

PHED Committee #2  
July 30, 2012

## MEMORANDUM

July 26, 2012

TO: Planning, Housing, and Economic Development (PHED) Committee  
FROM:  Marlene Michaelson, Senior Legislative Analyst  
SUBJECT: Economic Trends and Land Use Issues in the Agricultural Reserve

The purpose of this meeting is to brief the Committee on a number of different issues impacting the Agricultural Reserve, focusing on four main topics:

- Trends in Farming (both County and nationwide)
- Residential Development in the Agricultural Reserve
- Easement Programs (including transferable development rights and building lot termination easements)
- State Legislation relevant to agriculture

The Committee will receive presentations on these issues from the staff in the Department of Economic Development (DED) and Planning Department and representatives of the Agricultural Preservation Board (Billy Willard), the Agricultural Advisory Committee (Chair Dave Weitzer) and Montgomery Countryside Alliance (Executive Director Caroline Taylor).

### **Trends in Farming**

Attached on © 1 to 11 is a memorandum from the DED staff including information about trends in farming. DED staff will brief the Committee on the information in the memorandum. Data is available from the National Agricultural Statistics Services in five year increments from 1982 to 2007 (the 2012 data is not available yet.) Overall, the data shows changes in the types and sizes of farms, but some positive signs of a healthy agricultural economy.

Highlights are noted below:

- While the total amount of land assessed as being agricultural has decreased by approximately 35% from 1982 to 2012, the amount of land protected by easement has increased from virtually none to almost 93% of agriculturally assessed land (see © 5).
- The total number of farms decreased by 17% from 1982 to 2007, but there has been growth in the number of small farms (e.g., farms between 10 and 49 acres increased by 13%).
- While there has been a significant decrease in some types of farms (e.g., dairy farms decreased by 83% between 1982 and 2007), there has been significant growth in other areas. The number of farms with field crops except grains almost doubled, and farms that grow vegetables and melons tripled, while the number of farms with poultry and eggs increased from 3 to 59 in the 25 year time period – see © 7. DED projects additional growth in the number of these farms. Farms with cash grains have the most total acreage in the Reserve. DED believes that the demand for cash grains will remain high and projects an increase in the number of acres planted, due to market forces.

### Residential Development in the Agricultural Reserve

The Council has previously expressed interest in the amount of non-farm related residential in the Agricultural Reserve and whether such development would limit future farming. Staff asked Planning Department staff to summarize how many development approvals occurred over the past 5 years and current trends. A memorandum from Planning Department staff is attached at © 12 to 17.

Attached on © 18 is a chart listing all preliminary plan applications and approvals. Over the past **five years**, the Planning Board received applications with a total of 134 lots. Fifty-two lots were approved during this time period, approximately half in 2007. The slow-down in residential development in the Agricultural Reserve is similar to the slow-down in other areas, due to the economy.

Number of Approved Lots	Year
25	2007
7	2008
8	2009
11	2010
10	2011

There were 129 building permits pulled for dwelling units in the rural density transfer (RDT) zone since 2007, 27 on sand mounds. Since the Planning Board only approved a total of 52 lots during that period, most of the building permits were for lots approved prior to 2007.

The Council has also taken action in the past 5 years to limit the potential number of child lots and encourage smaller lot sizes for residential development, and Staff asked the Planning Department for updates on these approvals. The attached memorandum from Planning Department staff indicates that a total of 101 child lots have been created since 1980, **only 5 of them since 2007**. A summary of the approvals appears on © 16 to 17. Using the standards contained in the zoning text amendment related to child lots, a maximum of 67 additional lots could be created. Given the new requirements in the Zoning

Ordinance for child lots, Staff believes there is likely to be significantly few child lots created than the potential 67.

Planning Department Staff have been working to minimize the residential lot size over the past few years and will present some case studies to highlight a few recent approvals where they minimized lot size, and also some examples where they believe that a larger lot was appropriate.

### **Easement Programs**

Several different state and county easement programs are used to preserve agricultural land. A description of easement programs is attached at © 19 to 26. State programs include the following:

- The Maryland Agricultural Land Preservation Foundation (MALPF)
- Rural Legacy Program (RLP): State Funded Grant Program

The programs are funded by a combination of general obligation (GO) Bonds, Real Estate Transfer Taxes, and the Agricultural Transfer Tax, and the combination of reduced tax revenue and state fiscal constraints has significantly reduced funding available for these programs.

The County operates a Montgomery County Agricultural Easement Program (AEP). Traditionally funded by the County's share of State Agricultural Transfer taxes, the County Government is currently funding acquisitions for this program, utilizing \$2 Million in appropriated G.O. Bonds. Interest in these easement programs far exceeds the available funding, and DED believes the County may be missing unique opportunities to preserve farmland. Although pressure for residential development has diminished, the best time to purchase easements is when other opportunities for development are limited.

### **Building Lot Termination Program**

The Council created the building lot termination (BLT) program in 2008 and approved Executive Regulations to implement the program in July 2010. Since that time, DED has purchased 7 BLTs and has recently extended offers to purchase another 10 BLTs. Additional information appears on © 4. Each BLT prevents the development of a residential unit on 25 acres of land. The purchase price has averaged approximately \$246,000 per BLT. Four BLTs have been purchased on the private market, and DED is aware of another private transaction currently being negotiated. Staff believes that a private market has developed sooner than anticipated due to recent development in Twinbrook and White Flint. This is all very positive news.

### **Transferable Development Rights Program**

Attached on © 12 to 16 is the Planning Department's status update on the transferable development rights (TDR) program. They have provided this information to the Council periodically to determine whether there are sufficient receiving areas for all the owners of RDT zoned land who wish to sell TDRs. This latest status report indicates that there will be a 2,448 deficit of receiving area TDRs, assuming 58% utilization. (Historically, property owners have not purchased 100% of the TDRs they are eligible to purchase, and 58% is based on historical trends.)

In the past, deficits have not been considered too great a problem, since the Planning Department believed that pending master plans would create significant new capacity. However, the new Commercial/Residential (CR) zone, which has been used for much of the higher density zoning, requires the purchase of BLTs, not TDRs, and it is likely that this zone will be used in many of the areas contemplated for higher density development. Unless the Council determines that it no longer has an obligation to ensure that all property owners with TDRs have the opportunity to sell those TDRs, it will need to take action soon. Potential options include, but are not limited to, the following:

- Reassess which zones should have TDR requirements. If TDRs are only required in residential zones and the planning strategy continues to be to promote mixed-use in most high density areas, this strategy may not create sufficient new receiving areas, and could even reduce the number of existing receiving areas if high density residential zones are converted to the CR zone.
- Determine whether there should be a TDR requirement in the CR zone.
- Set goals for establishing receiving areas in specific planning areas.
- Assess whether it may be advantageous to have a public purchase of TDRs and allow the private market to focus on BLT purchases.

Regardless, Staff believes it is critical to get a better understanding of the number of TDRs potentially available for sale. This can be done by requiring registration by a date certain by property owners in the RDT zone, with a commitment that the County will provide receiving areas (or potentially public purchase of TDRs) for those who register and no commitment for those who do not register. There needs to be a clear recognition that the ability to identify new receiving areas will diminish both due to a decrease in undeveloped land and new zoning strategies focused on mixed-use zones that do not require TDRs. While there may be no need to formally terminate the TDR program, either the Council needs to identify strategies to increase receiving areas or recognize that property owners' ability to sell TDRs is not guaranteed into the future.

## **State Legislation**

The following legislation impacting the Agricultural Reserve was adopted by the state legislature this past year:

### ***Chapter 149 - Sustainable Growth and Agricultural Preservation Act of 2012***

This law describes four growth tiers based on specified land use characteristics that may be adopted by a local jurisdiction. If the jurisdiction does not adopt the tiers, they may not approve a "major" residential subdivision served by on-site sewage disposal systems, community sewage systems, or shared systems beginning December 31, 2012. (In Montgomery County, a major residential subdivision is one with more than 5 units.) Montgomery County has already informally submitted its tier designations to the state and has received positive feedback and will be preparing a formal submittal this fall.

### ***Chapter - 428 - Agricultural - Cost Sharing for Water Pollution Control***

This law increases the maximum dollar amount limit on State cost sharing that may be provided per project to implement best management practices on a farm to prevent or control agriculturally related nonpoint source water pollution, from \$100,000 to \$200,000.

***Chapter 448/449 - Family Farm Preservation Act***

This law exempts from the State estate tax up to \$5 million of qualified agricultural property. To qualify for the exemption, the property must pass from a decedent to a qualified recipient who enters into an agreement to use the property for farming purposes after the decedent's death.

***Chapter 675 - Montgomery County - On-Site Sewage Disposal System and Well Easements - Rural Zones***

This bill authorizes an on-site sewage disposal (septic) system or well located in a Montgomery County "rural zone" to serve contiguous subdivided property under an easement, under specified conditions and exceptions. This legislation was considered essential to enable the County to limit the size of residential lots in agricultural zones.

***House Bill 722/Senate Bill 1100 - Montgomery County - Real Property - Enforceability of Recorded Covenants and Restrictions - Agricultural Activities and Structures***

This bill would have made covenants that prohibit agricultural activities and/or structures in agricultural zones unenforceable. It did not pass this year, but DED staff are hopeful it will be reintroduced next year.



## DEPARTMENT OF ECONOMIC DEVELOPMENT

Isiah Leggett  
*County Executive*

Steven A. Silverman  
*Director*

July 24, 2012

Memorandum:

TO: Marlene Michaelson, Senior Legislative Analyst  
Montgomery County Council

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

SUBJECT: Montgomery Agricultural Trends PHED Committee  
Briefing: July 30, 2012

In advance of the July 30, 2012 Planning, Housing and Economic Development (PHED) Committee briefing concerning land use and economic trends in the Agricultural Reserve, the Agricultural Services Division prepared the historical data and other information you requested that will aid in the discussion during the Agricultural briefing.

### **Introduction:**

The agricultural industry within the County is constantly evolving and while agriculture is a pure competitive form of business, we must recognize that these changing trends are not unique to Montgomery County. While in some cases the positive indicator within the County's agricultural industry can be tied to local agricultural market conditions, we are finding more and more that the success of local agriculture hinges on many forces outside of the control of our producers and these forces are occurring on regional, national and global levels.

### **Trends in Agricultural Land Use:**

For over two hundred years, Montgomery County has been the home to a strong and diverse agricultural industry. There is a long and rich farming heritage in the County; a heritage and tradition that has contributed greatly to the incredibly high quality of life the residents of Montgomery County enjoy today. Preserving this heritage and encouraging land preservation

efforts in the Agricultural Reserve, continues to be a top priority in Montgomery County. Cash grain farms still dominate other types of agricultural operations in terms of total acres in production. This trend of Cash grain will remain for many years to come even as we see increases in other small scale farming operations producing table food crops.

Since World War II, we have seen the number of farms and farmland acreage steadily declining in Montgomery County. The downward trend of total Agriculturally Assessed farmland in the County is not surprising given our proximity to Washington DC and we have the highest population in the State of Maryland. Figure 1 below illustrates the comparison of total farmland acreage to farmland protected by Easements covering time period of Pre 1980 through FY12.

Figure 1

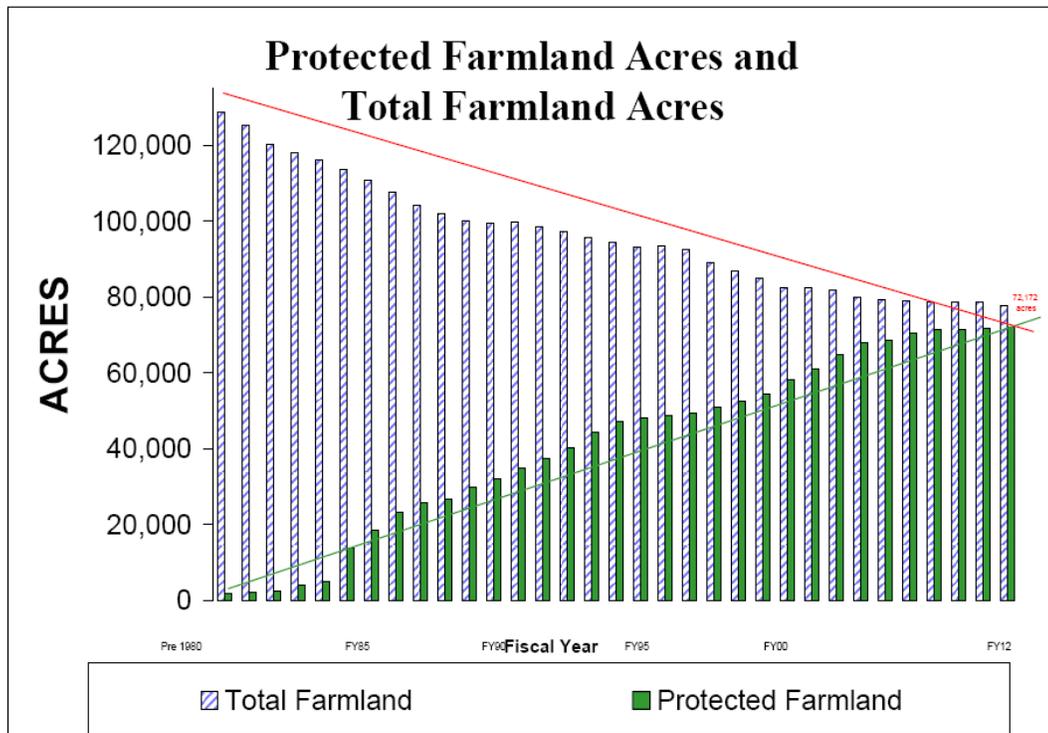


Table 1 illustrates data compiled by the National Agricultural Statistics Services for the agricultural census of Montgomery County. The data includes the number of farms and average size of farms as well as some other agricultural data for the period of 1982 through 2007. The agricultural census is conducted every five years and we have selected the period of time since the creation of the Agricultural Reserve to evaluate the trends of the industry over the life of the Agricultural Reserve. Please note that the agricultural census data for 2012 will not be available until sometime next spring.

**Table 1**

	<u>1982</u>	<u>1992</u>	<u>2002</u>	<u>*2007</u>	<u>2012</u>
<b>Number of Farms</b>	675	561	577	561	
<b>Average Size of Farm</b>	157	147	130	121	
<b>Land in Farms</b>	106,157	82,470	75,077	67,613	
<b>Ag Assessed</b>	120,074	99,791	85,043	79,232	77,726
<b>Principle Operators by Operation</b>					
Farming	N/A	253	292	244	
Other	N/A	<u>308</u>	<u>286</u>	<u>317</u>	
Total		561	578	561	
Percent Farming		45.10%	50.52%	43.49%	
<b>Average Age of Principle Operator</b>	N/A	54.3	56.3	60	
<b>Market Value of Ag Products Sold (Millions)</b>	\$25,330	\$27,717	\$41,634	\$33,193	
<b>Crop Sales (Millions)</b>	\$103,383	\$19,953	\$36,239	\$25,344	
<b>Livestock Sales (Millions)</b>	\$122,232	\$7,764	\$5,395	\$7,850	

\* In 2007 Severe Drought in MC had major impact on Agricultural Products and total Market Value of Products Sold

The steady decline of farmland in Montgomery County was a major concern for the County during the 1970's. One of the most important and significant initiatives under taken by the County began over 30 years ago in 1980 when almost a third of the County, more than 93,000 acres of land, was designated as the County's Agricultural Reserve. The vision was to preserve this land not only for the benefit of the County's farmers, but to ensure future generations of residents would enjoy the environmental and esthetic benefits of this wondrous open space. The vision has become a reality. Montgomery County is recognized as a national leader in the field of land preservation by preserving over **72,172** acres of farmland to date. This represents almost 93 percent of all agricultural land (**77,726 acres-Ag Assessed farmland**) remaining that is protected by agricultural easements.

We have accomplished this milestone by partnering with rural landowners to utilize several agricultural land preservation programs. The programs are designed to assist the landowner by placing agricultural and conservation easements on land to prevent future commercial, residential or industrial development of the property.

The most effective tool created by the County to fight the battle against suburban sprawl, was the designation of a bona-fide agricultural zone, known as the Rural Density Transfer (RDT) Zone. The RDT zone became the predominant zoning in the Agricultural Reserve. By law, RDT zoning created a 1 lot per 25 acre density for subdivision of land, but allows landowners to sell Transferable Development Rights-TDRs based on 1 TDR per 5 acres which is equivalent to the previous Rural zone density of 1 lot per 5 acres. The landowners sell the TDR to developers in areas designated for higher residential densities elsewhere in the County where public services exist to accommodate the development.

## **Status of Building Lot Termination Program:**

The most recent program designed to enhance the protection of Montgomery County agricultural land is the Building Lot Termination Program (BLT). The purpose of the BLT program is to offer another farmland preservation option that will enhance the farmland preservation programs and initiatives. This BLT program focuses on specific ways to encourage the preservation of farmland owned by individuals that have retained development rights with their farms. Many RDT landowners have decided, for a variety of reasons, to not protect or encumber their farms through our publically funded easement programs that are currently available. There are two components to the BLT easement program. The first component is a publicly funded initiative and the second is funded by private market in a similar fashion as the County's nationally recognized Transferable Development Rights program (TDR). Both public and private funding components both require the termination of an on-site waste disposal system for each BLT proffered for sale.

We are very excited to report that since the inception of the BLT program through the adoption of Council Bill 39-07 on November 18, 2008 and the adoption of Executive Regulation 3-09 AM by the County Council on July 27, 2010 we have made significant progress with this new BLT program.

The County conducted the First BLT Open Purchase Period for the BLT program during spring of 2011 which led to the purchase of 7 BLTs (Elimination of 7 rooftops), protecting a total of 308 acres, at cost of \$1.7 Million Dollars. The average price per BLT was roughly \$243,000 dollars.

After the completion of all BLT easements during the first opened purchase period, the County conducted a second BLT Open Purchase Period during spring 2012. It became highly apparent that there is much interest in this program as witnessed by an increased number of applicants to this program. Currently, BLT easement offers have been extended to purchase 10 BLTs, covering 466 acres, at cost of \$2.5 Million Dollars. The average BLT easement value for this opened purchase period is roughly \$250,000 dollars.

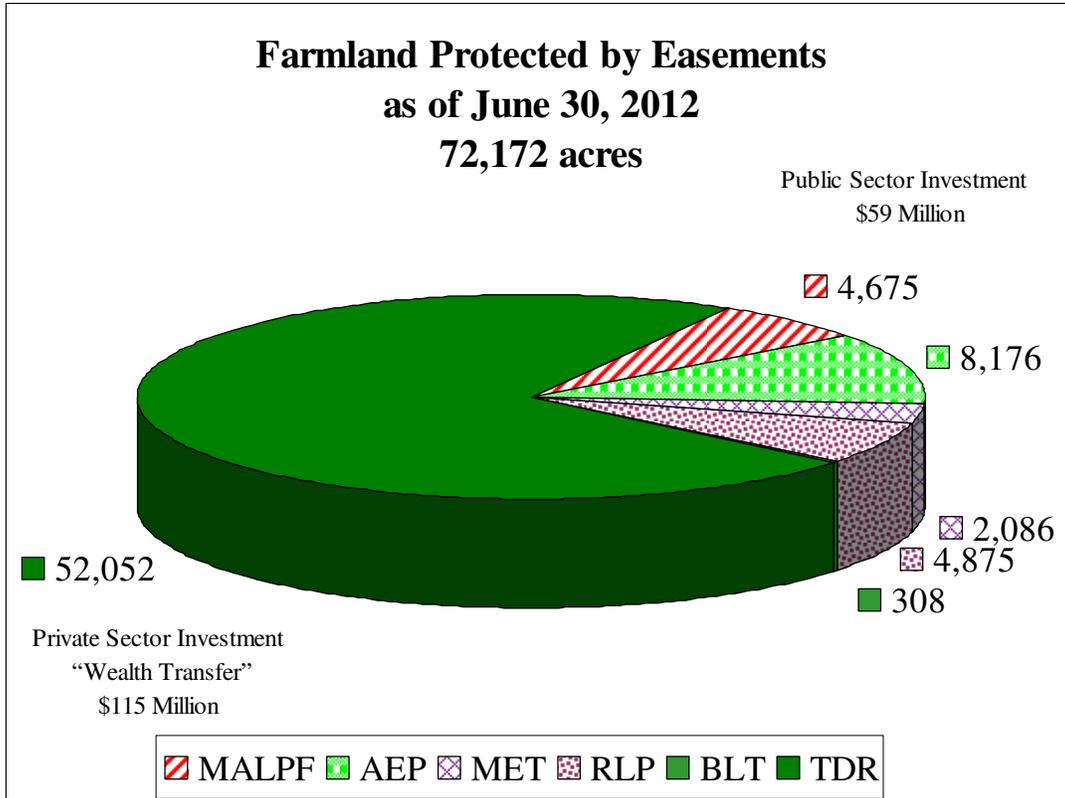
In the Spring/Summer of 2102, we also monitored the first 4 Private BLTs purchased by Park Lawn North LLC, for their project in the TMX Zone –Twinbrook Sector Plan. Park Lawn North LLC, also required a partial BLT for this project. The average price for these private BLT's was about \$238,000 dollars. DED assisted this developer with the purchase of .9616 BLTs at cost of \$216,360.00 which was deposited into the Agricultural Easement Program Fund specifically for the BLT program.

DED is aware of an additional Private BLT which is being purchased by Federal Reality for a Commercial Residential-CR project. This acquisition is still in the negotiation phase and we are not aware of the purchase price at this time. DED is assisting Federal Reality in the purchase .8199 BLTs at a cost of \$184,477.50 in association with Phase I of the Mid-Pike Plaza Redevelopment Project. Once settled, the \$184,477.50 will be deposited into the Agricultural Easement Program Fund specifically for the BLT program.

**Summary of Agricultural Land Preservation (All Programs)**

Since the inception of the County’s TDR program, the County has developed other agricultural land preservation programs as well as partnered with Federal and State Government programs to provide agricultural landowners alternatives to development in favor of permanently protecting farmland for agricultural use. Figure 2 below details the progress of our Agricultural Land Preservation initiatives with the preservation of 72,172 acres of Agricultural Land by easement.

Figure 2



There is still a great amount of interest in farmland preservation in Montgomery County. With each agricultural easement purchase period, we are seeing trends that favor a high interest. Unfortunately, funding at both State and Local levels is insufficient to meet this demand. During our most recent AEP open purchase period, we had more interest (over \$4 Million in acquisitions) and only \$2 Million dollars to work with. The future funding for farmland preservation needs to be addressed for the DED to help the farmers that are interested in preserving their farms.

**The Funding Dilemma:**

We must consider alternative funding mechanisms as well as maintaining commitments to public policy and other initiatives that aid in the preservation of agricultural land, especially at times when market conditions favor reduced Fair Market Value of Agricultural Lands. The County may never again have the opportunities that exist today to preserve farmland.

This is of particular interest because collections of Agricultural Transfer Tax (the primary funding source for Agricultural Easements) continue to under perform. Normally, the County collects about \$1 – 1.5 Million in Agricultural Transfer Taxes on an annual basis. In the Period of FY09- FY12 the County has only collected about \$988,000 dollars in Agricultural Transfer Taxes. This trend continues to be worrisome because the County collected only \$75,821.25 in agricultural transfer taxes during the period of July 1, 2011 through June 30, 2012.

It does not appear this funding trend will improve anytime soon, therefore alternative funding, such as General Obligation Bonds need to be put on the table for discussion, especially in light of some of incredible opportunities to protect large contiguous areas that the DED is currently discussing. The County must also embrace the application of BLT receiving areas wherever possible. This will trigger the investment in private dollars in the preservation of farmland which compliments our public funded preservation initiatives. This includes studying the status of the County’s Transferrable Development Rights (TDR) program and recognize that we still have a significant deficit of TDR receiving capacity to absorb the remaining TDRs in the Agricultural Reserve that are available for sale..

While our much heralded TDR program is over 30 years old, there is still a need to provide opportunities for private landowners to market their TDRs. The planning for new TDR receiving capacity is a real challenge and we should explore alternative uses for the application of TDRs. By doing so, we once again provide a mechanism for the private sector investment in the preservation of farmland which compliments publicly funded preservation efforts.

**Economic Trends in Agriculture:**

Table 2 below illustrates data compiled by the National Agricultural Statistics Services as part of the agricultural census for Montgomery County relating number of farms by size.

Table 2

	<u>1982</u>	<u>1992</u>	<u>2002</u>	<u>*2007</u>
<b># of Farms By Size</b>				
Farms Less than 10 acres	90	83	88	103
Farms 10-49 acres	232	221	260	261
Farms 50 - 69 acres	59	47	48	40
Farms 70- 99 acres	65	43	25	24
Farms 100 - 139 acres	51	35	41	38
Farms 140-179 acres	26	24	20	16
Farms 180 -219 acres	30	17	18	15
Farms 220 - 259 acres	13	10	13	4
Farms 260 -499 acres	58	44	31	33
Farms 500 - 999 acres	31	22	20	15
Farms 1000 acres or more	<u>20</u>	<u>15</u>	<u>13</u>	<u>12</u>
Totals	675	561	577	561

While the number of larger farms is on the decline, we are seeing an increase in smaller farms, more particularly in the 10 to 49 acre range. This seems to support trend of small farms that are growing diversified products including more table food products. Figure 3 illustrates the increasing trend of smaller farms 10 to 49 acres in size.

Figure 3

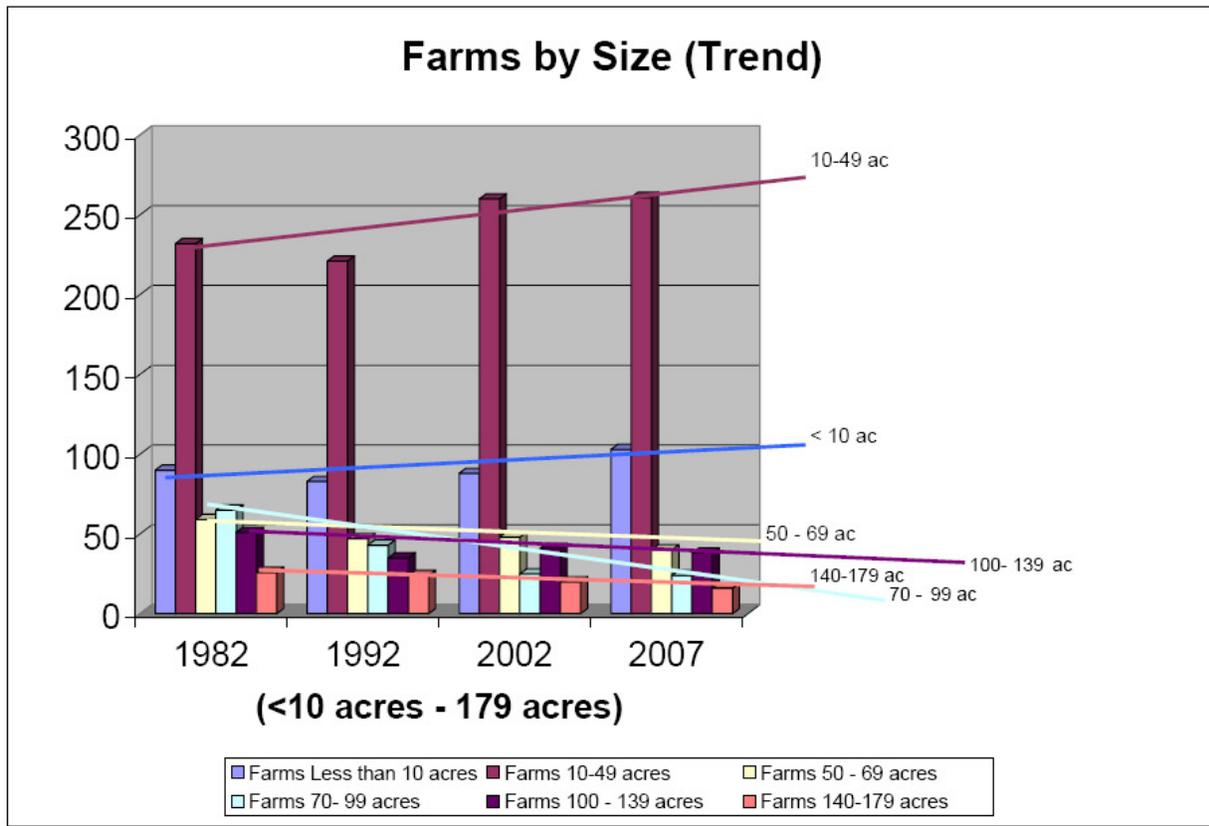


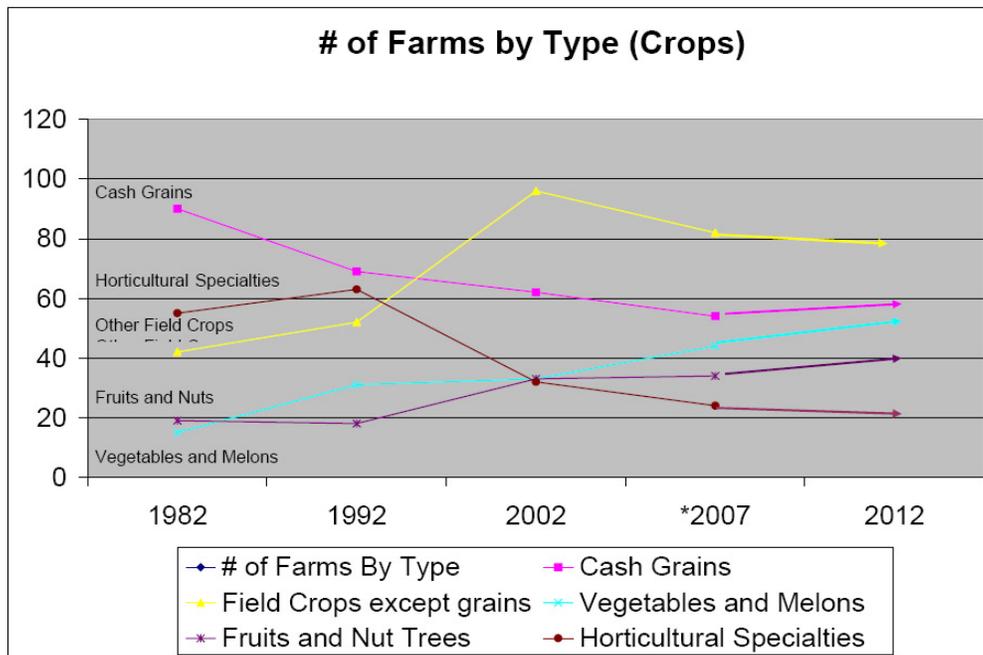
Table 3 below illustrates data compiled by the National Agricultural Statistics Services as part of the agricultural census for Montgomery County relating number of farms by type. Cash grain farms still dominate other types of agricultural operations in terms of total acres in production. This trend of Cash grain will remain for years to come even as we see increases in other small scale farming operations producing table food crops. The growing demand for food in addition to the Ethanol used in E-10% gasoline will help to keep demand of grain production up. The number of farms producing vegetables, nuts and fruit are increasing in the County. Farms producing poultry and eggs are also on the increase in the County.

Table 3

# of Farms By Type	1982	1992	2002	*2007
Cash Grains	90	69	62	54
Field Crops except grains	42	52	96	82
Vegetables and Melons	15	31	33	44
Fruits and Nut Trees	19	18	33	34
Horticultural Specialties	55	63	32	24
Livestock, except dairy, poultry and animal specialties	166	132	110	101
Beef Cattle, except Feedlots	120	110	104	80
Dairy Farms	52	23	13	9
Poultry and Eggs	3	3	47	59
Animal Specialties	84	55	47	74
General Farms	29	5	0	0
Totals	675	561	577	561

In Figure 4, the DED projects that Montgomery County will see increases in the number of acres planted in Cash grains due to current commodity prices. Several farms are moving away from other field crops and planting Cash grains due to the current market forces. The DED also projects the number of farms producing Fruits, Nuts, Vegetables, and Melons will continue to increase over time.

Figure 4



The DED projects in Figure 5 the number of small Livestock operations will continue to increase especially animal specialties which include Goats for milk, cheese, and meat, and Sheep. The number of Poultry farms producing both meat chickens and egg laying hens has increased in the County and the DED projects this trend will continue.

Figure 5

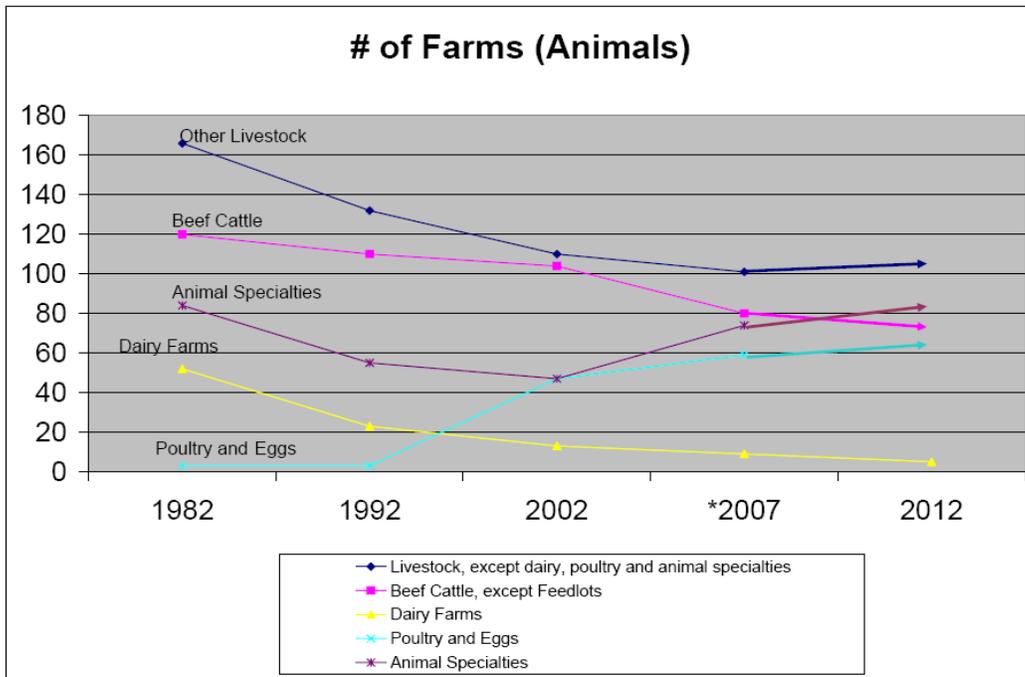


Table 4 below illustrates data compiled by the National Agricultural Statistics Services as part of the agricultural census for Montgomery County relating farm grain storage capacity. In recent years we have seen expansion of on-farm grain storage that helps our farmers market their grain throughout the year to take advantage of market forces. The price of grain is usually at it lowest during the harvest as the supply of grain is very high. Farmers that dry and store their grain can wait until the winter or out of season and sell their grain for higher prices.

Table 4

Grain Storage Capacity	1982	1992	2002	*2007
Farms	N/A	N/A	32	32
Bushels	N/A	N/A	1,066,923	1,457,775
Avg Bushels per Farm	N/A	N/A	33,323	44,930

Table 5 illustrates data compiled by the National Agricultural Statistics Services as part of the agricultural census for Montgomery County relating Community Supported Agriculture (CSA), Organic Farms and Agricultural Products Sold for Human Consumption. With the increases in the number of farms 10-49 acres in size we have seen the number of farmers offering Community Supported Agriculture-CSA's increase and now the USDA is tracking the number of CSA's as part of the agricultural census. The CSA represents a good business model where the farmer shares with the customer the risk and uncertainty of producing the agricultural products. The decrease in the number of organic operations has much to do with the difficulty of achieving the certification by meeting the growing requirements. Some farmers have told the DED that meeting the growing requirements for organic certification represents additional production costs that are not always cost effective. The number of farms that are producing-table food crops-products for direct human consumption is increasing. These are mostly small scale operations

that help to explain the increasing number of farms from 10 to 49 acres in size. The following types of farms are included in the total of 217 farms (Vegetables/Fruit/Nuts-78 Beef-80 Poultry-59).

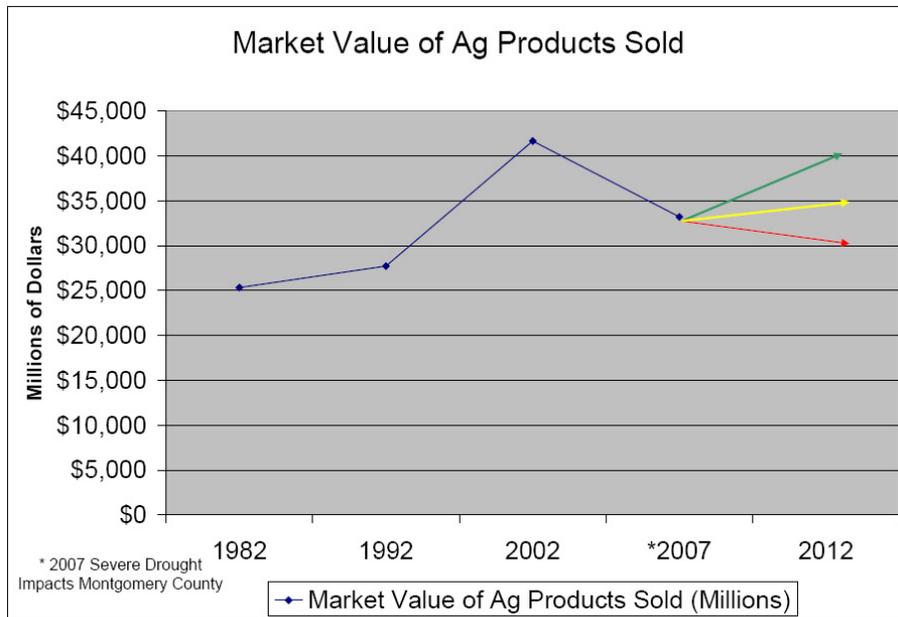
Table 5

**Misc Ag. Stats**

# of farms - Marketing CSA	N/A	N/A	N/A	15
# of Organic Farms				
# of farms with Agricultural Products Sold	N/A	N/A	12	10
Directly for Human Consumption	N/A	N/A	71	217

In Figure 6, the total Market Value of Agricultural Products Sold went down from \$41.5 million in 2002 to \$33 million in 2007. The reduction in the Market Value of Agricultural Products Sold represented the first time this figure went down since the Agricultural Reserve was created. In 2007 the Mid-Atlantic region including Montgomery County experienced a severe drought that impacted all agricultural products. In response to this severe drought the County Government approved \$1.5 million to be distributed to the farmers that experienced crop losses greater than 20 percent. The DED is hopeful the growing season this year 2012 will be less severe and the Market Value of Agricultural Products sold will once again increase.

**Summary of Agricultural Trends: Figure 6**

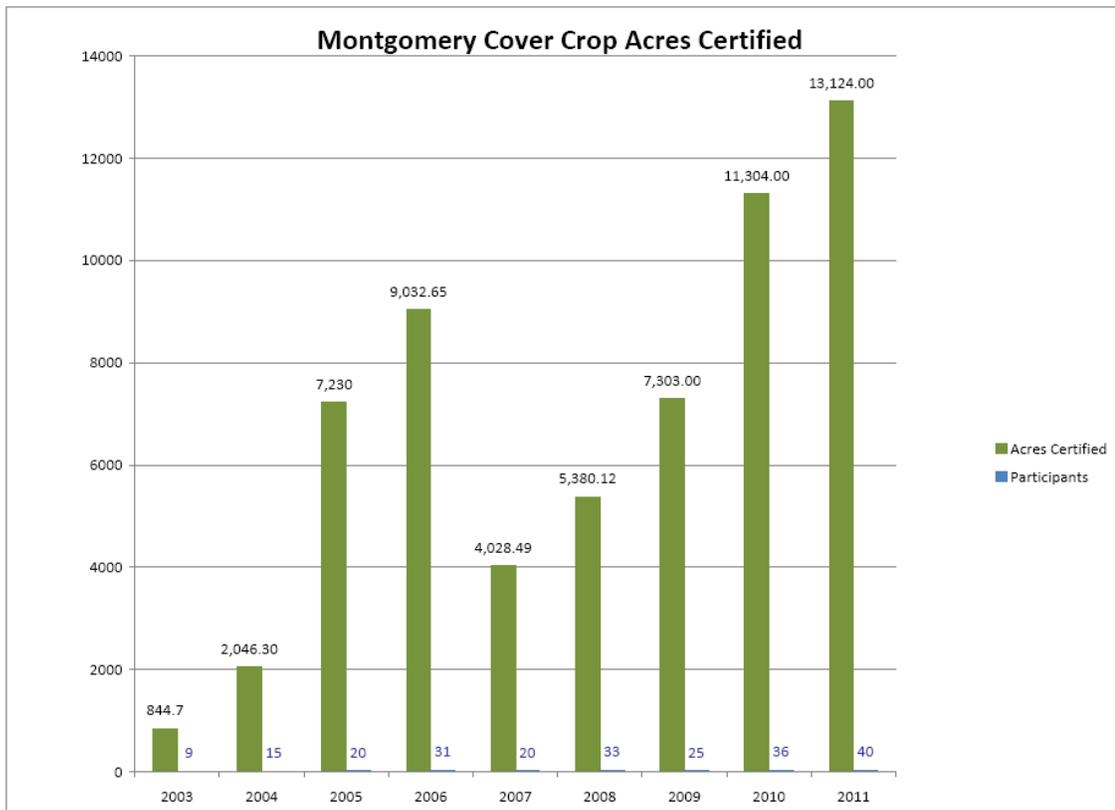


**Other Issues/State Legislation Relating to Agriculture:**

The DED was involved with State legislation surrounding HB 722/SB1100 that did not pass the 2012 MD Legislative Session. This legislation attempted to prohibit the recording of Private Covenants on properties encumbered by TDR easements where the covenants are in conflict with Legislative Intent of RDT Zone. The Montgomery County Agricultural Advisory Committee

recommends that an amendment to the Subdivision Regulations-Chapter 50 is needed to create a new condition of approving preliminary plans of subdivision before the record plat is recorded in the land records. The condition would state that once the Planning Board approves the record plat no future owners, developers, or Home Owners Association can record private covenants in the land records that are in conflict with the legislative intent of the RDT zone. This amendment will help to prevent future cases involving private covenants being recorded against RDT properties. If the County Government desires to also address the existing cases of private covenants that are in conflict with the RDT zone then a new State Bill would be needed for the 2013 Maryland Legislative session.

**Montgomery County Farmers Increase Acres in Conservation-BMP's Figure 7**



Montgomery County farmers have always been leaders in the area of conservation and implementing Best Management Practices-BMPs. In the 1960's, Montgomery County was one of the first counties in the Nation to implement no-till planting of commodity crops as a soil conservation practice. In Figure 7, Montgomery County farmers during the past 5 years have increased the acres planted in Cover Crops that establish a vegetative cover over the soil in the winter months while the cover crops also absorb any nutrients in the soil that remained from the previous crop.



# MONTGOMERY COUNTY PLANNING DEPARTMENT

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**TO:** Marlene Michaelson  
Senior Legislative Analyst  
Montgomery County Council

**FROM:** Callum Murray  
Area 3 Master Plan Supervisor

**SUBJECT:** PHED Agricultural Briefing

**DATE:** July 23, 2012

This memorandum summarizes the most up to date information on:

1. Transferable Development Rights (TDR) Sending and Receiving Data 2012  
The TDR data is a quick update to the 2008 TDR Tracking Report, taking into account master, sector, and preliminary plans approved by the Planning Board in the interim.
2. Residential Development in the Agricultural Reserve  
The attached Excel file (Applications table) is for preliminary and pre-application plans in the AROS master plan zoned RDT. The file applies to all applications approved, denied or open from January 1, 2007 to the present. Most applications classed as open are awaiting further information or submissions from the applicants.
3. Child Lots  
This is a brief summary of the current status of Child Lot applications following County Council approval of a Child Lot Zoning Text Amendment.

## 1. TRANSFERABLE DEVELOPMENT RIGHTS 2012

In 2008, Planning staff reported to the Planning Board and County Council on the status of the Transferable Development Rights (TDR) program. Due to economic conditions, there has been limited activity in the program since 2008. Today, staff observes a small increase in the TDR Receiving Area Capacity and TDRs Recorded, and a slight decrease in the TDR Receiving Area Deficit.

### Background

The tables below compare current data with that shown in the January and March 2008 TDR Tracking reports. The final table column reflects 1,135 TDRs approved by the Planning Board since the 2008 Report, but which have not yet been recorded on a plat.

## Sending Area Data

In 2008, staff analyzed the Rural Density Transfer (RDT) Zone and identified a Sending Area Supply of 11,134 TDRs. There have been no re-zonings to or from the RDT zone, so the Sending Area Supply is unchanged.

## Receiving Area Data

In 2008, staff reviews of Master and Sector Plans included:

- TDR Receiving Areas to determine total capacity to receive TDRs (TDR Receiving Area Capacity);
- TDRs recorded on a plat (TDRs recorded);
- whether developments had been recorded without using all of the possible TDRs (Diminished Capacity); and
- Remaining Capacity for the Plan Area.

In the table below, these figures have been updated based upon the six Master and Sector Plans adopted since the 2008 Tracking report; these Plans cover Twinbrook, the Germantown Employment Area, White Flint, Great Seneca Science Corridor, the Wheaton CBD, and the Town of Kensington and Vicinity.

<b>Receiving Area Data</b>			
	<b>March 2008</b>	<b>July 2012</b>	<b>Unrecorded* (2008-2012)</b>
TDR Receiving Area Capacity	15,986	16,113	16,113
TDRs Recorded	6,115	6,268	7,403
Diminished Capacity	4,615	4,615	4,725
Remaining Capacity	5,256	5,230	3,985

**Notes:**  
 \*As noted above, the Unrecorded column reflects TDRs on projects approved by the Planning Board, but not yet been recorded on a plat.

TDR Receiving Area Capacity:  
 The 2009 Germantown Employment Area Sector Plan added a TDR receiving area with a capacity for 148 TDRs, and the 2010 Great Seneca Science Corridor lost a TDR receiving area with a capacity for 21 TDRs.

TDRs Recorded  
 Since the 2008 report, 153 TDRs have been recorded on plats. The Planning Board has approved the use of an additional 1,135 TDRs in Receiving Areas (Clarksburg, Gaithersburg Vicinity, Fairland and Olney Master Plan areas) which have not yet been recorded.

Diminished Capacity:  
 An analysis of diminished capacity on recorded plats has not been performed, so the 2008 percentage figure was used for July 2012. Staff identified Planning Board approvals that will diminish capacity by 110 TDRs when they are recorded.

The change in the TDR Receiving Area Capacity reflects changes made through Master and Sector plans since the 2008 report. Six plans have been approved since 2008, with two plans having changes in TDR sending or receiving areas. Between 2008 and 2012, the TDR Receiving Area Capacity increased by 127 due to the Sectional Map Amendments for the Germantown Employment Area Sector Plan and the Great Seneca Science Corridor Master Plan. In addition, 153 TDRs were recorded on plats in receiving areas.

### Summary Data

<b>Reductions in Sending Capacity</b>				
		<b>Jan./March 2008</b>	<b>July 2012</b>	<b>Unrecorded (2008-2012)</b>
Sending Area Supply		11,134	11,134	11,134
Minus TDRs severed through easement		9,630	9,855	9,855
Equals TDRs remaining sending area TDRs	subtotal	1,504	1,279	1,279
Total TDRs severed through easement		9,630	9,855	9,855
Minus TDRs recorded on a subdivision plat		6,115	6,268	7,403
Equals TDRs severed, remaining to be sent	subtotal	3,515	3,587	1,279
<b>TDRs remaining to be sent</b>	<b>Total</b>	<b>5019</b>	<b>4,866</b>	<b>3,731</b>

<b>Reductions in Receiving Capacity</b>			
	<b>January/March 2008</b>	<b>July 2012</b>	<b>Unrecorded (2008-2012)</b>
Maximum receiving area capacity	15,986	16,113	16,113
Minus loss through development	4,615	4,615	4,725
Equals remaining TDR receiving area capacity	11,371	11,498	11,388
Available receiving area capacity	11,371	11,498	11,388
Minus TDRs recorded on a subdivision plat	6,115	6,268	7,403
Equals remaining TDR receiving area capacity	5,256	5,230	3,985

To accord with previous Tracking reports, TDRs are counted when they are recorded on a plat, and the deficit is based upon the historical utilization rate of 58 percent.

<b>Reconciliation of Sending and Receiving Areas</b>			
	<b>January/March 2008</b>	<b>July 2012</b>	<b>Unrecorded (2008-2012)</b>
Total number of TDRs remaining to be sent	5019	4,866	3,731
Total TDR sending supply adjusted for 58% utilization*	8,653	8,390	6,433
Minus total TDR receiving area capacity	5,256	5,230	3,985
Equals estimated TDR receiving area deficit	3,397	3,160	2,448
*E.g., 8,653 X 58% + 5,019			

The receiving area deficit of 2,448 is a worse-case scenario, as the historical rate of a 58% usage of TDRs in the receiving areas is assumed.

Although the deficit has decreased, this is a concern which will need to be addressed, either via future master plans, or via the Zoning Code Rewrite. For good reason, the Council focused on Building Lot Termination (BLTs) in the last six Master plans and rezoned 1,158 acres to BLT receiving zones in furtherance of agricultural preservation goals.

The currently open Master Plans are mostly in transit areas, so they may be more suited to the CR zone than to TDR receiving zones.

The Plans are:

- Burtonsville Commercial Crossroads Plan
- White Oak Science Gateway Master Plan
- Long Branch Sector Plan
- Chevy Chase Lake Sector Plan
- Greater Lyttonsville Sector Plan
- Glenmont Sector Plan
- White Flint 2 Sector Plan

#### **TDR Program – Purchase Trends**

On March 8, 2012, the Planning Board approved Site Plan 820110040 for Greenbriar at Norbeck Crossing. The proposal was for 262 dwelling units (including 15% MPDUs) consisting of 24 one-family detached homes, 95 townhomes and 143 garden apartments; located in the northeast quadrant of the intersection of Norbeck Road (MD 28) and Georgia Avenue (MD97); 30.76 acres; R-200/TDR-7 Zone, Olney Master Plan.

The plan used the optional method of development using Transferable Development Rights (TDRs) and Moderately Priced Dwelling Units (MPDUs).

The applicant was required to provide 103 TDRs, two-thirds of the number of development rights permitted to be transferred to the property.

The attorney for the applicant subsequently informed planning staff that the applicant, following approval, had purchased all 103 TDRs for approximately \$22,000 per TDR. The TDRs had previously been severed from RDT Zoned property.

This is the first sale of TDRs that staff is aware of in the past 5 years.

### **Local Map Amendment**

The Hearing Examiner's opinion on a pending Local Map Amendment for a TDR receiving area will be forwarded to the County Council shortly. Because of ex parte rules, staff is unable to provide details at this time.

## **2. RESIDENTIAL DEVELOPMENT IN THE AGRICULTURAL RESERVE**

The attached Excel file (Applications table) is for preliminary and pre-application plans in the AROS master plan zoned RDT. The subdivision cases submitted in 2000 were used as a starting point. All plans approved by the Planning Board before 2007 were removed. The following numbers are based on pre-app. and preliminary plans in the RDT:

- 134 proposed lots;
- 5 proposed outlots;
- 52 approved lots;
- 1 approved outlot; and
- 8 lots that were denied.

There were 129 building permits (27 on sand mounds) pulled for dwelling units in the RDT Zone since 1/1/2007. There were also 14 commercial building permits issued. Given that the Planning Board has approved only 52 lots since 2007, many of these are obviously for pre-2007 preliminary plan approvals, although the plats may have been recorded since 2007.

Please note that staff did not have time to individually check all the entries in the Hansen database.

## **3. CHILD LOTS**

101 child lots have been recorded by plat in the Rural Density Transfer (RDT) zone between 1980 and 2012. Eleven plans with child lots have been received and reviewed by staff or the Planning Board since September 2007, and five child lots have been recorded.

- Three pre-preliminary plans have been reviewed by staff and may be resubmitted at some point (Gladhill - 3 child lots, Lechliden - 1 child lot, Keshishian - 2 child lots).
- Two plans are pending (Ganassa - 5 child lots, Cavanaugh - 2 child lots).
- Six plans have been approved (Kiplinger - 2 recorded child lots, Bruchie - 2 child lots, Allnutt - 1 child lot, Dufresne - 3 recorded child lots, Duck's End - 2 child lots, Jones - 1 child lot).
- One plan has been denied (Copenhaver - 5 child lots).

Note: The Dufresne approval was reversed on appeal, and the plat has been rescinded. The Jones application was initially denied, then approved when it was revised to meet the new ZTA standards.

Assuming all approved plans receive plat approval, there will be a total of 107 child lots in the RDT zone. Using the standards contained in the new ZTA, the maximum number of additional child lots which could be generated in the Agricultural Reserve would be 67, and is likely to be much fewer.

A/P #	Project/Phase Name	Application Type	Milestone	Application Status	Proposed Lots	Proposed Outlots	Approved Lots	Approved Outlots	Resolution Approval Date	TDRs	Notes
720090090	ABERCROMBIE PROPERTY	PREAPP	Application Review	Open			5		3/9/2009		Advise
720090110	AIGNER PROPERTY	PREAPP	Application Complete	Closed			2		6/17/2010		Approved w/ Conditions
720060530	ALLNUTT PROPERTY	PREAPP	Application Signoff	Open			1		5/8/2008		Approved w/ Conditions
720090080	ANTOINETTE SMITH PROPERTY	PREAPP	Application Complete	Closed			1		3/9/2009		Advise
120090110	BARNESVILLE OAK FARMS	PRELIM	Approved Plan	Open	21	3					
120060960	BEALLSVILLE PROPERTY LOTS 9, 10	PRELIM	Application Review	Open			3		3/1/2007		
720080060	BYRD FARM	PREAPP	Application Review	Open			2		11/13/2007		Advise
720100040	CATTAIL ROAD PROPERTY	PREAPP	Application Review	Open			2		3/1/2010		Advise
720020340	CLARKSBURG T. C.	PREAPP	Process Application	Open	2						Burnt Mill Rd & Piedmont Rd
720030300	CLEMENT PROPERTY	PREAPP	Process Application	Open	29					9	RDT = 9 & RE-2 = 20
120060750	CLEMENT WEST PROPERTY	PRELIM	Approved Plan	Open			9		11/1/2007		Approved w/ Conditions
720110100	Club Hollow Property	PREAPP	Application Review	Open	1						
120050970	COPENHAVER PROPERTY	PRELIM	Check Application	Open			7		10/4/2007		
720080250	CORSBASKET PROPERTY	PREAPP	Application Review	Open			3		7/15/2008		Advise
720030400	DECKER PROPERTY	PREAPP	Process Application	Open	3						
720060310	DISCOVERY FARM	PREAPP	Process Application	Open	7						
120060810	DUCKS END	PRELIM	Approved Plan	Open			3		4/1/2010		Approved w/ Conditions; Plat - 2 bldg. perm
720090130	EDWARDS FERRY MANOR	PREAPP	Application Review	Open	2						
720090120	GOTTENS GOOD LUCK	PREAPP	Application Review	Open			2		7/15/2010		Approved w/ Conditions; Plat
720060590	HERNANDEZ ACRES	PREAPP	Application Complete	Closed			1		2/7/2008		Approved w/ Conditions; Plat
120050740	HILLTOP FARMS	PRELIM	Approved Plan	Open			8	1	6/23/2011		Approved w/ Conditions
720110080	Hobson Choice	PREAPP	Application Review	Open			1		5/2/2011		Advise
720080110	HUNGERFORD PROPERTY	PREAPP	Application Complete	Open			1		9/30/2010		Advise
720070160	HUNTER FARM	PREAPP	Process Application	Open	2						
720020540	JAMISON PROPERTY	PREAPP	Process Application	Open	4						On MD 28; 2,500 ft east of MD 109
719980210	KIPLINGER PROPERTY	PREAPP	Application Signoff	Open			2		3/22/2007	2	Approved w/ Conditions
720070260	LEVY PROPERTY	PREAPP	Application Review	Open			1		11/1/2007		
720080160	MALCOLM BROWN PROPERTY	PREAPP	Application Review	Open	1						
720070170	MARMET PROPERTY	PREAPP	Process Application	Open	7						
720020380	MARS PROPERTY	PREAPP	Process Application	Open	10						
720090100	MDR - FRIENDS APLENTY	PREAPP	Application Complete	Closed			1		4/1/2010		Approved w/ Conditions
720060520	MORGAN PROPERTY	PREAPP	Process Application	Open	4						
720040030	MOYMORE PROPERTY	PREAPP	Process Application	Open	1						
720110010	Phyllis Jones Property	PREAPP	Approved Plan	Open			1		3/1/2012		Approved w/ Conditions
720070300	PHYLLIS JONES PROPERTY	PREAPP	Application Review	Open			1		7/24/2008		
720040300	POLO GROUNDS PROPERTY	PREAPP	Process Application	Open	20					20	
120090390	POTOMAC ESTATES	PRELIM	Approved Plan	Open			2		12/17/2009		Approved w/ Conditions
720080100	RUSSELL PROPERTY	PREAPP	Application Signoff	Open			1		6/5/2008		Approved w/ Conditions
120120280	Sherman Property	PRELIM	Approved Plan	Open	8	2					
720070130	THE MEMBERS CLUB @ FOUR STREAM	PREAPP	Process Application	Open	7						
720120050	Weitzer Property	PREAPP	Application Payment	Open	2						
720050350	WOODFIELD FARM SUBDIVISION	PREAPP	Process Application	Open	3						
<b>TOTAL</b>					<b>134</b>	<b>5</b>	<b>52</b>	<b>1</b>			

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# Farmland Preservation

PROMOTING RURAL ECONOMIC DEVELOPMENT

## IN MONTGOMERY COUNTY

### **PURCHASE OF** *Development Rights Programs*

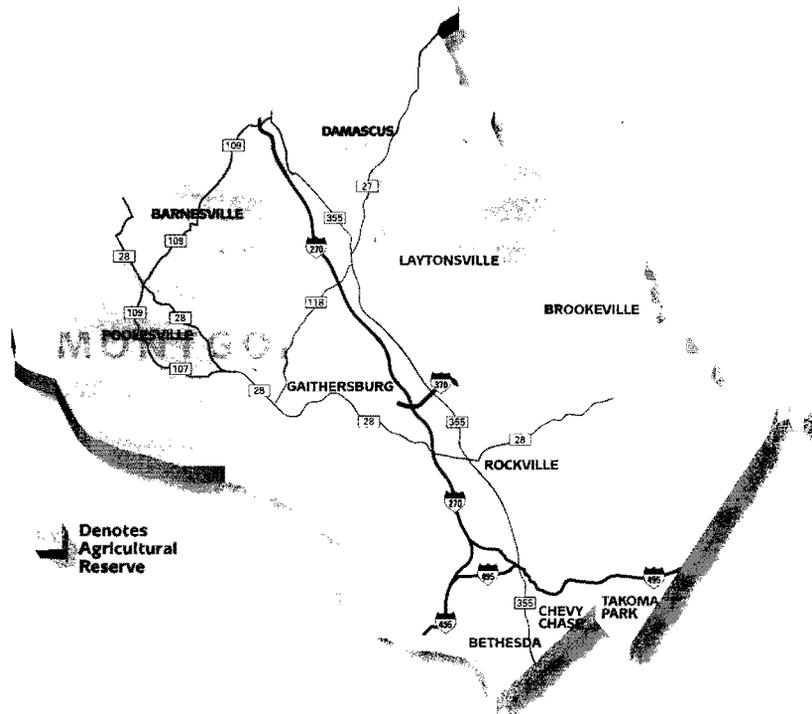


Provided by

The Department of Economic Development – Agricultural Services Division  
and the Agricultural Preservation Advisory Board

# AGRICULTURAL LAND PRESERVATION IN MONTGOMERY COUNTY

FOR OVER TWO HUNDRED YEARS, Montgomery County has been home to a strong agricultural industry. There is a long and rich farming heritage in the County; a heritage and tradition that has contributed greatly to the incredibly high quality of life that the residents of Montgomery County enjoy today. Preserving that heritage and promoting rural economic development opportunities through land preservation efforts and public policy continues to be a top priority in Montgomery County.



*Today, Montgomery County has the highest percentage of farmland under agricultural land preservation easements IN THE NATION.*

The most significant initiative for the preservation of agriculture here began in 1980 when almost a third of the County, or more than 93,000 acres of land, was designated as the County's Agricultural Reserve. This agricultural zone, known as the Rural Density Transfer (RDT) Zone, set a 25-acre density for subdivision of land, but allows landowners to sell development rights to areas designated for growth elsewhere in the County based on the previous zoning designation of 1 unit per 5 acres. In this way, rural landowners have been able to recapture some of the lost equity which resulted from the 1980 down-zoning while planning development in areas where the existing infrastructure can accommodate increased density. While this "transferable development rights" program has been successful, further protection measures have been necessary to preserve farmland.

Over the past thirty years, Montgomery County has become a nationally recognized leader in the field of farmland preservation. This effort is not only for the benefit of the County's farmers, but also to ensure that future generations of residents enjoy the environmental and aesthetic benefits of this wondrous open space. Through the use of permanent agricultural land preservation easements, Montgomery County has ensured that land that is zoned for agriculture cannot be re-zoned to allow denser development. Currently, almost 85% of the County's Agricultural Reserve is still being farmed, and of these lands, 90% are preserved under some type of agricultural land preservation easement. We have done this incredible work by partnering with rural landowners to utilize several agricultural land preservation programs.

**The County's agricultural preservation goals are:**

- **To conserve farmland for future food and fiber production.**
- **To ensure a continued high quality food supply for our citizens.**
- **To preserve the agricultural industry and rural communities.**

As farmers and landowners, you are a crucial part of this effort to preserve agricultural land. You can be both participants in, and beneficiaries of, efforts to preserve agricultural land. Aside from selling TDRs or donating easements, you can choose from four different agricultural land preservation programs in Montgomery County that will compensate you for permanently protecting your farmland. These "purchase of development rights" programs pay landowners for development rights and

place an easement on the property which prevents future commercial or industrial development of the land and places restrictions on future residential development.

**These four programs are:**

- **Montgomery County Agricultural Easement Program (AEP)**
- **Maryland Agricultural Land Preservation Foundation (MALPF)**
- **Montgomery County Rural Legacy Program (RLP)**
- **Building Lot Termination Program (BLT)**

You may find it economically advantageous to participate in one of these agricultural land preservation programs if you and your family intend to continue farming or if you desire to have your land protected from future development. This brochure will introduce you to each of the four purchase of development rights programs that are available to you in Montgomery County. In addition, there are donation programs and land trusts such as the Maryland Environmental Trust (MET), that you can explore. For more information on these types of programs, please visit the MET website at <http://www.dnr.state.md.us/met>. You may wish to discuss the features of each program further in order to decide which program is the most beneficial for you.

For answers to your questions or for additional information on how to participate in the agricultural land preservation programs in Montgomery County, please contact:

**John Zawitoski or Jeremy Criss  
Agricultural Services Division  
Department of Economic Development  
18410 Muncaster Road  
Derwood, Maryland 20855  
301-590-2810  
301-590-2839 (fax)  
[www.montgomerycountymd.gov/agsservices](http://www.montgomerycountymd.gov/agsservices)**

## COMMON TO ALL EASEMENTS

### Standard Easement Conditions:

- No development or subdivision for residential, commercial, or industrial use is permitted except to create lots for the original owner, their children, or other residential rights specifically reserved by the easement.
- Dumping trash or other materials on the property is prohibited.
- All normal agricultural uses are permitted.
- No restrictions from selling the farm in the future.
- Implementation of a soil and water conservation plan.
- Agreement is necessary to allow periodic inspections of property, except building interiors.
- Easement does not grant public access to the property.
- One acre is subtracted from the payment for each existing dwelling.
- Lands precluded from further development are not eligible.
- All require implementation of Soil Conservation and Water Quality Plans (SCWQ) for farm Best Management Practices (BMPs).
- All present and subsequent owners are bound by the Deed of Easement restrictions.
- To be eligible for the maximum easement value for these programs, 1 TDR for every 25 acres must be retained with the property. Any remaining TDRs above this threshold are recommended to be legally created prior to an application to sell an easement, except for the BLT program, where any remaining TDRs above the threshold stated above must be created prior to easement settlement.

### Duration of Easement:

- The easement is perpetual.

### Tax Liability:

- Proceeds from the sale of agricultural easements are subject to income taxes. Please consult with your accountant for the best way to address these requirements.

### Tax Benefits:

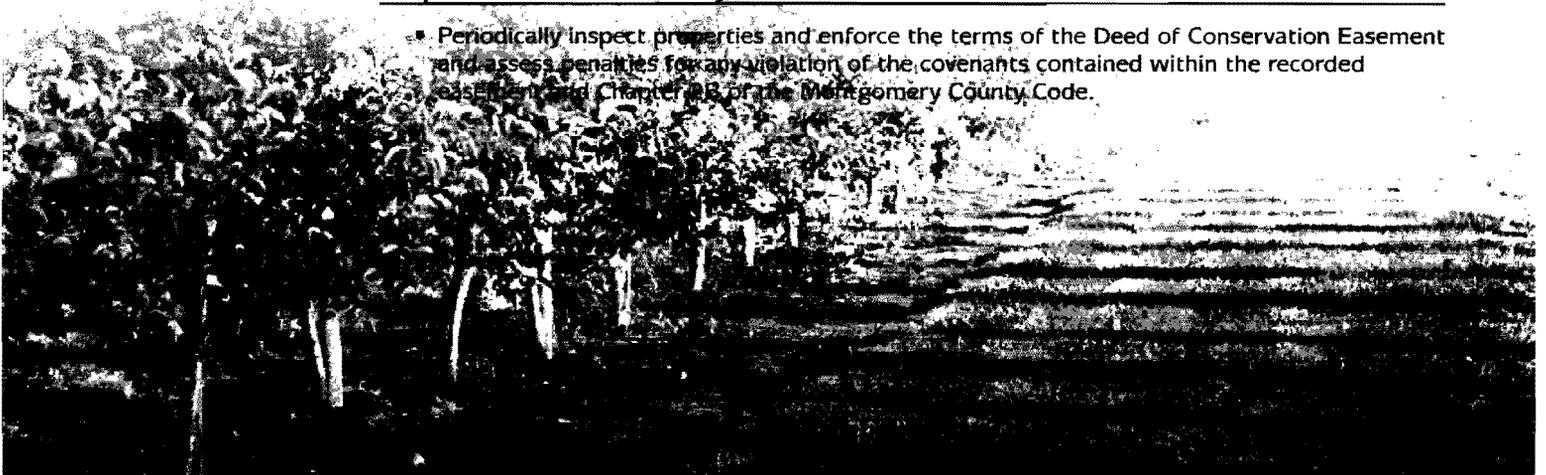
- For purposes of estate taxes, the value of the property is likely to be lower subject to the restrictions of the easement. Any remaining value of the land would still be included as part of the taxable estate.

### Typical Program Costs Incurred by Seller:

- Landowners (sellers) are responsible for resolving property boundary or title problems prior to settlement.
- Costs associated with the implementation of SCWQ Plan requirements.

### Responsibilities of the County/State:

- Periodically inspect properties and enforce the terms of the Deed of Conservation Easement and assess penalties for any violation of the covenants contained within the recorded easement and Chapter 23 of the Montgomery County Code.



# THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION (MALPF)

**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.
- The land must lie outside water and sewer categories 1, 2, and 3.
- Landowner must be approved by Montgomery County.

## Process (Typically 12-24 months):

- Landowner files petition with the Agricultural Preservation Advisory Board (APAB) requesting application for the purchase of an easement.
- Landowner submits easement application along with asking price prior to July 1st each year.
- Foundation accepts application.
- 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.
- Applications are ranked.
- Two appraisals are ordered for the landowner at the State's expense.
- State makes an offer to purchase an easement on the landowner's property.
- Montgomery County may offer a supplemental payment to landowners as a means to increase incentives for MALPF if approved through County Executive Order.
- If landowner accepts, a Project Agreement is submitted to the State for Maryland Board of Public Works (BPW) approval. Once approved by BPW, the MALPF easement can be settled.
- If an offer is made and rejected by the landowner, 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.

## Method Used to Determine Easement Values:

- MALPF employs the use of two fair market appraisals. The 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 an Agricultural Value formula.
- The difference between the Fair Market Value and Agricultural Value represents the MALPF maximum easement value.

## Responsibilities of the Landowner:

- May elect at the time of easement application up to 3 reserved rights for future dwellings for an owner or their children's personal use based upon the size of the property under the following calculation: first child lot at 20 acres, second at 70 acres and the third lot at 120 acres, or

- Elect at the time of easement application the right to reserve 1 one-acre or smaller lot unrestricted by its recipient, as long as the easement property is at least a full twenty acres in size. This retained right runs with the land.
- Present and Future landowners are required to have a current (less than 10 years old) Soil Conservation and Water Quality Plan prepared and approved by the Montgomery Soil Conservation District.
- All present and subsequent owners are bound by the Deed of Easement restrictions.
- Approval must be obtained from the Foundation and the County for lot creation and agricultural subdivision.

## Responsibilities of MALPF:

- Enforce the terms of the Deed of Easement.
- Review in a timely fashion all requests for approvals by landowner, as required by program.

## Governing Laws and Regulations:

- Annotated Code of Maryland.
- Agriculture Article, Title 2, Subtitle 5.
- Code of Maryland Regulations, Title 15, Subtitle 15.

**For further information on the MALPF program, visit [www.malpf.info](http://www.malpf.info) or visit our website at [www.montgomerycountymd.gov/agservices](http://www.montgomerycountymd.gov/agservices) and select the Ag Preservation tab**

# 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 must be determined by the County's Agricultural Preservation Advisory Board (APAB) 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. Since the acquisitions for this program are not dependant upon State approval, the County can process agricultural land preservation easement applications in a shorter timeframe, usually within six to twelve months. An important feature of this program is the method used to determine the agricultural easement value. This program employs the use of a formula-based system that considers farm size, soil quality, road frontage, and farm location.

## Eligibility:

- Farm must be located in the Rural Density Transfer Zone (RDT), Rural Cluster Zone (RC), Rural Zone (RZ), or other zones that possess significant agricultural value.
- Minimum property size: 50 acres, or 10 acres or more of cropland adjacent to other protected land.
- One Transferable Development Right (TDR) for every 25 acres of land must be retained with the property prior to easement application to be eligible for the maximum easement value.
- 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.

### **Process (Typically 6-12 months):**

- Landowner submits an easement application during set open purchase periods that includes an offer price to the Department of Economic Development (DED).
- DED staff assists in the 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. Resolving any title defects, including surveys, is 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 landowner.
- Once the 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.

### **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 (AVF).
- The AVF 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.

### **Responsibilities of the Landowners:**

- All present and subsequent owners are bound by the Deed of Easement restrictions
- Approval must be obtained from the APAB first and then the Montgomery County Department of Permitting Services (DPS) to construct dwellings on the subject property as permitted.
- May elect to reserve within a County easement the right to construct (1) 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.
- May elect to reserve within a County easement up to 3 reserved rights for future dwellings for children based upon the size of the property under the following calculation: first child lot at 25 acres, second at 50 acres and the third lot at 120 acres.
- Alternatively, a landowner may elect to retain within the easement the right to construct one (1) dwelling to support a farming operation provided there are no viable dwellings existing on the land at the time of easement acquisition. The landowner agrees that the requested dwelling must never be subdivided from the land under easement and the landowner agrees that the requested dwelling is in lieu of any right to future child lots. This right is intended to run with the land.
- Present and future landowners are required to have a current (less than 10 years old) Soil Conservation and Water Quality Plan prepared and approved by the Montgomery Soil Conservation District. The landowners who sell the easement to the County, are eligible to receive an incentive payment if the Soil Conservation and Water Quality Plan is implemented within two years of settlement.

### **Governing Laws and Regulations:**

- Montgomery County Code Sections 2B-1 to 2B-18
- Bill No. 39-07
- County Executive Regulations No. 3-09AM

## **THE MONTGOMERY COUNTY RURAL LEGACY PROGRAM (RLP)**

**ESTABLISHED IN 1997** as part of the Governor's Smart Growth and Neighborhood Conservation initiative to protect our natural resources. This State program provides competitive grants to Counties/Sponsors for preserving areas that are rich in agricultural, forest, natural and cultural resources which, if protected, will promote a resource-based economy, protect greenbelts and greenways, and maintain the fabric of rural life. The RLP calculates a conservation easement value using a State-approved Easement Valuation System (EVS).

### **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 bounds 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 of Intent 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 funds are 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.

### **Method Used to Determine Easement Values:**

- The Rural Legacy 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.

### **Responsibilities of Landowner:**

- All present and subsequent owners are bound by the Deed of Easement restrictions.
- Approval must be obtained from the APAB first and then the Montgomery County DPS for lot creation and agricultural subdivision.
- Landowner must implement an approved Total Resource Management Plan within 6 years.

### **Governing Laws and Regulations:**

- Subtitle 9A, Natural Resource Article, Annotated Code of Maryland.
- Rural Legacy Manual.

**For further information on AEP or RLP visit our website at [www.montgomerycountymd.gov/agservices](http://www.montgomerycountymd.gov/agservices) and select the Ag Preservation tab**

## **BUILDING LOT TERMINATION (BLT) PROGRAM**

**ESTABLISHED BY LAW 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 restricts 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 permanently retire an approved on-site waste disposal system associated with the lot to be terminated under the easement. In addition to County-purchased BLT easements, in which the development rights associated with the BLTs will be retired, BLTs may also be sold directly to developers for use in designated receiving areas to increase density. These receiving areas include the Life Science (LS) (Chapter 59-C-5.473), Transit Mixed-Use (TMX) (Chapter 59-C-14.27), and Commercial/Residential (CR) zones (Chapter 59-C-15.87). Additional information and details on the applicability concerning private BLT transactions within these established BLT receiving zones can be found by accessing the Montgomery County Zoning Ordinance, Chapter 59-C. online at [http://www.amlegal.com/montgomery\\_county\\_md](http://www.amlegal.com/montgomery_county_md).

### **Eligibility:**

- The land must be located in the Rural Density Transfer (RDT) Zone.
- The property must be at least 50 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 or 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 as evidenced by septic system site plan approved by the Department of Permitting Services.
- Any TDRs that are retained with a parcel of land above the threshold of 1 TDR per 25 acres must be created/severed from the land prior to or simultaneously with the settlement of the BLT easement.

### **Process (Up to 12 months):**

- The County will establish specified open purchase periods.
- Landowner submits an easement sales application to DED, including a complete property description, during the open purchase period.
- Each property is ranked and evaluated subject to the BLT Easement and Ranking Formula.
- Recommendation to purchase is forwarded to the DED Director by the 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. Resolving any title defects, including surveys, is the responsibility of the landowner if metes and bounds cannot be certified.
- Offer to purchase is extended to landowner 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.
- The landowner may reserve specified residential rights within the easement that run with the land.
- Once the easement is accepted and executed, settlement of the easement is scheduled.

### **Duration of Easement:**

- An individual on-site waste disposal system site plan approved by the Department of Permitting Services associated with the BLT easement must be terminated as part of the agreement and within the Deed of Easement.
- Retained development rights are restricted in size and location and must be approved by the APAB. They run with the land.

### **Method Used to Determine Easement Values:**

- On July 1 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, 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 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 lot right as determined by the County Executive and is applicable County-wide. The price that the County will offer to pay for a BLT Easement must not exceed the sum of the Base Value and the Enhanced Agricultural Land Preservation Value as determined by the BLT Easement and Ranking Formula.

### **Responsibilities of Landowner:**

- Approval must be obtained from the APAB first and then the Montgomery County DPS to construct dwellings on the subject property.
- All costs associated with the approval of an individual on-site waste disposal system approved by the Department of Permitting Services are the responsibility of the landowner.
- Present and future landowners are required to have a current (less than 10 years old) Soil Conservation and Water Quality Plan prepared and approved by the Montgomery Soil Conservation District.

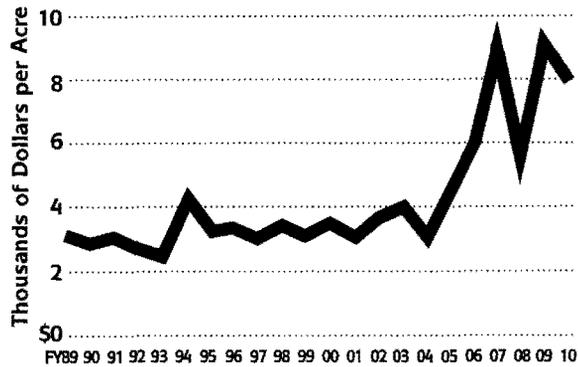
### **Governing Laws and Regulations:**

- Montgomery County Zoning Ordinance Chapter 59-C
- Montgomery County Code Sections 2B-1 to 2B-18
- Bill No. 39-07
- County Executive Regulations No. 3-09AM

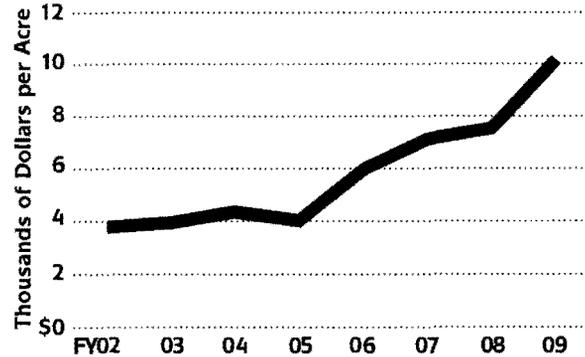
**For further information on BLT visit our website at [www.montgomerycountymd.gov/agservices](http://www.montgomerycountymd.gov/agservices) and select the Ag Preservation tab**

*Preserving farmland enhances  
the quality of life for all residents.*

### AEP Prices by Fiscal Year



### MALPF Prices by Fiscal Year



### AEP Formula – Example

Base All farms receive 100 base points 100

Size Total farm acreage \_\_\_\_\_ / 5 = \_\_\_\_\_

#### Land Quality

Soil class I \_\_\_\_\_ / total \_\_\_\_\_ = \_\_\_\_\_ x 300 = \_\_\_\_\_  
acres acres

Soil class II \_\_\_\_\_ / total \_\_\_\_\_ = \_\_\_\_\_ x 200 = \_\_\_\_\_  
(or woodland 1) acres acres

Soil class III \_\_\_\_\_ / total \_\_\_\_\_ = \_\_\_\_\_ x 100 = \_\_\_\_\_  
(or woodland 2) acres acres

#### Soil Conservation Plan

Approved and implemented soil conservation plan = \_\_\_\_\_  
(Yes = 10 points, No = 0 points)

#### Land Tenure

Long-term lease agreement = 25 points  
 Farmer with \$5,000 + annual gross farm income = \_\_\_\_\_  
(Yes = 25 points, No = 0 points)

#### Road Frontage

Total feet of road frontage \_\_\_\_\_ / 50 = \_\_\_\_\_  
(maximum 5000 ft.)

#### Agricultural Zone Edge

Within 1 mile of the RDT zone border = \_\_\_\_\_  
(Yes = 100 points, No = 0 points)

Total Points \_\_\_\_\_

#### Maximum Easement Value

Total Points \_\_\_\_\_ x Base Value \$ \_\_\_\_\_ = Max. Value \_\_\_\_\_

### BLT Formula – Example

BLT Fair Market Value (FMV) \_\_\_\_\_

BLT Base Lot Value (60% of FMV) \_\_\_\_\_

Maximum Easement Value (85% of FMV) \_\_\_\_\_

#### Enhanced Preservation Value

Soil Quality – % Class I, II, and III

50 – 64.99%	2 points
65 – 69.99%	4 points
70 – 74.99%	6 points
76 – 79.99%	8 points
> 80%	10 points

Total Points \_\_\_\_\_

#### Farm Size

Less than 25 acres	0 points
25 – 49.99 acres	1 point
50 – 74.99 acres	2 points
75 – 99.99 acres	3 points
100 – 149.99 acres	4 points
> 150 acres	5 points

Total Points \_\_\_\_\_

#### Land Tenures 5 points

Farm owned and operated by landowner who is registered as a producer with Agricultural Agencies or the landowner holds a long-term lease with a producer (1 point for every year of lease up to a maximum of 5 points)

Total Points \_\_\_\_\_

#### Enhanced Preservation Value =

Total Points \_\_\_\_\_ x (Max Easement Value – Base Value) / 20 points

#### Total Easement Value =

BLT Base Value + Enhanced Preservation Value

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