





THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
July 19, 2002

MEMORANDUM

TO: Montgomery County Planning Board

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

FROM: Judy Daniel, AICP, Team Leader-Rural Area Team 
Community-Based Planning Division (301/495-4559)

SUBJECT: TDR Program Task Force Report

RECOMMENDATION: Approval to Transmit Comments and Recommendations to the County Council.

PREFACE:

In 1980, the Montgomery County Council adopted the Functional Master Plan for the Preservation of Agricultural and Rural Open Space. The Master Plan identifies as a key element necessary to ensure the success of the TDR program: *"the identification of receiving areas in area master plans."* The success of this element is now in question. The number of receiving areas has dwindled in proportion to the remaining un-transferred TDRs, and the number of receiving areas realistically likely to be developed using TDR density has become critically low.

The Master Plan also states: *"We can assume that 9,000 dwelling units [to transfer] is a realistic number. The areas already within the sewer envelope could easily absorb this amount."* Twenty years after the adoption of the Master Plan, the TDRs have not been absorbed. The actual number of TDRs was closer to 10,000 and of that number, approximately 6,000 TDRs have been removed from land zoned Rural Density Transfer. Thus, as of 2002, approximately 4,300 TDRs remain to be removed and transferred. This includes almost 1,000 TDRs that have been severed, but not transferred. The number of available TDR receiving sites totals approximately 4,700 - a surplus of only 300 or so.

Almost all TDR literature recommends at least a 2:1 ratio of receiving sites to sending TDRs for programs limited to pre-designated receiving areas. This would indicate a need for at least 8,600 in receiving area capacity - a deficit of nearly 4,000. In the most successful years of the program, the ratio was significantly higher. And in recent years the designated receiving sites have not been using their TDR potential. TDR use in the first eight years of the program averaged over 500 TDRs per year, while TDR use over the last 10 years of the program averaged fewer than 60 per year.

These facts highlight the problem we are facing in sustaining the TDR program as a powerful tool in Montgomery County's agricultural and rural open space preservation efforts - and why low prices are being received for TDRs. The deficit of receiving sites and declining use of TDRs instigated the work of the TDR Task Force.

BACKGROUND:

In June 1999, the staff reported to the Planning Board on a range of issues related to concerns in the Agricultural Reserve. The stated purpose of that report was to *"consider changes to the subdivision and zoning regulations to address concern over the rate of conversion of farmland to residential use in the Agricultural Reserve, and incentives to preserve large contiguous areas of farm fields and forest."* As a result of that report, the Planning Board authorized transmittal to the County Council of certain changes to the Zoning Ordinance and Subdivision Regulations related to subdivisions in the Agricultural Reserve, particularly in the RDT Zone. Another element of that report was a recommendation to evaluate the TDR program, which was beginning to see declining overall prices for TDRs. The program was approaching its 20th year, and it was important to see what was, and was not, working in the overall implementation of the TDR program. The Planning Board authorized the study of changes to the TDR program through a Task Force composed of representatives from varied segments of the communities in the County and affected branches of the Montgomery County government.

This report contains the recommendations of that Task Force, which has met since January 2001 to consider the current state of the TDR program, falling TDR prices, the sufficiency of receiving areas, and how best to meet the challenge of modifying the TDR program to face the challenges of the current decade. The TDR program has been modified a number of times in its twenty-year history, evolving to face new realities. In the opinion of the Task Force, new modifications are now necessary to enable the program to complete its task of offering a fair price for the remaining development rights that are not to be used in the Agricultural Reserve.

In evaluating these recommendations, the Planning Board and County Council should consider the reality that the TDR program serves multiple County goals. It is as much a tool for rural open space preservation and environmental protection as it is for the preservation of agricultural production -- just as there is now recognition that mass transit is equally valuable as a congestion reduction tool, and recycling is a tool to extend the life of landfills. The changes recommended by the Task Force will ensure market support of the TDR program until all realistic potential transferable TDRs in the RDT Zone have been sold or otherwise utilized.

The staff wishes to thank all the members of the Task Force for their strong input, depth of commitment, and wise counsel in this task. We are particularly indebted to Royce Hanson, who was instrumental in the creation of the TDR program while serving as Chairman of the Planning Board and lent expertise, "gravitas" and perspective to this endeavor. The participation of William Anderson and Drew Stabler, who were also pioneers of the TDR program, and whose historic perspectives were vital to the process today was also deeply appreciated. Members of the Task Force included:

Representing the Agricultural Community: Drew Stabler, Norman Mease, William Anderson, Jim Clifford, Frank Jamison, and Vince Berg

Representing Preservation Organizations in the Agricultural Reserve: Dolores Milmoie and Perry Kephart

Representing the County Government: Ralph Wilson (Council Staff); Carl Morgan (Nancy Dacek's staff); Nancy Aldous (Mike Subin's staff), and Jeremy Criss (Agricultural Services Division)

Representing Down-county Perspectives: Elsie Reid, David Flanagan, Peggy Dennis, Pam Lindstrom, and Stuart Rochester

TDR History - Royce Hanson

The Task Force was also aided in its work by assistance from a team of graduate students in the Urban Studies and Planning Program at the University of Maryland, who undertook a range of research related to the study as part of a semester long project. A summary of their findings, which were considered by the Task Force in reaching its recommendations, is attached in the Appendix.

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 MXPZD 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.

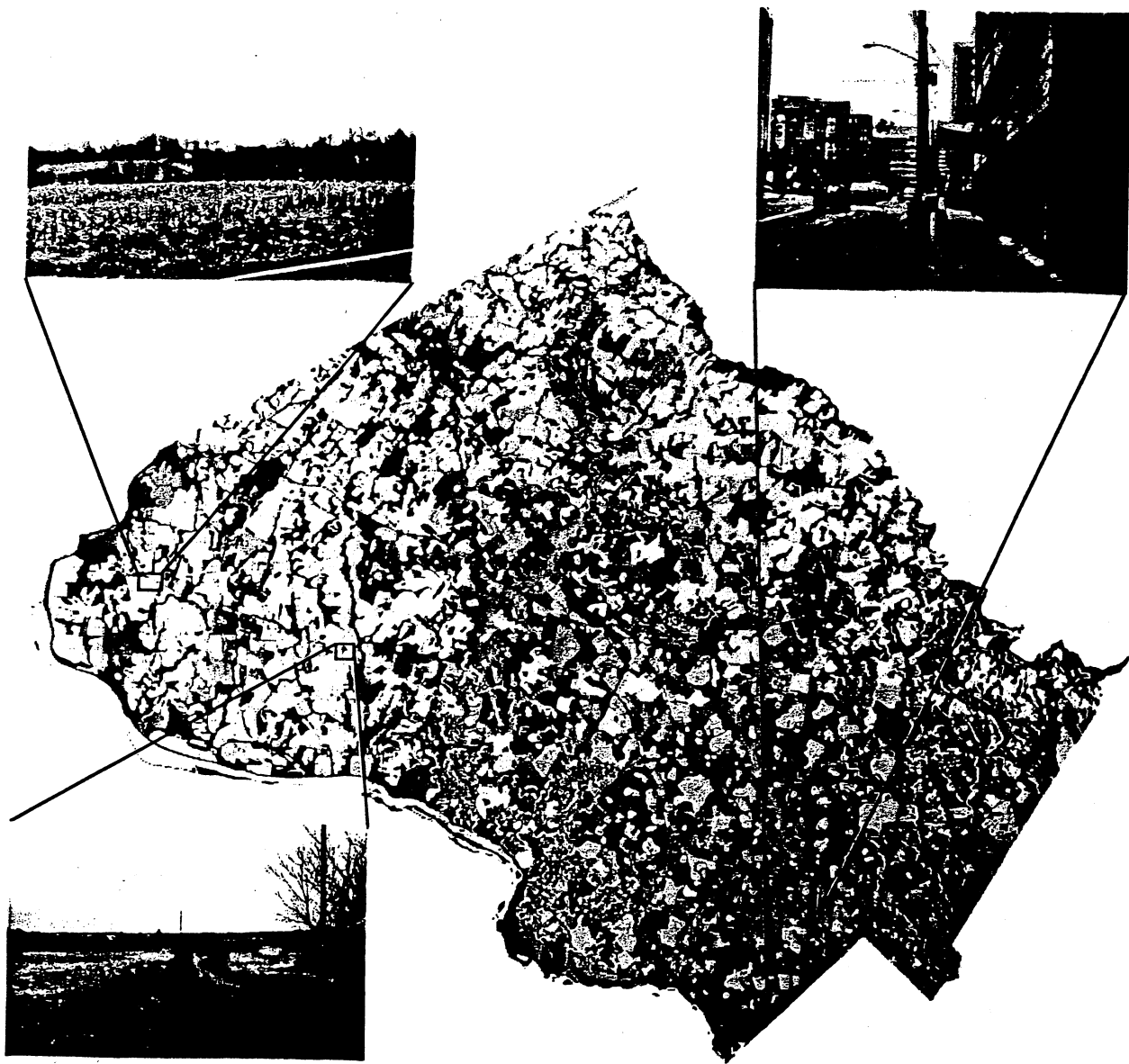
This project would be helpful in a determination of how many TDRs in the RDT Zone might be realistically transferable - as well as providing information to property owners on the multiple easement programs available for rural property owners. The M-NCPPC staff can work with the Agricultural Services staff and the Legacy Open Space staff to draft a survey form.

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Attachments:

- Appendix 1: University of Maryland Analysis
- Appendix 2: TDR Statistics from 1999 Report
- Appendix 3: Concepts Eliminated

APPENDIX I
University of Maryland Analysis



**An Analysis of the
Transfer of Development Rights Program
in Montgomery County, Maryland**

**A Report of the University of Maryland's
Spring 2001 Community Planning Studio**

June 2002

Declining prices and demand for Transfer of Development Rights (TDR), as well as the dissatisfaction among the various stakeholders involved, led the Maryland-National Capital Park and Planning Commission to reassess their TDR

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program. To accomplish this, they created a TDR Task Force comprised of members from different interest groups. This Task Force requested the assistance of the 2001 Community Planning Studio Team of the Urban Studies and Planning Program of the University of Maryland. They asked the Studio Team to perform research and provide an assessment and some recommendations regarding Montgomery County's TDR program.

In order to assist the Task Force as they deliberated the future of the TDR program, the Studio Team spent four months collecting data on the history, context, and current application of Montgomery County's TDR Program. The Team's findings are outlined in this report and were presented to the Task Force in May 2001.

Major Findings

- Montgomery County's TDR program is preserving open space and maintaining farmland in the short-term, but not necessarily in the long-term. Landowners who sell development rights in the TDR program are allowed to retain the last 20 percent of rights: from 25 acres, four rights may be sold while the fifth right can be retained. By selling 80 percent of their rights, the owners receive compensation for the historic downzoning of their land and receive equity to support their farms. By retaining the fifth right (the last 20 percent of developable land, also referred to as the 5th TDR), the owners may still develop their land at 1 unit per 25 acres (1:25), the zoned density, while maintaining equity to guarantee loans. Recent county development pressures and resident wealth have instigated farm parcelization with the remaining right for division into 25-acre lots. The selling of the rights helps farmers invest in their farms, but does not prevent development in the reserve or insure preservation of the agricultural uses.
- Receiving areas in the county were selected when Planning Areas came under review for new master plans in the early 1980's. The receiving area selection process did not take into account the already failing infrastructure of some of these Planning Areas and did not provide sufficient support to insure the necessary level of service. For instance, the Fairland Master Plan of 1981 included increased density created with TDR receiving areas. The Fairland Planning Area was placed (and still exists) under residential development moratorium in 1982.

- The portrayal of the TDR program to the residents in lower Montgomery County was not consistent with its implementation in the county. Master plan reports from the 1980's, which included the first receiving areas, noted that development rights would be transferred from the agricultural reserve to receiving areas to "preserve" agricultural lands. Yet this transfer of rights did not reduce the total developable density of the reserve. The rights transferred from the sending areas referred to the 80 percent of development rights that could not be used for development in the reserve, not the 20 percent that applied to development at the zoned density of 1 unit per 25 acres (the first four rights from each 25 acres of developable land, not the fifth).
- Jurisdictions with more political organization succeeded in reducing the number of receiving areas approved in the master planning process. These jurisdictions, such as the Potomac Planning Area, pressured the county Planning Board and developers to reduce the maximum number of developed units in given TDR zones.
- One must compare the finer details of all the preservation programs across all Maryland counties to assess Montgomery County's success in preserving agricultural land. When ranking Maryland counties according to the total acreage in all agricultural programs, Montgomery County ranked first with about 52,000 acres. Yet, the requirements of the TDR program do not insure that the agricultural lands will remain open space in perpetuity, but only that they will only be developed at a minimum of the zoned density 1:25. When Maryland counties are ranked by programs that provide long-term protection, (the distinction between TDR program and easement programs), Carroll County is ranked first with 33,800 protected acres. Using this method, Montgomery County slips to fourteenth in the rankings.

Primary Recommendations

Given the above observations, the Studio Team developed a combination of recommendations for the TDR program to reach the following underlying program goals as identified by the Team:

- compensation for the landowners,
- preservation of prime agricultural lands and open space over the long-term, and
- equitable distribution of additional residential densities throughout the county.

The Studio Team developed the following general recommendations:

- The county should create a long-term vision for growth over the next few decades. Without an evaluation of the future viability of farming in the county and the total needs

for additional market-rate and affordable housing, the fragile balance of future resident needs and the preservation of open space will be upset. A county-wide resident visioning process should be organized to identify long-term goals and design a 50-year growth map.

- A county committee on data exchange should be created to facilitate the establishment of a data bank. The Studio Team found that current available data are not sufficient to analyze the needs of county residents in relation to the use of TDRs and increased density. Among its many benefits, an effective data bank would enable planners to monitor the trends in agricultural land uses, locate remaining 5th TDRs, and measure historic changes in school capacity and the subdivision of reserve parcels for non-agricultural uses.

Additional recommendations are contained herein. The major topics covered include 1) recommendations for equity in the receiving areas; 2) the preservation of agricultural lands; 3) maintaining the balance of sending and receiving areas; and 4) economic benefits for participating landowners.

Additional Findings of this Report

Context and Background:

- Montgomery County has an extensive history of growth management. Among the major regional or state policies directing this growth are the Wedges and Corridors concept of 1964, Maryland's Planning Act of 1992, and Smart Growth legislation of 1997. The TDR program, a county program which began in 1980, promoted the Wedges and Corridors concept and supported subsequent state Smart Growth policies.
- Data on the change in county land uses from 1960 to 1991 show nearly a quadrupling of the county acreage in residential use (23,700 to 86,800 acres), an increase in the amount of multi-family acreage (700 to 6,700 acres), and a reduction in the amount of forest and agricultural land by almost half (263,000 to 167,000 acres).
- The major factors affecting the density of development in the county include general economic trends, location of TDR receiving areas, development of Moderately Priced Dwelling Units (MPDUs), and zoning restrictions.
- One of the county's first Planning Areas to contain a TDR receiving area, Fairland, is examined in the text for the implementation of master plans in 1981 and 1997. This evaluation shows that part of the infrastructure identified in the 1981 Plan, which was needed to support the added density from the transfer of rights, was not implemented until shortly before the 1997 Plan.

Major Impacts and Issues

Changes in the County's Agricultural Landscape...

- The future viability of farming in Montgomery County needs to be examined in light of information available in the U.S. Census of Agriculture. The Team examined the data and found that, after making adjustments for inflation, the revenue generated from the land is decreasing.
- The Team's research found a decrease in county farmland acres (33 percent) and the number of farms in the county (21 percent) from 1978 to 1997, while the state farmland acreage decreased by only 17 percent with a similar decrease in the number of farms. Additionally, the average market value of farmland and buildings declined over this same period (37 percent, when adjusted to 1997 dollars).
- The average market value of agricultural products sold (when adjusted for inflation) dropped between 1978 and 1997. The 48 percent decrease reflected a \$16 million change. The state also saw a 32 percent decrease over this period, when adjusted for inflation.

Concerning Development Rights...

- Over 5,000 development rights have been sold from agricultural sending areas since 1980. But since 1990, fewer than 200 rights have been sold each year, and over the past four years, less than 100 have been sold annually.
- TDR prices have fluctuated greatly over the program's 20-year history. When adjusted for inflation (to 1999 dollars), the price per development right reached a low of about \$5,500 in 1987 and a high of \$11,600 in 1996. The price of \$7,500 in 1999 was considerably lower than the starting price of \$9,100 (adjusted to 1999 dollars) in 1981.
- As of 2000, about 41,270 acres were in the TDR program and about 12,211 acres in easement programs. Data from the Legacy Open Space program shows about 88,800 acres of public land in Montgomery County.

Impacts of the TDR Program on Receiving Areas...

- The median value of homes for all receiving areas is approximately 89 percent of the value of homes in Planning Areas which contain receiving areas. The rate of owner-occupied housing is lower in receiving areas as well. This trend was not apparent in all Planning Areas when they were examined individually. Some, like Olney, showed higher rates of owner-occupancy in the receiving areas.
- The proportion of total housing units developed with TDRs is extremely varied across developed areas. By combining data from Planning and Policy Areas, the Studio Team found that TDR-built units account for almost 17 percent of Olney's housing units and 15 percent of Damascus units. Housing from the remaining county areas contain less than 3 percent TDR units. The highest concentration of TDRs is also found in Damascus and Olney, with 54 and 38 TDRs per square mile, respectively.

- Some county regions with TDR zones lost a high percentage of development potential because of environmental constraints and public pressure against development. Three areas lost more than 30 percent of their assigned TDRs: Germantown/Aspen Hill (39 percent), North Bethesda (36 percent), and Darnestown/Travilah (30 percent).
- The county's Annual Growth Policy shows that a number of Policy Areas have been in moratorium for residential development for more than twelve years, including Fairland/White Oak (19 years), Damascus (14 years), Cloverly (12 years), and Aspen Hill (12 years). During this time, Fairland had over 350 units approved through the Special Ceiling Allocation for Moderately Priced Dwelling Units (MPDUs) and the Pay & Go policy.

Preface

What is the Community Planning Studio?

The Community Planning studio is a six-credit culmination course for Masters of Community Planning students at the University of Maryland. Before their final semester, students have completed a required core of courses in research methods, planning history, and the planning process. In the Community Planning Studio, students work as a team to identify key planning issues in a given study area, based on input from an advisory committee organized by the instructor and composed of public officials and other stakeholders in the subject community. The Studio Team designs the research, collects and analyzes data, and produces a written report with findings and policy/program recommendations.

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Acknowledgements

The Studio Team would like to give special thanks to everyone who generously shared their information, time, and expertise during the production of this report.

Members of our advisory committee, listed in this preface, supplied vital background information for our research by meeting with us as a group to share their diverse perspectives about land development in Montgomery County and the Transfer of Development Rights program. We give special thanks to Judy Daniel, the coordinator of the M-NCPPC's TDR Study Task Force, for serving as the Team's liaison to the advisory committee and other stakeholders in the county.

The Team also thanks the Montgomery County landowners and farmers whose responses to our survey and intermittent questions furthered our knowledge regarding the impact of this program on the county.

In addition to the Maryland-National Capital Park and Planning Commission staff who served on our advisory committee, we thank planners Piera Weiss and Bill Barron and staff member Malcolm Shaneman for their input. Other people who assisted us include Stephen Eckert, a Montgomery County land developer, county farmers Bob Raver and Dan Ranck, and Lori Lynch from the University of Maryland's Agricultural and Resource Economics Department.

Finally, the Studio Team would like to acknowledge advisor Jim Cohen for his significant input, guidance, and encouragement during the project.

In June 1999, the Maryland-National Capital Park and Planning Commission transmitted a memo to the Montgomery County Planning Board that suggested

VI. *Lessons Learned and Recommendations*

modifications to the TDR program. The suggestions were part of a larger effort that addresses concerns over the rapid pace at which farmland was being converted for residential use.

The M-NCPPC memo begins by stating the problems with the existing TDR program—specifically, the dropping price of TDRs, the declining use of the number of TDRs, and the amount of bonus density being used. The following suggestions were made by county planners in response.

Suggestion	Studio Team Remarks
Eliminate or reduce the minimum TDR requirement in a receiving area if TDRs are used to one-third or one-fourth of the allowed TDR density.	<i>The requirement that developers use a minimum of two-thirds of the allowed TDR density on receiving area sites (if they choose to use any at all) may deter developers who want to use just a few.</i>
Evaluate potential of requiring use or purchase of TDRs for development at a receiving site.	<i>If developers were required to buy a certain percentage of TDRs on a receiving site whether they use them or not, it could help the county fund the purchase of TDRs for agricultural preservation.</i>
Adopt a temporary development tax on all property proposed for subdivision development (anything lower than 4 DU/acre) until the county's TDR purchase goals are met. Proceeds to be used for the purchase of TDRs.	<i>Instead of being directed specifically at developers building in receiving areas, this would impact all low-density suburban development that, according to M-NCPPC staff, is the true cause of sprawl and the biggest threat to agricultural lands.</i>

Suggestion	Studio Team Remarks
Reinstitute the TDR bank until the price of TDRs has stabilized.	<i>Renewing the credit bank that existed when the county created the TDR program in 1980 could provide a safety net in which the TDRs could remain until prices stabilize or more receiving areas are identified.</i>
Improve the master plan process for determining potential receiving areas to ensure more likely use of the anticipated density.	<i>Since many receiving areas have been developed at densities far below that recommended in master plans, a more intensive study of new and existing receiving areas and market forces may reveal the likelihood of and viability for TDR and bonus density use.</i>
Evaluate the potential for creating TDR receiving areas in Transit Station Zones and in additional multi-family zones.	<i>Assigning receiving areas in transit zones for multifamily housing and mixed-use development follows from the successful use of TDRs and absorption of density in these types of receiving areas.</i>
Implement an improved and more user-friendly tracking system to determine the amount and location of TDRs retained and sold.	<i>Better tracking and monitoring will help determine the need for and location of additional receiving areas. GIS could help connect TDR properties to property ID numbers.</i>

In addition to the findings of the M-NCPPC staff listed above, the 1999 memo to the county Planning Board included comments and concerns solicited from various stakeholders. The following paragraphs condense these comments and concerns.

While not specifically addressing improvements to the county's TDR program, Harold Baker, chairman of the Montgomery County **Agricultural Advisory Committee**, responded to the M-NCPPC's observations on

clustering. The committee was concerned that, if mandatory, clustering achieved through changes in the zoning laws might mean further taking of property rights. They alleged that, if not carefully handled, clustering would breach the promises made to farms when the original downzoning occurred in 1980.

Delores Milmo, president of **For a Rural Montgomery (F.A.R.M.)**, responded that her organization supports clustering to preserve large contiguous tracts of land for agricultural use. To help stabilize prices, F.A.R.M. supports "shoring up [the TDR market] in some creative fashion." One example the memo provided was the return to use of a TDR credit bank. In addition, F.A.R.M. is opposed to receiving areas being located within the agricultural reserve, on the basis that development pressures would outweigh the attempt to maintain the size or character of rural villages.

The **Sugarloaf Citizens' Association** stated with their support for the TDR program in general, with an emphasis that receiving areas be barred from the RDT.

And finally, **James Dougherty**, a Montgomery County landowner, responded to the suggestions with his support of incorporating TDRs into commercial development by requiring that developers of commercial properties be required to pay a fee to a county TDR bank on a square foot basis—on the principle that the public benefit of preserving agricultural land should be a shared responsibility.

It is in the context of these ideas and suggestions that—in addition to reviewing literature and case studies of other TDR programs in existence—the Studio Team embarked on analysis of a set of recommendations for the future direction of Montgomery County's TDR program.

Recommendations from the Studio Team

Through research and analysis of the current state of Montgomery County's TDR program, the Studio Team concluded that, although the TDR program was well-intentioned, its implementation has been poor. Landowners have received some compensation, but agricultural land involved in the program is not "preserved"—its development has been merely postponed through monetary compensation of landowners. Further, receiving areas down-county have received increased densities without adequate attention to their increased infrastructure needs..

In its current state, the county's TDR program will most likely continue to stagnate. A poor

distribution of sending versus receiving sites will cause the price of development rights to continue to drop, landowners will not receive the expected compensation, and added densities will not be constructed down-county.

Detailed here is the Studio Team's analysis of the program's goals and recommendations for ways to renovate the TDR program so that it might attain its original goals. Each recommendation is coded according to the goals it fulfills.

Original TDR Program Goals Identified by the Studio Team

- **Compensation (C)** to landowners for the loss of equity potential on downzoned land. Landowners whose land was downzoned in the RDT zone continue the culture of farming in the county and the TDR program has provided them with equity to support their farms. A number of farmers the Team spoke with stated that they needed to maintain development rights on their land to remain viable and to finance further improvements to their operations. Continued support of the farming community will be necessary, but should be provided in a different form.
- **Preservation (P)** of prime agricultural land and open space from future development. As explained, the TDR program only insures that the RDT zone will be developed at 1:25. If the 40,000 acres currently participating in the TDR program were to be developed at this rate, resultant development would be the worst kind of sprawl possible. A new preservation program could continue where the TDR program leaves off and work to reduce total potential densities and promote quality agricultural uses.
- **Equitable distribution (E)** of additional densities throughout the county to help conserve the county's existing open space. As stated above, additional equity should be provided to the farmers in exchange for the downzoning of their lands, but this cannot come at the expense of residential development down-county. Additional densities should be fairly distributed and sufficient infrastructure needs to be provided to jurisdictions in a timely manner to insure a high quality of life for every county resident.

A Myriad of Recommendations

The recommendations developed by the Studio Team consist of:

- general recommendations for improved planning and development analysis;

- recommendations for equity in the receiving areas;
- recommendations for preservation of agricultural land;
- recommendations for maintaining the balance of sending and receiving areas; and
- recommendations for financial stability of participating landowners.

The Studio Team presents these diverse options for consideration by all TDR program stakeholders and county residents. Some of these recommendations conflict with one another, but the Team believes that a successful TDR program will rely on the implementation of a combination of these recommendations.

General Recommendations:

- *County Long-term Vision (C,P,E):* The county continues to prosper and attract new residents, as reflected in the housing sales and rental markets. The future economic viability of farming is unknown and its preservation may not be possible. Without a long-term vision of the balance of open space versus provision of housing (and affordable housing) for the next 50 years, the county may become subject to haphazard development of remaining developable lands. Already, the goal of preserving open space conflicts with the goal of providing affordable housing. Attention should be focused on identifying and evaluating key opportunities for long-term preservation of the county's open spaces, a process for long-term development of remaining areas, and the viability of preserving farming on agricultural land. Given farming's sensitivity to international market forces, the realistic preservation of farming in Montgomery County in the long-term must be examined.

Implementation: M-NCPPC can organize a county-wide resident visioning process to identify long-term goals and design a potential 50-year land use map.

- *Evaluation and Data Collection (C,P,E):* Current available data are insufficient to fully analyze the needs of residents in the rural and urban zones. Trends in agricultural land uses, the location of remaining 5th TDRs, and the subdivision of parcels for non-agricultural use, among others, need to be documented. Change in the environment, quality of life for residents, and infrastructure provision should be more closely monitored for the receiving areas as well. A centralized data bank needs to be created to coordinate the provision of information between county departments and to the public. Benchmark data should be collected and analysis should be provided to policymakers.

Implementation: A county committee on data exchange should be created to facilitate the establishment of a data bank. New online technologies and geographic information system software (GIS) should be used to make this information available to the public.

Recommendations for Equity in the Receiving Areas

- *Fair Share Distribution of Added Densities (C,E):* Following the creation of a long-term plan, the future fair distribution of added density throughout the Planning Areas would require that each portion of the county accept additional housing resulting from redevelopment or new development. This includes the selected rural areas, such as rural villages and areas around Maryland Rail Commuter (MARC) stations. While it is important to retain the different characteristics of the Planning Areas, this distribution would help provide adequate housing for future residents.

Implementation: This proposal may be resisted by the lower density Planning Areas. A unifying process needs to be developed for the distribution of added densities—a process similar to the MPDU requirement.

- *Receiving Area Identification by Criteria (C,E):* Receiving areas would not be zoned by the county's Planning Board, but identified by developers for any parcel that fulfills certain criteria. Similar to the program in San Luis Obispo, criteria would be established to focus on parcels with minimal environmental constraints, strong infrastructure access, and adequate regional facilities. The relocation of developable land (lots with the 5th TDR intact) within the rural zone might be recommended for additional development around MARC stations. Developers could request the application of additional development rights on any parcel that they propose to fulfill these criteria. Planning Board approval would be required.

Implementation: The political feasibility of this concept alone might be difficult. It would need to be combined with some of the other suggestions that require fair distribution of density throughout the Planning Areas.

- *Purchase of TDRs to Develop Below Zoned Density (C,E):* Currently, many parcels within the TDR zone and other county zones are built to densities lower than their maximum potential. While density reduction due to environmental constraints is out of the control of the developer, some densities are removed at the option of the developer. In these cases, developers would be required to purchase TDRs to reduce density. For each unit removed from the maximum allowable density, the developer would be required to purchase a right at a rate determined by the county. For example, three TDRs would be purchased for each single-family house removed from the maximum density, while fewer would be required for multi-family development.

Implementation: Limitations to the proposal must be established to determine the maximum allowable density. This would apply to all development in the county.

- *Low-density Development to Purchase TDRs (C,E):* Development of parcels at a density of less than 1 unit per half-acre would require the purchase of development rights. For each additional acre per unit, a right would have to be purchased. This requirement promotes the county's objective of compact development and smart growth, while passing along the cost of open space preservation to the community who can afford it and will benefit from it. This would apply to non-agricultural development on lots sized up to 25 acres in the county.
Implementation: This may be politically difficult. All county lands would need to be given an "ideal" zoning above 1 unit per half-acre.
- *Development Rights for MPDU Density Bonus (C,E):* Provision of affordable housing could be tied to the provision of open space. The threshold for developments required to build MPDUs would be lowered to 25 units from 50 units. Any developer who constructed the maximum percent of MPDUs required would be allowed to purchase development rights for additional market rate housing. These additional units would be added to the existing density bonus that developers receive when building MPDUs. This would apply to any parcel in the county and be subject to review by the Planning Board.
Implementation: A maximum additional density would need to be established. The maximum percent MPDUs required could be increased in order to receive the right to build added units from development rights.
- *Infrastructure Fund (E):* A fund would be established and supported through general development fees, additional fees collected on projects developed at densities lower than 1:1, and taxes from the agricultural zone. This fund would help direct its monies and county expenditures towards neighborhoods most in need of updated infrastructure due to high densities. Improvement priorities would go towards neighborhoods that were receiving areas under the old TDR program, neighborhoods with more than their "fair share" of MPDUs, and then by Planning Area density. King County in Washington has a similar program through which a fee is charged for some TDR uses.
Implementation: Monetary support for this fund would need to be established.
- *Design Standards (E):* Stringent design standards for higher-density development would be established and enforced. This would require concentrated areas of usable open space in all multi-family development.
Implementation: New requirements from the Planning Board.

Preservation of Agricultural Land

- *Packaging of Development Rights (P)*: The sale of any development rights would be directly linked to a reduction in density for the given parcel. Sale of each 20 percent of development rights would be linked to the sale of a fifth right. The owner would not be allowed to preserve all of the rights at 1:25 acres and sell the remained rights. The rights would always be sold with the fifth right in order to decrease the potential density of the sending parcel. For instance, an owner with 100 developable acres who owned 20 development rights would sell the rights in increments of five. For each five sold, a right to develop at the existing density (1:25) would be sold as well.

Implementation: The 5th TDR currently draws a larger price than the other four rights that cannot be built upon. The county would need to either create a fund to purchase the 5th TDR each time, or create a different exchange rate for that TDR (i.e. the 5th TDR equals ten development rights). The success of this recommendation would depend in large part on the simultaneous implementation of both the preservation fund and the new agricultural tax break.

- *Focus Efforts on Prime Soils (P)*: By prioritizing lands participating in the program, the county could target benefits to lands with prime soil land and farms using best practices. In order to provide owners of prime lands with higher prices for their development rights, the county may need to provide a supplementary increment above the market rate for TDRs. This can also be accomplished through new emphasis on attracting the prime soils owners to the existing easement programs. Most prime lands would be downzoned to 1:50.

Implementation: County planning officials and the Planning Board would be required to prioritize lands for preservation and further downzone those identified as the most important for farming. Funding would need to be approved by the County Council to supplement the pricing of TDRs from these lands.

Maintain Balance of Sending and Receiving Areas

- *Purchase of Development Rights within the RDT Zone (C,P,E)*: Landowners would be allowed to purchase the 5th TDR from other landowners in the reserve to build at a density higher than 1:25 acres, such as in the rural villages. This would apply only to non-prime soil lands that still contained more than the minimum development rights (more than 20 percent). This would promote clustering of development within the reserve.

Implementation: This option would shift development within the reserve, but not allow an added density overall. The idea would probably be politically volatile because of the perceived encroachment on land in the reserve.

- *Inter-Jurisdictional Agreements (C,E):* As seen in the case studies of Boulder, Colorado, and King County, Washington, expansion of the program beyond boundaries, and potentially into neighboring counties, would greatly enhance the base of receiving areas. In Montgomery County, the use of development rights in Rockville and Gaithersburg, for example, would be accompanied by additional county infrastructure support—or by state funding in the case of neighboring counties. For instance, developers working in the redevelopment of downtown Rockville would be allowed to purchase development rights to increase the number of floors allowed in their high-rise developments. In return, Montgomery County would provide Rockville with additional funding for its infrastructure improvements.

Implementation: Although case studies have shown this method to be successful, there may be some resistance to this in Montgomery County. The added incentives may help instigate the program, but new sources of funding must be identified.

- *Non-Residential Receiving Areas (C,E):* TDRs can be applied for added densities in commercial or industrial zones. Due to the widespread availability of these parcels up-county, this may only be applicable for urban areas. Developers working in commercial business districts, such as Silver Spring or Bethesda, might be interested in additional densities for their construction. A new exchange rate of floor/area ratio (FAR) per development right would need to be established.

Implementation: A study is necessary to evaluate developer interest in such a program and to establish the FAR rate. Alternatively, receiving areas could be focused on infill parcels, as opposed to greenfields, but for limited density changes.

Financial Stability for Participating Landowners

- *Farmland Preservation Fund and Administration (P,C):* A fund could be created to provide farm owners with subsidized mortgage rates when they sell any of their higher-valued 5th TDRs, which are often used to secure loans. Because commercial lenders typically have established standards which cap the loan-to-value ratio permitted, it is logical that farmers are reluctant to sell their 5th TDRs even if they never intend to develop their property. A Farmland Preservation Fund could either guarantee loans at

regional banks—thereby allowing farmers to borrow larger amounts or at better rates—or provide loans itself. The fund would also administer purchases and streamline the process for both buyers and sellers. The fund would manage a database of all sales and acquisitions.

Implementation: The county would need to approve seed money for the fund to operate. Due to the risk involved from county loan security, the amount of money needed could be significant. Under this type of fund, loans would be secured by the county since loans that would go into default could not be recovered through the proceeds of sale (as is the case with conventional loans). A similar proposal was approved at the start of the TDR program, so this should not be excessively political beyond fund allocation.

- **Easement Tax Break of 100 Percent (P,C):** Farm owners who sell 100 percent of their development rights would receive a 100 percent tax exemption on their agricultural land and farm buildings. This is similar to Charles County's TDR program, where only residential buildings and minimum surrounding acreage are taxed. This would further support farmers in the region and help reduce the economic pressures to convert to development. The program could be prorated according to the proportion of development rights removed from the land. For instance, for each 20 percent reduction in the allowable density (20 percent of available 5th TDRs) a portion of the property tax would be reduced.

Implementation: Further study is needed to examine the amount of taxes collected by the county from these lands and the actual relief it provides to farmers. Residents down-county may resist this program because of its subsidy to up-county residents only.

- **Optional Reserve Status (P,C):** Following the lead of Maryland's Calvert and Charles counties, Montgomery County landowners in the agricultural reserve would be given an option to sign ten-year contracts to affiliate with the reserve, with an opportunity every ten years to continue the affiliation or not. The contract would require that land be kept in agricultural use, and would prevent owners in the reserve from developing their land or negotiating for subdivision during this period. The existing agricultural tax reduction would apply until owners stopped affiliating with the reserve.

Implementation: This may help the county direct development within the reserve over ten-year periods. It also directs aid only to those landowners who are committed to agriculture. This may be sensitive because it allows owners to choose their affiliation. Additional ideas include a longer or shorter agreement period, changes in density allowed when developed, and changes in the tax relief.

Areas for Further Study

During the course of the research and analysis phase of the report, the Studio Team realized that time constraints would make it impossible to adequately address several areas of interest related to the Montgomery County TDR Program. The Team also determined that a lack of available information concerning schools, sewers, and infrastructure, watersheds, and other data would make it difficult to fully evaluate the impacts of suggested changes and recommendations on sending and receiving sites. Therefore, areas for further study are outlined below, organized under three main categories:

- data the county should collect and make publicly available;
- areas for short-term study; and
- areas for long-term study and visioning.

The Team suggests that Montgomery County give further consideration to the ideas below should they decide to make fundamental changes to the TDR program.

County Data

One of the problems the Studio Team encountered while conducting research was a distinct lack of data to understand the impact of TDRs in the county, particularly in receiving sites. The Studio Team identified three areas in which sufficient data was lacking or difficult to obtain in a four-month period of time.

- *Data on the 5th TDR:* After several attempts to obtain detailed information on the landowners who have sold or still maintain their development rights, the Studio Team determined that records on this subject have not been kept. The Team strongly urges the county to collect detailed information on the status of 5th TDRs, and to maintain this data in a central data library.
- *Infrastructure Capacity in Receiving Areas:* The Studio Team encountered a lack of information on the capacity of the infrastructure in receiving sites to handle new growth. Current practices for determining capacity are not sufficient to establish the viability of an area for sustaining additional density. One of the major concerns that residents in receiving areas expressed was that they felt the infrastructure in their communities were inadequate to support new growth. To satisfy this concern, the Studio Team feels that further study into infrastructure capacity and requirements should be undertaken.
- *Improved Data Recording:* The Studio Team attempted to study a wide body of data to determine the impacts of the TDR program on receiving areas. However, much of the data was insufficient or illogically organized—often in units of measure or recording that changed from year to year, making valid comparisons of change difficult, particularly in relation to agriculture program records in GIS. Other data was missing entirely or proved to

be too difficult to obtain in the amount of time available for study. There needs to be an improvement in the amounts and types of data gathered in receiving areas, particularly for schools, sewer capacity, watersheds, roads, and electricity.

Areas for Short-Term Study

The Studio Team identified four areas of further study that focus on short-term aspects of this report's recommendations. Research into these areas is strongly advocated by the Studio Team, and all four suggestions are relevant to, but beyond the scope of this analysis.

- *Feasibility of the Studio Team's Recommendations:* Before implementation, any recommendation this report proposes should be analyzed in-depth by county planners. While the Studio Team proposes informed recommendations, fully researching the feasibility of each recommendation is beyond the scope of this report's purpose.
- *Developers' Views on Increasing TDR Use:* The Studio Team discovered that the demand for TDRs by developers is relatively low. The county should undertake a systematic survey of developers' views on how to increase TDR use in receiving areas. Discussions with developers in other counties, particularly ones working in the counties examined as case studies, would also be beneficial.
- *Views of Other Jurisdictions on Inter-jurisdictional Agreements:* The Studio Team feels that in order to encourage the success of the TDR program, Montgomery County must work with the cities of Rockville and Gaithersburg. The county should discuss the issue of how to develop successful inter-governmental agreements with key participants in jurisdictions such as Boulder and King counties, which have established IGAs with incorporated areas within county boundaries.
- *Research into Separation of Growth Problems from TDR-related Problems:* The Studio Team encountered difficulty in isolating challenges resulting from the county's overall growth from challenges stemming specifically from the TDR program. Making this distinction would be beneficial for the county's TDR program evaluation process and for its projections for population and urban growth.

Areas for Long-Term Study

The final four areas suggested for further study and research relate to the long-term aspects of county development. The ideas presented here are complex and may be difficult to analyze and

develop, but they all have a potentially great impact on the future of planning in Montgomery County. These suggestions may have little impact on the short-term, but the Team suggests the county consider these ideas as it attempts to evaluate and adapt the TDR program and shape future growth in the county.

- *Long-Term Viability of Farming in Montgomery County:* One of the goals of the TDR program in Montgomery County is to preserve farmland and the farming way of life. However, there has been little study into the long-term viability of farming in the county. Agricultural trends indicate that traditional farming is on the decline, along with the number of farmers, particularly younger farmers. It may be true that farming will not be a viable occupation in upcoming decades in the county. This would result in the preservation of land for farming purposes that no longer exist, making the goal of farmland preservation meaningless. The county should examine the viability of farming for the next 50 years in order to determine if farmland preservation is needed; if enough land has been preserved to date to support farming trends and predictions for the future; how much, if any, land needs to be set aside for further farmland preservation; and in which parts of the county preservation is crucial according to environmental factors, such as the location of prime soils.
- *Growth Trends:* Predictions for population growth, urban growth, and the economy need to be studied in greater detail. While demand for growth is currently strong, it is not guaranteed that the demand will continue. Montgomery County should conduct its own research on population growth and economic development to ascertain future housing and infrastructure needs. Adapting the TDR program or developing a new system for restricting growth is of little value if development stabilizes or slows significantly. The county's research would inform the need for growth regulation programs in the long-term. While this research not as relevant to short-term development, the Team suggests that the county be aware of how long-term growth trends might impact the TDR program.
- *Impacts of Regional Growth:* The Studio Team suggests the county look into the long-term impacts of regional growth on the infrastructure needs of Montgomery County's sending and receiving areas. If the population of the areas surrounding Washington, DC continues to grow at current rates, regional cooperation will become increasingly important. Montgomery County may wish to study the potential impacts of regional development in order to more efficiently guide and shape growth to accomplish its overall goals for land and open space preservation, as well as for affordable housing.
- *Research to Inform Long-Term Visioning:* Finally, Montgomery County should collect data to inform a long-term vision for the county in terms of affordable housing and open

space preservation. Although the Studio Team was tasked to focus on the TDR program, it is important that the county not neglect the long-term in favor of immediate and short-term solutions to current challenges.

Conclusion

This report attempts to present and review the major factors affecting the TDR program and its primary impacts on Montgomery County. Although a significant collection of resources, this data only presents the first tier of analysis needed to scrutinize and restructure the TDR program. As discussed, dropping TDR demand, inequitable distribution of receiving area units, insufficient infrastructure in high-density areas, and lack of a long-term open space plan all combine to cripple a program with good intent but imperfect implementation. The Studio Team hopes that the recommendations and suggestions for further study included in this report will guide Montgomery County towards its goals of smarter growth, open space preservation, and sufficient provision of housing for its growing population.



APPENDIX II
TDR Statistics from 1999 Report

APPENDIX 2

TDR Statistics

The following update can be derived from a review of current situation with TDRs. First, the number of TDRs recorded since 1982 has shown a marked and general decline since 1986, with an almost negligible use since 1995. Chart 1 indicates this declining level of use of TDRs.

TDR Use -- The use of available density in receiving areas is about 36% since 1981. As shown in Charts 2 and 3, the highest use was in the Olney and Eastern County Master Plans, but there was also significant use in the Travilah, Cabin John, and Germantown Plans. However, as planning areas "build out" fewer opportunities exist for using TDRs and a number of areas have "lost" their TDR potential, through development of receiving areas without using TDRs. The most significant examples of this are in Bethesda Chevy Chase, Germantown, North Bethesda, and Travilah. Overall, 26% of available receiving area density is now lost, and only 33% of available density remains available.

TDR Balance -- An update of the sending/receiving balance that was in the 1996 TDR Status Report shows a changed situation in this balance. As shown in Chart 4, currently there are approximately only 535 more receiving sites than available TDRs. This takes into account 377 TDRs that were thought to be unavailable for sale, because they were attached to land already under an MET easement when the TDR program began. However, a state court held last year that they were owned by the property owners, not MET; and thus they had to be added back into the calculation. In addition, the number of TDRs severed from property but not yet sold was added back into the calculation, as this category includes those who intend to sell at some time but are just holding the TDRs for the present. Thus at this time there are (approximately) only 4,867 remaining in TDR receiving capacity, and 4,332 TDRs that may be transferred.

TDR Prices -- Finally, as indicated in Chart 5, TDR prices have fluctuated considerably since their introduction. They were selling at about \$5,000 in 1983, rising to \$7,500 in 1990 before dropping briefly in 1991 to \$6,000. Then they rose again until hitting a high average price of \$11,000 in 1996. Since then they have dropped significantly to a current approximate price of \$7,200.

TDR Receiving Area Statistics

CHART 1 - From 1997 TDR Status Report, updated through 1998

Year	Total TDRs Recorded	Master Plans
1982	221	Fairland, Travilah
1983	1,012	Fairland, Goshen, Olney, Damascus
1984	955	Fairland, Damascus, Potomac, Darnestown, Travilah, Olney
1985	729	Olney, Fairland, Travilah, Darnestown
1986	661	Gaithersburg, Olney, Travilah, Darnestown
1987	304	Potomac, Darnestown, Gaithersburg, Olney, Travilah, Fairland
1988	317	Travilah, Cabin John, Gaithersburg, Fairland
1989	331	Olney, Germantown, Travilah
1990	160	Germantown, Olney, Damascus
1991	141	Germantown
1992	37	Olney
1993	- 0 -	
1994	121	Olney
1995	72	Cabin John, Travilah, BCC
1996	- 0 -	
1997	- 0 -	
1998	42	North Bethesda

CHART 2 - From 1997 TDR Status Report, updated through 1998

1982-1998 Master Plan	TDRs Assigned	TDRs on Approved Prem. Plans	TDRs Recorded	TDRs Remaining	TDRs Lost Capacity
Aspen Hill	122	10	- 0 -	87 (71%)	25 (20%)
BCC	179	- 0 -	- 19 -	94 (53%)	76 (43%)
Bethesda CBD	109	- 0 -	- 0 -	109 (100%)	- 0 -
Clarksburg	2,153	- 0 -	- 0 -	1,796 (83%)	357 (17%)
Damascus	458	457	457	-0- (100%)	1 (2%)
East County	1,747	931	882	483 (28%)	306 (18%)
Friendship H.	102	- 0 -	- 0 -	102 (100%)	- 0 - (0%)
Gaith/Goshen	1,290	392	301	549 (43%)	350 (27%)
Germantown	3,093	973	479	903 (29%)	1,217 (39%)
Ken/Wheaton	67	47	40	16 (24%)	11 (16%)
N.Bethesda	384	64	64	161 (42%)	137 (36%)
Olney	2,467	1,863	1,800	151 (6%)	516 (21%)
Potomac/CJ	673	489	469	11 (2%)	193 (29%)
Pot/Dtn.	361	196	187	86 (24%)	88 (24%)
Pot/Travilah	1,303	601	545	318 (24%)	450 (35%)
Wheaton CBD	21	- 0 -	-0-	21 (100%)	-0-
TOTAL	14,427	6,023 (42%)	5,243 (36%)	4,785 (33%)	3,727 (26%)

CHART 3
TDR Receiving Area Activity Since 1997 Status Report

Master Plan	TDR Capacity Land Developed Developed	TDRs on Approved Prelim. Plans	TDRs Recorded	TDRs Lost
BCC	29	19	19	10
Bethesda CBD	1	1	0	0
N. Bethesda	43	42	42	1
Pot/CJ	1	1	1	0
Pot/Travilah	<u>30</u>	<u>20</u>	<u>20</u>	<u>10</u>
	104	83	82	21

CHART 4
TDR SENDING AREA STATISTICS - From 1997 TDR Status Report, updated through 1998

Original Maximum TDRs -		19,297
Less public land, land in easements, small and developed parcels -	<u>6,889</u>	12,408 TDRs
Less 20% TDRs held for development in RDT - Total TDRs that MAY transfer	<u>2,481</u>	9,927
Less TDRs already severed and on approved preliminary plans	<u>5,972</u>	3,955
Less TDRs severed but not recorded on a preliminary plan TDRs remaining to sever and/or sell:	<u>657</u>	3,298
Plus TDRs added from MET easements due to court ruling - 377 TDRs now remaining sever and/or sell:	<u>377</u>	3,675
Plus TDRs severed but not on preliminary plan available to sell: Total TDRs realistic TDRs available to sell -	<u>657</u>	4,332
TDR RECEIVING AREA STATISTICS		
Maximum TDR capacity in master plans		14,427
Less TDR capacity used or lost in development activity: 5972 TDRs on approved preliminary plans (63%) and 3727 capacity lost (38%)]	<u>9,699</u>	
Remaining Theoretical Capacity:		4,728
CURRENT BALANCE		
Remaining TDR receiving area capacity:	4,728	
Remaining TDRs that may be transferred in future: (includes non-severed, severed but not recorded, & MET)	4,332	
	<u>396</u>	

CHART 5

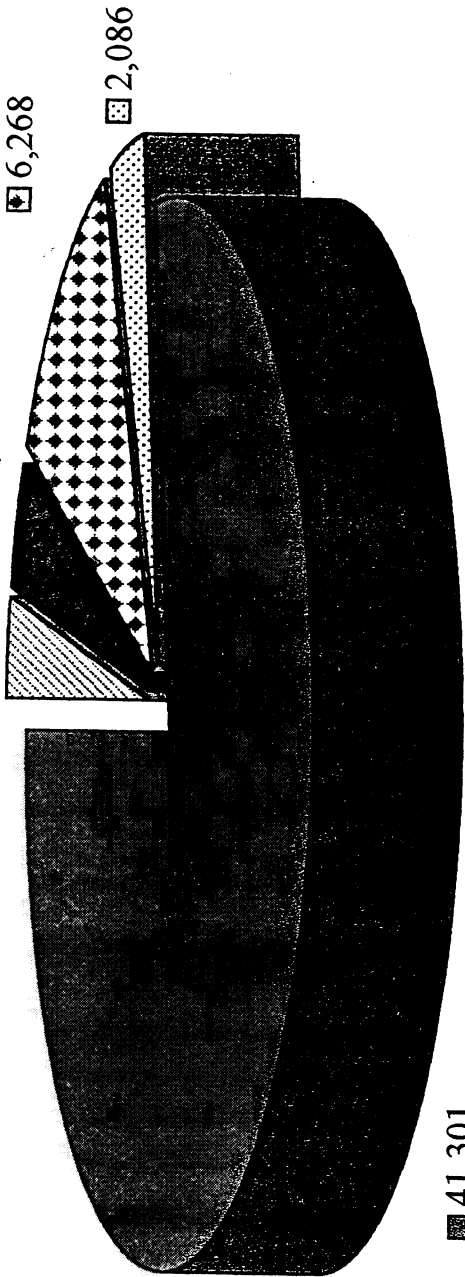
TDR PRICE FLUCTUATIONS - From Agricultural Services Division, Department of Economic Development

1981	\$ 5,000	1991	\$ 6,000 (-\$1500)
1982	\$ 5,000	1992	\$ 8,250 (+\$2250)
1983	\$ 5,000	1993	\$ 8,500 (+\$250)
1984	\$ 4,750 (-\$250)	1994	\$10,000 (+\$1500)
1985	\$ 4,050 (-\$700)	1995	\$10,500 (+\$500)
1986	\$ 3,970 (-\$ 80)	1996	\$11,000 (+\$500)
1987	\$ 3,750 (-\$220)	1997	\$10,500 (-\$500)
1988	\$ 4,200 (+\$450)	1998	\$ 8,000 (-\$2500) [-23%]
1989	\$ 5,200 (+\$1000)	1999	\$ 7,500
1990	\$ 7,500 (+\$2300)		

**Montgomery County Farmland
Protected by Easements
53,298 acres**

**Public Sector Investment
\$27 Million**

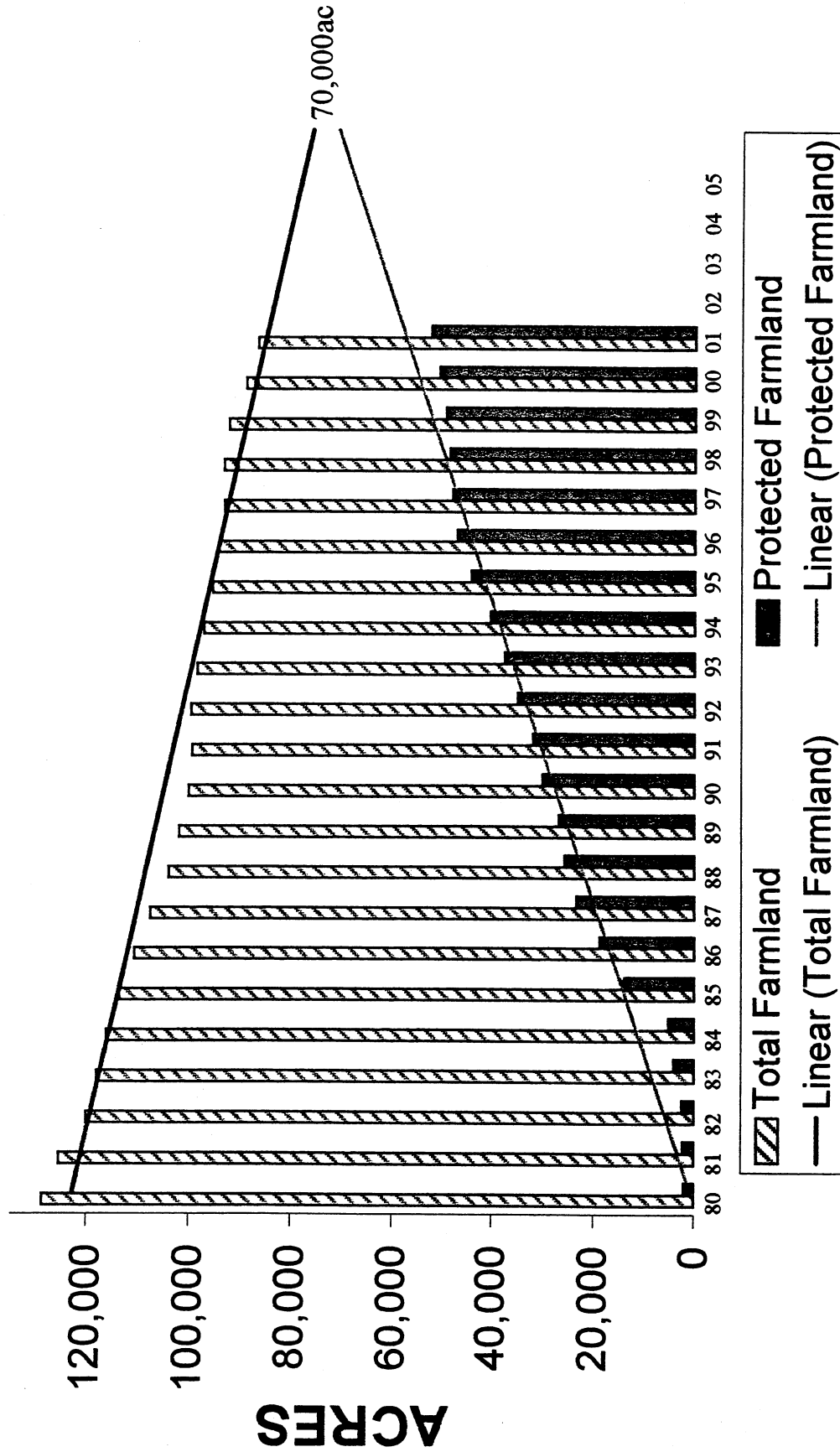
▨ 1,571 ■ 2,074



**Private Sector Investment
"Wealth Transfer"
\$60 Million**

- ▨ RLP
- MALPF
- ▤ AEP
- ▧ MET
- ▩ TDR

Protected Farmland Acres and Total Farmland Acres



APPENDIX III Concepts Eliminated

1. Change the Rural and Rural Cluster Zones to allow 1 bonus lot per 5 lots if conservation design is used, and a TDR is used for the bonus lot. Primarily limit to areas bordering the RDT Zone and Agricultural Reserve, and allow only in the context of a master plan amendment as a means to limit development potential in any one area.
2. Allow TDRs to transfer to Rural Cluster and Rural Zones at 1-acre density at locations adjacent to existing village areas.
3. Allow a limited number of internal transfers of "development" TDRs within the RDT Zone to areas in close proximity of some villages or edge areas or MARC Rail Stations.
4. Reconsider the TDR Bank or some form thereof.
5. Allow the use of TDRs to override moratoriums.
6. Require the use or purchase of TDRs at a receiving site.
7. Consider giving builders an option of building affordable housing or buying TDRs.
8. Consider more flexibility in the impervious surface cap requirements if TDR density is used.
9. Many studies have shown that the major culprit in sprawl—and the rising cost of government services—is serving low-density suburban development. To account for this concern, require residents of such development (perhaps at densities lower than 2 dwellings per acre) to pay a surtax used to purchase TDRs and protect the up-county open space and farmland.
10. Require all developers to buy one TDR in order to build. This would act like a temporary tax until the TDRs were bought.
11. Consider TDR concepts from programs in Palm Beach County, Florida; the New Jersey "Pinelands"; Collier County, Florida; and Redmond, Washington.