

Proposal to Improve the Calvert County Land Preservation Program

Introduction:

Preservation of agriculture and the rural character of the county has been a goal in every Calvert County comprehensive plan since the 1974 Pleasant Peninsula Plan. With the support of the farm community, Calvert was the first in the state and one of the first in the County to adopt transferable development rights legislation. For its size, Calvert has one of the most successful land preservation programs in the state.

However, since the 2007 Recession, private sector purchase of development rights is at a fraction of previous sales due to the depressed housing market and the difficulty in making TDRs work in the town centers. In addition, Calvert County has struggled to maintain the previous level of funding of its purchase of development rights programs. The problem is now exacerbated by the Maryland Sustainable Growth & Agricultural Preservation Act of 2012 (SB 236) which limits the number of residential lots on septic systems in rural areas. As a result of the law, lands within the Rural Community District may no longer be viable receiving areas for significant numbers of development rights as called for in the Comprehensive Plan.

There are over 12,500 TDRs that have been certified and the potential for an additional 4,500 TDRs from Agricultural Preservation Districts that are recorded but have not created TDRs yet. At the same time opportunity for development right transfers is very limited. Retaining the County's rural character remains a top priority in the Comprehensive Plan and higher commodity prices and the farm-to-table food movement are revitalizing the local agricultural industry. More and more, consumers recognize the freshness and variety that local suppliers provide. Food recalls have caused consumers to be concerned about where their food comes from. They want to know their farmers and how their food is produced.

According to the Southern Maryland Agricultural Development Commission (SMADC), the food budget of families within the five county region is \$3.7 Billion. As reported in the 2007 census, Southern Maryland farmers only captured \$8.8 million or 0.24% of the total Southern Maryland Food Budget. A number of states boast a much higher capture rate of the local food budget. For example, North Carolina has set a goal of reaching 10% of local food purchases to build a sustainable local food economy (<http://www.ncsu.edu/project/nc10percent/learnmore.php>). In Southern Maryland, each 1% share of the region's food budget would improve the local economy by \$37 million.

What is a sustainable pattern of Development Rights Sales?

The last decade has seen an artificially inflated residential housing market followed by the greatest housing recession in over three decades. These two trends have had profound impacts on the land preservation program. First, average development rights value rose from approximately \$2,300 in 2003 to \$8,500 by 2007. After the 2007 Recession, development rights value plummeted. Worse, there was no market. Total sales went from 716 in 2003 to 72 in 2012.

Until the housing bubble, TDR sales had averaged between 500 to 600 TDRs per year and TDR value had grown roughly 3% per year. To rebuild the program, the County should look toward a goal of roughly 500 - 600 TDRs per year, with a TDR value that more closely reflects the market and long-term trends of the past, not the inflated prices for TDRs that occurred during the housing bubble.

Proposed steps to improve the Land Preservation Program

I. Create a Market for 500 - 600 TDRs sold (or Acres preserved) per Year

While this may seem like a daunting task, the tools are in place to accomplish the goal. When the goal to reduce residential buildout to 37,000 households was first established in 1998, the county proposed to achieve the goal by adopting zoning density changes and purchasing half of the remaining development rights through county and state land preservation programs. The zoning changes were completed in 2003. The land preservation tools were created and funded. However, land preservation funding for county and state programs was cut during the Great Recession.

Over the long haul, existing programs could be utilized to use and retire 500-600 TDRs or preserve new acres per year.

| Source | TDRs sold or acres preserved per year |
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| A. Developer purchase of 300 TDRs per year for construction of 60 homes | 300 TDRs |
| B. County Purchase of 200 TDRs per year using the PAR fund or LAR fund | 200 TDRs |
| C. State land preservation Programs: MALPF or Rural legacy | 100 Acres |

A. Developer purchase of 300 TDRs per year for construction of 60 homes.

1. Amend TDR requirements in the town centers to vary the number of TDRs required to the type of house and lot size. Delay the requirement to purchase TDRs until the permit stage of development.
2. Negotiate with the Maryland Department of State Planning to allow remaining Rural Community District to be used for receiving areas despite the Maryland Sustainable Growth & Agricultural Preservation act of 2012. Preserving the ability to use TDRs in the Rural Community District would ensure that the 300 TDR yearly goal is achieved sooner rather than later.

B. County purchase of 200 TDRs per year using and PAR fund and LAR fund.

1. The County should no longer offer to buy TDRs at inflated prices. The County could either offer to purchase at the Market average or the PAR fund could be revised to allow land owners to offer their TDRs at their own discounted price, similar to the Maryland Agricultural Land Preservation Foundation (MALPF) program. That could reduce the county cost and allow for more TDR purchases. Funding could include matching funds from SMADC, the state transfer tax, and the county recordation tax that was increased in 1999 to promote land preservation and lower residential buildout. \$500,000 could purchase at least 100 development rights.
2. Over the next five years, utilize the remaining general assembly authority for the Leveraging Program of \$6,554,695. This money alone could buy 1,300 to 1,600 development rights.
3. As the future generations will benefit from the preservation of farmland and the rural character of the county, it makes sense to use bond funds.

C. State land preservation Programs: MALPF or Rural legacy

Now that the economy is recovering, the state increased funding of both programs this year. The County should be proactive in encouraging farm owners to apply for the Maryland Agricultural Land Preservation Foundation (MALPF) funds and for Rural Legacy funds.

D. Timing.

The private sector will be the last TDR market to recover as the County will need to first revise TDR requirements in town center ordinances and negotiate with the state concerning the Rural Community District before developers will be able to proceed with projects. Therefore, on the short term, the County should utilize County and State programs to kick-start the Program by holding a round of PAR purchases and a LAR acquisition in FY 14 and MALPF and Rural Legacy applications in FY 15.

II. Other Initiatives

A. The Small Lots to TDRs Program.

Place a moratorium on the certification of development rights under Section 5-1.09 of the Zoning Ordinance and consider amendments to no longer allow TDRs for the purpose of encouraging owners not to build on substandard residential lots. At the time of its creation, this program played a role in the County's effort to reduce residential buildout by encouraging owners of lots created before zoning to sell development rights recording restrictive covenants on those lots. Many of these lots would not meet current county environmental standards and a concern was that their development would further degrade county waterways. State regulations now address this issue.

B. Facilitate the use of Forest Conservation TDRs to meet the Forest Conservation Act.

1. A County owned Forest Conservation TDR Bank would encourage the use of more TDRs for Forest Mitigation. Commercial properties are called to retain existing forest on a site where possible. When those options are exhausted, there is a prescribed sequence for forest mitigation. First preference is given to onsite and then offsite afforestation and reforestation by the developer. After those afforestation and reforestation options comes the purchase of Forest Conservation TDRs. Regular TDRs are upgraded to FC TDRs with a replat that establishes Forest Retention Areas. Doing so permanently protects an acre of forest for each TDR converted and has the added benefit of using a TDR without shifting additional residential density elsewhere in the County. There is a potential for the County to facilitate the use of FC TDRs by eliminating the delays associated with converting the TDRs and waiting for the Forest Retention Area to be created. A County owned Forest Conservation TDR Bank would allow developers to quickly and easily obtain FC TDRs. Developers needing small amounts of FC TDRs would be able to purchase the needed FC TDRs from the County. The first step to creating the bank would be to explore if the County could use a portion of the existing forest Fees-In-Lieu funds to set up a Forest Conservation TDR bank.
2. Fees-In-Lieu prices need to be raised to cover the actual costs. Fees-In-Lieu are the final mitigation option and should be a practice of last resort. Fees-In-Lieu go into a fund and it becomes the County's burden to find land to reforest and protect. The Fees-In-Lieu are currently set at \$0.45 a square foot. Yet we know from the Critical Area program that it costs the County closer to \$1.00 per square foot to reforest even when the land is donated by homeowners. For the Fees-In-Lieu program, the County would need to add the additional cost for compensating the landowners for putting perpetual restrictions on their land on top of the expense of actual reforestation. Developers often petition to pay Fees-in-Lieu rather than buy FC TDRs or do other mitigation practices. If the fees were closer to the actual costs, developers would be more willing to purchase FC TDRs to meet their mitigation requirements.

C. Revise the criteria for the land preservation program to only allow the best remaining active working farms.

A combination of enthusiasm for conservation and some creative Agricultural Preservation Districts by developers have caused our land preservation program to lose some of its original focus. The program is intended to be an agricultural preservation program. The goal is to preserve the best working agricultural lands in the County to help stabilize our local agricultural industry, especially during the vulnerable transition from tobacco crops. New Agricultural Preservation Districts generate new TDRs which compete with existing TDRs and should be allowed sparingly. The APAB proposes to severely restrict the criteria for new Agricultural Preservation Districts to only allow the best remaining working farms.