



Lawrence J. Hogan, Jr., Governor
Boyd K. Rutherford, Lt. Governor
Mark J. Belton, Acting Secretary

Maryland Department of Natural Resources
Fiscal Year 2016 Capital Budget
Response to Department of Legislative Services Analysis

Senate Budget and Taxation Committee
Senate Capital Budget Subcommittee
Senator James E. DeGrange, Sr., Chair
March 3, 2015

House Appropriations Committee
House Capital Budget Subcommittee
Delegate Adrienne A. Jones, Chair
March 4, 2015

DLS recommends DNR comment on the following items:

1. DLS recommends that the Rural Legacy Program GO bond authorization be reduced by \$11.3 million to reflect a reduction of \$6.3 million attributable to the same replacement funding percentage received by POS and \$5.0 million for the mandated funding. DLS also recommends that the funding be repurposed to backfill the \$8.2 million POS – Local unencumbered balance proposed to be transferred in fiscal 2015 and a portion of the fiscal 2015 negative deficiencies for the Natural Resources Development Fund and Critical Maintenance Program (page 38).

Agency Response: The Department disagrees with this recommendation.

The Department does not believe that reducing Rural Legacy funding would result in a more equitable funding plan for transfer tax funded programs. While the Department looks forward to returning to full funding for land preservation and recreation programs according to statute, the Governor's FY 2016 budget takes an equitable approach to funding these programs given the current constraints on the State's budget.

1. Both of the State's working landscape easement programs (MALPF and Rural Legacy) are proposed to be funded with GO Bonds at equitable levels given the transfer tax allocation each program receives through the formula.
2. Both POS Stateside and Local are proposed to be funded at the same level.

3. The unencumbered special fund balance proposed to be transferred in fiscal 2015 from POS Stateside and Local was not replaced for either POS Stateside or Local.
4. Redirecting proposed Rural Legacy funding in the Governor's FY2016 budget to other programs erodes the integrity of this dedicated funding source.

The replacement GO Bonds proposed for POS and Rural Legacy in the Governor's FY 2016 budget also takes into account the programs' unencumbered balances. The Rural Legacy Program has encumbered all of the FY 2015 and prior year appropriations and so there will be no carry-over funding available for projects in FY 2016.

Given the high demand for Rural Legacy Program funding, the Program will encumber all FY 2016 funding in FY 2016. Demand for Rural Legacy Program funding from farmers consistently exceeds available funding – we have people waiting in line for easements who must be turned away simply because there is not enough funding available. The program receives on average over \$100 million in requests annually and receives on average approximately \$16 million in funding. Since the start of the Program, the Department has been only able to fund 16% of requests.

The Department has already received applications for the FY 2016 Rural Legacy Program totaling approximately \$77 million. Our ability to put acreage under easement via the Rural Legacy Program is directly tied to funding. The DLS recommendation to reduce funding for the Rural Legacy Program by \$11.3 million will decrease the conservation easements purchased on working farms and forests in the 31 locally designated Rural Legacy Areas across the State by approximately 3,200 acres. This directly impacts those in Maryland's rural areas who provide locally-available food and fiber in strategically targeted and locally-managed Rural Legacy Areas; and who are willing and waiting to place their farms and forests into permanent protection for the greater good. It will also negatively impact those with whom we partner at the local level including our sponsors of our 31 Areas across the State – either land trusts and/or local governments; as well as those with whom they do business locally for due diligence incidental work such as surveys and title.

Funding directly impacts the Program's ability to meet land preservation goals including BayStat goals, and the statewide goal to triple the existing number of acres of productive agricultural land preserved by programs such as MALPF, Rural Legacy and the local preservation programs by the year 2022 that was established through Joint Resolution in 2002. The Department is also working diligently toward the Federal Executive Order and the 2014 Chesapeake Watershed Agreement goal of protection of an additional two million acres and providing an additional 300 public water access sites Bay-wide by 2025. These are ambitious goals that, without consistent and adequate funding, will not otherwise be met by Maryland.

Maryland's land conservation and recreation programs do a wonderful job of leveraging federal dollars and partners. Since 2010 when the State entered into a multi-party agreement with the United States Department of Defense's Readiness and Environmental Protection Integration

(REPI) program administered through the Navy, we have been able to leverage more than \$8.5 million in federal REPI funds to secure permanent protection of lands surrounding Navy property and flyways in order to buffer these areas from incompatible encroachment. The Department will soon be entering into a similar multi-party agreement with the Department of the Army through their Army Compatible Use Buffer program – also for encroachment protection while ensuring the sustainability of the landscape. The Department was also recently successful in a nationally competitive process in securing nearly \$1 million in Regional Conservation Partnership Program funding through the Farm Bill. This money will leverage dollars for targeted conservation easements to help achieve resource conservation goals and protect water quality in the Chesapeake Bay Watershed by making permanent the protection measures found in Conservation Reserve Enhancement Program (CREP) contracts.

The Rural Legacy Program works well in a grassroots fashion by partnering with local land trusts and/or local governments in a fiscally responsible manner while helping to secure the economic expansion and prosperity of our rural working landscapes. This program has the ability and nimbleness to spend every dollar provided for in the Governor's FY2016 budget in order to meet the extraordinary demand by our farmers and rural landowners to willingly place their land into permanent protection.

2. DLS recommends that DNR comment on how it plans on meeting both the operating and PAYGO/capital demands on the WIF including the demonstrated need for dredging projects and the emerging need for larger facilities to handle larger boats (page 30).

Agency Response: DNR has prioritized all proposed waterway improvement projects, including dredging proposals, in the FY 2015 and 2016 budgets through the evaluation and scoring of grant requests and will continue to do so in the coming years. Boating Services does not see an impending need for larger facilities to handle larger boats. The vast majority of boats in the State are 40' or less. The national boating trend is toward smaller vessels to include paddle craft. Less than 2% of State registered vessels are over 40' in length.

In FY 2015, 94 project applications were submitted totaling \$21,676,715 for WIF funding. Of these applications, 17 were requests for dredging, with a proposed total cost of \$7,391,630, representing 34% of the total dollar amount requested and 18% of the number of applications.

Ultimately, a total of 35 projects were funded with FY 2015 Waterway Improvement funds totaling \$4 million, of these funded projects, 6 were for dredging, totaling \$965,250. This dollar amount for dredging represented 24% of the total FY 2015 funds, and 17% of the total number of projects funded.

The project evaluation criterion for WIF projects includes nine technical and environmental factors as well as the benefits, which the project will provide to the general boating public: (1) expand/improve public boating access; (2) safety; (3) cost/benefit; (4) regulatory permits; (5) projected expenditure rate (how soon can they encumber the funds and complete the project); (6) continuation of a current project; (7) boating congestion impact; (8) sustainable elements; and (9) other/priority.

Boating Services strives to maximize the number of projects funded given the funding available. In any given year we receive a number of requests that are not eligible for funding and filtered out; the remaining applications are evaluated according to well established and public criteria to optimize the use of WIFs.

3. DLS recommends that DNR comment on how it plans to balance the need for oyster shell for both oyster restoration and oyster aquaculture in order to be able to meet the five tributary restoration goal cost-effectively (page 39).

Agency Response:

Background:

A vital component for oyster recovery efforts is the shell that is used for hatchery produced oysters and to create a hard bottom, or substrate habitat. The demand for shell is ever increasing while the supply that DNR is able to acquire annually has diminished from 2.4 million bushels of dredged shell annually (1997-2006) to a significantly lower but fairly steady level of 200,000 to 300,000 bushels of fresh shell. This situation changed due to discontinuation of Maryland's shell dredging program in 2006. The program was discontinued because the program was no longer resulting in a positive impact to the Bay's oyster resource and industry, the majority of shell dredging deposits had been exhausted, and those areas that remained had ecological concerns and strong stakeholder opposition. Since then, the DNR has explored alternative oyster shell and non-shell materials placing increased demand on the limited supply of fresh shell. Current fresh shell costs vary from \$2.50 to \$4.75 per bushel depending on the source and transportation/delivery distances.

Solutions:

DNR is pursuing the following strategies to best ensure that the state's oyster substrate needs are met in the most cost effective manner. Thus far in 2015, the DNR has agreed to purchase 200,000 bushels for the public oyster fishery. This purchase will not impact plans for shell use for restoration or aquaculture. Future use will be determined annually based on availability and need. The allocation of the materials used for restoration, aquaculture, and the public fishery will be continually assessed. Below are the following options that the department will consider moving forward:

1. Fresh Shell – The DNR has acquired sufficient fresh shell supply to support the next two years for hatchery operations supporting restoration, aquaculture, and the public oyster fishery. Purchase of additional fresh shell will continue as opportunities arise.
2. Shell reclamation – There several public oyster bars across Maryland where the State has historically planted oyster shell which are no longer productive, many of which are covered with silt and/or sand. DNR has a tidal wetlands permit to allow the reclamation of shell covered with up to one foot of sediment. Watermen seed boats used this permit in 2011-2012 to recover 413,000 bushels of shell and replant it on public oyster bars. New areas could be identified with support of the County Oyster Committees and dredging could occur immediately.

3. Man O War Shoals – DNR is applying for a permit to dredge shell from this historical oyster bar in the Upper Bay. If approved in 2015, the permit application is currently designed to provide 2 million bushels of shell in 2016.
4. Gulf of Mexico shell - A new and significant source of oyster shells has been identified in the Gulf of Mexico in Laguna Pueblo Viejo, near Tampico Mexico roughly 250 miles south of Texas. DNR needs to conduct a thorough evaluation to determine the potential for this shell source.

PAYGO Recommended Actions

1. Concur with the following language on the special fund appropriation:

Notwithstanding the appropriations above, the Special Fund appropriation for the Outdoor Recreation Land Loan shall be reduced by \$27,882,266 contingent on the enactment of legislation crediting \$37,712,700 of the transfer tax revenue to the General Fund. The reduction shall be distributed in the following manner:

Agency Response: Concur

2. Concur with the Governor's allowance of \$500,000 in special funds for the Ocean City Maintenance Program.

Agency Response: Concur

3. Concur with Governor's allowance of \$6,000,000 in special funds and \$587,000 in federal funds for Waterway Improvement Capital Projects.

Agency Response: Concur

Go Bond Recommended Actions

1. Approve the \$2,500,000 general obligation bond authorization for Community Parks and Playgrounds to provide grants to local governments to design and construct capital-eligible park and playground improvement projects.

Agency Response: Concur

2. This action adds \$1,544,870 in general obligation bond authorization to the Critical Maintenance Program.

Agency Response: Disagree – See response on Page 1.

3. This action adds \$1,544,870 in general obligation bond authorization to the Natural

Resources Development Fund.

Agency Response: Disagree – See response on Page 1.

4. Approve the \$500,000 general obligation bond authorization for Ocean City Beach Replenishment Fund for the maintenance and restoration of the beach at Ocean City.

Agency Response: Concur

5. Approve the \$14,500,000 general obligation bond authorization for Program Open Space – Stateside – Land Acquisition for the purchase of conservation easements and acquisition of land.

Agency Response: Concur

6. This action adds \$8,181,400 in general obligation bond authorization to the Program Open Space – Local authorization.

Agency Response: Disagree – See response on Page 1.

7. Reduce Rural Legacy Program funding commensurate with Program Open Space replacement amount and by the mandated funding amount in statute.

Agency Response: Disagree – See response on Page 1.

8. Approve the \$7,600,000 general obligation bond authorization for the Oyster Restoration Program to design and construct oyster habitat restoration projects and provide grants for aquaculture development projects.

Agency Response: Concur

9. Approve the modification of Chapter 336 of 2008, as amended by Chapter 485 of 2009, Chapter 424 of 2013, and Chapter 463 of 2014, to allow funds to be reallocated to projects authorized under the Natural Resources Development Fund or Department of Natural Resources Capital Development Projects.

Agency Response: Concur

10. Approve the modification of Chapter 485 of 2009, as amended by Chapter 424 of 2013, and Chapter 463 of 2014, to allow funds to be reallocated to projects authorized under the Natural Resources Development Fund or Department of Natural Resources Capital Development Projects.

Agency Response: Concur

11. Approve the modification of Chapter 483 of 2010, as amended by Chapter 444 of

2012, to allow funds to be reallocated to projects authorized under the Natural Resources Development Fund or Department of Natural Resources Capital Development Projects.

Agency Response: Concur

12. Approve the modification of Chapter 396 of 2011 to allow funds to be reallocated to projects authorized under the Natural Resources Development Fund or Department of Natural Resources Capital Development Projects.

Agency Response: Concur

13. Approve the modification of Chapter 444 of 2012 to allow funds to be reallocated to projects authorized under the Natural Resources Development Fund or Department of Natural Resources Capital Development Projects.

Agency Response: Concur

14. Approve the modification of Chapter 424 of 2013 to allow funds to be reallocated to projects authorized under the Natural Resources Development Fund or Department of Natural Resources Capital Development Projects.

Agency Response: Concur

15. Approve the modification of 463 of 2014 to allow funds to be reallocated to projects authorized under the Natural Resources Development Fund or Department of Natural Resources Capital Development Projects.

Agency Response: Concur