

**Martin O'Malley**

Governor

**Anthony G. Brown**

Lieutenant Governor

**Earl F. Hance**

Secretary of Agriculture

**Vera Mae Schultz**

Acting Chair, MALPF Board of Trustees

Maryland Department of Agriculture

# The Maryland Agricultural Land Preservation Foundation

Annual Report 2008

---

50 Harry S. Truman Parkway, Room 104, Annapolis, Maryland 21401

09/22/2009

MDA 11.02.09

---



# Maryland Department of Agriculture

Agriculture | Maryland's Leading Industry

Office of the Secretary

**Martin O'Malley**, Governor  
**Anthony G. Brown**, Lt. Governor  
**Earl F. Hance**, Secretary

The Wayne A. Cawley, Jr. Building  
50 Harry S. Truman Parkway  
Annapolis, Maryland 21401  
TTY Users: Call via Maryland Relay  
Internet: [www.mda.state.md.us](http://www.mda.state.md.us)

410.841.5700 Baltimore/Washington  
301.261.8106 Washington, D.C.  
410.841.5914 Fax  
800.492.5590 Toll Free

## MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION September 22, 2009

The Honorable Martin O'Malley, Governor  
The Honorable Thomas V. Miller, Jr., President of the Senate  
The Honorable Michael E. Busch, Speaker of the House

Gentlemen:

We are pleased to present the Annual Report of the Maryland Agricultural Land Preservation Foundation for Fiscal Year 2008. Maryland is a national pioneer and leader in land preservation, and the Foundation's program represents the core of the State's preservation efforts. The Foundation was created more than thirty years ago in 1977 to implement one of the first state farmland preservation programs in the country. Combining the Foundation's and other State programs and the local programs of county partners, Maryland has preserved more prime farmland than any other state in the country. Maryland has met its Chesapeake 2010 land preservation goal two years early and continues to make progress towards its statutory goals to be achieved by 2022.

As of July 1, 2008, the Maryland Agricultural Land Preservation Foundation purchased or has offers pending to purchase perpetual preservation easements on 2,005 farms, totaling 274,947 acres. Since the FY 2007 Five-Year Annual Report, the Foundation purchased or acquired an option to purchase an additional 77 perpetual preservation easements on approximately 9,685 acres.

The Foundation's mission is to perpetuate a viable agricultural industry and help curb sprawl development by preserving a critical mass of Maryland's productive farmland. With the strong support of the Governor's Office, the General Assembly, the agricultural community, and Maryland's citizenry, we will continue our efforts by focusing on protecting the best quality farms, building on existing preservation areas to increase the size of contiguous blocks of preserved farmland, and finding additional incentives to bring critical farms into the Program. With the Foundation's county partners, we will work to maintain the agricultural support structure and direct development away from agricultural areas.

Your continued support allows us to protect more of this precious land as development pressures increase. Once farmland and woodland are lost to development, they are unlikely ever to return to productive agricultural use. We thank you for your past support, and we ask for your continued support into the future.

Sincerely,

Vera Mae Schultz  
Acting Chair, MALPF Board of Trustees

Earl F. Hance  
Secretary of Agriculture

James A. Conrad  
Executive Director

# Table of Contents

---

Overview	
Introduction .....	1
Program Administration .....	1
Eligibility Requirements .....	2
Landowners in the Program .....	3
Selling an Easement.....	3
Applications to Sell Easements.....	5
Continued Increase in Per Acre Acquisition Costs .....	5
Program Funding.....	8
New Regulations and Policy Recommendations and Changes	
Introduction .....	10
Reports: General Program Reviews with Policy Recommendations	
Report on the Aging of Rural Agricultural and Open Space Landowners and the Potential Impact on Land Conservation Goals.....	10
Reports: Specific Program and/or Policy Reviews Required by Law	
Audit of the Maryland Agricultural Land Preservation Fund, FY 2007 .....	12
Other Reports	
The Schaefer Center for Public Policy, "Maryland Policy Choices" .....	16
MALPF, Annual Monitoring Report, FY 2008 .....	17
Policy Reviews, Recommendations, and Changes Undertaken by MALPF Staff and of Trustees	
Overlay Easement Issues	
Introduction .....	20
Groundwater Recharge Easement Overlay.....	21
Forest Mitigation Easement Overlay .....	22
Young Farmer's Advisory Board Representative .....	25
Tenant House – Size Regulations.....	26
Appraisal and Applications Cap (FY 2009).....	27
Energy Production on MALPF Properties	
Wind and Solar .....	29
Natural Gas Rights.....	29
Coal Rights.....	30
Charitable Donations Policy .....	31
Acceptable Uses of MALPF Properties	
Introduction .....	33
New Regulations .....	33
General Uses Policy .....	34
Equine Uses Policy.....	36
Winery and Vineyard Uses Policy .....	37
Uses Tables .....	42
Conclusions .....	62
Cooperative Arrangements with Other Agencies and Programs	
Rural Legacy Program, Maryland Department of Natural Resources .....	66
Maryland Department of General Services.....	67
Farm and Ranch Lands Protection Program.....	68
Installment Purchase Agreement Program - Maryland Agriculture and Resource Based Industry Development Corporation.....	72
Next Generation Farmland Acquisition Program - Maryland Agriculture and Resource Based Industry Development Corporation.....	75

Legislation Relating to Agricultural Land Preservation Issues - 2008 Legislative Session	
House of Delegates Legislation .....	77
Senate Legislation .....	77
House of Delegates and Senate Legislation (cross-listed bills) .....	80
Farmland and Other Land Preservation in Maryland	
Introduction .....	84
Chesapeake Bay Agreement - Chesapeake 2000 .....	84
Maryland General Assembly Joint Resolution 16 (2002) .....	85
Maryland's Protected Lands Data .....	86
Certification of County Agricultural Land Preservation Programs	
Introduction .....	88
New Certification Regulations .....	88
Audit Concerns with Certification .....	95
Individual County Certifications (FY 2008).....	96
Howard County (Withdrawal of Certification).....	96
Calvert County (Recertification).....	98
Kent County (Recertification).....	99
Frederick County (Recertification).....	100
Carroll County (Recertification) .....	101
Queen Anne's County (Recertification) .....	102
Wicomico County (Recertification).....	103
Worcester County (Recertification) .....	104
Prince George's County (New Certification) .....	105
Summary .....	107
Data on the Maryland Agricultural Land Preservation Program.....	109
Easement Participation - Acreage (FY 2008) .....	110
Easement Acquisition Program - Values (FY 2008).....	115
Easement Acquisition Program - Historical Perspective .....	119
District Participation (FY 2008) .....	124
Preservation versus Conversion .....	130
Board of Trustees.....	133
Agricultural Land Preservation Advisory Board Chairs .....	134
County Program Administrators .....	135
MALPF Staff .....	136
Tables	
Applications by Landowners to Sell an Easement to MALPF (FYs 2003-2008).....	7
Proposed Guidelines for Certain Amendments to MALPF Easements	
(Draft "Charitable Donations" Policy).....	32
Guidelines for Uses of Land in the MALPF Program .....	42
Supplemental Guidelines for Horse Farm and Horse Farm-Related Uses of	
Preserved Properties .....	49

Supplemental Guidelines for Vineyard, Winery, and Winery-Related Uses of Preserved Properties .....	52
Total Acreage Preserved by the Rural Legacy Program .....	66
Update: Co-held MALPF/Rural Legacy Easements .....	67
Number of Pending Easement Settlements .....	68
MALPF Easements with Federal Matching Funds by Grant Agreement (1996-2008) .....	73
MALPF Easements with Federal Matching Funds by County (1996-2008) .....	74
Conservation Goals and Accomplishments (through January 1, 2009) .....	84
Maryland General Assembly Joint Resolution 16 (2002) - Prime Agricultural Land .....	85
Lands Protected and Developed in Maryland (January 1, 2009) .....	87
Status of Certified Counties as of June 30, 2008 (State Certification) .....	108
Easement Participation (FY 2008) .....	111
Regional Analysis: Percentage of Total Easement Acreage (FYs 2002-2008).....	112
Average Size of Newly Protected Farms (FYs 2002-2008) .....	115
Easement Acquisition Costs and Values: Per Acre Summary (FYs 2002-2008) .....	115
Easement Acquisition Costs and Values: Relative Percentages (FYs 2002-2008) .....	116
Value of Discounting in Easement Acquisitions (FYs 2002-2008) .....	117
Easement Acquisition Program (FY 2008) .....	118
Easement Acquisition Program - Historical Perspective (FYs 1977-2008) .....	121
Easement Preserved and Acquisition Funding (FYs 1980-2008) .....	122
Maryland County Agricultural District Programs (as of March 2009) .....	125
District Participation (FY 2008) .....	126
Regional Analysis: Percentage of Total District Acreage (FYs 2002-2008).....	127
Annual Change in Preserved Farmland versus Converted Farmland (FYs 1980-2008) .....	131

#### Charts and Graphs

Per Acre Easement Value and Acquisition Costs (FYs 2002-2008) .....	6
Funds Available for Easement Offers (FYs 2003-2008).....	9
Public Attitudes towards Farmland Preservation (2005-2009) .....	16
Site Inspections as a Percentage of Total Properties (FY 2003-2008).....	17
New Easements (FYs 2002-2008).....	113
Cumulative Easement Totals (FYs 2002-2008).....	113
Net New Easement Acreage (FYs 2002-2008).....	114
Cumulative Total Preserved Acreage (FYs 2002-2008).....	114
Offers Accepted and Rejected (FYs 1994-2008) .....	120
Offers Accepted (percentage) (FYs 1977-2008) .....	123
New and Terminating Districts (FYs 2002-2008) .....	128
Acreage of New and Terminating Districts (FYs 2002-2008) .....	129
Preservation versus Conversion of Agricultural Land (FYs 1980-2008).....	132
Preservation versus Conversion of Agricultural Land - Net Difference (FYs 1980-2008).....	132

#### Photographs

Horses and Stables, St. Mary's County .....	Cover
Board of Trustees, Maryland Agricultural Land Preservation Foundation .....	133
Staff, Maryland Agricultural Land Preservation Foundation .....	136

#### Maps

Map of Protected Lands in Maryland (FY 2008) .....	137
The map of Maryland's protected lands was produced by Graham Petto of the Maryland Department of Planning and is provided for illustrative purposes only.	

## Updated and Supplemental Information Online

Current Fact Sheets about the MALPF Program

<http://www.malpf.info/facts.html>

Maryland Annotated Code Applying to MALPF

<http://www.malpf.info/laws.html>

Code of Maryland (COMAR) Applying to MALPF

<http://www.malpf.info/laws.html>

Schedule and Agendas for MALPF Board Meetings

<http://www.malpf.info/agendas.html>

Minutes of MALPF Board Meetings

<http://www.malpf.info/minutes.html>

MALPF Model Deeds of Easement

<http://www.malpf.info/laws.html>

MALPF-related Reports

<http://www.malpf.info/reports.html>

MALPF Forms

<http://www.malpf.info/forms.html>

MALPF Audit Reports

[http://www.ola.state.md.us/top\\_pgs/Publications/pubs\\_AGENCY\\_AGLAND.html](http://www.ola.state.md.us/top_pgs/Publications/pubs_AGENCY_AGLAND.html)

Rural Legacy Program, Department of Natural Resources

<http://www.dnr.state.md.us/rurallegacy/index.asp>

Farm and Ranch Lands Protection Program, USDA

<http://www.nrcs.usda.gov/programs/frpp/>

Maryland Agriculture and Resource Based Industry Development Corporation

<http://www.marbidco.org>

Maryland General Assembly - Information on Legislation

<http://mlis.state.md.us>

Maryland Department of Natural Resources Maryland's Protected Lands Data

<http://dnrweb.dnr.state.md.us/gis/plreports/report.asp>

Maryland StateStat

<http://www.gov.state.md.us/statestat/index.asp>

Maryland BayStat Chesapeake

<http://www.baystat.maryland.gov/>

Maryland AgPrint

<http://www.agprint.maryland.gov/>

Maryland GreenPrint

<http://www.greenprint.maryland.gov/>

Most Recent MALPF Easement Participation and Acquisition Data

<http://www.malpf.info/data.html>

Current Board of Trustees Membership

<http://www.malpf.info/board.html>

Current MALPF County Program Administrator Contact Information

<http://www.malpf.info/PAcontact.html>

Maryland Environmental Trust

<http://www.dnr.state.md.us/met/>

The Maryland Environmental Trust's Land Conservation Center

<http://www.conservemd.org>

# Program Overview

---

## *Introduction*

The Maryland Agricultural Land Preservation Foundation (MALPF) was created in 1977 by the Maryland General Assembly and is an agency within the Maryland Department of Agriculture. The Foundation purchases agricultural land preservation easements that forever restrict development on prime farmland and woodland. MALPF settled on its first easement in October 1980.

Including FY 2008 funds, MALPF has now cumulatively purchased or has a pending contract to purchase permanent conservation easements on over 2,000 farms covering about 275,000 acres. The Foundation has preserved farmland in each of Maryland's 23 counties. Today, the Foundation manages a public investment of about \$550 million dollars in permanently preserved land, valued at about \$1.8 billion at current acquisition costs.

MALPF is one of the oldest and most successful programs of its kind in the nation. Through MALPF, the State's Rural Legacy and GreenPrint Programs, and the county agricultural land preservation programs, Maryland has preserved more productive agricultural land in perpetuity than any other state in the country (over 530,000 acres and more than 8.5% of the State's land base).

The mission of the Foundation is to preserve productive farmland and woodland for the continued production of food and fiber for all present and future citizens of the State. The preservation of agricultural land helps to curb the expansion of random urban development, protects wildlife habitat, and enhances the environmental quality of the Chesapeake Bay and Coastal Bays and their many tributaries.

## *Program Administration*

The Maryland Agricultural Land Preservation Foundation is governed by the Agriculture Article, §§2-501-2-515 of the Annotated Code of Maryland. A thirteen-member Board of Trustees and a staff of seven administer the Program. The Board includes the Secretaries of Agriculture and Planning and the State's Treasurer and Comptroller, all of whom serve as *ex-officio* members. The other nine members of the Board serve "at-large" and come from various regions of the State and different kinds of agriculture. These nine members are appointed by the Governor and serve a term of four years with one reappointment possible. At least five of the at-large members are farmer representatives. Individual members represent the Maryland Agricultural Commission, the Maryland State Grange, the Maryland Farm Bureau, the Young Farmers' Advisory Board, and the Maryland forestry industry. The Governor appoints the Chair of the Board of Trustees from among the nine at-large members.

Responsibilities of the Foundation's Board of Trustees include providing information to landowners and other Maryland citizens; offering assistance to the twenty-three Agricultural Land Preservation Advisory Boards; developing, applying, and evaluating Program rules, regulations and procedures; and acquiring, by purchase or donation, agricultural land preservation easements on productive agricultural land.

The Program is based on a partnership with local governments. Each local government appoints a five-member (in Worcester County, a seven-member) agricultural land preservation advisory board to assist the Foundation by providing information about the Program; assisting with the creation of Program rules, regulations and procedures; creating agricultural land preservation districts, and setting priorities in the purchase of perpetual easements. No easement purchase is approved by MALPF that has not already been reviewed and approved by the county in which the property is located.

Each county also has a county employee designated to be the program administrator to act as the primary contact with and liaison between the agricultural community and the Foundation. County program administrators also have day-to-day responsibility for monitoring MALPF properties, helping landowners prepare applications and subsequent requests, and advising landowners on MALPF and other programs available to help landowners seeking to preserve their properties.

### *Eligibility Requirements*

The central long-term objective of the Program is to preserve enough prime agricultural land in perpetuity to guarantee the continuing vitality of Maryland's agricultural industry. Landowners voluntarily offer restrictive easements to be purchased by the Foundation on their properties.

To qualify for participation in the program, a property must meet minimum size, soil productivity, and location criteria.

- The property must be at least fifty contiguous acres in size. A property smaller than fifty acres may qualify to participate if it meets certain requirements or is adjacent to land already enrolled in the Foundation's Program or a program with similar restrictions, and together they compose a contiguous block of protected land of fifty acres or more.
- The property must contain at least fifty percent of its soils classified as USDA soil capability Class I, II, or III and/or Woodland Group 1 or 2. Soils with these classifications are considered prime and are capable of producing agricultural commodities with reasonable yields and returns to ensure continuing profitability. Because of changes to the soil survey conducted by the United States Department of Agriculture, MALPF will soon be updating its regulations on the woodland soil groups to reflect changes in the classification of productive woodlands.
- The property must be outside any

ten-year water and sewer service plan, unless it is documented to have extraordinary productive capability and is of significant size.

Until July 1, 2007, a landowner with an eligible parcel would petition the county to create an *agricultural preservation district*. A district is land on which the owner is willing to commit to agricultural use for a minimum of five years by recording a District Agreement with the Foundation recorded among the county land records restricting the subdivision and development of the land and preventing commercial, industrial, or residential use during the term of the Agreement. Under the Agreement, farm and forestry production is encouraged and protected.

The district commitment established the property's eligibility and was a precondition for the owner to sell a permanent agricultural conservation easement to the Foundation until July 1, 2007. With House Bill 1331 (2007 Legislative Session), counties now have the option to require a two- to ten-year county District Agreement as a precondition for approval of an application to the Foundation or require no district commitment at all.

State agricultural districts are being phased out and are no longer a requirement for participation in the MALPF Program unless required by the county in which the farming property is located. Starting July 1, 2008, MALPF will no longer accept district petitions to establish State agricultural districts. All State District Agreements will be terminated on June 30, 2012.

Some county partners also offer property tax credits for landowners who record District Agreements on their land. Recognizing agriculture as the preferred use of the property by the county in a document recorded among the county land records may bolster any case a landowner undertaking normal agricultural activities can make against nuisance suits. Some counties have chosen to continue or adopt a county district program as part of the county's land preservation efforts.

## *Landowners in the Program*

Owners of eligible farmland and/or woodland can sell an agricultural land preservation easement on their properties to ensure that the properties remain in agriculture forever.

An *agricultural land preservation easement* is a legal contract between a landowner and MALPF that provides for the perpetual preservation of the landowner's property by restricting the property to agricultural use, requiring good stewardship of the land, and allowing the retention of limited and explicitly defined development rights. After signing, the deed of easement is recorded among the county land records so all future owners of the property will be aware of the easement and will be bound by its terms and provisions.

Selling an easement primarily extinguishes the right to develop the property for residential, non-agricultural commercial, and industrial use, with limited exceptions. The property continues to be owned privately. It may be bought, sold, leased or inherited without interference, as with all other land, but always subject to the recorded restrictions. MALPF, in purchasing the easement, agrees to monitor the property forever to ensure compliance with the terms of the easement. No public access is required by such an easement.

Landowners have sold their easements for many purposes, including:

- To finance the purchase of the land or additional agricultural land;
- To fund retirement;
- To plan or settle an estate;
- To finance the improvement of an existing agricultural operation;
- To invest in the production and marketing of new agricultural products;
- To finance the restoration of an historic home; and/or
- To pay down existing debt.

## *Selling an Easement*

Starting July 1, 2007, a landowner may apply to sell an easement to MALPF

without having established an agricultural land preservation district, unless required by the county where the land is located. Easement purchases are made through a competitive application process. Local governments rank properties relative to other county properties applying to the Program. MALPF makes offers to purchase easements based on these rankings and available funding.

When applying to sell an easement to the Foundation, landowners must include their *asking price*. The maximum amount that MALPF can pay for an easement is the landowner's asking price, the easement value, or a price cap determined by the county, whichever is the lowest. A property's *easement value* is determined by subtracting its *agricultural value* from the appraised fair market value. (See the Easement Value Formula text box below.)

Depending on the location of the property, the Foundation has in recent years paid from \$800 to more than \$10,000 per acre for agricultural preservation easements. Those who sell an easement for less than the full easement value may qualify under IRS guidelines for certain tax benefits.

County ranking systems follow State guidelines emphasizing the quality of the property, the importance that property may have for the county's strategic land-use objectives, contiguity to other preserved properties, and the willingness of the landowner to discount the asking price from the easement value. Each county ranking system weights the relative importance assigned to each of these elements of ranking, but cannot use only one of these elements to rank its properties. Each county's ranking system is reviewed and approved by the county's governing authority and the MALPF Board of Trustees.

The Foundation continues to use the discount ratio for any offers made during the second statewide round, when the county allocation of funds has been exhausted. Properties are ranked by a ratio determined by dividing the landowner's asking price by the appraised easement value. A ratio of less than 1.0 indicates that the landowner is willing to sell an easement for less than the ap-

praised easement value, letting MALPF purchase the easement at a discount. The landowner who offers the best discount to the State is ranked first. Discounting maximizes the number of easement acres the State can acquire during the second round.

The Foundation's offer to purchase an agricultural land preservation easement on any property depends on county approval and prioritization of the applications to sell an easement, available funds, and approval from the Maryland Board of Public Works.

Offers are generally made to landowners starting March or April to the end of the fiscal year, following the application deadline of the first day of that fiscal year, July 1. Settlement generally takes place two to eight months after the landowner accepts the offer by signing an option contract. Settlement may take longer if survey work is needed, acreage must be verified, additional owner signatures are needed, financial institutions or third party interests are discovered, or unforeseen title problems are identified. The Foundation continually evaluates ways to shorten the time to go to settlement.

Since 1985, the Foundation has required a Soil Erosion and Water Quality Plan for each property submitted for easement sale. The required plan identifies existing soil conservation and water quality problems on the land and recommends best management practices or other conservation measures necessary to address them and a schedule for implementation. The landowner is responsible for implementing the plan according to the schedule contained within the plan

if an easement is purchased on the property. The implementation responsibility is included in the recorded Deed of Easement as a special condition. As a result, the amount of land protected from erosion is increased, potential yield is protected, and the flow of sediment into neighboring streams, rivers, and ultimately the Chesapeake Bay is reduced or eliminated.

A Forest Stewardship Plan is required prior to settlement of the easement on properties having 25 or more contiguous acres in woodland. Though properties are not currently required to be in compliance with the Nutrient Management Program before an agricultural preservation easement is settled, such a requirement is under discussion for possible adoption in the near future.

Once preserved by MALPF, the rights the original seller of the easement retains typically include the right to construct a house for his or her personal use and/or the use of a child, subject to certain restrictions (such as location review, density requirements, and county approval). Easements sold by non-family corporations retain the right to construct an owner's house on the property as long as the corporation or the property does not transfer. Non-family corporations do not retain the right to construct houses for the use of children.

As of October 1, 2003, a landowner may choose one unrestricted lot whose dwelling right will survive the sale of the farm, or up to three family lots (owner and children), dwelling rights that do not survive the sale or transfer of the property.

**Easement Value Formula:**

<b>Appraised Fair Market Value (less)</b>	<b>Agricultural Value (equals)</b>	<b>Easement Value</b>
<p>The <i>appraised fair market value</i> is determined by at least two appraisals conducted by the State and any appraisal submitted by the landowner, if included with the application. The Department of General Services reviews the appraisals for the quality of their methodology to determine the preferred appraisal. Appraisal information is not publicly available during the easement acquisition cycle to which the appraisal applies, though it can be requested by the owner of the appraised property.</p>	<p>The <i>agricultural value</i> is determined by a statutory formula that calculates a land rent based on soil productivity.</p>	<p>The <i>easement value</i> establishes the maximum compensation a landowner can be offered by the Foundation to purchase an agricultural land preservation easement.</p>

## *Applications to Sell Easements*

The Maryland Department of General Services contracts with two independent fee appraisers to estimate the fair market value of each approved applicant's property, not including improvements. Properties with fewer than 50 acres are appraised as if they were part of a 50-acre parcel.

The Office of Real Estate in the Department of General Services reviews each appraisal and recommends to the Foundation the appraisal that best represents the property and adheres to the appraisal specifications set by the Foundation and included in its contract agreement with the appraiser.

The number of easement applications submitted to MALPF has varied widely over the history of the Program. The number of applications has been particularly affected by funding availability from year-to-year. In past years, landowners were less willing to commit to a five-year District Agreement limiting the options available for their farms during periods of significant funding uncertainty.

When Program funding returned to normal in FY 2006, MALPF staff held meetings statewide to solicit potential applicants. The number of applications to sell easements increased quickly in response. For FY 2007, MALPF received 325 applications. For FY 2008, MALPF received a record number of easement applications of 444. All 444 applications received to sell an easement for the FY 2008 Easement Acquisition Program were approved and appraised for possible easement sale.

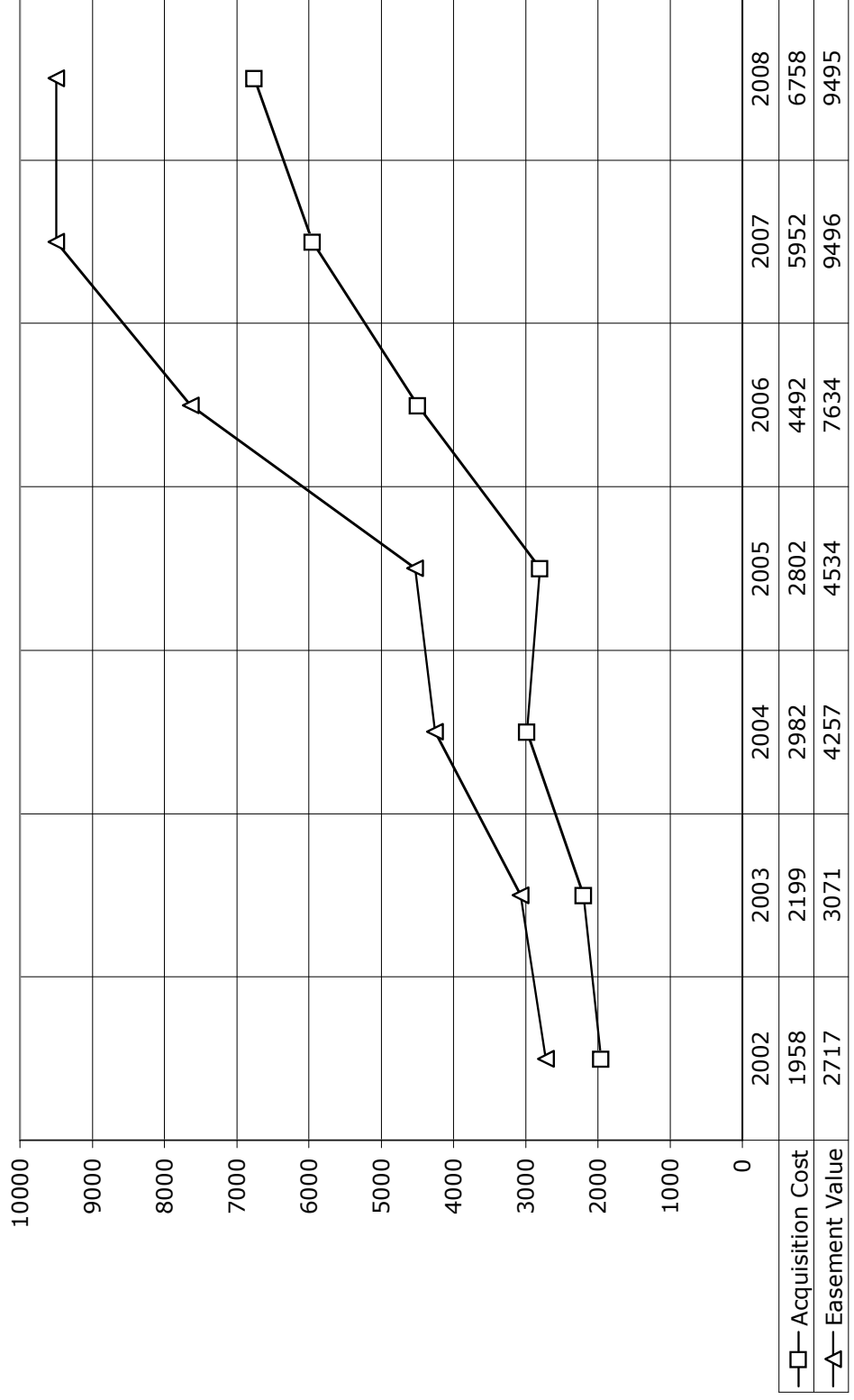
The Foundation made 77 easement offers that were accepted by landowners applying in the FY 2008 easement acquisition cycle. The Foundation acquired these easements for \$26,504,282 less than the total combined easement values because of competitive bidding. The total acquisition cost for FY 2008 was \$65,454,030 with an average per acre acquisition cost of \$6,758.

## *Continued Increase in Per Acre Acquisition Costs*

The data from the FY 2008 easement acquisition cycle show that the rapid increase in Maryland real estate market values since FY 2002 has now reached a plateau. The average per acre appraised fair market value reached a high in FY 2007 of \$10,341, and the average per acre easement value reached a high the same year of \$9,496. In FY 2008, both of these values remained at almost the same level, with the appraised per acre fair market value at \$10,303 and the average per acre easement value at \$9,495.

Though real estate values are leveling off, acquisition costs continued to increase for the last year. Average per acre acquisition costs rose from \$5,952 in FY 2007 to \$6,758 in FY 2008, an increase of \$806 per acre or 13.5%. This is consistent with the expectation expressed in the last Annual Report that stated the expectation that acquisition costs were likely to continue to increase somewhat, even after real estate values flatten out, because of the reduced emphasis on discounting in the ranking process. However, given the stagnant state of the real estate market, acquisition costs are expected to flatten out in FY 2009.

**Per Acre Easement Value and Acquisition Costs**  
(FYs 2002-2008)



**Applications by Landowners to Sell an Agricultural Conservation Easement to the  
Maryland Agricultural Land Preservation Foundation  
(FYs 2003-2008)\***

County	FY 2003		FY 2005		FY 2006		FY 2007		FY 2008		TOTALS (FYs 2003-2008)	
	Received	Approved	Received	Approved	Received	Approved	Received	Approved	Received	Approved	Received	Approved
Allegany	0	0	0	0	0	0	1	1	5	5	6	6
Anne Arundel	3	3	0	0	0	0	1	1	1	1	5	5
Baltimore	29	29	17	8	11	11	20	20	26	26	103	94
Calvert	3	3	0	0	0	0	0	0	0	0	3	3
Caroline	37	35	13	13	12	11	41	41	55	55	158	155
Carroll	22	21	16	15	13	13	23	23	36	36	110	108
Cecil	15	15	6	6	3	3	24	24	29	29	77	77
Charles	10	9	3	3	13	13	12	12	14	14	52	51
Dorchester	33	23	8	8	8	8	7	7	14	14	70	60
Frederick	21	21	8	7	2	2	20	20	30	30	81	80
Garrett	3	3	4	4	2	2	5	5	3	3	17	17
Harford	12	8	2	2	2	2	5	5	14	14	35	31
Howard	2	2	3	3	0	0	1	1	0	0	6	6
Kent	17	17	12	11	12	12	25	25	24	24	90	89
Montgomery	3	3	0	0	1	1	3	3	1	1	8	8
Prince George's	1	1	2	2	0	0	3	3	5	5	11	11
Queen Anne's	33	33	5	5	1	1	20	20	46	46	105	105
St. Mary's	33	26	12	10	15	15	33	33	41	41	134	125
Somerset	7	5	2	2	0	0	22	22	24	24	55	53
Talbot	22	22	13	13	10	10	21	21	31	31	97	97
Washington	36	11	20	16	12	12	24	24	24	24	116	87
Wicomico	6	6	3	3	0	0	5	5	5	5	19	19
Worcester	8	8	4	4	6	6	9	9	16	16	43	43
<b>TOTALS</b>	<b>356</b>	<b>304</b>	<b>153</b>	<b>135</b>	<b>123</b>	<b>122</b>	<b>325</b>	<b>325</b>	<b>444</b>	<b>444</b>	<b>1401</b>	<b>1330</b>
<b>AVERAGE NUMBER OF RECEIVED AND APPROVED APPLICATIONS (not including FY 2004):</b>											<b>280</b>	<b>266</b>

\* No applications were accepted in FY 2004. "Received" applications are all applications submitted by landowners by the July 1 deadline. "Approved" applications are the applications that met all conditions for participation in the Program and received approvals by county and State authorities to be considered for funding. An "approved" application does not represent an easement purchase. Please consult the easement acquisition tables later in this report for the actual number of easements acquired. Please note that each year's number includes reapplications from landowners not receiving an offer or rejecting an offer from a previous year or years.

## *Program Funding*

The Maryland Agricultural Land Preservation Foundation (MALPF) is primarily funded through dedicated revenues from the State's Real Estate Transfer Tax and its Agricultural Transfer Tax. The State Transfer Tax is a tax assessed on all real estate property transfers. The Foundation receives 17.05% of the State Transfer Tax remaining after certain funds are set aside by the State for long-term obligations and allocations. The Foundation receives additional State Transfer Tax revenue as a result of the creation and funding of the Rural Legacy Program in the Department of Natural Resources.

The Agricultural Transfer Tax is collected when farmland is sold and converted to another land use. The Foundation receives two-thirds of the Agricultural Transfer Tax collected by each county, while one-third is retained by the local jurisdiction for agricultural land preservation purposes. A county with a local agricultural land preservation program certified by the Foundation and the Maryland Department of Planning may retain 75% of the Agricultural Transfer Tax collected to spend for local land preservation purposes.

Many of the Foundation's county partners commit matching funds to help acquire easements. Most local funds derive from the counties' share of agricultural transfer taxes, but some add other county funds. The matching fund commitments are used to extend offers to landowners within each county on a 40% county and 60% State matching fund basis after State funds are committed. The total of Local Matching Funds committed for FY 2008 was \$16,294,406.73; the total spent may be different.

No new federal grant funding from the Farm and Ranch Land Protection Program (FRPP) was provided for the FY 2008 easement acquisition cycle. Funds from past grant agreements were committed again to new offers late in the FY 2007 easement acquisition cycle and continued to be committed when possible during FY 2008. Because MALPF judged that it would be impossible to meet the new terms of the FY 2007 federal grant agreement, it chose not to submit a funding proposal. Because it did not apply for FY 2007 funds, MALPF was ineligible for FY 2008 funds.

The Foundation received no funds from cooperative arrangements with other State agencies, State-issued General Obligation Bonds, donations, or special grants during FY 2008. A few counties provided funds to supplement insufficient funds offers and/or to make 100% county-funded offers to purchase easements to be processed and administered by the Foundation.

The following funding information is taken from the "Allocation of Funds Report" for FY 2008 issued for the March 24, 2008, meeting of the Board of Trustees to allocate funds among county participants based on an estimation of the actual funds available for easement offers. These estimates are not absolute. For example, a county's funding commitment may not be completely fulfilled because of the impact of one or more rejected offers in the county. Further, because the continuing ability to commit federal funds was uncertain at the time the Allocation Report was issued, the remaining federal funds were not included in the total available funds.

**Funds Available for Easement Offers, FY 2008**

The General Assembly approved the FY 2008 budget and authorized FY 2008 appropriations to make offers to applicants from the FY 2008 cycle. MALPF continues to draw on its traditional dedicated funding sources. The following is the calculation of funds available for the FY 2008 easement acquisition cycle.

**Net Projected Revenues:**

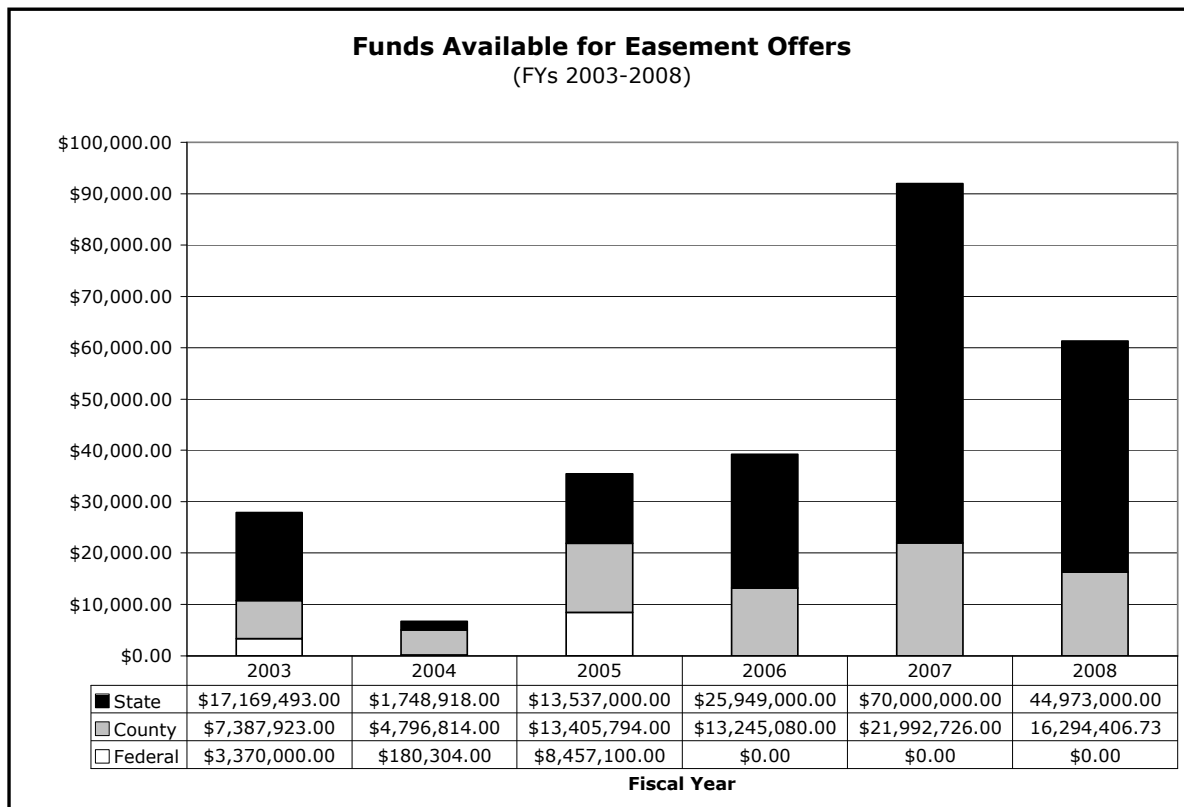
FY 2002 net Bond authorization (FY 2003).....	\$	0.00
FY 2003 net Bond authorization (FY 2004).....		0.00
FY 2004 net Bond authorization (FY 2005).....		90.00
FY 2008 State Transfer Tax (FY 2008 appropriation).....		43,762,000.00
FY2008 Agriculture Transfer Tax, FY 2003.....		1,160,910.00
(revenues above operating expenses and indirect cost allocation)		
Miscellaneous Revenues (attained to date: \$39,414.00).....		50,000.00
"3-year old" Funds (estimated).....		0.00

Net State Funding Available for FY 2008 Easement Offers..... **\$ 44,973,000.00**

TOTAL STATE FUNDS AVAILABLE FOR FY 2008 EASEMENT OFFERS ..... **\$ 44,973,000.00**

TOTAL LOCAL FUNDS AVAILABLE FOR FY 2008 EASEMENT OFFERS ..... **16,294,406.73**

TOTAL FUNDS AVAILABLE FOR FY 2008 EASEMENT OFFERS..... **\$ 61,267,406.73**



\* No new applications were accepted in FY 2004. FY 2004 "funding availability" is not strictly comparable to other years, but provides an estimate based on the fund sources of actual acquisitions. No new State funds were available in FY 2004; the State funds available for easements represent funds rolled over from late rejections of offers made during previous easement acquisitions.

# New Regulations and Policy Recommendations and Changes

---

## *Introduction*

The most important policy changes in the Maryland Agricultural Land Preservation Foundation (MALPF) Program during FY 2008 were the approval of the general uses and equine uses policies and the development and approval of the forest mitigation overlay easement policy. MALPF staff also made substantial strides in regularizing the Foundation's monitoring program and eliminating State-level agricultural districts.

Program review and recommendations for change come from a range of different sources. For example, changes to MALPF's uses policies have been a direct result of recommendations made during the five-year Program review carried out by the Task Force to Study the Maryland Agricultural Land Preservation Foundation created by the General Assembly in 2000 and renewed in 2002. Other sources influencing or motivating policy discussion and changes have come from recommendations from or concerns expressed by members of the General Assembly, the Governor's Office, MALPF staff and Board of Trustees, county staff, program participants, and other interested parties, as discussed below.

Some changes have required (or been required by) new statutory language adopted by the General Assembly. Other changes have been the result of policy adopted by the Board of Trustees, many eventually confirmed by changes in the regulations governing the Program. Some changes have only required modified office procedures or structures. Finally, some recommendations and changes were considered, but not adopted; are still under review; or are still being implemented at the end of this report period, FY 2008.

## *Reports: General Program Reviews with Policy Recommendations*

### Maryland General Assembly, Joint Subcommittee on Open Space and Agricultural Preservation, "Report on the Aging of Rural Agricultural and Open Space Landowners and the Potential Impact on Land Conservation Goals" (March 2008)

At the fall 2007 hearing of the Joint Subcommittee on Open Space and Agricultural Preservation, Senator Middleton, Chair of the Subcommittee, expressed concerns to agency staff about the potential impact of an aging "baby boom" generation on Maryland's farmland and open space. The discussion at the hearing centered on determining if a correlation exists between a generation of rural landowners reaching retirement age and a subsequent accelerated loss of open space and farmland. Three agencies, Maryland Departments of Natural Resources, Agriculture, and Planning, undertook the responsibility to make the initial investigation of the reality of this concern.

Their goal was to analyze available data and other information to determine if changing landowner demographics would impact overall rural land use. To that end, the agencies reviewed existing statistical analysis and anecdotal information. While not an exhaustive study, the conclusions from this basic information could be used to determine if further study and plans for action to address the land use changes were necessary.

### The General Findings by the Agencies:

#### *Landowners and Land –*

- Farmers have a higher average age than other Marylanders. Since the average age of the general population will be rising, it is reasonable to assume that the aging of the farm population will be even more acute.

- There will be a steady increase in the average age of Maryland's population in general and in rural areas specifically.
- No similar information on landowner age is available from the non-farm rural landowning population to allow for additional comparison. Therefore the report did not address the effect of an aging population on non-agricultural open space lands.
  - The average age of recent and current participants in land preservation programs is 55-65 years of age.
  - The age range for the pool of potential participants in land preservation programs (landowners who have expressed interest in preservation) is overall fairly similar to past program applicants.
  - The most immediate reasons that landowners cited for participation in land preservation programs were, estate planning, need for retirement funding, and protecting the family farm/open space land from development.
  - Impacts from an aging rural population would affect a range of land types and the variety of benefits they provide to the population. In addition to farmland, natural resource lands, open space, and sensitive environmental areas would be affected by any rise in conversion of open space to development caused by aging rural populations.

*Funding and Staff Support –*

- Whether or not there is an impending increase in the sale and development of open space and farmland, more applicants are seeking to sell easements than there is currently available funding. This is a key reason for the new Program Open Space (POS) targeting system.
- While the state transfer tax and agricultural transfer tax may increase relative to an increase in land conversion, it might not be sufficient to

meet the land preservation needs created by an aging rural population.

- A range of programs, partnerships and fund sources will be necessary to address potentially increasing land conversion and to meet land preservation goals.
- If land preservation activity is increased to protect additional acreage, both the land preservation programs and the support agencies will need increased staff to handle the additional workload.

*Remaining Questions and Future Analysis –*

- While the population is aging, the evidence of an impending increase in farmland and open space placed on the open market for sale is not clear from the limited data available.
- The readily available anecdotal evidence does not provide a clear answer to the questions that were addressed.
- A more accurate and targeted study will be necessary to answer questions about the impact of an aging population on retention of farmland and open space.

Recommendations:

- Conduct research that is specifically targeted to determine the impacts of changing demographics on the future of Maryland's open space and farmland. Include the data collection and analysis of the demographics of the non-farm rural landowner population as part of this research.
- Convene the key agricultural land preservation and land conservancy groups and partners and agency staff to work collaboratively to address the impact of an aging rural population on land preservation. Charge this group to identify and outline innovative funding mechanisms and strategic approaches and partnerships to protect Maryland's significant open space and farmland for future generations.

The report can be found and downloaded as an Acrobat Reader document (.pdf) (as of April 1, 2009) at:

<http://www.malpf.info/reports/AgingReport.pdf>.

### *Reports: Specific Program and/or Policy Reviews Required by Law*

#### **Maryland General Assembly, Department of Legislative Services, Office of Legislative Audits, "Audit of the Maryland Agricultural Land Preservation Fund – Fiscal Year Ended June 30, 2007" (September 4, 2008).**

Though MALPF is subject to an annual audit review, the Office of Legislative Audits (OLA) issued no audit report between July 1, 2007 and June 30, 2008, the period of this Annual Report. The audit report for FY 2006 was issued on March 20, 2007; the audit report for FY 2007 was issued on September 4, 2008. However, because a summary of the audit report is an appropriate topic for the Foundation's Annual Report and the FY 2007 was published before that Report was completed, the FY 2007 audit report will be summarized and discussed.

*OLA Observation:* According to the Audit, a comprehensive listing of all easement acquisitions was not maintained to ensure all easements were properly accounted for, and significant discrepancies existed between the cost of easement acquisitions reported in the Maryland Agricultural Land Preservation Foundation (MALPF) 2008 Annual Report to the General Assembly and the related amount reported on the State's accounting records.

*OLA Recommendation:* MALPF should maintain a comprehensive, accurate listing of all easement acquisitions and ensure consistent reporting of such activity.

*MALPF Comments:* MALPF agrees that staff should have a comprehensive, accurate listing of all easements acquisitions and reconcile acquisitions to the State's accounting records. The Foundation has always had a comprehensive and accurate record of its easement acquisitions and their current status contained in its physical files.

Aware several years ago of the shortcomings of its 1980s-era electronic database,

including its inaccuracies, inconsistencies, missing data, restricted number of data fields, and its limited usefulness for historical data or ongoing program management purposes, MALPF staff began a fundamental re-design of the database in early 2006, transforming it from a flat to a relational database with a much more extensive range of data fields. This is a major project undertaken with limited staff and resources. The new database has taken time to design, program, populate, and fully implement.

The circumstances and status of this transition to a new database were described at length in the previous Annual Report (pp. 165-167). Unlike the earlier database, the newly designed database will be the primary source of authoritative data for the program. The old database has now been abandoned and the new database, with its vastly expanded data fields and careful verification of data by examining the history of the property, is approaching completion.

The data fields should be populated by the end of Summer 2009. Testing, verification, and report design will continue in the fall and early winter, for a fully operational database by the end of calendar year 2009, assuming the project proceeds as anticipated. Once the database is completed and verified, any discrepancies between easement acquisition reports from MALPF and the amount reported on the State's accounting records should be easily resolved.

Current easement acquisition cycle data are maintained in spreadsheet form as well as the database while the database is being completed. MALPF must rely on its imperfect historical records for earlier data until the database is fully implemented. The verified historical data on the program will be published in the first Annual Report after the database is completed. (See up-to-date reporting of non-confidential information at: <http://www.malpf.info/reports.html>.)

The language used to describe this issue in the audit report is misleading. More accurately phrased, the auditors' observation is that the Foundation should be able to produce a comprehensive listing and related data of its easement inventory on demand in any format requested from an electronic database. Phrased in this manner, a fair-

minded observer will realize that the auditors are raising a shortcoming of which MALPF was well aware and already addressing.

MALPF agrees with the objective, but notes that MALPF has never had the capability to produce comprehensive, reliable, and accurate listing of the full range of information concerning its easements on short notice from its electronic database. It could produce a comprehensive listing of its inventory of easements and districts, but was fully aware of the problems inherent in past record-keeping resulting in information provided on acreage and more to be unreliable. But any information required has always been available in the non-electronic files.

As far as reconciling MALPF transactions to State fiscal records, MALPF offers and record-keeping are based on the fiscal year from which the funds are appropriated, while the State's accounting records are based on the date of disbursement of funds. This means that an easement offer is counted for MALPF under the fiscal year the funds for that offer are appropriated.

The payment for the easement is included by State accounting records for the fiscal year in which the payment is disbursed. Because easement offers can start quite late in a fiscal year and extend into the following fiscal year, and settlements can take place months after the offer is accepted, apparent discrepancies will appear between the two sets of records.

The redesigned and expanded database will allow MALPF to produce summaries of easement transactions and information on individual easements based on the fiscal year of the funding appropriation, the offer date, Board of Public Works (BPW) approval date, and the date of settlement. Once the database is populated and verified, responding to such inquiries by the DLS auditors and others will be much easier, the answers can be tailored to the question being asked, and reconciliations can be done more easily between less than compatible systems.

*OLA Observation:* Supervisory reviews of certain critical calculations used in determining the easement purchase price and for ensuring the propriety of certain easement payments were either not being done or were

not documented. In addition, there were no procedures for ensuring counties were invoiced for their share of the easement acquisition costs.

*OLA Recommendation:* MALPF should ensure that critical calculations are reviewed by an independent employee and that such reviews are documented. In addition, MALPF should establish procedures to ensure that counties are properly invoiced.

*MALPF Comments:* This criticism was designed to improve existing procedures to ensure the accuracy of critical calculations used in determining the easement purchase price for individual properties - primarily the calculation of the agricultural value of the property which is done by entering information provided by the program administrators and the National Agricultural Statistics Service into a spreadsheet where the agricultural value formula converts that information into one element of the final offer amount.

Though the information in each offer letter sent out is verified by the Executive Director before signing, the calculation of the agriculture value is not verified. A formal procedure has now been established to randomly sample calculated agricultural values before offers are made, with a sign-off procedure by the person verifying the calculations.

The criticism of the county billing procedures was the result of one slightly delayed county billing. A formal procedure has also been created to ensure timely billing requiring MALPF administrative staff to sign off in verification that counties have been billed by MALPF fiscal staff after settlement when offers include local funds.

Neither issue was serious nor systematic and did not represent a failure to follow written procedures. Rather, these observations are new and have resulted in procedural recommendations from the auditing staff. These criticisms have resulted in the creation of two new procedures with the related additional paperwork and staff time necessary to formalize the procedures' documentation.

*OLA Observation:* County agricultural land preservation programs were not properly certified, resulting in certain counties retaining a higher share of transfer taxes.

*OLA Recommendation:* MALPF should properly certify county agricultural land preservation programs and determine the legality of recovering any amounts deemed to be inappropriately retained by non-certified counties.

*MALPF Comments:* The original certification regulations were written in the early 1990s, soon after the creation of the certification program and before the practical problems of implementing of the regulations were evident. Because of these practical problems, the program's operations have always diverged from the regulations, but the regulations remained unrevised until recently.

The audit criticism of the divergence between the operation of the certification program and its regulations was made after the program had been in operation for about a decade-and-a-half. The audit criticism and the program changes from the 2006 Agricultural Stewardship Act shaped the recent revision of the regulations that now better reflect the way MALPF and the Department of Planning operate the certification program and provide the flexibility necessary for it to succeed.

The central audit criticism focuses on the certification program principle that a county remains certified and retains 75% of the agricultural transfer taxes collected in the county until the county is explicitly decertified. According to the auditors' interpretation of the regulations, once the two-year certification period runs out, a county is no longer certified if the recertification application is not approved by end of the certification period. Based on the auditors' interpretation, MALPF should institute legal action against counties whose certification lapsed, even for a day, to collect agricultural transfer taxes collected in the counties during the time certification lapsed.

The certification program principle that a county remains certified until the county is explicitly decertified derived from the following practical problems

- Both county and State programs have limited staff overburdened with responsibilities. Given the relatively short two-year certification period, it is unreasonable to decertify a county because it has problems meeting a

tight deadline, or, even more unreasonable, to decertify a county because the State staff of the certification program is unable to process and review the application in time to present the application to the MALPF Board of Trustees.

- Because county land-use and economic development actions are public and regularly under review for other purposes, the certification program staff and county staff already know which counties are susceptible not to be recertified and, more importantly, which counties have strong local programs that meet certification requirements, without going through the formal review process of recertification. To decertify a county with an excellent local program that meets all of the State's certification requirements just because a deadline was not met or a recertification application review was delayed at the State level would be ludicrous and counterproductive to the purposes of the program.

MALPF will undertake two responses to this observation and recommendation. First, the Maryland Department of Planning, MALPF's partner in the certification program, revised its regulations on certification in response to the audit comments and the change in statute resulting from the Agricultural Stewardship Act of 2006. The new regulations went into effect in early 2009.

Second, MALPF will seek advice of counsel on whether or not MALPF and the Department of Planning are required by law to undertake legal action against the counties who had any period of lapse between the expiration of their formal certification period and the formal approval for recertification, irrelevant of the reason for the lapse. Such legal action would almost certainly have to be taken against all counties that are now or have been certified since the beginning of the certification program about twenty years ago. These funds have always been restricted to land preservation activities, so have already been spent in pursuit of the same objectives pursued by MALPF and the certification program.

*OLA Observation:* MALPF did not ensure that counties properly used retained agricultural land transfer taxes in accordance with State laws and regulations, and did not ensure that counties remitted the required amount of unused transfer taxes to the State.

*OLA Recommendation:* MALPF should obtain and review annual reports and related audited financial statements to ensure that counties are using the transfer taxes in accordance with State law and are remitting all required amounts to the State.

*MALPF Comments:* First, MALPF will develop additional procedures to ensure that unspent three-year old agricultural transfer tax funds are recovered and that retained funds were properly spent in certified counties.

Second, MALPF notes that, while it will set up these additional procedures to address these two issues and that it is in the interest of the MALPF program to do so, MALPF only has the authority to pursue these matters with certified counties, not with uncertified counties. The authority to pursue these matters with uncertified counties resides with the Comptroller of Maryland, though at the auditors' urging, MALPF will seek to exercise this authority over uncertified counties. MALPF already receives information on the proper use and the timely spending of agricultural transfer taxes as part of the certification and recertification applications; however, MALPF can do a better job at obtaining off-year accounting information.

Third, MALPF notes that the auditors have not identified any cases whereby counties either improperly spent these funds or failed to remit unspent funds after three years. Even if any unspent funds are identified, the county is restricted from spending the funds on anything other than land preservation; though, this does not address the issue that the funds were spent in the proper way.

Fourth, if MALPF collected any unspent three-year old funds, it can only spend the funds on land preservation in the county from which the funds were collected for several years. However, if MALPF identifies any improper use of agricultural transfer taxes by the counties, recovered funds would immediately go into the Maryland Agricultural Land Preservation Fund to use to purchase ease-

ments.

*OLA Observation:* Easement inspections were not performed in accordance with federal grant agreements or MALPF's policy to ensure that landowners were in compliance with the provisions stipulated in the easement agreements.

*OLA Recommendation:* MALPF should establish procedures to ensure that all easement properties are periodically subject to inspection, and establish procedures to ensure appropriate follow-up action when counties fail to conduct required inspections.

*MALPF Comments:* MALPF has successfully used past audit comments on its monitoring program to make the case for hiring full-time, permanent monitoring staff. Kimberly Hoxter, MALPF's monitoring, enforcement, and database specialist, started work in October 2007. She has worked with the counties to fulfill MALPF and federal grant agreement requirements on monitoring frequency and to establish explicit monitoring and enforcement procedures. The first annual monitoring report can be found elsewhere in this MALPF annual report.

The DLS auditors have read additional requirements into the Board's policy on monitoring that are not in the text and have based their audit criticism in part on this extended interpretation of the policy. They assert that the policy requires 10% of the site inspections be completed annually for all non-federal easements county-by-county and 100% of all federally-funded easements be inspected annually.

While recent (though not earlier) federal grant agreements require 100% of the federally-funded easements to be monitored annually, the Board policy requires only 10% of MALPF properties overall to be monitored annually. While MALPF agrees that extending site inspections and distributing them more equitably among counties are objectives it shares with DLS, they are not goals currently required by statute, regulation, policy, or grant agreement.

The purpose of annual MALPF audits is to identify problems with the program and remediate them and to identify potential problems and fix them before they are actual

problems. MALPF staff and Board members view this process as helpful to the ongoing program evaluation that keeps the MALPF program a national leader in agricultural land preservation.

### Other Reports

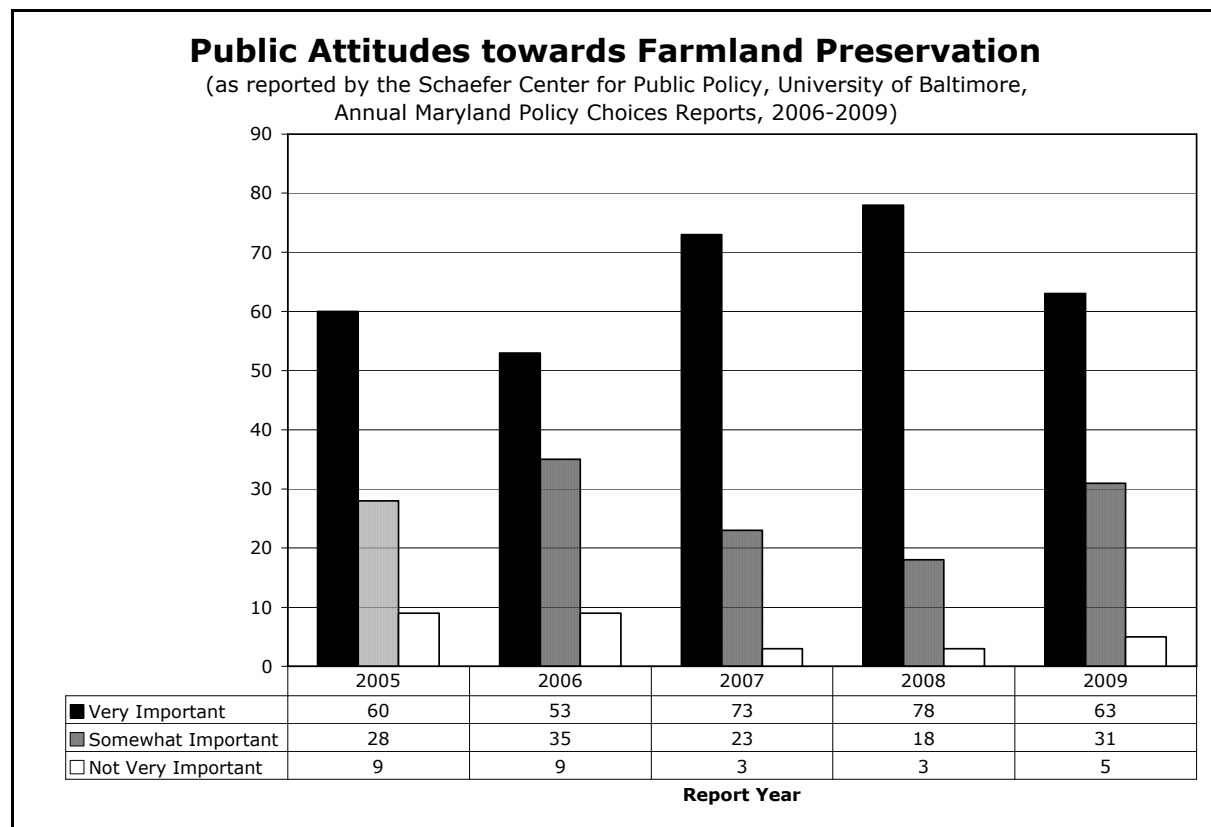
**The Schaefer Center for Public Policy, University of Baltimore, "Maryland Policy Choices: Public Opinion and Policy Choices, 2005-2009" (January 2005-08; February 2009).**

The Schaefer Center for Public Policy at the University of Baltimore undertakes annually a statewide survey of Maryland public attitudes of policy choices likely to be before the Maryland General Assembly. This survey is published as "Maryland Policy Choices" and available at the Center's website. See: <http://scpp.ubalt.edu/pages/report.html>.

The Maryland Department of Agriculture has been interested in gauging public support for farmland preservation. To this

end, for a number of years, the Schaefer Center has included in its Policy Choices survey the question: "How important do you think it is for the state to preserve land for farming?"

Between 88% and 96% of those surveyed during the five years (2006-2009) believe that preserving farmland is at least "somewhat important." From 53% to 78% of those surveyed believe that farmland preservation is "very important." The reasons behind these attitudes have not been measured. Different explanations are plausible, including the favorable attitudes Americans have towards their agricultural heritage, the desire to preserve the beauty of productive farmland and woodland, and the realization of the value of locally-produced agricultural products. Whatever the reasons, it remains clear that agricultural land preservation continues to be an important issue to the overwhelming majority of Marylanders. See the bar graph below: "Public Attitudes towards Farmland Preservation."



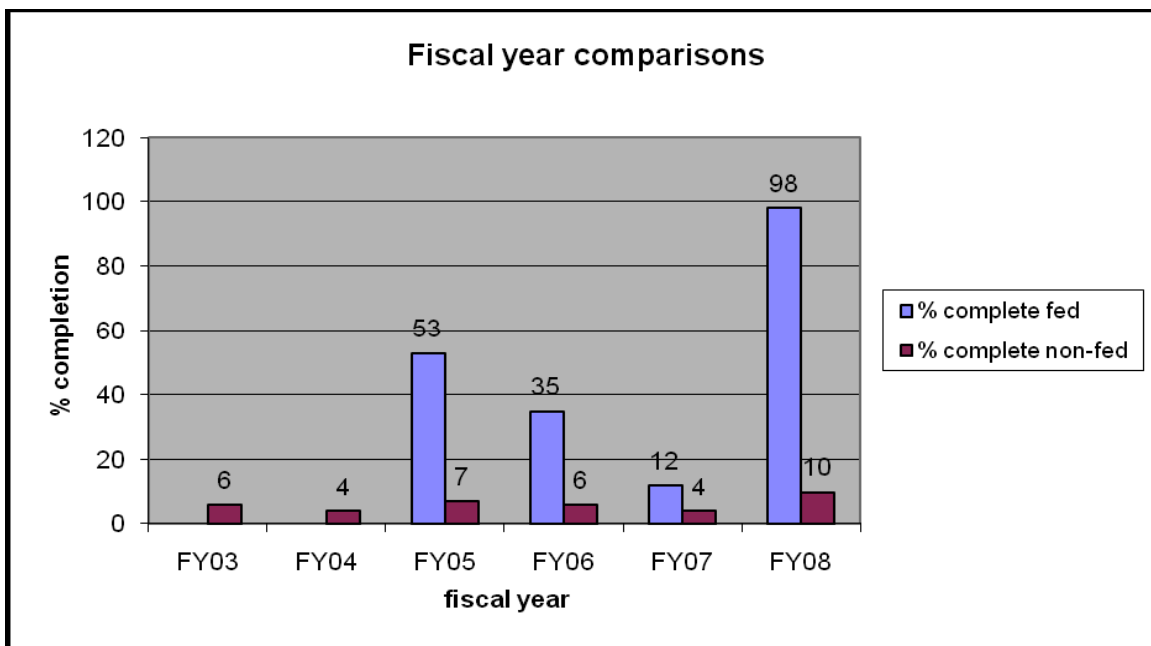
**Maryland Agricultural Land Preservation Foundation, Fiscal Year 2008 Annual Monitoring Report (March 9, 2009).\***

*Introduction*

In 1983, the Maryland Agricultural Land Preservation Foundation (MALPF) Board of Trustees approved a policy to inspect 10% of the Foundation's easements each year. The county program administrators were in agreement that they would perform the inspections. However, with increasing numbers of easements and inadequate staffing, this goal had not been met in recent years. In the mid- to late-1990's MALPF added another purchasing partner, the Farmland Protection Program (FPP), funded through the United States Department of Agriculture (USDA), and implemented by the Natural Resource Conservation Service (NRCS). FPP requires that 100% of easements purchased with federal funds would be inspected annually. Again, this goal has not been met in recent years. Federal funds and easements could be lost if the federal requirements are not met. These deficiencies have been identified by the legislative auditors in recent annual audits.

In October 2007, a full-time person was hired to coordinate monitoring responsibilities with the county offices and to organize the monitoring program, along with other duties. The following illustrates a comparison of inspection completion results between FY'08 and previous years. (Numbers prior to FY'08 were obtained from the legislative auditor's report.) Keep in mind the inspection goals are 100% for FPP annually inspected properties and 10% for state easement properties.

Clearly MALPF has made significant improvements: 10% of its State-funded easements were monitored, and 98% of federally-funded easements were monitored; overall, about 16% of all of MALPF easement properties were inspected. MALPF met its goals for monitoring State-funded easements in FY'08 and nearly achieved the federal goal. Interestingly, the spike in inspections during the FY'05 period corresponded to a time when MALPF hired a part-time person to help with monitoring. After that year, monitoring waned through the FY'06 and FY'07 periods.



## *Monitoring Results*

### Federal Inspections

For FY'08, MALPF had 130 federally-funded easements. Of this total, 127 easement properties were inspected. The three easements not monitored were located in Calvert County. Twenty-one properties out of 127 inspected (17%) had violations identified by the inspection. Of that twenty-one, sixteen were considered minor violations that are easily corrected, primarily the absence of soil conservation or forest management plans or expired plans needing to be updated. Letters have been sent notifying landowners of the violations, and the required plans are being created or updated. The remaining five violations were considered major violations.

### State Inspections

A total of 176 easement inspections were conducted, of these, fifty-seven properties (32%) had violations identified by the inspection. Fifty-one violations were considered to be minor, primarily the absence of soil conservation or forest management plans, or expired plans that need updating. Letters have been sent notifying landowners of the violations, and the required plans are being created or updated. The remaining seven violations were considered major violations. One farm had a major and a minor violation.

### *Other Issues*

Six additional lot release and illegal subdivision issues came to the Foundation's attention as a result of sources other than on-site inspections. Three of these violations are currently under litigation, one was settled without litigation, litigation may be undertaken on another violation depending on the outcome of other litigation, and the final issue remains under investigation with litigation depending on the conclusions drawn from the investigation.

## *County Cooperation*

County cooperation with MALPF in monitoring and enforcing easement restrictions is of utmost importance. With 2000 MALPF easements of which more than 100 have federal funding requiring annual inspections, if MALPF were responsible on its own to inspect the easements now required by Board policy and federal fiat, it would have to perform nearly 300 annual inspections, a number growing every year.

As program partners, both the county and MALPF should share responsibility for monitoring. If MALPF took sole responsibility in the monitoring, the bond between the landowner and the county administrator would be undercut. The county administrator is a vital link with the local farmers, acting as the farmers' advisor on the program and the liaison to the State MALPF staff and Board members. The county administrator should be visible and available to the landowners. All requests coming to MALPF must first be locally reviewed and forwarded to the State MALPF Board with an approval or recommendation, including lot releases, non-standard uses, and other changes on an easement property. The first thought of any program participant should be to contact the county administrator to seek direction and advice in making a request.

Further, county administrators should know and want to know what is happening on MALPF properties in their jurisdictions. MALPF violations are typically also violations of county zoning regulations. MALPF and the county can work to resolve violations cooperatively, using the tools and resources available to each to reinforce the actions of each other. Compliance is in the interest of both levels of government.

This volume of inspections can only be completed with the help of county program administrators. The MALPF monitor's additional responsibilities include follow-up enforcement, database implementation and management, and the implementation of a supplemental spatial database of MALPF properties using Geographic Information Systems software (GIS).

With more inspections comes an increase in actual and potential violations identified which requires the assistance of the Office of Attorney General to resolve, if necessary through litigation. The number of legal actions involving MALPF has increased substantially over the last two years, requiring the Office of Attorney General to seek an additional Assistant Attorney General position to litigate cases. To this end, MALPF has recently received approval to hire a half-time contract litigator to help address the increase in MALPF litigation.

### *Conclusion*

Meeting the goal of monitoring at least 10% of easement properties annually is now clearly realistic based on acquiring the new monitoring, enforcement, and database coordinator position. The first year MALPF has had this staff member in place has shown that, with improved cooperation and communication between the county program administrators and MALPF monitoring staff, monitoring should no longer be an issue for comment by the legislative auditors. However, most counties also have their own growing county easement inspections to complete, in addition to an increasing number of MALPF properties. Increasing the minimum inspection requirement beyond the current 10% level would stress the system at a time when resources are now adequate to meet existing objectives.

Properties can be monitored using a variety of tools, and a balance of all methods would benefit the program by helping to expand monitoring, make it more effective, and insuring better compliance with easement requirements.

The preferred method is always on-the-ground monitoring. This method provides the most personal contact with the landowner and provides the best vantage point in monitoring the restrictions listed in the easement. However, even on-site monitoring can miss changes that cannot be seen, such as an illegal subdivision.

The second method, aerial monitoring, is good, especially with the latest technology available. However, aerial monitoring

should only be used as a supplement to on-site inspections. Some blatant violations can be picked up by aerial views; for example, an unapproved house with a lawn and landscaping or an illegal right-of-way providing unapproved access to new development on an adjacent property can be easy to identify. However, all that is visible is a rooftop. It is sometimes difficult to distinguish between a farm structure and a house just from the aerial view. A farm structure converted to a dwelling could not be identified by aerial photographs. Aerial monitoring can be used to reduce the time between monitoring, to quickly identify issues to follow-up with the next on-site visit, and to prioritize site visits – obvious changes identified from an aerial view can result in an earlier follow-up visit to investigate the changes.

A third method that is typically used to supplement other inspection methods is to examine recent changes on a property recorded in the land records to look for subdivisions or other changes that cannot easily be identified by other means. This can be done in conjunction with or independent of other inspection methods, and can also be used to increase inspection rates and prioritize site visits.

Another possible method used by some easement holding agencies is monitoring by self-reporting. A questionnaire in the form of a legal document could be sent to a landowner to complete and return. This method should be considered strictly supplemental and not be used to replace other methods. Self-reporting can be used to reduce the time between inspections, can be made legally binding, but must be done in conjunction with regular on-site and other inspections.

After the MALPF database is completely populated and verified, it can be queried to identify farms that have not been inspected recently, and to set a regular schedule for inspections to insure that on-site inspections are performed for all properties within a reasonable time period.

No matter what schedule may be decided, certain occurrences should trigger an inspection. One such occurrence would be a

change in ownership. Subsequent owners pose a special challenge. Some owners are well informed about the restrictions on the farm they purchased, and others are not. This is one more reason for an on-site visit for educational purposes, and perhaps preventing violations that occur, not deliberately, but from a lack of knowledge of the program. This is where the importance of an involved and well-informed county program administrator becomes obvious. The county administrator is usually in a position to know if a farm owner passed away, or if a preserved farm was going to be auctioned. But at the very least, a quick web search of the tax assessment website will identify recent changes in ownership.

Inspections may also be scheduled in response to a complaint from neighboring landowners. It makes sense to complete an inspection in conjunction with requests from landowners to the MALPF Board of Trustees. If MALPF staff or Board members visit the property to evaluate the request before it is heard by the Board, such as for the approval of a location of a lot to be released or a new use of the property, an inspection of the entire easement property can be conducted. These visits provide opportunities to combine an inspection with a visit to the property for other purposes, making a more efficient use of staff and Board member time.

In conclusion, 10% of the state easements and 98% of the federal easements were inspected in FY 2008. The goals of 10% state easement inspections and 100% federal easement inspections are realistic goals that can be maintained each year with the cooperation of county administrators, MALPF staff, and MALPF board members using a variety of inspection techniques.

Respectfully submitted:

Kimberly A. Hoxter,  
Monitoring & Enforcement Coordinator

\* This monitoring report has been edited for inclusion in the Annual Report. A standardized format will be developed for summarizing the violations identified during the previous fiscal year and their disposition.

## *Policy Reviews, Recommendations, and Changes Undertaken by MALPF Staff and Board of Trustees*

### Overlay Easement Issues

#### *Introduction*

The MALPF overlay easement policy is stated in regulations:

"After a landowner has sold an agricultural preservation easement to the Foundation, the landowner may not grant or permit another to establish an easement, right-of-way, or other servitude in that land without the Foundation's written permission.... The Foundation may permit an easement or right-of-way to be granted in land subject to a preservation easement under the following circumstances: (a) If it is to service a lot released from preservation easement restrictions under Agriculture Article, Section 2-513, Annotated Code of Maryland; (b) If it is to service a neighboring farm, provided, however, that its use is restricted to the movement of farm equipment or other items associated with farming" (COMAR 15.15.01.17).

General overlay easement policy, approved by the Board of Trustees on March 25, 1997, follows.

### **OVERLAY EASEMENTS ON DISTRICT AND EASEMENT PROPERTIES**

#### **Purpose:**

To allow the placement of overlay easements on top of district/easement properties with certain restrictions to protect and maintain the agricultural potential of farm properties, so as not to interfere with present or potential agricultural operations. Examples of overlay easements may include, but not be limited to:

- Forest Mitigation Easements
- Cable Company Easements
- Wetland Mitigation Easements
- Historical Preservation Easements
- Utility Easements
- Environmental Easements
- Gas
- Cultural Easements
- Oil

- Septic Reserve Easements
- Electric
- Telephone

**Conditions:**

The overlay easement shall not prohibit any agricultural operation within the proposed easement area, unless otherwise approved by the Board.

The overlay easement should have minimal interference on the overall operation of the farm. Access shall be defined as to its location and potential uses. The overlay easement shall clearly list all activities that may be permitted.

**Criteria for Review:**

Landowner's request in writing.

Planning and Zoning concurrence to coincide with zoning regulations.

Local Agricultural Land Preservation Advisory Board approval to ensure the overlay easement is consistent with MALPF Program and that it does not interfere with the agricultural operation.

Copy of the actual overlay deed of easement (not a generic copy).

Locational map outlining the entire farm, overlay easement area and access.

A survey is preferred on district property. If the overlay easement is to be placed on an easement property, a survey will be required prior to settlement.

This general policy statement does not intend to imply that the examples cited are those regularly approved, but rather those that will be considered by the Board. In recent years, the Board addressed, clarified, and/or revised policy on three overlay easement issues: wastewater spray irrigation, dry hydrant easements, and wetland mitigation easements.

Forest mitigation easements were approved in the past on a case-by-case basis. With these requests becoming more common and more problematic, the Board wished to develop more explicit criteria for mitigation requests in the future to guide landowners, developers, program administrators, and staff and to create greater consistency in Board decision-making. In FY 2008, the Board re-

vised and clarified its policy on forest mitigation easement overlays. (See next page.)

By contrast, progress towards a workable groundwater recharge easement overlay policy has been difficult. (See below.) As reported in the last MALPF annual report (FYs 2003-2007), MALPF has been unable to complete the development of this policy because the necessary information on which such a policy would be based and individual requests would be reviewed is unavailable. Further, because this issue has broad implications for the long-term viability of Maryland agriculture and the allocation of water resources more generally, the MALPF Board and staff seem to believe that the issue should be addressed in a broader context of access and allocation of statewide water resources.

*Groundwater Recharge Easement Overlay*

A groundwater recharge easement overlay is an easement placed on a property within a given watershed that will permanently limit the amount of water that can be withdrawn from the land and the amount of impervious surface allowed on the property. The purpose of the restrictions is typically to transfer the water allocation to support development off-site within the same watershed or water recharge area.

Despite, or perhaps because of, the growing interest of developers, MALPF program participants, county and municipal governments, the Maryland Farm Bureau, legislators, and the general agricultural community in water policy, this particular issue has proven to be one of the most intractable of all recently engaged by the Foundation.

The two major recent developments on groundwater recharge easements are:

- Senate Bill 674, Water Resources – Groundwater Appropriation or Use – Priority Funding Areas," (cross-filed as HB 1423) was passed and signed by the Governor in the 2008 legislative session. The bill, sponsored by Senator Brinkley, representing Carroll and Frederick Counties, authorizes the Maryland Department of the Environment, in accordance with existing

State policy and provided that it will not jeopardize the State's natural resources, to give priority for groundwater appropriations and use in Carroll, Frederick, or Washington Counties to a public water system that provides water to specified municipal corporations or to specified priority funding areas. MDE is authorized to adopt regulations to implement the bill. A MALPF representative attends the workgroup staffed by MDE to develop the regulations to support this bill.

- At the July 2008 MALPF Board meeting, the Board approved that staff write a letter to the Governor's Office asking for the issue of groundwater recharge allocations be taken up for consideration by the Advisory Committee on the Management and Protection of the State's Water Resources or another suitable body, that the research needed to generate the information necessary for MALPF to make justifiable decisions on water recharge easement requests be funded by the State, and that this issue be treated as part of a comprehensive evaluation of the State's watersheds and aquifers to determine their adequacy in meeting expected future demand. This letter has since been sent to the Governor's Office under the signatures of the Maryland Secretary of Agriculture and the Chair of the MALPF Board of Trustees. As of early 2009, no response to this letter has been received from the Governor's Office.

The MALPF Board of Trustees has concluded that it cannot move forward and respond to individual requests for groundwater recharge easement overlays until the issue is addressed more comprehensively and the necessary data on which policy decisions and responses to individual requests can be based becomes available.

#### *Forest Mitigation Easement Overlay*

Forest mitigation is the process by which the impact of converted forested land

from development activities, from road construction to residential housing, is mitigated or offset by the restoration, enhancement, or creation of forested land elsewhere, as required by the Maryland Forest Conservation Act of 1991. Typically, a developer meets the legal obligation for offsets on the property being developed or may seek off-site mitigation by purchasing a perpetual forest mitigation easement from another landowner where a forest would provide protection to other natural resources such as streams or wetlands.

The primary concern of the Board for such overlay easements is that no restriction be placed on the ability to timber the forested land unless it is within a narrowly-defined area of the property where the land is restricted from harvesting by the soil erosion and water quality plan.

Further, members of the Board expressed concern about permanently limiting part of an easement property to forestry operations as going beyond short-term operational decisions to a permanent reduction in the flexibility of future landowners to adjust the mix of agricultural production on the property in response to changing market conditions. Perhaps a condition for approval of limitations on agricultural production should be an extinguishment of the 25-year termination clause.

Finally, concern was expressed both on the use of easement properties to facilitate development off-site as a general concept and, more specifically, to facilitate development in rural preservation areas, rather than in Priority Funding Areas, already slated for development.

During FY 2008, the MALPF Board of Trustees and the committee it appointed under the leadership of its forestry representative, Vera Mae Schultz, to develop a formal forest mitigation easement overlay policy completed their work. The work of this committee included a discussion with other State agencies to coordinate, though not necessarily replicate (because other programs pursue different goals than MALPF), forest mitigation policies for properties in which the State has an ownership or easement interest and to

seek to develop a forest mitigation policy mirroring the principles developed in an earlier developed wetlands mitigation policy.

The final forest mitigation easement overlay policy was approved by the MALPF Board of Trustees at the January 2008 meeting. For more background to the discussion on this issue, see the previous Annual Report (pp. 84-86). The approved policy follows.

---

## **MALPF FOREST MITIGATION POLICY AND PROCEDURES**

It is acknowledged that some jurisdictions in the state do not allow forest conservation easements on land that already is under a preservation easement. Therefore, the following applies to land in those jurisdictions where a policy approved by the county executive/county council/county commissioners allows forest conservation easement overlays on land under a preservation easement.

### OVERVIEW

When land is developed in Maryland, the Forest Conservation Act of 1991 requires retention, reforestation, or afforestation of specified amounts of forested land onsite or, if necessary, offsite. As more land is developed throughout the state, there are increasing requests to mitigate forestland away from development sites. The Maryland Agricultural Land Preservation Foundation (MALPF) is beginning to receive requests from easement landowners for forest mitigation on their farms for off-site development.

The Foundation's mission is to preserve productive farmland and woodland

- 1) for the continued production of food and fiber for all of Maryland's citizens;
- 2) to curb the expansion of random urban development;
- 3) to help curb the spread of urban blight and deterioration;
- 4) to help protect agricultural and forest land as open space;
- 5) to protect wildlife habitat; and
- 6) to enhance the environmental quality of the Chesapeake Bay and its tributaries.

It is recognized that forest mitigation on land under MALPF easements has benefits. It can be a best management practice (BMP) under a Soil Conservation and Water Quality Plan to insure that sensitive areas or land that is not suitable for field crops are not compromised or degraded. It can assure

that the forest resource will remain forever for fiber production and for natural resource benefits, such as air quality, water quality, and wildlife habitat. It may provide income for the landowner that can help fund good stewardship of land and water resources and be an added incentive to enter the MALPF program.

At the same time, forest mitigation on land under MALPF easements may compromise or undermine the Foundation's goals by facilitating more, rather than less, development. It restricts the land to forestry in perpetuity, reducing the current and future landowners' flexibility in use of the land. It limits the opportunity to preserve other land that does not have a conservation easement. It may provide a pool of land for developers needing to mitigate. It may be viewed as double dipping, if the landowner is compensated for the mitigation after he/she has received compensation for the MALPF easement. By mitigating on existing forestland rather than on non-forested land, it does not advance Maryland's goal of "no net loss of forestland" in protecting the Chesapeake Bay watershed.

### RECOMMENDATIONS

#### **Policy and Procedures**

Considering the above benefits and disadvantages, it is recommended that the Foundation limit forest mitigation on MALPF easements and districts, but consider mitigation proposals from landowners on a case-by-case basis. The following procedures are designed to ensure that, when forest mitigation is allowed, it will be a legitimate means to practice good stewardship that complements the Foundation's interest in farm and forest production and will facilitate development that supports and does not compromise the Foundation's goals.

#### Land Eligible for Forest Mitigation

For land under a MALPF easement to be eligible for consideration for forest mitigation, it must be other than Class I, II, or III unless, subject to the approval of the MALPF Board, mitigation on that land will serve a resource conservation purpose, e.g., buffering a stream, as part of a Soil and Water Quality Plan prepared by the Soil Conservation District.

#### Resource Conservation

A forest mitigation proposal must serve a legitimate resource conservation purpose under a Soil Conservation and Water Quality Plan. The proposed mitigation must

- contribute substantially to good land and environmental resource stewardship on the farm;
- be an appropriate best management practice (BMP) to achieve the resource conservation objectives for the farm, based on NRCS standards and estimates;
- be included in the Soil Conservation and Water Quality Management Plan and a Forest Stewardship Plan for the farm; and
- permit sustainable forest stewardship practices, including prescribed harvests.

The Maryland Department of Agriculture's Resource Conservation Operations (MDA-RCO) unit will be given the opportunity to review Soil Conservation District findings on these matters, advise the Foundation if it agrees with them or not, and if not, explain why.

#### County Agricultural Advisory Board Recommendation

The county agricultural land preservation advisory board must review a forest mitigation proposal and make a recommendation to the MALPF's Board of Trustees before a proposal will be considered by the Board. The county advisory board members should consider the factors established in this policy and procedure statement and should convey to the Foundation the basis for their recommendation.

#### Development Activity and its Implications for the Foundation's Goals

The development project(s) facilitated by a forest mitigation proposal must pass several screening tests.

- The local government (program administrator or responsible party, at the discretion of the county) must identify in writing the type of development activity for which mitigation is required, inform the Foundation if the development activity is subject to the county's approval and, if it is, verify that the county either has approved the project or believes that the development project is consistent with the plans, ordinances, and regulations governing its approval.
- The Maryland Department of Planning (MDP) must provide a written opinion stating that the development project is in a Priority Funding Area recognized by the State, is consistent with the local comprehensive plan and State Planning Policy, and is not likely to encourage or support substantial further development in areas the Foundation is attempting to preserve. [Note: March 25<sup>th</sup>, 2008, the Board discussed

that, if withheld acreage is not within a priority funding area and would require forest mitigation when developed, sufficient acreage must be withheld to accommodate that mitigation.]

#### Application Procedure

The person applying for forest mitigation/forest mitigation banking is responsible for

- having a current Soil and Water Quality Plan, developed by the local Soil Conservation District, that describes the resource conservation purpose served by the mitigation,
- if applicable, having a Forest Stewardship Plan, developed within the last ten years by a professional forester licensed in Maryland,
- completing an application for the mitigation/banking [Attachment A], and
- submitting the application to the county MALPF program administrator.

The county MALPF program administrator is responsible for

- reviewing the application for completeness,
- presenting the application to the county agricultural advisory committee for its recommendation, and
- if the county agricultural advisory committee approves the application, sending the application to the Foundation.

The Foundation staff is responsible for

- reviewing the application for completeness;
- submitting the application to MDA's Resource Conservation Operations for an opinion on the appropriateness of the mitigation/mitigation bank;
- submitting the application to the Maryland Department of Planning for a written statement indicating whether the development to be facilitated by the forest mitigation is in a Priority Funding Area, is consistent with the local comprehensive plan and State Planning Policy, and is not likely to encourage or support substantial further development in areas the Foundation is attempting to preserve; and
- submitting the application to the Board, complete with the required documents and statements [see Attachment A for details] and the staff recommendation.

#### Board Action

When it has received a recommendation from the Foundation staff, based on information from the county, the Soil Conservation District, the Maryland Department of Planning, and the Maryland Department of Agriculture's Resource Conserva-

tion Operations, the Board will determine if the mitigation is appropriate for the easement land and if the development project facilitated by the proposed mitigation is compatible with the Foundation's goals and objectives. The Board will consider:

- The restrictions that would be imposed on the current and future production options for the land;
- The potential effects of the forest mitigation on the ability of subsequent owners of the land to conduct profitable activities on the land, compatible with the Foundation's easement;
- The amount of land proposed for mitigation,
- The resource conservation purpose being served, if applicable,
- The recommendation of the county agricultural advisory board, and
- Whatever other considerations it finds appropriate and necessary to determine the proposal's compatibility with the Foundation's goals and objectives.

If the request is for forest mitigation banking, the Board will act on the concept after considering the criteria recommended herein and the county's forest conservation policies. If the mitigation banking request is approved by the Board, installment withdrawals from the mitigation bank can be approved by the MALPF staff and will not require additional Board approval.

### Additional Considerations

If the forest mitigation/mitigation banking easement overlay includes at least ten acres, or the forested land in the easement/district totals twenty-five contiguous acres (whether those forested acres are included in mitigation or not), the landowner shall be required to obtain and implement a Forest Stewardship Plan, prepared by a professional forester licensed in Maryland.

If the forest mitigation/forest mitigation bank request is for a property that was approved for MALPF easement purchase by the Board of Public Works prior to October 1, 2004, and is therefore eligible to apply for termination of the easement after twenty-five years, then the owner shall be required to amend the deed of easement to waive the right to request termination of the easement after twenty-five years, and clarify the perpetual nature of the easement.

Unless it determines that the State's interest in the land is somehow compromised by the doing so, if

the Board approves a forest mitigation proposal or forest mitigation bank proposal, it will

- maintain the superior position of the Foundation's easement on the mitigation acreage, making appropriate adjustments in the forest conservation easement, and
- not concern itself with mitigation payments from the developer to the landowner.

The following language shall be included in the forest mitigation overlay easement:

*"The parties hereto acknowledge that the land encumbered hereby has been encumbered previously by an Agricultural Land Preservation Easement (ALPE) in favor of the State of Maryland to the use of the Department of Agriculture on behalf of the Maryland Agricultural Land Preservation Foundation (MALPF). It is the intent of the parties hereto to maintain the agricultural integrity of the land and to comply with Maryland statutes, regulations, and policies regarding said ALPE. The Grantee acknowledges that the ALPE is superior in title to this Easement Agreement, and that by permitting this Easement Agreement to encumber the property, MALPF has not subordinated the ALPE to this Easement Agreement."*

In developing this policy, the MALPF Board acknowledged that currently not all the counties allow forest mitigation on easement properties. Also Allegany and Garrett County are exempt from the Forest Conservation Act, because they already have 250,000 forested acres in their counties. Given this, the policy will apply only to counties that allow forest mitigation to take place on easement properties, and the policy recognizes that the Forest Conservation Act could be amended in the future to exclude the possibility statewide of mitigating on already preserved land, rather than leaving the choice up to individual counties.

### Young Farmer's Advisory Board Representative on the MALPF Board of Trustees

Senator Thomas M. Middleton (Dem., District 28) successfully sponsored Senate Bill 909 in the 2008 legislative session creating an additional at-large position on the MALPF Board of Trustees. This new position represents the Young Farmers' Advisory Board and is selected from a list of three nominees provided by the Young Farmers' Advisory Board. The new Board member must meet the legal requirements for service on the Young Farm-

ers' Advisory Board, including being under 45 years old and deriving at least 50% of his or her income from farming or agricultural activities in the State of Maryland.

This bill expands the MALPF Board from twelve to thirteen members and the minimum number of farmer representatives from five to six members. The new Board membership requirement took effect on June 1, 2008. The first appointed member representing the Young Farmers' Advisory Board is William K. Boniface, a resident of Harford County.

### **Tenant House - Size Regulations**

House Bill 770, passed in the 2004 legislative session, updated MALPF's tenant house policy on the recommendation of the MALPF Task Force. All of the changes resulting from this bill were adopted into regulation, except for the provision that "the Foundation shall adopt regulations for the size and location of tenant houses" (Agriculture Article §2-513(b)(4)(iv), Ann. Code of MD).

The MALPF Board decided that the maximum size of a tenant house should be 2,000 square feet, drawing on size provisions already used in the Maryland Environmental Trust deed of easement. The general agreed-upon argument was that a tenant house is a secondary or auxiliary residence on an easement property and should not be larger in size than the main residence. The use of the tenant house has always been restricted to an individual fully engaged in the operation of the farm, not including any person with an ownership or financial interest in the easement property. The Board retained the right to provide different size requirements under unique or exceptional circumstances.

While the maximum size requirements for tenant houses were implemented in easement documents concluded subsequent to Board approval of size requirements, the additional language had not yet been included in the appropriate regulations. At the March 2008 Board meeting the following tenant house regulations were approved (the new language is italicized; language removed is bracketed). These new regulations were adopted in COMAR on July 17,

2008. The current tenant house policy is fully adopted in COMAR 15.15.03 and reads as follows.

---

### **Tenant House Approval for a Farm Subject to an Agricultural Land**

(Authority: Agriculture Article, §§2-504 and 2-513, Annotated Code of Maryland)

15.15.03.01

#### **.01 Scope.**

This chapter establishes the criteria and eligibility for the approval of a tenant house on a farm subject to an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation.

15.15.03.02

#### **.02 Definition.**

- A. In this chapter, the following term has the meaning indicated.
- B. Term Defined.
  - (1) "Tenant" means an individual fully engaged in the operation of a farm.
  - (2) "Tenant" does not include a landowner or a person who has a financial interest in the landowner, including a shareholder interest, partnership interest, or membership interest, full, limited, or otherwise.
  - (3) *"Tenant house" means, unless provided otherwise by the Foundation, an accessory structure consisting of no more than 2000 square feet, calculated by first multiplying the exterior footprint of the portions of the structure with multiple stories by the number of stories with windows and then adding the exterior footprint of any portions of the structure with one story, but excluding basements, attics, porches not used as a living space, garages, and unenclosed decks, in which the tenant resides.*

15.15.03.03

#### **.03 Eligibility.**

- A. The approval for the construction of a tenant house by the Maryland Agricultural Land Preservation Foundation is not an

absolute right of a landowner, and requests shall be reviewed by the Foundation on a case-by-case basis. Each request shall be reviewed to determine if a proposed tenant house is necessary based on the nature of the farming operation. A tenant house shall be [of appropriate size and] located on a farm consistent with this chapter and its purpose as housing for a tenant fully engaged in the operation of the farm.

- B. Farm Size.
  - (1) A request for a tenant house may not be considered by the Foundation for any farm of less than 100 acres.
  - (2) Not more than one tenant house per full 100 acres may be considered by the Foundation for a farm, for example, one house for 100—199.99 acres, two houses for 200—299.99 acres.
- C. A tenant house may be approved for and occupied only by tenants in which one or more is fully engaged in the operation of the farm.
- D. The Foundation shall approve the location and size of a tenant house as an accessory structure. Unless the Foundation approves otherwise a tenant house:
  - (1) Shall be located in the vicinity of other farm buildings; and
  - (2) May not be located on a farm field.
- E. A tenant house, including its size and location, may not be approved by the Foundation unless it conforms with local planning and zoning regulations.
- F. A tenant house and the land where it is constructed may not be subdivided and separately conveyed from the farm subject to the easement.
- G. The Foundation may not approve the construction of a tenant house solely for the purpose of producing rental income.

15.15.03.04

#### **.04 Application Procedure.**

Before the Foundation may consider a request for the construction of a tenant house, all of the following information shall be submitted:

- A. An application for construction of a tenant house, which has been completed and signed by all titled landowners;
- B. An unmarked copy of the tax map, which

outlines the entire district or easement property;

- C. A second copy of the tax map, which shall include the following:
  - (1) Property boundaries of the district of easement property;
  - (2) Location of, and access to, the proposed tenant house; and
  - (3) Location of, and access to, all preexisting dwellings, lot exclusions, tenant houses, and farm buildings;
- D. A written statement from the landowner indicating how much the tenant will be compensated for the tenant's work;
- E. Written verification from the county program administrator describing:
  - (1) The current overall farm operation; and
  - (2) The need for the proposed tenant housing to support the current operation;
- F. A letter of recommendation from the local agricultural land preservation advisory board; and
- G. A written statement from the local planning and zoning office or the county program administrator indicating that the proposed tenant house may be constructed under current local regulations.

#### **Appraisal and Applications Cap (FY 2009)**

When it became evident at the end of the 2008 legislative session that the State funds available for the FY 2009 easement acquisition cycle would be significantly lower than for FY 2008, and that the number of applications was anticipated to be the same or greater, MALPF staff proposed to cap the number of applications accepted by MALPF to limit the cost of appraisals for properties that could not be funded. This initial proposal was made at the April 2008 Board meeting.

MALPF received an appropriation of approximately \$45.7 million for FY 2009, of which only \$22 million was State funding (down from \$44.9 in FY 2008), and the balance projected local and federal funds (\$14 million in local; \$10 million in federal). Only a portion of the appropriated federal funds is expected to be available, and local contributions are expected to be significantly less than \$14 million because of the decline in

agricultural transfer tax revenues and other revenue sources.

Typically, when available funds are low relative to application numbers, the MALPF Board limits the number of applications to reduce appraisal costs and applies the savings to purchase easements. MALPF staff recommended a cap of five applications per county or, if more than five applications are submitted, the top 80% of the total number of applications received by a county. If a county is willing to pay for additional appraisals, it may increase the number of applications submitted to MALPF.

Projected appraisal costs are \$1,000 per property (two appraisals per property at \$500 per appraisal). The Foundation paid for about 900 appraisals in FY 2008. If the staff recommendation is approved and applications remain at 450, MALPF would save about \$90,000 in appraisal costs. While not enough alone to purchase an additional easement, when combined with county matching and/or federal funds, an additional offer could be made.

In the discussion of this proposal at the April 2008 meeting, the following points were made.

- An 80% cap may result in more applications than desired, because fewer than 50% of applications were funded in FY 2008 with more funding. County program administrators verified that applications are expected to be the same or greater than FY 2008.
- Staff recommended a relatively high cap of 80% because of concern over losing properties with deeply discounted asking prices from the application pool.
- Limiting the number of applications is also a workload issue, because the appraisal reviewers at the Department of General Services (DGS) are understaffed and overworked.
- Placing a cap on applications can affect the future behavior of applicants who may be less willing to apply because the county does not forward all applications to the State.
- With fewer applications and apprais-

als, the Foundation will lose information on trends in market values and asking prices, particularly important given changes occurring in real estate markets.

- Limiting applications would have a disproportionate impact on properties that do not do well under the new ranking system, but whose owners are willing to discount the most, unless counties find a way to include both the best quality and the most discounted properties.
- An alternative perspective is that, with less funding available, landowners will become more likely to discount to get an offer in Round Two.

The Board voted not to limit applications for FY 2009. The reasons expressed by those voting against the cap were the concern over changes to the program and discouraging potential applicants, the loss of information on changing property values and asking prices, and, above all, that the money saved with fewer appraisals could quickly be regained by one steeply discounted property. The Board also passed a motion for MDA to discuss workload and staffing issues with the Department of General Services.

At the June 2008 Board meeting, staff brought back the request to limit applications accepted. The counties reported they were likely to receive about 500 applications and the workload issues at DGS remained unresolved. Further, a more realistic funding level for FY 2009 appears to be \$25 million, down from the earlier projection of \$45.7 million, because revenues were down and county commitments were increasingly uncertain.

Staff asked the Board to reconsider its earlier rejection to limit the number of applications and, instead, approve a cap of approximately 250 applications. This would allow a reasonable workload for DGS to secure and review appraisals so MALPF could make offers in a timely manner in March or April 2009. Counties wishing to increase the number of applications forwarded to MALPF could do so by paying for the additional appraisals. Staff proposed several mechanisms by which it could limit the number of applica-

tions to approximately 250.

Staff stressed that the primary concerns are less to limit appraisal costs and reducing staff workload, and rather to be able to make offers and go to settlement within a time frame that is reasonable to applicants and the public more generally. For example, a landowner receiving a \$1 million offer foregoes \$4-5,000 of interest each month the offer is delayed. A delay of six months due to the volume of applications and appraisals to process would imply \$24-30,000 foregone (before taxes).

The Board agreed to limit the number of applications to approximately 250, leaving the specific mechanism by which to reach that goal subject to comment and review by county program administrators. Carla Gerber, Kent County Program Administrator, expressed a preference that, however the Foundation sets the cap; it should be a very clear and simple formula setting a maximum number to make it easier to explain to the County Commissioners and landowners.

After comment, review, and discussion among county program administrators, staff, and Board members, Ms. Gerber's preference was followed. MALPF would accept up to sixteen applications per county. Any additional applications would be accepted if a county is willing to pay the additional appraisal costs.

### **Energy Production on MALPF Properties**

#### *Wind and Solar*

In April 2008, Governor O'Malley announced that his administration would not allow wind turbines on State forest and park land. According to the *Baltimore Sun* (Tom Pelton, "Wind farms to be barred," April 12, 2008), a proposal to lease State-owned land in the Savage River and Potomac State forests was opposed by Garrett County elected officials and citizens who feared the visual impact of clearing about 400 mountaintop acres to construct 100 wind turbines. The Governor noted that he continues to support wind energy turbines on private lands.

MALPF staff and Board members anticipated that this issue would become relevant to the Foundation because MALPF-preserved lands fall in the middle between State- and privately-owned lands: they are privately-owned lands in which the State has a real property interest. State agencies with an interest in whether or not wind turbines are located on such lands should seek common, or at least coordinated policy.

MALPF currently allows wind turbines for the production of energy used on the easement property. Utility companies can integrate the on-site production into serving the energy needs of the farming operation through a net zero metering arrangement whereby any energy shortfalls are made up from the electrical grid and surpluses are sent to the grid. Any net excess would not be compensated at the end of the annual cycle. Selling surplus electricity produced on MALPF-preserved land to electric companies is not allowed by statute (Ag. Article, § 2-513(b), Ann. Code of MD).

MALPF approved its first requests for the construction of non-commercial wind turbines during FY 2009. The discussion on the commercial production of wind and solar power on MALPF-preserved properties will be continued in the next MALPF annual report, because the issue was engaged in proposed legislation in the 2009 legislative session.

#### *Natural Gas Rights*

The MALPF Board of Trustees was given authority by the General Assembly in House Bill 91 (2003) to accept easements entering the program without the subordination of natural gas rights on the property, if the Board determines that the exercise of those rights will not interfere with an agricultural operation on the land. This authority applies specifically to Western Maryland because of its unique relationship to natural gas.

First, Garrett County contains a natural geological formation called the "Accident Dome" used as seasonal storage by companies transporting natural gas by pipeline from Texas across the East Coast. The gas is stored in the off-season and released during

period of peak demand. The storage well sites connected to the Accident Dome operations are, for the most part, already in place, and the impact on the existing or potential farming operation can easily be established.

Second, the chain in title of ownership of mineral rights in some cases is broken and cannot be established in Western Maryland. In such cases, subordination cannot be obtained, and it makes sense for the MALPF Board to have discretion to decide whether or not to take an easement on a property on a case-by-case basis.

Since 2003, new drilling technologies have been adopted in the geological area of the Marcellus Shale found across much of Garrett County. Deep lateral or horizontal drilling now allows energy companies to tap into underground natural gas deposits that before were not commercially exploitable. As a result of the development of commercially viable wells using this technology in the Marcellus Shale area of New York and Pennsylvania, leasing agents have started soliciting natural gas lease pools of contiguous properties in Garrett County for drilling companies to develop for natural gas production.

MALPF has been receiving inquiries from program participants for permission to lease their land and/or mineral rights for natural gas drilling purposes, usually by joining a leasing pool being solicited. However, MALPF's statutory authority only allows it to accept properties into the program without subordination of mineral rights after the judgment is made of little or no impact to the farming operation, not allowing leasing once the property is in the program. This is similar to taking exception to a pre-existing right-of-way or other title issue on a property at closing, as opposed to allowing a new commercial non-agricultural activity on easement property, which is *not* allowed under statute (Ag. Article, § 2-513(b), Ann. Code of MD).

Leasing agents have offered “no access/no drill” lease because the natural gas can be extracted from off site through the new lateral drilling technology. A fundamental rule of the MALPF program is that MALPF does not control subsurface rights, though exactly how that rule is implemented is not

always clear. If a company extracted the natural gas or other resource without disturbing the land surface, with no impact to the farming operations (such as through subsidence), and with no accidents or other liability from the underground activity, while guaranteeing the protection of MALPF's interests, such a lease could be allowed.

In considering any changes to existing policy, such as through legislation, MALPF should coordinate its position with other State agencies, preferably under the direction of the Governor's Office, given that the Governor has already weighed in on a similar issue – the lease of State-owned land for wind turbines.

The MALPF Board had a request at its June 2008 meeting from a Garrett County program participant to sell a natural gas lease on his easement property. He requested that MALPF inform him whether or not he has the right to 1) sell a gas lease to allow drilling on site; and 2) if drilling on site is not allowed, if a “no drill/no access” lease allowing off-site extraction would be allowed. This request was tabled until after FY 2008, being assigned to Board's Gas Lease Committee, under the direction of Board Trustee Bobby Stahl, for a policy recommendation.

As of June 30, 2008, the Board awaited the report of the Gas Lease Committee, formal legal advice from the Foundation's counsel on off-site drilling and extraction of minerals from an easement property, the development of new regulations incorporating and interpreting the 2003 legislative changes and formal legal advice on off-site extraction, any additional information resulting from a projected visit of MALPF Board and staff members to drilling sites in Pennsylvania, and any new legislation introduced in the 2009 legislative session. The discussion of natural gas rights issues in Western Maryland will be continued in the next MALPF annual report.

### *Coal Rights*

In the 2008 legislative session, a bill introduced to the General Assembly by the Western Maryland delegation proposed extending the non-subordination provisions of

HB 91 (2003) to coal rights. House Bill 274 (2008), crossfiled as Senate Bill 133, would have prohibited MALPF from requiring (as a to the Foundation if the Foundation determines that exercise of the coal rights will not interfere with an agricultural operation conducted on land in the agricultural district. The Department of Agriculture chose to take no position on this bill. It was not passed by the General Assembly.

### **Charitable Donations Policy**

In late 2007, after a request from a landowner to amend an easement to donate family lot rights to the Foundation, the Board of Trustees realized that it had never considered what types of rights that it would accept for donation. The Foundation also did not have a policy on what the process for accepting a charitable donation would be. The Board created a committee to study the issue.

condition of establishing an agricultural district) a coal rights owner in Garrett or Allegany County to subordinate his or her interest

Types of donations that the Committee considered were the donation of family lots, the right to request termination after 25 years, the right to subdivide a property and the right to a tenant house. The Committee determined whether the type of donation had conservation value, whether MALPF should accept the donation, and whether the donation could be considered charitable under IRS regulations.

The process recommended for accepting a donation was based on the Maryland Environmental Trust's policy. The Committee now has a policy that it is recommending to the Board of Trustees, but, as of the date of this report, the Trustees have not yet voted on the policy.

*(text continues on page 33)*

## Proposed Guidelines for Certain Amendments to MALPF Easements

(Draft "Charitable Donations" Policy)

All Amendments to MALPF easements are subject to MALPF Board approval. However, the following are guidelines for MALPF staff and County Program Administrators. The Program Administrator/landowner must submit a letter or form requesting the amendment and the nature of the proposed provisions to the County Program Administrator and, if approved by the county, to MALPF. Upon review and approval, MALPF will send a draft amendment to the landowner for review. Amendments may also require Board of Public Works Approval. Additionally, some approvals may be conditional on a favorable review of the impact on the value of the easement by the Office of Real Estate, Department of General Services. If an Amendment has market value, as required by the Internal Revenue Service, then MALPF may sign the tax form. In addition, MALPF will look at the appraisal to determine if the appraisal adequately describes the gift, for example, the number of development rights being extinguished or other facts such as the configuration of the property. However, MALPF staff members are not trained appraisers and should not attempt to validate whether the monetary value associated with those extinguished rights is correct. MALPF staff may refuse to sign a Form 8283 if the facts surrounding the appraisal are inaccurate. A letter sent to the landowner at settlement will explain this policy. **THESE GUIDELINES ARE PROPOSED ONLY AND DO NOT REPRESENT APPROVED BOARD POLICY.**

What is the amendment?/ Should it be accepted by MALPF?	Is there a conservation value?	<b>Rationale/Conditions</b>	Is there potential market value?/ should MALPF sign the tax form?	Who should pay for the title work?
1. To extinguish family lots (YES)	Yes	Donations of family lots will be accepted because the Foundation finds that they have conservation value. However, the Foundation finds that there is no monetary value to donation. Value was not given to the retention of family lots for the valuation at the time of purchase, and, therefore, value is not given if family lots are donated. A "Whereas" clause will be in the Amendment to indicate that there is no charitable donation. [Note: unrestricted lots are deducted in the valuation and are not conditional; therefore, they DO have market value and are a valid tax deduction, if extinguished by Amendment.]	No	MALPF
2. To extinguish the right to request termination after 25 years (YES)	Unknown	It is unknown whether any landowner will succeed in obtaining termination and, therefore, unknown as to whether there is a conservation value. However, the Foundation is willing to accept these donations and pay for the title work as there is value in avoiding possible future legal costs incurred in the defense of the easement against termination. A "Whereas" clause will be in the Amendment to indicate that there is no charitable donation.	No	MALPF
3. To extinguish the right to subdivide a property or lot (LIKELY)	Yes	There is conservation and agricultural value to keeping parcels together. The Foundation may be willing to accept these donations. If a property has a concept plan for subdivision which met MALPF requirements and has one dwelling per parcel, then there may be a charitable donation. However, eliminating the right to a non-density transfer would likely not have market value.	Case specific	MALPF
4. To donate the right to a tenant house (HIGHLY UNLIKELY)	Yes (but agricultural value – No)	Donations of tenant houses may have conservation value, but may not be accepted because the Foundation finds that tenant houses help keep a farm economically viable. However, if the Foundation were to accept the donation, it would not establish monetary value by signing the tax form. Because value was not given to the possible tenant house at the time of the easement purchase, value may not be given for a donation. A "Whereas" clause in the Amendment would be needed to indicate that there is no charitable donation.	No	Landowner or MALPF – Case specific

Last revision: May 2008

## Acceptable Uses of MALPF Properties

### *Introduction*

A systematic review and revision of the allowable uses of MALPF-preserved properties has been underway since 2000 when the Task Force first discussed the issue of allowing farmers to earn supplemental income from farm- and forestry-related uses on MALPF properties and from home occupations. Legislation clarifying the MALPF Board's authority to implement these recommendations was not passed until the 2003 legislative session. The clarifying language states:

"A landowner whose land is subject to an easement may not use the land for any commercial, industrial, or residential purpose except as determined by the Foundation, for farm and forest related uses and home occupations..." (Agriculture Article §2-513(b)(1), Ann. Code of MD)

In implementing this clarification, the Foundation originally took two tracks. First, regulatory language was developed for COMAR. Second, the Foundation would draw up a list of acceptable activities and uses to be allowed either by pre-approval or as long as landowners met certain specified conditions for the activity or use. In the meantime, activity or use requests would be evaluated on a case-by-case basis using a combination of, primarily, proposed regulations originally approved by the Board in its September 2003 meeting, and, secondarily, a table of uses recommended by the MALPF Task Force in its August 21, 2001 Report for guidance.

Finally, in July 2005, the Board of Trustees created three formal committees to develop an explicit list of approved uses: the General Uses Committee under the chairmanship of Vera Mae Schultz, the Equine Uses Committee under the chairmanship of Howard Freedlander, and the Winery and Vineyard Uses Committee under the chairmanship of Dr. James Pelura. The work of these three Committees has now been completed, and the lists of approved uses and new regulations have been approved and adopted by the MALPF Board. Though the approvals for their work continued into FY 2009, the complete uses tables are presented in this document

to make them easily and publicly available in one place. For further discussion on the pre-FY 2008 background of the development of these regulations and use tables, see the previous MALPF annual report for FY 2003 to FY 2007 (pp. 93-99).

### *New Regulations*

The Board of Trustees approved new regulations on allowable activities and uses of MALPF-preserved properties in September 2003, but requested certain revisions before submitting them for adoption. Once final revisions were completed, they were submitted to the Joint Committee on Administrative, Executive, and Legislative Review (AELR Committee) of the General Assembly for adoption, going into effect on November 3, 2008. The text of the new regulations follows.

---

### **Approval for Uses of or Activities on Farmland Subject to an Agricultural Land Preservation District or Easement** (Authority: Agriculture Article, §§2-504 and 2-513(b), Annotated Code of Maryland)

15.15.07.01

#### **.01 Scope.**

This chapter establishes the criteria and eligibility for the approval of allowable uses or activities on a farm subject to an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation.

15.15.07.02

#### **.02 Eligibility.**

The Maryland Agricultural Land Preservation Foundation may approve farm, forest, or home occupation related uses or activities of eligible landowners on a farm subject to easement restrictions even though the use or activity does not strictly fall within the definition of traditional agricultural use. Each request shall be reviewed by the Foundation based on the criteria provided by this chapter to determine if a landowner's requested use or activity conflicts with the overall purpose of the easement to preserve the farm for agricultural use and as open space land.

15.15.07.03

#### **.03 Criteria to be Considered.**

The Foundation shall consider the following cri-

teria in determining whether to approve or disapprove any use or activity:

- A. proportion of size of use or activity to total farm operation;
- B. compatibility with farm or forest production;
- C. potential damage to soil productivity;
- D. extent of use of existing farm structures or buildings and impact on the value of the existing structure for farm or forestry use;
- E. whether any new structure or parking to support the use meets Foundation guidelines for location, scale, and impervious surfaces;
- F. compatibility with the rural character of the farm and the surrounding area;
- G. county advisory board recommendation;
- H. compatibility with the implementation or maintenance of a best management practice provided in a soil conservation and water quality plan for the farm and, if applicable, a Forest Stewardship Plan or a nutrient management plan; and
- I. impact on sensitive natural resources on the farm, such as steep slopes, highly erodible soils, wetlands or stream buffers.

15.15.07.04

**.04 Application Procedure.**

Before the Foundation may consider a request for approval of any use or activity provided by this chapter, all of the following information shall be submitted by the county on behalf of the landowner:

- A. an application for approval that has been completed and signed by all titled landowners that fully and completely describes the proposed use or activity on the farm;
- B. a letter of recommendation from the local agricultural land preservation advisory board or program administrator;
- C. a written statement from the local planning and zoning office, or the county program administrator indicating that the proposed use or activity is permitted as of right or by special exception under local zoning; and
- D. a written statement from the local soil conservation district that the use or activity does not (1) interfere in the implementation or maintenance of a best management practice for the farm provided in its soil conservation and water quality

plan, or (2) adversely impact sensitive natural resources on the farm, if such statement is requested by the Foundation.

15.15.07.05

**.05 Violation.**

Any landowner who violates an approval by the Foundation for any use or activity may also be in violation of that landowner's district agreement or agricultural land preservation easement. This violation may result in the rejection of the landowner's offer to sell an easement or in the enforcement of easement restrictions.

---

*General Uses Policy*

The General Uses Committee made its first report to the Board in February 2007 and continued its work and Board presentations through June 2007, with the initial sections of the tables on farm- and forest-related uses, uses associated with normal agricultural and silvicultural operations, and uses conducted in preexisting dwellings approved at the April and May 2007 Board meetings. A description of the pre-FY 2008 accomplishments of the General Uses Committee is available in the previous annual report.

The Committee made its final report and recommendations for general uses at the November 2007 Board meeting. The last elements for the table of acceptable general uses of MALPF-preserved lands were approved in final form at the November 2007 Board meeting. The final report and recommendations presented to the Board follows (capitalized text represents additions since the approval of this report at the April Board meeting).

---

**USES OF LAND IN THE MALPF PROGRAM<sup>o</sup>**

(In addition to normal agricultural and silvicultural uses)

Guidelines for uses of land in the Maryland Agricultural Land Preservation Foundation (MALPF) program in addition to normal agricultural and silvicultural uses were formed to help implement the portions of the statute requiring that MALPF “preserve agricultural land and woodland in order to provide sources of agricultural products within the State for the citizens of the State . . . and, protect agricultural land and woodland as

open-space land.” [Maryland Annotated Code, Title 1, Subtitle 5, Section 2-501.] At the same time, these additional uses are recognition of the need for agriculture and forestry to provide a dependable, adequate source of income for the owner or operator of land in the MALPF program.

An owner or operator of land in the MALPF program may engage in additional uses that complement other agriculture or forestry operation on the land and/or do not interfere with the current agricultural or silvicultural operations and continued agriculture and forestry production. When possible, to minimize the effect on other agriculture and forestry operations, these additional activities should be conducted near residences or buildings that existed at the time of recordation of the easement or district agreement.

The following conditions apply to additional uses of land in the MALPF program:

1. All additional uses are first subject to local zoning.
2. All additional uses must not interfere with the other agriculture or forestry operations.
3. All additional uses must not affect the future agriculture or forestry productivity of the land.
4. ALL ADDITIONAL USES MUST HAVE OWNERSHIP INTEREST.
5. All parking related to additional uses must be pervious.
6. The landowner must submit a letter detailing his/her proposed additional use to the county agricultural land preservation program administrator and, if approved by the county, to MALPF. The administrator may refer the use request to the county agricultural advisory board. All additional use requests require approval by the county agricultural program administrator and by MALPF staff, while some also require the approval of the MALPF Board of Trustees. Upon review and approval, MALPF will send a letter to the landowner detailing the proposed additional use. In agreement, the landowner will sign the letter and return it to MALPF for permanent placement in his/her file.

Additional uses in pre-existing dwellings are not subject to MALPF approval, but are to be reported to the county MALPF program adminis-

trator. Parking and storage related to those activities must be located within the one acre surrounding and including the preexisting dwelling. Additional uses in buildings other than pre-existing dwellings are subject to parking and other requirements as listed in the Guidelines.

Uses of land that receive easement funds from the federal Farm and Ranchland Protection Program (FRPP) are more restrictive. See FRPP regulations for allowed uses.

Some terms used in the table are defined here:

*Accessory sales* – items that add to the convenience or usefulness of the primary farm or forest products.

*Additional use* – any activity that is not normal agriculture or silviculture as defined by the Maryland Department of Agriculture or the Maryland Department of Natural Resources–Forest Service.

*Indigenous* – grown or raised in the specified geographical area.

*Livestock* - farm animals kept for use on a farm or raised for sale or profit, such as horses, cows, sheep, goats, and hogs.

**OWNERSHIP INTEREST – THE OWNER OF THE EASEMENT/DISTRICT LAND MUST BE INVOLVED IN OR GIVE PERMISSION FOR THE USE.**

*Pervious surface* – ground cover, such as grass, gravel, straw, etc., that allows storm water to penetrate the soil beneath.

*Pre-existing dwelling* – a dwelling existing at the time of recordation of the district agreement or deed of easement and the acre on which it is located; tenant houses are classified separately from “pre-existing dwellings.”

- *This report was approved by the Board of Trustees at the April 27, 2007 meeting, with the exception of the capitalized and italicized text approved by the Board of Trustees at the November 27, 2007 meeting.*

---

The General Uses Committee and the Board of Trustees stressed that the recommendations approved by the Board of Trustees are decision-making guidelines for the Board, and that the MALPF Board reserves discretion and final authority for the approval or restriction of any use request.

## *Equine Uses Policy*

MALPF has a long history of working with horse farms. The very first easement accepted by MALPF was a donated easement on a horse farm in Frederick County. The key issue in the MALPF program's past has always been at what point a horse farm crosses from being a horse breeding, raising, and training operation – essentially a livestock operation, clearly agricultural in nature – to being a commercial recreational operation.

New guidelines are intended to be more broadly conceived to include commercial recreational activities, such as horseback riding lessons, within the scope of allowable uses. Such a change is more consistent with the reality that horse operations today are made up of a number of interrelated and interdependent uses, some which have not been acceptable to the MALPF program in the past.

The Equine Uses Committee presented its proposed updated table of uses at the November 2007 Board meeting, asking for comments from Board members, county program administrators, local Advisory Board members, the Horse Industry Board, horse farm operators, and anyone else interested.

On one hand, a primary concern of horse industry representatives participating in the use discussions appeared to be whether the MALPF Board considers horse operations to be “farming.” If horse operations are defined as “farming,” some in the industry seemed to conclude that anything related to horses must be allowed, including regular large-scale horse race and show events open to the public.

On the other hand, regularly scheduled large-scale public events did not seem to some Board members to be an appropriate use of preserved land, leading to a great deal of discussion concerning the category of “horse racing/ steeplechase/ cross-country riding /rodeos/ eventing” and the need to control impervious surfaces on preserved land that may lead to limitations on parking, farm structures including large show and riding arenas, and other permanent structures and developments related to certain horse-re-

lated activities.

The response to the initial proposal concerned the following issues. First, some members of the Horse Industry Board were concerned with how to differentiate between small- versus large-scale horse events and where to draw the line at the number of major public events. The Committee had recommended no more than two major public events annually, and some Horse Industry Board members could not understand why a maximum of only two were to be allowed. Wally Lippincott, Baltimore County program administrator, was concerned about the strict limitations on parking coupled with the possibility of allowing two large-scale public events annually – that perhaps consideration could be given for temporary parking on the property for such events.

The MALPF Board of Trustees approved the proposed equine uses policy as expressed in the table of uses recommended by the Equine Uses Committee at its February 2008 Board meeting. The Committee had met with members of the Horse Industry Board to discuss their concerns. In addition to the table of uses, the final approved recommendations of the Committee as a result of that discussion follows.

- A major event would be defined by the following criteria: number of cars; number of horses; number of people; number of days; size of area affected; and the nature of the facilities required. The Equine Uses Committee did not draw a line on the scale of the activity, but rather these guidelines provide the dimensions by which the Board can compare one event to another. Over time, the Board may choose where lines should be drawn to distinguish a "major" event from other events.
- No more than two major events would be allowed annually, but this limit would be subject to review in the future by the Board.
- MALPF Board would consider on a case-by-case basis any requests to accommodate temporary parking for a major event.
- "Scale" is the primary consideration in reviewing use and activity requests. Any use requests that raise questions

of scale to the county advisory board and/or MALPF staff will be referred to the Board of Trustees for review and approval. The question of scale refers to what the primary land-use on the property will be when the use request is approved and implemented on the property. For example, a request to develop a property for horse riding lessons that results in a small easement property being covered with riding stables and a riding arena would raise issues of scale that should be addressed by the MALPF Board of Trustees.

- Properties must remain in compliance with their nutrient management plans, soil erosion and water quality plans, forest stewardship plans if applicable, and retain their agricultural assessment.
- The Board recognizes that the horse industry is a legitimate farm business in the State of Maryland and should be treated as such.

#### *Winery and Vineyard Uses Policy*

The policies recommended by the Winery and Vineyard Uses Committee were the last to be approved by the Board of Trustees. Though approved after the end of FY 2008 in February 2009, they are included in this annual report so the full range of allowable uses can be made available for reference in one location. The Committee used the recommendations of the General Uses and Equine Uses Committees as models to follow.

When discussions first got underway to review the winery uses, the following was clear. First, MALPF had no problem preserving a property with an existing winery operation. Any incompatible use could be addressed by withholding adequate acreage from the district and easement at application to encompass those uses. The primary problem occurs when an owner of an already preserved property wishes to develop a winery operation.

Second, within certain parameters, such as processing grapes grown on the property, the storage and sale of the estate-produced wine on the property including a

tasting room exclusively devoted to estate produced wines, and (with case-by-case permission) special events that do not interfere with the farming operation, wineries have always been allowed on MALPF-preserved land. However, processing grapes produced off-site, retail operations including wines or other agricultural products grown and/or processed off site or non-agricultural items, and special events or tour operations have been either not allowed on MALPF easement properties or only with strict limits and conditions.

New guidelines for winery operations are intended to be more broadly conceived to take into consideration the unique and difficult issues faced today by wineries in Maryland that, to be successful, may have to depend on uses and activities unacceptable to the MALPF program in the past. For example:

- For a Maryland winery to produce the range of wines often expected for marketing purposes, it must rely on grapes produced off-site, because relatively few properties have adequate microclimates, soils, exposure, and drainage to produce more than one or two grape varieties.
- Not only is it difficult to grow both the amount and range of grape varieties on one property, many Maryland wineries require more grapes than are available from Maryland vineyards, requiring the purchase of grapes or juice from California, New York, and elsewhere.
- Even wineries intending to produce only estate wines (grown only from vineyards on the proprietor's property or properties) need to supplement their own production during the development of their vineyards and as a result of short harvests from weather, insect, or animal damage.
- Some Maryland wineries rely on wine tourism, special events that may include catering, and other events to bring the public on the property for retail sales, supplemental income, and to develop and sustain brand awareness. Indeed, a condition of a Class IV winery license in Maryland is that tours of the winery facilities must be provided to visitors.

- Some Maryland wineries rely on retail sales of non-agricultural items, typically wine-related, to supplement income.

Initially, the Committee felt that developing uses policies that would work for Maryland wineries would require changes in legislation. After discussing with legal counsel what such legislation might require, Committee staff concluded that legislation would not be required, because the MALPF Board of Trustees had adequate authority to adopt the necessary changes.

The Winery and Vineyard Uses Committee presented its proposed table of uses to the Board at the September 23, 2008 meeting, asking for comments from Board members, county program administrators, local Advisory Board members, the Maryland Winery Association, the Maryland Grape Growers' Association, vineyard and winery operators, and any other interested parties.

At the September Board meeting, prior to collecting comments specific to the proposed use table, Board members expressed two concerns. First, because each winery operation is unique, how can a single policy apply? The table of uses is developed using the different possible use elements that can make up a winery operation. The Board needs to apply those different use dimensions to the specifics of each individual proposed winery operation.

Second, how can new winery and vineyard guidelines be applied retroactively to already existing easement properties and winery operations? As of September 2008, thirty-five wineries are in operation in Maryland. Only one or two incorporate MALPF-preserved land. Developing and adopting explicit use guidelines for winery and vineyard operations will help those in the program who already have a winery operation, those already in the program who may wish to develop a winery operation, those looking to purchase an existing easement property for a winery operation, and those who already have a winery operation who wish to enter the program.

A central Committee objective was to

find a policy on winery operations that would encourage the winery to be part of the easement rather than having it on withheld or released acreage. In both cases, such acreage may be used for purposes in the future inconsistent with farming operation on the remainder of the property. Also the Committee wanted to be certain both that a winery has and maintains a direct connection to the property on which it is located and that its production volume is proportionate or in scale to the property's size.

The comments at the November 25, 2008 Board meeting were directly related to these objectives, focusing primarily on the following:

- *How should MALPF account for the relationship between the size of the property and the production of the winery?*
- *What is the minimum connection that should be expected between a winery and the property's farming operation?*
- *What is the simplest and most effective way to monitor winery properties to ensure compliance with scale and connection requirements?*

The proposed policy focused on the scale of the winery production as the primary basis for approval, not the source of grapes. The production capacity of the winery seems easier to determine than the origin of the grapes. However, the general consensus of the comments provided to the Committee is to try to work with acreage measures as much as possible, both because of the simplicity in monitoring and because the acreage of the property can provide a basis for the allowable scale of winery production.

The Committee took the comments and recommendations from the November Board meeting and revised its winery and vineyard uses proposal. This proposal was completed, presented, and approved at the February 24, 2009 meeting of the Board of Trustees. The agenda memorandum submitted with the proposed use table to explain the thinking of the Committee follows.

### Proposed Vineyard/Winery Uses of MALPF-Preserved Properties

The MALPF Board of Trustees looked at the original winery uses proposal at its November meeting and recommended that the proposal be revised to make the size limitations based on acreage rather than production as an easier mechanism to monitor and understand. While moving from production volume to acreage represents a basic change in the approval and monitoring process, the winery uses policy does not diverge significantly from the general outlines of the initial proposal. The Board's intent in recommending this change was to simplify both the review and approval process of the Board and the ongoing problem of how to monitor winery properties.

Under recently adopted regulations, the Foundation is required to take into consideration the following criteria in determining whether or not to approve a use or activity:

1. proportionality of the use or activity to the total farm operation
2. compatibility with farm or forest production
3. extent of use of existing farm structures or buildings and the impact on their value for farm or forestry use
4. compliance with guidelines for location, scale, and impervious surfaces for structures and parking
5. compatibility with rural character
6. compatibility with conservation and forest stewardship plans
7. impact on sensitive natural resources on the property.

The Board and the Winery Uses Committee has also suggested the following criteria need to be taken into account specifically for winery and vineyard uses:

1. The ability of a winery to have a flexible operation that can respond to variations in production due to start-up, weather and pests, grape availability, etc.
2. The ability of a winery to produce a wider variation of wine than can necessarily be produced on the property (for example, the property may do well producing grapes for red wines, but not for whites)
3. A winery needs the ability to have events and wine tourism to help "brand" and market the wine produced as well as provide ongoing retail opportunities.

4. A winery must maintain a substantial connection to the farm property or properties where it is located in the support of on-site grape production.

Among other benefits, these proposed guidelines will allow the landowner and MALPF to preserve an entire farm, rather than requiring withheld acreage for a winery operation that could be used in the future in ways inconsistent or incompatible with or disruptive to the adjacent farming operation. Also, this would allow the landowner to be compensated through an easement purchase on the full acreage, which could help defray the substantial start-up costs of a vineyard and winery.

The volume of requests to MALPF for winery operations is not expected to be significant. The Committee anticipates that few, if any, requests will pose issues related to proportionality, and that such issues can be addressed on a case-by-case basis. Proportionality issues have not, and probably cannot, be addressed definitively but have been left to a large degree to the discretion of the Board based on individual requests, each with unique circumstances.

Proportionality. The Committee recommends that a fundamental principle for reviewing requests is that the production capacity of any winery must be proportional either to the size of the property and/or to the acreage of grapes under the direct control (ownership, lease, or contract) of the landowner. However, the Committee is not making recommendations at this point of any specific formula between acreage and winery capacity, though the Committee notes that this relationship will not be difficult to establish based on potential per acre yield. The Committee recognizes that properties that have conditions whereby the entire acreage could eventually be planted to vineyard or other wine-producing fruit are rare in Maryland. This concept of proportionality allows MALPF to put a cap on the size of winery production proportional to the size of the property, allowing for the proprietors to ramp up production, cope with harvest variability, develop contractual relationships with grape suppliers (expanding the supply and improving the quality of Maryland grape production), develop a fuller line of wines, and blend from different vineyards for taste and quality.

Based on production volume related to acreage, a 100-acre farm fully planted to grapes (an unlikely prospect) could produce 150,000 gallons of wine, assuming 1,500 gallons per

acre (10 tons per acre, with each ton producing 150 gallons); or a 50-acre farm could produce 75,000 gallons of wine. According to a member of the Winery Uses Committee, a winery to be profitable really needs to be producing 20,000 gallons of wine. Thus, MALPF can calculate a maximum proportional volume of production based on the acreage of the property, irrespective of where the grapes are actually produced.

Minimum "On-site" Primary Production. The Committee and the Board recommends that a fundamental principle for reviewing requests is that at least some grapes processed by the winery be produced "on site." Issues to be included in the review of any request are:

- Minimum on-site production can be much more easily and much less intrusively monitored by acreage requirements than volume requirements.
- Minimum on-site production requirements must recognize that a start-up winery may not be supplied with on-site production for at least three years after planting; it takes about five years to produce high quality grapes; and servicing the capital investment in a winery may require ramping up winery production more quickly than grape production can be expanded. Of course, depending upon the landowner, grape production may precede winery production, given the relative costs of the respective investments and the talents and resources of the operator.
- According to a member of the Winery Uses Committee, production of 20,000 gallons would likely result in a profitable winery. This production could reasonably be attained from 13.33 acres of producing vineyards. It seems to be a reasonable starting point to discuss a minimum on-site acreage (planted, not necessarily producing) at start-up of one-quarter the acreage necessary for 20,000 gallons of production (3.3 acres), growing to one-third the acreage necessary for 20,000 gallons of production over 10 years (4.5 acres).

Combining "Proportionality" and "On-site" Production. I would thus propose that the size of the easement property provide the maximum production possible for a proposed winery and the on-site production acreage necessary for providing the potential fruit for one-quarter to one-third of a reasonably profitable producing winery provide the minimum acreage planted

to vineyard. Thus, the startup acreage should be 3.3 acres to be reached within five years of the approval; and 4.5 acres should be planted within ten years of the approval, irrespective of the size of the property. However, the proportional calculation and the definition of "on-site" production include not just the easement property, but all properties owned by the grantor, though the grantor, in the request, must be explicit in what properties should be included and explain why, if some included properties are not preserved, the winery is not being constructed on non-preserved acreage. The Board, at its discretion, may also take property leased by the grantor or off-site Maryland-based vineyards under a long-term controlling contract by the grantor into consideration in calculating proportional winery capacity and the definition of "on-site" production. However, it must be made clear in any approval that, if the grantor is relying upon other property owned, leased, or under contract to determine the production capacity of the winery and/or to meet minimum "on-site" production requirement, the sale of such other properties, the loss of the lease, and/or the loss of vineyard contracts may affect the approved winery production capacity. Further, agricultural subdivision may also affect the conditions for approval of vineyard/winery uses on the property.

Monitoring. The monitoring of planted acreage can be done using field calculations from GPS coordinates. Better yet, planted acreage can be measured using aerial photographs that are anticipated to become an integral part of future monitoring. A rough estimate of production volume, if necessary, can probably be obtained from the State agency responsible for taxing alcohol production.

Implementation Considerations. The development of new use policies should be done with several practical issues in mind. First, use policies should be relatively easy to monitor to verify that the uses conform to what is allowable without intrusive inspections or an undue burden of proof on the inspectors. Among other considerations, uses should be constructed to avoid the need to enter structures to verify use, avoid the need to inspect financial records, avoid the need to monitor event schedules, etc. Second, use policies should be clear and easily understandable by the landowner, the public, county and state staff, County Advisory Board members, and MALPF Board members. Third, use policies should be relatively flexible to take into consideration that the activities on farms will vary widely across properties and are likely to vary

across time in ways that cannot now be anticipated. Fourth, new use policies should not take away uses and activities that currently are allowed and should not require approval for uses or activities that are currently allowed without prior approval. Finally, the Foundation should be careful not to lose control over the activities that take place on its properties as a result of changes in use policies.

Other Considerations. Impervious surfaces pose a major issue in at least one program in which MALPF participates: the Federal Farmland Protection Program. At the moment, any easement purchased with a commitment of federal funds is restricted from having over a 2% impervious surface cover on the property. This restriction can, based on a formula used by NRCS, go up to 6% on the total property if it is smaller and near a population center, but any such change in allowable impervious surface restrictions must be incorporated explicitly into the Deed of Easement. The impervious surfaces that count against this total include all farm and residential structures, impervious road surfaces (including road beds of public roads owned by the grantor), and impervious surface parking (certain structures created for conservation purposes may not be included). Not only is the property required to have less than 2% impervious surface relative to the total size of the property at settlement on the easement, property cannot exceed 2% of the property's area in impervious surface in the future, no matter what kind of agriculture is pursued.

---

To read the table of vineyard/winery uses on MALPF-preserved properties that [follows], note the following:

Uses are delineated by which level of approval must be sought for the individual use. Thus, in table 1 and 2, a farm winery restricted to processing on-site production in a preexisting structure, as a farm-supporting value-added commercial enterprise that is, minimally, compatible with and, more typically, enhances a farming operation and has minimal impact on the soils, will require review by the county and by MALPF staff to verify and clarify impervious surface issues and that it meets the approval conditions. If the request includes the

construction of a new structure or raises questions of location, scale, or other concern, MALPF staff will also seek a review and approval by the MALPF Board of Trustees. A farm winery processing on-site and off-site production will necessarily require review and approval by the county, MALPF staff, and the MALPF Board.

Because most uses and activities could include the construction of a new permanent structure, the expansion of a preexisting structure, and/or the creation of a permanent parking area to support the uses or activities that would have an impact on soils and the land, conditions are delineated on how much of an impact on the land such facilities could have on the property, such as by limiting the area that parking can occupy and the pervious nature of that parking. Any review of a request made by MALPF staff can be redirected to the MALPF Board if the request is such that MALPF staff judges the scale or nature of the proposed request to be beyond the scope of staff authority to approve. The Board of Trustees is expected to ask staff that all requests initially be reviewed and approved by the Board until it is comfortable with the new guidelines and their implementation.

Any requests including any of the following elements must be reviewed and approved by the Board of Trustees, unless the Board chooses to defer to staff approval:

- Any request involving new construction.
- Any request involving the construction of formal parking.
- Any request involving the processing or sale of off-site production.
- Any request involving large public events.
- Any public event where winery or other on-farm product promotion is only part of the event's purpose.

---

All three uses tables approved by the MALPF Board of Trustees follow, composing together the position of the Board on allowable non-traditional uses of MALPF-preserved properties. The tables are presented in the original form in which they were approved. Staff is aware that substantial redundancy can be eliminated from the tables and will condense the material in the future.

## Guidelines<sup>†</sup> for Non-Traditional Uses of Land in the MALPF Program

(in addition to normal agricultural and silvicultural uses)

*The Maryland Annotated Code provides for agricultural and silvicultural uses of land in the MALPF program. It also states that “A landowner whose land is subject to an [MALPF] easement may not use the land for any commercial, industrial, or residential purpose except ... [a]s determined by the [MALPF] [F]oundation, for farm and forest-related uses and home occupations.” The following guidelines apply to those excepted (additional) uses.*

*All additional uses of land in the MALPF program are subject to: 1) county zoning regulations; 2) conditions listed in MALPF regulations; 3) conditions listed here; and 4) ownership interest. Other uses or variations of the following examples may be allowed and can be pursued by the landowner at the county level for possible consideration at the state level.*

*All additional use requests require approval by the county agricultural program administrator and by MALPF staff while some, as noted in the chart below, also require the approval of the MALPF Board of Trustees. The landowner must submit a letter detailing his/her proposed additional use to the county agricultural land preservation program administrator and, if approved by the county, to MALPF. The administrator may refer the additional use request to the county agricultural advisory board. “County Ag Board/Admin approval” in the chart below means approval by either the county program administrator or both the county program administrator and the county agricultural advisory board. Upon review and action, MALPF will send a letter to the landowner detailing the approved proposed additional use or the reason for denying the request. In agreement, the landowner will sign the letter and return it to MALPF for permanent placement in his/her file.*

Land Use	Conditions	County Ag Board/Admin approval	MALPF Staff approval	MALPF Board approval
<b>A. Farm- and forest-related</b>  1. Agro-tourism, educational tours/programs, etc., e. g., corn mazes	<b>All additional uses are subject to county zoning regulations, conditions listed in MALPF regulations, conditions listed here, and ownership interest.</b>  Must not interfere with other agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Parking area is limited to 2% (two percent) of the easement/district, or two acres, whichever is smaller. Parking area must be pervious. Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.	X	X	
2. Butcher shop	Must not interfere with other agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Some of the meat processed must come from animals raised on site; the remainder must come from animals indigenous to Maryland. Facility and parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller. Parking area must be pervious. Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.	X	X	

(continues)

Land Use (Farm- and forest-related, continued)	Conditions	County Ag Board/Admin approval	MALPF Staff approval	MALPF Board approval
3. Compost production	<p>Must not interfere with other agricultural or silvicultural operations.            Must not limit future agricultural or silvicultural production.            Majority of the products involved must come from on site.            Products from off site must be ready to process when they come onto the farm.            Storage of tree stumps and debris from off site is not allowed.</p>	X	X	
4. Farm animal petting zoo	<p>Must not interfere with other agricultural or silvicultural operations.            Must not limit future agricultural or silvicultural production.            Must be farm animals indigenous to the Americas.            Must accompany agricultural education or the sale of farm products.            Parking area is limited to 2% (two percent) of the easement/district, or two acres, whichever is smaller.            Parking area must be pervious.            Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	
5. Farm and forest machinery repair	<p>Must not interfere with other agricultural or silvicultural operations.            Must not limit future agricultural or silvicultural production.            Repairs are limited to farm or forest equipment.            Some repairs must be to machinery of the on-site operation.            Parking area must be pervious.            Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	
6. Fee fishing	<p>Allowed in existing ponds.            Must not interfere with other agricultural or silvicultural operations.            Must not limit future agricultural or silvicultural production.            Parking area is limited to 2% (two percent) of the easement/district, or two acres, whichever is smaller.            Parking area must be pervious.            Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	
7. Firewood, mulch	<p>Must not interfere with other agricultural or silvicultural operations.            Must not limit future agricultural or silvicultural production.            Majority of the products must be produced on site; the remainder must be of species indigenous to Maryland.            Facility (or sale area) and parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.            Parking area must be pervious.            Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	

(continues)

Land Use (Farm- and forest-related, continued)	Conditions	County Ag Board/Admin approval	MALPF Staff approval	MALPF Board approval
8. Landscaping business	<p>Must not interfere with other agricultural or silvicultural operations. Majority of the stock used in the business must be grown on site. Must not limit future agricultural or silvicultural production. Parking area must be pervious. Vehicles and equipment stored must relate to the business. Distribution centers where offsite products are brought in for retail sales are not allowed.</p>	X	X	
9. Large farm animal veterinary hospital	<p>Must not interfere with other agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Footprint of the hospital (office, surgical rooms &amp; indoor treatment areas) must be no more than 5,000 sq. ft. The operation is limited to large farm animals. No retail sales are allowed other than those incidental to the services offered. Parking area must be pervious.</p>	X	X	X
10. Livestock auction, permanent facility	<p>Must not interfere with other agricultural or silvicultural operations. Can be held no more than once a month. Facility is limited to one acre. Parking area is limited to 2% (two percent) of the easement/district, or two acres, whichever is smaller. Parking area must be pervious. Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	X
11. Livestock show/auction/sale	<p>Must not interfere with other agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Can be held no more than once a month. Some animals involved must be raised on site; the remainder must be indigenous to Maryland. No new or additional permanent structures are allowed. Parking area is limited to 2% (two percent) of the easement/district, or two acres, whichever is smaller. Parking area must be pervious. Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	
12. Livestock slaughtering, mobile facility	<p>Must not interfere with other agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Some animals slaughtered must be raised on site; the remainder must be indigenous to Maryland. Disposal of all animal remains must comply with local, state, and federal regulations. Occurrence must be infrequent. Facility cannot be permanent.</p>	X	X	

(continues)

Land Use (Farm- and forest-related, continued)	Conditions	County Ag Board/Admin approval	MALPF Staff approval	MALPF Board approval
13. Livestock slaughtering, permanent facility	<p>Must not interfere with other agricultural or silvicultural operations.            Must not limit future agricultural or silvicultural production.            Disposal of all animal remains must comply with local, state, and federal regulations.            Parking area is limited to 2% (two percent) of the easement/district, or two acres, whichever is smaller.            Parking area must be pervious.            Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	X
14. Processed (value-added) farm and forest products	<p>Must not interfere with other agricultural or silvicultural operations.            Must not limit future agricultural or silvicultural production.            Some of the products must come from animals raised or crops grown on site; the remainder from animals or crops indigenous to Maryland.            Facility and parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.            Parking area must be pervious.            Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	X
15. Saw mill, lumber kiln	<p>Must not interfere with other agricultural or silvicultural operations.            Must not limit future agricultural or silvicultural production.            Some of the products handled must be produced on site; the remainder must be indigenous to Maryland.            Facility and parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.            Parking area must be pervious.            Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	
<p><b>B. Associated with normal agricultural or silvicultural operations</b></p> <p><b>All additional uses are subject to county zoning regulations, conditions listed in MALPF regulations, conditions listed here, and ownership interest.</b></p>				
1. Activities related to greenhouses	<p>Greenhouses are normal agricultural or silvicultural operations. The following conditions apply to activities related to greenhouses:            Must not limit future agricultural or silvicultural production.            Majority of the products must be grown on site; the remainder must be indigenous to Maryland.            Parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.            Parking area must be pervious.            Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	

(continues)

Land Use (associated with normal ag or silvicultural operations, continued)	Conditions	County Ag Board/Admin approval	MALPF Staff approval	MALPF Board approval
2. Activities related to farm markets and road-side stands	<p>Farm markets and road-side stands are normal agricultural and silvicultural operations. The following conditions apply to activities related to farm markets and road-side stands:</p> <ul style="list-style-type: none"> <li>Must not interfere with other agricultural or silvicultural operations.</li> <li>Must not limit future agricultural or silvicultural production.</li> <li>Majority of the products must be grown on site; the remainder must be indigenous to Maryland.</li> <li>Parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.</li> <li>Parking area must be pervious.</li> <li>Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</li> </ul>	X	X	
3. Activities related to seasonal harvests such as strawberries, pumpkins patches, Christmas trees	<p>Seasonal harvests are normal agricultural and silvicultural operations. The following conditions apply to activities related to these harvests:</p> <ul style="list-style-type: none"> <li>Must not limit future agricultural or silvicultural production.</li> <li>Majority of the products must be produced on site; the remainder must be indigenous to Maryland.</li> <li>Parking area is limited to 2% (two percent) of the easement/district, or two acres, whichever is smaller.</li> <li>Parking area must be pervious.</li> <li>Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</li> </ul>	X	X	
<b>C. Conducted in pre-existing dwellings</b>				
1. Animal rescue/rehabilitation	<p>All additional uses are subject to county zoning regulations, conditions listed in MALPF regulations, conditions listed here, and ownership interest.</p> <p>Must not interfere with the agricultural or silvicultural operations.</p> <p>Must not limit future agricultural or silvicultural production.</p> <p>Must operate within the one acre surrounding and including a pre-existing dwelling.</p> <p>Parking area must be included in that one acre.</p>	X	X	
2. Bed and breakfast	<p>Must not interfere with the agricultural or silvicultural operations.</p> <p>Must not limit future agricultural or silvicultural production.</p> <p>Must operate within the one acre surrounding and including a pre-existing dwelling.</p> <p>Parking area must be included in that one acre.</p>	X	X	
3. Cottage industries	<p>Must not interfere with the agricultural or silvicultural operations.</p> <p>Must not limit future agricultural or silvicultural production.</p> <p>Must operate within the one acre surrounding and including a pre-existing dwelling.</p> <p>Parking area must be included in that one acre.</p>	X	X	

(continues)

Land Use (conducted in pre-existing buildings, continued)	Conditions	County Ag Board/Admin approval	MALPF Staff approval	MALPF Board approval
4. Dog kennel	Must not interfere with the agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Must operate within the one acre surrounding and including a pre-existing dwelling. Parking area must be included in that one acre.	X	X	
<b>D. Other</b>	<b>All additional uses are subject to county zoning regulations, conditions listed in MALPF regulations, conditions listed here, and ownership interest.</b>			
1. Activities by landowner, operator, or others for gain for charitable purposes	Must not interfere with the agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Farm or forest must be maintained or restored to its original condition. Occurrence must be infrequent, of minimal duration, and limited in scope. No new or additional permanent structures are allowed. Parking area is limited to 2% (two percent) of the easement/district, or two acres, whichever is smaller. Parking area must be pervious. Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.	X	X	
2. Festivals, military re-inactments, other productions	Occurrence must be infrequent, of minimal duration, and limited in scope. Must not interfere with the agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Farm or forest must be maintained or restored to its original condition. No new or additional permanent structures are allowed. Parking area must be pervious. Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.		X	X
3. Filming – commercial and non-commercial	Must not interfere with the agricultural or silvicultural operations. Must not limit future agriculture or forest production. Occurrence must be infrequent and of minimal duration. Farm or forest must be maintained or restored to its original condition. No new or additional permanent structures are allowed. Parking area must be pervious	X	X	X
4. Hunting club	Must not interfere with the agriculture or silvicultural operation. Must not limit future agricultural or silvicultural production. Associated structure for such use can be no more than 600 (six hundred) sq. ft.. Parking area and associated structures are limited to 2% (two percent) of the easement/district, or two acres, whichever is smaller. Parking area must be pervious.	X	X	

(continues)

Land Use (other, continued)	Conditions	County Ag Board/Admin approval	MALPF Staff approval	MALPF Board approval
5. Private air strip	<p>Personal use is restricted to owner/operator of land on which the airstrip is located. Can be used for farm- and forest-related services in the community. Must not interfere with the agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Landing strip must be pervious. Accessory structures and lighting are not allowed.</p>	X	X	
6. Sporting clays/trap/skeet	<p>Must not interfere with the agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Area, including parking area, must cover no more than 5% (five percent) of the easement/district. Parking area must be pervious. Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	
7. Wagon/sleigh rides, hunting, canoeing, boating, trail riding, hiking, etc.	<p>Must not interfere with the agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Parking area and associated structures must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller. Parking area must be pervious. Accessory sales area must not exceed 600 (six hundred) sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.</p>	X	X	
8. Weddings, receptions, group picnics, etc.	<p>Must not interfere with the agricultural or silvicultural operations. Must not limit future agricultural or silvicultural production. Parking area must be pervious. No new or additional permanent structures are allowed. Occurrence must be infrequent.</p>	X	X	

+ Guidelines are just that. to serve as recommended direction for the MALPF Board of Trustees which has ultimate decision-making authority.

Approved by MALPF Board 11/27/2007

## Supplemental Guidelines<sup>+</sup> for Horse Farm and Horse-Farm-Related Uses of Preserved Properties

Normal equine activities typical of horse farms, with the exception of regularly scheduled, major public events, are considered by the Maryland Agricultural Land Preservation Foundation (MALPF) as agricultural activities appropriate to MALPF properties. MALPF fully appreciates and understands the value of horse farms as part of Maryland's agricultural industry. "County Advisory Board" in the chart below means explicit approval by the county agricultural advisory board.

Use	Definition or Description of Use and Nature of Relationship to the Farming Operation	Conditions	County Advisory Board approval	MALPF Staff approval	MALPF Board approval
<b>Farm, Farm-Related, and Farm-Supporting Uses</b>					
<b>Horse Boarding*</b> (currently allowed without restrictions)	A facility that shelters, feeds, and cares for horses. A horse boarding facility implies existing barns or stables used for boarding and/or new stables constructed for boarding. These structures are considered farm structures for purposes of the Program, but their size and number may be limited by any impervious surface restrictions on the property. Horse boarding is a farm business requiring other farm products and compatible with other farm operations.	No more than 4% of the easement/district or 2 acres, whichever is smaller, can be used for parking. Any parking lot must be pervious, with the exception of handicapped parking facilities required by law.	[X] ♦	[X] ♦	
<b>Horse Training*</b> (currently allowed without restrictions)	A facility that is used to train horses for riding, racing, driving, and/or managing livestock. A horse training facility may imply, in addition to stables, a training track and an arena for indoor training during inclement weather. These structures are considered farm structures for purposes of the Program, but their size may be limited by how they are constructed and any impervious surface restrictions on the property. Horse training is a farm business requiring other farm products and compatible with other farm operations.	No more than 4% of the easement/district or 2 acres, whichever is smaller, can be used for parking. Any parking lot must be pervious, with the exception of handicapped parking facilities required by law.	[X] ♦	[X] ♦	
<b>Horse Riding Lessons</b>	A facility that is used to teach people how to ride a horse. A horse riding facility may imply a free-standing tack shed, trails, arena or other related improvements on the property. These improvements are considered farm structures or farm-related improvements for purposes of the Program, but their size may be limited by how they are constructed and any impervious restrictions on the property. Horse riding is a farm support business requiring farm products and is compatible with farm operations.	No more than 4% of the easement/district or 2 acres, whichever is smaller, can be used for parking. Any parking lot must be pervious with the exception of handicapped parking facilities required by law. The primary use of the land must be for farming operations (including horse breeding, boarding, and training). The MALPF Board will review any requests that raise questions of scale. ♦	X	X	

(continues)

Use	Definition or Description of Use and Nature of Relationship to the Farming Operation	Conditions	County Advisory Board approval	MALPF Staff approval	MALPF Board approval
<p><b>Horse Shows and Auctions</b></p>	<p>A facility that is used for horse shows and/or auctions. A horse show or auction facility may imply, in addition to stables, an arena or barn used to show or auction horses. These structures are considered farm structures for purposes of the Program, but their size may be limited by any impervious surface restrictions on the property. A horse show or auction is a farm or farm-support business and/or event requiring other farm products and is compatible with other farm operations as long as the scale is limited. ◊ If these operations or events are major, regularly scheduled, and/or public, they must be approved by the MALPF Board of Trustees.</p>	<p>No more than 4% of the easement/district or 2 acres, whichever is smaller, can be used for parking. Any parking lot must be pervious, with the exception of hand-capped parking facilities required by law. The MALPF Board would consider on a case-by-case basis any requests to accommodate temporary parking for a major event.</p> <p>The primary use of the land must be for farming operations (including horse breeding, boarding, and training), and not the showing or auctioning of off-site horses. The MALPF Board will review any requests that raise questions of scale.</p> <p>Show or auction events that are major, regularly scheduled, public in nature, and involve horses not owned by the Grantor and stabled off site will be limited to not more than two per calendar year, the events must have a minimal or appropriate seasonal impact on the farming operations, and the events must be approved by the MALPF Board.</p> <p>A major event would be defined by the following criteria: number of cars, number of horses, number of people, size of area affected, and the nature of the facilities required.</p>	<p>X</p>	<p>X</p>	<p>[X]†</p>
<p><b>Horse Racing/ Steeplechase/ Cross-country Riding/ Rodeos/ Other Similar Events</b></p>	<p>A facility that is used to race horses. Steeplechase racing involves horse races where there are obstacles in the raceway. A horse racing facility may imply, in addition to stables, a race track and/or trails on the property. These are considered farm-related or farm-supporting improvements for purposes of the Program, but their size may be limited by how they are constructed and any impervious surface restrictions on the property. These are farm-support events having no long-term impact as long as no permanent structures are created and the scale is limited. ◊ If these events are major, regularly scheduled, and/or public, not more than two events can occur annually, the events must have a minimal or appropriate seasonal impact on the farming operations, and the event must be approved by the MALPF Board of Trustees.</p>	<p>No more than 4% of the easement/district or 2 acres, whichever is smaller, can be used for parking. The parking lot must be pervious, with the exception of hand-capped parking facilities required by law. The MALPF Board would consider on a case-by-case basis any requests to accommodate temporary parking for a major event.</p> <p>No permanent grandstands or other spectator-related structures for the racing or riding events will be allowed outside.</p> <p>Any racing or riding events that are major, regularly scheduled, public, and include animals not owned by the Grantor and stabled off site will be limited to not more than two events per calendar year, the events must have a minimal or appropriate seasonal impact on the farming operations, and the events must be approved by the MALPF Board.</p> <p>A major event would be defined by the following criteria: number of cars, number of horses, number of people, size of area affected, and the nature of the facilities required.</p>	<p>X</p>	<p>X</p>	<p>X</p>

- + \* Guidelines are just that: to serve as recommended direction for the MALPF Board of Trustees which has ultimate decision-making authority.
- \* Horse boarding and training are already accepted uses of MALPF properties. They are included here for completeness in delineating acceptable equine uses, to bring attention to the possibility that either one of these uses may result in impervious surface issues (either with limitations implicit in federally-funded easements or parking limitations), and to help track and report on equine uses to the Board and others (such as the Governor's Office). Existing horse boarding and training operations do not need to comply with changes in policy unless they exceed impervious surface limitations in their deeds of easement; such operations will be included in any reporting requests as a product of on-going monitoring activities.
- ◆ Review and approval are required only for new boarding and training operations and only to verify and clarify impervious surface issues.
- + MALPF Board approval is required if the proposed operations or events are major, regularly scheduled, and/or public.
- ◇ Any use requests that raise questions of scale to the county advisory board and/or MALPF staff will be referred to the Board of Trustees for review and approval. The question of scale refers to what the primary land use on the property will be if and when the use request is approved and implemented. For example, a request to develop and property for horse riding lessons that results in a small easement property being covered with riding stables and a riding arena would certainly raise issues of scale that should be addressed by the MALPF Board of Trustees. Properties must remain in compliance with their nutrient management plans, soil erosion and water quality plans, forest stewardship plans if applicable, and retain their agricultural assessment.
- Impervious surfaces used for parking in the immediate curtilage of residential and certain equine-related structures (for example, to meet handicapped parking requirements) must be within any applicable overall impervious surface limitations on the property, will count towards the total pervious parking lot limitations, and should be shown to be minimized as much as possible on the property.

Approved by MALPF Board 02/26/2008 (revisions: 02/28/2008; 07/20/2009)

## Supplemental Guidelines<sup>+</sup> for Vineyard, Winery, and Winery-Related Uses of Preserved Properties

*Normal production, processing, and promotional activities typical of farm vineyards and wineries with a Class IV Maryland wine license, with the exception of regularly scheduled, major public events, are considered by the Maryland Agricultural Land Preservation Foundation (MALPF) as agricultural activities appropriate to MALPF properties. MALPF fully appreciates and understands the value of vineyard and winery operations as part of Maryland's agricultural industry and the effort to develop Maryland's winery industry and related tourism.*

Use	Definition or Description of Use and Nature of Relationship to the Farming Operation	Conditions <sup>*</sup>	County Advisory Board approval	MALPF Staff approval	MALPF Board approval
<b>Farm, Farm-Related, and Farm-Supporting Uses</b>					
<b>Vineyards, Orchards, and Other Primary Agricultural Products*</b>	A primary production use on which other value-added processing and farm-related activities are based.	No conditions and no need for review or approvals.			
<b>Farm Winery*</b> (restricted to processing on-site products)	A facility that processes fruit for the production of wine or juice on a producing vineyard, orchard, or similar growing area. A farm winery must have a valid Class IV Maryland wine license. A winery structure is considered a farm structure for purposes of the Program, but its size may be limited by any impervious surface restrictions on the property. Storage of wine produced on the property is allowed in the winery structure and/or retail sales facility. This is a value-added processing facility dependent on and enhancing primary on-site products and compatible with other farm operations.	No more than 4% of the easement property or 2 acres, whichever is smaller, may be used for a permanent parking area. The parking area must be pervious, with the exception of handicapped parking facilities required by law. <sup>‡</sup> A winery's structure's size and maximum production capacity must be consistent in scale with the size of the property and maximum acreage that could realistically be planted (at a rate of 1,500 gallons per acre). The Board may require a smaller maximum size and production capacity, at its discretion, to control the impact on the farm operation, rural character, and other values. New construction for a winery must be approved by the Board and may only be approved if new construction is judged necessary. The use of a preexisting structure is encouraged. The location of the winery on the property must minimize interference with other agricultural or silvicultural operations and its impact on future agricultural or silvicultural production. Ownership interest in the winery operation is required of the landowner and/or farm operator. Winery processing can incorporate agricultural production from other farms owned and/or leased by the landowner and/or farm operator. If other properties owned or leased by the landowner or farm operator are taken into account in determining scale, any changes may affect the approval and will require, at minimum, staff review.	[X] <sup>♦</sup>	[X] <sup>♦</sup>	[X] <sup>♦</sup>

(continues)

Use	Definition or Description of Use and Nature of Relationship to the Farming Operation	Conditions*	County Advisory Board approval	MALPF Staff approval	MALPF Board approval
<p><b>Farm Winery</b> (processing on-site and off-site products by review and approval)</p>	<p>A facility that processes fruit for the production of wine or juice on a producing vineyard, orchard, or similar growing area. A farm winery must have a valid Class IV Maryland wine license. A winery structure is considered a farm structure for purposes of the Program, but its size may be limited by any impervious surface restrictions on the property. Wineries with a Class III Maryland wine license will not be approved on MALPF-preserved farms. Storage of wine produced on the property is allowed in the winery structure and/or retail sales facility. The purpose for allowing the processing of fruit grown off-site is (1) to facilitate the construction and use of the on-site winery facility while on-site fruit production is expanding; (2) to allow vineyard/winery operations flexibility in production variation due to weather and other factors; (3) to provide additional outlets for Maryland grape production; and (4) to help encourage improvement in the quality of off-site Maryland grape production. This is a value-added processing facility at least partially dependent on and enhancing on-site products and potentially compatible with other farm operations.</p>	<p>No more than 4% of the easement property or 2 acres, whichever is smaller, may be used for a permanent parking area. The parking area must be pervious, with the exception of handicapped parking facilities required by law. †</p> <p>A winery's structure's size and maximum production capacity must be consistent in scale with the size of the property (at a rate of 1,500 gallons per acre). The Board may require a smaller maximum size and production capacity, at its discretion, to control the impact on the farm operation, rural character, and other values.</p> <p>The minimum on-site vineyard acreage is 3.3 acres planted within 5 years of approval, rising to 4.5 acres within 10 years of approval. The Board may require a greater minimum acreage at its discretion.</p> <p>The use of a preexisting structure for the winery facility is encouraged. New winery construction must be approved by the Board and may only be approved if new construction is judged necessary.</p> <p>The location of the winery on the property must minimize interference with other agricultural or silvicultural operations and its impact on future agricultural or silvicultural production.</p> <p>Ownership interest in the winery operation is required of the landowner and/or farm operator.</p> <p>Winery processing is restricted to Maryland-grown fruit unless the Secretary of Agriculture determines that there is an insufficient supply.</p> <p>Production potential from other farms owned or leased by the landowner and/or farm operator or under control by contract may be taken into account in determining the winery's size and processing scale.</p> <p>If other properties owned or leased by the landowner or farm operator or under contract are taken into account in determining size and scale, any changes may affect the approval and will require, at minimum, staff review.</p>	X	X	X

(continues)

Use	Definition or Description of Use and Nature of Relationship to the Farming Operation	Conditions*	County Advisory Board approval	MALPF Staff approval	MALPF Board approval
<p><b>Retail Sales Facility</b> (restricted to selling only on-site products)</p>	<p>A facility that sells at retail primary and processed on-site products. A retail facility may imply a freestanding structure on the property. A sales facility would be considered a farm structure or farm-related improvement for purposes of the Program. Its size, location, and related parking may be limited by how it is constructed, the scale of the operation, access issues, and any impervious surface restrictions on the property. Retail sales facilities selling farm products produced on site, including farm markets and roadside stands, are considered part of normal agricultural and silvicultural operations, though size, location, and related parking may be limited by the Foundation and/or county rules. Storage of wine produced on the property is allowed in the retail sales facility and/or winery. A retail sales facility to sell wine will only be approved for an easement property with a previously or contemporaneously approved winery. A retail sales facility depends on, enhances, and promotes primary on-site products and value-added processing of primary on-site products.</p>	<p>All products sold must be grown and processed on site. A retail facility's size and sales capacity must be consistent in scale with on-site production.◇ New construction or the expansion of a preexisting structure must be approved by the Board. New construction may only be approved if it is judged necessary. First preference is to use pre-existing structures; second preference is to expand preexisting structures to house retail sales facilities. The location of the sales facility must minimize interference with other agricultural or silvicultural operations and its impact on future agricultural or silvicultural production. Ownership interest in the sales operation is required of the landowner and/or farm operator. Retail sales can incorporate farm products from other farms owned and/or leased by the landowner and/or farm operator. If other properties owned or leased by the landowner or farm operator are taken into account in determining scale, any changes may affect the approval and will require, at minimum, staff review. No more than 2% of the easement property or 2 acres, whichever is smaller, may be used for a related permanent parking area. Parking area allowances do not cumulate for multiple uses. The related parking area must be pervious, with the exception of handicapped parking facilities required by law.‡</p>	X	X	[X]◆

(continues)

Use	Definition or Description of Use and Nature of Relationship to the Farming Operation	Conditions*	County Advisory Board approval	MALPF Staff approval	MALPF Board approval
<p><b>Retail Sales Facility</b> (selling more than wine and other agricultural products produced on-site)</p>	<p>A facility to sell at retail primary and processed on-site and off-site farm products. A retail facility may imply a freestanding structure on the property. A sales facility would be considered a farm structure or farm-related improvement for purposes of the Program. Its size, location, and related parking may be limited by how it is constructed, the scale of the operation, access issues, and any impervious surface restrictions on the property. Retail sales facilities selling farm products produced on site, including farm markets and roadside stands, are considered part of non-mal agricultural and silvicultural operations, though size, location, and related parking may be limited. Storage of wine produced on the property is allowed in the retail sales facility and/or winery. A retail sales facility to sell wine will only be approved for an easement property with a previously- or contemporaneously-approved winery. A retail sales facility at least partially depends on, enhances, and promotes primary on-site products and value-added processing of primary on-site products.</p>	<p><b>Conditions*</b></p> <p>Some of the farm products sold must be produced on site; the remainder must be indigenous to Maryland.  Accessory sales area (such as for t-shirts, corkscrews, and other non-agricultural items) must not exceed 600 sq. ft. and in no case shall be greater than the area used for the sale of farm and forestry items.  A retail facility's size and sales capacity must be consistent in scale with on-site production.◇  New construction or the expansion of a preexisting structure may only be approved if it is judged necessary. First preference is to use preexisting structures; second preference is to expand pre-existing structures to house retail sales facilities.  The location of the sales facility must minimize interference with other agricultural or silvicultural operations and its impact on future agricultural or silvicultural production.  Ownership interest in the sales operation is required of the landowner and/or farm operator.  Retail sales can incorporate farm products from other farms owned and/or leased by the landowner and/or farm operator and have those products considered on-site products.  If other properties owned or leased by the landowner or farm operator are taken into account in determining scale, any changes may affect the approval and will require, at minimum, staff review.  No more than 2% of the easement property or 2 acres, whichever is smaller, may be used for a related permanent parking area. Parking area allowances do not cumulate for multiple uses.  The related parking area must be pervious, with the exception of handicapped parking facilities required by law.‡</p>	<p>X</p>	<p>X</p>	<p>X</p>

(continues)

Use	Definition or Description of Use and Nature of Relationship to the Farming Operation	Conditions*	County Advisory Board approval	MALPF Staff approval	MALPF Board approval
<p><b>Tasting Room Facility</b> (restricted to on-site products)</p>	<p>A support facility that is considered a farm-related or farm-supporting improvement for purposes of the Program. Its size, location, and related parking may be limited by how it is constructed, the scale of the operation, access issues, and any impervious surface restrictions on the property. The purpose of a tasting room is to allow prospective purchasers to sample the wine produced on site before purchase, and is therefore part of the promotion and branding activities that may be necessary to the success of the winery operation. A tasting room facility will only be approved for an easement property with a previously- or contemporaneously-approved winery. A farm support facility that depends on, enhances, and promotes primary on-site products and value-added processing of primary on-site products.</p>	<p><b>Conditions*</b></p> <p>All products sampled in the tasting room facility must be grown and processed on site.</p> <p>A tasting room's size must be consistent in scale with on-site production.◇</p> <p>A tasting room facility may not be a free-standing structure, but must be physically part of the structure housing the retail sales facility and/or the winery. The one exception is if the facility is housed in a preexisting structure on the farm.</p> <p>The expansion of a preexisting structure for tasting room facilities must be approved by the Board. Such an expansion may only be approved if it is judged necessary and incorporates either the winery and/or the retail sales facility.</p> <p>The location of the tasting room facility on the property must minimize interference with other agricultural or silvicultural operations and its impact on future agricultural or silvicultural production.</p> <p>Ownership interest in the tasting room operation is required of the landowner and/or farm operator.</p> <p>The tasting room can incorporate farm products from other farms owned and/or leased by the landowner and/or farm operator.</p> <p>If other properties owned or leased by the landowner or farm operator are taken into account in determining scale, any changes may affect the approval and will require, at minimum, staff review.</p> <p>No more than 2% of the easement property or 2 acres, whichever is smaller, may be used for a related permanent parking area. Parking area allowances do not cumulate for multiple uses.</p> <p>The related parking area must be pervious, with the exception of handicapped parking facilities required by law.‡</p>	X	X	[X]◆

(continues)

Use	Definition or Description of Use and Nature of Relationship to the Farming Operation	Conditions*	County Advisory Board approval	MALPF Staff approval	MALPF Board approval
<p><b>Tasting Room Facility</b> (tasting more than wine produced from fruit grown on-site)</p>	<p>A support facility that is considered a farm-related or farm-supporting improvement for purposes of the Program. Its size, location, and related parking may be limited by how it is constructed, the scale of the operation, access issues, and any impervious surface restrictions on the property. The purpose of a tasting room is to allow prospective purchasers to sample wine produced on site from fruit produced on or off site before purchase, and is therefore part of the promotion and branding activities that may be necessary to the success of the winery operation. A tasting room facility will only be approved for an easement property with a previously- or contemporaneously-approved winery. A farm support facility that, at least in part, depends on, enhances, and promotes primary on-site products and value-added processing, and the retail sales of primary and processed on-site products.</p>	<p>All products sampled in the tasting room facility must be processed, though not necessarily grown, on site. A tasting room's size must be consistent in scale with on-site wine production.◇ A tasting room facility may not be a free-standing structure, but must be physically part of the structure housing the retail sales facility and/or the winery. The one exception is if the facility is housed in a preexisting structure on the farm. The expansion of a preexisting structure for tasting room facilities must be approved by the Board. Such an expansion may only be approved if it is judged necessary and incorporates either the winery and/or the retail sales facility. The location of the tasting room facility on the property must minimize interference with other agricultural or silvicultural operations and its impact on future agricultural or silvicultural production. Ownership interest in the tasting room operation is required of the landowner and/or farm operator. If other properties owned or leased by the landowner or farm operator are taken into account in determining scale, any changes may affect the approval and will require, at minimum, staff review. No more than 2% of the easement property or 2 acres, whichever is smaller, may be used for a related permanent parking area. Parking area allowances do not cumulate for multiple uses. The related parking area must be pervious, with the exception of handicapped parking facilities required by law.‡</p>	X	X	X

(continues)

Use	Definition or Description of Use and Nature of Relationship to the Farming Operation	Conditions	County Advisory Board approval	MALPF Staff approval	MALPF Board approval
<p><b>Agricultural Tourism: Picnicking</b></p>	<p>A farm support activity promoting the retail sales of on-site farm products and winery tourism more generally. Its size, location, and related parking may be limited by the scale of the operation, access issues, and any impervious surface restrictions on the property.</p>	<p>Picnic area acreage must be consistent with the scale of the vineyard/winery operation.◊  The picnic area must be adjacent to the winery and/or retail sales facility.  The picnic area must have no or minimal impact on primary production and the farming operation.  No permanent structures or impervious surfaces may be created to support picnicking.  No more than 2% of the easement property or 2 acres, whichever is smaller, may be used for a related permanent parking area. Parking area allowances do not cumulate for multiple uses.  The related parking area must be pervious, with the exception of handicapped parking facilities required by law.‡</p>	<p>X</p>	<p>X</p>	<p>[X]◆</p>
<p><b>Agricultural Tourism: Tours</b></p>	<p>A farm support activity promoting wine education, the retail sales of on-site farm products, and winery tourism more generally. Facility tours may be available on demand, scheduled, or by advance appointment. Tour facilities will only be approved for an easement property with a previously- or contemporaneously-approved winery. Making public tours available is a condition for a Class IV Maryland wine license; therefore, the primary concern for approval is scale, access, and any impervious restrictions on the property.</p>	<p>Tour facilities must have no or minimal impact on primary production and the farming operation.  Availability of tours must be consistent with the scale of the vineyard/winery operation.◊  Availability of tours must be compatible with the rural character of the surrounding area.  No permanent structures or impervious surfaces may be created to support tourism.  Tour objectives must include agricultural and wine education and promotion.  No more than 2% of the easement property or 2 acres, whichever is smaller, may be used for a related permanent parking area. Parking area allowances do not cumulate for multiple uses.  The related parking area must be pervious, with the exception of handicapped parking facilities required by law.‡</p>	<p>X</p>	<p>X</p>	<p>[X]◆</p>

(continues)

Use	Definition or Description of Use and Nature of Relationship to the Farming Operation	Conditions *	County Advisory Board approval	MALPF Staff approval	MALPF Board approval
<p><b>Agricultural Tourism: Promotional Events</b></p>	<p>A farm support activity promoting primary on-site products, value-added processing, the retail sales of primary and processed on-site products, and the Maryland wine industry more generally.</p>	<p>Facilities used for promotional events must have no or minimal impact on primary production and the farming operation. The number, frequency, and scale of promotional events must be consistent with the scale of the vineyard/winery operation.◇</p> <p>The scale, frequency, and number of promotional events must be compatible with the rural character of the surrounding area.</p> <p>No permanent structures or impervious surfaces may be created to support promotional events.</p> <p>The purpose of any promotional event must clearly be to promote the farm products of the host vineyard/winery operation. No more than 2% of the easement property or 2 acres, whichever is smaller, may be used for a related permanent parking area. Parking area allowances do not cumulate for multiple uses.</p> <p>The related parking area must be pervious, with the exception of handicapped parking facilities required by law.‡</p>	<p>X</p>	<p>X</p>	<p>[X]◆</p>
<p><b>Agricultural Tourism: Charitable Events</b></p>	<p>A farm support activity at least partially promoting primary on-site products, value-added processing, and the retail sales of primary and processed on-site products. The charitable activities must benefit a <i>bona fide</i> non-profit organization while providing promotional benefit to the vineyard/winery operation. A large-scale charitable event that in effect becomes a major public event will be subject to the guidelines for a major public event (see below).</p>	<p>Facilities used for charitable events must have no or minimal impact on primary production and the farming operation. Occurrence must be infrequent, of minimal duration, and limited in scope.◇</p> <p>The scale of charitable events must be compatible with the rural character of the surrounding area.</p> <p>No permanent structures or impervious surfaces may be created to support charitable events.</p> <p>The purpose of the charitable event must be both to benefit the non-profit organization and to promote the farm products of the host vineyard/winery operation.</p> <p>No more than 2% of the easement property or 2 acres, whichever is smaller, may be used for a related permanent parking area. Parking area allowances do not cumulate for multiple uses.</p> <p>The related parking area must be pervious, with the exception of handicapped parking facilities required by law.‡</p>	<p>X</p>	<p>X</p>	<p>X</p>

(continues)

Use	Definition or Description of Use and Nature of Relationship to the Farming Operation	Conditions *	County Advisory Board approval	MALPF Staff approval	MALPF Board approval
<p><b>Agricultural Tourism: Major Public Events</b></p>	<p>A farm support activity that at least partially or directly promotes primary on-site products, value-added processing, and the retail sales of primary and processed on-site products. A major public event must be substantially promotional in purpose, though may include other purposes, such as charitable benefit and/or supplemental income. A major public event would be defined by the following criteria: number of cars; number of people; number of days; size of area affected; and the nature of the facilities required.◊</p>	<p>Facilities used for a major public event must have no or minimal impact on primary production and the farming operation. A major, regularly scheduled, public event will be limited to not more than 2 events per calendar year. A major public event must have a minimal or appropriate seasonal impact on the farming operations, and any such event must be approved in advance by the MALPF Board. The scale and frequency of major events must be compatible with the rural character of the surrounding area. The landowner requesting approval must demonstrate its compatibility. No permanent structures or impervious surfaces may be created to support major public events. No more than 4% of the easement/district or 2 acres, whichever is smaller, may be used for a permanent parking area. The parking area must be pervious, with the exception of handicapped parking facilities required by law. Parking area allowances do not cumulate for multiple uses.‡ The MALPF Board would consider on a case-by-case basis any requests to accommodate additional temporary informal parking for a major event on the property.</p>	<p>X</p>	<p>X</p>	<p>X</p>
<p><b>Agricultural Tourism: Catering Facilities and Activities</b></p>	<p>A farm support activity that helps promote primary on-site products, value-added processing, and the retail sales of primary and processed on-site products. A catering facility is one that allows food prepared off-site to undergo final preparation before service, such as reheating, and can include a dining area scaled to on-site promotional events. (Consult MALPF's "general use" guidelines for additional non-winery related activities.)</p>	<p>The location of on-site catering facilities must have no or minimal interference with other agricultural or silvicultural operations and future agricultural or silvicultural production. A catering facility must be limited to final preparations and service for food prepared off site and must be scaled in size consistent to the scale of the winery's promotional programs and part of the overall promotional strategy.◊ An on-site catering facility may not be a freestanding structure, but must be physically part of the structure housing the retail sales facility and/or the winery. The only exception is if the facility is housed in an appropriate preexisting structure on the farm. The expansion of a preexisting structure for catering facilities must be approved by the Board. Such an expansion may only be approved if it is judged necessary and incorporates either the winery and/or the retail sales facility. (The use of the on-site catering facility for non-winery-related functions may be allowed on an occasional and infrequent basis under MALPF's "general use" guidelines, if the events are using farm products produced on site, provide supplemental income to the farm operation, and do not interfere with the normal farm operations.)</p>	<p>X</p>	<p>X</p>	<p>X</p>

Footnotes:

- + Guidelines are just that: to serve as recommended direction for the MALPF Board which has ultimate decision-making capability.
- \* Vineyards, orchards, and similar production of the raw materials for wine have always been accepted uses of MALPF properties that do not require review or approval. They are included here for completeness in delineating acceptable vineyard and winery uses and to bring attention to the possibility that the ancillary activities of processing primary products on-site, agricultural tourism, and promotional activities related to wine production and sales may result in impervious surface and other issues addressed in these two tables.
- Existing already-approved or acceptable farm winery operations do not need to comply with the changes in policy embodied in these tables as long as they continue to meet the conditions of their original approval.
- ◆ Review and approval are required for new winery operations and related activities and use (retail sales, tasting, etc.); review and approval are also required for the expansion or change in status or conditions of existing winery operations already approved or acceptable to the Foundation. Requests for winery operations that process and sell only on-site primary products and involve no new construction may only need county and staff review to verify and clarify impervious surface issues and that approval conditions have been met, but may also be reviewed by the Board of Trustees at the discretion of staff, particularly until the Board is comfortable with the review process and standards. Board review will be required with no staff discretion if a request involves new construction, the use and/or sale of off-site primary products processed on site, major public events, or any promotional activities where promoting farm products is only part of the activity's purpose.
- ◇ Use requests that raise questions of scale to the county advisory board and/or MALPF staff will be referred to the Board of Trustees for review and approval. The question of scale refers to what the primary land-use on the property will be when the use request is approved and implemented on the property. For example, a request to develop a winery operation on a property that results in a small easement property being dominated by that winery and related promotional activities with minimal primary production would certainly raise issues of scale that should be addressed by the MALPF Board of Trustees. Further, scale can also relate to the number of activities on a property whereby the accumulation of multiple agriculture-related and -supporting activities can overburden the primary agricultural purpose of the easement.
- ‡ Impervious surfaces used for parking in the immediate curtilage of residential and winery-related structures (for example, to meet handicapped parking requirements) must be within any applicable overall impervious surface limitations on the property, will count towards the total pervious parking lot limitations, and should be shown to be minimized as much as possible on the property. MALPF follows NRCS to consider graveled parking, driveways, and farm lanes to be pervious surfaces.

Additional Notes:

1. The storage of wine produced on the property is understood to be included in winery, retail sales, and tasting room approvals.
2. All other uses of the property, such as bed and breakfast facilities, additional on-site value-added processing, etc., are evaluated under the general use and/or equine guidelines.
3. All properties must remain in compliance with their nutrient management plans, soil erosion and water quality plans, forest stewardship plans if applicable, and retain their agricultural assessment. Reviews and approvals will take into consideration the compatibility of the use request with the implementation or maintenance of a best management practice provided in a soil conservation and water quality plan for the farm and, if applicable, a Forest Stewardship Plan or a nutrient management plan.
4. Reviews and approvals shall also take into consideration the impact of the use request on sensitive natural resources on the farm, such as steep slopes, highly erodible soils, wetlands or stream buffers.
5. Impervious surfaces pose a major issue in at least one program in which MALPF participates: the Federal Farmland Protection Program. At the moment, any easement purchased with a commitment of federal funds is restricted from having over a 2% impervious surface cover on the property. This restriction can, based on a formula used by NRCS, go up to 6% on the total property if it is smaller and near a population center, but any such change in allowable impervious surface restrictions must be incorporated explicitly into the Deed of Easement. The impervious surfaces that count against this total include all farm and residential structures, impervious road surfaces (including road beds of public roads owned by the grantor), and impervious-surface parking (certain structures created for conservation purposes may not be included). Not only is the property required to have less than 2% impervious surface relative to the total size of the property at settlement on the easement, property cannot exceed 2% of the property's area in impervious surface in the future, no matter what kind of agriculture is pursued. For NRCS and MALPF, graveled parking and graveled farm lanes and driveways are considered pervious surface cover.
6. Recommendations in the agenda memos on vineyard/winery uses (dated 09/12/2008 and 02/24/2009) on interpretation of these guidelines that approved by the Board of Trustees will be incorporated in the implementation of these guidelines for vineyard/winery uses on MALPF-preserved properties.

Approved by MALPF Board 02/24/2009 (revisions: 02/27/2009; 07/26/2009)

## Conclusions

As a result of a five-year review of the MALPF program by a Governor-appointed Task Force (2000-2004) and as a result of an activist Board of Trustees, MALPF policy directions have been clear in the evolution of the program in recent years and projected into the future:

- Tighten up the development rights left in newly acquired easements on properties while creating more flexibility in the use of the remaining rights.
- Take a more expansive and inclusive view of allowable commercial agricultural uses of MALPF properties.
- Improve easement acquisition targeting.
- Improve the protection of the integrity of the farming operation through lot location, agricultural subdivision, and withheld acreage approvals.
- Improve the monitoring and enforcement of the State's interests in agricultural land preservation.

In the early days of the program, MALPF emphasized expanding the demand for participation. The earliest program participants were probably as much motivated by principle as by economics and had a good understanding of the restrictions on the property purchased by MALPF.

Over time, a larger share of MALPF properties is owned by subsequent owners, often with less of a commitment to MALPF principles and a fuzzier understanding of the restrictions imposed by the deed of easement. A larger share of new participants seem to be motivated more by money than by principle.

MALPF now has preserved enough acreage that its restrictions are increasingly getting in the way of others, including those with alternative or competing public interests that can be detrimental to the preservation of agriculture and those with proposals for non-agricultural uses of MALPF-preserved land. MALPF is now trying to address proposals, among others, for the expansion of public utilities across preserved land, the acqui-

sition and development of preserved agricultural land for parkland, and the drilling of natural gas wells and the construction of wind turbines and solar panels for the commercial production of energy.

Some MALPF issues are being fought in the General Assembly. MALPF is unusual in that the program is intimately tied to State statute. This was originally seen as protection for the program, making changes difficult. Increasingly this means that MALPF-related issues are becoming politicized. Some of the out-side pressure on the program comes from legislators seeking to serve constituent interests, potentially at the expense of the core objectives and principles of the program.

Nonetheless, widespread public support continues for agricultural land preservation. As shown in the Schaefer Center reports described above, in recent years, between 88% and 96% of those surveyed believe farmland preservation is at least "somewhat important," and 53% to 78% believe that it is "very important." And the number of applications to sell easements to MALPF continues to grow.

Some current issues that remain unresolved have already been described earlier in this chapter. They remain under discussion and will be addressed again in a future annual report if and when resolved. These include commercial energy production on MALPF properties, groundwater recharge easement overlays, and charitable donations policies.

Some issues MALPF is now beginning to engage or continues to address as general issues include the following.

1. *Predictable and Adequate Funding Levels.* The most intractable, but pressing issue for MALPF has been its funding. Tying the funding to real estate transfer taxes and agricultural transfer taxes has provided overall reasonable levels and a relatively steady flow of funding to the program when real estate markets are stable. However, recent instability and unpredictability in the real estate markets have made it clear that the

funding mechanism was both increasingly inadequate as acquisition costs soared (tripling since FY 2002) and counterproductive with funding dropping even more quickly than real estate values, making it impossible to increase easement acquisitions when properties are available and inexpensive.

The original purpose to create the MALPF Task Force in 2000 was to address program funding inadequacies systematically and comprehensively. Because government budget issues have persisted since 2002, the Task Force's funding recommendations failed to be adopted by the General Assembly.

The funding issue remains the most important still to be addressed by MALPF and the General Assembly. Today, however, the recommendations would likely be different than the Task Force recommendations and include restructuring the funding sources to include private sources and other State sources and allow MALPF to be more innovative in its acquisition and financing strategies by leveraging purchases during revenue shortfalls by bonding authority, seeking outside private and public funds to supplement its regular program funding, and a revolving loan fund to lock in the preservation of critical properties quickly through the Critical Farms Program using easement options.

2. *Easement Valuation and Acquisition Costs.* MALPF has engaged the issue of the value of the offers made to program applicants, both through the Board-appointed Easement Valuation Committee under the leadership of Jerry Klasmeier, Board representative for the Office of the Comptroller, and through staff actions. The problem is perceived to be relatively high easement values and, therefore, offers relative to the appraised fair market values of certain properties.

Initial analysis suggests two things are happening. First, the rate of discounting has remained relatively constant since FY 2002, going from

about 28% as a percent of easement value in FY 2002-04 to about 40% in FY 2005-07 and dropping back to pre-FY 2005 levels in FY 2008, despite the change in the ranking system based on discounting to one based on the relative quality of the properties.

The primary difference appears to be the distribution of discounted offers, not the average discounted asking price. Before the change in ranking system, the distribution of the average discounts offered was more of a "Bell curve," with a few steep discounts, a large number of average discounts, and a few asking prices representing inflated expectations. After the change in ranking system, the distribution of the discounts offered seemed to represent more of an inverted "Bell curve," with a large number of asking prices over 100% of the easement value and a relatively large number of steeply discounted asking prices for those seeking offers in the Second Round based on discounting.

Second, high easement values appear to be problems in some counties and not in others. Some counties already seem to do fairly well at encouraging applicants to discount asking prices, either by encouraging competition for Round Two offers (this is typical in some Eastern Shore counties), by caps (Carroll County), or a ranking system that takes discounting into account (Baltimore, Carroll, Frederick, and Worcester Counties). Some other counties have applicants seeking to maximize their offers because no incentive exists to discount and no limits are placed on offers, particularly if applicants know they have a high-quality property that will rank well.

To date, MALPF has sought to address this problem at the county level, because the problem is disproportionately concentrated in some counties and not in others, and seems to be best addressed with locally-generated solutions before considering the imposition of a statewide, one-size-fits-all solution. Among the

potential local solutions that have been proposed or adopted include caps on the per acre amount paid for an easement, caps on the maximum percentage of fair market or easement value paid for an easement, discounting as a weighting factor in the ranking system, rankings based on the cost-effective use of existing funding relative balancing the price paid for individual easements with the program-specific quality of the properties.

At the same time, discussion and analysis continues at the State level, including monitoring the easement valuation policies adopted by the counties and their effectiveness at controlling costs, working with agricultural economists at the University of Maryland to evaluate the agricultural value formulation and effects of altering its parameters on easement value calculations, and ways to build cost-effectiveness factors more systematically into county ranking systems.

3. *Participant Choice and Flexibility.* An area that the Task Force recommended changes was to tighten up development rights on newly preserved properties in return for greater choice and flexibility in how to use the retained development rights. As a result of Task Force recommendations, the total lot rights that can be retained on a preserved property is three family lots, but new participants have the option to request one unrestricted lot in lieu of family lots. Additional changes to lot rights can probably be developed to increase participant choice and flexibility and simplifying the program while retaining tight control over the number of retained residential rights to the mutual benefit of the MALPF program and individual farming operations.
4. *Farm Profitability.* The more flexible view of allowable uses on MALPF-preserved lands for agriculture-related activities was a direct product of Task Force recommendations to protect farm profitability. Recent

changes in the certification of local agricultural land preservation programs have included an analysis of zoning ordinances that interfere with normal agricultural activities, affecting farm profitability. Evidence of active local marketing support has also become an element of the certification review. All of these are a part of MALPF's ongoing effort to adopt policies that enhance the potential of its properties to be profitable, but to do so within program principles and requirements.

5. *Improved County Land-use Policies.* In addition to reviewing zoning ordinances that interfere with normal agricultural activities in the process of certification or recertification, MALPF and its certification program partner, the Department of Planning, will start reviewing land-use policies within designated Priority Preservation Areas (PPAs) that limit the conversion of agricultural land to other uses. This certification review criterion is now required under the Agricultural Stewardship Act of 2006 and with the goal of limiting development within the PPA during the time it takes to complete the area's permanent preservation.
6. *Land Acquisition Targeting.* With the effective date of the PPA requirement approaching and the increased concern about acquisition costs, MALPF can be expected to revisit its ranking system in terms of its cost-effectiveness in targeting the most desirable and critical properties for the MALPF program. Of particular concern would be to evaluate the impact of the ranking systems on the trade-offs between costs or discounts and the qualities of the acquired easements, between the quality of the soils protected and the strategic location of the property, and between other relevant elements.
7. *Stewardship Issues.* Because of the increased concern with impact of agricultural activities on water quality, erosion, and other environmental issues, MALPF is likely to take a more

systematic look at land stewardship issues in the near future. An issue already under discussion during FY 2008 is whether or not MALPF should require compliance with laws on nutrient management as a precondition to go to settlement on an easement. This issue was not resolved during FY 2008.

Another potential issue is the possibility that nutrient credit trading will have direct impact on the MALPF program. First, such a program could provide additional funding to acquire easements on agricultural land in return for enhanced conservation practices as an easement requirement. Second, owners of MALPF properties may seek to install and sell permanent enhanced conservation practices on their land to others seeking to purchase such an overlay

easement as a nutrient load offset. Both of these possibilities will require that MALPF discuss the gray area between expanded conservation practices and the permanent limitation that such practices impose on future farming activities and profitability.

8. *Improved Information Availability.* While not a policy in the traditional sense used in this chapter, a current high priority goal of the program is to complete the new MALPF database and have the expanded information available for program management and policy evaluation purposes. Once completed, MALPF will begin bringing in-house its related spatial database developed and currently maintained elsewhere in Maryland State government.

# Cooperative Arrangements with Other Agencies and Programs

---

## *Rural Legacy Program*

In 1997, the Maryland General Assembly approved the Rural Legacy Program as a major component of then Governor Parris N. Glendening's Smart Growth and Neighborhood Conservation Initiative.

Located in the Maryland Department of Natural Resources and administered by the Rural Legacy Board, made up of the Secretaries of the Maryland Department of Agriculture, Department of Natural Resources and Department of Planning, the Program was established to protect 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 interests in real property, as well as to purchase property in fee-simple, in designated Rural Legacy Areas (RLAs).

**TOTAL ACREAGE PRESERVED  
BY THE RURAL LEGACY PROGRAM**

(Based on Board of Public Works approvals  
as of 6/30/2008)

Fiscal Year	Rural Legacy Preserved Acreage
1999	376
2000	1,036
2001	13,844
2002	14,498
2003	10,376
2004	9,126
2005	1,345
2006	1,576
2007	1,823
2008	4,916
<b>TOTALS</b>	<b>58,916</b>

Source: RLP, DNR

On February 23, 1999, the Maryland Agricultural Land Preservation Foundation's Board of Trustees approved the concept of co-holding Rural Legacy easements on properties whose focus is primarily agricultural and that generally meet the minimum qualifications of the Foundation's Program. Final

approvals are given on a case-by-case basis and are contingent upon the Rural Legacy easements not having any language that could potentially conflict with MALPF program restrictions. Further, the Board requires a Memorandum of Agreement between the Rural Legacy sponsor and MALPF to outline easement monitoring and enforcement responsibilities.

Settlement of Rural Legacy easements is the financial responsibility of the Rural Legacy sponsor. There is no cost to MALPF other than administrative costs associated with ensuring easement monitoring and enforcement when accepting a co-held Rural Legacy easement. Co-held Rural Legacy easement acreage is not counted in MALPF's acreage totals, but is rather credited to the Rural Legacy Program as the State funding agency.

No new applications were made in FY 2008 for co-held Rural Legacy easements. As of June 30, 2008, the Rural Legacy Program had permanently preserved a total of 58,916 acres statewide.

Successful Rural Legacy Areas are establishing greenbelts of forests and farms around rural communities, protecting critical native wildlife and plant habitats, strengthening natural resource based economies, and protecting riparian forests, wetlands and greenways buffering Maryland's valuable tributaries and bays from pollution run-off.

Interest in the Rural Legacy Program continues to be strong as shown by the number of applications for each grant cycle and the approval of five new Rural Legacy Areas. However, funding continues to lag far behind demand. For FY 2008 \$115,790,000 was received in grant requests. \$20,920,000 (18%) in grant funds was available. Rural Legacy Areas are located in 21 of Maryland's 23 counties

**UPDATE: FY 2008 CO-HELD RURAL LEGACY EASEMENTS**  
(Status as of July 1, 2008)

	Number of Easements	Total Acreage	Average Farm Size (acreage)	Direct Cost of Easement Acquisition	Average Cost of Easement Acquisition per Property	Average Easement Acquisition Cost per Acre
<b>Gunpowder River Rural Legacy Area (Baltimore County)</b>						
Total approved	1	116.190	116.190	\$580,989.33	\$580,989.33	\$5,000.34
Total settled	1	116.190	116.190	\$580,989.33	\$580,989.33	\$5,000.34
<b>Long Green Valley Rural Legacy Area (Baltimore County)</b>						
Total approved	4	348.048	87.012	\$1,411,121.08	\$352,780.27	\$4,054.39
Total settled	4	348.048	87.012	1,411,121.08	352,780.27	4,054.39
<b>Piney Run Rural Legacy Area (Baltimore County)</b>						
Total approved	18	2,285.117	126.951	\$8,243,249.65	\$457,958.31	\$3,607.36
Total settled	18	2,285.117	126.951	\$8,243,249.65	\$457,958.31	\$3,607.36
<b>Little Pipe Creek Rural Legacy Area (Carroll County)†</b>						
Total approved	26	2,526.548	97.174	\$5,894,345.65	\$226,705.60	\$2,332.96
Total settled	26	2,526.548	97.174	\$5,894,345.65	\$226,705.60	\$2,332.96
<b>TOTALS – All Rural Legacy Areas</b>						
Total approved	49	5,275.903	107.671	\$16,129,705.71	\$329,177.67	\$3,057.24
Total settled	49	5,275.903	10.671	\$16,129,705.71	\$329,177.67	\$3,057.24

† Carroll County figures include one easement over a 49.336-acre property which is 100% funded with County Rural Legacy funds.

Rural Legacy easements co-held by the Maryland Agricultural Land Preservation Foundation are not included in the acre-age totals of easements held by MALPF. Such easements are counted in the protected lands totals for Maryland under the Rural Legacy Program's protected acreage.

The acreage and cost of easement acquisition reported for approvals are those given at the time of Board approval. The acreage and cost of easement acquisition reported for easement purchases which settled are those recorded at closing.

The goal of the Rural Legacy Program is to preserve 225,000 acres of land during a 15-year period, at an estimated cost of about \$600 million (estimated cost per acre from the original grant cycle). This Rural Legacy Program goal would only be achievable with the higher levels of funding proposed by then Governor Glendening when the Program was approved by the General Assembly in 1997 and continued by the Maryland General Assembly each year thereafter.

For more and updated information about the Rural Legacy Program, please consult the website at the Department of Natural Resources:

<http://www.dnr.state.md.us/rurallegacy/>

*Maryland Department of General Services*

The Maryland Department of General

Services (DGS) is contracted to provide support services to the MALPF Program's easement acquisition process. The DGS Office of Real Estate contracts for two independent appraisals to be done on each applicant property to establish its fair market value. The appraisals are then reviewed by DGS review appraisers who recommend, based on the quality of the appraisals, the better value for MALPF staff to use in calculating the property's easement value (the maximum that can be offered to purchase the conservation easement).

The Office of the Attorney General at DGS also provides support by reviewing title, property descriptions, and arranging for title insurance and settlements, filing and monitoring title insurance claims, and assisting in the investigation of Easement violations, as well as advising on more general legal issues before the Foundation, such as compliance with the Open Meetings Act and State Fi-

nance and Procurement Article.

DGS has requested checks to go to settlement on over 81% of the FY 2008 easement acquisition cycle offers (60 of 74) as of June 1, 2009. Another 14 offers (19%) are awaiting landowners to provide surveys or clear title issues. As of June 1, 2009, only 1 offer from the FY 2007 cycle has yet to settle due to a boundary line dispute the landowner is in the process of resolving with its neighbor. When issues clearly will not be resolved in a reasonable time, the Foundation is much more willing today to withdraw an offer than letting the issues remain unresolved indefinitely.

Surveys are required when deed records do not accurately define the property, and when the acreage reflected on the deed does not correspond to the acreage calculations made based on deed references.

**Number of Pending Easement Settlements**  
(as of June 1, 2009)

Fiscal Year	2007	2008
Number of Offers	122	74
Check Request Issued or Settled Easement	115	60
Survey or Other Issue	1	14
Waiting for Title Work	0	
Withdrew	6	
Waiting for Board of Public Works Approval	0	
Currently Under Review	0	0

Offers that contain federal funding under the Farm and Ranchland Protection Program (FRPP) take somewhat longer to go to settlement than those offers without federal funding because of the requirements for reimbursement under FRPP including review of title and description on the federal level and the necessity of obtaining a third appraisal (after title and description have been approved).

The Maryland Department of Agriculture and the Foundation are very pleased with the rate at which current pending easement offers go to closing.

**Federal Farm and Ranch Lands Protection Program**

In the 1996 Farm Bill, a new farmland protection program was created, the Federal Farmland Protection Program. This program was renewed in the 2002 Farm Bill under the new name of the Federal Farm and Ranch Lands Protection Program (FRPP) and renewed again in the 2008 Farm Bill. Until recent years, Maryland was one of the largest recipients of federal grants for farmland preservation easement acquisitions. Since December 31, 2005, MALPF has had increasing difficulties reconciling the requirements to receive federal matching funds with the statutory requirements and processes and procedures of the MALPF program.

Since the last annual report, MALPF settled on the eight offers it made to acquire easements with federal funding commitments during the FY 2007-2008 acquisition cycles, bringing to 134 easements acquired using federal matching funds since the beginning of FRPP. These eight new easements encompass 1,406 acres, of which approximately 405 acres were acquired with federal funds. To acquire these eight easements, MALPF committed about \$6.5 million of State and local funds to match about \$2.5 million in federal funds.

When MALPF was able to resolve the worst of its incompatibilities with the changes in FRPP midway through its FY 2007 easement acquisition cycle and acquire approval of a MALPF deed of easement incorporating federal language at least through the end of the FY 2005 grant agreement, MALPF chose to make formal federal matching funds commitments only to landowners receiving insufficient funds offers.

This decision was based on the following:

- Easements with federal funds require additional restrictions on impervious surfaces, agricultural subdivision, etc., that are not in easements using only State and local funds. Landowners do not receive any additional compensation for accepting the additional restrictions.
- Easements with federal funds take much

longer to go to settlement compared to easements using only State and local funds. The need for a third appraisal to establish the maximum commitment of federal funds and the extra title, deed of easement, appraisal, and possibly environmental reviews required by FRPP can add months to the settlement process, during which the landowner foregoes any earnings from the offer.

- MALPF is unable to determine a final allocation of funds because the commitment of federal funds depends on securing a third “before and after” appraisal within six months of settlement. This creates a great deal of uncertainty for both MALPF and the landowner(s).

Landowners receiving an insufficient funds offer are given the choice to accept an insufficient funds offer with only State and local funds, to accept an insufficient funds offer with federal matching funds that could bring the offer amount up to a full offer, or to reject the offer and reapply in the future. In this scenario, a landowner has a financial incentive to accept an offer with federal funds because that offer will be higher than the insufficient funds offer. In return, the landowner accepts the additional federal easement restrictions and the extra time to go to settlement.

Six FRPP offers were made as part of the FY 2007 easement acquisition cycle, of which five were accepted. The average number of days from the date of acceptance to settlement for non-FRPP transactions during this cycle was about 258 days. The average number of days for offers with FRPP funding commitments was 372 days – a number skewed by one FRPP transaction that ostensibly took 45 days, but actually took much longer because the final signed option contract was delayed by one-and-a-half years from the date of the offer and more than one year from the date of approval by the Board of Public Works, during which the Department of General Services continued to move towards settlement. Perhaps a better comparison of time it took FRPP offers versus all offers (including FRPP) to go to settlement is the median number of days for each. The median for non-FRPP offers was 231 days; the median for just FRPP offers was 392 days.

Thus, it took between 114 to 161 extra days for an FRPP-funded easement to settle relative to the average/median days to settlement for non-FRPP offers – a little less than four months to over five months extra time.

A more significant problem than the extra time to process FRPP-funded easements was adapting to the change in FRPP’s method to determine the maximum amount of federal matching funds that can be committed to an easement purchase. As required under Maryland statute, MALPF determines an easement’s value by subtracting a formula-based agricultural value from an appraisal-determined fair market value. Until December 31, 2005, FRPP matched up to 50% of MALPF’s easement value or its offer value, whichever was lower.

FRPP now requires a “before-and-after” appraisal – an appraisal of the value of the property without easement restrictions (the “before” value) and the value of the property with easement restrictions in place (the “after” value) incorporating a new definition of fair market value that adjusts values for the impact of the easement on adjacent parcels owned by the seller and his or her immediate family to calculate the value of the federal match. The FRPP easement value is the difference between these two appraisals; FRPP will match up to 50% of this value.

Insufficient funds offers are extended to landowners only when funds remaining in Round One for the county or in Round Two are less than what is needed for a full offer but greater than 50% of a full offer. Prior to the change in the FRPP valuation system, MALPF could easily bring an insufficient funds offer up to a full offer because FRPP matched up to 50% of MALPF’s offer value. Under the new system, MALPF cannot determine the amount of the federal match at the time of the offer, but must wait until the offer is clearly moving to settlement to order the appraisal necessary to determine the maximum commitment of federal funds that can be made to the offer.

While MALPF staff expected the easement values from FRPP appraisals to be generally lower than the easement values used for MALPF offers, the staff did not anticipate

that they would fail to bring the insufficient funds offers made with federal funding commitments up to full offers. Of the five offers made with federal funding commitments, only two provided sufficient federal funds for a full offer. The other three resulted in offers that were greater than the original insufficient funds offer, but less than a full offer. In one case, the offer was almost \$550,000 short of the full offer that the landowners expected, a reduction by more than 25% of the value of a full offer. The other two offers were reduced by 20-24% in value from full offers. Under the allocation rules determined by statute, MALPF has no flexibility to make up the difference with State or county funds, though the county in which the property is located could choose to do so.

After settlement on the FY 2007 federally-funded offers and in making three new insufficient funds offers with federal funding commitments during its FY 2008 easement acquisition cycle, two things became very clear to MALPF staff. First, MALPF will have to be very careful in how it makes offers because the matching funds commitments resulting from the "before and after" appraisals are highly unpredictable and often lower than anticipated. Second, applying FRPP funds only to insufficient funds offers will be inadequate to clear out the existing federal funds from FY 2004-2006 grant agreements; insufficient funds offers are too few in number and leverage only limited amounts of federal matching funds.

In preparing to make offers for the FY 2009 easement acquisition cycle, the MALPF Board of Trustees committed the remaining federal funds from FY 2004-2006 to all offers made in FY 2009 as long as the property is deemed to be eligible for federal funds based on soils and forestry criteria and the county in which the property is located is willing to accept the commitment of federal funds. To protect MALPF from the unpredictable results of the appraisals done for FRPP purposes, no more than 20% of the offer will be allocated to federal funds until a firm commitment can be made as a result of the "before and after" appraisal. MALPF will also hold out \$2 million in State funds to protect the Foundation from the possibility that an easement value calculated for FRPP purposes falls short of the

minimum expected 20% of the offer allocated to federal funds in a real estate market with falling values, given the long lag between MALPF appraisal values and the FRPP appraisal. Because there is neither compensation for the additional federal restrictions in the easement nor other financial incentive for accepting federal funds, an applicant receiving an offer with a federal funding commitment will have to reject the FY 2009 cycle offer and reapply if he or she does not wish federal funds and easement language.

MALPF has not received any additional federal grants since FY 2006 funds. MALPF did not apply for FRPP grant funds in the FY 2007 application cycle because the Foundation was informed that the FY 2007 grant agreement would no longer allow MALPF to substitute alternative properties for properties approved in the FY 2007 funding proposal. MALPF cannot operate its program in conjunction with FRPP without the ability to substitute properties.

- MALPF operates on an application cycle that does not coincide with FRPP deadlines, so the applicant properties submitted to FRPP can only be based on past applications and current application inquiries. Unlike most cooperating entities, MALPF does not recruit and evaluate applicant properties on an ongoing basis.
- MALPF's ranking system is county specific and, in some cases, diverges from the federal LESA system; therefore, it is impossible to guarantee that properties getting offers based on county ranking systems will be the same properties that are selected for FRPP funding. It should be noted that MALPF revised its ranking guidelines substantially in recent years using LESA to shape those guidelines. Incompatibility is much less than under the earlier ranking system that was based primarily on discounting, but it remains a problem. Some counties have chosen to adopt FRPP's LESA system as their own ranking system, which receives automatic approval by the MALPF Board of Trustees.
- Some applicants reject their offers, and some easements do not settle because of title or non-subordination issues.

In all of these cases, without the

ability to substitute properties that are receiving offers, MALPF would lose the federal grant funds designated for specific properties in the funding proposal. After being informed about the new non-substitution rule and not applying based on that information, the Foundation learned after the application deadline that the non-substitution rule had been waived for other cooperating entities. MALPF was never offered this waiver opportunity. MALPF was ineligible to receive funding for the FY 2008 federal funding cycle because it did not submit a funding proposal in FY 2007. The FRPP funds allocated to Maryland for FY 2007-2008 went to private land trust and county sponsored projects in the State.

As discussed in the previous annual report, MALPF has taken two tracks to try to resolve its difficulties in making the FRPP program work with the MALPF program. The first track has been to try to resolve the incompatibilities between federal easement requirements and MALPF's deed of easement and between the operations of the two programs. In the short term, this track has led to a practical resolution with an agreed-upon deed of easement that can be used for offers with federal funding commitments using FY 2004-2006 federal grant funds. However, in the longer term, in the judgment of MALPF staff, FRPP requirements and procedures have made the program increasingly difficult, if not impossible, to reconcile with the operations and statutory requirements of MALPF.

MALPF staff devoted significant time during FY 2008 to the second track: lobbying Congress. Staff, with Board member support, sought to resolve the incompatibilities and problems that have developed between FRPP and MALPF by recreating a workable FRPP within the 2008 Farm Bill. MALPF's problems have been faced to differing degrees by most state farmland preservation programs, particularly in the Northeast and Mid-Atlantic. The primary objectives of this effort have been (1) to recreate FRPP as a grants program, and (2) to create a meaningful certification program to allow competent cooperating entities with a long track record of successful land preservation to use their own procedures, policies, standards, deeds of easement, and property selection. MALPF worked both

through Maryland's Congressional delegation and through the coordinated efforts of the American Farmland Trust.

The Food, Conservation, and Energy Act of 2008 (2008 Farm Bill) was enacted into law in June 2008 and will govern the Food and Ranch Lands Protection Program for the next five years. Changes relevant to MALPF adopted in the Farm Bill included:

- The Program's purpose was altered from protecting topsoil by limiting non-agricultural uses of land to protecting agricultural use and conservation values of the land by limiting non-agricultural uses.
- Eligible lands changed from including only incidental forest land that is part of the agricultural operation to including forest land that contributes to the economic viability of the agricultural operation or serves as a buffer to development.
- The cooperating entity is now allowed to designate the terms and conditions for the deed of easement and choose the appraisal methodology for determining the offer price, with approval of the Secretary of Agriculture.
- Impervious surface limitation requirements changed from 2% of easement area to up to 6% under certain conditions to allow eligible entities to specify their own limit on impervious surfaces.
- Eligible entities are now explicitly allowed to substitute qualified projects, upon mutual agreement.
- A "certification" process has been established by which FRPP can enter into long-term agreements for cost share assistance.

The 2008 Farm Bill retains the provision that characterizes easements as purchased by eligible entities, with the Federal government purchasing the right to enforce the easement if the entity failed to do so.

Much of the substance of the legislative recommendations from MALPF and other interested cooperating entities was adopted in the 2008 Farm Bill when it was finally passed. MALPF has been hopeful that the recreated FRPP, following the legislative intent expressed by the language in the 2008 Farm Bill, would finally resolve the increasing restrictions placed on the cooperating entities in the use of FRPP grant funds. Unfortunately, to date, those writing the rules to inter-

pret statutory changes have readopted many of the old restrictions and procedures with little or no statutory justification or cost-benefit analysis. The outcome of this ongoing rule-making process will be addressed in a subsequent annual report.

At the end of FY 2008, MALPF still had \$8,591,705.5 in federal grant funds unspent from the FYs 2004-2006 grant agreements. MALPF anticipates all of these remaining funds will be committed and spent during the FY 2009 easement acquisition cycle. Whether MALPF will be able to apply for FRPP funds in the future or qualify for certification in a meaningful certification program remains to be determined by the outcomes of the rule-making process translating the statutory changes and legislative intent from the Farm Bill into the operations and requirements of a future FRPP.

### ***Installment Purchase Agreement Program – Maryland Agriculture and Resource Based Industry Development Corporation***

An installment purchase agreement (IPA) is a payment option made available for those selling easements to MALPF in addition to a lump-sum payment of the amount of the offer at the time of settlement or an installment payments plan that divides the principal amount unpaid at settlement into equal amounts to be paid annually from two to ten years. An IPA is typically from a minimum of 10 years up to 30 years. At settlement on the easement, the unpaid principal would be deferred for payment as a balloon payment until the end of the period of the agreement. During the period of the agreement, the IPA owner would be paid tax-free interest on the principal.

The payment of the principal and the interest is funded by investing in State and Local Government Securities (SLGS) – a form of U.S. Treasury obligation restricted to use by State and local government entities. This creates a self-funded IPA, meaning an IPA is completely funded by the investment of the full amount of the offer, rather than any promise of payments from future MALPF tax revenues.

MALPF worked with the Maryland Office of the Attorney General, the State Treasurer's Office, the Maryland Agriculture and Resource Based Industry Development Corporation (MARBIDCO), financial advising consultants, and private bond counsel to develop and make available IPAs to those receiving offers to purchase easements. The IPA settlement option was first made available to those receiving offers in the FY 2008 easement acquisition round. As of the date of writing, two landowners opted for the IPA settlement option, but none have settled. The limited initial interest can be attributed to the general unfamiliarity of applicants with this option, the relatively low rates of interest current at the time, and the expectation that a new administration in Washington would increase capital gains taxes.

MARBIDCO has been designated to be the facilitating agency for IPAs, providing the services necessary to make the investments, provide the advice of counsel on the tax exempt nature of the interest payments, and set up the mechanisms for both the regular interest payments and the payment of the principal at the end of the agreement. Started in April 2007, MARBIDCO is a state-supported economic development corporation charged with helping food and fiber producers and processors to make innovations or expand their business operations, exploit new market opportunities, and help preserve rural working farm and forest land. MARBIDCO is particularly focused on assisting the next generation of farmers and producers with getting started.

MALPF staff and Board members believed initially that developing the IPA as a settlement option created the potential to purchase more easements now by committing future revenues. To this end, MALPF would have to dedicate a share of future revenues to interest payments. Such leveraging would allow MALPF to purchase additional easements at current prices when the properties are still available, rather than paying higher prices later and risk losing important farming properties to development. Because of constitutional constraints on the assumption of debt by government agencies longer than 15

*(text continues on page 75)*

**MALPF EASEMENTS WITH FEDERAL FUNDING COMMITMENTS FROM THE  
FEDERAL FARM AND RANCH LANDS PROTECTION PROGRAM BY GRANT AGREEMENT**  
(Federal FYs 1996-2006/ MALPF FYs 1997-2008)

Federal Grant Agreement	MALPF Fiscal Year	Number of Easements Acquired	Total Direct Cost of Easement Acquisition	Total FRPP Funding Commitment	FRPP Funds as a Percent of Total Easement Cost	Total FRPP Award	Total Acreage Acquired	Acreage Acquired with FRPP Funding
1996	1997	30	\$4,893,871.99	\$1,000,000.02	20.43%	\$1,000,000.00	4,320.9957	1,053.3245
1998	1999	18	\$4,367,813.79	\$1,166,666.56	26.71%	\$1,666,666.66	2,391.4668	792.2670
2001	2002	7	\$1,936,558.17	\$452,935.80	23.39%	\$452,935.80	1,096.8891	307.1628
2002	2003	*25	\$7,641,029.44	*\$2,151,400.00	28.16%	\$1,870,000.00	3,009.9000	1,049.4818
2003	2003	†30	\$10,074,611.95	†\$3,754,197.75	37.26%	\$4,040,301.00	4,192.6146	1,660.8750
2004	2005	16	\$5,011,291.10	\$1,773,334.81	35.39%	see below	2,374.3654	936.0942
2004	2007	5	\$6,205,520.59	\$1,569,900.00	25.30%	see below	813.0110	218.5381
2004	2008	3	\$2,737,921.41	\$897,500.00	32.78%	see below	593.3200	186.7996
<b>2004 subtotal</b>	<b>2005-8</b>	<b>†24</b>	<b>\$13,954,733.10</b>	<b>‡\$4,240,734.81</b>	<b>30.39%</b>	<b>\$4,575,303.00</b>	<b>3,780.6964</b>	<b>1,341.4319</b>
<b>TOTALS</b>		<b>134</b>	<b>\$42,868,618.44</b>	<b>\$12,765,934.94</b>	<b>29.78%</b>	<b>\$13,605,206.46</b>	<b>18,792.5626</b>	<b>6,204.5430</b>

As of this annual report's date of publication, all easements from FY 2008 with federal funding commitments have settled. The only pending easements with federal funding commitments now are from FY 2009 easement acquisition cycle; these will be reported in the next annual report. Easements purchased in part with federal funds are also counted in the MALPF totals reported later in this document.

\* Two easements made in this total included funds from both the 2002 and 2003 FRPP grant agreements. Subtracting the \$281,400 of FRPP funds used from the 2003 grant agreement gives a total 2002 FRPP Funding Commitment of \$1,870,000.00.

† Three additional easements drew in part on 2003 FRPP grant agreement funds, but two are included in the 2002 FRPP grant agreement totals and one is included in the 2004 FRPP grant agreement totals. Adding the 2003 funding committed to these three easements from the 2003 grant agreement commitment gives a total 2003 FRPP Funding Commitment of \$4,040,300.60.

‡ One easement included in this total incorporated a small amount of funding from the 2003 FRPP grant agreement. Subtracting this amount (\$4,702.85) from the 2004 FRPP grant agreement gives a total 2004 FRPP Funding Commitment of \$4,236,031.96, leaving a balance of \$339,271.04 in uncommitted funding from the 2004 grant agreement.

MALPF also has unspent FRPP funds from its 2005 and 2006 grant agreements that have been committed to its FY 2009 easement offers. The 2005 grant agreement funds total \$6,035,274.00; the 2006 grant agreement funds total \$1,717,160.00. The total FRPP awards since the 1996 federal agreement amount to \$21,357,640.46 of which \$8,591,705.52 remains unspent.

**MALPF EASEMENTS WITH FEDERAL FUNDING COMMITMENTS FROM THE  
FEDERAL FARM AND RANCH LANDS PROTECTION PROGRAM BY COUNTY**  
(Federal FYs 1996-2005/ MALPF FYs 1997-2008)

County	Number of Easements Acquired	Total Direct Cost of Easement Acquisition	Total FRPP Funding Commitment	FRPP Funds as a Percent of Total Easement Cost	Total Acreage Acquired	†Est. Acreage Acquired with FRPP Funding
Anne Arundel	4	\$2,812,055.52	\$428,959.35	15.25%	690.5090	100.7766
Baltimore	8	\$5,902,090.22	\$1,843,967.53	31.24%	1,305.9938	375.2540
Calvert	3	\$2,510,488.45	\$362,867.77	14.45%	404.0390	60.8737
Caroline	10	\$2,358,039.41	\$834,355.55	35.38%	1,773.2899	661.8614
Carroll	5	\$1,555,060.09	\$485,077.78	31.19%	648.2020	198.0738
Cecil	11	\$3,403,636.71	\$636,698.51	18.71%	1,267.2572	254.1211
Charles	2	\$1,184,319.45	\$427,917.77	36.13%	672.8525	234.9055
Dorchester	11	\$2,263,319.11	\$687,649.23	30.38%	1,471.7098	532.6547
Frederick	9	\$2,029,615.94	\$774,337.77	38.15%	1,032.4436	380.2591
Garrett	1	\$153,435.00	\$52,631.58	34.30%	102.3400	35.1049
Harford	8	\$1,386,393.00	\$557,185.00	40.19%	394.6300	173.5000
Howard	1	\$331,875.00	\$77,777.00	23.44%	23.1250	5.4195
Kent	8	\$2,683,412.92	\$865,444.20	32.25%	1,312.0100	448.1588
Queen Anne's	15	\$2,371,411.90	\$1,005,752.47	42.41%	2,288.4770	929.4916
St. Mary's	10	\$4,524,730.08	\$1,328,725.85	29.37%	1,098.5440	311.0382
Somerset	6	\$542,172.82	\$231,749.16	42.74%	775.8900	327.4560
Talbot	6	\$2,143,541.36	\$612,298.853	28.56%	988.3712	296.1976
Washington	6	\$2,391,918.36	\$600,659.31	20.55%	1,047.8986	279.2624
Wicomico	6	\$1,324,935.43	\$515,219.38	38.89%	605.6740	212.2517
Worcester	4	\$996,167.67	\$436,660.88	43.83%	889.3060	387.8827
<b>TOTALS</b>	<b>134</b>	<b>\$42,868,618.44</b>	<b>\$12,765,934.94</b>	<b>29.78%</b>	<b>18,792.5626</b>	<b>6,204.5430</b>

† Estimated Acreage Acquired with FRPP Funding has been recalculated based on the percentages of the purchase price attributed to FRPP by property. Many numbers in this table have changed somewhat from those reported in the last annual report because the database is nearing completion with more accurate and verified data.

\* As of this annual report's date of publication, all easements from FY 2008 with federal funding commitments have settled. The only pending easements with federal funding commitments now are from FY 2009 easement acquisition cycle; these will be reported in the next annual report. Easements purchased in part with federal funds are also counted in the MALPF totals reported later in this document.

years, MALPF believed that MARBIDCO, as a quasi-governmental organization, was not subject to the 15-year constitutional constraint and could provide a mechanism by which leveraging could be accomplished.

To this end, the General Assembly passed Senate Bill 662 in the 2008 Legislative Session. Among other provisions, the bill diverted \$4.0 million annually from MALPF's dedicated revenue streams to secure annual interest payments on IPAs. This amount must be distributed into a special fund for use by MARBIDCO for a leveraged IPA program for easement purchases that have been approved by MALPF. If agricultural transfer tax revenues fall short of \$4.0 million, the deficiency must be made up from State real estate transfer tax revenues that would otherwise be distributed to the Maryland Agricultural Land Preservation Fund.

Since this bill went into effect, the establishment of a leveraged IPA program based on the dedication of MALPF revenues to future interest payment obligations has not been possible. The Treasurer's Office in conjunction with the Office of the Attorney General has advised MALPF and MARBIDCO that this dedication of funds to leverage IPAs beyond 15 years is still unconstitutional because (1) MARBIDCO is still considered an entity of the State of Maryland and its debts count against the State's debt ceiling, and (2) a tax revenue stream is being dedicated to service a debt obligation.

Based on this advice, MALPF and MARBIDCO will ask to have the dedication of tax revenues under SB 662 undone in a future legislative session. MALPF can still do self-funded IPAs without a dedicated funding stream by providing grants directly to MARBIDCO for individual easement purchases to make the investments necessary for the installment purchase agreement settlement option.

*Next Generation Farmland Acquisition Program – Maryland Agriculture and Resource Based Industry Development Corporation*

Another provision of Senate Bill 662 from the 2008 Legislative Session establishes

a 25% surcharge on agricultural transfer tax obligations in addition to the current agricultural land transfer tax and dedicates this surcharge to a new program to be developed and managed by MARBIDCO: the Next Generation Farmland Acquisition Program (NGFAP).

With the support and advice of the Young Farmers Advisory Board and other agricultural industry groups, MARBIDCO is developing this program to help the next generation of farmers purchase farmland at affordable prices. The NGFAP is intended to be a rapid response-type farmland easement purchase option program to help facilitate the transfer of farmland to a new generation of farmers.

Initially, the program expects to employ a financing tool called an "easement purchase option" to help farmers obtain mortgage financing. Using this tool, MARBIDCO would help a prospective farmer meet the equity requirements of a financial lender by buying the development rights of the land that farmer is purchasing at the time of settlement. Such a transaction would enable that farmer to purchase land that he or she would not otherwise be able to afford.

The key advantage here for the young farmer trying to purchase farmland is the timeliness in getting the external financial assistance. MARBIDCO believes that a 45- to 60-day turnaround is potentially achievable under the NGFAP, whereas participation in a MALPF land easement purchase program can take more than a year to complete from start to finish.

Under NGFAP, commercial lenders would be responsible for qualifying young or beginning farmers for initial eligibility. A commercial lender would review the credit history, equity position, work experience and proposed business plan of a beginning farmer seeking to acquire property for agricultural production, and the lender would decide whether to make a tentative mortgage loan commitment and bring forward a NGFAP application to MARBIDCO to make up the borrower's equity shortfall.

With the lender's tentative agreement to finance a portion of the farm pro-

perty purchase, MARBIDCO, after conducting its own review, could then purchase an easement option for the development rights at 70% of fair market value, with those funds being made available to the young or beginning farmer at the settlement table.

This farmer would then have three years to sell the easement to a Maryland land conservation program of his or her choosing (such as, MALPF, Rural Legacy, a county program or a private land trust), presumably with the goal of getting a higher return on the sale of the land conservation easement.

If, after three years, a permanent easement has not been sold, MARBIDCO would exercise its easement purchase option and convey that easement to MALPF permanently. If the participating young farmer is able to sell an easement, then the funds MARBIDCO provided at settlement would be

returned in full, and would go back into the Program to be used in making future easement option purchases.

Because MALPF will serve as the “default easement holder” for the Next Generation Farmland Acquisition Program, the properties on which MARBIDCO is purchasing easement options must be “MALPF eligible,” meaning that the properties must meet the minimum size, location, and soil standards. The parcel of farmland being purchased for permanent open space preservation must also receive approval of the appropriate county government.

Because of the poor state of the real estate market and the State’s budget, adequate funds to implement fully the NGFAP are not expected until FY 2010 or later. For up-to-date information on this Program, see:

<http://www.marbidco.org>.

# Legislation – 2008 Legislative Session

---

## Relating to Agricultural Land Preservation Issues

### House of Delegates legislation only:

#### **HB 445 - Property Tax Credits - St. Mary's County - Land Preservation Easements**

*Sponsor:* St. Mary's County Delegation.

*Department position:* The Department takes no position on bills that are not statewide and do not directly affect MALPF.

*Legislative status:* Successful: the bill was passed by the House of Delegates and the Senate; the Governor signed the bill.

This bill extends eligibility for an optional St. Mary's County property tax credit to real property, including improvements, subject to a State or county land preservation program. Under current law, the property has to be subject to the Maryland Agricultural Land Preservation District Program or the St. Mary's County Agricultural Land Preservation District Five-year Program. The bill takes effect June 1, 2008 and applies to all taxable years beginning after June 30, 2008.

#### **HB 976 - Maryland Agricultural Land Preservation Program - Lot Releases**

*Sponsor:* Chair, Environmental Matters Committee (by request of the Department of Agriculture).

*Department position:* Support.

*Legislative status:* Successful: the bill was passed by the House of Delegates and the Senate; the Governor signed the bill.

This bill requires the landowner or a child who builds a house on a lot released from easement on farmland subject to a MALPF easement to sign a statement acknowledging that the adjacent farmland may be used for any agricultural purpose in the future and that it may interfere with the use and enjoyment of the property through noise, odor, vibration, fumes, dust, glare and more. Further, the signed statement must also indicate that there is no recourse against the effects of normal agricultural operation performed in accordance with good husbandry practices. The bill also requires the child or lot owner to acknowledge that these conditions are binding to any successor landowner. Finally, the bill gives the Maryland Department of the Environment (MDE) the authority to determine what size lot is needed (between 1 and 2 acres) to accommodate certain septic requirements. Under current law only a 1-acre lot may be released from an easement for the landowner or children's lot unless certain septic conditions apply. When those conditions apply, a 2-acre lot is released. This bill would allow the lot to be larger than 2 acres if MDE requires it.

### Senate legislation only:

#### **SB 165 - Maryland Estate Tax - Exclusion for Family Farm or Family-Owned Business**

*Sponsor:* Senator Haines.

*Department position:* n.a.

*Legislative status:* Unsuccessful; the bill was not reported out of the Senate Budget and Taxation Committee.

This bill would alter the determination of the Maryland estate tax by excluding from the value of the gross estate up to \$1.0 million of "qualified real property" as defined by the Internal Revenue Code (IRC). The bill would also require the Comptroller to provide, by regulation, for the imposition of additional State estate taxes if specified conditions are

not met which would lead to imposition of additional federal estate taxes. The bill would take effect July 1, 2008, and would be applicable to decedents dying after December 31, 2007.

**SB 409 - Real Property - Agricultural and Historic Property - Prohibition on Condemnation**

*Sponsor: Senator Della.*

*Department position: n.a.*

*Legislative status: Unsuccessful; the bill was not reported out of the Senate Judicial Proceedings Committee.*

This bill prohibits the State or any of its instrumentalities or political subdivisions from acquiring any part of private property by condemnation if the property is (1) subject to an easement held by the Maryland Agricultural Land Preservation Foundation or an easement under the Maryland Rural Legacy Program; (2) listed in the National Register of Historic Places; and (3) designated as a National Historic Landmark.

**SB 495 - Homestead Property Tax Credit - Farm or Agricultural Use Land**

*Sponsor: Senators Haines, Brinkley, Colburn, Dyson, Edwards, Middleton, and Stoltzfus.*

*Department position: n.a.*

*Legislative status: Unsuccessful; the bill was not reported out of the Senate Budget and Taxation Committee.*

This bill would enable a homeowner to receive a homestead property tax credit for a second dwelling if it is located on a parcel of land to be actively used for farm or agricultural purposes and will be used as the principal residence of a family member or employee of the homeowner.

**SB 662 - Agricultural Land Transfer Tax - Surcharge and Distribution of Revenue**

*Sponsor: Senators Middleton, Currie, Kasemeyer, McFadden, DeGrange, Jones, Madaleno, Kramer, Brinkley, Munson, Peters, Robey, King, Edwards, and Zirkin.*

*Department position: support with amendments.*

*Legislative result: Successful; passed with different amendments by the Senate and the House of Delegates; the Senate concurs with the House amendments; signed by the Governor.*

This bill increases the agriculture transfer tax by 25% and uses most of the proceeds to fund the Next Generation Farmland Acquisition Program (that helps young farmers acquire their first farms, which are then preserved) to be offered by the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO). The bill also dedicates up to \$4 million annually for MALPF, in partnership with MARBIDCO, for a leveraged Installment Purchase Agreement (IPA) Program. The agriculture transfer tax is triggered whenever agricultural land is converted to a use other than farming. Under previous law, the agricultural transfer tax applied at the following rates: 5% for the transfer of 20 acres or more of agricultural land; 4% for the transfer of less than 20 acres of agricultural land assessed for agricultural use or as unimproved agricultural land; or 3% for a transfer of less than 20 acres of agricultural land assessed as improved agricultural land with site improvements. The new rates are, therefore, 6.25%, 5% and 3.75%.

**SB 758 - Property Tax - Agricultural Use Assessment**

*Sponsor: Senator Colburn.*

*Department position: n.a.*

*Legislative status: Unsuccessful; the bill was not reported out of the Senate Budget and Taxation Committee.*

This bill requires that property used as a migrant labor camp be considered actively used for farming and therefore qualify for an agricultural land use valuation and assessment for property tax purposes, provided that the camp operator holds a valid permit issued by the Department of Health and Mental Hygiene.

**SB 909 - Maryland Agricultural Land Preservation Foundation - Board of Trustees - Young Farmer**

*Sponsor: Senator Middleton.*

*Department position: support.*

*Legislative result: Successful; passed by the Senate and the House of Delegates; signed by the Governor.*

This bill expands the Board of the Maryland Agricultural Land Preservation Foundation to add one new member - a representative of the Young Farmers Advisory Board. The current non-*ex officio* membership of the MALPF Board is composed of 8 members, 5 of whom are farm representatives. The new Board member must meet the requirements set forth in existing law for service on the Young Farmers' Advisory Board, which include being under 45 years old and deriving at least 50% of his or her income from farming or agricultural activities in the State.

**SB 915 - Task Force on the Future Conservation of Maryland's Open Space and Farmland**

*Sponsor: Senators Middleton, Dyson, Harris, and Colburn.*

*Department position: Support.*

*Legislative status: Unsuccessful; passed with different amendments by the Senate and the House of Delegates; the two versions of the bill were not reconciled.*

This bill establishes a Task Force on the Future Conservation of Maryland's Open Space and Farmland, staffed by the Departments of Agriculture, Natural Resources, Planning, and Budget and Management. The task force must

- evaluate, determine, and project the impact that demographic changes have had and may have on land conversions;
- evaluate whether the State has adequate human resource funding capacity within its land preservation programs to accommodate potentially extensive land ownership transfers and land conversions;
- evaluate whether the State should allow a local government to use Program Open Space funds for specified purposes under specified conditions; and
- determine various financing mechanisms and potential resources for land acquisition in the future.

A final report must be issued by the Task Force. The bill terminates September 30, 2009.

**SB 962 - Public Education - Bridge to Excellence - Video Lottery Terminals**

*Sponsors: Senators Brinkley and Kittleman.*

*Department position: n.a.*

*Legislative status: Unsuccessful; hearing before the Senate Budget and Taxation Committee was cancelled.*

This bill would authorize, under the regulation of the State Lottery Commission, the issuance of six video lottery operation licenses; limiting to 15,000 the number of video lottery

terminals allowed in the State; requiring specified individuals to be licensed; specifying the manner in which video lottery proceeds are to be distributed; and specifying how State revenues from video lottery terminals will be distributed. MALPF would have received ½% of these revenues.

**SB 970 - Agricultural Land Preservation Easements - Construction of Houses**

*Sponsors: Senator Haines*

*Department position: opposed.*

*Legislative result: Unsuccessful; the bill was not reported out of the Senate's Education, Health and Environmental Affairs Committee.*

This bill would alter the MALPF law concerning the construction of homes on land subject to an agricultural land preservation easement. Under current law, a landowner may seek permission from MALPF to build one tenant home on easement property if it is at least 100 acres in size and if he or she can show compelling need. The home must be for a tenant "fully engaged in the farm operation." This bill strikes the permission for a "tenant dwelling" and substitutes "housing for the landowner's use." The bill also reduces the acreage size to 70 acres and deletes the requirement to demonstrate compelling need. Under current law MALPF may determine the location and establish a size limitation on the tenant house. Under SB 970, MALPF may not limit the size of the dwelling.

**House of Delegates and Senate legislation (cross-listed bills):**

**HB 274/SB 133 - Maryland Agricultural Land Preservation Foundation - Allegany County and Garrett County - Coal Rights**

*Sponsors: Allegany County Delegation and Garrett County Delegation; Senator Edwards.*

*Department position: No position.*

*Legislative result: Unsuccessful; the House bill given an unfavorable report by the House's Environmental Matters Committee; the Senate bill was passed by the Senate and given an unfavorable report by the House Environmental Matters Committee.*

This bill would prohibit MALPF from requiring (as a condition of establishing an agricultural district) a coal rights owner in Garrett or Allegany County to subordinate his or her interest to the Foundation if the Foundation determines that exercise of the coal rights will not interfere with an agricultural operation conducted on land in the agricultural district. This is similar to the provisions in current law applicable to natural gas rights owners. A report on such occurrences would be required by the bill.

**HB 314/SB 260 - Garrett County - County Commissioners - Agricultural Districts**

*Sponsor: Delegate Beitzel; Senator Edwards.*

*Department position: The Department takes no position on bills that are not statewide and do not directly affect MALPF.*

*Legislative status: Successful; both bills were passed by the House of Delegates and the Senate; the House bill was vetoed by the Governor as duplicative; the Senate bill was signed by the Governor.*

This bill requires the Garrett County Commissioners to adopt specified rules, regulations, and procedures for the establishment and monitoring of agricultural districts and the evaluation of land to be included in the districts. Land may only be included in an agricultural district if the County's rules, regulations, and procedures governing the land meet specified requirements, and the landowner agrees to specified conditions, restrictions, and limitations. The Maryland Agricultural Land Preservation Foundation may not purchase an

easement on land located in the County, but outside of an agricultural district established under the bill.

**HB 333/SB 509 - Maryland Estate Tax - Exclusion for Qualified Agricultural Property**

*Sponsors: Delegates Kullen, Beitzel, Bohanan, G. Clagett, Conway, Costa, DeBoy, Dwyer, Elmore, Jameson, Jennings, Krebs, Levy, Mathias, O'Donnell, Proctor, Rudolph, Stull, and Weldon; Senator Middleton.*

*Department position: n.a.*

*Legislative status: Unsuccessful; the House bill was not reported out of the House Ways and Means Committee; the Senate bill was not reported out of the Senate Budget and Taxation Committee.*

This bill would alter the determination of the Maryland estate tax by excluding from the value of the gross estate the value of “qualified agricultural property” that passes from the decedent to or for the use of a “qualified recipient.” The bill would also require the Comptroller to adopt regulations to provide for the imposition of additional State estate taxes if within 10 years of the decedent’s death, and before the death of a qualified recipient, the qualified recipient ceases to use the property for farming purposes. Qualified agricultural property is defined as real or personal property that is used primarily for farming purposes. A qualified recipient is an individual who enters into an agreement to use the qualified agricultural property for farming purposes after the decedent’s death. The bill would take effect July 1, 2008 and apply to decedents dying after December 31, 2007.

**HB 369/SB 213 - Chesapeake and Atlantic Coastal Bays 2010 Trust Fund and Nonpoint Source Fund**

*Sponsor: The Speaker of the House (by request of the Administration) and Delegates McIntosh, Bobo, Busch, Cardin, V. Clagett, Holmes, Hubbard, Lafferty, Malone, Manno, Montgomery, Niemann, Pena-Melnyk, Sophocleus, Stein, Ali, Beidle, Carr, Frush, Glenn, Healey, Hucker, Sossi, and Weir; the President of the Senate (by request of the Administration) and Senators Frosh, Garagiola, Gladden, King, Madaleno, Peters, Pinsky, Raskin, Robey, Conway, Dyson, Lenett, Rosapepe, Harrington, Colburn, and Harris.*

*Department position: n.a.*

*Legislative status: Successful; passed with different amendments by both the House and the Senate; a conference committee reached consensus; the bill was signed by the Governor.*

This bill would modify the purpose of the Chesapeake Bay 2010 Trust Fund by specifying that it be used for nonpoint source pollution control projects and by expanding it to apply to the Atlantic Coastal Bays. The Fund would be renamed as the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund. The bill generally would codify the BayStat Program and require it to administer the Trust Fund. The bill would establish a BayStat Subcabinet and a related scientific advisory panel. Money in the Trust fund would be distributed by the subcabinet agencies (1) through competitive grants to various entities; (2) to the Maryland Agricultural Water Quality Cost Share Program (MACS) within the Maryland Department of Agriculture; (3) to the Woodland Incentives Fund within the Department of Natural Resources; and (4) to the Chesapeake and Atlantic Coastal Bays Nonpoint Source Fund, a new special fund administered by the Water Quality Financing Administration within the Maryland Department of the Environment to provide financial assistance for urban and suburban stormwater management practices and stream/wetland restoration. WQFA would be authorized to issue revenue bonds and deposit the net proceeds into the new fund. Finally, the bill would establish financial accounting provisions for the WQFA.

**HB 898/SB 434 - Incentives for Agriculture Act of 2008**

*Sponsor: Delegate Cane (Chair, Task Force on Incentives for Agriculture) and Delegates Braveboy, Conway, Eckardt, Elmore, Haddaway, Haynes, Howard, Hubbard, Ivey, Jennings, Mathias, Montgomery, Morhaim, O'Donnell, Rudolph, Shewell, Smigiel, Sossi, Stull, and Walkup; Senator Dyson (Chair, Task Force on Incentives for Agriculture).*

*Department position: n.a.*

*Legislative status: Unsuccessful; the House bill was not reported out of the House Environmental Matters Committee; the Senate bill was not reported out of the Senate Budget and Taxation Committee.*

This bill would

- expand the Preservation and Conservation Easement Credit;
- alter the determination of the Maryland estate tax by excluding from the value of the gross estate the value of “qualified agricultural property” that passes from the decedent to or for the use of a “qualified recipient;”
- expand the ethanol and bio-diesel production credits established under the Renewable Fuels Promotion Act of 2005; and
- require the Governor to appropriate money for the Next Generation Farmland Acquisition Program for fiscal 2010 through 2013.

**HB 939/SB 95 - Maryland-National Capital Park and Planning Commission - Prince George's County Agricultural Preservation Easement Program PG/MC 116-08**

*Sponsors: The Prince George's County Delegation and Montgomery County Delegation; Senators Miller, Britt, Currie, Muse, Peters, Pinsky, Rosapepe, and Harrington.*

*Department position: The Department takes no position on bills that are not statewide and do not directly affect MALPF.*

*Legislative status: Successful; the House bill was adopted by special order; the Senate bill was passed by both the Senate and the House; the Senate bill was signed by the Governor.*

This bill would establish a Prince George's County Agricultural Preservation Easement Program to be administered by the Prince George's County Soil Conservation District (SCD). The bill would also establish a Prince George's County Agricultural Easement Fund to be used to purchase perpetual agricultural preservation easements; the fund would be financed through the Maryland-National Capital Park and Planning Commission's annual budget. The bill would establish several provisions relating to the fund and its uses and provide various authorities to the Prince George's County Council relating to agricultural land preservation. Among other things, the bill would authorize the Prince George's County Planning Board of MD-NCPPC to purchase easements outside the metropolitan district but within the Maryland-Washington Regional District.

**HB 1018/SB 94 - Prince George's County - Property Tax Credits - Agricultural Land Preservation Programs PG 421-08**

*Sponsors: The Prince George's County Delegation; Senators Miller, Currie, Britt, Muse, Peters, Pinsky, and Rosapepe.*

*Department position: The Department takes no position on bills that are not statewide and do not directly affect MALPF.*

*Legislative status: Successful; the House and Senate bills passed both legislative bodies with amendments; signed by the Governor.*

This bill would authorize Prince George's County to grant a property tax credit for agricultural land, including any farm improvement used in connection with an approved agricultural activity that is subject to a State or county agricultural land preservation program.

Property owners who are granted the property tax credit but subsequently withdraw the property from a State or county land preservation program would be liable for property taxes that would have otherwise been paid (up to 10 years), including interest and a penalty. The county would be authorized to provide, by law, any procedural or enforcement provision necessary to carry out the administration of the tax credit. The bill would take effect June 1, 2008, and would be applicable to all taxable years beginning after June 30, 2008.

***HB 1289/SB 175 - Maryland Estate Tax - Exclusion for Family Farms Subject to Agricultural Preservation Easements***

*Sponsors: Delegates Aumann, Boteler, Frank, Haddaway, Jennings, and Stifler; Senator Glassman.*

*Department position: support.*

*Legislative result: unsuccessful because it has not been passed in the House of Delegates or in the Senate, being stalled in the House of Delegates' Ways and Means Committee.*

This proposed bill alters the determination of the Maryland estate tax by excluding from the gross estate's value the value of the real property that: (1) is subject to either a perpetual agricultural preservation easement that has been granted to MALPF or a MALPF-approved local agricultural land preservation program and (2) passes from the decedent to or for the use of a specified relative of the decedent.

***HB 1423/SB 674 - Water Resources - Groundwater Appropriation or Use - Priority Funding Areas***

*Sponsors: Delegates Hecht, Barkley, Beidle, Cardin, G. Clagett, V. Clagett, Howard, Kaiser, Lafferty, Lee, Niemann, Schuler, Shank, Sossi, Stull, Waldstreicher, and Weldon; Senator Brinkley.*

*Department position: n.a.*

*Legislative result: Successful; both bills were passed with amendments and signed by the Governor.*

This bill authorizes the Maryland Department of the Environment, in accordance with existing State policy and provided that it will not jeopardize the State's natural resources, to give priority for groundwater appropriations and use in Carroll, Frederick, or Washington counties to a public water system that provides water to specified municipal corporations or to specified priority funding areas. MDE is authorized to adopt regulations to implement the bill.

## **Farmland and Other Land Preservation in Maryland**

From January 2008 to January 2009, Maryland protected more than an additional 66,470 acres through state, local, and private preservation programs and public ownership. From July 1, 2004 to June 30, 2008, the most recent five-year period for which data is available (see the discussion on "Preservation versus Conservation" later in this report), Maryland lost agriculturally-assessed land to development at an annual rate of about 16,440 acres. Maryland acreage protected through public ownership or easement as of January 2009 is now about 22.45% of the State's land area, up from 19% in January 2003. The acreage Maryland has developed composes approximately 20.2% of the State's land area, up from 18.5% in January 2003. The balance of Maryland's land area (57.34% of the total) is unprotected and in private ownership, down from 62.4% at the beginning of 2003.

The first of the two primary State goals was established by agreement: the Chesapeake Bay Agreement - Chesapeake 2000. The second statewide goal was established by statute: Maryland General Assembly Joint Resolution 16 in the 2002 Legislative Session.

<b>Conservation Goals and Accomplishments</b>		
<i>(through January 1, 2009)</i>		
	<b>Chesapeake Bay Agreement Chesapeake 2000</b>	<b>Joint Resolution 16 (2002) Prime Agricultural Land</b>
Acreage Goal	1,241,605	1,030,000
Goal as a Percent of Total State Land Area	20.00%	16.59%
Target Date to Achieve Goal	2010	2022
Acres Protected, as of January 1, 2009	1,389,626	534,906
Percent of State Land Area, as of January 1, 2009	22.45%	8.64%
Additional Acres Needed to Achieve Goal	Goal Achieved	495,094
Years Remaining after FY 2009	1	13
Annual Acreage Needed to Reach Goal	0	38,084

### *Chesapeake Bay Agreement - Chesapeake 2000*

Since 1983, the states of Maryland, Virginia, and Pennsylvania, the District of Columbia, the Chesapeake Bay Commission, and the U.S. Environmental Protection Agency representing the federal government have been signatories to historic agreements establishing the Chesapeake Bay Program partnership to protect and restore the Chesapeake Bay's ecosystem.

The signatories of the Chesapeake Bay Agreement agreed in 1987 that "there is a clear correlation between population growth and associated development and environmental degradation in the Chesapeake Bay system." The 2000 Agreement reaffirmed this concept and recognized that more needs to be done to manage growth and development by promoting sound land use. One of the provisions agreed upon in 2000 to support the goal of developing, promoting, and achieving sound land use practices that will protect and restore watershed resources and water quality, maintain reduced pollutant loadings for the Bay and its tributaries, and restore and preserve aquatic living resources is to:

"Strengthen programs for land acquisition and preservation within each state that are supported by funding and target the most valued lands for protection. Permanently preserve from development 20 percent of the land area in the watershed by 2010."

Because 93.8% of Maryland's land area lies within the Chesapeake Watershed, the State adopted the ambitious goal of protecting 20% of the entire State to meet the goal set by Chesapeake 2000. The State's total land area is about 6,190,193 acres (MDP). To protect 20% of the State and meet the objectives determined by the agreement, Maryland must protect 1,241,605 acres by 2010, including publicly-owned land. As of January 1, 2009, Maryland has protected more than 1,385,000 acres, or more than 100% of its 2010 goal with over 22% of the State land area. MALPF easements comprise about 20% of Maryland's protected lands, or about 4.44% of the State land area. As of January 1, 2009, Maryland more than fulfilled the land protection goals of Chesapeake 2000.

***Maryland General Assembly Joint Resolution 16 (2002 Legislative Session)***

In the 2002 Legislative Session, the General Assembly passed Joint Resolution 16, entitled: "Preservation of Agricultural Land." This resolution was the product of a recommendation of the Maryland Agricultural Land Preservation Task Force and states:

"For the purpose of establishing a statewide goal to preserve agricultural land in Maryland whereas, agricultural land is an exhaustible resource of the State which, once removed from agriculture, is forever lost for crop and food production, and for open space uses; and whereas, although approximately 35% of Maryland's total land area is farmland, Maryland's agricultural land is still rapidly disappearing, with an estimated 18,000 acres of farmland annually being converted to urban, commercial, or other nonagricultural use; and whereas, global economic trends, continuing development pressures, the encroachment of strip and scattered development in rural areas and nearby cities, and growing urbanization, threaten the destruction of Maryland's rural environment and the disappearance of its valuable agricultural land for agricultural purposes; and whereas, Maryland should not become one large urban development without any balanced agricultural economy; and, whereas, it is generally essential to Maryland's economic and environmental stability and growth, and particularly to maintain an agricultural economy in the State, to preserve large, contiguous areas of prime and productive agricultural land; now, therefore, be it resolved by the General Assembly of Maryland, that the statewide goal is to triple the existing number of acres of productive agricultural land preserved by the Maryland Agricultural Land Preservation Foundation, Green-Print, Rural Legacy, and local preservation programs by the year 2022...."

<b>Maryland General Assembly Joint Resolution 16 (2002) – Prime Agricultural Land</b>		
<b>PROGRAM (source of data)</b>	<b>Starting Acreage (April 6, 2002)</b>	<b>Current Acreage (January 1, 2009)</b>
Maryland Department of Agriculture: Maryland Agricultural Land Preservation Foundation (MDA)	208,910	274,948
Maryland Department of Natural Resources: GreenPrint Program (MDP)	4,700	24,138
Maryland Department of Natural Resources: Rural Legacy Program (MDP)	29,740	61,159
Local preservation programs (purchase and transfer of development rights) (MDP)	99,983	174,661
<b>TOTALS (Goal: 1,030,000 acres in 2022)</b>	<b>343,333</b>	<b>534,906</b>

On the effective date of this resolution, April 6, 2002, 343,333 acres of Maryland's agricultural land were permanently preserved by MALPF, GreenPrint, Rural Legacy, and local preservation program easements. By extension, the General Assembly set as its goal to protect 1,030,000 acres of land by the year 2022, adding 686,667 acres over twenty years, or approximately 34,334 acres per year. Assuming full funding under current revenue sources for the relevant programs, and accounting for variation in the economy and diversion of easement funds to other budget items when necessary, the Task Force projected that the State would preserve another 500,000 acres by 2022, leaving it about 187,000 acres short of its goal. An additional \$494 million beyond estimated revenues from existing sources dedicated to the preservation of productive agricultural land would be required to prevent this shortfall in the nineteen years beginning in FY 2004. That equated to approximately \$26 million per year in additional funds.

During the six years and nine months after effective date of the resolution, Maryland protected prime agricultural land at a rate somewhat lower than the projected annual rate necessary to reach the 2022 acreage goal, adding approximately 28,380 new preserved acres per year, an annual shortfall of about 5,950 acres. Projecting this annual shortfall over the next thirteen years suggests that Maryland will be over 75,000 acres short of its goal with a funding shortfall of about \$525.2 million at current (FY 2008) acquisition costs, or \$40.4 million per year.

### *A Note on Maryland's Protected Lands Data*

The statewide data reported derive primarily from the ongoing compilation by Daniel Rosen at Maryland's Department of Planning reported both formally and informally. This data is supplemented by MALPF's reporting of its own data. The benchmark or starting acreage as of April 6, 2002, for JR 16 was calculated and agreed upon by the MALPF Task Force, the Maryland Department of Budget and Management, the Maryland Department of Planning, and the Maryland Department of Natural Resources. The 2009 data is from the Maryland Department of Planning, *Maryland Land Preservation, Parks & Recreation Plan 2009*, volume 1 (Baltimore, MD, June 2009), Publication No. 2009-002A; from the Maryland Department of Planning, "Total Acres Preserved, Converted, and Developed, in Maryland Counties" (a spreadsheet provided to MALPF); and from the Maryland Agricultural Land Preservation Foundation, Maryland Department of Agriculture. This data may differ marginally from agency or program totals reported elsewhere.

The use of the data in this report is solely to gauge the progress Maryland is making towards its statewide land preservation goals. Because MALPF staff, as an end user of this data, is not in a position to reconcile differences among sources, it has chosen to rely predominately on MDP data this year. What is provided in this report should not be considered the authoritative statement of Maryland's protected lands data. Nonetheless, the conclusions drawn and projections made in this publication would not be affected by the slight differences that may be identified by drawing on other sources.

## Lands Protected and Developed in Maryland

(as of January 1, 2009)

Protected Land:	Reported Acreage	Acreage Totals	Percentage Sub-Totals	Percentage Totals
			Percent of Protected Land	Percent of State Land Area
Private conservation group protections	47,604		3.43%	0.77%
MALPF easements	274,948		19.79%	4.44%
MD Environmental Trust easements	91,504		6.58%	1.48%
Rural Legacy Program	61,159		4.40%	0.99%
DNR GreenPrint easements	24,138		1.74%	0.39%
ISTEA/CREP	10,663		0.77%	0.17%
Forest Legacy Program	1,171		0.08%	0.02%
Maryland Historical Trust easements	8,745		0.63%	0.14%
County PDR/TDR easements	174,661		12.57%	2.82%
<b>Acreage Under Easement</b>	<b>694,593</b>		<b>49.98%</b>	<b>11.22%</b>
County and municipal parkland	147,137		10.59%	2.38%
State lands (DNR)	455,632		32.79%	7.36%
Federal government protections	92,264		6.64%	1.49%
<b>Publicly Owned Acreage</b>	<b>695,033</b>		<b>50.02%</b>	<b>11.23%</b>
<b>TOTAL LAND PROTECTED</b>		<b>1,389,626</b>	<b>100.00%</b>	<b>22.45%</b>
Unprotected Land:			Percent of Un-protected Land	
Developed Unprotected Land	1,250,870		26.06%	20.21%
Private Unprotected & Undeveloped Land	3,549,697		73.94%	57.34%
<b>TOTAL LAND UNPROTECTED</b>		<b>4,800,567</b>	<b>100.00%</b>	<b>77.55%</b>
<b>TOTAL LAND AREA</b>		<b>6,190,193</b>		<b>100.00%</b>

# Certification of County Agricultural Land Preservation Programs

---

Certification of Local Agricultural Land Preservation Programs (the "Certification Program") was created by the Maryland General Assembly in 1990 and is jointly administered by the Maryland Agricultural Land Preservation Foundation (MALPF) and the Maryland Department of Planning. Program participation by interested counties is voluntary. Counties with an effective local agricultural land preservation program seeking certification apply to both MALPF and Maryland Department of Planning. Currently, sixteen Maryland counties are certified under this program: Anne Arundel, Baltimore, Calvert, Carroll, Cecil, Charles, Frederick, Harford, Kent, Montgomery, Queen Anne's, St. Mary's, Talbot, Washington, Wicomico, and Worcester.

The Certification Program allows counties to retain greater portions of the Agricultural Transfer Tax if they are able to demonstrate that they have an effective program to preserve agriculturally viable farmland. Certified counties are allowed to keep 75% of the Agricultural Transfer Tax revenue (uncertified counties retain 33% of the revenue). The increase in a county's share of Agriculture Transfer Tax helps support its agricultural land preservation program. All retained funds must be spent or encumbered for land preservation purposes within three years or the funds revert to MALPF.

Certification allows counties to create a preservation program that best meets local goals and needs. In combination with easement purchases, counties use other preservation tools such as agricultural zoning, transfer of development rights (TDRs), right-to-farm policies, and the designation of agriculture as the best use of certain lands. Other important aspects of local programs include defined areas targeted for preservation and established acreage goals. In addition to the Maryland Agricultural Land Preservation program, certified counties have typically also preserved land through private land trusts, Maryland Environmental Trust (MET), the Rural Legacy Program, and the Federal

Farmland Protection Program, among other organizations and programs.

## *New Certification Regulations*

MALPF and the Department of Planning submitted regulations to update existing regulations to bring them into compliance with both HB 2 (2006) and HB 1354 (2007) and to reflect better how the certification program has operated since it was originally created. These regulations were submitted to the *Maryland Register* late in FY 2008, and, with minor revisions, became effective on January 26, 2009. The new and revised certification provisions of HB 2 and HB 1354 will take effect for certification and recertification requests starting in FY 2009, so will be addressed more completely in the next annual report.

---

### **Title 34. MARYLAND DEPARTMENT OF PLANNING Subtitle 03. Land Use**

#### **Chapter 03. Certification of County Agricultural Land Preservation Programs**

(Authority: State Finance and Procurement Article, §§5-203(b)(2) and 5-408; Agriculture Article §§2-103(b) and 2-518; Tax-Property Article, §13-306; Annotated Code of Maryland)

34.03.03.01

#### **.01 Purpose.**

This chapter describes the procedures and requirements of the Maryland Department of Planning and the Maryland Agricultural Land Preservation Foundation for certifying county agricultural land preservation programs to use State and local funds.

34.03.03.02

#### **.02 Definitions.**

- A. In this chapter, the following words have the meanings indicated.
- B. Terms Defined.
  - (1) "Certification period" means the period of time during which a county is certified to retain and receive additional agricultural land transfer tax revenues as a result of certification of the county program.

- (2) "County" means a county of the State or Baltimore City.
- (3) "County agricultural preservation advisory board" means a board established by a county under Agriculture Article, §2-504.1, Annotated Code of Maryland.
- (4) "County funds" means local funds derived from a source other than the additional agricultural land transfer tax revenues a county is authorized to retain as a result of certification.
- (5) "County program" means a county's planning, zoning, land use management, and agricultural land preservation programs.
- (6) "Department" means the Maryland Department of Planning.
- (7) "Development right" means the right to develop agricultural land for non-agricultural commercial, industrial, or residential use.
- (8) "Foundation" means the Maryland Agricultural Land Preservation Foundation in the Maryland Department of Agriculture.
- (9) Local Plan.
  - (a) "Local plan" means the policies, statements, goals, and interrelated plans for private and public land use, transportation, and community facilities documented in texts and maps which constitute the guide for the area's future development.
  - (b) "Local plan" includes a general plan, master plan, comprehensive plan, community plan, and the like as adopted in accordance with Article 66B, Titles 3 and 14, Annotated Code of Maryland.
- (10) "Non-qualifying expenditures" means expenditures by a county, other than qualifying expenditures, to support, administer, or operate the county's agricultural easement purchase program.
- (11) "Priority preservation area" means the area identified in a priority preservation area element of a county's local plan.
- (12) "Program development strategy" means a strategy designed to improve the effectiveness of a county agricultural land preservation program.
- (13) "Program evaluation" means an analysis of a county agricultural land preservation program that the county conducts to assess the ability of its program to achieve State and county program certification goals.

- (14) "Qualifying expenditures" means expenditures of county funds by a county to:
  - (a) Purchase development rights; or
  - (b) Provide additional financial incentives to agricultural land owners to sell their development rights.

34.03.03.03

**.03 Goals.**

The goals of certification of county programs are to:

- A. Maintain the positive economic contribution of agriculture and the important role of farming in creating a high quality environment in Maryland;
- B. Encourage the development of county agricultural land preservation programs which:
  - (1) Complement the ability of the Maryland Agricultural Land Preservation Foundation to preserve viable agricultural land; and
  - (2) Make agricultural land preservation part of an overall effort to manage growth and preserve environmental quality; and
- C. Ensure the cost effectiveness of increased expenditures by the counties, toward preservation of agricultural lands consistent with these goals, of the agricultural land transfer tax revenues the counties are authorized to retain as a result of certification of county programs.

34.03.03.04

**.04 Eligible Applicants.**

A county may apply to the Department and the Foundation for certification of a county program.

34.03.03.05

**.05 Eligible Programs.**

A county program is eligible for certification by the Department and the Foundation if:

- A. The county agricultural preservation advisory board, the county office of planning, or the county planning commission, as designated by the county, and the governing body of the county have approved:
  - (1) The county program as an effective approach to agricultural land preservation; and
  - (2) The application for certification of the county program;
- B. The county has established county programs to encourage participation of farmers in agricultural land preservation efforts, including purchase of development rights or financial en-

hancements related to the purchase of development rights, outside of the Foundation;

- C. The county program is likely to be successful, as described in Regulation .06D of this chapter;
- D. The county has committed to make qualifying expenditures in an amount at least equal to the additional funds that would be available to the county as a result of certification of the county program, and has established the means to do so;
- E. The county submits an evaluation of the county's agricultural land preservation program, including the following:
  - (1) Strengths and shortcomings of the agricultural land preservation program in each of the following areas:
    - (a) The ability of the county's zoning and other land use management tools to do the following in the county's priority preservation area:
      - (i) Limit the amount and geographic distribution of subdivision and development in accordance with established agricultural land preservation goals;
      - (ii) Stabilize the land base; and
      - (iii) Provide time for agricultural land preservation easement acquisition to achieve State and local preservation goals before the agricultural land resource is excessively compromised by development;
    - (b) The ability of combined State, local, and other agricultural land preservation easement acquisition programs to permanently preserve lands in the county's priority preservation area at a rate sufficient to achieve State and local preservation goals;
    - (c) The degree to which county land use and other ordinances and regulations restrictor otherwise interfere with the conduct of normal agricultural activities in the priority preservation area;
    - (d) The ability of county zoning, subdivision, and development regulations and policies to minimize the degree to which development in the priority preservation area interferes with normal agricultural activities; and
    - (e) The ability of county and other farming assistance programs to support profitable agriculture and forestry activities in the priority preservation

area;

- (2) Statistics and other factual information necessary to evaluate the county's agricultural land preservation program, such as:
  - (a) A description of the amount of subdivision and development allowed on land within zoning districts comprising the priority preservation area, including base density and additional lots allowed for clustering, density transfers between parcels, and any other provisions affecting lot yields;
  - (b) The numbers and locations of residential parcels and acres subdivided and developed within the priority preservation area during the most recent 5-year period;
  - (c) The total acreage and locations of farms and parcels permanently preserved through agricultural land preservation easements recorded in the land records of the county during the most recent 5-year period;
  - (d) The constraints and restrictions placed by county ordinances and regulations on normal agricultural activities, such as minimum setbacks from property boundaries; and
  - (e) The constraints and restrictions placed by county ordinances and regulations on non-agricultural development activities, in order to minimize conflicts with normal agricultural activities within the priority preservation area;
- F. The county submits a program development strategy which:
  - (1) Describes the way in which the goals of the program described in Regulation .03 of this chapter will be accomplished in the county's priority preservation area, including the county's strategy to protect land from development through zoning, preserve the desired amount of land with permanent easements, and maintain a rural environment capable of supporting normal agricultural and forestry activities;
  - (2) Is based on the evaluation required in §E of this regulation;
  - (3) Includes a schedule of activities the county will undertake to overcome shortcomings in the ability of county tools identified in the evaluation; and
  - (4) Includes a schedule of milestones according to which the county hopes to overcome the identified shortcomings, in-

- cluding but not limited to changes the county intends to make or pursue in:
- (a) The county comprehensive plan, zoning, land use management tools, and related regulations and procedures;
  - (b) County easement acquisition programs;
  - (c) County ordinances, regulations, or procedures supporting or restricting normal agricultural activities;
  - (d) County ordinances, regulations, or procedures limiting non-agricultural development activities that might interfere with the conduct of normal agricultural activities;
  - (e) County strategies or mechanisms to fund easement acquisition; and
  - (f) Farming assistance programs and activities;
- G. The county submits an inventory, in digital or tabular form, of the properties which have been permanently preserved by a recorded conservation easement, which:
- (1) If in digital form, is approved by the Department for content and format;
  - (2) If in tabular form, includes, for each property:
    - (a) The number of each tax map on which each parcel comprising the easement occurs;
    - (b) Each grid cell number of each tax map for each parcel comprising the easement;
    - (c) Each parcel number through which the property can be identified on each tax map;
    - (d) The total number of acres of each easement property;
    - (e) The date on which the easement became effective;
    - (f) The preservation program which holds the easement;
    - (g) The means through which the easement was acquired, such as purchase, transfer of development rights between private parties, or another means specified by the county; and
    - (h) The easement purchase price, if the easement was purchased through or with financial assistance from a government program;
- H. Beginning July 1, 2008, the county's local plan includes a priority preservation area element that:
- (1) Identifies and delineates a priority preservation area that:
    - (a) Is large enough to support normal agricultural and forestry activities in conjunction with the amount of development permitted by the county in the priority preservation area under its local plan;
    - (b) Contains productive agricultural or forest soils or, where productive soils are lacking, is capable of supporting profitable agricultural and forestry enterprises; and
    - (c) Is governed by local policies, ordinances, regulations, and procedures that:
      - (i) Stabilize the agricultural and forest land base so that development does not convert or compromise agricultural or forest resources; and
      - (ii) Support the ability of working farms in the priority preservation area to engage in normal agricultural activities; and
    - (d) Has been submitted to and certified by the Department and the Foundation under Regulation .06 of this chapter;
  - (2) Establishes appropriate goals for the amount and types of agricultural resource land to be preserved in the priority preservation area and the rationale used to establish the goals, including a county acreage goal to protect at least 80 percent of the remaining undeveloped land in the priority preservation area, as calculated at the time the application is submitted;
  - (3) Describes the county's strategy to support normal agricultural and forestry activities in conjunction with the amount of development permitted in the priority preservation area;
  - (4) Includes maps showing the county's priority preservation area;
  - (5) Describes the priority preservation area in the context of the county's growth management plans;
  - (6) Describes the way in which preservation goals will be accomplished in the priority preservation area, including the county's strategy to protect land from development through zoning, preserve the desired amount of land with permanent easement, and maintain a rural environment capable of supporting normal agricultural and forestry activities;
  - (7) Includes an evaluation of the ability of the

county's zoning and other land use management practices to limit the impact of subdivision and development, allow time for easement purchase, and achieve the Foundation's goals before development excessively compromises the agricultural and forest resource land;

- (8) Identifies shortcomings in the abilities of the county's zoning and land management practices and identifies current or future actions to correct the shortcomings;
- (9) Describes the methods the county will use to concentrate preservation funds and other supporting efforts in the priority preservation area to achieve the goals of the Foundation and the county's acreage preservation goal; and
- (10) Incorporates by reference or inclusion the county's agricultural land preservation program evaluation and program development strategy required under §§E and F of this regulation.

34.03.03.06

#### **.06 Priority Preservation Area Certification.**

To certify a priority preservation area under Regulation .05 of this chapter, the Department and the Foundation shall determine that:

- A. The priority preservation area element of the county's local plan includes a priority preservation area element as prescribed under Regulation .05H of this chapter;
- B. The area meets the requirements of Regulation .05H(1)(a)—(c) of this chapter;
- C. The size of the area is appropriate in relation to the county's agricultural land acreage preservation goal; and
- D. The local plan, plan implementation tools, and program development strategy are likely to be successful in controlling development and providing time to achieve State and county goals through easement acquisition in the priority preservation area before the area is excessively compromised by development.

34.03.03.07

#### **.07 Application Process.**

- A. An application shall be submitted to both the Department and the Foundation on a form prescribed by the Department and the Foundation.
- B. The Department and the Foundation shall review a complete application, and each determine whether the application should be approved, approved with conditions, or disapproved.

- C. Within 45 days after receipt of an application, the Foundation shall notify the Department whether the Foundation has approved, approved with conditions, or disapproved the application, together with any changes that must be made to meet certification requirements.
- D. Within 60 days after receipt of an application by the Department and the Foundation, the Department shall notify the applicant in writing whether the application has been approved, approved with conditions, or disapproved, and the reasons for approval with conditions or disapproval. Any conditions shall require the county to submit, within 120 days, a schedule according to which the county will satisfy the conditions.
- E. The decision of the Department and the Foundation is final with no right of appeal.
- F. If a county program is denied approval, the county at any time may submit a revised application, which shall be processed as provided in §§A—E of this regulation.

34.03.03.08

#### **.08 Certification Period.**

Certification of a county program is effective for 3 years from the date the Department notifies the county that the county application has been approved, or from the date the county notifies the Department, and the Department confirms to the county in writing, that all conditions for approval have been met. If a county has submitted the second annual report which serves as the county's application for recertification of the county program required under Regulation .11 of this chapter, certification of the county program shall remain in effect until the Department notifies the county that the application for recertification has been approved, approved with conditions, or denied.

34.03.03.09

#### **.09 Effect of Certification.**

- A. If a county program is certified, the county is eligible for:
  - (1) Funds that are available to counties as additional funds under Agriculture Article, §2-508.1, Annotated Code of Maryland, and Tax-Property Article, §13-306, Annotated Code of Maryland, solely because the county program is certified under Regulation .07, or recertified under Regulation .11 of this chapter; and
  - (2) As of July 1, 2008, funds provided for the Foundation over and above the funding

the Foundation received under Agriculture Article, §2-508.1, Annotated Code of Maryland, and Tax-Property Article, §§13-209 and 13-306, Annotated Code of Maryland, as of July 1, 2007.

B. The funds available under §A of this regulation to a county with a certified county program may be used only for:

- (1) The purposes stated in or permitted under Agriculture Article, §2-508.1, Annotated Code of Maryland, or Tax-Property Article, §13-209 or 13-306, Annotated Code of Maryland, as the case may be;
- (2) Purchase of development rights in the county's certified priority preservation area;
- (3) Direct payments to landowners supplementing payments made by the Foundation for the purchase of development rights;
- (4) Direct payments to landowners in conjunction with the transfer of development rights from their land to areas where residential development is planned;
- (5) Any other direct use of funds or financial expenditures to expedite or promote the sale or purchase of development rights for the permanent preservation of agricultural land as approved by the Foundation and the Department, including payments for:
  - (a) Installment purchase agreements with landowners under an installment purchase agreement program approved by the Foundation;
  - (b) Preservation of critical farms under the Critical Farms Program established under Agriculture Article, §2-517, Annotated Code of Maryland; and
  - (c) The Next Generation Farmland Acquisition Program developed by the Maryland Agricultural and Resource-Based Industry Development Corporation under Article 41, Title 13, Subtitle 5, Annotated Code of Maryland, and approved by the Foundation;
- (6) Administrative costs associated with a certified county program that do not exceed 10 percent of the county share of the agriculture land transfer tax or \$30,000, whichever is greater;
- (7) Bond annuity funds for bonds issued by the county for the sole purpose of purchasing agricultural land preservation easements; and

- (8) County guarantees of loans collateralized by development rights on agricultural land that meets the standards established under Agriculture Article, §2-512(e), Annotated Code of Maryland.

34.03.03.10

#### **.10 Reporting Requirements.**

A. Annual Reports.

- (1) During the certification period, the county shall submit two written annual reports to the Department and the Foundation.
- (2) The first report is due on October 1 following completion of the first full fiscal year of the certification period, except as extended by the Department for reasonable cause.
- (3) The second report is due on October 1 following completion of the second full fiscal year of the certification period, except as extended by the Department for reasonable cause.

B. Financial Reporting.

- (1) Both annual reports shall provide a financial report that includes:
  - (a) Estimated revenues and expenditures for the county's agricultural land transfer tax account, established under Tax-Property Article, §13-306, Annotated Code of Maryland, for fiscal years that have transpired in their entirety during the certification period; and
  - (b) Revenue sources for, and estimated expenditures of, any other fund used to purchase development rights, provide financial enhancements to purchases of development rights, or administer the county's agricultural preservation program.
- (2) The financial report shall provide the information necessary for the Department and the Foundation to determine if the county is meeting its commitment of qualifying expenditures, and using for permitted uses the funds made available under Regulation .09B of this chapter. A financial reporting form for this purpose is available from the Department.
- (3) All expenditures reported shall be identified as qualifying or non-qualifying expenditures.
- (4) Financial reports shall be verified and signed by the county's chief financial officer or by an independent auditor.

- C. The first annual report of each certification period shall include:
- (1) The financial report described in §B of this regulation;
  - (2) An inventory of properties which have been permanently preserved by an agricultural land preservation easement during the reporting period, submitted in accordance with the requirements in Regulation .05G of this chapter;
  - (3) The total number of easements purchased and acreage preserved through the county and State agricultural land preservation easement purchase programs during the reporting period; and
  - (4) An update on progress made to reach the milestones established in the county's most recent program development strategy in accordance with the requirements in Regulation .05F of this chapter and approved by the Department and the Foundation.
- D. The second annual report of each certification period shall:
- (1) Meet the reporting requirements of §C of this regulation;
  - (2) Include a map of all agricultural lands preserved in the county, including those preserved both during and before the certification period, showing those properties in relation to priority preservation areas;
  - (3) Demonstrate that the county program continues to meet the certification requirements of Regulations .05 and .06 of this chapter;
  - (4) Include a description of any changes in the county priority preservation area and the priority preservation area element of the local plan;
  - (5) Include an updated program evaluation, as prescribed in Regulation .05E of this chapter; and
  - (6) Include an updated program development strategy, as prescribed in Regulation .05F of this chapter.

34.03.03.11

**.11 Recertification.**

- A. A county that has received certification of a county program may apply for recertification of the county program. The second annual report submitted in compliance with Regulation .10 of this chapter shall serve as the county's application for recertification.
- B. A county program may be recertified only if:

- (1) During the period of certification, the county:
  - (a) Has maintained a successful program of purchase of development rights or financial enhancements related to the purchase of development rights;
  - (b) Has continued to meet the requirements of Regulation .05D of this chapter;
  - (c) Has made reasonable progress on the recommendations and improvements scheduled in its most recent program development strategy, or can justify deviation from that strategy;
  - (d) Has been reasonably successful in preserving agricultural land and controlling subdivisions and conversion of agricultural land consistent with State and county goals and plans to preserve agricultural land and to protect environmental quality; and
  - (e) Has made significant attempts to coordinate agricultural preservation efforts with those of neighboring counties, when appropriate, and the Department and Foundation;
- (2) The county provides an update on the method, evaluation, shortcomings, and future actions the county is using or will use to achieve preservation goals, as required under Regulation .05E and F of this chapter, that demonstrates significant progress toward achievement of the preservation goals in the priority preservation area;
- (3) The Department and Foundation:
  - (a) Have approved the county's update of its program development strategy, as required by Regulation .10D(6) of this chapter;
  - (b) Determine that the latest local plan update includes an evaluation of:
    - (i) The county's progress toward meeting the goals of the Foundation;
    - (ii) Any shortcomings in the county's ability to achieve the goals of the Foundation; and
    - (iii) Past, current, and planned actions by the county to correct any shortcomings identified as part of the evaluation; and
  - (c) Determine that the priority preservation area identified in the priority preservation area element of the county's local plan continues to meet the re-

quirements of Regulation .06 of this chapter.

34.03.03.12

### **.12 Counties Certified Before July 1, 2008.**

- A. A county certified or recertified before July 1, 2008, may apply for recertification under this chapter.
- B. The Department and the Foundation may conditionally recertify a county under this regulation if they do not meet the requirements of Regulations .05H and .06 of this chapter, if the Department and Foundation determine that the county's program development strategy is likely to result in a priority preservation area and a priority preservation area element that will meet those requirements by July 1, 2010.

34.03.03.9999

### **.9999 Administrative History**

Effective date:

- Regulations .01–.10 adopted as an emergency provision effective September 18, 1990 (17:20 Md. R. 2421); emergency status expired February 1, 1991.
- Regulations .01–.10 adopted permanently effective March 4, 1991 (18:4 Md. R. 449).
- Regulation .02B amended effective October 20, 1997 (24:21 Md. R. 1452).
- Regulation .04 amended effective October 20, 1997 (24:21 Md. R. 1452).
- Regulation .05 amended effective October 20, 1997 (24:21 Md. R. 1452).
- Regulation .06 repealed effective October 20, 1997 (24:21 Md. R. 1452).
- Regulation .09 amended effective October 20, 1997 (24:21 Md. R. 1452).
- Regulation .10 amended effective October 20, 1997 (24:21 Md. R. 1452).
- Regulations .01–.10 repealed and new Regulations .01–.12 adopted effective January 26, 2009 (36:2 Md. R. 102).
- Chapter recodified from COMAR 14.24.08 to COMAR 34.03.03.

---

### ***Audit Concerns with Certification***

As discussed earlier in this annual report (pages 13-14), over 15 years after the State certification program has started operations, the Office of Legislative Audits has decided that county agricultural land preservation programs have not been properly certified, resulting in some counties retaining a higher share of transfer taxes. The auditors have recommended that MALPF should alter the way the program is operated and seek to recover any funds deemed to be inappropriately retained by counties treated as certi-

fied when, according to the auditors, they were not certified.

The auditors' contention is based on an interpretation of the regulations that, once the certification period is over, a county is no longer certified if the recertification request is not approved, no matter what the reason that the recertification approval is delayed. According to the auditors' logic, the Department of Planning and MALPF should institute legal action against counties whose certification has lapsed, even for a day, to recover the higher rate of agricultural land transfer taxes collected during the period the certification lapsed, even if the delay was the fault of the Department of Planning or MALPF for a timely review.

The Department of Planning and MALPF have always run the certification program based on the principle that a county remains certified and retains 75% of the agricultural transfer taxes collected in the county until the county is explicitly decertified. The Department of Planning and MALPF staff know the local programs intimately and know which counties are susceptible to lose certification and which have strong local programs that continue to meet certification requirements.

To nitpick the success of recertification requests based on deadlines, not the quality of a local program, when workload issues at both the State and local levels are well known would be counterproductive to the purposes of the certification program and unfair to its participants. Such an action would expose the Foundation to expensive and pointless legal action, especially after the participants in the program had a reasonable expectation that they would maintain their certification based on the quality of their programs, after more than fifteen years of experience without critical comment by the legislative auditors.

MALPF's response to this audit criticism is two-fold. First, MALPF worked with the Maryland Department of Planning to revise the regulations on certification. In part the revision has been a response to the audit comments; but, more importantly, the revision reflects the statutory changes from HB 2

(2006) and HB 1354 (2007) seen earlier in this chapter.

Second, MALPF is seeking advice of counsel on whether or not MALPF and the Department of Planning are required by law to undertake legal action against the counties who had any period of lapse between the expiration of their formal certification period and the formal approval for recertification, irrelevant of the reason for the lapse. Such a pharisaical interpretation would almost certainly lead to legal action taken against all counties that are now or have been certified since the beginning of the certification program in 1990. The expense of such legal action and the ill will created among county partners would far outweigh any recovered funds, most of which would return to the counties against which the legal action was instituted.

### *Individual County Certifications (FY 2008)*

Eight county partners of MALPF had certification or recertification applications reviewed during FY 2008. This was the final year during which certification and recertification reviews were based on the criteria in effect before the Agricultural Stewardship Act of 2006. The transition to the new requirements will require substantial effort on the part of counties seeking to obtain or retain certification to meet the newly legislated criteria and require flexibility on the part of the Departments of Planning and Agriculture to enable the transition using the new conditional certification and recertification designation for those counties who are making progress towards fulfilling the new requirements, but are unable to complete the process by the statutory deadlines.

#### *Howard County*

MALPF received a letter dated June 27, 2007, from Howard County Executive Ken Ulman informing the Foundation that the County would not seek recertification of its Agricultural Land Preservation Program at the end of its conditional certification period on June 30, 2007. Howard County was unable to resolve the issues that concerned the Department of Planning and the Foundation's Board

about the long-term effectiveness of the County's planning and zoning policies in protecting the State's investment in land preservation and the County's ability to achieve its own preservation goals. These concerns led to a conditional certification approval in 2005 after having been expressed several years before in earlier reviews.

Howard County's certification ended June 30, 2007. The County will now remit 66% of its agricultural transfer tax revenues to the State Comptroller, more than doubling the 25% it remitted when it was certified. Howard County remains a full partner in the MALPF program, continuing to qualify for its regular general allocation of State funds and participation in the MALPF Matching Funds Program.

Loss of certification status is *not* a judgment on agriculture's future in Howard County, but reflects, above all, State concern on the ability of the County to control the incursion of inappropriate development in the agricultural areas of the County and to meet County preservation goals. While such incursions can have a damaging impact on certain kinds of farming, adjacent development can also create opportunities for agricultural activities unavailable where there is little or no nearby population. On balance, however, the fragmentation of a farming area by inappropriate development raises the costs of farming and reduces the flexibility of farms to adjust to the changing farm economy.

---

#### **Withdrawal of Future Recertification Requests – Howard County**

(Summary of Letter from Howard County Executive, Ken Ulman – June 27, 2007)

Last December, when I became Howard County Executive, I had an opportunity to assess the County's Agricultural Land Preservation Program. As you know, we have been among the nation's leaders in preservation for more than 25 years, and have been a model for many Maryland counties. Beginning with the leadership of the late Senator Clark in establishing MALPF, I believe Howard County has contributed significantly to the mission of MALPF in the following ways:

- Howard County was one of the earliest MALPF participants.
- Howard County was first to establish its

own local preservation program, which creates perpetual easements on agricultural parcels.

- Howard County was the first in the nation to implement the innovative installment purchase agreement as a means to acquire easements.
- Howard County now holds agricultural easements on 20,700 acres, which exceeds our original goal of 20,000 acres.

On March 22, 2005, the MALPF Board of Trustees voted to grant conditional certification for Howard County's Agricultural Land Preservation Program (ALPP) for the two-year period starting July 1, 2005. However, when the current certification expires in July 2007, Howard County will not be requesting recertification of our program. With over twenty-five years of active participation, Howard County's preservation program is a mature one, with the focus transitioning from acquisition to stewardship.

Additionally, the funding that certification provides is not critical for the County's easement acquisition, and can be better utilized by other counties with growing programs. I am, however, still very interested in continuing to support and strengthen land preservation and the business of farming. Allow me to present my thoughts and plan for moving forward.

- **MALPF 25-Year Easement Termination:** On April 4, 2007, I approved the County's policy and criteria for evaluating requests to terminate MALPF easements. I am committed to strongly defending the County's program against any application to remove property from the MALPF easement program. The County has almost 4,000 acres in State easements. These properties form the core of the County's 20,000 acre agricultural preserve. Our program was built upon these early acquisitions and the retention of these easements is critical to our ongoing efforts to support the agricultural economy and preserve farmland for the future.
- **County's Easement Purchase Program:** To continue to attract property owners to our easement purchase program, the County has doubled the maximum easement purchase amount to \$40,000 an acre and expanded the payment options to include cash and shorter term installment purchase agreements (IPA). Subsequent to the passage of these enhancements in 2006, the ALPP opened an application period, and we were successful at attract-

ing several high quality farms totaling over 260 acres.

- **Pace of Development:** In 2005, County Executive Jim Robey introduced a Council Bill to amend the Adequate Public Facilities Ordinance (APFO) to slow the pace of development in the Rural West by reallocating up to 100 housing units a year from the West into the County's Planned Service Area. I supported that Bill and the associated Council Resolution to amend the Housing Allocation Chart. The Council, however, did not approve the Resolution to reduce the Rural West housing unit allocations. As County Executive, I have pre-filed legislation that will accomplish my goal of reducing the housing unit allocations in the West from 250 to 150 per year (representing a reduction of the rural West's share from 13.5% to 8% of the County's annual housing allocations). This legislation was pre-filed on June 21 for Council action in July.
- **Agricultural Preservation Acreage Goals:** Howard County has recently reached a landmark – the acquisition of 20,000 acres in agricultural land preservation easements. This was our original rural preservation goal, which we later expanded to 30,000 acres. We now have almost 6,700 acres in permanent environmental and historic easements, bringing our combined rural easement total to 26,700 acres. Given past trends and current projections for easement acquisition using our density exchange option, the County is confident that we will meet or exceed our 30,000-acre overall preservation goal. In addition to easement properties, more than 10,700 acres have been protected in parks and open space. Thus, the County has already preserved 40% (about 37,400 acres) of land in the Rural West and is projected to ultimately reach 47% (about 44,800 acres). Within the Rural Conservation zoning district, which is our priority agricultural preservation area, 50% (more than 31,000 acres) of the land is already protected.
- **Zoning Policies:** Current land management tools are working effectively in the manner for which they are established. Only 11% of the land in our Rural Conservation district (about 6,600 acres) remains uncommitted. If buildout continues at the current ratios and densities, the potential number of density sending rights is substantially in balance with the density receiving potential in receiving subdivisions. To make changes at this time would dismantle a

fragile balance and eliminate the predictability that is essential in the marketplace. We, therefore, do not intend to propose any significant changes to our Rural West zoning policies.

- **Preservation Priorities and Funding:** The County's preservation priorities are now primarily focused on acquiring easements through our density exchange program. These easements are obtained at no cost to the County or State. Although we expect to continue purchasing agricultural preservation easements through our local program, that approach will be a minor component of our County-wide preservation strategy. MALPF has acquired less than 80 easement acres in the County since 1989 and we no longer intend to pursue easement acquisition through the MALPF program. We have conducted a fiscal analysis of our preservation program and find that the proceeds from the 75% of the agricultural penalty tax that the County retains through its certification is not vital to our program. The funding available through the County's real estate transfer tax, along with 33% of the penalty tax will be adequate to fund future County easement acquisitions, payment of our outstanding installment purchase obligations, and program management. We will also be expanding our environmental preservation priorities to promote donated easements on sensitive infill parcels in the County's Planned Service Area. To this end, my FY 2008 budget proposes funding for an innovative partnership effort with the Howard County Conservancy.

We sincerely appreciate the time and effort that the MALPF Board and both agencies have spent with us discussing the evolving nature of agricultural preservation in Howard County. We have been widely recognized as a leader in preservation and we will continue to be a leader in promoting and supporting the business of farming through our agricultural marketing program. Undoubtedly, Howard County's significant gains in agricultural preservation would not have been possible were it not for MALPF. Furthermore, we hope that the State will consider granting special recognition to mature programs, like that of Howard County, which have made substantial preservation achievements. To this end, we will be asking our State Delegation to investigate the possibility of introducing legislation in 2008 that will create a new certification category for mature programs such as ours, that have reached an emeritus status worthy of recognition for ongoing stewardship.

## *Calvert County*

Calvert County's application for recertification was presented, reviewed, and approved at the August 2007 meeting of the MALPF Board. A summary of the letter dated November 6, 2007, on behalf of the MALPF Board and the Department of Planning confirming recertification follows.

---

### **Recertification of Calvert County's Agricultural Land Preservation Program** (Summary of Letter from MALPF and the Maryland Department of Planning – November 6, 2007)

We are pleased to recertify the Calvert County program for the period July 1, 2007 – June 30, 2009 in recognition of its impressive accomplishments in easement acquisition and steep decline in acreage conversion in the last five years, no doubt largely due to the strong land-use policies such as the down-zonings of 1999 and 2003 to protect the investment in easements.

We believe, however, that there are a few program issues it will be important for the County to address when the new requirements for Priority Preservation Areas for certified counties go into effect after July 1, 2008. (Calvert, because its latest certification period starts this year, will not need to demonstrate compliance with the regulations until July 1, 2009). These were established by the Agricultural Stewardship Act of 2006. We hope to work with you to see that the County has the opportunity to meet the new requirements in a timely manner. Please review them with appropriate staff and County officials, and contact us as soon as possible for any questions or clarification. We would be happy to meet with you, and with anyone else you wish, on the subject.

#### Existing Issues

*A number of indicators show the ways in which the County's land preservation program is functioning well:*

- The acres of land preserved, through a variety of sources, far surpassed the amount of land converted to development during the reporting period — 4,849 preserved to 1,296 converted. The County has over 25,000 acres under easement and is on track to meet its 40,000-acre goal by 2020.
- The County uses a full array of State, County, and land trust programs to acquire easements, including two Rural Legacy areas, two options for its local PDR program, and a very success-

ful TDR program.

- Through two courageous down-zonings, the County lowered its rural density to 1:20. The reduction of development in residential zones, which could be restored through the purchase of TDRs, invigorated the County's TDR program. A number of private land trusts are also active in the County.
- The County provided almost \$3.5 million in County funds for FYs 2003 through 2006.
- Town centers have been established to focus development.

Although Calvert County's land preservation program is not one that we generally worry about, there are several aspects of the program that are cause of concern:

- The price of TDRs and easements approximately tripled in just four years, which may slow down the County's pace of easement acquisition and hamper the ability of a new generation of farmers to obtain land.
- More important is the lack of a product to replace tobacco and the increasing age of farmers in Southern Maryland. The application to certify the County's program under the new regulations should describe in detail the status and prospects of the agricultural business sector in Calvert County. Is it possible that the preserved land resource base may not have a productive use in the near future? If so, what are the implications?
- The certification report stated that some development still occurs in the Farm and Forest District (FFD). We expect that the amount is small, given the sharp decline in acreage subject to agricultural land transfer tax. However, we would like to see the County's own data comparing units and acres being developed inside and outside development areas and the FFD. The enclosed risk analysis map, created by MDP and based on County Zoning, shows that much of the unprotected agricultural land in Calvert County is subject to moderate risk (1 du/10+acres/1du/20 acres) or high risk (between 1du/acre and 1du/10 acres). Some rural land in southern Calvert is at very high risk (more than 1 du/acre).

Given the timing of the County's recertification, Calvert does not need to meet the new requirements until July 1, 2009. (Other certified Counties have until July 1, 2008, but Calvert's certification under the old regulations does not end until July 1, 2009). As noted, we have some concerns about Calvert's program, which can be categorized as

"unknowns" more than as serious issues. The conversion of farmland in the County seems to have reached a consistently low level; the land preservation program appears to be working and is not lacking in effective tools. However, we wonder if past fragmentation, combined with the demise of the tobacco economy, aging of farmers, and high cost of land, add up to a sharply limited range of future farming activities on the large base of resource land that Calvert has preserved.

### *Kent County*

Kent County's application for recertification was presented, reviewed, and approved at the October 2007 meeting of the MALPF Board. A summary of the letter dated November 6, 2007, on behalf of the MALPF Board and the Department of Planning confirming recertification follows.

---

#### **Recertification of Kent County's Agricultural Land Preservation Program** (Summary of Letter from MALPF and the Maryland Department of Planning – November 6, 2007.)

We are pleased to advise you that the County's agricultural land preservation program has been recertified for the period from July 1, 2007 through June 30, 2009.

Kent continues to protect its agricultural sector and preserve land at a rapid rate despite the development pressure on Eastern Shore. This year alone, Kent County preserved almost 2,900 acres through MALPF, a total that has rarely been reached by any County. Even more extraordinary, every year Kent County sees the lowest or second lowest number of agricultural acres converted to development of any County. Since 1980, the "average" Maryland County has lost over 21,000 acres; Kent's total is 4,500.

#### Program Accomplishments

Highlights of the County's farmland preservation efforts during the recertification period were:

- During the reporting period (FYs 2004-2007) the County preserved 5,589 acres and saw just 614 converted (a ratio of over 9:1).
- After years of making the minimum match required of certification, the County contributed almost \$140,000 in other County funds in FY 2007. While it is commendable that the County in recent years increased its participation in the matching funds program, we encourage the County to further increase its contribution in

the future. Kent County is an important agricultural resource area with large contiguous blocks of prime farmland where farmers consistently demonstrate a high demand for farmland preservation. Acquisition costs are relatively low compared with the state average. Additional matching funds would provide a significant return on investment for both the County and the State. We would be glad to discuss alternative methods for funding farmland preservation with you, members of your staff, and elected officials.

- The 2006 Comprehensive Plan includes a number of worthwhile goals and strategies for protecting resource land, including recommendations that the County investigate a TDR and a PDR program.

Clearly, the County's land preservation program is on the right track. The County is able to limit development and give easement programs time to work.

The only issue we see with the County's program deals with designating a priority preservation area or areas; from the map it appears that existing clusters of easements and public lands are spread uniformly across the whole County. We are curious to see how the County will size and shape its PPA. If you would like assistance with this or any other aspect of certification under the new regulations, please do not hesitate to ask us. Since your recertification period ends in 2009, you will have a year's grace period in meeting the new regulations, which take effect on July 1, 2008. The best way to assure your compliance is through a joint State/County effort, in which we are prepared to assist.

### *Frederick County*

Frederick County's application for recertification was presented, reviewed, and approved at the November 2007 meeting of the MALPF Board. A summary of the letter dated February 5, 2008, on behalf of the MALPF Board and the Department of Planning confirming recertification follows.

---

#### **Recertification of Frederick County's Agricultural Land Preservation Program**

(Summary of Letter from MALPF and the Maryland  
Department of Planning – February 5, 2008.)

We are pleased to recertify the Frederick County program for the period July 1, 2007 – June 30, 2009. There are, however, a few program issues it will be important for the County to address when

the new requirements for Priority Preservation Areas for certified counties go into effect after July 1, 2008 (which the County does not have to address until July 1, 2009, given the timing of its latest recertification period). These requirements were established by the Agricultural Stewardship Act of 2006. We hope to work with you and your staff to see that the County has the opportunity to meet the new requirements in a timely manner.

#### Existing Issues

- The County posted significant achievements during the reporting period: almost 3,000 acres preserved each year, and over \$26,000,000 in County funds spent for that purpose. The County runs a very successful IPA program in addition to its critical farms program, and both MALPF and Rural Legacy are active in the County. *Farmland Preservation Report* recently noted that Frederick County has the 12<sup>th</sup> most successful farmland preservation program in the entire United States.
- In contrast to its strong pace of preservation, Frederick County also has a high rate of agricultural land conversion: 5,850 acres for 2002-2006, almost 1,200 acres per year. For the 18 years of 1990-2007, the amount of farmland subject to agricultural land transfer tax in Frederick is much higher than the state average: 18,565 acres vs. 12,053 acres, respectively. This is surprising, given that Frederick's agricultural zoning, on its surface, is highly protective. We are concerned that the number of small parcels with development rights may be undermining the effectiveness of the zone, and that the conservation zone, which is much less protective than the agricultural zone, allows even more development to compromise state and local investment in land preservation.
- Equally alarming is the size of rural lots: 1,497 lots during the reporting period consumed 11,292 total acres—an average of 7.5 acres each. Over the 1995-2007 timespan, 307 farm lots covering 11,251 acres were created (36.6 acres per lot). Farm lots are counted toward the three subdivisions allowed on the mother parcel that existed on August 18, 1976; they do not have to be perked for septic systems because they are intended for farm use. However, as the certification report concludes, "many of these lots are being perked for a house and are minimally used for agricultural purposes. Farm lots can result in large amounts of acreage being taken out of agricul-

tural use.”

- The program development strategy says that the following are being considered:
  - Making farm lots (25 acres or more) subject to the same subdivision regulations as other lots, since so many of them are being used for large lot residential development.
  - Amending the Zoning Ordinance to increase the minimum lot size in the Resource Conservation/RC District from 5 to 25 acres.
  - Amending the zoning ordinance to eliminate nursing homes in the agricultural zoning district as a use permitted by special exception.

We believe that these matters should be addressed when the County applies for certification under the new regulations, specifically for the areas the County chooses to include in its Priority Preservation Area. How the County addresses these issues will affect its ability to stabilize land use in the PPA to limit development and provide time for easement programs to preserve the area and achieve goals before they are compromised.

### *Carroll County*

Carroll County’s application for recertification was presented and reviewed by MALPF staff at the April 2008 meeting of the MALPF Board. Because the Department of Planning had not yet completed its review, report, and recommendation, the Board tabled its vote on recertification until the May meeting, when it was approved. A summary of the letter dated June 12, 2008, on behalf of the MALPF Board and the Department of Planning confirming recertification follows.

---

**Recertification of Carroll County’s  
Agricultural Land Preservation Program**  
(Summary of Letter from MALPF and the Maryland  
Department of Planning – June 12, 2008)

The Maryland Department of Planning and the Maryland Agricultural Land Preservation Foundation are pleased to recertify the Carroll County program for the period July 1, 2007 – June 30, 2009 in recognition of its impressive accomplishments in easement acquisition and the County’s commitment to preservation. There are, however, some program issues it will be important for the County to address when the new requirements for Priority

Preservation Areas for certified counties go into effect after July 1, 2008.

### Existing Issues

*A number of indicators show the ways in which the county’s land preservation program is functioning very well:*

- The county preserved over 2,500 acres per year during the reporting period, an impressive number in its own right and one that far out-distanced land converted to development. The county has over 51,000 acres under easement — one of the highest amounts in the country.
- Although it does not have a TDR program, the County uses a full array of state, local, federal, and land trust programs to acquire easements, including two Rural Legacy areas, an installment purchase option for the County easement program, and a critical farms program.
- The County’s financial commitment of almost \$10 million in other County funds per year is nearly unsurpassed in the state. Since 1996, the County has acquired 73 MALPF easements using 100% county funds.
- The County is able to retain a cap of 70% of fair market value for easements obtained with County funds. This makes the County’s program cost-effective.
- Although the 18,400 acres subject to agricultural land transfer tax since 1990 vastly exceeds the “average” 12,000 acres per county statewide, Carroll’s conversion rates have declined steeply for the past four years, and now are below the state average. We look forward to seeing this trend continue.

Although Carroll County’s land preservation program is not one that we worry about, we do have several concerns — which the county seems to be addressing. In the next certification report, which will be an application for certification under the new regulations, please elaborate on the County’s progress in overcoming these hurdles, especially as they relate to the new requirements established by the Agricultural Stewardship Act of 2006.

- As the county itself notes, easements have become expensive and the funding to protect the next 50,000 acres is problematical, especially given the decline in transfer tax revenues due to the real estate slump. However, as Planning Director Steve Horn noted at the recent the Western Maryland Local Government Exchange Workshop, you and other staff members are given flexibility to use all the techniques available to create the most suitable and

cost-effective easement packages for local landowners. The easement value cap and the importance of discounting in ranking easements help Carroll get the most bang for its buck.

The certification report mentioned that funding could potentially be available by combining preservation easements with water recharge or storm-water control easements. The issue of water recharge easements has been discussed at the state level, and we look forward to your contribution to the evolution of this idea.

- The acreage of agricultural land converting to development appears to be declining. Will this trend continue?
- While noting the success the County has in controlling development and securing easements in northwest Carroll County, we have in previous letters mentioned our concern about the difficulty of duplicating this success in other parts of the County and indicated the need to address it.

We believe that these matters should be addressed when the County applies for certification under the new regulations, specifically for the areas the County chooses to include in its Priority Preservation Area. Thank you for your hard work in keeping Carroll County's land preservation program one of the best in the nation. We look forward to working with you as Carroll County creates its Priority Preservation Area and PPA plan.

### *Queen Anne's County*

Queen Anne's County's application for recertification was presented, reviewed, and approved at the May 2008 meeting of the MALPF Board. A summary of the letter dated June 12, 2008, on behalf of the MALPF Board and the Department of Planning confirming recertification follows.

---

#### **Recertification of Queen Anne's County's Agricultural Land Preservation Program** (Summary of Letter from MALPF and the Maryland Department of Planning – June 12, 2008)

Based on your recertification report for the years FYs 2005-2007, the Maryland Department of Planning and the Maryland Agricultural Land Preservation Foundation are pleased to recertify the Queen Anne's County program for the period July 1, 2007 – June 30, 2009 in recognition of its impressive accomplishments in easement acquisition and the

County's commitment to preservation. There are, however, some program issues it will be important for the County to address when the new requirements for Priority Preservation Areas for certified counties go into effect after July 1, 2008. However, they must be addressed in your application for recertification, which is due in October of 2008. These were established by the Agricultural Stewardship Act of 2006. We hope to work with you and your staff to see that the County has the opportunity to meet the new requirements in a timely manner.

#### Existing Issues

*A number of indicators show the ways in which the County's land preservation program is functioning well:*

- The use of MALPF, two Rural Legacy areas, MET, local conservation groups, and TDRs to preserve over 40,000 acres.
- Increase in the acreage goal to 80,000.
- A rate of land conversion since 1990—i.e., acreage subject to agricultural land transfer tax — that is far below the state average.

There are, however, several aspects of the program that we feel could be improved to make the program more effective, specifically concerning high levels of development in rural Queen Anne's County:

- Since 1998, the trend line for land conversion has been upward, and in three of those years the rate of conversion in Queen Anne's County exceeded the state average.
- Since 1997, about 54% of the new building lots approved were located outside of designated growth areas. We understand that the percentage would be lower if some stalled projects in the growth areas had been built. However, the trend line for lots outside of growth areas has risen sharply over the past decade.
- A number of development options appear to make possible much greater capacity for residential lots in the agricultural zone than we understood. Unless we misunderstand them, these options include:
  - The option to cluster at 1 lot per 8 acres.
  - The sliding scale option allowing one extra unit per 100 acres.
  - Non-contiguous cluster subdivision allows the developed portion of the receiving parcel to be developed at a high density, apparently as high as well, septic, and environmental restrictions allow.
  - Provisions that allow rights that could not

be developed on sending parcels to nevertheless be transferred and developed on receiving parcels.

- Preserved open space is not necessarily permanent. We are uncertain if this impermanence is restricted to remainders from cluster subdivisions which can become receiving sites for non-contiguous transfers, or if it extends to other situations as well.

In general, it appears that under these provisions, a strong market has developed to create substantial subdivisions in proximity to preserved land. Unless such development is the exception rather than the rule, it will greatly compromise the rural landscape for farming, as it affects farmers' ability to farm, undermines supporting agricultural infrastructure, raises land prices beyond the reach of most farmers, and undermines State goals for preservation and certification.

Accordingly, we are concerned that demand for the type of development allowed by County zoning and land use tools may be resulting in increasingly widespread development that is incompatible with the goals for the Foundation and the certification program.

Two years ago we asked that the next certification report include the following, which we have not yet received. Please have this information available to review when we meet with you, at your earliest convenience, to discuss the County's application for recertification under the new regulations:

An evaluation of the degree to which the County's land use tools are allowing development that is compromising State preservation investment, addressing the concerns articulated above.

- 1) In the evaluation, please include provisions for clustering; non-contiguous transfer; sliding scale development rights; transferable development rights from parcels lacking corresponding development capacity; permanence or impermanence of County open space; and the cumulative effect of all provisions.
- 2) Please include the following data and explanations in the report:
  - *The number of parcels on which non-contiguous transfer has occurred, their location on a map, the number of units on them, and the acreage that remains permanently open as a result of the non-contiguous transfer remainder.*

- *The number, location, and acreage of open space parcels that exist as a result of the cluster option and that can be used as a non-contiguous receiving area.*
- *The number, location, and acreage of open space parcels that have been built on as a result of the non-contiguous cluster option.*
- *Clarification of County laws and procedures regarding County open space parcels: how much land must be preserved and is it permanently preserved or not.*

Finally, the report should include the steps the County is taking to correct shortcomings in the ability of the program to manage subdivision and development, consistent with the requirements of the certification program.

These matters must be addressed when the County applies for certification under the new regulations, specifically for the areas the County chooses to include in its Priority Preservation Area. How the County addresses these issues will affect its ability to stabilize land use in the PPA to limit development and provide time for easement programs to preserve the area and achieve goals before they are compromised.

### *Wicomico County*

Wicomico County's application for recertification was presented and reviewed at the June 2008 meeting of the MALPF Board. Recertification was approved soon afterwards by a telephone poll of the Board of Trustees because of the loss of a quorum at the Board meeting. A summary of the letter dated July 7, 2008, on behalf of the MALPF Board and the Department of Planning confirming recertification follows.

---

**Recertification of Wicomico County's  
Agricultural Land Preservation Program**  
(Summary of Letter from MALPF and the Maryland  
Department of Planning – July 7, 2008)

Based on your recertification report for the years FYs 2001-2007, the Maryland Department of Planning and the Maryland Agricultural Land Preservation Foundation are pleased to recertify the Wicomico County program for the period July 1, 2007 – June 30, 2009. There are, however, some program issues it will be important for the County to address when the new requirements for Priority Preserva-

tion Areas for certified counties go into effect after July 1, 2008. They should be addressed in your application for recertification, which is due in October of 2008. The new regulations were established by the Agricultural Stewardship Act of 2006. We hope to work with you and your staff to see that the County has the opportunity to meet the new requirements in a timely manner.

#### Existing Issues

The County's land preservation program can claim a number of successes:

- Through MALPF, Rural Legacy, and the local PDR program, the County preserved 2,354 acres in the six years of FY 2001-FY 2006. That is an average of 400 acres per year.
- The County was able to preserve two farms through the use of federal funds.
- Wicomico County's resource zoning was improved from its worst-in-the-state 2:1 to 1:15, with 1:3 with cluster on 50% of the land.

There are, however issues that compromise the ability of the County's preservation program to be successful:

- The base zoning of 1:15 is just moderately protective, in our view, and the 1:3 with cluster on 50% of the land – which is by far the preferred option – is one of the most unprotective rural densities in Maryland. The cluster requirement is better than no cluster requirement, but it is not an effective land preservation tool when the density is as high as 1:3.
- The County's growth area is extremely large, yet significant amounts of development occur outside the growth area. As a result, the County's agricultural and natural resource land is subject to high levels of fragmentation.
- Land is being converted faster than it is being preserved. Since 1990, the County has lost 12,221 acres – i.e., acres subject to agricultural land transfer tax – which is close to the “average” Maryland county total of 12,053 acres. This is troubling, given that Wicomico is a rural county and at the core of the State's agricultural economy.
- Only three counties have placed less land under easement than Wicomico. When publicly-owned land is added to the equation, Wicomico still has the 5<sup>th</sup> lowest amount of preserved land among the 23 counties.

At the heart of the certification criteria is the ability of the county to limit development in the PPA so that easement programs have time to work. Given

the development pressure, permissive zoning, and limited amount of preservation in the County, we have serious doubts about the ability of Wicomico County to accomplish its preservation goals in the PPA before the land base is compromised by development. We recognize the political and administrative difficulty involved in improving zoning and land use management tools. However, the law is clear that the County must demonstrate by July 1, 2010, how the PPA, PPA plan element, and other program components it has in place by that time will accomplish state and local goals for the certification program.

To that end, please review the new requirements with appropriate staff and county officials and contact us as soon as possible for any questions or clarification. Again, we appreciate the hard work you have put into the County's farmland preservation program. We look forward to working with you in the future, and would be happy to visit with you and other interested parties to discuss the County's program and the improvements that can be made to it.

#### *Worcester County*

Worcester County's application for recertification was presented and reviewed at the June 2008 meeting of the MALPF Board. Recertification was approved soon afterwards by a telephone poll of the Board of Trustees because of the loss of a quorum at the Board meeting. A summary of the letter dated July 7, 2008, on behalf of the MALPF Board and the Department of Planning confirming recertification follows.

---

#### **Recertification of Worcester County's Agricultural Land Preservation Program** (Summary of Letter from MALPF and the Maryland Department of Planning – July 7, 2008)

Based on your recertification report for the years FYs 2006-2007, the Maryland Department of Planning and the Maryland Agricultural Land Preservation Foundation are pleased to recertify the Worcester County program for the period July 1, 2007 – June 30, 2009 in recognition of your impressive accomplishments in easement acquisition and the County's commitment to preservation. There are, however, some program issues it will be important for the County to address when the new requirements for Priority Preservation Areas for certified counties go into effect after July 1, 2008. They should be addressed in your application for recerti-

fication, which is due in October of 2008. The new regulations were established by the Agricultural Stewardship Act of 2006. We hope to work with you and your staff to see that the County has the opportunity to meet the new requirements in a timely manner.

#### Existing Issues

A number of indicators show the ways in which the County's land preservation program is functioning very well:

- The County preserved 1,250 acres per year, on average, between 1999 and 2006 (although this is below the goal of 1,500 acres per year).
- The number of acres subject to agricultural land transfer tax in Worcester County, which we use as our main measure of agricultural land conversion, is only about 60% of the total for the "average" Maryland county for the years 1990-2007.
- The County's own data show that from 1999 through 2006, development consumed 3,176 acres while 10,015 acres were preserved.
- The County's Coastal Bays Rural Legacy Area is one of the most successful in the state, and the recently designated Dividing Creek Rural Legacy Area, which the county shares with Somerset County, holds great promise and received a large Rural Legacy award in 2007.
- The County's rural zoning is among the most protective in the state.
- The County's preserved-to-developed-land ratio is over 3.2, fourth best in Maryland behind Somerset, Dorchester, and Kent Counties.
- The number of new lots and new unit permits in the agricultural and conservation districts are relatively low compared to the numbers going into development areas.

Although Worcester County's land preservation program is not one that we worry about, we do have several concerns. In the next certification report, which will be an application for certification under the new regulations, please elaborate on the county's progress in overcoming these hurdles, especially as they relate to the new requirements established by the Agricultural Stewardship Act of 2006.

- As a small county, Worcester finds it difficult to contribute significant amounts of Other County Funds to its preservation effort. (In fact, the County actually fell \$154 short of meeting its minimum matching requirement for FYs 2005-2007; please make up this shortfall during the next year).

- Although residential lots in the A-1 zone are relatively few, they consume about six acres each, on average. Can the size be reduced?
- We cannot tell if the mobile homes in the A-1 and C-1 district are causing any land conversion. Please let us know.

The next recertification report is due in October 2008. This gives us time before the current certification period ends on June 30, 2009 to review your draft PPA element, if it is ready, or your strategy and timetable for creating the PPA plan element and meeting other new requirements. You have already provided a lot of the information that you need to be certified under the new regulations. You can supplement it with the financial report and preservation/development data for FY 2008, as well as the information on the PPA designation and PPA plan element.

The matters of concern about the County's program discussed above should be addressed when the County applies for certification under the new regulations, specifically for the areas the County chooses to include in its Priority Preservation Area.

#### *Prince George's County*

Prince George's County's application for new certification was presented and reviewed by MALPF staff at the June 2008 meeting of the MALPF Board. Because the Department of Planning had not yet completed its review, report, and recommendation, the Board tabled its vote on certification. Because of the timing of the application, under law, the criteria for evaluation was determined to be the new requirements in the Agricultural Stewardship Act of 2006. A summary of the letter dated September 8, 2008, informing the County of the additional application requirements on behalf of the MALPF Board and the Department of Planning follows.

---

#### **Certification of Prince George's County's Agricultural Land Preservation Program**

(Summary of Letter from MALPF and the Maryland Department of Planning – September 8, 2008)

Thank you for submitting an application to the Maryland Department of Planning and the Maryland Agricultural Land Preservation Foundation to certify Prince George's County's Agricultural Land Preservation Program. We administer the certification program according to COMAR Title 14 Subtitle 24 Chapter 08, "Guidelines for the Certifica-

tion of County Agricultural Land Preservation Programs.” As you know, the Agricultural Stewardship Act of 2006 (HB) revised the certification program, and the regulations to implement those changes took effect on July 1, 2008. Due to the timing of the County’s application, we must review it under the new requirements.

Among the most important and difficult of the requirements to address is that the County must stabilize land use in its proposed Priority Preservation Area, and provide time to achieve preservation goals before resource land is excessively compromised by development. We would like to meet with you and County Representatives to help you in this endeavor.

#### New Requirements

As you know, the Agricultural Stewardship Act of 2006 (HB 2), passed by the Maryland Legislature, requires certified counties to establish Priority Preservation Areas (PPAs) in their comprehensive plans and manage them according to certain criteria. The PPA must:

- Contain productive agricultural or forest soils, or be capable of supporting profitable agricultural and forestry enterprises where productive soils are lacking.
- Be governed by local policies, ordinances, regulations, and procedures that stabilize the agricultural and forest land base, support working farms and normal farming activities, and provide time to achieve State preservation goals before resource land is excessively compromised by development;
- Be of a size that is appropriate in relation to countywide preservation goals for both the number of acres of agricultural land and the agricultural industry.
- Be accompanied by the County’s acreage goal for land to be preserved through easements and zoning in the PPA equal to at least 80% of the remaining undeveloped areas of land in the area.

The comprehensive plan must do the following:

- Establish appropriate goals for the amount and types of agricultural resource land to be preserved in a PPA.
- Include maps showing the County PPA.
- Describe the County’s strategy to support normal agricultural and forestry activities in conjunction with the amount of development permitted in the PPA.

- Describe the ordinances, regulations, and procedures the County is using in the PPA to support the ability of working farms to engage in normal agricultural and forestry activities.
- Describe the way in which preservation goals will be accomplished in the PPA, including:
  - The County’s strategy to protect land from development through zoning;
  - Preserve the desired amount of land with permanent easements;
  - And maintain a rural environment capable of supporting the kind of production intended.
- Include an evaluation of the ability of the County’s zoning and other land use management practices to do the following:
  - Limit the impact of subdivision and development
  - Allow time for easement purchase; and
  - Achieve the goals of the Maryland Agricultural Land Preservation Foundation (MALPF) program before they are irreparably undermined or impaired by development.

#### Revisions needed for application

The most significant changes to the certification program concern the County’s designation of a Priority Preservation Area (PPA), the addition of a PPA element to the comprehensive plan, and stabilization of land use in the PPA through zoning and related land use and preservation tools. Because these things take time to achieve, they do not have to be fully implemented when you reapply for certification. In order for the County’s program to be conditionally certified, the revised application would need to describe the probable boundaries of the PPA, when the PPA will be officially designated, when the PPA element will be approved, etc. Your application already describes many of the program goals and components that will be discussed in your PPA plan element and a timetable for their implementation.

That said, we do have some questions and concerns about a potential PPA and the ability of some of the land use preservation tools that Prince George’s County uses to meet the requirements.

- Will the PPA include the entire 100,000-acre Rural Tier or just part? In answering this question, please address our confusion over how much agricultural land the County contains. The application says that about 60,000 acres of the County are agricultural, with 39,258 agriculturally assessed and privately owned. The same paragraph later says that

agricultural land comprises 47,572 acres with 19,948 acres tillable.

- Due to its location and permissive zoning, rural land in Prince George's has experienced significant fragmentation for decades. However, data provided by the County show that development in the Rural Tier has been limited in recent years, though not as low as the goal of 1% of total new development in the County. We are pleased but also a little mystified by the reduction in subdivision, given the zoning of one unit per five acres in the Open Space zone and one unit per two acres in the Residential Agricultural zone. If the County is not contemplating a change to the zoning — a change to the zoning is not among the proposed actions listed in the application — please explain how the other tools and programs will work to keep subdivision of the PPA at such low levels.
- One potentially important tool being considered is a transfer of development rights (TDR) program. We have reviewed the proposed TDR ordinance from the 2008 Legislative Session. Many parts of the proposed program are good, but we are concerned that other features will diminish the potential of the program. Also let us know the status of this legislation and any revisions to it.

We believe that these matters should be addressed when the County applies for certification under the new regulations, specifically for the areas the County chooses to include in its Priority Preservation Area.

Thank you for your hard work in getting Prince George's County's agricultural land preservation program up and running. We look forward to working with you as Prince George's County creates its Priority Preservation Area and PPA plan.

### *Summary*

During FY 2008, the certification program partners completed their revision of the regulations based on the legislative changes approved by the Maryland General Assembly in the Agricultural Stewardship Act of 2006 (HB 2, 2006) and a subsequent extension of that legislation in HB 1354 (2007). The new regulations became effective on January 26, 2009.

After more than fifteen years of certification program operations, the Office of

Legislative Audits concluded that the program has improperly certified many county agricultural land preservation programs, resulting in some counties retaining a higher share of transfer taxes than to which they were otherwise entitled. The basis for this judgment is that the 1991 regulations imply that a county is only certified for a period of two years. If the two years ends with recertification approval, the county should no longer be certified. The certification program has always operated based on the principle that, once certified, a county remains certified until the MALPF Board of Trustees and the Maryland Department of Planning say it is no longer certified.

MALPF is seeking to resolve this issue in two ways. First, the new regulations developed to operationalize HB 2 (2006) and HB 1354 (2007) explicitly give the certification program more flexibility in the certification approval process. Second, advice of counsel is being sought concerning whether the program is required by law to undertake legal action against counties with any technical lapse in certification since 1991 to recover agricultural transfer tax revenues retained during those technical lapses in certification.

During FY 2008, seven counties were recertified: Calvert, Carroll, Frederick, Kent, Queen Anne's, Wicomico, and Worcester Counties. As FY 2008 ended, only three counties were non-compliant with no recertification review scheduled: Cecil, Harford, and Talbot. Howard County chose not to seek recertification, which ended July 1, 2007. Prince George's County applied for certification in June 2008, seeking approval under the older criteria. Because of the timing of the application, the application would have to be evaluated under the new criteria. The application remained pending at the end of FY 2008. A revised application may be submitted at a later date.

A table of the status of certified counties at the end of FY 2008 is provided at the end of this chapter. For more up-to-date information on certification, please see:

<http://www.malpf.info/certification.html>

**Status of Certified Counties as of June 30, 2008**  
**STATE CERTIFICATION FOR**  
**COUNTY AGRICULTURAL LAND PRESERVATION PROGRAMS**  
Maryland Agricultural Land Preservation Foundation  
and the Maryland Department of Planning

<b>CERTIFIED COUNTY</b>	<b>END OF CURRENT CERTIFICATION PERIOD</b>	<b>STATUS</b>	<b>ADDITIONAL INFORMATION</b>
<b>Anne Arundel</b>	June 30, 2009	In compliance	
<b>Baltimore</b>	June 30, 2008	In compliance	Recertification application now due
<b>Calvert</b>	June 30, 2009	In compliance	
<b>Carroll</b>	June 30, 2009	In compliance	
<b>Cecil</b>	June 30, 2007	Out of compliance	Not yet scheduled
<b>Charles</b>	June 30, 2008	In compliance	Recertification application now due
<b>Frederick</b>	June 30, 2009	In compliance	
<b>Harford</b>	June 30, 2007	Out of compliance	Not yet scheduled
<b>Kent</b>	June 30, 2009	In compliance	
<b>Montgomery</b>	June 30, 2007	Out of compliance	Recertification review scheduled: July 2008
<b>Prince George's</b>		Certification application pending	
<b>Queen Anne's</b>	June 30, 2009	In compliance	
<b>St. Mary's</b>	June 30, 2009	In compliance	
<b>Talbot</b>	June 30, 2007	Out of compliance	Not yet scheduled
<b>Washington</b>	June 30, 2008	In compliance	Recertification application now due
<b>Wicomico</b>	June 30, 2009	In compliance	
<b>Worcester</b>	June 30, 2009	In compliance	

This table represents a snapshot of certification status at the end of FY 2008 (June 30, 2008). Certification status of individual counties has changed since then.

## **Data on the Maryland Agricultural Land Preservation Program**

---

The Maryland Agricultural Land Preservation Foundation (MALPF) is working to complete the population and verification of its new relational database. As of March 2009, it is approximately 85% complete.

The original Oracle database was non-relational and designed and implemented in the early days of the Program to provide a reference source for staff and a base for generating form letters. This database was not intended to be used for program evaluation, research, or the production of statistics. As a result, data fields were never standardized, never fully populated (some fields were abandoned), and never systematically verified or updated. The data produced had limited reliability and utility. This database was discontinued on the recommendation of the Department's Information Technology Services when the new database was sufficiently populated to process new easement applications.

The data on MALPF provided to date have not been created from the database because of its limitations, but have been collected incrementally from primary sources, including district petitions, easement applications, offer approvals by the MALPF Board of Trustees and the Board of Public Works, staff reports, surveys, recorded documents (such as lot releases and deeds of easement), etc. Collecting data this way is subject to errors that, once introduced, are difficult to discover, track down and correct.

Staff has become increasingly aware of this problem in recent years, starting the design of the new database in 2006. This new database has taken some time to populate because the number of data fields has been substantially increased, requiring new data to be entered by hand for each property and transferred data to be verified from the original documentation.

The data fields have been updated to reflect the current status of the Program and to be responsive to the kinds of information required by MALPF staff and Board members, the Maryland Department of Agriculture, the Governor's Office, the General Assembly, and others for policy analysis and development.

Staff is now using the database to process new applications and offers and anticipates that the database will be fully populated and verified against the material in the files sometime in Fall 2009. Information will continue to be verified, maintained, and updated using a regular and systematic monitoring schedule, including on-site inspections and remote monitoring methods.

Once the database is completed and tested, MALPF will recalculate the historical data provided in past annual reports to provide a more accurate and easily verifiable historical record. Once available, this recalculated data will be published in a subsequent annual report and posted at the website.

# Easement Participation

FY 2008

The adjusted total acreage base of agricultural preservation easements purchased or pending, as of June 30, 2008, was 274,948 acres, covering 2,005 individual properties. During FY 2008, the Foundation purchased or approved for purchase a total of 77 new agricultural conservation easements, protecting an additional 9,685 acres with deeds of easement restricting the land to agricultural use forever.

Acreage adjustments from recorded lot exclusions, option contracts not settling, and other changes in acreage, such as from a survey, resulted in a net decrease of 427 acres in the Program's acreage base. Five pending easements at the time of the last annual report failed to go to settlement either because of title problems or because the offer was eventually rejected by the landowner. These adjustments are incorporated into the cumulative totals reported in the table below.

During FY 2008, Carroll County had the largest net increase in easement acreage with 1,066 acres. Other significant net acreage increases included 870 acres in Caroline County and 831 acres in Baltimore County.

The largest distribution of easement acreage continues to be the Upper Eastern Shore (Queen Anne's, Talbot, Cecil, Kent and Caroline Counties). This area accounts for 96,349 easement acres, or 35.0% of all easement acreage statewide (as of June 30, 2008). The Upper Shore Region continues to surpass the Central Region of Maryland in the number of easement acres, though it has declined slightly in its relative proportion of total easement acreage from FY 2007.

The Central Region (Baltimore, Carroll, Harford, Howard and Montgomery Counties) now has a total of 85,012 acres enrolled in the easement program, accounting for

30.9% of statewide easement acreage, continuing its slow relative decline from 33.5% of the total at the end of FY 2002.

The third largest area of easement properties is the Western Region (Allegany, Frederick, Garrett and Washington Counties) with a total of 37,345 acres, or 13.6% of the total easement acreage.

The Southern Region (Anne Arundel, St. Mary's, Prince George's, Charles, and Calvert Counties) continues to increase its share of total easement acreage, from 8.2% in FY 2002 to 9.5% of easement acreage at the end of FY 2008, with a total of 26,125 acres.

The Lower Eastern Shore (Dorchester, Wicomico, Worcester and Somerset Counties) has slowly increased its relative share of statewide easement acreage to 11% from 10% in FY 2002, with 30,116 acres.

The easement numbers and acreage acquired continue to track the changes in the balance between funding availability and the increase in acquisition costs. The number of easements acquired in FY 2008 declined from FY 2007, from 116 to 77, with increasing acquisition costs and less funding. The net annual acreage acquired declined from 15,161 in FY 2007 to 9,258 in FY 2008.

The charts at the end of this section depicting annual changes in new easements and acreage clearly show the wide annual variations with which MALPF must cope. These variations are a direct product of uncertain funding and a rapidly changing real estate market over this period. MALPF expects the number of new easements and acreage to decline again in FY 2009 because the stagnant real estate market has dramatically affected the real estate transfer taxes that fund the Program, even though acquisition costs are expected to flatten out.

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

**EASEMENT PARTICIPATION**

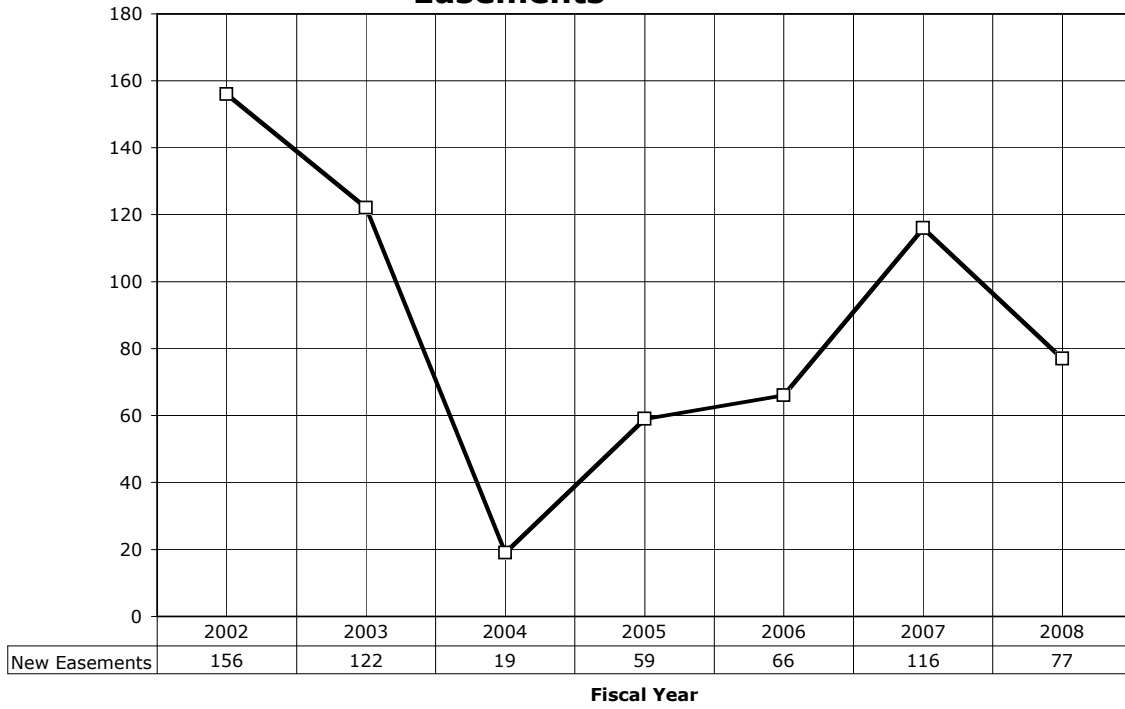
(Fiscal Year 2008)

COUNTY	TOTAL EASEMENTS ACQUIRED OR WITH CONTRACT STATUS (as of June 30, 2007)		EASEMENTS OFFERED AND ACCEPTED (FY 2008)		*LESS RECORDED LOT EXCLUSIONS FROM EASEMENTS, CONTRACTS NOT SETTLING, AND OTHER NET ADJUSTMENTS	TOTAL EASEMENTS ACQUIRED OR WITH CONTRACT STATUS (as of June 30, 2008)		PERCENT OF TOTAL
	Number	Acreage	Number	Acreage		Number	Acreage	
Allegany	2	375.2120	2	314.0400	-11.6600	4	677.5920	0.25%
Anne Arundel	37	4,598.7300	1	183.7300	0	38	4,782.4600	1.74%
Baltimore	195	21,069.9442	9	834.0170	-3.0140	204	21,900.9472	7.97%
Calvert	36	4,753.5153	0	0	0	36	4,753.5153	1.73%
Caroline	211	29,847.4045	6	904.8500	-34.7700	217	30,717.4845	11.17%
Carroll	338	40,428.9227	13	1056.1700	9.9432	351	41,495.0359	15.09%
Cecil	90	14,118.1212	1	186.6160	9.9380	91	14,314.6752	5.21%
Charles	36	6,073.9703	3	468.1200	0.2040	39	6,542.2943	2.38%
Dorchester	78	12,096.2260	2	625.5400	-118.2220	79	12,603.5440	4.58%
Frederick	116	17,960.5059	4	549.6440	8.4662	120	18,518.6161	6.74%
Garrett	46	5,954.6980	2	281.2800	6.7970	48	6,242.7750	2.27%
Harford	120	12,965.9678	4	325.9500	-3.3010	124	13,288.6168	4.83%
Howard	31	4,026.4512	0	0	-2.0000	31	4,024.4512	1.46%
Kent	87	16,052.9144	1	391.3600	20.7950	88	16,465.0694	5.99%
Montgomery	25	4,203.5830	1	98.5000	0.5364	26	4,302.6194	1.56%
Prince George's	5	537.3310	5	241.5277	-89.6370	9	689.2217	0.25%
Queen Anne's	145	23,665.0936	2	463.1600	-37.4170	147	24,090.8366	8.76%
St. Mary's	84	8,849.8757	5	528.0950	-20.0000	88	9,357.9707	3.40%
Somerset	36	4,750.2680	1	35.8200	-11.7430	37	4,774.3450	1.74%
Talbot	64	10,192.6780	5	727.6000	-159.5400	67	10,760.7380	3.91%
Washington	64	11,261.8989	6	638.4320	5.8570	70	11,906.1879	4.33%
Wicomico	48	6,129.7140	2	282.0900	1.3500	50	6,413.1540	2.33%
Worcester	39	5,776.7575	2	548.1500	0.4510	41	6,325.3585	2.30%
<b>TOTALS</b>	<b>1,933</b>	<b>265,689.7832</b>	<b>77</b>	<b>9,684.6917</b>	<b>-426.9662</b>	<b>2,005</b>	<b>274,947.5087</b>	<b>100.00%</b>

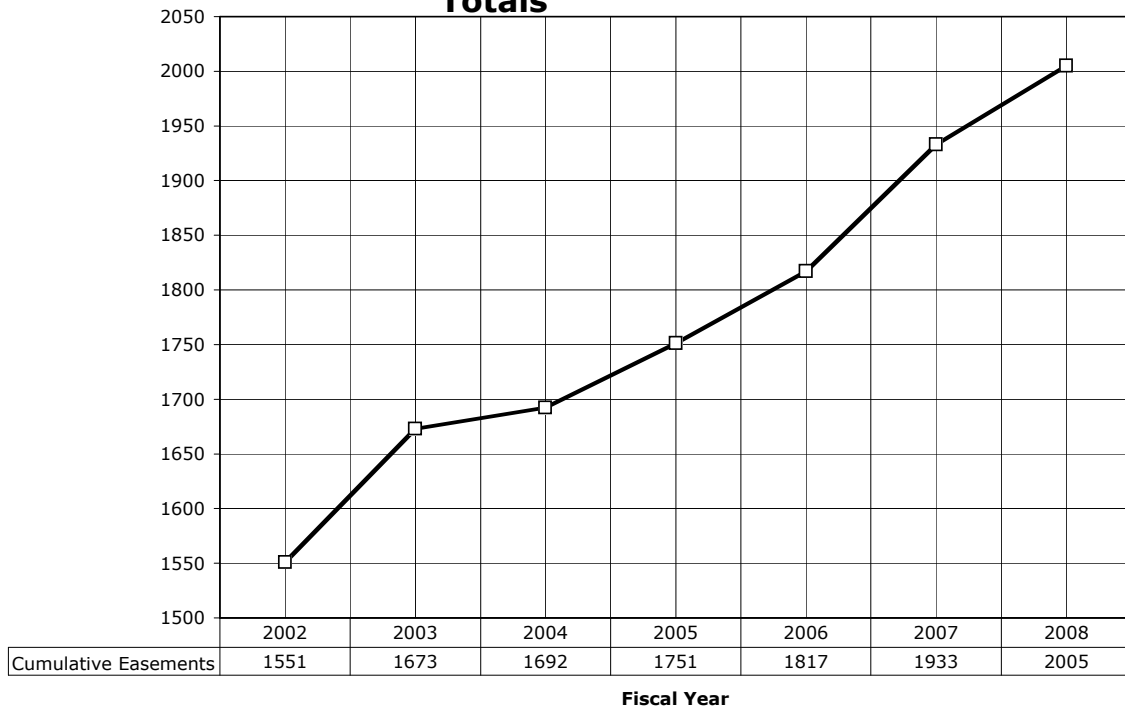
MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
**REGIONAL ANALYSIS:**  
**PERCENTAGE OF TOTAL EASEMENT ACREAGE**  
(Fiscal Years 2002-2008)

<b>REGIONS</b>	2002	2003	2004	2005	2006	2007	2008
<b>WESTERN:</b> Allegany Frederick Garrett Washington	13.0% 28,547 acres	13.2% 30,707 acres	13.3% 31,204 acres	13.5% 32,549 acres	13.4% 33,478 acres	13.4% 35,552 acres	13.6% 37,345 acres
<b>CENTRAL:</b> Baltimore Carroll Harford Howard Montgomery	33.5% 72,830 acres	32.5% 75,633 acres	32.7% 76,937 acres	32.3% 78,051 acres	32.0% 80,058 acres	31.1% 82,696 acres	30.9% 85,012 acres
<b>SOUTHERN:</b> Anne Arundel Calvert Charles Prince George's St. Mary's	8.2% 17,851 acres	8.9% 20,729 acres	9.0% 21,093 acres	9.4% 22,624 acres	9.4% 23,627 acres	9.3% 24,813 acres	9.5% 26,125 acres
<b>UPPER SHORE:</b> Caroline Cecil Kent Queen Anne's Talbot	35.3% 76,719 acres	34.6% 80,529 acres	34.4% 80,810 acres	34.2% 82,782 acres	34.5% 86,529 acres	35.3% 93,876 acres	35.0% 96,349 acres
<b>LOWER SHORE:</b> Dorchester Somerset Wicomico Worcester	10.0% 21,513 acres	10.8% 25,170 acres	10.7% 25,170 acres	10.7% 25,896 acres	10.7% 26,839 acres	10.8% 28,753 acres	11.0% 30,116 acres
<b>TOTAL ACREAGE</b>	<b>217,460</b> <b>acres</b>	<b>232,767</b> <b>acres</b>	<b>235,215</b> <b>acres</b>	<b>241,902</b> <b>acres</b>	<b>250,530</b> <b>acres</b>	<b>265,691</b> <b>acres</b>	<b>274,948</b> <b>acres</b>

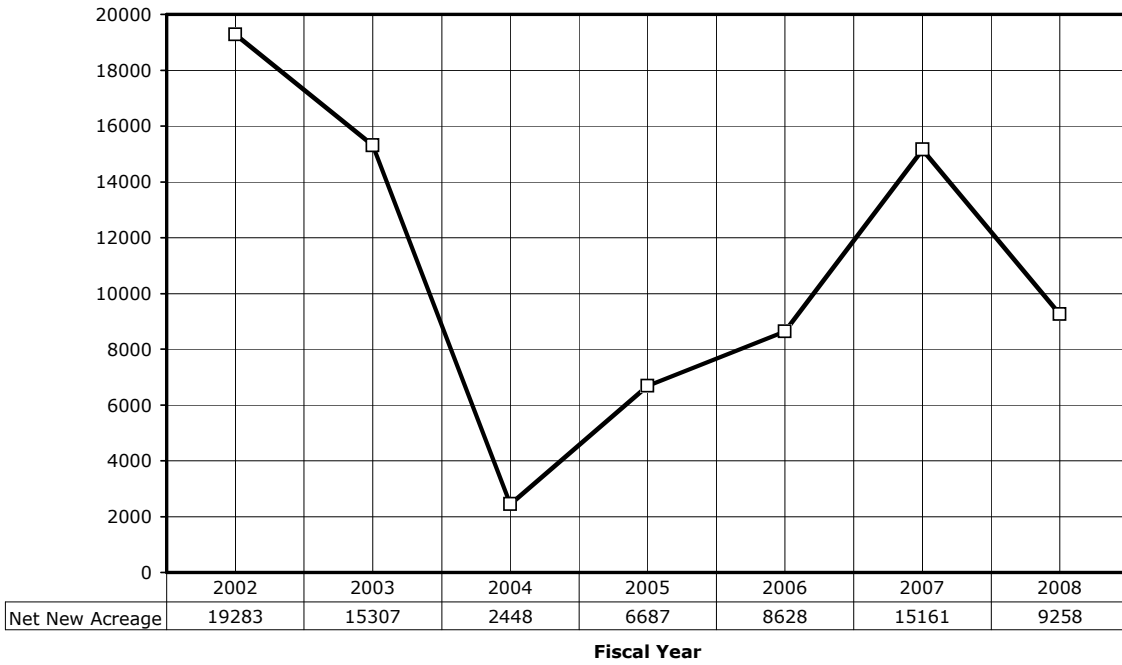
### New Easements



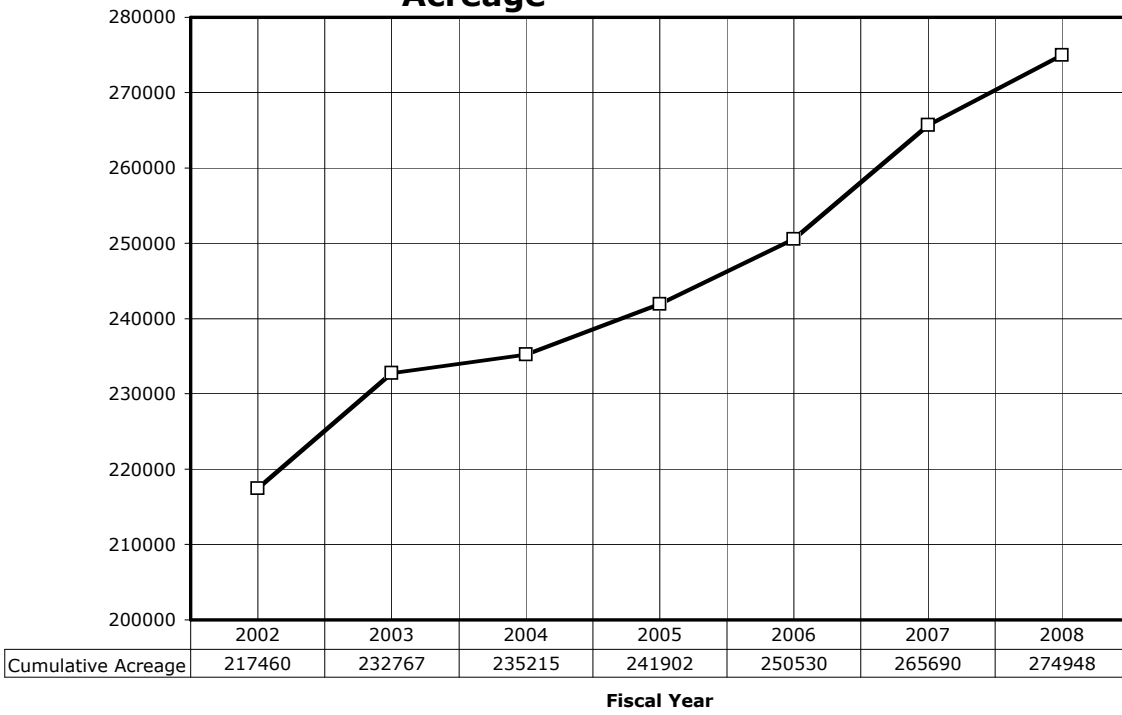
### Cumulative Easement Totals



### Net New Easement Acreage



### Cumulative Total Preserved Acreage



# Easement Acquisition Program

FY 2008

At the end of FY 2008, the Foundation had protected or had a pending offer on a cumulative total of 274,948 acres. The average size of farms protected during FY 2008 was approximately 126 acres, about average for the most recent seven-year period (FYs 2002-2008).

## Average Size of Newly Protected Farms (FYs 2002-2008)

Fiscal Year	New Easements	New Easement Acreage	Average Farm Size
2002	156	19,191.7875	123.0243
2003	122	15,316.4889	125.5450
2004	19	2,453.1014	129.1106
2005	64	7,939.1190	124.0487
2006	66	8,781.0910	133.0468
2007	116	15,286.6390	131.7814
2008	77	9,684.6917	125.7752
<b>2003-8</b>	<b>620</b>	<b>78,652.9185</b>	<b>126.8595</b>

Note: FY 2004 figures are not representative because of the low number of new easements and their limited geographical concentration.

As expected, the average per acre offer continued to increase, though easement values remained stagnant. Per acre acquisition costs reached \$6,792 in FY 2008, up from \$5,952 in FY 2007. Thus, in six years, the per acre costs have increased \$4,834 per acre, with current per acre costs almost three-and-a-half times greater than FY 2002 costs.

Multiple-year trends identified last year continue, as seen in the next table, "Easement Acquisition Costs and Values: Per Acre Summary." Not only have acquisition costs more than tripled (up 347%), the appraised Fair Market Value has also almost tripled (up 298%) since FY 2002. Almost all of the change in value was accounted for in the increased development value of the land, represented by the formula-determined Easement Value (up 351%). Only a small portion of the increase in the Fair Market Value can be accounted for by the formula-determined agricultural use value of the land (up only 8%).

However, in FY 2008, only the acqui-

sition costs continue to increase at the earlier rate. All other measures have stagnated with the real estate market, with the Agricultural Use Value actually declining some. The rate of change in Acquisition Costs has caught up with the change in Easement Values and should flatten out somewhat in the FY 2009 easement acquisition cycle.

## Easement Acquisition Costs and Values: Per Acre Summary (FYs 2002-2008)

Fiscal Year	Acquisition Cost	Easement Value (EV)	Fair Market Value (FMV)	Agricultural Use Value (formula)
2002	\$1,958	\$2,717	\$3,468	\$751
2003	2,199	3,071	3,756	686
2004	2,982	4,257	4,914	657
2005	2,802	4,534	5,293	759
2006	4,492	7,634	8,424	790
2007	5,952	9,496	10,341	845
2008	6,792	9,528	10,336	808
<b>7 yr % change</b>	<b>+347%</b>	<b>+351%</b>	<b>+298%</b>	<b>+8%</b>

Note: FY 2004 figures are not representative because MALPF accepted no new applications; the offers made were based on county funding and funds from rejected offers from previous years. Percentage change is calculated differently than in the previous annual report.

In the next table, "Easement Acquisition Costs and Values: Relative Percentages," the average Acquisition Cost as a percentage of Fair Market Value for FY 2008 has increased to 65.7%, somewhat higher than MALPF historic averages of about 60%. With the exception of the non-representative fiscal year 2004, the range of Acquisition Costs as a percentage of Fair Market Value was from 53% in FY 2005 to almost 60% in FY 2008. FY 2003 was the last regular easement acquisition round using primarily discounting as the basis for selecting properties on which to purchase easements.

This unexpected relationship is confirmed by the annual sequence shown by the decline in Acquisition Costs as a percent of Easement Value, from approximately 70% in FYs 2002-2004 to about 60% in FYs 2005-2007.

In FY 2008, this relationship seems to be reversing itself with this percentage rising to a pre-FY 2005 level at 71%, unsurprising given the stagnation in the real estate markets and the continued increase in Acquisition Costs.

Despite the increase in Acquisition Costs, the development value of land has not changed much in the last year, such that the rate of increase in Acquisition Costs during this period has finally caught up with the rate of increase in Easement Values.

Overall, landowners applying to the MALPF Program are discounting at a slightly higher rate than the historic average as a percent of Fair Market Value. Landowners were discounting more steeply during the FYs 2005-2007 period than before, if the Acquisition Costs are measured as a percentage of its Easement Value. For FY 2008, discounting behavior seems to have returned to FYs 2002-2004 levels.

**Easement Acquisition Costs and Values:  
Relative Percentages  
(FYs 2002-2008)**

FY	Acquisition Cost as % of FMV	Acquisition Cost as % of EV	Agricultural Use Value as % of FMV	EV as % of FMV
2002	56.46%	72.06%	21.66%	78.34%
2003	58.74%	72.54%	18.26%	80.97%
2004	60.68%	70.05%	14.34%	86.63%
2005	52.94%	61.80%	14.34%	85.66%
2006	53.32%	58.84%	9.38%	90.62%
2007	57.56%	62.68%	8.17%	91.83%
2008	65.70%	71.28%	7.82%	92.18%

Note: FY 2004 figures are not representative because MALPF accepted no new applications; the offers made were based on county funding and funds from rejected offers from previous years.

In the table below entitled "Value of Discounting in Easement Acquisitions," the value of discounting fell from \$54 to \$26.5 million from FY 2007 to FY 2008, reflecting the fall in available funds. More importantly, value of the discount per offer has fallen significantly, from \$467,142 in FY 2007 to \$344,211. This lower value does not yet necessarily establish a trend, but is nonetheless a retreat from higher per offer discounts obtained in the two previous year's offers. It may be that the more funds available in an

easement acquisition cycle, the larger percentage of those funds committed to Round Two offers based solely on discounting.

Discounting as a percentage of Easement Value for FY 2008 has similarly declined, returning to pre-FY 2005 levels of approximately 29%, down from a three-year average of about 41%.

Contradictory pressures have affected discounting in the Program. On the one hand, the increasing number of applications to sell easements to MALPF suggests that the supply of farmland on which to purchase easements will continue to be greater than the ability of MALPF to purchase easements. This growing imbalance will be made worse by the decline in MALPF funding from FY 2007 to 2008, with funding shortfalls anticipated to continue. Selling easements should become more competitive, putting pressure on landowners to lower their asking prices in response to more than just declining overall real estate values.

Reinforcing these trends, several counties have chosen or are considering to seek to limit maximum offers made to applicants within the county by putting a cap on those offers as a condition for county approval or to incorporate discounting as part of the ranking system either by rewarding discounted asking prices with bonus points based on the amount of the discount or as an additional weighting factor in the final ranking score.

As long as MALPF has limited funds, landowners without high priority properties should be more willing to discount their asking prices to get offers in the Second Round or to improve their ranking in counties using discounting as one of their ranking criteria.

On the other hand, landowners with highly productive farmland that will rank well and are likely to get easement offers even with lower funding for MALPF seem increasingly to realize that they can have high asking prices and capture the full easement value. These landowners put upward pressure on the overall acquisition costs of easements.

As a result of these contradictory pressures, the average per acre acquisition

cost as a percent of FMV may not change much, but greater variability may result among the offers made to purchase easements.

Because easement offers are based on the lower of either the asking price or the easement value (the appraised fair market value less the agricultural value), the Foundation purchases easements at a discounted value when the asking price is below the easement value. MALPF realized a total savings of \$1.85 million as landowners accepted offers that were below the appraised easement value, FYs 2002-2008. As seen below, the absolute discount realized by the Program by individual offer has increased since FY 2002. However, the discount as a percent of easement value has returned to pre-FY 2005 levels.

Overall, the absolute impact of discounting offers has notably increased since FY 2002, though discounting relative to Easement Values seems to have returned to pre-FY 2005 levels. Discounting remains an important and significant element of the MALPF program.

Relatively high offers as a percentage of fair market value still seem to be specific

to certain counties as a function of conditions in and/or characteristics of those individual counties. This is an empirical question; further study can show whether or not there is empirical support to relate any specific county characteristic to discounting behavior by its Program applicants.

Agricultural Values have remained substantially the same over recent years, though they have been a diminishing proportion of the value of the property. (See the tables entitled "Easement Acquisition Costs and Values: Relative Percentages" above and "Easement Acquisition Program" below.) This trend was not expected to continue this year. In last year's Annual Report, it was projected that the agricultural use value of farmland would likely increase in both actual value and as a percentage of the development value of the land (Easement Value). First, agricultural use values were increasingly connected to energy markets with recent historic high prices. Second, the development value of farmland was stagnating along with the real estate market more generally. Though development values stagnated in FY 2008 as expected, the bottom fell out of the energy markets. Thus, actual and relative agricultural values have declined marginally from FY 2007 to FY 2008.

**Value of Discounting in  
Easement Acquisitions  
(FYs 2002-2008)**

Fiscal Year	Discount Value	Acquisition Cost	Discount as a Percent of Easement Value	Discount Value per Offer
2002	\$14,551,881	\$37,582,057	27.91%	\$93,281
2003	13,328,266	33,687,626	28.35%	109,248
2004	3,127,721	7,315,417	29.95%	164,617
2005	13,749,682	22,246,850	38.20%	214,839
2006	27,591,821	39,443,428	41.16%	418,058
2007	54,188,476	90,980,431	37.33%	467,142
2008	26,504,282	65,773,730	28.72%	344,211

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

**EASEMENT ACQUISITION PROGRAM**

(Fiscal Year 2008)

COUNTY	NUMBER OF EASEMENTS	TOTAL NUMBER OF ACRES	AVERAGE FARM SIZE IN ACRES	AVERAGE ASKING PRICE PER ACRE	AVERAGE FAIR MARKET VALUE PER ACRE	AVERAGE AGRICULTURAL USE VALUE PER ACRE	AVERAGE EASEMENT VALUE PER ACRE	ACQUISITION COST		DISCOUNT
								PER ACRE	TOTAL	
Allegany	2	314.0400	157	\$4,763.88	\$3,803.66	\$477.28	\$3,326.38	\$3,087.74	\$969,673.91	\$74,941.89
Anne Arundel	1	183.7300	184	\$18,999.64	\$20,002.18	\$552.91	\$19,449.27	\$14,429.18	\$2,651,073.91	\$922,340.42
Baltimore	9	834.0170	93	\$7,129.07	\$15,742.12	\$676.23	\$15,065.89	\$7,129.07	\$5,945,763.55	\$6,619,447.59
Calvert										
Caroline	6	904.8500	151	\$5,615.77	\$5,926.84	\$1,160.88	\$4,765.96	\$3,947.66	\$3,572,044.26	\$740,436.92
Carroll	13	1056.1700	81	\$6,793.54	\$10,020.08	\$641.05	\$9,379.03	\$6,674.95	\$7,049,878.11	\$2,855,976.81
Cecil	1	186.6160	187	\$11,500.00	\$12,000.04	\$778.59	\$11,221.46	\$11,221.46	\$2,094,103.40	\$0.00
Charles	3	468.1200	156	\$14,110.12	\$11,257.80	\$576.05	\$10,681.75	\$8,449.27	\$3,955,273.91	\$1,045,067.59
Dorchester	2	625.5400	313	\$4,237.37	\$8,472.68	\$892.23	\$7,580.45	\$3,768.83	\$2,357,554.50	\$2,384,320.11
Frederick	4	549.6440	137	\$7,914.79	\$10,595.86	\$880.51	\$9,715.34	\$7,468.83	\$4,105,200.25	\$1,234,780.79
Garrett	2	281.2800	141	\$5,114.28	\$2,861.92	\$592.35	\$2,269.56	\$2,269.56	\$638,383.21	\$0.00
Harford	4	325.9500	81	\$14,449.44	\$14,999.77	\$916.35	\$14,083.42	\$12,673.11	\$4,130,800.25	\$459,689.16
Howard										
Kent	1	391.3600	391	\$3,500.00	\$7,755.01	\$1,081.32	\$6,673.69	\$3,411.70	\$1,335,203.91	\$1,276,610.04
Montgomery	1	98.5000	99	\$10,000.00	\$20,000.00	\$561.56	\$19,438.44	\$10,000.00	\$985,000.00	\$929,686.73
Prince George's	5	241.5277	48	\$20,000.00	\$11,808.58	\$677.42	\$11,131.16	\$11,131.16	\$2,688,483.73	\$0.00
Queen Anne's	2	463.1600	232	\$9,312.21	\$10,288.02	\$1,158.31	\$9,129.71	\$8,841.30	\$4,094,938.70	\$133,578.23
St. Mary's	5	528.0950	106	\$16,808.15	\$11,603.97	\$633.87	\$10,970.10	\$10,939.78	\$5,777,242.76	\$16,014.09
Somerset	1	35.8200	36	\$9,750.00	\$8,375.21	\$1,064.50	\$7,310.71	\$7,310.71	\$261,869.61	\$0.00
Talbot	5	727.6000	146	\$8,436.53	\$17,573.68	\$924.12	\$16,649.55	\$7,860.02	\$5,718,953.91	\$6,395,259.08
Washington	6	638.4320	106	\$11,796.04	\$7,311.19	\$838.89	\$6,472.30	\$6,223.51	\$3,973,285.47	\$158,837.88
Wicomico	2	282.0900	141	\$4,143.22	\$8,632.00	\$419.62	\$8,212.38	\$4,143.22	\$1,168,760.00	\$1,147,869.17
Worcester	2	548.1500	274	\$5,156.31	\$5,279.58	\$883.57	\$4,396.00	\$4,196.38	\$2,300,243.03	\$109,425.77
<b>TOTALS</b>	<b>77</b>	<b>9,684.6917</b>	<b>126</b>	<b>\$8,619.61</b>	<b>\$10,336.46</b>	<b>\$808.23</b>	<b>\$9,528.23</b>	<b>\$6,791.52</b>	<b>\$65,773,730.38</b>	<b>\$26,504,282.27</b>

# Easement Acquisition Program

## HISTORICAL PERSPECTIVE

Two tables are provided for historical perspective on the MALPF easement acquisition program. The first, entitled "Historical Acquisition Program (Historical Perspective)," is a table that has been produced for past MALPF annual reports. It shows the history of easement acquisition values by year, summarizing the values to 1993 and then providing annual cumulative and per acre average asking price, fair market, agricultural, easement, and acquisition values starting in 1994. These figures do not include acreage adjustments such as lot releases and lot line adjustments, or acquisition cost adjustments such as lot paybacks.

An "Asking Price" is required by statute of all Program applicants. This Asking Price is the price the applicant would be willing to sell the property's easement to MALPF. Some counties rank their applicants in part based on the ratio between the Asking Price and the Easement Value representing the applicant's willingness to discount the sale of the easement to MALPF. Relative discounting may improve the probability of getting an offer in Round One in such counties. Round Two offers are based only on statewide ranking of discount ratios.

The Maryland Department of General Services (DGS) establishes Fair Market Values by contracting for two independent fee appraisals per property. These appraisals are reviewed to verify that the appraisals meet contracted standards, and DGS review appraisers recommend the preferred value to MALPF.

The Agricultural Value is the property's agricultural production value determined by a formula required by statute that calculates land rent based on soil productivity or the five-year average cash rent in the county, whichever is lower.

The Easement Value is derived from a property's Fair Market Value less the Agricultural Value. The maximum price paid for an easement is either the Asking Price or the Easement Value, whichever is less.

The Acquisition Cost is the actual amount paid to the landowner for the easement. This Cost does not include administrative or other costs, such as title review or settlement expenses.

Over the history of the Program, a total of 2,018 applicants have accepted easement offers out of the 2,687 offers made by the Foundation, a 75% acceptance rate. The acreage preserved for agriculture totals over 277,000 acres. The average size of preserved farm properties is 138 acres. (These acceptance and acreage numbers are not adjusted for accepted offers that failed to settle after the end of the easement acquisition cycle or lot releases or other acreage changes.)

The historic average asking price of landowners is \$2,410 per acre. The historic average easement value is \$2,869 per acre. The average historic acquisition cost is \$2,002 per acre. All of these averages are trending upward over time, with a steep increase in all but agricultural values since FY 2003, leveling off from FY 2007 to FY 2008.

MALPF no longer uses discounting as the sole or the primary basis for ranking properties. Round One offers are made primarily based on the quality of the applicant properties, including the relative amount of prime soils and the strategic locations of the properties. Some counties incorporate discounting as one element of county-specific ranking or place a cap on the per acre cost to purchase easements as a condition for county approval. Statewide Round Two offers continue to be based only on discount ratios.

The discount value shown in this table represents the total dollars saved by competitive bidding and the additional easement acres that the Foundation acquired each year with that savings. The total discount value divided by the average acquisition cost equals the additional acreage that the Foundation was able to protect under easement.

Because of competitive bidding and the resulting discounted values, the Founda-

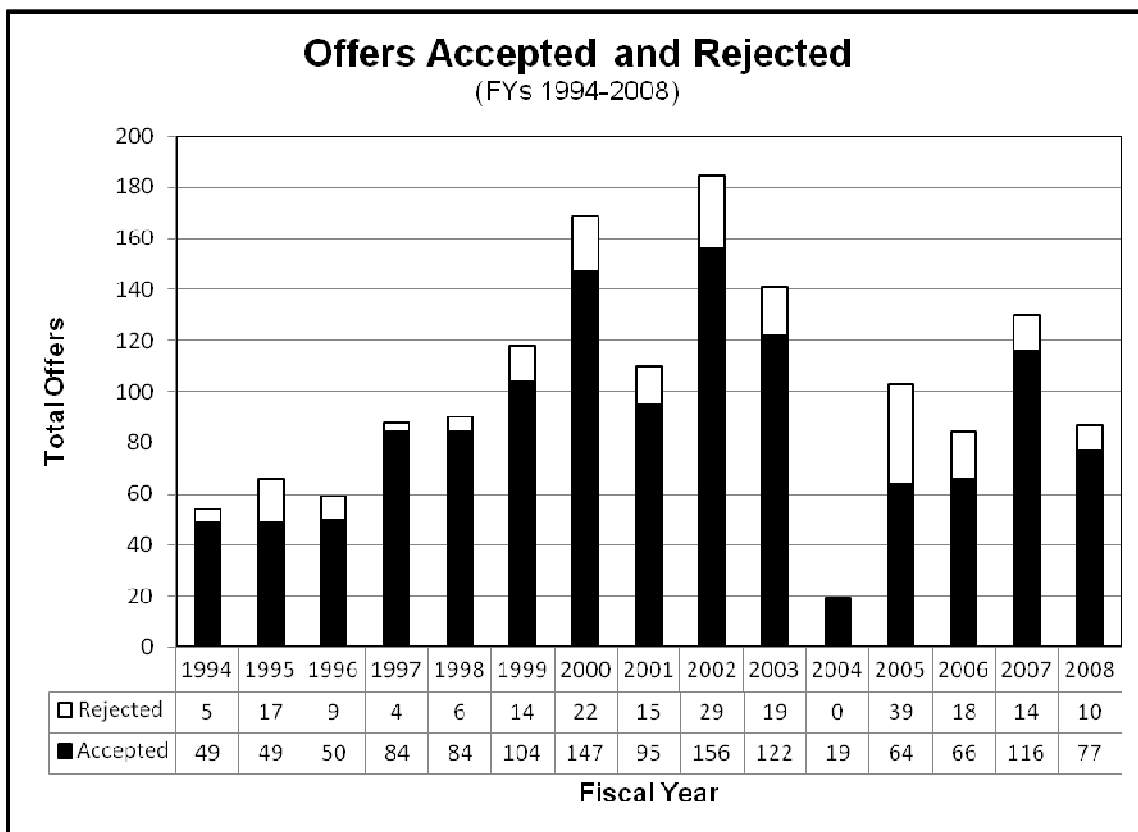
tion purchased easements with a cumulative savings of \$240,674,707. The Foundation purchased an estimated 106,381 acres more than it could have had it paid the full value for easements. This competitive bidding mechanism continues to play a very important role for the Foundation in making easement offers.

The second table in this section, entitled "Acreage Preserved and Acquisition Funding: FYs 1980-2008," provides annual historical data from the beginning of the Program: the annual net new acreage, the cumulative acreage preserved, the annual new funding for easement acquisitions, and the cumulative funding for acquisitions.

MALPF has preserved 274,948 acres (adjusted for lot releases and other acreage changes) using \$556,185,180 in public funds. Based on the current average per acre acquisition cost, this investment is estimated to be

worth approximately \$1.86 billion as of June 30, 2008.

The bar graph and line graph below, derived from the first table in this section, show the change over time of acceptances and rejections of offers made by the Foundation. Over the history of the Program, the percentage of offers accepted was 75%. The ratio of acceptances was much lower in the early years of the Program, averaging 62% from 1977 through 1993. Since 1994, the percentage of acceptances has remained significantly above the early percentages, with one anomaly in FY 2005 when the percentage fell temporarily back to 62%. In the last two years, FYs 2007-2008, the rate of acceptance of offers has returned again to the historic norm seen from FY 1996 through 2003.



**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
EASEMENT ACQUISITION PROGRAM  
(Historical Perspective)**

FISCAL YEAR	ACCEPTED OFFERS ACCEPTANCE RATE	TOTAL ACRES	AVERAGE FARM SIZE (acres)	ACCEPTED ASKING PRICE			VALUES			ACQUISITION COST	DISCOUNT VALUE
				AVERAGE PER ACRE TOTAL AMOUNT	FAIR MARKET (appraised) TOTAL AMOUNT	AGRICULTURAL (formula) TOTAL AMOUNT	EASEMENT (appraisal & formula) TOTAL AMOUNT	AVERAGE PER ACRE TOTAL AMOUNT	ADDITIONAL ACRES TOTAL AMOUNT		
1977 to 1993	736 of 1,184 62%	106,976.5016	144	\$1,213 p/acre \$129,783,289	\$2,460 p/acre \$263,212,656	\$1,312 p/acre \$140,443,572	\$1,185 p/acre \$126,786,333	\$1,016 p/acre \$109,256,873	\$17,253 acres \$17,529,460		
1994 Cycle One & Two	49 of 54 91%	6,805.0084	138	\$1,918 p/acre \$13,052,329	\$3,639 p/acre \$24,760,750	\$718 p/acre \$4,884,325	\$2,920 p/acre \$19,876,424	\$1,617 p/acre \$11,000,311	5,489 acres \$8,876,113		
1995 Cycle One & Two	49 of 66 74%	7,868.7585	160	\$1,633 p/acre \$12,852,272	\$3,040 p/acre \$23,923,175	\$792 p/acre \$6,231,521	\$2,235 p/acre \$17,586,655	\$1,384 p/acre \$11,120,874	4,672 acres \$6,465,781		
1996	50 of 59 85%	6,575.4135	132	\$1,697 p/acre \$11,156,156	\$2,977 p/acre \$19,577,300	\$773 p/acre \$5,081,222	\$2,205 p/acre \$14,496,078	\$1,537 p/acre \$10,109,481	2,854 acres \$4,386,597		
1997	84 of 88 95%	11,808.4475	141	\$1,470 p/acre \$17,360,614	\$2,848 p/acre \$33,625,725	\$655 p/acre \$7,734,524	\$2,193 p/acre \$25,891,901	\$1,382 p/acre \$16,324,722	6,923 acres \$9,567,179		
1998	84 of 90 92%	12,469.7617	148	\$1,688 p/acre \$21,047,013	\$3,027 p/acre \$37,741,650	\$666 p/acre \$8,305,238	\$2,364 p/acre \$29,481,412	\$1,634 p/acre \$20,378,116	5,571 acres \$9,103,296		
1999	104 of 118 88%	14,274.4518	137	\$1,650 p/acre \$23,556,074	\$3,012 p/acre \$42,990,425	\$667 p/acre \$9,516,930	\$2,345 p/acre \$33,473,495	\$1,619 p/acre \$23,109,183	6,402 acres \$10,364,312		
2000	147 of 169 87%	19,367.1352	132	\$1,818 p/acre \$35,212,521	\$3,129 p/acre \$60,614,079	\$724 p/acre \$14,021,015	\$2,405 p/acre \$46,593,064	\$1,683 p/acre \$32,609,436	8,309 acres \$13,983,628		
2001	95 of 110 86%	12,986.5969	137	\$2,223 p/acre \$28,863,085	\$3,201 p/acre \$41,569,093	\$690 p/acre \$8,966,279	\$2,511 p/acre \$32,602,857	\$1,944 p/acre \$25,246,645	3,784 acres \$7,356,212		
2002	156 of 185 84%	19,191.7875	123	\$2,676 p/acre \$51,356,192	\$3,468 p/acre \$66,553,930	\$751 p/acre \$14,419,991	\$2,717 p/acre \$52,133,938	\$1,958 p/acre \$37,582,057	7,432 acres \$14,551,881		
2003	122 of 141 87%	15,316.4889	126	\$2,400 p/acre \$36,559,074	\$3,756 p/acre \$57,353,421	\$686 p/acre \$10,337,528	\$3,071 p/acre \$47,015,892	\$2,199 p/acre \$33,687,626	6,061 acres \$13,328,266		
2004	19 of 19 100%	2,453.1014	129	\$3,779 p/acre \$9,270,783	\$4,914 p/acre \$12,054,600	\$657 p/acre \$1,611,462	\$4,257 p/acre \$10,443,138	\$2,982 p/acre \$7,315,417	1,049 acres \$3,127,721		
2005	64 of 103 62%	7,939.1190	124	\$3,189 p/acre \$25,321,454	\$5,293 p/acre \$42,022,800	\$759 p/acre \$6,026,268	\$4,534 p/acre \$35,996,532	\$2,802 p/acre \$22,246,850	4,907 acres \$13,749,682		
2006	66 of 84 79%	8,781.0910	133	\$5,475 p/acre \$48,072,673	\$8,424 p/acre \$73,971,904	\$790 p/acre \$6,936,655	\$7,634 p/acre \$67,035,249	\$2,178 p/acre \$39,443,428	12,668 acres \$27,591,821		
2007	116 of 130 89%	15,286.6390	132	\$8,010 p/acre \$122,450,953	\$10,341 p/acre \$158,079,982	\$845 p/acre \$12,911,075	\$9,496 p/acre \$145,168,907	\$5,952 p/acre \$90,980,431	9,104 acres \$54,188,476		
2008	77 of 87 89%	9,684.6917	126	\$8,620 p/acre \$83,478,280	\$10,336 p/acre \$100,105,436	\$808 p/acre \$7,827,423	\$9,528 p/acre \$92,278,013	\$6,792 p/acre \$65,773,730	3,902 acres \$26,504,282		
<b>TOTALS</b>	<b>2,018 of 2,687 75%</b> (unadjusted)	<b>277,784.9936</b> (unadjusted acreage)	<b>138</b>	<b>\$2,410 p/acre \$669,397,762</b> (unweighted average)	<b>\$3,809 p/acre \$1,058,156,926</b> (unweighted average)	<b>\$955 p/acre \$265,255,028</b> (unweighted average)	<b>\$2,869 p/acre \$796,859,888</b> (unweighted average)	<b>\$2,002 p/acre \$556,185,180</b> (unweighted average)	<b>106,381 acres \$240,674,707</b> (unweighted average)		

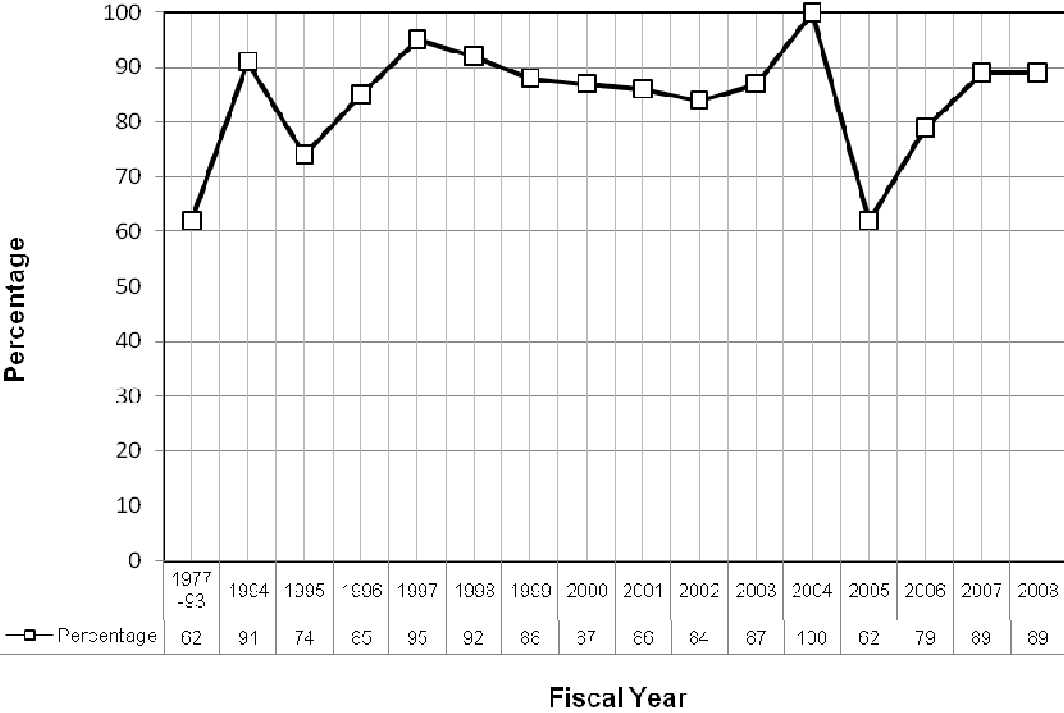
**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION**  
**ACREAGE PRESERVED AND ACQUISITION FUNDING: FYs 1980-2008**

<b>Annual Historical Data Fiscal Year</b>	<b>Annual Net New MALPF Acreage</b>	<b>Cumulative Acreage Preserved by MALPF</b>	<b>Annual New Funding for Easement Acquisitions</b>	<b>Cumulative Funding for Easement Acquisitions</b>
1980	0	0	\$2,138,910	\$2,138,910
1981	7,821	7,821	\$4,697,073	\$6,835,983
1982	7,035	14,856	\$5,629,526	\$12,465,509
1983	8,540	23,396	\$6,736,910	\$19,202,419
1984	5,499	28,895	\$4,931,295	\$24,133,714
1985	8,346	37,241	\$6,991,637	\$31,125,351
1986	10,900	48,141	\$8,640,733	\$39,766,084
1987	10,901	59,042	\$8,478,243	\$48,244,327
1988	10,379	69,421	\$8,198,193	\$56,442,520
1989	9,303	78,724	\$11,399,272	\$67,841,792
1990	19,729	98,453	\$29,942,321	\$97,784,113
1991	-19	98,434	0	\$97,784,113
1992	-29	98,405	0	\$97,784,113
1993	8,341	106,746	\$11,472,760	\$109,256,873
1994	6,783	113,529	\$11,000,311	\$120,257,184
1995	7,851	121,380	\$11,120,874	\$131,378,058
1996	6,552	127,932	\$10,109,481	\$141,487,539
1997	11,797	139,729	\$16,324,722	\$157,812,261
1998	12,460	152,189	\$20,378,116	\$178,190,377
1999	14,241	166,430	\$23,109,183	\$201,299,560
2000	18,781	185,211	\$32,609,436	\$233,908,996
2001	12,966	198,177	\$25,246,645	\$259,155,641
2002	19,283	217,460	\$37,582,057	\$296,737,698
2003	15,307	232,767	\$33,687,626	\$330,425,324
2004	2,448	235,215	\$7,315,417	\$337,740,741
2005	6,687	241,902	\$22,246,850	\$359,987,591
2006	8,628	250,530	\$39,443,428	\$399,431,019
2007	15,160	265,690	\$90,980,431	\$490,411,450
2008	9,258	274,948	\$65,773,730	\$556,185,180
<b>TOTALS</b>	<b>274,948</b>		<b>\$556,185,180.00</b>	

The acreage numbers are net numbers (in other words, corrections from new surveys, lot releases, the exercise of the right of eminent domain, etc., have been incorporated into each year's totals). The data are by fiscal year and represent offers made with that fiscal year's appropriations. When the new database is implemented, populated, and the data verified, a new historical sequence will be published to replace this table. Data published here may not be consistent with the numbers reported in current or past annual reports or elsewhere because the adjustments are done differently and at different times.

# Offers Accepted

(percentage)



# District Participation

FY 2008

The adjusted total acreage base of recorded and approved district properties, as of June 30, 2008, was 443,811 acres, covering 3,420 individual district properties. This total currently *includes* almost all properties whose owners have sold their permanent easements to MALPF. However, this will be the last reporting year that this will be the case.

Starting July 1, 2007 (the application deadline for the FY 2008 easement acquisition cycle), the Foundation no longer requires the establishment of an agricultural district as a prerequisite to sell an easement. Because of this statutory change to the program, the link between district and easement properties whereby all easement properties are also district properties is now broken.

Starting FY 2008, a property could apply, receive an offer and eventually go to settlement without first being in a district. This change will result in fewer districts being established than would otherwise have been the case for FY 2008 had district establishment been a prerequisite for participation in the FY 2008 easement acquisition cycle.

Reported district figures are no longer inclusive of easement properties reported elsewhere in this Annual Report. Though offers on non-district properties would not have settled before the end of the reporting period, the easement tables also report "pending offers," which could include applications submitted on non-district properties on July 1, 2007.

During FY 2008, the Foundation approved the establishment of a total of 74 new agricultural land preservation districts, protecting an additional 8,841 acres with five-year district agreements.

Landowners terminated 22 districts totaling 3,466 acres (including acreage from partial terminations). Terminations are requested for many reasons, including the desire to develop a parcel or to sell or transfer a parcel without restrictions on its use for the purchaser.

Total district acreage was reduced by an additional 32 acres because of acreage adjustments from deed and lot exclusions. Looking at the balance between new districts and district terminations, the Foundation had a net increase in 52 districts and a net increase in district acreage of 5,043 acres.

Caroline and Charles Counties had almost the same net increase in district acreage with just over 1,500 additional acres each. Charles County had the largest net number of new districts enrolled with 17, in part because the County links district enrollment to participation in the County's transfer of development rights (TDR) program. Twenty new districts were added in Caroline, but four districts were terminated.

The most district acreage is in the Upper Eastern Shore (Queen Anne's, Talbot, Cecil, Kent and Caroline Counties). This area has 143,363 district acres, or 33.0% of all district acres statewide (as of June 30, 2008). The Upper Shore Region continues to surpass the Central Region of Maryland in district acreage.

The Central Region (Baltimore, Carroll, Harford, Howard and Montgomery Counties) now has a total of 124,748 acres enrolled in the program, accounting for 28.7% of the total district acreage, a decline from FY 2007.

The third largest area of district properties is the Western Region (Allegany, Frederick, Garrett and Washington Counties) with a total of 69,918 acres, or 16.1% of the total district acreage.

The Southern Region (Anne Arundel, St. Mary's, Prince George's, Charles and Calvert Counties) continues to increase its share of total district acreage, from 12.4% in FY 2007 to 12.6% of statewide district acreage in FY 2008, with a total of 54,726 acres.

The Lower Eastern Shore (Dorchester, Wicomico, Worcester and Somerset Counties) now has 42,056 acres, 9.7% of total district acreage.

As of July 1, 2008, district petitions are no longer being accepted by MALPF. All district agreements will be terminated as of June 30, 2012. The process by which district agreements will be terminated has not yet been determined.

Some of MALPF's county partners have or are considering county-level district programs to supplement their land preservation efforts. In March 2009, MALPF staff queried county program administrators on the status of county district programs using the following questions:

1) Are you retaining agricultural districts at the county level?

- 2) If you are retaining districts at the county level, what is the minimum number of years' commitment to a district agreement that you are requiring?
- 3) If you are retaining districts at the county level, does the county district program use the same or different eligibility requirements that were used for MALPF's agricultural district program?
- 4) If you are retaining districts at the county level, are you making a district commitment a prerequisite to participation in the MALPF easement program?
- 5) If you are retaining districts at the county level, do you offer any tax or other benefits in return for a district commitment?

The table below summarizes the responses to these questions.

### Maryland County Agricultural District Programs (as of March 2009)

County	(1) County District Program	(2) Minimum Commitment	(3) Same Eligibility Criteria as MALPF	(4) Prerequisite for MALPF Application	(5) Tax Benefits from Districts
Allegany	no	-	-	-	-
Anne Arundel	yes	10 years	yes	no	yes
Baltimore	no	-	-	-	-
Calvert	yes§	5 years§	yes§	no§	to be determined
Caroline	no	-	-	-	-
Carroll	no	-	-	-	-
Cecil	no•	-	-	-	-
Charles	yes	5 years	yes	no	yes
Dorchester	no	-	-	-	-
Frederick	no•	-	-	-	-
Garrett	yes	3 years	yes	yes	yes
Harford	yes	5 years	yes	no	yes
Howard	no	-	-	-	-
Kent	yes	3 years	yes	yes	no
Montgomery	no	-	-	-	-
Prince George's	no	-	-	-	-
Queen Anne's	no	-	-	-	-
St. Mary's	yes	5 years	no	no	yes
Somerset	no	-	-	-	-
Talbot	yes	3 years	yes	yes	no
Washington	yes	10 years	yes	yes	yes
Wicomico	yes	5 years	yes	no	yes○
Worcester	no	-	-	-	-

§ These policies have been approved by the Calvert Board of County Commissioners, but a formal resolution has not yet been adopted.

- County district program is under consideration.
- Tax credit benefits end at the time the easement is sold.

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
**DISTRICT PARTICIPATION**  
(Fiscal Year 2008)

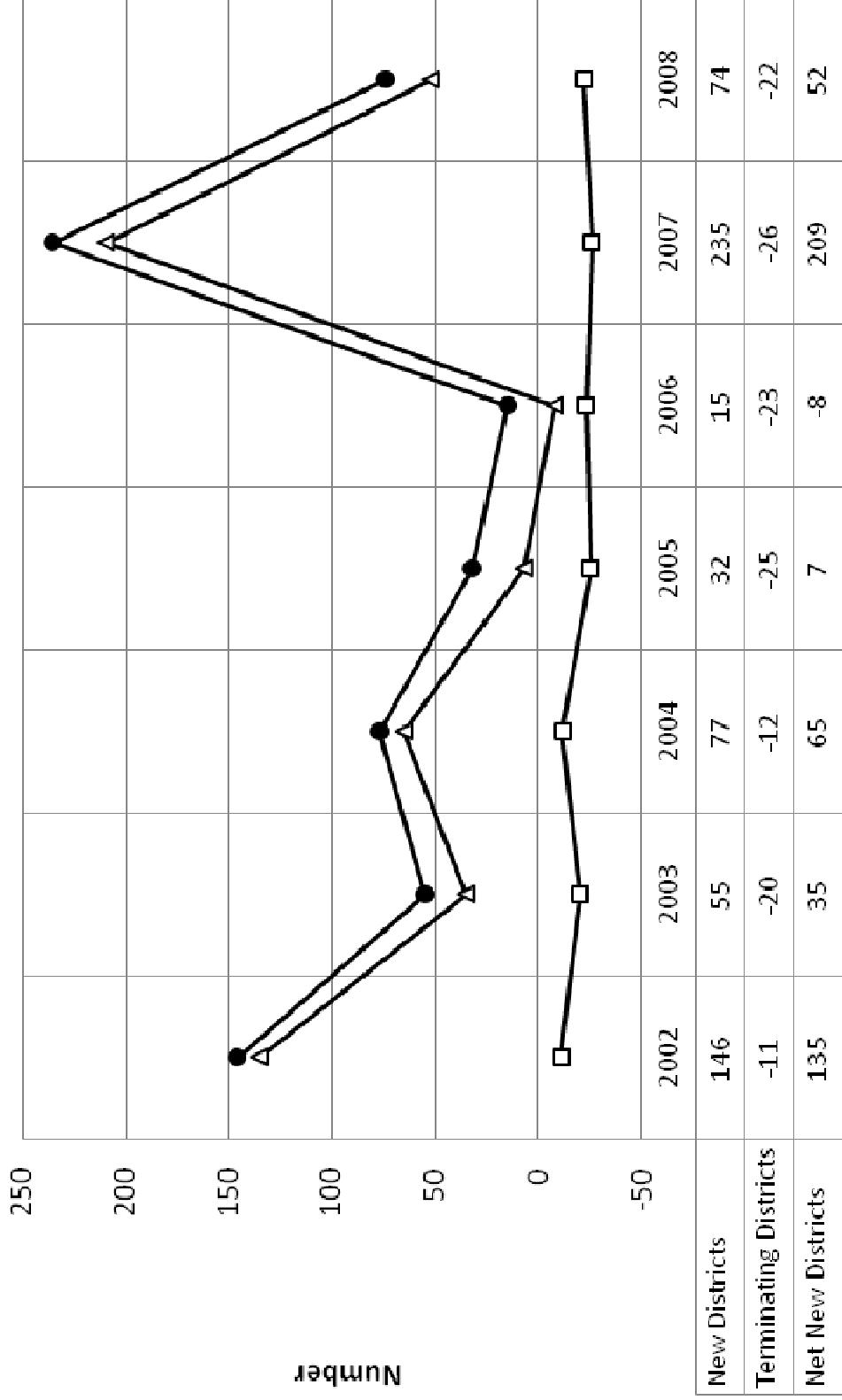
COUNTY	RECORDED DISTRICTS (as of June 30, 2007)		DISTRICTS APPROVED DURING FY 2008		DISTRICT TERMINATIONS (includes partial terminations)		ACREAGE ADJUSTMENTS			TOTAL RECORDED AND APPROVED DISTRICTS (as of June 30, 2008)		PERCENTAGE OF TOTAL
	Number of Districts	District Acreage	Number of Districts	District Acreage	Number of Districts	District Acreage	Acreage Adjustments from Deeds	District Lot Exclusion Acreage	Number of Districts	District Acreage		
Allegany	6	1,008.6180	0	0	0	0	-11.6600	0	6	996.9580	0.23%	
Anne Arundel	97	9,082.3443	0	0	0	0	0	0	97	9,082.3443	2.09%	
Baltimore	336	31,723.2251	1	115.0000	-1	-66.3700	-3.0140	0	336	31,768.8411	7.31%	
Calvert	55	6,827.8392	0	0	0	0	0	0	55	6,827.8392	1.57%	
Caroline	345	45,243.9299	20	2,273.6554	-4	-705.6950	-31.7700	-3.0000	361	46,777.1203	10.76%	
Carroll	460	53,539.1454	0	0	-2	-380.0350	15.8242	-5.8810	458	53,169.0536	12.23%	
Cecil	158	20,581.5853	3	304.7300	-2	-108.1060	9.9380	0	159	20,788.1473	4.78%	
Charles	173	21,961.4421	17	1,572.9200	0	-50.8000	0.2040	0	190	23,483.7661	5.40%	
Dorchester	110	16,472.4291	8	1,306.0300	0	0	19.7780	0	118	17,798.2371	4.09%	
Frederick	190	27,571.6727	4	398.0680	-2	-333.1470	11.2300	-2.7638	192	27,645.0599	6.36%	
Garrett	83	10,840.0968	3	304.8700	-1	-102.5000	6.7970	0	85	11,049.2638	2.54%	
Harford	253	26,744.7368	1	71.2900	-2	-130.0000	-3.3010	0	252	26,682.7258	6.14%	
Howard	56	6,345.2434	0	0	0	0	0	-2.0000	56	6,343.2434	1.46%	
Kent	132	25,023.5464	7	1,324.3450	0	0	24.7950	-4.0000	139	26,368.6864	6.06%	
Montgomery	38	6,783.8710	0	0	0	0	0.5364	0	38	6,784.4074	1.56%	
Prince George's	6	850.2530	0	0	0	0	-4.4100	-0.7270	6	845.1160	0.19%	
Queen Anne's	213	34,304.3660	6	780.1350	-2	-403.2170	-36.1670	-1.2500	217	34,643.8670	7.97%	
St. Mary's	139	14,421.6093	1	65.0000	0	0	0	0	140	14,486.6093	3.33%	
Somerset	60	6,208.0880	0	0	-2	-208.8000	-11.7430	0	58	5,987.5450	1.38%	
Talbot	106	15,325.7558	0	50.0000	-1	-583.5400	2.1100	-9.4900	105	14,784.8358	3.40%	
Washington	218	30,232.8294	1	88.8700	-1	-100.4100	8.0870	-2.2300	218	30,227.1464	6.95%	
Wicomico	76	10,113.9173	2	186.5000	0	0	1.3500	0	78	10,300.4173	2.37%	
Worcester	58	8,262.6855	0	0	-2	-293.0000	0.4510	0	56	7,970.1365	1.83%	
<b>TOTALS</b>	<b>3368</b>	<b>429,469,2298</b>	<b>74</b>	<b>8,841,4134</b>	<b>-22</b>	<b>-3465,6200</b>	<b>-0,9644</b>	<b>-31,3418</b>	<b>3420</b>	<b>434,811,3670</b>	<b>100.00%</b>	

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
**REGIONAL ANALYSIS:**  
**PERCENTAGE OF TOTAL DISTRICT ACREAGE**

(Fiscal Years 2002-2008)

<b>REGIONS</b>	2002	2003	2004	2005	2006	2007	2008
<b>WESTERN:</b> Allegany Frederick Garrett Washington	16.1% 64,001 acres	16.2% 65,082 acres	16.5% 67,595 acres	16.4% 67,562 acres	16.5% 67,291 acres	16.2% 69,653 acres	16.1% 69,918 acres
<b>CENTRAL:</b> Baltimore Carroll Harford Howard Montgomery	30.0% 121,837 acres	30.8% 123,655 acres	30.3% 124,203 acres	30.3% 124,494 acres	30.3% 123,898 acres	29.1% 125,136 acres	28.7% 124,748 acres
<b>SOUTHERN:</b> Anne Arundel Calvert Charles Prince George's St. Mary's	11.7% 46,880 acres	11.8% 47,220 acres	11.9% 48,922 acres	11.9% 48,742 acres	11.9% 48,588 acres	12.4% 53,143 acres	12.6% 54,726 acres
<b>UPPER SHORE:</b> Caroline Cecil Kent Queen Anne's Talbot	32.2% 128,328 acres	32.0% 128,725 acres	32.0% 131,028 acres	31.9% 131,070 acres	31.9% 130,370 acres	32.7% 140,479 acres	33.0% 143,363 acres
<b>LOWER SHORE:</b> Dorchester Somerset Wicomico Worcester	10.0% 37,881 acres	9.3% 37,358 acres	9.3% 38,211 acres	9.5% 38,997 acres	9.5% 39,041 acres	9.6% 41,057 acres	9.7% 42,056 acres
<b>TOTAL ACREAGE</b>	<b>398,927 acres</b>	<b>402,041 acres</b>	<b>409,959 acres</b>	<b>410,865 acres</b>	<b>409,189 acres</b>	<b>429,469 acres</b>	<b>434,811 acres</b>

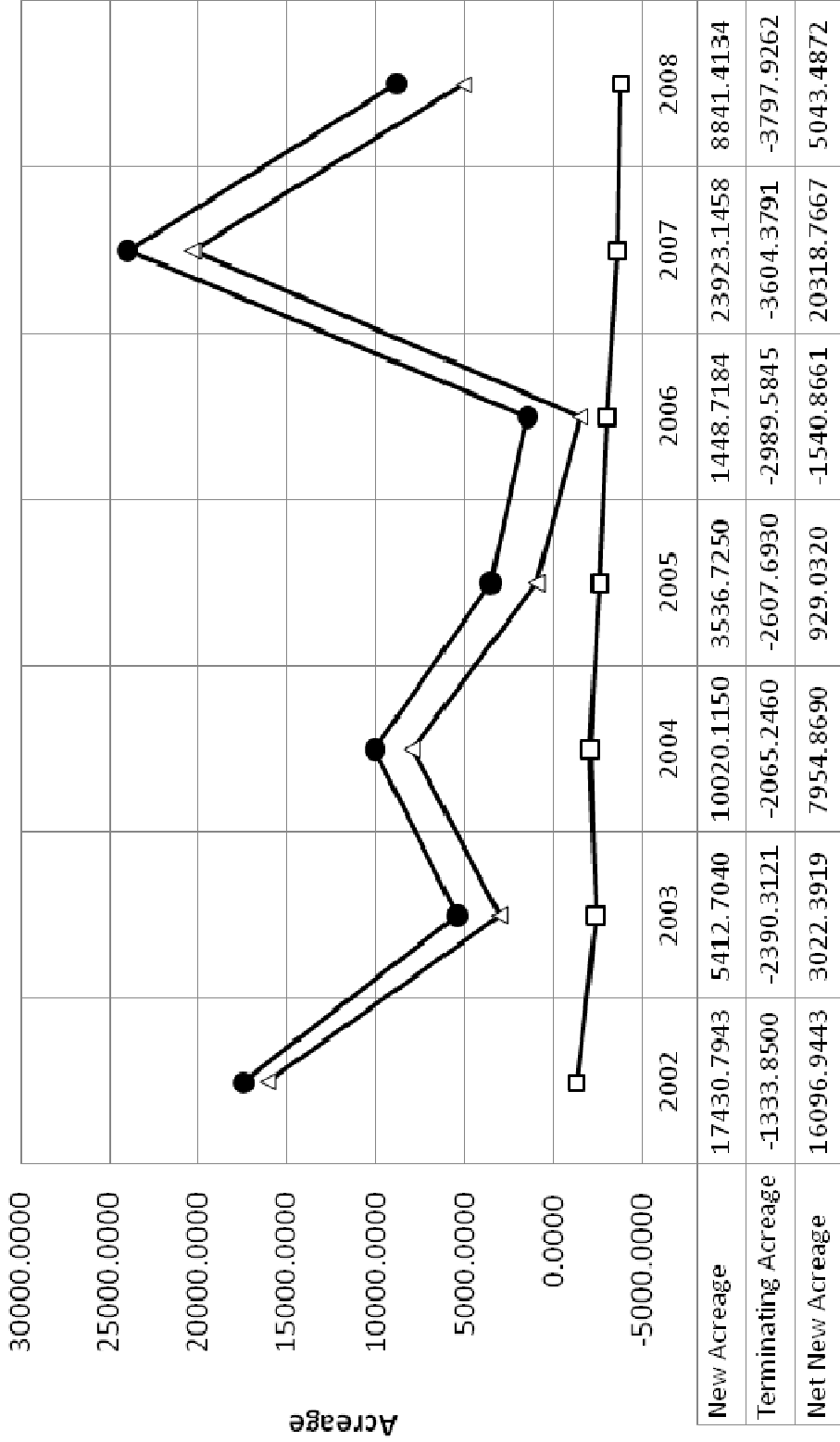
## New and Terminating MALPF Agricultural Districts (FYs 2002-2008)



New Districts    
  Terminating Districts    
  Net New Districts

## Acreage of New and Terminating MALPF Agricultural Districts

(FYs 2002-2008)



New Acreage    
  Terminating Acreage    
  Net New Acreage

## Preservation versus Conversion

---

Over the years, MALPF has used the balance between the agricultural land acreage it permanently preserves and the acreage converted statewide to non-agricultural use during the same time period as one relative indicator of its success at meeting its statutory objectives.

During the period FYs 1997-2003, a balance between preserved and converted agricultural land was substantially achieved. Over those seven years, the Foundation preserved a net balance of almost 2,000 acres more than were converted to non-agricultural use.

From FY 2003 through FY 2006 (the period reported in the last MALPF Annual Report), because of limitations on preservation funding and an increase in the rate of agricultural land conversions from development pressure, the relative balance deteriorated, returning to the levels of net loss not seen since the early 1990s. In three of those years, FYs 2004-2006, the balance was a net deficit of 46,000 more acres converted than preserved.

In FY 2007 and FY 2008, the number of acres converted to non-agricultural use declined dramatically, reflecting the changes in the real estate market and diminished development pressure. At the same time, MALPF funding levels for easement acquisition were higher than average, though per acre acquisition costs remained relatively high. As a result, FY 2008 agricultural land conversion was at its 29-year low - 5,200 acres - while the ratio of preserved to converted land was the most favorable since the beginning of the program.

The two line graphs and the table below compare the acres lost to agriculture and converted to other land uses to the number

of acres preserved by MALPF from the fiscal year preceding the first acreage preserved by the Foundation's program, 1980, through FY 2008. The table and line graphs only reflect land preserved by the Foundation.

Since the program began, the period for the highest rate for annual agricultural land conversion was FYs 1986-1990. The annual rate of conversion ranged from almost 25,000 acres in 1986 to more than 44,000 acres in 1988. During that five-year period, Maryland's net average annual conversion of agricultural land relative to preservation was over 21,000 acres. During the most recent two-year period, FYs 2007-2008, the net average annual preservation balance was approximately 3,000 acres.

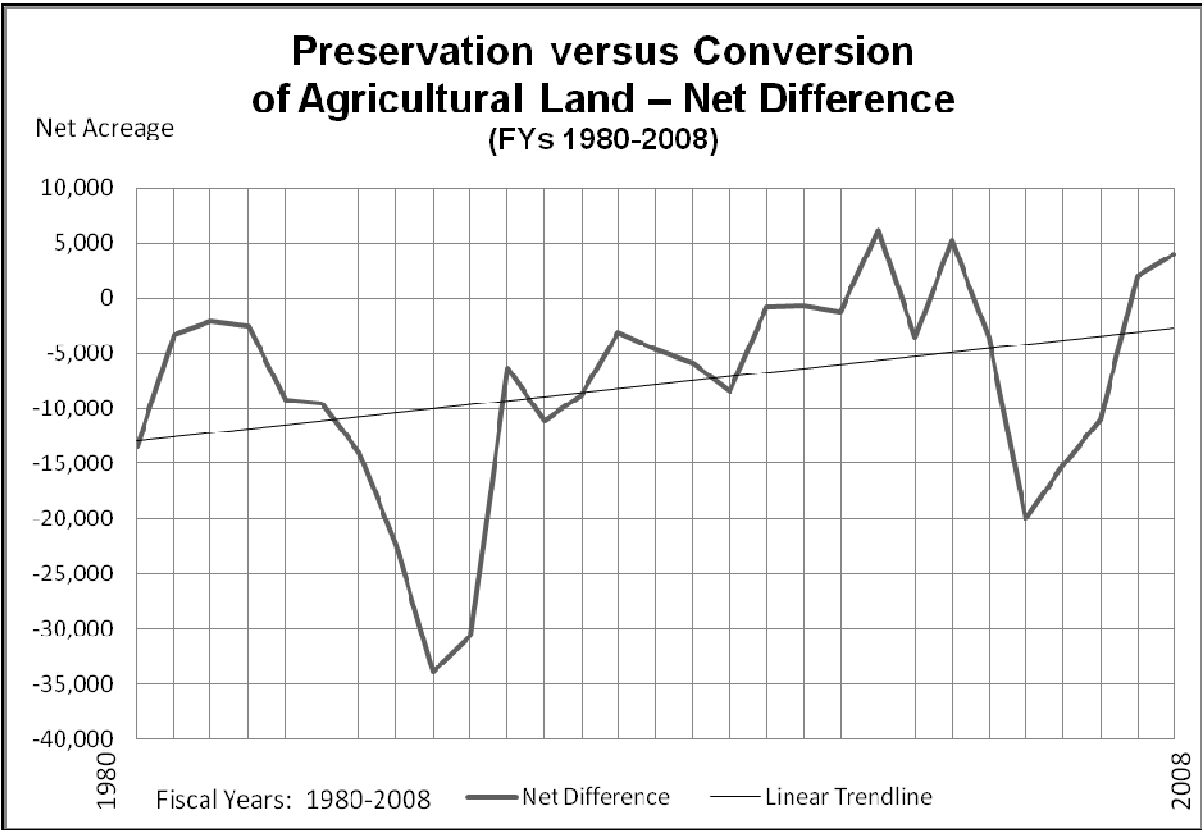
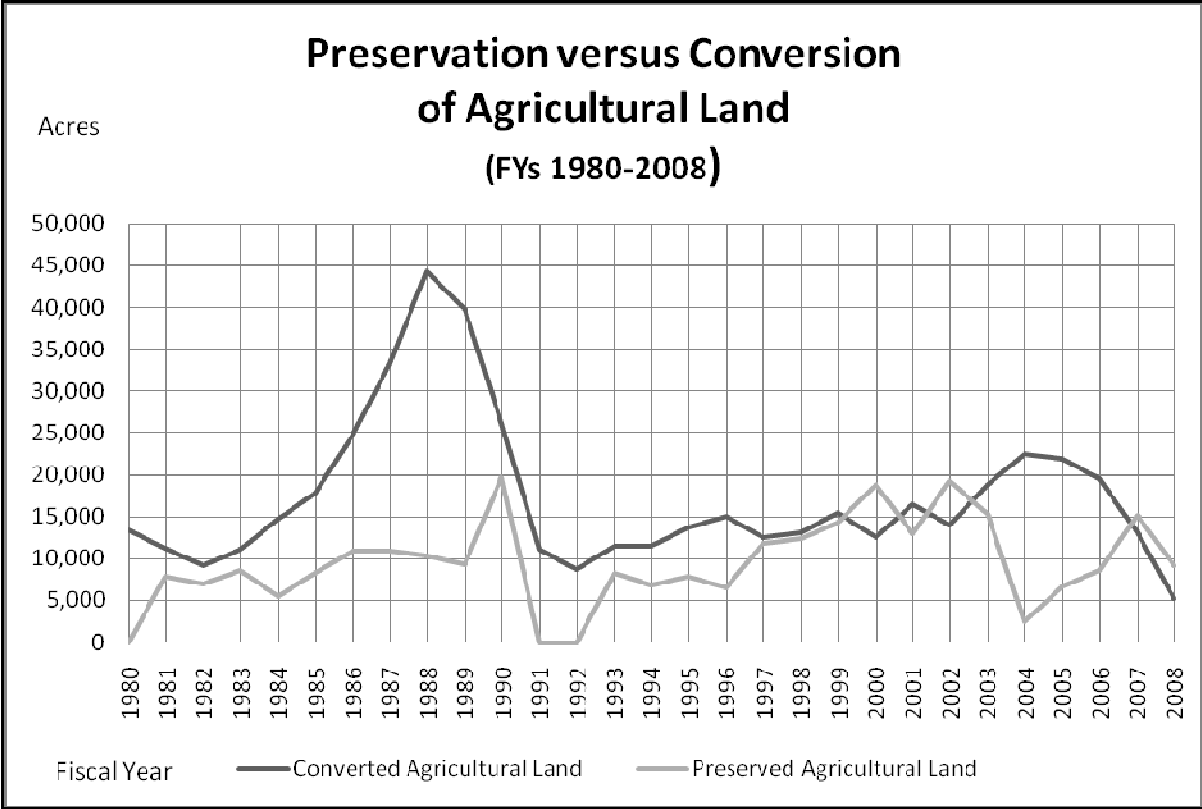
The data on the conversion of agricultural land was provided by the Maryland Department of Assessments and Taxation (SDAT) and is used to infer loss of agricultural land. Because most landowners are not willing to lose the significant tax benefits from an agricultural assessment, most land removed from agricultural assessment voluntarily by the owner is converted only when land-use conversion is imminent. While it is not impossible for converted agricultural land to return to productive agriculture, almost all of this land remains in non-agricultural use.

The Foundation expects the low rate of agricultural land conversion to continue in the foreseeable future because of the stagnant real estate market and declining real estate values. However, a stagnant or declining real estate market translates into reduced funding for agricultural land preservation, making it difficult to take advantage of declining acquisition costs, increased interest in the preservation option among landowners, and continued public support.

**Annual Change in Preserved Farmland  
versus Farmland Converted to Other Uses**  
(FY 1980-2008, in acres)

<b>Status Fiscal Year</b>	<b>Converted Farmland (acres)</b>	<b>Preserved Farmland (acres)</b>	<b>Net Difference (acres)</b>
1980	13,386	-	-13,386
1981	11,135	7,821	-3,314
1982	9,142	7,035	-2,107
1983	11,036	8,540	-2,496
1984	14,663	5,499	-9,164
1985	17,856	8,346	-9,510
1986	24,831	10,900	-13,931
1987	33,236	10,901	-22,335
1988	44,269	10,379	-33,890
1989	39,801	9,303	-30,498
1990	26,059	19,729	-6,330
1991	11,071	-19	-11,090
1992	8,719	-29	-8,748
1993	11,426	8,341	-3,085
1994	11,430	6,783	-4,647
1995	13,743	7,851	-5,892
1996	14,995	6,552	-8,443
1997	12,491	11,797	-694
1998	13,078	12,460	-618
1999	15,386	14,241	-1,145
2000	12,484	18,781	6,297
2001	16,463	12,966	-3,497
2002	14,011	19,283	5,272
2003	18,855	15,307	-3,548
2004	22,451	2,448	-20,003
2005	21,832	6,687	-15,145
2006	19,588	8,628	-10,960
2007	13,128	15,161	2,033
2008	5,200	9,259	4,059
<b>TOTALS (29 years)</b>	<b>501,765</b>	<b>274,950</b>	<b>-226,815</b>
<b>AVERAGE (annual)</b>	<b>17302</b>	<b>9481</b>	<b>-7821</b>

Note: Converted farmland figures have been updated based on the most recent data provided by the Maryland State Department of Assessments and Taxation and come from the acreage subject to the agricultural transfer tax applied when a landowner states the intent to remove land from agricultural assessment. Preserved farmland figures have been updated based on the most recent data from the Maryland Agricultural Land Preservation Foundation. These figures are now net acreage preserved in a fiscal year, subtracting out lot releases and other acreage changes. Preserved farmland data incorporate only land preserved by MALPF. Additional acres have been preserved by county programs, private land trusts and conservancies, and other State programs.



# Board of Trustees, FY 2008

## MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION



Board of Trustees, from left to right. Standing: John Draper, Jr., Farm Bureau representative; Howard Freedlander, State Treasurer's representative; Billy Boniface, Young Farmers' Advisory Board representative; Jonathan Quinn, at-large representative; Bobby Stahl, at-large representative; Dan Colhoun, Chair & Grange representative; Chris Wilson, at-large representative; & Doug Wilson, Secretary of Agriculture's representative. Sitting: Joe Tassone, Secretary of Planning's representative; Jerry Klasmeier, State Comptroller's representative; Vera Mae Schultz, Vice-Chair & forestry representative; & Martha Clark, Agriculture Commission representative. Not pictured: Jim Pelura, at-large representative. (Current as of 06-30-2009.)

### *Appointed Members*

<p><b>Daniel W. Colhoun, Chair</b> 16301 Trenton Church Road Upperco, MD 21155-9336 Grange representative Appointed: 2003</p>	<p><b>Vera Mae E. Schultz, Vice-Chair</b> 18312 Metz Drive Germantown, MD 20874-2410 At-large representative Appointed: 2004</p>	<p><b>William K. "Billy" Boniface</b> Bonita Farm Post Office Box 366 3745 Harmony Church Road Darlington, MD 21034 Young Farmers' Advisory Board representative Appointed: 2008</p>
<p><b>Martha A. Clark</b> 4370 Centennial Lane Ellicott City, MD 21042 Agriculture Commission representative Appointed: 2007</p>	<p><b>John W. Draper, Jr.</b> 1531 Ruthsburg Road Centreville, MD 21617 Farm Bureau representative Appointed: 2007</p>	<p><b>James Pelura III, D.V.M.</b> Endless Call Farm 3725 Tanglewood Lane Davidsonville, MD 21035-2408 At-large representative Appointed: 2003</p>
<p><b>Jonathan Quinn</b> 445 Church Road Warwick, MD 21912 At-large representative Appointed: 2008</p>	<p><b>Robert F. Stahl, Jr.</b> Jameson Manor Farm 7061 Oliver's Shop Road Hughesville, MD 20637-2112 At-large representative Appointed: 2004</p>	<p><b>Christopher H. Wilson</b> 4024 Solomons Island Road Harwood, MD 20776-9437 At-large representative Appointed: 2004</p>

### *Ex-Officio Members*

<p><b>Honorable Nancy K. Kopp</b> State Treasurer Goldstein Treasury Building 80 Calvert Street, Room 109 Annapolis, MD 21404-1907 <i>Represented by Howard Freedlander</i></p>	<p><b>Honorable Roger L. Richardson</b> Secretary Maryland Department of Agriculture 50 Harry S. Truman Parkway Annapolis, MD 21401-8960 <i>Represented by Douglas H. Wilson</i></p>
<p><b>Honorable Peter Franchot</b> State Comptroller Louis L. Goldstein Building Room 121 P.O. Box 466 Annapolis, MD 21404-0466 <i>Represented by Jerome Klasmeier</i></p>	<p><b>Honorable Richard E. Hall</b> Secretary Maryland Department of Planning 301 W. Preston Street, Room 1101 Baltimore, MD 21201-2365 <i>Represented by Joseph Tassone</i></p>

# Agricultural Land Preservation Advisory Board Chairs

## MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

<p><b>(01) ALLEGANY</b> Georgene McLaughlin 22717 Barn Hill Drive Oldtown, MD 21555</p>	<p><b>(09) DORCHESTER</b> Trent Jackson 2225 Pig Neck Road Cambridge, MD 21613</p>	<p><b>(17) QUEEN ANNE'S</b> David Denny 920 Damsontown Road Queen Anne, MD 21657</p>
<p><b>(02) ANNE ARUNDEL</b> Jeff Griffith 5643 Greenock Road Lothian, MD 20711</p>	<p><b>(10) FREDERICK</b> Alan Wilcom 10460 Glade Road Walkersville, MD 21793</p>	<p><b>(18) ST. MARY'S</b> George Baroniak Post Office Box 268 Dameron, MD 20628</p>
<p><b>(03) BALTIMORE</b> David Greene 2014 White Hall Road White Hall, MD 21161-9712</p>	<p><b>(11) GARRETT</b> George Bishoff 675 Hoyes Sang Run Road Friendsville, MD 21531</p>	<p><b>(19) SOMERSET</b> James T. Nelson, Jr. 28425 Revells Neck Road Westover, MD 21871</p>
<p><b>(04) CALVERT</b> Christopher Dowell c/o Agricultural Land Preservation Advisory Board Dept. of Planning &amp; Zoning 150 Main Street Prince Frederick, MD 20676</p>	<p><b>(12) HARFORD</b> David Thompson 3611 Miller Road Street, MD 21154</p>	<p><b>(20) TALBOT</b> Robert Saathoff 10144 Cordova Road Easton, MD 21601</p>
<p><b>(05) CAROLINE</b> Richard Edwards 14545 Oakland Road Ridgely, MD 21660</p>	<p><b>(13) HOWARD</b> Sean Hough 17419 Hardy Road Mt. Airy, MD 21771</p>	<p><b>(21) WASHINGTON</b> David Herbst 14230 Misty Meadow Road Smithsburg, MD 21783</p>
<p><b>(06) CARROLL</b> Steven C. Warehime 2245 Fesser Road Taneytown, MD 21787</p>	<p><b>(14) KENT</b> R. Allen Davis 33740 Sassafras Caldwell Road Galena, MD 21635</p>	<p><b>(22) WICOMICO</b> William Guy 7108 Levin Dashiell Road Hebron, MD 21830</p>
<p><b>(07) CECIL</b> Wayne Stafford 2817 Blue Ball Road Elkton, MD 21921</p>	<p><b>(15) MONTGOMERY</b> David O. Scott 20400 Darnestown Road Dickerson, MD 20842</p>	<p><b>(23) WORCESTER</b> Sandra Frazier 11452 Assateague Road Berlin, MD 21811</p>
<p><b>(08) CHARLES</b> Samuel F. Swann III Post Office Box 326 Newburg, MD 20664</p>	<p><b>(16) PRINCE GEORGE'S</b> Sidney Tucker 11900 Croom Road Upper Marlboro MD 20772</p>	<p style="text-align: center;">Current as of 03-31-2009</p>

## County Program Administrators

### MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

<p><b>(01) ALLEGANY</b>                  Dave Dorsey                  Allegany County Government                  701 Kelly Road, Suite 220                  Cumberland, MD 21502                  (301) 777-2199</p>	<p><b>(09) DORCHESTER</b>                  Rodney Banks                  Planning &amp; Zoning                  Post Office Box 107                  Cambridge, MD 21613                  (410) 228-3234</p>	<p><b>(17) QUEEN ANNE'S</b>                  Donna Landis-Smith                  Dept. of Econ. Dev. &amp; Ag.                  160 Coursevall Drive                  Centreville, MD 21617                  (410) 758-4418</p>
<p><b>(02) ANNE ARUNDEL</b>                  Barbara Polito                  Dept. of Recreation &amp; Parks                  1 Harry S. Truman Pkwy, MS3225                  Annapolis, MD 21401                  (410) 222-7317 x-3553</p>	<p><b>(10) FREDERICK</b>                  Tim Blaser                  Planning &amp; Zoning                  Winchester Hall                  Frederick, MD 21701                  (301) 600-2513</p>	<p><b>(18) ST. MARY'S</b>                  Donna Sasscer                  Dept. of Econ. &amp; Com. Dev.                  Post Office Box 653                  Leonardtown, MD 20650-0653                  (301) 475-4200 x-1405</p>
<p><b>(03) BALTIMORE</b>                  Wally Lippincott, Jr.                  Dept. of Enviro. Protection                  County Courts Bldg., Room 416                  401 Bosley Avenue                  Towson, MD 21204                  (410) 887-3776</p>	<p><b>(11) GARRETT</b>                  John Nelson, Planning Director                  Garrett County Planning Office                  203 South 4<sup>th</sup> Street                  Oakland, MD 21550                  (301) 334-1920</p>	<p><b>(19) SOMERSET</b>                  Tom Lawton                  Planning &amp; Zoning                  Somerset County Office Complex                  11916 Somerset Avenue                  Princess Anne, MD 21853                  (410) 651-1424</p>
<p><b>(04) CALVERT</b>                  Veronica Cristo                  Dept. of Planning &amp; Zoning                  150 Main Street, Suite 304                  Prince Frederick, MD 20678                  (410) 535-1600 x-2489</p>	<p><b>(12) HARFORD</b>                  William Amoss                  Planning &amp; Zoning                  220 South Main Street                  Bel Air, MD 21014                  (410) 638-3235</p>	<p><b>(20) TALBOT</b>                  Martin Sokolich                  Planning &amp; Zoning Office                  11 North Washington Street                  Easton, MD 21601                  (410) 770-8030</p>
<p><b>(05) CAROLINE</b>                  Tammy Buckle                  Planning &amp; Codes Administration                  Health &amp; Public Services Bldg.                  703 South 7<sup>th</sup> Street, Suite 210                  Denton, MD 21629                  (410) 479-8106</p>	<p><b>(13) HOWARD</b>                  Joy Levy                  Planning &amp; Zoning                  3430 Courthouse Drive                  Ellicott City, MD 21043                  (410) 313-4382</p>	<p><b>(21) WASHINGTON</b>                  Eric Seifarth                  Washington Co. Planning Dept.                  County Administrative Annex                  80 West Baltimore Street                  Hagerstown, MD 21740-4727                  (240) 313-2445</p>
<p><b>(06) CARROLL</b>                  Ralph Robertson                  County Office Building                  225 North Center Street                  Westminster, MD 21157                  (410) 386-2214</p>	<p><b>(14) KENT</b>                  Carla Martin Gerber                  Planning Commission                  400 High Street                  Chestertown, MD 21620                  (410) 778-7474</p>	<p><b>(22) WICOMICO</b>                  Gloria Smith                  Government Office Bldg., Rm. 203                  Post Office Box 870                  Salisbury, MD 21803-0870                  (410) 548-4860</p>
<p><b>(07) CECIL</b>                  Eric Shertz                  Planning &amp; Zoning                  200 Chesapeake Blvd., Suite 2300                  Elkton, MD 21921                  (410) 996-8359</p>	<p><b>(15) MONTGOMERY</b>                  John Zawitoski                  18410 Muncaster Road                  Derwood, MD 20850                  (301) 590-2831</p>	<p><b>(23) WORCESTER</b>                  Katherine Munson                  Dept. of Comp. Planning                  One West Market Street, Rm. 1302                  Snow Hill, MD 21863-1070                  (410) 632-5651</p>
<p><b>(08) CHARLES</b>                  Charles Rice                  Department of Planning &amp;                  Growth Management                  Post Office Box 2150                  La Plata, MD 20646                  (301) 645-0651</p>	<p><b>(16) PRINCE GEORGE'S</b>                  Yates Clagett                  Soil Conservation District                  Field Service Center                  5301 Marlboro Race Track Road                  Upper Marlboro, MD 20772                  (301) 574-5162</p>	<p style="text-align: center;">Current as of 03-31-2009</p>

## Foundation Staff

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION



MALPF Staff, from left to right. Standing: Jim Conrad, Executive Director; Carol Council, Administrator; Jeanine Nutter, Administrative Specialist; and Diane Chasse, Administrator. Kneeling: Rama Dilip, Foundation Secretary; Kim Hoxter, Administrative Officer; Jing Tian, Intern, University of Maryland, Baltimore County. (Current as of 06-30-2009.)

