

# Audit Report

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## Maryland Agricultural Land Preservation Fund

Fiscal Year Ended June 30, 2014

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**OFFICE OF LEGISLATIVE AUDITS**  
DEPARTMENT OF LEGISLATIVE SERVICES  
MARYLAND GENERAL ASSEMBLY

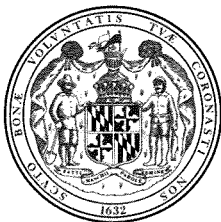
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DEPARTMENT OF LEGISLATIVE SERVICES  
OFFICE OF LEGISLATIVE AUDITS  
MARYLAND GENERAL ASSEMBLY

Karl S. Aro  
Executive Director

April 27, 2015

Thomas J. Barnickel III, CPA  
Legislative Auditor

Senator Guy J. Guzzone, Co-Chair, Joint Audit Committee  
Delegate Craig J. Zucker, Co-Chair, Joint Audit Committee  
Members of Joint Audit Committee  
Annapolis, Maryland

Ladies and Gentlemen:

We have conducted a fiscal compliance audit of the Maryland Agricultural Land Preservation Fund (Fund) for the period beginning July 1, 2013 and ending June 30, 2014. 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 have a comprehensive policy for addressing outstanding landowner easement violations and assessing penalties. In addition, MALPF did not ensure that landowners had resolved those violations in a timely manner. According to MALPF records, as of June 30, 2014, there were 496 unresolved violations, including 93 violations that were considered to be relatively high priority by MALPF management, which had been unresolved for up to 8 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 may be restricted from subdivision for residential or commercial purposes.) The Fund, which is administered by MALPF, generally derives revenues from State transfer taxes, agricultural transfer taxes, and local subdivision matching funds. In addition, MALPF uses proceeds of General Obligation Bonds to fund easement purchases. According to its records, since inception through June 30, 2014, MALPF had purchased 2,154 easements on 292,357 acres of land for a total cost of approximately \$645 million.

### **Financial Information**

According to State accounting records, as of June 30, 2014, the total resources available to finance future MALPF expenditures, including easement acquisitions, were \$32.2 million, consisting of funds held in a Special Revenue Fund (\$11.1 million) and General Obligation Bond funds (\$21.1 million). Available resources increased by \$4.9 million compared to resources available at June 30, 2013. The increase in resources available was primarily attributable to proceeds of General Obligation Bonds of approximately \$15.2 million received during fiscal year 2014.

During fiscal year 2014, MALPF acquired easements costing approximately \$26.3 million. 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 \$6.3 million as of June 30, 2014.

## **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 June 19, 2014. We determined that this finding was not satisfactorily addressed and is repeated in this report.

## **Findings and Recommendations**

### **Easement Violations**

#### **Finding 1**

**MALPF did not have a comprehensive policy for timely investigation of easement violations and did not ensure that all noted easement violations were resolved in a timely manner.**

#### **Analysis**

MALPF lacked a comprehensive policy for the timely investigation of easement violations, including the documentation required for follow-up actions and the criteria for assessing penalties. The local jurisdictions are generally responsible for conducting periodic easement inspections and completing the related inspection reports which are submitted to MALPF and entered into MALPF's database. MALPF is responsible for notifying the landowners of noted violations and ensuring landowner compliance with easement terms.

We noted that follow-up actions on easement violations were not always documented, certain violations were not resolved in a timely manner, and penalties were not always assessed as applicable. Although MALPF management advised us that it periodically reviewed a report of outstanding violations generated by its database, this review and the related follow-up actions were not documented. Our test of 8 unresolved violations as of December 3, 2014 disclosed that, for 2 violations, the last correspondence with the respective landowners was 11 and 20 months previously. In addition, we were advised that during the audit period, only one landowner was assessed a penalty for failure to correct a violation condition. State regulations allow MALPF to impose civil penalties of \$2,500 per day per violation (up to a \$50,000 maximum) on a landowner for uncorrected violations. The lack of documented reviews was commented upon in our preceding audit report, and untimely action to resolve violations was commented upon in our two preceding audit reports.

According to a report generated from MALPF's database, as of October 27, 2014, there were 496 unresolved violations identified prior to June 30, 2014. Of these, 93 violations were considered to be of relatively high priority (such as illegal subdivisions or dwellings), which had been unresolved for periods of 6 months to 8 years, as of December 2014. Violations listed on this report include violations identified during inspections, as well as those identified by other means (such as from complaints).

### **Recommendation 1**

#### **We recommend that MALPF**

- a. develop a comprehensive policy that includes the appropriate and timely steps to be taken to address easement violations, the documentation required for follow-up actions, and the criteria for assessing penalties;**
- b. document periodic reviews of the database and related follow-up actions (repeat);**
- c. perform and document appropriate and timely follow-up actions on outstanding easement violations consistent with the policy it develops to ensure corrective actions were taken (repeat); and**
- d. determine the status of the aforementioned unresolved violations and impose penalties, if deemed appropriate (repeat).**

## **Audit Scope, Objectives, and Methodology**

We have conducted a fiscal compliance audit of the Maryland Agricultural Land Preservation Fund (Fund) for the period beginning July 1, 2013 and ending June 30, 2014. The Fund is administered by the Maryland Agricultural Land Preservation Foundation (MALPF). 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.

In planning and conducting our audit, we focused on the major financial-related areas of operations based on assessments of significance 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. We also determined the status of the finding contained in our preceding audit report.

Our audit did not include certain support services provided to 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.

To accomplish our objectives, our audit procedures included inquiries of appropriate personnel, inspections of documents and records, observations of MALPF'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.

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 finding and recommendation 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.



## APPENDIX

# Maryland Department of Agriculture

*Office of the Secretary*

**Larry Hogan**, Governor

**Boyd Rutherford**, Lt. Governor

**Joseph Bartenfelder**, Secretary

**Mary Ellen Setting**, Deputy Secretary

The Wayne A. Cawley, Jr. Building

50 Harry S. Truman Parkway

Annapolis, Maryland 21401

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April 21, 2015

Thomas J. Barnickel, III, CPA  
Legislative Auditor  
State of Maryland – Office of Legislative Audits  
State Office Building, Room 1202  
301 West Preston Street  
Baltimore, Maryland 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, 2014.

Per your request, we will submit both paper and electronic copies to: [response@ola.state.md.us](mailto: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](mailto:James.Wallace@maryland.gov).

Sincerely,

  
Joe Bartenfelder  
Secretary

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

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

**Maryland Agricultural Land Preservation Fund**  
**Fiscal Year Ended June 30, 2014**

**Recommendations Responses**

**Recommendation 1**

**We recommend that MALPF:**

- a. develop and implement a written policy for addressing easement violations (including frequency of follow up, documenting all follow up actions, and criteria for the assessing of penalties);**

MALPF staff has located a one page Policy on Handling Potential Violations of Easement Restrictions that was approved by the MALPF Board of Trustees on March 23, 1999. This policy is obsolete and would not be effective in resolving today's violations. MALPF has written a DRAFT Policy to Enforce Potential Easement Violations that will be presented to the MALPF Board of Trustees for approval. This draft policy includes frequency of follow up, documenting all follow up actions, and steps to follow for legal action or assessing of penalties. The Draft Policy is under review by the MALPF Board of Trustees and hopefully will be adopted at their May 26, 2015 meeting.

- b. document periodic reviews of the database and related follow-up actions (repeat);**

The Monitoring and Enforcement Coordinator will run a query three times yearly. Staff will follow up with this list to check for accuracy and to input any actions taken or needed into the landowner file and/or database. Staff will coordinate running of the query with the attorney meetings three times yearly.

- c. perform appropriate and timely follow-up actions on outstanding easement violations to ensure corrective actions were taken (repeat);**

Actions taken:

1. Instituted a requirement that all contacts with landowners, attorneys and/or county program administrators are documented in the file. We are working with IT to update the database. Not all telephone calls have been noted. We will do a better job of providing dates and deadlines for actions to be taken (see Draft policy).

**Maryland Agricultural Land Preservation Fund**  
**Fiscal Year Ended June 30, 2014**

**Recommendations Responses**

2. Twice a year staff provides a list of easement violators to the MD Agriculture Water Quality Cost-Share (MACS) Program. Any easement violator who has applied for cost share is sent a letter that if his violation is not corrected he will not be eligible to receive the cost share funding.
  3. Staff meets three times a year with the Assistant Attorneys General to follow-up on outstanding violations that are categorized as High or Medium priority to get advice from the attorneys as to next steps. Some items are removed from the list as they have been resolved. Some items are re-prioritized. Discuss items that have been turned over to the attorneys for legal action. We will document the outcome of these meetings and update files and database as necessary.
  4. 90% of the violations on the Foundation's list are soil conservation and water quality plan (SCWQP) and forest stewardship plan related. As a result of teaming with the MDA Resource Conservation office to assist staff in updating this very extensive list of violations, the number of outstanding SCWQP violations has been reduced from 465 to 166. We have consistently carried this high number of violations due to a tremendous lag time in MALPF's receipt of updated information from the soil conservation districts. Going forward, MALPF staff will continue to work with the Resource Conservation office and the local Soil Conservation District offices to monitor the list of SCWQP violations as reported in the easement inspection reports.
- d. determine the current status of the aforementioned unresolved violations and impose penalties, if deemed appropriate (repeat).**

Staff meets three times a year with the Assistant Attorneys General to follow-up on outstanding violations that are categorized as High or Medium priority to get advice from the attorneys as to next steps. Some items are removed from the list as they have been resolved. Some items are re-prioritized. Discuss items that have been turned over to the attorneys for legal action. We will document the outcome of these meetings and update files and database as necessary.

The MALPF Board of Trustees will be reviewing the DRAFT Policy to Enforce Potential Easement Violations at their April meeting. They continue to use civil penalties as a last resort, not the first.

**AUDIT TEAM**

**Adam J. Westover, CPA**  
Audit Manager

**Catherine M. Clarke, CPA, CIA, CFE**  
Senior Auditor

**Annette L. Manning**  
Staff Auditor