

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
MINUTES
November 27, 2007**

TRUSTEES PRESENT:

Daniel Colhoun, Chairman
Vera Mae Schultz, Vice Chairman
John W. Draper, Jr.
Howard S. Freedlander, representing Treasurer Nancy Kopp
Robert F. Stahl, Jr.,
Jerry Klasmeier, representing Comptroller Peter Franchot
Joe Tassone, representing Secretary Richard E. Hall, Department of Planning
Christopher H. Wilson
Doug Wilson, representing Secretary Roger L. Richardson, Department of Agriculture

TRUSTEES ABSENT:

Dr. James Pelura

OTHERS PRESENT:

Tim Blaser, Frederick County, Program Administrator
Anne Bradley, Frederick County, Ag. Preservation Planner
Pam Bush, Department of Natural Resources, Senior Policy Analyst
Vince Berg, Citizen, Montgomery County
Tammy Buckle, Caroline County, Program Administrator
Diane Chasse, MALPF Administrator
Martha Clark, Farmer, Landowner, Howard County
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
James Evans, Landowner, Inverness Farm, Montgomery County
Buddy Hance, Deputy Secretary, Maryland Department of Agriculture
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Joy Levy, Howard County, Program Administrator
Tom McCarthy, Project Administrator, Department of Natural Resources
Paul Meyer, Landowner, Carroll County
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Barbara Polito, Anne Arundel County, Program Administrator
Ralph Robertson, Carroll County, Program Administrator
Daniel Rosen, Planner, Maryland Department of Planning
Charles Rice, Charles County, Program Administrator
Donna Sasscer, St. Mary's County, Program Administrator
Donna K. Landis-Smith, Queen Anne's County, Program Administrator
Elizabeth Weaver, MALPF Administrator

Daniel Colhoun, Chairman, called the meeting to order at 9:05 a.m., at the Maryland Department of Agriculture building, Annapolis, Maryland.

The Chair asked the guests to introduce themselves.

I. APPROVAL OF MINUTES/ADDITION OR DELETION OF AGENDA ITEMS:

A. APPROVAL OF MINUTES OF THE REGULAR MEETINGS

Motion #1: To approve the minutes of October 23, 2007 with amendments.

Motion: John Draper Second: Chris Wilson

Status: **Approved**

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B. ADDITIONS OR DELETIONS OF AGENDA ITEMS:

II.F.1 03-99-18A	Baltimore County Warfield, Josephine and Catherine Request to amend the Deed of Easement to extinguish family lots	Added 70.87 acres
V.B.	Information and Discussion Smart Growth Discussion	Postponed
	Memorandum of Agreement Between the MALPF and the Rural Legacy Program	Added

James Conrad, Executive Director of the Foundation, informed the Board that the Foundation has planned a Christmas Luncheon at the conclusion of the December Board meeting.

Mr. Conrad acknowledged the presence of Martha Clark as a future MALPF Trustee appointee, waiting to get the formal appointment letter from the Governor's Office. Ms. Clark is the daughter of Senator. Clark, one of the founders of the MALPF Program. Ms. Clark is a successful farmer in Howard County.

Mr. Conrad shared the information sent by Nancy Forrester, Assistant Attorney General, Department of General Services, on the status of easement offers. The Foundation has a total of 116 pending offers for the current easement acquisition cycle. Ms. Forrester has conveyed that 50 of the 116 offers are ready for closing or checks are ready to be issued. Mr. Conrad noted this as an incredible accomplishment and acknowledged Ms. Forrester's efforts. There are 27 pending offers that need a survey or have other title issues, and the rest are in various stages of review. The Foundation has five federal funded offers pending this year.

Mr. Conrad briefed the Board members about an item in the Baltimore County that has more general implications.

F. BALTIMORE COUNTY

1. 03-99-18A Warfield, Josephine and Catherine 70.87 acres
Request to amend the Deed of Easement to extinguish family lots

Mr. and Mrs. Warfield are the original owners of the easement property. The original easement had 1 pre-existing dwelling. There have been no exclusions. The current request is to amend the Deed of Easement to extinguish family lots.

The Foundation has discussed whether to accept this type of donation on two occasions. In July 2002, the Board briefly discussed the issue. The question that the Board had was whether the lot has any value. The Board suggested that the IRS be consulted as to whether the donation is tax deductible. At the time, the Board was informed that an IRS ruling on such an issue is very expensive to obtain and cannot be done in a timely manner.

The Foundation next discussed the issue on December 16, 2003, when Dan Calhoun (who was not on the Board at the time) requested that the Board amend his easement to extinguish his owner's lot. The Board was advised by counsel that the acceptance of the donation does not establish the value of the donation, but merely acknowledges that the transaction described took place and that the Foundation was the recipient of the waiver of lot rights. The Board approved the request at the time.

Staff Recommendation

Staff advises that the Board form a committee to study this issue, because MALPF has no policy in place. The arguments include the following.

On the one hand, in recent years, the IRS has increased its scrutiny of charitable donations, particularly of easements and amendments, because of some questionable practices of the Nature Conservancy in dealings with its Board members and because of a private Washington, DC, historical trust that was created to solicit donations of historical façade easements. The argument here is that there is little or no commercial value to the waiver of a lot right that is already highly restricted to family members and cannot be sold in the open market. This is the same reason that the retention of family lot rights does not affect the value of the offer made to the landowner. The same would be true of someone amending his or her easement to waive the 25-year termination clause, because the Foundation's position is that the easement is already "perpetual." (This particular easement does not have the 25-year termination clause). To accept or encourage the waiver of such rights creates the impression that there is value to what is being waived for which a grantor can seek tax benefits. While the tax form required to be signed by the Foundation indicates that the Foundation is not establishing the value of the donation, the IRS has put out a written statement warning that "promoters" of fraudulent donations will be pursued. Therefore, the IRS could more closely scrutinize any charitable donations to the Foundation, including bargain sales, if it so decides. At the recent Rally, staff learned that the IRS is even auditing bargain sale easements that were purchased with Federal Farmland Protection Program money.

On the other hand, any waiver of lot rights or the 25-year termination clause is a benefit to the Foundation, independent of its market or charitable contribution value. To set a policy on donations that discourages donations because their value cannot be judged by the Foundation would not make sense because the Foundation's interests in the property can be enhanced whether or not there is a market value that can be established. Despite the position of the IRS, it is not legally MALPF's responsibility to establish or judge the value of such a donation. Signing the IRS Form 8283 is to acknowledge that the transaction claimed actually took place and that MALPF was the recipient of whatever value was transferred. It is the appraiser's and landowner's responsibility to establish and defend whether or not there is a legitimate value that can be claimed on tax filings and what that value is. For example, in this case, the Foundation is gaining the following: (1) the landowners have extinguished a lot right – whether or not that lot right would be exercised, this waiver protects against the landowners changing their mind or children pressuring parents for a lot if circumstances change; and (2) it makes the landowners' ability to subdivide the pre-existing house on the property significantly less likely because it reduces the number of lot rights that remain.

Currently, if Foundation staff has concern about the value of a charitable contribution being claimed by the landowner for a charitable contribution, staff will request a copy of the appraisal to put in the file. While MALPF staff does not have the necessary appraisal expertise to evaluate the value claimed or the quality of the appraisal, if what was valued is described incorrectly, if the value is clearly inflated beyond reason, or other issues are evident (such as using the MALPF formula to determine the value of the charitable contribution), staff will include a letter to the landowner describing any of the issues that are identified in the documentation. MALPF staff regularly signs 8283 forms and, to date has not refused to sign any forms presented, though staff has sent out an estimated five to twelve letters to landowners where potential problems were identified. It is not clear that MALPF should necessarily seek to limit waivers and other potential charitable contributions from which it directly benefits simply because MALPF cannot establish their commercial value.

If the Foundation approves the acceptance of this particular donation and these types of

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- July 12, 2004 - Lorraine, Darlene and Paul, Jr. conveyed their interest in the lot to Piedmont Land Developers, Inc. for \$100,000.00 and advertised the buildable lot for sale on the open market.
- August 3, 2004 - Jim Conrad sent Mr. Meyer a letter notifying him that the advertised sale of the lot was a violation of the easement.
- February 5, 2005 - the lot was conveyed from Piedmont Land Developers, Inc. to Paul O. Meyer, Jr. and Betty A. Meyer for \$100,000.00.
- January 10, 2006 Ralph Robertson, Program Administrator, signed off for a non-transferable building permit in the name of Paul, Jr. and Betty Meyer to construct a dwelling on the 1.0 acre child's lot.

According to Mr. Meyer, he and his wife had planned to relocate to Tennessee and would visit their new home a few times a year. The home was constructed in the spring 2006, and they put the farm on the market for sale. He and his wife never moved into the dwelling (they reside in the remaining pre-existing dwelling on the farm which is a two story home). On August 19, 2006 Mrs. Meyer injured her knee and has since been told by a doctor that she should 'avoid steps as much as possible.' According to Mr. Meyer, her doctor suggested she "live in a home with a first floor bedroom and bathroom".

The newly constructed dwelling has its facilities on the second floor. A letter from Ms. Meyer's doctor was attached with the staff memo.

Mr. Meyer states that he has received a verbal okay from Mr. Robertson on more than one occasion to sell the lot without needing approval from the Foundation because the release of the lot pre-exists the five-year requirement for family lots. However, the title company will not proceed with the sale without approval from the Foundation.

Prior to the Foundation's institution of the five-year clause for family lots (effective October, 2003), the lot releases did not address the issue of conveyance of an owner's or child's lot. As such, landowners have not come to the Foundation to request permission to convey lots. With the new family lot releases, staff understands that a landowner/recipient of a lot which contains the five-year clause may request early release from the restrictions under certain conditions. The conditions as spelled out in the regulations were circulated at the meeting.

Because this is the first request of its kind, and because there is no written guideline for the request, the Carroll County Agricultural Advisory Board has deferred its decision and recommendation to the Foundation.

Given the implications of the request, staff is not making any recommendation. The issue has been brought to the attention of legal counsel who will be asked to comment at the Board meeting.

Paul Meyer, and Ralph Robertson, Program Administrator, were available at the meeting.

Carol Council, MALPF staff, stated that Mr. Meyer spoke with her on the day of the meeting and conveyed that some of the items listed in the staff memo are not correct. Ms. Council stated that the chronological listing in the staff memo is based on the documentation on file and deeds available in the land records. Ms. Council added that Ms. Forrester had conveyed that she thinks the request would not meet the Foundation's current criteria for the sale of the lot to a third party.

Mr. Robertson agreed with Ms. Council and stated that he believed the staff report to be accurate. The Carroll County Agricultural Advisory Board decided not to step in and not to provide a letter to the title company conveying that there was no cloud on the title of this property. This lot was subject to a single stage release. Mr. Robertson had a letter from Mrs. Meyer's doctor.

Mr. Colhoun informed the Board that he had the opportunity to drive by and see the farm from the county road.

Mr. Meyer stated that he believed that there is a lot of discrepancy in the staff report. The child's lot was deeded to Mr. Meyer and his two sisters by Mr. Meyer's father. A few years after their father's death they had to resolve the ownership of the farm itself and wanted to buy his sister's out. He did not have enough money to do so. Therefore, what he did was to remove his name from the child's lot that he held together with his sisters to receive a credit. It was their lot at that time and Mr. Meyer had a credit toward purchasing the farm. The staff report referred to the other lot as 1.278. Mr. Meyer stated that this is not correct and the correct acreage is 1.0 acre. Mr. Meyer stated that he had copies of the plat and the deed indicating the lot to be 1.0 acre, and he can provide this information to the Foundation.

Ms. Council clarified that Mr. Meyer is actually referring to the pre-existing dwelling of 1.12983 mentioned in the staff report.

Mr. Colhoun informed Mr. Meyer that any discrepancy found by him can be corrected by providing the necessary information to the Foundation in writing.

Mr. Meyer stated that the staff report indicated that he and his wife reside in a two-story home. Mr. Meyer clarified that they reside in a Cape Cod. The first floor has a master bedroom and a bathroom. He had copies of the blue print available. It is the one in the middle of the farm.

Mr. Doug Wilson asked if the Cape Cod is one of the pre-existing dwellings; he wanted to know if it was his parent's home. Mr. Meyer stated that it was not his parent's home, and the house was on the farm. When Mr. Meyer got the farm, he wanted to move out on the farm, but his wife did not want to move to the old farmhouse. So they tried to get a building permit. To build this house they had to agree with the agricultural preservation and the building permit offices to tear down the original farm house to get an occupancy permit for the new house so that they were not creating an additional dwelling on the farm.

Mr. Doug Wilson asked if the Cape Cod is on the same location as the original farm house. Mr. Meyer confirmed this.

Ms. Council stated that it is the last of the three pre-existing dwellings that still exists on the property.

Mr. Conrad wanted to know if this is considered under the program to be subdividable.

Mr. Robertson confirmed this and stated that it is a pre-existing dwelling.

Mr. Conrad stated that he understands that it is defined by the County as a tenant house and wanted to know if it is still subdividable.

Mr. Robertson stated that it would be very difficult, but under the rules of MALPF it could be subdividable. Under the rules of the County, it would be very difficult for a tenant house to be subdividable, but it could be done theoretically.

Mr. Meyer wondered how it could be a tenant house as it is the only house on the farm.

Mr. Robertson commented that it is the only house that is left on the farm and the rest of them have been subdivided off. Mr. Meyer commented that the original farm house was torn down.

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Mr. Conrad stated that the aerial map circulated at the table shows the house as pre-existing for the purposes of the State program, although it is indicated as a tenant house for county purposes.

Mr. Robertson stated that the easiest way for Mr. Meyer to request the new home was to tear down the old one; that is why the County designated it as a tenant house.

Joe Tassone, representing Secretary Richard E. Hall, Department of Planning, asked if the Cape Cod house replaced the original farmhouse. Mr. Meyer agreed. For the purposes of the MALPF program, it is considered as a pre-existing dwelling.

Mr. Meyer stated that he has a letter from Mr. Robertson on the requirements that refer to the five-year commitment. Mr. Meyer believed that his lot did not fall under the rules of the five-year requirement. When the lot was originally taken by Mr. Meyer's father, it was under the two-year requirement. This letter is available from Mr. Meyer. Second, Mrs. Meyer has arthritis in her knees and has related medical issues. Their family doctor has advised them to avoid any type of knee surgery. Mrs. Meyer cannot navigate steps.

Sometime around August 2006 Mr. Meyer informed Mr. Robertson about the problem. Mr. Robertson responded that he did not foresee any problem, that Mr. Meyer did not have much choice of what to do, and to go ahead and sell the house. Mr. Meyer sent a copy of his request, his wife's medical report, and the floor plan of the house being built. The plan is such that it is not feasible to add to or make changes to the house due to set-back requirements. The septic system for the house was approved for a three-bathroom house and to put another ½ bathroom downstairs would violate the Health Department requirements. Mr. Meyer has had several realtors calling Mr. Robertson's office. The realtors were assured that there would be no problem. A prospective homebuyer had spoken to Mr. Robertson, and he too was assured that there would be no problems. Mr. Meyer has a signed contract of sale waiting to go to settlement on this particular property.

Mr. Tassone asked if the child's lot is subject to the October 2003 lot release conditions and, if not, what is acceptable to the Foundation.

Mr. Conrad stated that the October 2003 lot release conditions were created to benefit the landowners. In statute and regulations there was no mechanism that existed to clarify at what point and under what conditions a person was able to transfer a property that is strictly for one's own personal use. There was no mechanism that would let them get around those statutory constraints. There is no other mechanism outside coming to the MALPF Board to transfer the property to an unrelated third party.

The current request is unusual. Mr. Conrad was not aware of any other case where a house was constructed and transferred without it being occupied by the person for whom the lot has been released without MALPF taking legal action. The Foundation takes legal action to guarantee that the statutory requirements of the release have been met. It is unusual that the request falls under the earlier release requirements, and there is no mechanism that exists in the statute to allow the lot to be released except going back and looking at the provisions that were created explicitly in the regulations from the 2003 statutory changes.

Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture, stated that the legislature has indicated that the lots are restricted solely for the use of the child of the landowner, and they are not for economic gain. The Foundation administers approximately 2000 easements across the State. The decisions have to be made in the light of a large State program. These are very restrictive rights. It has been the Foundation's administrative practice to recognize that the rights are for the child, the child needs to live there, and the lot cannot be conveyed. The Foundation recognizes some exceptions like the death of the child or the landowner, divorce, a bankruptcy, a change of

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employment, location, or any other circumstance as determined by the Foundation where it would be impossible for the landowner or child to continue to live in that house. The law was amended in 2004 to incorporate some of the longstanding practices of the Foundation.

Mr. Tassone commented that it seemed that the October 2003 policy applies to all properties; it simply was not spelled out before.

Mr. Doug Wilson agreed and stated that the current issue is more driven by the single lot release system used at that time as opposed to the two-stage release system currently used by the Foundation. A single lot was released in 1991. The lot was officially subdivided under the rules of allowing the parents to give the eligible child a child's lot. Like many landowners at that time, they did not build the house; many landowners build their child's lot/owner's dwelling later. In this case the Meyers built the house, and a subsequent event occurred making it difficult for them to live in the house.

Mr. Colhoun stated that the staff memo mentioned that the main farm house is for sale. He wanted to know more about it.

Mr. Meyer stated that the main farm house was up for sale. It was difficult for the Meyers to take care of their home, and they decided to downsize dramatically. The Meyers had envisioned moving to Tennessee and planned to have a smaller house. Mrs. Meyer had a couple of brothers who were seriously ill. Mrs. Meyer did not want to leave the area and not be able to come back. So they built this house with the intention of living in both places and were planning on making at least one trip a month. They wanted to spend two or three days in Carroll County and rest of the time in Tennessee. When Mrs. Meyer hurt her knees it affected their plans. The house is still on the market for \$700,000 or \$800,000. The whole farm is up for sale.

Mr. Tassone asked if the Cape Cod is the only remaining dwelling on the farm that has not been subdivided. Mr. Meyer confirmed this.

Mr. Robertson commented that it is the only dwelling on the two farms. The easement was made up of two separate farms, but all the dwellings and the house of Mr. Meyer were taken off before the other farm was put under easement. There was substantial subdivision of the other farm before it was put under easement.

Robert Stahl, Board member, stated that Mr. Meyer applied for a building permit for a house on a child's lot. Then the building permit was issued, and the eligible child built a two story house. Mr. Stahl wanted to know when it was actually completed. Mr. Meyer stated that it was completed probably around October 2006.

Mr. Stahl wanted to know when it was put up for sale. Mr. Meyer stated that probably 18 - 20 months ago. Around July 4, 2006 Mr. Meyer was in Tennessee looking at that property and it was their intention to sell the farm then. Their intention was to have the house completed and be able to move.

Mr. Stahl wanted to know Mr. Meyer's intention when he got the building permit.

Mr. Meyer stated that they intended to move into the house. The things that were put in that house were done in keeping with their needs. If that was not their intention, they would have not put such expensive upgrades in the house.

Mr. Doug Wilson wanted to know when the child's lot house was first listed on the market. Mr. Meyer stated that it did not happen until he contacted Mr. Robertson and sent him a letter with the doctor's letter. Mr. Meyer did not remember the exact date the house was put up for sale, but it might be sometime around February 2007.

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4. 11-08-04 Shawley, George R, III & Sharron L. 95.40 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria. The density associated with the withheld acreage is within the density allowed by the Foundation's policy.

Mr. Conrad informed the Board that the oil and gas rights on the property have been leased. Mr. Conrad asked Mr. Nielsen if there are any concerns or the rights have to be extinguished before the property enters the program.

Mr. Nielsen stated that in the past the Foundation did not buy a property if their rights have been leased. Ideally the company having the mineral rights should subordinate.

Mr. Conrad reminded that there has been legislation that the MALPF Board can accept gas rights if their judgment is that it does not affect the farming operation itself (only in the cases of Garrett and Allegany counties).

Mr. Nielsen stated that he believed that the Company should be contacted and an agreement to subordinate should be worked out. Otherwise, the Company can rip up the farm if oil and gas is discovered on the property at a later date. Mr. Nielsen also stated that he believed the subordination clause should be put in the district agreement, and the landowner has to be notified about the condition in case an easement is sold.

Elizabeth Weaver, MALPF staff, stated that the statute says that the Foundation does not require properties in Garrett and Allegany counties to subordinate. Mr. Conrad commented that it is left to the discretion of the Foundation.

Ms. Weaver stated that it is her understanding that at the time the easement is applied for the Foundation will make a judgment as to whether or not the activities of the gas company will impact the agricultural use of the property. The Foundation has the right to make that judgment.

Mr. Nielsen asked if the Foundation staff can furnish more information on the request because, hypothetically, if the district is established and there is an oil strike next week, the oil company could destroy the farm leading to an easement violation.

Motion #6: To table the request of item 4 and ask Foundation staff to obtain more information from the landowner about this particular condition.

Motion: Doug Wilson Second: John Draper
Status: **Approved**

5. 11-08-05 Sherbin, James L. & Linda S. 156.1 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria; however, the approval should be conditioned on the landowner agreeing to place a deed restriction on the area withheld if an easement is purchased on the property. The withheld acreage does not fall within the Foundation's policy. Under the Foundation's Withheld Acreage Policy, no more than three development rights may be associated with an area withheld from the district or easement. Local density could allow up to four development rights. Garrett County indicates that physical limitations (ponds, etc.) make it unlikely that the area could be developed to that density level. However, staff believes that, to remain consistent with past actions, the approval should be conditional.

Mr. Tassone observed that the 2 acres are withheld on one boundary of the property and

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12.9 acres are in the middle of the property. He wondered why the landowner wants to exclude 12.9 acres in the middle of the property.

Ms. Weaver commented that the landowner wants to do so because of the location of the pond and they want to have an area around the property for a large home. The existing large home is on 12.9 acres.

Mr. Tassone stated that the MALPF staff has recommended approval by placing a deed restriction on the area withheld if an easement is purchased on the property. Mr. Tassone wondered instead the Foundation can make restrictions on the withheld acreage for what the landowners' desire; future home sites on two acres, the farmstead, and ponds around the existing farmstead.

Ms. Weaver believed the landowners wanted some flexibility. She added that currently the landowners do not intend to build any further dwelling on the 12.9 acres. However they would like to have that flexibility. The landowner wants to have the ability to develop 12.9 acres up to what is allowed under the Foundation's withheld acreage policy.

John Draper, Board member, stated that his understanding was that one development rights would be on the 2.0 acres, there would be an existing dwelling on 12.9 acres and two additional dwellings on 12.9 acres.

Mr. Tassone stated that the Garrett County does not have zoning, but does have subdivision rules. Ms. Weaver stated the County's explanation was that, given the physical limitations, no more than one other dwelling is possible. The Foundation wants to make sure that no more than three additional lots can be built.

Mr. Tassone wondered if the Foundation's withheld acres policy addresses the issue of excluding acreage (like the Foundation's lot location policy does). Ms. Weaver stated that the Foundation's withheld acreage policy does not address such issues.

Mr. Tassone was not in favor of approving the exclusion of acres in the middle of the farm. The landowners are articulating their needs from their perspective, and Mr. Tassone believed the Foundation should convey what it requires from the State's perspective.

Mr. Tassone wondered if there is a way to configure the exclusion so that there is access to it without going through the property at all and it has a contiguous boundary with the road. Mr. Stahl added that the Foundation can ask the landowner to make the 12.9 acres contiguous to the edge of the property.

Mr. Colhoun sensing the Board members' concerns asked Ms. Weaver if the landowner can attend the meeting.

Ms. Weaver stated that the Foundation advises all landowners and program administrators to attend the Board meeting when their requests are discussed. However, Garrett County staff is three hours away from the meeting venue. The landowner of the current request is a judge and will not be able to take time off to attend the Board meeting.

Mr. Colhoun reminded that in the past the Foundation had had a pending issue with the Garrett County landowner. Mr. Colhoun and Ms. Weaver did visit the farm in the Garrett County and the landowners subsequently attended the Board meeting and the issue was resolved. Mr. Colhoun hoped similar would be the case in the current request.

Motion #7: To table the request of James and Linda Sherbin to establish a agricultural land preservation district till the landowner provides more information.

Motion: Doug Wilson
Status: **Approved**

Second: Chris Wilson

IV. PROGRAM POLICY

B. Equine Committee – an informational item

Howard Freedlander, Chair, Equine Committee, presented the recommendations of the Equine Committee and sought comments from Board members and Program Administrators. The Committee had received a few suggestions from the Horse Industry Board. Mr. Colhoun, Mr. Conrad and Mr. Freedlander had worked on the suggestions and had come up with a draft recommendation.

During the formulation of the draft, the Committee had to deal with scale, appropriate use, public perception of appropriate use, and flexibility. The item that received the most attention was Horse Racing/Steeplechase/Cross-Country Riding Rodeos/Eventing. The reason might be the pending Shawan Downs application and the possibility that the MALPF Board might receive such similar requests in the future. The other issue the Committee dealt with was pervious vs impervious surfaces, frequency of public events, and permanency of uses and related facilities.

Mr. Freedlander acknowledged the inputs he received from Mr. Chris Wilson, Mr. Tassone, the Horse Industry Board, Mr. Colhoun and Mr. Conrad. Mr. Freedlander hoped the Committee's recommendations are approved by the MALPF Board and the Horse Industry Board.

Mr. Conrad commented that the current proposal is the proposed policy. The Foundation always gives a month for everyone to look at it, discuss with anyone who is interested, and send in comments. The final revision has not yet been seen by the Horse Industry Board.

Mr. Freedlander pointed out that the Horse Industry seemed to be concerned as to whether the MALPF Board regards horse operations as farming.

Mr. Colhoun complimented the efforts of Mr. Freedlander and for taking time out to visit the horse farms.

Mr. Conrad encouraged the Program Administrators to talk to their Agricultural Advisory Board, horse farmers in their jurisdiction, and send in their comments.

Mr. Conrad pointed out that Horse Boarding and Horse Training listed in the table have always been acceptable uses on MALPF properties. They are included for the purpose of completeness. The Board also wanted to track equine uses. The Foundation receives many questions from the Governor's Office, particularly in the last five years. Tracking them will help the Foundation in knowing what is happening on the MALPF properties. Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator, will be visiting properties and eventually will have a better understanding of what is happening on the MALPF properties and be able to answer such questions.

The table also helps the MALPF Board in deciding whether members are comfortable with the proposed uses. The Foundation is not asking operations that are already approved to come to MALPF Board for approval. The Foundation is increasingly getting involved in issues concerned with impervious surfaces. Impervious surfaces are becoming a major issue as some funding limits how much impervious surface one can have on a property, and this applies to dwelling, parking and farm structures, including large arenas. Illustrating an example, Mr. Conrad stated, that if you have parking, such as handicapped parking, that has to be impervious surface under a certain county ordinance

or state law, that will be counted against allowed impervious surface. The Foundation needs to keep this in mind when dealing with landowners who are involved in such operations.

Mr. Colhoun urged the program administrators to think and send in their comments as soon as possible to move forward to adopt the Committee's recommendations.

A. Uses Committee Final Report

Vera Mae Schultz, Chair, commented that the MALPF Board has already approved several sections of the uses other than the normal agricultural-and-forestry-related activities.

The full report on recommended uses of land in the MALPF Program in addition to normal agriculture and silviculture uses was provided at the February 2007 Board meeting. The portion of the report dealing with "farm- and forest-related" uses was discussed and approved at the April 24 Board meeting. The portions dealing with uses "associated with normal agricultural or silvicultural operations" and "conducted in pre-existing dwellings" were discussed and approved at the May 22 Board meeting.

The portion on "other" uses was presented and discussed at the June Board meeting, leading to subsequent meetings and discussions with the committee, staff, and counsel. The Committee is discussing Section D of the guideline table – "Other uses." The Committee is recommending

1. That the following wording in approved sections A, B, and C
"Accessory sales area must not exceed 600 sq. ft."
be changed to
"Accessory sales area must not exceed 600 sq. ft., and in no case shall be greater than the area used for the sale of agricultural and forestry items."
2. That all uses must have ownership interest (see definition under "Uses of Land in the MALPF Program").

USES OF LAND IN THE MALPF PROGRAM*
In addition to normal agricultural and silvicultural uses

Guidelines for uses of land in the Maryland Agricultural Land Preservation Foundation (MALPF) program in addition to normal agricultural and silvicultural uses were formed to help implement the portions of the statute requiring that MALPF "preserve agricultural land and woodland in order to provide sources of agricultural products within the State for the citizens of the State . . . and, protect agricultural land and woodland as open-space land." [Maryland Annotated Code, Title 1, Subtitle 5, Section 2-501.] At the same time, these additional uses are recognition of the need for agriculture and forestry to provide a dependable, adequate source of income for the owner or operator of land in the MALPF program.

An owner or operator of land in the MALPF program may engage in additional uses that complement other agriculture or forestry operation on the land and/or do not interfere with the current agricultural or silvicultural operations and continued agriculture and forestry production. When possible, to minimize the effect on other agriculture and forestry operations, these additional activities should be conducted near residences or buildings that existed at the time of recordation of the easement or district agreement.

The following conditions apply to additional uses of land in the MALPF program:

1. All additional uses are first subject to local zoning.
2. All additional uses must not interfere with the other agriculture or forestry operations.
3. All additional uses must not affect the future agriculture or forestry productivity of

the land.

4. ALL ADDITIONAL USES MUST HAVE OWNERSHIP INTEREST.
5. All parking related to additional uses must be pervious.
6. The landowner must submit a letter detailing his/her proposed additional use to the county agricultural land preservation program administrator and, if approved by the county, to MALPF. The administrator may refer the use request to the county agricultural advisory board. All additional use requests require approval by the county agricultural program administrator and by MALPF staff, while some also require the approval of the MALPF Board of Trustees. Upon review and approval, MALPF will send a letter to the landowner detailing the proposed additional use. In agreement, the landowner will sign the letter and return it to MALPF for permanent placement in his/her file.

Additional uses in pre-existing dwellings are not subject to MALPF approval, but are to be reported to the county MALPF program administrator. Parking and storage related to those activities must be located within the one acre surrounding and including the pre-existing dwelling. Additional uses in buildings other than pre-existing dwellings are subject to parking and other requirements as listed in the Guidelines.

Uses of land that receive easement funds from the federal Farm and Ranchland Protection Program (FRPP) are more restrictive. See FRPP regulations for allowed uses.

Some terms used in the chart are defined here:

Accessory sales - items that add to the convenience or usefulness of the primary farm or forest products.

Additional use – any activity that is not normal agriculture or silviculture as defined by the Maryland Department of Agriculture or the Maryland Department of Natural Resources-Forest Service.

Indigenous – grown or raised in the specified geographical area.

Livestock - farm animals kept for use on a farm or raised for sale or profit, such as horses, cows, sheep, goats, and hogs.

OWNERSHIP INTEREST – THE OWNER OF THE EASEMENT/DISTRICT LAND MUST BE INVOLVED IN OR GIVE PERMISSION FOR THE USE.

Pervious surface – ground cover, such as grass, gravel, straw, etc., that allows storm water to penetrate the soil beneath.

Pre-existing dwelling – a dwelling existing at the time of recordation of the district agreement or deed of easement and the acre on which it is located; tenant houses are classified separately from “pre-existing dwellings.”

Mr. Tassone commented that he believed the current definition of ‘Ownership Interest’ is a broadening of definition rather than clarifying.

Mrs. Schultz stated that the Committee realized that the total farm may be rented and operated. In that case, the owner of the farm would have to be involved in the additional use or give permission for the additional use to be conducted by the renter.

Mr. Stahl commented that such an arrangement is currently common. Generally speaking, the farmer is more often a tenant today rather than a landowner.

Illustrating an example, Mr. Colhoun commented, if he rents the farm out but still owns the land with an easement, someone else is planting the crops, putting the crops in storage, and actually selling the products directly from the storage in the barn.

Mr. Tassone stated that he was concerned about the barber shop or tailor operation that is not operated by the owner of the farm, but someone else who lives down the street. They are basically going to rent space for a business.

Mrs. Schultz stated that the Committee recognized that the Foundation really has no authority over activities in pre-existing dwellings.

Mr. Colhoun commented that the Committee is already saying that the uses are all agricultural based.

Mr. Nielsen wanted to know the Committee's theory about allowing other uses that do not fall within the definition of farm, horse related and home occupations.

Mrs. Schultz stated that as long as the uses do not affect the current farming, forestry production or limit their future operations and are not permanent, the Committee did not have a problem.

Mr. Colhoun commented that the recommendations presented by the Uses Committee are guidelines to the Board and the MALPF Board still reserves the discretion to make a decision.

Motion #8: To approve the recommendations of Uses Committee (D.Other).

Motion: Howard Freedlander Second: Chris Wilson
Status: **Approved**

C. Forest Mitigation Report

Mrs. Schultz, Chair, commented that the Committee had made its presentation earlier and is currently re-presenting it with the revisions suggested. Mrs. Schultz commented that the Committee realized that not many jurisdictions in Maryland allow the Forest Mitigation Overlay on easement properties. Many jurisdictions do not have a policy because they have never received a request.

Tammy Buckle, Program Administrator, Caroline County, commented that currently Caroline County does not have a policy. If the State adopts a policy, Caroline County in the future may adopt the same policy.

Mr. Tassone commented that in Maryland most of the forest mitigation requests are related to implementation of the State's Forest Conservation Act, and each county has the responsibility to administer it.

Mr. Stahl felt that instead of forcing all the 23 counties to adopt a policy, the Foundation can create a State policy of allowing forest mitigation unless specifically banned by a particular County.

Mrs. Schultz stated that the Committee has inserted specific instructions that the Foundation will not use Class I, II, or III soil unless mitigation on that land will serve a resource conservation purpose, e.g., buffering a stream, as part of a Soil and Water Quality Plan prepared by the Soil Conservation District.

[LAND ELIGIBLE FOR FOREST MITIGATION

*For land under a MALPF easement to be eligible for consideration for forest mitigation, it must be other than Class I, II, or III unless mitigation on that land will serve a resource conservation purpose, e.g., **BUFFERING A STREAM**, as part of a Soil and Water Quality Plan prepared by the Soil Conservation District].*

Mr. Colhoun commented that the Committee is doing what Mr. Stahl has suggested, but also has added a specific restriction to protect the Class I, II, or III soils.

Addressing Mr. Stahl's concerns, Diane Chasse, MALPF staff, stated that some program administrators do not wish to allow Forest Mitigation Overlays on MALPF properties – that is why the policy required local government approval for doing so.

Mr. Tassone stated it seemed the Committee is suggesting the decision is deferred to the counties. If the counties do not have provision allowing forest conservation on easements, they are not going to allow it. Mr. Colhoun added that some counties have to readdress the issue, and also many counties look to MALPF and its policy for guidance. The Committee has developed some interesting elements in this policy. The Wetland Mitigation Policy has a second layer of technical review. The County may recommend, but the policy stipulates that it will be reviewed by the Maryland Department of Agriculture.

Mrs. Schultz also brought the attention to the clause pertaining to twenty five year termination clause.

If the forest mitigation/forest mitigation bank request is for a property that was approved for MALPF easement purchase by the Board of Public Works prior to October 1, 2004, and is therefore eligible to apply for termination of the easement after twenty-five years, then the owner shall be required to amend the deed of easement to waive the right to terminate the easement after twenty-five years, and clarify the perpetual nature of the easement.

Doug Wilson commented that the MALPF Board had earlier discussed the possibility of sending the recommendations to Maryland Department of Planning, Rural Legacy, etc., and to convey the Foundation's intent and ask for their inputs before the Foundation adopts the policy.

Pam Bush, Department of Natural Resources, Senior Policy Analyst, mentioned that she had spoken recently to Shaun Fenlon, Assistant Attorney General, Department of Natural Resources. The Department of Natural Resources is not sure if it can prevent overlays because there is nothing mentioned in its easements that prevent them.

Mr. Nielsen stated that the MALPF easements indicate that the landowner has to have permission to have an overlay easement. Ms. Bush stated that it is something the Department of Natural Resources (DNR) might be interested in incorporating in its easements. Ms. Bush believed the discussions among the agencies are important.

Mr. Tassone stated that during the formulation of both the wetland mitigation policy and the forest mitigation policy there were discussions about coordinating with other state programs. There is a written elaboration on this in the wetland mitigation policy. The same issue applies to the forest mitigation policy, though it is not articulated.

Ms. Chasse commented that she received an e-mail from Maryland Environmental Trust conveying that it is uncertain of what direction it will take with regard to Forest Mitigation Overlays.

Mr. Doug Wilson reiterated that the State has four or five similar programs. It would help everyone if there is a discussion among the state agencies and because of the useful outcome of increasing consistency in how this issue is treated.

Mr. Nielsen agreed with Mr. Doug Wilson's suggestion and stated that forest mitigation policy is like a sort of transfer of development rights (TDR). He is aware that DNR litigated this issue, and MALPF decided to change its easement language concerning TDRs. One of the problems is that, in the case of TDRs and forest mitigation, it could be argued that both are promoting development somewhere else. The concern is using MALPF properties as a vehicle to promote sprawl development.

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Executive Session, discussion on agenda items V.C was deferred to be discussed at the conclusion of the Executive Session.

Mr. Colhoun asked for a motion for adjournment of the meeting and a move into a closed Executive Session, pursuant to the provisions of:

- 1) State Government Article Section 10-508 (a) (3) to consider an offer to purchase an agricultural land preservation easement, and to provide information on an offer presented at the October 23rd Closed session
- 2) Status Report on Pending Legal Issues

Motion #11: To adjourn regular session and move into a closed Executive Session to consider the acquisition of an agricultural land preservation easement, to report on vote for an FY 2007 Offer, and MALPF staff to give a status report on pending legal issues.

Motion:	Vera Mae Schultz	Second:	Robert Stahl
Status:	Approved		
Vote:	7 in favor		
	None opposed		

The regular session of the Board meeting was adjourned at approximately 11:45 am.

The regular session reconvened at 12:00 Noon to discuss the re-certification request from Frederick County.

V. INFORMATION AND DISCUSSION

C. Frederick County Re-Certification

Elizabeth Weaver, MALPF staff, presented the request and stated that the Frederick County has submitted an application for Certification of a local Agricultural Land Preservation Program and is requesting Foundation approval. Below are some highlights:

- More than 17,500 acres were preserved during the reporting period (2002-2007); the average per year acquisition of approximately 2,900 acres is less the 4,800 acres necessary for the county to reach its preservation goal of 100,000 acres by 2020.
- Aggressive preservation goal: 100,000 acres; additionally, the County has a goal of protecting a further 100,000 acres through the implementation of a planning framework that identifies and delineates growth limits to minimize the intrusion of development into surrounding agricultural land.
- Strong commitment to land preservation shown through protective zoning: Agricultural zoning averages out to approximately 1 unit per 20 acres.
- Strong county commitment to focusing growth in areas designated for growth: 80% of recent residential development occurred in areas designated for growth.
- 65% of the land mass is zoned agricultural.
- Highly successful IPA program.
- Strong financial commitment to agricultural land preservation through matching funds commitment augmented by general funds contribution.
- Strong County commitment to agriculture through active, successful economic development programs.
- Continual adaptation of existing programs to changing conditions, including a Critical Farms program and an IPA program.
- Despite unrelenting development pressure, preservation outpaces development by a ratio of 2.5:1.

Foundation staff has not identified any weaknesses that have not already been identified by

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the County staff. The concerns have been addressed and remedies have been proposed. The major concern is the County's ability to achieve its land preservation goal of 100,000 acres by 2020.

The County's aggressive preservation goals, positive ratio of preservation to conversion, highly successful local IPA program, strong economic development programs that support agriculture, strong financial commitment to agricultural land preservation, and protective zoning, together clearly indicate that the County places a strong emphasis on agriculture and agricultural land preservation.

The staff's review of Frederick County's re-certification request, addressing general operations of the program, qualifying expenditures and program development strategies was attached with the staff memo.

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

Tim Blaser, Program Administrator, and Dan Rosen, Maryland Department of Planning, were present at the meeting.

Mr. Rosen stated that the Maryland Department of Planning also recommended re-certification.

The County had preserved 15,000 acres in the last six years; 12,000 acres were preserved from the County's Installment programs. The County had spent \$27 million.

Mr. Rosen was concerned about the amount of land developed in Frederick County in the last sixteen years. The average county in the state has lost 11,500 acres to development, and Frederick County has 5000 acres more than that. Mr. Rosen was also concerned about the number of acres eaten up by residential units outside the Priority Funding Areas. The average lot in the agricultural zone was 7½ acres, and the average lot in the conservation zone was 11 acres.

Mr. Rosen handed out dot maps; the red dots indicate the residential parcels developed from 1990 to 2006, and the black dots indicate the residential parcels developed prior to 1998. From 1995 to 1997 there were 307 farm lots, and they consumed 11,250 acres (36.6 acres a piece). The system has been set up to make it easier for agricultural subdivision. People wanted to continue farming, but Mr. Rosen was concerned about the amount of agricultural subdivision.

Mr. Blaser stated that it is always a challenge to deal with the land-use regulations, especially in a county with lot of development pressure. The County agreed with the recommendations and is aware of the weaknesses identified, especially about farm lots. Mr. Blaser had proposed to the Land Preservation and the Recreation Plan that the County cuts down to one dwelling per tract as opposed to three. The proposal was rejected by the local agricultural board; the Board is very reluctant to put this kind of restrictions. Mr. Blaser did include his proposal in his report, and it was approved by the County Commissioners. Mr. Blaser hoped that there would be some action on the farm lots. The County Commissioners are very proactive and have approved the provisions to decrease the number of farm lots. It has to be followed through with a zoning action. It is a political process and is a hot issue in the County.

Mrs. Schultz stated that she was glad to note that the County is considering adopting a maximum percentage of fair market value to be paid for easement acquisition.

Mr. Blaser stated that the County had an application with an easement value at \$21,000 per acre. The applicant was asking \$30,000, and the property ranked first. She is getting

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approximately 95% of the fair market value. Mr. Blaser stated that he believed it is hard to preserve much land with those values.

Motion #12: To approve Frederick County Re-Certification.

Motion: Robert Stahl Second: Doug Wilson

Status: **Approved**

There being no further business, Mr. Colhoun asked for a motion for adjournment of the meeting.

Motion #13: To adjourn regular session.

Motion: Chris Wilson Second: Vera Mae Schultz

Status: **Approved**

The regular session of the Board meeting was adjourned at approximately 12:10 pm.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, Executive Director