

Audit Report

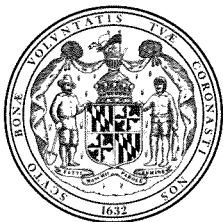
Maryland Agricultural Land Preservation Fund

Fiscal Year Ended June 30, 2013



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

Karl S. Aro
Executive Director

June 19, 2014

Thomas J. Barnickel III, CPA
Legislative Auditor

Senator James C. Rosapepe, Co-Chair, Joint Audit Committee
Delegate Guy J. Guzzone, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

We have audited the Maryland Agricultural Land Preservation Fund (Fund) for the period beginning July 1, 2012 and ending June 30, 2013. The Fund was established to preserve productive agricultural land and is primarily funded by State General Obligation Bond funds, State and agricultural transfer taxes and local subdivision matching funds. The Fund is administered by the Maryland Agricultural Land Preservation Foundation (MALPF).

Our audit disclosed that MALPF did not ensure that landowners, who had violated the terms of easement agreements, had resolved those violations in a timely manner. At June 30, 2013, there were 348 unresolved violations, including 49 violations that were considered to be relatively high priority by MALPF management, which had been outstanding for up to seven years.

The Department of Agriculture's response to this audit, on behalf of MALPF, is included as an appendix to this report. We wish to acknowledge the cooperation extended to us by MALPF during the course of this audit.

Respectfully submitted,

Thomas J. Barnickel III, CPA
Legislative Auditor

Background Information

Agency Responsibilities

The Maryland Agricultural Land Preservation Foundation (MALPF) was established to preserve productive agricultural land and woodland in Maryland. MALPF, which is governed by a Board of Trustees consisting of 13 members, purchases land easements with Maryland Agricultural Land Preservation Fund (Fund) revenue and places certain restrictions on the use of the land (for example, the land cannot be subdivided for residential or commercial purposes). The Fund, which is administered by MALPF, generally derives funding from State transfer taxes, agricultural transfer taxes, and local subdivision matching funds. In addition, MALPF uses proceeds from General Obligation Bonds to fund easement purchases. No State transfer taxes were received by the Fund during fiscal year 2013 as a result of the Budget Reconciliation and Financing Act of 2012 which transferred these collections to the State's General Fund. According to MALPF's records, as of June 30, 2013, it had purchased 2,102 easements on 285,902 acres of land for a total cost of approximately \$617.7 million.

Financial Information

According to State accounting records, as of June 30, 2013, the total resources available to finance future MALPF expenditures, including easement acquisitions, were \$27.3 million consisting of funds held in a Special Revenue Fund (\$7.7 million) and General Obligation Bond funds (\$19.6 million). During fiscal year 2013, MALPF acquired easements costing approximately \$4.3 million. Available resources increased by \$4.5 million compared to resources available at June 30, 2012. The increase in resources available was primarily attributable to proceeds of General Obligation Bonds of approximately \$10.2 million received during fiscal year 2013.

The Special Revenue Fund balance is reserved for easement acquisitions that were approved by MALPF's Board of Trustees, but were not yet presented to the landowners, as well as offers accepted by the landowners that were awaiting Board of Public Works approval or settlement at year-end. General Obligation Bonds have also been issued to finance future expenditures. In addition to funds available to fund future expenditures, MALPF holds other funds committed for the payment of easements purchased by MALPF on an installment basis which, according to State accounting records, totaled \$6.9 million as of June 30, 2013.

Status of Finding From Preceding Audit Report

Our audit included a review to determine the status of the finding contained in our preceding audit report dated April 30, 2013. We determined that this finding was not satisfactorily resolved and is repeated in this report.

Findings and Recommendations

Easement Violations

Finding 1

The Maryland Agricultural Land Preservation Foundation (MALPF) did not ensure that all easement violations were resolved in a timely manner.

Analysis

MALPF did not ensure that all easement violation were resolved in a timely manner. Violations may be noted, for example, during periodic easement inspections performed by the counties, and include conditions such as an improper dwelling on the property or a subdivision violation. Inspection reports submitted by the county offices are entered into MALPF's database, and MALPF is responsible for notifying the landowners of noted violations and ensuring landowner compliance. Although we were advised by MALPF management that it periodically reviewed a report of outstanding violations from its database, this review and the related follow-up actions were not documented. These reviews are critical to ensure corrective actions have been taken by the landowners to comply with easement terms.

According to a report generated by the database, as of June 30, 2013, there were 348 unresolved violations. Of these violations, 49 were considered to be relatively high priority violations by MALPF management (including illegal subdivisions and improper dwellings). According to the database, these 49 violations have remained unresolved for periods of up to seven years. We performed various tests of the relevant data from the aforementioned report and determined that the data were sufficiently reliable for the purposes the data were used during the audit.

The MALPF *Easement Inspection Policy* requires that the counties perform inspections on a minimum of 10 percent of their existing State-funded easement properties and 100 percent of their federally funded easement properties each year. State regulations allow MALPF to impose civil penalties of \$2,500 per day

per violation (up to a \$50,000 maximum) on a landowner as a result of uncorrected violations although no penalties were imposed during fiscal year 2013. A similar condition was commented upon in our preceding audit report.

Recommendation 1

We recommend that MALPF

- a. perform appropriate and timely follow-up actions on outstanding easement violations to ensure corrective actions were taken (repeat);**
- b. document periodic reviews of the database and related follow-up actions; and**
- c. determine the status of the aforementioned unresolved violations and impose penalties, if deemed appropriate (repeat).**

Audit Scope, Objectives, and Methodology

We have audited the Maryland Agricultural Land Preservation Fund (Fund) for the fiscal year ending June 30, 2013. The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

As prescribed by the State Government Article, Section 2-1221 of the Annotated Code of Maryland, the objectives of this audit were to examine the Fund's financial transactions, records, and internal control, and to evaluate its compliance with applicable State laws, rules, and regulations. The Fund is audited annually as required by the Agriculture Article, Section 2-505 of the Code. We also determined the status of the finding contained in our preceding audit report.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of materiality and risk. The areas addressed by the audit included disbursements for the purchase of easements, as well as receipt of agricultural land transfer taxes, and compliance with easement terms.

To accomplish our audit objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, observations of the Fund's operations, and tests of transactions. We also performed other auditing procedures that we considered necessary to achieve our objectives. The reliability

of data used in this report for background or informational purposes was not assessed.

Our audit did not include certain support services provided to the Maryland Agricultural Land Preservation Foundation (MALPF) by the Department of Agriculture. These support services (such as purchasing, data processing, maintenance of accounting records, and related fiscal functions) are included within the scope of our audit of the Department.

MALPF management is responsible for establishing and maintaining effective internal control. Internal control is a process designed to provide reasonable assurance that objectives pertaining to the reliability of financial records, effectiveness and efficiency of operations including safeguarding of assets, and compliance with applicable laws, rules, and regulations are achieved.

Because of inherent limitations in internal control, errors or fraud may nevertheless occur and not be detected. Also, projections of any evaluation of internal control to future periods are subject to the risk that conditions may change or compliance with policies and procedures may deteriorate.

Our reports are designed to assist the Maryland General Assembly in exercising its legislative oversight function and to provide constructive recommendations for improving State operations. As a result, our reports generally do not address activities we reviewed that are functioning properly.

This report includes a finding relating to a condition that we consider to be a significant deficiency in the design or operation of internal control that could adversely affect MALPF's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. This finding is also regarded as a significant instance of noncompliance with applicable laws, rules, or regulations. Another less significant finding was communicated to MALPF that did not warrant inclusion in this report.

The Department of Agriculture's response, on behalf of MALPF, to our findings and recommendations is included as an appendix to this report. As prescribed in the State Government Article, Section 2-1224 of the Annotated Code of Maryland, we will advise the Department regarding the results of our review of its response.



Maryland Department of Agriculture

APPENDIX

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Office of the Secretary

Martin O'Malley, Governor
Anthony G. Brown, Lt. Governor
Earl F. Hance, Secretary
Mary Ellen Setting, Deputy Secretary

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June 17, 2014

Thomas J. Barnickel, III, CPA
Legislative Auditor
State of Maryland – Office of Legislative Audits
State Office Building, Room 1202
301 West Preston Street
Baltimore, MD 21201

Dear Mr. Barnickel:

Attached you will find our responses to your draft audit report for the Maryland Agricultural Land Preservation Foundation for the period ending June 30, 2013.

Per your request, we will submit both paper and electronic copies to:
response@ola.state.md.us.

If you have any questions or specific issues regarding our response, please contact Jim Wallace at 410.841.5855 or via email: James.Wallace@maryland.gov.

Sincerely,

Earl F. Hance
Secretary

CC: James Wallace, Director of Administration
Carol West, Executive Director, MALPF

Attachment: Responses to Draft Audit Report for the Maryland Department of Agriculture

Response to Maryland Agricultural Land Preservation Fund Audit
June 30, 2013

Finding: The Maryland Agricultural Land Preservation Foundation (MALPF) did not ensure that all easement violations were resolved in a timely manner.

Response: *MALPF concurs that we have not done an adequate job of follow-up actions on outstanding easement violations. Administrators have not consistently documented each contact with the landowner/attorney and/or county program administrator. Specifically, no notes were made when there were emails or phone conversations. In order to better document subsequent activity, a status update sheet will be placed in each violations folder. The administrators and enforcement coordinator will document each contact that is attempted or made. Civil penalties were approved by the Maryland Legislature and are used by the Board of Trustees as a means of encouraging landowners to move toward resolution of violations when other means have failed; and, is seen by the Foundation as a last resort, not the first. MALPF first tries to resolve violations amicably; but, when a resolution with a landowner cannot be reached, MALPF requests the assistance of the Office of the Attorney General to file a lawsuit or to seek a civil penalty, whichever action is deemed appropriate by the Board of Trustees. MALPF staff has taken the following steps toward improving our process for violation follow-up and resolution:*

- 1) We have instituted a requirement that all contacts with landowners, attorneys and/or county program administrators must be documented in the file. This file is available for any and all MALPF staff to review.*
- 2) We have inquired with MDA about the possibility of withholding funding for cover crops or Maryland Agriculture Water Quality Cost-Share (MACS) Program from landowners whose easements are in violation.*
- 3) MALPF staff continues to hold bi-annual meetings with our Assistant Attorneys General to review the list of violations, set priorities, and determine if the rating given to each violation is appropriate.*

AUDIT TEAM

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Audit Manager

Lauren R. Crue, CPA
Senior Auditor

Isatta B. Mead
Staff Auditor