

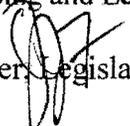
PHED Committee #3
March 4, 2010

Worksession

MEMORANDUM

March 2, 2010

TO: Planning, Housing and Economic Development (PHED) Committee

FROM: Justina J. Ferber, Legislative Analyst 

SUBJECT: **FY11 Capital Budget & FY11-16 Capital Improvements Program (CIP)**
Agricultural Land Preservation Easements
PDF No. 788911 (CIP Page 30-1)

Background

The County's Agricultural Land Preservation Easements Capital Program is administered by the County's Agricultural Services Division in the Department of Economic Development. The Agricultural Land Preservation Easements Program protects and preserves agricultural land from development with the goal of retaining a significant farming sector. In 2009, Montgomery County achieved its farmland preservation goal of protecting over 70,000 acres of farmland (71,353 acres). Preservation of agricultural land is accomplished under five separate programs: MC Agricultural Easements Program, MD Ag Land Preservation Foundation Program, MC Transferable Development Rights Program, Maryland Environmental Trust Program, and Rural Legacy Program.

The Building Lot Termination (BLT) easement program will be added once regulations are complete. The PHED Committee is continuing its review of Executive Regulation 03-09AM, Agricultural Preservation Easement Purchases to implement the BLT program, following its January 19, 2010 worksession. Action on the regulations has been extended to June 30, 2010. State law was amended to provide a transfer of ALARF funds from the Maryland-National Capital Park and Planning Commission to Montgomery County in the amount of \$5,000,000 to fund the BLT Program as authorized under Chapter 2B of the Montgomery County Code. A supplemental appropriation to the FY10 Capital Budget in the amount of \$5,000,000 was approved in November 2009.

CIP Project

The Agricultural Land Preservation Easements PDF can be found on ©1. The Executive's recommended FY11-16 program expenditure total is \$8,026,000. This represents a decrease of more than \$5,000,000 or 38 percent (reflecting the slow economy and reduced Agricultural Transfer Taxes) under the Amended FY09-14 CIP, including the \$5,000,000 ALARF supplemental.

The recommended appropriation for the FY11 Capital Budget for the Agricultural Land Preservation Easement Capital Program is \$1,045,000. For FY11 the program does not use any bond funding or current revenue funding. A portion of the Agricultural Preservation Program is funded through the State Agricultural Land Transfer Tax that is levied when farmland is sold and removed from agricultural status and the remainder is funded by investment income. Montgomery County is permitted to retain 75 percent of the revenue from the Agricultural Land Transfer Tax for the purpose of agricultural land preservation. There are legal constraints for the use of the Agricultural Transfer Tax. Investment income also funds the program. The use of investment income is directed by the Council and OMB.

Operating Expenses

In FY10 investment income funded operating expenses to run agricultural programs:

\$361,200	1 wy BDS III; 1wy BDS I; 0.6 wy MLS Mgr II; 0.4 wy MLS Mgr II
\$30,000	Deer Donation Program
\$10,000	Montgomery Weed Control Program
<u>\$31,000</u>	Cooperative Extension Partnership
\$432,200	FY10 Investment Income Expenditures

FY11 operating items funded by investment income expenditures will be updated once the FY11 Operating Budget is submitted.

For FY11, investment income expenditures show an increase from \$432,200 to \$445,000 to fund administrative expenses. Also for FY11, Agricultural Transfer Tax collection projections were reduced to \$600,000 to reflect the slow economy. In FY09 the Agricultural Transfer Tax collection projections were almost triple at \$1,723,000. Note that the level of appropriation for the CIP exceeds the cash balance of Agricultural Transfer Taxes.

Public Hearing Testimony

The Council received public hearing testimony from farmers Drew Stabler, Randy Stabler (©8), and Roy Stanley (©9) of Damascus and Billy Willard (©11) of Poolesville requesting that the Council approve G.O. bonds to fund the Agricultural Land Preservation Program to supplement decreasing Agricultural Transfer Tax

collections. They testified that the downturn in the economy presents opportunities to purchase agricultural land, but these opportunities will be lost if funds are not available in the County's preservation program. They cite examples of Carroll and Baltimore Counties providing G.O. bonds to fund the purchase of agricultural easements and note the County has used G.O. bonds in the past to supplement declining Agricultural Transfer Tax revenues.

Discussion

With regard to the request for G.O. bond funding to supplement Agricultural Transfer Tax revenues, in the 1990's the County did include G.O. bond funding to supplement declining revenues e.g. \$200,000 in FY96 and \$200,000 in 1997. See attached FY97 Agricultural Land Preservation Easements PDF at ©6. However, bond funding was never used for the Agricultural Easements project. Attached at ©7 is an excerpt from the State of Maryland budget advising that "Land preservation programs are fully funded, although bond funding has been substituted for transfer tax revenues." It is worth noting that M-NCPPC has received appropriations of G.O. bond funding for the Legacy Open Space Program. This program utilizes G.O. bond funding for both fee and easement acquisitions.

Notwithstanding prior practice, staff understands a legal review by the Department of Finance indicates that G.O. bonds cannot be used to purchase easements. Easements are not included in the definition of "public facility" in Chapter 20, Finance, of the County Code. The definition of "public facility" was not clarified previously; therefore, G.O. bonds were included in previous Agricultural Land Preservations PDFs but bond funding was never applied. In order to use bond funding for the Agricultural Land Preservations easements, Chapter 20 would have to be amended.

Recommendation

Staff recommends the Committee concur with the Executive's recommendation on the Agricultural Land Preservation project.

Attachments:	Agricultural Land Preservation Easements PDF	©1
	CIP Background Information	©3
	PDF FY97	©6
	State of Maryland Budget Excerpt	©7
	Testimony of Randy Stabler	©8
	Testimony of Roy Stanley	©9
	Testimony of Billy Willard	©11

Ag Land Pres Easements -- No. 788911

Category
Subcategory
Administering Agency
Planning Area

Conservation of Natural Resources
Ag Land Preservation
Economic Development
Countywide

Date Last Modified
Required Adequate Public Facility
Relocation Impact
Status

January 07, 2010
No
None.
On-going

EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY09	Est. FY10	Total 6 Years	FY11	FY12	FY13	FY14	FY15	FY16	Beyond 6 Years
Planning, Design, and Supervision	3,252	0	376	2,876	445	458	472	486	500	515	0
Land	18,338	0	13,186	5,150	600	750	850	950	1,000	1,000	0
Site Improvements and Utilities	0	0	0	0	0	0	0	0	0	0	0
Construction	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0
Total	21,588	0	13,562	8,026	1,045	1,208	1,322	1,436	1,500	1,515	0

FUNDING SCHEDULE (\$000)

Agricultural Transfer Tax	10,568	0	5,418	5,150	600	750	850	950	1,000	1,000	0
Federal Aid	393	0	393	0	0	0	0	0	0	0	0
Investment Income	3,367	0	491	2,876	445	458	472	486	500	515	0
M-NCPPC Contributions	5,000	0	5,000	0	0	0	0	0	0	0	0
State Aid	2,260	0	2,260	0	0	0	0	0	0	0	0
Total	21,588	0	13,562	8,026	1,045	1,208	1,322	1,436	1,500	1,515	0

DESCRIPTION

This project provides funds for the purchase of agricultural and conservation easements under the County Agricultural Land Preservation legislation, effective November 25, 2008, for local participation in Maryland's agricultural and conservation programs. The County Agricultural Easement Program (AEP) enables the County to purchase preservation easements on farmland in the agricultural zones and in other zones approved by the County Council to preserve farmland not already protected by Transferable Development Rights (TDRs) easements or State agricultural land preservation easements.

The Maryland Agricultural Land Preservation Foundation (MALPF) enables the State to purchase preservation easements on farmland jointly by the County and State.

The Rural Legacy Program (RLP) enables the State to purchase conservation easements to preserve large contiguous tracts of agricultural land. The sale of development rights easements are proposed voluntarily by the farmland owner. Project funding comes primarily from the Agricultural Land Transfer Tax, which is levied when farmland is sold and removed from agricultural status. Montgomery County is a State-certified county under the provisions of State legislation, which enables the County to retain 75 percent of the taxes for local use. The County uses a portion of its share of the tax to provide matching funds for State easements.

Beginning in FY10, a new Building Lot Termination (BLT) program will be initiated that represents an enhanced farmland preservation program tool to further protect land where development rights have been retained in the Rural Density Transfer Zone (RDT). This program will use Agricultural Transfer Tax revenue to purchase the development rights and corresponding TDRs retained on these properties.

COST CHANGE

Agricultural Transfer Tax collection and related expenditures were reduced to reflect the slowing economy.

JUSTIFICATION

Annotated Code of Maryland 2-501 to 2-515, Maryland Agricultural Land Preservation Foundation; Annotated Code of Maryland 13-301 to 13-308, Agricultural Land Transfer Tax; and Montgomery County Code, Chapter 2B, Agricultural Land Preservation.

OTHER

For FY10, Investment Income was increased to fund administrative expenses and additional agricultural initiatives carried out by the Agricultural Services Division.

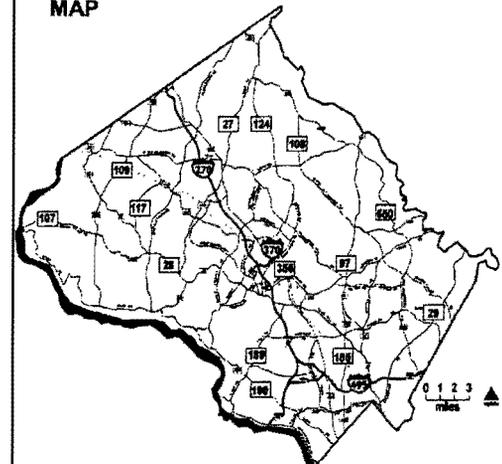
FY10 Investment Income expenditure before partial closeout adjustments is \$432,000 and is made up of \$361,200 – Current CIP appropriation/expense: 1 workyear Business Development Specialist III, 1 workyear Business Development Specialist I, 1 workyear MLS Manager II (beginning in FY10 .4 workyear for the MII was added to existing .6 workyear increasing personnel charges by an estimated \$69,200); \$30,000 – Deer Donation Program; \$10,000 – Montgomery Weed Control Program; and \$31,000 for Cooperative Extension Partnership.

APPROPRIATION AND EXPENDITURE DATA		
Date First Appropriation	FY89	(\$000)
First Cost Estimate	FY11	21,588
Current Scope		
Last FY's Cost Estimate		26,756
Appropriation Request	FY11	1,045
Appropriation Request Est.	FY12	1,208
Supplemental Appropriation Request		5,000
Transfer		0
Cumulative Appropriation		8,561
Expenditures / Encumbrances		2,696
Unencumbered Balance		5,865
Partial Closeout Thru	FY08	49,702
New Partial Closeout	FY09	7,383
Total Partial Closeout		57,085

COORDINATION

State of Maryland Agricultural Land Preservation Foundation
State of Maryland Department of Natural Resources
Maryland-National Capital Park and Planning Commission
Landowners

MAP



Ag Land Pres Easements -- No. 788911 (continued)

Appropriations are based upon a projection of Montgomery County's portion of the total amount of Agricultural Transfer Tax which has become available since the last appropriation and State Rural Legacy Program grant funding. Appropriations to this project represent a commitment of Agricultural Land Transfer Tax funds and State Aid to purchase agricultural easements. The Agricultural Transfer Taxes are deposited into an investment income fund, the interest from which is used to fund direct administrative expenses, the purchase of easements, and other agricultural initiatives carried out by the Agricultural Services Division. The program permits the County to take title to the TDRs. These TDRs are an asset that the County may sell in the future, generating revenues for the Agricultural Land Preservation Fund. The County can use unexpended appropriations for this project to pay its share (40 percent) of the cost of easements purchased by the State. Since FY99, the County has received State RLP grant funds to purchase easements for the State through the County. The State allows County reimbursement of three percent for direct administrative costs such as appraisals, title searches, surveys, and legal fees.

Given changes to the Federal Program, Federal Aid funds are no longer programmed in this project.

FISCAL NOTE

Expenditures do not reflect additional authorized payments made from the Agricultural Land Preservation Fund balance to increase financial incentives for landowners.

OTHER DISCLOSURES

- The Executive asserts that this project conforms to the requirements of relevant local plans, as required by the Maryland Economic Growth, Resource Protection and Planning Act.

Agricultural Land Preservation Program

PROGRAM DESCRIPTION AND OBJECTIVES

The County's Agricultural Land Preservation Capital Program is administered by the Montgomery County Department of Economic Development. The program includes one ongoing capital project, Agricultural Land Preservation Easements, whose objective is to protect and preserve agricultural land from development with the goal of retaining a significant farming sector throughout Montgomery County.

During FY2009, the County achieved the goal of protecting 70,000 acres of agricultural land through easements. As of June 30, 2009, the County has permanently preserved 71,353 acres for agricultural use. Montgomery County, leads the State of Maryland in the number of acres preserved and has the highest percentage of farmland under agricultural land preservation easements of any county in the nation. Within this total, 52,052 acres are protected only by Transferable Development Rights (TDR) easements which allow for densities as high as one unit per twenty-five acres. It will be important for the County to continue to pursue higher levels of protection for these properties to reduce the potential for future development in the Agricultural Reserve. The implementation of the Building Lot Termination (BLT) Program will be integral to this effort.

Currently, preservation of agricultural land is accomplished under five separate agricultural land preservation programs: the Montgomery County Agricultural Easement Program (AEP); the Maryland Agricultural Land Preservation Foundation (MALPF); Montgomery County's local Transferable Development Rights (TDR); the Maryland Environmental Trust (MET); and the Montgomery County Rural Legacy Program (RLP). The acres preserved under each program are displayed in the chart below, and each program is described in the narrative that follows.

	MALPF	AEP	MET	RLP	TDR	Total
Protected thru 09	4,280	8,060	2,086	4,875	52,052	71,353

Through AEP, the County purchases easements on farmland using Agricultural Transfer Tax collections to meet acreage acquisition targets. Agricultural easements acquired through the AEP may range in value from \$1,700 to \$9,000 per acre, depending on location, land quality, and amount of road frontage. The County has protected 8,060 acres through the AEP.

Through MALPF, the State purchases development rights easements directly from landowners to protect agricultural land from development. Since 1980, 4,280 acres have been protected.

Montgomery County's local Transferable Development Rights (TDR) program, established by the functional Master Plan for the Preservation of Agriculture and Rural Open Space, accounts for the major portion of the County's preserved land – 52,052 acres. The program, administered by the Maryland-National Capital Park and Planning Commission (M-NCPPC), allows Upcounty landowners to transfer development rights from the 93,000-acre Agricultural Reserve, in the western and northern portions of the County, at the rate of one TDR per five acres, to developers with projects in areas that can accept the higher development density, designated as "TDR receiving areas." Lands protected by TDR easements also represent additional opportunities for DED to further protect agricultural lands through easements by reducing the allowable housing density that is reserved on these lands.

The MET program encourages landowners to donate an easement on their property to protect scenic open areas, including farm and forest land, wildlife habitats, waterfront, unique or rare areas, and historic sites. This program is associated with the Maryland Department of Natural Resources and requires no monetary participation by the County. Montgomery County has protected 2,086 acres through the MET program.

The RLP was enacted in 1997 as part of the Governor's Smart Growth and Neighborhood Conservation initiative to protect natural resources. The program is designed to protect areas rich in multiple agricultural, forestry, natural and cultural resources in order to protect resource-based economic development, protect green areas, and maintain rural life. Montgomery County acts as a conduit for these funds, and no monetary participation is required of the County. The County has protected 4,875 acres through the RLP program.

The Building Lot Termination (BLT) program was approved by the County Council through Council Bill 39-07 in December of 2008. This program will provide another tool to permanently protect agricultural lands, especially where development potential is achievable through the approval of on-site waste disposal systems. On November 10, 2009, five million dollars was approved by the County Council through a supplemental appropriation to this project to fund the BLT. This program will be fully functional once Executive Regulation 03-09 is adopted by the Council.

PROGRAM CONTACTS

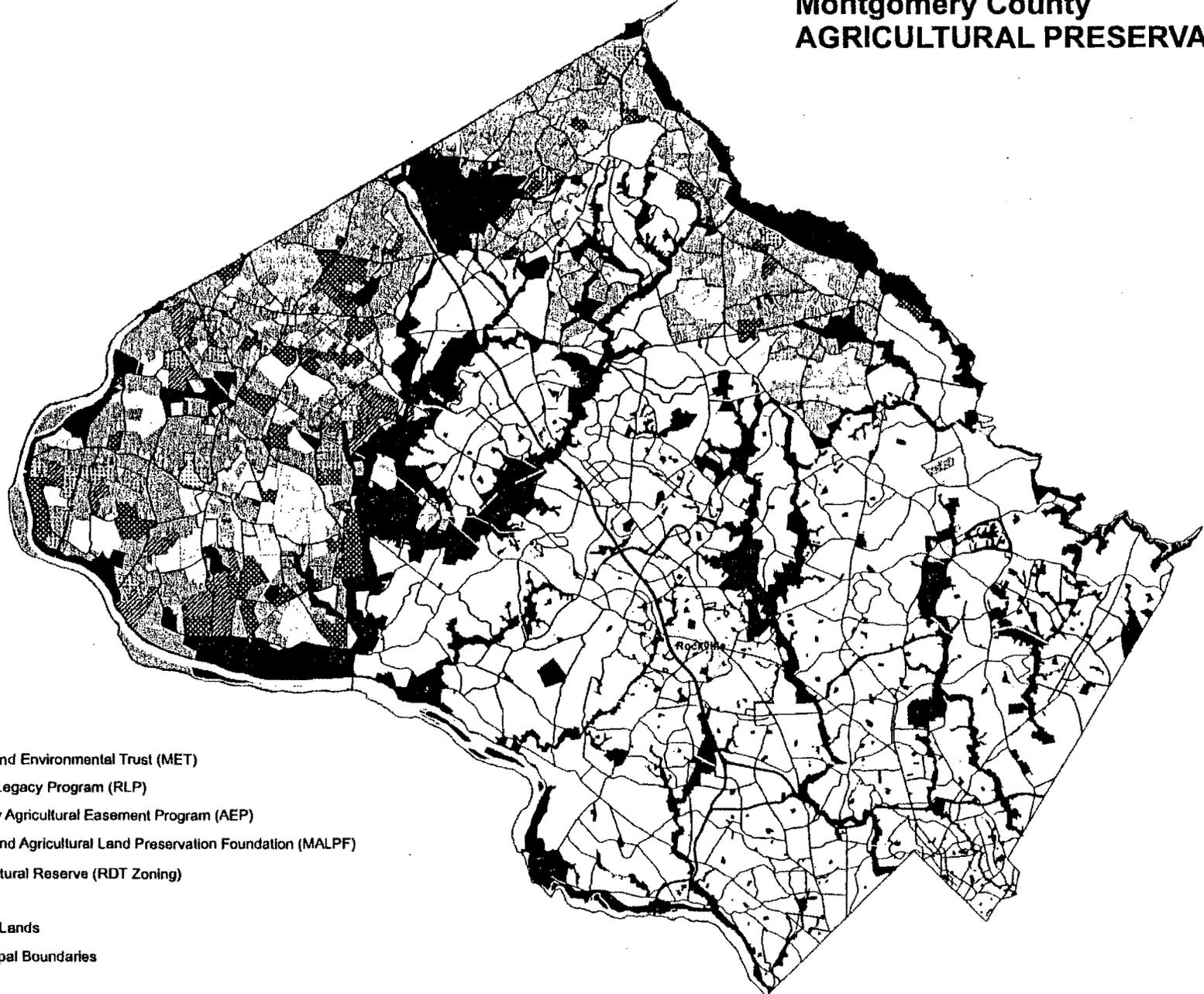
Contact Jeremy Criss of the Department of Economic Development at 301.590.2823 or Alison Dollar of the Office of Management and Budget at 240.777.2781 for more information regarding this capital budget.

CAPITAL PROGRAM REVIEW

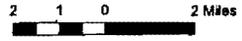
The Executive's recommended FY11-16 program expenditure total is \$8 million, which represents a decrease of \$5 million or 38 percent under the Amended FY09-14 program of \$13 million, which includes an FY10 Supplemental Appropriation of \$5 million. Total six year program funding includes Agricultural Transfer Tax contributions, and investment income.



Montgomery County AGRICULTURAL PRESERVATION



-  Maryland Environmental Trust (MET)
-  Rural Legacy Program (RLP)
-  County Agricultural Easement Program (AEP)
-  Maryland Agricultural Land Preservation Foundation (MALPF)
-  Agricultural Reserve (RDT Zoning)
-  Parks
-  Public Lands
-  Municipal Boundaries
-  TDR



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- Land preservation programs are fully funded, although bond funding has been substituted for transfer tax revenues. The 2010 Chesapeake Bay Trust Fund receives \$20 million – less than the statutory requirement but more than in either fiscal 2009 or 2010. ✓
- There is \$20 million allocated for a Job Creation and Recovery Tax Credit to provide incentives to business to hire unemployed Marylanders.

Financial Aspects – Operating Budget

- The fiscal 2011 current services general fund forecast considered by the Spending Affordability Committee showed a \$2 billion gap. In addition, it was estimated that fiscal 2010 deficiencies exceeded \$200 million. The Governor's fiscal 2011 budget proposal funds the fiscal 2010 deficiencies, eliminates the \$2 billion gap, and leaves a \$274 million fund balance. No tax increases are proposed, and the Rainy Day Fund remains at 5% of revenues. The plan relies primarily on the following:
 - *Spending Constraint* – \$965 million is reduced from baseline spending primarily by carrying forward many fiscal 2010 cost containment actions such as reductions in aid to local governments, the elimination of State employee increments, no cost-of-living adjustments for employees and community health care providers, level funding higher education, delaying major information technology projects, and employee furloughs.
 - *Fund Substitutions* – Replacing general funds with special or federal funds and replacing special funds with bond funds with subsequent transfer to the general fund. General fund reductions or special fund transfers resulting from these actions total about \$1.3 billion, with the largest being federal funds for Medicaid (\$389 million), local income tax revenue fund balance for education (\$350 million), and bonding special funded capital projects (\$442 million). The Administration proposes to repay the local income tax fund over seven years and fund the capital projects with bonds over three years.
- Across the two fiscal years, over \$1.8 billion of the actions to balance the budgets are contingent on legislation, primarily the Budget Reconciliation and Financing Act of 2010.
- The budget assumes \$389 million in additional federal monies from a six-month extension of the enhanced Medicaid match under the ARRA. With this assumption, reliance on federal stimulus funds to replace general funds grows from \$1.1 billion in fiscal 2010 to almost \$1.3 billion in fiscal 2011.

Ag.
Parks

**Randy Stabler's Testimony
Montgomery County Council
February 17, 2010**

- My name is Randy Stabler, I live and farm at 5900 Damascus Road in Laytonsville.

-Our farming operation (known as Pleasant Valley Farm) is a partnership owned by my parents, Robert and Betsy Stabler, and myself. Our operation consists of approximately 2600 acres of corn, soybeans, wheat and beef cattle, which is operated on both owned and rented land.

-I'm here tonight to testify on Montgomery County's continued public policy support of sustainable agriculture as a viable resource in the county's economic landscape. Specifically I'd like to address the funding issue in regards to Ag Land Preservation. My family currently has several pieces of land in preservation programs and see it as a very useful tool in helping to keep our operation economically viable.

-Montgomery County has invested decades of resources to ensure its public policy on agriculture land use has been successful. The use of General Obligation Bonds (G. O. Bonds) as part of the County's Capital Budget was appropriated and proven to be useful in the past (early 90's) to support Ag Preservation. I am here once again to ask that G. O. Bonds be used to capitalize public policy that is in place through these tough economic times.

-G.O. Bonds are proving to be a useful tool in preserving Agriculture Land in Carroll and Baltimore Counties. These counties have recognized the importance of being pro active in the funding needs of Land Preservation, by purchasing easements to capitalize on the continued future of agriculture. By purchasing these easements these counties have preserved one of the most significant needs of farming, that is the land it uses in its operations.

-Montgomery County Park and Planning Commission is utilizing G.O. Bonds to help fund the county's Legacy Open Space Program. This program has already proven to be useful in Montgomery County. My family used a similar program to help preserve the property that we have in Montgomery County's Land Preservation.

-In closing please approve the use of G.O. Bonds to help fund the County's Capital Budget, and specifically the needs of the county's Land Preservation Programs. By doing so you will help to ensure viable agriculture in Montgomery County for generations to come.

Thanks,

Randy Stabler

For the record, my name is Roy Stanley of 9100 Damascus Rd of Damascus, MD. I am here this evening to discuss Ag Preservation of land in Montgomery County.

My family has been farming in Montgomery County for over 140 years. Currently, our operation consists of farming over 4000 acres of corn, wheat, soybeans and hay. Our goal is to continue expanding our farming operation and involvement in Agriculture and it is our hope that this passion for Agriculture will be carried on by our grandchildren one day. I have purchased several farms in Montgomery County, but have had to sell off building rights in order to pay for them. I am currently in the process of subdividing several of my farms in order to pay for them. Recently, we purchased a farm that was once owned by my great grandfather. Our commitment to Agriculture is evidenced by the large grain storage facility that we constructed on this property this past year. The facility can store 330,000 bushels of grain. We also plan to build an office and shop there as well in the near future.

We have been dialoging with Montgomery County for the past several years regarding a desire to secure funding to preserve our Ag properties. However, being unsuccessful we have had to subdivide several of our properties in order to have a means to make

payment on them. What I propose in order to help keep agriculture alive by assisting the farmers in Montgomery County is to preserve farmers' properties by utilizing a source such as G.O. Bonds.

In summary, I have a strong desire and so do my children, to continue farming in Montgomery County. We are in the process of sub-dividing several of our properties in order to pay for them and would much rather have the opportunity to preserve them for an agricultural use. We really want to preserve our ground rather than having to sub-divide anymore. I ask that you consider some type of funding from the County to help support our vision of keeping agricultural strong in Montgomery County. Thank you.

Testimony to the Montgomery County Council
February 17, 2010
William F. Willard, Sr.

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- My name is Billy Willard, I reside at 20301 River Road, Poolesville.
- My farming operation consists of 2,100 acres of corn, soybeans, wheat and hay (Poolesville area).
- I am also in the agricultural supply business, servicing farmers in Montgomery County with fertilizers and crop protectants and agronomic services.
- My great, great grandfather (Dewalt J. Willard) purchased the farm where I live in 1871 and began the Willard farming operation in Montgomery County.
- My son (Billy Jr.) has completed his studies in agriculture at the University of Maryland, and is back home with me working the farm (this has always been a goal of his).
- My youngest son is a freshman at the University of Delaware; studying Agricultural Business (he is also interested in farming). The next generation is in place in our family.
- I am here testifying because of my passion for Montgomery County agriculture and my sincere desire to see it perpetuated, one way to aid in this is Agricultural Preservation of farm land.
- I currently have a preservation application submitted (to the Montgomery County Ag Services Division) on a farm that my family owns and operates,

and have been informed that the program's funds are depleted.

- I respectfully request the County Council to approve (as it has in the past) General Obligation bonds to fund this very important program and supplement under performing Ag Transfer Taxes.
- The price that Montgomery County will be able to purchase Ag Easements today will prove to be a tremendous value to the county in the future
- The first easements purchased in the 1990's at \$3,000 per acre are currently up to \$9,000 per acre.
- Once the economy recovers, these opportunities to purchase easements today may not exist. The economic reality shows us that easement prices will be higher so there will be reluctance for landowners to sell easements as development pressure returns (and it will return!).
- Easements will put into place land that will always be farmed; and there are documented benefits for our waterways, streams and the Bay to have land in Agriculture, and not "Black Top" and "Roof Tops".
- Easements enable farmers to better cash flow the real estate for farming purposes.
- The AG easements purchased will eliminate the costly need for public services.
- There are three other farmers here this evening testifying on this subject. To conserve your time, we intend not to repeat ourselves, but for each of us to present certain points for the council to consider. ALL FOUR OF US SUPPORT EACH OTHER'S TESTIMONY.