

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
MINUTES  
January 22, 2008**

**TRUSTEES PRESENT:**

Daniel Colhoun, Chairman  
Vera Mae Schultz, Vice Chairman  
Martha A. Clark  
John W. Draper, Jr.,  
Howard S. Freedlander, representing Treasurer Nancy Kopp  
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:**

Robert F. Stahl, Jr.,  
Dr. James Pelura

**OTHERS PRESENT:**

Bill Amoss, Harford County, Program Administrator  
Dorothy Bosley, Landowner, Baltimore County  
Patricia & Gene Bosley, Landowners, Baltimore County  
Tammy Buckle, Caroline County, Program Administrator  
Diane Chasse, MALPF Administrator  
James Conrad, MALPF Executive Director  
Carol Council, MALPF Administrator  
Rama Dilip, MALPF Secretary  
Virginia DuPont Suarez, Landowner, Cecil County  
Jeff Everett, Carroll County, Preservation Specialist  
Nancy Forrester, Assistant Attorney General, Department of General Services  
Billy Gorski, Anne Arundel County, Ag. Planner  
Buddy Hance, Deputy Secretary, Maryland Department of Agriculture  
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator  
Amanda Maresh Kleback, Landowner, Harford County  
Brian Kleback, Landowner, Harford County  
Wally Lippincott, Baltimore County, Program Administrator  
Brenda Maresh, Landowner, Harford County  
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture  
Barbara Polito, Anne Arundel County, Program Administrator  
Caroline Prickett, Landowner, Cecil County  
Daniel Rosen, Planner, Maryland Department of Planning  
Charles Rice, Charles County, Program Administrator  
Ned Sayre, Harford County, Program Assistant  
Eric Shertz, Cecil County, Program Administrator  
Martin Sokolich, Talbot County, Program Administrator  
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist  
Donna Sasscer, St. Mary's County, Agricultural Specialist  
Gloria Smith, Wicomico, Program Administrator

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



**MALPF Board Meeting Minutes (01-22-08): Page 3**

The same is happening in the current year. While the appropriation is for \$69 M, the State will not attain the level of money they are estimating as transfer taxes. So next year when the Foundation does the FY 2010 budget, there will be a similar reduction for pay back.

Once the budget passes, the Foundation would make easement offers for about \$35 M assuming that the Foundation gets full compliment dollars from the local governments. At the local level, depending on what is happening in the General Assembly, they may not get this much State grant money or State aided education. The counties will have to bear the expenses and the various discretionary places they may approach to offer money to a program like MALPF would not be available. Keeping this factor in mind, an amount of \$14 M might be an overstatement.

Mr. Doug Wilson remarked that while we can see \$45.705 M on the chart, if the Federal money of \$10M is taken out, the amount is \$35.705 and if half the local government is taken out, the funds available will be in the high \$20 M. It is a lot of money compared to what the Foundation had five years ago but it is still way off from what the offer values were in the last easement cycle. The Governor did not do anything to the allocation of State transfer tax; he has followed the prevailing formula of the law and has not diverted any dollars to the general funds. The dollars are down because of the anticipated revenues this year and the "pay back".

Howard Freedlander, representing Treasurer Nancy Kopp, suggested Mr. Doug Wilson is prepared for some questions that might arise concerning how MALPF feels about DNR's new target acquisition plan. DNR's target acquisition plan is still not implemented but is getting a lot of attention and questions in the Board of Public Works. There are questions as to whether it can be applied to MALPF purchases.

Mr. Doug Wilson stated that MALPF is sensitive to the methodology that is being advanced at DNR. The statute states the MALPF program will split its money with the counties by the General Assembly's direction and change the process to rank the properties as the counties rank them under their formulas. This is the difference between the MALPF program and the DNR program. In theory the MALPF program does not control what the counties submit to them; it is just the opposite.

Tammy Buckle, Program Administrator, Caroline County, wanted to know if the analysts suspect that the funding for FY 2008 might affect the FY 2008 applicants.

Mr. Doug Wilson stated that FY 2008 appropriation is just under \$70 M. This amount has federal money of \$2 M. The remaining funds are agricultural transfer tax and the State transfer tax. The agricultural transfer taxes are clearly down; it is less than \$2 M as on December 31, 2007. Assuming this is repeated, the funds available will be \$2 M or \$2½ agricultural transfer taxes and not \$5 M or \$6 M as budgeted. Clearly \$50 M is available and there is still a lot of money for the current applicants in the pipeline.

Mr. Conrad commented that efforts have been made to make the Farm and Ranchland Preservation Program (FRPP) a grant program; much more than what it has become. Approximately \$95 - \$97 M is available and waiting to be finally committed. The issues are (1) funding commitment and (2) the possibility of having a workable program. Mr. Conrad stated that he believed that the current Request for Proposal (RFP) for federal funds unfortunately got assigned to the same people who got grants last year. This means while there are some Maryland recipients, primarily land trusts, MALPF is not eligible to get the FY 2008 money. MALPF did not apply last year as it could not have a workable program. The money is going to be given only to FY 2007 recipients. If MALPF is able to have a workable program it can apply and reasonably expect it to work. There is no new funding this year as they were late in finalizing the Farm Bill. Funding this year is not possible unless FRPP changes the law to allow the people who got grants before FY 2007 to qualify.

Buddy Hance, Deputy Secretary, Maryland Department of Agriculture, addressed the MALPF Board. Mr. Hance stated that as Secretary Richardson and he are getting ready for the Legislature and the various committees, they are questioned about the way the agency operates in regard to the Nutrient Management Cross Compliance. They looked at the programs run by the agency in this regard where there is a need for cross compliance and an issue had come to their attention. During the easement process, MALPF does not request any certification that the property is operated under a Nutrient Management Plan. This is required under the law. Mr. Hance requested the MALPF Board to consider this requirement. The agency would set up a process whereby the landowner would have to supply the name of the operator if he was not the operator so that the agency could approach the operator and verify the Nutrient Management Plan on the property.

Mr. Conrad commented that the Foundation is in the process of settling FY 2007 easement applications and the FY 2008 applications were due on July 1, 2007. The new requirement would not apply to the FY 2008 applications. Mr. Conrad wanted to know if the new requirement would apply with the start of the FY 2009 applicants

Mr. Hance agreed and stated that he does not expect the requirement to be effective retroactively.

Mr. Doug Wilson stated that the issue is already a statutory issue. If your farm is eligible you need to have a Nutrient Management Plan. The issue is, if the landowners are not in compliance with the State's legal requirements, the State should not be giving them easement money. We have to check to find a methodology; such as, when is the right time to ask the question. Asking this question on July 1 may not work with the time frame of people handling the Nutrient Management Plan. The operator may become out of compliance by the time the easement is ready to settle. The process needs to be looked at.

Mr. Colhoun wanted to know if Mr. Hance wants the MALPF staff to put together a plan for his review.

Mr. Hance stated that he still has to talk with Mr. Conrad about the procedure. Mr. Hance stated that he believed that the MALPF Board would have to adopt a policy whereby complying with a Nutrient Management Plan would be a requirement. The Maryland Department of Agriculture, as an agency, will work through the process. It is not the intention to disturb the people who are already in the process.

Wally Lippincott, Program Administrator, Baltimore County, wanted to know the percentage of farms in the State that are in compliance with the Nutrient Management Plan. Mr. Hance stated that he believed it to be 96%.

Mr. Hance stated that it is not his intention to put the burden on the program administrators. The agency would be working out a process. The agency is aware that sometimes the owner is not the same as the operator. As long as the agency knows who the operator is, it can check on compliance.

Mr. Colhoun informed Mr. Hance that the MALPF Board would respond very quickly.

## **II. DISTRICT /EASEMENT AMENDMENTS**

### **A. HARFORD COUNTY**

1. 12-85-096B Maresh, Tim and Brenda 76.38 acres  
Request for a second relocation of a pre-existing dwelling and relocation of an approved tenant house on easement property.

**MALPF Board Meeting Minutes (01-22-08): Page 5**

Mr. and Mrs. Maresh are subsequent owners of the easement property. During the December, 2007 meeting, the Board approved two requests for the property: 1) relocation of an existing dwelling and 2) relocation of an approved tenant house on easement property. (Copy of draft minutes attached with staff memo.)

The tenant dwelling is to be occupied by Amanda Maresh Kleback, daughter of Mr. and Mrs. Maresh. Ms. Kleback and her husband will be fully engaged in the operation of the farm. During the Board's discussion, Ned Sayre, Harford County Program Administrator Assistant, stated that Mr. and Mrs. Maresh wanted to know if there were restrictions on the size of the tenant house. Following discussion, the Board directed the staff to review the deed of easement and other documentation to determine if there are limitations on the size of the tenant house.

According to Brenda Maresh, the proposed tenant house will be approximately 3,200 sq. feet. Mr. and Mrs. Maresh's house (the replacement for the pre-existing dwelling) will be approximately 2,200 sq. feet.

The staff has reviewed the deed of easement (copy of relevant portion attached with staff memo) and the regulations governing tenant houses (copy attached with staff memo).

The deed of easement does not address the issue of size of the tenant house. The Foundation's regulations addresses size of tenant houses as follows: "A tenant house shall be of appropriate **size** and located on a farm consistent with this chapter and its purpose as housing for a tenant fully engaged in the operation of the farm....The Foundation shall approve the location and **size** of a tenant house as an accessory structure....A tenant house, including its **size** and location, may not be approved by the Foundation unless it conforms with local planning and zoning regulations" (COMAR 15.15.03.03). According to Mr. Sayre, Harford County does not regulate tenant house sizes, nor does it address the issue of appropriateness of size for a tenant house. The regulations seem to indicate that the Foundation cannot limit the size of a tenant house if the local zoning regulations do not limit it. However, Craig Nielsen, Assistant Attorney General, indicated that he believed that, because it is considered an accessory structure, a tenant house should not be larger than the main dwelling on a farm. Mr. Conrad stated that this has become relevant because the Mareshs wish a smaller house than what the tenant house is going to be. The Mareshs daughter and her family are going to occupy the tenant house. The relative size of the houses is such that the larger house is going to be occupied by the tenant and the smaller house will belong to the owners.

In consultation with Mr. Nielsen, staff determined that the Board should re-review the request and make a determination about the appropriateness of the size of the tenant house.

Brenda Maresh, Amanda Maresh Kleback, and Ned Sayre, Program Assistant, were present at the meeting.

Mr. Doug Wilson asked if the proposed tenant house of approximately 3,200 sq. feet includes a basement. Ms. Kleback stated that the 3,200 sq. feet does not include a basement.

Mr. Doug Wilson wondered why the staff report mentioned that the Foundation does not have the ability to regulate the size. Mr. Conrad stated that there is nothing in the easement regulating the ability. Mr. Doug Wilson wondered if there is anything mentioned in the regulations.

Mr. Nielsen stated that the issue did come up when the Foundation discussed the regulations in 2003. The Foundation did not want to address the size in terms of the square footage. However, we can infer from the regulations that because the tenant house is an accessory structure, it should not be larger than the main house on the property. It has to be appropriate

in size for the needs of the tenant. The Foundation's current policy is reflected in the deed of easement, as quoted below:

*A tenant house shall be an accessory structure consisting of no more than 2000 square feet, calculated by first multiplying the exterior footprint of the portions of the structure with multiple stories by the number of stories with windows and then adding the exterior footprint of any portions of the structure with one story, but excluding basements, attics, porches not used as a living space, garages, and unenclosed decks, in which the tenant resides.*

However, because this is an older easement, this statement is not included in the Mareshs' deed of easement.

Mr. Nielsen continued that the size issue is based on two things: (1) it has to be a structure that is not the main house on the property; and (2) it has to be appropriate for the needs of the tenant.

Mr. Colhoun asked the Mareshs to explain why they need a larger tenant house.

Brenda Maresh commented that she and her husband are getting ready to retire. Her daughter, Amanda, and her husband, are beginning their family. They desire to have at least three children and will need a bigger dwelling. Amanda and Brian Kleback will inherit the farm. In the long run it would become a primary dwelling when the Mareshs pass away.

Mr. Nielsen stated that the MALPF program covers more than 2,000 easements in the State and the Foundation has to treat everyone equally. One of the regulations is that an owner and a tenant cannot be the same person. The idea is to have a modest, plain structure as a tenant house and not to have a monster house. It is meant for tenants fully engaged in the operation of the farm. Once they become owners, they cannot live in the tenant house. The law has designated that the dwellings can only be occupied by certain types of people and the owners are not legally eligible to live in a tenant house.

Mr. Conrad pointed out the size limitation which is relative. Under certain circumstances a house of 3,200 sq. feet would have been a very appropriate tenant house. In other cases, where a landowner does not need a large structure, a relative situation is such that the tenant cannot build this size house because the parents no longer have children living at home.

Mr. Nielsen commented that the deed of easement allows the Foundation to approve the size and the size is relative to what is appropriate to the needs of the farm (if not to the needs of the tenant), but in terms of an accessory structure, it cannot be the larger house on the property.

Mr. Sayre commented that the purpose of the agricultural preservation program is to preserve farms. Now, if the property is sold, the Foundation has effectively eliminated any possibility of multiple family members operating a farm. If they are partners in the farm they cannot live there. You have lost an opportunity for a child or family lot.

Chris Wilson, Board member, asked if Brenda and Tim Maresh are still involved in the operation of the farm. Brenda Maresh confirmed this.

Ms. Maresh stated that their farm already has been in the easement program. When their daughter was home she was active on the farm. The Mareshs have been a farm family and the children have grown up in 4-H. Their daughter, Brenda, wanted to continue to be actively involved in the farm.

Mr. Sayre added that when they split the property between Pennsylvania and Maryland all the residences were on the Pennsylvania side of the property. There were no physical residences

on the Maryland side of the property.

Mr. Doug Wilson stated that the issue is precedent setting. The State has more than 2,000 easements statewide. The MALPF Board has to recognize that eventually everybody in the MALPF program would be a subsequent owner of the easement. For the current request there would not have been an issue if the Mareshs were the original owners because then they would have been eligible for child's lots.

Mr. Colhoun stated that he believed a child's lot had already been extracted. Ms. Maresh agreed and stated that she believed it was not one child's lot but two or three children's lots.

Mr. Doug Wilson stated that even if the original owner had not done so, the Mareshs being subsequent owners of the farm, are not entitled to an owner's lot or a child's lot. So if there are no residences that the Mareshs can procure, they can't live on their property anywhere.

Mr. Doug Wilson continued that as people's life expectancy has increased and as the landowners want their children to be participants in the farm, the Foundation is going to face many similar challenges. The subsequent owners themselves may have no ability to live on the property and so is the case with their offspring. In theory, if the Foundation continues to allow more of these, eventually, the entire property will be a bunch of residences. Illustrating an example, Mr. Doug Wilson stated that a landowner subdivides a farm and the new subsequent owner wants to buy another 50 acres. They approach the Foundation to buy a house or hire a tenant to run their farm and it snowballs.

Mr. Sayre commented that the Maresh property is not being subdivided.

Mr. Doug Wilson was concerned that it may be subdivided in the future. All the regulations of the MALPF program are designed to keep the farm preserved.

Joe Tassone, representing Secretary Richard E. Hall, Department of Planning, stated that he remembered when the tenant house regulations were deliberated there were concerns about the size of the tenant house getting out of hand and that is the reason the explicit provisions were made. However, he did not remember whether the regulations mentioned anything about a size that was sufficient for the needs of a tenant.

Mr. Nielsen quoted from the COMAR 15.15.03, "a tenant house shall be of appropriate size and located on the farm consistent with this chapter." Mr. Nielsen stated that the idea is the tenant house is supposed to be of sufficient size certainly to meet the needs of the farm. The purpose is housing for a tenant fully engaged in the operation of the farm.

Mr. Tassone stated that when the regulations were changed, the Foundation was clearly thinking that the size of the tenant house should be appropriate for the use of a tenant. But in the current request the situation is such that the flexibility in the program's regulatory structure might not be adequate to support the family farm purpose. The Mareshs can build a tenant house to be as small as or smaller than the main house.

Ms. Maresh stated that their plan is to have a main house of 2,200 sq. ft.

Mr. Tassone stated that this meant the tenant house can be 2,200 sq. ft. or less. It is clearly a farm family. Amanda and her family plan to live on the farm and work on the farm. They have the intention of inheriting the farm. It is not an ambiguous situation. When the Mareshs no longer own the farm it becomes the farm of Amanda and her husband. At that time Amanda and her husband are no longer the tenants and can move into the main house or inform the Foundation of their intentions. There is a concern about setting a precedent by approving a tenant house without a size restriction.

Mr. Nielsen stated that it is clearly stated that an accessory house cannot be the larger house

on the farm.

Mr. Colhoun commented that the MALPF Board could automatically approve a tenant house of 2,000 sq. ft. It does not include the basement, does not include an attic area and does not include outside living space, decks etc. The 2,000 sq. ft. area is the interior enclosed area. Mr. Colhoun stated that he believed 2,000 sq. ft. would be sufficient.

Ms. Kleback stated that it is not enough space for them. She stated that they currently live in a townhouse which she hates because it is not enough for her family.

Mr. Tassone stated the present situation is that Amanda and her husband are the tenants and will remain so until they become owners. Mr. Tassone wondered if the MALPF Board can approve the request with the recognition of this reality. Mr. Doug Wilson stated that the parents still farm and they may sell the farm.

Mr. Colhoun reminded the landowners that once the tenants become the owners they can no longer use the house as a tenant house. Ms. Kleback stated that initially they did not realize this and that is why they went ahead and paid for the house plan. When her parents inherited the farm they had the intention of staying on the Pennsylvania side of the farm. Ms. Kleback and her husband started the process of what they wanted to do. The Klebacks went ahead and got the building permit. They wanted to preserve the Maryland side and in this process the Mareshs lost their house on the Pennsylvania side. The Mareshs have no place to live unless they build a house on the Maryland side. Ms. Kleback stated that because of this they had to make rearrangements and they have been involved in this process for more than a year.

Ms. Kleback stated that one of the guidelines is that the Mareshs can put equipment and have a storage area in their house. As per the guidelines, the Mareshs' house has to be bigger than the Klebacks' house. She wanted to know if they can have the same amount of bathrooms and bedrooms or if there is a limitation.

Mr. Colhoun stated that the Mareshs' house is under a different regulation than the Klebacks' house.

Mr. Sayre asked if the owner of the easement property wishes to make a renovation or an addition to a tenant house, does he need MALPF Board approval.

Mr. Conrad stated that it is not possible to answer such a question as the Foundation till now had not received such a request.

Mr. Nielsen stated that every deed of easement has a form that states that if there is a violation of the easement, technically, the Foundation can take a legal action and can ask that the land be restored to its former use at the expense of the landowner. So if a landowner is approved for a tenant house, they don't have to immediately come back for a renovation, but if the Foundation learned that someone built a trophy house, which happened recently, the Foundation could go to court and request the court to consider tearing down the part of the structure that exceeded the original approval. Such situations have occurred, not in Maryland, but in other jurisdictions.

Mr. Conrad stated that in recent easements, size restrictions have been very explicitly expressed. It is more ambiguous in the older easements where the size restrictions do not exist or are applied only indirectly through the regulations. Mr. Conrad stated that it's not clear in certain situations how to determine an appropriate size. If, for example, a bachelor lived on a farm and he had a child out of wedlock and he lived in a 1,600 sq. ft. house. In this situation, if his tenant wants a tenant house of 2,000 sq. ft. as is currently allowed under the easement, what happens at that point? It is larger than the main house on the property, but it is the size allowed under the terms of the easement. So which prevails? The size allowed

under the easement or the idea that it has to be an accessory structure?

Martha Clark, Board member, commented that you are not going to make a tenant house smaller that already exists. She asked if there were any regulations on those tenant houses that already exist on properties when they come into the program.

Mr. Conrad commented that Baltimore County has pre-existing tenant houses under the County's regulations. The Foundation treats them as pre-existing dwellings.

Wally Lippincott, Program Administrator, Baltimore County, stated that he keeps hearing from the attorneys about the issue of forcing newer standards on the older easements. We are getting better standards and better protected. The current standards are not in the contracts that were signed by the people who signed the contracts initially. Even though they are better, it is not correct to apply them to the people who had signed the contracts under different sets of circumstances.

Tammy Buckle, Program Administrator, Caroline County, asked Mr. Nielsen which takes precedence, the deed of easement as recorded in the land records or the new regulations and law developed recently.

Mr. Nielsen stated that he believes the deed of easement document is the prevailing document. Regulations can be interpreted and, legally, in some cases the regulations apply retroactively. In this case the easements say that the tenant houses will be approved by the Foundation. There is no right to build a tenant house except if it is approved by the Foundation. It gives the Foundation absolute discretion on what it approves.

Mr. Sayre stated that there are many specific locations in Harford County where there are equine facilities where they build apartments as part of indoor riding arenas. Mr. Nielsen stated that there might be examples that may be considered violations.

Mr. Conrad commented that a barn is an accessory structure which is necessarily larger than the houses. Here a tenant house is considered a farm structure but is not a farm structure. Mr. Conrad stated that he was not sure whether it is the use or the size that makes it an accessory. Legally it is the "size" or alternatively it might be the "use". In the case of barns vs. house it is not the size; it is the use. In the case of a tenant house vs. an owner's house, it becomes the size.

Mr. Nielsen stated that the MALPF program was established to do away with residential and commercial subdivision, and to preserve farmland in perpetuity. But the legislature recognized the needs of landowners and so the size of the tenant house should relate to the needs of the tenant involved in the farm operations. Also the legislature recognized that the tenant house cannot be subdivided and has to be for a tenant fully engaged in the operation of the farm. The legislature did not specify the size and that has been delegated to the Foundation. In the current case only the landowner who sold the easement, Mr. Harrison, was entitled to request a child's lot. The current landowners, Mr. and Mrs. Maresh, want their child to live in the tenant house. They are trying to marry the two concepts, the child's lot with the tenant house.

Mr. Sayre stated that the landowners are fully aware that it will never be an independent subdividable lot.

Mr. Colhoun commented it would be ideal for the landowners to request a child's lot but in this case the landowners are subsequent owners and hence are not eligible for a child's lot. The only other avenue is to request a tenant house. But in the process they have to abide by the rules governing tenant houses.

Mr. Tassone wondered if the Mareshs were to build a 3,500 sq. ft. house, how it will affect the



the easement pre-dates the regulations.

Mr. Tassone stated that in this specific case the landowner is a subsequent owner and has no children's lot rights. The landowner's child has the intention to be the legitimate tenant and subsequently inherit the ownership of the farm. Mr. Tassone stated that he believed the approval is based on this rationale.

Mr. Nielsen stated that it might also be approved based on the fact that once the tenant inherits the farm they should move from the tenant house and it should be occupied only by the tenants fully engaged in the operation of the farm. Once they become owners they cannot occupy the tenant house.

Mr. Tassone stated Mr. Nielsen's suggestion would be a gesture that would ensure the intention that this would be a tenant structure to be maintained through generations.

Mr. Doug Wilson stated that he would probably resist that recommendation. He understands Mr. Nielsen's view, but he believes the Foundation has the ability to correct it. While the Foundation currently does not allow re-designation, it would be a case in point to let them stay in the house with their children and have a smaller structure designated as a tenant house and get back into more rigid compliance.

Mr. Colhoun stated he believed Mr. Doug Wilson is trying to handle the specific situation and not set a precedent for the future. Mr. Colhoun added that the motion is made keeping in mind the family's specific situation.

Mr. Doug Wilson agreed that this was his intention behind his motion. Mr. Chris Wilson added that the motion is in order to facilitate the continuity of the agricultural operation and succession of this specific farm.

**B. CECIL COUNTY**

1. 07-87-11 Bohemia Stables 230.11 acres  
Request for two 50.0081 acre agricultural subdivisions of easement property

Mrs. Allaire duPont was the original owner of the easement property. There are two pre-existing dwellings on the property. In addition, Mrs. duPont owned four other easements, totaling over 928 acres. For all five of the easements, she had recorded (September 14, 2004) an Amended Deed of Easement which extinguished all owner's and children's lot rights on the properties and made the easements perpetual.

Upon her death in January, 2006, Mrs. duPont bequeathed 91 acres of the 230 acre Bohemia Stables easement property to her granddaughters, Virginia Hemingway duPont Suarez and Allaire duPont Hummel. On March 13, 2007 the 91 acre parcel was conveyed to Ms. Suarez and Ms. Hummel without the Foundation's knowledge or approval. Subsequently, Eric Shertz, County Program Administrator, was notified that Ms. Suarez and Ms. Hummel wished to divide the 91 acre parcel into two 45 acre parcels. Mr. Shertz notified the Foundation and the landowner, Ms. Helena duPont Wright, Administrator of Ms. duPont's estate, that the conveyance was a violation of the Deed of Easement.

The current request is for two 50.0081 acre agricultural subdivisions of the easement property in order to correct the violation and to equitably divide the property as per Ms. duPont's wishes.

According to Ms. Wright, Ms. Suarez and Ms. Hummel intend to individually grow horse-quality hay and use the property for the pasture of horses and cattle. The entire parcel will continue to be used as one large horse and cattle operation. The parcels will have direct

access onto Mitton Road. Two of the boundaries for the agricultural subdivisions are the County Road and (to the extent possible) a stream that meanders through woods that dissect the potential agricultural subdivisions from the 54.427 acre remainder of the parcel. An arbitrary line was drawn by the surveyor to create the two 50.0081 acre parcels.

This easement was approved and purchased (May 22, 1996) on three non-contiguous tracts of land located in an area of over 5,000 contiguous preserved acres. The subject tract (1) contained a total of 154.4432 acres. According to the County, the portion of tract 1 to be conveyed to Ms. Suarez (A) contains 41.6 acres (83%) qualifying soils and the pre-existing dwellings; the portion to be conveyed to Ms. Hummel (B) contains 32.8 acres (66%) qualifying soils. The remainder of the tract (C) is 54.427 acres that are mostly pasture/cropland and, along with tracts 2 and 3, totals 130 acres with 66% qualifying soils.

Foundation staff points out that although the easement is fragmented, the request meets minimum size and soils criteria. If the request is approved, both resulting parcels as well as the remaining parcels will have the ability to support viable agricultural operations.

Virginia duPont Suarez, Caroline Prickett, and Eric Shertz, County Program Administrator, were present at the meeting to answer questions from the Board.

Mr. Shertz clarified that at the time of the initial transfer of 91 acres to Mrs. duPont's granddaughters the legal counsel took into consideration the provision in the Cecil County Subdivision Ordinance. The provision states that any transfer of land, by a will, need not be platted and recorded. The land can be transferred by a deed only. The legal counsel also did not take into consideration that the land was under an easement and the State had some interest in the property.

Mr. Conrad noticed two distinct dwellings on the northern subdivision part of the parcel. Mr. Conrad wanted to know if the two daughters inheriting the property live in those dwellings. Ms. Prickett stated that those are occupied by the tenants. Mr. Conrad wanted to know about the ownership of the parcels between the three parcels that constitute Bohemia Stables. Mr. Shertz stated that they also are owned by Bohemia Stables. There are 16 pages of surveys that help in understanding the transfers of lands. The entire area is owned by Bohemia Stables.

Mr. Conrad wanted to know if there is a reason that the ownership has been chosen for the two parcels to be a single ownership rather than a partnership.

Ms. Prickett stated that at her death, her daughter Allaire duPont, will inherit the part of her land that is next to the barns. Her land is also under easement and is contiguous to Bohemia Stables. The other daughter Virginia Hemingway duPont wanted her parcel on the other side.

Mr. Conrad wanted to know if the intention is to keep the properties of Bohemia Stables together or if they have some other long term plan.

Ms. Prickett stated that her sister-in-law could not attend the meeting as she was sick. Ms. Prickett stated that she believed they may plan to construct houses in the future but it would not be anywhere near this. One cannot subdivide because there is no access and one has to come through the main gate.

Ms. Council stated that as per the Foundation's definition, they have pre-existing dwellings on the easement. Under those provisions the duPonts could request a re-location. They could live in the pre-existing dwellings, cut them off or sell them. Mrs. duPont's amendment to the deeds of easement did not include pre-existing dwellings. She included only owners' and children's lots.



D. CARROLL COUNTY

1. 06-81-02 Warner, Audrey, J. 208.7553 acres  
Request for acknowledgement of an existing right-of-way access for an adjoining property

Mrs. Warner is the original owner of the easement property. There is one pre-existing dwelling. A second pre-existing dwelling has been excluded from the easement. There have been no requests for owner's or children's lots on the property. The current request is for acknowledgment of an existing right-of-way access for an adjoining property.

Mr. Daniel Baugher, owner of the adjoining farm (not under easement), is in the process of subdividing a 1.0 acre lot for his daughter's use (the last lot that can be subdivided from the property). Carroll County requires a 30-foot road dedication before the subdivision can occur. A 0.019 acre parcel that, according to Mrs. Warner, has been used for right-of-way access for many years is the only access to Mr. Baugher's farm. When Mrs. Warner and her husband (now deceased) sold their easement to the Foundation in 1983, a survey was not required and they were not aware of creating the access issue for their neighbors. Mrs. Warner is working with Mr. Baugher to correct the issue and Carroll County states that had they been aware of the problem prior to settling the easement, the area would have been withheld from the program.

Mr. Baugher owns two MALPF easements totaling over 160 acres as well as several Carroll County easement properties. He has not requested any owner's or children's lots on the MALPF properties.

According to Carroll County, The Department of Planning requires fee ownership of the 30 foot road dedication. However, they are willing to waive their requirement and allow right-of-way access for the lot if MALPF also agrees. If this right-of-way is approved, no disturbance of the 0.019 acre parcel is anticipated. The local Department of Planning (letter attached with agenda memo) and advisory board have approved this request.

MALPF staffs, Carol Council, and Dan Colhoun, Chairman of the MALPF Board of Trustees, have visited the property and find that approval of this request will not adversely affect Mrs. Warner's easement property.

COMAR 15.15.01.17F states the Foundation may not grant right-of-way access on easement property unless it is to 1) service a lot released from the easement, or 2) service a neighboring farm for the movement of farm equipment. However, this right-of-way access pre-existed the easement.

Foundation staff recommends approval of the request as the right-of-way existed prior to establishment of the District and settlement of the easement.

Jeff Everett, Agricultural preservation Specialist, was present at the meeting. Mr. Everett stated that it is a remainder parcel and does not facilitate any development. As per the Carroll County Zoning regulations, the density in Carroll County is 1:20. Several of the Baugher properties are already under easement. If the MALPF Board approves the request, the County will write the right-of-way agreement between the Warners and the Baughers. The 0.019 acre is required because of the site distance and for safety reason. It is a very sharp turn.

Motion #5: To approve the request of Audrey J. Warner for acknowledgement of an existing right-of-way access for an adjoining property subject to recognizing an existing right-of-way.

Motion: Doug Wilson Second: Joe Tassone





agency, as it has an independent Board of Trustees. MET's mission does not include the protection of agricultural land or the economic viability of the farm. MET has decided that it will not allow forest mitigation easement overlays as it does not wish to facilitate development. MET has language in its easements that states, "Grantor further agrees that the Property shall not be used to provide required open space for the development or subdivision of another property, nor shall it be used in determining any other permissible residential, commercial or agricultural uses of another property." MET is currently talking to a landowner in Frederick County who is setting up a mitigation bank prior to placing an MET easement on the property. MET is trying to determine at what point the mitigation bank is considered complete (after it is certified or after the credits are sold) so that the MET easement may be the overlay.

Rural Legacy's mission is to protect areas vulnerable to sprawl development that can weaken an area's natural resources, thereby jeopardizing the economic value of farming, forestry, recreation and tourism. The emphasis of the program is on the natural resource values of the property. Rural Legacy is still considering the issue. They are open to it as they see it as a way to improve stream buffers. However, they are concerned that overlay easements would result in less overall forest conservation because already protected properties would be used for mitigation, as opposed to land that is unencumbered and still developable. As a result of the meeting, DNR now is investigating the legality of forest mitigation on Rural Legacy and Program Open Space easements.

Mrs. Schultz noted that the policy has been revised to include the persons responsible for each part of the forest mitigation application and the order in which the requirements should be met. The proposed forest mitigation application form was attached with the agenda memo.

Mr. Colhoun complimented Mrs. Schultz and the Committee for its input and the creation of the application.

Motion #9: To approve the Forest Mitigation Committee's policy.

Motion: Howard Freedlander                      Second: John Draper  
Status: **Approved**

Mr. Conrad asked if, during the discussions, there were any suggestions from DNR that they are considering revising or changing the Forest Conservation Act to make people look on properties other than already preserved properties through mitigation.

Mrs. Schultz stated that the DNR was considering making it mandatory that the land other than eased land be considered for mitigation but it did not come up during the discussions.

Mr. Doug Wilson commented that clearly DNR has a different approach. The MALPF Board is approving the policy in a very restrictive form; (1) when it is a best agricultural practice (2) good for topography (3) limited in size and (4) the farmer can make a few extra dollars. It is interesting that earlier MET had strictly said 'No' but is now re-visiting the issue.

Mr. Colhoun noted that the Equine Committee will be presenting its findings in the next Board meeting. Mr. Doug Wilson and Mr. Jerry Klasmeier are also working on two separate committees and the Committees will come to the MALPF Board for further discussions. Mr. Conrad is working on the Winery and Vineyard Committee.

**V. INFORMATION AND DISCUSSION**

A. Smart Growth Discussion/Presentation – Elizabeth Weaver, MALPF Staff

Mr. Conrad informed the Board that Elizabeth Weaver is the MDA representative to the Inter Agency Coordinating Committee for Smart Growth.

Ms. Weaver thanked the MALPF Board for the opportunity to make a presentation on achieving smarter, more sustainable growth in Maryland, a priority of the current Governor's administration.

Ms. Weaver noted that the presentation would cover growth and development in Maryland, the history of Smart Growth, the trends of growth in Maryland, an outline of the administration's strategy, and finally, she will solicit feedback from the MALPF Board and others at the meeting.

Ms. Weaver stated that during the rapid development of highways and suburban communities during the 50's, 60's and 70's, Maryland, like much of the nation treated its natural resources as if they were unlimited and treated older established communities as if they were expendable. Suburban sprawl consumed much valuable open space, devoured massive amounts of public funds for new infrastructure, and caused unrelenting traffic congestion, which contributed to poor air and water quality and destroyed a sense of community in many areas of the State. The steady move of population and later businesses away from downtowns led to chronic disinvestment of infrastructure, housing stock, public schools and so on. Increased impervious surfaces related to sprawl led to increased runoff of sediment and pollutants into streams and eventually into the Chesapeake Bay. Sprawl development has led to the degradation of our quality of life and the environment.

Ten years ago, in response to the negative impact of sprawl, the State sought to examine its growth management policies and practices. The State passed a number of laws which aimed to curtail sprawl development by investing in existing communities, protecting agriculture and other natural resources and making more efficient use of limited state funds for highways, sewer system and growth related needs.

Entitled 'Smart Growth,' these laws sought to balance economic growth and development with environmental protection by using the State budget to encourage local governments and developers to build in a more sustainable, quality of life enhancing manner. The State tried to curb sprawl, preserve valuable open space and revitalize its older communities by emphasizing incentives over regulations.

The Priority Funding Areas were the cornerstones of Maryland's Smart Growth efforts. These are areas in existing communities where the local governments want new growth to occur. The State laws require that the State's growth-related spending be directed towards these areas.

Ms. Weaver continued that Maryland's growth patterns are not sustainable. The State must develop new strategies to grow in a healthier, more cost effective, sustainable manner.

Maryland is currently the fifth most densely populated state in the nation. According to the U.S. Census Bureau, the population of Maryland will grow from 5.6 million to nearly 7 million by 2030, representing approximately a 25% increase in population.

Ms. Weaver presented a graph representing the population growth and land use during the time period of 1973-2002. In that time period, Maryland's population grew by 35%, but

the amount of land used to support that population has increased by 98%. During that time period, Maryland lost 25% of its farms and forest land.

The next graph indicated the relationship between the effect of the Smart Growth laws and their impact. The intent of the laws was to encourage population to grow in the PFAs, areas designated for growth. The Smart Growth laws were passed in 1997. At that time, 76.5% of the population lived inside the Priority Funding Areas. It was anticipated that the Smart Growth laws would encourage more people to live inside the Priority Funding Areas; however, as indicated by the graph, this is not what happened. Between 1997 and 2003 the number of people living inside the Priority Funding Areas dropped to 71.6% and in 2004 it further dropped to 68.4%.

The next graph shows the relationship between the number of parcels and the amount of land used to support those parcels. 74% of the parcels that were developed since 1990 are located inside the Priority Funding Area. Those parcels used 25% of the land developed. Only 26% of the parcels are located outside the Priority Funding Areas, yet those parcels used 75% of the land for development. Ms. Weaver stated that looking at the graph, it can be concluded that a huge disparity exists between the amounts of land used for parcels developed inside the priority funding areas vs. those outside the priority funding areas. Approximately eight to nine times as much land is being used when construction occurs outside the Priority Funding Areas. The current administration is concerned that if we continue this trend, much more farm and forested land will be lost.

The vehicle miles traveled per citizen in Maryland is very high compared with the rest of the nation. Currently, the average citizen travels 10,170 miles per year. This is a quality of life indicator that companies look at when they chose locations for their businesses. If the vehicular miles traveled are high, this has a negative impact on how the State is perceived, because it affects quality of life and productivity. The Governor is concerned about this because it could deter the attraction of the State for bio-tech companies and similar companies that the State wants to attract.

New development and increased impervious surface cover associated with sprawl development increase sediments and nutrient loading from storm and water run-off that ends up in streams and eventually in the Chesapeake Bay contributing to the deterioration of the Bay. New development is increasing nutrient and sediment loads at rates faster than restoration efforts are reducing them, according to a recent US EPA report.

The presentation included maps showing land use indicating development from 1973 to 2002. The presentation also included how the State would look in 2030 assuming the current land use trends continue. The maps indicates dramatic sprawl spreading out from the metropolitan areas to cover a large area of the State. This map assumes current zoning, current water and sewer plans remaining the same.

The next graph on the presentation depicted the land use with a Smart Growth scenario, which assumes that 80% of new growth would occur inside PFAs. The density inside Priority Funding Areas would be 4:1, while zoning outside PFAs is 1:20. Ms. Weaver noted that obviously the best outcome for protecting our farmland and forest is to grow using the Smart Growth scenario.

Ms. Weaver added that the State has the authority and the expertise needed to take action to address issues of climate change, protecting the Bay, community disinvestment, traffic congestion, rising energy costs, and the State's budget deficit. Smart Growth is necessary, acceptable and attainable.

In the summer of 2007, the Governor directed the Smart Growth Sub-Cabinet to review the State's existing Smart Growth programs and policies, and to develop a more comprehensive and effective strategy for achieving smarter, more sustainable growth in

Maryland. Secretary Richardson is on the Smart Growth Sub Cabinet.

Ms. Weaver shared the draft mission statement of the Smart Growth Sub-Cabinet: "Work with local governments and community partners to foster economic prosperity and the development of more livable and sustainable communities in Maryland - while preserving and enhancing the State's natural and cultural resources." Ms. Weaver added that the Smart Growth Sub-Cabinet wants to define where the growth should occur. The Sub-Cabinet recognizes that there is a need to support and revitalize existing communities in Maryland by increasing transportation choices, expanding work force and affordable housing in areas designated for growth. The intent is to provide opportunities for people to live near their work. In many counties, housing is not affordable for many people who work there, and they often must travel from other counties. We need to create desirable communities in PFAs so people would want to live there, not just because the government thinks it's a good idea. We must improve public education and increase job opportunities and per capita income in Priority Funding Areas.

One of the principle conservation objectives of achieving smarter, more sustainable growth in Maryland is to expand agriculture and resource based industries in the State. When farmers can make a good living and farming is profitable, they are more likely to stay on the land than sell their land for development. DNR is looking at developing priority conservation areas where development would be limited on ecologically sensitive land. Land preservation would be targeted to protect ecological priorities. We need to expand the Critical Area program and ensure enforcement and really try to protect the areas along the Chesapeake Bay, foster conservation and use of water and energy resources more wisely, reduce greenhouse gas emissions, and enhance air quality in Maryland and preserve Maryland's historical and cultural resource.

To achieve smart growth goals, we need to improve coordination, cross-agency and with jurisdictions of the state, and also between the public and private sector. Other goals are to have the State government lead by example, use new and expanded resources, enhanced regulations, strengthen accountability and expand outreach and education.

The intent is to better align and target state resources, scrutinize and evaluate all significant state capital conservation and growth related program and expenditures. The Smart Growth Sub-Cabinet will look at the impact of the State's expenditures and determine whether the State is encouraging good growth or not.

Establish a set of incentives and disincentives for the local government and developers to achieve Smart Growth, establish a multi-disciplinary, cross-agency team to provide technical and policy assistance. In many cases counties want to do things that may provide a benefit, but they do not have the technical knowledge to do it.

The State will lead by example. All new State buildings will meet LEED standards, that is, the Leadership in Environmental and Energy Design standards. The State would give precedence to existing buildings for facilities needs before considering new construction. The State is looking at renovating schools, when possible, rather than building new schools outside of towns which lead to sprawl.

The Governor and the Smart Growth Sub-Cabinet wants to strategically invest in the principle drivers of growth: transportation, schools, jobs and a range of housing opportunities. The intent is to scrutinize where the State is spending and determine if the transportation choices and school spending are in fact leading to sprawl. There needs to be a renewed emphasis on mass transit, mixed use, transit-oriented development and expand and better target existing, effective community revitalization programs, such as the Community Legacy program.

Maryland's past reliance on incentives alone has proven insufficient. The State is

exploring ways to strengthen water resource and wastewater management, agricultural conservation and land use planning

One of the principal shortcomings of past Smart Growth efforts in Maryland has been the failure to establish appropriate bench marks. For Smart Growth to truly succeed, indicators of success need to be clearly identified and routinely assessed. Therefore, the State will establish Smart Stat to routinely monitor the effectiveness of specific smart growth policies and programs. Additionally broader metrics will measure statewide progress toward key objectives. Possible metrics will include land use and development trends, resource conservation, economic and employment growth, housing affordability and supply of workforce housing, infrastructure investment and congestion, school location, enrollment and performance.

Ms. Weaver stated that Smart Growth will only succeed to the extent that Maryland residents are engaged and supportive. Toward that end, the State is soliciting ideas from stakeholders (including the MALPF Board), local officials, and the public. The Inter-Agency Coordinating Committee is looking at ways to re-brand and better market Smart Growth. We want to establish a statewide coalition for smarter, more sustainable growth. We are also looking at ways to educate local officials and the public through workshops, publications, and interactive websites.

Growth is managed best when it is guided by an ongoing dialogue among government officials and citizens. Smart Growth must be broadly inclusive and participatory. We must continually solicit participation through statewide forums, community meetings, and web-based tools. Continuous participation means evolving strategies and accompanied action. The current administration realizes that it must reach out to local government and work with them to achieve our common goal.

Ms. Weaver thanked the MALPF Board for the opportunity and solicited their feedback.

John Draper, Board member, commented that one of the slides compared the amount of the land occupied by development in priority funding areas vs. the land occupied by development outside the priority funding areas. Mr. Draper wondered how much of it was influenced by down zoning. Mr. Draper wanted to know about the requirement to have a fairly large lot.

Ms. Weaver asked if Mr. Tassone wanted to address this question because it is a planning related issue. Mr. Tassone responded that in almost all the jurisdictions in Maryland, zoning in rural areas do not require 25-acre lots and in fact some, such as Montgomery County, do not allow 25-acre lots. They require one or two-acre lots, even if the zoning is one per twenty or one per twenty-five. So if there are 100 acres, they get four lots and each will have to be of one or two acres. Four acres or eight acres will be taken and the remaining acres will remain on the farm. Almost no jurisdictions require large lots that would consume a lot of agricultural land per residential unit. For major subdivisions they all require small lots. Mr. Tassone encouraged program administrators to share if there are any exceptions.

Tammy Buckle, Program Administrator, Caroline County, added that sometimes the size also depends on the Health Department's requirement for water and sewer.

Doug Wilson commented that over the last 20 years every builder, every city, every developer was not interested in developing on the reduced size inside a city, town or small developed area. The land was cheaper outside. It was cheaper to build the place, cheaper to get the utilities, roads, etc. But things have changed now. For example, in Anne Arundel County, the impact fee is proposed to be as high as \$50,000 per house. Mr. Doug Wilson wondered if the builder was going to pass this cost on to the homeowner.

**MALPF Board Meeting Minutes (01-22-08): Page 22**

Mr. Doug Wilson wanted to point out that developers were going way outside towns to develop. The cheaper way was to build roads. We end up with double or triple lanes in the highways and sprawl is created. The move to make people to move to a hamlet or town or city and re-develop is good but it depends on where the business is located. Mr. Doug Wilson believed the commute time to work is more than 30 minutes. Everyone in the community he lives drive more than 30 minutes. A person finds an affordable place to live, where the schools are good, see if the area is safe and then figure out where he is going to work. Rarely is it next door. It is almost impossible for a government to make the ability for a company to expand its business inside a hamlet, town or a city. A couple of office buildings are okay but other kinds of business cannot get a permit to expand the manufacturing operations in some places.

Ms. Weaver commented that those are the types of things that the current Administration is looking into. Attempts to change people's behavior can happen only when State government works together with jurisdictions.

Mr. Colhoun stated that one of the color maps used in the presentation showed the upper part of Baltimore County in red. Mr. Colhoun stated that he believed that if the zoning continued to remain what it is today and more land is preserved in the process that development won't take place.

Mr. Tassone commented that theoretically most of the red in Baltimore County is probably associated with RC 4 or RC 5 zoning. There is a lot more of that in Baltimore County.

Mr. Colhoun also mentioned with RC 2, the development lots are fixed upon existing parcels before 1968.

Ms. Buckle wondered about the preservation map used in the presentation. The MALPF program has had easements from day one and over the years there have been many easement properties. Ms. Buckle wondered if they were displayed on the map.

Ms. Weaver stated that MALPF has preserved only 265,000 acres, while there are more than six million acres in the State. Ms. Weaver asked Mr. Tassone to confirm that the land mass of the State was approximately six million acres. Mr. Tassone stated that he agreed with that approximation. The map showed a lot of green on the Shore and in some parts of Frederick County. But the aggregate between the MALPF program, the Rural Legacy and the county programs is still only approximately 500,000 acres. In Southern Maryland we have a lot of easements but they are relatively small and a lot of development is projected to occur there.

Mr. Tassone commented that the protected lands are represented in the map but it has got wiped out by the red, it cannot be seen because of the development projected around them.

Mr. Doug Wilson stated that the map shows the issue of targeting and putting massive amount of land into preservation, which was the original goal of the MALPF program. In the big scale it does not become effective until we get a big area for preservation. One almost has to target farm by farm. When the pressure for demand for the land gets more extreme, the offers at the kitchen table are going to become bigger and bigger.

Mr. Colhoun asked for a motion for adjournment of the meeting and to 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 23<sup>rd</sup> Closed session
- 2) Status Report on Pending Legal Issues

