

ATTACHMENT 1

Bill No. 39-07
Concerning: Agricultural Land
Preservation – Amendments
Revised: 12/5/2007 Draft No. 2
Introduced: December 11, 2007
Expires: June 11, 2009
Enacted: _____
Executive: _____
Effective: _____
Sunset Date: _____
Ch. ____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the Request of the County Executive

AN ACT to:

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

By repealing

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

and re-enacting

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

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

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

1 **Sec. 1. Sections 2B-1, through 2B-19 are repealed as follows:**

2 **[ARTICLE 1. GENERAL PROVISIONS.]**

3 **[2B-1. Definitions.]**

4 [(a) In this chapter, the following words and phrases shall have the
5 meanings respectively ascribed to them by this section:

6 *Agricultural board:* The agricultural preservation advisory board.

7 *Agriculture:* The science or art of cultivating and managing the soil,
8 growing and harvesting crops and other plants, forestry, horticulture,
9 hydroponics, breeding or raising livestock, poultry, fish, game, and
10 furbearing animals, dairying, beekeeping, similar activities, and
11 primary processing on the farm of an agricultural product in the
12 course of preparing it for market. This may or may not cause a change
13 in the natural form or state of the product, but it does not entail
14 operations of a commercial or industrial character that must be
15 regulated so as to preclude adverse external impacts.

16 *County agricultural district:* An agricultural district that the council
17 approves.

18 *Easement:* A covenant running with the land which limits the use
19 permitted on the property to agricultural and other uses as specified in
20 this chapter.

21 *Foundation:* The Maryland Agricultural Preservation Foundation.

22 *Fund:* The county agricultural land preservation fund.

23 *Landowner:* A person or corporation owning or having an interest in
24 land situated within a state or county agricultural district or proposed
25 to be so situated.

26 *Planning board:* The county planning board for Montgomery County.

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

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

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

36 (1) Allocated purchases;

37 (2) County;

38 (3) Eligible county;

39 (4) General purchases of easements;

40 (5) Matching purchases of easements; and

41 (6) Total amount to be allotted.]

42 **[2B-2. Agricultural preservation advisory board; establishment; membership;**
43 **terms of office; duties and responsibilities.]**

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

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

53 (c) *Terms of office.* The original members must be appointed as follows:
54 One (1) member must be appointed to a term of three (3) years; two
55 (2) members must be appointed to terms of four (4) years; and two (2)
56 members must be appointed to terms of five (5) years. Thereafter, the
57 terms of office are for five (5) years. A member may not serve more
58 than two (2) successive full terms. Appointment to a vacancy must be
59 for the remainder of the unexpired term. Members must not be

60 compensated for their services, but may be reimbursed for necessary
61 expenses.

62 (d) *Duties and responsibilities.* The agricultural board is assigned the
63 following duties and responsibilities as provided under subtitle 5 of
64 title 2 of the Agriculture Article of the Annotated Code of Maryland:

65 (1) To advise the county governing body with respect to the
66 establishment of state and county agricultural districts and the
67 approval of purchases of easements by the foundation within
68 the county;

69 (2) To assist the county governing body in reviewing the status of
70 state and county agricultural districts and land under easement;

71 (3) To advise the foundation concerning county priorities for
72 agricultural preservation;

73 (4) To promote preservation of agriculture within the county by
74 offering information and assistance to farmers with respect to
75 establishment of state and county agricultural districts and
76 purchase of easements; and

77 (5) In addition to those duties prescribed by state law, the board
78 should:

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

94 **[2B-3. State agricultural districts; procedures for establishment.]**

- 95 [(a) The procedures provided under subtitle 5 of title 2 of the Agriculture
96 Article of the Annotated Code of Maryland must be followed with
97 regard to the review of petitions to establish state agricultural districts
98 and the recommendation of the county council to the foundation. The

99 recommendation of the council to the foundation must be by
100 resolution.

101 (b) Other agricultural land may be added to a state agricultural district
102 provided the owner applies for the land to be included, the state
103 district meets acreage requirements without inclusion of such land,
104 and each parcel is at least five (5) acres.

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

108 **[2B-4. Activities and land uses permitted in state districts.]**

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

112 (1) Any agricultural use of land.

113 (2) Operation at any time of any machinery used in farm
114 production or the primary processing of agricultural products.

115 (3) All normal agricultural operations performed in accordance
116 with good husbandry practices which do not cause bodily injury
117 or directly endanger human health.

- 118 (4) Sale of farm products produced on the farm where such sales
119 are made.
- 120 (b) Land uses not permitted in districts.
- 121 (1) Subdivision or use for residential, commercial or industrial
122 purposes is not permitted within agricultural districts; provided,
123 however, upon written application to the foundation,
124 conveyance of one (1) acre for the landowner and one (1) acre
125 for each child of the person owning the land at the time the land
126 enters into a district shall be permitted for the construction of
127 the principal residence for the grantee or child and does not
128 constitute residential subdivision for commercial purposes. A
129 landowner within a district may also construct housing for
130 tenants fully engaged in operation of the farm; provided that, in
131 no case shall the average density of tenant housing exceed one
132 (1) house for each one hundred (100) acres of land in the farm.
- 133 (2) Public access or use is not granted by virtue of purchase of an
134 easement by the foundation or the county unless specifically
135 provided for in the easement contract.
- 136 (3) Condemnation of any land within a district for public use shall
137 not occur unless other reasonable alternatives do not exist.

- 138 (c) Enforcement of regulations.
- 139 (1) The Department of Permitting Services enforces this Chapter
- 140 and any regulations adopted to implement this Chapter.
- 141 (2) If, in the enforcement of regulations adopted pursuant to this
- 142 Chapter, conflict occurs between County laws or regulations
- 143 concerned with land use, economic activity, noise and
- 144 environmental controls and regulations adopted pursuant to this
- 145 Chapter, the agricultural district regulations shall supersede
- 146 such other conflicting regulations.
- 147 (d) Appeals. An aggrieved individual may file an appeal to the County
- 148 Board of Appeals within 30 days after a decision of the Director of
- 149 Permitting Services made under this Section.]

150 **[2B-5. Agricultural easements.]**

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

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

163 **[2B-6. Termination of state easements.]**

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

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

168 **[2B-7. Eligible land.]**

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

177 is subject to the same restrictions as an owner of land located in a
178 county agricultural district.]

179 **[2B-8. Approval of county agricultural districts.]**

180 [(a) Land in a county district must:

- 181 (1) Include at least fifty (50) contiguous acres;
- 182 (2) Meet USDA soil classification standards I--III or woodland
183 classifications 1 and 2 on at least fifty (50) percent of the
184 acreage; and
- 185 (3) Lie outside water and sewer categories 1, 2, and 3. However,
186 the council may establish a county district that includes other
187 land if the council decides it has significant agricultural value
188 and, after considering the recommendation of the master plan
189 for the area, determines that it is in the public interest to
190 establish the county district.

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

193 **[2B-9. Procedures to establish a county agricultural district.]**

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

- 196 (b) At the request of an owner of agricultural land, the agricultural board
197 may recommend that the council establish a county agricultural
198 district or include the owner's land in a county agricultural district.
- 199 (c) Upon receipt of a request from an owner to establish a county district,
200 the agricultural board must notify any adjacent property owner of the
201 request and of applicable approval procedures. An adjacent property
202 owner must be notified, in writing, of any public hearing on the
203 request.
- 204 (d) Within sixty (60) days after receiving a request, the agricultural board
205 must forward a written recommendation to the council. This
206 recommendation may be to:
- 207 (1) Approve;
 - 208 (2) Deny; or
 - 209 (3) Recommend modification of the request.
- 210 (e) Upon receipt of a request of an owner to establish a county district,
211 the agricultural board immediately must forward a copy of that
212 request to the planning board for review. The planning board must
213 submit written comments to the council within thirty (30) days after
214 receiving the agricultural board's recommendation on the request. The

215 planning board's period for comment may be extended for up to
216 fifteen (15) days.

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

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

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

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

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

227 **[2B-10. Procedures to terminate a county agricultural district.]**

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

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

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

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

238 **[2B-11. Use of land in a county agricultural district.]**

239 [(a) Except as prohibited by the zoning ordinance, these activities are
240 permitted in a county district:

- 241 (1) Any agricultural use of land;
- 242 (2) Operation of any machinery used in farm production or the
243 primary processing of agricultural products, regardless of the
244 time of operation;
- 245 (3) All normal agricultural operations, performed in accordance
246 with good husbandry practices, that do not cause bodily injury
247 or directly endanger human health; and
- 248 (4) Operation of a wayside stand for sale of farm products.

249 (b) Subsection (a) does not alter the special exceptions applicable to the
250 zone in which the county district is located under the zoning
251 ordinance.

252 (c) A person who owns land that the council has included in a county
253 district must not use or subdivide the land for residential, commercial,
254 or industrial uses. However, a grantor may use no more than:

255 (1) One (1) acre, or the minimum lot size required by the zoning
256 and health regulations, whichever is greater, to build a house for
257 use by the grantor;

258 (2) One (1) acre, or the minimum lot size required, whichever is
259 greater, to a maximum density of not more than one (1) house
260 per twenty-five (25) acres for each house built, to be occupied
261 by an adult child of the grantor, to a maximum of ten (10)
262 children; and

263 (3) The acreage needed to construct housing for tenants fully
264 engaged in the operations of the farm, not to exceed one (1)
265 tenant house per one hundred (100) acres. The owner or the
266 owner's child must not further subdivide the parcel on which
267 the house is built. The land on which a tenant house is
268 constructed must not be subdivided or conveyed to any person.
269 The tenant house must not be conveyed separately from the
270 original parcel.]

271 **[2B-12. Purchase and value of easements.]**

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

274 It consists of:

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

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

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

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

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

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

- 292 (1) Price;
- 293 (2) Whether the land is designated in the master plan as
 294 agricultural;
- 295 (3) Whether the land borders a municipality or other developing
 296 area; and
- 297 (4) Other factors the county executive determines are needed to
 298 preserve agricultural land.
- 299 (f) The county may, in writing, agree to purchase an easement subject to
 300 the condition that an owner;
- 301 (1) Make a good-faith application to the foundation for the
 302 purchase of an easement by the state; and
- 303 (2) Accept any foundation offer if its price is equal to or higher
 304 than the agreed county price. If the foundation does not agree to
 305 purchase an easement subject to a conditional agreement under
 306 this subsection, the county must purchase it at the agreed price
 307 and may make an additional payment to an owner whose
 308 application has been rejected by the foundation in order to
 309 compensate for any delay in the state application process that is
 310 beyond the control of the applicant. This additional payment

311 should be determined based on an appropriate inflation index,
312 the rate of return, or other relevant factors.

313 (g) Consistent with this article, the county may establish appropriate
314 terms and conditions for any agreement to purchase an easement or
315 the easement itself. The county may limit the right of the grantor or
316 any successor in interest to apply for a special exception that is
317 inconsistent with the purpose of this article.

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

321 **[2B-13. Termination and repurchase of easements.]**

322 [(a) (1) Not earlier than twenty-five (25) years after the county has
323 purchased an easement, an owner may, in writing, ask the
324 county to terminate the easement. Termination may be
325 requested earlier only if the district council zones the land
326 subject to easement in a manner that precludes agricultural uses
327 as a matter of right.

328 (2) The council must hold a public hearing within ninety (90) days
329 after receiving a request to terminate an easement unless it
330 waives that requirement. The council must request the advice of

331 the agricultural board and the planning board and notify all
332 people who own land adjacent to the land on which the
333 easement is located.

334 (3) Within one hundred eighty (180) days after receiving a request
335 to terminate an easement, the council must decide whether to
336 terminate the easement. The council may extend the time for
337 this decision by not more than ninety (90) days.

338 (4) Before granting the request, the council must find that the land
339 is no longer suitable for agriculture and that the public interest
340 would be best served by terminating the easement.

341 (5) Within one hundred eighty (180) days after the council agrees
342 to terminate the easement, an owner may repurchase the
343 easement by paying to the fund the difference between the fair
344 market value and the agricultural value of the land, as
345 determined by an appraisal.

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

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

352 **[2B-14. Right to sell.]**

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

355 **[2B-15. Public access.]**

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

359 **[2B-16. Easements on county-owned farmland.]**

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

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

366 **[2B-17. Recordation.]**

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

369 **[2B-18. Executive regulations.]**

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

373 (b) The regulations must include:

374 (1) Method of easement valuation;

375 (2) Method of purchasing easements;

376 (3) Terms of payment for easements; and

377 (4) Method of ranking offers to sell easements.]

378 **[2B-19. Administration and conflict.]**

379 [(a) The funds to administer any agricultural land preservation program
380 may be paid from the fund and any other monies the Council
381 appropriates.

382 (b) The Department of Economic Development must administer this
383 Article and the regulations under it.

384 (c) The Department of Economic Development must issue a public
385 annual report on this program.

386 (d) (1) If a conflict occurs between the provisions of this Article and
387 County laws on economic activity, noise, or environmental
388 controls, this Article supersedes the conflicting laws.

389 (2) If a conflict occurs between the enforcement of regulations
 390 adopted under this Article and County regulations on economic
 391 activity, noise, or environmental controls, the regulations
 392 adopted under this Article supersede the conflicting
 393 regulations.]

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

395 **ARTICLE 1. GENERAL PROVISIONS.**

396 **2B-1. Definitions.**

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

399 ***Agricultural Board* or *APAB* means the Agricultural Preservation Advisory**
 400 ***Board.***

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

404 ***Agricultural Reserve* means that area in Montgomery County designated as**
 405 **such on the General Plan, as amended, by the Functional Master Plan for**
 406 **Preservation of Agriculture & Rural Open Space.**

407 ***Agriculture* means:**

408 (1) the business, science, and art of cultivating and managing the soil;

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

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

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

419 **Buildable Lot** means a parcel of land in the Agricultural Reserve zoned
420 RDT, which retains the right to build a principal dwelling, and can achieve a
421 percolation rate sufficient to support an individual sewage treatment unit
422 permitted in the Agricultural Reserve by Executive Regulation adopted
423 under Chapter 27A.

424 **Buildable Lot Termination (BLT) Account** is a separate account in the
425 Fund and is created in accordance with the provisions of Chapter 2B, Article
426 IV, Section 2B-19 (BLT Account.)

427 **Buildable Lot Termination (BLT) Easement** is a form of an agricultural
428 easement that runs with the land in perpetuity and extinguishes the right to

429 construct a residential dwelling unit on land located in the Agricultural
430 Reserve and zoned Rural Density Transfer.

431 **Farm Market** means the display and retail sale from a farm of agricultural
432 products produced:

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

434 (2) on another farm under the control of the owner or operator of the farm
435 market.

436 A **farm market** includes the display and sale of farm food products certified
437 as non-potentially hazardous by the Department of Health and Human
438 Services.

439 **Foundation** means the Maryland Agricultural Land Preservation
440 Foundation.

441 **Fund** means the County's Agricultural Land Preservation Fund.

442 **Landowner** means a fee simple owner of land located in the State or the
443 County on which a landowner proposes to sell or has sold an agricultural
444 easement to the State or the County.

445 **Planning Board** means the Montgomery County Planning Board.

446 **Principal Dwelling** means a residential structure on farm property serving as
447 the property's primary residence.

448 Productive agricultural land means land eligible to be included in an
 449 agricultural easement under County or Foundation regulations.

450 Significant agricultural resource or significant agricultural capability
 451 means land which, if properly agronomically managed and under normal
 452 growing conditions, the Department of Economic Development, after
 453 consulting local agricultural support agencies, finds can sustain a profitable
 454 farm enterprise.

455 State agricultural easements means easements established under Subtitle 5
 456 of Title 2 of the Agricultural Article.

457 Tenant house means a residential structure on land under an agricultural
 458 easement that serves as an accessory use to the principle dwelling.

459 **2B-2. Agricultural Preservation Advisory Board; establishment; membership;**
 460 **terms of office; duties and responsibilities.**

461 (a) Generally. The Agricultural Preservation Advisory Board is
 462 established under Subtitle 5 of Title 2 of the Agriculture Article.

463 (b) Composition.

464 (1) The County Executive must appoint, subject to confirmation by
 465 the County Council, 5 members to the APAB.

466 (2) 3 members must be owner-operators of commercial farm land
 467 and earn at least 50% of their income from farming.

468 (3) Each member must be a resident of the County.

469 (c) Terms of office.

470 (1) The term of each member is 5 years.

471 (2) A member must not serve more than 2 consecutive full terms.

472 An appointee to fill a vacancy before a term expires serves the
473 rest of the unexpired term.

474 (3) A member serves without compensation. However, a member
475 may request reimbursement for mileage and dependent care
476 costs at rates established by the County.

477 (d) Duties and responsibilities.

478 (1) As required by Subtitle 5 of Title 2 of the Agriculture Article,
479 the APAB must:

480 (A) advise the County on the purchase of State and County
481 agricultural easements;

482 (B) assist the County in reviewing the status of agricultural
483 land, including farming productivity under State and
484 County agricultural easements;

485 (C) advise the Foundation concerning County priorities for
486 agricultural preservation; and

487 (D) promote preservation of agriculture in the County by
 488 offering information and assistance to landowners on the
 489 purchase of State and County agricultural easements.

490 (2) The APAB may:

491 (A) delineate areas of productive agricultural land in the
 492 County;

493 (B) recommend to the Executive procedures to mediate or
 494 arbitrate disputes on the value of agricultural easements
 495 which the County may buy;

496 (C) review and make recommendations on regulations
 497 regarding State and County agricultural easements;

498 (D) recommend County policies and programs to preserve
 499 agriculture;

500 (E) cooperate with the Planning Board, the Cooperative
 501 Extension Office and the Soil Conservation District in
 502 carrying out its responsibilities; and

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

504 **ARTICLE 2. STATE EASEMENTS.**

505 **2B-3. State Easement Application and Purchase Guidelines.**

- 506 (a) A landowner seeking to place land under an agricultural easement
507 must file a petition with the APAB requesting an application for the
508 purchase of an easement by the Foundation.
- 509 (b) The APAB must advise the County whether the applicant's land meets
510 the qualifications established by the Foundation and recommend
511 whether the Foundation should buy an agricultural easement.
- 512 (c) The APAB must refer the application to the Planning Board. The
513 Planning Board must advise the County if:
- 514 (1) the proposed agricultural easement is compatible with existing
515 and approved County plans and overall policy; and
- 516 (2) the Planning Board recommends buying an agricultural
517 easement on the applicant's land.
- 518 (d) If either the APAB or the Planning Board recommends approval, the
519 County Council must hold a public hearing on the proposed easement.
520 Adequate notice of the hearing must be given to the owner of any land
521 adjacent to the proposed agricultural easement.
- 522 (e) The Council must decide if the application for the proposed
523 agricultural easement should be recommended to the Foundation for
524 approval.

525 (1) If the Council recommends approval of the application, the
526 Council must notify and forward to the Foundation its
527 recommendation and relevant information about the proposed
528 easement, including the recommendations of the APAB and the
529 Planning Board.

530 (2) If the Council recommends denial of the application, the
531 Council must notify the Foundation and the landowner of its
532 decision.

533 (f) The Foundation may approve an application for a proposed
534 agricultural easement only if:

535 (1) The land in the proposed agricultural easement meets the
536 following qualifications established by the Foundation:

537 (A) any productivity, acreage, and locational criteria
538 necessary to continue farming.

539 (B) the land must be at least 50 acres.

540 (C) any other eligibility requirement in Subtitle 5 of Title 2
541 of the Agriculture Article;

542 (2) The Council recommended approval of the proposed easement;

543 (3) A majority of the Foundation's Board of Trustees approves
544 buying the proposed easement.

545 (g) Additional County payment. If the Foundation buys an agricultural
546 easement, the County may make an additional payment to the
547 landowner of up to 15% of the State's purchase price of the easement
548 under regulations issued under this Chapter. The Executive must
549 specify the percentage used to determine the payment each year and
550 publish that number in the County Register.

551 (h) Procedures.

552 (1) The procedures governing State agricultural easements,
553 including the application process, the maximum value of any
554 easement bought, the source of funds to buy an easement, and
555 the restrictions required in easements, are contained in Subtitle
556 5 of Title 2 of the Agriculture Article and the regulations issued
557 under Subtitle 5 of Title 2.

558 (2) If any conflict arises between this Chapter and its regulations
559 and Subtitle 5 of Title 2 and its regulations, the State law and
560 State regulations govern.

561 (i) Each State agricultural easement must be recorded in the County land
562 records. The recordation of a State agricultural easement is not
563 subject to any County recordation or transfer tax.

564 **2B-4. Activities and uses permitted on land encumbered by a State easement.**

565 (a) Permitted uses. The following activities are permitted on land
566 encumbered by a State agricultural easement:

567 (1) Any agricultural use of land;

568 (2) Operation at any time of any machinery used in farm
569 production or the primary processing of agricultural products;

570 (3) Any normal agricultural operation performed in accordance
571 with good husbandry practices which does not cause bodily
572 injury or directly endanger human health; and

573 (4) Sale of farm products produced on the farm where the product
574 is sold.

575 (b) Uses not permitted. The following activities are not permitted on land
576 encumbered by a State agricultural easement:

577 (1) Subdivision or use for residential, commercial, or industrial
578 purposes. However, the Foundation may approve, after
579 receiving a written application, the release of any easement
580 restriction for:

581 (A) the landowner who originally sold the easement, to use 1
582 acre or less to build a dwelling house to be occupied by
583 that landowner or a child of the landowner, up to a

584 maximum of 3 lots, subject to the requirements in
585 Subtitle 5 of Title 2 of the Agriculture Article; and

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

589 (i) the use must not exceed 1 tenant house for each
590 100 acres, unless the Foundation allows an
591 exception in a case of compelling need;

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

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

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

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

601 (3) Any land encumbered by a State agricultural easement for
602 public use must not be condemned for public use unless no
603 other reasonable alternative is available.

604 **2B-5. Landowner rejection of offer to purchase easement.**

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

610 **2B-6. Termination of State easements.**

611 The Foundation and the County must approve the termination of any
 612 agricultural easement bought in full or in part with State funds. Any termination
 613 must comply with Subtitle 5 of Title 2 of the Agriculture Article. The Foundation
 614 must hold in perpetuity a State agricultural easement if the State Board of Public
 615 Works approved the purchase on or after October 1, 2004.

616 **ARTICLE 3. COUNTY EASEMENTS**

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

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

622 (b) The County may buy an agricultural easement under this Article:

- 623 (1) on land located in the Rural, Rural Density Transfer, or Rural
 624 Cluster zones; or
- 625 (2) on land located in another zone if:
- 626 (A) placing an agricultural easement on that land is in the
 627 public interest; and
- 628 (B) the Department concludes, after consulting local
 629 agricultural support agencies, that the land has significant
 630 agricultural resources.
- 631 (c) The County may not buy an easement under this Article if further
 632 development is already precluded on that land.
- 633 (d) The County may buy an agricultural easement under this Article if the
 634 land:
- 635 (1) is at least 50 contiguous acres;
- 636 (2) meets United States Department of Agriculture’s soil
 637 classification standards I, II, or III, or woodland classifications
 638 1 and 2 on at least 50% of the acreage, as outlined in the Soil
 639 Survey for Montgomery County; and
- 640 (3) is located outside water and sewer categories 1, 2, and 3 as
 641 defined in the County Ten-Year Comprehensive Water Supply
 642 and Sewerage Systems Plan.

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

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

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

651 **2B-8. Activities and uses permitted on land encumbered by a County**
652 **agricultural easement.**

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

656 (1) Any agricultural use of land;

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

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

663 (4) Operation of a farm market to sell farm products under the
664 following conditions.

665 (1) No more than 25 percent of the farm market display and
666 sales area may be used to display and sell agricultural
667 products not produced on the farm under the control of
668 the owner or operator of the farm market.

669 (2) If any crop failure is due to drought, insect damage,
670 disease, or other cause beyond the control of the owner or
671 operator of the farm market, the Department of
672 Permitting Services, after receiving a recommendation
673 from the Department of Economic Development and the
674 Agricultural Advisory Committee, may allow more than
675 25 percent of the farm market display and sales area to be
676 used for agricultural products not produced on the farm
677 where the farm market is located for a limited period of
678 time.

679 (b) Subsection (a) does not alter either the requirements in Chapter 59 for
680 a special exception applicable to the zone where a County easement is
681 located or the process to obtain a special exception. However, the
682 County may limit the right of the landowner or any successor in

683 interest to apply for a special exception that is inconsistent with the
684 purposes of this Article.

685 (c) Uses not permitted. The following activities are not permitted on land
686 encumbered by a County agricultural easement.

687 (1) Subdivision or use for any residential, commercial, or industrial
688 purpose. However, the landowner may obtain a release from an
689 agricultural easement for:

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

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

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

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

702 (iii) 3 lots for land under easement that is greater than
703 120 acres;

704 (2) Any release issued under this Section must include:

705 (A) a statement that the landowner or the child, whichever is
706 appropriate, must not transfer the lot released from an
707 agricultural easement for 5 years after the release is
708 recorded in the County land records, unless:

709 (i) the APAB approves the transfer; or

710 (ii) the lot is subject to a bona fide foreclosure of a
711 mortgage or deed of trust or to a deed in lieu of
712 foreclosure.

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

718 (3) If land proposed for an agricultural easement does not contain a
719 habitable dwelling house, the landowner of the proposed
720 agricultural easement may, as part of the application, request

721 the right, which would run with the land, to build 1 single
722 family dwelling house if:

723 (A) No viable residential structure exists on the land when
724 the easement is bought;

725 (B) The agricultural easement requires that the residential
726 structure must never be subdivided from the easement
727 property; and

728 (C) The agricultural easement requires that the right to build
729 a single family dwelling precludes the release of any lot
730 from the easement for the landowner's children.

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

733 (A) not more than 1 tenant house may be built for each 100
734 acres of land under easement;

735 (B) The land on which a tenant house is located must not be
736 subdivided or conveyed to any third party;

737 (C) The tenant house must not be conveyed separately from
738 the original parcel of land under the agricultural
739 easement; and

740 (D) The square footage of the tenant house must not exceed
741 the square footage of the principal dwelling on the land
742 under the easement.

743 (5) A landowner who obtains a release of a lot from an agricultural
744 easement must first reimburse the Fund by an amount equal to the
745 pro-rata purchase price the County paid for the agricultural easement.
746 The County must, after receiving the funds, execute and record a
747 partial release in the County land records.

748 **2B-9. Purchase and value of agricultural easements.**

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

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

757 (b) The County must use funds from the County's share of the State
758 agricultural transfer tax and any other revolving funds for the

759 purposes of this Article before using any other County funds for these
760 purposes.

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

763 (1) negotiations;

764 (2) competitive bidding; or

765 (3) any other method that is fair and equitable to the landowner and
766 the County.

767 (d) The purchase price may be based on an appraisal or any other
768 evidence of value under criteria in applicable regulations.

769 (e) Priority for buying easements must be given to any applicant who
770 meets all of the following criteria:

771 (1) The proposed purchase price for the agricultural easement does
772 not exceed either the appraised fair market value of the
773 easement or a commercially reasonable value for the easement;

774 (2) The land is designated in the applicable Master Plan as
775 agricultural;

776 (3) The land borders a municipality or other developing area; and

777 (4) Other factors the Executive finds necessary to preserve
778 agricultural land.

779 (f) The County may agree in writing to buy an agricultural easement if
 780 the landowner:

781 (1) files a good-faith application to the Foundation for the purchase
 782 of an agricultural easement by the State; and

783 (2) accepts a Foundation offer if the price offered by the
 784 Foundation is equal to or higher than the price the County
 785 offered. If the Foundation does not agree to buy an easement
 786 subject to a conditional agreement under this subsection, the
 787 County must buy the easement at the price the County offered
 788 under the conditional agreement.

789 (g) In addition to its authority to buy agricultural easements under this
 790 Article, the County may accept the donation of an agricultural
 791 easement or another interest in property for agricultural land
 792 preservation purposes.

793 **2B-10. Termination and repurchase of agricultural easements.**

794 (a) **Easements Purchased by the County After the Effective**
 795 **Date of this Chapter**

796 (1) **Agricultural Easements purchased by the County, after the**
 797 **effective date of this Chapter, are not eligible for easement**
 798 **termination and repurchase.**

799 (b) Process for Easement Termination for Easements Purchased Prior
800 to the Effective Date of this Chapter.

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

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

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

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

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

- 819 (B) the location of the farm with respect to development; and
- 820 (C) any other non-agricultural use that would otherwise impact
- 821 profitability of the farm.
- 822 (5) After the APAB completes its inquiry, the landowner must be
- 823 advised that an appraisal of the land must be conducted at the
- 824 landowner's expense. The appraisal must consider the current
- 825 fair market value of land and the current fair market value of
- 826 the land encumbered by an agricultural easement. The
- 827 difference between these values must represent the present
- 828 value of the agricultural easement.
- 829 (6) The landowner must pay the County for the cost of an
- 830 appraisal. The Department must order the appraisal after
- 831 receiving the funds from the landowner.
- 832 (7) After receiving the completed appraisal and APAB's
- 833 recommendation, the County Council must hold a public
- 834 hearing on the request to terminate the agricultural easement.
- 835 The Department must notify each owner of land adjacent to the
- 836 land where the easement is located of the public hearing.

837 (8) After the public hearing, the Council, by majority vote, must
838 recommend to the Executive whether the Executive should
839 agree to terminate the easement.

840 (9) If the Executive agrees to terminate the easement, the
841 landowner must repurchase the easement by paying the present
842 value of the easement as defined in this Section.

843 (10) The landowner must pay the County within 180 days after the
844 Executive agrees to terminate the easement. After receiving the
845 required payment, the County must prepare, execute, and deliver
846 to the landowner for recording, a Deed of Termination and
847 Release from Easement.

848 (11) If a request for termination is denied, or if the landowner does not
849 repurchase the easement within 180 days after the Executive
850 agrees to terminate the easement, the landowner must not request
851 termination of the easement for 5 years after the Executive agreed
852 or disagreed to the landowner's last request for termination.

853 (c) Easement Properties Purchased or Condemned by Government. If
854 the federal government or the State or County buys or condemns land
855 under an agricultural easement for park or any other nonagricultural
856 use, the condemning authority must pay the present value of the

857 easement to the Fund. After receiving the funds, the County must
858 prepare, execute, and deliver to the condemning authority for
859 recording, a Deed of Termination and Release from Easement.

860 **2B-11. Right to sell.**

861 This Article does not restrict the right of a landowner to sell land on
862 encumbered by a County agricultural easement.

863 **2B-12. Public access.**

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

867 **2B-13. Easements on County-owned farmland.**

868 Any productive agricultural land that the County owns must not be sold until
869 an agricultural easement is recorded against the land to preserve the land for
870 agricultural use.

871 **2B-14. Recordation.**

872 **(a)** The County must record each agricultural easement in the County
873 land records. The recordation of an agricultural easement is not subject to any
874 County transfer or recordation tax.

875 **(b) The recordation of agricultural easements must: (1) be in the**
876 **form required by the Department; (2) run with the land and bind the**

877 landowner and the landowner's assignees, transferees, mortgagees and all
878 other parties obtaining title to the property; and (3) be recorded so that the
879 easements are senior in priority to all liens (including instruments securing
880 permanent financing).

881 (c) Every deed transferring title to land on which an agricultural
882 easement is recorded must: (1) be a two-party deed; and (2) expressly state
883 that the property is subject to an agricultural easement and provide the liber
884 and folio of the recorded agricultural easement.

885 **2B-15. Executive regulations.**

886 (a) The County Executive must issue regulations under Method 1 to
887 implement this Article.

888 (b) The regulations must include:

889 (1) method of easement valuation;

890 (2) method of buying easements;

891 (3) terms of payment for easements; and

892 (4) method of ranking offers to purchase easements.

893 **2B-16. Administration of Agricultural Easements**

894 (a) The funds to administer any agricultural land preservation program,
895 including the purchase of agricultural easement, may be paid from the
896 Fund and any other appropriated funds.

- 897 (b) The Department of Economic Development must administer this
 898 Article and the regulations issued under it.
- 899 (c) The Department must issue an annual report that identifies the:
- 900 (1) number **and types** of agricultural easements bought ;
 901 (2) number of acres preserved by those easements; and
 902 (3) price of each easement.

ARTICLE 4. BLT EASEMENTS

2B-17 Purpose of BLT easements

The creation of BLT easements is to help realize the goals of the
Preservation of Agriculture and Rural Open Space Functional Master Plan to
prevent the further fragmentation of the Agricultural Reserve and preserve
the remaining farmland in Montgomery County by terminating development
rights on buildable lots to minimize residential development.

2B-18 Requirements for purchase of BLT easements

(a) In addition to the application process set forth in Section 2B-7, the
County may also initiate the purchase of BLT easements on land
that otherwise meets the requirements of this Chapter for a BLT
easement. BLT easements may also be acquired by gift.

(b) Notwithstanding any other provision in this Chapter, BLT
easements shall be in perpetuity and no subdivision or use for any

917 residential, commercial or industrial purpose is permitted on the
918 encumbered land unless expressly provided for in the BLT
919 easement. Non-residential accessory agricultural uses and
920 structures are permitted subject to the terms of the easement.

921 (c) BLT easements may only be established on land 1) in the
922 Agricultural Reserve; 2) zoned for residential density no higher
923 than one dwelling unit per 25 acres; and 3) capable of being served
924 by an individual sewage treatment unit permitted in the
925 Agricultural Reserve by Executive Regulation adopted under
926 Chapter 27A. Notwithstanding Section 2B-7(d)(1), BLT easements
927 may be created on land less than 50 contiguous acres in size.

928 (d) The County shall be the grantee of a BLT easement.

929 2B-19 BLT Account

930 All monies in the BLT Account must be spent on BLT easements and
931 must be maintained as a separate account in the County's Agricultural Land
932 Preservation Fund. Monies in the BLT Account may be used in conjunction
933 with other funds in order to purchase BLT easements. The BLT Account
934 shall contain the payments made in accordance with the Planning Board
935 conditions of approval required in connection with certain development plans

936 and may also include monies received through donation, appropriation, bond
937 proceeds, or other sources.

938 2B-20 Priorities for purchasing BLT easements

939 The following are criteria for considering the priority for purchasing
940 BLT easements:

941 (a) Imminent threat of development;

942 (b) Quality of soils;

943 (c) Cost of easement;

944 (d) Size of the land area to be protected by the BLT easement; and

945 (e) Contiguosness of land to other farmland.

946 ARTICLE 5. ENFORCEMENT OF STATE AND COUNTY
947 AGRICULTURAL EASEMENTS.

948 2B-21. Enforcement of State and County Agricultural Easements

949 (a) Any violation of this Chapter or regulations issued under it is a Class
950 A violation. The Department of Permitting Services may issue a
951 citation for any violation of this Chapter or the terms of any
952 agricultural easement.

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

955 (1) subdivision of land under an agricultural easement that violates
 956 this Chapter or an agricultural easement; or

957 (2) transfer of land, including the transfer of lots to or for the
 958 landowner or the landowner's children, that violates this
 959 Chapter or an agricultural easement.

960 The Director may also take legal action to recover any funds obtained
 961 from any subdivision or land transfer that violates this Chapter or an
 962 agricultural easement, plus costs and a reasonable attorney's fee.

963 (c) If a conflict occurs between this Article and any County law
 964 regulating economic activity, noise, or environmental controls, this
 965 Article prevails.

966 (d) If a conflict occurs between the enforcement of any regulation issued
 967 under this Article and any applicable County regulation on economic
 968 activity, noise, or environmental controls, the regulation issued under
 969 this Article prevails.

970

971

972 *Approved:*

973

Michael J. Knapp, President, County Council	Date
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974 *Approved:*

975

Isiah Leggett, County Executive	Date
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976 *This is a correct copy of Council action.*

977

Linda M. Lauer, Clerk of the Council	Date
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