TITLE: Repeal Agricultural Rights Transfer Option

FILE NUMBER: Bill 16-07

REQUEST: Recommendation to County Council
Bill 16-07 proposes to amend Sec. 1-19-7.300 of the Zoning Ordinance to repeal in its entirety the Agricultural Rights Transfer Option (ARTO).

STAFF: Jim Gugel, Planning Director

RECOMMENDATION: Staff recommends the repeal of ARTO

Enclosures:
Bill 16-07
Frederick County Planning Commission
Staff Report

July 27, 2016

Issue
Bill 16-07 to propose the repeal of the Agricultural Rights Transfer Option {§1-19-7.300 (D)} as set forth in the County Zoning Ordinance is presented to the Planning Commission for a recommendation to the County Council.

Background
The prior Board of County Commissioners (BOCC) initiated work on an agricultural rights transfer option in August 2013. Staff was directed to study the concept and with a work group of agricultural and real estate representatives prepare an ordinance for consideration by the BOCC. In August 2014 the BOCC gave direction to take two ordinance options to public hearing.

October 8, 2014: Planning Commission public hearing on text amendment ZT-14-02; Planning Commission voted (5-0-2, Young, Bruscia absent) to recommend denial of both ARTO text amendment options.
November 18, 2014: BoCC public hearing; voted (4-1, Gray opposed) to approve Option 1 (Weinberg version)

December 1, 2014: ARTO became effective
December 5, 2014: Letter from Maryland Department of Planning (MDP) notifying the County that its Tier IV exemption was suspended.

The Septic Bill and the Tier IV Exemption

The most significant implication of the adoption of ARTO has been the suspension of the County’s Tier IV Exemption by MDP. The suspension of the Tier IV exemption effectively prohibits all major subdivisions (six or more lots) located within the entire Tier IV area (zoned Agricultural or Resource Conservation).

Absent an MDP exemption, the Maryland Department of the Environment (MDE) is prohibited from approving major subdivisions within the identified Tier IV areas, and consequently, affected farmers and other property owners are prevented from realizing the full value of their subdivision rights. Our office has processed subdivision rights verification requests for ten (10) properties with a total potential of up to 80 lots that will not be able to move forward with subdivision applications. Staff has also been in discussion with a property owner wanting to create an Agricultural Cluster subdivision with five (5) lots, which is also not permitted without the Tier IV exemption.

In addition, several property owners negotiating with the Maryland Department of Natural Resources (DNR) for protective easements on their Tier IV properties have seen property appraisals suspended until the uncertainties relating to the Tier IV exemption are resolved. To date, appraisals on four (4) properties totaling roughly 820 acres have been delayed.

Recent staff level discussions with MDP resulted in an understanding as to the options available to the County in terms of the reinstatement of the Tier IV exemption. In a February 17, 2016 letter, MDP stated that if the County repeals ARTO, then “the County’s Tier IV exemption could be reinstated.”
Other options contained in the letter involve maintaining or revising ARTO which leads to “significant time and work together by the County and MDP staff to determine if the exemption is still attainable, and the outcome will be in question until that occurs.” Moreover, these other options would require MDP to “consult with the Maryland Sustainable Growth Commission” before any final decision is rendered on reinstatement of the exemption.

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Basis for ARTO Repeal
Following are the general concerns raised by staff in support of its initial recommendation to deny the adoption of an agricultural transfer option text amendment. These concerns also support the recommendation to repeal ARTO.

1. There has not been any consensus or documented need for an agricultural transfer option to support broader agricultural preservation efforts. Since ARTO has been in effect (December 1, 2014) staff has received few inquiries, and just one (1) application, to formally initiate the process. This application is still under review.

2. An agricultural to agricultural transfer program does not result in a net preservation of agricultural land since the subdivision potential is just shifted from one ag parcel to another.

3. The shift of residential subdivision potential to agricultural areas, even if to parcels and areas considered marginal for agricultural use, may adversely impact the viability of adjoining agricultural activities. This has the potential of creating another Green Valley type area where residential subdivision activity takes place and large areas of agricultural/rural lands are converted to low density residential sprawl. Staff is especially concerned about this scenario playing out in the Urbana region where these types of lots would be more marketable than in other parts of the County. The level of subdivision, up to 15 lots, that could take place could significantly threaten the areas around Sugarloaf Mountain and the Monocacy National Battlefield which are significant cultural, historical, and environmental features.

4. As noted previously, the adoption of ARTO has resulted in the suspension of the County’s Tier IV exemption by the Maryland Department of Planning. Without the exemption, the County is prevented from approving ALL major residential subdivisions in the Tier IV area. Eight (8) potential subdivisions comprising 62 residential building lots, including an Agriculture Cluster plan option, are delayed until the exemption is restored. Additionally, appraisals on four (4) properties totaling roughly 820 acres currently negotiating protective easements with DNR are also delayed.

5. Staff has identified numerous technical issues with the wording of the ordinance that create difficulty in interpretation and application.

RECOMMENDATION
Based on the items described in the staff report, Staff recommends approval of Bill 16-07 to repeal in its entirety the Agricultural Rights Transfer Option (ARTO) ordinance.
AN ACT to: Repeal the Agricultural Rights Transfer Option (§1-19-7.300(D)).

By amending:
Frederick County Code, Chapter 1-19, Section(s) 7.300

Other: 

Boldface: Heading or defined term.
Underlining: Added to existing law by original bill.
[S]ingle boldface brackets: Deleted from existing law by original bill.
(Double) underlining: Added by amendment.
[[Double boldface brackets]]: Deleted from existing law or the bill by amendment.
***: Existing law unaffected by bill.
The County Council of Frederick County, Maryland, finds it necessary and appropriate to amend Section 1-19-7.300 of the Frederick County Code to delete subsection (D) (Agricultural Rights Transfer Option).

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit I.

Harold F. (Bud) Otis, President
County Council of Frederick County, Maryland
CHAPTER 1-19 (Zoning):

§ 1-19-7.300. AGRICULTURAL DISTRICT.

***************

[§1-19-7.300. Agricultural Rights Transfer Option (ARTO).]

— (1) Purpose and intent.

(a) To further encourage the conservation of farmland, particularly in areas of the county known for prime agricultural soils, by permitting the transfer of existing development rights from one agriculturally-zoned parcel to another, and further by limiting the parcels which will be eligible to receive the transfer of such rights to land-zoned agricultural and located in more densely developed areas of the county; and to provide an additional privately-funded farmland preservation program.

(2) Sending parcels. Properties within the agricultural zone which meet the following criteria are eligible to be sending parcels:

(a) The parcel has more than 1 agricultural subdivision right.

(b) The parcel must be located within the Tier IV area as defined in the Sustainable Growth & Agricultural Preservation Act of 2012, and as approved by the county (the "Tier IV area").

(c) The minimum preservation parcel easement area for all sending parcels shall be 50 acres.

(d) A property consisting of 1 or more contiguous parcels or lots may be eligible to be a sending parcel if the parcels, when combined, meet the size criteria specified in paragraph (2)(c) of this subsection. All parcels that do not meet the size criteria specified in paragraph (2)(c) of this subsection must be combined at the time that the preservation easement agreement for the sending parcel is recorded.

(3) Receiving parcels.

(a) Any property within the Agricultural Zone in the Tier IV Area is eligible to be a receiving parcel, except property that is located in a Priority Preservation Area (PPA) or in a designated Rural Legacy Area.

**Boldface - Heading or defined term.**  
**Underlining - Added to existing law by original bill.**  
**[Single boldface brackets] and strikethrough - Deleted from existing law by original bill.**  
**Bill No. 16-07**
(b) If a portion of a receiving parcel is encumbered with a recorded easement that reduces or removes its development rights, the encumbered area shall be subtracted from the acreage of the parcel to determine the potential receiving area and density.

(4) Uses permitted as a matter of right. Uses permitted as a matter of right in the Agricultural Zoning District shall be permitted on the properties utilizing ARTO.

(5) Accessory uses. Accessory uses shall be as permitted in the Agricultural District.

(6) Bulk requirements.

(a) One development right must be retained for the sending parcel. Otherwise, all development rights associated with the sending parcel may be transferred, subject to § 1-19-7.300(D)(6)(d) below. In the event development rights are transferred from multiple contiguous sending parcels, the sending parcels may be consolidated into one or more parcels, provided that at least 1 development right is retained on each resultant sending parcel.

(b) The maximum density for the receiving parcel shall be 1 dwelling unit for every 2 gross acres.

(e) The density of the receiving parcel shall be based on § 1-19-7.300(B) or (C). If additional density is transferred from the sending parcel to the receiving parcel based upon the utilization of the clustering provisions set forth in § 1-19-7.300(C), then all procedural requirements of § 1-19-7.300(C) shall apply to the development on the receiving parcel.

(d) If the sending and receiving parcels are both "used for agricultural activities" as defined in Md. Ann. Code, Environment Article, § 9-206(m), a sending parcel may only transfer up to 7 development rights to the receiving parcel or parcels, and the receiving parcel may only be subdivided to yield a total of up to 15 lots.

(7) An applicant wishing to utilize the ARTO shall submit an application seeking approval of the transfer on a form provided by the county.

(a) If no agricultural clustering development is part of the ARTO application, then DPDR shall process and approve the ARTO application as part of the appropriate staff-level review of the subdivision plat.

(b) If agricultural clustering development is part of the ARTO application, then the same procedure set forth in § 1-19-7.300(C) shall apply.

(e) If the sending and receiving parcels are both "used for agricultural activities" as defined in Md. Ann. Code, Environment Article, § 9-206(m), then clustering development of the lots, as set forth in § 1-19-7.300(C), must be used for the receiving parcel.

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[Single boldface brackets] and strikethrough - Deleted from existing law by original bill.
**Bill No. 16-07**
(8) A deed of easement, in a form provided by the county, shall be required to be recorded for the sending parcel.

(9) The exchange of development rights shall take place as a private exchange between property owners, subject to approval of the sending and receiving parcels by the county in accordance with the procedures set forth herein.
Staff Report Concurrence Form

To: Office of the County Executive
Date: 3/10/16

Through (Name of Div. Dir.): Steve Horn, Division Director, Planning & Permitting

From (Name & Division): Jim Gugel, Planning Director, Division of Planning & Permitting

Phone #: X11153

Staff Report Topic:
Repeal of Agricultural Rights Transfer Option (ARTO)

County Funds Requested/Required? Yes ___ $ ____________ No ____________

Action Requested:
Information Only ____________

Requires County Executive’s: Approval _________ Signature _________

***Please remember to flag all pages that need to be executed by the County Executive.***

Staff Report Review:
This staff report has been thoroughly reviewed first by the appropriate divisions/agencies noted on Page 2 followed by those outlined below:

- Budget Office
- Finance Division

- County Attorney’s Office

Refer to County Council? Yes ___ No _____ (If yes, requires County Executive’s approval.)

- Chief Administrative Officer

- County Executive

Approval to forward to Council? Yes ______ No _______

For Office Use Only
Council Meeting Date: ________________ Presenter: ____________________________
Public Hearing? Yes _______ No _______
Requires Council President’s Signature? Yes _______ No _______
Other Reviewing Divisions/Agencies:
(Click to place a check mark in the following appropriate spaces.)

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Comments:

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4. From: ______________________________________ Date: __________________________

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To: County Council

Through: Jan H. Gardner, County Executive

From: Jim Gugel, Planning Director

Date: March 10, 2016

Subject: Repeal of Agricultural Rights Transfer Option

Issue:
Should the County Council repeal the Agricultural Rights Transfer Option {§1-19-7.300 (D)} as set forth in the County Zoning Ordinance?

Background:
The Maryland Department of Planning (MDP), by letter dated May 31, 2013, and pursuant to its authority under the Sustainable Growth and Agricultural Preservation Act of 2012, approved the County’s requested Tier IV area exemption. The granting of the exemption allowed farmers and rural land owners, located throughout the County’s identified Tier IV area, to pursue major subdivision (i.e., 6 lots or more) on their respective properties without intervention by state agencies.

On November 18, 2014, despite prior notification from MDP that doing so may jeopardize the Tier IV exemption, the then Board of County Commissioners (BoCC) adopted the Agricultural Rights Transfer Ordinance (ARTO). MDP promptly suspended the Tier IV exemption by letter dated December, 5, 2014. The suspension of the Tier IV exemption by MDP effectively prohibits major subdivisions located within the entire Tier IV area (zoned Agricultural or Resource Conservation).

Absent an MDP exerption, the Maryland Department of the Environment (MDE) is prohibited from approving major subdivisions within the identified Tier IV areas, and consequently, affected farmers and property owners are prevented from realizing the full value of their subdivision rights. Currently, Development Review staff has processed subdivision rights verification requests on ten (10) potential subdivisions comprising 80 residential building lots, including an Agriculture Cluster subdivision, all of which are effectively delayed pending the satisfactory resolution of the Tier IV exemption issue with MDP.

In addition, farmers and rural land owners currently negotiating with the Maryland Department of Natural Resources (DNR) for protective easements on their Tier IV properties have seen property appraisals suspended until the uncertainties relating to the Tier IV exemption are resolved. To date, appraisals on four (4) properties totaling roughly 820 acres are delayed.
Recent staff level discussions with MDP resulted in an understanding as to the options available to the County in terms of the reinstatement of the Tier IV exemption. In a February 17, 2016, letter MDP states that if the County repeals ARTO, then “the County’s Tier IV exemption could be reinstated.”

Other options contained in the letter involve maintaining or revising ARTO which leads to “significant time and work together by the County and MDP staff to determine if the exemption is still attainable, and the outcome will be in question until that occurs.” Moreover, MDP “must also consult with the Maryland Sustainable Growth Commission” before any final decision is rendered on reinstatement of the exemption.

**Timeline:**
The following timeline illustrates the key decision points leading to the adoption of ARTO and the subsequent suspension of the Tier IV exemption by MDP:

- **March 29, 2013:** Farm Bureau submits a request to the BoCC to consider a proposed text amendment to the Zoning Ordinance to create ARTO.
- **May 31, 2013:** Letter granting the Tier IV exemption from MDP.
- **August 8, 2013:** BoCC directed staff to form a work group to evaluate the proposed ARTO with a 90-day deadline to return for direction from the Board.
- **August - December 2013:** The Work Group was established and held five meetings during this period.
- **November 21, 2013:** Staff provided BoCC an update of the progress of the Work Group and requested additional time to continue evaluation of an agricultural transfer program.
- **December 19, 2013:** Staff requested guidance from the BoCC regarding the text amendment. Staff provided an overview of staff comments indicating no consensus on issues among the work group. The Farm Bureau commented that they needed more time to review the proposal with their general membership, which would not be meeting until March 2014. BoCC agreed to wait for feedback from the Farm Bureau before directing any public hearings.
- **August 21, 2014:** BoCC work session; Staff requested direction as to whether to proceed with public hearings. Letter from the Farm Bureau stated that the Farm Bureau “does not endorse any specific proposal” but indicated support for further exploration of additional land preservation programs. BoCC voted to proceed to public hearing with two (2) text amendment options (one from Staff and one from Rand Weinberg, Esq.).
- **October 2, 2014:** Letter from MDP indicating that adoption of ARTO may result in an increase in lot yield within the Tier IV area which could exceed the allowable threshold for the granting of the exemption.
October 8, 2014: Planning Commission public hearing on text amendment ZT-14-02; Planning Commission voted (5-0-2, Young, Bruscia absent) to recommend denial of both ARTO text amendment options.

November 18, 2014: BoCC public hearing; voted (4-1, Gray opposed) to approve Option 1 (Weinberg version); ARTO became effective December 1, 2014.

December 5, 2014: Letter from MDP notifying the County that its Tier IV exemption was suspended.

December 16, 2014: County Council work session; staff presented an overview of the ARTO and how it would be applied; explained implications of the Tier IV exemption and MDP’s suspension; provided recommendations to either repeal the ARTO or leave in place without the Tier IV Exemption; Council tabled action to another work session in January.

January 6, 2015: County Council briefing; Staff provided a general overview of Agricultural zoning in the County and how subdivision rights are determined.

January 14, 2015: County Council work session; provided an opportunity for representatives of the Farm Bureau (Rand Weinberg, Maurice Gladhill) to present their case in favor of the ARTO; public comment was also taken; Council took no action and would wait for any further action by the State under the new administration.

October 20, 2015: ARTO discussion removed from Council Workshop Agenda to allow for further discussions with MDP staff.

February 17, 2016: Letter from MDP outlining path forward on reinstatement of the Tier IV exemption.

**Basis for ARTO Repeal:**
Following are the general concerns raised by staff in support of its recommendation to deny the agricultural transfer option text amendment. These concerns also support the repeal of ARTO.

1. There has not been any consensus or documented need for an agricultural transfer option to support broader agricultural preservation efforts. Since ARTO has been in effect (December 1, 2014) staff has received few inquiries, including one (1) incomplete application, to formally initiate the process.

2. An agricultural to agricultural transfer program does not result in a net preservation of agricultural land since the subdivision potential is just shifted from one parcel to another.

3. The shift of residential subdivision potential to agricultural areas, even if to parcels and areas considered marginal for agricultural use, may adversely impact the ability of adjoining agricultural activities to maintain their viability. This has the potential of creating another Green Valley type area where residential subdivision activity takes place and large areas of agricultural/rural lands are converted to low density residential sprawl.
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these types of lots would be more marketable than in other parts of the County. The level of subdivision, up to 15 lots, that could take place could significantly threaten the areas around Sugarloaf Mountain and the Monocacy National Battlefield which are significant cultural, historical, and environmental features.

4. As noted previously, the adoption of ARTO has resulted in the suspension of the County’s Tier IV exemption by the Maryland Department of Planning. Without the exemption, the County is prevented from approving any major residential subdivisions in the Tier IV area. Ten (10) potential subdivisions comprising 80 residential building lots, including an Agriculture Cluster plan option, are delayed until the exemption is restored. Additionally, assessments on four (4) properties totaling roughly 820 acres currently negotiating protective easements with DNR are also delayed.

5. Staff has identified numerous technical issues with the wording of the ordinance that creates difficulty in interpretation and application.

6. The required preservation easement on sending parcels does not prohibit any development or use that is permitted by the Zoning Ordinance, thus nullifying the intent of the Ag preservation easement. A parcel may sell all of its subdivision rights, record the required Ag Preservation easement, and still develop the property for places of worship, communication towers, landscape contractor office and storage, school bus parking lots, golf course, cemetery, shooting range, aircraft landing and storage, group home, solar arrays, etc.

7. Sending parcels not currently in Ag use may send development rights to another parcel, resulting in the county accepting a Ag preservation easement on land that is not used for agriculture.

8. Encourages the transfer of subdivision rights from parcels not used for Ag purposes to parcels that are used for Ag purposes, resulting in a greater loss of productive farmland than under the previously allowed methods of subdividing Ag property.

Sustainable Growth and Agricultural Preservation Act of 2012:
This Act (SB 236), which is more commonly referred to as the Septic Bill, was adopted by the state legislature in 2012. The goal of the legislation is as follows:
“To limit the disproportionate impacts of large subdivisions on septic systems on our farm and forest land, streams, rivers, and Chesapeake and Coastal Bays.”

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Tier III: Area not planned to be served by public sewerage systems; would allow for major subdivisions on individual septic systems.

Tier IV: Area planned for agriculture, resource protection, preservation, or conservation.

**Tier IV Area:**
Under the 2012 state law, the intent of the Tier IV mapping effort was to identify areas where large lot development would conflict with the goals of the local jurisdiction for agricultural and natural resource land protection. As such, major subdivisions (as defined by the individual jurisdictions) would be prohibited in the Tier IV area. This would affect properties zoned Agricultural (A) that are large enough (minimum of 75 acres) to have agricultural cluster rights that could allow for residential subdivisions greater than five (5) lots.

**Tier IV Exemption:**
The 2012 state law allows for a jurisdiction to request an exemption, which would allow major subdivisions in a Tier IV area. The primary standard for consideration of an exemption is whether the zoning applicable to the majority of the Tier IV area allows for a density of one (1) dwelling or fewer per 20 acres. If a local jurisdiction’s zoning meets this standard, then the state would conduct additional analysis on subdivision history, and development regulations before a decision is rendered on the exemption request.

The County received a Tier IV exemption from MDP in May 2013, based on an analysis of the potential residential build out of properties in the Tier IV area as adopted by the County in February of 2013. The Tier IV area comprises properties that are zoned Agricultural (A) or Resource Conservation (RC). The Tier IV build-out analysis showed that resulting density would be 1 dwelling per 20.3 acres.

**RECOMMENDATION:**
That the County Council: (1) adopt the attached Bill repealing the Agricultural Rights Transfer Option; (2) pursue a reinstatement of the Tier IV exemption from MDP; and, (3) initiate a discussion of a traditional Transfer of Development Rights (TDR) program.

**Attachments**
1. Proposed Bill to repeal ARTO
2. MDP comment letters
3. ARTO Ordinance
February 17, 2016

Steven C. Horn, Director
Frederick County Planning and Permitting Division
30 N. Market Street
Frederick, MD 21701

Dear Mr. Horn:

Thank you for meeting with me and my staff on February 5, 2016 to discuss the steps necessary for Frederick County to regain a Tier IV exemption. As we discussed, there are four specific options available to the County for pursuing a Tier IV exemption. The Maryland Department of Planning (Planning) has no preference as to which option the county chooses and, as always, is available to county staff for technical assistance and guidance.

The first option is for Frederick County to retain the ARTO in its current form. Under this option, the county would need to demonstrate, and Planning would have to verify, that the county’s current subdivision and zoning requirements under ARTO result in an actual overall yield of not more than one dwelling unit per twenty acres in the cumulative Tier IV area. This would require county-specific data and guidance on the amount of development that has occurred and the amount of development capacity remaining in the County’s Tier IV area, as well as details on how the county will apply the ARTO to permit transfer of development rights. Planning staff can assist Frederick County in several phases of the analysis.

A second option is for the county to repeal the ARTO. If the ARTO is repealed and the county verifies to Planning that no changes have occurred to the county’s subdivision and zoning codes since the initial Tier IV exemption was verified by Planning on May 31, 2013, the county’s Tier IV exemption could be reinstated.

The third option is for the Frederick County to revise the ARTO in a way that reduces development potential in the county’s Tier IV area compared to the existing ordinance. The county may want to pursue this option if it prefers to retain rural-to-rural transfer of development rights but concludes that the existing ARTO, in conjunction with the county’s current subdivision and zoning requirements, cannot achieve an actual overall yield of one dwelling unit per twenty acres in the cumulative Tier IV area. Again, Planning can assist county staff with numerous aspects of the analysis.

The fourth option is for the county to replace the ARTO with a more traditional rural-to-urban transfer of development rights (TDR) program. A traditional TDR would send development rights from the Tier IV areas to Tier I or II areas in a way that might increase the likelihood that
the development potential within the county’s Tier IV area meets the exemption threshold; Planning staff can assist Frederick County with the analysis of how this option would affect development capacity within the Tier IV area.

Please understand that if the ARTO is retained and/or modified under the first, third and fourth options, the county would need to demonstrate, and Planning would need to verify, that the county’s subdivision and zoning requirements, including the requirements of the existing or revised ARTO or alternative TDR program, will result in an actual overall yield of not more than one dwelling unit per twenty acres in the cumulative Tier IV area. Consequently, it will take significant time and work together by the county and Planning staff to determine if the exemption is still attainable, and the outcome will be in question until that occurs.

In addition, before completing its verification of the actual overall yield in the Tier IV area, Planning must also consult with the Maryland Sustainable Growth Commission, in accordance with the established Tier IV exemption protocol, “Tier IV Exemption to Major Subdivision Restrictions of SB236: Final Protocol for Consultation between MDP and Sustainable Growth Commission, September 24, 2012”.

Regarding any of the four options, if the county’s zoning and subdivision regulations for Tier IV areas differ now from those in place as of May 31, 2013, or if the county’s Tier IV area differs from what it was as of May 31, 2013, Planning would need to conduct a new verification analysis using the best available data on the amount of existing development that has occurred and the amount of development capacity remaining in the county’s Tier IV area.

My staff and I stand ready to continue helping in any way that we can. Please let me know how we can be of further assistance.

Sincerely,

[Signature]

Sid Sirotta, AICP
Assistant Secretary,
Planning Services

cc:    David R. Craig, Secretary, Planning
        Chuck Boyd, Director, Planning Coordination, Planning
        Joe Tassone, Manager, Geospatial Data & Analysis
        Jason Dubow, Manager, Resource Conservation & Management
December 5, 2014

Jim Gugel, AICP
Director
Comprehensive Planning and Land Development
30 N. Market St
Frederick, MD 21701

Dear Mr. Gugel:

This letter concerns the November 18, 2014 approval by the Board of County Commissioners of Frederick County's Zoning Ordinance Text Amendment, ZT 14-02, Option 1, and how the adopted transfer of development rights (TDR) program impacts Frederick County's Tier IV exemption under the Sustainable Growth and Agricultural Preservation Act of 2012.

As we explained in our May 31, 2013 letter (see attached) -- which verified Frederick County's Tier IV exemption under Md. Code Ann., Envir. § 9-206(h) -- that "[i]n the event that modifications to the established zoning and subdivisions rules or Tier IV boundaries are made in the future, MDP will review the modifications, first for consistency with statutory rules for Tier delineation, and second to re-evaluate the County's qualifications for continuation of the Tier IV exemption under the new conditions." As noted in our October 2, 2014 letter (also attached), which commented upon ZT- 14-02 as proposed, implementation of ZT 14-02 might result in "actual overall density yield within the County’s Tier IV [areas that is] more dense than the maximum allowable density criteria of 1 dwelling unit per 20 acres."

With adoption of ZT 14-02, MDP requests that the County substantiate that the actual overall yield of Frederick County's cumulative Tier IV areas under the new TDR program is less dense than one dwelling unit per twenty acres, as required to maintain the Tier IV exemption. We are especially concerned about provisions that allow more lots to be created and transferred than would normally be allowed. This letter serves as notice to the
County that until such time as the County can substantiate that the new program will not result in Tier IV density below the statutory threshold, MDP's verification of the County's Tier IV exemption, as communicated in the May 31, 2013 letter, is withdrawn. As a consequence, and until such time as MDP verifies the County's Tier IV exemption, we are recommending to MDE that no new major residential subdivisions in Tier IV areas be authorized.

We welcome and are available to work with you and your staff on preparing the calculations necessary to substantiate the cumulative Tier IV density.

Please let me know if you have any questions.

Sincerely,

[Signature]

Richard Josephson, AICP
Director
Planning Services

Attachments
cc: Jan Gardner, County Executive
Virginia Kearney, MDE
Jason Dubow, MDP
October 2, 2014

Dwaine E. Robbins, Chair
Frederick County Planning Commission
c/o Gary Hessong, Acting Division Director
Frederick County Community Development Division
30 North Market Street
Frederick, MD 21701

Dear Mr. Robbins:

We have reviewed the two transfer of development rights (TDR) program options (ZT 14-02 Option 1 and ZT 14-02 Option 2) described in the Frederick County Community Development Division Staff Report, "Zoning Ordinance Text Amendment - Agricultural Subdivision Potential Transfer Option", prepared for the October 6, 2014 Frederick County Planning Commission meeting.

Much effort went into the Frederick County Tier IV exemption, including detailed analyses by MDP and County staff in consultation with the Maryland Sustainable Growth Commission. The analysis was completed and presented to the Growth Commission in May 2013 and established that the actual overall density yield within the County's Tier IV area is 1 dwelling unit per 20.3 acres, which just slightly meets the 1 dwelling unit per 20 acre maximum allowable density criteria established under the Sustainable Growth and Agricultural Preservation Act of 2012 (the "Act"). See Md. Code Ann., Envir. § 9-206(h). Any changes to density yields or development potential that results from the proposed TDR program would need to be evaluated in view of how the changes might impact the Tier IV exemption.

Both ZT 14-02 Option 1 and ZT 14-02 Option 2 place the County's Tier IV exemption at risk. Under both options, the actual overall density yield within the County's Tier IV is likely to become more dense than the maximum allowable density criteria of 1 dwelling unit per 20 acres.
In addition, we have reviewed the two options in light of the requirements of Md. Code Ann., Envir. § 9-206|m|(2) and it is our view that neither of these options comply with all aspects of state law. If the Planning Commission would like more details on the legal issues related to these proposals, we will provide them.

Sincerely,

[Signature]

Richard Josephson, AICP
Director of Planning Services

cc: Richard E. Hall, AICP, Secretary
    Amanda Conn, Esq., Deputy Secretary
    Peter Conrad, Director, Local Planning Assistance
    David Cotton, Western Maryland Regional Planning Office
    Jason Dubow, Director, Environmental Planning
    Dan Rosen, Manager, Conservation Program Development & Implementation
May 31, 2013

Eric Soter, Director
Frederick County Community Development Division
30 North Market Street
Frederick, Maryland 21701

Dear Mr. Soter:

Thank you for submitting a request to the Department of Planning for an exemption to Tier IV restrictions on major subdivisions under the Sustainable Growth and Agricultural Preservation Act of 2012. The Act states that the restriction does not apply to a local jurisdiction if an exemption is requested and the Maryland Department of Planning verifies that subdivision and zoning requirements in the cumulative Tier IV area result in an actual overall yield of not more than one dwelling unit per twenty acres.

The request to verify the actual overall yield and supporting materials provided by Frederick County Community Development Division staff were consistent with MDP’s guidelines and consultation protocol with the Maryland Sustainable Growth Commission. This was very helpful in the review and verification process.

MDP finds that the County’s established zoning and subdivision rules already adequately limit residential subdivision sufficiently so there is no need for the additional restrictions that would be imposed by Tier IV restrictions. This finding is based on our estimate that the actual overall yield of Frederick County’s cumulative Tier IV area under those rules is less than one dwelling unit per twenty acres and is likely to continue into the future; on the established record of the County’s land use and preservation plans, rules and policies; and on the vitality of resource-based industries in these areas, particularly agriculture.

As part of the exemption process established in the law, the Department consulted with the Maryland Sustainable Growth Commission to review the County’s exemption request and the Department’s preliminary findings at a Commission meeting on May 13, 2013. MDP staff and Frederick County representatives provided further details to the Commission on how the development yields for specific zoning districts were calculated, the private property considerations that influence the development yield, and the County’s available development capacity outside of the Tier IV area.
In the event that modifications to the established zoning and subdivisions rules or Tier IV boundaries are made in the future, MDP will review the modifications, first for consistency with statutory rules for Tier delineation, and second to re-evaluate the County's qualifications for continuation of the Tier IV exemption under the new conditions. Please advise us and the Maryland Department of the Environment if such changes are contemplated in the future.

Finally, we would like to recognize the County's staff for their work and cooperation in preparing and submitting the County's exemption and verification request.

Should you have any questions, please don't hesitate to contact us.

Sincerely,

Richard Josephson, AICP  
Director, Planning Services

cc: Richard E. Hall, Secretary, MDP  
Jon Laria, Chair, Maryland Sustainable Growth Commission  
Amanda Conn, Deputy Secretary, MDP  
Jay Sakal, Director, Water Management Administration, MDE  
Jenny King, Chief-of-Staff, MDP  
Chuck Boyd, Deputy Director, Planning Services, MDP  
Joe Tassone, Director, Smart Growth Policy Analysis, MDP  
Stephanie Martins, Analysis Coordinator, MDP  
Jason Dubow, Director, Environmental Planning, MDP  
Jim Gugel, Planning Manager, Frederick County Comprehensive Planning Section  
Dwayne Robbins, Chair, Frederick County Planning Commission
May 4, 2016

Mr. Bud Otis, President
Frederick County Council
Winchester Hall
12 East Church Street
Frederick, Maryland 21701

Re: Agricultural Rights Transfer Option (ARTO) / Tier IV Exemption

President Otis:

This letter will reaffirm County staff support for the outright repeal of ARTO as the best means available to obtain the Tier IV exemption from the Maryland Department of Planning (MDP).

Alternative approaches, including revisions that fall short of an outright repeal of ARTO, undermine and jeopardize our attempts to have MDP reestablish the Tier IV exemption for rural land owners in Frederick County.

Thank you for your attention to this matter.

Sincerely,

Steven C. Horn, Director
Planning & Permitting Division

cc: Jan H. Gardner, County Executive
Doug Browning, Chief Administrative Officer
THE EFFECTIVE DATE OF THIS ORDINANCE IS DECEMBER 1, 2014

ORDINANCE NO. 14-30-685

RE: Zoning Text Amendment ZT-14-02
Agricultural Rights Transfer Option

The Board of County Commissioners for Frederick County, Maryland deems it necessary and in the best interests of the citizens of Frederick County to amend Chapter 1-19 of the Frederick County Code (the Zoning Ordinance) to add an Agricultural Transfer Rights Option (ARTO).

The ARTO is intended to: encourage the conservation of farmland by permitting the transfer of existing development rights from one agriculturally zoned parcel to another; to limit the parcels which will be eligible to receive the transfer of such rights to land zoned Agricultural and located in more densely developed areas of the County; and to provide an additional privately funded farmland preservation program.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that Section 1-19-7.300 of the Frederick County Code is hereby amended by adding a new subsection (D) as shown below:

(D) AGRICULTURAL RIGHTS TRANSFER OPTION (ARTO)

1. PURPOSE AND INTENT.

A) TO FURTHER ENCOURAGE THE CONSERVATION OF FARMLAND, PARTICULARLY IN AREAS OF THE COUNTY KNOWN FOR PRIME AGRICULTURAL SOILS, BY PERMITTING THE TRANSFER OF EXISTING DEVELOPMENT RIGHTS FROM ONE AGRICULTURALLY ZONED PARCEL TO
ANOTHER, AND FURTHER BY LIMITING THE PARCELS WHICH WILL BE ELIGIBLE TO RECEIVE THE TRANSFER OF SUCH RIGHTS TO LAND ZONED AGRICULTURAL AND LOCATED IN MORE Densely DEVELOPED AREAS OF THE COUNTY; AND TO PROVIDE AN ADDITIONAL PRIVATELY FUNDED FARM LAND PRESERVATION PROGRAM.

(2) **SENDING PARCELS.** PROPERTIES WITHIN THE AGRICULTURAL ZONE WHICH MEET THE FOLLOWING CRITERIA ARE ELIGIBLE TO BE SENDING PARCELS:

(a) THE PARCEL HAS MORE THAN ONE (1) AGRICULTURAL SUBDIVISION RIGHT.

(b) THE PARCEL MUST BE LOCATED WITHIN THE TIER IV AREA AS DEFINED IN THE SUSTAINABLE GROWTH & AGRICULTURAL PRESERVATION ACT OF 2012, AND AS APPROVED BY THE BOARD OF COUNTY COMMISSIONERS (THE "TIER IV AREA").

(c) THE MINIMUM PRESERVATION PARCEL EASEMENT AREA FOR ALL SENDING PARCELS SHALL BE 50 ACRES.

(d) A PROPERTY CONSISTING OF ONE OR MORE CONTIGUOUS PARCELS OR LOTS MAY BE ELIGIBLE TO BE A SENDING PARCEL IF THE PARCELS, WHEN COMBINED, MEET THE SIZE CRITERIA SPECIFIED IN PARAGRAPH (2)(C) OF THIS SUBSECTION. ALL PARCELS THAT DO NOT MEET THE SIZE CRITERIA SPECIFIED IN PARAGRAPH (2)(C) OF THIS SUBSECTION MUST BE COMBINED AT THE TIME THAT THE PRESERVATION EASEMENT AGREEMENT FOR THE SENDING PARCEL IS RECORDED.

(3) **RECEIVING PARCELS.**

(a) ANY PROPERTY WITHIN THE AGRICULTURAL ZONE IN THE TIER IV AREA IS ELIGIBLE TO BE A RECEIVING PARCEL, EXCEPT PROPERTY THAT IS LOCATED IN A PRIORITY PRESERVATION AREA (PPA) OR IN A DESIGNATED RURAL LEGACY AREA.

(b) IF A PORTION OF A RECEIVING PARCEL IS ENCUMBERED WITH A RECORDED EASEMENT THAT REDUCES OR REMOVES ITS DEVELOPMENT RIGHTS, THE ENCUMBERED AREA SHALL BE SUBTRACTED FROM THE ACREAGE OF THE PARCEL TO DETERMINE THE POTENTIAL RECEIVING AREA AND DENSITY.
(4) USES PERMITTED AS A MATTER OF RIGHT. USES PERMITTED AS A MATTER OF RIGHT IN THE AGRICULTURAL ZONING DISTRICT SHALL BE PERMITTED ON THE PROPERTIES UTILIZING ARTO.

(5) ACCESSORY USES. ACCESSORY USES SHALL BE AS PERMITTED IN THE AGRICULTURAL DISTRICT.

(6) BULK REQUIREMENTS.

(a) ONE DEVELOPMENT RIGHT MUST BE RETAINED FOR THE SENDING PARCEL. OTHERWISE, ALL DEVELOPMENT RIGHTS ASSOCIATED WITH THE SENDING PARCEL MAY BE TRANSFERRED, SUBJECT TO SECTION 1-19.7.300. (D) (6) (d) BELOW. IN THE EVENT DEVELOPMENT RIGHTS ARE TRANSFERRED FROM MULTIPLE CONTIGUOUS SENDING PARCELS, THE SENDING PARCELS MAY BE CONSOLIDATED INTO ONE OR MORE PARCELS, PROVIDED THAT AT LEAST ONE DEVELOPMENT RIGHT IS RETAINED ON EACH RESULTANT SENDING PARCEL.

(b) THE MAXIMUM DENSITY FOR THE RECEIVING PARCEL SHALL BE ONE DWELLING UNIT FOR EVERY TWO GROSS ACRES.

(c) THE DENSITY OF THE RECEIVING PARCEL SHALL BE BASED ON SECTION 1-19-7.300(B) OR (C). IF ADDITIONAL DENSITY IS TRANSFERRED FROM THE SENDING PARCEL TO THE RECEIVING PARCEL BASED UPON THE UTILIZATION OF THE CLUSTERING PROVISIONS SET FORTH IN SECTION 1-19-7.300(C), THEN ALL PROCEDURAL REQUIREMENTS OF SECTION 1-19-7.300(C) SHALL APPLY TO THE DEVELOPMENT ON THE RECEIVING PARCEL.

(d) IF THE SENDING AND RECEIVING PARCELS ARE BOTH “USED FOR AGRICULTURAL ACTIVITIES” AS DEFINED IN MD. ANN. CODE, ENVIRONMENT ARTICLE, § 9-206(M), A SENDING PARCEL MAY ONLY TRANSFER UP TO SEVEN (7) DEVELOPMENT RIGHTS TO THE RECEIVING PARCEL OR PARCELS, AND THE RECEIVING PARCEL MAY ONLY BE SUBDIVIDED TO YIELD A TOTAL OF UP TO FIFTEEN (15) LOTS.

(7) AN APPLICANT WISHING TO UTILIZE THE ARTO SHALL SUBMIT AN APPLICATION SEEKING APPROVAL OF THE TRANSFER ON A FORM PROVIDED BY THE COUNTY.

(a) IF NO AGRICULTURAL CLUSTERING DEVELOPMENT IS PART OF THE ARTO APPLICATION, THEN DPDR SHALL PROCESS AND
APPROVE THE ARTO APPLICATION AS PART OF THE APPROPRIATE STAFF LEVEL REVIEW OF THE SUBDIVISION PLAT.

(b) IF AGRICULTURAL CLUSTERING DEVELOPMENT IS PART OF THE ARTO APPLICATION, THEN THE SAME PROCEDURE SET FORTH IN SECTION 1-19-7.300(C) SHALL APPLY.

(c) IF THE SENDING AND RECEIVING PARCELS ARE BOTH "USED FOR AGRICULTURAL ACTIVITIES" AS DEFINED IN MD. ANN. CODE, ENVIRONMENT ARTICLE, § 9-206(M), THEN CLUSTERING DEVELOPMENT OF THE LOTS, AS SET FORTH IN SECTION 1-19-7.300(C), MUST BE USED FOR THE RECEIVING PARCEL.

(8) A DEED OF EASEMENT, IN A FORM PROVIDED BY THE COUNTY, SHALL BE REQUIRED TO BE RECORDED FOR THE SENDING PARCEL.

(9) THE EXCHANGE OF DEVELOPMENT RIGHTS SHALL TAKE PLACE AS A PRIVATE EXCHANGE BETWEEN PROPERTY OWNERS, SUBJECT TO APPROVAL OF THE SENDING AND RECEIVING PARCELS BY THE COUNTY IN ACCORDANCE WITH THE PROCEDURES SET FORTH HEREIN.

AND BE IT FURTHER ENACTED AND ORDAINED that this Ordinance shall take effect on December 1, 2014.

The undersigned hereby certifies that this Ordinance was approved and adopted on the 18th day of November, 2014.

ATTEST: BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

[Signatures]

Lori D. Depies, CPA
County Manager, Acting

Michael G. Marckmann

Blaine R. Young, President

[Signature] 11/21/14
FREDERICK COUNTY COUNCIL

Local Government Fiscal Estimate of Legislation

CONTACT INFORMATION AND GENERAL INSTRUCTIONS

<table>
<thead>
<tr>
<th>Bill Number/Reference:</th>
<th>Bill No. 16-07</th>
</tr>
</thead>
<tbody>
<tr>
<td>Bill Title:</td>
<td>Repeal the Agricultural Rights Transfer Option</td>
</tr>
<tr>
<td>Local Government Agency:</td>
<td>Frederick County Finance Division</td>
</tr>
<tr>
<td>Prepared By:</td>
<td>Erin White</td>
</tr>
<tr>
<td>Title:</td>
<td>Accounting Director, Finance Division</td>
</tr>
<tr>
<td>Phone Number:</td>
<td>301-600-1193</td>
</tr>
<tr>
<td>E-Mail Address:</td>
<td><a href="mailto:ewhite@frederickcountymd.gov">ewhite@frederickcountymd.gov</a></td>
</tr>
<tr>
<td>Due Date:</td>
<td>June 20, 2016</td>
</tr>
<tr>
<td>Date Submitted:</td>
<td>June 17, 2016</td>
</tr>
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</table>
### FREDERICK COUNTY COUNCIL

**Local Government Fiscal Estimate of Legislation**

**Date:**

Please respond to the questions below. If you prefer to provide responses or additional information in a separate file or document, send the file or document in a separate e-mail to rcherney@frederickcountymd.gov with the bill number/reference in the subject line.

1. Describe the impact of this proposed legislation on your agency (operations, revenues, expenditures, etc). If there is no impact, please explain why.

This bill would have a positive fiscal impact to the County by relieving the risk that the Agricultural Rights Transfer Ordinance (ARTO) placed on the County’s Agricultural Preservation Programs. This bill serves to reinstate the County’s Tier IV exemption that the Maryland Department of Planning (MDP) suspended as a result of the adoption of the Agricultural Rights Transfer Ordinance on November 18, 2014. The Tier IV exemption allows farmers and rural land owners, located throughout the County’s identified Tier IV area, to pursue major subdivision (i.e. 6 lots or more) on their respective properties without intervention from the state agencies.

2. Please indicate whether the proposed legislation will affect small businesses in Frederick County, and if it will, please provide any information you may have which could be useful in determining the economic impact on small businesses.

This bill would have positive impact to property owners located in agricultural zones as it would allow a number of them to realize the full value of their subdivision rights. Several subdivisions and Conservation Reserve Enhancement Program easements are currently on hold due to the Tier IV exemption being suspended. Development Review staff has processed subdivision rights verification request on ten (10) potential subdivisions comprising 80 residential building lots, all of which are delayed pending the satisfactory resolution of the Tier IV exemption issue with the MDP.

### FISCAL IMPACT SUMMARY – SHOW (DECREASE) IN PARENTHESES

#### REVENUES

3. Analysis of estimated increase (or decrease) in government revenues. Please estimate below any anticipated increase (or decrease) in revenues resulting from this legislation. Please be aware of any delayed effective dates in the bill or other factors that may cause revenue increases/decreases to begin in later years.

<table>
<thead>
<tr>
<th>Source</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>FY 2019</th>
<th>FY 2020</th>
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</thead>
<tbody>
<tr>
<td>N/A</td>
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<td>$</td>
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</tr>
<tr>
<td><strong>TOTAL</strong></td>
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<td><strong>$</strong></td>
<td><strong>$</strong></td>
<td><strong>$</strong></td>
</tr>
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</table>

Please explain how the above estimated increase(s) or decrease(s) were arrived at, including any calculations and/or assumptions made. Please also explain any variation if the revenue increase(s)/decrease(s) are not constant.

N/A – It is not anticipated that this legislation would create additional revenue nor decrease any revenue of the County.
4. Analysis of *estimated increase (or decrease) in government expenditures.* Please estimate below any anticipated increase (or decrease) in expenditures resulting from this legislation. Please be aware of any delayed effective dates in the bill or other factors that may cause expenditure increases/decreases to begin in later years.

<table>
<thead>
<tr>
<th>A. Salaries &amp; Wages</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>FY 2019</th>
<th>FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>FTE Employees</td>
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</tr>
<tr>
<td>Fringe Benefits</td>
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<td></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>TOTAL (Salaries, wages &amp; benefits)</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

N/A Please provide an explanation of the need for the number and type of any personnel listed above, including (1) what specific provision(s) of the bill necessitate additional staff; (2) what the duties of each type employee will be; and (3) why existing personnel cannot absorb the additional work. Please also certify the wage/salary rate and % fringe rate (if differing rates apply) for each personnel classification.

<table>
<thead>
<tr>
<th>B. Other Operating Expenses</th>
<th>FY 2016</th>
<th>FY 2017</th>
<th>FY 2018</th>
<th>FY 2019</th>
<th>FY 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>Technical/Special Fees, Grants/Subsidies</td>
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<td>$</td>
<td>$</td>
<td>$</td>
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</tr>
<tr>
<td>Communications-Phone, Postage</td>
<td>$</td>
<td>$</td>
<td>$</td>
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<td>$</td>
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<tr>
<td>Travel, Food, Auto, Fuel &amp; Utilities</td>
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<td>$</td>
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<tr>
<td>Contractual Services</td>
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<tr>
<td>Supplies</td>
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<tr>
<td>Equipment-Replacement</td>
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<tr>
<td>Land &amp; Structures, Fixed Charges</td>
<td>$</td>
<td>$</td>
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<td>$</td>
</tr>
<tr>
<td>Other (Please Specify on Extra Page(s))</td>
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<td>$</td>
<td>$</td>
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<td>$</td>
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<tr>
<td>TOTAL (Expenditures)</td>
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<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
</tbody>
</table>

N/A On the next page, please provide brief descriptions/breakdowns of the above “Other Operating Expenses.”

N/A Please explain below any additional calculations or assumptions made in estimating the “Other Operating Expenses” that will help us to understand the amounts and timing of the expenses.

N/A – It is not anticipated that this legislation would create the need for additional staff or increase the operating expenses of the County.
4. (cont'd)

**C. Operating Expense Descriptions/Breakdowns**

Please provide below a short description of the specific purpose of each expense listed under 4B. If any amount(s) listed under 4B represent(s) a total of multiple expenses, provide a breakdown of the fiscal 2016 amount with a short description of each expense (for example, if $2,500 is listed for Communications – Phone, Postage, a statement such as "$1,500 for cellphone charges for two new inspectors and $1,000 for postage for mailings to permittees to notify them of changes to inspection requirements.”)

<table>
<thead>
<tr>
<th>Fiscal 2016 Expenditures</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Technical/Special Fees, Grants &amp; Subsidies</td>
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</tr>
<tr>
<td>description/breakdown</td>
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<td>Communications – Phone, Postage</td>
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<td>description/breakdown</td>
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<td>description/breakdown</td>
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<tr>
<td>Other (Please Specify)</td>
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</tr>
<tr>
<td>description/breakdown</td>
<td></td>
</tr>
</tbody>
</table>

Please submit BY E-MAIL to: Ragen Cherney, Legislative Director/Chief of Staff
Frederick County Council • E-Mail: RCherney@FrederickCountyMD.gov