ORDINANCE NO. 96-23-175

THE EFFECTIVE DATE OF THIS ORDINANCE IS: January 1, 1997

RE: Right to Farm

PREAMBLE

By virtue of the authority contained in Section 2□2□3 of the Frederick County Code of Public Local Laws, the Board of County Commissioners of Frederick County is authorized to adopt ordinances or regulations and take other action to protect a person's right to farm or to engage in agricultural operations.

The adoption of this Ordinance is necessary to serve the public interest and the efficient regulation of land use in Frederick County.

The Board of County Commissioners held a duly advertised public hearing on this Ordinance on November 12, 1996. The public had an opportunity to comment at this public hearing.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that a new Section is hereby added to the Frederick County Code (1979) to read as follows:

ARTICLE I. Sec. 1. Findings and Policy

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 tile production of food and other agricultural products. When non-agricultural 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 Ordinance 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 Ordinance 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.

It is in the public interest to promote a more clear understanding between agricultural operations and non-agricultural neighbors concerning the normal inconveniences of agricultural operations, which follow generally accepted agricultural practices and do not endanger public health or safety.

This ordinance 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.

An additional purpose of this Ordinance 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 ordinance shall be effective regardless of whether disclosure was made in accordance with Section 6 herein ("Right to Farm Notice and Real Estate Transfer Disclosure").

Sec. 2. Definitions

"Agricultural Land" means all real property within the boundaries of Frederick County that is: (1) lying in the Agricultural District or (2) carried on the tax rolls of the State Department of Assessments and Taxation as agricultural or (3) all other land that has been used as an agricultural operation continuously for one (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. Agriculture 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" means those methods used ill 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 that 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.

Sec. 3. Limitation of Actions

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.

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 Section 4 herein.

Sec. 4. Creation of Frederick County Agricultural Reconciliation Committee

A. 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. The FCARC shall be composed of seven persons, appointed by the Frederick County Commissioners. The Committee shall be composed of one 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; and 7) a member representing the agribusiness community. 8) A member of the Agricultural Preservation Advisory Board shall serve as an alternate member to the FCARC.

C. The Committee members shall serve a four-year term; however the initial appointments shall be as follows:

1) Two members shall be chosen to serve a four-year term; 2) Two members shall be chosen to serve a three-year term; 3) Two members shall be chosen to serve a two-year term; 4) One member shall be chosen to serve a one-year term; 5) The alternate shall be chosen to serve a four-year term. After these initial appointments, all terms shall be for a full four-year term.

D. The Committee shall meet at least one time per year and shall serve as volunteers, with no monetary compensation.

Sec. 5. Resolution of Disputes and Procedure for Complaints, Investigation and Declaration

A. Nuisances that affect public health.

(1) Complaints. A person may complain to the Frederick County Health Department to declare that a nuisance that 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 Ordinance. 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 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 thirty 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. Sec. 6. 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 tile existence of this Right to Farm Ordinance which shall be in substantially the form set forth in Appendix A.

B. 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 One Hundred Dollars ($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 Ordinance.

ARTICLE II. CODIFICATION

The County Attorney shall provide for the codification of this Ordinance, merging this Ordinance with all amendments hereafter made. In preparing the codification of this Ordinance the County Attorney is directed to provide the proper numerical and alphabetical designation to each provision of the ordinance as the County Attorney deems proper, it being the legislative intent that Article numbers, Section numbers and other similar designation are matters of form and not substance and may be changed by the County Attorney for editing and codification purposes as the County Attorney deems appropriate.

The document that is the result of this codification shall be known as and may be hereafter referred to as the Frederick County Right to Farm Ordinance.

ARTICLE III. SEVERABILITY.

Should any provision, section, paragraph or subparagraph of this Ordinance, including any code or text adopted hereby, be declared null and void, illegal, unconstitutional, or otherwise determined to be unenforceable by a court having competent jurisdiction. The same shall not affect the validity, legality, or enforceability of any other provision, section, paragraph or subparagraph hereof, including any code or text adopted hereby. Each such provision, section, paragraph or subparagraph is expressly declared to be and is deemed severable.

ARTICLE IV. SECTION HEADINGS, CHAPTER HEADINGS, TITLES

Section headings, chapter headings, titles, etc., are for the purpose of description or ease of use and do not form a part of the text of this Ordinance or any Code or text adopted hereby.

ARTICLE V. EXISTING LIABILITIES

Except to the extent specifically provided herein, this Ordinance shall not discharge, impair or release any contract, obligation, duty, liability or penalty whatever existing o11 the date of its enactment. It is not intended hereby that the law of non-conforming use be changed, or that the court's rule of construction concerning the application of changes in the law during the pendency of actions be modified hereby, but simply that this Ordinance should not effect a change between private parties.

ARTICLE VI. OFFICIAL COMMENTS

Where there appear "Official Comments" to portion of this Ordinance, those comments are included to reflect the intent of the drafters and the County Commissioners in the event it is necessary to construe that intent. These comments may be used for purposes of construction arid interpretation only.

ARTICLE VII. MANDATORY REVIEW

After the passage of one year the County Commissioners shall review this ordinance to determine whether to continue this Ordinance in its present form or to change it or repeal it.

ARTICLE VIII. EFFECTIVE DATE

This Ordinance shall become effective on January 1, 1997.

ADOPTED this 12th day of November, 1996.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

William E. Dennis
County Manager

By _____ (SEAL)
Mark L. Hoke
President

Approved for legal sufficiency:

Paul G. Zimmermann
Assistant County Attorney

APPENDIX A

REAL ESTATE TRANSFER DISCLOSURE STATEMENT

THIS DISCLOSURE STATEMENT CONCERNS THE REAL PROPERTY LOCATED IN THE COUNTY OF FREDERICK, STATE OF MARYLAND, DESCRIBED AS_____. THIS STATEMENT IS A DISCLOSURE OF THE EXISTENCE OF THE FREDERICK COUNTY RIGHT TO FARM ORDINANCE IN COMPLIANCE WITH FREDERICK COUNTY ORDINANCE NO. _____ (THE FREDERICK COUNTY RIGHT TO FARM ORDINANCE).

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.

FREDERICK COUNTY ALLOWS AGRICULTURAL OPERATIONS (as defined in the Frederick County Right to Farm Ordinance) 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. Frederick 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. Frederick 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 question concerning this policy or the reconciliation committee, please contact the Frederick County Planning Department for additional information.

Seller _____ Date_____

Seller_____ Date_____

UWE ACKNOWLEDGE RECEIPT OF A COPY OF THIS STATEMENT:

Buyer_____ Date_____

Buyer_____ Date_____

IF YOU DESIRE LEGAL ADVICE, CONSULT YOUR ATTORNEY.

APPENDIX B

FREDERICK COUNTY RIGHT TO FARM NOTICE

Frederick County now has a Right To Farm Ordinance, which recognizes the right to farm agricultural lands in a manner consistent with generally accepted agricultural management practices. Contact the Planning Department at 301-694-1134 for further information.