

# Transferable Development Rights and Building Lot Termination Programs in Montgomery County

OLO Report 2023-1



# Presentation Outline

1. Assignment
2. Agricultural Reserve
3. Transferable Development Rights Program
4. Building Lot Termination Program
5. OLO Recommendations and Discussion Questions



# Assignment

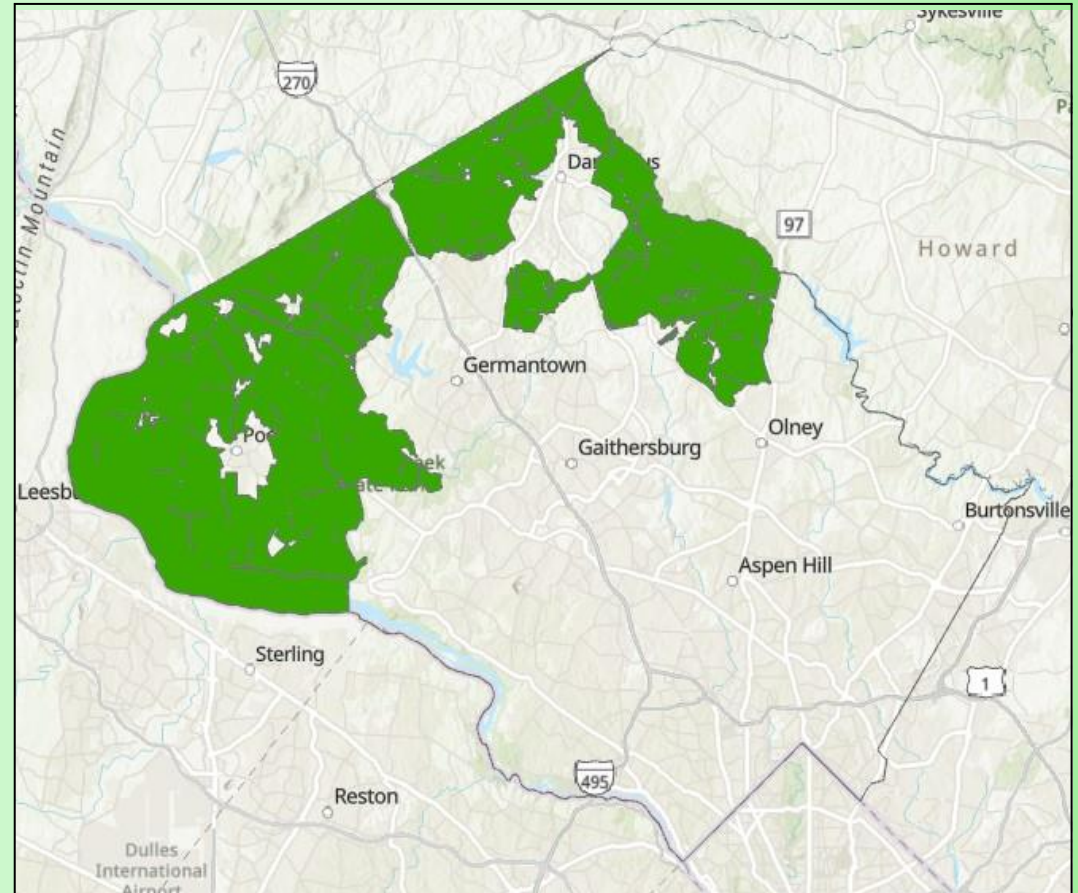
# Assignment

- In January of 2022, previous Council's Planning, Housing and Economic Development (PHED) committee asked OLO to prepare a status report on TDR and BLT programs.
- Request cited concerns from Office of Agriculture that TDR and BLT programs have been “de-emphasized.”

# Agricultural Reserve

# The Agricultural Reserve

- In 1980, County established Agricultural Reserve to preserve farmland and open space.
- Density limits were reduced to allow one dwelling unit per 25 acres (previous limits allowed one dwelling unit per five acres).
- To compensate landowners for loss of equity, County established the TDR program.



# Demographics of Farmers

- Structural racism contributes to large racial disparities in farmland ownership.
- White producers operated 92% of farms and 98% of farmed acreage in 2017.
- Population of residents eligible to receive compensation through TDR and BLT programs is overwhelmingly White.



# The Transferable Development Rights (TDR) Program



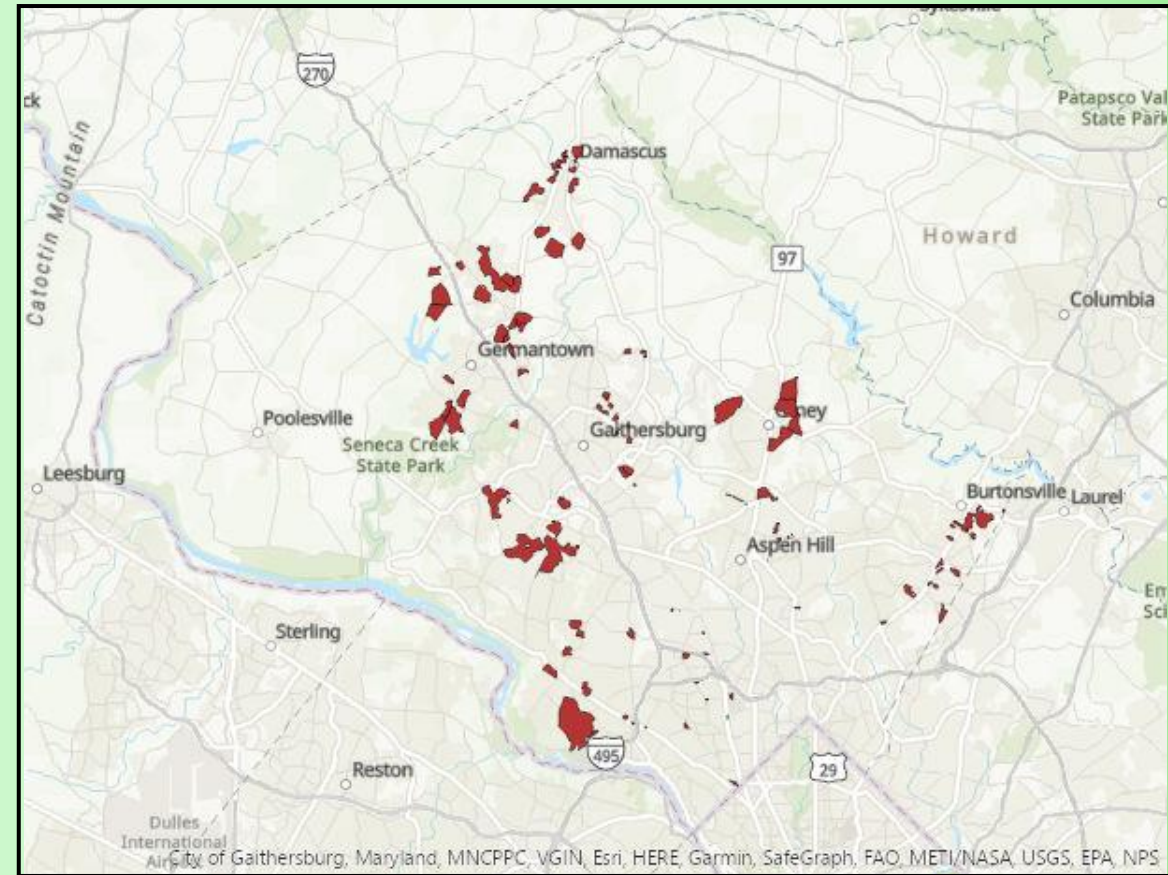


# TDR Overview

- Goal is to compensate property owners for loss of equity resulting from 1980 downzoning.
- A property owner may create a single TDR for each five acres of land, minus one TDR for each existing dwelling unit.
- Property owners receive compensation by selling their TDRs to other parties for use outside of Agricultural Reserve.
- In the early years, County maintained a “Development Rights Fund” as a safety net for farmers trying to sell TDRs.


# TDR Overlay Zones

- TDR overlay zones are receiving areas for TDRs.
- Owners of property in TDR overlay zone have the option to develop land with additional residential density using TDRs.
- No master plan approved since 2012 has created new TDR overlay zone.



# TDR Process

Owner of  
property in  
Agricultural  
Reserve creates  
TDRs



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graph LR; A[Owner of property in Agricultural Reserve creates TDRs] --> B[Property owner sells TDRs to another party]; B --> C[Developer uses TDRs to achieve increased density in a TDR overlay zone];
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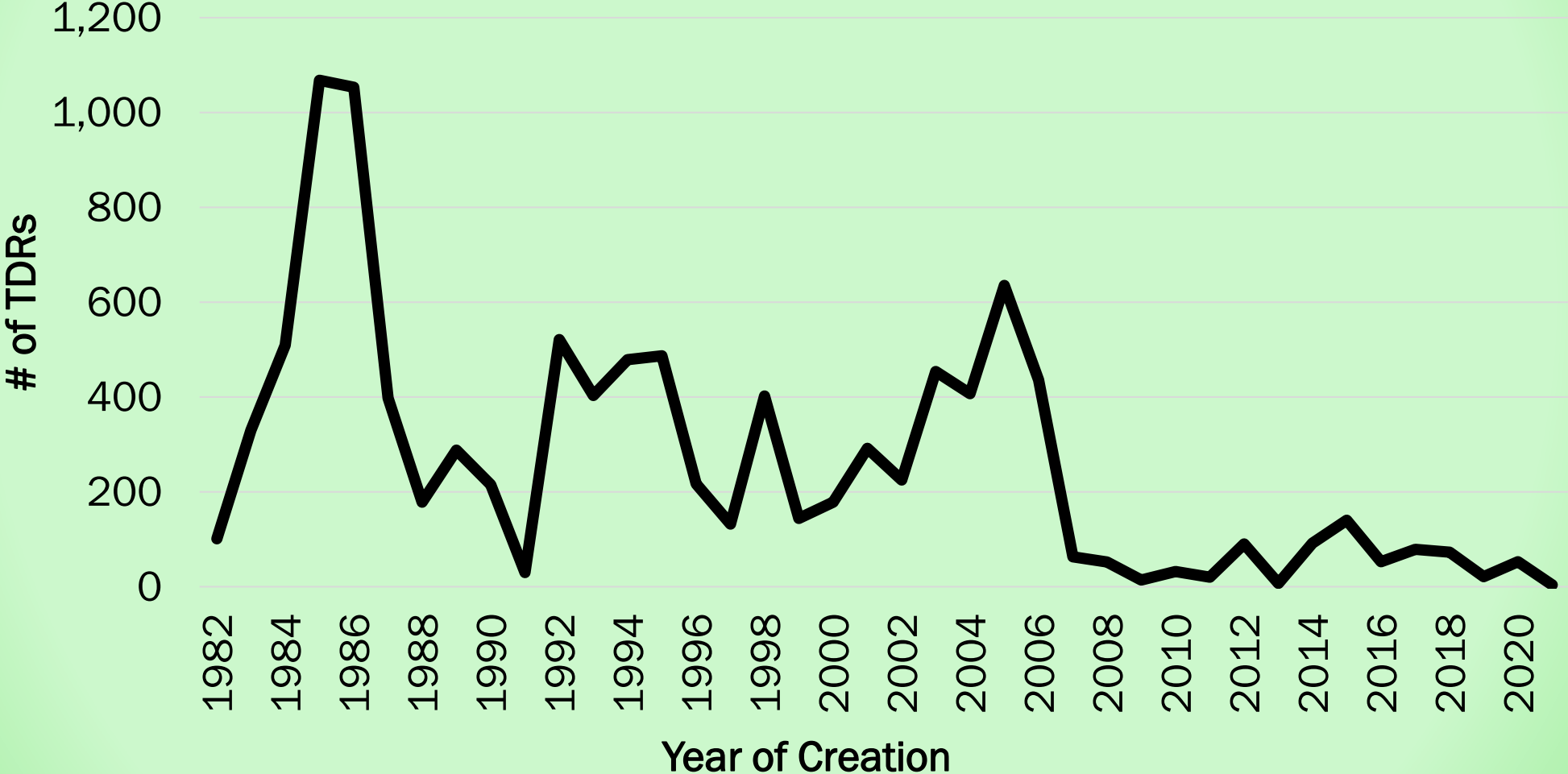
Property owner  
sells TDRs to  
another party

Developer uses  
TDRs to achieve  
increased  
density in a TDR  
overlay zone

# County Acquisition of TDRs

- Five other County and State programs acquire agricultural preservation easements.
- County takes title to “buildable TDRs” for properties under certain County or State easements.
- Current County policy is to not sell TDRs to avoid entering into competition against private landowners.

# TDRs by Year of Creation



# TDR Supply

| <b>Category of TDRs</b>                                       | <b># of TDRs</b> |
|---|------------------|
| a. Total Potential TDR Supply                                 | 13,597           |
| b. TDRs Created by Landowners                                 | - 10,381         |
| <b>c. TDRs Not Yet Created (a-b)</b>                          | <b>3,216</b>     |
| d. TDRs Created by Landowners                                 | 10,381           |
| e. Used TDRs – by developers for additional density           | - 7,884          |
| f. Used TDRs – bought by the County                           | - 1,148          |
| <b>g. TDRs Created by Landowners but Not Yet Used (a-e-f)</b> | <b>1,349</b>     |
| <b>h. Total TDRs That Could Be Used in the Future (c+g)</b>   | <b>4,565</b>     |

# TDR Supply vs. Receiving Capacity

- Estimated maximum receiving capacity in the overlay zones is 966 TDRs.
- A receiving capacity deficit of 400 TDRs exists when considering all TDRs that have been created, but not yet used.
- Considering TDRs that have not yet been created, a receiving capacity deficit of 3,600 TDRs exists (supply is four and a half times the current receiving capacity)

# Data quality

- OLO reviewed land records and found multiple discrepancies in data provided by County agencies.
- Existing system for tracking TDRs requires review and improvement to ensure accuracy.





# **The Building Lot Termination (BLT) Program**



# BLT Overview

- County created BLT program in 2008 to preserve farming and prevent fragmentation of the Agricultural Reserve.
- A property owner may create a single BLT for each 25 acres of land that is capable of being served by a septic system.
- Property owners may sell BLT to a developer to achieve increased density elsewhere.

# Use of BLTs

- A developer may use BLTs to increase density on properties in certain zones.
- Zoning Ordinance requires the purchase of BLTs, or an equivalent payment to the Agricultural Land Preservation Fund (ALPF), for optional method development in Commercial Residential and the Life Sciences Center zones
- Zoning Ordinance permits use of BLTs to increase optional method density in Commercial Residential Town and Employment Office zones.

# County Purchase of BLTs

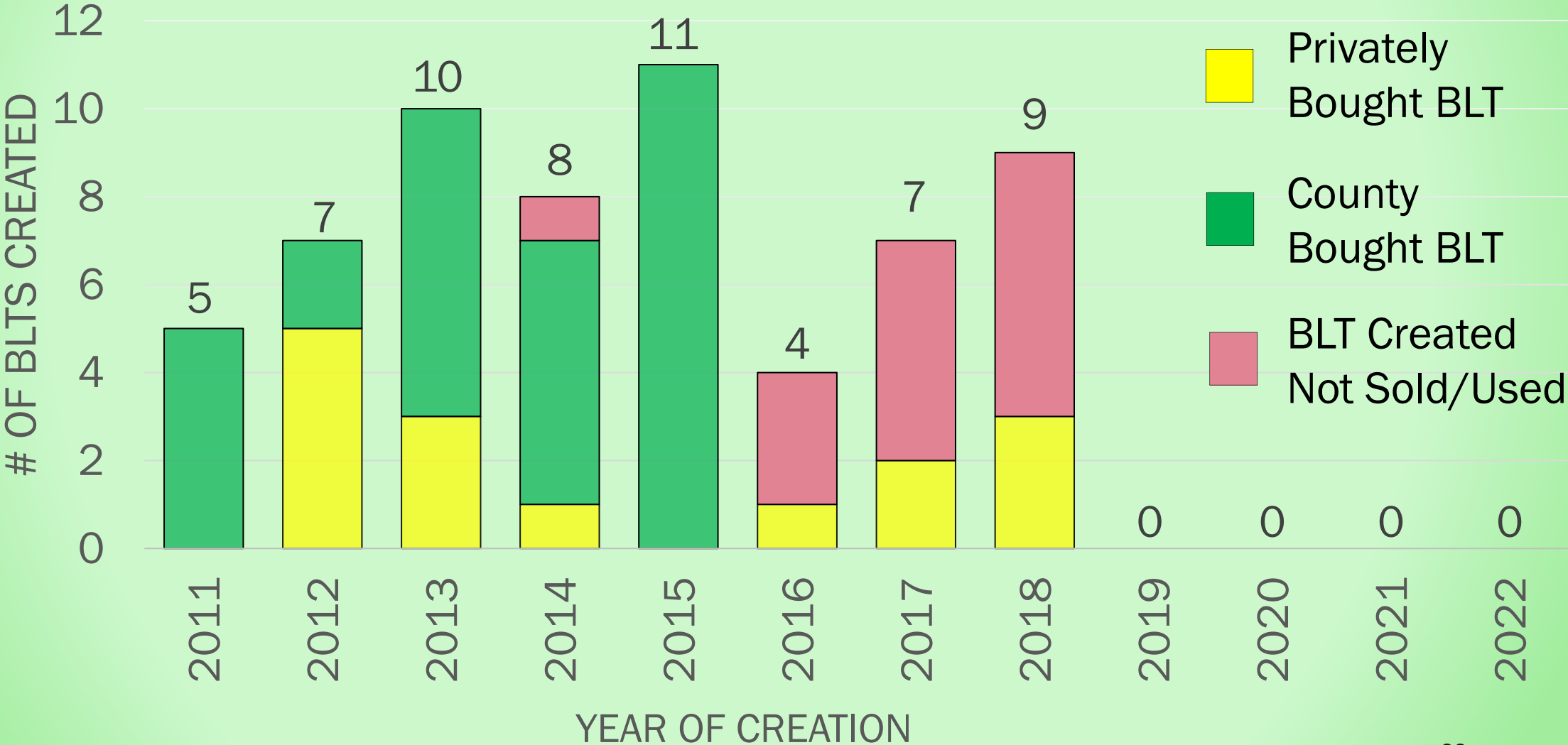
- County Code authorizes County to purchase agricultural easements including BLTs.
- Amount the County pays for a BLT is established by Executive Order. County Executive last established BLT easement values in 2013 with the base purchase value set at \$222,390.

# BLT Creation and Use

|  | #         | % of Total  |
|--|-----------|-------------|
| Public BLTs (purchased by Montgomery County)       | 30        | 39%         |
| Private BLTs (purchased by private party and used) | 16        | 25%         |
| BLTs created, not yet used                         | 15        | 36%         |
| <b>Total BLTs Created as of February 2022</b>      | <b>61</b> | <b>100%</b> |

# BLT Creation, Use, and Disposition

BLTs by Year of Creation and Disposition Status



# Partial BLTs

- “Partial BLT” refers to developer contribution to Agricultural Land Preservation Fund (ALPF) when optional method density bonus is less than one BLT.
- Since 2016, 23 projects included partial BLTs, summing to 10.3 BLTs. During same time, developers bought 7 whole BLTs.
- Dollar amount for partial BLT is based on value of whole BLT as established by Executive Order.
- BLT value last established in 2013 Executive Order.

# Agricultural Land Preservation Fund

- County established ALPF for agricultural preservation, including purchase of BLT easements.
- Initial seed money for ALPF not replicated; other funding sources generate relatively small amounts of revenue.



# BLT Account

- Code requires separate BLT Account to receive partial BLT payments to be spent on purchase of BLT easements.
- To date, County has not expended any funds in BLT Account for the purchase of BLTs.
- Revenues from partial BLT contributions have been offset by other costs charged against the BLT Account.



# **OLO Recommendations and Discussion Questions**



# OLO Recommendations

1. Council should:
  - a) consider future time span of TDR program;
  - b) set a sunset date for creating new TDRs;
  - c) direct Planning Board to establish TDR receiving capacity to accommodate supply of created TDRs.

# OLO Recommendations

2. Council should direct Planning Department to develop strategies to increase demand for BLTs.
3. At times, TDR and BLT programs compete with affordable housing goals. Council and Planning Board should balance these two priorities, with racial equity and social justice as a key consideration.

# OLO Recommendations

4. Council should direct Planning Department and Office of Agriculture to improve processes for tracking supply of TDRs and BLTs and establish a process for estimating receiving capacity for TDRs.
5. Council should request Executive update the base value of BLTs to assure dollar amount of developer contributions for partial BLTs are set at an appropriate level.

# OLO Discussion Questions

1. In future years, should County intervene in TDR and BLT markets? If so, under what conditions should County intervene?
2. What are preferred uses for Agricultural Land Preservation Fund resources? Should County support agricultural preservation administrative costs with General Fund resources?

# OLO Discussion Questions

3. Multiple types of public benefits compete for developer-provided public facilities, amenities or contributions. What should be relative priority of agricultural preservation versus other public benefits?

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