

**MEMORANDUM**

February 27, 2012

TO: Planning, Housing, and Economic Development Committee

FROM: Jacob Sesker, Senior Legislative Analyst 

SUBJECT: FY13-18 CIP: Agricultural Land Preservation Program  
Ag Land Preservation Easements—No. 788911

**INTRODUCTION**

The County's Agricultural Land Preservation Easements capital program is administered by the Department of Economic Development, Agricultural Services Division. This program enables the County to purchase preservation easements on land in the agricultural zones in order from which development rights have not been severed (e.g., through the sale of County Transferable Development Rights or State agricultural land preservation easements).

The following individuals will attend this worksession: Mary Oneda-Brown (OMB); Jeremy Criss (DED); John Zawitoski (DED).

**SUMMARY**

*Ag Land Preservation Easements—No. 788911 (PDF @ © 4-5)*

	Est FY12	FY13-18 Total	FY13	FY14	FY15	FY16	FY17	FY18
<b>Total</b>	\$14,977	\$6,984	\$1,020	\$1,061	\$1,120	\$1,199	\$1,257	\$1,327

**SOURCES OF FUNDS**

Almost all of the funds for the Agricultural Land Preservation Easements capital program come from two sources: first, the Agricultural Land Transfer Tax, and second, investment income. The Agricultural Land Transfer Tax is levied when farmland is sold and subsequently removed from agricultural

use/status. Montgomery County is permitted to retain 75% of the revenue from the Agricultural Land Transfer Tax to use, in accordance with State law, for the purpose of agricultural land preservation.

- **Revenue from the Agricultural Land Transfer Tax has fallen significantly in recent years, and is now just a fraction of the pre-FY07 revenue level.**
- **Investment income (interest earned) is no longer sufficient to keep pace with the capital budget expenditures that cannot be funded in the capital budget using other sources of revenue.**

## **USES OF FUNDS**

The use of the transfer tax revenues is limited by state law and will be used for acquisition of easements. Investment income represents a more flexible source of funding and is used to fund a variety of capital and operating expenditures.

More than half of the FY13 request funds positions—4.2 workyears are funded through the CIP (1.0 wy MLS Manager II, 1.0 wy Sr. Business Development Specialist, 0.5 wy Business Development Specialist, 1.5 wy Principal Administrative Aides, 0.1 wy Resource Conservation Specialist, and 0.1 wy Sr. Business Development Specialist). An additional 3.3 workyears are funded through the operating budget. In addition, the investment income funds will be used for the Deer Donation Program (\$30,000), Weed Control Program (\$10,000), and Cooperative Extension Partnership (\$72,000).

## **DISCUSSION**

Staff is concerned that the Deer Donation Program, Weed Control Program, and Cooperative Extension Partnership are not capital projects and should instead be part of the operating budget. The FY11-16 approved CIP includes \$112,000 for these three programs. The Executive's FY13-18 CIP request again includes \$112,000 for these three programs. Of the 4.2 workyears charged to the CIP, 1.0 workyear (for a Principal Administrative Aide) is attributable to the Cooperative Extension Partnership.

Staff is concerned that the strategy of relying upon investment income to fund administrative costs through the operating budget is unsustainable, and that the other primary source of revenue available (Agricultural Transfer Tax) is highly volatile. According to DED, currently available investment income balance will be used up in FY15 or FY16. DED has made efforts to find other sources of funds and to reduce costs. Jeremy Criss, DED, will be available to discuss DED's efforts should the Committee have questions.

## **OPTIONS**

1. Recommend approval as requested by the Executive. **-OR-**
2. Recommend subtracting all charges not attributable to the capital program (Agricultural Land Preservation Easements Program). This would include the following: Deer Donation Program (-\$30,000), Weed Control Program (-\$10,000), and Cooperative Extension Partnership (-\$72,000). Of the positions funded in the capital budget, approximately 1.3 of those workyears

are not directly related to the easement program (0.8 wy Principal Administrative Aide, and approximately 0.5 wy MLS II).

## RECOMMENDATION

**Staff recommends Option 2 (subtracting non-capital projects from the capital budget).** Agricultural preservation continues to be a policy priority for the County Council. As a general rule, the Council makes determinations regarding how to prioritize the programmatic aspects of policies during its deliberations on the operating budget. In the case of many policy priorities, including related priorities such as economic development and land use planning, the Council has been forced to make operating budget reductions over the last few years. Some County programs have been cut significantly. For example, the operating budget for libraries was reduced by 29.6% from FY09 to FY12.

**Staff also recommends that the Committee request a mid-year report from DED and OMB updating the Committee on (a) the remaining investment income balance available, and (b) progress made, if any, in identifying a sustainable funding strategy for Agricultural Services.**

### Attachments:

Program Description	© 1-2
Map	© 3
PDF	© 4-5

# 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, 2011, the County has permanently preserved 71,789 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 six 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); the Montgomery County Rural Legacy Program (RLP) and the Building Lot Termination Program (BLT). 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 Dec FY12	4,600	8,176	2,086	4,875	52,052	71,789

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 8,176 acres through the AEP.

Through MALPF, the State purchases development rights easements directly from landowners to protect agricultural land

from development. Since 1980, 4,600 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. Executive Regulation 03-09AM as adopted by the Council on July 27, 2010 and the first BLT Open Purchase Period was completed on May 30, 2011. BLT easement purchase offers were tendered to three of six applicants, covering 308 acres and 7 BLTs. The first BLT easement was settled on December 15, 2011 with 2 more easement settlements pending after January 1, 2012.

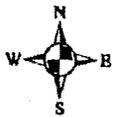
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## **PROGRAM CONTACTS**

Contact Jeremy Criss of the Department of Economic Development at 301.590.2823 or Mary Oneda-Brown of the Office of Management and Budget at 240.777.2751 for more information regarding this capital budget.

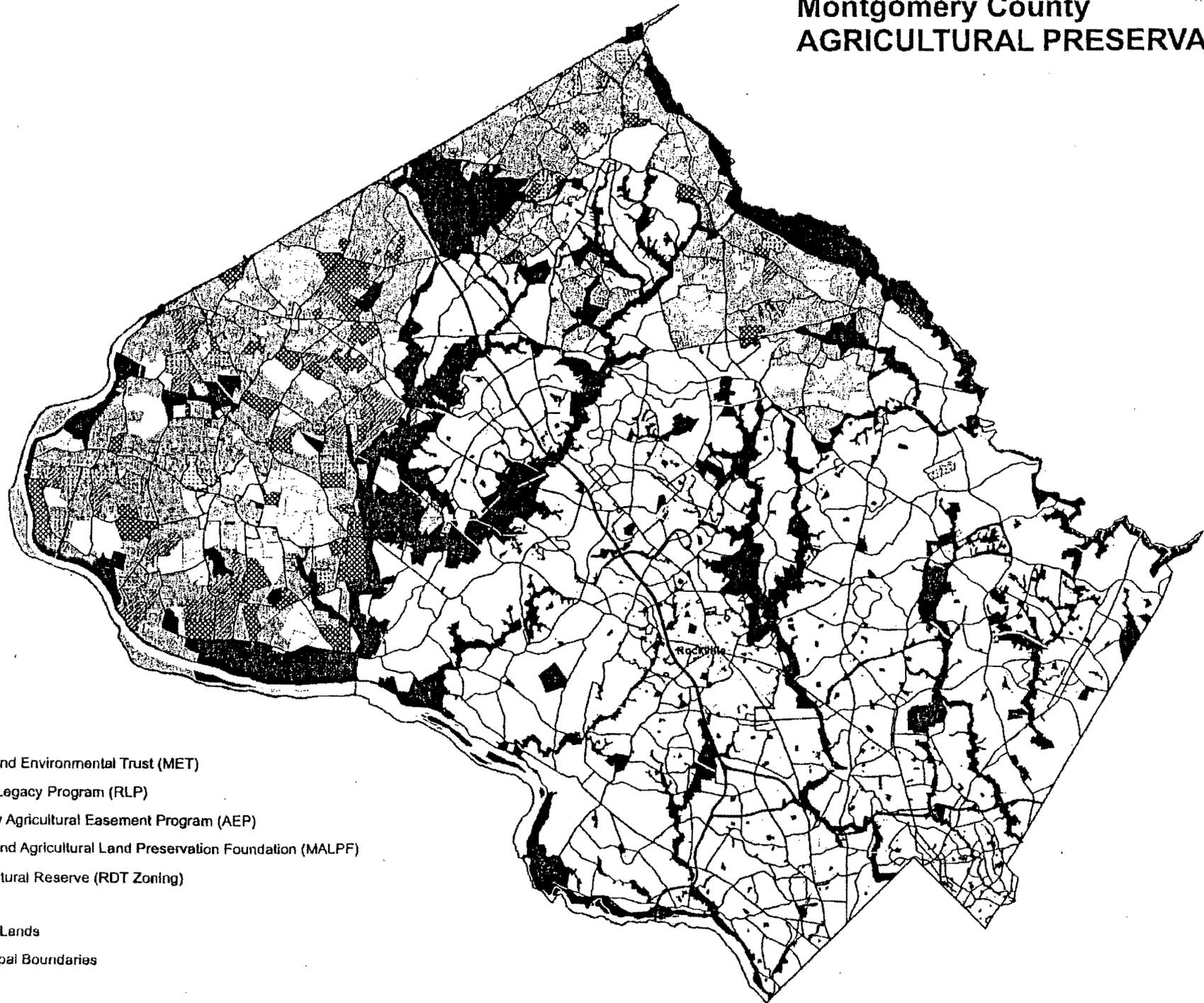
## **CAPITAL PROGRAM REVIEW**

The Executive's recommended FY13-18 program expenditure total is \$6.984 million, which is a \$5.428 million reduction, or 43.7 percent reduction, from the FY11-16 previously approved \$12.412 million in funding. Total six year program funding includes Agricultural Transfer Tax, contributions, and investment income.



# Montgomery County AGRICULTURAL PRESERVATION

30-3



-  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



# 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 04, 2012  
No  
None.  
On-going

## EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY11	Est FY12	Total 6 Years	FY13	FY14	FY15	FY16	FY17	FY18	Beyond 6 Years
Planning, Design, and Supervision	5,409	382	743	4,284	632	654	693	742	768	795	0
Land	18,130	1,196	14,234	2,700	388	407	427	457	489	532	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	39	39	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>23,578</b>	<b>1,617</b>	<b>14,977</b>	<b>6,984</b>	<b>1,020</b>	<b>1,061</b>	<b>1,120</b>	<b>1,199</b>	<b>1,257</b>	<b>1,327</b>	<b>0</b>

## FUNDING SCHEDULE (\$000)

Agricultural Transfer Tax	8,442	1,203	4,539	2,700	388	407	427	457	489	532	0
Contributions	252	0	51	201	51	30	30	30	30	30	0
Federal Aid	522	0	522	0	0	0	0	0	0	0	0
G.O. Bonds	2,000	0	2,000	0	0	0	0	0	0	0	0
Investment Income	5,102	414	605	4,083	581	624	663	712	738	765	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
<b>Total</b>	<b>23,578</b>	<b>1,617</b>	<b>14,977</b>	<b>6,984</b>	<b>1,020</b>	<b>1,061</b>	<b>1,120</b>	<b>1,199</b>	<b>1,257</b>	<b>1,327</b>	<b>0</b>

### 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 and through Executive Regulation 3-09 AM, adopted July 27, 2010. 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.

In FY10, the Building Lot Termination (BLT) program was initiated. This program 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

Reduction of \$2.0 million in General Obligation Bonds in FY12 to meet fiscal constraints and consistent with current spending pattern. Agricultural Transfer Tax decreases are partially offset by increases in Contributions and Investment Income and the addition of FY17 and FY18 project costs.

### 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, and Executive Regulation 3-09 AM.

### OTHER

FY13 estimated Investment Income expenditures are \$537,319: 1 workyear Sr. Business Development Specialist, .5 workyear Business Development Specialist I, 1 workyear MLS Manager II, 1.5 workyears Principal Administrative Aides, .10 workyear Resource Conservationist, .10 Sr. Business Development Specialist; \$30,000 - Deer Donation Program; \$10,000 - Montgomery Weed Control Program; and \$72,000 for Cooperative Extension Partnership.

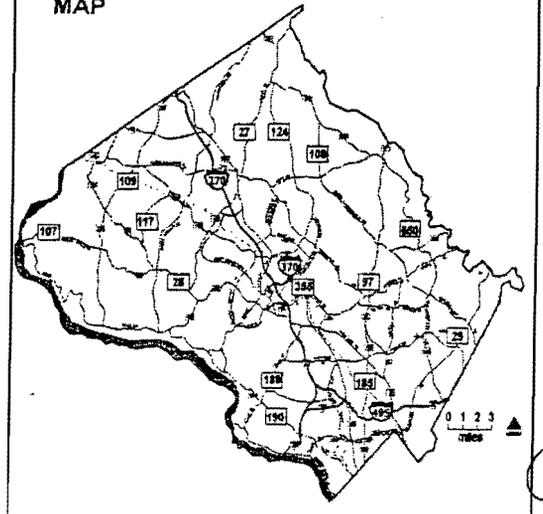
### APPROPRIATION AND EXPENDITURE DATA

Date First Appropriation	FY89	(\$000)
First Cost Estimate		
Current Scope	FY13	21,578
Last FY's Cost Estimate		24,912
Appropriation Request	FY13	639
Appropriation Request Est.	FY14	1,061
Supplemental Appropriation Request		0
Transfer		0
Cumulative Appropriation		16,974
Expenditures / Encumbrances		3,544
Unencumbered Balance		13,430
Partial Closeout Thru	FY10	58,147
New Partial Closeout	FY11	0
Total Partial Closeout		58,147

### 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)

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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, new 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.

Terms and conditions regarding Contributions from the Montgomery County Farm Bureau (MCFB) and the Montgomery Soil Conservation District (MSCD) will be specified within the MOU between the County and these agencies.

### 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.