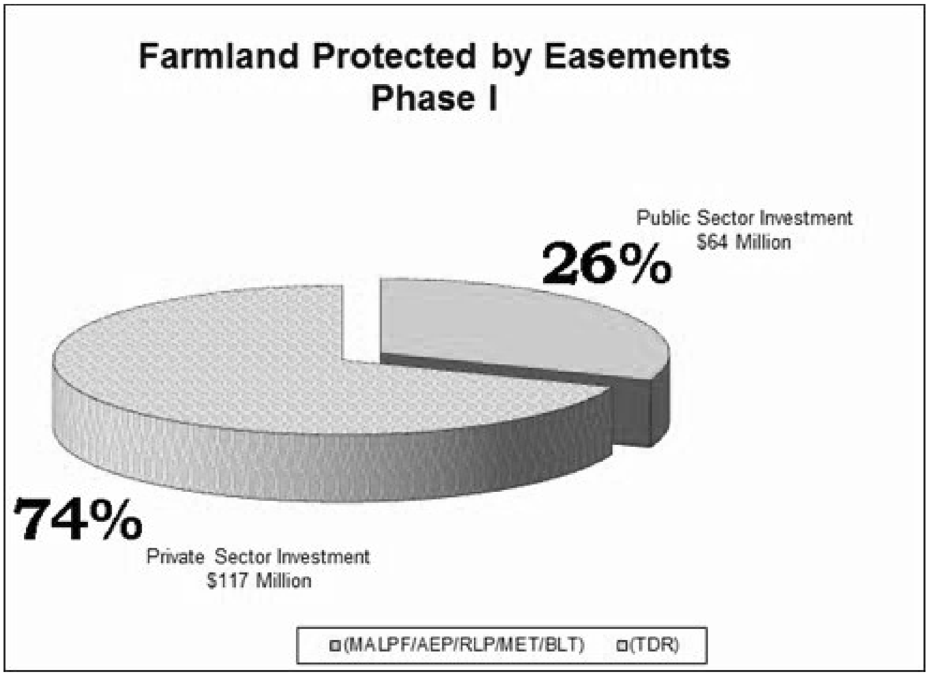
Phase II Montgomery County Farmland Preservation
Taking Ag Preservation to the Next Level

Introduction

The success of our farmland preservation programs depend on several factors including the amount of funding available and the state of our local economy and the real estate market. Tradition has shown that farmland preservation participation increases at times when the local economy and real estate markets are experiencing downward trends. Having appropriate preservation resources in place at the right time represents a critical challenge for us in assuring our preservation goals are met. Unfortunately the collections of Agricultural Transfer Taxes during the Great Recession have totaled $1,554,128 (FY11-FY16) which averages only $259,021 per fiscal year. This amount of funding will only result in acquiring agricultural easements on 37 acres annually at an average of $7,000 per acre easement value. Through the first quarter of FY17 a total of $67,871 has been retained representing the agricultural transfer tax fund balance that remains for easement acquisitions for FY18. The Office of Agriculture is working on two pending easement acquisitions for FY17 that will utilize the majority of the current agricultural transfer tax fund balance. **What this means for FY18 and beyond that if the County does not identify an alternative funding source, we will not be able to purchase any additional agricultural easements.** This situation necessitates the exploration of alternative funding sources, policy changes, regulatory relief, and the expansion of both private/public sector investments will be required in order to enhance the preservation of farmland in Montgomery County.

Background: Phase I of the Farmland Preservation Goal

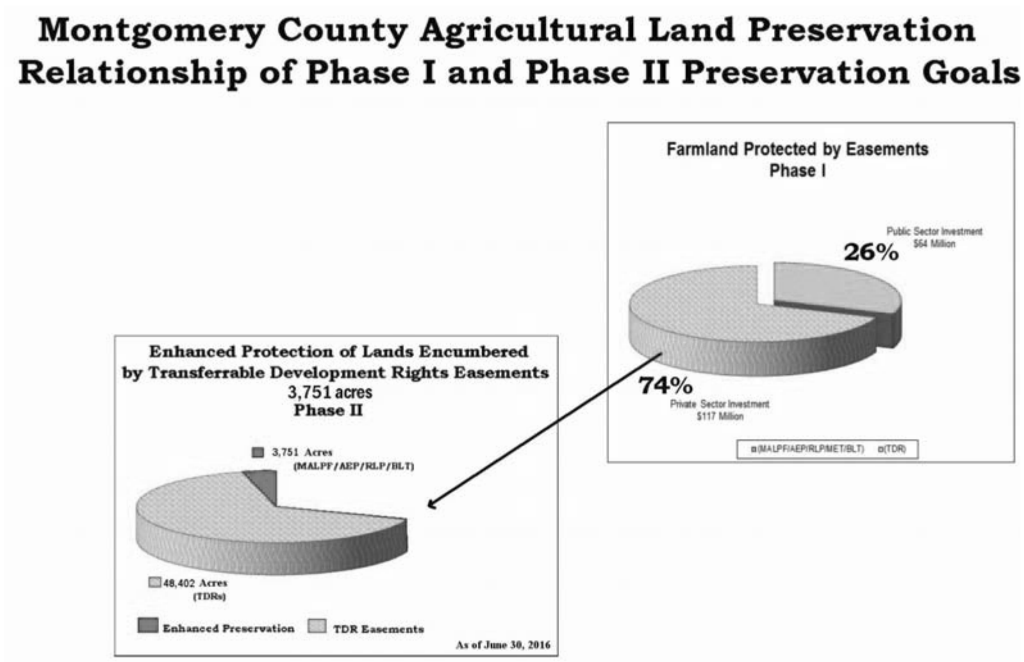
In January 2009, Montgomery County achieved Phase I of the farmland preservation goal. This resulted in the protection of 70,000 acres of farmland through the programs administered by the County or State of Maryland. These traditional programs included: The Transferrable Development Rights Program (TDR), The Agricultural Easement Program (AEP), the Maryland Agricultural Land Preservation Foundation Program (MALPF), and the Rural Legacy Program (RLP). The preservation of 70,000 acres by easement represented completion of the Phase I farmland preservation goal.



It was recognized achieving Phase I of the preservation goal meant that the majority of the acreage (over 52,000 acres) were encumbered by TDR easements. While TDR easements do offer a level of protection, TDR easements are the least protective of all the traditional programs offered. TDR easements are not as protective because they usually retain densities of 1 lot per 25 acres. Therefore, our secondary goal of layering more protective easements over TDR easement represents Phase II of the County's Agricultural Land Preservation goal.

<u>Phase II of the Farmland Preservation Goal</u>

The County began implementing Phase II of the Agricultural Land Preservation Goal in 2009. We target the preservation of farmland where TDR easements encumbering farmland still have retained development rights as well as any farmland where TDRs have not been previously created. We currently employ two approaches using the programs in Phase I or through the County's Building Lot Termination (BLT) easements to target this enhanced level of preservation. These approaches further reduce the density on TDR easement properties resulting in a higher level of protecting farmland.



As of June 30, 2016, a total of 3,751 acres of farmland encumbered by TDR easements have received enhanced protection through the preservation programs offered by Montgomery County. Of the 3,751 acres, 1,732 acres have been protected by Public and Private BLT easements.

Approach 1. Traditional Agricultural Land Preservation Programs

This first approach consists of targeting farmland using our traditional easement programs to further reduce densities retained on TDR easement properties. To help further enhance preservation of agricultural land the Executive Regulation governing the administration of our easement program was revised and adopted by the County Council on July 27, 2010. Specific modifications were made to help target properties for agricultural land preservation.

These modifications included: expansion of the agricultural zone edge property evaluation from ½ mile to 1 mile. Properties within this agricultural zone edge are at the highest risk for land conversion because of their proximity to other non agricultural zoned areas within the County. This modification allowed the County to enhance the value of the preservation easement to encourage landowners to seek preservation over conversion to non agricultural uses.

We also adopted a change to provide a mechanism for an enhanced valuation of easements for landowners who are not farmers but commit to long term written leases with Montgomery County producers. Prior to this change, only landowners who were also the farm operators were eligible for this enhanced valuation. This change provides an incentive to establish long term leasing arrangements with a tenant farmer, and encourages the continued agricultural use of the protected land.

Future collections of Agricultural Transfer Taxes:

As of FY16, the County has a total of 81,453 acres of agriculturally assessed farmland of which 70,416 acres are protected by Transferrable Development Rights (TDRs) and agricultural easements (PDRs). We calculate that there are about 4,000 acres of potential farmland outside of the Agricultural Reserve that could be developed and that would trigger the collection of agricultural transfer taxes. This condition creates a funding dilemma for the preservation program as Montgomery County will have fewer farm conversions that will generate agricultural transfer taxes for future easement acquisitions. This outcome means alternative sources of funds are needed to further protect the farms that are only protected by TDR easements.

Approach 2. Building Lot Termination (BLT) Program

The second approach consists of targeting TDR easement properties using the Building Lot Termination (BLT) program. The enabling legislation for the BLT program was adopted through reenactment of Chapter 2B of the Montgomery County Code and promulgated through Executive Regulation 3-09AM. Landowners seeking a higher level of preservation for their farms through the BLT program have two options:

Option 1: Apply to the County during open BLT easement purchase periods

Option 2: Marketing their approved BLTs through a private BLT market for use in qualified BLT receiving areas.

Progress:

Public BLT Program

	Acres	Number of BLT-TDRs	Serial Numbers
Damacus Limited Partnership	54.17	1	BLT-001
W. Drew Stabler	200.97	4	BLT-002 - BLT-005
William Hilton et al.	53.38	2	BLT-006 -BLT -007
Kathy Taylor	100.71	2	BLT-013-BLT014
Our House	98.9491	3	BLT-020-BLT022
Thomas Hartsock	103.83	2	BLT024-BLT025
Charles and Bertha Stanley	105.72	3	BLT026-BLT028
Robert and Betsy Stabler	160.77	3	BLT 017-019
Lynwood Farm LLC	226.51	6	BLT 031-036
Twin Ponds Parm LLC	77.15	2	BLT 037-038
Walter Prichard	75.1554	2	BLT 040-041
	1,257.31	**30**	

Private BLT Program

	Acres	Number of BLT-TDRs	Serial Numbers	
David Bolten and Layla Bolten	65.7471	1	BLT-008	
A.S. McGaughan, Jr. & Judith E. McGaughan	5	1	BLT-009	
A.S. McGaughan, Jr. & Judith E. McGaughan	5	1	BLT-010	
A.S. McGaughan, Jr., Guardian of the Property	5	1	BLT-011	
Potomac Estates Corporation	25.6361	1	BLT-012	* Did not Rank in Public BLT
Montgomery Horse, LLC	82.5	1	BLT-015	
Robert and Betsy Stabler	25	1	BLT 016	
Potomac Estates Corporation	48.951	1	BLT-023	* Did not Rank in Public BLT
Our House	5.55	1	BLT-029	
Kathy Taylor	5	1	BLT-030	
Jones Farm, LLC	25.1	1	BTT-39	
Farmers Collective Preservation LLC	176	5	BLT-042 - BLT 046	
	474.48	**16**		

Since FY12, the County has completed BLT settlements on 1,257.31 acres of agricultural land previously encumbered by only TDR easements and 474.48 acres have been protected by private BLT easements totaling 1,732 acres.

Setting of the Phase II Farmland Preservation Goal

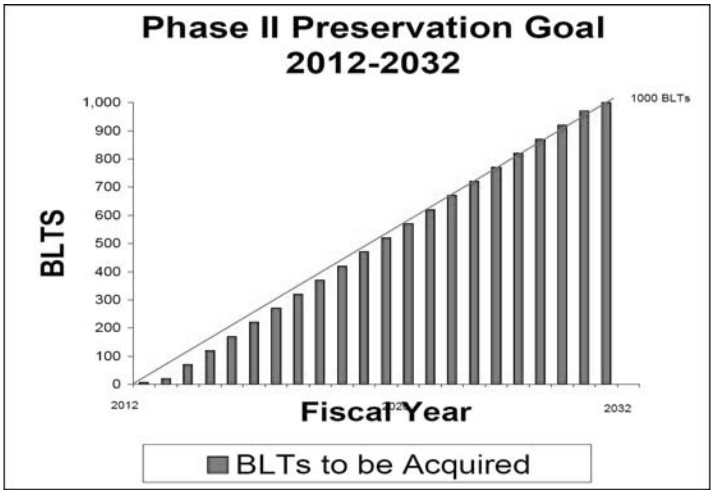
In setting the Phase II Farmland Preservation Goal, we consider the status of development and the number of retained TDRs that are part of the acreage protected only by TDR easements. Considering that prior to the beginning of Phase II, there were 52,052 acres encumbered by TDR easements and the density on these easements are set at 1 dwelling right for every 25 acres, the theoretical maximum number of BLTs that could exist on these protected lands would be 2,082 BLTs. There are 81,453 acres of agriculturally assessed properties in the County, from these acres there are 1,210 improved tax accounts.

Subtracting these 1,210 improved accounts from the theoretical maximum number of 2,082 BLT-TDR would be 872, however not all of the improved accounts are located on RDT zoned properties (Previously stated there are 4,000 acres of agriculturally assessed properties outside of the Agricultural Reserve – RDT zone), In addition, it must be recognized that some of these properties are on lands that cannot achieve an onsite septic absorption system. If we subtract 50% from the 2,082 theoretical maximum that would leave about 1,000 BLTs for both public and private BLT transactions. <u>The County's Phase II farmland preservation goal should demonstrate the number of years it would to acquire 1,000 BLTs.</u>

Scenario #1 – Static Number of BLTs Acquired Annually

If we subtract the public and private BLTs acquired since FY12, this would leave 954 BLTs needing to be acquired to reach the 1,000 BLT Phase II Goal. To determine the length of time needed to meet this goal, we need to make a few assumptions. Not necessarily limited to:

1. If Public Funding is readily available and there are no constraints.
2. The County establishes sufficient BLT receiving capacity.
3. The local economy demands mixed use type of development.
4. Purchased BLTs represents a fair exchange in value in terms of the Fair Market Value.
5. A total of 50 BLTs are acquired annually through a combination of public/private BLT transactions.

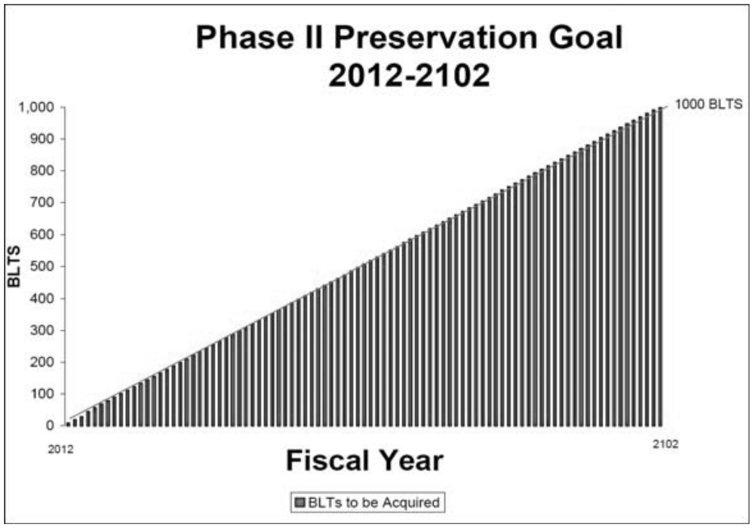


Under Scenario #1 a total of 50 BLTs would need to be acquired annually over the next 20 years to reach 1,000 BLT goal by the year 2032. It would require a combination of public/private BLT transactions and investing a minimum of $240 million dollars at the current BLT average value of about $245,000 per BLT. This investment may be a conservative projection as it assumes a static value of a BLT at $245,000 per BLT over the next 20 year period.

Scenario #2 – BLT Acquisitions based on Current Staffing and Funding Levels

The Office of Agriculture (formerly DED Agricultural Services) completed its third BLT purchase period on April 1, 2014. DED received applications for a total of 23 BLTs and once the ranking was completed it resulted in 15 BLTs eligible for the public BLT program. DED determined that 8 BLTs did not meet the public program's eligibility requirements but qualified to remain eligible for private BLT easements. With the public funding for FY15, we acquired a total of 13 BLTs during this third purchase period. In the absence of new funding opportunities there will not be sufficient public resources to conduct a fourth purchase period. Scenario # 2 considers the following:

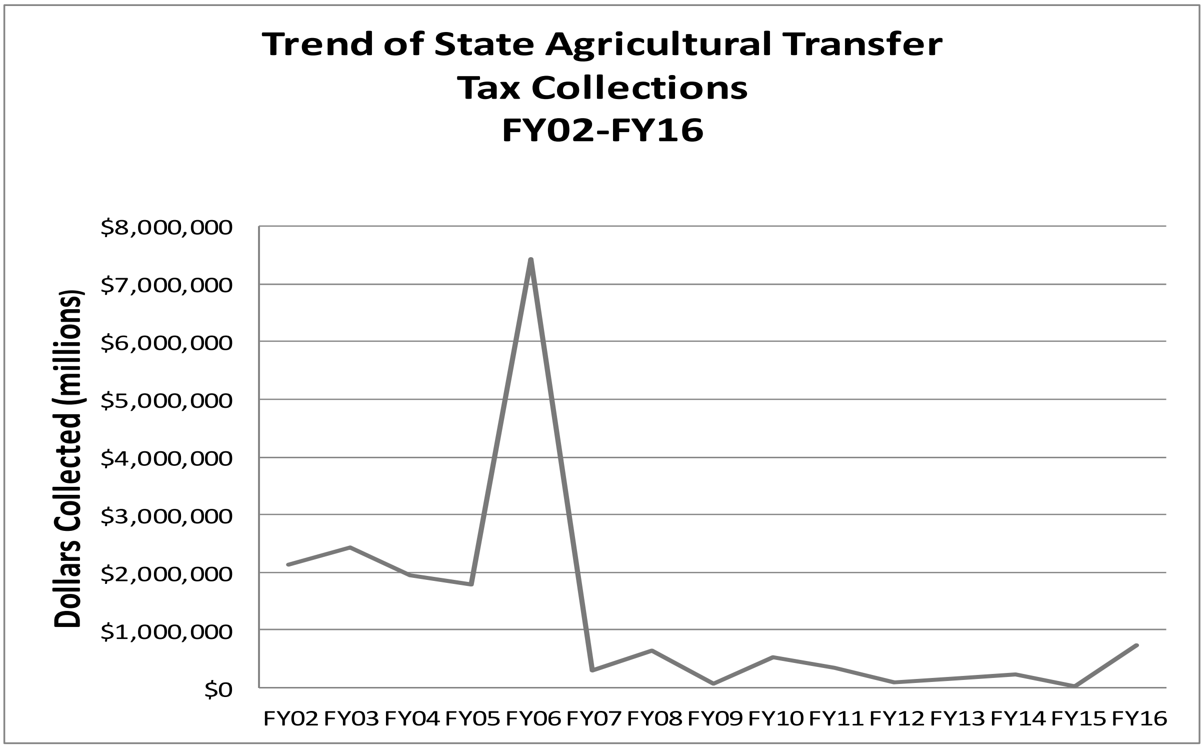
1. All existing funding sources for easement purchases have been expended.
2. Assumes current staff capacity does not change.
3. Assumes current level of private investment (3-4 BLTs purchased per year).
4. Assumes the County is willing to invest $2 Million per year beginning with the FY17 CIP Budget for BLT easement acquisitions.



Under Scenario # 2, it will take the 90 years to acquire 1,000 BLTs. Without a sustainable source of revenue achieving the Phase II preservation goal will not occur in our lifetime. In 1980, the County's Agricultural Reserve was created and today the Agricultural Reserve is 36 years old. The commitment made to the farmers in 1980 for creating sufficient TDR receiving capacity has still not been fully achieved as demonstrated by the continued imbalance of TDR sending and receiving capacity. This is a very sad environment for the County Government considering that downzoning which created the Agricultural Reserve took place 36 years ago and many of the affected farmers have already passed away. The issue of planning for and creating sufficient receiving capacity still plagues the County today. This outstanding commitment made to the agricultural community was heard loud and clear during the testimony on the Clarksburg Limited Master Plan Amendment for Ten Mile Creek Watershed. The Council instructed the MNCPPC to conduct an update of the TDR program that was last done in March 2008. Council staff has proposed the County should purchase all remaining TDRs from the farmers that still own them. Where will the County resources come from for this proposal? The above factors contribute to the farmer's frustration and lack of faith in the County Government. Under Scenario # 2, it will take the 90 years to acquire 1,000 BLTs.

The County must commit additional resources for public BLT easement acquisitions to achieve higher levels of protection on TDR easement properties that still have retained TDRs for allowing residential development. This BLT approach further reduces the density on TDR easement properties resulting in a higher level of protection of farmland.

As mentioned earlier, State Agricultural Transfer Tax revenue cannot be looked upon as a viable revenue stream. This revenue is not sustainable and the County must consider alternative funding mechanisms. It may involve redirecting a portion of the proceeds from different revenue sources.



Alternative sources of Funding to be considered

- Water Quality Protection Charge (WQPC) – Preserving Land reduces impervious surfaces that help infiltration of storm water in rural areas and improves water quality and possibly represent a mechanism for nutrient trading in MS4 Permit area once State enabling legislation is adopted to allow for trading in MS4 Permit area.

- County Agricultural Transfer Taxes – Currently assessed on all agricultural land sold whereby <u>no portion of this County tax goes to support agricultural land preservation.</u> We propose either receiving a percentage of the County Ag Tax to be allocated to Agricultural Land Preservation, or as an alternative, provide all investment income derived from the tax collected to be allocated to Ag. Preservation.

- General Obligation Bonds – There are no G.O Bonds appropriated within FY17-22 CIP.

- MNCPPC Legacy Open Space Funding – Category 5. The Legacy Open Space Master Plan recommended supplemental funding for the Montgomery County Agricultural Easement Program. MNCPPC priority for LOS is acquiring land for urban parks and that MNCPPC policy for funding for agricultural land preservation from LOS would require public access as a condition for funding. The law and regulations that govern the County's agricultural easement program cannot mandate public access as a condition of purchase. Those rights are maintained by the landowner.

Planning for Realistic Increases in TDR and BLT Receiving Capacity

In October 2014 the County adopted a new Zoning Code that provides the potential for new opportunities for farmland preservation. These opportunities are discussed below and they may help to fulfill the commitment to the agricultural community by creating receiving capacity for Transferable Development Rights (TDRs) sold through the private sector. Much of the development activity in the County today is occurring in down-County areas with redevelopment of older and existing communities (see attached chart on following page of pending DRC projects). Redevelopment involving residential space in the Commercial/Residential-C/R, and Employment zones could become a benefit to farmers that own TDRs. In the CR and LSC zones, under the Optional Method of development, an applicant must purchase a Building Lot Termination (BLT – also referred to a buildable TDR) easement, or make a payment to the ALPF for a partial BLT, for a specified amount of the incentive density floor area. In exchange, the applicant is awarded public benefit points. Public benefit points are also awarded for the purchase of TDRs for projects located in a TDR overlay zone, The Council could expand this provision, allowing all projects required to provide public benefits the opportunity to purchase TDRs in exchange for points.

Currently, MNCPPC is evaluating the capacity of existing receiving areas to absorb the TDRs that remain either un-serialized, or serialized but as yet unused in any designated receiving area.

Adding the potential for projects in a C/R or Employment zone the option of purchasing TDRs in exchange for public benefit points could help. The new features of the Zoning Code mentioned above along with the opportunities for BLT-TDRs will go a long way to addressing the imbalance of TDRs in the sending and receiving areas. The DED hopes that the demand for TDRs in the new C/R and Employment zone, in addition to what is currently planned will help fulfill the commitment to the agricultural community by moving toward sufficient TDR capacity.

The Agricultural Reserve is a treasured resource, and we need to identify every opportunity where TDRs and BLTs can be utilized, and encourage the redevelopment of older and existing communities. The private sector is responsible for making the initial $117 million investment in preservation representing over 74 percent of the acres protected under the Phase I Preservation Goal. We need the private sector development community to play an equally important role with achieving the Phase II Goal.

Pending DRC Projects That Have Potential For BLT USE (Optional Method of Developm

DRC Date	CR Zone	LSC Zone	TMX	CRT	EOF
	BLT Receviing Areas				
1/21/2014 -# 320140020 AVA Wheaton	1				
5/27/2014 #320140030 Chevy Chase Lake	1				
8/18/2014 #120140250/820140190 AVA Wheaton	1				
9/29/2014 # 32011003A/12012006A/82012004A North Bethesda Market II	1				
9/29/14 # 120150010/8201500010 Gables White Flint	1				
10/20/14 #81997005A Shady Grove Life Sciences		1			
10/20/14 #320150010 Ripley East	1				
11/24/14 # 720150030 Woodfield Commons				1	
11/24/14 # 120140240/820140180 East Village @ N. Bethesda Gateway	1				
11/24/14 # 320150030 Ripley II	1				
12/22/14 #320150020/12007056A/82012005A Falkland North	1				
1/20/15 #11999033A Decoverly Hall South		1			
2/17/15 # 92012004A Crystal Rock/12012021A Black Hills/82013025A Black Hills/820150060 Black Hills			1		
3/16/15 #32014003A/120150130/820150040/820150050 Chevy Chase Lake	1				
3/16/15 #7201500060 Armstrong Property				1	
3/16/15 #12012029A/82013020A Travilah Grove	1				
3/16/15 #7201500080 Saul Centers White Flint West	1				
3/16/15 #11987271C/82001009E Milestone	1				
5/11/15 #320150070 Wheaton Grandview	1				
5/26/15 # 320150060 Pooks Hill	1				
Total Project	15	2	1	2	0
Grand Total Project	**20**				

Pending DRC Projects That Have Potential For TDR USE (Optional Method of Developm

DRC Date	:PD/RMX-1/T	R-90-TDR	CRT
4/14/14 #8200714A Cabin Branch 436 lots/80.73 ac	1		
7/7/14 #120140230 Washington Grove 4 lots/1.25 acres		1	
11/24/14 # 720150030 Woodfield Commons			1
3/16/15 #7201500060 Armstrong Property			1
Total Project	1	1	2
Grand Total Project	**4**		