



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: AGRICULTURAL LAND PRESERVATION DISTRICTS & EASEMENT PURCHASES NUMBER : 31-07

Originating Department: Department of Economic Development (DED) Effective Date:

Draft

Montgomery County Regulation on:

AGRICULTURAL LAND PRESERVATION EASEMENT PURCHASES DEPARTMENT OF ECONOMIC
DEVELOPMENT

Issued by: County Executive Regulation No. 31-07

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Supercedes: Executive Regulation 66-91

Council review: Method (1) under Code Section 2A-15

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Comment Deadline:

Effective Date:

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SUMMARY: These agricultural land preservation Executive Regulations provide rules and regulations for determining the County supplemental payment for Maryland Agricultural Land Preservation Foundation purchase of agricultural land preservation easements; and establish the method of purchasing agricultural easements by the County including method of determining easement value, method of ranking offers to sell easements, and terms of payment for easements.

ADDRESS COMMENTS TO: Department of Economic Development, 111 Rockville Pike, Rockville, Maryland 20850

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BACKGROUND INFORMATION: Since 1978, Montgomery County has participated with the Maryland Agricultural Land Preservation Foundation in the purchase of agricultural land preservation easements to protect County farmland. Bill No. 56-87, Agricultural Land Preservation was enacted February 16, 1988 to increase the effectiveness of the preservation efforts in the County by enabling the County to purchase easements with the County's share of the agricultural land transfer tax directly from the farmland owner or to supplement the purchase price offered by the State. In 1992, the County approved the regulations to allow the Transferable Development Rights (TDRs) associated with the easement properties to be created rather than extinguished. In 2005, the County celebrated the 25th Anniversary of the Agricultural Reserve and several initiatives to support agriculture were identified including modification of these regulations to purchase "BLT Easements." Under this regulation, Building Lot Termination or BLT is henceforth defined as "permitted residential lot rights." The County Government may consider re-selling TDRs acquired through the Building Lot Termination (BLT) option for use in other areas subject to provisions approved by Government.



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I. Definitions:

Agricultural Easement Program (AEP): A program designed to reduce permitted residential density on agricultural lands by placing easements to preserve agricultural production capability.

Building Lot Termination (BLT) Easement Program: A program by which the County may purchase a BLT Easement on land in the Rural Density Transfer Zone (RDT) in exchange for terminating some or all of the permitted residential lot rights. Transferable development rights which are eligible for transfer into duly designated TDR receiving areas that do not equate to permissible residential lot rights on a parcel of land within the RDT Zone and are henceforth defined as "Excess TDRs" and not eligible for the BLT Easement program.

BLT Application Cap: A limitation on applications accepted which is imposed by the County when the number of applications received exceeds to total funds that are available for a specified purchase period.

BLT Adjusted Market Value Price: Is the "Price" established on an annual basis by the County Executive used for purchasing BLT easements under this regulation. Establishment of this "Price" will take into determination an analysis of appraisals/comparable sales/ land values obtained from other preservation programs expressed in terms of a percentage of the FMV of the land as determined by appraisals

Transferable 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 which may be classified in the following manner:

- a.) Buildable Transferable Development Right: is a transferable development right retained by a property owner in the Rural Density Transfer zone for the purpose of being able to build a dwelling (sometimes referred to as the 5th TDR, development TDR, or Super TDR.)
- b.) Excess Transferable Development Right: is a transferable right that can be sold to another party without impacting the landowners ability to develop in accordance with the base density of the Rural Density Transfer Zone.
- c.) Severed Transferable Development Right: is a transferable development right that is no longer attached to a sending property by virtue of an easement recorded in the land records of the County.
- d.) Extinguished Transferable Development Right: is a transferable development right that has been severed, conveyed to a developer, and the serialized number has been recorded on a development plan in a receiving area.



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- e.) Receiving Area for Transferable Development Rights: An area designated on an approved and adopted general, master, sector or functional plan appropriate for development beyond its base density through the transfer of development rights.

II. Agricultural Easement Program (AEP)

In accordance with Chapter 2B, Sections 7 through 17, the County may purchase an easement on real property to preserve agricultural land in the County. The agricultural land preservation easement will restrict residential, commercial, and industrial use of the land.

A. Eligibility - AEP Program

1. Eligible Sellers

The County will purchase easements only from the holder of fee simple title to eligible farmland, or a person or institution that has entered into a binding contract or option to purchase fee simple title to eligible farmland, if and when that person or institution takes title to the farmland.

2. Eligible Farmland - Landowners within Agricultural Zones

The County will only purchase easements on 50 acres or more of land that is zoned Rural Density Transfer, Rural, or Rural Cluster, or zoned land with significant agricultural resources, however smaller properties may be considered if they comprise at least 10 acres of cropland and are adjacent to properties protected by other State/County agricultural or conservation easements. The County may purchase easements on land that is already encumbered by a transferable development rights easement provided not all of the TDRs have been previously created and transferred. The County will evaluate the status of TDRs retained with the property and differentiate between the TDRs retained for development versus "Excess TDRs" available for transfer within receiving areas. At a minimum, a landowner must have retained TDRs with the land at the density of 1 TDR for every 25 acres to remain eligible for the maximum benefits under this program. The County will purchase easements over less than the entire contiguous acreage owned by an applicant only if the parcel is separately deeded, surveyed or subdivided, and is, in the discretion of the Agricultural Preservation Advisory Board, of sufficient size and capability to be used for agricultural purposes. One acre will be subtracted from the total eligible acreage for each dwelling on the property.

3. Additional Land Eligibility Requirements

- a. The land under consideration for easement purchase must be at least 50 acres in size; however, smaller properties that are contiguous to an existing agricultural Easements or



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several contiguous properties that in the aggregate total 50 acres meet the size requirement.

- b. At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- c. The land must lie outside water and sewer categories 1, 2, and 3.
- d. The Agricultural Preservation Advisory Board may consider other agricultural land that does not meet the above qualifications if it determines the land has significant agricultural value, is consistent with long term planning goals of the county and that it is in the public interest.

4. For the purpose of this section, land has "significant agricultural value" if it:

- a. Has a soil conservation plan approved by a local soil conservation district, fully implemented according to a schedule in the plan;
- b. Is recommended by the majority of the APAB members after an on-site inspection is conducted by one or more members of the Board or their designee; and
- c. Meets either of the following:
 - i. Has a minimum of 72 percent of the land area less any acreage included within the 100-year floodplain and less any acreage included in State or federal wetlands consisting of a combination of U.S.D.A. Soils, Class I, II, and III on cropland and pasture and Woodland Groups 1 and 2 on wooded areas.
 - ii. Has a detailed farm management plan describing the nature of the operation, including a detailed summary of viability of the resource as a profitable farm enterprise subject to the concurrence of the Montgomery County Cooperative Extension (MCE) and the Montgomery Soil Conservation District (MSCD)
- d. The APAB will provide a recommendation to the Director of DED, The Director will consider the recommendation by the APAB in the decision to either approve or deny the application.



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B. Eligible Farmland - Landowners within Non -Agricultural Zones

1. Land Eligible for Inclusion

Agricultural land within non-agricultural zones is eligible for easement purchase, provided the land meets the same requirements as stated within section II. A. 3. **and 4.** of this regulation, and approved by the County on the basis that the land has significant agricultural value, is consistent with long term planning goals of the county and that it is in the public interest.

C. AEP Easement Sales Application Requirements

The owner must submit an easement sales application to the Department of Economic Development. The application must include a completed property description as outlined below along with the owner's asking price-for the easement which-cannot exceed the calculated Maximum Easement Value. The Department of Economic Development certifies the completeness of the application.

1. The property description must include:

- a. names and addresses of all landowners of record;
- b. full names of owner's children;
- c. property address;
- d. tax map;
- e. total acreage;
- f. deed references;
- g. land use and USDA soils productive capability class;
- h. number of dwelling units;
- i. current zoning of the property;
- j. the existence of any third party interest in the property;
- k. a description of the farming operation;
- l. an inventory of farm buildings on the property; and
- m. other information necessary to evaluate property eligibility (i.e. Opinion of Title, surveys, legal descriptions, **Department of Permitting Services (DPS) Deep Trench/Sand Mound Sewage Systems Disposal Approval Letter-BLT** program only as reference in Section IV. A. 3.)

D. Permitted Activities- Lands Subject to AEP Easements

The following activities are permitted on lands encumbered by County Agricultural Preservation Easements subject to the limitations and conditions of Chapter 59 (Zoning) of the County Code:



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1. Agricultural Type Use

- a. any agricultural use of the land;
- b. operation of any machinery used in farm production or the primary processing of agricultural products, regardless of the time of operation;
- c. all normal agricultural operations, performed in accordance with good husbandry practices, that do not cause bodily injury or directly endanger human health;
- d. operation of a Farm Market for sale of farm products.

2. Residential Use

The grantor of an Agricultural Preservation Easement retains certain rights to construct dwellings needed on the farm. The grantor must apply in writing to the Agricultural Preservation Advisory Board for approval to use:

- a. one acre, or the minimum lot size required by the zoning and well and septic regulations, which ever is greater, to build a house for use by the grantor. For the purpose of this section, a grantor's ownership in the property may be legally constructed and titled as individuals, partnerships, or limited liability corporations (LLCs) provided the principles in the LLC are all related family members.
- b. up to 3 one-acre lots, or the minimum lot size required by the zoning and well and septic regulations, to build houses to be occupied by adult children of the grantor at a maximum density as determined by the following acreage calculation:
 - i. one permissible child lot for the first 25 acres;
 - ii. a second permissible child lot for properties greater than 50 acres but less than 120 acres;
 - iii. a third permissible child lots for properties greater than 120 acres in size;
- c. The grantor may request at the time of easement application, the right, intended to run with the land, to construct one (1) residential structure to support a farming operation provided;



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- i. no viable residential structures are in existence on the property at the time of easement acquisition;
 - ii. the residential structure may never be subdivided from the easement property; and
 - iii. The residential structure provided is in lieu of any future child lots.
- d. the acreage needed to construct housing for tenants fully engaged in the operations of the farm, not to exceed one tenant house per 100 acres.
- e. Any release or preliminary release issued under this regulation shall include:
- i. A statement that the owner's or child's lot may not be transferred for 5 years from the date of the final release, except on:
 1. Approval by the Agricultural Preservation Advisory Board (APAB) on the basis of severe economic hardship; or
 2. a lender providing notice to the APAB of a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure.
 3. For the purpose of this regulation, if severe economic hardship occurs as defined below, the APAB with the Concurrence of the Director of DED may allow a transfer of ownership of a child's lot earlier than the required 5 years.
 4. To obtain the relief provided under section II. D. 2. (e.) (i.) (1.) of this regulation the landowner shall:
 - (a) petition the APAB, stating succinctly the severe economic hardship that the landowner is sustaining, and providing the APAB with the following information:
 - (i) A recent financial statement which shows the owners complete assets and liabilities and a statement that the information contained in the financial statement is true and accurate;
 - (ii) Other information attesting to the severe economic hardship that the landowner is sustaining, including by way of example,



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information from mortgages, lien holders, creditors, attorney's, the Internal Revenue Service, or other third party interests who are qualified to address the economic condition of the landowner.

(b) Disclosure of information. To the extent permitted by law, the APAB shall deny public access to the information the landowner has supplied the APAB under this regulation. Nothing in this regulation shall preclude the APAB from discussing this information with the Director of DED, whose concurrence is required in any relief provided under this section.

(c) The APAB may also consider other documentation of hardship which includes any court order, writ, or decree which calls for a division of assets associated with any separation or divorce proceeding or death.

3. Restriction on Subdivisions

The owner of land in an agricultural easement must not use or subdivide the land for residential (except as provided in II. D.2), commercial, industrial, or any other non agricultural uses except as provided under this regulation.

4. Lots Created Prior to Easement Sale

Dwellings built under these provisions prior to easement sale are subtracted from the total that will be allowed after the easement is settled.

E. Establishing AEP Easement-Value

The method for establishing easement value under the Agricultural Easement Program (AEP) will be through the application of an added value formula based point system.

1. Time frame for Determination of Easement Value

The maximum value of an easement as determined by the AEP formula is determined at the time of receipt by the County of a complete easement sales application from the landowner. A landowner may have only one offer to sell an easement on a specific property pending at any one time.



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2. Maximum Easement Value and Relationship with TDRs.

The maximum value of an easement, as determined by the AEP formula, will take into account the number of TDRs retained with the property. At a minimum, 1 TDR per every 25 acres must be retained with the land in order to be eligible for the Maximum Easement Value.

3. Right to Revise/Withdraw

If the maximum easement value is determined by the County to be lower than the offer price submitted by the landowner, then the landowner may revise or withdraw the offer to sell.

F. AEP Easement Formula Valuation Procedure

Under the AEP, the maximum value of the easement is obtained by combining two separate values: (1) the per acre base value for an easement on agricultural land in the County, and (2) the added value for certain farm quality characteristics. Agricultural use of the land is determined by Agricultural Preservation Advisory Board.

1. Determining Base Value

On July 1 of each year, the County Executive determines the "Base Value" for the fiscal year. In setting the "Base Value", the County Executive considers such factors as Maryland Agricultural Land Preservation Foundation easement prices State- and County-wide, County TDR prices, and County agricultural land prices for parcels with and without agricultural easements. The base value is applicable County-wide.

2. Determining Added Value

The added value is based on several farm quality characteristics that have a direct effect on the future potential of the land to support agriculture and on the threat to the property from non-agricultural uses. These characteristics are:

- a. Size: For each five (5) acres of land, the added value is 1 percent of base value. Property size is determined from the most recent property tax assessment or other documentation acceptable to the Department of Economic Development.
- b. Land Quality: The land quality value varies by soil quality. It is 3 percent of the each 1 percent of land in U.S.D.A. Capability Class I, 2 percent for Class II and Woodland Group I, 1 percent for Class III and Woodland Group II. In addition 10 percent of base



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value is added on farms that have implemented a soil conservation plan approved by the Montgomery Soil Conservation District. The U.S.D.A. Capability Classification is determined by the Natural Resources Conservation Service (NRCS).

- c. Land Tenure: The land tenure value is 25 percent of the base value. It is applicable if:
 - i. the landowner earned gross income of at least \$5,000 annually from agricultural use of the land, on or before October 1, 1980, or
 - ii. in at least three of the previous five years, or continuously from the time the owner acquired the land, or
 - iii. the land is being purchased, under binding contract of sale, by a buyer who certifies under oath that he/she intends to start a new farming or direct marketing operation, or
 - iv. the land is being farmed by an operator under a long term lease agreement with the landowner

- d. Road Frontage: The road frontage value is 1 percent of the base value for each 50 ft. of frontage on a public road to a maximum of 100 percent of base value. Road frontage is determined by the Department of Economic Development and may be verified by the landowner by metes and bounds survey.

- e. Agricultural Zone Edge: The agricultural zone edge value will be 100 percent of the base value if a property inside the RDT zone is within one (1) mile of the border with other zones in the County, including incorporated towns. Agricultural Zone Edge value is determined by Department of Economic Development.

G. County Purchase Procedure

1. Ranking of AEP Easement Purchases

The County will accept applications to sell easements during set purchase periods. The County will hold at least one purchase period annually. The County will accept applications to sell an easement on or before the last day of each purchase period. At the end of each purchase period, applications to sell easements will be ranked by the Agricultural Preservation Advisory Board (APAB), size, quality of soils and threat of development will provide the vehicle to conduct priority rankings.

2. County Offer to Buy

- a. Upon the recommendation of the Director, Department of Economic Development and the Chief Administrative Officer, a **contract** to sell shall be approved, which contains



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the specific terms of purchase, including any TDRs not retained with the land for existing or reserved rights, shall be tendered to the landowner. Satisfaction of the requirements under these regulations by an applicant does not establish any obligation by the County to purchase an easement. An offer to buy may specify terms, contingencies, and conditions not contained in the original application to sell.

- b. The County will offer to purchase all approved easements for sale to the extent it is possible with the funds allocated. Funds for County easement purchases are allocated annually on July 1, in the Capital Improvement Projects budget.
- c. The County will tender any offer to buy containing the specific terms of purchase on or before the 60th day following the end of the purchase period when the complete offer to sell was made.

3. Rejection of Application

- a. The County will notify the landowner of any rejected application to sell on or before the 60th day following the end of the purchase period when the complete application to sell was made and whether the rejection is due to insufficient funds, ineligible land, clouded title, or other cause.
- b. Applications to sell which cannot receive offers to purchase from the County due to insufficient funds will automatically be reconsidered in the next purchase period when funds are available.

4. Landowner Acceptance

The landowner will have 30 days following the County's offer to purchase in which to accept the offer. Failure to respond after 30 days will be considered a rejection of the offer. The landowner may reject the offer to purchase up to the point of settlement. A landowner who rejects a County offer to purchase will forfeit his/her right to sell an easement to the County for a period up to twenty-four (24) months.

5. Closing and Payment

- a. Settlement will occur following landowner's acceptance of the County's offer to purchase an easement and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.
- b. Payment will be in full at time of settlement, or



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- c. Landowners can choose a partitioned payment over more than one tax year.

6. Recordation and Monitoring

The County's acquisition of an AEP easement will be recorded in the land records, in the annual report of the program, and the Department of Economic Development shall maintain a accounting referencing all TDRs created and conveyed to the County through the AEP program. DED will monitor the properties under easement at least biannually to ensure compliance with the easement.

H. Referral to State Program

For the purpose of leveraging State and County funds, the Chief Administrative Officer may, upon the recommendation of the Director, Department of Economic Development, may request that the landowner apply to the Maryland Agricultural Land Preservation Foundation and make a good faith offer to sell the easement.

III. County Supplement to Maryland Agricultural Land Preservation Foundation Easement Price

In accordance with Chapter 2B Section 3 (g.) of the Montgomery County Code the County may make an additional payment up to 15 percent of the price of the easement to the landowner upon completion of sale of the easement to the Maryland Agricultural Land Preservation Foundation to encourage landowners to choose to sell easements to the Foundation.

The County Executive will determine annually on July 1 the percentage of the price of the easement to be paid based on the success of the County in the previous year (measured by the number of easement sales) in encouraging County landowners to participate in the Foundation easement purchase program. At the discretion of the County Executive, a biannual review of the valuation may be conducted.

IV. Building Lot Termination (BLT) Easement Program

In accordance with Chapter 2B-9, the County may purchase an easement on real property to preserve agricultural land in the County. The primary purpose of the BLT program is to preserve agricultural land by reducing the fragmentation of farmland which would be impacted by residential development. The agricultural land preservation easement will restrict residential, commercial, and industrial and non agricultural uses of the land. A key feature of this program provides a mechanism to provide an enhanced level of compensation for an easement to landowners that can demonstrate the value of their land for actual residential development.

A. Eligibility



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1. Eligible Sellers

The County will purchase easements only from the holder of fee simple title to eligible farmland, or a person or institution that has entered into a binding contract or option to purchase fee simple title to eligible farmland, if and when that person or institution takes title to the farmland. Child lots, as permitted within Chapter 59 of the Montgomery County Code, are not eligible for the BLT program.

2. Land Eligible for Inclusion in BLT

- a. The land under consideration for easement valuation for the BLT under this regulation must be at least 25 acres in size; however, a smaller property maybe be considered if it is contiguous to other lands protected from development by State/County agricultural and conservation easements.
- b. At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- c. The land must lie outside water and sewer categories 1, 2, and 3.
- d. The Land must not be encumbered by Federal/State/County agricultural and conservation easements, except Land protected by Transferable Development Rights (TDR) Easements may still be eligible.

3. Application Requirements

A landowner may voluntarily request inclusion into the BLT by submitting a complete property description (see section II. C. 1.) to the Agricultural Preservation Advisory Board. The owner must submit an easement sales application to the Department of Economic Development. The application must include a completed property description (including the requirement outlined in section II. C. 1. m.- Opinion of Title, surveys, legal descriptions, Department of Permitting Services (DPS) Deep Trench/Sand Mound Sewage Systems Disposal Approval Letter-) along with an asking price. The Department of Economic Development certifies the completeness of the application.

B. Review and Approval Procedure

1. DED and the Agricultural Preservation Advisory Board shall:

- a. Establish a cap of applications which will be accepted during BLT purchase periods



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- b. Rank BLT applicants numerically from highest to lowest in accordance with the BLT Ranking Formula.
- c. The BLT Ranking Formula will consist of a maximum point value of twenty-five (25 points). Properties will be evaluated within five (5) categories and each category will consist of a maximum value of 5 points. The categories making up this numerical ranking are as follows:
 - i. Size of Property – Maximum of 20% of the Base Value.
 - a. 1 point for properties less than 25 acres
 - b. 2 points for properties 25 acres but less than 50 acres in size
 - c. 3 points for properties 50 acres but less than 100 acres in size
 - d. 4 points for properties 100 acres but less than 150 acres in size
 - e. 5 points for properties 150 acres or greater in size.
 - ii. Soil Quality – Maximum of 20% of the Base Value, determined as a percentage of USDA Soil Capability Classifications I, II, III and woodland Classification 1 and 2.
 - a. 1 point if soils comprise 50% but less than 65% Class I, II, III and Woodland 1 and 2 soils
 - b. 2 points if soils comprise 65% but less than 70% Class I, II, III and Woodland 1 and 2 soils
 - c. 3 points if soils comprise 70% but less than 75 % Class I, II, III and Woodland 1 and 2 soils
 - d. 4 points if soils comprise 75% but less than 80% Class I, II, III and Woodland 1 and 2 soils
 - e. 5 points if soils comprise 80% or greater Class I, II, III and Woodland 1 and 2 soils.
 - iii. Lot Termination Evaluation – Maximum of 20% of the Base Value. 1 point shall be awarded for every BLT lot terminated by Easement up to a maximum of 5 points.
 - iv. Land Tenure – The land tenure value is 20% of the Base Value. It is applicable if the farm is owned and operated by the landowner and is registered as a producer with the local agricultural support agencies.



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- v. Enhanced Preservation Evaluation. Maximum of 20% of the Base Value. Points under this category shall be awarded in accordance with the following criteria:
 - a. 1 point if property is contiguous to other protected land
 - b. 3 points if property is contiguous to other protected land and is within 1 mile of RDT zone border or an incorporated municipality
 - c. 5 points if property is contiguous to other protected land and is within 1/2 mile of RDT zone border or an incorporated municipality
- d. Provide notification to landowners as to the status of their application detailing the following:
 - i. DED will Review the extent of created/subdivided building lots: (i.e. recorded plat of subdivision, partially engineered lots, approved perc tests, and other factors such as preliminary testing, surveys, etc.;
 - ii. Review of previous TDR Transactions (Excess TDRs – must have been or will be created and serialized and at least buildable TDR must be intact with the property to be eligible for the program.)
 - iv. A recommendation by the DED and APAB to accept applications and proceed to settlement.
- e. Place applications for BLT easements received after the closing of a purchase period or after exceeding the application cap on a waiting list for future consideration.

C. Permitted Activities on Lands Protected under BLT

The following activities are permitted on lands protected by BLT easements subject to the limitations and conditions of Chapter 59 (Zoning) of the County Code:

1. Agricultural Type Use

- a. any agricultural use of the land;
- b. operation of any machinery used in farm production or the primary processing of agricultural products, regardless of the time of operation;



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- c. all normal agricultural operations, performed in accordance with good husbandry practices, that do not cause bodily injury or directly endanger human health;
- d. operation of a Farm Market for sale of farm products.

2. Residential Use

- a. No residential uses are permitted on lands encumbered by a BLT easement except when reserved residential rights are retained with the easement;
- b. To the extent allowed by the easement, the grantor of BLT Easement may retain certain rights to future residential dwellings. The grantor must apply in writing to the Agricultural Preservation Advisory Board prior to submission of any preliminary plan of subdivision for approval to use:
- c. Approval of retained rights shall be one acre, or the minimum lot size required by the zoning and well and septic regulations, whichever ever is greater, to build a house, unless a larger size does not interfere with the Agricultural character of the Property, as determined by the APAB;
- d. Any lot right terminated under this program, includes the termination of any on-site sewage disposal system used for the purpose of evidence as to viability of building lot right.

3. Restriction on Subdivisions

The owner of land subject to a BLT easement must not use or subdivide the land for residential commercial, industrial, or any other non agricultural uses except as provided under this regulation and contained within the terms of the easement.

D. Establishing BLT Easement-Value

Method for establishing easement value under the Building Lot Termination (BLT) Program will be through the application of a County established BLT Ranking and Easement Valuation Formula.

1. Determining the BLT Easement Base Value

On July 1 of each year, the County Executive determines the BLT Ranking and Easement



MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

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Valuation Formula Base Value "Base Value" for the fiscal year. In setting the "Base Value", the County Executive considers such factors as analysis of appraisals/comparable sales/ land values obtained from other preservation programs expressed in terms of a percentage of the FMV of the land as determined by appraisals

- a. The maximum value of a BLT easement may not exceed the maximum point value when multiplied by the base value as determined by the BLT Ranking and Easement Valuation Formula.
- b. The Fair Market Value of the land which includes the BLT Easement is the price, as of the date of the offer to sell, which the vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property were not subject to any restriction imposed under these regulations.

2. Right to Withdraw

If the landowner rejects the maximum easement value, the landowner shall withdraw the application from further consideration during that application cycle. A landowner must resubmit an application for future easement funding cycles, if the application is withdrawn due to landowner rejection of value.

3. Compensation

- a. Compensation under the BLT will involve the County purchasing the buildable TDR, defined as the "Permissible Residential Lot Right TDR", for each lot that is acquired in accordance with section IV. E of this regulation
- b. Public Funds will be appropriated through the Agricultural Preservation Capital Improvements Project (CIP). Private Sector funds contributed by developers must be certified by the Planning Board as to how the amount of funds was determined and these funds will be deposited and appropriated through the Building Lot Termination Capital Improvements Project (CIP) for BLT easement purchases only.
- c. The maximum value of a BLT easement may not exceed the maximum point value when multiplied by the base value as determined by the BLT Ranking and Easement Valuation Formula as determined above.



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- d. Upon the approval of Montgomery County Government, Buildable TDRs acquired through the purchase of a BLT easement may be used as a means of compensation in lieu of BLT payment when BLT funds are insufficient to complete the settlement.

E. Building Lot Termination Program Purchase Procedure

Under the BLT program, the maximum value of a BLT easement may not exceed the maximum point value when multiplied by the base value as determined by the BLT Ranking and Easement Valuation Formula. The Grantor of the easement shall encumber their entire property through a BLT Easement which terminates permitted residential lot rights under this option. By terminating the right, the Grantor shall forgo the right to subdivide the land for residential, commercial, industrial or any other non agricultural uses except for reserved residential rights in accordance with section IV. C. 2. of this regulation.

For each BLT Easement acquired under this program the County will create, serialize, and convey the TDR associated with the permitted residential lot rights from the grantor to the County. The future use of TDRs owned by the County must be approved by Montgomery County Government. Simultaneously to the creation, serialization and conveyance of these TDRs purchased for the BLT program under this regulation, the County shall also require the Grantor to create and serialize any "Excess TDRs" that remain with the property.

1. County Purchase Procedure

a. Ranking of BLT Easement Purchases

The County will accept applications to sell BLT easements during established purchase periods. The purchase period shall end upon the earlier of, meeting the cap of applications accepted established by the Agricultural Preservation Advisory Board, or 30 days from last application received by DED.

The County will accept offers to sell on or before the last day of each purchase period as outlined above.

At the end of each purchase period, DED will rank the properties in order from highest point value to lowest as determined by the BLT Ranking and Easement Evaluation Formula and the value determined will form the basis for the County offer to buy a BLT Easement.

b. County Offer to Buy BLT Easement

The County's offer to Buy BLT easements shall be conducted in accordance with section II. G. 2.(a.)(b.) and (c.) of this regulation.



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c. Rejection of Offer - BLT Easement

Rejections by the County's to purchase a BLT easement from a landowner shall be conducted in accordance with section II. G. 3.(a.) and (b.) of this regulation.

d. Landowner Acceptance - BLT Easement

The landowner will have 30 days following the County offer to purchase in which to accept the offer. Failure to respond after 30 days will be considered a rejection of the offer. The landowner may reject the offer to purchase up to the point of settlement. A landowner who rejects a County offer to purchase will forfeit his/her right to sell an easement to the County for a period up to twenty-four (24) months.

e. Closing and Payment - BLT Easement

The process and procedure for BLT easement closings and payments shall be conducted in accordance with section II. G. 5. (a.) (b.) and (c.) of this regulation.

f. Recordation and Monitoring - BLT Easement

The County's acquisition of a BLT easement will be recorded in the land records, in the annual report of the program, and the Department of Economic Development (DED) shall maintain an accounting referencing all TDRs created and conveyed to the County through the BLT program unless the TDRs acquired are provided to the landowner in lieu of direct compensation when BLT funds are insufficient to complete the settlement. The DED will monitor the properties under easement at least biannually to ensure compliance with the easement.



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V. Easement Termination and Repurchase.

Agricultural Easements purchased by the County, after the effective date of Bill 39-07 are not eligible for easement termination and repurchase, except in accordance with Chapter 2B-10 of the Montgomery County Code. A landowner who owns a property encumbered by an easement prior to the effective date of Bill 39-07 may, in writing, not earlier than twenty-five (25) years after an agricultural easement purchased by the County has been recorded among the County's land records, request the County to terminate the agricultural easement. Termination may be requested earlier only if the District Council zones the land under easement in a manner that precludes agricultural use as a matter of right. Any appraisal used to establish the present easement value under this section shall be considered viable up to 12 months from date of County approval. Appraisals will be ordered by the County but will be at the landowners expense.

VI. Effective Date

This regulation becomes effective 30 days after approval by the County Council.

Isiah Leggett
County Executive

Approved as to Form and Legality
Office of the County Attorney

By:

Date:

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