



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

**MCPB**  
**05/31/07**  
**Item # 16**

February 28, 2007

**MEMORANDUM**

**TO:** Montgomery County Planning Board

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

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

**SUBJECT:** Agricultural Policy – Implementation of Planning Board Recommendations

**STAFF RECOMMENDATION:**

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1. **Submit Draft Zoning Text Amendment regarding RDT – Child Lot Standards to the District Council for introduction.**
2. **Transmit amended Resolution No. 12-1503 regarding Executive Regulation 28-93AM, On-Site Water and On-Site Sewage Disposal Systems, for consideration by the County Council.**

On March 12, 2007, the Planning Board transmitted their recommendations to the County Council regarding the Ad Hoc Agricultural Policy Working Group Report. (Attachment 1)

The Planning, Housing and Economic Development (PHED) Committee discussed the Report, including the Board's comments, on March 12, and instructed Council staff to prepare draft policy instruments, including zoning text amendments, which would implement the Working Group's recommendations and would be the subject of a future public hearing.

County Council staff prepared a chart of short, mid and long-term steps for the County Council in response to the Ad-Hoc Agricultural Policy Working Group recommendations. (Attachment 2) The short-term tasks are almost complete, with several draft zoning text amendments scheduled to be introduced on June 12, 2007.

The Planning Board generally agreed with the Working Group on the building lot termination program and expanded TDR programs, but arrived at different conclusions on the issues of child lot and sand mounds:

### **Child Lots**

On March 8, 2007, the Planning Board recommended amending the language related to the child lot exemption in the RDT Zone to include the same provision that is in the Rural Zone, which limits the overall density of the property including all child lots to no more than the maximum density allowed in the zone. In order to implement this recommendation, Planning Staff recommends that the Planning Board submit the attached Zoning Text Amendment (Attachment 3) to the District Council for introduction.

The main substance of the ZTA adds language to § 59-C-9.74(b)(4), which involves conditions under which a child lot in the RDT Zone may be created, to limit the overall density including child lots to no more than one dwelling unit per 25 acres. The proposed language is similar to the language that exists in § 59-C-9.71(d)(3), which limits the overall density of a property in the Rural Zone including child lots to no more than one dwelling unit per 5 acres.

As the Planning Board stated in its March 12, 2007 letter to the Council President, the practice of interpreting the RDT Zone to allow child lots above the maximum density is clearly contrary to the intent of the zone with regard to density, protection against fragmentation of the critical mass of agricultural land, and, especially, with regard to giving primacy to agricultural uses. This ZTA will clarify and promote the intent of the RDT Zone by limiting the overall density including child lots to the maximum density allowed in the zone—one dwelling unit per 25 acres.

In addition, Staff recommends additional language in § 59-C-9.574(b)(4)(ii) to make clear that only one child lot per property owner may be created regardless of the number of properties owned by that particular property owner as well as certain other amendments as set forth in the ZTA that clarify and simplify the provision.

### **Sand Mounds**

On March 8, 2007, the Planning Board strongly recommended that all alternative technologies to trench systems should be prohibited in the Agricultural Reserve (RDT Zone) except for specified situations, and for parcels existing as of December 1, 2006.

The Planning Board found that the use of sand mounds instead of deep trench septic systems to produce residential subdivisions has had a pernicious effect on the Agricultural Reserve. It has reduced willingness to sell development rights for land that cannot meet perc tests for deep trench septic systems, and has inflated speculative land values in the Reserve, raising expectations that every acre should be valued at its development rather than its agricultural value. This has impeded the ability of new farmers to buy farmland and has thus worked against sustaining farming in the Reserve.

The Planning Board identified a primary source of the problem to be paragraph 2 of the Action section of Council Resolution 12-1503 of February 22, 1994, (Attachment 4) which, in part:

*“.....encourages the Department of Health to exercise flexibility provided for in the regulation, and to explore with applicants ways in which particular site restrictions may be dealt with to allow development allowed by zoning to be constructed.”*

The same paragraph also requested that a statement attached to the resolution on the regulation of sand mounds be considered when applications for sand mounds were being reviewed. That statement of the Health Department Policy concluded that:

*“It is the purpose and intent of the Health Department to render friendly and helpful assistance to citizen landowners to the end that they may use their property as permitted by zoning laws provided there is no significant health risk.”*

Determining the density of a subdivision is not a function of the Department of Health or the Department of Permitting Services. While the resolution cannot amend the Master Plan, it has been interpreted that way, and, at a minimum, it presents an inconsistency in County policy toward development in the Agricultural Reserve. To remove that inconsistency, the resolution should be amended to conform with, and to be consistent with, the Master Plan for Preservation of Agriculture and Rural Open Space.

The Planning Board strongly recommended that Council Resolution 12-1503 of February 22, 1994, be amended to excise paragraph 2 of the Action section and the entire Health Department Policy statement on sand mound systems. Staff recommends that a draft of an amended resolution (Attachment 5) be transmitted to the County Council for consideration by the County Council.

Attachments:

1. March 12, 2007 letter from Planning Board to Council President
2. Next steps for the County Council in response to the Ad-Hoc Agricultural Policy Working Group recommendations
3. Draft Zoning Text Amendment regarding the RDT Zone – Child Lot Standards
4. County Council Resolution No. 12-1503, Adopted February 22, 1994, regarding Executive Regulation 28-93AM, On-Site Water and On-Site Sewage Disposal Systems, with Health Department Policy Attachment on Mound Systems

G: CM: Murray/mcpb5.30.07



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

March 12, 2007

Marilyn J. Praisner  
President  
Montgomery County Council  
Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

**SUBJECT: Planning Board Recommendations regarding the Ad Hoc Agricultural Policy Working Group Report**

Dear Ms. Praisner:

On a motion by Commissioner Wellington, seconded by Commissioner Robinson, the Planning Board on March 8 voted 3-0 (Commissioners Hanson, Robinson, Wellington; Commissioners Purdue and Bryant absent) to transmit the following comments to the County Council regarding the Report and Recommendations of the Ad Hoc Agricultural Policy Working Group. This was the Planning Board's second work session on the Working Group's Report, having taken straw votes on the major themes during its discussion of March 1, 2007. The planning staff memorandum for the March 8, 2007 work session is attached for your information. During the first work session, the Planning Board votes on all but one key theme were 5-0. The following comments therefore reflect the Planning Board's unanimous views on most of the major issues, with a vote of 4-1 on the sand mound issue.

The Planning Board commends the Working Group for producing a thoughtful report on the array of issues facing the Agricultural Reserve. That the 15 members of the Group addressed all of these complex and inter-related issues in the relatively short time frame set by the County Council speaks very highly of their dedication, knowledge, energy and motivation.

The Planning Board also appreciates that all members of the Working Group share both a belief that the Agricultural Reserve is valuable to all the County's citizens and a common interest in preserving agriculture in Montgomery County. The Planning Board shares these views, and while generally agreeing with the Working Group on the building lot termination and expanded TDR programs, we arrived at different conclusions on the child lot and sand mound issues.

All these issues are inextricably linked. Terminating the large number of buildable development rights is an important means of resolving or diminishing the sand mound and child lot issues. Reciprocally, resolving the other two issues will help address the issue of buildable lots.

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

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

After discussion with several members of the Working Group and County and County Council staff regarding criteria for eligibility, priority, compensation, funding and procedures, the Planning Board concurred with all of the Working Group's recommendations regarding the proposed Building Lot Termination (BLT) easement program, except for one. Contrary to the Working Group's position, the Board recommends that sand mounds should not be used in determining the existence of a buildable lot. The objective of the master plan is to limit residential development in the Agricultural protection area of the Reserve to the natural holding capacity of the land. Thus, buildable lots are those that can be served by traditional deep trench septic systems rather than by any other sanitation systems, whether classified as alternative or conventional.

### **Expanded Transferable Development Rights Program**

On March 1, 2007, the Planning Board agreed that the identification of TDR receiving areas would be studied in the context of the Annual Growth Policy as well as individual Master Plans.

The Working Group endorsed several recommendations made by the 2002 TDR Task Force, and recommended several changes to the current TDR program. The Planning Board supports all of the following recommendations:

- Continue implementing a system that tracks the use of TDRs; submit annual TDR reports to the Council.
- Draft amendments to the Zoning Ordinance and Subdivision Regulations to require excess TDR receiving capacity in floating zones, research and development, certain commercial, industrial, and mixed-use zones.
- Create a program by which TDRs on commercial and industrial properties will purchase buildable TDRs instead of excess TDRs.
- Eliminate the requirement that receiving areas use 2/3 of the possible TDRs.
- Develop inter-jurisdictional TDR programs with municipalities.
- Maximize the placement of TDR receiving areas during master plan review.

## Child Lots

The first question in dealing with any land use matter is whether it furthers the goals of the Master Plan and the purposes of the zone. The existing exemption for child lots involves only the dimensional requirements of the RDT Zone. That each such lot requires the use of a development right does not, in itself, justify creating any lots, child or market, that exceed the base density of the zone (i.e. 1 residence: 25 acres.) The purpose of the exemption was to permit a child that would participate in the farming enterprise to reside on the land with the owner-parent. It recognized that in time, the excess family residence might be sold to someone outside the family, but by allowing a residence for a child to be built on an acre, the farm would not have to be divided among family members.

There is no justification for reading the ordinance, as it has been done, to allow densities in excess of 1:25, or to permit a lot per child, regardless of the number of children, in excess of, and in addition to, market lots at full density. As historically construed, this practice would permit an owner with 10 children and 100 acres to have 14 lots with a density of 1 residence for each 7.17 acres. This is clearly contrary to the intent of the zone with regard to density, protection against fragmentation of the critical mass of agricultural land, and, especially, with regard to giving primacy to agricultural uses.

The prime example of this in a recent case is the Copenhaver subdivision proposal, which would have placed five child lots on 42 acres, and have retained the rights to sell one additional market lot. While this subdivision was denied on grounds that the decedent owners had made no written statement of their desire to create the lots, it nonetheless illustrates the folly of the current practice. Another subdivision, which has been deferred indefinitely, would have created five child lots in addition to a permitted three market lots on 80+ acres, with an average residential density of 1:10 acres.

The fact that this practice has been permitted in the past is no justification for continuing it, a position endorsed in testimony before the Planning Board from 60 organizations and individuals. The practice has nothing to do with equity for farmers, as it discriminates against farm families that are not as procreative as others. Its purpose was to facilitate intergenerational transfer of the farm within the family, not to provide a windfall for owners with large families, by which they could increase the number of market lots, even if they have to wait five years to sell some of them.

The Working Group's proposal that the lot must be recorded in the child's name and the owner must file an affidavit swearing his/her intention to own the property for at least five years, is no assurance of fulfillment of the intent of the provision. Because of restraints on the alienation of property, ownership cannot be enforced, and even if it could be, the objective is not *occupancy* by a child, but participation in the farming enterprise. We appreciate the effort of the working group to try to find a measure that might restrain the "flipping" of child lots onto the market, but reluctantly conclude that such measures are more symbolic than enforceable.

The Planning Board believes that allowing a farm owner to build a home for a child remains a reasonable goal. Allowing the number of such homes to exceed the base density is not. It is a loophole for subdivision. ***The Planning Board recommends that the child lot exemption of the RDT Zone be amended to include the same provision that is provided in the Rural Zone (i.e. that the total number of lots created from a parcel, including child lots, must not exceed the density limitations of the zone.)*** The Planning Board strongly recommends that the current practice be discontinued and intends to do so in its review of applications for subdivisions that include child lots.

If the County Council does not concur with the Board on this proposal, it should, at a minimum, amend the ordinance to make it crystal clear that only child lots exceed base density, and that in no case should the ordinance allow the creation of any market lots if the number of child lots on a tract exceeds base density. Pages 3-5 of the planning staff memorandum of March 5, 2007, give a more detailed explication of this option, with an illustrative table and graphics.

The Planning Board disagrees with the Working Group's recommendations regarding the provision of public water service to child lots. We find no reason to extend water and sewer service into the Reserve, period. We recommend that the Ten Year Water and Sewerage Plan should be amended so that it is consistent with the Master Plan for the Preservation of Agriculture and Rural Open Space with respect to child lots.

### **Sand Mounds**

The Working Group's majority proposal would allow one sand mound per 25 acres for the first 75 acres, then one for each 50 acres thereafter. The minority recommended one mound per 50 acres. All agreed on their use (or other alternative technologies to trench septic systems) for failing systems, tenant homes on a common lot, and to locate a residence on poorer soils to protect better agricultural soils.

By a 4-1 majority (Commissioners Hanson, Robinson, Perdue, Wellington), the Planning Board strongly recommends that all alternative technologies to trench systems should be prohibited in the Agricultural Reserve (RDT Zone) except for the following situations, and for parcels existing as of December 1, 2006: (Commissioner Bryant dissented, preferring the Working Group majority's position.)

- Where there is an existing house and the sand mound would not result in the development of an additional house.
- When it enables a property owner with approved deep trench system percs to better locate houses to preserve agriculture.
- For child lots, which meet the Board's recommendations, above, and where they are approved under the Agricultural Easement Program MALPF/AEP.

- For bona fide tenant housing. Sand mounds should be approved for bona fide tenant housing if the dwelling can never be conveyed from the parent parcel.
- For any pre-existing parcel that is defined as an exempted lot or parcel in the zoning regulations.
- For any permitted agricultural use under the zoning regulations (e.g., farm market).
- For the purpose of qualifying for a State or County easement program.

The Planning Board also recommends use of alternative technologies, when necessary, for agriculture-related commercial activities.

As discussed above, the Planning Board does not recommend sand mounds or other alternative technologies for the purpose of qualifying for the Building Lot Termination program; or for properties where there has been a significant investment in testing for sand mounds prior to the adoption of these new restrictions. There is no good reason for grandfathering holes in the ground.

The use of sand mounds instead of deep trench septic systems to produce residential subdivisions has had a pernicious effect on the Agricultural Reserve. It has reduced willingness to sell development rights for land that cannot meet perc tests for deep trench septic systems, and has inflated speculative land values in the Reserve, raising expectations that every acre should be valued at its development rather than its agricultural value. This impedes the ability of new farmers to buy farmland and, thus, works against sustaining farming in the Reserve.

The argument that inflated land values produced by the ability to build on sand mounds is part of the landowner's equity and, thus, must be protected is specious. Permitting sand mounds without restrictions provide a windfall to land owners by creating an expectation that every parcel might achieve its full zoning density.

The source of the problem is paragraph 2 of the Action section of Council Resolution 12-1503 of February 22, 1994, (Attachment 1) which, in part:

“.....encourages the Department of Health to exercise flexibility provided for in the regulation, and to explore with applicants ways in which particular site restrictions may be dealt with to allow development allowed by zoning to be constructed.”

The same paragraph also requested that a statement attached to the resolution on the regulation of sand mounds be considered when applications for sand mounds were being reviewed. That statement of the Health Department Policy concluded that:



"It is the purpose and intent of the Health Department to render friendly and helpful assistance to citizen landowners to the end that they may use their property as permitted by zoning laws provided there is no significant health risk."

***The Planning Board strongly recommends that Council Resolution 12-1503 of February 22, 1994, be amended to remove paragraph 2 and the attachment.*** Determining the density of a subdivision is not a function of the Department of Health or the Department of Permitting Services. It is the responsibility of the Planning Board in the approval of subdivisions to ensure that they are consistent with the Master Plan. While a subdivision must conform to the zone in which it is located, the density limitations of the zone are not an entitlement, but an upper limit, and each subdivision must conform to the Master Plan and meet any other applicable regulations. While the resolution cannot amend the Master Plan, it has been interpreted that way, and, at a minimum, it presents an inconsistency in County policy toward development in the Agricultural Reserve. To remove that inconsistency, the resolution should be amended to conform with, and to be consistent with, the Master Plan.

One issue raised concerning sand mounds is whether the County may provide more strict regulation of their use rather than the State; i.e., has the State pre-empted this arena of regulation by declaring that sand mounds are now "conventional" technology?

It has not. The leading case on Maryland pre-emption doctrine is *Ad+Soil, Inc. v County Commissioners of Queen Anne's County*, 307Md.307, 503 A.2d 893 (1986), which held that the State has not pre-empted local regulation unless the General Assembly has expressly occupied the field by prohibiting local legislation or has created a comprehensive regulatory scheme that clearly implies a legislative purpose to occupy the field, and preclude all local regulation. The legislation clearly does not pre-empt the field, contemplating instead substantial County participation in the regulatory scheme. First of all, the statute explicitly prohibits State regulations that would prevent counties from enacting greater or supplementary protections in its sanitary regulations:

Any rule or regulation adopted under this subtitle does not limit or supersede any other county, municipal, or State law, rule, or regulation that provides greater protection to the public health, safety, or welfare. Md. Code § 9-502 (c) *Conflict with other laws, rules, or regulations.*

The law requires counties to submit their plans to the planning agencies with jurisdiction for review and comment, and that the planning agency "shall certify that the plan, revision, or amendment is consistent with the county comprehensive plan..." (Md. Code § 9-506.) A separate section imposes this duty on M-NCPPC in Montgomery County and Prince George's County (Md. Code § 9-516.) These statutory provisions strongly support the position that there was no legislative intent to occupy the field, but rather, that there a wide range of discretion, collaboration and cooperation has been afforded the counties in the development of plans and regulations governing sanitary policies.

Marilyn J. Praisner  
March 12, 2007  
Page Seven

The regulations adopted by the Maryland Department of Environment reinforce this view. The preface to the Department of Environment regulations governing water supply, sewerage, solid waste, and pollution control planning and funding states:

"It is the intent of these regulations to require the governing body of each county and Baltimore City to develop water supply and sewerage systems so as to be consistent with county comprehensive planning."

Code of Maryland Regulations § 26.03.01.02A re-emphasizes the point:

*"The objective of the county [water supply and sewerage] plan is to develop the water supply and sewerage systems in a way consistent with county comprehensive planning. The plan shall be used as a tool to implement the county development policy...."* (Italics added)

And § 26.03.01.02 D provides:

"Every official planning agency having any immediate jurisdiction in a county, including those comprehensive planning agencies with multi-county or regional jurisdiction, shall be consulted by the governing body in connection with the preparation, amendment, or revision of county plans. A statement that the above agencies have been consulted shall be attached."

The State has not, therefore, either by statute or regulation, pre-empted county discretion in the use of sewerage technologies. Moreover, it has required that the water and sewerage plan be consistent with the County's comprehensive plan, since it is a means of implementing that plan.

From a planning perspective, if we can withhold the highest technology, public sewer, from an area, either temporarily or permanently, by placing it in Category 6, we surely can withhold other alternative technologies, as long as we provide for the use of measures that ensure the public health. Whether land is zoned RDT, RC, RE-2, RE-1, I-1, or R-200, it can be denied sewer or any other technology that would prevent it developing to the full capacity of the zoning envelope. All land is subject to a variety of regulations, of which zoning is only one. Environmental regulations may prevent development on slopes, flood plains, wetlands, or forests. Requirements of access and road dedications, provision of parks and school sites, or issues of compatibility with surrounding communities may also reduce the lot yield of a tract of land.

This is a long way of returning to the basic issue addressed in the Working Group report: Should sand mounds be regarded as "conventional" technology, equivalent to deep trench septic systems for purposes of serving residential development in the RDT Zone? Both the majority and minority of the Working Group have, by implication, answered in the negative. The majority would allow sand mounds to be used only on each additional 50 acres after one for each 25 acres of the first 75 acres. The minority

Marilyn J. Praisner  
March 12, 2007  
Page Eight

would limit their use to one mound for each 50 acres. The issue, therefore, is not whether to restrict their use, but to what degree? Both the majority and minority, however, tend to miss the central point of the Agriculture and Rural Open Space Master Plan and the RDT Zone. It is not a residential zone. It is an agricultural zone. Its purpose is not to facilitate residential development, but to protect agricultural land for present and future farming.

### **PENDING LEGISLATION**

The Planning Board supports the Working Group recommendation that the Council introduce and enact legislation to clarify in clear and direct terms the long-standing legislative intent that the development of RDT-zoned parcels encumbered by TDR easements should be limited to single family, and agricultural and agricultural-related uses only.

### **ADDITIONAL ISSUES**

The Council's resolution establishing the Ad Hoc Agricultural Working Group called for a comprehensive review while also intentionally limiting the scope of the Group's work to the issues discussed above. The Working Group considered that a broader comprehensive review of policies and laws related to the Agricultural Reserve was necessary and suggested a range of issues that should be considered, including some preliminary thoughts on right-to-farm legislation, education strategies, and design standards. The Working Group concluded their Report with an expanded list of other issues regarding zoning, tenant homes, rustic roads, and economic viability to be addressed in any comprehensive consideration of the sustainability and vibrancy of Montgomery County's Agricultural Reserve.

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

The Planning Board looks forward to working with the County Council on resolution of these critically important issues for the Agricultural Reserve.

Sincerely,

  
Royce Hanson  
Chairman

cc: PHED Committee & Staff  
Attachment: Staff Report  
RH:CM:ha

**NEXT STEPS FOR THE COUNTY COUNCIL IN RESPONSE TO  
THE AD-HOC AGRICULTURE POLICY WORKING GROUP RECOMMENDATIONS**

**SHORT-TERM**

	<b><u>What Needs to be Done to Implement Working Group Recommendations?</u></b>	<b><u>By Whom?</u></b>
1	<b>TDRs:</b> Continue implementing a system that tracks the use of TDRs; submit annual TDR reports to the Council. (Annual Report)	M-NCPPC Ongoing
4	<b>TDRs:</b> Eliminate the requirement that receiving areas use 2/3 of the possible TDRs. (ZTA & SRA)	M-NCPPC (DONE – Council Staff)
7	<b>CHILD LOTS:</b> Clarify the Zoning Ordinance to indicate that child lots are in addition to market lots. (ZTA)	Council (DONE – Council Staff)
8	<b>CHILD LOTS:</b> Clearly restrict child lots to ensure ownership by child (allowing for hardships). Strategies include: <ul style="list-style-type: none"> <li>• Require that the record plat indicate it is a child lot (SRA)</li> <li>• Require that a covenant be recorded in the land records at the time the plat is recorded specifying that the house on the child lot must be owned by the child for five years and must not be leased except to immediate family. (SRA)</li> <li>• Require that the building permit be issued in the child's name. (SRA)</li> </ul>	M-NCPPC (DONE – Council Staff)
9	<b>CHILD LOTS:</b> A majority of any child lot must be preserved in agriculture (important) for small lots. (ZTA & SRA)	M-NCPPC (DONE – Council Staff)
10	<b>CHILD LOTS:</b> Codify the long-standing practices that require that each child is only entitled to one child lot, regardless of the number of properties owned by the parent and that the construction of each child lot requires the use of a TDR. (ZTA)	M-NCPPC (DONE – Council Staff)
11	<b>CHILD LOTS:</b> A child lot may be created after the death of the owner if the owners' intent has been established through a will or other document admissible in probate. (ZTA & SRA)	M-NCPPC (DONE – Council Staff)

Short-term: In the next 6 months

Mid-term: By the end of calendar year 2007

Long-term: In 2008 or later

ZTA: Zoning Text Amendment

SRA: Subdivision Regulation Amendment

Ex. Reg: Executive Regulation

	<b>What Needs to be Done to Implement Working Group Recommendations?</b>	<b>By Whom?</b>
		Staff)
12	<b>CHILD LOTS:</b> Develop a complaint based enforcement mechanism to respond to complaints if a child lot home is prematurely leased. (Ex Reg)	DPS
15	<b>CHILD LOTS:</b> Amend the language in the Ten-Year Water and Sewerage Plan to allow public water (but not sewer) to child lots under certain limited circumstances: <ul style="list-style-type: none"> <li>• When the child lot can be served from an existing water main and service to the property would not provide the opportunity for service to other RDT properties.</li> <li>• When public water service can be provided in a manner that would not prevent the future application for a State or County easement for farmland preservation.</li> </ul> Require Council approval of any request for public water to a child lot in the RDT zone. (Water & Sewer Plan)	DEP (DONE)
17	<b>SAND MOUNDS:</b> Obtain written confirmation from the State that limitations on sand mounds do not conflict with State law.	Council Staff (DONE)
	<b>BLT PROGRAM:</b>	
20	Draft Executive Regulations for the BLT Program (note that most of the Group's recommendations relate to for program specifics that will be part of the Executive Regulations) (Ex. Reg)	County Executive (Draft submitted – not yet published in register)
21	Determine budget implications and funding strategies for FY08 and beyond.	County Executive
22	<b>RDT LEGISLATION:</b> Clarify that the development of RDT zoned parcels encumbered by TDR easements must be limited to single family houses and agricultural and agricultural related uses only. (ZTA)	Council (DONE)
24	<b>RIGHT TO FARM DISCLOSURE LEGISLATION:</b> Enact legislation requiring disclosure for homes being sold in agricultural zones to inform potential homebuyers of current County and State law that protects farmers from certain nuisance claims related to farming. (Bill)	Council (DONE)

Short-term: In the next 6 months  
Mid-term: By the end of calendar year 2007  
Long-term: In 2008 or later  
ZTA: Zoning Text Amendment  
SRA: Subdivision Regulation Amendment  
Ex. Reg: Executive Regulation

## MID-TERM

	<b>What Needs to be Done to Implement Working Group Recommendations</b>	<b>By Whom?</b>
2	<b>TDRs:</b> Draft amendments to the Zoning Ordinance and Subdivision Regulations to require excess TDR receiving capacity in floating zones research and development, certain commercial, industrial, and mixed use zones (including the commercial portions of mixed-use zones). (ZTA & SRA)	M-NCPPC
5	<b>TDRs:</b> Develop inter-jurisdictional TDR programs with municipalities with appropriate incentives and/or penalties. (MOU)	M-NCPPC & Council
14	<b>CHILD LOTS:</b> Establish monetary penalties for violation of child lot provisions. (Bill)	Council

	<b>What Needs to be Done to Implement Working Group Recommendations</b>	<b>By Whom?</b>
16	<b>CHILD LOTS:</b> Develop a monitoring mechanism to track how many child lots use public water. (Water & Sewer Plan)	DEP
18	<p><b>SAND MOUNDS:</b> Enact changes to the Ten-Year Water and Sewerage Plan to reflect the Group's recommendations on sand mound usage limits:            One sand mound per 25 acres for the first 75 acres and, beyond that, one sand mound per 50 acres.            Allow sand mounds under the circumstances listed below, for a parcel existing as of December 1, 2006.</p> <ul style="list-style-type: none"> <li>• Where there is an existing house and the sand mound would not result in the development of an additional house.</li> <li>• When it enables a property owner with approved deep trench system percs to better locate potential houses to preserve agriculture.</li> <li>• For child lots, provide that recommendations related to child lots are also adopted (e.g., ownership requirement). Sand Mounds will be approved for child lots where they are approved under the zoning provisions or approved under the Agricultural Easement Program (MALPF/AEP).</li> <li>• For bona fide tenant housing, provided that recommendations related to tenant houses are also adopted. Sand Mounds will be approved for bona fide tenant housing wherein the dwelling can never be conveyed from the parent parcel.</li> <li>• For any pre-existing parcel that is defined as an exempted lot or parcel in the zoning regulations.</li> <li>• For properties where there has been a significant investment in testing for sand mounds prior to the adoption of these new restrictions.</li> </ul>	DEP

Short-term: In the next 6 months

Mid-term: By the end of calendar year 2007

Long-term: In 2008 or later

ZTA: Zoning Text Amendment

SRA: Subdivision Regulation Amendment

Ex. Reg: Executive Regulation

	<ul style="list-style-type: none"> <li>• For any permitted agricultural use under the zoning regulations (e.g., farm market).</li> <li>• For the purpose of qualifying for a State or County easement program (including a Building Lot Termination program). (Water &amp; Sewer Plan and Ex. Regs)</li> </ul>	
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- Short-term: In the next 6 months
- Mid-term: By the end of calendar year 2007
- Long-term: In 2008 or later
- ZTA: Zoning Text Amendment
- SRA: Subdivision Regulation Amendment
- Ex. Reg: Executive Regulation

## MID TO LONG TERM

19	<b>SAND MOUNDS:</b> Draft guidelines to ensure that properties using sand mounds locate buildings to prevent fragmentation of viable agricultural land. (SRA and/or ZTA)	M-NCPPC
25	<b>EDUCATION:</b> Develop an educational strategy for County residents.	County Executive

## LONG-TERM

3	<b>TDRs:</b> Create a program by which TDRs on commercial and industrial properties will purchase buildable TDRs instead of excess TDRs. (ZTA) (See staff note regarding TDR deficit)	M-NCPPC
23	<b>RDT LEGISLATION:</b> Undertake further analysis to determine whether the presence of a PIF on RDT land should limit the number of TDRs available for sale. (Potential ZTA)	M-NCPPC
26	<b>WORK PLAN FOR ADDITIONAL ISSUES:</b> Develop a plan for undertaking the additional issues identified at the end of the report.	M-NCPPC

## ON-GOING

6	<b>TDRs:</b> Maximize the placement of TDR receiving areas during master plan review. (MP)	M-NCPPC & Council
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Short-term: In the next 6 months  
 Mid-term: By the end of calendar year 2007  
 Long-term: In 2008 or later  
 ZTA: Zoning Text Amendment  
 SRA: Subdivision Regulation Amendment  
 Ex. Reg: Executive Regulation



Zoning Text Amendment No:  
Concerning: RDT - Child Lots Standards  
Draft No. & Date: 1 – 5/31/07  
Introduced:  
Public Hearing:  
Adopted:  
Effective:  
Ordinance No:

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

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By:  
\_\_\_\_\_ on behalf of The Maryland-National Capital  
Park and Planning Commission

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

- amending the density calculations in the RDT Zone to clarify that the number of child lots must not exceed the allowable base density
- generally amending the conditions for creation of a child lot in the RDT Zone

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

DIVISION 59-C-9     “Agricultural Zones”  
Section 59-C-9.74    “Exempted lots and parcels-Rural Density Transfer zone”

*EXPLANATION: **Boldface** indicates a heading or a defined term.  
Underlining indicates text that is added to 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 by amendment.  
\* \* \* indicates existing law unaffected by the text amendment.*

**ORDINANCE**

Zoning Text Amendment 07-XX

*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:*

1           **Sec. 1. DIVISION 59-C-9 is amended as follows:**

2           **DIVISION 59-C-9. Agricultural Zones.**

3           \*    \*    \*

4           **59-C-9.4. Development standards.**

5  
6           The following requirements apply in all cases, except as specified in the optional  
7           standards for cluster development set forth in sections 59-C-9.5 and 59-C-9.57 and  
8           the exemption provisions of section 59-C-9.7.

9           \*    \*    \*

10          **59-C-9.7. Exempted lots and parcels and existing buildings and permits.**

11          \*    \*    \*

12               **59-C-9.74. Exempted lots and parcels—Rural Density Transfer zone.**

13           (a)    The number of lots created for children in accordance with the  
14                   Maryland Agricultural Land Preservation Program must not exceed  
15                   the development rights assigned to the property and retained by the  
16                   property owner.

17           (b)    The following lots are exempt from the area and dimensional  
18                   requirements of section 59- C-9.4 but must meet the requirements of  
19                   the zone applicable to them [prior to their classification in the Rural  
20                   Density Transfer zone] before January 7, 1981.

21               (1)   A recorded lot created by subdivision, if the record plat was  
22                   approved for recordation by the Planning Board [prior to the  
23                   approval date of the sectional map amendment which initially  
24                   zoned the property to the Rural Density Transfer Zone] before  
25                   January 7, 1981.

- 26 (2) A lot created by deed executed [on or] before [the approval date  
27 of the sectional map amendment which initially zoned the  
28 property to the Rural Density Transfer Zone] January 7, 1981.
- 29 (3) A record lot having an area of less than 5 acres created after  
30 [the approval date of the sectional map amendment which  
31 initially zoned the property to the Rural Density Transfer Zone]  
32 January 6, 1981 by replatting 2 or more lots; provided that the  
33 resulting number of lots is not greater than the number which  
34 were replatted.
- 35 (4) A lot created for use for a one-family [residence] dwelling by a  
36 child, or the spouse of a child, of the property owner, provided  
37 that the following conditions are met:
- 38 (i) The property owner can establish that he had legal title  
39 on or before the approval date of the sectional map  
40 amendment which initially zoned the property to the  
41 Rural Density Transfer Zone;
- 42 (ii) This provision applies to only one [such] lot for each  
43 child regardless of the number of properties owned by  
44 [of] the property owner; [and]
- 45 (iii) Any lots created for use for one-family residence by  
46 children of the property owner must not exceed the  
47 number of development rights for the property owner[.];  
48 and

49                    (iv) The overall density of the property does not exceed one  
50                    dwelling unit per 25 acres in any subdivision approved  
51                    by the Planning Board after June 12, 2007.

52       \*   \*   \*

53            **Sec. 2. Effective date.** This ordinance takes effect 20 days after the date of  
54       Council adoption.

55

56       This is a correct copy of Council action.

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61       Linda M. Lauer, Clerk of the Council

62       f:\land use\ztas\pending\child lots.doc

Resolution No. 12-1503  
Introduced: February 22, 1994  
Adopted: February 22, 1994

COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND

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By: County Council

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Subject: Executive Regulation 28-93AM, On-Site Water and On-Site Sewage Disposal Systems

Background

1. On January 21, 1994, the County Executive submitted Executive Regulation 28-93AM, On-Site Water and On-Site Sewage Disposal Systems to the County Council.
2. Executive Regulation is processed under method 2 of the executive regulation process.
3. This regulation sets minimum standards for utilization of on-site water systems and on-site sewage disposal systems for detached and semi-detached residences, multi-use facilities and other establishments in Montgomery County where community water and sewerage systems are not available.,
4. The standards of State of Maryland regulations for On-Site Sewage Disposal Systems (COMAR 26.04.02), and Water Supply and Sewerage Systems in the Subdivision of Land in Maryland (COMAR 26.04.03), are met by these regulations. COMAR 26.04.04, which pre-empts local regulations for well construction, governs the construction of new wells; these regulations set standards for existing wells to the extent that COMAR 26.04.04, Well Construction does not.
5. The intent of these Regulations is to protect the public health and the ground water of Montgomery County by providing adequate on-site potable water supply and sewage treatment and disposal systems. Violation of these standards can result in issuance of citations and civil or criminal penalties.
6. The Transportation and Environment Committee reviewed this regulation on February 7, 1994, and recommends approval.

Action

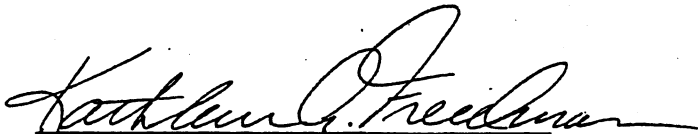
1. The Council considers that the prime purpose of this regulation is to control the construction and operation of on-site water supply and sewage disposal systems in a way that does not endanger public health or unacceptably impact the environment.

2. Within the framework established by this regulation the Council encourages the Department of Health to exercise flexibility provided for in the regulation and explore with applicants ways in which particular site restrictions may be dealt with to allow development allowed by zoning to be constructed. In particular the Council encourages the Department of Health to consider requests for waivers from the requirement of a third septic absorption reserve field in the Rural Density Transfer zone and to grant such waivers when site conditions indicate that this can safely be done and minimum mandated absorption field areas are met. The Council also requests that the statement attached to this resolution on the regulation of mound systems be considered when applications for such systems are being reviewed.

3. The County Council for Montgomery County, Maryland, approves the following resolution:

Executive Regulation 28-93AM, On-Site Water and On-Site Sewage Disposal Systems, is approved.

This is a correct copy of Council action.



Kathleen A. Freedman, CMC  
Secretary of the Council

#485/p1

HEALTH DEPARTMENT POLICY

Mound Systems

The Health Department realizes that in the agricultural zones of the County many property owners are not able to develop their land as permitted by current zoning, because the soils range from marginal to unsuitable for on-site, individual waste water treatment systems. Such land will not accept liquids at a rate which makes it permissible to construct septic systems under existing conventional tests and procedures.

In view of the foregoing, the Health Department has proposed amendments to its Executive Regulations for on-site systems, which among other things, include "Mound" septic systems, as approved by the State of Maryland as conventional systems.

Procedures for "Mound" testing must be as simple and economical as is feasible. To this end, a survey site plat for a proposed site must be submitted by a registered land surveyor. The landowner (or his agent) has the option to first try to obtain satisfactory percolation tests in the locations shown on the plat site submitted to and approved by the Health Department. This is the same process followed for conventional testing.

In the event a favorable test result is not obtained, the landowner (or the agent) may try other areas in the vicinity of the approved plan layout and in the event such new test areas appear promising or satisfactory, the Health department would be requested to conduct formal testing, which the Health department will attempt to schedule as quickly as possible. An appropriate site plan would be needed for the conduct of the tests, but an engineered and surveyed plan is not required until testing is complete. The plan would be submitted to the Health Department for approval.

The purpose and intent of this provision is identical to the purpose of the present practice as to conventional testing, that is, to eliminate the need to have repeated and costly surveys for site plat layouts for each percolation test attempt after an original failure, and to require only one additional final survey and certified plat after further testing has confirmed an acceptable location.

It is the purpose and intent of the Health department to render friendly and helpful assistance to citizen landowners to the end that they may use their property as permitted by zoning laws provided there is no significant health risk.

SMCK/cab  
#475/p20



Resolution No. \_\_\_\_\_

Introduced: \_\_\_\_\_

Adopted: \_\_\_\_\_

COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND

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By: County Council

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Subject: Executive Regulation 28-93AM, On-Site Water and On-Site Sewage Disposal Systems

Background

1. On January 21, 1994, the County Executive submitted Executive Regulation 28-93AM, On-Site Water and On-Site Sewage Disposal Systems, to the County Council.
2. The Executive Regulation was processed under method 2 of the executive regulation process.
3. This regulation sets minimum standards for utilization of on-site water systems and on-site sewage disposal systems for detached and semi-detached residences, multi-use facilities and other establishments in Montgomery County where community water and sewerage systems are not available.
4. The standards of State of Maryland regulations for On-Site Sewage Disposal Systems (COMAR 26.04.02), and Water Supply and Sewerage Systems in the Subdivision of Land in Maryland (COMAR 26.04.03), are met by these regulations. COMAR 26.04.04, which pre-empts local regulations for well construction, governs the construction of new wells; these regulations set standards for existing wells to the extent that COMAR 26.04.04, Well Construction, does not.
5. The intent of these Regulations is to protect the public health and the ground water of Montgomery County by providing adequate on-site potable water supply

and sewage treatment and disposal systems. Violation of these standards can result in issuance of citations and civil or criminal penalties.

6. The Transportation and Environment Committee reviewed the original regulation on February 7, 1994, and recommended approval.
7. The County Council approved the original Resolution No. 12-1503 on February 22, 1994.
8. Paragraph 2 of the Action section of Resolution No.12-1503, together with the Health Department Policy Attachment, are in direct conflict with the Master Plan for Preservation of Agriculture and Rural Open Space. They implicitly convey that the density limits of the RDT Zone are an entitlement, rather than an upper limit, and ignore the Adopted Master Plan restrictions on alternative septic systems. The purpose of the amended resolution is to resolve this inconsistency in public policy.
9. The Transportation and Environment Committee reviewed the amendment to Resolution No. 12-1503, which deletes Paragraph 2 of the Action section, and the entire Attachment to the Resolution pertaining to Health Department Policy on Mound Systems, on .....,2007, and recommends approval.

#### Action

1. The Council considers that the prime purpose of this regulation is to control the construction and operation of on-site water supply and sewage disposal systems in a way that does not endanger public health or unacceptably impact the environment.
2. The County Council for Montgomery County, Maryland, approves the amendment to Resolution No. 12-1503:

Executive Regulation 28-93AM, On-Site Water and On-Site Sewage Disposal Systems, is approved.

This is a correct copy of Council action.

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Linda M. Lauer  
Clerk of the Council