

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
OPEN MEETING MINUTES  
May 25, 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  
Bernard L. Jones, Sr.,  
Donald T. Moore  
James B. Norris, Jr.,  
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  
Jerome W. Klasmeier, representing Comptroller Peter Franchot  
Jonathan C. Quinn

**OTHERS PRESENT:**

Derick Berlage, St. Mary's County, Planning Director  
Anne Bradley, Frederick County, Agricultural Preservation Planner  
Tammy Buckle, Caroline County, Program Administrator  
James Conrad, MALPF Executive Director  
Betsy Coulbourne, Caroline County, Future Program Administrator  
Carol Council, MALPF Administrator  
Rama Dilip, MALPF Secretary  
Gail Ensor, Baltimore County, Ag. Advisory Board  
Nancy Forrester, Assistant Attorney General, Department of General Services  
Billy Gorski, Anne Arundel County, Ag. Planner  
Carla Gerber, Kent County, Program Administrator  
Amanda Gibson, Assistant Attorney General, Maryland Department of Agriculture  
Secretary Buddy Hance, Maryland Department of Agriculture  
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator  
Donna K. Landis-Smith, Queen Anne's County, Program Administrator  
Wally Lippincott, Jr., Baltimore County, Program Administrator  
Sarah Hall Peak, MALPF Administrator  
Michael G. Ritchey, Attorney Representing JoPaulette Staley, Landowner, Carroll County  
Charles Rice, Charles County, Program Administrator  
Dan Rosen, Maryland Department of Planning, Planner  
Donna Sasscer, St. Mary's County, Program Administrator  
Ned Sayre, Ag. Preservation Planner, Harford County  
Matt Schmid, Maryland Department of Agriculture  
Eric Shertz, Cecil County, Program Administrator  
Martin Sokolich, Talbot County, Program Administrator  
Elizabeth Stahl, Charles County

**OTHERS PRESENT BY WEB CONFERENCING:**

Sara Edelman, Washington County, Land Preservation Planner  
Tom Lawton, Somerset County, Program Administrator  
Katherine Munson, Worcester County, Program Administrator  
Jeanine Nutter, Administrative Specialist (Fiscal)





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Joe Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning, stated that he is curious to know alternative ways to resolve the issue.

Mr. Robertson stated that Mrs. Staley's easement documents indicate two documented houses; one on each of the properties. One is not standing and is just a shell. Under the rules and terms of the easement, each one of the pre-existing dwelling can be subdivided from the property.

Mr. Robertson stated that he believed Mr. Weicht had innocently bought this property in good faith. Mr. Weicht was planning to keep it as an easement property. He had no intention of subdividing the pre-existing dwelling. Mr. Weicht was planning to incorporate the property as a tree farm. All three parcels are under an easement. He would certainly prefer to have the house attached to the property rather than chance it ever being subdivided.

Mr. Ritchey stated that the correspondence received from Amanda Gibson, Assistant Attorney General, Maryland Department of Agriculture, refers to a "similar" case in Washington County. But Mr. Ritchey disagreed that the two cases are similar. He wanted to review the situation with Carroll County, Legal Counsel, and the MALPF staff. Mr. Ritchey clarified that Mrs. Staley is an elderly lady, but does not reside in a nursing home.

Responding to questions, Mr. Robertson stated that the 37.69 acre parcel is separately described. The 50.253 acre parcel is separately described and the third parcel held by Mr. Weicht is separately described. Mr. Weicht holds a separate easement that was originally owned by Mrs. Staley. Carol Council, MALPF Administrator, added that the third party is under a separate easement that was originally owned by Mrs. Smith. The 50.253 acre parcel is the centre of the three parcels but the third one is a separate easement.

Mr. Robertson stated that all the parcels were one farm at one time; three separate parcels under one ownership.

Martha Clark, Board member, commented that in 2007, when the Staleys requested relocation of the lots, they did not own the property from where they wanted to relocate the lots. The Board is addressing the issue of rescinding the relocation of the two lots. The Staleys were not allowed to relocate the lots because they had lost their rights when they sold the property in 2006.

Mr. Robertson remarked that he wanted to make sure the Board members were provided with the background information under the closed session, and they have a complete picture before making a decision.

Mr. Conrad stated that part of the dilemma is that the property is up for sale. The Foundation has notified the landowner about the potential issue and the need for disclosure to any potential buyer. Mr. Conrad stated that he understands the issue is part of the larger picture and there may be several steps to resolve the issue. At this point, the Foundation is not proposing to resolve the larger issue; it is subject to discussion. The Foundation's current request is to clean up the issue (rescind the September 25, 2007 approval to relocate a 1.0 acre child's lot and a 1.0 acre owner's lot clean up the issue). He wanted to know Mr. Ritchey's position.

Mr. Ritchey stated that he would object if the Board acted on the current request and it is construed in the future that the potential to create lots is gone forever from Mrs. Staley's remaining acreage.

Mr. Conrad noted that at this point, the Board is not addressing the subdivision issue.

Mr. Ritchey stated that he is concerned that, in the future, any action to rescind the approval to transfer the lots should not be construed by the Board (or any court interpreting the action) as Mrs. Staley waiving the rights to create lots on her property.

Motion #3: To approve staff recommendations to rescind the relocation of 1.0 acre child's lot and 1.0 acre owner's lot.

Motion: Martha Clark Second: Mary Ellen Setting

Ms. Clark stated that her motion is based on the fact that when Mrs. Staley sold the subdivided property in 2006, she lost the lot rights.

Mr. Ritchey stated that his understanding was that under a normal process an easement holder can apply for a preliminary approval indicating the proposed locations of future lots to be created on a tax map. The Board had given the preliminary approval to the Staleys. The lots were never formally released and no survey was done. The understanding of the property owner was that they owned the owner's lot and the child's lot. At that point, prior to the sale of the separate parcels, the lots could have been put on either of the two parcels. Mr. Ritchey pointed out the distinction that Mrs. Staley could have at any time gone back to the Board and conveyed that she did not like the location on 50-acres but liked the one on 37-acres. Had she done this, the Board would have approved it but would have wanted to go through the process of formal subdivision. Is the Board talking about rescinding the approved transfer or the ability to request lot approvals has been lost forever?

Motion #4: To approve staff recommendations to rescind the movement of the lots to the 37-acres parcel.

Motion: Martha Clark Second: Don Moore  
Status: Approved

Mr. Stahl noted that the decision to rescind or not to rescind lots rights is not part of this motion and it will be reviewed at a later date.

**B. SOMERSET COUNTY**

1. 19-06-01 Anderson, S. Langford 67.025 acres

REQUEST - SOMERSET COUNTY:  
Approval to exclude 2.0 acres for an unrestricted lot.

RECOMMENDATION:  
Staff recommends approval of the request. Staff had some reservations about the chosen location of the proposed lot given the configuration of the property, but notes that the optimum location for the lot – on the northwest side of Oriole Road – is a separately described parcel that is 2.322 acres and is currently being used as cropland.

BACKGROUND:  
Mr. Anderson is the original owner of the easement property. There are no pre-existing dwellings on the property. During the FY 2007 easement acquisition cycle, Mr. Anderson chose the option for an unrestricted lot.

The county Health Department requires that the lot be "at least two (2) acres in size." The lot is proposed to be located in a wooded area which, according to the minutes of the advisory board, was the former site of an old house which has been removed. The lot will have direct access onto Oriole Road. Mr. Anderson has stated that he wishes to continue with the residential use of the proposed location. He currently tills the 2.322 acre parcel located on the northwest side of Oriole Road along with an adjacent field, which he also owns. The proposed location will cause less impact to the overall farm operation.

The local advisory board approved the request, and it meets with Planning & Zoning



**IV. PROGRAM POLICY**

Added Audit Response – Certification and Litigating to Recover Agricultural Transfer Taxes  
Item Retained by MALPF's County Partners – for information

At the last meeting of the Board of Trustees, the most recent MALPF Audit Report (FY 2009) from the Office of Legislative Audits was distributed to Board members. Finding #3 stated that "MALPF had not obtained formal legal advice regarding the legality of recovering excessive amounts of agricultural land transfer taxes retained by certain counties during prior fiscal years."

MALPF has now obtained the letter of advice from the Office of the Attorney General on this subject. The memorandum passed out at the meeting contained the relevant sections of the Audit Report, the letter from Mr. Tassone and Mr. Conrad seeking that advice, and the letter of advice from Shelley Wasserman and Craig Nielsen of the Office of the Attorney General providing that advice.

In summary, the letter of advice states that MALPF and the Maryland Department of Planning (MDP) do not have the authority to take legal action against the counties to recover any improper retention or expenditure of agricultural transfer taxes. Such authority resides only with the Comptroller. Further, if asked, the Office of the Attorney General would recommend against pursuing the recovery of the funds retained by the counties because the pursuit of these funds would undermine the program and could potentially cost more than would be gained. Any lapses in certification were due to internal procedures and do not reflect the merits of the county programs. Amendments to the certification regulations and new procedures adopted by MALPF and MDP should prevent any future gaps between the end of a certification period and recertification approval for county programs.

**IV.E Proposed Change in Certification Regulations**

At the last meeting of the Board of Trustees, the Board approved extending the conditional certification of Queen Anne's County until December 31, 2010. MALPF staff and legal counsel advised the Board that this extension of the conditional certification was inconsistent with certification regulations. The Board chose to let the extension of conditional certification stand as approved.

The certification regulations are in the sections of COMAR that apply to the Maryland Department of Planning. After the Board meeting, the Secretary of the Department of Planning, represented on the Board by Joe Tassone, requested that the regulations be updated to reflect the decision made by the Board to extend Queen Anne's conditional approval to December 31, 2010. Currently, conditional approvals based on enacting the Priority Preservation Area (PPA) cannot be extended after July 1, 2010. The change proposed by the Department of Planning to COMAR will be submitted to the AELR (Administrative, Executive and Legislative Review) Committee to become effective on an emergency basis before July 1, 2010, to allow the approval to be consistent with law.

The Department of Planning has proposed regulations that would permit the extension of conditional certification to December 1, 2010. According to the Department of Planning, the reason for proposing the earlier deadline (the existing approval for Queen Anne's County is December 31, 2010) is to ensure that the certification issue is dealt with by the current Boards of County Commissioners and not dropped in the lap of newly elected people who don't know what's going on, which could raise additional complications.

MALPF staff and the Department of Planning request consideration of two items:







like to know about audits even though it may not wish to get involved because the issues can come up without notice. Mr. Conrad requested Board members and others to keep Foundation staff informed in the event they hear about on-going audits.

Ned Sayre, Ag. Preservation Planner, asked if the Foundation staff has run scenarios to assess the process and the costs involved if someone were to request an easement termination. Mr. Conrad stated that it is all drawn out in the regulations.

Ms. Gibson mentioned that one of the attorneys on the conference call had stated that she will be willing to issue a letter or a memo stating that the State of Maryland perpetuity requirement post-October 2004 meets the IRS requirements. Mr. Freedlander suggested Ms. Gibson to obtain this letter for Foundation's records.

C. FY 2011 Budget for Easement Acquisition

Mr. Conrad passed out the revised budget memorandum (a copy is available in the agenda file).

*Mr. Conrad stated that the Foundation has received many responses from the county program administrators and local advisory boards. Foundation staff has compiled the responses which are included in the agenda packet.*

*Compiled Responses to Questions*

1. Should two years' worth of funding again be combined into one easement acquisition round (I believe that the decision to combine two years' funding into one cycle is very likely)?

All counties preferred combining two years' funding into one easement acquisition round with the exception of the Baltimore and Anne Arundel County Advisory Boards which prefer to run an easement acquisition round for each funding year. Baltimore County's Advisory Board's preference is based on its judgment that (a) there are adequate funds to run an easement acquisition cycle if bond funds and Baltimore County matching funds are taken into account, (b) maintaining the MALPF program's momentum and annual nature is important, (c) committing known funds to an annual program reduces the uncertainty produced by running one cycle over two year's funding because FY 2012 funding remains unknown, and (d) timing for an easement sale can be very important for many farmers. Anne Arundel County's preference is based on its judgment that the County should act now on existing applications (four are pending, encompassing 400 acres) with current funds, because of the uncertainty of what funds may be available in the future.

*Vera Mae Schultz, Vice Chairman, stated that one of the arguments for combining two year's funding was that if they were not combined there might not be adequate funding to buy the top ranked property in an individual county. Ms. Schultz wondered if the top ranked property might not be purchased at all due to lack of funding.*

*Mr. Conrad stated that the easement acquisition process is based above all on general allocated funds. Some counties put either little or no matching funds. Other counties such as Baltimore put enough matching funds and there are no issues. So the situation varies from one county to another. If the Foundation cannot make an insufficient funds offer to the first property on the list, the money rolls over to Round Two. This is a concern because the Foundation would like to keep the money in the same county as long as possible. It is not an issue for some counties because they put adequate matching fund. Other counties might find that their money rolls over to Round Two immediately.*

*Ms. Buckle, Program Administrator, Caroline County, stated that Caroline County has a ranking list, but it does not have sufficient funds to purchase an easement. If an insufficient funds offer is made and the applicant rejects the offer, the county will lose money and it will*

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*go to Round Two. It is for the county to decide whether it wants to send top ranked properties or send easement applications that are discounted.*

*Responding to a question, Mr. Conrad stated that Round One has \$11.8 million for 2011 (excluding the \$5 million bond funds).*

*Mr. Sayre, Ag. Preservation Planner, Harford County, stated that the County's base land values are high. Their County Board is in favor of combining future years' funding but is not in favor of Bond money. Even if some easement applicants are ready to discount up to 75%, some properties have higher easement prices than other counties.*

*Donna Landis-Smith, Program Administrator, Queen Anne's County, stated that the County Ag. Advisory Board does not want to risk losing county's initial allocation. They voted against the Bond money. The Queen Anne's County liked Charles County's ranking system. The County voted to have 5 applications to avoid putting lot of money on appraisals.*

Motion #14: To approve combining two years' worth of funding into one easement acquisition round.

Motion: Joe Tassone Second: John Draper  
Status: **Approved**

2. Should the number of applications accepted by MALPF again be limited? If so, to what number? (Please note that this decision will have an impact on how quickly appraisals can be secured and reviewed.)

Of the twenty-one responses received, fourteen did not weigh in on limiting the number of applications (six of these eleven responses came from counties that receive a limited number of applications). Of the remaining seven responses, Cecil and Worcester would like to limit applications to a maximum of five, Garrett prefers to limit applications to seven, Talbot would like to limit applications to ten. Somerset is imposing its own limit of seven applications. Baltimore County would like to limit applications, but to wait until the decision is made on the other budget issues. Howard Freedlander would like to retain the sixteen application limit.

3. Should \$5 million in revenue bond authorization be incorporated into the funds available for easement acquisition to acquire easements now in return for being able to acquire fewer easements later while this debt is being repaid from future revenues?

***(The Board decided to take up this question before Question # 2).***

Of the twenty-one responses received, ten responded to this question, all positively. No one recommended against taking advantage of the bond authorization.

*Mr. Conrad mentioned that Mr. James Wallace, Director of Administration, Maryland Department of Agriculture, would prefer that the Foundation not use Bond funds. Mr. Wallace wanted the Board to consider that real estate are unlikely to increase at an annual rate greater than 1% over the next few years. If \$5 million in revenue bond authorization is incorporated into the funds available for easement acquisition, the Foundation will be paying back at 3% or 4%. The Bonds not only take money away from future acquisitions but also involves transaction costs. Mr. Wallace is of the opinion that this investment is not as good as it is perceived, and that he does not expect much increase in the real estate values over the next 5 years.*

*Mr. Stahl noted that there is also a possibility that the Foundation might lose properties over the time. It is not all about costs, but it is also about preserving farmland.*

*Mr. Freedlander stated that the Treasurer supported this because she believed this will help the program at this critical time.*

*Mr. Conrad mentioned that the Board had asked Mr. Nielsen's opinion on whether the Board has any leeway in how the bond funds are used. For example, if the Foundation can take the funds and roll them into Round Two in an attempt to get the best possible price. The answer is "No." The Funds will have to go through a standard allocation process.*

*Mr. Conrad acknowledged that he had worked with Delegate James to develop the Bond language that will work with the MALPF program. The language refers to the MALPF program as it works and is looking for the best land at the best prices.*

*Mr. Conrad mentioned that he had been in touch with Mr. Freedlander to find if the cost of the program will be reduced. Revenue Bonds require a slightly higher interest because they are considered riskier than general obligation bonds. The language change has been verified by Steven W. Vanderbosch, Principal Counsel, State Treasurer's Office. This means the bonds would be treated as general obligation bonds with the benefit of the lower interest rate.*

*Mr. Tassone wanted to know if combining funds for two years means that before easement acquisition process can commence, the Foundation has to wait to find out about the FY2012 budget. Mr. Conrad agreed and added that it will be a matter of about two months more time until the acquisition round could begin.*

Motion #15: To approve use of \$5 million in Bond Funding.

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

*Mr. Tassone wanted to understand the relationship between the bonds and the Foundation's revenue stream over time. In response, Mr. Conrad stated that the annual reductions in revenues would be about \$400,000-500,000 over 15 years. It sums up to little more than \$6 million. That much money will be taken off the top and will not come to the Foundation in return for having \$5 million to spend now. If the Foundation's revenue sources fail, the State will assume the obligation to pay any balance.*

4. If MALPF combines two years' funding into a single easement acquisition cycle as is likely, should the application deadline be July 1, 2010, or July 1, 2011?

Of the twenty-one responses received, ten preferred a 2010 deadline and nine preferred a 2011 deadline (two responses did not address this question). Of the counties offering separate responses from the advisory board and the program administrator, Wally Lippincott agreed with his advisory board on the 2010 deadline, while John Zawitoski disagreed with his advisory board. Washington County expressed a preference for a September 2010 deadline, which MALPF staff has already noted is close to the flexibility it has offered to county programs concerning when county applications should arrive at the MALPF office (late August).

*Mr. Conrad noted that from the responses received, it seemed, many of the program administrators misunderstood "the 2010 deadline." The Foundation has flexibility in fixing a date for receiving easement applications from the counties. Ultimately the deadline means when the appraisal is dated. A deadline of July 1, 2010, means appraisals are going to be valued as of July 1, 2010. Because the Foundation is combining two years' funding, it will be processing one set of easement applications. The Foundation needs to get the information to the Department of General Services in a timely manner so that it can get the appraisals done and returned to the Foundation when it is ready to make offers in spring. The Foundation staff is of the opinion that the Foundation can accept applications from the counties until the end of August/first week of September. A July 1, 2010, deadline means the counties can inform their landowners that they can submit the applications by August 1. The counties will have a*





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- *Eric Shertz, Cecil County, commented that the County is aware that if it sends 14 or 16 applications, all of them will not get an offer. Historically only the top three properties get an easement offer unless there is dramatic discounting.*
- *Mr. Lippincott stated a number of 5 or 10 will be convenient to the County. Baltimore County has a lot of smaller properties (20-acre, 30-acre or 40-acre properties) that fill in the gaps.*
- *Ms. Landis-Smith stated Queen Anne's County was limiting the number of applications to five. However, the local advisory board wanted to limit to 15 or 16 easement applications. Last year, the county's # 15 or 16 got an offer in Round Two (because of discounting).*

*Ms. Schultz stated that she believed a cap of 16 applications was too high.*

*Mr. Tassone stated that his support to limiting to 16 easement applications was based on Mr. Lippincott's perspective. Mr. Tassone did not want to limit a county that is in a position to buy additional easements.*

*Mr. Freedlander suggested a motion supporting a cap of 16 easement applications.*

*Mr. Conrad commented that last year, when the Foundation limited the easement applications to 16 with two year's worth of funding, the Foundation received 74-75 acceptances out of 285 applications.*

- *Jeanine Nutter commented that a cap 16 per county becomes potentially 368 applications if every county submits the maximum, which, of course, does not happen.*

Motion #18: The Foundation will accept easement applications to a maximum of 16 from each individual county.

Motion: Howard Freedlander      Second: Bernard Jones  
Opposed: Vera Mae Schultz  
Status: **Approved**

*Mr. Freedlander thanked Mr. Conrad and other staff members for the work on the funding issue.*

*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 #19: 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: Howard Freedlander      Second: Mary Ellen Setting  
Favor: Robert F. Stahl, Jr., Vera Mae Schultz, Martha A. Clark,  
John W. Draper, Jr., Howard S. Freedlander, Bernard L. Jones, Sr.,  
Donald T. Moore, James B. Norris, Jr., Mary Ellen Setting, Joe  
Tassone  
Status: **Approved**

The Open Meeting of the Board meeting was adjourned at approximately 12:10 pm.

The Closed Meeting of the Board was held from 12:10 pm 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:

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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, Martha A. Clark, John W. Draper, Jr., Howard S. Freedlander, Bernard L. Jones, Sr., Donald T. Moore, James B. Norris, Jr., Mary Ellen Setting, Joe Tassone

TOPICS DISCUSSED:

A. Right-of-Way Issue in St. Mary's County

Motion #3: To allow the agreement between the landowners to stay in place.

Motion: Joe Tassone Second: Mary Ellen Setting  
Status: **Approved**

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

a) Possible Tenant House Violation in Frederick County

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

Respectfully Submitted:

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Rama Dilip, MALPF Secretary

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James Conrad, MALPF Executive Director