

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
December 16, 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
Dr. James Pelura III
Dan Rosen, representing Secretary Richard E. Hall, Maryland Department of Planning
Douglas H. Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture

TRUSTEES ABSENT:

Howard S. Freedlander, representing Treasurer Nancy Kopp
Robert F. Stahl, Jr.,
Jonathan C. Quinn
Christopher H. Wilson

OTHERS PRESENT:

Bill Amoss, Harford County, Program Administrator
William Boniface, Landowner, Harford County
Tammy Buckle, Caroline County, Program Administrator
Pam Bush, Department of Natural Resources, Senior Policy Analyst
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, Program Assistant
Buddy Hance, Deputy Secretary, Maryland Department of Agriculture
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Lisa Ledman, St. Mary's County, Administrative Coordinator
Joy Levy, Howard County, Program Administrator
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Charles Rice, Charles County, Program Administrator
Donna Sasscer, St. Mary's County, Program Administrator
Ned Sayre, Harford County, Ag. Preservation Planner
Gloria Smith, Wicomico County, Program Administrator
Stewart Smith, Prince George's County, Planner
Martin Sokolich, Talbot County, Program Administrator

Michelle Boniface.

Recommendation:

Staff recommends approval of the request. The lot is not being located adjacent to the public roadway or clustered with existing dwellings or previously approved child's lots. However, a site visit by Dan Colhoun, Board Chairman, confirms that the location for the lot is the least disruptive for the overall farm operation. In accordance with the Foundation's Lot Location Policy, the lot is located adjacent to the property line and will be accessed via an existing right of way. The area surrounding the proposed lot is planted in Christmas trees and will be used for vineyards in the near future.

Background:

Bonita Farm Partnership is the original owner of the easement property. There are four (4) pre-existing dwellings (some used as tenant houses). There have been three (3) previous approvals for child's lots: 2-22-94 = 2.0 acres for son, John Boniface, Jr.; 8-27-91 = 1.0 acre for son, Kevin Boniface; and 5-23-95 = 2.0 acres for son, William Boniface. All three of the lots have been released from the easement and built upon. Staff notes that at the time these lots were approved the Foundation did not have a Lot Location Policy and the lots are scattered around the property.

According to Harford County, the location of the proposed lot will not impact the horse operation of the farm. The proposed location area is part of a pasture that is being replanted with Christmas trees and grape vines. It is located on the periphery of the farm as the more central areas are actively utilized for the horse training facility and broodmare pastures. The lot will have a panhandle fee-simple access to the property boundary, and then a road access variance will be needed for right-of-way to Glenville Road in order to meet Harford County Subdivision Regulations.

During conversations with the County about the lot not being located in the vicinity of pre-existing dwellings and approved child's lots, Ned Sayre provided the following information: "In trying to meet the guidelines, we also have to meet our county zoning requirements about access to a county road. That eliminates locations in the center of the farm where other buildings are. Pretty much any of the areas that could have road access as well as be suitable for building intrude in to potential cropland. The site selected is in an old pasture that is being converted to Christmas trees and grape vines. The site is also located keeping in mind family members' desires for a measure of separation and privacy."

The request has been approved by the local advisory board. A payback of the easement value of \$400.00 per acre will be required.

William Boniface and Ned Sayre, Agricultural Preservation Planner, were present at the meeting. Mr. Sayre informed the Board that the property owners were one of the first easement holders in Harford County. The family is involved in the thoroughbred business. The three sons have already built homes and had their lots excluded from the farm. The current request is for Mr. Boniface's daughter Kim Michelle Boniface. They will have to go through a county zoning variance to utilize the access. They have a historic well documented access right-of-way to the county road, but would have to get a variance to be able to use that (in lieu of the fee simple access to the county road). That will be at the landowner's further risk, and the landowner has to request it through county zoning. The request to the county zoning can proceed if the MALPF Board approves the lot location.

has received comments from Joe Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning, and they would be circulated to Board members.

Mr. Draper stated that currently if a landowner is proposing to divide a property for the purpose of selling an easement, he is allowed one unrestricted lot per application. If he divides the property into four different parts, he would get four unrestricted lots (if the landowner chose an unrestricted lot option). The committee is proposing to limit to three unrestricted lots and one new class of lots that would not be subdivided from the property.

The Committee is also proposing some changes to the new withheld acreage policy to keep people from increasing the density on the property.

Mr. Draper encouraged everyone to review the policy and offer their comments.

Responding to a question from a Board member, Carol Council, MALPF Administrator, explained the geographic restriction and its implication on the eligibility of the lots. If a landowner has more than one property in a county and has several children, he could not receive more than one lot for any particular child on more than one of the properties. But if the landowner owns a property in Somerset County and another property in Carroll County and his child is working on both properties, he might be entitled to a child's lot on both the properties.

Mr. Conrad stated that the draft policy would once again be circulated to the Program Administrators seeking their comments.

Mr. Douglas Wilson commented that when the policy was originally initiated, the farm size was 100 acres. The subdivisions were for 100 acres. Currently the situation is different and the law has changed allowing 50-acre parcels as a baseline. This radically changed the way in which people subdivided the farms and the way Foundation handled subdivision. In earlier times, a 200-acre farm can amount to 2 farms, but in today's world it can amount to 4 farms. This also has an impact on multiplication of lots.

Mr. Colhoun advised the Committee to get in touch with Mr. Nielsen, consolidate the comments received, and bring it back to the MALPF Board for further review.

- B. An update on certification by Dan Rosen, representing Secretary Richard E. Hall, Maryland Department of Planning (MDP).

Mr. Rosen stated that the deadline for recertification applications for some of the counties is January 1, 2009.

According to MDP currently there are 16 certified counties. Ten of the certified counties are certified till June 30, 2009, under the old regulations. The certification period for the remaining six counties expired on June 30, 2008, or before, and it has been agreed that they can have an additional six months to get their recertification applications reviewed under the new regulations. This date is coming up in a couple of weeks and MDP would have to ask the Comptroller of Maryland to withhold agricultural transfer tax funds if the applications of the six counties are not received by January 1, 2009.

Mr. Rosen stated that the six counties whose certification period expired on June 30, 2008, are Baltimore, Cecil, Charles, Harford, Talbot, and Washington counties (Baltimore and Washington Counties have currently submitted their application). These counties need not have all their program components solidified, and MDP can conditionally certify. The conditional certification would allow the counties to keep the funds.

Mr. Douglas Wilson clarified that the counties collect the money from the agricultural transfer tax, retain their share, and remit to the Comptroller the State's share. The Comptroller then gives the Maryland Department of Agriculture the State's share. If MDP is letting a county know that they are decertified, it also needs to notify the county and the agency collecting the tax. The money actually resides in the local jurisdiction and the State's share is remitted by the county.

Mr. Rosen stated that he would make sure that everyone concerned gets a copy of the letter sent by MDP.

Mr. Douglas Wilson commented that there is an auditing issue involved here. MDA has to ensure that when it gets the next month's proceeds from a particular jurisdiction, the proper amount has been remitted.

Mr. Colhoun wondered what happens to the money if a county is not certified.

Mr. Rosen stated that the agricultural transfer tax is collected at the county level. If a county is not certified, the county gets to keep one third of it and the remaining two thirds come to the State. If the county is certified, the county gets to keep 75% of the agricultural transfer tax, and the money has to be used for land preservation within three years or it reverts to the State.

Mr. Charles Rice, Program Administrator, Charles County, noted that Charles County has not collected a single tax dollar of agricultural transfer tax since July 2008.

Mr. Douglas Wilson commented that the State's share of collections has been between \$6 and \$7 million dollars. The State would be roughly collecting \$2 million dollars, which does not even cover the MALPF's operational costs.

V. INFORMATION AND DISCUSSION

A. Natural Gas Drilling in Pennsylvania – Presentation from Field Trip – Jim Conrad

Mr. Conrad stated that a group comprised of Board members and MALPF staff (Robert Stahl, Daniel Colhoun, Carol Council, Kimberly Hoxter and James Conrad) visited Pennsylvania to look at some natural gas drilling sites. In addition to Pennsylvania State Agricultural Extension staff, the group was accompanied by a State water quality expert. (A copy of the complete presentation is found in the Foundation's files and an updated version will be posted to the website.)

Mr. Conrad mentioned that there are about 40 properties under an agricultural preservation easement in Garrett County. While some of the properties subordinated their mineral rights, some did not. While some of the property owners have rights to do whatever they want to do with their mineral rights, others need approval from the Foundation to do anything on site. It is still not absolutely clear what the Foundation has the ability to approve or disapprove.

Mr. Conrad mentioned that, "after the initial drilling and reclamation, it is not unusual for crop damage to occur during periodic service on the wells and pipelines when required on site". One of the property owners the group visited mentioned that he had signed a contract for \$1000 or \$2000 for all crop damages that might occur in the future. The property owner believed that he was negotiating for 'one-time damage,' but according to the language in the contract he signed, the money he received was for 'all time.' Despite this and other complaints, the property owner commented that the royalties he received

were good, and he would make the same choice again to lease the mineral rights on his farm for drilling. Farming was not his main source of income, and allowing the natural gas drilling on his farm provided him with a major source of income.

Mr. Conrad commented that this property owner mentioned that the wells will remain hooked up to his house even after they are no longer commercially productive; thus, the owner gets free natural gas for cooking and heating. So there is an on-going benefit. Even though the gas companies may no longer pump out commercially, it still remains a source of energy.

Mr. Conrad discussed the potential impact to on-site and off-site water resources. He and Pam Bush, Department of Natural Resources, Senior Policy Analyst, went to hear a presentation by an energy company called Samson. The energy company has oil leases in Western Maryland, though has not yet started to drill. The company estimated that it is not expecting to find much salt water or contaminated water in the Western Maryland geological formations when it drills. This can vary depending on the geological conditions specific to the drilling site.

At the property where only vertical drilling had taken place, the water supply for the house and the rental house on the property drew from surface springs. Early on during drilling, the spring stopped producing. Over time, the impact on the springs stabilized, and the flow returned, but the water carried a lot of sediment. When the water comes into the house, it first goes into a storage or holding tank. The tank quickly filled with the sediment. The drilling company cleaned the tank, but the water continued to carry a lot of sediment, causing on-going problems.

Ms. Council noted that at some point in time, the drilling company stopped helping them maintain the water supply. The company claimed that it was not legally liable unless the property owner could prove that the water problems were a direct result of drilling on the property.

Mr. Conrad commented that it had been generally reported that water well levels (for those depending on groundwater) showed some degree of unpredictability during drilling; stabilizing once the drilling was completed. When the companies drill through the water table, they create a sealed permanent "sleeve" to protect the quality of the groundwater from any contamination from drilling. Apparently, contamination is rare, but when it happens, it can create a real mess.

Ms. Council commented that, in the past in Pennsylvania, when some companies drill and are no longer able to extract natural gas, they have been known to abandon the drill site without sealing off the well.

Ms. Bush commented that the Maryland Department of Environment may have better water regulations and controls, so Maryland may not have to address these kinds of issues.

Mr. Conrad commented that, in Pennsylvania, the drilling companies have not been able to use public water treatment facilities; therefore, all the water that comes off the property has to be treated in private facilities. The private facilities are not required to treat for phosphorous and certain other elements. The water quality expert who accompanied the group voiced her desire to find a better way to monitor private water treatment facilities, but personnel and regulations have been, to date, less than adequate.

As a result of drilling operations, there are two types of water that is coming off the property. One is the mud that is created to drill. It is a combination of water, Bentonite,

and certain other chemicals. When the companies drill, they recycle the "mud." Each one has their own drilling formula of the chemicals used in their mud. The fracturing of shale also requires large quantities of water pumped under high pressure – it is a combination of water, chemicals, and sand.

Mr. Conrad gave an example to illustrate how much water is being used. During fracturing, more than 100 water trucks will service the well. As many as 700 truckloads of contaminated water are removed to treatment facilities. This is from one fracturing. The gas companies do multiple fracturing over time. As they continue to drill, they continue to fracture.

Mr. Conrad shared the issue raised by the water quality expert from the State of Pennsylvania. Large quantities of water are taken out of one watershed, but often the treatment plants are located on different watersheds and the water has to be distributed to different watersheds, depending upon their capacity. So the water is taken out from one watershed and put back in a different watershed, and this completely alters the traditional flow pattern of the streams. This can affect the wildlife in streams, water supplies downstream, and can have other implications.

Mr. Conrad stated that the companies use 'proprietary fluids' in well drilling and fracturing that are treated as trade secrets. In other words, they use their special mixture and so when water is being treated or is being released into the streams, the treatment facilities do not necessarily know what they are dealing with. Also it is possible to get contaminants out of the shale layer. The area in Western Pennsylvania has problems with radioactivity. There are also metals and acid producing minerals (that dissolves the metals) and there is a possibility of water ending up with heavy metals.

Mr. Nielsen wanted to know how much money the farmers are getting. Ms. Council commented that the group tried to find this information, but the farmers could not or were not willing to provide estimates. Clearly, these transactions involve large amounts of money from the lease of the land and the royalty paid on the gas extracted.

Mr. Douglas Wilson stated that this year he expected legislation from the Western Maryland delegation giving various landowners and the owners of mineral rights the ability to participate in gas leases and drilling activities. Mr. Conrad also expected to receive requests to lay pipelines over MALPF properties.

Mr. Conrad pointed out that there is an additional issue concerning "value." It is difficult to establish property values, values of mineral rights, and the values of mining operations for appraisal, assessment, and taxation purposes. The same is true when the Foundation gets involved in situations where mineral rights have been subordinated.

Mr. Douglas Wilson commented that in Southern Maryland, the Foundation had sand and gravel issues. The Foundation establishes values primarily based on residential use as the "highest and best" use. The Foundation does not use 'speculative valuing' of what may or may not be under the ground. The issue involving gas mineral rights is no less speculative. The farmer is talking about getting royalties. The question is if the Foundation owns the mineral rights why wouldn't the State of Maryland also receive lease money and royalties? The real issue is to ascertain who owns the mineral rights.

Ms. Bush commented that there is also an issue about equity. The Department of Natural Resources (DNR) does not take into account whether mineral rights are separate or an integral part of the land. DNR pays the same amount of money. Some people lease their mineral rights, and others can't. Some may request that their easements be amended to allow drilling.

Mr. Colhoun wondered what would happen if a property owner approached the MALPF Board, expressed his intention to have drilling on his farm, and wanted to sell an easement to the Foundation. Would the MALPF Board approve the request? How will this affect ranking of the farm in a given county?

Dr. James Pelura commented that this would depend on how much leeway the drilling company allows.

Mr. Conrad commented that if the request is for a 5.0 or 6.0 acre drill site that already exists, it would be treated the way the gravel sites are handled. The area can be excluded in the middle of the property as a non-compliant use, and a legal right-of-way across the property can be established. In that scenario, the drilling can continue. However, it is up to the Board of Trustees if the Board is willing to accept the specific circumstances as withheld acreage.

Mr. Nielsen stated that according to State law, the deed of easement is a negative easement applying to the surface of the farm. The landowner cannot develop the surface for residential, industrial, or commercial uses. The Foundation has the right to restrict the farm from development; however, it does not own the soil, the farm, or the mineral rights. If the minerals can be extracted without an impact on the surface of the property (such as by lateral drilling or an offsite mine entrance for coal), the Foundation does not own any subsurface rights.

Mr. Colhoun asked for a motion for adjournment of the open meeting.

Motion #3:	Motion for adjournment of the open meeting		
Motion:	James Pelura	Second:	Martha Clark
Status:	Approved		
Vote:	Daniel W. Colhoun, Vera Mae Schultz, Billy K. Boniface, Martha A. Clark, John W. Draper, Jr., Jerome W. Klasmeier, Dr. James Pelura, Douglas H. Wilson		
None:	Opposed		

The Open Meeting of the Board meeting was adjourned at approximately 11:20 am.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, MALPF Executive Director