

(Attachment C.)

**Criss, Jeremy**

**From:** Criss, Jeremy  
**Sent:** Thursday, May 24, 2012 5:12 PM  
**To:** Robeson, Lynn  
**Cc:** 'Nancy Regelin'; 'Jim Humphrey'; 'robert.kronenberg@montgomeryplanning.org'; Bullard-Vinson, Victoria; 'weitzer@erols.com'; Michaelson, Marlene; Pamela Dunn  
**Subject:** RE: LMA G-909, Application of Glenwood Glen Aldon LLC, et. al., for rezoning from the R-10/TDR Zone to the PD-100 Zone or the PD-88 Zone

**Attachments:** BethesdaTDR.doc; AACLMAG-909.doc

Dear County Hearing Examiner Robeson,

In response to your message below the Montgomery County Agricultural Advisory Committee-AAC met on May 15, 2012 to discuss the LMA G-909.

The AAC forwarded the first attached January 17, 2012 letter to the Montgomery County Planning Board outlining their position regarding this property that is designated as an R-10/TDR receiving area.

The second attached letter reaffirms the position of the AAC regarding LMA G-909 and provides additional justification and clarification.

The remaining attachments involve the reports as listed below that pertain directly to the on-going environment of the significant deficit of TDR Receiving Capacity:

**Montgomery County Farmland Preservation Certification Report FY1980-2011**

[http://www.montgomerycountymd.gov/content/ded/ag/services/pdf/agpreservation/annualreportfy1980\\_fy2011](http://www.montgomerycountymd.gov/content/ded/ag/services/pdf/agpreservation/annualreportfy1980_fy2011).

**Marlene Michaelson's January 16, 2008 report to the PHED Committee**

[http://www.montgomerycountymd.gov/content/council/pdf/agenda/cm/2008/080124/20080124\\_PHED02.pdf](http://www.montgomerycountymd.gov/content/council/pdf/agenda/cm/2008/080124/20080124_PHED02.pdf)

**Pamela Dunn's March 21, 2008 report to the Planning Board**

[http://www.montgomeryplanningboard.org/agenda/2008/documents/tdr\\_tracking2\\_print.pdf](http://www.montgomeryplanningboard.org/agenda/2008/documents/tdr_tracking2_print.pdf)

On behalf of the Montgomery County Agricultural Advisory Committee, thank you for this opportunity to present this position surrounding the equity opportunities that TDR receiving areas represent to our County farmers for marketing Excess TDRs.

Tomorrow I will bring to your office a hard copy of the attached letter along with copies of the referenced reports for your records.

Please let us know if you should have any questions.

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](mailto:jeremy.criss@montgomerycountymd.gov)  
<http://www.montgomerycountymd.gov/ag/services>

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**From:** Robeson, Lynn  
**Sent:** Monday, April 30, 2012 12:02 PM  
**To:** Criss, Jeremy  
**Cc:** Nancy Regelin; 'Jim Humphrey'; 'robert.kronenberg@montgomeryplanning.org'; Bullard-Vinson, Victoria  
**Subject:** LMA G-909, Application of Glenwood Glen Aldon LLC, et. al., for rezoning from the R-10/TDR Zone to the PD-100 Zone or the PD-88 Zone

6/11/2012

(Attachment C.)

Mr. Criss, a public hearing on the above-referenced Local Map Amendment Application was held on Friday, April 27, 2012. As you may know, the applicant has submitted alternative requests for rezoning from the R-10/TDR to the PD-100 or the PD-88 zones. Technical Staff recommended the PD-88 Zone while the Planning Board recommended approval of the PD-100 Zone.

According to the Technical Staff Report, the property owners would be required to purchase 31 TDRs under the existing zoning. The owners have agreed to supply the full complement of TDRs under the PD-88 alternative. The Applicant prefers, however, the PD-100 zoning under which it will provide 20 TDRS and 10 workforce housing units restricted for a period of 20 years. The Department of Housing and Community Affairs has indicated its support for the PD-100 alternative.

One requirement for approval of the rezoning is that it be "in the public interest." When considering the public interest, the Hearing Examiner normally considers master plan conformity, the recommendations of the Planning Board and Technical Staff, and consistency with other County plans and policies. Technical Staff recommended approval of the PD-88 Zone, finding that the 10 workforce housing units, with only a 20-year restriction, were an insufficient benefit to justify the increase in density. The Planning Board recommended PD-100, finding that the workforce housing units cost more than the full complement of TDRs, and thus were more in the public interest.

At the public hearing, Mr. Jim Humphrey, representing the Greater Montgomery Civic Federation, testified that more weight should be given to fulfilling the purpose of the TDR program. He also stated that the Agricultural Advisory Committee did not have sufficient time to comment on the alternative proposals prior to the Planning Board hearing. Finally, he testified that there have been difficulties implementing the TDR program.

Rather than rely solely on Mr. Humphrey's representations, I would appreciate your referring the alternative proposals to the Agricultural Advisory Committee for their comments and advice on the two applications. For that purpose, I have left the record open until May 29, 2012, to receive any written response the Committee would like to make. This response will be placed in the record of the case, as will this e-mail.

I have attached the Technical Staff Report, an Errata to the Technical Staff Report, and the Planning Board's recommendation for the Committee's review.

(Attachment C.)



## AGRICULTURAL ADVISORY COMMITTEE

May 16, 2012

Lynn Robeson, County Hearing Examiner  
Montgomery County Board of Appeals  
Stella B. Werner Council Office Building  
100 Maryland Avenue, Room 217  
Rockville, Maryland 20850

Dear County Hearing Examiner Robeson,

RE:LMA G-909 Glenwood Glen Aldon, LLC

On May 15, 2012 the Montgomery County Agricultural Advisory Committee-AAC met and discussed the LMA G-909 for rezoning from the R-10/TDR Zone to PD-100 Zone or PD-88 Zone. This letter will serve to reaffirm the position of the AAC from their January 17, 2012 letter and to provide additional justification and clarification in opposing the proposed Planned Development Zoning.

The AAC is concerned regarding the amount of TDR receiving capacity in down County Master Planned areas that farmers rely on for marketing their "Excess TDRs" an issue that has existed since the inception of the TDR program. This on-going concern is advocated in various reports that are referenced below including links that you can access them on line. The Annual Certification Report that is published by the Montgomery County Department of Economic Development can be accessed by clicking on the link below:

[http://www.montgomerycountymd.gov/content/ded/agsservices/pdf/agpreservation/annualreportfy1980\\_fy2011.pdf](http://www.montgomerycountymd.gov/content/ded/agsservices/pdf/agpreservation/annualreportfy1980_fy2011.pdf)

### **Montgomery County Farmland Preservation Certification Report FY1980-FY2011.**

On page 13 it states the following-(explanation for difference between Excess and Buildable TDRs

At the end of FY11, a total of 52,052 acres of agricultural land have been protected by TDR easements. Also during FY08, the County reached its preservation goal of protecting 70,000 acres of farmland through agricultural easements, including TDRs. 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 (Buildable TDRs) consistent with the permitted density of the RDT zone. (It is important to note that lands protected by TDR easements are now eligible for the County's new Building Lot Termination-BLT program which overlays the TDR easement with a more restrictive and protective encumbrance than the conditions of the TDR easement. The long term success of the TDR and BLT programs are dependent upon sufficient Excess-TDR and Buildable-BLT-TDR receiving capacity in down County Master Plans.)

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On page 19 of this report it states the following:

"We must continue to expand the use of TDRs within the County wherever possible and not continue to erode capacity (referenced in MNCPPC TDR reports as diminished capacity) that has already been approved within the various Master Plans."

( Attachment C )

**Council Staff Marlene Michaelson January 16, 2008 memorandum referencing 2007 TDR Tracking Report**

In January of 2008, the County Council learned from Council staff and MNCPPC staff that an imbalance still exists between the "Excess TDRs" remaining in the sending area verses the total TDR receiving capacity to accommodate them. If you click on the link below you will access the Council staff packet for this PHED Committee Work session on the status of the Transferable Development Rights-TDR program.

[http://www.montgomerycountymd.gov/content/council/pdf/agenda/cm/2008/080124/20080124\\_PHE02.pdf](http://www.montgomerycountymd.gov/content/council/pdf/agenda/cm/2008/080124/20080124_PHE02.pdf)

The Council staff memorandum **states "The attached report indicates a significant deficit in the number of potential receiving areas ranging from 3,685 to 7,840 TDRs."**

The imbalance of TDRs results from the need for additional receiving capacity necessary to accommodate the remaining 4,986 "Excess TDRs" in the sending areas that are available for sale. This imbalance negatively impacts our farmers because the demand for Excess TDRs is lower than the supply of Excess TDRs available for sale.

**MNCPPC Staff Pamela Dunn March 21, 2008 memorandum entitled "TDR Program-Receiving Area Capacity"**

In March of 2008, the Planning Board discussed the TDR program-TDR Program-Receiving Area Capacity. If you click on the link below you will access the MNCPPC staff packet for this Planning Board Discussion on the status of the Transferable Development Rights-TDR program.

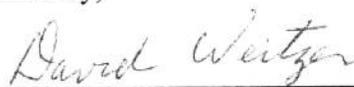
[http://www.montgomeryplanningboard.org/agenda/2008/documents/tdr\\_tracking2\\_print.pdf](http://www.montgomeryplanningboard.org/agenda/2008/documents/tdr_tracking2_print.pdf)

In the memorandum the MNCPPC staff asserted on page 1 that "the potential for additional TDR receiving capacity from the Twinbrook, White Flint, and Gaithersburg (West) plans equals approximately 3,300 TDRs. This additional capacity, if it is realized, is sufficient to support the TDR program for the remainder of its life." However, the Twinbrook and Germantown plans employed a newly created Transit Mixed Use (TMX) Zone that only provides for additional density derived from purchase of "buildable" TDRs, not "Excess" TDRs [see County Code Sec.59-C-14.27]. And the White Flint and Gaithersburg West (now known as the Great Seneca Science Corridor) master plans employed a newly created Commercial/Residential (CR) Zone that also only provides for additional density derived from purchase of "buildable" TDRs, not "Excess" TDRs [see County Code Sec.59-C-15,856(a)] therefore, none of the opportunities for creating additional receiving capacity for 3,300 Excess TDRs that MNCPPC staff anticipated in the March 21, 2008 memo materialized, and the "significant deficit" of receiving areas for TDRs that was explained in the *2007 TDR Tracking Report* remains to this day.

It is the Montgomery County Agricultural Advisory Committee's understanding that there are many properties zoned in the *1994 Bethesda CBD Sector Plan* for residential use, and that each residential project over 20 units in size which is approved by the Planning Board will require a minimum of 12.5% affordable units as MPDUs that do not require the purchase of TDRs. However, the Battery Lane District section of the Plan is the only one that contains the TDR receiving areas which "further the goals of the County's Agricultural Land Preservation Policy." The subject properties zoned R-10/TDR on the south side of Battery Lane are designated as TDR receiving areas and for this reason, we respectfully urge you recommend the County Council deny this rezoning request and retain the existing R-10/TDR zoning for those properties on Battery Lane as intended by the Council in 1994.

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Sincerely,



David Weitzer, Chairman