

Audit Report

Maryland Agricultural Land Preservation Fund

Fiscal Year Ended June 30, 2009



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

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Karl S. Aro
Executive Director

DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

March 31, 2010

Bruce A. Myers, CPA
Legislative Auditor

Senator Verna L. Jones, Co-Chair, Joint Audit Committee
Delegate Steven J. DeBoy, Sr., 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 fiscal year ending June 30, 2009. The Fund was established to preserve productive agricultural land and is primarily funded by 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's database of easement acquisitions had not been tested for reliability nor reconciled to the State's accounting records. In addition, MALPF needed to improve existing processes to ensure the accuracy of payments related to easement acquisition installment purchases.

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,

Bruce A. Myers, CPA
Legislative Auditor

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* Denotes item repeated in full or part from preceding audit report

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 revenues from State transfer taxes, agricultural transfer taxes, local subdivision matching funds, and federal grants. According to MALPF's records, since inception through June 30, 2009, it had purchased 2,018 easements on 277,000 acres of land for a total cost of approximately \$556 million.

Status of Findings From Preceding Audit Report

Our audit included a review to determine the status of the five findings contained in our preceding audit report dated June 15, 2009. We determined that MALPF satisfactorily addressed three of these findings. The remaining two findings are repeated in this report.

Financial Information

Attached, as Exhibit A, is a schedule of the financial activity of the Fund for the fiscal year ended June 30, 2009. This schedule is not intended to, and does not provide the financial position and results of operations in accordance with generally accepted accounting principles. Specifically, certain financial statements (for example, a balance sheet) and disclosures have not been provided as would be required by generally accepted accounting principles. The schedule was prepared on a modified accrual basis of accounting which provides that revenues are recognized when they become available and measurable, and expenditures are recognized when the related liability is incurred.

The fund balance as of June 30, 2009 in the Special Revenue Fund (\$11,284,477) represents funds available to finance future expenditures, including easement acquisitions. The fund balance as of June 30, 2009 in the Trust Fund (\$12,711,892) represents funds committed for the payment of easements purchased by MALPF on an installment basis.

Fund Status

MALPF recorded approximately \$42 million in encumbrances at the end of fiscal year 2009, which generally served to reserve funds for outstanding easement offers and was consistent with the remaining budgetary appropriations from 2009 and prior fiscal years. As of June 30, 2009, the amount of such offers totaled approximately \$46 million. However, the Fund only had a balance of approximately \$11 million to be used for these obligations, resulting in a shortage of \$35 million. While in the past, shortages were caused, in part, by the attainment of less than budgeted revenue; that was not the case for fiscal year 2009. Specifically, during fiscal year 2009, the actual revenues realized by MALPF were approximately \$38 million more than the estimated revenues of \$35 million appropriated to MALPF and were used to make offers to purchase easements for fiscal year 2009 and also to reduce the \$66 million shortage noted at the end of fiscal year 2008.

State law governing the Fund recognizes that estimated revenues may not be realized. Accordingly, the law provides for adjustments in future years or de-authorization of projects previously authorized.

Findings and Recommendations

Easement Acquisitions

Finding 1

The Maryland Agricultural Land Preservation Foundation's (MALPF) database of easement acquisitions had not been tested for reliability nor reconciled to the State's accounting records.

Analysis

The database of easement acquisitions developed by MALPF had not been tested for reliability nor reconciled to the State's accounting records. MALPF's database of easements purchased contains information such as the number of acres purchased and the related purchase price. However, as of December 31, 2009, the database had not been tested for accuracy and completeness. In addition, the database had not been reconciled to the State's accounting records. MALPF management advised us that it anticipated completing the reliability testing of the database by June 30, 2010. Consequently, there is a lack of assurance that all easements were properly accounted for and reported.

During our review, we also noted a lack of reliable data supporting the total cumulative cost of easement acquisitions reported in the MALPF Annual Report to the General Assembly (\$556 million) which exceeded the comparable amount recorded on the State's accounting records (\$486 million) by \$70 million. Additionally, the cumulative cost of the easement acquisitions recorded in the database totaled approximately \$533 million.

The MALPF developed a database of easement acquisitions as recommended in our preceding audit report. However, during our preceding audit, we also noted that the amount of easement acquisitions reported to the General Assembly was not supported and also had not been reconciled to the State's accounting records. These conditions continued to exist during our current audit.

Recommendation 1

We recommend that MALPF

- a. ensure the accuracy of the database of easement acquisitions,**
- b. ensure that easement information is accurately reported in its annual report and periodically reconciled to the related State accounting records (repeat), and**
- c. investigate the aforementioned discrepancies and take appropriate corrective action (repeat).**

Finding 2

Procedures and controls over easement acquisition payments related to installment purchases were inadequate.

Analysis

Procedures and controls over easement acquisition payments related to installment purchases were inadequate. Specifically, payments to landowners for easement acquisitions purchased on an installment basis were not always subject to independent review or approval. Although lump sum acquisition payments and initial installment payments were subject to review by the Department of General Services, no such review was required or performed for subsequent installment payments. A similar situation was commented upon in our preceding audit report.

A landowner has the option of receiving either a lump sum payment for easements acquired by MALPF, or may request that the purchase price, along with related accumulated interest, be paid in installments over a ten-year period. According to MALPF records, during fiscal year 2009, MALPF issued installment payments totaling approximately \$2.3 million.

Recommendation 2

We recommend that MALPF ensure that installment payments be reviewed by an independent employee and that such reviews be documented (repeat).

County Agricultural Land Transfer Taxes**Finding 3**

MALPF had not obtained formal legal advice regarding the legality of recovering excessive amounts of agricultural land transfer taxes retained by certain counties during prior fiscal years.

Analysis

MALPF had not obtained formal legal advice to determine the legality of recovering excessive amounts of agricultural land transfer taxes retained by certain counties during prior fiscal years. Specifically, during our preceding audit, we noted that certain county land preservation programs were not properly certified, in accordance with the regulations in effect at that time. These counties retained a higher percentage of transfer taxes collected as allowed for counties with certified programs. Since our preceding audit, the applicable regulations have been amended to allow county land preservation programs to retain their certification status unless the program is specifically decertified. Had the counties been treated as non-certified and remitted the corresponding percentage of transfer taxes, the counties identified would have been required to remit additional

funds to the State. As a result, MALPF needs formal legal advice to determine whether any amounts retained by the counties in prior years should be recovered. MALPF advised us that a memo requesting the legal advice has been drafted; however, as of January 28, 2010, it was being reviewed internally prior to being sent to its legal counsel.

Recommendation 3

We recommend that MALPF obtain formal legal advice to determine the legality of recovering any excessive amounts retained by the counties in prior years and take any appropriate action based on the advice obtained.

Audit Scope, Objectives, and Methodology

We have audited the Maryland Agricultural Land Preservation Fund (Fund) for the fiscal ending June 30, 2009. 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 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. We audit the Fund annually as required by the Agriculture Article, Section 2-505 of the Code. We also determined the status of the findings 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 cash receipts, and compliance with easement terms. Our audit procedures included inquiries of appropriate personnel, inspections of documents and records, and observations of the Fund's operations. We also tested transactions and performed other auditing procedures that we considered necessary to achieve our objectives. Data provided in this report for background or informational purposes were deemed reasonable, but were not independently verified.

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 findings relating to conditions that we consider to be significant deficiencies in the design or operation of internal control that could adversely affect the Fund's ability to maintain reliable financial records, operate effectively and efficiently, and/or comply with applicable laws, rules, and regulations. Our report also includes a finding regarding a significant instance of noncompliance with applicable laws, rules, or regulations. Other less significant findings were communicated to the Fund that did not warrant inclusion in this report.

The Department of Agriculture's response, on behalf of the Foundation, 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.

Exhibit A

MARYLAND AGRICULTURAL LAND PRESERVATION FUND

Schedule of Financial Activity Fiscal Year Ended June 30, 2009

	Governmental Fund Type Special Revenue	Fiduciary Fund Types Trust	Total (Memorandum Only)
REVENUES:			
State property transfer taxes	\$ 50,794,401		\$ 50,794,401
Local subdivision matching funds for easement purchases	21,059,974		21,059,974
Agricultural transfer taxes	1,580,229		1,580,229
Interest earnings on funds reserved for installment Purchases		\$ 278,288	278,288
Other non-recurring receipts	39,827		39,827
Total Revenues	73,474,431	278,288	73,752,719
EXPENDITURES:			
Easement acquisitions	67,667,726		67,667,726
Federal fund easement acquisitions	2,176,900		2,176,900
Administration	1,120,980		1,120,980
Land appraisal, legal, and settlement fees	595,118		595,118
Total Expenditures	71,560,724		71,560,724
EXCESS OF REVENUE OVER EXPENDITURES	1,913,707	278,288	2,191,995
OTHER SOURCES (USES) OF FINANCIAL RESOURCES:			
Federal reimbursement of Special Revenue Fund expenditures for easement acquisitions	2,176,900		2,176,900
Transfers in from Special Revenue Fund for easement acquisitions purchased on installment basis		5,403,012	5,403,012
Payments made on easement acquisitions purchased on an installment basis		(2,560,579)	(2,560,579)
Net Other Sources (Uses) of Financial Resources	2,176,900	2,842,433	5,019,333
EXCESS OF REVENUES OVER EXPENDITURES AND NET OTHER SOURCES (USES) OF FINANCIAL RESOURCES	4,090,607	3,120,721	7,211,328
FUND BALANCES, July 1, 2008	7,193,870	9,591,171	16,785,041
FUND BALANCES, June 30, 2009	(1) \$ 11,284,477	\$ 12,711,892	\$ 23,996,369

- (1) The Special Revenue Fund Balance is reserved for easement acquisition offers that were approved by the MALPF Board of Trustees, but were not 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.



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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March 23, 2010

Mr. Bruce A. Myers, CPA
Legislative Auditor
State of Maryland – Office of Legislative Audits
State Office Building, Room 1202
301 West Preston Street
Baltimore, MD 21201

Dear Mr. Myers:

Attached you will find our responses to your draft audit report for Maryland Agricultural Land Preservation Fund for Fiscal Year ending June 30, 2009.

If you have any specific issues concerning our response contact Jim Wallace at (410) 841-5855.

Sincerely,

Earl F. Hance
Secretary

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Responses to Maryland Agricultural Land Preservation Fund Audit ending June 30, 2009

Finding 1

The Maryland Agricultural Land Preservation Foundation's (MALPF) database of easement acquisitions had not been tested for reliability nor reconciled to the State's accounting records.

We concur.

The purpose of this database has never been for financial accounting, but for management of the program and policy analysis. The Department's Fiscal Services Office maintains all accounting records. Once critical records in new database are verified, accurate reporting will be available based on relevant criteria for any historical point or time period.

Finding 2

Procedures and controls over easement acquisition payments related to installment purchases were inadequate.

We concur.

The program will maintain detail information on installment payments. Each period, Treasurer's information along with the program detail of the installment payments will be forwarded to Fiscal Services for review and approved for payment.

Finding 3

MALPF had not obtained formal legal advice regarding the legality of recovering excessive amounts of agricultural land transfer taxes retained by certain counties during prior fiscal years.

We concur.

The written advice has been drafted by the Department, and forwarded to the Department of Planning for review. The Foundation will take the necessary action based on legal advice.

AUDIT TEAM

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