

Audit Report

Maryland Agricultural Land Preservation Fund

Fiscal Year Ended June 30, 2008



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

Bruce A. Myers, CPA
Legislative Auditor

June 15, 2009

Delegate Steven J. DeBoy, Sr., Co-Chair, Joint Audit Committee
Senator Verna L. Jones, 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 ended June 30, 2008. 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 lacked a comprehensive listing of all easement acquisitions and needed to improve existing processes to ensure the accuracy of easement purchase prices and related payments. We also noted that MALPF did not effectively monitor the certification status of local land preservation programs and did not ensure that all appropriate taxes were remitted to the Fund. In addition, MALPF did not properly monitor easement inspections performed by local jurisdictions.

An Executive Summary of our findings can be found on page 5. 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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Executive Summary

Legislative Audit Report on the Maryland Agricultural Land Preservation Fund June 2009

- **Maryland Agricultural Land Preservation Foundation (MALPF) did not maintain sufficient records of all easement acquisitions to ensure all easements were properly accounted for, and significant discrepancies existed between the cost of easement acquisitions reported by the MALPF to the General Assembly and the related amount reported on the State's accounting records.**

MALPF should maintain a comprehensive listing of all easement acquisitions and ensure consistent reporting of such activity.

- **MALPF lacked adequate procedures for ensuring easement acquisition prices were properly calculated.**

MALPF should ensure that critical calculations of easement acquisition prices are reviewed by an independent employee and that such reviews are documented.

- **County agricultural land preservation programs were not properly certified, resulting in certain counties retaining a higher share of transfer taxes.**

MALPF should properly certify county agricultural land preservation programs and determine the legality of recovering any amounts deemed to be inappropriately retained by the non-certified counties.

- **MALPF did not ensure that counties properly used agricultural land transfer taxes that had been retained by the counties in accordance with State laws and regulations, and did not ensure that counties remitted the required amount of unused transfer taxes to the State.**

MALPF should obtain and review annual reports and related audited financial statements to ensure that counties are using the transfer taxes in accordance with State law and are remitting all required amounts to the State.

- **Easement inspections were not performed in accordance with MALPF's policy to ensure that landowners were in compliance with the provisions stipulated in the easement agreements.**

MALPF should establish procedures to ensure that all easement properties are periodically subject to inspection, and establish procedures to take documented follow-up action when counties fail to conduct required inspections.

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 12 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, as of June 30, 2008, it had purchased 2,018 easements on 275,000 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 September 4, 2008. We determined that MALPF had not satisfactorily addressed these findings; therefore, these 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, 2008. 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, 2008 in the Special Revenue Fund (\$7,193,870) represents funds available to finance future expenditures, including easement acquisitions. The fund balance as of June 30, 2008 in the Trust Fund (\$9,591,171) represents funds committed for the payment of easements purchased by MALPF on an installment basis.

Fund Status

MALPF recorded approximately \$78 million in encumbrances at the end of fiscal year 2008, which generally served to reserve funds for outstanding easement offers and was consistent with the remaining budgetary appropriations from 2008 and prior fiscal years. As of June 30, 2008, the amount of such offers totaled approximately \$73 million. However, the Fund only had a balance of approximately \$7 million to be used for these obligations. The \$66 million dollar shortage was caused, in part, by the attainment of less than budgeted revenue. For example, during fiscal year 2008, the actual revenues realized by MALPF was approximately \$12 million less than the estimated revenue of \$68 million appropriated to MALPF and used to make offers to purchase easements for that year.

The revenue shortfall was also affected by certain limitations on federal funding that MALPF has experienced since late 2005, which were addressed in the Department of Legislative Services' Analyses of Maryland Executive Budget for fiscal years 2008, 2009, and 2010. In this regard, certain changes made to federal government easement requirements in 2005 have inhibited the use of federal funding. We were advised by MALPF management that it had contacted the federal government to request that the federal restrictions be relaxed.

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

Findings and Recommendations

Easement Acquisitions

Finding 1

A comprehensive listing of all easement acquisitions was not maintained to ensure that easements were properly accounted for and reported.

Analysis

The Maryland Agricultural Land Preservation Foundation (MALPF) did not maintain a comprehensive listing or operational database of all easements purchased, including the number of acres purchased and the related purchase price, to ensure all easements were properly accounted for and reported. A similar condition was commented upon in our preceding audit report, wherein we commented that, consequently, MALPF was unable to support the dollar value of easements previously reported to the General Assembly for fiscal year 2007 (which still is the most recent year reported) or recorded in the State's accounting records. Currently, MALPF management advised us that it is developing a new database which will provide detailed easement information for all easements acquired by MALPF since its inception. MALPF management anticipates that the new database will be completed by December 31, 2009.

In addition to a lack of underlying data to support the total cumulative cost of easement acquisitions reported in the MALPF Annual Report to the General Assembly (\$490 million), we also noted that the reported amount exceeded the comparable amount recorded on the State's accounting records (\$419 million) by \$71 million. MALPF management could not readily explain this difference.

Recommendation 1

We recommend

- a. that MALPF maintain a comprehensive database of all easement acquisitions and that this information be accurately reported in its annual reports and reconciled to the State's accounting records (repeat), and**
- b. that MALPF investigate the aforementioned discrepancy and take appropriate corrective action (repeat).**

Finding 2**Procedures and controls over easement acquisitions were inadequate.****Analysis**

MALPF lacked adequate procedures and controls over easement acquisitions. Specifically, independent reviews of calculations performed to determine easement acquisition prices were not documented. One MALPF employee was responsible for determining the Agricultural Land Value of properties considered for easement purchases, which totaled approximately \$79 million during fiscal year 2008. Since this value is subtracted from the appraised value of the land to determine the acquisition cost, undetected errors could result in erroneous easement acquisitions payments. MALPF management advised us that the calculations were reviewed by an independent employee; however, the reviews were not documented.

A similar condition was commented upon in our preceding audit report. In response to our preceding report finding, MALPF agreed to implement a documented review procedure to address this issue. However, since MALPF has not gone through another offer cycle since our preceding report was issued, the new procedure has not yet been used.

In addition, 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 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 2008, MALPF issued installment payments totaling approximately \$2.3 million.

Recommendation 2**We recommend**

- a. that MALPF ensure that critical calculations be reviewed by an independent employee and that such reviews be documented (repeat), and**
- b. that MALPF ensure that installment payments be reviewed by an independent employee and that such reviews be documented.**

County Agricultural Land Transfer Taxes

Finding 3

County agricultural land preservation programs were not properly certified resulting in certain counties improperly retaining a higher share of transfer taxes collected.

Analysis

The certification process for county agricultural land preservation programs was inadequate. Our test of 16 county programs that were deemed certified by MALPF through June 30, 2008 disclosed that MALPF retroactively recertified 11 of the programs for periods ranging from 2 to 13 months even though such retroactive approval was not provided for in State regulations. For example, MALPF approved in July 2008 requests for program certification received from three counties whose prior certifications had expired as of June 30, 2007. Furthermore, MALPF recertified the programs for three other counties tested even though the counties had not requested that their programs be recertified.

This is significant because, under State regulations, a county that lacks a properly certified program may only retain 33 percent of its agricultural land transfer tax revenues rather than the 75 percent retained by a certified county (except Montgomery County, which is allowed to retain 67 percent even if it is not certified). According to MALPF's records, transfer tax revenues remitted to the State by the aforementioned eleven counties, during that portion of fiscal year 2008 for which each county lacked proper certification, totaled approximately \$900,000. However, if the counties had been treated by MALPF as non-certified and remitted transfer taxes at the higher percentage, these eleven counties would have been required to remit an additional \$1.2 million to the State during fiscal year 2008.

A similar condition was commented upon in our two preceding audit reports. At the conclusion of our preceding audit, we discussed this matter with MALPF management and the Department of Agriculture's legal counsel. We were advised that, the aforementioned regulations notwithstanding, it was not necessary to require non-certified counties to remit additional transfer taxes since the counties would ultimately use such funds for the same purpose as MALPF (namely to acquire additional property easements). However, as commented upon in Finding 4, MALPF does not currently ensure that counties use all agricultural land transfer taxes as required.

State regulations specify that MALPF and the Maryland Department of Planning are jointly responsible for certifying and recertifying county agricultural land preservation programs. Counties are certified for a two-year period and must submit a request for recertification in October of the year preceding their certification expiration (for example, in October 2007 for certifications expiring in June 2008) in order to maintain continuous certification status.

Recommendation 3

We recommend

- a. that MALPF establish a process to timely monitor the certification status of the county agricultural land preservation programs and to ensure that agricultural land transfer taxes remitted are consistent with the certification status (repeat), and**
- b. that MALPF obtain a formal legal advice to determine the legality of recovering the excessive amounts retained by the counties, including the aforementioned \$1.2 million, and take appropriate action (repeat).**

Finding 4

MALPF did not ensure that counties properly used their share of agricultural land transfer taxes or remitted the unused funds to the State as required.

Analysis

MALPF did not have an effective process to annually monitor the use of agricultural land transfer taxes to ensure that counties properly used their share of transfer taxes or remitted the unused funds to the State as required. All counties are required by State regulations to submit annual reports that are to include information regarding the transfer taxes collected by the counties, the nature of the counties' use of the taxes, and whether any unexpended taxes were due to the State.

However, as of January 30, 2009, MALPF had not received from the counties any of the annual reports applicable to fiscal year 2007 (generally due in October 2007) and, as a result, did not ensure the proper disposition of the transfer taxes. Although we were advised by MALPF management that this information may be included in a county's audited financial statements, MALPF did not obtain these statements to determine whether counties remitted all amounts due to the State.

State law provides that each county shall remit the transfer taxes attributable to instruments of writing that transfer title to certain parcels of wooded land and a percentage of any remaining agricultural land transfer taxes to the State, most of

which is subsequently credited to the Maryland Agricultural Land Preservation Fund (Fund). The remaining transfer tax revenue can be used by the counties for land preservation (for example, to purchase development rights) and any taxes not expended or committed on or before three years from the original date of receipt, shall be remitted to the State for deposit into the Fund. According to the State's accounting records, agricultural land transfer taxes remitted to the State during fiscal year 2008 totaled approximately \$2.8 million.

A similar condition was commented upon in our preceding audit report.

Recommendation 4

We recommend

- a. that MALPF establish procedures to obtain and review the required annual reports and the related audited financial statements in order to monitor the use of transfer taxes in accordance with State law and the remission of amounts due to the State (repeat), and**
- b. that MALPF review the counties' usage of agricultural transfer taxes during prior years, determine if the taxes were used for purposes provided for by law, and recoup any taxes due to the State or improperly used (repeat).**

Easement Inspections

Finding 5

MALPF did not adequately monitor to ensure that counties annually inspected property easements as required.

Analysis

MALPF did not adequately monitor to ensure that counties annually inspected property easements as required. Specifically, for easements acquisitions paid for with State and local funds, MALPF did not receive inspection reports for 31 of 176 land parcels that should have been inspected by the applicable counties during fiscal year 2008 to ensure compliance with the related easement purchase agreements. Moreover, although MALPF advised us that it performed follow-up procedures with those counties that did not submit the required inspection reports, MALPF was unable to provide documentation to support its claim that efforts had been made to obtain the aforementioned 31 reports. As a result, MALPF lacked assurance that property owners were in compliance with provisions contained in the applicable easement purchase agreements governing the use of the related property. For example, such agreements may prohibit a property owner from subdividing a parcel of land for which MALPF acquired an easement. MALPF's

related written policy requires that counties perform annual inspections of 10 percent of easement properties purchased with State and local funds.

A similar condition related to the failure to obtain the required inspections has been commented upon in our six preceding audit reports dating back to June 3, 2003.

Recommendation 5

We again recommend that MALPF take appropriate action to ensure that easement inspections are performed as required, including establishing a process to account for all required annual inspections and to take documented follow-up action when counties fail to provide the inspections as required.

Audit Scope, Objectives, and Methodology

We have audited the Maryland Agricultural Land Preservation Fund (Fund) for the fiscal year ended June 30, 2008. 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 controls, 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. 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 the 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 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 findings regarding significant instances 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, 2008

	Governmental Fund Type Special Revenue	Fiduciary Fund Types Trust	Total (Memorandum Only)
REVENUES:			
State property transfer taxes	\$ 35,538,975		\$ 35,538,975
Local subdivision matching funds for easement purchases	17,574,518		17,574,518
Agricultural transfer taxes	2,751,773		2,751,773
Interest earnings on funds reserved for installment purchases		\$ 238,362	238,362
Sale of land included in prior easement acquisitions	33,083		33,083
Other non-recurring receipts	67,527		67,527
Total Revenues	55,965,876	238,362	56,204,238
EXPENDITURES:			
Easement acquisitions	78,628,807		78,628,807
Federal fund easement acquisitions	290,500		290,500
Administration	1,119,189		1,119,189
Land appraisal, legal, and settlement fees	913,051		913,051
Total Expenditures	80,951,547		80,951,547
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES	(24,985,671)	238,362	(24,747,309)
OTHER SOURCES (USES) OF FINANCIAL RESOURCES:			
Federal reimbursement of Special Revenue Fund expenditures for easement acquisitions	290,500		290,500
Transfers in from Special Revenue Fund for easement acquisitions purchased on installment basis		6,118,652	6,118,652
Payments made on easement acquisitions purchased on an installment basis		(2,523,964)	(2,523,964)
Net Other Sources (Uses) of Financial Resources	290,500	3,594,688	3,885,188
EXCESS (DEFICIENCY) OF REVENUES OVER EXPENDITURES AND NET OTHER SOURCES (USES) OF FINANCIAL RESOURCES	(24,695,171)	3,833,050	(20,862,121)
FUND BALANCES, July 1, 2007	31,889,041	5,758,121	37,647,162
FUND BALANCES, June 30, 2008	\$ 7,193,870 ⁽¹⁾	\$ 9,591,171	\$ 16,785,041

- (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

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June 12, 2009

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

Re: Audit of the Maryland Agricultural Land Preservation Foundation – Maryland Department of Agriculture (period of audit: July 1, 2007-June 30, 2008)

Dear Mr. Myers:

I have enclosed the Maryland Department of Agriculture's responses to your draft report covering the examination of the accounts and records of the Maryland Agricultural Land Preservation Foundation. Our comments refer to the individual items contained in the report.

Sincerely,

Earl F. Hance
Secretary

Enclosure

cc: Dan Colhoun, Chair, Maryland Agricultural Land Preservation Foundation
Douglas Wilson, Director, Administrative Services, Maryland Dept. of Agriculture
Joseph D. Lilly, Fiscal Administrator, Maryland Dept. of Agriculture
James Conrad, Executive Director, Maryland Agricultural Land Preservation Foundation
Ashley Reed, Department of Budget and Management
Board of Trustees, Maryland Agricultural Land Preservation Foundation

08MALPFauditTransmittal

RESPONSE TO THE LEGISLATIVE AUDIT REPORT
MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
MARYLAND DEPARTMENT OF AGRICULTURE JULY 1, 2007 TO JUNE 30, 2008

Easement Acquisitions

Finding 1

A comprehensive listing of all easement acquisitions was not maintained to ensure that easements were properly accounted for and reported.

Recommendation 1

We recommend that MALPF maintain a comprehensive database of all easement acquisitions and that this information be accurately reported in its annual reports and reconciled to the related State's accounting records (repeat), and that MALPF immediately investigate, and take appropriate corrective action (repeat).

Response 1

MDA and MALPF concurs. MALPF is in the process of creating a new, comprehensive database of all easement acquisitions that will allow timely and accurate reporting and a verifiable baseline for reconciling the State's accounting records. Once completed, MALPF will then be able to investigate the discrepancy with the State's accounting records. MDA has just rehired the intern / staff used last year to finish the data entry from actual easement files. MALPF expects the initial data entry (approx 15% remaining), data verification checks and report testing to be completed by September 15, 2009. MDA is concurrently drafting specific reports as we also validate data entered into the system. At that point, MALPF would run the first report and start the process of investigating any discrepancies in the various state and program records. MALPF expects to be able to reconcile the records of all easement purchases by December 31, 2009.

Explanation: MALPF has traditionally relied primarily on its written records and, secondarily, on an outdated, inaccurate, and incomplete database with limited number of data fields. MALPF has undertaken a fundamental revision of its database so it can be the preeminent source of accurate up-to-date information for reporting and policy-making. Given the scope of this task and the discontinuation of support for the old database (creating a lacuna for quick data accessibility, though all of the data remains accessible in written form in the files), providing accurate and verifiable historical data from the beginning of the Program is not yet possible. Data records back to FY 1996 have been completed, including entry of new data and verification of existing data for completeness and accuracy from the files. Once all of the records in new database are complete and verified, accurate reporting will be available based on relevant criteria for any historical point or time period. The historical data will be recalculated and published in the Annual Report and at the website once complete and accurate data are available. Whether or not that data will be reconcilable to the figures recorded on the State's accounting records can only be analyzed after the database has been completely populated and the records verified. Corrective action appropriate to resolve any reporting discrepancies will be taken at that time.

Easement Acquisitions (continued)

Finding 2

Procedures and controls over easement acquisitions were inadequate.

Recommendation 2

- a) We recommend that MALPF ensure that critical calculations be reviewed (repeat) and,
- b) That MALPF ensure that installment payments be reviewed by an independent employee and that such reviews be documented.

Response 2

MDA and MALPF concurs: As recommended last year, MALPF has developed a new review methodology for easement payments and county billing. In this review, after MALPF has received notice that DGS is ready for settlement, the administrators responsible for that client review the check request and the request for any required county billings.

As to the reviews for calculating agricultural value and certain other values, a methodology for independent review and verification of work, the Executive Director will develop a procedure for a “random review” of such calculations by the three administrators and/or the Executive Director. There would be a formal "sign-off" by the person performing the independent verification of the sample cases.

Installment payment reviews can be performed by an “independent employee”. For FY09 and FY10, MDA plans to have Douglas H. Wilson, Director of Administration perform these reviews.

Explanation: MALPF notes that the legislative auditors did not identify any errors in the calculation of agricultural land values, but were concerned with a formal "sign-off" procedure that established a paper trail of responsibility. Calculations have always been reviewed by an independent employee, but an official "sign-off" procedure was never part of the process. We would offer that the Executive Director always verifies the numbers making up an offer before offer letters and option contracts are sent to landowners. His signature on the letter was considered our documentation that that verification has taken place.

County Agricultural Land Transfer Taxes

Finding 3

County agricultural land preservation programs were not properly certified resulting in certain counties improperly retaining a higher share of transfer taxes collected.

Recommendation 3

- a) **We recommend that MALPF establish a process to timely monitor the certification status of the county agricultural land preservation programs and to ensure that agricultural land transfer taxes remitted are consistent with the applicable county certification status (repeat), and**
- b) **That MALPF obtain a formal legal advice to determine the legality of recovering the excessive amounts retained by counties, including the aforementioned \$1.2 million, and take appropriate action.**

Response 3

MDA and MALPF concurs. This finding and recommendation are based on the gap between the way the certification program is administered today and existing regulations which were developed many years ago. The certification program has been operated in a manner that is more flexible than regulations in effect during this audit period would allow. In response to this finding and recommendation, the Maryland Department of Planning has updated the applicable regulations both to take into account changes in the statute applying to certification – HB 2 (Agricultural Stewardship Act of 2006) and HB 1354 (2007) – and to bring the regulations in line with how the certification program actually operates. These regulations were approved by the AELR committee and then adopted after approval by the Secretary of Agriculture in February, 2009.

The Department of Planning sent a notice to the counties that had not yet been recertified notifying them that their status was maintained as long as they provided notice of their intent to file under the new regulations. Many counties were in the process of modifications due to the new requirements for PPA areas. These regulations also provide discretion for MALPF and the Department of Planning to not “decertify” a county while they are under review.

MDA will also request a written advice of counsel determination as to previous administration procedures for the certification program and related revenues.

County Agricultural Land Transfer Taxes (continued)

Finding 4

MALPF did not ensure that counties properly used their share of agricultural land transfer taxes or remitted the unused funds to the State as required.

Recommendation 4

- a) **We recommend that MALPF establish procedures to obtain and review the required annual reports and the related audited financial statements in order to monitor the use of transfer taxes in accordance with State law and the remission of amounts due to the State (repeat), and**
- b) **That MALPF review the counties' usage of agricultural transfer taxes during prior years, determine if the taxes were used for purposes provided for by law, and recoup any taxes due to the State or improperly used (repeat).**

Response 4

MDA and MALPF concurs. MALPF will continue to explore procedures to obtain and review the required annual reports. MALPF will also explore with the Maryland Department of Planning (MDP) incorporating the delivery and review of the annual reports and audited statements as part of the recertification review. A supplemental procedure will need to be developed cooperatively with MDP to address the timely review of annual reports and audit statements of certified counties under the new statutory and regulatory requirements. Further, as MALPF staff does not have the necessary expertise to review audits and financial statements of certified counties, the issue will be further reviewed within MDA to establish responsibilities and the availability of staff resources to ensure that the reviews of certified counties' audited financial statements are completed in a timely manner. Finally, MALPF notes that the auditors did not identify any improper expenditure of agricultural land transfer taxes by certified counties, but were simply concerned that a clear procedure is in place to monitor compliance.

Easement Inspections

Finding 5

MALPF did not adequately monitor to ensure that counties annually inspected property easements as required.

Recommendation 5

We again recommend that MALPF take appropriate action to ensure that easement inspections are performed as required, including establishing a process to account for all required annual inspections and to take documented follow-up actions when counties fail to provide the inspections as required.

Response 5

MDA concurs. MALPF has just produced a new ‘inspection report’ for FY08 prepared by our new inspection staff member. For FY08, significant improvement was made as MALPF completed 98% of the required 130 inspections of all easements that utilized federal funds and 176 inspections were made of the state easements (10%). While MALPF and MDA may disagree on the concept of each county being required to have a 10% inspection rate, we concur in the general audit finding.

The report details follow up actions related to major and minor violations. MALPF’s Board of trustees will continually monitor the inspection status and is reviewing inspection priorities, inspection criteria, new inspection targets, etc. Clearly, significant improvement has been made over prior year activity.

AUDIT TEAM

Peter J. Klemans, CPA
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