

Bill No. 39-07
Concerning: Agricultural Land
Preservation – Amendments
Revised: 11-18-08 Draft No. 6
Introduced: December 11, 2007
Enacted: November 18, 2008
Executive: November 25, 2008
Effective: February 24, 2009
Sunset Date: None
Ch. 37, Laws of Mont. Co. 2008

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

- (1) conform County law concerning the purchase of agricultural easements to the requirements of State law; and
- (2) generally amend County law governing the purchase of agricultural easements.

By ~~[[repealing]]~~ amending

Montgomery County Code
Chapter 2B, Agricultural Land Preservation
~~[[Section 2B-1 through and including 2B-19]]~~

~~[[and re-enacting~~

Montgomery County Code
Chapter 2B Agricultural Land Preservation
Section 2B-1 through 2B-17]]

Boldface

Underlining

~~[Single boldface brackets]~~

Double underlining

~~[[Double boldface brackets]]~~

* * *

Heading or defined term.

Added to existing law by original bill.

Deleted from existing law by original bill.

Added by amendment.

Deleted from existing law or the bill by amendment.

Existing law unaffected by bill.

The County Council for Montgomery County, Maryland approves the following Act:

28 *Productive agricultural land:* Land determined to be eligible to be
 29 included in a state agricultural district in accordance with regulations
 30 promulgated by the foundation.

31 *State agricultural district:* An agricultural district established under
 32 subtitle 5 of title 2 of the Agricultural Article of the Annotated Code
 33 of Maryland.

34 (b) In this chapter, the following words and phrases have the meanings
 35 set forth in subtitle 5 of title 2 of the Agriculture Article of the
 36 Annotated Code of Maryland:

- 37 (1) Allocated purchases;
 38 (2) County;
 39 (3) Eligible county;
 40 (4) General purchases of easements;
 41 (5) Matching purchases of easements; and
 42 (6) Total amount to be allotted.]

43 **[2B-2. Agricultural preservation advisory board; establishment; membership;**
 44 **terms of office; duties and responsibilities.]**

45 [(a) *Generally.* The agricultural preservation advisory board operates
 46 under state law to perform the duties and responsibilities set forth
 47 below.

48 (b) *Composition.* The agricultural board consists of five (5) -members
 49 appointed by the county executive and confirmed by the county
 50 council. Three (3) must be owner-operators of commercial farm land
 51 earning fifty (50) percent or more of their income from farming. All
 52 members of the agricultural board must be residents of Montgomery
 53 County.

- 54 (c) *Terms of office.* The original members must be appointed as follows:
55 One (1) member must be appointed to a term of three (3) years; two
56 (2) members must be appointed to terms of four (4) years; and two (2)
57 members must be appointed to terms of five (5) years. Thereafter, the
58 terms of office are for five (5) years. A member may not serve more
59 than two (2) successive full terms. Appointment to a vacancy must be
60 for the remainder of the unexpired term. Members must not be
61 compensated for their services, but may be reimbursed for necessary
62 expenses.
- 63 (d) *Duties and responsibilities.* The agricultural board is assigned the
64 following duties and responsibilities as provided under subtitle 5 of
65 title 2 of the Agriculture Article of the Annotated Code of Maryland:
- 66 (1) To advise the county governing body with respect to the
67 establishment of state and county agricultural districts and the
68 approval of purchases of easements by the foundation within
69 the county;
 - 70 (2) To assist the county governing body in reviewing the status of
71 state and county agricultural districts and land under easement;
 - 72 (3) To advise the foundation concerning county priorities for
73 agricultural preservation;
 - 74 (4) To promote preservation of agriculture within the county by
75 offering information and assistance to farmers with respect to
76 establishment of state and county agricultural districts and
77 purchase of easements; and
 - 78 (5) In addition to those duties prescribed by state law, the board
79 should:

- 80 a. Delineate areas of productive agricultural land in the
81 county.
- 82 b. Recommend to the county executive procedures for
83 mediation or arbitration of disputes as to values of
84 easements being considered for purchase by the county.
- 85 c. Review and make recommendations to the governing
86 body on regulations proposed for state and county
87 agricultural districts, and perform other duties as may be
88 assigned by the county council or county executive.
- 89 d. Prepare and/or review recommendations to the governing
90 body with regard to county policies and programs for
91 agricultural preservation.
- 92 e. Cooperate with the planning board, the cooperative
93 extension service and the soil conservation district in
94 carrying out its responsibilities.]

95 **[2B-3. State agricultural districts; procedures for establishment.]**

- 96 [(a) The procedures provided under subtitle 5 of title 2 of the Agriculture
97 Article of the Annotated Code of Maryland must be followed with
98 regard to the review of petitions to establish state agricultural districts
99 and the recommendation of the county council to the foundation. The
100 recommendation of the council to the foundation must be by
101 resolution.
- 102 (b) Other agricultural land may be added to a state agricultural district
103 provided the owner applies for the land to be included, the state
104 district meets acreage requirements without inclusion of such land,
105 and each parcel is at least five (5) acres.

106 (c) State districts may be established within the ten-year water and
107 sewerage envelope of Montgomery County only if the land is
108 outstanding in productivity and is of significant size.]

109 **[2B-4. Activities and land uses permitted in state districts.]**

110 [(a) Permitted uses. Notwithstanding any other provisions of this Code,
111 the following activities are permitted in districts in conformance with
112 the county policy that agriculture be the preferred land use in districts:

- 113 (1) Any agricultural use of land.
114 (2) Operation at any time of any machinery used in farm
115 production or the primary processing of agricultural products.
116 (3) All normal agricultural operations performed in accordance
117 with good husbandry practices which do not cause bodily injury
118 or directly endanger human health.
119 (4) Sale of farm products produced on the farm where such sales
120 are made.

121 (b) Land uses not permitted in districts.

- 122 (1) Subdivision or use for residential, commercial or industrial
123 purposes is not permitted within agricultural districts; provided,
124 however, upon written application to the foundation,
125 conveyance of one (1) acre for the landowner and one (1) acre
126 for each child of the person owning the land at the time the land
127 enters into a district shall be permitted for the construction of
128 the principal residence for the grantee or child and does not
129 constitute residential subdivision for commercial purposes. A
130 landowner within a district may also construct housing for
131 tenants fully engaged in operation of the farm; provided that, in

- 132 no case shall the average density of tenant housing exceed one
 133 (1) house for each one hundred (100) acres of land in the farm.
 134 (2) Public access or use is not granted by virtue of purchase of an
 135 easement by the foundation or the county unless specifically
 136 provided for in the easement contract.
 137 (3) Condemnation of any land within a district for public use shall
 138 not occur unless other reasonable alternatives do not exist.
- 139 (c) Enforcement of regulations.
- 140 (1) The Department of Permitting Services enforces this Chapter
 141 and any regulations adopted to implement this Chapter.
 142 (2) If, in the enforcement of regulations adopted pursuant to this
 143 Chapter, conflict occurs between County laws or regulations
 144 concerned with land use, economic activity, noise and
 145 environmental controls and regulations adopted pursuant to this
 146 Chapter, the agricultural district regulations shall supersede
 147 such other conflicting regulations.
- 148 (d) Appeals. An aggrieved individual may file an appeal to the County
 149 Board of Appeals within 30 days after a decision of the Director of
 150 Permitting Services made under this Section.]

151 **[2B-5. Agricultural easements.]**

- 152 [(a) Purchase of easements by the foundation.
- 153 (1) The purchase of easements by the state of either general or
 154 matching allotted purchases is governed by, subtitle 5 of title 2
 155 of the Agriculture Article of the Annotated Code of Maryland.
 156 (2) Agricultural easements must be recorded in the land records of
 157 the county; provided, that recordation of an agricultural
 158 easement is not subject to any local transfer tax.

159 (b) Additional county payment. If the foundation purchases an easement
 160 on land in a state agricultural district, the county may make an
 161 additional payment to the landowner of up to fifteen (15) percent of
 162 the price of the easement. The county executive must annually
 163 establish the percentage used to determine the payment.]

164 **[2B-6. Termination of state easements.]**

165 [Termination of easements purchased in full or in part with state funds must
 166 comply with subtitle 5 of title 2 of the Agriculture Article of the Annotated Code
 167 of Maryland.]

168 **[ARTICLE 11. PURCHASE OF EASEMENTS BY THE COUNTY.]**

169 **[2B-7. Eligible land.]**

- 170 [(a) The county may purchase an easement under this article on land:
- 171 (1) Without establishment of a county agricultural district if it is
 172 zoned Rural, Rural Density Transfer, or Rural Cluster; or
- 173 (2) That is in a county or state agricultural district.
- 174 (b) The county may not purchase an easement under this article on land
 175 on which further development is already precluded.
- 176 (c) An owner of land subject to a county easement under this article that
 177 is not located in a county agricultural district has the same rights and
 178 is subject to the same restrictions as an owner of land located in a
 179 county agricultural district.]

180 **[2B-8. Approval of county agricultural districts.]**

- 181 [(a) Land in a county district must:
- 182 (1) Include at least fifty (50) contiguous acres;
- 183 (2) Meet USDA soil classification standards I--III or woodland
 184 classifications 1 and 2 on at least fifty (50) percent of the
 185 acreage; and

186 (3) Lie outside water and sewer categories 1, 2, and 3. However,
 187 the council may establish a county district that includes other
 188 land if the council decides it has significant agricultural value
 189 and, after considering the recommendation of the master plan
 190 for the area, determines that it is in the public interest to
 191 establish the county district.

192 (b) The council may establish conditions to its approval of a county
 193 district that it considers in the public interest.]

194 **[2B-9. Procedures to establish a county agricultural district.]**

195 [(a) The council may establish by resolution one (1) or more county
 196 agricultural districts.

197 (b) At the request of an owner of agricultural land, the agricultural board
 198 may recommend that the council establish a county agricultural
 199 district or include the owner's land in a county agricultural district.

200 (c) Upon receipt of a request from an owner to establish a county district,
 201 the agricultural board must notify any adjacent property owner of the
 202 request and of applicable approval procedures. An adjacent property
 203 owner must be notified, in writing, of any public hearing on the
 204 request.

205 (d) Within sixty (60) days after receiving a request, the agricultural board
 206 must forward a written recommendation to the council. This
 207 recommendation may be to:

208 (1) Approve;

209 (2) Deny; or

210 (3) Recommend modification of the request.

211 (e) Upon receipt of a request of an owner to establish a county district,
 212 the agricultural board immediately must forward a copy of that

213 request to the planning board for review. The planning board must
 214 submit written comments to the council within thirty (30) days after
 215 receiving the agricultural board's recommendation on the request. The
 216 planning board's period for comment may be extended for up to
 217 fifteen (15) days.

218 (f) Within sixty (60) days after receiving comments from the planning
 219 board, the council must act on the request.

220 (g) (1) After receiving the recommendations, the council must hold a
 221 public hearing on the request unless it waives this requirement.

222 (2) The council may extend the period of action by up to one
 223 hundred twenty (120) days.

224 (3) If the council takes no action within the applicable time period,
 225 the request is denied.

226 (h) The council may not include a landowner's property in a county
 227 district without the landowner's consent.]

228 **[2B-10. Procedures to terminate a county agricultural district.]**

229 [A landowner may withdraw from a county district by giving notification in
 230 writing to the agricultural board and the county council:

231 (a) No earlier than five (5) years from the date the council includes the
 232 owner's land in the district; or

233 (b) After the county has rejected the purchase of an easement on the
 234 landowner's property.

235 In a county district that contains land from more than one (1) landowner, if a
 236 landowner's withdrawal from the district causes the district no longer to meet
 237 requirements for a county district, the council may reevaluate the district after
 238 receiving the recommendations of the agricultural board and the planning board.]

239 **[2B-11. Use of land in a county agricultural district.]**

- 240 [(a) Except as prohibited by the zoning ordinance, these activities are
241 permitted in a county district:
- 242 (1) Any agricultural use of land;
 - 243 (2) Operation of any machinery used in farm production or the
244 primary processing of agricultural products, regardless of the
245 time of operation;
 - 246 (3) All normal agricultural operations, performed in accordance
247 with good husbandry practices, that do not cause bodily injury
248 or directly endanger human health; and
 - 249 (4) Operation of a wayside stand for sale of farm products.
- 250 (b) Subsection (a) does not alter the special exceptions applicable to the
251 zone in which the county district is located under the zoning
252 ordinance.
- 253 (c) A person who owns land that the council has included in a county
254 district must not use or subdivide the land for residential, commercial,
255 or industrial uses. However, a grantor may use no more than:
- 256 (1) One (1) acre, or the minimum lot size required by the zoning
257 and health regulations, whichever is greater, to build a house for
258 use by the grantor;
 - 259 (2) One (1) acre, or the minimum lot size required, whichever is
260 greater, to a maximum density of not more than one (1) house
261 per twenty-five (25) acres for each house built, to be occupied
262 by an adult child of the grantor, to a maximum of ten (10)
263 children; and
 - 264 (3) The acreage needed to construct housing for tenants fully
265 engaged in the operations of the farm, not to exceed one (1)
266 tenant house per one hundred (100) acres. The owner or the

267 owner's child must not further subdivide the parcel on which
 268 the house is built. The land on which a tenant house is
 269 constructed must not be subdivided or conveyed to any person.
 270 The tenant house must not be conveyed separately from the
 271 original parcel.]

272 **[2B-12. Purchase and value of easements.]**

273 [(a) The county agricultural land preservation fund is created as a special,
 274 nonlapsing revolving fund for agricultural land preservation purposes.

275 It consists of:

- 276 (1) The county's share of the state agricultural transfer tax;
- 277 (2) Easement repurchases and reimbursements; and
- 278 (3) Any other available monies for the purchase of easements under
 279 this article.

280 (b) Monies from the county's share of the state agricultural' transfer tax
 281 and any revolving funds must be used for the purposes of this chapter
 282 before the expenditure of any other funds.

283 (c) The county may purchase an easement on real property to preserve
 284 agricultural land in the county. To purchase an easement, the county
 285 may use:

- 286 (1) Negotiations;
- 287 (2) Competitive bidding; or
- 288 (3) Any other method that is fair and equitable to the owners of
 289 agricultural land.

290 (d) The purchase price may be based on an appraisal or any other
 291 evidence of value of the easement that the county is receiving.

292 (e) Priority for purchasing easements should be based on:

- 293 (1) Price;

- 294 (2) Whether the land is designated in the master plan as
295 agricultural;
- 296 (3) Whether the land borders a municipality or other developing
297 area; and
- 298 (4) Other factors the county executive determines are needed to
299 preserve agricultural land.
- 300 (f) The county may, in writing, agree to purchase an easement subject to
301 the condition that an owner;
- 302 (1) Make a good-faith application to the foundation for the
303 purchase of an easement by the state; and
- 304 (2) Accept any foundation offer if its price is equal to or higher
305 than the agreed county price. If the foundation does not agree to
306 purchase an easement subject to a conditional agreement under
307 this subsection, the county must purchase it at the agreed price
308 and may make an additional payment to an owner whose
309 application has been rejected by the foundation in order to
310 compensate for any delay in the state application process that is
311 beyond the control of the applicant. This additional payment
312 should be determined based on an appropriate inflation index,
313 the rate of return, or other relevant factors.
- 314 (g) Consistent with this article, the county may establish appropriate
315 terms and conditions for any agreement to purchase an easement or
316 the easement itself. The county may limit the right of the grantor or
317 any successor in interest to apply for a special exception that is
318 inconsistent with the purpose of this article.

319 (h) In addition to its authority to purchase easements under this article,
320 the county may accept the donation of an easement or other interest in
321 property for agricultural land preservation purposes.]

322 **[2B-13. Termination and repurchase of easements.]**

- 323 [(a) (1) Not earlier than twenty-five (25) years after the county has
324 purchased an easement, an owner may, in writing, ask the
325 county to terminate the easement. Termination may be
326 requested earlier only if the district council zones the land
327 subject to easement in a manner that precludes agricultural uses
328 as a matter of right.
- 329 (2) The council must hold a public hearing within ninety (90) days
330 after receiving a request to terminate an easement unless it
331 waives that requirement. The council must request the advice of
332 the agricultural board and the planning board and notify all
333 people who own land adjacent to the land on which the
334 easement is located.
- 335 (3) Within one hundred eighty (180) days after receiving a request
336 to terminate an easement, the council must decide whether to
337 terminate the easement. The council may extend the time for
338 this decision by not more than ninety (90) days.
- 339 (4) Before granting the request, the council must find that the land
340 is no longer suitable for agriculture and that the public interest
341 would be best served by terminating the easement.
- 342 (5) Within one hundred eighty (180) days after the council agrees
343 to terminate the easement, an owner may repurchase the
344 easement by paying to the fund the difference between the fair

345 market value and the agricultural value of the land, as
 346 determined by an appraisal.

347 (b) If land under easement is purchased or condemned by the county for
 348 park or other nonagricultural uses, the county must transmit funds
 349 equal to the present value of the easement to the fund.

350 (c) An owner who builds a house under section 2B-11(b) of this article
 351 must reimburse the fund the pro rata amount that the county paid for
 352 the easement on that land.]

353 **[2B-14. Right to sell.]**

354 [This article does not restrict the right of an owner to sell land located in a
 355 county agricultural district or land on which the county holds an easement.]

356 **[2B-15. Public access.]**

357 [Purchase of an easement by the county does not create a right of public
 358 access to the land unless the easement contract specifically provides for public
 359 access.]

360 **[2B-16. Easements on county-owned farmland.]**

361 [(a) Productive agricultural lands sold by the county must be sold with an
 362 easement attached where the easement is consistent with the general
 363 plan of Montgomery County as amended by applicable master plan.

364 (b) Productive agricultural lands purchased by the county in pursuit of
 365 farmland preservation goals may be resold only for private
 366 agricultural uses and subject to an easement.]

367 **[2B-17. Recordation.]**

368 [The county must record an easement in the land records of the county. The
 369 recordation of an easement is not subject to any county transfer or recordation tax.]

370 **[2B-18. Executive regulations.]**

371 [(a) Within four (4) months after this article becomes effective, the county
372 executive must adopt regulations under method (1) to implement this
373 article.

374 (b) The regulations must include:
375 (1) Method of easement valuation;
376 (2) Method of purchasing easements;
377 (3) Terms of payment for easements; and
378 (4) Method of ranking offers to sell easements.]

379 **[2B-19. Administration and conflict.]**

380 [(a) The funds to administer any agricultural land preservation program
381 may be paid from the fund and any other monies the Council
382 appropriates.
383 (b) The Department of Economic Development must administer this
384 Article and the regulations under it.
385 (c) The Department of Economic Development must issue a public
386 annual report on this program.
387 (d) (1) If a conflict occurs between the provisions of this Article and
388 County laws on economic activity, noise, or environmental
389 controls, this Article supersedes the conflicting laws.
390 (2) If a conflict occurs between the enforcement of regulations
391 adopted under this Article and County regulations on economic
392 activity, noise, or environmental controls, the regulations
393 adopted under this Article supersede the conflicting
394 regulations.]

395 **[[Sec. 2. Sections 2B-1 through 2B-17 are re-enacted as follows:]]**

396 **ARTICLE 1. GENERAL PROVISIONS.**

397 **2B-1. Definitions.**

398 In this Chapter, the following words and phrases have the meanings
 399 indicated:

400 **Agricultural Board** or **APAB** means the County Agricultural Preservation
 401 Advisory Board.

402 **Agricultural Easement** means a covenant running with the land that restricts
 403 the uses permitted on the property to agricultural and other uses as specified
 404 in this Chapter.

405 **Agriculture** means:

- 406 (1) the business, science, and art of cultivating and managing the soil;
 407 (2) composting, growing, harvesting, and selling crops and livestock, and
 408 the products of forestry, horticulture, and hydroponics;
 409 (3) breeding, raising, or managing livestock, including horses, poultry,
 410 fish, game, and fur-bearing animals, dairying, beekeeping and similar
 411 activities; and
 412 (4) equestrian events and activities.

413 **Agriculture** includes processing an agricultural product on the farm [[of an
 414 agricultural product]] in the course of preparing the product for market,
 415 [[and]] which may or may not cause a change in the natural form or state of
 416 the product.

417 **Agriculture Article** means the Agriculture Article of the Maryland Code.

418 **Buildable Lot** means a parcel of land on which the owner has retained the
 419 right to build a principal dwelling.

420 **Department** means, unless otherwise specified, the County Department of
 421 Economic Development.

422 **Farm Market** means [[the display and retail sale from a farm of agricultural
 423 products produced:

- 424 (1) on the farm where the farm market is located; or

425 (2) on another farm under the control of the owner or operator of the farm
 426 market.]] a farm market as defined in Chapter 59.

427 [[A farm market includes the display and sale of farm food products
 428 certified as non-potentially hazardous by the Department of Health and
 429 Human Services.]]

430 Foundation means the Maryland Agricultural Land Preservation
 431 Foundation.

432 Fund means the County's Agricultural Land Preservation Fund.

433 Landowner means a fee simple owner of land located in [[the State or]] the
 434 County on which a landowner proposes to sell or has sold an agricultural
 435 easement to the State or the County.

436 Planning Board means the Montgomery County Planning Board.

437 Principal Dwelling means a residential structure on farm property
 438 [[serving]] which serves as the property's primary residence.

439 Productive Agricultural Land means land eligible to be included in an
 440 agricultural easement under County or Foundation regulations.

441 Significant Agricultural Resource or Significant Agricultural Capability
 442 means land which, if properly agronomically managed and under normal
 443 growing conditions, the Department [[of Economic Development]], after
 444 consulting local agricultural support agencies, finds can sustain a profitable
 445 farm enterprise.

446 State Agricultural [[Easements]] Easement means [[easements]] an
 447 easement established under Subtitle 5 of Title 2 of the Agriculture Article.

448 Tenant House means a residential structure on land under an agricultural
 449 easement that serves as an accessory use to the principal dwelling.

450 2B-2. Agricultural Preservation Advisory Board[; establishment;
 451 membership; terms of office; duties and responsibilities]].

- 452 (a) Generally. The Agricultural Preservation Advisory Board is
 453 established under Subtitle 5 of Title 2 of the Agriculture Article.
- 454 (b) Composition.
- 455 (1) The County Executive must appoint, subject to confirmation by
 456 the County Council, 5 members to the APAB.
- 457 (2) 3 members must be owner-operators of commercial farm land
 458 and earn at least 50% of their income from farming.
- 459 (3) Each member must be a resident of the County.
- 460 (c) Terms of office.
- 461 (1) The term of each member is 5 years.
- 462 (2) A member must not serve more than 2 consecutive full terms.
 463 An appointee to fill a vacancy before a term expires serves the
 464 rest of the unexpired term.
- 465 (3) A member serves without compensation. However, a member
 466 may request reimbursement for mileage and dependent care
 467 costs at rates established by the County.
- 468 (d) Duties and responsibilities.
- 469 (1) As required by Subtitle 5 of Title 2 of the Agriculture Article,
 470 the APAB must:
- 471 (A) advise the County on the purchase of State and County
 472 agricultural easements;
- 473 (B) assist the County in reviewing the status of agricultural
 474 land, including farming productivity under State and
 475 County agricultural easements;
- 476 (C) advise the Foundation concerning County priorities for
 477 agricultural preservation; and

478 (D) promote preservation of agriculture in the County by
 479 offering information and assistance to landowners on the
 480 purchase of State and County agricultural easements.

481 (2) The APAB may:

482 (A) delineate areas of productive agricultural land in the
 483 County;

484 (B) recommend to the Executive procedures to mediate or
 485 arbitrate disputes on the value of agricultural easements
 486 which the County may buy;

487 (C) review and make recommendations on regulations
 488 regarding State and County agricultural easements;

489 (D) recommend County policies and programs to preserve
 490 agriculture;

491 (E) cooperate with the Planning Board, the Cooperative
 492 Extension Office, and the Soil Conservation District in
 493 carrying out its responsibilities; and

494 (F) perform other duties the County Executive assigns.

495 **ARTICLE 2. STATE EASEMENTS.**

496 **2B-3. State Easement Application and Purchase [[Guidelines]].**

497 (a) A landowner seeking to place land under an agricultural easement
 498 must file a petition with the APAB requesting an application for the
 499 purchase of an easement by the Foundation.

500 (b) The APAB must advise the County Council whether the applicant's
 501 land meets the qualifications established by the Foundation and
 502 recommend whether the Foundation should buy an agricultural
 503 easement.

- 504 (c) The APAB must refer the application to the Planning Board. The
 505 Planning Board must advise the [[County]] Council if:
- 506 (1) the proposed agricultural easement is compatible with existing
 507 and approved County plans and overall policy; and
- 508 (2) the Planning Board recommends buying an agricultural
 509 easement on the applicant's land.
- 510 (d) If either the APAB or the Planning Board recommends approval, the
 511 County Council must hold a public hearing on the proposed easement.
 512 [[Adequate]] The Department must give adequate notice of the
 513 hearing [[must be given]] to the owner of any land adjacent to the
 514 proposed agricultural easement.
- 515 (e) The Council must decide if the application for the proposed
 516 agricultural easement should be recommended to the Foundation for
 517 approval.
- 518 (1) If the Council recommends approval of the application, the
 519 Council must notify and forward to the Foundation its
 520 recommendation and relevant information about the proposed
 521 easement, including the recommendations of the APAB and the
 522 Planning Board.
- 523 (2) If the Council recommends denial of the application, the
 524 Council must notify the Foundation and the landowner of its
 525 decision.
- 526 (f) The Foundation may approve an application for a proposed
 527 agricultural easement only if:
- 528 (1) the land in the proposed agricultural easement meets the
 529 following qualifications established by the Foundation:

- 530 (A) any productivity, acreage, and locational criteria
531 necessary to continue farming;
- 532 (B) the land must be at least 50 acres; and
- 533 (C) any other eligibility requirement in Subtitle 5 of Title 2
534 of the Agriculture Article;
- 535 (2) the Council recommended approval of the proposed easement;
536 and
- 537 (3) a majority of the Foundation's Board of Trustees approves
538 buying the proposed easement.
- 539 (g) [[Additional County payment.]] If the Foundation buys an agricultural
540 easement, the County may make an additional payment to the
541 landowner of up to 15% of the State's purchase price of the easement
542 under regulations issued under this Chapter. The Executive must
543 specify the percentage used to determine the payment each year and
544 publish that number in the County Register.
- 545 (h) [[Procedures.]]
- 546 (1) The procedures governing State agricultural easements,
547 including the application process, the maximum value of any
548 easement bought, the source of funds to buy an easement, and
549 the restrictions required in easements, are contained in Subtitle
550 5 of Title 2 of the Agriculture Article and the regulations issued
551 under Subtitle 5 of Title 2.
- 552 (2) If any conflict arises between this Chapter and its regulations
553 and Subtitle 5 of Title 2 and its regulations, the State law and
554 State regulations govern.
- 555 (i) [[Each]] The Department must work with the State to record each
556 State agricultural easement [[must be recorded]] in the County land

557 records. The recordation of a State agricultural easement is not
 558 subject to any County recordation or transfer tax.

559 **2B-4. Activities and uses permitted on land [[encumbered by]] under a**
 560 **State easement.**

561 (a) Permitted uses. The following activities are permitted on land
 562 [[encumbered by]] under a State agricultural easement:

- 563 (1) any agricultural use of land;
 564 (2) operation at any time of any machinery used in farm production
 565 or the primary processing of agricultural products;
 566 (3) any normal agricultural operation performed in accordance with
 567 good husbandry practices which does not cause bodily injury or
 568 directly endanger human health; and
 569 (4) sale of farm products [[produced on the farm where the product
 570 is sold]] at a farm market.

571 (b) Uses not permitted; release. [[The following activities are not
 572 permitted on land encumbered by a State agricultural easement:]]

573 (1) [[Subdivision or use]] Land under a State agricultural easement
 574 must not be subdivided or used for residential, commercial, or
 575 industrial purposes. However, the Foundation may approve,
 576 after receiving a written application, the release of any
 577 easement restriction for:

578 (A) the landowner who originally sold the easement, to use 1
 579 acre or less to build [[a] one or more dwelling [[house to
 580 be occupied by]] houses for the use only of that
 581 landowner or a child of the landowner, up to a maximum
 582 of 3 lots, subject to the requirements in Subtitle 5 of Title
 583 2 of the Agriculture Article; and

584 (B) a landowner to build housing for one or more tenants
 585 who are fully engaged in operating the farm if the
 586 landowner meets the following requirements:

587 (i) the use must not exceed 1 tenant house for each
 588 100 acres, unless the Foundation allows an
 589 exception in a case of compelling need;

590 (ii) the land where a tenant house is located must not
 591 be subdivided or conveyed to any person;

592 (iii) the tenant house must not be conveyed separately
 593 from the original parcel; and

594 (iv) any other requirement in Subtitle 5 of Title 2 of the
 595 Agriculture Article.

596 (2) Purchase of an agricultural easement by the Foundation does
 597 not grant the public any right of access or right to use the land
 598 included under the easement.

599 (3) Any land [[encumbered by]] under a State agricultural easement
 600 [[for public use]] must not be condemned for public use unless
 601 no other reasonable alternative is available.

602 **2B-5. Landowner rejection of offer to purchase easement.**

603 A landowner who rejects an offer by the Foundation to buy a State
 604 agricultural easement on the same land for 2 consecutive years, for a reason other
 605 than that sufficient State or County funds are not available to buy the easement,
 606 must not reapply to sell an agricultural easement on the same land for the next 2
 607 consecutive years.

608 **2B-6. Termination of State easements.**

609 (a) The Foundation and the County must approve the termination of any
 610 agricultural easement bought in full or in part with State funds. Any

611 termination must comply with Subtitle 5 of Title 2 of the Agriculture
 612 Article.

613 (b) The Foundation must hold [[in perpetuity]] a State agricultural
 614 easement in perpetuity if the State Board of Public Works approved
 615 the purchase of the easement on or after October 1, 2004.

616 **ARTICLE 3. COUNTY EASEMENTS.**

617 **2B-7. County Easement Application and Purchase [[Guidelines]].**

618 (a) A landowner seeking to place land under an agricultural easement
 619 must submit an easement sales application to the Department of
 620 Economic Development. The application must include a completed
 621 property description and specify the landowner's asking price.

622 (b) The County may buy an agricultural easement under this Article:
 623 (1) on land located in the Rural, Rural Density Transfer, or Rural
 624 Cluster zones; or
 625 (2) on land located in another zone if[[:]] the land meets all
 626 requirements of subsection (e).
 627 [[A) placing an agricultural easement on that land is in the
 628 public interest; and
 629 (B) the Department concludes, after consulting local
 630 agricultural support agencies, that the land has significant
 631 agricultural resources.]]

632 (c) The County [[may]] must not buy an easement under this Article if
 633 further development is already precluded on that land.

634 (d) The County may buy an agricultural easement under this Article if the
 635 land:
 636 (1) is at least 50 contiguous acres;

637 (2) meets United States Department of Agriculture's soil
 638 classification standards I, II, or III, or woodland classifications
 639 1 and 2 on at least 50% of the acreage, as outlined in the Soil
 640 Survey for Montgomery County; and

641 (3) is located outside water and sewer categories 1, 2, and 3, as
 642 defined in the County Ten-Year Comprehensive Water Supply
 643 and Sewerage Systems Plan.

644 (e) If any land does not meet all requirements of subsection (d), the
 645 County must not buy a County agricultural easement on that land
 646 unless:

647 (A) the Department finds that placing an agricultural
 648 easement on that land is in the public interest; and

649 (B) the Department concludes, after consulting local
 650 agricultural support agencies, that the land has significant
 651 agricultural resources.

652 **2B-8. Activities and uses permitted on land [[encumbered by]] under a**
 653 **County agricultural easement.**

654 (a) Permitted Uses. Except as prohibited by Chapter 59 or the terms of
 655 an agricultural easement, the following activities are permitted on land
 656 [[encumbered by]] under a County agricultural easement:

657 (1) any agricultural use of land;

658 (2) operation of any machinery used in farm production or the
 659 primary processing of agricultural products, regardless of the
 660 time of operation;

661 (3) any normal agricultural operation, performed in accordance
 662 with good husbandry practices, that does not cause bodily
 663 injury or directly endanger human health; and

- 664 (4) operation of a farm market [[to sell farm products under the
665 following conditions.
- 666 (1) No more than 25 percent of the farm market display and
667 sales area may be used to display and sell agricultural
668 products not produced on the farm under the control of
669 the owner or operator of the farm market.
- 670 (2) If any crop failure is due to drought, insect damage,
671 disease, or other cause beyond the control of the owner or
672 operator of the farm market, the Department of
673 Permitting Services, after receiving a recommendation
674 from the Department of Economic Development and the
675 Agricultural Advisory Committee, may allow more than
676 25 percent of the farm market display and sales area to be
677 used for agricultural products not produced on the farm
678 where the farm market is located for a limited period of
679 time]].
- 680 (b) Relation to special exceptions. Subsection (a) does not alter either the
681 requirements in Chapter 59 for a special exception applicable to the
682 zone where a County easement is located or the process to obtain a
683 special exception. However, [[the County]] an agricultural easement
684 may expressly limit the right of the landowner or any successor in
685 interest to apply for a special exception that is inconsistent with the
686 purposes of this Article.
- 687 (c) Uses not permitted; release. [[The following activities are not
688 permitted on land encumbered by a County agricultural easement.]]
- 689 (1) [[Subdivision or use]] Land under a County agricultural
690 easement must not be subdivided or used for any residential,

691 commercial, or industrial purpose. However, the landowner
 692 may obtain a release from an agricultural easement for:

693 (A) 1 acre, or the minimum lot size required by Chapter 59 or
 694 applicable well and septic regulations, whichever is
 695 greater, to build a house for use by the landowner; and

696 (B) up to 3 1-acre lots, or the minimum lot size required by
 697 Chapter 59 or applicable well and septic regulations,
 698 whichever is greater, to build houses to be occupied by
 699 adult children of the landowner at a maximum density
 700 determined by the size of the land under easement and
 701 the following calculations:

702 (i) 1 lot for the first 25 acres;

703 (ii) 2 lots for land under easement greater than 50
 704 acres but less than 120 acres; and

705 (iii) 3 lots for land under easement that is greater than
 706 120 acres.

707 (2) (A) Any release issued under this Section must include[[:]]

708 [[A)] a [[:statement]] requirement that the landowner or the
 709 child, whichever is appropriate, must not transfer the lot
 710 released from an agricultural easement for 5 years after
 711 the release is recorded in the County land records[[:]]
 712 unless:

713 (i) the APAB approves the transfer; or

714 (ii) the lot is subject to a bona fide foreclosure of a
 715 mortgage or deed of trust or to a deed in lieu of
 716 foreclosure.

717 (B) Noncompliance with subparagraph 2(A) is a violation of
 718 this Chapter and the agricultural easement, and may result
 719 in legal action to prevent the transfer or to obtain the
 720 proceeds of any sale collected by the landowner or the
 721 child if an unapproved transfer occurs.

722 (3) If land proposed for an agricultural easement does not contain a
 723 habitable dwelling house, the landowner [[of the proposed
 724 agricultural easement]] may, as part of the application, request
 725 the right, which would run with the land, to build one single
 726 family dwelling house if:

727 (A) no viable residential structure exists on the land when the
 728 easement is bought;

729 (B) the [[agricultural]] easement requires that the residential
 730 structure must never be subdivided from the easement
 731 property; and

732 (C) the [[agricultural]] easement requires that the right to
 733 build a single family dwelling precludes the release of
 734 any lot from the easement for the landowner's children.

735 (4) A landowner may build housing for one or more tenants fully
 736 engaged in operating the farm. However:

737 (A) not more than one tenant house may be built for each 100
 738 acres of land under easement;

739 (B) the land on which a tenant house is located must not be
 740 subdivided or conveyed to any third party;

741 (C) the tenant house must not be conveyed separately from
 742 the original parcel of land under the [[agricultural]]
 743 easement; and

744 (D) the square footage of the tenant house must not exceed
 745 the square footage of the principal dwelling on the land
 746 under the easement.

747 (d) Reimbursement. A landowner who obtains a release of a lot from an
 748 agricultural easement must first reimburse the Fund by an amount
 749 equal to the pro-rata purchase price the County paid for the
 750 [[agricultural]] easement. The [[County]] County Attorney must, after
 751 [[receiving the funds]] the Fund is reimbursed, execute and record a
 752 partial release in the County land records.

753 **2B-9. Purchase and value of agricultural easements.**

754 (a) The Fund is a special, non-lapsing revolving fund for agricultural land
 755 preservation purposes. It consists of:

- 756 (1) the County's share of the State agricultural transfer tax;
 757 (2) payments received by the County for the repurchase, release,
 758 reimbursement, and termination of an agricultural easement;
 759 and
 760 (3) any other funds available to buy agricultural easements under
 761 this Article.

762 (b) The County must use funds from the County's share of the State
 763 agricultural transfer tax and any other revolving funds for the
 764 purposes of this Article before using any other County funds for these
 765 purposes.

766 (c) The County may buy an agricultural easement to preserve agricultural
 767 land in the County. To buy an easement, the County may use:

- 768 (1) negotiations;
 769 (2) competitive bidding; or

- 770 (3) any other method that is fair and equitable to the landowner and
771 the County.
- 772 (d) The purchase price may be based on an appraisal or any other
773 evidence of value under criteria in applicable regulations.
- 774 (e) Priority for buying easements must be given to any applicant who
775 meets all of the following criteria:
- 776 (1) the proposed purchase price for the agricultural easement does
777 not exceed either the appraised fair market value of the
778 easement or a commercially reasonable value for the easement;
- 779 (2) the land is designated in the applicable master plan as
780 agricultural;
- 781 (3) the land borders a municipality or other developing area and is
782 likely to be developed in the foreseeable future; and
- 783 (4) any other [[factors]] factor the Executive finds necessary to
784 preserve agricultural land.
- 785 (f) The County Executive or the Executive's designee may agree in
786 writing to buy an agricultural easement if the landowner:
- 787 (1) files a good-faith application to the Foundation for the purchase
788 of an agricultural easement by the State; and
- 789 (2) accepts a Foundation offer if the price offered by the
790 Foundation is equal to or higher than the price the County
791 offered. If the Foundation does not agree to buy an easement
792 subject to a conditional agreement under this subsection, the
793 County must buy the easement at the price the County offered
794 under the conditional agreement.
- 795 (g) In addition to its authority to buy agricultural easements under this
796 Article, the County may accept the donation of an agricultural

797 easement or another interest in property for agricultural land
 798 preservation purposes.

799 **2B-10. Termination and repurchase of agricultural easements.**

800 (a) Process to Terminate and Repurchase an Easement.

801 (1) [[A]] Except as provided in subsection (c), a landowner may, in
 802 writing, at least 25 years after an agricultural easement bought
 803 by the County has been recorded in the County land records,
 804 request the County Council to terminate the agricultural
 805 easement. However, a landowner may request termination
 806 earlier if the land under easement is later zoned in a manner that
 807 precludes agricultural use as a matter of right.

808 (2) In [[reviewing]] approving a termination request, the County
 809 Council must find that the land is no longer suitable for
 810 agriculture and the public interest would be best served by
 811 terminating the easement.

812 (3) The landowner must submit an explanation, in a form acceptable
 813 to the [[County]] APAB, why profitable farming is no longer
 814 feasible on the land under easement.

815 (4) The APAB must [[conduct]] determine if profitable farming is
 816 feasible on the land and issue a written recommendation to the
 817 [[Director of Economic Development]] Department. In
 818 determining whether farming is profitable, the APAB must
 819 consider:

820 (A) if the landowner has implemented a Soil Conservation and
 821 Water Quality Plan;

822 (B) the location of the farm with respect to development; and

- 823 (C) any other non-agricultural use that would otherwise impact
824 profitability of the farm.
- 825 (5) After the APAB . [[completes]] issues its [[inquiry]]
826 recommendation, the Department must advise the landowner
827 [[must be advised]] that the Department must order an appraisal
828 of the land [[must be conducted]] at the landowner's expense.
829 The appraisal must consider the current fair market value of
830 land and the current fair market value of the land encumbered
831 by an agricultural easement. The difference between these
832 values must represent the present value of the agricultural
833 easement.
- 834 (6) The landowner must pay the [[County]] Department for the cost
835 of an appraisal. The Department must order the appraisal after
836 receiving the funds from the landowner.
- 837 (7) After receiving the completed appraisal and APAB's
838 recommendation, the County Council must hold a public
839 hearing on the request to terminate the agricultural easement.
840 The Department must notify each owner of land adjacent to the
841 land where the easement is located of the public hearing.
- 842 (8) After the public hearing, the Council, by majority vote, must
843 recommend to the Executive whether the Executive should
844 agree to terminate the easement.
- 845 (9) If the Executive agrees to terminate the easement, the
846 landowner must repurchase the easement by paying the present
847 value of the easement as defined in this Section.
- 848 (10) The landowner must pay the required payment to the County
849 within 180 days after the Executive agrees to terminate the

850 easement. After receiving the required payment, the [[County]]
 851 Department must prepare, execute, and deliver to the landowner
 852 for recording, a Deed of Termination and Release from
 853 Easement.

854 (11) If a request for termination is denied, or if the landowner does not
 855 repurchase the easement within 180 days after the Executive
 856 agrees to terminate the easement, the landowner must not request
 857 termination of the easement for 5 years after the Executive agreed
 858 or disagreed to the landowner's last request for termination.

859 (b) Easement Properties Purchased or Condemned by Government. If
 860 the federal government or the State or County buys or condemns land
 861 under an agricultural easement for park or any other nonagricultural
 862 use, the condemning authority must pay the present value of the
 863 easement to the Fund. After [[receiving the funds]] the Fund has
 864 received all payments due, the County Attorney must prepare,
 865 execute, and deliver to the condemning authority for recording, a
 866 Deed of Termination and Release from Easement.

867 (c) No termination. The County must not terminate and repurchase any
 868 agricultural easement which the County bought after December 31,
 869 2008.

870 **2B-11. Right to sell.**

871 This Article does not restrict the right of a landowner to sell land [[on
 872 encumbered by]] under a County agricultural easement.

873 **2B-12. Public access.**

874 The purchase of an agricultural easement by the County does not grant the
 875 public any right of access or right to use the land unless the easement expressly
 876 allows public access.

877 **2B-13. Easements on County-owned farmland.**

878 [[Any]] The County must not sell any productive agricultural land that the
 879 County owns [[must not be sold]] until an agricultural easement is recorded
 880 [[against the land]] to preserve the land for agricultural use.

881 **2B-14. Recordation.**

882 (a) The County Attorney must record each agricultural easement in the
 883 County land records. The recordation of an agricultural easement is
 884 not subject to any County transfer or recordation tax.

885 (b) Each agricultural easement must:

- 886 (1) be recorded in the form required by the Department;
 887 (2) run with the land and bind the landowner and each assignee,
 888 transferee, mortgagee, and any other party who obtains title to
 889 the property; and
 890 (3) be recorded so that the easement is senior in priority to all liens,
 891 including any instrument securing permanent financing.

892 (c) Each deed that transfers title to land on which an agricultural
 893 easement is recorded must:

- 894 (1) be a two-party deed; and
 895 (2) expressly state that the property is subject to an agricultural
 896 easement and cite the recorded easement.

897 **ARTICLE 4. BUILDING LOT TERMINATION EASEMENTS.**

898 **2B-15. Authority and Purpose.**

899 (a) A building lot termination (BLT) easement is a form of agricultural
 900 easement that generally terminates [[all]] remaining development
 901 rights [[and specifically extinguishes any remaining]] by
 902 extinguishing the right to build a dwelling unit on an eligible
 903 buildable lot.

904 **(b) The County Executive or a designee may create and buy building lot**
 905 **termination easements to achieve the goals of the County Preservation**
 906 **of Agriculture and Rural Open Space Functional Master Plan to**
 907 **preserve remaining farmland in, prevent the further fragmentation of,**
 908 **and minimize residential use of the Agricultural Reserve.**

909 **2B-16. Requirements for BLT easement.**

910 **(a) Except as expressly provided in this Article, Article 3 applies to any**
 911 **BLT easement.**

912 **(b) A BLT easement may only be created on a buildable lot which is:**
 913 **(1) located in the Rural Density Transfer (RDT) zone;**
 914 **(2) zoned for residential density no higher than one dwelling unit**
 915 **per 25 acres; and**
 916 **(3) capable of being served by an individual sewage treatment unit**
 917 **which meets the requirements of Chapter 27A and applicable**
 918 **regulations issued under that Chapter.**

919 **(c) Notwithstanding Section 2B-7(d)(1), a BLT easement may be created**
 920 **on a buildable lot smaller than 50 contiguous acres.**

921 **(d) In addition to the application process in Section 2B-7, the County may**
 922 **accept a gift of a BLT easement.**

923 **(e) The County must be the grantee of each BLT easement.**

924 **(f) Notwithstanding any other provision in this Chapter:**
 925 **(1) each BLT easement, once created, must not expire or be**
 926 **terminated;**
 927 **(2) land under a BLT easement must not be subdivided or used for**
 928 **any residential, commercial, or industrial purpose unless the**
 929 **BLT easement expressly allows that subdivision or use; and**

930 (3) land under a BLT easement may contain non-residential
 931 accessory agricultural uses and structures, subject to the terms
 932 of each easement.

933 **2B-17. BLT Account.**

934 (a) The Department must create a separate account under the Fund,
 935 entitled the BLT Account.

936 (b) The BLT Account must contain payments made to comply with
 937 conditions of approval which the Planning Board has imposed for
 938 certain development plans, and may also contain funds received
 939 through donation, appropriation, bond proceeds, or any other source.

940 (c) Funds in the BLT Account must be spent only on BLT easements.
 941 Funds in the BLT Account may be used in conjunction with other
 942 funds to buy BLT easements.

943 **ARTICLE 5. ADMINISTRATION.**

944 **[[2B-15]] 2B-18. [[Executive regulations]] Regulations.**

945 (a) The County Executive must issue regulations under Method 1 to
 946 implement this [[Article]] Chapter.

947 (b) The regulations must [[include]] specify the:

- 948 (1) method of easement valuation;
- 949 (2) method of buying easements;
- 950 (3) terms of payment for easements; and
- 951 (4) method of ranking offers to purchase easements.

952 **[[2B-16]] 2B-19. Administration.**

953 (a) The [[funds to administer]] costs of any agricultural land preservation
 954 program, including the purchase of any agricultural easement, may be
 955 paid from the Fund and any other appropriated funds.

956 (b) The Department ~~[[of Economic Development]]~~ must administer this
 957 ~~[[Article]]~~ Chapter and the regulations issued under it.

958 (c) The Department must issue an annual report that identifies the:

- 959 (1) number and types of agricultural easements bought;
- 960 (2) number of acres preserved by those easements; and
- 961 (3) price of each easement.

962 **[[ARTICLE 4. ENFORCEMENT OF STATE AND COUNTY**
 963 **AGRICULTURAL EASEMENTS.]]**

964 **[[2B-17]] 2B-20. Enforcement of State and County Agricultural Easements.**

965 (a) Any violation of this Chapter or regulations issued under it is a Class
 966 A violation. The Department of Permitting Services may issue a
 967 citation for any violation of this Chapter or the terms of any
 968 agricultural easement.

969 (b) The Director of Economic Development may take legal action,
 970 including seeking injunctive or declaratory relief, to prevent any:

- 971 (1) subdivision of land under an agricultural easement that violates
 972 this Chapter or an agricultural easement; or
- 973 (2) transfer of land, including the transfer of lots to or for the
 974 landowner or the landowner's children, that violates this
 975 Chapter or an agricultural easement.

976 (c) The Director may also take legal action to recover any funds obtained
 977 from any subdivision or land transfer that violates this Chapter or an
 978 agricultural easement, plus costs and a reasonable attorney's fee.

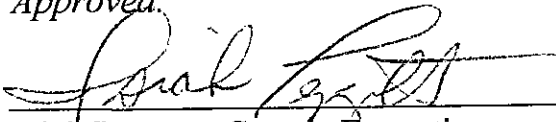
979 ~~[[c)]]~~ (d) If ~~[[a conflict occurs between]]~~ the creation of an easement under
 980 this ~~[[Article and]]~~ Chapter conflicts directly with any County law
 981 regulating economic activity, noise, or environmental controls, the
 982 easement created under this ~~[[Article]]~~ Chapter prevails.

983 [(d)] (e) If [a conflict occurs between the enforcement of] the creation of
984 an easement under any regulation issued under this [Article and]
985 Chapter conflicts directly with any applicable County regulation on
986 economic activity, noise, or environmental controls, the [regulation
987 issued] easement created under this [Article] Chapter prevails.


988 *Approved:*

989  19 Nov 08
Michael J. Knapp, President, County Council Date

990 *Approved:*

991  Nov 25 2008
Isiah Leggett, County Executive Date

992 *This is a correct copy of Council action.*

993  Nov. 26, 2008
Linda M. Lauer, Clerk of the Council Date