

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
MINUTES
May 27, 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, Maryland Department of Planning
Christopher H. Wilson
Doug Wilson, representing Secretary Roger L. Richardson, Maryland Department of
Agriculture
Jonathan Quinn

OTHERS PRESENT:

Linda Behrens, Landowner, Baltimore County
Michael Birch, Landowner, Harford County
Thomas Briscoe, Landowner, Calvert County
Diane Chasse, MALPF Administrator
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Veronica Cristo, Calvert County, Program Administrator
Rama Dilip, MALPF Secretary
Mary Catherine Drennan, Landowner, Baltimore County
Sara Edelman, Ag. Planner, Washington County
Thomas Filbert, Asst. Attorney General, Maryland Department of Agriculture
Nancy Forrester, Assistant Attorney General, Department of General Services
Whit Foster, Landowner, Baltimore County
Carla Gerber, Kent County, Program Administrator
Billy Gorski, Anne Arundel County, Ag. Planner
Buddy Hance, Dy. Secretary, Maryland Department of Agriculture
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Courtenay Jenkins, Landowner, Baltimore County
Tim Lessner, Landowner, Charles County
Joy Levy, Howard County, Program Administrator
Frank Newsome, Landowner, Kent County
Lois Reithlingshoefer, Landowner, Baltimore County
Dan Rosen, Planner, Maryland Department of Planning
Faith Elliott-Rossing, Director, Queen Anne's County, Department of Economic Development
and Agriculture
Charles Rice, Charles County, Program Administrator
Ned Sayre, Ag. Planner, Harford County
Michael Salandra, Landowner, Howard County
Eric Seifarh, Washington County, Program Administrator
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Elizabeth Weaver, MALPF Administrator

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1. 17-94-01 Clark, John W. and Evelyn 168.453 acres
Request for approval of a child's lot on easement property

Mr. and Mrs. Clark are the grantors of the easement. The current request is for approval of a child's lot of up to two acres for the personal use of their daughter, Beverly J. Clark for the construction of a dwelling for her use.

There are no pre-existing dwellings on the property. No lots have been approved on the property to date. Mr. and Mrs. Clark own another easement property (17-94-02). An owner's lot and a child's lot were approved on that property. The child's lot was for the use of their son, Jack.

The request was approved by the local advisory board and conforms to local zoning regulations. If the lot is approved, there will be a required payback of \$700.00 per acre to the Foundation.

Staff recommends approval of the release of up to two acres if required by the regulations of the Health Department or the County, 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: it is located along the road, in a corner of the property.

Donna Landis-Smith, Program Administrator, was available at the meeting. Ms. Landis-Smith stated that there are no pre-existing dwellings on the easement property.

Motion #11: To approve the request of John W. and Evelyn Clark for approval of a child's lot on easement property.

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

F. HOWARD COUNTY

1. 13-80-05e Colmont Farm, LLC 189.683 acres
Request to relocate an approved non-subdividable dwelling

Mr. Michael Salandra of Colmont Farm, LLC is the current owner of this easement property. The easement was purchased from Clifton Clevenger in 1981. At the February 2008 meeting, when the farm was owned by Bushy Park Farm, LLC, the Foundation approved a swap 1.0 acre of easement property for 1.0 acres of adjoining non-easement property, with the agreement from Mr. Salandra that this 1 acre would become part of the farm. The memo and minutes of the meeting were attached with the agenda memo.

Foundation staff recommends approval of the request. 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, as was the original approval.

Michael Salandra and Joy Levy, Program Administrator, were available at the meeting. Ms. Levy stated that originally the request was a swap for 1.0 acre of easement property for a 1.0 acre of non-easement property. The request is for a non-subdividable dwelling.

Motion #12: To approve the request of Colmont Farm, LLC to relocate an approved non-subdividable dwelling.

Motion: Doug Wilson
Status: **Approved**

Second: James Pelura

G. HARFORD COUNTY

1. 12-80-01s1 Island Branch Farm, LLC 138.11 acres
Request for a reconfiguration of two easement properties through the subdivision of a portion of an easement property and attachment to a non-contiguous easement property

Island Branch, LLC, is the grantor of the easement. The current request is for approval to reconfigure two easement properties by subdividing a 7.319-acre parcel from easement property, file # 12-80-01s1, and joining it by deed to a non-contiguous easement property, file 12-83-01.

During the March 25, 2008 MALPF Board meeting, the Board tabled two requests from Island Branch Farm, LLC on the 12-80-01s1 property. At that meeting, the landowners requested approval to 1) relocate an existing dwelling; and 2) the right to construct a tenant house for a contract purchaser of the property.

The easement #12-80-01s1 originally covered 239.16 acres. An agricultural subdivision of 101.01 acres was approved by the Board on August 24, 2004. On September 10, 2004, the 101.01-acre parcel was conveyed off (Parcel A on aerial). Island Branch Farm, LLC, retained the 138.11-acre portion (Parcel B and C on aerial). The Foundation was informed at the March meeting that the LLC is in the process of selling the 138.11-acre portion of the farm to Wayne and Beverly Caswell. The contract of sale includes a contingency that the purchaser will receive approval from MALPF for the relocation of a pre-existing dwelling and a tenant house on the property. During the discussion of the request at the March Board meeting, it became apparent that the LLC did not want to convey Parcel C to Mr. and Mrs. Caswell. The landowners were not present to clarify their request. The Board tabled the request pending receipt of further information related to the intentions of the landowners concerning Parcel C (minutes attached).

Michael S. Birch, managing member of Island Branch Farm, LLC, recently informed Harford County and the Foundation that he would like to retain ownership of Parcel C. He proposes that the LLC convey ownership of Parcel C to the personal ownership of Michael Birch and his wife, Ann Leah Birch. The Foundation informed Mr. Birch that the proposed subdivision of the 7.319-acre parcel was not allowed under the Foundation's subdivision regulations, which requires a minimum property size of 50 acres for each remaining parcel, unless a parcel could be added to an adjoining easement property, which together would comprise 50 acres, subject to approval of the Board. (Note the Foundation's agricultural subdivision regulations contain additional restrictions.) Mr. Birch proposes to add Parcel C to an easement property (file # 12-83-01) owned by him and his wife. Easement # 12-83-01, which comprises of 38.642 acres, is adjacent to Parcel A. It is not adjacent to Parcel C. (aerial map attached with agenda memo.) According to Harford County, the distance between Parcel C and easement #12-83-01 is approximately 1,200 feet.

Foundation staff recommends that the Board not approve the request because it does not meet the requirements of the Foundation's agricultural subdivision regulations. The addition of Parcel C to easement file # 12-83-01 would result in a parcel size of 45.961 acres, which does not meet the minimum 50-acre size requirement: "The subdivided portion and all remaining parcels shall be at least 50 acres" (COMAR 15.15.01.17(I)(1)). Additionally, Parcel C is not contiguous with easement file # 12-83-01 making the two

areas difficult to farm as a single agricultural operation. Therefore the request does not conform to the Foundation's agricultural subdivision regulation, COMAR 15.15.01.17(H)(4)(g), which requires that "both the parcel to be subdivided and the remaining parcel are able to sustain long-term agricultural production, independent from the other."

Mr. Birch was available at the meeting to address questions from members of the Board.

Note: The Board approved an owner's lot on the property on May 27, 2003. The lot was conveyed to Marjorie Birch, a member of Island Branch Farm, LLC. 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. Mr. Birch has indicated that he would like to re-designate the lot approved for Marjorie to his son. The Foundation staff recommended that Mr. Birch wait until the Board either approves or denies his request for the separation of Parcel C from Parcel B prior to requesting the re-designation of the lot.

Michael Birch and Ned Sayre, Harford County Agriculture Planner, were present at the meeting to answer questions from the Board. Mr. Sayre stated that the properties are all a part of a contiguous tract of both MALPF and Harford County easements. There is no land that is coming out of easement and it is basically re-apportioning which parcels are attached with which easement property in trying to put together the sale and the transfer of the property. Mr. Sayre stated that Mr. Birch thought this would be the easiest and the best way to do it. Mr. Birch originally hoped to swap parcel Parcel C with contiguous property, but this was not a workable proposition. The intervening property is a Harford County easement. The agenda packet also contained the proposed deed of dissolution. Mr. Sayre commented that all the lands stay under easement and there is no net loss of any ground to the programs.

Mr. Conrad wanted to know the decision of the Harford Advisory Board on the request.

Mr. Sayre stated that the request was approved with conditions that Parcel C would be attached by deed to the two properties owned by Mr. and Mrs. Birch's. The deed was included in the agenda packet.

Mr. Birch stated that this is a family farm and located the 38.11 acres easement property owned by his wife Leah Birch on the color aerial map (identified as Parcel D and E by the Board members). There are two easements, which can be named Parcel D and Parcel E, totaling more than 50 acres. Parcel E is 11½ acres that is under a separate MALPF easement. Parcel D and Parcel E are two easements; two parcels entered the program separately. Mr. Birch's easement entered the program at 38 acres in 1983. He was the first one in the neighborhood and the property was not adjoined by any preserved property.

Mr. Colhoun requested Mr. Birch to indicate Parcel D and Parcel E on the color aerial map and pass it around for the benefit of the Board members.

Mr. Birch stated that the total acreage for Parcel D and Parcel E is slightly over 50 acres but still separately accessed. North of Parcel C and attached to Parcel C are about half a dozen acres that Mr. Birch owns in Pennsylvania. It is land-locked. The only way to get through is via Parcel C. It is agricultural. Parcel C has always been separated from the rest of the farm. It is separated by a public road. It is unique in many aspects primarily because the adjacent ground is in Pennsylvania. Mr. Birch, Mr. Birch's parents and Mr. Birch's sister are the members of the LLC. Mr. Birch's father passed away 12 years ago.

Parcel C has always been a separate parcel and always farmed separately.

Mr. Birch commented that if he had come to the Board and conveyed that he owns Parcel C and Parcel D separately and would like to enter the program, the MALPF Board would have approved. They are adjoining other parcels; it is in the middle of one of the largest blocks of agricultural preservation districts and easements in Harford County. It is in the north western corner of the County. Attaching Parcel C enhances Parcel D and it adds another 14 acres to keep the operation on Parcel D more viable. He does not want to sell it to Mr. Caswell because it helps Mr. Birch to stay viable on Parcel D. Mr. Birch's 31-year-old son is actively involved in the farm. Mr. Birch spoke to his neighbor who owns the adjacent property shown on the map in green and suggested swapping 14 acres with him, but he did not want to swap the land.

Responding to a question from a Board member, Mr. Birch stated that Parcel B is also owned by Mr. Birch but is under contract to Mr. and Mrs. Caswell.

Mr. Doug Wilson commented that Caswells do not want Parcel C which is a part of the original easement for Parcel B. Mr. Birch has a contract to sell Parcel B but not Parcel C. Now the Foundation has been asked to subdivide Parcel C off from Parcel B. The critical issue is whether the MALPF Board would approve cutting off Parcel C. Parcel A is a pre-approved agricultural subdivision of the property and is not part of the current discussion. According to the Foundation's agricultural subdivision, Parcel C is too small. It is not a standalone farm and the Caswells do not want it with Parcel B. In theory, Mr. Birch cannot complete his sale because his sale is only for Parcel B minus Parcel C. The Caswells do not want Parcel C and Mr. Birch does not want to sell it to them.

Mr. Sayre added that Parcel C is physically separate but it will be attached by deed. Legally it would become part of parcel D.

Mr. Colhoun wanted to know about the building rights on the Parcel C. Mr. Sayre stated that there was a pre-approved owner's lot on Parcel C. It is a lot for Mr. Birch's sister but it is not yet constructed. Mr. Birch's sister changed her mind.

Mr. Colhoun requested the Board to keep in mind that the house could be constructed and could then be sold.

Mr. Doug Wilson commented that assuming that Parcel C is independently owned by Mr. X. Parcel B is under MALPF easement and Mr. Birch applied to participate in the easement program as a 7 acre parcel. The Foundation would consider the easement application if it adjoins two other easement properties and if the property ranks. Mr. Doug Wilson stated that it would be better if Mr. Birch could sell Parcel B and Parcel C together. But if someone would not buy it the Foundation can probably put a restriction that would allow a subdivision of Parcel C because he is trying to adjoin it to Parcel D which no longer makes it a 7 acre subdivision. Mr. Doug Wilson was concerned of setting a precedent by allowing a 7 acre agricultural subdivision. If a farmer was selling 7 acres to another farmer, the Foundation would allow it. There is a problem because there is a Harford County easement in the middle. The concern is how best to protect the Foundation's interest in keeping the farm agricultural without violating the issue of an agricultural subdivision.

Martha Clark, Board member, wanted clarification on the total acreage of the Maryland portion of Parcel C, Parcel D and Parcel E.

Mr. Birch stated that Parcel D and Parcel E together are slightly over 50 acres. The Maryland portion of Parcel C is 7.319 acres, which is shown on the plat. In addition there

is a 2 acre lot making the total 9 acres. The 2-acre lot is for Mr. Birch's sister.

Mr. Tassone wanted to know if there are any lot rights pertaining to Parcel D and E. He wanted to know if there are any pre-existing dwellings. Mr. Birch stated that the house he is residing in is a pre-existing dwelling and he is the original owner. The pre-existing dwelling is in Parcel D right on the road.

Mr. Tassone wanted to know if Mr. Birch has exercised his right for an owner's lot or a child's lot on his property. Mr. Birch stated that he has not exercised his right for an owner or a child's lot and he has two children. Both his children have expressed an interest in coming back and living on the farm. Mr. Birch's son is actively involved in the farm. Mr. Birch stated that he wants one lot for each child and the lots can be located in Parcel B, C or D. It might make sense for the lot to be on Parcel C. Mr. Birch stated that since they have already perced and laid out an owner's lot on Parcel C, it is possible to convert it to a child's lot.

Ms. Schultz asked if there is a residence on Parcel E. Mr. Birch stated that it is not a residence but a barn.

Mr. Colhoun asked the Assistant Attorneys General for their opinion.

Nancy Forrester, Assistant Attorney General, Department of General Services, stated that the Foundation has regulations in place to address this issue. Ms. Forrester quoted from the COMAR:

- 1) The Foundation may permit a subdivision of less than 50 acres of easement property if:
 - (a) One of the following exists:
 - (i) It is for the purpose of straightening a boundary; or
 - (ii) The parcel to be subdivided is conveyed to an adjoining easement property, the remaining parcel is at least 50 acres, and if the adjoining easement property is not a Foundation easement, it shall be restricted by a recorded instrument that permits agricultural activities and contains restrictions that are the same as or more stringent than those found in the Foundation's deed of easement; and
 - (b) The remaining portion of the original parcel meets the minimum soils criteria, as provided in Regulation .03D.

Ms. Forrester pointed out that in this request the parcel to be subdivided is not being conveyed to an adjoining easement property.

Mr. Birch stated that the regulations are a little vague because the adjoining Parcels D and B are cattycornered, whether that is adjoining or not is an interesting question. Mr. Birch stated that he is trying to find a way to do this.

Thomas Filbert, Assistant Attorney General, Maryland Department of Agriculture, wondered if Mr. Birch were to try to save a strip of land and run the border of Parcel C down to Parcels D/E.

Mr. Birch asked if Mr. Filbert would like to buy the farm if he kept 20 feet down along the road frontage. Nobody wants to give up what they have to drive through to get to the buildings at the back of the farm. Mr. Birch stated that he has tried everything. He even

tried buying from the neighbor but the neighbor does not want to sell.

Mr. Colhoun stated that the Board is concerned about building the house in the middle of the property and it no longer remains truly agriculturally viable. One of the Foundation's restrictions is on how much the Board will let someone divide away from the farm. Once a building is put in the middle of 7 acres very little remains viable.

Mr. Birch stated that he understands the MALPF Board's concern. It is not 7 acres but 14 acres even though the MALPF Board does not have any control over the 7 acres of land in Pennsylvania.

Mr. Colhoun commented that the 7 acres in Pennsylvania can be sold separately. Mr. Birch disagreed with Mr. Colhoun's comments as the 7 acres will have no frontage.

Mr. Tassone wanted to know the location of Ms. Birch's lots. Mr. Birch stated that Ms. Birch's lot is on the Maryland Pennsylvania line as shown in the plat. It is cut out from Parcel C. Ms. Weaver commented that the lot is still under the MALPF easement because it has not been released. Even though the lot has been subdivided in the Harford County, there was no preliminary or final release. If ownership of Parcel C is transferred to another party, the lot will not be a buildable lot. The lot right is for the sole use of the person for whom the lot was released. Mr. Birch stated that Ms. Birch has changed her mind and has decided not to exercise her right.

Mr. Tassone wondered if the MALPF Board could approve the request under certain conditions like (a) C can never be subdivided from Parcels D and E (b) no subdivision of pre-existing dwelling on Parcel D and (c) children's lots are absolutely limited to two.

Mr. Doug Wilson agreed and stated that he was thinking in reverse since possibly the Foundation would be taking the property in reverse. While discussing an earlier agenda item, the Board had instructed that any development of children's lot will occur on the smaller parcel to preserve the larger agricultural side. Mr. Doug Wilson saw no difference between this separation and the sliver recommended by Mr. Filbert.

Ms. Weaver pointed out that the parcels are not adjoining. Mr. Doug Wilson stated that he understands but if a sliver is created it would look exactly the same as the one they reviewed in the earlier agenda item. Mr. Doug Wilson commented that it would be a reasonable compromise if in the current request all the development that could occur in the farm could be moved to the upper portion and the Board limits Mr. Birch's rights of subdivision. That means that property will always have a house on it. This is a unique set of circumstances.

Ms. Forrester remarked that all this will be violating the Foundation's regulations.

Mr. Tassone remembered handling a subdivision request in the context of contiguity on another property. In order to see the parcels as contiguous, the Board has to recognize the ability to travel short distances along the road. In the current case it is 1200 feet away.

Mr. Stahl commented that he is surprised that this issue was not included in the negotiations with the Caswells, the Contract Purchasers. The Caswells are buying Parcel B, which actually includes Parcel C.

Mr. Birch stated that the parcels have separate tax bills. Only the easement is the same. Part of Parcel C is in Pennsylvania.

Mr. Stahl commented that the Caswells are buying Parcel B that includes Parcel C. Mr.

Stahl wondered that there was no way to negotiate the ability to include it while talking about a fairly large parcel.

Mr. Birch commented, "Can I go back and negotiate. Maybe." The MALPF Board might force him to negotiate but he does not want to. "There is no such thing as never."

Mr. Colhoun asked Mr. Birch to explain why he does not want to.

Mr. Birch stated that he certainly would not say that it could not be possible. He has a contract of sale waiting since October, 2007. The Caswells are waiting for the MALPF Board's approval to do what they want to do.

Mr. Colhoun asked if there is a possibility that Mr. Birch can negotiate with the Caswells, as suggested by Mr. Stahl, realizing that the Board has problems with the current request.

Mr. Birch stated that he understands the Board's concerns. There was no need for concern if the Caswells bought the whole thing. Mr. Birch has the additional problem of trying to sell the portion in the State of Pennsylvania.

Mr. Birch asked Mr. Doug Wilson to elaborate more on his suggestion. Mr. Birch wanted to know that if he offered to say no child's lots on the big farm the child's lot could be put on the small farm.

Mr. Doug Wilson stated that he was looking for opportunities to try to accomplish what Mr. Birch wanted given that the Foundation's legal position does not seem to allow them to do what Mr. Birch wants. There are many reasons why a farmer does not want to have a little parcel on the other side of the road. So the Foundation has to have some flexibility to deal with these 'across the road' parcels. The current request involves a parcel in another State. The purchaser might not like to buy a farm if he needs to deal with two States, two sets of income tax, etc. Mr. Doug Wilson stated that he is trying to get something that might allow the MALPF Board to seek to do something since Mr. Birch has development right opportunities. It is not necessary that the MALPF Board would vote for it.

Mr. Birch stated that the existing farms are clearly two easements. He is perfectly willing to combine them and agree that he would get no additional owner's lot on the parcels. Out of all the easement property, he agrees to get two child's lots. He is ready to put the lots along the Mason Dixon Line because it will affect the farm the least.

Mr. Doug Wilson stated that it was his intention to push the lots in that direction rather than having them scattered around Parcels D and E. Mr. Birch has two children and has the right to two children's lots and one owner's lot. As mentioned by Ms. Weaver, the other lot for Ms. Birch can be extinguished either by her or by a transaction where the property is sold because they have not released Ms. Birch's lot.

Mr. Tassone suggested that the pre-existing dwelling currently occupied by Mr. Birch becomes non-subdividable. The Board can also consider waiving the 25-year termination clause.

Mr. Conrad commented that Parcels D and E are under a different easement than Parcel C, so the MALPF Board would be moving development rights from one easement to another easement. Mr. Conrad was not sure if this could be done.

Mr. Doug Wilson suggested consolidating them all under one easement document. Mr. Birch stated that he is willing to do that.

Mr. Colhoun wanted to get a legal opinion.

Ms. Forrester did not believe the MALPF Board could do what has been suggested.

Mr. Colhoun commented that if the MALPF Board wants to entertain the suggestions and the property owner is willing, the MALPF Board can move in that direction and go to the Board of Public Works. There might be a number of legal things to be done to reconstruct this. The MALPF Board is trying to solve a problem.

Mr. Filbert stated that the MALPF Board is trying to solve a problem and is also creating a problem. The MALPF Board would have to consider the request keeping in mind all the other properties under the program in the State of Maryland. This is inconsistent with the Foundation's past practices. The distance is 1200 feet. There have been other properties that have come to the MALPF Board with a request and have been denied. Mr. Filbert understands each property is separate and distinct but at the same time, the Foundation has regulations and they need to be complied with. Mr. Filbert stated that in his opinion the proposals are well beyond the Foundation's discretion.

Mr. Filbert wondered why it is not possible for Mr. Birch to move the strip of land from Parcel C to Parcel D. Mr. Birch stated that in order to get there, it would take virtually the entire road frontage. The owner would no longer have his frontage on the public road.

Mr. Freedlander requested Mr. Doug Wilson to elaborate why he thought it would be worthwhile not to follow the regulations.

Mr. Doug Wilson stated that the Foundation has to try to find another way, given that Parcel C is on the other side of the road. Mr. Birch is trying to come up with a solution. The agenda item discussed earlier in the day had similar issues. The local government approved that. The MALPF Board looked at the request and allowed them to do that because the Board pushed all the potential development the lady had to a little lot in the front of the property. That is the vision he is trying to use for this request. Mr. Birch has some subdivision rights, he has his own house, and he has his children's lots. Let us push all those to Parcel C. There would be a house on the farm because he cannot subdivide his personal house and the Board has done the best it can to accomplish the sale of the property. Mr. Birch may very well find another buyer who will take Parcel C and the Pennsylvania property but that is not the current request. The Board can ask Mr. Birch to go back and re-negotiate. He will come back next month and say they said 'No'. So Mr. Birch's sale falls through. The MALPF Board preserves the easement and the property is still together and the Board is committed to foster long term continuation of agriculture. We have another party who wants to farm a bigger parcel. We have a weird little parcel here. Mr. Doug Wilson stated that he understands Mr. Filbert's concerns. Mr. Doug Wilson stated that he is of the opinion that the Foundation's records will indicate why the MALPF Board took an action because it did not want to create a land sliver along the road frontage. The Board pushed all the development to the other parcel.

Mr. Doug Wilson stated that he believed the MALPF Board has only two choices. The MALPF Board has to say 'No' because he did not want to vote for a land sliver or the MALPF Board allows some discretion in allowing the sale and preserve agriculture by pushing all the potential development onto a very small parcel.

Mr. Colhoun stated that in his opinion he agreed with Mr. Doug Wilson's suggestions. Mr. Colhoun stated that he believed the MALPF Board has some discretion to do that, subject to the legal opinion. If the Assistant Attorneys General later come back and convey that they do not agree they can always do that. Mr. Colhoun wanted to know if the MALPF Board would like to entertain the solution and then see what happens. Mr. Colhoun told

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Mr. Birch that the MALPF Board cannot guarantee legally how it will proceed.

Mr. Filbert stated that both he and Ms. Forrester will need approval from the Attorney General's Office. Mr. Filbert and Ms. Forrester had problems in agreeing with the suggestions.

Mr. Colhoun stated that is the risk the MALPF Board is taking in trying to arrive at a solution.

Mr. Chris Wilson, Board member, inquired whether there can be an agreement by the owner that could be enforceable. The owner can agree that his two lots can only be in Parcel C.

Mr. Filbert stated that he understand the MALPF Board is talking in terms of practicality. Mr. Filbert appreciated the suggestions, but the Foundation has rules and regulations. For every single request that comes to the MALPF Board there are always some odd situations. But still the Foundation has to follow some rules and regulations. Mr. Filbert stated that in his opinion the recommendations suggested by Mr. Doug Wilson would require a sign off by the Attorney General's Office and at this point in time, Mr. Filbert was not prepared to do that.

Mr. Doug Wilson stated that he agreed that the opinion of the Attorney General's Office should be sought before the MALPF Board votes, not after the MALPF Board votes. The MALPF Board's suggestion and conditions should be sent to the Attorney General's Office for his opinion. If the opinion is 'No' the MALPF Board cannot do it. Mr. Doug Wilson did not feel the MALPF Board should vote and then give it to the Counsel.

Mr. Tassone suggested the MALPF Board articulates what the motion would be. Mr. Tassone was ready to make a motion and wanted one more clarification before doing it.

Mr. Tassone stated that any future lot rights are restricted to Parcel C. According to Mr. Birch, the 7 acres in Pennsylvania is land locked and is accessible only through the Maryland portion of Parcel C. Mr. Tassone wanted to know if Mr. Birch (if he changes his mind) or another future landowner can decide to put the two children's lots on Parcel C and subsequently subdivide the Pennsylvania acreage into residential lots accessed through Parcel C. Mr. Tassone wondered if there should be a stipulation on the easement for Parcel C that says access for two residential lots and no more.

Mr. Birch stated that Mr. Tassone's suggestion cannot be done practically. Certainly the MALPF Board cannot control the State of Pennsylvania from here but you have the control by saying that this Board would not approve an access to the Pennsylvania ground for anything other than agricultural purposes.

Mr. Colhoun wanted to know if the Board would like to entertain a motion to table the issue but also add in the motion the stipulations discussed by the Board.

James Pelura, Board member, stated that he understands the MALPF Board's desire to table the request but he believed that the Board should make a decision. The Board should vote and then leave it to the legal counsel. It will be on the record that the Board tried to help an easement owner work out a problem.

Mr. Freedlander stated that if a parallel is drawn between the MALPF Board and the Board of Public Works, the Board of Public Works does not act without legal sufficiency. The legal sufficiency is very important to the Board of Public Works and Mr. Freedlander stated that he believed it is very important to the functioning of the MALPF Board.

Mr. Colhoun stated that he believed the MALPF Board would be accomplishing the same thing if it tables the request and then recommends what the required action should be. Mr. Colhoun stated that he would prefer to have a motion (1) tabling the request (2) make the stipulations and (3) forwarding them to the Attorney General.

Motion #13: To table the action and ask the Assistant Attorneys General to consider the following:

The proposed agricultural subdivision is approved with the condition that Parcels C and D and E be made a single easement under the same Deed of Easement. There should be a stipulation that Parcel C cannot be subdivided from D and E in the future; that the right to subdivide the pre-existing dwelling on Parcel D be eliminated; that any children's lots by Mr. Birch go on Parcel C; and that access to the Pennsylvania portion of Parcel C be only for agricultural purposes with no access for residential purposes; and waive the 25 year easement termination and extinguish any owner's lot right

Motion: Joe Tassone

Second: Doug Wilson

Favor: Howard Freedlander, Doug Wilson, Martha Clark, Jerry Klasmeier, Vera Mae Schultz, Jonathan Quinn, Joe Tassone, John Draper, Robert Stahl

Opposed: Chris Wilson, James Pelura

Status: **Approved**

Mr. Conrad mentioned that he has a policy comment that would be relevant to the discussion. The Foundation permitted small parcels to enter the program with an understanding that they can always be available to be incorporated into adjacent farming operations. Certainly had this request come in as a stand alone parcel, it may have been approved with an understanding that it could be incorporated into any adjacent farming operation without necessarily incorporating it to make it a part of the easement. This would permanently be one farming operation. If the Board wants to make it non-subdividable, it only could be incorporated into one farming operation and not available for other adjacent farming operations. So in a way you would tie this parcel to the other parcels which are non-contiguous, which is contrary to the intent of allowing parcels to be available to be incorporated into any adjacent farm operation.

Mr. Doug Wilson stated if Mr. Birch can find a way of getting it done, he or Mr. Tassone would add another clause conveying that they cannot be subdivided separately but it could be added back to Parcel B or to the Harford County easement or something like that. That is the intent.

Mr. Stahl stated that he still feels it important for Mr. Birch to explore possible opportunities for exchanging a piece with the Caswells, the Contract Purchaser. Mr. Stahl believed that all this action could be eliminated by some sort of property exchange between Mr. Birch and the Caswells exchanging 7 acres or 13 acres of contiguous property.

2. 12-88-03e Scarff, Grayson W., Jr. 287.49 acres
Request to exchange easement property for non-easement property to expand access to an adjacent property

Mr. Scarff is the grantor of the easement. The current request is for an exchange of non-easement acreage for easement acreage to increase the access to an adjacent property.

The owner of the adjacent property, the Estate of Walter Johnson, wants to subdivide the 24.416 acre property into a minimum of three lots. However, the Estate does not have adequate access to meet Harford County's subdivision regulations. The County requires fee simple access at a rate of 12.5 feet per dwelling. The Estate is able to secure adequate access from the road along a farm lane up to the Scarff property, which is the last portion of the access that is required for development. The Estate proposes an exchange of an approximately 5,000 square feet area of the Johnson property (Parcel B on the attached extract of a survey) for an approximately 5,000 square feet of the Scarff property (Parcel A on the extract attached with agenda memo). The exchange would provide sufficient access (37.5 feet wide) to the Johnson property to allow the additional development. (Note: Copy of the proposed plat was available during the Board meeting.)

Currently, there is one dwelling on the Johnson property, which would be torn down and replaced. According to Robert Kahoe, attorney for the Johnsons, an historic right-of-way pre-existed the MALPF easement. The Foundation recognizes rights-of-way as they exist at the time of settlement of the easement; therefore, assuming a legal right-of-way existed, the Foundation would recognize the access to the one pre-existing dwelling. However, MALPF is not legally obligated to expand the access unless it is compelled to do so by court order. The MALPF deed of easement (DOE) states that "no rights-of-way, easements...or other similar servitude may be conveyed, or permitted to be established in the above described land for any commercial, industrial or residential use without the Grantee's express permission" (MALPF DOE, Covenants, Conditions, Limitations and Restrictions, (A)(1)(j)).

Harford County Land Preservation Advisory Board recommended denial of the request. The request conforms to local zoning, with the exception that the Johnson property lacks adequate access to develop to the requested density.

Foundation staff concurs with the recommendation of the local Board, which stated that the purpose of the MALPF easements "is to protect (the) farms from development pressure and allow for continual agricultural production on them. It would seem counterintuitive then to give up easement protected lands to allow additional development of an adjoining parcel. It is well documented that increasing housing density on properties surrounding actively farmed lands brings about a significant potential to negatively impact the active farm. Even if the Johnson Estate were to provide a buffer strip as described, the potential for conflict is still there." Additionally, the local board noted that it may be possible to expand the development of the Johnson property beyond the proposed three lots through the transfer of development rights.

The Foundation has, on occasion, approved exchange of acreage upon the request of landowners. However, the Foundation's Board of Trustees has consistently expressed concern that in so doing it does not expand development potential on adjacent properties because that would run counter to the intent of the program. The Board wants to ensure at minimum a neutral impact on an easement, or ideally, a net gain for the Foundation. In this case, the viability of agriculture would be negatively impacted.

In a court order concerning the Johnson property access dispute, the judge acknowledged that the Foundation's approval would be required for an expansion of a right-of-way on the Scarff property.

Robert Kahoe, attorney for the Johnsons, and Ned Sayre, Ag. Planner, were present at the meeting.

Mr. Sayre stated that Mr. Kahoe is representing the Johnsons and has been working through a long process to try to resolve it. All the parties involved were in agreement including Mr. Scarff, but the request had to be reviewed by the Harford County Land Preservation Board.

Mr. Kahoe presented the request at the Harford County Land Preservation Advisory Board. After deliberations, the Harford County Land Preservation Advisory Board concluded that it was not in the best interest of the purpose of the easement and the goals of agricultural preservation to support the exchange of properties for the right-of-way to add additional development rights and to expand development beyond the single pre-existing dwelling that was on the Johnson property. The local board's opinion was that the access was just for maintaining a large agricultural tract and the pre-existing dwelling. The request was to expand it to at least two additional lots, with an agreement that it will be no more than three lots. However, the advisory board thought it would be a very expensive proposition to put in a couple thousand feet of road surface for three lots in addition to the cost of bringing in utilities.

This is a MALPF easement and the MALPF Board has the final say. The request was sent to the MALPF Board with the County Board's negative review.

Mr. Kahoe stated that he has been involved with the request for the last three years. He stated that the Johnson family bought this property in 1948. It was primarily used as a summer house. The property had a pre-existing farmhouse served by a driveway. The driveway has probably been in use for approximately 100 years or more. Around twenty five years back, the house burned down. The Johnson family stopped going to the property and so the driveway was not used since then. Mrs. Johnson, the matriarch of the family, died and the family tried to sell the property and listed the property for sale three years ago. Today there are five recently subdividable lots adjoining the driveway and the plat has been plotted by the local surveyor.

Mr. Doug Wilson wanted to know who owns the long land strip that runs along from the road to the property. Mr. Sayre identified it as belonging to Mr. Zeller.

Mr. Kahoe stated that he had no intention of asking for a waiver of the easement and had no intention of developing the property although two parcels under Harford County law could be developed as a matter of right if all other subdivision regulations are met. All they wanted was to establish the right of the Estate to use the driveway. Mr. Zeller was going to grant them 36 feet in fee which would give the Johnsons three lots under the county subdivision regulations. Of the 36 feet, the Johnsons would only be using 10 to 12 feet. The rest will not be disturbed. Mr. Zeller was to be paid something and was happy. Then they had to come to Mr. Scarff. Mr. Scarff was given certain assurances, such as, there would be no more than three units built on site. The Johnsons could put conveyances in the deed, will maintain trash, etc. One missing issue was that the Scarff property had a MALPF easement. Mr. Kahoe stated that now he is requesting the MALPF Board's permission to develop the three lots primarily because the development of this property needs that kind of development to settle the estate. The Johnsons need the development of the property in order to complete their settlement agreement, protect the interest of the neighbors, and get some cash to the estate to develop some roads and the utilities. Mr. Kahoe stated that he understands the local board's position and the MALPF Board's position and would be back in the Circuit Court, potentially litigating, and Mr. Kahoe thought it would likely result in establishing an historic right to use the right-of-way as it is now located.

Dr. Pelura asked if the Johnsons have even attempted to approach the County.

Mr. Kahoe stated that the Johnsons have the right to develop one lot. There is one building right as a matter of right. Beyond that, additional width is required up to 30 feet.

Dr. Pelura stated that it need not be so. The Appeals Board might have a say in it. Dr. Pelura stated that he believed the Johnsons are essentially asking the MALPF Board to

III. AGRICULTURAL PRESERVATION DISTRICT PETITIONS

A. Washington County

1.	21-08-01	Martin, Myron J. & Janet L.	98.49 acres
2.	21-08-02	Miller, Jay Richard	178.23 acres
3.	21-08-03	Thomas, Kenneth	130.93 acres
4.	21-08-04	Thomas, Kenneth	64.20 acres

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

Eric Seifarth, Program Administrator and Sara Edelman, Ag. Planner, were present at the meeting.

Motion #17: To approve items 1 to 4 to establish agricultural land preservation districts on their respective properties.

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

5.	21-08-05	Windy Willows Farm, Inc.	44.41 acres
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RECOMMENDATION: Staff recommends approval based on meeting minimum soils criteria and the size exception criteria set forth in COMAR 15.15.01.03D(2)(a)(i): A parcel of less than 50 acres may qualify for district establishment if "it adjoins a 50 acre parcel which has been approved by the Foundation as an agricultural land preservation district."

Ms. Council stated that she has received an e-mail from Ms. Forrester. On the attached map, the farm appears as a triangle and is separated by Interstate 70 from another MALPF district 21-95-07. Ms. Forrester had asked if that were the only MALPF property that is adjacent. Some time back, the MALPF Board did not approve a property that was separated by a large highway. Ms. Council wanted the MALPF Board to be aware that there is a second MALPF district 21-91-60 below the proposed district. Ms. Council wanted to know if the landowner of 21-08-05 were to apply for an easement does the Board require contiguity to 21-95-07 as well as 21-91-60. The question is which property also has to apply for an easement to qualify.

Mr. Conrad asked if Washington County has any opinion on the situation.

Mr. Seifarth stated that the County has always been of the opinion that separated land is contiguous if they cannot build houses between the two properties. The County Agricultural Advisory Board would accept the current request.

Mr. Stahl stated that if we don't do that we greatly reduce the value of the two parcels. From the agricultural standpoint he understands that the landowners have to go all the way around to the highway interchange to access the separated land. The MALPF Board would not do that.

Ms. Chasse stated that she recalled a similar case in Baltimore County where Interstate 83 was involved. The MALPF Board did not approve the request.

Mr. Stahl wondered what would have been the outcome if all of it were under one parcel

Motion #4: If in the event either of the two above offers is rejected, Foundation may make full or insufficient funds offer to three additional landowners.

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

Charles County

Motion #5: That the Foundation suspends offers in Charles County until the Foundation receives further details on the results of 'third appraisals' from the 07 Cycle.

Motion: Doug Wilson Second: Chris Wilson
Abstained: Robert Stahl
Status: Approved

Harford County

Motion #6: To approve that the Foundation make offers to a landowner at his easement value and another landowner at his asking price.

Motion: Doug Wilson Second: John Draper
Opposed: Joe Tassone, Vera Mae Schultz
Status: **Approved**

Motion #7: To approve that the Foundation make an insufficient funds offer plus any federal dollars MALPF staff can determine are available to make an easement offer to a landowner.

Motion: Doug Wilson Second: Chris Wilson
Status: **Approved**

Queen Anne's County

Motion #8: Foundation to make offer to a landowner at his easement value.

Motion: Doug Wilson Second: Howard Freedlander
Opposed: Joe Tassone, Vera Mae Schultz
Status: Approved

Worcester County

Motion #9: To approve that the Foundation to make an insufficient funds offer to a landowner plus any County funds or federal dollars the MALPF staff can determine are available to make a full easement offer.

Motion: Doug Wilson Second: Chris Wilson
Status: Approved

2) Status Report on the following Pending Litigation:

- a) Claggett v. MALPF, Court of Special Appeals Case #00578
- b) MALPF v. Stitzel, et al, Circuit Court for Washington County, Case # 21-C-06-025292DJ
- c) Owens v. Brown, et al., Circuit Court for Garrett County Case # 11-C-07-009981 DJ
- d) Yoder v. Bellevale Farms Circuit Court for Baltimore County

3) Status report on potential litigation in Baltimore County regarding illegal subdivision of lots

4) Status Report on potential litigation/settlement in Baltimore County regarding illegal subdivision

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of farm

5) Status report on potential litigation in Howard County regarding illegal subdivision of farm

The discussion on above items was for updating the Board members and no actions were taken.

The Executive Session Board meeting was adjourned at 2:15 p.m.

Motion #10: To adjourn the Executive Session.

Motion: Joe Tassone Second: Chris Wilson
Status: **Approved**
Vote: Vera Mae Schultz, H. Freedlander, J. Klasmeier, R. Stahl,
J. Tassone, C. Wilson, D. Wilson, J. Draper, J. Pelura, M. Clark, J.
Quinn, and D. Colhoun
None Opposed

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, Executive Director