


MEMORANDUM

March 2, 2018

TO: County Council

FROM: Gene Smith, Legislative Analyst 

SUBJECT: **CIP Worksession** – FY19-24 Capital Improvements Program (CIP): Agricultural Land Preservation Easements

Expected Attendees:

Jeremy Criss, Director, Office of Agriculture (OAG)
Jane Mukira, Office of Management and Budget (OMB)
Mary Beck, Capital Budget Manager, OMB

This project provides funds for the purchase of agricultural and conservation easements under the County Agricultural Land Preservation legislation.¹ The purchasing of these easements restricts certain uses on a property to ensure it is preserved for agricultural and rural uses for future generations.

Committee Recommendation

The Planning, Housing, and Economic Development (PHED) Committee recommends approval of the attached Project Description Form (PDF) on ©1-4.

During the PHED Committee worksession, Chair Floreen requested that the PDF consider alternative language for certain expenditure and funding elements. Council staff details these elements below, but the Committee did not take a position on these during the worksession.

Expenditure – Land. It was requested that this expenditure item reflect that the County is purchasing easements. Easements are a real property instrument, and the term “land” in the expenditure schedule includes a bundle of real property instruments use by the County. **Council staff recommends amending the Fiscal Note to state “land costs are for the purchasing of easements.”**

¹ Section 2B of the County Code.

Funding Source – Intergovernmental and Contributions. It was requested that these funding sources reflect the obligatory nature of the payments. The details of these elements are discussed on page 3. Both funding sources are required payments made by developers, and “Contributions” are from a one-time agreement. **Council staff recommends that both terms be combined into one element called “Developer Payments.”** The PDF’s Fiscal Note can be amended from time-to-time to identify specific changes or notes about these payments.

Use of Funds

The Executive recommends \$3.262 million in expenditures for this project in the FY19-24 CIP, a 29% reduction from the FY17-22 amended CIP. The reduction is due to a loss in programmed Federal and State aid.² Below is the Executive’s proposed expenditure schedule for this project.

FY19-24 Expenditure Schedule (\$000s)

Cost Elements	Total 6 Years	FY19	FY20	FY21	FY22	FY23	FY24
Planning, Design and Supervision	2,242	368	370	372	375	377	380
Land	1,020	170	170	170	170	170	170
Total	3,262	538	540	542	545	547	550

Planning, Design and Supervision. This cost element is approximately 70% of the total expenditures scheduled for this project. The \$368,000 estimated for FY19 includes: 1) \$265,000 for 2.5 FTEs; 2) \$20,000 for the Deer Donation Program; 3) \$15,000 for the County Weed Control Program; and 4) \$68,000 for the Cooperative Extension Partnership. The programmed increase in future fiscal years is due to annualization costs for personnel.

The Council has reduced the amount of funding for staff and additional programs in this project in previous years. **Reducing these expenditures increases funding available to purchase easements.** The PHED Committee will consider these items during its deliberations on the FY19 Operating Budget.

Land. This cost element reflects the funding programmed to purchase easements. The FY19-24 CIP shows a modest increase of \$36,000 annually compared to the FY17-22 amended project because of the expected increase in the Agricultural Transfer Tax (discussed below). **This increase is inadequate for OAG to purchase easements on a regular basis.** Based on fixed costs (e.g., legal fees), the OAG may opt to purchase no easements in some years so that it may purchase larger easements in a future year.

Source of Funds

See ©1 for a list of funding sources for this project. Each element is discussed in detail below.

² Grant requirements at the Federal- and State-level were changed several years ago, so the County no longer qualifies for these funds.

Intergovernmental. Most of this funding is from developers that were required to purchase partial building lot termination (BLT) easements.³ See ©5 for a list of the partial BLT payments to this project in FY17. No partial payments have been received in FY18. In addition, a small portion of this funding is the remaining balance from the Advance Land Acquisition Revolving Fund.

Investment Income. The funding schedule projects that the full value of the principal invested will be expensed by FY23.

Agricultural Transfer Tax.⁴ The FY19-24 CIP projects a \$66,000 or 50% increase to this tax compared to the FY17-22 amended CIP. Executive staff state that the increase is based on an analysis of the ten-year median for this tax. See ©5 for the County's revenue for this tax from FY00-17. **This table demonstrates both the volatility and decline of this tax, particularly in recent years.** As of December 31, 2017, the County has received \$19,297.50 in Agricultural Transfer Tax revenue for FY18.

The OAG continues to explore alternative funding options with other departments or agencies. One option under consideration is working with the Department of Environmental Protection to use future State regulations on nutrient trading to fund easement purchases.⁵ The OAG is still in early stages of the process, so implementation of a new revenue source is not likely in the near term.

Contributions. These funds are from the Crown Farm annexation agreement. One payment of \$500,000 remains. The timing for the County's receipt of these funds depends on when permits are issued by the City of Gaithersburg. The recommended FY19-24 CIP programs these funds in FY23 and FY24.

The PHED Committee recommends approval for the proposed project. Until an alternative funding source is identified and programmed, the Executive and the Council can consider funding easements on a case-by-case basis through supplemental appropriations.

This packet contains:

Proposed PDF

Partial BLT and Agricultural Transfer Tax collections

Circle #

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³ BLTs are an easement that terminates the remaining development rights on certain properties. Acquisition of whole or partial BLTs is required for all optional method projects in Commercial Residential and Life Sciences Center zones and is an option for projects in the Commercial Residential Town and Employment Office zones as part of the public benefit portion.

⁴ This tax is levied on agricultural properties that are sold and removed from agricultural use (e.g., commercial or residential development). The County receives 75% of this tax collected from the State to be used for agricultural land preservation.

⁵ State regulation DLS Control No. 17-199.



Ag Land Pres Easements (P788911)

Category	Conservation of Natural Resources	Date Last Modified	01/03/18
SubCategory	Ag Land Preservation	Administering Agency	Agriculture
Planning Area	Countywide	Status	Ongoing

EXPENDITURE SCHEDULE (\$000s)

Cost Elements	Total	Thru FY17	Est FY18	Total 6 Years	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	Beyond 6 Years
Planning, Design and Supervision	3,593	874	477	2,242	368	370	372	375	377	380	-
Land	7,163	5,750	393	1,020	170	170	170	170	170	170	-
Other	37	37	-	-	-	-	-	-	-	-	-
TOTAL EXPENDITURES	10,793	6,661	870	3,262	538	540	542	545	547	550	-

FUNDING SCHEDULE (\$000s)

Funding Source	Total	Thru FY17	Est FY18	Total 6 Years	FY 19	FY 20	FY 21	FY 22	FY 23	FY 24	Beyond 6 Years
Federal Aid	522	253	269	-	-	-	-	-	-	-	-
G.O. Bonds	308	308	-	-	-	-	-	-	-	-	-
Intergovernmental	4,614	3,614	100	900	150	150	150	150	150	150	-
Investment Income	841	-	70	771	188	190	192	195	6	-	-
Agricultural Transfer Tax	2,315	967	148	1,200	200	200	200	200	200	200	-
Contributions	1,508	1,000	117	391	-	-	-	-	191	200	-
State Aid	685	519	166	-	-	-	-	-	-	-	-
TOTAL FUNDING SOURCES	10,793	6,661	870	3,262	538	540	542	545	547	550	-

APPROPRIATION AND EXPENDITURE DATA (\$000s)

Appropriation FY 19 Request	538	Year First Appropriation	FY89
Appropriation FY 20 Request	540	Last FY's Cost Estimate	10,059
Cumulative Appropriation	7,531		
Expenditure / Encumbrances	6,694		
Unencumbered Balance	837		

Project Description

This project provides funds for the purchase of agricultural and conservation easements under the County Agricultural Land Preservation legislation, effective November 25, 2008, for local participation in Maryland's Agricultural and Conservation programs and through Executive Regulation 3-09 AM, adopted July 27, 2010. The County Agricultural Easement Program (AEP) enables the County to purchase preservation easements on farmland in the agricultural zones and in other zones approved by the County Council to preserve farmland not entirely protected by Transferable Development Rights (TDR) easements or State agricultural land preservation easements. The Maryland Agricultural Land Preservation Foundation (MALPF) enables the

State to purchase preservation easements on farmland jointly by the County and State. The Rural Legacy Program (RLP) enables the State to purchase conservation easements to preserve large contiguous tracts of agricultural land. The sale of development rights easements are proffered voluntarily by the farmland owner. The project receives funding from the Agricultural Transfer Tax, which is levied when farmland is sold and removed from agricultural status. Montgomery County is a State-certified county under the provisions of State legislation, which enables the County to retain 75 percent of the taxes for local use. The County uses a portion of its share of the tax to provide matching funds for State easements. In FY10, the Building Lot Termination (BLT) program was initiated. This program represents an enhanced farmland preservation program tool to further protect land where development rights have been retained in the Agricultural Reserve-AR zone. This program utilizes a variety of revenue sources that include: Agricultural Transfer Tax revenues, Montgomery National Capital Park and Planning Commission (MNCPPC) Contributions, Developer Contributions, and G.O. Bonds to purchase the development rights and the corresponding TDRs retained on these properties.

Cost Change

Expenditures and funding schedules reflect the revised estimates for Agricultural Transfer Tax revenues. In addition, expenditures and funding have been added to FY23 and FY24.

Project Justification

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

Other

FY19 estimated Planning, Design and Supervision expenditures are \$368,000, with \$30,000 of these annual costs funded by Agricultural Transfer Tax revenues as authorized by State law. The amount includes funding for 1.0 FTE Sr. Business Development Specialist; 1.5 FTE administrative staff; \$20,000 for the Deer Donation Program; \$15,000 for the Montgomery Weed Control Program; and \$68,000 for the Cooperative Extension Partnership. Appropriations are based upon a projection of Montgomery County's portion of the total amount of Agricultural Transfer Tax which has become available since the last appropriation and State Rural Legacy Program grant funding. Appropriations to this project represent a commitment of Agricultural Transfer Tax funds and State Aid to purchase agricultural easements, private contributions from the Crown Farm Annexation Agreement, and partial BLT payments made by developers for additional density in BLT receiving areas. The Agricultural Transfer Taxes are deposited into an investment income fund, the interest from which is used to fund direct administrative expenses, the purchase of easements, and other agricultural initiatives carried out by the Office of Agriculture. The program permits the County to take title to the TDRs. These TDRs are an asset that the County may sell in the future, generating revenues for the Agricultural Land Preservation Fund. The County can use unexpended appropriations for this project to pay its share (40 percent) of the cost of easements purchased by the State. Since FY99, the County has received State RLP grant funds to purchase easements for the State through the County. The State allows County reimbursement of three percent for direct administrative costs such as appraisals, title searches, surveys, and legal fees. The traditional funding sources for this project are no longer sustainable. Easement acquisition opportunities will be considered on a case-by-case approach while alternative funding sources are identified.

Fiscal Note

Expenditures do not reflect additional authorized payments made from the Agricultural Land Preservation Fund balance to increase financial incentives for landowners. An FY17 supplemental of \$634,000 was approved. Funding included: \$112,000 in Agricultural Transfer tax and reinstated \$522,000 in Federal Aid funding that was erroneously eliminated from this project.

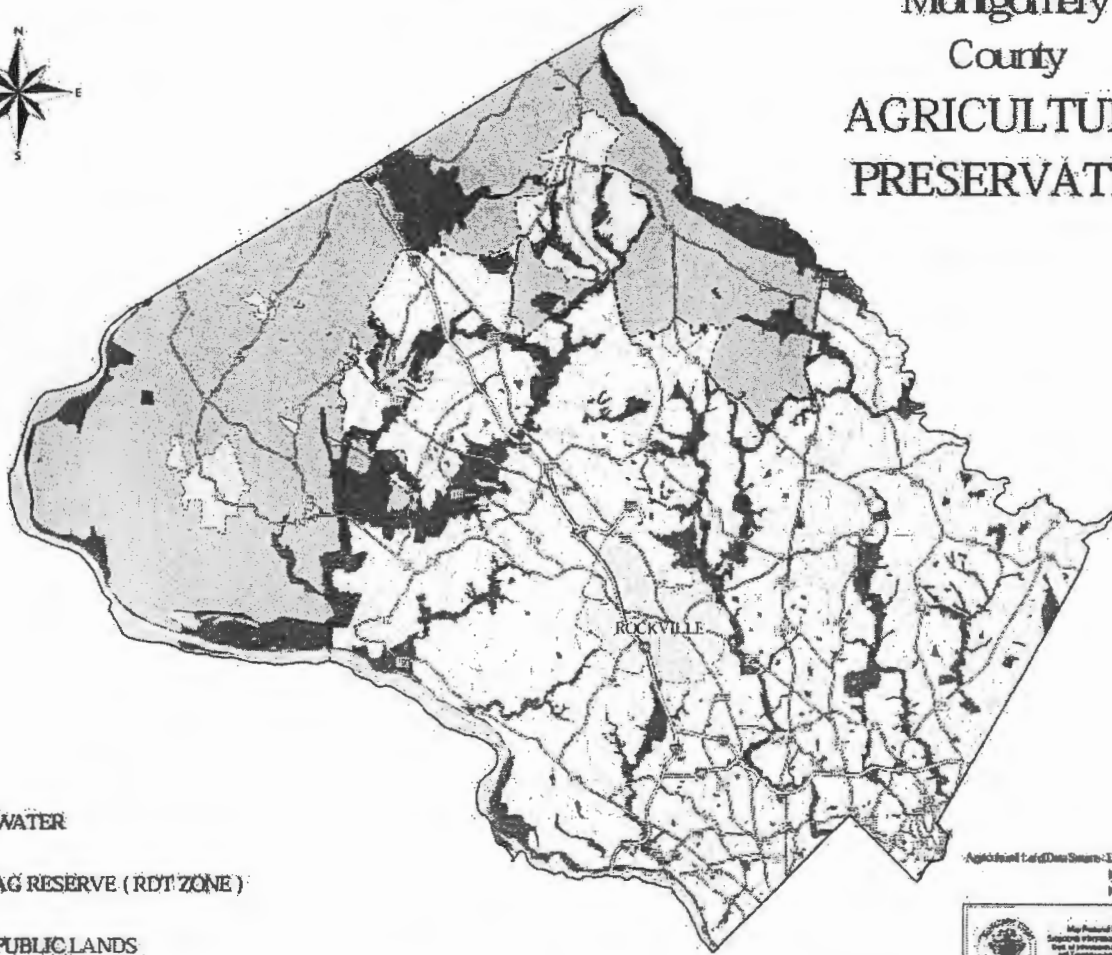
Disclosures




Expenditures will continue indefinitely. The County Executive asserts that this project conforms to the requirement of relevant local plans, as required by the Maryland Economic Growth, Resource Protection and Planning Act.

Coordination

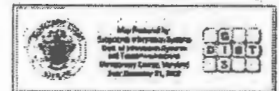
Montgomery County Office of Agriculture, State of Maryland Agricultural Land Preservation Foundation, State of Maryland Department of Natural Resources, Maryland-National Capital Park and Planning Commission, and landowners.

Montgomery County AGRICULTURAL PRESERVATION



-  WATER
-  AG RESERVE (RDT ZONE)
-  PUBLIC LANDS

Agricultural Land Data Source: USDA Agricultural Services
ROCKVILLE, MD
MD Office of Planning



FY17 Partial BLT payments

<u>Developer</u>	<u>Payment</u>
SG Apartments LLC	\$167,593.10
Shelter Development, LLC	\$42,254.10
Ripleys East	\$177,912.00
4747 Bethesda Avenue	\$62,269.00
CGPII Siesta Key MD Venture, LLC	<u>\$67,250.74</u>
Total:	\$517,278.94

FY00-FY17 Agricultural Transfer Tax County Revenue

Fiscal Year	Amount
FY00	\$2,846,000
FY01	\$1,605,000
FY02	\$2,132,000
FY01	\$1,605,000
FY02	\$2,132,000
FY03	\$2,431,000
FY04	\$1,937,000
FY05	\$1,775,000
FY06	\$7,434,000
FY07	\$303,011
FY08	\$626,402
FY09	\$57,398
FY10	\$517,310
FY11	\$339,968
FY12	\$75,847
FY13	\$157,580
FY14	\$231,042
FY15	\$13,691
FY16	\$736,000
FY17	\$88,324