

MEMORANDUM

January 15, 2010

TO: Planning, Housing, and Economic Development (PHED) Committee

FROM:  Marlene L. Michaelson, Senior Legislative Analyst

SUBJECT: **Worksession** - Executive Regulation 03-09, *Agricultural Land Preservation Easement Purchases*

The Council received Executive Regulation 03-09, *Agricultural Land Preservation Easement Purchases*, on July 2, 2009. The Council held a public forum on Regulation 03-09 on October 6, 2009. Although it was submitted as a Method 2 regulation, the Department of Economic Development has since indicated that it intended to send it as a Method 1 regulation, which requires Council approval.

The latest draft of the proposed regulation appears on © 1 to 21 and background materials from the Executive and the Department of Economic Development (DED) appear on © 22 to 96. Attached on © 97 is the latest version of Chapter 2B §15-17 of the County Code, which was amended to allow the Building Lot Termination (BLT) Program. This Executive Regulation is needed to implement Bill 39-07, which amended Chapter 2B of the County Code to be consistent with State Law. The regulation provides guidance regarding the implementation of the County's Agricultural Easement Program (AEP) and the Building Lot Termination (BLT) Program.

Agricultural Easement Program Regulations

The Montgomery County AEP is a 20+ year old program to purchase easements to protect land for agricultural purposes. To maintain its ability to use Agricultural Transfer Tax revenues to purchase agricultural easements, the County easement program must be consistent with the state agricultural easement program and the County must be certified by the Maryland Agricultural Land Preservation Foundation. The certification allows the County to keep 75% of the Agricultural Transfer Tax for local use. **The regulations modify the County program to be consistent with recent changes in the state program, including the following:**

- Eliminates the requirement for State Agricultural Districts;
- Limits the number of child lots to 3;
- Allows the property owner to build one dwelling to support farming operations;

- Requires that a child lot be owned by the child for at least 5 years, except in certain hardship cases;
- Indicates that one TDR must be held for every 25 acres to be eligible for the maximum easement value;
- Modifies the formula for determining the maximum easement purchase price related to land tenure and location near the edge of the agriculturally zoned area (see © 27-28); and
- Eliminates the property owner's right to terminate the easement.

Background on the BLT Program

When the Council created the Agricultural Reserve, it downzoned land in the reserve to one unit per 25 acres and also created the Transferable Development Rights (TDR) program. This program has been described in depth elsewhere and is not addressed here other than to define certain key terms. For each 25 acres of land in the Agricultural Reserve, a property owner has 5 TDRs, 4 that may be sold to property owners desiring higher density in a TDR receiving area, and one that may be sold or used to build a residential lot. The TDRs that can be sold but not used for building in the Agricultural Reserve are referred to as “**excess TDRs**”. The TDR that can be used to create a buildable lot is referred to as the “**buildable TDR**”.

At the time the Council created the Agricultural Reserve, it anticipated that property owners would rarely build residential units at 1 per 25 acres. Large lot residential developments with multiple units were not anticipated in the Agricultural Reserve, and recent efforts to create such developments are of concern. Suburban housing could jeopardize agriculture, principally by fragmenting farmland. The Council's Ad Hoc Agricultural Policy Working Group recommended establishing a BLT easement program as a way to prevent fragmentation of farmland in the Agricultural Reserve. The BLT program would pay a landowner for an easement that eliminates the future development of a residential lot. The goals of the BLT program are as follows: (1) to preserve by easement as much useable farmland as possible, and (2) to reduce the number of buildable lots in the Agricultural Reserve while providing equity to landowners.

The intent of the regulations is for DED to put the whole farm under easement, even if the property owner does not plan to sell all development rights. This provides DED with the ability to consider the whole farm, limits the size of any future residential dwelling units (if not all BLTs are extinguished), and requires the landowner to apply to the Agricultural Preservation Advisory Board (APAB) prior to filing a preliminary plan of subdivision (see section C. 2. on © 16). Collectively, these provisions provide APAB opportunities to maximize the protection of farmland, even for areas that are being developed. **Staff believes the Executive Regulation would be much clearer to those not familiar with the program if the concept of the whole farm easement were addressed somewhere in the regulation.**

Differences between Public and Private Program

The BLT program was created to allow the purchase and sale of BLTs between 2 private property owners similar to the transferable development rights (TDR) program, but it also has a public program that would allow the County to purchase BLTs. The Council has provided five million dollars in seed funding for this program. This is particularly important, since it may be a few years before the first

properties are developed that require the purchase of BLTs under the Transit Station Mixed-Use (TMX) Zone or the proposed Commercial-Residential (CR) Zone.

Section 2B-16 of the County Code establishes the basic requirements for a BLT:

- (b) A BLT easement may only be created on a buildable lot which is:
 - (1) located in the Rural Density Transfer (RDT) zone;
 - (2) zoned for residential density no higher than one dwelling unit per 25 acres; and
 - (3) capable of being served by an individual sewage treatment unit which meets the requirements of Chapter 27A and applicable regulations issued under that Chapter.

The Executive Regulation establishes further eligibility criteria for publicly purchased BLTs. There are no further guidelines to determine what constitutes an acceptable private BLT. While the public program focuses on preserving agriculture (see discussion of ranking below), private BLT purchases may focus on land that is not ideal for farming, since those easements are likely to be less expensive. The Executive Regulations provide clear guidance on the price the County will pay for a BLT; private purchases will be a negotiation between buyer and seller.

Eligibility

The eligibility requirements to participate in the public program are listed on © 13. They include the following:

- The land must be located in the RDT Zone and must be at least 50 acres in size; however, a smaller property may be considered and will be given priority ranking if it is contiguous to other lands protected from development by State or County agricultural and conservation easements.
- At least 50 percent of the land under consideration for an easement must meet either i) USDA Soil Classification Standards I, II, or III; or (ii) Woodland Classifications 1 or 2.
- The land must lie outside water and sewer categories 1, 2, and 3.
- The Land must not be encumbered by a federal, State, or County agricultural or conservation easement; except, however, land protected by a Transferable Development Right (TDR) Easement may still be eligible.

ISSUES

The Council has strongly supported the creation and funding of the BLT program and Staff believes the Council should move as rapidly as possible to adopt the regulations and other required changes in law, procedure, and policy. This is especially true since the price of land in the Agricultural Reserve is currently reduced due to the economy's impact on the demand for new housing. Nonetheless, there are certain policy issues that Staff believes need to be addressed before adoption.

Ranking of Properties

The Executive Regulation includes a point system that will be used to rank potential BLT purchases and also to establish the price of the purchase. The focus of the ranking and pricing is on providing a higher rank and purchase price based on suitability for agriculture, and Staff believes this is appropriate. While there is also a value to reducing development in the Agricultural Reserve in areas not best suited for crop-based farming, the limited resources available to fund the program justify a higher ranking for those properties most likely to support ongoing agricultural operations. The point system is as follows:

- Size (5 pts)
- Soil quality (10 pts)
- Land tenure (5 pts)

BLTs that do not rank high based on these point allocations are more likely to be sold in the private BLT market where these criteria do not apply and where buyers will instead prefer the lowest prices without regard to the quality of the land being preserved.

While Staff supports these criteria, staff has **four concerns** that the Committee may wish to consider. The criterion related to size is based on the size of the entire farm, not the amount preserved. Therefore, a 150 acre farm that only wants to sell 1 BLT would be ranked higher than a 125 acre farm that wants to sell 5 BLTs. Staff believes that the ranking formula should include points related to the **number of BLTs** to be preserved **in addition** to the size of the total farm.

Second, Staff believes that the ranking should allow the Agricultural Preservation Advisory Board (APAB), which will review and make recommendations on BLT acquisitions, to consider the **threat of development** in deciding the ranking of properties, as it does for the AEP easement. If there are 2 properties that are otherwise identical in their size, soil quality, and land tenure, the property that is platted or has an approved subdivision plan and could more easily be developed should be ranked higher than a property that has not started the development process.

Third, Staff is concerned that the ranking could lead to having a few property owners receive all the BLT funding in a given year. Staff recommends revising the Executive Regulation to indicate that **no single property should receive more than a certain percentage of the funds available in a given year** (e.g., 20%), unless DED determines there are unique circumstances that justify this allocation (e.g., limited applications or a property that is so far superior to the other applications).

Finally, the Regulation establishes a **point system** for ranking applications (see © 14 to 15), with a clear and objective means of assigning points that should facilitate the rankings. However, there is at least one reference to a factor that should influence ranking for which no points are assigned. On © 13 the Regulation language is as follows:

The land must be located in the RDT Zone and must be at least 50 acres in size; however, a smaller property may be considered **and will be given priority ranking** (emphasis added) under Section IV(B)1(b) if it is contiguous to other lands protected from development by State or County agricultural and conservation easements.

It is unclear to Staff how APAB will assign priority ranking for these properties if they are not included in the point system.

Added Value Formula

The Executive will determine the price he will pay for a BLT each year by obtaining appraisals on the value of a parcel of agricultural land with at least one TDR and an individual on-site sewage waste disposal system. He will then set a base and maximum price that is a percentage of fair market value (since the property owner retains ownership of the land and its use for agricultural purposes, the easement should be less than the fair market value). The base price sets a floor, and a pricing formula will be used to determine potential increases in the base value (the “value added”), based on its suitability for agriculture. The factors to be considered to determine agricultural suitability are size, land quality, and land tenure. While the Council received testimony questioning the complexity of the pricing formula, it was designed to mirror the pricing strategy used for the AEP program by having a base price and a maximum price and factors that can increase price. Unlike the AEP program, the BLT formula does not provide additional value for road frontage or land that is within one mile of the border of non-agriculturally zone land.

Contribution to Fund

The Executive Regulation does not address when a property owner may pay into the BLT Account Fund instead of purchasing a BLT in the private market. It also does not indicate the amount of the contribution to the fund and suggests that the Planning Board will specify “the amount of funds required from the developer”. Staff believes these are critical issues that must be addressed, either in the Executive Regulation, or elsewhere in written form at this time and not deferred for future consideration.

The only references to the contributions to the fund are as follows:

In County Code Section 2B-17(b):

- The BLT Account must contain payments made to comply with conditions of approval which the Planning Board has imposed for certain development plans, and may also contain funds received through donation, appropriation, bond proceeds, or any other source.

In the draft Regulations:

- The purchase of BLT Easements may be funded by public funds appropriated through the Agricultural Preservation Capital Improvements Project or by private funds contributed by developers. Funds contributed by developers will be deposited into a separate account within the CIP and appropriated for BLT Easement purchases only (“Fund”). With the exception of donations by developers or others that are unrelated to obtaining additional density, before funds contributed by developers are deposited in the Fund, the Planning Board must transmit a certification to DED specifying the amount of funds required from the developer.

DED previously indicated that a property owner could opt for payments to the fund in lieu of purchasing BLTs on the private market when the owner needed a partial BLT to achieve its development objectives. It is unclear whether there any other circumstances under which an owner could choose to contribute to

the fund (e.g., if a developer could not find a willing BLT seller or if they need a large number of BLTs which would require negotiating with many sellers). **Provided there is adequate incentive for the property owner to choose private BLTs, Staff sees no reason not to give each buyer the option of contributing to the fund instead of private purchases.** For example, the price to purchase a BLT by contributing to the fund could be 90% of current fair market value. Since the retained value of the land is usually more than 10%, most owners of RDT land should be willing to sell for a price that is less than 90% of fair market value, leading developers to opt for the private, less expensive purchase option.

Perhaps the most significant reason to allow property owners to contribute to the fund instead of purchasing BLTs in the private market is so that BLTs can be priced differently, depending on the location of the buyer. The PHED Committee has already discussed the fact that the cost of a BLT will have a far greater impact in less affluent areas of the County where the BLT will have a greater impact on the development's financial return. While, in some areas, the purchase of BLTs may have marginal impact on the viability of development, in areas where the returns on new development are marginal to begin with, the cost of a BLT could make development unfeasible. **Rather than eliminating the requirement to purchase a BLT in certain geographic areas, the Committee's preference was to establish a pricing policy for BLTs linked to the likely return on investment in certain geographical areas.**

While there are several ways to estimate the financial return in different areas, Staff believes the easiest proxy is the average rental for a square foot of Class A office space by submarket, data that is regularly tracked by organizations such as CoStar. More work should be done to determine how to price BLTs, both to encourage the private purchase of BLTs where feasible and to discount the price in areas where the purchase of a BLT could prevent development from proceeding. **An example of one option** for a pricing strategy would be to look at the average rental rates and have all properties with the highest average rentals pay more than the likely price of a BLT on the private market (to encourage those buyers to buy on the private market) and then discount the BLT price as the rental price decreases. Staff has not assessed whether the percentages below would achieve the stated objective but provides this chart as **an example** of how this system could work.

Average Rental Rates for Class A Office Space	Cost of BLT
90 to 100% of highest average rental rate	90% of FMV
80 to 90% of highest average rental rate	80% of FMV
70 to 80% of highest average rental rate	50% of FMV
60 to 70% of highest average rental rate	30% of FMV
50 to 60% of highest average rental rate	20% of FMV
Less than 60% of highest average rental cost	5% of FMV

FMV is Fair Market Value of a 25 acre lot in the RDT zone

Reserved Residential Rights/TDRs

The Executive Regulation allows "reserved residential rights" but does not explain what this means or when they are allowed. This provision would only apply when the whole farm is placed under easement but the property owner chooses not to sell all BLTs. For example, if a farm is 100 acres and the owner

only chooses to sell 2 BLTs, they would have 2 reserved residential rights (since there is 1 BLT per 25 acres). The definition of reserved residential rights and the fact that they are only intended to apply for properties that do not sell all BLTs should be added to the regulation.

Proof of Approval for Onsite Waste Disposal System

Chapter 2B requires that a property is “capable of being served by an individual sewage treatment unit which meets the requirements of Chapter 27A” before it can sell a BLT. (If the property cannot be served by an individual sewage treatment unit, it is not a developable property and has no development right to sell.)

The Executive Regulation provides additional detail on what is to be submitted by the property owner, and the latest draft further refines this requirement:

The application must include a completed property description as outlined in Section II(C)(1), including the requirement in Section II(C)(1)(m) of a [letter from the Department of Permitting Services approving a[n individual onsite waste disposal] septic system site plan approved by DPS with an on-site septic absorption area contained entirely within the legal description of the property and a minimum absorption area of 10,000 square feet or such additional area required by DPS.

It may be advisable to refine the language to indicate that the easement terminates one system and septic absorption area **for each BLT** to be purchased.

Child Lots

The Executive Regulation does not appear to permit child lots:

“Child lots permitted under Chapter 59 of the Code are not permitted under BLT Easements.

However, language in a memorandum from DED staff to the DED Director on © 30 appears to suggest that they are allowed in the following sentence:

“Child lots permitted under Chapter 59 of the Code may be expressly provided for within the BLT easement for properties that meet the pre 1981 landowner eligibility date.”

Executive staff should be asked to clarify their intent.

Future Use of Serialized BLTs

The Council received testimony questioning the Executive Regulation’s reference to future use of BLTs held by the Executive (see first paragraph of © 19 and DED summary of testimony on © 59):

The future use of the serialized BLTs owned by the County must be approved by the County [Executive].

All development rights expire once the BLT is acquired, but this language could be interpreted to mean that some future use of the land would be allowed. In addition, testimony stated that the Executive should not be able to resell BLTs or TDRs. The Executive should clarify what is intended by this provision.

Regulations for Private Transactions

The Executive Regulation focuses on public acquisition of BLTs and does not address any requirements or provisions associated with the private purchase of BLTs. While the Executive Regulation may not be the place to address these issues, it is critical that the needed changes to other sections of the County Code or the Zoning Ordinance be identified and developed immediately so that they are operational before the first TMX or CR-zoned property is developed. The Committee should confirm which agency (County Government or M-NCPPC) will take the lead in drafting these provisions and what the timeframe will be for submitting any necessary changes to the County Council. (Staff notes that the Council cannot approve zoning text amendments after October 31 in an election year until the new Council is in office.)

Exempting Properties from BLT Requirements

The specific properties required to purchase BLTs will be determined by the zoning decisions made during master plans and the requirements in specific zones. Although this issue is not (and should not be) addressed in the Executive Regulation, Staff believes it is worth addressing while the Committee is focused on the BLT program. Staff believes that no geographic area or specific land use should be exempt from BLT purchases, because this could significantly weaken the program. Staff has recommended a sliding scale for geographic areas based on rental values and recommends against exempting land uses such as life sciences. (The Committee has made a preliminary decision to exempt life science uses from purchasing BLTs as part of its consideration of the amendments to the Life Sciences Center zone. A final Committee vote on this issue is scheduled for later this month.)

Donations

Section 2B explicitly allows for donations of BLT easements or funds to the BLT Account Fund. The Executive Regulation is silent and the Planning Board Chair testified that more should be done to encourage donations. Staff does not believe that any change in regulations are needed to accept donations but that the County should have follow-up discussions with organizations such as the Maryland Environmental Trust (MET) to be sure they are aware of the program and can bring it to the attention of potential donors.



MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject AGRICULTURAL LAND PRESERVATION EASEMENT PURCHASES	Number 3-09AM
Originating Department DEPARTMENT OF ECONOMIC DEVELOPMENT	Effective Date

Montgomery County Regulation on:

AGRICULTURAL LAND PRESERVATION EASEMENT PURCHASES DEPARTMENT OF ECONOMIC DEVELOPMENT

Issued by: County Executive Regulation No. 3-09AM

Authority: Code Section 2B-18

Supersedes: Executive Regulation 66-91

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

Register Vol. 26 No. 3

Comment Deadline: March 31, 2009

Effective Date:

Sunset Date: None

SUMMARY: These Executive Regulations regulate the County's supplemental payment for the Maryland Agricultural Land Preservation Foundation's purchase of agricultural land preservation easements and regulate the method for purchasing agricultural easements by the County, including the method for determining easement value, the method for ranking offers to sell easements to the County, and the terms of payment for easements purchased by the County.

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 (Foundation) in purchasing agricultural land preservation easements to preserve County farmland for agriculture and to protect it from development. Bill No. 56-87, Agricultural Land Preservation, was enacted February 16, 1988 to increase the effectiveness of the County's preservation efforts by authorizing the County to purchase easements, using the County's share of the agricultural land transfer tax, directly from the landowner or by supplementing the purchase price offered by the State for an agricultural preservation easement. In 1992, the County approved regulations to allow the County to take title to Transferable Development Rights (TDRs) purchased with agricultural preservation easements, rather than requiring that TDRs purchased under an agricultural preservation easement be extinguished. The TDRs are assets the County may sell in the future to generate revenues for the Agricultural Land Preservation Fund. In 2005, the County celebrated the 25th Anniversary of the Agricultural Reserve and several initiatives to support agriculture were identified, including a proposal to legislate a new preservation



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tool known as the Building Lot Termination (BLT) Easement. In 2007, the Maryland General Assembly approved House Bill 1331 which modified the requirements for State agricultural preservation programs. In response to these modifications to State Law, the County introduced Bill 39-07 to amend Chapter 2B of the Code to be consistent with the State Law and to establish the BLT Easement.

I. Definitions. The definitions in this section supplement those in Chapter 2B.

Added-value formula: The method by which the price of AEP Easements is determined under Sections II(E) and (F).

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

Building Lot Termination (BLT) Easement: is defined in Section 2B-15 of the Code.

BLT Adjusted Market Value Price: The price for BLT Easements purchased under Chapter 2B and established on an annual basis by the County Executive.

BLT Ranking Formula: The method by which the price of BLT Easements is determined under Section IV(B)(1)(b).

DED: The County's Department of Economic Development.

Director: Director of DED.

II. Agricultural Easement Program (AEP)

The County may purchase an easement on real property to preserve agricultural land in the County. The agricultural easement must restrict residential, commercial, and industrial use of the land.

A. Eligibility - AEP Program

1. Eligible Sellers

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



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2. Land Eligible for Inclusion within Agricultural Zones.

The County will purchase easements on 50 acres or more of land that is zoned Rural Density Transfer, Rural, or Rural Cluster, or on land comprised of several contiguous parcels totaling 50 acres or more that are adjacent to properties protected by other State or County agricultural or other conservation easements., or on land with significant agricultural resources if they include at least 10 acres of cropland and are adjacent to properties protected by other State or County agricultural or other conservation easements. The County may purchase easements on land that is already encumbered by a transferable development rights easement provided not all of the TDRs have been transferred from the land. At a minimum, a landowner must have retained TDRs with the land at the density of 1 TDR for every 25 acres to remain eligible for the maximum benefits under the AEP Program. The County will purchase easements over less than the entire contiguous acreage owned by a landowner only if the parcel being considered for an AEP Easement is separately deeded, surveyed or subdivided, and is, in the discretion of the Agricultural Preservation Advisory Board, of sufficient size and capability to be used for agricultural purposes. Under an AEP Easement, the easement price will not include the curtilage around each dwelling and one acre will be subtracted from the total eligible acreage for each dwelling on the property.

3. Additional Land Eligibility Requirements

- a. At least 50 percent of the land under consideration for an easement must meet either i) USDA Soil Classification Standards I, II or III; or ii) Woodland Classifications 1 or 2.
- b. The land must lie outside water and sewer categories 1, 2, and 3.
- c. The Agricultural Preservation Advisory Board may consider purchasing easements on other agricultural land that does not meet the qualifications in Section II(A) if it determines the land has significant agricultural value, is consistent with the long term planning goals of the County and the easement is in the public interest.

4. Determining significant agricultural value

- a. For purposes of Section II(A), the land has significant agricultural value if the land:
 - i. has a soil conservation plan approved by a local soil conservation district and the plan is fully implemented according to the implementation schedule in the plan;
 - ii. is recommended by the majority of the APAB members after an on-site inspection is conducted by one or more members of the APAB or the APAB's designee; and
 - iii. meets either of the following criteria:



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(a) A minimum of 72 percent of the land (less any acreage included within the 100-year floodplain and less any acreage included in State or federal wetlands) contains of a combination of soils with U.S.D.A. Soils, Class I, II, and III classifications on cropland or pasture land and Woodland Groups 1 and 2 classifications on wooded areas.

(b) A detailed farm management plan describing the nature of the agricultural operation, including a detailed summary of the viability of the land as a profitable agricultural enterprise and the Montgomery County Cooperative Extension and the Montgomery Soil Conservation District concur that the land is capable of a profitable agricultural enterprise.

- b. After the APAB determines whether land has significant agricultural value, it will provide a recommendation to the Director about whether an easement should be purchased, The Director will consider the APAB's recommendation when deciding whether to approve or deny the purchase of an AEP Easement.

B. Eligible Farmland – Land Eligible for Inclusion within Non -Agricultural Zones

Agricultural land within non-agricultural zones is eligible for easement purchase if the land meets the requirements stated in Sections II(A)(1)(3) and (4).

The County will purchase easements on 50 acres or more of land, or on land comprised of several contiguous parcels totaling 50 acres or more that are adjacent to properties protected by other State or County agricultural or other conservation easements, or on land with significant agricultural resources if they include at least 10 acres of cropland and are adjacent to properties protected by other State or County agricultural or other conservation easements. The County will purchase easements over less than the entire contiguous acreage owned by a landowner only if the parcel being considered for an AEP Easement is separately deeded, surveyed or subdivided, and is, in the discretion of the Agricultural Preservation Advisory Board, of sufficient size and capability to be used for agricultural purposes. Under an AEP Easement, the easement price will not include the curtilage around each dwelling and one acre will be subtracted from the total eligible acreage for each dwelling on the property.

C. AEP Easement Sales Application Requirements

If a landowner is interested in selling an agricultural easement to the County, the landowner must submit an easement sales application to DED. The application must include a completed property description as outlined in Section II(C)(1), must pertain to a parcel of land or contiguous parcels of land at least 50 acres in size, and must include the landowner's asking price for the easement, which price must not exceed the calculated maximum easement value as described in Section II(E). Once DED receives an application, it will



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notify the landowner if the application is incomplete. If the application is complete, DED will review it under the requirements of these regulations.

1. **The property description of the land under consideration for an easement must include:**
 - a. the full names and addresses of all landowners of record;
 - b. the full names of all of the landowners' children;
 - c. the property address;
 - d. a copy of the tax map;
 - e. the total acreage;
 - f. deed references for the deeds conveying the land to the landowners;
 - g. the current land use and the USDA soils productive capability class;
 - h. the number of dwelling units on the land;
 - i. the current zoning of the land;
 - j. all third party interests in the land;
 - k. a description of the farming operation;
 - l. an inventory of farm buildings on the land; and
 - m. other information necessary to evaluate the land's eligibility for an easement (i.e. Opinion of Title, surveys, metes and bounds legal descriptions, and for an application under the BLT Program: [a letter] a copy of the septic system site plan from the Department of Permitting Services (DPS) approving an individual onsite waste disposal system.

D. Permitted Activities- Lands Subject to AEP Easements

The following activities are permitted on lands encumbered by County Agricultural Preservation Easements subject to the limitations and conditions of Chapter 59 of the Code:

1. **Agricultural Use**
 - a. use of the land for agriculture;
 - b. operation of any machinery used for agriculture 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; and
 - d. operation of a Farm Market.



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2. Residential Use

Under an Agricultural Preservation Easement, a landowner retains limited rights to construct dwellings on the land. Before constructing a dwelling on land under an easement, the landowner must apply in writing to the Agricultural Preservation Advisory Board (APAB) for approval. The APAB's approval of a dwelling will be contingent upon the landowner's compliance with the requirements of this Section II(D)(2).

- a. *For the landowner's use.* A landowner may request one acre, or the minimum lot size required by the zoning and well and septic regulations, which ever is greater, to build a dwelling for use by the landowner. However, irrespective of the number of landowners holding title to the land, there must not be more than 1 landowner lot. For purposes of this subsection, land titled in individuals, partnerships, or limited liability corporations whose principals are all related family members, are eligible to request permission to construct a dwelling.
- b. *For the landowner's children's use.* Up to 3 one-acre lots, or the minimum lot size required by the zoning and well and septic regulations, whichever is greater, to build houses for the use of the landowner's adult children at a maximum density determined by the following acreage calculation:
 - i. one child lot for the first 25 acres;
 - ii. a second child lot for properties greater than 50 acres but less than 120 acres;
 - iii. a third child lot for properties greater than 120 acres in size;
- c. When a landowner submits an easement application to DED, the landowner may request that the easement provide for the landowner's right, intended to run with the land, to construct one dwelling to support a farming operation provided:
 - i. no viable dwellings exist on the land at the time of easement acquisition;
 - ii. the landowner agrees that the requested dwelling must never be subdivided away from the land under easement; and
 - iii. the landowner agrees that the requested dwelling is in lieu of any right to future child lots.
- d. A landowner may also request permission to construct a dwelling for the landowner's tenants (tenant house) who are fully engaged in farming the land, but the maximum density for tenant houses must not to exceed one tenant house for every whole 100 acre increments (i.e. 100 acres is eligible for 1 tenant house, 150 acres is eligible for 1 tenant house and 200 acres is eligible for 2 tenant houses).



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e. If the APAB approves a landowner's request to construct a dwelling, the acreage approved for the dwelling must be released from the requirements of the easement. Any release issued under this regulation must include:

i. An affidavit from the landowner or the landowner's child, as applicable, that the released acreage (released lot) will not be transferred to a third party for a period of 5 years from the date the release is recorded among the land records, except:

1. with the prior written approval of the APAB upon demonstration by the landowner or the child of severe economic hardship; or
2. upon a lender providing notice to the APAB of a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or the lender accepting a deed in lieu of foreclosure.

f. For the purpose of this regulation, if a landowner or a landowner's child wishes to transfer a released lot within a period of less than 5 years because of severe economic hardship, the APAB with the concurrence of the Director, may allow a transfer of the released lot. To petition for relief from the 5 year requirement, the landowner or the landowner's child, as appropriate, may petition the APAB, stating succinctly the severe economic hardship that the landowner or the landowner's child, is sustaining, and providing the APAB with the following information:

i. A recent financial statement documenting all assets and liabilities and a statement signed by the landowner or landowner's child, as appropriate, that the information contained in the financial statement is, based upon personal knowledge, true and accurate;

ii. Other information documenting the severe economic hardship including, by way of example, information from mortgage holders, lien holders, creditors, attorneys, taxing authorities, or other third parties who can address the economic condition of the landowner or the landowner's child. To the extent permitted by law, the APAB and the Director, as applicable, must deny public access to the financial information provided to the APAB under this regulation. However, nothing in this regulation precludes the APAB from discussing or sharing the financial information with the Director, whose concurrence is required in any relief provided under this subsection.

iii. The APAB may also consider other documentation of hardship, including any court order, writ, or decree which calls for a division of assets associated with any separation or divorce proceeding or with distributing an estate.



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3. Restriction on Subdivisions

Except as otherwise provided under this regulation, land under an agricultural easement must not be used or subdivided for residential, commercial, industrial, or any other-non agricultural use.

4. Lots Created Prior to Easement Sale

The curtilage of any dwelling located on land proposed for an easement will be excluded from the easement price and the value of one acre of land for each dwelling will be subtracted from the total price paid for the easement.

E. Establishing AEP Easement-Value

The added-value formula is the method for establishing easement value under the Agricultural Easement Program. It is an added-value formula based on the point system in Sections II(E) and (F).

1. Time frame for Determination of Easement Value

The maximum value of an easement using the added-value formula is determined at the time of the County's receipt of a complete easement sales application from the landowner. A landowner may have only one easement sales application for a specific property pending at any one time.

2. Maximum Easement Value and Relationship with TDRs.

The maximum value of an easement, as determined by the added-value formula, will take into account the number of TDRs retained with the property. At a minimum, 1 TDR per every 25 acres must be retained with the land in order to be eligible for the maximum easement value.

3. Right to Revise/Withdraw

If the maximum easement value determined by the County using the added-value formula is lower than the requested purchase price submitted by the landowner, then the landowner must either revise their requested purchase price or withdraw the offer to sell an easement to the County.



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F. AEP Easement Formula Valuation Procedure

The maximum value of an easement is obtained by combining two separate values: (1) the per acre base value for an easement on agricultural land in the County (Base Value), and (2) the added value for certain farm quality characteristics (Added Value), the quality of which is determined by APAB.

1. Determining Base Value

By July 1st of each year, the County Executive determines the Base Value for the fiscal year. In setting the Base Value, the County Executive considers such factors as recent prices paid for agricultural easements by the Maryland Agricultural Land Preservation Foundation within Montgomery County, recent County TDR prices and recent prices paid for fee simple acquisitions of County agricultural land, including prices for parcels with and without agricultural easements. The Base Value is applicable County-wide.

2. Determining Added Value

The Added Value is based on several farm quality characteristics that have a direct effect on the future potential of the land to support agriculture and on the threat to the property from non-agricultural uses. These characteristics are:

- a. Size, as determined by deed or recent survey: For each 5 acres of land, the Added Value is one percent of Base Value. Land size is determined from the most recent property tax assessment or other documentation acceptable to DED.
- b. Land quality, as determined by DED: The land quality value varies by soil quality. The Added Value is three percent for each acre of land in the United States Department of Agriculture (USDA). Capability Class I; 2 percent for each acre of land in USDA Capability Class II or Woodland Group I; and, one percent for each acres of land in USDA Capability Class III or Woodland Group II. In addition 10 percent of base value is added to the added-value formula for farms that have implemented a soil conservation plan approved by the Montgomery Soil Conservation District. The USDA Capability Classification is determined by the Natural Resources Conservation Service (NRCS).
- c. Land Tenure: The Added Value for land tenure is 25 percent of the Base Value. It is applicable if:
 - i. the landowner earned gross income of at least \$5,000 annually from agricultural use of the land on or before October 1, 1980, in at least three of the previous five years, or continuously from the time the landowner acquired the land, or



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- ii. the land is being purchased under binding contract of sale by a buyer who certifies under oath that the buyer intends to start a new agricultural operation, such as farming, or to enter into a long term lease with a third party to use the land for agriculture purposes; or
 - iii. the land is being farmed by an operator under a long term lease agreement with the landowner.
- d. Road Frontage: The Added Value for road frontage is one percent of the Base Value for each 50 feet of frontage on a public road up to a maximum of 100 percent of the Base Value. Road frontage is determined by DED and may be verified by the landowner by metes and bounds survey.
- e. Agricultural Zone Edge: The Added Value for land located within the RDT Zone but situated on the edge of that zone, is 100 percent of the Base Value if the land, as determined by DED, is within one mile of the border with other zones in the County, including incorporated towns.

G. County Purchase Procedure

1. Ranking of AEP Easement Purchases

The County will accept applications to sell easements during set purchase periods. If funds are available, the County will hold at least one purchase period annually. The County will accept only those applications to sell an easements received by DED during the purchase period. At the end of each purchase period, applications to sell easements will be ranked by the APAB using land size, soil quality and threat of development as the primary factors in determining priority rankings.

2. County Offer to Buy

- a. Upon the recommendation of the Director, and the Chief Administrative Officer, or their designees, an offer to purchase an agricultural easement may be tendered to the landowner. The offer must contain the specific terms of purchase, including the disposition of any TDRs retained with the land and any rights to be reserved by the landowner for the construction of future dwellings for the landowner, the landowner's children or the landowner's tenants. A landowner's satisfaction of the requirements of these regulations does not establish an obligation by the County to purchase an easement. Further, the County's offer to purchase an easement may specify terms, contingencies, and conditions not contained in the landowner's application to sell an easement.



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- b. Following the conclusion of any purchase period, the County will tender offers to purchase all easements approved for purchase to the extent possible with the funds allocated. Funds for County easement purchases are allocated annually on July 1st in the Capital Improvement Projects budget.
- c. The County will endeavor to tender offers to purchase easements approved for purchase within 60 days following the conclusion of the purchase period.

3. Rejection of Application

- a. The County will notify a landowner if their application to sell an easement is not accepted within 60 days following the conclusion of the purchase period. The notice will briefly describe the reason or reasons for the County not accepting the easement application, i.e. the County lacked sufficient funds to purchase all proposed easements or the land proposed for easement acquisition did not meet eligibility criteria.
- b. If a landowner's applications to sell an easement is not accepted because the County lacks funds, with the landowner's permission, the application to sell will be reconsidered during the next purchase period.

4. Landowner Acceptance

The landowner will have 30 days following the County's 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 the landowner's right to sell an easement to the County for a period up to 24 months.

5. Closing and Payment

- a. Settlement will occur following landowner's acceptance of the County's offer to purchase an easement and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.
- b. Payment will be in full at time of settlement, or the landowner can choose a partitioned payment over more than one tax year; or
- c. A longer term structured payment subject to a negotiated agreement acceptable to both the landowner and the County.



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6. Recordation and Monitoring

The County's acquisition of an AEP easement will be recorded in the land records and in the AEP Program's annual report. DED must maintain a ledger of all of the TDRs conveyed to the County through the AEP Program. DED will monitor the properties under easement at least biannually to ensure compliance with easement requirements.

H. Referral to State Program

For the purpose of leveraging State and County funds, the Chief Administrative Officer or designee may, upon the recommendation of the Director, request that the landowner apply to the Maryland Agricultural Land Preservation Foundation and make a good faith offer to sell an agricultural easement to the Foundation.

III. County Supplement to Maryland Agricultural Land Preservation Foundation Easement Price

Under Chapter 2B-3(g), if the Foundation buys an agricultural easement, the County may make an additional payment to the landowner of up to 15 percent of the State's purchase price upon completion of the sale of the easement to the Foundation. This supplemental payment is to encourage landowners to choose to sell easements to the Foundation.

The amount of the supplemental payment will be determined by Executive Order annually on July 1st. The amount of the supplemental payment will be determined in part by the value paid by the County for AEP easements in the previous year and by the amount needed to encourage landowners to participate in the Foundation's easement purchase program. At the discretion of the County Executive, the value of the supplemental payment may be revised more than once each year.

IV. Building Lot Termination (BLT) Easement

The BLT Easement is another type of easement that may be purchased by the County under Chapter 2B. Similar to other agricultural easements purchased by the County, the primary purpose of the BLT Easement is to preserve agricultural land by reducing the fragmentation of farmland resulting from residential development. A BLT Easement will restrict residential, commercial, industrial and other non-agricultural uses. A key feature of the BLT Easement is an enhanced level of compensation to a landowner who can demonstrate that their land is capable of residential development and agrees, as part of the BLT Easement, to forego residential development and also agrees to restrict other types of development on their land.



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A. Eligibility

1. Eligible Sellers

The County will purchase easements only from the holder of fee simple title to eligible land, or to a person or institution that has entered into a binding contract or option to purchase fee simple title to eligible land, if and when that person or institution takes title to the land. Child lots permitted under Chapter 59 of the Code are not permitted under BLT Easements.

2. Land Eligible for Inclusion in BLT

- a. The land must be located in the RDT Zone and must be at least 50 acres in size; however, a smaller property maybe be considered and will be given priority ranking under Section IV(B)1(b) if it is contiguous to other lands protected from development by State or County agricultural and conservation easements.
- b. At least 50 percent of the land under consideration for an easement must meet either i) USDA Soil Classification Standards I, II, or III; or (ii) Woodland Classifications 1 or 2.
- c. The land must lie outside water and sewer categories 1, 2, and 3.
- d. The Land must not be encumbered by a federal, State or County agricultural or conservation easement; except, however, land protected by a Transferable Development Right (TDR) Easement may still be eligible.

3. Application Requirements

If a landowner is interested in selling a BLT Easement to the County, the landowner must submit an easement sales application to DED. The application must include a completed property description as outlined in Section II(C)(1), including the requirement in Section II(C)(1)(m) of a [letter from the Department of Permitting Services approving a[n individual onsite waste disposal] septic system site plan approved by DPS with an on-site septic absorption area contained entirely within the legal description of the property and a minimum absorption area of 10,000 square feet or such additional area required by DPS. Once DED receives an application, it will notify the landowner if the application is incomplete. If the application is complete, DED will forward the application to the APAB and the APAB will review it under the requirements of these regulations.

B. Review and Approval Procedure

- 1. DED and the APAB will accept applications, rank them, and provide notice to landowners under the requirements of this subsection.



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a. The County will accept applications to sell BLT Easements during set purchase periods. If funds are available, the County will hold at least one purchase period annually. The County will accept only those applications to sell a BLT Easement received by DED during the purchase period. At the end of each purchase period, applications to sell BLT Easements will be ranked numerically by the APAB, from highest to lowest, using the BLT Ranking Formula set out in Section IV(B)(1)(b).

b. i. The BLT Ranking Formula is equal to the Added Value and is used to determine the numerical ranking of BLT Easement applications received by the County during set purchase periods.

ii. The Maximum Easement Value is equal to the sum of the BLT Annual Base Value and the Added Value and is used to determine the price that the County will be pay for a BLT Easement. The BLT Annual Base Value is the minimum price that will be paid for a BLT Easement and will be determined annually by the County Executive as set out in Section IV(D)(1). The Added Value is used to increase the purchase price of a BLT Easement above the BLT Annual Base Value.

iii. The Added Value will be determined using a point system and the monetary value of the Added Value will be determined annually by when the County Executive as set out in Section IV(D)(1).

The Added Value consists of a maximum point value of 20 points within 3 categories:

- (a) Size of property, as determined by deed or recent survey, represents up to a maximum of 5 points:
 - a. zero points for properties less than 25 acres;
 - b. one point for properties at least 25 acres but less than 50 acres in size;
 - c. two points for properties at least 50 acres but less than 75 acres in size;
 - d. three points for properties at least 75 acres but less than 100 acres in size; and
 - e. four points for properties 100 acres but less than 150 acres in size; and
 - f. five points for properties 150 acres or greater in size.
- (b) Soil quality, as determined by DED, represents up to a maximum of 10 points, determined as a percentage of USDA Soil Capability Classifications I, II, III and Woodland Classifications 1 and 2:



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- a. two points if a minimum of 50 percent of the land but less than 65 percent (less any acreage included within the 100-year floodplain and less any acreage included in State or federal wetlands) contains of a combination of soils of Class I, II, III and Woodland 1 and 2 soils;
- b. four points if a minimum of 65 percent of the land but less than 70 percent (less any acreage included within the 100-year floodplain and less any acreage included in State or federal wetlands) contains of a combination of soils of Class I, II, III and Woodland 1 and 2 soils;
- c. six points if a minimum of 70 percent of the land but less than 75 percent (less any acreage included within the 100-year floodplain and less any acreage included in State or federal wetlands) contains of a combination of soils of Class I, II, III and Woodland 1 and 2 soils;
- d. eight points if a minimum of 75 percent of the land but less than 80 percent (less any acreage included within the 100-year floodplain and less any acreage included in State or federal wetlands) contains of a combination of soils of Class I, II, III and Woodland 1 and 2 soils; and
- e. ten points if greater than 80 percent of the land (less any acreage included within the 100-year floodplain and less any acreage included in State or federal wetlands) contains of a combination of soils of Class I, II, III and Woodland 1 and 2 soils.

(c) Land tenure represents up to a maximum of 5 points. These points will be awarded if the land is used for agriculture by the landowner and if the landowner is registered as a producer of agricultural products with the local agricultural support agencies; or, if a landowner demonstrates that the landowner has a long term lease agreement with a producer of agricultural products and the producer is registered with the local agricultural support agencies. One point will be awarded for each year the landowner has used the property for agriculture; or, alternatively, one point will be awarded for each year that a producer has used the land for agriculture under a lease agreement.

c. DED must provide its recommendation, and that of the APAB, to the Director about whether or not to tender an offer to purchase a BLT Easement from the landowner

d. If DED receives sales applications for BLT Easements after the closing of a purchase period, it will notify the landowner that the purchase period is closed, but the application will be placed on a waiting list for the next purchase period.



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C. Permitted Activities on Lands Protected under BLT

The following activities are permitted on lands encumbered by BLT Easements subject to the limitations and conditions of Chapter 59 of the Code:

1. Agricultural Use

- a. use of the land for agriculture;
- b. operation of any machinery used for agriculture 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.

2. Residential Use

- a. No residential uses are permitted on lands encumbered by a BLT Easement except when reserved residential rights are retained with the easement;
- b. To the extent allowed by the easement, the landowner of a BLT Easement may retain certain rights to future residential dwellings. The landowner must apply in writing to the APAB prior to filing a preliminary plan of subdivision;
- c. If a landowner's request to retain rights for future residential dwellings is approved, each retained right is be equal to two acres, or the minimum lot size required by zoning and well and septic regulations, which ever is greater, to build a dwelling, unless a larger size does not interfere with the agricultural character of the land, as determined by the APAB in its sole discretion;
- d. Any permitted residential right terminated under a BLT Easement must include the termination of an individual on-site sewage waste disposal system that would be used to support the residential dwelling.



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3. Restriction on Subdivisions

The landowner whose land is 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 and contained within the terms of the easement.

D. Establishing BLT Easement-Value

The method for establishing the value for a BLT Easement will be through the application of a County-established BLT Ranking and Easement Valuation Formula.

1. Determining the BLT Base Value, Maximum Value and Added Value

- a. **Base Value.** The Base Value is the minimum price that the County will pay for a BLT Easement. By July 1st of each year, the County Executive will determine the Base Value for BLT Easements for that fiscal year. In setting the Base Value, the County Executive considers such factors as recent prices paid for agricultural easements in Montgomery County, including BLT Easements, recent County TDR prices and recent fair market value prices paid for fee simple acquisition of County agricultural land, including prices for parcels with and without agricultural easements. The Base Value for BLT Easements is expressed as a percentage of the fair market value of a parcel of agricultural land with at least one TDR and an individual on-site sewage waste disposal system. The Base Valuable is applicable County-wide.
- b. **Maximum Value.** The Maximum Value is the highest or maximum price that the County will pay for a BLT Easement. By July 1st of each year, the County Executive will determine the Maximum Value for BLT Easements for that fiscal year. In setting the Maximum Value, the County Executive considers such factors as recent prices paid for agricultural easements in Montgomery County, including BLT Easements, recent County TDR prices and recent fair market value prices paid for fee simple acquisition of County agricultural land, including prices for parcels with and without agricultural easements. The Maximum Value for BLT Easements is expressed as a percentage of the fair market value of a parcel of agricultural land with at least one TDR and an individual on-site sewage waste disposal system. The Maximum Valuable is applicable County-wide. The price that the County will pay for a BLT easement must not exceed the Maximum Value.
- c. **Added Value.** The Added Value is the difference of the Maximum Value and the Base Value (Maximum Value – Base Value = Added Value).



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2. Right to Withdraw

If the landowner rejects the County’s offer of the Maximum Easement Value, the landowner must withdraw the BLT Easement sales application from further consideration for that purchase period. If a landowner wishes to participate in future easement purchase period, the landowner must resubmit an easement sales application consistent with Section IV(E)(2)(d).

3. Compensation

- a. The County’s offer to a landowner for a BLT Easement must not exceed the Maximum Easement Value. BLT Easements may be funded in cash as provided in Section IV(D)(3)(b).
- b. The purchase of BLT Easements may be funded by public funds appropriated through the Agricultural Preservation Capital Improvements Project or by private funds contributed by developers. Funds contributed by developers will be deposited into a separate account within the CIP and appropriated for BLT Easement purchases only (“Fund”). With the exception of donations by developers or others that are unrelated to obtaining additional density, before funds contributed by developers are deposited in the Fund, the Planning Board must transmit a certification to DED specifying the amount of funds required from the developer.
- c. The purchase price paid by the County for a BLT easement must not exceed the Maximum Easement Value.

E. Building Lot Termination Program Purchase Procedure

1. Restricting the Use of Land. If the County’s offer to purchase a BLT Easement is accepted, the landowner must agree through the terms of the easement to encumber all of the land included in the easement sales application with the BLT Easement. Except for reserved residential rights under Section IV(C)(2):

- a. The terms of the BLT Easement must provide that the landowner agrees to give up [all] certain permitted residential lot rights that would otherwise be available for development; and
- b. The terms of the BLT Easement must also provide that the landowner agrees to give up the right to subdivide the land for [any and all] residential, commercial, industrial or any other non-agricultural uses except as otherwise provided in the BLT Easement.



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Similar to the manner in which TDRs are serialized in TDR Easements, for each BLT Easement acquired by the County, the BLTs representing permitted residential density will be serialized and conveyed by the landowner to the County in a document separate from the BLT Easement; however, the BLT Easement will make reference to the document conveying the BLTs to the County. The future use of the serialized BLTs owned by the County must be approved by the County [Executive]. Except for reserved rights for residential lots under Section IV(C)(2), the landowner must record a TDR Easement to serialize any TDRs remaining with the land. The TDR Easement is in addition to the residential lot rights terminated under the terms of the BLT Easement.

2. County Purchase Procedure

a. Purchase Periods for BLT Easements

The County will accept applications to sell BLT easements during established purchase periods. The purchase period must end upon the earlier of, meeting the cap of applications established by the APAB for each purchase period, or the end of the purchase period established by DED for each purchase period.

The County will accept applications to sell easements on or before the last day of each purchase period.

At the end of each purchase period, the APAB will rank the properties in order from highest point value to lowest as determined by the BLT Ranking Formula and the value determined will form the basis for the County's offer to buy a BLT Easement.

b. County Offer to Buy BLT Easement

The County's offer to purchase BLT easements must be conducted in the manner provided under Sections II(G)(2).

c. Rejection of Offer - BLT Easement

If the County declines to purchase a BLT easement from a landowner, the County must notify the landowner in the manner provided under Sections II(G)(3).

d. 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 within the 30 day period will be considered a rejection of the County's 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 the right to sell a BLT Easement to the County for a period of 24 months.



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e. Closing and Payment - BLT Easement

The process and procedure for BLT easement closings and payments must be conducted in with the manner provided under Sections II(G)(5).

f. Recordation and Monitoring - BLT Easement

Each BLT Easement must be recorded among the land records of Montgomery County, Maryland. The BLT Easement must include a legal description of the property under easement and a legal description, or any other appropriate description, of the area on which the on-site waste disposal system terminated by the BLT Easement is located. The BLT Easement must also include a requirement that the septic absorption area being terminated by the BLT Easement must be separated from any other septic absorption area on the property by at least 50 feet. Each acquisition of a BLT Easement must be included in DED's annual report on agricultural easements, and DED must maintain an accounting reference for all BLTs created and conveyed to the County. DED will monitor the properties under easement at least biannually to ensure compliance with the easement terms.

V. Easement Termination and Repurchase.

Agricultural easements purchased by the County after the effective date of Bill 39-07 are not eligible for easement termination and repurchase, except as provided in Chapter 2B-10. A landowner who owns land encumbered by an AEP easement prior to the effective date of Bill 39-07 may, not earlier than 25 years after an agricultural easement purchased by the County has been recorded among the County's land records, make a written request to the APAB to terminate the agricultural easement. Termination may be requested earlier only if the District Council re-zones the land under easement in a manner that precludes agricultural use as a matter of right.

If a request for termination is approved, the landowner must pay the County the present value of the easement prior to the termination being recorded among the land records. An bona fide, third party appraisal must be used to establish the present easement value and an appraisal obtained for purposes of this section may be considered viable for up to 12 months from date of the appraisal. Appraisals will be ordered by the County but will be at the landowner's expense.



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VI. Effective Date

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

Isiah Leggett
County Executive

Approved as to Form and Legality
Office of the County Attorney

By: _____
Vickie L. Gaul
Associate County Attorney

Date: _____

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MONTGOMERY COUNTY
GOVERNMENT

OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

MEMORANDUM

July 2, 2009



METHOD 2

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive *Isiah Leggett*

SUBJECT: County Executive Regulation 03-09: Agricultural Land
Preservation Easement Purchases

On November 18, 2008, the County Council adopted Council Bill 39-07 for the purpose of amending Chapter 2B of the Montgomery County Code so that the implementation of our local farmland preservation program would be consistent with the State Law. This Bill also provided the enabling authority to establish the Building Lot Termination Easement program.

County Executive Regulation 03-09: Agricultural Land Preservation Easement Purchases serves to provide the specific details required to implement the amendments outlined in Chapter 2B of the Montgomery County Code. On March 1, 2009, Executive Regulation 03-09 was published in the Montgomery County Register for public comment. The public comment period closed on March 31, 2009 and we have endeavored to address all comments we have received.

Please find enclosed Executive Regulation 03-09 along with the complete package of supporting documentation that I am transmitting to the County Council for their consideration and approval. I support Executive Regulation 03-09 and believe these regulations will serve to enhance the protection of farmland within our nationally revered agricultural reserve by reducing the threat of agricultural land conversion to residential development.

It is my desire to have this matter scheduled before the Council at its earliest convenience. If you have any questions you may contact John Zawitoski at the Department of Economic Development on 301-590-2831.



OFFICE OF MANAGEMENT AND BUDGET

Isiah Leggett
County Executive

Joseph F. Beach
Director

MEMORANDUM

June 30, 2009

TO: Joseph F. Beach, Director
Office of Management and Budget

VIA: Ed Piesen, Management and Budget Manager *EP*

VIA: Brady Goldsmith, Management and Budget Specialist

FROM: John Cuff, Management and Budget Specialist *JC*

SUBJECT: Executive Regulation 03-09, Agricultural Land Preservation
Easement Purchase

REGULATION SUMMARY

These Executive Regulations regulate the County's supplemental payment for the Maryland Agricultural Land Preservation Foundation's purchase of agricultural land preservation easements and regulate the method for purchasing agricultural easements by the County, including the method for determining easement value, the method for ranking offers to sell easements to the County, and the terms of payment for easements purchased by the County.

FISCAL SUMMARY

This fiscal impact statement is prepared to coincide with the proposed changes to Executive Regulations (03-09) which govern Agricultural Land Preservation Easement Purchases. The Department of Economic Development (DED) is charged with the implementation of these programs. More specifically, these regulations are amended to incorporate language resulting from changes to Chapter 2B and a new preservation initiative called the Building Lot Termination (BLT) Easement Program. This program will serve to augment our existing programs which are all designed to protect agricultural lands. The BLT will be incorporated into the existing workload and implemented as another tool for protecting agricultural lands.

DED Ag Services may allocate funding for the BLT from a portion of State Agricultural Transfer Taxes, of which the County retains 75% for easement acquisitions. For FY09 and FY10, total Ag Transfer Taxes appropriated for land preservation are \$2,323,000. The anticipated collections of Agricultural Transfer taxes for FY09 and FY10 are much lower and estimated at only \$150,000. The County Council passed Zoning Text Amendment (ZTA) 08-14 on November 25, 2008. This ZTA

(23)

Office of the Director

provides a mechanism for developers to make payments into the Agricultural Land Preservation Fund. This will serve as a funding source for DED to purchase BLT easements. In addition, there is a \$2 million payment pending associated with the Crown Farm Annexation Agreement that may provide a source of seed funding for the BLT program.

Economic Effect on Private Sector:

Private landowners will benefit from these programs as the proceeds from easement purchases are provided directly to landowners as compensation for the property rights (equity) that they are forgoing. From the building industry perspective, the economic impact may be viewed as negative as the County will be in competition with developers in negotiating easements which will eliminate density permitted by the zone through the elimination of actual lots.

The following contributed to and concurred with this analysis: John P. Zawitoski and Jeremy V. Criss, DED Agricultural Services Division

JFB:jc

cc: Kathleen Boucher, Assistant Chief Administrative Officer
Dee Gonzalez, CEX
Caroline Darden, CEX
Steve Silverman, Director DED
Alison Dollar, OMB
John Cuff, OMB
Jeremy Criss, DED
Brady Goldsmith, OMB

OMB REVIEW

Fiscal Impact Statement approved Joseph L. Beaulieu
OMB Director

Fiscal Impact Statement not approved, OMB will contact department to remedy.



DEPARTMENT OF ECONOMIC DEVELOPMENT

Isiah Leggett
Silverman
County Executive

Steven A.

Director

June 5, 2009

Memorandum:

TO: Steven A. Silverman, Director
Department of Economic Development

FROM: Jeremy V. Criss, Manager
Agricultural Services Division

John P. Zawitoski
Farmland Preservation Administrator

Kristin Fisher
Assistant Farmland Preservation Administrator

SUBJECT: County Executive Regulation 03-09: Agricultural Land
Preservation Easement Purchases

Background Information:

Since 1978, Montgomery County has participated with the Maryland Agricultural Land Preservation Foundation (Foundation) in purchasing agricultural land preservation easements to preserve County farmland for agriculture and to protect it from development. Bill No. 56-87, Agricultural Land Preservation, was enacted February 16, 1988 to increase the effectiveness of the County's preservation efforts by authorizing the County to purchase easements, using the County's share of the agricultural land transfer tax, directly from the landowner or by supplementing the purchase price offered by the State for an agricultural preservation easement. The Executive Regulation 20-88AM was adopted to implement Chapter 2B of the Montgomery County Code. Since then the Executive Regulations were modified and updated by Executive Regulation 66-91 superseding 20-88AM.

In 2005, the County celebrated the 25th Anniversary of the Agricultural Reserve and several initiatives to support agriculture were identified, including a proposal to legislate a new preservation tool known as the Building Lot Termination (BLT) Easement Program. In 2007, the Maryland General Assembly approved House Bill 1331 which modified the requirements for State agricultural preservation programs. In response to these modifications to State Law, the County adopted Bill 39-07 on November 18, 2008 to amend Chapter 2B of the Code to be consistent with the State Law and to establish the BLT Easement Program. To implement these changes to Chapter 2B, on March 1, 2009 the County published in the Montgomery County Register, Executive Regulation 03-09. The deadline for public comment ended on March 31, 2009.

The Department of Economic Development reviewed comments received, as well as provided input from the Agricultural Advisory Committee and Agricultural Preservation Advisory Board and as result have made some additional edits to Executive Regulation 03-09 which have been incorporated into the attached draft executive regulations. For comparative purposes, major changes in Executive Regulation 03-09 from the previous Regulation 66-91 will be discussed in Section II below:

For a complete history of the Farmland Preservation Programs please go to the following link for a copy of the Annual Certification Reporting for Fiscal Years 1980 through Fiscal Year 2008.

<http://www.montgomerycountymd.gov/content/ded/agsservices/pdf/files/fy2008agpresannualreport.pdf>

Section II. Agricultural Easement Program (AEP) – Major Changes:

Linkage between State and County Easements:

It is important to understand that the Maryland Agricultural Land Preservation Foundation approves Montgomery County as a Certified County for the use of Agricultural Transfer Taxes used in purchasing County Easements. The Agricultural Easement that we use for the County Easement Program must also be approved by the State. This means that Montgomery County's Easement Program must be consistent with the State so that we can retain our certification status. It is for these reasons that specific changes to the State program as also emulated for our County Easement Program.

Elimination of County Agricultural Districts:

House Bill 1331 eliminated the State requirement for State Agricultural Districts. With this requirement being eliminated from State Law, it made a similar requirement contained within Executive Regulation 66-91 for County Agricultural Easements obsolete. Therefore the requirement for County Agricultural Districts was eliminated in Executive Regulation 03-09.

Residential Uses on Easement Properties:

Under Executive Regulation 66-91, up to 10 one-acre lots, or the minimum lot size required to build houses to be occupied by adult children of the grantor at a maximum density of not more than one (1) house per 25 acres. House Bill 1331 reduced the number of residential lot rights which could be reserved for children under the State Agricultural Land Preservation program to a maximum of three. To conform to these changes, Executive Regulation 03-09 modifies the County's AEP program to follow State Law. Specifically Executive Regulation 03-09 states that no more than 3 residential lots reserved for children may be constructed on an easement property under the following circumstances:

- i. one child lot for the first 25 acres;
- ii. a second child lot for properties greater than 50 acres but less than 120 acres;
- iii. a third child lot for properties greater than 120 acres in size;

Furthermore, Executive Regulation 03-09 provides a landowner the right, intended to run with the land, to construct one dwelling to support a farming operation provided:

- i. no viable dwellings exist on the land at the time of easement acquisition;
- ii. the landowner agrees that the requested dwelling must never be subdivided away from the land under easement; and
- iii. the landowner agrees that the requested dwelling is in lieu of any right to future child lots.

5 year no transfer condition for reserved rights for Children

House Bill 1331 required State Agricultural Easements to implement new conditions restricting the fee title transfer of reserved rights exercised by children to a third party for a period of 5 years. Under House Bill 1331, earlier releases may be approved by the State only under certain economic circumstances. Executive Regulation 03-09 was modified to contain similar conditions and certain economic hardship relief to conform to State Law.

Maximum Easement Value and Relationship with TDRs:

Executive Regulation 03-09 was modified to clarify the relationship of TDRs retained for properties evaluated for easement purchase. More specifically, at a minimum, 1 TDR per every 25 acres must be retained with the land in order to be eligible for the maximum easement value.

AEP Easement Formula Valuation Procedure: Determining Added Value:

Executive Regulation 03-09 modifies two categories within the added-value formula: Land Tenure and Agricultural Zone Edge.

The Land Tenure category expands the application of points awarded under this category to include: land is being purchased under binding contract of sale by a buyer who certifies under oath that the buyer intends to start a new agricultural operation, such as farming, or to enter into a long term lease with a third party to use the land for agriculture purposes; or the land is being farmed by an operator under a long term lease agreement with the landowner.

The Agricultural Zone Edge category, expands the application of points awarded under this category to properties, as determined by DED, that are within one mile of the border with other zones in the County, including incorporated towns.

Easement Termination and Repurchase:

House Bill 1331 required State Agricultural Easements purchased after the effective date of the legislation, to be perpetual in nature and not subject to termination. Executive Regulation 03-09 has been modified so that County Easements purchased after the effective date of Bill 39-07, November 18, 2008 are not eligible for easement termination and repurchase.

Section IV. Building Lot Termination Easement (BLT)

It is important to understand that the BLT program will consist of both a public and private sector component of funding and regulated BLT easements. These Executive Regulations will govern the use of the public funding component of BLT Easements.

The only private funding component of these Executive Regulations pertains to the partial BLT payments that private sector developers will contribute to the Agricultural Preservation Fund. The County DED will use these partial BLT private sector payments to purchase BLT easements from landowners.

Privately funded BLT easements where developers purchase the whole BLT easement from RDT lands, will represent a more flexible and less restrictive process as compared to the BLT easements acquired by the County. This will result in an outcome that is very similar to our existing Transferable Development Rights (TDR) program and the differences between publicly and privately purchased TDRs.

The BLT Easement is another type of agricultural easement that may be purchased by the County under Chapter 2B. Similar to other agricultural easements purchased by the County, the primary purpose of the BLT Easement is to preserve agricultural land by reducing the fragmentation of farmland resulting from residential development. A BLT Easement will restrict residential, commercial, industrial and other non-agricultural uses. A key feature of the BLT Easement is an enhanced level of compensation to a landowner who can demonstrate that their land is capable of residential development and agrees, as part of the BLT Easement, to forego residential development and also agrees to restrict other types of development on their land.

The attached regulations are designed to implement Article IV: Building Lot Termination Easements of Chapter 2B of the Montgomery County Code. Each section below provides a synopsis as to how DED intends to implement the Building Lot Termination Program.

Permitted Uses on Land Encumbered By BLT Easements:

Properties protected by BLT easements will restrict the land to Agricultural land use consistent with Chapter 59-C-9.3 of the Montgomery County Zoning Ordinance. These uses include any use of the land for agriculture; the operation of any machinery used for agriculture or the primary processing of agricultural products, regardless of the time of operation; all normal agricultural operations, performed in accordance with good husbandry practices, that do not cause bodily injury or directly endanger human health; and the operation of a Farm Market.

No residential uses are permitted on lands encumbered by a BLT Easement except when reserved residential rights are retained and expressly allowed within the easement. The BLT Easement may retain certain rights to future residential dwellings. The landowner must apply in writing to the APAB prior to filing a preliminary plan of subdivision.

If a landowner's request to retain rights for future residential dwellings is approved, each retained right must be equal to two acres, or the minimum lot size required by zoning and well and septic regulations, to build a dwelling, unless a larger size does not interfere with the agricultural character of the land, as determined by the APAB.

Any permitted residential lot right that is terminated under a BLT Easement must include the termination of an individual on-site sewage waste disposal system that would be used to support the residential dwelling. This termination will ensure the individual onsite sewage waste disposal system is never used for constructing a dwelling.

Land subject to a BLT easement must not be subdivided for residential, commercial, industrial, or any other non-agricultural uses except as provided under the Executive Regulation and contained within the terms of the easement.

The Relationship of TDRs to BLT easements:

For each BLT Easement acquired by the County, the BLTs representing permitted residential density will be serialized and conveyed by the landowner to the County by a TDR easement recorded among the land records of the County simultaneously with the BLT Easement. The BLT Easement will make reference to the document conveying the BLTs to the County. The future use of the serialized BLTs owned by the County must be approved by the County Executive and County Council. Except for reserved rights for residential lots the landowner must record a TDR Easement to serialize any remaining excess TDRs with the land. The TDR Easement is in addition to the residential lot rights terminated under the terms of the BLT Easement.

The DED will coordinate with the County Attorney's Office to develop a serialized numbering system for the BLT/TDRs that is completely separate and distinct from the existing system for serializing TDRs.

Eligibility and Application Requirements:

The County will purchase BLT easements only from the holder of fee simple title to eligible land, or to a person or institution that has entered into a binding contract or option to purchase fee simple title to eligible land, if and when that person or institution takes title to the land. Child lots permitted under Chapter 59 of the Code may be expressly provided for within the BLT easement for properties that meet the pre 1981 landowner eligibility date. In these cases additional excess TDRs will be retained with the properties for potential child lots that meet the eligibility requirements.

The land must be located in the RDT Zone and must be at least 50 acres in size; however, smaller property may be considered if the land is contiguous to other lands protected from development by State or County agricultural and conservation easements over non-contiguous properties of a similar size. The APAB recommends that BLT applicants whose properties consist of less than 50 acres will be evaluated and ranked by the sum or total acres impacted by preservation. At least 50 percent of the land under consideration for an easement must meet either USDA Soil Classification Standards I, II, or III; or Woodland Classifications 1 or 2; must lie outside water and sewer categories 1, 2, and 3 and must not be encumbered by a federal, State or County agricultural or conservation easement; except, however, land protected by a Transferable Development Right (TDR) Easement may still be eligible.

A landowner who is interested in selling a BLT Easement must submit an easement sales application to DED. What distinguishes the BLT easement program from other agricultural easement programs administered by DED is that the application must include a completed property description including a letter from the Department of Permitting Services approving an individual onsite waste disposal system. The County will accept applications to sell BLT Easements during set purchase periods. At the end of each purchase period, accepted applications will be forwarded to the APAB so that they may be ranked numerically from highest to lowest, using the BLT Ranking Formula.

The BLT Easement and Ranking Formula will consist of two components: The BLT Annual Base Value and the Added Value Formula.

Determining the BLT Easement Base Value and Maximum Easement Value

By July 1st of each year, the County Executive determines the Base Value and the Maximum Easement Value for the BLT Ranking Formula for that fiscal year. In setting the Base Value and the Maximum Easement Value, the County Executive considers such factors as recent prices paid for agricultural easements, including BLT Easements, within Montgomery County and recent County TDR prices and recent fair market value prices paid for fee simple acquisition of County agricultural land, including prices for parcels

with and without agricultural easements. The Base Value and Maximum Value for BLT Easements are expressed as a percentage of the fair market value of a parcel of agricultural land with at least one TDR and an individual on-site sewage waste disposal system. The Maximum Valuable is applicable County-wide. The price that the County will pay for a BLT easement must not exceed the Maximum Value.

Determining the Added Value

The BLT Annual Base Value is the minimum price that will be paid for a BLT Easement as determined annually by the County Executive. The Added Value is used to increase the purchase price of a BLT Easement above the BLT Annual Base Value by determining the agricultural land preservation value of a proposed property. The Added Value will be determined using a point system that consists of a maximum point value of 20 points within 3 categories

The three categories that comprise the Added Value are as follows:

- Size of property, as determined by deed or recent survey, represents a maximum of up to a maximum of 5 points;
- Soil quality, as determined by DED, represents up to a maximum of 10 points determined by the percentage of USDA Soil Capability Classifications I, II, III and Woodland Classifications 1 and 2; and
- Land tenure, represents up to a maximum of 5 points. These points will be awarded if the land is used for agriculture by the landowner and if the landowner is registered as a producer of agricultural products with the local agricultural support agencies; or, if a landowner demonstrates that the landowner has a long term lease agreement with a producer of agricultural products and the producer is registered with the local agricultural support agencies. One point will be awarded for each year the landowner has used the property for agriculture; or, alternatively, one point will be awarded for each year that a producer has used the land for agriculture under a lease agreement.

Once applications are ranked, the DED must provide its recommendation, and that of the APAB, to the Director about whether or not to tender an offer to purchase a BLT Easement from the landowner.

Compensation for BLT Easements:

The County's offer to a landowner for a BLT Easement must not exceed the Maximum Easement Value as determined by the County Executive. The purchase of BLT Easements may be funded by public funds appropriated through the Agricultural Preservation Capital Improvements Project or by private funds contributed by developers for partial BLT payments. Funds contributed by developers will be deposited into a separate account within the CIP and appropriated for BLT Easement purchases only. Funds contributed by developers will be deposited in the Fund, after the Planning Board transmits a certification to DED specifying the amount of funds required from the

developer. DED can accept donations offered by Developers for the BLT program. These donations will be deposited into the fund and are not related to obtaining additional density.

Requirement for Recordation of BLT Easements and Easement Termination:

Each BLT Easement must be recorded among the land records of Montgomery County, Maryland. The BLT Easement must include a legal description of the property under easement and a legal description, or any other appropriate description, of the area on which the on-site waste disposal system terminated by the BLT Easement is located. Each acquisition of a BLT Easement must be included in DED's annual report on agricultural easements, and DED must maintain an accounting reference for all BLTs created and conveyed to the County. DED will monitor the properties under easement at least biannually to ensure compliance with the easement terms. BLT easements purchased under this regulation are not eligible for easement termination and repurchase.

Staff Recommendation:

The County Government approved the Rural Density Transfer Zone on January 6, 1981 creating the Agricultural Reserve including the ability for landowners to develop their properties at a density of one house per twenty-five acres. Simultaneously to the creation of the RDT zone, the County created the Transferable Developments Rights (TDR) program as a mechanism for landowners to recapture a portion of the equity lost resulting from the change in zoning. Landowners, who voluntarily elect to sell TDRs, encumber their property with a TDR easement that prevents the land from being re-zoned to a higher density. At the end of FY08, a total of 51,830 acres of agricultural land have been protected by TDR easements which contributed to the County reaching its preservation goal of protecting 70,000 acres of farmland through agricultural easements.

While we are very proud of achieving the 70,000-acre preservation goal, we also recognize that about 74 percent of the 70,000 acres are lands protected by TDR easements. While TDR easements prevent lands from being rezoned to higher development density, the lands protected by TDR easements often retain development potential consistent with the permitted density of the RDT zone. The heightened value associated with these tangible development rights combined with a growing number of residents who would like to see lower development density in the Agricultural Reserve prompted the development of the BLT program. This program will provide enhanced compensation to landowners for the extinguishment of potential lots in the RDT zone.

The purpose of the Building Lot Termination Program (BLT) is to develop another mechanism that will enhance the farmland preservation programs and initiatives offered to the County's farmers and rural landowners. The BLT program may not be attractive to all landowners. The Ad-Hoc Agricultural Policy working group has provided strong support for the BLT program approach. This initiative focuses on specific ways to encourage the preservation of farmland owned by individuals that have decided, for a variety of reasons, not to protect or encumber their farms through our traditional easement programs that are

currently available. For more information about all of the programs administered by the DED, please refer to our FY2008 Farmland Preservation Annual Report. Access to this report can be achieved by following the link below:

<http://www.montgomerycountymd.gov/content/ded/agsservices/pdffiles/fy2008agpresannualreport.pdf>

DED believes Executive Regulation 03-09 fully implements the legal intent provided within Chapter 2B of the Montgomery County Code for both the enhancement of the County's existing Agricultural Easement Program (AEP) in accordance with State Law and for the establishment of the BLT Easement Program. DED recommends both the County Executive and the County Council to support Executive Regulation 03-09.

Attachments:

- a. Synopsis of Agricultural Preservation Programs
Available to Landowners: MALPF and AEP.
- b. Example Methodology: Montgomery County Agricultural Easement Program (AEP) New Added Value Formula.
- c. Example Methodology: The BLT Easement and Ranking Formula
- d. Summary of BLT Easement Formula Values: Lots Extinguished/Farm Size
- e. Public Comments Received and DED Response: Montgomery County Register
- f. Agricultural Preservation Advisory Board's (APAB) Written Recommendations
- g. Agricultural Advisory Committee's (AAC) Written Recommendations
- h. Summary of Rural Legacy and Maryland Environmental Trust Programs

MALPF

The Maryland Agricultural Land Preservation Foundation (MALPF) was established in 1977 by the State Legislature as a result of concern over decreasing farmland acreage caused by development. The MALPF purchases agricultural land preservation easements directly from landowners for cash. Following the sale of the easement, agricultural uses of the property are encouraged to continue.

Eligibility

- Minimum property size: 50 acres, or 10 acres or more of cropland adjacent to other protected land.
- At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- Applicant must have a soil and water conservation plan implemented with 10 years of settlement.
- Applicant must be approved by Montgomery County

Process (Typically 12-24 months)

- Landowner files petition with APAB requesting application for the purchase of an easement
- APAB makes recommendation to the Planning Board
- Planning Board makes recommendation to County Council
- Public hearing with the County Council
- County Council makes recommendation to Foundation
- Landowner submits application along with asking price prior to July 1st each year
- Foundation accepts application
- Applications are ranked
- Appraisals are ordered for the applicant at the State's expense
- State makes an offer to purchase an easement on the applicant's property
- Montgomery County may offer a supplemental payment to landowners as a means to increase incentives for MALPF participation, not to exceed 15% of the easement offer made by MALPF.
- If landowner accepts, easement is settled. If an offer is made and rejected by the applicant, they must wait 2 years before reapplying. If state rejects application, the landowner may reapply the following year.
- Payment can be a lump sum or paid in an agreed-upon schedule of installments in coordination with the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO) over as many as 15 years

Duration of Easement

- The easement is perpetual.

Method Used to Determine Easement Values:

- MALPF employs the use of two fair market appraisals. The two appraisals are then averaged to arrive at the Fair Market Value of the property.
- The Restricted Value or "Agricultural Value" is determined by the use of a formula.
- The difference between the Fair Market Value and Agricultural Value represents the MALPF maximum easement value.

AEP

Montgomery County Agricultural Easement Program (AEP) - Established in 1987, this program gives the County the ability to Purchase agricultural land preservation easements to preserve land for agricultural production. Lands eligible for participation in this program must be zoned Rural, Rural Cluster, or Rural Density Transfer, or be determined to possess significant agricultural value. The program was created to increase both the level of voluntary participation in farmland preservation programs and expand the eligibility of farmland parcels.

Eligibility

- Farm must be located in the Rural Density Transfer Zone (RDT), Rural Cluster Zone (RC), Rural Zone, or possess significant agricultural value.
- Minimum property size: 50 acres, or 10 acres or more of cropland adjacent to other protected land.
- One retained transferable development right (TDR) for every 25 acres of land to be eligible for the maximum easement value.
- Lands precluded from further development are not eligible.
- At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- The land must lie outside water and sewer categories 1, 2, and 3.
- The applicant must have a soil conservation and water conservation plan, and is eligible for an incentive payment if the plan is implemented within two years of settlement.

Process (Typically 6-12 months)

- Landowner submits an easement application including an offer price to the Department of Economic Development.
- DED staff assists in completion of the application and determines the maximum easement value.
- The DED Director certifies complete easement applications and determines ranking.
- The County orders a title report and reviews the chain of title for defects or other encumbrances which may impact eligibility for further participation. The curing of title defects, including surveys, are the responsibility of the landowner if metes and bounds cannot be certified.
- The County offers to purchase the easement through the contract of sale, which is accepted or rejected by the applicant.
- Once contract is ratified, DED drafts easement recording documents which are then executed by all parties.
- Once easement recording documents are finalized, the easement is scheduled for settlement and funds are remitted.

Duration of Easement

- The easement is perpetual

Method Used to Determine Easement Values:

- On July 1st of each year, the County Executive determines the Base Value for the AEP Added Value Formula.
- The added value formula is used to determine easement values. It is based on several farm quality characteristics that have a direct effect on the future potential of the land to support agriculture and on the threat to the property from non-agricultural uses. These characteristics are size, soil quality, land tenure, road frontage, and proximity to an agricultural zone edge.

**Montgomery County
AEP Easement Valuation Sheet**

Estimated Easement Value

Landowners Name: Frank Lee Speaking

Tax Account # 03-0000001

Actual Points

I. Base Points

100.0

100

II. Size (Total Farm Acreage)

Size of Property 150 ac

5.0 Ftr

30

III. Land Quality

(Soil Class I, II, III and woodland 1, 2)

I, 1

0 ac

150 ac

0 x

300.00 pts

0.00

II, 1

30 ac

150 ac

0.20 x

200.00 pts

40.00

III, 2

80 ac

150 ac

0.53 x

100.00 pts

53.33

110.00

IV. Soil Conservation Plan

10 points Implemented Plan 10 pts

No F 0 pts

10.00

V. Land Tenure

Farmer with \$5,000 + annual gross farm income yes = 25 points no = 0 points

Landowner with Long Term Lease Agreement with Farmer yes = 25 points. No long term lease agreement = No

Landowner to provide Letter detailing vested interest in commodity production yes = 25 points

YES 25 pts

No 0 pts

25.00

VI. Road Frontage

200 Lf

/ 50

= 4

4.00

VII. Agricultural Zone Edge

Within 1 Mile of the RDT Zone Border Yes = 100 points No = 0 points

YES 100 pts

No 0 pts

100.00

Total Point

362.33

Total Acres - Dwellings/Proposed (1ac for each dwelling)

150 ac

1 ac

149 Easement Acres

Maximum Easement Value

Total Points 362.33 x Base Value

17

\$6,159.67

X

149

\$ per Point

Max. Value/Ac

Easement Acres

\$917,790.33

Building Lot Termination Process

Steps taken before any applications are accepted.

1. The CE will establish the Base Value and the Maximum Easement Value for any BLT Easement.
 - For the purpose of this example the BLT Base Easement Value will be set at 60% of the FMV of the lot right and the BLT and the Maximum Easement Value will not exceed 80% of FMV of the lot right.
2. The County's BLT Easement Ranking System will consist of two components.
 - The BLT Annual Base Value
 - The Added Value Formula (Which determines the Agricultural Land Preservation Value)
3. In establishing the Annual Base Value for one BLT lot, comparable appraisals and collaborative information (TDR Prices, AEP Prices, MALPF Prices) will be evaluated and a recommendation from the APAB will be submitted to the County Executive

How will the CE determine the value of 1 Buildable Lot?

Assumptions for this example:

FMV of comparable appraised Lot Value= \$380,000

BLT Base Easement Value will represent 60% of the FMV or \$228,000

4. Properties will then be evaluated for The Added Value by using a 20 point formula. The formula assigns points for land attributes that enhance the lands agricultural land preservation value, such as soil quality, property size and agricultural land tenure. The Maximum Easement Value will represent the product of the Annual Base value and the Added Value.
 - Annual Base Value + Added Value = Maximum Easement Value

FMV= \$380,000

Annual Base Value =228,000 (60%)

MAX Easement Value =304,000 (80%)

AddedValue =\$76,000/20 pts = \$3,800 per point

Example of a 24 acre parcel extinguishing 1 lot/receiving 11 points under the Added Value Formula

Annual Base Value + Added Value = Maximum Easement Value

FMV= \$380,000

Annual Base Value =\$228,000 or 60% of the FMV

Maximum Easement Value =\$304,000 or 80% of the FMV

Added Value = \$76,000 or \$3,800 per point (Max Easement Value – Annual Base Value/20 points)

The Added Value will be determined by Added Value Formula which is based upon 20 point maximum score.

11 points X \$3,800 per point = \$41,800 Dollars for Enhanced Agricultural Preservation Value.

Annual Base Value (\$228,000) + Added Value (\$41,800) = \$269,800 BLT Easement Value

Application Phase: Purchase Periods

- 5. The County will then establish a purchase period to accept and rank applications and evaluate the property
- 6. See attached examples detailing various acreage sizes/lots extinguished from less than 25 acres up to 200 acres.

BLT

Building Lot Termination (BLT) Program – Established in 2008, the primary purpose of a BLT Easement is to preserve agricultural land by reducing the fragmentation of farmland resulting from residential development. A BLT Easement will restrict residential, commercial, industrial and other non-agricultural uses. A key feature of the BLT Easement is an enhanced level of compensation to a landowner who can demonstrate that their land is capable of residential development and agrees, as part of the BLT Easement, to forego residential development and also agrees to restrict other types of development on their land.

Eligibility

- The land must be located in the Rural Density Transfer (RDT) Zone
- The property must be at least 25 acres in size. Smaller property may be considered if it is contiguous to other lands protected from development by State/County agricultural and conservation easements.
- At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- The land must lie outside water and sewer categories 1, 2, and 3.
- The Land must not be encumbered by Federal/State/County agricultural and conservation easements, except Land protected by Transferable Development Rights (TDR) Easements may still be eligible.
- The land must be able to achieve a percolation rate sufficient to support an individual on-site waste disposal system.

Process (Typically 3-6 months)

- The County will establish specified purchase periods.
- Landowner submits an easement sales application to DED, including a complete property description.
- DED will accept applications and rank them among all received during the purchase period.
- Each property will be ranked and evaluated subject to the BLT Easement and Ranking Formula.
- Recommendation to purchase is forwarded to the Director by DED/APAB.
- The County orders a title report and reviews the chain of title for defects or other encumbrances which may impact eligibility for further participation. The curing of title defects, including surveys, are the responsibility of the landowner if metes and bounds cannot be certified.
- Offer to purchase is extended to applicant in the form of a BLT contract of sale.
- If the County's offer to purchase is accepted, the landowner must agree, through the terms of the easement, to encumber all of the land in the easement sales application/contract except for specified reserved residential rights contained within the easement that run with the land.
- Once the easement is accepted and executed, settlement of the easement is scheduled.

Duration of Easement

- The easement is perpetual
- The approved individual on-site waste disposal system associated with the BLT easement must be terminated as part of the agreement and within the easement
- Retained development rights are restricted in size and location, but run with the land

Method Used to Determine Easement Values:

- By July 1st of each year, the County Executive determines the Base Value and the Maximum Easement Value for the BLT Ranking Formula for that fiscal year. In setting the Base Value and the Maximum Easement Value, the County Executive considers such factors as recent prices paid for agricultural easements, including BLT Easements, within Montgomery County and recent County TDR prices and recent fair market value prices paid for fee simple acquisition of County agricultural land, including prices for parcels with and without agricultural easements. The Base Value and Maximum Value for BLT Easements are expressed as a percentage of the fair market value of a parcel of agricultural land with at least one TDR and an individual on-site sewage waste disposal system. The Maximum Valuable is applicable County-wide. The price that the County will pay for a BLT easement must not exceed the Maximum Value.

Montgomery County BLT Easement Valuation Sheet

Landowners Name: Frank Lee Speaking

Tax Account # 03-00000001

BLT Easement Value

Total Farm Acreage 150 acres

Total BLTs to be evaluated for purchase 5 lots

Fair Market Value = \$380,000 per lot 5 Lots \$1,900,000

Base Lot Value expressed as a percentage of FMV (for this example it is set at 60%)

\$228,000 Base Value Per lot X 5 Lots \$1,140,000
Number of Lots Total Lot Value

Added Value total of 20 points

Soil Quality	# of Points	
50%-64.99	2	<input type="text"/>
65-69.99	4	<input type="text"/>
70-74.99	6	<input type="text" value="6"/>
76-79.99	8	<input type="text"/>
>80% Class I,II, III	10	<input type="text"/>

Farm Size		
Less than 25 acres	0	<input type="text"/>
25 ac to 49.99 acres	1	<input type="text"/>
50 ac to 74.99 acres	2	<input type="text"/>
75 acres 99.99 acre	3	<input type="text" value="5"/>
100 acres to 149.99 acres	4	<input type="text"/>
150 +	5	<input type="text"/>

Land Tenure
 Farm owned and Operated by Landowner
 registered as a producer with Agricultural Agencies
 or landowner holds a long term lease with a producer
 (1 point for every year of lease up to max of 5 points)

Total Points

\$1,520,000	-	\$1,140,000	=	\$380,000	
80% FMV	Minus	Base Value =(60% FMV)		Max Added Value	\$19,000 per point
					Divide by 20
					20 point Formula
16	X	\$19,000	=	\$304,000	
# of Points		\$ per point		Added Value	+ \$1,140,000
					Base Lot value
		\$1,140,000	+	\$304,000	=
		Total Base Lot Value for 5 lots		Added Value	\$1,444,000
					Max Easement Value

Summary of BLT Easement Values/Lots Extinguished

# of Lots Extinguished	<25 acres	25 acres	50 acres	75 acres	100 acres	125 acres	150 acres	200 acres
1	\$269,800	\$273,600	\$277,400	\$281,200	\$285,000	\$285,000	\$288,800	\$288,800
2			\$554,800	\$562,400	\$570,000	\$570,000	\$577,600	\$577,600
3				\$843,600	\$855,000	\$855,000	\$866,400	\$866,400
4					\$1,140,000	\$1,140,000	\$1,155,200	\$1,155,200
5						\$1,425,000	\$1,444,000	\$1,444,000
6							\$1,732,800	\$1,732,800
7								\$2,021,600
8								\$2,310,400

Criss, Jeremy

From: Criss, Jeremy
Sent: Wednesday, April 08, 2009 4:43 PM
To: 'clifford@debelius.com'; 'Debbie Henry'
Cc: Jane Evans; 'Loisstoner@aol.com'; 'Lee Langstaff'; Zawitoski, John; Fisher, Kristin; Steed, Melissa; Nichols, Mary
Subject: Response to your questions surrounding the Executive Regulations 3-09 Agricultural Land Preservation Easement Purchases

Jim and Debbie,

I am responding to your letter dated March 24, 2009 surrounding the Executive Regulations 03-09. . Your questions pertained to the proposed Building Lot Termination Program and **my responses are in bold** on the attached file.

I'm sorry for the delay in responding to your questions.

I was out of the office for a week on sick leave.

I am trying to catch up on many things including the Agricultural Advisory Committee Sub-committee to meet and discuss these Executive Regulations.

You will receive a message from Melissa Steed later this afternoon to schedule this meeting next week.

I have copied the other folks that volunteered for this AAC sub-committee so they can see your questions and the responses.

Please let me know if you have any questions on my responses.

We are working to schedule the AAC sub-committee meeting next week to meet here at the Agricultural History Farm Park.

Thanks Jeremy

Jeremy V. Criss
Agricultural Services Manager
Department of Economic Development
Agricultural Services Division
18410 Muncaster Road
Derwood, Maryland 20855
301-590-2830
301-590-2839 (Fax)
jeremy.criss@montgomerycountymd.gov
<http://www.montgomerycountymd.gov/agservices>

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MEMORANDUM

TO: John Zawitoski, Ag Services Division
Jeremy Criss, Ag Services Division
FROM: Jim Clifford
DATE: March 24, 2009
RE: Montgomery County Regulation – BLT Easement Program

I have reviewed the draft Regulation forwarded to me and I have the following concerns regarding Article IV, Building Lot Termination Easement.

1. Section A (3). This provision asks landowners to proffer the sales price for the easement, which if I understand it would create a competitive environment for sales of BLTs. I thought the idea was for a flat sales price – take it or leave it – to avoid negotiations. **The DED will reconsider the value of requiring a landowner to provide an asking price as part of the application. You need to know the events surrounding how the flat BLT sales price was removed at the direction of the Executive staff. The Executive staff, Diane Jones and Jennifer Hughes had concerns about landowners with large acreage would receive most of the funds identified for the BLT. Therefore, the Executive staff instructed the DED to develop a formula ranking and easement valuation approach for the BLT. The idea of an asking price came about in cases where the landowner wanted more for a BLT lot than the County, or cases where the formula rank and evaluation is lower than the annual BLT price established by the County Executive. The asking price may serve as the means to acquire and/or reject an application and move on to the next applicant. We have prepared some examples to help explain the proposed process and we will share them with you and the other members of the Agricultural Advisory Committee Sub-committee on the BLT/ farmland preservation programs next week.**
2. Section B. I assume this section relates only to BLTs sold to the County since private BLT sales are not subject to any ranking formulas. **You are correct regarding this section B. The Executive Regulation only applies to BLT public sector program, not a private sector program.**
3. Section B (1) (b) (iii). Why maximize the points awarded for residential lot being terminated since the point is to obtain the termination of as many lots as possible? We should be providing points for each lot termination. **We are proposing that additional points are allocated for each lot that is terminated up to the maximum of 5 lots. We were asked to develop a formula to rank properties due to limited funds so that the process treated everyone fair and equitably. It was decided landowners who were**

willing to give up more BLTs would rank higher and their preservation value would be higher.

4. Section C (2) (c). I don't understand why there is any minimization of retained lots, but if its necessary under the Ag Easement, could it be established as two Acres to be more consistent with what was discussed with Park and Planning regarding Child Lots? **On page 34 of the Agricultural Policy Working Group report, there is reference to how the Agricultural Preservation Advisory Board would be given the authority to designate where additional buildings could occur on the parcel encumbered by BLT Agricultural Easement. This section C establishes the procedures, as with our other Agricultural Easement programs, for the APAB to review and approve retained lots. The BLT is a whole easement program and the APAB retains review and approval authority for retained lots as the mechanism to ensure greater agricultural preservation value.**

5. Section D(3)(b). We need to be sure that the regulations recognize that some of the BLT sales will be private and it's my understanding that those deals will be struck directly between the landowner and builder/developer without passing through the County at all. Simply put, an Ag Easement will be placed on the property, creating the BLTs and serializing them, at which point the owner can negotiate a private deal with a builder/developer or sell them to the County. **The DED totally supports a strong private sector BLT program. The DED proposes to demonstrate how the BLT will work with the Agricultural Easement and the new system for serializing the Buildable TDRs. These Executive Regulations do not deal with the private market sales for the BLTs and they only address when the county is purchasing the BLTs from landowner.**

6. Section D(3)(d). It appears that you will be allowing the County Executive to sell County owned BLTs for cash to fund the program when BLT funds are insufficient to complete settlement. If this is the case, how is this different than the County selling TDRs and competing with the very people we are trying to help? **Jim, this concept really needs to be discussed further. The County is not advocating the sale of County owned excess or buildable TDRs. In cases where BLT funds are insufficient, the intent of this section enables the County to provide County owned buildable TDRs in lieu of cash to landowner to settle a BLT agricultural easement on land. The landowner then could sell Buildable TDRs on the open market to get compensated, understanding this will only work if there is a viable private market for BLT sales. The intent of this section was recommended by the Agricultural Policy Working Group. Honestly, I am still trying to figure out how it can work so we need to discuss this section in more detail.**

7. Section E(2)(d). I assume the purchase period referenced here only applies to public funding and not private sales. **Your are correct that the purchase period only applies to the public funding for the BLT.**

8. As a general note it appears that there is no place within the regulation to deal with the specific procedural requirement that the septic site approved by the Department of Permitting Services Well and Septic Division be terminated of record so that the same site is not used to support an application for another building lot at a later time. **These Executive Regulations under Article II C (1) (m) requires a letter from DPS approving on-site waste disposal system. Under Article IV C (2) (D) it states that any permitted residential lot right that is terminated under the BLT must include the termination of the on-site sewage waste disposal system that would be used to support the residential dwelling. These conditions will be incorporated within the recorded Agricultural Easement document.**

In summary, I want to be sure that the regulation makes it clear a property owner can operate outside of the County regarding the sale of BLTs once created. Please call with your responses or if you have any question. **The DED firmly believes that a private BLT TDR market should take precedent over any public funded BLT program. The DED has no intention of standing in the way of a private BLT program or any TMX zone developers that chose the optional method of development requiring the purchase of BLT easements from properties in the Agricultural Reserve.**



AGRICULTURAL PRESERVATION ADVISORY BOARD

June 2, 2009

The Honorable Phil Andrews, President
 Montgomery County Council
 100 Maryland Avenue
 Rockville, Maryland 20850

Re: Written comments – Executive Regulation – 03-09 – Agricultural Land
 Preservation Easement Purchases

Dear Council President Andrews:

The Montgomery County Agricultural Preservation Advisory Board (APAB) would like to submit the following written comments in support of Executive Regulation 03-09 - Agricultural Land Preservation Easement Purchases. Please accept this letter and consider our thoughts as you proceed with the formal adoption of these regulations.

General Comments:

The Agricultural Reserve in Montgomery County has provided this area with a unique opportunity to keep contiguous farmland intact and functional in a highly urbanized county. The success of our programs and the achievement of over 70,000 acres of land in preservation is testimony to the successful efforts of Montgomery County in providing our farmers with workable programs that make land preservation a viable option within the framework of a functioning agricultural operation. There are currently six options for different methods of land preservation in the county: Transfer of Development Rights (TDR), the County's Agricultural Easement Program (AEP), the Maryland Agricultural Land Preservation Foundation (MALPF), the Rural Legacy Program (RLP), the Maryland Environmental Trust (MET), and Program Open Space (POS). A seventh option, the Building Lot Termination Program (BLT) is proposed in these regulations. In order to learn the intricacies of these programs and the terms and conditions that are inherent in each type of easement, we serve five-year terms on the APAB. As a result, we have an understanding of these programs that affords us the opportunity to recognize when changes are in the best interest of the continued success of agricultural land preservation in Montgomery County. We feel that the changes included in these regulations will provide farmers with programs that are more consistent with Maryland State Law and are more applicable to the conditions that exist in Montgomery County today.

Agricultural Services Division

18410 Muncaster Road • Derwood, Maryland 20855 • 301/590-2823, FAX 301/590-2839

(47)

Specific Comments:

Section II of Executive Regulation 03-09 addresses improvements to the County's AEP Program. Specifically, Section II(D)2(b-c) changes the number of allowable child lots reserved on an easement parcel to be consistent with recent changes to the state's MALPF Program. In the past, a landowner has been able to request up to ten child lots as long as there were children to support the number of lots and the property was of sufficient size. Changes that are proposed in these regulations would limit the number of child lots to a maximum of three depending on parcel size. In addition to this change, there is a new option for a farmer to elect to reserve a single lot right which would run with the land to support a farming operation and cannot be subdivided from the property. This option is only applicable for parcels of land with no existing houses and is provided in lieu of reserving residential lot rights for children. A reserved lot right that runs with the land gives farmers who do not wish to exercise child lots an option for maintaining equity in the land, and also eliminates the future possibility of vacant agricultural parcels that have no dwelling to support a farming operation. The APAB feels that these changes to the AEP Program represent positive steps in the protection of farmland while allowing lot rights to be built in a limited capacity.

The AEP Easement Value Formula has been modified in the Executive Regulations 03-09 to encourage additional participation in farmland preservation programs as demand for land and development pressures increase in Montgomery County. Today, land values are very high in the Agricultural Reserve and many farmers have found it more profitable to lease cropland from non-farming landowners to support their agricultural operations. In response to this situation, Section II(F)2(c) recognizes a long-term lease as a component of the land tenure section, which is an important factor to consider under the formula. Farmland in proximity to incorporated municipalities and other land zoned for higher density represents an increased threat for farmland conversion to residential development. The formula in Section II (F)2(e) is being modified to expand the criteria for determining this increased level of threat from ½ mile to one mile for those properties along the agricultural zone edge as well as incorporated municipalities. This distance has been increased from ½ mile to one mile because the agricultural land preservation programs in Montgomery County have been successful in preserving many of the farms within ½ mile of the Agricultural Reserve edge. As options for development are reduced and resulting pressures increase on the remaining parcels, it is important that we continue to be aggressive in pursuing additional farms near this boundary.

Section V removes the 25-year clause for termination of agricultural land preservation easements. A similar change was made to State Law and represents a lasting investment of County resources for agricultural land preservation. Montgomery County primarily purchases easements on farms in the Rural Density Transfer (RDT) zone, or farms with significant agricultural value. When Montgomery County purchases an AEP easement, all TDRs except those specifically retained within the easement are created and severed by a corresponding TDR easement, which is recorded simultaneously with the AEP easement. TDR easements are perpetual and not subject to termination. Given this fact, a 25-year termination clause on an AEP easement does not make sense when you understand that the TDR easement is permanent and prohibits the rezoning of lands encumbered by this easement to a higher density. Therefore, in practical application there would be no reason or benefit to having a process which would allow AEP easements to be subject to termination. Therefore, the APAB concurs that, as of the effective date of these regulations, the agricultural preservation easements purchased under the AEP program should not be subject to termination resulting in a program that is truly perpetual.

Finally, Section IV(B)1(b) describes the BLT Ranking Formula, which has been changed from the original ranking formula after receiving comments from representatives of the agricultural community (see attached email correspondence). The formula as currently proposed results in a more representative price for BLTs depending on the number of BLTs being terminated, the quality of soils and

size of the farm, and the land tenure arrangement. These criteria place the greatest value on large productive farms in Montgomery County and will be more successful at securing additional protections on these important parcels.

Thank you for considering these comments offered by the APAB regarding Executive Regulation 03-09 – Agricultural Land Preservation Easement Purchases. It is our hope and desire that the County Council will support these regulations so that the agricultural preservation programs offered in Montgomery County will continue to succeed in saving farmland for future generations.

Sincerely,



David O. Scott, Chairman
Agricultural Preservation Advisory Board

Attachment: Email to Lois Stoner/Jim Clifford/Jane Evans additional comments

cc: County Council Members
Steven A. Silverman, Director, DED
Jeremy V. Criss, DED Agricultural Services Manager

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Zawitoski, John

From: Zawitoski, John
Sent: Wednesday, April 29, 2009 5:38 PM
To: Zawitoski, John; 'clifford@debelius.com'; 'ortisevans@aol.com'; 'loisstoner@aol.com'
Subject: RE: Revisions to the BLT Easement Valuation System

Jim, Jane and Lois

I want to first thank you for your constructive comments regarding the review of the BLT portion of the Executive Regulation 03-09 on Friday April 17, 2009. Last Tuesday, April 21, 2009, Jeremy made a presentation before the full Agricultural Advisory Committee whereby he received general support for the AAC subcommittee report and recommendation on the BLT portion of the Executive Regulations. Following the AAC meeting, Fred Lechluder gave Drew Stabler the packet presented at the AAC meeting for his review. As you may know, Drew has served two terms on the Local Agricultural Preservation Advisory Board and one term on the State's Maryland Agricultural Land Preservation Foundation Board of Trustees. His guidance and input on agricultural land preservation initiatives is always welcomed in helping us to properly administer the farmland preservation programs.

Drew called our office last week to provide his insight on the formula based approach outlined in the AAC subcommittee approach. While he felt there was a lot of merit to the approach, when he ran some specific examples for some of his farm properties it raised some questions he felt required some additional thought and perhaps reconsideration.

Last Thursday, I met with Drew and we discussed his concerns and together we talked about how the easement valuation process could be improved so that a more consistent and objective approach to easement valuation could be considered. On Monday, Drew Stabler sat down with me to go over the revised approach and he believes the revised easement valuation methodology represents a significant improvement that should be supported by both the AAC and APAB.

Attached you will find a series of documents. They are as follows:

1. The revised Building Lot Termination Process
2. Specific Easement Valuation Examples ranging in size for properties <25 acres to properties 200 acres in size
In these examples the number of lots extinguished increases from the minimum up to the maximum provided by zoning so that relative value can be compared
(You may recall this was one of Jim Cifford's Concerns during the AAC subcommittee meeting)
3. A summary sheet showing all the results of all valuations run for each example
4. Revised Executive Regulation detailing the specific pages and changes necessary to the BLT section involving the formula's Base Value and Enhanced Agricultural Value

Please review the attached materials and feel free to contact me if you have any questions. I believe the product we have produced with Drew Stabler's assistance represents an improvement for the BLT and we hope to receive your concurrence and support.

John

**Recommendations on
Executive Regulations 03-09**

**Subcommittee of the
Agricultural Advisory Committee**

April 17, 2009

**Members: Jim Clifford, Jane Evans, Lois Stoner
Jeremy V. Criss, John P. Zawitoski**

Page 13. Section IV. A. Eligibility (3.) Application Requirements

If a landowner is interested in selling a BLT Easement to the County, the landowner must submit an easement sales application to DED. The application must include a completed property description as outlined in Section II(C)(1), including the requirement in Section II(C)(1)(m) of a letter from the Department of Permitting Services approving an individual onsite waste disposal system. [The application must also include the landowner's asking price for the easement, which must not exceed the calculated maximum easement value as described in Section IV(D).] Once DED receives an application, it will notify the landowner if the application is incomplete. If the application is complete, DED will forward the application to the APAB and the APAB will review it under the requirements of these regulations.

The Committee believes that for the purposes of the BLT program, an asking price submitted by the landowner is not necessary as the BLT easement ranking and valuation formula provides the basis for the BLT price. It is the recommendation of the Committee that this requirement be removed from the regulation

Page 15. Section IV. B. Review and Approval Procedure (1.)(b.)(iv.)

iv. Land tenure, represents a possible 20 percent of the Base Value. It is applicable if the land is owned and used for agriculture by the landowner and if the landowner is registered as a producer of agricultural products with the local agricultural support agencies, or if landowner demonstrates a long term lease agreement with a producer for a time period up to five years who is registered with the local agricultural support agencies.

The Committee believes the intent of this section is to encourage the agricultural use of the land, therefore, adding the additional suggested language, would provide a non agricultural landowner an incentive based upon the number of leasing years to ensure the lands protected under BLT are farmed.

Page 16. Section IV. C. (2. Residential Use (c.)

c. If a landowner's request to retain rights for future residential dwellings is approved, each retained right is be equal to [one] two acres, or the minimum lot size required by zoning and well and

septic regulations, which ever is greater, to build a dwelling, unless a larger size does not interfere with the agricultural character of the land, as determined by the APAB in its sole discretion;

The Committee believes Chapter 2B-16. (f).(2.) of the Montgomery County Codes provides sufficient flexibility in establishing a minimum lot size of two acres, if the BLT easement expressly allows that subdivision or use.

Page 17. Section IV. D. (3. Compensation (d.)

[d. Upon the recommendation of the Director and with the approval of the County Executive, the purchase of BLT Easements may be funded by paying the landowner in County-owned BLTs in lieu of cash when BLT funds are insufficient to complete the settlement.]

The Committee believes this section needs to be deleted. While this was an item for consideration under the Ad Hoc Agricultural Working Group's final report and recommendation, application of this process does not appear practical or feasible. The Committee agreed that situations involving the Gifting of BLT easements to the County for tax deduction benefits may need to be addressed in the regulation.

Page 19. Section IV. E. (2. County Purchase Procedure (f.)

f. Recordation and Monitoring - BLT Easement

Each BLT Easement must be recorded among the land records of Montgomery County, Maryland and include the legal description, or any other evidence which describes the extinguishment of the on-site waste disposal system used to qualify for the program. Each acquisition of a BLT Easement must be included in DED's annual report on agricultural easements, and DED must maintain an accounting reference for all BLTs created and conveyed to the County. DED will monitor the properties under easement at least biannually to ensure compliance with the easement terms.

The Committee believes this section needs to be modified so that the regulation gives the County clear authority to require the extinguishment of the on-site waste disposal system as part of the BLT easement acquisition process which is outlined in the Draft BLT easement under paragraph #8.

RLP

The Montgomery County Rural Legacy Program (RLP) – Established in 1997 as part of the Smart Growth and Neighborhood Conservation Act. This State program provides competitive grants to Counties/Sponsors for preserving areas that are rich in agricultural, forestry, natural and cultural resources which, if protected, will promote a resource-based economy, protect greenbelts and greenways and maintain the fabric of rural life.

Eligibility

- The property must be located within a designated State-approved Rural Legacy Area
- No legal minimum size (50 acres or more is preferred)
- Requires implementation of a Total Resource Management Plan which consists of a nutrient management plan, a soil and water conservation plan, and consideration for all other natural resources on the property, including wildlife and forestlands.
- Requires an environmental assessment of the property
- Requires either a professionally prepared land survey or a certified metes and bound property description.

Process (Typically 12-18 months)

- Landowner submits a Letter of Intent detailing their interest in participating in the program.
- DED assists in completing the letter and determining the maximum conservation easement value.
- Property may either be included in an annual grant request to the Maryland Department of Natural Resources (DNR) for future funding or is added to the list of eligible properties within an existing grant award provided there are funds available.
- If property is eligible and the landowner accepts the calculated conservation easement value, DED orders title and executes a Rural Legacy Contract of Sale with the landowner.
- A Project Agreement is submitted to the State for Maryland Board of Public Works (BPW) approval. Once approved by BPW, the Rural Legacy Easement can be settled.

Duration of Easement

- The easement is perpetual

Method Used to Determine Easement Values:

- The Rural Legacy Easement Valuation System (EVS) formula uses land attributes such as the extent of agricultural and forested lands, cultural and historic resources, and development potential to evaluate easement values.

MET

Maryland Environmental Trust (MET) - Established by the State Legislature in 1967 to encourage landowners to donate an easement on their properties. In return, landowners are eligible for certain income, estate, gift, and property tax benefits. A donated conservation easement to MET protects natural resources and preserves scenic open space including farm and forest land, wildlife habitat, waterfront, unique or rare areas and historical sites. A landowner who donates a conservation easement limits the right to develop and subdivide the land, now and in the future, but still retains title to the farm. By accepting the easement, MET agrees to monitor it forever to ensure compliance with its terms.

Eligibility

- Properties must have agricultural, environmental, or historical conservation value.
- No legal minimum size (20 acres waterfront or 50 acres inland preferred).

Process (Typically 3-6 months)

- Following contact by landowner, MET staff visits property and determines its conservation significance.
- An appraisal is ordered at the expense of the State.
- MET staff and property owner negotiate terms of draft Deed of Conservation Easement.
- MET notifies local elected officials of easement offer to ensure consistency with local land use plans. Approval of County, Maryland Department of Natural Resources, Board of Public Works, and Attorney General are required before MET decision to accept easement.
- Final Deed of Conservation Easement is executed by MET Director and donor.

Duration of Easement

- Typical easements are perpetual; however term easements may be considered, but do not qualify for tax benefits.

Method Used to Determine Easement Values:

- Easement value (for tax purposes) is the difference between the fair market value of the unrestricted property and the fair market value of the property with easement restrictions in place. Value is to be determined by qualified appraiser selected by donor. Easement values range from 14% to 81% of market value.

Jones, Diane (CEX)

From: Zawitoski, John
Sent: Monday, June 08, 2009 2:58 PM
To: Jones, Diane (CEX)
Cc: Silverman, Steve; Criss, Jeremy; Fisher, Kristin; Gaul, Vickie
Subject: Status of Executive Regulation 03-09 - Agricultural Land Preservation Easement Purchases

Diane

I wanted to take this opportunity to give you an update as to the status of Executive Regulation 03-09 - Agricultural Land Preservation Easement Purchases.

On March 1, 2009, Executive Regulation 03-09 was published in the Montgomery Register. The public comment period expired on March 30, 2009. Following the public comment period, DED assembled all comments received as well as obtained specific comments from both the Agricultural Advisory Committee and Agricultural Preservation Advisory Board. Once the public comments were received, DED began assembling a packet of information together, including the Executive Regulation 03-09, a detailed Staff report summarizing Executive Regulation 03-09 and other supporting documentation.

On Friday, June 5, 2009, DED staff met with Steve Silverman, DED director to review the complete packet of information, including Executive Regulation 03-09.

The purpose of this meeting was to obtain the support of DED's Director of the package of information pertaining to and including the Executive Regulation. After receiving the Director's endorsement, I delivered this packet of information to Vickie Gaul so that we could obtain the support of the County Attorney's Office. Once Vickie completes her review she will be delivering the packet of information to the 2nd floor to your attention. It is our hope to obtain the endorsement of the County Executive, so that the complete packet can be transmitted to the County Council to be scheduled for introduction and public hearing.

The packet that will be delivered includes the following components:

- I. Transmittal Letter from Steve Silverman to Mr. Leggett
- II. Transmittal Letter from Mr. Leggett to Council President Andrews
- III. Pink Cover Transmittal which includes a clean copy of the proposed Executive Regulation 03-09, staff report and other supporting documentation
- IV. DED Staff Report on Executive Regulation 03-09 with attachments

Summary of Staff Report Attachments:

- a. Synopsis of Agricultural Preservation Programs
Available to Landowners: MALPF and AEP.
- b. Example Methodology: Montgomery County Agricultural Easement Program (AEP) **New** Added Value Formula.
- c. Example Methodology: The BLT Easement and Ranking Formula
- d. Summary of BLT Easement Formula Values: Lots Extinguished/Farm Size
- e. Fiscal Impact Statement and Montgomery County Register Input Forms
- f. Public Comments Received and DED Response: Montgomery County Register
- g. Agricultural Preservation Advisory Board's (APAB) Written Recommendations
- h. Agricultural Advisory Committee's (AAC) Written Recommendations
- i. Executive Regulation 03-09 - Agricultural Land Preservation Easement Purchases
- j. Summary of Rural Legacy and Maryland Environmental Trust Programs

It is our hope following your review that we may obtain the support of the 2nd floor and Mr. Leggett so that the packet of information can be transmitted to the County Council for formal promulgation.

Please let me know if you have any additional questions.

John



DEPARTMENT OF ECONOMIC DEVELOPMENT

Isiah Leggett
County Executive

Steven A. Silverman
Director

December 28, 2009

Memorandum

TO: Michael Knapp, Chairman
Planning Housing and Economic Development Committee

FROM: Jeremy V. Criss, Manager
DED Agricultural Services Division

John Zawitoski, Administrator, Farmland Preservation

SUBJECT: Executive Regulation 03-09 – Agricultural Land Preservation Easement Purchases – Staff Report

On October 6, 2009, the Planning Housing and Economic Development Committee (PHED) held a public forum to provide public comments on Executive Regulation 03-09: Agricultural Land Preservation Easement Purchases. The DED questioned why a public forum was being scheduled over a public hearing. Upon further investigation, we discovered that during the Executive Regulation internal vetting process, the DED mistakenly indicated Method 2 when it should have read Method 1. We believe this prompted the scheduling of the public forum for the regulation. The DED informed Council staff on September 22, 2009 regarding the need to correct the front page of the Executive Regulations 03-09 to reflect Method 1 and not Method 2. Method 1 has always been our intent and furthermore Chapter 2B-18 (a.) of the Montgomery County Code instructs us that Executive Regulations must be promulgated under Method 1. On behalf of DED, we apologize for this oversight.

The purpose of this memorandum is an attempt to address the questions and suggestions that were offered by the individuals during the October 6, 2009 Public Forum as well as to supplement DED-Agricultural staff recommendations contained in our June 5, 2009 cover memorandum.

As you know, some of the speakers were not listed on the speakers lists and the DED did not have the names of two of these speakers. In the event the DED has missed any specific questions or comment, please let us know and we will respond accordingly.

Speaker

Chairman Royce Hanson:

Chairman Hanson was generally supportive of the draft regulations and most of his testimony focused on “Things to think about and useful to talk about in Committee” He believes that the County needs to be careful in the acquisition of excess TDRs and buildable TDRs in an environment of limited County funds. Traditional agricultural easement programs involving the acquisition of excess TDRs should come second to the acquisition of buildable TDRs. We should improve a process for acquiring BLTs rather than acquiring excess TDRs. The Chairman went on to state that the MNCPPC is the greatest investor in the BLT program with the \$5 million in ALARF funds that have been transferred to the Agricultural Land Preservation Fund to be used as seed funds for the BLT. Chairman Hanson believes the County needs to look closely at the issue of reserved development rights or residences on easement properties.

With regard to easement valuation, he feels the process or formula for using appraisals in determining annual BLT value seems a little complicated. As a proponent for donated easements Chairman Hanson believes that there is room in the program for landowners donating BLT easements to receive certain tax benefits. He recognized that Chapter 2B of the Montgomery County Code provides for donations, but this was not specially addressed in the regulations.

The DED response:

Acquisitions of agricultural easements using public funds will be prioritized and involve the ranking of properties to insure effective use of limited public funding. The DED already recommends to landowners (through both the County and State agricultural easement programs) that all excess TDRs be created and severed from the properties before traditional agricultural easements are settled. This current policy surrounding the treatment of excess TDRs essentially takes them off the table for agricultural easement negotiations and enables the landowner to retain ownership and to decide if and when they want to sell them through the private TDR market. The DED agrees that improving the process for acquiring buildable TDRs should take precedent over acquisitions involving excess TDRs. The DED is thankful to both the MNCPPC and the County Council for its leadership in approving the ALARF funding used as seed funds for the BLT easement program. A supplemental appropriation to the FY2010 – Agricultural Preservation Easement CIP will be submitted to the County Council shortly. The DED will provide assistance to the PHED committee to conduct a positive discussion surrounding reserved development rights or residences. DED believes that Chapter 2B of the Code sufficiently addresses the ability for a landowner to donate an easement and that additional language in the Executive Regulation is not needed to accept donated easements.

Jim Clifford:

Mr. Clifford is supportive of the Executive Regulations and indicated he was an appointed member of the Ad Hoc Agricultural Policy Working Group that recommended the

County develop the BLT program. Mr. Clifford is concerned that more work is needed on the private process for BLT easements and developers need to know how the process will work and function. Mr. Clifford suggests that page 18 IV.E. 1. a. b. **Building Lot Termination Program Purchase Procedure**: needs to be revised because landowners may want reserved residential rights. Mr. Clifford questions whether the regulation clearly addresses reserved rights on BLT easement properties. Mr. Clifford believes more work is needed to determine how the perc test-septic absorption fields should be terminated by the BLT Easements as this is the main feature of a BLT easement. Mr. Clifford agrees with Chairman Hanson that there is a need for landowners to be able to donate BLT Easements.

The DED response:

The DED agrees the wording on page 18 section IV.E.1.a.b. should be revised to clarify that with exception to the reserved residential rights, landowners agree to terminate or give up certain permitted residential lot rights. An exception for reserved rights is stated in the preamble to this section 1. **Restricting the Use of the Land**: provides wording that qualifies this exception, but the exception wording can be referenced again in both sub-section a. and b. if it makes the intent clearer. The DED also agrees that additional staff work is needed to determine the process for terminating the septic absorption field as part of a BLT Easement. The DED staff is coordinating with the DPS staff to make sure the recording documents for BLT Easements addresses the termination of the septic absorption field. (Please note that DED has outlined on page 5 of the memorandum the process for this septic absorption field requirement – Attachment 4)

While the Executive Regulation governs the public purchase of BLT easements, the DED staff agrees with Mr. Clifford that additional work is needed on the process for private BLT easements. The DED staff will coordinate with Council staff to consider the process and procedures for creating a private BLT market using attachment 1, entitled “Guiding Principles of the BLT.”

Jonathan Jenn:

Mr. Jenn stated that his family has interests in land in both the TMX BLT receiving areas of the FDA expansion in White Oak and the Agricultural Reserve RDT zone. His family owns 200 acres in the RDT zone so they have the potential to be both sellers and buyers of BLT Easements.

The family is opposed to the BLT concept as referenced in their letter dated September 9, 2009 addressed to the County Council. Mr. Jenn asked a fundamental question. “Should the preservation of the Agricultural Reserve take priority over Public Schools, Public roads, and transportation services, and the quality of life initiatives?” He believes that the BLT program requirement misses the mark and it represents an economic disincentive for Transit Mixed Use development.

The DED Response:

The DED is responsible for the implementation of the new BLT program. The County has a long history of down zoning and public policy decisions that have come at the expense of landowners for the benefit of the public good. The creation of the Agricultural Reserve and the

TDR program serve as examples and the County has consistently attempted to provide a means to reduce the lost equity from down zoning by approving greater densities down county.

Margaret Chasson:

Ms. Chasson presented testimony on behalf of the League of Women Voters. Ms. Chasson believes emphasis should be placed on developing adequate receiving capacity to encourage the private market for BLT's. While having a publicly funded BLT program is appropriate to demonstrate how a BLT program can function, the longevity of the BLT program will be dependent upon the development of the private BLT market. This is where the emphasis must be placed. Ms. Chasson is supportive of allowing donations of BLTs, however she felt very strongly that County should not be in the business of selling BLT-TDRs acquired through the easement acquisition process. She felt that any BLT easement must terminate the BLT-TDR and the Executive Regulation should be modified to strike any authority vested with the Executive whereby BLT-TDRs may be sold. Ms. Chasson said that the TDRs should be "deep-sixed."

The DED Response:

The DED concurs that the County should commit to the development of the private BLT-TDR market through the approval of receiving areas for mixed use zoning or other zones where use of BLT-TDRs is appropriate. DED also agrees that the public funded component of the BLT program may be short lived and the longevity of the BLT program will be vested in the private marketplace. DED understands Ms. Chasson's concerns regarding the sale of County owned BLT-TDRs as being in competition and in conflict with the private BLT-TDR market. DED is not advocating the sale of County owned BLT-TDRs, rather we are following established legal protocol surrounding how BLT-TDRs should be legally created, severed, serialized and transferred. There is legal case law of properties whereby TDRs that were not formally created and transferred in documents recorded among the land records. In these cases, the Court has ruled that the TDRs still exist and remain attached to the real property. DED simply wants the authority to ensure the BLT-TDRs associated with the BLT easement are legally created, severed, serialized and transferred, thereby "terminating" their use on the subject property.

The future use of these public owned TDRs represents a decision that would need to be made by the County Government involving both the County Executive and County Council. The DED recommends that no decision on the future use of public owned TDRs should be considered at this time.

The DED has worked closely with the County Attorney's Office in drafting the BLT Easement recording documents as outlined in attachment 3. Our goal is to modify the existing easements that have served our programs well over the past 20 years. Careful attention is being paid to unique requirements for the BLT program and will be incorporated into the modified easement recording documents. This approach maintains the continuity and form with our existing agricultural easement programs while addressing the unique requirements of the BLT program. This helps to ensure the County maintains a consistent and legally defensible recording document that is similar in nature with all of the programs we administer. Attachment 1, "Guiding Principles of the BLT" offers some additional information regarding specific details that will be required for BLT easements. This includes the County Attorney's Office approving

the BLT Easement and Modified TDR Easement as to form and legality and they will also create and assign a new TDR serial number system for Build able TDRs that will make them distinguishable from Excess TDRs. The BLT program recording documents as outlined in attachment 3, will consist of a BLT Easement and the corresponding modified TDR easement. This modified TDR Easement will be used for both private and public acquired BLT Easements. The BLT recording documents will also contain an exhibit- site plan that will outline the septic absorption field that is being terminated as outlined in attachment 4.

Program Development/Supplement since the October 6, 2009 Hearing:

Developed the Guiding Principles of the Building lot Termination Program (See Attachment 1.)

DED Agricultural Services developed this guidance document to illustrate the process for both public and private BLT easements. This document generally outlines the easement recordation process, from easement development, required supporting documentation, the assignment of serialized BLT TDR. This guidance document also outlines some subtle differences as well as applicability of certain program requirements for BLT easement acquired through the public program verses acquired on the private market. Furthermore, the guidance document generally outlines how easement values will be established, the role of the County Executive, and the applicability of certain program requirement impacting the established value for both the public and private BLT options. This document also outlines the linkage between the Value of the BLT Easements in the Agricultural Reserve and the Down County Master Plans identified for receiving capacity.

Developed Easement Value Methodology/Instructions to Appraisers (See Attachment 2.)

Ag Services has drafted the Request for Proposals that will be published for real estate appraisers to assist DED in determining the appraised values of lots in the Rural Density Transfer Zone (RDT) that is a key component needed for determining the annual BLT prices. We worked closely with several appraisers to develop this RFP to make sure what is drafted, will result in an end product that is necessary to evaluate and establish appropriate easement values. Once the Executive Regulations are adopted, DED will be prepared to release the RFP so that we may begin implementing the BLT program. (Please note that a procurement freeze is in effect and DED may need to obtain a waiver in order to move forward with this component of the BLT Program.)

Developed BLT Recording Documents (See Attachment 3.)

DED has drafted the recording documents that will be required for the BLT easement program. The review of these draft easement recording documents was coordinated with the County Attorney's Office. The recording documents are in similar form as our other existing programs. The key difference pertains to easement language and exhibits that document the extinguishment of the on-site waste disposal system (septic system). These recording documents will be finalized once Executive Regulation 03-09 is adopted by Council.

**Developed Process for Terminating Septic Absorption Area within a BLT easement
(See Attachment 4.)**

The termination of on-site septic absorption areas is the foundation by which the BLT program is vested upon. DED staff met with the County Attorney and the Department of Permitting Services (Well and Septic Division) to discuss what documentation would be necessary to properly as well as legally terminate an on-site septic absorption area. Collectively, it was determined that the site plan which is approved by DPS should be the vehicle by which an on-site septic absorption area is terminated. This site plan will become an exhibit to the recorded easement as well as identified within the DPS database so that we can ensure the terminated septic absorption area is never utilized. DPS has also advised DED that along with the Site Plan, a covenant should be placed within the easement that stipulates that each total absorption area terminated must be separated by any other absorption area of at least 50 feet. This provision would be consistent with the County's septic regulations and helps to clearly define the absorption area that is terminated. **The Executive Regulation (See Attachment 7.) has been modified and provided as an attachment to this staff report, highlighting these important changes since the October 6, 2009 public forum.**

FY 2010 Supplemental Appropriation \$5 million ALARF (See Attachment 5.)

Through the leadership of the County Council, the passage of HB 1517 provided for the disbursement of \$5 million dollars in ALARF funds from the Maryland National Capital Park and Planning Commission (MNCPPC) to Montgomery County to fund the Building Lot Termination (BLT) Program. The transfer of the funds from MNCPPC occurred on October 1, 2009. DED then began the process of requesting a supplemental appropriation by preparing the supplemental appropriation packet and circulating it within the Executive Branch for approvals before transmitting for Council action. On November 10, 2009, the County Council approved DED supplemental appropriation of seed funding for BLT easement purchases to begin once Executive Regulation 03-09 is adopted by Council.

FY 2011-16 BiAnnual CIP for Agricultural Easements requesting \$5.1 in GO Bond funding to supplement the Ag Transfer Tax. (See Attachment 6.)

The Department of Economic Development's Agricultural Land Preservation CIP project provides funds for the purchase of agricultural easements under the County Agricultural Land Preservation legislation, which was updated through Council Bill 39-07 adopted on November 18, 2008, for local participation in the State's Agricultural Land Preservation Program and for local participation in the State's Rural Legacy Program. The County Agricultural Easement Program enables the County to purchase preservation easements on farmland in the agricultural zones to preserve farmland not completely protected by transferable development rights easements or State agricultural land preservation easements.

Project funding comes primarily from 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. Montgomery County is state certified through June 30, 2012. The County uses a portion of its share of the tax to provide matching funds for State purchase of easements.

Based upon our Projections of Ag Transfer Tax collections (FY11-FY16), the current recession is having a detrimental effect on the amount of Agricultural Transfer Tax collected and ultimately it impacts the funding available for this project. This decrease in cash revenues could not have come at a worse time for our programs. The slowing economy and lack of demand for new residential development, has forced many landowners to pursue alternative land equity opportunities that include farmland preservation. This environment has also created unique opportunities for tenant farmers to acquire farmland they have leased for decades. These farmers are applying to farmland preservation programs as a mechanism to help them acquire these lands. This has resulted in some of the best prospects for farmland preservation since the inception of these programs over 20 years ago. These unique opportunities will certainly evaporate once the economy improves, TDR sales resume and landowners once again consider development as an alternative to seeking equity options with their lands.

With an increased interest in landowner participation in farmland preservation, at a time when agricultural transfer tax collections are under performing, opportunities to protect sensitive agricultural lands are going to be lost unless alternative funding can be achieved. General Obligation (G.O.) Bonds have been previously approved for this project. In 2003, \$700,000 in G.O. Bonds was returned to the County because of significant cash reserves on hand to fund this project. Recently, high landowner participation in these programs, combined with low agricultural transfer tax collections has depleted cash revenues and alternative funding sources must now be explored. DED is recommending that we revisit G.O. Bonding authority for this project to bridge the gap between the cash supported revenues and the deficit of agricultural transfer tax collections in order to have sufficient resources to settle the nine (9) prospect properties covering over 1,500 acres.

During our CIP budget discussions with the Office of Management and Budget (OMB) we learned that despite the previous appropriation of G.O. Bonds for this project, the Department of Finance believes that Chapter 20 of the Montgomery County Code must be amended to specifically provide Agricultural Land Preservation as a qualified use for bond funding.

Our farmland preservation programs have been a great success and we have received national recognition. One of the reasons for our success is that we have been able to adjust to program and budgetary issues as the times and conditions warranted. Therefore, the Department of Economic Development believes we must pursue an amendment to Chapter 20 of the Montgomery County Code, which would enable the use of G.O. Bonds for this project. The DED is also seeking the support for the appropriation of G.O. Bonds within DED FY11-16 Agricultural Land Preservation CIP to support farmland preservation during this time of exceptional opportunities. The Department of Finance does not recommend changes to Chapter 20 at this time, but may be willing to consider changes in the future.

It is our hope that through this supplemental staff report, that we have addressed the substantive questions and suggestions that were offered by the speakers during the October 6, 2009 Public Forum. We look forward to working with the PHED committee as the work sessions on Executive Regulation 03-09 on January 19, 2010. If you have any questions regarding this memorandum, please do not hesitate to contact us.

Attachments:

1. Guiding Principles of the BLT.
2. Draft RFP for Appraisals used for determining Annual BLT price
3. Draft BLT Easement recording documents.
 - 3A. – BLT Easement
 - 3B. – BLT TDR Easement
 - 3C. – BLT TDR Deed of Transfer (pending)
4. Example of Site Plan to Terminate Septic Absorption Field
5. Supplemental Appropriation of \$5 million ALARF funds for BLT seed funds
6. FY 2011-16 CIP Budget Submission
7. Revised Executive Regulations

cc: Nancy Floreen, County Council President
Marc Elrich, County Council PHED committee member
Steve Silverman, Director, DED
Kathleen Boucher, Assistant Chief Administrative Officer
Vickie Gaul, Associate County Attorney
Marlene Michaelson, Senior Legislative Analyst
Kristin Fisher, Agricultural Programs Specialist

The Principles of Building Lot Termination BLT Easements

Both Private and Public acquired BLT Easements

Prepared by Jeremy Criss and John Zawitoski

September 2009

Guiding Principles of BLT Easements

When a BLT Easement is acquired and recorded, whether through private or public sector, the BLT Easement will involve the creation of a modified TDR Easement that will be recorded simultaneously in the land records

All BLT Easements must be approved by the County Attorneys Office with the corresponding Build able TDR serial number that is being terminated

The County Attorneys Office will approve the BLT Easement and Modified TDR Easement as to form and legality and they will create an assign a new TDR serial number system (Example B-001) for Build able TDRs that will make them distinguishable from Excess TDRs

The BLT Easement and Modified TDR Easement must have an Exhibit attached that will document the septic absorption field that is being terminated as part of the BLT Easement and the corresponding modified TDR easement

This Exhibit attached to the BLT Easement and Modified TDR Easement could be the letter from the DPS stated the approved perc test results and/or a diagram showing the location of the approved septic absorption field that is being terminated by the BLT Easement and Modified TDR Easement.

The same Modified TDR Easement will be used for both private and public acquired BLT Easements

Private BLT	BLT Program Component	Public BLT
Perhaps	Farmland Preservation focus	Applicable
Applicable	Roof Top-Dwelling Elimination focus	Applicable
Perhaps	Size of BLT Easements <50acres	Applicable
NA	USDA I,II,III Soils BLT Easements	Applicable
NA	Water/Sewer Categories I, II, II	Applicable
Not Eligible	Child Lots reserved by Co/State Easem.	Not Eligible
Not Eligible	Child Lots reserved by Zoning	Not Eligible
Not Eligible	TDR retained by Co/State Easements	Not Eligible
NA	Whole farm BLT Easement Program	Applicable
NA	APAB Review of Retained TDRs	Applicable
NA	Soil Conservation Plan Certification	Applicable
NA	BLT Easement Ranking Process	Applicable
Perhaps	BLT Price determined with Appraisals	Applicable

Guiding Principles of the BLT Easement Price

BLT Easement Prices will reflect market conditions in the Agricultural Reserve and they will be established annually by the County Executive

The County Executive will receive recommendations from the APAB and DED upon completion of an evaluation of RDT zone lot values using comparative market sales from appraisals

The County Executive will establish the Annual BLT Base Easement Value

This Annual BLT Base Easement Value represents a percentage of the Fair Market Value including the lot terminated (Example BLT Base Value = 65% of FMV)

The County Executive will also establish the Maximum BLT Easement Price representing the BLT Base Price plus the enhanced agricultural added value (Size, Soils, Land Tenure) (Maximum BLT Easement Price = 85% of FMV)

The Annual BLT Easement Price represents the ceiling or maximum price the County can pay for a BLT Easement for the year.

The BLT Base Value for a property can increase up to the Maximum BLT price depending on the ranking of the BLT property and the enhanced agricultural added value

The annual BLT Easement Price represents an estimated floor price for the property owner interesting in selling a BLT easement

The BLT Easement Price offered by a developer to a property owner may not be driven by the components of the Public BLT Easement program with exception to years 1-3

<u>Private BLT Price</u>	<u>BLT Easement Price Components</u>	<u>Public BLT Price</u>
Perhaps	FMV Appraisals for RDT lot values	Applicable
Perhaps	BLT Base Easement Price (% of FMV)	Applicable
\$ ___ Negotiation	\$ _____ BLT Easement Price	\$ ___ County Exec
NA	Soil Conservation Plan Certification	Applicable
NA	Ranking of the BLT Easement Applicants	Applicable

Understanding the Linkage between the Value of the BLT Easements in the Agricultural Reserve and the Down County Master Plans identified for receiving capacity

The Transit Mixed-Use TMX zone was created for the receiving capacity for the TDRs associated with the BLT Easement Program

The following Master Plans apply: TwinBrook, White Flint, Gaithersburg, Germantown

The proposed Shady Grove Life Sciences Center zone is also identified for the receiving capacity for the TDRs associated with the BLT Easement Program

Developers in these areas can select the optional method of development that may require acquisition of BLT Easements under certain conditions

The BLT requirement does not apply to residential development in areas subject to the workforce housing program

Developers acquiring BLT Easement will achieve additional square footage of space measured as the Floor Area Ratio (FAR) levels above the density of the base zone

BLTs must be purchased to cover 12.5% of the additional density granted at a rate of one BLT for each 9,000 square feet of residential space, or for each 7,500 square feet of non-residential space

Developers that achieve additional square footage of space less than 12.5 % of FAR under the optional method will make partial BLT Easement payments to the DED Agricultural Land Preservation Fund in lieu of purchasing partial BLT Easements

The Planning Board must provide a certification to the developer with respect to the exact amount of partial BLT Easement Payment that should be made to the DED

This certification of payment will include the specific conditions of the developer's preliminary plan and serve as instructions to DED for the exact amount of payment to be deposited into the Agricultural Land Preservation Fund for purchasing only BLT Easements

Should all TMX zone developers pay the same amount for the benefit of BLT Easements?

Hypotheec Estimate for Square Feet of Mixed Use Space

White flint	\$40.00 per square foot of mixed use space
Twinbrook	\$35.00 per square foot of mixed use space
Gaithersburg	\$25.00 per square foot of mixed use space

Germantown \$20.00 per square foot of mixed use space

The BLT program is an unknown entity and there is no existing data for us to adjust the BLT Easement payments with respect to the range of prices for mixed use space from White flint to Germantown at this time

In absence of data surrounding TMX zone space by individual Master and Sector Plans, the DED may recommend the following criteria for setting the private sector BLT price:

For the beginning years of the BLT program, the DED recommends that developers should pay the BLT Base Value for purchasing Private BLT Easements

This is only recommended until which time the Private market for purchasing BLT Easements is known

To better understand this recommendation it was previously stated, the County Executive will establish/recommend the following:

The Annual BLT Base Easement Value (Example BLT Base Value = 65% of FMV)
This Annual BLT Base Easement Value represents a percentage of the Fair Market Value including the lot terminated

For the beginning years of the BLT program, developers that select the optional method of development will use the Annual BLT Base Easement Value (Example BLT Base Value = 65 % of the FMV)

Once the private market for purchasing BLT Easements is known, all future transactions involving private BLT Easements will be negotiated between the developer and the property owner and not driven by the public BLT Easement components.

- 4. The Contractor will take the following considerations into account while searching for comparative property sales: Date of comparable sale, conditions of sale, financing, location, size of the site, topography, highest and best use, availability of public utilities, visibility, access and other factors which may affect the value.
- 5. The Contractor should evaluate the value of individual properties sold ranging in size from 1 to 25 acres that are unimproved but can demonstrate the ability to be a valid buildable lot in accordance with Montgomery County's subdivision regulations.
- 6. The Contractor must conduct a similar search and analysis to the one that was conducted on comparable property sales for unrestricted developable lands. The appraisers will compile the sales data on properties that were sold subject to development restrictions as a way to arrive at the restricted/agricultural value.
- 7. The Contractor must work in collaboration with the Department of Economic Development Agricultural Services Division to ensure that the County develops a methodology based upon the Contractor's comparative sales analysis study enabling the County Executive to establish the BLT Base Value.

Deliverables

- 1. Based upon the Scope of Services and the signing of the contractual agreement, the Contractor must provide within 30 days a Work Plan that identifies the analysis methodology for completing the requirements of the contract with tasks and milestones delineated.
- 2. Based upon the Scope of Services, the Contractor must provide, within 30 days following the submission of the Work Plan, a Draft Report for review and examination.
- 3. Within 15 days, DED will provide written comments to the contractor during the review and examination period
- 4. Based upon the Scope of Services, the Contractor must provide a Final Report by no later than 30 days following DED's written comments during the review and examination period.

Compensation

- 1. The amount of compensation for the contractual services for this project must not exceed \$5,000. per year. The proposed budget must include all expenses associated with completing the Scope of Services.
- 2. The contract may be extended at the discretion of the County annually up to a maximum of four years.
- 3. Applicants must include their total hourly billing rate in their proposal.
- 4. Payment will be based upon the completion of identified tasks in the work plan, and submission of an invoice(s) that is approved by the County.

Proposal submission

1. Companies and individuals interested in responding to this Request for Proposals should submit three (3) copies of their proposal by 4:00 p.m. on Friday, _____ to: Jenna Shovlin, Senior Financial Specialist, Montgomery County Department of Economic Development, 111 Rockville Pike, Suite 800, Rockville, MD 20850. The proposal may be emailed to the following address: Jennifer.Shovlin@MontgomeryCountyMD.gov

Mandatory Insurance Requirements

Professional Liability

Certificate Holder

Montgomery County, Maryland
 Office of Economic Development / Jenna Shovlin
 101 Rockville Pike
 Rockville, Maryland 20850

Method of Award/Evaluation Criteria

Procedures:

1. Upon receipt of proposals, DED will evaluate all proposals in accordance with the evaluation criteria listed below.
2. A contract will be awarded to the highest scoring offeror based on DED's evaluation of the written proposals. Interviews will be conducted at the discretion of the County.

Evaluation Criteria

The Department of Economic Development will evaluate the proposals based on the following criteria:

Description	Points
Certified General Appraiser's experience in appraising Agricultural Land	25
Knowledge of County Agricultural Zones and Transferable Development Rights (TDRS)	25
Posses a thorough understanding of subdivision process relating to but not limited to the requirements to successfully achieve percolation standards distinguishing properties that are able to meet percolation standards from those that cannot.	20
Posses an understanding of the other agricultural land preservation tools available. This includes but not limited to, easement values based on extinguishing density, public policies impacting agricultural viability, other factors or programs that could enhance agricultural value	15
Cost to meet the scope of work outlined in the RFP	15
Total	100

Property ID #

BUILDING LOT TERMINATION EASEMENT

This Building Lot Termination Easement¹ (**Easement**) is sold, granted, and conveyed as of this ____ day of _____ 20__ by _____ (**Grantors**) to Montgomery County, Maryland, c/o Department of Economic Development, 111 Rockville Pike, Rockville, Maryland 20850 (**Grantee**) for the purpose of forever preserving the agricultural production capability of the subject property, pursuant to Chapter 2B of the Montgomery County Code (2004), as amended.

WITNESSETH:

By authority of Chapter 2B of the Montgomery County Code (2004), as amended and Executive Regulation No. _____, the Grantee may purchase a Building Lot Termination Easement to restrict land to agricultural use.

The Grantors are the sole owners in fee simple of property described in **Exhibits A and A-1** attached to and made part of this Easement, which consists of _____ more or less acres and _____ Transferable Development Rights (**TDRs**) and _____ Building Lot Development Rights (**BLTs**) associated with the property, together with buildings and other improvements (the "**Property**" or the "**Easement Parcel**").

The Property is eligible land located in the Rural Density Transfer and the Grantors desire to sell a Building Lot Termination Easement to the Grantee to restrict the Easement Parcel to agricultural use.

All holders of liens or other encumbrances upon the Property have agreed to release or subordinate their interests in the Property to this Building Lot Termination Easement, and to refrain forever from any action that would be inconsistent with its preservation purposes.

Now, therefore, for the reasons given, and in consideration of the sum of be _____ (000.0000) paid by Grantee to Grantors, the sufficiency and receipt of which Grantors hereby acknowledge, and also in consideration of the mutual covenants contained herein, the Grantors voluntarily sell, grant and convey to the Grantee, and the Grantee voluntarily accepts, a perpetual Building Lot Termination Easement on the Easement Parcel, pursuant to Chapter 2B of the Montgomery County Code (2004), as amended, consisting of those rights described in this Easement, exclusively for the purpose of preserving and forever maintaining the agricultural production capacity of the Easement Parcel. The Grantee's payment of the full amount of the consideration to Grantors under this Easement is subject to Grantors' compliance with the requirements of Paragraph 5, "Soil, Water and Forestry Conservation Plans", and Addendum No. I, which is attached to this Easement and made part hereof.

1. Prohibited Acts -- Grantors promise that they will not perform, nor knowingly allow others to perform, any act on or affecting the Easement Parcel that is inconsistent with the covenants enumerated below. It also authorizes the Grantee to enforce these covenants in any manner permitted by law or equity. However, unless otherwise specified below, nothing in this Easement shall require the Grantors to take any action to restore the

¹ For purposes of this transaction the Building Lot Termination Easement is deemed to include certain Transferable Development Rights (TDRs) and Buildable Lot Development Rights (BLTs) associated with the Property which the Grantors, simultaneous herewith, shall convey to Grantee.

condition of the Easement Parcel after any Act of God or other event over which they have no control. Grantors understand that nothing in this Easement relieves them of any obligation or restriction on the use of the Easement Parcel imposed by law.

2. Subdivision of Property -- The Grantors relinquish the right to subdivide the Easement Parcel for industrial, commercial, or residential use or purpose except as provided below.

- a. The Grantors reserve the right to subdivide and convey one acre, or the minimum lot size required by the zoning and health regulations, whichever is greater, upon written application to the Grantee a maximum of _____ future one-family dwellings on the Easement Parcel and these rights shall run with the land. The Grantors must not construct the any future one-family dwellings on the Easement Parcel without the prior written consent of the Grantee, which consent will not be unreasonably conditioned or withheld (**Permitted Dwellings**).
- b. The Easement Parcel, may not be further subdivided or conveyed to any person separately, except as part of a County- approved agricultural subdivision. The Grantors shall retain with the Property one (1) BLT to be available and attributable to each of the _____ Permitted Dwellings. Upon construction of the Permitted Dwellings, the Grantors must use the _____ BLTs retained by the Grantors for the construction of the Permitted Dwellings.
- b. All liens and mortgages for the Easement Parcel must be subordinated to this Easement.
- c. The Grantors retain the right to construct, subject to approval of the Grantee, houses for tenants fully engaged in the operation of the farm provided such construction does not exceed one tenant house per one hundred (100) acres and the property contains 1 TDR retained for an existing or future dwelling. The land on which a tenant house is constructed may not be subdivided or conveyed to any person and the tenant house may not be conveyed separately from the original parcel.

3. Construction of Buildings and or Structures Other Than a One-Family Dwelling -- The construction of any building or structure other than a one-family dwelling, excepting those existing on the date of this Easement or previously approved by the Grantee, is permitted only in accordance with this Paragraph 3. Those existing on the date of this Easement may be reconstructed in the event they are damaged or destroyed.

- a. Fences - Fences for, or related to, agricultural production, may be built anywhere on the Easement Parcel without limitation.
- b. Agricultural Buildings -- Buildings and other structures to be used solely for, or related to, agricultural production, (including the sale of farm products raised primarily on the Easement Parcel, but excepting any dwelling,) may be built anywhere on the Easement Parcel without the permission of the Grantee.

4. Dumping Material -- The Grantors will not dump ashes, sawdust, bark, trash, rubbish or any other material on the Easement Parcel, however, the Grantors reserve the right to dump any material which is generated by agricultural activities located on the Easement Parcel during regular agricultural operations.

5. Soil, Water and Forestry Conservation Plans

- a. The Grantors must within two (2) years from the date this Easement is recorded among the land records of Montgomery County, Maryland (**Recordation Date**) cause the Easement Parcel to be managed in accordance with an approved agricultural soil and water conservation plan so as to promote the agricultural capability of the land. Further, within two (2) years of the Recordation Date, the Grantors must manage any woodland in accordance with an approved Forest Resource Management Plan; the Grantors may selectively cut or clear cut trees from time to time in accordance with an approved Forest Resource Management Plan in order to insure that the agricultural character of the land will not be altered or its productive capability diminished.
- b. The Grantors must have a Soil Conservation Plan (**Plan**) in place on or before the Recordation Date and must implement all soil conservation and water quality practices that are required within that Plan within five years of the Recordation Date. Once the Plan is approved, it must be updated at least every ten (10) years. If revisions to the Plan's implementation schedule are necessary, the implementation schedule may amended in accordance with the changes requested of, and approved by, the Board of Supervisors of the local soil conservation district; however in all events, the Plan must be fully implemented within five years of the recordation date.
- c. All references to plan approvals mean approval by the applicable government agencies.
- d. The Grantee's payment of that portion of the consideration under this Easement for the Soil Conservation and Forest Resource Management Plans (see Addendum I) must not be made to the Grantors unless and until both plans are certified by the appropriate government agencies and are implemented by the Grantors.

6. Mining -- The mining or extraction of soil, sand, gravel, rock, fossil fuels or any other mineral substance, using any method that disturbs the surface of the land, is prohibited without the advance written permission of the Grantee. The Grantee will provide a determination concerning the Grantors' request within a reasonable period of time. The Grantee must not approve the Grantors' request if the Grantee determines that the proposed mining or extraction will diminish or impair the agricultural production capability of the Easement Parcel. However, nothing in this Easement must be interpreted to prevent Grantors or any third party holding subsurface mineral rights to remove such minerals, including coal, oil and gas, by methods that do not disturb the surface of the land and to construct facilities necessary for the removal of such mineral; provided however, any third party holding subsurface mineral rights must take no action or

otherwise cause the agricultural production capability of the Easement Parcel to be diminished.

7. Transferable Development Rights (TDRs) and Buildable Lot Development Rights (BLTs). Simultaneous with and as part of the consideration for this transaction, by a Building Lot Termination Easement and Transfer of Development Rights Easement of even date herewith by and between the Grantors and Grantee, recorded simultaneously herewith among the land records of Montgomery County, Maryland, the Grantors conveyed to the Grantee _____ TDRs and _____ BLTs associated with the Property. The Grantors retain _____ TDRs and _____ BLTs with the _____ acre Easement Parcel for _____ future Permitted Dwellings on the Easement Parcel; however, by executing this Easement, the Grantors acknowledge and agree that the _____ retained TDRs and the _____ retained BLTs associated with the Easement Parcel and encumbered by this Easement must remain with the Easement Parcel and that the Grantors specifically acknowledge and agree that they forego the right to convey to any third party the _____ retained TDRs and the _____ retained BLTs.

8. Extinguishment of On-Site Waste Disposal System-- As part of the consideration for this Easement, the Grantor, its survivors, agents, personal representatives, heirs, assigns and all other successors to the Grantor in interest shall forever forgo the right to utilize the On-Site Waste Disposal System approved by the County, dated _____ and numbered _____ and associated with the Building Lot terminated under the Building Lot Termination Easement and Transfer of Development Rights Easements of even date herewith, as outlined and described in **Exhibit B**, attached hereto and made a part hereof.

9. Rights Retained by Grantors -- As owner of the Property, the Grantors retain the right to perform any act not specifically prohibited or limited by this Easement. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone the Grantors choose.

Further, the Grantors retain the right to use the Easement Parcel for any agricultural use, and to carry on all normal farming practices, including the operation at any time of any machinery used in farm production or the primary processing of any agricultural products. The Grantors retain the right to conduct upon the Easement Parcel any agricultural operation which is in accordance with good husbandry practices and which does not cause bodily injury or directly endanger human health, including any operation directly relating to the processing, storage, or sale of farm, agricultural or woodland products produced on the Easement Parcel.

10. Responsibilities of Grantors Not Affected -- Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or on any existing obligation of the Grantors as the owner of the Property. The Grantors must continue to be solely responsible for payment of all taxes and assessments levied against the Property. The Grantors continue to be solely responsible for the upkeep and maintenance of the Property, and they continue to assume any liability for personal injury or property damage occurring on the Property. The Grantors hold the Grantee harmless from, and must defend the Grantee against, any claim for loss or damage, including costs and reasonable attorney's fees, injury, death, property damage or other matter relating to or arising from or occurring on or about the Property.

11. Enforcement -- The Grantee has the right and responsibility to prevent and correct violations of the terms of this Deed of Easement. With reasonable advance notice to the Grantors, the Grantee may enter the Property for the purpose of inspecting for violations. If the Grantee finds what it believes is a violation, it may take appropriate legal action. Except when an imminent violation could irreversibly diminish or impair the agricultural production capability of the Easement Parcel, the Grantee must give the Grantors written notice of the violation and thirty (30) days to correct it before filing any legal action. Any legal action that may be taken by Grantee to enforce the terms of this Easement, include but are not limited to, obtaining injunctive relief requiring the Grantors to cease and desist activity in violation of the terms of this Easement and to return the Easement Parcel to its condition prior to any violation. If the Grantee prevails, the Grantors must pay all costs and expenses associated with the enforcement action, including but not limited to, reasonable attorneys fees. The failure of the Grantee to discover a violation or to take immediate legal action must not bar it from doing so at a later time.

12. Interpretation -- This Easement shall be interpreted under the laws of the State of Maryland and Montgomery County, Maryland in a manner designed to resolve any ambiguities and questions of the validity of specific provisions to give maximum effect to its preservation purpose. If the Grantors have any doubt concerning the easement, covenants, conditions, limitations or restrictions herein contained with respect to any particular use of the Property, it may submit a written request to the Grantee for the Grantee's consideration and approval of such use.

13. Perpetual Duration - The easement created by this Easement shall be a servitude running with the land in perpetuity. Every provision of this Easement that applies to the Grantors or Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors in interest.

14. Remedies -- Grantee may enforce this Easement using any remedies available at law or in equity, including but not limited to, specific performance and injunctive relief.

15. Severability -- If any portion of this Easement is declared unlawful or invalid, the remainder of this Easement shall remain in full force and effect.

Signature Page Follows

IN WITNESS WHEREOF, the Grantors and Grantee intending to legally bind themselves, have set their hands and seals on the date first written above.

Witness:

GRANTORS

GRANTEE

MONTGOMERY COUNTY,
MARYLAND

Diane R. Schwartz Jones, Assistant
Chief Administrative Officer

APPROVED FOR FORM AND LEGALITY
OFFICE OF THE COUNTY ATTORNEY

By:

Vickie L. Gaul DATE
Associate County Attorney

COUNTY OF MONTGOMERY
STATE OF MARYLAND, SS:

I hereby certify that on this _____ day of _____, 20____, before me, a Notary Public of the State and County aforesaid, personally appeared _____, known to me (or satisfactory proven) to be the person whose name is subscribed to the foregoing Building Lot Termination Easement, and (s)he acknowledged that all material statements of fact in the foregoing Building Lot Termination Easement are true to the best of her/his knowledge and belief, and that the execution of said Deed is her/his free act.

Notary Public

My Commission Expires:

Jurats continue on following page

COUNTY OF MONTGOMERY
STATE OF MARYLAND, SS:

I hereby certify that on this _____ day of _____ 2009, before me, a Notary Public of the State and County aforesaid, personally appeared _____, known to me (or satisfactory proven) to be the person whose name is subscribed to the foregoing Building Lot Termination Easement, and (s)he acknowledged that all material statements of fact in the foregoing Building Lot Termination Easement are true to the best of her/his knowledge and belief, and that the execution of said Deed is her/his free act.

Notary Public

My Commission Expires:

STATE OF MARYLAND
COUNTY OF MONTGOMERY SS:

I hereby certify that on this _____ day of _____ 2009, before me, a Notary Public of the State and County aforesaid, personally appeared Diane R. Schwartz Jones, known to me (or satisfactory proven) to be the person whose name is subscribed to the foregoing Building Lot Termination Easement, and acknowledged that she is the Assistant Chief Administrative Officer of Montgomery County, Maryland, and that the execution of this Building Lot Termination Easement is her free act as Assistant Chief Administrative Officer on behalf of Montgomery County, Maryland.

Notary Public

My Commission Expires:

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.

Exhibit A
Description of Property
 Subject to Agricultural Preservation Easement
 Conveyed by _____ (Grantors)
 To Montgomery County

All that certain tract or parcel of land situate, lying and being in Election District _____, Montgomery County, Maryland, hereto containing _____ acres, more or less, and a total of _____ TDR's:

Property Tax Account No.: _____

Property Address: _____

Previous TDR Transactions: Total Available TDRs =
 _____ TDRs, Serial Numbers (_____ through and including _____) created by Easement recorded in Liber _____ at folio _____.

_____ BLTs, Serial Numbers (BLT- _____ through and including _____) created by Easement recorded in Liber _____ at folio _____.

Remaining TDRs and BLTS after Previous Transactions = _____ TDRs and _____ BLTs

Number of TDRs to be conveyed to Montgomery County (Grantee) _____

Number of BLTS to be conveyed to Montgomery County (Grantee) _____

Number of TDRs to be retained by Grantors _____

Number of BLTs to be retained by Grantors _____*

*One (1) BLT reserved for a future dwelling on the Easement Parcel.

Exhibit A-1
Metes and Bounds Description of Property

3A

Exhibit B
Description of On Site Waste Disposal System(s)
Extinguished by this Easement

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ADDENDUM NO. 1

The purchase price for said Building Lot Termination Easement shall be \$ _____.
One acre is subtracted from the payment acres for an exiting dwelling on the Easement Parcel.

The terms of payment are as follows:

Payment or Distribution to Landowner
on settlement date: _____
(\$BLT PRICE/AC x Payment acres)

Total Purchase Price _____

3A

FOR RECORDING PURPOSES ONLY:

Grantor's Address:

Grantee's Address:

Montgomery County, Maryland
Department of Economic Development
111 Rockville Pike, Suite 800
Rockville, Maryland 20850
240-777-2000

Title Insurer: N/A

Parcel Identifier:

BUILDING LOT TERMINATION EASEMENT AND TRANSFER OF DEVELOPMENT RIGHTS EASEMENT

THIS BUILDING LOT TERMINATION EASEMENT AND TRANFER OF DEVELOPMENT RIGHTS EASEMENT (“Easement”) is made this _____ day of _____, 20_____ by and between (include full name and address) (“Grantor”), and MONTGOMERY COUNTY, MARYLAND, a body corporate and politic located at 101 Monroe Street, Rockville, Maryland 20850 (“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, as more particularly described in Exhibit A hereto and made a part hereof, located in the Rural Density Transfer Zone, Planning Area _____, Montgomery County, Maryland (“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.

Chapter 2B of the Montgomery Code provides that a building lot termination easement generally terminates remaining Development Rights by extinguishing the right to build a dwelling unit on an eligible building lot. Chapter 2B defines a “Building Lot” “as a parcel of land on which the owner has retained the right to build a principal dwelling (“one-family dwelling”).

Grantor represents that it is the owner in fee simple of the Property as of the date of execution of this Easement and that the Property is located in the Rural Density Transfer Zone.

The parties intend that this Easement restrict the Property as described herein and that, hereinafter, _____ Development Rights numbered _____ and _____ Building Lot Development Rights numbered BLT-_____ may be conveyed from the Property by a deed without the conveyance of an additional Easement to Grantee.

A current title report for the Property is attached hereto and made a part hereof as Exhibit B.

NOW, THEREFORE, to permit the transfer of Development Rights and Building Lot 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 the Property.

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 the Grantor's heirs, successors, and assigns.

2. The term "one-family dwelling" includes mobile, manufactured, or similar dwellings, but excludes farm tenant dwellings permitted by Chapter 59, Montgomery 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 Easement shall operate independently of the restrictions imposed by the zoning of the Property.

5. The Property contains _____ acres. (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 or maintained on the Property to _____ and authorized the conveyance of _____ Development Rights numbered _____ and _____ Building Lot Development Rights numbered BLT-_____.) 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 _____ and (an additional) Building Lot Development Rights numbered BLT-_____. The conveyance of each Building Lot Development Right includes the termination of the use of a County-approved on-site waste disposal system in accordance with Paragraph 6 of this Easement. From this date forward, no more than _____ one-family dwellings may be constructed on the Property. This may not be interpreted 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. *Extinguishment of On-Site Waste Disposal System.* As part of the consideration for this Easement, the Grantor, its survivors, agents, personal representatives, heirs, assigns and all other successors to the Grantor in interest shall forever forgo the right to utilize the On-Site Waste Disposal System approved by the County, dated _____ and numbered _____ and associated with the Building Lot terminated under this Easement, as outlined and described in Exhibit C, attached hereto and made a part hereof.

7. 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.

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

9. 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, or the Grantor's heirs, successors and assigns, violate or breach any of such terms, conditions and restrictions herein contained, the Grantee, and the Grantee's 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 condition. The Grantee, and 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

Montgomery County, Maryland

By:

Diane R. Schwartz Jones, Assistant Chief
Administrative Officer

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 _____ 20____, before me, the undersigned officer, personally appeared _____ known to me (or satisfactorily proven) to be the person whose name is subscribed to the foregoing Building Lot Termination and Transfer of Development Rights 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 _____, 20____, 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 Building Lot Termination and Transfer of Development Rights Easement for the purpose contained therein, and further acknowledged the foregoing Building Lot Termination and Transfer of Development Rights 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 _____ 20____, before me, the subscriber, a Notary Public in and for the aforesaid jurisdiction, personally appeared Diane R. Schwartz Jones, Assistant Chief Administrative Officer of Montgomery County, Maryland, who executed the foregoing Building Lot Termination and Transfer of Development Rights Easement on behalf of Montgomery County, Maryland, for the purposes therein contained, and further acknowledged the foregoing Building Lot Termination and Transfer of Development Rights Easement to be the act and deed of 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.

3 B.

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:

6 88

Fisher, Kristin

From: Zawitoski, John
Sent: Tuesday, November 17, 2009 2:46 PM
To: Criss, Jeremy
Subject: amended language for Executive Regulation 03-09 relating to DPS site plan

Jay

I have made a few edits to 03-09 as it relates to DPS site plan. The changes are outlined below in two places within the reg
I think this will cover both the use of the Site plan and the 50 foot separation provision

Article II C 1.

1. **The property description of the land under consideration for an easement must include:**
 - a. the full names and addresses of all landowners of record;
 - b. the full names of all of the landowners' children;
 - c. the property address;
 - d. a copy of the tax map;
 - e. the total acreage;
 - f. deed references for the deeds conveying the land to the landowners;
 - g. the current land use and the USDA soils productive capability class;
 - h. the number of dwelling units on the land;
 - i. the current zoning of the land;
 - j. all third party interests in the land;
 - k. a description of the farming operation;
 - l. an inventory of farm buildings on the land; and
 - m. other information necessary to evaluate the land's eligibility for an easement (i.e. Opinion of Title, surveys, metes and bounds legal descriptions, and for an application under the BLT Program: a letter from the Department of Permitting Services (DPS) approving an individual onsite waste disposal system including a copy of the septic system site plan approved by DPS.

Article IV.E.2.(f)

- f. **Recordation and Monitoring - BLT Easement**

Each BLT Easement must be recorded among the land records of Montgomery County, Maryland. The BLT Easement must include a legal description of the property under easement and a legal description, or any other appropriate description, of the area on which the on-site waste disposal system terminated by the BLT Easement is located. This includes but is not limited to a Department of

(89)

4.

Permitting Services approved septic site plan which stipulates that each total absorption area must be separated by any other absorption area of at least 50 feet. Each acquisition of a BLT Easement must be included in DED's annual report on agricultural easements, and DED must maintain an accounting reference for all BLTs created and conveyed to the County. DED will monitor the properties under easement at least biannually to ensure compliance with the easement terms.

90

AGENDA ITEM #8
November 10, 2009

Public Hearing/Action

MEMORANDUM

November 5, 2009

TO: County Council

FROM: Justina J. Ferber, Legislative Analyst

SUBJECT: **Public Hearing and Action:** Supplemental Appropriation #6-A10-CMCG-3
FY10 Capital Budget – MCG Department of Economic Development
Agricultural Land Preservation Easements – PDF No. 788911
\$5,000,000

The County Executive recommends a supplemental appropriation to the FY10 Capital Budget in the amount of \$5,000,000 for the Agricultural Land Preservation Easements project. The appropriation will fund the new Building Lot Termination Program (BLT).

This supplemental request for funds is a result of HB 1517, which was passed during the 2009 Maryland General Assembly. The approved bill provides a transfer of ALARF funds from the Maryland-National Capital Park and Planning Commission (M-NCPPC) to Montgomery County in the amount of \$5,000,000 to be used specifically for the Building Lot Termination (BLT) Program as authorized under Chapter 2B of the Montgomery County Code. The M-NCPPC has completed the transfer of the \$5,000,000 in ALARF funds to the County, and the funding must now be appropriated within the project to implement the program.

Executive Regulation 03-09 to implement the BLT program will be reviewed by the Planning, Housing and Economic Development (PHED) Committee in January.

Background

The County's Agricultural Land Preservation Easements Capital Program is administered by the County's Agricultural Services Division in the Department of Economic Development. The Agricultural Land Preservation Easements Program protects and preserves agricultural land from development with the goal of retaining a significant farming sector. In 2009, Montgomery County achieved its farmland preservation goal of protecting over 70,000 acres of farmland. Preservation of agricultural land is accomplished under five separate programs: MC Agricultural Easements Program, MD Ag Land Preservation Foundation Program, MC Transferable Development Rights Program, Maryland Environmental Trust Program, and Rural Legacy

Program. The BLT program will now be added once funding and regulations are complete. Bill 39-07, Agricultural Land Preservation – Amendments, enacted November 18, 2008, authorizes easements for the BLT program.

Staff Recommendation: Approve the supplemental appropriation to the FY10 Capital Budget in the amount of \$5,000,000 for the Ag Land Preservation Easements project to fund the new Building Lot Termination Program.

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Ag Land Pres Easements -- No. 788911

Category
Subcategory
Administering Agency
Planning Area

Conservation of Natural Resources
Ag Land Preservation
Economic Development
Countywide

Date Last Modified
Required Adequate Public Facility
Relocation Impact
Status

October 12, 2009
No
None.
On-going

EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY08	Rem. FY08	Total 6 Years	FY09	FY10	FY11	FY12	FY13	FY14	Beyond 6 Years
Planning, Design, and Supervision	2,573	0	0	2,573	280	432	445	458	472	486	0
Land	19,183	0	12,910	6,273	1,723	600	750	1,000	1,000	1,200	0
Site Improvements and Utilities	0	0	0	0	0	0	0	0	0	0	0
Construction	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0
Total	21,756	0	12,910	8,846	2,003	1,032	1,195	1,458	1,472	1,686	0

FUNDING SCHEDULE (\$000)

Agricultural Transfer Tax	16,415	0	10,142	6,273	1,723	600	750	1,000	1,000	1,200	0
Federal Aid	393	0	393	0	0	0	0	0	0	0	0
Investment Income	2,887	0	114	2,573	280	432	445	458	472	486	0
M-NCPPC Contributions	5,000	0	0	5,000	0	5,000	0	0	0	0	0
State Aid	2,261	0	2,261	0	0	0	0	0	0	0	0
Total	26,756	0	12,910	13,846	2,003	6,032	1,195	1,458	1,472	1,686	0

DESCRIPTION

This project provides funds for the purchase of agricultural and conservation easements under the County Agricultural Land Preservation legislation, effective November 25, 2008, 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 other zones approved by the County Council to preserve farmland not already 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 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. The sale of development rights easements are proposed voluntarily by the farmland owner. Project funding comes primarily from 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 FY2010, a new Building Lot Termination (BLT) program will be initiated that represents an enhanced farmland preservation program tool to further protect land where development rights have been retained in the Rural Density Transfer Zone (RDT). This program will use Agricultural Transfer Tax revenue to purchase the development rights and corresponding TDRs retained on these properties.

COST CHANGE

Investment Income was increased to fund administrative expenses and additional agricultural initiatives carried out by the Agricultural Services Division.

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.

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 (3.0 workyears), the purchase of easements, and other agricultural initiatives carried out by the Agricultural Services Division. The program permits the County to take title to the TDRs. These TDRs are an asset that the County may sell in the future, generating revenues for the Agricultural Land Preservation Fund. The County can use unexpended appropriations for this project to pay its share (40 percent) of the cost of easements purchased by the State. Since FY99, the County has received State RLP grant funds to purchase easements for the State through the County. The State allows County reimbursement of 3 percent for direct administrative costs such as appraisals, title searches, surveys and legal fees.

Given changes to the Federal Program, Federal Aid funds are no longer programmed in this project.

FISCAL NOTE

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

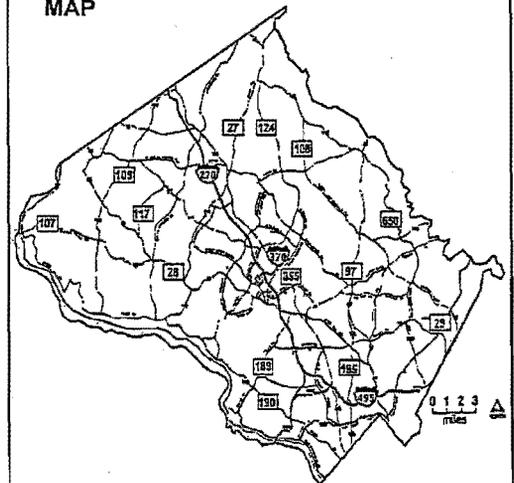
APPROPRIATION AND EXPENDITURE DATA

Date First Appropriation	FY89	(\$000)
First Cost Estimate	FY10	21,756
Current Scope		
Last FY's Cost Estimate		26,341
Appropriation Request	FY10	1,033
Supplemental Appropriation Request		0
Transfer		0
Cumulative Appropriation		14,912
Expenditures / Encumbrances		9,395
Unencumbered Balance		5,517
Partial Closeout Thru	FY07	44,416
New Partial Closeout	FY08	5,286
Total Partial Closeout		49,702

COORDINATION

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

MAP





DEPARTMENT OF ECONOMIC DEVELOPMENT

Isiah Leggett
County Executive

Steven A. Silverman
Director

MEMORANDUM

September 4, 2009

TO: Joseph Beach, Director
Office of Management and Budget

VIA: Steven A. Silverman, Director

FROM: Jeremy V. Criss, Agricultural Services Manager
John P. Zawitoski, Director of Planning and Promotions
Department of Economic Development

SUBJECT: FY 011-16 Capital Improvements Program (CIP) Submission

Introduction:

This project provides funds for the purchase of agricultural easements under the County Agricultural Land Preservation legislation, updated through Council Bill 39-07 which was adopted on November 18, 2008, for local participation in the State's Agricultural Land Preservation Program and for local participation in the State's Rural Legacy Program. The County Agricultural Easement Program enables the County to purchase preservation easements on farmland in the agricultural zones to preserve farmland not already protected by transferable development rights easements or State agricultural land preservation easements.

The Maryland Agricultural Land Preservation Foundation (MALPF) enables the State to purchase preservation easements on farmland through a partnership with the County and State Government. The Rural Legacy Program enables the State to purchase preservation easements to preserve large contiguous tracts of agricultural land. The Rural Legacy Program funds the Mid-Maryland Rural Legacy Plan Area and the Upper Patuxent River Watershed Rural Legacy Plan.

Project funding comes primarily from 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. Montgomery County is state certified through June 30, 2012. The County uses a portion of its share of the tax to provide matching funds for State purchase of easements.

The Office of Management and Budget (OMB) and The Department of Economic Development (DED) adopted a change in investment income policy on August 27, 2009. The new policy states that investment income be used to fund 100 percent of the administrative expenses associated with the project. (These expenses include in the Division of Agricultural Services 1.0 work year for the Senior Business Specialist, job class 00430, and 1.0 work year for the Manager II, job class 000112 and 1.0 Business Specialist, job class 000135). This includes expenses associated with certain agricultural initiatives shifted from the operating budget to the CIP to meet County Executive's 10 % savings mandate for the FY 2010. This agricultural initiatives include: \$30,000 for the Deer Donation Program, \$10,000 for the Montgomery Weed Control Program and \$31,000 for the Cooperative Extension Partnership. The total Investment Income Expense for FY2010 is approximately \$432,000.

Projections of Ag Transfer Tax collections (FY11-FY16) are based upon a review of the 6 year average of collections retained by Montgomery County for fiscal years 02 through 09, taking into account current Real Estate Values and declining unprotected agricultural lands that remain and overall impact the recession is having on Agricultural Transfer Tax Collections. Provided within the CIP submission is an expenditure schedule for FY10, FY11 and FY12 as outlined in the attachment. Projected expenditures for FY10-F12 are based upon pending negotiations with specific landowners.

Project Detail:

\$761,272.90	Encumbrances (after FY10 Committed settlements -Croghan/Stabler/Luther
<u>\$851,361.00</u>	Unencumbered - Cash Supported
\$1,612,633.90	Cash Supported/Encumbered/Unencumbered
\$7,529,277.00	Cumulative Appropriation
\$5,916,643.10	Difference in Appropriation Level and Cash Supported Revenue
\$1,850,000.00	Projected Ag Transfer Collection (FY10-FY12)
\$8,556,487.00	Total Revenue Required for 9 Prospect Properties
\$3,462,633.90	Total Cash Revenue (including future collections)
*\$3,945,000.00	Appropriation Request for FY11 (Ag Trans Tax, Invest. Income and G.O. Bonds)
*\$3,308,000.00	Appropriation Request for FY12 (Ag Trans Tax, Invest. Income and G.O. Bonds)
\$5,100,000.00	Total General Obligation Bond Request for FY11/12

* It is our understanding that following the submission of the CIP, OMB will conduct a reconciliation of revenues and expenditures. Once completed, this may result in an adjustment in the level of appropriation being requested in our CIP. We currently have an existing level of appropriation (\$4,084,057) that is absent of a cash supported revenue. The G.O. Bonds requested, if approved, will serve as a supplement revenue source for this level of existing appropriation.

One major cost change that has occurred more recently is a projected increase in Investment Income approved within our FY09-14 Capital Budget as discussed in detail above. Another cost change noted is a request for General Obligation Bonds. During economic downturns, the real estate market including the sale of TDRs is negatively impacted. This environment creates real economic challenges for farmers as they seek opportunities to receive equity from their farms. This in turn contributes to increases in landowner participation in our farmland preservation programs which help to provide equity to the farmers as we encumber their farms through these easement programs.

With an increased interest in landowner participation in farmland preservation, at a time when agricultural transfer tax collections are under performing, opportunities to protect sensitive agricultural lands are going to be lost unless alternative funding can be achieved. General Obligation Bonds have been previously approved for this program. In 2003, \$700,000 in G.O. Bonds was returned because of significant cash reserves on hand to fund this project. Recently, high landowner participation in these programs, combined with low agricultural transfer tax collections has depleted cash revenues and alternative funding sources must now be explored. DED is recommending that we revisit G.O. Bonding authority for this project to bridge the gap between the cash supported revenues and the deficit agricultural transfer tax collections in order to have sufficient resources to settle the nine (9) prospect properties.

Status of BLT program:

On November 18, 2008, the County Council adopted Bill 39-07 which provides the enabling authority to implement the proposed Building Lot Termination Program. On March 1, 2009, the corresponding Executive Regulation 03-09 was published in the Montgomery County Register. On July 2, 2009, the County Executive transmitted these Executive Regulations to the County Council. On August 17, 2009, the County Council announced that \$5 million in Advanced Land Acquisition Revolving Funds would be available as seed money for the BLT program on October 1, 2009. On October 6, 2009, the County Council will hold a public forum to take testimony from public regarding these regulations. Council work sessions are likely to occur sometime in November 2009. We are hopeful to have adopted regulations by the end of calendar year 2009. Another cost change for this program involves the appropriation of the \$5 Million Dollars from the ALARF to help provide seed funding for the BLT program once Executive Regulation 03-09 is adopted. These funds are legislatively mandated to be transferred to the County on or before October 1, 2009. These funds will be identified for appropriation as part of an FY09-14 supplemental appropriation request, which would make the funds available for utilization during the FY2010 program year.

Attachment: Expenditure Schedule for FY10, FY11, and FY12 and list of prospects
Justifying the funding request

ARTICLE 4. BUILDING LOT TERMINATION EASEMENTS.

Sec. 2B-15. Authority and Purpose.

(a) A building lot termination (BLT) easement is a form of agricultural easement that generally terminates remaining development rights by extinguishing the right to build a dwelling unit on an eligible buildable lot.

(b) The County Executive or a designee may create and buy building lot termination easements to achieve the goals of the County Preservation of Agriculture and Rural Open Space Functional Master Plan to preserve remaining farmland in, prevent the further fragmentation of, and minimize residential use of the Agricultural Reserve. (2008 L.M.C., ch. 37, § 1.)

Sec. 2B-16. Requirements for BLT easement.

(a) Except as expressly provided in this Article, Article 3 applies to any BLT easement.

(b) A BLT easement may only be created on a buildable lot which is:

(1) located in the Rural Density Transfer (RDT) zone;

(2) zoned for residential density no higher than one dwelling unit per 25 acres; and

(3) capable of being served by an individual sewage treatment unit which meets the requirements of Chapter 27A and applicable regulations issued under that Chapter.

(c) Notwithstanding Section 2B-7(d)(1), a BLT easement may be created on a buildable lot smaller than 50 contiguous acres.

(d) In addition to the application process in Section 2B-7, the County may accept a gift of a BLT easement.

(e) The County must be the grantee of each BLT easement.

(f) Notwithstanding any other provision in this Chapter:

(1) each BLT easement, once created, must not expire or be terminated;

(2) land under a BLT easement must not be subdivided or used for any residential, commercial, or industrial purpose unless the BLT easement expressly allows that subdivision or use; and

(3) land under a BLT easement may contain non-residential accessory agricultural uses and structures, subject to the terms of each easement. (2008 L.M.C., ch. 37, § 1.)

Sec. 2B-17. BLT Account.

(a) The Department must create a separate account under the Fund, entitled the BLT Account.

(b) The BLT Account must contain payments made to comply with conditions of approval which the Planning Board has imposed for certain development plans, and may also contain funds received through donation, appropriation, bond proceeds, or any other source.

(c) Funds in the BLT Account must be spent only on BLT easements. Funds in the BLT Account may be used in conjunction with other funds to buy BLT easements. (2008 L.M.C., ch. 37, § 1.)