

Montgomery Farmland Preservation
Annual Report
FY1980 - FY2008



Being County Executive provides me a great opportunity to work closely with a diversity of businesses and citizens throughout the County. Many people recognize that the County is the The **SMART** Business Location for biotech and information technology businesses. What many people are not aware of, however, is that Montgomery County also has a thriving agricultural industry that contributes over \$252 million to the local economy.

The continued viability of the agricultural industry is strengthened through a variety of programs offered by the Department of Economic Development - Agricultural Services Division. Our agricultural preservation programs help to ensure that the economic contribution from agriculture will continue for many years to come. I am proud that Montgomery County has permanently reached our farmland preservation goal by protecting 70,093 acres within our Agricultural Reserve as outlined in this *Montgomery County Farmland Preservation Program Report (FY1980-2008)*.

The Agricultural Preservation Programs, as referenced in this report, are integral to the County's public land use policy and key to the sustainability of the agricultural sector. Whether you enjoy purchasing fresh locally grown products or appreciate a beautiful vista as an open space amenity, all of us benefit from agricultural preservation.

We are proud that Montgomery County's Farmland Preservation Programs are recognized nationally as a leader in farmland preservation and we continue to work with the agricultural community to find avenues that will enhance the protection of this valuable resource.

The agricultural community should be commended for its stewardship in farmland preservation. The continued success of the preservation of farmland within the County could not be accomplished without this important and vital community.

Isiah Leggett
County Executive

The Honorable Isiah Leggett, County Executive
Executive Office Building
101 Monroe Street, 2nd Floor
Rockville, Maryland 20850

Dear Mr. Leggett:

It gives us great pleasure to present *The Montgomery County Farmland Preservation Program Report (FY1980-2008)*. This report details the progress we have made in our agricultural land preservation programs and initiatives over the past 28 years. The Agricultural Preservation Advisory Board (APAB) is encouraged by the continued program participation and quality of productive farms protected by easements under many of the programs that are available.

Many farmers have acknowledged the benefits our easement programs provide. We are very proud of the vital role these programs play in keeping important family farms in continued operation throughout Montgomery County. Our programs continue to focus on the preservation of farms with good soils which are threatened by development, while at the same time offering a protection opportunity to owners of small farms.

This year, the APAB is pleased to report that the has reached its goal of preserving 70,000 acres in the Agricultural Reserve, nearly two years ahead of schedule. We believe the achievement of this goal benefits all citizens by striking a balance between the preservation of agricultural and open spaces while promoting economic viability throughout the entire County. With the strong commitments from Montgomery County and with the agricultural community's willingness to participate in our programs, we look forward to an ongoing partnership that will help to protect our vital agricultural resources.

The APAB sincerely appreciates your demonstrated commitment to Agricultural Preservation and under your leadership we look forward to enhancing the protection of these important agricultural resources for many years to come.

Sincerely,

David Scott, Chairman

Bruce Connelly

Vince Berg

William Willard

Diana Bercholli

John P. Zawitoski
Director of Planning and Promotions
Department of Economic Development
Agricultural Services Division

The Montgomery County Farmland
Preservation Program Report
FY1980-FY2008
Executive Summary

For over two hundred years, Montgomery County has been the home to a strong agricultural industry. There is a long and rich farming heritage in the County; a heritage and tradition that has contributed greatly to the incredibly high quality of life the residents of Montgomery County enjoy today. Preserving that heritage and encouraging its growth, through land preservation efforts and public policy, continues to be a top priority in Montgomery County.

The most significant initiative began 28 years ago in 1980 when almost a third of the County, more than 93,000 acres of land, was designated as the County's Agricultural Reserve. The vision was to preserve this land not only for the benefit of the County's farmers, but to ensure future generations of residents would enjoy the environmental and esthetic benefits of this wondrous open space. The vision has become a reality. Montgomery County is recognized as a national leader in the field of land preservation by preserving over 70,093 acres of farmland to date.

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

The most revolutionary tool created by the County to fight the battle against suburban sprawl, was the designation of a bona-fide agricultural zone, known as the Rural Density Transfer (RDT) Zone. This first-of-its-kind zoning became the predominant zoning in the Agricultural Reserve. By law, RDT zoning sets a 25 acre density for subdivision of land, but allows landowners to sell development rights based on the previous zoning designation of 1 unit per 5 acres to areas designated for higher density growth elsewhere in the County. The results are that the rural landowner can recapture some of the lost equity which resulted from the 1980 down-zoning, while centering development in strategic areas where the existing infrastructure can accommodate the increased density. While this "transferable development rights" program has been successful, further protection measures have been necessary to protect farmland.

To keep Montgomery County's Farmland Preservation programs adequately funded, a combination of funding sources has been used, including:

Agricultural Transfer Taxes: Beginning with the certification of our farmland preservation program in *FY1990* and through *FY2008*, a total of \$29,604,220 of agricultural transfer taxes have been retained by the County for agricultural land preservation.

Investment Income: Agricultural Transfer Taxes that are retained by Montgomery County are placed into an interest bearing account. Beginning in *FY1994*, the income generated by the interest was invested back into the agricultural land preservation program. As of *FY2008*, a total of \$4,392,854 of interest has accrued. Investment Income has been used to fund preservation initiatives, emergency agricultural economic development initiatives and staffing costs. As of the end of *FY2008*, the fund balance of Investment Income is about \$2,331,468 and is available to the program.

General Obligation Bonds: One alternative farmland preservation funding source is General Obligation Bonds. While no G.O Bonds are currently being authorized and appropriated for this project, they may be sought in the future as cash revenues funding the preservation program dwindle.

State and Federal Grants: Beginning in 1997, the State's Rural Legacy Program was enacted as part of the State's Smart Growth and Neighborhood Conservation initiative to protect our natural resources. Since the first grants were awarded during the *FY1998-1999* grant cycle, Montgomery County has been awarded/allocated a total of \$19.3 million in State Grant Funds. The Federal Farmland Protection Program (FPP) was first created for the State of Vermont and then in 1996, was finally expanded to include all States and Counties in the U.S. While Montgomery County Government has been an active participant within the FPP since its first year in 1996, changes to the program have made many jurisdictions across the United States ineligible or unable to qualify for Federal Funding. Unfortunately, Montgomery County and the State of Maryland are included among the jurisdictions which are unable to apply for Federal funds due to the new funding eligibility requirements. It is our hope that changes recommended in the 2007 Farm Bill will correct the deficiencies with this program to once again enable Montgomery County to be eligible for Federal Funds. While since the inception of the Federal program, Montgomery County has been awarded a total of \$792,363 in Federal Funds, a total of \$92,500 was returned to the Federal Government due to changes in eligibility requirements.

Programs and Program Administration

The Agricultural Services Division was created to support and promote the viability of the agricultural industry in Montgomery County. The Division works to increase the public's awareness of the value and economic impact of agriculture. In order to preserve working farmland, the Division is responsible for the administration of a variety of agricultural and conservation easement programs. To oversee the public policy for agricultural preservation, Chapter 2B of the Montgomery County Code provides for the establishment of an Agricultural Preservation Advisory Board (APAB). The role of the APAB is to promote the preservation of agriculture within the County. In general, the APAB sets priorities for easement acquisition, provides guidance for setting program policies, and makes recommendations on proposed regulations as well as mediation for certain review and approvals for easement servicing.

There are 7 primary land preservation programs available to landowners within Montgomery County.

	Total Acreage Protected
1. Maryland Agricultural Land Preservation Foundation (MALPF)	4,036
2. The Montgomery County Agricultural Easement Program (AEP)	7,266
3. Rural Legacy Program (RLP)	4,875
4. Maryland Environmental Trust (MET), and other private trust organizations.	2,086
5. Transferable Development Rights Program (TDRs)	51,830
6. Montgomery County Legacy Open Space Program (LOS)	0
7. Conservation Reserve Enhancement Program (CREP)	1,909*

* CREP Contract Phase Only

Farmland Preservation Programs:

1. 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. Through *FY2008*, 4,036 acres of farmland has been protected by this program within the County. 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.

In 2007, State legislative changes to the program eliminate the need to create agricultural districts as a program eligibility requirement. Landowners can now apply directly to the County for selling an easement through MALPF. This administrative change will simplify the review and approval process which will save time. Once the easement is acquired, landowners retain title to the land and can sell the property in the future. However; future development of the property is limited to agriculture.

In order to determine the value of an easement, the 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. Once the “Fair Market Value” is determined, 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 easement value. The restricted or “Agricultural Value” is generally considered to be the value of the land that remains once the development potential has been restricted from the easement property. In other words, since the development potential has been restricted, the highest and best use for the easement property would be limited to those uses associated with agricultural production and, therefore, the sales price would reflect the lower restricted “agricultural” value. Typically, an easement under this program can be settled within 12 - 24 months.

The Chart below details a summary of MALPF Acquisitions for *FY2002* through *FY2008*

**MALPF Acquisition Summary
FY02-FY08 Program Cycle**

<u>Landowner</u>	<u>MALPF Program Cycle</u>	<u>Acres</u>	<u>FMV/Acre</u>	<u>Max Easement Value/Acre</u>	<u>Discounted Easement Offer/Acre</u>	<u>Discount Value</u>
James & Meg Evans	FY02	234	4,995	4,195	3,700	\$115,830.00
Cross Farm LLC	FY03	100	6,100	5,460	4,250	\$121,000.00
Cerino et al	FY03	109	5,300	4,506	3,700	\$87,854.00
Stabler et al	FY03	170	5,300	4,506	3,850	\$126,608.00
Carlin Farm LLC	FY03	130	5,300	4,505	3,900	\$78,650.00
Laney	FY03	12	4,402	3,608	3,608	\$0.00
MDR Friendly Acres	FY04	109.539	5,000	4,215	4,215	\$0.00
MDR Friends Advice	FY04	150.97	5,100	4,313	4,300	\$1,962.61
MDR Friends Ahoy	FY04	231.07	5,000	4,213	4,100	\$26,110.91
Bernard Mihm	FY05	272.84	5,200	4,406	3,900	\$137,045.04
Shiloh Farms LLC	FY06	140	7,192	6,327	5,800	\$73,817.00
Richard Biggs	FY08	137.85	10,920	10,282	7,049	\$445,831.90
John Doody Et al	FY08	<u>165.02</u>	<u>9,939</u>	<u>9,415</u>	<u>7,455</u>	<u>\$323,503.87</u>
		1,985	\$6,134	\$5,381	\$4,602	\$768,877.56

In general, values for settled easements during this time frame have typically averaged from about \$3,600 per acre upwards to \$10,000 per acre. It is important to note that the values paid for MALPF easements as noted above, represent a landowner's discounted easement offer. As land values increase, it is highly likely that higher easement values for MALPF easement purchases will result. However, the same is true in reverse; as the economy declines, easement values can be expected to decline as well. We will be monitoring the land values very closely as the slowing of the economy deepened during the latter part of 2008.

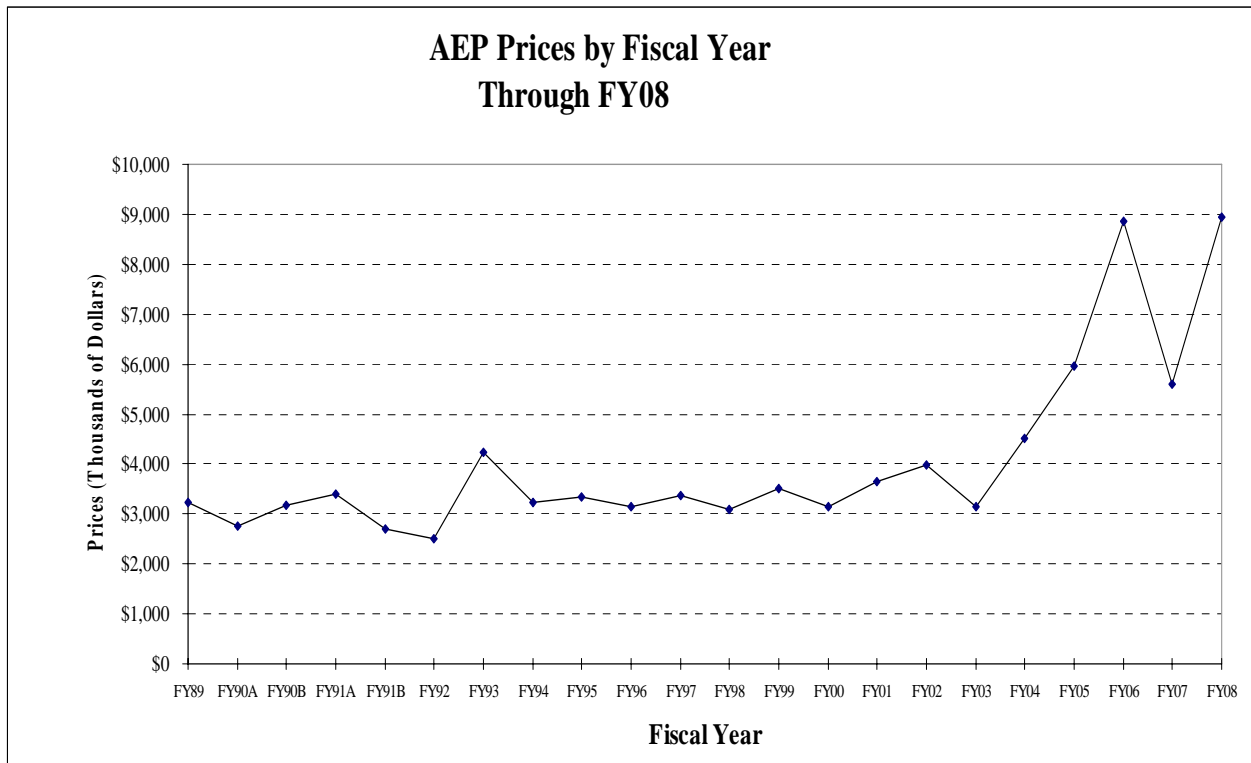
2. Montgomery County Agricultural Easement Program (AEP)- Established in 1987, this program gives the County the ability to Purchase agricultural land preservation easements to preserve land for agricultural production. Lands eligible for participation in this program must be zoned Rural, Rural Cluster, or Rural Density Transfer, or must be determined 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. Through *FY2008*, 7,266 acres of farmland have been protected by this program.

In addition, beginning in *FY91*, Montgomery County implemented a change in the Executive Regulation, 66-91 "Agricultural Land Preservation Districts & Easement Purchases" which enabled the County to create, acquire and account for Transferable Development Rights (TDRs) as a part of the easement acquisition process. The TDRs created through the easement acquisition process are held by the County and represent an asset with the potential to be a source of future revenue for the program. Through *FY2008*, the County has acquired 758 Transferable Development Rights in association with the County's AEP program.

This program has provided the means by which the County has effectively achieved its farmland preservation goal by targeting exceptional and/or key properties for preservation. Since the funding for this program is not dependent upon the availability of State matching funds, the County can respond more efficiently to landowners needs, typically settling easements within 6 to 10 months.

Determining Easement Values for AEP

An important feature of this program is that easement values are determined by using an added value formula in conjunction with the Base Easement value determined by the County Executive annually as outlined on the following page. The added value formula method attempts to put in place a numerical scoring system that evaluates the suitability of the property for agricultural use. Added value formulas can also be used as a mechanism to rank properties in order of their priority for easement acquisition. These formulas “add value” to a calculated easement price base upon the extent of coverage that exists for each attribute being evaluated under the formula.



Outlined below is a summary of the AEP Base Value over time.

History of AEP Base Value

<u>FY</u>	<u>Base Value/Acre</u>
1989	\$700 per acre
1991	\$750 per acre
1999	\$800 per acre
2004	\$900 per acre
2005	\$1,500 per acre (1st 6 months FY05) \$1,700 per acre (2nd 6 months FY05)
2006/2007/2008	\$1,700 per acre

Easement applications are received by the County during open purchase periods corresponding to the fiscal year and then ranked. Easement acquisitions are ranked in order of the amount by which the landowner's offer price is lower than the maximum easement value as determined for each easement. Under this program easement values may range from \$1,700 per acre to \$8,942 per acre.

3. Montgomery County Rural Legacy Program (RLP)- In 1997, the Rural Legacy Program (RLP) was enacted as part of the Governor's 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. Through *FY2008*, 4,875 acres have been protected by this program. As with the County's AEP program, the Montgomery County Rural Legacy Program provides the mechanism for the County to create, acquire and account for Transferable Development Rights (TDRs) as a part of the RLP easement acquisition process. The TDRs created through the easement acquisition process are held jointly by the State/County and represent an asset and potential source of future revenue for the program. Through *FY2008*, the State/County has acquired 351 Transferable Development Rights through the County's RLP program.

As with the County's AEP program's Added Value Formula, the Rural Legacy Easement Valuation System (EVS) must also be modified over time to ensure that it is properly calibrated to value properties for easement acquisition. Since program inception in 1998-99, modifications have been made to the RLP EVS formula's base value. These adjustments were made so that the RLP EVS formula could be properly calibrated to value farmland for easement acquisitions.

Below is a summary of the history of the adjustments to the RLP Base Value.

History of RLP Base Value

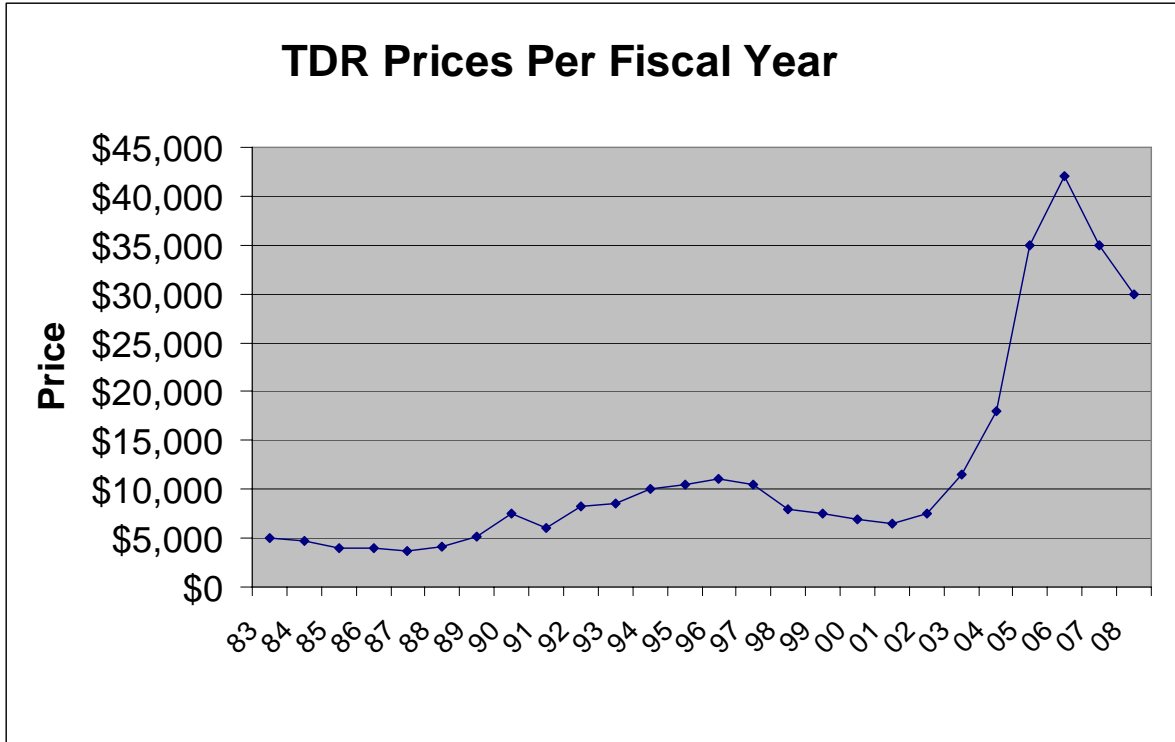
<u>FY</u>	<u>Base Value \$ per point</u>
1998/99	\$4.56 per Point
2002	\$5.50 per Point
2004	\$7.50 per Point
2005/2006/2007/2008	\$10.00 per Point

Under this program, easement values may range from \$3,500 per acre to \$8,000 per acre and can take between 8 to 12 months to complete settlement.

4. Maryland Environmental Trust (MET)- was 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. Through *FY2008*, a total of 2,086 acres have been protected by this program.

5. Montgomery County Transferable Development Rights (TDR) Program -

The Transfer of Development Rights (TDR) program allows landowners to transfer a development right from one parcel of land to another parcel. For agricultural land preservation, TDRs are used to shift development from agricultural areas (“TDR sending areas”) to designated growth zones or (“TDR receiving areas”) which are located where we have public services. When rights are transferred from a parcel within the designated “TDR sending area,” the land is restricted by a permanent TDR easement. The land to which the rights are transferred are called the “receiving area.” A TDR program represents the private sector's investment in land preservation, as the price paid for TDRs are negotiated between a landowner and a developer. A developer who purchases TDRs is permitted to build at a higher density than permitted by the “base zoning.” The funds paid for a TDR by the developer to a landowner creates a wealth transfer from the developed areas back into the rural economy. Through *FY2008*, a total of 51,830 acres have been protected by this program. Please note that MNCPPC reports that 64,566 acres are recorded under TDR easements and this total includes properties that are also protected through the programs listed 1 through 4.



6. Montgomery County Legacy Open Space Program (LOS)- While distinctly different from the Rural Legacy Program (RLP), the LOS program was established by the Maryland National Capital Park and Planning Commission in October 2000. The objective of this program is to conserve the County’s most significant open spaces. The program identifies natural resources, open space, agricultural and historic lands for conservation and creates a comprehensive strategy to protect the County’s “green infrastructure.” Acquisitions can be both “In Fee” and through “Conservation and Agricultural Easements.” While this program focuses on the protection of special, natural and environmental resources within 6 separate categories through the Legacy Open Space Master Plan, the only category directly related to farmland conservation is resource Category 5. As of 2008, LOS has not been directly involved in purchasing easements on farm properties.

7. Conservation Reserve Enhancement Program (CREP)- As part of a partnership between the United States Department of Agriculture and the State of Maryland, this program was developed beginning in 1997 to focus attention on a streamside buffer restoration initiative which would protect water quality and critical wildlife habitat. This program consists of two parts. The first part is the contract phase:

- Under CREP, a landowner contracts with USDA through the Farm Service Agency (FSA) or Soil Conservation District (SCD) to take land out of production and install conservation practices adjacent to streams and waterways. In return, a landowner receives annual rental payments for a period of 10 to 15 years.

- Through May 2008, a total of 51 farms covering 1,909 acres are under active CREP contracts.

The County is attempting to meet the objectives of the CREP program through the acquisition of 4,875 acres of Rural Legacy Conservation Easements. This program compliments CREP and draws from the same source of funds. It incorporates mechanisms to protect the natural resources by either maintaining or establishing a 65-foot buffer along both sides of the linear length of streams.

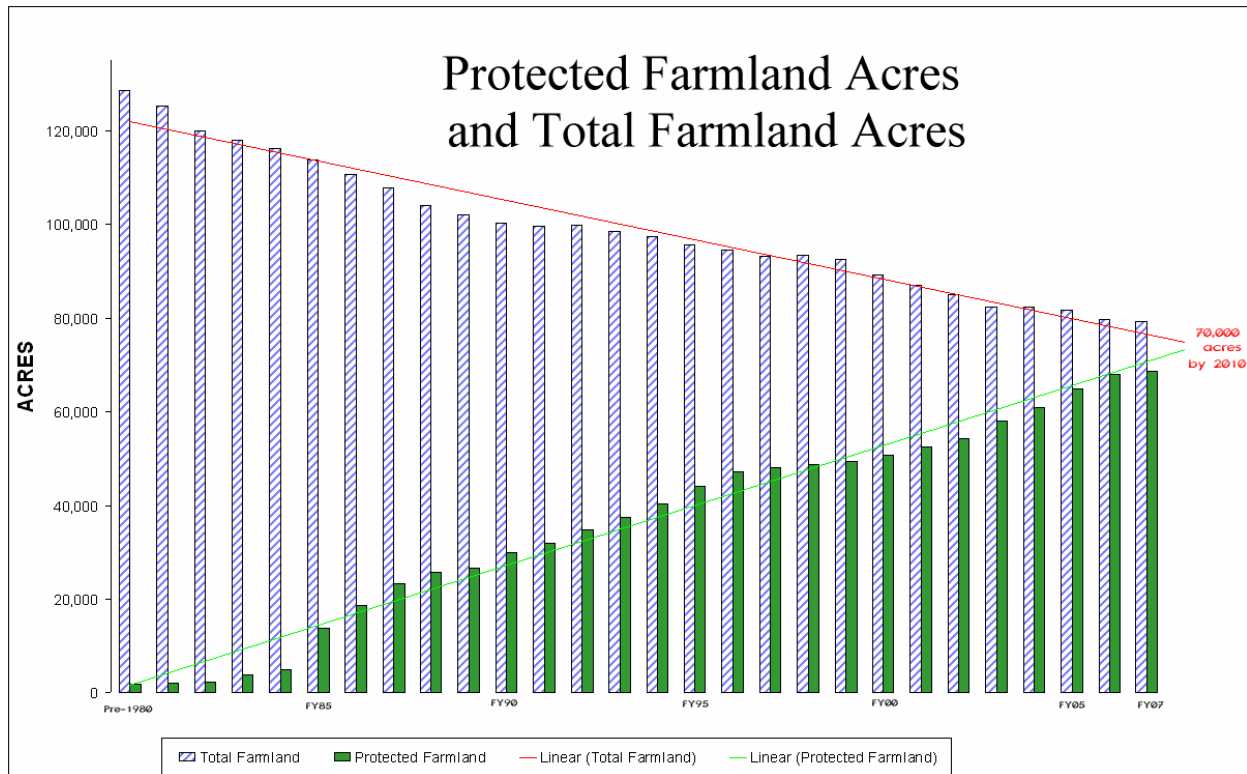
While one of the objectives of the Rural Legacy program is to promote the CREP program, landowners are given the option of choosing which program they prefer in order to implement the required riparian buffers. In all settled easements thus far, the landowners have chosen to implement the riparian buffer provisions through the Rural Legacy conservation easement and not through CREP. While CREP may not be the preferred vehicle by which riparian buffers are established and protected, the objectives of CREP are met through the Rural Legacy conservation easement provisions. Through *FY2008*, over 20 miles of buffers are permanently protected under the RLP program.

Achievement of 70,000 Acres of Farmland in Preservation:

Montgomery County's established goal of protecting 70,000 acres of farmland reached completion of this milestone during *FY2008*. Achievement of the goal has been attained two years ahead of our projected schedule. A press event will be scheduled early in 2009 to announce the achievement of the goal.

Agricultural Easement Stewardship:

Once the land is protected by an agricultural or conservation easement, the job of protecting the land is far from over. All easement properties must be monitored to ensure landowner compliance with all of the easement covenants. As part of the County's easement acquisition program, easement properties are periodically inspected. Easement stewardship is an ongoing requirement of any easement program and it will be necessary long after the last easement is purchased by the County or State. The dedication of local resources, including staff, must be provided to ensure that the investment in the protection of the agricultural resources is achieved. This vital programmatic component will ensure that all citizens within the County are the beneficiaries of farmland preservation. In *FY2008*, over 4,000 acres of farmland in agricultural preservation easements were inspected by DED staff for compliance with program guidelines. All easement holders who were inspected were cooperative and helpful with the process and no significant issues were found on these farms. The only easement violation still unresolved is held over from 2006 report. The landowners have been very cooperative and are diligently working to ensure all corrective measures are achieved.



Future Initiatives:

VI. Future Initiatives

The success of our farmland preservation programs depends on several factors including the amount of funding available and the state of our local economy and real estate market. Tradition has shown that farmland preservation program participation increases at times when the local economy and real estate market is experiencing downward trends. Having appropriate preservation tools in place at the right time represents a critical challenge for us in assuring our preservation goals are met. Exploration of innovative program changes, alternative funding sources, policy changes, regulatory relief, and the expansion of both private/public sector investments all may be required in order to continue a successful farmland preservation program in Montgomery County.

Now that we have achieved our goal of 70,000 acres of farmland preserved, Montgomery County ranks second in the nation in the number of acres of preserved farmland, and is first in the nation for the percentage of County land that is in agricultural preservation. While this recognition is a great accomplishment for the County and the farmers who live here, our work is not done. We must take steps to provide an enhanced level of protection to lands that are only protected by TDR easements. These properties may still be fragmented at a rate of one house per every twenty-five acres. This means that the APAB may wish to establish a new goal for enhancing the level of protection of lands only protected by TDR easements. This enhanced level of protection can be achieved through programs like MALPF, AEP, RLP and the BLT programs.

Innovative Changes and Enhanced Farmland Preservation Programs

Enhanced Farmland Preservation Programs:

Action Item #1 – Legislative and Regulatory Amendments

In May of 2007, the Maryland General Assembly approved House Bill 1331, which changed the application process for the Maryland Agricultural Land Preservation Foundation program. This change of State Law provided the impetus for Montgomery County to introduce Bill 39-07 in December of 2007, in order to make the local agricultural preservation program consistent with the new State law, and to incorporate a new agricultural preservation initiative called the Building Lot Termination (BLT) Program.

The BLT Easement is another method to preserve agricultural land by reducing the fragmentation of farmland resulting from residential development. However, a BLT Easement provides 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 introduction of Bill 39-07 to the County Council in December of 2007 was followed by a public hearing in January of 2008. In September of 2008, the Bill went before the Planning, Housing, and Economic Development (PHED) Committee for review, and in November it was approved by the County Council. Following the approval of Bill 39-07, the Chief Administrative Officer for Montgomery County sent an invoice to the City of Gaithersburg for the \$2.0 million the city had received from the developer of the Crown Farm as part of the Annexation Agreement. This money was to be used for agricultural preservation in Montgomery County, and it is hoped the \$2.0 million will provide seed money to the new BLT program. In addition, the PHED Committee met in January 2009 to discuss the use of Advanced Land Acquisition Revolving Fund (ALARF) monies for BLT, in the amount of \$5.0 million.

Action Item #2 Building Lot Termination Program (BLT)

The County Government approved the Legislative Act of January 6, 1981 creating the RDT Zone 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. 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 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 a new program. Referred to as the Building Lot Termination Program (BLT), 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. This initiative focuses on specific ways to encourage the preservation of farmland owned by individuals that have decided, for a variety of reasons, to not protect or encumber their farms through our traditional easement programs that are currently available. DED is currently in the process of drafting Executive Regulation 03-09- Agricultural Land Preservation Easement Purchases which will serve to implement changes to Chapter 2B.

Action Item # 3 - Modification of the County's Added Value Formula

The APAB recommends annually to the County Executive the established Base Easement Value to the added value formula. The APAB will need to closely monitor the real estate market to determine if the current base value is in need of adjustment. The APAB recognized changes to the Added Value Formula for determining easement values require action by the County Council as part of the regulation promulgation process and implementation. These specific recommended changes are outlined below:

Changes to the AEP Added Value Formula

Staff recommends the adoption of certain changes to parts of the added value formula valuation system. These changes provide greater flexibility in valuing the easements as well as considering an opportunity for landowners to extend long term leasing agreements with the local farming community. These changes are outlined below:

- Modification of the Land Tenure component to include consideration for point value when the land is being farmed by an operator under a long term lease agreement with the landowner.
- Modification of the Agricultural Zone Edge component to include the maximum point value award when a property inside the RDT zone is within one (1) mile of the border with other zones in the County, including incorporated towns.

We believe the expansion of the land tenure component will provide a financial incentive by which long term leasing agreements can be executed between the rural landowner and the farm community. In addition, it is also time to expand the Agricultural Zone Edge component from 1/2 mile to 1 mile. Since 1989 this has not changed and we believe the time has come to now consider expanding the zone edge requirement. Executive Regulation 03-09, once promulgated, will serve to implement changes to Chapter 2B that were adopted by the County Council on November 18, 2008. This approach provides another financial incentive which we hope will attract more landowners into this program. We have purchased 19 easements under

AEP that are located within 1/2 mile of the RDT zone border. This enhanced value has led to the preservation of these properties because we could offer a higher easement value in recognition of a greater threat of development.

Action Item # 4 - Changes to Owner's and Child Lot Provisions within the Executive Regulation 03-09

Under an easement, the grantor of an Agricultural Preservation Easement retains certain rights to construct dwellings needed on the farm. The grantor must apply in writing to the Agricultural Preservation Advisory Board for approval to use. The APAB recommends the following changes relating to any release executed for an owner's lot or child lot under the program:

- Any release or preliminary release issued under this regulation shall include:
 - i. A statement that the owner's or child's lot may not be transferred for 5 years from the date of the final release, except on:
 1. Approval by the Agricultural Preservation Advisory Board (APAB); or
 2. a lender providing notice to the APAB of a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure.

It is important to note that in 2003, the MALPF changed their regulations regarding releases for owners and children's lots to reflect a similar restriction on transfers. We believe the recommended changes as outlined above are consistent with the State program and would provide the County greater protection from potential abuse. It is important to note that a similar restriction is under consideration with regard to children's lot rights provided under zoning. We are also recommending as part of the change in Executive Regulations to reduce the number of future reserved residences for children as required by MALPF from a maximum of ten (10), to a maximum of three (3) depending on the size of the farm property. Executive Regulation 03-09 once promulgated will serve to implement changes to Chapter 2B that were adopted by the County Council on November 18, 2008.

Expand Agricultural Economic Support Initiatives to Promote Farmland Viability

Expansion of the Private Sector and Public Sector Investment in Farmland Preservation.

Since we have achieved our goal of 70,000 acres of preserved farmland, it will become more challenging to preserve the remaining unprotected land and the land only protected by TDR easements. We must strive to adopt changes that will serve as incentives to foster greater participation in farmland preservation on the lands that remain. This includes the expansion of both the private sector and public sector investments in farmland preservation.

Action Item #5 - Implement Improvements to our TDR programs, Promote Non Residential Uses for TDRs through the expansion of Urban Growth Areas.

Montgomery County's TDR program has long been admired nationally as the model for Transferable Development Rights programs. Many jurisdictions across this country have studied our example and worked towards implementing programs of their own. While we have benefited from this exposure, we have not been working aggressively enough to ensure its continued viability. Any program that has existed for over 26 years must be modified on occasion to enhance its effectiveness in meeting the needs of the citizens. The TDRs are responsible for protecting over 51,830 acres of farmland, which represents about 74% of the farmland preservation properties protected to date. The outcome of this TDR program represents an economic development initiative into the rural economy from the private sector investing \$115 million and TDRs play a pivotal role in our public policy objectives.

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. By promoting the concept of non residential uses for TDRs, it is anticipated that values for non-residential TDRs would be higher and more in line with the level of compensation that is necessary to encourage preservation. This expanded approach can help establish a private sector investment in the further protection of agricultural land by providing a financial mechanism will approach a fair and equitable exchange for those rights that will entice landowners to forgo residential development retained on farms where only the buildable TDRs remain (1 unit for every 25 acres.)

The County must also enhance planning and implementation efforts in our urban growth areas. By re-investing in our urban growth areas we can ensure that our citizens are exposed to healthy and sustainable communities. To this end, the recommendations in the Ad Hoc Agricultural Policy Working Group Report must become a part of our future planning goals.

A new zoning text amendment is being proposed which will both provide opportunities for non-residential TDRs and re-focus attention on urban growth areas. This new ZTA will create the Transit Mixed-Use Zone, which will be centered around transit corridors and will serve as new receiving areas for non-residential TDRs.

Action Item #7 – Increase the number of acres of preserved farmland that are inspected for compliance with program guidelines.

In order to update the schedule of biannual easement inspections and continue with the ongoing effort to monitor the integrity of agricultural easements in Montgomery County, we will increase the number of acres inspected in FY08 by 50%, to reach a goal of at least 6,000 acres of preserved farmland inspected in FY09.

The Winds of Change:

The agricultural industry within the County is constantly evolving. We must recognize that changing trends in agriculture are not unique to Montgomery County, nor is change a sign of

demise of the agricultural industry. Changes are a normal part of an evolving market-driven system. The key for any industry to survive is dependent upon its ability to adapt to these changes. The County must be in a position to adapt to these changes as well. One of the main philosophies the County employs for farmland preservation is to protect the agricultural land base and let the industry focus on the direction it wants to go. We do not protect farmland for any particular type of agriculture activity or use.

If the County recognizes the importance of agriculture within its borders then government must assume the responsibility of recommending and implementing measures to ensure its survival. A key recommendation within the 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space details on page iv is that there must be *"application of incentives and regulations to preserve farmland and rural open space and to encourage agricultural use of the land."*

These future initiatives and the decisions that are made will have a profound impact on the future of agriculture. We must ensure the next generation will be the beneficiaries of productive farmland and open space amenities. To this end we will have protected an important part of our heritage as well as enhancing the quality of life for all citizens of Montgomery County.

Summary of Appendices:

Appendix A: Montgomery County Agricultural Easement Program
(County AEP and State MALPF)
Actual Expenses for Pre FY 1989-2008

Appendix B: Montgomery County Agricultural Easement Program
(County AEP and State MALPF)
Revenue Collections/Expenses (Beginning with Certification)

Appendix C: Montgomery County Agricultural Easement Program
All Funding Sources (Local/State)
(County AEP and State MALPF and RLP)
Actual Expenses for Pre FY 1989-2008

Appendix D: Montgomery County Agricultural Land Preservation Map

**Montgomery County Agricultural Easement Program (County AEP and State MALPF)
Actual Expenses for Pre FY 1989-2008
August 2008**

<u>Fiscal Year</u>	<u>Easement Acres Purchased</u>	<u>Operating Expenses</u>	<u>Operating Expenses as Percent of Total Program Expenses</u>	<u>Easement Expenses</u>	<u>Easement Expense as Percent of Total Program Expense</u>	<u>AG Transfer Tax Expense</u>	<u>Allocation Investment Income</u>	<u>Total Program Expense</u>
<i>Pre1989</i>	<i>1,678MALPF</i>	-	-	\$420,546	-	\$420,546	N/A	420,546
1989	0	\$58,772	100.0%	0	0.0%	58,772	N/A	\$ 58,772
1990	1,016 AEP	120,456	3.7%	3,178,628	96.3%	3,299,084	N/A	3,299,084
1991	1,105 AEP	111,150	3.1%	3,436,429	96.9%	3,547,579	N/A	3,547,579
1992	822 AEP	99,793	3.9%	2,458,548	96.1%	2,558,341	N/A	2,558,341
1993	447 AEP	96,874	7.8%	1,141,722	92.2%	1,238,596	N/A	1,238,596
1994	701 AEP	101,818	3.4%	2,900,854	96.6%	3,002,672	N/A	3,002,672
1995	400 AEP	125,166	8.5%	1,339,264	91.5%	1,464,430	N/A	1,464,430
1996	573 AEP <i>128 MALPF</i>	99,412	5.2%	1,798,585	94.8%	1,839,109 58,888 Private Contributions*	N/A	1,897,997
1997	66 AEP	125,185	36.0%	222,804	64.0%	313,190 +	34,799 =	347,989
1998	0	165,852	97.8%	3,675	2.2%	152,574 +	16,953 =	169,527
1999	<i>268 MALPF</i>	7,872	1.7%	455,105	98.3%	361,044 + 61,817 Federal FPP#	40,116 =	462,977
2000	514 AEP	0	0%	1,785,889	100%	1,614,757 +	171,132 =	1,785,889
2001*	624 AEP	4,068	.19%	2,151,252	99.81%	2,035,292 + 115,960 Federal FPP#	4,068 =	2,155,320
2002*	187AEP 234 MALPF	90,303	8.63%	955,566	91.37%	955,566 +	90,303=	1,045,869
2003*	223 AEP 523 MALPF	153,955	11.08%	1,235,359	88.92%	1,235,359 +	153,955 =	1,389,314
2004	491 MALPF	163,259	9.88%	1,489,083	90.12%	1,489,083 +	163,259 =	1,652,342
2005	121 AEP 272 MALPF 30.83 RLP	193,180	9.89%	1,760,441	90.11%	1,760,441 +	193,180 =	1,953,621
2006	110 AEP 517 RLP	222,573	24.59%	904,994	75.41%	904,994 +	222,573 =	\$1,127,567

Montgomery County Agricultural Easement Program (County AEP and State MALPF)
Actual Expenses for Pre FY 1989-2008
August 2008

2007	86 AEP	234,307	43.86%	534,153	56.14%	534,153 +	234,307 =	\$768,460
2008	271 (AEP) 302 (MALPF) 427 (RLP)	236,743	7.3%	3,262,440	92.7%	3,262,440 +	236,743 =	\$3,499,183
<hr/>								
Totals	7,266 AEP 4,036 MALPF 4,875 RLP	\$2,410,738		\$31,435,337		\$32,048,022	1,561,388	33,609,410
						58,888*		
						61,817 #		
						115,960#		

* A change in Investment/Interest Income Policy by OMB/DED by Memorandum dated August 15, 2003 directs Investment/Interest income to be used to fund 100% of the administration expenses associated with this project. The policy was applied retroactive to FY01 and FY02 resulting in the changes as noted above. Prior to FY2001, this policy allocated 10% annually.

a:aepactualexp2007(AUG007)

Montgomery County Agricultural Easement Program (County AEP and State MALPF)
Revenue Collections/Expenses (Beginning with Certification)

	<u>Ag Transfer Tax</u>		<u>Interest</u>	<u>Expenses</u>	<u>Acres Acquired</u>
	<u>County</u>	<u>Total</u>			
FY 1990	\$2,475,994	\$3,713,991	0	\$3,299,084	1,016
FY 1991	147,181	196,242	0	3,547,579	1,105
FY 1992	197,016	262,688	0	2,558,341	822
FY 1993	533,960	711,947	0	1,238,596	447
FY 1994	934,322	1,245,763	151,356	3,002,672	701
FY 1995	1,400,765	1,867,687	192,295	1,464,430	400 (195 acres AFT)
FY 1996	1,041,580	1,388,773	187,230	1,839,109 Ag. Tax 58,888 Pri. Cont.	573 (128 MALPF)
FY 1997	364,210	485,613	151,989	313,190 Ag. Tax 34,799 Int. Inc.	66
FY 1998	401,491	535,321	169,733	152,574 Ag. Tax 16,953 Int. Inc.	0
FY 1999	1,016,102	1,354,802	174,051	361,044 Ag. Tax 40,116 Int. Inc. <u>61,817 Fed. FPP</u> 462,977	268 (MALPF)
FY2000	2,846,362	3,795,149	264,176	1,614,757 Ag. Tax <u>171,132 Int. Inc.</u> 1,785,889	514
FY 2001	1,605,855	2,141,140	408,208	2,035,292 Ag. Tax 4,068 Int. Inc. <u>115,960 Fed. FPP</u> 2,155,320	624
FY 2002	2,132,485	2,843,313	167,940	955,566 Ag. Tax <u>90,303 Int. Inc.</u> 1,045,869	421 (AEP/MALPF)
FY 2003	2,431,432	3,241,910	123,405	1,235,359 Ag Tax <u>153,955 Int. Inc.</u> 1,389,314	746 (AEP MALPF)
FY2004	1,936,800	2,582,400	94,293	1,489,083 Ag Tax <u>163,259 Int. Inc.</u> 1,652,343	491 (MALPF)

Montgomery County Agricultural Easement Program (County AEP and State MALPF)

Revenue Collections/Expenses (Beginning with Certification)

FY2005	1,774,915	2,366,553	187,318	1,760,441 Ag Tax <u>193,180 Int. Inc</u> 1,953,621	393 (AEP MALPF)
FY2006	7,434,337	9,912,449	627,555	904,994 Ag Tax <u>222,573 Int. Inc</u> 1,127,567	110 (AEP)
FY2007	303,011	404,015	843,338	534,153 Ag Tax <u>234,307 Int. Inc</u> 768,460	86 (AEP)
FY2008	626,402	835,203	649,967	3,262,440 Ag Tax <u>236,743 Int Inc</u> 3,499,183	271 (AEP) 302 (MALPF)
TOTALS	\$29,604,220	\$39,884,959	\$4,392,854	\$33,366,757	01/08/09

Agricultural Emergency Assistance Program (Ag. EAP) (Not included in total listed above)

FY 1998 67 applicants – 26,254 acres \$ 499,999.26 Int. Inc.
FY 2000 95 applicants – 36,703 acres \$1,000,000 General Fund
FY2007 \$2,000,000 General Fund
a:aeprevenueexp2006 (jan2005)

August 2008		Operating Expenses as Percent of Total Program Expenses			Easement Expense as Percent of Total Program Expense		AG Transfer Tax Expense	Investment Interest Income 10% Annually	Total County Program Expense	Total Rural Legacy Program Expense	Total Easement Program Expense
Fiscal Year	Easement Acres Purchased	Operating Expenses	Percent of Total Program Expenses	Easement Expenses	Percent of Total Program Expense	AG Transfer Tax Expense	Investment Interest Income 10% Annually	Total County Program Expense	Total Rural Legacy Program Expense	Total Easement Program Expense	
2005	121 (AEP) 272 (MALPF) 30.83 (RLP)	\$193,180	9.89%	\$1,760,441	90.11%	\$1,760,441	+\$193,180 =	\$1,953,621 +	\$288,692 =	\$2,243,313	
2006	110 (AEP) 517 (RLP)	\$222,573	24.59%	\$904,994	75.41%	\$904,994	+\$222,573 =	\$1,127,567 +	\$3,115,604 =	\$4,243,171	
2007	86 (AEP)	\$234,307	* 43.86%	\$534,153	56.14%	\$534,153	+\$234,307 =	\$768,460 +	0 =	\$ 768,460	
2008	271 (AEP) 302 (MALPF) 427 (RLP)	\$236,743	7.2%	\$3,262,440	92.7%	\$3,262,440	+\$236,743 =	\$3,499,183 +	\$1,786,445 =	\$5,285,628	
Totals	7,266 AEP 4,036 MALPF 4,875 RLP	\$2,410,738		\$31,435,337		\$32,048,022	1,561,388	33,609,410	\$17,668,898	\$51,278,308	
						58,888*	61,817 #				
						115,960#					

- Settlement of Edward Byrd et al property on 8/8/2007 in the amount of \$2,255,207 was intended to settle late in FY07, however delays with his estate planning pushed settlement to the beginning of FY08. Operating expenses if settlement had occurred in FY07 would bring the percentage of operating costs as a function of total program cost down to about 8.4%

a:aepactualandscape2007(aug2007)