

PLOWING NEW GROUND

2001 Revised Edition

Questions & Answers

Agricultural and Rural Open Space

Preservation Program

Montgomery County Maryland

Caution: This document does not include any changes to the Montgomery County Zoning Ordinance made since June 2001.



Preservation of Agriculture and Rural Open Space

Throughout history the conflict between town and country has been recognized and recorded, both in fiction and in official chronicles. However, it is also documented that both communities are dependent upon each other. The producers and the consumers, the buyers and the sellers, must find an accommodation that permits each to live and work without unbearable interference. As metropolitan areas in the United States spread at ever lower density, they displace farming, pushing it further and further away from markets and direct consumers. This conflict is felt, not only in the coming of more housing and people but also in the temptation to take advantage of the value of farmland for development, a value that has become greater than what could be realized for farm use.

Montgomery County began its involvement with this conflict in 1969 when it adopted the County's General Plan, which set aside certain areas as open space while confining denser development within recognized "corridors." In 1973, the County adopted the "Rural Zone" which set a 5-acre minimum lot size for approximately one-third of the County, including most of the western area and the northern and eastern parts of the County which were undeveloped.

Unfortunately, this restrictive measure did not prevent efforts to develop subdivisions in rural areas, and the County recognized that further measures would have to be taken if the agricultural community were to survive. In the fall of 1979, the Council instructed the Planning Board to provide a comprehensive plan to preserve farmland, which would also give owners of such land an equitable method of recovering the development potential of their property.

The response from the Planning Board was the Functional Master Plan for the Preservation of Agriculture and Rural Open Space. It proposed that a defined area should be designated as *Agricultural Reserve* and rezoned to the Rural Density Transfer Zone (RDT). The primary purpose of this zone is to protect the farmland in the *Agricultural Reserve* from fragmentation. Development in the area is limited to one dwelling per 25 acres. However, the property owner has the right to sell "development rights" from their land based on the density of the prior Rural Zone (one unit per five acres) for use on property in other areas of the County specifically designated on area master plans to accommodate higher density. These "receiving zones" allow higher density development than permitted in the basic zone for the land. The "development rights" (TDR's) can also be sold to anyone interested in purchasing them on a speculative basis.

The intent of this zone is to make it possible for land in the *Agricultural Reserve* to be maintained in agricultural use, while giving owners of the land the option to take advantage of the development value of their land by selling the devel-



opment rights. This Master Plan was adopted by the County Council in the summer of 1980. Since 1980, the following events and actions have served to strengthen and expand the County's agricultural preservation program:

- Dramatic decreases in the amount of acres lost to new residential subdivisions in the *Agricultural Reserve*.
- Thousands of TDR's transferred from the Rural Density Transfer Zone.
- Designation of TDR receiving areas in 13 area master plans, and a continuing commitment to identify additional receiving areas in upcoming master plans.
- Adoption of a *County Agricultural Easement Program (AEP)*, using the County's share of the State Agriculture Transfer Tax. This program is designed to augment the *Maryland Agricultural Land Preservation Foundation (MALPF)* easement program, increase the level of voluntary participation, increase the range of eligible farmland parcels, and expand farmland preservation alternatives.
- Favorable court rulings have upheld the Rural Density Transfer (RDT) Zone and the transfer of development rights program.
- Creation of the *Maryland Rural Legacy Program (RLP)* in 1997 provided a focus on, and the funding necessary to protect large contiguous tracts of land and other strategic areas from sprawl development, and enhance natural resource, agricultural, forestry and environmental protection through cooperative efforts among State and local governments and land trusts.
- Creation of the *Montgomery County Legacy Open Space (LOS)* program in 2000 designed to conserve open space areas throughout the county as a means of protecting the environment, quality of life, and economic vitality of the county. This program identifies natural resources, urban open space, farmland and historic lands for conservation through a comprehensive countywide strategy of protection. The County's "green infrastructure" and related resources will be protected through a combination of property acquisition and conservation easements. Threatened rural farmland is only one aspect of this program, but land in the Agricultural Reserve is slated for LOS protection in multiple resource categories including farmland, natural resources, and historic properties. Legacy Open Space targets lands of exceptional significance for protection.

In the following series of questions and answers, the Planning Board is attempting to give a simple and accurate explanation of how the TDR and other



related land preservation systems affect property owners in Montgomery County. For further information on this program refer to the Functional Master Plan for the Preservation of Agricultural and Rural Open Space (and related maps) available at the M-NCPPC offices in Silver Spring.



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GLOSSARY

- Affidavit** A voluntary declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths. Affidavits are requested as part of the subdivision process to verify development potential, the number of TDR's or the identification of children as recipients of children's lots.
- Agriculture** The business science and art of cultivating and managing the soil, composting, growing, harvesting and selling crops and livestock, and the products of forestry, horticulture and hydroponics, breeding or raising livestock, poultry, fish, game and fur-bearing animals, dairying, beekeeping and similar activities. Agriculture includes processing on the farm of an agricultural product in the course of preparing the product for market and may or may not cause a change in the natural form or state of the product.
- Agricultural Processing** Processing of an agricultural product that causes a change in the natural form or state of the product and that entails operations of a commercial or industrial character that must be regulated to mitigate potential adverse external impacts. Agricultural processing includes, but is not limited to, an abattoir, milk plant and similar non-farm operations.
- Agricultural Reserve** Primary agricultural areas which include most of the remaining working farms as well as other nonfarm land uses that will serve to define and support those farms. It represents the County's critical mass of farms and is the focus of Montgomery County's farmland preservation policies.
- Base Density** The maximum number of dwelling units permitted by the zoning classification of a property in a receiving area computed over the gross area of the property without the use of TDR or the MPDU density increase.



Deed of Transfer of Development Rights	A document which conveys ownership of TDR's that were originally attached to property covered by a TDR easement that may be found among the land records of Montgomery County.
Density	The ratio of residential units to the gross acreage of the property.
Development Rights	The potential for the improvement of a parcel of real property, measured in dwelling units or units of commercial or industrial space, existing because of the zoning classification of the parcel.
Development TDR	A TDR that may be retained with the property to develop one residential unit per 25 acres in accordance with the density permitted under the RDT Zone.
Easement	<p>Either an interest in real property which grants the ability to use or to restrict the use of another person's land. Any easement (or encumbrance) goes "with the land" in any property transfer of ownership. Easements are shown on record plats in the land records of Montgomery County.</p> <p>As commonly used in the subdivision of land it is a contractual agreement in real property to gain temporary or permanent use of and/or access through, another person's property, usually for public facilities and access ways.</p> <p>As commonly used in land preservation programs it is usually a claim or liability restricting use of land that is attached to property. Because an easement may lessen the value of property, it often grants financial or other recompense to the property owner.</p>
Excess TDR	The development rights in excess of one dwelling per 25 acres which may be severed from land in the RDT Zone and sold for use on receiving sites in other locations within the County.



Farmland Assessment	Valuation of land based on the agricultural use, derived for purpose of taxation.
Master Plan	A document supported by maps indicating future land use of property within a prescribed area based on an analysis of residential, commercial, and industrial needs of the area while considering transportation patterns, public facilities, and environment concerns.
Montgomery County Council	The elected legislative body of the County that has final authority, sitting as the Regional District Council, on all matters pertaining to planning and zoning. There are nine members elected to four-year terms.
Montgomery County Planning Board	The five-member body appointed by the County Council to advise them on all matters pertaining to planning and zoning, and which is charged with administering the subdivision regulations. Of the five members, no more than three may belong to the same political party.
Optional Density In TDR Zones	The additional number of dwelling units per unit of land (additional density) above base zoning allowed when Transferable Development Rights are used.
Receiving Areas	Areas where the availability of land and public services permit higher density development through the use of TDR's. These areas are designated in master plans, and are permitted to use development rights transferred from the RDT Zone, purchased from owners of such development rights. The use of development rights permits a higher density of development than that permitted by the base zoning classification, but only up to the density recommended in an approved and adopted master plan.
Rural Cluster Zone (RC)	A zoning classification that permits, through an optional method of development, clustering of housing in areas designated Rural Open Space. It permits housing on a tract of



Rural Cluster Zone (RC) (Continued)	land zoned for one unit per 5 acres to be clustered on lots as small as 40,000 square feet (approximately 1 acre) while retaining the remaining acreage in open space which may be used for agriculture or other limited uses. The purpose of this zone is to provide designated areas in the County for a compatible mixture of agricultural uses and low-density residential development, to promote agriculture, and to protect scenic and environmentally sensitive areas.
Rural Density Transfer Zone (RDT)	The zone applied to the <i>Agricultural Reserve</i> . Actual development is limited to one house per 25 acres, with the provision that such development can be placed on lots as small as 40,000 square feet (approximately 1 acre). Property in this zone is the designated "sending area" in which development rights at one dwelling unit per 5 acres can be sold and transferred to designated "receiving areas" in the growth areas of the County.
Rural Open Space	Areas abutting suburban development where the critical mass of farms has already been eroded by subdivision activity. The preservation of remaining farmland in an appropriate combination with low density residential development is the objective.
Rural Zone	The Rural Residential Zone allowing one unit per 5 acres was adopted in 1973 and applied to a major portion of the County by Sectional Map Amendment. The area affected by this zone was reduced in size but not eliminated as a result of the agricultural preservation program. It still exists in some areas and does not allow the clustering of lots as allowed in the RDT and RC Zones.
Sectional Map Amendment	A Rezoning Process which covers a section of Montgomery County, rather than one parcel of land. It is usually initiated by the Planning Board or County Council and normally follows adoption of a master plan.



**Sending
Areas**

Areas located within the Rural Density Transfer Zone (RDT) of the *Agricultural Reserve* which are the focus of Montgomery County's preservation program. They have a basic right of development of one dwelling unit per 25 acres, but are assigned development rights for the purpose of transfer at one unit per 5 acres. They are able to "send" these "excess TDR's" to "receiving areas" in designated growth areas of the County.

**Transfer of
Development
Rights (TDR)**

The conveyance of development rights by deed, easement, or other legal instrument, as authorized by local law, to another parcel of land; and the recordation of that conveyance among the land records of Montgomery County. This conveyance is the basis for the Rural Density Transfer Zone (RDT).

**TDR Transfer
Deed**

See "Deed of Transfer of Development Rights".

**TDR
Easement
Document**

A document restricting the future construction of one family dwellings on property in the RDT Zone. The landowner is the grantor and Montgomery County is the grantee.

**TDR
Extinguishment
Document**

The document which shows that a TDR has been used on a specific property in a receiving area and that TDR is no longer available to be transferred.



Requests for copies of the
Functional Master Plan for the Preservation of Agriculture and Rural Open
Space and map should be made to
the Information and Publication Counter at
The Maryland–National Capital Park and Planning Commission,
8787 Georgia Avenue, Silver Spring, Maryland 20910-3760

If you have any technical questions regarding the program, please
contact the Community-Based Planning Division – Rural Team at the
above address or call 301-495-4555.



**The Maryland-National Capital Park and Planning Commission
Montgomery County Department of Park and Planning
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