

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
OPEN MEETING MINUTES  
September 22, 2009**

**TRUSTEES PRESENT:**

Vera Mae Schultz, Acting Chair  
William K. (Billy) Boniface  
Daniel W. Colhoun  
Jerome W. Klasmeier, representing Comptroller Peter Franchot  
Dr. James Pelura III  
Daniel Rosen, 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:**

John W. Draper, Jr.,  
Howard S. Freedlander, representing Treasurer Nancy Kopp  
Robert F. Stahl, Jr.,

**OTHERS PRESENT:**

Steven Ball, Charles County, Planning Director,  
Derick Berlage, St. Mary's County, Director of Land Use  
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  
Kevin Clark, Caroline County, Planner III  
Veronica Cristo, Calvert County, Program Administrator  
Rama Dilip, MALPF Secretary  
Thomas Filbert, Assistant Attorney General, Maryland Department of Agriculture  
Nancy Forrester, Assistant Attorney General, Department of General Services  
Carla Gerber, Kent County, Program Administrator  
Billy Gorski, Anne Arundel County, Planner  
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator  
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist  
Jack Lenox, Wicomico County, Planning Director  
Paul Meyer, Landowner, Carroll County  
Katherine Munson, Worcester County, Program Administrator  
Pat O'Connell, President, Evergreen Capital Advisors, Inc  
Charles Rice, Charles County, Program Administrator  
Donna Sasscer, St. Mary's County, Program Administrator  
Gloria Smith, Wicomico County, Program Administrator  
Sue Veith, St. Mary's County, Environment Planner IV

Vera Mae Schultz, Acting Chair, called the meeting to order at 9:20 am at the Maryland Department of Agriculture building, Annapolis, Maryland. Due to lack of quorum, the meeting could not start before 9:20 am.

Ms. Schultz asked the guests to introduce themselves.





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against the operation. Meanwhile, the Foundation is collecting information and investigating the situation, but currently there is nothing for the Board to act upon.

**B. CAROLINE COUNTY**

1. 05-84-08 Kinnamon, Richard C. 135.51 acres  
Request for Right of Way Easements to be held by the County.

Request –Caroline County:

The request is for approval of Right of Way Easements to be held by the County.

Recommendation:

Foundation staff recommends approval as there will be very minimal agricultural impact.

Background:

Mr. Kinnamon is the original owner of the easement property. According to Caroline County, the purpose of the Right of Way Easements is for roadway and drainage improvements.

The permanent easement will cover 20,056 square feet and the temporary easement will be 18,224 square feet. The County Program Administrator knows the property and concluded that the proposed re-grading will not be detrimental to the agricultural capability of the farm.

Tammy Buckle, Program Administrator, and Kevin Clark, Planner III, were available at the meeting.

Mr. Conrad noted that the signature of the landowner is missing on the documents submitted by the County. He wondered if the County has any document bearing the landowner's signature.

Ms. Buckle stated that the landowner will be signing the easement document, but she can arrange to get his signature. Ms. Buckle introduced Mr. Kevin Clark as the Planner working on the landfill project. The construction work on the landfill project is to start shortly.

Responding to question from the Board, Mr. Clark stated that the project is a "minimum widening" project. Currently the lanes are an average of 8 – 8 ½ feet, being widened to a 10 feet lane to accommodate truck traffic for the landfill. There is no solid shoulder but there will be pressure on the shoulder. The road is being widened primarily to move the drainage ditch. The move will impact the farm property as well as other (residential) properties.

Mr. Clark also displayed the new drawings that were submitted to him by Maryland Environmental Service. The entrance to the actual landfill is almost at the end of the property on the south.

Dan Colhoun, Board member, wanted to know if the property owner is receiving compensation for the right-of-way. Ms. Buckle confirmed that the landowner is receiving \$12,000 as compensation.

Ms. Buckle stated that she can get the landowner's signature to support the request. The landowner was present at the local agricultural advisory meeting and had conveyed that the proposed change will have minimal agricultural impact.

Motion #3: To approve the request of Mr. Richard C. Kinnamon for a Right of Way Easements to be held by the County.

Motion: Jonathan Quinn Second: Billy Boniface  
Status: **Approved**

C. FREDERICK COUNTY

1. 10-81-06 Strite Galen 105 acres  
Request to amend a deed of easement to swap 1.671 acres for 1.671 acres.

Request –Frederick County:

The request is for approval to amend the deed of easement to swap 1.671 acres for 1.671 acres.

Recommendation:

Foundation staff recommends approval. There is a benefit to the farming operation, and there is no reduction of easement acreage.

Background:

Mr. and Mrs. Strite are the original grantors of the easement. There is one pre-existing dwelling. No lot exclusions have been requested. Mr. Paul Coblentz is purchasing the farm on the north side of the easement property. The current request is to amend the easement so that a narrow strip of 1.671 acres may be transferred to Mr. Coblentz, and Mr. Coblentz will transfer a triangular shaped piece to Mr. Strite. The narrow strip will be used as a farm lane between the two farms under Mr. Coblentz's ownership.

According to Frederick County, the soils coming out of the easement are 100% qualifying soils and the soils coming under easement are 100% qualifying soils. Both parcels are completely wooded.

The request was approved by the local advisory board and meets planning and zoning regulations.

Anne Bradley, Agricultural Preservation Planner, was available at the meeting. Ms. Bradley informed the Board that the Frederick County has put a Critical Farms Option on the 157-acre property adjacent to the Strite farm. Mr. Coblentz also owns a farm, probably between 400–500 acres, and has applied to the County's Installment Purchase Agreement program (IPA). If the swap is approved, it will be added to the parcel on the northwest boundary (157 acres under the Critical Farms Option). However, this narrow strip will not be part of the option, because it will be included after the option was concluded.

Mr. Conrad noted that a right-of-way for farming purpose is an allowable right-of-way for an overlay easement. He wondered why Mr. Coblentz wants to exercise a direct ownership. What is the benefit?

Ms. Bradley stated that the County discussed the issue with Mr. Coblentz and explained that fee simple ownership will involve more money and time. Mr. Coblentz still wanted to own the access.

Mr. Conrad reminded Ms. Bradley that such requests receive low priority and take long time. Ms. Nancy Forrester, Assistant Attorney General, Department of General Services reiterated that the transfer will take time and she did not want Mr. Coblentz to complain that his transaction is being held up. Mr. Coblentz will also be responsible for all the associated costs. Ms. Bradley agreed that Mr. Coblentz is aware of all the issues listed by Mr. Conrad and Ms. Forrester.

Mr. Colhoun wondered why the landowner is not available at the meeting to respond to the Board's questions.





2. *Enact policies, ordinances, regulations and procedures that stabilize the agricultural and forest land base, support working farms and normal farming activities, and provide time to achieve State preservation goals before resource land in the PPA is excessively compromised by development.*

*In response, an August 28 letter from John Cannon, President of the County Commissioners, was received by Jim Conrad. The letter recognizes the commitment made by the County Executive to this effect, and states that the "continuing efforts underway should provide meaningful policies, ordinances, regulations and procedures that will stabilize our agricultural and forest land base and provide a climate where farming is encouraged. Our goal is to complete this well before July 1, 2010."*

*Although the letter does not make the clear commitment in the name of the County Council, as we requested, we believe it is reasonable to give County Executive Pollitt's effort a chance to succeed, by extending conditional certification until July 1, 2010."*

Mr. Lenox stated that he wanted to clarify that the County Council is a pioneer in re-zoning efforts. The good intention of the County Executive alone certainly is not going to accomplish this. The Council did their best to mirror Mr. Pollitt's letter and also had attempted to add their concurrence that they anticipate to meet the requirements of the MDP and the statute. Mr. Lenox pointed out that the vote cast was 4:3. Mr. Lenox stated that he is hoping that the Council will strike a compromise. Fortunately, Secretary Hance and MDP have accepted the County's request and appointed one each of their staff to serve with the County's Executive Committee. Diane Chasse, MALPF Administrator, and Rich Josephson, Director of Planning Services are the appointments.

Mr. Lenox stated that the County Finance Director, the County Attorney, the County Planning Director (himself), and the representatives from the two State agencies will be working to bridge the gap between the existing policies and those necessary for recertification.

Mr. Conrad wanted to know the anticipated role of the representatives from the two State agencies (MDP and MDA).

Mr. Lenox stated that it will be an informal workgroup and will specifically advise the County Executive.

Ms. Schultz wondered if Mr. Lenox was conveying that the County Council will not be able to commit until the workgroup has reported.

Mr. Lenox responded in negative and stated that the County Council tried to mirror the language to convey their intention to comply. At this point in time, the Council does not know exactly how, but the discussion is underway and the goal is to meet the requirements. The County Council understands that if the County does not meet the requirements, it will not be certified when it returns next year.

Mr. Colhoun stated that he respects the letters received from the County. But as a Board member, he takes exception to the letter received from the Council President. Mr. Colhoun stated that the Council can change the rules in the County, and the Executive enforces them. Every good Committee tries to do a good job, but in the end it ends up with the legislature. Mr. Colhoun stated that his understanding was that when the vote took place, it was the President's vote that broke the tie (he voted "no"). In the last sentence of his letter, he has mentioned that, "Loss of certification at this time will only compound the problem and make it impossible for us to offer an alternative to development."

Mr. Colhoun stated that he believed for FY 2009, the State has committed \$584,660.86 to the County (as it has to other counties) and the certification process involved an amount of

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\$40,000. Mr. Colhoun stated that he disagreed with the Council President's statement that the MALPF Board is impeding further preservation. The MALPF Board is questioning the certification request because the County has not indicated its commitment to meet the MALPF Board's request. Mr. Colhoun stated that he believed that the MALPF Board has a responsibility to let the County know that there have to be more tangible changes.

Mr. Conrad wanted to clarify about the \$40,000 mentioned by Mr. Colhoun. If a County is certified, it will be receiving 75% of agricultural transfer tax. If a County is not certified, the amount will be reduced to 33%. So it is the difference of one year's agricultural transfer tax which is about \$60,000 for FY 2008. Future years' agricultural transfer taxes are not predictable.

Mr. Doug Wilson asked that for FY 2010 while the County is currently being allowed to continue to retain at the higher level, if the MALPF Board was not able to approve the transaction, will the County hold out money?

Ms. Chasse confirmed that even if the County receives conditional certification, they get to keep the money. But the conditional certification cannot be extended beyond July 1, 2010.

Dr. James Pelura, Board member, wanted to know how soon the County can re-apply if the MALPF Board decides to deny re-certification.

Mr. Conrad stated that if the MALPF Board denies the certification, the County will immediately become liable for agricultural transfer tax differential rate. The County can apply as early as next month, if it felt it was ready.

Mr. Colhoun proposed a motion.

Motion #7: To grant 90 more days to Wicomico County to try to answer the letters correctly. The additional time gives the County an opportunity to work on the issues in a more concentrated manner (particularly by the Council).

Motion: Dan Colhoun Second: Doug Wilson

Dr. Pelura wondered if the Board can vote to deny the certification.

Jerry Klasmeier, Board member, stated that in his opinion, the language cited by Mr. Colhoun (referring to the Council's letter) reflects the same language contained in the letter from County Executive. In a situation like this, Mr. Klasmeier would like to look to the County Executive for leadership. In his opinion, he would consider the letter subject to the approval of his Council. Loss of certification at this time will compound the problem and make it impossible for the Foundation/MDP to offer the County a preservation alternative to development (which is the language put in the Council President's letter). Both the Council President and the County Executive are speaking the same way, and they need more time to get things together.

Mr. Doug Wilson wanted to know about the expectations of MALPF/MDP after July 1, 2010. That is, what has to happen between December 30, 2009 and June 30, 2010 for the County to receive certification?

Mr. Rosen stated that the MDP/MALPF has to assess the progress made by the County on its land-use tools. The re-zoning (that they voted against) was in process for a few years, and it was one of the major strategic pieces of its agricultural land preservation program development. Since that got pulled out, there has to be something worthwhile to replace it. The PPAs are also a pending issue.

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Mr. Doug Wilson commented that, the Board is giving more time to the County. The real issue is what happens after June 30, 2010. The County will lose certification if it does not accomplish certain goals.

Mr. Lenox stated that the County clearly understands that it has a critical problem to address, and there is a tight time period to meet the new certification requirements. This year, the County needs to adopt the priority preservation elements. December 30, 2009, is too early of a deadline for the priority preservation elements to be adopted. The County needs time beyond December 30, 2009, but could meet a deadline of June 30, 2010.

Mr. Colhoun stated that the County will be back in December 2009 and can report tangible progress. The MALPF Board can measure the progress.

Mr. Lenox commented that the County Executive is an elected Council Executive and has veto. The County Council mirrored the County Executive's language because it believed the language was acceptable to the MALPF Board. He wanted to know if the Board is looking for more specific language.

Mr. Doug Wilson stated that he agreed with Mr. Klasmeier. The County's request was reviewed in June 2009. The MALPF Board seemed satisfied to what the County Executive had conveyed. So if the County Council writes the same language, how the MALPF Board then pick it apart? In reality, currently there are no dollars at stake. The County is correct that agricultural transfer tax collections are low. His only reason for trying to understand Mr. Colhoun's motion is the language between the County and the Council letters are identical and the MALPF Board should be asking both of them for their further commitments. The Board did not do that before. The Foundation and the MDP were okay with what the County had written.

Mr. Doug Wilson commented that it might be better to accept the letter as drafted and review the situation when Wicomico re-certification becomes due in July 1, 2010. By the June 2010 Board meeting, the County ought to have accomplishments. Mr. Doug Wilson was concerned about creating issues between the two branches of the government in Wicomico County.

Mr. Colhoun commented that he understands the difficulties of the County Executive and applauded his efforts. But clearly, he can't make it happen alone.

Billy Boniface, Board member, asked if there were any amendments offered by the Council during the process.

Mr. Lenox stated that a key amendment was on the table and the President was willing to support it, but it was voted against by another member who felt the preservation efforts should be even stronger. When that compromise failed, the final bill did not pass. The vote was 4:3 on the amendment and 4:3 on the final bill.

Mr. Boniface asked if the County Executive was the one who made the original recommendation doing away with 1 to 3 clustering.

Mr. Lenox stated in negative and clarified that the recommendation came from the Planning Commission. In fact the County Executive had publicly expressed some concern.

Mr. Boniface asked if Mr. Lenox was willing to put together a proposal to the County Council within a time frame before the issue returns to the MALPF Board for a review. This will involve the introduction of the legislation and the Council casting the vote.

Mr. Lenox stated that he would be willing. Last time, the initiative was mainly from the legislative side (looking at the Planning Commission in a policy role). It came from the

Commission to the County Council, and the Council obviously had problems in getting one final vote to make a difference. Literally on the day of the vote, the County Executive said, "I want to take the leadership on this. I will put something on the table."

Mr. Boniface commented that the MALPF Board has had several re-certification requests from the counties with much greater initiative to respond to the new certification requirements. The MALPF Board and the MDP certified them conditionally until July 1, 2010. Keeping in mind the politics involved in an election year, Mr. Boniface did not see how the Wicomico County is going to resolve the unresolved issues. The MALPF Board might be dealing with the same issues when the re-certification request is reviewed in June 2010. Mr. Boniface stated that he believed if the MALPF Board allowed the Wicomico County to be recertified with much less progress, it would be seen in a poor light and it would send the wrong signal. If the Wicomico County loses its certification, it will put more pressure on the County to resolve the issues, especially in an election year.

Ms. Schultz called for vote on Mr. Colhoun's motion.

Motion #8: To extend conditional certification for Wicomico County until December 30, 2009 anticipating positive reaction to the letter sent to the County on June 29, 2009 (from MDP/Foundation).

Favor: Dan Colhoun

Opposed: Chris Wilson, James Pelura, Billy Boniface, Jonathan Quinn, Jerry Klasmeier, Doug Wilson

Status: Failed

Motion #9: To deny re-certification to Wicomico County.

Motion: James Pelura Second: Billy Boniface

Favor: Chris Wilson, James Pelura, Billy Boniface, Jonathan Quinn, Dan Colhoun

Opposed: Jerry Klasmeier, Doug Wilson

Status: Approved

Mr. Rosen commented that he believed conditional certification through September 30, 2009 will allow the County to collect their agricultural transfer tax at the higher rate through September 30, 2009. Mr. Conrad agreed.

C. Recertification Request – St. Mary's County

Derick Berlage, St. Mary's County, Director of Land Use, Sue Veith, St. Mary's County, Environment Planner IV, and Donna Sasscer, Program Administrator, were available at the meeting. Daniel Rosen, MDP, was also present at the meeting.

Diane Chasse, MALPF Administrator, shared the Foundation's review and recommended conditional recertification through June 30, 2010. Mr. Rosen shared MDP's review and also recommended conditional recertification.

Mr. Rosen expressed his concerns about the extremely high rates of land conversion. He was also concerned about the adequacy of zoning that allows 1 on-site lot per 10 acres.

Mr. Berlage stated that the County shares his concerns about what had happened in the past. But the County is committed and wants an opportunity to be successful.

Mr. Boniface asked if the County is currently looking at creating receiving areas.





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Vera Mae Schultz, William K. (Billy) Boniface, Daniel W. Colhoun, Jerome W. Klasmeier, Dr. James Pelura III, Daniel Rosen, Christopher H. Wilson, Douglas H. Wilson, Jonathan C. Quinn

TOPICS DISCUSSED:

- 1) FY 2009 Offers
- 2) Status Report on the following Pending and Potential Litigation:
  - a) Herschell B. Claggett, Sr. vs. Maryland Agricultural Land Preservation Foundation, et al, Case # 142
  - 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 v. 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

The Closed Meeting was adjourned at 11:28 am.

Respectfully Submitted:

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Rama Dilip, MALPF Secretary

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James Conrad, MALPF Executive Director