

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
MINUTES
February 26, 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
Dr. James Pelura
Robert F. Stahl, Jr.,
Joe Tassone, representing Secretary Richard E. Hall, Department of Planning
Christopher H. Wilson
Doug Wilson, representing Secretary Roger L. Richardson, Department of Agriculture

OTHERS PRESENT:

Anne Bradley, Frederick County, Ag. Preservation Planner
Tammy Buckle, Caroline County, Program Administrator
Joan Becker, Attorney, Howard County
Rob Burk, Maryland Horse Industry Board, Maryland Department of Agriculture
Pam Bush, Department of Natural Resources, Senior Policy Analyst
Diane Chasse, MALPF Administrator
James Conrad, MALPF Executive Director
Pat O'Connell, President, Evergreen Capital Advisors, Inc.
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
Henry & Betty Daly, Landowners, Howard County
Patti & Dave Eason, Landowners, Kent County
Patti Eigenbrode, Caroline County, Staff
Honora Freeman, Evergreen Capital Advisors, Inc.
Nancy Forrester, Assistant Attorney General, Department of General Services
Carla Gerber, Kent County, Program Administrator
Mary Grant, Charles County, Land Preservation Planner
Buddy Hance, Deputy Secretary, Maryland Department of Agriculture
Ann Jones, Baltimore County, Land Preservation Trust
Karen G. Hobson, Landowner, Carroll County
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Lisa Ledman, St. Mary's County, Assistant Program Administrator
Joy Levy, Howard County, Program Administrator
Steve McHenry, Executive Director, MARBIDCO
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Barbara Polito, Anne Arundel County, Program Administrator
Ralph Robertson, Carroll County, Program Manager
Charles Rice, Charles County, Program Administrator
Daniel Rosen, Planner, Maryland Department of Planning
Charles Rice, Charles County, Program Administrator
Michael Salandra, Contract Purchaser, Howard County
Ned Sayre, Harford County, Ag. Preservation Planner
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Gloria Smith, Wicomico, Program Administrator
Stewart B. Smith, Prince George's County, Assistant Program Administrator
Martin Sokolich, Talbot County, Program Administrator

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real estate transfer tax. The budget looks inflated, primarily because of the need for the appropriation of past federal grant funds, current revenue have projections for agricultural transfer taxes that may be higher than what will actually be realized, and county matching fund based on recent pledges when State revenues were higher. There were no changes or recommendations for reduction.

MALPF staff distributed 5-year Annual Report to Board members and Program Administrators.

Mr. Colhoun stated that he made a presentation to the Maryland Grange last Saturday. He distributed one of MALPF's annual reports and received calls from many interested people.

Diane Chasse, Administrator, gave a brief summary of the various bills considered by the General Assembly in the current legislative session.

Senator Middleton has proposed a bill SB 909 to add a Board member. The additional Board member would be a young farmer nominated by the Young Farmers Advisory Board.

Mr. Conrad has been working on Senator Middleton's bill SB 915. Mr. Conrad stated SB 915 is conveying that we need more funding. At this point in time it is not suggesting from where the funding should come. The bill would set up a task force to look at creative funding ideas given that the average age of program participants is between 55 and 65 years of age, a portion of the population that is now increasing in size as the baby boom bubble moves through the population. These are people exploring their estate planning and trying to fund their retirement often with land preservation as one of the tools. MALPF helped compile a report based on the inputs from Program Administrators. Mr. Conrad expected a public presentation of the report at the hearing on March 10, 2008. Mr. Dan Rosen, Planner from Maryland Department of Planning, has also worked on the report as has Pam Bush from the Department of Natural Resources.

Ms. Chasse briefed Board members on HB 976. This departmental bill gives the Foundation a little more flexibility if the landowners are facing difficulties in getting lots released because of septic requirements. The bill would also have "right to farm" language in lot releases so that future farm owners are better protected from nuisance suits.

Senator Middleton has also proposed SB 662. The bill increases the agricultural transfer tax and dedicates much of its revenues to the Installment Purchase Agreement, Young Farmer, and Critical Farms Programs. Mr. Doug Wilson recommended all the Board members read SB 662. The bill doubles the agricultural transfer tax and describes a new distribution as to how those dollars are spent with a direct allocation for IPAs, and direct allocations for the Critical Farms and Next Generation. Mr. Doug Wilson stated that he is not 100% sure how the bill actually would work until MDA's legislative committee meets to discuss it. The bill talks about specific numbers: 3 times \$4 million amounts to \$12 million dollars. The bill gives MALPF money for the operating side of the program, but distributes the remaining revenues.

Mr. Conrad commented that there are a couple of inconsistencies and issues with the bill. When the bill moves forward, there will be amendments.

Mr. Doug Wilson stated that one of the recommendations from the Task Force was to double the agricultural transfer tax to give Ag Land more money. Senator Middleton is trying the same thing and targeting the money to IPAs, Critical farms, and Next Generation farms. MALPF generally gets funded ahead of others. The Task Force has said that to fund the IPAs, the Governor should provide a new general funds source. Since it appears that this is not going to happen, Senator Middleton has suggested the bill to fund IPAs dedicating a portion of the agricultural transfer tax.

Mr. Conrad encouraged the Board members and program administrators to read SB 662 and to let him know their reactions, if they have any concerns please let him know before the March 10 meeting. It would be useful to incorporate their comments in discussion.

II. DISTRICT /EASEMENT AMENDMENTS

A. CARROLL COUNTY

1. 06-89-02 Hobson, Louis and Karen 110.62 acres
Request for up to 2.0 acre owner's lot on easement property

Mr. and Mrs. Hobson are the original grantors of the easement. The current request is for approval of an owner's lot for their personal use.

There is one pre-existing dwelling on the property. A request has also been made for approval of a child's lot on the property. There have been no other requests for lots. They do not own any other district or easement properties.

According to Carroll County, the proposed lot is located along a boundary line and adjacent to a residential lot also owned by the Hobsons but not covered by the easement. The proposed owner's lot will be accessed through the adjacent lot.

The request was approved by the local advisory board and conforms to local zoning regulations. If approved, the per acre payback amount will be \$1,550.00 per acre.

Staff recommends approval of the release of one acre plus such minimum additional acreage if required by the County Health Department, not to exceed 2 acres total based on the provisions of the deed of easement and in accordance with Agricultural Article, Section 2-513(b), Annotated Code of Maryland, which grants an allowance of a maximum lot size of up to 2 acres if required by regulations adopted by the Department of the Environment or the county. The lot location conforms to the Foundation's lot location guidelines as it is located along a property boundary and is adjacent to an existing residential lot and a proposed child's lot.

Karen Hobson and Ralph Robertson, Program Manager, were present at the meeting. Mr. Robertson informed the Board that the location of the lots is predicated mostly on finding an area that would perc; they tried clustering the lot with other structures on the property, but found it impossible. The proposed dwelling will have to use a sand mound system and might need an owner's lot up to 2.0 acres.

Motion #2: To approve the request of Louis and Karen Hobson for up to 2-acre owner's lot on easement property.

Motion: Robert Stahl Second: John Draper
Status: **Approved**

2. 06-89-02 Hobson, Louis and Karen 110.62 acres
Request for up to 2.0 acre child's lot on easement property

Mr. and Mrs. Hobson are the original grantors of the easement. The current request is for approval of a child's lot for the personal use of their son, Steven Louis Hobson.

There is one pre-existing dwelling on the property. A request has also been made for approval of an owner's lot on the property. There have been no other requests for lots. They do not own any other district or easement properties.

According to Carroll County, the proposed lot is located along a boundary line and

According to Caroline County, this corner was chosen to be withheld because it does not interfere with the pivot irrigation system. The new location will also be located outside of the pivot irrigation system area. The survey was attached with the agenda memo. The family will continue to farm the Critical Area portion, even after the 6 acres are built on. Caroline County is researching whether the change will impact the quality of soils to be placed under our easement.

Staff recommends approval of the relocation of the 6 acres.

Tammy Buckle, Program Administrator, was present at the meeting. Mr. Jeff Lyons, representative for the farm has conveyed his apology for not being able to attend the meeting. Ms. Buckle stated that, since the withheld acres are in the critical area, the landowner would not have the options for three lots.

Ms. Buckle briefed the Board members about the history of the property. The Bell Creek Farms is a large property and entered the program as a district for 433.64 acres. When the survey was done, the property actually had 429 acres instead of 433.64. There is no house located on the property. It is composed of three separate parcels that allow at least four lots to be built upon on each one of these tracts of that land. The ownership of this is three sons and the father. Each son has three or four children. The reason for the current request is to have an option for their children to have their own farm. Critical area restrictions would allow only one lot and a house to be built. The surveyors picked up that the area proposed to be withheld was in the Critical area and requested it to be moved a little north of the road, without an impact to the farming operation. Mr. Lyons has conveyed that it will not have an impact at all. There will be 6 acres taken out of that corner; one way or the other. The soils in that area are all Class II soils.

Mr. Freedlander asked how the issue was picked up by the survey.

Ms. Buckle stated that the landowner was required to have a survey on the property. When the landowner did so and submitted the survey, the 15-acres withheld from district program in May 2006 was not identified on the survey. So the landowner was told to correct this. The 15-acres had to be pointed out and withheld from the easement. This was the time the surveyor picked up the fact that the area is in critical area and the landowner will not be able to exercise the option. Ms. Buckle then checked with the person handling Critical Area in her County and was told that the six acres in the critical area would be treated as one parcel, could not be subdivided, and only one house could be built.

Mrs. Schultz asked if there would be enough lots available for all the children desiring lots. Ms. Buckle stated that this is what was decided when the district was formed. They decided to leave that acreage out for any of the children who decided to build on the farm and definitely it would have to be located outside the irrigation systems.

Ms. Buckle explained the farm and the withheld acreage on the aerial map.

Ms. Buckle shared a little history of the farm. The three brothers have nine children. They want to have the right for any of those nine children to request lots on the 15 acres withheld. Through the county zoning regulations, this would be allowed, if they could get percs, on at least 1 acre of minimum lot size. The zoning would allow them four per parcel. However, because of the percs and the number of acres in each corner, it is not going to happen. On the 2-acre parcel, probably there would be 1 house. Because of perc tests, it would be very rare to get two 1-acre parcels. So through zoning, county would allow 4 parcels that are being withheld.

Mr. Colhoun enquired about the possibility of child's lot on easement property. Ms. Buckle stated that at the time, the program entered MALPF program as a district, there was a discussion if Mr. Lyons would agree to sign a letter to do that but it was never made a

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requirement and Mr. Lyons was not asked to do so. Mr. Tassone commented that the owner's lot and the children's lots total three.

Mr. Conrad enquired whether the family had designated family lots or unrestricted lots. Carol Council, MALPF staff, indicated that the staff report indicated that the family has chosen family lots which would give them a maximum of three on the easement. So they can choose an owner and two children or they could do three children's lots. Ms. Buckle reminded the Board members that if they use their rights on the withheld acreage they won't have the rights as zoning would not allow them to have both.

Mr. Tassone commented that MALPF Board has already approved withheld acres. The current request pertains to re-positioning six of the acres.

Motion #8: To approve the request of Bell Creek Farms, LLC to relocate 6 acres.

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

F. HOWARD COUNTY

1. 13-80-05e Bushy Park Farm, LLC 189.683 acres
Request to swap 1.0 acre of easement property for 1.0 acre of non-easement property

Mr. Michael Salandra is the contract purchaser of this easement property. The easement was purchased from Clifton Clevenger in 1981. The current request is to swap 1.0 acre of easement property for 1.0 acres of adjoining non-easement property.

The district contained two pre-existing dwellings but the two dwellings were withheld at the time of the easement, as was the Foundation's practice at the time (1981). The acre around the site of one of these dwellings is the acre being proposed to be added to the easement. The dwelling itself was razed in 2004. If the Board is to consider the area as a "pre-existing" dwelling, then the Board should follow COMAR regulations for re-location.

The regulations require that the request be reviewed to determine if the proposed new site for any new dwelling will adversely affect farming operations and the site where the dwelling exists at the time of the request be restored to agricultural use. Mr. Salandra proposes a dwelling to be located near an extension of a farm lane, near a wooded edge and a pond. The County reports that this site will have little impact on agricultural use. Mr. Salandra proposes to use the original dwelling site for horse pasture.

If Mr. Salandra agrees to having the new house site be non-subdividable from the farm, then reconfiguring the parcels will avoid having a third party ownership in the middle of the farm thereby avoiding potential conflict and nuisance suits. The number of acres within the easement will not be reduced.

According to Howard County, the soils of both 1 acre areas are GgB (Glenelg - B slope). This request has been approved by the local advisory board and meets all local zoning regulations.

Foundation staff recommends approval of the request subject to the new dwelling being non-subdividable from the farm. The rationale for this recommendation is that, while this approach will add a dwelling right to the easement, the Foundation created this circumstance of a lot in the middle of the farm by withholding the dwelling from the original easement. (There are a limited number of these in the program.) If approved, Foundation approval should be contingent on a satisfactory review by the Office of Real Estate, Department of General Services, for a determination of the impact of the proposed

exchange on the value of the easement.

Michael Salandra, his attorney Joan Becker, and Joy Levy, Program Administrator, were available at the meeting. Ms. Levy stated that when the request was discussed at the local county board, the request was considered as a swap because the proposal was to put one acre in easement and take one acre out of easement. The local county board asked if Mr. Salandra would be willing to make the new lot unsubdividable. Ms. Levy was not sure if the request should be considered a swap or a re-location of a pre-existing dwelling.

Ms. Levy continued that whatever be the case the end result would be that the 1-acre lot left out of easement from beginning will be encumbered with the easement. If the request is approved with recommendations made by MALPF staff, the location where Mr. Salandra would be building the house would be part of the farm and not be subdividable.

Ms. Becker introduced herself as an attorney representing Mr. Salandra. Ms. Becker stated that she originally presented the case to the local board. Ms. Becker stated that she is familiar with the deed of easement of the original grantor, Mr. Clevenger. At the time the property was put into easement there were two existing dwellings on the property. Both the pre-existing dwellings were excluded from the easement. The property was 336 acres but when the legal description was drawn up, it had 336 acres, save and except two 1-acres around the dwelling. It was recorded in this way in 1980. In 1988 Mr. Clevenger was required to subdivide the parcel to create a separate lot at the time he was doing an agricultural subdivision of 142 acres. At the same he created a subdivision of 1 acre which was included in the easement erroneously. It came to Board in 1988 and the Board released that from the easement. At that time, a release was done of that 1 acre. Since 1988 the property has been residentially taxed. The dwelling was occupied by Mr. Barclay Tagg. When Mr. Barclay Tagg left the State of Maryland, Mr. Clevenger became the owner. He purchased it back at \$375,000 in 2003-2004. In 2006, Mr. Clevenger sold the farm. At that time he did not use an owner's lot or a child's lot. The pre-existing house was razed because it was in poor condition in 2004. Currently the lot does not encumber any house. It is a recorded subdivided lot as it has been for the last 20 years. Ms. Becker was concerned that if the acre was not released in 1988, it would be now a pre-existing dwelling and will certainly fall within the eligibility requirements for a re-location of a pre-existing dwelling. There is no creation of an additional lot or taking any additional dwelling. They are requesting a re-location of an existing dwelling which was razed in 2004. Mr. Salandra's concern is to relocate it. The present location is behind the barn for a commercial equine facility. It makes sense to have some sort of exercise ring or a barn. The present farming property is probably not large enough to handle boarding horses. The new location is proposed near a wooded area off the farm land. The local Board has made a determination that there is no adverse impact on the agricultural use. The property has been razed and returned to agricultural use.

Ms. Becker believed the request satisfies all the qualifications for a re-location of a pre-existing dwelling except for the fact that probably it has been in the easement. So it would be exchanging one acre, unencumbered property in exchange for another acre, encumbered property. Ms. Becker stated that she believed there was no issue with agricultural tax. Ms. Becker was concerned about the staff recommendations outlined in the agenda memo. The staff had recommended that they be merged but then it is not an exchange. It becomes a donation to MALPF.

Mr. Salandra stated that he wants to build a house in a different location. He does not understand the legalities and was requesting to relocate the dwelling. Mr. Salandra stated that he does not want to build a house in the barn yard and wants to move it to a different location. Mr. Salandra expected to use the current location to build another barn. The plan is to make the farm into a horse operation.

Mr. Conrad noted Ms. Becker represents Mr. Salandra, Contract Purchaser. Mr. Conrad was concerned that he did not see any document signed by the landowner or that the landowner

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with the farm buildings, and the contract purchaser is agreeing to a non-subdividability provision to safeguard the long-term viability of the farm.

Mr. Doug Wilson asked Mr. Salandra and Ms. Becker to be in touch with MALPF staff regarding the documentation required. MALPF Board is approving Mr. Salandra's request, but it requires the cooperation and acquiescence of the current owner.

2. 13-02-01e Henry and Betty Ann Daly 23.125 acres
Request for a re-designation of a child's lot/house to an owner's lot, permission to allow grandson to use this house/lot, and to add 3.3 acres.

Mr. and Mrs. Daly are the original owners of the easement property. The current request is 1) a re-designation of a child's lot/house to an owners' lot and 2) permission to allow their grandson to use this house/lot. In return, the Dalys will grant an easement on an adjoining 3 acres (for no tax benefit), give up the right to subdivide their house (a pre-existing dwelling) and waive the right to request termination. In addition, they have also agreed to sign a corrective deed which is necessary to clear a title issue on the easement.

A child's lot was approved for Mr. and Mrs. Daly's daughter, Terry, on November 22, 2005. The house is now complete, but Terry does not wish to live there, as she has decided that she wishes to remain in Frederick County since being married. The lot has been subdivided and is under Terry's ownership, but a Final Release has not been completed. The Dalys live in a pre-existing dwelling (which may be subdivided). They are entitled to an owner's lot, but as they are both in their 80's, they do not wish to move.

Howard County is researching the quality of the soils on the three-acre lot and has no reason to believe it would not be buildable. An aerial map of the 3 acres was attached with the staff memo. The map also shows all the dwellings on the easement property. The Howard County Advisory Board recommended approval of the request. The Federal Farmland and Protection Program have been advised of this proposal and are supportive.

Bill Beach, Head Appraiser at the Department of General Services evaluated the proposal and determined that the State gains a more valuable easement by the proposal. His report was attached with the staff memo.

Staff recommendation: Staff recommends approval of the proposal. If approved, Nancy Forrester recommends that it be clear that Mr. and Mrs. Daly must hold title to the lot for 5 years, as in any other final release for an owner's lot that is issued by the Foundation. She suggests that the Dalys may want to execute a deed to themselves for life, with remainder to their grandson in order that the grandson may receive title to the lot in the event of death prior to the end of 5 years' time.

Mr. and Mrs. Daly, and Joy Levy, Program Administrator, were present at the meeting. Ms. Levy stated that the County Soil Conservation is aware of this issue. There is a pond. Between the soil and matrix soils there is an acre within 3.3 acres that would be buildable. During discussions, questions came up regarding the value of the 3.3 acres as far as donation of the easement is considered. Ms. Levy stated that she is confident that it is buildable as indicated by Mr. Beach in his memo. The Foundation is getting value in terms of 3.3 acre lot. The idea is to enable the Dalys to redesignate the child's lot to an owner's lot and to have the grandson reside in the house.

Motion #10: To approve the request of Henry and Betty Ann Daly to redesignate of a child's lot/house to an owner's lot and grant permission to allow grandson to use the house/lot, and to add 3.3 acres to easement property.

Motion: Robert Stahl Second: Chris Wilson

Status: **Approved**

Mr. Doug Wilson asked Ms. Levy if the Dalys have been briefed and understand the condition about the 5-year requirement. Ms. Levy confirmed that the Dalys understand that once the final release is done in their name, for five years the lot cannot be transferred.

Ms. Forrester suggested that if the Dalys want a title in their name alone, or the title to be in their name for life and remainder to their grandson, either one is acceptable. Ms. Forrester commented that she can talk to the Dalys after the meeting to explain more about these titling options.

Mr. Tassone commented that the pre-existing dwelling currently occupied by Dalys will become non-subdividable from the property. But Terry's lot is subdividable after five years. Terry's lot has been approved as a subdividable child's lot.

Mr. Doug Wilson commented that he believes the current request is the first case of its kind; after the landowners completed the process, the child changed her mind. In this case, the landowners had title to the land and had not done the second part of the release. They financed the house. It is little bit different from the norm where the child financed the construction and owns the residence.

Ms. Forrester commented that the lot is titled in the name of the child, but the Foundation has not yet issued a final release.

Mr. Doug Wilson stated that this was the first time the Foundation has had such a case. Today's approval is based on recommendations from all concerned parties to figure out how to move forward rather than just let the house sit vacant or tearing it down. In the bigger picture, the Foundation is getting 3.3 acres with one building lot, and that is significant in Howard County. The Foundation staff has suggested this as a way out of this particular dilemma of the Dalys.

Ms. Clark wondered if MALPF Board is setting a precedent and what will be the impact of this approval on the next person.

Mr. Doug Wilson stated that it will depend on individual circumstances. If the Foundation gets another request under similar circumstances, it has to look at what has been decided on this request. The current approval indicates that the Foundation is willing to try to accommodate unique situations. At the end of the day the Dalys have designated the lot as an owner's lot to move in, but given the circumstances, it does not make sense for them.

Ms. Forrester stated that in normal circumstances the Dalys can move into Terry's house; there is nothing to prevent that. But keeping in view their particular circumstances, it would be a hardship on the landowners.

Mr. Conrad commented that the request is a unique example of a property halfway between a request and a settlement. Mr. Conrad doubted if the Foundation would ever receive such requests in the future.

3. 13-80-06Ce Covered Bridge Farms LLC 132.597 acres
R. Wayne Newsome
Request to rescind tenant house approval.

Mr. Newsome is the subsequent owner of this easement property. The Board approved a request on December 12, 2006, to allow a pre-existing dwelling remain standing while a new tenant house was being built on the property. The approval was conditional on the

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Board's receipt and approval of the size of the new tenant house. A brief history was attached with the staff memo.

Kim Hoxter and Joy Levy visited the property on February 20, 2008. Although the original pre-existing dwelling has been removed, no new tenant house has yet been constructed. This easement is comprised of 3 parcels, which are 78.9, 45.6 and 6 acres in size. Mr. Newsome has dissolved the Covered Bridge Farms, LLC, and conveyed the 3 parcels to Covered Bridge Farms II, III and IV, respectively. This is a violation of the Deed of Easement.

Staff recommends rescinding the tenant house approval since the conveyance of the parcels no longer provides at least 100 acres to support a tenant house.

Joy Levy, Program Administrator, attended the Board meeting. Ms. Levy informed the Board members that Ms. Hoxter and she visited the property. They were pleased to see that the existing house had been razed. Mr. Newsome has not yet returned to the Foundation with the proposed size of the new tenant house. During the visit the landowner indicated that he is looking at a couple of plans and is not sure of what he wants to do. Ms. Hoxter conveyed that, when he makes a decision, he would have to approach MALPF Board for final approval.

Mr. Colhoun asked if the landowner was aware that the item is going to be discussed at the Board meeting. Ms. Levy stated that the request was a last minute addition to the agenda and she had not been able to brief Mr. Newsome about the discussion at the Board meeting.

Mr. Conrad stated that Mr. Nielsen has suggested that the Foundation gives Mr. Newsome an opportunity to attend the Board meeting and talk about the issue. Mr. Conrad also mentioned that, when Mr. Newsome approached MALPF Board with a request for a tenant house, he expressed that he had a pressing need for a tenant. Mr. Newsome conveyed that a tenant was already on the property and the tenant was already doing certain things that were absolutely necessary for the farming of the property. Mr. Conrad wondered where the tenant was.

Mr. Doug Wilson suggested Ms. Hoxter send a follow up letter to Mr. Newsome and propose that the pending issue will be discussed at the next Board meeting as an agenda item. This would also give an opportunity for Mr. Newsome to talk about the issue.

Ms. Levy commented that Mr. Newsome informed Ms. Levy and Ms. Hoxter that putting the three parcels together or re-titling them under one ownership is not a possibility. MALPF program requires a property to have 100 acres to qualify for a tenant house. Mr. Newsome has to make a case as to why he needs a tenant house when the parcel is less than 100 acres.

Mr. Conrad asked if the County is in a position to determine and stop the tenant house between now and next month, when the request is expected to come to MALPF Board. Is it possible for the County to block the issuance of a building permit for the tenant house?

Ms. Levy responded that she is doubtful if it can be done. Originally the County had a provision in the zoning regulations based on the height of the house, and Ms. Levy's predecessor had used it to convey that the proposal did not conform to zoning regulations but this is no longer in force. The County is working on having regulations in place regarding size, but currently there are none.

Mr. Nielsen stated that on the Newsome issue, the County and the Foundation were sued by Mr. Newsome. After that episode, the Foundation changed the law. Now the law allows the County to withhold any development requests that violate the MALPF program.

supposed to be transferred to MALPF, but the money was not transferred because the federal government will not reimburse directly to MALPF. MALPF could not get the reimbursement to the County because the County was not the co-holder on the easement. The Memorandum of Agreement drafted will ensure that this issue would not arise, because the PTLT will be a co-holder of the easement with MALPF. The Memorandum of Agreement reflecting this has been drafted, and attached with agenda memo. This Memorandum is based on one previously approved for easements being co-held through the Rural Legacy Program. However, this Agreement differs in that it gives more responsibility to the Foundation than to PTLT, since it is the Foundation that is benefiting by being able to use the funds.

Staff recommends approval of this Memorandum of Agreement. The request has already been approved by the Patuxent Tidewater Land Trust Board of Trustees.

Mr. Conrad informed the Board members that before he became the Executive Director of MALPF, he was the Executive Director of Patuxent Tidewater Land Trust, and the current request is something that arose after Mr. Conrad left PTLT.

Motion #12: To approve Memorandum of Agreement with the Patuxent Tidewater Land Trust.

Motion: Doug Wilson

Second: Chris Wilson

Status: **Approved**

IV. PROGRAM POLICY

A. Equine Committee Final Report by Howard Freedlander, Chair

Howard Freedlander and Rob Burk, Executive Director, Maryland Horse Industry Board, were available at the meeting.

Mr. Freedlander stated that after the last report was presented to MALPF Board, along with Mr. Conrad, he met Mr. Burk and other members from the Maryland Horse Industry Board (MHIB).

Mr. Freedlander highlighted the changes made to Equine table since the last Board meeting.

- Last footnote on page 1 - Guidelines serve as recommended direction for the MALPF Board which has ultimate decision-making capability.
- Horse Shows and Auctions - MALPF Board would consider on a case-by-case basis any requests to accommodate temporary parking for a major event.
- A major event would be defined by the following criteria: number of cars; number of horses; number of people; number of days; size of area affected; and the nature of the facilities required.

Mr. Freedlander stated that the term 'event' was discussed at length. Mr. Freedlander believed that MHIB accepted the thinking that there would be no more than two events in a year. Mr. Freedlander stated that he conveyed to MHIB that the equine table is a flexible document. If in the future, MHIB comes back to MALPF Board, and indicated that the 'two events' do not work, and recommended 'three or four events' the request would come back to MALPF Board for re-consideration.

Mr. Freedlander reiterated that the table is driven by the consideration for 'scale'.

Mr. Freedlander stated that there was significant discussion on livery stables. One of MALPF Board members had expressed a concern that if there was a 4-acre piece of ground that is adjacent to a public park a livery stable could be established. The concern was whether it was an appropriate use of easement property. The equine committee was concerned about

this and approached Mr. Nielsen for his advice and the fourth footnote was added.

- Any use requests that raise questions of scale to the county advisory board and/or MALPF staff will be referred to the Board of Trustees for review and approval. The question of scale refers to what the primary land-use on the property will be when the use request is approved and implemented on the property. For example, a request to develop a property for horse riding lessons that results in a small easement property being covered with riding stables and a riding arena would certainly raise issues of scale that should be addressed by the MALPF Board of Trustees. Properties must remain in compliance with their nutrient management plans, soil erosion and water quality plans, forest stewardship plans if applicable, and retain their agricultural assessment.

Mr. Freedlander summarized that the Equine Committee outlined the guidelines keeping in mind 'scale' and 'appropriate use of easement property' recognizing that the Horse Industry is a legitimate farm business in the State of Maryland and would be treated so. The Committee also tried to be consistent with the Uses Committee guidelines. The Equine Committee attempted to provide flexibility for the Horse Industry to prosper.

Mr. Burk commented that he believed the Equine Committee has come up with a good document. Mr. Burk stated that he is aware that there were discussions about the guidelines for the two events. Mr. Burk stated that he believed that the group, which worked on the discussions, understood the principles of the program and appreciated the fact that the equine industry includes different operations of equine industry. It was understood that with the passage of time the issues might be re-visited and certain things might change.

Mr. Tassone wanted clarification on "livery stables".

Mr. Burk stated that MHIB regulates "livery stables". In many senses the livery stables are instructional rental facility where a horse is rented to the public. The Maryland Horse Industry Board was specifically created to regulate the livery stables.

Mr. Colhoun complimented the efforts of the Equine Committee.

Mrs. Schultz suggested that since Cross-county riding might include going through forested land to include "Forest Stewardship Plan, if applicable" in footnote 4.

Mr. Sayre commented that Harford County does a major trail ride every year to promote agricultural preservation. The trail goes through easement properties. Mr. Sayre wanted to know if the County needs to approach MALPF Board every year to get permission if the event is held on one of the easement properties.

Mr. Freedlander stated that the Committee had a discussion about such requirements and believed it would not be necessary for the County in such cases.

Mr. Nielsen commented that sometimes neighbors object to such an event. Depending on the scale of activity, it would be wise to notify MALPF.

Mr. Conrad commented that the equine committee did not draw a line on the scale of activity. The guidelines have provided dimensions by which MALPF Board can compare one event to another event. Over time, the Foundation may end up in firming up the line.

Motion #13: To approve guidelines as amended for Horse Farm and Horse Farm related uses of preserved properties as a final report from Equine Uses Committee.

Motion: Robert Stahl
Status: **Approved**

Second: Chris Wilson

Mr. Colhoun commented that there are three more committees operating at this time and asked the committee chairs to report briefly on their committee's work.

Mr. Doug Wilson stated that his committee is on charitable donations. Foundation staff has developed a couple of position statements and the committee would be talking about it in their next meeting.

Mr. Klasmeier stated that his committee on easement valuation would be meeting on March 17, 2008.

Mr. Conrad stated that he is working on winery and vineyard committee.

**V. INFORMATION AND DISCUSSION – for informational
Purposes only – no Board action required**

- A. Withdrawal of request to co-hold Rural Legacy easement (Brinsfield – 243.94 acres) – Elizabeth Weaver, MALPF Administrator

On September 25, 2007, the Foundation's Board of Trustees approved a request to co-hold a Rural Legacy easement on the Brinsfield property located in the Nanticoke River Rural Legacy Area in Dorchester County. The easement was proposed to be co-held by Rural Legacy and MALPF.

Mr. Brinsfield recently contacted Liz Zucker of the Nature Conservancy regarding some questions about the feasibility of operating an agro-tourism business on the property at some point in the future. (The Nature Conservancy was one of the local sponsors of the easement.) Specifically, Mr. Brinsfield wanted assurance that he could construct a building with a footprint not to exceed 1,500 sq. ft. that would serve as an office for an agro-tourism business. Ms. Zucker contacted MALPF staff to inquire whether MALPF would approve the proposed building. MALPF staff advised Ms. Zucker that the request would require review by the MALPF Board of Trustees.

Ms. Zucker contacted Mr. Brinsfield regarding the required review. Mr. Brinsfield stated that he had reconsidered his original request that MALPF co-hold the easement with Rural Legacy. He stated that he wanted to make it clear that he does not intend his reconsideration of the request to be viewed as a negative impression of MALPF. Rather, he wants to simplify the process for any future request associated with the easement.

The easement has not yet been approved by the Board of Public Works. No action is required by the MALPF Board. The information is being provided for informational purposes only.

Pam Bush, Department of Natural Resources, Senior Policy Analyst, stated that she is not talking for this particular agenda item, but for the overall general policy. Ms. Bush stated that she believed it would be helpful for The Department of Natural Resources to know if MALPF has established guidelines on agro-tourism.

Ms. Weaver stated that the Foundation has an approved Uses Policy which covers issues related to agro-tourism. In this particular case, the landowner wants to construct a building with a footprint not to exceed 1,500 sq. ft. Under the Uses Guidelines, such a request requires the MALPF Board's approval. Ms. Weaver reiterated that the information is being provided for informational purposes only. No Board action is required.

IV. PROGRAM POLICY

B. Installment Purchase Agreement Program (IPA Program)

Pat O'Connell, President, Evergreen Capital Advisors, Inc., and Steve McHenry, Executive Director, MARBIDCO, were present at the meeting.

Mr. Conrad informed the Board members that the Foundation is trying to have the IPA option ready for the easement offer cycle 2008. The relevant regulations also have to be ready before the process can commence.

Mr. Conrad passed out a letter discussing the specific issues and seeking directions from the Board.

Mr. Conrad reminded the Board members that there are two primary elements to the Installment Purchase Agreement Program. The State Installment Purchase Agreement Program will be run by MARBIDCO on behalf of MALPF. MALPF, as a State agency, does not have the ability to accept debt obligation beyond 15 years. MARBIDCO is not under the same constitutional restriction. The second element of the Installment Purchase Program is the "County Grants Program".

Mr. Conrad stated that Carroll County has a County Installment Purchase Agreement Program. In Carroll County if a landowner wants to participate in an installment purchase agreement program, he will have a choice; participating through MARBIDCO or the County IPA program. Currently not every County has an IPA program at the county level, but some counties like, Howard, Harford, Anne Arundel, Frederick, Baltimore County, etc., do.

Also there are counties who do not currently have an IPA program, but are thinking of establishing one. When established, a county IPA program gives an additional choice to the landowner. There are two different types of IPA programs. One is a self-funded IPA program. Under the self-funded IPA program, the total amount of offer provides both for the payment of the principal at the end of the agreement (usually between 20 – 30 years) and installment interest payments. The landowner gets twice a year payment of the interest (tax exempt) earned on the entire amount of the unpaid principal. The landowner (or current owner of the IPA instrument) will be paid the unpaid principal as a lump sum at the end of the agreement. The Foundation would make a grant to the county, and the county would settle using its self-funded program. This is what is done in Carroll County. The Foundation simply provides the county the total amount of the offer, and the county runs the transaction through its IPA Program to make necessary investments to cover the obligations. The county would cover the administrative costs and the costs of the IPA, and would return to the Foundation an easement that is either in the Foundation's name or co-held with the Foundation.

The second case is where the Foundation seeks the MALPF Board's direction. Some counties, such as Howard County, have a separate source of funding for meeting their on-going obligations for interest installment payments. They have a dedicated source of funding. Howard County has a combination of bond funding and agricultural transfer tax. This is called a leveraged program. You only need enough money to go to settlement to buy the investment instrument necessary to pay the principal at the end of the period of the agreement. There are two different ways of handling the program. One is the Foundation provides the county the entire amount of the offer, that is, giving the county more than what is required for the settlement. The Foundation can let them have the full amount of the offer and the county would be restricted by the Memorandum of Understanding (MOU). The county can either return the balance to the Foundation and the Foundation can continue to make offers down the county's list or the county can spend it within their own land preservation program or do a combination of both.

The alternative is to say that we are going to give the county only enough money in order to take it to settlement. Mr. Conrad reminded the Board that some of the commitments for offers would have county funding already. For example, if the county is committing 30% of the offer, the Foundation would provide 70% of the offer. Instead of giving the county the full amount of the offer, the Foundation can just give enough money to take it to settlement within the county's IPA program but the remainder would stay in the MALPF program and MALPF will get the benefit of leveraging. The county's dedication of resources would return back to the Foundation and give the benefit of leveraging. MALPF can continue to make additional offers from that county's list of applicants. There are two possibilities that the county may not be happy with. One is they run out of applicants within the county to which offers could be extended, and the other is that funds would flow into the Round Two offers. In such a case any leveraging may not necessarily go to the county, but instead it may go to another county because it is Round Two. The offer will go to the next person on the list. If the county is out of applicants in Round One, the money rolls over to Round Two. Those are the two options that the Foundation would be seeking some direction from the MALPF Board.

Mr. Conrad requested Mr. O'Connell and Mr. McHenry to describe the program.

Mr. O'Connell introduced himself and stated that his company created the Installment Purchase Agreement Program for the Howard County in 1989. The Evergreen Capital Advisors are working as financial advisors to MALPF and MARBIDCO.

Mr. McHenry introduced himself and stated that MARBIDCO was set up by the State a few years back to provide alternative means of financing. Once MARBIDCO was created, its legislative mandate allowed it to assist MALPF in land preservation efforts.

Mr. O'Connell stated that the General Assembly, two sessions back, authorized both the programs. Evergreen Capital Advisors, Inc. has since been working to create them. What drives interest in the programs is the capital gains tax. People own their land for a long time and when they are ready to sell an easement on their property they typically would be paying a tax for the difference between what it was worth when they first acquired title to it and what they are selling it for. In the case of an easement on a farm that has been in the family for generations (somebody inherited from their parents maybe 30 years ago), they pay a tax on the difference between what was worth when they inherited and what they are selling it for. An IPA provides a way to defer the capital gains tax.

Mr. O'Connell added that there are two separate programs. One is through MARBIDCO, available to all MALPF applicants, regardless of where they live. MARBIDCO's IPA program is going to be for a term determined by the seller, but basically for 10 to 30 years. MALPF has the existing installment program where landowners can take payment up to 10 years. The State Treasurer invests the money in CDs after deducting a small fee. This would benefit the landowners for a short term. But for people who wanted to defer taxes over a longer period of time and want to receive interest payments that are tax exempt, the MARBIDCO IPA program is available. The County IPA program is a variation. In case a landowner lives in a county that has IPA program, he can indicate in his option contract that he would like to be paid through the county IPA program. MALPF would fund the sale by making grants to the County.

Because MARBIDCO's program is now a self-funded program, at closing, MARBIDCO would invest in the form of U.S. Treasury obligations called "State and Local Government Series" (SLGS). The SLGS are sold to the governmental units directly by the U.S. Treasury. You pick the interest rate; it cannot be any higher than one basis point below the market rate on the day it is subscribed. The Treasury looks at the closing yields on all the U.S. Treasury obligations and deducts 1 basis point, which is one-hundredth of percent, and says that this is the maximum yield one can subscribe for under the SLGS. The SLGS will be delivered to a Trustee that we are currently soliciting. The interest on the SLGS is paid through to the

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MARBIDCO IPA holders as interest on their IPAs. When the SLGS mature, the matured principal is paid through to the sellers. It is completely funded from the closing day.

Mr. Doug Wilson asked if the easement was \$500,000, is MALPF is going to give MARBIDCO \$500,000? Mr. O'Connell confirmed this and continued that the MARBIDCO would invest \$500,000 in that face amount of SLGS from the U.S. Treasury.

Mr. Doug Wilson stated that for MALPF, it is no different than paying the landowner. MALPF would take it out of the allocation of money and the only difference would be the financing method, which might be advantageous to the landowner.

James Pelura, Board member, asked if the interest rate to the landowner is an agreed amount. Mr. O'Connell confirmed this. Dr. Pelura wanted to know what happens if the value of the investment goes down. Who is going to be responsible for that, is it the taxpayer?

Mr. O'Connell stated that in such a case everybody would be in much bigger trouble. The U.S. Treasury has an obligation to pay, and there is essentially no risk associated with such an investment.

Mr. Colhoun asked if there is a name or an identification of the type of plan that does not have leveraging.

Mr. O'Connell stated that they are called "MARBIDCO's IPA program" or "the self-funded" program.

Responding to a question, Mr. Conrad stated that two different years might have two different interest rates.

Mr. Tassone asked how much the interest rates vary over time.

Mr. O'Connell stated that the credit market had been in a mess for the last couple of months. The rates are probably down for long-term obligations, and the spreads between what one can buy in a Howard County Municipal Bond and comparable material from the Treasury is narrowing. When the IPA program was started in Howard County it was around 8% for their IPAs.

Mr. Tassone wanted to know the difference between using SLGS as an investment instrument versus using zero-coupon bonds.

Mr. O'Connell stated that SLGS could be adapted to suit the requirements. The interest rate, maturity date, partial payment, or the exact face value can be determined, and this facility is available to only government agencies. It has no liquidity; there is no buyer, and you can cash it in if you don't want it anymore.

Mr. O'Connell wanted to talk about the zero coupons. For most of the county programs, offering an IPA program is leveraging county money. When Howard County started this program, it only needed to come up with 25 cents on the dollar to close an IPA. It had a very big balance in its land preservation account. This balance was used to buy zeros. A million dollar IPA cost \$250,000 at closing. The county owed interest over time. The interest was paid from its dedicated agricultural transfer tax. When the principal became due, the county had zero-coupon U.S. Treasuries. Most of the other counties in Maryland (with the exception of Carroll) have done the same kind of leveraging.

Mr. Doug Wilson commented that it is the county's obligation and MALPF has to structure some kind of agreement that makes it very clear that MALPF no longer has an obligation. Since MALPF funded the county, it would like to periodically review what the county is doing with the money. The county needs to account for the funds and should be able to

prove that it has the resources to pay off all the obligations.

Mr. Conrad stated that, if a county is willing to have an IPA program in the county, it must realize that there are certain costs involved. The administrative costs for an IPA itself are relatively expensive; they can be as high as \$15,000-17,000 per IPA. The County also would have to pay for title review, settlement, and other related issues, ordinarily handled by MALPF. MALPF would expect a clear title, and Ms. Forrester would have to verify that she is comfortable with what is provided to her. This is going to increase the administrative costs to the county. So an incentive could be created for the counties to have properties settled with county programs.

The Foundation is concerned that MALPF money should be used for easements, and the MALPF Board can put conditions on the money spent by the counties.

Mr. Doug Wilson stated that currently when the Foundation does an easement transaction it pays for a title review and bears the settlement costs. The Foundation actually pays the expenses through its operating budget. The Foundation could consider providing grants to the counties with some fixed percentage towards administrative costs. Mr. Doug Wilson was concerned that the County should not use the grant money as matching funds and bring the money back to the Foundation to leverage additional funds.

Mr. O'Connell stated that his Company also works in Pennsylvania and New Jersey. In both cases, the States made grants to the counties without regard to whether the money is being invested in zeros or how it is used to fund IPAs. The States have basically made a decision that it is all going for the same purpose, i.e., farmland preservation.

Dr. Pelura asked if a county has the ability to take the left over money and invest as it feels fit.

Mr. O'Connell commented that IPAs at the county level are general obligations of the county. Even if the investment went bad the county government is obligated to make all the payments. Dr. Pelura was concerned that the burden would fall on the county taxpayers.

Mr. Tassone wanted to know how it is done currently done in Howard and Harford Counties.

Mr. O'Connell stated that both counties are investing only in U.S. Treasuries. They buy zero-coupon U.S. Treasury bonds that are obligations of the U.S. Treasury. The only difference is that they pay no interest on the current basis. It is building a value on whatever the implied interest rate is at that time. Treasuries that pay interest every six months are called current coupons. All counties following the IPA program, with the exception of Carroll County, are investing in current coupons. The obligation that falls on the taxpayers for farmland preservation program is the interest payments of IPA. If the agricultural real estate market happens to be in doldrums, the county will have no agricultural transfer revenues, and the taxpayers have to come up with that money.

Ned Sayre, Agricultural Preservation Planner, Harford County, stated that the county bears the cost of the increased risk. Mr. Sayre commented that the Harford County has a different easement valuation formula than the State's. Which program does it go on?

Mr. Conrad stated that if they apply to the MALPF program, they will get offers from MALPF. The county only uses the IPA program to take them to settlement.

Mr. Doug Wilson wondered, assuming a county gets \$600,000 under normal allocation, is the whole amount eligible for IPAs or only part of it?

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Ralph Robertson, Program Manager, Carroll County, stated that he believed it is up to the landowner what he wants to do. Mr. Robertson wanted to know if the Foundation is suggesting that it is going to take "x" amount of dollars of all the allocated money and dedicate that portion only to IPAs.

Mr. Conrad commented that this would happen if Senator Middleton's bill passes; there would be dedicated money. How you mix the use of the dedicated funds is an administrative decision. Eventually it would be used to cover installment interest payments. Mr. Conrad stated that he and Mr. O'Connell had discussed this issue. The county can decide how much it wants to contribute through the county program. The county can offer IPAs if and because it can find means to fund it.

Mr. Conrad wanted to respond to Dr. Pelura's comments. The Agricultural Preservation Foundation Board of Trustees would review each participating county's IPA programs to determine whether it is eligible and if MALPF is comfortable with the way the program operates. The IPA programs will also be governed by the MOU. If MALPF is not happy with the way things are done, the ability to rescind the MOU can be incorporated in the MOU. There will be a review process where the Agricultural Preservation Foundation Board of Trustees can determine eligibility. The MOU would govern the relationship between the counties and the State in the transfer of IPA funds.

Mr. Stahl commented that the Foundation is still going to operate MALPF program; why should it take the money and give it the county?

Mr. Doug Wilson stated that it depends on who applied. If the landowner applying to the program is the #1 ranked property in a County and does not want an IPA, he takes all the money. There is no more left for funding offers in that county.

Mr. Stahl stated that he understands this point and is okay with it. He was concerned that it looks the Agland Preservation Foundation is paying for the easement, but in reality it is not so.

Mr. Doug Wilson commented that is the reason Mr. Conrad is seeking guidance from the MALPF Board. Does the MALPF Board want to fund a 100% grant programs to the county and allow the county to do what it wants to do. The other option is the Foundation gives 100% of the money, "x" amount goes towards settlement and the County has to invest or leverage the balance money. Mr. Conrad is trying to find out how the MALPF Board would like to set the guidelines.

Mr. Stahl wondered how to recognize the shared responsibility associated with the Foundation. Mr. Stahl illustrated an example of someone buying the house and someone else holding the mortgage on it.

Mr. O'Connell commented that it is important to remember that there is a difference to that analogy in this program. The easement is "not securing the obligation of their payments." So if a county defaults on its payments, it will see the owner of the IPA in court because it is a general obligation of the county. The landowner has no right to demand his easement back. It is the same thing with MARBIDCO. MARBIDCO's obligation is to make these payments, but the payments are not secured by the easement. If something happens to MARBIDCO and the payments don't get made, the landowner has no recourse to come back and demand the easement.

Mr. Chris Wilson commented that in the case of Anne Arundel County IPA programs, there are two different ways in which the easement values are estimated. MALPF uses a different approach. So there is a discrepancy between the two.

Mr. O'Connell commented that it is a good illustration of a case, where maybe a landowner in

Anne Arundel would apply to MALPF and gets his choice of MARBIDCO's or the County's IPA program. The landowner wants to use the County program. The County Program Administrator may look at it and feel it is too much of a mismatch; we are paying 60% of appraised value per easements. MALPF has its own way of evaluating, and I don't want to mix the two. So the county program may end up just for county applicants, and, if the landowner needs an IPA, he needs to go to MARBIDCO. If the County Program Administrator chose this route, the landowner will not have a choice because the regulations say that the county has to approve the use of the county IPA program.

Martin Sokolich, Program Administrator, Talbot County, commented that the counties can have preservation priorities that are very different from MALPF's. Assuming the county has received a million dollars from MALPF, and the county has to take only half a million to settle the IPA, and still has half a million left over. There are local choices of what land should be preserved. How about properties unsuitable for farming, or less than 100 acres, or in other ways do not meet MALPF's criteria. The County has a local preservation program. Is it a valid use of this money?

Mr. Conrad stated that there was legislation last year. Unintentionally the legislation ended up putting up a roadblock in terms of the way the statute is worded. It prevents the Foundation from providing the counties the difference in grant money to be used by the local preservation program. The Foundation would need either a statutory fix or would need to write an interpretive regulation based on the history of legislation itself. The decision is not something that can easily be made.

Mr. Conrad laid out what the Foundation is asking for. It might need some sort of consensus from the MALPF Board. Do we want to provide an incentive to the county to use county IPA programs to settle MALPF IPA easements? One possibility is providing administrative expenses separate and outside of the IPA transactions. A second possibility is having counties leverage the program, and MALPF only pays the State's share of IPA offer to the counties, and then keep the difference. If the county keeps the difference, the MALPF Board can put certain restrictions on the use of the money. There is already a restriction that the money cannot be spent to service the interest on IPA installments. The Foundation wants to restrict the money to be used for local land preservation and not go to the county. The question is, are we giving the money to the counties, to let them keep the difference in grant money, are we putting restrictions on the use of money, or letting them to use it for any type of land preservation? The third option is do we simply pay for the administrative expenses related to settlement and IPA expenses separate from the offers itself?

Mr. Tassone illustrated an example. A county has ten properties that have applied to MALPF. The first one wants to do a county IPA program and the settlement cost is \$300,000. So MALPF gives \$300,000 for the settlement cost; and the county invested in zero-coupon bonds. The second applicant wants all the money upfront. It is \$500,000, and MALPF gives the landowner \$500,000. The third applicant wants to do an IPA through MARBIDCO. The first applicant with a settlement cost of \$300,000 used the county IPA program. The landowner will get the full amount of the amount thirty years from now. The remaining obligation of interest installment payments is assumed by the county. In the MARBIDCO settlement, the full offer amount goes to fund both the interest payments and the principal payment at the end.

Mr. Conrad commented that the county IPA program can be self-funded, as in Carroll County.

Mr. Tassone commented that he is talking about the leveraged County IPA. An amount of \$300,000 is necessary to take it to settlement back to the magnitude of zero-coupon bonds the County needs to invest in order to be able to pay the principal at the maturity time. So MALPF would give \$300,000. He wanted to know if this is an option. Mr. Conrad confirmed that this is an option and stated that it becomes an issue for the county if the leveraging they

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created by accepting this obligation ends up going somewhere else because it is a Round Two offer or because they have no more applicants in their pool. If the money comes back because it is not necessary for settlement, it does not go to the county, because the county does not have any more applicants, it will go to Round Two for someone else. This is the only place where it becomes an issue for the county.

Mr. Colhoun asked Mr. O'Connell to summarize the different options available to MALPF Board.

Mr. O'Connell stated that he is seeking the Board's decision about how much money to give to a county with an IPA program. Do we give them the entire purchase price of the easement? And if we do, and they don't need all that money to go to closing, what kinds of limitation do we impose on them? The other option is whether the counties have the option to have a leveraged program.

Mrs. Schultz sought the responses of County Program Administrators present at the meeting.

Mr. Robertson stated that he believed if the first offer goes to leverage zero coupons, then the remainder of the money should go down the county list. If a \$300,000 easement only cost \$100,000 because of leveraging, the balance of \$200,000 should be used to go down the list until there is no money left in the county.

Mr. Conrad asked Mr. Robertson what he thinks should happen when there is no applicant left in the county.

Mr. Robertson stated that he believed that with the current low allocation money there will be many applicants remaining on the list.

Mr. Colhoun commented that MALPF is trying to get as much money into the program as is possible. The idea is to find which program gets the money in the hands of the easement holder and gets the easements purchased quicker.

Mr. O'Connell stated that he believed that giving the county the full purchase price encourages counties to leverage. If MALPF gives the counties only the cost of the zeroes, they have a disincentive to do a leveraged program and a greater incentive to take every dollar they can and invest all in U.S. Treasuries.

Mr. Doug Wilson wondered which list gets a priority; is it the county person's priority list or is it MALPF's?

Mr. Stahl stated that the county ranks based on the ranking system already approved by MALPF. Illustrating an example, Mr. Stahl stated, assume that a county has 32 ranked properties on the State list for the county. Applicant #1 chooses an IPA for a million dollars. The county has \$3M worth of Agland preservation funding. The first landowner chooses to use an IPA program. We have to pay \$300,000 for zero coupon bonds. The county keeps \$700,000. When MALPF gets to the second applicant, there is still \$2.7 million left to make offers in the county.

Mr. Doug Wilson stated, let us assume there is \$1M in Round One. Applicant # 1 wants an IPA for \$1M. MALPF gives the county a million dollars. They put \$300,000 for Mr. Smith. The county now has \$700,000. There is no other applicant. The money belongs to the county, and there is no more State money to roll over into Round Two.

Mr. O'Connell stated that what is suggested for the second applicant is that the county's obligation is to take the \$700,000 left over and to try and strike a deal with the second applicant in MALPF's priority list as opposed to taking \$700,000 and picking an alternative property the county would like to preserve. You have to use it the MALPF list. Mr. Stahl

agreed and stated that it is unfair for everybody else who went through the MALPF easement application process if you don't do so. It is unfair to all the people who are on the list, if we set up a precedent that we are going to use money out of the Foundation to go out and give to the county, and then the county uses some other methodology for ranking.

Mr. Conrad posed a general question to all the program administrators. You have the opportunity to leverage if you get some money back. You still have a list of applicants for the State program. What are the circumstances you can conceive where you wouldn't put the money directly back into MALPF to service the next person on the list rather than keeping the balance within the county to do something else related to land preservation?

Mr. Sayre stated that his county already has an IPA program set up. If you want to leverage, it would be best if MALPF does it in-house or gives the county a block of grant to augment its IPA program. Mr. Sayre stated that he believed it would be very hard for the county administrators to convince the County Executive Council that the County is going to assume the IPA debt obligation. Mr. Sayre stated that he believed Harford County would not like to co-hold the easement with MALPF. Mr. Sayre stated that Harford County uses MALPF money to augment the county's program. Most landowners would prefer to work with the County program.

Mr. Stahl commented that currently there are two ranking systems in place. It can become a nightmare for County Program Administrators to balance the two lists.

Mr. Sayre stated that in last round the County had 55 applicants. The County would be very hesitant to co-hold any easements with MALPF.

Mr. Sokolich stated that Talbot County has been trying to fund easement acquisitions outside the MALPF program. In the County's Comprehensive Plan, the County has established green belts, countryside preservation areas with a different zoning classification. The County does not have any money to support the green belts. The County also has to create priority preservation elements for the MALPF program. Mr. Sokolich is trying to fund a local program. He is trying to set up a task force from his community, taxpayer's association, ask people etc.

Mr. Doug Wilson stated that if you create additional resources by using IPAs, you should use those additional resources for the MALPF program; it should be farmland, preservation for agriculture and should meet MALPF criteria. MALPF Board strongly advocates using MALPF's money for preserving agricultural land.

Mr. Doug Wilson continued that the first year using IPAs, MALPF has to be very conservative. MALPF has to tell the county that it would make 100% of the funding available for offers, and MALPF would help through the administrative costs. Some will go through county IPA programs, and some will go through MARBIDCO program. MALPF can see how this proceeds. Until MALPF resolves the issues on how the funds are restricted and comes up with a way to leverage the money to preserve more agricultural land, it has not accomplished anything. The only thing that has occurred is giving the interested farmers a better way of getting their money tax free. It is not a bad goal, but the real issue is the concept of leveraging to take land off inventory. We already know that we can do it under the State program through MARBIDCO, as long as we understand what that means to us. Even in Senator Middleton's bill there is a caveat. If the agricultural transfer tax revenues are not sufficient, it comes off the State transfer tax. MARBIDCO has to have a guaranteed funding stream to absorb the debt over time. We need to be careful that we don't take on so much debt obligation that we cannot make an adequate number of new offers in future years.

Dr. Pelura wanted to know if there is an established statute.

Mr. Conrad stated that under the statute currently MALPF cannot provide grants supporting a county program. MALPF also may not have the authority to make grants covering the

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administrative costs. If MALPF decides to move forward it needs to change statutory language or have an acceptable interpretation of current statute.

Mr. Doug Wilson commented that we are co-holding the easement. The grant is for the IPA side of the dollars. He wanted to know MALPF's position because it would be paying the administrative expenses as one of the co-holders of the easement.

Mr. Nielsen quoted the statute. The statute says, "Grants provided by the Maryland Agricultural Land Preservation Foundation may not be used to fund county land preservation programs".

Ms. Forrester stated that IPAs cost a significant amount of money beyond title costs.

Mr. Doug Wilson said he would consider taking IPA expenses out of the Round One allocations and putting them in the operating budget.

Motion #14: Foundation to direct staff to continue developing the county IPA program along the guidelines that the dollars that MALPF would propose as a grant would be 100% of the offer to invest for settling the requested IPA. As an incentive for the counties to participate, MALPF would help pay for the closing costs for IPA transactions.

Motion: Doug Wilson

Second: Chris Wilson

Mr. Conrad wanted to know if the motion is restricted to self-funded programs, or if it is to include leveraged programs whereby MALPF would pay 100% of the offer to the county and the county could use the balance? Also are we are helping leveraged programs with administrative costs?

Mr. Doug Wilson stated that his motion is for self-funded programs. Mr. Conrad stated that in that case the motion is relevant only for Carroll County.

Board members wanted to know more about "self-funding".

Mr. Conrad clarified that "self-funding" takes the total amount of offer and uses it to secure both payment of the principal at the end of the agreement and to provide interest on installment payments during the period of the agreement. Currently only Carroll County operates such a program and that is how the Foundation will run the program until it has dedicated funding.

Mr. Robert Stahl moved to amend Mr. Doug Wilson's motion to include leveraged county programs. Mr. Stahl further moved to restrict use of county funding to those properties that would otherwise meet MALPF criteria. A county must move down the MALPF ranking as such those properties that are next in line for funding are made offers with any additional funds created by leveraged programs.

Amendment #14a: (Inclusive of Mr. Doug Wilson's motion) MALPF will fund County IPA programs at 100% of the easement offer to both self funded and leveraged county programs such that any property purchased through a self-funded or leveraged program must meet MALPF criteria for easements purchased and use the pending MALPF applications in their rank order.

Motion: Robert Stahl

Second: Doug Wilson

Mr. Colhoun asked if there are any discussions on the amendment.

Dr. Pelura commented that he believed that the attorneys had conveyed that the statutes do not allow MALPF to grant money to the counties.

Ms. Forrester stated that as of now, the Foundation can fund the counties only to the extent the counties need money to settle MALPF IPA offers. The Foundation cannot give an additional amount to fund a local program. Mr. Conrad added that the MALPF Board can direct the Foundation to propose legislation to change this.

Mr. Tassone stated that even if you give a county the whole million for the first IPA property you must apply the leftover \$700,000 balance to the next property on MALPF's ranked priority lists. It amounts to giving them just \$300,000 for settlement and applying the balance to subsequent properties. The money is not being taken away from the county. The Foundation is only designating where the balance of the money goes.

Mr. Conrad was concerned about situations when the counties run out of applicants for that county or the next applicant who gets an offer in Round Two is from a different county.

Mr. O'Connell commented that in the event MALPF has leftover money after all the properties in the list have been purchased, theoretically, the money can roll over to next year to that county's allocation.

Mr. Sayre commented that if there is an easement property that is worth a million dollars, MALPF would pitch in \$300,000 to take it to settlement with an IPA. Is the county liable for the installment interest payments? This would be a huge cost to the county.

Mr. Colhoun stated that he understands Mr. Sayre's concerns, but at the same time, there are other counties that might be able to take advantage of the program or individuals in other counties might like to take advantage of the option to settle through a county IPA program.

Amendment #14a: (Inclusive of Mr. Doug Wilson's motion) MALPF will fund County IPA programs at 100% of the easement offer to both self funded and leveraged county programs such that any property purchased through a self-funded or leveraged program must meet MALPF criteria for easements purchased and use the pending MALPF applications in their rank order.

Motion:	Robert Stahl	Second:	Chris Wilson
Opposition:	James Pelura		
Status:	Approved		

Mr. Tassone wanted to know why Dr. Pelura opposed the amendment motion.

Dr. Pelura stated that he opposed because he is against anything that involves giving the county MALPF money to fund an IPA. Dr. Pelura was concerned that if MALPF gives a million dollar to the County, the County needs to use only \$300,000 then what would happen to \$700,000. There is no guarantee that the residual money will be spent on land preservation.

Mr. Freedlander asked Mr. Conrad if the implementation of the IPA program will muster the approval of Legislative Auditors. Mr. Conrad stated that the Foundation has the broad authority to run the program and the MALPF Board's concerns can be built into the MOU with the county. The money made available is similar to agricultural transfer tax; use it or lose it. If the counties do not spend the money in acceptable ways, the money reverts back to State after three years. There has to be a standard auditing procedure as currently happens with county certification.

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order for MALPF #1, #2, #3 and so on. Applicant #2 decided not to have an IPA. The county has to use MALPF ranking. MALPF has no more dollars because it gave a million dollars to the county. Applicant #3 is interested in IPA. Mr. Doug Wilson wanted to know if MALPF Board is going to let the county go ahead, does the MALPF money roll over to a future year, or what? Theoretically we have to see how applicant #3 ranks, and that makes no sense.

Ms. Clark remarked that the money can roll over to the next year to offer money to more farms.

Mr. Doug Wilson agreed and commented that the rollover money can be used for the next year or several years.

Mr. Colhoun commented that MALPF Board is attempting to spend the money for land preservation. Mr. Colhoun wanted to know what mechanism MALPF Board would like to use to utilize the extra money that becomes available for the county for land preservation using MALPF criteria.

Mr. Doug Wilson stated he is struggling to understand what happens when applicant #1 gets a million dollar offer. If MALPF gives the money to the county to leverage, it needs only \$300,000 and instead has \$700,000. What do we do with applicant #2? If MALPF kept the money and gave the county only what needed for settlement amount, MALPF would have \$700,000. From the county's perspective it does not make any sense. Why would the county accept the debt obligations for the IPA?

Mr. Colhoun suggested that MALPF can require the county to use that money for the next person on the MALPF list. Mr. Doug Wilson stated that the applicant is not the county's client any more. The applicant is going to be appraised under MALPF values and is ranked #2 because of the MALPF ranking system. If the county wanted to use our values, it is fine; otherwise he is subject to the county's program.

Mr. Stahl stated that the applicant #2 would have to wait for the next year's funding for the whole amount from MALPF program or applicant #3 would be eligible for the IPA program with county money, if applicant #2 rejected an insufficient funds offer or was passed over.

Mr. Doug Wilson commented that the entire MALPF program is based on a ranking formula. A property is ranked #2 because it is the #2 desired property and now it could be bumped because the applicant did not choose a particular method of payment. Mr. Doug Wilson stated that he believed this would be wrong.

Mr. O'Connell stated that the #1 acquisition is for a million dollar easement. The county received a million dollar grant. They spent \$300,000 on strips and \$700,000 was remaining. Under the amendment the county is obligated to go to applicant #2 and say that they have \$700,000 left. The county can say that it is obligated to make an offer. The county can say that either it can pay either \$700,000 cash (that is what is left of the State money) or the county can do an IPA for a million dollars because the county has enough money to fund that. The county can ask the applicant what he would like to do. If the applicant's answer is "neither" his application is moved to next round or the county can move to applicant #3.

Mr. Tassone commented that the program is making the MALPF Board create a bunch of rules on how counties spend the money they received from MALPF. It ends up being exactly the same way if the county had been given only the funds necessary to settle the IPA upfront.

Mr. Nielsen quoted from the statute 2-510.1, "The Foundation may make a grant to purchase an easement on a property selected by the Foundation to a county with a program approved by the Foundation to purchase easements using Installment Purchase Agreements."

Mr. Doug Wilson commented that he understands Mr. Tassone's comments about a 'lot of

rules', but the IPA program allows the Foundation to leverage, which gives the Foundation a great resource for the future. We do not have a great history of steady revenues. The county has to accept the risks if it decides to take MALPF money as a grant and decide to leverage because it is in its best interests to preserve three properties instead of one. The county has to calculate the debt obligation. It means that the county has less and less money over any number of years to offer in its local program or as matching funds to MALPF.

Joy Levy, Program Administrator, Howard County, had a question about co-holding easements. The difference between the language in a MALPF easement and a Howard County easement is significant. Ms. Levy wondered if the easement would be a MALPF easement or a county easement. Mr. Conrad responded that it would be a MALPF easement. All you are doing is using the IPA mechanism in place in Howard County to take the property to settlement.

Mr. Doug Wilson stated that he would like to make a motion and wanted to include that if we are not able to continue to go down the county's list of priorities with MALPF, the money should remain with the county's allocation to be used within three subsequent easement cycles. If it can't be used, the money will be placed back into the general MALPF allocation to be redistributed. It will be no different than the current agricultural transfer taxes.

Mr. Tassone wondered if that money would get used in Round Two because the law says, the money should go to Round Two.

Mr. Doug Wilson stated that MALPF has given the grant, a million dollars, to the county. It is their money now. If you happen to make a couple of offers on the top of the list and applicant #3 goes to IPA; it might take a year to settle. You actually don't have Round Two money because you gave the money to the county.

Mr. Tassone was concerned if it is compatible with the law that governs what happens to leftover Round One allocation money.

Motion #15: If we are not able to continue to go down the county's list, the money should remain with the county's allocation to be used within three subsequent easement cycles. If it can't be used the money be returned to be redistributed in the MALPF general allocation.

Motion: Doug Wilson Second: Robert Stahl

Mr. Colhoun asked if there was any discussion on this motion.

Mr. Doug Wilson stated that the question being asked how this relates to Round Two money. This is Round One money that has been allocated to the County as a grant for an IPA transaction. The residual dollars are left after the county has done its IPA transaction (which may be months later). Round Two is about leftover money not allocated. This money was allocated. Mr. Doug Wilson stated that he believed that Round Two considerations are not relevant to this issue. What we are setting up is a guideline about how the county must utilize the dollars granted by MALPF in Round One. What are the conditions about that money? Any dollars that are left after we do Round One will go to Round Two. But these other dollars are allocated as part of a Round One transaction.

Mr. Stahl stated that he is supporting the motion because the dollars would remain with the county. Generally wealthier counties get Round Two offers because they have wealthier landowners who are willing to discount. Therefore, what we are doing now, is allocating money to the county and the money stays with the county. Mr. Stahl stated that he personally believed that Round One money should stay with the county. It still has to use the money within three years through the MALPF priority list submitted in subsequent years.

Mr. Tassone asked Mr. Sayre if this motion would change his disposition towards trying to take advantage through the county's IPA leveraging mechanism. Mr. Sayre stated that it will not.

Mr. Tassone commented that fundamentally MALPF is paying for the settlement costs for easements whether they are cash settlements or IPA leveraged settlements at the county level. All we change from the current program is that the county that gets all of their Round One allocations committed by virtue of a large enough IPA easement value does not lose any of the Round One money to Round Two in that fiscal year. They get extended for a few more years. Mr. Colhoun stated he believed MALPF is also creating an incentive.

Ann Jones, Baltimore County, stated that a lot will depend on where the counties are in their IPA programs. Ms. Jones believed that MALPF has created an incentive for the counties that have not thought about IPA program or is just beginning to think along those lines.

Mr. Sokolich wanted to know more about co-mingling of funds. MALPF Board is talking about residual \$700,000. Presumably two-thirds of \$700,000 is county's match money. He wanted to know if he can use the State's money but the money that is not match money and co-mingle it with match money and put it in county funds. Does he need to have the funds segregated whether it originates from the county's agricultural transfer tax or it came from the State's portion?

Mr. Doug Wilson stated that he understands the genesis of the question. MALPF gave a million dollars to the county to pay the applicant. Once the county decides not to use all the money, the county portion you gave me has been dedicated to Mr. Smith's easement. The million dollars is going to be under State's control and the MALPF Board is giving you the limits of what the county can do with it. Mr. Doug Wilson would argue that while two-thirds of the money might have been the county money, MALPF has used it to do exactly what the county wanted it to do; to buy a million dollar easement. You can't now take the money and segregate that money and put it in county's funds. MALPF is going to place a condition; we took that money and we bought an easement. The county chose to fund the easement a certain way and MALPF is going to give three more years to spend more on land preservation easements. There is no doubt the State as well as the County will have accounting issues to keep track of the funds. The only way not to do that is if MALPF would have everything go straight to MARBIDCO and there would be no accounting issue.

Motion #15: If we are not able to continue to go down the county's list, the money should remain with the county's allocation to be used within three subsequent easement cycles. If it can't be used the money be returned to be redistributed in the MALPF general allocation.

Motion:	Doug Wilson	Second:	Robert Stahl
Opposition:	James Pelura, Jerry Klasmeier		
Abstained:	Joe Tassone		
Status:	Approved		

Mr. McHenry briefed the Board members about MARBIDCO program.

Mr. McHenry stated that Senator Middleton has proposed SB 662. The bill proposes to increase agricultural transfer taxes. Currently there are three unfunded agricultural land preservation programs. They are Critical Farms, MARBIDCO's Next Generation Farmland Acquisition program, and the leveraged IPA program. The leveraged IPA program builds on the "self-funded" program.

Mr. McHenry passed out copies of schedule detailing \$4 million in new annual revenue under

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different schemes. Mr. O'Connell briefed the Board members about the schedule passed out at the Board meeting.

Mr. Tassone wanted to know why Senator Middleton's bill is restricting what can be done with this additional \$4 million revenue that he is going to generate by doubling the agricultural transfer tax.

Mr. McHenry suggested MALPF Board members to choose between option 1 and option 3 on his handout as soon as the legislation is passed. Mr. Conrad commented that when MALPF makes an offer we just take some portion of that offer and buy the strips but then the interest on installment payments would come out of the \$4 million dollars.

Mr. McHenry commented that the easement seller will not notice any difference on their end between the "self-funded" IPA and the "fixed" IPA.

Mr. Doug Wilson commented the only difference between Schedule 1 and Schedule 3 is MALPF puts up \$11,486,800 (in this particular example). Mr. McHenry commented that the good thing about third option is having a more stable level of funding moving forward.

Dr. Pelura asked from where the \$4 million was coming. Mr. McHenry stated that the amount comes from agricultural transfer tax. Mr. Doug Wilson stated that originally the idea was to fund this with general funds with the Governor putting in \$4 million dollars. That is not happening. So this legislation is introducing an alternative policy approach with the first \$2 million dollars going to MALPF's operational budget and the next \$4 million funds to MARBIDCO for IPAs as a priority of the State Government. This is Senator Middleton's way of funding the IPA program. The agricultural transfer tax now goes to local government agricultural programs and MALPF programs.

Pam Bush, Department of Natural Resources, Senior Policy Analyst, commented that if you don't realize the full \$4 million through the Agricultural Transfer Tax, you may have to go to the Real Estate Transfer tax and it can't be taken at the expense of other programs funded by the Real Estate Transfer Tax revenues. Mr. McHenry stated that the Bill is not clear, but the amendments will be made to make it clear that any shortfall will come from MALPF's share of the Real Estate Transfer Tax. Ms. Bush was concerned about the possibility of debt service if there is no money. Mr. Doug Wilson commented that in a year with very low State transfer tax revenue there might be times when there are no dollars available for new easement purchases. Mr. McHenry's approach of having us put dollars at the front end can take away funds from the regular program. Some will argue that we should always have a blend between IPAs and the regular program for landowners wanting a lump sum payment. One funding option never seems to be universally acceptable.

Mr. Colhoun thanked Mr. O'Connell and Mr. McHenry for explaining the program.

Mr. Colhoun informed the Board members that MALPF Board had a vacancy of one at-large member and, on behalf of MALPF Board, he is submitting the nomination of Mr. Jonathan C. Quinn of Cecil County, for consideration of Secretary of Agriculture, Roger Richardson.

Mr. Conrad stated that MALPF is under time constraints to offer the IPA Option to easement applicants in this easement cycle. Mr. Conrad sought MALPF Board's approval of the regulations provided with the proviso that the revised regulations are based on the discussion that just took place and the resulting MALPF Board's motions.

Mr. Doug Wilson stated that the regulations will have to go to the Register and go through the normal commentary. Mr. Nielsen stated that it may have to go through the emergency. Ms. Forrester pointed out that some regulations are not yet complete.

Mr. Nielsen stated that the regulations do not allow MALPF to make grants, but MALPF can

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purchase easements as long as they are selected by the MALPF Board in an IPA program approved by the MALPF Board.

Motion #16: To approve the regulations as drafted and incorporating today's MALPF Board motions and giving the staff the authority to submit the regulations for adoption.

Motion: Doug Wilson Second: John Draper
Opposed: Joe Tassone, James Pelura
Status: Approved

Mr. Nielsen stated that the regular way takes 100 days and going emergency takes two weeks. Mr. Doug Wilson stated that Mr. Conrad and Mr. Nielsen can decide which way to go once the regulations are ready. If Mr. Nielsen and Ms. Forrester come up with something and they need to stop the process, they can stop the process. If there is something in the regulations that needs to be tweaked and fixed, they can fix it.

Mr. Nielsen commented that it is usually better to go the regular way. Mr. Doug Wilson commented that Mr. Conrad has some time constraints and wanted to move forward.

Motion #17: To adjourn regular session.

Motion: Joe Tassone Second: Vera Mae Schultz
Status: Approved

The regular session of the Board meeting was adjourned at approximately 1:50 p.m.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, Executive Director