

ATTACHMENT 1

RECOMMENDED ZONING TEXT AMENDMENTS

- 1. "Super TDR" for "buildable" lots in the RDT Zone**
- 2. Eliminating the 2/3 Use TDR Use Requirement in Receiving Zones**

Zoning Text Amendment No: XX
Concerning: Agricultural Zones
Draft No. & Date:
Introduced:
Public Hearing:
Adopted:
Effective:
Ordinance No:

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AT THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND

By: Councilmembers _____

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:
- **Establishing a methodology for a higher value for transferable development rights
usable for residential building in the Rural Density Transfer Zone.**

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of
the Montgomery County Code:

Division 59-A-2 Definitions and Interpretation
 Sec. 59-A-2.1. Definitions

Division 59-C-1 Residential Zones, One-Family
 59-C-1.39. Special regulations for optional method development using transferable
 development rights
 59-C-1.391. Applicability

Division 59-C-2 Residential Zones, Multiple-Family
 59-C-2.44 Special regulations for optional method development using transferable
 development rights
 59-C-2.441 Applicability

EXPLANATION: **Boldface** indicates a heading or a defined term.
Underlining indicates text that is added to the existing laws
by the original text amendment.
[Single boldface brackets] indicate text that is deleted from
existing law by the original text amendment.
Double underlining indicates text that is added to the text
amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from
the text amendment y amendment.
*** indicates existing law unaffected by the text

ORDINANCE

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the
Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

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Division 59-A-2.1

Development rights: The potential for the improvement of a parcel of real property measured in dwelling units or units of commercial or industrial space, existing because of the zoning classification of the parcel.

Development rights, buildable: A development right for a property in the Rural Density Transfer Zone that may be used for the construction of a dwelling unit on a parcel in the zone, within the density set for the zone.

Development rights, non-buildable: A development right for a property in the Rural Density Transfer Zone that may not be used for the construction of a dwelling unit on a parcel in the zone, but may be transferred or sold for use on a designated receiving area.

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Transfer of development rights: The conveyance of development rights by deed, easement or other legal instrument authorized by local law to another parcel of land and the recordation of that conveyance among the land records of Montgomery County, Maryland.

Division 59-C-1 Residential Zones, One-Family

59-C-1.39. Special regulations for optional method development using transferable development rights

59-C-1.391. Applicability. The following procedures and regulations apply to the transfer of development rights from land classified in the rural density transfer zone (RDT) to land classified in the transferable development rights (TDR) zones. The planning board may approve subdivision of such land at densities not to exceed the maximum density permitted in the applicable TDR zone and conforming to the guidelines contained in the applicable master plan approved by the district council. Any increase in density above the density applicable to the standard methods of development must be based on a ratio of one single-family dwelling unit for each non-buildable transferable development right (TDR), [and] 2 multi-family dwelling units for each non-buildable transferable development right (TDR), and a variable number of dwelling units for each buildable transferable development right (TDR).

To receive the transfer valuation for buildable TDRs, a property owner must submit proof that all non-buildable development rights have been created for the property, that a TDR remains available for any dwelling(s) on the property (except as exempted in 59-C-9.6), and septic system testing indicating the number of building sites available on the property.

The Agricultural Services Division of the Department of Economic Development will calculate the dwelling unit value of buildable development rights based on an property assessment method, less the underlying value of the land for the residual uses permitted in the zone, in relationship to the current price of "transferable" TDRs. Upon request, the Agricultural Services Division will issue a certificate expressing the value of these TDRs in dwelling units.

Division 59-C-2 Residential Zones, Multiple-Family

59-C-2.44. Special regulations for optional method development using transferable development rights

59-C-2.441. Applicability. The following procedures and regulations apply to the transfer of development rights from land classified in the rural density transfer zone (RDT) to land classified in the transferable development rights (TDR) zones. The planning board may approve subdivision of such land at densities not to exceed the maximum density permitted in the applicable TDR zone and conforming to the guidelines contained in the applicable master plan approved by the district council. Any increase in density above the density applicable to the standard methods of development must be based on a ratio of 2 multi-family dwelling units for each non-buildable transferable development right (TDR), and a variable number of dwelling units for each buildable transferable development right (TDRs).

To receive the transfer valuation for buildable TDRs, a property owner must submit proof that all non-buildable development rights have been created for the property, that a TDR remains available for any dwelling(s) on the property (except as exempted in 59-C-9.6), and septic system testing indicating the number of building sites available on the property.

The Agricultural Services Division of the Department of Economic Development will calculate the dwelling unit value of buildable development rights based on an property assessment method, less the underlying value of the land for the residual uses permitted in the zone, in relationship to the current price of "transferable" TDRs. Upon request, the Agricultural Services Division will issue a certificate expressing the value of these TDRs in dwelling units.

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**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AT THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers _____ -

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- **Revising the use requirements for TDRs to eliminate the “two-thirds” requirement.**

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-C.1. Residential Zones, One Family.

Section 59-C-1.393. Development approval procedures under the optional method of development (using transferable development rights).

EXPLANATION: **Boldface** indicates a heading or a defined term.
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[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment y amendment.
*** indicates existing law unaffected by the text amendment..

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

59-C RESIDENTIAL DISTRICTS; REGULATIONS

59-C-1. Residential Zones, One-Family.

59-C-1.39. Special regulations for optional method development using transferable development rights.

59-C-1.393. Development Approval Procedures Under the Optional Method of Development.

- (a) A request to utilize development rights on a property under the optional method must be in the form of a preliminary subdivision plan submitted in accordance with the subdivision regulations contained in chapter 50 of the County Code.
- (b) Developers are encouraged to use at least two-thirds of the number of development rights permitted to be transferred to the property under the provisions of the applicable master plan approved by the district council. [Such a preliminary plan must include at least two-thirds of the number of development rights permitted to be transferred to the property under the provisions of the applicable master plan approved by the district council. However, upon a finding by the planning board that for environmental or compatibility reasons it would be desirable to permit a lower density, the two-thirds requirement may be waived.]

Summary of Stakeholder Comments – Agricultural Initiatives 2005

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| Zoning Text Amendments | |
| <i>Create "Super" TDR</i> | |
| League of Women Voters | 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. |
| Montgomery Countryside Alliance | Support the creation of a "Super TDR" to further reduce development potential in the RDT, an idea generated by the TDR Task Force and implementation is long overdue. |
| Celebrate Rural Montgomery | Support the idea of exploring the concept of a "super TDR" for buildable lots. |
| Citizens to Preserve the Reserve | It seems like a good idea, but "the devil's in the details." |
| Multi-Group Statement | We support the creation of a super TDR as recommended by the TDR Task force. |
| Agricultural Preservation Advisory Board | If the action item is to enlist a further down-zoning of the agricultural reserve, the APAB opposes the action item. There seems to be little recognition to the sacrifices farmers and rural landowners have already made in the name of farmland protection. If society determines that lower residential development is preferred, then we must provide incentives to reduce the development option. The APAB would endorse , if the action item focuses solely on the adoption a zoning text amendments which will provide an incentive to reduce development potential. If the compensation mechanism is viable then buy in from the rural community could be achieved while achieving the goal. |
| Deleting 2/3 Use Requirement in TDR Receiving Areas | |
| Montgomery Countryside Alliance | We encourage 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. |
| Policy Support | |
| <i>Private Institutional Facilities</i> | |
| League of Women Voters | Support restricting the 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. |
| Celebrate Rural Montgomery | 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. 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. |
| Agricultural Preservation Advisory Board | Endorse with Modification. Aside from obvious denial of water and sewer service recommended within the report, the County must also look at the PIF use as non agricultural and therefore, it should be viewed as development. A private institutional facility from a permitting and code perspective must meet the same standards as a commercial facility. A commercial use is looked upon as development, and so should any private institutional facility. |

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**Montgomery
Countryside Alliance**

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.

Prohibit the extension of water and sewer into the RDT. This is entirely consistent with the 1980 Master Plan for Agriculture and Rural Open Space. 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. 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 would have to prove that (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 because (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).

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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 have higher levels of imperviousness than traditional agricultural uses; so 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.

We request that the Council commission a Community Impact Study of PIFs in the Ag Reserve. The Working Group report states that 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 and where is the money coming from to support the increase in services? Examine needs such as police, fire and rescue, and roads.

Implement environmental overlays in the RDT, Rural, Rural Cluster, RE-2, RE-1 and RNC zones. It is critical to use overlay zones to protect the most pristine and environmentally sensitive areas of the Ag Reserve. 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.

We concur with the Working Group's recommendation that future Master Plan revisions identify areas where large institutions are encouraged and/or discouraged. 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.

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| <p>Citizens to Preserve the Reserve</p> | <p>CPR strongly endorses the position that the RDT zone not house new PIFs because agriculture must remain its primary land use. If new PIFs are allowed they should be limited to a recommended 5,000 GPD peak-capacity as the maximum allowed. CPR urges the Council to codify this ceiling as the <u>aggregate</u> GPD flow regardless whether a PIF development is single or multi-phased. PIFS should be more carefully regulated in the RDT Zone.</p> |
| <p>Multi-Group Statement</p> | <p>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,</p> <ol style="list-style-type: none"> 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 Agricultural Reserve. |
| <p>Sand Mounds</p> | |
| <p>Agricultural Preservation Advisory Board</p> | <p>We Oppose any restriction on the use of sand mound septic systems. The Master Plan for the Preservation of Agriculture and Rural Open Space is a document of guiding principles, but does not carry the same weight as an act of law. The report suggests that state and county opinions have changed that view sound mound systems in a different light and furthermore their permitted use has come as a result of considering opinions on the validity of their use. The report does not recognize that the use and approval of sand mound systems is vested as a matter of law as a conventional system. As a County we need to expect and plan for development that is permitted as a matter of right under zoning and not on perceived density based on archaic standards and site limitations. If the public is desirous of further limiting residential density in the agricultural reserve, then let the public sector pay for the land's protection. We should not use changes in policy or regulation as a form of de-facto zoning to further erode vested property rights.</p> <p>Furthermore, if environmental protection is one of the high values we place on the protecting the agricultural reserve, we should look carefully at how advances in technology can aid in environmental protection. Some of these newer technologies as well as the newer conventional systems have proven to be better environmentally. If one of the reasons we are protecting the agricultural reserve is based on environmental protection then we should not close the door on new technologies that can make these systems work better environmentally. Simply put, we should not limit technical advancements where the environmental efficiency and application of systems like these are dramatically improved.</p> <p>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.</p> |
| <p>Montgomery Countryside Alliance</p> | <p>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.</p> |

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| | <p>We believe the Planning Board would be justified in denying the use of alternative systems for other development because the goal of the Ag Reserve is retention of farmland. A 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.</p> |
| <p>Multi-Group Statement</p> | <p>Technologies for septic systems are being expanded to enlarge residential construction in the Agricultural 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.</p> <p>On the contrary, limits were placed on septic systems, by advocating for <u>conventional</u> septic systems as part of the overall plan to preserve the Agricultural Reserve for agricultural uses. The goal of the Agricultural Reserve program is retention of farmland, not maximum residential development within the Reserve.</p> <p>Therefore, we strongly recommend that sand mounds and other innovative technologies should be limited to specific applications, specifically:</p> <ol style="list-style-type: none"> 1. 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; or (iii) to correct specific public health problems with existing systems. 2. There should be a 9 month moratorium placed on proposed subdivisions with sand mound septic systems to assess impacts and establish clear limits. |
| <p>League of Women Voters</p> <p>Agricultural Preservation Advisory Board</p> <p>Montgomery Countywide Alliance</p> | <p>Creating TDR Receiving Sites</p> <p>The county should improve 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, and adopting a planning goal of no-net-loss of receiving areas. The county should develop 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.</p> <p>We endorse all recommendations for increasing TDR receiving sites. Specifically endorse the inter-jurisdictional transfer concept. This will require the execution of specific inter-jurisdictional agreements with the County and municipalities addressing TDR use.</p> <p>Receiving Capacity in Mixed Use and Commercial Zones- We support creating additional receiving areas in the CBD, TOMX, MXP, and RMX zones and in municipalities as well as the creation of additional TDRs.</p> |

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| Celebrate Rural Montgomery Multi-Group Comments | We 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. TDR receiving areas in urban areas should be expanded to industrial and commercial uses. |
| Support Existing Action or Research | |
| <i>TDR Program Support</i> | |
| Agricultural Preservation Advisory Board | Support this effort. |
| League of Women Voters | We support implementing an improved system for tracking TDR activity and assigning responsibility for compliance with the steps of the process. |
| Montgomery Countryside Alliance | 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. |
| <i>Agricultural Economic Development</i> | |
| Montgomery Countryside Alliance | We encourage finding ways the County can continue to increase its economic development support for agriculture. |
| League of Women Voters | 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, and 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 for the economic development of agriculture. |
| Agricultural Preservation Advisory Board | Endorse The report identifies a research report being compiled by MNCPPC staff identify issues and opportunities for the continued viability of agriculture in the county. APAB recommends working closely with MNCPPC staff to ensure any recommendations proposed considers recent trends of agriculture in the County. Regarding the potential for food production, the County must continue to employ the rationale that land is protected to maintain an agricultural base, but allows the industry and other economic forces to guide the direction of the industry itself. Proposing specific types of uses to ensure agriculture's survival may sound good, but in reality not all farmers possess the knowledge or the equipment for such transitions. The County's agricultural industry for mass fruit and vegetable production is somewhat limited by our own climate, as we can't supply a steady stream of fruits and vegetables during the winter months. Some citizens have presented their preference for a transition to more organic operations. While these have worked on a small scale basis, advocates of organic farming do not fully understand the high input costs and lack of adequate labor to make operations like these cash flow on a large scale basis. Recommend work to better understand the trends, technological advances, and opportunities to encourage the agricultural use of the land. |

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| | <p>In addition, the County must strengthen the partnership with the University of Maryland. Agriculture must be raised to a higher level of importance by our land grant university (U of MD). The lack of commitment by the University to Cooperative Extension (the educational outreach arm of the university) has severely fragmented extensions effectiveness in serving agricultural producers. If you want farmers to learn and implement new practices and technologies, then extension must be there to teach. This is one aspect of agricultural support the State and County is sorely lacking.</p> <p>Farmers and farming must be 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. We must continue to support a diversity of farms in the Agricultural Reserve</p> |
| <p>Celebrate Rural Montgomery</p> | |
| <p>Child Lots in the RDT Zone</p> <p>Montgomery Countryside Alliance</p> | <p>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. We encourage 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 an option to restrict use of child lots if the creation of the lots renders the property unusable for agricultural purposes.</p> <p>We Endorse with Modification. The report does not quantify the extent of abuses that have occurred, rather it suggests that "There seem to have been some abuses, but the number of subdivisions that can be categorized as abuses have not yet been quantified" The APAB is aware of some abuse and recommends provision B listed in the report as a viable solution. Provision B states: "Enact review standards for the provision so that any subdivision using this provision must guarantee that a home is built and lived in by the recipient for a designated period of time, and consider whether the recipient is employed in the family farm business"</p> |
| <p>Agricultural Preservation Advisory Board</p> | |
| <p>Multi-Group Statement</p> | <p>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. Critical steps include establishing that (1) 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; and (2) 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. 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.</p> |
| <p>Expand Role of Agricultural Farm Park</p> <p>Agricultural Preservation Advisory Board</p> | <p>Endorse with Modification. Any recommended use at the farm park must focus on promoting agriculture today and not on the romantic view of what agriculture was here in the County. More emphasis must be placed on using the facility to promote education outreach and demonstrations for securing a future and not romanticizing its past.</p> |

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| New Initiatives | |
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| Evaluate Requiring Development Right Use for All Non-Agricultural Uses | |
| Montgomery Countryside Alliance | We believe that 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. |
| Agricultural Preservation Advisory Board | Endorse with Modification Chapter 59 of the County Code defines a development right as "Development rights: The potential for the improvement of a parcel of real property, measured in dwelling units or units of commercial or industrial space, existing because of the zoning classification of the parcel" If the use is non-agricultural and meets the definition as outlined in Chapter 59, then the use must be defined as development. |
| <i>Agricultural Preservation Awareness and Education - Agricultural Reserve Brochure</i> | |
| Montgomery Countryside Alliance | We encourage pursuing additional agricultural preservation awareness and education initiatives. |
| Agricultural Preservation Advisory Board | Endorse The County can always do better in promoting agriculture. Many of the programs DED/CED/SCD are involved which, target students as our future leaders with agricultural knowledge and relative importance. The problem is most urban landowners, even when provided the information, do not fully appreciate the magnitude of the sacrifices farmers have already made in the name of agriculture and farmland protection. |
| <i>Equestrian Trail Mapping</i> | |
| Agricultural Preservation Advisory Board | Endorse with Modification The report outlines establishing trail riding easements when subdivisions are created. The APAB recommends this item be modified to require The County should acquire all trails and their connectivity through in fee purchase and not through easements. These very public uses should be conducted solely on public lands. There are too many examples of trespass issues that involve property and crop damage resulting from public impact as well as exposing the landowner to potential liability. |
| <i>Defer or Eliminate Concepts</i> | |
| <i>RDT Residential Development Design Standards</i> | |
| Montgomery Countryside Alliance | As currently written, these are suburban design standards being recommended for a rural context. The recommendation that substantial setbacks or buffers be required between designated agricultural fields and residential building sites illustrates how the standards accommodate suburb-style residential development rather than for farmers. The guidelines must recognize that farm homes need to be directly connected to their land and buffers are inappropriate. In order to address the conflict between farmers and residents (which the setbacks and buffers are envisioned to address), you could require that buyers of property in the RDT be notified that agriculture is the primary economic activity in the area and they may experience inconvenience. The question is, which use is doing the encroaching? Since this is the Ag Reserve, we should be protecting the farms from the residential development. |

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| | <p>While the guidelines state that prime and productive soils be identified, there is no requirement that these areas be saved from development. Once the land is altered to accommodate development, the agricultural productivity of the land is forever lost. If the "primary basis of the standards is to preserve field, pasture, and forest – and prime agricultural soils" these guidelines do not accomplish that goal. If the goal of these guidelines is to protect the Ag Reserve by guiding the placement of houses, then the guidelines should directly address the placement of houses to preserve agricultural uses. We agree that new roads should be designed to minimize the physical impact on natural and historic environmental resources. In addition to running with the contours, the roads should also be of minimal width to maintain their rural and traditional character.</p> <p>The Agricultural Conservation Subdivision Design Standards should include conservation best practices that go beyond what is currently recommended. These guidelines do not include a number of agricultural conservation subdivision best practices. For example, some communities have adopted site design guidelines intended to ensure that non-farm construction is directed to locations that are least disruptive to the continuance of agriculture. In addition, as mentioned above, the guidelines could direct development to the least fertile soils on the property.</p> <p>Endorse with Modification - The report suggests a philosophical conflict between proponents of clustering development in the agricultural reserve and those who advocate larger lot subdivisions for the purpose of creating working farmsteads. The report's recommended action advocates "<i>the Planning Board adopting agricultural preservation design standards for residential development in the RDT Zone.</i>" The APAB recommends that any design standards that are discussed should focus on incentives and other inducements over mandatory guidelines. One size does not fit all circumstances or needs, the County must provide the landowner maximum flexibility and viable options for equity protection as well as from a production agricultural point of view.</p> |
| <p>Agricultural Preservation Advisory Board</p> | <p>We support 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</p> |
| <p>League of Women Voters</p> | <p>Suburban-style housing developments with multi-million dollar homes destroy the rural character of the Ag Reserve and fragment farmland.</p> |
| <p>Celebrate Rural Montgomery</p> <p>Multi-Group Statement</p> | <p>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.</p> |

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| Private Road Requirements | |
| Montgomery Countryside Alliance | We completely agree that the public road requirements in rural subdivisions are entirely inconsistent with the rural character of the Ag Reserve. |
| League of Women Voters | We support the program of designated Rustic Roads and believe the considerations for private roads should be taken up with cluster development considerations. |
| Agricultural Preservation Advisory Board | Support the change allowing more lots on private roads. |
| Day Camps or Outdoor Education | |
| Montgomery Countryside Alliance | We do 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. |
| League of Women Voters | 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. |
| Sugarloaf Citizens | A ZTA related to this subject is not necessary. The County must pull back from passing ZTA's to accommodate every interest group that is unhappy with the original Master Plan for the Ag Reserve. Twenty five years ago the crafters of the Master Plan chose not to include permanent type camps in the Ag Reserve and we see no reason to alter their insight and judgment. |
| Agricultural Preservation Advisory Board | Endorse The County must recognize that non-agricultural uses, like campgrounds and Quasi-Agricultural uses (Ag tourism/entertainment) should be permitted as a matter of right. These uses provide opportunities to down county residents to fully appreciate their role in the public policy decision to protect these lands. It also provides a mechanism to implement the open space vision captured within the Master Plan. |
| Multi-Group Statement | 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 recognized the threat and closed the door to this non-agricultural use. |
| Interjurisdictional Transfer of TDRs | |
| | No specific comments. |
| Internal Transfer of "Buildable TDRs in RDT Zone | |
| Montgomery Countryside Alliance | We do not support the internal transfer of TDRs. In light of the "Montgomery County in the 21 st 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 that areas within the Ag Reserve. |

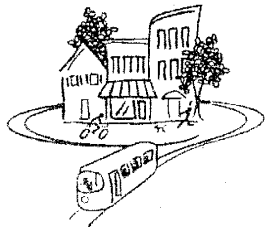
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| Agricultural Preservation Advisory Board | We endorse this concept. |
| Multi-Group Statement League of Women Voters | There should be no receiving areas created within the Agricultural Reserve itself, or adjacent to rural villages. This concept is counter to the preservation of the farmland envisioned by the Functional Master Plan and uncontrollable policy...a bad idea. |
| Bundling RDT Residual Acreage to Create Additional TDRs | |
| Agricultural Preservation Advisory Board | Endorse with modification Any process that advocates the use of incremental TDRs must also provide a mechanism to track the properties any partial TDR is created. This may require the development of a separate tracking system over and above the one currently in place. |
| Off-Site Afforestation on Receiving Sites | |
| League of Women Voters | We disagree with the TDR Task Force 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. |
| Other Comments | |
| Celebrate Rural Montgomery | No new Potomac crossing/techway should be built in or anywhere near the Ag Reserve. And 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. |

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*Multi-Group Statement incorporates comments from the: Audubon Naturalist Society, Boyds Citizens Association, Sugarloaf Citizens Association, Solutions Not Sprawl, For A Rural Montgomery, Peach Tree Ridge Citizens Association, and the Dickerson Community Association

ATTACHMENT 3

Stakeholder Comments



Coalition for Smarter Growth

Better Communities...Less Traffic

Montgomery County Planning Board
Montgomery County Department of Park & Planning
The Maryland-National Capital Park & Planning Commission
8787 Georgia Avenue
Silver Spring, MD 20910-3760

July 22, 2005

RE: Comments on the Proposed Agricultural Conservation Subdivision Design Review Standards for the RDT Zone

The Coalition for Smarter Growth (the Coalition) works to improve every community in the Washington region by ensuring that transportation and growth decisions are made with genuine community participation, and with a commitment to creating positive benefits to the community as a whole. The Coalition works in partnership with over 40 local, regional and national environmental and civic organizations. In addition, the Coalition provides staff support to the Montgomery Countryside Alliance, whose 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 the environment, open spaces, and rural and agricultural lands. It is in this capacity that I make the following comments on the "Proposed Agricultural Conservation Subdivision Design Review Standards for the RDT Zone".

As the Planning Board considers these guidelines further, please ensure that public input is sought and public comments solicited. I am eager to engage the members of our coalition regarding these important guidelines and having a clear sense of the timing of decisions by the Planning Staff and the Planning Board is important.

As currently written, these are suburban design standards being recommended for a rural context. The recommendation that substantial setbacks or buffers be required between designated agricultural fields and residential building sites illustrates how the standards accommodate suburb-style residential development rather than homes for farmers. **The guidelines must recognize that farm homes need to be directly connected to their land and setback and buffers are inappropriate.** In order to address the conflict between farmers and residents (which the setbacks and buffers are envisioned to address), you could require that buyers of property in the RDT be notified that agriculture is the primary economic activity in the area and they may experience inconvenience. The question is, which use is doing the encroaching? Since this is the Ag Reserve, we should be protecting the farms from the residential development.

4000 Albemarle Street, NW, Suite 310, Washington, DC 20016

(202) 244-4408 fax: (202) 244-4438

www.smartergrowth.net

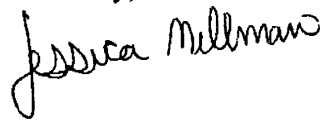
While the guidelines state that prime and productive soils be identified, **there is no requirement that these areas be saved from development.** Once the land is altered to accommodate development, the agricultural productivity of the land is forever lost. **If the “primary basis of the standards is to preserve field, pasture, and forest – and prime agricultural soils” these guidelines do not accomplish that goal.** If the goal of these guidelines is to protect the Ag Reserve by guiding the placement of houses, then the guidelines should directly address the placement of houses to preserve agricultural uses.

We agree that new roads should be designed to minimize the physical impact on natural and historic environmental resources. In addition to running with the contours, **the roads should also be of minimal width to maintain their rural and traditional character.**

The Agricultural Conservation Subdivision Design Standards should include conservation best practices that go beyond what is currently recommended. These guidelines do not include a number of agricultural conservation subdivision best practices. For example, some communities have adopted site design guidelines intended to ensure that non-farm construction is directed to locations that are least disruptive to the continuance of agriculture. In addition, as mentioned above, the guidelines could **direct** development to the least fertile soils on the property.

I look forward to working with Planning Staff and the Planning Board as these guidelines are refined and distributed for public comment. If you have any questions, please contact me at 202.244.44-8 x2 or jessica@smartergrowth.net.

Sincerely,



Jessica Cogan Millman

Cc: Judy Daniel