

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
OPEN MEETING MINUTES  
June 22, 2010**

**TRUSTEES PRESENT:**

Robert F. Stahl, Jr., Chair  
Vera Mae Schultz, Vice Chair  
William K. (Billy) Boniface  
Martha A. Clark  
Bernard L. Jones, Sr.,  
Jerome W. Klasmeier, representing Comptroller Peter Franchot  
Donald T. Moore  
James B. Norris, Jr.,  
Joe Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning  
Jonathan C. Quinn

**TRUSTEES ABSENT:**

John W. Draper, Jr.,  
Howard S. Freedlander, representing Treasurer Nancy Kopp  
Mary Ellen Setting, representing Secretary Earl F. Hance, Maryland Department of Agriculture

**OTHERS PRESENT:**

Steve Ball, Charles County, Planning Director  
George Baroniak, St. Mary's County, Ag. Preservation Board  
Tammy Buckle, Caroline County, Program Administrator  
Rama Dilip, MALPF Secretary  
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 Richard Hall, Maryland Department of Planning  
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator  
Kristin Nelson, Law Clerk, Department of General Services  
Donna K. Landis-Smith, Queen Anne's County, Program Administrator  
Sarah Hall Peak, MALPF Administrator  
Charles Rice, Charles County, Program Administrator  
Dan Rosen, Maryland Department of Planning, Planner  
Donna Sasscer, St. Mary's County, Program Administrator  
Eric Shertz, Cecil County, Program Administrator  
Carol West, MALPF Administrator

**OTHERS PRESENT BY WEB CONFERENCING:**

Anne Bradley, Frederick County, Agricultural Preservation Planner  
Ned Sayre, Ag. Preservation Planner, Harford County  
Eric Seifarth, Program Administrator, Washington County

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Robert F. Stahl, Jr., Chair, called the meeting to order at 9:02 am at the Maryland Department of Agriculture building, Annapolis, Maryland.

The sign-up sheet was passed around for the attendees to sign in.

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

A. APPROVAL OF MINUTES OF THE OPEN MEETING

Motion #1: To approve the minutes of May 25, 2010, with amendments.

Motion: Bernard Jones Second: Bubby Norris  
Status: **Approved**

B. ADDITIONS OR DELETIONS OF AGENDA ITEMS:

None

**II. DISTRICT/EASEMENT AMENDMENTS**

A. ST. MARY'S COUNTY

1. 18-00-02Ae Taylor, Glenn & Kathleen 64.53 acres

REQUEST FROM ST. MARY'S COUNTY:

To permit a wetland mitigation easement as an overlay on a MALPF easement property.

ORIGINAL RECOMMENDATION:

Foundation staff recommends denial because the request does not meet the Foundation's Wetland Mitigation Policy requirements for the following reasons:

1. The local board does not recommend approval.
2. Land will be taken out of agricultural use (pasture).
3. Proposed size of project exceeds that permitted under the policy.
4. The capacity of the farm may all ready be compromised, in part due to an existing Forest Conservation Easement on 28 acres. (A copy attached with the agenda memo).
5. The County may be able to use alternative sites by using multiple County-owned properties.

CURRENT RECOMMENDATION:

On May 23, 2010, the MALPF Board of Trustees denied the request as it did not meet the Foundation's policy requirements. From the original request, items #1, #3 and #5 needed to be satisfied. Consequently, the proposal has been revised to decrease the affected area from 5.0 acres to 3.2 acres (4.95% of the 64.53 acre property). Therefore, the remaining issues have been addressed as follows:

- #1 The local board recommends approval since the size has been reduced,
- #3 The proposed size of the project no longer exceeds that permitted under the policy, and
- #5 The County is actively working to address the wetland mitigation requirements of the airport expansion with multiple sites.

Foundation staff recommends approval of the request as it meets the Foundation's Wetland Mitigation Policy requirements.

**NEW INFORMATION:**

Following the Foundation's guidelines, the County Advisory Board originally denied the request as it did not meet the requirements of being either 5.0 acres or 5% of the total acreage of the farm, whichever is smaller. The original request for 5.0 acres equaled 8% of the easement property. Although the County Advisory Board prefers that this mitigation be located on land which is not already preserved, now that this proposal has been modified to meet the Foundation's size limit (reduced from 5.0 acres to 3.2 acres), the County has voted to approve the revised 3.2 acre easement overlay. In addition, the County Board has "submitted a list of potential properties which are not under land preservation easements and intend to continue to work with the St. Mary's County Department of Public Works and Transportation to create a "bank" of sorts of available eligible land for future projects that require wetland mitigation."

In addition to the 3.2 acre portion of the Taylor easement property, the County is also proposing use of the St. Clements Shores Wastewater Treatment Facility (2.75 acres) as well as a small portion of the Chaptico Park (2.0 acres under study) in order to complete the project.

**BACKGROUND:**

The agenda item and minutes from the March 23, 2010 Board meeting were attached with the agenda material.

George Baroniak, Chairman, Ag. Preservation Board, St. Mary's County, and Donna Sasscer, Program Administrator, were present at the meeting. Ms. Sasscer conveyed that Gary Whipple, St. Mary's County, Department of Public Works & Transportation, is not able to attend the meeting.

Carol West, MALPF Administrator, stated that items #1, #3 and #5 from the previous request have now been corrected and the Foundation recommends approval.

Mr. Baroniak mentioned that originally the request was presented to the County Department of Public Works. The requests were to approve (1) an easement on an easement and (2) a reduced acreage. The County Advisory Board's initial decision to deny was based on the fact that the request did not meet the Foundation's guidelines. At that time, the County Advisory Board also provided the County Department of Public Works a list of non-MALPF properties to explore possibilities if an easement could be placed on another property. The County approximately has more than 40 easement properties on the same watershed. The County Department of Public Works returned for the second time proposing to use 3.2 acres. The County Advisory Board approved the request though it was concerned about placing an easement on an easement because it believed it was beyond its capability to make a decision in this regard.

Bubby Norris, Board member, wanted to know how much land is needed for mitigation (3.2 acres, 2.75 acres and 2.0 acres = a total of 7.95 acres).

Mr. Baroniak stated that at that time, the County Department of Public Works had conveyed that the total acreage needed could not be met and that they were looking for 5 acres (not 7 acres). Ms. West added that they were planning to put 5 acres on a MALPF easement property and the remaining two on a non-easement property.

Mr. Norris stated that he was concerned that in these times of tight budgets and having less funding available for buying easements, the county is trying to put an easement on land that is already protected. Mr. Norris stated that he believed there are other lands that can be protected.

Mr. Baroniak stated that the County was advised by the Department of Public Works that they wanted to have this done over a rapid period of time. At that time, the County also provided

them with the list of additional properties and offered their assistance to try and work with the Department of Public Works to come up with all the requirements.

Mr. Norris wanted to know if the County was informed by the Department of Public Works about the contacts made by them or the surveys done.

Ms. Sasscer stated that at the March Board meeting, the Department of Public Works had a representative attending the meeting. The County has hired Angler Environmental who had done the research and contacted the property owners.

Joe Tassone, representing Secretary Richard E. Hall, Maryland Department of Planning, wanted to have the opinion of the legal counsel.

Nancy Forrester, Assistant Attorney General, Department of General Services, stated that the Foundation has a policy in place. She has concerns about the configuration and putting an easement on a property that is already protected.

Mr. Stahl read from the policy.

***RESOURCE CONSERVATION PURPOSE, SIZE, AND SOILS***

*The primary resource conservation purpose of the proposed mitigation practice must be to reduce discharge of sediment, nutrients, and/ or other pollutants from the farm. In addition, the proposed mitigation practice must:*

- *Be an appropriate and necessary best management practice (BMP) to achieve the resource conservation objectives for the farm, based on NRCS standards and estimates;*

Mr. Stahl wanted to know if the current request is “an appropriate and necessary BMP” for the farm.

Ms. Sasscer stated that the prior agenda packet submitted at the March Board meeting had the information from the local Soil Conservation. Ms. West confirmed that the Foundation has received comments from the Office of State’s Resource Conservation.

Mr. Stahl recalled that in the past the MALPF Board had approved areas that were either poorly drained or areas that were hard to work with. The Foundation ensured that best management practices were put in place and it improved the farm. Mr. Stahl wanted to make sure that the current request does not take away the productive land.

Mr. Stahl wanted the local board and the county staff to confirm that the current request is appropriate and necessary BMP for the farm.

Ms. Sasscer pointed out that the March agenda memo contained a paragraph that stated that, *“the area under consideration is currently in pasture and there is a pond. The soils are hydric/poorly drained Othello soils according to a letter from St. Mary’s County Soil Conservation District. The letter also stated that the area to be considered is conducive to the creation of a wetland area. John Rhoderick, Administrator for the Office of Resource Conservation, reviewed the Soil Conservation District’s findings and found the information to be accurate and complete. A follow-up conversation with St. Mary’s Soil Conservation District revealed that 100% of the property has qualifying soils (Class II and III). The Othello soils are Class III soils. Not all of the Resource Conservation Criteria from the Foundation’s policy were available. Please see the letter from Mr. Erichson, dated March 2, 2010.”*

Mr. Baroniak stated that he understands Mr. Stahl’s concerns. The issue also came up in the local board meeting and the local board struggled with the use and definition. On the one hand, it is pasture and on the other hand, it is a wetland area. The local board could not

determine whether pasture land will serve a better purpose than area subject to wetland mitigation.

Mr. Stahl stated that the MALPF Board has an investment in this piece of property for productive agriculture and suddenly we are changing it around to use that money for economic development at St. Mary's County airport. Mr. Stahl stated that he is very concerned about this.

Martha Clark, Board member, referred to Diane Chasse's memo of March 23, 2010, "If the Board considers that the Forest Conservation Easement removes 28 acres of land and applies the 5% rule to the remainder then only 1.8 acres is available for wetland mitigation."

Ms. Clark wanted to know if this is just an exercise in calculation or is that how the Board should be looking at. Is it the whole parcel and 3.2 acre is the proper amount or should the Foundation consider the Forest Conservation Easement and then figure out the 5%.

Vera Mae Schultz, Vice Chairman, stated that at the March Board meeting, the Board had established that under the Forest Conservation Easement, harvesting is not allowed.

Ms. West stated that if the Board approves a forest mitigation easement, they would have to allow harvesting.

Mr. Baroniak stated that when the local board discussed the issue and approved the 3.2 acres (of the 64.53 acre property); it was unaware of forest mitigation on the property and learned about it later. So forest mitigation was not part of the local board's discussions. The County's approval of 3.2 acres is based on it being part of the 64.53 acres.

Mr. Stahl stated that the Board is trying to work with the Foundation's policy and attempting to do what's best in the current scenario. Diane Chasse's memo was prior to the new application.

Ms. Sasscer stated that the previous agenda packet contained a letter dated March 2, 2010, addressed to Diane Chasse. This letter addressed issues of water quality and best management practices of the farm.

Mr. Stahl recalled the letter indicating "appropriate" use. However, the Foundation's guidelines require "an appropriate and necessary use." Mr. Stahl questioned if the request meets both the criteria.

Responding to a question from a Board member, Mr. Baroniak confirmed that he had visited the site but would not like to share his personal opinion. He is trying to balance the interests of the Taylors, the County Public Office, the Office of Economic Development, St. Mary's County Agricultural Land Preservation Programs, and the State Preservation Program. Mr. Baroniak stated that he is trying to do what's best for everyone involved.

Ms. Clark expressed her concern about setting a precedent.

Mr. Norris stated the Foundation's policy is to decide on a "case-by-case" basis. It also says the Foundation discourages wetland mitigation on MALPF easements. It is not necessary that if the request meets all the criteria, the Board needs to approve the request. He wanted to have a legal opinion.

Ms. Forrester stated that she is not saying that the Board needs to approve the request. Ms. Forrester reminded the Board that the Foundation has a policy in place and the Board should follow the policy.

Mr. Norris stated that the policy discourages wetland mitigation on MALPF easements. Ms. Forrester stated that the policy also gives discretion to the Board.



**REQUEST FROM WASHINGTON COUNTY:**

The request is for an agricultural subdivision of 67.79 acres and 50.44 acres on district property.

**RECOMMENDATION:**

Foundation staff recommends approval of this subdivision as it meets the requirements set forth in COMAR 15.15.01.17H and is consistent with the Foundation's policy on agricultural subdivisions as approved by the Board of Trustees on December 19, 2000.

**BACKGROUND:**

Joy and William Zepp and Janet Stiles Fulton are the original co-owners of this 201.41 acre District property. They are requesting an agricultural subdivision of a 67.79 acre parcel and a 50.44 acre parcel with an 83.18 acre remaining parcel. The subdivided parcels both have 99% qualifying soils and the remaining parcel has 61% qualifying soils.

Janet Stiles Fulton will own the 67.79 acre parcel and other two parcels will be owned by Joy and William Zepp. The Zepps plan to convey the 50.44 acre parcel to their daughter in the near future. The 67.79 acre parcel will be used mainly for crop production to support a dairy operation on a separate parcel. The 83.18 acre parcel and the 50.44 acre parcels combined support a farm operation with 150 breeding ewes; and the owners plan to continue farming the two parcels as one operation. The County Program Administrator has indicated that this request has been approved by the County Advisory Board and that it meets all Planning and Zoning approvals.

COMAR 15.15.01.17H(4)(g) provides that a request for a proposed subdivision will be considered by the Foundation if "[t]he proposed subdivision is intended for an agricultural purpose and both the parcel to be subdivided and the remaining parcel are able to sustain long-term agricultural production, independent from the other[.]". Staff finds that these criteria have been met.

Sarah Hall Peak, MALPF Administrator, presented the agenda item.

Eric Seifarth, Program Administrator, participated in the meeting through web conferencing. Mr. Seifarth informed the Board that the northern part of the property has 18.16 acres which are excluded from the District. This parcel would accommodate a potential lot for a grandchild which would not occur for another 15-20 years. By that time, it would be agricultural districts or MALPF easements.

Mr. Stahl asked Mr. Seifarth to confirm that since this is a District property the landowner could terminate the MALPF district and join a County district assuming they have met the five year commitment. Mr. Seifarth confirmed that was correct.

Mr. Tassone asked Mr. Seifarth to clarify what he meant when he stated that the property will be agricultural districts or easements in the future. Mr. Seifarth responded that his understanding is that after 2012 MALPF districts will cease to exist. At that point, the property will become county agricultural districts because they receive property tax credits. Hence the property will be a county district or a permanent MALPF easement or both.

Ms. Peak clarified that under the current law, since Washington County provides tax credits, the property would remain a MALPF district until the landowner changes them over to a county district. The MALPF district will not automatically terminate (as it will in other counties that do not extend tax credits). Mr. Seifarth stated that he will address that issue with the landowners; but the landowners have expressed their desire to keep the land in agricultural use and maintain tax credits.

Mr. Seifarth further stated that 67.79 acres will support a future dairy operation on a neighboring farm of about 150 acres. There is a potential for long term family farm production. The death of a family member has pushed the landowners to pursue estate

planning issues. While they were in the process of estate planning, they decided to look at the future of the farm for their child. So they decided to go for a 50-acre agricultural subdivision rather than coming to the Board at a later date.

Mr. Stahl stated that he hoped the agricultural subdivision is not just for the purpose of estate planning but for agricultural purposes. Mr. Seifarth responded that the agricultural subdivision is to serve both purposes. Mr. and Mrs. Zepp and their daughter are planning a seamless operation on the 50.44 acre and 83.18 acre parcels. The 67.79 acre parcel is already a part of the neighboring farm operation and the owners of that farm have indicated that they may also form a county district.

Mr. Stahl asked if the division line between the 83.18 acres and 50.44 acres is a county road. Mr. Seifarth confirmed that this is correct.

Ms. Forrester asked Mr. Seifarth to explain what the 18.16 excluded acres is going to be used for. Mr. Seifarth stated that the 18.16 acres is currently under farm use. Sometimes, when a landowner enters a district, there are financial issues. In the current case, because of uncertainties arising from the death of a family member, the landowners had excluded the acreage. However, the landowners have indicated that they have no plans to develop that parcel. Things in the family have also stabilized.

Ms. Forrester wanted to know what parcel the 18.16 acres will go with when the ag. subdivision occurs. Mr. Seifarth stated that the landowners are still working out the details and he will try to get an answer. Currently Ms. Fulton is farming the 18.16 acre parcel and it is not separately subdivided.

Ms. Forrester stated that in the future, the Foundation might purchase an easement. The 18.16 acre was never in the district. If the Foundation permits the agricultural subdivision of the district, there will be four parcels not three. Ms. Forrester wanted the Board to be aware that 18.16 acre will be part of the farm but excluded. She wanted to know if there was an ability to develop more than three lots on the 18.16 acre parcel.

Mr. Seifarth stated that it will not be possible to develop more than three lots because the county zoning is 1 to 5. If they were to develop, there will be three lots and no more. If the landowners chose to assign the lot rights to other parcels for the purposes of the easement, the County will allow them to make that choice and extinguish them if they chose to. The County tracks all building rights. If the landowners indicate to the appraiser that they want the value in easement, the County can extinguish. Even if they don't, three building rights will be the maximum allowed on the property.

Ms. Forrester stated that there will be three separately subdivided parcels in the district. She asked if the County is currently having the landowners assign the building rights.

Mr. Seifarth stated that there are some exemption rights that will go with the original parcels. The county zoning has one house for 5 acres and the mathematical calculation will give the number of rights to be assigned. As per the county zoning, the County calculates the total allowable building rights for the entire parcel. A landowner cannot gain building rights by any subdivision occurring post 2005.

Mr. Stahl noted that county roads divide the 83.18 acre and 18.16 acre parcels from the remaining acreage. He asked Mr. Seifarth if the county zoning regulations consider them as two separate parcels or as one.

Mr. Seifarth responded that the County does not consider them as separate parcels. Even though the parcels are divided by the road, they still need to go through subdivision process because the tax records indicate them as one parcel. The original agricultural district site location is little "Z" showing the connection across the roads (in the aerial map). The parcels still have to go through subdivision on either of those roads.

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Mr. Stahl asked about the county's regulations governing agricultural subdivision. What is the minimum size of the parcel? Mr. Seifarth stated that the County strictly follows MALPF's requirements.

Mr. Stahl asked which piece the 18.16 acre parcel will go with. Mr. Seifarth stated that currently the 18.16 acre parcel will go with Ms. Fulton's 67.79 acres.

Mr. Stahl stated that you could not end up with a parcel that is less than 50 acres. Theoretically, the 18.16 acre parcel has to go with one of the parcels and it was not clear which piece it will go with.

Mr. Seifarth stated that the 18.16 acres is excluded acreage and not an agricultural subdivision. Mr. Stahl stated that 18.16 acres is excluded from the district but from a subdivision standpoint, it has to go with another parcel.

Mr. Stahl noted that there is a district and 18.16 acres excluded from the district. He wanted to know if the County will allow an 18.16 acre parcel to stay as a separate parcel.

Mr. Seifarth stated that the County follows the Foundation's guidelines and will allow this if the Foundation allows it. He further stated that if the Foundation wants the 18.16 acres to be added to the 67.79 acres the County will follow that requirement.

Mr. Seifarth stated that this is the first time the County has received such a request since its 2005 re-zoning. In this particular case, Mr. Seifarth had spoken with the subdivision planner and the County will follow the Foundation's requirements.

Mr. Tassone noted that there seems to be some confusion. The rules under agricultural zoning and agricultural subdivision ordinances are different than the rules the County follows for a property that is in the MALPF program.

Mr. Seifarth confirmed this and stated that the subdivision planners in the County are not approving this until it is approved by the MALPF. Assuming that there is no agricultural preservation, the minimum acreage for the County is 5 acres.

Mr. Stahl stated that his understanding is that it is not different from any other subdivision but it cannot be under the guise of an agricultural subdivision and create smaller parcels.

Mr. Tassone stated that as per the Foundation's guidelines the 18.16 excluded acres is not going to be part of the MALPF easement because it was already excluded from the district (if the whole district were to become a MALPF easement).

Bernard Jones, Board member, wanted to know how the 18.16 acres was already excluded. Mr. Tassone explained that when a landowner enters the MALPF program (either as a district or an easement) he has a choice to exclude acreage subject to certain restrictions.

Mr. Stahl stated that the property is not getting subdivided into three parcels but is breaking into four parcels and one of the parcels is 18.16 acres. Mr. Stahl wanted to know which parcel the 18.16 acres is going with because he believed it should be tied to one of the three parcels.

Mr. Jones stated that if the MALPF Board has already approved excluding 18.16 acres it is "done". Mr. Stahl stated that the 18.16 acres is excluded from the district agreement but the MALPF Board has not given it a separate subdivision. It is still part of the whole parcel. Ms. Clark stated that the landowner request is for three parcels but in reality the property will break into four parcels.

Mr. Jones stated that from the request it seemed that the landowners want to keep the 18.16 acres as it is.

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Mr. Seifarth stated that the landowners are willing to tie 18.16 acres to 67.79 acres, if that is a MALPF requirement.

Ms. Schultz asked what acreage will be considered in the event the landowners are interested in selling the easement. Ms. Forrester stated that it will depend on what the landowners' apply for; the landowners might decide to put in all the acreage or they might not.

Jonathan Quinn, Board Member, stated that the 18.16 acre parcel does not seem to be very valuable given the fact that it is split from the remaining acreage by a road and has a development directly behind it.

Mr. Tassone mentioned that the Foundation is currently revising its subdivision policy because of the problematic nature of the existing policy. Currently, the Foundation does not allow subdivision of a farm unless the piece to be subdivided is able to be self sustaining in a separate agricultural operation. With reference to the current property, the 67.79 acre parcel is going to be used for crop production to support a dairy operation on a separate parcel. So it is not a self sustaining parcel. The other two parcels, 83.18 acres and 50.44 acres, are going to be used for the same agricultural operations. They are not going to be separated for distinct individual profitable agricultural operations. On the one hand, 18.16 acres separate is not good for anything and why don't we let it go. But on the other hand the Foundation has to use the rules governing its agricultural subdivision policy.

Mr. Stahl stated that he was concerned that people are using the agricultural subdivision processes for their estate planning and eventually the farms over the years will be subdivided to the minimum acreage (50 acres) allowed by the Foundation.

Ms. Clark wanted to know if the Board denies the current request could the landowners terminate their district. Ms. Peak confirmed this and stated that theoretically the landowners could approach the County to apply for three separate districts. There's no guarantee that the county program would approve them.

Mr. Stahl stated that if the Foundation made a decision that the 18.16 acres has to go with 67.79 acres they could withdraw.

Mr. Seifarth stated that he believes the landowners have demonstrated that all three parcels can operate as separate farms. He would like to defer that decision to the farmers on the Board because they can better tell how each of the parcels can stand alone. The family is trying to keep the property as a farm and keep it intact as much as possible. Mr. Seifarth stated that he believed estate planning is not a bad thing and the family is making every effort to stay in the MALPF program.

Mr. Seifarth stated that he believed the Foundation should not be too restrictive on issues that in his opinion are not related to the policies. He did not have a problem if the Board wants the 18.16 acres to be part of the 67.79 acres. He did not think the family is going to have a problem over that. The landowners preferred to stay in the MALPF program instead of forming a County district.

Billy Boniface, Board Member, stated that the Board should be more concerned with potential agricultural use of the parcels. One parcel is adjacent to a dairy operation; but if that operation ceases to exist the parcel still can be a viable agricultural operation. Mr. Boniface stated that in his opinion, the Board should be more concerned with how the subdivision will impact future agricultural use of the property. He further stated that he believed the Board is worrying too much about what is going on right now instead of looking at the potential viability of the subdivided parcels.





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Mr. Stahl asked Ms. Clark, Chair, Legislative Committee, how she would like the Board to proceed.

Ms. Clark stated that the Committee thought that the proposals on lot rights and agricultural subdivision will be reviewed by ad-hoc workgroup. Ms. Clark suggested allowing Ms. West and Ms. Peak to present the legislative memo. The Board can give conceptual approval to the ones with which it feels comfortable. The legal counsel can accordingly draft the bill.

Mr. Nielsen stated that the Department and the Governor's Office prefer, where possible, to combine ideas to introduce one bill or a couple of bills. The Department wants to forward only those bills that are absolutely essential in the Board's opinion.

**Lot Rights** - Ms. Forrester presented the proposal.

Proposal: A new lot system is proposed based on each easement being allowed up to three (3) unrestricted lots. The number of lots allowed will be based on the acreage under easement and one or all can be waived to maximize the offer amount.

Purpose: Objectives include: (a) cost control (this will help connect offer values to what is actually acquired) (b) flexibility in who receives the lot (can be given to those not now eligible under the current program) (c) simplification of program with concurrent reduction in legal costs (d) reduction in the likelihood of farms without residences (e) the reduction of inequities based on size of family and property and the number of farms (those with more children can retain more lot rights under current program; those with multiple farms have less incentive to preserve additional farms under current program) (f) mainstreaming the MALPF program (this reduces the differences between MALPF and other preservation programs, helping to reduce confusion). This bill will eliminate owner's lots and children's lots for new easements acquired by MALPF.

Mr. Tassone mentioned that some county program administrators had expressed concerns at the last legislative committee meeting. One concern related to changes proposed in the acreage thresholds. Mr. Tassone wondered what will happen once the bill gets introduced as an administrative bill and gets revised to a form that is unacceptable to the original sponsors.

Ms. Forrester stated that Mr. Conrad can testify against the bill if amendments are unacceptable.

Mr. Tassone stated that he believed that some of the specific county concerns raised at the legislative committee meeting can be addressed.

Ms. Clark stated that at the last legislative committee meeting a number of people agreed to be on the ad hoc work group. Therefore, there is at least one more opportunity to address any issues.

Mr. Norris stated that he agrees with the proposal. He stated that his understanding is that once a landowner gets an unrestricted lot he can sell it. He wanted to know more about the concerns surrounding family lots.

Mr. Stahl stated that because family lots are restricted to owners and children, some concerns have been expressed on how narrowly restricted the lots are. For example, if an easement holder had a tenant working for him for thirty years and wanted to give him a lot, he would be restricted from doing so because he had chosen family lots. Even if the easement holder wanted to give a lot to his grandchildren rather than his children, he could not do so because he does not have that option. Ms. Clark added that there were also issues concerning subdividability vs. non-subdividability.

Mr. Stahl stated that the numbers of lots is also based on the size of the parent parcel.

Ms. Schultz noted that, even under this proposal, it is possible that the farm has no dwelling, if the easement holder chooses to sell all three unrestricted lots. In the end, there is no guarantee that a dwelling will remain on the farm for future owners. Mr. Boniface asked if the proposal has addressed this concern.

Jonathan Quinn, Board member, stated that Cecil County has a farmer with a similar situation. It is a horse farm preserved under Rural Legacy.

Mr. Tassone stated that if needed the issue can be addressed by putting appropriate language in the legislation. The language will apply only to future easement sellers and would not apply retroactively.

**Critical Farms Program** – Ms. Peak presented the proposal.

Proposal: Fully authorize and enable the Critical Farms Program, as proposed in the Report to the Office of the Governor and the Maryland General Assembly (January 2007), while keeping its funding discretionary and opportunistic.

Purpose: With the partnership program approved in the last legislative session, MALPF can seek private outside and/or county funding for this program, while retaining the option for State funding at the discretion of the Office of the Governor and the General Assembly. The program needs to be fully authorized to achieve its intended purpose and the scope of its activities. MALPF sought to have the Critical Farms Program funded through surtax on the agricultural transfer tax; however, the bill sponsor chose to use that surtax to fund the Next Generation Farmland Acquisition Program under MARBIDCO.

Mr. Tassone wanted to know if the criterion defining a critical farm has been fully formed.

Ms. West stated that currently there is nothing in place, but the bill will address this issue.

Mr. Tassone asked if “Critical” can be defined by State and/or County based criteria. Ms. Forrester stated that she has not seen what Mr. Conrad has drafted.

**Limits on Easement Offers** – Ms. West presented the proposal.

Proposal: Counties would be required to adopt county-specific measures to limit the possibility of high acquisition costs (over a set percentage of the appraised fair market value). If acceptable measures are not adopted, the MALPF Board of Trustees will be authorized to impose an appropriate cap. Individual counties which have already adopted such measures and/or do not have high acquisition costs will not be subject to this requirement.

Purpose: This proposal is directed at limiting the possibility of offers more than a set percent of fair market values, preferably using approaches based on the unique circumstances of each county. The purpose is to forestall offers for acquiring easements that approach the appraised FMV and extend funds further in acquiring easements, while recognizing the potential downside that asking prices will tend in some counties to converge to the capped offer value.

Mr. Nielsen commented that if the Foundation feels it is paying too much, it can consider altering the agricultural value formula without new legislation.

Mr. Stahl stated that before land values had started to escalate in the rural areas (15 or 20 years earlier), there was not much difference between the appraised agricultural values and the appraised fair market values in some counties, because the highest and best use of the land was for farming. The agricultural value formula was adopted by statute resulted to compensate more rural landowners for a preservation easement. With the more recent rapid escalation in development values relative to stagnant agricultural values, some Board members have been concerned that some offers have been high as a percentage of the fair

market value. The Board understands paying high values is not in the best interests of the State or the Foundation. But finding a solution to this issue has been extremely challenging.

Mr. Stahl stated that when the issue was discussed at the legislative committee meeting, his personal opinion was that the Foundation in some way is forcing the counties to do this on a "county by county basis" so that each county can do what works best for them. Personally, he has to see the bill to ascertain what it is saying before he can decide to vote or not to vote in its favor.

Tammy Buckle, Program Administrator, stated that she was part of the agricultural formula review committee and it was a nightmare to try to resolve this issue.

Mr. Boniface stated that money is going to be tremendously tight at the next legislative session. Introducing legislation on this issue would be like opening a can full of worms, and he is not confident that this bill would make it through the legislative process. He also stated that he believed the Foundation should give more flexibility to the counties.

Ms. Clark stated that the original idea of the legislative committee was to work, county by county, to determine if the counties can be encouraged to do this unilaterally without legislation.

Mr. Stahl stated that using regulations instead of legislation would certainly be better in seeking solutions to this issue.

Mr. Tassone wondered about the scope of the MALPF Board's authority to use regulations in this regard. He requested Mr. Nielsen to look at the law to determine the authority available to the MALPF Board, particularly the discretion about the content of the formula as opposed to satisfying a statement of legislative intent. No language in the statute deals with land rents and/or the distance from the metropolitan areas – that is only in regulation. So long as the Foundation satisfies the statutory intent, the formula can be revised. But the nightmare sets in when we try to change the status quo....

Mr. Tassone stated that he believed something can be done with the proposed bill. But he shares the concerns expressed regarding its introduction in the next legislative session. Mr. Tassone also mentioned that there are a number of specific things about this proposal that he would modify to make it work in the way he would like to see it work.

Mr. Stahl asked Mr. Nielsen if he wanted the Board to share their reasonable concerns or would he like to draft the proposals. Mr. Nielsen stated that he can go ahead and draft whatever the Board would like him to. He has looked at the statute, and the MALPF Board is tied to using a formula to determine agricultural value. The MALPF Board has the discretion on how it wants to proceed.

Mr. Stahl stated that the issues are critical issues to the MALPF Board. He also understands how the legislative process works and realizes the MALPF Board has to be selective and minimize potential controversy with bill proposals before forwarding them to be considered in the legislative session. There has to be consensus among the Board members. The Foundation also needs to have substantial county support to move forward.

Ms. Schultz stated that perhaps the Board should not proceed with this proposal, but should give counties some more time to work on resolving the issue at the county level. The problem has only been presented to the counties within the last year or so.

Ms. Clark stated that the Committee can generate a chart indicating the counties that are doing a reasonable job in limiting the offers and the counties that need help. The county administrators doing a reasonable job can visit (if they are willing) other counties with the MALPF staff and share their experience. Ms. Clark stated that she is hesitant about taking this to the legislature and pit one county against another county. In her opinion, an attempt

can be made to deal with the issue administratively.

Mr. Nielsen stated that the MALPF program is a statewide program. One of the strengths of this program is that the MALPF Board adopts standards that apply statewide. The MALPF Board ensures fairness and equity in how the program is run. If this bill resulted in decentralized solutions, the MALPF Board loses control on the critical issue of how much the State is going to pay for the easements. Mr. Nielsen stated that Mr. Conrad's outline does not suggest language but suggests some kind of methodology that is not well defined. Mr. Nielsen stated that he will be glad to draft a bill, but believed the issue needs further study.

**Condemnation Compensation for Parkland or Economic Development – Ms. Peak** presented the proposal.

Proposal: When an entire MALPF-preserved property is condemned for economic development or parkland, compensation should be distributed among the landowner, MALPF, and the county (if county funds were used to acquire the easement) based on the proportional distribution of value ascribed to those with an interest in the property at the time of easement acquisition. Any funds going to MALPF or the county may be used only for land preservation purposes. This bill would *not* apply to partial condemnation for public safety (such as road widening) or utilities or similar purposes, but only to condemnation of a complete easement parcel for purposes of parkland or economic development.

Purpose: Currently, if a MALPF-preserved property is condemned for economic development or parkland, MALPF receives only what it was originally paid for the easement (unadjusted either for inflation or any increased value accruing over time) with the remaining full development value paid to the landowner. The county does not receive any funds it contributed to the acquisition. This creates a strong incentive for a knowledgeable landowner to lobby to have the preserved property condemned for economic development or parkland (the only cases in which the entire parcel is likely to be condemned), because condemnation would realize significantly more money for the landowner than selling the preserved property in the open market. This proposal would be an equitable solution to compensation under condemnation while eliminating the strong incentive for a landowner to seek condemnation of the property.

Mr. Nielsen stated that, in theory, the MALPF Board should only advance legislation that is absolutely essential. The Foundation has never had a total easement condemned, although it could happen. Also currently the payment is remitted to the counties under 2-515 B. It is mentioned that payment goes

*(2) (1) To the Maryland Agricultural Land Preservation Fund [or a county agricultural land preservation program, an amount equal to any amount paid by the Foundation or the county agricultural land preservation program for the easement.]*

Mr. Nielsen was not sure if this was needed in the proposal.

Mr. Stahl remarked that government authorities have to be the one condemning the property, not the landowner. The idea that a landowner would lobby to get his property condemned by a public agency is ridiculous. Landowners do not determine what is in the public good. Mr. Stahl stated that, as a farmer, he thought the Farm Bureau would be reasonably opposed to this proposal.

Mr. Jones asked if the Foundation has ever had a case when an entire MALPF property has been condemned.

Mr. Nielsen stated that an entire MALPF property has never been condemned. Pieces of MALPF properties have been condemned for road widening and other public safety reasons.

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Mr. Jones wondered why this bill is being proposed. Ms. Clark stated that the Foundation is being proactive. In the future, when there is a scarcity of land, counties are going to start looking around for schools, landfills, etc.

Mr. Jones stated that currently the counties do not have money to purchase land for public purposes. In his opinion, introducing this bill is not needed now. The legislature is going to be busy with financial issues, and he did not see benefit to introducing this bill.

Mr. Stahl stated that from the discussion it seemed that the MALPF Board has reasonable concerns regarding the last two proposals. The MALPF Board would like to see the **Lot Rights** and **Critical Farms Program** proposals in draft form at the next Board meeting.

Mr. Boniface stated that he would like to see the actual language of the proposals. He represents the Young Farmers Advisory Board, and, if the MALPF Board is proposing legislation, he wants time to discuss the bill proposals with the Young Farmers Advisory Board before a final decision is made.

Mr. Stahl agreed and stated that the Maryland Department of Agriculture follows a time line. If the MALPF Board is willing to move forward the legal counsel will work on the language to meet the Department's timeline. Mr. Conrad's concern was if the proposals have to be part of the administrative package, they have to be submitted to meet the Governor's Office's deadlines.

Mr. Nielsen noted that the Governor's Office restricts the Department's ability to share proposed legislation. However, there may be ways in which the Board members can discuss the general concepts. Mr. Nielsen stated that the legal counsel will work with the Board members to let members know what they can and what they cannot do.

Mr. Stahl noted that it also depends on whether the Secretary of Agriculture wants them as Administration bills. Maybe the bills can be sponsored by the legislators directly. There may be other ways to seek sponsorship for proposed legislation, such as through the Farm Bureau.

B. Inspection Deadlines – Update by Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator.

Ms. Hoxter noted that the deadline for completing inspections is end of June 2010 and so far ten counties have not met the deadline. She encouraged the county program administrators to complete the inspections before the deadline. The County Program Administrators present at the meeting provided the latest update to Ms. Hoxter.

Mr. Stahl recognized the contributions of Tammy Buckle, Caroline County, Program Administrator. On behalf of the MALPF Board, Mr. Stahl appreciated the hard work and dedication of Ms. Buckle. Ms. Buckle stated that she had enjoyed working with the Board members, MALPF staff, the attorneys, and the County Program Administrators.

Ms. Schultz acknowledged the contributions of Ms. Buckle to the various MALPF committees formed at different times.

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 re-consider acquisition of 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.

