



**MONTGOMERY COUNTY PLANNING DEPARTMENT**  
THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**3/1/07**  
**Item #**

February 26, 2007

**MEMORANDUM**

**TO:** Montgomery County Planning Board

**VIA:** John A. Carter, Chief *JK*  
Community-Based Planning Division

**FROM:** *CM*  
Callum Murray, Team Leader, Potomac and Rural Area West (301/495-4733)  
Community-Based Planning Division

**SUBJECT:** Report and Recommendations of the Ad Hoc Agricultural Policy Working Group

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**RECOMMENDATION:** Approve staff comments for transmittal to the County Council

On February 1, 2007, the Planning Board received a briefing from the Ad Hoc Agricultural Policy Working Group summarizing the results of their eight-month effort. The outline and key points of the Working Group's presentation are on © pages A1-A6. Planning Board members have received the complete report, and a copy is attached to this memorandum.

The Planning Board received public testimony on the Report on February 22, and a summary of the testimony is attached on © pages A39-A51. A Planning, Housing and Economic Development (PHED) Committee meeting to discuss the Report, including the Board's comments, is scheduled for March 12, at 2:00 P.M.

**BACKGROUND**

Although farming in the Agricultural Reserve is productive and extraordinarily important, it faces the serious and growing threat of the loss of farmland via the retention of residual development rights at the rate of one for each 25 acres. As a major industry, agriculture plays a key role in the County's economy and it is vital to our sense of community. Farming helps define cultural values and a rural way of life, just as farmland defines a working landscape.

The Agricultural Reserve is vital to the County's environment, because well-managed farmland provides crucial water filtering. It feeds the groundwater supply and supports a variety of habitats, including some of the forests essential for diverse wildlife and clean water. From a regional viewpoint, restoring the health of the Chesapeake Bay will be difficult without ensuring a healthy agricultural economy.

The threats facing the Agricultural Reserve are only too real, and none is more pressing than that posed by farmland loss. This simple fact is often overlooked. The farming representatives on the Ad Hoc Working Group, in Comment 3 on page A-10 in Appendix II of the Final Report, accurately state that, "...our most precious resource (is) our land." Without the very well intentioned down-zoning of the agricultural area by the County Council in 1980 and the introduction of the Transferable Development Rights (TDR) program as an offset, there would be very little resource to discuss.

Despite its value as a precious resource, the Agricultural Reserve faces severe pressure from the region's rapidly increasing population, discussed below. Since the best farmland tends to have the most productive, well-drained soils, with moderate slopes and mostly-cleared land, it is also the land most commonly favored for development.

### **External Influences – Population Trends**

During the past 35 years, the population growth accommodated by Montgomery County has been inordinate. The County's population has increased from 552,000 in 1970 to 942,000 in 2005, an increase of 11,000 per year, 214 per week, or 30 persons per day, an extraordinary growth rate. Significant societal changes have also occurred during these decades, leading for example, to more women in the workforce, fewer persons per household, and a gradual shift from one-car families to one vehicle per person of driving age. All of these factors contribute to either increased development or congestion absent any population growth.

Montgomery County's growth rate over the past 15 years (1990-2005) should be set in context with the growth rate in the State and nation. Since 1990, the population increase in the United States, State of Maryland, and Montgomery County has been 47 million, 790,000, and 182,400 respectively. The 15-year percentage increases were 18.9, 16.5 and 24.0 respectively, making Montgomery County's growth significantly in excess of that of the State or nation as a whole.

The population increase experienced by Montgomery County between 1970 and 2000, was the largest increase of any county (67 percent) within the metropolitan areas of Baltimore and Washington DC. Population density, another indicator of competition for space in the environment, also increased dramatically from 1,169 to 1,762 persons per square mile from 1980 to 2000 (an increase of almost 600 per square mile, or 51 percent).

### **Employment Trends**

There have been massive shifts in the economy of the State and of the County that both reflect and drive population growth. Job growth in the County, as with population growth, has occurred at a very rapid pace with at-place employment expanding from 414,000 in 1990 to 491,810 in 2005, a 15-year percentage increase of 18.8 percent. The latest Council of Governments (COG) (Round 7.0) forecast projects employment within the County to rise to 670,000 by 2030, a 25-year percentage increase of 36.2 percent. From 1990 to 2005, there has been a radical shift away from farm and manufacturing employment to a service-based, high technology economy. Today, agriculture contributes \$252 million to Montgomery's annual economy and employs 10,000 people.

## **Agricultural Trends**

In the past 30 years, there has been a dramatic reduction of land in farms in Maryland, declining from 2.6 million acres in 1978 to about 2 million acres in 2002. Similarly, the number of farms in the state declined from 14,776 in 1987 to 12,198 in 2002. In Montgomery County, the number of farms declined from 680 in 1986 to 577 today. From 1978 to 2002, there was significant urban encroachment of both agricultural and forested land in the County. During that period, the land area in farming declined by more than 40,000 acres, or around 13 percent.

The average size of farms has varied among counties and across decades throughout the state. In 1978, the average farm size in Maryland as a whole was 168 acres. Montgomery County experienced the most profound decline in average farm size of all metropolitan counties, with farm size declining from 173 acres in 1978 to 130 acres in 2002. The County also witnessed a sharp increase in the percentage of farms between 10 and 50 acres in size, while the percentage of farms of more than 500 acres declined.

Rapid development and urban growth has both spurred the proliferation of small farms and led to the loss of large farms in the County, with many small farms benefiting from proximity to urban markets. These changes in farm size indicate significant changes in the nature of farming in Montgomery County. On the one hand, there is increased significance to production from remaining large farms. Conversely, farming is adapting to urban development with the increased reliance on small farm production and recreational farming that supplies the urban consumer. The County now has 350 horticultural enterprises, with gross sales of \$125 million annually. These enterprises include nurseries, landscaping companies, arborists, sod farms, lawn care firms, and greenhouse businesses. Twenty percent of Maryland's horticultural industry is located in the County, which ranks second in the State in the total number of horticultural firms.

Equine operations have evolved into a major component of the agricultural industry in the County, with more than 700 operations stabling approximately 12,000 horses, more than the combined population of all other livestock.

Across the nation, with farm income for many family farmers still weak, many of them have been forced to diversify their operations with non-agricultural activities just to survive. Farmers describe these activities, on-site markets, farm tours for school groups, corporate teams and independent visitors, seasonal festivals and occasional overnight guests, as agritourism. Many farmers give 2-10 tours per week, year round, with the income derived comprising up to 25 percent of annual revenue.

Agritourism is not new. For many years, American farmers have set up mazes to entertain children as well as pick-your-own apple, blueberry and strawberry operations. These operations still exist. What has changed is the economic climate that surrounds them. A recent study by the Leopold Center for Sustainable Agriculture at Iowa State University indicates that over the last 30 years, farm income has remained flat while farm expenses have more than tripled.

To balance their ledgers, many farmers have become dependent upon government subsidies and income from second jobs known as “off-farm activities.” Statistics from the Economic Research Service, an agency within of the Department of Agriculture, indicate that in 1977, family farmers had an average household income of \$14,867, of which \$10,636 was from off-farm activities. By 2005, the gap between profit sources had widened, with the average income at \$81,420, and off-farm income equaling \$66,782.

For many farmers today, agritourism is a way to reduce the need for a second job. While the Department of Agriculture does not keep statistics on how many of the country’s 2.1 million farms engage in this activity, Eckert AgriMarketing, a consulting firm in St. Louis, estimated the number at 4 or 5 percent. This number was up considerably from a 2 percent estimate made in the 1990s, and a 2000 study from Cornell University reported farmers who turned to agritourism could be as much as 40 percent more profitable than those who did not.

The County’s Agricultural Services Division actively promotes agritourism through its Farm Tour & Harvest Sale and its Farm Directory in an effort to assist farmers realize the full earning potential of their farms. Many operators have expanded their on-site offerings to include hay mazes, barnyard animal petting and feeding stations, wagon rides, campfires, private special event hosting, and harvest/holiday festivals.

In recent years the New Urbanism, Smart Growth, and Green Building movements have dramatically reshaped how communities are conceived, sited, and constructed. The emerging Sustainable Agriculture and Local Food movements are making organic foods mainstream and farmers markets a common urban and suburban amenity. “New Ruralism” is emerging as a key new strategy for bridging Smart Growth and Sustainable Agriculture. In essence, the strategy aims to advance a framework for linking sustainable metropolitan development with sustainable urban-edge agriculture and local food systems.

Among other forces, urban development has greatly affected the value of agricultural property in Maryland. Statewide, agricultural real property totaled approximately \$8.3 billion in 2005, compared with \$1.9 billion in 1986. In Montgomery County, real agricultural property values (in 2005 dollars) rose from just under \$100 million in 1986 to approximately \$450 million in 2005. These augmented market values offered farmers significant incentives to dispose of their farms for urban development and put additional strain on local government and land conservation groups aiming to purchase agricultural easements.

Farmers face a double-edged sword. If the economic margin for farming gets thinner and profitability shrinks, more farmers leave farming, facilitating the conversion of farmland to development. Farmland conversion also occurs as a result of significant outside economic pressures, again resulting in farmers leaving their farms.

Agriculture is a difficult and risky business. USDA statistics indicate that from 1996 to 2005, federally funded crop insurance programs paid Montgomery County farmers a total of \$1.7 million in disaster payments, primarily for crop disaster and including \$113,000 for livestock assistance. During 2005, farmers in the County received \$0.9



million from the direct and counter-cyclical payments program, \$0.5 million from loan deficiency payments, and \$80,000 from the livestock compensation program. The USDA's 2007 Farm Bill continues federal subsidies, with a commitment to support the nation's farmers, and includes, for example, an additional \$7.8 billion over 10 years to protect natural resources through conservation programs, and targets almost \$5 billion over 10 years to significantly increase support of fruit and vegetable producers through targeted programs.

## **Fragmentation of the Reserve**

Farmland losses have a way of being self-perpetuating. At the most basic level, successful farming requires a critical mass of resources and markets. A sufficient land base is the most crucial component. When a farm, in whole or in part, is sold for development and houses displace prime cropland, the resulting suburbanization tends to erode and fragment the working landscape. Logistics, such as moving farm equipment, become more difficult. New homeowners object to unexpected sights, sounds, smells and the long work hours inherent in the real world of agriculture. Land prices rise to match urbanization's values, posing further obstacles to staying on the land.

There can be little doubt that but for the County's TDR program and easement purchase initiatives, the Agricultural Reserve would by now be highly fragmented. From 1971 to 1980, before creation of the TDR program, an average of 2,700 acres of agricultural land was subdivided annually in the area later designated the Reserve. From 1981 to 1998, after the TDR program was implemented, that figure declined to 460 acres per year. From January 1998 to the present, 35 subdivisions totaling 3988 acres, or 498 acres per year, have been approved in the Reserve. (Many of these subdivisions retained substantial acreage in farming.)

More than 50 percent of the Agricultural Reserve's 93,000 acres are now under easement, and the goal of the Agricultural Services Division is to protect 70,000 acres by the year 2010. The task now is to maintain and enhance this national model of land conservation, and to prevent the development pressures that devastate farmland across the nation from eroding one of the most significant resources in the region. The equity interests of farmers, and the viability of farming, has to be reconciled with the public interest in protecting the 25-year investment in acquisition of development rights and of maintaining covenants with down-county citizens, who have accepted higher densities in exchange for land conservation in the Reserve.

## **Review Methodology**

In reviewing the Report of the Working Group, planning staff viewed each recommendation through the prism of furthering the goals of the Master Plan and the purpose of the Rural Density Transfer (RDT) Zone, including preservation of a sustainable critical mass of farmland in a working landscape, application of specific innovative preservation techniques, and support of a rural sanitation policy that does not encourage non-agricultural development within this critical mass. For the Planning Board's convenience, staff comments in bold type follow summaries of each of the Working Group's principal recommendations excerpted from the Final Report.

## **GENERAL PRINCIPLES IDENTIFIED BY THE WORKING GROUP**

1. The economic viability of the agricultural industry is critical to the preservation of the Agricultural Reserve.
2. The open space and environmental protection goals of the Master Plan are unlikely to be achieved unless we can sustain the health of agriculture.
3. Agriculture in the County has and will continue to evolve and requires an environment that recognizes that fact.
4. The equity farmers hold in their property is not only important to them personally but an important asset for their businesses, and consequently an important factor in the success of the agricultural industry in the County.
5. Fragmentation of farmland should be avoided. Contiguous areas of farmland are desirable for traditional agriculture.
6. If the Agricultural Reserve is to survive permanently, policies must protect both farming and farmland, while fostering a deep commitment to stewardship that looks beyond current generations and current landowners.

## **KEY THEMES IDENTIFIED BY THE WORKING GROUP**

If implemented, the Working Group believes their recommendations will accomplish the following:

- Allow the continued use of child lots intended for the children of farmers (but with stricter assurance that those lots will be owned by the children of the property owner, and will not prevent future use of a significant portion of the property for farming);
- Limit the use of sand mounds, decreasing their potential use by as much as one-fourth;
- Create a Building Lot Termination (BLT) easement program to create an incentive to further reduce residential development in the Agricultural Reserve while providing an acceptable level of equity to property owners, giving them the resources that may be needed for farm investment; and
- Improve the TDR program, including expanding it to commercial and industrial zones (including Research and Development zones), mixed-use zones, and floating zones, and creating a non-residential use component to, among other things, help support the BLT easement program.

### **Staff Comment**

The Working Group strove to reach consensus, and has requested the Planning Board and County Council to 'look at the big picture' and to view their recommendations as a 'package.' There are four main themes, a new BLT program, an improved TDR program, sand mounds, and child lots. The BLT and TDR programs are the most significant themes, and, if successful, will do much to minimize the issues of sand mounds and child lots. The sand mound issue is very controversial, and was the only issue on which the Working Group did not

achieve consensus. Without a successful BLT program, the Working Group's recommendations on sand mounds could severely undermine the thrust of the 1980 Master Plan for the Preservation of Agriculture, even if all excess TDRs are sold. The Working Group's recommended restrictions on child lots will reduce their number, dramatically curtail abuse of the system, and slow their creation, and were instrumental in persuading some Working Group members to reach a compromise.

## **SUMMARY OF PRINCIPAL WORKING GROUP RECOMMENDATIONS**

### **A. TRANSFERABLE DEVELOPMENT RIGHTS**

When the County Council established the base density in the Rural Density Transfer (RDT) zone – the prevailing zone in the Agricultural Reserve – at one dwelling unit for 25 acres, it also created Transferable Development Rights (TDRs) that granted property owners one development right, or one “TDR,” for each five acres of land owned. Landowners in the RDT zoned “sending areas” could then sell a TDR to landowners or developers in a “receiving area” in order to increase their development density. (A receiving area is a parcel designated as appropriate for development beyond its base density when the property owner purchases TDRs.) This pioneering technique has generally been successful to date, but will require significant attention and adjustments if it is to fulfill its important role in the Agricultural Reserve.<sup>1</sup>

We recommend the County Council enact the following changes to the current TDR program:

- Distinguish between excess and buildable TDRs.
- Require TDR utilization for residential development in floating zone applications/local map amendments.
- Designate buildable TDRs for use in floating zones as well as in commercial and industrial zones, central business district and research and development zones with an equivalency to floor area ratio or square footage for their use.
- Clarify limitations on non-agricultural, non-residential uses (such as private institutional facilities) where land is covered by a TDR easement.
- Reintroduce legislation to prevent property owners from selling all TDR easements and subsequently developing a non-residential, non-agricultural use on the property.

We endorse the following recommendations of the 2002 TDR Task Force:

- Master plans should more aggressively seek to maximize the number of receiving areas.
- If additional density is considered via rezoning not recommended in the Master Plan, the use of TDRs should be part of the change.

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<sup>1</sup> See Comment 3 by Wade Butler, Pam Saul, Drew Stabler, William Willard, Bo Carlisle, and Jane Evans, paragraphs 7 and 8 in Appendix II.

- The County should work with local municipalities to establish inter-jurisdictional TDRs to create receiving areas in municipalities.
- Eliminate the requirement in single-family zones and subdivision regulations that receiving areas use 2/3 of the possible TDRs.

We have received briefings from the County Planning Department on the status of a system to track the use of TDRs and are satisfied that improved TDR tracking is under way and that the planned TDR tracking system should meet future TDR information needs.

#### **Staff Comment**

**The County has placed more than 48,000 acres of land in the Agricultural Reserve under TDR easement. It is commonly believed that these acres are preserved in perpetuity. They are not. The largest threat to the success of the TDR program in protecting farming in the Reserve is the looming possibility that 1,850 additional residences will be constructed at a density of one per 25 acres, using the 5<sup>th</sup> TDR typically withheld from the TDR market. At an estimated value of between \$175,000 and \$500,000 in 2005, depending on septic capacity, it is unlikely that these 5<sup>th</sup> TDRs will be sold for use outside of the RDT. (See Paragraph D. BUILDING LOT TERMINATION (BLT) EASEMENT PROGRAM.)**

**The TDR capacity of the RDT is estimated at 10,528. Since 1981, landowners have severed 9,729 TDRs from properties in the RDT Zone. Of those severed, 6,148 have been recorded on a record plat and transferred to receiving areas. For various reasons, 3,518 severed TDRs have not been attached to a receiving area. If the approximately 800 un-severed excess TDRs in the RDT Zone are added to the severed, un-extinguished 3,518, there are a total of 4,318 TDRs remaining to be transferred and used for development in receiving areas.**

**Including the Shady Grove and Damascus Master Plans, the remaining capacity for TDRs in receiving areas is 2,700. TDRs remaining to be transferred are in excess over receiving area capacity by approximately 1,600. Past practices show that a 1:1 ratio of sending and receiving areas is not sufficient, and that receiving capacity will have to be increased by significantly more than 1,600 in order to address this shortfall.**

**The Working Group has endorsed several recommendations made by the 2002 TDR Task Force, and has recommended several changes to the current TDR program. Planning staff concurs with all of these recommendations and has the following comments:**

**The fundamental concept underlying the most successful TDR program in the nation is that TDRs have sufficient value to buyers and sellers to sustain an active market to accomplish preservation goals. The market should set the value of TDRs, and the market should be made competitive by providing a sufficient number of receiving areas. There is little or no market at present for TDRs, and considerable efforts need to be made to bring supply and demand into balance for its eventual return.**

**TDRs are allowed in the following zones: RE-2, RE-2C, RE-1, R-200, R-150, R-90, R-60, R-30, R-20, R-10, Residential Mixed Use Development (RMX-1, 2, and 3), Planned Development (PD) and the Transit Oriented Mixed Use (TOMX/TDR) Zone.**

**To accomplish the goal of more receiving areas, TDRs would need to be designated as either a residential receiving area or a non-residential receiving area in the applicable master plan. For residential receiving areas, it would be appropriate to permit TDRs in the following selected commercial and industrial zones, such as C-1, C-2, C-3, C-4, C-5 and C- 6 and H-M (Hotel & Motel), R&D (Research & Development) and in the Industrial I-1, I-3 and I-4 Zones. These zones would also be appropriate for TDR non-residential receiving areas with appropriate FAR or square footage criteria specified in either the applicable Master Plan or Zoning Ordinance or both.**

**The county has a limited amount of I-2 zoned land. This zone is dedicated for heavy industrial uses, which do not appear to be compatible with new housing units that would be created through TDRs. If I-2 zoned property were designated as a non-residential receiving area, this would be more compatible with the existing uses found in the I-2 Zone.**

**The Country Inn Zone and the Commercial Transition (C-T) Zone are not appropriate as TDR receiving areas. The C-T Zone serves a transition between low-density residential areas and general commercial areas such as C-2 zoned land. Furthermore, this zone must be recommended in a master plan. The Country Inn Zone is a specialized zone limited in location and is not appropriate as a TDR receiving area.**

**Central Business District (CBD) Zones could also be included as either residential or non-residential TDR receiving areas as these zones are served by mass transit, in urban sections of the County and may be able to absorb additional development capacity. Townhouse zones, (RT-6, 8, 10 and 12.5) would also be appropriate for residential TDR receiving areas.**

**TDR requirements should be de-coupled from MPDU requirements where they are in competition. For example, in certain mixed use zones, there are requirements for both TDRs and MPDUs, and one can be maximized at the expense of the other. In the past, some property owners have gained approval of subdivision plans which minimized TDRs and maximized MPDUs, only to subsequently appeal to the Department of Housing and Community Development for a reduction in MPDUs based on criteria such as high condominium fees. Where these appeals are successful, there should be a mechanism to proportionately increase the TDR requirement.**

**In the future, it may be necessary to adjust the allocation rate of one TDR per single family unit or two multi-family units to make transaction beneficial to both buyers and sellers.**

## **Work Program Implications:**

**The County Council should authorize the Planning Board to update the 1980 Master Plan for Preservation of Agriculture & Rural Open Space, in consultation with major stakeholders. The Plan's purpose would be to preserve agricultural land and enhance farming viability, taking into account new agricultural trends.**

**Amend the Zoning Ordinance and Subdivision Regulations as follows:**

- 1. Amend the TDR program to require excess TDR receiving capacity in floating zones;**
- 2. Define an exchange rate for buildable TDRs in the research and development zone, and certain commercial, industrial and mixed-use zones; and**
- 3. Eliminate the requirement that receiving areas use 2/3 of the possible TDRs.**

**Work with municipalities to develop an inter-jurisdictional TDR program.**

**Complete implementation of a tracking system to track use of all TDRs.**

**Submit an annual TDR report to the County Council.**

**Maximize the number of receiving areas identified in master plans (i.e. if a master plan recommends additional density it should come from TDRs unless there is a compelling reason not to use TDRs).**

## **B. CHILD LOTS**

To encourage family continuity in farming, the RDT zone made allowance for landowners to build houses for their adult children at densities beyond one dwelling unit per 25 acres. This "child lot" program has been subject to differences in interpretation and to charges of abuse, and therefore requires both clarification and strict standards of implementation.

We recommend continuing to allow child lots in the RDT zone. We believe that the child lot provision is an important means to preserve and promote agriculture by allowing children to farm with their parents on the family farm. We recommend the County Council amend the Zoning Ordinance to clarify the density provisions for child lots, ensure ownership by the child, and protect farmland.

We recommend the maximum density of subdivisions with child lots be one lot per child *in addition* to the base density allowed in the RDT zone.<sup>2</sup> For example, a property owner with 100 acres and two children will be allowed six lots (two child lots and four

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<sup>2</sup> See Comment 1 by Margaret Chasson, Nancy Dacek, Bob Goldberg, and Tom Hoffmann and endorsed by Jim O'Connell and Comment 6 by Scott Fosler, paragraph C in Appendix II.

base density lots). This has been the practice of the Planning Board since the RDT zone was established. To limit the use of child lots for improper purposes, we recommend the following limitations on child lots:

- A child must own the child lot dwelling for five years; however exceptions should be allowed for hardship cases such as those used in the Maryland Agricultural Land Preservation Foundation (MALPF) easement program.
- A child must not lease the child lot dwelling or enter into a contract for sale for five years, except the child may lease the child lot home to an immediate family member.
- A landowner may create only one child lot for each child regardless of the number of properties owned.
- A child lot may be created after the death of the landowner if the landowner's intent was to create the lot and is established in writing through a will or other document admissible in probate.
- A majority of the land on parcels with child lots must be reserved for agriculture.

To facilitate the implementation of the ownership requirement and leasing prohibition, we recommend additional written documentation and recordation at different steps in the planning process. We also recommend substantial monetary penalties for violation of child lot requirements.

We recommend limiting circumstances in which public water can be provided to child lots to the following:

- When the child lot can be served from an existing, abutting water main and will not allow service to others.
- When public water service can be provided in a manner that would not prevent the future application for a State or County easement to preserve agriculture.

We recommend the County Council be required to approve any request for public water to a child lot in the RDT zone rather than allowing administrative approval.

### **Staff Comment**

**There can be little argument that the original intent of child lot provisions was a means of allowing a farmer to provide a home for a family member that would participate in the farm operation without having to subdivide off a full 25-acre tract, thus unnecessarily fragmenting the farm. The concept of child lots was related to the use of a maximum density standard as opposed to a minimum lot size in the RDT Zone. In other words, the child lot exemption was intended as a means of supporting agriculture, rather than a means of subverting it. While under no legal obligation to do so, the District Council inserted these exceptions to the general rules in the Zoning Ordinance for a worthy public purpose. Unfortunately, as stated in Page A-15 of the Working Group Report:**

*“...the child lot provision has been both misinterpreted and.....inappropriately implemented. The proposal in this report essentially accepts a quarter-century practice – and hence reasonable expectations on the part of bona-fide farmers in calculating the equity on their property – in defining the density permitted by child lots, while calling for strict enforcement in limiting the establishment of child lots to use by the adult children of property owners. This is not a perfect solution, but....is probably the fairest and most practical way of correcting the deficiencies in the original legislation and curbing the worst abuses of the child lot provision...”*

**The Working Group identified two issues associated with the creation of child lots: density increases and improper use.**

**1. Density.** For many years, there has been vigorous debate on how to interpret the existing language in the Zoning Ordinance. Preservation-oriented groups have argued to the Planning Board that the overall density on an RDT property cannot combine the inherent density with the additional density for child lots. In other words, the property owner is entitled to either the full development density, or the full child density, but not both.

**In a memorandum dated September 29, 2005, and presented to the Planning Board on December 8, 2005, the Conservation Federation of Maryland, Inc. and For a Rural Montgomery (FARM) argued that:**

*“There is nothing in the Zoning Ordinance relating to the RDT Zone that would indicate that the creation of (child lots), which can exceed the maximum density otherwise normally imposed, should be ignored in calculating any remaining density for creation of additional lots by subdivision.”*

*“While Section 59-C-9.74 (b) (iii) does allow the number of (child lots) to exceed the regular density applicable to the RDT Zone, there is absolutely nothing that can be pointed to which would exempt (child lots) from the total mix of maximum allowed density in the event of future or simultaneous subdivision and marketing of additional lots of a particular property.”*

**Simply put, the argument presented is that a property owner is entitled to only the child lots that are in excess of the base density on the property, not the child lots in addition to the base density. So on 100 acres with 4 children, a property owner could achieve 6 lots - the 4 permitted plus two for children; not 4 permitted plus 4 for the children.**

**The first question in dealing with any land use matter is whether it furthers the goals of the Master Plan and the purposes of the zone. Child lots are not defined in the Zoning Ordinance. A definition of child lots should be added to the Ordinance and the Subdivision Regulations. Currently, the only reference to child lots is found in Section 59-C-9.7 of the Zoning Ordinance, with no reference provided in the Subdivision Regulations.**



The argument for one lot per child in addition to the base density is in opposition to the thrust of the Master Plan and both the letter and spirit of the law. The practice favors development over agriculture, was never the intent of the framers of the legislation, and is contrary to the language in the Zoning Ordinance. As submitted by Mr. Fosler, a member of the County Council and a co-sponsor of the legislation creating the Agricultural Reserve in 1981 (Page A-15 of the Working Group Report):

*"My intention in voting to allow child lots was to enhance the prospects that a farming family could continue to farm successfully by having their adult children live on the farm. To me, that meant allowing an increase in the permissible zoning density, if necessary, to accommodate child lots, but it did not mean automatically increasing the permissible zoning density by the number of children a farmer had, on top of base zoning."*

This issue should not be confined to which way to interpret the existing language, but how fairly to address it in a way that ensures maintenance of a critical mass of farmland, and in a manner that ensures that houses built in the Reserve are supportive of agriculture rather than inimical to its sustainability. Staff concurs with the Working Group that the County Council should amend the Zoning Ordinance to clarify and make crystal clear the density provisions for child lots, but recommends that child lots not be in addition to base density. Simply put, the total number of residences on a parcel should in no case exceed one per 25 acres, whether developed with child lots or market lots.

2. Improper Use. Exacerbating the density issue is that a few property owners have frustrated the intent of the District Council by creating child lots with no intention that they would serve as homes for their children, but rather to dispose of them immediately on the open market.

In order to limit the use of child lots for improper purposes, the Working Group has recommended a series of limitations as follows:

- A child must own the child lot dwelling for five years; however exceptions should be allowed for hardship cases such as those used in the Maryland Agricultural Land Preservation Foundation (MALPF) easement program.  
**Staff recommends that the minimum duration of ownership be 10 years.**
- A child must not lease the child lot dwelling or enter into a contract for sale for five years, except the child may lease the child lot home to an immediate family member.  
**Staff concurs, but recommends that 'immediate family member' be defined and that subleases to non-family members not be permitted.**
- A landowner may create only one child lot for each child regardless of the number of properties owned.  
**Staff concurs.**
- Each child lot should require the use of one TDR.  
**Staff concurs.**

- A child lot may be created after the death of the landowner if the landowner's intent was to create the lot and is established in writing through a will or other document admissible in probate.

**Staff believes that after 25 years, child lots should be created, or at least applied for, before the death of a landowner. Staff does not recommend that a significant land use decision hinge on the decision of a judge at probate.**

- A majority of the land on parcels with child lots must be reserved for agriculture.

**Staff concurs with the Working Group that this limitation requires follow-up work, including the definition of 'majority,' and the minimum or maximum acreage requirement for child lots. This requirement would limit the size or location of child lots on existing small properties. Under the RDT Zone, the minimum acreage for any lot is 40,000 square feet and the maximum size is 25 acres. A minimum lot size of less than 40,000 square feet may be appropriate, if it serves to protect farmland and prevent fragmentation. It would need to be applied judiciously, possibly in conjunction with design standards, although these are not typically applied to Euclidean Zones such as the RDT Zone. Design standards would not be included in the Zoning Ordinance, but could be included in an updated Master Plan for Preservation of Agriculture, or in a separate stand-alone document similar to the Planning Board's Environmental Guidelines.**

**The RDT Zone allows a maximum lot size of 25 acres. To set a maximum size for 'child lots may reduce the landowner's future flexibility for locating potential child lots and may be contrary to the goal of protecting or preserving agricultural land.**

- The record plat must indicate that the property contains a child lot. To this end, the Planning Department must require a covenant to be recorded in the land records at the same time the plat is recorded. The covenant should contain a provision indicating that the house must be owned by the child for five years after construction and may not be leased during that time. Violation of the covenant should have penalties.

**Staff recommends ownership for 10 years after construction.**

- The building permit must be issued only in the child's name. The building permit should not be approved until DPS has determined that the child has signed an affidavit noting the limitations on ownership and leasing and knowledge of the covenant.

**Staff concurs.**

- There should be substantial monetary penalties to discourage violation of these requirements.

**Staff concurs.**

- We support confirming the provision in the Water and Sewerage Plan to allow public water service to be provided but with amendments to limit the applicability so that this provision would only be used in limited circumstance. We recommend amending the language of the Water and Sewerage Plan to allow public water to child lots in the following circumstances:
  - When the child lot can be served from an existing, abutting water main and service to the property would not provide the opportunity for service to other RDT properties.
  - When public water service can be provided in a manner that would not prevent the future application for a State or County easement for farmland preservation. Properties receiving public water are not eligible for State easement programs or the BLT program as described in Chapter 4. This could increase the appeal of residential development (at one house per 25 acres) over preservation through an easement program.
  - We make this recommendation based on the assumption that there are only a small number of potential child lots that would qualify for public water under our recommendation. Once implemented, we recommend the County monitor how many lots use this provision. If it appears that a significant number of lots are being provided with public water, we would urge the County reconsider this policy.
  - We recommend the County Council approve any request for public water to a child lot in the RDT zone by a majority vote. As the Council gains experience with such approvals, it might consider permitting them to be made administratively in accordance with clear criteria stipulated by the Council.

#### **Staff Comment**

**A conflict exists on this issue between the Ten-Year Comprehensive Water and Sewerage Systems Plan and the 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space. The Master Plan recommends denying “public water and sewer service to areas designated for agricultural preservation that utilize the RDT zone.”<sup>3</sup> The Water and Sewerage Plan provides, “community [public] water service may be provided to support the subdivision of lots for the children of the owners of qualifying properties.” Further, the Water and Sewerage Plan notes that “water service in these cases is generally intended to be provided from abutting water mains, although water main extensions can be considered where those extensions are consistent with the requirements for large lot development . . .”<sup>4</sup>**

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<sup>3</sup> Functional Master Plan for Preservation of Agriculture, page 59.

<sup>4</sup> Montgomery County, “Ten-Year Comprehensive Water Supply and Sewerage Systems Plan”, Chapter 1, § II.E.9 (2003).

Although this situation is a comparative rarity, staff does not concur with the Working Group's recommendation. The conflict between the two documents was noted in 2006 when Planning staff, using the 1980 Master Plan as a guide, recommended denial of a water category change for approved child lots, while Department of Environmental Protection (DEP) staff recommended the opposite, based on the Water and Sewerage Plan and the existence of a pre-1980 water main in the street abutting the lots.

The number of child lots that would qualify for public water under the Working Group's recommendation is likely to be small. The Working Group also recommended that the County Council reconsider the policy if it appeared that a significant number of lots were being serviced by public water. Staff believes that following this recommendation could set up future policy conflicts, as could the Water and Sewerage Plan statement that "water main extensions can be considered where those extensions are consistent with the requirements for large lot development..." Staff recommends following the language of the 1980 Master Plan denying public water service to areas designated for agricultural preservation.

#### **Work Program Implications:**

The County Council should authorize the Planning Board to update the 1980 Master Plan, in consultation with major stakeholders. The Plan's purpose would be to preserve agricultural land and enhance farming viability, taking into account new agricultural trends.

A zoning text amendment should be drafted that would clarify the Zoning Ordinance and impose limitations on the use of child lots in the RDT Zone, including examining follow-up questions of whether there should be a minimum acreage or a maximum size, what specific circumstances should constitute a hardship, and who should determine whether the hardship requirements are satisfied.

Explore requiring a covenant to be recorded in the land records when a child lot is created specifying that a house on the child lot must be owned by the child for ten years and must not be leased except to immediate family (to be defined).

Research the potential number of child lots that could theoretically abut existing water mains that pre-date the 1980 Master Plan.

#### **C. SAND MOUNDS**

Agriculture is the preferred use for the Agricultural Reserve proposed by the Functional Plan for the Preservation of Agriculture and Rural Open Space, and this is clearly stated in the Zoning Ordinance. One of the key recommendations of the Master Plan was to

“support a rural sanitation policy that does not encourage development within the critical mass of active farmland.”<sup>5</sup> To accomplish its goal of preserving land for farming, the Master Plan recommended against the use of alternative individual and community sewerage systems in the Reserve.<sup>6</sup> There was debate about whether sand mounds were an alternative system. As we seek to accomplish the aims of the Master Plan we recognize that in some cases the use of sand mound technology may be appropriate. Therefore, we recommend the County continue to permit sand mounds, but limit their potential use.

It is unclear whether current law permits the County to limit the use of sand mounds since current State law permits sand mounds (i.e., does the State law pre-empt the County from enacting a law that prohibits or limits the use of sand mounds). We concurred with the recommendation of Council staff to not delve into this complicated legal issue. Rather, we focused on what the best policy is for the County to implement at this stage.

- We recommend the Council investigate the legal ramifications of our recommendations and identify the appropriate legal strategy to implement them.

Although we have been told that Council members historically assumed that septic availability would limit density to less than the maximum permitted in the RDT zone, some Group members believe this intent is not clear and provides a significant source of confusion for property owners.

- In the future we believe that the Planning Board and Council should select zones that better reflect the desired density, rather than assume that septic limitations will control density.<sup>7</sup>

### **Staff Comment**

**The Zoning Ordinance is NOT an entitlement and always specifies the MAXIMUM density. It is not a guarantee. In the case of sand mounds, the Master Plan provides the guidance and not the Zoning Ordinance. Both the majority and the minority on the sand mound issue have recommended varying degrees of limiting density by restricting the unfettered use of sand mounds.**

**The sand mound issue is critical, not just for the Agricultural Reserve, but for extensive areas zoned RE-2 such as parts of Potomac, Travilah and Darnestown. For example, one property in Travilah, which was denied rezoning by the County Council from RE-2 to RE-2C, and excluded from the sewer envelope or access to an adjacent extensive grinder pump sewage system, has recently been the subject of a subdivision plan based entirely on sand mounds, the first time this has occurred in the Potomac Subregion, but almost certainly not the last. Other**

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<sup>5</sup> Maryland-National Capital Park and Planning Commission, “Approved and Adopted Functional Master Plan Preservation of Agriculture and Rural Open Space”, page iv (October, 1980).

<sup>6</sup> *Id.*, at 62.

<sup>7</sup> See Comment 4 by Margaret Chasson in Appendix II.

sites which do not perc for traditional septic systems, and which have been the subject of unsuccessful lawsuits occasioned by the County Council denying sewer extensions beyond the approved envelope, may also be resubmitted, with significant implications for Master Plan assumptions regarding population density, traffic, and environmental impacts.

**Selection by the Planning Board and County Council of a zone that better reflects the desired density in the Agricultural Reserve, rather than assuming that septic limitations will control density, would lead to consequences probably unintended by the Working Group. In other words, implementation of this recommendation would entail another down-zoning. By way of comparison, certain counties in California that protect their farmland via TDR programs (Marin, Sonoma and Napa) have base densities in the agricultural areas ranging from 1 per 40 acres to 1 per 160 acres, and one county in Montana adjacent to Yellowstone National Park is contemplating a base density of 1 per 160 acres for its agricultural areas, also coupled with a TDR program.**

We debated whether a quantitative, acreage-based limitation on sand mounds was the best solution available that might gain widespread support. The sand mound issue was the most controversial topic we discussed, as reflected by the extensive comments Group members submitted both in support and in opposition to the majority recommendation.<sup>8</sup> A majority of the Working Group supports a quantitative, acreage-based limitation on sand mounds (described below) that might reduce overall application of sand mounds by an estimated 25% over what would otherwise occur. A minority of the Working Group is not convinced of this approach, and would recommend limiting the use of sand mounds more aggressively or on some other basis. However, we all agree that there are a number of “special cases” where use of sand mounds is justified, as discussed below. One reason for this minority view is a deeply held concern that the impact of the majority’s proposal is not well enough understood to be reliably predicted. We spent substantial time trying to achieve an acreage-based compromise that would satisfy all members, but in the end, concluded it would be appropriate to explain this difference of views in this Report.

Our recommendation recognizes the competing interests between retaining value in farmland for the purpose of sustaining farmers and retaining large tracts of land where agriculture can dominate activity. We recommend sand mounds be allowed as follows: One sand mound per 25 acres for the first 75 acres. Beyond that, one sand mound should be allowed for every 50 acres of land in the parcel. For example, a property owner with 125 acres but less than 175 acres would be allowed four sand mounds; one with 175 acres but less than 225 acres would be allowed five sand mounds, etc.

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<sup>8</sup> See Comment 2 by Margaret Chasson, Nancy Dacek, Scott Fosler, Bob Goldberg, Tom Hoffmann, and Jim O’Connell; Comment 3 by Wade Butler, Pam Saul, Drew Stabler, William Willard, Bo Carlisle, and Jane Evans; Comment 5 by Jim Clifford; Comment 7 by Pam Saul; and Comment 8 by Elizabeth Tolbert in Appendix II.

## **Staff Comment**

**A 150-acre property would receive 4 sand mounds under this scenario. If the property were split by deed into two 75-acre parcels for agricultural purposes, eligibility would rise to 6 sand mounds. Similarly, a 300-acre property, eligible for 7 sand mounds, could theoretically be split into 4 parcels by deed for agricultural purposes, and raise its total to 12.**

**Under the scenario recommended by the Working Group minority (i.e. one sand mound per 50 acres), there would be no advantage gained by splitting property. Simply put, the 150-acre and 300-acre properties would be eligible for 3 and 6 sand mounds respectively.**

We further recommend that these numerical standards apply to any future new technology for on-site sewage disposal. For any subdivision involving sand mounds, we recommend Planning Department staff be required to determine whether the subdivision minimizes fragmentation of agricultural land by locating buildings to preserve viable farmland.

In addition, we recommend sand mounds be allowed under the circumstances listed below, for a parcel existing as of December 1, 2006.

- Where there is an existing house and the sand mound would not result in the development of an additional house.
- When it enables a property owner with approved deep trench system percs to better locate potential houses to preserve agriculture.
- For child lots, provided that our recommendations related to child lots are also adopted (e.g., ownership requirement). Sand Mounds will be approved for child lots where they are approved under the zoning provision or approved under the Agricultural Easement Program MALPF/AEP.
- For bona fide tenant housing, provided that recommendations related to tenant houses are also adopted. Sand Mounds will be approved for bona fide tenant housing wherein the dwelling can never be conveyed from the parent parcel.
- For any pre-existing parcel that is defined as an exempted lot or parcel in the zoning regulations.
- For properties where there has been a significant investment in testing for sand mounds prior to the adoption of these new restrictions.
- For any permitted agricultural use under the zoning regulations (e.g., farm market).
- For the purpose of qualifying for a State or County easement program (including a Building Lot Termination program).

## **Staff Comment**

**The limited circumstances above constitute legitimate uses for sand mounds, but staff has broader concerns, as follows:**

The Working Group debated the following issue: Should the use of sand mounds be prohibited or limited in the Rural Density Transfer (RDT) Zone? The Zoning Ordinance limits density in the RDT Zone to a maximum of one house per 25 acres. Development in the RDT will yield less than the base density, especially without the use of sand mounds, due to septic limitations (i.e., when land is unable to perc). The use of sand mounds will increase the total number of developable lots in the RDT Zone, and increase the fragmentation of agricultural land.

Viewing the Working Group recommendations through the prism of furthering the goals of the Master Plan and the purpose of the RDT Zone, the use of sand mounds in lieu of traditional septic systems presents a serious threat to the integrity of the Agricultural Reserve. They have the potential to facilitate subdivisions with no agricultural purpose that otherwise would not be feasible, resulting in fragmentation of the critical mass of farmland essential to maintaining a sustainable working landscape. The Master Plan statement on Page 62 is unambiguous: "Deny private use of alternative individual and community systems in all areas designated for the Rural Density Transfer Zone (RDT.)" The intent of the recommendation was to limit gross density to substantially less than the Zoning Ordinance maximum across the entire Agricultural Reserve. Accordingly, residential uses should be permitted only on a limited basis and consistent with the overarching goal of preservation of agricultural uses.

The "General Plan Refinement of the Goals & Objectives for Montgomery County," approved and adopted in 1993, supports the thrust of the 1980 Master Plan for the Preservation of Agriculture & Rural Open Space, and states:

*"The Agricultural Wedge's rural character must be safeguarded, preserved and protected to benefit future generations.....*

*Agriculture will continue as the primary land use in the Agricultural Wedge. Non-agricultural uses must be limited..... Actions needed to preserve farmland in the future, beyond current measures, should be considered if deemed appropriate."*

(Page 33, emphasis added)

The indiscriminate use of sand mounds, even with restrictive zoning at high minimum parcel sizes, will not guarantee adequate protection for continued farming. This challenges the assumption that large minimum lot sizes discourage residential buyers because larger parcels are more expensive to purchase. Land market forces and the existence of affluent buyers suggest otherwise. High amenity areas, where farms possess very attractive scenic attributes and other natural resource and recreational values, generate a market demand from affluent buyers seeking to establish primary or secondary homes. Indeed, the market may be even greater for properties adjacent to easement-protected parcels, because of the certainty that the natural amenities will be protected over time.



The widespread use of sand mounds will erode and fragment the critical mass of farmland in the Reserve, with the landscape dotted with clusters of large houses on relatively small lots, completely out of character with a working agricultural landscape. In addition to sand mounds recommended under the limited circumstances listed above, the potential number of additional sand mounds under the majority Working Group recommendation would be 433. A significant percentage of percolation tests for sand mounds fail in the northwest part of the Reserve, and could substantially reduce this number. The RDT Zone, which does not include residential uses in its purpose clause, should be re-named the Agricultural Zone, to remove any confusion with the Rural Cluster Zone, and to make its primary purpose crystal clear.

The combination of 25-acre zoning, TDR policy, and limits on sanitary technology put into place in 1980 has been largely successful in maintaining a nationally recognized model of land conservation. Proliferation of sand mounds will seriously jeopardize this achievement, even if all excess TDRs are transferred. Future technologies developed over the next 25 years may result in an entire household's sanitary waste being processed in very small tanks with space and volume requirements so minimal as to be inconceivable today. Theoretically, percolation tests may become totally redundant. Sand mounds, or any future alternative technology, should not be used to circumvent the intent of the Master Plan. Staff recommends that their general use, absent the legitimate exceptions detailed above, be prohibited.

#### **Work Program Implications:**

The County Council should authorize the Planning Board to update the 1980 Master Plan, in consultation with major stakeholders. The Plan's purpose would be to preserve agricultural land and enhance farming viability, taking into account new agricultural trends.

Work with DEP staff on amendments to the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan to bring it into alignment with the 1980 Master Plan for Preservation of Agriculture.

Coordinate with County and Executive legal staff to research and determine changes in laws or regulations needed to accomplish the report recommendations.

#### **D. BUILDING LOT TERMINATION (BLT) EASEMENT PROGRAM**

Even when landowners in the RDT zone sell TDRs, they typically retain one TDR for each 25 acres owned so that they will have a buildable lot. (This is why we refer to that single TDR retained for each 25 acres as a "buildable TDR," and the other four TDRs for each 25 acres as "excess TDRs," since the landowner cannot use these to build on RDT zoned property in "sending areas," but can only sell them to be used in "receiving areas.") The consequence is a higher probability than originally envisioned that the

Agricultural Reserve will be “built out” at close to the full density of one dwelling unit per 25 acres, a result that could jeopardize agriculture, principally by fragmenting farmland. We believe that addressing this problem is central to the viability of the Agricultural Reserve.<sup>9</sup>

We recommend establishing a BLT easement program as a way to prevent fragmentation of farmland in the Agricultural Reserve. A BLT program is designed to compensate a landowner financially in exchange for an easement that eliminates future development of a lot shown to be viable for building through a soil percolation test.

There are two goals and purposes of a BLT program: (1) reduce the number of buildable lots in the Agricultural Reserve while providing equity to landowners; and (2) preserve by easement as much usable farmland as possible.

We recommend strict eligibility criteria for participation in the BLT program to ensure that a bona fide development lot is terminated and appropriate public benefit is derived.

As a basis for compensation, we recommend a landowner prove that the lot can support a house with a viable septic system before participating in the BLT program. Regarding funding, we recommend public funding of the BLT program initially using proceeds from the Agricultural Transfer Tax with compensation set at a percentage of the fair market value of a buildable lot in the RDT zone. Although some Group members have some reservations with publicly funding the BLT program, we recognize that public funding is the only way to get the BLT program started quickly. At the same time, we recommend the County create a buildable TDR program to provide private funding via the purchase of TDRs by developers of non-residential property.

### **Staff Comment**

**The goals and purpose of a BLT program are to reduce potential development and prevent fragmentation of farmland in the Agricultural Reserve and to provide financial incentives that offer an attractive alternative to development.**

**The Working Group proposal is to establish a BLT program to publicly fund the purchase of a substantial portion of the 5<sup>th</sup> TDRs that remain on TDR sending parcels. Initially, the County would negotiate with the landowners that hold these rights, purchase the TDRs with public funds, convert the residential TDRs to non-residential use based on a formula to be calculated by the Planning Board and approved by the County Council, then re-sell them to developers for use in R & D, commercial, office, industrial and mixed-use zones. After an additional period when the County would play a brokerage or facilitation role, the expectation is that a direct developer-to-TDR owner market would develop for the transfer of these significantly more expensive 5<sup>th</sup> TDRs.**

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<sup>9</sup> See Comment 6 by Scott Fosler, paragraph D, in Appendix II.

Attached on pages A21-A38 is a draft of Montgomery County Regulations – Agricultural Land Preservation Districts and Easement Purchase (including BLT Easements) prepared by the Department of Economic Development. Also attached on pages A7-A20 is a draft Overview of the Building Lot Termination Program (BLT) prepared by the same Department. The Overview covers criteria for eligibility, priority, compensation, funding and procedures, as follows:

#### **A. ELIGIBILITY**

- The Department of Permitting Services (DPS) must provide certification that an approved soil percolation site exists on the property for each lot being terminated.
- Property owners must have retained a buildable TDR for each lot terminated.
- Properties must not be encumbered by an existing preservation easement, except easements placed through the existing TDR program.
- Properties must serialize the excess TDRs through a TDR easement that is recorded among the land records.
- Properties must be at least 25 acres, or be contiguous to other land protected from development by agricultural and conservation easements.
- At least 50% of the land in a parcel under the BLT easement must meet USDA soil classification standards Class I, II, or III or Woodland Classifications 1 and 2.
- Properties must be zoned RDT and be outside water and sewer categories 1, 2, or 3.
- Child lots are not eligible.

#### **B. PRIORITY**

Criteria to prioritize applications include date of receipt of a complete application (that meets all of the eligibility criteria), size of the property, and farmland preservation. The Agricultural Preservation Advisory Board will assist with rankings in the event of a tie.

#### **C. COMPENSATION**

Compensation will be set at a percentage of the fair market value of a buildable lot in the RDT Zone.

Payments may be spread over two tax years, as opposed to requiring the County to pay a landowner in full at the time the building lot is terminated.

## **D. FUNDING**

The Working Group recommends public funding of the BLT program. In the FY07-12 Capital Improvements Program (CIP), the County has approved \$8,204,000 for the next fiscal year to purchase easements for agricultural preservation programs, including a BLT program. For FY2008 \$6,346,000 has been budgeted for all farmland preservation program initiatives. The Department of Economic Development (DED) estimates that \$5.5 million would be available for the BLT program. The Agriculture Transfer Tax may provide ongoing funding which averages approximately \$2,000,000 per year to support the existing preservation programs and the BLT easement program.

Additional sources of public revenue to support the program will be necessary in the future. The possibility of exchanging publicly owned development rights in return for extinguishing these residual or developable lots should be explored. The Park and Planning Commission owns approximately 7,500 acres of parkland in the Agricultural Reserve. Some 2,000 acres were acquired after 1980 and the number of TDRs is minimal (approximately 60.) For the acreage acquired prior to 1980, the estimated number of TDRs is approximately 1,100. It would be theoretically possible to transfer these to farmers, at an agreed ratio, conditional on their sale to receiving areas and the termination of residual building lots.

The Working Group recommends that the BLT program be funded privately via the creation of a new market-driven TDR program for buildable TDRs for non-residential properties. Developers of properties in residential receiving areas would continue to buy excess TDRs, while developers of property in new non-residential receiving areas would purchase buildable TDRs at a significantly greater cost.

## **E. PROCEDURES**

- The landowner will apply to DED demonstrating eligibility under the above stated criteria.
- DED Agricultural Services Division will review applications to assure eligibility criteria are met and the application is complete.
- The Agricultural Preservation Advisory Board will review applications for recommendations to the Director of DED.
- The County Attorney will evaluate applications and approve the Contract and Easement documents.
- The package will then be sent to the County Executive for action.
- At settlement, the landowner will be paid in cash or by an option for payments to be spread over two tax years. When available, non-residential use TDRs could be added to the program so that they can be provided to the property owner in lieu of cash or as a component of the consideration paid under the BLT Program. Any buildable TDRs not converted under the program to non-residential TDRs would be terminated.

Planning staff concurs with all of the Working Group's BLT recommendations. Launching the program will be a daunting task, but that was probably the view of the TDR program in 1980. Of the total acreage under TDR easement in the entire USA, Montgomery County has succeeded in protecting more than 50 percent, and has the experienced professional staff capable of implementing the program. In order to be successful, the BLT program will need to make economic sense to both developers and farmers, supply and demand will need to be carefully balanced, with possible public intervention in the market, and there will need to be County Council support for not increasing commercial density in receiving areas without the use of TDRs.

#### **Work Program Implications:**

Explore potential for increasing commercial densities via TDRs in all future Master Plans.

Create a new TDR program whereby owners of non-residential properties would need to purchase buildable TDRs to increase density.

Coordinate with the County's Agricultural Services Division on a BLT program, which would work in concert with existing easement programs.

#### **E. PENDING LEGISLATION**

On December 13, 2005, ZTA 05-23 was introduced to require TDR easements to limit future development of non-residential and non-agricultural uses ("non-agricultural" is hereafter referred to mean all uses except residential and agricultural uses). In addition, ZTA 05-23 would prohibit a property developed with a non-agricultural use from participating in the TDR program. ZTA 05-23 has now lapsed.

We recommend the Council introduce and enact legislation to clarify in clear and direct terms the long-standing legislative intent that the development of RDT-zoned parcels encumbered by TDR easements shall be limited to single family and agricultural and agricultural-related uses only.

#### **Staff Concurs**

#### **F. ADDITIONAL ISSUES**

The Council's resolution establishing the Ad Hoc Agricultural Working Group called for a comprehensive review while also intentionally limiting the scope of the Group's work to the issues discussed above. We feel that a broader comprehensive review of policies and laws related to the Agricultural Reserve is necessary and suggest a range of issues that should be considered, including some preliminary thoughts on right-to-farm legislation, education strategies, and design standards.

We recommend the County Council enact legislation that requires potential homebuyers of homes in agricultural zones to be notified of laws that protect farmers from certain nuisance claims. If the number of nuisance complaints increases, we would recommend the Council explore whether additional action is necessary. In addition to disclosure, we recommend the County explore options to educate residents about the importance of the Agricultural Reserve.

We also recommend the Planning Department explore ways to prevent the fragmentation of agricultural land by locating buildings to preserve viable farmland. Any strategy must maintain owner equity and achieve the goal of preserving farmland. We understand that there is tension between the Planning Department and property owners on the issue of design standards and efforts to identify solutions must be mindful of these tensions. We recommend the Planning Department use the existing agricultural advisory groups to help develop these strategies.

We conclude this Report with an expanded list of other issues regarding zoning, tenant homes, rustic roads, and economic viability that we believe should be addressed in any comprehensive consideration of the sustainability and vibrancy of the Montgomery County's Agricultural Reserve.

#### **Staff Comment**

**Staff concurs that each and every one of the above issues should be addressed in a comprehensive study of the Agricultural Reserve, and recommends that the most appropriate instrument be an update of the 1980 Master Plan for the Preservation of Agriculture & Rural Open Space.**

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#### **Attachments:**

1. Outline and Key Points of Ad Hoc Agricultural Policy Working Group Presentation (pages A1-A6)
2. Overview of Building Lot Termination Program (BLT) (Draft) (pages A7-A20)
3. Draft Montgomery County Regulation – Agricultural Land Preservation Districts and Easement Purchases (including BLT Easements) – Department of Economic Development (pages A21-A38)
4. Summary of Public Testimony (pages A39-A51)
5. Public Testimony received by 2/23/07 (pages A52-A151)
6. Final Report (page A152)

# **ATTACHMENT 1**

**OUTLINE AND KEY POINTS  
of  
STATEMENT  
by  
SCOTT FOSLER, VICE CHAIR  
of the  
AD HOC AGRICULTURAL POLICY WORKING GROUP  
on the  
FINAL REPORT OF THE WORKING GROUP  
before the  
MONTGOMERY COUNTY COUNCIL  
Rockville, Maryland  
January 30, 2007**

## **INTRODUCTION**

- Thanks to the County Council for appointing the Agricultural Working Group.
- Thanks to all those who contributed to the Working Group: Chair Lib Tolbert, members of the Working Group, staff from the County Council, executive branch, and Planning Board, and citizens.
- We worked hard to achieve consensus, which was possible on most issues we addressed. Our recommendations do not always reflect an ideal solution from any one member's perspective, but in all but one case offer proposals that are generally acceptable to the entire Group.
- I would like to highlight three key points on which the Working Group was unanimous.

### **#1. FIRST, THE AGRICULTURAL RESERVE IS WORTH PRESERVING, IT SHOULD BE PRESERVED, AND IT CAN BE – AND ONLY WILL BE – PRESERVED, BY THE TIMELY AND EFFECTIVE ACTION OF THE COUNTY GOVERNMENT WITH THE SUPPORT OF COUNTY CITIZENS.**

- In 1981 the Council created the Agricultural Reserve, which has become an unparalleled resource that benefits all the County's residents, as well as the entire Washington region. The Agricultural Reserve is regularly cited throughout the United States as the country's leading model for agricultural, open space, and environmental preservation.
- All members of the Working Group members share a belief that the Agricultural Reserve is valuable to all the County's citizens, and a common interest in preserving agriculture in the County.

- The Agricultural Reserve is under stress, and its health and sustainability will remain in question unless those stresses are addressed.

**#2. SECOND, TO SUSTAIN A HEALTHY AGRICULTUREAL RESERVE, THE COUNTY WILL NEED A COMPREHENSIVE FRAMEWORK OF CLEAR, APPROPRIATE, AND FAIR PRINCIPLES AND RULES, AND EFFECTIVE PROGRAMS AND IMPLEMENTATION TO PUT THEM INTO PRACTICE.**

- Most elements of such a framework are already in place, embodied in a set of laws, policies, and practices. But these need to be updated, supplemented, and more tightly linked together.
- We identified principles on which all members could agree, and which provided the underlying rationale for our recommendations. These principles include the following:

**General Principles**

- The economic viability of the agricultural industry is critical to the preservation of the Agricultural Reserve.
- The open space and environmental protection goals of the Master Plan are unlikely to be achieved unless we can sustain the health of agriculture.
- Agriculture in the County has and will continue to evolve and requires an environment that recognizes that fact.
- The equity farmers hold in their property is not only important to them personally but an important asset for their businesses, and consequently an important factor in the success of the agricultural industry in the County.
- Fragmentation of farmland should be avoided. Contiguous areas of farmland are desirable for traditional agriculture.
- If the Agricultural Reserve is to survive permanently, policies must protect both farming and farmland, while fostering a deep commitment to stewardship that looks beyond current generations and current landowners.

**Child Lots**

- **Problem:** The language in the Zoning Ordinance is ambiguous and subject to multiple interpretations, and may result in new homes being built in the Agricultural Reserve that are not lived in by children of landowners.
- Continue to allow child lots as density in addition to the base density allowed in the RDT zone, continuing a 25 year practice.
- To limit the use of the child lots for improper purposes, change practices to ensure that a child lot will be owned by the child of the property owner.



- Limit the use of child lots as follows:
  - A child must own and not lease the dwelling for 5 years, except to immediate family members. There should be an exception for hardship cases.
  - Landowners can create only one child lot for each child.
  - Allow a child lot to be created after the death of the landowner.
  - A majority of the land on parcels with child lots must be reserved for agriculture.
  - Limit the circumstances in which public water can be provided to child lots to: (1) when the child lot can be served from an existing, abutting water main; and (2) when water can be provided in a manner that would not prevent the future application for an agricultural preservation easement.

### **Sand Mounds**

- **Problem:** The Zoning Ordinance limits density in the RDT zone to 1 house per 25 acres. Development in this zone is likely to yield less than the base density due to sewer limitations. The use of sand mounds can potentially increase the total number of buildable lots in the RDT zone.
- This is the only issue where consensus among Group members could not be reached. The Group's recommendation is to allow the use of sand mounds as follows: 1 mound per 25 acres for the first 75 acres and 1 mound per 50 acres beyond the first 75 acres. A dissenting group of members recommends allowing 1 sand mound per 50 acres.
- The Group unanimously agrees sand mounds should be allowed in the following instances:
  - For an existing house (e.g., to replace a failing system).
  - To allow a property owner to better locate a house.
  - For child lots, tenant houses, and any permitted agricultural use.
  - For pre-existing parcels defined as exempted lots in the zoning regulations.

- For properties where the owner has invested significant resources in testing for sand mounds prior to the adoption of new restrictions.
- For the purpose of qualifying for an easement program.

### **Pending Legislation**

- We do not recommend enacting any of the legislation pending as of October 31, 2006, with one exception.
- Legislation similar to ZTA 05-23 to require the TDR easement, in addition to limiting the construction of 1-family dwellings, prohibit the construction of any non-residential, non-agricultural use on the affected property. However, the second part of ZTA 05-23, which discusses limiting the use of TDRs on property in the RDT zone that is developed with a non-residential use other than agriculture, requires further discussion and should not be enacted at this time.

### **Additional Issues**

- The Council's resolution establishing the Ad Hoc Agricultural Working Group called for a comprehensive review while also intentionally limiting the scope of the Group's work to a defined cluster of issues. We feel that a broader comprehensive review of policies and laws related to the Agricultural Reserve is necessary and suggest a range of issues that should be considered.
- We explored whether there was a need for right-to-farm legislation and do not believe it is necessary. Instead, we recommend the Council enact legislation that requires potential homebuyers in agricultural zones be notified of laws that protect farmers from certain nuisance claims.
- Regarding education strategies, we recommend the County explore options to educate residents about the importance of the Agricultural Reserve.
- Regarding design standards, we recommend the Planning Department explore ways to prevent the fragmentation of agricultural land by locating buildings to preserve viable farmland.

**#3. THIRD, THE MOST IMPORTANT ACTION THE COUNTY GOVERNMENT COULD TAKE TO SUSTAIN THE AGRICULTURAL RESERVE IS TO ASSURE THAT THE TRANSFERABLE DEVELOPMENT RIGHTS (TDR) PROGRAM WORKS, IN CONJUNCTION WITH AN EFFECTIVE BUILDING LOT TERMINATION (BLT) PROGRAM.**

### **Transferable Development Rights (TDR) Program**

- **Problem:** The lack of receiving areas to accommodate the number of TDRs available to be sent from RDT land has been an ongoing problem. We believe that the TDR program is essential to the preservation of the Agricultural Reserve and that changes are necessary to keep the program strong.
- The Council should enact the following changes to the current TDR program:
  - Distinguish between *buildable* and *excess* TDRs (a *buildable TDR* is a TDR retained by a property owner in the RDT zone for the purpose of being able to build a dwelling; an *excess TDR* is one that would not permit the property owner to build a dwelling on the RDT property, but which could be sold to increase the permissible dwelling density in a TDR receiving area). This coincides with our recommendations for a BLT program.
  - Require the use of TDRs in floating zone applications.
  - Designate buildable TDRs for use in floating, commercial, industrial, CBD, and R&D zones.
  - Introduce legislation to prevent property owners from selling all TDR easements and subsequently developing a non-residential, non-agricultural use on the property.
- In no case should the density permitted in a receiving area as a consequence of applying TDRs exceed the carrying capacity of that area.
- Endorse the following recommendations of the TDR Task Force
  - Master Plans should more aggressively seek to maximize the number of receiving areas.
  - If additional density is considered via rezoning not recommended in the Master Plan, the use of TDRs should be part of that change.
  - Establish an inter-jurisdictional TDR program.
  - Eliminate the requirement that receiving areas use 2/3 of the possible TDRs.

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

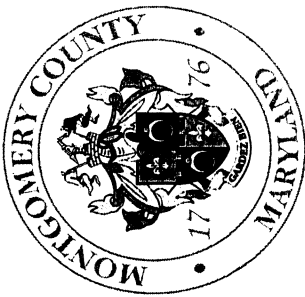
- **Problem:** RDT property owners can use 1 TDR for each 25 acres as a potential building lot. Thus, a substantial number of potential building lots

remain viable in the Agricultural Reserve. The value of lots for residential development in the Agricultural Reserve is significant, providing an incentive to sell lots for development.

- This is a critical piece of our recommendations. To meet the goal of preserving land for farming and preventing fragmentation of the Agricultural Reserve, some method of compensating landowners for the value of those buildable TDRs must be found. We therefore recommend the County establish a Building Lot Termination (BLT) Program whereby landowners are compensated in exchange for relinquishing the right to a potential building lot.
- In the report, we recommend specific eligibility criteria for participation in the BLT program including soil type, ability to perc, and relationship to the TDR program.
- We recommend priority for applications be date of receipt, size of property, and farmland preservation.
- We recommend public funding of the BLT program initially using proceeds from the Agricultural Transfer Tax with compensation set at a percentage of the fair market value of a buildable lot in the RDT zone. At the same time, we recommend the County create a buildable TDR program to provide private funding via the purchase of TDRs by developers of non-residential property.

## **CONCLUSION**

- We urge the Council and Planning Board to give our recommendations priority attention. Now is the time for a new commitment to the stewardship of the Agricultural Reserve so that it will endure for the remainder of this century and beyond, not just for our own children and grandchildren, but for theirs as well.



# 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
  - Letter from DPS
  - 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 acreage of the parcel size from largest acreage to smallest

# **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 plan, perc testing, surveys, etc.

## **Proposed Review and Approval Procedure**

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

Not all TDRs are alike

Title Report will determine the history of TDRs

Excess TDRs – must have been or will be created and serialized and at least 1 Buildable 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 to move towards 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 landowners reserve lots are on larger properties encumbered by the BLT Easement)

## **Subdivisions:**

The owner of land subject to a BLT easement must not use or subdivide the land for residential (except for reserved lots), 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

- **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 at settlement or over more than one tax year at the request of the landowner

## **• 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



# 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.



# Building Lot Termination Program (BLT)

- **Question and Answer Session**



## ATTACHMENT 3

Draft  
Montgomery County Regulation on:

AGRICULTURAL LAND PRESERVATION DISTRICTS AND EASEMENT PURCHASES  
DEPARTMENT OF ECONOMIC DEVELOPMENT

Issued by: County Executive Regulation No. \_\_\_\_\_

Authority: Code Section 2B-18

Supercedes:

Council review: Method (1) under Code Section 2A-15

Register Vol. 8 No. 9

Comment Deadline:

Effective Date:

Sunset Date: None

**SUMMARY:** These agricultural land preservation Executive Regulations provide rules and regulations for establishing an Agricultural District and for determining the County supplemental payment for Maryland Agricultural Land Preservation Foundation purchase of agricultural land preservation easements; and establish the method of purchasing agricultural easements by the County including method of determining easement value, method of ranking offers to sell easements, and terms of payment for easements.

**ADDRESS COMMENTS TO:** Department of Economic Development 111 Rockville Pike Rockville, Maryland 20850

**STAFF CONTACT:** Jeremy V. Criss 301 590-2830 John P. Zawitoski 301-590-2831

**BACKGROUND INFORMATION:** Since 1978, Montgomery County has participated with the Maryland Agricultural Land Preservation Foundation in the purchase of agricultural land preservation easements to protect County farmland. Bill No. 56-87, Agricultural Land Preservation was enacted February 16, 1988 to increase the effectiveness of the preservation efforts in the County by enabling the County to purchase easements with the County's share of the agricultural land transfer tax directly from the farmland owner or to supplement the purchase price offered by the State. In 1992, the County approved the regulations to allow the Transferable Development Rights (TDRs) associated with the easement properties to be created rather than extinguished. In 2005, the County celebrated the 25<sup>th</sup> Anniversary of the Agricultural Reserve and several initiatives to support agriculture were identified including modification of these regulations to purchase "BLT Easements." Under this regulation, Building Lot Termination or BLT is henceforth defined as "permitted residential lot



rights." The County Government may consider re-selling TDRs acquired through the Building Lot Termination (BLT) option for use in other areas subject to provisions approved by Government.

### **I. Definitions:**

**Agricultural Easement Program (AEP):** A program designed to reduce permitted residential density on agricultural lands by placing easements to preserve agricultural production capability.

**Building Lot Termination (BLT) Easement Program:** A program by which the County may purchase a BLT Easement on land in the Rural Density Transfer Zone (RDT) in exchange for terminating some or all of the permitted residential lot rights. Transferable development rights which are eligible for transfer into duly designated TDR receiving areas that do not equate to permissible residential lot rights on a parcel of land within the RDT Zone and are henceforth defined as "Excess TDRs" and not eligible for the BLT Easement program.

**BLT Application Cap:** A limitation on applications accepted which is imposed by the County when the number of applications received exceeds to total funds that are available for a specified purchase period.

**BLT Adjusted Market Value Price:** Is the "Price" established on an annual basis by the County Executive used for purchasing BLT easements under this regulation. Establishment of this "Price" will take into determination an 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

**County Agricultural District Agreement:** An agreement between the County and Landowner, recorded among the land records of the County, which establishes the preference for continued agricultural use of the land, restrictions on residential subdivision of the land for a specified length of time and is required prior to the County purchasing an AEP easement on lands within non-agricultural zones.

**Transferable Development Rights:** The Conveyance of development rights by deed, easement or other legal instrument authorized by local law to another parcel of land and the recordation of that conveyance among the land records of Montgomery County, Maryland which may be classified in the following manner:

- a.) **Buildable Transferable Development Rights:** are transferable development rights retained by a property owner in the Rural Density Transfer zone for the purpose of being able to build dwellings (sometimes referred to as the 5<sup>th</sup> TDR, development TDR, or Super TDR.
- b.) **Excess Transferable Development Right:** are transferable rights that can be sold to another party without impacting the landowners ability to develop in accordance with the base density of the Rural Density Transfer Zone.



- c.) Severed Transferable Development Rights: are transferable development rights that are no longer attached to a sending property by virtue of an easement recorded in the land records of the County.
- d.) Extinguished Transferable Development Rights: are transferable development rights that have been severed, conveyed to a developer, and the serialized numbers have been recorded on a development plan in a receiving area.

Receiving Area Transferable Development Rights: An area designated on an approved and adopted general, master, sector or functional plan appropriate for development beyond its base density through the transfer of development rights.

## **II. Agricultural Easement Program (AEP)**

In accordance with Chapter 2B, Sections 7 through 19, the County may purchase an easement on real property to preserve agricultural land in the County. The agricultural land preservation easement will restrict residential, commercial, and industrial use of the land giving the landowner the same rights and responsibilities as County Agricultural District status.

### **A. Eligibility - AEP Program**

#### **1. Eligible Sellers**

The County will purchase easements only from the holder of fee simple title to eligible farmland, or a person or institution that has entered into a binding contract or option to purchase fee simple title to eligible farmland, if and when that person or institution takes title to the farmland.

#### **2. Eligible Farmland - Landowners within Agricultural Zones**

The County will only purchase easements on 50 acres or more of land that is zoned Rural Density Transfer, Rural, or Rural Cluster, or is in a State or County Agricultural District, however smaller properties may be considered if they comprise at least 10 acres of cropland and are adjacent to properties protected by other State/County agricultural or conservation easements. The County may purchase easements on land that is already encumbered by a transferable development rights easement provided not all of the TDRs have been previously created and transferred. The County will evaluate the status of TDRs retained with the property and differentiate between the TDRs retained for development versus "Excess TDRs" available for transfer within receiving areas. At a minimum, a landowner must have retained TDRs with the land at the density of 1 TDR for every 25 acres to remain eligible for the maximum benefits under this program. The County will purchase easements over less than the entire contiguous acreage owned by an applicant, only if the parcel is separately deeded, surveyed or subdivided, and is, in the discretion of the Agricultural Preservation Advisory Board, of



sufficient size and capability to be used for agricultural purposes. One acre will be subtracted from the total eligible acreage for each dwelling on the property.

### **3. Additional Land Eligibility Requirements**

- a. The land under consideration for must be at least 50 acres in size; however, smaller properties that are contiguous to an existing agricultural district or several contiguous properties that in the aggregate total 50 acres meet the size requirement.
- b. At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- c. The land must lie outside water and sewer categories 1, 2, and 3.
- d. The Agricultural Preservation Advisory Board may consider agricultural land that does not meet the above qualifications if it determines the land has significant agricultural value and that it is in the public interest.

### **B. AEP Easement Sales Application Requirements**

The owner must submit an easement sales application to the Department of Economic Development. The application must include a completed property description as outlined below along with the owner's asking price-for the easement which-cannot exceed the calculated Maximum Easement Value. The Department of Economic Development certifies the completeness of the application.

#### **1. The property description must include:**

- a. names and addresses of all landowners of record;
- b. full names of owner's children;
- c. property address;
- d. tax map;
- e. total acreage;
- f. deed references;
- g. land use and USDA soils productive capability class;
- h. number of dwelling units;
- i. current zoning of the property;
- j. the existence of any third party interest in the property;
- k. a description of the farming operation;
- l. an inventory of farm buildings on the property; and
- m. other information necessary to evaluate property eligibility (i.e. Opinion of Title, surveys, legal descriptions-BLT program only)



### **C. Agricultural District Formation Requirement - Landowners within Non -Agricultural Zones**

Formation of an Agricultural District gives the district owner certain right to farm protection and is a prerequisite to sale of an AEP easement to the County if the farm property is not in an agricultural zone.

#### **1. Land Eligible for Inclusion**

Agricultural land is eligible to be included in an Agricultural District must meet the same requirements as stated within section II. A. 3. of this regulation, except, the County Council may establish an Agricultural District on lands that do not meet the above qualifications if it determines the land has significant agricultural value and that it is in the public interest.

#### **2. Agricultural District Application Requirements**

Formation of an Agricultural District gives the district owner certain right to farm protection and is a prerequisite to sale of an AEP easement to the County if the farm property is not in an agricultural zone. The Agricultural District application must include a completed property description as outlined within section II. B. 1.

#### **3. Review and Approval Procedure For Agricultural Districts**

##### **a. Agricultural Advisory Board**

Upon receipt of a complete request the Agricultural Preservation Advisory Board will:

1. notify adjacent property owners of the request, the procedure for approving an agricultural district, and any public hearing;
2. immediately forward a copy of the request to the Planning Board; and
3. forward to the County Council within 60 days a written recommendation to approve, deny or recommend modification of the request, and forward a copy of this recommendation to the Planning Board.

##### **b. Planning Board**

The Planning Board must submit written comments to the County Council within 45 days after receiving the recommendation of the Agricultural Board.



### **c. County Council**

Within 60 days after receiving comments from the Planning Board, the County Council must act on the request.

### **4. Withdrawal from District**

A landowner may withdraw from an agricultural district by giving notification in writing to the Agricultural Preservation Advisory Board and the County Council. A request for withdrawal may be submitted no earlier than five (5) years from the date the Council includes the owner's land in the district or after the County has rejected the purchase of an easement on the landowner's property, whichever is earlier.

### **D. Permitted Activities- Lands Subject to AEP Easements and Districts**

The following activities are permitted on lands encumbered by County Agricultural Preservation Easements and Agricultural Districts subject to the limitations and conditions of Chapter 59 (Zoning) of the County Code:

#### **1. Agricultural Type Use**

- 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.

#### **2. Residential Use**

The grantor of an Agricultural Preservation Easement or Agricultural District 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:

- a. one acre, or the minimum lot size required by the zoning and well and septic regulations, whichever is greater, to build a house for use by the grantor.





b. up to 10 one-acre lots, or the minimum lot size required by the zoning and well and septic regulations, to build houses to be occupied by adult children of the grantor at a maximum density of not more than one (1) house per 25 acres; and

c. 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.

d. the acreage needed to construct housing for tenants fully engaged in the operations of the farm, not to exceed one tenant house per 100 acres.

### **3. Restriction on Subdivisions**

The owner of land in an agricultural easement and/or district must not use or subdivide the land for residential (except as provided in II. D.2), commercial, industrial, or any other non agricultural uses except as provided under this regulation.

### **4. Lots Created Prior to Easement Sale**

Dwellings built under these provisions while the property is in district status are subtracted from the total that will be allowed after easement sales.

### **E. Establishing AEP Easement-Value**

The method for establishing easement value under the Agricultural Easement Program (AEP) will be through the application of an added value formula based point system.

#### **1. Time frame for Determination of Easement Value**

The maximum value of an easement as determined by the AEP formula is determined as of the time of receipt by the County of a complete easement sales application from the landowner. A landowner may have only one offer to sell an easement on a specific property pending at any one time.



## **2. Maximum Easement Value and Relationship with TDRs.**

The maximum value of an easement as determined by the AEP formula will take into account the number of TDRs retained with the property. At a minimum, 1 TDR per every 25 acres must be retained with the land in order to be eligible for the Maximum Easement Value.

## **3. Right to Revise/Withdraw**

If the maximum easement value is determined by the County to be lower than the offer price submitted by the landowner, then the landowner may revise or withdraw the offer to sell.

### **F. AEP Easement Formula Valuation Procedure**

Under the AEP, the maximum value of the easement is obtained by combining two separate values: (1) the per acre base value for an easement on agricultural land in the County, and (2) the added value for certain farm quality characteristics.

#### **1. Determining Base Value**

On July 1 of each year, the County Executive determines the base value for the fiscal year. In setting the base value, the County Executive considers such factors as Maryland Agricultural Land Preservation Foundation easement prices State- and County-wide, County TDR prices, and County agricultural land prices for parcels with and without agricultural easements. The base value is applicable County-wide.

#### **2. Determining Added Value**

The added value is based on several farm quality characteristics that have a direct effect on the future potential of the land to support agriculture and on the threat to the property from non-agricultural uses. These characteristics are:

- a. **Size:** For each five (5) acres of land, the added value is 1 percent of base value. Property size is determined from the most recent property tax assessment or other documentation acceptable to the Department of Economic Development.
- b. **Land Quality:** The land quality value varies by soil quality. It is 3 percent of the each 1 percent of land in U.S.D.A. Capability Class I, 2 percent for Class II and Woodland Group I, 1 percent for Class III and Woodland Group II. In addition 10 percent of base value is added on farms that have



implemented a soil conservation plan approved by the Montgomery Soil Conservation District. The U.S.D.A. Capability Classification is determined by the County Soil Conservation Service.

c. Land Tenure: The land tenure value is 25 percent of the base value. It is applicable if:

- the landowner earned gross income of at least \$5,000 annually from agricultural use of the land, on or before October 1, 1980, or
- in at least three of the previous five years, or continuously from the time the owner acquired the land, or
- the land is being purchased, under binding contract of sale, by a buyer who certifies under oath that he/she intends to start a new farming operation, or
- the land is being farmed by an operator under a long term lease agreement with the landowner

Agricultural use of the land is determined by Agricultural Preservation Advisory Board.

d. Road Frontage: The road frontage value is 1 percent of the base value for each 50 ft. of frontage on a public road to a maximum of 100 percent of base value. Road frontage is determined by the Department of Economic Development and may be verified by the landowner by metes and bounds survey.

e. Agricultural Zone Edge: The agricultural zone edge value will be 100 percent of the base value if a property inside the RDT zone is within one (1) mile of the border with other zones in the County, including incorporated towns. Agricultural Zone Edge value is determined by Department of Economic Development.

## **G. County Purchase Procedure**

### **1. Ranking of AEP Easement Purchases**

The County will accept applications to sell easements during set purchase periods. Purchase periods will be at least four months long, but will not exceed 12 months. The County will hold at least one purchase period annually.

The County will accept offers to sell on or before the last day of each purchase period. At the end of each purchase period, offers to sell easements will be ranked in order of the amount by which the landowner offer price is lower than the maximum easement value as determined for each easement.



## **2. County Offer to Buy**

- a. Upon the recommendation of the Director, Department of Economic Development and the Chief Administrative Officer, an application to sell shall be approved, and an offer to buy which contains the specific terms of purchase, including any TDRs not retained with the land for existing or reserved rights, shall be tendered to the landowner. Satisfaction of requirements under these regulations by an applicant does not establish any obligation by the County to purchase an easement. An offer to buy may specify terms, contingencies, and conditions not contained in the original application to sell.
- b. The County will offer to purchase all approved easements offered for sale to the extent it is possible with the funds allocated. Funds for County easement purchases are allocated annually on July 1, in the Capital Improvement Projects budget.
- c. The County will tender any offer to buy containing the specific terms of purchase on or before the 60th day following the end of the purchase period when the complete offer to sell was made.

## **3. Rejection of Offer**

- a. The County will notify the landowner of any rejected offer to sell on or before the 60th day following the end of the purchase period when the complete offer to sell was made and whether the rejection is due to insufficient funds, ineligible land, clouded title, or other cause.
- b. Offers to sell which cannot receive offers to purchase from the County due to insufficient funds will automatically be reconsidered in the next purchase period when funds are available.

## **4. 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. The landowner may reject the offer to purchase up to the point of settlement. A landowner who rejects a County offer to purchase will forfeit his/her right to sell an easement to the County for a period up to twenty-four (24) months.



## **5. Closing and Payment**

- a. Settlement will occur following landowner's acceptance of the County's offer to purchase an easement and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.
- b. Payment will be in full at time of settlement unless the County agrees to purchase an easement on less than the whole property and the landowner gives the County a legally binding option to purchase easement on the remainder of the property. In the event the County accepts an option, it will encumber and set aside funds necessary to complete the easement purchase, or
- c. To provide a benefit to the landowner by partitioning payment so that it can be remitted over more than one tax year.

## **6. Recordation and Monitoring**

The County's acquisition of an AEP easement will be recorded in the land records, in the annual report of the program, and the Department of Economic Development (DED) shall maintain a accounting referencing all TDRs created and conveyed to the County through the AEP program. The DED will monitor the properties under easement at least biannually to ensure compliance with the easement.

## **H. Referral to State Program**

For easements purchased under the AEP, the Chief Administrative Officer may, upon the recommendation of the Director, Department of Economic Development, agree to purchase an easement, but request that the landowner create a State Agricultural District and make a good faith offer to sell the easement to the Maryland Agricultural Land Preservation Foundation.

1. The County will reserve funds necessary to purchase the easement as agreed until the landowner settles with the Foundation.
2. If the Foundation easement purchase offer is equal to or exceeds the agreed County price, the landowner must sell to the Foundation or forfeit the opportunity to sell to the County at the agreed price.
3. If the Foundation easement purchase offer is less than the agreed County price, then the County will complete the purchase of the easement for the agreed price plus the inflation factor based upon the United States Department of Commerce Consumer



Price Index for the period of time between the receipt of the complete district agreement and property description to the date the Foundation makes an offer to purchase the easement.

### **III. County Supplement to Maryland - Agricultural Land Preservation Foundation Easement Price**

In accordance with Chapter 2B Section 5 of the Montgomery County Code the County may make an additional payment up to 15 percent of the price of the easement to the landowner upon completion of sale of the easement to the Maryland Agricultural Land Preservation Foundation to encourage landowners to choose to sell easements to the Foundation.

The County Executive will determine annually on July 1 the percentage of the price of the easement to be paid based on the success of the County in the previous year (measured by the number of easement sales) in encouraging County landowners to participate in the Foundation easement purchase program. At the discretion of the County Executive, a biannual review of the valuation may be conducted.

### **IV. Building Lot Termination (BLT) Easement Program**

In accordance with Chapter 2B-12, the County may purchase an easement on real property to preserve agricultural land in the County. The primary purpose of the BLT program is to preserve agricultural land by reducing the fragmentation of farmland by which would be impacted by residential development. The agricultural land preservation easement will restrict residential, commercial, and industrial and non agricultural uses of the land. A key feature of this program provides a mechanism to provide an enhanced level of compensation for an easement to landowners that can demonstrate the value of their land for actual residential development.

#### **A. Eligibility**

##### **1. Eligible Sellers**

The County will purchase easements only from the holder of fee simple title to eligible farmland, or a person or institution that has entered into a binding contract or option to purchase fee simple title to eligible farmland, if and when that person or institution takes title to the farmland. Child lots as permitted within Chapter 59 of the Montgomery County Code are not eligible for the BLT program.



## **2. Land Eligible for Inclusion in BLT**

- a. The land under consideration for easement valuation for the BLT under this regulation must be at least 25 acres in size; however, smaller properties may be considered if they are contiguous to other lands protected from development by State/County agricultural and conservation easements.
- b. At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- c. The land must lie outside water and sewer categories 1, 2, and 3.
- d. The Land must not be encumbered by Federal/State/County agricultural and conservation easements, except Land protected by Transferable Development Rights (TDR) Easements may still be eligible.

## **3. Application Requirements**

A landowner may voluntarily request inclusion into the BLT by submitting a complete property description (see section II. B. 1.) to the Agricultural Preservation Advisory Board.

## **B. Review and Approval Procedure**

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

1. Establish a cap of applications which will be accepted during BLT purchase periods;
2. Rank applicants on a list in the order in which they are received;
3. Conduct a second ranking based upon the size of the property being considered for BLT.
4. Provide notification to landowners as to the status of their application detailing the following:
  - a.) DED will Review the extent of created/subdivided Building lots: (i.e. recorded plat of subdivision, partially engineered lots, approved perc tests, and other factors such as preliminary testing, surveys, etc.
  - b.) 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.)
  - c.) Acceptance of the Annual Adjusted Market Value Price,



- d.) A recommendation by the DED and APAB to accept applications and proceed to settlement.

5. Place applications for BLT easements received after the closing of a purchase period or after exceeding the application cap on a waiting list for future consideration.

### **C. Permitted Activities on Lands Protected under BLT**

The following activities are permitted on lands protected by BLT easements subject to the limitations and conditions of Chapter 59 (Zoning) of the County Code:

#### **1. Agricultural Type Use**

- 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.

#### **2. Residential Use**

- a. No residential uses are permitted on lands encumbered by a BLT easement except when reserved residential rights are retained with the easement .
- b. To the extent allowed by the easement, the grantor of BLT Easement may retain certain rights to future residential dwellings. The grantor must apply in writing to the Agricultural Preservation Advisory Board prior to submission of any preliminary plan of subdivision for approval to use:
- c. Approval of retained rights shall be one acre, or the minimum lot size required by the zoning and well and septic regulations, which ever is greater, to build a house
- c. Any lot right terminated under this program, includes the termination of any on-site sewage disposal system used for the purpose of evidence as to viability of building lot right.





### **3. Restriction on Subdivisions**

The owner of land in subject to a BLT easement must not use or subdivide the land for residential commercial, industrial, or any other non agricultural uses except as provided under this regulation.

#### **D. Easement Sales Application Requirements**

The owner must submit an easement sales application to the Department of Economic Development. The application must include a completed property description (see section II. B.1.) along with an acknowledgement statement regarding the established Annual Adjusted Market Value Price as the asking price. The Department of Economic Development certifies the completeness of the application.

#### **E. Establishing BLT Easement-Value**

Methods for establishing easement value under the Building Lot Termination (BLT) Program will be through the application of a County established Annual Adjusted Market Value Price and under specified circumstances, an appraisal based system.

##### **1. Establishing the Annual Adjusted Market Value Price**

On July 1 of each year, the County Executive will establish the Annual Adjusted Market Value Price "Price" for the fiscal year. In setting the "Price", the County Executive considers such factors as 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

a.) The maximum BLT easement value is capped at the Annual Adjusted Market Value Price which shall be a percentage of the Fair Market Value of land in the RDT zone as approved by the County Executive.

b. The Fair Market Value of the land which includes the BLT Easement is the price, as of the date of the offer to sell, which the vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property were not subject to any restriction imposed under these regulations.

##### **2. Right to Withdraw**

If the landowner rejects the maximum easement value, the County shall withdraw the application from



further consideration during that application cycle. A landowner must resubmit an application for future easement funding cycles, if the application is withdrawn due to landowner rejection of value.

### **3. Compensation**

- a. Compensation under the BLT will involve the County purchasing the "Permissible Residential Lot Right TDR" for each lot that acquired in accordance with section IV. E of this regulation
- b. Funds will be appropriated through the Agricultural Preservation Capital Improvements Project (CIP).
- c. the maximum easement value for BLT may not exceed the Annual Adjusted Market Value Price as determined above.

### **F. Building Lot Termination Program Purchase Procedure**

Under the BLT program, the maximum value of the easement may not exceed the Annual Adjusted Market Value Price as determined by appraising the Fair Market Value (FMV) of the permitted residential lot rights on land in the Rural Density Transfer Zone (RDT). The Grantor of the easement shall encumber their entire property through a BLT Easement which terminates permitted residential lot rights under this option. By terminating the right, the Grantor shall forgo the right to subdivide the land for residential, commercial, industrial or any other non agricultural uses except for reserved residential rights in accordance with section IV. C. 2. of this regulation

For each BLT Easement acquired under this program the County will create, serialize, and convey the TDR associated with the permitted residential lot rights from the grantor to the County. The future use of TDRs owned by the County must be approved by Montgomery County Government. Simultaneously to the creation, serialization and conveyance of these TDRs purchased for the BLT program under this regulation, the County shall also require the Grantor to create and serialize any "Excess TDRs" that remain with the property.

### **1. County Purchase Procedure**

#### **a. Ranking of BLT Easement Purchases**

The County will accept applications to sell BLT easements during established purchase periods. The purchase period shall end upon the earlier of, meeting the cap of applications accepted established by the Agricultural Preservation Advisory Board, or 30 days from last application received by DED.



The County will accept offers to sell on or before the last day of each purchase period as outlined above.

At the end of each purchase period, DED will put the applicants on a list in the order they are received and a second ranking will be conducted based on the size of the property from largest acreage to lowest and have acknowledged acceptance of the Annual Adjusted Market Value Price. Under the BLT program, the County and Agricultural Preservation Advisory Board will establish prioritization and appraisal guidelines for properties that will be appraised.

**b. County Offer to Buy BLT Easement**

The County's offer to Buy BLT easements shall be conducted in accordance with section II. G. 2.(a.)(b.) and (c.) of this regulation.

**c. Rejection of Offer - BLT Easement**

Rejections by the County's to purchase a BLT easement from a landowner shall be conducted in accordance with section II. G. 3.(a.) and (b.) of this regulation.

**d. Landowner Acceptance - BLT Easement**

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. The landowner may reject the offer to purchase up to the point of settlement. A landowner who rejects a County offer to purchase will forfeit his/her right to sell an easement to the County for a period up to twenty-four (24) months. Rejected offers may require reimbursement by the applicant to the County for costs incurred for easement valuation.

**e. Closing and Payment - BLT Easement**

The process and procedure for BLT easement closings and payments shall be conducted in accordance with section II. G. 5. (a.) and (b.) of this regulation.

**f. Recordation and Monitoring - BLT Easement**

The County's acquisition of an easement will be recorded in the land records, in the annual report of the program, and the Department of Economic Development (DED) shall maintain a accounting referencing all TDRs created and conveyed to the County through the BLT program. The DED will monitor the properties under easement at least biannually to ensure compliance with the easement.



#### **V. Effective Date**

This regulation becomes effective 30 days after approval by the County Council.

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County Executive

Approved as to Form and Legality

Office of the County Attorney

By:

Date:

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**COMMENTS ON FINAL REPORT OF THE AD HOC AGRICULTURAL POLICY WORKING GROUP  
HEARING #1, FEBRUARY 22, 2007**

**ORGANIZATION REPRESENTATIVES**

Speaker/Organization	Comments
<p>Andrea Arnold Campaign Director Montgomery Countryside Alliance</p>	<p>Building Lot Termination (BLT) Program – Supports program and strict eligibility criteria; funding is critical and requests economic analysis to determine funding question</p> <p>Transfer Development Rights (TDR's) – Supports expansion of receiving areas in commercial, industrial, Central Business District (CBD) and mixed use zones; additional TDR density should not exceed carrying capacity of public infrastructure</p> <p>TDR's - Supports expansion of TDR program to w/municipalities</p> <p>TDR- Supports only single-family, agricultural or agricultural related uses on land with TDR easement</p> <p>TDR's - Supports developing a tracking system</p> <p>Child Lots – Supports 5 year minimum for ownership</p> <p>Child Lots – Supports creation after parents death if specified in will</p> <p>Child Lots – Opposes exceeding base density with market lots</p> <p>Sand Mounds - Opposes except for failed septic systems or legitimate child lots per 1980 Master Plan recommendations</p> <p>Education – Supports expansion of initiatives in Ag Reserve; recommends county technical &amp; marketing support for alternative and specialty farming</p> <p>Private Institutional Facilities (PIF's) – Supports 8-10% limit on imperviousness for PIF's and exemption of this limit for agricultural uses</p> <p>Conservation Design Standards -Supports need for standards and recommends existing agricultural advisory groups assist in developing</p> <p>Nuisance claims - Supports legislation that protects farmers from these claims</p> <p>1980 Master Plan – Supports document that continues preservation of agriculture and integrity of Ag Reserve</p>

<p>Jim Brown President Sugarloaf Citizens Association</p>	<p>TDR's supports increasing receiving areas in industrial, R&amp;D and CBD and commercial zones; tightening tracking policies and procedures</p> <p>Child Lots- Supports current law as written</p> <p>Child Lots - Opposes bonus density on top of child lots and requests appeal process for awarding additional child lots</p> <p>Child Lots – Supports residency requirement longer than 5 years</p> <p>Child Lots – Supports creation of lots after parents death if executed through will/other document accepted by court during probate</p> <p>Sand Mounds – Supports recommendations in 1980 Master Plan that limits usage in RDT zoned land</p> <p>BLT- Questions program's impact on potential farmers and farming sustainability</p> <p>BLT - Recommends county adopt funding mechanisms based on Legacy Open Space and MALFP standards</p> <p>Pending Legislation - Supports 15% impervious limit in RDT zone and additional review of PIF's is needed</p> <p>Air Quality Issues – Supports ban on burning refuse or plant life or cutting vegetation for purpose of residential construction</p> <p>Recommends that clear cutting of hedgerows and forests be subject of review process</p> <p>Recommends educational programs to support traditional and alternative farming</p> <p>Recommends county develop a comprehensive policy for diversified farming in Ag Reserve</p> <p>Supports signage in Ag Reserve</p> <p>Design Standards – Supports creation of standards</p> <p>Tenant Houses – Supports requirement that ownership stays with individuals employed on farms</p> <p>Supports limiting number of tenant houses depending on type of agricultural uses.</p>
<p>Tina T. Brown Board Member Montgomery County Alliance</p>	<p>BLT program - Supports program &amp; wants economic analysis to determine if feasible in commercial and industrial zones</p> <p>Sand Mounds – Opposes except for failed septic systems or legitimate child lots per 1980 Master Plan recommendation</p>

	<p>Child Lots – Supports longer child residency requirements 1980 Master Plan -Supports plan language on equity issue of landowners through TDR program if not equitable supports BLT program to protect equity</p> <p>BLT program – Supports establishing program to preserve landowner equity as it provides another preservation tool for farmers and places perpetual AG easements on Ag Reserve land 1980 Master Plan policies and assumptions are in conflict with current state and county laws</p> <p>Supports TDR program, longer residency requirement for child lots, 15 percent impervious limit, site-specific design standards, education program for traditional and non-traditional farming, and economic plan for diversified farming. Agrees with 1980 Master Plan position on alternative septic technologies.</p> <p>BLT program – Supports program and efforts to create additional receiving areas in commercial and industrial zones</p> <p>Sand Mounds - Opposes except for failing septic systems and legitimate child lots as per 1980 Master Plan recommendations</p> <p>Child Lots – Supports residency requirement longer than 5 years</p> <p>Ag Reserve – Supports efforts to protect and preserve it</p> <p>Ag Reserve – Supports as nationwide model preserving farmland and enhancing land's natural water filtering capacity</p> <p>Child Lots – Supports limit on numbers</p> <p>Supports longer residency requirement</p> <p>PIF- Opposes in Ag Reserve should only be allowed if permitted by special exception and with extensive review</p> <p>PIF- Supports water and sewer extensions/connections only for existing PIF and not for PIF expansion</p> <p>Impervious Limits – Supports a limit not to exceed 8% and lower in special protection and environmentally sensitive areas</p> <p>Sand Mounds – Opposes on RDT zoned land for new development</p> <p>Sand Mounds - Supports only if conventional system could not work and only if serves legitimate housing/commercial needs of farmers and workers</p>
<p>Wade Butler Chairman Agricultural Advisory Committee</p>	
<p>Ann Cinkue Sugarloaf's Citizen's Association</p>	
<p>Julius J Cinque President Peachtree Ridge Civic</p>	
<p>Kim Coble Maryland Executive Director Chesapeake Bay Foundation</p>	

Lynn DeWitt Chesapeake Bay Foundation	See comments by Lee Epstein
Steve Dryden Friends of Rock Creek Stormwater Partner Coalition	BLT – Supports program and requests a fiscal/economic analysis to create feasible way to fund program Ag Reserve – Supports its continued existence, undermining the Ag Reserve undermines commitment to protect the Bay
Cynthia Eeg Boys Civic Association	BLT Program – Supports establishing program and funding for it. Sand Mounds – Opposes expanded use except for failed septic systems and legitimate child lots Child Lots - Supports residency requirement longer than 5 years Child Lots – Opposes bonus density for market lots and child lots that exceed 1 dwelling unit/25 acres Supports diversity in farming; marketing, placement and presentation of farmers markets should be enhanced Supports educational recommendation of report
Lee Epstein Director, Lands Program Chesapeake Bay Foundation	Ag Reserve – Supports as nationwide model preserving farmland and enhancing land's natural water filtering capacity Child Lots – Supports limit on numbers Supports longer residency requirement PIF- Opposes in Ag Reserve should only be allowed if permitted by special exception and with extensive review PIF- Supports water and sewer extensions/connections only for existing PIF and not for PIF expansion Impervious Limits – Supports a limit not to exceed 8% and lower in special protection and environmentally sensitive areas Sand Mounds – Opposes on RDT zoned land for new development Sand Mounds - Supports only if conventional system could not work and only if serves legitimate housing/commercial needs of farmers and workers
Neal Fitzpatrick Executive Director, Audubon Naturalist Society Board Member Montgomery Countryside Alliance	Supports Agricultural Preserve and encourages Planning Board to support only recommendations that continue to protect it.
David Hauck	1980 Master Plan – Supports document that continues preservation



Chair Sierra Club, Montgomery County Group	<p>of agricultural/open space and enhances the agricultural community to remain economically viable in Ag Reserve</p> <p>TDR's – Supports report recommendations and 2002 TDR Task Force recommendations</p> <p>TDR's - Supports additional receiving areas in floating, mixed use, and appropriate commercial industrial and R&amp;D zones.</p> <p>Pending Legislation – Supports ZTA 05-23</p> <p>BLT Program – Supports establishing program with public funding</p> <p>Sand Mounds and Alternative Use Systems – Permit in Ag Reserve only for replacement of failing systems or construction of home on child lot; determine a detailed estimate of potential rooftops</p> <p>Child Lots - Supports residency requirement longer than 5 years</p> <p>Child Lots – All density should be used for child lots and additional market lots can not be created</p> <p>Supports County Council actions to deny water and sewer to PIF and to limit the size of multi-use systems</p>
John Hughes President Green Industry Association	<p>Ag Reserve- Supports agricultural viability; through additional county support of farmers markets, direct sales to restaurants, farm tours</p> <p>RDT Zone - Encourages land uses in this zone which use the land for agricultural purposes</p> <p>Rural Service Zone – Supports expansion of zone for more agricultural, commercial and industrial uses</p>
Chris Kendrick President Dad's Gourmet LLC	<p>Supports changes to Rural Legacy Program (interest free loans, grant monies) which will assist individuals wishing to farm</p> <p>Requests that Planning Board adopt land use recommendations of Sugarloaf Citizens Association and For A Rural Montgomery (F.A.R.M.)</p>
Del Lamiman Boyd's Civic Association	<p>States that original purpose of child lots has been distorted, as has original intent of 1980 Master Plan re alternative septic systems.</p> <p>Crucial to deter fragmentation of agriculture.</p>
Sewall E. Lee President Citizens to Preserve the Reserve	<p>BLT Program – Supports establishing program and report recommendations for market based funding of program</p> <p>TDR- Supports increasing number of receiving areas in non-residential zones</p> <p>Pending Legislation - Supports recommendation that RDT zoned</p>

	land with easements be limited to residential agricultural and agricultural uses only
Dolores Milmoie Audubon Naturalist Society	<p>BLT – Supports establishing program and requests fiscal analysis to determine mechanisms of funding</p> <p>BLT's - Supports increasing number of receiving areas in commercial, business and research zones</p> <p>Sand Mounds - Opposes expanded use except for failed septic systems and legitimate child lots as per 1980 Master Plan recommendations</p> <p>Child Lots – Opposes exceeding base density with market lots</p> <p>Child Lots – Supports a cap on child lots</p> <p>Child Lots – Supports residency requirement longer than 5 years</p> <p>Child Lots – Opposes creation after death of owner</p> <p>Child Lots -Opposes water and sewer service connections</p> <p>Design Standards – Supports developing standards</p> <p>Education – Supports outreach for Ag Reserve signs, promotion of alternative forms of agriculture, and placement and marketing of farmers markets.</p> <p>Rustic Roads &amp; Forest Conservation – Supports greater protection of forests and hedgerows and policies that require authority and authority governing clear cutting.</p> <p>Impervious Limits - Supports 15% limitation</p> <p>Tenant Houses - Supports stronger language</p> <p>Right to Farm – Supports strategies on this issue</p>
Carol Oberdorfer President Dickerson Community Association, Inc	<p>BLT program - Supports establishing program</p> <p>Sand Mounds – Opposes except for failed septic systems and legitimate child lots as per 1980 Master Plan recommendations</p> <p>Child Lots – Supports longer residency requirement than 5 years</p>
Alice Ortuzar Dickerson Community Association	Echoes comments from Carol Oberdorfer and Boyds Civic Association. Poor economic policy to fragment agriculture with residences due to cost of services.
Rabbi David Shneyer & Kehila Chadasha Am Kolel Retreat and Renewal Center	<p>Sand Mounds – Opposes except for failing septic systems and legitimate child lots as per 1980 Master Plan recommendations</p> <p>Child Lots – Supports residency requirement longer than 5 years</p> <p>BLT Program – Supports and requests program to address equity</p>

	<p>issues</p> <p>1980 Master Plan – supports document as it preserves agriculture and land.</p>
<p>Nancy Soreng</p> <p>League of Women Voters, Montgomery County</p>	<p>Supports preservation of Ag Reserve</p> <p>TDR's Supports identifying receiving areas through master plan process and in CBD, transit station areas and town centers and in rezoning of floating zones for increased residential density</p> <p>TDR's - Supports limiting use of TDR's for increased density of non-residential use in commercial, office and R&amp;D development</p> <p>Child Lots –Supports density top be exceeded for child lots not market lots</p> <p>Child Lots – Supports 5 year residency requirement</p> <p>Sand Mounds – supports limits on use in agricultural zones and requests county requirement that land purchases notify of sand mound presence and maintenance needs</p> <p>TDR- Supports language to clarify TDR easement to limit land uses to agricultural and single-family uses.</p> <p>BLT – Supports program if funds are available and recommends non-residential use of 5<sup>th</sup> TDR will complement program</p> <p>Viability of farming should be balanced with environmental sustainability. Child lots should not exceed base density, and water and sewer should not be extended into Reserve. Echoes Sugarloaf Citizens Association testimony.</p>
<p>Caroline Taylor</p> <p>For A Rural Montgomery</p>	

## INDIVIDUALS

Speaker	Comments
Krista Abbaticchio	<p>Sand Mounds – Opposes if they increase residences and requests stronger guidelines on ability to use</p> <p>Child Lots - Opposes bonus density for market lots and child lots to exceed 1 du/ 25 acres</p>
Kate Anderson	<p>BLT program - Supports program and requests economic analysis to determine if feasible for receiving areas in commercial and industrial zones</p> <p>Sand Mounds – Opposes except for failed septic systems or legitimate child lots per</p>

	<p>1980 Master Plan recommendation</p> <p>Child Lots – Supports longer child residency requirements</p> <p>1980 Master Plan -Supports plan language on equity issue of landowners through TDR program; preservation of agricultural land</p> <p>Supports protection of farmland and green space from fragmentation</p> <p>Supports stronger restrictions on child lots and sand mounds</p> <p>Supports protection of the Ag Reserve</p> <p>Sand Mounds - Opposes report recommendation except for failed septic systems and legitimate child lots as per 1980 Master Plan</p> <p>Child Lots Supports residency requirement longer than 5 years</p> <p>Child Lots – Opposes bonus density for market lots and child lots that exceed 1 dwelling unit/25 acres</p> <p>Child Lots – Requests a cap on number of child lots</p> <p>Sand Mounds – Supports minority opinion limiting systems to 1 unit/50 acres</p> <p>Child Lots - Supports minority opinion lots for children only, not bonus density for additional market lots</p> <p>Supports strengthening policies on sand mounds and child lots</p>
Roswitha Augusta Maggie Bartlett	
Krisna Becker	
Mary Ann Chandler	
James S & Margaret M Coleman	
Diana E. Conway	<p>BLT Program – Supports program</p> <p>TDR's – Supports expanding receiving areas</p> <p>Sand Mounds – Opposes use in Ag Reserve</p> <p>Child Lot - Supports residency requirement</p> <p>Child Lots –Opposes extra density for market lots in addition lot child lots</p> <p>BLT- Supports program that will eliminate rooftops in Ag Reserve, and wants economic analysis of program if feasible</p> <p>BLT - Program should address landowners' equity issue</p> <p>Sand Mounds –Opposes except for failed septic systems and legitimate child lots</p> <p>Child Lots – Supports longer child residency requirement</p>
Brenda and Tom Corbin	
Teresa Cummings	<p>BLT Program – Supports program</p> <p>Sand Mounds – Opposes except for failed septic systems and legitimate child lots as per 1980 Master Plan</p> <p>Child Lots – Supports a residency requirement longer than 5 years</p> <p>Equity issue for farmers was addressed through TDR program</p> <p>1980 Master Plan – Continues to support document</p>

Daniel Dean	<p>BLT – Supports program and requests economic analysis to determine if feasible Sand Mounds –Opposes continued use except for legitimate child lots and failing septic systems</p> <p>Child Lots – Supports a residency requirement longer than 5 years</p> <p>TDR program should address landowners' equity issues.</p>
Marilyn Emery	1980 Master Plan – Supports it and recommends closing of loopholes that undermine the Ag Reserve.
Cynthia Fain	<p>Sand Mounds – Opposes continued use except for legitimate child lots and failing septic systems as per 1980 Master Plan recommendations</p> <p>Child Lots – Supports cap on number of child lots in Ag Reserve</p> <p>Child Lots – Supports a residency requirement longer than 5 years.</p> <p>BLT- supports program and requests further fiscal analysis</p>
Claude G. Fecteau & Family	<p>BLT Program – Supports program</p> <p>Sand Mounds – Opposes use of sand mounds or any non-proven alternative septic system in Ag Reserve</p> <p>Child Lots – Supports only if resident child farm</p> <p>Ag Reserve – Supports its protection and conservation</p>
Lizou Fenyvesi	<p>Child Lot – Requests longer residency requirement</p> <p>Child Lots - Opposes bonus density for market lots in addition to child lots that exceed density of 1 dwelling unit/25 acres</p> <p>Sand Mounds - Opposes use in Ag Reserve except for failing septic systems and legitimate child lots as per 1980 Master Plan recommendations;</p> <p>BLT program- Supports as method to preserve agricultural land</p>
Jim Fremont	<p>BLT Program – Supports program which will eliminate potential for development and compensate landowners</p> <p>TDR-s- Supports maximizing number of receiving areas and using TDR's in commercial and mixed use zones</p> <p>Child Lots- Supports minority opinion that opposes market lots in addition to child lots which exceed base density</p> <p>Sand Mounds – Supports stronger limitations</p> <p>Ag Reserve – Supports preservation and protection of agriculture, associated jobs, open space and natural resources</p>
George French & Marcia Stickle	Child Lots – Increase the residency requirement above 5 years

	<p>Child Lots - Opposes bonus density in addition to child lots that exceed 1 for 25 acres</p> <p>BLT- Supports program and requests fiscal/economic analysis to determine if feasible for receiving areas in other zones</p> <p>Sand Mounds – Opposes except for failing septic systems and legitimate child lots as per 1980 Master Plan recommendations</p> <p>1980 Master Plan – Supports plan as it prevents fragmentation and erosion of Ag Reserve</p>
Ellen Gordon	<p>Sand Mounds – Opposes except for failing septic systems and legitimate child lots as per 1980 Master Plan recommendations</p> <p>Child Lots – Supports a residency requirement longer than 5 years</p> <p>Child Lots – Opposes bonus density for market lots in addition to child lots. Supports preservation and protection of farms and farmland</p>
Stephen G. Gunnulfson	<p>Sand Mounds – Opposes use in Ag Reserve, except for failed septic systems</p> <p>Child Lots – Supports a 10 year residency requirement</p>
Thomas Gutierrez	<p>Child Lots – Supports a 10 year residency requirement</p> <p>Sand Mounds – Opposes use in Ag Reserve except for failing septic systems and legitimate child lots as per 1980 Master Plan recommendations</p>
Linda France Hartge	<p>BLT program - Supports and requests economic analysis to determine if feasible for receiving areas in other zones</p> <p>Sand Mounds - Opposes report recommendation except for failed septic systems and legitimate child lots</p> <p>Child Lots – Supports residency requirement longer than 5 years</p> <p>BLT Program – Should address landowners' equity issue</p>
Melanie Kinney Hoffman	<p>BLT program _ Supports creation of program as it neutralizes financial incentive to sell farmland</p> <p>Sand Mounds – Opposes in Ag Reserve, seeks restrictions on their use</p> <p>Child Lots – Opposes allowing market lots in addition to child lots that exceed 1 for 25 acres</p> <p>Child Lots – Seeks residency requirement longer than 5 years</p>
Claire Howard	<p>Ag Reserve - Supports strong protection</p> <p>Sand Mounds – Opposes use unless needed for failing septic systems</p> <p>Child Lots – Opposes increased density and seeks expanded residency requirement</p>

Eskin Huff	Child Lots – Supports stronger restrictions and longer residency requirement BLT Program – Supports program and requests a fiscal/economic analysis to determine feasible way to fund the program
Robert Jamison	Characterized issues as denial of property rights without just compensation and unjustified use of police powers. Argued that 25 acres was sufficient critical mass to sustain agriculture and that child lots were partial compensation for previous down-zoning. Stated that there was no necessity for design standards or “Ownership by Committee.” “It’s my scenic vista and not these dilettantes.” “I need to sell some dirt from time to time to buy stuff, such as a \$300,000 combine, purchased recently.” Stated that sand mounds were vastly superior to outflows of raw effluent, as used to be experienced outside Poolesville.
Jerome Klobukowski	BLT Program – Supports and requests economic analysis to determine if feasible for receiving areas in other zones BLT Program –Requests program address landowners’ equity issues Sand Mounds – Opposes report recommendation except for failed septic systems and legitimate child lots as per 1980 Master Plan recommendations Child Lots – Supports residency requirement longer than 5 years Child Lots – Opposes allowing market lots in addition to child lots that exceed density of 1 dwelling unit/25 acres 1980 Master Plan Supports document as it preserves agriculture and land
Denise Jacklin	Child Lots – Supports longer residency requirement, limits on number of legitimate lots (per owner and reserve wide) and monitoring if child is living on the lot. Child Lots - Opposes bonus density as it is in violation of 1980 Master Plan Sand Mounds - Opposes use of sand mounds except for farmers with failed septic system. Seeks limit on number sand mounds in Ag Reserve Sand Mounds - Supports prohibition for new construction BLT program –Supports and requests an economic analysis to determine if feasible in commercial and industrial receiving area zones 1980 Master Plan - Supports document as bible of preservation for Ag Reserve
Michael Mesa	Sand Mounds - Opposes except for failed septic systems and legitimate child lots as per 1980 Master Plan recommendations Child Lot – Supports residency requirement longer than 5 years 1980 Master Plan - Supports preservation of Ag Reserve as stated in Plan.
Ellen Pearl	Supports limited sand mounds and strict child lot provisions

John Pentecost	<p>BLT Program- Supports and requests economic analysis to determine if feasible for receiving areas in commercial and industrial zones</p> <p>Sand Mounds - Opposes expanded use except for failed septic systems and legitimate child lots as per 1980 Master Plan recommendations</p> <p>Child Lots - Supports longer residency requirement than 5 years</p> <p>BLT program should address landowners' equity issues</p>
Heather Powers	<p>Supports strongest restrictions on density of development related to sand mounds and child lots</p> <p>Supports more farms and nature preserves, parks and other non-commercial or residential uses in Ag Reserve</p>
Mary Reardon	<p>Sand Mounds – Opposes except for failed septic systems and legitimate child lots as per 1980 Master Plan recommendations</p> <p>Child Lots – Supports longer residency requirement than 5 years</p> <p>Child Lots – Opposes market lots in addition to child lots that exceed the density.</p> <p>TDR's - Supports to address equity issues</p> <p>Ag Reserve - Supports highest priority in protecting it</p>
William J. Roberts Esq	<p>Child Lots – Opposes report recommendation for additional density of market lots</p> <p>BLT Program – Opposes Program, believes issues could be addressed through existing programs</p> <p>RDT Properties – Opposes different standards for RDT properties based on total property acreage</p> <p>Sand Mounds – Supports use of sand mounds</p>
William F Sheehan	<p>Child Lots and Sand Mounds –Opposes report recommendations for both and sees each as way to “chip away” and develop Ag Reserve.</p> <p>Ag Reserve – Support and maintain principles which created it</p>
Douglas R. Sherwood	<p>Ad Hoc Policy Group Final Report - Supports report recommendations in entirety and urges its approval</p>
Mary Anne Sonnenschein	<p>BLT - Supports Program</p> <p>Sand Mounds - Opposes, only allowed for legitimate child lots and failing septic systems</p> <p>Child Lots – Supports residency requirement of more than 5 years</p>
Randall Sorenson	<p>Sand Mounds and Child Lots – Opposes both and views as tools to fully develop land in Ag Reserves</p>



	Supports protection of green space
Richard W. Thoms	BLT Program – Supports establishing program Child Lots – Supports minority opinion and maximum density limited to 25 acres Sand Mounds – Supports strong limitations on use of this technology Cluster Development – Supports only if all adjoining neighboring properties agree
Carol Van Dam Falk	Sand Mounds – Opposes use in Ag Reserve Child Lots – Opposes exceeding base density Child Lots - Supports longer residency requirement than 5 years TDR's – Supports increasing number of receiving areas
Christopher Weaver	Supports - Protection of the Ag Reserve at all costs
James Wilbur	Child Lots- Supports one lot per child per parent over all properties Child Lots - Opposes exceeding base density with market lots and wants longer residency requirement than 5 years RDT Zone - Opposes public water in zone Sand Mounds – Opposes use for new development, use of sand mounds is only acceptable as emergency measure for existing housing



**ATTACHMENT 5**

Jane S. Hunter  
20400 West Hunter Road  
Beallsville, Md. 20830

February 22, 2007

To: Maryland National Capitol Park and Planning Commission

Re: Ad Hoc Agricultural Policy Working Group Report

My name is Jane S. Hunter. My husband, son and I farm grain on approximately 2, 000 acres. One hundred percent of our earned income comes from farming.

I would like to disclose that in June 2006 for estate planning , we subdivided our land creating two buildable lots (one deep trench and one sand mound sewage disposal system)and an outlot for our children and grandson. Although we were entitled to create two child lots, we decided against it and instead developed these lots for them. It is our intent to continue farming as long as feasible.

I have been a resident in Montgomery County for 44 years and my husband is a native of the County. He has lived on the family farm all his life. Likewise, our children have been raised here, attended Montgomery County Public Schools and our son and grandson are residents of Barnesville, Md.

I am deeply concerned about the findings of this report. At best they are a band aid approach to solving the problems of preservation. It is disappointing that there were no recommendations from the Ad Hoc group to address the serious problem of viable agriculture. If the farming industry were economically viable, people would be beating the door down to enter the business. And agriculture will preserve the land. There is a desperate need for a comprehensive economic development plan for diversified farming in Montgomery County. Having a healthy agricultural economy will resolve the preservation of the R DT.

The group unanimously endorsed sand mound technology. Where the group differed was the density that would be allowed using this technology. Why are you not addressing development density? Perhaps now is the time to look at one house per 25 acres and determine if that is the correct density. To use sewage disposal as the way to define density is dishonest at best. Not only is it flawed, I question if Park and Planning has the legal authority to dictate to the County what sewage disposal systems can be employed. An good example of the County allowing a non traditional septic system is Sugarloaf Citizens Association, Inc. Linden Farm headquarters. We employ a waterless composting toilet sewage disposal system and our back-up system is ironically a sand mound system.

I question the legal authority of Park and Planning to promote different standards for different sized properties. I thought the purpose of zoning was for all property in one zone to be treated in a like manner. Can you legally allow one house per 25 acres on my property, while requiring a different standard for my neighbor who owns 200 acres? The Master Plan is crystal clear allowing for one house per 25 acres. Again, decide if development density should be addressed.

The BLT program is flawed as well. The theory is that when the value of the land has been eliminated, land will be affordable for farming. This looks reasonable on paper but it is not. A good example is a young man recently graduated from college. He wants to start an organic farming operation. For the sake of argument, he locates a 100 acre parcel of land and purchases it. He will never be able to build a house and raise his family there. He must commute to and from work and if he builds a barn to house machinery, tools and supplies, etc. where can it be located? Where can he locate his office? What type of sanitary facilities will he be able to have? Where will his decontamination booth be? Where will his first aid station be? These are traditionally located in the farm house on the premises. If he has livestock, who will be available 24 hours a day to make sure the fences are mended and the livestock properly supervised? How can this be done if no one can live on the premises? How will you address these issues and shouldn't they be addressed before you support or deny this program?

Child Lots. I hear about the rampant abuse of tot lots and I have personal knowledge of some of those abuses. When the Ag Reserve was established, there were safe guards put in place to prevent such abuse. What happened that they were they ignored.? Why don't you examine those safeguards and implement steps to enforce them?. Since 1980, only 85 child lots have been developed and some 100 properties may yet qualify for child lots. Do we need new regulations or is enforcement the key to this issue?

What are the next steps to preserve the agriculture reserve? Promote Agriculture, develop a comprehensive plan to save it and most of these issues will resolve themselves.

#4

**Coleman, Joyce**

**From:** AmKolel@aol.com  
**Sent:** Wednesday, February 21, 2007 10:13 PM  
**To:** MCP-Chairman  
**Cc:** AmKolel@aol.com  
**Subject:** Ag Policy

RECEIVED  
FEB 22 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson,

I am a resident of Montgomery County for 37 years. I am a rabbi and the leader of two Jewish congregations. One community, Am Kolel, recently purchased Sanctuary Retreat Center in the Ag Reserve near Beallsville. Our Retreat Center is maintained as an ecumenical retreat center for the residents our county and Metro area. Hundreds of individuals each year enjoy the beauty of the countryside and this sacred respite from the "city." My community and I are most grateful to you, especially, for your foresight and personal dedication to preserve the Land. The Ag Policy Task Force is to be commended for their hard work to guard the integrity of the Reserve. But we are seriously concerned about child lots and on sand mounds.

We do not support the Task Force recommendation for continued use of sand mounds. Instead, we should adhere to the language and intent of the 1980 Master Plan which allowed alternative septic systems only for legitimate child lots or failed septic systems. Sand mounds have resulted in even more fragmentation of the land, contrary to the intent of the Master Plan. Without contiguous swaths of farm land, there will be no Ag Reserve.

We also believe in a residency requirement for legitimate child lots in the Reserve to preserve farming or the family core, but a 5 year residency requirement is not long enough to ensure that these lots are not simply investment mechanisms.

It makes sense to explore the BLT proposal as a next step to address equity. However, the sand mound and child lots recommendations made by the Task Force give undue priority to development over preserving agriculture and are contrary to the 1980 Master Plan.

Sincerely,

Rabbi David Shneyer  
Kehila Chadasha  
Am Kolel Retreat and Renewal Center

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A54

2/22/2007

Feb. 22, 2006  
**Testimony before the Planning Commission on the  
Ag Policy Task Force Recommendations**

My name is Dolores Milmoie and I am testifying on behalf of the Audubon Naturalist Society and its 20,000 members who have long sought to protect the Reserve and its resources. We would like to thank the task force for taking a fairly comprehensive look at issues which have long needed to be addressed.

When considering the Task Force recommendations, it is imperative to keep in mind that the overarching goal of the Reserve is to preserve agriculture and rural communities. The RDT zone is an agricultural zone, not a residential zone and agriculture is the primary and preferred use. We must ask "Do the recommendations further the goals of the Master Plan? Or, do some of these proposals further fragment the land ?

Using this principle, there is much to support, such as the **Building Lot Termination** plan. A full fiscal analysis is necessary with consideration of public/private support, tax relief options and other creative ways to finance BLTs. Geart care must be taken in creating receiving areas to accomodate them. We support commercial, business and research zones as receiving areas with the goal of creating mixed use, walkable developments. We also recommend that eligibility standards be created to prioritize which BLT lots best serve the purpose of the zone.

**Sand Mounds** are the greatest threat to the integrity of the Ag Reserve. We do not support the Task Force on this issue. Rather, we urge the Board to reaffirm the 1980 Master Plan which recommended against using alternative systems except for failed septics or legitimate child lots. The architects of the Reserve have testified that sand mounds were a known entity in 1980 and "alternative" or not, they did not recommend them.

The Master Plan in no uncertain terms addresses this issue at least 6 times:

- ✓ Page iv:
  - i. "Support of a rural sanitation policy that does not encourage development within the critical mass of active farmland."
- ✓ Page 62:
  - iii. "Deny private use of alternative individual and community systems in all areas designated for the Rural Density transfer Zone (RDT)."

✓ Pages 8 and 39:

The Plan reaffirms its objective of sustaining a critical mass of farmland by preventing its fragmentation, recognizing farmland as a permanent use, "and not simply a 'holding land-use' to be utilized for future development."

✓ Page 35:

While residential uses are allowed in the RDT zone, the purpose of the zone is to allow them and some commercial uses "to serve the agricultural community and the rural community at large."

It, therefore states that: "residential options are available in farming areas but only on a limited basis and in a manner that is consistent with preservation policies."

The 1994 Council resolution concerning the use of sand mounds does not and should not trump the Master Plan which explicitly recommends that alternative technologies not be employed. Moreover the Plan called for a study prior to a change in policy regarding alternative systems and this was never done.

**Child lots:** The Board is now aware that there is clear and unambiguous statutory language in the zoning ordinance regarding child lots and so called "bonus density" market lots. Family or child lots are only exempted from the *dimensional requirements of the zone not its density*. If the number of child lots meets or exceeds the allowed density, additional market lots should not be awarded. Does granting bonus density serve the purpose of the zone? Absolutely not! The Board has acknowledged recently that there has been *misapplication* of the law for many years. What has been approved erroneously in the past cannot be undone, but the Planning Board should now continue to enforce the law as written. It is important to add that staff could find no other no other jurisdiction which allowed for bonus density in addition to child lots. We would remind you too that child lots were not intended to provide equity for landowners in exchange for the downzoning, that was the purpose of the TDR program.

**Other child lot issues and our recommendations :**

- ✓ We suggest that the Board consider a cap on child lots. Rate of fertility should not be a factor in granting development rights.
- ✓ The 5 year residency requirement is too short and simply amounts to a relatively short term windfall.
- ✓ Sewer and water should NOT be extended to service child lots.
- ✓ A child lot should not be created after the death of the owner. It has been 26 years since the creation of the Reserve. We believe the child lot provision should be a "use it or lose" it proposition.

**Design standards:** There is a crying need for design standards which can protect the most arable farm land, create forested buffers, and site plans to preserve farming and rural character. **Clustering:** It is worth noting that clustering was explicitly provided in the RC Zone, but not the RDT Zone which was not intended to be primarily residential. Examining some of the impacts of recently built residential clusters in the Reserve is instructive. We have found that suburban style clusters on small lots such as "Peach Tree Estates," removes valuable acres of land from the potential for agricultural use forever and introduces a suburban culture often at odds with agricultural activity. And

clearly, agriculture is NOT the preferred use on most of these residential estate lots.

In terms of **Education Outreach**: There should be a much enhanced effort on this front.

- ✓ Ag Reserve signs should be expedited. The plans for these signs have been on hold for over a year and a half.
- ✓ We need to promote and support alternative forms of agriculture. There is virtually non-existent staff support for organic farming. In Virginia, extension agents advise and promote all forms of agriculture.
- ✓ Our farmer's markets are not always placed in prime locations or broadly marketed. Improvement needed.

**Rustic Roads and Forest Conservation**: There must be better protections in place for our forests and hedge rows in the Reserve. Currently, Rustic Road policies do not provide for any review or authority governing clear cutting in the RDT zone, and there is very little in the County Forest Conservation Law to provide adequate stewardship. There have been very recent instances of clear cutting of hedge rows and forests right up to stream valleys. Given our commitment to stream protection and a cleaner Bay, this should not be allowed to continue.

**Impervious Limitations**: ZTA 05-15. We do support a limit of 15% imperviousness in the RDT zone. Scientific documentation confirms that watersheds cannot sustain a healthy system under 8% imperviousness, so a 15% limit is more than generous.

The language regarding **tenant houses** also needs to be tightened. There have been documented instances of abuse and it continues.

We support **right to farm** strategies because we have seen the conflicts arise from new suburban type developments with complaints about associated farm noises and smells.

The Ag Reserve is of great value to the region and the nation. You have received comments from citizens all over the county who care deeply about the future of the Reserve. Many of them are willing to accept increased density down county in exchange for preserving farm land. The increase of McMansions in the Reserve, with more in the pipe line, is of grave concern for all of us. We ask you to hold firm to the 1980 Master Plan. We believe we are fast approaching a tipping point and limiting the further fragmentation of our remaining land should be a primary goal.

Thanks you,

Dolores Milmoie  
Maryland Conservation Associate



#4

**Coleman, Joyce**

**From:** NEAL FITZPATRICK [NEAL@audubonnaturalist.org]  
**Sent:** Thursday, February 22, 2007 9:14 AM  
**To:** MCP-Chairman  
**Cc:** DOLORES MILMOE  
**Subject:** Agricultural Policy Report

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

2/22/07

Royce Hanson  
Planning Board Chairman

I look forward to the next generation of carrots and sticks needed to continue the job of protecting Montgomery County's Agricultural Preserve.

I urge you and the members of the Planning Commission to endorse only those recommendations that truly protect one of Montgomery County's most important land use decisions – to protect our nationally acclaimed Agricultural Preserve. Please make decisions that set the preservation agenda for the next 25 - 50 years.

Thank you. Neal Fitzpatrick, Executive Director, Audubon Naturalist Society, board member Montgomery Countryside Alliance

2/22/2007

A58

#A

Coleman, Joyce

**From:** cs weaver [csweaver@comcast.net]  
**Sent:** Wednesday, February 21, 2007 10:53 AM  
**To:** MCP-Chairman  
**Subject:** Agriculture Report  
**Importance:** High

RECEIVED  
FEB 21 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson,

As a twenty seven year resident of Montgomery County and an employer of over two hundred people in a high technology business, I have read the recent Agricultural Policy Working Group report and wish to make my sentiments known to you and your fellow Council members.

Perhaps the best way of expressing my support for the report's findings is to quote from its summary:

*Citizens not only recognize the intrinsic value of agriculture, but the extraordinary benefit of preserving open countryside for every citizen to enjoy and experience, and of an environmental asset that helps preserve the healthfulness of our water supply and of the air we breathe. There seems to be a broad consensus throughout Montgomery County that the Agricultural Reserve is worth preserving and sustaining.*

*At the same time, the Agricultural Reserve is under stress. Especially since the turn of the century, pressure for residential development in the Reserve has increased. This is not surprising, given the amount of open acreage it encompasses and its uniqueness in the metropolitan area. The viability of the Agricultural Reserve, and perhaps its very survival, is threatened by extreme development pressures, proposals for new interstate highways, and increasing land values in the greater Washington metropolitan area.*

The ability to attract people to this county has become more difficult over time. Not because of lack of housing, but because of declining quality of life. The vibrant agricultural preserve, the rural nature of the county, even the quality of the county school system, have all suffered under the stresses of increased land use. It is far easier to offer something different to prospective employees by way of rural life near a metropolitan center than the urban sprawl that is rapidly overtaking Montgomery county and the larger tri-state area. As stewards of the land, I urge you to side with our children and protect the Agricultural Reserve. Imagine how many apartment buildings, shopping malls and parking areas could have been put into Central Park. Imagine the lessened congestion. Yet, imagine what metropolitan New York City of today would be like if the numerous attempts on the park in years past had not been defeated. The Agricultural Reserve is the legacy of Montgomery County. I urge you to take whatever steps are necessary to protect it at all costs.

Respectfully,  
Christopher Weaver  
13931 Esworthy Road, Darnestown, MD 20874  
and Founder, Bethesda Softworks, a division of Zenimax Media

2/21/2007

AS9

DATE: 2/22/07  
ITEM NO. 4  
EXHIBIT NO. 13

Comments for the Boyds Civic Association on Recommendations by the Ag

Policy Task Force

February, 22<sup>nd</sup>, 2007

My name is Cynthia Eeg; I am representing the Boyds Civic Association on behalf of my husband whose work precludes his personal appearance and the many Boyds Civic Association members who consider the Agricultural Reserve of Montgomery County the second Jewel in Marylanders' conservation efforts along with protection of the Chesapeake Bay.

My Husband and I own a small 33 acre horse farm at the North East Corner of the Agricultural Reserve along the exceptional rural and rustic West Old Baltimore Rd in Boyds.

We have reconnected several pieces of once unified farm acres to re-establish our farm. We have placed our farm under agricultural protection easements so as to protect its future use and open space. We currently actively produce over 75 round hay bales and 1000 square hay bales annually using our own equipment for our personal use and sale. We are very concerned that this North East section of the agricultural reserve is under severe threat from inappropriate development of subdivisions that would undermine the capacity for continued agricultural use in this area of the Agricultural Reserve

We thank the Ag Policy Task Force for taking on the enormous task of addressing the many issues facing the Ag Reserve.

We strongly endorse the Building Lot Termination idea which could neutralize the financial incentive to sell off farmland for development. Finding a way to fund it should be a top priority. If feasible, this program could do more to preserve land than any other;

But we would like to focus on two items in the report where, in the spirit of compromise, the Task Force went too far. These two issues still jeopardize the future of the Ag Reserve, especially in the North East Corner that our active farm calls home. They are sand mounds, and child lot density.

**With regards to septic systems,** there will no doubt be new technologies developed in the future. Every time a new system is available. Should we treat it as an excuse to build on land that was slated to be preserved for agriculture?

It has been repeatedly pointed out that alternative systems, such as sand mounds, were to be used for **failed septic** or for a **legitimate child lots**. Sand mounds allowed at any density remain the biggest threat to the integrity of the Reserve. The lure of development windfalls will surely undermine the preservation of agriculture if something is not done to rein in the use of sand mounds.

**Regarding child lots,** many landowners have abided by the initial intent of the child lot provision, to preserve the family core and farms. But we have seen several who have perverted the child lot system, or those who would like to, for the purpose of creating subdivisions for sale, not the continuation of family farming and open agriculturally viable farm land. **Child lots were meant to preserve family farming, not to make a profit based on how many children and grandchildren people can produce.**

It is well documented that certain landowners have claimed child lots and then immediately flipped them on the open market. The updated regulations should require a residency requirement of longer than 5

10/10

years to avoid these lots becoming simply short term investments. Awarding "market lots" on top of child lots when the proposal exceeds the 1 for 25 acre zone is contrary to the intent of the Master Plan and the way the law is currently written. **We oppose this bonus density recommendation.**

Finally, there are many in the Ag community which need broader staff support for diversity in farming. At present, traditional farming has terrific support as it should. However, there is very little outreach or knowledge base for niche farming in the Reserve. The marketing, placement and presentation of farmers markets in the county should also be enhanced. The education recommendation of the report we wholeheartedly support.

Finally, we hope the Board will stand firm in the face of increased development pressure, to ensure that the Ag Reserve remains a viable model for generations to come and not quick profit for a few developers.

Thank you.

Cindy Eeg

16400 W. Old Baltimore Rd.

Boys, Md, 20841

301-916-0144

CE/PHE

#A

**Coleman, Joyce**

**From:** Lee Epstein - ext. 2161 [LEpstein@savethebay.cbf.org]  
**Sent:** Tuesday, February 20, 2007 3:56 PM  
**To:** MCP-Chairman  
**Subject:** Agricultural Policy Task Force Report

RECEIVED  
FEB 20 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Planning Board:

As some of you might recall, we wrote to the County Council a year-and-a-half ago concerning the above-noted two matters, which were then in play as policy discussions in the Council. I am attaching this letter because the second matter, "alternative" septic systems in the Agricultural Reserve, is of special relevance to you now that the above-note Task Force Report has been submitted. We see no reason today to alter the strong recommendation we made in that letter, regardless of the hard (and much good) work that the Task Force has done. To summarize the position in our letter, we do not believe that the ultimate land use objectives of the Ag Reserve, nor of environmental protection and stream and Bay restoration, would be well-served by permitting sand mound systems to be readily used in the Ag Reserve, as is recommended in the Task Force report.

Second, the County has an Agricultural Reserve that has served as a nationwide model for a quarter of a century, but there are surely holes in the cloth after all that time. The County's major objective in all this should be to secure and strengthen the Reserve, and not undertake any actions that could weaken it still further by enabling more piecemeal nibbling of its productive land base. The number of child lots that can be carved out of a farmer's land should be strictly limited in number, and should probably require a rather lengthy tenure or residency before the family member can sell it off outside of the family; at least 10 years, but perhaps even 15-20 years should be used as a way to discourage merely seeking to carve out these lots as investments, to be sold in just a few years when the economy is ripe. Carving off multiple pieces of farmland for housing was never originally intended, nor should it be intended today, as an equity vehicle in the Ag Reserve. Indeed, that's what TDRs were for.

I hope these comments are helpful as you consider these matters.

Lee Epstein  
Director, Lands Program  
Chesapeake Bay Foundation

P.S. FYI, please note that I am a Montgomery County resident, living in the Springbrook area.

2/20/2007

(AGS)

Lynda DeWitt

COMMUNITY EXHIBIT  
RECEIVED BY MCPB

From: f.a.r.m@erols.com  
Sent: Wednesday, February 21, 2007 12:32 PM  
To: Lynda DeWitt  
Subject: FW: Agricultural Policy Task Force Report

DATE: 2/22/07  
ITEM NO. 4  
EXHIBIT NO. 12



Montgomery  
Private Institution...

8787 Georgia Ave.  
Park & Planning  
quarters

Original Message:

From: Lee Epstein - ext. 2161 LEpstein@savethebay.cbf.org  
Date: Tue, 20 Feb 2007 15:55:56 -0500  
To: mcp-chairman@mncppc.org  
Subject: Agricultural Policy Task Force Report

Dear Chairman Hanson and Planning Board:

As some of you might recall, we wrote to the County Council a year-and-a-half ago concerning the above-noted two matters, which were then in play as policy discussions in the Council. I am attaching this letter because the second matter, "alternative" septic systems in the Agricultural Reserve, is of special relevance to you now that the above-note Task Force Report has been submitted. We see no reason today to alter the strong recommendation we made in that letter, regardless of the hard (and much good) work that the Task Force has done. To summarize the position in our letter, we do not believe that the ultimate land use objectives of the Ag Reserve, nor of environmental protection and stream and Bay restoration, would be well-served by permitting sand mound systems to be readily used in the Ag Reserve, as is recommended in the Task Force report.

Second, the County has an Agricultural Reserve that has served as a nationwide model for a quarter of a century, but there are surely holes in the cloth after all that time. The County's major objective in all this should be to secure and strengthen the Reserve, and not undertake any actions that could weaken it still further by enabling more piecemeal nibbling of its productive land base. The number of child lots that can be carved out of a farmer's land should be strictly limited in number, and should probably require a rather lengthy tenure or residency before the family member can sell it off outside of the family; at least 10 years, but perhaps even 15-20 years should be used as a way to discourage merely seeking to carve out these lots as investments, to be sold in just a few years when the economy is ripe. Carving off multiple pieces of farmland for housing was never originally intended, nor should it be intended today, as an equity vehicle in the Ag Reserve. Indeed, that's what TDRs were for.

I hope these comments are helpful as you consider these matters.

Lee Epstein  
Director, Lands Program  
Chesapeake Bay Foundation

P.S. FYI, please note that I am a Montgomery County resident, living in the Springbrook area.

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## CHESAPEAKE BAY FOUNDATION

October 28, 2005

The Honorable Thomas E. Perez, President  
Montgomery County Council  
100 Maryland Avenue, 6<sup>th</sup> Floor  
Rockville, MD 20850

RE: Private Institutional Facilities and Sand Mound Sewage Systems in the  
Agricultural Reserve

Dear President Perez and Members of the County Council:

We have been asked by several local/regional organizations to examine issues pertaining to the above subjects as they relate to our focused concerns -- local and regional water quality and the long-term preservation of a rural, working landscape in the Chesapeake Bay watershed. Respectfully, please accept the following as our considered commentary on these matters as you move forward to try to resolve them.

### Summary of Recommendations

- (1) Agriculture, environment, and the preservation of rural community are the long-standing, enacted and declared reasons for the County's Agricultural Reserve. Since by their nature large PIFs will substantially disrupt, fragment, or interfere with those purposes, they should be disallowed. If they are to be permitted at all, such permission should be by special exception, and the SE review must entail an extensive set of compatibility standards and infrastructure requirements, including very limited impervious coverage at a baseline of no greater than 8%, with even lower percentages permissible in sensitive areas.*
- (2) The use in the RDT of the Agricultural Reserve of multi-use or alternative wastewater treatment systems such as sand mounds, in order to accommodate new development that would otherwise not be permitted due to soil and other natural limitations, should be prohibited. Such systems might be allowed to serve legitimate, agriculturally-related housing and related commercial needs, but the land and site should first meet the same dimensional and percability tests required of conventional septic systems.*



Philip Merrill Environmental Center

6 Herndon Avenue, Annapolis, Maryland 21403 • 410-268-8816, fax 410-268-6687



### (1) Private Institutional Facilities (PIFs) in the Agricultural Reserve

Some 25 years ago, the County took bold and innovative action by approving a comprehensive plan and its accompanying zoning changes, affirming the desires of both urban and rural county residents to protect Montgomery's farmland and farming into the future. The *Functional Master Plan for the Preservation of Agriculture and Rural Open Space* (1980) provided for a Rural Density Transfer (RDT) zone intended to protect up-county farmland from the "death by a thousand cuts" that fragmentation by scattered development would ultimately impose. Landowners were accorded development rights that they could sell to developers interested in acquiring additional density in places where the county deemed such appropriate.

Layered on this regulatory program were County efforts to apply additional funding to permit selective purchase of agricultural easements. Finally, where some erosion of the open land base had already occurred, a portion of the larger preservation area was set aside for rural subdivision clusters (the RC zone), as well as an intermediary Rural Zone for large lot (five acre) subdivision. The overall program to protect the county's rural land is far more complicated than that (and has since employed additional zoning designations), but by and large, this was its essence in 1980.

Quite obviously, rural open land in Montgomery County has since eroded still further. A combination of County actions and economic factors has contributed to the functional loss of hundreds if not thousands of acres of the working landscape over the past 25 years. And yet, on the other hand, by dint of hard work on the part of many farmers and the County itself, the County's agricultural community still works. The Agricultural Reserve still provides an annual market/product value of \$250 million, with some 10,000 employees, and adds immeasurably to the County's quality of life.

For our purposes, the County's mostly well-managed farm and forestland also enhances the land's natural water-filtering capacity. Instead of the full expansion of a sprawling urban/suburban landscape of extensive impervious surfaces, where the filtering of pollutant-laden stormwater must largely be engineered and maintained by costly means (with uneven results in area streams and groundwater), the Agricultural Reserve provides such a function naturally. Instead of a landscape of subdivision after subdivision, or scattered estates connected by ever-wider roads – and pulling behind it the extended "train" of strip commercial shopping centers, recreation facilities, police and fire stations, and other urbanizing characteristics that lead to increases in automobile usage and air pollution – the Agricultural Reserve is still (mostly) a functioning rural enclave. These qualities are hugely valuable and deserve to be maintained, again for our purposes, if we are to have a chance at restoring streams, rivers and the Chesapeake Bay.

It is clear that providing for the adequate and appropriate location of PIFs is an issue of high importance to the County, just as it is to the organizations that wish to sponsor and build them. But PIFs have the potential for further grinding away at the Agricultural Reserve (which after all, is intended for *agriculture*), as those ever-larger schools and churches and membership organizations prosper and grow. Thus, our recommendation is quite simple: we do not believe that PIFs belong in the Agricultural Reserve.

*If the Council decides to permit such uses in the rural zones at all, only permit their location by special exception, and then only after an extensive review process to assure that the facility meets strict, enumerated requirements.*

PIFs assuredly have a place in the County, but like any other extremely intensive land use activity (commercial or other) that involves extensive imperviousness, increased loading of vehicle trips and VMT to roads and highways, and pollution to streams and groundwater, those land uses should largely be confined to already developed places or places planned and zoned for significant development and having existing or near-term planned sewer and water infrastructure. If you decide to go the route of permitting such to occur under a special exception process, among the standards for a special exception that may be appropriate include size and scale (with reference to similar, already existing uses already in the County's rural areas), and infrastructure requirements over the long term. The main ideas are, first, "use compatibility" and not overloading public safety, transportation, and other facilities and services in a part of the county not intended to host them; and second, environmental quality, through the use, in part, of imperviousness and strict building siting requirements. Of course, *public water or sewer extensions or service connections made expressly to serve new PIFs in the Agricultural Reserve's RDT zone should also be proscribed, and should only be permitted for already existing PIFs (not those that would expand) to resolve health issues of failing systems.*

With respect to an imperviousness standard, we support the 8% limitation recommended by some, with even lesser imperviousness required in special environmental protection or sensitive areas. The body of older research (from the 1970's, 1980's and 1990's) strongly supported the conclusion that after watershed/sub-watershed imperviousness reaches 10%, streambed stability, quality of natural habitat, and water quality of watershed streams begins to degrade. At that point, nitrogen, a limiting factor with respect to the Chesapeake Bay and many tributary waters, begins to exceed background levels. While individual sites are not watersheds, substantial development in certain sub-watersheds – on the order of the hundred acres or more of disturbance that a single, very large PIF can represent – can begin to influence these effects. Additionally, the focus on just one site that is necessary for entertaining a special exception does not begin to account for small watershed-wide activity, such as multiple PIFs in a sub-watershed, niche agriculture that may increase imperviousness, and off-site land use changes (new or wider roads, a housing cluster or commercial use here and there, within that same sub-watershed). Ten percent imperviousness is not difficult to reach.

More importantly, however, is the fact that newer, more locally relevant research, such as that reported in December 1999 by the Maryland Department of Natural Resources under contract to U.S. EPA, has showed that the threshold for decline in habitat or water quality has the potential to begin at much lower imperviousness percentages. *In especially sensitive watersheds, imperviousness as low as 2% or 3% can have adverse biological impacts.* While an 8% base imperviousness requirement for most places may be conservative, we believe the "do no harm" paradigm should prevail within many of the sub-basins of Chesapeake watersheds -- especially those where existing open space uses are still largely extant and where a local jurisdiction has repeatedly reaffirmed its strong desire and intent to protect the existing open and working lands base.

(2) Sand Mound Sewage Systems in the Agricultural Reserve

Besides a strong zoning regime and the declared intention of the citizens of Montgomery County through their adopted comprehensive plan, as well as the conservation intentions of landowners ratified by the granting or sale of conservation/farmland easements, certain natural attributes of the Agricultural Reserve have served to protect the Reserve over the years. Among those were the limitations inherent in the soils, bedrock, and groundwater for infiltrating septic wastes. In many areas, so-called “conventional” septic systems simply could not be used. By the mid-1990’s, however, the permitted use of so-called “innovative” sand-mound septic systems had begun to nibble away at these natural protections, permitting more housing development in the Agricultural Reserve than had previously been anticipated or expressly desired in the functional plan for the region.

*In our view, where sewer system connection is infeasible, impractical, or ill-advised (the latter to protect the integrity of the Reserve), the use of sand mound septic systems that utilize advanced nitrogen removal technology might be allowed in order to improve nearby water quality, but only if the site meets the perc tests and dimensional requirements for conventional septic systems, and only to serve agricultural housing and related commercial activities. In other words, to be fully protective of the Agricultural Reserve and the places that have natural infiltration limitations, a site should first be deemed percable and of a sufficient size under the current standards for conventional septic systems. Only then should the County entertain the use of such systems as sand mounds so as to improve the quality of the effluent and serve a farm home or agriculture-related business.*

While systems such as sand mounds have the capability of performing fairly well, like all septic systems the risk of failure is also high. This is because of the professional maintenance required (and often ignored) to keep them operating at high efficiency (at least once every 6-12 months), and because (just like any engineered solution to wastewater problems) of the high standards for construction (water tightness, quality and size of sand, etc.) that must be ensured. Failures of septic systems are legion across the Chesapeake Bay region, leading to unacceptable levels of groundwater and related surface water pollution; there is no reason to expect that these newer systems’ integrity can or will be any better guaranteed. Thus, their use should remain the exception, only to serve legitimate housing/related commercial needs for farm owners and workers *and only where a conventional system could already be placed on that site.*

Additionally, it is our view that allowing new residential subdivisions of land (especially) in the RDT area of the Agricultural Reserve, premised upon the use of so-called innovative or “alternative” technologies -- that by the wave of a magic wand in the Department of Permitting Services would no longer be called alternative -- is a serious and obvious misreading of the proscription from doing so contained in original Master Plan. Since the intent was to prevent the use of certain “alternative” community or individual septic systems to increase densities and permit development in that zone, unless the Plan(s) are specifically and unwisely changed, no different reading should now be permitted by any County agency – and especially not by an agency that is not the Planning Board.

Thank you for accepting this commentary as part of your record.

Yours sincerely,

Kim Coble  
Maryland Executive Director

Lee Epstein  
Director, Lands Program

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DATE: 2/22/07  
ITEM NO. 4  
EXHIBIT NO. 11

Members of the Planning Board:

My name is Sewall Lee and I am President of Citizens to Preserve the Reserve or CPR, which is based in Laytonsville. The organization's website is [www.preservethereserve.org](http://www.preservethereserve.org) and our email address is [preservethereserve@gmail.com](mailto:preservethereserve@gmail.com). CPR offers the following three points related to the Ag Policy Working Group's Report that we respectfully ask the Board to consider:

First, enacting the Building Lot Termination or BLT program and enhancing the current Transfer Development Rights or TDR program are necessary if the Ag Reserve is to remain viable. The BLT would let owners of farmland within the Ag Reserve receive the equity in their land based on true market value while, at the same time, preserving the land in perpetuity for agriculture and/or open space. In other words, landowners within the Ag Reserve would no longer have to choose between preservation and receiving the equity to which they are entitled. CPR also supports the Working Group's recommendation of increasing the number of receiving areas for the TDR program and the use of TDRs in commercial, industrial, and multi-use zones.

Second, while CPR supports initial public funding of the BLT, we believe that a program sustained by private capital is the optimal solution for the long-term. CPR favors a market-based program, as recommended in the Final Report, because it would allow the value of a BLT to fluctuate according to supply and demand. Furthermore, the County could help encourage a market-based program by pegging the increased density allowed by a BLT to the value of the building right being terminated. If programs like the BLT succeed, the probability of development that is incompatible with the intent of the Ag Reserve declines because the right to build on such land would no longer exist.

Third, if Montgomery County is committed to preserving the Reserve it must close a longstanding loophole in its zoning code that allows private institutional facilitates or PIFs to sidestep RDT zoning limitations. CPR supports the Working Group's recommendation listed under the Pending Legislation section of the report, to "clarify in clear and direct terms the long standing legislative intent that the development of RDT zoned parcels encumbered by TDR easements shall be limited to single family, agricultural, and agricultural related uses only".

While CPR supports the adoption of the entire menu of recommendations in the Report, we understand that political realities could intervene. Individual Report recommendations may require additional discussion, refinement, and consensus building. We trust the Planning Board will advise the Council not to let debate over any one recommendation paralyze progress towards a legislative package that includes elements of the Report where consensus exists.

We thank you for the chance to speak and trust that the Planning Board will take the aforementioned points into consideration in its recommendations to the Council. CPR would also like to commend the Working Group for bringing the Final Report to fruition.

Sewall E. Lee  
President  
Citizens to Preserve the Reserve



#4

Coleman, Joyce

From: Denise Jacklin [djacklin@CORNETSER.com]  
Sent: Tuesday, February 20, 2007 3:03 PM  
To: MCP-Chairman  
Subject: Ag Policy Task Force

Importance: High

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image.jpg

Chairman Hanson,

I live in Poolesville surrounded by the Agricultural Reserve. I have lived here for 18 years. I would like to thank the Task Force for their efforts to arbitrate the property rights v. preservation question. These are difficult issues to reconcile but I believe the county needs err on the side of conservation. I consider the original 1980 Master Plan to be the bible of preservation and I am not inclined to support exceptions to its spirit or regulations.

The question of 'Child Lots' is certainly a legitimate concern for some but seems to be a convenient loop hole for others who have already sold and their development rights with TDRs and wish to 'dip' again. Of course those farm families who legitimately need to provide housing for next generations should be able to do so. The fatal flaw in the current system is that the County can not determine which requests are shams and which are legitimate. Currently the County does not seem to have the necessary means to monitor these child lots. When blatant violations are brought to light the general feeling is 'oh well, we can't do anything now'. This attitude does nothing to curb scofflaws and in fact encourages proscribed investment building. At the very least the County should extend the residency requirement, limit the number of legitimate 'Child Lots' (per farm owner and Reserve wide), and strictly monitor to assure that the 'child' is actually living at the residence and this is not just a mailbox.

I would like to see the land for these 'child Lots' remain part of the 'farm parcel' with appropriate usage rights allowed for the home's 'child' owner. If the homes are truly for family members then keeping the land in the 'farm parcel' is to everyone's advantage, keeping the farm land contiguous and allowing for family homes. This scheme would certainly discourage excising farm parcels for resale.

I am firmly against granting any 'bonus density' which is a clear violation of the spirit and regulation of the Master Plan and answers no legitimate need.

I do not support the use of 'sand mounds'. They are expensive, unattractive and fail more frequently than conventional systems. They were specifically addressed in the Master Plan recommendation against alternative septic technology. I consider them to be particularly unacceptable in the Ag Reserve which is situated on a fragile watershed feeding the Potomac and Chesapeake Bay. The only exception I might support is for legitimate farmers who need to replace their failed conventional septic system with this technology. Even then an overall limit should be put on the number these types of septic fields allowed in the Reserve.

In conclusion, I support the Building Lot Termination (BLT) recommendation as a tool for preservation and prevention of unnecessary loss of the Reserve farmland. There should be a full economic analysis to determine if this is feasible for receiving areas in commercial, industrial zones. More stringent measures are needed to prevent the disguise of investment-home-building as 'Child Lots'. Finally, 'sand mounds' should be prohibited for new construction and their use should be strictly limited to replacement use by legitimate farm families with failed conventional septic systems. For almost 27 years the 1980 Master Plan has been a land use blueprint for other jurisdictions nationwide please do not eviscerate it now.

Regards,

--

Denise Jacklin  
Purchasing Dept.

Corporate Network Services  
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RECEIVED BY MCPB  
DATE: 2/22/07  
ITEM NO. 4  
EXHIBIT NO. 7

February 22, 2007

Commissioners of the Montgomery Planning Board / M-NCPBC  
Re: Hearing on the Final Report of the Ad Hoc Agricultural Policy Working Group  
Rockville, MD

To Chairman Hanson and Commissioners,

Dad's Gourmet is a small, organic foods company in Montgomery County. As President of Dad's Gourmet, I want to express my deep concern for the future of Montgomery County's Agricultural Reserve, and farming throughout the region.

The precipitous rise in real estate that began several years ago, driven largely by increases in residential property values, is well known to all who live and work in Maryland. What no one seems to be discussing, though, is the startling impact on the price of agricultural land that has coincided with this period. Land that only six years ago could be obtained for less than three thousand dollars an acre is now being aggressively – and routinely – marketed for *three times as much!*

This unprecedented rise in prices has stopped cold many aspiring tree farmers, bison ranchers, and others with *legitimate* interest in local agricultural pursuits. Behind this steep rise is pent-up speculation that regulators will cave to pressures from those who would profit, and will try to do so anywhere they can.

The *good intentions* that gave rise to the legislation and monies associated with the Rural Legacy Program have been thwarted by a variety of loopholes. Any sincere effort to support growth in much needed local farming will necessarily need to address these deficiencies, and reverse the tide. Though perhaps well intentioned, the Final Report of the Ad Hoc Agricultural Policy Working Group doesn't go far enough. I urge the Board to adopt the land use recommendations of Sugarloaf Citizens Association and For A Rural Montgomery (F.A.R.M.).

In closing, changes to the Rural Legacy Program, and other efforts to assist those who aspire to truly farm, in perpetuity, local farmland (interest free loans, grant monies, etc.), would help shore up deficiencies in existing policy. Anything the Board can do to ease pressures that threaten to erode Montgomery County's invaluable, and much needed, Agricultural Reserve is truly appreciated.

With Deepest Concern,

Chris Kendrick, President  
Dad's Gourmet, LLC

17616 Kohlhoos Road  
PO Box 528  
Poolesville, MD 20837

phone: 301-349-0705  
efax: 603-307-0705

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[www.dadsgourmet.com](http://www.dadsgourmet.com)





COMMUNITY EXHIBIT

RECEIVED BY MCPB

DATE: 2/22/01

ITEM NO. 14

EXHIBIT NO. 14

Dear Chairman Hanson and Commissioners:

I regret that I will not be able to attend the Planning Commission's hearing on Thursday, but I wanted to convey our members' sentiments about the Ag Policy Task Force Report that you will be considering at that hearing.

Dickerson residents are grateful to the task force for its considerable efforts, and we welcome the report as an important step toward ensuring protection for the precious farmland that has been wisely shielded from development in Montgomery County for 25 years. However, we believe that the report has these shortcomings: (1) While we support the Building Lot Termination Proposal's goals, we oppose any changes in the 1980 master plan that would expand allowances for sand mound septic systems; and (2) We feel that the residency requirement for so-called "tot" lot building permits should be longer than the proposed five years. Any shorter requirement risks the use of the tot-lot exemption for development--a exemption not contemplated by the master plan.

Sincerely,  
Carol Oberdorfer  
President, Dickerson Community Association, Inc.  
(301) 972-8985

**Testimony Before Montgomery County Park and Planning Board: Final Report of the Ad Hoc Agricultural Working Group – February 22, 2007 on behalf of For A Rural Montgomery (FARM) by Caroline Taylor**

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Chairman Hanson, Members of the Board, Staff and Working Group members:

We appreciate the opportunity to comment on the final report. FARM has been working for over a decade now to ensure that our nationally recognized Agricultural and Open Space Reserve will be viable for generations to come. We are steadfast in our commitment and deeply concerned about the Reserve's future.

It is important to note appreciation for the hard and difficult work started by the Agricultural Working group. I say started because there remains more to be done. Clearly the issues facing the group were contentious for a variety of reasons. But we have to keep our eyes on the prize: keeping the reserve viable for farming and sustainable environmentally. To that end we make the following specific recommendations:

**Tot Lots:** Limit number of permitted lots, perhaps no more than 4. The years required for occupancy should be at minimum 10. There must be a system overseeing the occupancy requirement and should not merely be complaint based. The number of tot lots and developable lots together should not exceed the 1 per 25 acre allowable density. The fact that this loophole has been exploited for years doesn't constitute legal rationale to continue the error. Developments that are illegally constructed for open market sale should be razed and/or face legal penalties such as criminal fraud. Economic sanctions are ineffective and would simply be recouped in sale of homes.

The extension of public sewer and water for tot lots should not be permitted. The precedent created by extending the service would threaten the continued viability of the Reserve.

**Sand Mounds:** The groups recommendations ignore the legislative history of allowing the systems in the reserve and certainly undermine the intent not to fragment farmland and diminish the ability to farm. Sand mounds were intended as last resort for failing existing systems and for tot/tenant homes that could not utilize conventional systems. Since 1994, only 24% of the sand mounds systems built have been used for the original purpose. Now is the chance to make that original and sound policy clear.

Incorporated in this discussion should also be tenant houses and forest and stream preservation. There should be limits on the number and size of tenant houses and occupancy requirements. Programs that educate and promote conservation of forest buffer and large scale forest stands should be explored and instituted. Best land management policies rely on healthy forest and water.

In closing, we would like to voice support for the Building Lot Termination Proposal and call for economic analysis to show how it will work. The outcome of these deliberations is crucial to the future of farming in Montgomery County. I look forward to the coming together of the various stakeholders who share a vision of a vital, healthy long lived Agricultural Reserve.

Thank you.



COMMUNITY EXHIBIT  
RECEIVED BY MCPB  
DATE: 2/22/07  
ITEM NO. 4  
EXHIBIT NO. 5



Green Industry Association of Montgomery County  
1409 Spencerville Road  
Spencerville, MD 20868  
301-948-1686

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February 22, 2007

Mr. Royce Hanson, Chair  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland 20910

Re: Ad Hoc Agricultural Policy Working Group Report

Dear Mr. Hanson:

On behalf of the Green Industry Association (GIA), I am writing to offer comments on the Report prepared by the Ad Hoc Agricultural Working Group. The GIA is an organization that was created to help address the needs of the horticultural industry and provide representation at the table of government as land use policies are proposed.

Although the report itself is very comprehensive, it stops short of outlining business incentives to keep the land in agricultural use. If agricultural uses, in all its forms, were actively encouraged by the County, the pressures to develop the land for residential use would lessen and the County can retain the diverse agricultural industry that it desires.

The final pages of the Report list "Additional Agricultural Issues," including zoning changes and the economic health of the agricultural reserve (see pages 46-47). The Green Industry Association believes that these issues deserve more attention. Agricultural uses in Montgomery County, and throughout the region and the country, continue to evolve as market forces change. Direct marketing operations and small scale organic farms can be viable with support from the county in the promotions of farmers markets, direct sales to restaurants, and farm tours etc. Agriculture viability can be enhanced with additional county support for promoting more accessory uses to the farm as outlined in the zoning regulations. The application of accessory uses to generate additional farm income should be simplified and clarified to reduce risk.

In addition, the definition of agriculture continues to change, like any other business; however, this is not fully reflected in the Report. Currently, agriculture includes more than just traditional farming; it includes equestrian operations, horticulture operations, composting operations, and forestry operations. All of these uses operate together to create a vibrant RDT Zone – for example, the increased number of horses produces more manure, which can be composted and used to fertilize farms and arbors. This symbiotic nature is integral to a thriving agricultural industry, yet under current land use policies, nearly impossible to implement in any meaningful way. Therefore, we believe that the solutions outlined in the Report should be augmented by changes to the land use policy in

the agricultural reserve. These uses should be encouraged in the RDT Zone and recognized as profitable enterprises that use agricultural land for agricultural purposes.

Finally, the Report briefly mentions expanding the existing Rural Service Zone to provide additional opportunities for some agricultural-related uses, such as landscape contractors, as by-right uses. The RS Zone currently encompasses (approximately) 12 acres in Clarksburg, but should more appropriately be mapped at some fringe areas of the RDT Zone and at major "crossroads" where it is practical and efficient to locate landscape contractor and other agricultural-commercial-industrial uses. We urge the Planning Board to recommend to the Council a Sectional Map Amendment for this purpose so that operators of agricultural-commercial-industrial operations do not have bear the expense of Local Map Amendments or Special Exceptions to find a location for their business.

Thank you for your consideration of this matter. Please do not hesitate to contact me if you have any questions.

Sincerely,

*John Hughes*

John Hughes, President  
Green Industry Association



THE LEAGUE OF WOMEN VOTERS  
*of Montgomery County, MD, Inc.*

COMMUNITY EXHIBIT  
RECEIVED BY MCPB

DATE: 2/22/07  
ITEM NO. 4  
EXHIBIT NO. 9

TESTIMONY FOR PLANNING BOARD - AGRICULTURAL RESERVE POLICY  
February 22<sup>nd</sup>, 2007

The League of Women Voters of Montgomery County has been studying land use issues in the County for many years and has emphasized agriculture for the past six years. The League develops positions regarding governmental policies through studying the facts relating to issues, discussing the facts among our members and identifying consensus positions achieved through informed member discussion. Because of this process we are able to accurately reflect the views of our membership when we speak for the organization.

The League of Women Voters of Montgomery County believes that the Planning Board and its staff have a substantial role to play in maintaining the viability of the Agricultural Reserve not only in conjunction with the recommendations of the AD Hoc Agricultural Policy Working Group, but also through the planning process. The Master Plan process is a means to identify TDR receiving areas and we support intense review of the land and community characteristics prior to designating receiving areas. In developing new Master Plans, we believe a planning goal should be no net loss of receiving areas.

Since 2003, we have supported the planning staff's developing a mechanism for designating receiving areas in CBD, transit station areas and town centers. We also support limiting the use of TDRs for increased density of non-residential use in commercial, office and R&D development to the so-called 5<sup>th</sup> TDR. We support the Working Group's recommendations to **require** TDRs to be used when rezoning to floating zones results in an increase of residential density.

As early as 2004, the League adopted a position favoring a policy that considers preservation of productive farmland to be a primary design consideration for development in the RDT zone, including cluster development where appropriate. Our most recent consensus has expanded this position to include modifying the child lot provision to allow zoning density to be exceeded only by child lots, not by market lots. We also support a five-year minimum holding period before a child lot's title can be transferred. We support limitations on the utilization of sand mound technology for sewerage disposal in agricultural zones and establishing a requirement in the county for purchasers to be notified of the presence of sand mounds and the need for scheduling maintenance.

Since 2002, the League has supported policies to ensure the viability of agriculture in Montgomery County including agricultural and rural open space preservation easements. We support the recommendation of the Working Group to clarify the language of the TDR easement to limit land under those easements to agricultural and single family use. We support the Building Lot Termination easement program provided that funds are available for that purpose. We believe the recommendation for non-residential use of the 5<sup>th</sup> TDR will complement this program well.

(A78)

#4

**Coleman, Joyce**

**From:** Tom Gutierrez [TGutierrez@fcclaw.com]  
**Sent:** Wednesday, February 21, 2007 5:56 PM  
**To:** MCP-Chairman  
**Subject:** Ag Reserve Report

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Chairman:

I am a life long County resident that has resided in Poolesville for the last half-dozen years.

The Ag Reserve is why my family moved to Poolesville, and what the County should cherish most. The recent Ag Reserve Policy Task Force Report constitutes a tremendous effort to help preserve the Reserve. All involved should be commended for their efforts.

But like any task force report, this one includes an unhealthy amount of compromise. The compromises that are of most concern involve tot lots and sand mounds. Bluntly put, unless the County takes a more principled approach on each of these issues, the Ag Reserve will be severely endangered. With regard to tot lots, a mere five year minimum residency requirement will only invite mischief. The minimum needs to be at least ten years. Also, there need to be caps put on total tot lots, and the report's recommendation for a "bonus density" needs to be rejected in its entirety.

The report's recommendations on sand mounds is equally disturbing. When the Ag Reserve was established, the 1980 Master Plan made clear that sand mounds were to be used only for tot lots and failed existing septic systems. No bona fide reason for change have yet been put forth. In fact, with all of the most recent pressures that have been put on the Ag Reserve, the policy regarding sand mounds should be tightened, not loosened.

Mr. Chairman: it was under your guidance that the Ag Reserve came into being. So, it would be particularly frustrating were it to now take a major step towards oblivion. Please do not let that happen.

Tom Gutierrez.

Thomas Gutierrez  
Lukas, Nace, Gutierrez & Sachs, Chartered  
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McLean, VA 22102  
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2/21/2007

(A79)



## AGRICULTURAL ADVISORY COMMITTEE

February 22, 2007

Royce Hanson, Chairman  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, Maryland

Dear Chairman Hanson:

Re: Public Hearing Ag Policy Working Group

On behalf of the Montgomery County Agricultural Advisory Committee (AAC) please accept these comments regarding the final report of the Ad-Hoc Agricultural Policy Working Group.

The AAC thanks the Planning Board for this opportunity to provide some comments surrounding future recommended policies that could protect our Agricultural Reserve.

Over the past two years, the Ag Advisory Committee has commented on several legislative items that were proposed by the County Council and the Planning Board and we welcomed the mission of the Ag Policy Working Group to study these matters in a comprehensive way. The piecemeal approach to agricultural policies was replaced with the Working Group and report identifies recommendations that have the potential to further protect the agricultural reserve.

We hope the Planning Board agrees with and will support the Report findings and recommendations. The Ag Advisory Committee believes these recommendations can lead to a more effective way in addressing the viability of agriculture and needs of farmers.

**You will see in the report general principles that equity farmers hold in their property is not only important to them personally but an important asset for their businesses, and consequently an important factor in the success of the agricultural industry in the County.** As homeowners in the County, I am sure that each of you carefully monitors the equity appreciation in your property and why should the farmer look at their equity in the farm differently? Farmers can only support a public policy objective of protecting the agricultural reserve for the benefit of all citizens as long as it is not at the expense to the farmer. Policies to reduce fragmentation of farmland must carefully consider equity.

The preservation of landowner equity will be a very important issue as we deliberate on the proposed Building Lot Termination (BLT) Program. We ask that the Planning Board support the BLT program. The Council will need to ensure the BLT is adequately funded as a means to preserve the equity that will be reduced from the farm and compensate the farmer. Today, a farmer is having great difficulty finding buyers for excess TDRs and



Department of Economic Development • Agricultural Services Division

18410 Muncaster Road • Derwood, Maryland 20855 • 301/590-2823, FAX 301/590-2839

the market prices have also fallen from a record level of over \$40,000 per TDR. The BLT program will provide another preservation tool for farmers to consider that will terminate the buildable TDR and the BLT will compliment our existing programs. The ultimate benefit of the BLT is the placing of perpetual Ag Easements across the Ag Reserve, reducing new construction of homes and safe guarding the land for agriculture.

We are encouraged the report recommends against future down zoning which represents a further erosion of the farm value and property rights. The history of down zoning in Montgomery County has impacted the farmer in 1974 when the 5 acre Rural Zone was adopted and then again in 1981 when the 25 acre RDT zone was adopted.

We suggest that as the Planning Board deliberates on the report findings please be sensitive to the farmers land equity and property rights. Since the 1980 Ag Reserve Master Plan has not been officially revised, with exception to the map updated in 1988 and the report reprinted in 1999, it is reasonable and practical to understand how several areas of policy and program assumptions contained in the report are not current and therefore, in conflict with current state and county laws.

On behalf of the farmers in the County and the Ag Advisory Committee, it is our sincere hope that we can work with the Planning Board in a productive manner on these issues impacting agriculture and our future.

Sincerely,

A handwritten signature in black ink, appearing to read "Wade Butler", written over the word "Sincerely,".

Wade Butler, Chairman



#4

**Coleman, Joyce**

**From:** tina brown [tinathiemebrown@comcast.net]  
**Sent:** Tuesday, February 20, 2007 10:36 PM  
**To:** MCP-Chairman  
**Subject:** Ag Reserve Task Force Report

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson:

Thank you for taking the time to review the Agricultural Reserve Policy. My husband and I have enjoyed living in the historic town of Barnesville, where tractors, sheep, horses, hay bales, and farm machinery on the local roads are common part of our landscape.

I value the investment and leadership that created this working agricultural landscape over 25 years ago, and understand that there have been several provisions which need revision, in order to preserve our agricultural legacy for future generations.

I fully endorse and applaud the efforts that members of this committee have made in their work to produce a fresh look at what is necessary to keep the agricultural reserve alive and consistent with the vision of the master plan.

In my view these are the most important aspects of the policy report to address:

- Support of the Building Lot Termination Proposal. As well as, a full economic analysis to determine its efficacy for receiving areas in commercial, industrial zones.
- I do not support the Task Force recommendation for continued use of sand mounds. This is inconsistent with the language and intent of the 1980 Master Plan which allowed alternative septic systems only for legitimate child lots or failed septic systems.
- I support a residency requirement for legitimate child lots in the Reserve to preserve farming or the family core, however I do not believe a 5 year residency requirement is enough time to ensure that this is will not be abused.

Finally, I realize the value of balancing a landowners' equity and the master plan intention to preserve farm land and open space. The Master Plan addressed this with the TDR (Transfer of Development Rights) program. If this has not proven sufficient, then I support the Building Lot Termination Proposal as a further measure to be equitable. I am concerned about the sand mound and child lots recommendations made by the Task Force and read them as incompatible with the 1980 Master Plan.

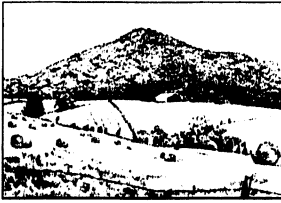
Again I would like to thank everyone who contributed their time and expertise to reviewing this important policy. We have marveled at this land use model that is in strong contrast with the wild west of development in Virginia. Every time we encounter the tractors moving across fields or the local produce available at nearby orchards, we appreciate the leadership and the long range vision displayed by Montgomery County. Thank you for being instrumental when the AG Reserve was created, and available to preserve it when it is under such constant development threat.

Tina T. Brown  
18201 Barnesville Rd.

Board Member, Montgomery Countryside Alliance

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2/21/2007



# Montgomery Countryside Alliance

## Celebrating and Advocating for Rural Montgomery

Chairman Royce Hanson  
Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

February 22, 2007

To Chairman Hanson and members of the Planning Board:

The Montgomery Countryside Alliance commends the entire Ad Hoc Agricultural Policy Working Group, with exceptional support from county staff, for an excellent report on critical policies that affect the viability of farming in Montgomery County and the future preservation of the Agricultural Reserve. We believe that a strong combination of incentives-based easement programs and restrictions on development will allow the working farms in the Agricultural Reserve to flourish. All the issues addressed in the report are interrelated and should be viewed comprehensively.

The sixth General Principle (page 2) states that, "If the Agricultural Reserve is to survive permanently, policies must protect both farming and farmland, while fostering a deep commitment to stewardship that looks beyond current generations and current landowners." As an observer of the working group discussions for the past 8 months, we have been impressed with the broad consensus among diverse members that the Agricultural Reserve is worth preserving and sustaining, is valuable to all residents and that agriculture can be preserved as an integral part of a modern, vibrant and diverse metropolitan region.

Given that the stated purpose of the 1980 Master Plan is to preserve agriculture, any development proposals that do not support agriculture are a genuine threat to the integrity of the Agricultural Reserve. As development pressures increase, the resulting fragmentation of agricultural land jeopardizes its long term economic viability. The central focus of this report is addressing fragmentation and we urge the Planning Board and County Council to join in a renewed commitment to the stewardship of the Agricultural Reserve.

There are recommendations in this report that we wholeheartedly support, namely providing incentives for keeping land in agriculture through the Building Lot Termination program and expanding the Transferable Development Rights program, and ask that decisive and rapid action be taken to move these initiatives forward.

However, there are also parts of this report which in our view have given priority to development over preserving agriculture. While the Minority Reports on sand mounds and child lots are a critical first step towards limiting the development potential within the Reserve, they do not go

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Gaithersburg, Maryland 20883-3045



far enough. We support strict adherence to the 1980 Master Plan. Despite the fact that there is not agreement on these two issues, we urge the Planning Board and County Council to move forward where consensus does exist.

### **Establish a Building Lot Termination Program**

The Building Lot Termination easement program has strong support from a majority of the working group. We support this new initiative as an incentive to further reduce residential development while providing an acceptable level of compensation to property owners. Our hope is that with a strong BLT program in place as an alternative to development, this could help minimize the use of sand mounds for residential development. One of the best ways to reduce development potential and prevent fragmentation of farmland in the Agricultural Reserve is to provide financial incentives that offer an attractive alternative to development while at the same time accomplishing the goal of preserving as much farmland as possible. Strict eligibility criteria, as recommended in the report, are necessary in order to ensure that the lots are terminated.

Funding the Building Lot Termination program is *critical* and the report recommends a combination of public funding (through existing agricultural preservation program and transfer taxes) and private funding (eventually through a market-driven TDR program for buildable TDRs used for non-residential properties). An economic analysis will help in determining how to fund this program and we urge you to prioritize resolving this issue as funding is necessary to move ahead with this program.

### **Expand the Transferable Development Rights Program**

Transferable Development Rights were an integral part of creating the Rural Density Transfer zone in 1980 as a means of preserving agricultural land and providing equity to land owners whose land was down-zoned. Counties across the United States look to Montgomery County as a successful example of the use of TDRs but recently the market for development rights has slowed and additional opportunities for property owners to sell their TDRs are needed. We support the report's recommendation to expand the TDR program (especially buildable TDRs) to non-residential uses such as in commercial, industrial, central business district and mixed-use zones.

Additionally, as Master Plans throughout the county are being revised, receiving areas for TDRs must be maximized (both for residential and non-residential uses) in order for the program to prosper and whenever additional density within those Master Plan revisions is considered, TDRs should be used. It is critical, however, that the additional density that TDRs allow does not exceed the carrying capacity of public infrastructure. Transferable Development Rights are one of the primary ways of sustaining the Agricultural Reserve by transferring development out of agricultural areas to areas of the county with the infrastructure to support it and therefore inextricably links upcounty and downcounty residents. Not allowing density to exceed the carrying capacity of the existing infrastructure is not only an essential part of responsible planning, but is also a way to maintain broad public support for the Agricultural Reserve.

Other important TDR recommendations:

- Clarify the limitations on non-agricultural, non-residential uses (such as private institutional facilities) where land is encumbered by a TDR easement. We recommend that development should be limited to single family houses and agricultural or agricultural-related uses only.
- Work with municipalities so that TDRs are accepted and not extinguished when land is annexed. This was a key issue in 2006 when the Crown Farm property was annexed into Gaithersburg.
- Continue developing a tracking system for TDRs.

### **Minimize Child Lot Abuse**

We commend the working group for clarifying policies related to child lots and for tightening the standards of implementation. These steps are important so that land owners can not abuse what is meant to be a way of perpetuating family farming. As the report states, stricter assurances are needed to make certain that these lots will not be immediately sold for market value and will be owned by children of the property owner while encouraging farming on the land. One central means of ensuring this is requiring a child to own the lot and not lease or enter into a sale contract. While the 5 years recommended in the report is better than no requirement at all, it is still not long enough. Also, lots should be able to be created after the death of a land owner *only* if the intent was specified in a will. We recommend stronger enforcement by the county than currently exists with substantial monetary penalties if the regulations are violated.

While we support the use of child lots as a means of supporting the overarching principle of preserving agriculture, allowing both market lots and child lots when they exceed the density restrictions favors development over agriculture. Therefore, while the number of child lots permitted alone may exceed the density of current zoning, we endorse the Minority Report which recommends that in no case should market lots and child lots together be allowed to exceed the base density.

### **Limit Sand Mound Usage**

As mentioned above, fragmentation of agricultural land is a central concern to many members of the working group. The Montgomery Countryside Alliance considers sand mounds to be a tool that enables suburban residential development to be built in an agricultural area, thus fragmenting the land. Sand mounds can potentially increase the total number of buildable lots in the RDT zone. While the majority of the group agreed that the use of sand mounds should be limited, ultimately a compromise could not be reached on what those limitations should be. The Minority Report is an important first step towards restricting their use, but stronger limitations are needed. The 1980 Master Plan is clear that a rural sanitation policy should not encourage development and restrictions on septic technology were used as a means of managing growth. As stated in the Master Plan, sand mounds should *only* be used in specific circumstances (i.e. for failing septic systems and legitimate child lots) and an aggressive proposal must be in place that limits the ongoing use of sand mound technology (or any future new technology for on-site sewerage) for suburban residential development.

### Additional Issues

- One of the Montgomery Countryside Alliance's primary program areas is education. By educating county residents about the benefits of and opportunities within the Agricultural Reserve (i.e. for fresh produce and recreation), our hope is to continue building critical public support for preservation of agriculture within the county. Therefore, we wholeheartedly support the recommendations of the working group to **expand education initiatives** to raise awareness of the importance of the Agricultural Reserve to the life and character of the county and region. We support additional funding for programs like Close Encounters with Agriculture and we certainly hope to continue our partnership with the county in our educational endeavors while exchanging other support as needed. We appreciate that the county is moving forward on creating gateway signs into the Agricultural Reserve
- Agriculture in Montgomery County has evolved over the past 27 years since the Agricultural Reserve was established. We recommend additional county technical and marketing **support for alternative and specialty farming**.
- In late 2005 and early 2006, the Council enacted critical legislation that would limit the scale and scope of large private institutions. One additional piece of legislation that would complement the policies already in place is a limit on impervious surfaces. Private institutions, even those with small septic systems, can have enormous footprints. The runoff from these paved surfaces affects water quality and we recommend an 8-10% **limit on impervious surfaces**. Recognizing, however, that many agricultural enterprises require impervious surfaces as part of their operations, we support an agricultural exemption.
- The working group discussed the issue of design standards which would guide the location of residential lots within the Agricultural Reserve to maintain land for farming and minimize the impact of residences. Building placement is important in preventing fragmentation and we **support conservation design standards** using the existing agricultural advisory groups to determine these standards appropriately.
- As the boundaries between suburban and rural continue to blur, more residents are moving into the Agricultural Reserve with suburban expectations for noise and odors. Given that agriculture is the favored use of the RDT zone, we support legislation that requires homeowners to be notified of the laws that **protect farmers from nuisance claims**.

Again, the Montgomery Countryside Alliance commends the working group for its months of constructive discussion on a package of issues affecting the future of the Agricultural Reserve.

We are at a critical point where development would fragment the remaining agricultural land and not only make farming more challenging but also would create a need for too many county services within the Rural Density Transfer zone. We urge the Planning Board and County Council to move ahead on the Building Lot Termination program in partnership with the expansion of the Transferable Development Rights program. Do not delay these critical initiatives.

Along with these easement programs, however, are also needed stronger limitations on the policies that favor development over the preservation of agriculture, namely sand mound usage and allowing a bonus density for child lots.

To quote the report, "Montgomery County can take pride in the establishment and the success to date of its Agricultural Reserve, an unparalleled resource that benefits all the County's residents, and indeed the Washington metropolitan area as a whole. But we cannot take its future survival for granted. A tipping point approaches with the convergence of too much farmland given over to new housing and mini-subdivisions, too much fragmentation of farmland, and too many barriers to farming (page 5)."

As we move towards this tipping point, we thank you for taking the time to consider these policies.

Sincerely,

Andrea Arnold  
Campaign Director

#A

**Coleman, Joyce**

**From:** Cinque, Julius (NIH/CSR) [E] [cinquej@csr.nih.gov]  
**Sent:** Wednesday, February 21, 2007 6:37 PM  
**To:** MCP-Chairman  
**Subject:** Agricultural Policy Task Force

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Royce Hanson,

My name is Julius Cinque and I live at 22300 Slidell Road in Boyds, Md. I am the current President of the Peachtree Ridge Civic Association and would like to express our appreciation and commend the Agricultural Policy Task Force for the long and difficult work they have performed in attempting to address the critical issues that are threatening the integrity of the Agricultural Reserve.

While we support the Building Lot Termination Proposal and the efforts to find additional receiving areas in commercial and industrial areas, we are concerned with the recommendations for the continued use of sand mounds. This policy, while originally well intended for legitimate child lots and failed septic systems has been abused by land speculators and developers. We would like urge the commission to apply the language and intent of the 1980 Master Plan which allowed alternative septic systems only for legitimate child lots and failed septic systems.

In terms of the residential requirements for legitimate child lots we believe that the five year residential requirement will not be sufficient and should be extended to discourage and prevent the investment in land speculation in the Agricultural Reserve. Overall we find that the efforts of the Agricultural Policy Working Group has been of great service for the preservation of the Agricultural Reserve but further efforts are urgently needed on Child lot and Sand Mound Policy

Sincerely

Julius J Cinque  
President  
Peachtree Ridge Civic

Association.

A88

2/21/2007

#4

**Hanson, Royce**

**From:** WILLIAM J. ROBERTS, ESQ. [LAWPOOL@VERIZON.NET]  
**Sent:** Wednesday, February 21, 2007 8:50 PM  
**To:** Hanson, Royce  
**Subject:** AD HOC AGRICULTURAL ADVISORY COMMITTEE REPORT

**RECEIVED**  
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OFFICE OF THE CHAIRMAN  
 THE MARYLAND NATIONAL CAPITAL  
 PARK AND PLANNING COMMISSION

**WILLIAM J. ROBERTS, ATTORNEY AT LAW**

20,000 Fisher Avenue, Mailing Address: Post Office Box 368  
 Poolesville, Maryland 20837 U.S.A.

Telephone: (301) 972-8673 Facsimile: (301) 349-2979

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Dear Chairman Hanson:

It is my understanding the Planning Board will review the above-referenced matter at its regular meeting of tomorrow. Please accept this communication for inclusion in the public record.

Both personally and professionally, I have been actively involved in land use matters in Montgomery County for over 25 years, particularly involving the RDT and other rural zones.

I apologize that, due to other substantial commitments, I have not had the luxury of studying the committee's report in detail; however, a few things really jumped out to me immediately in my cursory reading of that document:

1. Child Lots: The Planning Board and its staff has not only misinterpreted, but I will submit, just flat out ignored the plain statutory language in the past regarding adding "market" lots to properties while ignoring approved child lots in the calculation of total density. I believe you have already seen the memo which I prepared in September 2005 for The Conservation Federation of Maryland, Inc. concerning that issue. The law is clear, and I don't think there is any additional analysis required. The committee recommends that the same flawed application, [notice I did not say 'interpretation', because the plain statutory language simply is not subject to reasonable interpretation otherwise], that has been erroneously applied in the past, be continued to applied in the future. And that recommendation appears to be based upon some misguided idea that child lots were intended to provide some "equity" to property owners based upon their particular procreative proclivities. I don't think so.

2. Another Program for 'super TDRs' or 'TDR Termination' or 'BLT [Building Lot Termination]'. Just the Montgomery County Zoning Ordinance that I have sitting on my bookshelf currently encompasses, I would estimate based upon its thickness, somewhere between 800 and 1,000 pages. I submit that it presently is far more complicated that it needs to, should be, or should ever have been, but for the District Council's propensity to attend to every particular special interest that may sufficiently

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2/22/2007



bend their collective political ear.

As I recall, at the present there are approximately 7 different easement/conservation programs available through the County and/or the State of Maryland for properties in the RDT zone, as well as an untold number of programs that may be available through non-governmental entities.

I really must seriously question the necessity and advisability of yet an additional program which could be very well addressed and funded in one or more of the existing programs.

Perhaps I am just old-fashioned, or just a dumb country lawyer, but I abide by the notion that the simpler an ordinance, the more effective it ultimately will be in its application and enforcement.

3. Different Treatment Based Upon Property Size. It is my understanding the Committee has proposed different standards for properties in the RDT zone, based upon the total acreage of the property. I suspect that recommendation would present a significant problem as potentially running afoul of the uniformity requirement for properties in the same zoning classification and, when you think about, if we are going to consider "fairness" or "equity" issues, is fundamentally unfair to hereinafter essentially penalize property owners with larger tracts whom have thus far avoided the temptation of subdivision.

4. Sand Mounds. The use of sand mound septic systems is an issue which you are familiar with, so I won't explain it here. However, I will make three observations/comments.

First, going back to number 3 above, to suggest that different properties in the same zone should be treated differently based solely upon the fact that someone has even 1 square foot more property than a neighbor. I tend to suspect would run afoul of the uniformity requirement.

Second, I actually must tend to agree with the opinion of the County Attorney that, if sand mounds are an accepted practice by state regulation for sewage disposal, then the County may well be pre-empted to preclude use of the same. While the County might be empowered to enact regulations with certain standards stricter than the state standards, I must question its right to simply prohibit the use of such systems. [Remember that the County Council, in enacting health regulations, does not sit as a local legislative body, but rather as a the local Board of Health for the State of Maryland.]

Third, and I suppose this is just a matter that has always bothered me: It really is no secret that Montgomery County has used, and has continued to use, potentially limited septic capacity of properties as a what I will call, for lack of a better description, a "back-door" method of controlling development, regardless of minimum lot size or maximum density in any particular zone.

That may be perfectly legal, but I've got to say that I have always found it somewhat intellectually dishonest. If the County wants to restrict residential development in the RDT zone to a maximum density of, for example, 50 acres per DU, then I think the better, above-board and more honest way to go about that is just to put that in the development standards of the zoning ordinance, rather than having property owners experience misplaced hopes and expectations, based upon a reading of the existing zoning ordinance, ultimately frustrated by sometimes unreasonable health regulations.

~~~~~  
Going back to No. 1 above, I am just absolutely flabbergasted that the ONE positive recommendation that the Committee could have made [and should have made], which would require absolutely no ZTA, would have been to recommend application and enforcement of the child lot provisions of the ordinance as they should always have been applied and enforced.

Instead, the Committee's has recommended continued ignorance of the existing law, and then even new

suggested statutory schemes and controls-- schemes and controls that may well be unworkable, unenforceable, and potentially unlawful.

Those are just my individual thoughts for what they may or may not be worth. I'm sure some of my citizen and organizational clients will agree with some of this, and I'm sure some of them will strongly disagree, but those are my thoughts.

Best Regards,  
William J. Roberts

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2/22/2007



## Montgomery County Group

COMMUNITY EXHIBIT  
RECEIVED BY MCPB  
DATE: 2/22/07  
ITEM NO. 4  
EXHIBIT NO. 2

February 22, 2007

Dr. Royce Hanson, Chairman  
The Maryland-National Capital Park and Planning Commission  
8787 Georgia Avenue  
Silver Spring, MD 20910-3760

Re: Final Report of the Ad Hoc Agricultural Policy Working Group

Dear Dr. Hanson:

Once again, important decisions must be made on the fate of Montgomery County's Agricultural Reserve. The Sierra Club believes these decisions should be guided in a manner that maximizes two interrelated goals:

- Continuing the preservation of agriculture and rural open space, as designated in the *Master Plan*, with policies and regulations that minimize the fragmentation impact of new homes being built in the Reserve;
- Enhancing the ability of the agricultural community living in the Reserve to thrive and remain economically viable.

These general goals must be addressed with specific policy recommendations that reflect current realities, historical patterns of enforcement and a clear recognition that both goals must be pursued simultaneously if the significant public value of the Agricultural Reserve is to be enjoyed by future generations of Montgomery County residents.

To this end, the Sierra Club makes these recommendations:

**Transfer Development Rights (TDRs).** TDRs represent the principal compensation that property owners in the Ag Reserve received for the change in base density from 5 to 25 acres that established the Ag Reserve 26 years ago. The sale of TDRs has allowed farmers to earn compensation from their land while continuing agricultural use. Clearly, maintaining the viability of the TDR program is essential both to the economic viability of farming and to the preservation of agricultural land. Yet inventories by planners show a shortage of attractive TDR receiving areas. *Thus, the Sierra Club strongly supports the recommendations (see page 14 of their report) made by the Working Group as well as the recommendations made by the 2002 TDR Task Force.* In particular, the County has an obligation to designate the use of TDRs for

receiving areas whenever additional density is proposed. These receiving areas should include floating and mixed-use zones as well as appropriate use of commercial, industrial, and R&D zones.

**Building Lot Termination (BLT) Program.** An effective Building Lot Termination program, in conjunction with existing easement purchase programs (see page 33 in the Working Group Report), would go a long way towards protecting agricultural land and in reducing fragmentation of this land. The Working Group Report recommended that public funding be used to start the program quickly and also that a private purchase program be established. They specified that receiving areas in commercial and industrial zones be reserved as receiving areas for BLTs. *The Sierra Club recommends that the Planning Board and County government establish a program, with public support, to amend the Zoning Ordinance to establish new receiving areas.*

**Pending Legislation.** The Working Group made a very important recommendation to complete the work of ZTA 05-23, establishing that both residential and non-residential building rights are extinguished when TDRs are sold. *The Sierra Club strongly recommends that this legislation be completed in a timely way.*

**Sand Mounds and Alternative Septic Systems.** The recommendation made in the final Working Group Report was to allow one sand mound per 25 acres for the first 75 acres and one sand mound for each additional 50 acres (option A). However, a substantial minority recommended one lot per 50 acres (option B). The estimates of the number of sand mound enabled building sites for these two options that the Working Group used were 433 for option A and 311 for Option B. It is to be emphasized that both numbers are estimates and, in fact, it is not precisely known how many additional sand mound enabled building sites would actually be allowed under either option.

The Sierra Club believes that either of the above options will significantly contribute to fragmentation of the Agricultural Reserve. As a result, *the Sierra Club recommends that sand mounds and alternative septic systems be allowed only in cases to replace a failed septic system serving an existing home or to enable the construction of a home on a child lot.* The Sierra Club believes that the recommended changes involving greater use of TDRs in receiving areas and increasing funding and market demand for the BLT program would increase the value of TDRs and BLTs and fairly compensate landowners for any financial consequences that result from our recommendation on sand mounds.

Whatever you decide on the issue of sand mound-enabled building lots, *the Sierra Club recommends that a more detailed estimate of the potential number of rooftops be done prior to your decision.* We recognize there is some uncertainty in making reliable estimates for different options involving sand mound-enabled building lots – but having some discussion of this uncertainty would help both Park & Planning and the County make a wise choice on a matter that could potentially introduce a very large number of new rooftops in the Reserve.

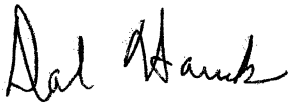
**Child Lots.** The intent of the legislation that allowed lots for the children of property owners in the Reserve was crystal clear – namely to allow the children of these original owners to remain

on the property with their parents. However, the legislation that established how this was to be done and, in particular, whether or not market lots were also to be given in addition to child lots was poorly worded. The Sierra Club believes that earlier Park and Planning Commissions misinterpreted the original legislation in regards to the market lot matter. In addition, under the current rules, the newly created child lots can be immediately sold on the open market – and this is clearly counter to the intent of the original legislation. To eliminate this abuse, the Working Group recommended a five-year holding period for child lots. *The Sierra Club makes two recommendations with regard to child lots. First, the legislation should be clarified to specify that child lots are not in addition to market lots. (In other words, if all zoning capacity is used for child lots, no additional market lots can be created.)*

*Second, we do not believe that a five-year holding period is sufficiently long to deter potential abuse of the intent of the child lot legislation. By our calculations, one could still make an attractive profit by selling a house that has been unoccupied but maintained for five years. We therefore recommend that the holding period be set at 10 years, a length of time that very clearly supports the intent of the original law and which is not unreasonable for legitimate child lots.*

As the County's population grows and available land becomes increasingly scarce, there will be mounting pressures for development in the Agricultural Reserve. In this regard, the Sierra Club was very pleased with the recent decision made by the County Council both to deny water and sewer for private institutional facilities and the decision to limit the size of multi-use systems. In addition, we support the conclusion of the Final Report of the Ad Hoc Agricultural Policy Working Group which noted that "If the Agricultural Reserve is to survive permanently, policies must protect both farming and farmland, while fostering a deep commitment to stewardship that looks beyond current generations and current landowners." How this is to be done rests to a large extent upon the decisions and recommendations that the Park and Planning Commission and the County government make in this important area.

Sincerely,



David Hauck, Chair  
Sierra Club, Montgomery County Group  
hauck\_d@msn.com  
301-270-5826

# MEMORANDUM

February 21, 2007

TO: Royce Hanson, Director  
Maryland National Capital Park and Planning Commission

FROM: Jim Brown, President  
Sugarloaf Citizens Association, Inc.

SUBJECT: Analysis and comments on the **Final Report of the Ad Hoc Agricultural Policy Working Group**, published January 2007

Please accept the following comments on the above-subject report. These comments represent the views of the Sugarloaf Citizens Association, Inc. Additional comments may be forthcoming and available in our testimony before the County Council on this matter. The SCA feels strongly that an economic development plan to promote and sustain diversified farming in the agriculture reserve is essential for securing the future of the reserve. We strongly recommend that this be accomplished by the County in the near future.

- I. Transferable Development Rights Program, including Tracking**
- a. Review of relevant laws and legislation
  - b. Activity under the existing law
  - c. Ad Hoc Group recommendation:
    - i. Distinguish between buildable and excess TDRs
    - ii. Require TDR utilization for residential development in floating zone applications/local map amendments
    - iii. Designate buildable TDRs for use in floating zones as well as in commercial and industrial zones, central business districts and research and development zones.
    - iv. Clarify limitations on non-agricultural, non-residential uses (i.e. private institutional facilities) where land is covered by TDR easement
    - v. Reintroduce legislation to prevent property owners from selling TDS easements and developing a non-residential, non-agricultural use on the property.
    - vi. Endorse recommendations of the 2002 TDR Task Force

**SCA Comments:**

*The SCA agrees with the recommendation for increasing TDR receiving areas to include industrial, R&D, central business districts, and commercial zones. We believe that this issue is difficult and complex and will need research by the County to determine the impact on down county receiving areas where adding density may become an issue.*

*The SCA also recommends that the County tighten up tracking policies and procedures.*

*The SCA strongly supports efforts to implement the recommendations in the report.*

## **II. Child Lots**

- a. Recommend continuing to allow use of child lots in RDT zone.
- b. Recommend Council amend Zoning Ordinance to clarify density provisions and ownership issues to protect farmland.
- c. Recommend maximum density of one lot per child in addition to base density allowed in RDT.
- d. Also recommend the following:
  - i. Child must own dwelling for five years, with exceptions for hardship cases such as those used in MALPF easement program.
  - ii. Child must not lease dwelling or enter into sale for five years, except for lease to immediate family member.
  - iii. Landowner may create only one lot per child regardless of number of properties owned.
  - iv. Child lot can be created after death if landowner's intent was to create lot and is established in writing through a will or other document admissible in probate.
  - v. Majority of land parcels with child lots must be reserved for agriculture.
- e. Limit public water to child lots

### **SCA Comments:**

*Support the current law as written and enforce as to the law's original intent. Do not allow bonus density on top of child lots. Have an appeals process in place for awarding additional child lots.*

*The five year residency requirement should be longer, or there should be other regulations imposed to prevent "flipping" of the property.*

*Oppose the extending of public sewer/water to child lots.*

*The County must put into place an enforceable monitoring mechanism that is not complaint based.*

*SCA supports allowing for creation child lots after death as long as the intent to create the child lot is clearly documented in a will or other document accepted by the Court during probate.*

## **III. Sand Mounds**

- a. Current master plans recommends against use of alternative individual and community sewerage systems in the reserve. There is debate as to whether sand mounds are an alternative system.
- b. Report recommends continued use of sand mounds, but limiting their potential use.

- c. Most controversial of all topics in report.
- d. Recommended for parcel existing as of 12/1/2006:
  - i. Allow sand mound where there is an existing house and the sand mound would not result in development of an additional house;
  - ii. When it enables property owner with approved deep trench system percs to better locate potential house to preserve agriculture;
  - iii. For child lots, provided recommendations for child lots are also adopted;
  - iv. For bona fide tenant housing wherein dwelling can never be conveyed from parent parcel;
  - v. Pre-existing parcel defined as exempt lot or parcel;
  - vi. Properties where there has been significant investment in testing for sand mounds prior to adoption of these restrictions;
  - vii. Permitted agricultural uses;
  - viii. Purpose of qualifying for a State or County easement program.

**SCA Comments:**

*The SCA endorses the remarks and rationale outlined in "COMMENT 2" (page A-8-A-9) of the report. The comment states that the Functional Master Plan speaks strongly against alternative individual sewerage disposal systems usage in the RDT zone. This position was adopted to limit maximum build out in the RDT zone. Widespread use of sand mounds will undercut the goal. While the issue of whether or not sand mounds are an "alternative system" is open to debate, the intent of the master plan is clear in its effort to use sanitation management tools to limit growth in the RDT zone.*

**IV. Building Lot Termination (BLT) Easement Program**

- a. Establish BLT as means of preventing fragmentation of farmland.
- b. Two goals:
  - 1. Reduce number of buildable lots in Ag. Reserve while providing equity to landowner;
  - 2. Preserve by easement as much usable farmland as possible.
- c. Recommend public financing for BLT program, initially using proceeds from Ag. Transfer Tax

**SCA Comments:**

*There were several questions raised regarding this recommendation. Consideration should be given to the program's impact on the future with regard to new persons entering the farming profession. Taking value out of the land and not allowing for a new farmer to build a home on the acreage could impact farming sustainability.*

*There are also questions as to the funding mechanism for the program. Using the Agricultural Transfer Tax as the funding source seems unfair to the farmers who are the ones paying it.*



*If the program is adopted, the County needs to develop standards similar to existing State and County programs for use in considering landowner applications. These standards should be based on those in existing programs such as the Legacy Open Space and MALFP.*

**V. Pending Legislation**

- a. Recommend Council enact legislation similar to ZTA 05-23 that would require TDR easement, in addition to limiting construction of one-family dwelling, prohibit construction for non-residential use other than agriculture.

**SCA Comments:**

*SCA felt strongly that the issues of impervious surfaces and PIF need to be reviewed and new legislation drafted to address these issues in order to protect the Agricultural Reserve. The SCA supports the 15% limitation on impervious surfaces in the RDT zone.*

*The SCA is against the adoption of the Ad Hoc Committee's recommendation on this matter.*

**VI. Additional Issues**

- a. Homebuyer notification laws
- b. Right-to-farm legislation
- c. Prevent fragmentation of farmland
- d. Other issues to include zoning, tenant homes, rustic roads, and economic viability of farming and the agricultural reserve.

**SCA Comments:**

*The SCA was very concerned about the air quality issues. The SCA recommends that the burning of refuse or plant life or cutting of vegetation for purposes of building residences not be allowed. The SCA also recommends that and clear cutting of mature hedgerows or forests should be subject to a review process, that this requirement be well publicized, and an agency assigned to have full enforcement powers.*

*The SCA questions why this issue is not part of Rustic Roads.*

*The SCA believes strongly that there need to be education programs in place to support and encourage both traditional and alternative farming in the Agricultural Reserve. The SCA recommends strongly that the County be tasked with developing a comprehensive economic development plan for diversified farming in the Agricultural Reserve. Virginia has a program which could serve as a model for the type of diversity needed in the training of the agricultural extension agents.*

*The SCA believes signage in the Agricultural Reserve would be beneficial and educational.*

*Design standards:*

*The SCA believes that site specific design standards should be in place as a means of maintaining the viability of the land for agriculture. It is recognized that these cannot be "one size fits all" standards.*

*Tenant homes:*

*The SCA agrees that there should be new requirements to ensure that the ownership of tenant homes is not transferred to individuals not employed on the farm. The SCA recommends that there should be a limit imposed on the number of tenant homes allowed and this limit should be dependant on the type of agricultural use.*

#4

**Coleman, Joyce**

**From:** Abbaticchi@aol.com  
**Sent:** Tuesday, February 20, 2007 6:29 PM  
**To:** MCP-Chairman  
**Subject:** Ag reserve

**RECEIVED**  
0178  
FEB 21 2007OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Hanson, I would just like to commend you for the work you are doing relating to the Ag reserve and would like to voice my concern regarding the sand mound issue and the tot lot issue. I believe there should be stronger guidelines relating to the sand mounds so that developers do not have the ability to take advantage of that provision and build more residences than were intended in the ag reserve. As for the tot lots, we all know of many instances where greedy landowners have already taken advantage and are making a killing off of what was supposed to be agricultural preservation. Why should they be given even more than originally promised, by giving them additional "market lots"? Again, I appreciate all you have done, and are doing to preserve this unique area. Thank you, Mrs. Krista Abbaticchio

\*\*\*\*\*

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A100

2/21/2007

Coleman, Joyce

#4

From: Anderson.Kate@epamail.epa.gov  
Sent: Wednesday, February 21, 2007 3:27 PM  
To: MCP-Chairman  
Subject: Ag Policy Task Force Report

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FEB 21 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Commissioners:

I live on Admirals Way in Potomac, Maryland, a short distance from the Agricultural Reserve. My family and I have lived in Montgomery County for over 20 years and we are proud of the County's national leadership in preserving open space by establishing the Reserve in the early eighties. I want to thank and commend the Ag Policy Task Force for their hard work in developing a report on this issue. While their report examines many of the issues which threaten the integrity of the Reserve, some of the proposed compromises sacrifice fundamental principles established over 25 years ago in the Master Plan, especially concerning child lots and on sand mounds.

The Building Lot Termination Proposal is a recommendation I support to eliminate "roof tops" in the Reserve. There should be a full economic analysis to determine if this is feasible for receiving areas in commercial, industrial zones. I do not support the Task Force recommendation for continued use of sand mounds. I would recommend sticking to the language and intent of the 1980 Master Plan which allowed alternative septic systems for legitimate child lots or failed septic systems only. Sand mounds have resulted in significant fragmentation of the land, contrary to the intent of the Master Plan. Without contiguous swaths of farm land, there will be no Ag Reserve. I also believe in a residency requirement for legitimate child lots in the Reserve to preserve farming or the family core, but a 5 year residency requirement is not long enough to ensure that these lots are not simply investment mechanisms. Please don't let the Reserve turn into the River Road corridor between Pineymeetinghouse and Seneca! The scenic byway signs really should come down along this stretch, unless "scenic" now means McMansion farms.

I understand there is a need for balance between the landowners' equity and the intent of the zone to preserve farm land and open space. According to the Master Plan, the equity issue was to be addressed by the TDR (Transfer of Development Rights) program. It makes sense to explore the BLT proposal as a next step to address equity. However, the sand mound and child lots recommendations made by the Task Force give undue priority to development over preserving agriculture and are contrary to the 1980 Master Plan. Thank you for considering these comments as you move forward to ensure protection of this vital part of Montgomery County.

Sincerely,

Kate Anderson  
10825 Admirals Way  
Potomac, MD 20854

#4

**Coleman, Joyce**

**From:** Roswitha Augusta [roswitha.augusta@verizon.net]  
**Sent:** Tuesday, February 20, 2007 3:17 PM  
**To:** MCP-Chairman  
**Subject:** An interesting time for decision making

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FEB 20 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Royce Hanson:

This truly is an interesting time for making decisions regarding land use. Yesterday in the Feb. 19th, in the "A Section" of the Washington Post, on page 20, there was yet another frightening article concerning global warming. Scientist again warn that global warming is real and that we must take immediate steps to curb green house gases for face serious climate changes. Scientist tell us this over and over again. Amazingly, their words are not taken seriously and jurisdictions continue to cut trees, subdivide, build more roads and fragment land, all that lead to more and more roads, traffic and more green house gases. Please, Chairman Hanson become a leader in in protecting the land, promoting alternative transportation solutions and help Maryland become a role model for curbing green house gases and protecting farm land and green space from being fragmented. The decisions that are made today will have a great impact on our future.

Thank you in advance for your effort to protect our environment and for protecting the well being of our grandchildren!

Sincerely

#4

**Coleman, Joyce**

**From:** Krisna and Chuck Becker [krisnachuck@verizon.net]  
**Sent:** Wednesday, February 21, 2007 9:56 AM  
**To:** MCP-Chairman  
**Subject:** Keep Integrity of the Ag Reserve

**RECEIVED**  
FEB 21 2007

Dear Chairman Hanson:

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

I believe that the County must protect principles that were established 25 years ago in the Master Plan, namely, keeping the integrity of the Agricultural Reserve by limiting sand mound septic systems and "child lots".

Farm land has been lost to residential development due to use of sand mounds. I support the 1980 Master Plan which recommended against using alternative septic technology except for legitimate child lots or failed septic systems.

A longer child residency requirement would help limit the "child lot" rule to what it was intended to allow. I do not support the recommendation for bonus density giving "market lots" in addition to child lots to exceed the 1 for 25 acre zoning. Please place a "cap" on the number of child lots. No other jurisdiction grants bonus density on top of child lots.

Thank you,  
Krisna Becker  
22511 Schoolfield Ct  
Clarksburg, MD 20871

#4

**Coleman, Joyce**

---

**From:** Maggie Bartlett [bartletm@mail.nih.gov]  
**Sent:** Thursday, February 22, 2007 9:11 AM  
**To:** MCP-Chairman  
**Subject:** Protect the Ag Reserve

Dear Mr. Royce,  
Please do not lessen the restrictions on sand mounds and child lots. Our Ag Reserve needs the protection that you and the board can support.

Maggie Bartlett  
Boys Resident

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FEB 22 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

#4

**Coleman, Joyce**

---

**From:** MARY ANN CHANDLER [machandler@audubonnaturalist.org]

**Sent:** Thursday, February 15, 2007 1:49 PM

**To:** MCP-Chairman

**Subject:** Agricultural Reserve Task Force Recommendations

The Planning Commission will soon consider the recommendations of the Agricultural Reserve Task Force. I am writing to urge adopting the minority recommendations in two very important areas;

- support the minority report on sand mound septic systems that limits these systems to one per 50 acres rather than one per 25 acres, and;
- support the minority report that says, in effect, that a farmer, who owns 100 acres and has five children should get five child lots, but *not* an additional four "market lots" now allowed on property of this size.

I am very concerned that adoption of the majority recommendations in these two areas will eventually undermine the purpose of the reserve through significant fragmentation of farms into building lots.

Mary Ann Chandler  
9902 Hillridge Dr  
Kensington MD 20895  
jwcmac@aol.com



2/16/2007



#4

**Coleman, Joyce**

**From:** PLEASANTSS@aol.com  
**Sent:** Wednesday, February 21, 2007 9:53 AM  
**To:** MCP-Chairman  
**Subject:** Agricultural policy

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FEB 21 2007

Royce Hanson, chairman  
Maryland-National Capital Park and Planning Commission  
Silver Spring, MD

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Hanson,

In reference to the hearing tomorrow, please move ahead on issues where there is consensus and take action to strengthen policies on sand mounds and child lots.

Thank you.

Margaret M Coleman  
James S Coleman  
16112 Barnesville RD  
Boys MD 20841  
301 972 3452

\*\*\*\*\*

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2/21/2007

(A106)

Testimony of Diana E. Conway  
Before the Planning Board of Montgomery County  
On the Agricultural Reserve Task Force

February 22, 2007

Good afternoon Dr. Hanson and members of the Planning Board. For the record my name is Diana Conway and I speak as an individual.

For the past eleven years my family and I have lived at 10600 River Road in an historic farmhouse, built by the founders of Potomac some 180 years ago. We are frequent and enthusiastic visitors to the Agricultural Reserve.

The Ag. Reserve Task Force Report leaves me both delighted and disappointed. I am delighted the Task Force was formed and set to work. I am delighted with the excellent work done to forge consensus on critical issues for the sustainability of the Ag Reserve. Key among these are the agreement on Building Lot Termination, and on expanding the Transferable Development Rights program to include more than residential zones as receiving areas.

I am also pleased that a diverse group of citizens agreed unanimously that the Ag. Reserve faces vital threats and needs comprehensive actions to be preserved and enhanced. But I am disappointed that the report---even with its minority reports---has veered too far from existing law and history in favor of a "current issues" compromise.

Accordingly I am here to advocate that you, and then the Council, shoulder the remainder of the work required to shape this debate into one that protects the land and the farming industry writ large, rather than one that is driven primarily by interests of current owners individually.

The Committee was well intentioned in trying to structure compromises which at least make everybody equally unhappy. However in doing so it sacrificed some fundamental principles, especially on child lots and on sand mounds. The Minority Reports are helpful but they are a bare minimum required in a policy destined to serve us for decades. Even the minority reports miss the point of protecting those critical principles established 25 years ago.

To be clear, I do not want to see the Committee Report wiped out; it is an important marker on the path to preserving the Ag. Reserve. But the next debate---the real issue---is whether the fundamental principles on which the Ag.

Reserve is based are to be renewed or surrendered. It's not a question of whether the Minority Reports went too far-----they didn't go far enough! And neither the full report nor the minority statements demonstrates that the Task Force lifted their eyes from the individual interests at stake, to see the big picture of what is required for the long term, for agricultural uses to remain economically and culturally sustainable and for the policy to be impregnable against the gnawing corrosion of reinterpretation and misapplication of the policy.

For example, the child lot "density" issue is a give-up to placate current landowners. I think the history and intent of the child lot law on the density question is clear. Unfortunately after 15 years of abuse (due to lack of enforcement in the County) current landowners feel entitled to get the same density exception their friends have been getting these past 15 years. I am delighted that the full Task Force voted to rein in abuse of child lots with a residency requirement, but that is not enough. To award ANY excess density is to make a mockery of the child lot program's purpose. Let us agree this should not go any further.

The sand mounds debate is more up front - "will technology be allowed to wipe out the Ag. Reserve Master Plan, or not?" The Task Force focused on quantitative compromises which, in a sense, legitimized sand mounds without addressing adequately the underlying question. That is, 25 years ago the creators of the Ag. Reserve recognized that sand mounds were technically feasible but took a strong stand against such new technologies. The fact that sand mounds have been used widely elsewhere does not change the reason for not allowing them in the Ag. Reserve---it reinforces the reason. If we introduce every innovative technology as it matures to the Ag. Reserve, then the Ag. Reserve will be gone before the next Task Force can be convened to worry about it.

I understand there are limits to what can be done based on political will. I understand the debate is fraught with vested interests and heartfelt vehemence.

What I don't understand is how the starting point for this debate can already be so far from the fundamental principles. The debate should start with the fundamental principles, not with a tight focus on the Task Force reports.

Thank you for considering my views.

Diana E. Conway  
10600 River Road  
Potomac, MD 20854  
301-983-6124  
dconway@erols.com

#4

**Coleman, Joyce**

**From:** Brenda Corbin [brenda.corbin@verizon.net]  
**Sent:** Tuesday, February 20, 2007 8:17 PM  
**To:** MCP-Chairman  
**Cc:** Tom Corbin  
**Subject:** Agricultural Reserve Policy Task Force Report

**R E C E I V E D**  
FEB 21 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Re: Agricultural Reserve Policy Task Force Report

Dear Chairman Hanson and Commissioners

Although we live down-county in North Chevy Chase, we have long been proud of our county's nationally recognized Agricultural Reserve. As long-time supporters of the environment, the Ag Reserve is important not only to our state but as an example for the rest of the nation.

We have learned of the Ag Policy Task Force and wish to compliment them on the important work they have accomplished. Their report is a good approach and look at the issues which threaten the strength of the Reserve. However, by attempting to find compromises, some of the important principles put in place 25 years ago in the Master Plan have been lost. We are speaking specifically about child lots and sand mounds.

The Building Lot Termination Proposal [to eliminate "roof tops" in the Reserve] is a recommendation we support. There should be a full economic analysis to determine if this is feasible for receiving areas in commercial, industrial zones.

We absolutely do NOT support the Task Force recommendation for continued use of sand mounds. Instead, the county should adhere to the language and intent of the 1980 Master Plan which allowed alternative septic systems only for legitimate child lots or failed septic systems. Sand mounds have resulted in even more fragmentation of the land, contrary to the intent of the Master Plan. If there are no contiguous swaths of farm land, the Ag Reserve.

We also agree with a residency requirement for legitimate child lots in the Reserve to preserve farming or the family core, however, a 5 year residency requirement is not long enough to ensure that these lots are not simply investment mechanisms.

It is certainly clear there is a need for balance between the landowners' equity and the intent of the zone to preserve farm land and open space. According to the Master Plan, the equity issue was to be addressed by the TDR (Transfer of Development Rights) program. It makes sense to explore the BLT proposal as a next step to address equity. However, we feel the sand mound and child lots recommendations made by the Task Force give too much priority to development over preserving agriculture and are not in agreement with the 1980 Master Plan.

Thank you for your continuing work on the Ag Reserve to preserve this part of Montgomery County.

Sincerely,

Brenda and Tom Corbin

(A109)

2/21/2007

8826 Brierly Road  
Chevy Chase MD 20815-4752

301/656-8719



2/21/2007

#4

**Coleman, Joyce**

**From:** Poplar Spring [psanimal@erols.com]  
**Sent:** Wednesday, February 21, 2007 6:02 PM  
**To:** MCP-Chairman  
**Subject:** Re: Ag Policy Task Force Report

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FEB 21 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Commissioners,

I have lived outside of Poolesville on a farm in the Agricultural Reserve for more than 25 years, and am very concerned about the future plans, especially regarding potential development, in this important green space. While I commend the Ag Policy Task Force for their attempts to address the issues that threaten the Ag Reserve, I feel that too many compromises were made in favor of more development in the Reserve.

I support the Building lot termination proposal. I do not support the recommendation by the task force to continue to allow sand mounds. I believe that sand mounds are the greatest threat to the Ag Reserve, and have already resulted in one major developer planning to build multiple large McMansions in the Reserve. We should continue to adhere to the 1980 Master Plan, which allowed alternative septic systems (which sand mounds should be classified as) for failed septic systems or child lots only. If sand mounds are allowed without major restrictions, I believe it will be the end of the Ag Reserve as we know it.

I also support a residency requirement for child lots in the Reserve, but believe that five years is not long enough to prevent misuse of this potential loophole for personal gain. Farmers are already being compensated for their loss of equity by the TDR program. Please adhere to the intent of the Master Plan to protect this important county resource from the major increase in residential development that will surely occur if all of the Task Force proposals are enacted. Thank you.

Sincerely,

Teresa Cummings  
15200 Mt. Nebo Rd.  
Poolesville, MD 20837

2/21/2007

4112

#A

Coleman, Joyce

From: Daniel Dean [ddean@burdeshaw.com]  
Sent: Wednesday, February 21, 2007 9:56 AM  
To: MCP-Chairman  
Subject: Ag Policy Task Force Report

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FEB 21 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Commissioners

As a Montgomery County resident who lives very close to the County's Ag Reserve, and who regularly avails myself to its many attractions and resources, I feel I must contact you regarding the Ag Policy Task Force Report, and to encourage you to fully consider the possible outcomes before making any determinations which will have a lasting impact on our treasured open spaces.

Let me begin by thanking The Ag Policy Task Force for your work on this critical issue. Having said that, I feel it is vitally important to note that I feel some of the compromises which the Task Force have adopted will threaten the integrity of the Reserve, and will also sacrifice some guiding Master Plan principles, *especially* as they relate to the subjects of child lots and sand mounds.

The Building Lot Termination Proposal is a recommendation I support to eliminate "roof tops" in the Reserve. There should be a full economic analysis to determine if this is feasible for receiving areas in commercial, industrial zones.

*I cannot and do not support the Task Force recommendation for continued use of sand mounds.* The intent and language of the 1980 Montgomery County Master Plan allowed alternative septic systems *only* for legitimate child lots or failed septic systems. Sand mounds have resulted in even more fragmentation of the land, contrary to the intent of the Master Plan. Without contiguous swaths of farm land, there will be no Ag Reserve.

Additionally, I feel a residency requirement for legitimate child lots in the Reserve to preserve farming or the family core is needed, but a five-year residency requirement is not long enough to ensure that these lots are not simply investment mechanisms.

Undeniably, there's a need for balance between the landowners' equity and the intent of the zone to preserve farm land and open space. According to the Master Plan, the equity issue was to be addressed by the TDR (Transfer of Development Rights) program. However, the sand mound and child lots recommendations made by the Task Force *give undue priority to development over preserving agriculture* and are contrary to the 1980 Master Plan.

I respectfully request that you consider these comments before your public hearing.

Thank you.

Sincerely,

Daniel Dean  
14701 Springfield Road

A113

2/21/2007

Darnestown, MD 20874  
(301) 926-0727

2/21/2007





DATE: 2/22/06

ITEM NO. 4

EXHIBIT NO. 12

**Steve Dryden // 5506 Charlcote Rd, Bethesda, 20817**

**Testimony Before the Planning Board, Feb. 22, 2007**

**Re: Agriculture Policy Task Force Report**

My name is Steve Dryden. I'm a Bethesda resident, and appearing here today wearing several hats, among them the Friends of Rock Creek, and the Stormwater Partners Coalition. The latter is an ad hoc group of several dozen organizations focusing on strengthening the county's permit under the federal Clean Water Act. The goal is to stop further degradation of our streams, protect the fragile Potomac River and prevent the slow death of the Chesapeake Bay.

I'd like to emphasize the far-reaching consequences of the policies that the county adopts regarding the Agriculture Reserve. If we undermine the Reserve, even on a gradual, death by a thousand cuts basis, we are surely undermining our solemn commitment to Save the Bay.

I am often astounded, looking back, that our policy process worked to well a quarter of a century ago when the Chairman and other public servants crafted the Reserve. It stands today as one of the handful of successes in planning that the master regionalist, Frederick Gutheim, called for in his opus, "The Potomac."

Central to the Gutheim vision was the notion of balance, and I do not envy the members of the Ag Task Force who had to find that elusive mean. The Task Force worked very hard, but it went too far in compromising on sand mounds and child lots. Others who are testifying here today will explain this problem, so I don't need to belabor these points. I would like to emphasize an examination of the Building Lot Termination recommendation with a fiscal or economic analysis to create a feasible way to fund such a program to remove development rights.

I live downcounty. We are part of the trade-off that is made every day to support the existence of the Ag Reserve. You probably read this morning in the Washington Post about plans to expand the Westfield mall. The reporter said the goal was to better compete with Tysons Corner. I don't know if that was just journalistic license or if the Australian backers of this plan and their financiers are really so insane as to use the word Tysons in describing their scheme. This isn't just an aesthetic aside on my part. I do hope planners will use this opportunity to do something serious about the degradation that this mall has caused in Cabin John Creek. The notion of equity, as applied to property owners in the Ag Reserve, can also be useful in the public sphere.

Statement of Marilyn Emery, 9713 Oldspring Road, Kensington, Maryland  
To be entered into hearing record: February 22, 2007 in the matter before  
Montgomery County Park and Planning Board: Final Report of the Ad Hoc  
Agricultural Policy Working Group.

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My husband Keith and I appreciate the opportunity to comment on the important issues facing the board. I note that the title of the group whose report we are considering is "Agricultural Policy Working Group." That title is important: we are determining policies that will promote and sustain farming in Montgomery County now and far into the future. Unfortunately, it seems that that vision may have become clouded with the desire to appease current land owners in the Reserve that seek to benefit in ways wholly separate from the conduct of agriculture.

For a number of years, we have tried to acquire enough land to start a tree farm. Several times we found ideal parcels and yet were thwarted by per acre costs that surpassed those prices that we had understood raw farm acreage would sell for. The last several years the acreage prices have skyrocketed. The sellers made it clear that we could recoup by subdividing and developing. We wanted to farm and have one homestead for our family. **Developing the land ran counter to our desire and our ability to farm it!**

We have a chance to further the work started in 1981. We need to close loopholes that result in land uses that undermine the Reserve. We support the recommendations of For A Rural Montgomery and hope that further evaluation will occur before any decision is reached. Our actions now are vital to the continued viability of our Agricultural Reserve.

Thank you.

Testimony for the MNCPPC

February 22, 2007

Agricultural Reserve Development Policy

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**COMMUNITY EXHIBIT**  
**RECEIVED BY MCPB**  
**DATE:** 2/22/07  
**ITEM NO.** 4  
**EXHIBIT NO.** 13

My name is Cynthia Fain. I am a life long resident of Montgomery County Maryland. I currently live in Kensington, MD. I am a trained conservation easement monitor with the Maryland Environmental Trust. My testimony today represents my personal views about future development in the Agricultural Reserve.

The Agricultural Reserve Task Force was an important step towards designing a plan that will preserve the integrity of this precious resource. Without an intact Agricultural Reserve, Montgomery County will have lost vast areas of natural filters, such as forest, and large tracts of farm land. Any policy that will encourage development in the Agricultural Reserve should be carefully scrutinized. We are at a crisis point in Montgomery County in terms of loss of forest, increasing amounts of impervious surface and extreme fragmentation of wildlife habitat.

One important way to limit development in the Agricultural Reserve is to limit the use of Sand Mound Septic Systems. The sand mound technology should not be used to build housing subdivisions in the Reserve. Under the 1980 Master Plan, Sand Mound Septic Systems were only permitted in cases of failed septic systems, or for legitimate child lots. We should adhere to the original Master Plan recommendations.

I support placing a cap on the number of child lots allowed in the reserve. The residency requirement for a child should be longer than five years. We must have a child lot policy that ensures the land will continue with agricultural uses, and not just be used as an investment strategy.

Keeping the Agricultural Reserve economically prosperous can be achieved without ruining the integrity of the land. The Building Lot Termination Proposal warrants further fiscal analysis.

I hope the Planning Board will balance the environmental integrity of the Agricultural Reserve with the needs for economic viability. Retaining large areas of undeveloped farmland and forest land is vital to the health of our county. The Agricultural Reserve should not be sacrificed for short term economic gain. Any development policy should be weighed against possible threats to agriculture and the environment.

Cynthia Fain  
4016 Simms Drive  
Kensington, MD 20895  
301-942-4885

#4

**Coleman, Joyce**

**From:** c.g.fecteau@att.net  
**Sent:** Wednesday, February 21, 2007 8:48 PM  
**To:** MCP-Chairman  
**Subject:** Task Force Report on the Ag Reserve

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FEB 22 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Commissioners:

My name is Claude G. Fecteau and this is the first time I write to the Planning Commission. The other three voters in my house (wife, and two adult children) live at 23416 Peach Tree Road on what I thought was deep in the Ag Reserve. We greatly appreciate the efforts of you and the other people who work long hours, with little thanks, for trying to preserve an internationally recognized, blueprint for wise land use, planning and management.

Over the past two years, my wife Kiva has been working with the group America Speaks and the citizens of New Orleans on intelligent planning. **Montgomery County's use of TDR's was sited as one the best methods to use in rebuilding New Orleans!** In addition to being proud of the lead in conservation my county is taking, we would strongly encourage the good work begun by the Ag Reserve Policy Task Force be carried forward by developing the Building Lot Termination policy. With so much international attention on wise land use, it would be a shame for the county to loose its reputation as a leader.

While sand mounds have been used in the Ag Reserve, this or any non-proven alternative septic system should be avoided. We are not engineers; however, several of our friends and relatives are. Sand mound technology is suspect, untested for long-term use, and logically a terrible solution. Failures of these systems endanger the entire watershed, the health and safety of the users and their neighbors, and may place undue liability on the county for permitting suspect technology. At the very least, the county would be liable for cleanup, particularly since the Ag Reserve watershed feeds Federal park and protected lands (the same Federal standard applied in super fund cleanup would likely apply).

We were greatly relieved by earlier commission action that limited the estates of property owners from claiming Child Lot rights. While we applaud the commission's action, we feel that the purpose of Child Lot allowance in the original Ag Reserve plan has been weakened by inadvertent abuse. Because a poor policy was implemented in the past, the commission seems unduly bound by prior decisions. Please take every opportunity to protect the spirit and intent of the Ag Reserve. Only resident children intent on farming the lot are protected.

We don't envy the tough decisions the Chairman, Commissioners, and the Ag Reserve Policy Task Force have to make. Any recommendations are going to have fans and opponents. The decisions you make effect generations of citizens in the county, the state, the country, and now internationally. Please continue to make us proud to live in Montgomery County.

Sincerely,

The Fecteau Family

(A119)

2/22/2007

RECEIVED  
0199  
FEB 23 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Jim Fremont  
2421 Evans Drive  
Silver Spring, MD 20902-4938  
[jimfremont@earthlink.net](mailto:jimfremont@earthlink.net)

February 22, 2007

Mr. Royce Hanson  
Chairman  
Montgomery County Planning Board  
8787 Georgia Ave.  
Silver Spring, MD 20910

Dear Chairman Hanson:

As you know, the recently released Agricultural Policy Working Group Report contains many important recommendations that could affect our county's Agricultural Reserve.

As a member of the Montgomery Countryside Alliance and one who wishes to see the Agricultural Reserve actually preserve agriculture and the county's working farms, I am writing to very strongly urge the Planning Board to support:

- A Building Lot Termination Program, which would eliminate the potential for development while compensating land owners; and
- Maximizing the number of receiving areas for the Transferable Development Rights program and using TDRs in commercial and mixed-use zones.

I agree with the Countryside Alliance's support for the Minority Report on child lots, which recommends that in no case should market lots and child lots be allowed to exceed the base density, and that stronger limitations on sand mound septic systems than recommended by both the Majority Report and Minority Report should be enacted.

The bottom line is that the purpose of the Agricultural Reserve is to preserve agriculture, and the jobs, open space, and natural resource protection it provides. Please provide the strongest protection possible to help achieve this purpose.

Thank you for your time and for considering my comments.

Sincerely,

  
Jim Fremont

#4

**Coleman, Joyce**

**From:** Ellen Gordon [ellen@gordonballard.com]  
**Sent:** Wednesday, February 21, 2007 8:35 PM  
**To:** MCP-Chairman  
**Subject:** Ag Reserve and the Ag Policy Task Force

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Planning Board Commissioners:

I want to commend the Ag Policy Task Force for their hard work, and their good intentions. That said, I find I cannot support all of their recommendations, particularly in regard to sand mound septic systems and

child lots. The 1980 Ag Reserve master plan wisely recommended against allowing the use of alternative septic system technology (which would include sand mounds), except to replace failed septic systems or to allow for the legitimate construction of a home for the child(ren) of the farmer, so as to preserve the family farm. Any other use of sand mound technology including as recommended by the Task Force is a misinterpretation of the original master plan, and a threat to the integrity of the Ag Reserve.

Child lots were made a part of the original master plan's efforts to preserve family farms. As can easily be seen in a drive through the Ag Reserve, this provision is being abused to allow actual subdivisions of farm property, with nary a farmer's child living in any of these homes.

However, the 5 year child residence requirement proposed by the Task Force is inadequate to ensure that the spirit of the provision--preservation of family farms--is supported. Please require a

longer residence period. More importantly, please do not reward landowners with bonus density by giving them market lots on top of the child lots.

If we are to continue to sustain farming in the Ag Reserve, it's vital that the Planning Board and Montgomery County take every step possible to preserve farms and farmland.

Sincerely,

Ellen Gordon  
17401 Ryefield  
Dickerson, MD 20842  
301-407-9155

#A

**Coleman, Joyce**

**From:** Stephen Gunnulfsen [sgunnulfsen51@yahoo.com]  
**Sent:** Wednesday, February 21, 2007 10:23 AM  
**To:** MCP-Chairman  
**Subject:** Ag Policy Task Force report comments

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Chairman Royce Hanson  
Montgomery County Planning Board  
Silver Spring, Maryland

February 21, 2006

Dear Chairman Royce Hanson,

Although I know that the members of the Agricultural Policy Task Force worked hard to produce the final report that you will consider tomorrow, I disagree with two of the recommendations in that report. If followed, I believe that the majority position regarding sand mounds and child lots will lead to the disintegration of the agricultural reserve.

Last year, after extensive debates, the County Council prohibited the use of public water and sewer lines into the Agricultural Reserve. They did this to stop the impending encroachment into the reserve of large, private institutions that would have gobbled up large chunks of prime farmland. Sand mounds are now being used to bypass this prohibition. Farms are being replaced by McMansions, in part, due to the use of sand mounds. As you well know, the 1980 Master Plan describes sand mounds as "alternative systems" and recommends against the use of alternative septic technology in the Ag reserve. I believe that you should stick to the Master Plan and not allow sand mounds except in case of failed septic systems.

Child lots were allowed in the 1980 Master Plan to encourage siblings of farmers to stay on the land and help work the farm. Unfortunately, in many cases, the people residing on farms now are descendants of the original farm owners; they have no equity in the land. And yet, under the current rules and the recommendations of the task force, they are allowed to sell off the child lots to non-farmers and reap windfall profits. There should be at least a 10 - residency requirement on child lots and no bonus density given as the task force recommends.

I remember how hard you and the county council worked in the late 1970's to create a plan that would preserve agriculture and protect the environment in an increasingly populated region. If you allow the recommendations of the Agricultural Policy Task Force regarding sand mounds and child lots to stand, I fear that suburban sprawl will quickly overwhelm the land and the environment will suffer.

Sincerely,  
Stephen G. Gunnulfsen  
5613 Riggs Road  
Laytonsville, Maryland 20882

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A122

2/21/2007



#4

Coleman, Joyce

From: David Hartge [dandl@toad.net]  
Sent: Wednesday, February 21, 2007 1:59 AM  
To: MCP-Chairman  
Subject: re: Ag. policy task force report

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FEB 21 2007OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Commissioners

My name is Linda Hartge, and I live on the Patuxant River, in MONTgomery County, Maryland. Living on one of the very few family farms left in this area has made me particularly sensitive to the pressures of "keeping it country", and trying to save what is left of open agricultural areas is paramount to having Montgomery Co. remain one of the better places to live.

I am writing as one who firmly believes in the importance of our nationally recognized Agricultural Reserve. The Ag Policy Task Force is to be commended for their hard work. The report is a good "first step" in taking on the issues which threaten the integrity of the Reserve. But in trying to structure compromises, the task force sacrificed some fundamental principles that were established over 25 years ago in the Master Plan, especially on child lots and on sand mounds.

The Building Lot Termination Proposal is a recommendation I support to eliminate "roof tops" in the Reserve. There should be a full economic analysis to determine if this is feasible for receiving areas in commercial, industrial zones.

I do not support the Task Force recommendation for continued use of sand mounds. Instead, we should adhere to the language and intent of the 1980 Master Plan which allowed alternative septic systems only for legitimate child lots or failed septic systems. Sand mounds have resulted in even more fragmentation of the land, contrary to the intent of the Master Plan. Without contiguous swaths of farm land, there will be no Ag Reserve.

I also believe in a residency requirement for legitimate child lots in the Reserve to preserve farming or the family core, but a 5 year residency requirement is not long enough to ensure that these lots are not simply investment mechanisms.

I understand there is a need for balance between the landowners' equity and the intent of the zone to preserve farm land and open space. According to the Master Plan, the equity issue was to be addressed by the TDR (Transfer of Development Rights) program. It makes sense to explore the BLT proposal as a next step to address equity. However, the sand mound and child lots recommendations made by the Task Force give undue priority to development over preserving agriculture and are contrary to the 1980 Master Plan.

Years ago our family gave up our developmental rights on the property we live on, not because we are rich, or noble, but because saving the countryside is essential to everyone's well being. Please think hard about what is at stake, and help keep the agricultural preserves safe from the ever encroaching developers.

Thank you.

Sincerely,

Linda France Hartge

A123

2/21/2007

#4

**Coleman, Joyce**

**From:** MelaneKHoffmann@aol.com  
**Sent:** Wednesday, February 21, 2007 2:56 PM  
**To:** MCP-Chairman  
**Subject:** Ag Reserve Report

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OFFICE OF THE CHAIRMAN  
 THE MARYLAND NATIONAL CAPITAL  
 PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Planning Board members:

I live on Peach Tree Road in the Agricultural Reserve. My husband and I have 50 acres, on which we grow hay for our own horses, and in a good year for neighboring farms as well. We moved to Montgomery County from DC 25 years ago, primarily because of its commitment to green and open space.

The Ag Policy Task Force has done overall a good job reviewing the initial Ag Reserve Master Plan and updating its recommendations where necessary. One recommendation of the Task Force I want to strongly endorse is the Building Lot Termination, or "super TDR," idea, because it in effect neutralizes the financial incentive to sell precious farmland for development. This one program alone would do more to preserve land than any other; finding a way to fund it should be a top priority.

But there are a two items in the report where in the spirit of compromise the Task Force went too far, and these issues still jeopardize the future of the Ag Reserve: sand mounds, and child lot density.

- **Sand Mounds:** More new technologies will be developed in the future -- for a variety of needed services. Every time a new one comes out, should we treat it as an excuse to build on land that was slated to be preserved for agriculture? The logic of this escapes me. As has been REPEATEDLY pointed out, the sand mound exception was initially intended ONLY for failed septic systems, or when that is the only way to put in a septic system for a legitimate child lot. **Restricting sand mounds will protect the Reserve; allowing their widespread use will provide incentive to develop and thereby destroy the Reserve. Pure and simple.**

- **Child Lots:** Stop the profiteering. Many people have abided by the initial intent of the child lot provision, please do not reward those who have gamed the system, or those who would like to. Child lots were meant to preserve family farming, not to make a profit based on how many children, cousins, nieces and grandchildren people can pull out of the woodwork. We've all seen landowners build "child" houses and then immediately sell them on the open market. The updated regulations should require a residency requirement of LONGER than 5 years. And the Planning Board should absolutely and forever preclude awarding "market lots" in addition to child lots to exceed the 1 for 25 acre zoning. Again, increased density will destroy the viability of agriculture, not support it.

Thank you.

Melane Kinney Hoffmann  
 23801 Peach Tree Road  
 Clarksburg, MD 20871  
 301-972-6126 home  
 301-972-6430 home office  
 301-929-5857 cell  
 melanekhoffmann@aol.com

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A124

2/21/2007

#4

**Coleman, Joyce**

**From:** claire howard [chowardlindenwood@verizon.net]  
**Sent:** Wednesday, February 21, 2007 3:58 PM  
**To:** MCP-Chairman  
**Subject:** Agricultural Reserve Policy

**RECEIVED**  
 FEB 21 2007

OFFICE OF THE CHAIRMAN  
 THE MARYLAND NATIONAL CAPITAL  
 PARK AND PLANNING COMMISSION

Dear Mr. Hanson and Distinguished Commissioners,

Thank you for your efforts during the past several months in analyzing our objectives for a clear plan for the future of our beautiful Maryland countryside, known as the "Ag Reserve". I commend all our predecessors well in being leaders in defending one of our State's most precious possessions. It is precisely this strong leadership that will be required for us to keep this valuable "green space" available for the future.

Let me tell you a story. As a young married woman in 1974, I had a dream. I wanted to raise our future family in the country; raise our own food, keep our own livestock, view the heavens during the day and thank God every night for the gift of His sunsets sprawling across the rolling hills each night.

Although I continued my prayers of gratitude for all our blessings, it was not until a few years ago that our dream came true. We were so blessed with acquiring "Lindenwood Farm" one of Montgomery County's historic treasures. We were told the land surrounding our farm was zoned 25 acres. We planned at least to raise our grandchildren in the country. One year later, I left the driveway to find an aerial maker on the easement. A visit to Poolesville's Town hall presented my worst nightmare; a 98 home development. Further involvement in the development in the area brought forth another nightmare. Although geology reports may not substantiate adequate water supply, the town can manipulate its several wells to "Rob Peter to pay Paul" and therefore keep on building. I also learned that despite all efforts, I am powerless to stop this. I learned through great heartache that expansion is the plan. Yikes. We have put our everything into our home. Love being the most important.

So, you see, I need you folks. I need to know that as I have put my faith in you and supported you that you will say "no". Say "no" to development and mean it. I cannot vote in Poolesville. We live outside the town limits. I cannot hold office and I cannot serve the community in the town I live in. I cannot stop annexation. Without laws and policies to safeguard what is loosely called the Ag Reserve, clearly it will be chipped away. Say No, please, to sand mounds unless needed by old homes that have no recourse when they fail. Ours will be coming up soon, I fear. Say NO to density. Say No to tot lots and expand the residency requirements. Very few 20 year olds want to give up the night life to live in the country. They are clearly loopholes for development. Tighten up the reigns, please, and get tough in protecting this land. Where water and septic issues once were key issues in keeping farming and land use limited, technology has now removed those obstacles. Now its up to us to define and regulate this space; and that includes the air with its environmental issues in Dickerson as well. We have just about paved over Montgomery County. Will you please give some of us the freedom to have our dreams as well?

Thank you for your time and caring.

Sincerely,

Claire Howard  
 20415 Westerly Road  
 Poolesville, Md. 20837  
 301-651-1866

1125

2/21/2007

## Murray, Callum

---

**From:** Coleman, Joyce on behalf of MCP-Chairman  
**Sent:** Friday, February 23, 2007 11:42 AM  
**To:** Murray, Callum  
**Subject:** FW: Ag reserve

-----Original Message-----

From: Eskin Huff [mailto:heskin@comcast.net]  
Sent: Thursday, February 22, 2007 4:56 PM  
To: MCP-Chairman  
Subject: Ag reserve

To: Chairman Royce Hanson:

From: Eskin Huff, 15410 Barnesville Rd, Boyds Md, 20854

Regarding the Agricultural Policy Task Force Report

Dear Chairman Hanson:

My wife and I have been living in Boyds for 18 years. Before that (32 years)  
I have lived several locations in Montgomery County. As one of the few remaining open spaces in the County the AG reserve is of great importance to us and to future generations.

I appreciate the amount of time the Ag Policy Task Force spent trying to come up with compromises on the future usage of this land. However, I am particularly concerned about the abuse of the child lots provision. If child lots are allowed there should be strong restrictions to prevent this land from being developed and then resold on the market within say 10 years.

I support looking into the Building Lot Termination (BLT) recommendation with a fiscal or economic analysis to create a feasible way to fund such a program to remove development rights.

Sincerely,

Eskin Huff

#4

Coleman, Joyce

From: Denise Jacklin [djacklin@CORNETSER.com]  
Sent: Tuesday, February 20, 2007 3:03 PM  
To: MCP-Chairman  
Subject: Ag Policy Task Force

Importance: High

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Chairman Hanson,

I live in Poolesville surrounded by the Agricultural Reserve. I have lived here for 18 years. I would like to thank the Task Force for their efforts to arbitrate the property rights v. preservation question. These are difficult issues to reconcile but I believe the county needs err on the side of conservation. I consider the original 1980 Master Plan to be the bible of preservation and I am not inclined to support exceptions to its spirit or regulations.

The question of 'Child Lots' is certainly a legitimate concern for some but seems to be a convenient loop hole for others who have already sold and their development rights with TDRs and wish to 'dip' again. Of course those farm families who legitimately need to provide housing for next generations should be able to do so. The fatal flaw in the current system is that the County can not determine which requests are shams and which are legitimate. Currently the County does not seem to have the necessary means to monitor these child lots. When blatant violations are brought to light the general feeling is 'oh well, we can't do anything now'. This attitude does nothing to curb scofflaws and in fact encourages proscribed investment building. At the very least the County should extend the residency requirement, limit the number of legitimate 'Child Lots' (per farm owner and Reserve wide), and strictly monitor to assure that the 'child' is actually living at the residence and this is not just a mailbox.

I would like to see the land for these 'child Lots' remain part of the 'farm parcel' with appropriate usage rights allowed for the home's 'child' owner. If the homes are truly for family members then keeping the land in the 'farm parcel' is to everyone's advantage, keeping the farm land contiguous and allowing for family homes. This scheme would certainly discourage excising farm parcels for resale.

I am firmly against granting any 'bonus density' which is a clear violation of the spirit and regulation of the Master Plan and answers no legitimate need.

I do not support the use of 'sand mounds'. They are expensive, unattractive and fail more frequently than conventional systems. They were specifically addressed in the Master Plan recommendation against alternative septic technology. I consider them to be particularly unacceptable in the Ag Reserve which is situated on a fragile watershed feeding the Potomac and Chesapeake Bay. The only exception I might support is for legitimate farmers who need to replace their failed conventional septic system with this technology. Even then an overall limit should be put on the number these types of septic fields allowed in the Reserve.

In conclusion, I support the Building Lot Termination (BLT) recommendation as a tool for preservation and prevention of unnecessary loss of the Reserve farmland. There should be a full economic analysis to determine if this is feasible for receiving areas in commercial, industrial zones. More stringent measures are needed to prevent the disguise of investment-home-building as 'Child Lots'. Finally, 'sand mounds' should be prohibited for new construction and their use should be strictly limited to replacement use by legitimate farm families with failed conventional septic systems. For almost 27 years the 1980 Master Plan has been a land use blueprint for other jurisdictions nationwide please do not eviscerate it now.

Regards,

Denise Jacklin  
Purchasing Dept.

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#4

**Coleman, Joyce**

**From:** Klobukowski, Jerome J (US SSA) [jerome.klobukowski@baesystems.com]  
**Sent:** Tuesday, February 20, 2007 1:27 PM  
**To:** MCP-Chairman  
**Subject:** Ag Policy Task Force Report

**R E C E I V E D**  
FEB 20 2007OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Commissioners

I live in Poolesville, which is in the Agricultural (Ag) Reserve and I am writing as one who firmly believes in the importance of our nationally recognized Ag Reserve. The Ag Policy Task Force is to be commended for their hard work. The report is a good "first step" in taking on the issues which threaten the integrity of the Reserve. But in trying to structure compromises, the task force sacrificed some fundamental principles that were established over 25 years ago in the Master Plan, especially on child lots and on sand mounds.

I support the Building Lot Termination Proposal recommendation to eliminate "roof tops" in the Reserve. There should be a full economic analysis to determine if this is feasible for receiving areas in commercial, industrial zones.

I do not support the Task Force recommendation for continued use of sand mounds. Instead, we should adhere to the language and intent of the 1980 Master Plan which allowed alternative septic systems only for legitimate child lots or failed septic systems. Sand mounds have resulted in even more fragmentation of the land, contrary to the intent of the Master Plan. Without contiguous swaths of farm land, there will be no Ag Reserve.

I also believe in a residency requirement for legitimate child lots in the Reserve to preserve farming or the family core, but a 5 year residency requirement is not long enough to ensure that these lots are not simply investment mechanisms. Do not support the recommendation for "bonus density" giving "market lots" in addition to child lots to exceed the 1 for 25 acre zoning. Place a "cap" on the number of child lots. No other jurisdiction grants bonus density on top of child lots.

I understand there is a need for balance between the landowners' equity and the intent of the zone to preserve farm land and open space. According to the Master Plan, the equity issue was to be addressed by the TDR (Transfer of Development Rights) program. It makes sense to explore the BLT proposal as a next step to address equity. However, the sand mound and child lots recommendations made by the Task Force give undue priority to development over preserving agriculture and are contrary to the 1980 Master Plan.

Sincerely,  
Jerome J. Klobukowski  
17300 Fletchall Road  
Poolesville, MD 20837  
Work: (301) 231-1656  
Home: (301) 349-2283

K129

2/20/2007

#A

**Coleman, Joyce**

**From:** FENYVESI, LIZOU [LFENYVESI@ushmm.org]  
**Sent:** Tuesday, February 20, 2007 4:00 PM  
**To:** MCP-Chairman  
**Subject:** Ag Policy Taskforce Report

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Commissioners

My name is Lizou Fenyvesi, my husband and I live on Comus RD in the Ag Reserve.

I am writing to you because I am concerned about the future of the Ag Reserve. It seems to me that in the last few years there has been further fragmentation of the land, contrary to the intent of the Master plan. This is due in part to the abuses of the Child Lot provision. I believe residency requirements should be longer than 5 years to prevent such abuses and I don't support the Taskforce Report's recommendation for "bonus density" giving "market lots" in addition to child lots to exceed the 1 for 25 acre zoning.

In 1980 the Master Plan only allowed alternative septic technology for Child lots or failed septic systems and I support this view. I disagree with the taskforce's recommendation for the continued use of sand mounds because it has already resulted in loss of farmland to development.

I support the recommendation of working on the Building Lot Termination to preserve the land for agriculture and I want to thank the Taskforce for their hard work in tackling these complicated issues.

Sincerely,  
Lizou Fenyvesi

A130

2/20/2007



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Page 1 of 2

#4

**Coleman, Joyce**

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

**From:** Mike.Mesa@meridianmt.com

**Sent:** Wednesday, February 21, 2007 7:50 PM

**To:** MCP-Chairman; JDavis@king.meridianmt.com; JDavis@king.meridianmt.com;  
JDavis@king.meridianmt.com; JDavis@king.meridianmt.com; JDavis@king.meridianmt.com

**Subject:** Ag Policy Task Force Report

Dear Chairman Hanson and Commissioners

I write to you today as both an advocate and a resident of the Montgomery Agricultural Reserve.

As such I would like to comment on The Ag Policy Task Force Report. While I do recognize the hard work the task force put into this report I come away from my reading with serious concerns. The report is but a start towards dealing with the vital issues that confound the long term the integrity of the Reserve. I believe we need to decide once and for all if we really mean to actually preserve the Ag Reserve. If the answer is yes then we must recognize that the greatest threat to our nationally recognized treasure is compromise. We must vigorously defend our open space from all encroachment and I am afraid that the task force proposals fail in some fundamental ways to protect our open spaces and could if implemented signal the beginning of the end for Agriculture in our county.

I absolutely do not support the Task Force recommendation for continued use of sand mounds. The current liberal use of sand mounds does not comply in anyway with the intent of the 1980

Master Plan which allowed alternative septic systems only for legitimate child lots or replacements for failed septic systems. Sand mounds have instead become the Reserve busting tool of developers who otherwise would be locked out of the Reserve. The intent of the 1980 Master Plan was to protect these very precious 90,000 acres while ceding the vast majority of the then open land for development. The developer certainly got more than their share in that bargain.

Folks the intent of the child lot provisions was to provide for continuity of family farms. This provision was not intended to provide for a quick investment opportunity that results in further constriction open and arable land. The five year residency requirement is way to short.

When establishing the rules going forward please remember that the only way to save our nationally recognized treasure is to simply Preserve the Reserve. Always err on the side of the reserve. other wise we will surely lose the Ag Reserve one compromise at a time.

Folks there simply should be little to no compromise when it comes to the AG Reserve. When in doubt fall back to the intent of the 1980 master plan. Chairman Hanson is in a unique position to provide ongoing insight as to what was intended by that plan.

Sincerely,

4131

2/22/2007

Michael Mesa  
17505 Moore Rd  
Boys MD 20841  
301-916-3670

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4132

2/22/2007

#4

**Coleman, Joyce**

**From:** Ellen Pearl [pearljam@erols.com]  
**Sent:** Wednesday, February 21, 2007 8:12 AM  
**To:** MCP-Chairman  
**Subject:** Ag Report

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Mr. Hanson,

You know my views. I urge you to please keep our sacred Ag Reserve sacre: limited sand mounds, strict child lots provisions, etc. I just love this place and know you do too.

Ellen Pearl

301-972-4554

4133

2/21/2007

## Murray, Callum

---

**From:** Coleman, Joyce on behalf of MCP-Chairman  
**Sent:** Friday, February 23, 2007 11:42 AM  
**To:** Murray, Callum  
**Subject:** FW: Agricultural Reserve and future development policies: Ag Policy Task Force Report

-----Original Message-----

**From:** johnhpentecost@aol.com [mailto:johnhpentecost@aol.com]  
**Sent:** Thursday, February 22, 2007 4:24 PM  
**To:** MCP-Chairman  
**Subject:** Agricultural Reserve and future development policies: Ag Policy Task Force Report

Dear Chairman Hanson and Commissioners:

I live at 15125 Montevideo Road and have been active with the Agriculture Reserve issues for the last 8 years. Our property is right at the beginning of the Reserve, off Route 28 and I have been watching with horror as the development is moving relentlessly toward us from Darnestown as well as seeing the development within the reserve using the Tot lots provisions combined with sand mounds.

I firmly believes in the importance of our nationally recognized Agricultural Reserve. I have watched what has happened in Fairfax and Loudoun Counties without some structure to preserve critical open space as viable farming areas. The Ag Policy Task Force is to be commended for their hard work on the report, but in trying to structure compromises, the task force sacrificed some fundamental principles that were established over 25 years ago in the Master Plan, especially on child lots and on sand mounds.

The Building Lot Termination Proposal is a recommendation I support to eliminate "roof tops" in the Reserve. There should be a full economic analysis to determine if this is feasible for receiving areas in commercial, industrial zones.

I do not support the Task Force recommendation for continued use of sand mounds. Instead, we should adhere to the language and intent of the 1980 Master Plan which allowed alternative septic systems only for legitimate child lots or failed septic systems. Sand mounds have resulted in even more fragmentation of the land, contrary to the intent of the Master Plan. Without contiguous swaths of farm land, there will be no Ag Reserve.

I also believe in a residency requirement for legitimate child lots in the Reserve to preserve farming or the family core, but a 5 year residency requirement is not long enough to ensure that these lots are not simply investment mechanisms.

I understand there is a need for balance between the landowners' equity and the intent of the zone to preserve farm land and open space. According to the Master Plan, the equity issue was to be addressed by the TDR (Transfer of Development Rights) program. Owners should not have received the TDRs and then be able to divide and sell property using the tot lot provision as a loophole! It makes sense to explore the BLT proposal as a next step to address equity. However, the sand mound and child lots recommendations made by the Task Force give undue priority to development over preserving agriculture and are contrary to the 1980 Master Plan.

I regret that I was not able to testify at today's hearing, but sincerely hope that you and the task force will reconsider these provisions!

Thank you.

John Pentecost  
15125 Montevideo Road  
Poolesville, MD 20837



2/23/2007

301-869-9074  
[johnhpentecost@aol.com](mailto:johnhpentecost@aol.com)

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#A

**Coleman, Joyce**

**From:** Heather Kennedy [we98bees@yahoo.com]  
**Sent:** Wednesday, February 21, 2007 1:55 PM  
**To:** MCP-Chairman  
**Subject:** Urgent-Ag reserve issue

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Royce,

I am writing to you to voice my concerns regarding the up county Agricultural Reserve. Based upon a recent report I understand that certain policies will be re-evaluated such as Child Lots and the use of Sand Mounds on newly developed lots.

I urge you to maintain the strongest possible protection of this land for agricultural uses that will benefit many residence of the county and state. I'm concerned that the possiblilty of future growth within the agricultural resevere and would like to see strict regulations regarding the density of development with regards to the issues of sand mounds and child lots. Both of these issues could potentially allow more residential growth within the reserve when what we need is to maintain as little residential growth in this area as possible.

I currently live in Gaithersburg and am am member of a CSA that leases land from the Ag. reserve and I enjoy so much going to the farm and eating the fresh local produce that is available to me and other residence of the county, much in part to the county's commitment to preserving this land for such use. I would like to see more farms and nature preserves, parks and other non commercial or residential development for this area so that we can all enjoy a little "nature" from time to time and close to home. With the high cost of land I'm concerned that with out this land being set asside for agricultural lease that farms will not be able to maintain or grow in this part of the state. With the growth of the organic market and the slow foods movement more and more people are seeking out fresh, healty and locally grown produce. Montgomery county has the opportunity to encourage this process locally.

I respect your history and record of service to Montgomery County and the establishment of the Agricultural reserve and am sure you will take everything into account to make the best decisions for the future of this land. Thank you for your time and consideration.

Kind regards,

Heather Powers  
15 Noblewood Ct  
Gaithersburg, MD 20878  
301-789-2591

---

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A136

2/21/2007

#4

**Coleman, Joyce**

**From:** mary reardon [mareardon3@yahoo.com]  
**Sent:** Tuesday, February 20, 2007 7:19 PM  
**To:** MCP-Chairman  
**Subject:** Ag Policy Task Force Report

**RECEIVED**  
FEB 21 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Royce Hanson  
Chair, Montgomery County Planning Board  
8787 Georgia Avenue  
Silver Spring, MD 20910

RE: Report of the Ag Policy Task Force

Chairman Hanson and Commissioners:

I appreciate the attention that the Ag Policy Task Force has given to the issue of protecting our Agricultural Reserve. But I must take issue with several of the task force recommendations.

First is the recommendation for continuing the use of the sewage treatment technology known as sand mounds. The 1980 Master Plan did not intend the use of "alternative septic systems" to result in fragmentation of the Agricultural Reserve. Indeed it recommended against using such systems except for legitimate child lots or in the case of failed septic systems. We should follow the Master Plan recommendation.

Secondly, a 5-year residency requirement on child lots is not sufficient, and I stated this in testimony before the Planning Board last year. The residency requirement should be a disincentive to selling the lots on the open market, and 5 years is simply not long enough to prevent child lots from being investments rather than family residences. Moreover, it makes no sense to permit market lots in addition to the child lots in calculating the zoning allowance, if we are to limit density in the Ag Reserve. What other jurisdiction allows this?

Transfer of development rights could be a way to address equity concerns. But in addressing the two areas of concern above (sand mounds and child lots), the highest priority should be given to protecting our Agricultural Reserve.

Mary Reardon  
2236 Washington Avenue  
Silver Spring, MD 20910

---

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4131

2/21/2007

#4

**Coleman, Joyce**

**From:** Sheehan, William F [wsheehan@goodwinprocter.com]  
**Sent:** Tuesday, February 20, 2007 1:53 PM  
**To:** MCP-Chairman  
**Subject:** Ag Policy Task Force Report

**RECEIVED**  
FEB 20 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Commissioners:

I have lived in Barnesville, Maryland for nearly 25 years and am a strong proponent of the Agricultural Reserve. I am writing because I believe that the Ag Policy Task Force has compromised the fundamental principles animating the Reserve in two important respects, namely child lots and sand mounds. These were meant to be exceptions, not entitlements. Child lots are now being used as commercial real estate ventures rather than ways to maintain family farming, and sand mounds are becoming increasingly detached from the original idea that they were appropriate only for child lots or when existing septic systems failed.

Chipping away at the Reserve will eventually destroy it: as protected land diminishes so will the instinct and will to preserve. What is promoted today as compromise will only facilitate failure. It will take the Council's full commitment to the integrity of the Reserve to reject these piecemeal attacks on the fundamentally sound concepts underlying the 1980 Master Plan.

I respectfully call on each of the Commissioners to reject the child lot and sand mound proposals. Montgomery County is substantially more populated and congested than it was in 1980. It is more important than ever to maintain and reaffirm the principles that led to the creation of the Reserve in the first place.

Sincerely yours,  
William Sheehan  
Box 362  
Barnesville, MD 20838

\*\*\*\*\*

**IRS CIRCULAR 230 DISCLOSURE:**

To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

(A138)

2/20/2007



February 22, 2007

Testimony before the Montgomery County Planning Board

Good afternoon

My name is Douglas Sherwood, and I am a resident of Laytonsville.

I am here today to request that you, the Montgomery County Planning Board, approve the recommendations of the Ad Hoc Agricultural Policy Working Group and forward your approval to the Montgomery County Council for their consideration.

This report is the culmination of many hours and days of work by one the best prepared groups ever assembled for this purpose in Montgomery County. The report is not perfect, but represents the best compromise and the most agreeable set of actions to balance the pressures of progress with the rights of landowners.

You may encounter concerns from some people about minor portions of the report, but the recommendations are proposed to be considered as a group, and any attempt to "cherry pick" will ultimately lessen the effect on preserving the reserve.

Nearly a generation ago, I remember a certain Planning Board Chairman who sometimes wore a referee's shirt to Planning Board meetings so he could "referee" the difficult decisions of that Board.

Today we face, if anything, more pressures to arrive at a workable plan to save the Agricultural Reserve. The Final Report of the Agricultural Working Group represents what I consider the best attempt to act to preserve the Reserve and I would strongly urge you to approve the Report in its entirety.

Contact:

Douglas R. Sherwood  
5800 Griffith Rd.  
Laytonsville, MD 20882  
Ph. 301-253-6064

**Coleman, Joyce**

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FEB 20 2007

**From:** Michels, Kathleen (NIH/FIC) [E] [michelsk@ficod.fic.nih.gov]  
**Sent:** Monday, February 19, 2007 11:34 PM  
**To:** MCP-Chairman; ikeleggett@verizon.net  
**Cc:** county.council@montgomerycountymd.gov; timothy.firestine@montgomerycountymd.gov; Edward Murtagh  
**Subject:** FW: Environmental protections gone awry: How will the county fix this? Post: So Many Trees, So Few Safeguards: With Low Oversight, Builders Can Submit False Plans and Clear Tracts of Land  
**Follow Up** Follow up  
**Flag:**  
**Flag** Flagged  
**Status:**

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

To: Dear Chairman Hanson and Executive Leggett,

Subject: The fragmentation of county responsibilities for environmental and community protections in the development process.

There are many good individuals with great expertise and good intentions in the county agencies and departments implementing laws meant to protect us from the harmful side-effects of rampant development. We observe with alarm however that when it comes to the environment in this county the whole is much less than the sum the parts. As we have seen in too many cases the assurances the county gives of robust protections in the development process are only on paper and in practice toothless due to loopholes, weak implementation and lax enforcement.

From construction to forest conservation to water quality protections our county comes up short. In just the latest example (see below and <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/24/AR2007012400897.html?referrer=emailarticle>), the spotlight is on the poor planning and enforcement for forest conservation (this follows up on a previous article about the the Department of Permitting services showing its tilt towards developers at the expense of the environment - <http://www.washingtonpost.com/wp-dyn/content/article/2006/02/23/AR2006022302181.html?referrer=email> ). And these are just the ones the papers have uncovered. For example, the continuing degradation of our waterways is little known although monitored very well by the Department of Environmental Protection.

The tone and vision come from the top. We have great hopes for your leadership. How will you work together to give a mandate to your department heads and their staff to fix these problems? Clearly more expertise is needed in the best practices for community and low impact development and more staff to implement these practices. Most recently we found that the DPS staff had insufficient knowledge to draft appropriate implementation for the County's "small lot drainage bill" designed to protect homeowners, communities and our waterways.

However, no matter how many great staff you hire, fragmentation of responsibilities for different aspects of environmental protection in the development process ensure perpetuation of the types of loopholes described in this article, in the DPS article, the Clarksburg fiasco and more. County staff across departments need to be given the mandate and ability to work together to promote and enforce environmental health and protection in Montgomery county: to change the county from a paper tiger to a living breathing one with teeth that can truly be a model for the state and region, and eventually the nation. The interagency/interdepartmental water quality task force was a great start for higher level coordination. However, we need an interagency task force not just for water quality, with which these agency problems are entwined, but for planning and enforcement of environmental health and protection in general.

We look forward to your response- what specifically will be done to address the problems highlighted at Park and Planning and at the Department of Permitting Services? And more generally what will be done to foster coordination and to ensure loopholes are closed and protections become real? We believe progress is being

A140

2/20/2007

made but much at the prodding of the citizenry. We need such protections and expertise to be integral to our government, proactive and finally robust against developer pressure.

Best regards,

Kathleen Michels  
Upper Sligo Civic Association  
1701 Ladd St.  
Silver Spring, MD 20902  
Kathleen.michels@verizon.net  
301-922-3816

Edward Murtagh  
Sligo Headwaters Civic Association  
1904 Ventura Ave.  
Silver Spring, MD 20902  
Edward\_b\_murtagh@yahoo.com  
202-365-6526

To view the entire article, go to <http://www.washingtonpost.com/wp-dyn/content/article/2007/01/24/AR2007012400897.html?referrer=emailarticle>

## **So Many Trees, So Few Safeguards**

**With Low Oversight, Builders Can Submit False Plans and Clear Tracts of Land**

By Miranda S. Spivack  
Washington Post Staff Writer

Thursday, January 25, 2007; GZ01

Tree cutting in Montgomery County has sparked neighborhood disputes, court challenges, at least two defamation lawsuits and a concerted effort to salvage a single, aging cherry tree. Now, a county planner is warning that residents have good reason to be worried about the fate of trees at a time when the housing boom shows little sign of a decisive slowdown.

Builders and developers submit so many "blatantly wrong" plans showing incorrect locations for trees on property they want to develop, that the paperwork at times is "almost fraudulent," said Josh Penn, who commented recently during a meeting of a county panel examining tree protection.

Penn, a planner with the Montgomery County Department of Park and Planning, said he and his colleagues often encounter errors on submissions that are supposed to accurately depict trees and other land characteristics, but that they are often helpless to do much about it because there are few penalties for incorrect paperwork. As a result, developers and builders sometimes cut down more trees than they are supposed to.

Developers whose proposals require documentation of tree locations -- generally for larger tracts where extensive clearing is proposed -- must provide a map of the trees and other property features. County and state laws require a certain amount of tree preservation and control of runoff on building sites, depending on property size and how much of it will be cleared.

The maps are presumed to be accurate. Usually they include assurances and sometimes sworn statements by experts that they are correct. But, said Penn and other planners who work on



environmental issues, the maps often turn out to be wrong, making it difficult if not impossible to decide if there is illegal tree cutting. Planning agency officials acknowledge that they do little to challenge inaccurate documents, other than requesting that they be drawn more precisely.

Some developers or their consultants appear to fully understand the holes in the system and are gambling that flaws in their documents won't be discovered, Penn said. "They show no wetlands, no forest. The self-certification without a penalty is pointless," he said.

Montgomery's planning agency, like most government agencies that receive reams of papers from the public as part of permit applications, operates on the assumption that the documents received are accurate. It would be extremely difficult for the county to check their accuracy by making site visits for every plan. Unlike agencies such as the Internal Revenue Service, Montgomery's planning agency rarely penalizes people who deliberately file incorrect information.

"It is a problem. We don't know how big it is," said Mark Pfefferle, an agency environmental planner who heads the task force studying tree protection. The task force was set up last summer by former chairman Derick P. Berlage and acting planning director Faroll Hamer.

The only way the planning agency can verify the documents it receives is to send out inspectors or examine aerial photographs, which may or may not be up to date.

Pfefferle said illegal tree cutting often takes place on weekends, when perpetrators know county inspectors aren't on duty.

The task force, which is expected to issue a report in the next month about how to better enforce tree protection regulations, comprises planning agency staff members, developers, consultants, representatives of other county and state agencies, a development lawyer, environmental activists and a County Council staff member. It has been meeting since late summer, after the planning agency came under fire from several residents and environmental groups who argued that tree protection was lax.

In the meantime, inspectors who must patrol the entire county to investigate complaints about tree cutting, building plans and other issues are trying to work out a formal agreement with the county park police to get help handling complaints about illegal cutting on weekends. While details are still being worked out, park police have begun to respond to some weekend complaints.

"The police have told alleged violators to cease operations until the inspector can get there on Monday to check it out," said Douglas Johnsen, who leads the team of inspectors at the planning agency.

The agency is also hiring a consultant who will begin spot-checking the accuracy of tree plans, said Pfefferle.

It's not clear how many complaints the agency gets involving illegal tree cutting, because they aren't formally compiled. But in recent years, as tear-downs of homes in established neighborhoods have proliferated, residents who are worried about excessive tree cutting have complained that the planning agency has responded too late, or not at all.

The agency also is asking the County Council to fund two more inspectors and hopes to soon hire an environmental planner who will specialize in trees.

Steve Kanstoroom, an Ashton resident who has spent more than a year trying to get several county agencies to heed his concerns about weaknesses in tree protection laws, has proposed that the County

Council stiffen penalties for false statements to the planning agency.

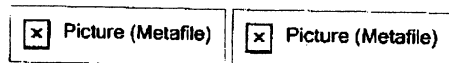
The agency, he said, "routinely refuses to take corrective action or impose consequences for applicants who submit false and misleading documents in the . . . application processes, provided that the applicant corrects them prior to being cited for a violation."

He proposed instead that the council establish minimum mandatory penalties for applicants who submit false or misleading information. He also advocates changing the law to allow residents to bring complaints to the planning director for swift review. If residents remain unsatisfied, he says they should be able to sue, even if they are not directly affected by the tree cutting.

Council member Marc Elrich (D-At Large) is examining Kanstoroom's proposal as well as other possible legislation, and is looking into administrative fixes.

"You can make an honest mistake, and you shouldn't be fined or penalized for that. . . . I do expect staffers to follow up when they are given information that something may be false," said Elrich. "We need to change the culture."

The task force is the second in the county to examine tree policies. A group convened by U.S. Rep. Chris Van Hollen (D-Md.) recommended tightening enforcement. That panel was convened after Redskins owner Daniel Snyder reached a settlement in 2005 with the planning agency; he had been cited for tree cutting on property near the Potomac River and the Chesapeake and Ohio Canal. Snyder agreed to pay \$37,000 toward forest conservation elsewhere in the county, to replant trees and to place several acres in a permanent conservation easement. Top of Form 1



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#4

**Coleman, Joyce**

**From:** Mary Anne Sonnenschein [mimione@erols.com]  
**Sent:** Tuesday, February 20, 2007 10:31 PM  
**To:** MCP-Chairman  
**Subject:** Agriculture Policy Task Force Report

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and Commissioners

I am a resident of Leisure World in Silver Spring, and I am very concerned about the fate of our Agricultural Reserve.

I find that in trying to structure compromises, the task force sacrificed certain principles that were established long ago in the Master Plan, especially regarding child lots and on sand mounds.

The Building Lot Termination Proposal is a recommendation I support to eliminate roof tops in the Reserve.

However, I do not support the Task Force recommendation for continued use of sand mounds. Instead, I believe that we should stick to the language of the 1980 Master Plan which allowed alternative septic systems only for legitimate child lots or failed septic systems. Sand mounds have resulted in even more fragmentation of the land, contrary to the intent of the Master Plan. Without contiguous swaths of farm land, there will be no Ag Reserve.

I also believe in a residency requirement for legitimate child lots in the Reserve to preserve farming or the family core, but I believe that the residency requirement (5 years) is not long enough to ensure that these lots are not being used as investment mechanisms.

I understand there is a need for balance between the landowners' equity and the intent of the zone to preserve farm land and open space.

However, the sand mound and child lots recommendations made by the Task Force give too great a priority to development over preserving agriculture. This is certainly contrary to the 1980 Master Plan.

Sincerely,

Mary Anne Sonnenschein  
3272 Gleneagles Drive #2D  
Silver Spring, MD 20906

1444

2/21/2007

#4

Coleman, Joyce

From: rs@go-cat-music.com  
Sent: Tuesday, February 20, 2007 11:01 PM  
To: MCP-Chairman  
Subject: RE: Ag Policy Task Force Report

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman

I believe the Task Force recommendations do not go far enough in protecting the Agriculture Reserve. The development of the Reserve by the use of Tot lots and sand mounds was never envisioned as a work around for development. They have turned into a way to dice up the Reserve. The wholesale development of all of Montgomery county cannot be sustained. Please save some greenspace.

Thank You for your time, Randall Sorenson

19310 White Ground Rd Boyds, MD 20841 301 972 3350

-----  
This mail sent through IMP: <http://horde.org/imp/>

#4

**Coleman, Joyce**

**From:** MarciPro@aol.com  
**Sent:** Wednesday, February 21, 2007 5:26 PM  
**To:** MCP-Chairman  
**Subject:** Re: Ag Policy Task Force Report

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Re: Ag Policy Task Force Report

Dear Chairman Hanson and Commissioners:

We support the strictest protection of our County's green belt of forest and farms. One of the main reasons we voted for our new county executive Ike Leggett was his strong commitment to protect this very important County resource. We should strive for no loss of agricultural land in our county to help feed our areas burgeoning population. The Ag Policy task force is to be commended, but their report does not go far enough to protect our Agricultural Reserve. There are several corrections that need to be made to this report.

- 1) The residency requirement for child lots must be raised from five years to prevent flipping of houses by those who have no intention of remaining on the land to farm.
- 2) Bonus density for market lots in addition to child lots to exceed the 1 for 25 acre zoning should not be allowed.
- 3) Support looking into the Building Lot Termination (BLT) recommendation with a fiscal or economic analysis to create a feasible way to fund such a program for receiving areas in commercial, industrial zones, to remove development rights. We understand there is a need for balance between the landowners' equity and the intent of this zone to preserve farm land and open space. The equity issue was to be addressed by the TDR program, but it makes sense to explore the BLT proposal as a next step.
- 4) Reject sand mounds except for legitimate child lots or failed septic systems. These are clearly an alternative septic technology recommended for exclusion in the 1980 MasterPlan.

Please protect our Agricultural Reserve from fragmentation and erosion of the intent of the crucial master plan document establishing the Ag Reserve policy in 1980.

George French, 510 Albany Avenue, Takoma Park, Maryland 20912  
Marcia Stickle, 8515 Greenwood Avenue Apt. 8, Silver Spring, Maryland, 20912

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1146



#4

**Coleman, Joyce**

**From:** Thoms, Dick [rwthoms@trane.com]  
**Sent:** Wednesday, February 21, 2007 12:06 PM  
**To:** MCP-Chairman  
**Subject:** Ad Hoc Ag Policy Working Group Report

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OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Royce,

First allow me to congratulate you on your appointment to the Chairmanship of the Planning Board, and to express my pleasure in the county's selection. Your commitment to the betterment of Montgomery County is much appreciated.

Regarding the Ag. Zone policies, I would like to express my support of the following:

1. Building Lot Termination program ~ I believe this is a very good idea.
2. Tot Lots ~ I support the Minority report on Tot lots, requiring the maximum density including Tot Lots to be limited to 25 acres
3. Sand Mounds ~ Strong limitations must be placed on sand mounds to avoid this technology becoming the method for skirting the preservation of Agricultural land and open space.
4. Cluster development ~ I believe the concept of cluster development within the 25 ac. Zone should be limited to those cases where all of the neighboring properties agree to it. To take a 500 Acre piece of property and build 20 houses in a cluster of small lots while retaining 450+ acres as open space sounds like a good idea unless you are the neighbor who is getting 20 houses built immediately adjacent his rural homestead. Further, I believe that the future development pressure on the remaining 450 acres is greater than would be the case if the whole 500 Acre property had been developed in 25 acre parcels.

Thanks for consideration of my opinions on this matter, and best of luck in your new position.

Regards,

Richard W. Thoms  
21700 Big Woods Rd  
Dickerson, MD 20842

2/21/2007

(A147)

#A

**Coleman, Joyce**

**From:** Carol Van Dam [cvdfalk@verizon.net]  
**Sent:** Wednesday, February 21, 2007 9:49 AM  
**To:** MCP-Chairman  
**Subject:** Ag Policy

RECEIVED  
FEB 21 2007

OFFICE OF THE CHAIRMAN  
THE MARYLAND NATIONAL CAPITAL  
PARK AND PLANNING COMMISSION

Dear Chairman Hanson and other Planning Commissioners,

As a resident of Montgomery County for more than 20 years, I am writing you about my concerns with the Ag Policy Working Group Report.

While I support the work the Group has done, I think the members went overboard in trying to reach compromises.

Specifically, supporting sand mounds in the Upper Ag Reserve goes against everything the 1980 Master Plan tried to do in preserving Agricultural Reserve.

Alternative septic technology, as stated in the Master Plan, is exactly what sand mounds are. Why bother having a Master Plan if we don't follow it? The Upper Ag is the jewel of this County. We've only got one shot at preserving it. Once the developers come, there's no going back. Mc Mansions in the Ag Reserve is not the way to go; not what the planners had envisioned.

Also, I do not support the idea of extending or expanding these so-called "child lots". It's one thing to bestow a farm property onto your son or daughter so they can afford to live in the same place they grew up and hopefully pass on the farming life to their children. It's quite another to allow adult children to turn around and sell it within five years solely to make a huge profit on the land.

That is not the intent of the child lots, so please do not allow child lots to exceed the base density. I support the minority report on child lots.

I also support the idea of maximizing the receiving areas of Transferable Development Rights (TDRs) and using them wherever possible.

Thank you for attention to this issue.

I look forward to hearing from you.

Sincerely,

Carol Van Dam Falk  
13100 Esworthy Road  
Darnestown, Md. 20878

A140

2/21/2007

DATE: 11/27/07  
ITEM NO. 4  
EXHIBIT NO. 76

# Opening

- James Wilbur
- Resident of Montgomery County for almost eleven years.
- I am here to testify in response to the Final Report of the Ad Hoc Agricultural Policy Working Group.
- Testifying as an individual
- Also as business person in down county
  - Biotech company I helped start in 1995
  - Competitive recruiting important - vs. SF, Boston, RTP
  - Ag Preserve a great asset
    - Preserving qual. of life & Ag in Upcounty
    - Capitalize on economic benefits down county

- Report from Task Force is important
- Task force should be recognized for the accomplishment of their report.
- Well intentioned - pres. of Ag
- Required compromises that resulted in flawed recommendations
- Child Lots and Sand Mounds
  - Testimony not suggesting we abandon the report,
  - Council reviews critical areas

# Child Lots

## Report

- Report sets aside the basic intent and principles of child lots
- Allow children of farmers to stay on the land for continued family farming
- Not economic compensation for downzoning (that's TDRs)
- Not an entitlement to expands the number of buildable lots to a maximum

## Recommendations

- One lot per child per parent *over all properties*
  - ~~No~~
- Total lots not to exceed base density in the RDT
  - Child lots are not intended to maximize the number of buildable lots
- Uses a TDR
  - Puts remaining land into conservation easement
- 5 year ownership is too weak
  - 5 years is a good time for investment to grow
- Require residency
  - Active farming
  - Signed affidavit from child is simple counter to the question of enforcement
- No public water in the RDT zone
  - Small number of possible cases
  - Protection from encroachment of sewer into RDT far outweighs a couple of special cases

# Sand Mounds

*Controversial only in that the committee couldn't agree*

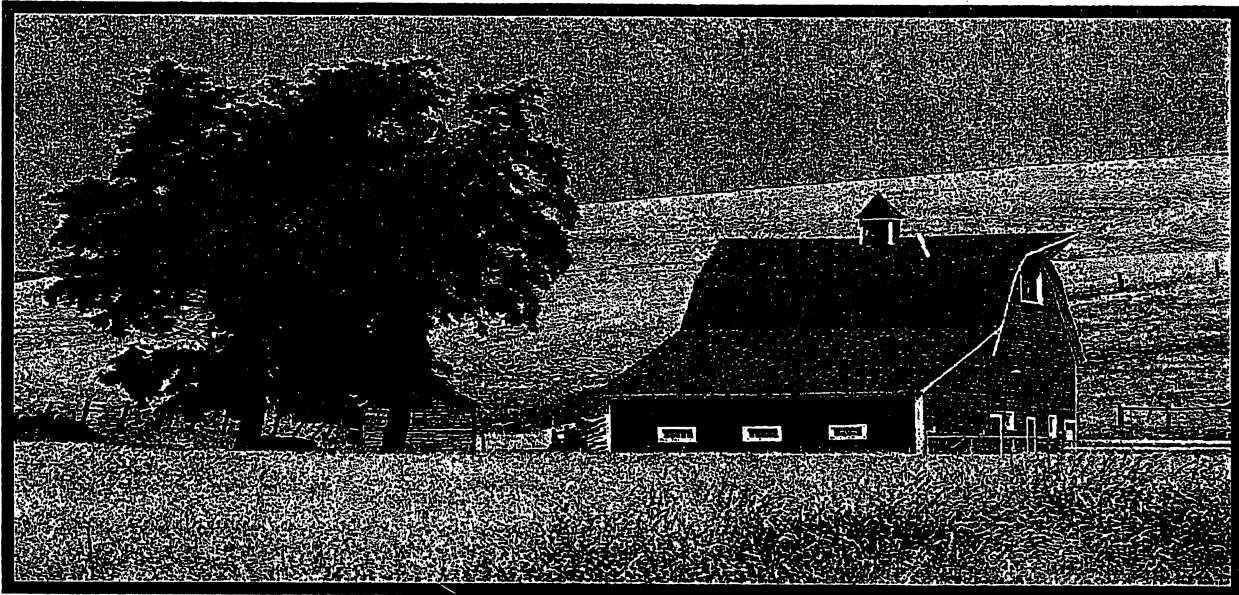
## REPORT

- Report distracts council from the key issue
  - By focusin on the number of sand mounds rather than the use
- Master plan prohibits use of alternative technologies
- Sand mounds are alternative
- Zoning in RDT represents the maximum density allowed of 1 per 25 acres
  - Not a requirement to reach maximum density
- Sewage system intended as one of the controls on density
  - Recognized much of land would not perk
  - No sewer
  - No alternative technologies

## RECOMMENDATIONS

- Clarify sand mounds as an alternative technology
- Not to be used for new development
  - Let percolation determine appropriate density
  - Do not need to achieve max density
- Acceptable as an emergency measure for existing housing





**FINAL REPORT**

**OF THE**

**AD HOC AGRICULTURAL  
POLICY WORKING GROUP**

**MONTGOMERY COUNTY,  
MARYLAND**

**JANUARY 2007**

# ***AD HOC AGRICULTURAL POLICY WORKING GROUP***

## **Members**

***Elizabeth Tolbert, Chair***

***R. Scott Fosler, Vice Chair***

***Wade Butler***

***Bo Carlisle***

***Margaret Chasson***

***Jim Clifford***

***Nancy Dacek***

***Jane Evans***

***Robert Goldberg***

***R. Thomas Hoffmann***

***Jim O'Connell***

***Wendy Perdue\****

***Michael Rubin***

***Pam Saul***

***Drew Stabler***

***William Willard***

***\* Member until August 2006***



**Montgomery County Council Staff**

***Marlene L. Michaelson, Senior Legislative Analyst***

***Amanda Mihill, Legislative Analyst***

***Jeff Zyontz, Legislative Attorney***

***Shondell Foster, Research Associate***

***Carol Edwards, Legislative Services Coordinator***

**County and State Staff**

***Jeremy Criss, Montgomery County Department of Economic Development***

***John Zawitoski, Montgomery County Department of Economic Development***

***Alan Soukup, Montgomery County Department of Environmental Protection***

***Karl Moritz, Montgomery County Department of Planning***

***Callum Murray, Montgomery County Department of Planning***

***Doug Tregoning, Montgomery County Cooperative Extension***

***Jay Beatty, Montgomery County Department of Permitting Services***

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# **INTRODUCTION AND SUMMARY OF RECOMMENDATIONS**

## **I. INTRODUCTION**

In 1981 the County Council established Montgomery County's Agricultural Reserve to preserve farming, provide open space, and protect the environment. The County's Functional Master Plan for the Preservation of Agriculture and Rural Open Space limited residential development in nearly one-third of the County in order to achieve these goals. The Agricultural Reserve was visionary and bold at that time, and we believe that the Council's goals behind establishing the Agricultural Reserve remain entirely valid today. The Agricultural Reserve is regularly cited throughout the United States as the country's leading model for agricultural, open space, and environmental preservation.

Over the ensuing quarter century, Montgomery County has changed enormously, in population size and diversity, economic activity, and land use. The Agriculture Reserve, meanwhile, has succeeded in preserving agriculture in the County. The mix of agriculture, to be sure, has evolved. For example, dairy farming has dwindled while specialty farms have increased in number and value. This evolution has only confirmed that agriculture can be preserved as an integral part of a modern, vibrant, and diverse metropolitan region. Over this same period, public awareness of environmental issues and threats to natural resources has grown exponentially, so that today the Agricultural Reserve is widely viewed as an environmental oasis in a sprawling metropolitan area. Citizens not only recognize the intrinsic value of agriculture, but the extraordinary benefit of preserving open countryside for every citizen to enjoy and experience, and of an environmental asset that helps preserve the healthfulness of our water supply and of the air we breathe. There seems to be a broad consensus throughout Montgomery County that the Agricultural Reserve is worth preserving and sustaining.

At the same time, the Agricultural Reserve is under stress. Especially since the turn of the century, pressure for residential development in the Reserve has increased. This is not surprising, given the amount of open acreage it encompasses and its uniqueness in the metropolitan area. The viability of the Agricultural Reserve, and perhaps its very survival, is threatened by extreme development pressures, proposals for new interstate highways, and increasing land values in the greater Washington metropolitan area. While public support appears to remain favorable, there are concerns that many citizens of the County, especially those who live in more distant urban areas, are not fully aware of the importance of the Agricultural Reserve to the life and character of Montgomery County. These mounting stresses are reflected in the increasing number, complexity, and emotional intensity of debates before the Council and Planning Board regarding appropriate public policies for agricultural preservation. For example, sanitation policy (including whether and when to permit sand mounds in lieu of traditional trench sanitation systems), the viability of the Transferable Development Rights (TDR) program, and the ambiguity of the child lot zoning exception, have all recently come before the Planning Board or Council.

In response to these trends, the County Council appointed the Ad Hoc Agricultural Policy Working Group in April 2006 to "provide comprehensive advice on ways to ensure the long-term protection of the Agricultural Reserve and preservation of our agricultural industry." In particular, the Council charged the Group with addressing a cluster of specific and inter-related issues by performing the following tasks:

- Undertake a thorough review of pending and potential legislation concerning the Rural Density Transfer (RDT) zone, the child lot program, the proposed Building Lot Termination program (BLT), uses of sand mound technology, and technical tracking and use issues associated with the TDR program;
- Assure that this review provides a clear understanding of how the individual proposals interact with each other and considers the potential for unanticipated negative consequences;
- Proceed in a way that respects the concerns of all stakeholders; and
- Update the Council on its progress and submit a final report to the Council within calendar year 2006.

The 15 members of the Group represent very different backgrounds and philosophies about the Agricultural Reserve and property rights. We are farmers, property owners, representatives of organizations, former elected officials, and citizens. Even with these differences, however, we share both a belief that the Agricultural Reserve is valuable to all the County's/citizens and a common interest in preserving agriculture in Montgomery County. This positive approach created a productive and conciliatory environment in which we sought consensus on creative and practical solutions to difficult problems. Part of the process of finding common ground led us to identify principles on which all members could agree, and which provided the underlying rationale for our recommendations.<sup>1</sup> These principles include the following:

#### **GENERAL PRINCIPLES**

1. The economic viability of the agricultural industry is critical to the preservation of the Agricultural Reserve.
2. The open space and environmental protection goals of the Master Plan are unlikely to be achieved unless we can sustain the health of agriculture.
3. Agriculture in the County has and will continue to evolve and requires an environment that recognizes that fact.
4. The equity farmers hold in their property is not only important to them personally but an important asset for their businesses, and consequently an important factor in the success of the agricultural industry in the County.
5. Fragmentation of farmland should be avoided. Contiguous areas of farmland are desirable for traditional agriculture.
6. If the Agricultural Reserve is to survive permanently, policies must protect both farming and farmland, while fostering a deep commitment to stewardship that looks beyond current generations and current landowners.

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<sup>1</sup> See Comment 3 by Wade Butler, Pam Saul, Drew Stabler, William Willard, Bo Carlisle, and Jane Evans in Appendix II.

We applied these principles in developing our recommendations in a consistent manner. For example, in order to protect the equity and business viability of farmers, we concluded that any new program or policy to discourage development must be evaluated in terms of its impact on farmers' financial viability. This would mean that programs that provide equity in lieu of development (such as building lot terminations or transferring development rights in exchange for payment) are an important means of preserving this equity. To successfully implement such programs, the County government should identify options for funding them either through the public sector (e.g., farmland preservation tax, general obligation bonds) and/or through the private sector (e.g., through an enhanced TDR program).

While we focused on the specific cluster of tasks given us by the Council, we also examined a few additional issues, including whether there is a need for right-to-farm legislation, design guidelines, or educational programs. We took seriously the charge to look comprehensively at issues. We made every effort to understand the inter-relationship of issues raised by pending legislation and proposals. We also attempted to identify the full range of issues related to the Agricultural Reserve, both to understand comprehensively the specific and interrelated tasks the Council assigned us, and to build a checklist of issues that other entities will need to address if the Agricultural Reserve is to survive and flourish.

The Group worked hard to achieve consensus, which was possible on most issues we addressed. Our recommendations do not always reflect an ideal solution from any one member's perspective, but in all but one case offer proposals that are generally acceptable to the entire Group. Our intent was not to paper over important differences, but rather to acknowledge them and attempt to find a consensus position that respected each individual position while best addressing the goals of the Agricultural Reserve. For example, the issue of clarifying the acceptable uses of sand mounds proved to be especially challenging, as it brings into sharp relief the debate between different perspectives which are difficult to reconcile. Some Group members believe that sand mounds offer an alternative method of private sewage treatment that was not envisioned by the County Council when it created the Agricultural Reserve. Other Group members believe that sand mounds are an entirely legitimate form of sanitation technology whose use should not be restricted. Still others believe that the Master Plan intends to limit the use of alternative individual systems, such as sand mounds, to special circumstances and that sand mounds should not be allowed to increase residential development in the Agricultural Reserve. Our intent for each issue was to clearly define the factual background, the policy options, and the differences in perspective, as well as the position taken by the Group. Dissenting opinions and comments are indicated by footnotes in the text and are included at the end of the Report in Appendix II. Comments by Group members referencing specific recommendations or statements in the Report are indicated by footnotes in the relevant chapter while general comments are indicated by footnotes in this Introduction.

Notwithstanding our clear and acknowledged differences, we all strongly support the continued protection of the Agricultural Reserve and the future of farming in the County. Collectively, we believe the Group's recommendations will better protect the Agricultural Reserve, while not asking any single party – whether property owners in the Reserve or other County residents and taxpayers – to unduly bear the cost of this protection.

## **KEY THEMES**

If implemented, we believe our recommendations will accomplish the following:

- Allow the continued use of child lots intended for the children of farmers (but with stricter assurance that those lots will be owned by the children of the property owner, and will not prevent future use of a significant portion of the property for farming);
- Limit the use of sand mounds, decreasing their potential use by as much as one-fourth;
- Create a BLT easement program to create an incentive to further reduce residential development in the Agricultural Reserve while providing an acceptable level of equity to property owners, giving them the resources that may be needed for farm investment; and
- Improve the TDR program, including expanding it to commercial and industrial zones (including Research and Development zones), mixed-use zones, and floating zones, and creating a non-residential use component to, among other things, help support the BLT easement program.

The Council asked for our advice on the interaction among the specific cluster of issues they asked us to address. We believe our recommendations on these issues form an integral package that needs to be viewed, and should be implemented, in its entirety. The recommendations attempt to strike a balance by reducing the total amount of development possible in the Agricultural Reserve, while at the same time creating new opportunities to compensate landowners for further limitations on development. For example, we strongly believe that funding of the BLT easement program, which would compensate property owners as an incentive to enhance agricultural preservation and prevent development, is critical as an offset to the restrictions we recommend for sand mounds. The BLT easement program, moreover, could significantly reduce the use of sand mounds.

We caution, however, that this important but limited cluster of issues also needs to be placed in an even broader context that accounts for still other critical issues that affect the viability of the Agricultural Reserve. We addressed some of these issues, and identified a range of others that we did not have time to address. However, we urge the Council, Executive, and Planning Board to carefully consider this broader range of issues, even as they act on the more narrow cluster of issues on which we focused. We especially urge an expanded education initiative for all County residents on the importance of the Agricultural Reserve to Montgomery County and the Washington Region in order that we not lose the critical public support throughout the County that provided the foundation for the Council to establish the Agricultural Reserve and to sustain it over the past 25 years.

## **THE NEED FOR ACTION**

We met biweekly between May and December 2006, including a tour of the Agricultural Reserve, in order to meet the Council's deadline to finish our work by the end of 2006.<sup>2</sup> Group members also met in smaller groups throughout the process in order to better understand one

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<sup>2</sup> See Comment 7 by Pam Saul in Appendix II.

another's perspectives and develop new ideas and consensus. We trust that we have fulfilled the charges given us by the Council in the time allotted, even if we were not able to address every detail. We have identified important follow-up issues that will require further review and work, and urge the Council and Planning Board to give these matters your priority attention. In the course of our work, we came upon numerous recommendations from prior working groups that have not been addressed, and urge the County government to address the full range of issues that, taken together, will determine the future of the Agricultural Reserve.<sup>3</sup>

In particular, we urge the County Council to take decisive and rapid action in two key areas. First, provide incentives to current landowners to keep their land in agriculture, indirectly enabling new entrants to farming in Montgomery County. Second, provide additional disincentives to an increasing pace of residential development within the Agricultural Reserve. We need to protect the farming and the farmland we have, we need to encourage entry of more farmers and a new generation of farmers, and we need to limit or even reduce the pace of residential buildout in the Reserve. We believe our package of proposals can dramatically advance all these goals.

Montgomery County can take pride in the establishment and the success to date of its Agricultural Reserve, an unparalleled resource that benefits all the County's residents, and indeed the Washington metropolitan area as a whole. But we cannot take its future survival for granted. A tipping point approaches with the convergence of too much farmland given over to new housing and mini-subdivisions, too much fragmentation of farmland, and too many barriers to farming. We have no simple formula for determining when that tipping point is reached, and indeed encourage more deliberate attention to that very question. It is our strong sense that unless the County government acts soon and decisively, that tipping point could soon be upon us. Now is the time for a new commitment to the stewardship of our Agricultural Reserve so that it will endure for the remainder of this century and beyond, not just for our own children and grandchildren, but for theirs as well.

Following is a summary of our principal recommendations.

## **II. SUMMARY OF PRINCIPAL RECOMMENDATIONS**

### **A. TRANSFERABLE DEVELOPMENT RIGHTS**

When the County Council established the base density in the Rural Density Transfer (RDT) zone – the prevailing zone in the Agricultural Reserve – at one dwelling unit for 25 acres, it also created Transferable Development Rights (TDRs) that granted property owners one development right, or one “TDR,” for each five acres of land owned. Landowners in the RDT zoned “sending areas” could then sell a TDR to landowners or developers in a “receiving area” in order to increase their development density. (A receiving area is a parcel designated as appropriate for development beyond its base density when the property owner purchases TDRs.) This

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<sup>3</sup> A summary of the 2002 TDR Task Force recommendations is in Appendix III.

pioneering technique has generally been successful to date, but will require significant attention and adjustments if it is to fulfill its important role in the Agricultural Reserve.<sup>4</sup>

We recommend the County Council enact the following changes to the current TDR program:

- Distinguish between excess and buildable TDRs.
- Require TDR utilization for residential development in floating zone applications/local map amendments.
- Designate buildable TDRs for use in floating zones as well as in commercial and industrial zones, central business district and research and development zones with an equivalency to floor area ratio or square footage for their use.
- Clarify limitations on non-agricultural, non-residential uses (such as private institutional facilities) where land is covered by a TDR easement.
- Reintroduce legislation to prevent property owners from selling all TDR easements and subsequently developing a non-residential, non-agricultural use on the property.

We endorse the following recommendations of the 2002 TDR Task Force:

- Master plans should more aggressively seek to maximize the number of receiving areas.
- If additional density is considered via rezoning not recommended in the Master Plan, the use of TDRs should be part of the change.
- The County should work with local municipalities to establish inter-jurisdictional TDRs to create receiving areas in municipalities.
- Eliminate the requirement in single-family zones and subdivision regulations that receiving areas use 2/3 of the possible TDRs.

We have received briefings from the County Planning Department on the status of a system to track the use of TDRs and are satisfied that improved TDR tracking is under way and that the planned TDR tracking system should meet future TDR information needs.

## **B. CHILD LOTS**

To encourage family continuity in farming, the RDT zone made allowance for landowners to build houses for their adult children at densities beyond one dwelling unit per 25 acres. This "child lot" program has been subject to differences in interpretation and to charges of abuse, and therefore requires both clarification and strict standards of implementation.

We recommend continuing to allow child lots in the RDT zone. We believe that the child lot provision is an important means to preserve and promote agriculture by allowing children to farm with their parents on the family farm. We recommend the County Council amend the

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<sup>4</sup> See Comment 3 by Wade Butler, Pam Saul, Drew Stabler, William Willard, Bo Carlisle, and Jane Evans, paragraphs 7 and 8 in Appendix II.



Zoning Ordinance to clarify the density provisions for child lots, ensure ownership by the child, and protect farmland.

We recommend the maximum density of subdivisions with child lots be one lot per child *in addition* to the base density allowed in the RDT zone.<sup>5</sup> For example, a property owner with 100 acres and two children will be allowed six lots (two child lots and four base density lots). This has been the practice of the Planning Board since the RDT zone was established. To limit the use of child lots for improper purposes, we recommend the following limitations on child lots:

- A child must own the child lot dwelling for five years; however exceptions should be allowed for hardship cases such as those used in the Maryland Agricultural Land Preservation Foundation (MALPF) easement program.
  - A child must not lease the child lot dwelling or enter into a contract for sale for five years, except the child may lease the child lot home to an immediate family member.
  - A landowner may create only one child lot for each child regardless of the number of properties owned.
  - A child lot may be created after the death of the landowner if the landowner's intent was to create the lot and is established in writing through a will or other document admissible in probate.
  - A majority of the land on parcels with child lots must be reserved for agriculture.
- To facilitate the implementation of the ownership requirement and leasing prohibition, we recommend additional written documentation and recordation at different steps in the planning process. We also recommend substantial monetary penalties for violation of child lot requirements.

We recommend limiting circumstances in which public water can be provided to child lots to the following:

- When the child lot can be served from an existing, abutting water main and will not allow service to others.
- When public water service can be provided in a manner that would not prevent the future application for a State or County easement to preserve agriculture.

We recommend the County Council be required to approve any request for public water to a child lot in the RDT zone rather than allowing administrative approval.

### C. SAND MOUNDS

Agriculture is the preferred use for the Agricultural Reserve proposed by the Functional Plan for the Preservation of Agriculture and Rural Open Space, and this is clearly stated in the Zoning Ordinance. One of the key recommendations of the Master Plan was to "support a rural sanitation policy that does not encourage development within the critical mass of active

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<sup>5</sup> See Comment 1 by Margaret Chasson, Nancy Dacek, Bob Goldberg, and Tom Hoffmann and endorsed by Jim O'Connell and Comment 6 by Scott Fosler, paragraph C in Appendix II.

farmland.”<sup>6</sup> To accomplish its goal of preserving land for farming, the Master Plan recommended against the use of alternative individual and community sewerage systems in the Reserve.<sup>7</sup> There was debate about whether sand mounds were an alternative system. As we seek to accomplish the aims of the Master Plan we recognize that in some cases the use of sand mound technology may be appropriate. Therefore, we recommend the County continue to permit sand mounds, but limit their potential use.

We debated whether a quantitative, acreage-based limitation on sand mounds was the best solution available that might gain widespread support. The sand mound issue was the most controversial topic we discussed, as reflected by the extensive comments Group members submitted both in support and in opposition to the majority recommendation.<sup>8</sup> A majority of the Working Group supports a quantitative, acreage-based limitation on sand mounds (described below) that might reduce overall application of sand mounds by an estimated 25% over what would otherwise occur. A minority of the Working Group is not convinced of this approach, and would recommend limiting the use of sand mounds more aggressively or on some other basis. However, we all agree that there are a number of “special cases” where use of sand mounds is justified, as discussed below. One reason for this minority view is a deeply held concern that the impact of the majority’s proposal is not well enough understood to be reliably predicted. We spent substantial time trying to achieve an acreage-based compromise that would satisfy all members, but in the end, concluded it would be appropriate to explain this difference of views in this Report.

Our recommendation recognizes the competing interests between retaining value in farmland for the purpose of sustaining farmers and retaining large tracts of land where agriculture can dominate activity. We recommend sand mounds be allowed as follows: One sand mound per 25 acres for the first 75 acres. Beyond that, one sand mound should be allowed for every 50 acres of land in the parcel. For example, a property owner with 125 acres but less than 175 acres would be allowed four sand mounds; one with 175 acres but less than 225 acres would be allowed five sand mounds, etc.

In addition, we recommend sand mounds be allowed under the circumstances listed below, for a parcel existing as of December 1, 2006.

- Where there is an existing house and the sand mound would not result in the development of an additional house.
- When it enables a property owner with approved deep trench system percs to better locate potential houses to preserve agriculture.
- For child lots, provided that our recommendations related to child lots are also adopted (e.g., ownership requirement). Sand Mounds will be approved for child lots

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<sup>6</sup> Maryland-National Capital Park and Planning Commission, “Approved and Adopted Functional Master Plan Preservation of Agriculture and Rural Open Space”, page iv (October, 1980).

<sup>7</sup> *Id.*, at 62.

<sup>8</sup> See Comment 2 by Margaret Chasson, Nancy Dacek, Scott Fosler, Bob Goldberg, Tom Hoffmann, and Jim O’Connell; Comment 3 by Wade Butler, Pam Saul, Drew Stabler, William Willard, Bo Carlisle, and Jane Evans; Comment 5 by Jim Clifford; Comment 7 by Pam Saul; and Comment 8 by Elizabeth Tolbert in Appendix II.

where they are approved under the zoning provision or approved under the Agricultural Easement Program MALPF/AEP.

- For bona fide tenant housing, provided that recommendations related to tenant houses are also adopted. Sand Mounds will be approved for bona fide tenant housing wherein the dwelling can never be conveyed from the parent parcel.
- For any pre-existing parcel that is defined as an exempted lot or parcel in the zoning regulations.
- For properties where there has been a significant investment in testing for sand mounds prior to the adoption of these new restrictions (specific criteria for these grandfathering provisions are addressed below).
- For any permitted agricultural use under the zoning regulations (e.g., farm market).
- For the purpose of qualifying for a State or County easement program (including a Building Lot Termination program).

#### **D. BUILDING LOT TERMINATION (BLT) EASEMENT PROGRAM**

Even when landowners in the RDT zone sell TDRs, they typically retain one TDR for each 25 acres owned so that they will have a buildable lot. (This is why we refer to that single TDR retained for each 25 acres as a “buildable TDR,” and the other four TDRs for each 25 acres as “excess TDRs,” since the landowner cannot use these to build on RDT zoned property in “sending areas,” but can only sell them to be used in “receiving areas.”) The consequence is a higher probability than originally envisioned that the Agricultural Reserve will be “built out” at close to the full density of one dwelling unit per 25 acres, a result that could jeopardize agriculture, principally by fragmenting farmland. We believe that addressing this problem is central to the viability of the Agricultural Reserve.<sup>9</sup>

We recommend establishing a BLT easement program as a way to prevent fragmentation of farmland in the Agricultural Reserve. A BLT program is designed to compensate a landowner financially in exchange for an easement that eliminates future development of a lot shown to be viable for building through a soil percolation test.

There are two goals and purposes of a BLT program: (1) reduce the number of buildable lots in the Agricultural Reserve while providing equity to landowners; and (2) preserve by easement as much usable farmland as possible.

We recommend strict eligibility criteria for participation in the BLT program to ensure that a bona fide development lot is terminated and appropriate public benefit is derived.

As a basis for compensation, we recommend a landowner prove that the lot can support a house with a viable septic system before participating in the BLT program. Regarding funding, we recommend public funding of the BLT program initially using proceeds from the Agricultural Transfer Tax with compensation set at a percentage of the fair market value of a buildable lot in the RDT zone. Although some Group members have some reservations with publicly funding

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<sup>9</sup> See Comment 6 by Scott Fosler, paragraph D, in Appendix II.

the BLT program, we recognize that public funding is the only way to get the BLT program started quickly. At the same time, we recommend the County create a buildable TDR program to provide private funding via the purchase of TDRs by developers of non-residential property.

#### **E. PENDING LEGISLATION**

Several pieces of legislation pending as of October 31, 2006 would affect the Agricultural Reserve and need to be reconciled with the Group's findings and recommendations.

We recommend the Council enact legislation similar to language in Zoning Text Amendment (ZTA) 05-23 that would require that the TDR easement, in addition to limiting the construction of one-family dwellings, prohibit the construction of any non-residential use, other than agriculture, on the affected property as defined in Section 59-A-2. However, the second part of ZTA 05-23 has unintended consequences that require further discussion and we are not recommending the current language in that part of this legislation. The second part discusses limiting the use of TDRs on property in the RDT zone that is developed with a non-residential use other than agriculture.

#### **F. ADDITIONAL ISSUES**

The Council's resolution establishing the Ad Hoc Agricultural Working Group called for a comprehensive review while also intentionally limiting the scope of the Group's work to the issues discussed above. We feel that a broader comprehensive review of policies and laws related to the Agricultural Reserve is necessary and suggest a range of issues that should be considered, including some preliminary thoughts on right-to-farm legislation, education strategies, and design standards.

We recommend the County Council enact legislation that requires potential homebuyers of homes in agricultural zones to be notified of laws that protect farmers from certain nuisance claims. If the number of nuisance complaints increases, we would recommend the Council explore whether additional action is necessary. In addition to disclosure, we recommend the County explore options to educate residents about the importance of the Agricultural Reserve.

We also recommend the Planning Department explore ways to prevent the fragmentation of agricultural land by locating buildings to preserve viable farmland. Any strategy must maintain owner equity and achieve the goal of preserving farmland. We understand that there is tension between the Planning Department and property owners on the issue of design standards and efforts to identify solutions must be mindful of these tensions. We recommend the Planning Department use the existing agricultural advisory groups to help develop these strategies.

We conclude this Report with an expanded list of other issues regarding zoning, tenant homes, rustic roads, and economic viability that we believe should be addressed in any comprehensive consideration of the sustainability and vibrancy of the Montgomery County's Agricultural Reserve.

# **CHAPTER 1:**

## **TRANSFERABLE DEVELOPMENT RIGHTS PROGRAM, INCLUDING TRACKING**

**ISSUE:** Should the Transferable Development Rights (TDR) program be modified? The lack of receiving areas to accommodate the number of TDRs available to be sent from land zoned Rural Density Transfer (RDT) has been an ongoing problem. We believe that the TDR program is essential to the preservation of the Agricultural Reserve and that changes are necessary to keep the program strong.<sup>10</sup>

### **I. RELEVANT LAWS AND REGULATIONS**

The County established the TDR program to provide landowners compensation for the downzoning that reduced the density allowed for a property in the RDT zone from one house for every five acres to one house for every 25 acres.<sup>11</sup> The TDR program allows farmland owners to sell their development rights and still retain title to their land. When a landowner desires to sell a TDR, an easement identifying the TDR is recorded in the County land records. The easement stipulates the number of existing houses on the parcel, the number of TDRs being severed,<sup>12</sup> and the number of future houses that can be built on the parcel.

The maximum number of TDRs that can be created is one right for every five acres. A TDR must be retained for each dwelling unit existing on a parcel. The maximum number of houses on RDT zoned property with retained development rights is one house for every 25 acres. All TDRs that are not retained by the owner of RDT zoned property, may be sold for use in a designated receiving area. To make the difference in potential use and value of the TDRs clear, we refer to the TDR corresponding to an existing or potential house on an RDT parcel as a "buildable TDR". We refer to a TDR that cannot result in a house's being built on an RDT parcel (but may result in additional density in a receiving area) as an "excess TDR".

An open market system facilitates this exchange. Some or all of the TDRs available to the parcel could be severed at any time. Provisions allowing the sale of development rights from the RDT zone are found in § 59-C-9.6 of the Zoning Ordinance. Provisions allowing TDRs to increase residential density in receiving areas are found in various sections of the Zoning Ordinance and are not referenced here.

See Appendix I for a glossary of terms used in this chapter.

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<sup>10</sup> See Comment 3 by Wade Bulter, Pam Saul, Drew Stabler, William Willard, Bo Carlisle, and Jane Evans, paragraphs 7 and 8 in Appendix II.

<sup>11</sup> See Comment 6 by Scott Fosler, paragraph A in Appendix II.

<sup>12</sup> Severed means "to be recorded by easement among the land records of Montgomery County". A severed TDR is a TDR that is no longer attached to the sending property.

## **II. ACTIVITY UNDER THE EXISTING LAW**

The County has placed more than 48,000 acres of land in the Agricultural Reserve under TDR easement. Planning Department analysis shows that since 1981, landowners have severed approximately 9,700 TDRs from properties in the RDT zone. Of those severed, approximately 6,100 have been transferred to receiving areas. Some 3,600 severed TDRs for various reasons have not been attached to a receiving area. In addition, there are 800 unsevered TDRs. These unsevered, excess TDRs plus the 3,600 severed, unextinguished TDRs equal approximately 4,400 TDRs that can still be used for development in receiving areas. The quantity of potential TDRs that can be transferred from sending areas is larger than the number of designated TDRs in receiving areas. Based upon the existing number of TDRs that can be purchased in receiving areas and past experience with the number of TDRs actually purchased, Planning staff estimates a deficit in receiving areas between 3,100 to 3,600 TDRs.<sup>13</sup>

Designating a sufficient number of receiving areas has been the responsibility of the County Council through the master plan development process. Since the use of TDRs is at the option of the developer, in some designated receiving areas, fewer TDRs than the number allowed by the master plan have been used. Therefore, the County has an ongoing need to maintain an adequate supply of receiving capacity. The price the landowner receives varies with the residential building activity in the County. To deal with the problem of sustaining an attractive market for TDRs, a Task Force was established in 2001 to recommend changes to the TDR program. This Task Force was composed of representatives from varied segments of the County and affected branches of the County government. The Task Force recommended policy, regulatory, and information changes to the TDR program, but only the tracking issue has been addressed. A summary of the Task Force recommendations appears in Appendix III. The Task Force reported their recommendations to the Planning Board in 2002; therefore, we refer to this Task Force as the 2002 TDR Task Force.

## **III. GROUP RECOMMENDATION TO REMEDY THE PROBLEMS**

We believe the current TDR program is essential to the preservation of land in the Agricultural Reserve and to sustain the ability of rural landowners to capitalize their equity in the land. It should be modified to provide additional opportunities for property owners to sell their TDRs. There are not enough receiving areas to support the TDRs that remain to be sent from the RDT zone. We strongly support identifying new receiving areas for the existing TDR program while at the same time creating a mechanism and receiving areas for a new TDR program whereby developers of non-residential property can purchase TDRs, especially buildable TDRs, which have a higher value than excess TDRs.

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<sup>13</sup> At the time the Group considered the TDR program, the estimated deficit was 800 to 1,300 TDRs. In the time between the Group's last meeting and the editing of this final report, Council staff learned that a new estimate increased the deficit to 3,100 to 3,600. So while this updated information is included in the text, it was not available to the Group during its deliberations. A reasonable assumption is that it would only reinforce the Group's recommendations to expand the quantity of TDRs that can be accommodated in receiving areas.

As new TDR receiving areas are sought, we recommend the process assure that densities in all receiving areas, after application of total permissible TDRs in those receiving areas, do not exceed the carrying capacity of public infrastructure. This is critical both as good planning and to assure that residents living near TDR receiving areas are not unduly burdened by the TDR program, which is important both with regard to fairness and in maintaining broad public support for the Agricultural Reserve.<sup>14</sup>

**We endorse the following recommendations made by the 2002 TDR Task Force:**

- **The Master Plan evaluation process should formally include the creation or expansion of TDR receiving areas whenever any additional density is contemplated.** We believe that the County Council should adopt a policy whereby in any master plan if a site is recommended for increased density, there should be an assumption that the increased density should be through the use of TDRs, unless there is a compelling reason not to require TDRs. We believe the burden of proof should be to prove why TDRs are inappropriate on a particular site, rather than to prove why TDRs are warranted.
- **If additional density is considered via rezoning not recommended in the Master Plan, the use of TDRs should be part of the change.** Recommendations to accomplish this are given below.
- **The County should authorize discussions with Rockville and Gaithersburg on transfers of TDRs into municipalities.** We believe that inter-jurisdictional TDRs present a way to increase the number of receiving areas and prevent the loss of receiving areas on property that may be annexed. Since Rockville is in the process of revising its zoning ordinance, this may present an opportunity to establish this program. Because there is little direct benefit to municipalities for placing TDRs on properties within their boundaries, we believe that the County may need to develop incentives to encourage their participation (or consequences for failure to participate).
- **The County Council should eliminate the requirement in single-family zones and subdivision regulations that receiving areas use 2/3 of the possible TDRs.** The Zoning Ordinance requires that development using TDRs must use at least "two-thirds of the number of development rights permitted to be transferred to the property under the provisions of the applicable master plan approved by the district council."<sup>15</sup> We believe that eliminating this provision may actually *increase* the use of TDRs, especially on small or constrained properties where it is impossible to use two-thirds of the TDRs allowed by the zone.

At the time the TDR easement was defined, residential and agricultural uses were predominant in the land designated as the Agricultural Reserve. As a consequence, the easement is written in language to encourage agricultural use and simply limits the number of houses permitted on a parcel under easement. Now other uses that are permitted by the Zoning Ordinance are being proposed in the RDT zone. Legislation is needed to strengthen and clarify the intent of the TDR easement (see Chapter 5 on Pending Legislation).

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<sup>14</sup> See Comment 6 by Scott Fosler, paragraph B in Appendix II.

<sup>15</sup> Montgomery County Zoning Ordinance, § 59-C-1.393(b). This requirement may be waived by the Planning Board only if it finds that it would be desirable for environmental or compatibility reasons.

We recommend the County Council enact the following changes to the current TDR program:

- **Enact legislation similar to language in ZTA 05-23.** Such legislation would clarify in clear and direct terms the long-standing legislative intent that the development of RDT-zoned parcels encumbered by TDR easements be limited to single family houses and agricultural and agricultural-related uses only. See Chapter 5 on Pending Legislation for additional information.
- **Distinguish between excess and buildable TDRs.** By recognizing the value of a development right in the RDT zone and providing a more valuable exchange rate for such rights, landowners would be motivated to transfer those rights.<sup>16</sup>
- **Require excess TDRs for increasing density in floating zone applications/local map amendments.** Although TDRs have traditionally been applied through Euclidian zones, we believe that floating zones that increase density provide an appropriate opportunity for additional excess TDRs to be used. This is consistent with the second bullet under 2002 TDR Task Force endorsements above. We believe that this should be a high priority.
- **Designate buildable TDRs for use in floating zones as well as in certain commercial and industrial zones, and research and development (R&D) zones with an equivalency to floor area ratio (FAR) or square footage for their use.** Land in commercial and industrial zones could be allowed an increase in density to provide significant potential as new receiving areas. Assuming the County implements the BLT program, we recommend non-residential receiving areas be designated to create new TDR capacity to purchase buildable TDRs providing an alternative way to fund the BLT program (see Chapter 4).
- **Provide for TDR receiving capacity for mixed-use zones.** Mixed-use zones are used extensively in the most dense areas of the County (central business districts (CBDs) – Silver Spring, Bethesda and Friendship Heights) and near transit stations. Although the County Council has begun putting TDRs on the resident portion of two mixed-use zones (the Transit Oriented Mixed-Use zone and the Town Center Mixed-Use zone), it has not placed TDRs on the commercial portion of mixed-use zones or considered whether to add TDRs to the CBD zones. Both provide significant opportunities that should be realized. We note that the 2002 TDR Task Force recommended the creation of TDR receiving areas with density bonuses in some mixed-use zones.<sup>17</sup>

## **IV. TDR TRACKING**

### **A. INTRODUCTION**

The 2002 TDR Task Force recommended improvements to the TDR tracking system and this recommendation is being addressed. Tracking TDRs involves recording the status of the TDR from the time it is severed from the land by easement, through the sale of the TDR recorded by deed, and until the TDR is extinguished by use in a preliminary plan and subsequent recording

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<sup>16</sup> See Comment 6 by Scott Fosler, paragraph D, in Appendix II.

<sup>17</sup> The TDR Task Force recommended TDR receiving areas be created in CBD, Transit Station, Town Center, and the higher density residential and mixed-use zones used in the vicinity of transit stations.



on a subdivision plat. TDRs that are severed from the farmland by easement can be held by the landowner or sold to another party. The buyer of the TDR can also hold, sell, or use the TDR as a means of increasing density elsewhere in the County.

Once a TDR is severed from the land, an easement is recorded.<sup>18</sup> The easement records the date, TDR serial number, tax identification number associated with the parcel, acreage of the parcel, grantor and grantee of the easement, location of the parcel, number of houses on the parcel, TDR capacity of the parcel, and the number of TDRs being severed. A distinct liber and folio (book and page) for the easement assigned by the County are also recorded.

If the TDR is sold, a deed will record additional information relevant to tracking the TDR. The deed records the sale date, the buyer and seller of the TDR, the number of TDRs sold, the TDR serial number, the liber and folio of the easement that severed the TDR, the liber and folio of the deed, and frequently, the location and description of the parcel from which the TDR was severed.

Additional information used to track TDRs comes from the County Tax Assessors Office. This information includes current acreage of the parcel, number of houses on the parcel, improvements to the parcel, the tax identification number of any child lots associated with the parcel, as well as the landowner's name and address. This data is used as a cross reference to the data supplied by the County Attorney's Office.

Consolidation of the above data creates a data file for all parcels that create/sever a TDR indexed by tax identification number. This data is matched to Planning Department data on preliminary plan information. If a TDR is extinguished by use on a preliminary plan, the preliminary plan number is attached to the file and recorded for each individual TDR.

## **B. IMPROVED TDR TRACKING**

For Fiscal Year 2007, the County Council directed the Montgomery County Planning Department to develop a comprehensive record of TDRs from creation through final use. With improved tracking, the County should be able to know at any point in time how many TDRs have been created, are left to be created, have been used, and other statistics. Additionally, the County should be able to look up TDR-related information about any parcel and be able to verify that TDRs are being created, sold, and used in accordance with the provisions of the TDR program.

By November 2006, the Planning Department had made significant progress in completing this task and reported their progress to us. The Planning Department has completed the comparison of TDR information in the County Attorney's records to those in the Planning Department's Development Review database (Hansen), to make sure both records match. The goal is a complete record in Hansen of sending parcel TDR information, and this goal is virtually complete (there are some outstanding questions for a few records). The Planning Department is

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<sup>18</sup> The Montgomery County Attorney's Office records all easements and deeds that are created in the County. This is the primary source of data on TDRs.

currently creating a Geographic Information Systems (GIS) layer of land under TDR easement. This layer is tied to the TDR database in Hansen.

The Planning Department indicates that further work on TDR tracking will focus on parcels that have used TDRs (i.e., receiving areas). It is performing a quality assurance check of all TDRs that have been recorded on a subdivision plat. This process is somewhat more complicated than for sending areas because there is not a comprehensive reference for receiving parcels analogous to the County Attorney's record of created/sent TDRs. When this quality assurance is finished, Planning Department staff intends to add to the TDR GIS layer those receiving parcels where TDRs have been used.

Once the accounting and mapping of receiving parcels is complete, the County will have a system for tracking each TDR recorded from origination from the sending parcel to its being extinguished by final use on a receiving parcel. This combination of Hansen database and GIS layer will allow easy access for checking the status of any individual TDR or any sending or receiving parcel. It will allow status reports to be run when needed for policy analysis or TDR program evaluation. It will also allow County staff an easy method for determining if TDR use in any particular case is being conducted in accordance with the rules of the program (e.g., ensuring that a new landowner cannot create and sell TDRs that have already been sold by a previous landowner).

### **C. GROUP DISCUSSION**

We received two briefings from the Planning Department on the status of tracking the sale of TDRs. We are satisfied that improved TDR tracking is well under way and that the planned TDR tracking system, if implemented properly, will meet future TDR information needs. We understand that the progress on TDR tracking is the result of high levels of coordination among staff from several public agencies, including the County Attorney's Office, the Department of Economic Development (DED), Park and Planning, and the State Tax Assessor's Office. We are encouraged by this coordination and support staff's review to determine whether any additional, or more formalized, arrangements for data transfer and review are needed. We support the creation of a TDR tracking manual to document the tracking procedures that have been established, and recommend that the Planning Board transmit an annual TDR status report to the County Executive and County Council.

### **V. NEXT STEPS**

The Planning Department should draft amendments to the Zoning Ordinance and the Subdivision Regulations to amend the TDR program to require excess TDR receiving capacity in floating zones and define an exchange rate for buildable TDRs in research and development and certain commercial, industrial, and mixed-use zones, and eliminate the requirement that receiving areas use two-thirds of the possible TDRs.

The Planning Board and the Council should implement our suggested policy that maximizes the number of receiving areas identified in master plans (i.e., assume for purposes of master plans that if a site is recommended for increased density, the additional density should be through the use of TDRs unless there is a compelling reason to depart from this assumption).

The Planning Department should begin working with municipalities to develop an inter-jurisdictional TDR program.

The Planning Department should finish the necessary steps they have identified to complete implementing a system to track the use of TDRs, and begin submitting annual TDR reports to the Council.

## **CHAPTER 2: CHILD LOTS IN THE RURAL DENSITY TRANSFER ZONE**

**ISSUE:** Should the Zoning Ordinance or practices concerning child lots be changed? The Zoning Ordinance allows for lots for children of property owners; however, language on child lots in the Rural Density Transfer (RDT) zone is unclear and subject to multiple interpretations. Questions have arisen about the wording and the intent of the Zoning Ordinance with regard to density and use. Additionally, there are no restrictions on the transfer of child lots to third parties after building permits are issued. If child lots can be immediately transferred, they may provide an incentive to build more houses than may otherwise be built. Finally, there are conflicting provisions in the Master Plan for the Preservation of Agriculture and the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan regarding whether or not public water is available for child lots.

### **I. RELEVANT LAWS AND REGULATIONS**

There are two exemption provisions in the Zoning Ordinance for creating child lots in the RDT zone:<sup>19</sup> (1) through the Maryland Agricultural Land Preservation Foundation (MALPF)<sup>20</sup>; and (2) in the process of subdivision. Participants in the MALPF State easement program must adhere to a more stringent set of requirements for child lots than those who create child lots under the County's program.

#### **A. MALPF CHILD LOTS**

MALPF promotes the creation of easements on agricultural land by placing easements which are more restrictive than zoning. The easement itself becomes the guiding document which details what permissible density there is (if any) and under what circumstances that density can be achieved.

The MALPF program permits lots to be released from the MALPF easements "only for the landowner who originally sold an easement, 1 acre or less for the purpose of constructing a dwelling house for the use only of that landowner or child of the landowner, up to a maximum of three lots."<sup>21</sup> For MALPF child lots, "the resulting density on the property shall be less than the

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<sup>19</sup> Child lots are also allowed in the Rural Cluster and Rural zones. Child lots are a "grandfathering" of development rights for some long-time landowners whose property was down-zoned.

<sup>20</sup> Montgomery County Zoning Ordinance, §59-C-9.74(a). The Maryland Agricultural Land Preservation Foundation's primary purpose is to preserve sufficient agricultural land to maintain a viable local base of food and fiber production for the present and future citizens of Maryland. The MALPF program consists of two basic steps: the establishment of agricultural preservation districts, and the purchase of perpetual agricultural conservation easements. The Maryland Agricultural Land Preservation Foundation administers the easement program.

<sup>21</sup> Maryland Code, Agriculture §2-513(b)(2).

density allowed under zoning of the property before the Foundation purchased the easement.”<sup>22</sup> By regulations, the County Planning Board must approve MALPF child lots,<sup>23</sup> which is done during the subdivision process.

Under the negotiated easement sold by the landowner through MALPF, the transfer of a child lot to a third party is prohibited within five years from the release of the MALPF easement, unless a transfer is specifically approved, such as for death or bankruptcy.

The Zoning Ordinance limits the creation of MALPF child lots to the number of development rights assigned to the property.<sup>24</sup> There is no mention of the relationship between MALPF child lots and overall density. The Zoning Ordinance does not specifically state that MALPF child lots are exempted from area and dimension requirements. MALPF child lots can never produce more lots than allowed by the underlying zoning density according to the terms of the easement.

## **B. SUBDIVISION CHILD LOTS**

The Zoning Ordinance provision permits an “exemption” of lots “for use for a one-family residence by a child, or the spouse of a child, of the property owner”.<sup>25</sup> In order to create a child lot, the following conditions must be met:

1. The property owner must establish that he or she had legal title on or before the approval date of the sectional map amendment (January 6, 1981) which initially zoned the property to RDT;
2. This provision applies to only one lot for each child of the property owner; and
3. Any lots created for use for one-family residence by children of the property owner must not exceed the number of development rights for the property.<sup>26</sup> (There is no mention of the relationship between subdivision child lots and overall density.)

Subdivision child lots “are exempt from the area and dimensional requirements of section 59-C-9.4 but must meet the requirements of the zone applicable to them prior to their classification in the [RDT] zone.”<sup>27</sup> Before zoned RDT, properties in the Agricultural Reserve were zoned Rural, which has a density of one dwelling for every five acres.

## **C. DENSITY IN THE RDT ZONE**

Generally, the maximum density in the RDT zone is one house per 25 acres. Section 59-C-9.41 specifically excludes farm tenant dwellings and accessory apartments, but not child lots, from that density limitation.<sup>28</sup> Section 59-C-9.4 states that the density limits in the RDT zone “apply

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<sup>22</sup> Maryland Code, Agriculture §2-513(b)(3)(i).

<sup>23</sup> Code of Maryland Regulations (COMAR) 15.15.01.17(c)(1)(c).

<sup>24</sup> *Id.*

<sup>25</sup> Montgomery County Zoning Ordinance, §59-C-9.74(b)(4) (emphasis added).

<sup>26</sup> *Id.*, §59-C-9.74(b)(4).

<sup>27</sup> *Id.*, §59-C-9.74(b).

<sup>28</sup> *Id.*, §59-C-9.41.

in all cases, except as specified in . . . the exemption provisions of section 59-C-9.7",<sup>29</sup> which include child lots. For "subdivision" child lots, the only exemption specified in the exemption provisions of 59-C-9.7 is from "area and dimensions", not density.

There are two ways to create lots in the Zoning Ordinance: (1) exceptions to density (pre-existing parcels and child lots as a matter of practice); and (2) regular density ("market" lots). The Zoning Ordinance is unclear on whether density for child lots is in addition to the general permissible "market" density of one housing for every 25 acres. (For example, is a property owner with 100 acres and two children allowed six lots, that is, two child lots and four base density lots?). The Zoning Ordinance does not specify whether excepted housings are the exclusive way to develop or that development can use both ways of creating lots. The overall density allowed on a parcel differs depending on whether only one method is allowed or both methods are allowed.

#### **D. CHILD LOTS USE**

The Zoning Ordinance permits the creation of a child lot "for use for a one-family residence by a child, or the spouse of a child".<sup>30</sup> The Zoning Ordinance defines "use" as follows: "Except as otherwise provided, the principal purpose for which a lot or the main building thereon is designed, arranged, or intended, and for which it is or may be *used, occupied, or maintained*."<sup>31</sup> The Zoning Ordinance does not limit the ownership of child lots or the transfer of child lots to third parties, and it does not require any notation on the record plat concerning child lots.

### **III. ACTIVITY UNDER THE EXISTING LAW**

#### **A. CURRENT ACTIVITY**

Since 1981, 95 child lots have been created within 46 subdivisions in the RDT Zone. That averages approximately two child lots per plan when a subdivision plan contains child lots. Child lots represent 18% of the total number of lots created in the zone. Planning Board staff and Department of Economic Development staff developed an inventory of RDT properties eligible for child lots. The best available information suggests that there are 99 RDT zoned properties at least 10 acres<sup>32</sup> that have not transferred ownership since January 6, 1981.<sup>33</sup> The number of children a landowner has limits the number of potential child lots. Based upon the experience of the program to date, approximately 198 *additional* child lots are possible to be created in the Agricultural Reserve.

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<sup>29</sup> *Id.*, §59-C-9.4.

<sup>30</sup> *Id.*, §59-C-9.74(b)(4).

<sup>31</sup> Montgomery County Zoning Ordinance, §59-A-2.1 (emphasis added).

<sup>32</sup> A property smaller than 10 acres is not entitled to create a child lot.

<sup>33</sup> On January 6, 1981, a sectional map amendment was adopted that downzoned land in the Agricultural Reserve from one house per five acres to one house per 25 acres.

The child lot provision will be a self-extinguishing program. The number of landowners that have owned property in the RDT zone since 1981 will diminish to zero over time. The number of children from that set of owners will peak at some point in time (if it has not done so already). There is still an open question as to whether a child lot can be created by a will (after the death of a long time owner) when property is owned with rights of survivorship. Given the existing text of the Zoning Ordinance, this question can only be answered when a County agency has the opportunity to interpret the word "title".<sup>34</sup>

Allegations of abuse of the child lot provisions have arisen and are a result of differing interpretations of provisions in the Zoning Ordinance highlighted above.

## **B. CURRENT PLANNING BOARD ZONING ORDINANCE INTERPRETATIONS**

Since the establishment of the RDT zone, the Planning Board has interpreted the Zoning Ordinance to limit the maximum density of subdivisions with child lots to one lot per child in addition to the base density allowed in the RDT zone (e.g., if a landowner has 3 children on a 25-acre parcel, current Planning Board interpretation would allow the landowner 4 lots; base density would allow the landowner only 1 lot). **The Planning Board has considered changing this interpretation.** The Planning Board requires a property owner to retain one transferable development right (TDR) for each lot.<sup>35</sup> The combination of child lots and base density may not exceed the total number of TDRs available for the property.<sup>36</sup>

When a subdivision application includes child lots in the RDT zone, the Planning Board requires an affidavit from the landowner stating that any lot created is for the owner's child or the spouse of a child.<sup>37</sup> The Planning Board also requires an affidavit at record plat confirming that the building will be for the use of the owner's children or spouses of the children. More recently, building permits are being checked to ensure that the permit is being issued to the child of the property owner. There have been instances where the County has refused to issue a building permit on a child lot to someone who is not the child of the landowner.

There have been no prohibitions or restrictions placed on the sale of child lots by the Planning Board at the time of subdivision approval. The Planning Board has discussed changing this practice.

## **III. GROUP RECOMMENDATION TO REMEDY THE PROBLEMS**

**We recommend continuing the use of bona fide child lots in the RDT zone.** Group members believe that child lots are an important means to promote family-based agriculture. They provide a way for children to live on their parent's land and help farm on the family farm or simply allow

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<sup>34</sup> The Planning Board has not been presented a subdivision with the issue of child lots created after the death of an owner; this question arose in a Planning Board staff proposed zoning text amendment.

<sup>35</sup> Montgomery County Planning Board, "Plowing New Ground", page 10 (2001).

<sup>36</sup> Planning Staff memo, Ganassa property, February 16, 2006.

<sup>37</sup> This long-standing practice is not a literal requirement of the Zoning Ordinance.

children to be near their parents. Further, some believe they are a source of compensation, in addition to TDRs, for the loss of equity landowners experienced during the 1981 downzoning. Because the current Zoning Ordinance is unclear regarding the framework for the child lot provisions, we recommend the County Council amend the Zoning Ordinance to clarify when child lots are allowed. Regarding density, we recommend the maximum density of subdivisions with child lots be one lot per child *in addition* to the base density allowed in the RDT zone (one house per 25 acres). For example, a property owner with 100 acres and two children will be allowed six lots (two child lots and four base density lots).<sup>38</sup>

To clarify the intent and limitation of the child lot program, we recommend the following additional requirements:

- **The child must own the home constructed on the child lot for five years.** When a house is built, the child must own the lot at the time of building permit and must continue to own the house for five years after construction. An existing dwelling that becomes a child lot will be governed by the five year ownership requirement. We recommend enforcement of the ownership requirement be resolved through a title search at the time of sale.
- **Exceptions to the ownership requirement should be allowed for hardship cases,** such as those used in MALPF (e.g., foreclosure of the property, death of the child before the end of the five year period of ownership, serious incapacity, and callup for military service).<sup>39</sup>
- **Do not allow a child owning a child lot home to lease the home or enter into a contract for sale for five years after construction.** However, the landowner's child should be allowed to lease the house to another immediate family member (e.g., the grandchild of the original owner). We discussed requiring the child to occupy a child lot, but agree that monitoring occupancy could be difficult. For enforcement, we recommend the Department of Permitting Services (DPS) develop a "complaint-based" enforcement mechanism. Under this system, DPS would follow-up with any complaints filed. We feel more extensive enforcement options are too costly, may invade privacy rights, and are not worth the effort.
- **A landowner can only create one child lot for each child.** We strongly feel that a landowner is only entitled to one child lot per child regardless of the number of properties a landowner has. In other words, we feel that a landowner is not entitled to one child lot per child for each property the landowner has.
- **Each child lot should require the use of one TDR.** Child lots should not be allowed if the property owner has already sold all TDRs. (Planning and Executive staff have historically advised property owners to hold onto one TDR for each potential child lot.)

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<sup>38</sup> See Comment 1 by Margaret Chasson, Nancy Dacek, Bob Goldberg, and Tom Hoffmann and endorsed by Jim O'Connell and Comment 6 by Scott Fosler, paragraph C in Appendix II.

<sup>39</sup> **Follow-Up Required:** Further work should be done to determine what specific circumstances would constitute a hardship and what body would make the decision on a hardship matter.



- **A child lot can be created after the death of the landowner if the landowner's intent was to create the lot and is established in writing through a will or other document admissible in probate.**
- **A majority of land on any parcel with child lots be reserved for agriculture and prohibited from development.** Our recommendation is to set a standard low enough so that it would not reduce the total number of allowable lots. A requirement to keep a majority of the land reserved for agriculture would probably have no impact on large properties where the number of children is limited but could limit the **size or location** of child lots on small parcels. For example, an owner of 25 acres with two children would have to keep the one market rate house and child lots on 7.5 acres if the goal were to preserve 70 percent of the property in agriculture. We believe that this provision should not result in a decrease in the potential number of child lots.
- **We did not have the opportunity to discuss in detail whether there should be a minimum acreage requirement for child lots or a maximum size but believe these are appropriate issues for follow-up work.**

We believe care must be taken to adequately ensure that these recommendations are adhered to. Therefore, to facilitate the implementation of the ownership requirement and leasing prohibition, we recommend establishing the following procedures:

- **The record plat must indicate that the property contains a child lot.** To this end, the Planning Department must require a covenant to be recorded in the land records at the same time the plat is recorded. The covenant should contain a provision indicating that the house must be owned by the child for five years after construction and may not be leased during that time. Violation of the covenant should have penalties.
- **The building permit must be issued only in the child's name.** The building permit should not be approved until DPS has determined that the child has signed an affidavit noting the limitations on ownership and leasing and knowledge of the covenant.
- **There should be substantial monetary penalties to discourage violation of these requirements.**

We considered some limits that we determined were unnecessary because of the other recommendations set forth in this Chapter. We do not recommend limiting the creation of child lots to property owners with land in agricultural production. Group members feel that any landowner who owned land during the 1981 downzoning should be allowed to create child lots, regardless of whether the land is in agricultural production. We also do not recommend establishing a sunset date for the child lot provisions. Group members generally feel that a natural sunset date already exists when the landowners from the 1981 downzoning either pass away or sell their property. Therefore, we feel that an arbitrary deadline is unnecessary. Further, although we support allowing a child to create a child lot after the death of a landowner, we do not believe that there should be a time limit on the child's ability to create the lot because a child's lifespan will serve as a natural time limit.

## **IV. PUBLIC WATER TO CHILD LOTS**

### **A. RELEVANT LAWS AND REGULATIONS**

There is an inherent conflict between the Ten-Year Comprehensive Water and Sewerage Systems Plan and the 1980 Functional Master Plan for the Preservation of Agriculture and Rural Open Space. The Master Plan recommends denying “public water and sewer service to areas designated for agricultural preservation that utilize the” RDT zone.<sup>40</sup> The Water and Sewerage Plan provides, “[c]ommunity [public] water service may be provided to support the subdivision of lots for the children of the owners of qualifying properties.” Further, the Water and Sewerage Plan notes that “[w]ater service in these cases is generally intended to be provided from abutting water mains, although water main extensions can be considered where those extensions are consistent with the requirements for large lot development . . . .”<sup>41</sup>

### **B. GROUP RECOMMENDATION**

We support confirming the provision in the Water and Sewerage Plan to allow public water service to be provided but with amendments to limit the applicability so that this provision would only be used in limited circumstance. We recommend amending the language of the Water and Sewerage Plan to allow public water to child lots in the following circumstances:

- When the child lot can be served from an existing, abutting water main and service to the property would not provide the opportunity for service to other RDT properties.
- When public water service can be provided in a manner that would not prevent the future application for a State or County easement for farmland preservation.<sup>42</sup> Properties receiving public water are not eligible for State easement programs or the BLT program as described in Chapter 4. This could increase the appeal of residential development (at one house per 25 acres) over preservation through an easement program.

We make this recommendation based on the assumption that there are only a small number of potential child lots that would qualify for public water under our recommendation. Once implemented, we recommend the County monitor how many lots use this provision. If it appears that a significant number of lots are being provided with public water, we would urge the County reconsider this policy.

We recommend the County Council approve any request for public water to a child lot in the RDT zone by a majority vote. As the Council gains experience with such approvals, it might consider permitting them to be made administratively in accordance with clear criteria

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<sup>40</sup> Functional Master Plan for Preservation of Agriculture, page 59.

<sup>41</sup> Montgomery County, “Ten-Year Comprehensive Water Supply and Sewerage Systems Plan”, Chapter 1, § II.E.9 (2003).

<sup>42</sup> For example, if public water is provided on the edge of a lot and would not jeopardize application for the rest of the property.

stipulated by the Council (for instance, by more clearly defining whether “abutting” means 10 ft. or 10,000 ft.).

## **V. NEXT STEPS**

The Planning Board should, draft a zoning text amendment that would clarify the Zoning Ordinance and impose limitations on the use of child lots in the RDT zone, including examining follow-up questions of whether there should be a minimum acreage or a maximum size, what specific circumstances should constitute a hardship, and who should determine whether the hardship requirements are satisfied,

The Planning Department should begin requiring a covenant to be recorded in the land records when a child lot is created specifying that a house on the child lot must be owned by the child for five years and must not be leased except to immediate family.

The Department of Environmental Protection should develop a monitoring mechanism to track how many child lots are utilizing public water.

The Department of Permitting Services should continue ensuring that building permits for child lots are approved only for the landowner’s children and begin developing a complaint-based enforcement mechanism to respond in situations when the owner of a child lot leases the home. The County should establish a monetary penalty for child lot violations.

## **CHAPTER 3: SAND MOUNDS**

**ISSUE:** Should the use of sand mounds be prohibited or limited in the Rural Density Transfer (RDT) zone? The Zoning Ordinance limits density in the RDT zone to one house per 25 acres. Development in this zone is likely to yield less than the base density, especially without the use of sand mounds due to sewer limitations (e.g., when land is unable to perc). The use of sand mounds can potentially increase the total number of buildable lots in the RDT Zone. This, in turn, could potentially increase the fragmentation of agricultural land.

### **I. INTRODUCTION**

#### **A. GENERAL BACKGROUND**

A sand mound is an on-site sewerage disposal system elevated above the natural soil surface. The mound system, on average about 35 feet wide, 90 feet long, and 5 feet high, can sometimes be used to overcome site limitations which would preclude the use of other traditional, underground trench type sewage disposal systems. Such site limitations include high water tables and shallow soils over bedrock. A sand mound system cannot be used unless the requirements for slope, permeability, and other design features are satisfied. However, there are properties that can develop using mound systems that could not be developed using conventional underground "trench" systems.

Assuming an equal number of houses and septic systems, sand mounds are more environmentally friendly than traditional septic systems. The sand provides a medium where bacteria can digest sewage effluent efficiently. Soil below the mounds provides for additional water treatment. There are no documented failures of sand mounds in Montgomery County. The maintenance of sand mounds is very similar to that of traditional septic systems.

Developers prefer using trench systems if they can accommodate the same number of houses as sand mounds. Trench systems are invisible to the casual observer and cost approximately \$10,000. Sand mounds are raised 30 to 60 inches above ground and cost approximately \$30,000. Where landowners know the limited suitability of their soils for trench systems, they may choose to use sand mounds to avoid excessive perc testing or to provide easier location of sites than is often possible for trench systems. Because a sand mound can function in more areas than trench systems, the technology may offer more options for the location of lots on any given property.

#### **B. BACKGROUND ON SEWER-RELATED ZONING STRATEGIES**

The planning process considers the availability of sewer and the feasibility of septic systems in determining the appropriate zoning for land in rural zoning. Where public sewer is available, the zoning is generally set at the maximum density intended. In those zones where sewer is not

generally available (the RDT zone, the Rural zone, the Rural Cluster zone, and the RE-2 (2-acre zone)) the ability of the land to perc has been considered as part of the zoning/density decision. Where the soils are poor, the zoning has typically been set at higher density than desirable over the entire property on the assumption that the full density will not be achieved. This is done to provide some flexibility for property owners with difficult soils to locate houses where feasible on smaller lots and to avoid an unnecessarily complex zoning pattern.

Although this zoning strategy is important in considering potential development in the RDT zone, it was also used extensively outside the RDT zone. The use of sand mounds or other previously unanticipated technologies could significantly increase density over that projected in the County's residential wedge and even in suburban communities, particularly in areas zoned RE-2.

## **II. RELEVANT LAWS, REGULATIONS, AND POLICIES**

### **A. STATE LAW/REGULATION**

The Maryland Code discusses sand mounds twice. In one section, the State Code defines a sand mound disposal system as a conventional system for the coastal plain physiographic province<sup>43</sup> and in a different section defines a sand mound septic system as an innovative/alternative septic system for a grant program.<sup>44</sup> **State regulations define a sand mound system as a "conventional on-site sewage disposal system".**<sup>45</sup> State regulations require the County to allow an on-site sewage disposal system if it determines that the site and proposed design can safely dispose of sewage and conform to applicable laws and regulations.<sup>46</sup> State law also requires Montgomery County to adopt a 10 year water and sewer plan<sup>47</sup> that is consistent with the applicable master plan.<sup>48</sup>

### **B. COUNTY REGULATION/POLICY**

#### **Ten-Year Comprehensive Water Supply and Sewerage Systems Plan**

As noted above, State law requires the County to adopt a water and sewer plan that is consistent with all applicable master plans. The latest County Ten-Year Comprehensive Water Supply and Sewerage Systems Plan was approved in 2003. While the Water and Sewerage Plan does not explicitly mention sand mound systems, it does state that properties in the RDT zone are "not intended to be served by community systems." The Water and Sewerage Plan makes case-by-

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<sup>43</sup> MD Code, Environment Article, § 9-216(a), (b)(1)(iii). Montgomery County is in the piedmont physiographic province.

<sup>44</sup> MD Code, Environment Article, § 9-1401(b)(2)(i).

<sup>45</sup> Code of Maryland Regulations (COMAR), § 26.01.02.01.

<sup>46</sup> COMAR, § 26.04.02.02(L)

<sup>47</sup> Maryland Code, Environment Article, § 9-515.

<sup>48</sup> *Id.*, § 9-505(a)(1).

case exceptions where community service is “logical, economical, environmentally acceptable, and does not risk extending service to non-eligible properties.”<sup>49</sup>

### 1980 Functional Master Plan for the Preservation of Agriculture & Rural Open Space

The 1980 Functional Master Plan recognizes that availability of sewer may limit achievable density. Therefore, the Plan recommends that a comprehensive “policy regarding the private use of alternative individual or community sewerage systems outside of the sewer envelope.”<sup>50</sup> Although sand mounds were viewed as an alternative in 1980, the Master Plan does not specifically state that sand mounds are alternative systems. The Master Plan also made several recommendations regarding sewers, including the following:

- Do not use public sewer service for the entire Study Area within 20 years from the date of adoption.
- Deny public water and sewer service in the RDT zone.
- Deny private use of alternative systems in the RDT zone, except for public health reasons.
- Study the use of alternative systems in Rural Open Space areas.
- Consider some rural communities and villages for alternative systems to increase low-cost housing and for public health reasons.<sup>51</sup>

### Montgomery County Regulations

The Code of Montgomery County Regulations (COMCOR) references the specifications set forth in State regulations that a sand mound must meet.<sup>52</sup>

## **C. REGULATORY HISTORY**

At the time of the adoption of the Functional Master Plan, sand mounds were not a conventional septic system. As noted above, the Functional Master Plan recommended prohibiting alternative systems. In 1986, Maryland regulations included sand mounds as a conventional system. From 1987 to 1994 some in the agricultural community found it increasingly difficult to achieve septic absorption fields due to Fractured Rock Test. Montgomery County did not permit sand mounds as a conventional system until executive regulations were amended in 1994. During the initial administration of the executive regulations, sand mounds were a “last resort” option. An applicant had to demonstrate that a trench system would not work before a sand mound system would be considered. Now there are no limitations on sand mounds other than the physical requirements for a workable system.

<sup>49</sup> Montgomery County Ten-Year Comprehensive Water Supply and Sewerage Systems Plan, (2003) page 17.

<sup>50</sup> Preservation of Agricultural & Rural Open Space Functional Master Plan, page 17 (1980).

<sup>51</sup> *Id.*, at 61-62.

<sup>52</sup> COMCOR, § 27A.00.01.

Although other counties in Maryland vary in some sand mound specifications, (e.g., percolation and system size) no Maryland County restricts the use of sand mounds for agricultural preservation reasons.

### **III. ACTIVITY UNDER THE EXISTING LAW**

The Department of Permitting Services estimates that there are 75 sand mound systems in operation throughout the County in all zones. As of March 2006, the Planning Board has approved 127 preliminary plans of subdivision in the RDT zone since 1988. Approximately 11% (14) of those subdivisions relied upon sand mound systems either wholly or in part. These subdivisions created 45 single-family lots that could be platted utilizing sand mounds; 18 of those lots now have houses on them. Forty-one of those lots are for new houses; four lots represent existing dwellings on these properties that use a sand mound for a new septic reserve field established as part of the development process. Of these 41 lots, 23 sand mound systems are approved but not constructed (15 via one plan). (For perspective on this number, 851 lots have been recorded in the RDT zone since 1978.)

Sand mound systems are also allowed on lots and parcels that do not need to go through the subdivision process (e.g., tenant houses, existing structures, and existing lots). These are not counted in the subdivision numbers. Since 1999, 45 sand mounds have been constructed in the RDT zone (including those that have gone through subdivision and those exempt). Of those 45 mounds, 11 (or 24%) were for repairs to existing homes.

### **IV. OPTIONS AND GROUP RECOMMENDATIONS TO REMEDY THE PROBLEMS**

It is unclear whether current law permits the County to limit the use of sand mounds since current State law permits sand mounds (i.e., does the State law pre-empt the County from enacting a law that prohibits or limits the use of sand mounds). We concurred with the recommendation of Council staff to not delve into this complicated legal issue. Rather, we focused on what the best policy is for the County to implement at this stage. **We recommend the Council investigate the legal ramifications of our recommendations and identify the appropriate legal strategy to implement them.**

Although we have been told that Councilmembers historically assumed that septic availability would limit density to less than the maximum permitted in the RDT zone, some Group members believe this intent is not clear and provides a significant source of confusion for property owners. **In the future we believe that the Planning Board and Council should select zones that better reflect the desired density, rather than assume that septic limitations will control density.**<sup>53</sup>

We debated whether a quantitative, acreage-based limitation on sand mounds was the best solution available that might gain widespread support. The sand mound issue was the most controversial topic we discussed, as reflected by the extensive comments Group members

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<sup>53</sup> See Comment 4 by Margaret Chasson in Appendix II.

submitted both in support and in opposition to the majority recommendation.<sup>54</sup> A majority of the Working Group supports a quantitative, acreage-based limitation on sand mounds (described below) that might reduce overall application of sand mounds by an estimated 25% over what would otherwise occur. A minority of the Working Group is not convinced of this approach, and would recommend limiting the use of sand mounds more aggressively or on some other basis. We all agree that there are a number of "special cases" where use of sand mounds is justified, as discussed below. One reason for this minority view is a deeply held concern that the impact of the majority's proposal is not well enough understood to be reliably predicted. The Working Group spent substantial time trying to achieve an acreage-based compromise that would satisfy all members, but in the end, concluded it would be appropriate to explain this difference of views in this Report.

**We recommend one sand mound per 25 acres be permitted for the first 75 acres. Beyond that, one sand mound should be allowed for every 50 acres of land. We further recommend that these numerical standards apply to any future new technology for on-site sewerage disposal. For any subdivision involving sand mounds, we recommend Planning Department staff be required to determine whether the subdivision minimizes fragmentation of agricultural land by locating buildings to preserve viable farmland.**

The number of sand mounds permitted under our recommendation (433), is 22 percent less than the number of sand mound that would otherwise be permitted (557) in the area of the County where sand mounds are advantageous. Both numbers (433 and 557) exclude existing houses on property.<sup>55</sup> (See table on the next page.)

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<sup>54</sup> See Comment 2 by Margaret Chasson, Nancy Dacek, Scott Fosler, Bob Goldberg, Tom Hoffmann, and Jim O'Connell; Comment 3 by Wade Butler, Pam Saul, Drew Stabler, William Willard, Bo Carlisle, and Jane Evans; Comment 5 by Jim Clifford; Comment 7 by Pam Saul; and Comment 8 by Elizabeth Tolbert in Appendix II.

<sup>55</sup> These estimates of potential sand mounds do not include the exemptions described below.



### POTENTIAL SAND MOUND USAGE UNDER GROUP RECOMMENDATION

| Acreage       | Number of Sand Mounds | Number of properties in size range | Gross of potential sand mounds | Existing number of dwellings | Net of potential sand mounds * |
|---------------|-----------------------|------------------------------------|--------------------------------|------------------------------|--------------------------------|
| 25<50         | 1                     | 17                                 | 17                             | 1                            | 16                             |
| 50<75         | 2                     | 14                                 | 28                             | 3                            | 25                             |
| 75<125        | 3                     | 32                                 | 96                             | 10                           | 86                             |
| 125<175       | 4                     | 18                                 | 72                             | 3                            | 69                             |
| 175<225       | 5                     | 8                                  | 40                             | 0                            | 40                             |
| 225<275       | 6                     | 9                                  | 54                             | 0                            | 54                             |
| 275<325       | 7                     | 9                                  | 63                             | 0                            | 63                             |
| 325<375       | 8                     | 5                                  | 40                             | 5                            | 35                             |
| 375<425       | 9                     | 3                                  | 27                             | 0                            | 27                             |
| 425<825       | 10-17                 | 0                                  | 0                              | 0                            | 0                              |
| 825<875       | 18                    | 1                                  | 18                             | 0                            | 18                             |
| <b>TOTALS</b> |                       | 116                                | 455                            | 22                           | 433                            |

\* Net number of sand mounds is the total potential minus existing development on the property.

In addition, we recommend allowing sand mounds under the following circumstances:

- **Where there is an existing house and the sand mound would not result in the development of an additional house.** Situations in which this may occur include where there is a failing septic system or the need to create a new reserve field for an existing home. We believe property owners should be able to use the best technology to serve existing homes and address failures.
- **When it enables the property owner with an approved deep trench perc to better locate potential houses to preserve agriculture.** Under this scenario the property owner must first obtain the approval of the Department of Permitting Services (DPS) for a deep trench system perc. We suspect that the circumstances in which a property owner will want to pay for the additional cost of a sand mound will be limited, but we believe this should be an option for an owner wanting to protect land for agricultural purposes. Once a landowner uses a sand mound to relocate a house, the unused perc cannot be used for an additional residential development.
- **For child lots,** provided that our recommendations related to child lots are also adopted (e.g., ownership requirement- see Chapter 2). Sand Mounds will be approved for child lots where they are approved under the zoning provision or approved under the Agricultural Easement Program MALPF/AEP.
- **For farm tenant housing.** In addition, we recommend sand mounds be allowed under the circumstances listed below for parcels existing as of December 1, 2006.
- **For a pre-existing parcel** that is defined as an exempted lot or parcel in the zoning regulations.
- **Grandfather provision.** Any property owner who has submitted a Water Table Application and conducted testing of water table holes between January 1, 2000 and

October 1, 2006 is not limited by any new restrictions, provided that record plats for the property are approved by December 31, 2009.

- **For any permitted agricultural use under the zoning regulations (e.g., farm market).**
- **For the purpose of qualifying for a State or County easement program (including a Building Lot Termination program).**

#### **IV. NEXT STEPS**

Council legal staff should coordinate with Planning and Executive legal staff to conduct legal research to determine what changes in law or regulations are necessary to accomplish the Report's recommendations. Changes to the Ten- Year Comprehensive Water Supply and Sewerage Systems Plan will certainly be necessary. The first task of this group should be to resolve outstanding questions related to State preemption.

## CHAPTER 4: BUILDING LOT TERMINATION PROGRAM

**ISSUE:** Should the County support a Building Lot Termination (BLT) easement program to discourage fragmentation of farmland? Development in the Rural Density Transfer (RDT) zone can result in the fragmentation of farmland, limiting future use of this land for types of farming that require large tracts of land. While there are some types of agriculture that can be sustained on 25 acres or less, if financially competitive alternatives to development are not identified, properties may develop with residential uses that would stunt agricultural activities.

While the County reports more than 48,000 acres of land preserved through Transferable Development Rights (TDR) easements, that land is limited by easement only to uses permitted in the RDT zone and in the number of houses to be allowed. In most cases this number is one house for each 25 acres, the same as the zoning limit. It has been the practice of the Agricultural Services Division and Planning Board to recommend that the landowner retain a TDR for each 25 acres not already built upon as a potential building lot. Thus, a substantial number of potential building lots remain viable in the Agricultural Reserve. The value of lots for residential development in the Agricultural Reserve is significant, providing an incentive to sell lots for development. It is important to provide an incentive to keep a considerable amount of the land under the TDR easements in farming. To meet the goal of preserving land for farming and preventing fragmentation of the Reserve, some method of compensating landowners for the value of those buildable TDRs must be found. **We recommend a BLT Easement as one of the tools to accomplish this goal.**<sup>56</sup>

The target of the BLT program is those unused building lots that either have been or can be created on the RDT zoned ground. Simply put, these unused lots, along with the retained TDRs and approved septic fields that make them viable as building lots, should be eliminated for future development by the execution of an agricultural easement on the land on which the lots or potential lots are located. The landowner would be paid fair compensation for the termination of the lot(s).

### **I. ACTIVITY UNDER THE EXISTING LAW**

Easement purchase programs fall within the scope of existing County authority.<sup>57</sup> There are currently seven easement programs within the County's farmland preservation toolbox, excluding TDR easements:

- Montgomery County Agricultural Easement Program
- Maryland Agricultural Land Preservation Foundation (MALPF) Program
- Maryland Environmental Trust Program
- Montgomery County Rural Legacy Program

<sup>56</sup> See Comment 6 by Scott Fosler, paragraph D in Appendix II.

<sup>57</sup> Montgomery County Code, § 2B-7.

Legacy Open Space  
Conservation Reserve Enhancement Program  
Forest Conservation Easements

Under these seven easement programs approximately 14,000 acres of the 77,000 acres zoned RDT in the Agricultural Reserve are protected. None of these programs would be replaced by the BLT Easement Program.

## **II. GROUP RECOMMENDATION TO REMEDY THE PROBLEMS**

We believe that the best way to reduce potential development and prevent fragmentation of farmland in the Agricultural Reserve is to provide financial incentives that offer an attractive alternative to development. The major problems to be solved in establishing the program are what eligibility criteria are appropriate, how to prioritize applicants, how to determine a fair compensation for the building lot, and how the program can be funded. We believe that our recommendations are acceptable answers and the BLT program can be established successfully.

We agree that there are two goals and purposes of a BLT program: (1) reduce the number of buildable lots in the Agricultural Reserve while providing equity to landowners; and (2) preserve by easement as much usable farmland as possible. Some Group members feel that the primary purpose of the BLT program is to reduce the number of rooftops in the Agricultural Reserve while others feel that the primary purpose is to prevent fragmentation and preserve as much farmland as possible. Some Group members believe the motivation behind the BLT program is unimportant so long as the County implements the program, but other Group members feel that the purpose of the program matters when determining program priorities.

As with other easement programs, one feature of this program would be to give the Agricultural Preservation Advisory Board some authority to designate where additional building could occur on the parcel.

### **A. ELIGIBILITY**

We recommend the following eligibility criteria for participation in a BLT program:

- **The Department of Permitting Services (DPS) must provide certification that an approved soil percolation site exists on the property for each lot being terminated.** DPS must also provide a sketch map locating the percolation site to be terminated in form suitable for recording as part of the agricultural easement.
- **Property owners must have retained a buildable TDR for each lot terminated.** Property owners that have utilized their buildable TDRs on a parcel (either by sale of the TDRs or to build) do not have a buildable lot to terminate.
- **Properties must not be encumbered by an existing preservation easement, except easements placed through the existing TDR program.** We believe that landowners

should not be compensated more than once for abstaining from developing their property. We recommend properties that have sold easements through the existing TDR program not be excluded from a BLT program because of the nature of the TDR easement.

- **Properties must serialize the excess TDRs through a TDR easement that is recorded among the land records.** We do not believe it is necessary to require a landowner to sell their excess TDRs, but we believe a landowner must at least serialize any remaining excess TDRs. Requiring serialization effectively ensures that a bona fide buildable TDR is conveyed to the County.
- **Properties must be at least 25 acres, or be contiguous to other land protected from development by agricultural and conservation easements.** We believe "contiguous" should be defined as one parcel touching another parcel in some manner as shown on the property deed. If one property is across the road or across a utility right of way from another property, those two properties are contiguous; if the road is dedicated, however, the two properties are not contiguous. This definition is similar to that used by the Department of Economic Development (DED) in other programs.
- **At least 50% of the land in a parcel under the BLT easement must meet USDA soil classification standards Class I, II, or III or Woodland Classifications 1 and 2.** This is a State requirement for State funding for agricultural easements and the BLT program must use this requirement to use Agricultural Transfer Tax proceeds.
- **Properties must be zoned RDT and be outside water and sewer categories 1, 2, or 3.** This is another State requirement for using Transfer Tax proceeds and therefore should be used. We do not believe, however, that the BLT program should be limited to specific geographical areas in the RDT zone.
- **Child lots are not eligible.**

## **B. PRIORITY**

We recognize the importance of placing as much farmland under easement as possible. It is important to have a fair and transparent method for selecting properties offered for this easement. Therefore we recommend the criteria to prioritize applications should include date of receipt of a complete application (that meets all of the eligibility criteria), size of the property and farmland preservation. The Agricultural Preservation Advisory Board should assist with rankings in the event of a tie.

## **C. COMPENSATION**

**We recommend compensation be set at a percentage of the fair market value of a buildable lot in the RDT zone.**<sup>58</sup> Annually the average value for a typical building lot in the RDT zone would be established by acquiring appraisals from at least three qualified appraisers requesting their market evaluation of a typical building lot in the RDT zone. The appraisals will also

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<sup>58</sup> **Follow-Up Required:** What lot size should be used to establish value? Group members suggest lot sizes ranging from one-acre to 25-acres.

determine the residual value of property once the ability to build is terminated. The annual adjusted market value price would be a percentage of the average of the appraisals. The set value will not differentiate between lots based on their location or the quality of the building site. Compensation will involve the County's purchasing the "Permissible Residential Lot Right" TDR for each lot that is terminated.

We do not support requiring compensation based on approved lots because this option would require a landowner to expend too many resources on obtaining development review approvals. Moreover, this option may result in the landowner's opting to sell lots rather than participate in the BLT program if the owner has met all of the requirements and has an approved lot.

**We recommend the County be flexible and allow an option for payments to be spread over two tax years, as opposed to requiring the County to pay a landowner in full at the time the building lot is terminated.**

Since the County is purchasing buildable TDRs, the Group discussed the ultimate disposition of the purchased TDRs. Current statistics indicate that there is a significant shortage of TDR receiving areas in the County. Any buildable TDRs not converted into TDRs for non-residential uses as suggested in the section below should be terminated or held for future trading to support the BLT program. We oppose the County's selling TDRs as creating a situation which may invite market disruption (e.g., artificially setting prices too low or too high).

#### **D. FUNDING**

**We recommend public funding of the BLT program.** In the FY07-12 Capital Improvements Program (CIP), the County has approved \$8,204,000 for the next fiscal year to purchase easements for agricultural preservation programs, including a BLT program.<sup>59</sup> For FY2008 \$6,346,000 has been budgeted for all farmland preservation program initiatives. The Department of Economic Development (DED) estimates that \$5.5 million would be available for the BLT program. The Agriculture Transfer Tax may provide ongoing funding which averages approximately \$2,000,000 per year to support the existing preservation programs and the BLT easement program.<sup>60</sup>

Additional sources of public revenue to support the program will be necessary in the future. Possible sources of funding could include a bond issue for preservation purposes or a small limited term tax. The response to the program once it is in place will help gauge the relative demand for this program as compared with other preservation programs and determine whether the existing funding source, the Agriculture Transfer Tax, is sufficient.

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<sup>59</sup> The FY07-12 CIP provides for funding for the following four programs: Montgomery County Agricultural Easement Program; Maryland Agricultural Land Preservation Foundation; Rural Legacy Program; and the BLT program.

<sup>60</sup> It may be unrealistic for the County to approve an ongoing BLT program which is also funded by the Agriculture Transfer Tax revenue.

We also believe that the BLT program can be funded privately via the creation of a new market-driven TDR program for buildable TDRs for non-residential properties. This would require utilizing the program for buildable TDRs described in Chapter 1 on the TDR program. The County could offer non-residential TDRs to pay for all or part of the purchase price for landowners applying to the BLT program. Developers of properties in residential receiving areas would continue to buy excess TDRs, while developers of property in the new non-residential receiving areas would purchase buildable TDRs at a significantly greater cost.

#### **E. PROCEDURE**

We recommend the following procedures:

- The landowner will apply to DED demonstrating eligibility under the above stated criteria.
- DED Agricultural Services Division will review applications to assure eligibility criteria are met and the application is complete.
- The Agricultural Preservation Advisory Board will review applications for recommendations to the Director of DED.
- The County Attorney will evaluate applications and approve the Contract and Easement documents.
- The package will then be sent to the County Executive for action.
- At settlement, the landowner will be paid in cash or by an option for payments to be spread over two tax years. Our recommendation is that, when available, non-residential use TDRs could be added to the program so that they can be provided to the property owner in lieu of cash or as a component of the consideration paid under the BLT Program. Any buildable TDRs not converted under the program to non-residential TDRs should be terminated.

#### **III. NEXT STEPS**

DED should draft Executive regulations that would implement the BLT program as envisioned by the Group. For items that require follow-up work, DED should work with appropriate groups and individuals to determine how to resolve those issues.

The Planning Department should be tasked with creating a new TDR program whereby owners of non-residential properties would need to purchase buildable TDRs to increase density.

## **CHAPTER 5: PENDING LEGISLATION**

**ISSUE:** Should the Council enact legislation pending as of October 31, 2006? Although all pending zoning text amendments (ZTAs) expired on October 31 pursuant to State law, we discussed any legislation, including ZTAs, pending as of October 31, 2006 that related to the Agricultural Reserve.

### **I. ZTA 05-23, TDR EASEMENT – NONRESIDENTIAL USES**

#### **A. BACKGROUND**

Agriculture is the preferred use in the Rural Density Transfer (RDT) zone. The intent of the RDT zone is “to promote agriculture as the primary land use in sections of the County designated for agricultural preservation,” applied through the County’s general plan and area master plans. The County’s Transferable Development Rights (TDR) Easement program exemplifies this intent. In consideration for allowing a property owner to sell “development rights” to developers based on their landholdings in the RDT zone, the County executes an easement with the owner to preserve those landholdings principally for agriculture and limit future construction on the encumbered property to one single family house per 25 acres. The Council has recently taken action to ensure that uses that are neither agricultural, nor residential, are limited in the RDT zone.<sup>61</sup>

On December 13, 2005, ZTA 05-23 was introduced to require TDR easements to limit future development of non-residential and non-agricultural uses (“non-agricultural” is hereafter referred to mean all uses except residential and agricultural uses). In addition, ZTA 05-23 would prohibit a property developed with a non-agricultural use from participating in the TDR program. ZTA 05-23 has now lapsed.

#### **B. GROUP RECOMMENDATION**

**We recommend the Council introduce and enact legislation to clarify in clear and direct terms the long-standing legislative intent that the development of RDT-zoned parcels encumbered by TDR easements shall be limited to single family and agricultural and agricultural-related uses only.**

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<sup>61</sup> The Council recently enacted two changes in law and regulation that limit the growth of PIFs in the RDT zone. First, it amended the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan to prohibit the extension of public water and sewer services for PIFs in RDT zoned property. Therefore, all future PIFs on RDT zoned property are limited to private sewerage treatment systems. Second, the Council limited private multi-use sewerage disposal systems for non-agricultural uses in the RDT zone to 600 gallons of effluent per day for any housing unit and no more than 4,999 gallons of water per day for any given property. On a practical basis, the maximum size multi-use system creates an upper limit on the maximum total size of structures allowed.



The second impact of ZTA 05-23 is to prohibit a property developed with a private institutional facility (PIF) from selling any TDRs, regardless of the size of the PIF or the property (e.g., a large property with a small PIF structure would be prohibited from selling any TDRs). While we support the concept of decreasing the potential TDRs for sale once a PIF has been located on the property, we believe that additional work must be completed to determine the legality of reducing the TDRs for sale, and the relationship between the size of the property, the size of the PIF and the number of TDRs.

The follow-up work needed to address the second part of ZTA 05-23 should not delay passage of the provision discussed earlier that limits a landowner whose land is under easement to single-family and agricultural uses only. The issues could be considered in two separate text amendments.

## **II. ZTA 05-15, IMPERVIOUS SURFACE LIMIT REQUIREMENTS FOR THE RE-2, RE-1, RURAL, RC & RDT ZONES**

### **A. BACKGROUND**

On October 3, 2005, ZTA 05-15 (first introduced in December 2004 as ZTA 04-27) was introduced to limit all impervious surfaces that are not related to agriculture to 15% in the RDT zone and 20% in the RC, RE-2 and RE-1 zones. An impervious surface is a hard surface area that prevents or substantially impedes the natural infiltration of water into the underlying soil. Examples of impervious surface include buildings, decks, patios, parking areas and all paved surfaces such as driveways, roads, sidewalks, tennis courts, and basketball courts. ZTA 05-15 has now lapsed.

### **B. GROUP RECOMMENDATION**

We recommend against enacting legislation similar to ZTA 05-15 at this time. Since introduction of ZTA 05-15, the Council has passed legislation and changes to the Ten-Year Comprehensive Water Supply and Sewerage Systems Plan that effect the Agricultural Reserve. Any effort to move forward on this legislation must be considered with an agricultural exemption that holds agricultural uses harmless. We believe that the Council should continue to monitor the development in the RDT zone to determine whether any further changes are needed, but a limit on imperviousness does not appear necessary at this time.

### **III. EXPEDITED BILL 38-05, SEWAGE DISPOSAL – SEPTIC SYSTEMS – TEMPORARY PROHIBITION**

#### **A. BACKGROUND**

Expedited Bill 38-05 was introduced on November 8, 2005, to temporarily prohibit the use of mound systems or any innovative or alternative individual septic systems for new construction until July 31, 2006. We are recommending specific recommendations on sand mound use which should address the concerns raised by the Council making a temporary prohibition unnecessary.

#### **B. GROUP RECOMMENDATION**

We recommend not enacting legislation similar to Expedited Bill 38-05. In Chapter 3, we recommend alternative legislation that would limit, but not prohibit, sand mounds. If the alternative legislation is enacted, we do not believe that this legislation is necessary to reduce potential development in the Agricultural Reserve.

### **IV. BILL 38-04, AGRICULTURAL LAND PRESERVATION – PUBLIC SALE OF DEVELOPMENT RIGHTS**

#### **A. BACKGROUND**

Bill 38-04 was introduced on November 9, 2004 to authorize the sale of County-owned TDRs. The purpose of such a sale was to “provide the opportunity for buyers to gain access to development rights when privately-owned development rights are not available.” This legislation has now expired.

#### **B. GROUP RECOMMENDATION**

We recommend against enacting legislation similar to Bill 38-04. Current statistics indicate that there is a shortage of TDR receiving areas in the County. We believe that increasing the supply of TDRs would not only reduce the price that private landowners receive for TDRs but would also put the County in direct competition with private landowners that have TDRs to sell. The transfer of privately held TDRs into bona fide TDR receiving areas must remain a County priority.

## **CHAPTER 6: ADDITIONAL ISSUES**

The Council's resolution establishing the Ad Hoc Agricultural Working Group called for a comprehensive review while also intentionally limiting the scope of the Group's work to the issues discussed above. We feel that a broader comprehensive review of policies and laws related to the Agricultural Reserve is necessary and our goal here is to identify a range of issues that should be considered. We offer some preliminary thoughts on right-to-farm legislation, education strategies, and design standards, and suggest a list of questions regarding other important issues.

### **I. RIGHT-TO-FARM LEGISLATION**

**ISSUE:** Does the County need to pass additional legislation to protect a farmer's "right-to-farm"? As suburban communities expand into rural communities, conflicts can arise between farmers who want to farm the land and neighbors who expect suburban standards for noise, odors, etc. Conflicts can also arise between farmers and other farmers. These conflicts can interfere with agricultural activities.

#### **A. RELEVANT LAWS AND REGULATIONS**

"Right-to-farm" legislation is often adopted as a response to nuisance complaints between farmers and their neighbors. An excerpt from the State legislation is reproduced below. Since Montgomery County does not have a "nuisance ordinance," Council staff has perused the County Code and identified legislation that is relevant to the broad category of nuisance law. These excerpts appear below.

##### **1. STATE LAW**

State law provides for the following protections for farmers from nuisance claims:

Operation continued for 1 year or more. If an agricultural operation has been under way for a period of 1 year or more and if the operation is in compliance with applicable federal, State, and local health, environmental, zoning, and permit requirements relating to any nuisance claim and is not conducted in a negligent manner:

The operation, including any noise, odors, dust, or insects from the operation, may not be deemed to be a public or private nuisance; and

A private action may not be sustained on the grounds that the operation interferes or has interfered with the use or enjoyment of other property, whether public or private.<sup>62</sup>

## 2. COUNTY LAW

### Zoning Ordinance

Section 59-C-9.23 of the Montgomery County Zoning Ordinance sets forth the intent of the Rural Density Transfer (RDT) zone. This section states that “[a]griculture is the preferred use in the [RDT] zone. *All agricultural operations are permitted at any time, including the operation of farm machinery*.”<sup>63</sup>

### Air Quality

Chapter 3 of the Montgomery County Code, entitled “Air Quality”, generally prevents an individual from burning refuse or plant life outside of a building without a permit and limits the purposes for which a permit may be issued. Section 3-8(c)(1) allows the Director of the Department of Environmental Protection (DEP) to issue a permit for agricultural open burning.

Section 3-9(a) states that “[a] person must not cause or allow the emission into the atmosphere of any gas, vapor, or particulate matter beyond the person’s property line or house if a resulting odor creates air pollution.”<sup>64</sup> The County Code does not contain a provision exempting farmers from the general odor provisions of the Code.

### Erosion, Sediment Control, and Stormwater Management

Chapter 19 in the County Code, entitled “Erosion, Sediment Control, and Stormwater Management”, provides that “[i]f illegal pollutant discharges from properties engaged in agriculture impair aquatic life or public health, cause stream habitat degradation, or result in water quality standards or criteria violations, the Department must pursue correction of these violations . . .”<sup>65</sup> This section specifically addresses agricultural operations and there is no exemption.

### Noise Control

Chapter 31B of the County Code, entitled “Noise Control”, provides the standards for acceptable levels of noise during both the day and night times. The table below summarizes the general standards related to acceptable noise levels in the agricultural zones.

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<sup>62</sup> Maryland Code, Courts and Judicial Proceedings, § 5-403(c).

<sup>63</sup> Montgomery County Code, § 59-C-9.23 (emphasis added).

<sup>64</sup> Montgomery County Code, § 3-9(a).

<sup>65</sup> Montgomery County Code, § 19-51(c).

### Maximum Allowable Noise Levels in the Agricultural Zones<sup>66</sup>

|                                                                                                      | Daytime<br>(decibels) | Nighttime<br>(decibels) |
|------------------------------------------------------------------------------------------------------|-----------------------|-------------------------|
| Land zoned in agricultural zones* where the owner <b>has not</b> transferred the development rights. | 65                    | 55                      |
| Land zoned in agricultural zones* where the owner <b>has</b> transferred the development rights.     | 67                    | 62                      |

\* The agricultural zones are Rural, Rural Cluster (RC), Rural Density Transfer (RDT), Rural Neighborhood Cluster (RNC), Rural Service (RS), and Low Density Rural Cluster Development Zone (LDRCDZ).<sup>67</sup>

Section 31B-10 includes a relevant exception. Section 31B-10(a)(1) states that the Noise Control chapter does not apply to “agricultural field machinery used and operated in accordance with the manufacturer’s specifications”.<sup>68</sup>

#### Pesticides

Chapter 33B of the County Code, entitled “Pesticides” regulates the use and distribution of pesticides. The definitions section exempts agricultural land from the requirements in that section.<sup>69</sup>

#### Solid Waste

Chapter 48 of the County Code contains laws related to solid waste. Section 48-22 prohibits people from hauling refuse into the County without a permit. Provisions in this section exempt fertilizer and stable manure used for agricultural purposes from this general prohibition.<sup>70</sup>

### **B. ACTIVITY UNDER EXISTING LAW**

As suburban communities expand and abut agricultural land, conflicts may arise between farmers who wish to continue their farming and non-farmers who want to preserve the use and enjoyment of their property. Conflicts can also arise between farmers. These conflicts can involve complaints about “odor, flies, dust, noise from field work, spraying of farm chemicals, [and] slow moving farm machinery.”<sup>71</sup>

Currently, complaints are filed with the DEP. Staff from DEP indicate that the number of complaints filed, while not “common”, have increased as development in the UpCounty area has increased. According to DEP’s data, in the past 10 years (through May 2006), DEP has only

<sup>66</sup> Montgomery County Code, §§ 31B-2(l)(1)-(2), 31B-5(a)(1).

<sup>67</sup> Montgomery County Code, § 59-C-9.1.

<sup>68</sup> Montgomery County Code, § 31B-10(a)(1).

<sup>69</sup> Montgomery County Code, § 33B-1 defines *lawn* as excluding agricultural land.

<sup>70</sup> Montgomery County Code, § 48-22.

<sup>71</sup> Janie Hipp, “Balancing the Right to Farm with the Rights of Others”, page 1 (National Public Policy Education Conference, 1998).

recorded 25 complaints in the Agricultural Reserve. About half of those were illegal dumping complaints, which would not be addressed in right-to-farm legislation.

Council staff performed a cursory online search that did not identify current Maryland court opinions addressing nuisance claims related to agricultural land and farming in Maryland. The lack of reported judicial opinions is not surprising given the strong State language that protects farmers from nuisance lawsuits.

### **C. GROUP RECOMMENDATIONS TO REMEDY THE PROBLEMS**

The Group discussed the following options:

1. Do nothing
2. Enact Right-to-Farm Legislation
3. Enact Legislation Requiring Disclosure Requirements

We do not support the “do nothing” approach because Group members are concerned that if residential development in the Agricultural Reserve increases, the potential number of complaints against agricultural operations could increase. Nor do we support enacting right-to-farm legislation for two reasons: (1) we feel that current County and State law adequately protects farmers from nuisance lawsuits;<sup>72</sup> and (2) we reviewed data compiled by DEP that indicates that there is not a widespread problem. However, if the Council does opt to enact right-to-farm legislation, we recommend the Council exclude the use of grievance procedures because these procedures tend to favor homebuyers and be costly for farmers.

**We recommend the Council enact legislation requiring disclosure for homes being sold in agricultural zones informing potential homebuyers of current County and State law that protects farmers from nuisance claims.** We feel that this approach may reduce the number of complaints lodged against farmers by increasing the awareness of homebuyers that current laws protect farmers from agricultural-related complaints. If the number of complaints lodged against farmers continues to increase despite a disclosure notice, we would recommend that the Council explore whether additional action is required to protect farmers. If additional action is needed, some Group members suggest the Council pass a resolution affirming the right of farmers to farm in the Agricultural Reserve.<sup>73</sup>

### **D. NEXT STEPS**

The County Council should enact legislation requiring disclosure for homes being sold in agricultural zones informing potential homebuyers of current County and State law that protects farmers from certain nuisance claims related to farming.

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<sup>72</sup> See discussion on pages 41 and 43.

<sup>73</sup> *Follow-Up Required:* At what stage of the home buying process should this disclosure be required (e.g., when a contract is signed, at closing, etc.)? What form should the disclosure take?

## **II. EDUCATION STRATEGIES**

### **A. GROUP RECOMMENDATION**

We recommend the County invest in an education campaign to inform County residents of the importance and location of the Agricultural Reserve. Group members suggest the following campaign strategies be considered: signs indicating the boundaries of the Agricultural Reserve, pamphlets, events, a "speaker on call" list, coordination with Montgomery County Public Schools, special programs for after-school children's groups and seniors, public service announcements, an advertising campaign, cable TV programming, a website, expanding the cooperative extension service, and expanding the Agriculture History Farm Park. We feel the existing Agricultural committees should be involved in the development of this educational campaign.

### **B. NEXT STEPS**

The Department of Economic Development should work with the Agriculture community to develop an educational program designed to inform County residents of the importance of the Agricultural Reserve.

Signs indicating entry to and exit from the Agriculture Reserve would be appropriate. An example that might be useful is the historical marker sign for the Viers Mill on Viers Mill Road. This is a small bronze-like sign giving some historical data.

## **III. DESIGN STANDARDS**

Design strategies would guide the location of residential lots created in the RDT zone to maintain farmable areas and minimize the impact of residences. The size of the lot, the need for septic treatment and the ability to use private roads also impact location/design. Placement of homes on the land may have a more important impact on retaining rural character than lot size, especially at the low density of the RDT Zone.

### **A. ACTIVITY UNDER THE EXISTING LAW**

The County does not currently have provisions for design standards for clustering, home placement, or for allowing more lots on private roads in the RDT zone. Existing law requires that lots in the RDT zone be a minimum of 40,000 square feet. The Rustic Road Functional Master Plan recommends placement of buildings to protect view sheds.

## **B. GROUP RECOMMENDATION TO REMEDY THE PROBLEMS**

We did not discuss specific options related to design strategies because of time constraints, but we recommend the Planning Department further explore options to reduce fragmentation of agricultural land by locating buildings to preserve viable farmland. Options could include design standards, clustering, the use of private roads, etc. We believe that if developed properly, these strategies could be an important tool. However, if these strategies are not developed properly, they could run counter to the underlying goal of reducing farmland fragmentation. (For example clustering for environmental purposes has sometimes led to a recommendation to place houses in the middle of productive land to protect forested areas.)

We believe that efforts to identify potential strategies should involve property owners and must be cognizant of the existing tensions between the Planning Department and rural property owners on this issue. We recommend the Planning Department consider using existing agricultural advisory groups to help develop these strategies.

We further believe that any strategy must maintain property owner equity and achieve the goal of preserving farmland, which may sometimes conflict with other County policies (e.g., forest conservation). Several Group members believe that incentives should be provided to encourage, rather than mandate, location strategies. Some Group members believe strongly that the incentives should not include additional density, while other Group members believe that additional density should be considered as a potential incentive.

## **IV. ADDITIONAL AGRICULTURE ISSUES**

### **A. GENERAL ISSUES**

- What role can non-profit entities play in the effort to keep land as farmland, (rather than being converted for residential development)?
- Do any of the needed policy changes require an amendment to the Master Plan for the Preservation of Agriculture and Rural Open Space or can all needed modifications occur through changes to the Zoning Ordinance and other County laws?

### **B. ZONING**

- Should the uses and/or special exceptions allowed in the RDT zone be limited or expanded (e.g., to limit institutional uses or allow children's day camps)? Should the County designate additional areas for the "Rural Service Zone"?
- Should the County designate additional areas for the "Rural Service Zone"?



- Should new development standards/zoning be created or used for developments and subdivisions in the RDT zone (e.g., to allow smaller lots, require rural preservation design standards, etc.)?
- Should public road requirements be changed to allow more houses to access private drives in rural areas (Planning Department page 7)?

#### **C. TENANT HOMES**

- Should there be new requirements to ensure that the ownership of tenant homes is not transferred to individuals not employed on the farm?
- Should the number of tenant homes be limited?

#### **D. RUSTIC ROADS**

- Are changes needed regarding roads in the Agricultural Reserve and rustic roads in particular?

#### **E. ECONOMIC HEALTH OF THE AGRICULTURAL RESERVE**

- Are changes needed to the County's efforts to monitor the economic health and evolution of the agricultural industry in the County and to County programs to promote the health of this industry? (Note that this question is intended to address issues unrelated to land use.)
- How can the County ensure a focus on sustainable agriculture and not just the preservation of farmland?
- What additional analysis is needed of changing trends in farming and opportunities for alternative/small scale farming?
- How should the County monitor and react to the impact on farming from environmental legislation and deer management? Are changes required or needed?

## **APPENDIX I: GLOSSARY/ ACRONYMS OF TERMS**

**Agricultural Advisory Committee (AAC)** – A fifteen member committee appointed by the Montgomery County Executive and confirmed by the County Council to advise the County Executive and the County Council on all matters affecting agriculture in Montgomery County.

**Agricultural Easement Program (AEP)** – A Montgomery County agricultural land preservation program that gives the County the ability to purchase agricultural land preservation easements to preserve land for agricultural production. The program was created to increase both the level of voluntary participation in farmland preservation programs and expand the eligibility of farmland parcels.

**Agricultural Preservation Advisory Board (APA)** – A five member board appointed by the Montgomery County Executive and confirmed by the County Council to promote the preservation of agriculture within the County. The Board provides advice and recommendations for the establishment of Agricultural Districts, sets priorities for easement acquisitions, provides guidance for setting program policies, and makes recommendations on proposed regulations.

**Agricultural Reserve** – A defined area of the County, primarily agriculture, which includes most of the County's remaining working farms as well as other non-farm land uses that will serve to define and support those farms. The Agricultural Reserve was created in 1981 when the Montgomery County Council rezoned land in the northern third of the County from the Rural zone to the Rural Density Transfer zone. For the purpose of this report, property zoned Rural Density Transfer and in private ownership is the focus of the farmland preservation recommendations.

**Base Density** – The maximum number of dwelling units permitted by the zoning classification of a property in a receiving area computed over the gross area of the property without the application of provisions in the Zoning Ordinance that allow for increased density (e.g., TDRs, MPDUs).

**Building Lot Termination Program (BLT)** – A proposed agricultural easement program that would provide a means for a landowner to receive compensation in exchange for relinquishing the right to a potential building lot. See the definition for "Transferable Development Rights" and Chapter 4 for a more detailed description.

**Central Business District (CBD)** – A central business district is designed to encourage residential and commercial development at relatively high densities. There are four central business districts in Montgomery County: Bethesda, Friendship Heights, Silver Spring, and Wheaton.

**Density** – The ratio of residential units to the gross acreage of the property.

**Department of Economic Development (DED)** – A department in the Montgomery County government that implements programs and aids in the creation and advancement of businesses in

the County to ensure the economic growth and vitality of the County. The Agricultural Services Division in the Department of Economic Development supports and promotes the viability of the agricultural industry in Montgomery County.

**Department of Environmental Protection (DEP)** – A department in the Montgomery County government that protects and enhances the quality of life in the County through the conservation, preservation, and restoration of the environment. The Department of Environmental Protection is guided by the principles of science, resource management, sustainability, and stewardship.

**Department of Permitting Services (DPS)** – A department in the Montgomery County government that enforces standards that control what goes on before, during, and after construction. Anyone who wants to develop land, build something, or establish a business in a particular area of the County must first obtain a permit from the Department of Permitting Services.

**Euclidean Zone** – A type of zoning that establishes zoning districts with set boundaries and specific standards that govern permitted uses, lot size, setbacks, and building height. Euclidian zones are typically applied by the government through a Sectional Map Amendment. There are four types of Euclidean zones: residential, commercial, industrial, and agricultural.

**Farm tenant housing (tenant housing)** – A structure occupied by an agricultural worker actively engaged in farming on a full-time or part-time basis on a farm on which the farm tenant dwelling is located.

**Floating Zone** – A type of zoning that does not apply to a property until the property owner requests the County apply the zone to their property. Rezoning a property must be compatible with surrounding uses and in accord with the expressed purpose and other requirements of the zone. Once a floating zone is applied to a property, it establishes the standards for development.

**Floor Area Ratio (FAR)** – A means of establishing the maximum building size which is controlled by a mathematical ratio between the total amount of gross floor space that can be built and the total land area. This figure is determined by dividing the gross floor area of buildings on a lot by the area of that lot.

**Geographic Information Systems (GIS)** – Data and computer programs that provide the ability to map and spatially analyze any feature associated with property (i.e., zoning, wetlands, forests, man-made improvements).

**Hansen** – A proprietary computer program used by the Montgomery County Planning Board and the Department of Permitting Services to track development approvals.

**Local Map Amendment (LMA)** – A change in zoning sought by the owner or contract purchaser of a particular property. The local map amendment covers a single tract, all portions of which are proposed for classification in the same zone.

**Maryland Agricultural Land Preservation Foundation (MALPF)** – This program protects and preserves agricultural land from development throughout the State of Maryland and provides for the purchase of development rights easements directly from landowners.

**Maryland-National Capital Park and Planning Commission (M-NCPPC)** – A bi-county agency comprised of the Montgomery County Planning Board and the Prince George's County Planning Board.

**Mixed-Use Zones** – These zones attempt to ensure the compatibility of residential and nonresidential uses by providing for an integrated mix of residential, commercial, research and development, and institutional uses while adequately providing open space for the entire community.

**Montgomery County Planning Board** – A five-member Board responsible to the County Council to advise and assist the Council in planning, zoning, and subdivision. The Planning Board is responsible for developing land use plans for review and approval by the County Council and implementing adopted plans through its review of development applications and administration of subdivision regulations. The Board, acting as the Park Commission, also plans, acquires, maintains, and operates the County park system.

**Private Institutional Facility (PIF)** – A structure utilized by a non-government, not-for-profit organization, such as houses of worship, private schools, or other tax-exempt groups. Some private institutional facilities are allowed in the Rural Density Transfer zone.

**Receiving Area** – An area designated on an approved and adopted general, master, sector, or functional plan appropriate for development beyond its base density through the transfer of development rights.

**Residential Estate Zone (RE-2)** – A zoning classification that limits development to one dwelling unit per two acres.

**Rural Cluster Zone (RC)** – A zoning classification that permits clustering of housing in areas designated Rural Open Space. It permits housing on a tract of land zoned for one unit per five acres to be clustered on lots as small as 40,000 square feet (approximately 1 acre) while retaining the remaining acreage in open space, which may be used for agriculture or other limited uses.

**Rural Density Transfer Zone (RDT)** – The zone applied to the Agricultural Reserve. Actual development is limited to one house per 25 acres, with the provision that such development can be placed on lots as small as 40,000 square feet. Property in this zone comprises the designated transferable development rights sending area. Prior to 1981, the vast bulk of land now zoned Rural Density Transfer was zoned Rural.

**Rural Zone** – The Rural Residential Zone allows one dwelling unit per five acres. This zone does not allow the clustering of lots as allowed in the Rural Density Transfer and Rural Cluster zones.

**Sectional Map Amendment (SMA)** – A comprehensive rezoning of a particular area of the County to implement the recommendations of a general, master, sector, or functional plan. Sectional Map Amendments can only be proposed by the Montgomery County Planning Board or the Montgomery County Council and are approved by the Council.

**Sending Area** – An area designated on an approved and adopted general master, sector, or functional plan as a sending area appropriate for the conveyance of transferable development rights from the area. All sending areas are zoned Rural Density Transfer.

**Transferable Development Rights (TDR)** – Inchoate rights established under Section 59-C-9 of the Montgomery County Zoning Ordinance that grants a landowner one TDR for every five acres of land in a parcel owned in the Rural Density Transfer zone. These rights, once serialized through the easement process, may be transferred to receiving areas and used for density above the base density.

***Buildable Transferable Development Right*** – A transferable development right retained by a property owner in the Rural Density Transfer zone for the purpose of being able to build a dwelling (sometimes referred to as the 5th TDR, development TDR, or Super TDR).

***Excess Transferable Development Right*** – Transferable development rights that can be sold to another party without impacting the landowner's ability to develop in accordance with the base density of the Rural Density Transfer zone.

***Severed Transferable Development Right*** – A transferable development right that is no longer attached to a sending property by virtue of an easement recorded in the land records of the County.

***Extinguished Transferable Development Right*** – A transferable development right that has been severed, conveyed to a developer, and the serialized numbers have been recorded on a development plan in a receiving area or conveyed to Montgomery County under the Building Lot Termination Program.

***Transferable Development Right Receiving Capacity*** – The potential number of transferable development rights that can be used to create more houses on land designated as a transferable development right receiving area via the application of transferable development right zoning. The Zoning Ordinance regulates the maximum number of transferable Development Rights that can be used.

***Transferable Development Right Sending Capacity*** – The potential number of transferable development rights that can be used from a particular parcel of land zoned Rural Density Transfer. This is the number of acres of the parcel divided by 5, as transferable development rights are assigned based on the 1:5 ratio. This capacity figure does not distinguish between transferable development rights necessary for houses, buildable transferable development rights, or excess transferable development rights.

**Zoning Text Amendment (ZTA)** – Legislation that, if enacted by the Montgomery County Council, would amend Chapter 59 of the County Code (i.e., the Zoning Ordinance).

**APPENDIX II:  
COMMENTS OF DISSENT, RESERVATION AND  
CLARIFICATION**

## **COMMENT 1:**

**Submitted by:** Margaret Chasson, Nancy Dacek, Bob Goldberg, Tom Hoffmann  
**Endorsed by:** Jim O'Connell

In implementing the Functional Master Plan for the Preservation of Agriculture and Rural Open Space, the limitation of the number of child lots to the number of TDRs was a way of saying that for the purposes of child lot development, one should consider the restraints prior to the adoption of the 1981 sectional map. This certainly is not to say that one should disregard the new zoning provisions for all development. The practice of allowing a landowner to exceed the density restrictions of current zoning for the creation of market lots in subdivisions containing child lots is contrary to the thrust of the Master Plan. This practice gives priority to development over preserving agriculture. While the number of child lots permitted may exceed the density of current zoning, in no case should the creation of market lots be allowed to exceed the base density.



## COMMENT 2:

**Submitted by:** Margaret Chasson, Nancy Dacek, Scott Fosler, Bob Goldberg, Tom Hoffmann, Jim O'Connell<sup>74</sup>

The Working Group's attempt to reach agreement on limiting the use of sand mounds proved to be the most divisive issue faced, although there was consensus among the Working Group that the use of sand mound technology should be limited. The issue debated therefore was to settle on an acceptable scope and measurement of sand mound limitation. It is important to note that these limitations are not a reduction in actual development rights for any landowner, as "regular percs" are always permitted within the existing zoning of one lot / 25 acres.

The proposal contained in the report, which resulted from a very close vote in the Working Group, is to allow parcels of less than 100 acres to employ sand mounds to develop to maximum zoned potential (one building lot per 25 acres) but to restrict application of sand mounds in larger parcels (greater than 75 acres) to one additional sand mound per 50 acres. The undersigned minority group felt strongly that this proposal was not strong enough in limiting the ongoing utilization of sand mound technology.

The Functional Master Plan for the Preservation of Agriculture and Rural Open Space speaks strongly against alternative individual sewerage disposal system usage in the RDT zone. The Master Plan took this position for the purpose of limiting maximum build out in the RDT zone. Wide-spread use of sand mounds will undercut that goal. Whether or not sand mounds are an "alternative" system has been much debated, but the authors of the Master Plan clearly intended to use sanitation management tools to limit growth in the RDT zone. The management of growth in the Agricultural Reserve was structured around a total package of carrots and sticks – TDRs, zoning, sewerage systems. If one of these management tools is lost or degraded, the desirable extent of development in the Agricultural Reserve will be exceeded. Similarly, introduction of new sanitation technologies, if not limited, could in the future cause the "sand mound debate" to be replayed.

The official Working Group recommendation would potentially allow creation of lots using sand mounds numbering over half as many as lots created in the entire RDT zone since 1978. This would be in addition to the number of lots that could be created using standard trench septic systems. The minority believes this level of development would severely fragment the remaining agricultural land and create a need for too many services in the RDT zone.

The recommendations of the Working Group complement each other with enhanced TDR receiving areas and the BLT easement program offering alternatives to development, offsetting limitations on the use of sand mound sewerage disposal. Therefore it is important that the package of recommendations be considered as a whole.

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<sup>74</sup> Mike Rubin fully agrees with all paragraphs in this minority statement with the exception of the limitation expressed in second sentence of final paragraph. Mr. Rubin would support one sand mound for each 25 acres up to parcels of 75 acres. Any parcel above this size would be at 1:50. This would mean a parcel of 75.1 acres to 149.9 acres would get less yield utilizing a sand mound than those of 75 acres. This limitation would allow small landholders to get more yield while protecting the larger, potential working farm parcels.

As the Working Group discussed the use of sand mound technology, there was general agreement about special cases in which the use would be desirable. These are stated in the Report and the minority agrees with all of them.

The Working Group also agreed that fragmentation of farmland should be avoided in all situations, and that conservation design standards should be developed and implemented for sand mound development. With such standards in place, the minority accepts that it would be reasonable to accommodate one sand mound per 50 acres in addition to the special cases agreed upon without destroying the purposes of the Agricultural Reserve. We recommend this standard for parcels developed using sand mounds, and also for future application to any future new technologies for on-site sewerage systems.

### COMMENT 3

**Submitted by:** Wade Butler, Pam Saul, Drew Stabler, William Willard, Bo Carlisle, Jane Evans

The farmer representatives of the Agricultural Policy Working Group were asked to support several proposals that would clarify some existing county provisions and also develop policies for reducing the fragmentation of farmland in the agricultural reserve. It was our view that fragmentation of agricultural lands represents the greatest threat to long term agricultural economic viability, while other group members seemed to focus on the number of new residences as the main threat.

We were concerned that if we could not achieve consensus on these matters, the County Council would make the decisions in a way that may not be desirable to the interests of farmers and rural landowners. With these concerns in mind, we attempted to comprehensively address the interests of the agricultural community without jeopardizing our standing in our community and negatively impacting our ability to interact with our peers. We trust that you can understand and appreciate our position since we represent the future of agriculture in the county and we are the true agricultural stakeholders.

The roots of the agricultural community in Montgomery County run deep, and we represent a traditional and unique heritage which dates back to the days of our founding fathers. With such long standing heritage, our families' interest in maintaining our rural lifestyle and setting, are among the values of paramount importance to us. It is with this understanding and our sense of commitment to our community that we embraced the vision and mission of the Ad Hoc Agricultural Policy Working Group with a sense of urgency and responsibility.

Over the past several months, this group met to discuss the important land use issues of today and their impact on our most precious resource, our land. As agriculturists and stewards of the land, we view this resource in ways much different than other stakeholders who live in the agricultural reserve. The farmers believe the report will provide an opportunity to adequately address several pending issues and introduce some new initiatives and programs which include guidance for a real estate disclosure provision, clarification for future cases involving child lots, tenant dwellings, and a new building lot termination program, enhancements for the TDR program, and a new policy for sand mounds.

Developing a new sand mound policy proved the most challenging of issues and this represented the only issue where the group members had difficulty reaching a consensus. We recognized that it was unrealistic to expect no change as a reasonable outcome, so we discussed and negotiated these issues in good faith and with opened minds in reaching what we thought was the compromise as outlined on page 9 which resulted in a sand mound reduction of 25%. At the last moment the compromise was evolving into a new proposal that was more restrictive than what we agreed to support. With any reduction of sand mounds, there remains great uncertainty as to whether the County Council is truly committed to helping farmers as compared to, once again, taking from farmers.

As group members and leaders of the agricultural community, our job was to represent all agricultural interests. We were being pressured to support a proposed sand mound reduction of 48%, and the question of adequate funding for compensation was not clear. We felt that this approach was neither fair nor equitable because we questioned whether funding for a building lot termination program will be sufficient to compensate landowners for giving up vested property rights. In light of these considerations, we collectively agreed that we simply could not support more than 25% reduction in future use of sand mounds.

Twenty six years ago, the County Council once again down zoned the rural and agricultural areas with the TDR program as a means to offset the lost equity from the RDT zone. Today, the farmers remain discouraged by the TDR market as reduced demand in receiving areas has resulted in no TDR sales and therefore no means is currently available for farmers wanting to sell their TDRs.

An adequately funded program to provide a mechanism to preserve equity and compensate landowners will need to be developed and implemented.

## **COMMENT 4**

**Submitted by:** Margaret Chasson

The statement that the group believe that the Planning Board and Council should select zones that better reflect the desired density, rather than assume that septic limitations will control density is contrary to the recommendation of the group to limit density through restricting the use of sand mounds to control growth. While it is true that some members of the group interpret the zoned density to be a guarantee of the amount of building that occurs in a zone, in reality zoning is a maximum, not a base guarantee. This point needs to be made in all discussions of zoning and density.

## COMMENT 5

Submitted by: Jim Clifford

I believe there is a real desire by the members of the Ad Hoc Agricultural Policy Working Group to make certain the final report reflects how hard fought and difficult it was to try to reach a compromise between the parties regarding the application and use of Sand Mounds in the Ag Reserve.

Given the fact that certain members, representing different points of view, had to yield on their respective heartfelt positions in order to reach a reasonable consensus, I would respectfully request the Council give serious consideration to the reported proposal before them before implementing any alterations to the recommendation.

At the inception of the group meetings back on May 25, 2006, certain members representing the agricultural community felt strongly that the Sand Mound policy should be consistent with state law and therefore the full realization of one lot per 25 acres, as permitted in the RDT zone, should have the potential to be realized through Sand Mounds. There was a feeling among this group that the concern to limit this was "much to do about nothing" since the reality is that very few Sand Mounds had been utilized in the RDT zone since being permitted in 1993. On the other hand, other members sought to eliminate Sand Mounds (except in limited circumstances) as being an alternative septic disposal system not allowed by the 1980 Agricultural Reserve Master Plan.

Both groups reached a consensus relatively easily regarding what circumstances should be an exception to any restriction to Sand Mounds. Those exceptions are evidenced in the reported Ad Hoc Committee proposal.

In an effort to reach a compromise beyond the agreed upon exceptions, certain agricultural representatives proposed that any parcel in the RDT zone should be given the opportunity to subdivide using Sand Mounds on a 1 to 25 acre ratio but should be limited to the Minor Subdivision procedure, thereby limiting the total Sand Mound usage under that procedure to five lots. After that, any subdivision would require the full subdivision procedure using a one lot per 50 acres ratio. The counter proposal by other group members was to permit one lot per 50 acres from the start, with any lots less than 50 acres entitled to at least one Sand Mound. No consensus could be reached on either proposal. As a further compromise by both sides, the proposal was to allow three lots for the first 75 acres to protect small landowners and then one lot per 50 acres thereafter. Although not all group members were happy with this proposal, it appeared to be the compromise needed to garner support from the majority.

This proposal was reported by the Sand Mound subcommittee as their understanding of the Ad Hoc Committee's preferred compromise. However, it failed to obtain a passing vote in the final meeting due to concerns regarding its application and its real impact in reducing Sand Mound Lots.

I believe the compromise recommended in the report bridges this divide between the opposing points of view and I ask the County Council to support this recommendation as set forth in the report and the exceptions

Thank you County Council members past and present for the opportunity to serve on this meaningful committee and thanks to all on the Ad Hoc Committee and Staff for a well conducted effort.

## COMMENT 6

Submitted by: Scott Fosler

- A. I was a member of the County Council and a co-sponsor of the legislation creating the Agricultural Reserve in 1981. In voting to create the Agricultural Reserve, I believed that the preservation of equity in land accomplished by the TDR program was not only a matter of fairness to landowners, but also a way of helping farmers preserve capital in order to enhance the likelihood that they would continue farming successfully.
- B. In voting to create the Agricultural Reserve, I considered the principle that TDRs would not be permitted to establish densities exceeding carrying capacity to be integral to the original TDR program, and believe now that principle will be all the more important if the TDR program is expanded to include non-residential receiving areas.
- C. My intention in voting to allow child lots was to enhance the prospects that a farming family could continue to farm successfully by having their adult children live on the farm. To me, that meant allowing an increase in the permissible zoning density, if necessary, to accommodate child lots, but it did not mean automatically increasing the permissible zoning density by the number of children a farmer had, on top of the base zoning. Unfortunately, the Council at that time (myself included) neither crafted the child-lot provision effectively, nor articulated its intent clearly, which is one of the reasons it has been both misinterpreted and, in my opinion, inappropriately implemented. The proposal in this report essentially accepts a quarter-century practice – and hence reasonable expectations on the part of bona fide farmers in calculating the equity in their property -- in defining the density permitted by child lots, while calling for strict enforcement in limiting the establishment of child lots to use by the adult children of property owners. This is not a perfect solution, but I think it is probably the fairest and most practical way of correcting the deficiencies in the original legislation and curbing the worst abuses of the child lot provision, which have involved selling (“flipping”) newly established child lots to buyers other than the children of property owners, in some cases resulting in residential construction incompatible with agriculture.
- D. As a member of County Council that created the Agricultural Reserve, I believe our failure to anticipate the wide variability in value between “buildable TDRs” and “excess TDRs” – as much as ten-fold, if not more -- is one of the principal deficiencies in the original Agricultural Reserve legislation, and that the BLT program proposed in this report is the best way yet suggested to help correct it.



## COMMENT 7

Submitted by: Pam Saul

### General comments:

For the record, I am disappointed in how the final meetings of the working group were conducted. Extensive editing of subgroup reports before they could be presented to the full group led to serious contentions and confusion that could have been avoided if we were simply given more time to understand the debate and the views of all the members.

### Specific comments:

During the last minutes of final meeting of the working group, I introduced a motion surrounding a future sand mound policy that attempted to bridge the gap between agricultural representatives and the other members of the working group. The report includes a recommended reduction of 25 % for future sand mounds which agricultural representatives support.

The major challenge for the working group centered around the initial 7:7 split vote wherein the sand mound chapter was going down a path where we could not achieve a consensus recommendation that we were able to achieve on all of the other mandated issues by the County Council. Many of us expressed concerns that a more in depth discussion on the sand mound policy was warranted and that we needed more time to discuss the proposals which were presented during our November meeting. As a result, too much confusion and too many questions were left unanswered.

The basis and intent of my motion was to solidify support for no more than 25 % reduction in future sand mounds by adding two additional conditions to the total threshold of net sand mounds 433 that 25 % would represent. These two conditions pertained to how future technology of septic systems would be permitted and how subdivisions using sand mounds could reduce the fragmentation of farmland. The vote on my motion resulted in 11 members for it and only 1 member against it. It is my view that this vote helped to validate the 25 % future sand mound policy and served as the basis for the recommendation by the working group in the final report. I encourage the County Council to support this recommendation regarding sand mounds in the agricultural reserve.

Like the other group members, I am sensitive and appreciative regarding the enormous undertaking this working group and final report involved. As a farmer, I am committed to investing my time and energy to get the job done right. The rush to finish in the allotted time ensured less than 100% accuracy of the report. Clarification will have to be made in the future before implementing recommendations to encompass the details we were unable to discuss.

## COMMENT 8

Submitted by: Elizabeth Tolbert

While I was present during the Final Meeting of the Working Group December 18, 2006, I could not bring myself to cast the tie breaking vote surrounding the proposed policy for approving future sand mounds in our Agricultural Reserve. As the appointed chair of the Working Group, I have been concerned by some of our discussions and the perceptions of problems that facts do not appear to support.

Based upon the data from Mr. Clifford's study, a maximum build-out would be 650-700 homes. The Eastern part of the County soils will sustain traditional percs, so what we are talking about is limiting growth in the Northwestern part of the County. Mr. Beatty stated that approximately 80% of all percolation tests in the Northwestern part of the County fail. That includes traditional and sand mounds. Now if you apply the 20% maximum build out potential that may pass percolation tests, we are only talking about 130-140 homes that may be built.

I want to be clear on my view of sand mounds and the environment of the working group. The Working Group was comprised of many well intentioned people, some do not farm and know little about farming or what it takes to farm, and a few who actually earn a living by farming. Some members were very vocal about not about promoting farming or sustainable farming, but about any development in the Ag Reserve, especially where sand mounds are concerned. They seem to agree that sand mounds are safe, environmentally friendly and work well, just as long as you do not use them for development.

In conclusion, I believe the sand mound recommendations, as outlined in the final report, represent a reasonable outcome given the complexity of this subject matter and the level of debate that it created.

**APPENDIX III:  
SUMMARY OF 2002 TRANSFERABLE DEVELOPMENT  
RIGHTS TASK FORCE RECOMMENDATIONS**

July 19, 2002

**MEMORANDUM**

**TO: Montgomery County Planning Board and Montgomery County Council**

**FROM: TDR Task Force Members**

**SUBJECT: Recommendations for Addressing TDR Program Problems**

The 1999 staff report to the Planning Board on agricultural issues addressed the need to stabilize TDR prices and find long-term solutions to the problem of declining TDR prices. In creating the RDT Zone and its 25-acre density in 1980, a promise was made that sufficient and realistic receiving areas would be provided. While this system has worked well until recently, today there are too few receiving areas and the value of TDRs has declined.

The study of the TDR program arose from the acknowledged problem in maintaining fair TDR prices. A review of TDR prices found that they began dropping in 1997 from an average high of \$11,000 to as low as \$6,300 in 2000. Prices for TDRs have fluctuated from \$5,000 to \$11,000 in the twenty years of the program. In the past year, prices have stabilized (at least for now) at an average of approximately \$7,250 per TDR, about where they were in the early 1990's. While fluctuations are to be expected, the degree of fluctuation is troubling. A greater concern is that the use of TDRs in development has been dropping steadily.

Evaluation of this situation revealed multiple reasons for these problems. They include decreased use of receiving areas, and a cumulative loss of receiving areas from annexations, rezonings, and master plan revisions. This has resulted in an imbalance of realistic sending to receiving area TDRs. These are issues that have arisen since the completion of the last TDR Status Report in 1996. The report in the Appendix contains a summary of these findings.

It is worth highlighting the successes of the TDR program. By the end of 2001, the TDR program had protected over 40,000 rural acres from development through density transfers - at very minimal expenditure of public dollars. This private sector transfer of density is the rough equivalent of a \$60 million dollar investment in open space preservation, that also has benefited the County's smart growth goals of putting development where there is infrastructure to support it. In comparison, the contributions from other preservation programs used in the County have protected just over 12,000 acres at a public cost of approximately \$29.5 million dollars. The enormous differential in price per acre of land preserved, with the added benefit of development occurring in areas of adequate infrastructure - serves to highlight the need to stabilize and augment the TDR program to enable it to complete its mission.

The program must be revitalized now. The baseline of receiving areas has been eroded and the necessary balance between available TDRs and viable receiving areas must be

restored. Very few TDRs have been sold in the past four years, and few TDRs have been used in receiving areas. The work of the Task Force has been to analyze the reasons for this decline and to evaluate workable changes to the program.

The Task Force evaluated all of the recommendations contained in the 1999 and 2000 reports to the Planning Board and County Council, and added other concepts for consideration presented by Task Force members. The actions ultimately recommended including short and long term remedies, of varying levels of effectiveness. Like most problems, the reality is that there is no single remedy that will easily resolve the TDR concerns. The Task Force concluded that the best approach is a series of initiatives, all contributing certain elements to the solution. Ultimately, three types of recommendations are proposed - policy, regulatory, and communications. They address different elements of the TDR conundrum.

The Task Force is convinced that if the County pursues the recommendations in this report, the TDR goals can be met. Implementation of these recommendations will not only assist the preservation of the Agricultural Reserve, they will also assist in the smart growth initiatives to which Montgomery County has committed for the future. The support of the Planning Board and County Council is needed to pursue these creative initiatives.

Montgomery County has an extraordinarily successful TDR program, recognized nationally and even internationally. It was recently profiled in "Preservation", the magazine of the National Trust for Historic Preservation (attached to this report); and was the focus of an international panel on TDR programs this spring. The commitment of 1980 has resulted in over 53,000 acres permanently preserved through TDR and subsequent programs, by far the most successful in the nation.

Just as the TDR program has been changed several times in the past 20 years, and has been augmented by the Maryland's Rural Legacy program, and the County's Agricultural Easement and Legacy Open Space programs - so TDR itself must now evolve - again - to meet current challenges. The Task Force believes that this is now a challenge with a viable likelihood of achieving its goals.

The TDR program never envisioned all TDRs being transferred, as noted in the TDR Sending Statistics from the July 1999 report to the Planning Board. Every TDR status report has noted the number of TDRs anticipated to remain on the land in the RDT Zone. Via TDR and other programs, the total number of TDRs realistically anticipated to transfer has been reduced from almost 10,000 to a little more than 4,000. The focus of the TDR Task Force work was to find the ways to whittle away at the approximately 4,300 remaining TDRs that we realistically anticipate being removed from the RDT Zone. This represents 21,500 acres of protection that can be achieved through a combination of methods.

With this in mind, the Task Force presents the following concepts for action. We request that these changes be adopted and staff be assigned to implement the recommendations. The concepts represent a concerted effort to be realistic and politically feasible in the approaches suggested. These recommendations reinforce the

objective of supporting a *working* agricultural landscape in the County's Agricultural Reserve, as opposed to allowing it to become an area of low-density subdivisions.

A number of the concepts contemplated by the Task Force - sometimes at length over several meetings - were ultimately not recommended for action. There was often extraordinary support for these ideas from some Task Force members, and equally strong opposition or just strong qualms about unintended consequences from other members. Because of the strength of some of these concepts, the Task Force believes the Planning Board and County Council should be aware of their consideration even though they were ultimately not recommended to be included at this time. A list of these concepts is in the Appendix.

Because the Task Force members believe this effort is now an enterprise with an end in sight, we also recommend that the next phase of the Agricultural Preservation Program in Montgomery County should be directed toward programs beyond TDRs that consider opportunities to:

1. Further reduce residential density in the Agricultural Reserve through other types of easement, land purchase, and density transfer programs;
2. Support policies and programs to facilitate and maintain a viable working agricultural landscape in the County for the future; and
3. Develop additional marketing and support programs to ease the transition to new and evolving forms of agriculture that will be both economically viable and environmentally sustainable in the future.

Finally, the Task Force recommends that a subsequent evaluation of the issues pertaining to "child lots" and the absolute severance of TDRs is warranted. Although somewhat outside the scope of this report, the Task Force members wrestled with several aspects of these issues that should be considered by a separate group that would include representation from the legal staff at the M-NCPPC and the Montgomery County Attorney's office.

## **TDR TASK FORCE SUMMARY OF CONCEPTS TO BE RECOMMENDED**

### **POLICY TOOLS**

- 1. The Planning Board and County Council should adopt the following statement of policy for use in the development and implementation of master plans:**

*In order to support the Transferable Development Rights Program, the Master Plan evaluation process in all areas of Montgomery County outside the Agricultural Reserve must formally include the creation or expansion of TDR Receiving Zones whenever any additional density is contemplated. Criteria for the consideration of TDRs during Master Plan Review and Amendments include:*

#### **Master Plan Development**

- a. *During any Master Plan review process the Rural Area Team and the Agricultural Services Division must be informed of any discussions of potential additional density on properties and the status of existing TDR receiving sites. This will enable the discussions to be in the context of the program (and County needs) as a whole, and not centered solely on the receiving areas impacts only.*
- b. *When discussions of TDR receiving sites are before public bodies, representatives of the Agricultural Community are to be invited to attend in the event they wish to express support for retention of existing sites, or the inclusion of additional sites.*
- c. *If TDR receiving sites are discussed for possible removal, this negative impact upon the TDR program as a whole must be highlighted, taken into account, and provision made for replacement of these sites at alternative locations.*

*If a designated receiving site is to be re-designated to a land use without TDR potential, an alternate site for the use of TDRs must be designated in order to achieve a "no net loss" of TDR potential.*

- d. *The process for choosing receiving areas must include a rational test of the viability of the site to actually develop at the density specified - in relation to environmental limitations, market factors, and community factors such as compatibility and adequate infrastructure.*
- e. *The Master Plans must strive to achieve a fair share distribution of TDRs to insure that environmental, community, and other impacts resulting from intensified use of TDRs are not borne disproportionately in a limited number of receiving areas.*

### Master Plan Implementation

- a. *When TDR receiving area sites are proposed for development, every effort must be made to persuade the developer to use the TDR potential in the property; and the Rural Area Team and the Agricultural Services Division staff are to be informed of any potential receiving area development.*
- b. *If a designated receiving site is to be developed with a non-residential land use that will not use the TDR potential – an alternate site for the use of TDRs must be designated in order to achieve a “no net loss” of TDR potential in a master plan, including the potential use of a minor master plan amendment to replace the TDR site.*

### **2. The Planning Board and County Council should adopt the following policy to allow TDRs to be used in floating zones in appropriate circumstances.**

If the additional density is to be considered via rezoning on property that is not recommended in a master plan, the use of TDRs should be a part of that change. Given the extreme difficulty of achieving a rezoning on a property with a Euclidian zone designation outside the master plan process (due to the change or mistake rule), floating zones are the usual mechanism for achieving additional density in Montgomery County. Since the proof necessary for Planning Board and County Council support of floating zones takes into account the same factors that are used to consider TDR receiving zones, this change should be implemented as a means to allow the additional use of TDRs where there is developer interest. The TDRs should be the primary mechanism for achieving additional density.

For example, when a rezoning application is proposed using a floating zone (such as a townhouse zone) that would change the use and density from the underlying Euclidean zone recommended for a parcel of land by the relevant Master Plan; one of the factors to be weighed (*ceteris paribus*) in deciding whether to grant the requested increase in density should be the extent to which the applicant will acquire and use TDRs in the proposed development.

For example, if a private school or other institutional use on R-90 land decides to relocate making the site available for infill redevelopment, *and staff evaluation indicates that the land will support a higher level of density without imposing adverse effects on the neighborhood*, the additional density permitted under the floating zone should be partially, if not fully, achieved by the use of TDRs.

### **3. The County should authorize the discussion of inter-jurisdictional transfers of TDRs to receiving sites in the larger county municipalities (Rockville and Gaithersburg) particularly at locations near transit centers.**

The Task Force believes there is realistic potential for the creation of inter-jurisdictional transfer of TDRs. This is being done in other communities nationally, and they believe



there is little to be lost in pursuing such discussions, particularly related to locations along the Metro Red Line or MARC Rail where transit-oriented redevelopment is being considered.

As an example, the staff recently learned of a very successful TDR transfer program between King County and Seattle in Washington State. The impetus for that program was the realization, reinforced by the state, that the residents of Seattle were as benefited by the King County TDR program as the residents of King County; and therefore they should be a part of finding locations for TDRs to transfer. Surely, there is also support for this concept within the philosophy of Maryland's Smart Growth initiatives.

4. **The County Executive hopes to significantly increase the number of affordable and housing units for the elderly built each year. The TDR program should play a role in placing this type of housing. Therefore, under certain criteria, allow use of TDRs for extra density for these types of priority housing.**

This concept has the greatest potential if the housing is located at transit centers as part of mixed-use projects. Location factors, such as adequate current infrastructure, are very important to communities in the placement of these types of projects. The use of TDRs needs to play a role as part of incentive programs to create more affordable and senior housing.

5. **Support a "Land Preservation Summit" to coordinate the efforts of all the existent programs - government and non-profit - working to preserve agricultural working lands and rural open space.**

As open space preservation, agricultural preservation, and historic preservation movements in Montgomery County have evolved over the past decade or so, multiple organizations and programs have proliferated. As yet, there has not been a coordinated process to allow all these public and private groups to discuss how their visions and goals can be mutually enhanced through cooperative efforts. A strong basis exists for this "summit" through the pioneering work of Legacy Open Space to quantify and classify the lands to be saved, and move toward identified common goals through varied methodologies and a possible layered approach to easements.

## **REGULATORY TOOLS**

1. **Change the minimum TDR use requirements:**
  - a. **Reduce the TDR minimum use requirement for properties of 20 acres or less to 25% of capacity when the TDR receiving zone density is 10 dwelling units per acre or more.**

- b. Eliminate the TDR minimum use requirement for properties of 5 acres or less when the TDR receiving zone capacity is 20 dwelling units per acre or fewer.**

Experience with the program has shown that small sites and those with substantial environmental limitations often make it infeasible to use the required number of TDRs contemplated by the Master Plan. Under current regulations, a developer proposing to use less than two-thirds of the TDRs permitted in a receiving area must have the approval of the Planning Board. That approval is negotiated and often requires concessions as a condition of approval. This situation is often further complicated by the requirements and options of the MPDU program. Consequently, to avoid negotiations with the Planning Board, developers of these marginal sites are very likely to choose to build without using any TDRs. And because of the MPDU complication, these two programs are in conflict with each other.

To avoid this consequence in the situations where this is most likely to occur, the Task Force recommends that the two-thirds use requirement be modified as stated above. This change will not impact many sites, but will have the potential to spur some TDR development if the choice is freely available to the developer (in the instances noted) without having to seek Planning Board approval for the reduced number of TDR units.

## **2. Allow relief from on-site afforestation if TDRs are used.**

*Afforestation is a part of the County's forest conservation requirements that requires new trees to be planted on non-forested portions of a development site. Some receiving sites are heavily impacted by forest conservation requirements. After lengthy discussions of this issue, the Task Force believes that on some TDR receiving sites all or a portion of the afforestation requirement can be implemented at off-site locations as a means to increase the use of TDRs. This option would only be available for the non-forested land outside of required stream buffers.*

*This recommendation derives from our understanding that in a number of instances the trees required to be planted may be more urgently needed at other locations in the impacted watershed. This concept would augment the use of intended TDR capacity at the receiving site while improving forest cover where it is more needed. While it would be the developer's choice to use this option, the M-NCPPC Environmental Planning staff should be authorized to approve any proposed off-site afforestation locations.*

*The Planning Board should direct the staff to study the receiving sites most likely to utilize this concept, and the watersheds and properties where it is most likely to be useful. These would be properties where conservation values can be met or enhanced via the offsite afforestation.*

- 3. Create TDR receiving versions of the CBD, Planned Development, Transit Station, and Mixed Use Zones to use when they have existing or are designated for, planned transit access. These zones should have appropriate density bonuses for the use of TDRs in housing production.**

As the Montgomery County Commission on the Future recently stated, "The County should encourage as much future job and housing development as possible to locate in transportation corridors.....Development should be in forms best suited to effective transit service and use. This may mean redeveloping certain areas along transportation corridors that are currently zoned for low-density to attractive mixed-use residential and non-residential uses."

This is a concept with significant potential and the TDR program needs to be a stakeholder in future discussions of this concept - including the I-270 Corridor Master Plan initiatives now underway. Implementing this recommendation should have high priority, because of the fast schedule of these Master Plan revisions including the Shady Grove Sector Plan, Gaithersburg Vicinity Master Plan, and Germantown Master Plan.

The concept seems to have general support even with many neighborhood organizations -particularly if limited to areas with transit service that is frequent and reliable (most preferably fixed rail). Many believe that using TDRs for these zones instead of primarily in single-family residential zones allows more control over the development design. This is often more important for the surrounding community than the absolute density.

The Planning Board should direct the staff to conduct the additional study required to work out transfer ratios, and to answer questions such as how would TDRs fit into the maximum density requirement for these zones. The Task Forces specifically recommends:

- a. **Create TDR receiving areas with density bonuses in CBD, Transit Station, Town Center and the higher density residential and mixed-use zones used in the vicinity of transit (rail or bus) stations.**

This is a concept with significant potential for creating capacity for additional transit-oriented housing, a goal that is widely shared. The concept has general support even with many neighborhood organizations that are beginning to see good-quality redevelopment of Metro-oriented property as beneficial for their neighborhoods. *The Task Force emphasizes that these density bonuses should be tied to proximity to a high usage transit corridor.*

In addition, there are limited instances where additional density or bonuses may be desirable outside the official boundaries of CBDs or Town Centers. Underdeveloped (or redevelopable) border areas around CBDs that are along arterial roads can provide good opportunities for redevelopment and TDRs should be a primary mechanism for that additional density. *In these instances the zoning text should provide requirements that the site be on a major arterial, highway, or business district street served by a high frequency bus service and no more than one mile from a rail or bus station.*

- b. **Create additional TDR receiving zones with the flexibility of the Planned Development Zones in Master Plan development.**

One problem that has discouraged the application of the TDR zones during Master Plan reviews in recent years is the tendency to prefer the Planned Development (PD) Zones because of their added design flexibility. The County should create TDR receiving capacity within these zones as has been recently recommended in the Potomac Master Plan. (ZTA 02-11 currently in process recommends a density bonus of 10% in the PD-2 Zone using TDRs, if recommended for the site in a Master Plan.) This should include the PD Zones with a mix of housing and employment such as the MXPDP Zone.

Further study should consider a TDR equivalent for FAR (floor area ratio) used for non-residential uses. Methods for determining equivalency already in use in other communities include:

1. Comparison of traffic generation of equivalent space;
2. Evaluation of traffic generation per square foot for office space compared to traffic generation per square foot for residential space;
3. Comparison of revenue streams for commercial versus residential rental space (basing a TDR equivalent on the comparative potential profit return for the same space).

Implementation of these recommendations has the potential to achieve high receiving zone capacity. If this should become the case, there is the potential in the future (once all viable existing RDT/TDRs are transferred) for transferring density from locations other than the RDT Zones, perhaps from Legacy Open Space sites or other areas deemed important to protect from development. There is also the potential to use the receiving area capacity in creative ways to purchase the final 20% of development rights that tend to stay within the RDT Zone, further reducing housing construction in the Agricultural Reserve.

**4. Allow residential uses by right in certain commercial zones through use of TDRs.**

The County already allows residential development in some commercial zones, but there are often misgivings about losing commercial space to residential development. Using TDRs as the mechanism for allowing this change of use has the potential to provide relief to the TDR program and to allow commercial zones as a location for needed affordable housing. Additional study is needed to determine likely locations and transfer ratios, but this concept would perhaps most easily work through the mechanism of a limited increase in height. This is a concept that could be set up to work inside or outside the master plan process.

## **INFORMATION TOOLS**

- 1. Begin an annual TDR "countdown" tally and progress report, accounting for all deductions from the total remaining TDRs to be severed in the RDT Zone:**

A "countdown" tally, coupled with an annual report to the Planning Board and County Council, will highlight the progress in achieving the goal of 70,000 acres of protected land through the various existing programs. This concept has the potential to reduce the imagined threat of additional density in the growth areas by publicizing the declining number of transfer units necessary to achieve preservation goals. The Task Force members believe that the TDR program needs to establish a timeline for this goal. This report would highlight acres protected and deductions of TDRs from the RDT Zone through TDR transfers, parkland acquisition, Legacy Open Space easements, Rural Legacy easements, Montgomery County Agricultural easements, Maryland Agricultural Land Preservation Foundation easements, Maryland Environmental Trust easements, and hopefully a continuing growth in the mechanism of private land trust easements.

- 2. Implement an improved and easier to use "tracking system" to determine TDRs retained for subdivision vs. those sold.**

The 1995 Future of Agriculture Study noted that better records of TDR severances, sales and recordings are increasingly necessary to monitor the effectiveness of the TDR program. An up to date tracking system, long overdue, will better monitor the degree of need for additional receiving areas, quickly determine the TDR status of RDT properties, and ensure that sufficient TDRs have been retained to accommodate any new lots created on the original property. A methodology is needed, perhaps using GIS capability, for a reliable and user-friendly system. The current system does not even co-relate TDR properties to property identification number.

The Rural Area Team and Resource Team have been working on this project, as time and resources allow, with the M-NCPPC GIS staff and the Agricultural Services Division staff, and other Montgomery County staff for over two years. However, it apparently has not been considered a priority and staff resources have been limited for this project. *The Task Force recommends that this become a priority work program item for these agencies, and this accountability finalized.*

- 3. Revise the TDR Status Report Methodology**

On an approximate five-year basis, the M-NCPPC staff has prepared a status report on the TDR program. Due to the lack of modern record keeping, as noted above, this task is always arduous and extraordinarily complicated. When a better system is put in place, the TDR program status report will be able to be updated more easily, and with more reliable numbers.

While the Status Report has always evaluated the remaining receiving areas, it has never given an assessment of the realistic potential for development on the remaining receiving areas. The Task Force recommends that without such an assessment the Status Report presents an inaccurate impression of the balance between sending and receiving area TDRs.

One of the reasons that the precipitous drop in TDR prices was not foreseeable in the last Status Report (1997) is that it indicated a reasonable surplus of receiving areas. In reality, many of them were not realistically attractive to developers. That subjective element of realism needs to be a part of the Status Report.

**4. Conduct a survey of property owners in the RDT Zone to provide information regarding the variety of easement programs available in the County.**

This project would be helpful in a determination of how many TDRs in the RDT Zone might be realistically transferable - as well as providing information to property owners on the multiple easement programs available for rural property owners. The M-NCPPC staff can work with the Agricultural Services staff and the Legacy Open Space staff to draft a survey form.

**APPENDIX IV:  
AGRICULTURAL PRESERVATION  
PROGRAMS IN OTHER JURISDICTIONS**

## MEMORANDUM

December 5, 2006

TO: Scott Fosler, Co-Chair, AD HOC Agriculture Policy Working Group

FROM: Shondell Foster, Research Associate  
Jeff Zyontz, Legislative Attorney

SUBJECT: Other Jurisdictions Use of TDRs to Preserve Farmland

This memo responds to your request to examine the experiences in other jurisdictions with the agricultural preservation issues addressed by the working group. The American Farmland Trust's last comprehensive national survey was published in January 2001. At that time, 60% of the land with TDR easements in the country was located in Montgomery County.

- 1) There are approximately 50 jurisdictions in the United States that use TDRs. Montgomery County's program has placed more easements on sending areas than all other programs combined. Most places that use TDRs allow more houses per acre than one house for every 25 acres, the base density allowed in the RDT zone. We found two jurisdictions using TDRs, both west of the Mississippi River that had zoning less dense than Montgomery County.
- 2) Although relatively few jurisdictions have a TDR program, many have a purchase of development rights program (PDR) also known as the purchase of agricultural conservation easements (PACE). PDR programs buy easements in exchange for a price paid, similar to the MALPF program in Maryland.
- 3) Some jurisdictions provide for "child lots" even when land is under TDR easements. Some of these easements limit the number of child lots that can be created by each land owner. We did not find any jurisdictions, however, that allowed the creation of new lots in excess of existing zoning, such as Montgomery County's child lots. There are other jurisdictions that permit previously recorded lots to develop.
- 4) Some jurisdictions limit the size of residential lots that can be created. Some jurisdictions limit the percentage of land area in residential lots or only allow lots that do not diminish the viability of the land to support agriculture. Some jurisdictions limit both the size of the lot and the percentage of land that can be used for agriculture.
- 5) We did not find any jurisdictions that limit the type of septic system allowed for the purpose of reducing the number of potential houses. We focused on jurisdictions in Maryland for this topic.

Council staff interviewed and reviewed the ordinances and easements of other programs around the country. The following describes our findings.



## Interviews

The following chart summarizes the information that was gathered from other jurisdictions that have successful agricultural preservation programs, suggested by Judy Daniel and the American Farmland Trust- Farmland Information Center.

In compiling this chart, three preliminary questions help to identify the counties that most resemble Montgomery County's farmland preservation program:

1. How would you describe the pressure to develop farms into commercial or residential use?
2. Does your county control the conversion of farmland to developed land (either commercial or residential) by zoning or purchased easement?
3. Does your county give farm landowners transferable development rights to sell?

All jurisdictions surveyed are currently subject to strong pressures to develop farmland into commercial or residential use except one. The New Jersey Pinelands is the only region not subject to development pressure because the Pinelands area is protected under state and federal law.

In areas where land is regulated by the county government, zoning is rarely used exclusively but is often used along with purchased easements as means of controlling the conversion of farmland into developed land. For example, Boulder County, Colorado uses zoning but is most effective in controlling farmland conversion through purchased easements.

The question of whether the jurisdiction used transferable development rights provided many different responses. Several counties were not included in the chart because the TDR programs they used helped to preserve open space, and not specifically agricultural land.

Of the jurisdictions included in the survey, only Boulder County, Colorado indicates that their TDR program actively serves as an incentive to preserve farmland. This is in contrast to Blue Earth County, Minnesota where the impetus for farmers to participate in their TDR program is to gain substantial profits, even though in theory it preserves farmland. The other counties identified have TDR programs that are difficult to implement since land use is regulated by municipalities and participation in TDR programs is optional among municipalities.

In addition to the chart, the list of Local Governments with TDR Programs compiled by the American Farmland Trust- Farmland Information Center is also attached.

### Survey for Agricultural Preservation

How would you describe the pressure of farms to develop into commercial or residential uses?

| Jurisdiction                                                    | Strong | Moderate | Weak |
|-----------------------------------------------------------------|--------|----------|------|
| <i>Blue Earth County, WI</i>                                    | X      |          |      |
| <i>Boulder County, CO</i>                                       | X      |          |      |
| <i>Buckingham Township, Buck County, PA</i>                     | X      |          |      |
| <i>Burlington County, NJ</i>                                    | X      |          |      |
| <i>Dane County, WI- especially around urban areas (Madison)</i> | X      |          |      |
| <i>Lancaster County, PA</i>                                     | X      |          |      |
| <i>Loudon County, VA</i>                                        | X      |          |      |
| <i>Michigan State</i>                                           | X      |          |      |
| <i>New Jersey Pinelands</i>                                     |        |          | X    |
| <i>Vermont State</i>                                            | X      |          |      |

Do you control the conversion of farm land to development mostly by zoning or purchased easements?

| Jurisdiction                                                                                                                           | Zoning | Purchased Easements | Other |
|----------------------------------------------------------------------------------------------------------------------------------------|--------|---------------------|-------|
| <i>Blue Earth County, WI</i>                                                                                                           | X      |                     |       |
| <i>Boulder County, CO-most effective through purchase easements but primarily zoning</i>                                               | X      |                     | X     |
| <i>Buckingham Township, Buck County, PA- uses both zoning and purchased easements</i>                                                  |        |                     | X     |
| <i>Burlington County, NJ-municipalities have authority over land use but controls water use</i>                                        |        |                     | X     |
| <i>Dane County, WI- try to influence through zoning but municipal annexation makes it difficult</i>                                    | X      |                     |       |
| <i>Lancaster County, PA uses both zoning and purchased easements</i>                                                                   |        |                     | X     |
| <i>Loudon County, VA – some land is zoned while other land restrictions are choices by the land owner to place land under easement</i> |        |                     | X     |
| <i>Michigan State (mostly) a little farmland is controlled through purchase easements</i>                                              | X      | X                   |       |
| <i>New Jersey Pinelands</i>                                                                                                            | X      |                     |       |
| <i>Vermont State</i>                                                                                                                   | X      |                     |       |

Do you give farm land owners transferable development rights to sell?

| Jurisdiction                                                                                                                                                         | YES | NO |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|----|
| <i>Blue Earth County, WI-</i> are not used to preserve farmland but more to help farmers sell more land and make more money                                          | X   |    |
| <i>Boulder County, CO-</i> used as an incentive to conserve farmland and open space                                                                                  | X   |    |
| <i>Buckingham Township, Buck County, PA</i>                                                                                                                          | X   |    |
| <i>Burlington County, NJ-</i> only two municipalities have participated since late 1980s early 1990s. Used by open space landowners and not agricultural land owners | X   |    |
| <i>Dane County, WI-</i> does have a Farmland Preservation Program that gives tax credits to land owners that have their land zoned exclusively for agriculture       |     | X  |
| <i>Lancaster County, PA-</i> some townships have TDRs but TDRs do not cross municipal boundaries                                                                     |     | X  |
| <i>Loudon County, VA-</i> does have purchase development rights                                                                                                      |     | X  |
| <i>Michigan State</i>                                                                                                                                                |     | X  |
| <i>New Jersey Pinelands-</i> but difficult to implement because the commission does not have authority in townships and municipalities                               | X   |    |
| <i>Vermont State</i>                                                                                                                                                 | X   |    |

#### Ordinance Review

Transfer Development Rights (TDR) is a program that is accepted across the country, but difficult to implement. TDR's often require the sponsorship by a County but participation is optional for townships and municipalities. In addition, receiving sites usually must remain within the township or municipality in order for the development rights to transfer. Municipalities often do not contain both farm areas and urbanized areas in sufficient quantity for a successful program. Jurisdictions that do implement TDR programs vary the application of the program; the number of TDRs a landowner may transfer vary; the density the landowner may develop the land and what provisions are placed on the sending parcel varies. The following chart summarizes how the ordinances of various jurisdictions across the country implement TDR programs.

## TDR Ordinances

### 1. If the land converts to residential uses, how many houses per acre are allowed?

|                                                                                                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Blue Earth County, MN                                                                                                                                          | In the A Agricultural District- no more than four dwellings per 40 acres; In the C Conservation District- no more than one dwelling unit per 40 acres.                                                                                                                                                                                                                                                                                                                |
| Boulder County, CO                                                                                                                                             | 1 per 35 acres; over 140 acres, 2 per 35 acres                                                                                                                                                                                                                                                                                                                                                                                                                        |
| Cape Elizabeth, ME<br><i>Density depends on how the development is connected to certain types of sewage</i>                                                    | 1 per 20,000 sq. ft. of net residential area- public sewage system<br>1 per 40,000 sq. ft. of net residential area- on site sewage disposal when transferred from an abutting parcel or parcel has the same ownership<br>1 per 50,000 sq. ft. of net residential area- when transferred from parcel located within 2000 ft of developed parcel<br>60, 000 sq. ft. of net residential area- when transferred from parcel located more than 2000 ft of developed parcel |
| Charles County, MD<br><i>Three development credits will be subtracted for each dwelling located on a parcel in the Agricultural Land Preservation District</i> | 1 per 3 acres                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| King County, WA<br><i>Ranges depending on the zone</i>                                                                                                         | Urban separator & R-1 Zone- 4 dwelling units per acre; RA Zone (inside forest)- 1 dwelling unit per 5 acres; A-10 & A-35- 1 dwelling unit per 5 acres; F Zone- 1 dwelling unit per 80 acres or 1 dwelling unit for each lot btw. 15 to 80 acres                                                                                                                                                                                                                       |
| Marin County, CA                                                                                                                                               | <i>Does not mention the density</i>                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Township of Lumberton, NJ                                                                                                                                      | 1 dwelling unit per 2 acres                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| West Hempfield Township, PA                                                                                                                                    | 1 per 25 acres if the land was zoned in the Rural Agriculture District or Rural Residential District prior to 3/14/1978; if land is zoned in either of these districts after 3/14/1978, density is determined by total acreage: If land is between 2 to 50 acres- 1, 50 to 75 acres- 2 lots, 75 to 100- 3 lots, 100 to 125- 4 lots, etc...                                                                                                                            |

2. How many TDRs can they transfer?

|                                                                           |                                                                                                                                                                                                                                                                                                                                                        |
|---------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Blue Earth County, MN                                                     | Agriculture District- development rights may be transferred to a contiguous 40 acres in the A district, upon obtaining a conditional use permit<br>Conservation District- development rights may be transferred to a contiguous 40 acres upon obtaining a conditional use permit                                                                       |
| Boulder County, Colorado<br><i>Up to 140 acres, 1 TDR may be retained</i> | 2 per 35–52.49 acres; 3 per 52.5–69.9 acres; 4 per 70–87.49 acres; 5 per 87.5–104.9; 6 per 105–122.49 acres; 7 per 122.5–139.9 acres; 2 per 35 acres for 140+;                                                                                                                                                                                         |
| Cape Elizabeth, ME                                                        | <i>Transfer rates are not in zoning</i>                                                                                                                                                                                                                                                                                                                |
| Charles County, MD                                                        | <i>Transfer rates are not in zoning</i>                                                                                                                                                                                                                                                                                                                |
| King County, WA                                                           | 1 per 1 acre minus the acres of submerged land and any land being retained for development on the site                                                                                                                                                                                                                                                 |
| Marin County, CA                                                          | <i>Transfer rates are not in zoning</i>                                                                                                                                                                                                                                                                                                                |
| Township of Lumberton, NJ                                                 | A formula uses the septic suitability of soils; based on this number a TDR amount is determined for the parcel and 1 TDR credit is subtracted from the TDR amount for each single family unit existing on a given parcel at the time the section is adopted.                                                                                           |
| West Hempfield Township, PA                                               | The maximum number of dwelling units permitted is determined by the Open Space Design Option provisions in the district the tract is located multiplied by five (5) if in the Rural Agricultural district.<br>If in the Rural Residential district- .067 multiplied by the area of the tract of land minus 3 (at least) to allow for one retained TDR. |

3. Are there any special provisions for clustering/design or grandfathering/child lots?

|                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|--------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Blue Earth County, MN    | <p>If the land existed as a whole parcel as of October 1, 1992, large tracts of land may be divided into no less than 40 acre parcels without going through the subdivision process.</p> <p>If the land is already divided in parcels less than 40 acres, one lot may create one lot, for every 40 acres, without going through the formal subdivision process so long as the owner has not previously split the property and no other residential lots exist within the 40 acres. Any and all subsequent divisions must go through the subdivision process.</p> |
| Boulder County, Colorado | <i>None mentioned</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Cape Elizabeth, ME       | <i>None mentioned</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| Charles County, MD       | A covenant in the instrument of transfer restricts the sending parcel from subdividing unless for it is for agricultural purposes.                                                                                                                                                                                                                                                                                                                                                                                                                               |
| King County, WA          | Land that is in one zone may only be developed through a clustering subdivision, short subdivision, or binding site plan that creates a permanent preservation tract as large or larger than the portion of the subdivision set aside as lots.                                                                                                                                                                                                                                                                                                                   |
| Marin County, CA         | <p>Clustering Requirements. In A districts (A3 to A60) and in ARP districts, non-agricultural development shall be clustered to retain the maximum amount of land in agricultural production or available for future agricultural use.</p> <p>Homes, roads, residential support facilities, and other non-agricultural development, shall be clustered on no more than five percent of the gross acreage, to the extent feasible, with the remaining acreage retained in agricultural production and/or open space.</p>                                          |

|                             |                                                                                                                                                                                                                                                                                                                                                                                                                             |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             | <p>Clustering shall be considered when applying for a TDR. Generally, structures should be clustered or sited in the most accessible, least visually prominent, and most geologically stable portion or portions of the site.</p> <p>In areas where usable agricultural land exists, residential development shall be clustered or sited so as to minimize disruption of existing or possible future agricultural uses.</p> |
| Township of Lumberton, NJ   | A parcel must be free from encumbrances prior to enrolling in the TDR program because once enrolled in the program the sending parcel is restricted to utilize the land only for farm, farm buildings and detached dwellings.                                                                                                                                                                                               |
| West Hempfield Township, PA | Restrictive Covenant- the entire sending lot is restricted from any future development that is non-agricultural except where a TDR is retained on the sending lot.                                                                                                                                                                                                                                                          |

## Easement Review

The ability to build one or more additional residences/dwellings onto a property after it has come under easement is an issue that is usually addressed at the beginning of the negotiation for the easement. Few jurisdictions actually have provisions in the easement that allow for the development of a "child lot." More often, the Grantor will reserve land that does not come under easement because the language of the easement will expressly prohibit residential, commercial, or industrial development after the delivery of the deed of easement. The following is a summary of how various jurisdictions' conservation easements allow or restrict residential development on the land that is subject to the easement.

### Issues:

1. What rights does a landowner retain after placing the land under easement?
2. What restrictions does the easement place on the land?

In **Pennsylvania**, the restriction that is placed on the land when a lot is under a Deed of Agricultural Conservation Easement is that construction or use of any building/structure after delivery of the deed is prohibited. The easement does provide for an exception: the construction of one additional residential structure is permitted if construction and use is limited to providing housing for persons who farm the land that is subject to the easement, no other structure has been built on the land since the delivery of the Deed of Easement, the residence and curtilage occupies no more than two acres of the property and the location of the residence does not diminish the economic viability of the land for agricultural purposes.

In addition, the land may be subdivided, however, the easement applies to all the subdivisions and it must state which of the subdivided parcels the residential structure is permitted. For all other parcels, no residence is permitted.

In **King County, Washington**, the Grantors of an easement reserve the right to use a limited number of single family units for the Grantor, the family of the Grantor, or agricultural employees. No more than a limited number of dwelling units in total will be permitted, even if the land is subdivided. One restriction placed on the land after it is under easement is that if the Grantor subdivides the land, the land may only be subdivided to less than 20 acres if a reserved homesite is attached to each parcel of the subdivided land and the reserved homesites on the parcels does not increase the density of housing on the land- using the total acreage prior to the subdivision, one reserved homesite per 35 acres. Another restriction is that no more than five percent of the land, or of any subdivided parcel, may be covered by structures and/or nontillable surfaces.

The **Commonwealth of Massachusetts** Agricultural Covenants do not reference the total number of residences permitted on the property under easement or whether the property is subject to the applicable zoning ordinance. However, the language in the covenant does allow the Grantor to construct a residence, driveway, septic system, any other underground sanitary system, or other utility for use by the Grantor or a family member of the Grantor who is actively



involved in the agricultural operations so long as the Grantor first obtains permission from the Grantee.

In **Marin County, CA**, subject to the current applicable zoning regulations for the property and government approvals, the Agricultural Conservation Easement allows the property to be developed up to a density of a limited number of single family residential dwelling units (Development Rights). The Grantor retains one Development Right that is applied to the existing residence(s) and all other rights to develop are extinguished. If the allowable development for the property increases, neither the Grantor nor the Grantee may receive such a benefit.

Land Preservation Easements in **Harford County, MD** allow the Grantor, at any time, to request a two acre or less lot exclusion for the exclusive residence of the Grantor. The Grantor and a child of the Grantor, at any time, may request the right to construct, use, or occupy a two acre or less lot exclusion for the exclusive residential use of that child. The child must verify the intent to live in the dwelling that is excluded. The total number of such lot exclusions may not exceed one lot per 25 acres contained in the easement.

Agricultural Preservation Easements in **Frederick County, MD** expressly prohibit land that is under easement from being developed, subdivided, or used for residential, industrial or commercial purposes unless it is approved by the Board. A Grantor may request, by written application, a personal covenant that would release free of easement restrictions 2 acres or less for the purpose of constructing a dwelling house for use by only the Grantor or the Grantor's child. The total number of lots may not exceed 4 lots of two acres or less with a maximum of no more than one lot per fifty acres. The Grantor also has an option of granting one two acre or less lot to another but then the Grantor does not have the ability to create any additional child lots.

In **Fayette County, KY** the Grantor, its heirs and assigns retain the right to construct single family detached dwelling(s), subject to prior approval from the Grantee. The language of the easement does not expressly state the total number of dwellings allowed, however it references the zoning and building ordinances as the controlling authority for the property. The Grantor may then construct, maintain, or reasonably expand any permitted new residence(s).

In **Delaware**, the Agricultural Lands Preservation Easement prohibits rezoning or major subdivision for land that is subject to the easement. The easement language does allow for the residential use of real property for the Grantor, the Grantor's relatives, and agricultural employees. The restrictions placed on the construction of residences are that any dwelling unit must be limited to no more than one acre per each 20 usable acres of land owned by the Grantor and a maximum of 10 acres of the Grantor's land is allowed for dwelling units.

According to the Deed of Easement in **New Jersey**, the Grantor is restricted from constructing a residence on the land unless it is to replace any single family residence that existed at the time of the conveyance (must be approved by the Grantee and the Committee). The Grantor may reserve an agreed upon number of residual dwelling site opportunities, which are defined as the potential to construct a residential unit and other appurtenant structures on the premises. The Grantor may also use, maintain, or improve a residential dwelling that is in existence at the time of

conveyance so long as it is consistent with agricultural, single and/or extended family residential uses.

The easement does not reference the size or density of the residual dwelling site and does not indicate whether the local zoning ordinance controls the development density of such site.

**Town of Dunn, Dane County, Wisconsin** Conservation Easements state the property may not be subdivided into smaller parcels. It is the intent that the property remains as a whole. However, the language of the easement also states that the Grantors may specifically reserve development rights, and such rights are not subject to the easement. The Grantor is permitted to maintain, improve, expand or replace the existing single family residential dwelling and accessory buildings so long as the total aggregate ground coverage of all buildings, other structures and improvements do not exceed 5% of the total acreage.

The easement does not reference the size or density of the residences and does not indicate whether the local zoning ordinance controls the development density of the land.

**Fauquier County, VA** prohibits subdivision, division, family transfer, boundary adjustment, or division of the property on land that is subject to an agricultural easement. In addition, the land is not permitted to have construction, placement, or maintenance of a structure or improvements, unless it existed prior to the deed conveyance, then it may be repaired, expanded or replaced.

Even though the property may not be subdivided into additional lots, no more than one single family dwelling may exist on each lot and only one secondary dwelling per parcel is permitted for a parcel that is 50, or more, acres. A secondary parcel may be established for a caretaker or tenant farmer. The maximum number of secondary dwellings for the entire property is four and the size of secondary dwellings cannot exceed 60% of the square footage of the primary residence. In addition, all buildings/structures cannot exceed two percent of the surface area of the property.

The easement does not reference the size of each lot and does not indicate whether the local zoning ordinance determines the density for the parcel.

