

**Certification of County Agricultural Land Preservation Programs
(The State Certification Program)
2007 Annual Report**

I. Background and Goals

The Certification of County Agricultural Land Programs (certification program) was created in 1991. At that time, dedicated funding for POS and MALPF was diverted to the general fund to help balance the budget. Partly in response to this situation, the legislature created the certification program to let states keep more of locally generate agricultural land transfer tax, leverage more easement funding from the counties, and encourage planning and land use that support the investment in easements.

Program participation by interested counties is voluntary. Counties with an effective local agricultural land preservation program who wish to be certified apply to both MDP and MALPF and MDP. Sixteen of Maryland's twenty-three counties have been certified.

Certified Counties and Date of Certification			
Anne Arundel	1991-Present	Kent	1997-Present
Baltimore	1991-Present	Montgomery	1991-Present
Calvert	1993-Present	Queen Anne's	1999-Present
Carroll	1991-Present	St. Mary's	1995-Present
Cecil	1996-Present	Talbot	1999-Present
Charles	1996-Present	Washington	1993-Present
Frederick	1991-Present	Wicomico	2001-Present
Harford	1991-Present	Worcester	2004-Present
Howard	1991-2007		

The certification period lasts two years (after July 1, 2008, the certification period will be three years). A County must be recertified by both the Department and the Foundation.

Why do counties seek certification? Because it allows them to retain a greater share of locally-generated agricultural land transfer tax. This transfer tax—not to be confused with the real estate transfer tax that is levied on all real estate transactions—is levied on farmland when it is sold for development. The tax is based on a sliding scale:

- 5% for a transfer of 20 acres or more of agricultural land;
- 4% for a transfer of less than 20 acres assessed for agricultural use or as unimproved agricultural land;
- 3% for a transfer of less than 20 acres assessed as improved agricultural land or agricultural land with site improvements.¹

¹ See the Tax Property article of the Maryland Code, § 13-303.

Counties that are not certified keep 33% for land preservation—most use the funds as part of the 60%/40% MALPF match—and remit 67% of the funds to the State, for use by MALPF. However, counties whose preservation programs are certified by MALPF and MDP can retain 75% of the locally generated transfer tax revenue. Counties are required to match the extra 42% of the agricultural land transfer tax with funds from other sources.²

The Certification program has three goals:

- Maintain contributions of farming to the economy and a quality environment.
- Encourage county programs that complement MALPF to preserve viable land, manage growth, and preserve environmental quality.
- Ensure that increased county expenditures of agricultural land transfer tax are cost-effective.

The law creating the certification program is located in the following parts of the Maryland Code:

- State Finance and Procurement Article, Title 5 (State Planning), Subtitle 4 (Government Coordination, Cooperation, and Assistance in Planning), § 5-408, *Certification of County Agricultural Land Preservation Programs*. Most of the certification law is here. Small parts of program implementation are contained in the provisions cited below.
- Agriculture Article, Title 2 (Department of Agriculture), Subtitle 5 (Maryland Agricultural Land Preservation Foundation), § 2-504.1.a (approval of county application for certification by a county's agricultural preservation advisory board), and § 2-508.1, *Disbursements to County Agricultural Land Preservation Programs*.
§ 2-518 (A) to (D) says that a county may include a Priority Preservation Area in its comprehensive plan, then elaborates on the criteria for what a designated PPA shall or may include. § 2-518 (E) requires a PPA plan element to contain a preservation acreage goal for the PPA. § 2-518 (F) requires updates of a PPA element to contain an evaluation of the preservation programs strengths and weaknesses, and planned actions to correct the shortcomings. § 2-518 (G) gives MDP and MALPF the authority to jointly certify a PPA.
- Tax-Property Article, Title 13 (Transfer Taxes), Subtitle 3 (Agricultural Land Transfer Tax), § 13-306(a-1) (a certified county returns 25% of agricultural land transfer tax to the State). § 13-306(a)(2)(i) states that all counties retain all the agricultural land transfer tax on transfers of parcels "that are entirely woodland...."
- Article 66B - Land Use. § 1.03(b) says that charter counties may include a Priority Preservation Area (PPA) plan element in their comprehensive plans. § 1.03(c)(1)(ii) says that the PPA element must be in the plan if the planning commission decides to choose it as a plan element, and § 1.03 (c)(2)(ii) says that if the PPA element is included in the comprehensive plan, it must be updated every six years (along with the rest of the plan).
The same enabling provisions for other counties are found in § 3.05 (a)(6)(ii)(8), § 3.05(b)(1)(ii), and § 3.05(b)(2)(ii).

The regulations for the certification program can be found in the Code of Maryland Regulations (COMAR) Title 14 (Independent Agencies), Subtitle 24 (Office of Planning), Chapter 08: *Guidelines for the Certification of County Agricultural Land Preservation Programs*. They were adopted in 1991 and extensively amended in 1997 and 2008.

² The matching requirements may seem a bit complicated at first glance. A County that collects \$100,000 of agricultural land transfer tax can retain \$33,000 if uncertified and \$75,000 after certification. If certified, the County would have to commit \$42,000 in matching funds to equal the \$42,000 it gained through certification. However, the original \$33,000 that the County would have kept if uncertified can be applied to the match. Therefore, the County would need to find just \$9,000 from other sources.

To be certified initially, a county must have goals, established in the local comprehensive plan, for preservation of land and the agricultural industry. They must complement the Foundation's goals:

- Provide sources of food and fiber for the citizens of Maryland.
- Control the urban expansion that is consuming agricultural land and woodland.
- Curb the spread of urban blight and deterioration from development.
- Protect agricultural land and woodland as open space.

A county must have an implementation program to achieve those goals. The implementation program includes three things:

- Zoning and land use management tools, to protect agricultural land from subdivision and development.
- Programs to purchase development rights and permanently preserve land.
- Economic assistance activities that support productive agriculture and the industry.

In its certification application, a County must identify weaknesses in the ability of their program to achieve goals; commit to a program development strategy to correct those weaknesses; and spend certification funds and county qualifying funds on easements and related financial enhancements. MDP and MALPF must agree that the County meets these requirements.

To be recertified, a county must demonstrate effectiveness in each of the areas above; the Department and the Foundation must agree that the program is effective; and MDP must approve the County's updated Program Development Strategy to correct weaknesses.

The certification program is designed to achieve its goals by helping counties identify and overcome shortcomings in the ability of their implementation programs to achieve State and county preservation goals. Each time a County is certified and recertified, the State reviews the County's *program evaluation* and *program development strategy*, and communicates its understanding of priority steps that should be taken to improve the program during the next certification period. Taking those steps is an important factor for the next certification review: if the county is not correcting shortcomings, recertification can be denied.

III. New Requirements for the Agricultural Certification Program

The Agricultural Stewardship Act of 2006 (HB 2), passed by the Maryland Legislature, requires certified counties to establish Priority Preservation Areas (PPAs) in their comprehensive plans and manage them according to certain criteria. Language was slightly modified by HB 1354 (2007). There are two sets of requirements, relating to conditions in the PPA itself and content of the county comprehensive plan, respectively.

The PPA must:

- Contain productive agricultural or forest soils, and be capable of supporting profitable agricultural and forestry enterprises;

- Be governed by local policies, ordinances, regulations, and procedures that stabilize the agricultural and forest land base, support working farms and normal farming activities, and provide time to achieve State preservation goals before resource land is excessively compromised by development;
- Be large enough to support normal agricultural and forestry activities in context of the amount of development permitted in the PPA;
- Be accompanied by the County's acreage goal for land to be preserved through easements and zoning in the PPA equal to at least 80% of the remaining undeveloped areas of land in the area.

The comprehensive plan must:

- Establish appropriate goals for the amount and types of resource land to be preserved in a PPA.
- Describe the County's strategy to support normal farming and forestry, in context of the amount and kinds of development allowed in the PPA. The description should include, as part of the strategy, relevant ordinances, regulations, and procedures.
- Describe the way in which preservation goals will be accomplished in the PPA, including how the County will:
 - Protect land from development through zoning/ land use tools;
 - Preserve the desired amount of land under permanent easements;
 - Maintain a rural environment capable of supporting normal farm and forestry activities.
- Include a "*Program Evaluation*," of the ability of the County's zoning and other land use management tools, and a corresponding "*Program Development Strategy*," to do the following:
 - Limit the impact of subdivision and development
 - Allow time for preservation/ easement acquisition;
 - Achieve the goals of the Maryland Agricultural Land Preservation Foundation (MALPF) and the Certification program, before agricultural and forest land resources are undermined by development; and
 - Describe how the County will concentrate preservation funds/ efforts in the PPA to achieve these goals.

The new requirements take effect on July 1, 2008. Certified Counties whose certification periods expire on or before June 30, 2008 will, in effect, be applying for initial certification under the new regulations. (Counties that were recertified under the old regulations in 2007 will not have to be certified under the new regulations until July 1, 2009.) Counties that do not have all program components in place by the deadline can still be certified, provided that they indicate a clear timeline according to which the major features of the updated certification law—e.g., designation of Priority Preservation Areas, creation of the Priority Preservation Element for the comprehensive plan—will be completed.

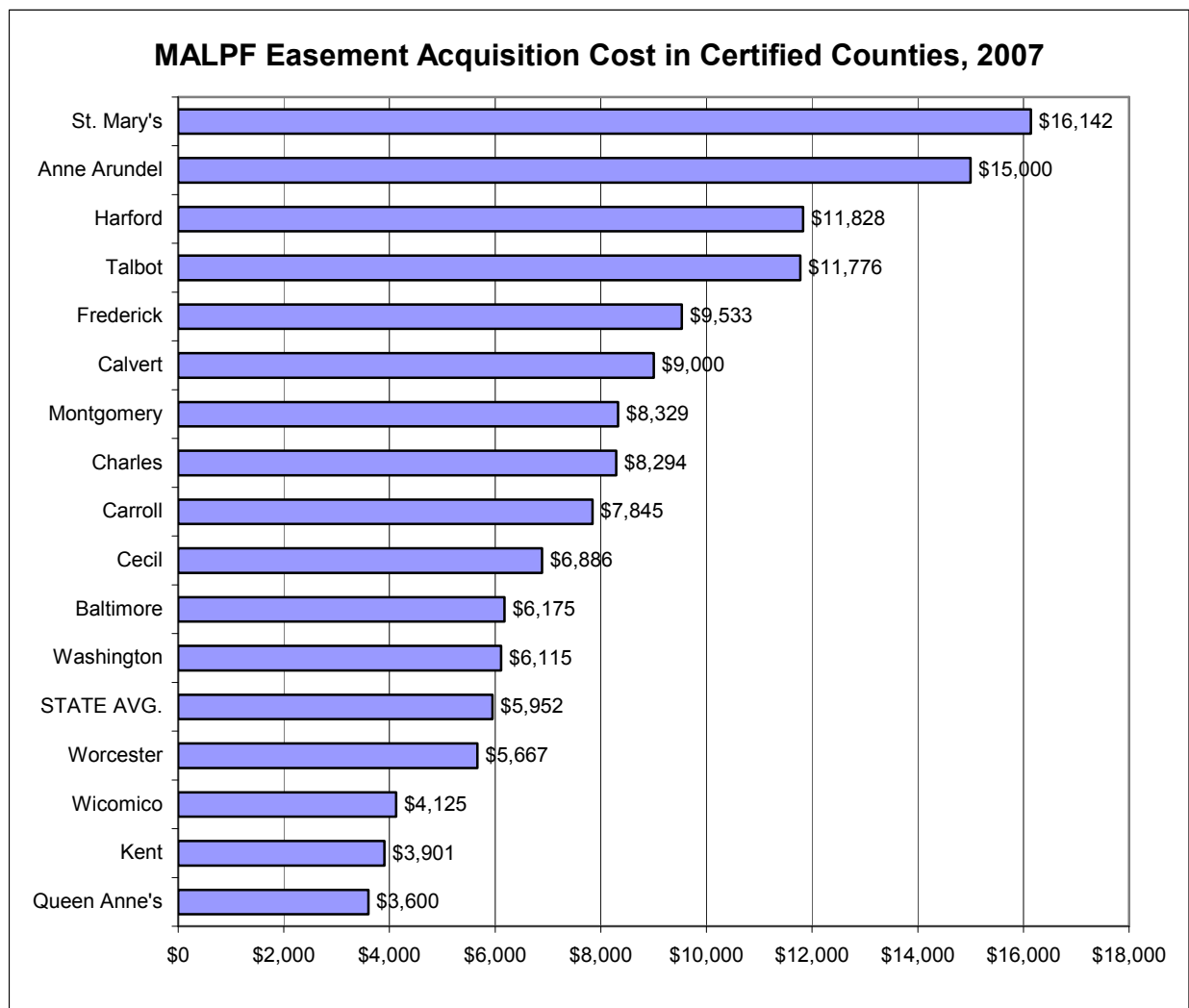
IV. Implications of PPA Requirements

Zoning and other land use tools must stabilize land use within a PPA commensurate with development pressure and county preservation goals. Now with the PPA component, certified

counties must reach the point with their zoning and related land use tools that they were merely working toward under the old certification requirements. In essence, PPA provisions transform the certification program from one that accepts the evolution of effective land management tools to one that requires effective tools as of July 1, 2008, or shortly thereafter.

According to MDP's assessment of the effectiveness of local programs, which is used to support MDP's decisions regarding certification, only a few counties that are currently certified are likely to meet PPA requirements without improvements to one or more of their zoning, development and/or subdivision ordinances, and the way in which they target easement acquisition.

As mentioned earlier, MDP and MALPF will allow already-certified counties, in their applications for recertification beyond July 1, 2008, to establish a schedule and set milestones for meeting these requirements. This grace period is necessary because of the time it takes for counties to amend and adopt local comprehensive plans and related land use management ordinances and procedures.



V. The Howard County Experience

At the time of its certification in 1991, Howard County's farmland preservation program was a national leader. Thanks to its own dedicated revenue source—including a 1/4 share of 1% local tax on all real estate transfers in the county—and an innovative installment purchase program, the county was preserving thousands of acres on its own. Howard had a strong agricultural marketing effort, and its flexible zoning allowed farmers an increased return on their investments, particularly in horse-related businesses.

By 2000, however, the shortcomings in the county's program had gained the upper hand. Zoning in the Howard County's Rural West allowed one house per 4.25 acres, which proved highly accommodating for an affluent population looking for large houses on large lots in a location convenient to both Baltimore and Washington. On many measures of a successful preservation program—rate of development in agricultural zones, number of small lots fragmenting agricultural zones, cost of easements—Howard County scored far worst than other counties in Maryland. Despite the highest easement prices in Maryland, state and local preservation efforts in Howard could not compete with developers, and little land was being preserved in the county.

In 2001, MDP began notifying Howard County's about the obstacles to maintaining its certification status, and in 2006 the Board decided to allow a conditional recertification, with future recertifications based on the county's adoption of the following improvements to its program:

- An adequate public facilities regulations, to slow the pace of rural development.
- Revised zoning regulations, to decrease the amount of development in the Rural West. These may include but are not limited to reductions in the number of lots allowed and revisions to the density exchange option to eliminate the transfer density within the Rural West area zoned Rural Conservation.
- Revisions to the county PDR program to promote greater use of County funding to purchase development rights on high priority farm properties.
- Refinement of the county's eligibility and ranking criteria for purchase of development rights through MALPF that will better achieve the Foundation's objectives.

Unable to adapt its farmland preservation program to these conditions, Howard County notified MDP and MALPF that it would not seek recertification in FY 2008; therefore, its status as a certified county ended on June 30, 2007.

This ad hoc response to Howard County's situation—the land use context of its easements and the program's ability to achieve program goals and protect the state's investment in land preservation—became a precedent that has evolved into a standard for all certified programs, thanks to recent changes in certification law.

VI. Conclusions

Maryland's land and resource preservation program are no longer just about protecting the largest number of acres, nor do they function in isolation from smart growth efforts. Good return on state investment—through local preservation programs and land use tools that limit

development in preservation areas—is a major consideration in the allocation of Rural Legacy funds and will become central to evaluating properties for purchase by Program Open Space. The certification program, though able to channel relatively few preservation dollars to the counties compared to the total amount of funds at their disposal—is moving farmland preservation in this direction as well.