L00A1111
Department of Agriculture – Capital

Capital Budget Summary

($ in Millions)

	FY 2010 Approp.	*FY 2011 Approp.*	*FY 2011 Adjusted*	*FY 2012 Allowance*	*FY 2012 Adjusted*	*% Change FY 2011-2012 Adjusted*	*DLS Recommd.*
Maryland Agricultural Land Preservation Program[1]	$25.585	$31.874	$21.874	$28.122	$8.567	-60.8%	$8.567
Tobacco Transition Program[2]	10.335	4.256	4.256	2.738	2.738	-35.7%	1.238
Maryland Agricultural Cost-Share Program	7.980	10.800	10.800	6.000	6.000	-44.4%	7.500
Total	**$43.900**	**$46.930**	**$36.930**	**$36.860**	**$17.305**	**-53.1%**	**$17.305**

Fund Source							
Special	$16.900	$15.116	$15.116	$24.993	$5.438	-64.0%	$5.438
Federal	2.000	2.000	2.000	0.000	0.000	-100.0%	0.000
PAYGO Subtotal	**$18.900**	**$17.116**	**$17.116**	**$24.993**	**$5.438**	**-68.2%**	**$5.438**
GO Bonds	25.000	29.814	19.814	11.867	11.867	-40.1%	11.867
Total	**$43.900**	**$46.930**	**$36.930**	**$36.860**	**$17.305**	**-53.1%**	**$17.305**

[1] The fiscal 2011 general obligation (GO) bond authorization for the Maryland Agricultural Land Preservation Program (MALPP) includes $10.0 million in prior year fund balance that is replaced with GO bonds. The fiscal 2011 adjusted column reflects that this is not new funding and takes the funding out for comparison purposes. The fiscal 2012 special fund allowance for MALPP includes $19.6 million in State transfer tax revenue that would be credited to the general fund contingent upon the enactment of a provision in the Budget Reconciliation and Financing Act of 2011 and $4.4 million in GO bond authorization as partial replacement for the transferred funds. The amounts reflected in the fiscal 2012 allowance column include the contingent appropriation and proposed GO bond funds intended as partial replacement. The fiscal 2012 adjusted column does not include the contingent funds since these funds are intended to be transferred to the general fund and, therefore, not available for program use.

[2] The fiscal 2010 GO bond authorization for the Tobacco Transition Program was authorized by a provision in the 2006 Maryland Consolidated Capital Bond Loan, which altered the use of GO bonds for the tobacco buyout funding plan that was originally laid out in Chapter 103 of 2001.

Note: Numbers may not sum to total due to rounding.

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Summary of Issues

Maryland Agricultural Land Preservation Foundation Funding Considerations: A number of factors have impacted Maryland Agricultural Land Preservation Foundation (MALPF) funding and, in turn, easement purchases, which again for fiscal 2011 and 2012 have been combined into one easement purchase cycle. These factors include decreased State transfer tax revenue and allocations, as well as federal funding uncertainty. However, additional funding is available from the Program Open Space Acquisition Opportunity Loan of 2009, Chapter 210 of 2010, and possibly from provisions in Chapter 36 of 2010. **The Department of Legislative Services (DLS) recommends that MALPF comment on an any updates concerning the availability of federal funding, its plans for the Program Open Space Acquisition Opportunity Loan of 2009 funding, and the possibility of raising partnership funding as allowed for by Chapter 36 of 2010.**

Audit Compliance Activities: In recent years, annual MALPF audits have raised concerns about easement monitoring compliance and the reconciliation of MALPF's easement acquisition database with the State's accounting records. The easement monitoring compliance finding appears to have been resolved, but the reconciling of easement acquisitions with State records is an ongoing problem. **DLS recommends that the Maryland Department of Agriculture (MDA) comment on the current status of addressing the recommendations in the audit and the status of developing a methodology for presenting uniform funding and easement acquisition information from year-to-year.**

Marcellus Shale on Agricultural Easements: A report on Marcellus Shale extraction on agricultural easements was requested in Section 48 of the fiscal 2012 operating budget. MALPF's summary recommendation is that it is neither necessary nor desirable to allow surface exploration, drilling, or extraction activities for natural gas on lands protected by MALPF agricultural easements. However, for landowners with subordinated mineral rights on a property, "no access/no drill" leases, the "Withheld Acreage Policy," or the incorporation of the value of the natural gas rights in easements are all avenues for exploration. **DLS recommends that MALPF comment on the status of using the "Withheld Acreage Policy" to allow for surface exploration for natural gas and incorporating mineral rights into easement pricing.**

Renewable Energy Policy on Agricultural Easements: A report on renewable energy policy on agricultural easements was requested in Section 47 of the fiscal 2011 operating budget and was to be written by MDA and the Maryland Energy Administration. The report was to include policy recommendations for allowing MALPF easement holders to implement solar or wind renewable energy generation projects that may assist in contributing to the State's renewable energy goal of 20% by 2022. To date this report has not been received. **DLS recommends that MDA comment on why this report has not been submitted.**

Summary of Recommended Actions – PAYGO

		Funds
1.	Strike the Maryland Agricultural Land Preservation Foundation special fund appropriation reduction that is contingent upon the enactment of legislation crediting transfer tax revenues to the general fund.	
2.	Reduce the Maryland Agricultural Land Preservation Foundation special fund appropriation to reflect the Governor's contingent reduction.	$ 19,555,275
	Total Reductions	**$ 19,555,275**

Summary of Recommended Actions – Bond

	Program	**Action**	**Amount**
1.	Maryland Agricultural Land Preservation	Concur	
2.	Tobacco Transition Program	Delete	-$1,500,000
3.	Maryland Agricultural Cost-Share Program	Add	1,500,000
4.	Pre-authorizations of $6.5 million for Maryland Agricultural Land Preservation in fiscal 2013 and 2014	Concur	
	Total		**$0**

Overview

The fiscal 2012 allowance includes $25.0 million in special funds and $11.9 million in general obligation (GO) bonds. However, the allowance includes $19.6 million in special funds that are to be contingently reduced if the Budget Reconciliation and Financing Act (BRFA) of 2011 provision to transfer this amount of special funds to the general fund is enacted.

Exhibit 1 shows the available fiscal 2012 funding for the three programs in the allowance. The figures are adjusted to account for contingent reductions and bond replacement of prior year fund balance in the fiscal 2011 appropriation. After accounting for these adjustments, the proposed fiscal 2012 funding level is $19.6 million lower than what was provided in fiscal 2011. This reflects partial replacement of Maryland Agricultural Land Preservation Foundation (MALPF) special fund revenue transferred to the general fund, lower county participation, and the elimination of federal funds in fiscal 2012. Fiscal 2012 funding for the Maryland Agricultural Cost-Share Program is $4.8 million lower than fiscal 2011. GO bond authorizations account for $4.0 million of the difference and reflect the anticipated use of available fund balance intended to make up the difference. In addition, the program is not slated to receive Chesapeake and Atlantic Coastal Bays 2010 Trust Fund funding in fiscal 2012. For the Tobacco Transition Program, the increase in funding for the tobacco bond buyout in the operating budget reduces available pay-as-you-go funding.

Exhibit 1
Department of Agriculture Capital Budget Changes by Fund
Fiscal 2011–2012
($ in Millions)

Program	Fund	2011	2012	Difference
Maryland Agricultural Land Preservation Program	SF	$12.1	$4.2	-$7.9
	FF	2.0	0.0	-2.0
	GO	7.8	4.4	-3.4
Subtotal		**$21.9**	**$8.6**	**-$13.3**
Tobacco Transition	SF	2.3	1.2	-1.0
	GO	2.0	1.5	-0.5
Subtotal		**$4.3**	**$2.7**	**-$1.5**
Maryland Agricultural Cost-Share Program	SF	0.8	0.0	-0.8
	GO	10.0	6.0	-4.0
Subtotal		**$10.8**	**$6.0**	**-$4.8**
Total		**$36.9**	**$17.3**	**-$19.6**

FF: federal fund GO: general obligation SF: special fund

Source: Department of Legislative Services

The MALPF program funding changes in Exhibit 1 reflect the assumption that a contingent reduction in fiscal 2012 State transfer tax funding occurs and is replaced partially with GO bonds. In all, $19.6 million in special funds is transferred to the general fund and partially replaced with $4.4 million in GO bonds. The available fiscal 2012 funding is $8.6 million.

Multi-year GO Bond Replacement: Revisions to Fiscal 2011 and Pre-authorizations

The fiscal 2012 allowance reflects three interrelated calculations and actions as follows.

- **Revised Fiscal 2011 Transfer Tax Estimate** – The fiscal 2011 transfer tax revenue estimate has been revised downwards. As a result, MALPF received $2.2 million more in GO bonds in fiscal 2011 than it should have received.

- **Fiscal 2012 Transfer Tax Revenue Diverted to General Fund** – The BRFA of 2011 diverts to the general fund $19.6 million of the transfer tax allocated to MALPF.

- **Three-year Replacement Plan for Fiscal 2012 Revenue Diverted –** The Governor has proposed a multi-year replacement plan for the $19.6 million in transfer tax revenue diverted to the general fund. However, instead of three equal $6,518,000 payments between fiscal 2012 and 2014, the Governor replaces only $4,367,000 in fiscal 2012 to reflect the revised fiscal 2011 transfer tax estimate under which MALPF received $2.2 million more than it should have received.

The 2011 Maryland Consolidated Capital Bond Loan includes MALPF pre-authorizations of $6,518,000 for the 2012 session and $6,518,000 for the 2013 session. The pre-authorizations complete the replacement of State transfer tax diverted to the general fund instead of being appropriated to MALPF in fiscal 2012. **Exhibit 2** shows the MALPF fiscal 2012 revenue replacement schedule described above.

Exhibit 2
MALPF Funding
Fiscal 2012 Revenue Replacement

Formula	Fiscal Year Effect	MALPF Funding
A	FY 2011 Original	$11.81
B	FY 2011 Revised Funding	9.66
C = B - A	**FY 2011 Adjustment**	**-$2.15**
D	**FY 2012 Formula**	**$19.56**
E = D/3 + C	FY 2012 Funding	4.37
F = D/3	FY 2013 Bond Replacement	6.52
G = D/3	FY 2014 Bond Replacement	6.52
H = E + F + G	**FY 2012 Total Replacement**	**$17.40**

MALPF: Maryland Agricultural Land Preservation Foundation

Note: The fiscal 2011 original funding reflects $4 million that was allocated to the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO), but is now available to MALPF due to the enactment of Chapter 210 of 2010 (Agricultural Land Transfer Tax – Distribution and Use of Revenue), which repealed the provision requiring $4 million of MALPF's allocation under the State transfer tax be dedicated to MARBIDCO's Installment Purchase Agreement program.

Source: Department of Legislative Services

Insofar as the proposed multi-year GO bond replacement of fiscal 2012 transfer tax revenues proposed to be diverted to the general fund alleviates some of the pressure on the bond program in fiscal 2012 that fully replacing these funds in one year would entail, the Department of Legislative Services recommends concurrence with the fiscal 2013 and 2014 pre-authorizations. The budget committees, however, may wish to consider the overall repayment plan in the context of other actions it may consider during the 2011 session that impact the GO bond program.

Maryland Agricultural Land Preservation Program (Statewide)

GO Bonds	**$4,367,000**	**Recommendation:**	**Strike the language on the special fund appropriation. Reduce special funds by $19,555,275 to reflect contingent reduction**
PAYGO SF	**$23,755,275**		

Bill Text: Provide funds for the acquisition of conservation easements on agricultural land. The funds appropriated for this purpose shall be administered in accordance with §§ 2-501 through 2-519 of the Agricultural Article.

Program Description: The General Assembly created the Maryland Agricultural Land Preservation Program (MALPP) to preserve productive agricultural land and woodland which provides for the continued production of food and fiber; limit the extent of urban development; and protect agricultural land and woodland as open space. The Maryland Agricultural Land Preservation Foundation (MALPF), with the assistance and cooperation of landowners and local governments, purchases development rights easements as a means of protecting agricultural land and woodland production activities. Participation in MALPP is voluntary on the part of landowners.

MALPF qualifications include the requirement that parcels be at least 50 contiguous acres in active agricultural use with at least 50% of the total soils on the land classified as U.S. Department of Agriculture soil capability Class I, II, III, or woodland group one or two. Landowners also agree to maintain the land in agricultural use for a minimum of five years and not subdivide the land for residential, commercial, or industrial use.

An owner of land that is at least 50 acres in size and actively devoted to agricultural use who is interested in selling an easement to MALPF is required to file an application with the county governing body. The county governing body refers the application and accompanying materials both to the agricultural preservation advisory board and to the county planning and zoning body. Within 60 days after the referral of the application, the agricultural preservation advisory board is required to advise the county governing body as to whether the land in the proposed easement meets MALPF qualifications and to make a recommendation on whether the easement should be purchased.

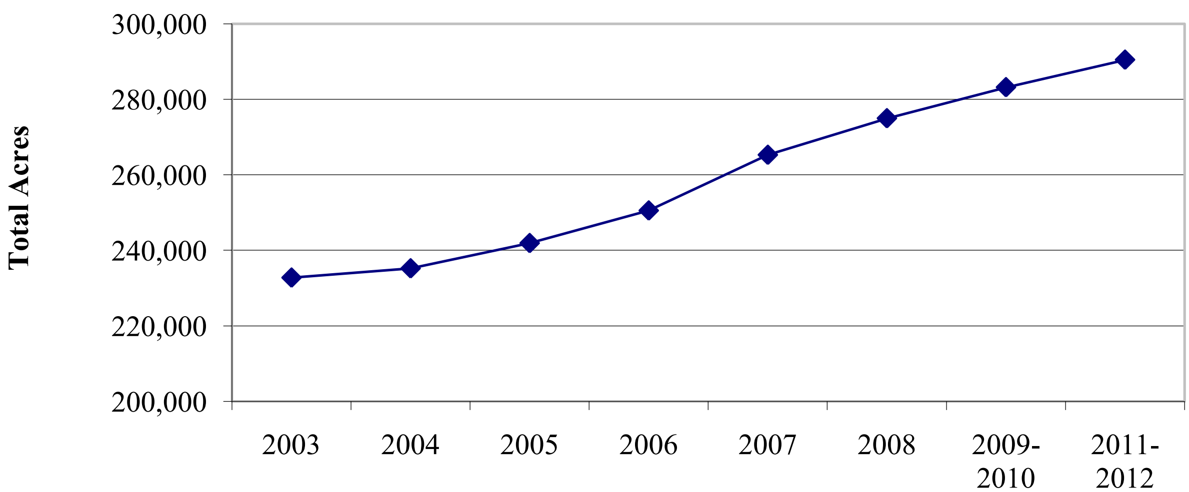
If either the agricultural preservation advisory board or the planning and zoning body recommend approval, the county governing body is required to hold a public hearing on the proposed easement. Within 120 days after the receipt of the application, the county governing body is required to render a decision as to whether the application will be recommended to MALPF for approval.

The maximum price MALPF may pay for an easement is the landowner's asking price or the easement value, whichever is lower. The easement value is determined by subtracting the agricultural value from the appraised fair market value of the property. Once the development rights have been sold, the property is perpetually protected from further development, with certain rights available only to the owners who originally sold the easement.

Program Analysis and Performance Measures

MALPF has decided to combine easement acquisition cycles in recent years due to reduced funding. This has made it more difficult to determine funding and easement acquisition status over time. For instance, funding for fiscal 2009 and 2010 were combined into one cycle as will be funding for fiscal 2011 and 2012. However, MALPF reports that there was easement activity in fiscal 2010 separate from the combined fiscal 2009-2010 easement cycle, which makes year-to-year comparisons difficult. While MALPF continues to increase the total agricultural acres under protective easements, it is difficult to reconcile the different numbers being produced by the programmatic and fiscal sides of the program. **Exhibit 3** provides the information provided by the fiscal side of the program. **The Department of Legislative Services (DLS) recommends, in an issue included in this analysis, that MDA develop a methodology for presenting uniform funding and easement acquisition information from year-to-year.**

Exhibit 3
Total Acres of MALPP Easements
Fiscal 2003-2012



MALPP: Maryland Agricultural Land Preservation Program

Note: Includes easements under the Maryland Agricultural Land Preservation Foundation and the now defunct GreenPrint Program.

Source: Maryland Department of Agriculture

Issues

1. MALPF Funding Considerations

A number of factors have impacted MALPF funding and, in turn, easement purchases.

Combined Easement Cycles

The fiscal 2011 and 2012 offers have been combined into one offer. MALPF advises that the offers will not be made until June 2011 when the fiscal 2012 funding is known and that local government match funding for fiscal 2012 will not be known until the fiscal 2012 State funding is determined.

Federal Funding

As of September 1, 2010, MALPF has been reimbursed for all of the federal grant funding it was allocated. MALPF is waiting now for the final rule from the U.S. Department of Agriculture on the next round of federal funding. The federal request for proposals (RFP) is set for March 2011, and so MALPF anticipates that the final rule will be issued by March 2011 in order to inform the RFP. However, MALPF does not anticipate receiving any federal funding unless federal rules change.

Recent Funding Legislation

The Program Open Space Acquisition Opportunity Loan of 2009 has provided for approximately $5 million in additional bond funding. Chapter 210 of 2010 changed the funding distribution from the State transfer tax for MALPF and the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO). The change redirects $4 million in funding to MALPF that was temporarily diverted to MARBIDCO for leveraged installment purchase agreements. Leveraged installment purchase agreements have been deemed infeasible due to restrictions on the length of State debt.

Chapter 36 of 2010 allows for partnership funding from the U.S. National Oceanic and Atmospheric Administration (NOAA), local governments, Ducks Unlimited, private foundations, and the U.S. Department of Defense buffer program. However, MALPF advises that Chapter 36 of 2010 is not anticipated to have a big impact on funding availability since MALPF is down from 7 filled positions to 5 due to the departure of a fiscal officer and program administrator. Therefore, MALPF will not be able to take advantage of additional funding opportunities in the near future.

In addition, MALPF advises that the NOAA funding is not anticipated to be easily used because it can only be used on land that it is not farmed, for instance along riparian buffers. However, the funding may be used to buy easement rights on half of a subdivided property, which is kept out of farming, and State funding used to buy an agricultural easement on the remaining land, which could be farmed.

DLS recommends that MALPF comment on an any updates concerning the availability of federal funding, its plans for the Program Open Space Acquisition Opportunity Loan of 2009 funding, and the possibility of raising partnership funding as allowed for by Chapter 36 of 2010.

2. Audit Compliance Activities

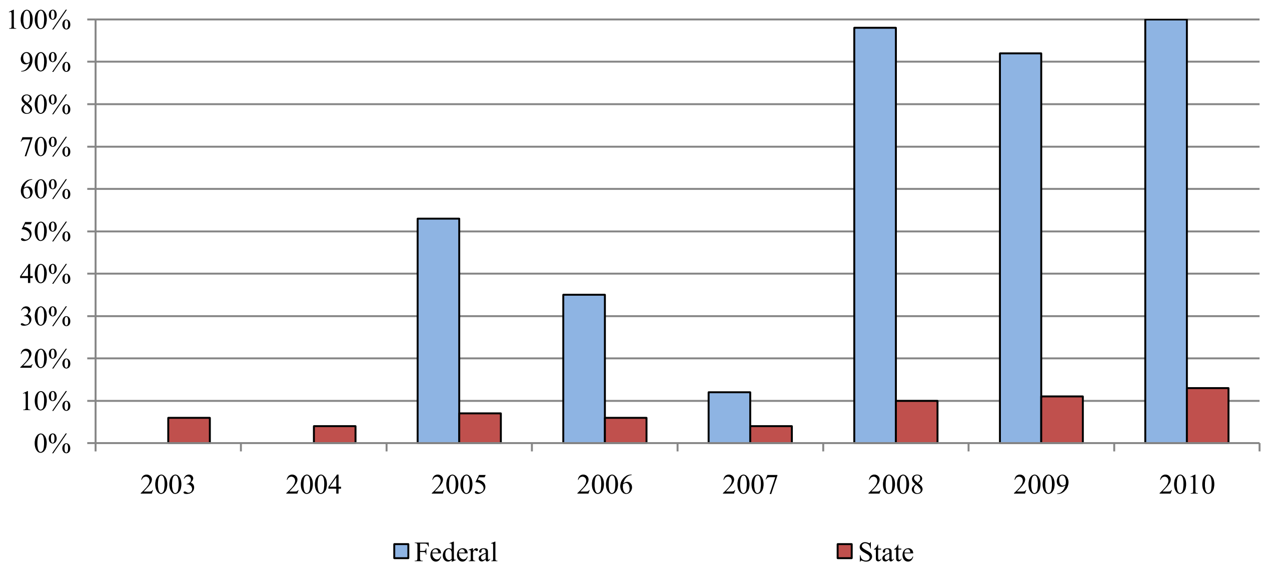
In recent years, annual MALPF audits have raised concerns about easement monitoring compliance and the reconciliation of MALPF's easement acquisition database with the State's accounting records. The easement monitoring compliance finding appears to have been resolved, but the reconciling of easement acquisition with State records is an ongoing problem.

Easement Monitoring Compliance Report

The committees are concerned that MALPF has had multiple audit findings concerning the lack of procedures for ensuring that required annual inspections of easement properties are performed. As a result, a report on easement monitoring compliance was requested in the 2010 *Joint Chairmen's Report*.

The report submitted by MALPF indicates that the goal of 100% of the federal Farm and Ranch Lands Protection Program properties and 10% of the State easements has been met in fiscal 2010. **Exhibit 4** shows the percent compliance for fiscal 2003 through 2010.

Exhibit 4
Completion of MALPF Easement Monitoring Requirements
Fiscal 2003-2010



MALPF: Maryland Agricultural Land Preservation Foundation

Note: MALPF obtained fiscal 2003 through 2007 data from an Office of Legislative Audits audit. The Federal Farm and Ranch Lands Protection Program requirement is 100% monitoring for federally funded properties each year. The MALPF requirement for State properties is 10% per year.

Source: Maryland Agricultural Land Preservation Foundation

Reconciliation of Easement Acquisitions

The Office of Legislative Audits published its fiscal 2009 audit for MALPF on March 30, 2010. The audit found that as of December 31, 2009, the easement database, which contains the number of acres purchased and the related purchase price, had not been tested for accuracy and completeness and that it had not been reconciled to the State's accounting records. MALPF indicates that it intended to complete the reliability testing by June 30, 2010. However, in preparation for this analysis, DLS noted that there was a difference in the MALPF acreage provided by the fiscal staff at the Maryland Department of Agriculture (MDA) for this analysis and the information provided by programmatic staff to the Joint Subcommittee on Program Open Space and Agricultural Land Preservation.

In addition, the audit found that the total cumulative cost of easement acquisitions reported in the MALPF annual report to the General Assembly ($556 million) matched neither the amount recorded on the State's accounting records ($486 million) nor the amount in the MALPF easement database ($533 million).

DLS recommends that MDA comment on the current status of addressing the recommendations in the audit and the status of developing a methodology for presenting uniform funding and easement acquisition information from year-to-year.

3. Marcellus Shale on Agricultural Easements

A report on Marcellus Shale extraction on agricultural easements was requested in Section 48 of the fiscal 2012 operating budget. The report was to include information on policy recommendations for allowing MALPF and Rural Legacy Program easement holders to extract natural gas from the Marcellus Shale formation and was to be written by MDA and the Department of Natural Resources (DNR). The requested report was submitted in two parts: a report from MALPF concerning agricultural easements and a separate report from DNR on the Rural Legacy Program. The discussion following will cover only the MALPF report as the Rural Legacy Program report will be discussed in DNR's operating and capital analyses.

MALPF's Summary Recommendation

MALPF's summary recommendation is that it is neither necessary nor desirable to allow surface exploration, drilling, or extraction activities for natural gas on lands protected by MALPF agricultural easements. However, for landowners with subordinated mineral rights on a property, "no access/no drill" leases, the "Withheld Acreage Policy," or the incorporation of the value of the natural gas rights in easements are all avenues for exploration.

Background

The exploration for natural gas in the Marcellus Shale formation is a relatively recent phenomenon driven by the improvement of technology for drilling and affecting primarily agricultural easements in Garrett County, but also Allegany County. Three main issues arise in the issue of Marcellus Shale exploration.

- **Subordination** – In order to protect the State's investment in an agricultural easement, it is important that the mineral rights on a property be subordinated to the deed of easement so that the deed of easement is not voided.

- **Environmental Damage** – There is potential environmental damage from activities related to natural gas such as onsite, offsite, or subsurface natural gas exploration and extraction activities, which could damage soil productivity, cause loss of water quality, impact drainage, or reduce water availability.

- **Legal Protection** – A final concern is that natural gas policy could impact the legal status of easement owners in terms of tax implications, federal funding requirements, and environmental contamination liability issues.

Possible Ways Forward

MALPF acknowledges that it does not acquire ownership of subsurface mineral rights. Instead it restricts surface activities to explore for or extract mineral resources on its easement properties. This means that "no access/no drill" leases can be signed for easement properties. These leases allow for offsite lateral drilling technologies to be used to access natural gas under properties with MALPF easements. While this does not allow for the full economic benefits of a surface mining lease, it does mean that there is some flexibility in how mineral rights are treated relative to the MALPF easement requirements.

Two more remote possibilities for landowners interested in receiving the financial benefits of surface exploration for natural gas are the "Withheld Acreage Policy," which in theory would allow a landowner approaching MALPF to exclude certain areas from the easement in order to allow for surface exploration, and the possibility of incorporating the value of the natural gas rights in easements. Neither of these two options has been pursued to date, and it is possible that all "Withheld Acreage Policy" claims will be denied and mineral right valuation efforts be frustrated.

DLS recommends that MALPF comment on the status of using the "Withheld Acreage Policy" to allow for surface exploration for natural gas and incorporating mineral rights into easement pricing.

4. Renewable Energy Policy on Agricultural Easements

A report on renewable energy policy on agricultural easements was requested in Section 47 of the fiscal 2011 operating budget and was to be written by MDA and the Maryland Energy Administration. The report was to include policy recommendations for allowing MALPF easement holders to implement solar or wind renewable energy generation projects that may assist in contributing to the State's renewable energy goal of 20% by 2022. To date, this report has not been received. **DLS recommends that MDA comment on why this report has not been submitted.**

Fund Data

Fund History

	FY 2012 Allowance	FY 2013 Estimate	FY 2014 Estimate	FY 2015 Estimate	FY 2016 Estimate
Beginning Balance	**$0**	**$0**	**$0**	**$0**	**$0**
Revenue					
State Transfer Tax	$0	$22,050,000	$25,600,000	$28,350,000	$28,900,000
Agricultural Transfer Tax	1,250,000	1,300,000	1,350,000	1,400,000	1,500,000
Miscellaneous Fees	50,000	50,000	50,000	50,000	50,000
Agricultural Tax Surcharge	800,000	800,000	800,000	800,000	800,000
Federal Fund Revenue	0	1,500,000	1,500,000	1,500,000	1,500,000
Local Subdivision Participation	4,000,000	18,000,000	18,000,000	12,000,000	13,000,000
Transfers to General Fund					
GO Bonds	4,367,000	6,518,000	6,518,000		
Total Revenue	**$10,467,000**	**$50,218,000**	**$53,818,000**	**$44,100,000**	**$45,750,000**
Total Funds Available	**$10,467,000**	**$50,218,000**	**$53,818,000**	**$44,100,000**	**$45,750,000**
Expenditures/Disbursements					
Operating Expenses	$1,900,000	$1,900,000	$1,900,000	$1,900,000	$1,900,000
Easements Purchases	8,567,000	48,318,000	51,918,000	42,200,000	43,850,000
Total Expenditures/Encumbrances	**$10,467,000**	**$50,218,000**	**$53,818,000**	**$44,100,000**	**$45,750,000**
Ending Balance	**$0**	**$0**	**$0**	**$0**	**$0**

GO: general obligation

Note: The data was provided on January 26, 2011. The figure reflects the contingent reduction and transfer of fiscal 2012 transfer tax revenue and the $4.4 million of general obligation bond funds intended as replacement.

Looking forward, the 2011 *Capital Improvement Program* (CIP) reflects a rebound in State transfer tax revenue and local subdivision participation. For fiscal 2013 and 2014, the pre-authorizations of $6.5 million in general obligation (GO) bonds are shown. The CIP assumes that increased revenue will allow the program to return to levels of easement purchases last seen in fiscal 2010, presumably as single fiscal year easement cycles as opposed to the combined fiscal year cycles seen in fiscal 2009-2010 and fiscal 2011-2012.

The 2011 CIP does not account for two existing funding trends, which could undermine the spending program as follows.

- **Optimistic Transfer Tax Revenue Projection** – Transfer tax revenue estimates have already been written down for fiscal 2011, and it remains to be seen if transfer tax revenue will recover to the levels reflected in the CIP in the time period shown.

- **Potential for More Transfers to the General Fund** – Continued operating budget problems could result in more transfers to the general fund in the future with repayment spread out over multiple years, which would reduce new funding for easement acquisitions.

Prior Authorization and Capital Improvement Program

Authorization Request
($ in Millions)

Fund Source	*2010 Approp.*	*2011 Approp.*	*2012 Allowance*	*2013 Estimate*	*2014 Estimate*	*2015 Estimate*	*2016 Estimate*
PAYGO SF	$10.585	$12.060	$23.755	$40.300	$43.900	$40.700	$42.350
PAYGO FF	2.000	2.000	0.000	1.500	1.500	1.500	1.500
GO Bonds	13.000	17.814	4.367	6.518	6.518	0.000	0.000
Total	**$25.585**	**$31.874**	**$28.122**	**$48.318**	**$51.918**	**$42.200**	**$43.850**

Note: The Program Open Space Acquisition Opportunity Loan of 2009 allocated up to $5.0 million of the $70.0 million authorization to MALPF and thus should be reflected in fiscal 2010 but is not since the entirety of the $70.0 million is reflected in the Program Open Space appropriation in the Department of Budget and Management's records. The fiscal 2011 appropriation amount includes $10.0 million in general obligation bond authorization that replaces prior year fund balance transferred to the general fund. The fiscal 2012 allowance includes $19.6 million in special funds that is a contingent reduction. Therefore, the fiscal 2012 allowance overstates available appropriations by $19.6 million.

The fiscal 2010 and 2011 appropriations do not reflect two substantial funding sources. The fiscal 2010 appropriation does not reflect $5 million in GO bonds from the Program Open Space Acquisition Opportunity Loan of 2009, which MALPF has determined it will use; the remainder of $65 million is being used by DNR. The fiscal 2011 appropriation does not reflect the availability of $4 million in State transfer tax revenue available due to one of the provisions of Chapter 210 of 2010, which deleted the allocation of agricultural transfer tax and State transfer tax to MARBIDCO's Installment Purchase Agreement program since the program was deemed infeasible.

MALPF's fiscal 2012 allowance reflects $23.8 million in special funds and $4.4 million in GO bond authorization; no federal funding is reflected due to ongoing concerns about federal requirements for use of its funding. Of the $23.8 million in special funds in the fiscal 2012 allowance, $19.6 million is reduced in the fiscal 2012 allowance contingent on the Budget Reconciliation and Financing Act of 2011 transferring the funding to the general fund. The remaining special fund appropriation primarily reflects local subdivision participation.

The fiscal 2012 $4.367 million GO bond authorization reflects the first installment of the planned replacement of the fiscal 2012 special funds transfer. However, the full $19.6 million will not be replaced. Instead, the fiscal 2012 funding reflects an adjustment of funding from underattainment of fiscal 2011 State transfer tax revenues. The fiscal 2013 and 2014 replacement of $6,518,000 per year is pre-authorized in the 2011 Maryland Consolidated Capital Bond Loan.

The 2011 CIP reflects a return of State transfer tax funding and local government participation under the special fund allocation, the availability of federal Farm and Ranch Lands Protection Program funding presumably due to optimism about revised federal requirements, and the out-year pre-authorizations of GO bond funding to replace the $19.6 million special fund transfer in fiscal 2012.

GO Bond Recommended Actions

1. Concur with $4,367,000 in general obligation (GO) bonds which reflects the first year installment of bonds intended to replace fiscal 2012 transfer tax revenues that by formula would have otherwise been appropriated to the Maryland Agricultural Land Preservation Foundation but are instead proposed to be transferred to the general fund in the Budget Reconciliation and Financing Act of 2011. The amount proposed to be replaced in fiscal 2012 is adjusted to reflect over-authorization of GO bonds in fiscal 2011.

2. Concur with the pre-authorization of funding for the Maryland Agricultural Land Preservation Foundation (MALPF). Section 12 of the 2011 Maryland Consolidated Capital Bond Loan pre-authorizes $6,518,000 as the second installment of the proposed three-year replacement of fiscal 2012 transfer tax revenues that by formula would be appropriated to MALPF.

3. Concur with the pre-authorization of funding for the Maryland Agricultural Land Preservation Foundation (MALPF). Section 13 of the 2011 Maryland Consolidated Capital Bond Loan pre-authorizes $6,518,000 as the third and final installment of the proposed three-year replacement of fiscal 2012 transfer tax revenues that by formula would be appropriated to MALPF.

PAYGO Recommended Actions

1. Strike the following language from the general fund appropriation:

   ~~, provided that this appropriation shall be reduced by $19,555,275 contingent upon the enactment of legislation crediting transfer tax revenues to the General Fund.~~

   Explanation: The fiscal 2012 budget bill as introduced includes a $19,555,275 reduction for Maryland Agricultural Land Preservation Foundation agricultural easement purchases contingent upon enactment of a provision in the Budget Reconciliation and Financing Act of 2011 crediting transfer tax revenues to the general fund. This action strikes that contingent reduction so that the reduction may be taken directly. The capital budget contains $4.4 million in fiscal 2012 with the plan to replace up to $17.4 million of the $19.6 million transferred through fiscal 2014. The Administration does not intend to replace the remainder, $2.2 million, because this amount was bonded in excess of current fiscal 2011 revenue estimates.

		Amount Reduction	
2.	Reduce the Maryland Agricultural Land Preservation Foundation special fund appropriation by $19,555,275 to reflect directly the Governor's contingent reduction of the property transfer tax allocated to the program. The Governor plans to transfer this funding to the general fund as part of the Budget Reconciliation and Financing Act of 2011. The Governor's capital budget includes a $4,367,000 general obligation bond authorization as the first installment of a three-year plan to replace fiscal 2012 funds transferred to the general fund.	$ 19,555,275	SF
	Total Special Fund Reductions	**$ 19,555,275**	

Tobacco Transition Program (Statewide)

GO Bonds	**$1,500,000**	**Recommendation:**	**Delete GO bond authorization of $1.5 million and reprogram to Maryland Agricultural Cost-Share Program**
PAYGO SF	**$1,238,000**		

Bill Text: Provide funds for the purchase of agricultural easements for the Tobacco Transition Program.

Program Description: In 1999, the General Assembly created the Cigarette Restitution Fund (CRF). Under the legislation, one purpose of the CRF is to fund the implementation of the Southern Maryland Regional Strategy Action Plan for Agriculture adopted by the Tri-County Council (TCC) for Southern Maryland with an emphasis on alternative crop uses for agricultural land now used for growing tobacco. Funds are appropriated to the Maryland Department of Agriculture (MDA), which then issues grants to TCC. TCC is a nonprofit, quasi-governmental body that works with the Southern Maryland Agricultural Development Commission to develop programs to stabilize the region's agricultural economy as Maryland growers transition away from tobacco production.

TCC's Strategy Action Plan has three main components: the tobacco buyout (first priority), agricultural land preservation (second priority), and infrastructure/agricultural development (third priority).

- The tobacco buyout component is a voluntary program that provides funds to (a) support all eligible Maryland tobacco growers who choose to give up tobacco production forever while remaining in agricultural production; and (b) restrict the land from tobacco production for 10 years, should the land transfer to new ownership. A total of 854 farmers and 7.65 million pounds of tobacco are enrolled in the program and out of production.

- The agricultural land preservation component seeks to provide an incentive to tobacco farmers to place land in agricultural preservation, enhance participation in existing preservation programs, and assist in the acquisition of land for farmers' markets. The 10-year agricultural land preservation goal established in 2001 is to protect 35,000 acres in the tri-county area.

- The infrastructure/agricultural development program seeks to foster profitable natural resource-based economic development for Southern Maryland by helping farmers and related businesses to diversify and develop and/or expand market-driven agricultural enterprises in the region through economic development and education.

Program Analysis and Performance Measures

The 10-year agricultural land preservation goal established in 2001, which will not be met, is to protect 35,000 acres. With the $1.5 million general obligation (GO) bond authorization, TCC intends to preserve an additional 1,000 acres, bringing the estimated cumulative acreage preserved to approximately 28,500 acres. **The Department of Legislative Services (DLS) has recommended the deletion of the $1.5 million GO bond authorization, which will defer this additional easement acreage purchased by a year.**

MDA did not provide updated numbers for the Managing for Results measures of farmers benefiting from farmers' market promotion and agri-businesses enhanced/developed. The explanation provided is that it is difficult to quantify the measures that were developed 10 years ago. **DLS recommends that MDA comment on a set of appropriate measures that reflect the status of the Tobacco Transition Program's (TTP) progress toward assisting landowners and agricultural producers of Southern Maryland transition from the 300-year old tradition of tobacco production.**

Fund Data

Fund History

	FY 2009 Actual	FY 2010 Actual	FY 2011 Appropriation	FY 2012 Allowance	FY 2013 Estimate	FY 2014 Estimate	FY 2015 Estimate	FY 2016 Estimate
Revenue								
Cigarette Restitution Funds[1]	$7,039,000	$7,039,000	$5,039,000	$5,539,000	$7,039,000	$7,039,000	$7,039,000	$7,039,000
GO Bonds	3,000,000	5,000,000	2,000,000	1,500,000	0	0	0	0
Total Funds Available	**$10,039,000**	**$12,039,000**	**$7,039,000**	**$7,039,000**	**$7,039,000**	**$7,039,000**	**$7,039,000**	**$7,039,000**
Expenditures								
Operating expenses[2]	$460,000	$460,000	$460,000	$478,000	$478,000	$478,000	$500,000	$500,000
Tobacco Buyout	7,650,000	7,650,000	2,214,000	1,238,000	842,000	319,000	0	0
Infrastructure	338,000	1,244,000	500,000	500,000	500,000	500,000	500,000	500,000
Agricultural Land Preservation[3]	1,591,000	2,685,000	2,042,000	1,500,000	1,896,000	2,419,000	2,716,000	2,216,000
GO Bond Repayment[4]			1,823,000	3,323,000	3,323,000	3,323,000	3,323,000	3,823,000
Total Expenditures	**$10,039,000**	**$12,039,000**	**$7,039,000**	**$7,039,000**	**$7,039,000**	**$7,039,000**	**$7,039,000**	**$7,039,000**
Capital								
Tobacco Buyout	$7,650,000	$7,650,000	$2,214,000	$1,238,000	$842,000	$319,000	$0	$0
Agricultural Land Preservation	1,591,000	2,685,000	2,042,000	1,500,000	1,896,000	2,419,000	2,716,000	2,216,000
Total Capital Budget	**$9,241,000**	**$10,335,000**	**$4,256,000**	**$2,738,000**	**$2,738,000**	**$2,738,000**	**$2,716,000**	**$2,216,000**

GO: general obligation

[1] The allocation of Cigarette Restitution Fund revenues was reduced in fiscal 2009 by the Board of Public Works and extended to out-years fiscal 2010 through 2016.
[2] The funds required for administration and infrastructure are budgeted under the Maryland Department of Agriculture operating budget.
[3] The $1.5 million GO bond authorization for fiscal 2012 reflects the replacement of Cigarette Restitution Fund special funds transferred to Medicaid. The GO bonds will be used for agricultural land preservation and thus can be seen as a portion of the agricultural land preservation component of the expenditures.
[4] Chapter 103 of 2001 requires the repayment of bond proceeds and issuance costs within eight years of the last bond authorization. The $3,323,000 for tobacco buyout bond repayment in fiscal 2012 is budgeted in the Maryland Department of Agriculture's operating budget.

Source: Maryland Department of Agriculture

The fund history reflects level funding from the CRF of $7.0 million per year through fiscal 2016. Operating expenses are shown to rise moderately, and the tobacco buyout gradually declines until the final payment in fiscal 2014. Agricultural land preservation funding increases commensurately with the decrease in tobacco buyout payments over the time period shown. Funding for infrastructure grants is held steady at $500,000.

Prior Authorization and Capital Improvement Program

Authorization Request
($ in Millions)

Fund Source	*2010 Approp.*	*2011 Approp.*	*2012 Allowance*	*2013 Estimate*	*2014 Estimate*	*2015 Estimate*	*2016 Estimate*
PAYGO SF	$5.335	$2.256	$1.238	$2.738	$2.738	$2.716	$2.216
GO Bonds	5.000	2.000	1.500	0.000	0.000	0.000	0.000
Total	**$10.335**	**$4.256**	**$2.738**	**$2.738**	**$2.738**	**$2.716**	**$2.216**

Funds in the fiscal 2012 allowance are spread among three different areas of MDA's budget as follows:

- $4,301,000 in CRF special funds in the operating budget for tobacco bond repayment ($3,323,000), noncapital grants for infrastructure/agricultural development programs ($500,000), and administrative expenses ($478,000);

- $1,238,000 in CRF special funds in the pay-as-you-go budget for the tobacco buyout program; and

- $1,500,000 in GO bonds in the capital budget for agricultural land preservation.

Authorization of GO bonds for the TTP began in fiscal 2004 and ended with the $5 million authorization in fiscal 2010; the funding was authorized by a provision in the 2006 Maryland Consolidated Capital Bond Loan, which altered the use of GO bonds for the tobacco buyout funding plan that were originally laid out in Chapter 103 of 2001.

Buyout payments decrease to $842,000 in fiscal 2013, $319,000 in fiscal 2014, and then to $0 in fiscal 2015. The 2011 *Capital Improvement Program* reflects the Governor's adoption of a revised bond repayment schedule. The Governor's revised schedule is a payment of $1.8 million in fiscal 2011, $3.3 million from fiscal 2012 through 2016, and payments of $3.8 million from fiscal 2016 to 2018 to round out the $26.6 million required payment.

GO Bond Recommended Actions

1. Delete authorization.

LA15A Tobacco Transition Program.. $ 0

Allowance	Change	Authorization
1,500,000	-1,500,000	0

Explanation: The Department of Legislative Services recommends deleting the general obligation (GO) bond funding as these funds which are used to fund the purchase of agricultural land easements duplicate what is already being funded through the Maryland Agricultural Land Preservation Foundation program. It is recommended that these GO authorizations instead be used to supplement funding for the Maryland Agricultural Cost-Share Program.

PAYGO Recommended Actions

1. Concur.

Maryland Agricultural Cost-Share Program (Statewide)

GO Bonds	**$6,000,000**	**Recommendation:**	**Add GO bond authorization of $1.5 million from reprogrammed Tobacco Transition Program funding**

Bill Text: Provide funds for financial assistance for the implementation of best management practices that reduce soil and nutrient runoff from Maryland farms. The funds appropriated for this purpose shall be administered in accordance with §§ 8-701 through 8-705 of the Agriculture Article.

Program Description: The Maryland Agricultural Cost-Share (MACS) Program provides financial assistance to Maryland farmers for installing 1 or more of 30 nationally recognized best management practices (BMPs) that reduce soil and nutrient runoff from farmland. The program requires a minimum of 12.5% cost-share match from grantees. The maximum levels of assistance currently available through MACS are described below.

Animal waste treatment and containment projects are funded:

- up to $100,000 per project, with a maximum of $150,000 per farm when combined with other BMPs; and
- up to $100,000 per project under a pooling agreement to solve a pollution problem on two or more farms.

All other BMPs are funded:

- up to $35,000 per project, with a maximum of $75,000 per farm; and
- up to $70,000 per project under a pooling agreement to solve a pollution problem on two or more farms.

Program Analysis and Performance Measures

Exhibit 6 shows MACS nutrient loading reductions. **The Department of Legislative Services (DLS) recommends that the Maryland Department of Agriculture (MDA) comment on what the out-year goals are for nutrient and sediment loading so that future load reductions may be compared against these goals.**

Exhibit 6
MACS Nutrient Loading Reductions
Fiscal 2006-2010

	2006	2007	2008	2009	2010
Nitrogen (pounds)	103,493	129,363	112,241	94,024	120,000
Phosphorus (pounds)	6,633	7,547	7,079	6,299	48,317

MACS: Maryland Agricultural Water Quality Cost-Share Program

Note: Sediment loads are not shown because the Department of Agriculture is waiting for updated modeling information from the U.S. Environmental Protection Agency.

Source: Maryland Department of Agriculture

Prior Authorization and Capital Improvement Program

Authorization Request
($ in Millions)

Fund Source	*2010 Approp.*	*2011 Approp.*	*2012 Request*	*2013 Estimate*	*2014 Estimate*	*2015 Estimate*	*2016 Estimate*
PAYGO SF	$0.980	$0.800	$0.000	$0.000	$0.000	$0.000	$0.000
GO Bonds	7.000	10.000	6.000	8.500	8.500	8.500	8.500
Total	**$7.980**	**$10.800**	**$6.000**	**$8.500**	**$8.500**	**$8.500**	**$8.500**

The special funds reflected in the prior authorizations above reflect allocations from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund. They fund animal waste management best management practices and Conservation Reserve Enhancement Program bonus payments for riparian buffer best management practices of forest/grass buffers/wetland restoration. No funding from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund is anticipated in fiscal 2012.

The fiscal 2012 allowance provides $6.0 million in general obligation (GO) bond funds for MACS, a decrease of $4.0 million relative to the fiscal 2011 GO bond authorization or a decrease of $4.8 million when the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund allocation for fiscal 2011 is included. Relative to what was programmed in the 2010 *Capital Improvement Program* (CIP), the fiscal 2012 allowance decreases by $1.5 million in GO bond authorization. The 2011 CIP projects an authorization increase to $8.5 million in fiscal 2013, which is then held at this level through fiscal 2016.

Exhibit 7 reflects the focus of MACS funding on meeting the two-year milestones for Chesapeake Bay restoration – the evolving approach to meeting Chesapeake Bay nutrient and sediment loading goals in two-year increments**.** MACS funding would support 15 of the agricultural best management practices included within the two-year milestones.

Exhibit 7
MACS Best Management Practices Supporting Two-year Milestones
Fiscal 2012

Best Management Practice	Unit	Proposed Activity Level	Annual Nitrogen Reductions	Funding	$/Unit	$/Pound Nitrogen Reduced
Retire Highly Erodible Land – Private	acres	121	1,156	$570,780	$4,717	$494
Heavy Use Poultry Area Concrete Pads	farms	90	19,800	3,150,000	35,000	159
Livestock Waste Structures	structures	26	13,806	1,950,000	75,000	141
Poultry Waste Structures	structures	30	6,300	757,500	25,250	120
Wetland Restoration – Private	acres	200	5,456	600,000	3,000	110
Runoff Control Systems	systems	30	2,070	153,090	5,103	74
Stream Protection without Fencing	acres	1,000	3,400	205,000	205	60
Streamside Forest Buffers – Private	acres	90	2,455	126,000	1,400	51
Phosphorus-absorbing Ditch Retrofits	acres	200	400	20,000	100	50
Stream Protection with Fencing	acres	700	4,753	199,500	285	42
Water Control Structures	acres	450	1,350	56,250	125	42
Soil Conservation and Water Quality Plans	acres	45,000	27,900	450,000	10	16
Road Erosion and Sediment	acres	1,000	10,000	150,000	150	15
Tree Shelters, Poultry Houses	acres	60	10,002	84,000	1,400	8
Streamside Grass Buffers – Private	acres	250	4,230	25,000	100	6
Total			**113,078**	**$8,497,120**		

MACS: Maryland Agricultural Water Quality Cost-Share Program

Source: Department of Budget and Management

Exhibit 7 reflects a range of cost-effectiveness for nutrient reduction. The best management practice Soil Conservation and Water Quality Plans is notable for its inexpensiveness but appears to be underutilized. **DLS recommends that MDA comment on why Soil Conservation and Water Quality Plans are not more widely used as a MACS best management practice. DLS also recommends that $1.5 million of Tobacco Transition Program GO bond authorization be reprogrammed to MACS to reflect the importance of meeting the demand for best management practices generated by the two-year milestones process and to balance the lack of an appropriation from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund in fiscal 2012.**

The continued high level of funding for MACS in the CIP reflects the need to meet the following:

- cost sharing for enhanced Conservation Reserve Enhancement Program eligibility and benefits;
- additional program expenditures anticipated from changes to the maximum level of State funding assistance brought about through Chapter 77 of 2006;
- new activity from concentrated animal feeding operations subject to updated Maryland Department of the Environment and potentially U.S. Environmental Protection Agency discharge permit requirements; and
- two relatively new practices – heavy use areas (associated with poultry houses) and water control structures (reduces nutrients in water management systems).

Authorization Encumbrance and Expenditure Data

Authorization Summary
($ in Millions)

		Funds		*Balances*	
Fiscal Year	*Authorization*	*Encumbered*	*Expended*	*To Be Encumbered*	*To Be Expended*
Prior Years	$88.658	$88.658	$88.658	0.000	0.000
2007	4.578	4.578	4.578	0.000	0.000
2008	3.608	3.608	3.608	0.000	0.000
2009	4.800	4.800	4.727	0.000	0.073
2010	7.980	7.980	7.580	0.000	0.400
2011	10.800	4.300	0.375	6.500	10.425
Total	**$120.424**	**$113.924**	**$109.526**	**$6.500**	**$10.898**

Note: The data was provided on January 28, 2011.

The authorization summary reflects only $0.5 million in fiscal 2009 and 2010 funding that has not been expended, which is a dramatic improvement from the $3.5 million that was reflected for fiscal 2008 and 2009 at the same time last year. MDA no longer keeps track of reverted funds available for new projects. This is because projects are encumbered on a project-by-project basis at the end of the year in the State's accounting system.

GO Bond Recommended Actions

1. Increase authorization level.

LA12A Maryland Agricultural Cost-Share Program .... $ 7,500,000

Allowance	Change	Authorization
6,000,000	1,500,000	7,500,000

Explanation: This action reprograms $1.5 million in general obligation bond authorization from the Tobacco Transition Program to the Maryland Agricultural Cost-Share Program in order to reflect the importance of funding agricultural best management practices for Chesapeake Bay restoration.