

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
March 23, 2010**

TRUSTEES PRESENT:

Robert F. Stahl, Jr., Chair
Vera Mae Schultz, Vice Chair
William K. (Billy) Boniface
Martha A. Clark
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:

John W. Draper, Jr.,

OTHERS PRESENT:

Tammy Buckle, Caroline County, Program Administrator
Diane Chasse, MALPF Administrator
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
Nancy Forrester, Assistant Attorney General, Department of General Services
Amanda Gibson, Assistant Attorney General, Maryland Department of Agriculture
Billy Gorski, Anne Arundel County, Planner
Secretary Earl F. Hance, Maryland Department of Agriculture
Fatimah Hasan, Planner, Prince George's County
Forest Kelly, Prince George's County
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Wally Lippincott, Baltimore County, Program Administrator
Joy Levy, Howard County, Program Administrator
Lynn Miller, Long Range Planning, Anne Arundel County
Samantha Mozo, Representing the Landowner, Montgomery County
Mr. Nelson, Landowner, Baltimore County
Sarah Hall Peak, MALPF Administrator
Brad Petru, Angler Environment, St. Mary's County
Barbara Polito, Program Administrator, Anne Arundel County
Donald Reuwer, Landowner, Howard County
Charles Rice, Charles County, Program Administrator
Donna Sasscer, Program Administrator, St. Mary's County
Don Seaborn, Angler Environment, Consultant, St. Mary's County
Stewart B. Smith, Assistant Program Administrator, Prince George's County
Martin Sokolich, Program Administrator, Talbot County
Emily Vaios, Attorney Representing the Landowner, Montgomery County
Gary Whipple, St. Mary's County, Department of Public Works & Transportation
John Zawitoski, Program Administrator, Montgomery County

OTHERS PRESENT BY WEB CONFERENCING:

Sara Edelman, Washington County, Land Preservation Planner
Carla Gerber, Kent County, Program Administrator
Lisa Ledman, St. Mary's County, Administrative Coordinator
Jeanine Nutter, Administrative Specialist (Fiscal)
Ned Sayre, Harford County, Ag. Preservation Planner

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Mr. Zawitoski also stated that the parcel was subdivided by deed not by plat. In Montgomery County, one can get a one-time exemption from grantee approval for subdivision if one owned more than 25 acres.

Mr. Stahl wondered if the County will require the subdivision by plat. Mr. Zawitoski stated that it might help keep things cleaner in the land records. It is exempt from the subdivision requirements. Parks and Planning will issue a letter of exemption and will not require a subdivision as it is over 25 acres.

Ms. Vaias introduced herself as the legal attorney representing Mr. Keshishian. Ms. Vaias stated that Mr. Keshishian certainly wants to rectify the situation. Ms. Vaias stated that Mr. Keshishian's intent was not to go against the easement. The land has not been further developed and the intention is to continue the land in agricultural use. It was clearly a misunderstanding on the part of Mr. Keshishian. He recognized this and wants to rectify.

Ms. Vaias stated that if the MALPF Board believes a plat will be a good idea, Linowes & Blocher LLP, can certainly help Mr. Keshishian process that. Ms. Vaias also stated that she believed when these things were happening, Mr. Keshishian was undergoing personal issues and that might have impacted his action. Ms. Vaias stated that she believed Mr. Keshishian's intention was not to violate the spirit and the intent of the agricultural use of the land. Mr. Keshishian's farm was one of the first to enter the MALPF program in Montgomery County. Mr. Keshishian is a good steward of the land and wants to maintain the agricultural nature of the land. He recognizes the agricultural subdivision as a mistake and wants to correct it.

Mr. Zawitoski stated that he had also met with Mr. Walsh, who had purchased the 42.13 acre parcel from Mr. Keshishian. Mr. Walsh is aware of the easement and is extending his support to resolve the issues.

Ms. Clark wanted to know if Mr. Walsh is involved in farming this property.

Mr. Zawitoski stated that Mr. Walsh is involved in hay production and eventually would like to have an equestrian operation for racing. Currently Mr. Walsh is in the process of building a barn. In the future, Mr. Walsh would like to have a small operation. Mr. Keshishian uses the hay that comes off this farm. Also, there are substantial wooded sections on the property.

Joe Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning, wanted to make sure that Foundation staff has ascertained that the agricultural subdivision meets the Foundation's requirements that existed at the time of the conveyance. Foundation staff confirmed this.

Ms. Clark commented that she would like to look at the request in the light of Mr. Keshishian's next request for a 1.0 acre owner's lot. The next request is asking the Board not consider the policy that was in place at that time. The Foundation Staff is seeking the Board's approval in light of the existing current policy. Ms. Clark pointed out that in the second request, it is mentioned that, at the time of lot release, there was no provision for conveyance of an approved owner's or child's lot to a third party. Mr. Keshishian did not live in the dwelling for a full 5 years and allowed a builder to live in it. Ms. Clark had concerns about how the two requests are being treated.

Mr. Stahl wondered what the remedy can be. He wanted to make clear that the Board does not want to have any precedence associated with allowing people to do what they want to do and then the Board is required to approve something retroactively. The challenge is to find a legal remedy other than retroactive approval.

Nancy Forrester, Assistant Attorney General, Department of General Services, stated that the Board can either chose to approve the request and move forward or file a legal suit. Jerry Klasmeier, representing Comptroller Peter Franchot, wondered why the Board cannot

owner's lot and two 1.0 acre child's lots from the easement. The 1.0 acre owner's lot release document is dated October 21, 1991 and it was recorded in the land records of Montgomery County on December 12, 1991. According to Mr. Keshishian's request letter and Montgomery County, a dwelling was constructed on the lot in 1991 and it was used as Mr. Keshishian's residence. The lot was then conveyed to Mr. James V. Walsh on October 17, 1996 – along with a 42.13 acre agricultural subdivision.

At the time of the lot release there was no provision for the conveyance of an approved owner's or child's lot to a third party. As of October, 2003, the Foundation has adopted regulations which provide for family lots to be transferred to a third party after five years have passed from the date of the final release, or prior to five years with permission of the Board of Trustees.

The local advisory board has reviewed this request and recommends approval.

Mr. Zawitoski commented that he started working on the agricultural easements in 1997. Mr. Zawitoski stated that he believed that the easement language in earlier times was looser. Things have evolved over the years, and the current easement language provides clear guidance and outlines the restrictions. The easement executed for Mr. Keshishian is not that clear. The easement document talks specifically about the personal use and nothing more. Mr. Zawitoski stated that he believed Mr. Keshishian did not intend to violate any terms of the easement.

Ms. Vaias stated that Mr. Keshishian built three houses after the easement was granted. His understanding was that a lot for himself and a lot each for his two children were permitted. He also had a pre-existing house. In total, there were four houses. As Mr. Zawitoski had pointed out, the easement language at that time was not clear and did not specify personal occupancy. Mr. Keshishian has stated that technically he did not live in that house for five years. The house was not sold and it was not under a written lease. He was using it and allowed the builder to live in that house while the other two houses were being built. Around this time, Mr. Keshishian was also dealing with certain personal issues.

Mr. Conrad commented that, according to the Foundation's revised policy, divorce is one of the circumstances for releasing a lot before its completion of five years.

Ms. Vaias stated that she did not know when the actual event happened but it did happen sometime in mid or early 1990s. So she knew that divorce was part of the issue driving his financial situation.

Mr. Stahl asked the Board to review the first request and asked if there were any questions related to this item II.B.1.

Mr. Tassone commented that the event had occurred in the past and has been in place for some time. Foundation staff has confirmed that the request meets the guidelines in force at that time. In his opinion, the proposal was reasonable.

Billy Boniface, Board member, wondered what would be the ramifications if the Board approved the first request and denied the second request.

Ms. Clark wanted to know if Mr. Walsh lives on the property conveyed to him. She pointed out that the information from Maryland Department of Assessments and Taxation indicates that the house is not the principal residence. Mr. Zawitoski stated that Mr. Walsh also has another house.

Ms. Clark wanted to know who lives on the two houses considered as children's lots. Mr. Zawitoski stated that the title of the lots was transferred to the children in 2009.

Mr. Tassone commented that his action is based on the Foundation staff's advice that the subdivision meets the criteria of the Foundation's Agricultural Subdivision policy that existed at that time.

The Board addressed Mr. Keshishian's request for an owner's lot.

Mr. Tassone commented that he agrees with Ms. Clark's concerns and comments. One of his prime concerns is about the lack of clarity on the procedures relating to agricultural subdivision and who can live on an approved child's lot. A possible reason for this could be the loosely defined procedures at that time.

Ms. Clark commented that there were many landowners in the program who understood the intent and followed through the regulations. She wanted to know if the Foundation can provide historical background on other similar requests (for owner's and children's lots) at that time period.

Mr. Conrad gave an example. When a farm is sold, the house goes with the farm and provides essential value to any farming operation. In earlier days, there were cases of transfer of lots to ineligible third parties that were subject to legal proceedings. That's why the Foundation came up with the two stage release process. Over time, things have evolved, and now the Foundation also has a 5-year requirement to try to control illegal transfers.

Mr. Stahl commented that now that the Foundation has approved the agricultural subdivision, could not Mr. Walsh make the owner's lot part of 42.13 acre agricultural subdivision so that the Foundation doesn't have to worry about the possibility of selling it as a separate lot. The bottom line is that that the Foundation is clearly interested in making sure that the owner's lot remains with the farm.

Mr. Zawitoski stated that he does not see a reason why Mr. Walsh would not agree. Obviously it is a farming parcel and the house is the primary residence for that parcel.

Mr. Conrad commented that there is also a possibility that the owner's lot could be purchased in the future by the person who owns the parent parcel.

Mr. Stahl stated that in his opinion the owner's lot should stay with the subdivision. It should be the primary residence for the agricultural subdivision.

Mr. Tassone wondered if the MALPF Board can ask this since that is not the landowner's request.

Ms. Forrester stated that the MALPF Board needs to check with the landowner before making such a decision.

Motion #4: To table Harold Keshishian's request for an owner's lot.

Motion: Howard Freedlander Second: Vera Mae Schultz
Status: **Approved**

Mr. Conrad stated that the request is from Mr. Keshishian. But the MALPF Board is requiring Mr. Walsh to come back to the Board. At this point in time, Mr. Walsh is not party to the request, although he owns the property. The person who has signed the easement document is Mr. Keshishian.

Mr. Stahl stated that he understands Mr. Freedlander's decision to table the request, but the decision will ultimately affect Mr. Walsh. Mr. Stahl advised Mr. Zawitoski to have the request signed by both Mr. Keshishian and Mr. Walsh.

Ms. Vaias wanted to know if the Board can make a contingent motion so that the request

does not need to come back. She can get a written letter signed by both owners stating that they agree.

Mr. Stahl stated that the owners have to come back because there are still some pending children's lots issues with Mr. Keshishian.

Ms. Vaias stated that she is working with Ms. Hoxter and may not have to come back to the Board.

Mr. Stahl stated that at this point in time, the motion has been tabled. It is up to the owners if they want to come back and present their request or they want Mr. Zawitoski to make the presentation with the letter from the landowners.

C. CHARLES COUNTY

1. 08-92-08A Bowling, Clark & Margaret 47.7043 acres

REQUEST – CHARLES COUNTY:

Request for a 3.0875 acre partial termination of district

RECOMMENDATION:

Staff recommends approval as the remainder of the district will continue to meet the Foundation's soils and size requirements. The District Agreement has exceeded its required five-year commitment. Although the district is not 50.0 acres in size, it is contiguous to two other districts that together consist of more than 180 acres.

BACKGROUND:

Mr. and Mrs. Bowling are the original owners of the district property. The District Agreement was executed April 6, 1992.

According to Charles County, the remaining 44.6168 acres contains 63% qualifying soils. The proposed 3.0875 acre lot is intended for a house site for a grandchild that will be accessed by MD Route 234 and clustered near three existing homes.

The local advisory board has approved the request and it meets with Planning & Zoning requirements.

Charles Rice, Program Administrator, was available at the meeting. Mr. Rice informed the Board that the lot size is the minimum allowed by the County Zoning.

Motion #5: To approve Clark and Margaret Bowling's request for partial termination of District.

Motion: James Pelura Second: Bubby Norris
Status: **Approved**

E. BALTIMORE COUNTY

1. 03-98-16 Nelson, Martha 96.00 acres

REQUEST - BALTIMORE COUNTY:

Release of up to a 2.0 acre owner's lot for the personal use of Martha Nelson.

RECOMMENDATION:

Staff recommends approval as the requested lot meets the Foundations Lot Location Policy. The lot is being situated along a road.

Consultant, St. Mary's County, and Brad Petru, Angler Environment, St. Mary's County were present at the meeting.

Mr. Whipple stated that the St. Mary's County has owned and operated St. Mary's County Reserve Airport since 1968. It is part of the Federal Aviation Administration's (FAA) General Aviation System. The FAA has invested \$9M in development of St. Mary's County Airport. In 1979, the County issued its first master plan and it was most recently updated in 2002. It was based upon aviation demand and a forecast of increased use for St. Mary's County Regional Airport. The plans recommend extension of the runway and the extension of the taxi way on the airport property. The airport is located in the industrial, commercial zone portion of St. Mary's County and is within the Priority Funding Area as verified by Maryland Department of Planning. The Department of Public Works & Transportation worked with MDE and also the County planners with the Department of Land Use and Growth Management to come with an environmental assessment. It was determined that there is a need to mitigate wetlands offsite. The FAA does not want any wetlands mitigation project within 5 miles of the airport because of the hazard it can create (wetlands within the approach of an airport has the potential to attract wildlife). The County went through a systematic process to identify potential mitigation sites, using such evaluation criteria.

Mr. Whipple added that the ideal wetlands mitigation site contains hydric soil, is relatively flat, and is not forested (clearing trees requires forest conservation). The Department also wants to make sure that the site is not only away from the airport but also away from schools, parks, or other developed public area. Wetlands not only attract wildlife, but can also be a hazard because of mosquitoes. The Department of Public Works & Transportation identified the property in St. Clements Shores owned by the County and by the Metropolitan Commission in charge of wastewater and water in the County. The Department of Public Works & Transportation approached MDE, started the Wetlands Permitting Process, and received the approval for phase 1 from MDE. The Department then mobilized Angler Environmental to start the mitigation work and discovered that the identified areas in St. Clements Shores were not as suitable as indicated by the original feasible study. They had to go back and explore additional properties to make up the balance. The Angler Environmental did a screening process and identified Taylor Farm meeting all criteria for wetlands mitigation. It is in the same watershed as the airport.

Mr. Stahl expressed his surprise that the Taylor Farm is in the same watershed as the airport.

Mr. Whipple stated that watersheds are delimited at many different scales. Don Seaborn, Angler Environment, Consultant, added that the U.S. Geological Survey (USGS) publishes a hydrological unit code map. Typically the regulatory agencies use hydrological units to determine if mitigation is in the appropriate watershed. For instance, Southern Maryland is essentially broken into three hydrological unit codes. For the purposes of dealing with MDE, Angler focused the search within the same hydrological unit code as the airport. Angler has to get approval from MDE to build beyond the watershed (hydrological unit code) where the impact is occurring.

Mr. Freedlander stated that he is surprised because he has reviewed cases of State Highway Administration and the mitigation areas are commonly not even near the State project being mitigated.

Mr. Whipple stated that the FAA does not want mitigation near the airport. The southern half of St. Mary's County has three airports almost eliminating considering the southern half of the County. One has to find hydric soil in the north end of the County, and the central portion of the County does not have much hydric soil. So one is pushed more towards the Bushwood area. They found some properties at St. Clements Shores, but not enough.

Mr. Whipple stated that he recognized that the 5 acres requested do not meet the size criteria. But the property has hydric soil, is adjacent to a large system of existing wetlands, and probably was a wetland before. The Army Core Engineers and MDE will rather see

wetlands restored rather than create wetlands. Creation of wetlands is more expensive, and the wetlands, thus created, are not as likely to work.

Mr. Seaborn stated that when Angler got associated with the project, it did a detailed feasibility study and met with MDE and the County. The parcels were identified. They identified only 2 acres of the area suitable for wetland mitigation. What they are looking for is an area where wetlands can be restored. Ecologically, it is a significant project and has to be a unique piece of property.

Mr. Seaborn added that Angler has good experience, having done more than 100 similar projects in Maryland and Virginia. When it took on the project, it did a GIS screening of the entire County, sent out approximately 100 letters to different landowners, and met with at least 10 landowners. Angler had to search not only for a technically suitable area but also a landowner willing to live with the restrictions associated with wetlands mitigation. The search led them to the Taylor farm.

Mr. Freedlander wanted to know about the soils on the Taylor farm. Mr. Conrad stated that the hydric soils are eligible soils. If they are farmed correctly, such soils can be very productive, but they do require good husbandry practices.

Mr. Conrad wanted to know if a buffer has been included in the calculations. Mr. Seaborn confirmed that the area for a buffer (as required by MDE) has been included.

Mr. Conrad stated that the proposed area is surrounded by other preserved lands. He wanted to know if Anglers has plans to expand the wetland mitigation to other preserved areas if they find the area suitable for wetland mitigation.

Mr. Seaborn stated that he does not know. It will depend on what the landowner thinks his land is worth. There could be individual negotiations with interested landowners.

Mr. Whipple added that separate from the current request, his Director has asked him and the local board has offered to review the wetlands mitigation process. So the Department of Public Works and Transportation will be working with the local board to develop a plan to deal with wetlands mitigation.

Mr. Conrad wanted to know about the nature of farming operation before and after the wetlands mitigation. Ms. Sasscer stated that the farming operation on the remainder of the farm will remain the same. The land under wetlands mitigation will come out of production. The area is currently leased. Bubby Norris, Board member, added that the farm currently has grain farming (with the exception of one green house). The area that is proposed for mitigation is pasture. The application indicates that the landowner allows grazing of animals on the pasture land.

Mr. Tassone wanted to know about the percentage of hydric soils on the proposed wetlands site. Mr. Seaborn responded that virtually all soils on the proposed wetlands site are hydric soils.

Mr. Conrad wanted to know if the pond in the area of mitigation will become off-limits to farming operation. Mr. Whipple stated that the landowner does not use the pond for agricultural purposes. The area covering the pond need not be encompassed for wetland mitigation, but that area can certainly be integrated into a wildlife preservation area.

Ms. Sasscer stated that the local board decided to deny approval. Its decision was based on the Foundation's policy. The local board also considered that last year, the County had 42 property owners on the waiting list to enter the MALPF program, but could not meet the demand because of a lack of funding. The funding situation is still not clear for next year. The County believed mitigation could provide an alternative source of income for landowners who

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Ms. Council passed out the subdivision language used by Nancy Forrester, Assistant Attorney General, Department of General Services, in the easement documents. Ms. Council requested the Board to use this language to formulate the definition of what is in the COMAR.

Mr. Stahl stated that he wanted the issue to be reviewed by the MALPF Board and a decision will not be made at the March Board meeting.

Recommended Solution:

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.

Problem 2:

Number of Subdivisions Permitted.

The Regulations and the Foundation's 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 which allow agricultural subdivisions in 50-acre increments (1 subdivision for 100-149 acres, 2 for 150-199 acres, 3 for 200-249 acres, etc.). It is unclear if the Board intended to further restrict the occurrences of agricultural subdivisions when the new Policy was enacted. When an agricultural subdivision is approved, the easement remains on all of the parcels; only the ownership of the parcels and, potentially, the farm operation changes.

Recommended Solution:

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. Does the Board prefer?

A) To change the Regulations to agree with the Policy which allows one agricultural subdivision for each full 100.0 acres (1 for 100-199 acres, 2 for 200-299 acres, 3 for 300-399 acres, etc.) with each parcel being a minimum of 50 acres?

OR

B) To change the Policy to agree with the Regulations which allows one agricultural subdivision for each full 50 acres (1 for 100-149 acres; 2 for 150-199 acres; 3 for 200-249 acres, etc.), with each parcel being a minimum of 50 acres? Staff points out that the requirement for entering the program as a stand-alone agricultural operation is a 50 acre minimum.

Mr. Stahl commented that if the Foundation does not limit the numbers of subdivisions, over time the State might end up with all of its farms to be 50 acres. His personal preference is to allow a one-time subdivision.

Wally Lippincott, Program Administrator, Baltimore County, stated that he discussed the proposed policy with the local advisory board and wanted to share its concerns. There are many landowners with the old easement language. They entered into a contract with the State of Maryland, and the easement language does not specify the acreage or how many times subdivisions are allowable. The second concern was how to ensure that the requests for agricultural subdivisions are legitimate requests. The Foundation's policy, COMAR, and the fact sheets indicate that the issues will be addressed on a "case by case" basis. The county's recommendation is that when the Foundation reconsiders the policy and the regulations, the emphasis be on whether it is for agricultural purposes. Is it based upon the requirement of agricultural operations and what is the justification? or is it for a lot line adjustment? or is it for estate purposes?

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Mr. Conrad wanted to know Mr. Lippincott's views when the subdivision is for estate purposes.

Mr. Lippincott stated that farmers necessarily subdivide the farm for estate purposes. The easement document does not say anything on this and would allow it.

Mr. Tassone stated that he agreed with Mr. Stahl. If the Foundation's rules and criteria appear too mathematically driven by numbers, the Foundation might wind up with smaller parcels. The Foundation's stand has not been in favor of subdivision, and if there is a need for subdivision, it has to be for stand-alone agricultural production purposes and for economic sustainability of prospective owner of the subdivision. Mr. Tassone asked the Foundation staff to what degree the Foundation still follows the policy of ensuring that the subdivided parcels are stand-alone, profitable, and economically viable agricultural operations.

Mr. Conrad stated that currently, the Foundation solicits judgment as to whether the resulting parcels have the capacity to be a stand-alone agricultural production unit. The Foundation also asks for the plans of the future owners. The Foundation staff makes recommendations, but still the issue is open for the Board to review the situation.

Mr. Conrad reiterated that the purpose of agricultural subdivisions is not about natural boundary subdivisions or estate subdivisions. The justification for agricultural subdivisions has to be agricultural. The Board started receiving requests in 1980s and the requests were considered on a "case by case" basis. There were no acreage guidelines or number guidelines. Then "case by case" approval started becoming difficult because each one was different and that's when the Foundation came up with the idea of establishing standards by which the requests could be evaluated.

Mr. Stahl stated that he recalls a request that had come to the MALPF Board. The agricultural subdivision divided off 6 acres with three poultry houses. It was a separate operation, and the landowner was trying to convey a stand-alone poultry operation. So the request was for two separate stand-alone agricultural operations, and the MALPF Board agreed with the request.

Dr. Pelura stated that the MALPF Board is set up to allow for changes in circumstances and philosophy. Dr. Pelura stated that he believed the Board works the best when requests are handled "case by case". It allows the members of the Board to express changes in agriculture and land preservation.

Mr. Conrad stated that he discussed the issue with the Delaware Program Administrator. The State of Delaware allows subdivision without restrictions. Its position is that the parcels are still under agricultural preservation and can be recombined at a later date. They recognize that nothing can be built on the subdivided parcels. Mr. Conrad added that he is not advocating this, but, wanted to inform Board members on how the issue is addressed in the State of Delaware.

Ms. Clark commented that the reality is the MALPF Board makes a decision based on the landowner's request and their testimony of their future plan. We don't know what the future generation (fourth or fifth generation) is going to do.

Donna Landis-Smith, Program Administrator, Queen Anne's County, agreed with Mr. Lippincott. Many easements were done in 1980s. Will the Foundation have legal standing to disallow subdivision when easement language is loosely written? Queen Anne's County has large parcels of land (300 - 400 acres). There is an issue if the landowners of such parcels are restricted to one or two subdivisions.

Mr. Tassone noted problem # 2 presented by Ms. Council. It seems to be a choice between the Foundation's existing policy statement and as it exists in the regulations. The critical issue is possible number of agricultural subdivisions and the allowable acreage. Mr. Tassone suggested that as long as there is a maximum number that can't be exceeded it does not

really make a difference. The other issue is, as raised by Ms. Clark and Mr. Stahl, how will the Foundation verify that the subdivision is for a legitimate agricultural purpose?

Joy Levy, Program Administrator, Howard County, stated that she does not understand why the Board has always been against agricultural subdivision for estate planning purposes, and that realistically this will become more of an issue as the generation that put the farms in preservation retires/dies and wants to divide the land among the children.

Mr. Stahl stated that he will work with the Foundation staff and bring the issue back to the Board for a review.

Mr. Boniface commented that agriculture is different in different counties throughout the State of Maryland. He believed the issue needs to be discussed and reviewed at the county level by the local board and the program administrators. He also mentioned that the Foundation is trying to sell the preservation program to the farmers. The more restrictive a program becomes, the harder it is to generate interest in the program.

Mr. Tassone stated that if the Foundation is going to solicit the county's opinion, it may be a good idea to solicit a statement from each county's advisory board.

B. Recertification Request – Worcester County

Carol Council, MALPF Administrator, presented the recertification request and recommended re-certification through June 30, 2012. Ms. Council also noted that the first year the counties are conditionally re-certified is considered as the first year of their three years' term.

Dan Rosen, Maryland Department of Planning, was present at the meeting and recommended certification.

Motion #8: To approve recertification through June 30, 2012.

Motion: Howard Freedlander Second: Bubby Norris
Status: **Approved**

C. Recertification Request – Anne Arundel County County

Barbara Polito, Program Administrator, Lynn Miller, Long Range Planning, Administrator, and Billy Gorski, Anne Arundel County, Planner, were available at the meeting.

Carol Council, MALPF Administrator, presented the request and recommended re-certification through June 30, 2012. Dan Rosen, Maryland Department of Planning, recommended re-certification. Mr. Rosen mentioned that there is a concern about the future of land preservation. Even though the County is a populous county, it does have not much area subject to agricultural land transfer taxes. It is only about ¾ of the state average.

Ms. Polito stated that the agriculture is mainly in the county's Priority Preservation Areas (PPAs) which is larger than the county's Rural Legacy Area. The County would like to preserve additional land if the landowners are interested.

Mr. Freedlander wanted to know about the outreach programs used by the County.

Ms. Polito stated that the County hosts public meetings and sends letters to all landowners zoned RA (50 acres or larger). The County has an agricultural advisory board. Ms. Polito added that currently the funding is low, but in the last 4-5 months there has been increased interest among landowners.

Dr. Pelura stated that in the area where he lives, until recently, the property values were so high, no one wanted to consider the preservation programs. The County has restrictive

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zoning and allows family conveyances.

Ms. Polito stated that the only family conveyances subdivided now were in the pipeline as of 2005. Agriculture is changing and Anne Arundel County has a lot of former tobacco farms of 20 to 30 acres. If there is a house on it with 1 – 20 zoning, there is nothing to sell to the preservation programs. So the County's zoning change is finally having an impact, and the County is getting more protection.

Mr. Tassone wanted to know if the County Council has adopted the PPA boundaries. Ms. Polito confirmed this.

Motion #9: To approve recertification through June 30, 2012.

Motion: Howard Freedlander Second: Mary Ellen Setting
Status: **Approved**

Mr. Stahl asked for a motion for adjournment of the meeting and a move into a closed session, pursuant to the provisions of State Government Article Section 10-508 (a) (7) and (8) to obtain legal advice from counsel concerning easement violations, and to consult with legal counsel staff, consultants, or other individuals about pending or potential litigation.

Motion #10: To adjourn the open meeting and move into a closed session to obtain legal advice concerning easement violations, and to consult with counsel and staff about proposed and pending litigation.

Motion: Jonathan Quinn Second: Don Moore
Favor: Robert F. Stahl, Jr., Vera Mae Schultz, William K. (Billy) Boniface,
Martha A. Clark, Howard S. Freedlander, Jerome W. Klasmeier,
Donald T. Moore, James B. Norris, Jr., Dr. James Pelura III,
Jonathan C. Quinn, Mary Ellen Setting, Joe Tassone
Status: **Approved**

The Open Meeting of the Board meeting was adjourned at approximately 11:30 am.

The Closed Meeting of the Board was held from 11:30 am to 12:05 p.m. at the Maryland Department of 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.

Robert F. Stahl, Jr., Vera Mae Schultz, William K. (Billy) Boniface, Martha A. Clark, Howard S. Freedlander, Jerome W. Klasmeier, Donald T. Moore, James B. Norris, Jr., Dr. James Pelura III, Jonathan C. Quinn, Mary Ellen Setting, Joe Tassone

TOPICS DISCUSSED:

- 1) 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) MALPF vs. Paul F. Stitzel et al, Case # 01017, September term, 2009
 - d) Covered Bridge Farms LLC R. Wayne Newsome
 - e) James R. Owens & Linda M. Owens vs. Peter G. Brown & Jeffery L. Conner and Christa D. Conner, Case #01-C-09-032664 DJ
 - f) Yoder v. Bellevale Farms Circuit Court for Baltimore County, Case # 228 September term, 2009

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- g) 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
- h) Easement Violation in Baltimore County related to dumping.
- i) Possible Tenant House Violation in Frederick County
- j) Possible Illegal Use of Dwellings in Montgomery County

2) Consultation with Council/Staff regarding loan to easement applicant.

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

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, MALPF Executive Director