

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
January 26, 2010**

TRUSTEES PRESENT:

Robert F. Stahl, Jr., Chair
Vera Mae Schultz, Vice Chair
Martha A. Clark
John W. Draper, Jr.,
Howard S. Freedlander, representing Treasurer Nancy Kopp
Jerome W. Klasmeier, representing Comptroller Peter Franchot
Donald T. Moore
James B. Norris, Jr.
Dr. James Pelura III
Jonathan C. Quinn
Mary Ellen Setting, representing Secretary Earl F. Hance, Maryland Department of Agriculture
Joe Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning

TRUSTEES ABSENT:

William K. (Billy) Boniface

OTHERS PRESENT:

Warren Bontoyan, Maryland Department of Agriculture
Anne Bradley, Frederick County, Agricultural Preservation Planner
Tammy Buckle, Caroline County, Program Administrator
Diane Chasse, MALPF Administrator
Alyssa Clabaugh, Frederick County
Connor Clabaugh, Frederick County
Dalton Clabaugh, Frederick County
Greg Clabaugh, Landowner, Frederick County
Loree Clabaugh, Landowner, Frederick County
Lisa Cliser, Carroll County
Michael Condon, Carroll County
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Win Cuple, Carroll County
Phil Davidson, Maryland Department of Agriculture
Breck Debnam, Landowner, Kent County
Rama Dilip, MALPF Secretary
Dwight Dotterer, Maryland Department of Agriculture
Sue DuPont, Maryland Department of Agriculture
Jeff Everett, Carroll County, Dy. Program Administrator
Tom Flores, Frederick County
Ann Forman, Carroll County
Nancy Forrester, Assistant Attorney General, Department of General Services
James Forman, Carroll County
Kellie Friedrich, Landowner, Charles County
Harold Brent Gardner, Landowner, Charles County
Lori Geis, Carroll County
Billy Gorski, Anne Arundel County, Planner
Secretary Earl F. Hance, Maryland Department of Agriculture
Bryan Harris, Maryland Department of Agriculture
Cint Hayane, Carroll County
Don Hoff, Carroll County
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
George Koenig, Landowner, Carroll County
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist

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Joy Levy, Howard County, Program Administrator
Don Lewis, Maryland Department of Agriculture
Terence Mahoney, Landowner, Carroll County
Steve McHenry, MARBIDCO, Executive Director
Charles Mulliz, Carroll County
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Pat O'Connell, President, Evergreen Capital Advisors, Inc
Farhab Payan, PBCCG/Landowner, York
Maria Payan, PBCCG/Landowner, York
Sarah Hall Peak, MALPF Administrator
Frank D. Prakasker, Carroll County
Harry Roach, Carroll County
Rodney Rodgers, Carroll County
Charles Rice, Charles County, Program Administrator
Phil Snader, Landowner, Carroll County
Trudy Snader, Landowner, Carroll County
Victoria Snader, Landowner, Carroll County
Anthony Woodre, Carroll County
Candy Woodre, Carroll County

OTHERS PRESENT BY WEB CONFERENCING:

Tim Blaser, Frederick County, Program Administrator
Sara Edelman, Washington County, Land Preservation Planner
Carla Gerber, Kent County, Program Administrator
David Herbst, Landowner, Washington County
Jeanine Nutter, Administrative Specialist (Fiscal)
Donna Sasscer, St. Mary's County, Program Administrator
Ned Sayre, Harford County, Ag. Preservation Planner

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Mr. Everett commented that the County disagrees with the MALPF staff's recommendations because it believes the Foundation is being too liberal. The County believes the entire operation to be a commercial use. The Foundation's recommendations would require frequent monitoring on the Snader property. The County does not have the resources to monitor this easement and to ensure it is in compliance. The Carroll County has 15-16% of MALPF easements covering approximately 42,000 acres. A 10% increase each year involves a lot of monitoring for a county program with three staff members. In addition to MALPF easements, the County also handles the County Land Preservation Program and the Rural Legacy Program. So monitoring does not happen as frequently or as thoroughly as one might hope.

Mr. Everett stated that he would approach the request first asking if the residuals are being produced on this farm. The Snaders have their farming operations and a residual business that is separate. Mr. Everett stated that he will not disagree that the residuals are inherently agricultural in nature. But the Snaders are not producing the residuals.

Mr. Conrad commented that the question is whether or not the roll-offs and the trucks used by the Snaders for on-site applications should be allowed to remain on the property, not where the nutrients being applied were produced.

Mr. Everett commented that according to him, it is either a violation or it is not. He understands the Snaders have a farming operation and some of the equipment is needed on the property. But the question is who is going to visit the property to ensure the Foundation's requirements are met. He stated that he believed that if equipment has a commercial tag, it should be considered "commercial" and not agricultural.

Mr. Phil Snader introduced himself and his wife, Victoria Snader. Mr. Snader stated that the family owns 257 acres of easement property and he and his wife live on 20 acres. However, they own another 147 acres in two parcels. Mr. Snader's brother owns a 21-acre easement and his mother owns 134 acres under an easement. All the properties are contiguous. So in total there is 257 acres of family-owned easement land.

Mr. Snader stated that he and his wife Victoria started Enviro Organic Technologies, Inc. (EOT) in 1996. Mr. Snader's education background is in agriculture. Most of the farm has been in the family for more than 100 years and was put in easement in 1984. His parents struggled between putting the land in preservation and selling it to a local quarry. Finally they sold an easement, and that is what Mr. Phil Snader wanted.

After graduating from college, Mr. Snader started farming and working for large residual management firms where he gained experience to start his own business.

When the Snaders started the business, they worked closely with MDA. The Snaders handle food processing residuals and water treatment residuals. The residual management program run on the Snader farm and other farms is strictly regulated by MDA. There have been questions whether it is agricultural or non-agricultural.

Mr. Snader stated that he strongly believed the operation should be defined as traditional agriculture. The EOT is offering a product regulated by MDA to farmers "free of charge" in place of commercial fertilizer. So the materials can be used and recycled. It is a green business and approximately 50 farmers in the State of Maryland use their products. The firm employs about 18 people.

Mr. Snader added that he works closely with State Chemist and is paying in excess of \$30,000 as tonnage fees per year. The firm is regulated under the Maryland Commercial Fertilizer Law.

Mr. Snader summarized that EOT is a farm-related and farm supporting use. The firm supports other farmers and also their own farms. The firm uses little commercial fertilizer. It

has four customers and works with Maryland Department of Environment (MDE) for biosolids in the city of Taneytown, town of Leonardtown, Mt. Airy and Mount St. Mary's College. The firm has about 1100 acres permitted with MDE. There are other farms where the Snaders apply biosolids. It is a small part of their business. The firm operates between the Eastern Shore and Frederick County. The firm also offers a nutrient management plan services. Mr. Snader stated that he is certified and writes nutrient management plans. He offers the plans free of charge to farmers using their products. The firm is also regulated by the Nutrient Management section at MDA.

Mr. Snader stated that the firm has been operating for the past 14 years and is asking the Board to allow them to operate the agricultural business on the easement property. The Snaders wanted the MALPF Board to allow them to operate 5 trucks, 8 trailers (out of 22) off their property. Out of 40 roll-off containers they wanted to be allowed 16 roll-off containers on the property.

An inspection on the property was done in December 2008 and a recommendation was made by Carroll County that the Snaders relocate any containers that do not transport residuals that are permitted by MDA or biosolids permitted by MDE. The Snaders carried out this recommendation and all the containers that store non-agricultural products are now stored off the easement property. In talking to the County staff, the Snaders realized that there was a violation and corrected the violation.

Mr. Snader stated that he has read the Foundation's policy on allowable uses on MALPF easement properties. He believed that his farm is in compliance with the zoning and use regulations. For their operations, they have taken 1.3 acres out of agricultural production for the residual management business. The soil conservation plan of the farm was updated in September 2009. The farm has grass buffer zones and restored water ways installed in the mid-1980s. Mr. Snader stated that they were formally audited last January 2009 for their Nutrient Management Plan, and everything was satisfactory.

Mr. Snader stated that he understands and respects anyone's right to complain. They have received a lot of complaints about water quality, nutrient management, and a couple of buildings he had built that did not have permits. Mr. Snader has followed up and has now received the permits. A concrete holding tank was installed and it was since removed. All issues related to water quality and nutrient management have been resolved. In May 27, 2009, Mr. Tom Devilbliss, Carroll County, Assistant Planning Director, visited the farm and advised him to take the issue to the Right to Farm Council, Carroll County. Two or three weeks later he called up and stated that he has found something that might be little more interesting and might solve the problem if he did not go through the Right to Farm and that he should try the "mediation" offered by MDA. In May, 2009, they met with concerned neighbors at the New Windsor Community Center for three hours. Another community meeting is scheduled in three months. Someone from MDA was also present at the meeting. The Snaders agreed not to spread the food residuals on the weekends because of the odor. They spread the water residuals because they had no odor. In July 2009, the Snaders purchased a farm that was contiguous to them. Some people objected to the purchase. Ms. Johnson (MDA Mediator) got a call from the spokesperson of the community group opposing the Snaders' applications of residuals on the Snader farm and conveying that the group is backing out of the three-month mediation agreement. The community group wanted to go to a "Right to Farm" hearing. Mr. Snader stated that he believed they had reached verbal agreement from mediation that would be honored, but such was not the case. Currently the Snaders are in the "Right to Farm" process.

Mr. Stahl asked if anyone present at the meeting wanted to speak on the issue.

Don Hoff, Carroll County, stated that he lives on the preserved farm next to the Snader operations. He read a letter that he stated had been signed by 26 members of the Community. (The Foundation staff had not received a signed copy of this letter.)

Terence Mahoney, member of the community, stated that he has also worked with the New Windsor Community Action Program (New Cap) on other issues that have affected the community. Mr. Mahoney stated that he is also a former New Cap Board member and has now moved to a mediator role, primarily on disputes with the mining community, namely the mining company. Mr. Terence Mahoney invited the Mr. George Mahoney, President, New Cap, to come and meet with EOT. As a result, New Cap has decided that this was not an issue that it wanted to address as an organization. He did not believe EOT had been deceptive at all. He believed many of the charges that were reiterated were directed at the commercial trucking business of R&R Transport that since has moved off site. He wanted to get this point out of the way for a calm discussion.

Mr. Mahoney stated that he has witnessed several of the changes made by the Snaders to respond to community concerns and believed they are making earnest efforts. He has not seen the same efforts on the side of the community. Mr. Mahoney's land is within a couple hundred feet of the easement property being discussed. Lehigh Cement agricultural land is across the street that has odor associated with it. He recognized it as a function of agriculture. The odor is the real key. Having driven past the EOT and lived with it since 1996 Mr. Mahoney believed the odor generating from EOT is no better or worse than any other odors he has smelled in his career driving around Carroll County. He also stated that he did not see anything amiss in the fact that the employees of EOT worked from 03:30 am to 04:00 pm.

Mr. Mahoney continued that another critical issue is whether the operation of EOT is agricultural: Mr. Mahoney stated that he believed the Snaders have made an excellent case that the operations are agricultural and the complaints seemed more like an emotional reaction rather than a logical complaint. There is no question that the operations are agricultural. This business is regulated by the MDA.

Win Cuple, Carroll County, stated that he lives approximately one mile away from the Snader's farm. He stated that he did not have any problem with the odor, but is concerned whether the operations are in conformance with the Deed of Easement. Mr. Snader had testified that he was under close scrutiny of the commercial fertilizer division of MDA. Mr. Cuple stated that he believed that this definitely means this is a commercial fertilizer operation. He wanted to know if the Foundation will allow a traditional fertilizer plant to operate on an agricultural easement property. Mr. Cuple stated that he believed that the operations are commercial operations that do not conform to the easement language.

Rodney Rodgers, resident of New Windsor, stated that he and his wife reside in the community and have a problem with the odor. To the north of his property he has a dairy farm. Directly behind their property, there is a horse farm. He disagreed with Mr. Mahoney that the smell is like any other agricultural odor. Mr. Snader himself had testified that they spray over forty times a year on his farm. In summer months, the odors are really bad. Mr. Rodgers was concerned that he is not able to enjoy his property because of the odor.

Harry Roach, Carroll County, stated that he was a member of the group that had submitted the letter with the signatures of 26 members of the Community. (The Foundation staff has not received a signed copy of this letter.) Mr. Roach stated that he had volunteered his time to help to investigate the non-agricultural business conducted by R&R Transport. He used the Freedom to Information Act to request records from the Carroll, Frederick and Howard County landfills. He also contacted treatment sewage plants. For approximately five years, Mr. Snader's trucks hauled 5478 loads of garbage to the dump. Approximately 52,000 tons incurred tipping fees in excess of \$3 million fees. He could not get the complete records from Carroll County because it changed computers services in 2004. He also got records from a former driver. The R&R Transport had a contract to haul shingle tabs. This particular driver worked for a year. In the course of a year, he hauled almost 600 loads of shingles tabs from the shingle plant. Mr. Roach stated that he had no idea what this had to do with Agriculture. There were also other loads from shingles plant to landfills but they were counted in the landfills records. The driver also stated that at times he hauled five loads a day and there

were four more drivers hauling the shingle tabs. The load pay on that was over \$100,000 just for one driver for one year. If these trucks are housed, perched, stored, serviced, tail lights fixed, brakes adjusted, tires changed on the farm, it is a violation of an easement because one cannot develop a property for commercial use. Therefore, Mr. Roach agreed with the letter that the whole business should be relocated to a commercial property since it is a commercial business.

Maria Payan, Pennsylvania, stated that she is part of a non-profit organization in Pennsylvania. Ms. Payan stated that she had come to support the citizens from whom she had been receiving complaints. This is an issue that supports sustainability in farming. Ms. Payan added that she had supported the Prigel Creamery in Baltimore County. No one is trying to stop agriculture. Ms. Payan stated that she believed that with budget cuts and not having enough people to monitor, it is going to be a difficult thing to control. Putting a multimillion dollar business on preservation land and trying to go under the guise of farming has to be carefully considered. She has heard testimonials from the residents regarding the odor. Ms. Payan asked the Board to consider this request carefully because it will open the door for other similar operations.

Mr. Snader stated that, due to concerns regarding the quality of soils on the farm, they are going to have an independent contractor visit the farm to take soil samples. The evaluation of the samples will be made available to the MDA staff (the Nutrient Management staff and the MALPF staff). Mr. Snader also clarified that any materials that come to their farm, stay on the farm. If the Snaders haul to another farm, residuals are taken directly from the source to the farmer as the end user. If those materials come to the Snader's farm, they will be kept either in the Snader's farm or will be shifted to a farm they rent or a farm for which they have a share crop agreement consistent with County zoning regulations).

Trudy Snader stated that she hates to hear someone use the phrase "under the guise of farming." There are several multimillion dollars businesses on farm preservation land in Carroll County. Mrs. Snader stated that whether or not adequate resources are available to monitor approved and allowable uses on preserved land should not determine the approval of the request. The Snaders have always been good neighbors and have always had good neighbors. If they had wanted to write a letter in support of their request and have the letter signed from the people in the community, there would be many more than 26 signatures.

Mrs. Snader appreciated the Board Members for hearing and handling the issue. She believed her family is continuing to farm their property as did their ancestors.

Howard Freedlander, representing Treasurer Nancy Kopp, asked Craig Nielsen, Assistant Attorney General, to clarify what is legally allowable.

Mr. Nielsen stated that the MALPF program has more than 2000 easements covered by the state wide preservation program. The MALPF Board's authority is limited and it does not own the Snader farms. The easement promotes economically viable farming, and the State wants farmers to make a profit. The easement limits non-agricultural commercial activities.

Mr. Nielsen stated that he believed the Snaders cannot manufacture fertilizer on their farm from materials originating off site for the use of others, although they can manufacture for themselves. Farming itself is commercial. Farming necessarily involves odor and noise. To participate in the MALPF Program, the counties have adopted local ordinances that allow smells that are the result of normal allowable agricultural activities on an agricultural property. The Foundation does not regulate odor and does not get involved in neighbor's disputes. There are other government bodies that regulate odor and can handle disputes. There are limits to what the Foundation can do to regulate what happens on the farms. The Legislature has given MALPF the authority to make a judgment as to what is agriculture and what is not agriculture.

Mr. Conrad wanted to know the specific numbers regarding roll-offs, trailers, and trucks. He

also wanted to know about the on-site use of fertilizers and how the Snaders came up with specific numbers they are requesting to be allowed on the property.

Mr. Snader stated that currently they have 4 roll-off trucks and one dump truck that are used to haul residuals. Several years ago, the Snaders did a lot more non-agricultural work. Today, that business is very small. If they were to forget about the residual management business completely, there would be one half of one truck used for non-agricultural transportation of trash (construction debris). Two years ago, it would have been two or three. But currently that is not the case. The Snaders had chosen to phase it out for numerous reasons. The Snaders own 22 tankers and dump trailers. It is important to note that they own only one truck tractor. The truck tractor is not tagged and is used on the farms to move these trailers. The trucks that are used for these trailers are all owner-operated. The Snaders have about 38-40 roll-off containers that they use strictly for residuals. The Snaders are asking for 16 of the roll-off containers to be left on site. Out of the 16, one roll-off container is used for personal trash, one is used as a metal recycling container, two are used for shavings, two are used for manure and several of the roll-off containers are used for hauling hand straw and grain. The Snaders are asking that the five trucks be allowed to be kept on the property. The trucks are used for residuals, hauling grains, and other various agricultural products used on site.

Mr. Snader commented that all the assets he had spoken about can be repaired on site. They also have a three-bay machine shop. They own in excess of \$1M of farm equipment. The 50' x 80' shop is used for dual purpose; to maintain the trucks and trailers as well as their farm equipment. The office is roughly 24' x 48' and is used for the farm, the residual management business, and the equestrian business.

Martha Clark, Board member, quoted from the staff memo, "On December 10, 2009 the local advisory board reviewed the request. They voted to approve the uses request under the condition that all trailers, cans, and commercially tagged trucks be stored off-site. While this recommendation is somewhat more restrictive than the staff recommendation, the MALPF Board has the discretion to set the final conditions of approval, as long as they do not conflict with the September 25, 2001 Board of Zoning Appeals approval." It is also mentioned that "not more than eight containers shall be stored on the site and they shall be empty." Ms. Clark commented that the Foundation staff's recommendations seemed to be for a larger number of containers. Ms. Clark wondered how the Foundation can exceed the number of containers allowable by the Carroll County Board of Zoning Appeals.

Ms. Council stated that as per Mr. Nielsen, the MALPF Board could say that the Snaders can keep the entire 40 roll-off containers on his property. But if Zoning had said that they can keep only 8, they are restricted by the requirement that is most restrictive. So regardless of what the MALPF Board feels necessary, if the Zoning says they can store only eight at any time and they should be empty that is what the Snaders will be allowed to store. The Foundation staff's memo does not have a number in its recommendation. Ms. Council stated that her memo is based on the information provided by Mr. Snader and in consultation with MALPF legal advisors.

Mr. Nielsen commented that there are two separate levels of rules and regulations. One is the Deed of Easement and the other is County Zoning. These are two different processes. The Foundation takes its position based on local zoning. Zoning has not provided adequate protection for farms. So the Legislature created this program to make sure farms are adequately protected. You don't look at Zoning to determine what is allowable under the MALPF program. You should look at the Deed of Easement and the State law. Sometimes, the Foundation's interpretation can be more liberal than Zoning Ordinances and sometimes it can be more restrictive.

Responding to a question from another Board member, Vera Mae Schultz, Vice Chairman, quoted the Foundation's Uses Guidelines relating to landscaping business. The Guidelines say that, in addition to not interfering with other agricultural or silvicultural activities or limiting

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Mr. Everett stated that the County wanted any vehicles related to EOT off of the easement property. The County did not believe it is in the spirit of the MALPF program to allow any commercial uses. If a truck has a commercial tag, it is used for commercial purposes. If equipment is used for farming, it will have a farm tag, even if it is used exclusively to bring material from off site to the property for use as a farming input.

Mr. Conrad asked if the issue for the County is about the tag.

Mr. Everett said the issue is the trucks. Mr. Everett gave an example. If there is a poultry house and one is selling out-of-date eggs as manure there will not be a problem, because material used as fertilizer was produced on site. The Snaders have a farm operation, but the residuals they use as fertilizer come from offsite sources as a waste product, so the residuals are not entirely agricultural.

Mr. Tassone commented that his understanding is that residuals can be applied to the Snader's property, and they have an ability to store the residuals.

Mr. Stahl commented that his understanding was that any residual stored on the farm is for the farm use. Mr. Snader confirmed this and added that the residuals stored on the farm will be used for their farms, the farms they rent, or the share crop. This was established by Carroll County Zoning in 1996.

Mr. Everett stated that he was concerned with the scope and the scale of operations. The aerial photographs indicate an increase in the scope and the scale of operations. If the Snaders start bringing tankers, roll-offs, and trucks with commercial tags onto the property, it becomes a problem. Mr. Everett stated that he was concerned about the commercial use of an easement property.

James B. Norris, Jr., Board member, wanted to know if this was a commercial fertilizer, and if the Snaders stored it at the storage facility on the easement property, would the County object? Mr. Norris stated he believed residuals are considered agricultural fertilizers.

Mr. Everett stated that he was concerned with the ingress and egress of commercial trucks. The storage of products is a separate issue.

Mr. Stahl stated that it seemed the only difference at this point is the trucks. The County's recommendation was to move all trucks with commercial tags and the roll-offs to an industrial site. Otherwise, all the recommendations seem to be the same.

Mr. Everett stated that the County advisory board wants to see only the office left on the property. The advisory board feels that the office has already been built, and everything else related to the business must be moved off-site including any commercially-tagged equipment, even if only used for the Snaders' farming operation.

Mr. Freedlander wanted to know if this property is the only non-conventional agricultural operation in Carroll County. Mr. Everett stated that there are some others on the radar. But this is the one that has come to the County's attention because of complaints received.

John Draper, Board member, stated that he believed the Board will be opening a hornet's nest if the Board were to limit the storage of trucks on easement property to those that have only farm tags.

Mr. Conrad wanted to know if the only issue for the County advisory board is commercial tags.

Mr. Everett stated the Board's concern is how the trucks with commercial tags can be used on an agricultural preservation farm. Why can't the trucks be stored elsewhere?

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Mr. Pelura stated that the Snaders had a specific request concerning the number of roll-off containers, etc. He wanted to amend the motion to insert their specific request.

Amended : To adopt the Foundation staff's recommendations. The Foundation
Motion #3a staff is advised to work with the parties involved to determine the number of pieces of equipments that are needed to be on-site for the agricultural and silvicultural operations.
* The Snaders are requesting that these vehicles be allowed to remain on their farm property, regardless of how they are tagged, for use to collect and apply residuals to their farm: 16 residuals containers, 9 over-the-road trailers. In addition, the following containers are necessary for daily use on their agricultural operation: 1 for trash generated from the farm, 1 for metal recycling, 2 to store wood chips for bedding, 2 to store manure from the horse and livestock barn and 4 for transporting hay, straw and grain grown on the farm.

Motion: James Pelura Second: John Draper

Ms. Clark wondered if the motion is talking about 24 residual containers and 9 over-the-road trailers.

Mrs. Victoria Snader said that they have 5 trucks and the shop and the office. They will make sure that everything else is cleared.

Ms. Schultz stated that she is not sure all the things mentioned in the motion relate to their on-site operations. She stated that she would prefer the Foundation staff and the County Advisory Board to work it out with the Snaders.

Mr. Stahl called for a vote on the amended motion.

Motion: James Pelura Second: John Draper
Favor: James Pelura, John Draper, Jerry Klasmeier
Opposed: Howard Freedlander, Bubby Norris, Martha Clark, Jonathan Quinn,
Mary Ellen Setting, Vera Mae Schultz, Joe Tassone
Status: Amendment Motion Failed

Mr. Stahl stated that the amended motion failed and the original motion moved by Ms. Schultz stands.

Ms. Clark wanted to make sure that Ms. Schultz's motion will allow the Foundation staff and the Snaders to work with the local advisory board to come up with a resolution. Foundation staff confirmed this.

2. 06-81-07 Lippy Brothers, Inc. 1.069 acres

REQUEST - CARROLL COUNTY:

Request for an even exchange of 0.25 acres of easement property for 0.25 acres of non-easement property.

RECOMMENDATION:

Staff recommends approval of the request to exchange 0.25 acres of easement property for 0.25 acres of non-easement property.

BACKGROUND:

Lippy Brothers, Inc. are the recipients of a 1.069 acre portion of a 102 acre easement owned by George R. Brooks. On April 28, 1998 the MALPF Board of Trustees approved the 1.069 acre agricultural subdivision to allow Lippy Brothers, Inc., to properly maintain a water runoff

2. 08-92-05 Berkleigh, LLC 184.321 acres

REQUEST - CHARLES COUNTY:

Request for a 1.9963 acre owner's lot for the use of Kellie Marie Friedrich.

RECOMMENDATION:

Staff recommends approval of the request for a 1.9963 acre owner's lot for Kellie Marie Friedrich. Ms. Friedrich is one of the original owners identified in the deed of easement as eligible for an owner's lot as long as the three members of Berkleigh LLC retain 100% ownership of the property, which they have. The lot is not proposed to be located adjacent to either of the two pre-existing dwellings. To do so would require taking land out of production. The chosen location will have an existing access which will be a part of the lot, as required by Charles County. The area is a knoll area where an old barn once stood and which is now unusable for cropland, according to the Program Administrator. Since the lot requires fee access, the landowners will record an agreement to allow the remainder of the easement to have full use of the driveway, which is currently a major access for the property.

BACKGROUND:

Kellie Marie Friedrich, Harold Brent Gardner, Jr. and Harold Brent Gardner, III are the original members of Berkleigh LLC. The easement document states that either of them may receive the owner's lot as long as all three of them together retain 100% ownership in the company. An attorney for Berkleigh LLC has stated that they have retained ownership. Staff notes that this is considered a family corporation and that the Deed of Easement includes a provision for the children of Kellie, Harold, Jr. or Harold Sr. to receive a child's lot (maximum of two).

The property has two pre-existing dwellings, and there have been no previous requests for lot exclusions.

The area of the proposed 1.9963 acre owner's lot consists of class IV soils and will have direct access via a deeded right-of-way from Trinity Church Road. A survey and successful perc have been completed for the lot.

The local advisory board has approved the request and it meets with Planning & Zoning requirements. Payback for the lot will be \$6,854.14 per acre.

Kellie Marie Friedrich, Harold Brent Gardner, Jr., and Charles Rice, Program Administrator, were available at the meeting. The material in the agenda packet included the proposed lot location and lot configuration. The aerial photograph located a panhandle going out to the public road. Charles County subdivision regulation requires a fee simple access which would be a 12 ½ foot strip over the existing farm road to Trinity Church Road. The owners have agreed to record an access easement over the 12 ½ foot strip to ensure the farm can continue to use the road. Mr. Gardner provided some pictures locating the proposed lot.

Mr. Rice mentioned that this property is a unique property in Charles County because it is about 60-70% cropland, making it more challenging to locate lots. The lot is proposed to be located on the grass between two farm fields and adjacent to a wooded block. The soils from this site are Class IV. The proposed location is in proximity to one of the pre-existing dwellings on the property.

Mr. Gardner stated that the lawyer has drawn up an operating agreement to ensure that the farm stays as a farm.

Mr. Stahl informed the Board that he is familiar with the farm because it is on the same road as his farm. He stated the belief that the proposed location of the lot access is safe for entry and exit from the County road. The proposed location probably does the least damage to the surrounding crop fields. The landowners have cleaned up the property and made modifications. The farm is probably one of the largest farming operations in Charles County.

D. FREDERICK COUNTY

1. 10-89-01 Clabaugh, Greg 177.38 acres

REQUEST:

To approve a preliminary/conceptual proposal for a brewery operation on an easement property.

RECOMMENDATION:

Staff finds the preliminary/conceptual proposal meets brewery guidelines that were drafted by staff based on the winery guidelines. The landowner would come back to get final approval once he has completed a site plan.

Final approval of the request will be subject to the following:

1. Receipt of Class 5 Brewery License.
2. An increase in scale will require additional Foundation review.
3. A change in the owners of the operation will require additional Foundation review.
4. Agreement to give the Foundation access to the facility for monitoring purposes.
5. Landowners sign a letter outlining MALPF's conditions, including frequency of events.

BACKGROUND:

Background information as included in the agenda packet is available in the Agenda File.

Mr. and Mrs. Greg Clabaugh, Tom Flores, Frederick County, and Anne Bradley, Frederick County, Agricultural Preservation Planner, were present at the meeting. Mr. Flores is an expert on the brewing process.

Mr. Clabaugh stated that he had been a dairy farmer all his life. To generate additional income, Mr. Clabaugh thought of growing barley. He and Mr. Flores worked together and are now ready to brew beer. Currently there are other farm breweries in the country, but none raises, malts and brews on the same farm. Every existing structure on the farm is being used for dairy and machinery. Mr. Clabaugh stated that he believed that they need a new building for the operation between 20,000 to 25,000 sq. feet.

Mr. Clabaugh and Mr. Flores explained the processes involved. They don't have a finished model, but are in the process of developing how the operation will work.

John Draper, Board member, asked if all the processes are planned to be in one building or separate buildings. Mr. Clabaugh stated that they plan to process everything inside one building.

Mr. Conrad stated that the Foundation has altered the winery guidelines to develop brewery guidelines. He suggested that any discussions/proposed motions should also address the revisions. Diane Chasse, MALPF Administrator, asked Mr. Clabaugh if he had reviewed the Foundation's guidelines on winery and brewery operations. Mr. Clabaugh confirmed that he had read the guidelines. His only concern was that 20,000 sq foot structure might be small and wondered if the size could be revised to 25,000 sq. feet.

Ms. Schultz wanted to know how the water supply will be considered and addressed. Mr. Clabaugh stated that he had received an e-mail from Mr. Mark Filer, Maryland Department of Environment. Mr. Filer did not think the water supply should be an issue. Mr. Filer had conveyed that he cannot give a written statement unless Mr. Clabaugh files for permit. Mr. Filer stated that he believed Mr. Clabaugh's request is for a small use permit and there is no charge to process such a permit. The source of water will be well water.

Mr. Conrad wanted to know if the proposal will have an effect on the property's agricultural assessment. Mr. Clabaugh stated that he did not believe it will have an impact.

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Donna Landis-Smith, Program Administrator, Queen Anne's County, stated that Queen Anne's County has a landowner using barley for brewing on site. In Queen Anne's County, it was considered an agro-business, and the landowner did not lose his agricultural assessment.

Mr. Clabaugh stated that, according to the Zoning Ordinance in Frederick County, his operation is considered an agricultural use.

Mr. Conrad commented that the Clabaughs are planning to have a malting facility that is unique in the area. He wanted to know 1) if the neighbors have any reaction and, 2) if the Clabaughs have any intention of malting for other people. He also wanted to know more about the size of the tasting room and the farm museum planned by Mr. Clabaugh.

Mr. and Mrs. Clabaugh stated that their proposal has received a very positive reaction from all their neighbors. They get a tractor trailer in to get the milk. The traffic generated by the proposed operations will be less than the traffic generated if he chose to buy couple of hundred more cows and ship milk every day. The proposed brewery is a small one.

Mr. Clabaugh stated that he wanted people to come and visit his operations. He believed that many people are not aware of the everyday operations of a farmer and are often disconnected from what happens on the farm. He wanted to build a bigger tasting room and create an awareness of agriculture and what a farmer does. He also wanted to put some antique farm machinery for people to see.

In the last two months, he has had two local farmers asking him if his operations would ever get big enough that they could bring grain over to malt. One of them asked if he could raise grain for Mr. Clabaugh. Mr. Clabaugh stated that he believed the farmers are keen to know more about other sources of income.

Mr. Draper commented that reading the **Winery/Brewery** guidelines, his understanding is that the only way the Board would approve the request is if the operation associated was with on-site grain production. He wanted to know if one can use grains other than barley. Ms. Chasse confirmed that it is possible to use grains other than barley.

Motion #8: To approve the request of Greg Clabaugh for a conceptual proposal for a brewery operation on an easement property as per the recommendations of the Foundation staff. This approval is with a condition that the building is limited to 25,000 sq. feet as requested and the size is justified by the landowner when he comes for final approval.

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

Mr. Stahl advised Ms. Chasse to clarify the requirement of Class 5 Brewery Licence before the Board votes on the Foundation's recommendations of Winery/Brewery guidelines.

Mr. Freedlander asked Ms. Chasse to provide an update on the winery operations in Dorchester County. Sometime, in the recent past, the MALPF Board had approved a conceptual plan and was supposed to see more specifics on the case. Ms. Chasse confirmed that she will research both.

IV. PROGRAM POLICY

C. MARBIDCO Invoice for Installment Purchase Agreement Costs

The Foundation has received an invoice and documentation from Steve McHenry, Executive Director of the Maryland Agriculture and Resource Based Industries Development Corporation (MARBIDCO), for administrative charges related to MARBIDCO's work on the

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Jerome W. Klasmeier, Donald T. Moore, James B. Norris, Jr., James Pelura III, Mary Ellen Setting,
Joe Tassone, Jonathan C. Quinn

TOPICS DISCUSSED:

1. Baltimore County – Consider Withdrawal of a 2009 Offer.

Motion #1: To approve the Foundation staff to send a letter to the landowner via certified mail to give him 30 days to respond to the Foundation's earlier letter or the Foundation will terminate his offer.

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

2. Status Report on the following Pending and/or Potential Litigation:

- a) P. Michael Larrick
- b) Wachovia Bank v. Dianne L. Stern et al, Case #C-07-9151
- c) James R. Owens & Linda M. Owens vs. Peter G. Brown & Jeffery L. Conner and Christa D. Conner, Case #11-C-07-009981 DJ
- d) 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
- e) Possible Tenant House Violation in Frederick County

The Closed Meeting was adjourned at 12:05 p.m.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, MALPF Executive Director