

**MARYLAND**  
**PROGRAM OPEN SPACE & RURAL LEGACY PROGRAM**

**I. Overview**

Maryland is a diverse state with oceans, barrier islands and beaches, tidal marshes and estuaries, farmland, mountains, valleys, and plateaus. Ecologically, the state is the “northernmost limit on many southern species, and the southernmost limit of many northern species.”<sup>1</sup> It is estimated that before colonization, Maryland was composed of 95 percent forests and 5 percent tidal marsh. By 1993, both forests and wetlands had decreased by half. At least 180 plants and 35 animal species are now extinct and another 310 plant and 165 animal species are rare, threatened, or endangered. The state has an estimated two million acres of ecologically significant land that has not been consumed by development. Of these two million acres of so-called “green infrastructure,” nearly 70 percent are unprotected.<sup>2</sup>

The two principal land conservation programs in the state are the Rural Legacy Program and Program Open Space. Established under the Maryland Department of Natural Resources (MDNR) in 1969, Program Open Space provides funding for state acquisition of open space and recreational lands. Program Open Space (POS) is the largest and oldest open space program in the State of Maryland. From 1970 to the end of Fiscal Year (FY) 2003, POS funded the acquisition of 233,533 acres of land in fee simple and protected 17,186 acres with purchased easements. Local governments have protected 36,388 acres with POS assistance.<sup>3</sup> In FY 2004, POS protected 2,666 acres in state acquisition and 286 acres through funding assistance to local governments. Approximately 242,000 acres of the total acreage protected over the life of the program has been acquired primarily for conservation, natural resource, and biodiversity purposes.<sup>4</sup> As of 2003, POS funding had acquired more than 83,000 acres and 115 miles of Bay area waterfront. In addition, “a significant portion of the land protected by both stateside and local POS funds has been along the streams and tributaries feeding into the Bay.”<sup>5</sup> POS has not yet determined how the state wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) will influence land protection prioritization processes.

The Rural Legacy Program (RLP), established by the State Legislature in 1997, encourages local governments and qualified private land trusts to identify “Rural Legacy Areas” and to apply competitively for funds to complement existing land preservation efforts or to develop new ones. Applications for the designation of Rural Legacy Areas must include “Rural Legacy Plans.” These plans provide for acquisition of easements or fee estates in the Rural Legacy Area. To date, the program has protected 52,155 acres.<sup>6</sup>

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<sup>1</sup> Maryland Department of Natural Resources, *Green Infrastructure Assessment: Overview*, at <http://www.dnr.state.md.us/greenways/gi/overview/overview.html#what> (© 2003).

<sup>2</sup> *Id.*

<sup>3</sup> Maryland Depts of Agriculture, Budget and Management, Natural Resources, and Planning, *Maryland's Land Conservation Programs: Protecting the Chesapeake Bay Watershed (2003)*, available at <http://www.dnr.state.md.us/download/mdlandconprog.pdf>, at 7-8.

<sup>4</sup> Telephone Interview with Chip Price, Director, Program Open Space (2005).

<sup>5</sup> Maryland Depts of Agriculture, Budget and Management, Natural Resources, and Planning, *supra* note 3, at 8.

<sup>6</sup> *Id.* at 9.

Biodiversity considerations are a key factor in prioritizing land acquisitions under the RLP. Both the statutory criteria and a principal methodology used to implement the program, the Green Infrastructure Assessment, include biodiversity-related considerations that can be used in reviewing Rural Legacy Areas, Rural Legacy Plans, and parcel-specific acquisitions. RLP intends to integrate Maryland's wildlife action plan into its implementation of the program.<sup>8</sup> The plan will also be a factor in the state's current effort to update the Green Infrastructure Assessment.<sup>9</sup>

### ***Maryland's GreenPrint Program***

The GreenPrint Program was the Maryland's primary program designed to protect lands, known as "green infrastructure," that are considered critical to the state's long-term ecological health. The goals of the GreenPrint Program were to: identify, using the most up-to-date computer mapping techniques, the most important unprotected natural lands in the state; link, or connect, these lands through a system of corridors or connectors; and save those lands through targeted acquisitions and easements.<sup>7</sup> The GreenPrint Program, established in 2001, was intended to stay in operation for five years, but closed in 2005. Funding for the GreenPrint Program was discontinued because other existing land conservation programs, such as Program Open Space, already were incorporating the Green Infrastructure Assessment, discussed in more detail below, into their project review process.

## **II. Maryland's Open Space Programs**

### ***Program Open Space***

Program Open Space is administered by MDNR. Primary programmatic goals are to make funds available to state agencies (and any subdivision) to: "(1) expedite acquisition of outdoor recreation and open space areas before escalating cost of land prevents its purchase for public use and before potential areas are devoted to some other use; and (2) accelerate development and capital renewal of needed outdoor recreation facilities."<sup>10</sup> Program Open Space acquires land for biodiversity purposes primarily through its goal of acquiring lands critical to the protection and restoration of the Chesapeake Bay. Program Open Space provides funding for state acquisition of open space and recreational lands, as well as grants to local governments for land acquisition and park facilities development.

In addition, Program Open Space administers the Heritage Conservation Fund. The purpose of the Fund, established in 1986, is to acquire conservation easements and fee simple interests in specific types of land, such as "ecologically unique areas of the State" and lands that support "diverse ecological communities of plants or animals."<sup>11</sup>

*Program Funding.* A bond authorization of \$60 million provided the initial funding for POS. POS is now funded through a state real estate transfer tax and general obligation bonds. In 1970, the Maryland General Assembly dedicated one-half of one (1/2) percent of the real estate transfer

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<sup>7</sup> Maryland Department of Natural Resources, *Maryland's Green Print Program*, at <http://www.dnr.state.md.us/greenways/greenprint/> (© 2003).

<sup>8</sup> Telephone Interview with Pamela Bush, Director, Rural Legacy Program (Apr. 12, 2006).

<sup>9</sup> Telephone Interview with Christine Conn, Watershed Services Center, Maryland Department of Natural Resources (Apr. 13, 2006).

<sup>10</sup> ANN. CODE MD. § 5-902(a)(1).

<sup>11</sup> ANN. CODE MD. § 5-1502.

tax to fund Program Open Space.<sup>12</sup> The “funding concept was based on the principles that the rate of funding for state land acquisition and local parks should keep pace with the rate that land is developed and when someone buys his house he also contributes to the open space and recreational assets of their community.”<sup>13</sup>

In partial response to real estate activity and home price increases, the State General Assembly has placed annual caps on the amount of revenue to POS. For example, between FY 1980 and FY 2003, \$761.8 million in transfer tax revenues were diverted to the state’s General Fund. Some of the funds were replaced by \$261.5 million in bond authorizations and by other land conservation programs using the transfer tax. Between FY 2002 and FY 2004, \$216.8 million in transfer taxes were diverted to the General Fund, but replaced, in part, by \$102.8 million in bonds, resulting in a net loss of \$114 million to land conservation programs over this three-year period.<sup>14</sup>

In addition, over time the General Assembly has authorized several additional uses of POS funds. For example, a share of POS funds has been used for: park capital improvements; the Maryland Agricultural Land Preservation Foundation Program; the Heritage Conservation Fund; MDNR capital improvements, administration, and critical maintenance projects; the Heritage Area Finance Authority; and the Rural Legacy Program. In total, MDNR’s share of transfer tax revenues for land acquisition has declined from 50 percent in FY 1970 to 15 percent in FY 2003.<sup>15</sup>

Funding for POS has exceeded \$1 billion since inception with half going to support state projects and land acquisition, and the other half supporting local projects and grants for local land acquisition.<sup>16</sup> Funding in FY 2004 totaled \$12,734,000 for the state acquisition and \$19,093,891 in local grants.<sup>17</sup> Funding for the Heritage Conservation Fund totaled \$1,178,000 (from bonds) in FY 2004. In total, the Heritage Conservation Fund had received \$18 million through FY 2003.

Specifically, POS provides acquisition assistance “for land or interests in land that are beneficial and necessary for providing general outdoor recreation and/or open space opportunities for the public.”<sup>18</sup> All projects must conform to the county’s Land Preservation and Recreation Plan and be included in the Annual Program for that county. Areas acquired may preserve the natural and cultural features of the property for resource preservation, provide public education, or provide for a wide variety of recreational activities.<sup>19</sup> Counties that have not met the land acquisition goals contained in their Local Land Preservation and Recreation Plan or the state’s Land

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<sup>12</sup> Maryland Depts of Agriculture, Budget and Management, Natural Resources, and Planning, *supra* note 3, at 7; ANN. CODE MD. § 13-209.

<sup>13</sup> Maryland Depts of Agriculture, Budget and Management, Natural Resources, and Planning, *supra* note 3, at 7.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Price, *supra* note 4.

<sup>17</sup> Maryland Depts of Agriculture, Budget and Management, Natural Resources, and Planning, *supra* note 3, at 12.

<sup>18</sup> Maryland Department of Natural Resources, *Program Open Space Manual (2003)*, available at [http://www.dnr.state.md.us/download/posmanual\\_april\\_02.doc](http://www.dnr.state.md.us/download/posmanual_april_02.doc), at 25.

<sup>19</sup> *Id.*

Preservation and Recreation Plan must use at least 50 percent of their total POS annual allocation exclusively for acquisition, as opposed to development, projects.<sup>20</sup>

### ***Rural Legacy Program***

The Rural Legacy Program<sup>21</sup> was established “to enhance natural resource, agricultural, forestry, and environmental protection . . .while maintaining the viability of resource-based land usage and proper management of tillable and wooded areas through accepted agricultural and silvicultural practices for farm production and timber harvests.”<sup>22</sup> The Program is aimed at countering “sprawl development and other modifications to the landscape in Maryland” that are continuing at “an alarming rate, consuming land rich in natural resource, agricultural, and forestry value, adversely affecting water quality, wetlands and habitat, threatening resource-based economies and cultural assets, and rending the fabric of rural life.” Specifically, the State Legislature concluded that: “A grant program that leverages available funding, focuses on preservation of strategic resources, including those resources threatened by sprawl development, streamlines real property acquisition procedures to expedite land preservation, takes advantage of innovative preservation techniques such as transferable development rights and the purchase of development rights, and promotes a greater level of natural and environmental resources protection than is provided by existing efforts, will establish a rural legacy for future generations.”<sup>23</sup>

RLP encourages local governments and qualified private land trusts to identify Rural Legacy Areas and to apply competitively for funds to complement existing land preservation efforts or to develop new ones. Applications for the designation of Rural Legacy Areas must include Rural Legacy Plans for acquisition of easements or fee estates in the Rural Legacy Area. Specifically, purchases should be sought from “willing landowners in order to protect areas vulnerable to sprawl development that can weaken an area’s natural resources, thereby jeopardizing the economic value of farming, forestry, recreation and tourism.”<sup>24</sup> The statute requires that sponsors must submit to the Rural Legacy Board for approval contracts for easement or fee estate acquisitions.<sup>25</sup> The program covers preservation of open space, farmland, greenways, recreational lands (limited to private hunting), historical lands, forestland, wildlife, natural areas and biodiversity, and watersheds.<sup>26</sup>

RLP is administered by MDNR’s Capital Grants and Loan Administration with assistance from the Maryland Department of Agriculture and the Department of Planning. The Rural Legacy Advisory Committee, a multi-disciplinary group, makes recommendations to the Rural Legacy Board, which in turn makes recommendations to the Governor and the Board of Public Works.<sup>27</sup>

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<sup>20</sup> *Id.* at 1-2.

<sup>21</sup> ANN. CODE MD. § 5-9A.

<sup>22</sup> ANN. CODE MD. §§ 5-9A-01 (a) and (b).

<sup>23</sup> *Id.*

<sup>24</sup> Maryland Department of Natural Resources, *Maryland’s Rural Legacy*, at <http://www.dnr.state.md.us/rurallegacy/rlprogram/introduction.html> (last updated Apr. 15, 2005).

<sup>25</sup> ANN. CODE MD. § 5-9A-07 (d)(1).

<sup>26</sup> ANN. CODE MD. §§ 5-9A-01 (b) and 5-9A-05(m).

<sup>27</sup> Maryland Department of Natural Resources, *supra* note 24.

*Program Funding.* The Rural Legacy Program is funded in part through Program Open Space, which in turn is funded in part by a real estate transfer tax. In some years, RLP also receives funding from general obligation bonds from the state's Capital Budget. In addition, local jurisdictions contribute monies for a variety of land preservation efforts within Rural Legacy Areas. The program considers whether there are matching contributions from local, private, and federal funds as a factor in approving grants.<sup>28</sup> The state statute establishing the program requires a minimum of a \$5 million appropriation for the program in the capital budget every year.<sup>29</sup> In some years, however, the State Legislature has rewritten law to avoid the requirement.<sup>30</sup>

The amount of funding for the program has varied from year-to-year as follows: FY 2003: \$21,363,429 (\$6,363,429 from the real estate transfer tax; \$15 million from bonds); FY 2004: \$5 million (all from bonds); FY 2005: \$2 million (all from bonds); FY 2006: \$16 million (none from bonds); and FY 2007: \$26 million (none from bonds). In total, RLP has expended \$133 million since its inception.<sup>31</sup>

The RLP provides funding to state agencies, county and municipal governments, and qualified land trusts.<sup>32</sup> The Rural Legacy statute states that the Board shall encourage local governments to reflect Rural Legacy Plans in their comprehensive land use plans.<sup>33</sup> Furthermore, Rural Legacy Plans are evaluated on the "degree to which the proposed plan is consistent with the applicable local comprehensive plan, including protection of sensitive areas and mineral resources."<sup>34</sup> Although land trust recipients do not have land use plans, local governments must approve Rural Legacy Areas that are sponsored by land trusts.<sup>35</sup>

### **III. Land Protection Strategies**

#### ***Land Protection Tools***

Program Open Space utilizes several open space protection tools, including fee simple purchase, conservation or public access easements, and donation of fee simple or easement rights.<sup>36</sup>

Land protection tools employed by RLP and authorized in the statute include: fee title acquisition, conservation easements, purchase of development rights, tax-exempt installment purchase, donation of fee estate or easement rights, fee estate purchase, and resale with conservation easement.<sup>37</sup> The program's preferred tool, however, is conservation easements.<sup>38</sup>

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<sup>28</sup> ANN. CODE MD. § 5-9A-05 (c)(7).

<sup>29</sup> ANN. CODE MD. § 5-9A-09.

<sup>30</sup> Bush, *supra* note 8.

<sup>31</sup> Maryland Depts of Agriculture, Budget and Management, Natural Resources, and Planning, *supra* note 3, at 9.

<sup>32</sup> ANN. CODE MD. §§ 5-9A-02 (f) and (k), and 5-9A-05(a).

<sup>33</sup> ANN. CODE MD. § 5-9A-06(d).

<sup>34</sup> ANN. CODE MD. § 5-9A-05(c)(5)(ii).

<sup>35</sup> Maryland Department of Natural Resources, *The Rural Legacy Program Grants Manual (Dec. 2001)*, available at <http://www.dnr.state.md.us/rurallegacy/manualdecember2001.pdf>, at 9, 11.

<sup>36</sup> Maryland Department of Natural Resources, *supra* note 18.

<sup>37</sup> ANN. CODE MD. § 5-9A-01(b)(2); Maryland Department of Natural Resources, *supra* note 35, at 13.

<sup>38</sup> Bush, *supra* note 8.

## ***Prioritizing Land Protection***

*Program Open Space.* For local government land acquisition, MDNR considers the following information:

- Project description, including type of area (regional park/neighborhood, park/hiker biker trail, etc.), whether the area is new or an addition to an existing area, and whether the area is the initial development or additional development;
- Benefits of the project, including the benefits and beneficiaries, intended uses, whether the area will be developed or left in its natural state; and the constituency served;
- Project consistency, including whether it builds upon earlier POS projects, whether the project or the planned development of the site will result in an increased demand on existing infrastructure (roads/water/sewer), and whether the project is consistent with the county's Comprehensive Plan, the State Planning Act and the seven planning visions (which include "sensitive areas are protected"), and the Local Land Preservation & Recreation Plan; and
- Project uniqueness, including whether communities or other groups assisted with the proposal, whether there are any unique natural features, and whether there are any notable social or economic aspects.<sup>39</sup>

For state land acquisition, POS relies upon Green Infrastructure Assessment. Maryland's green infrastructure, the state's most ecologically important natural lands, has been mapped using satellite imagery, road and stream locations, biological data, and other information. Scientists, local government officials, and conservation groups reviewed the results. The assessment identifies the heart of the state's green infrastructure, called "hubs," or unfragmented areas critical to the state's ecological health. The Assessment also connects these hubs with "corridors," or "linear remnants of natural land, such as stream valleys and mountain ridges that allow animals, seeds, and pollen to move from one area to another." Corridors also protect the health of streams and wetlands by maintaining adjacent vegetation. The effort to identify and protect these linkages between the remaining blocks of habitat is intended to help ensure the survival of and continued diversity of Maryland's plants, wildlife, and environment.<sup>40</sup>

The Green Infrastructure Assessment relies, in part, on GIS-based assessments, on-the-ground inventories and surveys, and evaluation by Natural Heritage Program staff using heritage data. Scientists, including biologists and ecologists, developed the methodology. MDNR has evaluated the effectiveness of the methodology by, for example, conducting a recent breeding bird study, in an effort to develop bio-indicators to verify the modeling approach used in the Green Infrastructure Assessment.<sup>41</sup>

Biological information used in developing the Green Infrastructure Assessment includes: species locations and inventories, such as biological survey databases; species life history information;

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<sup>39</sup> Maryland Department of Natural Resources, *supra* note 18, at 36-37 (Appendix A).

<sup>40</sup> Maryland Department of Natural Resources, *supra* note 1.

<sup>41</sup> Conn, *supra* note 9.

natural ecosystem delineations; information on wildlife utilization and critical wildlife habitat; information on biodiversity hot spots (identified through surveys that rate streams on the basis of biological integrity); hydrology and water quality data; information on ecosystem functions and processes; topography and elevation; and soil types. The information is provided by: MDNR's Natural Heritage Program; Department of Planning; Department of Environment; U.S. Geological Survey; USDA Natural Resources Conservation Service; The Nature Conservancy; University Maryland; and Towson State University.<sup>42</sup>

POS uses the Green Infrastructure Assessment model to identify and prioritize land protection. The Green Infrastructure Assessment determines: the amount, percentage, and ecological significance of green infrastructure present; proximity to existing protected lands and contribution to further protection of the green infrastructure hub or corridor that the property lies in; an overall ecological score for the project; and the presence of other conservation features on the property. The Green Infrastructure Assessment is available on the state's web site and includes tools, such as the "desk top parcel evaluation." Maps and raw data can also be downloaded.<sup>43</sup>

In addition, in 2003, the Governor announced a new initiative that provided for a comprehensive set of ecological indicators to be used in evaluating the state's land preservation purchases. The purpose of the policy is "to ensure that land most critical to the Chesapeake Bay restoration is preserved and protected from development."<sup>44</sup> The initiative also provides that state conservation programs will focus on outdoor recreation facilities and the land base for agricultural and forestry industries. Identified lands that encompass several state goals at one time are considered high priority for POS acquisition. The first priority of POS, however, is the acquisition of lands that will help in the restoration of the Chesapeake Bay.<sup>45</sup>

The 2003 policy is intended to: focus state land conservation programs on the most strategic lands to protect the Chesapeake Bay and its tributaries as well as the most significant natural and agricultural resources; apply the best scientific information and technology to identify resource lands that are most important, the potential threats to these lands, and areas in which preservation goals can be maximized; and establish a process for collaboration and coordination among state and local land conservation programs to identify geographic and natural resource areas. In addition, the policy provides that the state "will use the best available mapping, data, and geographic information systems to identify the most important parcels of land based on ecological and economic value, contribution to the Chesapeake restoration, and vulnerability to land use changes."<sup>46</sup>

Accordingly, under POS, natural resource, conservation, and biodiversity issues are often considered with respect to state land acquisition projects near and around the Chesapeake Bay.

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<sup>42</sup> *Id.*

<sup>43</sup> Maryland Department of Natural Resources, *Maryland's Green Infrastructure Assessment*, at <http://www.dnr.state.md.us/greenways/gi/gidoc/gidoc.html> (© 2003); Maryland Department of Natural Resources, *supra* note 1; Maryland Department of Natural Resources, *Maryland's Green Infrastructure Assessment (Chp. 10) (May 2003)*, available at: [http://dnrweb.dnr.state.md.us/download/bays/gia\\_chp10.pdf](http://dnrweb.dnr.state.md.us/download/bays/gia_chp10.pdf).

<sup>44</sup> Maryland Depts of Agriculture, Budget and Management, Natural Resources, and Planning, *supra* note 3, at 1.

<sup>45</sup> Price, *supra* note 4.

<sup>46</sup> Maryland Depts of Agriculture, Budget and Management, Natural Resources, and Planning, *supra* note 3, at 2.

POS has a representative working in each of the four regions in the state (eastern, western, southern, and central), who meets with the MDNR Regional Teams once per month to assess state land acquisition needs, problems, and priorities (for example, lands needed to gain management access). The Regional Teams are made up of MDNR staff (e.g., regional administrators) within the different sections of the agency: Bays & Streams; Forest Service; Wildlife & Heritage Service; Parks & Land; and Fisheries Service. These meetings result in identification of priority state lands. POS representatives then follow up to find out information about feasibility, willingness of potential sellers, and cost.<sup>47</sup>

In addition, the Heritage Conservation Fund statute provides that criteria established by MDNR for fee simple acquisition of purchase of conservation easements and other interests in land should include a priority system that considers: “ecological uniqueness of the land;” “presence of rare, threatened, or endangered plants or animals or diverse communities of plants or animals;” “whether the land is in the Chesapeake Bay Critical Area;” “whether development of the land will adversely impact water quality or unique natural habitat;” “whether a natural area has been designated by the State or submitted by a county for designation as an area of critical State concern;” and “whether the land is forestland, nontidal wetlands, or tidal wetlands.”<sup>48</sup>

*Rural Legacy Program.* Criteria set out in the statute for the Rural Legacy Board to use in evaluating and comparing applications for designation of Rural Legacy Areas include, but are not limited to:

- “The significance of the agricultural, forestry, and natural resources proposed for protection, including: (i) The degree to which proposed fee or easement purchases will protect the location, proximity, and size of contiguous blocks of lands, green belts or greenways, or agricultural, forestry, or natural resource corridors; (ii) The nature, size, and importance of the land area to be protected, such as farmland, forests, wetlands, wildlife habitat and plant species, vegetative buffers, or bay or waterfront access; and (iii) The quality and public or economic value of the land;” and
- “The degree of threat to the resources and character of the area proposed for preservation, as reflected by patterns and trends of development and landscape modifications in and surrounding the proposed Rural Legacy Area.”<sup>49</sup>

Both the state statute and RLP Manual provide that, with respect to approval of Rural Legacy Plans, the Board will consider the “overall quality and completeness” of the plan including, but not limited to: “The degree to which existing planning, zoning, and growth management policies contribute to land conservation and the protection of cultural resources;” “The degree to which the proposed plan is consistent with the applicable local comprehensive plan, including protection of sensitive areas and mineral resources;” “How well existing or new conservation programs are coordinated with the proposed acquisition plan;” “How well the plan will maximize acquisition of real property interests in contiguous blocks of land within the Rural Legacy Area while providing for protection of isolated acquisitions important to the plan;” “Provisions for protection of resources, such as voluntarily granted or purchased easements, fee

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<sup>47</sup> Price, *supra* note 4.

<sup>48</sup> ANN. CODE MD. § 5-1503(b).

<sup>49</sup> ANN. CODE MD. § 5 -9A-05(c); Maryland Department of Natural Resources, *supra* note 35.



estate purchases, or gifts of lands;” “How the sponsor plans to manage, prioritize, and sequence easement and land acquisitions;” “Methodology for prioritizing and valuing or appraising easements;” and “The quality of the proposed stewardship program for holding and monitoring of easement restrictions in perpetuity. . .”<sup>50</sup>

In addition to using the statutory criteria outlined above, and consistent with a gubernatorial initiative announced in 2003, the Rural Legacy Program prioritizes its land acquisition and conservation activities, in part, based on areas identified as green infrastructure (described above).<sup>51</sup> It also uses additional criteria, such as water quality and restoration benefits, that help assess the ecological benefits of particular properties.<sup>52</sup>

### ***Protection in Perpetuity***

*Program Open Space.* Maryland law provides that land acquired or developed under POS may not be converted without express approval by the Secretaries of MDNR, the Department of Budget and Management, and the Department of Planning. Furthermore, conversions will not be approved until the local governing body replaces the land with another parcel of equivalent area, appraised monetary value, and recreation or open space value.<sup>53</sup>

POS does not designate funding for long-term stewardship, monitoring and management of protected lands. Current budgets require that all funds are allocated to new projects rather than monitoring existing acquired lands. The Maryland Legislature has considered legislation that would provide for an increased number of public hearings on long-term management and monitoring issues, but no such legislation has been enacted to date.<sup>54</sup>

*Rural Legacy Program.* Easements acquired under the Rural Legacy Program can be sold, but are perpetual. Fee simple interests also can be sold, but only with approval from MDNR.<sup>55</sup> In the rare cases when the government does not want to hold a property it has acquired in fee, the government may sell it with an easement imposed. The sale must be pre-approved by MDNR. The Rural Legacy Board has a third party right of enforcement with respect to easements the state does not hold.<sup>56</sup>

RLP addresses long-term management, monitoring, and stewardship of protected land by requiring that one-half of one (1/2) percent of all grant totals must be invested in an endowment or special account that is available only for purposes of monitoring easements acquired with Rural Legacy funds. Fees charged for program compliance for easement monitoring must be invested in a long-term managed investment program. The principal may not be withdrawn without approval of the Rural Legacy Board. If a grantee fails to monitor purchased easements

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<sup>50</sup> *Id.*

<sup>51</sup> Maryland Department of Natural Resources, *supra* note 1.

<sup>52</sup> Conn, *supra* note 9.

<sup>53</sup> ANN. CODE MD. § 5-906(e)(7).

<sup>54</sup> Price, *supra* note 4.

<sup>55</sup> Bush, *supra* note 8; Maryland Department of Natural Resources, *supra* note 35, at 13-14.

<sup>56</sup> Bush, *supra* note 8.

adequately, it may be required to repay the easement monitoring fees to the Rural Legacy Board for re-assignment to a successor organization that will carry out the monitoring responsibilities.<sup>57</sup>

MDNR provides guidance to land trusts on long-term management and monitoring of easements. Third parties that hold easements are required to submit a monitoring plan with their grant applications and the quality of the proposed stewardship program is a factor in reviewing Rural Legacy Plans.<sup>58</sup> MDNR sends letters each year about the status of monitoring of easements. The state is finalizing a long-term monitoring manual for MDNR to use for the easements it holds.<sup>59</sup>

There is no specific funding for long-term management and monitoring work and, therefore, MDNR uses its existing staff. Program compliance costs may not be paid from bond sale proceeds.<sup>60</sup> The real estate transfer tax, therefore, is the ultimate source of the funding for this aspect of the program.

#### **IV. State Wildlife Action Plan**

Maryland's state wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) "represents the results of a broad and inclusive approach to compile and present the best available current information on the status of wildlife conservation in the state while involving the diversity of Maryland's public and private stakeholders." Development of the plan at the state level is "the critical first step in defining the capabilities and needs of DNR and its partners to accomplish wildlife conservation goals." The plan also "identifies the measures that will be used to evaluate the results achieved and the threats and needs that remain for effective wildlife conservation in Maryland."<sup>61</sup> The wildlife action plan is part of and consistent with the green infrastructure approach adopted by the state and employed by both land protection programs.<sup>62</sup> It is expected that the MDNR will take the lead on implementing the plan.

The wildlife action plan specifically notes that many of its conservation actions will rely on cooperation and partnership from existing government programs, such as POS and RLP, that "have a direct and indirect influence on the conservation of Maryland's wildlife species and the key wildlife habitats that support them."<sup>63</sup> POS has not yet determined how its acquisition priorities will be impacted by the plan. The Rural Legacy Program anticipates integrating the plan into its land prioritization process.

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<sup>57</sup> *Id.*; Maryland Department of Natural Resources, *supra* note 35, at 19.

<sup>58</sup> ANN. CODE MD. § 5 -9A-05(c); Maryland Department of Natural Resources, *supra* note 35, at 4.

<sup>59</sup> Bush, *supra* note 8.

<sup>60</sup> Maryland Department of Natural Resources, *supra* note 35; Bush, *supra* note 8.

<sup>61</sup> Maryland Department of Natural Resources, *Final Draft, Maryland Wildlife Diversity Conservation Plan*, at [www.dnr.maryland.gov/wildlife/divplan\\_wdcp.asp](http://www.dnr.maryland.gov/wildlife/divplan_wdcp.asp) (last updated Sept. 26, 2005).

<sup>62</sup> Bush, *supra* note 8.

<sup>63</sup> Maryland Department of Natural Resources, *supra* note 61, at 297-299.

## **V. Summary**

Program Open Space conserves open space primarily through acquisition of lands critical to the protection and restoration of the Chesapeake Bay, and by assisting local governments to acquire land for recreational purposes. In addition, the POS administers the Heritage Conservation Fund, which is intended, in part, to protect biologically diverse land. POS protects acquired land in perpetuity and is currently developing strategies to deal with long-term management, monitoring, and stewardship of acquired lands. It has not yet been determined how Maryland's wildlife action plan will be integrated into the POS acquisition and funding process.

The Rural Legacy Program prioritizes land acquisitions based in part on biodiversity-related considerations. The statutory criteria for designation of Rural Legacy Areas and approval of Rural Legacy Plans provide authority to the program to take into account biodiversity factors. In addition, a principal methodology used to implement the program, the Green Infrastructure Assessment (including parcel-specific acquisition determinations), is focused in large part on preserving biodiversity.