

THE BOARD OF GARRETT COUNTY COMMISSIONERS

203 South Fourth Street · Courthouse · Room 207, Oakland, Maryland 21550

www.garrettcounty.org · countycommissioners@garrettcounty.org

301-334-8970

301-895-3188

FAX 301-334-5000

Board of Commissioners

Dennis G. Glotfelty

Ernest J. Gregg

Frederick A. Holliday

County Administrator

R. Lamont Pagenhardt

County Attorney

Gorman E. Getty III

Filed and recorded January 15, 2009.

RESOLUTION NO. 2009 - 1 - Revised

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF GARRETT COUNTY, MARYLAND, A BODY POLITIC AND CORPORATE AND A POLITICAL SUBDIVISION OF THE STATE OF MARYLAND (THE "COUNTY"), TO ADOPT A LOCAL PROGRAM FOR THE ESTABLISHMENT, MONITORING, AND EVALUATION OF LAND TO BE INCLUDED IN AGRICULTURAL DISTRICTS WITHIN GARRETT COUNTY AND TO ASSIST IN AND CONTINUE THE PRESERVATION OF AGRICULTURAL LAND BY PERMITTING PROPERTY OWNERS TO PARTICIPATE IN THE TAX CREDIT PROGRAM FOR AGRICULTURAL LAND IN GARRETT COUNTY.

Explanation

The Maryland Agricultural Land Preservation Foundation ceased accepting district applications as of July 1, 2008. Pursuant to authority contained in Article 25, § 237, of the Annotated Code of Maryland, the County is authorized to adopt a local program for the establishment, monitoring, and evaluation of land to be included in Agricultural Districts. The County desires to continue to establish Agricultural Districts and desires to adopt a Garrett County Agricultural District Program in order to assist in and continue in the preservation of agricultural land in Garrett County designed to permit property owners to participate in the Tax Credit Program for Agricultural Land adopted July 6, 2000.

It is the purpose of this Resolution to create the Garrett County Agricultural District Program and establish the rules, regulations, and procedures for establishment of Agricultural Districts in Garrett County.

NOW, THEREFORE, BE IT RESOLVED, by the Board of County Commissioners of Garrett County, Maryland, as follows:

1. The Explanation set forth above is incorporated as a substantive provision of this Resolution.
2. The Garrett County Agricultural Land Preservation District Ordinance, which is attached hereto and incorporated herein, be and is hereby enacted establishing the rules, regulations, and procedures for the establishment of Agricultural Districts in Garrett County, Maryland.

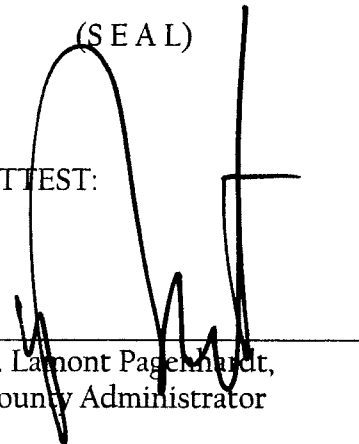
3. The terms of this Resolution shall be effective upon passage.

ADOPTED this 13<sup>th</sup> day of January, 2009, by the Board of County Commissioners of Garrett County, Maryland, by its Chairman, Frederick A. Holliday, and attested by R. Lamont Pagenhardt, County Administrator.

BOARD OF COUNTY COMMISSIONERS  
OF GARRETT COUNTY, MARYLAND

(SEAL)

ATTEST:

  
\_\_\_\_\_  
R. Lamont Pagenhardt,  
County Administrator

By  (SEAL)  
\_\_\_\_\_  
Frederick A. Holliday, Chairman

**GARRETT COUNTY AGRICULTURAL LAND PRESERVATION DISTRICT  
ORDINANCE**

**100 General**

The Maryland General Assembly created the Maryland Agricultural Land Preservation Program to preserve productive agricultural land and woodland that provides for the continued production of food and fiber for the citizens of the State. The Board of Garrett County Commissioners supports this policy and wishes to assist in preserving productive agricultural land and woodland by creating its own agricultural district program. The County's district program is intended to screen and pre-qualify landowners eligible for participation in the State's Easement program and to encourage landowners to participate in the preservation program by allowing qualifying district owners to participate in the Garrett County Agricultural Tax Credit program adopted July 6, 2000.

**200 Program Summary**

- A. Like the Maryland Agricultural Land Preservation Program, the Garrett County Agricultural Land Preservation District program is voluntary on the part of landowners. The Board of County Commissioners has appointed a local agricultural preservation advisory board to assist in the creation of agricultural preservation districts where the subdivision and development of land is restricted by agreement between the landowner and Garrett County, and where agricultural and woodland production activities are encouraged and protected. If a landowner requests that his property be included in a district, that property must meet minimum criteria as established by the Maryland Agricultural Land Preservation Foundation ("the Foundation") and this Ordinance. If an easement has not been sold to the Foundation, a landowner may terminate after 3 years his property's inclusion in a district. Notice to terminate may be given at any time after the 3-year term.
- B. A landowner who includes his land within a district will receive the following benefits:
  - (1) Direct and indirect support of agriculture;
  - (2) Insulation of normal agricultural activities from nuisance complaints;
  - (3) Eligibility to apply for an agricultural land tax credit; and
  - (4) Eligibility to make an application to sell an agricultural land conservation easement to the Foundation.

**300 Agricultural Preservation Districts**

- A. Conditions for Establishment
  - (1) To establish a district, a landowner shall:
    - (a) File a petition as provided under §B of this regulation; and

- (b) If the petition is approved as provided under this regulation, execute a district agreement in the form prescribed by the County, agreeing, among other things, that the following covenants, conditions and restrictions contained in it run with the land covered by the agreement for so long as the agreement remains in effect:
  - (i) The landowner agrees to keep the land in agricultural use in a district for, except as otherwise permitted by law, a minimum period of 3 years from the date the district agreement is recorded in the land records of the county,
  - (ii) The landowner agrees not to use the land for any commercial, industrial, or residential purpose, except as otherwise permitted by Agriculture Article §2-513, Annotated Code of Maryland,
  - (iii) The landowner agrees not to subdivide the land for any purpose unless the County first has approved the proposed subdivision and the subdivision is consistent with the policies and requirements of the Maryland Agricultural Land Preservation Foundation easement program, and
  - (iv) The landowner agrees not to construct buildings or structures on the land that are not designed or intended to be used for agricultural purposes unless the County first has approved the proposed construction.

- (2) The Maryland Agricultural Land Preservation Foundation will continue to process applications for the sale of easements on agricultural land under Title 15, Department of Agriculture, Subtitle 15 and may only purchase an easement on land in a district.

B. Petition for Establishment

- (1) One or more owners of land actively devoted to agricultural use within the County may voluntarily file a petition with the County governing body requesting the establishment of an agricultural preservation district composed of the land owned by the petitioners.
- (2) The petition shall include a general description of each land parcel including acreage and the current use of the land and shall be accompanied by a map or plat of each subject parcel at a scale no smaller than 1 inch equals 600 feet (copy of tax map will meet requirement).
- (3) The petition also shall be accompanied by a district agreement for each subject parcel signed by the landowner or landowners.
- (4) The petition and district agreement shall be submitted to the County governing body.

C. Agricultural Preservation District Establishment – Procedures.

(1) Referral of Petition

- (a) Upon receipt of a petition to establish an agricultural preservation district, the County governing body shall refer the petition and accompanying materials to both the agricultural preservation advisory board and to the County planning commission.
- (b) Within 60 days of the referral of a petition, the agricultural preservation advisory board shall inform the County governing body whether the land in the proposed district meets the qualifications established by the County under §D, below, and whether the advisory board recommends establishment of the district.
- (c) Within 60 days of the referral of a petition, the County planning commission shall inform the County governing body whether establishment of the district is compatible with existing and approved County plans, programs, and overall County policy, and whether the planning commission recommends establishment of the district. In the process of review, the County planning commission shall consider compatibility of district establishment with State and local plans and programs.

- (2) If either the agricultural preservation advisory board or the planning commission recommends approval, the County governing body shall hold a public hearing on the petition. Adequate notice of the hearing shall be given to all landowners in the proposed district and to landowners adjacent to the proposed district. If neither body recommends approval of the petition, the local governing body shall deny the petition and notify the landowner or landowners stating the reasons for the denial.

(3) Approval of Petition

- (a) Within 120 days after the receipt of the petition, the County governing body shall render a decision on whether the petition is approved.
- (b) If the County governing body decides to approve the petition, this body shall so notify the Foundation.

- (4) If the County governing body approves the petition, the agricultural preservation district shall be established by the County governing body. However, the establishment may not take effect until all parties have executed agricultural preservation district agreements and until these agreements have been recorded in the land records of the county. The County shall record the agreements.

- (5) The establishment of a district does not grant the public any right of access or right of use of subject properties.

D. Agricultural Preservations Districts – Qualifying Criteria.

(1) Productive Capability Criteria

(a) Agricultural preservation districts shall consist of land that is either used primarily for the production of food or fiber or is of such open space character and productive capability that continued agricultural production is feasible.

(b) Soils Criteria

(i) The majority of the land area of any district shall consist of U.S.D.A. Soil Capability Classes I, II and III; or,

(ii) The majority of the land area of any district shall consist of U.S.D.A. Woodland Groups 1 and 2 which are applied to wooded areas only; or,

(iii) The majority of the land area of any district less the acreage contained within the 100-year floodplain as delineated on Flood Hazard Boundary maps produced by the Federal Emergency Management Administration and State or Federal designated wetlands shall consist of U.S.D.A. Soil Capability Classes I, II and III on cropland and pasture or Woodland Groups 1 and 2 on wooded areas only; or

(iv) A minimum of 60 percent of the land area of any district shall consist of U.S.D.A. Soil Capability Classes II, II and III on cropland and pasture and Woodland Groups 1 and 2 on woodland areas; or

(v) A minimum of 60 percent of the land area of any district less the acreage contained within the 100-year floodplain and State or Federal wetlands shall consist of U.S.D.A. Soil Capability Classes I, II, and III on cropland and pasture and Woodland Groups 1 and 2 on wooded areas.

(c) Exceptions to §D (1)(b)(i) - (v) of this regulation may include land areas of lower soil capabilities, but with a rating similar to Classes I, II and III on cropland and pasture and Woodland Groups I and II on woodland areas. Land with lower soil capabilities may qualify to be in a district if the soils on the applicant's farm otherwise comply with all the requirements of this section and the applicant submits to the County a letter from the appropriate U.S. Department of Agriculture district conservationist that states that the soils on the applicant's farm have a cropland or pasture rating similar to Classes I, II and III, or Woodland Groups I and II. Farm areas with extensive specialized production, including but not limited to dairying livestock, poultry, fruit or berry production may also be considered by the County to be included in a district.

(2) District Size Criteria.

- (a) An agricultural preservation district shall be 50 contiguous acres. However, a parcel of less than 50 acres may qualify as a district if:
  - (i) It adjoins a 50 acre parcel which has been approved by the County as an agricultural preservation district; or
  - (ii) It is added to one or more adjoining parcels which together have been approved by the County as agricultural preservation districts; or
  - (iii) The land has extraordinary agricultural capability as provided by §D (5) of this regulation and is of significant size; or
  - (iv) It adjoins land subject to a recorded instrument which permits agricultural activities and contains restrictions that are the same as or more stringent than those found in the Foundation's deed of easement and the collective mass of these lands total at least 50 acres.
  
- (3) Location Criteria. Land within the boundaries of a 10-year water and sewerage service district may be included in an agricultural preservation district only if that land is outstanding in productivity and is of significant size. Note: Refer to County Water and Sewerage Plan.
- (4) Agricultural land which is otherwise qualified for district establishment and is comprised predominantly of land of lower general capability also may meet minimum qualifying criteria if the following conditions are met to the satisfaction of the County.
  - (a) The agricultural preservation advisory board of the County shall obtain general information from the Agricultural Extension Agent and specific written information from the soil conservation district in the County, and such other sources as might be applicable, addressing the long-term productivity of the land and farm management practices, and shall forward this documentation to the local governing body; and
  - (b) The agricultural preservation advisory board shall state in its recommendations, with the advice of the applicable soil conservation district, that an approved soil conservation plan is being implemented.
  
- (5) For the purpose of this chapter, land has "extraordinary agricultural capability: if it:
  - (a) Has a soil conservation plan approved by a local soil conservation district, fully implemented according to a schedule in the plan;
  - (b) Is located in an area designated by the County for agricultural preservation;

- (c) Is recommended by the majority of the local advisory board after an on-site inspection is conducted by one or more members; and
- (d) Meets either of the following:

- (i) Has at least 60 percent of the land area consisting of U.S.D.A. Soil Capability Classes I, II and III, or U.S.D.A. Woodland Groups 1 and 2 which are applied to wooded areas only, or
- (ii) Has a minimum of 72 percent of the land area less any acreage included within the 100-year floodplain and less any acreage included in State or Federal wetlands consisting of a combination of U.S.D.A. Soils, Class I, II and III on cropland and pasture and Woodland Groups 1 and 2 on wooded areas.

E. Additions to Existing Districts. The procedures for adding land to existing districts shall be the same as for the initial establishment of districts. There are no minimum size criteria for the addition of land parcels contiguous to an agricultural preservation district.

F. Exclusion of Lots in Districts

- (1) A landowner may request to have excluded from a district certain portions of the owner's property, constituting lots of either 1 acre or less, or when permitted, 2 acres or less if the purpose for excluding the property is to construct a dwelling house for the owner or the owner's children.
- (2) A landowner may request to have up to 3 building lots excluded from a district. The number of lots allowed to be excluded shall be computed based upon the total farm acres at the rate of one lot for 20 to 69.99 acres; two lots for 70 to 119.99 acres; and three lots for over 120 acres.
- (3) In reviewing the landowner's request, the County shall examine the:
  - (a) Location of the lot to be excluded; and
  - (b) Potential impact the lot's exclusion may have on the agricultural use of the remaining property.

G. Continuation of Districts. Agricultural districts shall continue in effect indefinitely unless terminated in accord with any of the procedures provided in Section 400 below.

H. Access. In determining questions about easements, rights-of-way, licenses, and other similar servitudes in land subject to a district agreement, the County shall follow the same rules that are applicable to the establishment of these servitudes in land subject to a preservation easement set forth under Regulation 17F of COMAR, Title 15, Department of Agriculture, Subtitle 15, Chapter 01

**400 Terminations and Alteration of Districts**



- A. The provisions of this regulation are applicable only to land in agricultural preservation districts on which an easement is not held by the Foundation.
- B. After 3 years. A landowner may terminate his property's inclusion in an agricultural preservation district at any time after 3 years from the establishment of the district. Notice of intention to terminate may be submitted to the County at any time after the three-year term.
- C. Severe Economic Hardship
  - (1) County Approval Needed. If severe economic hardship occurs, the County governing body may release the landowner's property from an agricultural preservation district at any time.
  - (2) Petitioning the County
    - (a) To obtain the relief available under §C (1) of this regulation, the landowner shall petition the County, stating succinctly the severe economic hardship that the landowner is sustaining, and providing the County with the following information:
      - (i) A recent financial statement which shows the owner's complete assets and liabilities and a statement that the information contained in the financial statement is true and accurate;
      - (ii) Other information attesting to the severe economic hardship that the landowner is sustaining, including by way of example, information from mortgagees, lien holders, creditors, attorneys, the Internal Revenue Service, or other third-party interests who are qualified to address the economic condition of the landowner.
    - (b) Disclosure of Information. To the extent permitted by law, the County shall deny public access to the information the landowner has supplied under §C (2)(a) of this regulation.
    - (c) If the County approves the petition to release the landowner's property from a district, the County shall prepare the release.