CHAPTER 4:
BUILDING LOT TERMINATION PROGRAM

ISSUE: Should the County support a Building Lot Termination (BLT) easement program to discourage fragmentation of farmland? Development in the Rural Density Transfer (RDT) zone can result in the fragmentation of farmland, limiting future use of this land for types of farming that require large tracts of land. While there are some types of agriculture that can be sustained on 25 acres or less, if financially competitive alternatives to development are not identified, properties may develop with residential uses that would stunt agricultural activities.

While the County reports more than 48,000 acres of land preserved through Transferable Development Rights (TDR) easements, that land is limited by easement only to uses permitted in the RDT zone and in the number of houses to be allowed. In most cases this number is one house for each 25 acres, the same as the zoning limit. It has been the practice of the Agricultural Services Division and Planning Board to recommend that the landowner retain a TDR for each 25 acres not already built upon as a potential building lot. Thus, a substantial number of potential building lots remain viable in the Agricultural Reserve. The value of lots for residential development in the Agricultural Reserve is significant, providing an incentive to sell lots for development. It is important to provide an incentive to keep a considerable amount of the land under the TDR easements in farming. To meet the goal of preserving land for farming and preventing fragmentation of the Reserve, some method of compensating landowners for the value of those buildable TDRs must be found. **We recommend a BLT Easement as one of the tools to accomplish this goal.**[56]

The target of the BLT program is those unused building lots that either have been or can be created on the RDT zoned ground. Simply put, these unused lots, along with the retained TDRs and approved septic fields that make them viable as building lots, should be eliminated for future development by the execution of an agricultural easement on the land on which the lots or potential lots are located. The landowner would be paid fair compensation for the termination of the lot(s).

I. ACTIVITY UNDER THE EXISTING LAW

Easement purchase programs fall within the scope of existing County authority.[57] There are currently seven easement programs within the County's farmland preservation toolbox, excluding TDR easements:

Montgomery County Agricultural Easement Program
Maryland Agricultural Land Preservation Foundation (MALPF) Program
Maryland Environmental Trust Program
Montgomery County Rural Legacy Program

[56] See Comment 6 by Scott Fosler, paragraph D in Appendix II.
[57] Montgomery County Code, § 2B-7.

Legacy Open Space
Conservation Reserve Enhancement Program
Forest Conservation Easements

Under these seven easement programs approximately 14,000 acres of the 77,000 acres zoned RDT in the Agricultural Reserve are protected. None of these programs would be replaced by the BLT Easement Program.

II. GROUP RECOMMENDATION TO REMEDY THE PROBLEMS

We believe that the best way to reduce potential development and prevent fragmentation of farmland in the Agricultural Reserve is to provide financial incentives that offer an attractive alternative to development. The major problems to be solved in establishing the program are what eligibility criteria are appropriate, how to prioritize applicants, how to determine a fair compensation for the building lot, and how the program can be funded. We believe that our recommendations are acceptable answers and the BLT program can be established successfully.

We agree that there are two goals and purposes of a BLT program: (1) reduce the number of buildable lots in the Agricultural Reserve while providing equity to landowners; and (2) preserve by easement as much usable farmland as possible. Some Group members feel that the primary purpose of the BLT program is to reduce the number of rooftops in the Agricultural Reserve while others feel that the primary purpose is to prevent fragmentation and preserve as much farmland as possible. Some Group members believe the motivation behind the BLT program is unimportant so long as the County implements the program, but other Group members feel that the purpose of the program matters when determining program priorities.

As with other easement programs, one feature of this program would be to give the Agricultural Preservation Advisory Board some authority to designate where additional building could occur on the parcel.

A. ELIGIBILITY

We recommend the following eligibility criteria for participation in a BLT program:

- **The Department of Permitting Services (DPS) must provide certification that an approved soil percolation site exists on the property for each lot being terminated.** DPS must also provide a sketch map locating the percolation site to be terminated in form suitable for recording as part of the agricultural easement.
- **Property owners must have retained a buildable TDR for each lot terminated.** Property owners that have utilized their buildable TDRs on a parcel (either by sale of the TDRs or to build) do not have a buildable lot to terminate.
- **Properties must not be encumbered by an existing preservation easement, except easements placed through the existing TDR program.** We believe that landowners

should not be compensated more than once for abstaining from developing their property. We recommend properties that have sold easements through the existing TDR program not be excluded from a BLT program because of the nature of the TDR easement.

- **Properties must serialize the excess TDRs through a TDR easement that is recorded among the land records.** We do not believe it is necessary to require a landowner to sell their excess TDRs, but we believe a landowner must at least serialize any remaining excess TDRs. Requiring serialization effectively ensures that a bona fide buildable TDR is conveyed to the County.
- **Properties must be at least 25 acres, or be contiguous to other land protected from development by agricultural and conservation easements.** We believe "contiguous" should be defined as one parcel touching another parcel in some manner as shown on the property deed. If one property is across the road or across a utility right of way from another property, those two properties are contiguous; if the road is dedicated, however, the two properties are not contiguous. This definition is similar to that used by the Department of Economic Development (DED) in other programs.
- **At least 50% of the land in a parcel under the BLT easement must meet USDA soil classification standards Class I, II, or III or Woodland Classifications 1 and 2.** This is a State requirement for State funding for agricultural easements and the BLT program must use this requirement to use Agricultural Transfer Tax proceeds.
- **Properties must be zoned RDT and be outside water and sewer categories 1, 2, or 3.** This is another State requirement for using Transfer Tax proceeds and therefore should be used. We do not believe, however, that the BLT program should be limited to specific geographical areas in the RDT zone.
- **Child lots are not eligible.**

B. PRIORITY

We recognize the importance of placing as much farmland under easement as possible. It is important to have a fair and transparent method for selecting properties offered for this easement. Therefore we recommend the criteria to prioritize applications should include date of receipt of a complete application (that meets all of the eligibility criteria), size of the property and farmland preservation. The Agricultural Preservation Advisory Board should assist with rankings in the event of a tie.

C. COMPENSATION

We recommend compensation be set at a percentage of the fair market value of a buildable lot in the RDT zone.[58] Annually the average value for a typical building lot in the RDT zone would be established by acquiring appraisals from at least three qualified appraisers requesting their market evaluation of a typical building lot in the RDT zone. The appraisals will also

[58] ***Follow-Up Required:*** What lot size should be used to establish value? Group members suggest lot sizes ranging from one-acre to 25-acres.

determine the residual value of property once the ability to build is terminated. The annual adjusted market value price would be a percentage of the average of the appraisals. The set value will not differentiate between lots based on their location or the quality of the building site. Compensation will involve the County's purchasing the "Permissible Residential Lot Right" TDR for each lot that is terminated.

We do not support requiring compensation based on approved lots because this option would require a landowner to expend too many resources on obtaining development review approvals. Moreover, this option may result in the landowner's opting to sell lots rather than participate in the BLT program if the owner has met all of the requirements and has an approved lot.

We recommend the County be flexible and allow an option for payments to be spread over two tax years, as opposed to requiring the County to pay a landowner in full at the time the building lot is terminated.

Since the County is purchasing buildable TDRs, the Group discussed the ultimate disposition of the purchased TDRs. Current statistics indicate that there is a significant shortage of TDR receiving areas in the County. Any buildable TDRs not converted into TDRs for non-residential uses as suggested in the section below should be terminated or held for future trading to support the BLT program. We oppose the County's selling TDRs as creating a situation which may invite market disruption (e.g., artificially setting prices too low or too high).

D. FUNDING

We recommend public funding of the BLT program. In the FY07-12 Capital Improvements Program (CIP), the County has approved $8,204,000 for the next fiscal year to purchase easements for agricultural preservation programs, including a BLT program.[59] For FY2008 $6,346,000 has been budgeted for all farmland preservation program initiatives. The Department of Economic Development (DED) estimates that $5.5 million would be available for the BLT program. The Agriculture Transfer Tax may provide ongoing funding which averages approximately $2,000,000 per year to support the existing preservation programs and the BLT easement program.[60]

Additional sources of public revenue to support the program will be necessary in the future. Possible sources of funding could include a bond issue for preservation purposes or a small limited term tax. The response to the program once it is in place will help gauge the relative demand for this program as compared with other preservation programs and determine whether the existing funding source, the Agriculture Transfer Tax, is sufficient.

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[59] The FY07-12 CIP provides for funding for the following four programs: Montgomery County Agricultural Easement Program; Maryland Agricultural Land Preservation Foundation; Rural Legacy Program; and the BLT program.

[60] It may be unrealistic for the County to approve an ongoing BLT program which is also funded by the Agriculture Transfer Tax revenue.

We also believe that the BLT program can be funded privately via the creation of a new market-driven TDR program for buildable TDRs for non-residential properties. This would require utilizing the program for buildable TDRs described in Chapter 1 on the TDR program. The County could offer non-residential TDRs to pay for all or part of the purchase price for landowners applying to the BLT program. Developers of properties in residential receiving areas would continue to buy excess TDRs, while developers of property in the new non-residential receiving areas would purchase buildable TDRs at a significantly greater cost.

E. PROCEDURE

We recommend the following procedures:

- The landowner will apply to DED demonstrating eligibility under the above stated criteria.
- DED Agricultural Services Division will review applications to assure eligibility criteria are met and the application is complete.
- The Agricultural Preservation Advisory Board will review applications for recommendations to the Director of DED.
- The County Attorney will evaluate applications and approve the Contract and Easement documents.
- The package will then be sent to the County Executive for action.
- At settlement, the landowner will be paid in cash or by an option for payments to be spread over two tax years. Our recommendation is that, when available, non-residential use TDRs could be added to the program so that they can be provided to the property owner in lieu of cash or as a component of the consideration paid under the BLT Program. Any buildable TDRs not converted under the program to non-residential TDRs should be terminated.

III. NEXT STEPS

DED should draft Executive regulations that would implement the BLT program as envisioned by the Group. For items that require follow-up work, DED should work with appropriate groups and individuals to determine how to resolve those issues.

The Planning Department should be tasked with creating a new TDR program whereby owners of non-residential properties would need to purchase buildable TDRs to increase density.

ATTACHMENT 3

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 septics) 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.

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

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

ATTACHMENT 4

Ag Land Pres Easements - N0.788911 Building Lot Termination (BLT)

Category	Conservation of Natural Resources	Date Last Modified	
Agency	Economic Development	Previous PDF Page Number	
Planning Area	Countywide	Required Adequate Public Facility	NO
Relocation Impact	None		

Expenditure Schedule ($000)

Cost Element	Total	Thru FY07	Estimate FY08	Total 6 years	FY09	FY10	FY11	FY12	FY13	FY14	Beyond 6 years
Planning, Design and Supervision	0	0 0	0	0	0	0	0	0	0	0	
Land	0	0	0	0	0	0	0	0	0	0	
Site Improvements and Utilities	0	0 0	0	0	0	0	0	0	0	0	
Construction	0	0	0	0	0	0	0	0	0	0	
Other	0	0	0	0	0	0	0	0	0	0	
Total	0	0	0	0	0	0	0	0	0	0	

Funding Schedule ($000)

Dev. Approval Fee	0	0	0	0	0	0	0	0	0	0	
ALARF	0	0	0	0	0	0	0	0	0	0	
Total	0		0	0	0	0	0	0	0	0	

Description

This project provides funds for the purchase of agricultural easements under the County Agricultural Land Preservation Legislation effectice _____, 2008. The proposed Building Lot Termination Program (BLT) enables the County to purchase preservation easements on farmland in the Rural Density Transfer Zone. The sale of development rights-preservation easements are proposed voluntarily by the farmland owner. The proposed BLT program is a component of the ZTA 08-14 TMX Zone wherein developers in Transit Mixed-Use Zones will pay a developer approval fee to the Department of Economic Development. The funds from these fees will be used to purchase development rights that have been retained in the Rural Density Transfer (RDT) Zone to build houses in accordance with the permissiable density of 1 hourse per 25 acres. The BLT represents a new enhanced farmland preservaton program tool to further protect the agricultural reserve by elimininating rooftops. The BLT program will be funded by the private sector if developers chose the optional method of development in the TMX Zone which requires the purchase of BLT/TDR easements to exceed the base zone density.

COST CHANGE

NONE

JUSTIFICATION

The addition of this enhanced farmland preservation program will address the disparity in value that exists between permissable density land value within the RDT zone from the density that is actually acheivable based upon approvals of on site septic disposal systems or other measures of performance. The value paid for terminating this acheiveable development will be a level higher than the value paid under the existing agricultrual preservation program options for eliminating potential density/development.

OTHER

Appropriations are based upon the collections of Developer approval fees associated with the optional method of development in accordance with the TMX Zone. These funds collected from developers shall be used for BLT/TDR easements exclusively.

FISCAL NOTE

Expenditures will reflect authorized payments received from TMX zone developers to be deposited into the Agricultural Land Preservation Fund for BLT/TDR Easements.

APPROPRIATION AND EXPENDITURE DATA		($000)
Date of First Appropriation	FY89	
First Cost Estimate Current Scope	FY07	0
Last FY's Cost Estimate		0
Appropriation Request	FY09	0
~~Appropriation Request~~	~~FY10~~	0
Transfer		
Cumulative Appropriation		0
Expenditures/ Encumbrannces		0
Unencumbered Balance		0
Partial Closeout thru	FY06	0
Total Partial Closeout		0

COORDINATION

State of Maryland Agricultural Land Preservation Foundation
State of Maryland Department of Natural Resources
Maryland-National Capital Park & Planning Commission
Landowners

The Executive asserts that this project conforms to the requirements of relevant local plans, as required by the Maryland Economic Growth, Resource ~~Protection and Planning~~ Act.

MAP