

MALPF Easement Language:

Agricultural Uses and Activities. “Agriculture”, “Agricultural” or “Agricultural Use”, means any use of the Land which directly contributes to the production, conversion, processing, storage, or sale of agricultural products generated on the Land and/or management of products such as livestock, horses, poultry, crops, trees, shrubs, plants, other vegetation, and aquaculture. The Land may be used for any Agricultural Use , and to carry on all normal agricultural operations, including, but not limited to: 1) the operation at any time of any machinery used in farm production or the primary processing of any Agricultural products; 2) the right to conduct upon the Land any Agricultural operation which is in accordance with good husbandry practices and which does not cause bodily injury or directly endanger human health; 3) other operations directly relating to the processing, storage, or sale of farm, Agricultural or woodland products generated on the Land; and 4) activities as approved by the Foundation for farm and forest related uses and home occupations.

RURAL LEGACY PROGRAM EASEMENT LANGUAGE (2017):

ARTICLE III. LAND USE AND STRUCTURES

A. General. This Article sets forth certain specific restrictions, prohibitions, and permitted activities, uses, and Structures under this Conservation Easement. Other than the specifically enumerated Provisions described below, any activity on or use of the Property that is otherwise consistent with the Conservation Purpose of this Conservation Easement is permitted. All manner of industrial activities and uses is prohibited. If Grantors believe or reasonably should believe that an activity not expressly prohibited by this Conservation Easement may have a significant adverse effect on the Conservation Purpose of this Conservation Easement, Grantors shall notify Grantees in writing before undertaking such activity.

B. Agricultural Uses and Activities. “Agriculture,” or “Agricultural” as the context requires, means production and/or management of products such as livestock, poultry, crops, trees, shrubs, plants and other vegetation, and aquaculture, but not surface, sub-surface, or spring water. This includes, by way of example and not limitation, the related activities of tillage, fertilization, application of pesticides, herbicides and other chemicals, harvesting and mowing, and the feeding, housing, breeding, raising, boarding, training and maintaining of animals such as horses, ponies, cattle, sheep, goats, hogs, and poultry.

Agricultural uses and activities are permitted on the Property on a Commercial (as defined below) or non-Commercial basis.

C. Commercial Uses and Activities. “Commercial” means any use or activity conducted by Grantors or a third party for the purpose of realizing a profit or other benefit to Grantors, their designees, or such third party from the exchange of goods or services by sale, barter, or trade. In instances in which the Grantors are a nonprofit corporation, Grantors may conduct only those Commercial uses or activities that are (i) directly related to Grantors’ mission and (ii) do not harm the Conservation Attributes. Commercial activities and uses that are permitted shall be limited in scale to those appropriate to the size and location of the Property. The following Commercial activities and uses are permitted:

(1) Commercial activities within Dwelling Units (as defined below) (for example: ongoing activities such as a professional office, at-home child day care, or, subject to Grantees’ approval, bed and breakfast; or occasional activities such as fundraisers or benefits);

(2) Commercial activities related to Agriculture inside of structures used for Agriculture (for example: farm machine repair shop or seed and mineral shop);

(3) seasonal or occasional outdoor Commercial activities that are accessory to the Agricultural uses of the Property (for example: hay rides, corn maze, farm animal petting zoo, pick your own produce) and sale of Agricultural products produced off of the Property but associated with such seasonal or occasional activities (for example, the sale of apple cider on a hay ride);

(4) production/processing (within a permitted Structure (as that term is defined below)) of Agricultural products (as listed in Article III.B above), a majority of which are produced on the Property or another property owned by Grantors, into derivatives thereof.

(5) the Commercial retail and/or non-retail sale of (i) Agricultural products (as listed in Article III.B above), a majority of which are produced on the Property or on a property owned by Grantors; or (ii) derivatives produced pursuant to III.C.(4) above;

(6) Commercial services related to Agriculture limited to equestrian sports, events, and shows, boarding, the training of horses/ponies and riders, and the provision of recreational or therapeutic riding opportunities; and

(7) Commercial Passive Recreational (as defined below) uses operated by a resident of a Dwelling Unit on the Property, or by the Grantors. Structures associated with these uses must be permitted according to Article III.E (3) below

D. Private Passive Recreational Uses and Activities. “Private” means the intensity of activity that could reasonably be expected in proportion to the number of residents that would typically occupy the permitted Dwelling Units (as defined below) on the Property. “Passive Recreation,” or “Passive Recreational” as the context may require, means low-impact activities conducted outdoors, including, by way of example and not by way of limitation, nature study, orienteering, hunting, fishing, hiking, kayaking, canoeing, sailing, boating, horseback riding, camping, and cross country skiing.

Private Passive Recreational uses are permitted on the Property but shall be limited in scale to those appropriate to the size and location of the Property. Athletic fields, golf courses, motor cross courses, all terrain vehicle (“ATV”) courses, off road vehicle (“ORV”) courses, and off highway vehicle (“OHV”) courses are prohibited on the Property.

**GUIDELINES FOR
REQUESTED USES OF LAND IN THE
MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION (“MALPF” OR “FOUNDATION”) PROGRAM**

The Foundation’s enabling statute provides the primary restriction for uses on Foundation easement properties. That restriction states: “[a] landowner whose land is subject to an easement may not use the land for any commercial, industrial, or residential purpose except . . . as determined by the Foundation for farm – and forest-related uses and home occupations . . .” Md. Code Ann., Agric. § 2-513(b). Accordingly, any commercial operation on an easement property must be farm or forest related or in the nature of a home occupation.

All requested uses must satisfy the following criteria to determine if a commercial operation (i.e., a use to generate profit) complies with the Foundation’s statutory and regulatory restrictions (any request must either meet criteria #1 through #3; or meet #4 alone):

1. The Foundation must determine that the proposed use is a farm or forest related use. Agric. § 2-513(b); COMAR 15.15.07;
2. The Foundation must determine if any request for a use or activity “conflicts with the overall purpose of the easement to preserve the farm for agricultural use and as open-space land.” COMAR 15.15.07; and
3. The Foundation should also consider whether the proposed use has an historical relationship to farming. COMAR 15.15.01.17.G(3)(c).

or;

4. The Foundation must determine that the proposed use is a home occupation. § 2-513(b); COMAR 15.15.07.

These guidelines are to serve as recommended direction for the Foundation, which has the ultimate decision-making authority for proposed uses on easement properties. At MALPF staff’s sole discretion, any matter requiring only MALPF staff approval may be referred to the Foundation’s Board of Trustees for consideration.

NOTE: Any lawful activities are allowed within a 1-acre footprint surrounding a pre-existing dwelling, including parking, and does not require MALPF approval. However, any new commercial activities must comply with your County Code. Once the necessary county approval/permits have been obtained, please provide notice to the Foundation for purposes of future inspection of the easement property.

DEFINITIONS

The following definitions clarify certain phrases used in this policy:

1. **“Agriculture”, “Agricultural” or “Agricultural Use”**: Any use of the easement property which directly contributes to the production, conversion, processing, storage, or sale of agricultural products generated on the easement property and/or management of products such as livestock, horses, poultry, crops, trees, shrubs, plants, other vegetation, and aquaculture.
2. **“Accessory Sales”**: Sales of items that typically are not agricultural in nature and are not produced on or from the property. Such items may include apparel, gardening or other implements, souvenirs, books or similar items.
3. **“Facility”**: A structure or fixture, such as a building, improvement, or large piece of equipment required for the requested use.
4. **“Some”**: A portion of the total that is 50% or less.
5. **“Majority”**: A portion of the total that is greater than 50%.
6. **“Regional” or “Regionally Produced”**: Products grown or produced within Maryland, Virginia, West Virginia, Delaware, Pennsylvania, or Washington, D.C.
7. **“Agritourism”**: The act of visiting a working farm to engage in outdoor recreation, participate in educational experiences, or enjoy entertainment and hospitality services. These activities are conducted on a working farm and offered to the public or to invited groups for the purpose of recreation, education, or active involvement in the farm operation. These activities must be related to agriculture or natural resources and support the primary agricultural operation. Activities include (but are not limited to) farm tours, hay rides, corn mazes, and classes related to agricultural products or skills.
8. **“Value-Added Agricultural Products” (defined by the USDA as follows)**:
 - a) A change in the physical state or form of the product (such as milling wheat into flour, making strawberries into jam, or making milk into ice cream).
 - b) The production of a product in a manner that enhances its value (such as organically produced products).
 - c) The physical segregation of an agricultural commodity or product in a manner that results in the enhancement of the value of that commodity or product.
 - d) Identity preserved marketing systems (i.e. Local, Grass-fed, Hormone-free, etc).

9. **“Equestrian uses”**: Equestrian activities and facilities are considered agricultural uses of the land and require no MALPF approval. All equestrian facilities must comply with COMAR 15.16.01 (Horse Industry Board), in regards to obtaining and maintaining an “Operator’s license” if you are a facility that offers boarding, lessons, rental services, training, or rescue/sanctuary stable.
- a. “Equestrian activity”: Breeding, boarding, renting, riding, training or caring for horses, as well as the instruction of equestrian skills to riders.
 - b. “Equestrian facility”: Any building, structure, or land area used primarily for an equestrian activity or event.
 - c. “Equestrian event”: Any competition, exhibition, or other display of equestrian skills (competitive or non-competitive).

REQUIREMENTS

Prerequisites	<p>All requested uses are subject to:</p> <ol style="list-style-type: none"> 1. All applicable State, Federal, and County requirements associated with the requested use; 2. County planning and zoning regulations; 3. Regulations concerning uses of or activities on farmland subject to a MALPF easement as provided in COMAR 15.15.07.01 et seq.; 4. Conditions, restrictions and limitation provided in the deed of easement, including impervious surface limitations in federally-funded easements; 5. Conditions and restrictions listed in these guidelines; 6. The landowner must have an ownership interest in any business, operation or occupation permitted under these guidelines; 7. Permitted uses must not interfere with other agricultural or silvicultural activities; 8. Permitted uses must not limit future agricultural or silvicultural production; and 9. Any requested uses that are permitted or approved under these guidelines shall be limited in scale to those appropriate to the size and location of the property (with consideration given to surrounding land uses), and shall be considered on a case-by-case basis by the Foundation. The Foundation shall also determine the frequency of any requested use.
Parking	<ol style="list-style-type: none"> 1. Parking area for all approved activities may be 1 acre, and up to 2 acres if the request demonstrates the need for the larger area. 2. Parking area must be pervious unless otherwise required by law, or approved by the Foundation.

	<ol style="list-style-type: none"> 3. Parking facilities for the handicapped shall be provided as required by law, however, any required impervious surface shall not exceed 5,000 square feet. 4. Parking area for any activities conducted within the one (1) acre surrounding a pre-existing dwelling is limited to that surrounding one (1) acre. 5. The Foundation must approve overflow parking for any Tier 2 or temporary events.
Accessory Sales	<ol style="list-style-type: none"> 1. Any accessory sales area must not exceed 600 (six hundred) sq. ft., and in no case shall be greater than the area used for the sale of agricultural and forestry items.

Other uses or variations of the requested uses defined herein may be allowed and may be pursued by the landowner by formal, written request to the county's MALPF program administrator, for possible consideration by MALPF's Board of Trustees. These uses must also comply with all conditions and restrictions as provided in these guidelines.

CONSIDERATION PROCESS

PROCESS	<p>Generally, when a landowner wants to pursue a requested use, there are many different required approvals at various levels of government, some of which require expenditures of funds to initiate. The MALPF review can occur in the beginning of the process, with the landowner providing the Foundation with as much information and details currently available to layout the intended plan of the operation. The Foundation can base the review off the best available information at the time, providing a decision on the conceptual plan. If the Foundation grants a conditional approval, the landowner shall provide the Foundation documentation that all the necessary approvals and permits associated with the requested use have been obtained. Foundation approval is not final until all conditions have been met.</p> <p>The Foundation encourages landowners to request the review early in the process so they do not have to expend any, or very little, funds prior to Foundation review.</p>
	<ol style="list-style-type: none"> 1. The process begins with a formal written request to the County Program Administrator by the landowner, describing the type of use being sought. The written request should address the requirements provided in this policy. The request shall then be considered by the county agricultural advisory board.

	2. After the county agricultural advisory board reviews the Requested Use, the County Program Administrator shall forward the request, together with written recommendation from the Program Administrator and the County's agricultural advisory board to MALPF staff for consideration. If required, MALPF staff will present the request to the MALPF Board of Trustees for consideration.
	3. After Foundation review, MALPF staff will send a letter to the landowner(s). The letter will either detail the conditions of approval (if any), or explain why the Requested Use was denied. If approved, the letter outlining the conditions of approval must be signed by the landowner/s and returned to MALPF. A Requested Use shall not be considered approved until the signed letter is returned from the landowner(s).

All Requested Uses are subject to the requirements, considerations and process listed above.

Land Use	CONDITIONS	MALPF Staff approval	MALPF Board approval
A. FARM AND FOREST RELATED			
1. Agritourism	Majority of the activities must be related to agriculture or natural resources and support the primary agricultural operation.	X	
2. Compost production*	Some of the products involved must come from, or be used, on site. Products from off site must be ready to process when they come onto the farm.	X	
3. Farm and forest machinery repair	Repairs are limited to farm or forest equipment. Some repairs must be to machinery of the on-site operation.	X	
*If all Agricultural product(s) is/are from the easement property, no approval necessary per terms of the easement.			

Land Use	CONDITIONS	MALPF Staff approval	MALPF Board approval
4. Firewood, mulch*	<p>Some of the products must be produced on site; the remainder must be of species grown in Maryland.</p> <p>Long-term storage of tree stumps and debris/plant material from off site is not allowed.</p>	X	
5. Landscaping business	<p>Majority of the stock used in the business must be grown on site. The operation must be involved in the planting of plant materials. The size of the operation is limited to 2 acres, or 10% of the easement property, whichever is less.</p> <p>Vehicles and equipment stored must support the business.</p> <p>Distribution centers, where offsite products are brought in for retail sales, are not allowed.</p>		X
6. Saw mill,* lumber kiln	<p>Some of the products handled must be produced on site; the remainder must be produced in Maryland or regionally produced.</p>	X	
7. Farm animal veterinary hospital	<p>The total square footage for the hospital (office, surgical rooms, and indoor treatment areas) must be no more than 10,000 sq. ft., unless the landowner can demonstrate the need for a larger area.</p> <p>The majority of animals treated shall be farm animals.</p> <p>No retail sales are allowed other than items supporting the services offered.</p>		X
*If all Agricultural product(s) is/are from the easement property, no approval necessary per terms of the easement.			

Land Use	CONDITIONS	MALPF Staff approval	MALPF Board approval
8. Livestock: - show - auction - sale	Can be held no more than once a month. Some animals must be raised on site.		X
9. Livestock slaughtering, butcher shop permanent facility	Disposal of all animal remains must comply with local, state, and federal regulations.		X
10. Processed (value-added) farm and forest products* (revised 1-23-2018)	Some of the products must come from animals raised or crops grown on site; the remainder must come from animals raised in or crops grown in Maryland or regionally produced, unless landowner can demonstrate the need for non-regionally produced products, which shall be specifically approved by the Board. Alcohol producers must comply with COMAR 03.02.01., Alcohol Beverages.		X
11. Farm markets and road side stands*	Majority of the products must be grown on site; the remainder must be grown in Maryland or regionally produced. Approval needed for accessory sales.	X	
12. Food preparation and on-site sales/seating relating to and supporting an agricultural operation.	Must be integral to, support, and market the principal agricultural operation. Seating area is limited to 1,000 square feet of a permanent roofed structure (or less if county zoning is more restrictive). Square footage of accessory sales may be co-mingled within the seating area. Total size of food preparation and on-site sales/seating area must be reviewed and approved by MALPF, which will consider the size of the facility in proportion to the agricultural operation.		X

*If all Agricultural product(s) is/are from the easement property, no approval necessary per terms of the easement.

Land Use	CONDITIONS	MALPF Staff approval	MALPF Board approval
13. Private air strip	Personal use is restricted to the personal use of the owner/operator of land on which the airstrip is located. Can be used for farm- and forest-related services in the community. Landing strip must be pervious. Accessory structures and lighting are not allowed.	X	

B. <u>COMMERCIAL EVENTS</u> (Agricultural related)	<ul style="list-style-type: none"> • The event must be farm or forest related. • The number, frequency, and scale of any event must be consistent with the scale of the farm, the agricultural operation, and the area's rural character. • May not conduct more than 16 events per year without MALPF Board approval. • If impacted, any farm or forested area must be maintained or restored to its original condition. • No permanent structures may be created to support events. • Food for events may be provided through a catering service (including food trucks), with final preparation on-site. 	MALPF Staff approval	MALPF Board approval
Definition of Tier 1 and Tier 2:			
14. Tier 1 Ag-related event	<ol style="list-style-type: none"> 1. Parking is less than or equal to 2 acres, and 2. Frequency of events are less than or equal to 16 per year. 	X	
15. Tier 2 Ag-related event	<ol style="list-style-type: none"> 1. Parking is greater than 2 acres; or 2. Frequency of events are 17 or more per year; or 3. The landowner has no ownership interest in the event. 		X
Dates of events must be provided to MALPF once scheduled.			

NOTE: MALPF's governing statute and regulations prohibit the Foundation from permitting commercial events or activities that are not farm or forest related.

Agricultural Article Section 2-513:

(d) (1) In this subsection, “special occasion event” means a wedding, lifetime milestone event, or other cultural or social event.

(2) Subject to the Foundation’s approval and any applicable regulations, and subject to paragraph (3) of this subsection, a landowner may use a portion of the land subject to an easement to hold special occasion events for commercial purposes if:

(i) More than 10 years have elapsed since the easement was recorded in the land records;

(ii) The local agricultural advisory board provides a written favorable recommendation for the proposed special occasion event area;

(iii) The proposed special occasion events are not prohibited by any federal, State, or local law or regulation;

(iv) The proposed special occasion events will not interfere with any federal, State, or local restriction placed on funds used by the Foundation to purchase the easement;

(v) The proposed special occasion event area, including parking for the special occasion events, does not exceed 2 acres, as shown on a map prepared and certified by a professional land surveyor licensed under Title 15 of the Business Occupations and Professions Article;

(vi) The Foundation approves in writing the location of the proposed special occasion event area;

(vii) The Foundation determines in writing that the proposed special occasion events will not interfere with the agricultural use of the land subject to the easement;

(viii) The proposed special occasion events will take place in:

1. A temporary structure, including an enclosed or open canopy or tent, or other portable structure erected for a reasonable amount of time to accommodate the special occasion event;

2. An existing building on the land subject to the easement;

3. A farm or open air pavilion; or

4. Any other existing structure located on the land subject to the easement; and

(ix) Unless required by law, the special occasion event area does not add any new impervious surfaces to the land subject to the easement.

(3) An approval granted by the Foundation under this subsection to a landowner to use a portion of the land subject to an easement to hold special occasion events for commercial purposes automatically terminates on the sale or transfer of the land subject to the easement.

Effective June 1, 2018.