

LA11
Department of Agriculture – Capital

Capital Budget Summary

Grant and Loan Programs
(\$ in Millions)

	<i>FY 2012 Approp.</i>	<i>FY 2013 Approp.</i>	<i>FY 2014 Allowance</i>	<i>FY 2014 Adjusted</i>	<i>% Change FY 2013 Approp. – FY 2014 Adjusted</i>	<i>DLS Recommd.</i>
Maryland Agricultural Land Preservation Program ¹	\$15.333	\$17.456	\$54.821	\$36.714	214.1%	\$45.483
Tobacco Transition Program	1.238	2.736	2.236	2.236	-18.3%	1.853
Maryland Agricultural Cost-Share Program	6.000	0.000	3.750	3.750	n/a	3.750
Total	\$22.571	\$20.192	\$60.807	\$42.700	201.1%	\$51.086

¹ The fiscal 2013 appropriation amount includes \$8.7 million in general obligation (GO) bond authorization for the Maryland Agricultural Land Preservation Program (MALPP) that replaces prior year fund balance transferred to the general fund. The fiscal 2014 special fund allowance for MALPP includes \$18.1 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 2013 and \$12.7 million in prior year replacement GO bond authorization. The amounts reflected in the fiscal 2014 allowance column include the contingent appropriation and the prior year replacement GO bond authorization. The fiscal 2014 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.

Summary of Issues

Transfer Tax Modification Proposal: The Governor has proposed a change in the transfer tax allocation in order to close the State’s structural deficit. The plan would divert \$410.7 million in transfer special funds to the general fund over five years and replace the funding with \$405.1 million in general obligation (GO) bond authorizations over seven years. An alternative would be to direct \$25.0 million in capital-eligible transfer tax allocation program funding to the general fund and to modify the transfer tax formula at the point before funding is allocated to the various operating and capital programs in order to allow for \$25.0 million annually to be used for operating relief in the Department of Natural Resources’ Natural Resources Police. **The Department of Legislative Services (DLS) recommends that the contingent reduction on the Maryland Agricultural Land Preservation Program’s (MALPP) fiscal 2014 special fund appropriation be modified to reflect a \$9,338,000 reduction in concert with modifications to Budget Reconciliation and Financing Act of 2013 provisions proposed for the transfer tax allocation. In addition, DLS recommends that pre-authorizations of GO bond authorization for MALPP fiscal 2014-2018 replacement funding be deleted.**

Tobacco Transition Program Goal Met: The Tri-County Council’s (TCC) overall work includes developing programs to stabilize Southern Maryland’s agricultural economy as Maryland growers transition away from tobacco production. However, the first priority is the tobacco buyout. Under the buyout, TCC provided funds to (1) support all eligible Maryland tobacco growers who chose to give up tobacco production forever while remaining in agriculture; and (2) 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. Final tobacco buyout funding is programmed for fiscal 2014, and the final repayment of GO bond funding, which was provided in order to accelerate the buyout, is scheduled for fiscal 2018. **DLS recommends that funding for the Tobacco Transition Program be phased out in equal increments over the next five years in the Maryland Department of Agriculture’s (MDA) operating budget such that fiscal 2018 is the final year of funding in order to reflect the accomplishment of the Tobacco Transition Program’s main goal – the tobacco buyout.**

Easement Termination Requests Heard: Before September 30, 2004, MALPP easements approved for purchase by the Board of Public Works allowed for landowners to request that the easement be reviewed for possible termination. Easements approved for purchase after September 30, 2004, are perpetual. MALPP has received three applications for termination, of which one has been addressed in separate MALPP and county hearings. **DLS recommends that MDA comment on the State’s potential exposure to easement terminations in terms of the number of farms, the amount of acreage, the likelihood that the termination conditions eventually will be met, and how MDA would approach a lawsuit charging MALPP with a “takings” of property rights.**

Maryland Agricultural Land Preservation Program Audit Findings: MALPP is audited annually by the Office of Legislative Audits. The most recent findings came out on June 6, 2012, and cover the period beginning July 1, 2010, and ending June 30, 2011. MALPP resolved one of the findings from the previous audit concerning the fact that MALPP had not established procedures to ensure taxes remitted by the counties were supported by monthly reports. To resolve the audit finding,

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MALPP reviews Comptroller-posted entries with monthly reports from the counties. The two repeat findings concern easement acquisitions and county agricultural land transfer taxes. **DLS recommends that MDA comment on the results of the proposed database accuracy test and how the meeting with county administrators and finance staff went.**

Summary of Recommended PAYGO Actions

1. Capital Appropriation

Modify the contingent reduction for the Maryland Agricultural Land Preservation Program capital appropriation.

2. Tobacco Transition Program

Concur with Governor’s allowance for the Tobacco Transition Program.

Summary of Recommended Bond Actions

	<u>Funds</u>
1. Tobacco Transition Program	\$383,400 GO
Reduce the \$1,917,000 general obligation bond authorization for Tri-County Council agricultural land preservation to reflect the proposed phasing out of the program over five years.	
2. Maryland Agricultural Cost-Share Program	
Approve the \$3,750,000 general obligation bond authorization for the Maryland Agricultural Cost-Share Program.	
3. Maryland Agricultural Land Preservation Program	
Approve the \$12,653,000 general obligation bond authorization for the Maryland Agricultural Land Preservation Program.	
4. Maryland Agricultural Land Preservation Program	
Modify the pre-authorization of general obligation bond funding.	
Total Reductions	\$383,400

Program Description

The Maryland Department of Agriculture (MDA) capital program is comprised of the Maryland Agricultural Land Preservation Program (MALPP), the Tobacco Transition Program, and the Maryland Agricultural Cost-Share (MACS) Program. The programs fit under MDA's goals to preserve adequate amounts of productive agricultural land and woodland in Maryland; promote profitable production, use and sale of Maryland agricultural products; and provide and promote land stewardship. Descriptions of the three programs follow.

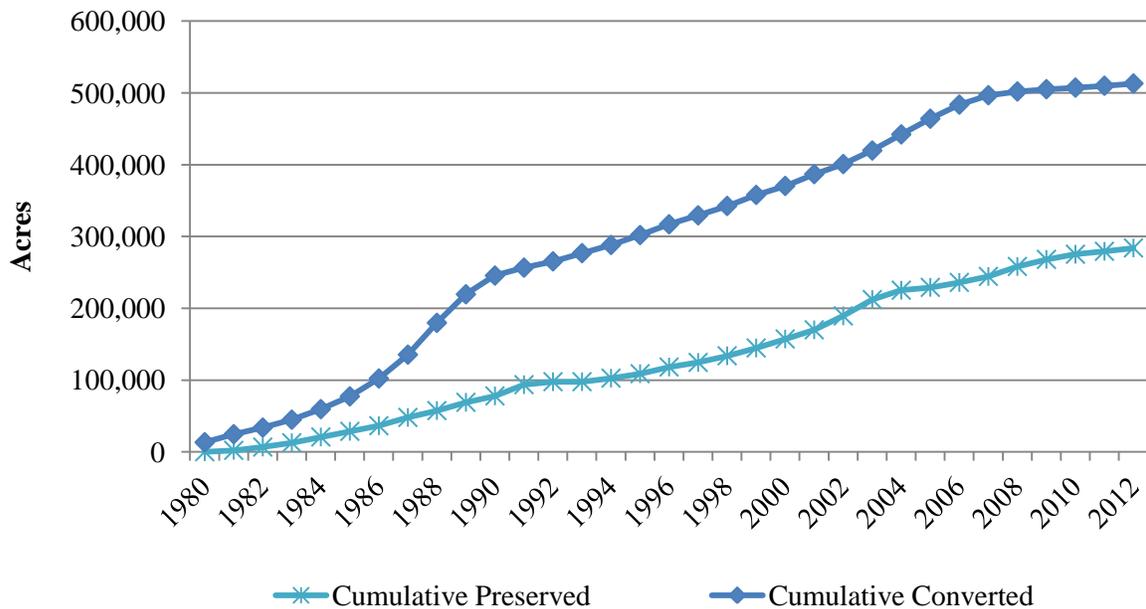
- **Maryland Agricultural Land Preservation Program** – The General Assembly created MALPP to preserve productive agricultural land and woodland which provides for the continued production of food and fiber; limit the extent of urban development; and protect agricultural land and woodland as open space. 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. 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.
- **Tobacco Transition Program** – 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 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). Final tobacco buyout funding is programmed for fiscal 2014.
- **Maryland Agricultural Cost-Share Program** – The MACS Program provides financial assistance to Maryland farmers for installing 1 or more of 30 nationally recognized best management practices (BMP) that reduce soil and nutrient runoff from farmland. The program requires a minimum 12.5% cost-share match from grantees. Animal waste treatment and containment projects are funded up to \$200,000 per project, with a maximum of \$300,000 per farm for all animal waste management practices and up to \$450,000 per farm when combined with other BMPs, and up to \$200,000 per project under a pooling agreement to solve a pollution problem on two or more farms. All other BMPs are funded up to \$50,000 per project, with a maximum of \$150,000 per farm per person; and up to \$100,000 per project under a pooling agreement to solve a pollution problem on two or more farms.

Program Performance Measures and Outputs

Maryland Agricultural Land Preservation Program

Agricultural land is desirable for conversion to other uses, such as residential development. MALPP is one tool for keeping farmland in agriculture, as is the agricultural use assessment for taxation purposes. **Exhibit 1** reflects the cumulative agricultural land preserved by MALPP versus the agricultural land converted from fiscal 1980 to 2012. During this time period, the amount of cumulative agricultural land converted has exceeded the cumulative amount conserved. From fiscal 1980 to 1990 and again from fiscal 2004 to 2007, the amount of farmland converted annually exceeded the amount of farmland preserved annually. Since about fiscal 2007, more land has been preserved annually than converted. For instance, in fiscal 2012, 3,130 acres were converted, and 4,692 acres were preserved.

Exhibit 1
Cumulative Agricultural Land Preserved by MALPP Versus Converted
Fiscal 1980-2012



MALPP: Maryland Agricultural Land Preservation Program

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

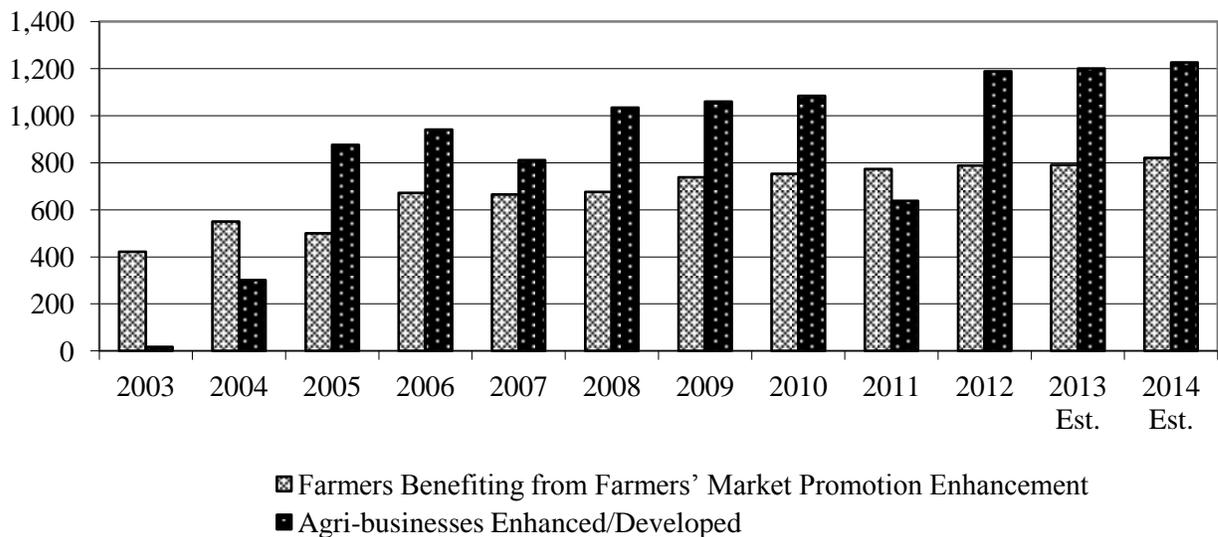
Source: Maryland Department of Agriculture; Department of Legislative Services

Tobacco Transition Program

The 10-year agricultural land preservation goal established in 2001 for the Tobacco Transition Program is to protect 35,000 acres. TCC indicates that 232 farms and 27,604 acres have been preserved using its own funding and leveraged funds from counties. Of this amount, 138 farms and 14,134 acres have been preserved with solely TCC funding. However, with the \$1.9 million general obligation (GO) bond authorization in fiscal 2014, TCC estimates that cumulative acreage will increase to approximately 29,100 acres on 247 farms, a marked increase from the current 27,604 acres of preserved agricultural land. **The Department of Legislative Services (DLS) recommends that TCC comment on how an additional 1,496 acres would be preserved under the proposed funding. DLS also has recommended the reduction of the \$1.9 million GO bond authorization by \$383,400 as part of a proposed five-year phase-out of the TCC funding, which will defer additional easement acreage purchased by a year.**

Exhibit 2 shows the number of farmers benefiting from farmers’ market promotion and agri-businesses enhanced/developed as a result of tours, education, trade fairs, grants, and workshops. In general, there has been an increasing trend for both measures. However, the number of agri-businesses enhanced/developed declined between fiscal 2010 (1,083) and 2011 (637). **DLS recommends that MDA comment on why the number of agri-businesses enhanced/developed declined between fiscal 2010 and 2011 and the impact of the TCC on the overall health of the local agricultural economy.**

Exhibit 2
Tobacco Transition Program Performance Measures
Fiscal 2003-2014



Source: Governor’s Budget Books, Fiscal 2006-2011; Southern Maryland Agricultural Development Commission

Capital Improvement Program

Grant and Loan Capital Improvement Program (\$ in Millions)

	<i>2012 Approp.</i>	<i>2013 Approp.</i>	<i>2014 Allowance</i>	<i>2015 Estimate</i>	<i>2016 Estimate</i>	<i>2017 Estimate</i>	<i>2018 Estimate</i>
Maryland Agricultural Land Preservation Program	\$15.333	\$17.456	\$54.821	\$39.867	\$42.276	\$42.438	\$43.886
Tobacco Transition Program	1.238	2.736	2.236	2.736	2.236	2.236	2.236
Maryland Agricultural Cost-Share Program	6.000	0.000	3.750	7.000	7.250	7.500	7.750
Total	\$22.571	\$20.192	\$60.807	\$49.603	\$51.762	\$52.174	\$53.872

Looking forward, the 2013 *Capital Improvement Program* (CIP) reflects a rebound in State transfer tax revenue and local subdivision participation for MALPP, continued funding for the Tobacco Transition Program, and an increase in funding for MACS. Pre-authorizations of GO bonds are reflected for MALPP in fiscal 2015 (\$15.2 million), 2016 (\$17.0 million), 2017 (\$16.1 million), and 2018 (\$16.9 million).

<i>Description</i>	<i>2012 Approp.</i>	<i>2013 Approp.</i>	<i>2014 Allowance</i>	<i>2015 Estimate</i>	<i>2016 Estimate</i>	<i>2017 Estimate</i>	<i>2018 Estimate</i>
PAYGO SF	\$12.204	\$9.592	\$42.487	\$27.415	\$27.545	\$28.581	\$29.245
GO Bonds	10.367	10.600	18.320	22.188	24.217	23.593	24.627
Total	\$22.571	\$20.192	\$60.807	\$49.603	\$51.762	\$52.174	\$53.872

Budget Overview

The fiscal 2014 allowance includes \$42.5 million in special funds and \$18.2 million in GO bonds. However, the allowance includes \$18.1 million in special funds that are to be contingently reduced if the Budget Reconciliation and Financing Act (BRFA) of 2013 provision to transfer this amount of special funds to the general fund is enacted.

Contingent Reductions and Multi-year GO Bond Replacement

As shown in **Exhibit 3**, the fiscal 2014 allowance reflects three interrelated calculations and actions as follows.

- **Fiscal 2014-2018 Transfer Tax Revenue Diverted to General Fund** – The BRFA of 2013 diverts \$410.7 million in estimated transfer tax revenue to the general fund over five years beginning with fiscal 2014. The \$89.2 million proposed to be transferred from fiscal 2014 revenues is attributable to the following:
 - \$71,091,338 in the Department of Natural Resources (DNR) including Program Open Space (POS) – State share (\$21,944,526), POS – Local share (\$23,727,620), POS Capital Improvements (\$14,690,351), and Rural Legacy Program (\$10,728,841); and
 - \$18,107,000 in MALPP funding.
- **Seven-year GO Bond Replacement Plan** – The Governor has proposed a multi-year replacement plan utilizing GO bond funds to replace all but \$5.6 million of proposed transfers. The 2013 session capital budget bill includes pre-authorizations that span seven years, as shown in Exhibit 3.
- **Prior Year Transfers Replaced with GO Bonds** – The fiscal 2014 allowance includes \$55.0 million in GO bonds for replacement of prior year transfer taxes transferred to the general fund. This includes funding for POS – State (\$15,093,000), POS – Local (\$17,846,000), Rural Legacy Program (\$9,456,000), and MALPF (\$12,653,000).

Exhibit 3
Transfer Tax Diversions and Multi-year General Obligation Bond
Replacement Plan
Fiscal 2014-2020

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Total</u>
Special Funds Transferred to the General Fund	\$89.2	\$75.1	\$77.7	\$82.8	\$86.0	\$0.0	\$0.0	\$410.7
Special Funds to Programs	\$37.4	\$75.1	\$77.7	\$82.8	\$86.0			
GO Bond Replacement to Programs	9.0	37.3	74.8	76.4	80.2	84.4	43.0	405.1
Prior GO Bond Replacement to Programs	55.0	29.8						
Total Funding to Programs	\$101.5	\$142.1	\$152.4	\$159.1	\$166.2			

GO: general obligation

Fiscal 2014: Transfer 67% of the capital-eligible transfer tax allocations for land preservation programs and 100% of the capital-eligible transfer tax allocation for capital development programs to the general fund. Bond replacement for land preservation programs is scheduled in fiscal 2015 and 2016.

Fiscal 2015-2018: Transfer amounts estimated to be 50% of the capital-eligible transfer tax allocation to the general fund and replace with GO bonds in the following two fiscal years.

Note: Transfer tax revenue estimates for fiscal 2019 and 2020 are unavailable to reflect estimates of program funding.

Source: Department of Budget and Management

New Funding in the Fiscal 2014 Allowance

Exhibit 4 shows the available fiscal 2014 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 2014 appropriation. After accounting for these adjustments, the proposed fiscal 2014 funding level is \$18.6 million higher than what was provided in fiscal 2013. This primarily reflects a greater amount of MALPP special fund revenue being appropriated. Tobacco Transition Program funding decreases due to end of the tobacco buyout payments. Fiscal 2014 funding is provided for MACS, but at a level lower than programmed in the 2012 CIP as a result of available prior year bond authorizations.

Exhibit 4
Department of Agriculture Capital Budget Changes by Fund
Fiscal 2013-2014
(\$ in Millions)

<u>Program</u>	<u>Fund</u>	<u>2013</u>	<u>2014</u>	<u>Difference</u>
Maryland Agricultural Land Preservation Program	SF	\$8.8	\$24.1	\$15.3
	FF	0.0	0.0	0.0
	GO	0.0	0.0	0.0
Subtotal		\$8.8	\$24.1	\$15.3
Tobacco Transition Program	SF	\$0.8	\$0.3	-\$0.5
	GO	1.9	1.9	0.0
Subtotal		\$2.7	\$2.2	-\$0.5
Maryland Agricultural Cost-Share Program	GO	\$0.0	\$3.8	\$3.8
Subtotal		\$0.0	\$3.8	\$3.8
Total		\$11.5	\$30.1	\$18.6

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

Note: The exhibit does not include either prior year replacement bond funding or the special funds that are contingently reduced.

Source: Department of Legislative Services

Maryland Agricultural Land Preservation Program

MALPF’s fiscal 2014 allowance reflects \$42.2 million in special funds and \$12.7 million in GO bond authorization. Of the \$42.2 million in special funds in the fiscal 2014 allowance, \$18.1 million is reduced contingent on the BRFA of 2013 transferring the funding to the general fund. In addition, the entirety of the \$12.7 million in GO bond authorization replaces prior year funding. Therefore, there is only \$24.1 million in special funds in new fiscal 2014 funding. The remaining special fund appropriation reflects both transfer tax revenue and local subdivision participation. Due to funding reductions, the MALPF Board of Trustees voted to combine fiscal 2013 and 2014 funds into one easement cycle at the April 24, 2012 board meeting.

The estimated cost per acre for MALPF easement is projected to be \$4,500 for fiscal 2014. This is greater than the DNR Rural Legacy Program cost per acre of \$3,200 because of differences in how easement purchase prices are determined in each of the programs and the lower value of forested acreage – a greater percentage of Rural Legacy Program easement purchases – than of higher value agricultural acreage.

Tobacco Transition Program

Funds in the fiscal 2014 allowance are spread among three different areas of MDA’s budget as follows:

- \$4,303,000 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 (\$480,000);
- \$319,000 in CRF special funds in the pay-as-you-go budget for the tobacco buyout program (this reflects the last buyout payment); and
- \$1,917,000 in GO bonds in the capital budget for agricultural land preservation.

Authorization of GO bonds for the Tobacco Transition Program began in fiscal 2004 and ended with the \$5.0 million authorization in fiscal 2010; the funding was authorized by a provision in the Maryland Consolidated Capital Bond Loan of 2006, which altered the use of GO bonds for the tobacco buyout funding plan that were originally laid out in Chapter 103 of 2001. The payment schedule is \$1.8 million in fiscal 2011, \$3.3 million from fiscal 2012 through 2015, and payments of \$3.8 million from fiscal 2016 to 2018 to round out the \$26.6 million required payment.

Maryland Agricultural Water Quality Cost-Share Program

The fiscal 2014 allowance for MACS is \$3.8 million. This reflects the return of funding for MACS after the one-year funding hiatus in fiscal 2013. Even with the one-year funding hiatus, MDA still anticipates having \$4.3 million available at the end of fiscal 2013, which it will roll into fiscal 2014. Therefore, the total available funding for fiscal 2014 would be the \$3.8 million new authorization plus the \$4.3 million rolled over authorization or \$8.1 million. Of note, between fiscal 2009 and 2012, MDA only encumbered an average of \$6.6 million per year in MACS. **DLS recommends that MDA comment on its ability to encumber \$8.1 million in fiscal 2014 given that it has not attained this level of program activity in recent years.**

In addition to the State funding available for farmers, there is federal Environmental Quality Incentives Program funding that farmers receive directly for implementing BMPs. For instance, Environmental Quality Incentives Program funding was available in federal fiscal 2010 (\$6.6 million), 2011 (\$5.8 million), and 2012 (\$11.3 million). MDA indicates that the authorization for federal fiscal 2013 is \$11.0 million. In terms of program characteristics, the Environmental Quality Incentives Program funds best management practices that are not addressed by MACS, it allows producers 3 to 10 years to implement best management practices, and until recently, had a

higher cap than MACS. MACS, in contrast, requires that best management practices be installed within 1 year with a possible 1-year extension.

The question arises whether MACS could benefit from a change in program scope. For instance, it is not clear how many farmers may be discouraged from using MACS due to the cost-share requirement. A solution to this concern would be to provide 100% grants instead. MDA indicates that the cost-share requirement is in place to ensure that the participant has an economic stake in maintaining the best management practice throughout the life of the practice.

Future demand may increase for MACS due to the enactment of Chapter 428 of 2012 (Agriculture – Cost Sharing for Water Pollution Control), which raised the maximum amount of State cost sharing for water pollution control projects from \$100,000 to \$200,000. This new maximum funding amount became effective December 24, 2012. In addition, MDA indicates that new nutrient management regulations became effective on October 15, 2012, and that the phased-in deadlines for the regulations will affect the rate of applications for cost-share stream fencing and manure storage. **DLS recommends that MDA comment on the combined impact of the increase in the per project cap for best management practices and the expected impact on program need from the nutrient management regulations.**

Summary of Pre-authorizations

The fiscal 2014 capital budget bill includes a number of pre-authorizations related to the replacement of transfer tax funding diverted to the general fund, as shown in **Exhibit 5**.

Exhibit 5
Pre-authorizations
Fiscal 2015-2020

<u>Fiscal Year</u>	<u>Program</u>	<u>Description</u>	<u>Amount</u>	<u>DLS Recommendation</u>
2015	MALPP	Pre-authorize \$15.2 million for special fund replacement	\$15,188,000	Reduce by \$9,054,000
2016	MALPP	Pre-authorize \$17.0 million for special fund replacement	16,967,000	Delete
2017	MALPP	Pre-authorize \$17.0 million for special fund replacement	16,093,000	Delete
2018	MALPP	Pre-authorize \$17.0 million for special fund replacement	16,877,000	Delete
2019	MALPP	Pre-authorize \$17.0 million for special fund replacement	17,727,000	Delete
2020	MALPP	Pre-authorize \$17.0 million for special fund replacement	9,029,000	Delete

DLS: Department of Legislative Services

MALPP: Maryland Agricultural Land Preservation Program

Source: Department of Legislative Services

Authorization Encumbrance and Expenditure Data

Exhibit 6 reflects the encumbrance and expenditure history for MACS. The total authorization through fiscal 2013 is \$124.6 million, of which \$8.2 million remains to be encumbered. If MDA’s spending plan holds, then there will be \$4.3 million available for fiscal 2014.

Exhibit 6
Maryland Agricultural Cost-Share Program
Encumbrances and Expenditures
Program Inception through November 2012
(\$ in Millions)



GO: general obligation

Source: Maryland Department of Agriculture; Department of Budget and Management

Issues

1. Transfer Tax Modification Proposal

The Governor has proposed a five-year change in the transfer tax allocation in order to close the State’s overall structural deficit. The Governor’s proposal is to divert \$410.7 million in transfer special funds to the general fund over five years and then to replace the funding with \$405.1 million in GO bond authorizations over seven years.

DLS has provided two alternative plans. The recommended option is to direct \$25.0 million in capital-eligible transfer tax allocation program funding to the general fund and to modify the transfer tax formula at the point before funding is allocated to the various operating and capital programs in order to allow for \$25.0 million annually to be used for operating relief in the Department of Natural Resources’ Natural Resources Police. The transfers attributable to MALPP total \$47.4 million over five years and would be as follows:

- Fiscal 2014 – \$9,338,000;
- Fiscal 2015 – \$9,535,000;
- Fiscal 2016 – \$9,529,000;
- Fiscal 2017 – \$9,517,000; and
- Fiscal 2018 – \$9,510,000.

The General Assembly may not wish to follow the replacement schedule but instead handle replacement on a year-to-year basis as conditions merit. Of note, the GO bond replacement of the \$405.1 million reflected in the Governor’s plan puts additional strain on the capital budget and means other important infrastructure needs are deferred simply to ensure that the programs funded from the transfer tax remains intact.

The Department of Legislative Services (DLS) recommends that the contingent reduction on the MALPP’s fiscal 2014 special fund appropriation be modified to reflect a \$9,338,000 reduction in concert with modifications to BRFA of 2013 provisions proposed for the transfer tax allocation. In addition, DLS recommends that pre-authorizations of GO bond authorization for MALPP fiscal 2014-2018 replacement funding be deleted.

2. Tobacco Transition Program Goal Met

TCC's overall works includes developing programs to stabilize Southern Maryland's agricultural economy as Maryland growers transition away from tobacco production. However, the first priority is the tobacco buyout. Under the buyout, TCC provided funds to (1) support all eligible Maryland tobacco growers who chose to give up tobacco production forever while remaining in agriculture; and (2) 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.

Final tobacco buyout funding is programmed for fiscal 2014, and the final repayment of GO bond funding, which was provided in order to accelerate the buyout, is scheduled for fiscal 2018. **DLS recommends that funding for the Tobacco Transition Program be phased out in equal increments over the next five years in MDA's operating budget such that fiscal 2018 is the final year of funding in order to reflect the accomplishment of the Tobacco Transition Program's main goal – the tobacco buyout.**

3. Easement Termination Requests Heard

Before September 30, 2004, MALPP easements approved for purchase by the Board of Public Works (BPW) allowed for landowners to request that the easement be reviewed for possible termination. MALPP indicates that an easement may only be terminated if (1) the county governing body, after receiving the recommendation of the county agricultural preservation advisory board, approves it; (2) MALPP determines that profitable farming is no longer feasible on the land; and (3) BPW approves termination. Furthermore, MALPP indicates that if an easement is terminated, then the current and any future landowner would have the ability to subdivide and develop the land as provided under local zoning laws and regulations. Easements approved for purchase after September 30, 2004, are perpetual.

MALPP has received three applications for termination, of which one has been addressed in separate MALPP and county hearings. The Mullinix Brothers Partnership in Howard County is the one request to be addressed in a public hearing so far. The easements were purchased over 25 years ago on three farms owned by the partnership as follows:

- Murray Farm – Mt. Airy (166 acres);
- Home Farm – Dayton (123 acres); and
- Howard Farm – Dayton (201 acres).

The Murray Farm is the one Mullinix Brothers Partnership farm to be considered so far. The MALPP Board held a public hearing on November 15, 2012, and the item was brought before the Howard County Council in early February 2013. MALPP indicates that the outcome of the requests for termination by the Mullinix Brothers Partnership likely will dictate the outcome of future

termination requests. Overall, MALPP has preserved more than 284,000 acres on nearly 2,100 farms for \$610.8 million. **DLS recommends that MDA comment on the State’s potential exposure to easement terminations in terms of the number of farms, the amount of acreage, the likelihood that the termination conditions eventually will be met, and how MDA would approach a lawsuit charging MALPP with a “takings” of property rights.**

4. Maryland Agricultural Land Preservation Program Audit Findings

MALPP is audited annually by the Office of Legislative Audits. The most recent findings came out on June 6, 2012, and cover the period beginning July 1, 2010, and ending June 30, 2011. MALPP resolved one of the findings from the previous audit concerning the fact that MALPF had not established procedures to ensure taxes remitted by the counties were supported by monthly reports. To resolve the audit finding, MALPP reviews Comptroller posted entries with monthly reports from the counties. The two repeat findings are as follows:

- ***Easement Acquisitions*** – The database of easement acquisitions developed by MALPF had not been tested for reliability nor reconciled to the State’s records.
- ***County Agricultural Land Transfer Taxes*** – MALPF did not ensure that all counties properly filed an annual report or remitted unused agricultural land transfer taxes to the State as required.

In order to resolve the audit findings, MALPF has been populating the easement acquisitions database and reconciling easement expenditures with the State’s accounting system annually. In addition, MALPF planned a meeting with county administrators and finance staff about county agricultural land transfer taxes. MALPF indicates that it appears that it is in total compliance and prior years’ findings have been addressed. **DLS recommends that MDA comment on the results of the proposed database accuracy test and how the meeting with county administrators and finance staff went.**

PAYGO Recommended Actions

1. Add the following language to the special fund appropriation:

, provided that this appropriation shall be reduced by ~~\$18,107,000~~ \$9,338,000 contingent upon the enactment of legislation crediting transfer tax revenues to the General Fund.

Explanation: This action modifies the contingent reduction for the Maryland Agricultural Land Preservation Program capital appropriation to align it with the modified Budget Reconciliation and Financing Act of 2013 provision for the transfer tax.

2. Concur with Governor’s allowance for the Tobacco Transition Program. This funding of \$319,000 in special funds reflects the final tobacco buyout payment.

