



Montgomery Countryside Alliance  
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October 24, 2005

Judy Daniel  
 Maryland-National Capital Park and Planning Commission  
 8787 Georgia Ave  
 Silver Spring, Maryland 20910

Dear Ms. Daniel:

Thank you for the opportunity to comment on the draft Agricultural Reserve Initiatives you will be presenting to the Planning Board in late fall. As you know, the Montgomery Countryside Alliance's mission is to protect Montgomery County's Agricultural Reserve and thereby enhance the quality of life, health and well-being of families and communities by working for sound transportation, economic development and land use policies and to support and celebrate Montgomery County's historic commitment to protecting rural and agricultural lands, the environment, and open spaces. I hope you will strongly consider these comments as you revise the draft initiatives.

Unfortunately, bad land use policies are attacking the Ag Reserve from all directions. In order of priority, they are:

1. The Techway
2. Sand Mounds and Child Lot Abuses
3. Private Institutional Facilities
4. TDR issues including lack of receiving areas and residual TDRs

MCA's comments are organized in this order of priority.

**Techway**

With the threat of the Techway becoming increasing real, it is important to reaffirm the County's objection to a bridge and highway that would destroy the unique character and sensitive environment of the Ag Reserve. Such a statement of reaffirmation in the text of this document would comfort many who care deeply about the health and well-being of the Ag Reserve.

**Sand Mounds and Child Lots**

Regarding child lots and sand mounds, we have the following comments.

- We are interested in the findings from the research that is underway to establish the number of remaining properties under unchanged ownership since 1980 in addition to reviewing the findings of the research to uncover the past abuses of the child lots provision.

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- MCA encourages the Planning Board to develop mechanisms to guarantee that the subdivided properties are lived in by a child of the landowner. This must also be monitored and MCA supports the creation of a child lot tracking system.
- We support the option to restrict use of child lots if the creation of the lots renders the property unusable for agricultural purposes.
- When the Master Plan was passed in 1980, much of the Ag Reserve was considered safe from development since the land could not perc. We believe that the Planning Board would have absolutely prohibited the use of sand mounds if they thought they would be considered “normal” or non-alternative in the future. What was considered “alternative” in 1980 should remain “alternative” today. As such, sand mounds should be prohibited in the Ag Reserve, except when existing septic systems have failed, and for legal child lots. We believe the Planning Board would be completely justified by denying the use of alternative systems for other development because the goal of the Ag Reserve is retention of farmland not non-agricultural related uses.
- The ubiquitous “exception for public health standards” is troubling because we fear that it creates a “slippery slope” effect. The public health exception too often allows for “alternative” systems and the extension of water and sewer into areas that are not suitable for development thus further deteriorating the Ag Reserve. The existence of these systems then justifies the extension of water and sewer services into adjacent areas. Pretty soon, as public infrastructure is provided throughout the Ag Reserve (at taxpayer expense), there will be nothing but residential subdivisions, strip shopping centers, and mega-institutions in place of working farms. The Planning Board should study the effect of a policy that would no longer provide public health exceptions for development in the Ag Reserve from a certain date forward.

### **Private Institutional Facilities**

The Montgomery Countryside Alliance has a long record on PIFs and has the following comments.

1. **Multi-use septic and package treatment systems should be prohibited in the RDT.** The Agricultural Reserve has a geology that just cannot accommodate large quantities of waste. In addition, anything requiring a category change should be forbidden. The use of experimental systems should be forbidden. Only well proven technologies and systems should be allowed. Furthermore, Park and Planning does not have the expertise to evaluate the significant impact these systems would have on the environment and the community.
2. **Prohibit the extension of water and sewer into the RDT.** This is entirely consistent with the Master Plan for Agriculture and Rural Open Space developed in 1980. This is also a fiscally sound policy that will prevent taxpayers from having to pay for public infrastructure to serve all corners of the county.

3. **We recommend that the County Council recognize the importance of the Agricultural Reserve to the public's health and safety and not allow PIFs in the RDT, Rural, Rural Cluster, RE-2, RE-1 and RNC Zones except by special exception and rigorous site plan review. To receive a special exception, the PIF must prove the following:**
- a. **The institution is serving a majority of people in the surrounding community.**
  - b. **The institution is of the appropriate size and scale, based on the size and scale of other similar institutions in the RDT, Rural, Rural Cluster, RE-2, RE-1 and RNC Zones and can be adequately served by roads and emergency services.**
  - c. **The impervious surface is no greater than 8% rather than the 15% and 20% recommended by the Working Group for the following reasons:**
    - i. **The Ag Reserve is home to a substantial number of Montgomery County's last remaining healthy streams. Nationally recognized scientific research by the Center for Watershed Protection demonstrates that impervious surface contributes significantly to water quality degradation. National and local research has found that water quality within watersheds begins to deteriorate from "good" to "fair" once impervious area exceeds 8%. When imperviousness exceeds 21%, stream quality declines from "fair" to "poor." Also, since ground water is impacted by impervious surface, the wells of residents in or near the Ag Reserve can be affected. In an area as environmentally sensitive and pristine as the Agricultural Reserve, accepting high levels of imperviousness as suggested by the Working Group, will result in a reduction in water quality that is entirely unacceptable. In addition, if water quality leaves the Ag Reserve at a lower quality than it has historically, the rest of the county's water quality is further compromised as imperviousness down county is significantly greater than in the Ag Reserve. Millions of dollars have been spent to restore the Chesapeake Bay and its tributaries (including the Potomac, Patuxent, and Anacostia Rivers). We need to protect the headwaters in the Agricultural Reserve in order to provide clean water to help in the ongoing restoration efforts (the headwaters of Rock Creek are in the Ag Reserve, just a few miles from Laytonsville). In addition, the headwaters are vital to preserving and protecting our drinking water supply.**
    - ii. **The 15% and 20% levels were recommended by the Working Group with the assumption that future residential**

and agricultural developments in the zones will fall in the impervious surface range of 5% to 11% (depending on the zone). We believe that agricultural uses in the Ag Reserve are changing and evolving. With the decline in traditional crop farming, we are seeing the rise of equestrian and horticultural uses. These “new” uses do in fact have higher levels of imperviousness than more traditional agricultural uses; thus, relying on future levels to lower the overall impact of high imperviousness associated with PIFs is irresponsible. We do not favor the imposition of impervious surface limits on agricultural uses.

- iii. Even if the PIFs comply with the Working Group recommended caps of 15% and 20%, have the associated road widenings off-site been accounted for? There is little doubt that the location of large institutions in rural Montgomery County will require infrastructure improvements and it is important to account for the additional associated imperviousness.

4. **If the institution is on land that has unused or unsold TDRs, the building of the institution extinguishes the ability to use or sell the TDRs.** The TDR program was created to provide landowners an ability to sell their development rights in exchange for the protection of their land from development. The ability to develop AND sell TDRs is contrary to the original intent of the program.

5. **We request that the Council commission a Community Impact Study of PIFs in the Ag Reserve.** As the Working Group report states, the issues of concern to the community were beyond the scope and capacity of the Working Group. Since the community impacts associated with PIFs have not been fully studied, decisions regarding the location of PIFs in the Ag Reserve should not be made without understanding the benefits and costs. A few community impacts that should be examined include:

- a. The Agricultural Reserve was established in 1980 with the intent of creating a Rural Density Transfer zone to promote agriculture as the primary land use in sections of the County designated for agricultural preservation in the General Plan. What impact will the location of PIFs in the Ag Reserve have on the future viability of agriculture in Montgomery County? Will the impervious surface caps result in the purchase of greater quantities of land by PIFs to meet the cap requirements?
- b. With the location of large churches in the Ag Reserve, what will happen to the small, rural churches that have served residents in upper Montgomery County for decades? For example, will the large churches compete directly with historic free slave churches?

- c. What is the appropriate scale of development in the Ag Reserve? Should buildings in the Ag Reserve be of a scale consistent with the rural character of upper Montgomery County? Should amphitheaters, schools, tennis courts, and senior housing be allowed as part of a PIF development in the Ag Reserve?
  - d. What new infrastructure is required to support PIF uses in the Ag Reserve and where is the money coming from to support the increase in services? Needs such as police, fire and rescue, and roads should be examined.
6. **Environmental overlays should be implemented in the RDT, Rural, Rural Cluster, RE-2, RE-1 and RNC zones.** It is critical that we use overlay zones to protect the most pristine and environmentally sensitive areas of the Ag Reserve. These areas include the headwaters of trout streams which cannot function with levels of imperviousness higher than 2%. In addition, overlays can respect the environmentally sensitive location of buildings since sites close to streams will have a greater impact on water quality than locations further from stream buffers.
7. **We concur with the Working Group's recommendation that future Master Plan revisions identify areas where large institutions are encouraged and/or discouraged and whether water and sewer should be provided.** Specifically, are there appropriate locations for PIFs located on existing infrastructure and proximate to their clients/students/parishioners thus reducing vehicle miles traveled (and the associated air quality impacts) and traffic congestion.

### **TDRs**

The Montgomery Countryside Alliance encourages the Planning Board to explore ways to more effectively use TDRs and MCA certainly supports the development of a ZTA to eliminate the 2/3-use requirement. This also includes creating additional receiving areas in the CBD, TOMX, MXPB, and RMX zones and in municipalities as well as the creation of additional TDRs.

MCA does not support the internal transfer of TDRs. In light of the "Montgomery County in the 21<sup>st</sup> Century" effort of the planning staff that focuses on redevelopment in our centers and along our boulevards and corridors, there are plenty of areas within Montgomery County that are much more suitable as receiving areas than areas within the Ag Reserve.

Due to the complexity of the TDR program, it is necessary to continually update and expand the TRD tracking system. This is critical in order to prevent abuses of the TDR program.

The creation of a "Super TDR" to further reduce development potential in the RDT is an idea generated by the TDR Task Force and its implementation is long overdue.

We encourage the Planning Board to either require the use of TDRs by all non-agriculturally related uses in the RDT zone or extinguish any existing TDRs if a PIF is built. This is particularly important since PIFs continue to whittle away at the Ag Reserve.

#### **Other Items**

- We completely agree that the public road requirements in rural subdivisions are entirely inconsistent with the rural character of the Ag Reserve.
- Our comments on the design standards in the RDT were submitted to the Planning Board on July 22, 2005 and are attached.
  - The Montgomery Countryside Alliance does not consider campgrounds an appropriate use in rural areas and thus will oppose any ZTA seeking to expose the Ag Reserve to non-agricultural uses.
- MCA encourages the planning staff to recommend ways the County can continue to increase its economic development support for agriculture.
- MCA also encourages the planning staff to pursue additional agricultural preservation awareness and education initiatives.

# Comments on Proposals Relating to the Agriculture Reserve

October 2005

The **League of Women Voters of Montgomery County** has conducted a study of agriculture in Montgomery County during the past 5 years. During that period the study committee prepared three eight page fact sheets and conducted a series of membership discussions on agricultural issues pertinent to the county. Using this process, our membership has arrived at consensus positions. These positions are reflected in our comments regarding the Agriculture Reserve in response to the series of proposals presented by Park & Planning staff.

The Functional Master Plan for Agriculture and Rural Open Space should be the guide to the development in the rural sections of the county. The repeatedly stated intent of the plan is to preserve farmland.

Issues 1 and 2 – Development in the Agriculture Reserve:

The League of Women Voters of Montgomery County supports a policy that considers preservation of productive farmland to be a primary design consideration for development in the Rural Density Transfer (RDT) zone by emphasizing cluster development and restricting the provision of water and sewer service beyond the established envelope. We support limiting service to private institutional facilities (PIFs) by denying all requests for service for new and expanded uses in the RDT zone. Since the plan recommends denial of alternative sewerage systems in the RDT zone, we believe this policy should be enforced.

We support the program of designated Rustic Roads and believe the considerations for private roads should be taken up with cluster development considerations.

We support limiting the uses permitted in the Agriculture Reserve to those permitted prior to defining equestrian facilities as agriculture and would not support expanding the permitted or special exception uses to include camping. We are especially concerned about the definition of **outdoor education facility** and see no reason to permit such a facility in the RDT zone. We support monitoring uses that require a special exception and restricting activities and events in the RDT zone that stimulate a need for commercial or industrial development in that zone.

Issue 3 - TDR Support

While the TDR Task Force report does strive to reduce the development potential in the RDT zone, no recommendation resembling the proposed "Super TDR" can be found in the report. This proposal essentially assigns a county department legislative authority which is totally inappropriate; the transfer ratio should be set by ordinance and the value by the market. Allowing a variable number of dwelling units for a TDR is an invitation to corruption.

We support the TDR program as a market driven program. Our position is that the key to making this program achieve its goals of conserving farmland, compensating rural landowners for down-zoning and consolidation of growth is to provide an adequate supply of receiving areas. We propose that this could be accomplished by:

- a. Improving the Master Plan process for determining potential receiving areas through more intense review of the land and community characteristics prior to designation of receiving areas
- b. Developing a mechanism for designating receiving areas in CBD, transit stations and town centers. The current zoning code permits the transferable development right to be measured in units of commercial or industrial space as well as in dwelling units. A ZTA could fix the conversion factors.
- c. Adopting a planning goal of no-net-loss of receiving areas.

The League of Women Voters of Montgomery County supports implementing an improved system for tracking TDR activity and assigning responsibility for compliance with the steps of the process. We do disagree with the staff recommendation to make it easier to use off-site afforestation for TDR receiving areas. Our belief is that where there is more density the need for trees may be greater than in less dense areas.

We do find the recommendation for allowing exchanges of TDRs within the RDT zone in the TDR task force report. It is in Appendix III entitled "Concepts Eliminated". This is counter to the preservation of the farmland envisioned by the Functional Master Plan and uncontrollable policy...a bad idea.

The implementation of the TDR program states that the purpose is the preservation of farmland, but the easement refers only to limiting dwelling units. We believe that the intent of the program was to limit land with easements to agricultural uses. (Refer to the Plan on page 48.)

#### Issue 4 - Economic Development of Agriculture

We support policies to ensure the viability of agriculture in Montgomery County including:

1. Agricultural and rural open space preservation programs in Montgomery County
2. Flexible payment options for conservation easements
3. Enhanced deer management practices
4. A tax policy for agricultural land that includes the agricultural assessment, the county agricultural land transfer tax and fuel and energy tax reductions.

We do not believe the county should endeavor to duplicate services provided by the University of Maryland and the Maryland Center for Agro-Ecology, Inc. for the economic development of agriculture.



**Statement of Position on Protecting and Improving the  
Agricultural Reserve of Montgomery County**

November 7, 2005

Submitted to Montgomery County Planning Board and Montgomery County Council

By

Audubon Naturalist Society  
Boys Citizens Association  
Sugarloaf Citizens Association  
Solutions Not Sprawl  
For A Rural Montgomery  
Peach Tree Ridge Citizens Association  
Dickerson Community Association

The Agricultural Reserve of Montgomery County is at a turning point, not because of its 25th anniversary, but because land use pressures in Montgomery County and the metropolitan Washington region pose this critical question:

*Was the Ag Reserve created to truly preserve agriculture and open spaces for future generations, or was the Reserve merely a temporary set-aside of open land until one day, piece by piece, it would be put to commercial, institutional and residential uses simply because the lobbying of would-be developers and users grew loud and powerful enough?*

Many millions of dollars have been invested, by thousands of landowners and by the County, in the belief that the commitment would be real and permanent. Apart from honoring the 25 year old commitment, however, the County government can reaffirm once again that the preservation of agriculture and open space is indeed a legacy for generations to come, that makes Montgomery County a uniquely desirable place to live and work in the mid-Atlantic.

The organizations submitting this set of recommendations seek a renewed commitment, but we also seek a series of practical steps to address urgent threats to the Ag Reserve. We hope our County officials will remember that the Master Plan is quite clear when it says the primary purpose and use of the zone is agriculture. There are three threats to solve using this guiding principle to craft the solutions to each. If all are stemmed, the preservation of the Ag Reserve for perpetuity will be enormously strengthened. The threats are:

1. Gaps in the zoning laws and gaps in enforcement have allowed mini-subdivisions to be planned and built, encroaching on valuable farmland and beginning to undercut the critical mass of farmland.
2. Too many special uses and special exceptions exist, allowing large institutions and developers to look to the Ag Reserve to build facilities that serve County-wide, non-agricultural groups whose ONLY reason to come into the Ag Reserve is to find less expensive parcels of land for development.

3. The TDR program was a brilliant innovation in its origins, but it needs strengthening today, to encourage retirement of the residual TDR so that 25-acre parcels are truly retired from development, and to adequately reward landowners for taking that step.

**I. Limiting residential subdivision development in the Ag Reserve**

The Ag Reserve is not a large-lot repository for maximum residential subdivision development. It is an area preserved to support and facilitate agriculture. Residential development therefore should be consistent with agricultural uses. There are three main challenges to be addresses:

1. Technologies for septic systems are being expanded to enlarge residential construction in the Ag Reserve, specifically the sand mound technology is being over-deployed. The authors of the Master Plan did not fail to realize that technical innovation would occur, as often alleged. On the contrary, limits were placed on septic systems, by advocating for conventional septic systems as part of the overall plan to preserve the Ag Reserve for agricultural uses. The goal of the Ag Reserve program is retention of farmland, not maximum residential development within the Reserve. Therefore, we strongly recommend that sand mounds and other innovative technologies should be limited to specific applications:

- Specifically, we urge that the Council rescind its 1994 resolution, which opened the door to sand mound abuse, as inconsistent with the Master Plan, and adopt a Master Plan amendment that limits sand mounds (and other non-traditional technologies which may emerge) to the following applications:
  - (i) replacement of existing septic systems which have failed,
  - (ii) legitimate child lots or legitimate tenant house for farm workers;
  - (iii) correct specific public health problems with existing systems.
- There should be a 9 month moratorium placed on proposed subdivisions with sand mound septics to assess impacts and establish clear limits.

2. Widespread abuse of child lots is growing, and the creation of additional illicit child lots has become a slippery slope in which each new child lot abuse seems to justify the next, more egregious abuse. We reiterate our previously submitted memorandum on this topic dated October 1, 2005, and we again urge those recommendations to be adopted. We attach a copy for reference. Critical steps include:

Creation of a child lot should be restricted to those situations where both the parent and the child will certify, under oath, the intention for the child to build and live in his/her own residence on the new lot for a minimum of 5 years.

The creation of a child lot should reduce the remaining density on the property. The creation of the child lot, and associated restrictions, should always be recorded on the plat of subdivision.

Details are provided in the memorandum of October 1, 2005.

1. We are not opposed to legitimate use of child lots, indeed, we favor their continuation as it supports the preservation of family farming in the county.

2. Subdivision guidelines are needed to reorient the recent direction of the Planning Board. The Board should explicitly recognize that it can approve fewer lots than permitted in the RDT Zone, on a case by case basis, to implement the intent of the Master Plan to preserve agriculture. In other words, a clear policy statement is needed that the Board considers the Reserve an area preserved for agriculture as the dominant use, and does not accept the notion that the Reserve is a residential development area that happens to require 25 acre lots. Residential uses should support agriculture, not destroy it. Potential abuse of the tenant house exception needs to be anticipated. We recommend that outlots for tenant houses, when created, should be required to be held in common ownership with the primary residence in recognition of the premise that the tenant house is created to support the agricultural use.

## **II. Restricting Institutional Encroachment**

Large-scale institutional uses that neither support nor complement agriculture should be severely restricted. In this regard, we endorse the positions stated by the Montgomery Countryside Alliance in its letter dated October 24, 2005 to Planning board staff, commenting on a draft report on policy initiatives. A copy is attached for reference. To summarize those recommendations we endorse:

1. Multi-use septic and package systems should be prohibited in the RDT Zone.

2. Water and sewer extension into the RDT Zone should be prohibited under all circumstances; the Board should recommend this to the Council.

3. Private institutional uses should be approved only if they do not exceed 8% imperviousness and 4% if a significant natural resource is impacted.

4. All unused TDRs on the site should be extinguished.

5. We recommend that the Board or Council should commission a community impact study of private institutional facility encroachment in the Ag Reserve.

6. In addition, we oppose ZTA's allowing camps in the RDT zone. The County should look to the example of the short period of time in which golf courses were allowed by special exception. There was a proliferation of golf course applications in only a 6 month period of time after which the Council wisely recognized the threat and closed the door to this non agricultural use.

7. We refer to the letter of October 24th for additional recommendations.

### **III. Strengthening the Effectiveness of the TDR Program**

The TDR program has been a very important part of conservation in the Ag Reserve over many years. However, it is critical that the truth about the TDR program be recognized: in many cases, landowners have sold 4 out of 5 TDRs off a 25 acre parcel, thereby preserving the buildable character of each 25 acre lot. Only sale of the residual last TDR is effective conservation of farmland. Discussion of this fact is not a criticism of the TDR program, which was, after all, created to compensate owners of down-zoned land when the RDT Zone was created. Sale of all TDRs other than the residual TDR achieves that compensation goal. Now, however, the time has come to couple the compensation goal with a farmland preservation goal. Our specific recommendations to make the TDR program more effective are:

1. TDR receiving areas in urban areas should be expanded to industrial and commercial uses.
2. There should be no receiving areas created within the Ag Reserve itself, or adjacent to rural villages. There was virtually no support for such a concept in the TDR Task force.
3. We support the creation of a super TDR as recommended by the TDR Task force.

#### **Conclusion**

Using the Master Plan's simple dictum that the primary use and purpose of the Ag Reserve is agriculture, most of the needed actions to protect the Ag reserve can be implemented by the Planning Board without Council action. Clearly Council action is needed in certain instances.

In addition to the need to address urgent threats and challenges discussed above, Montgomery County Government should be aggressive in continuing to fund conservation easement purchases. Likewise, the county should be more aggressive in supporting agricultural businesses with economic development programs.

TO: Judy Daniel, Team Leader Rural Area  
M-NCPPC

FROM: Melanie Choukas-Bradley  
Celebrate Rural Montgomery

Thank you for meeting with me last week to discuss your report on the present and future of the Agricultural Reserve. As you know, I have spent the past year helping to educate people about the benefits that the Agricultural Reserve provides to the region as a whole. Those benefits are summarized on our web page—"Top Ten Benefits of the Ag Reserve" at [www.ruralmontgomery.org](http://www.ruralmontgomery.org) and in an op-ed piece I wrote for the Washington Post Outlook section (July 17, 2005). Here is a short summary of some of my concerns:

That farmers and farming are supported by the county to keep them economically viable and diverse. Our more than 500 family farms represent a healthy mix of traditional agriculture and innovative endeavors. I hope we can continue to support a diversity of farms in the Agricultural Reserve.

I hope there will continue to be a healthy market for TDRs in developed receiving areas where services are in place but no TDR receiving areas created anywhere within the Agricultural Reserve or the communities it encompasses. I like the idea of exploring the concept of a "super TDR" for buildable lots.

Suburban-style housing developments with multi-million dollar homes destroy the rural character of the Ag Reserve and fragment farmland.

New large institutions that are non-agricultural in nature should not be allowed to be built in the Ag Reserve as they mar the rural fabric of the land, fragment farmland and add traffic to country roads.

No new Potomac crossing/techway should be built in or anywhere near the Ag Reserve.

It's very important to protect the headwaters of the stream systems originating in the Ag Reserve by keeping impervious surfaces to an absolute minimum.

The Ag Reserve should be recognized for its significant contributions to air quality, native plant and wildlife habitat, and the protection of historic sites and scenic beauty.

Melanie Choukas-Bradley