

## MEMORANDUM

October 4, 2006

TO: Ad Hoc Agricultural Policy Working Group

FROM: Marlene Michaelson, Senior Legislative Analyst  
Jeff Zyontz, Legislative Attorney  
Amanda White, Legislative Analyst

SUBJECT: October 9, 2006 Meeting

Our next meeting is scheduled for October 9, 2006 from 4:00 p.m. to 6:00 p.m. in Room A at the Upcounty Regional Services Center. Attached are additional background materials for this meeting. These include the following:

- An agenda.
- Minutes from the September 25 meeting.
- An alternative proposal on sand mounds from some Group members.
- A draft list of potential Agricultural Reserve issues outside the scope of the Council resolution that may require future attention. We would like to receive your feedback (at the meeting or by e-mail or phone) as to whether there are any issues not on this list you believe should be included (or any that should be taken off the list). Are there priority issues that should be the focus of review by the Council and/or other entities?
- The schedule for remaining meetings including a proposed revision by the Chair to more clearly describe the steps needed to complete review of the Draft Report.

For the Group's discussion on Sand Mounds, you may wish to review or bring the Staff Policy Papers previously distributed to the Group.

**AGENDA**  
**AD HOC AGRICULTURAL POLICY WORKING GROUP**

Monday, October 9, 2006  
Upcounty Regional Services Center  
4:00 to 6:00 p.m.

- 4:00      Approve Minutes
  
- 4:05      Sand Mounds: presentation on alternative proposal by  
            Group members
  
- 4:15      Discussion of outstanding Sand Mound Issues
  
- 5:10      Discuss list of agricultural issues that may require  
            subsequent attention
  
- 5:50      Administrative/Calendar Issues
  
- 6:00      Adjourn

**AD HOC AGRICULTURAL POLICY  
WORKING GROUP MINUTES**

Monday, September 25, 2006

4:00 P.M. to 6:02 P.M.

Up-County Regional Services Center Room A

**PRESENT**

Working Group Members

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

Montgomery County and State Staff

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

**ABSENT**

Lib Tolbert, Chair	Wendy Perdue
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**GUESTS**

Jay Beatty, County Department of Permitting Services	Pamela Dunn, M-NCPPC
Royce Hanson, Chair, Montgomery County Planning Board	Sherry Kinikin, County Council
Kathy Reilly, M-NCPPC	Christopher Sasiadek, M-NCPPC
John Zawitoski, County Department of Economic Development	Andrea Arnold
Vince Berg	Sue Carter
Jane Hunter	
David Tobin	Michelle Rosenfeld
Carol Fancoin	Lois Stoner

The Group had before it the September 20, 2006 memorandum with attachments from Marlene Michaelson, Jeff Zyontz, and Amanda White.

The Group approved the minutes for the September 11, 2006 meeting.

The Group received a presentation by Jeremy Criss outlining a proposal on the Building Lot Termination (BLT) program developed by Group members Margaret Chasson, Jim Clifford, and Mr. Criss. The Group used this proposal as a basis for discussion.

The Group tentatively recommended the following eligibility criteria:

- Landowner is not eligible for a BLT easement if the land is already encumbered by an existing preservation easement, excluding transferable development right (TDR) easements.
- Land must be at least 25 acres to participate in the BLT program. Smaller properties may be considered if they are contiguous to other lands protected from development by agricultural and conservation easements. The Group agreed contiguous should be defined similarly to other preservation programs and agreed to define contiguous as one parcel touching another parcel in some manner as shown on the property deed. The Group further agreed that if one property is across the road or across a utility right of way from another property, those two properties are contiguous. If the road is dedicated, however, the two properties would not be contiguous.
- At least 50% of the land under the BLT easement must meet United States Department of Agriculture (USDA) soil classification standards Class I, II, or III or Woodland Classifications 1 and 2 as required for State funding.
- Land must be outside water and sewer categories 1, 2, and 3.
- Land must be zoned rural density transfer (RDT).

Group members had the following additional comments regarding the criteria for eligible land:

- One Group member felt that if a property is less than 25 acres, but participates in the BLT program, that property should remain empty.
- Group members deferred consideration of how sand mounds and child lots factor into the BLT program until after the Group has discussed those topics again.

The Group agreed that in order to participate in the BLT program, a landowner must be able to establish that he or she would likely be able to otherwise put a house on the property. Group members discussed requiring the landowner to submit a letter from the Department of Permitting services (DPS) stating that percs have been approved or have preliminary approval as a way of establishing value. Some Group members suggested requiring an applicant for the BLT program to submit a pre-preliminary plan and the letter described above from DPS regarding perc testing. The Group requested Jay Beatty, Manager of the Well and Septic Section of DPS respond to the Group's proposal to require applicants to submit a letter from DPS.

The Group also discussed what lot size should be use to establish value. Group members acknowledged that smaller lots sizes would cost the County less to terminate. Group members

suggested lot sizes ranging from 1-acre to the entire 25-acre parcel. Several Group members emphasized that although the owner of the property would be giving up their right to place a house on their property, landowners participating in the BLT program still retain the residual value because they still hold title to the land.

The Group tentatively recommended identifying a terminated BLT lot in the County land records. Some Group members emphasized that this documentation must be rigorous to prevent a landowner from attempting to participate in the BLT program more than once with the same piece of property.

The Group discussed how applications to the BLT program should be prioritized. The proposal was priority for applications based on receipt date and a second ranking based on property size. Group members had the following comments:

- One Group member was concerned about establishing the first priority level as date of application because that may create a land rush.
- Some Group members emphasized the importance of the size of the farm and believed that this should be the first priority. Other Group members were concerned that making the parcel size the first priority may result in one or two property owners receiving the bulk of the funding available for the BLT program.
- One Group member was concerned that giving land in agricultural production priority could disqualify good farms lying fallow.
- Some Group members believed that applications should be prioritized based on the preservation impact. One Group member suggested that criteria for participation in the BLT program should include the number of lots that will be terminated.

The Group also discussed how the County should handle TDRs obtained by the County via the BLT program. Group members had the following comments:

- Some Group members supported requiring the County to terminate the 5th TDR. Other Group members supported allowing the County to hold the 5th TDR to sell at a later date (in a TDR program) to help fund the BLT program.
- Some Group members supported creating a new TDR program, available only for the 5th TDRs. This new TDR program could be used to increase development in commercial or mixed-use areas. Other Group members felt that a combined program (commercial and residential TDRs) would address the possibility that the market for commercial and residential development may be strong or weak at different times. Some Group members felt strongly that this new TDR program should not compete with the current residential TDR program.

The Group discussed the proposed requirement that the County pay the landowner in full at the time the lot is terminated. Several Group members suggested the County should be more flexible and allow payments to be spread over more than one tax year.

Minutes written by Amanda White, Legislative Analyst

F:\Land Use\Agriculture\Minutes\September 25, 2006.Doc

## **SAND MOUND PROPOSAL**

Allow sand mounds only for the following types of development:

1. Where there is an existing house and the sand mound would not result in the development of an additional house. Situations in which this may occur include where there is a failing septic system or the need to create a new reserve field for an existing home.
2. Allow the same number of sand mounds as potential (deep trench systems) percs if it enables the property owner to better locate potential houses to preserve agriculture.
3. For child lots, provided that the Group's recommendations related to child lots are also adopted (e.g., ownership/ residency requirement).
4. For tenant housing. (To ensure that the tenant housing is for those who work on the farm and not built with the intention of immediately reselling the house, create a new prohibition against separating property with tenant homes from the rest of the property.)
5. For any minor subdivision (5 or fewer lots on any one parcel), provided that no other residential or non-agricultural development will occur on the property. To prevent property owners from splitting their properties into multiple small parcels, each of which could have a minor subdivision, this option should only be available for parcels owned/titled as of a certain date.
6. Allow approved mounds to proceed to construction.

## Meeting Schedule for Agricultural Advisory Group

### Alternative Schedule Option

	Existing Schedule	Alternative Schedule
October 9	Review of all pending legislation	Sand Mounds Identification of topics for further study/action
October 23	Identification of topics for further study/ action	Child Lots Review of pending legislation.
November 6	Wrap-up of any unresolved issues and conflicting recommendations.	Wrap-up of any unresolved issues and conflicting recommendations/ reconsideration of principles.
November 20	Review Draft Report	Small groups consider preliminary draft of Final Report.
December 11	Final meeting	Final full Group meeting to consider final draft of Final Report
December 22		Distribution of Final Report to full Group for members to submit comments of dissent, reservation, or clarification.
January 12		Distribution of groups members' comments of dissent, reservation, or clarification to full Group for possible association by other Group members
January 19		Submission of Final Report to County Council

## **ADDITIONAL AGRICULTURE ISSUES**

The Council's resolution establishing the Ad Hoc Agricultural Working Group intentionally limited the scope of the Group's work. The purpose of this list is to identify issues not specifically identified in the resolution that the Group believes requires further work. Due to time constraints, these issues will probably have to be assigned to the Planning Board, Department of Economic Development, an existing Advisory Committee or another entity.

### **RELATED TO RDT LAND**

Related to zoning:

1. Should the uses and/or special exceptions allowed in the RDT zone be limited or expanded (e.g., to limit institutional uses or allow children's day camps)? Should pending legislation be approved that prohibits future development of any non-residential use, other than those related to agriculture? Should the County designate additional areas for the "Rural Service Zone"?
2. Should new development standards/zoning be created or used for developments and subdivisions in the RDT zone (e.g., to allow smaller lots, require rural preservation design standards, etc.).
3. Should public road requirements be changed to allow more dwelling units to access private drives in rural areas (Planning Department page 7)

Related to tenant homes

4. What actions should be taken to ensure that tenant homes are occupied by farm employees and not resold or rented to non-agricultural residential users?
5. Should the number of tenant homes be limited?

Related to development rights:

6. Should RDT land owners be allowed to hold onto development rights indefinitely or should a time limit be set? If a date certain is set by which land owners must sell all development rights, then the County will probably need to establish a TDR bank to purchase outstanding development rights and sell them to property owners in receiving areas at a later time.
7. Should the County set up a new TDR bank to facilitate the buying and selling of TDRs? Once the bank has run out of development rights, it could still collect funds from property owners who want to use TDRs and use those funds to promote agricultural programs.

8. Are the existing easements associated with development rights sufficient to protect agricultural land into the future or are additional protections needed to ensure that elected officials will not be pressured to change the zoning and negate the protections of the easements in the future?

## **RELATED TO TDRs**

9. Should a development right be required to be used for non- agricultural and non-residential uses in the RDT zone?
10. Should TDRs on public land be extinguished (to reduce the number that must be sold and prevent competition with privately held TDRs)?
11. Should TDR receiving capacity be extended to commercial zones?
12. Should TDR receiving capacity be extended to more high density mixed-use zones (such as the Central Business District zones)
13. How the planning process be changed to ensure that the maximum number of receiving areas are identified as the Planning Board and Council establish zoning through the master plan process? Should TDR receiving capacity be required for each site in master plans that increases zoning density or intensity?
14. Should TDR receiving capacity be required for affordable housing units?
15. Should TDR receiving capacity be required for increasing density through a special exception use?
16. Should TDR receiving capacity be required for increasing density in floating zone applications/local map amendments?
17. Should the County work with local municipalities to establish inter-jurisdictional TDRs to create receiving areas in municipalities
18. Is the requirement that receiving areas use 2/3 of the possible TDRs beneficial? Would eliminating this provision increase the use of TDRs (particularly on small or constrained properties where it is impossible to use 2/3 of the possible TDRs)
- 19. Are there additional ways to keep land as farmland, (rather than being converted for residential development) other than the easement programs (existing and proposed) discussed by the group? What role can non-profit entities play in this effort?**

**20. Do any of the needed policy changes require an amendment to the Master Plan for the Preservation of Agriculture and Rural Open Space or can all needed modifications occur through changes to the zoning ordinance and other County laws?**

**21. What changes are needed regarding roads in the Agricultural Reserve and rustic roads in particular?**

22. Are changes needed to County laws and regulations impacting rustic roads?

**23. How can we better educate citizens regarding the value of the Agricultural Reserve?**

24. Should the County consider

- Brochures
- Signs at major entrance points and/or marker on major roads
- Enhancing the County's website on agricultural issues
- Programs to educate County students about the Agricultural Reserve

25. Can we better define the different groups that have an interest in the Agricultural Reserve and identify outreach strategies that will reach out to each different stakeholder group?

**26. What changes are needed to the County's efforts to monitor the economic health and evolution of the agricultural industry in the County and to County programs to promote the health of this industry?** (Note that this question is intended to address issues unrelated to land use.)

27. How can the County ensure a focus on sustainable agriculture and not just the preservation of farmland?

28. What additional analysis is needed of changing trends in farming and opportunities for alternative/small scale farming?

29. How should the County monitor and react to the impact on farming from

- Environmental legislation
- Deer management

**30. What state and local environmental laws impact farming and are any modifications needed?**

**31. What impact do the County's deer management programs have on farming and are any changes required?**