

# Title 34 DEPARTMENT OF PLANNING

## Subtitle 03 LAND USE

### 34.03.03 Certification of County Agricultural Land Preservation Programs

Authority: Agriculture Article, §§2-103(b) and 2-518; State Finance and Procurement Article, §§5-203(b)(2) and 5-408; Tax-Property Article, [§3-306] §13-306; Annotated Code of Maryland

**Notice of Proposed Action**

[20-065-P]

The Maryland Department of Planning proposes to repeal existing Regulations .01—.12 and adopt new Regulations .01—.11 under COMAR 34.03.03 Certification of County Agricultural Land Preservation Programs.

**Statement of Purpose**

The purpose of this action is to revise the regulatory framework for certifying County Agricultural Land Preservation Programs.

**Comparison to Federal Standards**

There is no corresponding federal standard to this proposed action.

**Estimate of Economic Impact**

**I. Summary of Economic Impact.** The proposed action, consistent with recently enacted legislation, extends for a certain number of years the certification period for certain county agricultural land preservation programs. Under the proposed action, if the Department of Planning and the Maryland Agricultural Land Preservation Foundation determine that a county program is consistently effective in achieving program goals, its recertification period shall be for 5 years rather than 3 years. Accordingly, this may reduce a county’s administrative time and costs to have its county program recertified.

<b>II. Types of Economic Impact.</b>	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	NONE	
B. On other State agencies:	NONE	
C. On local governments:	(E-)	Minimal
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

**III. Assumptions.** (Identified by Impact Letter and Number from Section II.)

C. If a county program is determined to be consistently effective in achieving program goals, its recertification period shall be 5 years

rather than the current 3-year period; and thereby reduce the administrative time and costs to seek recertification.

**Economic Impact on Small Businesses**

The proposed action has minimal or no economic impact on small businesses.

**Impact on Individuals with Disabilities**

The proposed action has no impact on individuals with disabilities.

**Opportunity for Public Comment**

Comments may be sent to Adam Gruzs, Chief of Staff, Maryland Department of Planning, 301 W. Preston Street, Suite 1101, Baltimore, MD 21201, or call (410) 767-4613, or email to adam.gruzs@maryland.gov. Comments will be accepted through March 30, 2020. A public hearing has not been scheduled.

**.01 Purpose.**

*This chapter establishes the eligibility requirements and applications procedures for the certification and recertification of a county agricultural land preservation program by the Department of Planning and the Maryland Agricultural Land Preservation Foundation. Certification of a county agricultural land preservation program qualifies the county for additional funding as provided in State Finance and Procurement Article, §5-408(h), Annotated Code of Maryland, and Regulation .09 of this chapter.*

**.02 Definitions.**

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) “Agricultural land transfer tax” means the tax imposed under Maryland Tax-Property Article, §13-302, Annotated Code of Maryland.

(2) “County” means a county of the State or Baltimore City.

(3) “County agricultural preservation advisory board” means a board established by a county under Agriculture Article, §2-504.1, Annotated Code of Maryland.

(4) “County funds” means local funds derived from sources other than the agricultural land transfer tax.

(5) “County governing body” means the board of county commissioners or, in a charter county, the county executive and the county council of a county.

(6) “County program” means a county agricultural land preservation program under State Finance and Procurement Article, §5-408, Annotated Code of Maryland.

(7) “Department” means the Maryland Department of Planning.

(8) “Development right” means a right under local law to develop land for non-agricultural commercial, industrial, or residential use.

(9) “Financial enhancement” means a financial incentive that a county offers to encourage local landowners to participate in a land preservation program, including, but not limited to, property tax credits, bonus payments, or tax-free interest payments.

(10) “Foundation” means the Maryland Agricultural Land Preservation Foundation in the Maryland Department of Agriculture.

(11) “Local plan” means a County’s goals, objectives, policies, and interrelated plans for private and public land use, transportation, and community facilities documented in texts and maps which constitute the guide for the County’s future development, and includes a general plan, master plan, comprehensive plan, or community plan adopted in accordance with Division I of the Land Use Article, Annotated Code of Maryland.

(12) “Nonqualifying expenditures” means expenditures by a county, other than qualifying expenditures, made to support, administer, or operate a county program.

(13) “Priority preservation area” means an area established and certified in accordance with Agriculture Article, § 2-518, Annotated Code of Maryland, and Regulation .06 of this chapter, and which is identified and delineated on a map as the priority preservation area in a priority preservation area element of the local plan.

(14) “Program development strategy” means a strategy designed to improve the effectiveness of a county program.

(15) “Program evaluation” means an evaluation of a county program that:

(a) Evaluates the effectiveness of the county’s zoning and land management practices to:

(i) Limit the adverse impacts of subdivision and development of agricultural and forest land;

(ii) Allow for the timely acquisition of land preservation easements on agricultural and forest land; and

(iii) Achieve the Foundation’s goals, as expressed in Agriculture Article, §2-501, Annotated Code of Maryland and Regulation .03 of this chapter, before development excessively compromises agricultural and forest resource lands; and

(b) With respect to the goals for certification of a county program set forth in Regulation .03 of this chapter:

(i) Identifies the strengths and weaknesses in the county’s zoning and land management practices and the county program;

(ii) Includes a discussion and analysis of all identified weaknesses; and

(iii) Identifies the county’s plans and actions to make improvements to the county’s zoning and land management practices and the county program.

(16) “Qualifying expenditures” means expenditures of county funds by a county to:

(a) Purchase a development right;

(b) Provide bond annuity funds or matching funds for the purchase of a development right;

(c) Guarantee loans that are collateralized by a development right;

(d) Provide additional financial incentives to agricultural land owners to sell a development right; or

(e) Pay allowable administrative expenses as provided in Tax-Property Article, §13-306(c)(5), Annotated Code of Maryland.

(17) “Secretary” means the Secretary of the Department.

**.03 Goals.**

Certification and recertification of a county program are intended to assure that the county program operates to:

A. Maintain rural communities and areas capable of supporting agricultural and forestry activities that enable positive economic contributions of agriculture and forestry and the important roles that farming and forestry play in enhancing Maryland’s environment;

B. Complement the Foundation’s mandate to preserve viable agricultural and forest lands;

C. Make agricultural and forest land preservation part of an overall effort to manage growth and preserve environmental quality; and

D. Assure the cost effectiveness of:

(1) County expenditures directed toward preservation of agricultural and forest land; and

(2) Expenditures by the county of the agricultural land transfer tax.

**.04 Eligibility and Certification Requirements.**

A. A county may apply for certification or recertification by the Department and the Foundation of a county program.

B. Before it may certify or recertify a county program, the Department and the Foundation must determine that:

(1) Both the county agricultural preservation advisory board and the county governing body:

(a) Have determined that the county program is effective in preserving agricultural and forest land; and

(b) Approve the county’s application for certification or recertification of the county program;

(2) The county program encourages the participation of farmers in agricultural land preservation efforts, including through the purchase of development rights or financial enhancements related to the purchase of development rights through funds other than those from the Maryland Agriculture Land Preservation Fund established in Agriculture Article, §2-505, Annotated Code of Maryland;

(3) The county’s local plan includes a priority preservation area element that:

(a) Establishes appropriate goals for preservation within the priority preservation area of agricultural and forest land; and

(b) Meets the requirements of Regulation .05D(9) of this chapter;

(4) The size of the county’s priority preservation area is appropriate in relation to the county’s agricultural and forest land acreage preservation goals;

(5) The local plan, plan implementation tools, and program development strategy are likely to be successful in managing development and providing time to achieve State and county goals through acquisitions within the priority preservation area of land preservation easements before the area is excessively compromised by development;

(6) The county’s programs for the purchase of development rights and for financial enhancements related to the purchase of development rights:

(a) Are proven successful at the time of the county’s application; or

(b) Are likely to be successful, as described in §B(5) of this regulation, during the certification or recertification period; and

(7) The county has committed to making qualifying expenditures in an amount at least equal to the additional funds that would be available to the county if the county program is certified.

**.05 Application for Certification.**

A. This regulation applies to an application for certification of a county program that is:

(1) A county’s initial application for certification; or

(2) An application for certification of a county program if the county program had once been certified or recertified but is not certified or recertified at the time of the application.

B. An application for certification of a county program:

(1) Shall be submitted to both the Department and the Foundation on a form prescribed by the Department and the Foundation; and

(2) Shall serve as an application for certification by the Department and the Foundation of the county’s priority preservation area element for purposes of Agriculture Article, §2-518(g), Annotated Code of Maryland.

C. Preliminary Application.

(1) A county may submit a draft application to the Department and the Foundation for preliminary review and comment.

(2) If a county submits a draft application to the Department and the Foundation under this section, the Department and the Foundation must within 45 days after receipt of the draft application provide written comments to the county on the draft application.

D. An application for initial certification of a county program shall:

(1) Include a resolution, ordinance, or other appropriate authorization adopted or issued by the county agricultural preservation advisory board and the county's governing body that establishes each body's approval of both the county program and the application for certification;

(2) Include a program evaluation;

(3) Include a summary of how State, local, and other land preservation easement acquisition programs will operate to permanently preserve lands in the county's priority preservation area at a rate sufficient to achieve State and local land preservation goals;

(4) Include an evaluation of how county and other farming assistance programs operate to support profitable agriculture and forestry activities within the priority preservation area;

(5) Identify the number and locations of residential parcels and acres subdivided and developed within the priority preservation area during the 5-year period that preceded the application;

(6) Identify the total acreage and locations of agricultural and forest land located within the priority preservation area that is permanently preserved through land preservation easements that were recorded in the county's land records during the 5-year period that preceded the application;

(7) Include the county's current program development strategy;

(8) Include an inventory, in digital and tabular form, that:

(a) Identifies all properties located within the county that have been permanently preserved by a recorded land preservation easement;

(b) Identifies whether a preserved property is located within or outside of the priority preservation area;

(c) For each property identified, provides:

(i) The number of each tax map on which the parcel appears;

(ii) Each grid cell number of each tax map on which the parcel appears;

(iii) The parcel number that identifies the property on each tax map;

(iv) The tax account identification number;

(v) The total number of acres under easement;

(vi) The date on which the easement became effective;

(vii) The preservation program or entity that holds the easement;

(viii) The means through which the easement was acquired, such as purchase, transfer of development rights between private parties, or another means specified by the county; and

(ix) The easement purchase price, if the easement was purchased through or with financial assistance from a government program; and

(d) Is approved by the Department for content and format; and

(9) Verify that the local plan includes a priority preservation area element that:

(a) Identifies and delineates a priority preservation area that:

(i) Is large enough to support normal agricultural and forestry activities in conjunction with the amount of development permitted by the county in the priority preservation area; and

(ii) Contains productive agricultural or forest soils or, where productive soils are lacking, is capable of supporting profitable agricultural and forestry enterprises;

(b) Is governed by policies, ordinances, regulations, and procedures that operate to:

(i) Stabilize the agricultural and forest land base such that development does not convert or compromise agricultural or forest resources; and

(ii) Support the ability of working farms and forests within the priority preservation area to be utilized for agricultural and forestry activities;

(c) Establishes goals consistent with Regulation .03 of this chapter for the amount and types of agricultural and forest land to be preserved in the priority preservation area, including goals to protect at least 80 percent of the remaining undeveloped acreage within the county's priority preservation area as calculated at the time of certification of a priority preservation area;

(d) Provides the rationale used to establish the land preservation goals;

(e) Includes maps that delineate the county's priority preservation area;

(f) Describes the priority preservation area in the context of the county's growth management plans;

(g) Describes the ways in which the land preservation goals will be accomplished in the priority preservation area, including the county's strategy to:

(i) Protect land from development through zoning;

(ii) Preserve the desired amount of land with permanent land preservation easements; and

(iii) Maintain a rural environment capable of supporting agricultural and forestry activities; and

(h) Describes the county's methods and strategies to concentrate preservation funds and other supporting efforts in the priority preservation area.

**.06 Application Review and Certification.**

A. The Department shall within 15 days of receipt of an application for certification of a county program:

(1) Determine whether the application includes all information required in Regulation .05D of this chapter; and

(2) If determined incomplete, send written notice to the county and the Foundation informing:

(a) That the application is incomplete; and

(b) Of the additional information needed to complete the application.

B. Within 30 days after receipt of an application determined by the Department to be complete, the Secretary shall:

(1) Determine whether to approve, approve with conditions, or disapprove the application;

(2) If disapproved, identify in writing any changes that must be made to meet certification requirements; and

(3) Forward the Secretary's determination on the application to the Foundation.

C. Within 60 days after receipt of an application determined by the Department to be complete:

(1) The Board of Trustees of the Foundation shall review the Secretary's action and determine whether to approve, approve with conditions, or disapprove the application;

(2) If the Board's action is consistent with the Secretary's action, the Department shall notify the applicant in writing whether the application is approved, approved with conditions, or disapproved; and

(3) If either the application is disapproved or the Secretary and the Board of Trustees of the Foundation do not agree upon an approval, the Department's written notice to the applicant shall include:

(a) The reasons for disapproval or for the failure to agree upon an approval; and

(b) Instructions for resubmitting the application.

D. Notice to a county under §C of this regulation that an application is approved by the Department and the Foundation shall constitute certification of:

- (1) The county program; and
- (2) The county's priority preservation area.

E. A decision or determination made under this regulation is final, is not subject to appeal, and is not a contested case within the meaning of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

**.07 Recertification.**

A. Application for Recertification.

(1) A county that has a county program that is certified under Regulation .06 of this chapter or is recertified under this regulation may apply for recertification of the county program.

(2) The final annual report submitted in compliance with Regulation .10 of this chapter during a certification or recertification period shall serve as the county's application for recertification.

(3) The Department shall within 15 days of receipt of a county's final annual report for a certification or recertification period:

- (a) Determine whether the report includes all information required under Regulation .10 of this chapter; and
- (b) If determined incomplete, send written notice to the county and the Foundation informing:
  - (i) That the report is incomplete; and
  - (ii) Of the additional information needed to complete the report.

B. A county program may be recertified only if:

(1) During the period of certification or recertification the county has:

- (a) Maintained a successful program for the purchase of development rights or of financial enhancements related to the purchase of development rights;
- (b) Continued to meet the requirements of Regulation .04B of this chapter;
- (c) Made reasonable progress on any recommendations or improvements identified in the county's most recent program development strategy; and
- (d) Preserved agricultural and forest land and managed subdivision and conversion of agricultural and forest land consistent with State and county goals and plans for land preservation and environmental protection; and

(2) The county met the reporting requirements under Regulation .10 of this chapter.

C. Within 30 days of receipt of a county's final annual report for either a certification or recertification period determined by the Department to be complete, the Secretary shall:

- (1) Determine whether to approve, approve with conditions, or disapprove recertification of the county program;
- (2) If disapproved, identify in writing any changes that must be made to meet certification requirements; and
- (3) Forward the Secretary's determination on the recertification to the Foundation.

D. Within 60 days after receipt of a county's final annual report for either a certification or recertification period determined by the Department to be complete:

- (1) The Board of Trustees of the Foundation shall review the Secretary's action and determine whether to approve, approve with conditions, or disapprove recertification of the county program;
- (2) If the Board's action is consistent with the Secretary's action, the Department shall notify the applicant in writing whether the recertification is approved, approved with conditions, or disapproved; and

(3) If either the recertification is disapproved, or the Secretary and the Board of Trustees of the Foundation do not agree upon an approval, the Department's written notice to the applicant shall include:

- (a) The reasons for disapproval or for the failure to agree upon an approval; and
- (b) Instructions for resubmitting an application for recertification.

E. Notice to a county under §D of this regulation that recertification is approved by the Department and the Foundation shall constitute recertification of the county program.

F. A decision or determination made under this regulation is final, is not subject to appeal, and is not a contested case within the meaning of State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.

**.08 Periods of Certification and Recertification.**

A. Certification. The certification of a county program made under Regulation .06 of this chapter shall be effective to the end of the third full fiscal year that follows the date of notification under Regulation .06C of this chapter that the county's application for certification is approved or approved with conditions.

B. Recertification.

(1) Excepted as provided in §B(2) of this regulation, a recertification of a county program made under Regulation .07 of this chapter shall be effective to the end of the third full fiscal year that follows the date of the notification under Regulation .07D of this chapter that the county's recertification is approved or approved with conditions.

(2) If, at the time of a recertification made under Regulation .07 of this chapter, a county program is determined to be consistently effective in achieving preservation goals, the recertification of the county program shall be effective to the end of the fifth full fiscal year that follows the notification under Regulation .07D of this chapter that the county's recertification is approved or approved with conditions.

(3) For purposes of §B(2) of this regulation, a county program shall be considered consistently effective in achieving preservation goals if the county's program has previously been certified and recertified by the Department and the Foundation with no gap in time between the certification and recertification.

C. If a county has submitted the annual report under Regulation .10 of this chapter that serves as the county's application under Regulation .07 of this chapter for recertification of the county program, the certification or recertification of the county program shall remain in effect until the date of notification under Regulation .07D of this chapter that the recertification is approved, approved with conditions, or denied.

**.09 Effect of Certification or Recertification.**

A. A county that has a county program certified or recertified under this chapter is eligible for:

- (1) Funds that are available to counties as additional funds under Agriculture Article, §2-508.1, Annotated Code of Maryland, and Tax-Property Article, §13-306, Annotated Code of Maryland; and
- (2) Funds provided for the Foundation over and above the funding the Foundation receives under Agriculture Article, §2-508.1, Annotated Code of Maryland, and Tax-Property Article, §§13-209 and 13-306, Annotated Code of Maryland.

B. The funds available under §A of this regulation to a county with a certified or recertified county program may be used only for:

- (1) The purposes stated in or permitted under Agriculture Article, §2-508.1, Annotated Code of Maryland, or Tax-Property Article, §13-209 or 13-306, Annotated Code of Maryland;

(2) The purchase of development rights within the county's certified priority preservation area;

(3) Direct payment to a landowner to supplement a payment made by the Foundation for the purchase of development rights;

(4) Direct payment to a landowner made in conjunction with the transfer of development rights from the landowner's land to an area where residential development is planned;

(5) Any other direct use of funds or financial expenditures made to expedite or promote the sale or purchase of development rights for the permanent preservation of agricultural or forest land as approved by the Foundation and the Department, including payments for:

(a) Installment purchase agreements with landowners under an installment purchase agreement program approved by the Foundation;

(b) Preservation of critical farms under the Critical Farms Program established under Agriculture Article, §2-517, Annotated Code of Maryland; and

(c) The Next Generation Farmland Acquisition Program developed by the Maryland Agricultural and Resource-Based Industry Development Corporation under Article 41, Title 13, Subtitle 5, Annotated Code of Maryland, and approved by the Foundation;

(6) Costs incurred by the county to administer a certified or recertified county program, but no more than the greater of 10 percent of the county share of the agriculture land transfer tax or \$30,000;

(7) Bond annuity funds for bonds issued by the county for the sole purpose of purchasing agricultural land preservation easements; and

(8) County guarantees of loans collateralized by development rights on agricultural or forest land that meet the standards established under Agriculture Article, §2-512(e), Annotated Code of Maryland.

**.10 Reporting Requirements.**

**A. Annual Reporting Deadlines.**

(1) A county that has a county program that has been certified under Regulation .06 of this chapter or recertified under Regulation .07 of this chapter shall submit to the Department and the Foundation a written report that meets the requirements of this regulation:

(a) By October 1 of the year that follows the first full fiscal year of the certification or recertification period; or

(b) By October 1 for each year of a certification or recertification period that follows the initial report made under §A(1)(a) for that certification or recertification period.

(2) If requested in writing by the county, the Department may for good cause shown grant:

(a) A first extension of the deadline under §A(1) of this regulation to December 1 of the year that the report is due; and

(b) If a first extension has previously been granted, a second extension of the deadline under §A(1) of this regulation to February 1 of the calendar year that follow the year the report is due.

(3) If a county fails to submit an annual report by the deadline under §A(1) of this regulation or as extended by the Department under §A(2) of this regulation, the certification or recertification of the county's county plan shall expire on June 30 of the calendar year that follows the year that the report is due under §A(1) of this regulation.

**B. Contents of Annual Report. An annual report shall:**

(1) Include the following information verified and signed by the county's chief financial officer or by an independent auditor:

(a) For the fiscal year reported on, an accounting of the revenues and expenditures for the county's agricultural land transfer

tax account established under Tax-Property Article, §13-306, Annotated Code of Maryland;

(b) Identification of revenue sources for, and expenditures of, all other funds used during the fiscal year to purchase development rights, provide financial enhancements for the purchase of development rights, or administer the county program;

(c) For each reported expenditure, a statement that the expenditure was:

(i) Made inside the priority preservation area or outside the priority preservation area; and

(ii) A qualifying or nonqualifying expenditure; and

(d) Using a financial reporting form available from the Department, information sufficient for the Department and the Foundation to determine if the county is:

(i) Meeting its qualifying expenditures commitment; and

(ii) Using for permitted uses the funds made available under Regulation .09B of this chapter;

(2) If for either the first annual report of a 3-year certification period or the first three annual reports of a 5-year certification period, include an inventory of properties, provided in digital and tabular format and in accordance with Regulation .05D(9)(c) of this chapter, that identifies all properties that were permanently preserved by a land preservation easement during the reporting period; and

(3) If for the final annual report of a certification or recertification period:

(a) Include a map of all agricultural and forest lands preserved in the county, including those preserved both during and before the certification period, showing those properties in relation to priority preservation areas;

(b) Demonstrate that the county program continues to meet the certification requirements of Regulation .04B of this chapter;

(c) Describe any changes in either the county's priority preservation area or the priority preservation area element of the local plan;

(d) Include an updated program evaluation;

(e) If the county determines in its updated program evaluation that changes are needed to the county program, include an updated program development strategy; and

(f) Provide an update on progress towards implementing the county's most recent program development strategy.

**.11 Changes to a County Priority Preservation Area.**

A. The Department and the Foundation shall review a county program if either the Department or the Foundation learn or discover during either a certification or recertification period that the county has:

(1) Revised the boundary of a priority preservation area;

(2) Subtracted land from a priority preservation area; or

(3) Adopted zoning that increases the allowable nonagricultural land uses, density, or intensity of development within a priority preservation area.

B. The Department and the Foundation may revoke the certification or recertification of a county program if the Department and the Foundation find that the action reviewed under §A of this regulation is inconsistent with the requirements of Agriculture Article, §2-518, Annotated Code of Maryland.

C. The Department and the Foundation shall notify the county of the results of its review within 90 days of discovering any program changes described §A of this regulation.

JULIANNE OBERG  
Deputy Secretary of Agriculture