

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
OPEN MEETING MINUTES  
August 26, 2008**

**TRUSTEES PRESENT:**

Daniel Colhoun, Chairman  
Vera Mae Schultz, Vice Chairman  
Martha A. Clark  
John W. Draper, Jr.,  
Jerry Klasmeier, representing Comptroller Peter Franchot  
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:**

Howard S. Freedlander, representing Treasurer Nancy Kopp  
Dr. James Pelura  
Jonathan Quinn

**OTHERS PRESENT:**

Bill Amoss, Harford County, Program Administrator  
Anne Bradley, Frederick County, Program Administrator  
Tammy Buckle, Caroline County, Program Administrator  
Pam Bush, Department of Natural Resources, Senior Policy Analyst  
Diane Chasse, MALPF Administrator  
Yates Clagett, Program Administrator, Prince George's County  
Carol Council, MALPF Administrator  
Rama Dilip, MALPF Secretary  
Nancy Forrester, Assistant Attorney General, Department of General Services  
Carla Gerber, Kent County, Program Administrator  
Buddy Hance, Dy. Secretary, Maryland Department of Agriculture  
Steven Keil, Landowner, Baltimore County  
Dino La Fiandra, Attorney, Baltimore County  
Wally Lippincott, Baltimore County, Program Administrator  
Amber Mohr, Law Clerk, Baltimore County  
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture  
Ralph Robertson, Carroll County, Program Administrator  
Charles Rice, Charles County, Program Administrator  
Eric Shertz, Cecil County, Program Administrator  
Martin Sokolich, Talbot County, Program Administrator  
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist  
Stewart Smith, Planner, Prince George's County  
James Ward, Landowner, Baltimore County





Mr. La Fiandra stated that Mr. Ward has put six parcels in four different MALPF easements in Baltimore County. He has another farm that is under a Land Preservation Trust Easement. The total acreage preserved is approximately 1000 acres. Mr. Ward has taken out one owner's lot. Mr. Ward acquired the property in the early 1980s and in 1987 put the subject property under the MALPF program. Later he transferred this property to his wife in 1991. Mr. La Fiandra confirmed that the letter written by Mr. Scheidt is available in their files. Mr. Ward transferred the property to his wife for "no consideration" and received no financial benefits. Subsequently in 2006, Mr. Ward re-acquired the property from his wife.

Mr. La Fiandra directed the attention of the MALPF Board to the language outlined in the Deed of Easement, State Code and the COMAR regulations. The easement says, "the Grantor reserves as a personal covenant only and one not intended to run with the land, the right to convey one-acre or less upon written application to Grantee, to themselves or to each of their children, for the purpose of constructing a dwelling for his or that child's personal use."

The State Code says, "On written application, the Foundation shall release free of easement restrictions only for the landowner who originally sold an easement 1-acre or less for the purpose of constructing a dwelling house for the use only of that landowner or a child of the landowner." Mr. La Fiandra stated that Mr. Ward was the one who sold the easement.

Mr. La Fiandra quoted COMAR 15.15.06.03 on lot eligibility.

### **.03 Lot Eligibility.**

Upon approval and release by the Foundation, only a landowner who sold or transferred an easement to the Foundation has the right to construct a dwelling on a lot on the farm for the bona fide use and occupancy of the landowner or a child.

Under the regulations, a landowner has been defined as follows:

"Landowner" means the landowner who sold or transferred an agricultural land preservation easement to the Foundation.

Mr. La Fiandra stated that based on these documents, Mr. Ward is qualified to make a request. The legal issue is arising from the fact that after selling the easement, Mr. Ward transferred his property to his wife, who is not a grantor of the easement. Foundation staff is interpreting the easement language that when Mr. Ward transferred his property he forfeited the right to a child's lot. Mr. La Fiandra argued that if Mr. Ward does not own the property he cannot ask for a child's lot but the easement language does not say anything about terminating, expiring, or lapsing upon Mr. Ward's transfer of the property. The only interpretation available is that if the landowner had re-acquired the property he still has the rights granted to him under the provisions of the easement. Mr. La Fiandra commented that since Mr. Ward is in title to the property and he has a child who qualifies, Mr. Ward has the right to a child's lot. The fact that the right to have a child's lot is termed in the Deed of Easement as a personal covenant does not mean that the right ends when Mr. Ward sells/transfers his property.

Mr. La Fiandra also pointed out that when the courts interpret easements, they turn to principles of contract construction. What do the parties mean? What is the language on the paper mean? The number one principle is that if the language is clear and there can be reasonable interpretation on its face without having to delve to know the intent of the party, then the clear meaning of the plain language would prevail over other interpretations taken into account. According to Mr. La Fiandra, the clear and unambiguous meaning of this language particularly in the context of the State Code and COMAR regulations is that Mr. Ward retains his right to a child's lot even after he transferred the property to his wife.

Mr. La Fiandra stated that the Foundation has an informal policy and a codified policy under the COMAR which allow child's and owner's lots releases to a family controlled entity. This can be a LLC or a family partnership where the landowner puts the property for probably estate planning or succession planning. The property under MALPF easement would go into family controlled entities. The family controlled entity need not be owner of the property when MALPF easement was granted. But under the Foundation's policy, Mr. La Fiandra stated, the Foundation would allow an owner's lot and a child's lot to an entity that was not in title at the time of grant of the MALPF easement. Mr. La Fiandra stated he believed that the same logic should be applied to Mr. Ward's property as Mr. Ward still retains his right to a child's lot (it is under COMAR Section 15.15.01.17.3). Mr. La Fiandra stated that the Foundation would permit a non-owner of the property to obtain a child's lot and an owner's lot. There is another provision under the COMAR 15.15.01.03 which specifically states that the Foundation requires a signed acknowledgement of the forfeiture of lot exclusion rights under the easement, if the landowner is excluding lots from a district. Mr. La Fiandra remarked that where the Foundation intended a waiver or forfeiture of a right the Foundation had required that there would be a signed acknowledgement so that the property owners know and appreciate the fact that he is waiving a right to a lot by taking an action. But that is not the case in the current request. There is no provision of any law, any contract, any easement, and any regulations that requires a signed acknowledgement of a waiver or forfeiture in these types of situations.

Mr. La Fiandra also mentioned that he has done some work/research on the title of some of the MALPF easements and releases, particularly in, Baltimore County. Mr. La Fiandra stated that there have been title issues in the past with regard to the releases that the Foundation has granted, perhaps, unknowingly by the Foundation. Mr. La Fiandra requested the Foundation to consider that perhaps this is not an uncommon occurrence. (Mr. La Fiandra stated that during the work, he had determined some irregularities). If the MALPF Board were to find that Mr. Ward does not have the lot rights requested by him, it calls several of the Foundation's policies into question. Mr. La Fiandra also stated that if the MALPF Board finds that Mr. Ward has the right to a child's lot, Mr. Ward's daughter, Ms. Patricia Ward Waldman, will be present at the Board meeting.

Mr. Colhoun requested Mr. Ward to describe his farm and its operations.

Mr. Ward stated that originally he had bought the farm to be a golf course. A lot of changes have happened since. Mr. Ward bought the Sagamore farms, planned to do something for children's lots but ended up not doing that. Last year, Mr. Ward sold the Sagamore farms. Mr. Ward has preserved properties also through Maryland Environmental Trust, but had never asked for a child's lot so far on any of his preserved property.

Mr. Doug Wilson stated that he is concerned with the specific letter that Mr. Scheidt had written to Mr. Ward. There were no complaints or no appeals from Mr. Ward.

Mr. Ward stated that it is just one letter. Mr. Ward had also applied for couple of children's lots. Mr. Ward stated that he has three kids (including two step-kids). The Foundation did not approve the application because they were step-kids. Mr. Ward stated that one cannot look at just one letter; there were a whole bunch of letters.

Mr. Tassone wanted to know if Mr. Ward's daughter intends to build a house in the lot requested and occupy it as a primary residence. Mr. Ward stated that it would be his daughter's summer residence but not a full time residence.

Mr. La Fiandra stated that prior to transferring the property to his wife, Mr. Ward, had requested for children's lots. Records pertaining to this request can be seen in the Foundation's minutes of November 24, 1992 Board meeting. The minutes reflect the fact that

there had been an application prior to the transfer to Mrs. Ward, which for unexplained reason was never forwarded to MALPF for formal consideration. Thereafter, the transfer of property occurred.

Mr. Doug Wilson quoted the Foundation staff's Report that "on November 24, 1992, the Foundation reviewed a request from Mr. Ward for two children's lots. The Foundation turned down the request because Mr. Ward had transferred the property to his wife."

Mr. La Fiandra stated that the transfer pre-dated November 24, 1992 but post dated February, 1991.

Martha Clark, Board member, wanted to know about the farming operations.

Mr. Ward stated that the farm has 187 acres and about 175 acres farmed, corn and soybeans, and a few acres of woods. Mr. Ward rents the land and has a contract farmer.

Mr. La Fiandra mentioned that Mr. Ward's recollection of the reason the MALPF Board turned down the request in 1992 differs from what is available in the Foundation's minutes. Mr. Ward recollects that more emphasis was placed on the fact that the children were step-children.

Mr. Colhoun thanked Mr. Ward and Mr. La Fiandra for attending the Board meeting and providing information to the MALPF Board.

Mr. La Fiandra wanted to know if the Foundation would be responding and if the MALPF Board would require them to come again for the request. Mr. Colhoun stated the Foundation staff would be responding and would let them know when the request would be discussed again in an Open Meeting.

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| 2. | 03-88-05 | Keil, Steven   | 126.75 acres |
|    |          | Advance review of proposed 1.4-acre child's lot location |              |

Request:

At the June 24, 2008 Board meeting, the Foundation approved an offer to Steven Keil. The landowner has not yet acted on the offer. The landowner is requesting that the Board review a proposed 1.4-acre child's lot prior to his decision.

Recommendation:

Staff recommends advance approval of the release of up to 2 acres based on the provisions of the deed of easement and in accordance with Agricultural Article, Section 2-513(b)(8), Annotated Code of Maryland, which grants an allowance of a maximum lot size of up to 2.0 acres if recommended by the local agricultural advisory board and the planning and zoning department and if the Foundation determines that the additional acreage will not significantly interfere with the agricultural use of the property. The lot location conforms to the Foundation's lot location guidelines as it is located along the edge of a till-able field.

Background:

According to Baltimore County, the lot will be located within wooded area at the edge of a field. The access will be a driveway which starts at Hoffman Road and will be going through the woods. The additional .4 acres is required by County Planning for an in-fee access.

Under the terms of HB 460, the Foundation's Board of Trustees may approve a lot size of up to two acres if the additional acreage is recommended by the local advisory board and the local planning and zoning authority. The legislation states that the Foundation must determine that a lot size of greater than one acre will not interfere significantly with the agricultural use of the property. The legislation was intended to avoid situations where the one-acre size restriction results in lots with irregular shapes or where the lot creates small adjacent areas of





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7. 06-09-07 Blocher, Charles H. Jr. & Georgette 78.63 acres

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

Ms. Forrester noted that the Sheeley property has a railroad running through it and it has to be verified that they have a legal crossing.

8. 06-09-08 Simpson, Clinton B. & Judith L. 21.20 acres

9. 06-09-09 Snyder, Charlotte 24.87 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."

Ralph Robertson, Program Administrator, was present at the meeting.

Motion #5: To approve items 1 to 9 for easement application.

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

B. ANNE ARUNDEL COUNTY

1. 02-09-01 Catterton, Herbert 156.576 acres

2. 02-09-02 Dee Corporation 150.188 acres

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

Motion #6: To approve items 1 and 2 for easement application.

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

C. WORCESTER COUNTY

1. 23-09-01 Holland, Joseph M. 102.00 acres

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

Motion #7: To approve item 1 for easement application.

Motion: Robert Stahl Second: Joe Tassone  
Status: **Approved**

D. ALLEGANY COUNTY

1. 01-09-01 Fiscus, W. Guy, et al 205.78 acres

2. 01-09-02 Pratt, Sr., William R. 213.00 acres

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3. 01-09-03 Beal, Edwin E., et al 191.82 acres

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

Ms. Council noted that Mr. Edwin Beal (01-09-03) is withholding 10 acres. There is no density associated with 10 acres. The landowner is withholding to meet the soil criteria.

Ms. Forrester noted that the Pratt property has a railroad running through it and it has to be verified that they have a legal crossing.

Motion #8: To approve items 1 to 3 for easement application.

Motion: Robert Stahl Second: Joe Tassone  
Status: **Approved**

E. CECIL COUNTY

1. 07-09-05 Balderston Family Partnership 120.0 acres

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

2 07-09-06 Reisler, Sr., J. David 117.91 acres

3. 07-09-08 Fell, William L. 97.05 acres

RECOMMENDATION: This request does not meet the Foundation's criteria for withheld acreage. Staff is attempting to contact the Program Administrator to determine if the landowner is aware that the request does not conform. Staff recommends the request be approved if the landowner is willing to reduce the withheld acreage to result in three or fewer development rights.

4. 07-09-10 Fell, William L. 56.28 acres

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

5. 07-09-11 Fell, William L. 42.5158 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."

Eric Shertz, Program Administrator, was present at the meeting.

Mr. Tassone commented the staff report for item 1 indicates withheld acreage as 4.5 acres and density associated as 3. He wanted clarification. Mr. Shertz stated that there has been a minor subdivision approval.

Motion #9: To approve item 1 for easement application.

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







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RECOMMENDATION: Staff recommends approval based on meeting minimum soils criteria. While the property does not meet minimum size criteria, it meets the exception criteria because it is contiguous with a large block (1,000+ acres) of MALPF easement property.

8.	09-09-08	W. A. Harper, Inc.	313.980 acres
9.	09-09-09	Knauer, Henry L.	212.000 acres

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

Motion #17: To approve items 1 to 9 for easement application.

Motion:	Robert Stahl	Second:	Joe Tassone
Status:	<b>Approved</b>		

K. FREDERICK COUNTY

1.	10-09-01	Ramsburg, Jacob R. Jr.	145.150 acres
2.	10-09-02	Kinna, Clay C. & Melissa A.	106.514 acres
3.	10-09-03	Blickenstaff, Brian	122.196 acres
4.	10-09-04	Lakin, Henry D. Jr. & Alma J.	146.370 acres
5.	10-09-05	Hope, Green, (Trustee)	179.885 acres
6.	10-09-06	Kemp, William L.	128.000 acres
7.	10-09-07	Ryan, Michael J.	247.860 acres
8.	10-09-08	Ramsburg Family, LLC	249.381 acres
9.	10-09-09	Fornwald, Douglas W. & Laura W.	80.430 acres

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

Motion #18: To approve items 1 to 9 for easement application.

Motion:	Robert Stahl	Second:	John Draper
Status:	<b>Approved</b>		

L. HARFORD COUNTY

1.	12-09-01	Troyer, Patricia, et al	69.25 acres
2.	12-09-02	Quick, Stephen F. & Susan C.	121.00 acres
3.	12-09-03	English, Scott D. & Debra Laubach	50.70 acres
4.	12-09-04	Whiteland Land Assoc.	430.00 acres
5.	12-09-05	Wilson, Samuel R. & Ruth P.	83.38 acres
6.	12-09-06	Norton, James E. & Mildred J.	83.00 acres

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

7.	12-09-07	Arnold, Donald L., et al	41.66 acres
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RECOMMENDATION: Staff recommends approval based on meeting minimum soils criteria. While the property does not meet the minimum size requirement, it meets the size exception criteria because it is contiguous with more than 100 acres of County easement property. Additionally, the withheld acreage is consistent with the Foundation's withheld acreage policy. (See additional note on individual staff memo.)

8.	12-09-08	Archer, James H. & Janet W.	23.00 acres
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RECOMMENDATION: Staff recommends approval based on meeting minimum soils criteria. While the property does not meet the minimum size requirement, it meets the size exception criteria because it is contiguous with more than 200 acres of MALPF easement property.

9. 12-09-09 Grier, Louise, et al 96.00 acres

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

10. 12-09-10 Euler, Michael A. & Jacqueline A. 60.00 acres

RECOMMENDATION: Staff recommends approval based on meeting minimum size and soils criteria. The withheld acreage is consistent with the Foundation's Withheld Acreage Policy: land that has split zoning may be allowed to withhold the area that is not zoned for agriculture, e.g., land that is zoned residential or commercial may be withheld.

Motion #19: To approve items 1 to 9 for easement application.

Motion: Robert Stahl Second: Joe Tassone  
Status: **Approved**

Motion #20: To approve item 10 for easement application.

Motion: Robert Stahl Second: Chris Wilson  
Abstained: Joe Tassone  
Status: **Approved**

M. KENT COUNTY

1. 14-09-01 Angelica Nurseries, Inc. 246.14 acres  
2. 14-09-02 Kennedy, Robert W. & Jane W. 165.31 acres  
3. 14-09-03 Kimble, Mary R. 213.00 acres  
4. 14-09-04 Fernwalt, John D. 240.00 acres  
5. 14-09-05 Welch, Mary A. et al 243.00 acres

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

Motion #21: To approve items 1 to 5 for easement application.

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

N. PRINCE GEORGE'S COUNTY

1. 16-09-01 Kuehn, George H., et al 172.8695 acres  
2. 16-09-02 DeVaughn, William D. & Catherine 112.9720 acres

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

3. 16-09-03 Leitch, Arthur E., Jr. & Roswitha K. 60.8300 acres  
4. 16-09-04 Rogers, J. Whitson & Joseph S. 106.8498 acres  
5. 16-09-05 Antoniolio, Vincent J., et al 159.0215 acres

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

Yates Claggett, Program Administrator, Prince George's County, was present at the meeting.





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- 2) Status Report on the following Pending Litigation:  
1) Status report on potential litigation in a Rural Legacy easement regarding an illegal subdivision.

Motion #4: To accept the Foundation staff's recommendations and not pursue litigation.

Motion: Doug Wilson

Second: John Draper

Status: **Approved**

The Closed Meeting was adjourned at 11:50 am.

Respectfully Submitted:

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Rama Dilip, MALPF Secretary

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Carol Council, MALPF Administrator