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SENATE BUDGET AND TAXATION COMMITTEE CAPITAL BUDGET SUBCOMMITTEE

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HOUSE APPROPRIATIONS COMMITTEE CAPITAL BUDGET SUBCOMMITTEE

Issues and Recommended Actions

1) Department of Legislative Services (DLS) recommends that the Maryland Department of Agriculture (MDA) comment on the likely funding need for the MACS program under low-, middle-, and high-demand scenarios as a result of Chesapeake Bay restoration needs.

Since State agencies have not yet developed the WIP III milestones, the following projection of low-, middle-, and high-demand scenarios as a result of Chesapeake Bay restoration needs are speculative. \$8.6 million is the mid-demand scenario based on the average expenditure of MACS funds 2011-2016. This assumes WIP milestones will not increase. The low- and high-demand scenarios are \$4.3 million and \$12.9 million respectively. This assumes 50% less or more than mid-range.

2) DLS recommends that MDA comment on the advantages and disadvantages of passing legislation to work with the REPI program, including the amount of annual funding involved and the possible agricultural easement acreage that could be preserved as well as the downside of losing the option of the "friendly condemnation" process.

If SB 885 (Maryland Agricultural Land Preservation Foundation – Condemnation of Land Under Easement) passes, the statutory incompatibility between the MALPF and REPI programs would be resolved. That would then allow MALPF to enter into a Multi-Year Encroachment and Protection Agreement with the Department of the Navy (Navy), and a number of other partners, to allow MALPF easement properties that are eligible under the REPI program to receive federal funding to contribute to the purchase price of the easement.

The primary benefit of partnering with the Navy in the REPI program is the availability of receiving federal matching funds to combine with the State and County funds already appropriated to the MALPF program. The addition of federal monies would provide funding to

increase the number of easements that could be purchased under the MALPF program in eligible counties.

After MALPF has entered into the Encroachment Agreement with the Navy, and has completed all the transactional requirements and approvals necessary to participate in a REPI-funded easement acquisition, then the federal funding will become available for MALPF easement projects. In the most recent MALPF easement cycle, if REPI funding had been available for all MALPF/REPI eligible easement applicants, approximately \$3.8 million of federal funds could have been utilized to extend additional easement offers, according to an estimate provided by Charles County Program Administrator. Using the average per-acre acquisition cost of \$4,020/acre, an additional 945 acres could have been acquired under the MALPF easement program in the combined FY 2017/2018 cycle.

When partnering with the Navy to acquire easements under the REPI program, the United States of America, through the Navy, is a co-grantee of the easements along with MALPF. There are a number of challenges that partnering with the Navy in the REPI program would bring, which can be categorized into four general areas of jurisdiction, governance, violation enforcement, and transactional process.

To summarize, the issue of jurisdiction refers to all legal proceedings being processed in federal, as opposed to state, courts, and it also eliminates the option of “friendly condemnation.” In a similar manner, the Navy has refused to permit MALPF easements to be governed solely by Maryland statutes and regulations and requires the Navy’s policies to govern as well, which may be at odds. Both MALPF and the Navy have independent authority to determine if any action, activity, or use on an easement property is a violation of the terms of the easement. The Navy will not defer to MALPF decisions regarding violation enforcement. Finally, the response and turn-around time for obtaining any approval or guidance from REPI is considerable. For the first REPI easement, MALPF and the county will need to procure all necessary due diligence work, which can take 6 to 9 months to complete; once provided to the Navy, their review can take up to 9 months for this first transaction. Afterwards, the process would take considerably less time, and all REPI-eligible easement applicants with willing landowners can pursue REPI partner funding.

3) DLS recommends that MDA comment on why the pounds of nitrogen reduced increased from fiscal 2016 to 2017 while the number of BMPs funded decreased.

The term "projects" is associated with individual farmer contracts. A contract may consist of more than one BMP. We have "counted" individual BMPs when calculating nutrient reduction values but not when presenting funding information, which is tied to contract/project amounts. In 2016, we funded 612 BMPs (556 state projects); in 2017, we funded 494 BMPs (343 state projects). We would have to analyze the BMPs implemented and their relative nutrient value to fully explain the difference in nitrogen reduction. Waste storage could partially explain the difference: 60 in 2016, 66 in 2017. Grassed waterways may also be a factor in the nitrogen spread between the two years; in 2016 there were 150 (which elevates the project number) compared to 2017 when there were there were 67 grassed waterways. The nutrient reduction difference, however, is about 1,400 pounds.

4) DLS recommends that MDA comment on the succession plan for MALPF given the executive director's upcoming retirement and whether the department has engaged the Department of Budget and Management (DBM) in any discussions to increase staffing in DGS' Attorneys General office to handle the increased easement activity associated with returning to a one-year easement cycle.

MALPF's Executive Director, Carol West, plans to retire effective June 30, 2018. She is actively working on a succession plan that will include the following steps:

- a) MDA is currently working on determining who will take over as Executive Director. No final decisions have been made.
- b) DGS has one Assistant Attorney General assigned to MALPF on a full-time basis. This position processes all easement applicants' due processes from acceptance of an offer through settlement. In addition, she processes all existing easement revisions. She has been working at more than full capacity for some time. Given that she can barely keep up with the workload associated with the bi-yearly cycle, it would be impossible to expect her to handle the additional burden of processing the same number of easement applications on a yearly basis. Ms. West has met with the Assistant Secretary for DGS' Office of Real Estate to discuss increasing the MDA/DGS contract by \$130,000 to secure a second dedicated full-time Assistant Attorney General. DGS is currently working on securing this position.