

Maryland Agricultural Land Preservation Program

RETAINED RESIDENTIAL LOT OPTIONS ON EASEMENT PROPERTIES (post-October 2003[†])

This Fact Sheet details the eligibility you retain to request that a family lot or pre-existing residence be released from Maryland Agricultural Land Preservation Foundation (MALPF) easement restrictions for your or your child's personal use OR, alternatively, an unrestricted lot or pre-existing residence be released from any easement restrictions. This discussion applies only to post-October 2003 easements, and its specific application depends upon the language in your deed of easement.

Eligibility for the Release of Lots

You, as the original owner of the preserved property, must choose at the time of easement application whether you wish to retain eligibility to develop up to three family lots *or* one unrestricted lot on your property. You may also choose to waive all lot rights on your property. Any lots released may not be further subdivided.

Choice 1 **Family Lots**

You may retain the option to have released for residential development up to three family lots. The legislative intent of providing the family lot option is to encourage the continuation of the family farming unit and to facilitate the intergeneration transfer of the farming operation by allowing children involved in the farming operation with their parents to live on the property. This benefit is **not** to provide an opportunity for commercial speculation and/or gain by the transfer of such lots to ineligible third parties. *Subsequent owners do not have a right to these lots.*

- You, as the original seller of the easement, are eligible to apply for release of only one lot per eligible family member, no matter how many easement properties you own and irrespective of the form of ownership (multiple individuals, family entity, or non-family entity).
- Eligibility to exclude family lots and lots for pre-existing dwellings is extinguished if you, as the original seller of the easement, sell or transfer the property to a subsequent owner, whether or not all of the lots have been developed.
- The first lot requires a full twenty acres. The second lot requires an additional full fifty acres. The third lot requires an additional full fifty acres. Therefore, you must have 70 acres or more to be eligible for two lots, and 120 acres or more to be eligible for all three lots.
- If you choose the family lot option, you, as the original seller of the easement, may exclude a one-acre or smaller lot for your personal residence and/or each of your children is eligible for the release of a one-acre or smaller lot up to a maximum of three lots if you have sufficient acreage (120 acres or more).
- If you choose the family lot option, you as the original seller of the easement, may exclude a one-acre or smaller lot surrounding any dwelling that existed at the time of

the easement sale. The exclusion of a lot around a pre-existing dwelling can only be for the personal use of a family member qualifying for a family lot and will use up eligibility for a family lot from the total possible on the property.

- If more than one acre is necessary to meet regulations adopted by the county or to meet the septic requirements, up to two acres can be released from the easement with written verification from the appropriate county agency. Under exceptional circumstances, the Foundation may release more than two acres for a family lot to meet unusual septic requirements with adequate documentation from the county health department.
- If your easement property was subject to a district agreement before the sale of the easement, any lot released during the period that only the district agreement was in effect will use up lot eligibility from the total possible on the property.
- The release of a family lot from the easement requires the payback to the Foundation the amount paid to you for the easement on a pro-rated per acre basis. Thus, if you were paid \$1,500 per acre and your lot requires 1.5 acres to meet septic requirements, you will be required to repay the Foundation \$2,250. If the family lot being released is associated with a pre-existing dwelling, the payback will only apply to any acreage required beyond the one acre on which the Foundation did not pay when the easement was acquired.
- Release of a family lot from the easement does not constitute a subdivision of the lot from the balance of the property. The lot may not be sold or otherwise conveyed separately from the whole property without appropriate subdivision approval from the local governing authority.
- Because family lots are highly restricted and only available for the personal use of eligible individuals, a five-year restriction is imposed on the transfer of any released family lot to a third party without permission of the Foundation.
- Because family lots are highly restricted and cannot be sold in the open market, they are not taken into account when the property is appraised during the process to sell the easement to the Foundation.
- If you, as the potential seller of the easement, are concerned about the future status of pre-existing dwellings on your property, you should consult with your local program administrator about excluding or withholding such dwellings before applying to the program. If you are a subsequent owner, any pre-existing dwellings that were not excluded from the easement will remain permanently non-subdividable.
- All lot release requests must be reviewed and approved by the county and the Foundation's Board of Trustees. The approval process and criteria are detailed in a separate fact sheet.

Choice 2 **Unrestricted Lot**

You may alternatively choose to retain the unrestricted lot option. You or any subsequent owner are/is eligible to exclude a one-acre or smaller lot to develop a single dwelling. No restrictions are imposed on who can receive this dwelling. Once this lot is developed, no more lots can be excluded from the easement. This benefit is intended to give you greater flexibility in the disposition of the lot. You could transfer it to an otherwise ineligible family member, such as a grandchild or uncle. You could sell it on the open market. Or you could keep the right with the farm for use by a subsequent owner.

- If you choose the unrestricted lot option, you as the original seller of the easement or any subsequent owner of the property may exclude one one-acre or smaller lot unrestricted by its recipient, as long as the easement property is at least a full twenty acres in size.
- If you choose the unrestricted lot option, you as the original seller of the easement and any subsequent owner of the property may exclude a one-acre or smaller lot surrounding any dwelling that existed at the time of the easement sale. The exclusion of a lot around a pre-existing dwelling can be for any recipient and will extinguish eligibility for the one unrestricted lot on the property.

Fact Sheet 6

- If more than one acre is necessary to meet county regulations or septic requirements, up to two acres can be released from the easement with written verification from the appropriate county agency. Under exceptional circumstances, the Foundation may release more than two acres for an unrestricted lot to meet unusual septic requirements with adequate documentation from the county health department.
- Once the one unrestricted lot has been released, whether for a new residence or a pre-existing residence, no further lots can be developed on the property by any owner.
- If your easement property was subject to a district agreement before the sale of the easement, any lot released during the period that only the district agreement was in effect will use up lot eligibility from the total possible on the property. If the lot released under the district agreement was a family lot, you will not be eligible for the unrestricted lot option when you sell your easement. If the lot released under the district agreement was an unrestricted lot, you will have no unrestricted lot remaining.
- The release of an unrestricted lot from the easement requires the payback to the Foundation the amount paid to the original seller of the easement on a pro-rated per acre basis. Thus, if the easement seller was paid \$1,500 per acre and your lot requires 1.5 acres to meet septic requirements, you will be required to repay the Foundation \$2,250. If the unrestricted lot being released is associated with a pre-existing dwelling, the payback will only apply to any acreage required beyond the one acre on which the Foundation did not pay when the easement was acquired.
- Release of an unrestricted lot from the easement does not constitute a subdivision of the lot from the balance of the property. The lot may not be sold or otherwise conveyed separately from the whole property without appropriate subdivision approval from the local governing authority.
- Because an unrestricted lot may be sold to anyone at any time in the open market, it is counted as a "used" residential development right on the property when it is appraised during the process to sell the easement to the Foundation.
- If you, as the original seller of the easement, are concerned about the future status of pre-existing dwellings on your property, you should consult with your local program administrator about excluding such dwellings before applying to the program or withholding the associated acreage in the application process. If you are a subsequent owner with pre-existing dwellings that were not excluded from the easement, and the unrestricted lot eligibility has been used on the property, those pre-existing dwellings will remain non-subdividable permanently.
- All lot release requests must be reviewed and approved by the county and the Foundation's Board of Trustees. The approval process and criteria are detailed in a separate fact sheet.

Choice 3 **Waiver of All Lot Rights**

You may choose to waive all lot rights on your property. If you have no need for a family lot or unrestricted lot and wish to maximize the value of your offer and any discount you may take in selling your easement to the Foundation, you may prefer to extinguish all remaining eligibility for residential lots on your property. You may also extinguish an unexercised unrestricted lot after the easement has been sold for the tax benefits that result from such a charitable donation. You should consult with your local program administrator to more fully understand the program implications of waiving lot eligibility on your property.

Estate Planning

With the exception of those eligible for and choosing the unrestricted lot option, the law specifically allows only the original landowner who sold the easement to create lots for his or her children. If the owner should die before formally and in writing requesting any lots for eligible children, the Foundation may deny any requests to release lots for these children.

As a form of insurance against such an occurrence, the landowner may formally document the intention to create a child's lot even though this transaction may not be completed until years later. The landowner may formally and in writing state the intent to create a child's lot for specifically named eligible children in a letter to the Foundation that is placed in the property file, or the landowner may include language in his or her last will and testament which clearly indicates the intention to create lots for the named children (or, preferably, may place a letter of intent in the Foundation's property file and include a statement of intent in the last will and testament).

By presenting the Foundation's letter of approval, a letter from the Foundation acknowledging receipt of this letter of intent, and/or the will, a landowner's child may complete the lot release transaction after the landowner's death. However, even if a landowner has formally documented the intention to create lots, any uncompleted lot release transactions are null and void once the property is sold or the ownership is transferred.

† A post-October 2003 easement to which the discussion in this fact sheet applies is an easement approved by the Maryland Board of Public Works after October 1, 2003. The language in your recorded Deed of Easement will clarify your retained residential lot options.

This fact sheet is a public document and is provided for general information only. If you have a question about a specific law, regulation, or provision of the district agreement, option contract, or deed of easement, please consult legal counsel.

Last revision: April, 2015.

QuickTime™ and a
decompressor
are needed to see this picture.

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
MARYLAND DEPARTMENT OF AGRICULTURE
The Wayne A. Cawley, Jr. Building
50 Harry S. Truman Parkway
Annapolis, Maryland 21401
Telephone: 410-841-5860
Fax: 410-841-5730

<http://www.mda.maryland.gov/malpf/Pages/Fact-Sheets.aspx>