

T&E COMMITTEE #3  
April 20, 2009

Worksession

**MEMORANDUM**

April 16, 2009

TO: Transportation and Environment Committee

FROM: Justina J. Ferber, Legislative Analyst

SUBJECT: **Worksession: FY09-14 Capital Budget & Capital Improvements Program (CIP) Agricultural Land Preservation Easements – PDF No. 788911**

**Background**

The County's Agricultural Land Preservation Easement Capital Program is administered by the County's Agricultural Services Division in the Department of Economic Development. The Agricultural Land Preservation Easement Program protects and preserves agricultural land from development with the goal of retaining a significant farming sector. Preservation of agricultural land is accomplished under five separate programs: MC Agricultural Easement Program, MD Ag Land Preservation Foundation Program, MC Transferable Development Rights Program, Maryland Environmental Trust Program, and Rural Legacy Program. The Agricultural Land Preservation Easements PDF can be found on ©1, History of Agricultural Easement Funding on ©2, Agricultural Land Preservation Administration and Program Expenses on ©3, and responses to Council staff budget questions on ©5. In 2009, Montgomery County achieved its farmland preservation goal of protecting over 70,000 acres of farmland.

**CIP Amendment**

The recommended appropriation for FY10 for the Agricultural Land Preservation Easement Capital Program is \$892. The Program CIP does not use any bond funding or current revenue funding. A portion of the Ag 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% 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 Ag transfer tax. The use of investment income is directed by the Council and OMB.

The amendment to the Ag Preservation Program adjusts investment income from \$292,000 to \$432,000 for FY10. Investment income for FY10 to FY14 is adjusted by \$140,000 each year for a total of \$700,000 for 5 years. The additional investment income will fund operating expenses.

### **PHED Committee Discussion**

The PHED Committee discussed the shift in funding for a position and programs from the operating budget of the Agricultural Services Division of DED to the Ag Preservation Program in the CIP. Funding would shift for the Weed Control program, the Deer Donation program, and 0.4 wy for the Ag Director. Funding for the Cooperative Extension Partnership would also be added. This will total 3.0 workyears and \$432,000 charged to the FY10 CIP. In FY09, \$294,943 and 2.6 workyears were charged to the CIP.

\$292,000	Current CIP appropriation/expense: 1 wy BDS III, 1wy BDS I, 0.6 wy MII
\$69,200	0.4 workyear MLS Manager II
\$30,000	Deer Donation Program
\$10,000	Montgomery Weed Control Program
<u>\$31,000</u>	Cooperative Extension Partnership
\$432,000	FY10 Investment Income Expenditures

The PHED Committee agreed that the Agricultural Land Preservation Easements Program was an appropriate funding source for agriculture staffing and activities; however, the Committee suggested that a separate fund or more identifiable accounting be used for operating expenses drawn from the Ag Preservation CIP.

**The PHED Committee approved the shift of funding to the CIP for the Weed Control program, the Deer Donation program, and 0.4 wy for the Ag Director, including the addition of the Cooperative Extension Partnership.**

### **Staff Comments and Recommendation**

Council staff conferred with OMB staff and the simplest way to identify operating costs in the Agricultural Land Preservation Easements Program is to establish a “Cost Center” in the Program. The “Cost Center” would provide better identification and accounting of operating expenses and would keep expenses for the Ag Preservation program in one place. Ag funding issues are complex, so establishing a separate fund for agricultural operating costs would add to the complexity. Also, keeping all agriculture funds in one place allows for flexibility in funding capital, operating, or any other agriculture costs the Council deems necessary.

- Staff recommends a specific Cost Center be established in the Agricultural Land Preservation Program to track operating expenses charged to the program and that the Committee approve the Agricultural Land Preservation Easement PDF as submitted.

<b>Attachments:</b> Agricultural Land Preservation Easements PDF	©1
History of Agricultural Easement Funding	©2
Agricultural Land Preservation Administration and Program Expenses	©3
Responses to Council staff budget questions	©5

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# 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

March 12, 2009  
No  
None.  
On-going

## EXPENDITURE SCHEDULE (\$000)

Cost Element	Total	Thru FY08	Rem. FY08	Total 6 Years	FY09	FY10	FY11	FY12	FY13	FY14	Beyond 6 Years
Planning, Design, and Supervision	2,573	0	0	2,573	280	432	445	458	472	486	0
Land	19,183	0	12,910	6,273	1,723	600	750	1,000	1,000	1,200	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
<b>Total</b>	<b>21,756</b>	<b>0</b>	<b>12,910</b>	<b>8,846</b>	<b>2,003</b>	<b>1,032</b>	<b>1,195</b>	<b>1,458</b>	<b>1,472</b>	<b>1,686</b>	<b>0</b>

## FUNDING SCHEDULE (\$000)

Agricultural Transfer Tax	16,415	0	10,142	6,273	1,723	600	750	1,000	1,000	1,200	0
Federal Aid	393	0	393	0	0	0	0	0	0	0	0
Investment Income	2,687	0	114	2,573	280	432	445	458	472	486	0
State Aid	2,261	0	2,261	0	0	0	0	0	0	0	0
<b>Total</b>	<b>21,756</b>	<b>0</b>	<b>12,910</b>	<b>8,846</b>	<b>2,003</b>	<b>1,032</b>	<b>1,195</b>	<b>1,458</b>	<b>1,472</b>	<b>1,686</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. 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 FY2010, 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

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

### 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

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 (3.0 work years), 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 3 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.

APPROPRIATION AND EXPENDITURE DATA	COORDINATION	MAP																																																
<table border="1"> <tr> <td>Date First Appropriation</td> <td>FY89</td> <td>(\$000)</td> </tr> <tr> <td>First Cost Estimate</td> <td></td> <td></td> </tr> <tr> <td>Current Scope</td> <td>FY10</td> <td>21,056</td> </tr> <tr> <td>Last FY's Cost Estimate</td> <td></td> <td>26,341</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>Appropriation Request</td> <td>FY10</td> <td>892</td> </tr> <tr> <td>Supplemental Appropriation Request</td> <td></td> <td>0</td> </tr> <tr> <td>Transfer</td> <td></td> <td>0</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>Cumulative Appropriation</td> <td></td> <td>14,912</td> </tr> <tr> <td>Expenditures / Encumbrances</td> <td></td> <td>9,395</td> </tr> <tr> <td>Unencumbered Balance</td> <td></td> <td>5,517</td> </tr> <tr> <td colspan="3"> </td> </tr> <tr> <td>Partial Closeout Thru</td> <td>FY07</td> <td>44,416</td> </tr> <tr> <td>New Partial Closeout</td> <td>FY08</td> <td>5,286</td> </tr> <tr> <td>Total Partial Closeout</td> <td></td> <td>49,702</td> </tr> </table>	Date First Appropriation	FY89	(\$000)	First Cost Estimate			Current Scope	FY10	21,056	Last FY's Cost Estimate		26,341				Appropriation Request	FY10	892	Supplemental Appropriation Request		0	Transfer		0				Cumulative Appropriation		14,912	Expenditures / Encumbrances		9,395	Unencumbered Balance		5,517				Partial Closeout Thru	FY07	44,416	New Partial Closeout	FY08	5,286	Total Partial Closeout		49,702	<p>State of Maryland Agricultural Land Preservation Foundation State of Maryland Department of Natural Resources Maryland-National Capital Park and Planning Commission Landowners</p>	
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County Council

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# History of Ag Easement Funding

Fiscal Year	75% County Collections	Purchased Easements	Interest Income Collections	WY CIP	Detail	Interest Income Expenses	Total County Expense	Percent of Total Expense	Transfers Out	Interest Income Balance
1980	\$0	\$0								
1981	\$0	\$0								
1982	\$0	\$46,322		0.8	.8 Rene Johnson					
1983	\$645,666	\$81,057		0.8	.8 Rene Johnson					
1984	\$1,066,595	\$128,408		0.8	.8 Rene Johnson					
1985	\$1,310,649	\$217,663		0.8	.8 Rene Johnson					
1986	\$1,055,739	-\$58,648		0.8	.8 Rene Johnson					
1987	\$1,981,859	\$5,744		0.8	.8 Tim Warman					
1988	\$3,823,031	\$0		1.8	.8 Tim Warman/1.0 Jeremy Criss					
1989	\$2,151,535	\$58,772		1.8	.8 Tim Warman/1.0 Jeremy Criss					
1990	\$3,319,615	\$3,299,084		1.8	.8 Tim Warman/1.0 Jeremy Criss					
1991	\$147,181	\$3,547,579		1.8	.8 Tim Warman/1.0 Jeremy Criss					
1992	\$197,016	\$2,558,341		1.8	.8 Tim Warman/1.0 Jeremy Criss					
1993	\$533,960	\$1,238,596		1.0	1.0 Jeremy Criss					
1994	\$934,322	\$3,002,672	\$151,356	1.0	1.0 Jeremy Criss	0				\$151,356
1995	\$1,400,765	\$1,464,430	\$192,295	1.0	1.0 Jeremy Criss	0				\$192,295
1996	\$1,041,580	\$1,839,109	\$187,230	1.0	1.0 Jeremy Criss	0				\$187,230
1997	\$364,210	\$313,190	\$151,989	2.4	.8 Jeremy Criss/1.0 John Zawitoski/.5 Melissa Pugh	\$34,799	\$347,989	10.00%	\$500,000*	\$117,190
1998	\$401,491	\$152,574	\$169,733	2.4	.8 Jeremy Criss/1.0 John Zawitoski/.5 Melissa Pugh	\$16,953	\$169,527	10.00%		\$152,780
1999#	\$1,016,102	\$361,044	\$174,051	0.0	2.4 migrated to Operating Budget	\$40,116	\$401,160	10.00%		\$133,935
2000	\$2,846,362	\$1,614,757	\$264,176	0.0	2.4 migrated to Operating Budget	\$171,132	\$1,785,889	9.58%		\$93,044
2001##^	\$1,605,855	\$2,035,292	\$408,208	0.0^	2.4 migrated to Operating Budget	\$4,068	\$2,039,360	0.20%		\$230,022
2002^	\$2,132,486	\$955,566	\$167,940	2.0^	1.0 Jeremy Criss/1.0 John Zawitoski	\$90,303	\$1,045,869	8.63%		\$67,602
2003^	\$2,431,433	\$1,235,359	\$123,405	2.0^	1.0 Jeremy Criss/1.0 John Zawitoski	\$153,955	\$1,389,314	11.08%		\$153,605
2004^	\$1,936,800	\$1,489,082	\$94,293	1.6^	.6 Jeremy Criss/1.0 John Zawitoski	\$163,259	\$1,652,341	9.88%		-\$68,966
2005^	\$1,774,916	\$1,760,440	\$187,318	1.6^	.6 Jeremy Criss/1.0 John Zawitoski	\$193,180	\$1,953,620	9.89%		-\$5,862
2006^	\$7,434,337	\$904,994	\$627,555	1.6^	.6 Jeremy Criss/1.0 John Zawitoski	\$222,573	\$1,127,567	19.74%		\$404,982
2007^	\$303,011	\$534,153	\$843,338	2.1^	.6 Jeremy Criss/1.0 John Zawitoski/.5 Agata Newacil	\$234,307	\$768,460	30.49%		\$609,031
2008^	\$626,402	\$3,262,440	\$649,967	2.6^	.6 Jeremy Criss/1.0 John Zawitoski/1.0 Agata Newacil	\$236,743	\$3,499,183	6.77%		\$413,224
12/31/2008^	\$46,018	\$3,382,254		2.6^	.6 Jeremy Criss/1.0 John Zawitoski/1.0 Kristin Fisher	\$131,713				

^ in accordance with August 15, 2003 OMB Memorandum 100% corresponding to the WY's listed above charged to Investment Income (2001- Dec 2008)

\* 1997 Agricultural Emergency Drought Assistance Program

# 1999 totals does not include \$61,817 federal reimbursement through FPP not shown as it reflects Federal aid

## 2001 total does not include \$115,960 federal reimbursement through FPP not shown as it reflects Federal aid

\$2,831,468

500000

\$2,331,468

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Administrative and Program Expenses for  
Agricultural Land Preservation Programs  
March 2009

Introduction:

Montgomery County has been actively involved in the field of Agricultural Land Preservation since the late 1970's. Nationally, Montgomery County is recognized as a leader in the preservation of farmland by having the greatest percentage of agricultural land protected by easements. In 2009, Montgomery County achieved its farmland preservation goal of protecting over 70,000 acres of farmland. The purchase and stewardship of protective easements cannot occur without the staff resources necessary to get the job done. Given the long history and success of this program, the County developed an easier and more consistent policy to charge administrative staff expenses associated with this program. The current policy regarding the administrative expenses associated with the agricultural land preservation programs was adopted in August 2003. This proposal identifies the reasons for changing this policy to address the budget reduction mandate for FY 2010.

Background:

The Agricultural Services Division portion of the DED operating budget is 12.6 % of the total making it appropriate for the Division to contribute to the County Executive's savings mandate for the FY 2010.

Over the years the specific work years of the Agricultural Services Division charged to the CIP have fluctuated with the cyclical tides of our economy. Please see the attached chart titled (History of Ag Easement Funding). The chart shows the complete history associated with the Agricultural Land Preservation CIP program starting in 1980. Future changes in County policy that migrate administrative staff charges from the operating budget to the CIP budget will need to be reconsidered when the economy improves.

Agricultural Transfer Tax and Investment Income

Prior to FY1994, interest income from the Agricultural Transfer Tax collections in the amount of \$7.7 million was allocated to the County's General Fund. In 1994, the County changed its policy by authorizing the interest income derived from the County's share of Agricultural Transfer Taxes to be applied back the Agricultural Land Preservation CIP for easement purchases. In FY1997 an implementation agreement between OMB, DED and the Department of Finance was adopted where annual expenditures associated with the Agricultural Land Preservation CIP would be adjusted for 90% in Agricultural Transfer Taxes and 10% Investment Income.

This 90%-10% policy remained in effect until *FY2003*, when OMB and DED agreed that investment income be used to fund 100 percent of the administrative expenses associated with the project. The 2003 policy change simplified the practice of cost allocation for administrative expenses and eliminated the need for time-consuming State reporting requirements. The *FY2003* policy was applied retroactively to encompass Investment Income expenditures for *FY2001*, *FY2002* and *FY2003* and the Investment Income expenditures were adjusted accordingly. This policy of 100% of 2.6 work years charged to investment income remains in effect today.

#### Recommendation

The County Executive's *FY2010* Recommended Budget assumes the following increased changes to the Agricultural Land Preservation Easement project No. 788911.

The total breakdown of expenditures in *FY2010* is the following:

\$292,000	Current CIP appropriation/expense: 1 wy BDS III, 1wy BDS I, .6 WY MII
\$69,000	.4 work year MLS Manager II
\$30,000	Deer Donation Program
\$10,000	Montgomery Weed Control Program
<u>\$31,000</u>	Cooperative Extension Partnership
\$432,000	FY 2010 Investment Income Expenditures

1. The future collections of agricultural transfer taxes and investment income are difficult to project and therefore, it is recommended that all parties revisit this issue and policy annually. This recommendation will ensure that levels of funds from collections are sufficient to cover the identified expenditures. This recommendation represents a new policy for *FY 2010* that makes logical and practical sense during these economic times.

Attachment: History of Ag Easement Funding

InvestmentIncomePolicyProposal.doc

## DED Responses to Council Staff Budget Questions

### AG Services

1. *Explain the shifting of costs to the Ag Easement CIP, especially the legal justification for charging the fund for the Weed Control and Deer Donation programs.*

The Agricultural Services Division portion of the DED operating budget is 12.6 % of the total and it is appropriate for the Ag Services Division to contribute to the County Executive's 10 % savings mandate for the FY 2010. With these percentages in mind, the County Executive proposes the shift of certain agricultural programs from the operating budget to the Ag Easement CIP. The state law requires that Agricultural Transfer Taxes be used by Counties to purchase agricultural easements and that only 10 percent of the annual fund balance can be used for administrative expenses for the program. In the early 1990's Montgomery County began to exceed the 10 percent threshold and this outcome contributed to a change in County Policy. Prior to 1994, the investment income from the Agricultural Transfer Tax went to the County General fund and was used for all county government expenses. Starting in 1994 the investment income was applied back to the CIP project with the Agricultural Transfer Taxes. The investment income for the project has been used over the years for easement purchases, 1997 drought assistance, and administrative expenses addressed through the MOU between DED and OMB. DED is currently working on a new MOU between OMB and the department that will change the policy and expand the use of investment income beyond the administrative costs and help us to maintain the level of service for agricultural programs while reducing the impact on the general fund. There are no legal constraints with the use of investment income for agricultural initiatives.

Ag Services is comfortable with including Deer Management and Weed Control because both of these programs fit in with the objectives to support agricultural initiatives within the County. Additionally, the alternative that the department is facing was the possible elimination of the programs all together or agricultural services staff, and the decision to shift the program provides the department with the opportunity to continue these important and required and contractual services without impacting the general fund. Again, prior to 1994, the investment income of amount of \$7.7 million funded everything from County roads to County schools so there should be no question as to the specific use of the investment income, which will be directly tied to agricultural initiatives.

2. *Provide a status report on the Deer Management Program*

The Deer Donation Program encourages an increased, productive deer harvest by giving farmers and hunters a convenient place to drop off deer taken above and beyond what can be stored for personal use. The program was developed in response to farmer and hunter input that articulated the need for a deer donation or processing location within the County along with public safety concerns related to

the growing number of deer in the County due to the off balance ratio of predator to prey. As of 2009, cars and trucks are the largest threat to deer in Montgomery County. The deer population has been able to proliferate at a very rapid rate with the availability of food sources even during the winter months when food resources are normally scarce and the natural habitats for predators has eroded with increased development.

The program is entering its fifth year of operation, and continues to grow successfully as more farmers and hunter opt to hunt and donate more deer, thus providing a valuable service to local food banks, which are experiencing decreased levels of donations because of the economy. As of February, 2009, the number of deer donated to the program is 150, which equates to approximately 6,000 pounds of donated deer meat to food banks.

<i>Deer Donation Program - Deer Collected and Pounds of Venison Donated</i>		
2004-2005 Season	39 deer	1,560 pounds
2005-2006 Season	51 deer	2,040 pounds
2006-2007 Season	85 deer	3,400 pounds
2007-2008 Season (through January 7, 2008)	197 deer	7,880 pounds
2008-2009 Season (through February 4, 2009)	150 deer	6,000 pounds

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