

## MEMORANDUM

September 20, 2006

TO: Ad Hoc Agricultural Policy Working Group

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

SUBJECT: September 25, 2006 Meeting

Our next meeting is scheduled for September 25, 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 11 meeting;
- a summary of the major features of the Department of Economic Development (DED) proposal to create a Building Lot Termination Program

At the last meeting several members expressed an interest in receiving a briefing on the BLT program. Others expressed a concern to Staff about receiving a presentation from a single individual with a stated position on the program. As a result, we have asked Jim Clifford, Margaret Chasson, and Jeremy Criss to prepare a presentation together. They each came to the last meeting with different perspectives on the program and having been working together to see where they can reach agreement on different program elements.

Staff recommends that the Committee spend it time focusing on the major policy questions regarding the program. In Staff's view the major unresolved issues are the funding for the program and how the County will establish the value of each lot to be terminated. In addition, Staff recommends that the Group reconsider whether eligibility requirements should mirror those of the state for soils to ensure that state funds can be used.

Staff is in the process of preparing a matrix that describes each issue associated with the BLT program and the various positions on the issue. Since this involves input from other County staff and Group members who have developed alternative proposals, it is not ready at this time but will sent as soon as available or distributed at the meeting. A summary of the DED program is attached. More detailed information can be found in the earlier materials sent to you before the prior meeting on the BLT program. The matrix will highlight where Margaret and Jim have alternative suggestions and where the Group raised questions or took positions contrary to the DED proposal.

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

Monday, September 25, 2006  
Upcounty Regional Services Center  
4:00 to 6:00 p.m.

- 4:00      Approve Minutes
  
- 4:05      Presentation on the Building Lot Termination Program  
            by Jeremy Criss, Jim Clifford, and Margaret Chasson
  
- 4:20      Discussion of outstanding BLT policy issues
  
- 5:55      Administrative/Calendar Issues
  
- 6:00      Adjourn

**AD HOC AGRICULTURAL POLICY  
WORKING GROUP MINUTES**

Monday, September 11, 2006  
4:03 P.M. to 6:09 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
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	Tom Hoffmann
Wendy Perdue	

**GUESTS**

Jay Beatty, County Department of Permitting Services	Pamela Dunn, M-NCPPC
Royce Hanson, Chair, Montgomery County Planning Board	Brian Jones, County Council
Sherry Kinikin, County Council	Kathy Reilly, M-NCPPC
Christopher Sasiadek, M-NCPPC	Kevin Schwartz, Chair, Upcounty Citizens Advisory Board
Gene von Gunten, County Department of Permitting Services	John Zawitoski, County Department of Economic Development
Andrea Arnold	Vince Berg
Sue Carter	Barry Clifford
Jane Hunter	Dan Shaw
David Tobin	

The Group had before it the September 6, 2006 memorandum with attachments from Marlene Michaelson, Jeff Zyontz, and Amanda White.

The Group approved the minutes for the August 7, 2006 meeting with the following changes:

- On page 1, specify that the Group reviewed (not supported) the draft recommendations for building location strategies and will revisit them at a later meeting;
- On page 2, add language noting that the Group had a wide ranging discussion on funding and compensation in the Building Lot Termination (BLT) program that resulted in agreement that further definition of the program was needed to resolve these issues; and
- On page 5, when referring to priority in the BLT program, ensure that farmers and landowners that are participating in farming activities on their land are given priority.

The Group received a briefing explaining the use of different septic systems in the County from Jay Beatty, Manager of the Well and Septic Section in the County Department of Permitting Services.

The Group discussed their experiences with sand mounds. Group members revealed the following information:

- Of the Group members that were present, four members had personal experiences with using sand mounds.
- Several Group members suggested that the use of sand mounds was a viable option.
- One Group member suggested that the use of sand mounds was a viable option specifically for homes that are used to support agricultural purposes.
- One Group member suggested that sand mounds were intended to be used for homes with failing septic systems and were not intended to be used as a development tool.

The Group tentatively agreed that sand mounds should not be absolutely prohibited, and many Group members agreed that the existing policy (allowing sand mounds for any new or existing development) required some modification. The Group further agreed that sand mounds should be allowed for existing houses to replace failing systems. The Group also conceptually agreed to allow sand mounds of previously approved projects, pending a definition for “previously approved”. The Group also agreed that further discussion was necessary before deciding whether sand mounds should be allowed if their use resulted in an improved design.

Group members had the following additional comments regarding sand mounds:

- Group members had varying levels of concern about the use of sand mounds under the current policy. Some Group members were not concerned about the number of sand mounds that have been constructed under the current policy while other Group members were very concerned about the number of sand mounds that have been constructed.
- The Group discussed what the Agricultural Master Plan assumed regarding septic recommendations and density. Some Group members felt that the Agricultural

Master Plan assumed that not every property would be able to perc and therefore would limit density. Other Group members felt that since the Plan did not specifically state that density would be limited by septic considerations, property owners should be allowed to build one unit per 25 acres.

- One Group member supported allowing one sand mound for every 50 acres.
- Some Group members supported an incentive-based approach to reducing the number of sand mounds built.
- The Group discussed the balance between equity and preservation. Some Group members stressed the need to compromise; other Group members emphasized that building homes on land is not the only way landowners can get equity. Some Group members highlighted the tension between the need to preserve farmland and the need for farmers to have enough equity to have a sustainable agriculture industry.
- One Group member felt that in 1980, property owners who owned land with poor soils did not have an expectation of achieving the one unit per 25 acres that were theoretically allowed in the Agricultural Reserve. This Group member felt that these property owners received equity when they were given transferable development rights (TDRs) and received a windfall when sand mounds were allowed to be used.
- Some Group members felt that if sand mounds are not allowed, developers will rush to build houses on land with good soils instead of leaving those soils for agricultural use. Some Group members argued that some controls of sand mounds are needed to control development.
- Other Group members questioned whether or not fragmentation was higher in the portion of the Agricultural Reserve where land percs.
- Some Group members noted that sand mounds are necessary to establish value to get landowners into agricultural preservation programs.

For the Final Report, the Group discussed dividing the Group into sub-group and assigning each sub-group a topic the Group has already discussed. Each sub-group would then wrap up discussions on its assigned topic and report back to the full Group for a recommendation.

The Group agreed to return to the BLT program at their next meeting.

Minutes written by Amanda White, Legislative Analyst



## Overview Building Lot Termination Program (BLT)

### A New Farmland Preservation Initiative/Program

- What is it called?

The Building Lot Termination Easement  
Program (BLT)

## Building Lot Termination Program (BLT)

- How will it work?

The BLT will represent an additional preservation option for landowners which may result in higher levels of compensation for giving up residential building lots in the RDT zone

## Building Lot Termination Program (BLT)

- The BLT will involve landowners making application to DED
- What types of information will you need to provide as part of the application process:
  - Property Description – Title Report
  - Various Property Maps, Surveys, and Plats illustrating the property
  - Approved or Preliminary Approvals/Testing for PERCs
  - An acknowledgement statement regarding the BLT Easement Price
- DED will determine eligibility for the property

## Proposed Eligibility Criteria

- **Sellers:**

- Must be holder of fee simple title to eligible farmland, or perhaps contract purchasers with equitable interest or option to purchase fee simple title to eligible farmland
- request inclusion into the BLT by submitting a complete property description-application to the Agricultural Preservation Advisory Board.

- **Eligible Land:**

- Must be at least 25 acres in size
- Smaller properties maybe be considered if they are contiguous to other lands protected from development by agricultural and conservation easements.
- \*At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
  - \* Please note this represents a State Tax-Funding legal requirement
- The land must lie outside water and sewer categories 1, 2, and 3.

## Proposed Review and Approval Procedure

- **DED and the Agricultural Preservation Advisory Board shall:**

- Each fiscal year, the County Executive will establish the annual **BLT Adjusted Market Value Price**. (This will involve analysis of appraisals/comparable sales/land values obtained from other preservation programs expressed in terms of a percentage of the FMV of the land as determined by appraisals.)
- Establish a cap of applications which will be accepted during BLT purchase periods;
- This **Application Cap** will apply when the applications accepted exceed the total funds available for the purchase period;
- Rank applicants on a list in the order in which they are received;
- Conduct a second ranking based upon the highest percentage of Class I, II, III soils

## **Proposed Review and Approval Procedure**

**1. Provide notification to landowners as to the status of their application detailing the following:**

**2. DED will Review the extent of created/subdivided Building lots:**

Recorded plat of subdivision

Partially engineered – approved perc tests

Other factors – preliminary testing, surveys, etc.

## **Proposed Review and Approval Procedure**

**3. Review of previous TDR Transactions:**

Excess TDRs – must have been or will be created and serialized and at least 1 Development/Super TDR must be intact with the property to be eligible for the program.

**4. Applications Accepting Annual Adjusted Market Value Price:**

A recommendation of approval by DED and APAB providing the ability to move to the settlement of the BLT Easement

## Proposed Permitted/Restricted Uses on BLT Easement Properties

- **Permitted Uses:**

- a. any agricultural use of the land;
- b. operation of any machinery used in farm production or the primary processing of agricultural products, regardless of the time of operation;
- c. all normal agricultural operations, performed in accordance with good husbandry practices, that do not cause bodily injury or directly endanger human health;
- d. operation of a Farm Market for sale of farm products.

## Proposed Permitted/Restricted Uses on BLT Easement Properties

- **Restricted Uses:**

**Residential Use:**

No future residential uses are permitted on lands encumbered by a BLT easement. (Except in cases where the landowners reserved lots are on larger properties)

**Subdivisions:**

The owner of land subject to a BLT easement must not use or subdivide the land for residential commercial, industrial, or any other non agricultural uses;

Subdivisions for agricultural uses may be considered subject to guidelines established by the APAB, provided subdivision does not further fragment agricultural production capabilities.

## Proposed County Purchase Procedure

- **Rejection of Offer**
- The County will notify the landowner of any rejected offer to sell
- The County will inform landowner as to the reasons for rejection
- Reasons may include: insufficient funds, ineligible land, clouded title, or other cause.
- Applications rejected on the basis of insufficient funds will automatically be reconsidered/ranked in the next purchase period when funds are available.

## Proposed County Purchase Procedure

- **Landowner Acceptance**
- The landowner will have 30 days following the County offer to purchase in which to accept the offer.
- Failure to respond after 30 days will be considered a rejection of the offer.
- If landowner rejects offer, they may have to wait up to 24 months to be eligible to reapply

## Proposed County Purchase Procedure

- **Closing and Payment**

- Settlement will occur following landowner's acceptance of the County's offer to purchase
- Payment will be in full at time of settlement unless the County agrees to purchase an easement on less than the whole property

- **Recordation and Monitoring**

- The County's acquisition of an AEP/BLT easement will be recorded in the land records
- TDRs Acquired through BLT Easements will be held by the County Government.
- Future Use of TDRs will be at the discretion of County Government



## Building Lot Termination Program (BLT)

- **Question and Answer Session**

## SUMMARY OF BLT OPTIONS\*

	AEP Easement	Proposed BLT Program from Margaret Chasson, Jim Clifford, and Jeremy Criss	Working Group Discussions
<b>Funding</b>	Encouraged to use MALP if its offer is higher; otherwise Ag. Transfer tax funds.	<b>Q7</b> - Publicly funded via the Agricultural Transfer tax. Create a separate TDR program for the 5 <sup>th</sup> TDR.	Need to further consider whether to use public funding in the initial phases and whether to have a dedicated commercial TDR program.
Maximum Value	Determined by formula at time of application.	<b>Q6</b> Annual Adjusted Price representing a percent of appraised/comparable market value of permitted residential lot rights on land in the RDT zone – established by the County Executive.	Not discussed.
Determination of value per lot	Base value plus factor for size, land quality, land tenure, road access and location near edge of zone.	BLT Easements will be based on landowners accepting the Annual Adjusted Price.	Not discussed.
<b>Eligibility:</b>			
Child lots	???	Excluded from program.	Excluded from program.
Parcel Size	10 acres or more; practically limited to 50 acres minimum.	<b>Q1</b> Minimum of 25 acres or contiguous to other land under agricultural or conservation easement.	Must be 25 acres or more to have a building lot to terminate.
Soil	50% of land USDA Class I-III or Woodland Class I and 2.	50% of land USDA Class I-III or Woodland Class I and 2.	No limit. (Staff recommends reconsideration to ensure that State funding can be used.)
Lots with existing non-agricultural commercial or non-profit uses (e.g. a religious institution)	???	???	Briefly discussed. The Group wanted to return to this issue.
Ability to perc	Not a consideration.	<b>Q2</b> Successful perc test required for participation. (No payment for theoretical lots allowed without percs.) Establish value to get value.	Successful perc test required for participation. (No payment for theoretical lots allowed without percs; proof of buildable lot not required since it may lead a property owner to choose

\* Shaded rows indicate topics Staff believes the Group should return to.

\*\* Topics Margaret Chasson, Jim Clifford, and Jeremy Criss believe the Group should discuss.

	<b>AEP Easement</b>	<b>Proposed BLT Program from Margaret Chasson, Jim Clifford, and Jeremy Criss</b>	<b>Working Group Discussions</b>
			development over preservation.)
Participation in other easement programs	???	May not participate in BLT if land is under another easement except TDRs as noted below.	May not participate in BLT if land is under another easement except TDRs as noted below.
Zoning	RDT, Rural, Rural Cluster or in a state or County Agricultural District.	RDT.	RDT.
Sewer and Water	Outside water and sewer categories 1, 2, and 3.	Outside water and sewer categories 1, 2, and 3.	Did not discuss.
Title	Property owner or contract purchaser.	Property owner or contract purchaser.	Property owner or contract purchaser (who may also be the farmer or may live elsewhere, even out-of-state).
<b>Application</b>			
Timing	Selling period set for 4 months to a year.	Purchase period set by APA board subject to funding (application cap).	Not discussed.
Data	Complete property description; asking price.	<b>Q3</b> Complete property description and title report; surveys and plats if available; letter from DPS that the land percs to support the number of houses offered.	Not discussed.
<b>Priority</b>	Ranked by price for each selling period.	<b>Q4</b> Order of receipt; size of parcel.	Whether land is in agricultural production.
<b>Restrictions</b>			
Agricultural Use	All permitted including Farm Market.	All permitted including Farm Market.	Discussed limiting it to agricultural use.
Residential Use	May retain 1 minimum size lot, child lots up to 1 per 25 acres and 1 tenant house per 100 acres.	Not permitted on lots under BLT easement. Permitted at 1 per 25 acres on reserved lots that are not terminated.	Not permitted on lots under BLT easement. Permitted at 1 per 25 acres on reserved lots that are not terminated.
Other Uses (commercial, non-profit)	Not permitted for commercial, industrial or any other non-agricultural use.	Not permitted for commercial, industrial, institutional or any other non-agricultural use.	The Group indicated that it wanted to return to this issue.

\* Shaded rows indicate topics Staff believes the Group should return to.15

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	<b>AEP Easement</b>	<b>Proposed BLT Program from Margaret Chasson, Jim Clifford, and Jeremy Criss</b>	<b>Working Group Discussions</b>
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<b>TDR Issues:</b>			
Existing TDRs	If there is a TDR easement, land must have retained TDRs with the land at the density of 1 TDR for every 25 acres.	Owner will create, serialize, and convey the TDR associated with the permitted residential lost rights (the 5 <sup>th</sup> TDR) to the County. Excess TDRs must be serialized.	Owner will create, serialize, and convey the TDR associated with the permitted residential lost rights (the 5 <sup>th</sup> TDR) to the County. Excess TDRs must be serialized.
Disposition of fifth TDRs	Retained by County.	<b>Q5</b> Terminated by the County.	Retained by the County if publicly funded. (The Group did not reach agreement as to whether it could be resold.) Sold to a receiving area property owner if privately funded via a TDR program.

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\* Shaded rows indicate topics Staff believes the Group should return to.16

\*\* Topics Margaret Chasson, Jim Clifford, and Jeremy Criss believe the Group should discuss.

**The BLT – Establish Value to Get Value  
Issues for Discussion**

1. Eligible land
  - a. Should smaller properties be considered?
  - b. How should contiguous be defined?
2. To what degree of integrity should the ability to perc be defined?
  - a. Engineering/contractor report?
  - b. Full approval letter from DPS?
  - c. Some middle ground?
  - d. Sand mounds included?
3. How should a terminated lot be identified?
  - a. Land survey?
  - b. DPS record keeping?
  - c. Identification by some means with notation in the easement?
4. How should priority be established
  - a. Application date?
  - b. Size of property?
  - c. Other criteria?
5. What is the appropriate disposition of the TDRs provided to the County under the BLT program
  - a. Terminate?
  - b. Just hold for the future?
  - c. Sell for utilization in receiving areas?
  - d. Create a new use?
6. Establishing value
  - a. Should a 1 Acre lot (as used in other easements) be the standard for comparison?
  - b. Or should a 2 Acre lot (more usual in the Ag Reserve) be the standard?
7. Should a separate program be established to allow 5<sup>th</sup> TDRs be used in commercial and office receiving areas for additional floor space?