Maryland's Land Preservation Programs

Report to the Chairmen of the Senate Budget and Taxation Committee and House Appropriations Committee

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Executive Summary

At the close of the 2015 session of the Maryland General Assembly, the Chairmen of the Senate Budget and Taxation Committee and House Appropriations Committee issued a report that requested "an evaluation of the State's land preservation and easement acquisition programs and all capital and operating programs funded with the State transfer tax."[1]

The transfer tax funds a wonderful diversity of preservation and conservation programs, whose accomplishments rival those anywhere in the nation. This report discusses specific issues identified by legislators.

Notwithstanding the diversity of issues addressed and differing priorities among interests represented on the workgroup, the group wants to emphasize three major recommendations:

- Restore full funding of Maryland's land preservation programs with transfer tax revenue at the earliest possible opportunity.
- Make no changes to the transfer tax allocation formula in statute.
- Amend the statute to give the local governments more flexibility in spending POS-Local funds on the acquisition and development projects that best meet their recreation and open space needs.

Almost 40 years ago, Maryland became the first state to create a transfer tax fund dedicated to land preservation and parks and recreation. Today, Maryland is a national leader in land preservation, parks and recreation: over 862,000 acres are preserved by easement, which allows working landscapes like farms and forestry businesses to prosper; another 726,000 acres are protected through public ownership, offering Marylanders an opportunity to enjoy nature, hike, fish, and hunt. These 1.6 million acres also provide valuable "ecological services": protecting the water supply, cleaning the air and filtering stormwater runoff, and providing habitat for wildlife in addition to having a significant economic impact for both the State and local jurisdictions.

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[1] The official name of the legislative report is "The Report on the Fiscal 2016 State Operating Budget (HB 70) and the State Capital Budget (HB 71) and Related Recommendations by the Chairmen of the Senate Budget and Taxation Committee and House Appropriations Committee."

The Report on the Fiscal 2016 State Operating Budget (HB 70) and the State Capital Budget (HB 71) and Related Recommendations by the Chairmen of the Senate Budget and Taxation Committee and House Appropriations Committee (otherwise known as the Joint Chairmen's Report, or JCR) included language requesting "an evaluation of the State's land preservation and easement acquisition programs and all capital and operating programs funded with the State transfer tax." The evaluation was conducted by the Executive Branch agencies including the Department of Natural Resources (DNR), the Maryland Department of Agriculture (MDA), the Maryland Department of Planning (MDP), and the Department of Budget and Management (DBM); as well as workgroup participants including representatives from county parks and recreation departments and other interested stakeholders including the Maryland Association of County Park and Recreation Administrators, the General Assembly, the Chesapeake Conservancy, the American Farmland Trust, the Chesapeake Bay Commission, the Maryland Farm Bureau, Partners for Open Space, the Maryland Municipal League, The Conservation Fund, and Baltimore City Recreation and Parks.

Meetings were held on June 23rd, July 21st and August 25th, 2015 to hear background on programs and processes, to discuss the issues and questions raised in the JCR language, and to discuss recommendations on how to address items raised in the JCR language. A draft report was presented for the October 6, 2015 meeting for review before the final report due date of December 1, 2015.

In this report, the workgroup is defined by representatives from the Maryland Association of County Park and Recreation Administrators, the General Assembly, the Chesapeake Conservancy, the American Farmland Trust, the Chesapeake Bay Commission, the Maryland Farm Bureau, Partners for Open Space, the Maryland Municipal League, The Conservation Fund, Baltimore City Recreation and Parks, and other interested stakeholders.

The Administration, consisting of the Executive Branch agencies of DNR, MDA, MDP and DBM, were also participants in this effort, including authoring the report.

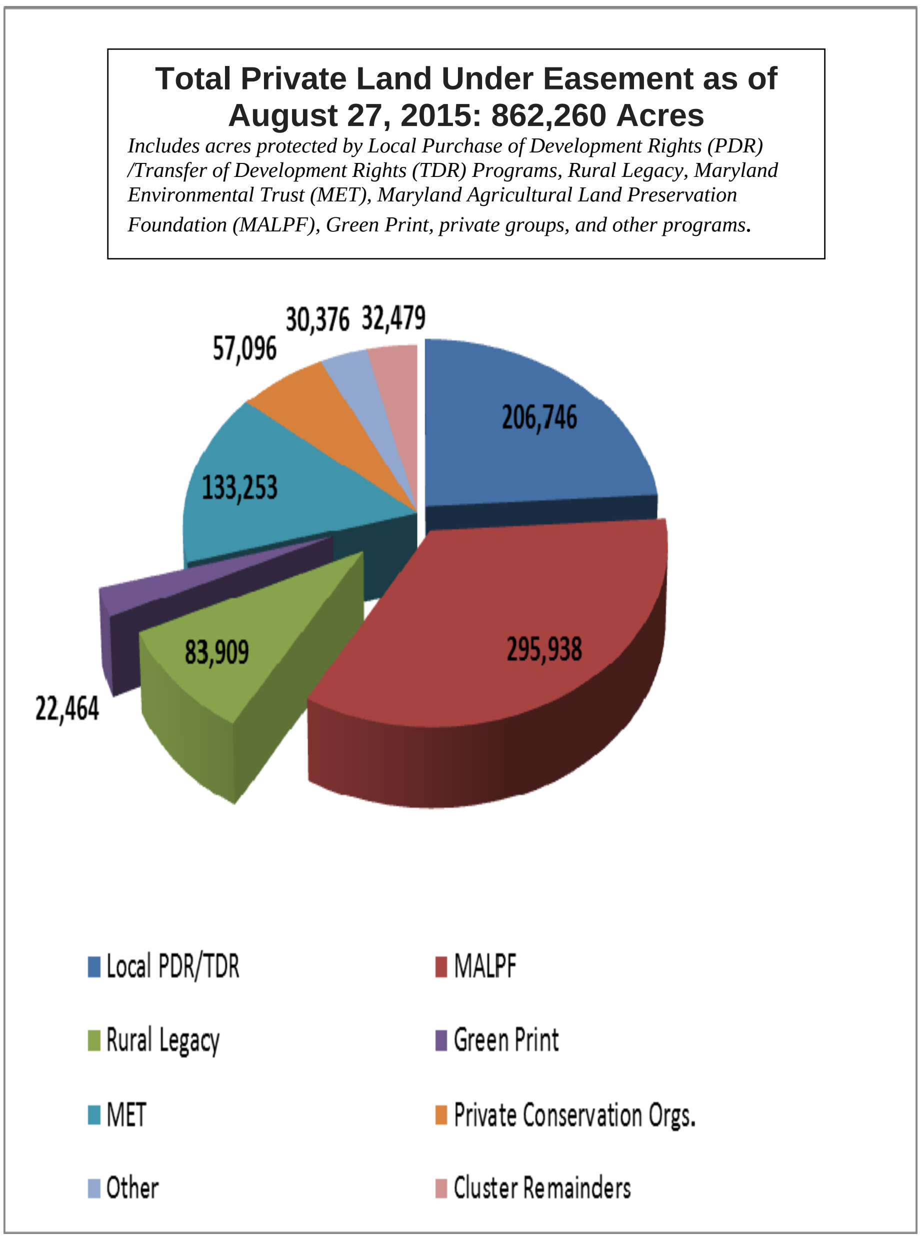
While there were many areas of consensus among all participants – including agreement on major overarching themes – the Administration, consisting of the Executive Branch Agencies, must note a potential need for flexibility on some of the workgroup recommendations given current law, the continued structural budget deficit, and the need to craft a budget that best meets the needs of the State based on current revenue estimates and budget demands.

For this reason, the report will conclude with the recommendations of the workgroup while also noting the Administration's concerns regarding important budget demands still facing the State.

State Land Preservation

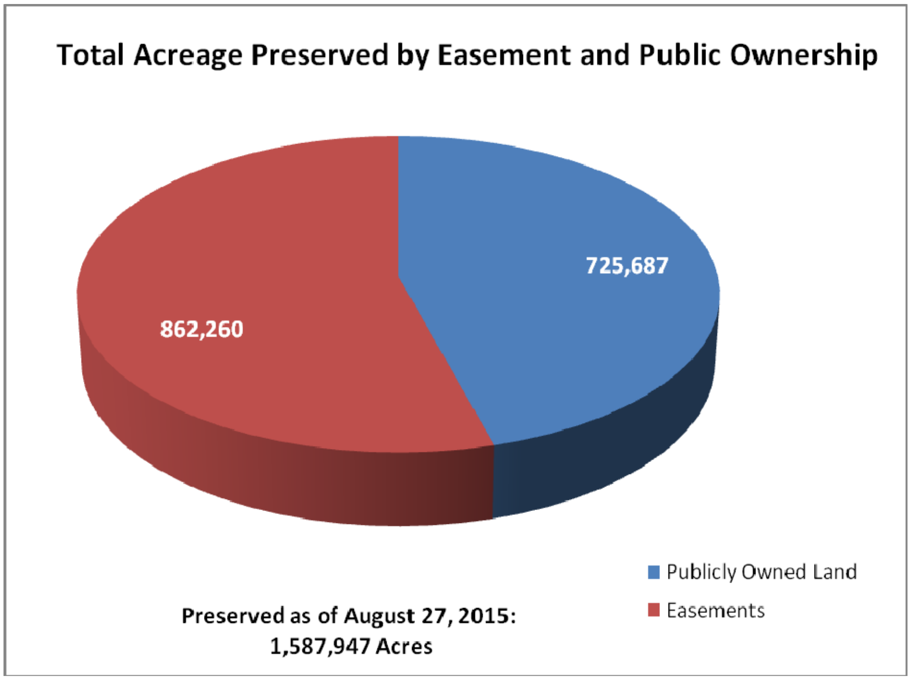
Maryland has been a national leader in land conservation for more than 40 years. The purpose of State land preservation and recreation programs is to advance land conservation, the resource-based businesses that depend on the land base, and outdoor recreational opportunities throughout Maryland. Maryland's land preservation programs secure the state's Green Infrastructure, just as the Transportation Trust Fund supports the Built Infrastructure. According to statute, the majority of funding for State land preservation and recreation programs is provided through the collection of a 0.5% State property transfer tax. This funding mechanism was designed to directly tie development to available funding for open space and recreational facilities for the public good.

The Maryland Department of Planning reports that as of September 2015, approximately 1.58 million acres of land in Maryland have been protected through the purchase and donation of conservation easements and fee-simple acquisitions (as shown in the charts below). This is compared to approximately 1.63 million acres of land that have been developed. Transfer tax funding for land preservation and recreation programs and the continued partnerships between State programs, local governments, conservation groups and land trusts have resulted in almost as much land being preserved as has been developed. However, as development continues and the population continues to increase, funding for land preservation and recreation programs must also continue.



Total Private Land Under Easement as of August 27, 2015: 862,260 Acres

Includes acres protected by Local Purchase of Development Rights (PDR) /Transfer of Development Rights (TDR) Programs, Rural Legacy, Maryland Environmental Trust (MET), Maryland Agricultural Land Preservation Foundation (MALPF), Green Print, private groups, and other programs.



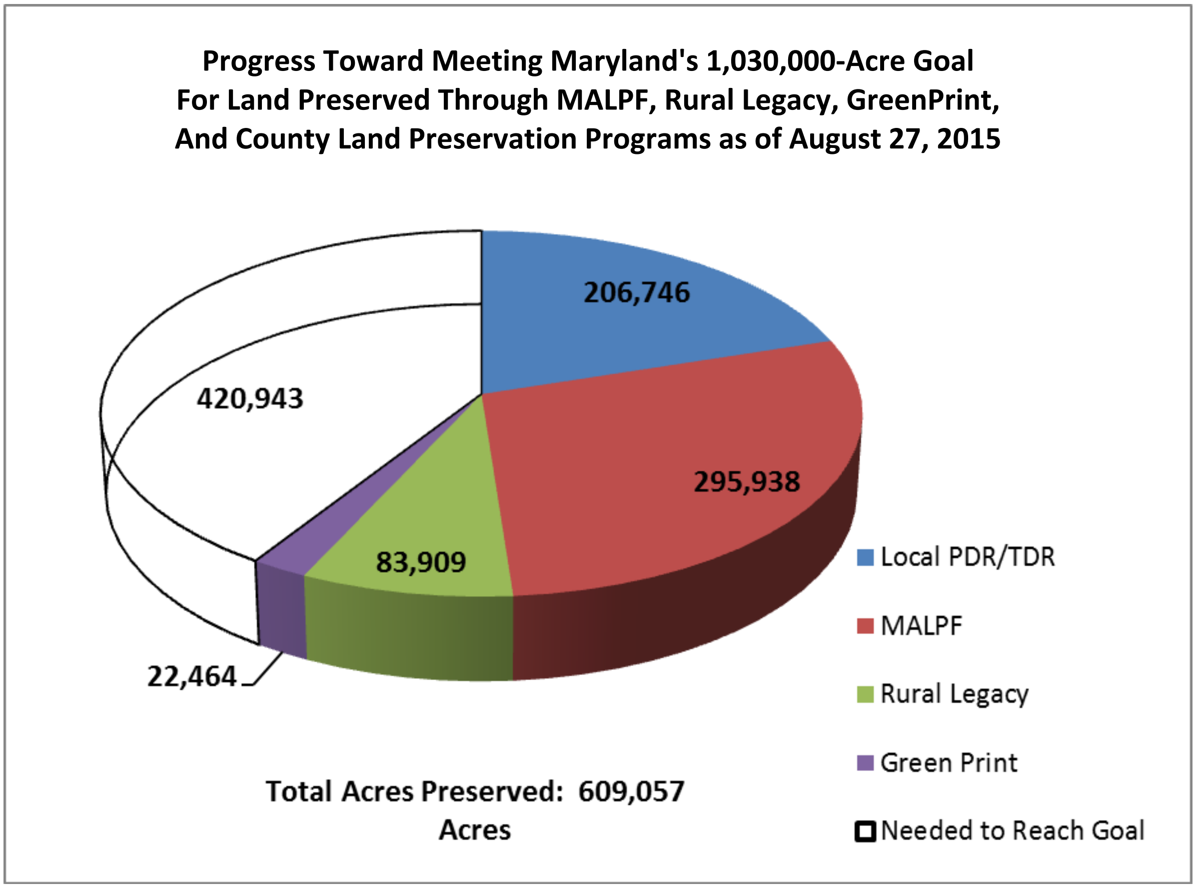
Source: Maryland Department of Planning

Land Preservation Goals

In addition to the program specific goals described in later sections of the report, the State has committed to two overarching land preservation goals.

Senate Joint Resolution 10, 2002 General Assembly

Senate Joint Resolution 10 (SJR10) from the 2002 General Assembly set the statewide goal to triple the number of acres of productive agricultural land preserved by MALPF, GreenPrint (no longer funded), Rural Legacy, and local preservation programs by the year 2022. At the time the resolution was passed, a total of 343,000 acres of agricultural land had been preserved and so the statewide goal is to preserve 1,030,000 acres. According to the Department of Planning approximately 610,000 acres of productive agricultural land through the programs specified in the goal have been preserved.



Source: Maryland Department of Planning

It should be noted that, while not tracked as part of SJR10, other land preservation programs have also protected productive agricultural land. For example, MET is a statewide easement preservation program and has contributed 50,294 acres to the total of preserved land during the same period, the vast majority being agricultural.

<u>Chesapeake Bay Agreement</u>

The 2014 Chesapeake Bay Agreement includes 10 goals and 31 measurable, time-bound outcomes that will help create a healthy watershed. Agreement signatories include the Governors of each state in the watershed, the Mayor of the District of Columbia, the chair of the Chesapeake Bay Commission, and the administrator of the U.S. Environmental Protection Agency (EPA).

The land conservation goal is to conserve landscapes in order to maintain water quality and habitat; sustain working forests, farms and maritime communities; and conserve lands of cultural, indigenous and community value. The protected lands outcome is to protect an additional two million acres throughout the watershed by 2025. The Chesapeake Bay Program defines protected lands as any lands permanently protected from development through a perpetual conservation or open space easement or fee simple ownership; these include lands protected by federal, state, and local governments, and by private and nonprofit organizations for natural resource, forestry, agriculture, wildlife, recreation, historic, cultural or open space use, or to sustain water quality and living resource values.

The baseline year for the goal is 2010. The Bay Program calculates protected lands data every two years; the last figures were calculated in 2013. From 2010 – 2013, 570,000 acres were protected throughout the watershed, which is 29% of the goal and on track to meet the preservation goal by 2025. The data for 2014-2015 will be collected by the Bay Program and shared with partners and the public in the summer of 2016. While State programs continue to preserve land, they are only one part of the effort to meet the land preservation goal. The updated data released next summer will include land preserved by other government and non-profit partners and will be used by the Bay Program to determine if the signatories are still on track to meet the protected lands outcome.

Additionally, Maryland's land preservation programs participate in and leverage federal program dollars to support efforts on the national level including the Captain John Smith National Historic Trail – integral to showcasing the Chesapeake Bay, as well as the Rivers of the Chesapeake initiative. This initiative in Maryland focuses on strategic land conservation using federal dollars along the Susquehanna, Nanticoke, and Middle Potomac Rivers.

Transfer Tax Formula

The funding for each program supported by the property transfer tax is outlined in §13-209 of the Tax-Property Article and §5-903 of the Natural Resources Article of the Annotated Code of Maryland. During the creation of the Governor's budget allowance, a revenue estimate is decided by the Board of Revenue Estimates and forms the basis of the transfer tax allocation. This estimate is also combined with the over-attainment or under-attainment of actual revenues from two fiscal years prior. The funds are then allocated to programs in four steps:

1) Up to 3% is allocated to the Department of Natural Resources for administrative expenses.
2) Of the remaining funds, 75.15% is allocated to Program Open Space (POS), 17.05% is allocated to the Maryland Agricultural Land Preservation Fund (MALPF), 5% is allocated to Rural Legacy, 1.8% is allocated to the Heritage Conservation Fund, and 1% is allocated for POS – State.
3) Of the 75.15% allocated to POS, up to $3 million can be allocated to the Heritage Areas Authority. The remainder after the Heritage Areas Authority allocation is split 50% to POS – Local and 50% to POS – State.
4) Of the 50% that goes to POS – Local, the greater of $21 million or 20% of total POS is allocated for Maryland Park Service operational expenses. The remaining funds are allocated to the counties and Baltimore City by another allocation formula specifically for POS – Local. Of the 50% that goes to POS – State, the funds are distributed as follows:
    a. Rural Legacy – up to $8 million
    b. Debt Service on 2009 POS Bonds – approximately $6 million a year until 2026

c. Capital Development – at least 1/8 of the total POS, Rural Legacy and Additional State Land Acquisition allocation less the funding for the Heritage Areas Authority. The Capital Development piece funds DNR's Critical Maintenance Program, the Natural Resources Development Fund, and the Ocean City Beach Replenishment Program.
d. Park Service – Receives an additional $1.2 million from the Capital Development allocation
e. Baltimore City Direct Grant – at least $1.5 million
f. POS State Allocation – remaining funds after above allocations (a) through (e)

The Maryland Environmental Trust does not receive funding directly through the transfer tax formula.

The Committee Narrative included in the JCR requests an evaluation of the full suite of land preservation and easement acquisition programs – Maryland Agricultural Land Preservation Program, Program Open Space – State and Local, Rural Legacy Program, and Maryland Environmental Trust. A summary of each program, including responses to the specific questions included in the JCR, follows.

Program Open Space

Established under DNR in 1969, Program Open Space (POS) symbolizes Maryland's long term commitment to conserving natural resources while providing exceptional outdoor recreation opportunities for all citizens. Funding for Program Open Space typically comes from the collection of a 0.5% State property transfer tax. Transfer tax funding of POS is designed with a direct correlation between development pressures and available funding for open space and recreational facilities for the public good.

The General Assembly, per Section 5-902 of the Natural Resources Article – Annotated Code of Maryland, recognized the need for funds for State agencies and local subdivisions to expedite the acquisition of outdoor recreation and open space areas before the escalating cost of land prevented its purchase for public use and to accelerate the development and capital renewal of recreation facilities.

Funding

Funding for POS comes primarily from the transfer tax allocation formula. DNR also pursues federal grant funds for open space and recreation projects from programs including (but not limited to):

- Land and Water Conservation Fund (National Park Service) – provides cost-share funding to state agencies for the acquisition, development and planning of outdoor recreation opportunities.

- National Coastal Wetlands Conservation Grant Program (U.S. Fish and Wildlife Service) – provides matching grants to States for acquisition, restoration, management or enhancement of coastal wetlands.
- Department of the Navy's Readiness and Environmental Protection Integration (REPI) Program through an Encroachment Protection Agreement. This Agreement also partners with The Nature Conservancy, The Conservation Fund, and The Trust for Public Land. The program seeks to protect lands adjacent to and near naval bases to serve as buffers to their operations and is a key initiative in maintaining the viability of naval facilities.

Since FY 2010, POS Stateside has leveraged $9.192 million in federal funds and POS Local has leveraged $7.636 million in federal funds.

Goals

In addition to the broader State-wide goals for land preservation stated above, the State's Land Preservation and Recreation Plan[2] (LPRP) includes the Department's goals for Recreation, Parks, and Open Space.

1. Make a variety of quality recreational environments and opportunities readily accessible to all of its citizens, and thereby contribute to their physical and mental wellbeing.
2. Recognize and strategically use parks and recreation facilities as amenities to make communities, counties, and the State a more desirable place to live, work, and visit.
3. Use state investment in parks, recreation, and open space to complement and mutually support the broader goals and objectives of smart growth within Maryland.
4. To the greatest degree feasible, ensure that recreation land and facilities for local populations are conveniently located relative to population centers, are accessible without reliance on the automobile, and help to protect natural open spaces and resources.
5. Complement infrastructure and other public investments and priorities in existing communities and areas planned for growth through investment in neighborhood and community parks and facilities.
6. Continue to protect recreational open space and resource of lands at a rate that equals or exceeds the rate that land is developed at a statewide level.

Economic Impact

Projects funded through Program Open Space have a significant economic impact. The Outdoor Industry Association's 2012 Report, "The Outdoor Recreation Economy," has calculated the economic impact of outdoor recreation, studying the purchase of gear and vehicles and dollars spent on trips and travel. Gear purchases include anything for outdoor recreation, such as outdoor apparel and footwear, bicycles, skis, fishing waders, tents, rifles, or backpacks. Vehicle purchases include vehicles and accessories used only for outdoor recreation, such as boats, motorcycles, RVs, snowmobiles, and all-terrain vehicles. The Outdoor Industry Association reports that in Maryland, the outdoor recreation economy generates $9.5 billion in consumer spending, $686 million in local tax revenue, 85,000 jobs, and $2.8 billion in wages and salaries. [3]

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[2] http://www.dnr.state.md.us/land/stewardship/LPRP_2014-2018.asp
[3] "The Outdoor Recreation Economy" economic analysis for the Outdoor Industry Association.

Specifically, POS and land preservation programs provide the following economic benefits to all Marylanders

- Maryland State Parks have a $650 million estimated annual economic benefit to local economies and the State. State Park visitors directly spent more than $567 million, which supported more than 10,000 full-time jobs and generated more than $39 million in state and local retail, hotel, gas and income taxes.[4]
- State Parks and preserved lands in counties, cities, and towns across Maryland contain recreational amenities such as trails, greenways, and camping which in turn bring job growth in construction and maintenance and provide tourism-related opportunities. These preserved spaces are local economic drivers attracting over 10 million visitors annually who support area retailers.
- For every $1 million in grant funding for development projects, POS supports 6.4 direct Maryland-based construction jobs.
- For every POS Stateside land acquisition, approximately 5% of the purchase price goes to local Maryland businesses to complete due diligence work including title work, surveys, and appraisals.

POS has two components, a local grant component called POS Local and a component that funds acquisition and recreation facility development by the State called POS Stateside. Both components are described below.

Program Open Space State-Side

Program Description

POS Stateside preserves natural areas for public recreation and watershed and wildlife protection across Maryland through the acquisition of fee simple land and conservation easements. Fee simple purchases are managed by DNR as State Parks, Forests, and Wildlife and Fisheries Management Areas.

Program Administration

The Department's Land Acquisition and Planning (LAP) Unit administers Program Open Space Stateside in collaboration with the Office of the Attorney General and according to the Natural Resources Article of the Annotated Code of Maryland. On some acquisitions, DNR partners with land trusts.

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[4] 2010 Maryland State Parks Economic Impact and Visitor Study
http://www.visitmaryland.org/AboutMDTourism/Pages/TourismNewsAndReports.aspx

Targeting

POS Stateside uses a scientific based framework to target ecological acquisitions. Targeted Ecological Areas are lands and watersheds identified by DNR as the most ecologically valuable areas in the State. These areas were identified by combining the most ecologically important areas for green infrastructure, wildlife and rare species habitat, nontidal streams and fisheries, wetland adaptation areas, and bay and coastal ecosystems. Each property that DNR considers for acquisition is scored pursuant to an ecological ranking protocol consistent with this targeting. In addition, POS Stateside also targets properties with extraordinary management and public benefits using Appendix A to the ecological ranking protocol. Appendix A guides DNR in acquiring properties with extraordinary management and public benefits, including cultural and historical aspects, that may not meet the ecological thresholds. Finally, where appropriate, DNR utilizes Community Connections, which is a scoring system for land conservation projects that enhance linkages between people and the land.

In addition, DNR has implemented new land conservation strategies to address the impacts of climate change and increase the resilience of vulnerable coastal habitats. DNR reviews all land acquisitions for climate change impacts and incorporates those considerations into purchased conservation easements and management of land purchased in fee simple.

Accomplishments

To date, Program Open Space Stateside has preserved over 324,000 acres. Since 2010, DNR has set annual acreage goals and has exceeded those goals each year.

Goals

In addition to the goals for Program Open Space detailed above, the FY 2016 Strategic Plan for the Department of Natural Resources includes the goal to preserve 7,500 acres through POS Stateside in FY 2016. These acres will count towards the protected lands outcome in the 2014 Chesapeake Bay Agreement and will be managed as State parks, forests, and wildlife and fisheries management areas to meet the goals articulated in the State’s LPRP.

Demand

There are over $176 million in high quality ecological, recreational, public access, coastal resilience, and community connections projects in the POS Stateside project pipeline that could add approximately 30,000 acres to the public estate statewide if acquired.

Specific Questions included in the JCR

Possible expansion of State and local revenue generating opportunities from multi-use State working lands.

The Maryland Park Service (MPS) continuously seeks opportunities to increase revenue and improve operating cost efficiencies. Park revenues allocated to the Forest or Park Reserve Fund have increased steadily in recent years, from $11.8 million in fiscal 2010 to $14.2 million in fiscal 2015. This increase has been due in large part to increasing park visitation and a 2012 fee increase. In fiscal 2015, the Maryland Park Service operations were supported by approximately $5 million of the $14.2 million generated.

MPS has given consideration to a variety of revenue generation strategies to help ensure the unit's short and long-term financial stability; however, as revenues have increased over the past five years, park operating budget appropriations have continued to decline. A demand-based pricing plan has increased revenue by $1 million annually while, by design, retaining the affordability of basic recreation services such as hiking, picnicking and tent camping. Strategic planning has been undertaken to establish additional camping and recreation sites at State Parks; however, annual shortfalls in capital and operating budgets have hindered these efforts. As a result, State Parks are not fully serving the outdoor recreation needs of Maryland citizens. During the summer of 2015, 15 State Parks filled to capacity 122 times and campground and cabin inventory was sold out. Without available parking and camping, families were turned away at park entrances nearly every weekend in the summer, resulting in poor public service and a reduction in revenue.

Preliminary research has also been completed on authorizing the sale of the Maryland State Park Passport as part of the State's vehicle registration process. This strategy could help the Maryland Park Service to diversify its funding base, maximize its operating funds, and serve more potential customers at a more affordable cost. Similar programs operate in other states, including Kansas, Idaho, Michigan, Montana, and Washington.

MPS routinely employs a variety of cost reduction strategies outlined as Best Management Practices in its Five-Year Strategic Plan. A significant new partnership with the Department of General Services (DGS) and the Maryland Energy Administration (MEA) has potentially long-term potential for reducing operating costs by cutting facility energy use in State Parks. MPS has invested $450,000 in MEA grants to install energy efficient lighting fixtures, HVAC systems and appliances throughout the parks in order to reduce growing utility costs. Just over the past year, approximately 400 fluorescent light tubes have been replaced at State Parks. A pilot project currently under contract at Sandy Point State Park will include energy efficiency upgrades and wind and solar installations projected to save the park $19,000 annually in utility costs. The Sandy Point State Park contract is funded by DNR's capital budget with a projected return on investment of 10 years. MPS is working with DGS to finance future projects through Energy Performance Contracts, which will accelerate the number of projects that can be completed and will reduce pressure on the capital budget.

The ability of the MPS to achieve financial sustainability and generate revenue over time also depends in large part on the agency's ability to make strategic infrastructure investments and to grow the size of the park system to meet visitation demand. MPS seeks to cost-effectively apply limited capital funds to support park maintenance and recreation improvements, including efforts to replace aging playgrounds, renovate bath houses, expand the park trail system, and restore historic sites, as these efforts are critical to attracting repeat customers and growing visitation. In fiscal 2015, MPS was able to make a meaningful investment in replacing and purchasing new picnic tables and grills in response to growing visitor demand for picnicking experiences. MPS is also working with the new Friends of the Maryland State Parks Foundation to identify small capital projects in need of fundraising support. Overall, these cost-effective investments are critical to ensuring a quality State Park system that can support jobs in Maryland's local rural economies through outdoor and heritage tourism (2010 Maryland State Parks Economic Impact and Visitor Study).

The DNR Forest Service will be increasing the amount of timber harvested from State Forests when and where appropriate. Each State Forest will have an annual harvest target that is based on the average annual growth that is occurring in each State Forest. These targets will comply with forest certification standards set by the Forest Stewardship Council (FSC) and the Sustainable Forestry Initiative (SFI). Our State Forests are certified by both bodies as being managed on a sustainable basis.

Additionally, DNR is gearing the Natural Resource Development Fund (NRDF) toward projects that will generate revenue, like expanded camping opportunities to include electric hookups and projects to attract more visitors like new playgrounds and trail improvements.

Finally, DNR is reviewing certain leases and operations to ensure appropriate revenue from and management of DNR land holdings. To that end, the Department has a position dedicated to overseeing potential economic development opportunities on DNR lands when and where appropriate, and consistent with DNR’s mission.

The appropriate level of operating and capital funding needed for maintaining State forest, park, and wildlife management area land in terms of general management, public interpretation, and infrastructure improvements, including the need to reduce the $44 million (676 projects) backlog in the Critical Maintenance Program, and provide public amenities through the Natural Resources Development Fund.

Capital Funding

DNR maintains over 1,700 buildings, hundreds of miles of roadway, parking lots, sewer and water systems, and a variety of water-associated facilities. These facilities serve millions of visitors per year. During the normal life cycle of facilities and building systems, deterioration occurs and maintenance work is required. For example, a roof, boiler, road, or utility pipe all have a certain expected service life. Through the Critical Maintenance Program (CM) DNR facilities are kept in useable, functioning condition. HVAC replacement systems are chosen to increase efficiency and reduce operating costs. The Natural Resources Development Fund (NRDF) funds the design and construction of development projects on DNR property.

The transfer tax allocation formula, when fully funded, provides sufficient funding to address both the backlog of critical maintenance projects and the provision of public amenitities via the Natural Resources Development Fund. One common issue for both programs is the sporadic levels of funding that have been authorized in recent years. It is very difficult to plan, develop and complete projects when the Department is uncertain of the amount of funding to be appropriated in any given year. Level funding would help to remove the uncertainty and allow the Department to efficiently plan and complete improvement projects. A year of very low funding for the NRDF or CM creates a backlog of projects that must be fit into years of higher funding. For NRDF projects which require complete Design Programs, it means that the completed Program can sit on the shelf for a number of years before funding is available, becoming out of date. For CM projects it means continued deteroriation of facilities and more expensive fixes.

To aid in administration of the Critical Maintenance Program, DNR maintains a facility inventory and an associated critical maintenance backlog list. Currently there is a backlog of 637 projects on the Critical Maintenance list valued at $39.9 million. The Department has taken a multi-pronged approach to reducing the backlog that includes increased focus on custodial maintenance; carefully screening requests to accurately align them with the best program for getting the project completed; specifying materials and systems that are higher efficiency and longer lasting; and, where able, combining individual requests into single larger scale projects.

Appropriate funding for CM projects should be set at level that will not only address the current needs, but also the backlog of projects. Over the past 10 years annual funding has averaged $3 million (not including the $10 million provided in FY 2013 since that was to fund specific projects not previously on the Critical Maintenance list) with a low of $1.25 million in FY 2010. However the Department is adding an average of $2.8 million per year to the backlog list. In order to reduce the project backlog in a timely manner, the Critical Maintenance Program should be funded at $5 - $6 million annually. Consistent funding at this level would allow the Department to remove projects from the backlog at a faster rate than they are added. This funding level is also based on the amount that can be encumbered in a fiscal year given current staffing levels.

Operating Funding

In January 2013, the Maryland Park Service (MPS) and Department of Budget and Management released a *Five-Year Strategic Plan* that identified priority funding needs for investment in State Park operations and maintenance in fiscal 2014-2017. The Five-Year Strategic Plan elaborated upon and updated recommendations contained in a 2007 reported entitled "Maryland State Parks Funding Study: A Plan to Fully Fund the Operations of the Maryland Park Service." The Five-Year Strategic Plan also discusses park system operations and management, the use of nationally-recognized best management practices within the park system, and presents a sustainable, five-year resource plan. Specific recommendations included in the Five-Year Strategic Plan include additional funding for permanent and seasonal positions, new vehicles, supplies, and equipment. Recommendations also addressed capital infrastructure including developing strategic plans to prioritize and fund (1) restoration of historic sites and (2) energy efficiency and alternative energy facility improvements.

The Five-Year Strategic Plan assumed that increased transfer tax revenue would be available in the future to fund implementation. However, transfer tax revenues have experienced a decline in recent years, severely limiting implementation of the plan. In fiscal 2015, MPS did allocate some new funding for seasonal staff, and $1.8 million to replace vehicles, supplies and heavy equipment; however, no additional permanent staff positions have been established as recommended.

PROGRAM OPEN SPACE – LOCAL

Program Description

Program Open Space Local provides financial and technical assistance to local subdivisions (counties and municipalities) for the planning, acquisition, and/or development of recreation land or open space areas. The program is administered according to Sections 5-905 and 5-906 of the Natural Resources Article.

Accomplishments

To date, POS Local has provided over $1 billion in grants to local jurisdictions for approximately 180 planning projects, 1,700 acquisition projects, and 3,900 recreation and open space development projects. Acquisition projects funded through POS Local have preserved over 46,000 acres throughout the State for recreation and open space.

Program Administration

POS Local is a reimbursable grant program administered by DNR’s Land Acquisition and Planning Unit. To be eligible for funding, counties must submit a Local Land Preservation, Parks, and Recreation Plan (LPPRP). LPPRPs are an important resource by which county governments and the City of Baltimore evaluate key issues, trends and plans for managing and enhancing the systems of preserved public lands, parks and recreation facilities in their jurisdictions. The LPPRPs provide county and state leaders and the general public with a clear understanding of the county or City’s goals and strategies for investing to improve parks and recreation facilities and open spaces for the public’s benefit.

Counties must also submit an annual program of proposed acquisition and development projects to MDP for review and to DNR for approval. Any projects funded through POS Local must be included in the annual program.

According to statute:

- Counties that have not met the land acquisition goals of their LPPRP must use at least 50% of their total POS annual allocation exclusively for acquisition projects.
- Counties that have met the land acquisition goals of their LPPRP (as certified by DNR and MDP) may use up to 75% of their future annual apportionment for development projects for a period of five years after attainment. The General Assembly has passed legislation that has temporarily allowed for the use of up to 100% of the future annual apportionments for development projects for a period of time after attainment.
- POS funds may be used to reimburse local governments:
    - up to 100% of costs for local acquisition projects.
    - up to 75% assistance (25% local match) for local development projects in counties that have not met their land acquisition goals as stated in the current LPPRP.
    - up to 90% assistance (10% local match) for local development projects in counties that have met their land acquisition goals as stated in the current LPPRP.

Projects funded through POS Local are determined by the local jurisdictions that submit applications for funding to the Department for review and approval. Once the application has been approved and the project eligibility is determined, the Department presents the individual project to the Board of Public Works (BPW) for approval.

POS Local Apportionment Formula

DBM allocates POS Local funds annually to every County and Baltimore City according to a formula.

Statute *[Natural Resources Article 5-903(c)]* requires that a committee, appointed by the Governor, shall prepare and adopt an apportionment formula relating to the percent of the total POS Local funds each subdivision will receive, and meet annually to review and update the apportionment formula. The committee consists of two members of the Senate, three members of the House of Delegates, and four members of the public at large with the Secretaries of MDP and DNR to serve as advisors. The committee last met in 1982 to establish the current allocation formula. After this allocation formula was established in 1982, the formula was used instead of convening the committee each year.

POS Local funds are currently allocated among the counties and Baltimore City as follows:

- the proportionate distribution of the sum of each county's largest grant between 1970 and 1982 is applied to the initial distribution of current funds;
- counties that are projected to lose population between the 2010 Census and the most recent population estimate are allocated the lesser of the distribution calculated above or its proportionate distribution in 1982; and
- remaining funds are distributed based on each county's relative share of transfer tax revenues collected in the second preceding fiscal year.

Demand

In their latest LPPRPs, the 23 Counties and Baltimore City have identified needs-based priorities for over $1.8 billion for the acquisition, development, and rehabilitation of park and recreation facilities through 2022.

Specific Questions included in the JCR

The appropriate percentage of funding to be devoted to acquisition of land before development projects may be funded; the trade-offs associated with increasing/decreasing this percentage, the current status of county fulfillment of the land acquisition requirement.

The preparation and/or regular update of an LPPRP is a prerequisite for county participation in POS Local *[per Section 5-905(b) (2) of the Natural Resources Article – Annotated Code of Maryland]*. During the preparation of the LPPRP, an analysis of the level of service provided by public parks and recreation systems is developed to identify areas in the county where additional investment in land or facilities may be needed to meet the needs and desires of users. Historically in Maryland, this analysis was completed using only a single state default metric of 30 acres of open space per 1,000 residents; counties could use another standard with the approval of MDP and DNR. This is the current metric used to determine whether a County has met the land acquisition goal, which enables them to use a greater percentage of their annual funding on development projects.

To date, 12 counties have met their acquisition goals as stated in their Land Preservation, Parks and Recreation Plans: Allegany, Carroll, Dorchester, Frederick, Garrett, Kent, Queen Anne's, Somerset, Talbot, Washington, Wicomico, and Worcester.

For many years, counties have been telling DNR staff that they would like more flexibility in spending the POS Local allocation. The reasons for this, as reported to the Department, are as follows:

- Counties have operating, maintenance, and development needs at existing parks that can be more urgent than the need to acquire additional land.
- Acquisition projects can be more expensive than development projects. With recent funding levels, it can take years for some counties to bank sufficient funds to pursue an acquisition project. During this time, the funding remains unencumbered. If greater flexibility was allowed, the funds could be spent more quickly on priority development projects.
- More flexibility would allow counties to maximize their funding. For example, when the real estate market is low, a County could chose to fund an acquisition project and when the real estate market is high, the County could chose to fund more development projects until real estate costs decrease.

As part of the development of updated LPPRP guidelines, DNR staff met with all counties and the City of Baltimore. One of the topics discussed was the default metric used to determine a county’s land acquisition goal. Based on the input from the local jurisdictions, it was determined that an analytical methodology capable of considering multiple factors (user demand, population density, and land and facility distribution) was a better approach. By analyzing and mapping a county's parks and recreation inventory of existing land and facilities in relation to population density and taking into consideration the known needs and demands of users (as determined via surveys, participation rate figures, public input, etc.), a more accurate determination of deficiencies in service can be made and better plans formulated to address them, versus the past reliance on the 30-acres-per-1,000 residents, single acres/population metric.

The recommendation of the workgroup is to revise statute to give counties greater flexibility in how they spend their POS Local funding. Specifically, remove the current restriction on POS Local funding that sets aside a percentage only for acquisition. This would require a statutory change. This would begin with FY17, and existing POS Local funding (from FY16 back) would still be subject to the current restrictions until expended. The projects funded through POS Local should be based on the needs identified in the LPPRP using an analytical methodology that includes multiple factors (user demand, population density, land & facility distribution).

The status of the requirement to evaluate the Program Open Space – Local allocation formula annually by committee.

As stated above, the committee to evaluate the POS Local allocation formula last met in 1982 to establish the current allocation formula. After this allocation formula was established, the formula was used instead of convening the committee each year. **The workgroup recommends that DBM, DNR, MDP, representatives from the Maryland Association of Counties Park and Recreation Administrators (MACPRA), and representatives from the Maryland Municipal League (MML) meet to review the apportionment formula that determines the percentage of POS Local funds each subdivision will receive. This group should also review the statutory requirement that a committee meet annually to review and update the apportionment formula. Based on the recommendations of this group, statute should be updated.**

RURAL LEGACY PROGRAM

Program Description

Maryland's Rural Legacy Program was established in 1997 by the General Assembly to protect the State's natural resources, farms, forests, and other sensitive environmental areas while maintaining the viability of resource-based economies and the proper management of tillable and wooded areas. The Program provides funds to local governments and land trusts to purchase conservation easements and property in fee simple in designated Rural Legacy Areas. The Program is focused on a community-up approach to land preservation, stressing partnerships among federal, state, and local governments and non-profit land trusts. Counties are encouraged to initiate other land conservation measures to build upon the land preservation accomplishments achieved through Rural Legacy Program funds.

Funding

Funding for the Rural Legacy Program comes primarily from the transfer tax allocation formula and General Obligation Bonds.

Program Administration

Land trusts and local governments (Rural Legacy Sponsors) administer the Rural Legacy Program in partnership with DNR staff. The Rural Legacy Sponsors propose and apply for the designation of Rural Legacy Areas and for annual grant funding. The Rural Legacy Advisory Committee, appointed by the Governor, reviews applications annually and makes recommendations to the Rural Legacy Board, consisting of the Secretaries of DNR (Chair), Agriculture and Planning. The decisions of the Rural Legacy Board are then taken as a whole to the BPW.

Once a Rural Legacy Area is designated and funded, the local Sponsor works with willing landowners and DNR to purchase conservation easements. The individual conservation easements within the Rural Legacy Area are then taken to the BPW throughout the year for approval. Easement requirements include Soil Conservation and Water Quality Plans, Forest Management Plans, and riparian buffers which ensure water quality benefits and protect the Chesapeake Bay and its tributaries.

Targeting

Rural Legacy Areas represent a targeted strategy of land conservation through local and state partnerships. Creation of Rural Legacy Areas involves a combined effort by county governments, land trusts, and landowners to protect what is collectively regarded as the best of Maryland's concentrated natural, cultural, and agricultural resources. Communities and local governments desiring to protect working farms and forests, support the local resource based economy, and conserve natural resources and open space are able to do so through Rural Legacy Program grants.

By statute, the Rural Legacy Program "is established to enhance natural resource, agricultural, forestry, and environmental protection…while maintaining the viability of resource-based land usage and proper management of tillable and wooded areas through accepted agricultural and silvicultural practices for farm production and timber harvests." The emphasis on resource protection in the Program's statutory criteria combined with the Program sponsors' grassroots knowledge of regionally significant areas throughout the State ensures that Rural Legacy Areas and acquisitions represent strategic conservation of resources.

A property must be located within a designated Rural Legacy Area to be conserved with a Rural Legacy easement. There are 31 Rural Legacy Areas, with at least one Rural Legacy Area in every county in the State. When a Rural Legacy Sponsor submits a proposed application for designation or funding, the applications are reviewed by all of the State agencies involved in land conservation including DNR, MDA, and MDP.

Designated Rural Legacy Areas

Rural Legacy Areas are located in all of Maryland's 23 counties. The existing Areas cover approximately 900,000 acres of Maryland's most significant natural resource, agricultural, open and scenic lands.

Rural Legacy Area	**Counties**	**Sponsor**
Agricultural Security Corridor	Caroline, Cecil, Dorchester, Kent, Talbot	Eastern Shore Land Conservancy
Anne Arundel South	Anne Arundel	Anne Arundel County
Baltimore Coastal	Baltimore	Baltimore County
Bear Creek	Garrett	Garrett County
Calvert Creeks	Calvert	Calvert County
Carrollton Manor	Frederick	Carrollton Manor Land Trust
Coastal Bays	Worcester	Worcester County
Deer Creek (formerly Lower Deer Creek)	Harford	Harford County
Dividing Creek	Somerset, Worcester	Somerset County, Worcester County, The Nature Conservancy
Fair Hill	Cecil	Cecil Land Trust
Foreman Branch (formerly Chino Farms)	Queen Anne's	Queen Anne's County
Gunpowder	Baltimore	Gunpowder Valley Conservancy
Huntersville	St. Mary's	Patuxent Tidewater Land Trust, St. Mary's Co.
Lands End	Queen Anne's	Queen Anne's County
Little Pipe Creek	Carroll	Carroll County
Long Green Valley	Baltimore	Long Green Valley Land Trust
Manor	Baltimore and Harford	The Manor Conservancy
Mattapany	St. Mary's	Patuxent Tidewater Land Trust, St. Mary's Co.
Mid-Maryland Frederick	Frederick	Frederick County
Mid-Maryland Montgomery	Montgomery	Montgomery County
Mid-Maryland Washington	Washington	Washington County
Mountain Ridge	Allegany	Allegany County
Nanticoke	Dorchester	The Nature Conservancy, The Conservation Fund, Dorchester County
North Calvert	Calvert	Calvert County
Patuxent – Prince George's	Prince George's	Prince George's Soil Conservation District
Piney Run	Baltimore	The Land Preservation Trust
Quantico Creek	Wicomico	Wicomico County
Upper Patapsco	Carroll	Carroll County
Upper Patuxent – Howard	Howard	Howard County
Upper Patuxent – Montgomery	Montgomery	Montgomery County
Zekiah Watershed	Charles	Charles County

Accomplishments

The Rural Legacy Program has preserved over 84,000 acres of Maryland's most scenic landscapes and critical natural resources that support the State's resource based industries.

Goals

In addition to the Chesapeake Bay Agreement goals and the goals included in SJR 10 detailed above, the FY 2016 Strategic Plan for the Department of Natural Resources includes the goal to preserve 2,800 acres through the Rural Legacy Program in FY 2016. The acres preserved through the Rural Legacy Program will protect working resources threatened by sprawl development.

Demand

Strong interest in the Rural Legacy Program continues as shown by the amount of funds requested each grant cycle. In every annual application cycle, the amount requested far exceeds the amount of funding available. Over the seventeen application cycles (FY 1998 through FY 2015), requests for grant funds have totaled $1.672 billion for only $274.45 million in available funding. The Rural Legacy Program receives on average over $100 million in annual requests with an average of $16 million funded annually. In the FY 2016 grant cycle, this trend continues with requests for $78 million in grant funds for only $10.082 million in available funding.

Sustained funding will be needed to support local governments and land trusts to meet the goal of conserving the Rural Legacy Areas throughout the State. This partnership of local government, land trusts, landowners and the State of Maryland continues to make a substantial commitment of supporting the preservation of the State's most valuable agricultural, natural, open space resources and scenic landscapes.

The status of local transfer of development rights (TDR) programs in the State and the opportunities for leveraging these programs with Rural Legacy Program funding as allowed for in statute

The Rural Legacy Program is mindful of the fact that under Md. Code Ann., Nat. Resources § 5-9A-05(j) it has the ability to purchase TDRs with the approval of the county and has conducted extensive outreach measures on this issue. Rural Legacy is a grassroots (locally driven) program.

The decision to create a TDR program is a local county decision. Several counties including Frederick, Montgomery, and Charles Counties do have TDR programs. It appears they prefer to use Rural Legacy funds for easements rather than for entering the TDR market.

It should be noted that Counties can always establish their own County programs to transfer development rights out of their Rural Legacy Areas to complement state funding. This would be counted as a local match and would make additional state Rural Legacy funding more likely.

In addition, the results of DNR's outreach measures show that TDRs have not been utilized by Rural Legacy Program Sponsors for the following main reasons:

- Rural Legacy Conservation Easements include best management practices (BMPs) and other water quality protections whereas TDRs do not include any BMPs or water quality protection measures;
- The lack of development pressure significantly reduced the market for TDRs;
- Rural Legacy Conservation Easements act as a compliment to existing TDR programs;
- Some Counties, such as Baltimore and Prince George's, do not have a TDR program.

MARYLAND AGRICULTURAL LAND PRESERVATION PROGRAM

OVERVIEW OF THE MALPF PROGRAM

Authority: Agriculture Article, §§ 2-501, and 2-504, Annotated Code of Maryland
.01 General.

The Maryland Agricultural Land Preservation program is administered by the thirteen member Board of Trustees of the Maryland Agricultural Land Preservation Foundation (the Foundation). The Foundation was established in 1977 by the Maryland General Assembly to provide sources of agricultural products within the State for the citizens of the State, control the urban expansion which is consuming the agricultural land and woodland of the State, curb the spread of urban blight and deterioration, and protect agricultural land and woodland as open-space land. In addition, the General Assembly encourages that fair consideration be given to the retention of forest lands that are working landscapes as defined under § 5–101 of the Natural Resources Article, Annotated Code of Maryland.

The MALPF Program is based on a partnership with local governments. Each local government appoints a county agricultural land preservation advisory board of five (or seven) members with a county employee to act as staff to the Board and liaison between the County and the Foundation. The Board and county liaison assist MALPF in administering the easement selection process and review subsequent requests from owners of easement properties for approval and/or advice before submitting the requests to the Foundation.

To qualify to sell an agricultural land preservation easement to MALPF, an applicant's property must meet the minimum eligibility requirements based on soil quality, property size, and location. Applications are reviewed and approved by the local advisory boards and county governing bodies and forwarded for consideration to the MALPF Board of Trustees. The application process is competitive, with each county choosing its own ranking procedure within the State guidelines and approval process. Generally, the first round of offers (Round One) is based on the relative quality of the competing applicant properties ranked by county; the second round of offers (Round Two) is statewide and based on the relative discounts in asking prices from the applicants. Each application is ultimately approved or denied by the Foundation's Board. Offers are made in rank order until the available allocation and matching funds for the county is exhausted, followed by the same procedure statewide for the second round of offers.

An offer is either the asking price or the easement value (determined by the difference between the appraised fair market value of the property and the agricultural value determined by a formula in regulation), whichever is lower. In either case, the offer amount cannot exceed 75% of the appraised fair market value nor be less than 25% of the appraised fair market value (unless the landowner's asking price is less than 25%). Landowners often discount their asking price to be more competitive in the ranking process. The Foundation has the discretion to select those easements which it shall purchase.

Easements approved for purchase by the BPW prior to October 1, 2004 may be reviewed after a 25-year period, and if profitable farming is found not to be feasible, an easement may be terminated by repurchase, unless the right to apply for termination has been waived by the landowner.

The operations of the MALPF Program are closely tied to Maryland law. Because most of the provisions of its deed of easement are tied directly to statute or regulation, the deed of easement signed by landowners is relatively inflexible. The agricultural land preservation easement is filed among the local county land records, and the conditions and rights detailed in the agreement become part of the property's deed. MALPF easements are perpetual, meaning that the easement binds both the current landowner and those who subsequently own and/or lease the land, permanently protecting the property and instituting a stewardship ethic that passes through the generations.

MALPF FUNDING

Real Estate Transfer Tax:

MALPF receives the majority of its funding from the Real Estate Transfer Tax. The Real Estate Transfer Tax funding is used to make easement purchases.

Agricultural Transfer Tax:

In addition to the Real Estate Transfer Tax, MALPF receives a portion of the Agricultural Land Transfer Tax that is collected by the counties. The Agricultural Land Transfer Tax is a tax that is imposed on all agricultural properties that are removed from the agricultural assessment for commercial, industrial or residential uses. This tax is collected by the county in which the property lies and the county retains 75% if they have been certified by MALPF and the Department of Planning or 33% if they have not been certified.

Matching Funds Participation:

Often, a county uses their retained portion of the Agricultural Land Transfer Tax as matching funds for the MALPF program. If other county funds are available, they may be combined with the retained agricultural transfer tax funds. Any committed funds are matched by MALPF funds at a rate of 40% county dollars to 60% state dollars up to a maximum of $1 million state funds. In 2006 the state maximum was increased to $2 million. Some local subdivisions are very active in MALPF, providing matching funds year after year, and also have their own local easement acquisition programs. From the chart below you can see county participation for a twelve year period. There is no notation for FY 2004 as the program was not funded in that year. FY 2009/2010, 2011/2012, 2013/2014, and 2015/2016 were combined easement acquisition cycle years:

FISCAL YEAR	COUNTY FUNDS COMMITTED *	STATE MATCH AMOUNT
2003	$7,387,923	$8,584,746
2005	$13,404,176	$6,768,500
2006	$14,043,962	$12,979,499
2007	$21,885,154	$25,303,212
2008	$16,294,407	$22,486,500
2009	$13,368,669	$13,852,000
2011	$8,693,851	$10,755,411
2013	$12,354,566	$17,564,455
2015	$8,537,352	$12,794,030
TOTAL MATCHING FUNDS	$115,970,060	$131,088,353

*Due to MALPF's matching funds limitation, not all committed county funds were matched with state dollars.

Program Achievements:

At the end of Fiscal Year 2015 MALPF has protected approximately 297,000 acres with 2,187 easements, representing an investment of over $662,000,000 of State/County/Federal funds.

Goals:

MALPF's goal is the preservation of adequate amounts of farmland, woodland and open space in Maryland to ensure the continued production of food and fiber and to protect the agribusiness infrastructure for the future.

It is the State of Maryland's goal, via SJ10 of 2002, to preserve 1,030,000 acres of farmland, woodland and open space land in Maryland through the purchase of permanent easements through MALPF, the Rural Legacy Program, local government land preservation programs to purchase or transfer development rights, and the now unfunded GreenPrint program by the year 2022.

In addition to the State goal via SJ10 of 2002, the counties have their own individual agricultural land preservation goals. All together they add up to a collective goal to preserve 1,683,540 of farmland under easement. They have achieved just over 51% of their agricultural land preservation goal to date.

Specific Questions included in the JCR not addressed above

The status of using federal funding

The Maryland Agricultural Land Preservation Foundation (MALPF) has not applied for funding from what was known as the federal Farm and Ranchland Protection Program (FRPP) since 2007. This program has since been renamed as part of the Agricultural Act of 2014 under what is now known as the Agriculture Conservation Easement Program (ACEP). We had a very successful partnership from 1996 through 2006, during which time we were awarded more than $27 million. In the 2007 rule-making process, the provisions of the awards were changed in a way that made the two programs incompatible. In September 2009, MDA’s Secretary joined leaders from Connecticut, Delaware, Maine, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, and Vermont in signing a letter to Tom Vilsack, Secretary of the U.S. Department of Agriculture, communicating the states’ inability to make FRPP work with local programs. Although MALPF eventually dropped out of the conversation to make FRPP a more user-friendly program, the other states continued to work to make some changes.

Since 2007, there have been many concessions made to make the Federal program more palatable for the State programs. But even given the amount of headway that had been gained, there were still several areas that make FRPP difficult to impossible to use with MALPF:

- MALPF cannot apply for FRPP funding until we have a pool of accepted offers. The MALPF process requires that all funding be secured prior to extending offers to landowners.
- Landowners would have to fill out a separate application for FRPP. This application would include a certification of highly erodible land and wetland conservation compliance, adjusted gross income verification and consent to disclosure of tax information, and a Maryland Natural Resources Conservation Service Parcel Ranking Workbook.
- FRPP has a 2% impervious surface limit. They will allow, upon request, up to 10% of a property to be covered with impervious surface and there is a waiver component. Livestock, chicken, and horse operations, vineyard and winery operations, and nursery operations are among properties that may be excluded from receiving federal funds or which would be well advised not to accept such an easement because of the limitations imposed by this restriction on future flexibility to adjust to the changing agricultural economy. It was unclear if properties with chicken houses would qualify for the waiver when there are several chicken houses and they cover more than 10% of the property, which could occur often on the Eastern Shore.
- Subdivisions are strictly prohibited. This includes subdivisions for agricultural purposes and the subdivision of any dwellings. Our landowners would not be able to request unrestricted or family lots, a cornerstone of the rights retained when a MALPF easement is purchased.
- There are several items listed on the MALPF Uses Policy that may are not permitted on an easement that contains FRPP language.

- FRPP restricts federal matching funds to properties with less than 50% forested acreage. This requirement limits the properties eligible to participate in the program. MALPF considers forestry a normal agricultural activity; restricting normal agricultural activities on easement property contradicts Maryland statute. If an owner of a federally-funded easement chose to expand woodland to more than 50% of the acreage, the landowner might become out of compliance with the FRPP forestry requirements and MALPF might be required to treat this as an easement violation.
- If there is still a requirement for Office of General Counsel title review for every easement transaction, this would be duplicative. This would add 3-4 weeks to the review time for every transaction. Title reports for all MALPF easement transactions are reviewed by the Maryland Office of the Attorney General.
- Counties that do not currently use the federal land evaluation and site assessment (LESA) scoring system to rank their applicants for MALPF would have to use the LESA system to assess the individual properties. This would put a greater burden on those counties.

Allocation of Funds

The General Assembly approves the MALPF budget and authorizes the appropriation to make offers to applicants. The total amount appropriated for each cycle is split into two equal amounts: 1) General Allotted Funds and 2) State Matching Funds.

The General Allotted Funds ensure that every county will receive an equal share of funds regardless of whether or not the county has current applicants or has committed matching funds. General Allotted Funds are one-twenty-third of one-half of the total funds available for a particular cycle. General Allotted Funds are used to make offers in Round One of each cycle. At the end of Round One, any remaining General Allotted Funds, and the funds allotted to any county that does not have any applicants, will be placed into the Round Two pot.

The State Matching Funds are distributed as explained above. At the end of Round One, any remaining State Matching Funds will be placed into the Round Two pot.

The goal of Round One is to expend as much of the county General Allotted Funds and State/County matching funds within each county as possible.

Round Two uses funds not committed in Round One to make offers to the ranked list of applicants who did not receive a Round One offer. The remaining applicants are ranked on a competitive statewide basis.

Combining Fiscal Years

With a decline in funding levels due to a downturn in the real estate market, coupled with the transfer of Real Estate Transfer Taxes to the General Fund, funding for two fiscal years – FY 2013 and FY 2014 – were combined to conduct one easement acquisition offer cycle and maximize the number of acres to be purchased. We had over $53.5 million available for this cycle. Of this, more than $12 million was county funding used to match state funds at a ratio of

60% state to 40% county dollars. This funding secured acceptances on 91 offers which represent almost 11,199 acres.

The Foundation is currently making offers in its fourth combined cycle, FY 2015 ($15,442,799) and FY 2016 ($17,044,500). If the Foundation were to operate FY 2015 as a single cycle year, $335,713 of the General Allotted Funds would be distributed per county. Combining the easement cycles nets $706,245 per county and is much more likely to secure at least one easement in each county.

MARYLAND ENVIRONMENTAL TRUST

Description and Statutory Authority

The Annotated Code of Maryland, Natural Resources Article, Section 3-201 states, "There is a Maryland Environmental Trust established to conserve, improve, stimulate, and perpetuate the aesthetic, natural, health and welfare, scenic, and cultural qualities of the environment, including, but not limited to land, water, air, wildlife, scenic qualities, open spaces, buildings or any interest therein, and other appurtenances pertaining in any way to the State. Through educational and other means, the Trust shall encourage and motivate the populace of the State and others to do so and shall promote continuing interest in and the study of these matters. The purpose of the Trust is of general benefit to the citizens of the State, and it is charitable in nature."

MET is governed by a board of twelve citizens, elected for four year terms by the Board, plus a representative from each of the Governor, the President of the State Senate, and the Speaker of the House of Delegates. A staff of approximately 10 works to carry out the mission and programs of the Trust.

Sources of Funding

The large majority of MET's conservation easements have been acquired through donations by private landowners. MET does not receive funds from the State budget to acquire easement interests. However, in some recent instances, MET has been granted easements that are purchased using federal Transportation Enhancement Program funds administered through the State Highway Administration. These projects involved protection of scenic land near a Civil War battlefield as well as considerable acreage along the federally designated Chesapeake Country National Scenic Byway. MET is also exploring federal grants through the Department of Defense REPI program to acquire easements near naval facilities in Maryland.

Operating funding is provided through DNR's General Fund budget, a portion of LAP's transfer tax administrative funds, and other sources including private fundraising. MET's private funds are used for education, training, outreach, community involvement, and grants to assist local land trusts.

The General Assembly created the Land Trust Grant Fund ("LTGF" or "Fund") in 1990. [Md. Ann. Code N.R. 3-2A-01.] Pursuant to the statute, the Fund is a non-lapsing revolving fund intended to provide grants to land trusts in the State for the purpose of encouraging the preservation and protection of open space and natural areas. MET was assigned responsibility for administration of the Fund, and the statute authorized outright grants or reimbursable grants or loans. Over the years the LTGF assisted in a number of land conservation projects. In administering the Fund, MET typically provided only a fraction of a project's purchase price, with the balance coming from local community and other private fund sources, thus leveraging the State money. The fund could also be used to offer bridge loans to landowners waiting to receive payment from MALPF or other programs. These projects permanently protected some 2,000 acres through purchased and donated easements to MET and MALPF and helped landowners with cash flow issues while they waited to close on purchases.

Targeting, participation and eligibility

The large majority of MET's conservation easements have been acquired through donations by private landowners. The Maryland Annotated Code (Section 2-118, Real Property) permits the use of conservation easements for conservation purposes, and the Natural Resources Article of the Code (Sections 3-203 and 3-203.1) authorizes MET to accept gifts of real property, including conservation easements. All easements are legally accepted by MET's board, and are approved by the Board of Public Works in most cases.

MET generally considers easements on lands that will yield a significant public benefit such as the protection of a natural habitat or important ecosystem; the preservation of open space (including farmland and forest land) pursuant to a clearly delineated federal, state, or local governmental conservation policy, or that is for the scenic enjoyment of the general public; the preservation of a historically important land area or a certified historic structure; or the preservation of land areas for outdoor recreation by the general public. MET is also committed to promoting the protection of large contiguous areas or corridors of protected open space. Further, MET is now reaching beyond its traditional rural constituencies to conserve critical open spaces within urban and suburban areas.

Program Achievements

MET has partnered with landowners across the entire State of Maryland to acquire and record over 1,070 easements protecting over 132,000 acres. These conservation easements help to ensure the protection of an enormous diversity of the state's natural resources including air and water quality, history and culture, working farms, scenic view sheds, and the communities that depend on them.

Specific Questions included in the JCR

The effectiveness of easement donations in terms of tax expenditures by the state.

Annotated Code of Maryland, Tax General, Section 10-723 allows a credit of $5,000.00 against Maryland income tax assessment per year per individual grantor of a qualified easement, subject to the cap as described below. And according to Maryland Tax Form 502CR, Part F if the property is owned jointly by more than one individual, each individual owner is entitled to the credit based on their percentage of ownership. For example, the credit can be as high as $10,000 per year for a couple. It is not available to grantors that are corporations, trusts and other entities. If the grantor(s) are not able to use the available credit in the year of donation, the credit can be carried over for up to 15 additional years. The credit can never exceed the value of the donation and cannot exceed the $5,000/$10,000 per year limit except in the rare case where there are three or more individual grantors.[5] Therefore, assuming that the grantors have sufficient taxable income to utilize the credit, the maximum available credit for any given donation will be $80,000 for a single taxpayer or $160,000 for a couple over a period of 16 years. The present value of $160,000 over a period of 16 years using a discount rate of five percent is approximately $120,000.

Over the last 10 years, the average MET donated easement acreage was 92. Therefore, assuming all grantors were spouses, all had sufficient taxable income to offset their tax liability by $10,000 per year for 16 years, the maximum cost to the state was $1,300 per acre. Of course it is less because not all grantors had sufficient taxable income to use up the entire credit. Some grantors will die, retire, or move out of the state and will have no tax liability. A substantial number of grantors are not eligible because they are not taxed as individuals. While outright purchase programs remain a vital mechanism for land preservation, donated easements fill a necessary void and are a terrific complement to other programs.

[5] About 25% of the easements donated to MET during the last ten years were donated by a single individual, and the average maximum cost per acre was about $650.00 in tax credits. About 32% were donated by married couples. The average maximum cost per acre was approximately $1,300.00. Over 35% were donated by entities or other grantors not eligible for the credit. The average cost per acre was $0.00. Approximately 8% were donated by two or more individuals who were not spouses. The average cost per acre might be approximately $2,000.00. Thus, the majority of easements would either not generate a credit, or generate a $5,000 per year credit (a single grantor)

General Recommendations

While there were many areas of consensus among all participants – including agreement on major overarching themes – the Administration must note a potential need for flexibility on some of the workgroup recommendations due to the State's continuing structural budget deficit. For that reason, the remainder of the report is broken up into two distinct sections.

The first section will provide the recommendations from the workgroup. The second section will provide the Administration's comments given current law, the continued structural budget deficit, and the need to have flexibility in order to craft a budget that best meets the needs of the State based on the current revenue estimates and budget demands.

SECTION ONE – *Workgroup Recommendations*

The recommendations offered by the workgroup as outlined in this section are offered as a package with the recognition that each recommendation is dependent on all of the others to maintain the endorsement of the workgroup.

Combining State Land Preservation Programs

As described above, each of the five main land preservation programs are unique in their statutory purpose and intent and are administered differently. Run as separate programs, these differences are highly complementary and contribute to the overall State goals for land preservation by focusing on different types of properties. **The workgroup recommends that each program remain independent, with no combination of the State land preservation programs.** Reasons for this recommendation include:

The programs are complimentary programs that work together to preserve large blocks of protected land. For example, Rural Legacy can purchase infill parcels that would not be eligible for funding through MALPF. The combination of different programs makes large landscape protection possible.

Having different programs with different goals, objectives, and criteria allows local governments and land trusts to identify the programs most beneficial to an individual property owner.

Having different programs makes it possible to team up with more partners both for outreach and for matching funding.

Different programs serve land with different characteristics. For example, MALPF relies heavily on prime and productive soils; Rural Legacy places a greater emphasis on streams and woodland.

More choice makes for a stronger program for individual property owners and for the state.

MET is a unique organization that serves a special role as a bridge between private landowners and land conservation programs statewide. Its discrete focus on private landowner conservation through gifts of easements is one avenue for private landowners. MET's independence allows it to leverage public dollars by attracting private sources of funding (from foundations, individual donors, and businesses) to support programs and training that strengthen statewide conservation capacity.

Transfer Tax Allocation Formula

The workgroup recommends that no changes be made to the transfer tax allocation formula as articulated in statute.

Transfer Tax Funding

According to statute, transfer tax revenues are to be allocated to programs as outlined in §13-209 of the Tax-Property Article of the Annotated Code of Maryland. Historically, in many fiscal years transfer tax revenues were transferred from land preservation programs to the General Fund to provide operating budget relief. These transfers are authorized through the passage of Budget Reconciliation and Financing Acts (BRFA). GO Bond funding has been provided in some instances to replace the special funds transferred. (See Appendix 1 and 2)

The recommendation of the workgroup is to return to full PAYGO cash funding of these programs in FY 2018 and remain at full cash funding every fiscal year thereafter. While the BRFA of 2013 has already authorized transfers in FY 2017 and FY 2018, the workgroup recommends transfer tax revenues should only be diverted to the General Fund in 2017, and only to the extent the funds are needed to close the State's remaining structural deficit. The workgroup recommends that GO Bonds may be used for one more year in FY 2017 to replace any funds diverted from programs. The Workgroup also proposes the use of General Funds over a three year period starting in FY 2018 to repay transfers from FY 2016 and FY 2017. Because the recommendation is that no further transfers will be made to the General Fund after FY 2018, there will be no need to authorize GO Bonds to replace transfer tax revenues diverted to the General Fund.

The workgroup recommends legislation in the 2016 legislative session to create a "lock box" type mechanism to stop the diversions of transfer tax special funds to the General Fund. The workgroup notes that a mechanism of this kind was recently put in place for the Transportation Trust Fund.

If all other recommendations are adopted, especially establishment of a lockbox to mandate all PAYGO cash funding to the land conservation programs, the workgroup recommends forgiving the balance of funds owed from prior transfer tax diversions to the General Fund up to and including FY 2015, except for the FY 2006 transfer.

The workgroup, recognizing that statute still requires the repayment of $90 million transferred in FY 2006, recommends that, along with the adoption of the full set of recommendations, a portion of the statutorily owed $90 million should be used over time to fund capital projects on DNR lands, including critical maintenance projects to reduce the current backlog. The workgroup notes that this would be an infusion of funds to address a backlog of DNR Critical Maintenance needs and that, when fully funded, the transfer tax allocation formula provides sufficient funding to address these ongoing needs.

Summary of Workgroup Recommendations

1. **No changes be made to the transfer tax allocation formula as articulated in statute (and as described on page 6 of this report).**

2. **Return to full PAYGO cash funding of these programs in FY 2018 and remain at full cash funding every fiscal year thereafter.**

3. **Do not combine any of the State land preservation programs.**

4. **Transfer tax revenues should only be diverted to the General Fund in 2017 to the extent the funds are needed to close the State's remaining structural deficit.**

5. **GO Bonds may be used for one more year in FY 2017 to replace any funds diverted from programs. The workgroup also proposes the use of General Funds over a three year period starting in FY 2018 to repay transfers from FY 2016 and FY 2017.**

6. **The proposal of legislation in the 2016 legislative session to create a "lock box" type mechanism to stop the diversions of transfer tax special funds to the General Fund.**

7. **A portion of the statutorily owed $90 million should be used over time to fund capital projects on DNR lands, including critical maintenance projects to reduce the current backlog.**

8. **Revise statute to give counties greater flexibility in how they spend their POS Local funding. Specifically, remove the current restriction on POS Local funding that sets aside a percentage only for acquisition. This would require a statutory change. If statute is changed during the 2016 General Assembly, this would begin with the FY17 POS Local funding. Existing POS Local funding (from FY16 back) would still be subject to the current restrictions until expended. The projects funded through POS Local should be based on the needs identified in the LPPRPs using an analytical gap analysis methodology that includes multiple factors (user demand, population density, land and facility distribution).**

9. **DBM, DNR, MDP, representatives from the Maryland Association of County Park and Recreation Administrators (MACPRA), and the Maryland Municipal League (MML) meet to review the apportionment formula that determines the percentage of POS Local funds each subdivision will receive. This group should also review the statutory requirement that a committee meet annually to review and update the apportionment formula. Based on the recommendations of this group, statute should be updated.**

SECTION TWO - Summary of Administration Views

Transfer Tax Allocation Formula

While the Administration recognizes the consensus of the workgroup, there is a continued need for additional operating and capital funding to operate and maintain State forest, park, and wildlife management area lands given the high demand from the public for access to open space and park amenities. The Administration, to meet these needs, may need to examine the percentage of operating and capital maintenance funds received by the Department through the transfer tax allocation formula in the future. Any proposed changes to the transfer tax formula would require a statutory change and so would be evaluated during the legislative session by all parties. Allocating transfer tax funds for operational expenses creates an opportunity to expand and improve visitor experiences at State Parks and other State lands. Public access to nature is one of the most critical outcomes of a strong land preservation program like Program Open Space.

FY 2017 and FY 2018 Authorized Transfers

The BRFA of 2013 has already authorized transfers in FY 2017 and FY 2018. The current projections on the State's structural deficit assume the transfer of $82.8 million in FY 2017 and $86.0 million in FY 2018 from transfer tax funded programs to the General Fund. The Administration further notes that the cumulative out year structural deficit exceeds $900 million for fiscal year 2017 through 2020, even with the recent upward revision of revenues.

Repayment of Transferred Funds

Statute does require payback of transfers – this is found in Tax – Property 13-209 (g) and (h). However, the language in the BRFA which authorizes the transfers includes the words, "notwithstanding any other provision of law," which has the effect of negating the requirement that prior BRFA transfers be repaid in accordance with statute. As the purpose of the BRFA is to balance the budget, it is designed to eliminate any future debt burden related to the one-time actions it takes.

The one exception to this is the $90 million in transfer tax funds transferred in FY 2006. Separate legislation was passed requiring the $90 million transferred to be repaid under certain circumstances and within a certain timeframe with General Funds. That repayment requirement has been deferred in BRFAs over the years. Currently, it is to be repaid beginning in FY 2019 and for each subsequent fiscal year. If the unappropriated General Fund surplus as of June 30 of the second preceding year exceeds $10,000,000, the Governor shall include in the budget bill a General Fund appropriation to the special fund in an amount equal to at least the lesser of $50,000,000 or the excess surplus over $10,000,000.

The Administration concurs with the workgroup recommends that a portion of the statutorily owed $90 million should be used over time to fund capital projects on DNR lands, including critical maintenance projects to reduce the current backlog and projects that will support revenue generation on DNR lands**.** DNR notes that the backlog is currently less than $40 million and staff resources limit the funding that can be spent each year. DBM will make recommendations on the $90 million repayment based on the Critical Maintenance backlog, capacity to spend additional funds, updated revenue estimates and operating budget needs.

Additionally, DBM, as the State’s budgeting agency, will make recommendations regarding any repayment of funds transferred in FY 2016 – FY 2018 based on updated revenue estimates and operating budget needs.

Creation of a Lock Box

The Administration notes that the creation of a "lock box" will hamper the ability of the General Assembly and the Governor to address the State's fiscal problems in periods of economic distress and removes options for balancing future budgets. Further, the Administration would note that the bond rating agencies generally view restrictions on a State's flexibility to address fiscal downturns negatively.

Appendix 1

Capital Funding for Maryland's Land Preservation and Recreation Programs

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Program Open Space Stateside	74.3	27.5	17.9	13.5	8.1	17.5	30.6	22.9	26.1
Program Open Space Local	95.6	18.6	6.1	0.0	6.9	14.3	29.7	22.8	30.1
Rural Legacy Program	20.9	13.5	11.8	6.3	4.5	5.6	13.5	16.0	10.1
MD Ag. Land Preservation Program	44.1	18.6	13.0	7.8	4.4	8.7	19.3	15.2	17.0
DNR Capital Development Programs	29.6	11.6	10.7	4.4	5.1	19.1	9.2	2.9	14.3

**in millions*

***includes Special Funds, GO Bonds, and Federal Funds*

****includes GO Bond premiums in FY 2016*

NOTES:

1) FY 2010 through FY 2013 do not include bond replacements for prior year fund balance transfers that took place in FY 2010 and FY 2011 in order to not double count prior year appropriations

2) FY 2015 includes mid-year reductions of $7.1 million due to a updated transfer tax revenue estimate

Appendix 2

Transfer Tax Revenues, Diversions, and GO Bonds

	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016 est.
Revenues ($ millions)	153.5	113.7	123.4	118.5	121.7	140.4	151.0	163.5	174.5
% Change in Revenues	-27.8%	-25.9%	8.5%	-4.0%	2.7%	15.4%	7.5%	6.6%	8.4%
GF Diversions ($ millions)	0.0	136.5	188.5	23.6	94.5	96.9	89.2	154.7	115.4
GO Bonds ($ millions)	0.0	0.0	172.3	119.6	45.8	86.6	59.4	67.1	87.3

**GF diversions may be higher than revenues due to previous year over-attainment or fund balance transfers*

***includes GO Bond premiums in FY 2016*

SOURCE: Department of Budget and Management