

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

TRUSTEES PRESENT:

Daniel W. Colhoun, Chairman
Vera Mae Schultz, Vice Chairman
John W. Draper, Jr.,
Howard S. Freedlander, representing Treasurer Nancy Kopp
Jerome W. Klasmeier, representing Comptroller Peter Franchot
Jonathan C. Quinn
Robert F. Stahl, Jr.,
Joseph F. Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning
Douglas H. Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture

TRUSTEES ABSENT:

William K. (Billy) Boniface
Martha A. Clark
Dr. James Pelura III
Christopher H. Wilson

OTHERS PRESENT:

Bill Amoss, Harford County, Program Administrator
Anne Bradley, Frederick County, Ag. Preservation Planner
Tammy Buckle, Caroline County, Program Administrator
Pam Bush, Department of Natural Resources, Senior Policy Analyst
Diane Chasse, MALPF 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
Billy Gorski, Anne Arundel County, Program Assistant
H. Dale Gray, Representative, St. Luke's Lutheran Church
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Joanna Kille, Director, Governmental Relations, Maryland Department of Agriculture
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
William Layton, Winery Owner, Dorchester County
Wally Lippincott, Baltimore County, Program Administrator
Joy Levy, Howard County, Program Administrator
Paul Meyer, Landowner, Carroll County
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Ralph Robertson, Carroll County, Program Administrator
Dan Rosen, Planner, Maryland Department of Planning
Charles Rice, Charles County, Program Administrator
Betty Russell, Landowner, St. Mary's County
Donna Sasscer, St. Mary's County, Program Administrator
Ned Sayre, Harford County, Ag. Preservation Planner
Martin Sokolich, Talbot County, Program Administrator
Michael Wilson, Landowner, Baltimore County
Patricia and Hobart Wolf, Landowners, Baltimore County
H. Daniel Wolf, Landowner, Baltimore County

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Daniel 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

Approval of minutes postponed to next month.

B. ADDITIONS OR DELETIONS OF AGENDA ITEMS:

IV. Program Policy Unrestricted Lot Policy Postponed

Legislative Update – Joanna Kille, Director, Governmental Relations, MDA Added

VI.A Matching Funds Participation Added

Douglas Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture, briefed the Board members about the findings of the Legislative Auditors. He further stated that the copies of the audit report and the Foundation's draft commentary would be passed out shortly.

Mr. Douglas Wilson briefed the Board members on the current status of the budget discussions. As of now, it does not seem that the General Assembly would seek dollars from MALPF for FY 09. However, for FY 10, the House has adopted an amendment that takes all the State Real Estate Transfer Tax from MALPF and Program Open Space and transfers it to General Fund for FY 10. For MALPF, it is \$13 million. The language is contingent on a dollar per dollar. As long as the amendment stays, MALPF and Program Open Space are not affected. The \$13 million that MALPF would receive would be replaced by the bond dollars. The Senate was scheduled to meet in the afternoon.

II. DISTRICT /EASEMENT AMENDMENTS

A. CARROLL COUNTY

1. 06-83-09 Wilhide, Ruth Rebecca 146.59 acres
Request for two child's lots up to 2.0 acres for son, Daniel Lee Wilhide, and daughter, Audrey Elizabeth Rote.

Request:

- 1) Approval of up to 2.0 acres for a child's lot for son, Daniel Lee Wilhide (Lot 1).
- 2) Approval of up to 2.0 acres for a child's lot for daughter, Audrey Elizabeth Rote (Lot 2).

Recommendation:

Staff recommends approval of the request because it meets the Foundation's guidelines for lot exclusions. Although the lots will not be located adjacent to the pre-existing dwelling, they are adjacent to each other, in a corner of the property, and along a county road (see the note below).

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Mr. Conrad commented that the bill not only affects the Foundation, it also affects the counties and might also affect MARBIDCO.

Mr. Douglas Wilson commented that the bill did not pursue money from DNR side of transfer tax. Ms. Kille added that the bill's language was changed to make existing funding taken from DNR subject to DNR's approval. But this was not the case with MALPF.

Mr. Conrad passed out the 2009 legislative update.

Mr. Stahl had a question on HB 333/SB 291 (MALPF – Easement Properties – Natural Gas Drilling). He wondered why the House “opposed” and the Senate had “no position.” He wanted to know why there was a difference. Ms. Kille commented that was because the Governor's Office wanted to develop a policy across the Board and wanted MDA to take a step backwards until the agencies and the Governor's Office have had a chance to look at all the proposed non-agricultural commercial use of MALPF properties.

Mr. Colhoun thanked Ms. Kille for briefing the Board members. Mr. Colhoun also announced that he planned to appoint a Legislative Committee at the next Board meeting to facilitate more involvement of the Board members when the Foundation moves into next legislative session. The purpose is to have a strong group available to work with Mr. Conrad and Ms. Kille. This group would also work with the legislators and keep the Board members updated on various bills affecting MALPF.

A. WASHINGTON COUNTY

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|----|----------|---|--------------|
| 1. | 21-91-28 | Roth Meadowbrook Farm Inc. | 111.91 acres |
| | | Request for a 1.0-acre unrestricted lot exclusion | |

Request:

For approval to exclude 1.0 acre from the easement for an unrestricted lot.

Recommendation:

Staff recommends approval of the request as it meets the Foundation's Guidelines for Lot Location. Although the lot is not being located adjacent to either of the two pre-existing dwellings, it is adjacent to an existing residential lot (parcel 216), is in an area not currently being farmed, has direct access to the county road, and is located along the property boundary. Staff feels that, since this is an unrestricted lot, to locate it within the farm and adjacent to either of the existing dwellings could cause greater future disturbance to the farm operation.

Background:

Roth Meadowbrook Farm, Inc., is the original owner of the easement property. There are two pre-existing dwellings.

According to Washington County, the farm is a very successful dairy and crop operation. The proposed lot is class II soils. The remaining acreage of the farm is 65% soils classes I, II and III.

The request has been approved by the local agricultural advisory board and meets Planning & Zoning regulations. If approved, payback for the lot will be \$5,522.25 per acre. The request meets the Foundation's guidelines for lot location.

4. Landowners sign a letter outlining conditions.

BACKGROUND:

Joseph and Laura Layton are the original owners of the easement property. Mr. William Layton is their son and a beneficiary of the Joseph H. Layton, Jr. Revocable Trust and The Laura H. Layton Revocable Trust, which together own the farm. The current request is to allow a winery operation on an easement property. There is one pre-existing dwelling on the farm.

According to Dorchester County, Mr. Layton would like to construct a 5,568 square feet building to house the production facility and event and tasting rooms. The size of the tasting room and event rooms would each be 1,056 square feet each. A letter from Mr. Layton describing in more detail the use of these rooms was attached with the staff memo. Mr. Layton has 4 acres of vineyard and plans to plant 15 more acres in the next 4 years. He also would like to promote the winery by use of tours and events. Some events would be smaller in nature such as wine tastings (1 or 2 a month) and some would be larger such as a one-day or two-day festival (1 or 2 per year). The landowner considers major events to be those which require the use of the overflow parking. In addition, Mr. Layton would like to rent the event room for business meetings, weddings and parties, when the room is not being used.

He is requesting gravel parking area of approximately 7,500 square feet (accommodates 18 vehicles). A proposed overflow parking area is also shown on the site plan as approximately 7,500 square feet. The shaded area next to the gravel parking lot is a required stormwater run-off area. He chose the location because it is adjacent to the planted vines and because he needed a spot that would perc. Picnic tables will be located on the south side of the structure. The area impacted is approximately 3 acres. If these soils are all qualifying soils and they are un-cultivable, the property still qualifies for the program with 55% Class I, II, and III soils.

The request was approved by the local advisory board and conforms to County Zoning under new legislation that was passed on February 3rd, 2009, which is attached. Soil Conservation District has written a letter of support. Mr. Layton has provided his Nutrient Management Plan. Mr. Layton's proposed facility has a potential maximum capacity of 20,000 gallons.

According to the Winery Guidelines which were approved by the Board last month, the following were the considerations for review:

1. Must be approved by the local agricultural advisory board and be permitted under County regulations and zoning.
2. Compatible with Soil Conservation and Water Quality Plan and, if applicable FSP and NMP.
3. Winery must have a valid Class IV Maryland wine license.
4. Parking area must cover no more than 4% (four) percent of the easement, or two acres, whichever is smaller. Parking area must be pervious with the exception of handicapped parking facilities required by law.
5. Size of the structure and volume of production must be in scale with the size of the farm at a rate of a maximum of 1,500 gallons per acre. (Production from other land owned or leased by the landowner may be taken into account.)
6. A minimum of 3.3 acres must be planted within 5 years of approval and 4.5 acres must be planted within 10 years of approval.
7. Location of the winery and all associated uses must limit interference with other agricultural or silvicultural production.
8. Easement owner must have an ownership interest in the operation, including sales and tasting.

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9. Some of the grapes must be grown on site; the remainder must be Maryland-grown, unless the Secretary of Agriculture determines there is an insufficient supply.

For the Retail and Tasting Areas, the following additional considerations apply:

10. Accessory sales area must not exceed 600 square feet. Accessory sales are non-agricultural items such as t-shirts and corkscrews.
11. Retail size and tasting areas must be consistent in scale to on-site production. (Production from other land owned or leased by the landowner may be taken into account.) This is determined by the Board.
12. Use of existing structures is preferred. Tasting room must be part of the production and/or retail structure, unless an existing structure is used. (An expansion of an existing structure must be approved by the Board.)
13. All wine/grape products sampled (tasted) must be processed on-site.

For picnicking and tours, the following additional considerations apply:

14. Picnicking area and availability of tours must be consistent with the scale of the vineyard/winery operation. Picnicking areas and availability of tours must be consistent with the area's rural character.
15. Picnicking area must be adjacent to the winery and/or retail sales facility.
16. No permanent structures may be created to support picnicking or tours.

For events, the following additional considerations apply:

17. The number, frequency and scale of events must be consistent with the scale of the vineyard/winery operation and the area's rural character.
18. No permanent structures may be created to support events.
19. The purpose of any promotional event must clearly be to promote the products of the winery.
20. Charitable events must also promote the products of the winery.
21. A major public event is defined by the number of cars, people, days, acreage affected and facilities required. These are limited to no more than 2 events per calendar year and must be approved by the MALPF Board in advance. The landowner must demonstrate that the event is compatible with the area's rural character. For a major event, the MALPF Board will consider requests for additional, temporary, informal parking.
22. A catering facility is one that allows food prepared off-site to undergo final preparation before service, such as reheating, and can include a dining area scaled to on-site promotional events. Facility must be part of the production and/or retail structure, unless an existing structure is used. (An expansion of an existing structure must be approved by the Board and should incorporate the production and/or sales areas.) If winery products are used, catering facility may be used for "non-winery" events on an occasional and **infrequent** basis.

William Layton, landowner, was present at the meeting.

Mr. Conrad commented that Mr. Layton's parents were currently travelling, and the request had not been signed by them. Any decision made by the MALPF Board would be contingent upon their signing the request.

Mr. Layton stated that the family currently has a grain operation and farm about 1300 acres of corn, soybeans, and wheat. The family wanted to diversify to generate more income and decided to get into wine business. It seemed that they would be able to get 90% of the grapes within the County. Local small wineries are not going to be able to compete in the liquor store. It is not possible to produce wine that would justify the production facilities. So there was a

subdivided is conveyed to an adjoining easement property and the remaining portion of the original parcel consists of at least 50 acres. A letter from Soil Conservation District is required under this provision. The request meets the guidelines that the new landowner will continue the agricultural use of the parcel and the remaining parcel will continue to meet the Foundation's soils and size requirements.

Background:

Ms. Sullivan is the original owner of the easement property. There are no pre-existing dwellings. No lot exclusions have been requested. Ms. Sullivan wishes to transfer 32 acres of her easement property to a neighboring landowner. She will continue to lease her 175.17-acre grain operation to a local farmer. The agricultural use of the 32 acre parcel will remain cropland and woodland.

The landowner states that of the remaining 175.17 acres, 163.3 acres (93%) are classes I, II and III. (The subdivided parcel has 84% soils classes I, II and III, but this is not required). The request has been approved by the local advisory board and meets with Planning & Zoning requirements.

Mr. Colhoun left the room and Ms. Schultz chaired the proceedings.

Ms. Landis-Smith stated that there is no physical boundary between the 32-acre and the property owned by Ralph and April Whaley. The 32-acre parcel is on the opposite side of the road from the rest of the Whaley farm. The Whaley Farm consists of 283.3 acres and is under a MALPF easement.

Motion #9: To approve the request of Sandra Lynn Sullivan for a 32 acre agricultural subdivision of easement property.

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

F. KENT COUNTY

1. 14-88-05 James J. Berna 128.3 acres
Request for approval of a non-subdividable owner's lot on easement property.

Request:

The current request is for approval of a non-subdividable owner's lot for the landowner's personal use.

Recommendation:

Foundation staff recommends approval of the release of one acre based on the provisions of the deed of easement and in accordance with Agricultural Article, Section 2-513(b), Annotated Code of Maryland.

Background:

Mr. Berna is the original grantor of the easement. There are two pre-existing dwellings on the property. No other lots have been approved on the property.

According to Kent County, the proposed residence is a renovation of an existing barn. The residence will be accessed from an existing farm lane off Airy Hill Road.

The request will be reviewed by the local advisory board and approved. The proposed lot conforms to local zoning regulations. If approved, the per acre payback amount will be \$800.

Diane Chasse, MALPF Administrator, shared the Foundation's review with the Board members and recommended re-certification.

Motion #15: To approve Re-certification of Talbot County.

Motion: Robert Stahl

Second: John Draper

Status: **Approved**

VI.A. INFORMATION AND DISCUSSION

Mr. Nielsen updated the Board members about the Prigel issue. The judge in the Prigel case made a ruling that the Long Green Valley Association had no legal standing.

Mr. Conrad brought the attention of the Board members to a letter published in the Baltimore Sun. A letter from the Secretary of Long Green Valley Association appeared in the newspaper. This letter is inaccurately saying that MALPF is not enforcing its program and the Prigel Creamery is an example of disinvestment on the part of the State in preservation. Mr. Conrad commented that this year there had been several instances of inaccuracies published in the newspaper about the MALPF program. Mr. Conrad sought the Board's guidance on how it would like to proceed.

Mr. Tassone suggested writing an accurate article and publishing it in the newspapers.

Mr. Douglas Wilson commented that he believed the inaccuracies have to be dealt on a 'case-by-case' basis. There are times when the records have to be set right.

Mr. Stahl agreed with Mr. Tassone and believed it is important to have the Foundation's position established. Mr. Stahl stated that the Foundation should consider publishing the positive sides of the MALPF program and its achievements in the Baltimore County.

Mr. Klasmeier agreed with Mr. Douglas Wilson that the circumstances surrounding the letter have to be considered. Mr. Klasmeier suggested having press releases pertaining to MALPF activities published in the newspapers.

Mr. Freedlander suggested the Foundation can write a letter to the editor of the newspaper or approach the newspaper to find out if it can do a column in the newspaper.

Mr. Quinn commented that most of the people writing the columns in the newspapers are not aware about agriculture and about the MALPF program. The inaccuracies in the newspaper arise from this fact.

Mr. Draper suggested handling the issue on a 'case-by-case' basis.

Ms. Schultz stated that she believed that the Foundation should not respond to such letters in the newspaper. It is questionable that how much a letter (like this) can influence people who are interested in the MALPF program.

Ms. Forrester commented that she agreed with everyone's comments and felt that it would be a good idea to have positive articles in the newspapers about the MALPF program.

Mr. Nielsen commented that the taxpayers look at such articles and wonder whether it is right or wrong. This issue needs to be addressed and the Foundation should highlight the good things done by the Foundation. The public needs to know that MALPF is supporting agricultural business and helping farmers to preserve agricultural land.

IV. PROGRAM POLICY

C. Lot Eligibility (Continued from February 2009 Board meeting)

Mr. Conrad pointed out that the Board needs to discuss one more issue. While discussing the revision in the easement language, the Board did not discuss a situation when the parents and children co-own the property. The current language permits the owner of the child to request an owner's lot and also permits eligible children to request for children's lots. This issue had not been explicitly addressed when the Board discussed the lot eligibility.

Ms. Chasse stated that, as per the existing language, if the parents and children are co-holders, either one can request an owner's lot. Ms. Forrester added that there are situations involving LLC, partnerships, corporations, multiple generations, etc.

Mr. Douglas Wilson commented that he believed the Board should vote on the issue and take it to the General Assembly, present the problem and seek solution as it involves a public policy. The ownership structures have changed compared to what it used to be in earlier times. The Foundation's role is to administer a public policy.

Mr. Conrad stated that he believed the issue need not be taken to the General Assembly and can be done within the Foundation's current legislation. The question is more pressing as the Foundation is getting ready to make offers for FY 09. The Foundation wants to know whose children are eligible to children's lots; is it all the owners' children or does the designation of the lots determine who the parent is?

Ms. Forrester commented that the Foundation does not always have owners determining their owner's lots prior to the easement being settled.

Mr. Tassone stated that he remembers MALPF always determining who is going to be designated as the owner for the purposes of the lots. Whether they take an owner's lots or not, it is their children whose children are eligible for children's lots. Mr. Douglas Wilson commented that this is how the Foundation used to do but it is not the way Ms. Forrester is doing since the law changed.

Tammy Buckle, Program Administrator, Caroline County, stated for the last five years as a program administrator she has educated all the landowners that they are eligible for one owner or three children's lots and that the children's lots are usually determined based on who owns the property. If this is changed now, it would create problems for the landowners.

Mr. Conrad stated that he did not foresee any problem given the fact that the Foundation has fairly restricted densities in giving people more flexibility to decide who gets something on the property given the nature of the family farming may involve more than one generation.

Ned Sayre, Program Administrator, Harford County, wanted to know if there is something in the statute that tells how many lots can be taken.

Mr. Nielsen stated that many years ago, the Foundation struggled with this issue and decided not to go to the General Assembly. The Foundation struggled with the idea of the corporation, partnership etc and the same debate happened some thirty years ago and it is a very complicated issue. The statute says that the right to lots is a personal covenant that the person who sells the easement has. They can have an owner's lot or designate lots for their children. The issue becomes more complex when corporations, LLCs, partnerships, etc, are involved. The Foundation has looked at the issue to determine the legislative intent. The idea is that the Foundation gives away these rights based on various ways of looking at the law and looking at the facts as to how the farm is owned. The idea is to try and not to discriminate

