

MEMORANDUM

June 7, 2006

TO: Ad Hoc Agricultural Policy Working Group

FROM: Marlene Michaelson, Senior Legislative Analyst
Jeff Zyontz, Council Analyst
Amanda White, Council Legal Analyst

SUBJECT: June 12 Meeting

Our next meeting is scheduled for June 12, 2006 from 4:00 p.m. to 6:00 p.m. in Room A at the Upcounty Regional Services Center. As you will note, the agenda for this meeting does not yet tackle the difficult issues listed in the Council's resolution since Staff needed additional time to prepare background materials on these issues.

Attached are the background materials for this meeting. These include the following:

- An agenda.
- Minutes from the last meeting.
- Ideas for potential Group acronyms. Additions to this list would be most welcome.
- General Principles: From the comments of Group members at the first meeting, we have compiled a brief list of principles upon which there appeared to be common agreement.
- A schedule for future meetings.
- A staff Policy Paper on Right to Farm Legislation. It is our plan to provide a similar document for each major issue before the Group and we welcome your comments on the form or substance. (Although the Council did not request a recommendation on this issue, several Group members mentioned it and it was an issue that Staff could adequately research in the limited time between the first and second meetings.)

In addition to these materials, attached are updated versions of three annotated bibliographies: relevant memoranda, relevant studies and reports, and legislation. Please replace the bibliographies in your binders with those that are attached. (Bibliographies appear at the beginning of the tabbed sections.) Additionally, this packet contains Chapter 2B of the County

Code, entitled "Agricultural Land Preservation" that should be inserted immediately after Chapter 59-C-9 if the Zoning Ordinance in the "Legislation" tab.

The two possible dates we have identified for the tour are Saturday, July 8 or Saturday July 15. The chair has suggested that we begin early (8:30?) and complete the tour early (12:30?) so that it does not take the entire day. Please let us know as soon as possible whether you are available on the 8th and 15th.

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AGENDA
AD HOC AGRICULTURAL POLICY WORKING GROUP

Monday June 12, 2006
Upcounty Regional Services Center
4:00 to 6:00 p.m.

- 4:00 Review Minutes
- 4:05 General Principles
- 4:35 Right to Farm Legislation
- 5:35 Scheduling and Administrative matters (including
 setting a date for a tour)
- 6:00 Adjourn

**AD HOC AGRICULTURAL POLICY
WORKING GROUP MINUTES**

Thursday, May 25, 2006

4:04 P.M. to 6:15 P.M.

Up-County Regional Services Center Room A

PRESENT

Working Group Members

| | |
|--------------------|--------------------------|
| Lib Tolbert, Chair | Scott Fosler, Vice-Chair |
| Wade Butler | Margaret Chasson |
| Jim Clifford | Nancy Dacek |
| Jane Evans | Robert Goldberg |
| Tom Hoffman | Jim O'Connell |
| Michael Rubin | Pam Saul |
| Drew Stabler | Billy Willard |
| Wendy Perdue | |

Montgomery County and State Staff

| | |
|--------------------------------|--|
| Nancy Aldous, County Council | Jeremy Criss, County Department of Economic Development |
| Justina Ferber, County Council | Marlene Michaelson, County Council |
| Karl Moritz, M-NCPPC | Amanda White, County Council |
| Jeff Zyontz, County Council | |

ABSENT

Bou Carlisle

GUESTS

Council President George Leventhal

Councilmember Nancy Floreen

Councilmember Nancy Floreen gave opening remarks thanking the working group members for serving on the group; and encouraging the group to work through the issues the Council identified in the resolution establishing the working group (Resolution 15-1395).

Council President George Leventhal gave opening remarks thanking the working group members for serving on the group; requesting group members listen to one another, especially during contentious and heated discussions; and expressing the Council's intent to rely on the group's findings and recommendations.

Working Group members and County staff gave introductions.

The group discussed and unanimously agreed that a bus tour of the Agriculture Reserve would be beneficial; and requested County staff make the necessary arrangements, including stopping

at a few farms. Group members requested the tour show both farms and development in the Agriculture Reserve and include areas from both sides of the Agriculture Reserve.

The group discussed, but did not definitively decide, how the group should operate (e.g., should the group take official votes). The group contemplated whether it should adopt a policy statement that states the group supports the agricultural industry as a whole. The group did not decide whether or not to adopt a statement, but the sentiment of the group was that they supported the agriculture industry generally.

Ms. Tolbert reminded the group that members could request information regarding agriculture issues from County staff.

Working group members identified what they thought were the important issues facing the Agriculture Reserve. Group members identified the following different issues/perspectives:

- Protect the Agriculture Reserve. Are we planning for the facilities/uses that are encroaching on the Agriculture Reserve? Concern that in the future there will be an effort to open the Agriculture Reserve (especially if it is open space and not agriculture). How big is the threat to the Agriculture Reserve?
- Support the agricultural industry.
- Allow agriculture to evolve. Need to be able to use new technologies as they come out.
- Development: Prevent fragmentation of land. Need to get owners to participate in programs rather than selling lots for development. Find alternative ways to provide value of the land without subdividing (option for lease revenues). Must cluster development – not have 25-acre lots. Find ways to encourage moderate housing instead of “McMansions”.
- Planning: What was the intent of the Master Plan? Has the interpretation been consistent? How do agriculture issues fit into M-NCPPC’s planning framework?
- Need background on earlier decisions related to the Agriculture Reserve.
- How does the big picture relate to building lot termination and transferable development rights issues?
- Farmer/landowner equity and economics. Preserving agriculture. Need to maintain current farms. Need to keep agriculture economically viable.
- Land equity – it is unfair to implement policies that decrease equity.
- Educate the public. Many people do not realize the Agriculture Reserve exists. “Keep It Simple” - most people don’t understand the County’s zoning strategies.
- TDR issues.
- Sand mounds: They are sometimes necessary because owners cannot always get a perk, even on large tracts of land. Discussions about sewer, septic, and sand mound issues must involve the underlying policy goals. The answer to the sand mound problem is not a simple yes or no – must find a way to maintain large contiguous areas of land (with

smaller lots for development). There is a problem when land cannot perk and there are no options for septic, but too many sand mounds is also a problem.

- Rustic roads.
- Tech Way.
- Child lots: How many child lots are there?
- Natural resources.
- Different views of purpose of the Agriculture Reserve (open space v. agriculture). Sometimes these views are in harmony and sometimes they are not. The core of the Agriculture Master Plan was agriculture, but there are also goals for open space and environmental protection. Park and Planning should not own the whole western area of the County.
- Need to maintain support of entire County.
- Right to farm. What is the place of non-agriculture uses?
- Enforcement of existing laws.
- Don't keep doing things the same way if they are wrong.

The group discussed the frequency, time, and location of meetings and decided that subsequent meetings will be held on Mondays from 4:00 p.m. to 6:00 p.m., beginning June 12.

Audience members submitted the following suggestions:

- Develop a Growth Management Plan by 2040 – where the demands for housing is going to be influenced by an aging population, migration should be to smaller lots. Pressure will be reducing in the Agriculture Reserve and the threat may be over-stated. Focus on equity and compensation to reduce immediate threat to conversion as the community ages (urban services needs will dictate the growth pattern).
- Require education program for new residents of the Agriculture Reserve. The program should educate new residents on farming issues and farming practices in rural Montgomery County.
- County Charter Amendment to limit changes in zoning of the Agriculture Reserve (RDT).
- Local Right-to-Farm legislation is needed in the zoning ordinance.
- Set up a Policy like fire equipment where the County buys large agricultural equipment (combines, tractors, etc.) to be used by farmers (like the fire trucks).
- Montgomery County Economic Development Fund (a low interest revolving fund) that farmers can use for land, equipment, seed, etc.

Minutes written by: Amanda White, Council Legal Analyst

The AgHOC Group **AG**gricultural Ad **HOC** Group

WAGG **Working AG**gricultural **G**roup

GAG **Group on AG**riculture

CAG **Council's Agricultural Group**

WOGAG **WORK**ing **G**roup on **AG**riculture

RAWG **Rural Agricultural Working Group**

D R A F T
Agricultural Working Group
General Principles

(Note that these principles are not presented in order of importance.)

1. The economic viability of the agricultural industry is critical to the preservation of the Agricultural Reserve. While the open space and environmental protection elements of the Agricultural Reserve are important, they alone will not be sufficient justification for preserving one-third of the County into the future.
2. Agriculture in the County has and will continue to evolve and requires an environment that recognizes that fact.
3. The equity farmers hold in their property is not only important to them personally but an important asset for their businesses. Any new program or policy to discourage development must be evaluated in terms of its impact on farmers' equity.
4. Large contiguous areas of farmland are necessary for agriculture. Fragmentation of that critical mass of farmland should be avoided.

Meeting Schedule for Agricultural Advisory Group

| | |
|--------------|--|
| June 12 | Schedule for meetings, General Principles and Right to Farm Legislation |
| June 26 | Child Lot Issues |
| July 10 | TDR Tracking Issues |
| July 24 | Building Lot Termination/ Super TDR and other programs to limit or discourage full build-out at 1 per 25 units |
| August 7 | Continuation of July 24 th discussion |
| August 21 | August break? |
| September 11 | Sewer and Water Strategies (Sand Mounds) |
| September 25 | Continuation of September 11 discussion |
| October 9 | Review of all pending legislation |
| October 23 | Identification of topics for further study/ action (e.g., options to improve subdivision design in the RDT zone) |
| November 6 | Wrap-up of any unresolved issues and conflicting recommendations. |
| November 20 | Review Draft Report |
| December 11 | Final meeting |

Potential Dates for Tour: July 8 or July 15.

STAFF POLICY PAPER RIGHT-TO-FARM LEGISLATION

Draft Date: June 7, 2006

ISSUE: Does the county need to pass additional legislation to protect a farmer's "right-to-farm"?

PROBLEM STATEMENT

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.

RELEVANT LAWS AND REGULATIONS

"Right-to-farm" legislation is often adopted as a response to nuisance complaints between farmers and their neighbors. An excerpt from the State legislation is reproduced below. Since Montgomery County does not have a "nuisance ordinance", Council staff has perused the County Code and identified legislation that is relevant to the broad category of nuisance law. These excerpts appear below.

State Law

State law provides for the following protections for farmers from nuisance claims:

- (c) Operation continued for 1 year or more. If an agricultural operation has been under way for a period of 1 year or more and if the operation is in compliance with applicable federal, State, and local health, environmental, zoning, and permit requirements relating to any nuisance claim and is not conducted in a negligent manner:
 - (1) The operation, including any noise, odors, dust, or insects from the operation, may not be deemed to be a public or private nuisance; and
 - (2) A private action may not be sustained on the grounds that the operation interferes or has interfered with the use or enjoyment of other property, whether public or private.¹

¹ Maryland Code, Courts and Judicial Proceedings, § 5-403(c).

County Law

Zoning Ordinance

Section 59-C-9.23 of the Montgomery County Zoning Ordinance sets forth the intent of the RDT zone. This section states that “[a]griculture is the preferred use in the [RDT] zone. *All agricultural operations are permitted at any time, including the operation of farm machinery*”² (emphasis added).

Air Quality

Chapter 3 of the Montgomery County Code, entitled “Air Quality”, generally prevents an individual from burning refuse or plant life outside of a building without a permit and limits the purposes for which a permit may be issued. Section 3-8(c)(1) allows the Director of the Department of Environmental Protection to issue a permit for agricultural open burning.

Section 3-9(a) states that “[a] person must not cause or allow the emission into the atmosphere of any gas, vapor, or particulate matter beyond the person’s property line or unit if a resulting odor creates air pollution.”³ The County Code does not contain a provision exempting farmers from the general odor provisions of the Code.

Erosion, Sediment Control, and Stormwater Management

Chapter 19 in the County Code, entitled “Erosion, Sediment Control, and Stormwater Management”, provides that “[i]f illegal pollutant discharges from properties engaged in agriculture impair aquatic life or public health, cause stream habitat degradation, or result in water quality standards or criteria violations, the Department must pursue correction of these violations . . .”⁴ This section specifically addresses agricultural operations and there is no exemption.

Noise Control

Chapter 31B of the County Code, entitled “Noise Control”, provides the standards for acceptable levels of noise during both the day and night times. Table 1 below summarizes the general standards related to acceptable noise levels in the agricultural zones.

² Montgomery County Code, § 59-C-9.23.

³ Montgomery County Code, § 3-9(a).

⁴ Montgomery County Code, § 19-51(c).

Table 1: Maximum Allowable Noise Levels in the Agricultural Zones⁵

| | Daytime (decibels) | Nighttime (decibels) |
|--|-------------------------------|---------------------------------|
| Land zoned in agricultural zones* where the owner has not transferred the development rights. | 65 | 55 |
| Land zoned in agricultural zones* where the owner has transferred the development rights. | 67 | 62 |

* The agricultural zones are Rural, Rural Cluster (RC), Rural Density Transfer (RDT), Rural Neighborhood Cluster (RNC), Rural Service (RS), and Low Density Rural Cluster Development Zone (LDRCDZ).⁶

Section 31B-10 includes a relevant exception. Section 31B-10(a)(1) states that the Noise Control chapter does not apply to “agricultural field machinery used and operated in accordance with the manufacturer’s specifications”.⁷

Pesticides

Chapter 33B of the County Code, entitled “Pesticides” regulates the use and distribution of pesticides. The definitions section exempts agricultural land from the requirements in that section.⁸

Solid Waste

Chapter 48 of the County Code contains laws related to solid waste. Section 48-22 prohibits people from hauling refuse into the County without a permit. Provisions in this section exempt fertilizer and stable manure used for agricultural purposes from this general prohibition.⁹

Excerpts from State and County Law

Relevant state law is attached on © 1 to 2. Relevant excerpts from the County Code and Zoning Ordinance are on © 3 to 10. Chapter 59-C-9 can be found in its entirety in the Legislation tab on © i to xxxiv.

OTHER RELEVANT MATERIAL

Circles 11 to 12 is a right-to-farm law fact sheet published by the American Farmland Trust. Attached on © 13 to 15 is a summary of right to farm laws in all 23 Maryland counties. This summary was prepared by the Maryland Farm Bureau and, according to the document, is current as of October, 2006.¹⁰ According to the summary, of the 23 counties:

⁵ Montgomery County Code, §§ 31B-2(l)(1)-(2), 31B-5(a)(1).

⁶ Montgomery County Code, § 59-C-9.1.

⁷ Montgomery County Code, § 31B-10(a)(1).

⁸ Montgomery County Code, § 33B-1 defines *lawn* as excluding agricultural land.

⁹ Montgomery County Code, § 48-22.

¹⁰ This document can be found online at http://www.mda.state.md.us/pdf/rtf_list.pdf.

- 15 counties (65%) have at least one component (other than standard definitions) of a right-to-farm law
- 13 counties (57%) have grievance procedures
- 12 counties (52%) have a clause for limitations of actions
- 11 counties (48%) have a bad faith clause and/or good neighbor policy

Circles 16 to 29 contain examples of right to farm laws from the following counties: Butte County (California) and Howard, Frederick, and Carroll counties (Maryland). Articles containing background information on right-to-farm laws is attached on © 30 to 44.

ACTIVITY UNDER THE EXISTING LAW

As suburban communities expand and abut agricultural land, conflicts may arise between farmers who wish to continue their farming and non-farmers who want to preserve the use and enjoyment of their property. Conflicts can also arise between farmers. These conflicts can involve complaints about “odor, flies, dust, noise from field work, spraying of farm chemicals, [and] slow moving farm machinery.”¹¹

Currently, complaints are filed with the Department of Environmental Protection (DEP). Staff from DEP indicate that the number of complaints filed, while not “common”, have increased as development in the Up-County area has increased. Council staff has requested data from DEP staff on the number of complaints, which was unavailable at the time of this mailing (but which we hope to have by the meeting).

Council staff performed a cursory online search that did not identify current Maryland court opinions addressing nuisance claims related to agricultural land and farming in Maryland. The lack of reported judicial opinions is not surprising given the strong state language that protects farmers from nuisance lawsuits.

ALTERNATIVES TO ADDRESS THE PROBLEM

- 1) Do nothing.

This option would retain the status quo.

- 2) Do not enact right-to-farm legislation, but enact legislation requiring disclosure requirements.

Choosing this option suggests that the County Code and Zoning Ordinance or State law is sufficient to protect farmers, and therefore only a disclosure statement (not a right-to-

¹¹ Janie Hipp, “Balancing the Right to Farm with the Rights of Others”, page 1 (National Public Policy Education Conference, 1998). See © x.

farm law) is necessary to inform nearby residents of what current county and state law provide. The County law currently requires the seller of real property to provide prospective buyers an opportunity to examine the applicable county and/or municipal master plan and contracts for the sale of real property must contain a provision notifying the prospective buyer of the right to review the applicable master plan.¹²

If the Group recommends legislation requiring disclosure requirements, the following issues would need to be addressed:

- Who should receive the disclosure (e.g., homebuyers in the RDT zone or homebuyers in all agricultural zones)?
- When should the disclosure be provided (options include: as part of the annual tax bill, when subdivisions or building permits are approved and/or as part of a real estate transaction, as general informational pamphlets not linked to a specific event)?
- Should the disclosure be recorded and attached to the property deed?
- What government oversight, if any, should there be over the disclosure process?

3) Enact a right-to-farm ordinance.

This option would protect farmers from potential nuisance lawsuits, due to byproducts of farming (e.g., odor, flies, dust, noise from field work, spraying of farm chemicals, or slow moving farm machinery). Selecting this option suggests that the Group does not believe current county or state law adequately protects farmers against potential nuisance suits or complaints from neighbors.

This option would require a detailed examination of provisions. Potential components include the following:

- a) Good Neighbor Policy
- b) Disclosure Requirements
- c) Grievance Procedures
- d) Establishing and staffing an Agricultural Grievance Board
- e) Language limiting liability of farmers
- f) Bad Faith Clause
- g) Negligence Clause
- h) Required right-to-farm notice
- i) Specific “nuisances” to be included (e.g., odor, chemical spray, dust, insects, etc.)

¹² Montgomery County Code, § 40-10(a), (c).

ADVANTAGES AND DISADVANTAGES OF ALTERNATIVES

1) Do nothing

Advantages

- Legislative change is not required.
- Current state law may adequately protect farmers and therefore legislative change may not be necessary.

Disadvantages

- Potential buyers of homes in agricultural zones may not be aware of relevant laws.
- As development increases in agricultural areas, the number of complaints may increase.
- Does not provide for a forum for resolving disputes between farmers and neighbors.

2) Do not enact right-to-farm legislation, but enact legislation requiring disclosure requirements

Advantages

- Puts the buyer of land in RDT-zoned agricultural areas on notice that the preferred use in these areas is agriculture, not residential, and agricultural operations are permitted at *any* time.
- May reduce complaints.
- Does not take time away from farming activities, as would occur with the use of a formal grievance procedure.

Disadvantages

- Does not provide for a forum for resolving disputes between farmers and neighbors.
- May require County oversight.
- Requires legislation.

3) Enact a right-to-farm ordinance:

Advantages

- Inform and educate County residents about the local value of agriculture.¹³
- Provides a forum for resolving disputes between farmers and neighbors (if grievance procedures are enacted).

¹³ Matthew Wacker, Alvin D. Sokolow, and Rachel Elkins, "County Right-to-Farm Ordinances in California: An Assessment of Impact and Effectiveness, page 3 (University of California Agricultural Issues Center, May 2001). See © x.

Disadvantages

- Evidence is not clear that a right to farm ordinance would decrease the volume of complaints or litigation.¹⁴
- Requires legislation with complex list of issues that must be decided.
- May have significant administrative costs (particularly if a grievance process is included).
- May be unnecessary because of state law provisions.

STAFF COMMENTS/QUESTIONS TO CONSIDER

The Group may wish to use the following questions as a tool to guide discussion of the need for right-to-farm legislation or legislation requiring disclosure of relevant law. The desirability of “right-to-farm” legislation was not an issue the Council asked the Group to discuss. Therefore, if the Group’s recommendation involves significant follow-up work, Staff recommends that it be done as part of the follow-up work to be completed after December so as not to take time away from other issues the Council asked the Group to focus on.

Is there a problem that requires “right-to-farm” legislation?

It is unclear to Council staff whether there is a problem that requires a legislative solution (other than related to the disclosure issue addressed below). State law specifically states that agricultural operations, “including any noise, odors, dust, or insects from the operation, may not be deemed to be a public or private nuisance” and “a private action may not be sustained on the grounds that the operation interferes . . . with the use or enjoyment of other property . . .”¹⁵ Agricultural operations are protected if the operation has been in operation for at least 1 year, is in compliance with applicable environmental, zoning, and permit requirements relating to nuisance claims, and is not conducted in a negligent manner. Council staff has not yet heard the view expressed that existing state law has been inadequate to prevent unwarranted nuisance claims.

The lack of reported judicial opinions, may be indicative that state law is adequate to protect farmers. Council staff has requested data from DEP staff, which was unavailable at the time of this mailing and may shed additional light on this issue.

If the Group chooses to recommend adopting a right-to-farm ordinance, complex decisions will need to be made regarding which activities to allow and which activities to prohibit. For example, should the right-to-farm law reference spraying chemicals? This may be problematic for organic farmers if residue from the chemicals lands on organic crops. Another complicated issue would be whether grievance procedures should be required? **On first glance, it appears**

¹⁴ Id.

¹⁵ Maryland Code, Courts and Judicial Proceedings, § 5-403(c)(1), (2).

that grievance procedures may be more likely to benefit those purchasing homes in the Agricultural Reserve than farmers.

Details of the legislation could include

- Good Neighbor Policy
- Disclosure Requirements
- Grievance Procedures
- Establishing and staffing an Agricultural Grievance Board
- Language limiting liability of farmers
- Bad Faith Clause
- Negligence Clause
- Required right-to-farm notice
- What “nuisances” should be included (e.g., odor, chemical spray, dust, insects, etc.)

If a right-to-farm ordinance is not necessary, should legislation requiring disclosure be enacted?

If the group feels that county and state law adequately protects farmers from nuisance lawsuits, but believes that potential homebuyers are not aware of these laws, an alternative may be to require disclosure of current law to potential homebuyers of property in or near the Agriculture Reserve. Each of the issues listed on page 5 regarding the timing and form of disclosure need to be considered (see discussion of these issues at © 40 to 42).

Maryland Right-to-Farm Enabling Statute

(Maryland Code/Courts and Judicial Proceedings/Title 5. Limitation, Prohibited Actions, and Immunities /Subtitle 4. Immunities and Prohibited Actions – Businesses, Associations, and Charities/ § 5-403. Nuisance suits against agricultural operations.)

§ 5-403. Nuisance suits against agricultural operations.

- (a) *"Agricultural operation" Defined.*- In this section, "agricultural operation" means an operation for the processing of agricultural crops or on-farm production, harvesting, or marketing of any agricultural, horticultural, silvicultural, aquacultural, or apicultural product that has been grown, raised, or cultivated by the farmer.

- (b) *Exceptions.*-
 - (1) This section does not:
 - (i) Prohibit a federal, State, or local government from enforcing health, environmental, zoning, or any other applicable law;
 - (ii) Relieve any agricultural operation from the responsibility of complying with the terms of any applicable federal, State, and local permit required for the operation;
 - (iii) Relieve any agricultural operator from the responsibility to comply with any federal, State, or local health, environmental, and zoning requirement; or
 - (iv) Relieve any agricultural operation from liability for conducting an agricultural operation in a negligent manner.
 - (2) This section does not apply to any agricultural operation that is operating without a fully and demonstrably implemented *nutrient management* plan for nitrogen and phosphorus if otherwise required by law.

- (c) *Operation continued for 1 year or more.*- If an agricultural operation has been under way for a period of 1 year or more and if the operation is in compliance with applicable federal, State, and local health, environmental, zoning, and permit requirements relating to any nuisance claim and is not conducted in a negligent manner:
 - (1) The operation, including any noise, odors, dust, or insects from the operation, may not be deemed to be a public or private nuisance; and

(2) A private action may not be sustained on the grounds that the operation interferes or has interfered with the use or enjoyment of other property, whether public or private.

(d) Construction of section.-

(1) This section does not create, and may not be construed as creating, a new cause of action or substantive legal right against a person who is engaged in an agricultural operation.

(2) This section does not affect, and may not be construed as affecting, any defenses available at common law to a defendant who is engaged in an agricultural operation and subject to an action for nuisance.

County Law Provisions

I. Air Quality Control

Sec. 3-8. Control or prohibition of open fires.

* * *

- (c) Permitted fires. Except as provided in subsections (a) and (b), a person must not burn any refuse or plant life outside of a building unless the person has obtained a permit from the Director. The Director must limit the duration of the permit. The Director may issue the permit for any of the following reasons or purposes:
- (1) Agricultural open burning. A person may set a fire during agricultural operations if the fire complies with subsection (d) and the person obtains an agricultural burning permit before setting the fire. The Department may grant a permit to burn excessive lodging or destroy diseased crops and other vegetation originating on the applicant's property only:
 - (A) on a property that is agriculturally assessed for property tax purposes; and
 - (B) if the burning is necessary to maintain agricultural land in production.
- (d) Conditions. The Director may impose any condition on an open burning permit to prevent air pollution or protect the health, safety, comfort and property of persons. An open fire must at all times be attended by the permittee or the permittee's agent who has the burning permit in possession during the burning. The Director must not grant a permit if the intended activity would:
- (1) create a hazardous condition;
 - (2) be conducted during an air pollution episode or other burning prohibition period declared by the Governor or the Secretary of the Maryland Department of the Environment;
 - (3) be conducted within 500 yards of an occupied building or a heavily traveled public road, walkway, path, or other facility used by the public;
 - (4) violate any other law or regulations;
 - (5) create visible emissions whose opacity exceeds 20 percent for more than a total of 3 minutes in any consecutive 60-minute period; or
 - (6) include the burning of leaves, brush, other vegetation, or household trash.

Sec. 3-9. Ambient air quality requirements for odors.

- (a) A person must not cause or allow the emission into the atmosphere of any gas, vapor, or particulate matter beyond the person's property line or unit if a resulting odor creates air pollution.
- (b) The Director may issue a citation for violating subsection (a) if the Director:
 - (1) witnesses the violation; or
 - (2) receives complaints from at least 2 individuals who have person knowledge of the air pollution odor.

II. Chapter 19. Erosion, Sediment Control, and Stormwater Management

Sec. 19-48. Definitions.

In this Article, the following words and phrases have the following meanings:

- (a) Agriculture means the business, science and art of cultivating and managing the soil, growing, harvesting, and selling sod, crops and livestock, and the products of forestry, horticulture and hydroponics; breeding or raising livestock, poultry, fish, game, and fur-bearing animals; dairying, beekeeping and similar activities.

* * *

- (v) Soil Conservation and Water Quality Plan means a land use plan for a farm approved by the Soil Conservation District in accordance with Department of Agriculture (USDA) Soil Conservation Service standards and specifications to make the best possible use of soil and water resources in carrying out agriculture while minimizing the movement of sediment, animal wastes, nutrients, or agricultural chemicals into waters of the state in the County.

Sec. 19-51. Control Of Water Quality.

* * *

- (c) If illegal pollutant discharges from properties engaged in agriculture impair aquatic life or public health, cause stream habitat degradation, or result in water quality standards or criteria violations, the Department must pursue correction of these violations in conjunction with the Soil Conservation District and, if necessary, the state Department of the Environment. Abatement of any violations must be handled in accordance with a memorandum of understanding between the Department and the Soil Conservation District regarding the specific notification

and enforcement procedures to be followed in cases of water pollution caused by agriculture.

Sec. 19-53. Enforcement.

* * *

- (e) Any person who causes or permits a violation of this Article to occur must submit a plan for compliance when required by the Department. A plan for compliance and any amendment to it must be approved by the Director. If the violation involves a person engaged in agriculture, a plan for compliance must be developed under Section 19-51(c).

III. Chapter 31B. Noise Control

Sec. 31B-2. Definitions.

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

* * *

- (c) *Daytime* means the hours from 7 a.m. to 9 p.m. on weekdays and 9 a.m. to 9 p.m. on weekends and holidays.
- (d) *Decibel* means a unit of measure equal to 10 times the logarithm to the base 10 of the ratio of a particular sound pressure squared to the standard reference pressure squared. For this Chapter, the standard reference pressure is 20 micropascals.

* * *

- (h) *Impulsive noise* means short bursts of a acoustical energy, measured at a receiving property line, characterized by a rapid rise to a maximum pressure followed by a somewhat slower decay, having a duration not greater than one second and a field crest factor of 10 dBA or more. Impulsive noise may include, for example, noise from weapons fire, pile drivers, or punch presses.

* * *

- (j) *Nighttime* means the hours from 9 p.m. to 7 a.m. weekdays and 9 p.m. to 9 a.m. weekends and holidays.

* * *

- (l) *Noise area* means a residential or non-residential noise area:
- (1) Residential noise area means land in a zone established under Section 59-C-1.1 [one-family residential zones], Section 59-C-2.1 [multiple family residential zones], Division 59-C-3 [R-MH zone], Section 59-C-6.1 [central business districts], Section 59-C-7.0 [planned unit development zones], Section 59-C-8.1 [transit station development area zones], **Section 59-C-9.1 [agriculture zones] for which the owner has not transferred the development rights**, or Section 59-C-10.1 [residential mixed-use development zones] or land within similar zones established in the future or by a political subdivision where Chapter 59 does not apply.
 - (2) Non-residential noise area means land within a zone established under Section 59-C-4.1 [commercial zones], Section 59-C-5.1 [industrial zones], **Section 59-C-9.1 [agricultural zones] for which the owner has transferred the development rights**, or Division 59-C-12 [mineral resource recovery zone], or land in similar zones established in the future or by a political subdivision where Chapter 59 does not apply.

(m) *Noise disturbance* means any noise that is:

- (1) unpleasant, annoying, offensive, loud, or obnoxious;
- (2) unusual for the time of day or location where it is produced or heard; or
- (3) detrimental to the health, comfort, or safety of any individual or to the reasonable enjoyment of property or the lawful conduct of business because of the loudness, duration, or character of the noise.

* * *

(q) *Prominent discrete tone* means a sound, often perceived as a whine or hum, that can be heard distinctly as a single pitch or a set of pitches. A prominent discrete tone exists if the one-third octave band sound pressure level in the band with the tone exceeds the arithmetic average of the sound pressure levels of the 2 contiguous one-third octave bands by:

- (1) 5 dB for center frequencies of 500 Hz and above;
- (2) 8 dB for center frequencies between 160 and 400 Hz; or
- (3) 15 dB for center frequencies less than or equal to 125 Hz.

* * *

- (r) *Receiving property* means any real property where people live or work and where noise is heard, including an apartment, condominium unit, or cooperative building unit.
- (s) *Sound* means an auditory sensation evoked by the oscillation of air pressure.

* * *

Sec. 31B-5. Noise level and noise disturbance violations.

- (a) Maximum allowable noise levels.
 - (1) Except as otherwise provided in Sections 31B-6(a) and 31B-8, a person must not cause or permit noise levels that exceed the following levels:

| Maximum Allowable Noise Levels (dBA) for Receiving Noise Areas | | |
|--|----------------|------------------|
| | <i>Daytime</i> | <i>Nighttime</i> |
| Non-residential noise area | 67 | 62 |
| Residential noise area | 65 | 55 |

- (2) A person must not cause or permit the emission of a prominent discrete tone or impulsive noise that exceeds a level, at the location on a receiving property where noise from the source is greatest, that is 5 dBA lower than the level set in paragraph (1) for the applicable noise area and time.
 - (3) Sound that crosses between residential and non-residential noise areas must not exceed the levels set in paragraph (1) for residential noise areas.

Sec. 31B-10. Exemptions.

- (a) This Chapter does not apply to:
 - (1) agricultural field machinery used and maintained in accordance with the manufacturer's specifications;

* * *

- (3) a source or condition expressly subject to any State or federal noise-control law or regulation that is more stringent than this Chapter;

* * *

IV. Chapter 33B. Pesticides

Sec. 33B-1. Definitions.

In this chapter:

Lawn means an area of land, except agricultural land, that is:

- (1) Mostly covered by grass, other similar herbaceous plants, shrubs, or trees; and
- (2) Kept trim by mowing or cutting.

Pest means an insect, snail, slug, rodent, nematode, fungus, weed, or other form of plant or animal life or microorganism (except a microorganism on or in a living human or animal) that is normally considered to be a pest or defined as a pest by applicable state regulations.

Pesticide means a substance or mixture of substances intended or used to:

- (1) prevent, destroy, repel, or mitigate any pest;
- (2) be used as a plant regulator, defoliant, or desiccant; or
- (3) be used as a spray adjuvant, such as a wetting agent or adhesive.

However, pesticide does not include an antimicrobial agent, such as a disinfectant, sanitizer, or deodorizer, used for cleaning that is not considered a pesticide under any federal or state law or regulation.

Sec. 33B-2. Notice about pesticides to customer.

- (a) In this section:
 - (1) Customer means a person who makes a contract with a custom applicator to have the custom applicator apply a pesticide to a lawn.
 - (2) New customer includes a customer who renews a contract with a custom applicator.

* * *

Sec. 33B-3. Posting signs after application.

- (a) Immediately after a custom applicator treats a lawn with a pesticide, the custom applicator must post a sign on the lawn.

* * *

Sec. 33B-4. Signs with retail purchase of pesticide.

A person who sells at retail a pesticide or material that contains a pesticide must make available to a person who buys the pesticide or material that contains a pesticide:

- (a) Notice signs and supporting information that are approved by the department; and
- (b) The product label or other information that the federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 et seq., requires for sale of the pesticide.

V. Chapter 48. Solid Waste

Sec. 48-22. Permit required to haul garbage, etc., from outside state into county; exceptions; penalty.

It shall be unlawful for any person to haul or otherwise transport any garbage, trash, junk or other refuse from without the state into the county for the purpose of feeding, dumping, incinerating or other final disposition within the confines of the county unless such person shall have obtained a permit therefor from the county; provided, that nothing in this section shall prohibit the transportation into the county from without the state of fertilizer or stable manure for agricultural purposes or of ashes, cinders, scrap metal or other similar materials for road building, industrial or manufacturing purposes. Any violation of this section shall be punished as a class C violation as set forth in section 1-19 of chapter 1 of the County Code.

V. Chapter 59, Zoning – Division 59-C-9. Agricultural Zones.

59-C-9.23. Intent of the Rural Density Transfer zone.

The intent of this zone is to promote agriculture as the primary land use in sections of the County designated for agricultural preservation in the General Plan and the Functional Master Plan for Preservation of Agriculture and Rural Open Space. This is to be accomplished by providing large areas of generally contiguous properties suitable for

agricultural and related uses and permitting the transfer of development rights from properties in this zone to properties in designated receiving areas.

Agriculture is the preferred use in the Rural Density Transfer zone. All agricultural operations are permitted at any time, including the operation of farm machinery. No agricultural use can be subject to restriction on the grounds that it interferes with other uses permitted in the zone, but uses that are not exclusively agricultural in nature are subject to the regulations prescribed in this division 59-C-9 and in division 59-G-2, "Special Exceptions-Standards and Requirements."



FACT SHEET

RIGHT-TO-FARM LAWS

DESCRIPTION

Right-to-farm laws are designed to accomplish one or both of the following objectives: (1) to strengthen the legal position of farmers when neighbors sue them for private nuisance; and (2) to protect farmers from anti-nuisance ordinances and unreasonable controls on farming operations. Most laws include a number of additional protections. Right-to-farm provisions may also be included in state zoning enabling laws, and farmers with land enrolled in an agricultural district may have stronger right-to-farm protection than other farmers. A growing number of counties and municipalities are passing their own right-to-farm legislation to supplement the protection provided by state law.

The common law of nuisance forbids individuals from using their property in a way that causes harm to others. A private nuisance refers to an activity that interferes with an individual's reasonable use or enjoyment of his or her property. A public nuisance is an activity that threatens the public health, safety or welfare, or damages community resources, such as public roads, parks and water supplies.

A successful nuisance lawsuit results in an injunction, which stops the activity causing the nuisance, provides monetary compensation, or both. In a private nuisance lawsuit involving complaints against a farming operation, the court must decide whether the farm practices at issue are unreasonable. To make this decision, courts generally weigh the importance of the activity to the farmer against the extent of harm to the neighbor or community, taking into account the following factors:

- The degree of harm and its duration, permanence and character: Is it continuous or sporadic? Is it a threat to health, or simply a minor annoyance?
- The social value that state and local law places on both farming and the type of neighboring use that has been harmed;

- The suitability of the two sets of uses to the character of the locality; and
- The ease with which the neighbor could avoid the harm, and the farmer's ability to prevent or minimize the undesirable external effects of the farming operation.*

One of the most important issues is whether the person bringing the lawsuit should have been able to anticipate the problem, and thus has assumed the risk of injury. If the farm was in operation before the person with the complaint moved to the neighborhood, the farmer may argue that the plaintiff "came to the nuisance." In most states, "coming to the nuisance" does not necessarily prevent farm neighbors from winning in court, but a farmer usually has a stronger legal case if his or her operation was there before the plaintiff moved to the area. Right-to-farm laws give farmers a legal defense against nuisance suits; the strength of that defense depends on the provisions of the law and the circumstances of the case.

HISTORY

Between 1963, when Kansas enacted a law to protect feedlots from litigation, and 1994, when Utah included right-to-farm protections in its agricultural district law, every state in the Union enacted some form of right-to-farm law. Several states have enacted two types of right-to-farm legislation, and Minnesota and Iowa have enacted three.

FUNCTIONS & PURPOSES

Right-to-farm laws are intended to discourage neighbors from suing farmers. They help established farmers who use good management practices prevail in private nuisance lawsuits. They document the importance of farming to the state or locality and put non-farm rural residents on notice that generally accepted agricultural practices are reasonable activities to expect in farming areas. Some of these laws also limit the ability of newcomers to change the local rules that govern farming.



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Local right-to-farm laws often serve an additional purpose: They provide farm families with a psychological sense of security that farming is a valued and accepted activity in their communities.

RIGHT-TO-FARM LAWS

* American Law Institute, Restatement of Torts (Second) (St. Paul, Minn., 1982), Sections 827-828.

For additional information on right-to-farm laws and farmland protection, the Farmland Information Center offers publications, an on-line library and technical assistance. To order Right-to-Farm Laws: What Works, a 28-page comprehensive technical report (\$9.95), or other AFT publications, call (800) 370-4879. The farmland information library is a searchable database of literature, abstracts, statutes, maps, legislative updates and other useful resources. It can be reached at <http://www.farmlandinfo.org>. For additional assistance on specific topics, call the technical assistance service at (413) 586-4593.

Source: American Farmland Trust, *Saving American Farmland: What Works* (Northampton, Mass., 1997).

Right to Farm Laws Component Summary

The following chart is intended to provide a brief introduction to the main components of the various county 'right to farm' protections, as well as to highlight some of their similarities and differences. While some ordinances are 10, 15, or even twenty years old, most of the more recently adopted measures have followed a more comprehensive template. (Data compiled by Maryland Farm Bureau - 10/3/05)

| | Good Neighbor Policy | Miscellaneous | Additional Definitions | Res. of Disputes and Procedures | Ag Reconciliation Board | Standard 4 Definitions | Limitations of Action | No Standing Clause | Bad Faith Clause | Transfer Disclosure | RTF Notice | Transfer Disclosure Text Incl. | RTF Notice Text Incl. | Online |
|--------------------------|----------------------|----------------|------------------------|---------------------------------|-------------------------|------------------------|-----------------------|--------------------|------------------|---------------------|-----------------|--------------------------------|-----------------------|--------|
| Allegany | | | | | | X ¹ | | | | | | | | X |
| Anne Arundel | | | | | | X ² | | | | | | | | |
| Baltimore | | | | | | | | | | X | | | | X |
| Calvert | X | | | X | X | X | X | X | X | | | X | X | X |
| Caroline | X | | | X | X | X ³ | X | X | X | | | X | X | X |
| Carroll | X | | | X | X | X ⁴ | X | X | X | | | X | X | X |
| Cecil | | X ⁵ | | X | X | | | X | | | X | X | | X |
| Charles | X | | X ⁶ | X | X | X | X | X | X | | | X | X | X |
| Dorchester | X | | | X | X | X | X | X | X | X | X | | | X |
| Frederick | X | | | X | X | X ⁷ | X | X | X | | | X | X | |
| Garrett | | X ⁹ | X ⁸ | | | X ⁸ | | | | | | | | |
| Harford ¹⁰ | | | | | | | | | | | | | | X |
| Howard | | | X ¹¹ | | | | | | X | | | | | X |
| Kent | X | | X ¹² | X | X | X ¹² | X | X | | X | X | | | |
| Montgomery ¹³ | | | | | | | | | | | | | | |
| Prince George's | | | | | | X ¹⁴ | | | | | | | | X |
| Queen Anne's | | | | X | X | | X | X | | | X ¹⁵ | | | X |
| Saint Mary's* | | | | | | | | | | | | | | |
| Somerset | X | | | X | X | X ¹⁶ | X | X | X | | | X | X | |
| Talbot | | | X ¹⁷ | X | X | X ¹⁷ | X | X | | | | X | X | X |
| Washington | X | | | X | X | X ¹⁸ | X | X | X | | | X | X | X |
| Wicomico | X | | | X | X | X ¹⁹ | X | X | X | | | X | X | X |
| Worcester ²⁰ | | | | | | | | | | | | | | X |

* - Information pending

Notes from RTF Laws Component Summary

The 'Good Neighbor Policy' section refers to a statement that an additional purpose of the ordinance is to promote good neighbor relations through the use of disclosure statements and notices elaborated on further in the text. Charles County also defines the policy as methods by which ag operations should be conducted in a manner which demonstrates common courtesy, minimal impact on environment and human health, etc.

The 'Standard 4 Definitions' referenced in the chart refer to the most commonly included definitions in the comprehensive ordinances. These include agricultural land, agricultural operations, forestry operations, and generally accepted agricultural and forestry practices.

The 'No Standing Clause' section in the chart refers to the provision that if the plaintiff did not seek and/or obtain a decision on the dispute from the county's ag resolution board, he/she would have no standing in court.

The 'Bad Faith Clause' section refers to the provision that if the ag resolution board finds the plaintiff brought the case in bad faith or without substantive justification, he/she can be found liable for any/all expenses incurred by the defendant.

1 – Allegany – Only defines agriculture operation; contains a county definition of Concentrated Animal Feeding Operation (CAFO)

2 – Anne Arundel – Only defines agricultural operation

3 – Caroline – Does not define forestry operation

4 – Carroll - Does not define forestry operation

5 – Cecil – Establishes 'buffer' zones to protect agriculture from abutting residential subdivisions

6 – Charles – Also defines vibration, good neighbor policy, aircraft, and soil amendment

7 – Frederick - Does not define forestry operation

8 – Garrett - Does not define forestry operation, but does define farm use

9 – Garrett – Establishes its ordinance to take precedence over any current or potential future conflicts in zoning

10 – Harford – More of a zoning regulation, somewhat loosely set out

11 – Howard – Defines agricultural operation and where the nuisance protection applies

12 – Kent - Does not define forestry operation, but does also define agriculture, best management practices, and farm product

13 – Montgomery – In Agricultural Preservation Area the operation of machinery at anytime and GAA practices are permitted; noise nuisance does not apply to agricultural field machinery; no language of protection from nuisance suits

14 – Prince George's– Only defines agricultural operation; provides some protection from nuisance suits

15 – Queen Anne's – Chapter 18:1:E.7 Zoning and Subdivision Requirements establishes the issuance of a notice of a right to farm in AG, CS, or NC zoned areas

16 – Somerset - Does not define forestry operation

17 – Talbot - Does not define forestry operation; does also define agriculture, best management practices, and farm product

18 – Washington - Does not define forestry operation

19 – Wicomico - Does not define forestry operation

20 – Worcester – In the A-1 Agricultural District there can be no recourse against the effects of GAA farming or forestry operations as permitted in the zone area

RIGHT TO FARM LAWS

I. Butte County, California

(Butte County, Ca., County Code §§ 35-1 to 35-4 (1981)). Chapter 35 – Protection of Agricultural Land

35-1 Purposes.

The board of supervisors of Butte County finds that it is in the public interest to preserve and protect agricultural land and operations within the County of Butte and to specifically protect these lands for exclusive agricultural use. The board of supervisors of Butte County also finds that residential development adjacent to agricultural production often leads to restrictions on farm operations, to the detriment of the adjacent agricultural uses, and the economic viability of the county's agricultural industry as a whole. The purposes of this chapter, therefore, are to promote the general health, safety and welfare of the county; to preserve and protect for exclusive agriculture use those lands, as defined in section 35-4, zoned for agricultural use; to support and encourage continued agricultural operations in the county; and to forewarn prospective purchasers and residents of property adjacent to agricultural operations of the inherent potential problems associated with such purchase or residence, including but not limited to the sounds, odors, dust and chemicals that may accompany agricultural operations.

35-2 Disclosure to prospective purchaser.

A person who is acting as an agent for a seller of real property which is located within or adjacent to agricultural land as designated on the zoning map of the county, or the seller if he or she is acting without an agent, shall disclose to the prospective purchaser that the property is located within or adjacent to agricultural land as designated on the county's zoning map and residents of the property may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including but not limited to herbicides, pesticides and fertilizers; and from the pursuit of agricultural operations, including but not limited to cultivation, plowing, spraying, pruning and harvesting which occasionally generate dust, smoke, noise and odor. Butte County has established various agricultural zones, and residents of adjacent property should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations.

35-3 Statement required.

The following statement shall be included in any receipt or contract of sale for the purchase of real property adjacent to or included within any agricultural zone, as defined in section 35-4, as designated on a zoning map of the county, and shall be included in my deed or contract or sale conveying the property:

“The property described herein is adjacent to or within land utilized for agricultural purposes and residents of this property may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including, but not limited to herbicides, pesticides and fertilizers; and from the pursuit of agricultural operations including, but not limited to cultivation, plowing, spraying, pruning and harvesting which occasionally generate dust, smoke, noise and odor. Butte

County has established agricultural zoning which sets as a priority the use of these agricultural lands included therein, and residents of adjacent property or within the zoned areas should be prepared to accept such inconvenience or discomfort from normal, necessary farm operations.”

Failure to include the above warning in any deed or contract of sale conveying property shall not invalidate the deed or contract of sale.

II. Howard County, Maryland

Sec. 12.111. Nuisance suits against agricultural operations.

- (a) *Short Title:* This section shall be known and may be cited as the Howard County Right-To-Farm Act, Bill No. 22, 1989.
- (b) *Public Policy:* The practice of agriculture has been a mainstay of the economy of Howard County since the land was settled. It is a valued and respected way of life, and the preferred land use in the Rural Conservation zoning district, a valued land use in the Rural Residential zoning district and on (1) individual residential properties of 20 acres or more that are subject to perpetual conservation easements; or (2) two contiguous residential properties where the total contiguous acreage equals 20 acres or more and which are subject to one or more perpetual conservation easements. The Howard County Council hereby finds and declares that the practice of farming in Howard County should be protected and encouraged.
- (c) *Definitions:* This section "agricultural operation" includes any one or a combination of the following activities as well as the necessary accessory uses for packing, processing, treating, storing or marketing the produce; provided however, the operation of any such accessory uses shall be secondary to that of normal agricultural activities:
 - (1) Cultivation of land.
 - (2) Production of agricultural crops.
 - (3) Raising of poultry.
 - (4) Production of eggs.
 - (5) Production of milk.
 - (6) Production of fruit or other horticultural crops.
 - (7) Production of livestock, including pasturage.
 - (8) Production of bees and their products.
 - (9) Production of fish.

- (10) Production of trees.
 - (11) The breeding, raising, training and general care of livestock by children and youth enrolled in an organized program such as 4-H for uses other than food, such as sport or show purposes, as pets or for family recreation, shall be considered a normal farming function provided that good agricultural management practices are followed.
- (d) *Protection for Agricultural Operations:* In RR and RC zoning districts, and on (1) individual residential properties of 20 acres or more that are subject to perpetual conservation easements; or (2) two contiguous residential properties where the total contiguous acreage equals 20 acres or more and which are subject to one or more perpetual conservation easements, an agricultural operation may not be or become a public or private nuisance; and a private action may not be sustained on the grounds that the agricultural operation interferes or has interfered with the use or enjoyment of other property, whether public or private, if:
- (1) The agricultural operation existed before a change occurred in the land use or occupancy of land in the locality of the agricultural operation and, before such change in land use or occupancy of land, the agricultural operation did not constitute a nuisance; or
 - (2) The agricultural operation, including any change in the operation, has been ongoing for one year or more and the operation or change did not constitute a nuisance from the date the operation began or the date the change in the operation began; and
 - (3) The agricultural operation is conducted in accordance with generally accepted agricultural management practices.
- (e) *Exceptions:* This section does not apply to:
- (1) An agricultural operation that does not conform to federal, state or local health or zoning requirements;
 - (2) A federal, state or local agency when enforcing air, water quality, or other environmental standards under federal, state or local law; or
 - (3) An agricultural operation that is conducted in a negligent manner.
- (f) *Legal Actions in Bad Faith or Without Substantial Justification:* In any civil action, if a court finds that the conduct of a plaintiff in maintaining a nuisance against the owner of an agricultural operation was in bad faith or without substantial justification, the court may require the plaintiff to pay to the owner of the agricultural operation the costs of the

proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by the owner of the agricultural operation in defending against the legal action.

III. Frederick County, Maryland
(Chapter 1-6, article V, "Right to Farm")

§ 1-6-61. FINDINGS AND POLICY.

- (A) In recognition that agriculture is the largest industry in Frederick County and that it adds many positive benefits to the quality of life, it is the declared policy of the county to preserve, protect and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. When nonagricultural land uses extend into agricultural areas, agricultural operations can become the subject of lawsuits. As a result, agricultural operators are sometimes forced to cease or curtail their operations. Others are discouraged from making investments in agricultural improvements to the detriment of the economic viability of the county's agricultural industry as a whole. It is the purpose of this article to reduce the loss to the county of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to constitute a nuisance, trespass, or other interference with the reasonable use and enjoyment of land, including, but not limited to smoke, odors, flies, dust, noise, chemicals, or vibration; provided that nothing in this article shall in any way restrict or impede the authority of the state and of the county to protect the public health, safety and welfare, nor shall it restrict or impede private covenants.
- (B) It is in the public interest to promote a more clear understanding between agricultural operations and nonagricultural neighbors concerning the normal inconveniences of agricultural operations which follow generally accepted agricultural practices and do not endanger public health or safety.
- (C) This article is not intended to and shall not be construed as in any way modifying or abridging local, state or federal laws, including, but not limited to, laws relating to health, safety, trespass onto agricultural property, zoning, licensing requirements, environmental standards (including those standards which relate to air and water quality and pesticide use), and the like.
- (D) An additional purpose of this article is to promote a good neighbor policy by advising purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or use. These potential problems include, but are not limited to, noises, odors, dust, flies, chemicals, smoke, vibration, and hours of operation that may accompany agricultural operations. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas. However, this article shall be effective regardless of whether disclosure was made in accordance with § 1-6-66 herein.

§ 1-6-62. DEFINITIONS.

The following definitions shall apply to this article.

AGRICULTURAL LAND. All real property within the boundaries of Frederick County that is lying in the Agricultural District or carried on the tax rolls of the State Department of Assessments and Taxation as agricultural or all other land that has been used as an agricultural operation continuously for 1 year.

AGRICULTURAL OPERATION. Includes, but is not limited to, all matters set forth in the definition of "operation" at Md. Cts. and Jud. Proc. Code Ann., § 5-308(a), as amended from time to time; the production of all matters encompassed within the definition of "farm product" at Md. Agric. Code Ann., § 10-601(c), as amended from time to time; the cultivation and tillage of the soil; the spreading of manure, lime, fertilizer and the like; composting; spraying; production, harvesting and processing of agricultural crops; raising poultry and other fowl; production of eggs; production of milk and dairy products; production of livestock, including pasturage; production of bees and their products; production of fruit, vegetables and other horticultural crops; production of aquatic plants; aquaculture; production of timber; any commercial agricultural procedure performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market; usage of land in furtherance of educational and social goals, (including, but not limited to 4-H clubs and Future Farmers of America), agro-tourism and alternative agricultural enterprises; and the like.

GENERALLY ACCEPTED AGRICULTURAL MANAGEMENT PRACTICES. Those methods used in connection with agricultural operations which do not violate applicable federal, state or local laws or public health, safety and welfare and which are agricultural practices in the agriculture industry. *GENERALLY ACCEPTED AGRICULTURAL MANAGEMENT PRACTICES* include practices which are recognized as generally accepted management practices and those methods which are authorized by various governmental agencies, bureaus, and departments, such as the Frederick County Cooperative Extension Service of the University of Maryland, the Frederick and Catoctin Soil Conservation Districts, and the like. If no generally accepted agricultural management practice exists or there is no method authorized by those agencies mentioned herein which governs a practice, the practice is presumed to be a generally accepted agricultural management practice.

§ 1-6-63. LIMITATION OF ACTIONS.

- (A) A private action may not be sustained with respect to an agricultural operation conducted on agricultural land on the grounds that the agricultural operation interferes or has interfered with the use or enjoyment of property, whether public or private, if the agricultural operation was, at the time the interference is alleged to arise, conducted substantially in accordance with generally accepted agricultural management practices.

- (B) Notwithstanding any provision of this section, no action alleging that an agricultural operation has interfered with the reasonable use or enjoyment of real property or personal well-being shall be maintained if the plaintiff has not sought and obtained a final judgment of the Agricultural Reconciliation Committee, as defined in § 1-6-64 herein.

§ 1-6-64. FREDERICK COUNTY AGRICULTURAL RECONCILIATION COMMITTEE.

- (A) *Creation.* There is hereby established the Frederick County Agricultural Reconciliation Committee (FCARC), which shall arbitrate and mediate disputes involving agricultural operations conducted on agricultural lands and issue opinions on whether such agricultural operations are conducted in a manner consistent with generally accepted agricultural management practices.
- (B) *Number and composition.* The FCARC shall be composed of 7 persons appointed by the Frederick County Commissioners. The Committee shall be composed of 1 representative from each of the following:
- (1) The Frederick County Chapter of the Maryland Municipal League;
 - (2) A civic/homeowner's association, who is a resident of Frederick County;
 - (3) The Frederick County Farm Bureau;
 - (4) The Frederick County Pomona Grange;
 - (5) Maryland Cooperative Extension Service for Frederick County;
 - (6) The Frederick County Association of Realtors;
 - (7) A member representing the agribusiness community; and
 - (8) A member of the Agricultural Preservation Advisory Board shall serve as an alternate member to the FCARC.
- (C) (1) The Committee members shall serve a 4- year term; however, the initial appointments shall be as follows:
- (a) Two members shall be chosen to serve a 4-year term;
 - (b) Two members shall be chosen to serve a 3-year term;
 - (c) Two members shall be chosen to serve a 2-year term;
 - (d) One member shall be chosen to serve a 1-year term;

- (e) The alternate shall be chosen to serve a 4-year term.
- (2) After these initial appointments, all terms shall be for a full 4-year term.
- (D) *Meetings; compensation.* The Committee shall meet at least 1 time per year and shall serve as volunteers, with no monetary compensation.

§ 1-6-65. RESOLUTION OF DISPUTES AND PROCEDURE FOR COMPLAINTS, INVESTIGATION AND DECLARATION.

(A) *Nuisances which affect public health.*

- (1) *Complaints.* A person may complain to the Frederick County Health Department to declare that a nuisance which affects public health exists.
- (2) *Investigations.* The health officer may investigate all complaints of nuisance received against an agricultural operation. When a previous complaint involving the same condition resulted in a determination by the health officer that a nuisance condition did not exist, the health officer may investigate the complaint but the health officer may also determine not to investigate such a complaint. The Frederick County Health Department may initiate any investigation without citizen complaint.
- (3) *Declaration of nuisance.* If the health officer determines that a nuisance exists, the Health Department may declare the existence of a nuisance. In determining whether a nuisance condition exists in connection with an agricultural operation, the health officer shall apply the criteria provided in this article. Further, the health officer may consider the professional opinion of the Frederick County Cooperative Extension Service of the University of Maryland, or other qualified experts in the relevant field in determining whether the agricultural operation being investigated is conducted in accordance with generally accepted agricultural management practices.

(B) *Resolution of disputes regarding agricultural operations.*

- (1) Should any controversy arise regarding an interference with the use or enjoyment of property from agricultural operations conducted on agricultural land, the parties to that controversy shall submit the controversy to the Agricultural Reconciliation Committee, in writing, through the Frederick County Planning Department.
- (2) The FCARC will conduct its proceedings in an informal manner and the rules of evidence shall not apply. The FCARC has the power, but is not required hereunder, to hold hearings and to compel testimony under oath and the production of documents. In each case before it, the FCARC shall issue orders settling or otherwise resolving controversies arising out of agricultural operations,

including, but not limited to, the invasion of property and personal rights by agricultural operations conducted on agricultural land.

- (3) Four FCARC members shall constitute a quorum for purposes of holding a hearing.
- (4) If a hearing ends in a tie vote, no action shall be taken on the complaint that formed the basis of the hearing.
- (5) Orders of the FCARC shall be binding on the parties as a matter of law, but their enforcement shall be suspended by operation of law if, within 30 days of the date of the Committee's judgment, a party appeals such order to the Circuit Court for Frederick County. Appeals from orders of the Committee shall be by a trial de novo.
- (6) If the FCARC or a court finds that the conduct of a party in bringing or maintaining an action in connection with an agricultural operation conducted on agricultural land was in bad faith or without substantial justification, the FCARC or court may require that party to pay to the owner of the agricultural operation (or any other party opponent) the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by that party in defending against the action.

§ 1-6-66. RIGHT TO FARM NOTICE AND REAL ESTATE TRANSFER DISCLOSURE.

- (A) *Real estate transfer disclosure statement.* Upon any transfer of real property by any means, the transferor shall provide the purchaser or lessee a statement specifically advising the purchaser or lessee of the existence of this right to farm ordinance, which shall be in substantially the form set forth in Appendix A.
- (B) *Right to farm notice.* In addition, because of the county's desire to maintain a good neighbor policy and the county's desire to provide this information to county real property owners, the Frederick County Treasurer shall mail a copy of the "Right to Farm Notice" to all owners of real property in Frederick County with the annual tax bill, beginning in fiscal year 1997-98, in substantially the form set forth in Appendix B.
- (C) *Penalty for violation.* Any person who violates any provision of this section is guilty of an infraction punishable by a civil penalty not exceeding \$100. Failure to comply with any provision of the right to farm notice and real estate transfer disclosure section shall not prevent the recording of any document, or the title to real property or any mortgage or deed of trust made in good faith or for value, and it shall not affect the application of this article.

IV. Carroll County, Maryland
(Chapter 173, "Right-to-Farm").

§ 173-1. Findings and policy.

- A. It is the declared policy of the county to preserve, protect, and encourage the development and improvement of its agricultural land for the production of food and other agricultural products. It is the purpose of this chapter to reduce the loss to the County of its agricultural resources by limiting the circumstances under which agricultural operations may be deemed to constitute a nuisance, trespass, or other interference with the reasonable use and enjoyment of land, including, but not limited to, smoke, odors, flies, dust, noise, chemicals, or vibration, provided that nothing in this chapter shall in any way restrict or impede the authority of the state and of the County to protect the public health, safety, and welfare.
- B. It is in the public interest to promote a more clear understanding between agricultural operations and nonagricultural residential neighbors concerning the normal inconveniences of agricultural operations which follow generally accepted agricultural practices and do not endanger public health or safety.
- C. This chapter is not intended to and shall not be construed as in any way modifying or abridging local, state, or federal laws relating to health, safety, zoning, licensing requirements, environmental standards (including those standards which relate to air and water quality), and the like.
- D. An additional purpose of this chapter is to promote a good-neighbor policy by advising purchasers and users of property adjacent to or near agricultural operations of the inherent potential problems associated with such purchase or use. These potential problems include, but are not limited to, noises, odors, dust, flies, chemicals, smoke, vibration, and hours of operation that may accompany agricultural operations. It is intended that, through mandatory disclosures, purchasers and users will better understand the impact of living near agricultural operations and be prepared to accept attendant conditions as the natural result of living in or near rural areas. However, this chapter shall be effective regardless of whether disclosure was made in accordance with § 173-5 herein.

§ 173-2. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

AGRICULTURAL LAND -- All real property within the boundaries of Carroll County that is lying in the Agriculture and Conservation Districts, or that is lying in other zoning districts if carried on the tax rolls of the State Department of Assessments and Taxation as agricultural or that is lying in other zoning districts if it has been used as an agricultural operation continuously for one year.

AGRICULTURAL OPERATION -- Includes, but is not limited to, all matters set forth in the definition of "operation" in the Courts and Judicial Proceedings Article of the Annotated Code § 5-308(a), as amended from time to time; the production of all matters encompassed within the definition of "farm product" in the Agriculture Article of the Annotated Code § 10-601(c), as amended from time to time; the cultivation and tillage of the soil; composting; production, harvesting, and processing of agricultural crops; raising poultry; production of eggs; production of milk and dairy products; production of livestock, including pasturage; production of bees and their products; production of fish; production of fruit, vegetables, and other horticultural crops; production of aquatic plants; aquaculture; production of timber and any commercial agricultural procedure performed as incident to or in conjunction with such operations, including preparation for market, delivery to storage or to market or to carriers for transportation to market; and usage of land in furtherance of educational and social goals, such as 4-H, Future Farmers of America, and the like.

GENERALLY ACCEPTED AGRICULTURAL PRACTICES -- Those methods used in connection with agricultural operations which do not violate applicable federal, state, or local laws or public health, safety, and welfare and which are generally accepted agricultural practices in the agriculture industry. "Generally accepted agricultural practices" includes practices which are recognized as best management practices and those methods which are authorized by various governmental agencies, bureaus, and departments, such as the Carroll County Cooperative Extension Service of the University of Maryland, the Carroll County Natural Resource Conservation Service, and the like. If no generally accepted agricultural practice exists or there is no method authorized by those agencies mentioned herein which governs a practice, the practice is presumed to be a generally accepted agricultural practice.

§ 173-3. Limitation of actions.

- A. A private action may not be sustained with respect to an agricultural operation conducted on agricultural land on the grounds that the agricultural operation interferes or has interfered with the use or enjoyment of property, whether public or private, if the agricultural operation was, at the time the interference is alleged to arise, conducted substantially in accordance with generally accepted agricultural practices.
- B. Notwithstanding any provision of this section, no action alleging that an agricultural operation has interfered with the reasonable use or enjoyment of real property or personal well-being shall be maintained if the plaintiff has not sought and obtained a final judgment of the agricultural reconciliation committee, as defined in § 173-4 herein.

§ 173-4. Resolution of disputes and procedure for complaints; investigation and declaration.

A. Nuisances which affect public health.

- (1) **Complaints.** A person may complain to the Carroll County Health Department to declare that a nuisance which affects public health exists.

- (2) Investigations. The Health Officer may investigate all complaints of nuisance received against an agricultural operation. When a previous complaint involving the same condition resulted in a determination by the Health Officer that a nuisance condition did not exist, the Health Officer may investigate the complaint, but the Health Officer may also determine not to investigate such a complaint. The Carroll County Health Department may initiate any investigation without citizen complaint.
- (3) Declaration of nuisance. If the Health Officer determines that a nuisance exists, the Health Department may declare the existence of a nuisance. In determining whether a nuisance condition exists in connection with an agricultural operation, the Health Officer shall apply the criteria provided in this chapter. Further, the Health Officer may consider the professional opinion of the Carroll County Cooperative Extension Service of the University of Maryland, or other qualified experts in the relevant field in determining whether the agricultural operation being investigated is conducted in accordance with generally accepted agricultural management practices.

B. Resolution of disputes regarding agricultural operations.

- (1) Should any matter arise regarding an interference with the use or enjoyment of property from agricultural operations conducted on agricultural land, the parties to that matter shall submit the matter to the Agricultural Reconciliation Committee by first contacting the Agricultural Land Preservation Program Administrator, Carroll County Department of Planning, 225 North Center Street, Westminster, Maryland, 21157.
- (2) There is hereby established the Carroll County Agricultural Reconciliation Committee, which shall arbitrate and mediate disputes involving agricultural operations conducted on agricultural lands and issue opinions on whether such agricultural operations are conducted in a manner consistent with generally accepted agricultural management practices.
- (3) The Agricultural Reconciliation Committee shall be composed of five persons. The Carroll County Board of County Commissioners shall appoint the members of the Agricultural Reconciliation Committee, one member shall be from a municipality and chosen from a list of recommendations submitted by the Carroll County Chapter of the Maryland Municipal League, one member shall be a member of a homeowners' association and a resident of Carroll County, one member shall be a resident of Carroll County who is not engaged or otherwise has a pecuniary interest in the commercial practice of agriculture, and 2 members who shall be members of the Agriculture Commission and selected as set forth herein. The Agriculture Commission shall select from among its members on a case-by-case basis, 2 people with competence in the subject matter of the dispute at issue, whose names shall be submitted to the Board of County Commissioners and upon

the Board's approval shall serve as members of the Agricultural Reconciliation Committee.

- (4) The Agricultural Reconciliation Committee will conduct its proceedings in an informal manner, and the rules of evidence shall not apply. The Agricultural Reconciliation Committee has the power, but is not required hereunder, to hold hearings, to compel testimony under oath and the production of documents. In each case before it the Agricultural Reconciliation Committee shall issue orders settling or otherwise resolving controversies arising out of agricultural operations, including but not limited to the invasion of property and personal rights by agricultural operations conducted on agricultural land. Proceedings shall be conducted in accordance with the duly adopted Rules of Procedure for the Carroll County Agricultural Reconciliation Committee which may be amended from time to time. The Reconciliation Committee will render a written decision within 30 days of the final proceedings and may extend the decision deadline for one additional 30 day period.
- (5) Orders of the Agricultural Reconciliation Committee shall be binding on the parties as a matter of law, but their enforcement shall be suspended by operation of law if, within 30 days of the date of the Committee's judgment, a party appeals such order to the Circuit Court for Carroll County. Appeal from orders of the Committee shall be by a trial de novo.
- (6) If the Agricultural Reconciliation Committee or a Court finds that the conduct of a party in bringing or maintaining an action in connection with an agricultural operation conducted on agricultural land was in bad faith or without substantial justification, the Reconciliation Committee or Court may require that party to pay to the owner of the agricultural operation (or any other party opponent) the costs of the proceeding and the reasonable expenses, including reasonable attorney's fees, incurred by that party in defending against the action.

§ 173-5. Right to farm notice and real estate transfer disclosure.

- A. Upon any transfer of real property by any means, the transferor shall provide the purchaser or lessee a statement specifically advising the purchaser or lessee of the existence of this chapter which shall be in substantially the form set forth in Appendix A at the end of this chapter.
- B. Any person who violates any provision of this section is guilty of an infraction punishable by a civil penalty not exceeding \$100.00. Failure to comply with any provision of this right to farm notice and real estate transfer disclosure section shall not prevent the recording of any document, or the title to real property or any mortgage or deed of trust made in good faith or for value, and it shall not affect the application of this chapter.

APPENDIX A

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY LOCATED IN THE COUNTY OF CARROLL, STATE OF MARYLAND, DESCRIBED AS _____ . THIS STATEMENT IS A DISCLOSURE OF THE EXISTENCE OF THE CARROLL COUNTY RIGHT TO FARM ORDINANCE IN COMPLIANCE WITH CHAPTER 173 OF THE CODE OF PUBLIC LOCAL LAWS AND ORDINANCES OF CARROLL COUNTY (RIGHT TO FARM).

SELLER'S INFORMATION

THE FOLLOWING ARE REPRESENTATIONS MADE BY THE SELLER AND ARE NOT THE REPRESENTATIONS OF THE AGENT(S), IF ANY. THIS INFORMATION IS A DISCLOSURE AND IS NOT INTENDED TO BE PART OF ANY CONTRACT BETWEEN THE BUYER AND SELLER.

AGRICULTURAL OPERATIONS (as defined in the Carroll County Right to Farm Chapter) LAWFULLY EXIST IN ALL ZONING DISTRICTS WITHIN THE COUNTY. You may be subject to inconveniences or discomforts arising from such operations, including but not limited to noise, odors, fumes, dust, flies, the operation of machinery of any kind during any 24-hour period (including aircraft), vibration, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, and pesticides. Carroll County has determined that inconveniences or discomforts associated with such agricultural operations shall not be considered to be an interference with reasonable use and enjoyment of land, if such operations are conducted in accordance with generally accepted agricultural management practices. Carroll County has established a reconciliation committee to assist in the resolution of disputes which might arise between persons in this county regarding whether agricultural operations conducted on agricultural lands are causing an interference with the reasonable use and enjoyment of land or personal well being and whether those operations are being conducted in accordance with generally accepted agricultural practices. If you have any questions concerning this policy or the reconciliation committee, please contact the Carroll County Planning Department for additional information.

Seller _____
Seller _____

Date: _____
Date: _____

I/WE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT:

Buyer _____
Buyer _____

Date: _____
Date: _____

IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

APPENDIX B

CARROLL COUNTY RIGHT TO FARM NOTICE

Carroll County recognizes and supports the right to farm agricultural lands in a manner consistent with generally accepted agricultural management practices. Residents of property on

or near agricultural land should be prepared to accept the inconveniences or discomforts associated with agricultural operations, including but not limited to noise, odors, flies, fumes, dust, the operation of machinery of any kind during any 24-hour period (including aircraft), vibration, the storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. Carroll County has determined that inconveniences or discomforts associated with such agricultural operations shall not be considered to be an interference with reasonable use and enjoyment of land, if such operations are conducted in accordance with generally accepted agricultural practices. Carroll County has established an agricultural reconciliation committee to assist in the resolution of disputes which might arise between persons in this county regarding whether agricultural operations conducted on agricultural lands are causing an interference with the reasonable use and enjoyment of land or personal well being and whether those operations are being conducted in accordance with generally accepted agricultural practices. If you have any questions concerning this policy or the reconciliation committee, please contact the Planning Department.

"Balancing the Right to Farm with the rights of Others" Janie Hipp,
University of ~~Agricut~~ Arkansas / National Agricultural Law Center.
1998 National Public Policy Education Conference.

RIGHT-TO-FARM LAWS: HISTORY & FUTURE

Right-to-Farm Laws: Why?

Right-to-farm laws were originally designed to protect agricultural operations existing within a state or within a given area of the state by allowing owners or operators of those operations who meet the legal requirements of the right-to-farm law a defense to nuisance suits which might be brought against the operation.

These statutes were originally developed in the 1970s as state lawmakers were becoming more aware of and concerned about the loss of agricultural land. Losses of agricultural land were occurring in that period of our history from conflicts in potential uses of agricultural land and from the rising tide of urban encroachment into traditional agricultural areas. Persons not involved in farming were beginning to move into traditional agricultural areas and with them they were bringing new complaints concerning the way agricultural is: complaints concerning odor, flies, dust, noise from field work, spraying of farm chemicals, slow moving farm machinery, and other necessary byproducts of farming operations.

If neighboring landowners brought a lawsuit against an agricultural operation and it was found to be a nuisance, courts had the option of closing the operation, altering the way it conducted its business, or assessing penalties to compensate the neighboring landowner for the nuisance. Sometimes, even if a lawsuit failed, the cost of defending against the suit could threaten or even close the farming operation.

When looking across the nation at these laws one immediately finds that, all in all, the state laws are strikingly similar. Most of the laws have defined to some degree the purpose behind passage of the protection. Most states make some mention of the need to conserve and protect agricultural land, the encouragement and development and improvement of agricultural land for food production. Most states make mention of the fact that as nonagricultural land uses have extended into agricultural areas, an increase in nuisance suits has occurred. In addition to citing the potential loss of agricultural operations, some states also mention the potential for problems in investments being made in farm improvements with exposure to nuisance litigation. The state statutes therefore attempt to limit the circumstances under which agricultural operations can be deemed a nuisance.

As you examine the various state right-to-farm laws, you will find that many terms are defined within the statutes, with a small level of consistency state-to-state in definition. Most state right-to-farm statutes define such terms as: agricultural operations, agricultural activities, farming and farm operations.

Types of right-to-farm laws.

There are several types of right-to-farm laws: the traditional, the laws requiring generally accepted agricultural management practices, laws protecting specific types of agricultural activities, laws protecting feedlots and laws protecting operations located within agricultural districts.

Traditional right-to-farm laws protect the agricultural operation if it has been in existence for one year prior to a change in the surrounding area which has given rise to the nuisance claim. Agricultural activities which could be classified as a nuisance when the activities began or activities which are negligently or improperly conducted are not protected under traditional right-to-farm laws.

Some right-to-farm laws require the use of generally accepted agricultural management practices (GAAMPs) in order to be protected from nuisance litigation. These laws usually create a presumption of reasonableness on the part of an operation if standard practices are followed. GAAMPs are similar to best management practices (BMPs). The outstanding issues involved when a state chooses to use the GAAMPs approach is the question of who establishes the GAAMPs? Some state laws require the state department of agriculture to set those standards. Other laws are silent on who establishes the standards. Silence on this issue leaves the farmer to, in litigation on the nature of the operation, place into evidence information concerning what the standard or acceptable practice might be and information that will support that he or she followed those practices.

Some laws reflect that if an operation is in conformity with federal, state and local laws and regulations concerning agricultural practices or permit requirements, a presumption is created that the agricultural practice is a good agricultural practice and that there are no adverse effects on public health or safety.

In some states, the Agriculture Commissioner establishes the acceptable agricultural practices for the state, presumably by rule or regulation. Some state statutes require the Commissioner to take into consideration information from the extension service, colleges of agriculture, and other relevant entities. In addition, some states require that the farmer cooperate with NRCS and the state department of natural resources or other industry organizations who have a role in establishing acceptable standards for the agricultural industry.

In still other states, right-to-farm laws list specific agricultural activities which are protected from nuisance litigation. Examples of specific agricultural activities, or in some cases, agricultural byproduct creations, which may be protected are: odor from livestock, manure, fertilizer, feed, noise from livestock or farm equipment used in the normal fashion, dust created during plowing or cultivation operation, use of chemicals if in conformity with established practices, and water pollution from livestock or crop production.

Animal feedlots are specifically protected in some states, particularly if the problems complained of is odor or waste related. Most nuisance suits brought against agricultural operations involve odors from animal feeding or some question concerning the handling of waste. For example, Iowa's law defines "feedlots" and offers protection to activities occurring in relation to those feedlots. Other states offering specific protection to animal feedlots are: Oklahoma, Wyoming, Tennessee, and Kansas.

Finally, some right-to-farm laws require that in order for the agricultural operation to have protection, the operation must be located within an acknowledged and approved agricultural district. These laws are usually part of a broader farmland preservation statutory program. For example, in Iowa, in order to form an agricultural district farmers within that district must agree to restrictions on converting their land to non-agricultural uses for a period of time. The districts are created by a local county board after being petitioned by a group of farmers for the creation of the agricultural district. Some state laws grant absolute protection from nuisance suits for operations conducted within the confines of a properly created agricultural district. These types of laws exist in: Delaware, Illinois, Iowa, Maryland, Minnesota, Ohio, Oregon, Virginia, and Wisconsin.

Although we usually think of right-to-farm laws as having been created at the state level, some localities have passed specific right to farm ordinances. Some states allow local protections but other states do not give local governments the power to regulate agricultural operations at any level.

Common attributes of right-to-farm laws.

Most right-to-farm laws require that the farming operation must have been in existence before any change in the surrounding area occurred. Changes in the surrounding area usually refer to development in the area, someone moving in, a private business being opened or other activity. Some laws require that an "established date of operation" be set. This date is the date upon which agricultural activities began on the site. If the operation should expand or change its operations in significant ways, a new established date of operation may be set. Usually states require that the agricultural operation have been in existence at least one year before the change in the surrounding neighborhood. Some laws require unchanged operation for more than one year, while other laws require only a prior existence with no specific time requirements.

Another pivotal feature required in order to obtain and keep protection is that there must not have been a change on the farm. The change must have occurred in the surrounding neighborhood. Most right-to-farm protection is given those operations which can point to the change in the surrounding neighborhood while the farming operation remain unaffected. If the farming operation is changing, either in size or farming methods used, the protection from right-to-farm statutes may be lost.

If an operation expands or adopts changes in technology, most operations will lose their protected status. Questions predictably arise when the operation expands or uses a changed technology on the farm without necessarily incorporating any expansion. States have begun passing laws addressing these issues. Those laws may require: a new time period to run after each expansion; that a "reasonable" expansion will not affect the original established date of operation so long as "significant" differences in environmental pressures on neighbors and livestock has not occurred; that the operation ensure its waste handling capabilities not exceed minimum recommendation of the extension service; that complete relocation of the operation has not occurred. These new provisions will: allow expansions but give each expansion a separate established date of operation; provide no protection for expanded operations; provide no protection if there is a substantial increase in size of the operation; or, provide no change in established date, even if expansions or adoption of new technology has occurred. In other words, the states are all over the map on whether and to what extent a change in established date of operation will occur with expansion or adoption of technology on the farming site.

Most laws require that the farming operation be run in a reasonable manner. The operation cannot be handled in a negligent or improper manner. The problem then becomes answering the age-old question of what is reasonable and proper. What is reasonable and proper to one particular farmer may not be reasonable and proper to another farmer, the extension service or other agricultural professional, or to the non-farming community.

Water pollution and erosion are usually not protected by right-to-farm laws. Most laws do not allow the farmer to hide behind a right-to-farm law if she is conducting operations which are causing or may cause water pollution and soil erosion.

In addition, most right-to-farm laws require the operation be in compliance with all relevant local laws and regulations applicable to the operation, which can include zoning ordinances and waste disposal rules.

While right-to-farm laws offer the farmer a defense in nuisance suits, the laws do not protect the farmer from a suit being filed. Some states are enacting statutes which shift the costs and attorney fees onto the person who brings the nuisance suit if they are unsuccessful in proving their case. These statutes are called fee-shifting statutes. These types of statutes can offer an additional deterrent to the bringing of nuisance suits against agricultural operations.

Criticisms of right-to-farm statutes.

Most right-to-farm statutes could use improvement in definition of terminology and in clarity of purpose and language. For example, do current large confined animal feeding operations qualify as agricultural operations according to the framers intentions? The agricultural community is still not well-versed in the mechanism for usage of a right-to-farm statute, preferring to think of the statutes as a general blanket protection for all agricultural activities while the statutes were never intended to be applied in that manner.

Case law interpreting right-to-farm laws

As early as the beginning of this decade, only a few dozen reported cases concerning interpretation of right-to-farm laws had appeared in the casebooks. While the number of reported cases had increased over time, there were still relatively few cases on the books. Whether this phenomenon indicates that the protections offered agricultural operations under right-to-farm laws served as a deterrent against unsubstantiated nuisance claims, or whether there were a rising number of nuisance claims against agricultural operations but the claims were either not going on to appellate courts for eventual reporting or were being settled out of court, is still in question.

Of the reported cases, the courts have found that the right-to-farm protection will not apply if the activity in question was simply not covered specifically by the right-to-farm statute, if the nuisance resulted from changes in the farm, if the neighbors were already present during and before the complained of activity, if the activity in question was not an agricultural activity, if the GAAMPs were not being followed, or if the operation was being conducted in an improper manner.

The Bormann case: The shortage of reported cases in the right-to-farm area came to a complete halt with the September decision of the Iowa Supreme Court in *Bormann v. Board of Supervisors in and for Kossuth County, Iowa*. On September 23, 1998, the Iowa Supreme Court handed down a decision in *Bormann* which held unconstitutional a provision of the Iowa right-to-farm statutes. The provision allowed right-to-farm protections in properly designated “agricultural areas.”

In order to declare an “agricultural area” in Iowa, an application must be filed with the county board of supervisors. An agricultural area may include certain types of activities: raising and storing of crops, care and feeding of livestock, treatment or disposal of wastes resulting from livestock and creation of noise, odor, dust, or fumes associated with agricultural activities. If an agricultural area is designated, section 352.11(1)(a) of the Iowa statutes provides that agricultural operations within the area are given immunity from nuisance suits. Specifically, the statute provides in part:

A farm or farm operation located in an agricultural area shall not be found to be a nuisance regardless of the established date of operation or expansion of the agricultural activities of the farm or farm operation.

This protection from nuisance does not apply if the operation is in violation of federal or state laws or regulations, if the operation is being conducted in a negligent manner, if an injury is sustained to person or property prior to the creation of the agricultural area, or if the operation is causing pollution or a change in the condition of water, overflow, or excessive soil erosion, unless caused by an act of God.

Facts: In September 1994, Gerald and Joan Girres applied to the Kossuth County Board of

Supervisors for establishment of an "agricultural area" which would include land they owned as well as land owned by others in the surrounding vicinity. All total, the land in question was to involve 960 acres. In November 1994, the Board denied their application finding that there were no non-agricultural development pressures in the area, that the nuisance protections afforded by an agricultural area designation would have a direct and permanent impact on the private property rights of adjacent landowners, and that the private property rights of those adjacent landowners outweighed any agricultural land preservation policy which might be furthered by the designation.

In 1995, the applicants tried again and the Board approved the designation of an agricultural area by the flip of a coin on a 3-2 vote. A few months later, the neighbors of the new agricultural area filed an action in district court seeking to have the statute declared unconstitutional. The district court found the action of the Board to be arbitrary and capricious but rejected all other arguments of the neighbors. The neighbors sought and received a certification of appeal to the Iowa Supreme Court.

The Iowa Supreme Court examined the agricultural area statutes and accompanying nuisance protections in light of the Fifth Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution, and article I, section 18 of the Iowa Constitution in order to determine whether the decision to create an agricultural area and thus afford operations with nuisance protection "effects a taking of the neighbors' private property for a use that is not public." In this particular case it should be noted that there were no facts presented which would allege that a nuisance existed in the area - the entire challenge to the statute was on its constitutionality.

The Fifth Amendment states that "no person shall be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation." The Fourteenth Amendment prohibits a state from "depriving any person of life, liberty, or property without due process of law." The Fourteenth Amendment also makes the Fifth Amendment applicable to the states and their political subdivisions. Article I, section 9 of the Iowa Constitution provides that "no person shall be deprived of life, liberty or property, without due process of law" and further provides that "private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury."

The court answered several questions in its analysis. The first question: does the immunity given under the statute create a property right? The answer was *yes*. The court identified the property interest at stake in this particular case to be that of an easement (an interest in land). Case law in Iowa had long identified the right to maintain a nuisance as an easement. The court said the nuisance immunity created an easement in the property affected by the nuisance in favor of the applicants' land. The immunity therefore allows the applicants to do acts on their own land which, were it not for the easement, would constitute a nuisance. The second question: is an easement a protected property right subject to just compensation rights? The answer was *yes*. The third question: has the easement resulted in a taking? The answer was *yes*. Using the analysis

contained in the 1992 U.S. Supreme Court case, *Lucas v. South Carolina Coastal Council*, the court ultimately found that “the state cannot regulate property so as to insulate the users from potential private nuisance claims without providing just compensation to persons injured by the nuisance.”

The court found that the legislature had exceeded its authority “by authorizing the use of property in such a way as to infringe on the rights of others by allowing the creation of a nuisance without the payment of just compensation.” The court held unconstitutional that portion of the agricultural area statutes that provides immunity against nuisance suits for those operations within a designated agricultural area. Among the final words of the court in their opinion was the following observation:

We recognize that political and economic fallout from our holding will be substantial. But we are convinced our responsibility is clear because the challenged scheme is plainly-we think flagrantly-unconstitutional.

We clearly must watch for the effects of this decision on the farming community in Iowa and around the country. Other states have similar statutes, some of which have come under increased scrutiny based on constitutional grounds in the last few years. The potential impact of this decision is, as yet, hard to say. One thing we do know is that problems between agricultural operations and their neighbors are not always resolved well within the court system. Perhaps it is time to examine the use of other means short of litigation to resolve conflicts with our neighbors.

County Right-to-Farm Ordinances in California: An Assessment of Impact and Effectiveness

Matthew Wacker, Alvin D. Sokolow and Rachel Elkins¹

When first adopted by California local governments in the 1980s, right-to-farm ordinances were seen by many farm leaders, real estate people, and public officials as an easy response to the problem of urban growth encroaching on adjacent farm operations. Such measures have little regulatory effect, but seek to reduce the opposition of urban neighbors to commercial agriculture as a nuisance generator. Most ordinances require that homebuyers who move to parcels adjacent to or near working farms and ranches be notified about the possible negative impacts of agricultural activities. In this way, the theory goes, new residents—especially those unfamiliar with rural living—would effectively learn about the realities of modern farming and would be less inclined to complain, or even go to court, about sprays, dust, odors, noise and other aspects of agricultural activities. The normal practices of farmers and ranchers would thus be protected.

The local ordinances are now widespread throughout California's agricultural regions. About 40 counties

and 50 cities currently have these measures. Despite their popularity, questions are frequently raised about the effectiveness of right-to-farm ordinances in protecting agricultural operations and reducing farm-urban edge conflicts. The two principal reasons are: (1) considerable variation in implementation from one jurisdiction to another, and (2) the generally benign and undemanding character of disclosure requirements, as compared to the more stringent regulatory tools of zoning, buffers, and subdivision review.

This assessment is based on a comparative study of county-adopted ordinances and their implementation in 15 agricultural counties² located in Central Valley and coastal regions³. (This study does not cover city ordinances which apply just to areas within incorporated boundaries.) We examined each of the county ordinances and conducted phone interviews with about 40 knowledgeable local persons, including agricultural commissioners, county planners, agricultural (Farm Bureau) leaders, real estate representatives, and UC Cooperative Extension staff.

¹Matthew Wacker is a graduate student in the Department of City and Regional Planning and Department of Environmental Science, Policy, and Management at UC Berkeley; Al Sokolow is a Cooperative Extension Public Policy Specialist in the Department of Human and Community Development at UC Davis; and Rachel Elkins is a Cooperative Extension Farm Advisor in Lake County, California.

²The counties are Butte, Colusa, Fresno, Mendocino, Merced, Monterey, Napa, San Benito, San Joaquin, Solano, Sonoma, Stanislaus, Sutter, Tulare, and Yolo.

³The project was funded by an internship grant from the California Communities Program at UC Davis, and was initiated at the request of agricultural and other leaders in Lake County. This report benefits from suggestions made by several outside reviewers, including a county ag commissioner and staff attorneys of the CFBF.

Following a description of ordinances, this Issues Brief summarizes local perceptions about the performance of the ordinances in the 15 sample counties and then examines in greater detail the provisions that deal with grievance procedures and disclosure requirements.

Origins and Content

As a tool to protect farmers from nuisance lawsuits by neighbors, right-to-farm ordinances have existed for almost 40 years in the United States. Local ordinances in California date from the early 1980s. Although they fall within the regular police powers (the ability to regulate) of county and city governments, the local measures were partly stimulated by passage in 1981 of a state statute (Sect. 3482.5 of the California Civil Code) that declares that a farm in operation for more than three years is not to be considered a nuisance due to changed conditions (urbanization) in the area. In 1989 the legislature went further by allowing counties and cities to require realtors to disclose to property buyers particular conditions of the property, including the possible negative impacts of nearby farming (Civil Code Section 1102.6a). The California Farm Bureau prepared a model right-to-farm ordinance at about that time, and most counties and cities have since followed the model language in adopting their own ordinances.

Most county right-to-farm ordinances thus have similar contents. Four major provisions are common: (1) a statement of purpose, (2) definitions of agricultural operations and farmland, (3) limitation on agricultural nuisances, and (4) agricultural disclosure requirements. A few ordinances also provide for a formal grievance procedure. Box 1 describes these ordinance provisions, and Box 2 (page 8) shows a sample disclosure requirement from the Farm Bureau model.

Within this common framework, ordinances differ from county to county in detail and added topics. Disclosure provisions, for example, vary a great deal according to when and how notification about nearby agricultural conditions is supposed to be provided. As adopted and sometimes changed by boards of

Box 1 Common Ordinance Provisions

Statement of Purpose

Generally a policy statement outlining the intent of the ordinance—to preserve agricultural operations, promote a good-neighbor policy between farm and other landowners, or to affirm the county's commitment to agriculture as a component of the local economy.

Definitions

For legal clarity, an agricultural operation is defined according to the state code. Farmland is defined by location in an agricultural zone; a few counties define it more broadly as land that currently or potentially supports active agricultural operations.

Nuisance

Usually a reference to the state code that prohibits a nuisance finding if the agricultural operation is conducted according to established farming practices, has existed at the same location for more than three years, and does not infringe upon a public right-of-way. Some counties reduce the time requirement to one year.

Disclosure

A requirement that a potential purchaser of property near farming or the developer of residential property in such an area be notified of the impacts of the agricultural operation.

Grievance Procedures

Formal procedures in some counties for resolving complaints against agricultural operations, usually involving mediation by a committee whose organization and timing may be specified.

supervisors—county legislative bodies— ordinance language is a product of local priorities and political pressures.

Perceived Impacts

What do county officials and others say about the operations and impacts of the right-to-farm ordinances in their communities? In brief phone interviews, we asked 40 persons in the 15 sample counties about their understanding of the provisions of the local ordinance, their perceptions of the impacts, benefits, and limitations of the ordinance, and their views of how it related to land use issues pertaining to the agricultural-urban edge. Here is a summary of their comments about several key aspects of the ordinances and their implementation.

Right-to-farm ordinances are primarily education tools.

The ordinances mainly serve to inform and educate residents about the local value of agriculture, according to the great majority of persons we interviewed. The major intention is to tell homebuyers about the consequences of locating in agricultural areas, but the audiences of the information also include the community at large and farmers themselves. The ordinances generally seem to accomplish this purpose, although their informational impacts vary by county and depend on specific provisions and implementation. A county agricultural commissioner and a Farm Bureau leader, respectively, described the benefits in these terms:

"(The ordinance) reminds the public and the Board of Supervisors that the county wishes to preserve agriculture. It sets the tone, raises awareness."

"It puts buyers on notice that the county values agriculture and there are certain things they have to be prepared to accept."

Ordinances are a useful tool for county officials who deal with complaints about agricultural practices.

The local public officials we interviewed liked that the ordinances asserted as a policy matter the importance of agriculture in their counties. This gave county officials a firm factual basis on which to respond to complaints from residential neighbors, when combined with the nuisance and disclosure

language. An agricultural commissioner noted:

"It gives me a way to frame the discussion between growers and residents....to try to get people to talk as neighbors."

Often this meant that minor complaints could be prevented from escalating into major issues and even lawsuits.

A right-to-farm ordinance is not a substitute for good land use planning.

Whatever its benefits, none of our respondents believed that a right-to-farm ordinance was a technique for determining land uses or defining urban-agricultural edges. The ordinances are not regulatory tools; they lack the planning and urban development power of agricultural zoning, general plans, and subdivision controls.

Right-to-farm ordinances do not insulate farmers from lawsuits nor do they provide farmers with rights not already codified in state law.

While a right-to-farm ordinance may serve to resolve many small complaints, it will not prevent a farmer from being sued over an agricultural practice, even one that is covered under the ordinance as a normally accepted farming practice. As a Farm Bureau representative indicated, if a neighbor wants to sue a farmer over an agricultural nuisance complaint, there is nothing a right-to-farm ordinance can do to prevent that action. We also heard from local officials who believed the term "right-to-farm" was a misnomer, wrongly implying that farmers have all the rights and homeowners have none in edge conflicts. One Farm Bureau leader suggested "agricultural awareness" as a more appropriate label.

There is no clear evidence that the right-to-farm ordinances have reduced the volume of litigation and complaints.

Our respondents were not able to give us a definitive answer to the question of whether lawsuits or other complaints directed against agricultural practices in their counties have decreased in number since the ordinances were adopted. No one could detect a decrease in litigation, although several respondents

said they thought formal complaints to county bodies had declined, but without providing specific information. In fact, lawsuits on agricultural nuisances in California have been rare, whether before or after the appearance of right-to-farm ordinances. Respondents in only six of our 15 sample counties could recall such cases. According to staff attorneys for the California Farm Bureau Federation, only one farm nuisance suit has been decided by a California appellate court in recent years, and that case involved farm operators as both plaintiff and defendant.

County governments exercise little oversight over the implementation of ordinances.

While boards of supervisors enact and revise right-to-farm ordinances, county governments pay little attention to how their provisions are carried out. Respondents were especially critical of the implementation of disclosure requirements for real estate transactions, which is left largely to realtors and title companies. None of the county agencies in our 15 sample counties regularly monitors this process. When disclosure is applied to development approvals or building permits, however, planning and building departments are usually involved. A more general comment about limited oversight concerns the lack of coordination among different county departments. At one time or another, the various county agencies that may be involved in ordinance creation, revision, and execution include the board of supervisors, agricultural commissioner, planning and building, assessor, county counsel, and sheriff.

Grievance Procedures, Formal and Informal

Formal mediation procedures for handling complaints against farm practices are found in the ordinances of six (Colusa, Monterey, San Benito, Solano, Stanislaus, Yolo) of the 15 counties we surveyed. The grievance-handling bodies outlined in these ordinances are either committees drawn from citizens appointed by the board of supervisors, ex officio bodies (agricultural commissioner, planning director, etc.), or a combination of the two. The exception in one county is the planning commission.

At least one county (San Joaquin) uses its agricultural advisory committee for this purpose, although it is not designated in the right-to-farm ordinance.

The formal mediation bodies in the six counties have had little work. Respondents in only two of the counties could recall instances of committee activity in recent years. Solano's group last handled a complaint in 1994, one involving a noisy diesel pump. The committee in Yolo has had only one case, also a noise issue, since it was established in 1991.

Complaints from residential neighbors about agricultural practices actually are more frequent than these committee records suggest. They are handled and usually resolved in the course of the routine business of county departments. Most come to the agricultural commissioners because of their heavy involvement in the agricultural sector through the regulation of chemical use on farms. In the process of dealing with objections to the pesticide spray practices of particular farmers, the commissioners also pick up complaints about noise, dust, odor, and other nuisances. The standard approach is to resolve these complaints through informal methods. One agricultural commissioner explained:

"A lot of my efforts in these issues go to trying to get people to talk as neighbors and work things out like most civilized people should be able to. Often the urban resident just wants to know what's going on. When they hear a noise at night they will know what's going on, or they will know to close their windows at certain times of the day to avoid sprays and dust."

Variations in Disclosure Requirements

Most discussion about the performance of right-to-farm ordinances in individual counties is focused on the disclosure requirements. How thoroughly affected residents are informed about the consequences of living near agricultural operations depends on the audience and the manner in which notices are distributed. According to the ordinances we reviewed, there are three general approaches to providing disclosure:

- In the annual tax bills sent to all or a portion (typically just in unincorporated areas) of a county's property owners;
- In connection with new development located near agricultural activity, usually when subdivision or parcel maps are approved or building permits are issued by county government;
- As part of a real estate transaction in which residential or other property located near agricultural activity is sold, generally at the time escrow is closed signifying the completion of the purchase.

The notified audience differs—a countywide one composed of all or many property owners in the case of tax bill statements, primarily developers or builders in the instance of development-related notification, and new purchasers of property in the case of real estate transactions. Likewise, the location or degree of responsibility within county government for administering these processes varies. Assessors' offices send out the annual property tax bills and planning and building departments manage development approvals and building permits. For notification through property sales, however, there is no clear county government involvement or oversight. In these cases realtors and title companies handle agricultural disclosures as part of their normal process of working with sellers and buyers to complete transactions.

Ordinances also differ in whether or not they require that the developer/builder or purchaser sign the disclosure notice and it is recorded in the county recorder's office as a designation attached to the property deed. Recordation provides a formal record of the disclosure and ensures that the information will be transmitted to future buyers of the property through the title search process.

As Table 1 (page 7) shows, the 15 county ordinances we reviewed vary greatly in the mix of disclosure methods used. Most employ only one or two of the methods, although recordation is required by 10 of the ordinances. All three approaches are used by three sample counties—Napa, Stanislaus, and Sonoma, with Napa and Sonoma also requiring

recording. Sonoma and Napa counties have had additional, unique components in their disclosure programs. Sheriff's deputies in Sonoma distribute pamphlets about county agriculture to residents, while the Napa Farm Bureau has sent pamphlets to new residents.

Two counties have substantially revised the disclosure requirements in their right-to-farm laws in recent years. In 1994 the Monterey County Board of Supervisors eliminated entirely the disclosure provisions of its ordinance, at the urging of the local real estate industry. On the other hand, the Sonoma County Board of Supervisors in 1999 added disclosure requirements for both development actions and real estate transactions to the original tax bill provision, primarily at the request of the local Farm Bureau.

Illustrated here are the ongoing differences between the views of real estate and farm interests in many agricultural counties over the extent of disclosure requirements. Farmers generally support strong and mandated forms of notification as a way of heading off problems with urban neighbors. Realtors, on the other hand, generally see required notification as discouraging potential home sales and adding to their paperwork burdens, and so prefer minimal or non-mandated disclosure provisions. In at least six of the sample counties, according to respondents, the local real estate industry successfully opposed more detailed or stronger disclosure provisions when the ordinances were first adopted or at later times when changes were proposed. Some title companies also have been reluctant to get involved in the disclosure process because of perceived procedural burdens.

The concerns revolve largely around how disclosures are inserted into real estate transactions. Several of the county officials we interviewed worried about the lack of county government oversight over the private actions of realtors and title companies. A few respondents, however, noted that realtors were obligated under state law and their licenses to disclose such information in the case of other property-related conditions such as potential hazards. They suggested that even in the absence of local ordinance requirements, many realtors would

voluntarily reveal to property buyers the nature of nearby agricultural operations as legal protection against future lawsuits from dissatisfied homebuyers. This seems to be the case in Lake County where most realtors use disclosure statements when selling residential properties in rural areas, although few seem to be aware of a county requirement for agricultural notices.

Timing is also an issue in the adequacy of agricultural disclosures in real estate sales. Disclosures are usually provided at the completion of a transaction, when escrow is closed. Many of our respondents said this was too late in the transaction for new information to have much impact, since it comes some time after the basic decision to buy has been made. The impact of the information is further diluted by the numerous other documents purchasers must read and sign at this stage, making it difficult to highlight the importance of the agricultural disclosure. Noted an agricultural commissioner:

"People when they are buying real estate are really stressed, and they don't pay much attention to the disclosure. They have lots of forms to look at."

As a result, other respondents said, some homeowners who later come before county bodies to complain about nearby agricultural nuisances have to be reminded about the agricultural disclosure forms they signed.

Conclusions

What makes for an effective county right-to-farm ordinance? Judging from the comments of the persons we interviewed in 15 counties, the key lies in specific disclosure requirements and how they are implemented. Formal grievance procedures are far less essential, considering their limited use in the counties that have them and the greater importance of informal methods for resolving farmer-resident conflicts.

An effective ordinance is one that fully informs both directly affected parties and the community at large about the importance of maintaining productive agriculture in the face of urban growth. For homeowners and other residents in edge areas, those considering purchase and those already living there, this means acquiring a full appreciation of the consequences of residing next to commercial farm operations that from time to time generate noise, dust, odor, and other negative effects. Prospective home buyers then can consider the pertinent tradeoffs, weighing the negative impacts against the scenic, cost, and other benefits of living in the rural community.

Right-to-farm ordinances are a limited answer to the problems of conflict and incompatible land uses at the agricultural-urban edge. The solution also depends on other and more active measures, especially the planning and design of urban development that is sensitive to agricultural operations and appropriate modifications in farm practices at the edge. But as an informational technique, the ordinances are an important part of the overall strategy for achieving a more peaceful coexistence of agricultural and urban neighbors.

Table 1. Disclosure Requirements in Right-to-farm Ordinances

| County | Property Tax Bill | Development Approval | Real Estate Transaction |
|-------------|---|---|--|
| San Benito | Mailed annually to all real property owners in unincorporated county. | Not required. | Required for all real property transfers. Disclosure must be signed by buyer and seller and recorded with the County Recorder's office. All leases must also incorporate the disclosure statement. |
| Solano | Not required. | Not required. | Disclosure statement included with any property deed and recorded with County Recorder. Buyer/seller are not required to physically sign disclosure statement. |
| Monterey | Not required. | Not required. | Not required. |
| Merced | Not required. | Notice required on all final parcel maps for all parcels within 1000 feet of an ag zone and dwelling unit over 500 square feet. Acknowledgment required for building permit. | Not required. |
| Tulare | Not required. | Notice must be recorded for all parcel/subdivision maps; notice provided to all applicants for building permits; County Recorder includes notice with any deed or land sale contract. | Signed disclosure between buyer and seller. |
| Stanislaus | Mailed annually to all real property owners in unincorporated county. | Notice must be recorded for all parcel/subdivision maps; notice provided to all applicants for building permits; County Recorder includes notice with any deed or land sale contract. | Signed disclosure between buyer and seller. |
| San Joaquin | Not required. | County provides building permit applicants with copy of disclosure statement. Not a condition of development approval. Builder's responsibility to deliver copy to owner of building. | Not required. |
| Butte | Not required. | Acknowledgment must be signed and recorded as a condition of obtaining a building permit. | Not required. |
| Sutter | Not required. | Acknowledgment must be signed and recorded as a condition of obtaining a building permit. | Disclosure required between buyer and seller. No form to sign. |
| Colusa | Not required. | Disclosure required on all building permits and other development approval documents. | Disclosure must be signed by buyer and seller and recorded with the County Recorder's office. |
| Mendocino | Not required. | Acknowledgment must be signed and recorded as a condition of obtaining a building permit. | Disclosure required between buyer and seller. No form to sign. |
| Yolo | One-time mailing. | County-prepared notice included with preliminary title reports. | Not required. |
| Napa | Mailed annually to all real property owners in unincorporated county. | Signed form filed with Planning Department for all subdivision approvals and development permits. | Disclosure required between buyer and seller. No form to sign. |
| Sonoma | Mailed annually to all real property owners in unincorporated county. | Disclosure required for all development approvals and recorded with County Recorder. | Signed disclosure between buyer and seller. |
| Fresno | Not required. | Notice must be filed with County Recorder for subdivision map approvals. | Not required. |

Disclosure Notice—Farm Bureau Model Ordinance, Section 4 (b)

The County of _____ permits operation of properly conducted agricultural operations within the County. If the property you are purchasing is located near agricultural lands or operations or included within an area zoned for agricultural purposes, you may be subject to inconveniences or discomfort arising from such operations. Such discomfort or inconveniences may include, but are not limited to: noise, odors, fumes, dust, smoke, insects, operation of machinery (including aircraft) during any 24 hour period, storage and disposal of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments, herbicides and pesticides. One or more of the inconveniences described may occur as a result of any agricultural operation which is in conformance with existing laws and regulations and accepted customs and standards. If you live near an agricultural area, you should be prepared to accept such inconveniences or discomfort as a normal and necessary aspect of living in a county with a strong rural character and an active agricultural sector.

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