

**MEMORANDUM**

February 25, 2022

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

FROM: Gene Smith, Legislative Analyst

SUBJECT: Recommended FY23-28 Capital Improvements Program (CIP) for Agricultural Land Preservation Easement Project

PURPOSE: Review Executive's recommendation and make recommendation to the Council

**Those expected for this worksession:**

Jeremy Criss, Office of Agriculture (OAG)  
Mike Scheffel, OAG  
Derrick Harrigan, Office of Management and Budget

See the Executive's recommended FY23-28 CIP for Agricultural Land Preservation Easement Project (the "Project") on ©1-6. The recommendation includes no significant structural changes compared to the approved FY21-26 CIP. The recommendation also includes the changes in FY22 recently approved by the Council related to additional State aid and developer contributions.

**I. Background**

The project provides funds for the purchase of agricultural and conservation easements under the County Agricultural Land Preservation legislation.<sup>1</sup> The purchasing of easements restricts certain uses on a property to ensure it is preserved for agricultural and rural uses for future generations. See ©1 for a listing of the easement programs utilized in the County, including programs administered by the State or other County agencies. Most of the acreage protected was from the Transfer Development Rights program. The ability to purchase easements is dependent on funding, because as noted by the Office of Agriculture (OAG), easements can cost between \$1,600 to \$9,000 per acre depending on the property's characteristics.

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<sup>1</sup> Section 2B of the County Code.

## II. FY23-28 CIP Executive Recommendation

### A. Expenditures

The Executive recommends \$3,201,000 of expenditures in the Project for FY23-28, a decrease of \$92,000 or 2.8% from the approved FY21-26 CIP. The decrease is due to changes in the personnel costs included in the Project. Table 1 below is the Executive’s recommended expenditure schedule for the Project.

**Table 1: Executive Recommended FY23-28 Expenditure Schedule (\$000s)**

Cost Elements	Total 6 Years	FY23	FY24	FY25	FY26	FY27	FY28
Planning, Design and Supervision	2,181	356	359	362	365	368	371
Land	1,020	170	170	170	170	170	170
<b>Total</b>	<b>3,201</b>	<b>526</b>	<b>529</b>	<b>532</b>	<b>535</b>	<b>538</b>	<b>541</b>

The following are highlights for each cost element of the Project:

Planning, Design and Supervision. This cost element is approximately 70% of the total expenditures scheduled for the Project. The \$356,000 estimated for FY23 includes: 1) \$241,000 for 2.25 FTEs; 2) \$25,000 for the Deer Donation Program; 3) \$15,000 for the County Weed Control Program; and 4) \$75,000 for the Cooperative Extension Partnership. The programmed increase in future fiscal years is due to annualization costs for personnel.

This cost element is mostly funded by a combination of investment income and developer payments/contributions. **Of the 2.25 FTEs programed, OAG notes that 1.0 FTE is dedicated to the purchasing of easements.** The remaining FTEs perform work related to the OAG’s broader mission. The other programs included in the Project (e.g., Deer Donation, etc.) are also unrelated to the purchasing of agricultural easements.

Land. **This cost element reflects the funding programmed to purchase easements.** The FY23-28 CIP recommends no change to the six-year funding compared to the approved FY21-26 CIP. Given the average costs per acre and limited funding, the OAG purchases easements on a case-by-case basis. The actual timing and expenditures will vary from the one programmed in the CIP.

### B. Funding

The Project includes multiple funding sources to support the recommended expenditures. The following are highlights for the major funding sources in this Project.

Agricultural Transfer Tax. This tax is levied on agricultural properties that are sold or removed from agricultural use (e.g., transferred for commercial or residential development). The County receives 75% of the agricultural transfer tax receipts for properties in the County; the funding must be used for agricultural land preservation.

The amount of agricultural transfer tax programmed in FY23-28 CIP is unchanged compared to the approved FY21-26 CIP. **The remaining agricultural land that could qualify for this tax is limited in the County, so this funding source is expected to remain depressed.**

Contributions. This funding represents the final \$500,000 payment for the Crown Farm annexation agreement and child lot releases. The programming of this funding is based on the expenditure needs of the PDF.

Developer Payments. This funding is from transfers from the Maryland-National Park and Planning Commission (M-NCPPC) from developers that were required to purchase partial building lot termination (BLT) easements. A BLT is an easement that terminates the remaining development rights on certain properties. Acquisition of whole or partial BLTs is required for all optional method projects in Commercial Residential and Life Sciences zones and is an option for projects in Commercial Residential Town and Employment Office zones as part of the public benefit portion.

OAG has received about \$767,000 in developer payments for FY21 and to-date in FY22. Most of these resources were appropriated in the recent supplemental approved by the Council. These payments fluctuate like most of the funding sources in this Project based on businesses decisions for private developers. The recommended PDF estimates these payments based on historic averages and also programs the available resources based on the expenditure needs of the Project.

Investment Income. This funding is from interest earned based on the principal balance for the other funding resources in this project. **The funding has steadily decreased because it was used to fund personnel costs and operating expenses unrelated to the purchasing of agricultural easements.**

Table 2 below details the funding sources and schedule for the Project as recommended by the Executive.

**Table 2: Executive Recommended FY23-28 Funding Schedule (\$000s)**

<b>Funding Source</b>	<b>Total 6 Years</b>	<b>FY23</b>	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>FY28</b>
Agricultural Transfer Tax	1,200	200	200	200	200	200	200
Contributions	546	0	42	332	172	0	0
Developer Payments	842	0	0	0	163	338	341
Federal Aid	23	23	0	0	0	0	0
Investment Income	488	201	287	0	0	0	0
State aid	102	102	0	0	0	0	0
<b>Total</b>	<b>3,201</b>	<b>526</b>	<b>529</b>	<b>532</b>	<b>535</b>	<b>538</b>	<b>541</b>

### III. Potential Amendments

Council staff notes two possible amendments for the committee’s consideration.

#### A. Options to increase resources for agricultural easement purchases

The Council has previously reduced expenditures not related to easements to increase potential funding for agricultural easements. **Given the scarce resources for purchasing easements and that the Project’s purpose is to purchase easements, Council staff recommends that the Council continue this trend and presents two options for the committee’s consideration today.**

Option #1: Remove all expenditures not related to purchasing easements beginning in FY24. This option would give a one-year transition in FY23 for the Operating Budget. This includes all program expenses and 1.25 FTEs and totals about \$257,000 in FY24. Table 3 below details the revised expenditure schedule based on this option. **Removing these expenditures from the project immediately provides about \$1.3 million more for purchasing easements during the next six years.**

**Table 3: Option #1: Revised FY23-28 Expenditure Schedule (\$000s)**

Cost Elements	Total 6 Years	FY23	FY24	FY25	FY26	FY27	FY28
Planning, Design and Supervision	898	356	102	105	108	112	115
Land	2,303	170	427	427	427	426	426
<b>Total</b>	<b>3,201</b>	<b>526</b>	<b>529</b>	<b>532</b>	<b>535</b>	<b>538</b>	<b>541</b>

Option #2: Phase out the expenditures not related to purchasing easements from FY24-FY26. This would allow additional time to absorb the expenditures through the General Fund. Table 4 details the potential new expenditure schedule based on this option. **This option would generate about \$924,000 more for purchasing easements in the next six years.**

**Table 4: Option #2: Revised FY23-28 Expenditure Schedule (\$000s)**

Cost Elements	Total 6 Years	FY23	FY24	FY25	FY26	FY27	FY28
Planning, Design and Supervision	1,257	356	319	247	108	112	115
Land	1,944	170	210	285	427	426	426
<b>Total</b>	<b>3,201</b>	<b>526</b>	<b>529</b>	<b>532</b>	<b>535</b>	<b>538</b>	<b>541</b>

**Choosing either option would result in an increase of General Fund expenditures because the current funding sources are unique to this Project.**

#### B. Technical amendment to PDF text

The second amendment for consideration is a technical amendment to the PDF text about the PDS expenditures. The current Other Section of the PDF currently states:

*FY23 estimated Planning, Design and Supervision expenditures are \$356,000, with \$30,000 of these annual costs funded by Agricultural Transfer Tax revenues as authorized by State law. The amount includes funding for 1.0 FTE Business Development Specialist; \$25,000 for the Deer Donation Program; \$15,000 for the Montgomery County Weed Control Program; and \$75,000 for the Cooperative Extension Partnership.*

The approved FY21-26 PDF included all FTE expenditures for this Project. **Council staff recommends that the PDF note the accurate number of FTEs supported by the project.** Below is the recommended language. Should the committee support one of the options above to reduce the number of FTEs not related to easement purchases in the Project, staff can update the language to reflect that decision, too.

*FY23 estimated Planning, Design and Supervision expenditures are \$356,000, with \$30,000 of these annual costs funded by Agricultural Transfer Tax revenues as authorized by State law. The amount includes funding for 1.0 FTE Business Development Specialist; 1.0 FTE assigned to the University of Maryland Extension; 0.25 FTE Public Administration Associate; \$25,000 for the Deer Donation Program; \$15,000 for the Montgomery County Weed Control Program; and \$75,000 for the Cooperative Extension Partnership.*

This packet contains:

Recommended FY23-28 CIP for the Project

Circle #

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# Agricultural Land Preservation

## PROGRAM DESCRIPTION AND OBJECTIVES

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

During FY09, the County achieved the goal of protecting 70,000 acres of agricultural land through easements. As of June 30, 2021, the County has permanently preserved 71,594 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, 47,903 acres are protected 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. The number of total acres is adjusted to reflect the land preserved through BLT that were placed over TDR.

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	BLT	RLP	TDR	Total
Protected thru June FY2022	5,107	8,464	2,532	2,286	5,302	47,903	71,594

Note: The number of total acres is adjusted to reflect the land preserved through BLT that were placed over TDR.

Through the Agricultural Easement Program (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 \$1,600 to \$9,000 per acre, depending on location, land quality, and amount of the road frontage. The County has protected 8,464 acres through the AEP.

Through the Maryland Agricultural Land Preservation Foundation (MALPF), the State purchases development rights easements directly from landowners to protect agricultural land from development. Since 1980, 5,107 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 a major portion of the County's preserved land (47,903). 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 the County to further protect agricultural lands through easements by reducing the allowable housing density that is reserved on those lands.

The Maryland Environmental Trust (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 2,532 acres through the MET program.

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The Rural Legacy Program (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 5,302 acres through RLP.

The Building Lot Termination Program (BLT) was approved by the County Council through Council Bill 39-07 in December of 2008. This program provides another tool to permanently protect agricultural lands, especially where development potential is achievable through the approval of on-site waste disposal systems. In 2009, five million dollars was approved by the County Council through a supplemental appropriation to this project to fund the BLT program. Since FY12, 1,257 acres of agricultural land and 30 BLTs have been acquired through County BLT easements and an additional 1,029 acres and 31 BLTs have been acquired through private/developer purchased BLT easements, totaling 2,286 acres.

## PROGRAM CONTACTS

Contact Jeremy Criss of the Office of Agriculture 301.590.2830 or Derrick Harrigan of the Office of Management and Budget at 240.777.2759 for more information regarding this capital budget.

## CAPITAL PROGRAM REVIEW

The Executive's recommended FY23-28 program expenditure total is \$3.201 million. Total six-year program funding includes Agricultural Transfer Tax, contributions, M-NCPPC contributions (listed as Developer Payments) and investment income. An FY22 supplemental appropriation was approved to recognize the availability of Contributions from M-NCPPC (\$953,055) and an FY22 Rural Legacy State grant (\$2,722,761).



# Ag Land Pres Easements

(P788911)

Category	Conservation of Natural Resources	Date Last Modified	01/13/22
SubCategory	Ag Land Preservation	Administering Agency	Agriculture
Planning Area	Countywide	Status	Ongoing

## EXPENDITURE SCHEDULE (\$000s)

Cost Elements	Total	Thru FY21	Est FY22	Total 6 Years	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28	Beyond 6 Years
Planning, Design and Supervision	5,217	1,831	1,205	2,181	356	359	362	365	368	371	-
Land	14,768	8,695	5,053	1,020	170	170	170	170	170	170	-
Other	37	37	-	-	-	-	-	-	-	-	-
<b>TOTAL EXPENDITURES</b>	<b>20,022</b>	<b>10,563</b>	<b>6,258</b>	<b>3,201</b>	<b>526</b>	<b>529</b>	<b>532</b>	<b>535</b>	<b>538</b>	<b>541</b>	<b>-</b>

## FUNDING SCHEDULE (\$000s)

Funding Source	Total	Thru FY21	Est FY22	Total 6 Years	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28	Beyond 6 Years
Agricultural Transfer Tax	3,821	1,244	1,377	1,200	200	200	200	200	200	200	-
Contributions	1,499	-	953	546	-	42	332	172	-	-	-
Developer Payments	6,359	4,982	535	842	-	-	-	163	338	341	-
Federal Aid	545	479	43	23	23	-	-	-	-	-	-
G.O. Bonds	308	308	-	-	-	-	-	-	-	-	-
Investment Income	1,275	392	395	488	201	287	-	-	-	-	-
State Aid	6,215	3,158	2,955	102	102	-	-	-	-	-	-
<b>TOTAL FUNDING SOURCES</b>	<b>20,022</b>	<b>10,563</b>	<b>6,258</b>	<b>3,201</b>	<b>526</b>	<b>529</b>	<b>532</b>	<b>535</b>	<b>538</b>	<b>541</b>	<b>-</b>

## APPROPRIATION AND EXPENDITURE DATA (\$000s)

Appropriation FY 23 Request	526	Year First Appropriation	FY89
Appropriation FY 24 Request	529	Last FY's Cost Estimate	15,351
Cumulative Appropriation	16,821		
Expenditure / Encumbrances	10,611		
Unencumbered Balance	6,210		

## PROJECT 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 entirely protected by Transferable Development Rights (TDR) easements or State agricultural land preservation easements. The Maryland Agricultural Land Preservation Foundation (MALPF) enables the State to purchase



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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 proffered voluntarily by the farmland owner. The project receives funding from the Agricultural 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 Agricultural Reserve-AR zone. This program utilizes a variety of revenue sources that include: Agricultural Transfer Tax revenues, Contributions, Developer Payments, Investment Income, and State Aid.

## COST CHANGE

Costs for FY27 and FY28 have been added to the project, as well as FY22 funds related to a \$2,722,761 Rural Legacy Program State grant, and contributions from Maryland National Capital Park and Planning Commission of \$953,055.

## PROJECT JUSTIFICATION

Annotated Code of Maryland Agriculture Article 2-501 to 2-515, Maryland Agricultural Land Preservation Foundation; Annotated Code of Maryland Tax-Property Article 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

FY23 estimated Planning, Design and Supervision expenditures are \$356,000, with \$30,000 of these annual costs funded by Agricultural Transfer Tax revenues as authorized by State law. The amount includes funding for 1.0 FTE Business Development Specialist; \$25,000 for the Deer Donation Program; \$15,000 for the Montgomery Weed Control Program; and \$75,000 for the Cooperative Extension Partnership. 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 Transfer Tax funds and State Aid to purchase agricultural easements, contributions from the Crown Farm Annexation Agreement, and partial BLT payments made by developers for additional density in BLT receiving areas. 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 Office of Agriculture. 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. Easement acquisition opportunities will be considered on a case-by-case approach while alternative funding sources are identified.

## FISCAL NOTE

Land costs are for the purchasing of easements. An FY20 supplemental appropriation was approved to recognize the availability of additional FY19 Agricultural Transfer Tax revenue (\$744,000) and an FY20 Rural Legacy State grant (\$2,705,000). The Office of Agriculture was able to settle easements from the Rural Legacy State grant received in FY21, of which, \$2,497,047.65 has been spent. An FY22 supplemental was approved to recognize contributions from Maryland National Capital Park and Planning Commission for the acquisition of a farm encumbered by a County Agricultural Preservation easement (\$953,000), as well as a Rural Legacy Program grant (State Aide) for the amount of \$2,722,761.

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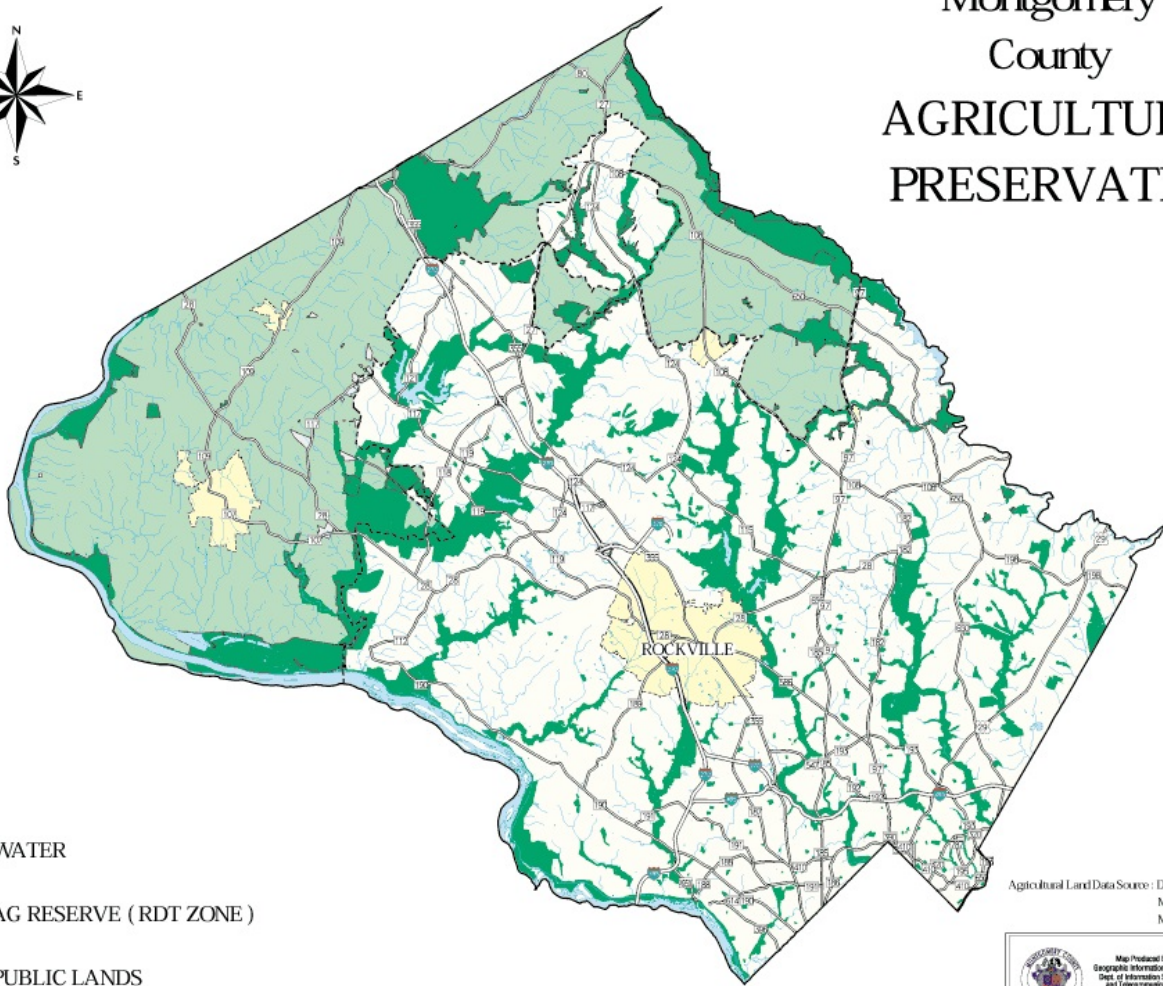
## DISCLOSURES




Expenditures will continue indefinitely. The County Executive asserts that this project conforms to the requirement of relevant local plans, as required by the Maryland Economic Growth, Resource Protection and Planning Act.

## COORDINATION

Montgomery County Office of Agriculture, State of Maryland Agricultural Land Preservation Foundation, State of Maryland Department of Natural Resources, Maryland-National Capital Park and Planning Commission, and Landowners.

# Montgomery County AGRICULTURAL PRESERVATION



-  WATER
-  AG RESERVE ( RDT ZONE )
-  PUBLIC LANDS

Agricultural Land Data Source : DED Agricultural Services  
MNCP& PC  
MD Office of Planning

