

**MEMORANDUM**

February 22, 2023

TO: Planning, Housing, and Parks (PHP) Committee

FROM: Craig Howard, Deputy Director

SUBJECT: Amendment to the FY23-28 Capital Improvements Program (CIP) and Supplemental Appropriation to the FY23 Capital Budget for the Agricultural Land Preservation Easement Project, \$2,641,207.72

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

**Expected Attendees:**

Jeremy Criss, Office of Agriculture (OAG)  
Mike Scheffel, OAG  
Natalia SalazarLahera, OAG  
Natasha Wilkerson, Office of Management and Budget (OMB)

On January 17, 2023, in conjunction with his recommended FY24 Capital Budget, the Executive transmitted an amendment to the FY23-28 CIP and supplemental appropriation in the amount of \$2,641,207.72 for the Agricultural Land Preservation Easement Project (©1-4). The Executive's recommendation makes no structural changes to the [approved FY23-28 CIP](#) for this project, but adds additional funding received from the State in FY23.

**Background.** The project provides funds for the purchase of agricultural and conservation easements under the County Agricultural Land Preservation legislation (County Code, §2B) The purchasing of easements restricts certain uses on a property to ensure it is preserved for agricultural and rural uses for future generations. 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.

**Executive Recommendation.** The Executive recommends a CIP amendment and supplemental appropriation in FY23 totaling \$2,641,207.72. This increase in funding is due to the Office of Agriculture receiving an FY23 State Rural Legacy Grant in the amount of \$1,305,702.90 and the FY22 State Agricultural Transfer Tax exceeding projections by \$1,335,504.82. These additional funds will be used to directly purchase agricultural preservation easements.

As shown in the chart below, there are no other changes the funding amounts or schedule approved by the Council in the approved FY23-28 CIP. As noted by the Executive, the recommended amendment is consistent with the criteria for amending the CIP because it leverages significant non-County sources of funds.

Ag Land Preservation Easements

<b>FY23-28 CIP</b>	<b>Total 6 Years</b>	<b>FY23</b>	<b>FY24</b>	<b>FY25</b>	<b>FY26</b>	<b>FY27</b>	<b>FY28</b>
Current Approved	3,701	1,026	529	532	535	538	541
CE Recommendation	6,343	3,668	529	532	535	538	541
<b>Difference</b>	<b>2,642</b>	<b>2,642</b>	-	-	-	-	-

**Racial Equity Impact Assessment.** The Office of Racial Equity and Social Justice (ORESJ) finds that this recommended supplemental appropriation and CIP amendment “is unlikely to advance racial equity and social justice in the County, as the eligibility criteria of funds involved with this appropriation do not include smaller farms under 50 acres, which due to structural inequities are more likely to have a principal producer who is a person of color or female. As a result, the acquisition of additional easements on the agricultural reserve— through this supplemental request—is more likely to benefit larger farms with a principal producer who is White or male.”

**Staff Recommendation.** Council staff recommends approval as submitted by the Executive.

This staff report contains:

- County Executive Transmittal Memo ©1-4
- Draft Resolution ©5-6
- ORESJ Racial Equity Impact Assessment (REIA) ©7-9




OFFICE OF THE COUNTY EXECUTIVE

Marc Elrich  
County Executive

MEMORANDUM

January 17, 2023

TO: Evan Glass, President  
Montgomery County Council

FROM: Marc Elrich, County Executive 

SUBJECT: Amendment to the FY23-28 Capital Improvements Program and Supplemental Appropriation #23-63 to the FY23 Capital Budget  
Montgomery County Government - Office of Agriculture  
Ag Land Preservation Project (No. 0788911), \$2,641,207.72

I am recommending a supplemental appropriation to the FY23 Capital Budget and amendment to the FY23-28 Capital Improvements Program (CIP) in the amount of \$2,641,207.72 for Ag Land Preservation Easement Project (No. 0788911). Appropriation for this project will fund the purchase of agricultural preservation easements.

This appropriation is needed because the Office of Agriculture received an FY23 State Rural Legacy Grant award in the amount of \$1,305,702.90 and the FY22 State Agricultural Transfer Tax amount collected was higher than projected in the amount of \$1,335,504.82. The recommended amendment is consistent with the criteria for amending the CIP because it leverages significant non-County sources of funds through the State Rural Legacy Grant award and the State Agricultural Transfer Tax. The Office of Agriculture has significant opportunities to acquire additional easements in the Agricultural Reserve which may be lost if not acted upon at this time.

I recommend that the County Council approve this supplemental appropriation and amendment to the FY23-28 Capital Improvements Program in the amount of \$2,641,207.72 and specify the two sources of funds: State Agricultural Transfer Tax funds (\$1,335,504.82) and State Aid (\$1,305,702.90).

ME:nw

Amendment to the FY23-28 Capital Improvements Program, Supplemental Appropriation #23-63  
January 17, 2023  
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Enclosure: Amendment to the FY23-28 Capital Improvements Program and Supplemental  
Appropriation #23-63

cc: Marlene Michaelson, Executive Director, Montgomery County Council  
Richard S. Madaleno, Chief Administrative Officer, Office of the County Executive  
Ken Hartman, Director of Strategic Partnerships, Office of the County Executive  
Jennifer Bryant, Director, Office of Management and Budget  
Jeremy Criss, Director, Office of Agriculture



# Ag Land Pres Easements (P788911)

Category	Conservation of Natural Resources	Date Last Modified	01/11/23
SubCategory	Ag Land Preservation	Administering Agency	Agriculture
Planning Area	Countywide	Status	Ongoing

Total	Thru FY22	Rem FY22	Total 6 Years	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28	Beyond 6 Years
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## EXPENDITURE SCHEDULE (\$000s)

	Total	Thru FY22	Rem FY22	Total 6 Years	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28	Beyond 6 Years
Planning, Design and Supervision	3,934	2,019	1,017	898	356	102	105	108	112	115	-
Land	19,193	9,102	4,646	5,445	3,312	427	427	427	426	426	-
Other	37	37	-	-	-	-	-	-	-	-	-
<b>TOTAL EXPENDITURES</b>	<b>23,164</b>	<b>11,158</b>	<b>5,663</b>	<b>6,343</b>	<b>3,668</b>	<b>529</b>	<b>532</b>	<b>535</b>	<b>538</b>	<b>541</b>	-

## FUNDING SCHEDULE (\$000s)

	Total	Thru FY22	Rem FY22	Total 6 Years	FY 23	FY 24	FY 25	FY 26	FY 27	FY 28	Beyond 6 Years
Agricultural Transfer Tax	5,157	1,599	1,022	2,536	1,536	200	200	200	200	200	-
Contributions	1,499	-	953	546	-	42	332	172	-	-	-
Current Revenue: General	500	-	-	500	500	-	-	-	-	-	-
Developer Payments	6,359	5,083	434	842	-	-	-	163	338	341	-
Federal Aid	545	479	43	23	23	-	-	-	-	-	-
G.O. Bonds	308	308	-	-	-	-	-	-	-	-	-
Investment Income	1,275	531	256	488	201	287	-	-	-	-	-
State Aid	7,521	3,158	2,955	1,408	1,408	-	-	-	-	-	-
<b>TOTAL FUNDING SOURCES</b>	<b>23,164</b>	<b>11,158</b>	<b>5,663</b>	<b>6,343</b>	<b>3,668</b>	<b>529</b>	<b>532</b>	<b>535</b>	<b>538</b>	<b>541</b>	-

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

Appropriation FY 24 Request	529	Year First Appropriation	FY89
Cumulative Appropriation	20,489	Last FY's Cost Estimate	20,522
Expenditure / Encumbrances	11,184		
Unencumbered Balance	9,305		

## 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 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 FY23 funds related to a \$1,306,000 Rural Legacy Program State grant have been added, and additional funding from FY23 easement purchases.

## 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; 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 Weed Control Program; and \$75,000 for the Cooperative Extension Partnership. The Council approved eliminating expenditures not related to agricultural easement purchases for FY24-28, which includes 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 Weed Control Program; and \$75,000 for the Cooperative Extension Partnership. These expenditures will be included in the operating budget

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beginning in FY24. 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

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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 (\$953,055), as well as a Rural Legacy Program grant (State Aide) for the amount of \$2,722,761. The Council added \$500,000 in general fund current revenue in FY23 to support agricultural easement purchases. An FY23 supplemental appropriation was approved to recognize the availability of additional Agricultural Transfer Tax revenue (\$1,336,000) and a Rural Legacy Program grant (State Aid) for the amount of \$1,306,000.

#### DISCLOSURES

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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

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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.

Resolution: \_\_\_\_\_  
Introduced: \_\_\_\_\_  
Adopted: \_\_\_\_\_

COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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SUBJECT: Amendment to the FY23-28 Capital Improvements Program and Supplemental Appropriation #23-63 to the FY23 Capital Budget  
Montgomery County Government  
Office of Agriculture  
Ag Land Preservation Easements (No. 0788911), \$2,641,208

Background

1. Section 307 of the Montgomery County Charter provides that any supplemental appropriation shall be recommended by the County Executive who shall specify the source of funds to finance it. The Council shall hold a public hearing on each proposed supplemental appropriation after at least one week's notice. A supplemental appropriation that would comply with, avail the County of, or put into effect a grant or a Federal, State or County law or regulation, or one that is approved after January 1 of any fiscal year, requires an affirmative vote of six Councilmembers. A supplemental appropriation for any other purpose that is approved before January 1 of any fiscal year requires an affirmative vote of seven Councilmembers. The Council may, in a single action, approve more than one supplemental appropriation. The Executive may disapprove or reduce a supplemental appropriation, and the Council may reapprove the appropriation, as if it were an item in the annual budget.
2. Section 302 of the Montgomery County Charter provides that the Council may amend an approved capital improvements program at any time by an affirmative vote of no fewer than six members of the Council.
3. The County Executive recommends the following capital project appropriation increases:

<u>Project Name</u>	<u>Project Number</u>	<u>Cost Element</u>	<u>Amount</u>	<u>Source of Funds</u>
Ag Land Preservation	0788911	Land	\$ 1,305,703	State Aid
		Land	<u>\$ 1,335,505</u>	Ag Transfer Tax
TOTAL			\$ 2,641,208	

4. This increase is needed because the Office of Agriculture received an FY23 State Rural Legacy Grant award in the amount of \$1,305,703 and the FY22 State Ag Transfer Tax amount collected was higher than projected in the amount of \$1,335,505. The recommended amendment is consistent with the criteria for amending the CIP because it leverages significant non-County sources of funds through the State Rural Legacy Grant award and the State Ag Transfer Tax. The Office of Agriculture has significant opportunities to acquire additional easements in the Ag Reserve which may be lost if not acted upon at this time.
5. The County Executive recommends an amendment to the FY23-28 Capital Improvements Program and a supplemental appropriation in the amount of \$2,641,208 for Ag Land Preservation Easements (No. 0788911) and specifies that the source of funds will be State Ag Transfer Tax and State Aid.
6. Notice of public hearing was given, and a public hearing was held.

Action

The County Council for Montgomery County, Maryland, approves the following action:

The FY23-28 Capital Improvements Program of the Montgomery County Government is amended as reflected on the attached project description form and a supplemental appropriation is approved as follows:

<u>Project Name</u>	<u>Project Number</u>	<u>Cost Element</u>	<u>Amount</u>	<u>Source of Funds</u>
Ag Land Preservation	0788911	Land	\$ 1,305,703	State Aid
		Land	<u>\$ 1,335,505</u>	Ag Transfer Tax
TOTAL			\$ 2,641,208	

This is a correct copy of Council action.

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Judy Rupp  
Clerk of the Council





## OFFICE OF RACIAL EQUITY AND SOCIAL JUSTICE


Marc Elrich  
County Executive

Tiffany Ward  
Director and Chief Equity Officer

### MEMORANDUM

February 21, 2023

To: Jennifer Bryant, Director  
Office of Management and Budget

From: Tiffany Ward, Director  
Office of Racial Equity and Social Justice 

Re: Racial Equity Impact Assessment (REIA) Supplemental Appropriation (SA) #23-63  
Agriculture Land Preservation (No. 0788911)

- I. **FINDING:** The Office of Racial Equity and Social Justice (ORESJ) finds that Supplemental #23-63—Agriculture Land Preservation (No. 0788911)— is unlikely to advance racial equity and social justice in the County, as the eligibility criteria of funds involved with this appropriation do not include smaller farms under 50 acres, which due to structural inequities are more likely to have a principal producer who is a person of color or female. As a result, the acquisition of additional easements on the agricultural reserve— through this supplemental request—is more likely to benefit larger farms with a principal producer who is White or male.
- II. **BACKGROUND:** The purpose of Supplemental Appropriation # 23-63 Ag Land Preservation (No. 0788911) is to fund agricultural land preservation easements using revenue from a FY23 State Rural Legacy Program (RLP) Grant award and FY22 State Ag Transfer Tax income. The Capital Improvements Program (CIP) Agriculture Land Preservation Easements project aims to support the Office of Agriculture’s (OAG) ability to acquire additional easements on the Agriculture Reserve. The overarching goal of the County’s Agricultural Land Preservation efforts are:
- To conserve farmland for future food and fiber production
  - To ensure a continued high-quality food supply for our citizens.
  - To preserve the agricultural industry and rural communities
- 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. In this case, the appropriation will be used to fund the acquisition of specific large easements (greater than 50 acres) in OAG’s pipeline, one of which will be funded with a RLP Grant. Other easements involved with this appropriation will be funded with State Agriculture Transfer Tax income, which will be leveraged to increase available funding for the easement acquisition.

In February 2022, ORESJ conducted a REIA of Supplemental Appropriation #22-MCG 06<sup>1</sup> which involved funding from the RLP. In that REIA, ORESJ explained how the RLP’s structure and eligibility requirements do not enable equitable access to land for smaller farms, which due to systemic and structural factors are more likely to be farms owned by people of color or women. *Please read ORESJ’s REIA for a full explanation of historical and current patterns of systemic racism in farming and land ownership.* Overall, the acreage restriction in the RLP limits OAG’s ability to reach farmers of color and women farmers with the financial assistance afforded through the program.

In addition to RLP’s land acreage constraints, OAG is constrained in its ability to expand land access by additional factors not well addressed with financial resources alone. One challenge is familiarity with land easement purchasing. Multigenerational farming families have more understanding of how to access and benefit from easement purchasing. So, resources for targeted outreach and awareness-building could help reduce knowledge gaps for new farmers, farmers of color, and women farmers. Another constraint in expanding equitable land access is the absence of designated legal expertise to efficiently structure and execute deals. Deal efficiency is a major challenge as the circumstances surrounding the buyers’ and sellers’ interests can quickly change. Finally, bolstering support for OAG with designated resources to target capital and assistance to smaller farms, newer farmers, and farmers of color and women farmers will go a long way in addressing wealth and other economic inequities related to land access and farming.

**III. DATA ANALYSIS**

The average farm in Montgomery County was 117 acres in 2017. Average farm acreage varies by race, ethnicity, and gender of the principal producer. The 2017 Census of Agriculture data for Montgomery County shows that average acreage among principal producers who are women, people of color, and new or beginning is lower than the County average and the average among Male and White principal producers.

**Average Farm Acreage, Montgomery County, Maryland 2017**

Principal Producer	Number of farms	Land in farms (acres)	Average acres per farm
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<sup>1</sup> <https://www.montgomerycountymd.gov/ore/Resources/Files/22-53.pdf>

Racial Equity Impact Assessment (REIA) Supplemental Appropriation (SA) #23-63 Agriculture  
Land Preservation (No. 0788911)

February 21, 2023

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County	558	65,537	117
Asian	12	319	27
Black	14	316	23
White	515	64,341	125
Hispanic	17	833	49
Native American/Alaska Native	4	110	28
More than one race	20	500	25
Male	363	57,397	158
Female	353	18,660	53

**Source:** Author's calculations of 2017 USDA Census of Agriculture using Table 1, 46, 47, 48, 49, 50, 51, 53, 54, 57. Available at:

[https://www.nass.usda.gov/Publications/AgCensus/2017/Full\\_Report/Volume\\_1,\\_Chapter\\_2\\_County\\_Level/Maryland/](https://www.nass.usda.gov/Publications/AgCensus/2017/Full_Report/Volume_1,_Chapter_2_County_Level/Maryland/)

cc: Jeremy V. Criss, Director, Agricultural Services  
Ken Hartman, Director, Strategic Partnerships, Office of the County Executive