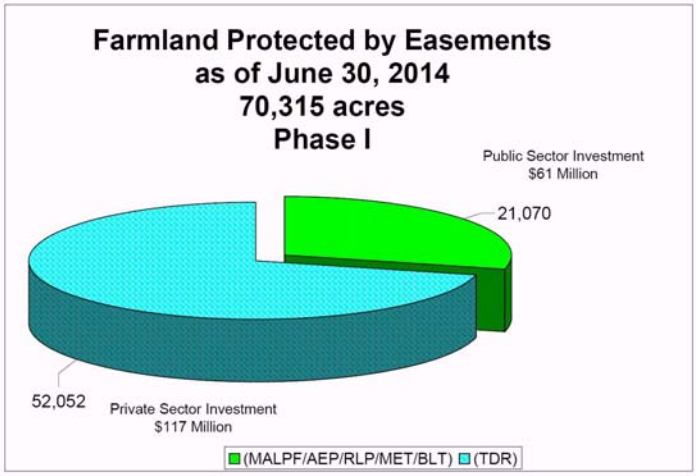
Phase II Montgomery County Farmland Preservation
Taking Ag Preservation to the Next Level

Introduction

The success of our farmland preservation programs depend on several factors including the amount of funding available and the state of our local economy and the real estate market. Tradition has shown that farmland preservation participation increases at times when the local economy and real estate markets are experiencing downward trends. Having appropriate preservation resources in place at the right time represents a critical challenge for us in assuring our preservation goals are met. Unfortunately the collections of Agricultural Transfer Taxes during the Great Recession have totaled $2,077,516 (FY07-FY13) which averages only $296,788 per fiscal year. This amount of funding will only result in acquiring agricultural easements on 42 acres annually at an average of $7,000 per acre easement value. This trend has continued into FY14 as the County retained only $231,000 which represents the agricultural transfer tax fund balance that remains for easement acquisitions for FY15. This situation necessitates the exploration of alternative funding sources, policy changes, regulatory relief, and the expansion of both private/public sector investments will be required in order to enhance the preservation of farmland in Montgomery County.

<u>Background: Phase I of the Farmland Preservation Goal</u>

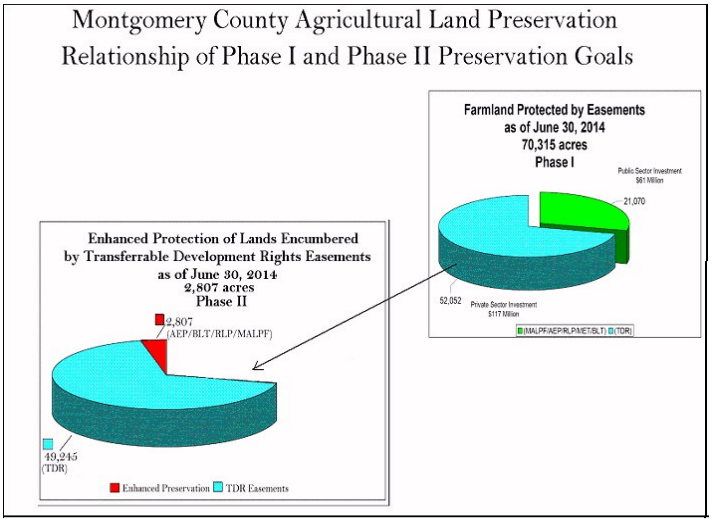
In January 2009, Montgomery County achieved Phase I of the farmland preservation goal. This resulted in the protection of 70,000 acres of farmland through the programs administered by the County or State of Maryland. These traditional programs included: The Transferrable Development Rights Program (TDR), The Agricultural Easement Program (AEP), the Maryland Agricultural Land Preservation Foundation Program (MALPF), and the Rural Legacy Program (RLP). The preservation of 70,000 acres by easement represented completion of the Phase I farmland preservation goal.



It was recognized achieving Phase I of the preservation goal that the majority of the acreage (over 52,000 acres) were encumbered by TDR easements. While TDR easements do offer a level of protection, TDR easements are the least protective of all the traditional programs offered. TDR easements are not as protective because they usually retain densities of 1 lot per 25 acres. Therefore, our secondary goal of layering more protective easements over TDR easement represents Phase II of the County's Agricultural Land Preservation goal.

Phase II of the Farmland Preservation Goal

The County began implementing Phase II of the Agricultural Land Preservation Goal in 2009. We target the preservation of farmland where TDR easements encumbering farmland still have retained development rights. We currently employ two approaches using the programs in Phase I or through the County's Building Lot Termination (BLT) easements to target this enhanced level of preservation. These approaches further reduce the density on TDR easement properties resulting in a higher level of protecting farmland.



Approach 1. Traditional Agricultural Land Preservation Programs

This first approach consists of targeting farmland using our traditional easement programs to further reduce densities retained on TDR easement properties. To help further enhance preservation of agricultural land the Executive Regulation governing the administration of our easement program was revised and adopted by the County Council on July 27, 2010. Specific modifications were made to help target properties for agricultural land preservation.

These modifications included: expansion of the agricultural zone edge property evaluation from ½ mile to 1 mile. Properties within this agricultural zone edge are at the highest risk for land conversion because of their proximity to other non agricultural zoned areas within the County. This modification allowed the County to enhance the value of the preservation easement to encourage landowners to seek preservation over conversion to non agricultural uses.

We also adopted a change to provide a mechanism for an enhanced valuation of easements for landowners who are not farmers but commit to long term written leases with Montgomery County producers. Prior to this change, only landowners who were also the farm operators were eligible for this enhanced valuation. This change provides an incentive to establish long term leasing arrangements with a tenant farmer, and encourages the continued agricultural use of the protected land.

Future collections of Agricultural Transfer Taxes:

As of FY14, the County has a total of 77,892 acres of agriculturally assessed farmland of which 72,859 acres are protected by Transferrable Development Rights (TDRs) and agricultural easements (PDRs). Subtracting the total easement acreage from the total ag assessed acreage results in only about 4,000 acres of potential farmland outside of the Agricultural Reserve that could be developed and trigger the collection of agricultural transfer taxes. Montgomery County is running out of farmland to develop. This condition creates a funding dilemma for the preservation program as Montgomery County will have fewer farm conversions that will generate agricultural transfer taxes for future easement acquisitions. This outcome means alternative sources of funds are needed to further protect the farms that are only protected by TDR easements.

Approach 2. Building Lot Termination (BLT) Program

The second approach consists of targeting TDR easement properties using the Building Lot Termination (BLT) program. The enabling legislation for the BLT program was adopted through reenactment of Chapter 2B of the Montgomery County Code and promulgated through Executive Regulation 3-09AM. Landowners seeking a higher level of preservation for their farms through the BLT program have two options:

Option 1: Apply to the County during open BLT easement purchase periods

Option 2: Marketing their approved BLTs through a private BLT market for use in qualified BLT receiving areas.

Progress:

Public BLT Program

	Acres	Number of BLT-TDRs	Serial Numbers
Damacus Limited Partnership	54.17	1	BLT-001
W. Drew Stabler	200.97	4	BLT-002 - BLT-005
William Hilton et al.	53.38	2	BLT-006 -BLT -007
Kathy Taylor	100.71	2	BLT-013-BLT014
Our House	98.9491	3	BLT-020-BLT022
Thomas Hartsock	103.83	2	BLT024-BLT025
Charles and Bertha Stanley	105.72	3	BLT026-BLT028
	717.7291	**17**	

Private BLT Program

	Acres	Number of BLT-TDRs	Serial Numbers	
David Bolten and Layla Bolten	65.7471	1	BLT-008	
A.S. McGaughan, Jr. & Judith E. McGaughan	5	1	BLT-009	
A.S. McGaughan, Jr. & Judith E. McGaughan	5	1	BLT-010	
A.S. McGaughan, Jr., Guardian of the Property	5	1	BLT-011	
Potomac Estates Corporation	25.6361	1	BLT-012	* Did not Rank in Public BLT
Montgomery Horse, LLC	82.5	1	BLT-015	
Robert and Betsy Stabler	25	1	BLT 016	
Potomac Estates Corporation	48.951	1	BLT-023	* Did not Rank in Public BLT
	262.8342	**8**		

Since FY12, the County has completed BLT settlements on 717 acres of agricultural land previously encumbered by only TDR easements and 263 acres have been protected by private BLT easements.

Setting of the Phase II Farmland Preservation Goal

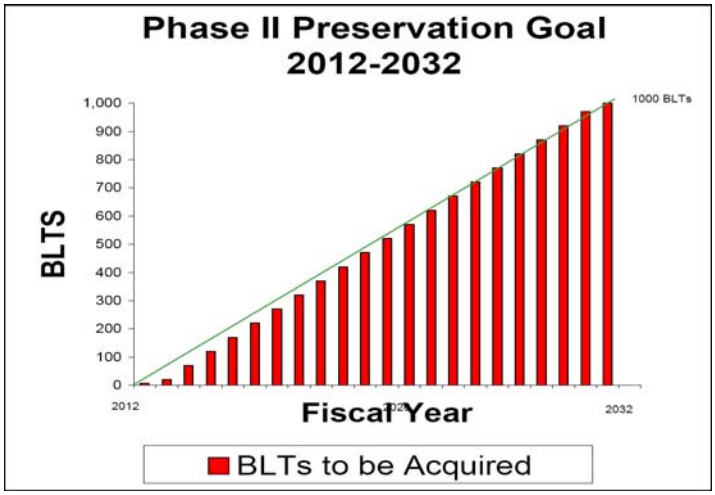
In setting the Phase II Farmland Preservation Goal, we must consider the status of development and the number of retained TDRs that are part of the 52,052 acres protected only by TDR easements. Considering that 52,052 acres are encumbered by TDR easements and the density on these easements are set at 1 dwelling right for every 25 acres, the theoretical maximum number of BLTs that could exist on these protected lands would be 2,082 BLTs. There are 77,892 acres of agriculturally assessed properties in the County, from these acres there are 1,210 improved tax accounts.

Subtracting these 1,210 improved accounts from the theoretical maximum number of 2,082 BLT-TDR would be 872, however not all of the improved accounts are located on RDT zoned properties (Previously stated there are 4,000 acres of agriculturally assessed properties outside of the Agricultural Reserve – RDT zone), In addition, it must be recognized that some of these properties are on lands that cannot achieve an onsite septic absorption system. If we subtract 50% from the 2,082 theoretical maximum that would leave about 1,000 BLTs for both public and private BLT transactions. The County's Phase II farmland preservation goal should demonstrate the number of years it would to acquire 1,000 BLTs.

Scenario #1 – Static Number of BLTs Acquired Annually

If we subtract the public and private BLTs acquired during FY12 and FY13, this would leave 972 BLTs needing to be acquired to reach the 1,000 BLT Phase II Goal. To determine the length of time needed to meet this goal, we need to make a few assumptions. Not necessarily limited to:

1. Public Funding is readily available and there are no constraints.
2. The County establishes sufficient BLT receiving capacity.
3. The local economy demands mixed use type of development.
4. Purchased BLTs represents a fair exchange in value in terms of the Fair Market Value.
5. A total of 50 BLTs are acquired annually through a combination of public/private BLT transactions.

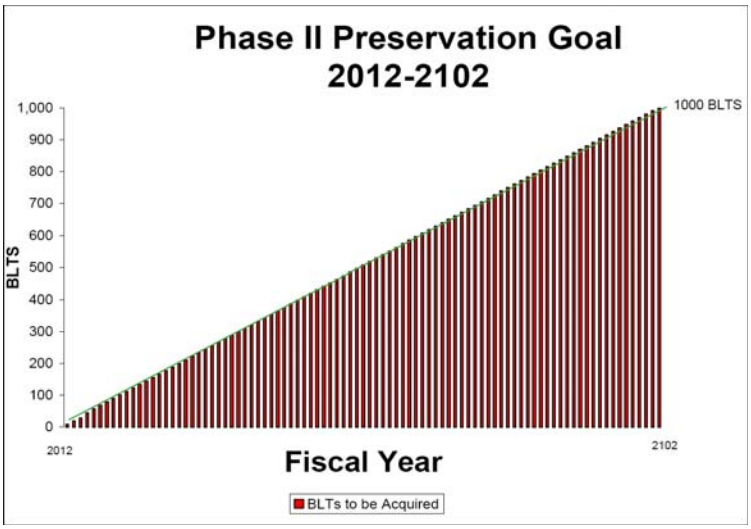


Under Scenario #1 a total of 50 BLTs would need to be acquired annually over the next 20 years to reach 1,000 BLT goal by the year 2032. It would require a combination of public/private BLT transactions and investing a minimum of $240 million dollars at the current BLT average value of about $245,000 per BLT. This investment may be a conservative projection as it assumes a static value of a BLT at $245,000 per BLT over the next 20 year period.

Scenario #2 – BLT Acquisitions based on Current Staffing and Funding Levels

DED completed its third BLT purchase period on April 1, 2014. We have public funding to acquire a total of 13 BLTs during this third purchase period. DED received applications for a total of 23 BLTs and once the ranking was completed it resulted in 15 BLTs that were eligible for the public BLT program. DED has determined that 8 BLTs did not meet the public program's eligibility requirements but remain eligible for private BLT easements. In the absence of new funding opportunities there will not be sufficient public resources to conduct a fourth purchase period. Scenario # 2 considers the following:

1. All existing funding sources for 13 BLTs are expended and gone
2. Assumes current staff capacity does not change.
3. Assumes current level of private investment (3-4 BLTs purchased per year)
4. Assumes the County is willing to invest $2 Million per year beginning in FY16 for BLT easement acquisitions.



Under Scenario # 2, it will take the 90 years to acquire 1,000 BLTs. Without a sustainable source of revenue achieving the Phase II preservation goal will not occur in our lifetime. In 1980, the County's Agricultural Reserve was created and today the Agricultural Reserve is 34 years old. The commitment made to the farmers in 1980 for creating sufficient TDR receiving capacity has still not been fully achieved. This outcome is irresponsible of the County Government considering that downzoning which created the Agricultural Reserve took place 34 years ago and many of the farmers have already passed away. The issue of planning for and creating sufficient receiving capacity still plagues the County today. This outstanding commitment made to the agricultural community was heard loud and clear during the testimony on the Clarksburg Limited Master Plan Amendment for Ten Mile Creek Watershed. The Council has instructed the MNCPPC to conduct an update of the TDR program that was last done in March 2008. Council staff has proposed the County should purchase all remaining TDRs from the farmers that still own them. Where will the County resources come from for this proposal? The above factors contribute to the farmer's frustration and lack of faith in the County Government. Under Scenario # 2, it will take the 90 years to acquire 1,000 BLTs.

The County must commit additional resources for public BLT easement acquisitions to achieve higher levels of protection on TDR easement properties that still have retained TDRs for allowing residential development. This BLT approach further reduces the density on TDR easement properties resulting in a higher level of protection of farmland.

As mentioned earlier, State Agricultural Transfer Tax revenue cannot be looked upon as a viable revenue stream. This revenue is not sustainable and the County must consider alternative funding mechanisms. It may involve redirecting a portion of the proceeds from different revenue sources such as:

- Water Quality Protection Charge (WQPC) – Preserving Land reduces impervious surfaces that help infiltration of storm water in rural areas and improves water quality.
- County Agricultural Transfer Taxes – Currently assessed on all agricultural land sold whereby <u>no portion of this County tax goes to support agricultural land preservation.</u>
- Excise Tax on Disposable Bags – This tax is allocated to the Stormwater Management Fund that includes the WQPC.

- General Obligation Bonds – We have only $322,000 in General Obligation Bonds remaining. There are no G.O Bonds appropriated within FY15-20 CIP.
- Development Impact Tax for Preserving Farmland.
- Creation of a new Agricultural Land Preservation Charge – Similar to the Water Quality Protection Charge. This proposed charge would be employed under the premise that each resident of the County benefits from the preservation of farmland in a multitude of ways and improves resident's quality of life. This charge would make every resident a vested stakeholder in the public policy for the preservation of farmland preservation.

Planning for Realistic Increases in TDR and BLT Receiving Capacity

As mentioned earlier, the County needs to fulfill the outstanding commitment to the agricultural community to approved receiving capacity for excess TDRs sold through the private sector. The County needs to deliver on this commitment. The longer it takes the County to deliver on this commitment more farmers impacted by the 1980 Downzoing will pass away. A long term plan that encourages a greater private investment of TDR and BLT receiving capacity is needed beyond what has currently planned.

We need to take advantage of every opportunity where TDRs and BLTs could be utilized to encourage the redevelopment of older communities with mixed use zoning and development. Much like the private sector made the initial investment in the preservation of over 74 percent of Phase I Preservation Goal; we need the development community to play an equally important role with achieving the Phase II Goal. It is evident that the Agricultural Reserve is a treasured and coveted County resource, without seeing the enhanced preservation of lands protected by less restrictive TDR easements, the future of maintaining a critical mass of agricultural land is in doubt. We have a real opportunity to take Montgomery County's Agricultural Land Preservation Program to the next level and the now is the time to take the steps necessary to enhance the protection of TDR easement properties.