

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
OPEN MEETING MINUTES  
August 25, 2009**

**TRUSTEES PRESENT:**

Vera Mae Schultz, Acting Chair  
William K. (Billy) Boniface  
Daniel W. Colhoun  
John W. Draper, Jr.,  
Jerome W. Klasmeier, representing Comptroller Peter Franchot  
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  
Jonathan C. Quinn

**TRUSTEES ABSENT:**

Howard S. Freedlander, representing Treasurer Nancy Kopp  
Dr. James Pelura III

**OTHERS PRESENT:**

Anne Bradley, Frederick County, Agricultural Preservation Planner  
Tammy Buckle, Caroline County, Program Administrator  
Diane Chasse, MALPF Administrator  
James Conrad, MALPF Executive Director  
Carol Council, MALPF Administrator  
Veronica Cristo, Calvert County, Program Administrator  
Rama Dilip, MALPF Secretary  
Kristin Fisher, Montgomery County, Ag. Program Specialist  
Nancy Forrester, Assistant Attorney General, Department of General Services  
Billy Gorski, Anne Arundel County, Planner  
Buddy Hance, Secretary, Maryland Department of Agriculture  
Wilson Lippy, Landowner, Carroll County  
Fatimah Hasan, Maryland-National Capital Park and Planning Commission, Prince George's County  
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator  
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture  
Bubby Norris, Farmer, St. Mary's County  
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist  
Wally Lippincott, Baltimore County, Program Administrator  
Pat O'Connell, President, Evergreen Capital Advisors, Inc  
Ralph Robertson, Carroll County, Program Administrator  
Stewart B. Smith, Prince George's County, Planner  
John Zawitoski, Montgomery County, Program Administrator  
William Zentgraft, Jr., Landowner, Calvert County  
Gennie Zentgraft, Landowner, Calvert County

Vera Mae Schultz, Acting Chair, called the meeting to order at 9:05 a.m., at the Maryland Department of Agriculture building, Annapolis, Maryland.

Ms. Schultz asked the guests to introduce themselves.



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necessary to address potential drainage issues.” He goes on to say that there is the possibility of the county acquiring a portion of the property for future widening of the road.

The request has been approved by the local advisory board and the Planning & Zoning Department. It is anticipated that the lot will have to be greater than 1.0 acre to accommodate the septic area (but no larger than 2.0 acres). If so, the Advisory Board has approved the lot to be expanded to the north and east (adjacent to an area withheld from the easement). If approved, payback for the lot will be \$1,473.22 per acre.

Mr. William Zentgraft's son, William Zentgraft, Jr, and his daughter, Gennie Zentgraft, were available at the meeting. Veronica Cristo, Program Administrator, was also available at the meeting.

Carol Council, MALPF Administrator, spoke about the three areas that were withheld from the district and the easement. This was done in early '80s and, since then, the terminology has changed. The areas were separately deeded with two smaller pieces owned by Mr. Zentgraft's sisters and could not have been part of the easement. One of them had a pre-existing dwelling. The largest of the three was owned by Mr. Zentgraft.

Mr. Colhoun was concerned that the proposed child's lot was subdividable and was proposed to be located at the end of the right-of-way. If the Board approves this request, there will be one more subdividable lot on the farm and possibly, in the future, no houses will remain on the farm. Mr. Colhoun wondered if it is possible to have an alternative location that would be closer to the road and occupy less land.

Ms. Zentgraft stated that in her opinion that would be “No”. It is an extremely steep grade between the two driveways and one of the driveways goes into their father's lot.

Responding to a question, Ms. Zentgraft stated that their father is currently actively operating the farm. Their other brother lives on the farm and helps his father. Mr. William Zentgraft, Jr, lives away from the farm but helps on the farm over the weekends.

Ms. Cristo stated that the paperwork for the other brother's subdividable lot is ready to be submitted at the same time.

Mr. Stahl wanted to confirm that the family understands that in the future there may be no house remaining on the farm.

Ms. Zentgraft confirmed that the family is aware of this. She added that the farm next to them is under the preservation program. The family has no intention of subdividing the farm. The lots are to remain in the family.

Mr. Stahl commented that the MALPF Board is interested in ensuring that in the future, the farm, irrespective of whoever ends up with the farm, has the ability to have a house. The Board is concerned not only about the current generation but also about future generations.

Mr. Stahl also expressed his concern about ensuring enforcement of the restrictions on the easement property. It is hard to monitor the strips between the lots.

Mr. Colhoun wondered if the landowner will be willing to have either of his lots be non-subdividable.

Ms. Zentgraft stated that she believed that was not her father's intention. Her father's intention was to maintain and convey the farm to his sons sometime in the future.

Mr. Tassone stated that the situation is a result of policy and procedures that existed in 1984

and 1988 creating a minor residential subdivision in the middle of the farm. This is highly undesirable for the program and, over time, the Foundation has developed lot location policy. But there is no option to undo the past.

Mr. Conrad commented that the Foundation's Lot Location Policy lists desirable options for geographical location, but does not indicate a preference for any particular criterion. In the current request, there is a trade-off between clustering vs. proximity to the road.

Motion #2: To approve the request of William A. Zentgraft for a child's lot up to 2.0 acres for son, William Zentgraft, Jr.

Motion: Billy Boniface Second: Jerry Klasmeier  
Opposed: Dan Colhoun  
Status: **Approved**

Mr. Stahl added that the Foundation staff should work with the County and the landowner to minimize some of the concerns discussed. Mr. Colhoun suggested Foundation staff visit the site to explore opportunities to address these concerns. It might cost more money but will be saving farmland forever.

**B. CARROLL COUNTY**

1. 06-99-15A Foggy Bottom Farms, Inc., Wilson Lippy 45.524 acres  
Request for up to 2.0 acres for a child's lot for daughter, Mary Lee Lippy.

Request - Carroll County:

Request for up to 2.0 acres for a child's lot for daughter, Mary Lee Lippy.

Recommendation:

Staff recommends approval of the request as it meets the Foundation's Guidelines for Lot Location. The lot will be located adjacent to the property boundary and will have fee simple access.

Background:

Wilson Lippy is the original owner of the easement property. No previous lot exclusions have been requested. As there are no pre-existing dwellings, Mr. Lippy withheld 1.0 acre for the construction of a future dwelling to be associated with the farm.

According to Carroll County, the proposed lot will be located in a wooded area and will have access along the property line. The lot is being placed in an area that will cause the least disturbance to the overall farm operation. Due to the property configuration, it is not possible to locate the dwelling close to the County road.

The lot has been approved by the local advisory board and meets Planning & Zoning requirements. The county's office of Development Review has verified that the chosen location is percable, although a perc test has not yet been performed. If the request is approved, payback for the lot will be \$4,026.24 per acre.

Wilson Lippy, landowner, and Ralph Robertson, Program Administrator, were available at the meeting.

Mr. Robertson stated that the request meets the Foundation's guidelines. The lot is located in the proposed location because of the configuration of the parcel itself. There was a withheld





Ms. Chasse noted that this proposal was fully approved by the legislative committee.

**II. MARBIDCO and MALPF-Dedicated Agricultural Transfer Revenues**

**Short description of the issue/problem**

Two years ago, MALPF agreed to allow a dedication of \$4 million of its agricultural transfer tax (and, when insufficient revenues accrue from agricultural transfers, the balance to come from MALPF's share of the real estate transfer tax revenues) to secure installment purchase agreements (IPAs) used to acquire agricultural land preservation easements. These revenues were to go directly to MARBIDCO (Maryland Agricultural and Resource-Based Industry Development Corporation), could not be redirected to MALPF after FY 2009 and were necessary to leverage IPA interest payments from future MALPF revenues and provide a sufficient comfort level that this debt would be guaranteed by the State such that landowners would be willing to accept this payments option.

Since this bill went into effect, the Treasurer's Office in conjunction with the Office of the Attorney General has advised MALPF and MARBIDCO that this dedication of funds for the purpose of leveraging IPAs beyond 15 years is unconstitutional. MALPF can do self-funded IPAs without needing this dedicated revenue stream simply by providing grants to MARBIDCO for individual easement purchases. After July 1, 2010, revenues transferred automatically to MARBIDCO can *only* be used to purchase easements using IPAs, and can no longer be transferred back to MALPF if not used for this purpose. This restriction will have the effect of placing traditional MALPF funding out-of-reach if there is insufficient demand for IPAs to be used to purchase easements. Even if there the demand for IPAs meets or exceeds \$4 million annually, the demand for IPAs can be met without dedicating these revenues directly to MARBIDCO, because self-funded IPAs can be done directly by grants to MARBIDCO.

**A description of the solution**

This funding should not be tied to MARBIDCO or to the purchase of easements using IPAs. It should simply be made available to MALPF with no conditions. If landowners choose the IPA payments option, MALPF can fund it out of its standard allocation of funds using grants to MARBIDCO, including funds to cover MARBIDCO's expenses.

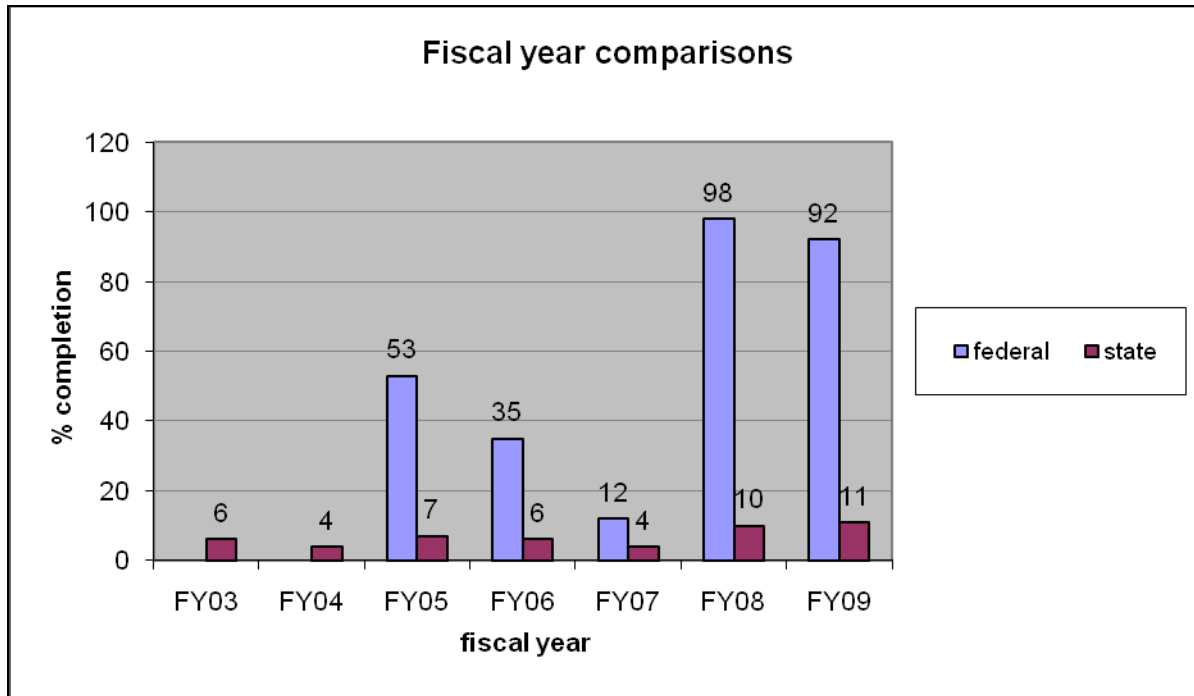
Mr. Doug Wilson commented that the money has to go to the IPA program and, if there is not enough activity in the IPA program, it stays there and cannot be transferred back to the Foundation. Given the current status, the Foundation does not consider this appropriate and is proposing changes.

Mr. Stahl noted that he, Mr. Conrad, and a small group of people will seek to meet with Senator Middleton, the original bill sponsor. Mr. Conrad stated that he had spoken with Joanna Kille, Director, Governmental Relations, Maryland Department of Agriculture, to explore other options in case Senator Middleton chooses to defer and not sponsor the bill.

Mr. Conrad commented that the Foundation is still having discussions with Mr. Steve McHenry, Executive Director, MARBIDCO to finalize the language of the bill.

Ms. Schultz asked if there was a motion to accept the Legislative Committee's report. Accepting the Legislative Committee's report would imply that the Lot Rights Proposal and the Condemnation payment proposals would receive further study and the Board is accepting the proposal on seeking and committing non-MALPF Funds for Farmland Preservation and the proposal on MARBIDCO and MALPF-Dedicated Agricultural Transfer Revenues.





With cooperative efforts from MALPF and the county program administrators, MALPF's inspection goal was met for the state easements, and was nearly met for the federal easements.

The following proposed policy incorporates comments and changes suggested by board members and county program administrators.

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### MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION EASEMENT INSPECTION POLICY

Approved by the MALPF Board of Trustees, \_\_\_\_\_ date \_\_\_\_\_

Historical records indicate The MALPF Board approved a motion on December 27, 1983 to develop an easement inspection policy in response to legislative auditor's comments. The proposed policy would require counties to perform inspections on a minimum of 10% of their existing state funded easement properties and 100% of their federally funded easement properties each year.

#### Easement Inspections

- All easement inspections will be conducted by the county offices, MALPF Monitoring Coordinator, or an authorized representative.
- Properties with funds provided by the Federal Farmland Protection Program will be inspected annually.
- Easement inspections should be completed on the MALPF Easement Inspection Form found on the MALPF website.
- Copies of completed forms will be submitted by the county offices to the MALPF office, in care of the Monitoring Coordinator. If a MALPF representative completed the inspection then copies would be sent to the appropriate county office.
- An annual written report for the FRPP inspections will be submitted to NRCS by the Monitoring Coordinator no later than December 31.

Easement Inspection Completion Date

- All easement inspections will be completed by June 30, the end of the fiscal year period.

Inspection Tracking

- County inspections will be tracked throughout the fiscal year by the Monitoring Coordinator.
- County offices will be reminded periodically of the impending deadline and which properties require inspections.

Non-compliance

- If a county fails to meet its goals, it may submit a letter to MALPF with the reasons it missed the goal.
- If the reason is accepted by MALPF, the county will be given the opportunity to make up the shortfall the following fiscal year.

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**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
EASEMENT INSPECTION POLICY**

**Approved by the MALPF Board of Trustees December 27, 1983**

In order to insure that easements purchased by the Foundation are in effect and are in compliance with the conditions as stated in the deeds of easement, the Foundation shall request each local advisory board to perform routine inspections on an annual basis of the properties within its jurisdiction on which development rights easements have been purchased. These inspections shall be performed under the following conditions:

1. Each year, inspections shall be performed on 10% of all current easement properties within each county;
2. Inspections of easement properties shall be performed no less than once every 10 years;
3. Inspection information shall be recorded in full on easement inspection forms provided by the Foundation;
4. Copies of each inspection shall be sent to the Foundation as soon as it is completed;
5. The Executive Director shall report to the Board of Trustees any alleged violations of the conditions of a deed of easement;
6. The Board of Trustees shall determine the approximate action to deal with deed violations on a case by case basis.

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Mr. Conrad commented that one of Ms. Hoxter's roles had been to keep in touch with the counties. If the counties had problems and felt they might not be able to reach the goal of achieving 10% of non-FRPP easements, Ms. Hoxter and the other MALPF Administrators will be able to anticipate and assist in meeting the requirement. One of the things that had come to light is rarely, due to last minute emergencies, the County Program Administrator is not able to meet the monitoring requirement. This situation usually, but not always, can be avoided if the County Program Administrator keeps Ms. Hoxter informed about the situation and the MALPF staff can step up to meet the goal. The purpose of monitoring is to visit and check the properties.

Mr. Conrad stated that there is a need to have flexibility and an understanding that certain circumstances are beyond people's control. The Foundation cannot hold a county responsible for non-compliance. The intention of the policy is to make sure that site inspections continue to occur and the Foundation makes progress being aware of what is happening on its easement properties without creating ill will on the part of the counties.

Mr. Conrad reiterated that the Foundation is seeking policy changes to allow more flexibility to accommodate circumstances that are beyond a county's control.





Mr. Tassone made a few observations:

- Since 1990 the percentage of development outside priority funding areas is continuing to increase at the State level.
- Number of acres developed for residential land is also continuing to increase outside the PFAs.
- Minority of resource lands are highly stabilized by land use tools.
- Zoning and land use tools are as/or more important than easement acquisitions for the long term success of achieving the goals (The reason is there is not enough money to lock away all the lands in time to compete with the private market for development). The MALPF Task Force had done an excellent analysis of this and came to the same conclusion that when you look collectively at the programs, it is not clear that preservation is being strategically focused in a manner that the goals can best be achieved.

General Recommendations:

The State adopt a policy to invest strategically in recognition of local land use goals and practices, concentrate the majority of funds in areas within resources of appropriate size and configuration for the resources and industries involved and where zoning provides time to achieve goals before they are compromised by development.

Mr. Tassone commented that this and other recommendations of the Plan are modeled on the certification program criteria established on the basis of Agricultural Stewardship Legislation in 2006. Mr. Tassone stated that he believed that it would be a good idea to apply the general concepts to all the State programs whose success is based on protecting large aggregations of land and preventing intrusive development within those protected areas. Other areas where the situation is not the same may require some special work with the local governments to protect the larger scale of investment to make it possible to achieve the goals over time.

The funding recommendation is to implement the funding recommendation of the MALPF Task Force from their 2004 report. The Task Force called for increases in revenues for MALPF and all State programs that were funded primarily by the real estate transfer tax. The revenue recommendations were carefully outlined by the MALPF Task Force to be the most appropriate to impose on the portions of the private sector and geographic areas.

The implications for the Foundation is to think about how what we do for the certification program to target efforts can be emulated through the rest of the Foundation's program. Certification only affects the allocation of the agricultural transfer tax revenues in individual counties, but is only a minority of the money used for preservation. The majority of the money coming from the real estate transfer taxes is not affected by certification.

Mr. Stahl commented that he continues to share his concern that MDP is focused on the local land use in working towards this goal, and needs to place a similar focus on facilitating development in the priority funding areas. Mr. Stahl stated that he believed the State is doing a poor job in this respect. Clearly the penalty for developing in the priority funding areas is much more than developing outside the priority funding areas. The State Water Appropriation is making it hard to get water appropriation from a large municipality.

Mr. Tassone stated that he agrees with Mr. Stahl's concerns and shared that a specific work group is designed to address this issue. Mr. Tassone is working with this group to explore why priority funding areas are not an effective magnet for market development and for people investing for business or residential purposes. The attempt is to change the situation and create an effective magnet.

Ms. Schultz 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, State Government Article Section 10-508 (a) (3) to obtain legal advice from counsel concerning easement violations, and State Government Article Section 10-508 (a) (8) to consult with legal counsel staff, consultants, or other individuals about pending or

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potential litigation.

Motion #10: To adjourn regular session and move into a closed Executive Session to consider purchasing agricultural land preservation easements, to obtain legal advice concerning easement violations, and to consult with counsel and staff about proposed and pending litigation.

Motion: John Draper Second: Dan Colhoun  
Favor: Vera Mae Schultz, William K. (Billy) Boniface, Daniel W. Colhoun, John W. Draper, Jr., Jerome W. Klasmeier, Robert F. Stahl, Jr., Joe Tassone, Christopher H. Wilson, Douglas H. Wilson, Jonathan C. Quinn

Status: **Approved**

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 12:15 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] (7) To consult with counsel to obtain legal advice on a legal matter.

[x] (8) To consult with staff, consultants, or other individuals about pending or potential litigation

During the Closed Meeting, the following Board members were present.

Vera Mae Schultz, William K. (Billy) Boniface, Daniel W. Colhoun, John W. Draper, Jr., Jerome W. Klasmeier, Robert F. Stahl, Jr., Joe Tassone, Christopher H. Wilson, Douglas H. Wilson, Jonathan C. Quinn

**TOPICS DISCUSSED:**

- 1) FY 2009 Offers
- 2) An agricultural subdivision violation in Frederick County
- 3) An agricultural subdivision violation in Caroline County
- 4) Status Report on the following pending and potential litigation:
  - a) Herschell B. Claggett, Sr. vs. Maryland Agricultural Land Preservation Foundation, et al, Case # 00578
  - b) P. Michael Larrick
  - c) Wachovia Bank v. Dianne L. Stern et al, Case #C-07-9151
  - d) MALPF vs. Paul F. Stitzel et al, Case # 21-C-06-025292 DJ.
  - e) Covered Bridge Farms LLC (R. Wayne Newsome)
  - f) James R. Owens & Linda M. Owens vs. Peter G. Brown & Jeffery L. Conner and Christa D. Conner, Case #11-C-07-009981 DJ
  - g) Yoder vs. Bellevale Farms Circuit Court for Baltimore County
  - h) Michael W. Johnson, Sr. personal representative for the estate of Regina Mary Richardson Johnson vs. Grayson W. Scarff, Jr, MALPF et al, Case # 12-C-05-000813 OC
  - i) Easement violation in Baltimore County related to dumping.
  - j) Possible tenant house violation in Frederick County
  - k) Possible easement violation in Carroll County

The Closed Meeting was adjourned at 12:15 p.m.

Respectfully Submitted:

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Rama Dilip, MALPF Secretary

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James Conrad, MALPF Executive Director