

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
February 24, 2009**

TRUSTEES PRESENT:

Daniel W. Colhoun, Chairman
Vera Mae Schultz, Vice Chairman
William K. (Billy) Boniface
Martha A. Clark
John W. Draper, Jr.,
Howard S. Freedlander, representing Treasurer Nancy Kopp
Jerome W. Klasmeier, representing Comptroller Peter Franchot
Dr. James Pelura III
Robert F. Stahl, Jr.,
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

OTHERS PRESENT:

Kevin Atticks, Executive Director, Maryland Winery Association
Bill Amoss, Harford County, Program Administrator
Michael Birch, Landowner, Harford County
Anne Bradley, Frederick County, Ag. Preservation Planner
Tammy Buckle, Caroline County, Program Administrator
Pam Bush, Department of Natural Resources, Senior Policy Analyst
Wayne and Beverly Caswell, Contract Purchasers, Harford County
Marcus Chapman, Landowner, Frederick County
Diane Chasse, MALPF Administrator
Yates Clagett, Prince George's County, Program Administrator
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
Nancy Forrester, Assistant Attorney General, Department of General Services
Carla Gerber, Kent County, Program Administrator
Fatima Hasan, Planning Coordinator, Prince George's County
Buddy Hance, Deputy Secretary, Maryland Department of Agriculture
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Steve McHenry, Executive Director, MARBIDCO
Willam Layton, Winery Owner, Dorchester County
Joy Levy, Howard County, Program Administrator
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Charles Rice, Program Administrator, Charles County
Daniel Rosen, Planner, Maryland Department of Planning
Donna Sasscer, Program Administrator, St. Mary's County
Ned Sayre, Harford County, Agricultural Preservation Outreach Specialist
Donna K. Landis-Smith, Agricultural Specialist, Queen Anne's County
Stewart Smith, Prince George's County, Planner
Charles Twigg, Landowner, Allegany County
Dan Twigg, Landowner, Allegany County

MALPF Board Open Meeting Minutes (02-24-09): Page 2

Daniel W. Colhoun, Chairman, called the meeting to order at 9:00 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

Motion #1: To approve the minutes of December 16, 2008 with amendments.

Motion: John Draper Second: Billy Boniface
Status: Approved

Motion #2: To approve the minutes of January 27, 2009 with amendments.

Motion: Chris Wilson Second: John Draper
Status: Approved

B. ADDITIONS OR DELETIONS OF AGENDA ITEMS:

- | | | |
|---------|--|-----------|
| II.B.1. | 03-98-06c Lippy T. Edward and Marjorie K. Request to change child lot approval to a subdivide able lot | Withdrawn |
| IV.A. | Recertification Request – Charles County | Withdrawn |
| IV.B | Recertification Request – Talbot County | Withdrawn |
| VI.B | Matching Funds Program | Added |

James Conrad, Executive Director of the Foundation, briefed the Board members about the pending bills in the 2009 Legislative Session.

II. DISTRICT /EASEMENT AMENDMENTS

A. HARFORD COUNTY

1. 12-80-01s1 Island Branch Farm, LLC 145.432 acres
Request to: extinguish an approved 2.0 acre owner's lot; and to approve a 9.319 acre agricultural subdivision.

Request:

Island Branch Farm, LLC, is the original owner of the easement property. This 145.432-acre parcel is an agricultural subdivision (approved August 24, 2004) of a 248.445 acre property. Parcel A (101.013 acres) has been conveyed separately. The remaining acreage consists of Parcels B (138.113 acres which are under contract to be conveyed to Wayne and Beverly Caswell) and C (9.319 acres from which a 2.0-acre owner's lot had been approved, but not subdivided).

Parcel C is the subject of this request to 1) extinguish the approved 2.0-acre owner's lot; and 2) approve a 9.319-acre agricultural subdivision (including the 2.0-acre owner's lot) to be conveyed to an adjoining Harford County easement property.

Recommendation:

Staff recommends approval of extinguishment of the approved 2.0-acre owner's lot.

MALPF Board Open Meeting Minutes (02-24-09): Page 3

No dwelling has been constructed on the lot and it remains available for agricultural use.

Staff recommends approval of the 9.319-acre agricultural subdivision of Parcel C. Although the parcel is less than 50.0 acres in size, the Foundation's Policy for Agricultural Subdivision (copy attached with agenda memo) Special Exception to Criteria #3 allows a parcel of less than 50.0 acres to be subdivided if it is to be conveyed to an adjoining easement property.

Background:

1) Extinguish an approved 2.0-acre owner's lot:

On April 27, 2003 the Foundation approved the 2.0- acre owner's lot to be located on what is currently Parcel C. The lot was for the use of Marjorie Jane Birch who was a member of Island Branch Farm, LLC, at the time. In June of 2008, Island Branch Farm LLC was in the process of dissolution of the LLC and transferring its assets to Michael S. Birch and Ann Leah Birch. The Foundation has received a check for the reimbursement of the 2.0 acre lot of \$1,300.12, but has not received a metes and bounds description. Therefore, the lot has not been released from the easement and no home has been constructed. As Ms. Birch has not completed the release of the lot, and she is no longer a member of the LLC, the lot will remain with Parcel C and will be conveyed as part of the requested agricultural subdivision.

The request was approved by the local advisory board and conforms to local zoning regulations.

2) Approve a 9.319-acre agricultural subdivision:

This request was originally presented to the Board on May 27, 2008. That request was for the agricultural subdivision of 7.319 acres to be added to a non-adjointing easement property as Wayne and Beverly Caswell, contract purchasers of Parcel B (138.113 acres), did not wish to purchase Parcel C (7.319 acres). As the agricultural subdivision did not meet the Foundation's criteria for approval, the item was tabled pending legal advice.

The current request includes the previously approved 2.0-acre owner's lot and is for a total of 9.319 acres. Although this request does not meet the Foundation's Policy for Agricultural Guidelines of a minimum of 50.0 acres to be subdivided and remaining, it does meet the requirement to be added to an adjoining easement property. The adjoining Harford County easement is owned by Arvin Sadler and is 110 acres in size. The remaining parcel (Parcel B, 138.113 acres) will continue to meet the Foundations requirements for soils and size.

The request was approved by the local advisory board and conforms to local zoning regulations.

Michael Birch, landowner, Mr. and Mrs. Caswell, Contract Purchasers, and Ned Sayre, Harford County Agricultural Preservation Outreach Specialist, were available at the meeting.

Mr. Colhoun stated that he and Mr. Billy Boniface had visited the farm.

Mr. Sayre informed the Board members that 9.319 acres is across the road and directly adjoins a Harford County easement property. The farm is currently being farmed and has hay fields. They are also releasing and giving up the pre-approved owner's lot. The owner's lot was never constructed.

regulations.

2) Tenant House:

The Caswells have requested a tenant house for an individual who will provide assistance on the farm. However, the application does not provide information about the operation of the farm. The statute provides that a landowner may request a tenant house for "a tenant fully engaged in the operation of the farm." The application indicates a 138-acre crop operation. Ned Sayre, Harford County Agricultural Preservation Outreach Specialist, stated that the Caswells intend to operate a horse farm on the property.

The proposed tenant house is to be located near the entrance to the farm. Mr. Sayre indicated that the Caswells chose the location for security reasons. The area is currently cropped, but will be converted to pasture under the Caswells's plan. The proposed location will require an extension of the existing driveway.

The request was approved by the local advisory board and conforms to local zoning regulations.

Michael Birch, landowner, Mr. and Mrs. Caswell, contract purchasers, and Ned Sayre, Harford County Agricultural Preservation Outreach Specialist, were available at the meeting.

Mr. Conrad wanted to know if the pre-existing dwelling has any historical interests.

Mr. Birch stated that the house is 200 years old but it does not have any specific historical significance. Mr. and Mrs. Caswell are planning to construct a new home back in the corner of the woods. For the foreseeable future, they would like to leave the existing home as a tenant house. It is practically impossible to return to tillable ground because it is on the only hill on the farm and is absolutely unusable for farming purposes.

Mr. Conrad wanted to know about the farming operations of the Caswells.

Mr. Caswell stated that currently Mr. Birch is planting hay. Mr. Caswell would like to bring horses onto the property. He would like someone to stay on the farm to maintain the barn, the buildings and the fences. Mr. Caswell stated that he is getting old and needs help to do all of these things.

Mr. Boniface had visited the farm. He commented that the property is very beautiful and located the house and other buildings on the map provided with the agenda memo. A road goes towards the proposed new home site. Mr. Birch had informed him that at one point in time the road was a public road used to access the town. That area is rocky and not farmed. The proposed new home site is good and is higher than the existing location. Even if the existing house is torn down, it is located in a place that cannot be farmed. It is more on the hillside. Mr. Boniface stated that he personally believed the location of the proposed tenant house is terrible because it is probably the best place for agriculture. The existing home site is in good shape. If it needs to be torn down, it is an ideal location for a tenant house.

Mr. Douglas Wilson wondered if the farm operations required a tenant house. As a subsequent owner of the easement, Mr. Caswell is not eligible to own a home site unless it is the pre-existing dwelling. If Mr. Caswell is eligible for a tenant house, the location of the tenant house is an issue. If it is chosen to be at the old farm structure, as per the pre-existing dwelling ruling, the applicant can request a replacement of the pre-existing dwelling. Mr. Douglas Wilson agreed that the particular location of the second tenant house is pre-mature.

Chris Wilson, Board member, commented that the farm operations are moving from a hay operation to horses. He believed that this is a valid reason for a tenant house.

MALPF Board Open Meeting Minutes (02-24-09): Page 6

Responding to a question from a Board member, Mr. Caswell stated that he has Arabian horses and would like to breed and raise horses. His daughter is fond of horses and is currently 10 miles away. She currently has seven horses.

Mr. Colhoun wanted to know if Mr. Caswell's daughter would move to the tenant house. Mr. Caswell stated that "could be" because she is taking care of the farms.

Craig Nielsen, Assistant Attorney General, stated that the General Assembly has said that the Foundation may approve a landowner's request to relocate a site of the existing dwelling to another location on the farm subject to:

- The new location does not interfere with any agricultural use and
- Foundation's approval of landowner agreeing to either demolish the existing dwelling at the current location or permanently convert the existing dwelling at the current location to use the non-residential and integral to the farm operations.

Mr. Nielsen stated that a landowner cannot swap a tenant house for moving to another location. The law says that, to move an existing dwelling, it has to be converted to a non-residential use integral to the farm operations, such as a farm building, or torn down.

Mr. Boniface agreed that the tenant house is not the residential home of the property owner. The Caswells are changing the farm operation to a horse operation which needs people on the farm. The proposed tenant house (even if it gets approved) is in a bad spot.

Mr. Douglas Wilson agreed that it was not wise to make a landowner tear down a two hundred year old structure and build a new tenant house right on that location. Mr. Nielsen is citing the standard operation of the relocation of a pre-existing dwelling but the law does not address when the exact location is used as a location for a new tenant house. The Board has to use its judgment. The Foundation would not require the landowners to tear down the house if they located the tenant house at that site. If it is on any other location, the house has to be torn down.

Mr. Colhoun wondered if the MALPF Board has the discretion to make a practical decision. If the building is located in the appropriate place, it can be a farm office and should certainly also be able to be a tenant house.

Martha Clark, Board member, commented that the landowners have a pre-existing dwelling and they also need a tenant house. Ms. Clark wondered how many lots the property has.

Mr. Conrad stated that he disagrees with Mr. Douglas Wilson. The way the law was originally written is that if a landowner is requesting for relocation, the Foundation can't redesignate the original house as a tenant house and then allow building of a new regular house. Also Senator Haines is introducing a new bill in this legislative session titled "Agricultural Residential Uses" that would authorize landowners (whose lands are subject to agricultural preservation easements) subject to approval of the MALPF Board to convert the landowner's existing dwelling house into a tenant house and build a dwelling house for the landowners use elsewhere on the property. This bill could specifically help to address this issue. The Foundation cannot redesignate something that was originally not a tenant house as a tenant house.

Mr. Douglas Wilson stated that in the absence of the new law, the counsel's position and Foundation staff's opinion would hold good.

Robert Stahl, Board member, suggested the MALPF Board approve the relocation of the existing dwelling and the old house becoming a farm office. If at some point in the future, the

MALPF Board Open Meeting Minutes (02-24-09): Page 7

issue returns, the MALPF Board can deal with it appropriately then.

Mr. Birch commented that other alternative is to say that it is the Board's stance that a tenant dwelling is a residence for an agricultural use, not for a residential use.

Mr. Douglas Wilson and Mr. Nielsen conveyed that it is not the MALPF Board's intention. The daughter could not move into that house.

Mr. Nielsen stated that a tenant house is defined by regulations, and it is not for an agricultural use.

Mr. Caswell commented that his request is for putting a house where they live. They want to maintain the existing home to be used as a tenant house. Mr. Caswell stated that he believed that the law says that if a landowner has over 100 acres, he has a right to have a tenant house.

Mr. Douglas Wilson clarified that subsequent owners are not entitled to homes on the property. Mr. Caswell has a pre-existing dwelling and can move into the pre-existing dwelling. The MALPF Board can approve Mr. Caswell's request for a new tenant house. If the MALPF Board approves the request as presented, the old house must be torn down. Under the law Mr. Caswell is allowed to destroy the existing home and build a replacement home elsewhere on the farm. If Mr. Caswell does so, he has only two choices 1) tear the existing home and restore the property to an agricultural use or 2) the structure has to become a farm building such as a barn, but cannot be used for residential purposes. MALPF Administrators and County Administrators would carry out inspections to check that no one is living in the house.

Mr. Nielsen stated that the Foundation has to determine that there is a need for a tenant house. He wanted to know if Mr. Caswell is willing to sign a statement that can be recorded.

Martha Clark, Board member, also reminded the Board of the other recommendations outlined in the staff memo.

Motion #4: Foundation allows Mr. Caswell to relocate the existing farm dwelling to the relocated site proposed and indicated on the map provided by Foundation staff. Foundation to allow Caswells to maintain the existing home site for a non-residential farm office building at this time.

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

Mr. Conrad commented that the changes in legislation would allow Mr. Caswell to come back when the need for a tenant house becomes more pressing.

Bill Amoss, Program Administrator, Harford County, commented that the MALPF Board's approval to designate the home site for a non-residential farm office building would make the request come to County Planning and Zoning. The County Planning and Zoning requires plumbing to be removed.

Mr. Amoss also requested the MALPF Board to explain to Mr. Caswell why his daughter would not be able to move into the tenant house.

Mr. Conrad commented that there is no need to remove the plumbing until the new house has an occupancy permit. Mr. Conrad stated that a landowner is eligible for a tenant house when the tenant is fully engaged in farming operations. The person who can occupy the tenant house should not be the landowner or anybody having financial interest in the farm. If

MALPF Board Open Meeting Minutes (02-24-09): Page 8

Mr. Caswell's daughter is a part owner of the farm (either now or anytime in the future), even if she is fully engaged in farm operations, she would not be eligible to live in the tenant house.

Mr. Douglas Wilson requested the motion be amended to include the conditions outlined in the staff memo. He also pointed out that the Board has radically changed the request of the landowner. If Mr. Caswell is concerned about the approval, the Board should be tabling the request until Mr. Caswell feels comfortable.

Dr. Pelura asked Mr. Birch if the sale was complete. Mr. Birch responded "No." Dr. Pelura was concerned that the Board's decision might affect the possible sale of the property based on whether and when Senator Haines's bill gets passed.

Mr. Colhoun commented that the Board's motion has given Mr. Caswell the ability to build a new house at a location desired by Mr. Caswell and it designates the existing building to be a farm office building.

At Mr. Freedlander's request Mr. Nielsen read the statute covering the re-location of an existing dwelling. "The Foundation may approve the landowner's request for re-location of an existing dwelling subject to an easement provided that the new location does not interfere with the agricultural use and subject to the Foundation's approval. The landowner agrees either to demolish the existing dwelling or at a current location or permanently convert the existing dwelling at a current location to use it as non-residential and integral to the farm operations". Mr. Nielsen commented that the Foundation should be guided by the rules of common sense.

Mr. Nielsen also informed Mr. Caswell that the Foundation operates a State-wide program covering over 2,000 easements, and the Foundation has to maintain consistency in its dealings.

Mr. Colhoun asked Mr. Caswell if he is comfortable with the Board's decision or would like to table the request. Mr. Caswell stated that he is also part of a State Board and understands the Board's need to be governed by regulations. Mr. Caswell stated that he did not believe tabling the request would help.

Mr. Tassone commented that the MALPF Board has the authority and the responsibility to review requests for a tenant house and their legitimacy. Mr. Tassone wondered if the Board has discretion to interpret the law about the ability to move a pre-existing dwelling and relocating it as a tenant house without tearing the building down.

Mr. Nielsen stated that it did not make sense to ask the landowners to tear down something and re-build, but the Board has to make its decision. Literally, the statute gives only two choices: either it has to be torn down or permanently converted to a non-residential use.

Mr. Tassone commented that it is logical to allow a tenant house in the interests of the State of Maryland and Mr. Caswell. This is preferable compared to the process of tearing down the building and putting it back.

Mr. Tassone wondered if the MALPF Board agrees that Mr. Caswell deserves to have a tenant house approved on his property. Mr. Stahl has recommended a motion that is very different from the request.

Mr. Colhoun stated that Mr. Stahl's motion is allowing the transfer of the residence to another location up the hill and designating the existing residence as a farm office. Mr. Colhoun wondered about the legitimacy of a tenant house at this point in time. In the future, there might be a compelling need.

MALPF Board Open Meeting Minutes (02-24-09): Page 9

Mr. Conrad reminded the Board members that if the MALPF Board's approval goes beyond the recommendations of the local board, the request might have to go back to the local board for a re-review. The MALPF Board is currently discussing something that is different from the local Board's recommendations.

Mr. Sayre representing Harford County stated that the local board felt that there was adequate justification that Mr. Caswell needed a tenant on the property. The local board is also of the opinion that Mr. Caswell's proposed location for his new residence is justified. The MALPF Board has to decide whether the tenant house is located next to the road in a new location and the old house is torn down or the tenant lives in the old house.

Mr. Stahl recommended amending the motion and wanted to include the conditions outlined by the Foundation staff.

Motion #5: the relocation approval be conditioned on 1) the lot will not be subdivided from the farm; 2) the original dwelling site will be returned to agricultural **use as a farm office** and 3) the approval extends to the Caswells only. If approved, the landowners must enter into a written agreement with the Foundation, to be recorded among the county land records, describing the terms and conditions of the Foundation's approval.

Mr. Stahl stated that he would prefer to leave the option open for Mr. Caswell to decide in the future if he would like to ask for this building to be converted to a tenant house or if he wants to request a new tenant house.

Mr. Freedlander commented that the law allows the Legal Counsel to interpret the statute. Mr. Freedlander wondered that by voting and accepting the fact that the Legal Counsel can interpret the law; the MALPF Board is not going against the legislature's intent.

Mr. Nielsen stated that he is interpreting the MALPF Board's feeling. The MALPF Board is approving a new location in an area that does not interfere with the farm; the building that needs to be torn down is going to be made into a farm office. This is the MALPF Board's interpretation. Mr. Nielsen stated that he believed that the landowner wants to have the same location as a tenant house. It does not make sense to require the landowner to tear down the pre-existing dwelling. The statute appears to give the Foundation two choices 1) a new location has to be in an area that does not interfere with the farm 2) the old location is either torn down or is converted to a non-residential use. Why require the building to be torn down when the MALPF Board feels the structure and location are appropriate for a tenant house. Mr. Nielsen believed common sense should prevail.

Dr. Pelura commented that the MALPF Board is essentially telling the landowner that he can use the pre-existing dwelling as a farm office. The MALPF Board is making the assumption and giving the inference that in the future the MALPF Board might approve the conversion of the house to a tenant house. What would happen if Senator Haines's bill gets defeated? The General Assembly has conveyed that it does not want anybody living in that house.

Mr. Stahl commented that his motion validates the location. Mr. Caswell has the ability to come back in the future and request a tenant house to be built by the road.

Mr. Colhoun reiterated that Mr. Caswell can request a tenant house at any time with proper justification.

Mrs. Schultz was concerned about the implications for other similar properties. She specifically asked Mr. Amoss if this request was similar to another situation where the house was required to be torn down.

MALPF Board Open Meeting Minutes (02-24-09): Page 10

Mr. Amoss confirmed that the situation was exactly the same in the case of another easement holder and the house was required to be torn down.

Mr. Stahl commented that the particular request had come up before the interim legislation was passed. At that point in time there was only one choice: to tear down the building. Now the Foundation can ask the landowners to either tear down the house or use it for a non-residential use.

Mr. Colhoun asked Mr. Caswell, Mr. Birch, and Mr. Sayre if they want to withdraw the request or would like the MALPF Board to go ahead and vote on the motion.

Mr. Boniface stated that after listening to the discussions of Mr. Nielsen and Mr. Tassone, he believed it was important for the MALPF Board to move forward on its decision. He believed the MALPF Board was created to look at each individual case and determine its decision using common sense. As a landowner in the MALPF program, it is frustrating to get different interpretations. Mr. Boniface continued that if the MALPF Board made a decision, as a legislator, he would fully support the Board's decision. Mr. Caswell wants to move forward and he should have the ability.

Mr. Boniface suggested an alternative motion.

Mr. Colhoun wanted to have a vote on Mr. Stahl's motion before Mr. Boniface made his alternative motion.

Motion #5a: The approval for relocation of the pre-existing dwelling be conditioned on 1) the lot will not be subdivided from the farm; 2) the original dwelling site will be returned to agricultural **use as a farm office**; and 3) the approval extends to the Caswells only. If approved, the landowners must enter into a written agreement with the Foundation, to be recorded among the county land records, describing the terms and conditions of the Foundation's approval.

Motion: Robert Stahl Second: Howard Freedlander

Favor: Howard Freedlander, Chris Wilson, John Draper, Jonathan Quinn, Robert Stahl, Martha Clark, Douglas Wilson, Dan Colhoun

Opposed: Billy Boniface, Joe Tassone, James Pelura, Vera Mae Schultz, Jerry Klasmeier

Status: Approved

Mr. Boniface suggested a motion to allow Mr. Caswell to move forward with his request for a tenant house at the existing location.

Motion #6: To approve Mr. Caswell to move forward with his request for a tenant house at the existing location.

Motion: Billy Boniface Second: Douglas Wilson

Opposed: Howard Freedlander, Vera Mae Schultz

Status: Approved

Mr. Douglas Wilson commented that the reason he is supporting the motion is because the local board has recommended that, in its view, Mr. Caswell is justified in his need for a tenant. Because of the two motions, the landowner now has the flexibility to decide on the

tenant facility at an appropriate time when he is ready to have a tenant house without having to come back to the MALPF Board. The only thing he can't do is to rent that facility or have someone (who is not a tenant) live in that facility. If he rents out the place for income, it would be a violation and would be detected by Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator. If Mr. Caswell did anything else on the property, it would be a violation of the Foundation's policy. So the MALPF Board is allowing Mr. Caswell to use the facility temporarily as a farm office. It has to be ensured that the house is not being used for some residential purpose other than a tenant or for a farm use. For some time, this farm will be on the Foundation's inspection watch list. As long as there is no violation, Mr. Caswell can move forward.

Mr. Conrad commented that he believed it would be a good idea to have a document signed by Mr. Caswell and the Foundation and have it recorded.

Carol Council, MALPF Administrator, stated that normally when the Foundation allows a relocation of the existing dwelling, the current dwelling is changed into an agricultural use. The Foundation records a document that says, "The kitchen would be removed." Ms. Council wanted to know if this clause is required knowing that in a year or more Mr. Caswell might use the dwelling as a tenant house.

Mr. Conrad commented that it would be for the County to weigh in that option based on the regulations at the County's end. Mr. Douglas Wilson stated that it would also depend on the timing.

Mr. Nielsen encouraged Mr. Caswell to read the Deed of Easement and be aware of the restrictions outlined in the document.

C. FREDERICK COUNTY

1. 10-91-01 Marcus Chapman 177 acres
Requests the approval of an 81.33 acre partial termination of district property.

Request:

The request is for approval to partially terminate 81.33 acres.

Recommendation:

Foundation staff recommends review of the proposed termination. Although, the District has met its five-year requirement and the remaining property continues to meet the Foundation's requirements for District establishment, the remaining District acreage is in a configuration that may cause issues when an easement is sold.

Another alternative is to allow the Forest Resource Ordinance Easement to overlay the District. In accordance to the Foundation's Forest Mitigation Policy, a forest mitigation easement overlay should be:

1. Over soils other than Class I, II, or III OR, if the soils are Class I, II or III serving a resource conservation purpose which is part of a Soil and Water Conservation Plan and approved by the Board
2. Consistent with County planning policy and approved by the County agricultural land preservation advisory board
3. Connected with development inside of a Priority Funding Area (and other planning considerations)
4. On a property that has a current Soil and Water Conservation Plan
5. On a property that has a Forest Stewardship Plan, if the overlay is ten or more acres or if the contiguous forested area in the total property consists of twenty-five acres,

MALPF Board Open Meeting Minutes (02-24-09): Page 12

The landowner is likely able to meet these requirements with the exception of #3. However, since this property has met its 5-year requirement for the District, staff recommends waiving this requirement under this circumstance.

Background:

Mr. Chapman is the original owner of the district property. There is one pre-existing dwelling. No lot exclusions have been requested.

According to Frederick County, the landowner wishes to partially terminate the District to do forest mitigation (known as a Forest Resource Ordinance Easement). The remaining 96.0455 acres has 100% class I, II, and III soils. The local advisory board has approved the request, and it meets with all Planning and Zoning requirements.

Marcus Chapman, landowner, and Anne Bradley, Ag. Preservation Planner, were available at the meeting.

Mr. Conrad wanted to know if Mr. Chapman was interested in selling an easement to the Foundation. Mr. Chapman stated that he might and had been in touch with Ms. Bradley regarding this possibility.

John Draper, Board member, observed that at least one of the staff recommendations is different from Mr. Chapman's request. He wondered if Ms. Bradley had discussed the overlay proposal with Mr. Chapman. Ms. Bradley stated that she had not, but had been in touch with the staff handling the Forest Resource Ordinance Easement (FRO) to explore the possibility of having both easements in conjunction with each other. The staff handling FRO Easement had conveyed that they would be willing to entertain this if there is no conflicting language.

Mr. Conrad wanted to know if the Frederick County Forest Conservation easement requirements allowed harvesting of trees in the area. Ms. Bradley stated that they allow harvesting and also require certain densities be maintained in the area.

Mr. Douglas Wilson asked Mr. Chapman if he was aware that the Forest Conservation easement allows harvesting of trees under a formal plan. Mr. Chapman stated that it is a possibility, but he has not researched this.

Mr. Tassone wanted to know if the Forest Conservation easement is a permanent easement that eliminates development and subdivision of the land. Mr. Chapman confirmed this.

Robert Stahl, Board member, commented that the property already has a 55-acre Forest Conservation easement. Ms. Bradley stated that the first Forest Resource Conservation easement was recorded approximately in 2004 without going through the approval process of an agricultural preservation district.

Ms. Bradley stated that when Mr. Chapman's request came up, the County staff noticed that the District has met its five-year requirement and can be terminated at the landowner's request. The County staff saw value in keeping the portion of the District intact and therefore worked to have a partial termination instead of terminating the whole District. The language in the overlay easement and Forest Resource Ordinance easement can be reviewed to avoid conflicting language.

Motion #7: To approve Mr. Marcus Chapman's request for a partial termination of the district property.

Motion: John Draper Second: Joe Tassone
Status: **Approved**

MALPF Board Open Meeting Minutes (02-24-09): Page 13

Mrs. Schultz stated that she is concerned about item (3) of the Foundation's Forest Mitigation Policy.

3. Connected with development inside of a Priority Funding Area (and other planning considerations)

Mrs. Schultz's understanding was that the area will be put in a forest mitigation bank.

Mr. Tassone stated that, since the district can be terminated, a possible solution would be to terminate the entire district and allow the landowner to do what he wants to do. If the area is going into the bank, the issue should be waived.

Mr. Stahl expressed his concern that allowing partial termination would create an island. He wondered if the landowner can wait for the staff to work out the possibility to have an overlay easement.

Mr. Colhoun wanted to know if the area meets the forest mitigation requirement. Ms. Bradley stated that the area meets the requirements, but has not been recorded.

Mr. Tassone wondered if the landowner was willing to postpone the request and if he was willing to explore the possibility of working out an overlay easement. The district agreement would still be intact. Mr. Chapman stated that he was agreeable to this.

Mr. Draper withdrew his motion.

Motion #8: To table Mr. Marcus Chapman's request and direct Foundation staff, the County staff, and the FRO staff to explore if an overlay easement on the entire district property can be developed.

Motion: Douglas Wilson Second: Joe Tassone
Status: **Approved**

IV. PROGRAM POLICY

D. Proposed Vineyard/Winery Uses of MALPF Preserved Properties

Mr. Colhoun recused himself from the discussions and Vera Mae Schultz, Vice Chairman, chaired the meeting.

Kevin Atticks, Executive Director, Maryland Winery Association, and William Layton, Winery Owner, Dorchester County, were available at the meeting.

Mr. Conrad highlighted the changes incorporated by the Winery Uses Committee based on the recommendations received from the Board. Specifically the Board was concerned with the idea that the Committee was looking at the volume of production rather than the actual acreage because it was easier in terms of monitoring and approving requests.

Proportionality. The Committee recommends that a fundamental principle for reviewing requests is that the production capacity of any winery must be proportional either to the size of the property and/or to the acreage of grapes under the direct control (ownership, lease, or contract) of the landowner. However, the Committee is not making recommendations at this point of any specific formula between acreage and winery capacity, though the Committee notes that this relationship will not be difficult to establish based on potential per acre yield. The Committee recognizes that properties that have conditions whereby the entire acreage could eventually be planted to vineyard or other wine-producing fruit are rare in Maryland. This concept of proportionality allows MALPF to put a cap on the size of winery production

proportional to the size of the property, allowing for the proprietors to ramp up production, cope with harvest variability, develop contractual relationships with grape suppliers (expanding the supply and improving the quality of Maryland grape production), develop a fuller line of wines, and blend from different vineyards for taste and quality.

Based on production volume related to acreage, a 100-acre farm fully planted to grapes (an unlikely prospect) could produce 150,000 gallons of wine, assuming 1,500 gallons per acre (10 tons per acre, with each ton producing 150 gallons); or a 50-acre farm could produce 75,000 gallons of wine. According to a member of the Winery Uses Committee, a winery to be profitable really needs to be producing 20,000 gallons of wine. Thus, MALPF can calculate a maximum proportional volume of production based on the acreage of the property, irrespective of where the grapes are actually produced.

Minimum "On-site" Primary Production. The Committee and the Board recommend that a fundamental principle for reviewing requests is that at least some grapes processed by the winery be produced "on site." Issues to be included in the review of any request are:

- Minimum on-site production can be much more easily and much less intrusively monitored by acreage requirements than volume requirements.
- Minimum on-site production requirements must recognize that a start-up winery may not be supplied with on-site production for at least three years after planting; it takes about five years to produce high quality grapes; and servicing the capital investment in a winery may require ramping up winery production more quickly than grape production can be expanded. Of course, depending upon the landowner, grape production may precede winery production, given the relative costs of the respective investments and the talents and resources of the operator.
- According to a member of the Winery Uses Committee, production of 20,000 gallons would likely result in a profitable winery. This production could reasonably be attained from 13.33 acres of producing vineyards. It seems to be a reasonable starting point to discuss a minimum on-site acreage (planted, not necessarily producing) at start-up of one-quarter the acreage necessary for 20,000 gallons of production (3.3 acres), growing to one-third the acreage necessary for 20,000 gallons of production over 10 years (4.5 acres).

Combining "Proportionality" and "On-site" Production. The Committee proposed that the size of the easement property provide the maximum production possible for a proposed winery and the on-site production acreage necessary for providing the potential fruit for one-quarter to one-third of a reasonably profitable producing winery provide the minimum acreage planted to vineyard. Thus, the startup acreage should be 3.3 acres to be reached within five years of the approval; and 4.5 acres should be planted within ten years of the approval, irrespective of the size of the property. However, the proportional calculation and the definition of "on-site" production include not just the easement property, but all properties owned by the grantor, though the grantor, in the request, must be explicit in what properties should be included and explain why, if some included properties are not preserved, the winery is not being constructed on non-preserved acreage. The Board, at its discretion, may also take property leased by the grantor or off-site Maryland-based vineyards under a long-term controlling contract by the grantor into consideration in calculating proportional winery capacity and the definition of "on-site" production. However, it must be made clear in any approval that, if the grantor is relying upon other property owned, leased, or under contract to determine the production capacity of the winery and/or to meet minimum "on-site" production requirement, the sale of such other properties, the loss of the lease, and/or the loss of vineyard contracts may affect the approved winery production capacity. Further, agricultural subdivision may also affect the conditions for approval of vineyard/winery uses on the property.

Mr. Conrad commented that there were some questions related to impervious surfaces. In this regard, Mr. Conrad had spoken to Natural Resources Conservation Service (NRCS).

MALPF Board Open Meeting Minutes (02-24-09): Page 15

Gravel surfaces such as parking and roads are not included as impervious surfaces by NRCS. There is a bill in the General Assembly about impervious surfaces, but it does not count gravel as being impervious. Hence there are certain different standards depending on who is calculating. For the purposes of the Foundation, any parking or any right-of-way, if it is graveled it is not taken as an impervious surface.

Mr. Tassone wanted to know about the on-site production calculations.

Mr. Conrad commented that the on-site production calculations do not apply to anything in particular and the formula is applied where off-site production is involved. Anything related to construction pertaining to winery will also come to the Board.

Vera Mae asked that, under the Retail Sales Facility category on page 6, to make it consistent with the General Use guidelines, the language be changed to:

"A majority of farm products sold must be produced on site" to "Some of the farm products sold must be produced on site".

Mr. Boniface complimented Mr. Conrad for his efforts in developing the proposed guidelines.

Mr. Atticks introduced himself and thanked the MALPF Board for trying to resolve the issues. He stated that the Maryland Winery Association has four or five different programs underway to encourage the growth of vineyards. Most of the wineries grow majority of their grapes. However, there is shortage of grapes in the State, and the ability for someone to produce wine out of their grapes provides a much needed boost and revenue. It has been seen that independent grape growers without wineries have grown at a much slower pace than grape growers having winery on-site (even if it is small).

Mr. Layton introduced himself and stated that he was looking forward to building a winery on his property (under MALPF easement). He currently has a 1300-acre grain farm, but it is hard to support families on a grain farm. He would like to continue to do what he loves to do and hoped to involve his children in farming.

Motion #9: To adopt the proposed Uses Policy with the change recommended by the Board at the initial Board review.

Motion: Chris Wilson Second: John Draper
Abstained: Billy Boniface, Daniel Colhoun
Status: **Approved**

E. Family Lot Eligibility

REQUEST

To review family lot eligibility.

BACKGROUND

The policy on Lot Eligibility approved in January 2003 was attached with the agenda packet. Two months later, after proposed legislation was passed, this policy should have been updated based on reducing the number of lot rights from a maximum of ten to a maximum of three.

In addition and more importantly, the Board should have discussed whether it would adhere to the January 2003 policy in concept by defining "family lots" as restricted to a maximum of one owner's lot.

Because this was not done, all easements that settled since January 2003 (5 cycles) do not

MALPF Board Open Meeting Minutes (02-24-09): Page 16

define "family." Model Easement and Examples, A, B, and C were attached with the agenda memo.

Staff Recommendations:

1. To permit all currently pending offers to be settled consistently with the attached examples. This includes Bowman 05-01-02, which was tabled last month when brought for a vote on a change in the names of the Grantors.
2. To clearly define "family." The three options are:
 - A. Leave as is.
 - B. Define as one owner and two children.
 - C. In addition to #2, permit no owners and three children to have lots.

If the Board chooses to define "family," then Staff recommends doing regulations as soon as possible to have the definition in place prior to making FY 2009 offers. Additional language would also need to be put into the easement.

Foundation staff included model easement language in the agenda packet.

Mr. Conrad cited the language from the deed of easement document (page 10 of the current deed of easement) and stated that the Foundation lists the names of all people who are eligible for the lots. This includes the owners and the children of the owners.

6. Regardless of how the property is titled, and subject to the requirements and conditions of this Section IV.A., the Grantor, _____ [fill in all name(s) of title owners of record] agrees that the following individuals are the only family members eligible for release of a family lot: _____ fill in names of Grantors if individuals and "children of them," or, in the case of a family entity owner, its partners/members/shareholders as applicable, and "children of them." Note: Do not fill in children's names in case of after-born children].

Mr. Conrad commented that there is a potential for misunderstanding. Earlier the owners were eligible for only one lot under the then current statute. The way it is now handled requires clarification because there is a possibility of having multiple owners' lots. The problem comes up when there is no record of who is the designated owner or a situation where the ownership spreads across more than one generation. The Foundation is now seeking the Board's direction on how it would like to treat the issue.

Mr. Nielsen stated that under Chapter 258 Laws of Maryland 2003, the Legislature allows more flexibility to landowners. Family lots are nothing more than lots for the owners and their children. In olden days, the Legislature and the Foundation limited this right. Since 2003, as per the statute, the landowners get only three lots maximum.

Mr. Conrad commented that the deadline for the new easement cycle is July 1, 2009. If the Board feels that it is appropriate, any change in the easement language or the regulations can be done before this date. Accordingly, the Program Administrators can advise the landowners applying to the program.

Mr. Douglas Wilson commented that he wants to be sure that the Board agrees on the concept of "family lots." The Board has to consider situations when multiple owners and their children are involved. Children's lots are available only if the landowners' children request them. If there is an original owner and his kids don't want to farm the land, there are no lots for the children.

Martha Clark, Board member, stressed the need for focusing on the continuation of the family farms. Ms. Clark believed that if the landowners' children do not want to farm the land,

MALPF Board Open Meeting Minutes (02-24-09): Page 17

“Cousin Bob” should be allowed a lot if he is interested in farming. Ms. Clark believed that there is a need to keep the farm and the lots in the family.

Mr. Nielsen commented that the Legislature has allowed the family to elect an unrestricted lot that can be sold to anybody. This is done to allow landowners to have some flexibility.

Tammy Buckle, Program Administrator, Caroline County, stated that unfortunately the intent is not tied to the lot. The intent of the law is to continue family farm.

Donna Landis-Smith, Program Administrator, Queen Anne’s County, stated that it should be possible for the Foundation to make the lots no more than what is permissible by law. If there is a 300-acre farm, there should be three eligible lots. If a landowner has a grandchild helping him on the farm, the grandchild should be able to live on the farm and build a house. The intention is to transfer the farm to the next generation.

Mr. Nielsen commented that this is possible after a released residence has been occupied for five years by the eligible lot recipient. In the meantime, the child would have to live in a tenant house.

Mr. Conrad stated that in a year or so the Foundation would like to move into a situation where there are only non-designated lots (i.e., lots not specific to eligibility classifications). But this cannot be done retrospectively as there are already 2000 MALPF easements.

Joy Levy, Howard County, Program Administrator, commented that the County changed the law in 1993 and now uses the unrestricted lot program. An easement grantor in the program, prior to 1993, has the option to keep his family lots or switch his lots. This practice is working well in Howard County.

Mr. Colhoun sought the Board member’s comments/suggestions to resolve the issue.

Mr. Tassone commented that he would like to stick to the idea of “owner’s lots” and “children’s lots.” He would prefer to have maximum of one owner’s lot and maximum of three children’s lots.

Responding to a question, Mr. Tassone stated that the Foundation had limited the number of lots to three based on the Task Force’s recommendations. The Task Force’s recommendations were to reduce the total number of lot exclusions that could happen on a farm. Instead of making it to a maximum of ten, they recommended a maximum of three. That was the driving force for the statutory change in 2003.

Ms. Clark commented that an easement holder can have three children’s lots. In five years, they get released and can be sold to anyone and so completely reverse the desire to have someone actively involved in farming.

Motion #10: To instruct the Foundation staff to interpret the current statute as family lots being one owner’s lot and two children’s lots or 3 children’s lots subject to a cap of three with sufficient acreage.

Motion: Douglas Wilson Second: James Pelura
Status: **Approved**

C. Draft Unrestricted Lot Policy – John Draper, Chair

The Committee studied the question of whether a landowner shall be permitted to have more than one unrestricted lot if that landowner owns multiple properties or districts. Currently the law allows a landowner to opt for one unrestricted lot or family lot(s) on each easement of 20

acres or more.

Recommendations – *These recommendations are not to be retroactive. They are to apply to NEW easement applications that the Foundation accepts starting July 1, 2009.*

The Committee recognizes that farms need people living on them to be economically viable and, therefore, recommends that the Foundation permit one unrestricted lot per easement application if the application is for a legally-described metes-and-bounds parcel, as is the current practice. A legally-described metes-and-bounds parcel is one that is described in the most recent deed or plat as one parcel. Tax parcels will not be considered a parcel.

The Committee also recommends that if a legally-described metes-and-bounds parcel is proposed to be divided for the purpose of applying for an easement, the landowner may only divide the property so that each portion is 100 acres or more. Also, if the parcel is divided into more than three portions, the landowner may only exclude an unrestricted lot on the first three portions. The remaining portions may have residences which are not subdividable. The reasoning for allowing a non-subdividable residence is to provide stability to the farming operation. This non-subdividable residence may be one that is existing at the time of the application (but does not need to be). If it is existing, it will not require a release of an acre. If it is constructed, it will. The Board has the discretion to make these recommendations into policy without a change in statute.

Diane Chasse, MALPF Administrator, explained the charts included in the agenda packet. Ms. Chasse requested that the program administrators and the Board members study the draft policy and encouraged them to send in their comments.

Motion #11: To table the decision on Unrestricted Lot Policy.

Motion: Chris Wilson Second: Joe Tassone
Status: **Approved**

Mr. Tassone suggested a change in the language, “Currently the law allows a landowner to opt for one unrestricted lot or family lots on each easement on which they are entitled to family lots”. Mr. Tassone commented that he had written a memo and sent to Mr. Nielsen and Ms. Forrester for their comments.

Mr. Tassone commented that he believed that a landowner in a particular geographic area has one set of family lots rights. Ms. Chasse stated that the law says “per easement” and does not mention “geographic area.”

Ms. Forrester stated that unrestricted lot and family lots cannot be compared. Unrestricted lot is part of the property and goes with the property. It is a right of the land. A family lot is the right of the owner who sold the easement.

Mr. Tassone stated that as per the law an unrestricted lot is in lieu of the family lots. A landowner cannot get multiple family lots.

Mr. Colhoun encouraged the Board members and the program administrators to send in their comments.

V. INFORMATION AND DISCUSSION

For the FY 2009 easement acquisition program, four (4) additional counties are committing a total of \$3,245,713.00 to be used as matching funds for the purchase of easements. MALPF staff requests Board approval for these counties to participate in the FY 2009 Matching Funds Program.

MALPF Board Open Meeting Minutes (02-24-09): Page 19

COUNTY	COMMITMENT
Frederick	\$1,333,334
Kent	93,400
Queen Anne	635,646
St. Mary's	1,133,333
Wicomico	50,000

Motion #12: To approve County Participation in Matching Funds Program, as listed.

Motion: Vera Mae Schultz Second: John Draper
Status: **Approved**

Mr. Colhoun asked for a motion for adjournment of the meeting and a move into a closed Session, pursuant to the provisions of State Government Article Section 10-508 (a) (3) to consider a withdrawal of FY 2008 easement offer to purchase agricultural land preservation easements and consider change in ownership on a pending easement offer, and State Government Article Section 10-508 (a) (8) to consult with legal counsel about proposed and pending litigation.

Motion #13: To adjourn Open Meeting and move into a Closed Meeting to consider a withdrawal of FY 2008 easement offer to purchase agricultural land preservation easements and consider change in ownership on a pending easement offer, and to consult with legal counsel about proposed pending litigation.

Motion: Joe Tassone Second: John Draper
Status: Approved
Vote: Daniel W. Colhoun, Vera Mae Schultz, William K. (Billy) Boniface, Martha A. Clark, John W. Draper, Jr., Jerome W. Klasmeier, Dr. James Pelura III, Robert F. Stahl, Jr., Joe Tassone, Jonathan C. Quinn, Christopher H. Wilson, Douglas H. Wilson
None: Opposed

The Open Meeting of the Board meeting was adjourned at approximately 12:50 p.m.

The Closed Meeting of the Board was held from 12:55 p.m to 02:00 p.m. at the Maryland Department of Agriculture building, Annapolis, Maryland, pursuant to the provisions of State Government Article Sections 10-508(a) (3), (7), and (8), Annotated Code of Maryland.

- [x] (3) To consider the acquisition of real property for a public purpose and matters directly related Thereto
- [x] (3) To consult with counsel to obtain legal advice on a legal matter
- [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, Vera Mae Schultz, William K. (Billy) Boniface, Martha A. Clark, John W. Draper, Jr., Jerome W. Klasmeier, Dr. James Pelura III, Robert F. Stahl, Jr., Jonathan C. Quinn, Joe Tassone, Christopher H. Wilson, Douglas H. Wilson

MALPF Board Open Meeting Minutes (02-24-09): Page 20

TOPICS DISCUSSED:

- 1) Discussion on withdrawal of FY 2008 Easement Offer.
- 2) Discussion on Change in Ownership.
- 3) Update from counsel on status of litigation.

The Closed Meeting was adjourned at 02:00 p.m.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, MALPF Executive Director