

MEMORANDUM

February 20, 2014

TO: Planning, Housing, and Economic Development Committee

FROM: Jacob Sesker, Senior Legislative Analyst *JS*

SUBJECT: FY15-20 CIP: Agricultural Land Preservation Program
Ag Land Preservation Easements—No. 788911

ATTENDEES

The following individuals will participate (depending upon availability):

- From OMB: Mary Beck, Jahantab Siddiqui
- From DED: Steve Silverman, Peter Bang, Jeremy Criss, John Zawitoski

INTRODUCTION

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

OVERVIEW

Ag Land Preservation Easements—No. 788911 (PDF @ © 1-2)

	Est FY14	FY15-20 Total	FY15	FY16	FY17	FY18	FY19	FY20
Total	\$14.977	\$6.984	\$1.020	\$1.061	\$1.120	\$1.199	\$1.257	\$1.327

Recommended funding source: (See details below) Agricultural transfer tax; Private contributions; Federal aid; G.O. Bonds; Investment income; M-NCPPC Contributions; State aid
Total FY15-20 request: \$5.609

Total FY13-18 approved: \$6.984

Recommended FY15-16 appropriation: \$0.000 (This project is a partial close-out)

SOURCES OF FUNDS

The largest sources of funds for the Agricultural Land Preservation Easements capital program come from two sources: first, the Agricultural Land Transfer Tax, and second, contributions. One of those two sources has been in steep decline, while the other is finite.

The Agricultural Land Transfer Tax is levied when farmland is sold and subsequently removed from agricultural use/status. Montgomery County is permitted to retain 75% of the revenue from the Agricultural Land Transfer Tax to use, in accordance with State law, for the purpose of agricultural land preservation. Revenue from the Agricultural Land Transfer Tax has fallen significantly in recent years, and is now just a fraction of the pre-FY07 revenue level. The FY13-18 CIP was approved with \$2.700 million in Ag Transfer Tax programmed over the 6-year period. In his FY15-20 request, the Executive acknowledges that revenue from the transfer tax will not reach previous levels, and shows only \$1.649 in transfer tax revenue.

	FY15	FY16	FY17	FY18	FY19	FY20	Total	Total FY15-18 only
FY15 Request	0.241	0.253	0.266	0.284	0.304	0.331	1.679	1.044
FY13 Approved	0.427	0.457	0.489	0.532	0	0	1.905	1.905
Change	-0.186	-0.204	-0.223	-0.248	0.304	0.331	-0.226	-0.861

As the table above illustrates, total Ag Transfer Tax revenue over the 4-year period ending in FY18 is down \$861,000.

On the other hand, contributions are increased drastically during the last 3 years of the 6-year CIP, from \$30,000 per year in FY15-17, up to \$464,000 in FY18, \$520,000 in FY19, and \$530,000 in FY20. As a point of comparison, the FY13-18 Approved funded only \$30,000 from contributions; in FY15, the request would fund \$464,000 of the capital cost of the program. **The contribution funds reflect \$1.5 million of the \$2.0 million associated with the Crown Farm annexation (the remainder would be programmed beyond the 6 years).**

Similarly, the FY15 request funds the program with a large spike in investment income for the years FY16 and FY17, from \$0 in FY15 to \$283,000 in FY16 and to \$470,000 in FY17. Recently, investment income has not been sufficient to keep pace with the capital budget expenditures that cannot be funded in the capital budget using other sources of revenues. **The investment income in FY16-18 represents the balance of the principal invested.**

Floating the boat in FY15 and FY16 is the remaining State aid money (\$450,000 in FY15 and \$177,000 in FY16). However, once that money runs out, funding this budget could become even more

challenging. Since most of the GO Bonds issued several years ago and most of the M-NCPPC contribution will have been spent by the beginning of FY15, the Ag Land Preservation Easements Program is still in search of a long-term funding solution.

USES OF FUNDS

The use of the transfer tax revenues is limited by State law and will be used for acquisition of easements. Investment income, contributions, and State aid all represent more flexible sources of funding.

This budget request would actually increase the number of positions funded through the program from 4.2 in the FY13 Approved to 4.7 positions. The great majority of this request would fund positions—for example, in FY15, \$550,000 would fund positions, \$241,000 would fund land acquisition, \$50,000 would fund a partnership with the University of Maryland Extension (down from \$72,000 in FY13), \$20,000 would fund deer donation (down from \$30,000 in FY13), and \$10,000 would fund weed control.

As in FY13, the request includes full funding of an MLS Manager II position. Council resolution 15-744, which established a Council policy for charging personnel costs to agency capital budgets, specifies that positions of Manager II and higher will charge their time to their agency's operating budget. See © 3. The remaining positions funded in the CIP include: 1.0 FTE Sr. Business Development Specialist, 1.0 FTE Business Development Specialist I (vacant), 1.5 FTE Principal Administrative Aides (0.25 of which is vacant), 0.1 FTE Resource Conservation Specialist, and 0.1 FTE Sr. Business Development Specialist).

As the Ag Transfer Tax revenue has declined, so too has the funding for land acquisition—the FY15 request is for \$1.679 million over 6 years, compared to \$2.700 over 6 years in the FY13 Approved CIP. Money available for land declined by approximately 1 Building Lot Termination (BLT) per year as a result of the declining transfer tax revenues. See © 4 for more detail regarding fund balances available for easement purchases.

DISCUSSION

Staff is concerned that this program is overly reliant on declining or unstable sources of funds. While it may be possible to fund individual land preservation easement purchases using supplemental appropriations, the program could likely operate more effectively with cash on hand. For more information regarding open season for BLT purchases, see © 5. Options include funding additional land acquisition with GO Bonds, and freeing up capital budget room for land acquisition by adding positions to the operating budget that are currently in the CIP.

First, Staff recommends moving the MLS II position to the operating budget, then placing additional funds for land in the CIP reconciliation list. Doing so would roughly double the funding available for land acquisition in FY15.

Second, Staff believes that the vacant Business Development Specialist position could serve a critical function in helping agricultural businesses navigate the various County and State agricultural programs and regulations. Given both the responsibilities of the position (Ag Business Navigator) and the

uncertain prospects for filling the position if funded in the capital budget, Staff recommends shifting this position to the operating budget. As a point of reference, DED's Small Business Navigator is funded in DED's operating budget.

STAFF RECOMMENDATIONS

1. Recommend reducing Planning, Design and Supervision (P, D & S) costs by the total personnel costs associated with the MLS Manager II position. The personnel costs should be added to the DED operating budget by the Council, if not by the Executive in his March 15 transmittal.
2. Recommend shifting the vacant Business Development Specialist I position (Agricultural Service Navigator) to DED's operating budget during reconciliation.
3. Recommend adding to reconciliation \$222,000 per year for land acquisition (equivalent to the cost of one BLT).

Attachments:

PDF #788911 © 1-2
Resolution 15-744 © 3
Fund balances—easements © 4
E-mail (BLT purchase period) © 5

F:\Sesker\project files\FY15 CIP\ag land preservation\FY15 CIP ag land PHED 022412.doc

Ag Land Pres Easements (P788911)

Category Conservation of Natural Resources
 Sub Category Ag Land Preservation
 Administering Agency Economic Development (AAGE06)
 Planning Area Countywide

Date Last Modified 1/6/14
 Required Adequate Public Facility No
 Relocation Impact None
 Status Ongoing

	Total	Thru FY13	Est FY14	Total 6 Years	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	Beyond 6 Yrs	
EXPENDITURE SCHEDULE (\$000s)												
Planning, Design and Supervision	5,068	509	629	2,412	3,950	387,680	393,640	399,650	405,680	411,670	417,680	0
Land	8,061	1,796	4,586	3,011	1,879	463,241	475,253	487,266	506,284	526,304	553,321	0
Site Improvements and Utilities	0	0	0	0	0	0	0	0	0	0	0	0
Construction	0	0	0	0	0	0	0	0	0	0	0	0
Other	30	30	0	0	0	0	0	0	0	0	0	0
Total	13,159	2,335	5,215	5,423	5,609	850,871	868,893	887,916	911,944	937,974	970,101	0

FUNDING SCHEDULE (\$000s)											
Agricultural Transfer Tax	4,008	628	1,701	1,679	241	253	266	284	304	331	0
Contributions	1,706	51	51	1,604	30	30	30	464	520	530	0
Federal Aid	522	522	0	0	0	0	0	0	0	0	0
G.O. Bonds	2,000	1,118	882	0	0	0	0	0	0	0	0
Investment Income	815	16	0	799	0	283	470	46	0	0	0
M-NCPPC Contributions	3,050	0	2,150	900	150	150	150	150	150	150	0
State Aid	1,058	0	431	627	450	177	0	0	0	0	0
Total	13,159	2,335	5,215	5,609	871	893	916	944	974	1,011	0

APPROPRIATION AND EXPENDITURE DATA (000s)

Appropriation Request	FY 15	0
Appropriation Request Est.	FY 16	0
Supplemental Appropriation Request		0
Transfer		0
Cumulative Appropriation		17,058
Expenditure / Encumbrances		3,698
Unencumbered Balance		13,360

Date First Appropriation	FY 89
First Cost Estimate	
Current Scope	FY 15 13,159
Last FY's Cost Estimate	21,961

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 Land Transfer Tax, which is levied when farmland is sold and removed from agricultural status. Montgomery County is a State-certified county under the provisions of State legislation, which enables the County to retain 75 percent of the taxes for local use. The County uses a portion of its share of the tax to provide matching funds for State easements. In FY10, the Building Lot Termination (BLT) program was initiated. This program represents an enhanced farmland preservation program tool to further protect land where development rights have been retained in the Rural Density Transfer Zone (RDT). This program utilizes a variety of revenue sources that include: Agricultural Transfer Tax revenues, MNCPPC Contributions, Developer Contributions, and G.O. Bonds to purchase the development rights and the corresponding TDRs retained on these properties. The Department of Economic Development is developing a strategic plan for Phase II of the preservation program and preservation opportunities will be considered as they become available.

Cost Change

Programming of \$150,000 of MNCPPC/Developer Contributions for BLT Program Administration (FY14-20) to offset BLT administrative charges to investment income. Programming of Private Contributions for FY18-FY20 to replace depleted Investment Income for Planning, Design and Supervision project expenses and the addition of FY19 and FY20 project costs. The budget also reflects revised estimates for Agricultural Transfer Tax revenue.

Justification

Annotated Code of Maryland 2-501 to 2-515, Maryland Agricultural Land Preservation Foundation; Annotated Code of Maryland 13-301 to 13-308, Agricultural Land Transfer Tax; and Montgomery County Code, Chapter 2B, Agricultural Land Preservation, and Executive Regulation 3-09 AM.

Other

Ag Land Pres Easements (P788911)

FY15 estimated Planning, Design and Supervision expenditures are \$630,000: 1.0 FTE Sr. Business Development Specialist, ~~1.0 FTE Business Development Specialist-I, 1.0 FTE MLS Manager II,~~ 1.5 FTE Principal Administrative Aides, 0.10 FTE Resource Conservationist; 0.10 FTE Sr. Business Development Specialist; \$20,000 - Deer Donation Program; \$10,000 - Montgomery Weed Control Program; and \$50,000 for the Cooperative Extension Partnership. Appropriations are based upon a projection of Montgomery County's portion of the total amount of Agricultural Transfer Tax which has become available since the last appropriation and State Rural Legacy Program grant funding. Appropriations to this project represent a commitment of Agricultural Land Transfer Tax funds and State Aid to purchase agricultural easements. The Agricultural Transfer Taxes are deposited into an investment income fund, the interest from which is used to fund direct administrative expenses, the purchase of easements, and other agricultural initiatives carried out by the Agricultural Services Division. The program permits the County to take title to the TDRs. These TDRs are an asset that the County may sell in the future, generating revenues for the Agricultural Land Preservation Fund. The County can use unexpended appropriations for this project to pay its share (40 percent) of the cost of easements purchased by the State. Since FY99, the County has received State RLP grant funds to purchase easements for the State through the County. The State allows County reimbursement of three percent for direct administrative costs such as appraisals, title searches, surveys, and legal fees. Given changes to the Federal Program, new Federal Aid funds are no longer programmed in this project.

Fiscal Note

Expenditures do not reflect additional authorized payments made from the Agricultural Land Preservation Fund balance to increase financial incentives for landowners. Terms and conditions regarding contributions from the Montgomery Soil Conservation District (MSCD) will be specified within the Memorandum of Understanding (MOU) between the County and MSCD.

The Executive asserts that this project conforms to the requirements of relevant local plans, as required by the Maryland Economic Growth, Resource Protection and Planning Act.

Coordination

State of Maryland Agricultural Land Preservation Foundation, State of Maryland Department of Natural Resources, Maryland-National Capital Park and Planning Commission, Landowners

Resolution: 15-744
Introduced: September 14, 2004
Adopted: September 21, 2004

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: County Council

SUBJECT: Personnel charges to agency capital budgets

Background

1. As a result of a review of the County agencies budget submissions, the County Council has determined that agencies have followed differing practices as to which personnel are charging to capital projects and which are charging to the operating budget.
2. The Council wishes to apply a consistent policy across County agencies regarding personnel charges to capital projects.

Action

The County Council for Montgomery County approves the following resolution:

As of July 1, 2006 a staff-person will charge time to a capital project only if he/she is engaged on a regular and direct basis in the planning, designing, building, inspecting, or acquiring of land or right-of-way for the project. A manager who directly reviews and/or oversees the work of such a staff-person as a supervisor may charge to the CIP, provided he/she substantially contributes to the delivery of the same services or directly engages in similar planning, design, construction, inspecting, or land acquisition activities (at least 60% of his/her time) as the staff person. Other more removed managers will charge their time to the agency's operating budget.

Specifically, the following positions will charge their time to their agency's operating budget:

County Government: Manager II and higher;
Montgomery County Public Schools: Grade Level M and higher;
Montgomery College: Director for Capital Planning, Design, and Construction; and
Maryland-National Capital Park and Planning Commission: Chiefs of the Project Management, Design, and Construction Sections.

These changes will be reflected in the Approved FY 2007 Capital and Operating Budgets and the FY 2007-2012 Capital Improvements Program.

This is a correct copy of Council action.



Mary A. Edgar, CMC
Clerk of the Council

Ag Transfer Tax

Total Ag Tax Fund Balance as of 11/27/2013	
Encumbrance #	Total Ag Tax
Purchase Order #1037012	\$1,431,683.00
Hartsock BLT - PO #1037012	<u>\$506,250.00</u>
Amount Remaining after Hartsock	\$925,433.00
Our House BLT - PO #1037012	<u>\$759,375.00</u>
Amount Remaining after Our House	\$166,058.00
Total Ag Tax Fund Balance as of 2/18/2014	\$166,058.00

Charles and Bertha Stanley (Settlement 3/6/2014)	
Encumbrance/ Purchase Order #1037012	\$166,058.00
Amount of G.O. Bonds needed for Stanley settlement	\$570,817.00

G.O. Bonds

G.O. Bond Fund Balance as of 2/18/2014	\$883,168.00
Minus G.O. Bonds earmarked for Stanley Settlement	<u>\$570,817.00</u>
	\$312,351.00

G.O Bond Balance after 3/6/2014 - Stanley settlement	\$312,351.00
--	--------------

MNCPPC Contributions as of 2/18/2014	\$3,235,675.00
--------------------------------------	----------------

Fund Balance Available for BLT Easement Acquisitions for Feb 1- Apr 1 open purchase period

Agricultural Transfer Tax	0
G.O.Bonds	\$312,351.00
MNCPPC Contributions	\$3,235,675.00
	<u>\$3,548,026.00</u>
# of BLT's that can be purchased if Avg BLT Value is \$245,000	14

Sesker, Jacob

From: Criss, Jeremy
Sent: Thursday, January 30, 2014 11:56 AM
To: Criss, Jeremy
Cc: Zawitoski, John
Subject: FY14-15 Building Lot Termination Program Open Purchase Period

Hello Everyone,

The Agricultural Services Division of the Montgomery County Department of Economic Development will open a Purchase Period for the Building Lot Termination Program beginning on February 1, 2014 and will close at the end of business on April 1, 2014.

No applications can be received prior to February 1, 2014 or after April, 1, 2014.

The application for the Building Lot Termination Program is available from the Agricultural Services Website at the following link:

Application for the BLT Program:

http://www.montgomerycountymd.gov/agservices/resources/files/BLT_Files/blteaseappl.pdf

To be eligible for the BLT program:

1. Property must be zoned Rural Density Transfer
2. Property must have retained Transferrable Development Rights with the land to support a dwelling or dwellings on the property.
3. Must have a County approved on-site waste disposal system (Perc Test) for each development right proffered for BLT purchase.
4. Soils on the property must comprise at least 50% Class I, II, or III, soils (USDA Soil Capability Classification System -Prime and Productive Soils) DED assists the landowner in making this determination)
5. Property must be at least 50 acres unless DED and the Agricultural Preservation Advisory Board determine the property contains significant agricultural resources worthy of protection.

Once the purchase period closes, DED will then analyze each applicant's property to determine eligibility and provide a ranking to the Agricultural Preservation Advisory Board (APAB).

The APAB will make a recommendation to the Director of Economic Development for recommending BLT purchase offers based on the BLT ranking system. The Director will make a determination and direct staff to make offers to qualified applicants from the ranking provided by the APAB.

Landowners wishing to discuss the property in context with the BLT program can contact John Zawitoski (301-590-2830) or via email at john.zawitoski@montgomerycountymd.gov

He will be happy to answer any questions you may have regarding this program.

It should be recognized that it is very likely that there will be more applicants than funding available and therefore not every applicant can be funded. Any applicant not funded during this open purchase period will be automatically enrolled in subsequent open purchase periods unless applicants wish to be removed from consideration.

Jeremy V. Criss
Agricultural Services Manager
Department of Economic Development
Agricultural Services Division
18410 Muncaster Road
Derwood, Maryland 20855
301-590-2830
301-590-2839 (Fax)
jeremy.criss@montgomerycountymd.gov
<http://www.montgomerycountymd.gov/agservices>