

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
MINUTES  
March 25, 2008**

**TRUSTEES PRESENT:**

Daniel Colhoun, Chairman  
Vera Mae Schultz, Vice Chairman  
Martha A. Clark  
John W. Draper, Jr.,  
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

**TRUSTEES ABSENT:**

Howard S. Freedlander, representing Treasurer Nancy Kopp

**OTHERS PRESENT:**

Bill Amoss, Harford County, Program Administrator  
Anne Arnold, Landowner, Frederick County  
Tammy Buckle, Caroline County, Program Administrator  
Diane Chasse, MALPF Administrator  
Mr. and Mrs. Wayne Caswell, Landowners, Harford County  
James Conrad, MALPF Executive Director  
Carol Council, MALPF Administrator  
Rama Dilip, MALPF Secretary  
Nancy Forrester, Assistant Attorney General, Department of General Services  
Carla Gerber, Kent County, Program Administrator  
Billy Gorski, Anne Arundel County, Ag. Planner  
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator  
Anthony Jett, Anne Arundel County  
Teresa R. Jett, Anne Arundel County  
Sandy Magness, Landowner, Harford County  
John Mattingly, Landowner, Garrett County  
Cynthia McElwain, Landowner, Harford County  
Linda Neal, Landowner, Carroll County  
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture  
Janice Setren, Assistant Attorney General, Department of General Services  
Barbara Polito, Anne Arundel County, Program Administrator  
Gregory E. Rapisarda, Attorney, Harford County  
Ralph Robertson, Carroll County, Program Administrator  
Charles Rice, Charles County, Program Administrator  
Ned Sayre, Harford County Agricultural Preservation Outreach Specialist  
Martin Sokolich, Talbot County, Program Administrator  
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist  
Donna Sasscer, St. Mary's County, Agricultural Specialist  
Gloria Smith, Wicomico, Program Administrator  
Lynda Striegel, Attorney representing Virginia Carlton, Anne Arundel County

Daniel Colhoun, Chairman, called the meeting to order at 9:00 a.m., at the Maryland Department of Agriculture building, Annapolis, Maryland.

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

**A. APPROVAL OF MINUTES OF THE REGULAR MEETINGS**

James Conrad, MALPF Executive Director, stated that he has not been able to read the minutes and recommended postponing the approval to next month.

Board members arrived at a consensus to approve the minutes next month.

**B. ADDITIONS OR DELETIONS OF AGENDA ITEMS:**

Mr. Conrad informed the Board that the final version of the Allocation of Funds Report is ready and available for Board members and Program Administrators. The total fund available for FY 2008 easement offers is \$61,267,406.73.

Mr. Colhoun commented that currently there are a few committees working on various policy matters and requested the committee chairs to give their report.

Doug Wilson, representing Secretary Roger L. Richardson, Department of Agriculture, stated that his committee on charitable donations met a day before the Board meeting. The committee will soon be drafting their recommendations.

Jerry Klasmeier, Chair, Easement Valuation committee, proposed dates for three meetings and handed some reference material to the committee members.

Mr. Conrad, Chair, Winery and Vineyard Committee, stated that he intends to work on the proposed legislative changes. The plan is to draft the legislative change, bring it to the MALPF Board for review and then move towards departmental legislation in summer 2008.

John Draper, Chair, Unrestricted Lot committee, stated that the committee participated in a conference call. The committee was hoping to have Bill Beach, Department of General Services, joining them for their next conference call.

Mr. Conrad commented that the Foundation has some left over federal funding from previous grant years. This fund is not included in the allocation of funds and currently is not in the offer sheets. The available federal fund is generally used to make up insufficient funds offer up to full offers. This year also the Foundation would like to continue this practice. Mr. Conrad stated that during the Executive Session when the Board is considering approval of insufficient funds offer, Foundation staff would be asking that insufficient funds offers, if any, are made with a contingency that if the Foundation can make up to full offer based on existing distribution of funds that has been approved by FRPP. If the property is not already approved by FRPP, the Board can give approval for that property for federal matching funds. Mr. Conrad wanted the Board to approve (1) as an insufficient funds offer and (2) if it can be met with federal funds, the offer also to be approved using federal funds. The Foundation has to get properties approved by FRPP. The Foundation still is not aware of the exact amount of federal money since FRPP settlements have not occurred. The settlement is dependent on the third appraisal to be done within six months of settlement. The Foundation is close to settlement on one property.

Diane Chasse, Administrator, informed the MALPF Board that SB 909, proposed by Senator Middleton, was approved. Therefore, the MALPF Board will add a trustee which is a young farmer nominated by the Young Farmers Advisory Board.

Mr. Conrad stated that he is working on the report on SB 915 to the Joint Sub Committee and would distribute to the Board members and the program administrators. The average age of

people preserving land (with MALPF or the Department of Natural Resources or the Maryland Environmental Trust) is between 55 and 65 years of age. They are mainly doing so for reasons of estate planning or planning for their retirement. They also desire to preserve properties and pass them on to the next generation. The reason for the study, hearing, and the Task Force legislation is that we are looking at demographic bubble of baby boomers as they move into the age group of people looking at estate planning and retirement funding over the next 10 years. Senator Middleton is concerned that, because of the increased demand, a lot of land may be changing hands. Senator Middleton is also concerned about whether enough funding is available and about the possible wholesale loss of prime farmland. The Task Force would be primarily asked to look at innovative ways of identifying new funding sources for land preservation for the next ten years or so.

Mr. Conrad informed the MALPF Board about SB 970. The bill proposes a fundamental change in the program. The Foundation's recommendation is that the bill passes through the standard MALPF Policy Review Process. The standard MALPF policy review is that the proposal is reviewed by the Board. The MALPF Board sets up a committee to look at the policy and considers ramifications of the policy changes. The SB 970 proposes to get rid of tenant houses and to transform tenant houses into additional rights for the owners of the property to build residences that have much higher density and that would be non subdividable. Such a dwelling could be either occupied by the landowner who already has the right to own a lot for an unrestricted lot or could be used for rental, or used for tenants. Basically the bill would create additional rights that currently do not exist because it would be reducing the density from 1 per 100 acres to 1 per 70 acres. The Foundation's analysis shows that the bill could create an additional 3,500 houses on existing properties and would result in significant amount of additional residential development unrelated to agricultural needs on preserved farmland. Mr. Conrad could see only one good point about the bill: retained development right could be defined based on whether a dwelling is non subdividable or subdividable, and not on its use or the eligibility of its recipient. Other than this consideration, Mr. Conrad did not feel the bill is good for the program. Mr. Conrad stated that he believed the bill is attempting to address the concerns of a particular constituent by attempting to change the entire State program. Mr. Conrad commented that there has been no conversation with Foundation Staff, the MALPF Board, or with anyone at MDA by the sponsor before the bill was introduced.

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

### **A. HARFORD COUNTY**

1. 12-91-27 Magness, Robert, et al 212.10 acres  
Request for the relocation of a pre-existing dwelling on easement property

Mr. Magness, et al, are the grantors of the easement. The current request is for the relocation of an existing dwelling on the property.

The Magness family home, which was not located on this property, burned down in October, 2006. After the fire, the family determined that they wanted to move onto this farm where they run a cattle operation. This property had two existing dwellings when the district was established, a principal dwelling and a trailer. The trailer has been removed from the property. The main pre-existing dwelling on this property was determined to be unstable and therefore uninhabitable in its current state.

According to Harford County, the landowners chose the proposed site location because it is an area of lower crop potential and provides separation of the dwelling from the feedlot. The access will follow an existing farm lane along the wood line and cut through the field for a new gravel access road of approximately 200 feet through the field. The existing site contains

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Class III soils. The proposed site, which is predominately scrub brush, contains Class IV soils.

Mr. Magness, et al, intends to return the area of the original dwelling site to pasture. The Soil Conservation District Manager indicates that the landowners' plan to return the area to pasture is consistent with the practices promoted by the Harford County Soil Conservation District (copy of letter attached with the agenda memo).

The request was approved by the local advisory board and conforms to local zoning regulations.

Foundation staff has concerns about the proposed location of the dwelling. It is located in an area of the farm that could potentially cause significant disruption to the agricultural use of the property, due to both the location and the access to the site. However, the landowners have indicated a willingness to make the lot non-subdividable from the farm. Should the Board of Trustees approve the relocation, staff recommends that the approval be conditioned on 1) the lot will not be subdividable from the farm; and 2) the original dwelling site will be returned to agricultural use. The landowners must enter into a written agreement with the Foundation, to be recorded among the county land records, describing the terms and conditions of the Foundation's approval.

Sandy Magness and Ned Sayre, County Agricultural Preservation Outreach Specialist, were available at the Board meeting to answer questions from the Board.

Mr. Sayre stated that the landowners are looking for a new location for the house that would place it in a lower quality soil area than the pre-existing house. They plan to clear out the little areas of scrub. The location is rocky and is not the best crop ground. The access will follow along the edge of the woods, as well as possible and coming off the existing farm lane and then a minimal cut through the field over to the house site. The lot will not be subdividable.

Mr. Doug Wilson asked if this would be the only home on the farm.

Ms. Magness stated that this will be the only home on the farm other than the two children's lots. The landowners have two children and an owner's lot. In October, 2006 the house in the other farm in Bel Air burned down. The central beef operations are located on this farm and the Magnesses asked the insurance companies if they had to re-build their property in Bel Air. The insurance company conveyed that they don't need to as long as they re-build within three years. Then they started working with Soil Conservation and the County Program Administrators in Harford County. The proposed location seems to have the least impact on the farm.

Ms. Magness stated that there are no houses constructed on the children's lots. The current request is for a replacement for a pre-existing dwelling and they have not requested an owner's lot.

Mr. Doug Wilson wanted to know the landowner's intent about an owner's lot.

Ms. Magness stated that if the current request is approved, there probably will not be an owner's lot.

Vera Mae Schultz, Vice Chairman, wanted to know the location of the children's lots on the aerial map.

Mr. Sayre stated that the children's lots are potential rights. The current request is for relocating a pre-existing dwelling.





regulations.

Foundation staff has concerns about the proposed location of the dwelling. It is located in an area of the farm that would cause significant disruption to the agricultural use of the property, due to both the dwelling location and the access to the site. However, the Caswells have indicated a willingness to make the lot non-subdividable from the farm. Should the Board of Trustees approve the relocation, staff recommends that the approval be conditioned on 1) the lot will not be subdividable from the farm; 2) the original dwelling site will be returned to agricultural use; and 3) the approval extends to the Caswells only. If approved, the landowners must enter into a written agreement with the Foundation, to be recorded among the county land records, describing the terms and conditions of the Foundation's approval.

2) Tenant House:

The Caswells have requested a tenant house for an individual providing assistance on the farm. However, the application does not provide information about the operation of the farm. Foundation staff has requested further clarification of the role of the tenant in the operation of the farm. The statute provides that a landowner may request a tenant house for "a tenant fully engaged in the operation of the farm." The application indicates a 138-acre crop operation. Ned Sayre, Harford County Agricultural Preservation Outreach Specialist, stated that the Caswells intend to operate a horse farm on the property. The Caswells will provide further information during the Board meeting regarding their need for a tenant house.

The proposed tenant house is to be located near the entrance to the farm. Mr. Sayre indicated that the Caswells chose the location for security reasons. The area is currently cropped, but will be converted to pasture under the Caswells's plan.

The request was approved by the local advisory board and conforms to local zoning regulations.

Staff recommends that the Board of Trustees request that the landowner reconsider the location of the tenant house. Perhaps the Caswells would consider locating it closer to the existing driveway so as to minimize disturbance to the tillable land. The approval should be for the current contract purchasers only.

Note: The Board approved an owner's lot on the property on May 27, 2003. No dwelling has been constructed on the owner's lot. Foundation staff requested that the Program Administrator inform the landowners that the lot remains under easement because it has not been released. Should the landowners sell the farm property; the right to construct a dwelling on the lot will be extinguished.

Wayne Caswell, John Cairnes, and Ned Sayre, Harford County Agricultural Preservation Outreach Specialist, were available at the meeting.

Mr. Conrad mentioned that in the agenda packet there is a letter from Mr. Michael S. Birch that has an indication that the owner's lot was for his sister Marjorie. Ms. Marjorie decided not to build a house there. Mr. Birch has requested in his letter that the lot be redesignated as a child's lot for the benefit of his son Christopher M. Birch, who plans on building there. However this request is not included in the current request.

Mr. Sayre mentioned that it is a separate issue and is not part of the current request.

Mr. Sayre stated that the property is currently being cropped. The Caswells are planning to convert the crop ground to hay and pasture ground. It is an old dairy farm that has been rented out for cash crops. The Caswells would like to build a horse operation. The old house has not been occupied; it is not a historic structure and has fallen into a state of serious disrepair. Renovation of the house would be very expensive. There are wetlands in front of the house and it is not an ideal situation for a house site.

Mr. Colhoun wondered if the property owner was represented at the Board meeting. Mr. Sayre stated that the property owner is not available at the meeting. Mr. Caswell is the potential buyer.

Mr. Conrad stated that he is curious about the owner's lot. The owner's lot is stated to be located on parcel C. Mr. Conrad wanted to know if Mr. Sayre can locate it and also if the County approved the subdivision although it is all under the same easement.

Mr. Sayre stated that he has the copy of the plat with him. Lot C is on the other side. Mr. Sayre located the main part of the farm in the aerial map. Parcel C is about 7 acres. The true physical survey extends over the line into Pennsylvania.

Mr. Conrad asked if the MALPF easement is on the 7 acres. Mr. Sayre confirmed this.

Mr. Conrad wanted to know if the County allowed it and the lot to be subdivided. Mr. Sayre stated that the lot was approved by the MALPF Board but it was neither recorded nor released. The lot was never created.

Mr. Conrad asked if the lot would have been on the 7 acres. Mr. Sayre stated that is where it would have been as it was the site approved for the lot. Mr. Conrad wanted to know if the subdivision was recorded. Mr. Sayre stated that he has been working with the County for only 7 months and is not aware if the subdivision had been recorded.

Bill Amoss, Program Administrator, Harford County, was available at the meeting and stated that the request for agricultural subdivision never came to the MALPF Board.

Nancy Forrester, Assistant Attorney General, Department of General Services, commented that it would be subdivided only if Caswells buy the partial deed. Subdivision cannot happen without the Foundation's approval. The landowners can move forward and transfer it and the Foundation would find out about the subdivision after it had occurred.

The Board was concerned about the status of parcel C. Mr. Sayre commented that currently parcel C is part of the remainder after the original agricultural subdivision was done. Parcel C is a deeded piece of ground that is not recorded and is not part of the contract of sale.

Mr. Doug Wilson asked if the Caswells are planning to buy the parcel. Mr. Sayre responded that they are not.

Mr. Doug Wilson commented that the MALPF Board normally would not approve the 7-acre agricultural subdivision. If the request for 7-acre agricultural subdivision came to the MALPF Board, generally speaking, the MALPF Board may not approve of it as a 7-acre agricultural subdivision violates the Foundation's policy for subdivision. There is an issue with Mr. Caswell's contract of sale related to the Foundation's easement. The MALPF Board will not allow it as it violates the deed of easement.

Mr. Nielsen added that the deed of easement states that the landowner cannot subdivide the easement property without the Foundation's approval.









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Foundation's approved Lot Location Policy, this is the only area on this property that can be perced.

The request has been approved by the local advisory board and is in compliance with Planning & Zoning regulations. If approved, a payback of \$1,599.17 per acre will be required.

It is the Foundation's policy not to approve multiple owner's or child's lots for individuals on easement properties within close proximity. However, this is believed to be the first request where a recipient has requested a child's lot on one easement and an owner's lot on a separate easement. Staff recommends approval of the up to 2.0 acre owner's lot only if Roger Neal agrees to relinquish the 2.0 acre child's lot that was approved September 25, 2001 for Roger's use on MALPF easement 06-79-02A.

Linda Neal and Ralph Robertson, Program Administrator, were present at the meeting. Mr. Robertson stated that the location of the proposed lot is in an unorthodox part of the farm.

The Neals tested over 156 sites before they got this one site that perced. The proposed location conforms with the existing Health Department rules. The right-of-way also conforms with the Carroll County rules and regulations. The right of way is also less than 1200 feet and complies with the Rural Community Guidelines.

Mrs. Neal stated that her husband is not willing to relinquish his child's lot. Mrs. Neal also conveyed that at this point in time they are willing to request a child's lot for their son, Peter, instead of an owner's lot. When they find another location they would deal with their request for an owner's lot.

Mr. Conrad asked if Carroll County had reviewed the application as an owner's lot or as a child's lot. Mr. Roberston replied that the County had reviewed the application as an owner's lot.

Mrs. Neal stated that she did not understand the staff's recommendation outlined in the agenda memo.

Mr. Nielsen stated that the legislature has indicated that lots are not business opportunities for the landowners to sell the lot but they are special rights that are given to landowners for selling their easement. The rights do not run with the land and subsequent owners do not get this right. The rights allow the landowner to live in the house. Legally an owner cannot live in two places.

Mr. Colhoun stated that the requests are to be approved by the Carroll County Advisory Board before they come to the MALPF Board for review. Since Mrs. Neal is now changing the request from an owner's lot to a child's lot, it needs to go back to the Carroll County Advisory Board for a re-review and return to the MALPF Board for necessary action.

Mr. Doug Wilson stated that he believed the MALPF Board could approve the revised request conditional on it being approved by the Carroll County Advisory Board. Mr. Doug Wilson also stated that there are many landowners who own multiple easements. The Foundation would not allow an owner having five easements in Carroll County to have five owners' lots even though each easement carries a right to have an owner's lot. If a family had three children the Foundation would not allow three children's lots on each of the five different easements in the County. This is the underlying principle. There have been few exceptions. If a landowner happens to own a farm on the lower Eastern Shore and own another farm in Garrett County, the Foundation might approve two owner's lots because of the distance. In this particular





Mr. Robertson stated that he believed the easement policy allows for an owner's lot.

Mr. Tassone stated that the Foundation has stipulated that sometimes owner's or children's lots be non subdividable when they are clearly located in violation of the Foundation's lot location guidelines. The current request is not in violation of the lot location policy. The proposed location is forced by virtue of its soil conditions.

Mr. Stahl stated that he believed the MALPF Board would have to safeguard the state's best interests and try to preserve the easement as a whole. Mr. Stahl suggested Mrs. Leister is offered to make the lot non-subdividable. Ultimately the idea is to preserve land and avoid the land ending up in the hands of a third party and Mrs. Leister may not be opposed to this at all.

Mr. Nielsen stated that the Foundation can ask the landowner if she would like to have it non-subdividable but cannot make it a condition of approval.

Mr. Colhoun encouraged Board members to physically visit the properties under discussion. The Leister property has a farm road going to the location selected by the owners. The location is certainly better than option #1. Objections raised by Mr. Stahl are valid for option #1. Option #2 is a reasonable compromise.

Mr. Stahl commented that Mrs. Leister sold the easement. Mrs. Leister is likely interested in preservation as a whole. Mr. Stahl stated that he believed that no one has had the conversation with her about whether or not she wants to subdivide the lot. In the interest of preservation, there is a possibility that Mrs. Leister may not like to have her house sold off in the future to a "third party lot" in the middle of the farm.

Mr. Colhoun asked Mr. Robertson to ask Mrs. Leister if she would like to make the lot non-subdividable. Mr. Doug Wilson stated that if Mrs. Leister chose to have the house non-subdividable, she can be accommodated.

Mr. Doug Wilson stated that following Mr. Stahl's suggestion, theoretically one of the items on the Administrators' checklist discussion should be about the non-subdividability. The response should become part of the agenda packet.

3.       06-85-02e       Ensor, Jr., William N. & Truth                               73.93 & 40.701  
Request to re-designate an approved owner's lot and approved        acres  
child's lot on easement property

The Ensors are the original owners of the easement property. The original 189.566 acre easement was approved in 1990 to be subdivided into three separate parcels of 73.93, 73.93 and 40.0 acres. Below is a history of activity on the property to date.

- 10-23-90 the property was approved for agricultural subdivisions resulting in 73.93 acres, 73.93 acres, and 40.0 acres.
- 10-23-90, the Board approved a 1.0 acre owner's lot and three 1.0 acre child's lots on the 40.0 acre agriculturally subdivided parcel.
- 3-25-97 Board approved re-designation of the owner's lot and Elizabeth's child's lot.
- 10-27-98 Board approved relocation of the owner's lot and two remaining child's lots (William and Robert).
- 7-17-02 Final Release for Elizabeth's 1.0 acre child's lot (Lot #1) was recorded.
- 6-27-06 the Board approved relocation of the 1.0 acre owner's lot.
- 8-23-06 Final Release for Robert's 1.0 acre child's lot (Lot #3) was recorded.
- 11-20-07 Final Release for William's 1.0 acre child's lot (Lot #2) was recorded.





**.03 Eligibility.**

A. The approval for the construction of a tenant house by the Maryland Agricultural Land Preservation Foundation is not an absolute right of a landowner, and requests shall be reviewed by the Foundation on a case-by-case basis. Each request shall be reviewed to determine if a proposed tenant house is necessary based on the nature of the farming operation. A tenant house shall be [of appropriate size and] located on a farm consistent with this chapter and its purpose as housing for a tenant fully engaged in the operation of the farm.

B. Farm Size.

(1) A request for a tenant house may not be considered by the Foundation for any farm of less than 100 acres.

(2) Not more than one tenant house per full 100 acres may be considered by the Foundation for a farm, for example, one house for 100—199.99 acres, two houses for 200—299.99 acres.

C. A tenant house may be approved for and occupied only by tenants in which one or more is fully engaged in the operation of the farm.

D. The Foundation shall approve the location and size of a tenant house as an accessory structure. Unless the Foundation approves otherwise a tenant house:

(1) Shall be located in the vicinity of other farm buildings; and

(2) May not be located on a farm field.

E. A tenant house, including its size and location, may not be approved by the Foundation unless it conforms with local planning and zoning regulations.

F. A tenant house and the land where it is constructed may not be subdivided and separately conveyed from the farm subject to the easement.

G. The Foundation may not approve the construction of a tenant house solely for the purpose of producing rental income.

**.04 Application Procedure.**

Before the Foundation may consider a request for the construction of a tenant house, all of the following information shall be submitted:

A. An application for construction of a tenant house, which has been completed and signed by all titled landowners;

B. An unmarked copy of the tax map, which outlines the entire district or easement property;

C. A second copy of the tax map, which shall include the following:

(1) Property boundaries of the district of easement property;

(2) Location of, and access to, the proposed tenant house; and

(3) Location of, and access to, all preexisting dwellings, lot exclusions, tenant houses, and farm buildings;



