

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
November 25, 2008**

TRUSTEES PRESENT:

Daniel W. Colhoun, Chairman
Vera Mae Schultz, Vice Chairman
William K. (Billy) Boniface
Martha A. Clark
John W. Draper, Jr.,
Jerome W. Klasmeier, representing Comptroller Peter Franchot
Jonathan C. Quinn
Dan Rosen, representing Secretary Richard E. Hall, Maryland Department of Planning
Robert F. Stahl, Jr.,
Christopher H. Wilson
Douglas H. Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture

TRUSTEES ABSENT:

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

OTHERS PRESENT:

Anne Bradley, Frederick County, Ag. Preservation Planner
Pam Bush, Department of Natural Resources, Senior Policy Analyst
Diane Chasse, MALPF Administrator
Dale Perry Clark, Landowner, Anne Arundel County
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
Jeffrey C. Everett, Carroll County, Preservation Specialist
Karen Fedor, Maryland Department of Agriculture
Kristin Fisher, Montgomery County, Assistant Program Administrator
Nancy Forrester, Assistant Attorney General, Department of General Services
Richard Graham, Landowner, Charles County
Billy Gorski, Anne Arundel County, Program Assistant
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
William Layton, Landowner, Dorchester County
Paul Meyer, Landowner, Carroll County
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Barbara Polito, Anne Arundel County, Program Administrator
Andrea Puckett, Landowner, Charles County
Dwight Puckett, Landowner, Charles County
Gregory Rapisarda, Attorney, Harford County
Charles Rice, Charles County, Program Administrator
Donna Sasscer, St. Mary's County, Program Administrator
Ned Sayre, Harford County, Ag. Preservation Planner
Eric Shertz, Cecil County, Program Administrator
Stewart Smith, Prince George's County, Planner
Bobby Willis, Carroll County
Susan & Howard Wilson, Landowners, Frederick County
John Zawitoski, Montgomery County, Program Administrator

dwelling on the property. On July 31, 2008 an Amendment to the Deed of Easement was recorded that: 1) gives up the right to request tenant houses on the property, 2) makes the pre-existing dwelling non-subdividable, and 3) makes the remainder of the property non-subdividable, even for an agricultural purpose.

According to Carroll County, the turbine will be located within the curtilage of the pre-existing dwelling and will not interfere with the overall farm operation. The existing access for the dwelling will also be used to access the turbine. The turbine will generate only enough electricity for the general operation of the farm and the existing dwelling. The total height of the structure will be 51 feet. The local advisory board finds that "the request is consistent with state and local government's recent pledge to encourage citizens to move to efficient, clean alternative energy sources."

Mr. Conrad stated that landowner has the right to construct a wind turbine on a MALPF easement property if there will be no net electricity sold (the turbine(s) will generate only enough electricity for the landowner's personal use for the farm operation and houses on the property). Staff also spoke with Ms. Nancy Willis, LookUp Energy, and was told that the turbine that is to be constructed on Mr. Meyers' property will not generate enough energy to be sold off-site. In addition, Mr. Meyers will sign a BGE Interconnection Agreement that will not allow energy to be sold. If at any given time the turbine generates more energy than can be consumed by Mr. Meyers residence, by a process called 'net metering' BGE will do a credit for up to 12 months. After that time, any surplus energy that has not been used by Mr. Meyers will be lost.

Mr. Meyers has provided copies of his BGE bills for the months of February, July and August, 2008 (copies attached with the staff memo). During these months, Mr. Meyers home used 1680, 1799, and 1389 kilowatt hours of electricity, respectively. According to Ms. Willis, given that the average wind speed in Carroll County is 12 mph, the proposed turbine will generate only about 400 kwh per month, on average. This equates to 1/4 to 1/3 of the energy currently used by Mr. Meyers.

On May 6, 2008, the Carroll County Commissioners adopted an Ordinance to allow small wind energy systems in the county (copy attached with the staff memo). This request has been approved by the local advisory board and meets the requirements of the County Commissioners Ordinance.

Mr. Meyers and Mr. Everett, Preservation Specialist, Carroll County, were available at the meeting. Mr. Meyers stated that he is trying to conserve energy and find alternative sources of energy.

Bobby Willis, LookUp Energy, was also available at the meeting and stated that his company installs wind turbines. Mr. Willis stated that the Company is working on its fifth installation in Carroll County and has been well accepted in the County.

Mr. Meyers stated that his request meets the County requirements and has County's approval.

Mr. Colhoun commented that he visited the site with Mr. Ralph Robertson, County Program Administrator. Mr. Colhoun stated that the proposed location is by the driveway and will not be intrusive to the farm operations.

Mr. Conrad reminded the Board members that there is no flexibility on any easement property that has federal funding.

[Update: Mr. Colhoun has asked Mr. Stahl, Board member, to expand the charge of the existing committee on natural gas drilling to look also at wind and solar energy production. The Committee will be renamed the "Energy Committee." Mr. Rice will be asked to join this committee and take part in the discussion of these energy production issues on MALPF – easement properties.]

D. WASHINGTON COUNTY

1. 21-95-04 Taulton, Robert 127.38 acres
Request for 50 acre agricultural subdivision of easement property

Request:

Approval to agriculturally subdivide 50.0 acres of easement property to be conveyed to an adjoining landowner, Barry Stup.

Recommendation:

Staff recommends approval. The request meets the Foundation's guidelines for agricultural subdivision because 1) the new landowner will continue the agricultural use of the parcel, 2) it will result in both parcels being at least 50 acres, and 3) both parcels will continue to meet the Foundation's soils and size requirements.

Background:

Mr. Taulton is the original owner of the easement property. There is one pre-existing dwelling. No lot exclusions have been requested. According to his request, Mr. Taulton wishes to transfer 50 acres of his easement property to a neighboring landowner for health and financial reasons. He will continue with the existing dairy and crop operation on the 77.38 acre remainder of the farm. The agricultural use of the 50 acre parcel will remain cropland and woodland.

The landowner states that 47 of the 50 acres (94%) to be conveyed are soils classes I, II and III. Of the remaining 77.38 acres, 57.98 acres (75%) are classes I, II and III. The request has been approved by the local advisory board and meets with Planning & Zoning requirements.

Ms. Council informed the Board that Mr. Taulton is ill and Eric Seifarth, Program Administrator, is not able to attend the meeting.

Motion #6: To approve the request of Robert Taulton for a 50-acre agricultural subdivision of easement property.

Motion: Douglas Wilson Second: John Draper
Status: **Approved**

E. HARFORD COUNTY

1. 12-83-03c Hoopes, James W. & Mary L. 14.64 acres
Request for approval of a child's lot up to 2.0 acres on easement property

Request:

Mr. and Mrs. Hoopes are the original grantors of the easement. The current request is for

approval of a child's lot for their daughter, Jennifer Marie Hoopes.

Recommendation:

Foundation staff has concerns about the location of the lot. The chosen location does not conform to the Foundation's lot location guidelines: it is not located along the road nor is it clustered with existing dwellings (there are none). While the chosen location preserves the cropland, the location of the lot could be disruptive to the future agricultural use of the land if it is sold to an entity not connected with the farm. As the landowners have agreed to make the lot non-subdividable, staff recommends approval of the release of one acre plus such minimum additional acreage if required by the County Health Department, not to exceed 2 acres total based on the provisions of the deed of easement 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.

Background:

There are no pre-existing dwellings on the property. No other lots have been approved on the property. The Hoopes do not own any other district or properties; however, they are adjacent to two family-owned MALPF easement properties: 12-83-03A = 107.9 acres with 2 pre-existing dwellings; 12-83-03B = 15.0 acres with no pre-existing dwellings. There have been no requests for lot exclusions on any of the properties. Language in the Hoopes Deed of Easement allows for owner's and child's lots at a rate of 1 per 20 acres, or a portion thereof (hence their ability to request a lot on this 14.64 acre property).

According to Harford County, the proposed lot is to be located to the rear of the property. The lot would be accessed by a driveway that would run along the edge of the property. According to the County, the location was chosen because the area, which was formerly part of an orchard, is no longer used for production agriculture. The remaining area of the farm is cropland. Two adjacent farms are owned by family members and are part of the same farm operation.

The request was approved by the local advisory board and conforms to local zoning regulations. If approved, the per acre payback amount will be \$1,500.00.

Ned Sayre, Ag. Preservation Planner, was available at the meeting. Mr. Sayre stated that the entire farm comprising parcel A, B, and C (indicated on the tax map) entered the MALPF program together as a family farm. When it entered the easement program, the parents originally gave lots B and C to two brothers. One brother then bought the parents parcel A and the other brother retained lot C. That is why there are a number of smaller parcels, but they all entered the program as a family operation. This area of the farm had an old orchard not being used.

Parcel B and C do not touch, and there is a small panhandle to access the parcels. It is a 50' in-fee strip. Parcel A has a separate access.

Responding to a question, Mr. Sayre commented that the proposed child's lot is coming off parcel C owned by James and Mary Hoopes. The three parcels are three separate easements having three individual deeds of easements. The landowner is agreeable to make the lot non-subdividable.

Mr. Conrad stated that he wanted the Board to consider an important point while considering requests involving non-subdividable lots. The Foundation has a 5-year release process whereby the house has to be retained for 5 years before it can be released. In the current request the landowners are agreeable to have the lot non-subdividable. Mr. Conrad wanted to

County. Mr. Lippincott's recommendations were mainly focused at simplifying the monitoring process. The proposed policy had considered the scale of production as the primary basis for approval rather than looking at the source of grapes. It is easier to determine the actual production capacity of the winery rather than determining the origin of the grapes.

Mr. Conrad recommended that, if the MALPF Board agrees with the recommendations, the Vineyard/Winery Committee can revise the proposed uses and bring it back to the MALPF Board for final approval. Mr. Conrad stated that the Committee has also received recommendations from Vera Mae Schultz, Vice Chairman, and Diane Chasse, MALPF Administrator.

Mr. Colhoun commended the work of the Committee and stated that the proposal is drafted to encourage winery to be part of the easement rather than landowners requesting excluding acreage in the middle of the farm to operate winery. The idea of the Committee is to include winery operations as a part of the easement.

Mr. Conrad introduced William Layton, Landowner, Dorchester County, as one of the Committee members representing Winery industry.

John Draper, Board member, wondered how the Foundation would go about monitoring 'at least 51%' of the grapes grown on-site, as outlined in Mr. Lippincott's letter.

For purposes of clarification, Mr. Conrad asked Mr. Layton if there are any requirements under a Class IV tax license that the grapes used by the winery must come from same property. Mr. Layton stated that for the actual Class IV license, it is not a requirement. There is a requirement that the landowner buys only Maryland-grown grapes, but if Maryland's grown grape production is not enough, wineries get an exemption allowing them to purchase grapes out-of-state. The requirement for that license is that one buys Maryland grown grapes only.

In a response to a question, Mr. Conrad said that, in California, winery operations are primarily regulated by planning and zoning authorities rather than easements or land preservation policies.

Mr. Conrad stated that Mr. Nielsen had enquired about the winery situation in California and how it was addressed through land preservation. Mr. Conrad stated that last summer he had been to Napa and visited some land trusts. During this visit he found out that the Sonoma County Land Trust was focusing on protecting coastal properties rather than focusing on vineyard and winery issues. Most winery activities in Napa Valley are not controlled through land trusts and the easements, but are controlled by Planning and Zoning.

Mr. Colhoun agreed with Mr. Draper's comments and asked Ms. Hoxter's opinion on the monitoring issue. Ms. Hoxter agreed that it would be a challenge to assess what is 51%.

Mr. Boniface commented that winery operations involve some start-up years. So the amount of grape production a landowner is going to buy off-site to keep the wineries profitable would vary from year-to-year depending on whether he is at the start-up stage or at full production stage. Mr. Boniface stated that he believed the percentage of off-site grapes used in production would be very difficult to monitor.

Mr. Conrad commented that he believed flexibility is required while dealing with winery operations. Just as a creamery needs to offer a range of creamery products to be successful at marketing its products, wineries may need to have a wider range of wines available.

Mr. Layton agreed and stated that, rather than looking at a percentage of grapes, it would be a better idea to have the required amount of grapes to meet the required production. Grapes are going to produce only a certain amount of wine. Mr. Layton suggested looking at the acreage in vineyards rather than specifically looking at the grapes.

Mr. Layton continued that on an average an acre of grapes makes approximately 1800 gallons of wine.

Mr. Conrad wanted to know if it was possible to determine the production capacity based on the equipment used. Mr. Layton stated that it is hard to determine the production capacity based on the equipment used.

Chris Wilson, Board member, wanted to know how many gallons are found in a case. Mr. Layton stated that a case approximately has 2.1 gallons.

Donna Landis-Smith, Agricultural Specialist, Queen Anne's County, stated that Queen Anne's County has several vineyards and three wineries. The County has one vineyard with 20 acres of grapes, and all the grapes are sold to a local winery. The owner has to bring in different varieties of grapes, and it would be very challenging to monitor what a landowner is producing and what grapes are coming from a vineyard. A majority of the producers buy grapes from other vineyards to produce in their winery.

Mr. Colhoun wanted to know if the Foundation is concerned about whether the grapes are grown in Maryland or come from another State.

Mr. Conrad stated the Foundation is concerned about proportionality. The origin of the grapes is not a major issue but there is a concern about the scale of production and the size of the property. For example – If a property has 100 acres and an x number of gallons are produced per acre, it is possible to estimate how much wine could be produced. Therefore you would like to match the Foundation-approved production capacity of the winery to the potential production of grapes on the property. The processing unit has to be somehow related to other activities on the farm. Normally this is what would happen, but the Foundation also does not want someone to say that they want to build the winery independent of the farm operation.

Mr. Nielsen stated that in terms of scale, the Foundation in the past addressed the issue with regard to selling the products used on the farm. The Foundation did not want the landowners to bring produce from other farms to sell.

Martha Clark, Board member, commented that she understands there is already a criterion for defining the wine as a Maryland wine and a state or a federal enforcing agency exists to enforce this. Ms. Clark wondered if the Foundation can work with the enforcing agency.

Mr. Conrad stated that for the purposes of a class of winery, one already has to use Maryland grapes unless an exception is approved by the Secretary of Agriculture because there is inadequate production of grapes in Maryland. Part of the desire of the Winery Committee is to have enough flexibility, that in the event of a natural calamity, there is no loss to Maryland wineries.

Ms. Clark wondered if the Foundation can use an already existing mechanism for inspection and approval.

Mr. Layton stated that the only time audits would reveal whether all of the grapes used are the landowners or not is if the landowners create a formal plan. Currently Maryland roughly grows 50% of the grapes required by Maryland wineries, so there is a deficit.

Mr. Colhoun wondered if the Board would like to consider the possibility of getting 3,000 cases as a starting point. Based on the Board's discussions, 51% might not be appropriate, and also depending on the situation, Maryland might need to use grapes from other areas.

Mr. Layton stated 3,000 cases are only about 6,000 or 7,000 gallons, and the real profits only result from producing around 20,000 gallons. Usually 3,000 cases use approximately 8 – 9 acres of grapes.

Howard Wood, past President, Maryland Grape Growers Association, was present at the meeting. Mr. Wood commented that, in general, acres are a good measure to use, but people grow grapes in different ways. Some people plant 10' wide rows with 6' between the vines, and some people plant 7' wide rows with 4' between the vines. So there is a possibility of having double the number of vines in the same acre, and there is a possibility of having 50% or 100% differential in production from an acre of grapes.

Mrs. Schultz stated that the Uses Committee also had to struggle with the issue of having percentages and arrived at the conclusion that "some of the products must come from the farm".

Mr. Conrad stated that most wineries purchase grapes from other Maryland vineyard due to shortages of vineyards on winery properties. Mr. Conrad stated that he did not believe there is any winery that does not have plans for on-site vineyard.

Mr. Wood stated that in general he agreed with Mr. Conrad's comments, but stated that he is also aware of at least three wineries that do not have vines on the property.

Mr. Wood commented that he understands the Foundation is trying to promote farmland use. He suggested the Foundation use the production facility as a ratio. If you have certain acreage of grapes you have a certain volume of production capacity. That way, if you have the grapes, you are allowing the winery. It is possible to measure acres and production facility.

Mr. Boniface agreed that the issue has to be considered from the standpoint of acreage.

Douglas Wilson recommended going through statutory approval process. The Foundation can have the statute changed for the future easement properties and also for properties that are currently under the MALPF program but might want to change their operation. Based on the Committee's work, the Foundation can seek special exception to allow to exclude 'x' amount of acres out of the easement. There is an issue if the landowner returns to the Foundation after he had been unsuccessful in the winery operation and wants to instead apply for another operation. So there is a need to have a statutory limitation.

Mr. Colhoun thanked the Board members, guests, and the program administrators for their inputs.

Mr. Conrad stated that his understanding is that the Board wants the Committee to look at the proportionality in terms of acreage with respect to monitoring. Mr. Colhoun agreed and stated that it would be a good idea to look at the acreage rather than the cases of wines or percentages.

B. An update by Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture

Mr. Nielsen had passed out copies of "Petition for Writ of Certiorari" to the Board members and the Program Administrators. The case arose in Kent County over a dispute of a landowner subject to a MALPF easement. The landowner wanted an owner's lot. The

Foundation had a dispute with the landowner over the nature of the release and whether the law passed in 2004 applied to the landowner. The Foundation won the litigation in the Circuit Court of Kent County. The landowner appealed to the Court of Special Appeals. The Judge in the Court of Special Appeals had stated that once the landowner gets a release, the landowner gets a right to sell the lot immediately.

Mr. Nielsen stated that he believed this decision was wrong and harms the program. This judgment would roughly affect 2,000 MALPF easements and around 265,000 acres. Mr. Nielsen estimated that this could impact as many as 5,000 or 6,000 lots and possibly have implications for all the 23 counties. The Office of Assistant Attorney General had asked the Court of Appeals to review this decision.

Mr. Nielsen requested the County Program Administrators to take copies of the "Petition for Writ of Certiorari" and asked for their support. He asked the County Program Administrators to discuss this document with their County Governing Body and explore if they would be interested in filing a support as and when and if the certification is granted. In many jurisdictions in the State of Maryland, the 'right of appeal' is not 'by right' but it is 'by permission' of Appellate Court. So if the Certiorari is not granted, the decision stays and could have disastrous effect on the Program.

Mr. Nielsen informed the Board that he had approached Maryland Association of Counties (MACO) for support. However, the Association had declined its support as it is not in its policy to support the State in this kind of endeavor.

Mr. Conrad stated that the Court's decisions means that, if the Foundation releases a lot to someone under the old easement, that person could immediately flip it and sell it to anyone. A child's or an owner's lot is not restricted to personal use, although the statute says it is restricted. The General Assembly has clearly indicated that these lots are not economic opportunities for the easement holders. The lots are restricted solely for the landowner's use to live in or for his children to live on the farm.

Mr. Nielsen requested that the County Program Administrators approach the County Governing Body and the County Law Department for support.

Douglas Wilson suggested that the Chair should write a joint letter with the Secretary of Agriculture to all the County Executives, County Commissioners, and County Attorneys, briefing them about the history and the likely impact of this decision. The Counties should be requested to begin considering the possibilities of supporting the Foundation, if the Foundation is granted the right of appeal. This issue is likely to have an impact on the State and the County's plans to preserve agricultural land and eventually affect appraisal values.

Nancy Forrester, Assistant Attorney General, Department of General Services, stated that the decisions might also affect the Counties' local programs if their programs or easement documents mirror the MALPF program or the easement document.

Mr. Colhoun urged the Program Administrators to discuss the issue at their local jurisdictions.

Charles Rice, Program Administrator, stated that he liked Mr. Douglas Wilson's suggestion of writing a letter to the County authorities. The letter would expedite the process.

Motion #11: Foundation staff work with Craig Nielsen, Assistant Attorney General, to develop a draft letter to be signed by the Chairman MALPF Board, and the Secretary of Maryland Department of Agriculture to send to Senior County Officials, County Executives and County Attorneys (with copies to Program Administrators)

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TOPICS DISCUSSED:

- A. Review of an easement violation in Howard County.
- B. Status Report on the following Pending Litigation:
 - a) Herschell B. Claggett, Sr. vs. MALPF, et al, Case #00578
 - b) Paul F. Stitzel et al. vs. MALPF, Case #21-C-06-025292 DJ
 - c) James R. Owens & Linda M. Owens vs. Peter G. Brown & Jeffery L. Conner & Christa D. Conner, Case #11-C-07-009981 DJ
 - d) John & Susan Yoder, et al. vs. MALPF and Bellevalle Farms
 - e) Michael W. Johnson, Sr. personal representative for the estate of Regina Mary Richardson Johnson vs. Grayson W. Scarff, Jr, MALPF et al., Case # 12-C-05-000813 OC

The Closed Meeting was adjourned at 12:00 p.m.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, MALPF Executive Director