

**REPORT OF THE  
MARYLAND  
AGRICULTURAL LAND  
PRESERVATION  
FOUNDATION  
TASK FORCE**

**Prepared for  
Governor Parris N. Glendening  
and the  
Maryland General Assembly**

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# **REPORT OF THE MARYLAND AGRICULTURAL LAND PRESERVATION TASK FORCE FOUNDATION**

## **I. EXECUTIVE SUMMARY**

This report concludes the Task Force's study of the Maryland Agricultural Land Preservation Foundation (MALPF) Program. It includes recommendations for immediate and longer-term actions by the General Assembly, the Governor, and the Foundation. The body of the report provides background information and the Task Force's reasoning for recommendations in each of the following areas:

- actions needed to achieve the goals of the Program;
- changes in the uses allowed or restricted on MALPF districts and easements; and
- changes in current procedures of the program.

The Executive Summary provides a brief introduction and the Task Force's recommendations in each of these three areas. Appendix 3 provides a list of recommendations and implementation responsibilities as currently envisioned by the Task Force.

### **ACHIEVING THE GOALS OF THE PROGRAM**

Despite impressive accomplishments (in terms of acres preserved) that consistently place it above or among the most successful programs in the nation, we find that the Foundation is not, in the long run, likely to achieve its legislative goals<sup>1</sup> without action from the Governor and the legislature to 1) increase funding and 2) ensure that easements are purchased primarily in preservation areas better protected from development through local zoning and land use management.

There are three principal reasons that the Program cannot fully achieve its goals without these changes:

- Without better support from zoning and land use management programs in preservation areas, the Foundation cannot control the impacts of development on agriculture. In metropolitan areas lacking this support, development is winning the competition; agricultural land and many facets of the industry are the losers.
- Because development on and around farms affects agricultural operations, the Program cannot preserve farmland that remains viable for many forms of production. This deficiency increases with development pressure, and therefore is most evident in metropolitan areas. It is becoming increasingly apparent in more rural areas as development pressures expand geographically.
- To preserve masses of farmland critical for various agricultural industries around the State, rural landowners must support the more restrictive zoning needed to achieve this goal. That support is lacking in many parts of the State, but will become more likely if landowners are

given reasonable assurance that, if their land is qualified, they will be able to sell a preservation easement within a reasonable time frame. This assurance is not possible at current funding levels; it will only become possible if funding is increased and easement acquisition is targeted explicitly to areas supported by zoning.

These conclusions are based on our findings that:

- 1) The impacts of development are not being controlled;
- 2) The goal of retaining a viable source of agricultural products is growing more difficult to achieve;
- 3) Funds are insufficient to meet demand for easements from willing sellers; and
- 4) Easement acquisition is not sufficiently targeted to achieve program goals.

If we are to continue to invest State funds wisely to achieve the goals of the Program, these shortcomings must be overcome. To realize good return on that investment, we should clearly understand what we are accomplishing at County and Statewide scales, both in terms of acres and preservation of resource based industries. Without this understanding, the principal return on our investment may be privately owned, inaccessible open space surrounded by large lot residential development, rather than land that is a viable source of food and fiber.

Below are recommendations that we believe will make it possible to achieve the Program's goals. However, because some of these recommendations involve substantial changes in the Program, they require additional research and development before they are submitted for action by General Assembly. For this reason, our first recommendation is that the Governor and legislature extend the charge of the Task Force until September 30, 2002. The Task Force should be commissioned during this time to oversee completion of research and development of the recommendations related to funding and targeting easement acquisition; and to develop strategies for their implementation during the 2003 Session of the General Assembly.

Many parties are affected by and have interest in the future of the MALPF Program. Significant changes should be formulated through an appropriately participatory process. The Task Force membership was designed by the legislature to include representatives of the diverse interested parties affected. For this reason, and for purposes of continuity, we believe that continuation of the Task Force will provide the most efficient means to ensure that the following recommendations, in their final form, will be effective, fiscally sound, and widely supported by those diverse interests.

## **RECOMMENDATIONS**

- Increase funding for the MALPF Program to approximately \$1 billion over the next twenty years. Appropriate 60% of that in the first decade (\$60 million per year) following enactment of the comprehensive changes recommended by this Task Force, to accelerate easement acquisition before land values increase further.
- During the first four years following enactment, set aside an increasing percentage of these

funds to acquire easements in priority preservation areas designated by each county: 50% the first year and 60%, 70%, and 80% in years two, three, and four respectively, remaining at 80% thereafter. In counties wishing to do so, authorize the Foundation to spend the balance of funds in each year to purchase easements on properties outside designated priority preservation areas.

- To qualify as priority preservation areas, require counties to:
  - Designate these areas in their comprehensive plans;
  - Establish acreage goals for preservation of agricultural land in the designated areas, and strategies to achieve those goals, in county comprehensive plans. These goals must complement the legislative goals already established for the program to support a viable industry, preserve open space, and control the expansion and impacts of development in rural areas; and
  - Implement these preservation plans, through zoning and other techniques, to stabilize land use in designated areas, ensuring adequate time to achieve Program and complementary acreage goals in each county.
- If the Governor and legislature do not increase funding for the Program, the Task Force believes that the recommendations to target an increasing share of funds to County-designated Priority Preservation Areas should go forward. It is a necessary prerequisite to achieving Program goals, whatever the level of funding.
- Establish a preliminary Statewide goal to preserve 1.1 million acres of productive agricultural land by they year 2020. This is half of the 2.2 million acres of Maryland’s farmland remaining in private ownership. The goal will provide a target for a long-term funding strategy for MALPF, and a frame of reference for the legislature, the State and the Counties. It can be adjusted as counties formulate their individual goals. It should not be construed as a goal for woodland preservation. Some woodland is preserved through MALPF easements, but the focus of this goal is on productive agricultural land.
- Establish a process to certify qualified designated priority preservation areas, similar to the process used by the Department of Planning and the Foundation for Maryland’s Agricultural Certification Program.
- Use \$20 million per year during the second through fifth years following enactment of these recommendations to fund an installment purchase program. Use these funds to further accelerate easement acquisition in designated areas. Engage the Department of Management and Budget to ensure that the fiscal strategy for this mechanism is sound, and that it will not compromise debt affordability or the State’s bond rating.
- Create new revenue sources to support the recommended funding level. The cost would be less than \$12 per Maryland resident per year, or about \$17.50 when Rural Legacy and MALPF are considered together. Currently, Maryland spends \$9.05 per resident on MALPF and Rural Legacy combined, compared to \$5.05 per capita for farmland preservation in Vermont, \$8.67 in Pennsylvania, \$12.89 in New Jersey, and \$21.00 in Delaware. The

recommended amount of funding will be necessary to ensure that the State can buy easements within a reasonable period of time following landowners' offers to sell. The Task Force believes that if the State cannot do so, it will not have the support of the agriculture community and rural landowners for the zoning and related techniques needed to achieve the Program's goals.

- Examine the following as potential sources of the necessary additional revenue, and identify additional potential sources if necessary to provide the recommended funding:
  - Increase the agricultural land transfer tax to recapture more of the property taxes avoided when the land was under agricultural use assessment.
  - Add a surcharge to the real estate transfer tax on sales of properties outside priority funding areas (PFAs) that are not assessed for agriculture.
  - Add a surcharge to the State property tax on property outside of PFAs and not assessed for agriculture. Houses and improvements on farms that are assessed for agricultural should be excluded.
- Do not reassign funds from other preservation programs to MALPF. The Task Force's estimate of funds needed to achieve program goals assumed continued level funding for other major State and local preservation programs. These include Rural Legacy, Program Open Space, and local farmland preservation programs, at a minimum. Diversion of funds from those programs to MALPF will result in no net gain for agricultural and woodland preservation.
- Evaluate the establishment of a State Critical Farms Program, administered through a flexible revolving fund such as the Land Trust Grant Fund of the Maryland Environmental Trust, and encourage Counties to establish their own Critical Farms Programs with a share of their MALPF funds and County funds.

## **ALLOWED AND RESTRICTED USES OF DISTRICT AND EASEMENT PROPERTIES**

The economics of farming increasingly make it difficult for many farms to be consistently profitable. The Annotated Code prohibits "commercial or industrial" operations on MALPF easements. MALPF's regulations allow the sale of items raised on the farm, plus limited items raised on other local farms. County easement programs are generally more generous in what uses they allow.

The Task Force believes that it would benefit farmers and the goals of agricultural land preservation if limited, non-agricultural commercial uses were allowed on MALPF easements and districts. Such activities will supplement farmer income without compromising production or the rural character of easement properties, and would help landowners avoid additional financial pressures to develop their land.

The Task Force also reviewed a variety of problems associated with current State law and policies governing the subdivision of easement land. Current provisions in the law that give

landowners the right to exclude (subdivide) residential lots from MALPF districts and easements should be revised. Lots can be easily excluded by landowners for purposes not intended by the law. It is very difficult, often impossible, for the Foundation to determine if abuse is occurring and to control it. When the State purchases easements, it pays fair market value or more for subdividable development rights; when the rights are restored to the landowner, the landowner reimburses the Program at a rate generally far below fair market. The provisions for lot exclusions can also be used to create excessive development on and around easement properties, contrary to the purposes of the Program.

## **RECOMMENDATIONS**

- During the 2002 Session, change the law to allow limited, non-agricultural commercial uses that will supplement farmer income, while ensuring that allowed activities will not compromise production or the rural character of easement properties. Draft legislation is being developed by the Task Force.
- During the 2002 Session, revise the Foundation's enabling legislation to solve the problems identified by the Task Force pertaining to lot exclusions and land withheld prior to enrollment in the Program. We recommend changes (draft legislation is being developed) to ensure that:
  - MALPF districts and easements are not subdivided except for agricultural or forestry use.
  - Landowners wishing to reserve development rights for residential lots be allowed to do so by excluding land with limited development potential prior to enrolling in the Program.
  - To protect the State's investment in easements on recently subdivided parcels, the potential impact of development on the land withheld from the easement should be evaluated before the property is accepted. The adjacent development may compromise agricultural production or silviculture on the potential easement, thereby compromising the State's investment.
  - Residences existing on the easement property at the time of easement purchase, including principal and tenant houses, are not allowed to subdivide from the farm. Rights for additional tenant houses for legitimate agricultural purposes, not to exceed one per 100 acres, should be reserved in the terms of the easement.

As part of its additional responsibilities, the Task Force should study the need for additional changes in Program provisions for tenant houses. If no longer needed for a tenant, tenant houses can be rented for landowner income. This is a non-agricultural commercial use that is not allowed by the law. The Task Force should determine if there is a way to prevent abuse of the right to a tenant house, without compromising a farmer's ability to meet legitimate needs.

- Support a new MALPF policy that the Task Force endorses. Subdivisions of districts and easements should be allowed only for the purpose of conducting separate, viable agricultural or forestry operations. In addition, a farm to be subdivided should be at least 100 acres in size, and each resulting parcel must be at least 50 acres in size. The subdivided parcel may be smaller if it is being transferred to an adjacent easement.

## CURRENT PROCEDURES OF THE PROGRAM

MALPF is the oldest statewide farmland preservation program in the nation; its procedures for acquiring easements are well established. Since MALPF's inception, farmland easement programs have been created in many Maryland counties and other states. Most of them acquire easements in less time than it takes the Foundation.

The road from easement application to settlement goes from landowner to County to MALPF to the Department of General Services (DGS) to the Board of Public Works to the Comptroller and back to the landowner, with a few side trips along the way. Sometimes landowners wait over two years from the time they apply until the time their easement payments arrive. The delay can be more than frustrating or a dent in the Program's reputation: sometimes the funds are crucial to maintaining or improving a farm operation, making a delay catastrophic from the standpoint of the farmer. The recommendations below that pertain to current MALPF procedures and staffing can do much to speed up the process.

The Task Force identified three principal sources of delay in reaching settlement: an excessive number of steps in the process, beginning with submission of a landowner's offer to sell; inadequate staff support; and the amount of time required to appraise large numbers of properties and derive easement values via the current appraisal / valuation formula. Delays for any and all of these reasons reduce landowner confidence in the Program and compromise ability to preserve land.

The easement valuation formula currently used by the Foundation has been very effective in many respects. However, in addition to its effects on time to reach settlement and appraisal costs, it artificially inflates easement values in many parts of the State, resulting in easement values that are higher than fair market. This effect is offset to some degree by the Program's discount ranking procedures. However, those procedures inherently give owners of more expensive land the greatest ability to rank high, and owners of lower value land the least ability to do so. Since development potential and not agricultural value is the principal determinant of easement value, the ranking procedure may favor land in ways that do not always serve the purposes of the Program. The Task Force believes that it would be to the State's advantage to consider alternative approaches to valuation that would correct these problems.

The Task Force offers the following recommendations to address these issues.

- The legislature should support the Foundation's proposed procedural changes to reduce time to settlement:
  - Have Counties receive all easement applications directly from landowners and approve them before they are sent to the Foundation (with three copies accompanying the original). This can be achieved through changes to the Foundation's policy and procedures.
  - Make easement offers within each round to applicants as appraisals are completed, rather

- than waiting for completion of appraisals of all applicants' properties. (Policy change.)
  - Spread several application / offer periods over the course of a year, rather than handling an entire year's worth of applications at one time. (Requires change to the law, regulations, and policy. The Foundation will draft recommended legislation.)
  - Hiring more staff. The existing number of MALPF staff is not sufficient to handle the large and growing work load of the program, especially if the recommendations for increased funding and procedural changes are adopted.
- In extending the life of the Task Force, the Governor and the General Assembly should include the task of developing a final recommendation regarding easement valuation by September 30, 2002, for consideration during the 2003 Session of the General Assembly. At a minimum, a point system or easement valuation system, such as those now used by an increasing number of Counties for their own easement programs, and by most sponsors under the Rural Legacy program, should be evaluated. Specifically, the Task Force should determine if there are methods that would:
    - Further reduce the time required to reach settlement.
    - Result in easement values that are more consistent with appraised fair market value of easements than is currently the case.
    - Better serve the goals of the Program by making factors other than development potential, such as agricultural or forestry value, more important determinants of easement value than is currently the case.
    - Retain the benefits of the current valuation Appraisal formula, specifically the discount easement prices resulting from the Foundation's existing ranking procedure.
  - Change the law to make the Declaration of Intent that buyers file, which pledges them to keep the land in agricultural use for five years in exchange for agricultural use assessment, a contract that is binding for ten years rather than five. This would send a strong message that agricultural assessment is designed to save agricultural land for farming, not to reduce the carrying costs of land while waiting for development opportunities.

## ENDNOTE

1. The goals are cited in §2-501, Subtitle 5, Agriculture Article: "...to preserve agricultural land and woodland in order to: provide sources of agricultural products within the State for the citizens of the State; control the urban expansion which is consuming the agricultural land and woodland of the State; curb the spread of urban blight and deterioration; and protect agricultural land and woodland as open-space land (Annotated Code of Maryland, Agriculture Article, §2-501).

## **II. INTRODUCTION**

The Task Force to study the Maryland Agricultural Land Preservation Foundation was commissioned by House Bill 740 in the 2000 Session of the General Assembly. We were asked to examine the MALPF Program, its practices and financial standing, and a number of bills considered and deferred by the General Assembly during the Session; and to make recommendations to improve the Program. The Task Force submitted an interim report to the Governor and the General Assembly in December 2000.

The legislation from the 2000 Session (see Appendix I for a summary) was concerned with the need for additional preservation funds, and the number of residential lots landowners are permitted to subdivide from properties (“lot exclusions”) after enrolling in the MALPF program. We made short-term recommendations to initiate the process of increasing funding for the Program in our December 2000 report. Those recommendations were implemented through two bills passed during the 2001 Session: “Income Tax - Credit for Preservation and Conservation Easements” and the Maryland GreenPrint Program, which sets aside 25% of its funds for GreenPrint easements on MALPF districts. In the December report, we also recommended that changes in lot exclusions allowed by the Program be delayed until the Task Force completed its study of the Program.

This report concludes the Task Force’s study. Recommendations for funding, lot exclusions, and additional steps we find critical to the long-term success of the Program were presented in Section I of this report, the Executive Summary. Section III presents our conclusions and the basis for our recommendations. We suggest that some of the steps we recommend should be implemented immediately or in the short term, through action by the General Assembly during the 2002 Session, or through administrative actions of the Foundation. Other recommended actions, in our view, still require additional research and development before they are implemented.

## **III. Conclusions & Basis for Recommendations**

In our December 1, 2000 Report, we noted four principal needs:

- To support achievement of Program goals,
  - substantially increase funding and enhance financial incentives for landowners, and
  - target easement acquisition more strategically to areas where the goals are supported.
- To support the economic and personal interests of landowners without compromising the Program’s goals, and to maintain interest from farmers in the Program,
  - change the types of uses allowed on MALPF Districts and Easements, and
  - substantially reduce the amount of time required to reach settlement on easements following a landowner’s offer to sell.

In exploring ways to meet these needs, we identified other needs for change in several other aspects of the program. These needs are addressed under three headings: Achieving the Goals of the Program, Allowed and Restricted Uses of District and Easements, and Current Procedures of the Program.

## **A. ACHIEVING THE GOALS OF THE PROGRAM**

### **1. CONCLUSIONS**

- Agricultural land and woodland continue to decline Statewide. The loss is greatest in core metropolitan counties, but has increased in Southern Maryland, parts of Western Maryland, and parts of the Eastern Shore. Statewide, while the Foundation preserved 186,000 acres since 1980, 371,000 acres of agricultural land have left the agricultural assessment tax roles. These lands have been or will ultimately be developed, principally for residential use.
- Development of agricultural land is expected to continue through 2020 at high rates – approximately 75% of the rate measured from 1973 to 1997 (Maryland Department of Planning).
- While comparative rates of loss versus preservation have evened out somewhat in recent years, farmland within agricultural zoning districts in many counties has been and continues to be increasingly fragmented by subdivision and development.
- The agricultural industry is changing for a variety of reasons. One of them is development, which is affecting profitable production of food and fiber through both the conversion of agricultural land and the impact that development has on production in agricultural areas.
- If the Program is to achieve its goals, funding must increase significantly, easement acquisition must be concentrated in areas better protected from development, an installment purchase program should be developed to further increase the rate of preservation, and settlement times should be decreased. These steps would maximize acquisition before land values increase more and development further compromises Program goals.
- To achieve the goal of preserving enough farmland that is sufficiently protected from the impacts of development to sustain many agricultural industries, agricultural landowners must support more restrictive zoning. That support will be greater if owners of qualified land are given reasonable assurance that they will be able to sell easements relatively quickly. This will not be possible until funding is increased and acquisition is targeted explicitly to areas supported by zoning.
- Proposals to address these needs and priorities should be fully researched and developed before final recommendations are made to the Governor and the General Assembly. To identify the most effective solutions, the organizations and interests represented on the Task

Force should participate in the research and development process.

- The lack of coherent acreage goals for agricultural land, woodland, and open space preservation further compromises the Program's ability to achieve its established goals. This deficiency should be corrected to provide a clearer framework from which all parties concerned with the success of the Program can work.

## **2. AMOUNT OF LAND AND MONEY NEEDED TO ACHIEVE PROGRAM GOALS**

No one knows how much acreage constitutes a "critical mass" that will ensure the viability of agriculture. Such a number might tell us how much acreage we need to preserve to achieve the goals of the program. Unfortunately, to determine a critical mass, much depends on the types of agricultural commodities produced, the nature and locations of the operations, supporting infrastructure, markets, and a variety of other factors. Critical masses for some commodities may be regional (e.g., poultry on the Delmarva Peninsula) or local rather than Statewide. Thus, the concept of a critical mass is of limited value in establishing an acreage goal that supports the already established goals of the Program.

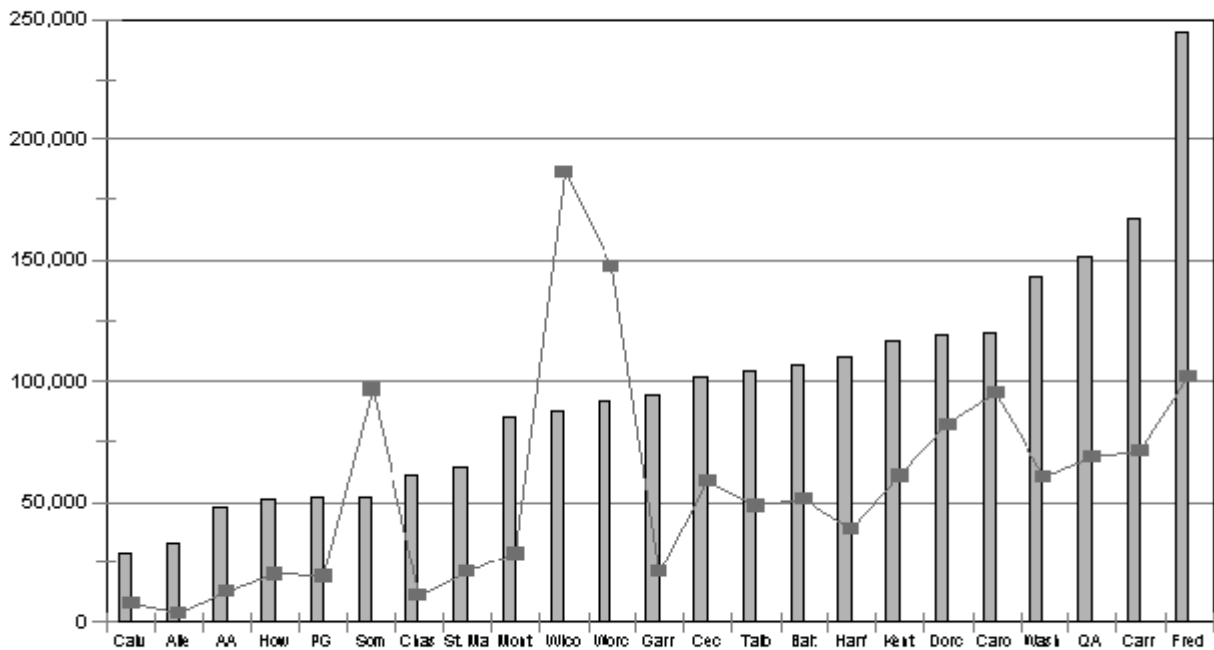
Based on our review of the status of agricultural land, its conversion to development, and the agricultural industry, it is clear to Task Force members that increased funding, better land use management, and more targeted easement acquisition are needed to achieve program goals. While we support the idea that the State and counties should preserve as much agricultural land as possible, indiscriminate adherence to this principle ultimately leads to the question of "how much is it worth to continue doing this everywhere, without a coherent goal in sight?"

We believe that we have reached the point where it is important to answer that question. In some metropolitan counties, easement costs typically exceed \$6,000 per acre, landowner interest is minimal in favor of development potential, and there is no realistic hope of preserving a mass of land critical for most traditional forms of agriculture. If we are to continue to invest State funds wisely to achieve the goals of the Program, we should clearly understand what we are accomplishing at county and Statewide scales, both in terms of acres and the agricultural industry. Without doing so, the principal return on our investment may be privately owned, inaccessible open space surrounded by large lot residential development.

For these reasons, we think it is important at this time to follow the recommendation of the 1974 Committee on the Preservation of Agricultural Land to the Maryland Secretary of Agriculture, to establish an acreage goal for the Program. This goal should complement the legislative goals already established for the program to support a viable industry, preserve open space, and control expansion and impacts of development in rural areas. Because the State is the sum of its parts, we believe it is important to ensure that provision is made for each County to establish a corresponding goal. In turn, the State goal should be based on a realistic aggregation of these County goals.

A review of agricultural land (in acres, based on the Department of Planning's land use / land

## Acreage in Agricultural Use and Total Sales, by County



Source: Maryland Department of Planning 1997  
landuse data and 1997 Census of Agriculture



Ag. Acres

—■— Sales (x ' ,000)

cover data) and total agricultural sales (in dollars, based on the Census of Agriculture), both for 1997, is useful in this regard. The chart above shows these data by county, and suggests the following:

With the exception of Somerset, Wicomico, and Worcester counties, whose sales are dominated by poultry, there is a strong relationship between acres and total sales. This makes common sense. There are two clusters of counties on the chart: first, those with fewer than 100,000 acres of land and total sales of about \$25,000,000 or less; and second, those with more than 100,000 acres of land and sales of roughly \$50,000,000 or more (\$40 million in Harford County).

This does not suggest that 100,000 acres is a magic number. It does suggest that, in the absence of an intense production industry with a value and market comparable to those of poultry, the total value of agricultural products declines considerably in areas below some threshold of agricultural land. That threshold is undoubtedly related not only to the number of acres, but also to the commodities produced, and the degree to which development has intruded into production areas, thereby reducing or eliminating certain types of production.

To preserve as much of the agricultural industry as possible in each County for which agriculture is a priority, the Task Force believes that it would be desirable to preserve as close to 100,000

acres as possible, and to minimize the degree to which development occurs within the area containing those acres. Most Certified counties already have established goals, ranging from 30,000 to 100,000 acres. Given those goals and the amount of agricultural land remaining in each County, a Statewide goal of 1.1 million acres would be realistic. This figure is half of the remaining privately owned farmland in Maryland. This goal does not include an estimate for the amount of woodland to be preserved by the Program. Woodland is generally preserved as part of a farm; occasionally, a property entirely comprised of woodland enrolls in the Program. However, this acreage goal is recommended for productive agricultural land, necessary to support the agricultural industry. Reaching it will not directly preserve land for forest industries in the same way; thus it should not be construed as a woodland acreage goal.

To comprise the Statewide 1.1 million acre total, county goals would range from roughly 20,000 to 100,000 acres, and would average in the 50,000 to 60,000 range. That amount and distribution of land should be adequate to make production of a fairly wide range of agricultural products possible. This is more likely to be correct in light of the fact that land in adjacent counties will, in many cases, be part of the same regional industry from the standpoint of operations, agricultural industry service and supply businesses, and marketing. The degree to which this is true, of course, depends on the type of operation, the part of the State, and the degree to which the land in a county is isolated. But in at least some cases, accomplishment of preservation goals such as those proposed per county would reap benefits across county boundaries for some types of production.

Accordingly, the Task Force recommends establishment of a preliminary Statewide goal of 1,100,000 acres. This will provide a target for a long-term funding strategy and a frame of reference for the legislature, the State and the counties. The goal can be revised as counties formulate their individual goals if appropriate.

To date, MALPF, local programs (including TDR programs), private land trusts, MET, and Rural Legacy have preserved approximately 400,000 acres (or will have when all allocated funds are spent). Over the next twenty years, we expect a minimum of another 200,000 acres to be preserved by Rural Legacy, local programs, MET, and private land trusts. Thus, the preservation goal for MALPF over the next two decades would be 500,000 acres. Assuming an average per-acre cost of \$2,000, the cost of preserving 500,000 acres would be \$1 billion.

### **3. CHANGES IN EASEMENT ACQUISITION NEEDED TO ACHIEVE GOALS**

Despite impressive accomplishments (in terms of acres preserved), that consistently place it above or among the most successful programs in the nation, we find that the Foundation is not, in the long run, likely to achieve its legislative goals without action from the Governor and the legislature to 1) increase funding, as discussed above, and 2) ensure that easements are purchased primarily in preservation areas better protected from development through local zoning and land use management.

There are three principal reasons that the Program cannot fully achieve its goals without these

changes:

- Without better support from zoning and land use management programs in preservation areas, the Foundation cannot control the impacts of development on agriculture. In metropolitan areas lacking this support, development is winning the competition; agricultural land and many facets of the industry are the losers.
- Because development on and around farms affects agricultural operations, the Program cannot preserve farmland that remains viable for many forms of production. This deficiency increases with development pressure, and therefore is most evident in metropolitan areas. It is becoming increasingly apparent in more rural areas as development pressures expand geographically.
- To preserve masses of farmland critical for various agricultural industries around the State, rural landowners must support the more restrictive zoning needed to achieve this goal. That support is lacking in many parts of the State, but will become more likely if landowners are given reasonable assurance that, if their land is qualified, they will be able to sell a preservation easement within a reasonable time frame. This assurance is not possible at current funding levels; it will only become possible if funding is increased, as discussed above, and easement acquisition is targeted explicitly to areas supported by zoning.

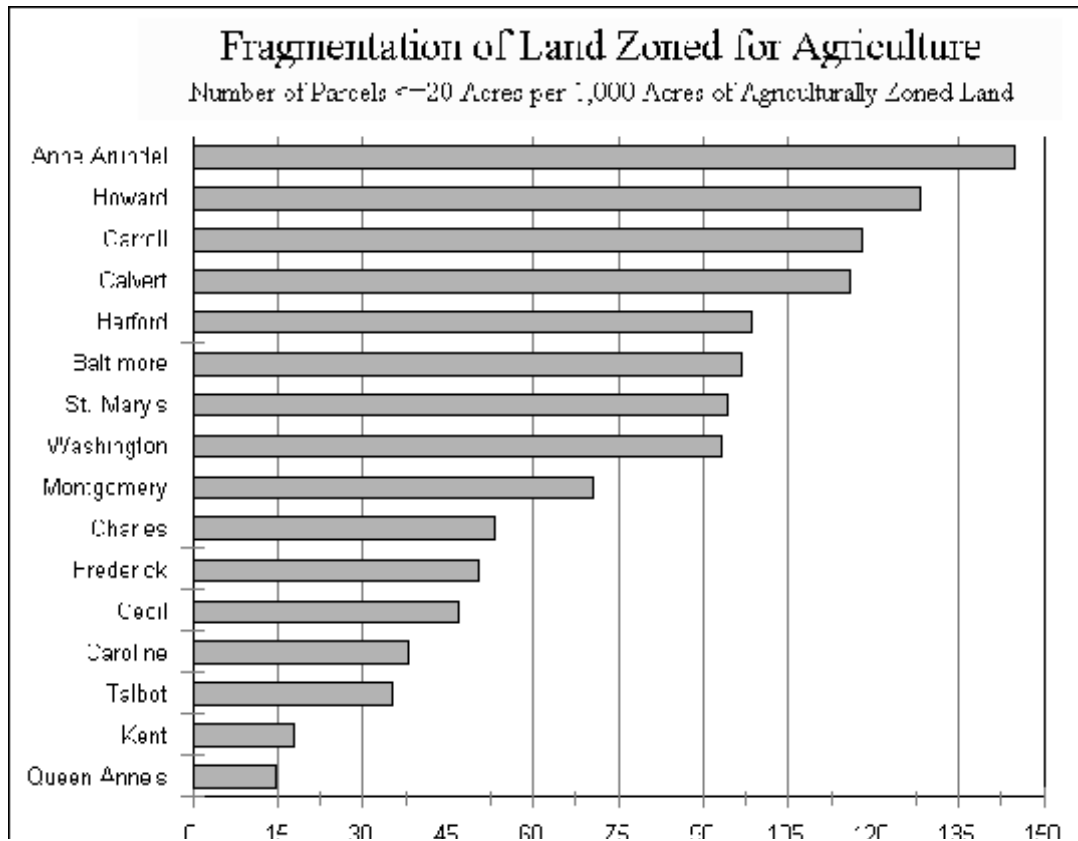
These conclusions are based on our findings that:

- 1) The impacts of development are not being controlled;
- 2) The goal of retaining a viable source of agricultural products is growing more difficult to achieve;
- 3) Funds are insufficient to meet demand for easements from willing sellers; and
- 4) Easement acquisition is not sufficiently targeted to achieve program goals.

**The impacts of development are not being controlled.** Suburban expansion continues to consume agricultural land, woodland, and open space. Since 1980, 186,000 acres have been preserved by MALPF, while 371,000 acres of farmland were converted from agricultural use assessment statewide. The rate of loss versus preservation has evened out somewhat in recent years. However, farmland has been increasingly fragmented by subdivision, more so in some Counties than in others (see the chart on “Fragmentation” below, and the maps in Appendix 4).

The chart “Fragmentation of Land Zoned for Agriculture” provides a measure of the cumulative impacts of development in terms of separately deeded parcels 20 acres or less in size. Fifty acres is the minimum parcel size eligible for the MALPF Program; prior to the 2001 Session of the General Assembly, the minimum was 100 acres. The larger the number of small parcels, the greater the potential for residential development to fragment agricultural land. Since parcel subdivision is limited by zoning and associated subdivision rules, the “Fragmentation” chart also provides some measure of the degree to which zoning constraints on subdivision have allowed fragmentation, up until now, in each county. It does not, however, indicate the pace of recent development, i.e., the degree to which zoning is currently allowing additional fragmentation and

development.



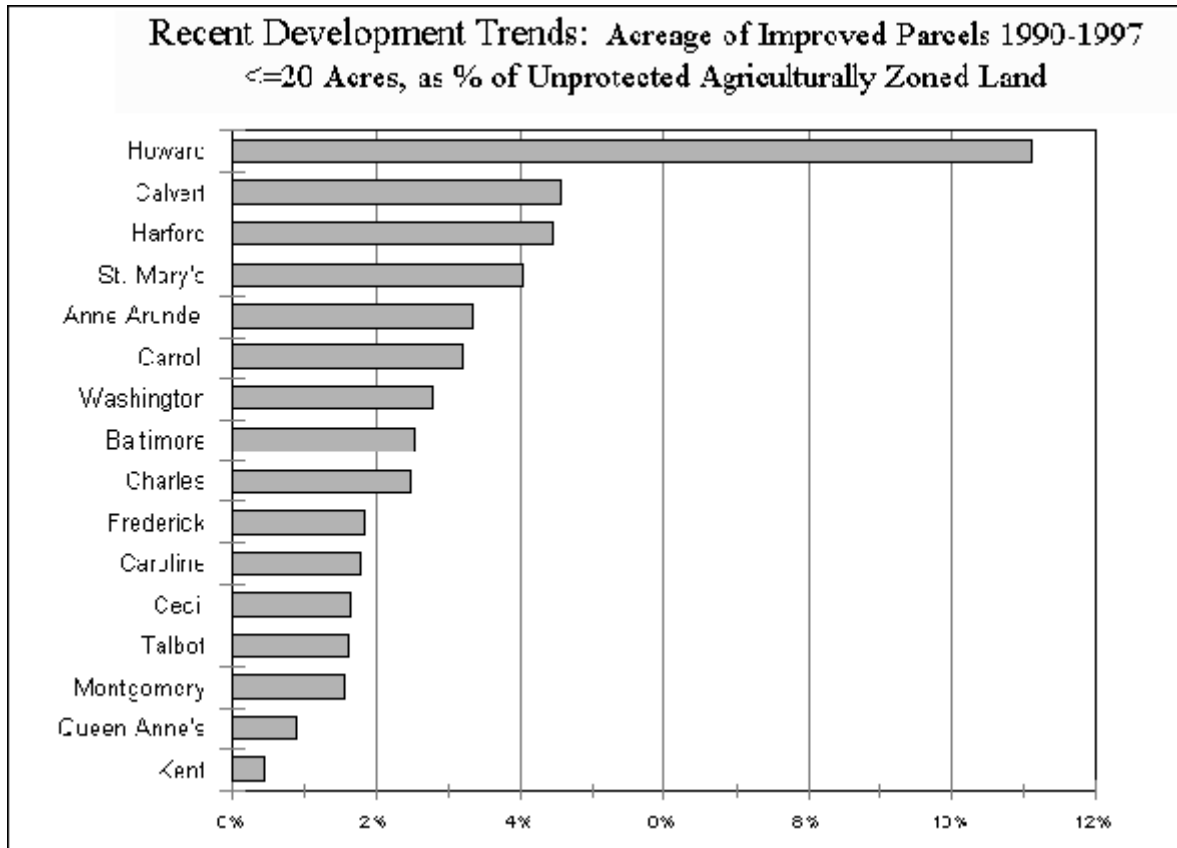
The pace of development on land zoned for agriculture is considerable in many counties, especially in metropolitan counties (see the chart on “Recent Development Trends” on the following page, and the maps in Appendix 4).

The chart of “Recent Development Trends” shows how zoning and development pressure combine to affect the pace of development. The Counties’ order on the chart reflects their zoning and the intensity of development pressure: Howard shows the largest amount of recent development, followed by Calvert, Harford, St. Mary’s, Anne Arundel, Carroll, Washington, Baltimore, Frederick, and Montgomery. Howard, Harford, and St. Mary’s have the least protective zoning in this group, followed by Calvert, Anne Arundel, and Carroll. Baltimore, Frederick, and Montgomery Counties have the most protective agricultural zoning.

The data on fragmentation and recent development illustrate that the goals of the program to control the impacts of development cannot be achieved in areas that have high development pressure without protective zoning. Restrictive zoning in a few of the metropolitan counties is holding development in check, but this is not the case in most of them. As a result, farmers face

increasing conflicts with residential neighbors and other obstacles to agricultural production.

This is illustrated by a simple comparison. Among counties with active preservation programs, Montgomery and Baltimore counties were among those to experience the first wave of development pressure expanding from the metropolitan cores of Washington and Baltimore,



beginning in the 1950s and intensifying in the 1960s and 1970s. Howard County and, more recently, Harford County, were subject to a second wave of pressure.

Despite the fact that they have been under pressure for a longer time, Montgomery and Baltimore show less fragmentation (Baltimore and Harford are close) and, more importantly, recent development in their agricultural zones than do Howard and Harford. The differences, especially in recent development, are due in large part to the differences in agricultural zoning between the two pairs of counties. Other factors have played a role, but the bottom line is that if the zoning doesn't allow residential subdivision beyond a certain point, then fragmentation and development are limited accordingly. As time goes on and development pressure continues to expand, the future fate of other counties in these regards - high or low rates of fragmentation and development - will depend in significant part on their zoning. Thus, the ability to achieve the MALPF Program's goals also depend on zoning, in addition to funding.

The outer reaches of central Maryland are increasingly subject to development pressure. In addition, counties beyond central Maryland will soon experience increasing development pressure radiating from Washington, Baltimore, Pennsylvania, Delaware and Northern Virginia. These Counties still have time to make choices: will they end up with easements surrounded by development, or will their agricultural areas remain intact thanks to a combination of protective zoning, strategic easement purchases, and other tools?

**The goal of retaining a viable source of agricultural products is growing harder to achieve.**

The agricultural industry has been declining along with the amount of farmland. From 1982 to 1997, the number of farms in Maryland declined 25%, from 16,000 to 12,000; over the same time period, real total cash sales (adjusted for inflation) declined by thirteen percent; \* however, “[w]hile total real cash sales have decreased, real cash sales per acre have increased by 13 percent between 1981 and 1997.... Today’s smaller group of farmers are making more money than their counterparts of the past.”\*\* These results parallel changes in the nature of farming in Maryland. On average from 1979 through 1981, for example, dairy enterprises contributed 22% of agricultural cash sales; for 1995 through 1997, the figure dropped to 13%. Grains/oils fell from 20% to 15%, while meat declined from 9% to 5%. On the other hand, greenhouse and nursery sales rose from 4% of the total in the earlier period to 16% in the latter, while vegetables became one of the top five agricultural enterprises in the three years of 1995-97, accounting for 5% of cash sales. As a percentage of cash sales, broilers were dominant both in 1979-81 (31%) and 1995-97 (34%).\*\*\*

The preceding findings reflect statewide statistics. However, the biggest impacts of uncontrolled development on the land and the industry are occurring in individual counties and regions. In the long run, the ability of the industry to adjust and remain profitable on the remaining land becomes limited in highly fragmented and developed areas.

Switching from one kind of farming to another can be expensive, and farmers are less willing to make the necessary financial commitment if the land around them is filling with houses. If land use is stabilized through easements, protective zoning, and other tools so that agriculture seems permanent, farmers will have more confidence to maintain production, or to commit capital to new operations.

**Program funds are insufficient to meet demand for easements from willing sellers.** For the five years 1996-2000, MALPF received appraisals for 986 easement applications for properties covering 142,664 acres. MALPF was able to purchase 469 easements on 64,494 acres (45.2% of the properties appraised). Total expenditures through the MALPF program, including County matching funds, during those five years was \$102.5 million—just 41.4% of the \$247.8 million needed to purchase all the easements. The shortfall is even greater when you consider that while 986 properties were appraised, 1,347 applied to the program.

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\* Hanson, Jim. “Rends in Maryland Agriculture.” Maryland Cooperative Extension Service.

\*\* Hanson, page 22.

\*\*\* Hanson, page 23, using data from the Maryland Agricultural Statistics Service.

**Easement acquisition is not sufficiently targeted to achieve program goals.** Unless development is better controlled, easement funds are increased, and easement purchases are more concentrated in areas where investment is better supported, return on investment will not improve. Until now, targeted easement acquisition by the Program has been limited. Eligibility for soils criteria ensure a degree of land productivity. The Foundation's ranking procedures ensure that properties offered at low cost relative to easement formula value are preserved first. And ranking procedures of individual counties ensure that land with desirable attributes receive easement offers first.

None of these targeting mechanism address the inability of the Program to control the impacts of development already discussed. The fact is that development will not be controlled everywhere the Foundation buys easements. Consequently, the only way to improve return on investment in this regard is to concentrate funds in areas that are being reasonably well protected.

This type of concentrated easement acquisition will require, first, the establishment and certification of "Priority Preservation Areas," and second, means to concentrate funds to an increasing degree in such areas in stages over a period of time. The staging of funds should be designed to give counties and landowners the opportunity to designate areas in a timely manner and so benefit as fully as possible as funds become available.

We suggest that to qualify as a Priority Preservation Area, zoning, subdivision, and other creative preservation techniques must be used to limit development and stabilize land use, providing time for easement acquisition that will ultimately achieve Program goals.

Priority Preservation Areas would be certified by the Departments of Planning and Agriculture through a process and criteria similar to that used for Maryland's Agricultural Certification Program. The specific considerations used as certification criteria would include the size of the areas; local goals for acreage and the agricultural industry commensurate with State goals; and the ability of local land use management authority and techniques to limit development, stabilize land use, provide time for easement acquisition, and ultimately achieve local and Program goals.

If funds are concentrated in Priority Preservation Areas, as recommended, landowners would be more likely to support the zoning techniques needed to achieve the goals of the program: they could be reasonably sure to realize the significant income from selling an easement, if they were inclined to do so. The degree of funding recommended by the Task Force would make this possible. Landowners outside of Priority Preservation Areas would still have opportunities to sell easements to the Foundation, but less funds would be available in these areas.

If the Governor and legislature do not increase funding for the Program, the Task Force believes that the recommendations to target an increasing share of funds to County-designated Priority Preservation Areas should go forward. For all of the reasons discussed, it is a necessary prerequisite to achieving Program goals, whatever the level of funding.

The Task Force believes that this is the case because, as discussed previously, there is not enough time or money to protect enough farmland and woodland to achieve the Program's goals

through easement purchases alone. Therefore, the rate of subdivision and development must be slowed under any funding scenario. For example, in its first 20 years, MALPF spent approximately \$233 million to protect 186,000 acres. This acreage is just four percent of the privately owned farmland and woodland remaining in Maryland (2.2 million and 2.4 million acres, respectively).

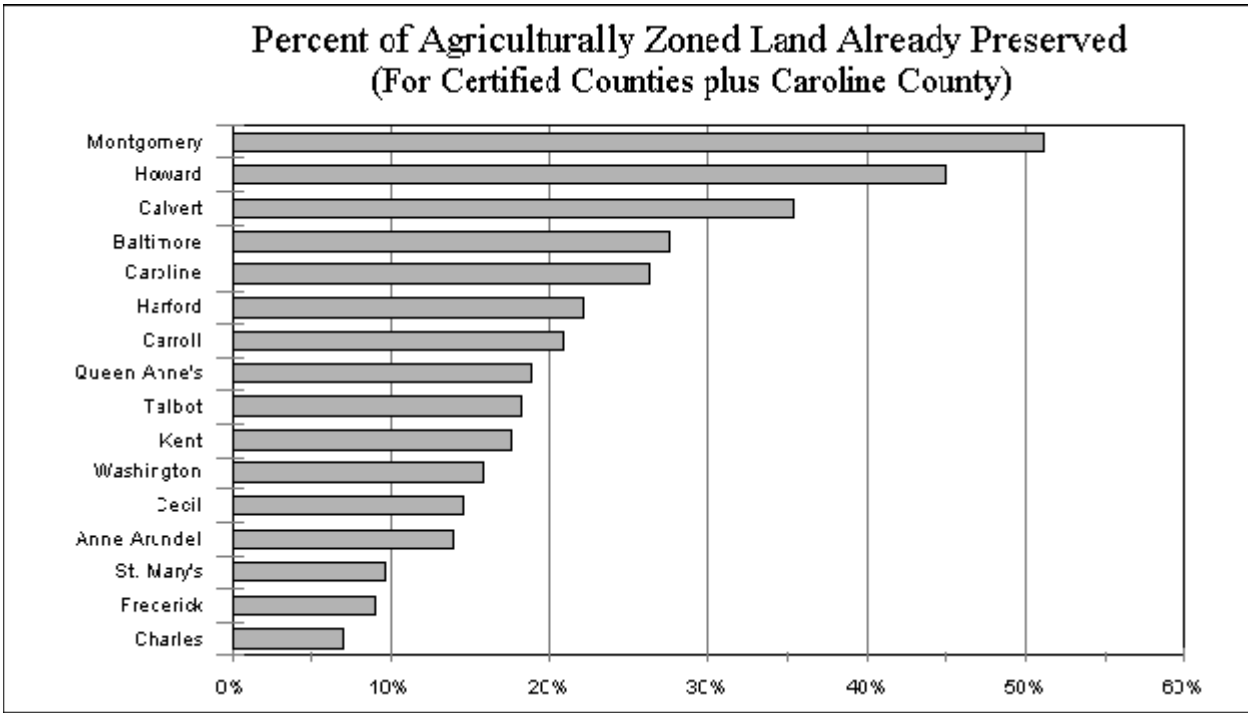
At the level of the individual county, only two of sixteen counties (i.e., fifteen certified counties plus Caroline, which has been very active in the MALPF Program) have preserved more than 40% of their agriculturally zoned land (see chart below). Nine have preserved less than 20%. The unpreserved agriculturally zoned land that can be preserved in parcels larger than twenty acres totals almost 1.4 million acres in just those sixteen Counties. If MALPF were to preserve just half of that remaining unpreserved agriculturally zoned land at the year 2000 funding level and average easement cost per acre, it would need almost 36 years to do the job. If land is converted to development at 1980 - 2000 rates, 667,800 acres would be lost from the agricultural property tax rolls during those 36 years. The value of the remaining agricultural land for production would be greatly compromised in many, if not all parts of the State.

For these reasons, it is the conclusion of the Task Force that easement acquisition must be targeted to more specifically defined geographic areas that are better protected from further impacts of development. If this is not done, 1) no reasonable level of funding will be sufficient to assure qualified rural landowners that they will be able to sell an easement within a reasonable amount of time, 2) rural landowners will be less likely to support zoning that is adequate to achieve program goals, 3) development impacts will continue to expand and worsen in counties further from the metro cores, and 4) ultimate return on investment in agricultural land preservation will be marginal throughout much of the State; in short, the Program will not achieve its goals.

We suggest that the ratio of general funds (i.e., easement funds allocated Countywide, as is done now) to targeted funds (funds allocated exclusively for use in Priority Preservation Areas) should start at 50%-50%, changing to 40%-60% the second year, 30%-70% the third year, and 20%-80% thereafter. This distribution ratio does not affect MALPF easements purchased with GreenPrint funds, which can be spent Countywide as long as part or all of the district lies in a GreenPrint area. MALPF would buy easements in two parallel procedures, within and outside of Priority Preservation Areas.

**To further accelerate protection of Priority Preservation Areas, MALPF should create an installment purchase option to offer easement sellers.** A number of Counties use them already for increasing the rate at which easements can be acquired. When the easement agreement is approved, the County purchases a zero-coupon U.S. bond that will earn interest for thirty years until it equals the purchase price of the easement. In the meantime, the County makes interest payments on the principal balance to the landowner.

If the State used \$20 million per year to buy federal zero-coupon bonds that mature in 30 years, it could buy approximately \$100,000,000 worth of easements each year. At current easement prices, that's 50,000 acres. In four years of this installment purchase pilot project, MALPF would protect more land than it did in its first twenty years.



The zero coupon bonds, upon maturity, would pay the easement value to the landowners. For the thirty years before maturity, MALPF would have to make interest payments to the landowners. Assuming an interest rate of 5% per year, the State would have to pay \$5 million per year for interest payments to landowners who sold \$100 million worth of easements the first year.

After four years, with 200,000 more acres under easement, \$20 million of the Program’s annual appropriation could not be used to acquire any more easements. It would be reserved to pay the interest on the \$400,000,000 commitment for easements already made (\$5 million interest payments for each of the four years of the installment purchase program). This \$20 million would be just 2/5 of the funds available to MALPF, under the Task Force’s recommendations.

**4. POTENTIAL NEW FUNDING SOURCES**

The Task Force discussed numerous potential sources to meet the estimated needs for increased funding. We chose to focus at this time on three specific, existing revenue sources that are closely linked to the subdivision and development of agricultural and rural land: the agricultural land transfer tax; the real estate transfer tax on sales of property outside of Priority Funding Areas that are not assessed for agricultural use; and the State property tax on land outside of Priority Funding Areas that is not assessed for agricultural use, excluding dwellings and other improvements on farms.

All three revenue sources, as defined here, would be derived only from rural or formerly rural

land that is developed or can be developed. Our preliminary investigation suggests that revenues from these sources could be increased to provide all or a substantial part of the needed level of funding, in conjunction with MALPF's existing funding sources; and that this can be done without imposing excessive financial burden on owners or purchasers of rural land as defined, or inadvertently compromising the ability of would-be first time homeowners to realize that ambition. Our recommendation is to explore these potential sources to determine if this is the case, and to then make final recommendations to the Governor and legislature.

**Agricultural Land Transfer Tax.** When land that is assessed for agricultural use is sold for development, the buyer declares the property ineligible for agricultural assessment and pays an agricultural land transfer tax of between three percent and five percent, depending on the size of the property.<sup>\*\*\*\*</sup> In FY 2000, this tax provided \$2.6 million to MALPF and about \$8 million to counties for farmland preservation. (The fifteen Certified counties retain 75% of locally generated agricultural land transfer tax; the other counties retain 33%.)

During the period of time in which property is assessed for agriculture, the owner pays a fraction of the tax he or she would pay if the property were assessed otherwise. Only a small percentage of the amount of property tax forgiven is recaptured by the State and County through the agricultural land transfer tax. It is not enough to accomplish the goals of the Program. However, the fact that agricultural landowners choose to develop is the reason that the MALPF Program is needed. The Task Force believes that it would be appropriate for the tax to provide a larger portion of the necessary funds.

For example, the \$8.6 million collected in FY 2000 were not nearly enough to preserve the amount of farmland converted that year: 12,424 acres. At an average per-acre easement cost of \$1,683 in 2000, over \$21 million would have been needed.

In its current form, the tax reduces the carrying costs for a property until an owner decides to develop it, but does not recapture a sufficient portion of the revenue lost. The revenue lost through the agricultural assessment over the past 30+ years serves a valuable purpose for the State, and benefits farm owners or those wishing to preserve the land. However, when an owner decides to develop the land, the purpose of all of the previously forgiven taxes is undermined: the land will be developed, is lost to agriculture, and either begins or continues to compromise an area for agriculture. The landowner benefits financially by developing the land.

Because this scenario is the reason for the MALPF and Rural Legacy programs in the first place, the Task Force believes that the transfer tax should recapture more of the lost revenue. In order to decide what the proper agricultural land transfer tax should be, the Task Force should determine the following:

- How much property tax is lost to local and State government as a result of the agricultural use assessment?

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<sup>\*\*\*\*</sup> See Tax – Property Article, §13-301-§13-308.

- How does this loss in property taxes compare to the amount of tax gained as a result of the agricultural transfer tax on these properties when they are converted?
- What share of the total amount of farm- and forest land in Maryland is enrolled in the agricultural use assessment program?
- What share of the total amount of land developed in Maryland since 1960 received a lower tax assessment under the agricultural use assessment program before it was developed?

**Real estate transfer tax surcharge.** This recommendation relates to the real estate transfer tax collected on all property transfers. As was the case for the Agricultural Transfer Tax, the Task Force wanted new revenue sources to have a connection to the problem of preserving agricultural lands.

Existing residential development outside PFAs - much of it reflecting earlier landowner decisions to develop agricultural land - has fragmented agricultural or otherwise rural land, and continues to create conflicts with farm operations, compromise production, raise the price of easements, and contribute to the “impermanence syndrome” experienced by many farmers. The Task Force believes that it makes sense that landowners choosing such residential development should contribute more to the preservation of farmland and woodland than do those choosing dwellings that do not contradict the public objectives of rural land preservation. Properties that are assessed for agriculture would not be subject to this tax when they change hands. After they are converted to development, however, subsequent owners would pay the surcharge. Here is an example of revenue such a surcharge could provide. Both Calvert and Carroll counties have strong preservation programs but also significant development pressure. In 1999, Calvert saw 1,146 properties that were not assessed for agriculture change hands outside the PFAs. The average assessed value was \$173,705; the total assessed value was \$199,065,395. A transfer tax surcharge of .5% (½ of 1%) would have yielded over \$995,000 in Calvert County alone, or about \$868 per transfer. A surcharge of .25% (1/4 of 1%) would have yielded almost \$498,000, or about \$435. In Carroll County, 1,769 properties that were not assessed for agriculture changed hands outside PFAs in 1999. The average assessed value was \$173,253; the total assessed value was \$306,484,970. A transfer tax surcharge of .5% would have produced over \$1,530,000, or about \$865 per transfer. A surcharge of .25% would have produced over \$766,000 in Carroll County alone, or about \$433 per transfer.\*\*\*\*\*

**State property tax surcharge.** This is another measure that would connect funding sources to the development that fragments farmland and woodland and puts pressure on farms and other rural resource-based businesses. The State’s share of the property tax is \$0.21 (21 cents) per \$100 of assessed value. If the State tax were increased one cent per \$100 on properties outside PFAs that are not assessed for agriculture, the revenue would be as follows in the two test Counties. Calvert has 19,503 such properties outside PFAs, with an average assessed value of \$160,021 and a total assessed value of \$3,120,894,225. The one cent increase would yield over \$312,000, or \$16 per house outside the PFAs. Carroll County has 29,066 such properties outside

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<sup>1</sup> Assessed values were used because actual sales prices were not available.

PFAs, with an average assessed value of \$181,714 and a total assessed value of \$5,281,701,871. The one cent increase would yield over \$528,000, or just over \$18 per house outside the PFAs.\*\*\*\*\*

**Funds from other preservation programs.** Rural Legacy, Program Open Space, GreenPrint, and local easement acquisition programs, funded in part by local shares of the agricultural land transfer tax and the real estate transfer tax, are the principal State and local preservation programs with a primary orientation toward agriculture and the other goals of the MALPF program, such as woodland and open space preservation. In estimating the amount of funds needed to achieve the Foundation’s goals, the Task Force assumed that funding for and accomplishments of these programs would continue at current levels, at a minimum. Diversion of funds from existing land conservation programs would reduce those accomplishments, and result in no net gains for purposes of agricultural land, woodland, and open space preservation. For this reason, the Task Force recommends that such reassignment of funds not be considered in meeting the funding needs for MALPF identified in this report.

**Critical Farms Program.** The Task Force should evaluate the establishment of a State Critical Farms program, which would ensure that when farms are sold, more of the them will transfer to farmers than to developers.

Currently, a number of Counties, such as Frederick and Carroll, Have a Critical Farms program. The County purchases an option, equal to 75% of easement value, on a property under contract of sale to a farmer or just sold to him or her. The funds give the farmer enough money to proceed with the purchase or to avoid having to subdivide after purchase in order to pay the mortgage. The landowner then applies to MALPF. If MALPF purchases an easement, then the landowner reimburses the County. If MALPF does not buy an easement within five years, the landowner can either reimburse the County or put the property under County easement for the price the County has already paid. In a program run by the State, MALPF would advance 75% or some other percentage of easement value to a contract buyer without making him or her go through the more lengthy easement process. In return, MALPF would acquire an easement.

A Statewide Critical Farms program could be administered through a flexible revolving funds such as the Land Trust Grant Fund of the Maryland Environmental Trust. In addition, the State should encourage Counties to establish their own Critical Farms programs with a share of their MALPF funds and County funds.

## **B. ALLOWED AND RESTRICTED USES OF DISTRICT AND EASEMENT PROPERTIES**

### **1. CONCLUSIONS**

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<sup>2</sup>If property tax is not based on the full assessed value, the figures should be adjusted accordingly.

- To help preservation compete successfully with development, some non-agricultural commercial activities should be allowed on MALPF districts and easements. Appropriate activities will supplement incomes of farmers, will not compromise production of farm or forest products, and are compatible with rural character.
- Current provisions in the law that give landowners the right to exclude (subdivide) residential lots from MALPF districts and easements should be revised. Lots can be easily excluded by landowners for purposes not intended by the law. It is very difficult, often impossible, for the Foundation to determine if abuse is occurring and to control it. When the State purchases easements, it pays fair market value or more for subdividable development rights; when the rights are restored to the landowner, the landowner reimburses the Program at a rate generally far below fair market. Provisions for lot exclusions can also be used to create excessive development on and around easement properties.
- Currently, in addition to lot exclusions, landowners can subdivide or otherwise withhold part of a farm before it becomes a MALPF district and easement. This land may have development potential which may be great enough to result in residential development that would compromise the value of an easement for agricultural production. Landowners are increasingly being advised by county Program administrators to exclude acreage with development potential, which can then be subdivided and developed. Landowners appear to be increasingly withholding land from the Program prior to enrolling their farms. We believe this trend runs counter to the intent of the enabling legislation, and should be corrected.

## **2. PERMITTED USES ON EASEMENT AND DISTRICT LAND NEED TO KEEP PACE WITH THE CHANGING ECONOMICS OF AGRICULTURE**

The Annotated Code of Maryland, §2-513, specifically allows the following uses if the easement and County regulations permit:

- (1) Any farm use of land is permitted.
- (2) Operation at any time of any machinery used in farm production or the primary processing of agricultural products is permitted.
- (3) All normal agricultural operations performed in accordance with good husbandry practices that do not cause bodily injury or directly endanger human health are permitted including but not limited to sale of farm products produced on the farm where such sales are made.

The Code specifically precludes any land subject to an easement being used for any commercial, industrial, or residential purpose. The Foundation's published Regulations are the same as the Code except that they limit the sale of farm products produced locally on other farms to 25%. All other products sold must be raised on the farm. The easement document is similar to the Code, but goes on to prohibit:

- (1) signs, billboards, or other outdoor advertising displays other than a 4' x 4' sign for the farm; and
- (2) dumping of ashes, sawdust, bark, trash, or rubbish, except for materials which are for regular

farm use.

In the past twenty years, the Foundation has had the difficult task of interpreting what specific uses are permitted and prohibited under the broad terms outlined in the Code. In addition, Counties have been requesting additional flexibility in allowable land uses, so as to not discourage prospective applicants and allow owners to diversify and generate additional farm income in a tight farm economy. Though the Annotated Code prohibits “commercial or industrial” operations, a farm must, in a sense, be “commercial or industrial” if it is to be successful. A farm must be able to market a product to survive, and on many occasions the farm must process that product before it can be sold. No use should be permitted on a State district which would prevent future use of the property for food and fiber production. On the other hand, the uses should not be so limited that owners avoid applying or that owners are precluded from diversifying or providing additional farm income. The Task Force believes that such incentives are becoming increasingly important if the Program is to compete successfully with development.

To respond to the changing nature and financial condition of agriculture, the law should be changed to enable MALPF to adopt a policy that allows limited commercial and industrial uses, provided that they meet the following criteria: 1) the use should be an agricultural or forestry use, a supporting use, or supporting event; 2) the activity should not have a significant long term impact on the farming or forestry potential of the land and the farm; 3) if the activity is not a farm, forestry, or supporting activity, it must be a home-based business or industry, utilizing existing buildings and affecting a limited portion of the land. We recommend the specific activities, definitions, and conditions found in the tables in Appendix II; or the use of these parameters as a point of departure for a policy to implement changes generally authorized through a change to the law.

### **3. LOT EXCLUSIONS**

MALPF’s current lot exclusion policy, established through the Program’s enabling legislation, allows one owner’s lot, plus lots for the owner’s children, plus one lot around each existing dwelling on the property, up to a maximum density of one subdivided lot for each twenty acres and ten total lots on each property. Lots rights are intended for the exclusive use of the original owner of the property and his/her children, to occupy as a principal residence. The required payback to the State by the landowner for a lot is equal to the easement value per acre; this is a fraction, often a small one, of the market value of the lot once it has been excluded.

HB 162, one of the bills considered during the 2000 legislative session that the Task Force is charged with evaluating, would have reduced the number of owner’s and children’s lots allowed to one per fifty acres, with a maximum of four.

We find several reasons to change the current provisions for lot exclusions:

FIRST, the provisions can be easily abused. Lots can be created, subdivided and sold for income, inconsistent with the use intended by law. Because permission from the Foundation for a lot is based primarily on the landowner’s statement of intent, there is no practical way to police

and prevent abuse. The Foundation has no way to know the extent to which misuse is occurring; however, it is likely to increase as more landowners become aware of the possibility.

SECOND, the State is paying market value for something it is not receiving from the landowner. By allowing landowners to retain lot rights under current provisions, the State is paying landowners market value or higher for development rights; however, these rights are essentially retained by the landowner for a relatively small fee (i.e., the required payback). Even if lots are initially used by immediate family, they will in most cases ultimately be sold for profit, for which the State has already paid.

THIRD, the number of lots allowed under current provisions has the potential to be excessive: as much as one for every twenty acres of land. For example, the Foundation can “buy” development rights on a 100 acre farm that had three rights under existing zoning; the landowner could then subdivide as many as five lots from the property, essentially allowing more development than was possible before the State paid to stop development.

We concluded that provisions for lot rights should be changed to solve these problems. However, we also concluded that it is important to ensure that landowners wishing to do so can retain land for limited residential development, for their families or other purposes. The Task Force believes that the best way to do this is by allowing farmers to withhold land from the district/easement within appropriate limits. Such limits on the amount of development would protect the State’s investment in the easement, ensuring that excessive residential subdivision does not compromise the goals of the Program (e.g., agricultural production and development impacts on the area). Our recommendations (see Executive Summary) would establish a means to achieve appropriate limits.

## **C. CURRENT PROCEDURES OF THE PROGRAM**

### **1. CONCLUSIONS**

- The Foundation has identified several procedural changes to reduce the amount of time required between a landowner’s offer to sell an easement and final settlement. The Task Force believes that these changes will be effective.
- The easement valuation formula currently used by the Foundation has been very effective in many respects. However, it artificially inflates easement values in many parts of the State, resulting in easement values that are higher than fair market. This effect is offset to some degree by the Program’s discount ranking procedures. However, those procedures inherently give owners of more expensive land the greatest ability to rank high, and owners of lower value land the least ability to do so. Since development potential and not agricultural value is the principal determinant of easement value, the ranking procedure may favor land in ways that do not always serve the purposes of the Program. The Task Force believes that it would be to the State’s advantage to consider alternatives approaches to valuation that would correct these problems.

## **2. DECREASING THE TIME FROM APPLICATION UNTIL SETTLEMENT**

The road from easement application to settlement goes from landowner to County to MALPF to DGS to the Board of Public Works to the Comptroller and back to the landowner, with a few side trips along the way. Sometimes landowners wait over two years from the time they apply until the time their easement payments arrive. The delay can be more than frustrating or a dent in the Program's reputation: sometimes the funds are crucial to maintaining or improving a farm operation, making a delay catastrophic. The recommendations in the Executive Summary that pertain to current MALPF procedures and staffing can do much to speed up the process.

## **IV. IMPLEMENTATION OF THE RECOMMENDATIONS IN THE TASK FORCE'S INTERIM REPORT, DECEMBER 2000**

The Task Force's draft tax credit bill was passed by the legislature intact and signed by Governor Glendening. The Task Force's draft bill allowed land owners to take a credit against State income tax for the value of easements donated to MET or the value of partial donations to MALPF (i.e., the amount by which the selling price is lower than the easement value). The credit applied to the first \$90,000 of income and could have been distributed over 15 years. In the legislature's bill, HB 681, the language was changed so that the credit refers not to the first \$90,000 income but to the lesser of total State income tax for the year or \$5,000.

The Task Force's draft bill to provide Certified Counties with easement purchase funds and matching funds, and to help non-Certified Counties update their plans and land use policies to better support agriculture, was not passed by the legislature. However, a significant increase in funding for MALPF easements appears in the new GreenPrint program, HB 1379, passed by the legislature and signed by the Governor. The law says that "25 percent of the total funds appropriated in the annual state budget for this program shall be spent on the acquisition of easements on agricultural land within Maryland Agricultural Land Preservation Foundation approved districts that contain land within the Green Infrastructure network." With first year funding of \$35 million, MALPF's share is \$8.75 million.

## **Appendix 1: Summary of Legislation Reviewed by the MALPF Task Force**

The Task Force was charged with studying “the current programs and practices of the Maryland Agricultural Land Preservation Foundation” and its financial standing. The Task Force is to “make recommendations to improve the programs, practices, and financial standing” of MALPF. The Task Force is also to “review and make recommendations” on four bills considered by the General Assembly in the 2000 session:

- A. **Senate Bill 255/House Bill 186**: This would provide a one-time grant, in the year 2002, to Counties whose farmland preservation programs are certified by MALPF and the Maryland Department of Planning. (At present, fifteen Counties are certified.) The amount of the grants would be equal to increase in the amount of County General Funds used for farmland preservation between 2000 and 2001.
  
- B. **Senate Bill 393/House Bill 615**: This bill would allow certified Counties to retain 75% of agricultural transfer tax generated locally on wholly wooded parcels, just as they do on agricultural parcels. Presently, 100% of transfer tax on wholly wooded parcels is remitted to the State; up to \$200,000 goes to the Woodland Incentives Fund and the rest to MALPF.
  
- C. **Senate Bill 443**: This bill would provide preservation funds to the Counties in an amount equal to what the State property tax would be for two cents per \$100 of assessed value on real property, taxable at full rate for State purposes. The percentage of the funds allocated to the Counties would be equal to the percentage of the State’s total farmland lies in each County, as certified by the Department of Assessments and Taxation. Baltimore City would receive \$500,000.
  
- D. **House Bill 162**: This legislation would limit owner’s and children’s lots on easement property to one unit per fifty acres, with a limit of four. (Presently, one house per twenty acres is permitted, up to a limit of ten.)

## Appendix 2: Proposed Allowed Uses on District and Easement Land

**Table 1: Proposed Land Uses in State APDs\*\*\*\*\***

Land Use	Justification
<b>1. Farm and Farm Related</b>	
<b>a. Animals</b>	
Large Animal Veterinary Hospital	A farm support business requiring farm products and compatible with farm operations if conditions are met.
Horse/Animal Show	A farm product support event having no long term impact on the land if conditions are met.
Livestock Auction/Sale	A farm support business having no long term impact on the land if conditions are met.
Livestock Slaughtering	A farm support business having no long term impact on the land if conditions are met.
Livestock Breeding/Sale	A farm support business having no long term impact on the land if conditions are met.
Petting Zoo	A farm support event having no long term impact on the land if conditions are met.
Horse Boarding	A farm support business requiring farm products and compatible with farm operations if conditions are met.
Horse Training	A farm support business requiring farm products and compatible with farm operations if conditions are met.
Horse Riding Lessons	A farm support business requiring farm products and compatible with farm operations if conditions are met.
Horse Racing/steeplechase	A farm support event having no long term impact on the land if conditions are met.
Fee fishing/pond	A farm support business requiring farm products and compatible with farm operations if conditions are met.
Aquaculture facility	A farm operation having no long term impact on the land if conditions are met.
<b>b. Farm Product Sales</b>	
Pumpkin/Maze/Hay Ride Event	A farm support event having no long term impact on the land if conditions are met.
Saw Mill	Production of value added farm product
Butcher Shop	Production of value added farm product
Greenhouse	Sale of a farm product
Road Side Stand	Sale of a farm product
<b>2. Commercial Services/ Recreation</b>	
<b>a. Home Occupations – General</b>	Supports farm income
<b>b. Recreation/Education</b>	
Ag. Education on the farm	Supports farming by educating the general public
Hunting	Supports farm income and has no impact on the land, if conditions are met
Paint Ball	Supports farm income and has no impact on the land, if conditions are met
Sporting Clays	Supports farm income and has no impact on the land, if conditions are met
Hunting Club/Trap/Skeet	Supports farm income and has no impact on the land, if conditions are met
Private Air Strip	Supports transportation needs of owner

<sup>3</sup>Livestock is defined as farm animals kept for use on a farm or raised for sale or profit, such as horses, cows, or sheep.

<b>3. Other</b>	
Communications Antenna	Supports farm income and requires little land area
Gravel and Sand extraction	Supports farm operation and has minimal impact if limited by size
Environmental Enhancements	Supports farm income and has minimal impact if limited by size

**Table 2: Draft Land Uses, Definitions and Conditions  
Maryland Agricultural Land Preservation Foundation (MALPF)**

<b>Use</b>	<b>Definition</b>	<b>Condition(s)</b>
<b>1. Farm and Farm Related Uses</b>		
<b>a. Animals</b>		
Large Animal Veterinary Hospital	An establishment for the care and treatment of large outdoor animals, such as cows, horses, pigs, goats, etc., but not dogs, cats, birds, reptiles, etc.	<ol style="list-style-type: none"> <li>1. The hospital (office, surgical rooms, and indoor treatment areas) shall be no more than 5,000 sq. ft.</li> <li>2. No retail sales are permitted other than those incidental to the services offered.</li> </ol>
Horse/Animal Show	An event staged for the showing (and sometimes judging) of horses or other livestock where the owners of the animals do not live on the property.	<ol style="list-style-type: none"> <li>1. No more than one show may be conducted per month.</li> <li>2. No more than 2% of the farm (or 2 acres, whichever is smaller) can be used for parking and the event. The parking lot must be pervious.</li> </ol>
Livestock Auction/Sale	An event held for display and sale of livestock.	<ol style="list-style-type: none"> <li>1. At least 50% of the animals sold must be raised on the farm.</li> <li>2. No more than 2% of the farm (or 2 acres, whichever is smaller) can be used for parking and the event. The parking lot must be pervious.</li> </ol>
Livestock Slaughtering	The slaughter of farm animals for sale and/or human consumption.	At least 50% of the animals slaughtered must be raised on the farm.
Livestock Breeding/Sale	The breeding and sale of livestock.	At least 50% of the animals sold must be raised on the farm.
Farm Animal Petting Zoo	A facility that boards and displays farm animals for the entertainment of the public.	<ol style="list-style-type: none"> <li>1. All farm animals must be indigenous to the Americas.</li> <li>2. The Petting Zoo must be accessory to ag. education or the sale of farm products.</li> <li>3. The facility shall be no more than 5,000 sq. ft. in size.</li> <li>4. The parking lot must be pervious.</li> </ol>

Horse Boarding	A facility that shelters, feeds and cares for horses other than those of the owner.	1. Indoor riding arenas and boarding facilities shall cover no more than 1% of the farm.  2. No more than 1% of the farm (or 1 acre, whichever is smaller) can be used for parking. The parking lot must be pervious.
Horse Training	A facility that is used to train horses for riding, racing, and/or managing livestock.	1. Indoor riding arenas and boarding facilities shall cover no more than 1% of the farm.  2. No more than 1% of the farm (or 1 acre, whichever is smaller) can be used for parking. The parking lot must be pervious.
Horse Riding Lessons	A facility that is used to teach people how to ride a horse.	1. Indoor riding arenas and boarding facilities shall cover no more than 1% of the farm.  2. No more than 1% of the farm (or 1 acre, whichever is smaller) can be used for parking. The parking lot must be pervious.
Horse Racing/ steeplechase	A facility that is used to race horses. Steeplechase racing involves horse races where there are obstacles in the raceway.	1. No permanent racing area shall be established.  2. No impervious parking is permitted.
Fee fishing/pond	Farm ponds where the public, for a fee, is permitted to fish.	No more than 1% of the farm (or 1 acre, whichever is smaller) shall be used for parking and no impervious parking is permitted.
Aquaculture facility	A facility used for the raising of fish or shellfish in any natural or man-made body of water.	Buildings used for aquaculture shall cover no more than 5% of the farm.
<b>b. Farm Product Sales</b>		
Pumpkin/straw bale and corn Maze/Hay Ride Event	A seasonal, recreational event held on a farm where the public is provided certain activities utilizing farm products or farm equipment and farm products are sold.	The parking area shall cover no more than 1% of the farm (or 1 acre, whichever is smaller) and no impervious parking is permitted.
Butcher Shop	A facility which sells meats.	1. At least 50% of the meat sold must be raised on the farm; the rest grown locally.  2. The facility and parking shall cover no more than 1% of the farm (or 1 acre, whichever is smaller) and no impervious parking is permitted.
Greenhouse Sales	A structure <b>or</b> area in which plants, vegetables, and flowers are grown and sold.	1. At least 50% of the products must be raised on the farm; the rest grown locally.  2. The facility (or sale area) and parking shall cover no more than 1% of the farm (or 1 acre, whichever is smaller) and no impervious parking is permitted.

Road Side Stand	A structure used for the display or sale of agricultural products.	1. At least 50% of the produce and plants must be raised on the farm, the rest can be grown locally.  2. The facility and parking shall cover no more than 1% of the farm (or 1 acre, whichever is smaller) and no impervious parking is permitted.
<b>2. Commercial Services/ Recreation</b>		
<b>a. Home Occupations-General</b>	Any non-farm or forestry activity carried out for gain.	1. The business shall be run by residents only.  2. The business shall be operated within structures existing at time of recordation; no outside storage.  3. No retail sales are permitted unless, the sale is accessory to the service offered.
<b>b. Recreation/ Education</b>		
Ag. Education on the farm	An event held on a farm to provide the public an opportunity to learn more about farming.	The parking area shall cover no more than 2% of the farm and no impervious parking is permitted.
<b>Hunting</b>	<b>DEFINITION NEEDED</b>	<b>CONDITIONS NEEDED</b>
Sporting Clays/ trap/skeet	An area where participants shoot at clay projectiles.	The area shall cover no more than 5% of the farm and no impervious parking is permitted.
Hunting Club	An organization utilizing a property for the pursuit of game or wild animals.	No more than 600 sq. ft. in building space can be devoted to such use.
Private Air Strip	An area reserved for the landing and take-off of aircraft.	Use is restricted to land owners.
<b>3. Utilities, Mineral Extraction, and Environmental Enhancements</b>		
Communications Antennae on existing farm buildings	Any antennae whose primary purpose to transmit or receive mobile telephone communications for commercial purposes.	The antennae shall be mounted on existing buildings. Support structures shall be contained within existing buildings.
Gravel and Sand pit	An area where gravel or sand is removed from the ground.	The sand and gravel shall be for farm use only.
Wooded or vegetated stream buffers, afforestations and reforestation.	Any planting of trees or vegetated buffers for increasing forests, woodlands, and wildlife habitat or for decreasing sedimentation or pollution of streams or the Chesapeake Bay, such as with funds provided by the CRP, CREP, WRP, or for forest mitigation through State and County forest management programs.	Environmental enhancement uses shall be limited in size to allow continued viability of productive farming or forestry of the property, and shall be conducted pursuant to approved forest management plans or soil and water quality management plans.



### Appendix 3: Implementation of the Recommendations

RECOMMENDATION	METHOD OF IMPLEMENTATION
<b>Meeting the Goals of the</b>	<b>Program and Long-Term Funding</b>
Creation of a Statewide farmland preservation acreage goal	Further research and analysis by the Task Force and Departments. State legislation.
Creation of County farmland preservation acreage goals and designation of preservation areas	Further research and analysis by the Task Force and Departments. State legislation., implementation by Counties
Creation of a process to certify Priority Preservation Areas	Further research and analysis by the Task Force and Departments. Legislation and regulatory change.
Targeting of new funding to preservation areas	Further research and analysis by the Task Force and Departments. Legislation.
Extend the charge of the Task Force until September 30, 2002	Governor and General Assembly. Legislation.
New funding sources	Further research and analysis by the Task Force and Departments. Legislation.
Increase funding to \$1 billion over 20 years, with \$60 million per year for the first decade	Further research and analysis by the Task Force and Departments. Legislation.
Evaluate the creation and funding of a Statewide critical farms program, and methods of encouraging the creation of such programs on the County level	Further research and analysis by the Task Force and Departments.
<b>Allowed and Restricted Uses of</b>	<b>District and Easement Property</b>
Adoption of policies and procedures to allow limited commercial and industrial uses on district and easement property	Legislation (see below), implementation by MALPF Board (The Task Force recommends adoption of the use tables in Appendix II)
Revision of MALPF easement to allow new uses	MALPF legal staff with input from Board and County administrators
Prohibition on the subdivision of lots from district or easement property (NOT retroactive)	Governor and General Assembly. Legislation being developed.
Creation of a policy requiring the MALPF Board to consider, before purchasing an easement, the degree to which development rights on the land withheld land from the district may compromise agricultural production on easement land	Governor and General Assembly. Legislation being developed. Implementation by MALPF Board.

<p>Revision of MALPF law to allow limited commercial and industrial uses on district and easement property, provided that they adhere to the following principles:</p> <p>1) the use should be an agricultural or forestry use, a supporting use, or supporting event;</p> <p>2) the activity should not have a significant long term impact on the farming or forestry potential of the land and the farm;</p> <p>3) if the activity is not a farm, forestry, or supporting activity, it must be a home-based business or industry, utilizing existing buildings and affecting a limited portion of the land.</p> <p>As a start, the specific uses, definitions, and conditions found in the tables in Section III should be adopted.</p>	<p>Legislation: Revise the Annotated Code of Maryland - Agriculture as shown below (additions shown in bold, deletions with a strike-through).</p> <p>2.513 (a)...:</p> <p>(1) Any farm use of land is permitted.</p> <p>(2) Operation at any time of machinery ....</p> <p>(3) All normal agricultural operations performed in accordance with good management practices that do not cause bodily injury or directly endanger human health are permitted including but not limited to sale of farm products produced on the farm where such sales are made.</p> <p>(4) Farm support businesses and events that are related to the primary agricultural use of the farm as limited by regulations propagated by MALPF.</p> <p>(b) Use for commercial, industrial, or residential purposes.– ...</p> <p>New: (2) Except that landowners may conduct commercial activities within residence(s) and existing accessory buildings (at the time of the easement) as home occupations limited by local zoning and as approved by the Maryland Agricultural Land Preservation Foundation (MALPF).</p>
<p>Revision of the law to prohibit the subdivision of principal dwellings from a farm under easements.</p>	<p>Legislation being developed.</p>
<p>Change in the regulations to require landowners to reserve additional tenant houses, not to exceed one per 100 acres, in the terms of the easement; the value of such reserved rights should be deducted from the value of the easement at the time of appraisal</p>	<p>Regulatory change</p>
<p>Prohibition of the subdivision of MALPF easements except for agricultural or silvacultural use</p>	<p>Policy change</p>
<p><b>Current Procedures of the MALPF Program</b></p>	
<p>Revise procedures so that : easement applications are sent to and approved first by individual counties before submission to the Foundation</p>	<p>Policy change</p>
<p>easement offers are made to applicants as soon as their appraisals are completed instead of when all appraisals are completed</p>	<p>Policy change</p>
<p>application and offer deadlines are staggered over the course of a year so as not to deluge staff</p>	<p>Legislation, regulatory change and policy change</p>
<p>Hire more staff at MDA to process easement applications and DGS to appraise properties</p>	<p>Funding through State budget, MDA and DGS.</p>
<p>Evaluate alternative approaches to the appraisal system, such as a point system or easement valuation system now used by several Counties and the Rural Legacy program</p>	<p>Legislation to extend the life of the Task Force and give it a new charge. Legislation being developed.</p>

Change the Declaration of Intent that is signed by buyers of agricultural land into a contract and make it binding for ten years instead of five

Legislation.

## **Appendix 4: Maps of Fragmentation & Preservation, Selected Counties**

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1. The goals are cited in §2-501, Subtitle 5, Agriculture Article: "...to preserve agricultural land and woodland in order to: provide sources of agricultural products within the State for the citizens of the State; control the urban expansion which is consuming the agricultural land and woodland of the State; curb the spread of urban blight and deterioration; and protect agricultural land and woodland as open-space land (Annotated Code of Maryland, Agriculture Article, § 2-501).