



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

**MCPB**  
**Item #**  
**4/30/09**

April 16, 2009

**MEMORANDUM**

**TO:** Montgomery County Planning Board

**VIA:** Glenn Kreger, Acting Chief *HK*  
Vision Division

**FROM:** *CIM*  
Callum Murray, Team Leader, Potomac and Rural Area (301/495-4733)  
Vision Division

**SUBJECT:** Petition to apply to the Maryland Agricultural Land Preservation Foundation (MALPF) for an Agricultural Easement (93.06 acres). Lonnie and Mina Luther, 10701 Bethesda Church Road, Damascus, Maryland 20878. RDT Zone - Preservation of Agriculture and Rural Open Space Master Plan.

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**STAFF RECOMMENDATION:** Transmit comments to the Montgomery County Council.

**INTRODUCTION**

On February 26, 2009, the Department of Economic Development, Agricultural Services Division, referred to the Planning Board a petition filed with the Agricultural Preservation Advisory Board (AFAB) by Lonnie and Mina Luther, 10701 Bethesda Church Road, Damascus, Maryland 20878. The petition requests an application for the purchase of an easement by the Maryland Agricultural Land Preservation Foundation (MALPF). (Attachment 1.)

**SUMMARY**

The proposed easement is for a farm comprising a single parcel of land consisting of 93.06 acres (Attachment 2). The farm is an active agricultural operation with a rotation of beef production, small grains and hay.

Bill No.39-07 concerning Agricultural Land Preservation – Amendments, (Attachment 3) enacted on November 18, 2008, and effective on February 24, 2009, requires that the AFAB refer the application to the Planning Board and requires the Planning Board to advise the County Council if the proposed agricultural easement is compatible with existing and approved County plans and overall policy. Section 2-509 of the Annotated Code of Maryland stipulates the same requirement.

On November 18, 2008, the APAB recommended approval of the Luther agricultural easement application and instructed Department of Economic Development staff to actively pursue preservation of the farm with the State of Maryland. Over 55 percent of the farm consists of prime and productive soils: 8.986 acres of USDA Class II prime soils and 42.44 acres of USDA prime soils, (16B and 16C respectively on Attachment 4). The incidence of prime soils exceeds the minimum agricultural productivity requirements for participation in the State Agricultural Easement program.

The property was sold in 2008 to Mr. Luther. The sellers retained all excess TDRs (14). A deed of October 28, 2008, states that 4 TDRs conveyed with the property and that there is one existing dwelling unit. With a property of 93.06 acres, this appears to be one more TDR than necessary. Planning staff have been informed that there is some doubt as to the exact acreage of the parcel. It has not been surveyed and there is a possibility that the acreage may exceed 100 acres. MALPF does not formally extinguish TDRs, and MALPF easements prohibit creation or transfer of any TDRs that remain with the property, save those required for retained rights. Planning staff understands that Mr. Luther will request one retained lot right, which will require that the lot be of minimum size and an approved location by the APAB. Exercise of the right would also require subdivision approval by the Planning Board. The easement will therefore eliminate one potential lot, and two if the property is surveyed as over 100 acres.

The proposed agricultural easement is compatible with existing and approved County plans and overall policy. The property is within the area of the Preservation of Agriculture and Rural Open Space Master Plan. The critical land use issue identified in this Plan is the loss of productive farmland and the Plan's focus is the identification and application of land use regulations and incentives to help retain agricultural land in farming.

The goals and purposes of the Building Lot Termination (BLT) easement program proposed by the Ad Hoc Agricultural Policy Working Group include the following: (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. The MALPF easement program essentially fulfills similar goals and purposes.

## **STAFF RECOMMENDATION**

Planning staff recommends that the Planning Board transmit letters advising the Montgomery County Council and the Department of Economic Development that the proposed agricultural easement is compatible with existing and approved County plans and policy.

Attachments:

1. February 26, 2009 memorandum from Director of Planning and Promotions, Department of Economic Development to Dr. Royce Hanson, Chairman, Montgomery County Planning Board.
  - A. Petition to Purchase Agricultural Easement.
  - B. Aerial with Tax Map base and SDAT Assessment Readout.
  - C. Agricultural Preservation Advisory Board Approval Letter.
  - D. USDA Soil Capability Classification Soil Map.
2. Aerial Location Map – 10701 Bethesda Church Road, Damascus, Maryland 20878.
3. Excerpt of Montgomery County Code, Chapter 2B, Agricultural Land Preservation, Article 2, State Easements, 2B-3. State Easement Application and Purchase.
4. Detailed Soils Map – 10701 Bethesda Church Road, Damascus, Maryland 20878.



Page 2  
Mr. Royce Hanson  
February 26, 2009

The County Council must hold a public hearing and vote to approve the resolution to approve the purchase of the in June 2009.

The application to sell an easement and other supporting documentation must be processed by the Department of Economic Development (DED) pending County Council approval of the purchase.

This Landowner wishes to submit an easement application to MALPF prior to July 1, 2009 deadline.

To enable this landowner to make application to sell a MALPF easement by the July 1, 2009 application deadline, we will need the Planning Board's support and recommendation on this agricultural easement purchase prior to the County Council Introduction of Resolution, Public Hearing, and final action on the Resolution. Once the County has approved the resolution, the DED will process the Agricultural Easement Application.

Please let me know, at your earliest opportunity, when the Planning Board can schedule review of this agricultural easement sale petition DED would like to schedule this before the Council in June, if at all possible. The Planning Board should forward written comments on this petition to sell an Agricultural Easement to the Foundation to the Montgomery County Council and also to the DED.

Thank you for your assistance and consideration. Should you have any questions or need additional information, please call me at 301-590-2831.

#### Attachments

- (A) Petition to Purchase an Agricultural Easement
- (B) Tax Map and Assessment Readout
- (C) APAB Approval Letter
- (D) Soil Maps

cc: Dr. Pradeep Ganguly, Director DED  
Jeremy Criss, Manager DED  
✓ Callum Murray, Rural Area Team Leader

A:\2009PBHanson(mydocuments)

Date: October 14, 2008

To: Agricultural Preservation Board, Montgomery County, Maryland  
c/o John Zawitoski

From: Lonnie & Mina Luther

Subject: Application to Maryland Agricultural Land Preservation Foundation  
(MALPF) re 93 acre farm at 10701 Bethesda Church Road, Damascus, Maryland 20872  
[formerly owned by Catherine Dorsey] -Tax Account # 12-00927863.

PETITION TO THE GOVERNING BODY OF MONTGOMERY COUNTY,  
MARYLAND, TO APPLY TO MARYLAND AGRICULTURAL LAND  
PRESERVATION FOUNDATION (MALPF) TO SELL AN AGRICULTURAL  
EASEMENT.

We, the undersigned landowners of productive agricultural land in Montgomery County,  
Maryland, petition the county governing body of Montgomery County to apply to  
MALPF to sell an agricultural easement composed of 93 acres of farm land. The property  
is zoned in the agricultural reserve with one development right per 25 acres.

Landowner's Signatures:

Lonnie W. Luther  
Lonnie W. Luther

Date:

10-14-08

Mina M. Luther  
Mina M. Luther

10/14/08



Maryland Department of Assessments and Taxation  
MONTGOMERY COUNTY  
Real Property Data Search (2007 vw3.1)

[view map](#)  
[New Search](#)

Account Identifier: District - 12 Account Number - 00927863

**Owner Information**

Owner Name: LUTHER, LONNIE W ET AL TR Use: AGRICULTURAL  
Principal Residence: NO  
Mailing Address: 28711 CLARKSBURG RD Deed Reference: 1)  
DAMASCUS MD 20872-1375 Deed Reference: 2)

**Location & Structure Information**

Premises Address 10701 BETHESDA CHURCH RD Legal Description FLAG PATCH ETC  
DAMASCUS 20872

Map	Grid	Parcel	Sub District	Subdivision	Section	Block	Lot	Assessment Area	Plat No:
FX33		P333		1				1	Plat Ref:

Special Tax Areas Town Ad Valorem Tax Class 42

Primary Structure Built	Enclosed Area	Property Land Area	County Use
0000	2,048 SF	93.06 AC	812

Stories	Basement	Type	Exterior
2	NO	STANDARD UNIT	FRAME

**Value Information**

	Base Value	Value Phase-in Assessments			PREFERENTIAL LAND VALUE INCLUDED IN LAND VALUE
		As Of 01/01/2007	As Of 07/01/2008	As Of 07/01/2009	
Land	105,530	255,530			
Improvements:	52,660	110,900			
<b>Total:</b>	<b>158,190</b>	<b>366,430</b>	<b>297,016</b>	<b>366,430</b>	
Preferential Land:	15,530	15,530	15,530	15,530	

**Transfer Information**

Seller: MCCLOSKEY, EILEEN TR	Date: 02/02/2009	Price: \$950,000
Type: IMPROVED ARMS-LENGTH	Deed1:	Deed2:
Seller: DORSEY, CATHERINE K TR	Date: 08/30/2005	Price: \$0
Type: NOT ARMS-LENGTH	Deed1:	Deed2:
Seller: MCCLOSKEY, EILEEN	Date: 08/30/2005	Price: \$0
Type: NOT ARMS-LENGTH	Deed1: /19325/ 439	Deed2:

**Exemption Information**

Partial Exempt Assessments	Class	07/01/2008	07/01/2009
County	000	0	0
State	000	0	0
Municipal	000	0	0

Tax Exempt: NO  
Exempt Class:

Special Tax Recapture:  
AGRICULTURAL TRANSFER TAX







DEPARTMENT OF ECONOMIC DEVELOPMENT

Isiah Leggett  
County Executive

Pradeep Ganguly, Ph.D.  
Director

January 22, 2009

Lonnie and Mina Luther  
10701 Bethesda Church Road  
Damascus, Maryland 20872

Re: Approval of MALPF Application to Sell and Agricultural Easement

Dear Mr. and Mrs. Haines:

I am writing to you today on behalf of the Montgomery County Agricultural Preservation Advisory Board, to inform you that the Board met on November 18, 2008 to discuss the Agricultural Easement sale petition for your farm.

The Board recommends the approval of the Agricultural Easement Application and instructed me to actively pursue the preservation of your farm with the State of Maryland. The agricultural productivity meets the requirements for participation in the State Agricultural Easement program due to the fact that 55.05% of the soils consist of prime and productive classifications: 8.986 acres of USDA Class II prime soils classification and 42.244 acres of USDA Class III prime soils classification. I explained to the Board how the preservation of this farm will enable you to ensure the continued viability of this farming operation.

The recommendation at this time is to recommend the approval of the easement application you will be submitting to the Maryland Agricultural Land Preservation Foundation on or before July 1, 2009. The completion of your easement sale application will enable an agricultural easement to be purchased on the farm.

I look forward to working with you on this property in an expeditious manner. Should you have any questions regarding this matter, please do not hesitate to call me at 301-590-2831.

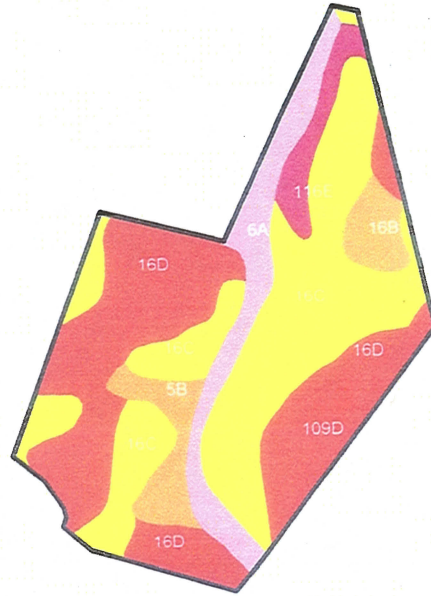
Sincerely,

John P. Zawitoski  
Director of Planning and Promotions

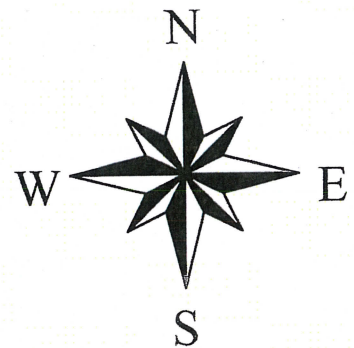
cc: File  
Jeremy Criss

# Lonnie Luther -

Total acres = 93.03



	<b>Luther.shp</b>
	<b>Luther2soils.shp</b>
	Class II = 8.986 acres
	Class III = 42.244 acres
	Class IV = 30.531
	Class V = 8.217
	Class VII = 3.082
	<b>Co-bndy.shp</b>



ATTACHMENT 2



RETHESDA CHURCH RD

10855

10851

10701

10727

10724

10711

10711

10533

10421

10409

10321

10201

10201

10125

JOHNSON

LEWIS



Legend

478 (D) promote preservation of agriculture in the County by  
 479 offering information and assistance to landowners on the  
 480 purchase of State and County agricultural easements.

481 (2) The APAB may:

482 (A) delineate areas of productive agricultural land in the  
 483 County;

484 (B) recommend to the Executive procedures to mediate or  
 485 arbitrate disputes on the value of agricultural easements  
 486 which the County may buy;

487 (C) review and make recommendations on regulations  
 488 regarding State and County agricultural easements;

489 (D) recommend County policies and programs to preserve  
 490 agriculture;

491 (E) cooperate with the Planning Board, the Cooperative  
 492 Extension Office, and the Soil Conservation District in  
 493 carrying out its responsibilities; and

494 (F) perform other duties the County Executive assigns.

## 495 ARTICLE 2. STATE EASEMENTS.

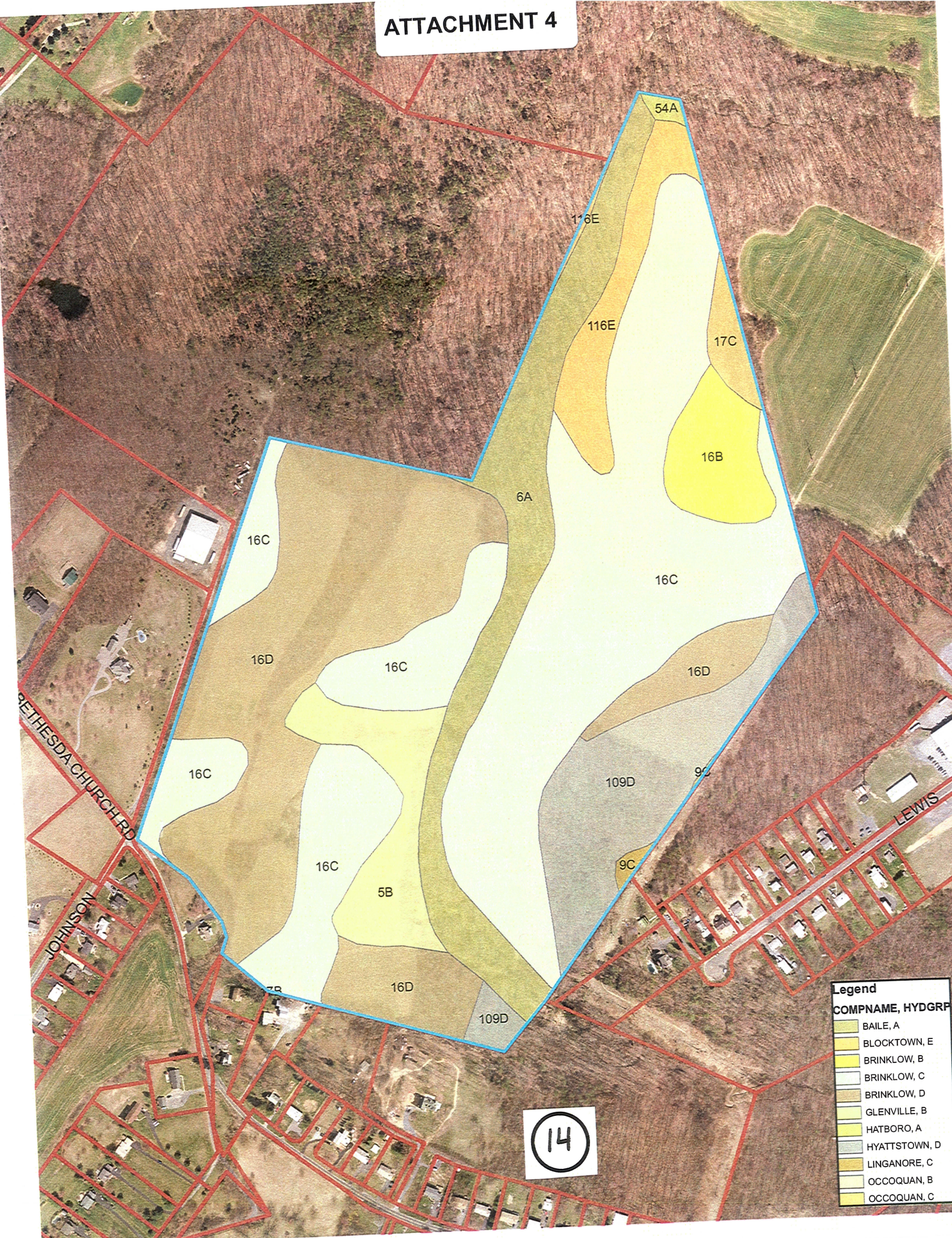
### 496 2B-3. State Easement Application and Purchase [[Guidelines]].

497 (a) A landowner seeking to place land under an agricultural easement  
 498 must file a petition with the APAB requesting an application for the  
 499 purchase of an easement by the Foundation.

500 (b) The APAB must advise the County Council whether the applicant's  
 501 land meets the qualifications established by the Foundation and  
 502 recommend whether the Foundation should buy an agricultural  
 503 easement.

- 504           (c) The APAB must refer the application to the Planning Board. The  
 505 Planning Board must advise the [[County]] Council if:
- 506           (1) the proposed agricultural easement is compatible with existing  
 507 and approved County plans and overall policy; and
- 508           (2) the Planning Board recommends buying an agricultural  
 509 easement on the applicant's land.
- 510           (d) If either the APAB or the Planning Board recommends approval, the  
 511 County Council must hold a public hearing on the proposed easement.  
 512 [[Adequate]] The Department must give adequate notice of the  
 513 hearing [[must be given]] to the owner of any land adjacent to the  
 514 proposed agricultural easement.
- 515           (e) The Council must decide if the application for the proposed  
 516 agricultural easement should be recommended to the Foundation for  
 517 approval.
- 518           (1) If the Council recommends approval of the application, the  
 519 Council must notify and forward to the Foundation its  
 520 recommendation and relevant information about the proposed  
 521 easement, including the recommendations of the APAB and the  
 522 Planning Board.
- 523           (2) If the Council recommends denial of the application, the  
 524 Council must notify the Foundation and the landowner of its  
 525 decision.
- 526           (f) The Foundation may approve an application for a proposed  
 527 agricultural easement only if:
- 528           (1) the land in the proposed agricultural easement meets the  
 529 following qualifications established by the Foundation:

# ATTACHMENT 4



**Legend**

COMPNAME, HYDGRF
BAILE, A
BLOCKTOWN, E
BRINKLOW, B
BRINKLOW, C
BRINKLOW, D
GLENVILLE, B
HATBORO, A
HYATTSTOWN, D
LINGANORE, C
OCCOQUAN, B
OCCOQUAN, C