

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
MINUTES
June 24, 2008**

TRUSTEES PRESENT:

Daniel Colhoun, Chairman
Vera Mae Schultz, Vice Chairman
Martha A. Clark
Howard S. Freedlander, representing Treasurer Nancy Kopp
Jerry Klasmeier, representing Comptroller Peter Franchot
Dan Rosen, representing Secretary Richard E. Hall, Maryland Department of Planning
Robert F. Stahl, Jr.,
Doug Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture
Jonathan Quinn

TRUSTEES ABSENT:

John W. Draper, Jr.,
Dr. James Pelura
Christopher H. Wilson

OTHERS PRESENT:

Lawrence Bernard, Farmer, Garrett County
Delegate Wendell R. Beitzel, Garrett & Allegany County
Danny Brown, Landowner, Caroline County
Gene Bosley, Landowner, Baltimore County
Tammy Buckle, Caroline County, Program Administrator
Pam Bush, Department of Natural Resources, Senior Policy Analyst
Yates Clagett, Prince George's County
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
Marty Dunnington, Lines Designer, Allegheny Power
Chad Fike, Planner, Garrett County
Nancy Forrester, Assistant Attorney General, Department of General Services
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
Ed Larrimore, Maryland Department of Environment
Jack Lenox, Planning Director, Wicomico County
Wally Lippincott, Baltimore County, Program Administrator
Joy Levy, Howard County, Program Administrator
Gary and Shalon Marvel, Landowners, Caroline County
John P. Munhall, Magnum Land Services, LLC
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Charles Rice, Charles County, Program Administrator
Eric Shertz, Cecil County, Program Administrator
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Gloria Smith, Wicomico County, Program Administrator
Stewart B. Smith, Prince George's County, Planner
David W. Stanley, Landowner, Caroline County
Janice Stanley, Landowner, Caroline County
Martin Sokolich, Talbot County, Program Administrator
Jing Tian, MALPF Intern
James T. Worm, Jr., Farmer, Caroline County
Delmer Yoder, Farmer, Garrett County
Elizabeth Weaver, MALPF Administrator

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Daniel Colhoun, Chairman, called the meeting to order at 9:05 a.m., at the Maryland Department of Agriculture building, Annapolis, Maryland. Mr. Colhoun advised the attendees that the MALPF Board is moving to closed Executive Session because some Board members have other commitments and wanted to leave early.

Mr. Colhoun asked for a motion for adjournment of the meeting and a move into a closed Executive Session, pursuant to the provisions of State Government Article Section 10-508 (a) (3) to consider offers to purchase agricultural land preservation easements in various counties and State Government Article Section 10-508 (a) (8) to consult with legal counsel and staff about proposed and pending litigation in various counties.

Motion #1: To adjourn regular session and move into a closed Executive Session, pursuant to the provisions of State Government Article Section 10-508 (a) (3) to consider offers to purchase agricultural land preservation easements in various counties and State Government Article Section 10-508 (a)(8) to consult with legal counsel and staff about proposed and pending litigation in various counties.

Motion: Howard Freedlander Second: Jerry Klasmeier
Status: **Approved**
Vote: Vera Mae Schultz, Vice Chairman, Martha A. Clark,
Howard S. Freedlander, Jerry Klasmeier, Robert F. Stahl, Doug
Wilson, Jonathan Quinn, Dan Colhoun
8 in favor None opposed

The closed session of the Board meeting was held from 9:10 am to 10:00 am at the Maryland Department of Agriculture building, Annapolis, Maryland, pursuant to the provisions of State Government Article Sections 10-508(a) (3), and (8), Annotated Code of Maryland.

- [x] (3) To consider the acquisition of real property for a public purpose and matters directly related thereto
- [x] (8) To consult with staff, consultants, or other individuals about pending or potential litigation

During the closed meeting, following Board members were present.

Daniel Colhoun, Chairman, Vera Mae Schultz, Vice Chairman, Martha A. Clark, Howard S. Freedlander, representing Treasurer Nancy Kopp, Jerry Klasmeier, representing Comptroller Peter Franchot, Dan Rosen, representing Secretary Richard E. Hall, Maryland Department of Planning, Robert F. Stahl, Doug Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture, Jonathan Quinn

TOPICS DISCUSSED:

- 1) FY 2008 Offers to Purchase MALPF Easements in Baltimore, Carroll, Cecil, Talbot and Washington Counties

Baltimore County

Motion #2: To approve that the Foundation makes offers to 6 properties at their respective asking prices.

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

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Motion #3: To approve that the Foundation makes an insufficient funds offer to a landowner. A larger offer can be made with federal funding if the property qualifies for federal funding.

Motion: Robert Stahl Second: Vera Mae Schultz
Status: **Approved**

Carroll County

Motion #4: To approve that the Foundation makes offers to two landowners at their respective asking prices.

Motion: Vera Mae Schultz Second: Howard Freedlander
Status: **Approved**

Motion #5: That the Foundation withdraws an offer made to a landowner contingent upon receiving a request from the County in writing.

Motion: Vera Mae Schultz Second: Howard Freedlander
Status: **Approved**

Motion #6: To approve that the Foundation makes an offer to a landowner contingent upon receiving the information from the County.

Motion: Doug Wilson Second: Jonathan Quinn
Status: **Approved**

Motion #7: To approve that the Foundation makes an offer to a landowner at his asking price. Offers to three landowners capped at 70% of the landowners' asking prices (as per the County request). The County has also requested MALPF to co-hold the four properties.

Motion: Doug Wilson Second: Jonathan Quinn
Status: **Approved**

Cecil County

Motion #8: To approve that the Foundation makes offer to a landowner at his easement value.

Motion: Howard Freedlander Second: Jonathan Quinn
Opposed: Vera Mae Schultz
Status: **Approved**

Talbot County

Motion #9: To approve that the Foundation makes offers to two landowners at their respective asking prices. Also to approve that the Foundation makes an offer to another landowner at his easement value.

Motion: Robert Stahl Second: Martha Clark
Opposed: Vera Mae Schultz
Status: **Approved**

Washington County

Motion #10: To approve that the Foundation makes offers to items 1 to 4 at their respective easement values.

Motion: Robert Stahl Second: Howard Freedlander
Opposed: Vera Mae Schultz
Status: Approved

- 2) Status Report on the following Pending Litigation:
a) Yoder v. Bellevalle Farms Circuit Court for Baltimore County

The discussion on above item was for updating the Board members and no action was taken.

The Executive Session Board meeting was adjourned at 10:00 am.

Motion #11: To adjourn the Executive Session.

Motion: Doug Wilson Second: Robert Stahl
Status: **Approved**
Vote: Vera Mae Schultz, H. Freedlander, J. Klasmeier, R. Stahl,
D. Wilson, M. Clark, J. Quinn, and D. Colhoun
None Opposed

The regular session reconvened at 10:05 am. Mr. Colhoun asked the guests to introduce themselves.

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

A. APPROVAL OF MINUTES OF THE REGULAR MEETINGS

Motion #2: To approve the minutes of May 27, 2008 with amendments.

Motion: Robert Stahl Second: Jonathan Quinn
Status: **Approved**

B. ADDITIONS OR DELETIONS OF AGENDA ITEMS:

II.A.1. Harford County Withdrawn
Island Branch Farm, LLC 138.11 acres

IV.D. Cap for appraisals for FY 2009 Added

II. DISTRICT /EASEMENT AMENDMENTS

B. GARRETT COUNTY

1. 11-02-01 Bernard, Lawrence M. 98.7 acres
Request to allow the sale of gas leases on MALPF easement property

Request:

Mr. Bernard, who is the grantor of the easement, was contacted recently by a broker who has offered to arrange the sale of a natural gas rights lease to gas companies. The lease would allow drilling for natural gas on his property, or if drilling is not permitted by the MALPF easement, allow access to the gas under his property through an adjacent property. Mr. Bernard is requesting that MALPF inform him whether or not he has the right to: 1) sell a gas lease that would allow drilling for gas on his property; and 2) if drilling for gas would not be

allowed, sell a “no drill/no access” lease that would allow the extraction of the gas under his property that would be accessed through a well drilled on an adjacent property.

Recommendation:

Drill Lease: Staff recommends that the Board assign the request to the Gas Lease Committee, which met to discuss this issue on June 13, 2008. Staff recommends that the Board direct the Committee to develop a policy recommendation.

“No drill/no access” Lease: The Board should request legal clarification as to whether or not landowners may sell “no drill/no access” gas leases without obtaining prior written approval from the Foundation. According to Craig Nielsen, Assistant Attorney General, it is his preliminary understanding that the Foundation does not own the sub-surface rights and therefore cannot prevent or control access to the gas if it is accessed from an adjacent property. The Foundation may control the access to the sub-surface rights only if they are accessed directly through the easement property (a normal drilling lease). Mr. Nielsen will provide further clarification on the Foundation’s legal discretion with regard to “no drill/no access” leases during the Board meeting. If it is established that the Foundation may not legally prevent “no drill/no access” leases on easement properties, the Foundation should inform the landowners as soon as possible that they are free to enter into “no drill/no access” leases with gas companies. The Foundation should offer to review the “no drill/no access” leases prior to signature to determine that they in fact do not allow drilling or access on the easement property and therefore do not violate the terms of the easement. If it is determined that the Foundation has the legal discretion to control “no drill/no access” leases, the issue should be assigned to the Gas Lease Committee.

Background:

Garrett County’s geological composition includes a layer of rock called the Marcellus Shale. The Marcellus Shale runs from southern New York to Ohio, and south to West Virginia. The western portion of Allegany County, MD, is also included. Gas companies have known for some time of the existence of gas in the Marcellus Shale, but generally regarded the area uneconomical to drill. The gas is located at depths of 7,000-9,000 feet below ground. However, new drilling technology, an increase in natural gas prices, and a revised estimate of the amount of gas present in the shale, have resulted in a heightened interest in exploration and extraction of natural gas in the region.

The new extraction technology involves the use of a horizon drilling method to access the gas from natural fractures in the rock. The gas is extracted through high pressure from the insertion of water and sediment that further fractures the rock. Well construction sites cover an average area of 4-5 acres. Preliminary inquiry indicates that once the construction is complete (approximately six months), the area is restored to its former use, with the exception of an area equal to about ¼ of an acre, where the well head and an access area is located.

The Board does not have the legal discretion to approve the construction of gas drilling wells on easement properties because the statute explicitly states, “A landowner whose land is subject to an easement may not use the land for any commercial, industrial, or residential purpose except: As determined by the foundation, for farm and forest related uses and home occupations” (§ 2-513 (b) Annotated Code of Maryland). Legislation would be required to change the statute to grant the Foundation the authority to allow the construction of drilling of gas wells on properties with existing easements.

Through the use of horizontal drilling, it is possible to extract gas located in ground underneath an easement property from a well on an adjacent property. In such cases, it appears that there would be no impact to the surface of the easement property. (It would be necessary to review a “no drill/no access” lease to determine if that in fact is the case.)

MALPF staff has requested clarification from Craig Nielsen, Assistant Attorney General, as to whether or not MALPF can prevent the extraction of gas through “no-drill/no access” methods because MALPF does not own the sub-surface rights of the property. Mr. Bernard (along with other landowners in his situation) is making an inquiry as to whether or not he needs to seek the permission of the Foundation to sell a “no-drill/no access” gas lease.

In terms of precedent, on January 23, 2007, the Board approved the acquisition of an easement on a property owned by Kahl Farm LLC, which had an existing gas lease in place. Normally, the Foundation requires that an owner or lessees of mineral (or other rights) subordinate its interest to the MALPF easement. However, legislation passed in the 2003 legislative session made it possible that the Foundation “may not require, in Garrett County or Allegany County, a natural gas rights owner or lessee to subordinate its interests to the Foundation’s interest if the Foundation determines that exercise of the natural gas rights will not interfere with an agricultural operation conducted on land in the agricultural district” (§ 2-509 (c) Annotated Code of Maryland). Note: This language refers to properties entering the MALPF program, not properties with existing easements. Properties with existing easements are subject to the restrictions contained in § 2-513 (b) cited above.

The lease on the Kahl farm, which is used for the storage of natural gas, does allow for future drilling. The storage field in the Accident area of Garrett County is a natural geological reservoir in a depleted gas field. The reservoir is sealed on top by impermeable cap rock. The gas company injects and withdraws natural gas from the reservoir. The Board approved the request because it was determined in that situation that the impact on the agricultural use of the property would be minimal. The Board does not have similar discretion in the Bernard request because there is an existing MALPF easement in place.

Currently, there are 46 MALPF easements in Garrett County, covering 5,954.7 acres. There is only one easement in Allegany County, but it is not included in the Marcellus area. However, landowners with properties located in the affected area of Allegany County will be applying for the FY 2009 cycle.

The local advisory board recommended approval because the board believes that the impact on the farming operation will be minimal. The request is consistent with local zoning.

Mr. Conrad noted that the development of the gas lease policy is very critical for the Maryland Department of Agriculture (MDA) as well as other State agencies like the Department of Natural Resources and Maryland Department of Environment. Mr. Conrad acknowledged the presence of Pam Bush, Department of Natural Resources, Senior Policy Analyst and Ed Larrimore, Maryland Department of Environment, at the meeting.

Elizabeth Weaver, MALPF Administrator, stated that Mr. Bernard was the first landowner to contact MALPF. Mr. Bernard wanted to know whether or not he could sell a gas lease to gas companies on his easement property for gas exploration and extraction. Initially MALPF’s response was ‘No’. Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture, had advised MALPF staff that the statute would not allow it. However, after some discussion, staff learned that it was possible to extract gas from underneath the property without drilling on the easement property. The gas located under the easement property could be accessed from an adjacent property using new technology referred to as ‘horizontal drilling.’ MALPF staff has requested clarification from Mr. Nielsen on whether this could be allowed under statute.

Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture, commented that the Foundation does not buy subsurface rights. Mr. Nielsen stated that in his view there is no legal issue in allowing the easement owner to drill off-site (but not on the land). There is a section in the easement that allows the Foundation to claim remedy against the landowner

should something happen that would hinder the land from being farmed as a result of the off-site drilling.

Lawrence Bernard, Delegate Wendell R. Beitzel, Garrett and Allegany County, Delmer Yoder, Farmer, Garrett County, and Chad Fike, County Planner, were available at the meeting.

Mr. Bernard stated that he believes that the gas company would be engaged in lateral drilling on an adjacent property and it would not disturb the grass on his land. Mr. Bernard requested that the MALPF Board consider the financial benefits to him, the County and the State. Mr. Bernard stated that he had lived on the farm his entire life and would like to take care of it. He would also like to generate more revenue to do things he cannot currently do. The process would also help the with the current energy crisis.

Mr. Yoder commented that he agreed with Mr. Bernard that the process would generate revenues. The drilling might disturb 3 to 5 acres temporarily. Time is of the essence. They are in the process of getting all the acreage together and creating a pool. Currently they have 25,000 acres. The pool of acreage will go out to different large gas companies for a bid. The gas companies will come back with a bid. At that point in time, it is up to each individual landowner whether they want to sign or not. If the landowners sign up, it would mean great revenue for all concerned. Mr. Yoder stated that he personally believed that an end result of a quarter of an acre or less of disturbed land is not much.

Delegate Beitzel stated that he has been very supportive of the Maryland Agricultural Land Preservation Program and one of his farms is in the MALPF program. Delegate Beitzel stated that he wanted to share a brief history about the issue in Garrett County. In Garrett County, years ago, gas wells have been drilled and gas extracted. The County now has storage fields. In the County, people had already sold their gas rights and could not participate in the MALPF program because the new program required the landowners to get Texas Eastern (or whoever owned the gas rights) to subordinate the gas rights to the State before they participated in the MALPF program. Delegate Beitzel stated that when he was a County Commissioner, he attempted to change this by putting in a bill that would allow farmers whose gas rights have been sold to participate in the MALPF program. The bill passed and currently farmers who own land in the Accident area that already have gas wells drilled on their property can participate in the program. It did not make any sense that people who already have gas wells on their property can participate in the MALPF program, but participants in the MALPF program who do not currently have gas wells on their properties cannot allow drilling on their property. Additionally, with the directional boring, it is unlikely that something that is done underneath the land will affect the surface. Delegate Beitzel urged the MALPF Board to allow the landowners with potential gas rights on the property to extract gas and to enjoy the benefits.

Mr. Conrad was curious to know if there was a 1000 acre parcel with a 'no access lease', can the landowners extract the gas underneath the property, by drilling, in the event they are allowed to sell a 'no access lease' for the gas exploration.

Mr. Yoder stated that he is not sure but hoped the first couple of drills would establish this.

Ms. Weaver stated that during the Gas Lease Committee discussions she asked a similar question of Bill Capouillez, the consultant who gave the presentation. Mr. Capouillez estimated that an average of one well would be drilled vertically per 350-to 650-acre block.

Robert Stahl, Chair, Gas Lease Committee, stated that during the Committee discussions it was mentioned that it is possible to drill out as far as 4000 ft and it could withdraw up to 5000 ft. Currently there are only 46 MALPF preserved properties in Garrett County. It was not much of a problem regarding vertical drilling, but we have to ensure that people have the right

to extract gas from under their farms using the current technology. The Gas Lease Committee had to address two issues (1) vertical well drilling and the effect on the 5-acre area on the surface; and (2) whether or not technology had an effect on certain properties.

John P. Munhall, representative from Magnum Land Services, LLC, was present at the meeting and stated that his company is focusing on the southern area of Garrett County, south of Oakland. The Company drills natural gas wells. Very soon the Company would be starting to work with people who have leased lands that are not in agricultural preservation programs. Mr. Munhall stated that Marcellus Shale in Garrett County is estimated to be 7000 - 9000 ft deep.

Mr. Munhall also mentioned that he has worked in many different states and many other counties that have other agricultural land preservation programs. Every one of the states allows natural gas drilling. Pennsylvania's "Clean and Green Program" works in such a way that if any landowner is in the "Clean and Green Program" and signed up for a gas lease, the gas company has to add a clause to the lease. It would allow them to contact the "Clean and Green Program" before wells are drilled. They cut a 1-acre portion out of the program to allow drilling. The gas company is required to pay the landowner, the state, and the county for the area taken out of the program. An acre is not intimidating to the gas company and they are willing to shell out the money, but they are not willing to exclude the entire acreage from agricultural preservation. South of Oakland, there are already many landowners participating in agricultural preservation programs whose lands are surrounded by leases. Drilling in parts of West Virginia is commencing within a month and thereafter his company is moving to Garrett County. He stated that time is of the essence and the landowners participating in the MALPF program can potentially miss out on their revenue if a decision is not taken soon.

Howard S. Freedlander, representing Treasurer Nancy Kopp, wanted to know if there is a determination of an environmental impact.

Mr. Munhall stated that usually when there is shallow drilling, there is more contamination. For example, in North East Ohio, the wells are dug to a depth of 2000 ft and the water table in that area is also very deep (1200 ft). In those areas, there have been instances of contamination and losing water. Mr. Munhall was not aware of any instances in the case of deep drilling.

Mr. Colhoun asked if the drilling company bears any financial responsibility.

Mr. Munhall stated that typically his company carries a \$10M bond.

Ed Larrimore, Maryland Department of the Environment, commented that so far the County has experienced only deep drilling and has not experienced any environmental impacts. There will be a bond required through the State to ensure that the drilling is done and maintained properly. The Bond is typically towards the ongoing operations of the drill.

Responding to a question, Mr. Munhall stated that Marcellus has been dug many times in many different States and he has not heard of any kind of environmental impact other than water related issues in Ohio. Usually when a well is drilled you have slush pits. Anything that is potentially harmful goes into the slush pit.

Jerry Klasmeier, representing Comptroller Peter Franchot, stated that the staff memo mentions "temporary diversion of 4 -5 acres for a six-month time period to accommodate vertical drilling. At the end of the six months a quarter of an acre is permanently disturbed". Mr. Klasmeier wanted to know if that is an accurate assessment. Ms. Weaver confirmed that this is what the consultant stated in his presentation.

Mr. Klasmeier also wanted to know about the road access.

Ms. Weaver stated that this question came up during the Committee's discussions. The consultant stated that it is beneficial to the gas company to use the existing access as it would involve fewer disturbances and less cost. However there is no guarantee that the gas company would be willing to do that. However, the Foundation can make it conditional, if the Committee so desires.

Mr. Klasmeier wanted to know the time frame of the Committee report.

Mr. Stahl stated that he planned to submit the final report next month for the Board's approval.

Mr. Yoder stated that he has been involved with the Farm Bureau for years and is spearheading an effort to bring all the landowners together to protect the interests of the landowners. Working through the consultants they have been able to put together a lease that has numerous provisions. The provisions restrict where the roads and the gas lines can be put up and where the well sites could be located. They are making efforts to ensure that the landowners are protected from the negative aspects of the drilling operations.

2.	11-96-01	O'Brien, Donald E. & Diana L.	102.34 acres
	11-84-05	Shreve, Eugene, Mary L.	

Request:

The current request is to allow the relocation of a utility line on one easement and one district property.

Recommendation:

Staff recommends approval based on meeting the criteria of the Foundation's Overlay Easement policy. The proposed location of the utility lines along the edge of the properties creates a more suitable configuration for agricultural use than the existing location, which runs through the center of the farm.

Background:

Mr. and Mrs. O'Brien are the grantors of the easement. Mr. and Mrs. Shreve are subsequent owners of a district property. The properties are adjacent to one another. A 30' utility right-of-way easement in favor of Allegheny Power currently traverses both properties, running through the interior of the farms. Allegheny Power contacted Mr. O'Brien and Mr. Shreve regarding relocation of the lines to run along the edge of the properties. Both Mr. O'Brien and Mr. Shreve informed the Foundation that they are in favor of relocating the line because the proposed location will improve their ability to farm the properties. Mr. O'Brien has a beef cattle operation. Mr. Shreve has a corn and hay operation. Mr. O'Brien and Mr. Shreve currently farm around the utility poles.

The request satisfies the conditions of the Foundation's Overlay Easement Policy. The right-of-way easements will not prohibit any agricultural operation; they will have minimal interference on the overall operation of the farms; the use is limited to the area defined in the overlay easement; and the use is limited to the use allowable under the current rights-of-way.

Federal funding (FPP – predecessor of FRPP; 1996 Cooperative Agreement) was used in the acquisition of the MALPF easement. NRCS has a contingent interest in the MALPF easement. NRCS has been notified of the request.

Chad Fike, County Planner, was available at the meeting and stated that the County

Motion: Robert Stahl Second: Jerry Klasmeier
Status: **Approved**

7. 05-08-12 Wothers, Ralph and Emily 54.204 Acres
RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria. Staff also recommends that a deed restriction be recorded on the withheld acreage so that no more than 3 dwellings are recorded on the withheld acreage.

Motion #11: To approve item 7 to establish an agricultural land preservation district on Wothers property.

Motion: Doug Wilson Second: Vera Mae Schultz
Status: **Approved**

8. 05-08-13 Worm, James T., Jr. 49.485 Acres
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".

9. 05-08-14 Worm, James T., Jr. 86.5 Acres
10. 05-08-15 Worm, James T., Jr. 58.17 Acres
11. 05-08-16 Worm, James T., Jr. 56.623 Acres
RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria

12. 05-08-17 Worm, James T., Jr. 37.029 Acres
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". Staff also recommends that a deed restriction be recorded on the withheld acreage so that no more than 3 dwellings are recorded on the withheld acreage.

13. 05-08-18 Worm, James T., Jr. 52.38 Acres
RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria. Staff also recommends that a deed restriction be recorded on the withheld acreage so that no more than 3 dwellings are recorded on the withheld acreage.

James T. Worm., was available at the meeting.

Mr. Doug Wilson asked if Mr. Worm is willing to accept the Foundation staff's recommendation of having a clause limiting the number of development rights. Mr. Worm confirmed this.

Mr. Doug Wilson informed Mr. Worm that his eligibility for owner's lot or children's lots will be considered on the basis of his whole operation and he would not be entitled to lots on each of his district operations.

Motion #12: To approve items 8 to 13 establish agricultural land preservation districts on their respective properties.

situation can change over the generations. He was concerned about the size of the property and the ability of the soils to maintain a self sustaining agricultural operation.

Mr. Conrad commented that the County can accept an easement application on July 1, 2008 even though they are not a district. The question is whether the MALPF Board wants to deal with it in August or prefers to deal with it now.

With Mr. and Mrs. Marvel's assent, Ms. Buckle sought the Board's vote.

Motion #13: To accept the agro-tourism business as an acceptable use.

Motion: Doug Wilson Second: Martha Clark
Status: **Approved**

Responding to a question, Ms. Buckle stated that the Marvels have waived their lot rights in their easement application.

Responding to a question, Ms. Marvel stated that the neighboring farm adjacent to their 31.92 acre (parcel16) is an agricultural farm.

Motion #14: To accept the property as a District under the "extraordinary agricultural capability" criteria.

Motion: Jerry Klasmeier Second: Howard Freedlander
Status: **Approved**

D. Washington County

1. 21-08-05 Windy Willows Farm, Inc. 44.41 Acres
Re-review of District Petition

Request:

On May 27, 2008 the Board tabled a request to establish a MALPF district on this property as it was unsure of whether the property can be considered contiguous to an existing district located on the other side of I-70 (file #95-07). Staff was instructed to review a similar request that was denied at the September 25, 2007 Board meeting.

Recommendation:

Staff maintains its recommendation for approval based on 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."

Background:

After reviewing the September 25, 2007 request (map attached with agenda memo), staff concludes that the Windy Willows Farm district is not contiguous to district 95-07. Therefore, the district would be contingent upon district 91-60 also applying to sell an easement to the Foundation.

Motion #15: To approve the request to establish an agricultural land preservation district on Windy Willows Farm, Inc.

Motion: Jerry Klasmeier Second: Howard Freedlander
Status: **Approved**

IV. PROGRAM POLICY

Mr. Colhoun asked Mr. Stahl to give a brief summary on the Gas Lease Committee.

Mr. Stahl stated that Martha Clark, Jerry Klasmeier, Dan Colhoun and he participated in the Committee meeting. The Committee discussed not only vertical drilling but also horizontal drilling. Mr. Stahl listed two major issues:

- (1) Should the Foundation allow gas extraction under preserved properties? All the members participating in the Committee felt that gas is going to be extracted out of the preserved properties no matter what the Foundation's position is. The Committee members strongly felt that the Foundation should allow horizontal drilling on the MALPF preserved properties.
- (2) Whether or not the Foundation should allow vertical drilling of the pipe to take place on MALPF preserved properties. The size required for a site is about 4 – 5 acres to dig pits and extract the gas. At the end of the projects they lined the pits and soils would be tested. If the soils did not contain high levels of any poison, they would cover the material and seal the area off. There was a reasonable support to try and work with this issue because the Committee did not want to limit someone requiring vertical drilling. Even though it is a temporary industrial operation, it does change the agricultural viability of the soil.

Mr. Stahl stated that clearly there is a need for speed. The initial recommendation from the Gas Lease Committee is to allow horizontal drilling on MALPF properties. Mr. Stahl recommended that until more clarification is received, vertical drilling on MALPF properties is not allowed. The Committee would be circulating a report before the next Board meeting.

Mr. Conrad suggested circulating the report to Maryland Department of Environment and Department of Natural Resources.

Martha Clark, Board member, suggested using the wording "Drill Lease" and "No drill/no access Lease" rather than using horizontal and vertical drilling.

A. Recertification of County Programs – Wicomico County : FY 2001 - 2006

Mr. Conrad made a presentation on the County's request. Jack Lenox, Planning Director, Wicomico County, Gloria Smith, Program Administrator, and Dan Rosen, Planner, Maryland Department of Planning (MDP), were available at the meeting.

Wicomico County had submitted an application for Certification of a local Agricultural Land Preservation Program and is requesting Foundation approval. Mr. Rosen made his presentation and recommended recertification.

Mr. Conrad stated that the Foundation would seek approval by telephone poll.

B. Application for Certification – Prince George's County

Ms. Weaver presented the MALPF staff's review of the County's request for certification. Ms. Weaver stated that some of the highlights include:

- Transfer of the farmland preservation program to the Soil Conservation District has moved the program closer to the agricultural community which has resulted in a dramatic increase in participation in farmland preservation programs.
- The County has demonstrated a strong commitment to limiting growth in the Rural Tier: In 2005, the County instituted a moratorium on growth in the Rural Tier to allow time for a comprehensive study to determine ways to slow growth in the area.

- The County's General Plan recommends a policy of discouraging expenditure of public funds in the Rural Tier
- The County has demonstrated a strong financial commitment to farmland preservation. In recent years, the County has consistently contributed to the MALPF program at one of the highest levels in the State.
- Creation of a successful PDR program which has demonstrated both interest from the farming community and financial commitment from the County.
- The County responded to the challenge of a high proportion of properties with soils that do not meet MALPF's minimum qualifying criteria by creating a local program that can accept those properties.

However, in reviewing the County's request for certification report, Ms. Weaver stated that zoning in much of the Rural Tier is weak (1:2 and 1:5). Due to its location adjacent to Washington DC, the County is under tremendous development pressure. There is not a lot of farmland remaining in the County to support viable agriculture. Weak zoning contributes to fragmentation of farmland. Fragmented farmland is often unable to support a viable agricultural economy. Additionally, there is significant resistance to down-zoning in the Rural Tier. An attempt to downzone to 1:20 in 2006 was defeated.

Ms. Weaver states that although its weak zoning leaves it vulnerable to fragmentation, the County has demonstrated a commitment to keeping agriculture viable into the future. Foundation staff recommends approval of the County's request for certification.

Yates Clagett, Program Administrator, and Stewart B. Smith, Planner, were available at the meeting. Dan Rosen, Planner, Maryland Department of Planning (MDP), was also available at the meeting.

Mr. Clagett stated that about four years earlier the Soil Conservation District took over the MALPF Program. In four year period, the County is going will have preserved about 17 properties. The County Council voted to create a local county program, which was started in 2006. Within three months, the County received 34 applications covering 3000 acres. The County ran into some funding issues which were corrected through State legislation. He expects the first three farms to be eligible for easement purchase. The County also received its first Rural Legacy easement grant.

Mr. Clagett stated that the County has the people, the tools, and the priorities in place to accomplish substantial preservation in the area. Currently the County is working on its TDR program.

Mr. Rosen stated that he is still working on the Maryland Department of Planning review. Mr. Rosen noted that much of the preservation in the Prince George's County is in the Rural Legacy area. The rate of development in the last decade has been very minimal compared with the other Rural Legacy areas.

Mr. Rosen also stated that the new regulations start on July 1, 2008 and the County's application was received at the end of FY 08. Mr. Rosen wondered if the County can be certified effective beginning of FY 08 or if it should be certified beginning of FY 09, which would require it to be reviewed under the new regulations.

Mr. Conrad stated that this issue has been discussed but not yet resolved. It is a legal question.

Mr. Rosen stated that MDP has the ability to certify conditionally under the new regulations.

Mr. Clagett stated that currently the County is updating the general plans and the updates

would include the definition of Priority Preservation Areas. The County's plan is to submit the application to the MALPF Board for review and the request can fall under the old regulations with the understanding that as things change the County could be re-certified.

Ms. Weaver stated that it was the MALPF staff's understanding that if the application was reviewed and approved in June, the County could be certified under the old regulations. Mr. Conrad stated that the County has an option of receiving conditional certification under the new regulations or be certified under the old regulations. The legal question is when the certification period begins.

Mr. Clagett stated that he takes exception to the statement that the County is not a viable agricultural area. Mr. Clagett stated that he believed if Southern Maryland is considered as a region, Prince George's County is considered an intricate cog in the wheel. The Horse Industry is the fourth largest in the State. Regarding the County Zoning, Mr. Clagett, stated that the County made a mistake. There is a need to gain the trust of the rural landowners in order to downzone. Initially the County conveyed that it wanted to downzone but had no equity to provide to the landowners nor did they have the trust of the landowners. In the future, the County might be able to do down zoning.

Mr. Clagett stated that the Prince George's County has more agricultural land than Calvert County, Anne Arundel County or Howard County.

Mr. Doug Wilson wanted to know if the County uses the Agricultural Transfer Tax and uses it for local programs or TDR programs. Mr. Clagett stated that the County has budgeted part of planning funds to the tune of about \$20M. Mr. Doug Wilson requested Mr. Clagett look at the balances and reminded him about the three year rule.

Ms. Weaver stated that she wanted to clarify that the staff did not state that agriculture is not viable in the County; rather the report states that the County's weak zoning leaves it vulnerable to fragmentation, which could result in making agriculture no longer viable.

Mr. Conrad stated that when the report from MDP is received, it would be circulated for a telephone poll. Mr. Rosen agreed and stated that the new regulations do not require the plan to be approved; it just needs to confirm that the plan is in the works.

C. **Recertification of County Programs – Worcester County : FY 2005 - 2007**

Ms. Council made a presentation on the County's request. Dan Rosen, Planner, Maryland Department of Planning (MDP), was available at the meeting.

Worcester County had submitted an application for Certification of a local Agricultural Land Preservation Program and is requesting Foundation approval. Mr. Rosen made his presentation and recommended recertification.

Mr. Conrad stated that the Foundation would seek approval by telephone poll.

D. **Workload Issues and a Limit on the Number of Easement Applications (Re-review)**

Request

The request, from MALPF staff, is for approval to limit the number of applications to sell an easement to MALPF for the FY 2009 easement acquisition round.

Recommendation

Foundation staff recommends approval of a cap of approximately 250 easement applications for FY 2009 to allow for a reasonable turnaround time for appraisals and appraisal reviews to allow MALPF to make offers in a timely manner in March and/or April of 2009. Counties wishing to increase the number of their applications submitted to MALPF can do so by paying for the additional appraisals. Staff recommends setting an absolute cap and working with formula #10 in the final table for the formula best able to limit the applications to that pre-selected number: *100% of applications up to maximum of five (or other); the balance is apportioned based on what it will take to total 250 (or other) accepted applications.*

Background

Several tables and a chart were attached with the agenda memo.

The Board of Trustees had declined to place a cap or limit on the number of applications to be accepted by MALPF in 2009 at an earlier Board meeting, and the current request is for a re-review.

Mr. Conrad mentioned that this request was discussed during May Board meeting. St. Mary's County and Queen Anne's County had conveyed that the numbers of easement applications from their counties have increased, and MALPF staff expects to receive around 500 applications. In the current year the Foundation has received 440 applications and has a funding of about \$60M to spend. Next year the funding might be about \$25M. The Foundation has to take into consideration the available resources, the process, and the time.

Mr. Conrad stated that currently the Foundation still has two counties for which it has not received appraisal reviews. The dates of these appraisals will be more than a year old before the MALPF staff gets to make offer based on those appraisals. Currently one easement acquisition cycle is rolling into another easement acquisition cycle. When landowners have to make a decision regarding re-applying, they are not aware whether or not they are getting an offer for the previous year.

Mr. Doug Wilson stated that because the appraisals from the two counties are outstanding, the Foundation has not been able to complete its Round One offers. Recycling of rejected offers has not been done. Round Two cannot be started until Round One Offers are made in the remaining two counties.

Mr. Doug Wilson mentioned that procurement laws have changed and the values of procurement in each jurisdiction has doubled or trebled making contracting more difficult. Mr. Doug Wilson wondered how a landowner who currently does not know whether he is going to be rejected by the Foundation would know that he needs to re-apply. The County is supposed to receive all the easement applications by July 1, 2008. A County might receive 60 applications. This requires 120 appraisals and in the end only one offer may be made.

In 2007, the Foundation nearly had \$100M. In 2008, the funding was \$60-70M. For FY 2009 State Transfer Tax revenues are approximately \$80M. However, much of it will go to fund the Foundation's previous shortfalls. Currently the State Agricultural Transfer Tax is \$2.4M. Because of the steep decline in funds available to purchase easements, county matching funds are also expected to decline.

DGS has to do a larger number of composite appraisals, which also adds to the appraisal workload.

Mr. Conrad proposed deciding two things (1) the total number of applications the Foundation wanted to accept and (2) the maximum number that the Foundation wants to accept by County. The Foundation would take that number and apportion the remainder among the counties based on the number of applications. Mr. Conrad stated that the Counties can always have more applications provided they are willing to pay for the appraisals.

Mr. Colhoun stated that the Foundation would be making offers based on the County's ranking. Currently in Round Two, discounting plays a major role. The Foundation relies on County Program Administrator's judgment based on their experience.

Donna Landis-Smith, Program Administrator, Queen Anne's County, stated that Queen Anne's County farms are usually larger in size (their smaller parcels are 60-70 acres). Ms. Landis-Smith informed the Board that Queen Anne's County is trying to commit extra county money this year.

Billy Gorski, Anne Arundel County, Agricultural Planner, stated that Anne Arundel County does not have much demand and the County has only two easement applications this year.

Tammy Buckle, Program Administrator, Caroline County, stated that the landowners in the County are aware how the process works. Ms. Buckle was concerned that the issue is being discussed at the end of the year instead of the beginning of the year. The landowners have to be made aware that the County would only be able to submit 8 or 10 of the easement applications based on their ranking. The landowners have to be made aware that they need to consider discounting to be able to utilize the discounting method.

Ms. Buckle informed the Board that there would be no extra matching funds from the Caroline County.

Eric Shertz, Program Administrator, Cecil County, stated that as of June 20, 2008, the County had 18 applications and he expected the total applications to be around 25.

Yates Clagett, Program Administrator, Prince George's County, stated that in Prince George's County, if an applicant does not get an offer, he gets some extra points when he re-applies next year.

Mr. Conrad stated that the statute says that the Board shall determine the maximum number of applications in each offer cycle. Applications received, after the maximum number has been reached, might be considered in the next available easement cycle. So the landowner may not even re-apply, and the application can be rolled into next easement cycle when money becomes available.

Charles Rice, Program Administrator, Charles County, stated that Charles County still has one outstanding appraisal from last year waiting for a re-review. This means the landowner has more time to think and reject and there might be a loss of around \$2M of State money for Charles County.

Carla Gerber, Program Administrator, Kent County, wished the Foundation had discussed this earlier and it would have given the counties more time to counsel the landowners. Ms. Gerber stated that she does not like formula #10 and would prefer that however the Foundation sets the cap; it should be a very clear formula setting a maximum number. That would make it easier for the County Program Administrator to explain to the County Commissioners and to the landowners.

Mr. Doug Wilson stated that the goal is to arrive quickly at a consensus that is comfortable to all the counties.

