

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 1100

(Senator Montgomery, *et al.*)

Judicial Proceedings

Montgomery County - Real Property - Enforceability of Recorded Covenants and Restrictions - Agricultural Activities and Structures

This emergency bill authorizes a person with standing to bring an action in a court of competent jurisdiction to challenge any provision of recorded covenants and restrictions in Montgomery County that prohibits or restricts agricultural activity or the construction of an agricultural structure on agricultural property as unenforceable to the extent that the provision is inconsistent with the classification of agricultural property and contrary to public policy.

The bill also authorizes a person with standing to bring an action in a court of competent jurisdiction to challenge any provision of recorded covenants and restrictions in Montgomery County that prohibits or restricts commercial or business activity as unenforceable to the extent that the provision (1) has the effect of prohibiting or restricting the establishment and operation of agricultural activity on agricultural property; (2) is inconsistent with the classification of agricultural property; and (3) is contrary to public policy. The bill may not be construed to render local zoning regulations unenforceable.

The bill applies retroactively and must be applied to and interpreted to affect any recorded covenants and restrictions whether recorded before or after the bill's effective date.

Fiscal Summary

State Effect: The bill does not directly affect State governmental operations and finances.

Local Effect: Montgomery County revenues and expenditures are not anticipated to be affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill defines “agricultural activity” as an activity included in the definition of “agriculture” or “farming” in the local zoning code. “Agricultural property” is defined as property located in Montgomery County that is encumbered by a recorded transfer of a development rights (TDR) easement established in accordance with a program for the TDR rights under Article 28 of the Maryland Code. The bill applies only to property encumbered with a TDR easement. The bill further defines “agricultural structure” as a structure, as defined in the local zoning code, that is used for an agricultural activity. The bill defines “existing use” as any lawful agricultural activity or agricultural structure on agricultural property. Finally, “recorded covenants and restrictions” means any instrument of writing that is recorded in the land records of Montgomery County and that governs or legally restricts the use of real property.

The bill does not apply to covenants, restrictions, conditions, or conservation easements for the benefit of or held by any State or local governmental agency or program, or held by a qualified private land trust, for the purpose of conserving natural resources or agricultural land, including:

- the Maryland Environmental Trust;
- the Maryland Department of Natural Resources (DNR);
- the Maryland Agricultural Land Preservation Foundation (MALPF); and
- forest conservation programs implemented through the Maryland-National Capital Park and Planning Commission.

The bill establishes a rebuttable presumption that recorded covenants and restrictions that limit an existing use are inconsistent with the classification as agricultural property and contrary to public policy. Montgomery County has standing to intervene in a case where a provision of recorded covenants and restrictions is challenged.

Current Law/Background:

Definitions: As noted above, the bill refers to several words defined in the Montgomery County local zoning code. While the Montgomery County zoning code defines “farm,” it does not define “farming,” the language used in the bill.

“Agriculture” means the business, science, and art of cultivating and managing the soil, composting, growing, harvesting, and selling crops and livestock and the products of forestry, horticulture, and hydroponics; breeding, raising, or managing livestock, including horses, poultry, fish, game, and fur-bearing animals, dairying, beekeeping, and similar activities, and equestrian events and activities. Agriculture includes processing on the farm of an agricultural product in the course of preparing the product for market and may or may not cause a change in the natural form or state of the product.

“Farm” means a tract of land, with or without associated buildings, that is devoted to agriculture, as defined above.

“Structure” means an assembly of materials forming a construction for occupancy or use including, among others, buildings, stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio and television broadcasting towers, telecommunications facilities, water tanks, trestles, piers, wharves, open sheds, coal bins, shelters, fences, walls, signs, power line towers, pipelines, railroad tracks, and poles.

The Agricultural Reserve and Transfer of Development Rights: TDR easements exist solely within Montgomery County’s Agricultural Reserve. Created in 1981 as an effort to preserve the county’s agricultural industry, the reserve provides 93,000 acres for farming. The stated intent of the reserve’s zoning requirements is to promote agriculture as the primary land use. All agricultural operations are permitted at any time, and no agricultural use can be subject to a restriction on the grounds that it interferes with other uses permitted in the zone. However, any use that is not exclusively agricultural in nature is subject to specified zoning regulations.

To combat decreased land values caused by the reserve’s restrictive zoning requirements, Montgomery County created the TDR program to compensate landowners. The program allows owners of undeveloped land to sell those development rights to owners of property outside the reserve. The purchasers of the development rights are then allowed to exceed the zoning restrictions on their own land. Once transferred, owners of land within the reserve are prohibited from developing the land, thus increasing the likelihood that the land will be used for agricultural purposes.

Maryland Agricultural Land Preservation Fund: Many State and local agencies buy conservation easements. One such program is MALPF, which was established by the General Assembly in 1977 and is part of the Maryland Department of Agriculture (MDA). It purchases agricultural preservation easements that restrict development on prime farmland and woodland in perpetuity. In addition to funding from the State transfer tax, MALPF is funded with agricultural land transfer taxes, local matching funds, and the U.S. Department of Agriculture’s Federal Farmland Protection Program.

MALPF settled on its first purchased easement in October 1980. As of the end of fiscal 2011, MALPF had cumulatively purchased 2,043 farms covering 279,223 acres.

The Department of Natural Resources: DNR preserves, protects, enhances, and restores the State's natural resources for the use and enjoyment of all citizens. To accomplish this mission, DNR is structured into the programmatic units, including the Land Acquisition and Planning unit and the Maryland Environmental Trust.

The Land Acquisition and Planning unit administers diverse financial assistance programs that support public land and easement acquisitions, local grants, waterway improvements, and shoreline protection. The Maryland Environmental Trust negotiates and accepts conservation easements over properties with environmental, scenic, historic, or cultural significance and provides grants, loans, and technical assistance to local land trusts.

Small Business Effect: There is a meaningful impact for small businesses involved in agricultural activity on specified property within Montgomery County's Agricultural Reserve as the bill will prevent the enforcement of covenants or restrictions which may restrict their agricultural-related business. For example, a land owner who wishes to build a fence to keep livestock may do so regardless of any covenant or restriction placed upon the property by a homeowners association.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Department of Natural Resources, Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), Maryland-National Capital Park and Planning Commission, Montgomery County, Department of Legislative Services

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