

**OVERVIEW MEMO TO:**  
AGENDA ITEMS 2B, 3, 5,6,7,8&9  
June 12, 2007

**MEMORANDUM**

June 5, 2007

TO: County Council

FROM: <sup>MLM</sup> Marlene L. Michaelson, Senior Legislative Analyst  
Jeffrey L. Zyontz, Legislative Attorney <sup>JLZ</sup>  
Amanda Mihill, Legislative Analyst <sup>AM</sup>  
Shondell Foster, Research Associate

SUBJECT: Agricultural Working Group Report Implementation – Overview of Short-Term Measures

The Planning, Housing, and Economic Development (PHED) Committee met on March 12, 2007 to consider the recommendations of the Council's Ad Hoc Agricultural Working Group Report and directed Staff to prepare the legislation and amendments to the Zoning Ordinance and Ten-Year Water and Sewerage Plan necessary to implement the recommendations of the Working Group. Attached on © 1 to 5 are a list of tasks necessary to implement their recommendations and the Committee's recommended time-frame for Council consideration of these measures. Agenda items 2B, 3, 5, 6, 7 and 9 are all part of the short-term package of follow-up tasks. In summary, the items on the Council's agenda for introduction that implement the Working Group recommendations include the following:

- An Amendment to the Comprehensive Ten-Year Water Supply and Sewerage Plan to allow public water (but not sewer) to child lots under certain limited circumstances. (agenda item 2B)
- A bill that requires disclosure for homes being sold in agricultural zones to inform potential homebuyers that current County and State law protects farmers from certain nuisance claims related to farming. (agenda item 3)
- A zoning text amendment (ZTA) and a subdivision regulation (SRA) that eliminates the requirement that receiving areas use 2/3 of the possible Transfer Development Rights. (in agenda items 7 and 9)

- A ZTA (agenda item 5) that clarifies and strengthens child lot provisions in the Zoning Ordinance to accomplish the following:
  - indicate that child lots are in addition to market lots;
  - require that the record plat indicates it is a child lot;
  - require that a covenant be recorded in the land records at the time the plat is recorded specifying that the house on the child lot must be owned by the child for five years and must not be leased except to an immediate family;
  - require that the building permit be issued in the child's name;
  - require that a majority of any child lot must be preserved in agriculture;
  - codify the long-standing practice that requires that each child is only entitled to one child lot, regardless of the number of properties owned by the parent and that the construction of each child lot requires the use of a TDR;
  - allow a child lot to be created after the death of the owner if the owners' intent has been established through a will or other document admissible in probate; and
  - provides penalties for violations of these provisions.
- A ZTA that clarifies that the development of RDT zoned parcels encumbered by TDR easements must be limited to single-family houses and agricultural related uses only. (agenda item 6)

The Planning Board has also submitted for introduction a ZTA related to child lots and a resolution to amend an Executive Regulation related to sand mounds. The ZTA presents an alternative recommendation to the Working Group recommendations and would limit child lots such that the overall density of the property would not exceed one dwelling unit per 25 acres, regardless of whether there are child lots. The Council President is introducing the ZTA at the Planning Board's request (agenda item 8), but is delaying introduction of the sand mound resolution so that it can be considered at the same time as all other sand mounds initiatives (fall 2007).

Council Staff drafted all legislation, ZTAs and SRA consistent with the Report recommendations. In a few instances, it was necessary to make minor changes that are highlighted in the cover memorandum that accompanies each item (e.g. if there were conflicting recommendations). Staff received comments from a few group members and Executive staff suggesting that further refinements should be made in the Working Group's recommendations. In Staff's view any refinements should be made during the Council's worksessions, not prior to introduction of documents that should be a direct reflection of the Working Group Report.

There are also several items that are part of the short-term package of measures on © 1 to 2 that do not require introduction and are therefore not on the agenda but are attached to this memorandum and described in more detail below. Since the July 19 public hearing will be on the entire package of short-term measures, individuals may comment on these items in addition to the text amendments, subdivision regulations, bill and amendment to the Comprehensive Ten-Year Water Supply and Sewerage Plan. These items are as follows:

## **Restrictions on Sand Mounds**

Although all legislative initiatives related to sand mounds will be introduced in the next package of agricultural initiatives (the medium term measures), the one task in the short-term was for Staff to confirm in writing that the Council could place a restriction on the use of sand mounds. (Some individuals had expressed concerns that the restrictions recommended by the Working Group would be a preemption of state authority since the state regulates sand mounds.) Attached on © 6 to 7 is an e-mail from the Deputy Program Manager for the Maryland Department of Environment stating that “State regulations do not preempt additional local controls concerning sand mounds that are not at least as restrictive as State regulations”.

## **Building Lot Termination Program**

The Building Lot Termination (BLT) Program would purchase development rights for the one residential lot per 25 acres allowed in the Rural Density Transfer (RDT) zone (the “buildable TDR”). The Working Group strongly supports the BLT Program as a means to

- “(1) reduce the number of buildable lots in the Agricultural Reserve while providing equity to landowners; and
- (2) preserve by easement as much usable farmland as possible.”

A **draft** Executive Regulation for the BLT Program has been submitted by the Executive Branch and is attached at © 8 to 24. (This Executive Regulation also covers the State Agricultural Easement Program (AEP).) It has not yet been published in the County Register and Staff has just learned that the County Attorney’s Office may propose additional refinements before publication. Staff from the County Attorney’s Office also believe that it may be necessary to introduce changes to the County Code (Chapter 2B) to provide the authority to implement the program. Since the Council cannot act on an Executive Regulation until it has been in the Register for at least 30 days, action on the BLT program will not be possible this summer and Council action will depend on the timing of the Executive Branch edits and publication. Nonetheless, the hearing on July 19 will provide the public an opportunity to comment on the draft regulations.

Staff notes that the draft regulation differs from the Working Group’s recommendations in some respects. For example, the Working Group indicated that BLT applications should be prioritized based on three factors: date of receipt of a completed application, size of the property, and farmland preservation. The draft Executive Regulations does not include any reference to farmland preservation and indicates that applicants will be ranked in the order they are received with a second ranking based on size of property. These differences should be considered at the Committee worksession on the Executive Regulations.

## **Budget Implications and Funding Strategies for BLT**

The PHED Committee asked the Executive Branch to prepare an analysis of budget implications and funding strategies for the Building Lot Termination Program. Attached on © 25 is their response. It indicates that there is currently \$6.4 million available for the BLT program in FY07 and FY08 from the proceeds of the Agricultural Transfer Tax and that the total funding needed for the program is estimated to be between \$100 and \$200 million over the next 5 to 10 years. The attachment further indicates that the County Council has retained the services of the Trust for Public Land to develop a strategic plan for funding the proposed BLT program. The full Council had not made such a request, but Councilmembers Knapp and Floreen have asked the Trust for Public Land to explore options for funding the BLT program. They indicated to Staff that they had not anticipated that this would supplant an independent analysis of funding options by the Executive Branch.

## **Enforcement of Child Lots**

The Ad Hoc Agricultural Policy Working Group recommends enforcement of the child lot provision be done by Department of Permitting Services (DPS) through a complaint based enforcement mechanism. Initially, Council staff thought an Executive Regulation was needed to give DPS the guidelines and authority to enforce the child lot provisions. However, DPS proposes to include the enforcement of child lot occupancy in its standard complaint based zoning enforcement procedure because there are no other regulations in the COMCOR that have been promulgated for one specific enforcement effort. DPS indicates this is an efficient and effective way to assure compliance with child lot residency requirements which might be enacted. When the Zoning Ordinance is changed to reflect the new requirements for child lots, DPS will create a new Enforcement Code and apply its standard enforcement criteria to it.

In addition, DPS has explained the standard code enforcement procedures to be internal standard operating procedures. They were developed by DPS to provide DPS employees and customers standards regarding response times that will be implemented and measured by their complaint handling survey. Attached on © 26 to 27 are a copy of the current standard code enforcement procedures used by DPS.

**NEXT STEPS FOR THE COUNTY COUNCIL IN RESPONSE TO  
THE AD-HOC AGRICULTURE POLICY WORKING GROUP RECOMMENDATIONS**

**SHORT-TERM**

|    | <b>What Needs to be Done to Implement Working Group Recommendations?</b>   | <b>By Whom?</b>                   |
|----|--|-----------------------------------|
| 1  | <b>TDRs:</b> Continue implementing a system that tracks the use of TDRs; submit annual TDR reports to the Council. (Annual Report)   | M-NCPPC<br>Ongoing                |
| 4  | <b>TDRs:</b> Eliminate the requirement that receiving areas use 2/3 of the possible TDRs. (ZTA & SRA)  | M-NCPPC<br>(DONE – Council Staff) |
| 7  | <b>CHILD LOTS:</b> Clarify the Zoning Ordinance to indicate that child lots are in addition to market lots. (ZTA)  | Council (DONE – Council Staff)    |
| 8  | <b>CHILD LOTS:</b> Clearly restrict child lots to ensure ownership by child (allowing for hardships). Strategies include: <ul style="list-style-type: none"> <li>• Require that the record plat indicate it is a child lot (SRA)</li> <li>• Require that a covenant be recorded in the land records at the time the plat is recorded specifying that the house on the child lot must be owned by the child for five years and must not be leased except to immediate family. (SRA)</li> <li>• Require that the building permit be issued in the child's name. (SRA)</li> </ul> | M-NCPPC<br>(DONE – Council Staff) |
| 9  | <b>CHILD LOTS:</b> A majority of any child lot must be preserved in agriculture (important) for small lots. (ZTA & SRA)  | M-NCPPC<br>(DONE – Council Staff) |
| 10 | <b>CHILD LOTS:</b> Codify the long-standing practices that require that each child is only entitled to one child lot, regardless of the number of properties owned by the parent and that the construction of each child lot requires the use of a TDR. (ZTA)  | M-NCPPC<br>(DONE – Council Staff) |
| 11 | <b>CHILD LOTS:</b> A child lot may be created after the death of the owner if the owners' intent has been established through a will or other document admissible in probate. (ZTA & SRA)  | M-NCPPC<br>(DONE – Council Staff) |

Short-term: In the next 6 months  
Mid-term: By the end of calendar year 2007  
Long-term: In 2008 or later  
ZTA: Zoning Text Amendment  
SRA: Subdivision Regulation Amendment  
Ex. Reg: Executive Regulation



|    | <u>What Needs to be Done to Implement Working Group Recommendations?</u>  | <u>By Whom?</u>  |
|----|---|--|
|    |   | Staff)   |
| 12 | <b>CHILD LOTS:</b> Develop a complaint based enforcement mechanism to respond to complaints if a child lot home is prematurely leased. (Ex Reg)   | DPS (Done)   |
| 15 | <b>CHILD LOTS:</b> Amend the language in the Ten-Year Water and Sewerage Plan to allow public water (but not sewer) to child lots under certain limited circumstances: <ul style="list-style-type: none"> <li>• When the child lot can be served from an existing water main and service to the property would not provide the opportunity for service to other RDT properties.</li> <li>• When public water service can be provided in a manner that would not prevent the future application for a State or County easement for farmland preservation.</li> </ul> Require Council approval of any request for public water to a child lot in the RDT zone. (Water & Sewer Plan) | DEP (DONE)   |
| 17 | <b>SAND MOUNDS:</b> Obtain written confirmation from the State that limitations on sand mounds do not conflict with State law.  | Council Staff (DONE)   |
|    | <b>BLT PROGRAM:</b>   |  |
| 20 | Draft Executive Regulations for the BLT Program (note that most of the Group's recommendations relate to for program specifics that will be part of the Executive Regulations) (Ex. Reg)  | County Executive (Draft submitted – not yet published in register) |
| 21 | Determine budget implications and funding strategies for FY08 and beyond.   | County Executive (Draft completed)                                 |
| 22 | <b>RDT LEGISLATION:</b> Clarify that the development of RDT zoned parcels encumbered by TDR easements must be limited to single family houses and agricultural and agricultural related uses only. (ZTA)  | Council (DONE)   |
| 24 | <b>RIGHT TO FARM DISCLOSURE LEGISLATION:</b> Enact legislation requiring disclosure for homes being sold in agricultural zones to inform potential homebuyers of current County and State law that protects farmers from certain nuisance claims related to farming. (Bill)   | Council (DONE)   |

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## MID-TERM

|    | <b>What Needs to be Done to Implement Working Group Recommendations</b>  | <b>By Whom?</b>      |
|----|--|----------------------|
| 2  | <b>TDRs:</b> Draft amendments to the Zoning Ordinance and Subdivision Regulations to require excess TDR receiving capacity in floating zones research and development, certain commercial, industrial, and mixed use zones (including the commercial portions of mixed-use zones). (ZTA & SRA) | M-NCPPC              |
| 5  | <b>TDRs:</b> Develop inter-jurisdictional TDR programs with municipalities with appropriate incentives and/or penalties. (MOU)   | M-NCPPC<br>& Council |
| 14 | <b>CHILD LOTS:</b> Establish monetary penalties for violation of child lot provisions. (Bill)  | Council              |

|    | <b>What Needs to be Done to Implement Working Group Recommendations</b>  | <b>By Whom?</b> |
|----|--|-----------------|
| 16 | <b>CHILD LOTS:</b> Develop a monitoring mechanism to track how many child lots use public water. (Water & Sewer Plan)  | DEP             |
| 18 | <p><b>SAND MOUNDS:</b> Enact changes to the Ten-Year Water and Sewerage Plan to reflect the Group's recommendations on sand mound usage limits:<br/>           One sand mound per 25 acres for the first 75 acres and, beyond that, one sand mound per 50 acres.<br/>           Allow sand mounds under the circumstances listed below, for a parcel existing as of December 1, 2006.</p> <ul style="list-style-type: none"> <li>• Where there is an existing house and the sand mound would not result in the development of an additional house.</li> <li>• When it enables a property owner with approved deep trench system percs to better locate potential houses to preserve agriculture.</li> <li>• For child lots, provide that recommendations related to child lots are also adopted (e.g., ownership requirement). Sand Mounds will be approved for child lots where they are approved under the zoning provisions or approved under the Agricultural Easement Program (MALPF/AEP).</li> <li>• For bona fide tenant housing, provided that recommendations related to tenant houses are also adopted. Sand Mounds will be approved for bona fide tenant housing wherein the dwelling can never be conveyed from the parent parcel.</li> <li>• For any pre-existing parcel that is defined as an exempted lot or parcel in the zoning regulations.</li> <li>• For properties where there has been a significant investment in testing for sand mounds prior to the adoption of these new restrictions.</li> </ul> | DEP             |

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|--|--|--|
|  | <ul style="list-style-type: none"> <li>• For any permitted agricultural use under the zoning regulations (e.g., farm market).</li> <li>• For the purpose of qualifying for a State or County easement program (including a Building Lot Termination program). (Water &amp; Sewer Plan and Ex. Regs)</li> </ul> |  |
|--|--|--|

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**MID TO LONG TERM**

|    |  |                  |
|----|--|------------------|
| 19 | <b>SAND MOUNDS:</b> Draft guidelines to ensure that properties using sand mounds locate buildings to prevent fragmentation of viable agricultural land. (SRA and/or ZTA) | M-NCPPC          |
| 25 | <b>EDUCATION:</b> Develop an educational strategy for County residents.  | County Executive |

**LONG-TERM**

|    |   |         |
|----|---|---------|
| 3  | <b>TDRs:</b> Create a program by which TDRs on commercial and industrial properties will purchase buildable TDRs instead of excess TDRs. (ZTA) (See staff note regarding TDR deficit) | M-NCPPC |
| 23 | <b>RDT LEGISLATION:</b> Undertake further analysis to determine whether the presence of a PIF on RDT land should limit the number of TDRs available for sale. (Potential ZTA)         | M-NCPPC |
| 26 | <b>WORK PLAN FOR ADDITIONAL ISSUES:</b> Develop a plan for undertaking the additional issues identified at the end of the report.   | M-NCPPC |

**ON-GOING**

|   |  |                   |
|---|--|-------------------|
| 6 | <b>TDRs:</b> Maximize the placement of TDR receiving areas during master plan review. (MP) | M-NCPPC & Council |
|---|--|-------------------|

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 Ex. Reg: Executive Regulation

**Foster, Shondell**

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**From:** Zyontz, Jeffrey  
**Sent:** Monday, April 23, 2007 10:53 AM  
**To:** Michaelson, Marlene; Mihill, Amanda; Foster, Shondell  
**Subject:** FW: State Intent to preempt County regulation of On-site Sewage Disposal Systems - in particular Sand Mounds

FYI

Jeff Zyontz  
Legislative Attorney  
Montgomery County Council  
240 777 7896

-----Original Message-----

From: Jay Prager [mailto:jprager@mde.state.md.us]  
Sent: Monday, April 23, 2007 10:45 AM  
To: Zyontz, Jeffrey  
Cc: Edwal Stone  
Subject: Re: State Intent to preempt County regulation of On-site Sewage Disposal Systems - in particular Sand Mounds

I am writing to confirm that State regulations do not preempt additional local controls concerning sand mounds that are not at least restrictive as State regulations. Please be advised that decisions based on local standards will not be defended by the State.

Jay Prager, Deputy Program Manager  
Groundwater Permits Program  
Water Management Administration  
Maryland Department of the Environment

>>> "Zyontz, Jeffrey" <Jeff.Zyontz@montgomerycountymd.gov> 04/23/07 9:07 AM >>>  
Mr. Prager,

In telephone conversations you have stated that the Maryland Department of the Environment does not view its regulations concerning sand mounds as preempting additional local controls that are at least as restrictive as the State's standards.

Please confirm or correct my understanding.

Jeff Zyontz  
Legislative Attorney  
Montgomery County Council  
240 777 7896

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# MONTGOMERY COUNTY EXECUTIVE REGULATION

Offices of the County Executive • 101 Monroe Street • Rockville, Maryland 20850

Subject: AGRICULTURAL LAND PRESERVATION DISTRICTS & EASEMENT PURCHASES NUMBER :

Originating Department: Department of Economic Development (DED) Effective Date:

Draft

## Montgomery County Regulation on: AGRICULTURAL LAND PRESERVATION EASEMENT PURCHASES DEPARTMENT OF ECONOMIC DEVELOPMENT

Issued by: County Executive Regulation No. \_\_\_\_\_

Authority: Code Section 2B-18

Supersedes: Executive Regulation 66-91

Council review: Method (1) under Code Section 2A-15

Register Vol. 8 No. 9

Comment Deadline:

Effective Date:

Sunset Date: None

**SUMMARY:** These agricultural land preservation Executive Regulations provide rules and regulations for determining the County supplemental payment for Maryland Agricultural Land Preservation Foundation purchase of agricultural land preservation easements; and establish the method of purchasing agricultural easements by the County including method of determining easement value, method of ranking offers to sell easements, and terms of payment for easements.

**ADDRESS COMMENTS TO:** Department of Economic Development, 111 Rockville Pike, Rockville, Maryland 20850

**STAFF CONTACT:** Jeremy V. Criss 301 590-2830, John P. Zawitoski 301-590-2831

**BACKGROUND INFORMATION:** Since 1978, Montgomery County has participated with the Maryland Agricultural Land Preservation Foundation in the purchase of agricultural land preservation easements to protect County farmland. Bill No. 56-87, Agricultural Land Preservation was enacted February 16, 1988 to increase the effectiveness of the preservation efforts in the County by enabling the County to purchase easements with the County's share of the agricultural land transfer tax directly from the farmland owner or to supplement the purchase price offered by the State. In 1992, the County approved the regulations to allow the Transferable Development Rights (TDRs) associated with the easement properties to be created rather than extinguished. In 2005, the County celebrated the 25<sup>th</sup> Anniversary of the Agricultural Reserve and several initiatives to support agriculture were identified including modification of these regulations to purchase "BLT Easements." Under this regulation, Building Lot Termination or BLT is henceforth defined as "permitted residential lot rights." The County Government may consider re-selling TDRs acquired through the Building Lot Termination (BLT) option for use in other areas subject to provisions approved by Government.



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Originating Department: Department of Economic Development (DED) Effective Date:

## **I. Definitions:**

**Agricultural Easement Program (AEP):** A program designed to reduce permitted residential density on agricultural lands by placing easements to preserve agricultural production capability.

**Building Lot Termination (BLT) Easement Program:** A program by which the County may purchase a BLT Easement on land in the Rural Density Transfer Zone (RDT) in exchange for terminating some or all of the permitted residential lot rights. Transferable development rights which are eligible for transfer into duly designated TDR receiving areas that do not equate to permissible residential lot rights on a parcel of land within the RDT Zone and are henceforth defined as "Excess TDRs" and not eligible for the BLT Easement program.

**BLT Application Cap:** A limitation on applications accepted which is imposed by the County when the number of applications received exceeds to total funds that are available for a specified purchase period.

**BLT Adjusted Market Value Price:** Is the "Price" established on an annual basis by the County Executive used for purchasing BLT easements under this regulation. Establishment of this "Price" will take into determination an analysis of appraisals/comparable sales/ land values obtained from other preservation programs expressed in terms of a percentage of the FMV of the land as determined by appraisals

**Transferable Development Rights:** The Conveyance of development rights by deed, easement or other legal instrument authorized by local law to another parcel of land and the recordation of that conveyance among the land records of Montgomery County, Maryland which may be classified in the following manner:

- a.) **Buildable Transferable Development Right:** is a transferable development right retained by a property owner in the Rural Density Transfer zone for the purpose of being able to build a dwelling (sometimes referred to as the 5<sup>th</sup> TDR, development TDR, or Super TDR.)
- b.) **Excess Transferable Development Right:** is a transferable right that can be sold to another party without impacting the landowners ability to develop in accordance with the base density of the Rural Density Transfer Zone.
- c.) **Severed Transferable Development Right:** is a transferable development right that is no longer attached to a sending property by virtue of an easement recorded in the land records of the County.
- d.) **Extinguished Transferable Development Right:** is a transferable development right that has been severed, conveyed to a developer, and the serialized number has been recorded on a development plan in a receiving area.



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- e.) Receiving Area for Transferable Development Rights: An area designated on an approved and adopted general, master, sector or functional plan appropriate for development beyond its base density through the transfer of development rights.

## II. Agricultural Easement Program (AEP)

In accordance with Chapter 2B, Sections 7 through 19, the County may purchase an easement on real property to preserve agricultural land in the County. The agricultural land preservation easement will restrict residential, commercial, and industrial use of the land.

### A. Eligibility - AEP Program

#### 1. Eligible Sellers

The County will purchase easements only from the holder of fee simple title to eligible farmland, or a person or institution that has entered into a binding contract or option to purchase fee simple title to eligible farmland, if and when that person or institution takes title to the farmland.

#### 2. Eligible Farmland - Landowners within Agricultural Zones

The County will only purchase easements on 50 acres or more of land that is zoned Rural Density Transfer, Rural, or Rural Cluster, or zoned land with significant agricultural resources, however smaller properties may be considered if they comprise at least 10 acres of cropland and are adjacent to properties protected by other State/County agricultural or conservation easements. The County may purchase easements on land that is already encumbered by a transferable development rights easement provided not all of the TDRs have been previously created and transferred. The County will evaluate the status of TDRs retained with the property and differentiate between the TDRs retained for development versus "Excess TDRs" available for transfer within receiving areas. At a minimum, a landowner must have retained TDRs with the land at the density of 1 TDR for every 25 acres to remain eligible for the maximum benefits under this program. The County will purchase easements over less than the entire contiguous acreage owned by an applicant only if the parcel is separately deeded, surveyed or subdivided, and is, in the discretion of the Agricultural Preservation Advisory Board, of sufficient size and capability to be used for agricultural purposes. One acre will be subtracted from the total eligible acreage for each dwelling on the property.

#### 3. Additional Land Eligibility Requirements

- a. The land under consideration for easement purchase must be at least 50 acres in size; however, smaller properties that are contiguous to an existing agricultural Easements or



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several contiguous properties that in the aggregate total 50 acres meet the size requirement.

- b. At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- c. The land must lie outside water and sewer categories 1, 2, and 3.
- d. The Agricultural Preservation Advisory Board may consider other agricultural land that does not meet the above qualifications if it determines the land has significant agricultural value, is consistent with long term planning goals of the county and that it is in the public interest.

## **B. Eligible Farmland - Landowners within Non -Agricultural Zones**

### **1. Land Eligible for Inclusion**

Agricultural land within non-agricultural zones is eligible for easement purchase, provided the land meets the same requirements as stated within section II. A. 3. of this regulation, and approved by the County Council on the basis that the land has significant agricultural value, is consistent with long term planning goals of the county and that it is in the public interest.

## **C. AEP Easement Sales Application Requirements**

The owner must submit an easement sales application to the Department of Economic Development. The application must include a completed property description as outlined below along with the owner's asking price-for the easement which-cannot exceed the calculated Maximum Easement Value. The Department of Economic Development certifies the completeness of the application.

1. **The property description must include:**
  - a. names and addresses of all landowners of record;
  - b. full names of owner's children;
  - c. property address;
  - d. tax map;
  - e. total acreage;
  - f. deed references;
  - g. land use and USDA soils productive capability class;
  - h. number of dwelling units;
  - i. current zoning of the property;
  - j. the existence of any third party interest in the property;



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- k. a description of the farming operation;
- l. an inventory of farm buildings on the property; and
- m. other information necessary to evaluate property eligibility (i.e. Opinion of Title, surveys, legal descriptions-BLT program only as reference in Section IV. A. 3.)

## D. Permitted Activities- Lands Subject to AEP Easements

The following activities are permitted on lands encumbered by County Agricultural Preservation Easements subject to the limitations and conditions of Chapter 59 (Zoning) of the County Code:

### 1. Agricultural Type Use

- a. any agricultural use of the land;
- b. operation of any machinery used in farm production or the primary processing of agricultural products, regardless of the time of operation;
- c. all normal agricultural operations, performed in accordance with good husbandry practices, that do not cause bodily injury or directly endanger human health;
- d. operation of a Farm Market for sale of farm products.

### 2. Residential Use

The grantor of an Agricultural Preservation Easement retains certain rights to construct dwellings needed on the farm. The grantor must apply in writing to the Agricultural Preservation Advisory Board for approval to use:

- a. one acre, or the minimum lot size required by the zoning and well and septic regulations, which ever is greater, to build a house for use by the grantor.
- b. up to 3 one-acre lots, or the minimum lot size required by the zoning and well and septic regulations, to build houses to be occupied by adult children of the grantor at a maximum density as determined by the following acreage calculation:
  - i. one permissible child lot for the first 25 acres;
  - ii. a second permissible child lot for properties greater than 50 acres but less than 120 acres;
  - iii. a third permissible child lots for properties greater than 120 acres in size;



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Subject: AGRICULTURAL LAND PRESERVATION DISTRICTS & EASEMENT PURCHASES NUMBER :

Originating Department: Department of Economic Development (DED) Effective Date:

- c. Any release or preliminary release issued under this regulation shall include:
  - i. A statement that the owner's or child's lot may not be transferred for 5 years from the date of the final release, except on:
    - 1. Approval by the Agricultural Preservation Advisory Board (APAB); or
    - 2. a lender providing notice to the APAB of a transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed in lieu of foreclosure.
  - d. The grantor may request at the time of easement application, the right, intended to run with the land, to construct one (1) residential structure to support a farming operation provided;
    - i. no viable residential structures are in existence on the property at the time of easement acquisition;
    - ii. the residential structure may never be subdivided from the easement property; and
    - iii. The residential structure provided is in lieu of any future child lots.
  - e. the acreage needed to construct housing for tenants fully engaged in the operations of the farm, not to exceed one tenant house per 100 acres.

### 3. Restriction on Subdivisions

The owner of land in an agricultural easement must not use or subdivide the land for residential (except as provided in II. D.2), commercial, industrial, or any other non agricultural uses except as provided under this regulation.

### 4. Lots Created Prior to Easement Sale

Dwellings built under these provisions prior to easement sale are subtracted from the total that will be allowed after the easement is settled.

### E. Establishing AEP Easement-Value

The method for establishing easement value under the Agricultural Easement Program (AEP) will be through the application of an added value formula based point system.



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## 1. Time frame for Determination of Easement Value

The maximum value of an easement as determined by the AEP formula is determined at the time of receipt by the County of a complete easement sales application from the landowner. A landowner may have only one offer to sell an easement on a specific property pending at any one time.

## 2. Maximum Easement Value and Relationship with TDRs.

The maximum value of an easement, as determined by the AEP formula, will take into account the number of TDRs retained with the property. At a minimum, 1 TDR per every 25 acres must be retained with the land in order to be eligible for the Maximum Easement Value.

## 3. Right to Revise/Withdraw

If the maximum easement value is determined by the County to be lower than the offer price submitted by the landowner, then the landowner may revise or withdraw the offer to sell.

## F. AEP Easement Formula Valuation Procedure

Under the AEP, the maximum value of the easement is obtained by combining two separate values: (1) the per acre base value for an easement on agricultural land in the County, and (2) the added value for certain farm quality characteristics. Agricultural use of the land is determined by Agricultural Preservation Advisory Board.

### 1. Determining Base Value

On July 1 of each year, the County Executive determines the base value for the fiscal year. In setting the base value, the County Executive considers such factors as Maryland Agricultural Land Preservation Foundation easement prices State- and County-wide, County TDR prices, and County agricultural land prices for parcels with and without agricultural easements. The base value is applicable County-wide.

### 2. Determining Added Value

The added value is based on several farm quality characteristics that have a direct effect on the future potential of the land to support agriculture and on the threat to the property from non-agricultural uses. These characteristics are:



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- a. Size: For each five (5) acres of land, the added value is 1 percent of base value. Property size is determined from the most recent property tax assessment or other documentation acceptable to the Department of Economic Development.
- b. Land Quality: The land quality value varies by soil quality. It is 3 percent of the each 1 percent of land in U.S.D.A. Capability Class I, 2 percent for Class II and Woodland Group I, 1 percent for Class III and Woodland Group II. In addition 10 percent of base value is added on farms that have implemented a soil conservation plan approved by the Montgomery Soil Conservation District. The U.S.D.A. Capability Classification is determined by the Natural Resources Conservation Service (NRCS).
- c. Land Tenure: The land tenure value is 25 percent of the base value. It is applicable if:
  - i. the landowner earned gross income of at least \$5,000 annually from agricultural use of the land, on or before October 1, 1980, or
  - ii. in at least three of the previous five years, or continuously from the time the owner acquired the land, or
  - iii. the land is being purchased, under binding contract of sale, by a buyer who certifies under oath that he/she intends to start a new farming or direct marketing operation, or
  - iv. the land is being farmed by an operator under a long term lease agreement with the landowner
- d. Road Frontage: The road frontage value is 1 percent of the base value for each 50 ft. of frontage on a public road to a maximum of 100 percent of base value. Road frontage is determined by the Department of Economic Development and may be verified by the landowner by metes and bounds survey.
- e. Agricultural Zone Edge: The agricultural zone edge value will be 100 percent of the base value if a property inside the RDT zone is within one (1) mile of the border with other zones in the County, including incorporated towns. Agricultural Zone Edge value is determined by Department of Economic Development.

## G. County Purchase Procedure

### 1. Ranking of AEP Easement Purchases

The County will accept applications to sell easements during set purchase periods. The County will hold at least one purchase period annually. The County will accept applications to sell an easement on or before the last day of each purchase period. At the end of each purchase period, applications to sell easements



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will be ranked by the Agricultural Preservation Advisory Board (APAB), size, quality of soils and threat of development will provide the vehicle to conduct priority rankings.

## 2. County Offer to Buy

- a. Upon the recommendation of the Director, Department of Economic Development and the Chief Administrative Officer, an application to sell shall be approved, which contains the specific terms of purchase, including any TDRs not retained with the land for existing or reserved rights, shall be tendered to the landowner. Satisfaction of the requirements under these regulations by an applicant does not establish any obligation by the County to purchase an easement. An offer to buy may specify terms, contingencies, and conditions not contained in the original application to sell.
- b. The County will offer to purchase all approved easements for sale to the extent it is possible with the funds allocated. Funds for County easement purchases are allocated annually on July 1, in the Capital Improvement Projects budget.
- c. The County will tender any offer to buy containing the specific terms of purchase on or before the 60th day following the end of the purchase period when the complete offer to sell was made.

## 3. Rejection of Application

- a. The County will notify the landowner of any rejected application to sell on or before the 60th day following the end of the purchase period when the complete application to sell was made and whether the rejection is due to insufficient funds, ineligible land, clouded title, or other cause.
- b. Applications to sell which cannot receive offers to purchase from the County due to insufficient funds will automatically be reconsidered in the next purchase period when funds are available.

## 4. Landowner Acceptance

The landowner will have 30 days following the County's offer to purchase in which to accept the offer. Failure to respond after 30 days will be considered a rejection of the offer. The landowner may reject the offer to purchase up to the point of settlement. A landowner who rejects a County offer to purchase will forfeit his/her right to sell an easement to the County for a period up to twenty-four (24) months.



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## 5. Closing and Payment

- a. Settlement will occur following landowner's acceptance of the County's offer to purchase an easement and is contingent upon a title search and any other evidence, such as a land survey, that may be necessary to establish clear title.
- b. Payment will be in full at time of settlement, or
- c. Landowners can choose a partitioned payment over more than one tax year.

## 6. Recordation and Monitoring

The County's acquisition of an AEP easement will be recorded in the land records, in the annual report of the program, and the Department of Economic Development shall maintain an accounting referencing all TDRs created and conveyed to the County through the AEP program. DED will monitor the properties under easement at least biannually to ensure compliance with the easement.

## H. Referral to State Program

For the purpose of leveraging State and County funds, the Chief Administrative Officer may, upon the recommendation of the Director, Department of Economic Development, may request that the landowner apply to the Maryland Agricultural Land Preservation Foundation and make a good faith offer to sell the easement.

## III. County Supplement to Maryland Agricultural Land Preservation Foundation Easement Price

In accordance with Chapter 2B Section 5 of the Montgomery County Code the County may make an additional payment up to 15 percent of the price of the easement to the landowner upon completion of sale of the easement to the Maryland Agricultural Land Preservation Foundation to encourage landowners to choose to sell easements to the Foundation.

The County Executive will determine annually on July 1 the percentage of the price of the easement to be paid based on the success of the County in the previous year (measured by the number of easement sales) in encouraging County landowners to participate in the Foundation easement purchase program. At the discretion of the County Executive, a biannual review of the valuation may be conducted.

## IV. Building Lot Termination (BLT) Easement Program

In accordance with Chapter 2B-12, the County may purchase an easement on real property to preserve agricultural land in the County. The primary purpose of the BLT program is to preserve agricultural land by



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reducing the fragmentation of farmland which would be impacted by residential development. The agricultural land preservation easement will restrict residential, commercial, and industrial and non agricultural uses of the land. A key feature of this program provides a mechanism to provide an enhanced level of compensation for an easement to landowners that can demonstrate the value of their land for actual residential development.

## A. Eligibility

### 1. Eligible Sellers

The County will purchase easements only from the holder of fee simple title to eligible farmland, or a person or institution that has entered into a binding contract or option to purchase fee simple title to eligible farmland, if and when that person or institution takes title to the farmland. Child lots, as permitted within Chapter 59 of the Montgomery County Code, are not eligible for the BLT program.

### 2. Land Eligible for Inclusion in BLT

- a. The land under consideration for easement valuation for the BLT under this regulation must be at least 25 acres in size; however, a smaller property maybe be considered if it is contiguous to other lands protected from development by State/County agricultural and conservation easements.
- b. At least 50 percent of the land must meet USDA Soil Classification Standards I-III or Woodland Classifications 1 and 2.
- c. The land must lie outside water and sewer categories 1, 2, and 3.
- d. The Land must not be encumbered by Federal/State/County agricultural and conservation easements, except Land protected by Transferable Development Rights (TDR) Easements may still be eligible.

### 3. Application Requirements

A landowner may voluntarily request inclusion into the BLT by submitting a complete property description (see section II. B. 1.) to the Agricultural Preservation Advisory Board. The owner must submit an easement sales application to the Department of Economic Development. The application must include a completed property description (including the requirement outlined in section II. B. 1. m.- Opinion of Title, surveys, legal descriptions) along with an acknowledgement statement regarding the established Annual Adjusted Market Value Price as the asking price. The Department of Economic Development certifies the completeness of the application.



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## B. Review and Approval Procedure

### 1. DED and the Agricultural Preservation Advisory Board shall:

- a. Establish a cap of applications which will be accepted during BLT purchase periods
- b. Rank applicants on a list in the order in which they are received;
- c. Conduct a second ranking based upon the size of the property being considered for BLT.
- d. Provide notification to landowners as to the status of their application detailing the following:
  - i. DED will Review the extent of created/subdivided building lots: (i.e. recorded plat of subdivision, partially engineered lots, approved perc tests, and other factors such as preliminary testing, surveys, etc.
  - ii. Review of previous TDR Transactions (Excess TDRs – must have been or will be created and serialized and at least 1 buildable TDR must be intact with the property to be eligible for the program.)
  - iii. Landowner acceptance of the Annual Adjusted Market Value Price,
  - iv. A recommendation by the DED and APAB to accept applications and proceed to settlement.
- e. Place applications for BLT easements received after the closing of a purchase period or after exceeding the application cap on a waiting list for future consideration.

## C. Permitted Activities on Lands Protected under BLT

The following activities are permitted on lands protected by BLT easements subject to the limitations and conditions of Chapter 59 (Zoning) of the County Code:

### 1. Agricultural Type Use

- a. any agricultural use of the land;
- b. operation of any machinery used in farm production or the primary processing of agricultural products, regardless of the time of operation;



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- c. all normal agricultural operations, performed in accordance with good husbandry practices, that do not cause bodily injury or directly endanger human health;
- d. operation of a Farm Market for sale of farm products.

## 2. Residential Use

- a. No residential uses are permitted on lands encumbered by a BLT easement except when reserved residential rights are retained with the easement;
- b. To the extent allowed by the easement, the grantor of BLT Easement may retain certain rights to future residential dwellings. The grantor must apply in writing to the Agricultural Preservation Advisory Board prior to submission of any preliminary plan of subdivision for approval to use:
- c. Approval of retained rights shall be one acre, or the minimum lot size required by the zoning and well and septic regulations, which ever is greater, to build a house, unless a larger size does not interfere with the Agricultural character of the Property, as determined by the APAB;
- d. Any lot right terminated under this program, includes the termination of any on-site sewage disposal system used for the purpose of evidence as to viability of building lot right.

## 3. Restriction on Subdivisions

The owner of land subject to a BLT easement must not use or subdivide the land for residential commercial, industrial, or any other non agricultural uses except as provided under this regulation and contained within the terms of the easement.

### D. Establishing BLT Easement-Value

Methods for establishing easement value under the Building Lot Termination (BLT) Program will be through the application of a County established Annual Adjusted Market Value Price and under specified circumstances, an appraisal based system.

#### 1. Establishing the Annual Adjusted Market Value Price

On July 1 of each year, the County Executive will establish the Annual Adjusted Market Value Price



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("the Price") for the fiscal year. In setting the Price, the County Executive considers such factors as analysis of appraisals/comparable sales/ land values obtained from other preservation programs expressed in terms of a percentage of the FMV of the land as determined by appraisals.

- a. The maximum BLT easement value is capped at the Annual Adjusted Market Value Price which shall be a percentage of the Fair Market Value of land in the RDT zone as approved by the County Executive.
- b. The Fair Market Value of the land which includes the BLT Easement is the price, as of the date of the offer to sell, which the vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay for the property if the property were not subject to any restriction imposed under these regulations.

## 2. Right to Withdraw

If the landowner rejects the maximum easement value, the landowner shall withdraw the application from further consideration during that application cycle. A landowner must resubmit an application for future easement funding cycles, if the application is withdrawn due to landowner rejection of value.

## 3. Compensation

- a. Compensation under the BLT will involve the County purchasing the buildable TDR, defined as the "Permissible Residential Lot Right TDR", for each lot that is acquired in accordance with section IV. E of this regulation
- b. Funds will be appropriated through the Agricultural Preservation Capital Improvements Project (CIP).
- c. the maximum easement value for a BLT may not exceed the Annual Adjusted Market Value Price as determined above.
- d. Upon the approval of Montgomery County Government, Buildable TDRs acquired through the purchase of a BLT easement may be used as a means of compensation in lieu of BLT payment when BLT funds are insufficient to complete the settlement.



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## **E. Building Lot Termination Program Purchase Procedure**

Under the BLT program, the maximum value of the easement may not exceed the Annual Adjusted Market Value Price as determined by appraising the Fair Market Value (FMV) of the permitted residential lot rights on land in the Rural Density Transfer Zone (RDT). The Grantor of the easement shall encumber their entire property through a BLT Easement which terminates permitted residential lot rights under this option. By terminating the right, the Grantor shall forgo the right to subdivide the land for residential, commercial, industrial or any other non agricultural uses except for reserved residential rights in accordance with section IV. C. 2. of this regulation.

For each BLT Easement acquired under this program the County will create, serialize, and convey the TDR associated with the permitted residential lot rights from the grantor to the County. The future use of TDRs owned by the County must be approved by Montgomery County Government. Simultaneously to the creation, serialization and conveyance of these TDRs purchased for the BLT program under this regulation, the County shall also require the Grantor to create and serialize any "Excess TDRs" that remain with the property.

### **1. County Purchase Procedure**

#### **a. Ranking of BLT Easement Purchases**

The County will accept applications to sell BLT easements during established purchase periods. The purchase period shall end upon the earlier of, meeting the cap of applications accepted established by the Agricultural Preservation Advisory Board, or 30 days from last application received by DED.

The County will accept offers to sell on or before the last day of each purchase period as outlined above.

At the end of each purchase period, DED will put the applicants on a list in the order they are received and a second ranking will be conducted based on the size of the property from largest acreage to lowest and have acknowledged acceptance of the Annual Adjusted Market Value Price.

#### **b. County Offer to Buy BLT Easement**

The County's offer to Buy BLT easements shall be conducted in accordance with section II. G. 2.(a),(b.) and (c.) of this regulation.



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**c. Rejection of Offer - BLT Easement**

Rejections by the County's to purchase a BLT easement from a landowner shall be conducted in accordance with section II. G. 3.(a.) and (b.) of this regulation.

**d. Landowner Acceptance - BLT Easement**

The landowner will have 30 days following the County offer to purchase in which to accept the offer. Failure to respond after 30 days will be considered a rejection of the offer. The landowner may reject the offer to purchase up to the point of settlement. A landowner who rejects a County offer to purchase will forfeit his/her right to sell an easement to the County for a period up to twenty-four (24) months.

**e. Closing and Payment - BLT Easement**

The process and procedure for BLT easement closings and payments shall be conducted in accordance with section II. G. 5. (a.) (b.) and (c.) of this regulation.

**f. Recordation and Monitoring - BLT Easement**

The County's acquisition of a BLT easement will be recorded in the land records, in the annual report of the program, and the Department of Economic Development (DED) shall maintain an accounting referencing all TDRs created and conveyed to the County through the BLT program unless the TDRs acquired are provided to the landowner in lieu of direct compensation when BLT funds are insufficient to complete the settlement. The DED will monitor the properties under easement at least biannually to ensure compliance with the easement.



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Originating Department: Department of Economic Development (DED) Effective Date:

## V. Effective Date

This regulation becomes effective 30 days after approval by the County Council.

\_\_\_\_\_  
Isiah Leggett  
County Executive

Approved as to Form and Legality  
Office of the County Attorney

By:  
Date:

C:\BLT\NEWBLTregtemplaterevised051007

Issuing Department Economic Development  
 Contact Person John P. Zawitoski  
 Executive Regulation No. \_\_\_\_\_

FISCAL IMPACT STATEMENT

AGRICULTURAL LAND PRESERVATION DISTRICTS AND EASEMENT PURCHASES

Fiscal Summary: Presentation of the Incremental increase or decrease in expenditures and revenues for the current and next fiscal years.

|   |  | FY07<br><u>Current Fiscal Year</u> | FY08<br><u>Next Fiscal Year</u> |
|---|--|------------------------------------|---------------------------------|
| <b>1 Revenues</b>                               | Agricultural Transfer Taxes                              | \$6,704,000                        | \$5,088,000                     |
| <b>2 Personnel Costs: 2.6 WY Charged to CIP</b> |  |                                    |                                 |
|   | <b>1.4 WY Charged to Operating</b>                       |                                    |                                 |
|   | Salaries and Wages Including Fringe Charged to CIP       | \$221,000                          | \$268,890                       |
|   | Salaries and Wages Including Fringe Charged to Operating | \$222,000                          | \$226,000                       |
|   | <b>Total Personnel Costs:</b>                            | <b>\$443,000</b>                   | <b>\$494,890</b>                |
| <b>3 Capital Expenses:</b>                      |  |                                    |                                 |
|   | List Items: Land   | <u>\$8,204,000</u>                 | <u>\$6,088,000</u>              |
|   | <b>Total Capital Expenses</b>                            | <b>\$8,425,000</b>                 | <b>\$6,356,890</b>              |
|   | Capital Outlay:  |                                    |                                 |
|   | <b>Total Expenses (2+3)</b>                              | <b>\$8,647,000</b>                 | <b>\$6,582,890</b>              |

**4 Positions Affected:**

Positions:  
 Full time: Ag Services Division Manager  
 Business Development Specialist  
 Business Development Specialist  
 Part time: Principal Administrative Aide  
 Principal Administrative Aide  
 Workyears: Total 4 (2.6 CIP + 1.4 General = 4.0)  
 Full time: 3  
 Part time: 1 (.5 + .5 = 1.0)

**5 Assumptions and Explanations:**

This fiscal impact statement is intended to describe the affects the proposed changes to Executive Regulation which govern Agricultural Land Preservation Districts and Easement Purchases will have on local government who are charged with the implementation of these programs. More specifically, these regulations are being amended to include a new preservation initiative which is referred to as the Building Lot Termination Easement Program. This program will serve to augment our existing programs which are all designed to protect agricultural lands. This program will be incorporated into the existing workload and implemented as another tool for protecting agricultural lands. DED Ag Services proposes funding the BLT from a portion of State Agricultural Transfer Taxes which the County retains 75% for this intended purpose. The appropriation for farmland preseervation in the FY07 and FY08 CIP totals \$14,550. Within this total are funds appropriated for State Aid. When you exclude the amount of State Aid for land preservation, the total remaining represents Ag Transfer Taxes available for land preservation which are estimated at \$11.792 Million Dollars. Of which, about \$6.442 Million is dedicated for the proposed BLT program and the balance of \$5.350 Million for our traditional land preservation programs. The total funding that will be necessary for the proposed Building Lot Termination BLT program has been estimated to be between \$100-200 million over the next 5-10 years. This level of funding may permit the county to purchase 250-500 BLT easements that are estimated to cost \$300,000-400,000 per BLT. The County Council has retained the services of a national preservation organization (The Trust for Public Land (TPL)) to develop a strategic plan for funding the proposed BLT program. Bonding authority to meet this financial obligation may be required over the next 5-10 years. In addition, it is recommended that the BLT program can be funded privately via the creation of a new market-driven TDR program for buildable TDRs for non-residential purposes.

**6 Economic Effect on Private Sector:**

Private Landowners will benefit from these programs as the proceeds from easement purchases are provided directly to landowners as compensation for the property rights (equity) that they are forgoing. From the building industries perspective, the economic impact may be viewed as negative as the County will be in direct competition with developers in negotiating easements which will eliminate density permitted by the zone through the elimination of actual lots.

If additional space is needed, please attach

OMB REVIEW

\_\_\_\_\_ Fiscal Impact Statement Approved

\_\_\_\_\_ OMB Director

\_\_\_\_\_ Fiscal Impact not approved, OMB will contact department to remedy

# STANDARD OPERATING PROCEDURE

## CODE ENFORCEMENT

Upon receipt of a complaint, the Permit Technician contacts the complainant to acknowledge receipt of the complaint and provides the Investigator/Inspector's name and telephone number.

Within 24 hours of receipt of the complaint, the Investigator/Inspector must contact the complainant by phone. The Investigator/Inspector will inform the complainant of the assignment of the case, ask pertinent questions regarding the best time to witness a violation, and obtain any additional information that might be helpful. The Investigator/Inspector will then give the complainant an approximate time the site will be visited. This information should be documented into Hansen so that if additional calls from citizens are received, whoever takes the call can indicate that an investigation is underway.

The Investigation should begin no later than 72 hours of receipt of the complaint whenever possible. All visits should be documented in Hansen.

A decision to close the case for no violation, or a decision to issue a Notice of Violation should be made and documented in Hansen within 5 days of visiting the site. Exceptions will occur. All research and conversations pertinent to the case will be documented in Hansen. The complainant will be called when the case is closed.

If a Notice of Violation is issued, time for compliance should reflect the complexity or lack thereof of the corrective action. The Investigator/Inspector will contact the complainant and the results of the investigation should be discussed at that time. Documentation into Hansen will be made.

If a Civil Citation is issued, documentation must be made in Hansen and the Investigator/Inspector will call the complainant to discuss the next step. Documentation into Hansen will be made.

Extensions of time should be given only if the Investigator/Inspector believes compliance will be achieved by doing so. No "buying time" extensions should be given. Extensions longer than 30 days should be discussed with the Permitting Services Manager. Documentation into Hansen will be made.

If the violator files for Special Exception to correct the violation, the Investigator/Inspector/Inspector will inform the complainant of the special exception process and give the date of the hearing. After the Board of Appeals makes the decision, the Investigator/Inspector will call the Complainant and discuss the next steps. Documentation into Hansen will be made.

If the violator files an Administrative Appeal, the Investigator/Inspector will contact the

**STANDARD OPERATING PROCEDURE**

**CODE ENFORCEMENT**

Under no circumstances will transfers of cases between Investigators/Inspectors be made without Manager's approval.

In situations that require extensive investigations, for example where the activity occurs sporadically, the Investigator/Inspector will contact the complainant at mutually agreed upon intervals.

The Permitting Services Manager will review cases with each Investigator/Inspector on a biweekly basis during which the application of this procedure will be reviewed for the cases discussed.

\_\_\_\_\_  
Permitting Services Manager  
Casework Management

\_\_\_\_\_  
Division Chief  
Casework Management

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date



**MEMORANDUM**

June 8, 2007

TO: County Council

FROM: Amanda Mihill, Legislative Analyst *AM*  
Marlene Michaelson, Senior Legislative Analyst *MM*  
Jeffrey Zyontz, Legislative Attorney  
Shondell Foster, Research Associate *SF*

SUBJECT: **Introduction:** Bill 12-07, Real Property – Agricultural Zones– Disclosure

Bill 12-07, Property – Property Tax – Disclosure, sponsored by the Council President at the request of the Ad Hoc Agricultural Policy Working Group, is scheduled to be introduced on June 12, 2007. A public hearing is tentatively scheduled for July 19 at 7:30 p.m.

Bill 12-07 would require sellers of real property in agricultural zones to notify potential buyers that state and county laws protect owners and operators of agricultural uses from certain lawsuits; and generally amend the law governing real property disclosures. Bill 12-07 would implement recommendations of the Ad Hoc Agricultural Policy Working Group. In the January 2007 Report, the Group recommended the following:

**We recommend the Council enact legislation requiring disclosure for homes being sold in agricultural zones informing potential homebuyers of current County and State law that protects farmers from nuisance claims. We feel that this approach may reduce the number of complaints lodged against farmers by increasing the awareness of homebuyers that current laws protect farmers from agricultural-related complaints.**

This packet contains

Bill 12-07

Legislative Request Report

Circle #

1

4

Bill No. 12-07  
Concerning: Real Property -  
Agricultural Zones - Disclosure  
Revised: 5/20/2007 Draft No. 1  
Introduced: June 12, 2007  
Expires: December 12, 2008  
Enacted: \_\_\_\_\_  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: \_\_\_\_\_  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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By: Council President at the request of the Ad Hoc Agricultural Policy Working Group

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**AN ACT** to:

- (1) require sellers of real property in agricultural zones to notify potential buyers that state and county laws protect owners and operators of agricultural uses from certain lawsuits; and
- (2) generally amend the law governing real property disclosures.

By adding

Montgomery County Code  
Chapter 40, Real Property  
Section 40-12B

|                              |  |
|------------------------------|--|
| <b>Boldface</b>              | <i>Heading or defined term.</i>                            |
| <u>Underlining</u>           | <i>Added to existing law by original bill.</i>             |
| [Single boldface brackets]   | <i>Deleted from existing law by original bill.</i>         |
| <u>Double underlining</u>    | <i>Added by amendment.</i>                                 |
| [[Double boldface brackets]] | <i>Deleted from existing law or the bill by amendment.</i> |
| * * *                        | <i>Existing law unaffected by bill.</i>                    |

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

1       **Sec. 1. Section 40-12B is added as follows:**

2       40-12B. Real Property Sold in Agricultural Zones.

3       (a) If any real property is located in an area zoned agricultural, as defined in  
4       Section 59-C-9.1, the seller must disclose to each prospective buyer, before the  
5       buyer signs a contract for the sale of the property, that existing County and  
6       State law is intended to discourage owners of real property adjacent to  
7       agricultural-zoned land from filing certain lawsuits against an owner or  
8       operator of an agricultural use in those areas. The following text must be  
9       substantially included in the disclosure:

10           As required under Montgomery County Code §40-12B, you are hereby  
11           notified that the state of Maryland and Montgomery County have  
12           enacted laws that establish agriculture as the preferred use on land  
13           zoned Rural Density Transfer and as a permitted use in other  
14           agricultural zones, as defined in Section 59-C-9.1 of the County Code.  
15           The property subject to this contract is located in an area zoned  
16           agricultural. Residents and other occupants of property near land in  
17           agricultural zones should be prepared to accept effects of usual and  
18           customary agricultural operations, facilities, and practices, including  
19           noise, odors, dust, smoke, insects, operation of machinery, storage and  
20           disposal of manure, unusual hours of operation, and other agricultural  
21           activities.

22           Under Maryland law, an agricultural operation is not a nuisance, and a  
23           lawsuit may not be successful alleging that an agricultural operation  
24           interferes with the use or enjoyment of other property, if the agricultural  
25           operation:

26           (1) has continued for at least 1 year;



# LEGISLATIVE REQUEST REPORT

## Bill 12-07, Real Property – Agricultural Zones – Disclosure

- DESCRIPTION:** This bill would require sellers of real property in agricultural zones to notify potential buyers that state and county laws protect owners and operators of agricultural uses from certain lawsuits; and generally amend the law governing real property disclosures.
- PROBLEM:** As suburban communities expand into rural communities, conflicts can arise between farmers who want to farm the land and neighbors who expect suburban standards for noise, odors, etc. Conflicts can also arise between farmers and other farmers. These conflicts can interfere with agricultural activities. This bill would implement recommendations made by the Ad Hoc Agricultural Policy Working Group.
- GOALS AND OBJECTIVES:** To ensure that potential homebuyers of property in agricultural zones are aware that existing State and County law protect farmers from certain nuisance lawsuits; and to reduce the number of potential complaints filed against farmers.
- COORDINATION:** To be researched.
- FISCAL IMPACT:** To be requested.
- ECONOMIC IMPACT:** To be requested.
- EVALUATION:** To be requested.
- EXPERIENCE ELSEWHERE:** To be researched.
- SOURCE OF INFORMATION:** Amanda Mihill, Legislative Analyst (240-777-7815)  
Marlene Michaelson, Senior Legislative Analyst (240-777-7943)  
Jeffrey Zyontz, Legislative Attorney (240-777-7896)
- APPLICATION WITHIN MUNICIPALITIES:** To be researched.
- PENALTIES:** Class A violation