

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
November 24, 2009**

TRUSTEES PRESENT:

Vera Mae Schultz, Acting Chair
Howard S. Freedlander, representing Treasurer Nancy Kopp
Jerome W. Klasmeier, representing Comptroller Peter Franchot
Robert F. Stahl, Jr.,
Joe Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning
Dr. James Pelura III
Jonathan C. Quinn
Douglas H. Wilson, representing Secretary Earl F. Hance, Maryland Department of Agriculture

TRUSTEES ABSENT:

William K. (Billy) Boniface
Daniel W. Colhoun
John W. Draper, Jr.,
Christopher H. Wilson

OTHERS PRESENT:

Christopher L. Baker, Landowner, Calvert County
Anne Bradley, Frederick County, Agricultural Preservation Planner
Tammy Buckle, Caroline County, Program Administrator
Diane Chasse, MALPF Administrator
Martha Clark, Landowner, Howard County
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
Paul Doody, Landowner, Carroll County
Clint Evans, Farm Manager, Queen Anne's County
Tom Filbert, Assistant Attorney General, Maryland Department of Agriculture
Carla Gerber, Kent County, Program Administrator
Amanda Gibson, Assistant Attorney General, Maryland Department of Agriculture
Billy Gorski, Anne Arundel County, Planner
Secretary Buddy Hance, Maryland Department of Agriculture
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Wally Lippincott, Baltimore County, Program Administrator
Mr. & Mrs. Wayne McGinnis, Landowners, Baltimore County
Steve McHenry, MARBIDCO, Executive Director
Don Moore, Cecil County
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Pat O'Connell, President, Evergreen Capital Advisors, Inc
Sarah Hall Peak, MALPF Administrator
Charles Rice, Charles County, Program Administrator
Ralph Robertson, Carroll County, Program Administrator
Dan Rosen, Maryland Department of Planning, Planner
Donna Sasscer, St. Mary's County, Program Administrator
Stewart Smith, Prince George's County, Planner

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Vera Mae Schultz, Acting Chair, called the meeting to order at 9:06 am at the Maryland Department of Agriculture building, Annapolis, Maryland.

Ms. Schultz asked the guests to introduce themselves.

I. APPROVAL OF MINUTES/ADDITION OR DELETION OF AGENDA ITEMS:

A. APPROVAL OF MINUTES OF THE OPEN MEETING

Motion #1: To approve the revised minutes of October 27, 2009.

Motion:	Jerry Klasmeier	Second:	Howard Freedlander
Status:	Approved		

B. ADDITIONS OR DELETIONS OF AGENDA ITEMS:

IV.B. Proposed Regulations for Board's approval Added

IV.C Memorandum of Understanding between MALPF and MARBIDCO (Maryland Agricultural and Resource-Based Industry Development) Added

James Conrad, MALPF, Executive Director, briefed the Board about the Program Administrators' meeting held on November 19, 2009. The participants discussed easement valuation and there were valuable interactions between the counties, the MALPF staff, and the Faculty from the University of Delaware.

Mr. Conrad reminded the Board and the Program Administrators about the retirement of Mr. Douglas Wilson, representing Secretary Earl F. Hance, Maryland Department of Agriculture. Mr. Conrad presented the Secretary's Citation recognizing Mr. Douglas Wilson's contributions to the MALPF program and thanked him for his valuable guidance. Former MALPF Board Chairmen, current Board members, Program Administrators, and the MALPF staff thanked Mr. Douglas Wilson for his valuable contributions and narrated highlights of their personal interactions with him.

II. EASEMENT AMENDMENTS

A. CARROLL COUNTY

1. 06-81-13B Doody, Paul and Mary Anne 130.019 acres

REQUEST – CARROLL COUNTY:

Release of a 2.0 acre owner's lot for the personal use of Paul and Mary Anne Doody.

RECOMMENDATION:

Staff recommends approval as the requested 2.0-acre lot meets the Foundations Lot Location Policy. The landowners are not requesting the lot be located adjacent to a previously approved 1.0-acre child's lot or the two pre-existing dwellings as there were problems receiving Health Department approval due to perc problems. The lot is being situated along a property boundary and will utilize an existing right-of-way access.

BACKGROUND:

Mr. and Mrs. Doody are the original owners of the easement property. There are two pre-existing dwellings. On October 23, 2004 they received approval for a 1.0-acre child's lot for their son, Jeffrey. They do not own any other MALPF district or easement properties.

According to Carroll County, the proposed owner's lot must be 2.0 acres in size and is not being located adjacent to the approved child's lot and pre-existing dwellings because of

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generation farmers. His children are involved in the farming operation. Mr. McGinnis stated that he would like to subdivide the farms to allow flexibility in the future.

Mr. Lippincott informed the Board that the local advisory board had recommended approval of the request.

Motion #3: To approve the request of Wayne McGinnis for a 50.0 acre agricultural subdivision of easement property.

Motion: Joe Tassone Second: Howard Freedlander
Status: **Approved**

B. QUEEN ANNE'S COUNTY

1.	17-86-03	Brick Holdings, LLC (Lawrence Julio)	154 acres
	17-90-10c	Alvin Lane	12.85 acres

REQUEST—QUEEN ANNE COUNTY:

The request is for approval to amend two deeds of easement to swap .129 acres for .129 acres.

RECOMMENDATION:

Foundation staff recommends approval. There is no negative impact to the farming operation and there is no reduction of easement acreage.

BACKGROUND:

Brick Holdings LLC (Mr. Lawrence Julio) is a subsequent owner of Easement 17-86-03. Mr. Alvin Lane is a subsequent owner of an agriculturally subdivided portion of Easement 17-90-10c. The request is to amend both easements so .129 acres may be exchanged between the two easement properties. Mr. Julio is proposing the swap so that his property has fee-simple ownership of the dirt road over which he currently only has a right-of-way.

According to Queen Anne's County, the soils of the areas being exchanged are the same type.

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

Clint Evans, Farm Manager, representing Mr. Lawrence Julio, and Donna Landis-Smith, Program Administrator, were available at the meeting. Ms. Landis-Smith stated that she has the property exchange agreement between the two parties. Both the parties understand that they will have to bear the expenses of amending the two deeds of easement. There is no benefit or negative impact to either landowner. The deeds of easement are being amended only to straighten the right-of-way.

Mr. Conrad wanted to know if the landowners were aware that the transaction will take time. Mr. Evans confirmed this.

Motion #4: To approve the request of Brick Holdings, LLC and Alvin Lane to amend two deeds of easement to swap .129 acres for .129 acres.

Motion: Joe Tassone Second: Jonathan Quinn
Status: **Approved**

B. ST. MARY'S COUNTY

1. 18-02-18 Morris, Charlotte 162.5 acres

REQUEST-ST. MARY'S COUNTY:

The request is for an exemption to the 5-year residency requirement.

RECOMMENDATION:

Foundation staff recommends approval for an exemption to the 5-year residency requirement due to the death of Mr. Morris.

BACKGROUND:

On January 24, 2006 the Foundation approved an owner's lot for Mr. and Mrs. Morris. The Final Release was recorded on September 29, 2008. Shortly after construction of the home, in November 2008, Mr. Morris passed away. Since Mr. Morris has passed, Mrs. Morris no longer wishes to move to the residence. She would like to rent it out.

COMAR 15.15.06.05 A.(2) states "A landowner or child who has a lot released under the terms of the easement shall occupy the dwelling constructed on the lot and may not transfer or lease the lot to any person except after the expiration of 5 years from the date of the Foundation's final release for the lot. Before the expiration of the 5-year period, the Foundation may only approve a landowner's or child's request to transfer a lot upon the occurrence of the following events: ... **The death of the landowner** or landowner's child; ..."

Donna Sasscer, Program Administrator, was available at the meeting. (Ms. Sasscer informed the Board that Mrs. Morris was available at the County Office to participate through a conference call).

Ms. Sasscer stated that the property consists of two easement properties next to each other. Mr. Morris had desired to move to a smaller house.

Responding to a question from the Board, Mr. Conrad and Ms. Sasscer, confirmed that the current request is believed to be the first request received for an exemption to the 5-year residency requirement.

Motion #5: To approve the request of Charlotte Morris for an exemption to the 5-year residency requirement.

Motion: Doug Wilson Second: James Pelura
Status: **Approved**

E. CALVERT COUNTY

1. 04-01-02 Baker, Raymond N., et al. 101 acres

REQUEST-CALVERT COUNTY:

The request is for the exclusion of up to 2 acres for a child's lot for Christopher L. Baker.

RECOMMENDATION:

Foundation staff recommends approval of the request for a 2.0-acre child's lot exclusion from easement property based on the provisions of the deed of easement and the Foundation's Guidelines for Lot Locations.

BACKGROUND:

Mr. Raymond N. Baker, et al. are the original owners of the easement property. This request is for the release of up to two acres for a child's lot for the personal use of Christopher L. Baker, who is a co-owner of the easement property with his parents and siblings. The provisions of the deed of easement allow a child's lot right for each child who is a co-owner of the property up to a maximum. One other child's lot was approved in 2004.

According to Calvert County, the proposed lot will be clustered near the previously approved child's lot and along the edge of a wooded ditch, a natural boundary. The lot location was chosen so as to avoid tillable land and not interfere with the current cattle operation. The lot could not be located closer to the pre-existing dwelling due to steep slopes. Access will be through an existing private lane and a shared driveway with the previously approved child's lot. The landowner has indicated that location of the proposed lot along a public roadway was not feasible since the easement property has very little road frontage and most of the road frontage is steep slopes and tillable land.

Approval of a lot size of up to two acres is requested to comply with Critical Area regulations and anticipated Health Department requirements. Agriculture Article, Section 2-513 (b) (7), Annotated Code of Maryland, grants an allowance of a maximum lot size of up to two acres if required by regulations adopted by the Department of the Environment or the county.

The request was approved by the county agricultural preservation advisory board; conforms to local zoning regulations; and has been approved by the county planning and zoning department. If approved, payback for the lot will be \$6,500.00 per acre.

Mr. Conrad added that the County has provided aerial maps as well as a map indicating the relative slopes of the property.

Christopher Baker and Veronica Cristo, Program Administrator, were available at the meeting.

Ms. Cristo stated that Mr. Christopher Baker had worked extensively with his surveyor. The surveyor had felt confident that the area will perc based on his experience with Mr. Peter Baker's farm. Mr. Peter Baker's lot is in the process of active subdivision. The pending issues on Mr. Peter Baker's lots are being resolved and will not affect Mr. Christopher Baker's request.

Mr. Christopher Baker stated that he had worked to ensure that there is minimal agricultural impact. The proposed lot can use the pre-existing private lane and the shared roadway with other approved lots. He feels comfortable with his choice of location.

Mr. Douglas Wilson mentioned that the parents and the siblings are the owners of the easement property. He wanted to make sure the current request is being treated as a child's lot even though Mr. Christopher Baker is one of the co-owners.

Sarah Hall Peak, MALPF Administrator, stated that the terms of the easement specifically state that Mr. Christopher Baker is a child.

Mr. Douglas Wilson wanted to make sure that the easement holders understand that none of the siblings' children are entitled to a child's lot.

Mr. Christopher Baker stated that he and his family understand that each child of this generation has a child's lot.

Mr. Joe Tassone wanted to know about the wooded area (a wooded ravine or a stream valley) between Peter and Christopher's lots.

Mr. Christopher Baker commented that the area lacks wet weather drainage and it is heavily wooded.

Mr. Conrad asked if the area is covered by a conservation plan. Mr. Christopher Baker stated that he is not sure if the area is covered by a formal plan but the family's intent is to keep the area as a buffer at all times.

Ms. Cristo commented that the orange color on the slopes map indicate the slopes are steep and between 25% and 50%.

Ms. Schultz wanted to know if there was a reason that the lots are not closer to the water.

Mr. Christopher Baker stated that one of the reasons is the boat traffic in the summer months. In summer, many people come in boats and the sounds carry on the water. So the lots have to be back from the water, and there is a wood line between the water and the lots. In addition, the Bakers want to protect the shore line and prevent soil erosion. Ms. Cristo estimated the distance to be at least 200 feet.

Mr. Conrad wondered about the pink lines on the color maps provided with the agenda items. Ms. Cristo clarified that she had used the pink colors to clearly indicate the existing house and to show that there are no lots around the existing house. The blue line is the critical area line.

Mr. Tassone commented that it almost seemed the physical location of the lot is to avoid any removal of the forest that is covered and therefore avoiding forest conservation requirements.

Mr. Christopher Baker stated that he does not intend to remove any forests.

Ms. Schultz commented that the MALPF Board is always concerned about the lots situated in the middle of the farm. Ms. Shultz wanted to know if the Board had any concerns in this regard.

Mr. Tassone stated that he was concerned but in his opinion the issue should have been addressed when the Board approved Mr. Peter Baker's lot request. Now that Mr. Peter Baker's lot and the access have been established, the current request seems to be something of a "shoot off" that request. The fact that Mr. Christopher Baker's lot borders the wooded ravines makes it a "little out-of-the-way."

Mr. Christopher Baker stated that none of the members of the Baker Family intends to sell the property. The reason and the intention of putting the property under an easement were to keep the property in the family in perpetuity. He further added that his generation built the houses, but the next generation would not be able to build any more houses.

Motion #6: To approve the request of Raymond N. Baker, et al. for a 2.0 acre child's lot exclusion from easement property.

Motion: Joe Tassone Second: Jerry Klasmeier
Status: **Approved**

IV. PROGRAM POLICY

A. Agricultural Subdivisions – Clarification of Policy

Mr. Conrad commented that the item is being presented for information and discussion. The Board will not be voting on this item.

Problems:

1. Definition of Subdivision.
COMAR 15.15.01.02-2(7) provides the following definition of 'Subdivision':
"means the division of land into 2 or more parts or parcels." This definition of

subdivision does not address the conveyance of separately described parcels that are covered by one MALPF easement.

When MALPF purchases an easement, it prohibits the subdivision of the property without the express written approval of the Foundation. If an easement consists of several parcels of record, the Foundation still considers it to be one parcel for the purposes of the easement. The definition of 'subdivision' does not discuss the circumstance of separately described parcels. At the County level, the off-conveyance of a separately described parcel is not necessarily considered a subdivision when the parcels have been assigned separate tax identification accounts, and there are no mechanisms in place for the county to intercede when a landowner transfers ownership of a parcel and records a subsequent deed. During inspections of the property, and with the assistance of an intern working to populate the Foundation's new database, several instances of subdivisions of land under MALPF easements have been discovered.

2. Number of Subdivisions Permitted.

The Regulations and the agricultural subdivision policy are inconsistent regarding the number of agricultural subdivisions permitted on one easement. While the Foundation's current policy states "no more than one agricultural subdivision per full 100.0 acres would be considered (1 for 100.0 acres, 2 for 200.0 acres, 3 for 300.0 acres, etc.)", this language was not included in the Regulations. Staff is unclear if the Board truly intended to further restrict the occurrences of agricultural subdivisions by reducing the number to only one for every full 100.0 acres of easement property. When an agricultural subdivision is approved, the easement remains intact, only the ownership of the parcels and potentially the farm operation changes.

Policy History:

Jim Conrad's 11-14-2001 Report to the Joint Subcommittee on Program Open Space and Agricultural Land Preservation included the following facts:

Prior to 8-25-1991 requests for agricultural subdivisions were reviewed on a case-by-case basis and there was no minimum size requirement.

8-25-1991 MALPF Board approved policy (revised following discussions with the Program Administrators). The policy allowed for agricultural subdivisions that met the following criteria:

- 1) The property was at least 20.0 acres in size and which met the minimum soils requirements for district establishment.
- 2) The parcel was actively devoted to agricultural use and qualified for agricultural use assessment.
- 3) The request would describe how the proposed subdivided and remaining parcels would be able to sustain long term viable agricultural production.
- 4) The boundaries would follow physical characteristics of the farm such as the end of a field or hedge row, a stream, or some other physical feature of the farm.
- 5) No more than one agricultural subdivision per 100 acres would be considered – 1-100 acres = 1; 101-200 acres = 2; 201-300 acres = 3. (Exceptions would include subdivisions of minor acreage for the express purpose of straightening property boundaries or similar reasons). Subdivisions of minor acreage would be considered if they are endorsed by the county and if, in the opinion of the Foundation, the subdivision would be consistent with the general purposes of the program.

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- 6) Subdivision must conform with local planning and zoning regulations and requirements with the local advisory board's support and recommendation for approval.
- 6-30-1993 MALPF Board approved the policy with revisions.
5-25-1994 MALPF Board approved revised policy again.
10-1995 Regulations submitted as amendments.
11-1998 Policy Review Committee reached general consensus that farms should not be divided into parcels smaller than 50 acres (to be incorporated into later drafts of the policy).
- 6-28-2000 Regulations submitted to AELR for final approval, effective FY 2001.
12-19-2000 MALPF Board approved final draft. No distinction was made as to how the property was deeded or described. It was sent to the OAG to be drafted into regulations. The policy allowed for agricultural subdivisions that met the following criteria:
- 1) A request for an agricultural subdivision would not be considered for any property containing less than 100 acres unless it is an easement property. Exceptions: if the parcel to be subdivided were to be joined to an adjacent easement property. The exception is not available for district properties.
- 2) No more than one agricultural subdivision per full 100.0 acres would be considered (1 for 100.0 acres, 2 for 200.0 acres, 3 for 300.0 acres, etc.)
- 3) The size of any requested agricultural subdivision must be at least 50.0 acres.
- 4) The parcel remaining after an agricultural subdivision must be at least 50.0 acres.
- 5) The proposed agricultural subdivision and the remaining parcel must both meet the Foundation's minimum soils criteria.
- 6) The proposed agricultural subdivision and the remaining parcel must both continue to qualify for agricultural use assessment.
- 7) The request must conform with local planning and zoning requirements and/or regulations.
- 4-22-2003 Board approved interim easement document to be applied to FY 2003 easement applicants to clarify the restriction on the conveyance of separately described parcels.
- 7-22-2003 MALPF Board gave final approval to changes to the deed of easement to become effective 10-1-2003 and to be applied to FY 2003 easement applicants to clarify the restrictions on the conveyance of separately described parcels as follows:

The division, partition or subdivision ("division") of the land for any purpose, including off conveyance and boundary line adjustment, is prohibited, unless written approval has first been obtained from the Grantee. Notwithstanding the fact that the land subject to this Deed of Easement may comprise existing subdivided parts (whether separately described parcels or government assigned tax parcels or accounts), it is the intent of the Grantor and the Grantee that the total of the parts remains in common ownership. To that end, the Grantor may not sell, transfer, off convey, devise, give, bequeath, donate, or otherwise divide, any existing or future subdivided part or parts separately from the total of the parts, whether voluntarily, involuntarily, or by reason of foreclosure or bankruptcy. However, the Grantee may approve a division of the total of the parts of the land and separate ownership of a part or parts of the land for reasons which the Grantee, in its sole discretion, deems sufficiently extraordinary to justify an exception to the prohibition against division. For purposes of this subparagraph, the terms, "divide" and "division" shall include the lease of

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any part or parts less than 100% of the total parts of the land for a term in excess of twenty (20) years.

Practice:

The guidelines in effect at the date when requests for agricultural subdivision are received are applied to evaluate the request, irrelevant of when the easement was purchased.

Requests from 5-25-1994 to 12-19-2000 had to meet the 20 acre minimum rule. Requests after 12-19-2000 had to meet the 50 acre minimum rule. Prior to 5-25-1994 requests were considered by the Board regardless of size.

No distinction has ever been made between an easement covering one described parcel and an easement covering two or more described parcels when the Board considered requests for agricultural subdivision.

Possible Resolutions:

- 1.A. Revise COMAR to clarify the definition of subdivision so that it includes the Foundation's long standing practice of not allowing the conveyance of separately described parcels that are under one easement.
- 1.B. Review all potential violations on a case-by-case basis. Then:
 - 1) Treat all instances of the conveyance of separately described parcels which are not reviewed and approved by the MALPF Board as violations of the easement.
 - 2) Consider the date of the transfer. Approve any transfers that occurred prior to 12-19-2000 which meet the 20.0 acre minimum rule and those that occurred after 12-19-2000 which meet the 50.0 acre minimum rule (if the property otherwise meets the requirements for agricultural subdivision). The Board has used this tactic several times in the past.
 - 3) Forgive any past transfers of parcels that were described separately as of the date of the easement. As of 4-22-2003 (final approval 10-1-2003) the Foundation's Deed of Easement was revised to clarify the prohibition on the conveyance of separately described parcels.
2. In order to have the Regulations and Policy be consistent, staff is requesting clarification of the Board's intention for the number of agricultural subdivisions that may be requested on a property. Is it the Board's opinion that only one agricultural subdivision for every full 100.0 acres is what is required in order to prevent the creation of large lot estates and to maintain agriculturally viable parcels? Would the Board consider changing the guidelines to a maximum of 1 for 100 acres; 2 for 101-150 acres; 3 for 151-200 acres, etc.?

Carol Council, MALPF Administrator, presented the agenda item.

Mr. Tassone suggested that the Foundation's policy should indicate that the subdivided piece and the remaining parcel each be 50 acres or more rather than changing the guidelines to a maximum of 1 for 100 acres; 2 for 101-150 acres; 3 for 151-200 acres, etc.

Wally Lippincott, Program Administrator, Baltimore County, stated that the County encourages larger farms and allows some minor subdivisions to meet individual needs.

Mr. Tassone wondered if the Foundation's existing regulations allow one subdivision per 100 acres and two subdivisions per 200 acres. So a 200-acre farm could get two 50-acre subdivisions but will be left with a 100-acre farm.

Diane Chasse, MALPF Administrator, agreed but commented that it is not mentioned in the regulations. Mr. Conrad added that the existing regulations indicate that a 200-acre farm can have four 50-acre parcels. The Foundation's subdivision policy has evolved over time and the number of agricultural subdivisions a landowner can get on a parcel has dropped in the new regulations. The Foundation is now seeking the Board's opinion. The Board can choose to have more flexibility or have more restrictive use of agricultural subdivisions on the farm. One requirement is that the subdivided parcels are always required to be capable of an economically viable farming operation. The problem is how one defines an economically viable farming operation.

Mr. Tassone commented that at one point in time, the Foundation required that someone requesting an agricultural subdivision assert that the two parcels have separate agricultural operations and share their future plans to demonstrate that both have sustainable independent operations. Mr. Tassone wondered if the Foundation still requires this.

Mr. Stahl remarked that sometime back, the Foundation received a request from a landowner having chicken houses and the grain operations on the remainder of the farm. The Board required both to be independent viable operations.

Mr. Conrad commented that the two operations were clearly existing operations and both parcels were self sustainable. Questions arise when agricultural subdivisions are for proposed agricultural purposes.

Mr. Tassone stated that in such situations, the Foundation sometimes approves a subdivision even though the proposed operations are not entirely clear.

Mr. Douglas Wilson commented that the Foundation tries to meet the landowner's desires. The Foundation has bought the development rights. The original concept was not to have any subdivision on the farm. Over time, the Foundation could not maintain that position and got into estate planning. For example, an easement holder with a large grain operation wants to divide the farm. The farm meets the Foundation's soil requirements and other criteria. It is a legitimate reason for a subdivision. There are other States that do not allow subdivision. But not "allowing subdivision" can be an inhibitor for a landowner voluntarily entering the MALPF program.

Mr. Stahl commented that the Board has to be cautious that the Foundation does not end up with all 50-acre parcels in the program. Mr. Stahl stated that he believed the Foundation has to address the agricultural viability of the program at some point in the future. The intent of the MALPF preservation program has to be maintained.

Responding to questions from the Board members, Mr. Conrad clarified that a property can be considered a viable operation on a 50-acre farm and a property can also enter the MALPF program as a 50-acre farm. The Foundation already has a clear policy on the minimum requirement to enter the program.

Tammy Buckle, Program Administrator, Caroline County, commented that the Foundation has a policy on eligibility of owner's lot and children's lots on easement properties. There is a cap on the number of lots allowed. It might be a good idea to have a cap on the number of subdivisions. In today's economy it is very difficult for a large farm "not to be subdivided."

Dr. James Pelura, Board member, commented that many agricultural operations can be viable on a 50-acre farm (winery, horse farms, vegetable farm, cattle). The nature of agriculture is changing in Maryland and a 50-acre farm can be sustainable. Dr. Pelura further stated that he did not recollect a subdivision request in the recent past when the MALPF Board had seriously questioned the viability of agriculture. The example referred by Mr. Stahl was approximately three years earlier.

Mr. Conrad commented that to a certain extent the State of Maryland makes a distinction between the owners and the operators in Maryland. Many agricultural operations (like winery, cattle, horse farms etc) can be considered viable on a 50-acre farm and are not required to be “free standing” or “self contained.”

Mr. Stahl commented that he never looked at the 50-acre farm as a standalone 50-acre operation. The idea is to have farms that are capable of viable farming operations. He did not want the land to be subdivided in a way that it can't be farmed.

Mr. Tassone stated that he liked Ms. Buckle's idea of having a cap on subdivisions and wondered how to ascertain the limits.

Mr. Conrad asked Ms. Council to circulate a revised memo to the Board members and the Program Administrators. The revised memo will have revised language to avoid confusion to the Board members and the Program Administrators.

Mr. Conrad and Ms. Schultz encouraged the Board members and the Program Administrators to send in their comments for the Board's review. Ms. Council can compile the comments received and re-circulate it for the Board's review.

Donna Landis-Smith, Program Administrator, Queen Anne's County, suggested limiting the number of subdivisions on a farm, for example, not allowing more than three subdivisions on a 200-acre farm.

Mr. Stahl suggested not allowing more than “a one-time subdivision” on an easement property so that every generation does not end up subdividing the property further and further. He did not want every single easement in the program ending up with 50-acres. Jonathan Quinn, Board member, agreed with Mr. Stahl. If a landowner has a big farm, he should be encouraged to subdivide even before entering the MALPF program.

Mr. Conrad remarked that the memo is seeking policy clarification.

Ms. Council added that the memo is also seeking guidance on what to do when an easement consists of more than one deeded parcel and the landowner has sold one without the Foundation's permission.

B. Proposed Regulations

Amanda Gibson, Assistant Attorney General, Maryland Department of Agriculture, was available at the meeting and presented the proposed regulations. Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture, was present at the meeting. Mr. Nielsen stated that the regulations, if approved by the Board, can be put in the Maryland Register.

15.15.01.00

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 15 MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

Chapter 01 Guidelines for the Maryland Agricultural Land Preservation Program

Authority: Agriculture Article, §§2-504, 2-509, and 2-513, Annotated Code of Maryland

.01 — .11 TEXT UNCHANGED

.12 Sales Applications for Land Subject to Mineral Rights, Natural Gas Rights in Garrett and Allegany Counties, and Other Rights.

[Only those applications for land which is subject to existing mining or mineral rights sale or lease, in which the landowner or mineral rights owner or lessee will subordinate their interest to the Foundation's interest with the following exceptions and limitations:

A. Alterations to surface contours and conversion from agricultural and open space use to mineral extraction use, or both, may occur only as specified by the Foundation in advance of easement acquisition and in accord with remaining mineral rights subsequent to releases, on a case-by-case basis;

B. Mineral extraction shall be, and remain strictly ancillary to, the agricultural use of the property and shall be limited to the extraction of sand and gravel, shale, limestone, crude petroleum and natural gas, clay, ceramic, and fertilizer minerals and deep-mined minerals, including bituminous coal; and

C. Reclamation of the subject parcel shall be accomplished in accord with Maryland statutes and regulations.]

A. The Foundation will not acquire an easement on a farm that is subject to mineral rights or any right to extract sand and gravel, shale, limestone, crude petroleum and natural gas, clay, ceramic, and fertilizer minerals and deep-mined minerals, including bituminous coal, unless the mineral rights owner or other owner either releases its interest or subordinates its interest to the Foundation's interest under the easement.

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.

C. In Garrett County or Allegany County the Foundation may not require a natural gas rights owner or lessee to subordinate its interest to the Foundation's interest if the Foundation determines that exercise of the natural gas rights will not interfere with an agricultural operation conducted on land subject to an easement.

.13 — .22 TEXT UNCHANGED

Mr. Conrad stated that the proposed regulations are being re-circulated at the request of the Department of Natural Resources (DNR). The DNR is concerned about part C. Mr. Conrad also stated that earlier the Board had approved a different version. The current version has been revised by the Foundation since the 2009

Legislative Session and has been reviewed by Mr. Nielsen, Ms. Forrester, and Ms. Gibson. The earlier version was also circulated to Senator Edwards and Representative Weitzel and they were not happy with it. The current version originated from the responses that were sent to Senator Edwards and Representative Weitzel. Once approved, the proposed regulation can be put on the Maryland Registry.

Motion #7: To approve the proposed regulation on Sales Applications for Land Subject to Mineral Rights, Natural Gas Rights in Garrett and Allegany Counties, and Other Rights.

Motion: Howard Freedlander Second: Joe Tassone
Status: **Approved**

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 15 MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION

Chapter 09 Civil Penalty Standards

Authority: Agriculture Article, §2-519, Annotated Code of Maryland

.01 Scope.

This chapter establishes criteria and procedures for assessing civil penalties that the Maryland Agricultural Land Preservation Foundation may impose on any owner of a property that is subject to an easement granted under Title 2, Subtitle 5 of the Agriculture Article, Annotated Code of Maryland, who violates the terms of the easement, any Foundation regulation, or any provision of Title 2, Subtitle 5 of the Agriculture Article, Annotated Code of Maryland.

.02 Penalty in Violation.

A. Pursuant to the requirements of this chapter, the Foundation may impose a civil penalty on any owner of a property whose farm is subject to the terms of an agricultural land preservation easement granted under Title 2, Subtitle 5 of the Agriculture Article, Annotated Code of Maryland; and

B. A civil penalty may be imposed by the Foundation instead of, or in addition to, any remedies at law or in equity available to the Foundation.

.03 Violation.

This section establishes violations for which the Foundation may impose penalties.

A. Property Use. The Foundation may impose a civil penalty on any landowner subject to this chapter who:

(1) Uses easement property for commercial, industrial, or residential use except as otherwise permitted by Agriculture Article § 2-513, Annotated Code of Maryland, the deed of easement, or Foundation approval;

(2) Grants an easement, right-of-way, oil, gas, or mineral lease, or similar servitude on land to any person or government agency without written approval from the Foundation, in violation of the deed of easement;

(3) Erects a sign, billboard, or outdoor advertising in violation of the deed of easement;

(4) Dumps ashes, sawdust, bark, trash, or rubbish on the land, except when used in normal agricultural practices, in violation of the deed of easement; or

(5) Violates an approval by the Foundation for any use or activity under the deed of easement.

B. Property Management. The Foundation may impose a civil penalty on any landowner subject to this chapter who:

(1) Fails to manage the property with sound agricultural soil and water conservation practices, in violation of the deed of easement; or

(2) Fails to manage the land with sound forest stewardship practices, if the land contains 25 acres or more of contiguous forest, in violation of the deed of easement.

C. Subdivision; Conveyance. The Foundation may impose a civil penalty on any landowner subject to this chapter who:

(1) Divides, partitions, or subdivides the property, or otherwise creates a lot for any purpose, including off conveyance or boundary line adjustment, without written approval of the Foundation, in violation of the deed of easement;

(2) Sells, transfers, gives, bequeaths, donates, or otherwise divides, any pre-existing subdivided parcel separately from the total of the parts in an easement, whether voluntarily, involuntarily, or by reason of foreclosure or bankruptcy without written approval of the Foundation, in violation of the deed of easement;

(3) Transfers or sells any remaining developmental rights of the property, without Foundation approval, in violation of the deed of easement; or

(4) Fails to comply with lot transfer restrictions, in violation of Agriculture Article § 2-513, Annotated Code of Maryland, COMAR 15.15.06.06, or the deed of easement.

D. Dwelling House. The Foundation may impose a civil penalty on any landowner subject to this chapter who:

(1) Constructs a dwelling house without written approval of the Foundation in violation of the deed of easement;

(2) Constructs a replacement dwelling house without the written approval of the Foundation in violation of Agriculture Article § 2-513(b)(5), Annotated Code of Maryland, or the deed of easement; or

(3) Permits any lot or dwelling house constructed on an owner's or child's lot to be used for the purposes of an individual other than the landowner or, in the case of a child's lot, the identified child, in violation of the deed of easement.

E. Tenant House. The Foundation may impose a civil penalty on any landowner subject to this chapter who:

(1) Constructs a tenant house without written approval of the Foundation in violation of Agriculture Article § 2-513(b)(4), Annotated Code of Maryland, COMAR 15.15.03, or the deed of easement;

(2) Allows a dwelling designated as a tenant house to be occupied entirely by individuals who are not fully engaged in the operation of the farm, in violation of Agriculture Article § 2-513(b)(4), Annotated Code of Maryland, COMAR 15.15.03.03C, or the deed of easement; or

(3) Subdivides and separately conveys a tenant house and/or the land where it is constructed in violation of Agriculture Article § 2-513(b)(4)(iii), Annotated Code of Maryland, COMAR 15.15.03.03F, or the deed of easement.

F. General. The Foundation may impose a civil penalty on any landowner subject to this chapter who violates any other law or regulatory requirement governing the Maryland Agricultural Land Preservation Program, an individual deed of easement acquired by the Foundation, or Foundation approval or policy.

.04 Violation Classification and Penalty

A. For a violation of Regulation .03 of this chapter, a penalty may be imposed on an owner as follows:

- (1) Up to \$2,500 for each violation;
- (2) Each day a violation occurs constitutes a separate violation; and
- (3) For each administrative hearing, no more than \$50,000 in penalties may be assessed.

B. Before imposing any civil penalty amount under this chapter, the Foundation shall consider the following:

- (1) The nature and gravity of each violation;
- (2) The willfulness of the violation and the extent to which the existence of the violation was known to the violator but uncorrected by the violator; and

(3) Any history of prior violations.

.05 Civil Penalty Procedure.

A. The Foundation shall issue a written notice of violation upon finding that a violation of Regulation .03 of this chapter has occurred or is ongoing.

B. A written notice of violation shall include:

(1) A statement of the statute, regulation, deed of easement violated by the landowner;

(2) A description of the evidence indicating a violation;

(3) A statement informing the alleged violator of the right to an informal meeting with the Foundation;

(4) The amount of the proposed civil penalty;

(5) A statement of the remedial action necessary to bring the landowner into compliance; and

(6) A reasonable amount of time, as determined by the Foundation, to correct the violation.

C. If the alleged violation still exists after the landowner has had the opportunity for an informal meeting and a reasonable amount of time to correct the violation, the Foundation may impose a penalty on the landowner.

D. If the Foundation assesses a penalty against a landowner, it shall issue a written notice of violation to the landowner that shall include:

(1) A statement of the statute, regulation, deed of easement violated by the landowner;

(2) A description of the evidence proving the violation;

(3) The amount of the civil penalty;

(4) A statement of the remedial action sought to bring the landowner in compliance; and

(5) A statement notifying the landowner of the right to a contested case hearing on the violation and the penalty.

.06 Contested Case Hearing; Appeal.

A landowner may petition the Foundation for a contested case hearing on the violation and penalty within 30 calendar days of the issuance of the notice of violation by the Foundation. The Office of Administrative Hearings will conduct a hearing and issue proposed findings of fact and conclusions of law pursuant to Title 10, Subtitle 2 of the State Government Article, § 10-201, *et*.

seq., Annotated Code of Maryland. The Foundation will adopt or reject the proposed findings of fact and conclusions of law and issue a final decision. An owner may then appeal the Foundation's decision as provided by Agriculture Article § 2-405, Annotated Code of Maryland.

.07 Penalty Payment.

A. Unless a landowner appeals, the amount of a penalty shall be paid promptly to the Foundation.

B. The Foundation does not consider payment of a penalty as a replacement for compliance. If the landowner continues to violate this chapter, the Foundation may impose additional civil penalties or take other remedies at law or in equity, or both, until the landowner complies with the deed of easement.

.08 Violation Date.

This regulation applies to any violation that occurs on or after October 1, 2009.

Mr. Conrad informed the Board that the authority to enforce the Civil Penalty lies with the MALPF Board. The MALPF staff does not have the authority to enforce the Civil Penalty. Ms. Gibson added that if the landowner does not correct the violation, the issue can be heard at the Office of Administrative Hearing.

Motion #8: To approve the proposed Civil Penalty Standards.
Motion: Howard Freedlander Second: James Pelura
Status: **Approved**

Title 15 DEPARTMENT OF AGRICULTURE

Subtitle 15 Maryland Agricultural Land Preservation Foundation

Chapter 10 Confidential Records

Authority: Agriculture Article, § 2-510(m), Annotated Code of Maryland

.01 Scope.

This chapter explains the confidentiality requirement and its duration for records relating to the sale of an agricultural land preservation easement to the Maryland Agricultural Land Preservation Foundation. Confidentiality of records is maintained during an offer cycle to ensure the integrity of the offer and sale process for all participants. An offer cycle begins upon submission of a landowner's application and ends as provided by this chapter.

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Agriculture building, Annapolis, Maryland, pursuant to the provisions of State Government Article Sections 10-508(a) (7), and (8), Annotated Code of Maryland:

To consult with legal counsel staff, consultants, or other individuals about pending or potential litigation.

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

Vera Mae Schultz, Jerome W. Klasmeier, Robert F. Stahl, Jr., Joe Tassone, Dr. James Pelura III, Jonathan Quinn, Douglas H. Wilson.

TOPICS DISCUSSED:

1) Round One Offers – St. Mary's County

Motion #1: To approve the Foundation to make an insufficient funds offer to a landowner or raise it to a higher value, if additional county money becomes available.

Motion: Joe Tassone
Status: **Approved**

Second: Robert Stahl

2) Status Report on the following Pending and Potential Litigation:

- a) Wachovia Bank v. Dianne L. Stern et al, Case #C-07-9151
- b) Easement Violation in Baltimore County related to dumping.
- c) Possible Tenant House Violation in Frederick County

The Closed Meeting was adjourned at 11:30 am.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, MALPF Executive Director