



Committee: PHED
Committee Review: Completed
Staff: Gene Smith, Legislative Analyst
Purpose: Review – straw vote expected
Keywords: CIP, Agriculture

AGENDA ITEM #5
April 23, 2020
Worksession

SUBJECT

FY21-26 Capital Improvements Program: Agricultural Land Preservation Easements

EXPECTED ATTENDEES

Mary Beck, Office of Management and Budget

FISCAL SUMMARY

FY21-26 versus Amended FY19-24 Expenditures (\$000s)

	Six-Year Total	FY19	FY20	FY21	FY22	FY23	FY24	FY25	FY26	Beyond 6-Years
FY19-24 Amended	3,262	538	540	542	545	547	550			
FY21-26 CE Rec	3,313			542	545	547	550	563	566	
change from amended (\$,%)	51 1.6%			-	-	-	-			-
Committee Rec	3,313			542	545	547	550	563	566	
change from amended (\$,%)	51 1.6%			-	-	-	-			-
change from CE Rec (\$,%)	- 0.0%			-	-	-	-	-	-	-

COMMITTEE RECOMMENDATIONS (BY PROJECT)

- The Planning, Housing, and Economic Development (PHED) Committee requested that the Executive remove non-easement operating expenditures from the project and include the costs in the operating budget for the Office of Agriculture. The Executive did not recommend any amendments to the project or add resources to the Office of Agriculture in the recommended operating budget.

OTHER ISSUES

- None

This report contains:

Staff Report – if applicable
Recommended FY21-26 CIP for the project
Table of FY00-20 Agricultural Transfer Tax Collection
PHED Committee memo to Executive

Pages 1-4
© #1
© #6
© #7

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MEMORANDUM

February 19, 2020

TO: Planning, Housing, and Economic Development (PHED) Committee

FROM: Gene Smith, Legislative Analyst *JS*

SUBJECT: Recommended FY21-26 Capital Improvements Program (CIP) for Agricultural Land Preservation Easement Project

PURPOSE: Review Executive's recommendation and make recommendation to the Council

Those expected for this worksession:

Jeremy Criss, Office of Agriculture (OAG)
Mike Scheffel, OAG
Jane Mukira, Office of Management and Budget

See the Executive's recommended FY21-26 CIP for Agricultural Land Preservation Easement Project (the "Project") on ©1-5. The recommendation includes no significant structural changes compared to the approved FY19-24 CIP. The recommendation also includes the changes from the Executive's recommended supplemental appropriation and FY19-24 CIP amendment (Item #1 for today) for FY20.

I. Background

The project provides funds for the purchase of agricultural and conservation easements under the County Agricultural Land Preservation legislation.¹ The purchasing of easements restricts certain uses on a property to ensure it is preserved for agricultural and rural uses for future generations. See ©1 for a listing of the easement programs utilized in the County, including programs administered by the State or other County agencies. Most of the acreage protected was from the Transfer Development Rights program. The ability to purchase easements is dependent on funding, because as noted by the Office of Agriculture (OAG), easements can cost between \$1,600 to \$9,000 per acre depending on the property's characteristics.

¹ Section 2B of the County Code.

II. FY21-26 CIP Recommendation

A. Expenditures

The Executive recommends \$3,293,000 of expenditures in the Project for FY21-26, an increase of \$31,000 or 1.0% from the approved FY19-24 CIP. The increase is due to negotiated compensation increases for the County staff programed in the Project. Below is the Executive's proposed expenditure schedule for the Project.

Recommended FY21-26 Expenditure Schedule (\$000s)

Cost Elements	Total 6 Years	FY21	FY22	FY23	FY24	FY25	FY26
Planning, Design and Supervision	2,273	372	375	377	380	383	386
Land	1,020	170	170	170	170	170	170
Total	3,293	542	545	547	550	553	556

The following are highlights for each cost element of the Project:

Planning, Design and Supervision. This cost element is approximately 70% of the total expenditures scheduled for this project. The \$372,000 estimated for FY21 includes: 1) \$260,000 for 2.25 FTEs; 2) \$25,000 for the Deer Donation Program; 3) \$15,000 for the County Weed Control Program; and 4) \$72,000 for the Cooperative Extension Partnership. The programmed increase in future fiscal years is due to annualization costs for personnel.

This cost element is mostly funded by a combination of investment income and developer payments/contributions. Of the 2.25 FTEs programed, less than 0.5 FTE is dedicated to the purchasing of easements. The remaining FTEs perform work related to the OAG's broader mission. The other programs included in the Project (e.g., Deer Donation, etc.) are also unrelated to the purchasing of agricultural easements.

Previously, the Council has reduced the amount of funding not related to easements to increase potential funding for agricultural easements. **Given the scarce resources for purchasing easements, Council staff recommends that the Council continue this trend and presents two options for the committee's consideration today.**

Option #1: Remove most expenditures not related to purchasing easements beginning in FY21. This includes all program expenses and 1.0 FTE and totals \$213,329. The revised expenditure schedule is below based on these reductions. **Removing these expenditures from the project immediately would produce an estimated \$1.3 million for purchasing easements from FY21-26.**

Option #1: Revised FY21-26 Expenditure Schedule (\$000s)

Cost Elements	Total 6 Years	FY21	FY22	FY23	FY24	FY25	FY26
Planning, Design and Supervision	995	159	162	164	167	170	173
Land	2,298	383	383	383	383	383	383
Total	3,293	542	545	547	550	553	556

Option #2: Phase out the expenditures not related to purchasing easements from FY21-FY23. This would allow additional time to absorb the expenditures through the General Fund. The new expenditure schedule is below. **Using this approach, an estimated \$822,000 is generated for purchasing easements from FY21-26.**

Option #2: Revised FY21-26 Expenditure Schedule (\$000s)

Cost Elements	Total 6 Years	FY21	FY22	FY23	FY24	FY25	FY26
Planning, Design and Supervision	1,269	332	263	164	167	170	173
Land	2,024	210	282	383	383	383	383
Total	3,293	542	545	547	550	553	556

Choosing either option would result in an increase of General Fund expenditures because the current funding sources are unique to this Project.

Land. This cost element reflects the funding programmed to purchase easements. The FY21-26 CIP recommends no change to the six-year funding compared to the approved FY19-24 CIP. **Given the average costs per acre and limited funding, the OAG purchases easements on a case-by-case basis.** The timing and amount of expenditures will vary from the one programmed in the CIP.

B. Funding

The table below details the funding sources and schedule for the Project.

Recommended FY21-26 Funding Schedule (\$000s)

Funding Source	Total 6 Years	FY21	FY22	FY23	FY24	FY25	FY26
Agricultural Transfer Tax	1,200	200	200	200	200	200	200
Contributions	500	0	0	70	200	142	88
Developer Payments	1,254	150	198	277	150	211	268
Investment Income	339	192	147	0	0	0	0
Total	3,293	542	545	547	550	553	556

The following are highlights for each funding source in this Project:

Agricultural Transfer Tax. This tax is levied on agricultural properties that are sold or removed from agricultural use (e.g., commercial or residential development). The County receives 75% of the agricultural transfer tax receipts for properties in the County; the funding must be used for agricultural land preservation.

The amount of agricultural transfer tax programmed in FY21-26 CIP is unchanged compared to the approved FY19-24 CIP. See ©6 for a table detailing the historical collection for this tax since FY00.

Contributions. This funding represents the final \$500,000 payment for the Crown Farm annexation agreement. The County has received \$1,500,000 from this agreement. The OAG anticipates that the final payment will be received soon.

Developer Payments. This funding is from transfers from the Maryland-National Park and Planning Commission (M-NCPPC) from developers that were required to purchase partial building lot termination (BLT) easements.

A BLT is an easement that terminates the remaining development rights on certain properties. Acquisition of whole or partial BLTs is required for all optional method projects in Commercial Residential and Life Sciences zones and is an option for projects in Commercial Residential Town and Employment Office zones as part of the public benefit portion.

Investment Income. This funding is from interest earned based on the principal balance for the other funding resources in this project. The funding has steadily decreased because it was used to fund personnel costs and operating expenses unrelated to the purchasing of agricultural easements.

This packet contains:

Recommended FY21-26 CIP for the Project
Table of FY00-20 Agricultural Transfer Tax Collections

Circle #

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Agricultural Land Preservation

PROGRAM DESCRIPTION AND OBJECTIVES

The County's Agricultural Land Preservation Capital Program is administered by the Montgomery County Office of Agriculture (OAG). The program includes one ongoing capital project, Agricultural Land Preservation Easements, with the objective to protect and preserve agricultural land from development and the goal of retaining a significant farming sector throughout Montgomery County.

During FY09, the County achieved the goal of protecting 70,000 acres of agricultural land through easements. As of June 30, 2019, the County has permanently preserved 71,262 acres for agricultural use. Montgomery County leads the State of Maryland in the number of acres preserved and has the highest percentage of farmland under agricultural land preservation easements of any county in the nation. Within this total, 48,516 acres are protected by Transferable Development Rights (TDR) easements which allow for densities as high as one unit per twenty-five acres. It will be important for the County to continue to pursue higher levels of protection for these properties to reduce the potential for future development in the Agricultural Reserve. The implementation of the Building Lot Termination (BLT) Program will be integral to this effort. The number of total acres is adjusted to reflect the land preserved through BLT that were placed over TDR.

Currently, preservation of agricultural land is accomplished under six separate agricultural land preservation programs: the Montgomery County Agricultural Easement Program (AEP); the Maryland Agricultural Land Preservation Foundation (MALPF); Montgomery County's local Transferable Development Rights (TDR); the Maryland Environmental Trust (MET); the Montgomery County Rural Legacy Program (RLP) and the Building Lot Termination Program (BLT). The acres preserved under each program are displayed in the chart below, and each program is described in the narrative that follows.

	MALPF	AEP	MET	BLT	RLP	TDR	Total
Protected thru June FY2019	4,746	8,753	2,086	2,286	4,875	48,516	71,262

Note: The number of total acres is adjusted to reflect the land preserved through BLT that were placed over TDR.

Through the Agricultural Easement Program (AEP), the County purchases easements on farmland using Agricultural Transfer Tax collections to meet acreage acquisition targets. Agricultural easements acquired through the AEP may range in value from \$1,600 to \$9,000 per acre, depending on location, land quality, and amount of the road frontage. The County has protected 8,753 acres through the AEP.

Through Maryland Agricultural Land Preservation Foundation (MALPF), the State purchases development rights easements directly from landowners to protect agricultural land from development. Since 1980, 4,746 acres have been protected.

Montgomery County's local Transferable Development Rights (TDR) program, established by the functional Master Plan for the Preservation of Agriculture and Rural Open Space, accounts for a major portion of the County's preserved land (48,516 acres). The program, administered by the Maryland National Capital Park and Planning Commission (M-NCPPC), allows Upcounty landowners to transfer development rights from the 93,000-acre Agricultural Reserve, in the western and northern portions of the County, at the rate of one TDR per five acres, to developers with projects in areas that can accept the higher development density, designated as "TDR receiving areas." Lands protected by TDR easements also represent additional opportunities for the County to further protect agricultural lands through easements by reducing the allowable housing density that is reserved on those lands.

The Maryland Environmental Trust (MET) program encourages landowners to donate an easement on their property to protect scenic open areas, including farm and forest land, wildlife habitats, waterfront, unique or rare areas, and historic sites. This program is associated with the Maryland Department of Natural Resources and requires no monetary participation by the County. Montgomery County has protected 2,086 acres through the MET program.

The Rural Legacy Program (RLP) was enacted in 1997 as part of the Governor's Smart Growth and Neighborhood Conservation initiative to protect natural resources. The program is designed to protect areas rich in multiple agricultural, forestry, natural and cultural resources in order to protect resource-based economic development, protect green areas, and maintain rural life. Montgomery County acts as a conduit for these funds, and no monetary participation is required of the County. The County has protected 4,875 acres through RLP.

The Building Lot Termination Program (BLT) was approved by the County Council through Council Bill 39-07 in December of 2008. This program provides another tool to permanently protect agricultural lands, especially where development potential is achievable through the approval of on-site waste disposal systems. In 2009, five million dollars was approved by the County Council through a supplemental appropriation to this project to fund the BLT program. Since FY12, 1,257 acres of agricultural land and 30 BLTs have been acquired through County BLT easements and an additional 1,029 acres and 31 BLTs have been acquired through private/developer purchased BLT easements, totaling 2,286 acres.

PROGRAM CONTACTS

Contact Jeremy Criss of the Office of Agriculture 301.590.2830 or Jane Mukira of the Office of Management and Budget at 240.777.2754 for more information regarding this capital budget.

CAPITAL PROGRAM REVIEW

The Executive's recommended FY21-26 program expenditure total is \$3.293 million. Total six year program funding includes Agricultural Transfer Tax, contributions, M-NCPPC contributions (listed as Developer Payments) and investment income. An FY20 supplemental appropriation was approve to recognize the availability of additional FY19 Agricultural Transfer Tax revenues (\$744,000) and an FY20 Rural Legacy State grant (\$2,704,500).



Ag Land Pres Easements (P788911)

Category	Conservation of Natural Resources	Date Last Modified	01/04/20
SubCategory	Ag Land Preservation	Administering Agency	Agriculture
Planning Area	Countywide	Status	Ongoing

Total	Thru FY19	Est FY20	Total 6 Years	FY 21	FY 22	FY 23	FY 24	FY 25	FY 26	Beyond 6 Years
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EXPENDITURE SCHEDULE (\$000s)

Planning, Design and Supervision	4,484	1,372	839	2,273	372	375	377	380	383	386
Land	10,830	5,808	4,002	1,020	170	170	170	170	170	170
Other	37	37	-	-	-	-	-	-	-	-
TOTAL EXPENDITURES	15,351	7,217	4,841	3,293	542	545	547	550	553	556

FUNDING SCHEDULE (\$000s)

Agricultural Transfer Tax	3,421	957	1,254	1,200	200	200	200	200	200	200
Contributions	500	-	-	500	-	-	70	200	142	88
Developer Payments	6,423	4,734	435	1,254	150	198	277	150	211	268
Federal Aid	522	479	43	-	-	-	-	-	-	-
G.O. Bonds	308	308	-	-	-	-	-	-	-	-
Investment Income	787	68	380	339	182	147	-	-	-	-
State Aid	3,380	661	2,729	-	-	-	-	-	-	-
TOTAL FUNDING SOURCES	15,351	7,217	4,841	3,293	542	545	547	550	553	556

APPROPRIATION AND EXPENDITURE DATA (\$000s)

Appropriation FY 21 Request	542	Year First Appropriation	FY89
Appropriation FY 22 Request	545	Last FY's Cost Estimate	10,793
Cumulative Appropriation	12,058		
Expenditure / Encumbrances	7,259		
Unencumbered Balance	4,799		

PROJECT DESCRIPTION

This project provides funds for the purchase of agricultural and conservation easements under the County Agricultural Land Preservation legislation, effective November 25, 2008, for local participation in Maryland's Agricultural and Conservation programs and through Executive Regulation 3-09 AM, adopted July 27, 2010. The County Agricultural Easement Program (AEP) enables the County to purchase preservation easements on farmland in the agricultural zones and in other zones approved by the County Council to preserve farmland not entirely protected by Transferable Development Rights (TDR) easements or State agricultural land preservation easements. The Maryland Agricultural Land Preservation Foundation (MALPF) enables the State to purchase preservation easements on farmland jointly by the County and State. The Rural Legacy Program (RLP) enables the State to purchase conservation easements to preserve large contiguous tracts of agricultural land. The sale of development rights easements are proffered voluntarily by the farmland owner. The project receives funding from the Agricultural Transfer Tax, which is levied when farmland is sold and removed from agricultural status. Montgomery County is a State-Certified County under the provisions of State legislation, which enables the County to retain 75 percent of the taxes for local use. The County uses a portion of its share of the tax to provide matching funds for State easements. In FY10, the Building Lot Termination (BLT) program was initiated. This program represents an enhanced farmland preservation program tool to further protect land where development rights have been retained in the Agricultural Reserve-AR zone. This program utilizes a variety of revenue sources that include: Agricultural Transfer Tax revenues, Contributions, Developer Payments, Investment Income, and State Aid.

COST CHANGE

Costs for FY25 and FY26 have been added to the project, as well as, FY20 funds related to a \$2,705,000 Rural Legacy Program State grant and FY19 Agricultural Transfer Tax receipts in excess of the approved FY19 budget.

PROJECT JUSTIFICATION

Annotated Code of Maryland Agriculture Article 2-501 to 2-515, Maryland Agricultural Land Preservation Foundation; Annotated Code of Maryland Tax-Property Article 13-301 to 13-308, Agricultural Land Transfer Tax; and Montgomery County Code, Chapter 2B, Agricultural Land Preservation; and Executive Regulation 3-09 AM.

OTHER

FY21 estimated Planning, Design and Supervision expenditures are \$372,000, with \$30,000 of these annual costs funded by Agricultural Transfer Tax revenues as authorized by State law. The amount includes funding for 1.0 FTE Business Development Specialist; 1.25 FTE administrative staff; \$25,000 for the Deer Donation Program; \$15,000 for the Montgomery Weed Control Program; and \$72,000 for the Cooperative Extension Partnership. Appropriations are based upon a projection of Montgomery County's portion of the total amount of Agricultural Transfer Tax which has become available since the last appropriation and State Rural Legacy Program grant funding. Appropriations to this project represent a commitment of Agricultural Transfer Tax funds and State Aid to purchase agricultural easements,

contributions from the Crown Farm Annexation Agreement, and partial BLT payments made by developers for additional density in BLT receiving areas. The Agricultural Transfer Taxes are deposited into an investment income fund, the interest from which is used to fund direct administrative expenses, the purchase of easements, and other agricultural initiatives carried out by the Office of Agriculture. The program permits the County to take title to the TDRs. These TDRs are an asset that the County may sell in the future, generating revenues for the Agricultural Land Preservation Fund. The County can use unexpended appropriations for this project to pay its share (40 percent) of the cost of easements purchased by the State. Since FY99, the County has received State RLP grant funds to purchase easements for the State through the County. The State allows County reimbursement of three percent for direct administrative costs such as appraisals, title searches, surveys, and legal fees. The traditional funding sources for this project are no longer sustainable. Easement acquisition opportunities will be considered on a case-by-case approach while alternative funding sources are identified.

FISCAL NOTE

Land costs are for the purchasing of easements. An FY20 supplemental appropriation was approved to recognize the availability of additional FY19 Agricultural Transfer Tax revenue (\$744,000) and an FY20 Rural Legacy State grant (\$2,705,000).

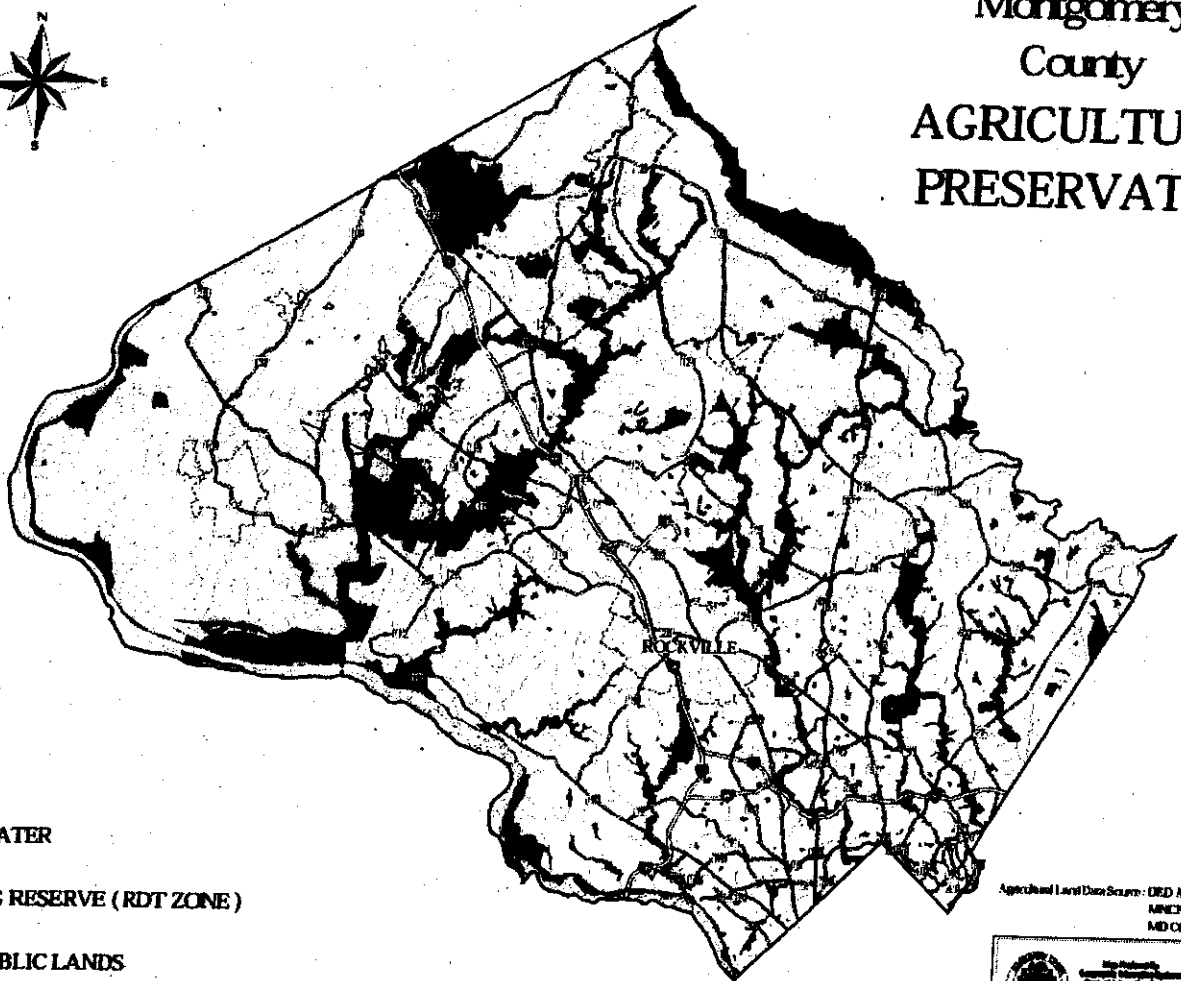
DISCLOSURES




Expenditures will continue indefinitely. The County Executive asserts that this project conforms to the requirement of relevant local plans, as required by the Maryland Economic Growth, Resource Protection and Planning Act.

COORDINATION

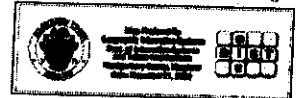
Montgomery County Office of Agriculture, State of Maryland Agricultural Land Preservation Foundation, State of Maryland Department of Natural Resources, Maryland-National Capital Park and Planning Commission, and Landowners.

Montgomery County AGRICULTURAL PRESERVATION



-  WATER
-  AG RESERVE (RDT ZONE)
-  PUBLIC LANDS

Agricultural Land Data Source: DED Agricultural Services
MINCPA, PC
MD Office of Planning



FY00-FY20 Agricultural Transfer Tax Revenue – County portion

Fiscal Year	Amount
FY00	\$2,846,000
FY01	\$1,605,000
FY02	\$2,132,000
FY01	\$1,605,000
FY02	\$2,132,000
FY03	\$2,431,000
FY04	\$1,937,000
FY05	\$1,775,000
FY06	\$7,434,000
FY07	\$303,011
FY08	\$626,402
FY09	\$57,398
FY10	\$517,310
FY11	\$339,968
FY12	\$75,847
FY13	\$157,580
FY14	\$231,042
FY15	\$13,691
FY16	\$736,000
FY17	\$88,324
FY18	\$61,358
FY19	\$943,732
FY20 (to date)	\$33,937



MONTGOMERY COUNTY COUNCIL
ROCKVILLE, MARYLAND

April 19, 2020

TO: Marc Elrich, County Executive

FROM: Planning, Housing, and Economic Development (PHED) Committee
Hans Riemer, Chair
Andrew Friedson, Councilmember
Will Jawando, Councilmember

SUBJECT: FY21-26 Capital Improvements Program (CIP) – Ag Land Preservation Project

The PHED Committee requests that you shift expenditures out of the Ag Land Preservation CIP project (the “Project”) to the Office of Agriculture FY21 operating budget. Currently, Council and Executive staff have identified approximately \$213,300 of annual expenditures in the Project that does not support the acquisition of easements which is the purpose of the Project. Those expenditures are listed below for your reference. Shifting these resources in FY21 will provide approximately \$1.3 million in additional resources for purchasing easements during FY21-26.

Expenditures Unrelated to Easement Acquisition in the CIP

- \$101,300 for 1.0 FTE for an administrator
- \$15,000 for the County Weed Control Program
- \$72,000 for the Cooperative Extension Partnership
- \$25,000 for the Deer Donation Program

The committee respects the prior decisions to shift the expenditures unrelated to the Project into the Project during the recession almost ten years ago. In the following years, however, the Council and Executive have partnered to return these operating expenditures back to the operating budget. There are only a few items that remain, and given the average growth in revenues to the County’s operating budget for the last ten years, the PHED Committee believes there will be enough resources to accommodate this small, but meaningful, shift.

The PHED Committee urges you to consider our request as you review and recommend the FY21 Operating Budget. We thank you for your attention to this important matter.