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## **Maryland Department of Natural Resources**

### **Fiscal Year 2012 Capital Budget Presentation Response to the Department of Legislative Services Analysis**

**House Appropriations Committee  
Subcommittee on Capital Budget  
March 2, 2011**

**Senate Budget and Taxation Committee  
Subcommittee on Capital Budget  
March 8, 2011**

The Department concurs with the vast majority of recommended DLS actions, most of which are consistent with the Administration's Capital Budget, or provisions of the Budget Financing and Reconciliation Act of 2011. Only items of difference, or those requiring further discussion, are considered below.

#### **Recommended Actions**

##### **Transfer Tax Redirection to General Fund - Budget Reconciliation and Financing Act**

**DLS recommends that this BRFA provision be adopted in order to mandate a minimum level of funding for capital-related programs currently funded by volatile transfer tax revenue, put operating-related line items in the context of other State budget priorities, and provide additional revenue to the general fund.**

**Department Response: The Department strongly disagrees with the recommended action.**

- This recommended action strikes at the heart of the spirit and intent of Program Open Space as it was created 41 years ago. It would abolish Program Open Space.

- The proposal would also be a severe breach of the public trust, in that citizens have come to expect a dedicated funding source paid for through real estate transactions to preserve outdoor spaces for recreation at a pace equal to development.
- Let us reiterate the Governor's proposed budget for FY12. In order to assist with the deficit reduction, transfer tax revenues have been diverted to the general fund and replaced with general obligation bonds over a three year period. This is an appropriate and necessary approach to cost containment.
- We know that the needs of the state and local conservation and recreation programs far outweigh the available funding, but POS has been successful at balancing the needs against available funding and has taken advantage of boon years to accomplish as much of the preservation portfolio as possible, as well as adjusting spending based on priorities in lean times.
- We currently rely on the operating expenses authorized in statute to fund personnel who do the planning, acquisition, parks operations and capital development on the public lands.
- To move these functions over to be funded through general fund expenditures in FY 2013, to compete on a statewide basis with other programmatic funding needs across state government, especially when the state is facing in excess of a \$1 billion deficit is tantamount to a decision to close parks and fire staff in several units of DNR.
- Program Open Space currently operates at no direct expense to taxpayers or the general fund - in that the special funds are accumulated through a percentage tax on real estate transactions. Those transactions underwrite the cost of preserving land and providing public access and staffing for the general public.
- POS is a nationally renowned program that works and people are passionate about protecting it.
- A \$50 million minimum funding mandate is substantially below annual projected funding levels over the next five years, and would fail to keep up with any changes in real estate prices as the economy recovers. Demand for programs like Rural Legacy, local side POS and MALPF far outpace the funding available, even in robust years. The program should be allowed the flexibility to utilize all the dedicated funds available.
- We have estimated \$11 billion would be necessary just to protect the targeted ecological areas within GreenPrint.
- Under the analyst's proposed funding scenario, looking just at the state share, once you deduct out capital development, critical maintenance and rural legacy, you will only be left with a meager \$4 million for public land acquisitions in a given year. This would only allow for one or maybe two transactions.

- Funding all the land conservation programs at a \$50 million level will never get us to the goal line in terms of land protection needed to keep pace with development, to meet our goals under Watershed Implementation Plans and BayStat.
- We also run the risk of cutting ourselves off from new funding opportunities where leveraging state funds is necessary - initiatives like the recently announced America's Great Outdoors for the 21st century - if we limit ourselves to the transfer tax allocation in the recommendation.
- This recommendation made by DLS is a sweeping change in state policy affecting a nationally recognized program, and we cannot support the recommendation.
- If the budget committees and the General Assembly want to kill Program Open Space, that is obviously their prerogative to do so. We, on the other hand, wish to disassociate ourselves from any effort to do so.

**GO Bonds #5. Rural Legacy Program. Reduce GO Bond Funding by \$5,000,000**

**Department Response: The Department disagrees with the recommended action.**

The Rural Legacy Program historically receives requests that amount to far more than available funding. There are currently still more than 780,000 acres in Rural Legacy Areas across the State that require easements for permanent protection. Deletion of this \$5 million will mean that more than 1,200 acres of Rural Legacy acres will go unprotected, based on the average cost of \$4,100/acre for Rural Legacy easements

**PAYGO #9. Delete Ocean City Maintenance local share \$1,000,000**  
**GO Bonds #6. Delete Ocean City Maintenance \$1,000,000**

**Department Response: The Department disagrees with the recommended actions.**

The recommended action is inconsistent with the very successful funding matrix established 21 years ago, that has allowed ongoing beach replenishment and response to emergency situations. If approved, it would jeopardize future beach replenishment needs and be inconsistent with our agreement with the Federal government.

The reason for the Ocean Beach Maintenance Fund (Fund) is two fold: 1) to meet annual maintenance needs as required by the Local Cooperation Agreement between the State of Maryland and the U.S. Army Corps of Engineers; and, 2) to meet emergency repair needs following coastal storms. The economic and recreational significance of the beach at Ocean City is well established.

The nature of the Atlantic coast is its unpredictability with respect to major storms from season to season and year to year. Our 21 year history with the Ocean City Beach

Replenishment Program has taught us that we can have devastating storms in any year and the end goal of the Fund is not just to reach the \$15 million mark, but to maintain a fund level that will meet expenditures for annual maintenance and emergency repair costs. The benefit of the Fund has been that at no time over the past 21 years have we had to ask for an emergency appropriation even though the project has been heavily damaged a number of times requiring the outlay of substantial amounts from the Fund.

The last major coastal storm to damage the Project hit in November 2009. The State was fortunate that it happen to coincide with a planned re-nourishment effort to be undertaken by the Corps in 2010 and that Congress made emergency funds available to pay for the storm damage. In the current Congressional atmosphere we are not certain that emergency funds would be made available and the cost would then fall to the State, thereby substantially reducing if not eliminating the balance in the Fund.

As noted by the analyst, the funding agreement, approved by the Board of Public Works, holds the State and local governments of Worcester County, the Town of Ocean City, to making annual contributions to the Fund until and unless the balance reaches the cost of the Phase I construction project, \$15 million.

In FY 2010 we were able to take advantage of this stipulation to enjoy a break from making a contribution and it is anticipated that we will reach the balance threshold again by the end of FY 2013. We urge the Committees to disregard the legislative analyst's recommendation for a contribution holiday to the Fund in 2012 and instead follow the contract stipulation to maintain annual contributions until the contractually agreement upon level is reached.

## **Overview Issues**

### **Waterway Improvement Fund Revenue Shortfall**

**DLS recommends that DNR comment on its plans for addressing the current level of vessel excise tax revenue and the impact this would have local jurisdictions and the boating public. In addition, DLS recommends that DNR submit a report laying out its proposed Waterway Improvement Program funding policies.**

**Department Response:** The Waterway Improvement Fund is the only source of state funds that support the existing boating infrastructure for the Maryland Boating Industry, local watermen and the general boating public. Since 1966, this Fund has completed thousands of grant projects and has supported essential boating activities, programs, and services throughout Maryland. The demand for grants to complete state and local waterway improvement projects have historically exceeded available funding.

The sole source of revenues for the Fund is the 5% vessel excise tax (VET) that is paid when a boat is titled in Maryland. Projects and services supported by this Fund are critical in maintaining adequate navigational and boating access, boating safety as well as environmental projects and activities that support over 200,000 registered and transient

boaters that recreate and work on our state waterways. The Fund is essential to the \$2.5 billion dollar Maryland boating industry that supports an estimated 35,000 jobs in our state.

The Waterway Improvement Fund (WIF) has recently experienced a dramatic decrease in revenues because of reduced boat sales. Compared to just five years ago, the VET revenues has decreased from \$30 million to \$15 million (50% reduction), which has resulted in a significant decline in funds available for projects. Currently, VET revenues are nearly equal to what was collected this time last year. DNR anticipates that the VET will not increase significantly within the next five years. In addition, recent increases in fuel prices may further impact boat sales. As such, DNR has only included a cumulative annual increase of \$1 million in the out-years for Waterway Improvement Fund projects.

Based on the amount of grant requests that the Department historically receives for local and state projects, it is anticipated that there will not be sufficient state funding to develop and maintain the public boating infrastructure in Maryland. In addition, the U.S. Army Corps of Engineers is not maintaining many of their existing shallow water channels, which in some cases has required DNR to use the WIF to finance dredging projects at these locations.

Due to the sharp decline in VET revenues, the Department is considering amending its existing funding policies to better reflect the level of state funding that is currently available for projects. This may result in local jurisdictions having to provide a larger cost share for local dredging and boating access projects until such time the VET revenues rebound. The Department is going to review all potential funding sources that may be applicable to completing projects of this nature and plans to hold a work session with local governments later this year to discuss these and other issues related to funding projects.

DNR agrees to complete the report recommended by DLS regarding its proposed Waterway Improvement Program funding policies by September 1, 2011.

## **Rural Legacy and Marcellus Shale**

**DLS recommends that DNR comment on the status of communications with Spectra Energy concerning the development of lease amendments and whether the three provisions outlined in the Maryland Agricultural Land Preservation Foundation report on Marcellus Shale drilling are available for Rural Legacy Program applicants.**

**Department Response:** The Rural Legacy Program is a grass-roots, locally driven program where local governments and private land trusts identify Rural Legacy Areas and competitively apply for funds to complement existing land conservation efforts or create new ones. Local Sponsors are the ones to apply annually to the Rural Legacy Board for participation in the Program and to receive funding. As such, it is the Local Sponsors who negotiate at their local level with interested landowners and any other pertinent party, including Spectra Energy, about the potential for a Rural Legacy easement. Garrett County is the Local Sponsor for the Bear Creek Rural Legacy Area, containing Marcellus Shale, and is appropriately taking the lead on negotiations with Spectra Energy. For future Rural

Legacy Program applications in areas underlain with Marcellus Shale, the following three options outlined in the Department's recent JCR report will guide our consideration of Rural Legacy easement purchases: (1) the landowner buys out the lease and thereby extinguishes the lease; (2) the lease expires, and is thereby extinguished; or (3) the landowner and the lessee agree to amend the lease to limit allowable activities to gas storage and transmission and protection of gas storage facilities.

DNR and MDE are supporting a two year comprehensive study before any drilling takes place in order to address environmental and economic concerns. Part of the study is intended to look at the impacts of natural gas extraction on conservation investments in public lands and purchased easements. The results of that study will further inform departmental policy beyond the provisions cited above for any future acquisitions.

### **Natural Resources Development Fund**

**Harriet Tubman Underground Railroad State Park. The Department of Legislative Services recommends that DNR comment on the overall scope of State funding for the visitor center and that the pre-authorization of \$2.85 million in GO bond authorization for fiscal 2013 be approved since it will help facilitate the leveraging of federal funding and thus possibly obviate the need for State funding.**

**Department Response:** DNR agrees with the recommendation to approve the pre-authorization of \$2.85 million in FY 2013. The State has been very successful leveraging prior appropriations for federal grants. The State has approved appropriations in FY 2008 (\$1.6m) and FY 2010 (\$4.409m) and we have received federal grants totaling \$3.63 million. We are currently pursuing another \$8.5 million in federal grant funds which require a matching amount from the State. The preauthorization demonstrates to the grantor that we will have all of our funds in place when the project is ready to go to construction.