

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
May 26, 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
Jonathan C. Quinn
Dan Rosen, representing Secretary Richard E. Hall, Maryland Department of Planning

TRUSTEES ABSENT:

Robert F. Stahl, Jr.,
Christopher H. Wilson
Douglas H. Wilson, representing Secretary Earl F. Hance, Maryland Department of Agriculture

OTHERS PRESENT:

Bill Amoss, Harford County, Program Administrator
Tammy Buckle, Caroline County, Program Administrator
Pam Bush, Department of Natural Resources
Diane Chasse, MALPF Administrator
Randall Carrion, Landowner, Cecil County
Pat O'Connell, President, Evergreen Capital Advisors, Inc.
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
Gail Ensor, Landowner, Baltimore County
Nancy Forrester, Assistant Attorney General, Department of General Services
Carla Gerber, Kent County, Program Administrator
Mary Grant, Planner, Charles County
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Brandon Lancey, Law Intern, Maryland Department of Agriculture
Joy Levy, Howard County, Program Administrator
Melissa McNutt, Landowner, Harford County
Bob Miller, Landowner, Caroline County
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Ralph Robertson, Carroll County, Program Administrator
Lori Sample, Landowner, Cecil County
Donna Sasscer, St. Mary's County, Program Administrator
Shelly Sasscer, Guest, St. Mary's County
Eric Shertz, Cecil County, Program Administrator
Philip H. Snader, Landowner, Carroll County
Martin Sokolich, Talbot County, Program Administrator
Chase Tanner, Landowner, Caroline County

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Daniel Colhoun, Chairman called the meeting to order at 9:10 a.m., at the Maryland Department of Agriculture building, Annapolis, Maryland.

Mr. Colhoun asked the guests to introduce themselves. Mr. Colhoun introduced Brandon Lancey as the law intern currently working with the Foundation.

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 April 28, 2009.

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

B. ADDITIONS OR DELETIONS OF AGENDA ITEMS:

IV.C. House Bill 491/Senate Bill 674 – MALPF Easements - Inspection Requirements. Request from Bill Sponsors, Delegate Aumann and Senator Greenip Withdrawn

V.B. Federal Matching Funds (FRPP) Update and Discussion Withdrawn

IV.A Recertification Request – Frederick County Added

II. DISTRICT /EASEMENT AMENDMENTS

B. WASHINGTON COUNTY

1. 21-89-06 Forsythe, Michale B. & Christine A. 164.61 acres
Request to construct a tenant house on easement property.

Request - Washington County:

Permission to construct a tenant house on easement property for a tenant who will be fully engaged in the daily operation of the farm.

Recommendation:

Staff recommends approval of the request for a tenant house as the request conforms to the Foundation's Regulations for Tenant House. The Regulations for Tenant House were attached to the staff memo.

Background:

Mr. and Mrs. Forsythe are the subsequent owners of the easement property. The Forsythes reside on a 1.0 acre lot that was withheld from the easement (Parcel 989). There are no pre-existing dwellings on the easement and there will be no approved family lots as these are subsequent owners.

According to Washington County, the farm is a combination of dairy and orchards. The landowners have stated that their son, Brian Forsythe will be occupying the tenant house. Brian currently works on the farm in the morning, in the evening, and on weekends and holidays to assist with the 100 dairy cattle, 17 acres of orchard, and all other aspects of the daily farm operation. The Forsythes also have stated that Brian will work on the farm full time once the tenant house is constructed. He currently receives room, board, health and auto

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Carol Council, MALPF Administrator, stated that when she voiced her concern about the potential for Ms. Carrion to request the remaining five children's lots and their location on the property, the County Program Administrator informed her that there were only four total rights remaining. One of them must be located on Parcel 6 and the other three must be located on Parcel 29 and probably will be forced to be clustered and located adjacent to Pond Neck Road.

The proposed 1.0 acre lot is located in what is currently grass and tillable land. It is class II soils. Access will be via a deeded right-of-way from the existing farm lane. The 1.0 acre lot includes the 10,000 square foot septic drainage area.

The request has been approved by the local advisory board and meets Planning & Zoning requirements. Payback for the 1.0 lot will be \$1,500.00.

Randall Carrion, the landowner's son, and his daughter, Lori Sample, were available at the meeting to answer questions from the Board.

Ms. Council noted that Jonathan Quinn, Board member, had visited the property.

Mr. Carrion commented that he farms the farm and it had been in the family for approximately 50-60 years. Mr. and Mrs. Randall Carrion have three children and they all love the farm. As his mother is getting older, she needs someone to live close by. So Mr. Carrion would like to move closer to his mother and nearer to the operations of the farm. Ms. Sample added that the farm is also in the name of Mr. and Mrs. Randall Carrion and in the future, they would be the sole owners. Mr. and Mrs. Randall Carrion plan to live in the new structure and have no plans of selling the house.

Mr. Quinn stated that he had seen the proposed lot location and it would not disrupt the farming area. The proposed lot location has a pond nearby and is sitting on the hill. Mr. Quinn stated that he believed the proposed lot location is closer to the farmstead than as it appears in the aerial map.

Mr. Colhoun suggested Ms. Council and Mr. Randall Carrion get together to make sure the proposed lot location is accurately located on the aerial map.

Vera Mae Schultz, Vice Chairman, noted that part of the area is under CREP. Ms. Schultz wondered if there would be any issues if the proposed lot was under an area covered by CREP.

Mr. Randall Carrion stated that he would have to buy that one acre out of the CREP program and he is working on it. He would have to pay back the money he had received for that acre. Ms. Sample added that Mr. Carrion has received verbal approval but needs to complete the necessary paperwork.

Motion #3: To approve the request of Aline Carrion for a child's lot up to 2.0 acres on easement property. This approval is subject to removing the acreage from the CREP program.

Motion: Jonathan Quinn Second: Howard Freedlander
Status: **Approved**

D. HARFORD COUNTY

1. 12-98-05 McNutt, Tony & Teresa 112.347 acres
Request for up to 2.0 acres for a child's lot on easement property.

existing dwelling and for the general operation of their farm.

Recommendation:

Staff recommends approval of the request.

Background:

Mr. and Mrs. Snader are the subsequent owners of the easement property. There is one pre-existing dwelling on the property. This 21.0 acre parcel is an agricultural subdivision of a 109.7 acre property owned by Mr. Snader's parents, Richard and Trudy. The agricultural subdivision was approved January 29, 1997. There are no other dwellings on this parcel.

On November 25, 2008 and March 24, 2009 the MALPF Board approved similar requests for Mr. Paul Meyer to construct wind turbines for his personal residential and agricultural uses. For this request, the Snaders will require only one larger turbine.

According to Carroll County, the wind turbine will be approximately 100 feet in height (59 foot tower) and will be located 400-500 feet from the dwelling. An existing farm lane will be used to access the wind turbine. The Snaders have stated that the total area to be disturbed for construction will be approximately 20'X20' that is currently grassed. They anticipate the turbine will generate 80-90 percent of their electrical need. The turbine will not be capable of generating enough electricity to supply electric to the grid.

Mr. and Mrs. Snader have provided a copy of their Allegheny Power Statement of Account which covers the period February 2007 through January 2009 (copy attached with the staff memo). According to the statement, from April 2008 through January 2009 they used an average of 4,229 kilowatt hours (kWh) of electricity per month. The proposed wind turbine is capable of generating an average of 3,678 kWh per month (86.9% of the average used by the Snaders).

On May 6, 2008, the Carroll County Commissioners adopted an Ordinance to allow small wind energy systems in the county (copy attached with the staff memo). This request has been approved by the local advisory board and meets the requirements of the County Commissioners Ordinance.

Philip Snader, landowner, and Ralph Robertson, Program Administrator, were present at the meeting.

Mr. Robertson stated that the request is consistent with the county codes that encourage the use of wind turbines on properties. The request meets the county codes requirements for the location and the height. Two other wind turbines have been approved on Carroll County properties and are working well.

Responding to a question, Mr. Snader stated that the top of the tower is around 60 feet. The wind turbine will be approximately 80 feet in height (the radius of the blade is 40 feet).

Mr. Robertson encouraged a visit to Mr. Paul Meyer's property to see how the wind turbines work.

Ms. Council commented that she had spoken with Mr. Meyer recently. Mr. Meyer has invited interested Board members and Program Administrators to visit his property. Ms. Council planned to send an e-mail in this regard.

Motion #7: To approve the request of Mary S. Walls for a tenant house on easement property.

Motion: Billy Boniface Second: John Draper
Status: **Approved**

F. CAROLINE COUNTY

1. 05-99-10 Miller, Robert and Tanner, Martha 200.9567 acres
Request to allow a micro-creamery operation on an easement property.

REQUEST- Caroline Co.:To allow a micro-creamery operation on an easement property

RECOMMENDATION: Foundation staff recommends approval of the request.

BACKGROUND:

Mr. Miller and Ms. Tanner are the original owners of the easement property, on which they have 44 cows. According to Caroline County, the landowners would like to construct a 450 square foot building to process and sell some of the milk produced on the farm. They may also make yogurt. They wish to build the structure on the site of an old barn that they plan to demolish. They plan to use existing pervious area for parking. An existing farm lane will be used to access the structure.

The request was approved by the local advisory board and is permitted by local zoning (Caroline County Code of Public Local Laws) with a Special Exception.

According to the Uses Table, the following are the considerations for review:

Must not interfere with other agricultural or silvicultural operations.

Must not limit future agricultural or silvicultural production.

Easement or district owner must have an ownership interest in the operation.

Some of the products must come from animals raised or crops grown on site; the remainder from animals or crops indigenous to Maryland.

Facility and parking area must cover no more than 2% (two percent) of the easement/district, or two acres, whichever is smaller.

Parking area must be pervious.

Accessory sales area must not exceed 600 sq. ft. and in no case shall be greater than the area used for the sale of agricultural and forestry items.

Diane Chasse, MALPF Administrator, pointed out that Tom Filbert, Assistant Attorney General, Maryland Department of Agriculture, advised that as per the MALPF easement, the landowners have the right to process farm products produced on the farm.

Martha Tanner, Landowner, and her son Bob Miller, were available at the meeting. Tammy Buckle, Program Administrator, was also available at the meeting. Ms. Miller stated that Bob has recently finished his stint in army and returned to work on the farm. The Millers have a pasture based dairy and are not interested in going with the expansion of the herd. For the micro-creamery the Millers are proposing a 15'x30' foot building. They plan to be selling only the products they produce.

Mr. Bob Miller added that the proposed micro-creamery is not very big and he is not looking for a tenant house.

Ms. Buckle stated that the local agricultural advisory board was very excited to hear this

proposal. The County does not have anything similar to this operation. The Millers would have to go through the Board of County Zoning Appeals for a special exception.

Mr. Colhoun commented that any approval by the MALPF Board is subject to the local zoning, local regulations etc.

Responding to questions from the Board, Mr. Miller commented that the family would be using a combination of retail activities to sell the produce. Farmers' Markets will be a major sales area. They would be using their own milk. The proposed building is within the footprints of the building and no expansion is planned. The neighbors are supportive of this project.

Motion #8: To approve the request of Robert Miller and Martha Tanner for a micro-creamery operation on an easement property.

Motion: Dr. James Pelura Second: John Draper

Status: **Approved**

G. KENT COUNTY

1. 14-00-09 Lovett, David and Dawn 105.685 acres
Request to re-designate an approved child's lot on easement property.

REQUEST - Kent Co.: To re-designate an approved child's lot on easement property

RECOMMENDATION: Foundation staff recommended approval of the request.

BACKGROUND:

The Lovetts are the original owners of the easement property. There is one pre-existing dwelling on the property. No other lots have been approved on the property. The Lovetts do not own any other district or easement properties. On December 14, 2007, the Board approved a child's lot of up to two acres for their son, Jake.

According to Kent County, the landowners are now requesting that the lot be re-designated to their daughter, Jessica.

The local advisory board has approved this request and it conforms to the county's planning and zoning regulations. The Foundation has not yet received the required payback of \$1,320 per acre.

Carla Gerber, Program Administrator, was available at the meeting. Ms. Gerber stated that Jake had decided to move to Iowa and Jessica decided to use the lot that was previously designated for Jake.

Motion #9: To approve the request of David and Dawn Lovett to re-designate an approved child's lot on easement property.

Motion: John Draper Second: Martha Clark

Status: **Approved**

IV. PROGRAM POLICY

- D. Regulations on Mineral Rights on MALPF - Preserved Properties – Follow-up

In July and August of 2008, the MALPF Board of Trustees approved new regulations on the acquisition of easements on lands relative to the subordination of mineral rights, including natural gas rights, on those properties. The new regulations were necessary because of recent legislation concerning this issue. The original proposed revision of the regulations was

simply to substitute the old regulatory language for the language of the new legislation. The original revisions from last year and the Board approval were attached with the agenda material.

As a result of the intense focus on the issue of natural gas rights in Garrett County over the past year, these regulations were delayed until certain issues such as lateral drilling from off-site were reviewed and resolved. The original revisions were revisited and again revised with the collaboration of Craig Nielsen and Nancy Forrester to clarify more specifically the authority of the Foundation in accepting easements on properties where the mineral rights are not fully subordinated to the easement. Because these revisions go beyond the scope of the substance of the proposed regulations approved last year, MALPF staff resubmitted the new proposed regulations for review by the Board.

Staff recommends approval of the new language to clarify the authority of the MALPF Board to accept the non-subordination of mineral rights in the acquisition of easements both generally and specific to easements acquired in Garrett and Allegany Counties.

Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture, stated that the Foundation is requesting approval of the draft regulations to be put in the Maryland Register. Mr. Nielsen confirmed that the draft regulations passed out are consistent with the Foundation's policy on mineral rights.

Nancy Forrester, Assistant Attorney General, Department of General Services, stated that if her title search revealed that the property has severed mineral rights, generally, the Foundation would require subordination of the mineral rights. But in Allegany and Garrett Counties, landowners can request the MALPF Board to make a determination that the exercise of natural gas rights would not cause any interference to the agricultural operations. Foundation policy requires subordination of mineral rights in all the counties except for natural gas rights in Allegany and Garrett Counties.

Mr. Nielsen commented that Clause A and B outlined in the draft regulations apply statewide. Martha Clark, Board member, suggested that the title of the draft regulations be revised appropriately.

Jerry Klasmeier, Board member, commented that the draft regulation does not make a distinction between a permanent and a temporary disruption of the farming activities.

Mr. Nielsen agreed and stated that it is up to the Foundation to make that determination.

Mr. Colhoun commented that the Committee set up by the MALPF Board observed an actual drilling operation in Pennsylvania. Mr. Colhoun stated that he believed the MALPF Board can make a reasonable judgment.

Mr. Nielsen commented that all the things discussed are commercial use and a commercial use is a violation of an easement as set by the General Assembly. The Foundation can make a judgment that the extraction is not a disruption and is a minor issue. The draft regulations passed out gives the MALPF Board the authority to make a determination in the future. The MALPF Board has the discretion to make a judgment that an extraction would disrupt either the farm's surface or any agricultural use.

Mr. Freedlander raised a question on Clause B mentioned in the draft regulations.

"B. On a case by case basis, the Foundation may accept subordination of less than 100% of the mineral rights interest if certain owners of fractional shares cannot be located or are unwilling to subordinate, and the Foundation determines that the fractional interests are unlikely to be exercised."

Mr. Freedlander wanted to know how the Foundation makes that determination.

Mr. Nielsen commented that a lot depends on the facts of each case.

Ms. Forrester discussed a situation where land was subject to third party mineral rights. The rights were reserved mineral rights on the farm. The rights were reserved in the 1920's. Since that time, the mineral rights passed to at least 50 descendants of the original mineral rights owner. Half of those were willing to subordinate. The other half was either unwilling, dead, or for some reason could not be located. Maryland Department of Environment (MDE) has conveyed that unless they have 100% of mineral rights owners agree to the permit application, they would not issue permits for mining or drilling. As long as the Foundation has the cooperation from MDE, the agricultural easements will not be compromised by the extraction of mineral rights. MALPF bought the easement.

Mr. Colhoun stated that the draft regulations allow discretion on the part of the MALPF Board. Mr. Klasmeier commented that he would like to exercise discretion but he did not see/read the language used in the draft regulations. Mr. Klasmeier remembered that four or five years earlier, farmers in St. Mary's County were trying to remove gravel, and the MALPF Board did not allow that to happen.

Mr. Nielsen stated that the process of restoring land after an extraction can be problematic. Even if it is allowed, the Foundation should be able to say whether it is advisable or not. The draft regulations allow the Foundation and the MALPF Board to exercise discretion.

Motion #10: To approve the new language on Mineral Rights.

Motion: Howard Freedlander Second: Jonathan Quinn
Status: **Approved**

Mr. Colhoun stated that the motion includes the suggestion of Ms. Clark to revise the title appropriately. Mr. Nielsen stated that he would also revise the language to fully describe Clause A, B and C.

Mr. Colhoun commented that the MALPF Board is approving the basic framework and concept and Mr. Nielsen would submit to the Maryland Register and for public comments.

Mr. Freedlander requested the language in Clause B to be amended appropriately to reflect the MDE's role as discussed by Ms. Forrester.

A. ALLOCATION OF FUNDS, FY 2009 AND FY 2010 REVISITED

At the last month's Board meeting on April 28, 2009 Jim Conrad, MALPF, Executive Director, had a lengthy discussion about the possibility of combining funds for FY 2009 and FY 2010 in order to maximize the number of easement offers that can be made given MALPF's limited funding availability. During the meeting, the Board took a straw vote to combine the funding for FY 2009 and FY 2010 and allow the local counties to add additional matching funds.

During discussion, it was asked if the Board could legally combine more than one fiscal year. Craig Nielsen, Assistant Attorney General, had provided a memo stating that the statute does allow the Foundation to combine funding from more than one fiscal year. (Memo attached with agenda material).

Using the combined funding, the revised allocation of funds will provide for \$602,000 of general allotted funding for each county. This is a real advantage for counties where the

landowners have discounted their asking price. Combined with FRPP funds, these counties will receive the most easement offers.

Douglas Wilson, Board member, representing Secretary Earl F. Hance, Maryland Department of Agriculture and Mr. Conrad have decided to withhold \$2,000,000 of FY 2009 funding. The purpose is to have funds available should the third appraisals for properties receiving FRPP funds provide for less than the 20% that the Foundation anticipates. The FY 2010 funds will be bond funding that will not allow IPA (Installment Purchase Agreement Program) or installment payments as settlement options. By withholding FY 2009 funds, we will have more flexibility to handle unique settlement requirements that cannot be done if funding is restricted to bond funds. Any funds remaining may be rolled into the next year the Foundation would have offers.

The memo also had an attached chart that outlined where the Counties are for the FY 2009 offer cycle. It indicated the number of counties willing to use FRPP funds, that support combining FY 2009 and FY 2010 funding, and which at this point will commit additional matching funds.

Mr. Pat O'Connell, MALPF's contractually employed financial adviser, met with Mr. Conrad on May 20, 2009. Mr. O'Connell would like permission to contact every landowner who gets an offer to see if they have questions about or are interested in the IPA program. Mr. Conrad preferred not to give Mr. O'Connell permission but wants the Board to make the decision. He suggests that rather than giving Mr. O'Connell permission to contact of the landowners, the Board approves for staff to place a paragraph into the landowners offer letter that provides Mr. O'Connell's contact information and encourages landowners and/or their financial advisers to contact Mr. O'Connell for additional information on settlement options.

Staff is requesting the following votes be made:

- 1) Approval to combine FY 2009 and FY 2010 funds to operate one easement cycle in FY 2009.
- 2) Approval to accept additional matching funds from the counties.
- 3) Approval to allow Pat O'Connell to contact every recipient of an easement offer in order to discuss the IPA program; OR
Approval to revise the landowner's offer letter to provide Mr. O'Connell's contact information.
- 4) Set a deadline to hear back about additional matching funds from the counties of June 15. (Mr. Conrad would need enough time to redo the allocation, but the counties need enough time to have the Commissioners/Council approve or disapprove of additional funds).

Pat O'Connell, President, Evergreen Capital Advisors, Inc., was present at the meeting.

Ms. Forrester expressed her concern that most of the easements are going to be funded through federal funding. The co-operative agreement does not permit installments.

Ms. Council pointed out that some properties do not qualify for receiving federal funding and some counties have conveyed that they don't want to use federal funding.

Ms. Forrester commented that bond funding also does not allow IPA. Also, the new law regarding confidentiality does not allow release of information until the Foundation has been able to complete the easement cycle.

Ms. Council reminded the Board of Mr. Conrad's suggestion that the Board approves the insertion of a paragraph into the letter being sent to landowners providing Mr. O'Connell's contact information and encouraging landowners and/or their financial advisers to contact Mr.

O'Connell for additional information on settlement options.

Mr. O'Connell stated that the IPA program was authorized by the General Assembly. The Foundation had spent a considerable amount of time and effort with Mr. O'Connell and the Bond Counsel. The Foundation has an easement cycle each year and each year has a round of new applicants. One of the issues is to keep the landowners informed about how the program functions so that they can make informed decisions when they fill out their option contracts.

Mr. O'Connell commented that he does understand Ms. Forrester's comments about the FRPP money but it is not yet clear because in some parts of the Country, FRPP does use money in transactions involving IPAs. The FRPP program varies from state to state. The bond issues are bigger issues because the bond proceeds cannot be invested to purchase IPAs. So it has to be ensured that any money being utilized for IPAs should be coming from last years' appropriation rather than from the bond funds appropriation.

Mr. Boniface commented that the Foundation believes the County Program Administrators to be the "eyes and the ears" of the Foundation. He stated that he believed whether the decision on whether Mr. O'Connell should be involved or not should be left to the discretion of the County Program Administrators.

Mr. O'Connell commented that Harford County has been involved with IPA and the County had spent approximately 20 years educating the landowners. The County has a good understanding on how the IPA program works. However, there are some counties where the administrators are busy dealing with MALPF's current regulations, handling easement applications, talking to landowners etc. In such cases, it is difficult to build awareness on the part of the County Program Administrators to respond to landowners' questions.

Ms. Council stated that the landowners are not completely uninformed about the IPA program. The Foundation includes an information packet when it sends out its offer letters.

Mr. Nielsen remarked that there are still some concerns about the County Program Administrators sharing the information with Mr. O'Connell in the light of the new law on confidentiality. It is not an issue if the landowners want to contact Mr. O'Connell.

Ms. Council added that the Foundation staff is proposing to add Mr. O'Connell's details to the offer letters.

Board members wanted to hear the opinion of the County Program Administrators.

Ms. Landis-Smith, Queen Anne's County, Program Administrator, commented that there are too many twists with FRPP money, FY 2010 money etc. The Foundation staff has to determine and inform the County Program Administrators on who is eligible to receive offers. She then would be able to get in touch with the specific landowner. Ms. Landis-Smith believed contacting every applicant at this stage will be confusing to the applicants.

Ralph Robertson, Carroll County, Program Administrator, agreed with Ms. Forrester that the FRPP money cannot be used for IPA programs.

Bill Amoss, Harford County, Program Administrator, stated that he agreed with Mr. O'Connell that it does take years to work with the landowners to educate them about the IPA program.

they review the requests in order to prepare them in time to be sent out with the rest of the agenda. This will give Board members time to review the item before the meeting.

B. Recertification Request – Frederick County - Postponed

V. **INFORMATION AND DISCUSSION**

1. Policy on the Acquisition of Easements, Violations on the Property at the Time of Acquisition, and Baseline Documentation

MALPF staff has had recent experiences where an easement went to settlement with a violation (such as dumping) unresolved on the property. For example, recently in Baltimore County, MALPF was involved in bringing a co-held Rural Legacy property back into compliance with the easement by requiring a dump that may have existed at time of settlement to be removed. MALPF has been informed that at least two applications with similar existing problems are likely to be received in FY 2011.

Two issues are relevant in these cases. First, sometimes, the landowner needs the resources provided by selling the easement to correct an existing violation. Second, not every applicant property has been inspected in advance of selling an easement to the Foundation, so a landowner may settle on an easement where the property is in violation of the easement, but the Foundation is not aware of the existing violation.

Staff recommends that the Board consider formalizing the following change in policy. First, allow settlements to occur where MALPF is aware of an existing violation and where settlement funds are needed to correct the violation. Such settlements will require holding back a percentage of the funds only to be released when MALPF staff is satisfied that the violation has been corrected. Direct Nancy Forrester, Assistant Attorney General securing MALPF settlements, to implement this policy in cooperation with the Title Companies handling the settlements.

Second, require each property receiving an easement offer to have baseline documentation completed by the county program administrator in cooperation with MALPF staff before going to settlement. The baseline documentation format will be drawn up by Kim Hoxter in cooperation with MALPF staff, legal counsel, and county program administrators. Part of the purpose of this documentation is to insure that no violations of the proposed easement exist on the property at time of settlement or, if violations are identified and it is appropriate, to allow settlement to occur withholding part of the settlement funds until the violation is corrected.

Ms. Forrester stated that the issue is open for discussion and invited suggestions from the Board members and the County Program Administrators.

Ms. Landis Smith stated that Rural Legacy has a checklist for their environmental assessment and the landowners are required to sign the checklist. She suggested that something similar to this can be developed as baseline documentation.

Mr. Amoss commented that pictures and aerial maps combined with checklists also can make up baseline documentation.

Mr. Colhoun asked for a motion for adjournment of the meeting and a move into a closed Executive Session, pursuant to the provisions of State Government Article Section 10-508 (a) (3) to consider offers to purchase agricultural land preservation easements and State Government Article Section 10-508 (a) (8) to consult with legal counsel staff, consultants, or other individuals about pending or potential litigation.

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Motion#14 : To adjourn regular session and move into a closed Executive Session to consider the acquisition of agricultural land preservation easements, and to consult with counsel and staff about proposed and pending litigation.

Motion: Howard Freedlander Second: John Draper
Status: Approved
Favor: Daniel W. Colhoun, Vera Mae Schultz, Billy Boniface, Martha A. Clark,
John W. Draper, Jr., Howard S. Freedlander, Jerome W. Klasmeier,
Dr. James Pelura III, Jonathan C. Quinn
Opposed: None

The Open Meeting of the Board meeting was adjourned at approximately 11:10 am.

The Closed Meeting of the Board was held from 11:12 am to 11:35 am 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] (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 Colhoun, Vera Mae Schultz, Billy Boniface, Martha A. Clark, John W. Draper, Jr., Howard S. Freedlander, representing Treasurer Nancy Kopp, Jerry Klasmeier, representing Comptroller Peter Franchot, Dr. James Pelura, Jonathan Quinn, Dan Rosen, representing Secretary Richard E. Hall, Maryland Department of Planning.

TOPICS DISCUSSED:

- 1) FY 2009 Offers
- 2) Status Report on Pending and Potential Litigation
 - a) Wachovia Bank as Custodian for Sass Muni V DTR vs. Ralph P. & Dianne L. Stern and AgFirst, FCB and State of Maryland, and Jerry Sopher, Trustee, and Karl A. Terwilliger, and Baltimore County, Case # C-07-9151.
 - b) MALPF vs. Paul F. Stitzel et al, Case # 21-C-06-025292 DJ.
 - c) James R. Owens & Linda M. Owens vs. Peter G. Brown & Jeffery L. Conner & Christa D. Conner, Case #11-C-07-009981 DJ.
 - d) Easement violation in Baltimore County related to dumping.

The Closed Meeting was adjourned at 11:35 am.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

Carol Council, MALPF Administrator

Diane Chasse, MALPF Administrator