

Certification of County Agricultural Land Preservation Programs
Re-Certification Request – Anne Arundel County
(Summary of Certification Letter dated April 12, 2007)

We are pleased to recertify the County for the period from July 1, 2007 through June 30, 2009. We also want to point out two other significant matters:

- We believe that there are a few program deficiencies it will be important for the County to address to remain certifiable after July 1, 2008, when the new requirements for Priority Preservation Areas for certified counties go into effect. The new requirements were established by the Agricultural Stewardship Act of 2006. We hope to work with you to see that the County has the opportunity to meet the new requirements in a timely manner. Please review them with appropriate staff and county officials, and contact us as soon as possible for any questions or clarification. We would be happy to meet with you, or with anyone else you wish, on the subject.
- There are a few reporting requirements we requested as part of the County's program evaluation and development strategy, in response to last year's interim certification report, which were not included in the County's recertification report (noted in the body of the letter). Please provide them as soon as convenient.

We will cover existing issues and reporting requirements first, followed by a brief discussion of new requirements of the Agricultural Stewardship Act of 2006. As you would expect, there is considerable overlap between them.

Existing Issues

We have enclosed the checklist used to review the County's annual report. The checklist itemizes each of the reporting requirements and our comments on the information provided in the report. We ask that you review the checklist and our comments, and advise us if you have any questions, or if we have misunderstood your program in any way.

The County significantly improved its program through the elimination of family conveyances. This important step forward notwithstanding, we have several concerns and suggestions, made in earlier certification reviews that, in our view, remain unresolved or relevant:

- The easement acquisition program is relatively inactive—even compared to many rural Counties—and a number of recent acquisitions have been fee simple. With some effort the County can reach its preservation goal of 20,000 acres by 2010, and we are pleased to hear that the pace of easement acquisition should increase dramatically in FYs 2007 and 2008. However, it is still not clear that this level of preservation can serve the County's long-term goals for agriculture, or those of the State.
- In our review of last year's interim certification report we expressed some concern about agricultural preservation subdivision, which we understood as a way to ease the transition away from family conveyances. We thought that it might allow significant fragmentation. You have allayed our concerns somewhat on three matters:
 - a. The landowner must have a minimum of two development rights to extinguish in order to enter the County's program
 - b. The APFO exemption is allowed only for lots reserved on properties under easement;
 - c. The agricultural preservation subdivision was not designed as a method to replace the family conveyance law. It was created to protect landowners who currently have reserved lot rights under the State and County program. It will also allow a landowner to retain a lot right under the County easement program and child's lots or unrestricted lot rights under the MALPF program. However, it will not provide any subdivision or development rights to a landowner who is not in one of the preservation programs.

In the letter that accompanied our review of the interim certification report last year, we asked that

the recertification report provide a summary of the amount of subdivision that is occurring under this provision. This summary was not included. We would still like you to provide it in the next interim certification report, which is due on October 1, 2007.

- The following text from the Checklist, section IV.3.a., pertains to the old, small lots platted in the South County:

The County reports that a number of small parcels, "established long before the adoption of subdivision regulations in the 1950's," exist in the South County (2006 Certification Report, page 5). Anne Arundel County plans to update the General Development Plan soon, and the certification report recommends that a "more logical zoning category ... be applied to these long-time existing legal parcels that are well below the 1:20 ratio."

As we interpret this, the County may "upzone" smaller parcels that exist in the agriculture zone. Since other Counties have these smaller parcels in their agriculture zones, we are not sure of the benefit of making this change. More important, is there anything the County can do to eliminate small lots that were platted many years ago but not built? Such a change could lower the development capacity of the South County.

This is another matter that the next certification report must address in detail. Upzoning will simply result in more development in the designated preservation zone. This would seem to contradict the preservation intent.

- The County previously decided not to pursue a TDR program. However, we think that a TDR program should be reconsidered in light of the development pressure that will arrive with BRAC. We think the BRAC-induced demand for housing and offices presents an excellent opportunity for creating a TDR program.

New Requirements

As you know, the Agricultural Stewardship Act of 2006 (HB 2), passed by the Maryland Legislature, requires certified counties to establish Priority Preservation Areas (PPAs) in their comprehensive plans and manage them according to certain criteria, and makes other substantial changes in the Certification Program. A County's PPA must:

- Contain productive agricultural or forest soils, or be capable of supporting profitable agricultural and forestry enterprises where productive soils are lacking;
- Be governed by local policies that stabilize the agricultural and forest land base and provide time for easement acquisition before goals are undermined by development;
- Be large enough to support the kind of agricultural operations that the County seeks to preserve, as represented in the comprehensive plan; and
- Be accompanied by the County's acreage goal for land to be preserved through easements and zoning in the PPA equal to at least 80% of the remaining undeveloped areas of land in the area.

The comprehensive plan must:

- Establish appropriate goals for the amount and types of agricultural resource land to be preserved in a PPA.
- Include maps showing the County PPA.
- Describe the kinds of agricultural production the County intends to support and the amount of development the County intends to allow.
- Describe the way in which preservation goals will be accomplished in the PPA, including:
 - The County's strategy to protect land from development through zoning;
 - The County's strategy to preserve the desired amount of land with permanent easements;
 - The County's strategy to maintain a rural environment capable of supporting the kind of

production intended.

- Include an evaluation of the ability of the County's zoning and other land use management practices to do the following:
 - Limit the impact of subdivision and development;
 - Allow time for easement purchase; and
 - Achieve the goals of the Maryland Agricultural Land Preservation Foundation (MALPF) program before they are irreparably undermined or impaired by development.

Our review of Anne Arundel County's program suggests that there is a rough equilibrium between the relatively slow pace of preservation and the relatively slow rate – for an urban County – at which agricultural land is subject to the agricultural land transfer tax. The question that must be addressed for certification under the new regulations is whether or not an increase in easement acquisition, coupled with the County's recently updated zoning and land use management tools, can achieve State and local goals before resource land is excessively undermined by development.

To meet the new requirements, shortcomings in program effectiveness must be corrected by July 1, 2008, or, we must be able to conclude that they will be corrected by the County's next recertification date of July 1, 2009. We suggest that the best way to accomplish this is through a joint State/County effort, in which we are prepared to assist.