

# 1 MISSION


During the Summer of 2008, the Board of Supervisors created the Rural Areas Subcommittee. The Board asked the group to study the County's rural areas and identifying the factors that are impacting the area's rural character and the County's fiscal responsibilities. The Subcommittee is also in charge of studying the different tools that the State has enabled the County to use and to determine which of these are best for Frederick County.


The Subcommittee's goal is to identify the tools that will help to preserve the community's rural character and assure a fiscally and environmentally responsible future for the County.


Before it makes a recommendation to the Board of Supervisors, the Rural Areas Subcommittee is seeking the public's input, so please let them know what you think.


# 2 OVERVIEW OF STATE - ENABLED GROWTH MANAGEMENT TOOLS


 **Comprehensive Policy Plans.**  
The County has a Comprehensive Policy Plan and regularly updates it. The Frederick County Planning Commission and Board of Supervisors evaluate proposed developments and consider whether they are in accordance with the Comprehensive Policy Plan.


 **Urban Growth Boundaries.**  
The County has a defined Urban Development Area. A locality's comprehensive plan can designate areas which are planned for immediate or long-term utility service, thereby coordinating rezonings and utility extensions to achieve an orderly, efficient development pattern.


 **Cluster Development Zoning.**  
The 'Rural Preservation Subdivision' is the County's cluster development option. Under cluster zoning provisions, a residential subdivision is designed so that the dwelling units are clustered together on smaller-than-average lots, with the remaining land mass permanently designated as open space or for agricultural uses.


 **Large Lot Zoning.**  
The 'Traditional 5 acre Lot' is Frederick County's large-lot development option. Large lot zoning sets a minimum lot size (usually between 10 and 40 acres) that is large enough to protect agricultural activities from non-agricultural land uses. If minimum lot size is large enough, large-lot zoning can help discourage residential development and reduce public infrastructure costs.


 **'Special Exception Permitting.'**  
The County has a Conditional Use Permit (CUP) and Rezoning process but does not require CUP's or Rezoning for residential developments in the Rural Areas. Uses allowed by special exception are those considered to have a potentially greater impact on public than those uses permitted by right in that zoning district. The state allows localities to determine which uses will require a CUP and this can include residential development. When CUP's are required, a locality can impose separate, specialized regulations or conditions on the site to mitigate adverse impacts.


 **Agricultural and Forestal Districts (AFD).**  
The County presently has three AFD's. State Code allows localities to create AFDs at the request of landowners who must assemble at least 200 acres of contiguous land for inclusion in the district. Districts last from 4 to 10 years and can be renewed and inclusion in an AFD provides landowners with some extra protection against certain public infrastructure improvements, and from some forms of development including residential subdivisions.


 **Historic Districts.**  
The County's Historic Resources Advisory Board, encourages property owners to participate in the voluntary establishment and expansion of historic districts. Localities are authorized by the State to establish Historic Districts for designated historic landmarks and defined 'historic areas,' including adjacent properties and land contiguous to road corridors leading to such areas. Establishing an Historic Overlay District provides a locality with authority to guide the details of a neighborhood's visual character.


 **Use Value Assessment and Taxation.**  
The County's use value assessment program is called 'Land Use' and is widely used in the county. The Land Use program is a state-guided program that allows localities to tax farmland and open space land at its use's value (a substantially lower rate than the fair market value). The intent of the program is to promote agricultural activities by accommodating landowners interested in leaving their farmland, forestland, and open space undeveloped.

 **Sliding Scale Property Tax Rates.**  
The County doesn't currently have a Sliding Scale program. The State allows localities to reduce a property's taxes based on the number of years that the landowner agrees not to develop the property, (up to 20 years). The State limits participation in this program to landowners already in a land use program.

 **Conservation Easements & Purchase of Development Rights (PDR).**  
The Frederick County Conservation Easement Authority (CEA) actively pursues donated conservation easements, educates the public about easements, and has an active Purchase of Development Rights program. A conservation easement is a legal agreement between a landowner and a land trust or government agency that permanently limits a property's further development in order to protect its agricultural/environmental value. When conservation easements are purchased as part of a broad government program, it is typically called the Purchase of Development Rights.

 **Leasing of Development Rights (LDR).**  
The County doesn't currently have an LDR program. The state allows counties to establish LDR programs that limit a property's rights to be developed for a certain number of years in exchange for payments to, or tax benefits for the landowner. To date, no locality has enacted an LDR program. This may be because most qualifying land already receives substantial benefits from land use tax deferral programs, thus making the terms of an LDR program less attractive to landowners.

 **Transfer of Development Rights (TDR).**  
The County doesn't currently have a TDR program. The State TDR program option allows Counties to establish a system where some or all of the rights to develop a parcel of land in one district (the sending district) can be sold / transferred to a parcel of land in a different district (the receiving district). The TDR is a tool used to preserve open space, farmland, water resources and other resources in areas where a locality wishes to limit or curtail development.

 **Private On-Site Health System Regulations.**  
The County's requirements are the same as those of the State. The Virginia Department of Health (VDH) regulates the minimum standards for private on-site health systems constructed within the County. Recognizing that the site conditions, (such as soil quality) vary throughout the state, the VDH allows localities to establish additional requirements beyond the state's minimum standards in order to protect homeowners, and the area's environmental integrity.

 = A tool that the County currently uses.

 = A tool that the County does not currently use.

*Note: Frederick County is not allowed to use tools that have not been approved by the state. This means that potential growth management tools such as the use of Impact fees are not an option for Frederick County.*

# 3 STATE-ENABLED OPPORTUNITIES FOR FREDERICK COUNTY

## OPPORTUNITIES WARRANTING FURTHER CONSIDERATION IN AN EFFORT TO ADDRESS RURAL AREA RESIDENTIAL GROWTH

STATE ENABLED OPPORTUNITIES THAT PROMOTE AGRICULTURAL ECONOMY & VIEWSHED PRESERVATION

### Subdivision Layouts: Preservation Tracts & Cluster Lots

**Existing Clustering Ordinance:**  
The Frederick County clustering ordinance is called the "Rural Preservation Lots" subdivision option and requires a 40% set-aside parcel.

**Existing Clustering Ordinance:**  
The Frederick County clustering ordinance allows the creation of cluster lots as small as 2 acres.

**Potential Option:**  
Increase the set-aside or "Preservation Tract" from 40% to 50% or 60%.

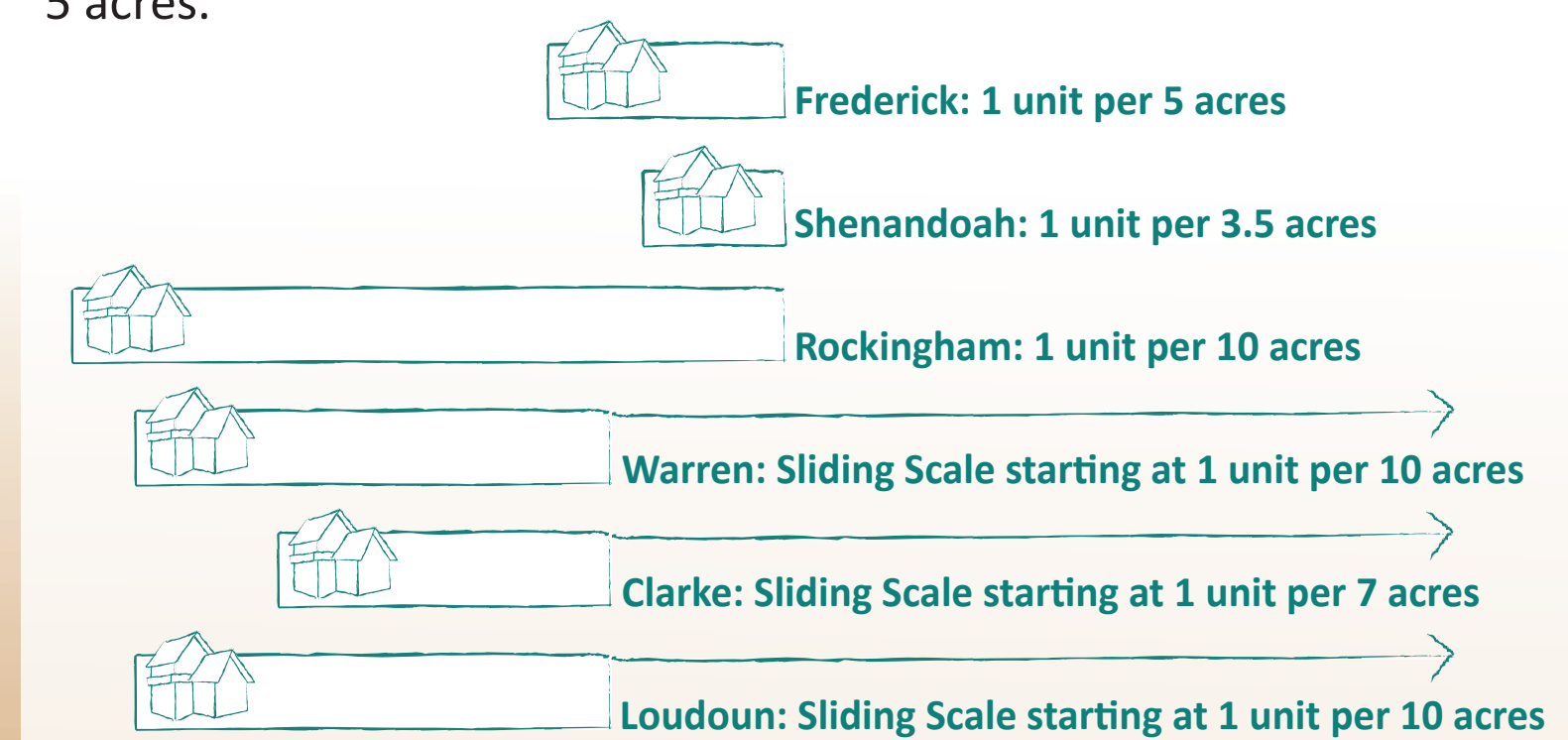
**Potential Option:**  
Promote the creation of larger set-aside tracts by setting a maximum lot size for the cluster lots (as a complement to the existing ordinance standards).



**Existing Traditional Lot Ordinance:**  
The Frederick County large-lot ordinance is called the "Traditional Five-Acre Lots" subdivision option and requires that a lot created under this ordinance be at least five acres. (Note that the Traditional Lot Subdivision option may not be an efficient use of land.)

### Residential Density: Reducing 'By-Right' Housing Density

**Existing Ordinance:**  
The existing County ordinance allows a 'by-right' density of 1 unit per 5 acres.



**Our Neighbors:** The County's existing lot density is shown here in comparison with the allowed, rural area densities of neighboring counties.

**Potential Option:**  
Decrease the allowed density in the rural areas. This would reduce the number of housing units constructed in the rural areas, and thus reduce the fiscal impacts levied on the County.

Note that the recent growth rates result in some 300 new homes constructed in the rural areas annually. Current capital facility fiscal modeling (Development Impact Model) projects that each of the new single family homes constructed in the County places a negative impact of \$23,818 on the County's capital infrastructure. This equates to a projected unmet capital fiscal impact of \$7,145,400, annually. These unmet costs include impacts on the County's Schools, Fire and Rescue, Parks and Recreation. In addition to these costs, there are also significant impacts on the transportation system.

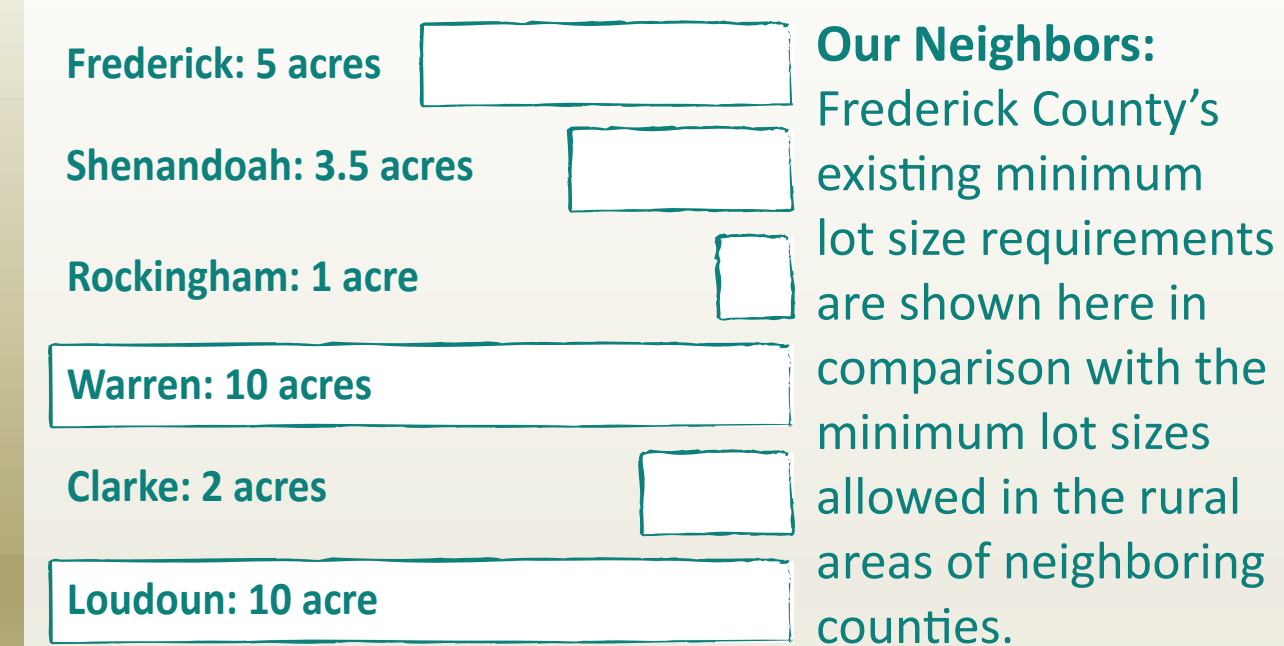
A Reduction in the County's allowed density could reduce capital facility fiscal impacts:

- 1 unit per 10 acres would generate impacts of \$3,572,700 annually – not including transportation impacts.
- 1 unit per 20 acres would generate impacts of \$1,786,350 annually – not including transportation impacts.

STATE ENABLED OPPORTUNITIES THAT MITIGATE ENVIRONMENTAL & FISCAL IMPACTS TO THE COUNTY

### Lot Sizes: Minimum & Maximum Acreages

**Existing Ordinance:**  
The minimum lot sizes allowed in the Frederick County ordinance are 2 acres for cluster subdivisions, and 5 acres for traditional lot subdivisions.



**Potential Option:**  
Maintain the 2 acre minimum lot size. (Note that, based on the recommendation of soil/health system experts, the minimum lot size should be at least 2 acres in order to adequately accommodate an appropriate private, on-site health system.)

**Existing Ordinance:**  
The existing ordinance does not contain a maximum lot size requirement for any of the Rural Area Subdivision Options.

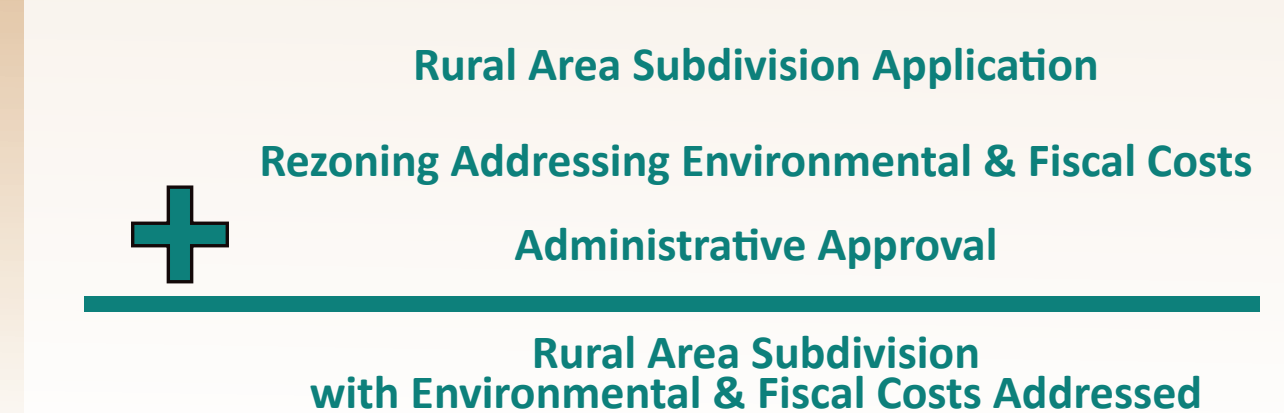
**Potential Option:**  
Establish a maximum lot size of 3, 4, or 5 acres for the cluster subdivision option in order to encourage the creation of larger set-aside tracts.

### Approval Process: Administrative Approvals & Rezonings



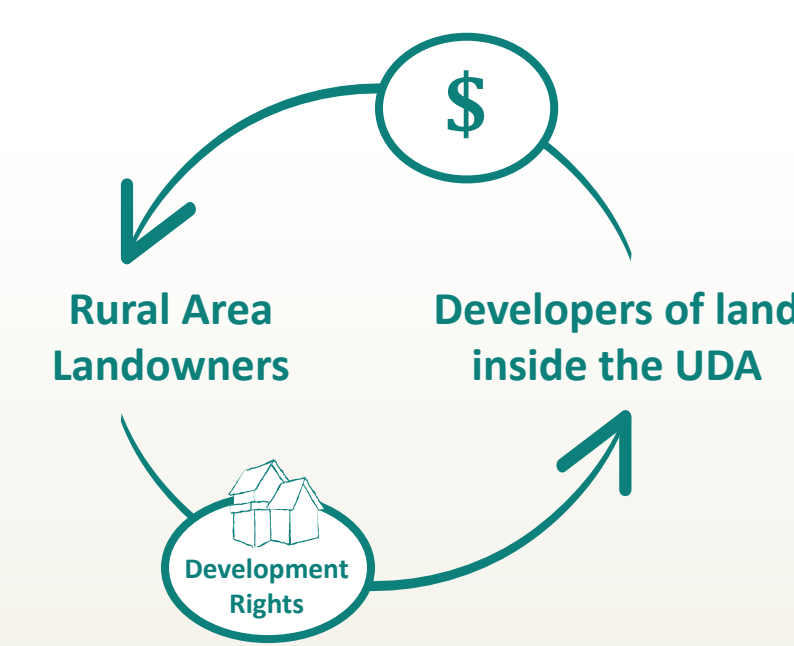
**Existing Ordinance:**  
The existing ordinance allows rural area subdivision applications to be approved through an administrative process ('by-right'). This has left the County with no opportunity to address fiscal impacts generated by the development and has eroded the County's agricultural economy and environment.

**Potential Option:**  
Enable and require a rezoning for developments that exceed 1 unit per X acres. This would enable developers to mitigate the fiscal and environmental impacts generated by the development.



**Potential Option:**  
Maintain the existing ordinance which allows By-Right development at a density of 1 unit per 5 acres. This would leave fiscal impacts unmitigated, and efforts to maximize protection of the environment would go unrealized.

### TDR's & PDR's: Transfer of Development Rights & Purchase of Development Rights

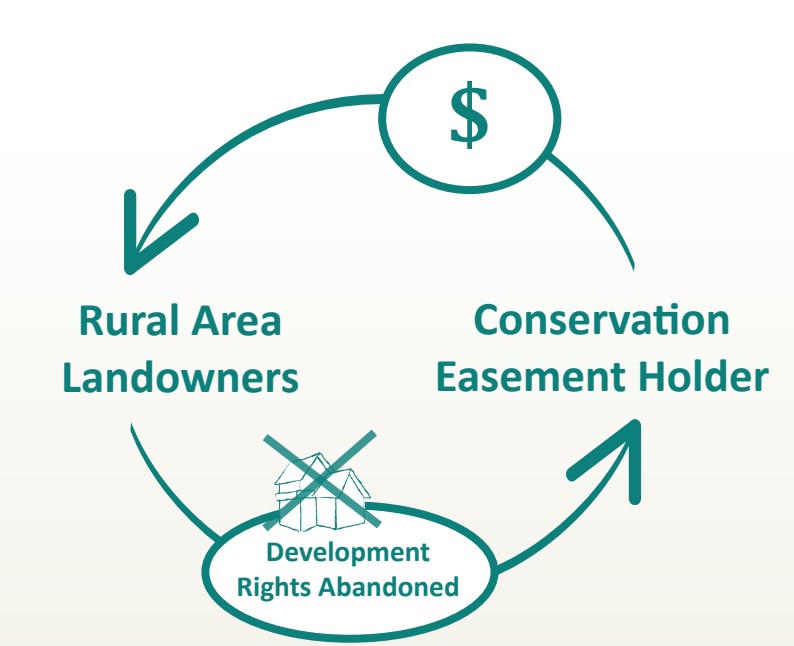


**Existing Ordinance:**  
The County does not have an ordinance for the Transfer of Development Rights (TDR) Program. However, State Code does enable the County to adopt and implement a TDR program. A TDR program would enable farmers to sell their development rights, but maintain their ownership of the land, which then allows them to continue with agricultural activity.

**Potential Option:**  
Establish a TDR program that allow land owners of key agricultural soils to access the equity from their land holdings without having to actually develop their property.

A TDR program could designate prime agricultural soils as the "sending areas," and UDA-planned residential as the "receiving area."

While a TDR program does help to preserve rural land and support rural landowners, the transferred development rights are still used to build homes in other parts of the County. This would mean that without impact fees, the County would not be able to recover fiscal impacts of the development (i.e. Costs such as Schools, fire and rescue, and roads).



**Existing Ordinance:**  
The County ordinance allows the Conservation Easement Authority (CEA) to hold conservation easements and if federal, state, or local Purchase of Development Rights (PDR) funding is available, the ordinance allows the CEA to purchase conservation easements.

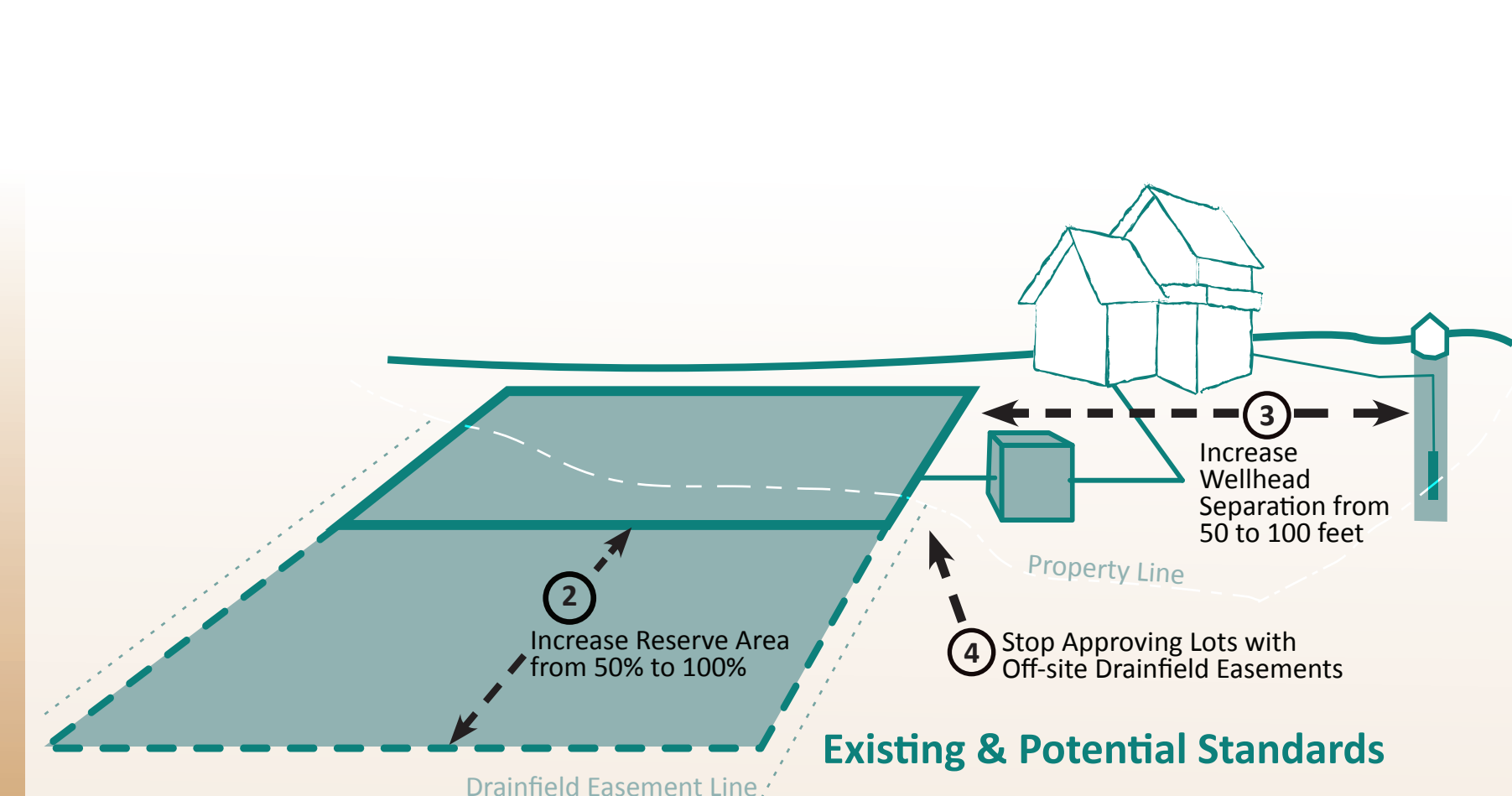
A PDR program would enable farmers to sell their development rights, but maintain their ownership of the land, which then allows them to continue with agricultural activity.

Instead of being used elsewhere, under the PDR program, the development rights are abandoned/retired so that the houses are never constructed.

**Potential Option:**  
Continue to seek out and secure state and federal grants, and other creative financing methods, to further the County's existing PDR program.

While the PDR program does help to preserve rural land and support rural landowners, the funding for PDR programs usually comes from a government (taxpayer) or, through rather limited, small-scale private grants and donations.

### Private Health Systems: Private Health System Types & Design Standards



**Potential Options:**  
1. Establish limitations on experimental and provisions systems. These types of systems are not necessarily tested for appropriateness for the County's soil type, and may fail more often than general approval systems. Neighboring jurisdictions more closely regulate use of such systems.

2. Establish a requirement for 100% drainfield reserve areas. This would provide homeowners with assurance that if their primary health system failed, an adequate reserve drainfield area would be available to serve the residence. Most neighboring jurisdictions require a 100% drainfield reserve area.

3. Establish 100 ft. wellhead separation distance from drainfields. The increased separation will provide better protection against well contamination. Neighboring jurisdictions more often require 100ft separation distances.

**Existing Ordinance:**  
The County's existing ordinance follows the state's minimum standards:

1. All health system approval types are allowed: general approval, provisional, and experimental.
2. 50% drainfield reserves required.
3. 50 ft. wellhead separation distance required from drainfields.
4. Off-site drainfield easements are allowed.
5. No operation and maintenance requirements for alternative health systems.

4. Prohibit off-site drainfield easements on lots not dedicated as open space. This would provide homeowners with greater control over their own health systems. Currently, Frederick County is one of the only jurisdictions that broadly allows off-site drainfield easements.

5. Establish operation and maintenance (O&M) requirements for alternative health systems. Many of the newer health systems are more complex than conventional drainfields, and require operation and maintenance oversight in order to avoid failure. The Virginia Department of Health will require O&M on certain systems beginning July 2009, but application and enforcement has not been determined. O&M would prolong the life expectancy of the health systems, and help protect against groundwater contamination.

### Tax Programs: Sliding Scale & Land Use

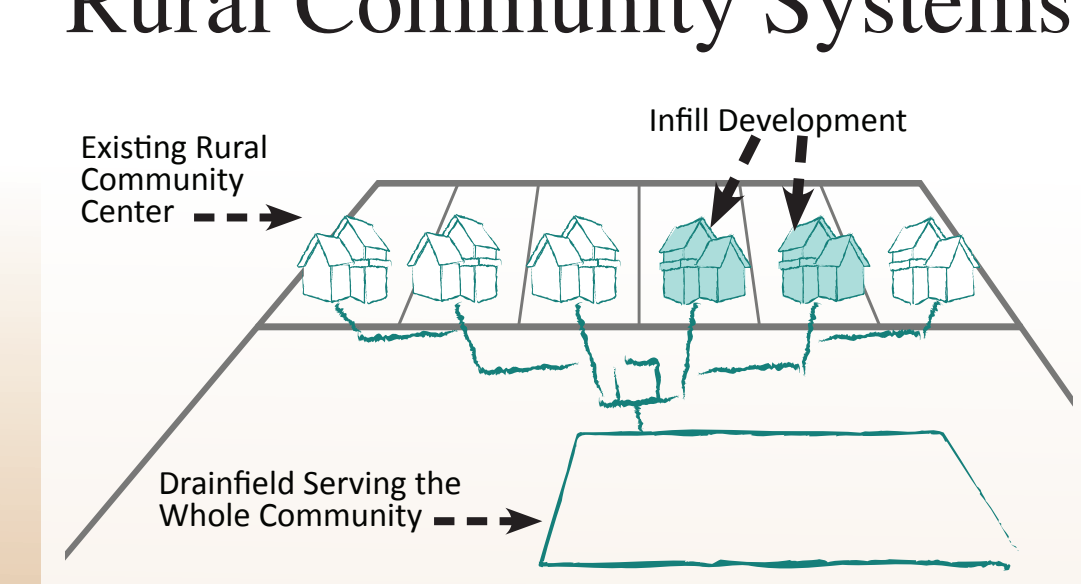
**Existing Ordinance:**  
The County is already using the "Land Use" Assessment Tax program. This allows for a reduction of real estate tax if the property is in an active qualifying agricultural or forestry use.

The Sliding Scale Land Use Program is a state-enabled opportunity that allows the County to defer as much as 100% of a property's real estate tax, if that property owner commits to not developing the land for 20 years. This Sliding Scale program is currently not in use in the County.

**Potential Option:**  
Expand the current Land Use program to include the Sliding Scale Land Use option, which offers greater tax relief for properties committed to preservation of land for up to 20 years.

Note that preliminary research indicates the current real estate assessments placed on agricultural lands are so low, the sliding scale program would offer little if any incentives to commit to long term preservation.

### Community Systems: Rural Community Systems



**Existing Ordinance:**  
The County's existing ordinances do not allow health systems which serve more than a single property.

**Potential Option:**  
Establish an opportunity to use community health systems in existing Rural Community Centers (such as Gainesboro, Gore, Hayfield, Brucetown, etc.) in order to assist existing residents with challenged health systems. This will also allow for and promote new infill development within the Rural Community Center, supporting new growth opportunities and the construction and operational cost of the community systems.

Note that community systems are most effective in more dense environments such as the Rural Community Centers, where lots are smaller, and homes closer together.