

LA11
Department of Agriculture – Capital

Capital Budget Summary

State-owned Capital Improvement Program
(\$ in Millions)

Projects	Prior Auth.	2019 Est.	2020 Est.	2021 Est.	2022 Est.	2023 Est.	Beyond CIP
Salisbury Animal Health Laboratory Replacement	\$1.380	\$4.975	\$11.830	\$0.000	\$0.000	\$0.000	\$0.000
Total	\$1.380	\$4.975	\$11.830	\$0.000	\$0.000	\$0.000	\$0.000

Fund Source	Prior Auth.	2019 Est.	2020 Est.	2021 Est.	2022 Est.	2023 Est.	Beyond CIP
GO Bonds	\$1.380	\$4.975	\$11.830	\$0.000	\$0.000	\$0.000	\$0.000
Total	\$1.380	\$4.975	\$11.830	\$0.000	\$0.000	\$0.000	\$0.000

CIP: *Capital Improvement Program*

GO: general obligation

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

Program	2017 Approp.	2018 Approp.	2019 Request	2020 Est.	2021 Est.	2022 Est.	2023 Est.
Maryland Agricultural Land Preservation Program ¹	\$21.228	\$32.924	\$48.976	\$52.997	\$54.349	\$53.527	\$52.984
Tobacco Transition Program	1.000	1.000	0.999	0.000	0.000	0.000	0.000
Maryland Agricultural Cost-Share Program	0.000	8.000	8.500	8.000	8.000	8.000	8.000
Total	\$22.228	\$41.924	\$58.475	\$60.997	\$62.349	\$61.527	\$60.984

Fund Source	2017 Approp.	2018 Approp.	2019 Request	2020 Est.	2021 Est.	2022 Est.	2023 Est.
PAYGO SF	\$22.228	\$33.924	\$49.975	\$52.997	\$54.349	\$53.527	\$52.984
GO Bonds	0.000	8.000	8.500	8.000	8.000	8.000	8.000
Total	\$22.228	\$41.924	\$58.475	\$60.997	\$62.349	\$61.527	\$60.984

GO: general obligation
 PAYGO: pay-as-you-go
 SF: special funds

¹ The fiscal 2019 amount has been adjusted to reflect the contingent reduction of \$15.0 million that was required to be replaced by Chapter 10 of 2016 (Program Open Space – Transfer Tax Repayment – Use of Funds).

Summary of Issues

Future Maryland Agricultural Cost-Share Program Funding Needs Unclear: In the near future, the Maryland Agricultural Cost-Share (MACS) program funding may need to increase in order to accommodate Chesapeake Bay restoration needs. **The Department of Legislative Services (DLS) recommends that the Maryland Department of Agriculture (MDA) comment on the likely funding need for the MACS program under low-, middle-, and high-demand scenarios as a result of Chesapeake Bay restoration needs.**

Readiness and Environmental Protection Integration Program Not Ready Yet: The Maryland Agricultural Land Preservation Program (MALPP) and the federal Readiness and Environmental Protection Integration Program (REPI) have contrasting legal structures concerning the condemnation of land on which agricultural easements are held. These contrasting legal structures need to be reconciled before the REPI program funding can be commingled with the Maryland Agricultural Land Preservation Foundation (MALPF) funding for agricultural land easement purchases. **DLS recommends that MDA comment on the advantages and disadvantages of passing legislation to**

work with the REPI program, including the amount of annual funding involved and the possible agricultural easement acreage that could be preserved as well as the downside of losing the option of the “friendly condemnation” process.

Intent for Tobacco Transition Program Agreement to Be Upheld Unclear: The report, *Transition Programs/Strategies for Southern Maryland Tobacco Farmers*, confirms the ongoing funding requirement for the Southern Maryland Strategy Action Plan for Agriculture through calendar 2024 at a level of not less than 5% of the funds received from the Master Settlement Agreement (MSA) to be used at least partially for funding the preservation of a minimum of 35,000 acres using MSA funding that is to be distributed equally among counties. **DLS recommends that the General Assembly consider how it wants the provisions of the MSA, as it relates to the Southern Maryland Strategy – Action Plan for Agriculture, to be upheld.**

Summary of Updates

Fiscal 2017 MACS Program Funding Update: The fiscal 2017 budget restricted \$6 million for the MACS program in the Revenue Stabilization Account, but the Governor reverted the appropriation to the General Fund. The funding made available for fiscal 2017 totaled \$3,373,692 and included \$1,100,000 in general funds from a fiscal 2017 deficiency appropriation, \$1,900,000 in Grants to Farmers funding for manure injection projects that was allocated through the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund, and \$373,692 available from canceled general obligation (GO) bond projects.

Summary of Recommended PAYGO Actions

1. Strike the language specifying how the Tobacco Transition Program funding is to be allocated.
2. Concur with Governor’s allowance of \$48,976,142 in special funds for the Maryland Agricultural Land Preservation Program’s capital appropriation.

Summary of Recommended Bond Actions

1. Salisbury Animal Health Laboratory Replacement
Approve the \$4,975,000 general obligation bond authorization for the Salisbury Animal Health Laboratory Replacement project.
2. Maryland Agricultural Cost-Share Program
Approve the \$8,500,000 general obligation bond authorization for the Maryland Agricultural Cost-Share Program.

3. SECTION 12 – Maryland Department of Agriculture – Salisbury Animal Health Laboratory

Approve the pre-authorization for the Salisbury Animal Health Laboratory Replacement project.

Program Description

The MDA capital program is comprised of MALPP, the Tobacco Transition Program (TTP), and the MACS program. In addition, the 2018 *Capital Improvement Program* (CIP) includes funding for the proposed Salisbury Animal Health Laboratory Replacement project, which is a State-owned facility. The programs fit under MDA's goals to preserve adequate amounts of productive agricultural land and woodland in Maryland and provide and promote land stewardship. Descriptions of the three programs follow.

- ***MALPP:*** 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. MALPP, 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 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.
- ***TTP:*** 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 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 (SMADC) 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 was budgeted in fiscal 2014, and the 2018 CIP reflects final agricultural land preservation funding in fiscal 2019.
- ***MACS 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

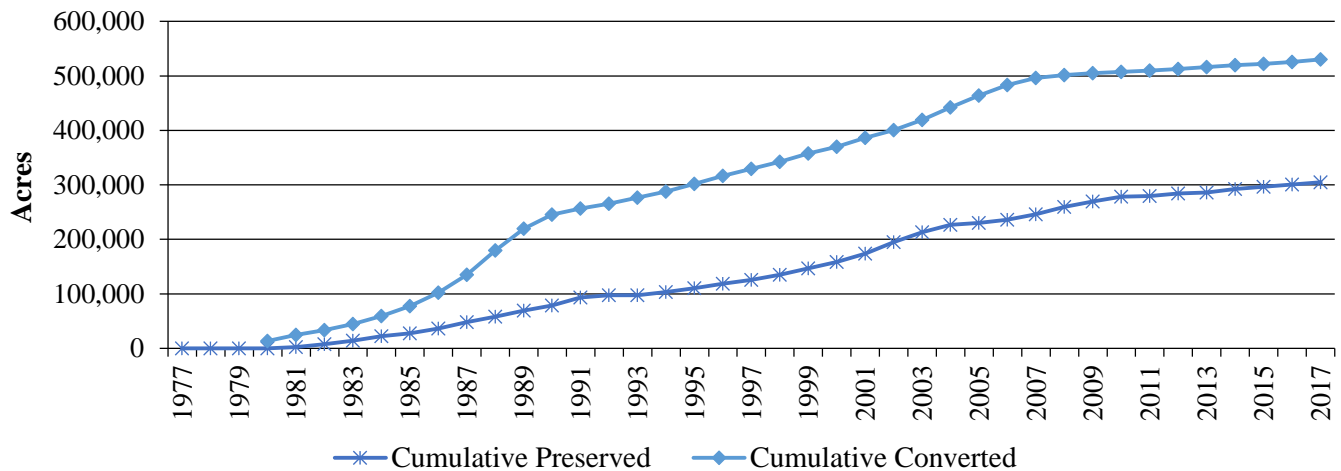
practices and up to \$450,000 per farm when combined with other BMPs, and up to \$200,000 per project under a pooling agreement to solve a pollution problem on two or more farms. All other BMPs are funded up to \$50,000 per project, with a maximum of \$150,000 per farm per person, and up to \$100,000 per project under a pooling agreement to solve a pollution problem on two or more farms.

Performance Measures and Outputs

MALPP

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 1977 to 2017. During this time period, the amount of cumulative agricultural land converted has exceeded the cumulative amount conserved. **Exhibit 2** shows that during recessions there is reduced development pressure on agricultural lands and thus more agricultural land is preserved than is developed. In fiscal 2017, there was a small net decrease in the annual acres preserved: 4,433 acres were converted while 4,161 acres were preserved.

Exhibit 1
Cumulative Agricultural Land Preserved by MALPP vs.
Cumulative Agricultural Land Converted
Fiscal 1977-2017

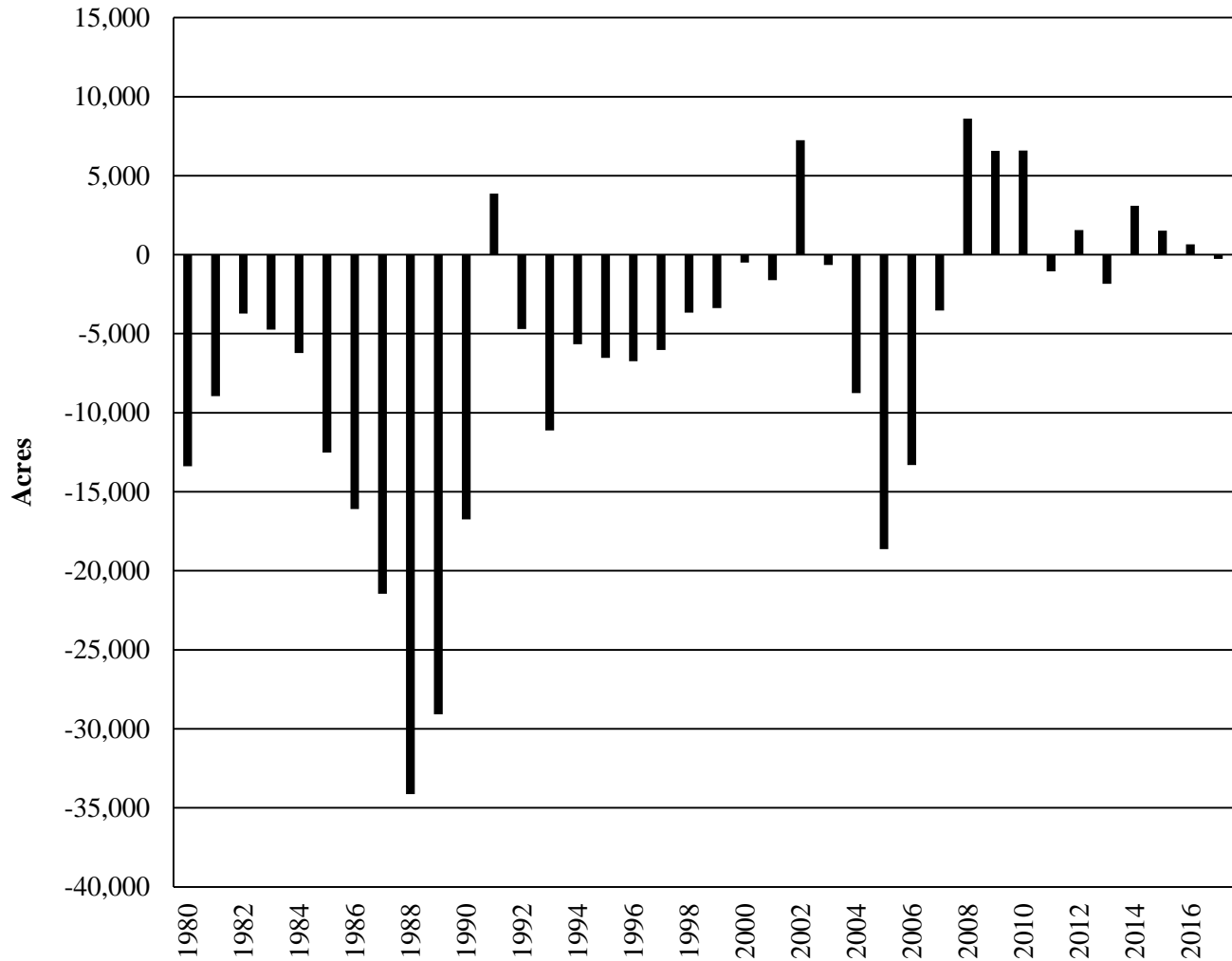


MALPP: Maryland Agricultural Land Preservation Program

Note: Includes easements under the Maryland Agricultural Land Preservation Foundation and the now defunct GreenPrint Program. State records do not exist for agricultural land converted before fiscal 1980.

Source: Maryland Department of Agriculture; Department of Legislative Services

**Exhibit 2
Net Difference in Annual Farmland Preserved and Converted
Fiscal 1980-2017**



Source: Maryland Department of Agriculture; Department of Legislative Services

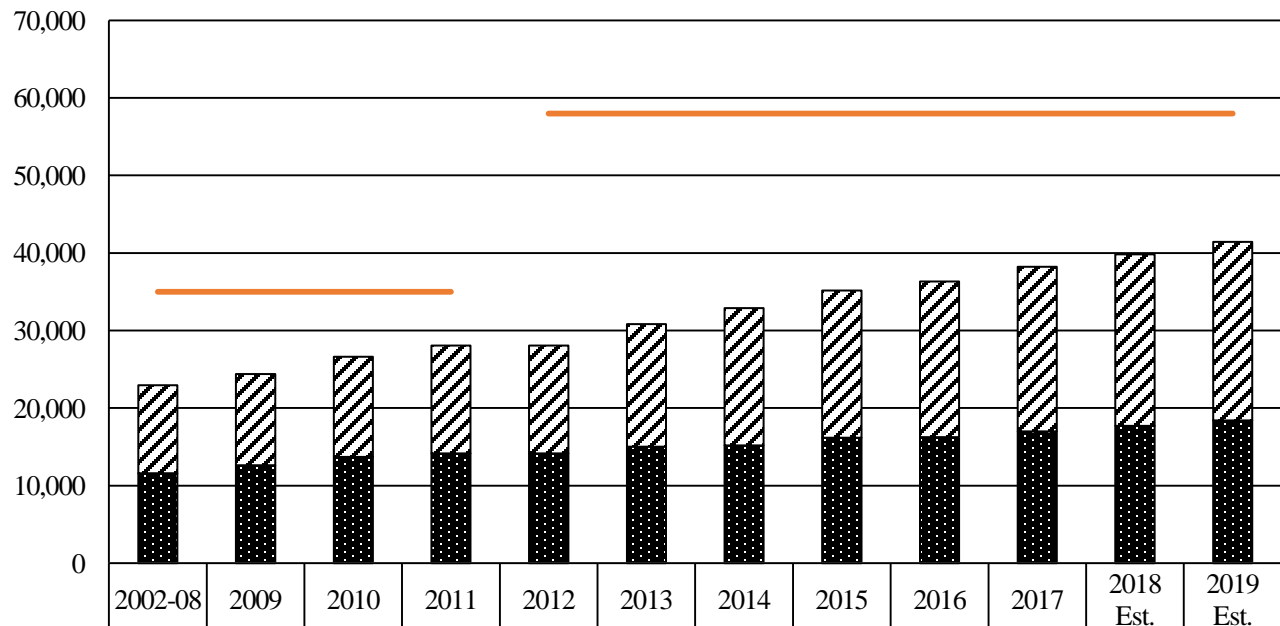
Senate Joint Resolution 10 of 2002 established a statewide land preservation goal to triple (1,030,000 acres) the number of acres of productive agricultural land preserved by MALPF, GreenPrint, the Rural Legacy Program, and local preservation programs by the year 2022. As of October 16, 2017, a total of 636,743 acres have been preserved; thus, an additional 393,257 acres need to be preserved by 2022, or 78,651 acres annually, which does not compare well to the 12,600 acres that were preserved on average over the last five years. Through fiscal 2017, MALPF has conserved 305,063 acres as its contribution to the statewide goal.

TTP

The TTP uses two performance measures; the number of acres of agricultural land preserved with State funds and leveraged funds, and the number of farms preserved with State funds and with leveraged funds. The 10-year agricultural land preservation goal established in fiscal 2001 for the TTP was to protect 35,000 acres. Over the years, it has been unclear whether the 35,000-acre goal was to be met by solely the State funds or whether it also included leveraged funds. This is discussed further as an issue in this analysis.

SMADC updated its 10-year Strategic Plan in fiscal 2012 to reflect a new goal of preserving an additional 30,000 acres by fiscal 2020, relative to the approximately 28,000 acres preserved up to that point, pending the availability of funding. This acreage preservation goal reflects acres preserved with State funding as well as acreage preserved with leveraged funding from counties (Anne Arundel, Calvert, Charles, Prince George's, and St. Mary's). In addition, SMADC measures the number of farms preserved both with State funding as well as with county funding. SMADC indicates that as of fiscal 2017, 162 farms and 16,996 acres have been preserved using direct CRF funds. When CRF preservation funds are added with other State and county funding over the 16 years of the program, 338 farms and 38,221 acres have been preserved. SMADC's fiscal 2018 goal with direct funds is to preserve an estimated cumulative total of 167 farms on an estimated 17,696 cumulative acres, and its fiscal 2019 goal with direct funds is to preserve an estimated cumulative total of 172 farms on 18,396 acres. **Exhibit 3** shows the history of agricultural land and farm preservation.

Exhibit 3
Tobacco Transition Program and Leveraged Agricultural Land Preservation
Fiscal 2002-2019 Est.



	2002-08	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018 Est.	2019 Est.
Cumulative Leveraged Acres Preserved	11,338	11,761	12,922	13,915	13,915	15,806	17,709	18,998	20,068	21,225	22,125	23,025
Cumulative Tobacco Transition Program Acres Preserved	11,608	12,632	13,716	14,145	14,145	15,012	15,194	16,176	16,257	16,996	17,696	18,396
Acreage Goal	35,000	35,000	35,000	35,000	58,000	58,000	58,000	58,000	58,000	58,000	58,000	58,000
Cumulative Tobacco Transition Program Farms Preserved	115	125	132	137	137	143	146	156	157	162	167	172
Cumulative Leveraged Farms Preserved	75	78	89	100	100	120	138	150	163	176	186	196

Note: No funding was provided in fiscal 2012.

Source: Maryland Department of Agriculture

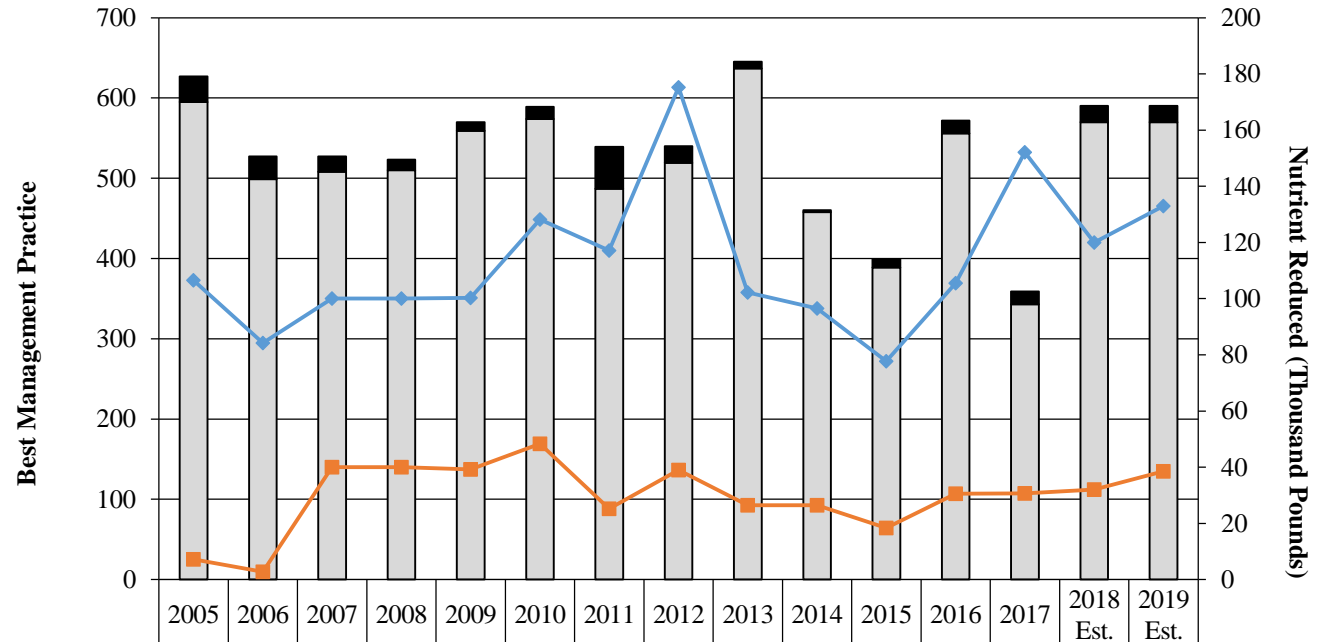
MACS

MDA's Resource Conservation Grants program has the goal of controlling and reducing agriculturally related water pollution through the implementation of BMPs. MDA has implemented a tracking system that reflects both BMPs installed with State funding and federal financial assistance through the U.S. Environmental Protection Agency's (EPA) Chesapeake Bay Implementation Grant and processed through MACS. In contrast, BMPs funded by the U.S. Department of Agriculture (USDA) are not tracked as part of the budget process; however, BMPs and nutrient reductions are reported to EPA as part of Watershed Implementation Plan (WIP) documentation. MDA has noted that it backfills funding with federal cost-share dollars when federal funding is available.

MDA notes that, outside of the State budgeting process, the 2014 Farm Bill authorized the Regional Conservation Partnership Program through USDA's Natural Resources Conservation Service. For federal fiscal 2018, the Natural Resources Conservation Service selected 91 regional conservation partnership projects for funding, thus investing approximately \$220 million in projects across the country. Of this \$220 million, MDA secured two grants: a \$1 million grant to support implementation and demonstration of soil health practices targeted to farmers on the upper Eastern Shore; and \$2.6 million will be available as part of a partnership with Delaware and Virginia for financial assistance related to promoting precision nutrient management. In addition, beginning in fiscal 2018, \$2.5 million in financial assistance from a federal fiscal 2017 Regional Conservation Partnership Projects grant is available for implementation of nutrient management practices on dairies in Western Maryland.

Exhibit 4 reflects the new BMPs installed by MACS between fiscal 2005 and the fiscal 2019 estimate. As illustrated, the majority of BMPs are installed with State funds, and the combined State and federal projects have reduced, on average, around 110,000 pounds of nitrogen pollution per year between fiscal 2005 and 2017. Noteworthy is an increase from 105,547 pounds of nitrogen reduced in fiscal 2016 to 152,099 in fiscal 2017, despite a decrease in the number of funded combined State and federal BMP's from 572 to 359 from fiscal 2016 to 2017. MDA partially attributes this to an increase from 60 waste storage structure BMPs funded in fiscal 2016 to 66 such structures in fiscal 2017. **DLS recommends that MDA comment on why the pounds of nitrogen reduced increased from fiscal 2016 to 2017 while the number of BMPs funded decreased.**

Exhibit 4
MACS New Best Management Practices Installed
Fiscal 2005-2019 Est.



	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018 Est.	2019 Est.
■ Federal (EPA Grant) Funded BMPs	32	28	19	13	11	15	52	21	8	2	10	16	16	20	20
■ State-funded BMPs	595	499	508	510	559	574	487	519	637	458	389	556	343	570	570
◆ Reduction in Nitrogen for New BMPs Installed (Thousand Pounds)	106.5	84.2	100.0	100.0	100.2	128.2	117.2	175.2	102.2	96.5	77.8	105.5	152.1	120.0	133.0
■ Reduction in Phosphorus for New BMPs Installed (Thousand Pounds)	7.2	2.8	40.0	40.0	39.2	48.3	25.2	39.0	26.4	26.4	18.4	30.6	30.6	32.0	38.5

BMP: best management practice
 EPA: Environmental Protection Agency
 MACS: Maryland Agricultural Cost-Share Program

Source: Maryland Department of Agriculture

In terms of the maintenance of BMPs, MDA has indicated in the past that it inspects 10% of all contracts every year and that in a recent three-year period, it conducted over 500 inspections annually. Unsatisfactory reviews occur in approximately 10% of its inspections. Common reasons for unsatisfactory reviews include the lack of maintenance of BMPs or the lack of transfer of responsibility when ownership changes. Since property transfers make up 50% of the unsatisfactory reviews, MDA has instituted a policy whereby BMPs, for which the State cost share is \$5,000 or greater, are recorded as a lien on the property. If maintenance issues are not resolved within a certain period of time, then MDA may require payback of the State share.

Budget Overview

Fiscal 2019 Budget

The fiscal 2019 allowance includes \$50.0 million in special funds and \$13.5 million in GO bonds.

Fiscal 2019 Repayment Modification

The fiscal 2019 budget plan includes the modification of repayments of transfer tax transfers to the General Fund that were originally authorized by Chapter 425 of 2013 and then subsequently modified by Chapter 10 of 2016. Chapter 10 requires the repayment of \$242.2 million in past redirected transfer tax funds by fiscal 2029. The plan provides for the use of general funds as a source of repayment to be expended as special funds in the budget. The components of the repayment plan and the Governor’s proposed changes to each are highlighted below. **Exhibit 5** shows the differences in the repayment plan established by the Governor in the 2017 session to that proposed in the 2018 session. In total, the revised plan proposes to defer \$31.9 million in fiscal 2019 and reprograms those funds for future years. The proposed deferral includes \$15.0 million that is reduced contingent upon a provision in the Budget Reconciliation and Financing Act (BRFA) of 2018 amending the mandated portion of the funding repayment schedule.

- ***Payback for Fiscal 2006 Transfer Tax (to Be Distributed through the Transfer Tax Formula):*** Chapter 10 requires \$15.0 million in each of fiscal 2019 through 2021, for a total repayment of \$45.0 million. A provision in the BRFA of 2018 amends the repayment schedule by deferring the \$15.0 million required in fiscal 2019 to 2022, essentially moving back by one year the total repayment requirement.
- ***Payback for Fiscal 2006 Transfer Tax for Critical Maintenance/Natural Resources Development Fund:*** Chapter 10 requires that \$6.0 million in each of fiscal 2019 through 2024 and \$4.0 million in fiscal 2025, for a total repayment of \$40.0 million, be used to fund the Department of Natural Resources (DNR) Critical Maintenance and Natural Resources Development Fund projects. The statutory repayment schedule remains unchanged in the fiscal 2019 budget submission.

- Payback for Fiscal 2016 to 2018 Transfer Tax (to Be Distributed through the Transfer Tax Formula):** Chapter 10 requires the repayment of \$152.2 million as follows: one-third by fiscal 2021; two-thirds by fiscal 2025; and the full amount by fiscal 2029. This provision provides for some annual funding flexibility, and the fiscal 2019 budget as introduced programs this in equal installments of \$25.4 million in each of fiscal 2020 and 2021, which is revised from what the Administration programmed in the 2017 session that called for equal annual installments of \$16.9 million in each of fiscal 2019 through 2021.

Exhibit 5
Transfer Tax Replacement
Comparison of 2017 and 2018 Session Repayment Plans
Fiscal 2018-2029
(\$ in Millions)

	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023-2029</u>	<u>Total</u>
2017 Session							
MARBIDCO	\$2.5	\$2.5	\$0.0	\$0.0	\$0.0	\$0.0	\$5.0
POS (Fiscal 2006 Transfer)	0.0	15.0	15.0	15.0	0.0	0.0	45.0
POS (Fiscal 2016 to 2018 Transfers)	0.0	16.9	16.9	16.9	12.7	88.8	152.2
Park Development	0.0	6.0	6.0	6.0	6.0	16.0	40.0
Total	\$2.5	\$40.4	\$37.9	\$37.9	\$18.7	\$104.8	\$242.2
2018 Session							
MARBIDCO	\$2.5	\$2.5	\$0.0	\$0.0	\$0.0	\$0.0	\$5.0
POS (Fiscal 2006 Transfer)	0.0	0.0	15.0	15.0	15.0	0.0	45.0
POS (Fiscal 2016 to 2018 Transfers)	0.0	0.0	25.4	25.4	12.7	88.8	152.2
Park Development	0.0	6.0	6.0	6.0	6.0	16.0	40.0
Total	\$2.5	\$8.5	\$46.4	\$46.4	\$33.7	\$104.8	\$242.2
Difference							
MARBIDCO	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
POS (Fiscal 2006 Transfer)	0.0	-15.0	0.0	0.0	15.0	0.0	0.0
POS (Fiscal 2016 to 2018 Transfers)	0.0	-16.9	8.5	8.5	0.0	0.0	0.0
Park Development	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total	\$0.0	-\$31.9	\$8.5	\$8.5	\$15.0	\$0.0	\$0.0

MARBIDCO: Maryland Agricultural and Resource-Based Industry Development Corporation
 POS: Program Open Space

Source: Department of Budget and Management

Exhibit 6 shows the fiscal 2019 revenue and expenditure differences for the transfer tax under current statute and under the BRFA provision. As illustrated, there is a reduction of \$15.0 million allocated to the operating budget; \$2,254,500 for the Forest and Park Service within DNR, and \$12,745,500 for pay-as-you-go (PAYGO) capital programs. The reduction to the PAYGO capital programs is allocated as follows: Program Open Space (POS) – State Share – \$6,056,250; POS – Local Share – \$3,381,750; Rural Legacy Program – \$750,000; and MALPF – \$2,557,500.

Exhibit 6
Transfer Tax Funding under Statute and the BRFA Provision
Fiscal 2019

	Fiscal 2019 <u>Statutory</u>	Fiscal 2019 <u>BRFA</u>	<u>Difference</u>
Revenues			
Revenue Estimate	\$221.9	\$221.9	\$0.0
Overattainment	25.1	25.1	0.0
Transfer to General Fund	0.0	0.0	0.0
Repayment – Fiscal 2006 Transfer – Critical Maintenance/Natural Resources Development Fund	6.0	6.0	0.0
Repayment – Fiscal 2006 Transfer – Distributed through Formula	15.0	0.0	-15.0
Total Revenue	\$268.0	\$253.0	-\$15.0
Expenditures			
Administrative Expenses	\$6.7	\$6.7	\$0.0
Debt Service	7.1	7.1	0.0
Heritage Areas Authority	6.0	6.0	0.0
Forest and Park Service	38.4	36.1	-2.3
Department of Natural Resources – Land Acquisition and Planning			
Program Open Space – State Share	62.0	55.9	-6.1
Program Open Space – Local Share	55.8	52.4	-3.4
Rural Legacy Program	20.8	20.0	-0.8
Natural Resources Development Fund	14.4	14.4	0.0
Critical Maintenance Program	13.0	13.0	0.0
Ocean City Beach Maintenance	1.0	1.0	0.0
Maryland Department of Agriculture – Maryland Agricultural Land Preservation Foundation	43.0	40.5	-2.6
Total Expenditures	\$268.0	\$253.0	-\$15.0

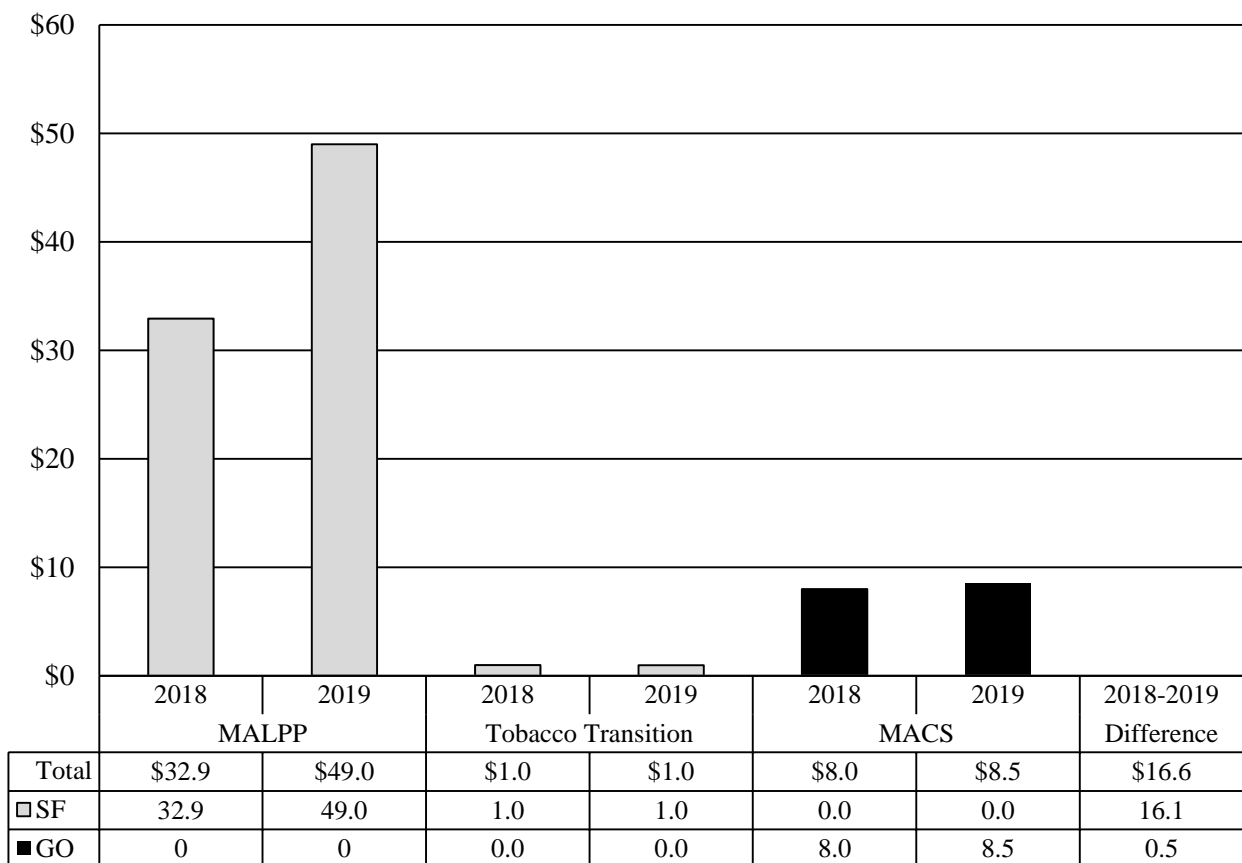
BRFA: Budget Reconciliation and Financing Act

Source: Department of Budget and Management; Department of Legislative Services

Funding in the Fiscal 2019 Allowance

Exhibit 7 shows the fiscal 2019 funding for the three programs in the allowance. The proposed fiscal 2019 funding level is \$16.6 million higher than what was provided in fiscal 2018. This reflects an increase of \$16.1 million in special funds for MALPP and \$0.5 million in GO bond authorization for MACS.

Exhibit 7
Maryland Department of Agriculture Capital Budget Changes by Fund
Fiscal 2018-2019
(\$ in Millions)



GO: general obligation
 MACS: Maryland Agricultural Cost-Share
 MALPP: Maryland Agricultural Land Preservation Program
 SF: special fund

Source: Department of Legislative Services

MALPF

MALPF's fiscal 2019 allowance provides \$49.0 million in special funds. The fiscal 2019 funding includes \$40.5 million in transfer tax funding and \$8.5 million in county participation funding. The estimated cost per acre for MALPF easements is projected to be approximately \$4,200 in fiscal 2019, which is \$200 more than the amount projected for fiscal 2018, and will allow for the preservation of 11,700 acres. No federal funding is reflected, which means that there has been no change in the restrictive requirements on the federal Farm and Ranch Lands Protection Program funding.

Of note, the county participation funding in fiscal 2019 reflects that MALPF will resume a one-year easement cycle even though a final determination has not been made. Since fiscal 2009, MALPF has instituted a two-year easement cycle in order to be able to fund easements in each participating jurisdiction. MDA notes that it apprised the MALPF Board of Trustees on January 23, 2018, about the fiscal 2019 funding level. While there may be enough funding to run a single-year cycle, the department faces some staffing challenges. The first challenge is the upcoming retirement of the MALPF executive director, scheduled for June 30, 2018. Any delay in appointing a new director could negatively impact the easement schedule, particularly if a one-year easement cycle is undertaken. Second, and perhaps of greater concern, is the insufficient number of Attorneys General legal staff within the Department of General Services (DGS) to handle the increased workload of a one-year easement cycle. MALPF Board of Trustees will make its determination about a return to a one-year easement cycle in April after the final funding level has been determined. **DLS recommends that MDA comment on the succession plan for MALPF given the executive director's upcoming retirement and whether the department has engaged the Department of Budget and Management (DBM) in any discussions to increase staffing in DGS' Attorneys General office to handle the increased easement activity associated with returning to a one-year easement cycle.**

TTP

As in prior years, the CRFs supporting the TTP are budgeted in both MDA's operating and capital PAYGO budgets. As shown in **Exhibit 8**, \$1,949,000 in CRF special funds are budgeted as follows: administrative expenses (\$550,000); noncapital grants for infrastructure/agricultural development programs (\$400,000); tobacco bond repayment (\$0); and agricultural land preservation (\$999,000). The overall funding level of \$1,949,000 is lower than the \$5,773,000 provided in fiscal 2018, primarily due to the end of the bond repayment and the decision to not repurpose this funding, and is lower than the \$7,039,000 funding level provided in recent years due to cost containment actions.

Exhibit 8
Tobacco Transition Program Funding
Fiscal 2018-2019
(\$ in Thousands)

<u>Fiscal Year</u>	<u>Operating Budget</u>			<u>PAYGO Capital Budget</u>		<u>Total</u>
	<u>Administration</u>	<u>Infrastructure Grants</u>	<u>Bonds Repaid</u>	<u>Buyout Payment</u>	<u>Land Preservation</u>	
2018	\$550,000	\$400,000	\$3,823,000	\$0	\$1,000,000	\$5,773,000
2019	550,000	400,000	0	0	999,000	1,949,000
Difference	\$0	\$0	-\$3,823,000	\$0	-\$1,000	-\$3,824,000

PAYGO: pay-as-you-go

Note: The Maryland Department of Agriculture provided the \$319,000 final tobacco buyout payment in fiscal 2014. The fiscal 2018 legislative appropriation allocation for administration and infrastructure grants has changed. The Southern Maryland Agricultural Development Commission notes that in October 2017, it received permission to change the funding from \$600,000 for administration and \$350,000 for infrastructure grants to \$550,000 for administration and \$400,000 for infrastructure grants.

Source: Department of Budget and Management; Southern Maryland Agricultural Development Commission

Authorization of GO bonds for the TTP 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 uses of GO bonds for the tobacco buyout funding plan that were originally laid out in Chapter 103 of 2001. The payment schedule was \$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. Of note, the 2017 CIP reflected final PAYGO capital funding in fiscal 2018, which is coincident with the end of the bond repayment, but the fiscal 2019 allowance extends this by one year.

As shown in **Exhibit 9**, the fiscal 2019 appropriation of \$999,000 for land preservation is conditioned by budget bill language that allocates the funding as follows: Calvert County – \$333,000; Charles County – \$333,000; and St. Mary’s County – \$333,000. This funding allocation is contrary to prior year allocations that provided the funding in lump sum amounts for SMADC to allocate among its five counties. SMADC notes that in the past, funding for agricultural easement purchases has been allocated based on a formula reflecting the amount of tobacco that was grown in each of the five counties during the years of tobacco production, as shown in Exhibit 9. **DLS recommends that the budget bill language either be struck in order to provide lump sum funding or be modified to provide funding to the five counties covered by SMADC in a manner in keeping with the historical allocation methodology.**

Exhibit 9
TTP Agricultural Easement Funding
SMADC Allocation vs. Budget Bill Allocation
Fiscal 2019

<u>County</u>	<u>SMADC Preferred Allocation</u>		<u>Budget Bill Allocation</u>		<u>Difference</u>
	<u>Percent</u>	<u>Amount</u>	<u>Percent</u>	<u>Amount</u>	<u>Amount</u>
Anne Arundel	9.623%	\$96,134	0.000%	\$0	-\$96,134
Calvert	20.913%	208,921	33.333%	333,000	124,079
Charles	19.548%	195,285	33.333%	333,000	137,715
Prince George’s	9.976%	99,660	0.000%	0	-99,660
St. Mary’s	39.940%	399,001	33.333%	333,000	-66,001
Total	100.000%	\$999,000	100.000%	\$999,000	\$0

SMADC: Southern Maryland Agricultural Development Commission
TTP: Tobacco Transition Program

Source: Department of Budget and Management; Southern Maryland Agricultural Development Commission; Department of Legislative Services

MACS Program

The fiscal 2019 allowance for MACS is \$8.5 million, which is \$0.5 million greater than both the fiscal 2018 funding level and the amount programmed for fiscal 2019 in the 2017 CIP. The additional funding is intended to partially offset the loss of funds in fiscal 2017 when the Governor did not release the \$6.0 million in general funds fenced off in the Revenue Stabilization Account for the program and instead used a general fund deficiency and the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund. The 2018 CIP reflects an \$8.0 million funding level for the remainder of the five-year planning period after the fiscal 2019 authorization.

Salisbury Animal Health Laboratory Replacement

The fiscal 2019 allowance includes \$4,975,000 in GO bonds for completing planning, beginning construction, and beginning the equipping of the proposed 18,066 net assignable square footage (28,592 gross square feet (GSF)) Salisbury Animal Health Laboratory replacement project. DBM has approved the Part 1 and Part 2 program plans for the project. Overall, the project description has not changed from the 2017 CIP – secure laboratory area (16,008 GSF), public/entry administration (6,834 GSF), and shared storage (5,750 GSF). MDA has noted that the Animal Health program

first requested the project in September 2014, but it appears that this was too late for the project to go through the 2015 CIP process. However, as far back as calendar 2006, a licensed building inspector concluded that the building could not be renovated to meet current laboratory standards.

The Salisbury Animal Health Laboratory conducts tests that ensure the safety of the food supply and the economic viability of animal industries throughout the Delmarva Peninsula by, among other activities, providing diagnostic and investigatory services that identify and contain animal health emergencies. The primary justifications for the project include the deterioration of the existing infrastructure and the inability to meet current laboratory standards. The existing building has roof, ceiling, wall, and floor failures; mechanical, electrical, and plumbing systems that do not meet current requirements; and inadequate space for many laboratory functions. In terms of laboratory standards, the laboratory lacks negative air pressure, and in fact has positive pressure, which means that the existing air system does not minimize the escape of contaminants; and the laboratory lacks biosecurity/safety features to isolate nonpublic areas.

In terms of the accreditation schedule, MDA notes that both the Salisbury and Frederick animal health laboratories are up for the American Association of Laboratory Accreditation reaccreditation in June 2018. While the Salisbury lab is not expected to be ready until spring 2020, MDA does not foresee any problems with the reaccreditation of the current Salisbury Animal Health Laboratory, presumably because of the promise of the new lab.

As shown in **Exhibit 10**, the overall project is now estimated to cost \$18,185,000, an increase of \$934,000 (\$375,000 for planning and \$559,000 for construction) relative to the 2017 CIP. The cost increase is due to a delay in the award of the design contract. As a result, the initiation of design was pushed back from January 2017 to October 2017, which has increased the overall project cost and allowed for a portion of the construction funding to be shifted to fiscal 2020 based on updated project cash flow projections. The start of construction has been shifted from June 2018 to February 2019, but the overall timeline of final funding in fiscal 2020 remains unchanged. The updated overall work schedule for the project is as follows:

- ***Schematic Design Phase*** – on target for completion by February 7, 2018, followed by DGS review and approval;
- ***Design Development*** – will run from February 8, 2018, to May 16, 2018;
- ***Construction Documents*** – will complete construction documents from May 17, 2018, to September 25, 2018;
- ***Construction Bidding and Award*** – will start construction bidding and award process by November 28, 2018; and
- ***Building, Moving, and Demolition*** – will complete building and moving into the new laboratory and demolishing the old laboratory by April 3, 2020.

Exhibit 10
Change in Salisbury Animal Health Laboratory Replacement Authorization Uses
(\$ in Millions)

	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>Total</u>
2016 CIP					
Planning	\$0.8	\$0.6	\$0.0	\$0.0	\$1.4
Construction	0.0	7.6	7.6	0.0	15.3
Equipment	0.0	0.2	0.3	0.0	0.5
Total	\$0.8	\$8.5	\$7.9	\$0.0	\$17.2
2017 CIP					
Planning	\$0.8	\$0.6	\$0.0	\$0.0	\$1.4
Construction	0.0	0.0	11.5	3.8	15.4
Equipment	0.0	0.0	0.2	0.3	0.5
Total	\$0.8	\$0.6	\$11.7	\$4.1	\$17.3
2018 CIP					
Planning	\$0.8	\$0.6	\$0.4	\$0.0	\$1.8
Construction	0.0	0.0	4.4	11.5	15.9
Equipment	0.0	0.0	0.2	0.3	0.5
Total	\$0.8	\$0.6	\$5.0	\$11.8	\$18.2
2017-2018 Difference					
Planning	\$0.0	\$0.0	\$0.4	\$0.0	\$0.4
Construction	0.0	0.0	-7.1	7.7	0.6
Equipment	0.0	0.0	0.0	0.0	0.0
Total	\$0.0	\$0.0	-\$6.8	\$7.7	\$0.9

CIP: *Capital Improvement Program*

Source: Department of Budget and Management; Department of Legislative Services

Issues

1. Future Maryland Agricultural Cost-Share Program Funding Needs Unclear

In the near future, MACS program funding may need to increase in order to accommodate Chesapeake Bay restoration needs. MDA notes that it has encumbered the entirety of its fiscal 2018 GO bond authorization of \$8.0 million and that it has a backlog of \$1.1 million in requests for the MACS program. The fiscal 2019 authorization is \$0.5 million greater than the fiscal 2018 authorization and the amount programmed for fiscal 2019 in the 2017 CIP. However, future funding demand for the MACS program may be even greater depending on the Phase III WIP for Chesapeake Bay restoration. MDA recently received nutrient reduction goals from EPA and meetings to develop Phase III WIP reduction goals for the agricultural and other sectors will occur in summer and fall 2018. **DLS recommends that MDA comment on the likely funding need for the MACS program under low-, middle-, and high-demand scenarios as a result of Chesapeake Bay restoration needs.**

2. Readiness and Environmental Protection Integration Program Not Ready Yet

Under federal law governing REPI, the Secretary of Defense or the Secretary of a military department may enter into an agreement with an eligible entity to address the use or development of real property in the vicinity of, or ecologically related to, a military installation or military airspace for specified purposes, including limiting any development or use of the property that would be incompatible with the mission of the installation. In its 2016 annual report to Congress on REPI, the U.S. Department of Defense described its funding of cost-sharing agreements with state and local governments and conservation organizations to promote compatible land uses and preserve habitats near military installations.

Chapter 394 of 2017 (MALPF – Participation in the REPI Program) required MALPF easements to be included as part of a partnership under REPI if (1) the land that is subject to an easement is in the vicinity of, or ecologically related to, the Atlantic Test Range; (2) the landowner whose land is subject to an easement agrees to any restrictions imposed on the easement under REPI; and (3) funding is available to MALPF to enter into an agreement under REPI.

Chapter 394 attempted to harmonize the partnership between MALPF and the U.S. Navy, with the goal of paving the way for REPI funds to be commingled with MALPF funds as part of easement acquisitions. However, Chapter 394 did not alter the statutory incompatibility between the U.S. Navy and MALPP related to compensation for condemnation of agricultural land with an easement on it. If land is under an agricultural easement and it is condemned for some reason by an entity with the authority to conduct such a condemnation – as a voluntary program, MALPP does not have this authority – then MALPF has the authority to allow for a friendly condemnation process, which includes the approval of the Board of Public Works to release the subject area from the restrictions of the MALPF easement, thereby allowing the condemning authority to proceed with their “greater public good” project. Conversely, the REPI program requires the easement holder to collect the current per acre

value of the area subject to any condemnation and requires a full condemnation legal proceeding in federal court. The contrasting legal structures for MALPP and REPI need to be reconciled before the REPI program funding can be commingled with MALPF funding.

Over summer 2017, at the request and leadership of a legislator, MALPF staff participated in partner meetings with the U.S. Navy to discuss what actions were needed in order for MALPP and REPI programs to be eligible to work together. MDA notes that it has been informed that legislation will be submitted in the 2018 session to address the condemnation incompatibility between MALPF and all federal easement programs, including REPI. MDA notes that if such legislation is passed then the friendly condemnation process option will no longer be available for any agricultural easements funded with the REPI program and that the condemning authority, whether a State agency, a county, or a utility, must file suit in federal court in order to have the agricultural easement interest released. **DLS recommends that MDA comment on the advantages and disadvantages of passing legislation to work with the REPI program, including the amount of annual funding involved and the possible agricultural easement acreage that could be preserved as well as the downside of losing the option of the friendly condemnation process.**

3. Intent for Tobacco Transition Program Agreement to Be Upheld Unclear

TTP is at a crossroads, as yet again no further funding is budgeted beyond fiscal 2019 for agricultural land preservation. The program's future is informed by the report, *Transition Programs/Strategies for Southern Maryland Tobacco Farmers*, prepared by the Tobacco Crop Conversion Task Force on December 10, 1999.

The task force's mission was to develop a strategic plan on how Maryland will utilize monies obtained from the MSA – the result of lawsuits between 46 states and the tobacco companies – to transition Maryland farmers out of tobacco production into more profitable and life-sustaining crops, while preserving rural agriculture in Southern Maryland. The terms of the task force's report included that beginning in fiscal 2001, and for the duration of the MSA, the Governor will include a minimum of \$9 million, and in subsequent years, not less than 5% of the funds received from the MSA shall be provided to implement the Southern Maryland Strategic Action Plan for Agriculture, as proposed by the Tri-County Council for Southern Maryland. In addition, the task force's report reflected the endorsement of components of the Southern Maryland Strategy Action Plan for Agriculture, including the supplementing of existing county preservation programs with a minimum target of preserving 35,000 acres of farmland using MSA funds. The task force's report also notes that the monies for farmland preservation be distributed equally among counties. Finally, the report notes that the settlement payment is scheduled through 2024.

Thus, the report, *Transition Programs/Strategies for Southern Maryland Tobacco Farmers*, confirms the ongoing funding requirement for the Southern Maryland Strategy Action Plan for Agriculture through 2024 at a level of not less than 5% of the funds received from the MSA to be used at least partially for funding the preservation of a minimum of 35,000 acres using MSA funding that is to be distributed equally among counties. **DLS recommends that the General Assembly consider**

how it wants the provisions of the MSA, as it relates to the Southern Maryland Strategy Action Plan for Agriculture, to be upheld.

Updates

1. Fiscal 2017 MACS Program Funding Update

The fiscal 2017 budget restricted \$6 million for the MACS program in the Revenue Stabilization Account, but the Governor reverted the appropriation to the General Fund. This raised the question of what funding would be used in fiscal 2017 to meet the demands for the program. The fiscal 2018 operating budget included a \$1,100,000 fiscal 2017 general fund deficiency appropriation for the program. This funding reflected the replacement of funding for the Cover Crop Program that was used for MACS program projects. For fiscal 2017, MDA repurposed approximately \$1,900,000 in Grants to Farmers funding for manure injection projects that was allocated through the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund. In addition, there was \$373,692 available from canceled GO bond projects. As a result, there was \$3,373,692 in available funding for the MACS program in fiscal 2017. **Exhibit 11** reflects the status of encumbering and expending this fiscal 2017 funding.

Exhibit 11
Maryland Agricultural Cost-Share Funding
Fiscal 2017

<u>Funding Type</u>	<u>Allocation</u>	<u>Encumbered</u>	<u>To Be Encumbered</u>	<u>Expended</u>	<u>To Be Expended</u>
General Fund Deficiency	\$1,100,000	\$1,100,000	\$0	\$594,926	\$505,074
Chesapeake and Atlantic Coastal Bays 2010 Trust Fund Special Funds	1,900,000	1,900,000	0	995,065	904,935
Canceled GO Bond Funding	373,692	373,692	0	0	373,692
Total	\$3,373,692	\$3,373,692	\$0	\$1,589,991	\$1,783,701

GO: general obligation

Note: The Maryland Department of Agriculture (MDA) notes that reversions become part of the GO bond from which they originated; and since all active bonds are encumbered, the canceled GO bond funding shown in the exhibit is also shown as encumbered. MDA does not track expenditures of reverted GO bond funds separately from the GO bond to which it was returned.

Source: Maryland Department of Agriculture

Operating Budget Impact Statement

Executive’s Operating Budget Impact Statement – State-owned Projects (\$ in Millions)

	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023
Salisbury Animal Health Laboratory Replacement					
Estimated Operating Cost	\$0.000	\$0.281	\$0.120	\$0.120	\$0.120
Estimated Staffing	0	2	2	2	2
Total Operating Impact					
Estimated Operating Cost	\$0.000	\$0.281	\$0.120	\$0.120	\$0.120
Estimated Staffing	0	2	2	2	2

The operating budget impact statement for the Salisbury Animal Health Laboratory Replacement project reflects the following schedule:

- **Fiscal 2020** – includes \$281,000 (\$236,000 in general funds and \$45,000 in special funds) for part-year funding of 1 laboratory scientist and 1 administrative assistant for \$40,000 and replacement equipment for \$241,000; and
- **Fiscal 2021-2023** – includes \$120,000 (\$50,000 in general funds and \$70,000 in special funds) in each year for full-year funding of 1 laboratory scientist (\$70,000) and 1 administrative assistant (\$50,000).

The laboratory scientist is necessary based on the assumption that there will be the need for increased equine testing; the current laboratory scientific expertise is in poultry diseases. An administrative assistant will be needed to support the scientific research, but it is not clear at this point whether a regular position or a contractual full-time equivalent will be needed, as it depends on whether more equine testing actually occurs.

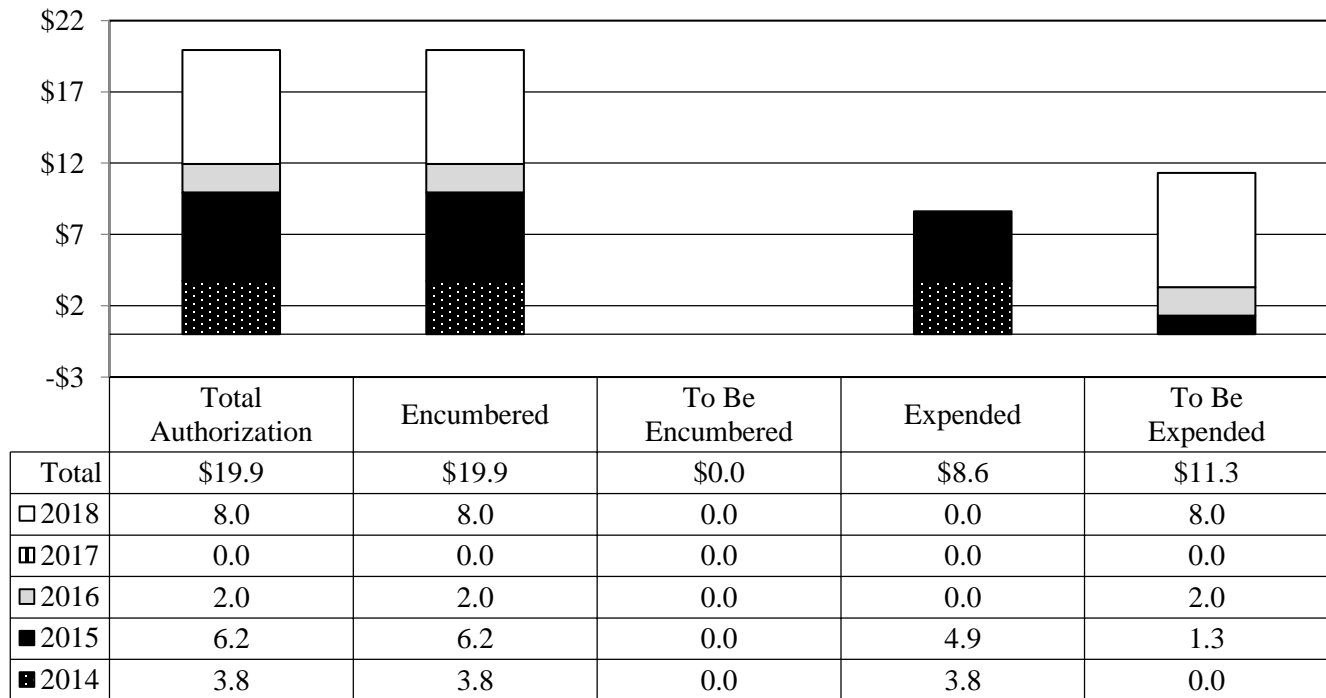
The replacement equipment funding reflects the replacement of equipment in the old laboratory. In contrast, brand new equipment that was not previously owned is funded in the equipment line of the capital budget for the project and old equipment that is still serviceable will be moved to the new laboratory and thus does not need to be replaced.

Natural gas may be used to heat the building, which would offset any increased energy use by the building because natural gas is a less expensive energy source. However, no savings are reflected because the status of natural gas as a heat source is uncertain. Revenue from additional equine testing is also uncertain because it is not clear whether the new laboratory scientist position will create more equine testing or if demand for more equine testing will create the need for the new position.

Authorization Encumbrance and Expenditure Data

Exhibit 12 reflects the encumbrance and expenditure history for MACS between fiscal 2014 and January 2018. The total authorization for the time period shown is \$19.9 million, of which \$0 remains to be encumbered. The lack of GO bond funding in fiscal 2017 has meant MACS has encumbered more of its authorized funding than it has in previous years.

Exhibit 12
Maryland Agricultural Cost-Share Program
Encumbrances and Expenditures
Fiscal 2014 through January 2018
(\$ in Millions)



Note: Format rounds data so numbers do not balance.

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

Pre-authorizations and De-authorizations

As shown in **Exhibit 13**, there is \$11,530,000 in GO bonds pre-authorized for fiscal 2020 in order to complete construction of the Salisbury Animal Health Laboratory Replacement project. The full cost in fiscal 2020 is projected to be \$11,830,000; \$300,000 for equipment is not pre-authorized.

Exhibit 13 Pre-authorizations and De-authorizations

Pre-authorizations

<u>Project</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>Reason</u>
Salisbury Animal Health Laboratory Replacement	\$11,530,000	\$0	\$0	\$0	Complete construction of the Salisbury Animal Health Laboratory Replacement project.

Source: Department of Budget and Management, 2018 *Capital Improvement Program*

PAYGO Recommended Actions

1. Strike the following language:

~~; provided that this appropriation shall be distributed to each of the counties in the Tri-County Council of Southern Maryland in the following allocation:~~

Calvert County.....	\$333,000
Charles County.....	\$333,000
St. Mary's County.....	\$333,000

Explanation: The fiscal 2019 allowance for the Tobacco Transition Program is conditioned by the distribution of one-third equal distributions to only three of the five counties that have historically received agricultural land easement purchase funding – Anne Arundel County and Prince George’s County do not receive any funding under this distribution. This action strikes the conditioning of the funding so that the Tri-County Council of Southern Maryland may allocate the funding to all five counties in the manner that the funding historically has been provided.

2. Concur with Governor’s allowance of \$48,976,142 in special funds for the Maryland Agricultural Land Preservation Program’s capital appropriation for agricultural land preservation.

GO Bond Recommended Actions

1. Approve the \$4,975,000 general obligation bond authorization for the Salisbury Animal Health Laboratory Replacement project to continue design and begin the construction and equipping of a replacement animal health laboratory in Salisbury.
2. Approve the \$8,500,000 general obligation bond authorization for the Maryland Agricultural Cost-Share Program to provide funds for financial assistance for the implementation of best management practices that reduce soil and nutrient runoff from Maryland farms.
3. Approve the pre-authorization of \$11,530,000 in general obligation bonds for fiscal 2020 for the Salisbury Animal Health Laboratory Replacement project to complete construction of a replacement animal health laboratory in Salisbury.