

**HOUSE APPROPRIATIONS COMMITTEE
CAPITAL BUDGET SUBCOMMITTEE**

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

The Department of Legislative Services (DLS) recommends that MALPF comment on any updates concerning the availability of federal funding, its plans for the Program Open Space Acquisition Opportunity Loan of 2009 funding, and the possibility of raising partnership funding as allowed for by Chapter 36 of 2010.

MALPF does not currently know the availability of federal funds for its program. The final rule for the Farm and Ranch Land Protection Program (FRPP) was issued on January 24, 2011. MALPF was notified on February 4, 2011, that the RFP for FRPP this year had been issued. Because MALPF's ability to apply for federal matching funds depends upon the eligibility requirements set forth in both documents, MALPF cannot comment on whether it will be eligible to apply until MALPF staff and legal counsel have finished reviewing these documents.

The MALPF Board of Trustees has committed its bonding authorization under the POS Acquisition Opportunity Loan of 2009 to offers to be made during the combined FY 2011/12 easement acquisition cycle.

Until MALPF has staff committed to the implementation of the partnership program, partnership funding will not be sought.

DLS recommends that the Maryland Department of Agriculture (MDA) comment on the current status of addressing the recommendations in the audit and the status of developing a methodology for presenting uniform funding and easement acquisition information from year-to-year.

The MALPF database of easement acquisitions had not been tested for reliability nor reconciled to the State's accounting records. MALPF has verified the accuracy and completeness of all of its acreage data fields by comparing its physical files on offer acreage, payment acreage, verified settlement acreage, lot release acreages, and assorted other acreage adjustments to their electronic counterparts MALPF's database nor the expertise to use it purposefully (it does not use the database in meeting any of its responsibilities) and MALPF does not have access to the Fiscal Office's fiscal accounting records nor the expertise to use those records purposefully (it makes only minor use of MDA's fiscal accounting records to meet its responsibilities).

Procedures and controls over easement acquisition payments related to installment purchases were inadequate. MDA's Fiscal Services now reviews and approves installment payments generated by both the Treasurer's Office and by MALPF's fiscal specialist.

MALPF had not obtained formal legal advice regarding the legality of recovering excessive amount of agricultural land transfer taxes retained by certain counties during the prior fiscal years. MALPF has obtained formal legal advice on the issue of litigation against the counties to recover retained agricultural transfer taxes and taken the necessary action based on this legal advice.

MALPF is unaware of any problem with funding and easement acquisition information from year-to-year.

DLS recommends that MALPF comment on the status of using the "Withheld Acreage Policy" to allow for surface exploration for natural gas and the incorporation of mineral rights into easement pricing.

Using the "Withheld Acreage Policy" to Allow for Surface Exploration for Natural Gas, the following response is partially paraphrased and partially excerpted from the "Report on Implications of Marcellus Shale Gas Drilling on Conserved Land" prepared for the General Assembly. Potential applicants to the Program who own the mineral rights on a property (only) could propose to withhold adequate acreage from an easement application to facilitate a drilling site on the applicant property. Withheld acreage requests have, in some cases, proved necessary to the operation of the Program and are typically made for reasons such as to meet qualifying soils criteria, to exclude land already used for non-agricultural purposes (such as an existing gravel extraction operation), or to develop one or two lots for non-qualifying recipients (such as a grandchild or long-time tenant). Though some counties do not allow acreage to be withheld during the application process, Garrett County accepts this practice. The Foundation's Board of Trustees examines such requests very closely to ensure that they are legitimate, consistent with the purposes of the Program, and will have no or minimal impact on the preservation values on the adjacent land going under its easement. The Board may not approve the request or approve it only with conditions. For example, land withheld for residential development is commonly restricted to three or fewer residential units by deed restriction, with the retained development rights subtracted from the development potential of the land appraised for easement acquisition. While the retention of acreage for a proposed drilling site is not an explicitly designated "legitimate" reason for the exclusion of land from applications, the request could be made under the "such other legitimate reasons as the Maryland Agricultural Land Preservation Foundation may determine" criterion. Such a request must minimize the area excluded from the easement application while allowing for adequate acreage to meet the drill pad requirements and incorporate access for vehicles, electric transmission lines, natural gas pipelines, and other support facilities, preferably by locating the withheld acreage along a public road. Further, the applicant

would have to locate the withheld acreage to eliminate or minimize any potential impact of the drilling activities on the agricultural values to be preserved on the property, including its water resources, and be explicit in the request how the location and proposed commercial natural gas activities would serve to eliminate or minimize the activities' impact on the adjacent easement property. Finally, in making this request, the applicant should be fully aware that the request may not be approved because withheld acreage approvals are not a right, but are made at the discretion of the Board of Trustees. If a request is approved, the Board may impose conditions unacceptable to the applicant. No requests of this kind have been made to the Board, so no precedents exist to guide an applicant seeking to withhold acreage from an easement application for this purpose.

The Status of the Incorporation of the Value of Mineral Rights into Easement Pricing

The following response is partially paraphrased and partially excerpted from the "Report on Implications of Marcellus Shale Gas Drilling on Conserved Land" prepared for the General Assembly. The independent appraisals that are secured for MALPF already incorporate any influence that the value of mineral rights (or their absence) has on the fair

market value of the land. Any mineral rights value beyond what is already incorporated in the fair market value is highly speculative given the inadequate natural gas exploration, a lease market with limited competition providing little public information on pricing, and unanswerable questions over exactly what MALPF would be acquiring for increased offer prices. Offers incorporating the value of these rights beyond what is already incorporated in a property's appraised fair market value would not be defensible in front of the Board of Public Works.

DLS recommends that MDA comment on why this report has not been submitted.

A draft report has been completed and is under review by the Governor's Office.

SOUTHERN MARYLAND AGRICULTURAL DEVELOPMENT COMMISSION

The Department of Legislative Services (DLS) has recommended the deletion of the \$1.5 million GO bond authorization, which will defer this additional easement acreage purchased by a year.

The Southern Maryland Agricultural Development Commission (SMADC) **disagrees** with the analyst recommendation. Overall, this budget includes tobacco buyout payments of \$1.238 million and Debt repayment of \$3.323 million. Additionally, funds are used for infrastructure programs (\$500,000) and land preservation (\$1,500,000).

For most farmers, land is their greatest financial asset. As the Tobacco Buyout payments begin to cease, land preservation as well as our infrastructure programs will be even more critical to retain and recruit farmers, as farmers may be more receptive to pressure from land developers once the Buyout payments are complete.

The five Southern MD counties match land preservation program funds to:

- Prioritize tobacco buyout properties, a criteria which is not included in the MALPF priorities
- Leverage county funds and funds other than MAPLF to make additional offers for agricultural land preservation.

The demand far exceeds the ability to preserve farmland in So. MD. If all the farms that applied for agricultural land preservation in FY'11 were awarded easements, the total number of acres would be 6,923 at a cost of over \$60 million for all five Southern Maryland counties.

These program funds have enabled the five counties to make additional offers for agricultural land preservation and have leveraged the counties to place a total of 2,192 acres under agricultural land preservation in Fiscal Year 2010 alone, and 26,630 acres over the ten years of the program.

DLS recommends that MDA comment on a set of appropriate measures that reflect the status of the Tobacco Transition Program's (TTP) progress toward assisting landowners and agricultural producers of Southern Maryland transition from the 300-year old tradition of tobacco production.

SEE ATTACHED SHEET

MARYLAND AGRICULTURAL COST SHARE PROGRAM

The Department of Legislative Services (DLS) recommends that MDA comment on the out year goals for nutrient and sediment loading so that in the future load reductions may be compared against these goals.

Maryland has developed a phase I Watershed Implementation Plan (WIP) to address EPA TMDL nutrient load reductions. This provides statewide reduction strategies by sector through 2017. Sediment information was not available from EPA at the time of WIP, Phase I, so it is not included in the reduction plan at present. Phase II WIP will be developed on a more localized scale this year after EPA provides nutrient reduction targets at a county and/or watershed scale. This information may not be available until July, 2011 or later. MDA nutrient reduction projections may need to be adjusted as EPA and phase II WIP refine BMP objectives. The following goals apply only to BMPs cost shared with capital funds.

State fiscal year	2013	2014	2015	2016	2017
#/yr N Reduction	100000	100000	100000	100000	100000
#/yr P reduction	24000	24000	24000	24000	24000

DLS recommends that MDA comment on why Soil Conservation and Water Quality Plans are not more widely used as a MAC best management practice.

Soil Conservation and Water Quality Plans (SCWQP) are listed within the capital funded BMPS as a substitute for the erosion control BMPs that are not currently credited within the Chesapeake Bay Model. Instead of providing nutrient credits for BMPs such as diversions, the Bay model allows .62 #sN/ac for each new SCWQP. This may change in the future and MDA would then be able to credit actual individual erosion control BMPs installed.

The 45,000 acre goal for SCWQP is the current average of new plans that SCDs are able to complete annually. These plans provide a roadmap for the BMPs needed to address water quality issues on a farm operation and a proposed timeframe for their implementation. SCWQP output is directly correlated to technical SCD staff support available to accomplish this as well as all the other BMP goals.

DLS also recommends that \$1.5 million of Tobacco Transition Program GO bond authorization be reprogrammed to MACS to reflect the importance of meeting the demand for best management practices generated by the two year milestones process and to balance the lack of an appropriation from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund in fiscal year 2012.

MDA activity reflects the need for \$8.5 million in FY2012 to be on track to meet milestone goals as currently established on phase I WIP. The request is also balanced with availability of technical staff to assist farmers to install BMPs. Funding above projected need and capacity may not necessarily result in acceleration of implementation. In developing a plan for state use of the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund in fiscal year 2012, MDA targeted program areas where funding gaps are anticipated- cover crop program and bonus payment for CREP enrollment and re-enrollment. The lack of PAYGO funds in 2012 budget for MACS is a result of targeting.