

Farmland Preservation

PROMOTING RURAL ECONOMIC DEVELOPMENT

IN MONTGOMERY COUNTY

PURCHASE OF *Development Rights Programs*

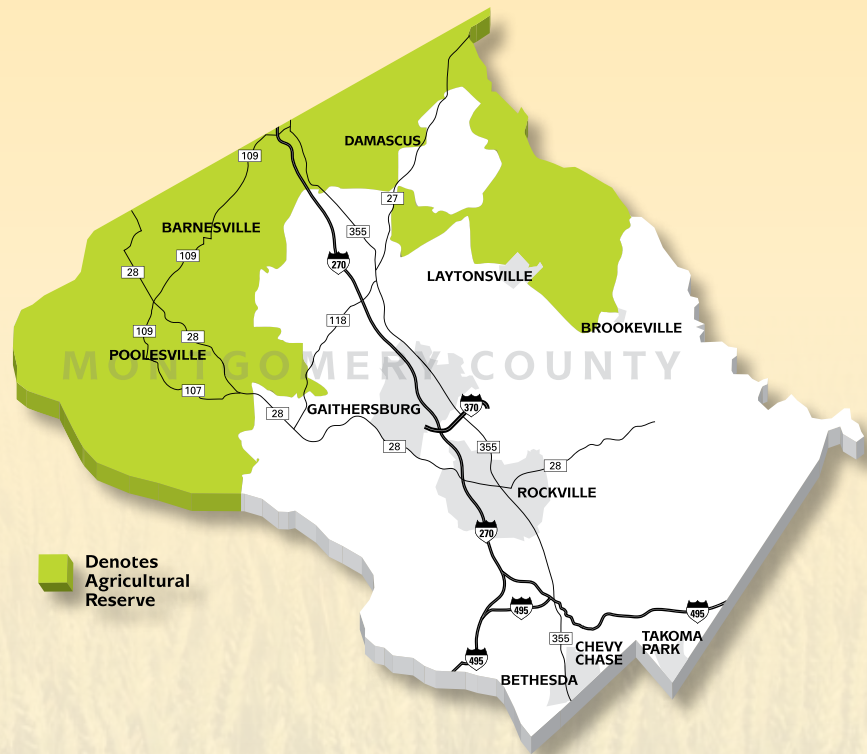


Prepared by:

The Department of Economic Development – Agricultural Services Division
and the Agricultural Preservation Advisory Board

AGRICULTURAL LAND PRESERVATION IN MONTGOMERY COUNTY

FOR OVER TWO HUNDRED YEARS, Montgomery County has been home to a strong agricultural industry. There is a long and rich farming heritage in the County; a heritage and tradition that has contributed greatly to the incredibly high quality of life that the residents of Montgomery County enjoy today. Preserving that heritage and promoting rural economic development opportunities through land preservation efforts and public policy continues to be a top priority in Montgomery County.



Today, Montgomery County has the highest percentage of farmland under agricultural land preservation easements IN THE NATION.

The most significant initiative for the preservation of agriculture here began in 1980 when almost a third of the County, or more than 93,000 acres of land, was designated as the County's Agricultural Reserve. This agricultural zone, known as the Rural Density Transfer (RDT) Zone, set a 25-acre density for subdivision of land, but allows landowners to sell development rights to areas designated for growth elsewhere in the County based on the previous zoning designation of 1 unit per 5 acres. In this way, rural landowners have been able to recapture some of the lost equity which resulted from the 1980 down-zoning while planning development in areas where the existing infrastructure can accommodate increased density. While this "transferable development rights" program has been successful, further protection measures have been necessary to preserve farmland.

Over the past thirty years, Montgomery County has become a nationally recognized leader in the field of farmland preservation. This effort is not only for the benefit of the County's farmers, but also to ensure that future generations of residents enjoy the environmental and aesthetic benefits of this wondrous open space. Through the use of permanent agricultural land preservation easements, Montgomery County has ensured that land that is zoned for agriculture cannot be re-zoned to allow denser development. Currently, almost 85% of the County's Agricultural Reserve is still being farmed, and of these lands, 90% are preserved under some type of agricultural land preservation easement. We have done this incredible work by partnering with rural landowners to utilize several agricultural land preservation programs.

The County's agricultural preservation goals are:

- **To conserve farmland for future food and fiber production.**
- **To ensure a continued high quality food supply for our citizens.**
- **To preserve the agricultural industry and rural communities.**

As farmers and landowners, you are a crucial part of this effort to preserve agricultural land. You can be both participants in, and beneficiaries of, efforts to preserve agricultural land. Aside from selling TDRs or donating easements, you can choose from four different agricultural land preservation programs in Montgomery County that will compensate you for permanently protecting your farmland. These "purchase of development rights" programs pay landowners for development rights and

place an easement on the property which prevents future commercial or industrial development of the land and places restrictions on future residential development.

These four programs are:

- **Montgomery County Agricultural Easement Program (AEP)**
- **Maryland Agricultural Land Preservation Foundation (MALPF)**
- **Montgomery County Rural Legacy Program (RLP)**
- **Building Lot Termination Program (BLT)**

You may find it economically advantageous to participate in one of these agricultural land preservation programs if you and your family intend to continue farming or if you desire to have your land protected from future development. This brochure will introduce you to each of the four purchase of development rights programs that are available to you in Montgomery County. In addition, there are donation programs and land trusts such as the Maryland Environmental Trust (MET), that you can explore. For more information on these types of programs, please visit the MET website at <http://www.dnr.state.md.us/met>. You may wish to discuss the features of each program further in order to decide which program is the most beneficial for you.

For answers to your questions or for additional information on how to participate in the agricultural land preservation programs in Montgomery County, please contact:

John Zawitoski or Jeremy Criss
Agricultural Services Division
Department of Economic Development
18410 Muncaster Road
Derwood, Maryland 20855
301-590-2810
301-590-2839 (fax)
www.montgomerycountymd.gov/agservices

COMMON TO ALL EASEMENTS

Standard Easement Conditions:

- No development or subdivision for residential, commercial, or industrial use is permitted except to create lots for the original owner, their children, or other residential rights specifically reserved by the easement.
- Dumping trash or other materials on the property is prohibited.
- All normal agricultural uses are permitted.
- No restrictions from selling the farm in the future.
- Implementation of a soil and water conservation plan.
- Agreement is necessary to allow periodic inspections of property, except building interiors.
- Easement does not grant public access to the property.
- One acre is subtracted from the payment for each existing dwelling.
- Lands precluded from further development are not eligible.
- All require implementation of Soil Conservation and Water Quality Plans (SCWQ) for farm Best Management Practices (BMPs).
- All present and subsequent owners are bound by the Deed of Easement restrictions.
- To be eligible for the maximum easement value for these programs, 1 TDR for every 25 acres must be retained with the property. Any remaining TDRs above this threshold are recommended to be legally created prior to an application to sell an easement, except for the BLT program, where any remaining TDRs above the threshold stated above must be created prior to easement settlement.

Duration of Easement:

- The easement is perpetual.

Tax Liability:

- Proceeds from the sale of agricultural easements are subject to income taxes. Please consult with your accountant for the best way to address these requirements.

Tax Benefits:

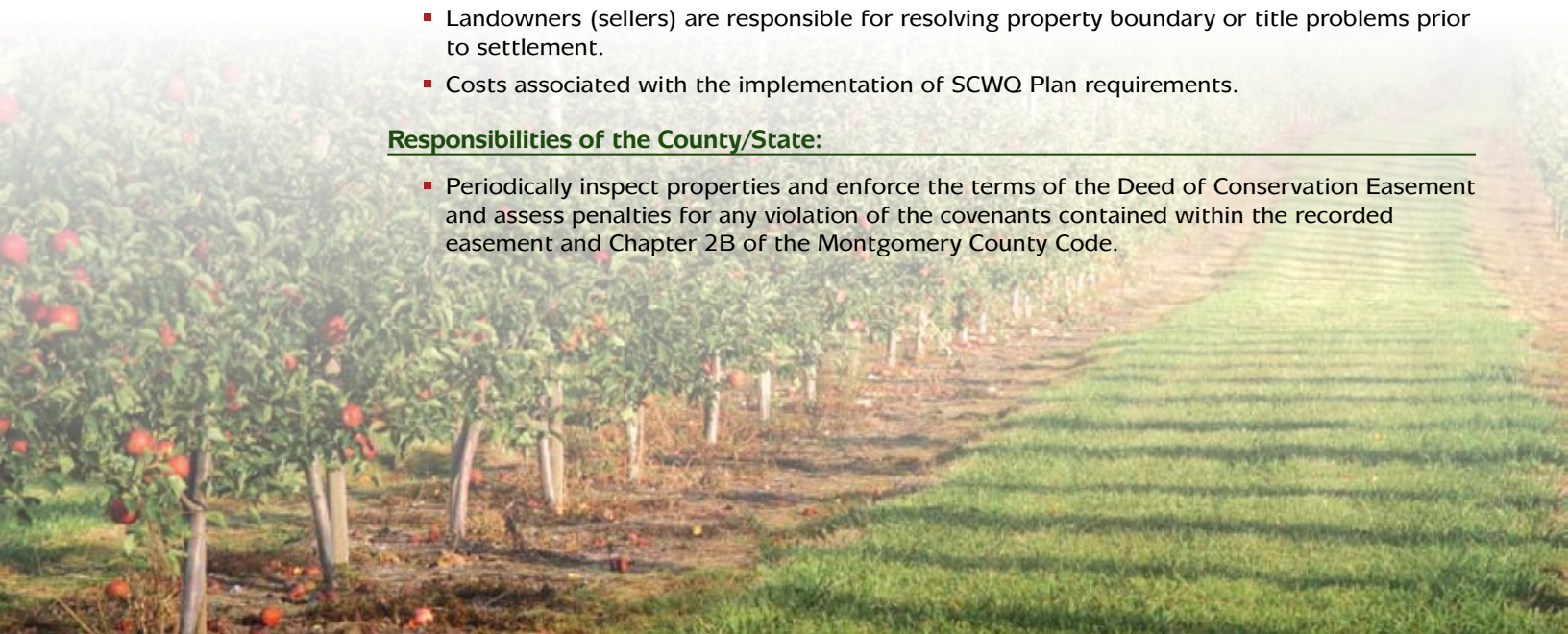
- For purposes of estate taxes, the value of the property is likely to be lower subject to the restrictions of the easement. Any remaining value of the land would still be included as part of the taxable estate.

Typical Program Costs Incurred by Seller:

- Landowners (sellers) are responsible for resolving property boundary or title problems prior to settlement.
- Costs associated with the implementation of SCWQ Plan requirements.

Responsibilities of the County/State:

- Periodically inspect properties and enforce the terms of the Deed of Conservation Easement and assess penalties for any violation of the covenants contained within the recorded easement and Chapter 2B of the Montgomery County Code.



THE MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION (MALPF)

ESTABLISHED IN 1977 by the State Legislature as a result of concern over decreasing farmland acreage caused by development. The MALPF purchases agricultural land preservation easements directly from landowners for cash. Following the sale of the easement, agricultural uses of the property are encouraged to continue.

Eligibility:

- Minimum property size: 50 acres, or 10 acres or more of cropland adjacent to other protected land.
- At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- The land must lie outside water and sewer categories 1, 2, and 3.
- Landowner must be approved by Montgomery County.

Process (Typically 12-24 months):

- Landowner files petition with the Agricultural Preservation Advisory Board (APAB) requesting application for the purchase of an easement.
- Landowner submits easement application along with asking price prior to July 1st each year.
- Foundation accepts application.
- APAB makes recommendation to the Planning Board.
- Planning Board makes recommendation to County Council.
- Public hearing with the County Council.
- County Council makes recommendation to Foundation.
- Applications are ranked.
- Two appraisals are ordered for the landowner at the State's expense.
- State makes an offer to purchase an easement on the landowner's property.
- Montgomery County may offer a supplemental payment to landowners as a means to increase incentives for MALPF if approved through County Executive Order.
- If landowner accepts, a Project Agreement is submitted to the State for Maryland Board of Public Works (BPW) approval. Once approved by BPW, the MALPF easement can be settled.
- If an offer is made and rejected by the landowner, they must wait 2 years before reapplying. If State rejects application, the landowner may reapply the following year.
- Payment can be a lump sum or paid in an agreed-upon schedule of installments in coordination with the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO) over as many as 15 years.

Method Used to Determine Easement Values:

- MALPF employs the use of two fair market appraisals. The appraisals are then averaged to arrive at the Fair Market Value of the property.
- The Restricted Value or "Agricultural Value" is determined by the use of an Agricultural Value formula.
- The difference between the Fair Market Value and Agricultural Value represents the MALPF maximum easement value.

Responsibilities of the Landowner:

- May elect at the time of easement application up to 3 reserved rights for future dwellings for an owner or their children's personal use based upon the size of the property under the following calculation: first child lot at 20 acres, second at 70 acres and the third lot at 120 acres, or

- Elect at the time of easement application the right to reserve 1 one-acre or smaller lot unrestricted by its recipient, as long as the easement property is at least a full twenty acres in size. This retained right runs with the land.
- Present and Future landowners are required to have a current (less than 10 years old) Soil Conservation and Water Quality Plan prepared and approved by the Montgomery Soil Conservation District.
- All present and subsequent owners are bound by the Deed of Easement restrictions.
- Approval must be obtained from the Foundation and the County for lot creation and agricultural subdivision.

Responsibilities of MALPF:

- Enforce the terms of the Deed of Easement.
- Review in a timely fashion all requests for approvals by landowner, as required by program.

Governing Laws and Regulations:

- Annotated Code of Maryland.
- Agriculture Article, Title 2, Subtitle 5.
- Code of Maryland Regulations, Title 15, Subtitle 15.

For further information on the MALPF program, visit www.malpf.info or visit our website at www.montgomerycountymd.gov/agsservices and select the Ag Preservation tab

MONTGOMERY COUNTY AGRICULTURAL EASEMENT PROGRAM (AEP)

ESTABLISHED IN 1987, this program gives the County the ability to purchase agricultural land preservation easements to preserve land for agricultural production. Lands eligible for participation in this program must be zoned Rural, Rural Cluster, or Rural Density Transfer, or must be determined by the County's Agricultural Preservation Advisory Board (APAB) to possess significant agricultural value. The program was created to increase both the level of voluntary participation in farmland preservation programs and expand the eligibility of farmland parcels. Since the acquisitions for this program are not dependant upon State approval, the County can process agricultural land preservation easement applications in a shorter timeframe, usually within six to twelve months. An important feature of this program is the method used to determine the agricultural easement value. This program employs the use of a formula-based system that considers farm size, soil quality, road frontage, and farm location.

Eligibility:

- Farm must be located in the Rural Density Transfer Zone (RDT), Rural Cluster Zone (RC), Rural Zone (RZ), or other zones that possess significant agricultural value.
- Minimum property size: 50 acres, or 10 acres or more of cropland adjacent to other protected land.
- One Transferable Development Right (TDR) for every 25 acres of land must be retained with the property prior to easement application to be eligible for the maximum easement value.
- At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- The land must lie outside water and sewer categories 1, 2, and 3.

Process (Typically 6-12 months):

- Landowner submits an easement application during set open purchase periods that includes an offer price to the Department of Economic Development (DED).
- DED staff assists in the completion of the application and determines the maximum easement value.
- The DED Director certifies complete easement applications and determines ranking.
- The County orders a title report and reviews the chain of title for defects or other encumbrances which may impact eligibility for further participation. Resolving any title defects, including surveys, is the responsibility of the landowner if metes and bounds cannot be certified.
- The County offers to purchase the easement through the contract of sale, which is accepted or rejected by the landowner.
- Once the contract is ratified, DED drafts easement recording documents which are then executed by all parties.
- Once easement recording documents are finalized, the easement is scheduled for settlement and funds are remitted.

Method Used to Determine Easement Values:

- On July 1st of each year, the County Executive determines the Base Value for the AEP Added Value Formula (AVF).
- The AVF is used to determine easement values. It 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 size, soil quality, land tenure, road frontage, and proximity to an agricultural zone edge.

Responsibilities of the Landowners:

- All present and subsequent owners are bound by the Deed of Easement restrictions
- Approval must be obtained from the APAB first and then the Montgomery County Department of Permitting Services (DPS) to construct dwellings on the subject property as permitted.
- May elect to reserve within a County easement the right to construct (1) one acre, or the minimum lot size required by the zoning and well and septic regulations, whichever is greater, to build a dwelling for use by the landowner.
- May elect to reserve within a County easement up to 3 reserved rights for future dwellings for children based upon the size of the property under the following calculation: first child lot at 25 acres, second at 50 acres and the third lot at 120 acres.
- Alternatively, a landowner may elect to retain within the easement the right to construct one (1) dwelling to support a farming operation provided there are no viable dwellings existing on the land at the time of easement acquisition. The landowner agrees that the requested dwelling must never be subdivided from the land under easement and the landowner agrees that the requested dwelling is in lieu of any right to future child lots. This right is intended to run with the land.
- Present and future landowners are required to have a current (less than 10 years old) Soil Conservation and Water Quality Plan prepared and approved by the Montgomery Soil Conservation District. The landowners who sell the easement to the County, are eligible to receive an incentive payment if the Soil Conservation and Water Quality Plan is implemented within two years of settlement.

Governing Laws and Regulations:

- Montgomery County Code Sections 2B-1 to 2B-18
- Bill No. 39-07
- County Executive Regulations No. 3-09AM

THE MONTGOMERY COUNTY RURAL LEGACY PROGRAM (RLP)

ESTABLISHED IN 1997 as part of the Governor's Smart Growth and Neighborhood Conservation initiative to protect our natural resources. This State program provides competitive grants to Counties/Sponsors for preserving areas that are rich in agricultural, forest, natural and cultural resources which, if protected, will promote a resource-based economy, protect greenbelts and greenways, and maintain the fabric of rural life. The RLP calculates a conservation easement value using a State-approved Easement Valuation System (EVS).

Eligibility:

- The property must be located within a designated State-approved Rural Legacy Area.
- No legal minimum size (50 acres or more is preferred).
- Requires implementation of a Total Resource Management Plan which consists of a Nutrient Management Plan, a Soil and Water Conservation Plan, and consideration for all other natural resources on the property, including wildlife and forestlands.
- Requires an environmental assessment of the property.
- Requires either a professionally prepared land survey or a certified metes and bounds property description.

Process (Typically 12-18 months):

- Landowner submits a Letter of Intent detailing their interest in participating in the program.
- DED assists in completing the Letter of Intent and determining the maximum conservation easement value.
- Property may either be included in an annual grant request to the Maryland Department of Natural Resources (DNR) for future funding or is added to the list of eligible properties within an existing grant award provided funds are available.
- If property is eligible and the landowner accepts the calculated conservation easement value, DED orders title and executes a Rural Legacy Contract of Sale with the landowner.
- A Project Agreement is submitted to the State for Maryland Board of Public Works (BPW) approval. Once approved by BPW, the Rural Legacy Easement can be settled.

Method Used to Determine Easement Values:

- The Rural Legacy EVS formula uses land attributes such as the extent of agricultural and forested lands, cultural and historic resources, and development potential to evaluate easement values.

Responsibilities of Landowner:

- All present and subsequent owners are bound by the Deed of Easement restrictions.
- Approval must be obtained from the APAB first and then the Montgomery County DPS for lot creation and agricultural subdivision.
- Landowner must implement an approved Total Resource Management Plan within 6 years.

Governing Laws and Regulations:

- Subtitle 9A, Natural Resource Article, Annotated Code of Maryland.
- Rural Legacy Manual.

For further information on AEP or RLP visit our website at www.montgomerycountymd.gov/agservices and select the Ag Preservation tab

BUILDING LOT TERMINATION (BLT) PROGRAM

ESTABLISHED BY LAW IN 2008, the primary purpose of a BLT Easement is to preserve agricultural land by reducing the fragmentation of farmland resulting from residential development. A BLT Easement restricts residential, commercial, industrial and other non-agricultural uses. A key feature of the BLT Easement is an enhanced level of compensation to a landowner who can demonstrate that their land is capable of residential development and agrees, as part of the BLT Easement, to forego residential development and permanently retire an approved on-site waste disposal system associated with the lot to be terminated under the easement. In addition to County-purchased BLT easements, in which the development rights associated with the BLTs will be retired, BLTs may also be sold directly to developers for use in designated receiving areas to increase density. These receiving areas include the Life Science (LS) (Chapter 59-C-5.473), Transit Mixed-Use (TMX) (Chapter 59-C-14.27), and Commercial/Residential (CR) zones (Chapter 59-C-15.87). Additional information and details on the applicability concerning private BLT transactions within these established BLT receiving zones can be found by accessing the Montgomery County Zoning Ordinance, Chapter 59-C. online at http://www.amlegal.com/montgomery_county_md.

Eligibility:

- The land must be located in the Rural Density Transfer (RDT) Zone.
- The property must be at least 50 acres in size. Smaller property may be considered if it is contiguous to other lands protected from development by State/County agricultural and conservation easements.
- At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- The land must lie outside water and sewer categories 1, 2, and 3.
- The Land must not be encumbered by Federal/State/County agricultural or conservation easements, except land protected by Transferable Development Rights (TDR) Easements may still be eligible.
- The land must be able to achieve a percolation rate sufficient to support an individual on-site waste disposal system as evidenced by septic system site plan approved by the Department of Permitting Services.
- Any TDRs that are retained with a parcel of land above the threshold of 1 TDR per 25 acres must be created/severed from the land prior to or simultaneously with the settlement of the BLT easement.

Process (Up to 12 months):

- The County will establish specified open purchase periods.
- Landowner submits an easement sales application to DED, including a complete property description, during the open purchase period.
- Each property is ranked and evaluated subject to the BLT Easement and Ranking Formula.
- Recommendation to purchase is forwarded to the DED Director by the APAB.

- The County orders a title report and reviews the chain of title for defects or other encumbrances which may impact eligibility for further participation. Resolving any title defects, including surveys, is the responsibility of the landowner if metes and bounds cannot be certified.
- Offer to purchase is extended to landowner in the form of a BLT contract of sale.
- If the County's offer to purchase is accepted, the landowner must agree, through the terms of the easement, to encumber all of the land in the easement sales application/contract.
- The landowner may reserve specified residential rights within the easement that run with the land.
- Once the easement is accepted and executed, settlement of the easement is scheduled.

Duration of Easement:

- An individual on-site waste disposal system site plan approved by the Department of Permitting Services associated with the BLT easement must be terminated as part of the agreement and within the Deed of Easement.
- Retained development rights are restricted in size and location and must be approved by the APAB. They run with the land.

Method Used to Determine Easement Values:

- On July 1 of each year, the County Executive determines the Base Value and the Maximum Easement Value for the BLT Ranking Formula for that fiscal year. In setting the Base Value, the County Executive considers such factors as recent prices paid for agricultural easements, including BLT Easements, within Montgomery County and recent County TDR prices and recent fair market value prices paid for fee simple acquisition of agricultural land, including prices for parcels with and without agricultural easements. The Base Value for BLT Easements is expressed as a percentage of the fair market value of a lot right as determined by the County Executive and is applicable County-wide. The price that the County will offer to pay for a BLT Easement must not exceed the sum of the Base Value and the Enhanced Agricultural Land Preservation Value as determined by the BLT Easement and Ranking Formula.

Responsibilities of Landowner:

- Approval must be obtained from the APAB first and then the Montgomery County DPS to construct dwellings on the subject property.
- All costs associated with the approval of an individual on-site waste disposal system approved by the Department of Permitting Services are the responsibility of the landowner.
- Present and future landowners are required to have a current (less than 10 years old) Soil Conservation and Water Quality Plan prepared and approved by the Montgomery Soil Conservation District.

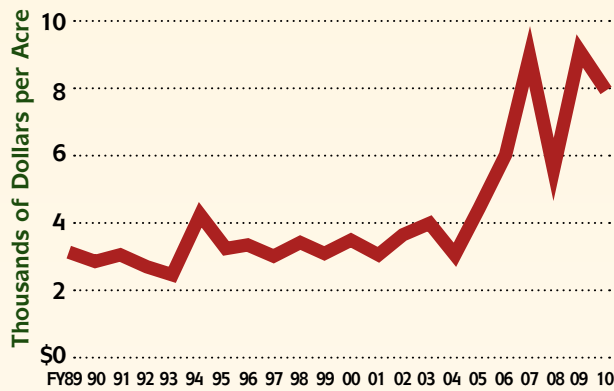
Governing Laws and Regulations:

- Montgomery County Zoning Ordinance Chapter 59-C
- Montgomery County Code Sections 2B-1 to 2B-18
- Bill No. 39-07
- County Executive Regulations No. 3-09AM

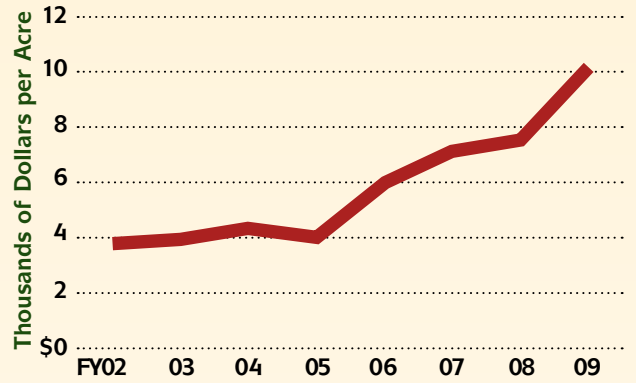
For further information on BLT visit our website at www.montgomerycountymd.gov/agservices and select the Ag Preservation tab

Preserving farmland enhances the quality of life for all residents.

AEP Prices by Fiscal Year



MALPF Prices by Fiscal Year



AEP Formula – Example

Base All farms receive 100 base points 100

Size Total farm acreage _____ / 50 = _____

Land Quality

Soil class I _____ / total _____ = _____ x 300 = _____
acres acres

Soil class II _____ / total _____ = _____ x 200 = _____
(or woodland 1) acres acres

Soil class III _____ / total _____ = _____ x 100 = _____
(or woodland 2) acres acres

Soil Conservation Plan

Approved and implemented soil conservation plan = _____
(Yes = 10 points, No = 0 points)

Land Tenure

Long-term lease agreement = 25 points
 Farmer with \$5,000 + annual gross farm income = _____
(Yes = 25 points, No = 0 points)

Road Frontage

Total feet of road frontage _____ / 50 = _____
(maximum 5000 ft.)

Agricultural Zone Edge

Within 1 mile of the RDT zone border = _____
(Yes = 100 points, No = 0 points)

Total Points _____

Maximum Easement Value

Total Points _____ x Base Value \$ _____ = Max. Value _____

BLT Formula – Example

BLT Fair Market Value (FMV) _____

BLT Base Lot Value (60% of FMV) _____

Maximum Easement Value (85% of FMV) _____

Enhanced Preservation Value

Soil Quality – % Class I, II, and III

50 – 64.99%	2 points
65 – 69.99%	4 points
70 – 74.99%	6 points
76 – 79.99%	8 points
> 80%	10 points

Total Points _____

Farm Size

Less than 25 acres	0 points
25 – 49.99 acres	1 points
50 – 74.99 acres	2 points
75 – 99.99 acres	3 points
100 – 149.99 acres	4 points
> 150 acres	5 points

Total Points _____

Land Tenures 5 points

Farm owned and operated by landowner who is registered as a producer with Agricultural Agencies or the landowner holds a long-term lease with a producer (1 point for every year of lease up to a maximum of 5 points)

Total Points _____

Enhanced Preservation Value =

Total Points _____ x (Max Easement Value – Base Value) / 20 points

Total Easement Value =

BLT Base Value + Enhanced Preservation Value