

Legislation – 2009 Legislative Session
Relating to Agricultural Land Preservation Issues

Final Revision: June 25, 2009

House of Delegates legislation only:

HB 34 – Environment – Impervious Surface – Statewide Database

Sponsor: Delegate Cardin.

Department position: n.a.

Legislative status: unsuccessful: hearing on Wednesday, February 4, 2009, Environmental Matters; February 16, the bill received an unfavorable committee report.

This bill would require the Department of the Environment, in consultation with the Department of Planning, to develop and maintain a database of impervious surface in the State; requiring each county to report the amount of impervious surface in the county to the Department of the Environment; and authorizing the Department of the Environment to adopt regulations to enforce this requirement.

HB 81 – Frederick County – Property Tax Exemption

Sponsor: Frederick County Delegation.

Department position: the Department takes no position on bills that are not statewide and do not directly affect MALPF.

Legislative status: unsuccessful: hearing on Thursday, February 12, 2009, Ways & Means; no action taken.

This bill would provide a State property tax exemption for property in Frederick County that is currently used for farm or agricultural purposes, and subject to a permanent easement in part or entirely held by: the Maryland Agricultural Land Preservation Foundation, the Maryland Environmental Trust, the Rural Legacy Board, or the Board of County Commissioners of Frederick County; this new legislation would apply to tax years beginning after June 30, 2009.

HB 166 – Maryland Estate Tax – Exclusion for Qualified Agricultural Property

Sponsors: Delegates Kullen, Bartlett, Beitzel, Bohanan, Bromwell, Cane, G. Clagett, Conway, DeBoy, Eckardt, Haddaway, Hecht, Jameson, Krebs, Levy, Mathias, Murphy, O'Donnell, Rudolph, Shewell, Stull, Weldon, and Wood.

Department position: n.a.

Legislative status: unsuccessful: hearing on Wednesday, February 18, 2009, Ways & Means; no action taken.

This bill alters the determination of the Maryland estate tax by excluding from the value of the gross estate the value of “qualified agricultural property” that passes from the decedent to or for the use of a “qualified recipient.” The bill also requires the Comptroller to adopt regulations to provide for the imposition of additional State estate taxes if within 10 years of the decedent’s death, and before the death of a qualified recipient, the qualified recipient ceases to use the property for farming purposes. Qualified agricultural property is defined as real or personal property that is used primarily for farming purposes. A qualified recipient is an individual who enters into an agreement to use the qualified agricultural property for farming purposes after the decedent’s death.

HB 676 – Maryland Agricultural Land Preservation Foundation – Easements

Sponsors: Delegates Cane, Beitzel, Carr, Conway, Donoghue, Frush, Kelly, Mathias, Myers, Rudolph, Shewell, Stocksdale, Stull, Waldstreicher, and Wood.

Department position: support.

Legislative status: successful: hearing on Wednesday, February 25, 2009, Environmental Matters; March 9, 2009, favorable committee report with amendments; March 12, passed the House of Delegates; hearing on Tuesday, March 31, 2009, Senate Education, Health, and Environmental Affairs; April 3, favorable committee report; April 4, passed the Senate; April 14, signed by Governor O'Malley.

This bill authorizes the Maryland Agricultural Land Preservation Foundation to enter into corrective easements to adjust boundary lines, resolve easement violations, or accommodate specified plans; and authorizing corrective easements to be accomplished by the exchange and release of farmland. Amendment moves the effective date of the bill up to July 1, 2009.

HB 754 – Real Property - Conservation Easements – Disclosure

Sponsors: Delegates Stein, Boteler, V. Clagett, Glenn, Hucker, James, Lafferty, and Weir.

Department position: n.a.

Legislative status: successful: hearing on Thursday, March 5, 2009, Environmental Matters; March 17, favorable committee report; March 20, passed the House of Delegates; April 5, favorable report, Senate Judicial Proceedings; April 6, passed the Senate; May 19, signed by Governor O'Malley.

This bill requires a real estate vendor to provide a potential buyer with a copy of all conservation easements encumbering real property prior entering into a contract for sale.

HB 783 – Transfer Tax – Program Open Space Bonds – Land Acquisition

Sponsors: Delegates James, Bohanan, and Gaines.

Department position: support.

Legislative status: successful: hearing on Wednesday, March 4, 2009, Environmental Matters; March 25, favorable committee report with amendments; March 26, passed the House of Delegates with additional amendments; March 28, favorable with amendments report, Environmental Matters; hearing on April 3, 2009, Senate Budget and Taxation; April 8, favorable committee report with amendments; passed the Senate with additional amendments; April 10, House concurs with Senate amendments; April 13, favorable Senate committee report on the amendments; May 7, signed by Governor O'Malley.

This bill authorizes the Department of Natural Resources, by resolution of the Secretary of Natural Resources and subject to the approval of the Board of Public Works, to issue Program Open Space bonds for the purpose of land acquisition; providing for the use of the proceeds; dedicating revenues from the State transfer tax to payment of principal and interest on the bonds. This bill does not appear to apply to MALPF acquisitions of easement interest in properties. Amendments cap the bonds at \$60 million and allow MALPF to bond up to \$5 million of this amount. Amendments raise the bond cap to \$70 million, still allowing MALPF to bond up to \$5 million of this amount, and transfers the authority to request the bonding to the Governor.

HB 858 – State Government – Advisory Committees – Appointment of Members

Sponsors: Delegates Smigiel, Dwyer, McComas, Shank, and Stull.

Department position: n.a.

Legislative status: unsuccessful: hearing on Wednesday, March 4, 2009, Health & Government Operations; March 17, unfavorable committee report.

Requiring the Governor or member of an Executive Branch agency who appoints members of an advisory committee (including Boards such as the MALPF Board of Trustees) to take appropriate steps to assure that the members represent a fair and balanced range of viewpoints and that the advice and recommendations of an advisory committee are not inappropriately influenced by specified people or groups and are the result of the advisory committee's independent judgment.

HB 945 – Education Funding – Transfer of Funds from Land Preservation Programs

Sponsor: Delegate McDonough.

Department position: oppose.

Legislative status: unsuccessful: hearing on Tuesday, March 3, 2009, Appropriations; March 16, unfavorable committee report.

This bill would transfer funds appropriated in the State budget from MALPF, Program Open Space, and the Rural Legacy Program to the General State School Fund to be used for the purposes specified in section 5-201 of the Education Article, excepting for school construction, if the funding formulas and education programs described in Title 5, Subtitle 2 of the Education Article are not fully funded in the State budget as proposed by the Governor.

HB 955 - Maryland Horse Industry Board - Equine Activities

Sponsor: Delegate V. Clagett.

Department position: support with amendments.

Legislative status: successful: hearing on Wednesday, March 4, 2009, Environmental Matters; March 23, favorable committee report with amendments; March 24, passed the House of Delegates with additional amendments; March 25, favorable with amendments report, Environmental Matters; hearing on April 7, Senate Finance; April 4, favorable committee report; April 7, passed the Senate; May 19, signed by Governor O'Malley.

This bill provides that farms using horses for teaching or competing in displays of equestrian skills, and for specified other activities, are not subject to provisions of law relating to the Maryland Horse Industry Board; it requires that equine activities be treated as agricultural activities for the purposes of the Agriculture Article; and it defines "equine activities" to include teaching equestrian skills, participating in equestrian competitions, exhibition, or other displays of equestrian skills, and caring for, breeding, boarding, renting, riding, or training horses. Because this bill, as originally drafted, would override the MALPF equine uses policy, MDA supports the bill with amendments that would allow the MALPF policy to stand. These amendments are incorporated into the bill.

HB 1418 – Maryland Agricultural Land Preservation Foundation – Condemnation of Easement

Sponsor: Chair –Environmental Matters Committee (by request of the Department of Agriculture).

Department position: support with amendments.

Legislative status: successful: assigned to House Rules and Executive Nominations; reassigned to the Environmental Matters; hearing on Wednesday, March 18, 2009; March 25, favorable committee report with amendments; March 26, passed the House of Delegates with additional amendments; March 28, favorable with amendments report, Environmental Matters; hearing on April 7, Senate Education, Health, and

Environmental Affairs; April 6, favorable committee report; April 7, passed the Senate; May 19, signed by Governor O'Malley.

This bill provides a process by which MALPF-preserved land sought for condemnation for economic development, residential development, or parkland would be reviewed, comparing the public interest served by preserving the land for agricultural use versus the alternative use for which the land would be condemned. Condemnation would be subject to approval by the Maryland Board of Public Works after the request would be reviewed and a recommendation made to the Board of Public Works by the MALPF Board of Trustees. This is a Departmental bill and it was submitted with clarification amendments requested by the Maryland Association of Counties (MACO) which were adopted.

Senate legislation only:

SB 73 – Maryland Agricultural Land Preservation Foundation – Sale of Land Preservation Easements – Confidentiality of Records

Sponsor: Chair – Education, Health, & Environmental Affairs Committee (by request of the Department of Agriculture).

Department position: support.

Legislative status: successful: hearing on Thursday, January 15, 2009, Education, Health, & Environmental Affairs; January 29, favorable committee report; February 3, passed by the Senate; hearing on March 25, House Environmental Matters; March 31, favorable committee report; April 1, passed the House of Delegates; April 14, signed by Governor O'Malley.

This departmental bill would require that asking prices, offers, and ranking records related to the purchase of agricultural land preservation easements remain confidential until the end of the easement acquisition cycle, as determined by the Maryland Agricultural Land Preservation Foundation (MALPF).

SB 89 – Maryland Agricultural Land Preservation Foundation – Imposition of Civil Penalties by Board of Trustees – Authorization

Sponsor: Chair – Education, Health, & Environmental Affairs Committee (by request of the Department of Agriculture).

Department position: support.

Legislative status: successful: hearing on Thursday, January 15, 2009, Education, Health, & Environmental Affairs; February 13, favorable committee report; February 23, passed with amendments by the Senate; hearings on March 25 and April 1, House Environmental Matters; April 2, favorable committee report; April 3, passed the House of Delegates; April 14, signed by Governor O'Malley.

This departmental bill authorizes the Maryland Agricultural Land Preservation Foundation (MALPF), after an opportunity for a hearing, to impose a civil penalty of up to \$2,500 per violation for specified violations, but not more than \$50,000 per administrative hearing. Penalty revenue is directed to the Maryland Agricultural Land Preservation Fund. MALPF must adopt regulations to implement the bill. Amendments preclude retroactivity to apply to existing violations already identified by MALPF, clarify that the MALPF Board of Trustees must approve the referral of any violation for an administrative hearing and approve any assessment of a civil penalty, and that landowners must be allowed a reasonable amount of time to bring the property back into compliance before any administrative hearing or civil penalty is imposed.

SB 90 – Maryland Agricultural Land Preservation Foundation – Valuation of Terminated Easements

Sponsor: Chair – Education, Health, & Environmental Affairs Committee (by request of the Department of Agriculture).

Department position: support.

Legislative status: successful: hearing on Thursday, January 15, 2009, Education, Health, & Environmental Affairs; January 29, favorable committee report; February 3, passed by the Senate; hearing on March 25, House Environmental Matters; March 31, favorable committee report; April 1, passed the House of Delegates; April 14, signed by Governor O'Malley.

This departmental bill requires that the appraisal method used to determine the agricultural value of a Maryland Agricultural Land Preservation Foundation (MALPF) easement being terminated be identical to the appraisal method used when the easement was originally purchased by MALPF.

SB 362 – Agricultural Land Preservation Easements – Residential Uses

Sponsor: Senator Haines.

Department position: support with amendments.

Legislative status: successful: hearing on Tuesday, March 10, 2009, Education, Health, & Environmental Affairs; March 17, favorable committee report with amendments; March 20, passed by the Senate; hearing on April 8, House Environmental Matters; April 6, favorable committee report; April 8, passed by the House of Delegates; May 19, signed by Governor O'Malley.

This bill would authorize a landowner whose land is subject to an agricultural land preservation easement, subject to the approval of the Maryland Agricultural Land Preservation Foundation, to convert the landowner's existing dwelling house into a tenant house and to build a dwelling house for the landowner's use; and providing that such a dwelling house would be subject to the restrictions of a full 100 acres for eligibility, that the owner's dwelling be non-subdividable, and that the owner's dwelling be subject to review by the MALPF Board of Trustees for size and location. Amendments adopted were offered by MDA/MALPF and required (1) that a request for a tenant house be based on a compelling need; (2) that the house restricted to the owner's use is a replacement dwelling; (3) that the Board approval includes size and location; (4) that neither the tenant nor replacement dwelling can be subdivided from the parent parcel; (5) that the replacement relocated dwelling is restricted to the use of the landowner; and (6) that the effective date of the change is July rather than October 1, 2009.

SB 384 – Program Open Space – Impervious Surface Projects – Prohibition

Sponsor: Senator Harris, Dyson, and Frosh.

Department position: n.a.

Legislative status: unsuccessful: hearing on Tuesday, February 17, 2009, Education, Health, & Environmental Affairs; March 23, unfavorable committee report.

This bill prohibits the use of Program Open Space funds for the development of impervious surfaces. The prohibition specifically impacts the Open Space funds appropriated to local governments for the acquisition and development of land for recreation and open space purposes. The bill defines “impervious surface” as “structures, buildings, dwelling units, roads, parking lots, and driveways; and areas that are covered with gravel, stone, shell, impermeable decking,

pavers and more. Under the bill impervious surface does not include a fence or wall less than 1 foot in width, a wood mulch pathway, a bike pathway, or a walking pathway or a deck with gaps to allow water to pass freely. This bill is of interest to MALPF because it defines impervious surface to include roads, driveways, and parking lots covered with gravel; this is a definition at odds with MALPF and NRCS for which graveled surfaces are considered pervious surfaces.

SB 1029 – Reorganization of State Government – Consolidating the Departments of Agriculture and the Environment into the Department of Natural Resources

Sponsor: Senator Colburn.

Department position: opposed.

Legislative status: unsuccessful: assigned to the Senate Rules Committee; March 13, unfavorable committee report; withdrawn.

This bill restructures State government by the consolidation of the Department of Agriculture and the Department of the Environment into the Department of Natural Resources by June 30, 2010. The bill would also abolish specified positions under these Departments by July 1, 2010.

SB 1068 – Workgroup to Study the Future Conservation of the State's Open Space and Farmland

Sponsor: Senators Middleton and Rosapepe.

Department position: support with amendments.

Legislative status: unsuccessful: March 24, referred to the Senate Rules Committee for suspension of rules; March 31, re-referred to the Education, Health, and Environmental Affairs; hearing on April 7; April 11, unfavorable committee report.

This bill establishes a workgroup on the Future Conservation of Maryland's Open Space and Farmland. The workgroup must:

- evaluate, determine, and project the impact that demographic changes have had and may have on land conversions;
- evaluate whether the State has adequate human resource funding capacity within its land preservation programs to accommodate potentially extensive land ownership transfers and land conversions;
- evaluate whether the State should allow a local government to use Program Open Space funds for development projects after the local government has attained its acreage acquisition goals; and
- determine various financing mechanisms and potential resources for land acquisition in the future.

A final report must be issued by the workgroup on or before October 1, 2010. The bill takes effect on October 1, 2009, and terminates on year later.

House of Delegates and Senate legislation (cross-listed bills):

HB 290/SB 358 – Agriculture – Agricultural Preservation Easements – Renewable Energy Generation

Sponsors: Southern Maryland Delegation.

Senators Middleton, Dyson, Garagiola, and Glassman.

Department position: no position.

Legislative status: unsuccessful: House hearing on Wednesday, February 25, 2009, Environmental Matters and Economic Matters; April 11, unfavorable committee report.

unsuccessful: Senate hearing on Tuesday, March 10, 2009, Education, Health, & Environmental Affairs; April 2, favorable committee report with amendments; April 4, passed the Senate with amendments; April 11, unfavorable report from the House Environmental Matters Committee.

This bill would authorize a landowner whose land is subject to an agricultural preservation easement to use the land for the commercial generation of power or heat from solar or wind energy so long as the use does not exceed 5% of the land under easement or district, minimizes the impact to the farm and forest use of the property, meets all federal state, and local permitting and zoning requirements, is recommended by the county agricultural land preservation advisory board within 45 days of application, and has been approved by MALPF within 45 days of receiving the local board's recommendation; this proposed bill was introduced as an emergency measure. Amendments restricted the bill to the three counties of Southern Maryland with a three-year sunset to the legislation and required landowners repay the market value of the land being used.

HB 294/SB 273 – Smart, Green, and Growing – Local Government Planning – Planning Visions

Sponsors: The Speaker (By Request – Administration) and Delegates Ali, Barve, Beidle, Benson, Cane, Carr, V. Clagett, Feldman, Frush, Gaines, Gilchrist, Gutierrez, Guzzone, Healey, Hecht, Howard, Hucker, Lafferty, Lee, Mizour, Montgomery, Niemann, and Pena-Melnyk.

The President (By Request – Administration) and Senators Della, King, Klausmeier, Lenett, Madaleno, and Rosapepe.

Department position: support.

Legislative status: successful: House hearing on Wednesday, February 18, 2009, Environmental Matters; March 17, favorable committee report with amendments; March 20, passed by the House of Delegates; assigned to the Senate Education, Health, and Environmental Affairs Committee; favorable committee report with amendments; April 4, passed by the Senate with amendments; House of Delegates concur; May 7, signed by Governor O'Malley.

successful: Senate hearing on Wednesday, February 25, 2009, Education, Health, & Environmental Affairs; March 9, favorable committee report with amendments; March 16, passed by the Senate; hearing on April 8, House Environmental Affairs; April 4, favorable committee report; April 5, passed the House of Delegates; May 7, signed by Governor O'Malley.

This bill intends to carry out a key recommendation of the Task Force on the Future for Growth and Development by modernizing the Visions to include public participation, economic development, housing, sustainability, and multi-modal transportation, as well as broader resource conservation and environmental protection goals. The "Eight Visions" that form the basis of planning in Maryland were first adopted by Maryland in the 1992 Economic Growth, Resource Protection, and Planning Act. Local jurisdictions are required to implement the Visions through their comprehensive plan and through the adoption of ordinances, zoning, and regulations. The Visions are a now-familiar touchstone of Maryland land-use law and policy and have been in place without significant amendment for 16 years. The Visions have never been modernized to reflect and keep pace with current growth and development patterns and trends. The bill would also require jurisdictions that have imposed restrictions based on their Adequate Public Facilities Ordinance (APFO) to submit a detailed report to the Department of Planning every 2 years on the location, type, impact, and timeline for resolution of the restriction. Additionally, the Department must publish a report every two years on the statewide impacts of APFOs. Finally, the bill would

allow jurisdictions with planning authority to establish transfer of development rights programs within a Priority Funding Area (PFA) to assist in the purchase of land for a school or public facility within the PFA. This is part of Governor O'Malley's "Smart, Green, and Growing" legislative initiative.

HB 295/SB 276 – Smart, Green, and Growing – Annual Report – Smart Growth Measures and Indicators and Implementation of Planning Visions

Sponsors: The Speaker (by Request – Administration) and Delegates Ali, Barve, Beidle, Cane, Carr, V. Clagett, Feldman, Gaines, Gutierrez, Guzzone, Healey, Howard, Hucker, Lee, Mizeur, Montgomery, and Niemann.

The President (by Request – Administration) and Senators Della, Madaleno, and Rosapepe.

Department position: support.

Legislative status: successful: House hearing on Wednesday, February 18, 2009, Environmental Matters; March 24, favorable committee report with amendments; March 26, passed the House of Delegates with amendments; March 26, favorable with amendments report, Environmental Matters; assigned to the Senate Education, Health, and Environmental Affairs Committee; April 2, favorable committee report with amendments; April 3, passed the Senate; May 7, signed by Governor O'Malley. successful: Senate hearing on Wednesday, February 25, 2009, Education, Health, & Environmental Affairs; April 2, favorable committee report with amendments; passed the Senate with amendments; April 10, hearing before the House Environmental Matters Committee. April 4, favorable committee report; April 8, passed by the House of Delegates; May 7, signed by Governor O'Malley.

This bill establishes a statewide land-use goal that 80% of residential growth be located within Priority Funding Areas (PFAs), and not more than 5% of new developed areas be located in Priority Preservation Areas (PPAs) and green infrastructure areas. The bill also requires local government to develop a percentage goal for incremental progress towards achieving the statewide land-use goal by 2012 and every three years afterwards. Additionally, unless the jurisdiction issues less than 50 building permits per year, the annual report on this progress is to include information related to the measures and indicators to be developed by the Maryland Department of Planning. This bill is part of Governor O'Malley's "Smart, Green, and Growing" legislative initiative.

HB 297/SB 280 – Smart, Green, and Growing – Smart and Sustainable Growth Act of 2009

Sponsors: The Speaker (by Request – Administration) and Delegates Ali, Barve, Beidle, Cane, Carr, V. Clagett, Feldman, Frush, Gaines, Gilchrist, Gutierrez, Healey, Howard, Hucker, Lafferty, Lee, Mizeur, Montgomery, Niemann, and Pena-Melnyk.

The President (by Request – Administration) and Senators Della, King, Lenett, Madaleno, and Rosapepe.

Department position: support.

Legislative status: successful: House hearing on Wednesday, February 18, 2009, Environmental Matters; March 21, favorable committee report with amendments; March 22, passed by the House of Delegates with additional amendments; March 23, favorable with amendments report by Environmental Matters; assigned to the Senate Education, Health, and Environmental Affairs Committee; April 3, favorable committee report; April 4, passed the Senate; May 7, signed by Governor O'Malley. successful: Senate hearing on Wednesday, February 25, 2009, Education, Health, & Environmental Affairs; March 23, favorable committee report with amendments; March 27, passed the Senate; April 9, hearing before the House Environmental Matters

Committee; April 4, favorable committee report; April 5, passed the House of Delegates; May 7, signed by Governor O'Malley.

This legislation reiterates that a local jurisdiction must implement and follow the comprehensive plan it adopts. The strong link between local comprehensive plans and zoning was substantially weakened by the Maryland Court of Appeals in the *Terrapin Run* case when the Court ruled that these plans are more or less guidelines for growth. As a result, this case potentially allows jurisdictions to disregard their comprehensive plan despite clear State law, dating back to the 1992 Planning Act, that requires a local jurisdiction to implement the provisions of the comprehensive plan it develops through zoning and ordinances. Consistency with local comprehensive plans is a requirement of other programs as well, such as critical areas and water and sewer planning. Local comprehensive plans encompass a consensus view of the future development of the jurisdiction. Countless hours are spent by citizens, including agricultural producers, and public officials considering the future of their jurisdiction and developing a local comprehensive plan to carry out that vision. A good comprehensive plan does not predetermine every land use decision that will be made, but it charts a course for the jurisdiction, and land use ordinances and regulations should be consistent with the local comprehensive plan. This bill is part of Governor O'Malley's "Smart, Green, and Growing" legislative initiative.

HB 333/SB 291 – Maryland Agricultural Land Preservation Foundation – Easement Properties – Natural Gas Drilling

Sponsors: Delegate Beitzel.

Senator Edwards.

Department position: oppose (House hearing); no position (Senate hearing).

Legislative status: unsuccessful: House hearing on Wednesday, February 11, 2009, Environmental Matters; March 25, unfavorable committee report. unsuccessful: Senate hearing on Tuesday, March 10, 2009, Education, Health, & Environmental Affairs; March 23, unfavorable committee report.

This bill allows a property owner subject to a MALPF easement to drill for natural gas as a matter of right, without review or restriction. The bill was introduced to assist landowners and owners of mineral rights in Garrett County who have the opportunity to sell drilling rights for and receive royalties from the extraction of for natural gas unique to that area of the State.

HB 491/SB 674 – Maryland Agricultural Land Preservation Foundation – Easements – Inspection Requirements

Sponsors: Delegates Aumann, Bates, Bobo, Boteler, Branch, Conway, Eckardt, Gaines, Gutierrez, Haynes, Howard, Jones, Levy, Robinson, Sophocleus, and Wood.

Senator Greenip.

Department position: oppose.

Legislative status: unsuccessful: House hearing on Wednesday, February 18, 2009, Environmental Matters; March 2, unfavorable committee report. unsuccessful: Senate hearing on Tuesday, March 10, 2009, Education, Health, & Environmental Affairs; no action taken.

This bill mandates that counties inspect land under MALPF easement at least once every five years and at least 20% of all easements in each county annually. MALPF is required to provide an annual report on monitoring to the Governor and the General Assembly on the percentage of easements inspected in each county over a specified time period. The bill requires the Attorney

General and the Secretary of Agriculture to provide legal staff to assist MALPF in certifying that each county has met the minimum inspection rules. The bill mandates that MALPF develop regulations implementing this proposed bill and that MALPF may not distribute certain easement acquisition funds to counties if the annual inspection certification is not fulfilled.

HB 748/SB 775 – Maryland Dormant Mineral Interests Act

Sponsors: Delegate Beitzel.

Senator Edwards.

Department position: n.a.

Legislative status: unsuccessful: House hearing on Wednesday, February 25, 2009, Environmental Matters; March 21, favorable committee report with amendments; March 22, passed the House of Delegates with additional amendments; March 23, favorable with amendments report, Environmental Matters; referred to the Senate Education, Health, and Environmental Affairs and Judicial Proceedings Committees; no action taken by the Senate.

unsuccessful: Senate hearing on Tuesday, March 10, 2009, Education, Health, & Environmental Affairs; no action taken by the Senate.

This bill authorizes the surface owner of real property to undertake an action to terminate a mineral interest or rights unused or unrecorded for 20 or more years on the property; it establishes actions that constitute the use of a mineral interest to establish whether or not the interest can be considered dormant; it requires an owner to bring an action in the circuit court where the property at issue is located; it authorizes an owner of a mineral interest or his or her agent to record a specified notice of a mineral interest; and it requires a court to permit an owner to record a late notice under certain circumstances. Overall, this bill establishes a procedure by which dormant and unclaimed mineral rights can be regained by the owner of the property from which the mineral rights were severed.

HB 771/SB 549 – Sustainable Forestry Act of 2009

Sponsors: Delegates Cane, Conway, Eckardt, Elmore, Haddaway, Haynes, Holmes, Malone, Mathias, McConkey, Rice, Rudolph, Smigiel, Sophocleus, Sossi, and Walkup.
Senator Dyson.

Department position: support with amendments; changed to oppose; with amendments adopted, changed to support.

Legislative status: unsuccessful in the House: House hearing on Wednesday, March 4, 2009, Environmental Matters; no action taken by the House of Delegates.
Successful in the Senate: Senate hearing on Tuesday, February 24, 2009, Education, Health, & Environmental Affairs; April 2, favorable committee report with amendments; April 2, floor amendments; April 3, passed by the Senate; April 6, favorable with amendments report; assigned to the House Rules and Executive Nominations Committee; reassigned to the Environmental Matters Committee; April 10 hearing cancelled; April 7, favorable committee report; April 9, passed the House of Delegates; May 7, signed by Governor O'Malley.

This bill declaims a number of policy statements and findings relating to forests; revises provisions of law relating to the protection of forestry practices from certain private actions; establishes a Sustainable Forestry Council; alters the uses of certain funds; requires the Secretary of Natural Resources to consider specified priorities when allocating the State's share of Program Open Space funds for conservation and preservation purposes; and authorizes the transfer of particular forestry responsibilities from the Department of the Environment to the Department of Natural Resources, and other changes. In terms of MALPF, this bill proposes to change the name

of MALPF to the Maryland Agricultural and Forestry Land Preservation Foundation (MAFLPF), to require that the Forest Conservation District Boards and the Agricultural Land Preservation Advisory Boards meet regularly to promote and retain farmland and woodland in their respective jurisdictions, and to transfer a larger portion of agricultural transfer tax revenues from the acquisition of permanent easements by MALPF to the Woodlands Incentive Program which primarily focuses on the improvement of the quality of wood stands and the encouragement of forest management and stewardship plans. This bill was amended to remove MALPF from the bill, with the exception of the expanded role of the Agricultural Land Preservation Advisory Boards and the Forest Conservation District Boards.

HB 911/SB 780 – Counties – Purchase of Development Rights – Carroll County

Sponsors: Carroll County Delegation.

Carroll County Senators.

Department position: the Department takes no position on bills that are not statewide and do not directly affect MALPF.

Legislative status: successful: House hearing on Thursday, March 5, 2009, Environmental Matters; March 17, favorable committee report; March 20, passed by House of Delegates; April 2, favorable report by the Senate Education, Health, and Environmental Affairs Committee; April 2, passed by the Senate; May 19, signed by Governor O'Malley. successful: Senate hearing on Friday, March 13, 2009, Education, Health, & Environmental Affairs; March 23, favorable committee report; March 26, passed by the Senate; hearing on April 9, House Environmental Matters; April 5, passed by the house of Delegates; May 19, vetoed by Governor O'Malley as duplicative of HB 911.

This bill would authorize Carroll County to enter into an agreement to purchase development rights; would authorize Carroll County to determine, by resolution, the provisions, terms, conditions, and the duration of a specified agreement; would provide that a payment obligation shall be a general obligation of the county and may not be subject to a specified annual appropriation; etc.

HB 1053/SB 824 – Community Environmental Protection Act of 2009

Sponsors: Delegates McIntosh, Barkley, Bobo, Cane, V. Clagett, Dumais, Frush, Haynes, Healey, Howard, Hucker, Ivey, Kaiser, Lafferty, Lee, McHale, Morhaim, Niemann, Olszewski, Riley, Robinson, and Waldstreicher.

Senators Frosh, Brochin, Harrington, Pinsky, Raskin, and Rosapepe.

Department position: n.a.

Legislative status: unsuccessful: House hearing on Wednesday, March 11, 2009, Environmental Matters; March 27, unfavorable committee report. unsuccessful: Senate hearing on Wednesday, March 18, 2009, Education, Health, & Environmental Affairs, cancelled; rescheduled hearing on Tuesday, March 31, Education, Health, & Environmental Affairs; hearing cancelled; March 30, unfavorable committee report; bill withdrawn.

This bill would provide certain persons and associations standing in specified claims under specified circumstances; providing judicial review of specified final administrative decisions under specified circumstances; providing specified persons standing to participate in specified administrative appeal proceedings under specified circumstances; etc. This bill could affect MALPF by giving standing to those who currently have no standing to sue MALPF in disagreement with interpretation and application of the provisions of the MALPF deed of easement and applicable State statute and regulations, creating additional litigation and limiting MALPF's ability to interpret and apply its own legal documents and applicable statute and

regulations in favor of others not party to the deed of easement and to the courts. See successor cross-filed bills: HB 1569 and SB 1065.

HB 1291/SB 666 – Natural Resources – No Net Loss of Forest Policy – Forest Conservation Act

Sponsors: Delegates Bobo, Carr, Frush, Healey, and Hucker.

Senators Pinsky, Conway, Frosh, Harrington, Lenett, Madaleno, Raskin, and Rosapepe.

Department position: n.a.

Legislative status: unsuccessful in the House: House hearing on Friday, March 13, 2009, Environmental Matters; April 7, favorable committee report with amendments; April 8, passed the House of Delegates; referred to the Senate Rules Committee; no action taken by the Senate.

Successful in the Senate: Senate hearing on Tuesday, February 24, 2009, Education, Health, & Environmental Affairs; March 23, favorable committee report with amendments; March 26, passed by the Senate with additional amendments; referred to the House Rules and Executive Nominations Committee; re-referred to the House Environmental Matters Committee; hearing on April 8, Environmental Matters; April 7, favorable committee report with amendments; April 9, passed the House of Delegates; May 7, signed by Governor O'Malley.

This bill would reduce the threshold acreage of land under a proposed subdivision plan above which the Forest Conservation Act applies; repeal specified exemptions from the requirements of the Forest Conservation Act for cutting or clearing trees in a public utility right-of-way; authorize the acquisition of an off-site protective easement for temporarily protected forested areas as a mitigation technique to meet afforestation or reforestation requirements; alter the fee-in-lieu contribution required under specified circumstances; etc. This bill would affect lot releases under the MALPF program in that the lower threshold under a proposed subdivision above which the Forest Conservation Act applies will result in additional MALPF-preserved acreage to be further restricted to forestry use with a Forest Conservation Easement. In addition to reducing the flexibility of the farming unit, this change will, in some cases, result in the Forest Conservation Easement having to be negotiated between MALPF and the county to ensure that tree harvesting remains possible, a legal requirement under the law.

HB 1569/SB 1065 – Standing – Miscellaneous Environmental Protection Proceedings and Judicial Review

Sponsors: Delegates McIntosh, Barkley, Beidle, Carr, V. Clagett, Dumais, Frush, Glenn, Haynes, Healey, Howard, Hucker, Ivey, Kaiser, Lafferty, Lee, McHale, Morhaim, Niemann, Olszewski, Riley, Robinson, Stein, and Waldstreicher.
Senator Frosh.

Department position: n.a.

Legislative status: successful: House hearing on Wednesday, March 24, 2009, Environmental Matters; March 24, favorable committee report with amendments; March 25, passed by the House of Delegates with additional amendments; favorable with amendments report by Environmental Matters; assigned to the Senate Education, Health, and Environmental Affairs Committee; April 3, favorable committee report with amendments; April 5, passed the Senate with amendments; April 6, floor amendments accepted by the EHEA Committee; May 19, signed by Governor O'Malley.

successful: Senate hearing on March 31, 2009, Education, Health, and Environmental Affairs; April 3, favorable committee report with amendments; April 5, passed by the Senate with amendments; April 6, EHEA Committee concurs with floor amendments;

April 7, favorable report by the House Environmental Matters Committee; April 8, passed the House of Delegates; May 19, signed by Governor O'Malley.

This bill repeals specified provisions relating to contested case hearings and establishes new provisions regarding judicial review of final decisions by the Maryland Department of the Environment (MDE) with respect to the issuance, renewal, or revision of specified permits, particularly to dredge or fill wetlands. This bill no longer would have any impact on the operations of the Maryland Agricultural Land Preservation Foundation. The bill would take effect January 1, 2010. It is the successor to HB 1053 and SB 824.



Bill signing ceremony for Departmental bills, SB 89, SB 90, and HB 676 (April 14, 2009). Sitting from left to right, Lt. Governor Anthony G. Brown; Thomas V. Mike Miller, Jr., President of the Senate; Governor Martin O'Malley; and Michael E. Busch, Speaker of the House of Delegates. Standing from left to right, James Conrad, Executive Director, Maryland Agricultural Land Preservation Foundation; Joanna W. Kille, Director of Intergovernmental Relations, Maryland Department of Agriculture; Earl F. "Buddy" Hance, Deputy Secretary of Agriculture; and Roger L. Richardson, Secretary of Agriculture. Thanks to Delegate Rudolf Cane for sponsoring HB 676 on behalf of the Maryland Department of Agriculture.