

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
January 27, 2009**

TRUSTEES PRESENT:

Daniel W. Colhoun, Chairman
William K. (Billy) Boniface
John W. Draper, Jr.
Howard S. Freedlander, representing Treasurer Nancy Kopp
Jerome W. Klasmeier, representing Comptroller Peter Franchot
Joe Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning
Jonathan C. Quinn
Christopher H. Wilson
Douglas H. Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture

TRUSTEES ABSENT:

Vera Mae Schultz, Vice Chairman
Martha A. Clark
Dr. James Pelura III
Robert F. Stahl, Jr.

OTHERS PRESENT:

Bill Amoss, Harford County, Program Administrator
Tammy Buckle, Caroline County, Program Administrator
Diane Chasse, MALPF Administrator
James Conrad, MALPF Executive Director
Rama Dilip, MALPF Secretary
Sara Edelman, Land Preservation Planner, Washington County
Billy Gorski, Anne Arundel County, Program Assistant
Buddy Hance, Deputy Secretary, Maryland Department of Agriculture
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Michael Glanden, Landowner, Caroline County
Graham Petto, Maryland Department of Planning
Daniel Rosen, Planner, Maryland Department of Planning
Ned Sayre, Harford County, Ag. Preservation Planner
Eric Seifarth, Washington County, Program Administrator
Stewart Smith, Prince George's County, Planner
Sean Stafford, Landowner, Caroline County

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Daniel W. Colhoun, Chairman, called the meeting to order at 9:05 a.m., at the Maryland Department of Agriculture building, Annapolis, Maryland.

Mr. Colhoun asked the guests to introduce themselves.

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

A. APPROVAL OF MINUTES OF THE OPEN MEETING

James Conrad, Executive Director of the Foundation, informed the Board members that he had not reviewed the December minutes and would like to review them before they are approved.

B. ADDITIONS OR DELETIONS OF AGENDA ITEMS

II.A.1.	Litton, Charles & Donna (100.38 acres) Request for a 0.14 acre agricultural subdivision for the purpose of straightening a boundary line.	Withdrawn
IV.C.	MALPF Unrestricted Lot Policy	Withdrawn
VI.A.	County Matching Funds	Added

Douglas Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture, briefed the Board members on the Governor's budget and passed out a publication from the Department of Budget and Management.

James Conrad, Executive Director of the Foundation, informed the Board members that the Foundation has completed the interview process for the Administrator's position and the necessary paperwork would be completed soon to make an offer to the top candidate.

II. DISTRICT /EASEMENT AMENDMENTS

A. CAROLINE COUNTY

1. 05-06-26 Glanden, Michael and Crystal 128.91 acres
Request for a 50.0-acre agricultural subdivision of district property

Request:

Approval to agriculturally subdivide 50.0 acres of district property to be conveyed to an adjoining landowner, Randall Stafford, III.

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. and Mrs. Glanden are the original owners of the district property. There is one pre-existing dwelling. No lot exclusions have been requested. According to the request, the

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landowners wish to transfer 50 acres of their easement property to a neighboring landowner for financial reasons. They will continue with the existing crop operation on the 78.91-acre remainder of the farm. The agricultural use of the 50-acre parcel will be raising and feeding horses.

The property is 100% class I, II and III soils. Therefore, both portions will also be 100% class I, II and III soils. The request has been approved by the local advisory board and meets with Planning and Zoning requirements.

Michael Glanden, Sean Stafford, landowners in Caroline County, and Tammy Buckle, Program Administrator, were available at the meeting.

Ms. Buckle introduced Mr. Glanden as the current owner and Mr. Stafford as the 'soon to-be' adjoining property owner. Both the landowners confirmed that the farm operations will remain the same.

Responding to a question, Mr. Stafford commented that he has four riding horses, but does not have a horse operation.

Motion #1: To approve the request of Michael and Crystal Glanden for a 50.0-acre agricultural subdivision of district property.

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

B. CARROLL COUNTY

1. 06-83-06 Wright, Frank & Virginia 339.85 acres
Request for a 62.0-acre agricultural subdivision

Request:

For approval to agriculturally subdivide a 62.0-acre parcel of the 339.85 acre easement property to facilitate the sale of both parcels for estate planning.

Recommendation:

Staff recommends approval of the 62.0-acre agricultural subdivision because it meets the Foundation's criteria for agricultural subdivision. Each parcel will continue to meet the soils and size criteria and have the ability to be managed as separate agricultural operations.

Background:

Mr. and Mrs. Wright are the original owners of the easement property. There are two pre-existing dwellings. No owner's or child's lots have been requested. On April 26, 1988, the Foundation approved a tenant house on the easement property.

According to Carroll County, the 62.0-acre parcel proposed to be subdivided is separated from the 277.85-acre parcel by Falls Road. When the easement was purchased, the two parcels were already separately described by deed. The 62.0-acre parcel is 76% class I, II and III soils and is currently pasture which can be converted to cropland (22 acres), cropland (18 acres) and woodland (20 acres). The remaining parcel is 55% class I, II and III soils and contains the farm's brood mare operation. The County states that both parcels have the ability to be farmed as separate units.

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The request has been approved by the local advisory board and meets Planning and Zoning regulations.

Mr. Colhoun commented that he is aware of the property and would be in a position to respond if there are any questions from the Board. Mr. Boniface commented that he also knows the property owners, and they are excellent stewards of land. They are currently doing estate planning and want to stay in agriculture.

Mr. Tassone stated that, in regard to agricultural subdivision, the Foundation has a policy that an agricultural subdivision has to be at least in part justified by an explicit intention for an agricultural purpose. Mr. Tassone noticed that it seems that the Foundation no longer follows this policy. Mr. Tassone sought clarification.

Mr. Douglas Wilson agreed and stated that in the early days the goal was to keep the whole farm, lots, parcels, etc., in one piece. The Foundation has now moved to accept smaller agricultural properties of 50 acres versus 100 acres. The Foundation has allowed people to split their farms and enter into an easement program to accommodate budgetary issues. As the Foundation moved past its first generation of applicants, as people died, and as applicants planned for their estates and for their children, the Foundation started allowing a fair amount of agricultural subdivision. The Foundation did not want a family farm to be sold to settle an estate issue, but has gone along with many agricultural subdivision requests to support the farmer's intent. The MALPF Board has gone along to support the farmer's intentions. The Foundation's current policy differs from its original plan to preserve the entire farm. Mr. Douglas Wilson stated that he believed the framers of the original program had not thought about these evolving issues.

Mr. Tassone suggested that the Foundation relooks at its agricultural subdivision policy to ensure that the policy conforms to the new rationale and that it is well articulated.

Motion #2: To approve the request of Frank and Virginia Wright for a 62.0-acre agricultural subdivision.

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

Mr. Colhoun recommended Foundation staff to more clearly define the Foundation guidelines and their applications in staff memos.

IV. PROGRAM POLICY

A. Recertification Request – Washington County

Eric Seifarth, Program Administrator and Sara Edelman, Land Preservation Planner, were available at the Board meeting.

Mr. Seifarth stated that the balance of the agricultural transfer taxes that the County had as of the June 30, 2007 audit is gone. The amount of \$2 million is now reduced to less than \$60,000. The agricultural transfer tax revenues are at historic lows.

Mr. Seifarth continued that Washington County is trying to preserve 50,000 acres of prime and productive farmland and woodland in perpetuity. The County is about a half way to achieving this and is estimating that it will cost a quarter of a billion dollars to reach its goals. The County is focused on how to slow down development in the critical areas and is exploring any available mechanisms.

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Mr. Seifarth displayed a map that located the preserved parcels in the County. The County's strategy is to build on those parcels, using the County's priority rankings, etc. To the extent possible, the County has incorporated the PPA into the County's rankings to build on the existing preserved parcels and the prime productive soils and woodland.

Mr. Seifarth commented that one of the major issues in the County is related to zoning. The County had a major re-zoning in 2005. It had areas that went from 1:1 to 1:5, 1:20 and 1:30. On this issue, Mr. Seifarth had spoken to Mr. Tassone and Mr. Rosen in detail. The County underwent a great deal of effort to get to the current zoning.

The County has been pushing donated easements, and there are good prospects. The County adopted district agreements and received overwhelming support. The agricultural use zoning in the County is 80,000 to 90,000 acres.

Dan Rosen, Maryland Department of Planning (MDP), was available at the meeting. Mr. Rosen stated that the PPA is required to contain the productive farm and forest soils capable of supporting productive agriculture.

Mr. Rosen commented that one of the criteria is whether the PPAs are governed by policies, ordinances, regulations, and procedures that stabilize the agricultural and forestry land base. Mr. Rosen stated that MDP had concerns about this issue that the County did not adequately address.

Mr. Rosen stated that MDP recommends conditional certification from July 1, 2008 through June 30, 2011, and would like the County to provide the following data in its certification reports:

1. MDP would like to see more contiguous borders to the PPA. Pieces that are left out might still have a lot of development potential that could affect development pressure and the PPA itself, especially since lots of areas in the PPA have the zoning of 1:5 instead of 1:20.
2. Given that so much acreage is covered by 1:5 zoning, MDP would like to see a further analysis of how the County program would be able to stabilize the land base.
3. MDP wants to ensure that the PPA would help the County to achieve, not just the acreage goals, but all the other goals for agriculture.

Mr. Rosen explained the maps developed by MDP and noted that MDP would prefer the PPA boundaries to be a little more contiguous and not have many discrete pieces if the County would like to see the effects of the development on areas that are currently outside the PPA boundaries.

Mr. Seifarth stated that he agreed that the areas are fragmented. Washington County is unique in the sense that the County has 25,000 acres of farmland owned by Mennonites. This community is similar to the Amish community. The community is mainly involved in dairy, is the backbone of the agricultural economy, and will not participate in a government preservation program. The County tried several times, but could not encourage them to participate.

Mr. Tassone brought the attention of the Board members to the map attached with the staff memo. The map had areas marked red. Those are areas already preserved. Washington County did not include these areas in their PPAs. The maps produced by MDP (entitled "Status of Washington County's Rural Resource Lands, 2007") indicated a lot of green areas below Hagerstown as already preserved, but the county has excluded them from PPAs. One way to reduce the "gerrymandered" boundaries with these islands

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would be to include all preserved lands in the PPA which would also recognize the practical relationships of the preserved parcels to PPAs.

Mr. Conrad stated that one of the criteria for PPAs is the way that already preserved farms are located relative to "not yet" preserved properties. So it would be logical to include the preserved areas in PPAs.

Mr. Tassone stated that one of the ideas related to PPA concept is to define relatively large contiguous areas that would provide the protection from the intrusion of development.

Mr. Tassone stated that MDP has serious concerns about the degree to which the County has stabilized land use in one of the five zoning areas, so MDP would like to monitor the adequacy of existing policies. The second concern is to address the fragmentation and the gerrymandered nature of the boundaries. The third concern is to make sure that the County includes all the County agricultural land preservation goals (not excluding any).

Mr. Tassone reiterated a major step for the County would be to address the gerrymandering of the boundaries. This will increase the size of the PPAs by 22,000 acres and smooth the edges of the boundaries, further increasing acreage in the PPA by a few more thousand. MDP would like to address these issues with the County over the next three years of certification period.

Motion #3: To approve conditional certification of Washington County.

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

Mr. Colhoun commented that the motion includes the conditions cited by Mr. Tassone. Mr. Conrad commented that the Foundation would also be looking at the planning and zoning policies and be making a systematic analysis based on their impact on normal agricultural activities. Part of the provisional certifications comes from the fact that the Foundation would like to work with County and State Program Administrators to build a baseline to know if the county is meeting goal of having planning and zoning regulations that guarantee normal agricultural activities in PPAs.

B. Recertification Request – Harford County

Bill Amoss, Program Administrator, was available at the Board meeting and informed the Board members about the County program

Harford County has many land trusts, volunteers, tax attorneys, CPAs, and appraisers volunteering their time to support the preservation program. The County has two seminars every year for landowners. This partnership has been built over the years. Currently the County has 46,000 acres preserved and 7,000 acres under districts. Mr. Amoss provided a brief history of the County preservation program.

The County has set up a Transferable Development Rights (TDR) program. The zoning code has changed and allows more flexible uses in an agricultural area. Overall, the County has spent \$9 million of its money on land preservation.

Dan Rosen, Maryland Department of Planning (MDP), was available at the meeting. Mr. Rosen stated that Harford County's land conversion rate was about 1/3 higher than the State average. In the last five years, the County is either at the State average or below. It is currently losing less acreage than the average county; so, there has been an

improvement.

Also, Harford County has the most preserved land of any county in the State with a Purchase Development Rights (PDR) program. Mr. Rosen also praised the County's marketing efforts and value-added efforts to outreach the farmers.

Mr. Rosen stated that, even though the County is saving land, fragmentation of development has occurred in the past. So he was concerned if the County would be able to stabilize its land base. The County's report indicated that, using the land preservation efforts, efforts to support agriculture as a business, and the new TDR program, the County would be able to stabilize its land base. MDP recommended conditional certification for three years.

Mr. Rosen stated that MDP feels 1:10 zoning undermines land- use stability. The potential for family conveyances creates 1:7 zoning. MDP would like to ascertain how many family conveyance lots have been subdivided in 5, 3, or 2 years. MDP would also like to see how much the TDR program is accomplishing.

Mr. Rosen displayed the Harford County maps developed by MDP. Mr. Tassone pointed out that the map entitled "Status of Harford County's Rural Resource Lands, 2007" should be correctly read as "Land Use Stability of Harford County's Rural Resource Lands, 2007."

Billy Boniface, Board member, and also a member of the Harford County Board of County Council, stated that the County has made great strides. The County Executive strongly supports land preservation. The TDR program has been implemented and follows the master plan. The TDRs will go into the areas designated for growth within the agricultural community. The County is working with Harford Land Trust and others to determine how to help them in the future. The County would explore if at some point in the future the land trusts can be allowed to use TDR-funded programs. The PPAs, too, are a major challenge. The County is committed to moving forward and dealing with the family conveyance issue. The County needs to determine the number of potential family conveyances for planning purposes.

Mr. Amoss stated that about 30 years back there was a rush in the County to create family conveyance lots. The good news is that it has now leveled off. There was a sunset provision that one had to own the land as of February, 1977, to be eligible for a family conveyance.

Mr. Tassone commented that MDP's recommendation included two stipulations: (1) looking at the TDR program to determine what it does to reduce subdivision and developments happening in PPAs, and (2) looking at what is happening with family conveyances.

Mr. Tassone cited the stipulations as: (1) an inventory of family lots in the recent past and in the future, and (2) an examination of what the TDR program is doing to address MDP's concerns that the County's land-use tools have not stabilized.

Motion #4: To approve conditional certification of Harford County.

Motion:	Doug Wilson	Second:	Howard Freedlander
Abstained:	Billy Boniface		
Status:	Approved		

V. INFORMATION AND DISCUSSION

A. Participation in FY 2009 Matching Funds Program

For the FY 2009 easement acquisition program, nine (9) counties are now committing a total of \$6,485,822.33 to be used as matching funds for the purchase of easements. MALPF staff requests Board approval to participate in the FY 2009 Matching Funds Program. Other counties may commit to participate in the FY 2009 Matching Funds Program before the Foundation begins to make offers.

COUNTY	COMMITMENT
Baltimore	\$670,000.00
Caroline	47,454.75
Carroll	1,333,334.00
Cecil	773,833.58
Garrett	200,000.00
Harford	500,000.00
Prince George's	2,000,000.00
Washington	950,000.00
Worcester	11,200.00

Motion #5: To approve County Participation in Matching Funds Program, as listed.

Motion: Jonathan Quinn Second: John Draper
Status: **Approved**

B. Pending Legislation

Mr. Colhoun wanted Mr. Conrad to update Board members on the pending legislation.

Mr. Conrad informed the Board members about the Departmental bills being discussed under the current year's legislation.

SB 73 – MALPF – Confidentiality of Records

This bill would require that, in the sale of agricultural land preservation easements to the Maryland Agricultural Land Preservation Foundation, specific documents remain confidential until after the end of the offer cycle, as determined by the Foundation.

This issue came up last year because both the Foundation and two County Program Administrators were asked to provide complete disclosure of all records related to ranking. In one case in Kent County, information was published in the newspaper, and the Foundation had originally believed that such information was confidential. This information was requested by the newspaper under the Maryland Public Information Act, and the Foundation staff was advised that none of its application and ranking information could be kept confidential, including asking prices, names of applicants, location and description of properties and farming operations, etc. The Foundation is able to protect only appraisal information from disclosure. The Department had already gone through the controversy over whether or not nutrient management plans are confidential.

Mr. Conrad believed the applicants to the MALPF program have a justifiable expectation that things such as their asking price, ranking, etc., be kept confidential while an application is pending before the Board. Further, making public the competitive rankings of properties during the easement acquisition cycle can be disruptive by creating false expectations. Discounting based on asking price is an element that enters into many county rankings and is the sole element for Round Two ranking.

The intent is not to create permanent secrecy around the offer process, but to allow offers to proceed during an active easement acquisition cycle like a normal acquisition of public interest in property. Through this bill, the Foundation is asking this information be kept confidential only until the end of the easement acquisition cycle at which point it would be available for public scrutiny on request. Information on specific applicants, property values and location, offer amounts and conditions, etc., would continue to be made public when option contracts accepted by a landowner are reviewed for approval by the Maryland Board of Public Works, even if this review occurs before the end of the cycle.

SB 90 – MALPF – Valuation of Termination Easements

This bill would alter the appraisal method for a terminated agricultural land preservation easement to be repurchased by the landowner from the Maryland Agricultural Land Preservation Foundation. The way the easement value was determined when a property entered the program will be the way it is determined should easement termination be approved and the easement is repurchased. Mr. Conrad described this bill to be a technical fix.

SB 89 – MALPF – Civil Penalties

This bill would authorize the Maryland Agricultural Land Preservation Foundation to impose civil penalties for violations of specified provisions of law and regulations relating to agricultural preservation easements.

Mr. Conrad passed out a statement detailing litigation involving easement violations. Mr. Conrad commented that Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator, has currently completed a systematic compilation of inspections done by counties coupled with her own on-site inspections. This has led to a discovery of a number of easement violations. There are two ways to correct these violations. The first is to work through informally the problems found on the property. When that does not work, the other way is litigation. Last summer or earlier there had been discussions that it would be useful to have an additional incentive to landowners to correct violations or not to violate the easement in the first place. The Vet Board currently follows this system, and there was general agreement to consider civil penalties. A civil penalty would be assessed only after long and informal efforts to bring the landowners into compliance and only with the approval of the MALPF Board. After these two steps, a landowner can be taken to an administrative hearing and both sides can present their cases. Only at that point would there be a civil penalty assessed against the violator of the easement rather than following the long cumbersome and unpredictable process of litigation. Civil penalties do not replace litigation, but provide another tool in addition to litigation.

The idea was originally discussed by the MALPF Board. Then, proposed legislation was developed and forwarded for review and approval to the Governor's Office. Once at the Governor's Office, matters related to legislation are confidential in nature until the legislation is actually submitted to the General Assembly.

Another bill is in the process of being introduced that relates indirectly to the Mullinix case discussed by the MALPF Board. Mr. Conrad reminded the Board members that the

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Mullinix brothers had wanted to swap lot locations on their property in Howard County. They are trying to move withheld acreage from the middle of the farm and put it on the road. This is exactly what MALPF would like to see done. However, under the new land disposition legislation passed in 2006, the Office of Attorney General is saying that this type of transaction would require four appraisals: two for the value of the land disposed and two for the value of the land acquired by the Foundation.

The proposed bill would authorize the Foundation to get an opinion from the Office of Real Estate, Department of General Services, on what the balance of value would be rather than having to secure expensive appraisals. Through this bill the Foundation is proposing that if there are small minor adjustments like boundary adjustments, swaps of land, etc., the Foundation should be able to avoid having to contract with the Office of Real Estate, Department of General Services, to obtain four appraisals for the Board of Public Works at the expense of the landowner.

Mr. Douglas Wilson stated that the past practice has been generally to discuss legislation in the early summer so that the Foundation staff is aware whether the MALPF Board wants to move forward or not with legislative proposals. The current example of the civil penalties bill is a perfect case of why the internal process used by the administration can be very difficult to coordinate for administrators and/or a regulatory board like MALPF, especially if its Board members are asked to testify in support. Mr. Douglas Wilson wondered how other regulatory boards operate in similar situations.

Mr. Freedlander commented that he represents the Treasurer of Maryland on the Committee on the State Retirement and Pension System. At this Committee's meeting, pending legislation has been discussed in great detail. This began in June, and the issues were discussed at every meeting. He has never heard of any restrictions on discussing pending legislation. He wanted to know if there is any difference because MALPF Board is a regulatory board.

Mr. Douglas Wilson stated that in the past the Governor's Office used to approve bills and give MDA copies. Sometime in November the agency would be briefed about the bills. Mr. Douglas Wilson stated that he would like to research and find what other regulatory boards are doing.

Mr. Colhoun commented that he believed the MALPF Board should be better informed and should be a part of the legislative team in a way that is comfortable to the Maryland Department of Agriculture.

Mr. Boniface commented that, if there is legislation of the magnitude and significance of the civil penalties bill, it should have been discussed and inputs sought from the county program administrators. The Board members are representatives of various organizations, and not being made aware of such a significant proposal puts Board members in an awkward and uncomfortable position. The issue needs to be addressed.

Mr. Boniface stated that he represents the Young Farmers Advisory Board and had questions and comments from them: What is an administrative hearing? What is involved? If the administrative hearing goes against the landowner, does the landowner have an opportunity to take it to court?

Mr. Conrad stated that there is an Office of Administrative Hearing that would be contracted by the Foundation to conduct the hearing. This is a formal procedure set up through a separate agency, and it would be an impartial hearing.

Mr. Boniface stated that he believed the legislation was not specific about the use of "administrative" in the language. The language used was just "hearing." The word

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thereto

[x] (8) To consult with staff, consultants, or other individuals about pending or potential litigation

During the Closed Meeting, the following Board members were present.

Daniel W. Colhoun, Billy K. Boniface, John W. Draper, Jr., Howard Freedlander, Jerome W. Klasmeier, Joe Tassone, Jonathan C. Quinn, Chris H. Wilson, and Douglas H. Wilson

TOPICS DISCUSSED:

- 1) FY 2008 Offers to Purchase MALPF Easements in St. Mary's County
- 2) Status Report on the Pending Litigation was passed out.
- 3) A change in ownership on a pending easement offer was discussed and tabled.

The Closed Meeting was adjourned at 12:10 p.m.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, MALPF Executive Director