AGENDA ITEM #16
October 6, 2009

Public Forum

MEMORANDUM

October 2, 2009

TO: County Council

FROM: Marlene L. Michaelson, Senior Legislative Analyst

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

Executive Regulation 03-09: Agricultural Land Preservation Easement Purchases was transmitted as a Method 2 Regulation, which allows for Council review and approval. Public Hearings are not required for Executive Regulations; however, the Council decided to hold a public forum to solicit comments on these proposed regulations.

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OFFICE OF THE COUNTY EXECUTIVE
ROCKVILLE, MARYLAND 20850

Isiah Leggett
County Executive

MEMORANDUM

July 2, 2009

METHOD 2

TO: Phil Andrews, President
Montgomery County Council

FROM: Isiah Leggett, County Executive

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

VIA: Brady Goldsmith, Management and Budget Specialist

FROM: John Cuff, Management and Budget Specialist

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

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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 _____ **OMB Director**

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

MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject AGRICULTURAL LAND PRESERVATION EASEMENT PURCHASES	**Number** 03-09
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. 3-09

Authority: Code Section 2B-18
Supersedes: Executive Regulation 66-91
Council review: Method 2 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 Coun[illegible] [illegible]rated the 25th Anniversary of the Agricultural Reserve and several initiatives to support agriculture w[illegible] [illegible]ied, including a proposal to legislate a new preservation

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.

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 f[illegible]ving 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

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 from the Department of Permitting Services 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.

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).

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 dist[illegible] n 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.

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 th e landowner acquired the land, or

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.

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.

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 and 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.

MONTGOMERY COUNTY EXECUTIVE REGULATION

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Subject AGRICULTURAL LAND PRESERVATION EASEMENT PURCHASES	**Number** 03-09
Originating Department Department of Economic Development	**Effective Date**

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 an individual onsite waste disposal system. 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.

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:

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 landowr the purchase period is closed, but the application will be placed on a waiting list for the (18) ase period.

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.

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).

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 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.

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 la[illegible]er who rejects a County offer to purchase will forfeit the right to sell a BLT Ease[illegible] e County for a period of 24 months.

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. 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.

MONTGOMERY COUNTY EXECUTIVE REGULATION

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

Subject AGRICULTURAL LAND PRESERVATION EASEMENT PURCHASES	**Number** 03-09
Originating Department Department of Economic Development	**Effective Date**

VI. Effective Date

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

For Isiah Leggett
County Executive

Approved as to Form and Legality
Office of the County Attorney

By: Vickie L. Gaul
Associate County Attorney

Date: 6-11-09

Montgomery County
Agricultural Reserve

DEPARTMENT OF ECONOMIC DEVELOPMENT

Isiah Leggett
County Executive

Steven A. Silverman
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.

Agricultural Services Division
www.montgomerycountymd.gov/agservices
18410 Muncaster Road · Derwo nd 20855 · 301-590-2823 · FAX 301-590-2839

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/agservices/pdffiles/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/agservices/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 # 03-00000001

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 ($ per Point) — $6,159.67 (Max. Value/Ac) X 149 (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	
65-69.99	4	
70-74.99	6	6
76-79.99	8	
>80% Class I,II. III	10	

Farm Size		
Less than 25 acres	0	
25 ac to 49.99 acres	1	
50 ac to 74.99 acres	2	
75 acres 99.99 acre	3	5
100 acres to 149.99 acres	4	
150 +	5	

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

5

16 Total Points

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

Summary of BLT Easement Values/Lots Extinguished

# of Lots Extinguished	<25 acres	25 acres	50 acres	75acres	100acres	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

Attachment

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

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 then 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 males 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.**

Attachment

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 · Derw 'and 20855 · 301/590-2823, FAX 301/590-2839

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

E:\APAB\APAB 2009\APABcomments03-09aglandpres (AAC/APAB stick)

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 Lechlider 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 approached 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, <u>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.</u>

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] <u>two</u> acres, or t[illegible]imum 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 <u>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.</u> 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