

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
OPEN MEETING MINUTES  
June 23, 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  
Jonathan C. Quinn  
Robert F. Stahl, Jr.,  
Joe Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning  
Christopher H. Wilson  
Douglas H. Wilson, representing Secretary Earl F. Hance, Maryland Department of Agriculture

**TRUSTEES ABSENT:**

Dr. James Pelura III

**OTHERS PRESENT:**

Tim Blaser, Frederick County, Program Administrator  
Tammy Buckle, Caroline County, Program Administrator  
Diane Chasse, MALPF Administrator  
James Conrad, MALPF Executive Director  
Yates Clagett, Prince George's County, Program Administrator  
Carol Council, MALPF Administrator  
Rama Dilip, MALPF Secretary  
Nancy Forrester, Assistant Attorney General, Department of General Services  
Carla Gerber, Kent County, Program Administrator  
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  
Wally Lippincott, Baltimore County, Program Administrator  
Jim McCafferty, Landowner, Caroline County  
Tom McGuckian, Landowner, Caroline County  
Katherine Munson, Worcester County, Program Administrator  
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture  
Dan Rosen, Maryland Department of Planning  
Jeremy Rothwell, Maryland Department of Natural Resources  
Charles Rice, Charles County, Program Administrator  
Walter Rullman, State Highway Administration – Real Estate, Baltimore County  
Ned Sayre, Harford County, Ag. Preservation Planner  
Eric Shertz, Cecil County, Program Administrator  
Gloria Smith, Wicomico County, Program Administrator  
Stewart Smith, Prince George's County, Planner

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.















to the north of the strip will go to Mr. Ciman and Ms. Zodhiates.

According to Baltimore County, the Wilsons' driveway is encroaching on the Ciman/Zodhiates property and the Wilsons' house does not meet setback requirements. The proposed swap will resolve both issues. The soils coming out of the easement are 70% qualifying soils and the soils coming under easement are 53% qualifying soils. However, another consideration is that the some of the soils coming out of easement are not useful because they are under a driveway.

The request was approved by the local advisory board. The local board visited the property and determined that there was no detrimental impact to the agricultural capability of the farm. The request meets planning and zoning regulations and corrects a zoning violation.

Wally Lippincott, Program Administrator, was available at the meeting. Mr. Lippincott located the driveway on the map provided in the agenda packet. The driveway can be seen meandering across the Zodhiates land and goes back to Mr. Wilson's house. Mr. Wilson, the neighbor, wanted to make some additional improvements and approached Mr. Zodhiates for a lot line adjustment.

Mr. Doug Wilson wondered how Mr. Wilson's house was built without having the proper setbacks. It would have been helpful if this problem had been known to the Foundation before the property was settled.

Responding to a question, Mr. Lippincott, commented that the landowners and Mr. Wilson would pay for the survey costs.

Motion #8: To approve the request of Richard Ciman and Mary Zodhiates to amend a deed of easement to correct an encroachment.

Motion: Doug Wilson Second: Robert Stahl  
Status: **Approved**

2. 03-98-05 Edward T. Lippy 95.5 acres  
Request from State Highway Administration for Right of Entry Agreement.

Request – Baltimore County:

The request is for approval of a Right of Entry Agreement.

Recommendation:

Foundation staff recommends approval as there will be no agricultural impact of the re-grading.

Background:

Mr. Lippy is the original owner of the easement property. According to Baltimore County, the purpose of the Right of Entry Agreement is to re-grade the slope in order to improve the site line at the corner of Hanover and Bortner Roads.

The local advisory board visited the property and concluded that the proposed re-grading will not be detrimental to the agricultural capability of the farm.

Walter Rullman, State Highway Administration – Real Estate, Baltimore County, and Wally Lippincott, Program Administrator, were available at the meeting.

Mr. Lippincott stated that the road is a busy and dangerous road. The removal of vegetation is on a separately owned property and not on the easement property.









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 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 and Mr. Conrad stated that they have not received any suggestions from the Board members and the County Program Administrators.

Motion #14: 1) To enact a policy to allow the Department of General Services to settle on properties that have violations. However, the Foundation to hold in escrow a certain amount of money only to be released when the violations are corrected. 2) To require that each property receiving an easement offer be inspected in advance of settlement and baseline documentation developed on that property. If violations are identified, to allow the Foundation to delay settlement until the violations are corrected or go to settlement withholding a portion of the offer until the violation(s) is/are corrected.

Motion: Robert Stahl Second: Jonathan Quinn  
Status: **Approved**

Ms. Schultz asked if there were any costs involved with baseline documentation.

Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator, stated that she did not believe there would be any additional costs. Mr. Conrad commented that the baseline documentation would be verification that the landowners have correctly conveyed what is on their property and the property does not have any encroachment. It would involve a general farm inspection.

Charles Rice, Program Administrator, Charles County, commented that the County staff currently does this for Rural Legacy easements.

Ned Sayre, Ag. Preservation Planner, Harford County, wondered how to determine when a dumping becomes a violation.

Ms. Council stated that usually the County Program Administrators inform the MALPF staff when they see something that doesn't seem right. Ms. Council requested the County Program Administrators to use their judgment and to report to the MALPF staff. Some pictures of the questionable area might help.

**V. INFORMATION AND DISCUSSION**

**B. Federal Matching Funds (FRPP) Update and Discussion**

Mr. Conrad passed out a report from the American Farmland Trust. This report contained comments from the American Farmland Trust and is a good summary of issues in dealing with Farm and Ranch Lands protection Program (FRPP) funds. The Farm Bill attempted to make the FRPP program more workable.

Mr. Conrad pointed out that the purpose of the changes in the Farm Bill was to try and change the FRPP program into a type of cost share or funding program rather than an easement acquisition program. Almost all the changes proposed in the language of the Farm Bill were directed at changing the way the FRPP is defined; the purpose of the program away from being a simply soil protection purpose to having an agricultural preservation purpose. A key question has been, what is the Federal Government obtaining in working with State and private organizations?

Mr. Conrad commented that the NRCS has always considered itself as obtaining real property no different than purchasing fee interest. One of the intent of the Farm Bill was to change this concept. Mr. Conrad shared the Joint Statement of Managers accompanying the conference report stating that the Managers "do not intend this right to be considered an acquisition of real property, but in the event an easement cannot be enforced by the eligible entity the Federal Government shall ensure the easement remains in force." NRCS reiterates that it is about acquiring real property. Once NRCS makes that assertion, all of the problems created making the program difficult to work with come back again through the back door through the rule-making process.

For example, the Federal government has asserted an independent right to enforce easement independent of the actual easement holder. So instead of saying that it will enforce its rights, if they are not being enforced by the easement entity, NRCS claims an independent and parallel right to enforce the easement. In the past, the Foundation has had issues with this and the other additional restrictions that grow from this concept.

Ms. Forrester recently attended a meeting in Colorado where this issue was discussed. In that discussion, it was clear that NRCS brought back lot of issues that were supposed to be taken out of FRPP through the new certification process.

NRCS is now saying, that

1. There will be no residential development on the property, including no tenant house.
2. There will only be limited agricultural subdivision. Instead of using MALPF regulations, each resulting parcel from an agricultural subdivision for a federal easement property has to be at least as large as the average farm size in the State where agricultural subdivision takes place.
3. The FRPP easement valuation system requires MALPF to acquire a third appraisal.
4. Annual monitoring is required rather than following the State standards.
5. No amendments to Deed of Easement are allowed (no swaps, no outline adjustment, and no other kinds of housekeeping operations that could benefit the farming operations).
6. Environmental warranties are required.
7. A second standard review procedure is required of the appraisal and title commitment in addition to the State review.
8. FRPP has created a new interview procedure for landowner applicants that did not exist before.



**MALPF Board Open Meeting Minutes (06-23-09): Page 17**

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.

Motion #16: 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: Doug Wilson Second: Chris Wilson  
Favor: Daniel W. Colhoun, Vera Mae Schultz, William K. (Billy) Boniface, Martha A. Clark, John W. Draper, Jr., Jonathan C. Quinn, Robert F. Stahl, Jr., Joe Tassone, Christopher H. Wilson, Douglas H. Wilson  
Status: **Approved**

The Open Meeting of the Board meeting was adjourned at approximately 12:00 noon.

The Closed Meeting of the Board was held from 12:05 p.m. to 01:20 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] (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., Jonathan C. Quinn, Joe Tassone, Christopher H. Wilson, Douglas H. Wilson

**TOPICS DISCUSSED:**

- 1) FY 2009 Offers
- 2) Status Report on Pending and Potential Litigation
  - a) Herschell B. Claggett, Sr. vs. Maryland Agricultural Land Preservation Foundation, et al
  - 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.

The Closed Meeting was adjourned at 01:20 p.m.

Respectfully Submitted:

\_\_\_\_\_  
Rama Dilip, MALPF Secretary

\_\_\_\_\_  
James Conrad, MALPF Executive Director