

MEMORANDUM

July 19, 2006

TO: Ad Hoc Agricultural Policy Working Group

FROM: ^{MLM} Marlene Michaelson, Senior Legislative Analyst
Jeff Zyontz, Council Analyst
Amanda White, Council Legal Analyst ^{AW}

SUBJECT: July 24 Meeting

Our next meeting is scheduled for July 24, 2006 from 4:00 p.m. to 6:00 p.m. in Room A at the Upcounty Regional Services Center. Attached are the background materials for this meeting. These include the following:

- an agenda;
- minutes from the July 10 meeting and the July 15 tour of the Agricultural Reserve; and
- a Staff policy paper on preventing fragmentation in the Agricultural Reserve.

Although the focus of this paper is on the BLT and super TDR programs, several Group members asked that we identify other options for achieving the same results as these programs. We have therefore briefly addressed design options and downzoning. Since the Council did not ask the group to comment on design options, this section of the paper is limited. In addition to other options to limit density in the Agricultural Reserve, downzoning is identified as an option, but we want to make it clear that no Councilmember has proposed downzoning nor asked the Group to explore this option (and Group members appeared to be in agreement that any proposal should consider landowner equity). As with our other papers, we will continue to identify the full range of options to address identified problems, even if one of the options is not one that we endorse or believe the Group would support.

AGENDA
AD HOC AGRICULTURAL POLICY WORKING GROUP

Monday, July 24, 2006
Upcounty Regional Services Center
4:00 to 6:00 p.m.

- 4:00 Review and Approval of July 10 and 15, 2006
 Meeting Minutes

- 4:10 Fragmentation in the Agricultural Reserve

- 6:00 Adjourn

**AD HOC AGRICULTURAL POLICY
WORKING GROUP MINUTES**

Monday, July 10, 2006
4:08 P.M. to 5:55 P.M.

Up-County Regional Services Center Room A

PRESENT

Working Group Members

Lib Tolbert, Chair	Scott Fosler, Vice-Chair
Wade Butler	Bou Carlisle
Margaret Chasson	Jim Clifford
Nancy Dacek	Jane Evans
Robert Goldberg	Tom Hoffmann
Jim O'Connell	Michael Rubin
Pam Saul	Wendy Perdue

Montgomery County and State Staff

Nancy Aldous, County Council	Jeremy Criss, County Department of Economic Development
Justina Ferber, County Council	Marlene Michaelson, County Council
Callum Murray, M-NCPPC	Doug Tregoning, Montgomery County Cooperative Extension
Amanda White, County Council	Jeff Zyontz, County Council

ABSENT

Drew Stabler	Billy Willard
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GUESTS

Councilmember Mike Knapp	Krishna Akundi, M-NCPPC
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The Group had before it the July 3, 2006 memorandum with attachments from Marlene Michaelson, Jeff Zyontz, and Amanda White.

The Group reviewed the minutes for the June 26, 2006 meeting and approved the minutes, without objection, with the following changes:

- when discussing a small property, refer to the property as a parcel, not a lot;
- ensure a sentence is added noting that Wendy Perdue said that if the Group discussed a pending subdivision case, she would leave the room during the discussion; and
- ensure that the suggestion to require a title search at the time of subdivision would include both public and private easements, as well as ownership.

The Group reiterated that they would discuss outstanding child lot issues, including the possibility of an occupancy requirement, at a future meeting.

The Group received a briefing from M-NCPPC on the status of a program to track transferable development rights (TDRs). Group members suggested that tracking TDRs should include a way to ensure that a developer does not use the same TDR more than once. The Group generally discussed the market for TDRs and learned that generally, the market is based on supply and demand.

Group members identified several issues that should be addressed when the Group discusses TDR policy, including:

- the discrepancy between the number of TDRs authorized in a master plan and the number actually approved and used;
- the requirement that developers use at least 2/3 of the required number of TDRs;
- factors that impact the cost of TDRs, including annexations (such as the Crown Farm annexation) and moratoria (such as the recent building moratorium in Clarksburg); and
- TDRs lost when a municipality annexes a property that would otherwise require TDRs to obtain full density.

The Group received briefings on the economics of farming and the Agricultural Reserve from staff from M-NCPPC and the Montgomery County Cooperative Extension. The Group learned that the number of farmers in the County is increasing and that horticulture is valued much higher than traditional crops. The Group also discussed the specifics of the price of certain crops and the yield of those same crops.

The Group discussed plans for the upcoming Agriculture Reserve tour and confirmed that the tour should last approximately 3 to 4 hours. Some Group members preferred a longer tour.

Minutes written by: Amanda White, Council Legal Analyst

**AD HOC AGRICULTURAL POLICY
WORKING GROUP MINUTES**

Saturday, July 15, 2006
9:00 A.M. to 12:30 P.M.

Ride-On Bus Tour of the Agricultural Reserve

PRESENT

Working Group Members

Lib Tolbert, Chair	Scott Fosler, Vice-Chair
Wade Butler	Bo Carlisle
Margaret Chasson	Jim Clifford
Nancy Dacek	Jane Evans
Robert Goldberg	Tom Hoffmann
Michael Rubin	Pam Saul
Drew Stabler	

Montgomery County and State Staff

Jeremy Criss, County Department of Economic Development	Justina Ferber, County Council
Marlene Michaelson, County Council	Karl Moritz, M-NCPPC
Callum Murray, M-NCPPC	Doug Tregoning, Montgomery Cooperative Extension
Amanda White, County Council	Jeff Zyontz, County Council

ABSENT

Jim O'Connell	Billy Willard
Wendy Perdue	

The Group participated in a tour of the Agricultural Reserve. The tour including the following highlights:

- Orchards: Butler's, Kingsbury's, and Lewis Orchard (where the Group took a short break)
- Horse farms on the east and west side of the Agricultural Reserve
- Housing developments: the Wooden property, Peach Tree Estates, and the Ganassa property (the Ganassa property does not currently have a subdivision, but there is a case pending before the Planning Board to create lots on this property)
- Different types of farm, including some farms owned or operated by Group members.

Minutes written by: Amanda White, Council Legal Analyst

STAFF POLICY PAPER
OPTIONS TO PREVENT FRAGMENTATION OF FARMLAND
July 19, 2006

ISSUE: Should the County change existing laws and programs to discourage fragmentation of farmland?

PROBLEM STATEMENT

Unrestrained development in the Rural Density Transfer (RDT) zone can result in the fragmentation of farmland, limiting future use of this land for certain types of farming that require large tracts of land. While there are some types of agriculture that can be sustained on less than 25 acres, some are concerned that if viable alternatives to subdivision are not identified, remaining properties would likely develop with residential uses that may minimize agricultural activities. In addition, the lack of rural design standards as a guide when lots are created can lead to suburban design characteristics that may not be appropriate in a rural area.

OPTIONS TO REDUCE FRAGMENTATION

There are two basic strategies to reduce fragmentation: change design standards to preserve large areas of farmland and/or open space or reduce the number of homes built in the Agricultural Reserve. Under each of these basic strategies are several specific strategies that are addressed below.

I. DESIGN STRATEGIES

Design strategies would guide the location of residential lots created in the Rural Density Transfer (RDT) zone to maintain farmable areas and minimize the impact of residences. The size of the lot, the need for septic treatment and the ability to use private roads also impact location/design. Placement of homes on the land may have a more important impact on retaining rural character than lot size, especially at the low density of the RDT Zone.

Existing Legislation

The County does not currently have provisions for design standards for clustering, home placement, or for allowing more lots on private roads in the RDT zone. Existing law requires that lots in the RDT zone be a minimum of 40,000 square feet. The Rustic Road Functional Master Plan recommends placement of buildings to protect view sheds.

Connecticut River Valley

Montgomery County is not alone in recognizing the damage that fragmentation inflicts upon agriculture. An example of this recognition is a design manual for the Connecticut River Valley in Massachusetts. "Clearly, the development design process needs to encompass the total

landscape of an area.”¹ The Connecticut River Valley design manual analyzes sites within the Connecticut River Valley and depicts two development scenarios for each site that purportedly contain the same amount of development. The two scenarios are designed to compare the difference between conventional development and innovative development. Sample illustrations are attached on © 26 to 31.

The authors of this manual have developed a “Farmland/Open Space Conservation and Development Bylaw”. The Bylaw is designed to preserve farmland and open space while “allowing landowners fully equity value for residential subdivision of their land.”² Under this Bylaw, agriculture, horticulture, floriculture, and any accessory uses are permitted as are the creation of up to 2 lots for residential uses (or up to two dwelling units) within a five-year period on a set of contiguous properties as of a particular date. The creation of 3 or more lots for residential use (or 3 or more dwelling units) within a five-year period as of a particular date requires a special permit. All other uses under this Bylaw are expressly prohibited. In order to qualify for a special permit, the Bylaw specifies that the minimum area of land to be developed must be at least 6 acres and the maximum number of dwelling units is based on a 1 unit per 2 acres calculation; however, the dwelling units are to be grouped so that they do not have more than 1 acre of land per dwelling on average and at least 50% of the parcel must remain open space. Under this bylaw, 50% of the total area of buildable land must be retained as residual farmland and further subdivision of this land is generally prohibited. A copy of the full Bylaw is on © 32 to 36.

Proposals

Planning staff have proposed changes to the Zoning Ordinance to improve the design of residential development in the RDT zone. In a memo dated June 11, 1999 (see © 1-10 in the memoranda section of the binder) they recommend the following:

- Create new development standards for large subdivisions in the RDT zone (subdivisions of 5 lots on more than 100 acres) to protect prime farmland or other resources through the emphasis of dwelling placement over lot size, and increased use of clustering or open space easements;
- Change the Zoning Ordinance and Subdivision Regulations to allow additional lots on private roads as an incentive to cluster lots;
- Allow a cluster option in the Rural zone;
- Adopt private road design and construction standards; and
- Evaluate proposed changes to septic requirement that may support improved design of RDT land.

¹ “Dealing with Change in the Connecticut River Valley: A Design Manual for Conservation and Development”, page 12 (Lincoln Land Institute, 1993).

² Id., page 169.

Clustering provisions and/or requirements to locate buildings as indicated in a master plan or design guidelines are used in many other zones (most notably the Rural Neighborhood Cluster Zone), but have not been used in the RDT zone. There was some objection to this concept by property owners due to the possible restrictions on an owner's discretion. Planning staff recommended deferring consideration of RDT lot design guidelines (see © 24 in the memoranda tab).

Options

The Council resolution establishing this Group did not ask for recommendations on design strategies and Council staff does not believe it would be possible to develop specific design strategies before December. If the Group supports the use of design standards to guide the placement of homes as a means of minimizing fragmentation of farmland, one option is to recommend that the Council direct Planning staff to prepare an updated comprehensive assessment of potential design standards and recommendations to be submitted to the Council within a specific time frame (e.g., one year).

II. STRATEGIES TO PREVENT FRAGMENTATION BY REDUCING THE NUMBER OF HOUSES

Design strategies impact the **location** of units. Options to reduce fragmentation by reducing the **number** of houses built in the RDT zone include providing financial incentives to discourage development or lowering the density via downzoning. The "Building Lot Termination (BLT)" and "Super Transferable Development Right (TDR)" programs are two proposed incentive-based options for achieving this objective. Detailed information about a strategy to further downzone RDT land **without compensation** is not presented in this memorandum. It is not an option the Council asked be considered and Staff believes there are significant disadvantages to this approach. The County has the authority to downzone land if it serves a public purpose and protection of the Agricultural Reserve clearly serves a public purpose. However, another important public policy is the sustained viability of the agricultural industry. Devaluing the land of farmers would likely undermine this objective. Moreover, the Council previously downzoned land in the Agricultural Reserve. If the Group agrees with the Staff view that this is not an option worthy of further consideration, the Group may want to specifically state so in your report to the Council. Alternatively, if Group members believe that downzoning without compensation deserves further consideration, Staff will be prepared to address it at a future meeting. Finally, Staff notes that it would be possible to downzone property **and** also provide compensation as a means of providing equity while ensuring that landowners would not choose development over participation in an incentive program.

The BLT and Super TDR programs are similar programs designed for the same purpose: to reduce the number of potential dwelling units in the RDT zone by compensating landowners for the last or "fifth" TDR. (This concept is explained more fully below under "TDR Program Basics".) By ending the right to build a residential lot both programs also reduce the value of land, making it more affordable for agricultural users. The difference between these programs is who compensates the landowner for the fifth TDR. The BLT program initially calls for the

County to compensate a landowner (at less than full fair market value because the land retains value for agriculture and other permitted uses), while the Super TDR program envisions private developers compensating landowners. The Department of Economic Development (DED) has developed a detailed proposal for implementing a BLT program³, while the Super TDR program is still conceptual. Therefore, this policy paper references the DED proposal as a basis for discussion.

Existing Legislation

Easement purchase programs fall within scope of existing County authority.⁴ Legislation authorizing the TDR program is also relevant, particularly if the source of compensation will be additional TDRs.

There are currently seven easement programs within the County's farmland preservation toolbox, excluding TDRs:

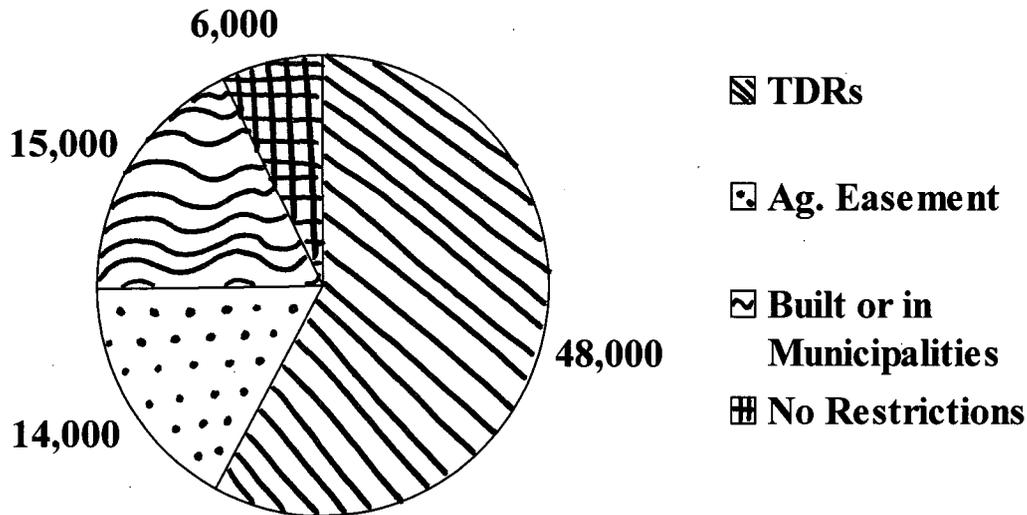
- Montgomery County Agricultural Easement Program (AEP)
- Maryland Agricultural Land Preservation Foundation (MALPF)
- Maryland Environmental Trust (MET)
- Montgomery County Rural Legacy Program (RLP)
- Legacy Open Space (LOS)
- Conservation Reserve Enhancement Program (CREP)
- Forest Conservation Easements

These programs plus TDR easements affect all but 6,000 acres of the RDT area, excluding 14,000 acres that were developed under prior zoning or in municipalities.

³ "Enhanced Farmland Preservation Initiates" at © 1 to 6 and Draft Regulations at © 10 to 17

⁴ Montgomery County Code, § 2B-7.

Status of Privately Owned Land Zoned RDT



TDR Program Basics

TDRs are a creation of the Zoning Ordinance. The TDR program was created to provide landowners compensation for the downzoning that reduced the density allowed for a property from one house for every five acres to one house for every 25 acres. To provide a mechanism for compensation, the TDR program allows the creation of 5 TDRs for every 25 acres. Any of the 5 TDRs available on a 25-acre parcel can be sold, but only one TDR is available for an actual building lot. The other 4 TDRs are called “excess TDRs”. The Zoning Ordinance requires a TDR for each building lot permissible under zoning and therefore property owners have retained one TDR for every 25 acres of their property.⁵ The BLT program is designed to remove the buildable TDRs from the land and therefore a landowner only qualifies for this program if they have retained these TDRs.

Under the current TDR program, landowners negotiate with developers and TDR brokers to sell the excess TDRs from the property. TDRs are legally created via a TDR easement that is placed on RDT property.⁶ The TDR that can be used to develop one house on a 25-acre site (the actual permissible density provided under zoning) has been generally referred to as the “fifth TDR” or the “super TDR”. From a valuation perspective, there is no way to distinguish the value of excess TDRs from the value of the “fifth TDR”. A developer or TDR broker will offer the same price for the super TDR as they will for the excess TDRs. Since the current market value of a

⁵ Montgomery County Zoning Ordinance, § 59-C-9.6, “Transfer of density-Option in Rural Density Transfer zone.”

⁶ Sample TDR Easement attached on © 20 to 24.

buildable lot may be 10 times the current price of a TDR, there is no real financial incentive for landowners to sell these TDRs into designated receiving areas. From a landowner's perspective, selling a lot for housing development is far more profitable than selling the fifth TDR at standard TDR prices. The proposed BLT and super TDR programs would provide a mechanism for compensation for the fifth TDR that could allow landowners an alternative to selling for development by receiving compensation closer to the value of a developable lot while maintaining ownership of the land.

Issues and Options

Staff suggests that the Group may want to consider the following list of issues related to options to reduce fragmentation by reducing the number of houses.

1) Compensation

What justifies compensation?

A BLT program could provide for compensation in several different ways:

- 1) The theoretical maximum number of dwelling units allowed by the zone (1 unit per 25 acres) assuming all lots are buildable
- 2) The number of proven building lots (those that passed all requirements),
- 3) Something between the theoretical maximum number of dwelling units and the number of proven lots.

Compensation Based on Theoretical Maximum

Of the three alternatives identified above, the theoretical number of dwelling units (one unit per 25 acres) would produce the highest number of potential lots for any given property. This is the easiest method to use given the rules of mathematics. The mathematics of zoning does not reward fractions: you can only build whole numbers after the land area is divided by the minimum area required by the zone. For example, a property owner with 49 acres is entitled to build one house just like the 25-acre neighbor.

While this method may be the simplest to calculate, it would also be the most expensive if there is an assumption that all lots are buildable. Existing programs (AEP, MALPF, RLP, etc.) purchase land based on assumed density without a requirement to prove that the lots are actually buildable. However, these programs typically pay between 50% and 60% of the fair market value and therefore it is unlikely to be an enticement to some property owners who believe their land is more valuable (because they believe the permitted density is achievable). The approximate payment under these programs ranges between \$5,000 and \$8,000 per acre while the current value of a buildable lot may be \$300,000 to \$400,000 or higher (approximately \$12,000 to \$14,000 per acre). Council staff does not believe there is a need to establish a program that is identical to existing easement programs (as discussed further below). Council staff also believes it is cost prohibitive to create a program that assumes that all available fifth TDRs are buildable lots.

Compensation Based on Proven Lots

A second alternative to providing compensation is to base compensation on the number of buildable lots, which is frequently less than allowed by zoning. This is particularly true when the ability to build depends on the ability to “perc” the property. In some areas in the Agricultural Reserve, the realistic potential density may be significantly less than the one per 25 allowed by the zone. Therefore, a program based on proven lots would be far less expensive to the purchaser of the fifth TDR than one that assumes a property owner should be fully compensated for the theoretical maximum number of lots.

Creating a building lot is time consuming, complex, and costly. A building lot only exists when it is on a plat recorded in the land records of the County. In addition to having the required acreage for each lot (one lot for every 25 acres), it must have a means of sewage treatment and a means of getting potable water.⁷ Applications must comply with a variety of different subdivision requirements. It may need a permit to access a roadway. Costs involved may include percolation tests for a septic system (traditional or sand mound) and well tests for quality and quantity. Since street access and environmental buffer areas and forest retention areas must comply with regulations, subdivision approval also requires application fees and bonding.

Limiting BLTs to proven building lots (those that passed all requirements) clearly reduces the number of lots eligible for the BLT program. This is a key component of the DED program because DED believes that the proposed level of compensation should only be offered if the landowner has invested financial resources to prove they have actual buildable lot rights. If the owner chooses not make this investment, they could still participate in one of the other easement programs that do not require proof of a buildable lot.

The name “building lot termination” may imply that a building lot exists before it can be terminated; however it is not necessary to require the effort and expense of going through the subdivision process to achieve this objective. In fact, it is possible that once a landowner invests the resources necessary for subdivision approval, they may find it easier to ignore the BLT program and sell lots. A BLT process that requires a landowner to act like a developer in “proving” the number of building lots may have the unintended outcome of stimulating rather than limiting development. This would not be a problem if the County downzones the land at the same time it offers compensation for lost equity.

Compensation Based on Estimates of Buildable Lots

This final option neither assumes the maximum allowed by zoning nor requires the cost and difficulty of the “proven lot” method but would require an estimate of buildable lots, most likely resulting in a number somewhere between the theoretical maximum and actual number of proven

⁷ If sewage treatment (traditional septic or sand mounds) requires more than 25 acres then the number of building lots is limited more than the zoning limit. In this manner the ability to use sand mounds significantly adds to the number of potential building lots.

lots. Council staff has identified two alternatives to estimate the number of buildable lots: a real estate appraiser or percolation tests.

A real estate appraiser can be used to determine value. The appraiser would have to make assumptions about whether the land can percolate and the potential number of lot yields to estimate value. An appraiser does not need proof that a lot has been engineered. If the appraiser has some evidence that the property percs, this will be reflected in the appraisal. Appraisals would make it more likely that public dollars are paying for values aligned with the market.

Another option would be to require a successful percolation test to help substantiate a value without requiring any of the reviews or approvals required as part of subdivision. Since the greatest hurdle to creating a building lot in the RDT zone is proving the existence of land that can perc for a septic system, a landowner who can demonstrate approvable percs will have gone a long way towards demonstrating a viable lot. This would help the County to provide a value through the BLT program closer to the value of a real buildable lot. This process also limits the landowner's financial exposure and reduces the potential that the landowner will opt for development instead of the BLT program. If the Group prefers this method, the Group will need to discuss the standards for that test: traditional septic or sand mounds. The result of not allowing sand mounds would be to lessen the number of buildable lots. Since sand mounds will be the topic of a future meeting, the Group should return to this specific issue after the discussing sand mounds.

2) Who compensates the landowner?

There are two conceivable extremes for compensation. The program could require full public funding. This would be administratively simple through the direct purchase of these rights with tax dollars. On the other extreme there could be no public funding. Building lot termination would be an addition to or part of the TDR program. Developers in receiving areas would be given density in exchange for directly buying BLT rights. Both of these approaches require a search for resources. For public funding, tax dollars must be found. For expanding TDRs, viable receiving areas must be found. A third option would be to have a public program and a private program operating at the same time. As proposed by DED, the BLT would be a public purchase program during its initial phase of operation and then have a TDR component in the second phase.

Public pays

As proposed by DED, the BLT would start as a fully public funded program. Money would be appropriated and spent for terminating building lots in the RDT zone. Priorities could be set up if the program's popularity exceeds its funding. Some funding is already earmarked for the purchase of easements.⁸ DED has indicated that there are existing financial resources to begin a BLT program (see the Ag Land Preservation Easements Project Description Form on © 25).

⁸ Montgomery County Code, § 2B-12, "Purchase and value of easements".

Although the goal of the program as proposed is **not** to purchase all development rights, it is useful to know the maximum costs of the program if all development rights were to be purchased. Assuming there are 1,920 building lots in total that the program could be used to terminate⁹ and the raw cost of a building lot is between \$300,000 and \$400,000, the program cost would be between \$576 million and \$768 million. The total Capital Improvement Program (CIP) for the County is \$600 million per year. This is the price for all capital projects within the County's responsibility: schools, roads, libraries, police stations, parks and playgrounds. It is difficult to imagine a new BLT program funded on this scale. Council staff does not believe that public sector investment at this level of funding is practical or likely.

A program can be crafted at any level of funding. Funding at less than the full amount needed to purchase all lots mean that the County must either limit access (as described below) and prioritize those still eligible, or not pay full market value for the lots. If full market value is not offered, downzoning could also be considered to prevent property owners from choosing the private market as an alternative. DED suggest prioritizing applications. They would proceed down their prioritized list until they ran out of funds. The funds for the program would come through transfer tax revenues and any other funds made available to them.

The program as proposed establishes a cap on the price of a RDT building lot on an annual basis. This cap would be a percentage value of the fair market value (FMV). For example, if the FMV of the lots is \$400,000 and the County Executive establishes a cap of 85% of the FMV, then the landowner could receive \$340,000 and still maintain the ownership of the land. DED believes that the annual cap that will result in a fair and equitable price for the lot, minus the remaining value of the land as farmland.

As an alternative, a price can be established before an offer to sell. In this case, the only variable would be the number of building rights being limited. This method would provide notice to landowners who might want to apply to the program. It would speed managing the program (see Jim Clifford's proposal on © 18 to 19). A single price for the County would be simple but not necessarily the best solution. It may not reflect local variations in the real estate market. Those on the high-end of the market may not find it worthwhile to join the program. Those who find the offer generous may flood the program. A price for suitable subareas of the County could overcome this problem.

Developer's pay

An alternative option is to have developers pay for BLTs via the purchase of TDRs. The value of a fifth or super TDR could be made a certain number of regular TDRs. For example, if terminating a lot is worth \$400,000 and the price being paid for an excess TDR is \$40,000 then each super TDR would be worth 10 excess TDRs. This would significantly increase the supply of TDRs and would require the creation of a very large number of new receiving areas. Assuming that each super TDR is worth 10 excess TDRs and that all buildable lots are to be purchased, it would require the creation of 19,000 receiving areas (10 times the maximum number of TDRs (1,900) to be terminated). (As noted elsewhere in this paper, the intent is not to

⁹ This assumes 48,000 acres of RDT divided by 25. The number of existing houses on this land will reduce this number. The cost of raw lots excludes infrastructure and site preparation costs.

purchase **all** lots and therefore the actual number of receiving areas needed would be less than 19,000.) The existing TDR program has produced some 15,000 units of receiving areas over its 26-year history. Those receiving areas are insufficient to provide enough buyers for the existing TDRs.

The best estimate is that 1,800 dwelling units of new receiving areas are needed for the **existing** program. The risks of simply adding super TDRs to the existing program without certainty about the ability to identify an equal number of receiving areas are significant. Adding a new supply of TDRs without providing a demand for those extra TDR could dramatically reduce the value of TDRs. Even if more TDR receiving areas can be created, the market will take time to adjust to the new opportunities. If there is not sufficient demand for these TDRs it will be easier to sell for development than to wait for the market to change.

One option is to create separate receiving areas for super TDRs. The amount of development permitted for each super TDR would have to reflect its value for the market to work. (For example, a new program could be created to allow the purchase of TDRs in for increases in commercial zoning.) This would make a distinction between the excess TDR market and the new super TDR market. The use of TDRs for commercial development will be a topic for a future meeting.

3) Scope of the program

The intent of the BLT program is not to eliminate all residential uses since that would not only be impractical and cost prohibitive, but potentially harmful to the County's agricultural economy if those that own farms or are employed by farmers are unable to live near their work. If the Group is conceptually supportive of a BLT program, Council staff suggests that the Group should discuss ways to limit the scope of the program and prioritize eligible participants (this will be essential for this program to receive legislative support and funding). There are several ways in which the scope can be limited, beginning with limiting the purchase to potentially buildable lots as discussed above. Other options are addressed below.

Fifth TDRs

The Group may want to discuss whether the program should be limited to properties that have retained the fifth TDR. Properties that do not have remaining TDRs (because of sale and use, such as houses on the property) could be excluded from a BLT program because these properties would not have a building lot to terminate. DED feels strongly that properties without any remaining TDRs should not be allowed to participate in the program.

Properties under Existing Easements

Properties that have already sold easements to programs like MALPF, AEP, and RLP can be declared ineligible for this program since the landowner has already been compensated for these rights purchased by the public sector. The MALPF program creates perpetual easements that end the right to build through negotiation. This program and AEP is limited to land in

agricultural production and woodland (if the woodland can meet the soil capability classification guidelines). The Rural Legacy (RLP) and Legacy Open Space (LOS) programs can purchase easements on rural lands regardless of their production capability. MALPF, AEP, and RLP purchase permissible density while LOS is based on appraised value. The DED proposal is to exclude any land covered by any of their tools box of easements from the program.

Soils Classification

The DED proposal is to exclude land that does not have at least 50% of its soils classified as prime and productive by the United States Department of Agriculture. This is an easement and funding requirement for both MALPF and AEP. Both programs are easement programs designed to protect farms with good production capabilities. In addition to protecting viable farmland this strategy also protects land most likely to be developed since the land with the best soils for farming are also the most likely to perc.

Lands in Agricultural Production

If the purpose of the BLT program is to prevent further fragmentation of farmland, then another test would be to limit the BLT program to lands in agricultural production. (While there is probably a correlation between soil type and agriculture, there are some farms that do not require quality soil and some properties that are no longer actively farming even though they have quality soils.) If the land is not in production, or has been already fragmented to the point that agricultural production would be difficult or impossible, then these lands are already lost to agriculture. Alternatively, if the goal of the BLT program is to reduce rooftops, it would not matter whether the property is in agricultural production. Limiting the program to land in production keeps the focus of the program on agricultural protection, rather than simply reducing potential development. In addition, a proposed source of revenue for BLT is agricultural transfer taxes. These funds must be used to purchase easements on agricultural lands. If lands not in agriculture are included it will be necessary to identify a different funding source.

Lands in Specific Geographical Areas

If the Group agrees that any program should be limited to land in agricultural productions and/or with soils that can support agriculture, another option to consider is whether to limit the program to certain geographical areas within the RDT zone. This would simplify program administration since properties would not have to be considered on a case by case basis. Those properties not in the area identified for the BLT program would be directed to the other easement programs. (Since these properties have reduced chances of obtaining a perc, the lower funding from other easement programs may be a sufficient incentive to prevent development.)

Other Building Structures

The RDT zone allows farm buildings and houses. It also allows various other uses such as private institutional facilities (PIFs). PIFS do not require a retained TDR for their construction. The Group may want to discuss whether land should be excluded from participation in the BLT program when a PIF or other structure exists. The easement recorded would create a mechanism

to prohibit any non-agricultural commercial building as well as PIFs. (The extent to which non-residential and non-agricultural uses should generally be allowed in the RDT zone will be the subject of a future Group meeting.)

Creation of Excess TDRs

Another option that would limit participation is the DED proposal to require that RDT properties to first create the "excess" TDRs through a TDR easement that is recorded among the land records (if they haven't already done so). Therefore, the number of TDRs that are retained with the property would be clearly distinguished as the permissible lot right. The landowner who creates the excess TDRs can monitor the TDR market and sell them at their discretion. As a condition of applying to the program proposed by DED, landowners would be required to serialize their "excess" TDRs either prior to or simultaneously with the settlement of the BLT easement.

Child Lots

Since child lots also add density and potentially fragment farmland, one option is to allow child lots to be purchased under a BLT program. This would provide landowners with the option of treating child lots as a matter of pure equity and not require a child to live on the land. Whether or not one agrees that landowners should be provided with this equity option, it is clear that adding child lots to the program could add 200 building lots to the program. There may also be undeveloped child lots that may want to join the program. If the intent is to limit the scope of the program, excluding child lots could help accomplish this goal.

Need to Prioritize

Even with the limitations discussed above, it is possible that in even given year there will be more landowners who wish to terminate building lots than can be afforded by public funding or supported by TDR purchasers. If public funding is being used, DED will have to prioritize potential participants using criteria such as the value to the agricultural land, the threat of imminent development or the cost of the property. DED suggests using the asking price as a means of ranking applications.

RELATIONSHIP TO OTHER ISSUES BEFORE THE WORKING GROUP

Sand mounds

The ability to use sand mounds increases the number of building lots that could be created in the Agricultural Reserve. If sand mounds are prohibited for new construction then there are far fewer potential building lots in the RDT zone. Traditional septic systems are more sensitive to soil types. Land with soils that fail to perc will have the greatest difference in potential building lots. A full discussion on sand mounds will be the subject of a future Working Group meeting.

Child lots

There is the potential for creating approximately 200 child lots in the Agricultural Reserve. Child lots could be excluded or included in the BLT program. If they are included, child lots become a matter of pure equity rather than the requirement for a child to live on a lot.

QUESTIONS TO GUIDE GROUP DISCUSSION

1. Does the group support the development of design standards and, if so, how should they be developed? Should this be referred to the Planning Department?
2. Should there be further consideration of downzoning to mandate, rather than encourage, fewer houses?
3. Should compensation for property owners be based on a theoretical maximum, proven lots or something in between?
4. If compensation is to be based on an estimate of buildable lots, should it be based on appraisals, perc tests or something else?
5. Which of the following potential limits on program eligibility should apply:
 - Properties that have retained the fifth TDR
 - Properties that have not sold easements
 - Requirement to have 50% of land in a soil classification that can support agriculture
 - Land in agricultural production (focus on protecting agriculture rather than reducing rooftops)
 - Limit the program to certain geographical areas based on soil classification or agricultural production.
 - Exclude lots on which there are non-farm buildings.
 - Require serialization of excess TDRs.
 - Exclude child lots.
6. Should the program be funded with public dollars or with the purchase of TDRs or both?

This packet contains:

	<u>Circle #</u>
Enhanced Farmland Preservation Initiatives (DED)	1
Proposed Procedures for BLT Easement Program (DED)	7
Draft BLT Executive Regulations	10
Building Lot Termination Program (Jim Clifford)	18
Sample TDR Easement	20
Project Description Form for Preservation Easements	25
Excerpts from Connecticut River Valley Design Manual	26

**Enhanced Farmland Preservation
Initiatives
Fall 2005**

Purpose:

To develop a new mechanism that will enhance the farmland preservation programs and initiatives offered to the County's rural landowners. This new initiative will focus on specific ways to encourage the preservation of farmland owned by individuals that have decided, for a variety of reasons, to not protect or encumber their farms through the easement programs that are currently available. To accomplish this objective, this new initiative must carefully evaluate all of the specific reasons for non-participation in our existing preservation programs and attempt to address them by either creating a new program and/or modifying existing programs. In this way, the County will better address the needs of rural landowners and simultaneously work towards completion of the 70,000 acres Farmland preservation goal by the year 2010.

Introduction:

2005 represents the 25th Anniversary of the County's Agricultural Reserve as the Functional Master Plan for the Preservation of Agriculture and Rural Open Space was published in October 1980. Over the past 25 years, the County has achieved national recognition in the number of acres protected through various easement programs. At present, the County has 65,000 acres encumbered by these easements and this acreage represents over 93% of the farmland preservation goal of preserving 70,000 acres by the year 2010. The remaining 4,500 acres or 7% has proven to be the most difficult and the most expensive properties to protect and, therefore, enhanced Farmland Preservation initiatives are recommended as we look beyond the silver anniversary of the Ag. Reserve.

Background:

The Rural Density Transfer Zone represents one of the most successful agricultural zones in the Country. The Agricultural Reserve, as it is most commonly called, is truly a precious and valuable resource that all citizens can appreciate and enjoy. This Agricultural Reserve provides many environmental and economic benefits to the County as well as enhancing the quality of life for residents through the amenities of rural open space and the availability of fresh locally grown agricultural products. Montgomery County is fortunate to have an extensive farmland preservation "tool box" or public policy which encompasses seven easement programs as follows:

- . Montgomery County Agricultural Easement Program (AEP)
- . Maryland Agricultural Land Preservation Foundation (MALPF)
- . Maryland Environmental Trust (MET)
- . Montgomery County Rural Legacy Program (RLP)
- . Montgomery County Transfer of Development Rights Program (TDRs)
- . Legacy Open Space (LOS)
- . Conservation Reserve Enhancement Program (CREP)

Each of these easement programs are specifically designed to target certain properties and meet the diverse needs of landowners. The success of our preservation programs is a tribute to commitment of landowners and their stewardship in voluntarily protecting their farms.

Suggestions from the farmers:

During the summer and fall, several agricultural organizations have discussed the escalating real estate values of rural land transferring in the market and they are suggesting that a new approach for farmland preservation participation may be needed in view of these trends. These discussions have contributed to the Department of Economic Development Agricultural Services Division laying a foundation for this new approach and outline exactly how it would work. The challenge for staff is to develop a strategy and specific programmatic procedures that will be conducive to the programs already in place or perhaps modify them altogether to improve their effectiveness.

The increasing fair market values of farmland in Montgomery is well documented over the past 25 years. In 1980, the Ag. Reserve Master Plan stated that growing values of farmland were making it difficult for farmers to purchase land for farming. While this situation also holds true today-the average fair market value of farmland has continued to increase from \$3,500 per acre in 1980 to over \$10,000 per acre in 2005. As this trend continues to grow, it provides opportunities to landowners in appreciating the equity they have in the land by selling the farm for development. This factor represents a realization whereby the farmer's most valuable and most important asset is the farmland itself. The County Government approved the Legislative Act of January 6, 1981 which created the RDT Zone including the ability for landowners to develop their properties at a density of one house per twenty-five acres. This density represents the foundation for determining the equity in the land. And while this RDT Zone has been extremely effective since 1980 in reducing the level of residential development in the rural regions of the County, there are a growing number of residents that are objecting to this permissible density as authorized in accordance with the zoning laws of the County Code. In view of the growing concerns voiced by rural residents coupled with the increasing demand and fair market values of farmland in the County, a new approach/proposed program has emerged.

Suggested names for the proposed program:

Outlined below, you will see a comprehensive list of suggested names for this proposed program that is provided in an attempt to avoid confusion because there are multiple names being discussed for this proposed program.

Suggested Names for the Proposed Program

- 5th TDR Program
- Super TDR Program (STP)
- Building Lot Termination (BLT)
- Roof Top Elimination Program (REP)
- Development TDR Program (DTP)

No matter what the proposed program is ultimately called, the above suggested names all share one common theme that needs to be explained in detail. When the Agricultural Reserve was created in January 6, 1981, the Rural Density Transfer (RDT) Zone was simultaneously adopted. This RDT Zone mandated the following:

1. For every five (5) acres of RDT zoned land, one (1) Transferable Development Right (TDR) was allotted.
2. Houses could be built at a density of 1:25 acres
3. A TDR must be retained with the property for all existing and future houses (Farm Tenant dwellings excluded)

Example of a 25 acre farm in the RDT Zone

- | | |
|---|-------|
| 1. 25 acres yields (1 TDR per 5 acres) | 5TDRs |
| 2. 4 “Excess TDRs” that can be serialized, created, transferred, sold | 4TDRs |
| 3. 1 retained “Super TDR” for 1 house permitted by zoning | 1TDR |

For the 25 acre example, the “5th or Super TDR” is retained with the property enabling the landowner to construct the house permissible under the density of the RDT Zone. This retained or “Super TDR” is valued differently because it equates to the house that can be built or developed on the property as compared to the four (4) “Excess TDRs” - whose value is determined by negotiations between developer and landowner and not tied directly to the value of an actual development right. These “Excess TDRs” can be serialized, created, transferred and sold to developers for use in down county TDR receiving areas. Understanding the difference in valuing the “5th or Super TDR” from the “Excess or transferable TDR” is paramount in developing procedures and fair compensation for the proposed program.

Range of Current Values of TDRs

<u>Type of TDR</u>	<u>Explanation</u>	<u>Range of Fair Market Values</u>
• “5 th or Super TDR”	Retained TDR for house on farm	\$175,000-\$500,000/Dev. Right
• “Excess TDR”	“Excess TDR” that is serialized, created & sold to developer	\$ 37,500-\$ 41,000/TDR

It should be recognized that as we approach our goal of protecting 70,000 acres of farmland, it will become more difficult to preserve the unprotected lands that remain. The land we have protected thus far has become extremely attractive and valuable for surrounding land that still can be developed. Developers and real estate agents use protected lands as another selling amenity that adds value to an unprotected property and encourages rural landowners to pursue development options. Rising real estate values and the demand for building units in down county areas has required staff to examine current methods for the valuation of farmland for agricultural preservation easements and to make recommendations for new farmland protection

initiatives and enhancements. Enhancements include bi-annual reviews of the Agricultural Easement Formula to ensure easements provide fair and equitable compensation for farmers.

How will the proposed program work?

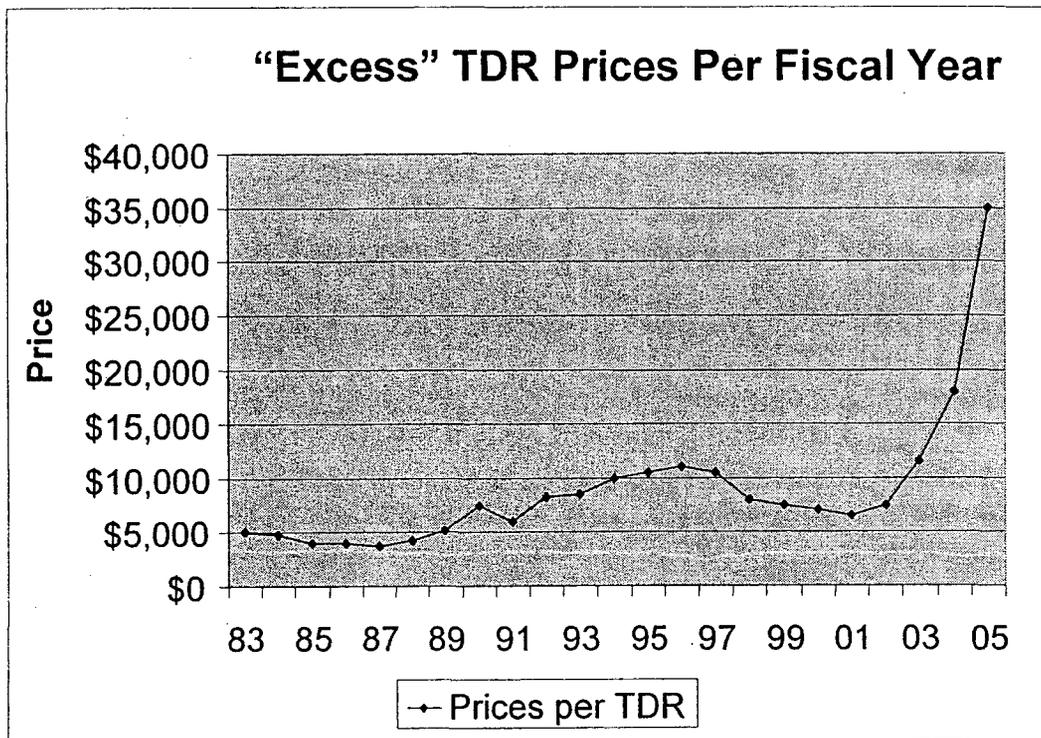
The proposed "Building Lot Termination" program (BLT) will involve a public/private sector investment. The program would be to evaluate the development options available in the agricultural reserve. Staff would negotiate with private landowners to value each building/development right which is permissible under zoning for the purpose of eliminating all or some of the permitted density. In exchange for eliminating density, the landowner would receive compensation for each development right or "Super TDR" eliminated. The County would benefit by additional easements at a time where real estate values have risen dramatically which has impeded progress with traditional programs. This in turn will help to provide greater protection of agricultural lands and help us meet our 70,000 acre preservation goal by 2010.

Funds provided by the public sector will come from the Agricultural Preservation Capital Improvement Program wherein \$14 million will be appropriated over FY 2007 and 2008 for the purchase of "Super TDRs." This approach will represent the initial phase of the BLT program where the County Government will purchase "Super TDRs" with the intent of reselling them to developers in the future once the County creates the new TDR receiving areas for commercial, mixed use, and R/D development. During this initial phase of the BLT, the County will serve as a facilitator in the purchase of "Super TDRs" that will eventually be used for Commercial Development Rights (CDRs) to be applied in any zone and provide a density over-ride of 10%. Funds provided by the private sector will initially come from developers purchasing "Super TDRs" from the County Government. The proceeds will go back to the Agricultural Preservation CIP program thereby serving as a revolving fund for purchasing more "Super TDRs." The County will turn the purchase of "Super TDRs" over to the private sector-developers to purchase them directly from landowners, once the program procedures and recording documents are fully understood by everyone.

For this approach to be viable, the County will need to develop new TDR receiving capacity within master plans and explore new uses for TDRs outside of the residential zones.

Understanding TDR prices:

Over the history of the TDR Program, the value of "Excess TDRs" has fluctuated widely as outlined below:



Until recently (2003), the farmers have stated that proceeds from the sale of TDRs did not adequately compensate them for the lost equity resulted from the 1981 Down Zoning. As the prices for TDRs have approached \$40,000/TDR, the farmers are saying this is where the TDR prices should have been all along and the County has been too slow in creating the necessary demand for TDRs through new TDR receiving capacity. At present, the MNCPPC has determined that 2,122 TDRs are remaining available for transfer from the sending area and that total TDR receiving capacity is 2,046. On the surface, these numbers create a false sense of security because the designated TDR receiving capacity on specific sites is often lost for many reasons and this diminished TDR capacity ranges from 30-40%. Considering this factor of diminished TDR capacity, means that only 1,227 TDRs may actually materialize and therefore, another 895 TDRs will be needed in new TDR receiving capacity. It is also important to note that when the 183 acre Crown farm is annexed into the City of Gaithersburg, another 300 TDR's in receiving capacity will also be lost and we will need to make up this lost capacity somewhere else.

If the County Government supports this proposed BLT program in reducing the number of residences in the Agricultural Reserve, we must be more aggressive in approving additional TDR receiving areas for residential development as well as change the TDR program in using TDRs in other zones such as commercial, industrial or R/D zones.

The MNCPPC reports that approximately 1,800 additional houses will be constructed in the Agricultural Reserve over the next 30 years and many residents want to see this number of potential houses reduced.

Based on MNCPPC most recent TDR data, there are approximately 2,500 TDRs that were deducted from the overall maximum number of TDRs available for transfer from the sending area to receiving areas because these TDRs are retained with the properties in view that 1 house per 25 acres will most likely be built at some point. The DED recommends that the BLT Program could reduce this number of residences through the purchase of "Super TDRs" by at least 20%. This will result in an additional 500 "Super TDRs" that will need to be created for new CDR receiving areas involving various types of commercial, industrial and R/D zones.

(2,500 "Super TDRs" @ $1/25 \times 20\% = 500$ "Super TDRs")

How can a compensation mechanism be developed to address the difference value of Excess TDRs @ \$40,000 and "Super TDRs" @ \$400,000? Furthermore, how can the current TDR market pricing structure be modified to develop the higher TDR values needed to encourage the reduction of residential roof tops in the Ag. Reserve?

The answer to these questions must be addressed as part of the amendments to the Executive Regulations No. 66-91 which govern the County Government in the use of public funds for purchasing agricultural preservation easements. The Department of Economic Development and the Agricultural Preservation Advisory Board recommends these regulations need to be amended to incorporate the BLT program.

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Proposed Procedures for BLT Easement Program

- DED announces to rural landowners and developers that Montgomery County Government has restructured the zoning ordinance (Chapter 59), and Chapter 2-B Agricultural Land Preservation Easement Purchase of the Montgomery County Code and Executive Regulations to implement a new farmland preservation initiative in accordance with the legislative objectives and intent.
- An announcement will be designed to inform both the farmers/RDT zone property owners and the development community that the program is up and running and that DED will serve as a facilitator for transactions between the parties.

DED will develop lists of farmers interested in participating with the BLT program and also a listing of developers that are in need of finding and purchasing TDRs. DED will provide the listings to all parties in an attempt to get them talking and enter into negotiations and real estate contracts for purchasing TDRs.

- As part of this announcement, DED distributes a simple application where the landowner outlines the following information:

Date the Farm was purchased _____
Total Acres of the Farm _____
Number of Existing dwellings _____
Number of TDRs still retained with the property _____
Number of Development rights the landowner would like to
negotiate _____
An Asking Price for the Development right \$ _____ per right

Submittal of a recent title report for the property. The title report will contain all transactions and encumbrances against the property, including all previous TDRs created and sold. (The title report shall not be more than 6 months old and provided at the applicant's expense)

The Landowner/Developer will be responsible for incurring all costs associated with the settlement of the easement, title deficiencies or defects and recordation costs.

- From the information contained in the application and review of specific records of title on the property, DED will validate the actual number of development rights that still exist on the property.
- DED will put the applicants on a list in the order they are received in designated purchase periods and a second ranking will consist of the Asking Prices per development right being less than or equal to the annual established BLT Easement price cap approved by the County Executive.

- Using the ranking of applicants as stated above, DED will contract with an independent appraiser to appraise the development rights for applicants starting with the properties that have the greatest percentage of prime and productive soils (USDA Soil Capability Classification I, II, III.) Under no circumstances shall a property be appraised if the cumulative soils comprise less than 50% prime and production soils - Capability Classification I, II, III.
- The DED will pay for the costs associated with an appraisal under certain circumstances.
- DED will develop specific appraisal guidelines to assist appraisers in appraising the permitted residential lot rights.
- Once the appraisal is completed, DED will be in a position to develop a final ranking of applicants.
- Once the Ranking of applicants has been determined using the appraisal, DED will indicate the specific price for the development right (Permitted Residential Lot Right.)
- Applicants will either accept or reject the value determined by DED.

Acceptance of Value:

- Certification process – This certification will indicate the applicant's excess TDRs were previously created and that only the "Development" TDRs remain with the property. DED will verify the specific number of TDRs to be transferred.
- As a part of the review and approval for an applicant's TDR(s) for transfer under this program, DED will certify and indicate to the applicant the number of TDRs available to be acquired under BLT.
- DED will prepare TDR Easement and Deed of Transfer with corresponding number of TDRs previously created in addition to "Development" TDRs created and acquired through the BLT.
- The County Attorney's office will review all the required documentation (TDR Easement, Deed of Transfer, BLT Easement, title reports, TDR contract of sale) for legal sufficiency.
- The County Attorney's office will develop a separate accounting system for assigning the specific serialized numbers for the "Development" TDRs that will be created and acquired through the BLT.

- The County will simultaneously record among the land records, a Transferable Development Right (TDR) Easement, TDR Deed of Transfer, and a BLT Easement (Restrictive Covenant) as evidence that the building lots have been terminated. Each BLT Easement shall encumber 25 acres or a smaller size if approved by the APAB.

Rejection of Value:

- Applicant will reimburse DED for cost of the appraisal.
- The DED will reserve right to delay an applicant's re-entry in the BLT for a period up to two years if the applicant decides to reject for whatever reason, the value of the "Development" right as determined by the appraisal.

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MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: AGRICULTURAL LAND PRESERVATION DISTRICTS & EASEMENT PURCHASES NUMBER :

Originating Department: Department of Economic Development (DED) Effective Date:

Montgomery County Regulation on:

AGRICULTURAL LAND PRESERVATION DISTRICTS AND EASEMENT PURCHASES DEPARTMENT OF ECONOMIC DEVELOPMENT

Issued by: County Executive Regulation No. _____

Authority: Code Section 2B-18

Supercedes:

Council review: Method (1) under Code Section 2A-15

Register Vol. 8 No. 9

Comment Deadline:

Effective Date:

Sunset Date: None

SUMMARY: These agricultural land preservation Executive Regulations provide rules and regulations for establishing a County Agricultural District and for determining the County supplemental payment for Maryland Agricultural Land Preservation Foundation purchase of agricultural land preservation easements; and establish the method of purchasing agricultural easements by the County including method of determining easement value, method of ranking offers to sell easements, and terms of payment for easements.

ADDRESS COMMENTS TO: Department of Economic Development 111 Rockville Pike Rockville, Maryland 20850

STAFF CONTACT: Jeremy V. Criss 301 590-2830 John P. Zawitoski 301-590-2831

BACKGROUND INFORMATION: Since 1978, Montgomery County has participated with the Maryland Agricultural Land Preservation Foundation in the purchase of agricultural land preservation easements to protect County farmland. Bill No. 56-87, Agricultural Land Preservation was enacted February 16, 1988 to increase the effectiveness of the preservation efforts in the County by enabling the County to purchase easements with the County's share of the agricultural land transfer tax directly from the farmland owner or to supplement the purchase price offered by the State. In 1992, the County approved the regulations to allow the Transferable Development Rights (TDRs) associated with the easement properties to be created rather than extinguished. In 2005, the County celebrated the 25th Anniversary of the Agricultural Reserve and several initiatives to support agriculture were identified including modification of these regulations to purchase "BLT Easements." Under this regulation, Building Lot Termination or BLT is henceforth defined as "permitted residential lot



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rights." The County Government may consider re-selling TDRs acquired through the Building Lot Termination (BLT) option for use in other areas subject to provisions approved by Government.

I. Definitions:

Agricultural Easement Program (AEP): A program designed to reduce permitted residential density on agricultural lands by placing easements to preserve agricultural production capability.

Building Lot Termination (BLT) Easement Program: A program by which the County may purchase a BLT Easement on land in the Rural Density Transfer Zone (RDT) in exchange for terminating some or all of the permitted residential lot rights. Transferable development rights which are eligible for transfer into duly designated TDR receiving areas that do not equate to permissible residential lot rights on a parcel of land within the RDT Zone and are henceforth defined as "Excess TDRs" and not eligible for the BLT Easement program.

County Agricultural District Agreement: An agreement between the County and Landowner, recorded among the land records of the County, which establishes the preference for continued agricultural use of the land, restrictions on residential subdivision of the land for a specified length of time and is required prior to the County purchasing an AEP easement on lands within non-agricultural zones.

Transferable Development Rights: The Conveyance of development rights by deed, easement or other legal instrument authorized by local law to another parcel of land and the recordation of that conveyance among the land records of Montgomery County, Maryland.

Receiving Area Transferable Development Rights: An area designated on an approved and adopted general, master, sector or functional plan appropriate for development beyond its base density through the transfer of development rights.

II. Agricultural Easement Program (AEP)

In accordance with Chapter 2B, Sections 7 through 19, the County may purchase an easement on real property to preserve agricultural land in the County. The agricultural land preservation easement will restrict residential, commercial, and industrial use of the land giving the landowner the same rights and responsibilities as County Agricultural District status.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Originating Department: Department of Economic Development (DED) Effective Date:

IV. Building Lot Termination (BLT) Easement Program

In accordance with Chapter 2B-12, the County may purchase an easement on real property to preserve agricultural land in the County. The agricultural land preservation easement will restrict residential, commercial, and industrial and non agricultural uses of the land.

A. Eligibility

1. Eligible Sellers

The County will purchase easements only from the holder of fee simple title to eligible farmland, or a person or institution that has entered into a binding contract or option to purchase fee simple title to eligible farmland, if and when that person or institution takes title to the farmland.

2. Land Eligible for Inclusion in BLT

- a. The land under consideration for easement valuation for the BLT under this regulation must be at least 25 acres in size; however, smaller properties maybe be considered if they are contiguous to other lands protected from development by agricultural and conservation easements.
- b. At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- c. The land must lie outside water and sewer categories 1, 2, and 3.

3. Application Requirements

A landowner may voluntarily request inclusion into the BLT by submitting a complete property description (see section II. B. 1.) to the Agricultural Preservation Advisory Board.

B. Review and Approval Procedure

DED and the Agricultural Preservation Advisory Board shall:

1. Establish a cap of applications which will be accepted during BLT purchase periods;
2. Rank applicants on a list in the order in which they are received;



MONTGOMERY COUNTY EXECUTIVE REGULATION

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3. Conduct a second ranking based upon a landowners asking price being less than or equal to the annual established BLT Easement price cap approved by the County Executive in order from highest percentage of prime and productive soils (USDA Soil Capability Classification I, II, III.) to lowest;
4. Establish prioritization and appraisal guidelines for properties that will be appraised; and
5. Provide notification to landowners as to the status of their application detailing the following:
 - a.) a recommendation of approval to DED that the property be appraised, or
 - b.) a recommendation of denial to DED that the property should not be appraised, or
 - c.) a recommendation of modification to DED referring the asking price offer back to the landowner giving them the opportunity to either revise or withdraw offer.
6. Place applications for BLT easements received after the closing of a purchase period on a waiting list for future consideration.

C. Permitted Activities on Lands Protected under BLT

The following activities are permitted on lands protected by BLT easements subject to the limitations and conditions of Chapter 59 (Zoning) of the County Code:

1. Agricultural Type Use

- a. any agricultural use of the land;
- b. operation of any machinery used in farm production or the primary processing of agricultural products, regardless of the time of operation;
- c. all normal agricultural operations, performed in accordance with good husbandry practices, that do not cause bodily injury or directly endanger human health;
- d. operation of a Farm Market for sale of farm products.

2. Residential Use

No residential uses are permitted on lands encumbered by a BLT easement.

3. Restriction on Subdivisions

The owner of land in subject to a BLT easement must not use or subdivide the land for residential commercial, industrial, or any other non agricultural uses except as provided under this regulation.



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D. Easement Sales Application Requirements

The owner must submit an easement sales application to the Department of Economic Development. The application must include a completed property description (see section II. B.1.) and the owner's asking price-for the easement. The Department of Economic Development certifies the completeness of the application.

E. Establishing BLT Easement-Value

The method for establishing easement value under the Building Lot Termination (BLT) Program will be through the application of an appraisal based system.

1. Time frame for Determination of Easement Value

The maximum value of an easement for the BLT is determined by completion of an analysis of appraisal information. A landowner may have only one offer to sell an easement on a specific property pending at any one time.

2. Maximum Easement Value

The maximum value of a BLT easement may not exceed the annual established BLT Easement price cap as approved by the County Executive.

3. Right to Revise/Withdraw

If the maximum easement value is determined by the County to be lower than the offer price submitted by the landowner, then the landowner may revise or withdraw the offer to sell.

F. Building Lot Termination Program Valuation Procedure

Under the BLT program, the maximum value of the easement is a function of the annual BLT Easement price cap as a percentage of the appraised Fair Market Value (FMV) of the permitted residential lot rights on land in the Rural Density Transfer Zone (RDT). The Grantor of the easement shall encumber their property through a BLT Easement which terminates the permitted residential lot rights for every 25 acres encumbered under this option. By terminating the right, the Grantor shall forgo the right to subdivide the land for residential, commercial, industrial or any other non agricultural uses except as provided in IV. C. 1.



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Originating Department: Department of Economic Development (DED) Effective Date:

For each BLT Easement acquired under this program the County will create, serialize, and convey the TDR associated with the permitted residential lot rights from the grantor to the County. Simultaneously to the creation, serialization and conveyance of these TDRs purchased for the BLT program under this regulation, the County shall also require the Grantor to create and serialize any "Excess TDRs" that remain with the property.

1. Fair Market Value

The fair market value of the land which includes the BLT Easement is the price, as of the date of the offer to sell, which the vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property were not subject to any restriction imposed under these regulations.

2. Compensation

a. Compensation under the BLT will involve the County purchasing the "Permissible Residential Lot Right TDR" for each lot that is appraised;

b. County Funds will be appropriated through the Agricultural Preservation Capital Improvements Project (CIP).

c. the maximum easement value for BLT may not exceed the annual established BLT Easement price cap as approved by the County Executive as determined above.

G. County Purchase Procedure

1. Ranking of BLT Easement Purchases

The County will accept applications to sell BLT easements during established purchase periods. The purchase period shall end upon the earlier of, meeting the cap of applications accepted established by the Agricultural Preservation Advisory Board, or 30 days from last application received by DED.

The County will accept offers to sell on or before the last day of each purchase period as outlined above. At the end of each purchase period, offers to sell easements will be ranked based upon the Asking Prices per development right being less than or equal to the annual established BLT Easement price cap approved by the County Executive.

This list will be used to determine the number of appraisals to be ordered associated with the set purchase period. The County will contract with an independent appraiser to appraise the development rights for



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: AGRICULTURAL LAND PRESERVATION DISTRICTS & EASEMENT PURCHASES NUMBER :

Originating Department: Department of Economic Development (DED) Effective Date:

applicants starting with the properties that have the greatest percentage of prime and productive soils (USDA Soil Capability Classification I, II, III.) Under no circumstances shall a property be appraised if the cumulative soils comprise less than 50% prime and production soils - Capability Classification I, II, III. Under the BLT program, the County and Agricultural Preservation Advisory Board will establish prioritization and appraisal guidelines for properties that will be appraised.

2 County Offer to Buy BLT Easement

The County's offer to Buy BLT easements shall be conducted in accordance with section II. G. 2.(a.)(b.) and (c.) of this regulation.

3. Rejection of Offer - BLT Easement

Rejections by the County's to purchase a BLT easement from a landowner shall be conducted in accordance with section II. G. 3.(a.) and (b.) of this regulation.

4. Landowner Acceptance - BLT Easement

The landowner will have 30 days following the County offer to purchase in which to accept the offer. Failure to respond after 30 days will be considered a rejection of the offer. The landowner may reject the offer to purchase up to the point of settlement. A landowner who rejects a County offer to purchase will forfeit his/her right to sell an easement to the County for a period up to twenty-four (24) months. Rejected offers under Method 2, may require reimbursement by the applicant to the County for costs incurred for easement valuation.

5. Closing and Payment - BLT Easement

The process and procedure for BLT easement closings and payments shall be conducted in accordance with section II. G. 5. (a.) and (b.) of this regulation.

6. Recordation and Monitoring - BLT Easement

The County's acquisition of an easement will be recorded in the land records, in the annual report of the program, and shall be cross referenced to the TDRs that will be created. The Department of Economic Development will monitor the properties under easement at least biannually to ensure compliance with the easement.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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Originating Department: Department of Economic Development (DED) Effective Date:

V. Effective Date

This regulation becomes effective 30 days after approval by the County Council.

Douglas M. Duncan
County Executive

Approved as to Form and Legality
Office of the County Attorney

By:

Date:

C:\BLT\executivereg66-91BLToptiontemplate(NEWBLTdec05)

BUILDING LOT TERMINATION PROGRAM

Jim Clifford

I have been asked to give as much detail as possible regarding my proposal to eliminate building lots in the RDT zone, which for lack of a better term will be referred to as the Building Lot Termination Program (BLT Program).

This program will work under the simple premise that most landowners in the RDT would prefer not to subdivide and sell building lots off of their land, if given an alternative that would provide them with comparable value. Landowners, particularly farmers, have a history of carving off building lots and selling them to help with their cash flow. If there was a competitive alternative, it is likely most landowners would pursue the alternative.

The BLT Program would work as follows:

A landowner in the RDT who has uncreated building lots by right on his property can choose to have some or all of the building lot rights terminated by entering into an Agricultural Easement program with Montgomery County, in exchange for consideration comparable to the value of a building lot. I would suggest that the program would only apply to building lots by right as provided by the zone, not Child Lots.

After having soil tests conducted to determine that their land percs, the landowner would make an application with the Agricultural Services Division of the Department of Economic Development for Montgomery County, just as if they were applying for the State MALF or County AEP Program. Ag Services would evaluate the application to determine that the landowner does in fact have potential for building lot(s) on their property for termination. An annual appraisal will be done for the Department of Economic Development for Montgomery County, Maryland to determine the average market value for a building lot in the RDT. Once market value has been established for the lot(s), building lot termination consideration would be determined by subtracting the raw land value from the building lot value.

For example, if a landowner has 100 acres in the RDT zone, the landowner is permitted to four (4) lots by right and if each perced building lot is determined to have a net value of \$400,000.00 in the BLT program, then the County would compensate the landowner by \$1.6 Million. Please remember that the only relevance of TDRs to this program is that there must be one unserialized TDR for each building lot terminated. The one TDR for each Lot Terminated, plus all surplus TDRs associated with that tract of land would be serialized so to prevent further use on that tract. Whether or not the landowner retains the surplus serialized TDRs is not relevant and of no consequence to the intended result of this program.

The landowner, simultaneously with the receipt of the consideration, will execute a Restrictive Covenant which would be recorded in the Land records of Montgomery County to evidence that the building lot(s) have been terminated. The Restrictive Covenant would identify the entire parcel used in the calculation of the building lot(s). In addition to the Restrictive Covenant, a COMAR plat would be recorded for the termination of the lot(s). For each terminated building lot,

an outlot of not less than 25 acres would be created on the property. I don't think it is necessary that there is a perc on that 25 acres, so long as there is one somewhere on the land that was otherwise unusable. This would prevent further utilization of that 25 acres of land in density calculations by the landowner or an adjoining landowner. If only one lot is to be terminated, one outlot of 25 acres would be created. If two lots are to be terminated, an outlot of 50 acres would be created, and so on, using 25 acre increments for each building lot terminated. These outlots would be known as AAg Outlots@. The combination of the COMAR Plat and the Ag Easement would prevent abuses of, and add integrity to, the program. I would recommend that we add this Ag Lot Plat to the Minor Subdivision Process under Section 50-35A of the Montgomery County Code.

Prioritizing applications would be done by the Department of Economic Development based on the date of application and the importance of the agricultural asset to the preservation of agriculture in the RDT zone.

One of the more subtle results of this program is that by terminating a building lot, the overall value of the property is then reduced, making it more affordable for agricultural users. The more obvious results are that fewer houses will be built in the Ag Reserve and more agricultural land will be preserved by Easement, without eliminating or impairing the landowners' equity.

Potential funding sources for this program could be as follows:

1. Agricultural transfer taxes (presently \$14 Million earmarked for this program)
2. Annual funding from the County Council
3. Commercial TDRs (not yet codified and available)
4. Special Assessments from Builder/Developers (\$2Million from the Crown Farm)

TRANSFER OF DEVELOPMENT RIGHTS (TDR) EASEMENT

THIS TRANSFER OF DEVELOPMENT RIGHTS (TDR) EASEMENT, made this _____ day of _____, 200__ by and between _____ (“Grantor”), and **MONTGOMERY COUNTY, MARYLAND**, a body corporate and politic, hereinafter (“Grantee”).

RECITALS

Chapter 59 of the Montgomery County Code defines “Development Right” as: “The potential for the improvement of a parcel of real property, measured in dwelling units or units of commercial or industrial space, existing because of the zoning classification of the parcel”, and sets forth a procedure for the transfer of Development Rights for the purpose of preserving agricultural land. Grantor is the owner in fee simple of _____ acres, more or less, of real property known as Parcel _____, hereinafter more particularly described in Exhibit A, attached hereto and made part hereof, in the Rural Density Transfer Zone, located in Planning Area _____ Montgomery County, Maryland (the “Property”). The Property is now improved with _____ one-family dwellings.

Chapter 59 of the Montgomery County Code recognizes the right of an owner of property in the Rural Density Transfer Zone to transfer a certain number of Development Rights, provided that such a conveyance contains an easement restricting the future construction of one-family dwellings on the property. The parties intend that this Easement so restrict the Property and that, _____ Development Rights numbered _____ through _____ may be conveyed from the Property by a deed in a recordable form approved by the Montgomery County Planning Board of the Maryland-National Capital Park and Planning Commission without the conveyance of an additional Easement to Grantee.

Grantor represents that it is the owner in fee simple of the Property as of the date of execution of this Easement.

A current title report for the subject Property, identified as Exhibit B, is attached hereto and made a part hereof a current tax map for the subject Property, identified as Exhibit C, is attached hereto and made part hereof.

NOW, THEREFORE, to permit the transfer of Development Rights and in consideration of the covenants, terms, conditions and restrictions hereafter set forth and other good and valuable consideration, receipt of which is hereby acknowledged, Grantor does grant and convey to Grantee, its successors and assigns, forever and in perpetuity, an interest and Easement of the nature and character and to the extent hereinafter set forth in respect to all that Property situate in Montgomery County, Maryland, described as:

The Property conveyed by and described in a deed from _____, to _____ and _____ dated _____ recorded among the Land Records of Montgomery County, Maryland, in Liber _____ at Folio _____ located in Planning Area _____ with street address of _____ [or, as more particularly described in Exhibit A].

The terms, conditions and restrictions, of this Easement are these:

1. This Easement shall be perpetual. It is an easement in gross, and as such, is inheritable and assignable and runs with the land as an incorporeal interest in the Property enforceable with respect to the Property by the Grantee, and its successors and assigns, against the Grantor and his heirs, successors, and assigns.

2. The term "one-family dwelling" includes mobile, manufactured, or similar dwelling, but excludes farm tenant dwelling permitted by Chapter 59, Montgomery County Code, as amended.

3. A one-family dwelling may not be constructed, occupied, or maintained on the Property unless one Development Right is retained with the Property for each one-family dwelling constructed, occupied, or maintained.

4. The restrictions imposed by this Development Rights Easement shall operate independently of the restrictions imposed by the zoning of the Property.

5. The Property contains a total of _____ acres, more or less. [Previous Development Rights Easements recorded at Liber _____ Folio _____ among the land records of Montgomery County, Maryland limited the number of one-family dwellings that may be constructed on or maintained on the Property to _____ and authorized the conveyance of _____ Development Rights numbered _____ through _____.] There are _____ existing one-family dwellings on the Property. As a result of this Easement, the Parties intend that Grantor may convey [an additional] _____ Development Rights numbered _____ through _____. [Or, "No previous Development Rights Easements have been conveyed by Grantor from this Property."] From this date forward, no more than a total of _____ one-family dwellings may be constructed on the Property. This may not be interpreted to permit additional dwellings inconsistent with the zoning of the Property or to prevent the reconstruction of existing one-family dwellings which complied with the terms of this Easement in the event such dwellings may be destroyed or damaged.

6. Grantee, its successors and assigns, may, with reasonable notice, enter the Property from time to time, for the sole purpose of inspection and enforcement of the terms, conditions and restrictions of this Easement. This right of inspection does not include the interior of dwellings.

7. Nothing herein may be construed to convey to the public a right of access or use of the Property, and the Grantor, its heirs, successors and assigns, retain exclusive right to such access and use, subject only to the provisions of this Easement.

8. The parties agree that monetary damages would not be adequate remedy for breach of any of the terms, conditions and restrictions herein contained, and, therefore, in the event that the Grantor, its heirs, successors and assigns, violate or breach any of such terms, conditions and restrictions, herein contained, the Grantee, its successors and assigns, may institute a suit to enjoin by ex parte, preliminary and/or permanent injunction such violation and to require the restoration of the Property to its prior conditions. The Grantee, its successors and assigns, by any prior failure to act, does not waive or forfeit the right to take action as may be necessary to insure compliance with the terms, conditions and purposes of this Easement

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto set their hands and seals in the day and year above written.

WITNESS/ATTEST

GRANTOR

, (SEAL)

, (SEAL)

GRANTEE

Douglas M. Duncan, County Executive
Montgomery County, Maryland

APPROVED AS TO FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY

BY _____
DATE _____

[FOR AN INDIVIDUAL]

STATE OF MARYLAND *
 *
COUNTY OF MONTGOMERY *

I HEREBY CERTIFY that on this _____ day of _____ 200__, before me, the undersigned officer, personally appeared _____ known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Transfer of Development Rights (TDR) Easement and acknowledged that (s)he executed the same as his/her act for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

[FOR A BUSINESS ENTITY]

STATE OF MARYLAND

*

COUNTY OF MONTGOMERY

*

*

I HEREBY CERTIFY that on this _____ day of _____, 200___, before me, the subscriber, a Notary Public in and for the aforesaid jurisdiction, personally appeared NAME, TITLE of BUSINESS ENTITY, and did acknowledge that (s)he executed the foregoing Transfer of Development Rights (TDR) Easement for the purpose contained therein, and further acknowledged the foregoing Transfer of Development Rights (TDR) Easement to be the act and deed of BUSINESS ENTITY.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My commission expires:

STATE OF MARYLAND

*

COUNTY OF MONTGOMERY

*

*

I HEREBY CERTIFY that on this _____ day of _____ 200___, before me, the subscriber, a Notary Public in and for the aforesaid jurisdiction, personally appeared DOUGLAS M. DUNCAN, County Executive of Montgomery County, Maryland, who executed the foregoing Transfer of Development Rights (TDR) Easement on behalf of Montgomery County, Maryland, for the purposes therein contained, and further acknowledged the foregoing Transfer of Development Rights (TDR) Easement to be the act and deed of said Montgomery County.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires: _____

ATTORNEY CERTIFICATE

THE UNDERSIGNED, a member of the Bar of the Court of Appeals of Maryland, hereby certifies that the foregoing instrument was prepared by or under the supervision of the undersigned.

RELEASE OF LENDER:
(If Lender is involved)

THIS INSTRUMENT IS INSURED BY:
(If applicable)

PARCEL IDENTIFICATION NUMBER(S):

GRANTOR'S ADDRESS:

GRANTEE'S ADDRESS: MONTGOMERY COUNTY, MARYLAND
101 Monroe Street, 3rd Floor
Rockville, MD 20852

AFTER RECORDATION, PLEASE RETURN TO:

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24

Ag Land Pres Easements -- No. 788911

Category **Conservation of Natural Resources**
 Agency **Economic Development**
 Planning Area **Countywide**
 Relocation Impact **None**

Date Last Modified
 Required Adequate Public Facility

January 5, 2006
 NO

EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY05	Est. FY06	Total 6 Years	FY07	FY08	FY09	FY10	FY11	FY12	Beyond 6 Years
Planning, Design and Supervision	1,834	0	212	1,622	221	256	268	280	292	305	0
Land	30,972	0	8,222	22,750	8,204	6,090	2,156	2,300	2,000	2,000	0
Site Improvements and Utilities		0	0			0	0	0	0	0	0
Construction											
Other	0	0	0	0	0	0	0	0	0	0	0
Total	32,806	0	8,434	24,372	8,425	6,346	2,424	2,580	2,292	2,305	0

FUNDING SCHEDULE (\$000)

Federal Aid	393	0	393	0	0	0	0	0	0	0	0
Investment Income	1,952	0	328	1,624	221	258	268	280	292	305	0
State Aid	7,162	0	4,662	2,500	1,500	1,000	0	0	0	0	0
Agricultural Transfer Tax	23,299	0	3,051	20,248	6,704	5,088	2,156	2,300	2,000	2,000	0

ANNUAL OPERATING BUDGET IMPACT (\$000)

DESCRIPTION

This project provides funds for the purchase of agricultural and conservation easements under the County Agricultural Land Preservation legislation, effective May 26, 1988, for local participation in Maryland's agricultural and conservation programs. The County Agricultural Easement Program (AEP) enables the County to purchase preservation easements on farmland in the agricultural zones and in approved County agricultural districts to preserve farmland in conjunction with farms protected by transferable development rights (TDRs) easements or State agricultural land preservation easements. The Maryland Agricultural Land Preservation Foundation (MALPF) enables the State to purchase preservation easements on farmland in agricultural districts established jointly by the County and State. The Rural Legacy Program (RLP) enables the State to purchase conservation easements to preserve large contiguous tracts of agricultural land. Project funding comes from State aid and the Agricultural Land Transfer Tax, which is levied when farmland is sold and removed from agricultural status. Montgomery County is a State-certified county under the provisions of State legislation which enables the County to retain 75 percent of the taxes for local use. The County uses a portion of its share of the tax to provide matching funds for State easements. Beginning in FY07, a new Building Lot Termination (BLT) program will be initiated to protect land where development is permitted given 1 lot per 25 acre zoning. This will be accomplished by using Agricultural Transfer Tax revenue to purchase the "Super TDRs" retained on these lots.

JUSTIFICATION

Annotated Code of Maryland 2-501 to 2-515, Maryland Agricultural Land Preservation Foundation; Annotated Code of Maryland 13-301 to 13-308, Agricultural Land Transfer Tax; and Montgomery County Code, Chapter 2B, Agricultural Land Preservation. In order to facilitate the new BLT program, changes to both the State certification and Montgomery County Executive Regulations are required and are being pursued.

Cost Change

The cost increase reflects the new BLT program to be funded with Agricultural Transfer Tax revenue. State funds for FY07-08 are estimated and will be pursued through the competitive grant process.

STATUS

Since 1980, the State and the County have completed nearly 95 easement purchases totaling 16,414 acres. An additional 48,584 acres have been preserved through private transactions facilitated by the County TDR program, for a total of 64,998 acres. The County's goal is to preserve 70,000 acres by 2012.

OTHER

Appropriations are based upon a projection of Montgomery County's portion of the total amount of Agricultural Transfer Tax, which has become available since the last appropriation and State Rural Legacy Program grant funding. Appropriations to this project represent a commitment of Agricultural Land Transfer Tax funds and State Aid to purchase agricultural easements. The Agricultural Transfer Taxes are deposited into an investment income fund, the interest from which is used to fund direct administrative expenses and purchase easements.

FISCAL NOTE

Expenditures do not reflect additional, authorized payments made from the Agricultural Land Preservation Fund balance to increase financial incentives for landowners.

APPROPRIATION AND EXPENDITURE DATA

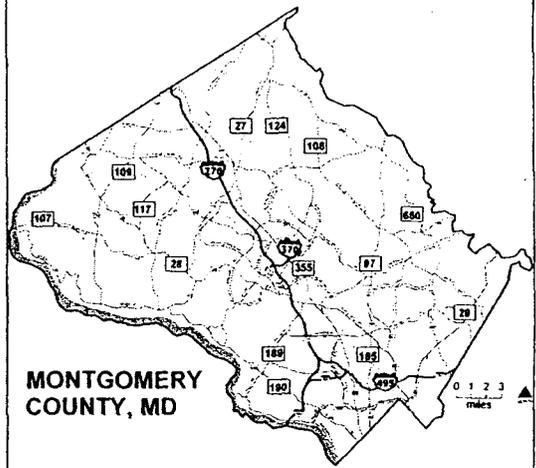
Date First Appropriation	FY89	(\$000)
Initial Cost Estimate		18,705
First Cost Estimate		
Current Scope	FY07	32,806
Last FY's Cost Estimate		23,557
Present Cost Estimate		32,806
Appropriation Request	FY07	8,425
Appropriation Request Est.	FY08	6,346
Supplemental Appropriation Request	FY06	0
Transfer		0
Cumulative Appropriation		8,434
Expenditures/Encumbrances		1,857
Unencumbered Balance		6,577
Partial Closeout Thru	FY04	37,163
New Partial Closeout	FY05	2,242
Total Partial Closeout		39,405

COORDINATION

State of Maryland Agricultural Land Preservation Foundation
 State of Maryland Department of Natural Resources
 Maryland-National Capital Park and Planning Commission
 Landowners

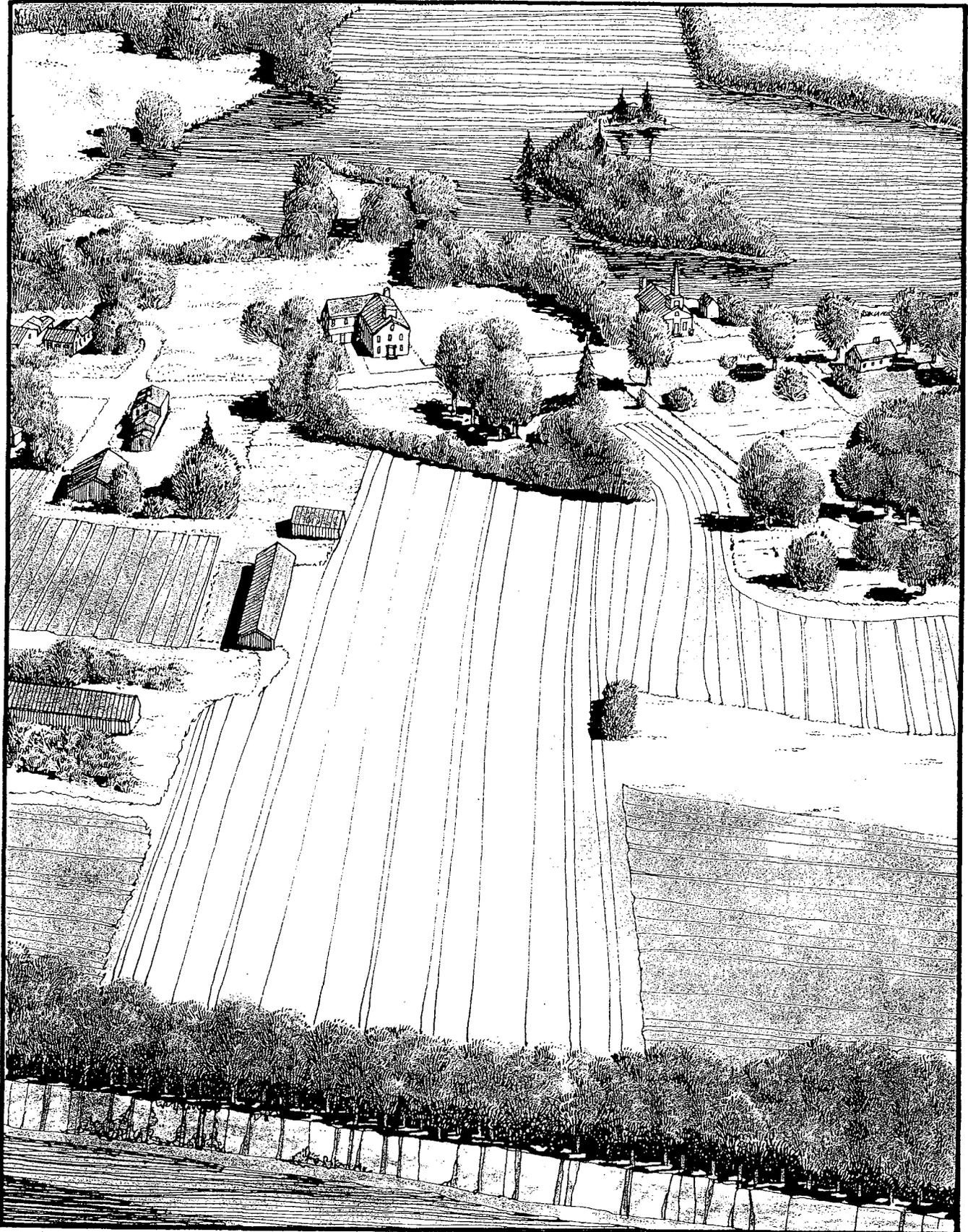
The Executive asserts that this project conforms to the requirements of relevant local plans, as required by the Maryland Economic Growth, Resource Protection and Planning Act.

MAP

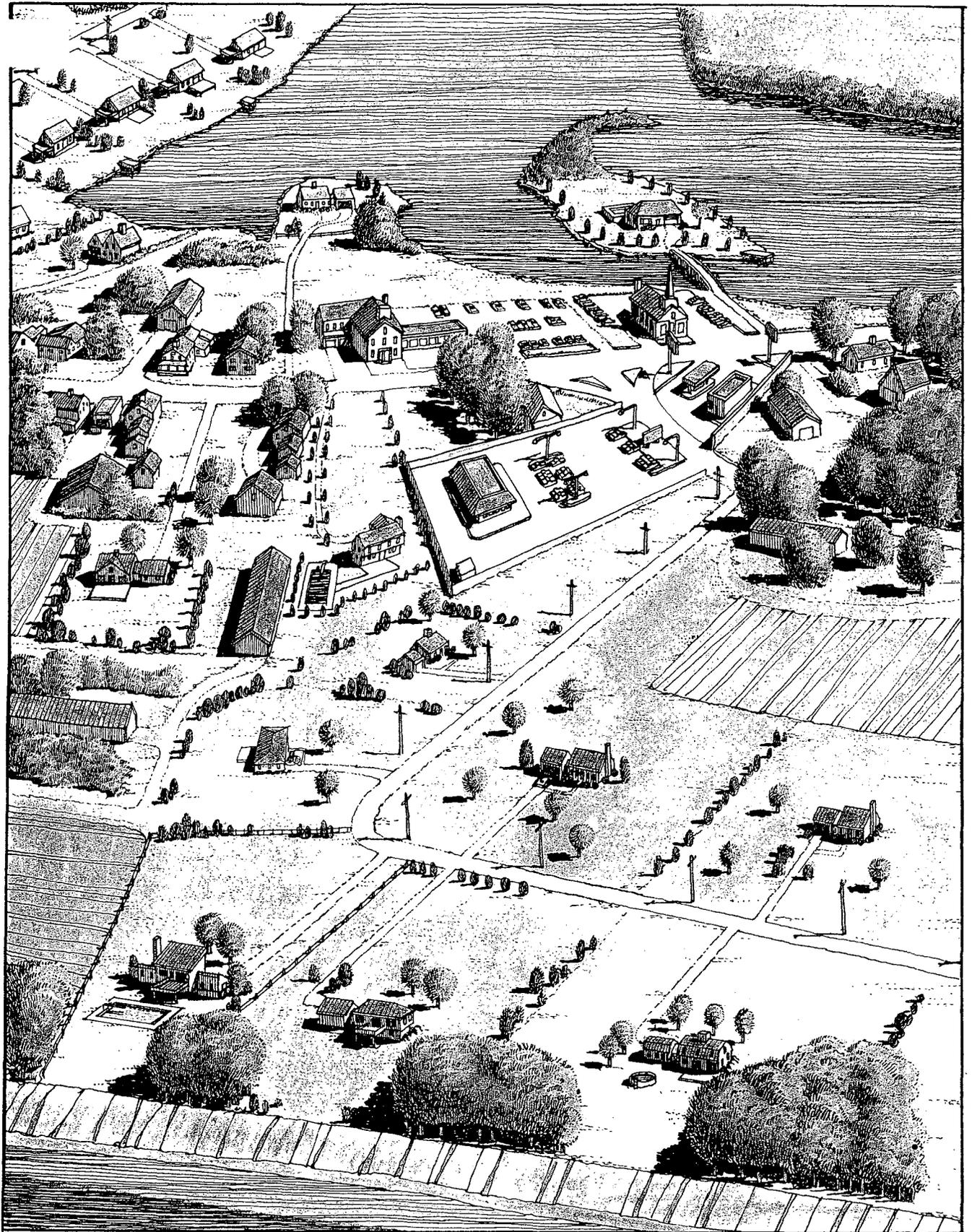


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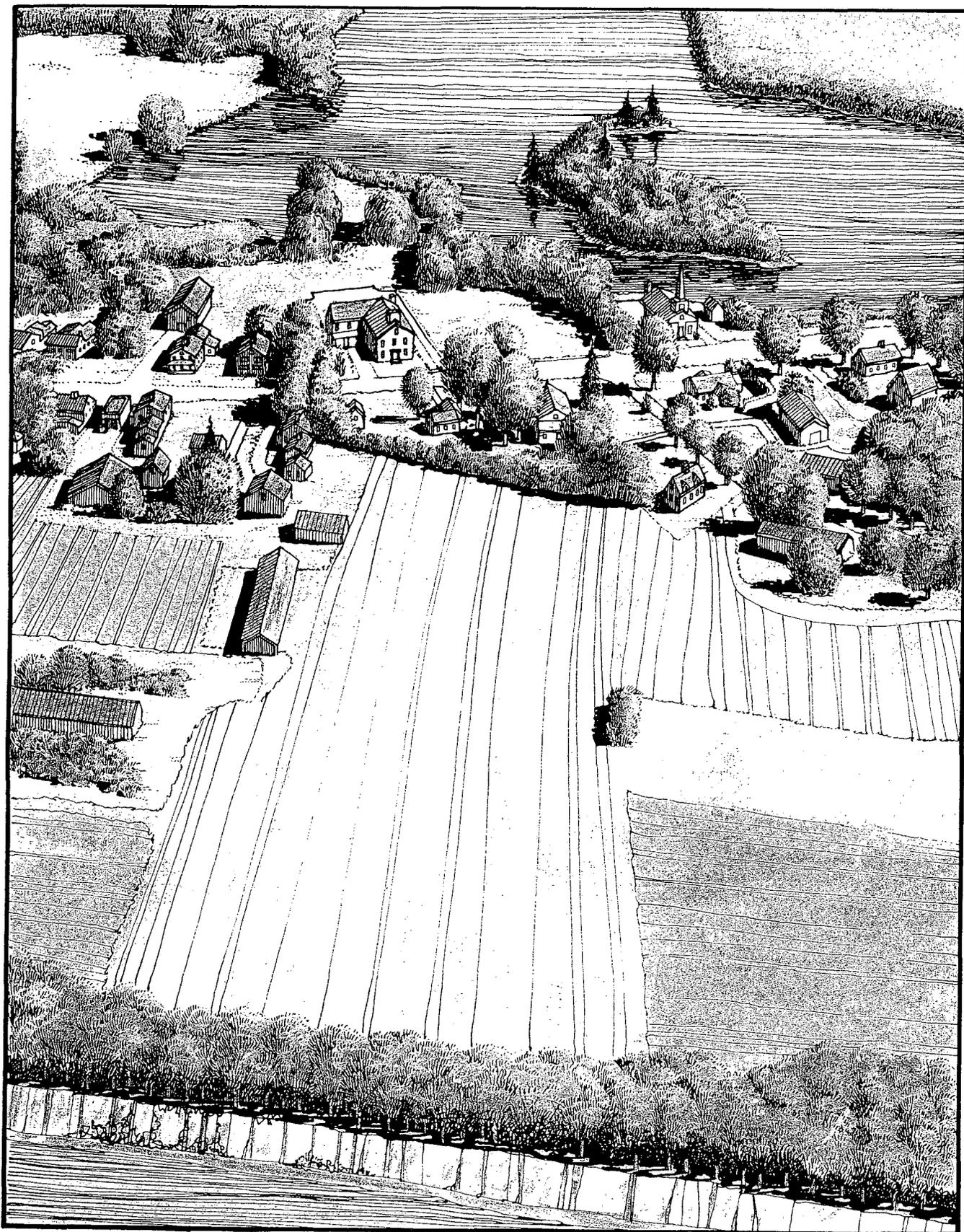
Excerpts from "Dealing with Change in the Connecticut River Valley: A Design Manual for Conservation and Development" (Lincoln Institute of Land Policy and the Environmental Law Foundation, 5th Printing, 1993).



Aerial View of Site A Before Development

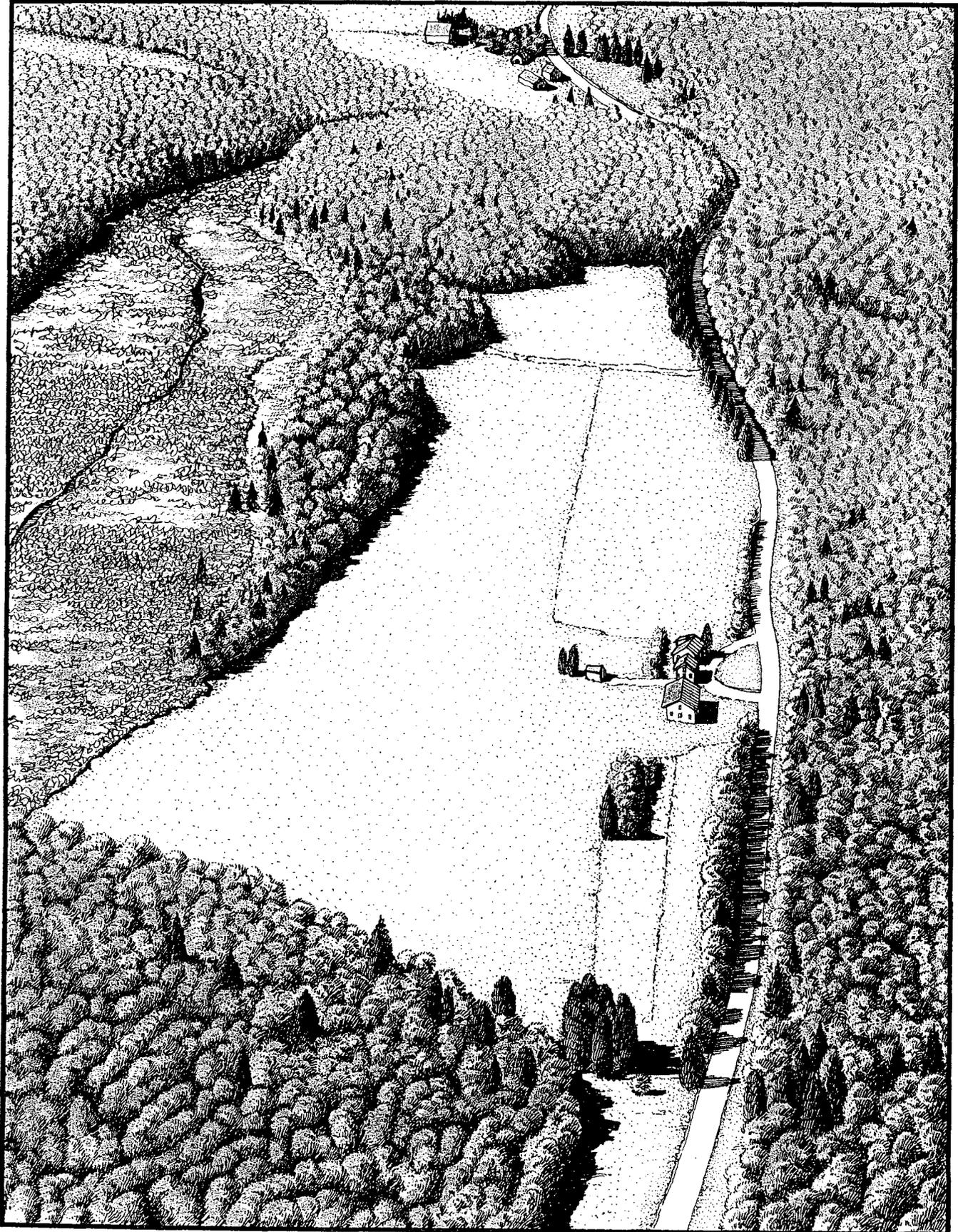


Aerial View of Site A After Conventional Development



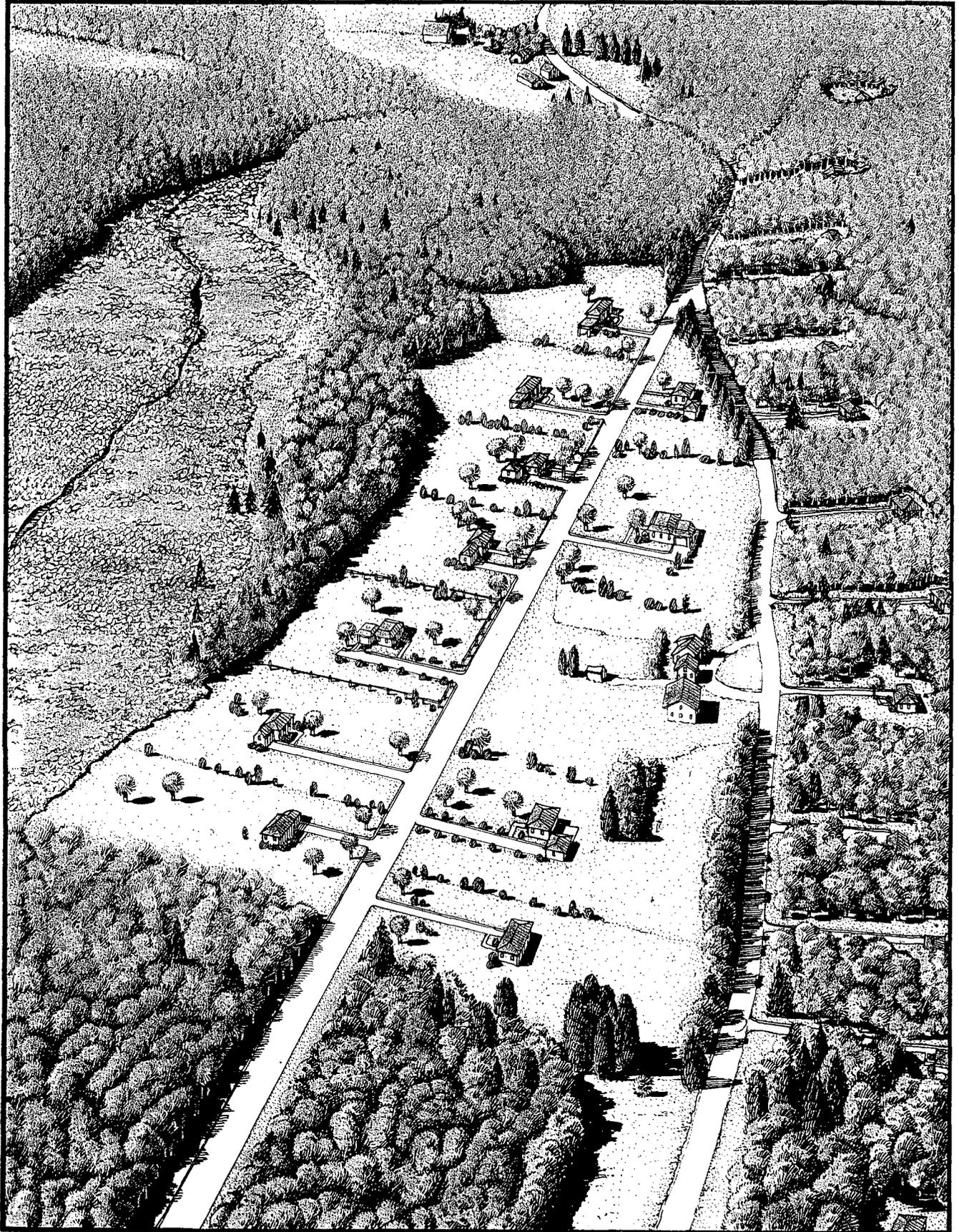
Aerial View of Site A After Creative Development

28

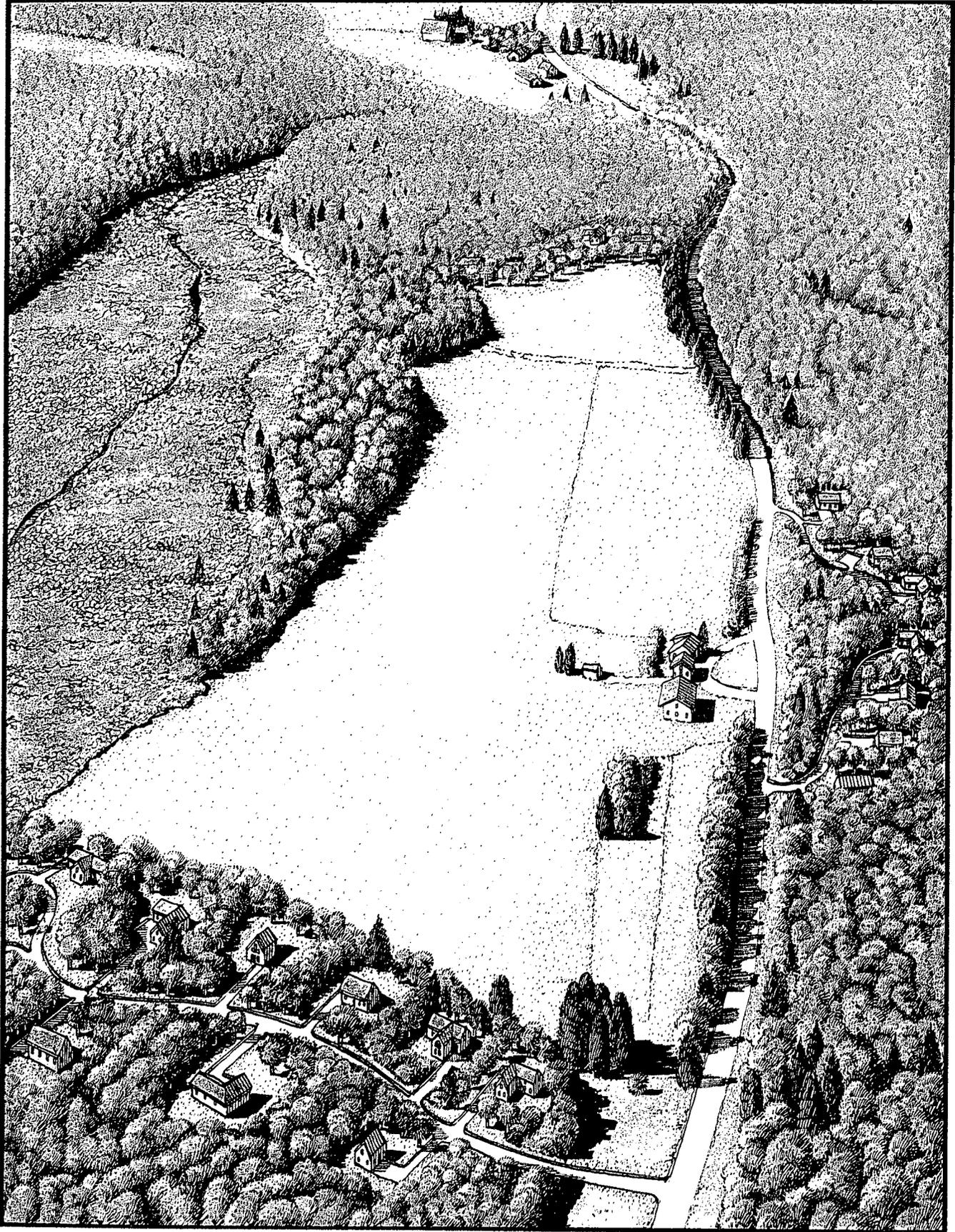


Aerial View of Site C Before Development

29



Aerial View of Site C After Conventional Development (30)



Aerial View of Site C After Creative Development

Farmland and Open Space Protection

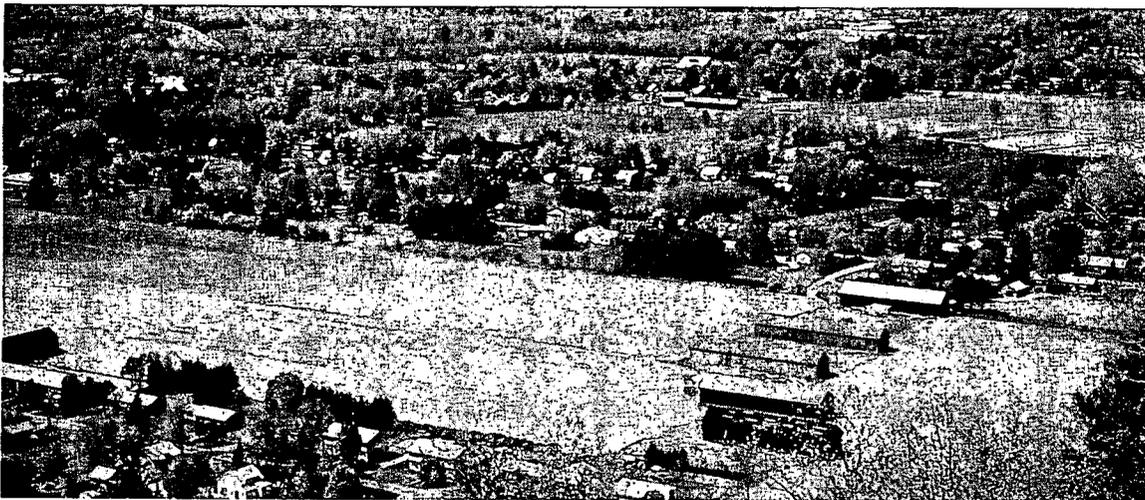
The Problem

One of the most vexing problems facing small towns today is the rate at which farmland is being developed for residential use. Such conversions devastate rural character, and further compromise an already beleaguered industry. The meadows in which children once played or cows once grazed are being carved into house-lots throughout the length of the Valley. Long-term residents see their towns changing at an alarming pace and feel helpless to break the pattern of conventional suburban sprawl (often inadvertently encouraged by "protective" bylaws containing development standards inappropriate to rural areas).

One of the most common reactions to new development is to increase the minimum residential lot size, in the mistaken belief that, as new homes are spread farther apart, the town's open rural character will be retained. Although this is a laudable goal, this method often produces the opposite result, with remaining open land being subdivided at an even faster rate. To worsen the situation, such developments nearly always consume the entire parcel being sold, leaving no residual open space for farming, natural enjoyment, or rural beauty.

The traditional character of Massachusetts towns has evolved gradually over several centuries, during which time farmsteads and village centers grew slowly and organically, without the straitjacket of standardized land-use regulations. Rural towns often contain several villages where development is moderately dense, with the remainder of the land dotted by farms. If the goal is to maintain town character, then a method must be found to preserve agricultural land and open space surrounding natural groupings of residential development.

Two approaches to farmland preservation in Massachusetts which have enjoyed some success over the past decade are: 1) the state's Agricultural Preservation Restriction (APR) program (through which development rights to agricultural land are bought and held by the Commonwealth, with future land use limited to agriculture); and 2) various land trusts, which function in a broadly similar manner, utilizing private funds and land donations. However, both of these programs are seriously limited by shortage of cash and escalating land prices all across the state. For example, the Commonwealth's investment of \$45 million over the last ten years has protected 18,500 acres of farmland, which accounts for only 3% of this non-renewable resource. Most of the remaining 97% lies unprotected and zoned for conventional development.



Farmland parcels adjacent to moderately sized lots in Hadley's historic town center illustrate the land-use pattern achievable by implementing the development-and-conservation standards contained in this section of the Design Manual.

What is urgently needed is a practical, low-cost approach to land conservation which simultaneously preserves farmland and significant open space, while also allowing landowners full equity value for residential subdivision of their land. This is precisely what the following "Farmland/Open Space Conservation and Development Bylaw" has been designed to achieve. Because it allows for the same number of lots under conventional subdivision, sellers receive full value for their land. It also requires the setting aside of half the acreage for agricultural or open space uses, in perpetuity, thus meeting the second goal as well. In addition, road and utility construction is generally reduced significantly, thereby saving on development costs and public expenditures for snowplowing and periodic repaving.

Districts for Implementation

Two types of districts may be defined by towns for the implementation of this type of bylaw. The first are areas in which farming is predominant. These may be identified by overlay maps locating the soils which are most suitable for agriculture, land which is currently being farmed, and land already under the Agriculture Preservation Restriction program. The opinions of farmers regarding which areas are most important to safeguard should be solicited and considered carefully.

A second possible type of district is an open space protection district. This type of area, if not intensively farmed, would have other scenic or natural resources worth protecting. Criteria for defining this type of zone include: large tracts of undeveloped land; aquifer recharge areas; sites identified under the Massachusetts Natural Heritage program (administered by the Massachusetts Department of Fisheries and Wildlife); areas of scenic beauty within the town (perhaps as identified in the Massachusetts Landscape Inventory, prepared by the Massachusetts Department of Environmental Management in 1982); and areas of historical or cultural interest. These criteria, either singly or as a group, are important considerations in land preservation.

These districts should be mapped, with a written explanation of why the boundaries were drawn and why neighboring lands were either included or excluded. This would strengthen the case for implementing the bylaw, and would make it easier to defend, if the zoning boundaries are legally challenged.

Farmland/Open Space Conservation and Development Bylaw

1. Purposes

The purposes of this bylaw are to maintain the rural, natural, and scenic qualities of the Town of _____, Massachusetts by preserving farmland and significant open lands while allowing landowners a reasonable return on their holdings. Toward this end, the creation of three (3) or more lots for residential use, whether or not constituting a subdivision, or construction of three (3) or more dwelling units within a five-year period from or on a property or set of contiguous properties in common ownership as of _____, within or partially within the Farmland/Open Space Protection District, shall be allowed only on Special Permit by the Planning Board, in accordance with the criteria set forth below.

2. Establishment of Overlay Districts

The Farmland/Open Space Protection Districts are herein established as overlay districts. The Farmland/Open Space Protection Districts are described on a map, entitled "Farmland/Open Space Protection Districts, Town of _____", a copy of which is on file with the Town Clerk. The Farmland/Open Space Protection Districts include farmland of state or local significance, said determination based upon a combination of factors, including soil type, historic use of the land in question, size of the parcels used for farming or agricultural purposes, and character of the surrounding area. Significant Open Space of more than _____ acres is also included in the District.

3. Use Regulations

Within the Farmland/Open Space Protection District, the requirements of the underlying districts shall apply, unless the following provisions are deemed more stringent than the underlying requirements:

3.1 Permitted Uses

3.1.1 Agriculture, horticulture, or floriculture, and any accessory uses or structures appurtenant thereto, including farm-based businesses.

3.1.2 Creation of one or two (1 or 2) lots for residential use, whether a subdivision or not, or construction of one or two (1 or 2) dwelling units within a five-year period from or on a property or set of contiguous properties in common ownership as of _____. Each lot for residential use shall contain at least _____ sq. ft.

3.1.3 Timber-cutting for public safety, personal non-commercial use, or performed according to a forest management plan drafted under Chapter 61, or commercial selective cutting of not more than five (5) acres of land within a five (5) year period, is permitted within Open Land Preservation Districts.

3.2 Special Permit Uses

Creation of three (3) or more lots for residential use, whether a subdivision or not, or construction of three (3) or more dwelling units, within a five (5) year period from or on a property or set of contiguous properties in common ownership as of _____.

3.3 Prohibited Uses

All other uses are hereby prohibited.

4. Special Permit for Residential Development in Farmland/Open Space Protection Districts

The creation of three (3) or more lots for residential use, whether a subdivision or not, or construction of three (3) or more dwelling units, within a five-year period from or on a property or set of contiguous properties in common ownership as of _____, shall be allowed only on Special Permit by the Planning Board. Such Special Permits shall be acted upon in accordance with the following criteria.

4.1 Data Requirements

Applicants for Special Permit shall file with the Town Clerk one (1) copy, and with the Planning Board five (5) copies, of the following documents:

4.1.1 A Development Plan conforming to the requirements for a preliminary subdivision plan under the Planning Board's Subdivision Rules and Regulations. Such Development Plans shall also indicate, unless the development is to be sewerred, the results of deep soil test pits and percolation tests, at the rate of no fewer than two (2) successful test results for each proposed septic disposal area.

4.1.2 An Environmental Analysis, if required under the Planning Board's Subdivision Rules and Regulations.

4.1.3 A site plan, as required under Section ____, Site Plan Review.

4.2 Criteria

Applications for Special Permits for residential construction in Farmland/Open Space Protection Districts shall meet all of the following criteria:

4.2.1 The Development Plan shall demonstrate that, where applicable, the proposed development meets all of the requirements of the Planning Board's Subdivision Rules and Regulations.

4.2.2 The minimum area of land for Special Permit development shall be six (6) acres. The total number of dwelling units shall be determined at the rate of one (1) unit per every two (2) acres of buildable land, after excluding from this computation all wetlands, as defined by M.G.L.A. CH. 131, S. 40, and flood-prone land, as defined by the Zoning Bylaw.

4.2.3 The total area of residual farmland or open space within the development shall be at least fifty (50) percent of the total area of buildable land in the proposed development, excluding from this computation all wetlands, as defined under M.G.L.A. CH. 131, S. 40.

4.2.4 All residual land which is to be used only for recreational, conservation, or agricultural purposes, shall be:

- a. owned jointly or in common by the owners of the building lots, or
- b. owned by the Town, subject to acceptance.

A third alternative is for the deed to this residual open land (with permanent conservation restrictions) to remain with the original property owner, who has sold the development rights to this part of the parcel to the developer (who in turn has sold an undivided equal interest in these rights to each new homeowner in the development).

4.2.5 The residual open land left unbuilt after development shall be mowed or plowed at least once annually. Special Permit applicants shall provide copies of deed covenants with prospective purchasers, or conservation easements with the Town, describing land management practices to be followed by whichever party or parties are responsible for annual mowing or plowing.

4.2.6 Further subdivision of residual land, or its use for other than non-commercial recreation, conservation, or agriculture (except for easements for underground utilities), shall be prohibited. Structures and buildings accessory to non-commercial recreation, conservation, or agriculture may be erected on residual land, subject to the Site Plan Review section of this Zoning Bylaw. These restrictions shall be recorded in a Conservation Easement to which the Town Conservation Commission is a signatory party.

4.2.7 Where applicable, a homeowners' association shall be established for the purpose of permanently maintaining all residual open space and recreational facilities. Such homeowners' association agreements, guaranteeing continuing maintenance, and giving lien to the Town in the event of lack of such maintenance, shall be submitted to the Town Counsel for approval prior to the issuance of any Special Permits.

5. The proposed development shall meet the following applicable design guidelines:

5.1 Dwelling units shall be grouped so that, on average, they consume no more than one (1) acre of land per dwelling, including roads, so that at least 50% of the parcel may remain open.

5.2 Lots shall be laid out, to the greatest extent feasible, to achieve the following objectives (listed

below in order of priority, as it is recognized that some may conflict with others on any given site):

- a. on the most suitable soils for sub-surface septic disposal (in unsewered areas only);
- b. on the least fertile soils for agricultural uses, and in a manner which maximizes the usable area remaining for such agricultural use;
- c. within any woodland contained in the parcel, or along the far edges of the open fields adjacent to any woodland (to reduce impact upon agriculture, to provide summer shade and shelter from winter wind, and to enable new construction to be visually absorbed by natural landscape features);
- d. in locations least likely to block or interrupt scenic vistas, as seen from the public roadway(s);
- e. in locations where the greatest number of units could be designed to take maximum advantage of solar heating opportunities; and
- f. other criteria listed in the Site Plan Review Bylaw.

5.3 Any lot facing onto a previously-existing public road shall have frontage of not less than one-hundred fifty (150) feet.

5.4 Lots not served by town sewer shall contain not less than 30,000 sq. ft., and shall have road frontage of not less than fifty (50) feet where such frontage is on a way created by the subdivision involved.

5.5 Distance between dwellings shall not be less than sixty (60) feet.

5.6 Buffer zones at least seventy-five (75) feet in width shall be required between residential and agricultural uses, and shall be thickly planted with fast-growing native shrubs and trees (such as viburnum, elderberry, winterberry, wild rose, hawthorne birch, poplar, shadbush, maple, white cedar, etc.) to create an effective barrier separating yards from fields and pastures.

6. Procedural Requirements for Reviewing Special Permits

6.1 The Planning Board is hereby directed to deliver one (1) copy of the application for Special Permit to the following boards, commissions, or committees:

- Conservation Commission
- Historical Commission
- Board of Health
- Board of Selectmen
- Agricultural Incentive Committee

6.2 Special Permits shall be issued only following a public hearing held within sixty-five (65) days after the application has been filed. Notice of such public hearing shall be given in accordance with Section 11 of Chapter 40A of the Massachusetts General Laws. The Planning Board shall act within ninety (90) days following the public hearing. Failure to act within ninety (90) days following the date of the public hearing shall be deemed to be a grant of the permit applied for.

6.3 The Planning Board shall adopt, and from time to time amend, rules relative to the issuance of such permits, after presenting such proposed rule changes at a duly advertised public hearing, and shall file a copy of said rules in the office of the Town Clerk.

30