

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
July 22, 2008**

TRUSTEES PRESENT:

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

TRUSTEES ABSENT:

Jerry Klasmeier, representing Comptroller Peter Franchot
Jonathan Quinn

OTHERS PRESENT:

Austin Armacost, Landowner, Baltimore County
Billy Boniface, Harford County, Landowner/Young Farmers Advisory Board
Tammy Buckle, Caroline County, Program Administrator
Diane Chasse, MALPF Administrator
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
Nancy Forrester, Assistant Attorney General, Department of General Services
Carla Gerber, Kent County, Program Administrator
Billy Gorski, Anne Arundel County, Ag. Planner
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Wally Lippincott, Baltimore County, Program Administrator
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Bill Powel, Carroll County, Preservation Specialist,
Lorie Roeser, Landowner, Kent County
Daniel Rosen, Planner, Maryland Department of Planning
Ralph Robertson, Carroll County, Program Administrator
Charles Rice, Charles County, Program Administrator
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Elizabeth Weaver, MALPF Administrator
John Zawitoski, Montgomery County, Program Administrator

Governor's Office.

Mr. Conrad commented that Pam Bush, Senior Policy Analyst, Department of Natural Resources, is in the process of drafting a letter. The drafting of this letter is in its initial stages and is still to be reviewed.

Elizabeth Weaver, MALPF Administrator, wanted to know if the Foundation's letter to the landowners should state that the Foundation requires that the landowners provide to the Foundation the language contained in their lease document prior to signature. Mr. Conrad commented that the letter should also clarify that the Foundation is not reviewing the lease document for legal sufficiency but only to guarantee that the lease documents are truly a "No Access Lease."

Mr. Colhoun recommended that the Foundation staff could work on the letter with the support of the Assistant Attorneys General.

Mr. Conrad commented that the letter to the Governor can include the decision made by the MALPF Board along with the Board's discussions and also solicit any comments/information about the policy from the Governor's Office.

F. Committee Updates

a. Tax Treatment Committee – Mr. Doug Wilson

Mr. Doug Wilson commented that the Committee would try to wrap up the Report and would be presenting a preliminary report very soon.

b. Winery/Vineyard Uses Committee – Mr. James Conrad

Mr. Conrad stated that the Committee was planning to recommend Legislation to ensure the Foundation has legal authority to do what it wants to do. But when he spoke with Mr. Nielsen and Ms. Forrester he concluded that the Foundation already has adequate legislative authority. Mr. Conrad stated that he is close to completing a draft Winery/Vineyard Uses Table and would be circulating it to the Committee shortly.

c. Easement Valuation committee – Mr. James Conrad

Mr. Conrad stated that the Committee members had met and discussed the issue. Mr. Conrad stated that he had been continuing his discussions with Mr. Dale Johnson, the person who had created the agricultural formula in 1990s. Mr. Johnson has recommended that the Committee include Lori Lynch, Associate Professor, University of Maryland, in their discussions. Ms. Lynch is currently out of State and the Committee would solicit her inputs when she is back. Mr. Johnson had also provided valuable inputs. Mr. Conrad expected their inputs by end of summer, and the Committee Report to be ready sometime in the fall.

d. Unrestricted Lot Committee – Mr. John Draper

Mr. Draper stated that the Committee members have come up with some recommendations. The Committee intends to have a written report by next meeting.

Mr. Conrad introduced a proposed change in the regulations concerning the treatment of mineral rights on MALPF easement properties.

Mr. Nielsen provided some background information on the issue. The Department of General Services had objected to the fact that certain farms in Western Maryland were subject to mineral and gas leases. Legal Counsel advised the Foundation that it should not purchase easement properties that have gas or mineral rights. The Foundation felt that it did not want to exclude these farms. The Foundation's theory was that if the landowners had a pre-existing mineral rights easement (whether it is oil, gas, natural gas, gravel, ceramic, fertilizer etc.), as long as the mineral rights owner or the landowner subordinated it to the easement, it was acceptable. Over time, the legislators have amended the law allowing properties without natural subordinated - gas rights in Allegany and Garrett Counties to be accepted into the Program.

Mr. Nielsen stated that he believed that the current language should be repealed and the language he has proposed (indicated below in capital letters) be incorporated based on recent changes in the statute.

***Guidelines for the Maryland Agricultural Land Preservation Program -
15.15.01.00
Title 15 DEPARTMENT OF AGRICULTURE
Subtitle 15 MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
Chapter 01 Guidelines for the Maryland Agricultural Land Preservation Program
Authority: Agriculture Article, §§2-504, 2-509, and 2-513, Annotated Code of Maryland
.01 - .11 TEXT UNCHANGED***

[12 Sales Applications for Land Subject to Mineral Rights.

Only those applications for land which is subject to existing mining or mineral rights sale or lease, in which the landowner or mineral rights owner or lessee will subordinate their interest to the Foundation's interest with the following exceptions and limitations:

A. Alterations to surface contours and conversion from agricultural and open space use to mineral extraction use, or both, may occur only as specified by the Foundation in advance of easement acquisition and in accord with remaining mineral rights subsequent to releases, on a case-by-case basis;

B. Mineral extraction shall be, and remain strictly ancillary to, the agricultural use of the property and shall be limited to the extraction of sand and gravel, shale, limestone, crude petroleum and natural gas, clay, ceramic, and fertilizer minerals and deep-mined minerals, including bituminous coal; and

C. Reclamation of the subject parcel shall be accomplished in accord with Maryland statutes and regulations.]

IN GARRETT COUNTY OR ALLEGANY COUNTY THE FOUNDATION MAY NOT REQUIRE A NATURAL GAS RIGHTS OWNER OR LESSEE TO SUBORDINATE ITS INTEREST 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 SUBJECT TO AN EASEMENT.

Mr. Nielsen stated that, currently, if a landowner has an existing natural gas lease, he can enter the program as long as the MALPF Board considers the likely impact of non-subordination to be minimal. Mr. Nielsen stated that he did not believe the current regulations provide a correct interpretation of the statute and the Foundation's old policy is inconsistent.

Mr. Colhoun stated that the current discussion is to advise Mr. Nielsen's recommendations to the Board members and the Program Administrators. At a subsequent Board meeting a decision can be made whether or not to change the policy recommended by Mr. Nielsen. The General Assembly grants the authority to the Foundation to approve Natural Gas Extraction only in Garrett and Allegany Counties.

Mr. Conrad commented that there seems to be a perception that if you mined a property, you cannot enter the MALPF program. The reason for this perception was because of the idea that the area that had been mined for gravel on the property could not be classified. The Soil Conservationists on the Sand and Gravel Study Committee made it clear that the soils can be classified as Class I, II, or III by a Soil Conservationist and there is nothing to disqualify it from the program based on the classification of the soil. The Sand and Gravel Study Committee reached a consensus that it should not be up to the Foundation to pay for classifying soils on a potential applicant property. It should be up to the landowner in determining the eligibility of the property. Mr. Conrad emphasized that just because something is being graveled does not mean that it is ineligible. In particular, the eligibilities of the properties in Southern Maryland, St. Mary's County, and Charles County are not necessarily affected because they have been graveled.

Mr. Colhoun commented that he believed that the Sand and Gravel Study Committee looked into the extraction of the materials, made recommendations, but the policy was not actually adopted by the MALPF Board and therefore the policy did not get incorporated into COMAR. Therefore the Board may revisit the issue to establish a policy.

Mr. Stahl stated that the situation is no different than how the Foundation is positively handling issues in Allegany and Garrett Counties. Mr. Stahl stated that he wanted to ensure that because mining is taking place on a piece of property, it does not exclude the property from participating in the MALPF program.

Mr. Nielsen commented that the line is drawn by the legislature. The legislature has allowed natural gas extraction only in Allegany and Garrett Counties. Selling off gravel would be a commercial use and a violation of the law. Unless the Foundation approaches the legislature, it cannot change what the legislature allows or does not allow.

Mr. Doug Wilson commented that one of the issues concerning the Sand and Gravel Study Committee was handling the people already in the program and wanting to mine. The Foundation had not received clearance from the General Assembly. The Foundation's policy until that time was that if you had already done it you cannot participate in the MALPF program because there was no way to classify the soil. However, science over time has changed and now the Soil Conservation Committee now has a methodology where the productivity of the soils can be determined.

Mr. Colhoun stated that the issue will be revisited at a later date. Mr. Colhoun also asked Foundation staff to draft guidelines and circulate it to the Board members and Program Administrators.

Mrs. Schultz, Vice Chairman, stated her objections about a newspaper article appearing in the Baltimore Sun regarding a Lothian farm in Anne Arundel County. The article reads as follows, "The easement – essentially an agreement that allows the state to **control** the land, impose development restrictions and perform regular inspections - ". Ms. Schultz stated that she believes the language in the article is inaccurate and creates a negative perception of the

Status: **Approved**

Motion #6: To approve the Foundation to make offer to a landowner at his easement value.

Motion: Chris Wilson Second: Howard Freedlander
Opposed: Joe Tassone, Vera Mae Schultz
Abstained: Robert Stahl
Status: **Approved**

Motion #7: To approve the Foundation to make offers to the two properties at their respective easement values subject to County's additional funds approved by the County.

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

Washington County

Motion #8: To approve the Foundation to make offer to landowners at their respective easement values.

Motion: John Draper Second: Robert Stahl
Abstained: Vera Mae Schultz, Joe Tassone
Status: Approved

Motion #9: To approve the Foundation to make contingent offers to landowners, if funds become available.

Motion: Doug Wilson Second: Chris Wilson
Abstained: Vera Mae Schultz, Joe Tassone
Status: Approved

- 2) Status Report on the following Pending Litigation:
a) Wachovia Bank v. Dianne L. Stern et al, Case #C-07-9151
b) Yoder v. Bellevalle Farms Circuit Court for Baltimore County
3) Status report on potential litigation in Baltimore County regarding an illegal subdivision.
4) Status report on potential litigation in Caroline County regarding an illegal subdivision.
5) Status report on potential litigation in a Rural Legacy easement regarding an illegal subdivision.

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

The Closed Meeting was adjourned at 11:50 am.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, Executive Director