

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
April 28, 2009**

TRUSTEES PRESENT:

Daniel W. Colhoun, Chairman
Vera Mae Schultz, Vice Chairman
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.,
Joseph F. Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning
Christopher H. Wilson
Douglas H. Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture

TRUSTEES ABSENT:

William K. (Billy) Boniface
Jonathan C. Quinn

OTHERS PRESENT:

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
Tom Filbert, Assistant Attorney General, Maryland Department of Agriculture
Nancy Forrester, Assistant Attorney General, Department of General Services
Carla Gerber, Kent County, Program Administrator
Mary Grant, Planner, Charles County
Billy Gorski, Anne Arundel County, Program Assistant
Buddy Hance, Dy. Secretary, Maryland Department of Agriculture
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Wally Lippincott, Baltimore County, Program Administrator
Joy Levy, Howard County, Program Administrator
Susan Marshall, Landowner, Baltimore County
Graham Petto, Planner, Maryland Department of Planning
Dan Rosen, Planner, Maryland Department of Planning
Charles Rice, Charles County, Program Administrator
Donna Sasscer, St. Mary's County, Program Administrator
Ned Sayre, Harford County, Ag. Preservation Planner
Butch Zimmerman, Landowner, Garrett County
Jerry Zimmerman, Landowner, Garrett County

Daniel 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 February 24, 2009 with amendments.

Motion: Chris Wilson Second: Howard Freedlander
Status: **Approved**

Motion #2: To approve the minutes of March 24, 2009 with amendments.

Motion: Jerry Klasmeier Second: Howard Freedlander
Status: **Approved**

B. ADDITIONS OR DELETIONS OF AGENDA ITEMS:

IV. Program Policy Added
Recertification Request – Baltimore County

V.D. Allocation of Funds Report 2009 Added

Douglas Wilson, representing Secretary Roger L. Richardson, Maryland Department of Agriculture, briefed the Board members on the current status of the budget discussions. MALPF's funding for FY 10 for \$13 million was approved by the Conference Committee. But all the money was put into the General Funds and the Bonds substituted for the allocation of dollars. When the MALPF program uses the Bond money, some features like the IPA option, cannot be used.

II. DISTRICT /EASEMENT AMENDMENTS

B. BALTIMORE COUNTY

1. 03-97-08 Marshall, John and Susan 196.619 acres
Request for approval of a tenant house and a tenant trailer (to correct violations) on easement property.

Request:

To approve a tenant house and tenant trailer that have been constructed on easement property without the Foundation's permission.

Recommendation:

Foundation staff recommends approval of the request for tenant house and trailer request. The tenant house meets the Foundation's requirements as found in COMAR 15.15.03.03.B(2) which states "not more than one tenant house per full 100 acres may be considered by the Foundation for a farm, for example, one house for 100-199.99 acres, two houses for 200-299.99 acres", etc., or demonstration of a compelling need for a tenant on less than 100 acres. The trailer is used as needed to house transient workers during crop harvesting and therefore a compelling need is shown for a second residence.

Background:

The original owners of the easement, John and Susan Marshall sold their easement in 1999. The farm operation is corn, hay, vegetables, and horses (45 on average). The tenant, Mr.

Diane Chasse, MALPF Administrator, stated that the County is seeking re-certification through June 30, 2011 and shared the Foundation's review of the certification request.

Mr. Lippincott commented that the County's agricultural zoning, RC-2, has a policy (not a regulation) for 100" setback but for other zones adjoining the RC2 zones there are regulations. They are typically 300" setback.

Mr. Rosen stated that the County has good implementation tools, a strong urban rural demarcation lines, and good zoning. 36% of the County's land is in the proposed PPA but only 4.5% of the occupancy permits in the last 27 years have been in the PPA. The County has its own PDR (Purchase Development Rights) program.

Mr. Rosen remarked that the MDP is recommending conditional re-certification because the County governing body needs to officially approve the PPA's boundary and PPA elements.

Motion #7: To approve conditional re-certification of Baltimore County.

Motion: Robert Stahl Second: Chris Wilson

Status: **Approved**

V.D. INFORMATION AND DISCUSSION – 2009 Allocation Funds Report

The 2009 Allocation of Funds Report was distributed at the meeting.

Because limited funding is available this year, the Allocation of Funds Report raises several issues. (1) Given that acquisition costs have risen so high in recent years and not declined much yet, the general allotted State funding of \$363,130.43 means that some counties do not have enough funding even for an insufficient funds offer to the first applicant on the county's Round One offer sheet, given the guideline that an insufficient funds offer must be at least 50% of a full offer. Without any change in the process, these counties will see their general allocation immediately go to Round Two. (2) Other counties have enough for an insufficient funds offer for the first property on their offer list, but not enough for a full offer.

Mr. Conrad proposed some possible ways to address this problem, noting that the funding for FY 2010 is likely to pose the exact same problem (FY 2009 funds are \$16.7 million; FY 2010 funds are \$13 million).

- (1) MALPF has \$6.035 million in unspent FRPP (federal) funds from the 2005 grant agreement and \$1.7 million in unspent FRPP (federal) funds from the 2006 grant agreement. While the 2006 funds pose problems in applying the funds to MALPF offers, the 2005 funds do not pose major problems in the additional requirements, though offers with federal funds take quite a bit longer to go to settlement. Mr. Conrad proposed that EVERY offer made by MALPF include a minimum of 20% federal funds and the sample easement distributed be the easement including the already approved federal language. The upfront exceptions will be (a) any property that does not meet FRPP's requirement that no more than 50% of the property be forested; (b) any property that is rejected by FRPP for not meeting its minimum requirements for soil productivity; (c) any property that a program administrator identifies as having potential impervious surface issues where a waiver cannot be worked out with FRPP; and (d) any IPA or regular installment payments options for settlement that cannot be handled with an FRPP funding commitment. If, with the third appraisal, MALPF can commit more than 20% of the offer amount in federal funds, it will maximize its commitments. Mr. Conrad pointed out that this would include the following changes in policy. Counties not participating in the original FRPP 2005 application will also have federal funds put into their offers. MALPF will no longer seek to match the original allocation of federal funds as

determined by NRCS, Maryland. Both of these changes have already been approved by NRCS, Maryland. Even if 20% is applied to all offers made with funds available for FY 2009 easement offers, MALPF would still fall short of fully committing federal funds. Twenty per cent of \$27.035 million is \$5.4 million, and MALPF has over \$6 million in federal funds unspent in its 2005 grant agreement. There is absolutely no way to clear out old federal funds by committing FRPP funds only to insufficient funds offers. If MALPF does not commit these funds soon, federal funding will be lost and potential future funding would be at risk.

Mr. Conrad reminded everyone present at the meeting that offers with federal funds take longer time to settle. Mr. Douglas Wilson added that the advantage of offering federal funds is that more applicants get a chance to get an offer. If an applicant rejects an offer, it would go to the next person in the list in Round One.

(2) Given that MALPF is starting to make offers relatively late in the fiscal year, an additional proposal is to commit FY 2010 funding to MALPF's FY 2009 easement acquisition cycle. Craig Nielsen, Assistant Attorney General, advised Foundation staff that this decision can be made within the legal constraints of the program. No new applications would be accepted for FY 2010, but the offers to FY 2009 applicants would be extended with FY 2010 funding. This decision could be implemented in one of three ways.

- a. The existing 2009 Allocation of Funds Report could be redone to include the additional State funds (\$13 million). This would allow the nine counties with unmatched commitments to the State's Matching Funds Program to extend their matches; it would put more funds into Round Two; and it would extend funding for all counties. The downside to this plan is that MALPF would forgo any county matching funds for this FY 2010 money.
- b. Alternatively, the existing 2009 Allocation of Funds Report could be redone to include the additional FY 2010 State funds after allowing counties one month to decide if they wish to commit any additional matching funds from either their FY 2009 or FY 2010 budgets.
- c. The third alternative would be keep the existing 2009 Allocation of Funds Report as completed and create a new supplemental 2010 Allocation of Funds Report after allowing counties one month to decide if they wish to commit any additional matching funds. A second Allocation of Funds Report would be completed based only on the FY 2010 funds and any new matching funds commitments (and possibly unmatched matching funds commitments from the existing 2009 Allocation of Funds Report).

It should be noted that FY 2010 funds will be bond funding that will not allow IPA or installment payments settlement options. By blending FY 2009 and FY 2010 funds, MALPF will have more flexibility to handle these unique settlement requirements that cannot be done if funding is restricted to bond funds.

Mr. Conrad stated that, whether the MALPF Board approves using FY 2010 or not, it is going to have an impact in terms of how quickly the Department of General Services (DGS) can generate the second appraisal. So if the MALPF Board approves using the FY 2010 money to MALPF's FY 2009 easement acquisition cycle, part of the motion should recommend Foundation staff to instruct DGS to expedite the third appraisal. This should a top priority if there is no FY 2010 round of offers.

Dr. James Pelura, Board member, commented that in the past the Board had discussed the long delays in the settlement process. There were many disappointed landowners. Dr. Pelura was concerned that the easement applicants might reject the offers because of the expected delays in settlement.

Mr. Conrad commented that landowners might prefer receiving the money late rather than not receiving any at all. The current economy might play a role in the decision making, and the Foundation's offers might seem more attractive. There is a possibility that the Foundation

might not make offers in FY 2010. Mr. Douglas Wilson added that the letter from the Foundation would inform all the easement applicants that there would be no easement cycle in FY 2010, if that is how the Board decides to vote.

Dr. Pelura asked if there were any statutory restrictions governing the use of FY 2010 money in FY 2009.

Mr. Douglas Wilson commented that the Foundation had checked with Mr. Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture, and had been informed that the Foundation can do this. The Foundation had done so in the past. The good thing is everybody had already been appraised and more people on the list can get offers. The downside is the Foundation does not get new applications unless the counties are ready to fund them 100%.

Mr. Colhoun wanted to have the feedback from the County Program Administrators.

Howard Freedlander, representing Treasurer Nancy Kopp, commented that he was not happy receiving the information packet just few hours before the Board meeting, especially when it involved making complicated decision. Mr. Freedlander wondered how the Board members can vote on this important issue without having the County Program Administrators review the document. The County Program Administrators would need time to consider the various options.

Mr. Conrad stated that the offers can be made based on existing allocations. If the Board does not approve today, the decision can be postponed to the next month. If the Board decides to vote in one direction or the other, the Foundation can prepare the necessary documentation for the next month's meeting.

Mr. Conrad requested that a decision be made about committing federal funds because this would make a difference in whether the Foundation would be able to make offers or not.

Mr. Doug Wilson stated that the Foundation was not aware of the issues with FY 2010 until the General Assembly's budget cuts were finalized. The Foundation clearly wants to have an informed decision considering all the points. If the County Program Administrators want to take the issue to their jurisdiction for further deliberation, it can be done.

Mr. Conrad stated that the biggest downside of locking two years' money into one is that the Foundation can potentially forego all matching funds in FY 2010.

Mr. Colhoun summed up by saying that by using the federal money, the Foundation would have more money for making easement offers. Using federal money also implies that every successful easement applicant, if he chooses to accept the offer, has to comply with the federal restrictions. So he wanted to know how the County Program Administrators would like to address this issue.

Wally Lippincott, Program Administrator, Baltimore County, stated that Baltimore County is under similar situation with regard to the use of federal funds. Mr. Lippincott also added that the use of the federal money would also require more annual inspections.

Ned Sayre, Harford County, Agricultural Preservation Planner, stated that certain landowners in Harford County would have issues with the use of federal money. If the Foundation does not make offers in a year, the money can be used to fund the County's local preservation program. Mr. Sayre stated that he believed that it would be unfair to the landowners to change the terms of their application retroactively after they had submitted their applications.

approved by NRCS. Further, MALPF's deed of easement has not yet been reviewed and approved under the 2006 grant agreement requirements. So MALPF does not yet know the final language in that deed of easement. Today's discussion applies to the 2005 grant agreement funds.

Mr. Sayre commented that the Foundation's proposed change is very significant and the counties would need time to discuss the issue at the local level.

Mr. Conrad stated that the Foundation would be providing a summary sheet to all the easement applicants and the County Program Administrators.

Mr. Colhoun reminded the Program Administrators that Mr. Stahl's motion sets up machinery for the counties wanting to share the federal money. It also gives an option to the counties to opt out if they are not willing to use the federal money.

Mr. Conrad commented that the Foundation is being criticized by the Legislative Auditors for not matching federal funds to make easement offers. The criticism may continue if these funds are not spent.

Vera Mae Schultz, Vice Chairman, commented that she does not mind the Legislative Auditor's criticism if the MALPF Board believes what it is doing is the right thing for the landowners, the counties, and the program.

The Board moved to review Mr. Conrad's second proposal of committing FY 2010 funding to MALPF's FY 2009 easement acquisition cycle.

Mr. Douglas Wilson asked the counties to review the issue at their local jurisdiction and provide feedback and additional funding, if possible, to the Foundation within a month.

Mr. Conrad suggested having an initial straw vote. The straw vote would include allowing the counties to do additional matching funds and including it to the allocation funds. The offers cannot be made until June 2009.

Mr. Colhoun requested the counties to respond in two weeks.

Mr. Douglas Wilson asked for a straw vote to combine funding for two years and allowing the local counties to add additional matching funds.

Straw Vote: To combine the funding for FY 2009 and FY 2010 and allow the local counties to add additional matching funds.

Favor: John Draper, Martha Clark, Dan Colhoun, Douglas Wilson, Robert Stahl, Chris Wilson, Joe Tassone, Vera Mae Schultz, Jerry Klasmeier and Howard Freedlander

Opposed: Dr. James Pelura

Mr. Conrad stated that he would be preparing and forwarding a detailed memo to the Board members and the Program Administrators.

V. INFORMATION AND DISCUSSION

B. Appointment of Legislative Committee

Mr. Colhoun appointed Martha A. Clark as the chair of the MALPF Legislative Committee. Ms. Clark asked interested Board members and the Program Administrators to get in touch with her.

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Mr. Conrad distributed the updated status of the 2009 legislations. Mr. Conrad briefed the Board members about HB491/SB674 titled "Maryland Agricultural Land Preservation Foundation – Easements – Inspection Requirements." This bill did not pass and received unfavorable report in the House. Mr. Conrad planned to include an agenda item in the next month's Board meeting about a follow up letter from the from the sponsors of this bill.

- A. Presentation on AgPrint (website mapping) – Mr. Joe Tassone, Maryland Department of Planning (MDP).

Mr. Tassone and Mr. Graham Petto from MDP made a powerpoint presentation.

Mr. Tassone discussed the land preservation targeting approaches being developed by the Maryland Department of Natural Resources (DNR) in collaboration with Program Open Space, based on requests from the Governor's Office to incorporate this as an "on-line" application. This application was called GreenPrint. Subsequently this application was titled AgPrint and currently the MDP works with the MDA to put the agricultural easements "on-line."

The website is user friendly and provides background information and interactive maps. The idea is targeting preservation efforts. The MDP included all the agricultural and rural zoning districts that are eligible for easements. Mr. Tassone explained the color codes used in the map and displayed the various available features. One of the challenges of this application is that it requires constant upgrades and continuous flow of information between the Foundation, the Rural Legacy Program, the Counties, and the MDP.

Mr. Colhoun thanked Mr. Tassone and Mr. Petto for the information provided at the meeting.

Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator, passed out the "Violation & Litigation Report."

Tom Filbert, Assistant Attorney General, Maryland Department of Agriculture, updated the Board members on the lawsuit that the Owens filed against MALPF and two landowners (Peter Brown and Jeff Conner), who have each conveyed an easement in their land to MALPF. The Owens' property, consisting of 120 +/- acres, is surrounded by approximately 53,000 acres of preserved land – more specifically: (a) several farms subject to a MALPF easement (approximately 1000 acres), including the Brown and Conner farms; and (b) the Savage River State Forest (approximately 52,000 acres). The Owens' property is akin to a small doughnut hole that is surrounded by acres of preserved land, a beautiful area with running streams and the Savage and Little Savage Rivers.

The Owens have indicated their intent to develop their property to its fullest potential. Their property is landlocked. Their access is through lands subject to a MALPF easement. The Owens claim two 30" wide right-of-ways to their property, which would allow them to fully develop the property. MALPF, Peter Brown, and the Conners claim otherwise – namely, that the width of two potential right-of-ways is substantially less, which would severely limit the development potential of the Owens' property.

The day before the Board meeting, Mr. Filbert and Ms. Hoxter did a site-visit of these lands. They met with Peter Brown and Jeff Conner, the surveyor/engineer that MALPF hired (with Peter Brown and the Conners), and representatives from the DNR. In addition to the road access issue, they discussed the ecological values of the properties. The trial for the case is scheduled for late August 2009.

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

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Motion #9: Motion for adjournment of the open meeting
Motion: Chris Wilson Second: Joe Tassone
Favor: Daniel W. Colhoun, Vera Mae Schultz, Martha A. Clark, John W.
Draper, Jr., Dr. James Pelura III, Robert F. Stahl, Jr., Joseph F.
Tassone, Chris Wilson, Douglas H. Wilson
Status: **Approved**

The Open Meeting of the Board meeting was adjourned at approximately 12:05 p.m.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, MALPF Executive Director