

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
April 27, 2010**

TRUSTEES PRESENT:

Robert F. Stahl, Jr., Chair
Vera Mae Schultz, Vice Chair
William K. (Billy) Boniface
Martha A. Clark
John W. Draper, Jr.,
Howard S. Freedlander, representing Treasurer Nancy Kopp
Bernard L. Jones, Sr.,
Jerome W. Klasmeier, representing Comptroller Peter Franchot
Donald T. Moore
James B. Norris, Jr.,
Mary Ellen Setting, representing Secretary Earl F. Hance, Maryland Department of Agriculture

TRUSTEES ABSENT:

Jonathan C. Quinn
Joe Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning

OTHERS PRESENT:

Anne Bradley, Frederick County, Agricultural Preservation Planner
Tammy Buckle, Caroline County, Program Administrator
Shannon Briscoe Campbell, Landowner, Calvert County
Steve Breeden, Landowner, Howard County
Diane Chasse, MALPF Administrator
Bill Clark, Soil Conservation District Manager, Calvert County
Michael Clark, Landowner, Howard County
Veronica Cristo, Calvert County, Program Administrator
James Conrad, MALPF Executive Director
Carol Council, MALPF Administrator
Rama Dilip, MALPF Secretary
James and Frances Ellwood, Landowners, Harford County
Nancy Forrester, Assistant Attorney General, Department of General Services
Amanda Gibson, Assistant Attorney General, Maryland Department of Agriculture
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
George T. Koenig, Landowner, Carroll County
Donna K. Landis-Smith, Queen Anne's County, Agricultural Specialist
Joy Levy, Howard County, Program Administrator
Tim Long, BGE Project Manager, Howard County
Sarah Hall Peak, MALPF Administrator
Charles Rice, Charles County, Program Administrator
Donna Sasscer, Program Administrator, St. Mary's County
Ned Sayre, Harford County, Ag. Preservation Planner
Phil and Victoria Snader, Landowner, Carroll County
Emily Vaios, Attorney Representing the Landowner, Montgomery County
John Zawitoski, Montgomery County, Program Administrator

OTHERS PRESENT BY WEB CONFERENCING:

Sara Edelman, Washington County, Land Preservation Planner
Carla Gerber, Kent County, Program Administrator
Jeanine Nutter, Administrative Specialist (Fiscal)
Martin Sokolich, Talbot County, Program Administrator

Warehime, Chairman Carroll County Agricultural Advisory Board, Thomas J. Rio, Carroll County Department of General Services, Jay Voight, Carroll County Zoning Administrator, and Jeff Everett, Deputy Program Administrator. During the discussion, Mr. Warehime stated that if the local Board were asked to make a decision on the number of vehicles allowed to be housed on the farm, it would not change its opinion that none of them should be kept there, especially those with commercial tags. Mr. Voight stated that having the vehicles on the farm does not violate the zoning regulations as long as they do not exceed the number already approved by Carroll County.

At the conclusion of the meeting, it was decided that the Foundation would rely on advice from the MALPF Board of Trustees members with nutrient management experience. The two Board members, Don Moore and Bubby Norris, will present their opinions at the Board meeting.

Phil and Victoria Snader, landowners, Carroll County, were present at the meeting.

Don Moore was available at the meeting and confirmed that he has reviewed the material provided by the Snaders. The nutrient values and other related issues conform to the State's guidelines for nutrient management. The vehicles on the Snaders farm correspond to the volume of nutrients they plan to apply.

Mr. Conrad stated that during the county visit, he was able to talk with one of the advisory board members regarding the MALPF Board's recommendations about the vehicles on the Snader farm. Mr. Conrad stated that the County does not have a united voice. The County Planning and Zoning has no problem with the vehicles being on the property. The local advisory board's recommendation is not directed at the relationship between the equipment and on-site farming operations of application residuals. Their concern is with the nature of tags on the vehicles.

Mr. Snader stated that he wanted to clarify the difference between farm tagged vehicles and commercially tagged vehicles. Just because a truck is tagged with a commercial tag does not mean that it is not used for farm operations. A truck tagged with a farm tag allows a farmer to transfer products that are grown on the farm or bring in products that are used on the farm. Many farmers have trucks with farm tags on them but part of their income is from custom combine or custom grain hauling. That does not fit with the farm tag. If a farmer has to do something else other than deal with his own crops and products, his truck has to have a commercial tag. Mr. Snader stated that he strongly believed the Board should not look at farm tag vs. commercial tag.

Bubby Norris, Board member, stated that the farming community needs trucks. Mr. Norris stated that, in his opinion, having a commercial tag is not an issue.

John Draper, Board member, stated that he believed the Board should not be concerned with the issue of farm tag vs. commercial tag.

Mr. Snader wanted to clarify that he is farming about 260 acres of contiguous parcel that has broken into four different easements. Mr. Snader owns 66.72 acres and farms 400 acres.

Mr. Snader stated that he understands that there was a concern after the last meeting about the County Zoning approving the eight containers (in 2001). Mr. Snader visited the Board of Zoning Appeals (BZA) and got a letter clarifying that those eight containers were strictly for the Residuals Management Business. Mr. Snader stated that he used another eight containers strictly for crops and hay. Mr. Snader also has couple of manure containers and a personal trash container. He was told that as long as he is using the containers for agricultural purposes, it is acceptable. He is looking at a total of 16 containers. Mr. Conrad added that Mr. Snader has already discussed this with the Foundation staff and the relevant documentation is in the Foundation's files.

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Mr. Conrad stated that the Snaders are seeking the Board's approval for 16 residual containers and nine over-the-road trailers. This equipment is necessary for the on-site farming operations.

Martha Clark, Board member, asked if the Snaders have any other containers that are stored off-site.

Mr. Snader stated that he has other containers that are stored off-site. He has about 19 trailers; he is asking for eight of them to be stored off-site. Eight or nine containers will be stored on the farm.

Ms. Clark wanted to know the difference between containers and trailers. Mr. Snader stated that the trailers are over road tractors and he has trailers off-site. He is asking for nine trailers out of 19. The trailers are 40 feet tractor trailers and the containers are three roll-off containers. There are five trucks.

Mr. Norris stated that he has looked at the materials presented by the Snaders. He wanted to know who will be monitoring the farm and what will be the consequences if the Board's directions were not followed.

Mr. Stahl stated that the Foundation staff will be monitoring the farm. Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator, sought an exact number to monitor.

Ms. Clark commented that Zoning allows eight containers that the Foundation considers as eight residual containers and eight agricultural containers. She was concerned about the nine over-the-road trailers.

Mr. Stahl stated that Zoning regulates containers that are for commercial use. There's no Zoning regulation with regard to what's used for agricultural operations as long as they are used for agricultural operations. The MALPF Board is attempting to make a determination as to what is necessary for the agricultural operations. Mr. Snader has proposed that he needs nine over-the-road trailers, five trucks, eight containers, and 8 additional containers for manure and personal use.

Mr. Snader mentioned that the Snaders have met all the Zoning guidelines and the County allows five commercially tagged trucks. Mr. Snader stated that he has a document from Zoning indicating that he has met all the zoning requirements.

Ms. Clark stated that she has concerns about the nine over-the-road trailers on the farm when Zoning allows not more than eight containers on the site.

Mr. Stahl asked for Mr. Moore's opinion.

Mr. Moore stated that his understanding is that most of the over-the road trailers are tanker trailers for transporting liquids. The containers are mostly for transporting the dry material. So the Board is looking at transportation of two different materials and volume of materials proposed by the Snaders to be used on their farms.

Mr. Snader stated that the Zoning Administrator was present at the March meeting and did not express any concerns.

Mr. Conrad stated that the County Planning and Zoning does not make its decisions based on the MALPF Board's decision. Similarly, the MALPF Board operates on a different plane and has to respond based on MALPF's requirements. The more restrictive language will always apply.

The easements across the subject properties are a public necessity because increases in the quantity of natural gas being consumed by residences and businesses located in Howard County and Anne Arundel County, Maryland, are predicted to exceed the physical configuration of the existing natural gas distribution system within two years. If BGE does not complete the Southern Reinforcement Project no later than the fall of 2011, natural gas utility customers located in Howard County and Anne Arundel County, Maryland, may face natural gas outages during the winter of 2011-2012 and thereafter.

5. Were alternatives explored?

When BGE evaluated the options for this 14.4 mile pipeline project, it first and foremost considered which alternative would give BGE the highest probability of putting the pipeline in service before the winter of 2011-2012. If the line is not in service before then, there may be widespread gas customer outages in Howard and Anne Arundel Counties. BGE also considered which alternative would be least costly to customers who will pay for the project through their utility rates. It is a requirement of Maryland law that utilities consider cost when selecting a project to satisfy a gas distribution system need. BGE also considered which alternative would have the least impact on the day to day lives of the residents living in the area of the project.

Three different routes were explored. The only difference in the alternatives was in the first 7 miles of the route because the remainder of the route will use existing Pepco and BGE right-of-way. One route paralleled existing rights-of-ways 100% (in new private rights-of-ways). A second route favored running alongside roadways (in new private right of way). The third (proposed) route used a cross country approach to favor larger parcels. Based on factors including cost, construction duration, permitting, public impact, number of property owners, and probability of success acquiring easements, the cross county route was selected. Then the route was modified to reduce the impacts to environmentally sensitive areas (wetlands, steep slopes) and as well as areas which needed to be avoided per the request of individual property owners (such as agricultural fields).

6. Does the utility agree to conditions regarding the replacement of the top soil and continuation of farming on the right-of-way?

Yes. BGE agrees to the Special Considerations which are attached here and will be attached as an Exhibit to the Right-of-Way Easement. These Special Considerations were approved by the Board previously for use in Calvert County in a request for a gas pipeline.

Michael Clark, Steven Breeden, landowners from Howard County, Tim Long, BGE Project Manager, and Joy Levy, Program Administrator, were available at the meeting.

Ms. Levy informed the Board that, in addition to two MALPF properties, six county easement properties were affected by the underground gas line. The Howard County Land Preservation Board met on March 15, 2010, and reviewed the six county easements and the two MALPF easement properties. The Board approved a positive recommendation.

Mr. Long stated that BGE has been working with the property owners and wants to protect the topsoil. He has been in touch with Diane Chasse, MALPF Administrator, to include the appropriate language in the deed of easement to protect the agricultural use. BGE expected construction to begin in June/July 2011 and hoped to complete the construction in three months.

Mr. Conrad stated that Amanda Gibson, Assistant Attorney General, Maryland Department of Agriculture, confirms that the language developed and used in Dominion project is accepted by BGE.

Responding to questions, Mr. Long stated that average depth of pipeline is 3 feet; but for agricultural areas, BGE will do a minimum of 4 feet or 5 feet. The land above the pipeline will be restored for use as farmland. The pipe will be coated steel pipe.

easement establishment (policy attached with staff memo).

According to Montgomery County, at the time of the conveyance, the property was maintained in hay fields and woodland. Although Mr. Walsh does not currently have the fields in active production, they are in good condition and could easily be placed back into hay production. The 42.13-acre parcel contains 77.8% class II soils. Had this request been presented to the Board in 1996, it would have met the criteria for agricultural subdivision.

This request has been approved by the local advisory board and meets Planning & Zoning requirements.

Emily Vaios, Linowes & Blocher LLP, representing Mr. Keshishian, and John Zawitoski, Program Administrator, were available at the meeting.

Mr. Stahl stated that last month the MALPF Board had reviewed two requests from Mr. Keshishian. The Board had tabled the motion for the owner's lot issue pending discussion with the new owner. After last month's Board meeting, some of the Board members felt that the two issues should have been discussed together. If they had, they probably would have voted to table both issues, not just the owner's lot. Regardless of whether the issues were related or not, the question was whether or not the Board wanted to consider both the issues at the same time. The Board wanted to bring back the issue for the Board's consideration as to whether or not the Board wanted to consider both issues at the same time and, therefore, wanted to rescind the approval of the agricultural subdivision.

Mr. Conrad stated that during the last month's closed session, some Board members had expressed that they should have had the knowledge of all issues related to this property. The issue discussed in closed session may have been resolved satisfactorily, though it must still be reviewed by legal counsel.

Mr. Conrad stated Mr. Keshishian's request for transferring a 1.0-acre owner's lot has been withdrawn from this month's agenda.

Mr. Freedlander stated that he was one of the Board members who had strong concerns about the issue. Mr. Freedlander stated that he had spoken to Mr. Stahl and Mr. Conrad and his original request was to rescind his vote. His strong feeling is based upon his experience with the Board of Public Works working hard to make sure that the Governor, the Comptroller, or the Treasurer do not make a decision without adequate information. As a representative of the Treasurer, he felt he made the original decision based on inadequate information. Mr. Freedlander expressed his decision to rescind his vote. At the same time, he wanted to make a motion to rescind the Board's vote on agricultural subdivision.

Motion #9:	To rescind the MALPF Board's earlier approval of Mr. Keshishian's request for a 42.13 acre agricultural subdivision.		
Motion:	Howard Freedlander	Second:	Martha Clark
Abstained:	Bernard Jones*		
Status:	Approved		

** Mr. Jones stated that he is abstaining because he was not present at the March Board meeting.*

Mr. Stahl commented that the Board's intention is to review the agricultural subdivision and the owner's lot issue at the same time.

Mr. Zawitoski stated that, at the last Board meeting, the Board had asked the County to draft a covenant to link the two parcels (the 42.13 acre agricultural subdivision and the Owner's Lot) together. Ms. Vaios has drafted the document and sent it to Mr. Walsh. Mr. Walsh has agreed in principle that it is a good idea. Currently the document is with Mr. Walsh's mortgage holder for their review.

BACKGROUND:

In January, 2006 the MALPF Board of Trustees approved Charles County's Easement Sale Prioritization System. Today, the County is requesting approval of amendments to that will include:

1. Changing Section B.2., Area Actively Devoted to Agricultural Use, from a percentage of the property to a scale based on the number of acres;
2. Replacing Section B.3., Stewardship Practices, with points for properties that are farmed/operated by the owner;
3. Adding additional points to Section B.4., Contiguous Woodland Acres; and
4. Incorporate discounting as a factor.

The amendment has been approved by the local advisory board and the County Commissioners.

Charles Rice, Program Administrator, was available at the meeting and presented the agenda item. Mr. Rice stated that the County has added discounting as a factor. The County will initially rank the property using its land based ranking system. Once the County gets the appraisals, it will know the discounting factor. The local board strongly felt that doubling it will not overwhelm the initial land ranking system. Then the two are added together to get final ranking.

Mr. Conrad asked if the County went through last year's ranking with the changed criteria to see the impact. Mr. Rice stated that the County worked with the local board and that is how it arrived at the factor of giving discounting twice the weight of the land. For example, you look at the top five properties. If you juggle the top five properties based on discounting, the #4 ranked property may jump to # 2 and vice versa based on discounting.

Mr. Stahl asked if the property owner is able to see the appraisals prior to being able to discount. Mr. Rice stated "no."

Mr. Conrad stated that usually the previous years' appraisals are used. Mr. Stahl wondered about the properties that have not been appraised previously. In a way, it is like asking people to guess correctly. Ranking is based on discounting factor, which is based on appraisals.

Sara Edelman, Washington County, Land Preservation Planner, participating via Web Conferencing, conveyed that generally landowners talk to each other about the price per acre.

Tammy Buckle, Caroline County, Program Administrator, stated that the values are not a guess, but what the property owner is willing to accept. It is the property owner's bid to participate in the easement acquisition program.

Mr. Draper commented that he is not sure if many properties get accepted in their first year of application. The property owners are much more educated in the second year. Mr. Stahl added that is because they have the appraisal value from the first year.

Mr. Conrad stated that Charles County is trying to handle the high acquisition costs by making changes in its ranking methodology. It works well in counties with a lot of competition. Charles County is using a legitimate approach rather than just putting a cap on the applications. Caps work better in counties with less competition. Mr. Conrad stated that he believed Charles County is going about this in the right way.

Mr. Stahl commented that it is a means of throwing Round 2 into Round 1.

Mr. Conrad stated that Round 1 is done on County by County, but uses discounting only if the county wishes to incorporate it. Round 2 has always been statewide discounting.

Donna Landis-Smith, Queen Anne's County, Program Administrator, stated that Queen Anne's County uses statistical history of average fair market value, higher fair market value, and the lower fair market value for three years (this information is not farm specific or landowner specific). The landowners are educated that they need to choose a value that they are ready to accept. Queen Anne's County is thinking of using a ranking system similar to the one proposed by Charles County.

Ms. Schultz stated that since the Foundation preserves farm and forest land and forest land is an agricultural crop, she would like the points on the contiguous woodland acres to be the same as points devoted to acres for other agricultural use.

Mr. Rice stated that he understands Ms. Schultz's concerns. The original thinking of the local board (as approved in 2006) was to give open land more points because of the investment made to have it cleared. Currently, Charles County is the third most wooded land in the State of Maryland. Mr. Rice added that the proposed ranking system carries 50% of its weight in soils regardless of whether it is wooded or cropland.

Ms. Schultz stated that there is a general perception that forested land is not treated equally and fairly in the preservation program. Mr. Conrad stated this was an issue. However, in the last legislative session, the Foundation demonstrated that forested land comes in at the same rate as tillable land to be preserved.

Billy Boniface, Board member, stated that the Board should not be holding up Charles County's request. If the Board wants, it can consider studying the issue separately as a potential policy issue to be applied statewide.

Motion #12: To approve Charles County's request to amend County Ranking.
Motion: Billy Boniface Second: John Draper
Opposed: Vera Mae Schultz
Status: **Approved**

B. Recertification Request – Frederick County

Anne Bradley, Agricultural Preservation Planner, Frederick County, was available at the meeting.

Carol Council, MALPF Administrator, stated that she had a conversation with Dan Rosen and Joe Tassone, Maryland Department of Planning. They are unable to attend the meeting and their comments are incorporated in the staff report. The earlier request for Frederick County was conditionally approved through June 30, 2010. It is now returning for a full re-certification.

Ms. Bradley presented the agenda item. Ms. Bradley stated that the County has a PPA plan element and it is part of the County's Comprehensive Plan document approved three weeks earlier.

Motion #13: To approve recertification through June 30, 2012.
Motion: Vera Mae Schultz Second: Bernard Jones
Status: **Approved**

C. Recertification Request – Queen Anne's County

REQUEST:

Queen Anne County is requesting an extension of its conditional recertification to October 1st.

RECOMMENDATION:

Foundation staff recommends approval of the request. Approval of the request will require the County to come back to the Board on September 28th.

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Mr. Conrad stated that the Foundation's acquisition costs have reduced, but not substantially. The Foundation does not have enough flexibility responding to the provision in the bill requiring it to get the best possible discount. The Foundation needs to get a legal opinion on whether the bill allows the money to be used specifically in Round Two.

Mr. Stahl suggested getting the legal opinion before the next Board meeting. He also encouraged the county program administrators to send their inputs.

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) (3) to consider offers to purchase agricultural land preservation easements and State Government Article Section 10-508 (a) (7) and (8) to consult with staff and legal counsel about proposed and pending litigation.

Motion #17: To adjourn the open meeting and move into a closed session to consider the acquisition of agricultural land preservation easements, and to consult with counsel about proposed and pending litigation.

Motion: John Draper Second: Howard Freedlander
Favor: Robert F. Stahl, Jr., Vera Mae Schultz, William K. (Billy) Boniface,
Martha A. Clark, John Draper, Jr., Howard S. Freedlander, Bernard
Jones, Sr., Jerome W. Klasmeier, Donald T. Moore, James B.
Norris, Jr., Mary Ellen Setting
Status: **Approved**

The Open Meeting of the Board meeting was adjourned at approximately 11:37 am.

The Closed Meeting of the Board was held from 11:40 am to 12:25 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, John W. Draper, Jr., Howard S. Freedlander, Bernard L. Jones, Sr., Jerome W. Klasmeier, Donald T. Moore, James B. Norris, Jr., Mary Ellen Setting

TOPICS DISCUSSED:

- A. Queen Anne's County Recertification
- B. Update – Baltimore County Acquisitions
- C. Request to Withdraw FY 2009 Easement Offer – Allegany County

Motion #4: To approve Foundation staff to send a letter to landowner by certified mail giving him 30 days to respond. If no response is received within 30 days, Foundation staff to send a second certified letter withdrawing his FY 2009 easement offer.

Motion: John Draper Second: Mary Ellen Setting
Status: Approved

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D. Request to Withdraw FY 2009 Easement Offer – Carroll County

Motion #5: To approve Foundation staff to send a letter to landowners by certified mail giving him 30 days to respond. If no response is received within 30 days, Foundation staff to send a second certified letter withdrawing their FY 2009 easement offer.

Motion: Howard Freedlander Second: Martha Clark
Status: Approved

E. FY 2009 Round Two Easement Offers

Motion #6: To proceed with Foundation staff's recommendations.

Motion: Martha Clark Second: Howard Freedlander
Status: Approved

F. FY 2010 Easement Offers (Montgomery County only)

Motion #7: To approve the Foundation to make offers to items 1 and 2.

Motion: Bernard Jones Second: Jerry Klasmeier
Status: Approved

G. Status Report on the following Pending and Potential Litigation:

- a) P. Michael Larrick, et al.
- 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

Motion #3: To allow James Conrad to negotiate as advised by Tom Filbert.

Motion: Howard Freedlander Second: Bernard Jones
Status: Approved

- f) Yoder v. Bellevalle Farms Circuit Court for Baltimore County, Case # 228 September term, 2009
- 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

The Closed Meeting was adjourned at 12:25 p.m.

Respectfully Submitted:

Rama Dilip, MALPF Secretary

James Conrad, MALPF Executive Director