

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
MINUTES**

August 28, 2007

TRUSTEES PRESENT:

Daniel Colhoun, Chairman
Vera Mae Schultz, Vice Chairman
John W. Draper, Jr.
Jerry Kiasmeier, representing Comptroller Peter Franchot
Judith C. Lynch
Dr. James Pelura
Robert F. Stahl, Jr.,
Joe Tassone, representing Secretary Richard E. Hall, Department of Planning
Doug Wilson, representing Secretary Roger L. Richardson, Department of Agriculture

TRUSTEES ABSENT:

Howard S. Freedlander, representing Treasurer Nancy Kopp
Christopher H. Wilson

OTHERS PRESENT:

Bill Amoss, Harford County, Program Administrator
Vince Berg, Vice President, Forestry and Conservation, Inc. Montgomery County
Tammy Buckle, Caroline County, Program Administrator
Veronica Cristo, Rural Planner, Calvert County
Diane Chasse, MALPF Administrator
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
James Evans, Landowner, Inverness Farm, Montgomery County
Jeff Everett, Carroll County, Preservation Specialist
Nancy Forrester, Assistant Attorney General, Department of General Services
Shelby Guazzo, Landowner, St. Mary's County
Ned Halle, Jr. Land Preservation Trust
Buddy Hance, Deputy Secretary, Maryland Department of Agriculture
Dale Hutchins, Landowner, Calvert County
Tom Hornsby, Jr., Landowner, Somerset County
Ann Jones, Land Preservation Trust, Baltimore County
Carla Martin, Kent County, Program Administrator
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Larry & Sue Porter, Landowners, Somerset County
Jacquelyn Rachor, Landowner, Somerset County
Daniel Rosen, Planner, Maryland Department of Planning
Charles Rice, Charles County, Program Administrator
Donna Sasscer, St. Mary's County, Program Administrator
Ned Sayre, Harford County, Program Assistant
Martin Sokolich, Talbot County, Program Administrator
Donna K. Landis-Smith, Queen Anne's County, Program Administrator
Joy Levy, Howard County, Program Administrator
Wally Lippincott, Baltimore County, Program Administrator
Linda Long, Landowner, St. Mary's County
Brian Long, Landowner, St. Mary's County
Christina L. Taylor, Attorney representing Mrs. Long, St. Mary's County
Elizabeth Weaver, MALPF Administrator
John Zawitoski, Montgomery County, Program Administrator

MALPF Board Meeting Minutes (08-28-07): Page 4

Board.

Robert Stahl, Board member, stated that the Board has to be careful not to penalize the landowners. The landowners are bringing a 583-acre into the MALPF program and if the Foundation is harsh on that situation, they can bring the farm into 50-acre blocks and get 10 unrestricted lots.

Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture, added that in such a situation the MALPF Board can refuse the application.

Doug Wilson, representing Secretary Roger L. Richardson, Department of Agriculture, believed that when the first application comes in, the MALPF staff would have reviewed the whole farm and would have allowed the first 50-acre block to come in with 'an unrestricted lot'. When the next application comes in the MALPF staff will highlight it and the MALPF Board will be having a discussion. The landowner may be entitled to additional child's lots but the MALPF Board will not allow the landowner to have an unrestricted lot because of the Foundation's policy and the law's intent.

Mr. Tassone stated that hypothetically when the first 50-acre block enters the MALPF program the landowner will be informed that family lot rights are based on the whole property and not based on how many separate pieces enter the MALPF program.

Mr. Doug Wilson stated that the MALPF Board wants to make sure that the landowner understands that the best they can do is to have certain number of child's lots and owner's lot. Landowner has to understand that their request for an unrestricted lot may pose a problem.

Mr. Colhoun asked Mr. Sokolich if the landowner will understand the concerns of the MALPF Board.

Mr. Sokolich stated that he believed that even if the four district properties rank as the first four properties in the County, the MALPF Board probably will be dealing with only one or two of the districts. The State program probably will not have enough money to bring all the four properties in one chunk. Mr. Sokolich believed the issue can be worked out over time.

Mr. Colhoun reiterated the need for the landowner to be present at the Board meeting. The landowner's attendance gives the MALPF Board an opportunity to convey their concerns and to understand the landowner's intent.

Mr. Conrad stated that the Foundation is moving away from a situation where it reviews a district application before the landowners applied for an easement. Currently the Foundation receives an easement application and then proceeds to have appraisals done by Department of General Services. The Foundation has compiled all the easement applications with withheld acreage so that the Board can establish the nature of circumstances on the properties to ascertain accurate values during their appraisals.

Mr. Conrad pointed out that, if the Knauer application is held up, it can hold up all the Talbot County appraisals.

Mr. Sokolich stated that the landowners have one large farm and they consider it as one large farm. The farm is too big to have anything done on it as one chunk. Mr. Sokolich believed the landowners wanted to take advantage of an unrestricted lot or a child's lot anywhere within the geographic area. So the landowners completed all the applications in the same way, not expecting that all four of them will get accepted at once.

Mr. Sokolich further stated that the district was created in 1984. During that period of time

MALPF Board Meeting Minutes (08-28-07): Page 5

the landowners have taken a total of less than 15 acres out of the program and the farm has been the same. The landowners have been conservative and Mr. Sokolich did not believe there has been any change in their attitude. At the time of filling in the applications the Knauers did not want to preclude any opportunity for their children.

Mr. Doug Wilson stated that the appraiser has to know the development rights associated with the piece of the land. This cannot be done without knowing if the land has an unrestricted lot.

Mr. Doug Wilson suggested tabling the request and recommended that the MALPF staff, County Program Administrator, and landowners get together to work out a reasonable solution. The MALPF Board does not want to injure the landowners. There are issues about how the landowners want to arrange ownership. The whole scenario changes if the landowners decide to give one lot to each of their children and then the ownership structure changes. If the landowners choose not to do so, it changes the entire dynamic. If it ends up in restructuring the farm ownership, the landowners may extinguish all their children's lot rights. Mr. Doug Wilson felt the need for the landowners to think through and come back with their request.

Mr. Doug Wilson was concerned that the request is a FY'08 easement application and normally the Foundation does not allow a lot of changes.

Motion #3: To table the request of Irvin and Margaret Knauer and the MALPF staff, County Program Administrator and the landowners get together to work out a reasonable solution.

Motion: Doug Wilson Second: Robert Stahl
Status: **Approved**

Mr. Conrad asked if the Board will feel comfortable having a telephone poll or if it wishes to have a general discussion at the next Board meeting.

Board members conveyed they would be comfortable having a telephone poll as long as there is a clear staff memo.

Tammy Buckle, Program Administrator, Caroline County, wanted to know if the Board would have taken a similar view if the property entered the program as four separate properties (with more than 50 acres and meeting the soils criteria) with separate tax id number.

Mr. Tassone believed the problem of multiple unrestricted lot rights if the ownership was the same on all four properties would be the same.

Ms. Buckle believed the County Program Administrators will have a problem educating the landowners and this policy needs to be clarified. She wanted clarification as to how to deal with the issue publicly.

Mr. Colhoun agreed. Mr. Colhoun stated that the Board will review the issue and create a memo.

A. CHARLES COUNTY

1. 08-85-02 Rice, Michael & Paula 205.00 acres
Request for a 21.0 acre partial termination and correction of acres for a district property

Mr. and Mrs. Rice are the subsequent owners of the district property. The original

MALPF Board Meeting Minutes (08-28-07): Page 6

owners, Michael's parents Jarrett and Clara Rice, received approval for a 1.0 acre child's lot for Michael's use. A release for the lot was recorded August 28, 1989. There are two pre-existing dwellings on the property.

The landowners are currently requesting approval for a 21.0 acre partial termination to correct a violation. In addition, the District Agreement must be amended to recognize a 7.5 acre parcel that was off-conveyed from the deed in 1933 and which should not have been included in the district.

According to the landowners, in May 2006, while setting up the estate for a terminally ill parent a 21.0 acre parcel was conveyed to Michael's brother William and his wife Malinda. The remainder of the property was conveyed to Michael. The 21.0 acre parcel is located on the south side of Mt. Victoria Road and does not contain any dwellings. Charles County recognizes the 21.0 acre parcel as separate because it is divided by the county road. However, the Foundation views all lands that are within a district or easement as one property and the landowner must obtain written approval to convey portions separately either by partial termination (when applicable) or agricultural subdivision. Charles County states that the 21.0 acre parcel is 100% wooded and may yield up to seven (7) development rights. The remaining 175.5 acre property is 85% soils classes I, II and III and contains 56 acres cropland, 114.5 acres woodland, and 5 acres of wetland that front on the Wicomico River. This property continues to meet the Foundation's requirements for district establishment/easement sale.

The landowners have submitted an easement application for the 2008 easement acquisition cycle. Staff has amended the application to include only the 175.5 acres that Michael and Paula have retained (note: only two (2) family lots are available). If this request is not approved, the application will be withdrawn.

Staff notes that the request for a 21.0 acre partial termination does not meet the Foundation's requirement for withheld or terminated acreage because it could result in as many as seven (7) development rights. However, the landowners are eligible to terminate the entire district. Had they chosen this route, they could have either applied for an easement without benefit of the district or not preserved the farm at all. Therefore, staff recommends approval to 1) amend the District Agreement to recognize the 7.5 acre parcel that was off-conveyed prior to establishment of the district and 2) partially terminate the 21.0 acre parcel to correct a violation and allow the landowner to proceed with the 2008 easement application.

Charles Rice, Program Administrator, was available at the meeting to answer questions from the Board.

Mr. Rice stated that the County did not catch this when it happened because the County recognizes the 21.0 acre parcel as separate because it is divided by the county road. Looking at the tax map, Mr. Rice pointed out that the property to the left, parcel 10, is 350 acres and settled a MALPF easement very recently.

Mr. Doug Wilson wanted to know if a house was built on the child's lot approved for Michael.

Carol Council, MALPF staff, stated that as the original owner of the easement Michael would have two family lot rights. The property of 175 acres is large enough to have three family lots. One lot is already in use as a child's lot. As the owner of the easement Michael would be entitled to two family lots.

Motion #4: To approve the request of Michael and Paula for a 21.0 acre partial termination and correction of acres for a district property.

Motion: Joe Tassone Second: Judith Lynch

Status: **Approved**

C. ST. MARY'S COUNTY

1. 18-00-06e Long, Linda 204.15 acres
Request for approval of a child's lot for son, third review

Ms. Long is the original grantor of the easement. The current request is for approval of a child's lot for the use of her son, Brian Christopher Long.

There is one pre-existing dwelling on the property. There have been no previous requests for lot exclusions. Ms. Long does not own any other MALPF district or easement property.

Due to concerns about the location of the lot, the item was tabled from the April 24, 2007 so that the landowner could be in attendance. The item was re-reviewed at the May 22, 2007 meeting with Ms. Long in attendance. The vote on the child's lot location did not carry. It was suggested that a Board member visit the site. The Chairman indicated that a revised request could come back to the Board.

The site visit occurred on Friday, June 1st, with Board members Dan Colhoun and Robert Stahl attending, with Diane Chasse, Ms. Long and her invited guests. After visiting the site, two suggestions were made to the landowner. They were 1) to consider an agricultural subdivision so that the lot would carry with a larger parcel and 2) to consider an alternate right-of-way to prevent disputes with potential third party future owners.

These two suggestions were investigated by the landowner and the following information was ascertained.

According to a St. Mary's County's Soil Conservation Planner, it is not possible to agriculturally subdivide the property under the Foundation's requirement that both parts have over 50 percent Class I, II, and III soils or that 60 percent be covered by Class I, II, and III soils and Woodland Groups 1 and 2. Attachment A attached with agenda memo.

On the alternate right-of-way suggestion: creating a new 1,800 feet long 20 foot wide right-of-way requires extensive storm water management measures, including gravel trenches and dry wells. The minimum lost to productive farmland from the road is approximately 1 acre. As per discussion with Mark Anderson of the Resource Conservation Service, the cost of installing the system would range from \$3,000 to \$5,000.

The landowner requests this third review based on this new information and on her suggestion that the deed for the lot to contain "right-to-farm" language (Attachment B attached with the agenda memo) and that she obtain a Right of First Refusal on the lot.

The factors that favor of the landowner's proposed location are that it is in a less productive field. Letter from Soil Conservation attached with the agenda memo as Attachment C. Access for the proposed lot will be via an existing farm road. The chosen location is also along a tree line and behind a pond. As the adjoining forest shades the field, it reduces its productivity. Also, farm equipment is less able to maneuver in this area, than in the open area by the road. Associated farm structures will also then be located in this area of poorer soils. Alternative house site locations such as along the road and/or adjacent to the existing residence would remove better soils from production.

The request was approved by the local advisory board and conforms to local zoning regulations. If the lot is approved, there will be a required payback of \$2,600.00 per acre to the Foundation.

In conforming to the Foundation's Lot Location Policy, the physical location of the lot should be (in priority order from most to least desirable):

1. Along public roadway and (if they exist) clustered with other dwellings;
2. Along boundary lines, natural boundaries, or the edge of tillable land, and clustered with other dwellings (if they exist);
3. Clustered with farmstead dwellings and buildings
4. Other

Foundation staff maintains its recommendation to approve the request for a 1.0 acre child's lot if the Board finds this new information satisfactory.

Mrs. Long, Brian Long and Christina L. Taylor, Attorney, representing Mrs. Long, were present at the meeting. Donna Sasscer, Program Administrator, was also available at the meeting.

Ms. Taylor stated that the landowner understands the MALPF Board's concerns about the access to the property and the effect it may have on the farming activity, should the property be subsequently owned by a third party. To address the Board's concerns, the landowner is making an additional request. The landowner is requesting an additional right-of-way access to the child's lot in case it becomes necessary in the future. Ms. Taylor requested that, if Mrs. Long's request is approved, Mrs. Long is not required to establish this alternative access until absolutely necessary.

Mr. Conrad believed that the additional right-of-way will be located along the tree line and meet the public road.

Mr. Stahl stated that the lot will be reasonably isolated from the farm and the right-of-way. Mr. Stahl wanted to ensure that at some point in the future, the Board knew that the right-of-way was approved in a given location and not right next to Mrs. Long's house. Mr. Stahl was concerned, from a legal standpoint, if there is a way to establish that the right-of-way was approved in a given area.

Mr. Colhoun referred the issue to Nancy Forrester, Assistant Attorney General, Department of General Services.

Ms. Forrester stated the Board can approve a location with an alternative right-of-way and the minutes will be available to rely on. If the Longs or the future owners wanted to change the alternative right-of-way, they can come back to the MALPF Board for a review.

Mr. Colhoun asked the landowner if she would feel comfortable to mark the proposed location on the aerial map or the tax map and that can be included as a part of the minutes.

Mr. Conrad stated that at this point in time the lot and the farm are owned by the same family as the farming operation. Board members had expressed concerns that at some point in the future, if the lot is under a separate ownership the actual access across the existing farmland could pose conflicts between the owner of that lot and the operator of the farm. The current action establishes a separate access that will remain isolated from the farming operation and allows separate access should it become necessary because of the conflicts caused by a separate ownership in the future. As long as there are no issues, there should not be a need to use an alternative right-of-way.

Mr. Stahl stated that as long as the person who owns the preserved farm does not mind the lot access going through the farm, it is okay. At any point in time, if it becomes an issue with the use of the road through the farm, they can say the lot owner must build a separate driveway. As long as the owners want, they can let someone use the existing driveway. At

Dr. Pelura stated that they had discussed the possibility of the lot going to a third party but it is possible to seal off the left hand turn going to the main house and still have access.

Mrs. Schultz wondered if the future owner of the lot would have to negotiate a right-of-way with the owners.

Mr. Doug Wilson stated that he believed when the Guazzos go through the county process for their child's lot, and the County will require a formal right-of-way.

Ms. Sasscer stated that the County requires a maintenance agreement for the road, and so any subsequent owner will be tied to that arrangement.

Mr. Stahl stated that in the earlier agenda item (Mrs. Long), the MALPF Board was asking that a right-of-way go through an area that did not affect the farming situation. In the current agenda item, by requiring a separate right-of-way, we would have to go through other farming situations because all the farmland is right at the front of the lot. So if the MALPF Board wants to put another right-of-way, the landowner has to go through and tear up good agricultural land to establish a right-of-way. In the case of Guazzos there is a pre-established road that has direct access to the lot. Also, it does not go through the existing farm structures right in the middle of the farming operations.

3. 18-00-06 Herriman, James 81.094 acres
Request for approval of up to a 2 acre lot for daughter, Betsy Lynn Haley

Mr. Herriman is the original grantor of the easement. The current request is for approval of a child's lot for the use of his daughter, Betsy Lynn Haley.

There are no pre-existing dwellings on the property. There have been no previous requests for lot exclusions. Mr. Herriman also owns a MALPF district. He has not requested any exclusion on his district, either.

According to St. Mary's County, the proposed lot is located in a field. Access for the proposed lot will be from Baptist Church Road. The request was approved by the local advisory board and conforms to local zoning regulations. If the lot is approved, there will be a required payback of \$3,146.09 per acre to the Foundation.

In conforming to the Foundation's Lot Location Policy, the physical location of the lot should be (in priority order from most to least desirable):

1. Along public roadway and (if they exist) clustered with other dwellings;
2. Along boundary lines, natural boundaries, or the edge of tillable land, and clustered with other dwellings (if they exist);
3. Clustered with farmstead dwellings and buildings
4. Other

Foundation staff recommends the request for up to a 2 acre child's lot be approved because it conforms to the Foundation's Lot Location Policy, subject to receipt of letter from the Health Department (or County Planning Department) citing its requirement for the lot size.

Donna Sasscer, Program Administrator, was available at the meeting to answer questions from the Board. Ms. Sasscer conveyed that the landowner was not able to attend the meeting. Diane Chasse, MALPF Administrator, stated that she has not yet received the letter from the Health Department.

Motion #7: To approve the request of James Herriman for approval of up to a 2

chickens for the last 22 years. He has relied on a tenant throughout that time. He has 136,000 broilers (5 chicken houses) and described a typical day in the life of a tenant.

Mr. Nielsen stated that the law says that an existing dwelling cannot be relocated unless the old dwelling is torn down or converted to a non-residential agricultural uses. Mr. Nielsen also shared the Foundation's history on a similar issue in Howard County. In Howard County a landowner wanted to swap a tenant house for a pre-existing dwelling and then to relocate the pre-existing dwelling to another location on the farm. The Foundation had consistently said 'No' to the request because it allows the landowner to have an additional development right.

Mr. Porter hoped the new owner would be able to move into the existing home. Their intent is to build another home because the current home is very small. In the past one year Mr. Porter had spent approximately \$9,000 to upgrade the home. Mr. Porter believed that it would be a hardship to simply tear down the house and build another one.

Mr. Conrad stated that the MALPF Board legally does not have the discretion to re-designate a dwelling.

Ms. Council stated that she and Mr. Porter had communicated earlier as Ms. Council was previously the Administrator for Somerset County. The County considers the dwelling to be a tenant house. The MALPF program recognizes it as a pre-existing dwelling.

Ms. Rachor stated that currently there are five working chicken houses and she has approval to build an additional four, though she does not plan to build them immediately. Ms. Rachor stated that she needs a tenant for the broiler operation.

Ms. Rachor informed the Board that she wants to build a home for her family. The current pre-existing dwelling is a mobile home and is very small. Initially Ms. Rachor and her fiancée intend to be 100% involved in the chicken operation. Ms. Rachor was concerned about having an able body to work in the chicken house, available during the day and living in the existing trailer.

Mr. Doug Wilson stated that Ms. Rachor is a contract purchaser and as such is not entitled to an owner's lot. There is a pre-existing dwelling that is on the property Ms. Rachor is buying and so Ms. Rachor has the right to own and live in the pre-existing structure. Ms. Rachor has the right to ask the MALPF Board to move the location of the pre-existing structure to some other location on her property. The Foundation requires her to tear down the other structure.

The issue about Ms. Rachor having a tenant is driven by the operational requirements of the farm. The statute gives some flexibility to the MALPF Board to allow a tenant in certain circumstances when the acreage is below 100 acres, and the flexibility language was primarily driven by poultry issues. Ms. Rachor needs to demonstrate a compelling need for a tenant.

Ms. Council stated that Mr. Porter is requesting that they do not have to demolish the pre-existing dwelling.

Mr. Doug Wilson reiterated that the law does not permit us to approve the request.

Mr. Nielsen believed the current request is not like the one in Howard County where the landowner wanted to swap a pre-existing dwelling for a tenant house and claimed a third development right to build a big house. There is no mechanism in the statute to recognize a pre-existing dwelling as a tenant house.

Mr. Conrad asked if both the structures are mobile homes. Mr. Porter answered that there is only one home and that the pre-existing dwelling is a mobile home.

for a tenant house at the same location. The landowner had to have a new home, and a new septic system built.

Mr. Nielsen stated that it was done before the law changed and the current request involves a trailer that could be moved.

Mr. Colhoun thanked Mr. Amoss for his comments and stated that the MALPF Board has to consider what is in front of them and use their judgment.

Elizabeth Weaver, MALPF staff, stated that the Foundation asked the legislature to give the MALPF Board the discretion to approve the redesignation of pre-existing dwellings as tenant houses, but an amendment was introduced that specifically states that the Foundation shall not be able to convert the dwelling to a tenant house.

Mr. Colhoun asked Mr. Nielsen if there is any conflict. Mr. Nielsen stated that he did not believe there were any conflicts.

Mr. Porter asked if they still need an approval for the other site.

Ms. Council stated that the area Mr. Porter is intending to re-locate the pre-existing dwelling is a site that the MALPF Board approved for the tenant house ("the approved tenant house" located on the map attached with the agenda memo).

Mr. Colhoun thanked the landowners for attending the meeting.

E. MONTGOMERY COUNTY

1. 15-00-01e Evans, James & Meg (Inverness Farm) 234.0432 acres
Request for approval of a 34.03 acre overlay forest mitigation easement onto easement property

Mr. and Mrs. Evans are the original owners of the easement property. The current request is for approval of a 34.03 acre forest conservation easement overlay onto a MALPF easement.

The easement contains two pre-existing dwellings. There have been no requests for lot exclusions.

The purpose of the requested overlay easement is to provide a forest mitigation bank so that "developers for more than one project may propose utilizing the Easement Area created herein" in order to conform to the provisions of Chapter 22A of the County Code and to satisfy any forest conservation plan afforestation or reforestation requirement. The landowners are proposing to locate this easement area as an overlay onto the existing woodland of their MALPF easement property. According to the survey that was submitted (Attachment G with the agenda memo), the entire 30.43 acres of the forest conservation easement would be located on the MALPF easement property.

The Maryland National Capital Park and Planning Commission (MNCPPC) generally places a no-cut provision in its forest conservation easements. However, MALPF will not approve overlay easements with no-cut provisions (unless it is a part of a soil conservation and water quality plan). Attachment F to the agenda item contained a copy of the standard forest conservation easement used by the MNCPPC which has been modified to incorporate specific language as drafted by Nancy Forrester, Assistant Attorney General, DGS, for a previous forest mitigation easement (page 5, item 2 and page 6, item 5). The document also contains language approved by the Board to be added to all easements that are overlaid onto an existing MALPF easement (page 2, Recital #2). The draft easement must be approved by the Attorney General's office prior

to execution.

This request has been approved by the Montgomery County Advisory Board, Planning Department (MNCPPC), and the USDA NRCS office (Attachments B, C and D) attached with the agenda memo.

Foundation staff recommends approval of the request as it conforms to the Foundation's Policy on Overlay Easements (Attachment A attached with agenda memo) pending approval of the draft easement document by the DGS Assistant Attorney General.

James Evans, Vince Berg, Vice President, Forestry and Conservation, Inc., and John Zawitoski, Program Administrator, were present at the meeting to answer questions from the Board.

Mr. Zawitoski informed the Board that the request was reviewed by the Montgomery County Advisory Board. The local advisory board's summary and the staff recommendations are included with the attachments with the agenda memo. The County would like specific amendments to be included in the forest conservation easement. The County adopted the language Ms. Forrester had drafted for Shiloh Forest Conservation easement and asked the landowner to incorporate the same. The Montgomery Agricultural Preservation Board endorsed the overlay easement contingent upon the fact that the overlay easement would not be subordinate to the MALPF easement. It would only cover existing forest land. The County wants to make sure that the easement itself provides for an opportunity for the forest land to be managed.

Mr. Tassone wanted to know if there is a requirement for afforestation from an off-site development and if the existing forests can meet the afforestation requirements. Mr. Berg confirmed that it can meet the requirements.

Mr. Berg stated that the Park and Planning Commission review the harvesting plan and their position is selective crop harvesting that is approvable. They don't want clear cut except for some compelling reason.

Mr. Zawitoski stated that the people handling the forest conservation program in Montgomery County are not registered foresters and make decisions based on feelings rather than based on sound practical silvicultural practices. Until recently they did not allow any harvesting in the area, but the program is now moving in the right direction.

Mr. Colhoun wanted to know how the forest mitigation banks operate. Mr. Colhoun believed that the Forestry and Conservation, Inc., will make a proposal to the landowner to put x acres in the bank and pay the landowner a sum. The Company then deals with developers who need mitigation and deal with them in small pieces. The Company acts as a broker in between all this. The landowner gets his money upfront and moves ahead. Mr. Colhoun wanted to know if his understanding was correct.

Mr. Berg confirmed that essentially it is correct. The developer gets credit; they don't break the banks into little pieces. So the developer just gets credit out of the bigger bank. Mr. Berg keeps track of how many acres have been used previously, how much in a particular project and how much is remaining. There is a public record of each transaction. The landowner is paid as the transaction progresses.

Mrs. Schultz reminded the MALPF Board that a committee is working on forest mitigation policy and believed it would be wise to have a policy in place before the MALPF Board acts on the current request.

Motion #9: To table the request of James and Meg Evans for approval of a 34.03 acre overlay forest mitigation easement onto easement

and reviews the standard requests. The MET Board reviews only requests that have issues at the Board meeting. Mr. Conrad believed that such a review will save everyone's time and make the MALPF operations more efficient.

Mr. Colhoun believed it to be a very good idea.

III. AGRICULTURAL PRESERVATION DISTRICT/EASEMENT PETITIONS

A. CARROLL COUNTY

1. 06-08-01 Harrison, Michael & Ann 27.834 acres,
Withholding 1.0 acre

RECOMMENDATION: Staff recommends approval based on meeting minimum soils criteria and the size exception criteria set forth in COMAR 15.15.01.03D(2)(1)(iv): A parcel of less than 50 acres may qualify for district establishment if "it adjoins land subject to a recorded instrument which permits agricultural activities and contains restrictions that are the same as or more stringent than those found in the Foundation's deed of easement, and the collective mass of these lands total at least" 50 acres."

2. 06-08-02 Panora Acres, Inc. 123.50 acres,
Withholding 1.0 acre

3. 06-08-03 Totura, Helen T. 174.62 acres,
Withholding 5.43 acres

4. 06-08-04 Georg, Roy W. & Quillin, Karen G. 127.95 acres,
Withholding 24.78 acres

5. 06-08-05 100 John Street LLC 76.446 acres,
Withholding 4.7 acres

6. 06-08-06 Leppo, Melvin & Regina Revocable Trusts 250.86 acres,
Withholding 2.0 acres

7. 06-08-07 Jewell, Helen Louise 90.63 acres,
Withholding 11.37 acres

8. 06-08-08 Davis, Margaret E. 116.75 acres,
Withholding 2.0 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria.

Jeff Everett, Preservation Specialist, was available at the meeting to answer questions from the Board.

Motion #11: To approve the items 1 to 8 for easement applications.

Motion: Robert Stahl Second: Doug Wilson
Status: **Approved**

B. WORCESTER COUNTY

1. 23-08-08 Bounds, Eric 317.00 acres,
Withholding 99.8 acres

MALPF Board Meeting Minutes (08-28-07): Page 20

2. 23-08-12 Hastings, Randall 144.00 acres,
Withholding 16.0 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria.

Katherine Munson, Program Administrator, was available at the meeting to answer questions from the Board. Responding to a question, Ms. Munson stated that, the Hastings property has an area in active mining.

Motion #12: To approve the items 1 and 2 for easement applications.

Motion: Doug Wilson Second: Judith Lynch
Status: **Approved**

Mr. Tassone wondered how it has been ascertained that there is only one development right associated with the property. Ms. Munson clarified that portion of the property has no road frontage. In Worcester County, because of agricultural zoning, only one right is available. The only road access is through the easement.

C. CHARLES COUNTY

1. 08-08-01 Wolfe, Nancy 272.947 acres,
Withholding 5.4569 acres

2. 08-08-03 Jameson, Joseph 139.076 acres,
Withholding 6.0 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria.

Charles Rice, Program Administrator, was available at the meeting. Mr. Rice informed the Board that the Jameson property is within the County's Rural Legacy area. The two lots resulting from the withheld acreage are for Mr. Jameson's grandchildren.

Motion #13: To approve the items 1 and 2 for easement applications.

Motion: Robert Stahl Second: Doug Wilson
Status: **Approved**

D. TALBOT COUNTY

1. 20-08-05 Shortall, William, Sr., and Jennifer 146.058 acres,
Withholding 52.0 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria.

2. 20-08-06 Shortall, William, Sr., and Jennifer 180.5 acres,
Withholding 52.0 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria. Staff also recommends the landowner acquire a forest stewardship plan. If the landowner sells an easement, an FSP will be required.

Martin Sokolich, Program Administrator, was available at the meeting.

Mr. Conrad informed the Board that the two properties are actually a single parcel that is being brought in as two separate easement applications. Both of them together are

MALPF Board Meeting Minutes (08-28-07): Page 23

2. 18-08-02 Lancaster, John Jenkins, III 50 acres,
Withholding 23.03 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria. Staff also recommends that a document be recorded that restricts the landowner from obtaining TDR's for the withheld acreage. Staff also recommends the landowner acquire a forest stewardship plan. If the landowner sells an easement, an FSP will be required.

Donna Sasscer, Program Administrator, was available at the meeting to answer questions from the Board.

Motion #17: To approve the items 1 and 2 for easement applications based on staff report and restrictions mentioned in the staff report.

Motion: Doug Wilson Second: Vera Mae Schultz
Status: **Approved**

3. 18-08-03 Lyon, William V., Sr. and Rose Marie 71.68 acres,
Withholding 5.0 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria.

Ms. Chasse pointed out the area that is already under easement (18-97-04) and is contiguous to the proposed easement application. On the current request the landowners have chosen one unrestricted lot and Ms. Chasse was not aware of the lot rights chosen in the previous easement.

Ms. Forrester stated that the original easement is of 1997. The original easement was with the parents and William and Rose Lyons. The current easement is William and Rose Lyons. (Rose is the wife of William Lyon, Son).

Mr. Doug Wilson stated that the current request is a separate different easement with different ownership.

Motion #18: To approve item 3 for easement application with a condition that MALPF staff and County Program Administrator review the lot availability given that the landowners are also owners of the original easement. This is to make sure that the landowners are aware of the lot rights eligibility requirements.

Motion: Doug Wilson Second: Joe Tassone
Status: **Approved**

Mr. Doug Wilson stated that the landowners were part owners of the other farm. Mr. Doug Wilson is asking for a staff review to know what transpired in the original easement related to the lots so that the Foundation can determine the lot eligibility of the landowners. The landowners are asking for an unrestricted lot, and that may or may not be valid depending on what happened prior.

Ms. Forrester stated that the landowners had come in 1997 and sold the first easement. Ms. Forrester did not believe that the Foundation can now tell the landowners that because they chose family lots back in 1997 they cannot get an unrestricted lot on the remainder of the land coming into the program now.

Mr. Doug Wilson stated that, if the landowners were owners of the other farm, they are part of the ownership of the original easement, and it is an adjoining property. The Foundation will not allow them to have an owner's lot. They would be allowed a child's lot on one of the two

MALPF Board Meeting Minutes (08-28-07): Page 24

properties.

Mr. Conrad wanted to know if the two parcels are separate. Ms. Sasscer stated that the two parcels are the same parcel.

4. 18-08-04 Tomakakin Creek Farm, LLC 411.37 acres,
Withholding 5.0 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria. Staff also recommends the landowner acquire a forest stewardship plan. If the landowner sells an easement, an FSP will be required.

5. 18-08-10 O'Neill, Gary & Lisa 39.85 acres,
Withholding 14.5 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria. Staff also recommends that a document be recorded that restricts the landowner from obtaining TDR's for the withheld acreage. Staff also recommends the landowner acquire a forest stewardship plan. If the landowner sells an easement, an FSP will be required.

Motion #19: To approve the items 4 and 5 for easement applications subject to staff's conditions and recommendations mentioned in the staff report.

Motion: Doug Wilson Second: Joe Tassone
Status: **Approved**

G. BALTIMORE COUNTY

5. 03-08-09 Land Preservation Trust 228.494 acres,
Withholding 10 acres

RECOMMENDATION: If approved, staff recommends the landowner acquire a forest stewardship plan. If the landowner sells an easement, an FSP will be required.

Wally Lippincott, Program Administrator, was available at the meeting.

Ned Halle, Jr., and Ann Jones from Land Preservation Trust were available at the meeting. Mr. Lippincott requested that the MALPF Board take up their request before other Baltimore County requests are taken up.

Mr. Halle informed the Board that the property is owned by a land trust. The Land Preservation Trust is a local land trust in Baltimore County, and the Trust receives donated easements that are too small for MET. This particular property was purchased from donations from neighbors in the area and is zoned and used as a horse-related equine activity property. The Land Preservation Trust would like to sell an easement to MALPF to get money to maintain the property. Mr. Halle stated that he understands that the MALPF Committee has to be comfortable with the equine activity pursued in the property. Mr. Halle believed that the equine committee had reservations about the race track portion of the property and therefore wanted to amend the exclusion area to include the 10 acres around the barns and also decided to exclude 50 acres of the actual race track area.

Mr. Halle located the area on the aerial map provided with the staff memo. The idea is that the particular area would go not into a MALPF easement, but a County easement.

The Land Preservation Trust is committed to having no residential uses of the property. It might like to have one small watchman's cottage, but there would be no principal house on the property. On the property there are two race meetings; one in spring and one in fall.

MALPF Board Meeting Minutes (08-28-07): Page 25

People come to watch the races, and tents are put up. Tickets are sold for the event, and the money is used for land preservation purposes and also to support the fall race meet (GBMC). The GBMC provides hundreds of volunteers and it is a major fund raising event. Everything on the property is cleared next day.

Mr. Colhoun informed the Board members that he has had a conversation with Mr. Howard Freedlander, Equine Committee, Chair. During a tour of the Baltimore County, Mr. Colhoun took Mr. Freedlander for a site visit. In his conversation Mr. Freedlander conveyed that he believed that the regular use of the race track could be questionable within his committee and the events that take place may not meet the criteria outlined in the committee report. Mr. Freedlander differentiates the race meetings differently than being simply a training track. The Foundation already has a number of easements with a training track. Mr. Colhoun suggested that the MALPF Board can review the request with the exclusion of race track.

Mr. Lippincott stated that the parking will be on the MALPF easement. He wanted to know if it would be a problem. Mr. Colhoun stated that the parking on the easement property will be temporary.

Having been associated with the Charles County Agricultural Preservation Board, Mr. Stahl was concerned how to distinguish one-day events in different jurisdictions.

Mr. Halle stated the activity on the farm is horse related; it is very supportive of the equine industry in the Baltimore County and the State.

Mr. Doug Wilson stated that initially the staff report indicated 10 acres would be excluded. The request is being amended to exclude 60 acres. Mr. Halle confirmed.

The excluded area will now include the race area and the track. The Land Preservation Trust is asking the MALPF Board to approve the easement application and to exclude approximately 60 acres. Mr. Halle confirmed this.

The other option is for the request to come back once the equine committee concludes its report and consider if the activities in this area are within the bounds of the Foundation's equine use policy.

Mr. Lippincott stated that the 60 acres has not been approved by the local agricultural Advisory Board.

Mr. Doug Wilson stated that Mr. Halle had mentioned a possibility of having a house for a watchman. He wanted to know if it would be a tenant house. Mr. Halle confirmed and stated that it will be within the bounds of the excluded acreage.

Diane Chasse, MALPF Administrator, enquired about the density. Mr. Lippincott stated that a portion has been sold off. The Land Preservation Trust has negotiated with the landowner to receive two of the units back. That can be done by deed description. As per the County, it has to go through a review process to give the State an assurance that those lots are available and cannot be sold by someone else. The Land Preservation Trust has agreed to submit the request. Mr. Lippincott did not foresee an issue and will be providing the necessary documentation.

Mr. Tassone wanted to know the development rights associated with the property that is being preserved (228.494 -60.00 acres = 168.494 acres). Mr. Lippincott said it will be 3 development rights. They will be eliminating two development rights, and there would not be any development rights on the withheld acreage as long as the County does not change the zoning. The Land Preservation Trust will be applying for an easement for 60 acres through the County program.

MALPF Board Meeting Minutes (08-28-07): Page 30

If the landowner receives an easement offer, a forest stewardship plan will be required prior to settlement.

2. 10-08-17 Burrier, Harold & Judith 145.517 acres
Withholding 3.0 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria. The acreage being withheld is consistent with the Foundation's withheld acreage policy: Land is under local agricultural zoning and will allow three or fewer lots.

Motion #26: To approve items 1 and 2 for easement applications.

Motion: Judith Lynch Second: Robert Stahl
Status: **Approved**

J. QUEEN ANNE'S COUNTY

1. 17-08-06 Leager, Robert & Gloria 315.158 acres,
Withholding 2.862 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria. The acreage being withheld is consistent with the Foundation's withheld acreage policy: the land is under local agricultural zoning and will allow three or fewer lots. If the landowner receives an easement offer, a forest stewardship plan will be required prior to settlement.

2. 17-08-07 Glanding, Evelyn H. 85.00 acres,
Withholding 2.0 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria. The acreage being withheld is consistent with the Foundation's withheld acreage policy: the land is under local agricultural zoning and will allow three or fewer lots.

3. 17-08-09 Rhodes, C. Temple & Patricia 48.70 acres,
Withholding 1.028 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum soils criteria. While the Foundation is paying for only 48.7 acres, the MALPF easement will also cover the area now covered by the Open Space deed restriction, making a total area of 77.874 acres (map attached with agenda memo), which will exceed the minimum size criteria. The area being withheld is consistent with the Foundation's withheld acreage policy: the land is under local agricultural zoning and will allow three or fewer lots.

Donna Landis-Smith, Program Administrator, was available at the meeting to answer questions from the Board.

Motion #27: To approve items 1 to 3 for easement applications.

Motion: Joe Tassone Second: Doug Wilson
Status: **Approved**

V. INFORMATION AND DISCUSSION

- A. Calvert Co. Certification – Certification of County Agricultural Land Preservation programs :
Recertification Request from Calvert County

Calvert County has submitted an application for Certification of a local Agricultural Land

Preservation Program and is requesting Foundation approval. Below are some highlights:

- 5,347 acres were preserved during the reporting period (2003-2007); the average per year acquisition of 1,069 acres is slightly under the 1,100 acres necessary for the County to reach its preservation goal of 40,000 acres by 2020.
- Strong commitment to land preservation is shown through protective zoning: 1 dwelling unit per 20 acres in Farm and Forest District and Rural Community District
- There is a strong private market for Transferable Development Rights (TDRs)
- There is a strong county government commitment to focusing growth in areas designated for growth: master plans are being developed for the seven Town Centers in the county
- The County has created new programs, such as Purchase and Retirement, Leveraging and Retirement, and Forest Conservation TDRs
- High level of public awareness and participation exists in the different programs, established through newsletters, newspaper reports, materials on the County website, and public presentations
- The County has demonstrated an ability to collaborate with County land trusts in the acquisition of easements

However, in reviewing the recertification request report, Foundation staff has identified one area for concern. There has been a sharp decline in applications for easement sale to MALPF. MALPF staff contacted Calvert County staff to attempt to determine causes for the decline. According to Calvert County staff, a number of issues may contribute to the drop in interest in the MALPF program: 1) Prices for TDRs and PDRs are very high, making it difficult to compete; 2) there are fewer administrative processes involved with TDRs and PDRs, resulting in less time involved in the sale; 3) funding for the local programs is more consistent than state funding; and 4) the county program does not limit lots to family lots (the county program allows 1 per 25 acres, up to a maximum of three lots).

Foundation staff recommends that Calvert County be recertified as the County's local program continues to be successful in supporting viable agricultural operations and preserving agricultural land in perpetuity.

Veronica Cristo, Planner, Calvert County, and Dan Rosen, Planner, Maryland Department of Planning, were present at the meeting.

Ms. Weaver stated that the County is very well known for its TDR program. The County is trying to help the farmers transition from tobacco into alternative agriculture.

Ms. Weaver expressed her concern to the County that there has been no participation in the MALPF program since 2004. According to the County, the price paid for TDRs are very high in the County and it is tough to compete with that. Additionally, funding with the local program is more consistent and the program is more flexible. The county program does not limit lots to family lots (the county program allows 1 per 25 acres, up to a maximum of three lots). The County allows the landowners to split the property into 100 acre parcels, allowing them to get more than three lots on larger farms. Ms. Weaver recommended certification.

Mr. Rosen stated that the Maryland Department of Planning also recommends certification. Over the four year period of FY 2003 to FY 2006, there were 1296 acres subject to agricultural transfer tax and 4849 acres were preserved. Furthermore, the amount of acreage being converted in the County has declined for five years in a row. Mr. Rosen was concerned about the cost of TDRs. Mr. Rosen was confident that the County will meet its land preservation acreage goals, but was concerned about the status and prospects for the agricultural sector, including the decline in the agriculture, the tobacco buy out, the aging of farmers, and the difficulties of a young farmer to buy more land.

Ms. Cristo stated that she and Greg Bowen, Director of Planning and Zoning, are exploring ways to encourage small farmer's markets. Calvert County farms are often not conducive to large grain operations. Most of the farms are rather small. There are a lot of nearby markets, and they are

