

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION  
OPEN MEETING MINUTES  
NOVEMBER 22, 2011**

**TRUSTEES PRESENT:**

Robert F. Stahl, Jr., Chair  
Vera Mae Schultz, Vice Chair  
Susanne Brogan, representing Treasurer Nancy Kopp  
John W. Draper, Jr.  
Bernard L. Jones, Sr.  
Jerome W. Klasmeier, representing Comptroller Peter Franchot  
Donald T. Moore  
James (Bubby) Norris, Jr.  
Jonathan C. Quinn  
Mary Ellen Setting, representing Secretary Earl F. Hance, Maryland Department of  
Agriculture  
Joe Tassone, Maryland Department of Planning, representing Secretary Richard E. Hall

**TRUSTEES ABSENT:**

Martha A. Clark

**OTHERS PRESENT:**

Anne Bradley, Frederick County, Program Administrator  
Michelle Cable, MALPF Administrator  
Diane Chasse, MALPF Administrator  
Tom Davis, Queen Anne's County, Engineer  
Rama Dilip, Administrative Specialist  
Nancy Forrester, Assistant Attorney General, Department of General Services  
Amanda Gibson, Assistant Attorney General, Maryland Department of Agriculture  
Billy Gorski, Anne Arundel County, Ag Program Planner  
Fatimah Hasan, Prince George's County, Planner  
Butch Helwig, Charles County, Landowner  
Kimberly Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator  
Donna K. Landis-Smith, Queen Anne's County, Program Administrator  
Angela Miller, MALPF Temp. Secretary  
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture  
Beth Ramacciotti, Frederick County, Land Acquisitions Coordinator, Utilities & Solid  
Waste  
Charles Rice, Charles County, Program Administrator  
Daniel Rosen, Maryland Department of Planning, Planner  
Deb Vaughan, MALPF Administrator  
James Wallace, Director, Administrative Services, Maryland Department of Agriculture  
Kevin Wayson, Queen Anne's County, Landowner  
Carol West, MALPF Acting Executive Director

**OTHERS PRESENT BY WEB CONFERENCING:**

Chad Fike, Garrett County, Assistant Program Administrator  
Betsy Jackson, Caroline County, Program Administrator  
Ned Sayre, Harford County, Agricultural Preservation Planner  
Martin Sokolich, Talbot County, Program Administrator

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Robert F. Stahl, Jr., Chair, called the meeting to order at 9:14 a.m. at the Maryland Department of Agriculture building, Annapolis, Maryland. The guests and then the Board and staff introduced themselves.

**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 October 25, 2011.

Motion: Bernard Jones                      Second: James Norris  
Status: Approved

B. ADDITIONS OR DELETIONS OF AGENDA ITEMS

1. None

**II. DISTRICT/EASEMENT AMENDMENTS**

A. FREDERICK COUNTY

1. 10-86-01 Estate of Mary Elizabeth Day Wood 256.774 acres

REQUEST- Frederick County:

Request to retroactively approve an existing water line Utility Easement on 2.670 acres of MALPF easement land

RECOMMENDATION:

Given the history of this case, staff refrains from offering any specific recommendation to the Board:

1. In 1999, the Foundation Board denied the landowner's request to allow a waterline utility easement
2. The Foundation Board suggested that the County utilize the existing I-70 200' ROW to locate the utility
3. Subsequent to the Foundation Board's denial of the request, the Frederick County Agricultural Advisory Board approved the utility and the County Commissioners executed an Agreement with Mrs. Wood and placed the utility on the MALPF easement
4. The County agreed to make public water available to the landowner

BACKGROUND:

Mary Elizabeth Day Wood was the original grantor of the easement. The current request, made on behalf of the estate by Mrs. Susan Wood Wilson, daughter of Mrs. Wood and personal representative, is to request retroactive approval for an overlay Utility Easement for an existing public water line installed by Frederick County without the permission of the Foundation.

Prior activity on this easement includes an agricultural subdivision approved in December of 2006 and approved as reconfigured in 2008. The farm was divided into two agricultural uses consisting of ~128 acres for a wine grapes and hay business operated by Mrs. Susan Wilson and ~128 acres for the hay and livestock business operated by her brother Nicholas Wood.

In January of 1999, Mrs. Mary Wood requested approval to allow Frederick County to place a

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water line running along the north side of the property parallel to I-70. The Board decided to table the request. Then, in February of 1999, the Foundation Board voted to deny Mrs. Mary Wood's request to allow Frederick County to place the water line running along the north side of property. The Board discussed the request at length in the minutes; specifically the Board inquired why the County had not opted to use the I-70 ROW. Later that year, in September of 1999, the County Commissioners of Frederick County executed the Deed of Easement for the utility. No further action of the Foundation's Board was found in MALPF records.

According to Frederick County, the Frederick County Agricultural Preservation Advisory Board met on September 27, 1999 at which time the Board recommended approval of the easement and believed that issues had been resolved with the updated contract with Mrs. Wood. Frederick County says that it is unclear whether a request was ever brought back to the MALPF Board. Research of their records does not indicate an answer as to what happened.

The farm is not currently on public water. According to Frederick County, the waterline easement contract had wording that provided an access point, but no actual access. Access to the waterline would be gained only as a result of a well failure or other health emergency.

Deb Vaughan presented the agenda item.

Anne Bradley, Frederick County, Program Administrator, stated that Ms. Vaughan presented the history very well. The issue was uncovered a few months ago when a sewer line easement request was submitted to the county. This water line easement had been executed without MALPF's formal approval. The county does want to express regret that they didn't bring this back. It's unclear what happened. As for the history, it was taken to the local Ag Board with a signed contract with Ms. Wood; the Ag Board initially approved it. However with further testimony from the landowner, the local Ag Board denied the request. At that time there was work done with the landowner to recommend changes to the contract. What is being asked for today is retroactive approval of this water line easement. Talking with the current landowner they did feel that a lot of the issues that they brought up initially were amended or fixed with an updated contract.

Mr. Stahl asked would County Utilities like to say anything with regard to this.

Beth Ramacciotti (Frederick County, Land Acquisitions Coordinator, Utilities & Solid Waste) stated at the time, after the denial their Deputy County Attorney got involved working with the property owners. There were multiple people representing the family at the time. Nick Wood has a separate piece already on that property so an easement was needed for the water line for his property as well. It basically looked like, as things progressed, the Wilson's ended up representing the interest of the farm itself and when the Deputy County Attorney got involved concerns were raised by the Wilson's and Mrs. Wood at the MALPF meeting. That was the first time a lot of those issues came to bare. The Deputy County Attorney got involved and addressed those concerns and there was an amendment to the contract which added a total of about ten conditions for the easement. Certain things about protection, the soils, the wetlands with the trees and also the actual alignment which had been shifted a little bit closer in one area to the interstate in order to address some landowner concerns and reduce the impact on the land as well.

Mr. Stahl asked Ms. Ramacciotti if County Utilities as part of the County Government have a right to condemnation.

Ms. Ramacciotti answered yes, that is correct.

Mr. Stahl added, in this case whether the Foundation has approved the request or not she could have exercised her right of condemnation on the situation to have condemned.

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Ms. Ramacciotti stated, at the time, yes.

Mr. Stahl continued, the County decided not to do that in favor of this easement.

Ms. Ramacciotti stated right, because obviously condemnation is a last resort as far as the County is concerned. As soon as the County is aware of a particular property owner's concerns an effort is made to try to address them through the easement process.

Mr. Tassone questioned if the purpose of the water line was to convey water to the nearby industrial property.

Ms. Ramacciotti answered, no, there were several projects including an elevated storage tank so the issue there was pressure and providing water to existing service areas. The project ended up being phased; obviously some phases were developer based. The original plan called for a very tall elevated water storage tank beside this farm.

Mr. Tassone added, on an industrial property?

Ms. Ramacciotti stated yes, but right beside the farm. If you drive down I-70 near New Market, you'll see there is one right beside the interstate a little further away and with a different location for the storage tank. It was possible to do a shorter tank which gave the county a little more flexibility. With it being moved, in some areas that enabled part of the water line to be shifted a little bit differently as well. If the elevated tank had been left in the original position it would have affected more of the farm property.

Mr. Tassone confirmed so whatever the details, it was all in the interest of working with the County's needs to convey water to its service areas more efficiently.

Ms. Ramacciotti stated correct, this was the precursor to the new design, the new 42 inch water line that runs through Frederick County.

Mr. Stahl asked what size line is the one for retroactive approval.

Ms. Ramacciotti stated that it is an 18 inch line. The 42 inch pipe was a large project that did go through several agricultural properties and that was brought here to this Board at one point several years ago as well.

Mr. Tassone asked while it's a separate agenda item, what's the purpose of the 1.12 acre water and sewer overlay easement with a temporary construction easement on 0.37 acres that we are going to talk about next.

Ms. Ramacciotti explained that the sewer request is similar to the water line in that it is not a service access type line. It is an interceptor. Right beside the Wood property at the edge of the industrial property is a waste water treatment plant that was put in around the time of the water line. The intent was always that it would be temporary. With a lot of the requests, enhanced nutrient removal was obviously the preferred way to go with waste water treatment. This treatment plant will come off line after this sewer interceptor gets in and all of that waste water will be conveyed to the Ballenger/McKinney ENR, Enhanced Nutrient Removal Treatment Plant that is currently within the tail end of construction right now.

Mr. Tassone asked if this waste water treatment plant is going to disappear. Take a gravity interceptor from there and take it down to the other plant.

Ms. Ramacciotti added that it will reduce the effluent going into Bush Creek right beside the farm property.

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Mr. Tassone stated, and that's great for a lot of purposes, the next agenda item has to do with conveying water to the service area.

Mr. Stahl stated no, that's the agenda item for the sewer. It's for an easement for a sewer interceptor to take gravity sewer down to the main treatment plant that they are upgrading under ENR. There are four of them.

Ms. Ramacciotti explained that the water line is an 18 inch denied access line which means people will not be hooking up to it. The only reason the access to the water line language was put into the amended contract for the Wood property was to satisfy Frederick County Water and Sewer requirements. When taking a water line past an existing residence, typically it's a farm property. If it's a farm operation or an existing residence you have to put in an access point because obviously those properties are served by wells. If that well fails, if there is some reason they need public water, at least there is an access point. Then if they go through all of the steps to get their right classification and approval they can connect for an existing dwelling.

Mr. Tassone asked if the County agreed to make public water available to the landowner but the landowner currently doesn't have public water.

Ms. Ramacciotti stated that is correct because it's just an access point. If they have a well failure, they get a letter from the Health Department that says they have a failing well.

Mr. Tassone confirmed that that's a contingency.

Ms. Ramacciotti responded yes. That's the only reason they are there for the farm operation or the residence.

Mr. Stahl stated there is some question as to whether or not on a MALPF property public water or sewer can be provided in a scenario. Ultimately as long as it is limited to the existing dwelling he certainly doesn't have any problem providing them with public water just from the sheer safety stand point. Instead of the landowners dealing with a well they are dealing with a chlorinated public water system.

Carol West, MALPF Acting Executive Director, stated that the Foundation just approved a water line to run through the middle of an easement in Montgomery County and part of the approval was that the landowner could not hook up to that water line. It was to benefit a recreation center for children that were on the other side of the easement property. To be consistent, the Board needs to consider that.

Ms. Ramacciotti mentioned that the new designed 42 inch waterline that comes up from the Potomac goes past a lot of farms along the Tuscarora and Buckeystown area. MALPF actually raised the issue with Frederick County when access points were not included for those existing farms. MALPF raised that to the County to make sure they were including those access points and the County did then change in some areas where there were adequate access points. That was a concern from this Board that the County responded to.

Mr. Tassone stated that he totally agrees with all of the concerns and considerations about providing public water and sewer to restricted properties but this contingency is for public health and safety reasons that can't get access unless there are septic system failures or some other sort of contamination for their water supply for their farm operation. That essentially overrides everything.

Bernard Jones, Board Member, asked if the County is requesting to retroactively approve an existing water line that's already there.

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Mr. Stahl confirmed yes. The 18 inch line that runs right along the Route I-70 corridor has been in for about 10 years.

Ms. Forrester added that the Board previously denied the request.

Mr. Jones stated, so it's already there and it was done without the Boards approval. What's the advantage in getting the Board's approval now?.

Ms. Ramacciotti answered, trying to do the right thing.

Mr. Jones responded so if we don't approve, it's still in so does the County want to take it out?

Mr. Stahl answered no, they'll condemn it.

Mr. Jones commented they didn't condemn it ten years ago, why are they going to condemn it now?

Mr. Stahl stated that he believes the issue was that the County had options for putting the water line in. They maybe thought that they would go ahead and do this through the easement process and somebody let the ball drop and it didn't come back to MALPF asking for approval. But it had been denied. At this point they are coming back to MALPF asking for retroactive approval so that something isn't allowed to perpetuate itself further into the future without having it corrected. The Board is correcting MALPF's easement in the situation by doing this. The question is, if it is denied are they forced back into a condemnation, yes probably.

Jonathan Quinn, Board Member, pointed out that this water line doesn't affect the farming, it's underground.

Ms. Ramacciotti confirmed that it is along the driveway and into the woods.

Nancy Forrester, Assistant Attorney General, Department of General Services, stated on MALPF's easements the Foundation is now requiring the government or private company, whoever wants to come in and do something to get an easement on top of what is already there to enter into an agreement with us, particularly if they have condemnation powers. If they don't want to go through condemnation then cooperate with MALPF and put in the kind of safeguards that we want to see. They have signed an amendment to the contract that provides that the County will hold the Woods and the Wilsons harmless for any claims that the Foundation might make against them because of this water line. However, it's not recorded anywhere and it doesn't have the kind of language that we typically like to use for the County to sign so MALPF can enforce the agreement against the County. It could come in and condemn, no question, but they don't want to do that. The Board needs to make a few requirements of them before approval. She recommends that the Board ask the County to amend the easement as recorded to include language to protect the Foundations interests.

Susanne Brogan, representing Treasurer Nancy Kopp, asked how that would protect the Foundations interests.

Ms. Forrester explained that it recognizes the MALPF easement and it allows MALPF to have enforcement rights against the County. The Foundation doesn't want to have to go against the landowner.

Mr. Stahl stated that whoever decides if the motion is for approval then he would ask that the Board subject it to protecting the Foundation's interests and that the attorneys are asked to work with Frederick County if that is the case to develop a modification to the easement as

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such that it does protect the Foundation's interests.

Ms. Cable questioned, during the discussion earlier, it was her understanding of why back in 1999 the Board denied this was because Route I-70 was there and there was a right-of-way and the Board said put the water line in the right-of-way that already exists. Did anything ever come of that?

Ms. Ramacciotti answered, yes; it was addressed, in one of the minutes that it had been denied but it was looked at further again after the MALPF meeting and it was shifted somewhat, but Federal approval process for that is not an easy process to go through plus it is typically not approved. A crossing is one thing, a parallelism would make it a safety issue for maintenance purposes for the federal government and also for the water line. Within that road right-of-way there was already storm water management infrastructure and other things along the side of the highway. Imagine trying to dig up a water line alongside a 65 mph highway. Imagine them trying to doing maintenance in a limited time frame with the water line in the way.

Ms. West asked if the right-of-way is located far enough away from the highway that if something happened it won't it be an issue on the highway?

Ms. Ramacciotti answered, right. The 200 foot right-of-way is along the edge of the water line easement. The easement on the Wood property is in their driveway for the most part until it gets all the way back to the end just past the farm. The County actually put in a new driveway for them as part of the project and you can see it skims along the edge of the highway, that's their right-of-way partially into the trees and then it winds around a little bit around their last driveway entrance and then at the very back it cuts through the woods a short distance. No farming is being done over this water line.

Vera Mae Schultz, Vice Chair, wanted to confirm the request was being made by the estate because Mrs. Wilson has been very active with other requests that have come here. Ms. Schultz is surprised Mrs. Wilson is not here today.

Ms. Ramacciotti stated that Mrs. Wilson is okay. When the Deputy County Attorney got involved after the MALPF meetings, once Mrs. Wood and the Wilsons raised their concerns and the County was able to act, their issues were all dealt with. They signed the amendment, and they signed the easement because they felt that the County had addressed their concerns at that point. The County has worked with them ever since. They've put in some deer crossing grates on top of the water line and the County worked with them because the deer are affecting the vineyard and they want to make sure the property is protected. Ms. Ramacciotti has been working with the Wilsons on a regular basis for as long as she's been there. Even on the sewer line easement, ultimately that's on a piece that's going to be her brothers' property. She even has a letter in her file that says Mrs. Wilson is okay with the sewer easement as long as her brother is okay with it, which he is as well. She has had a good relationship with them.

Mr. Tassone stated that it's a strange situation but he doesn't see that the Board has any choice but to do nothing or to approve it contingent upon incorporation of language provided by MALPF attorney's and Frederick County that would better protect the Foundation's interests here forward.

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Motion #4: To approve a request to retroactively approve an existing water line Utility Easement on 2.670 acres of MALPF easement land contingent upon protecting the Foundation's interests which will be negotiated with MALPF attorney's and Frederick County.

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

2.      10-86-01      Estate of Mary Elizabeth Day Wood      256.774 acres

REQUEST- Frederick County:

Request for approval of a 1.12 acre Water and Sewer Overlay Utility Easement with an additional temporary construction easement of 0.37 acre

RECOMMENDATION:

Given the history of an installation of a public utility on this easement without Board approval, staff refrains from offering any specific recommendation to the Board.

BACKGROUND: Mary Elizabeth Day Wood was the original grantor of the easement. The current request, made on behalf of the estate by Mrs. Susan Wood Wilson, daughter of Mrs. Wood and personal representative, is to request approval for an overlay Utility Easement for a public utility to be installed by Frederick County.

Prior activity on this easement includes an agricultural subdivision approved in December of 2006 and approved as reconfigured in 2008. The farm was divided into two agricultural uses consisting of ~128 acres for a wine grapes and hay business operated by Mrs. Susan Wilson and ~128 acres for the hay and livestock business operated by her brother Nicholas Wood.

The Frederick County Department of Utilities and Solid Waste Management states that the proposed easement will enable the installation of infrastructure to reduce effluent discharge into Bush Creek and help take several smaller wastewater treatment plants offline including the Monrovia Wastewater Treatment Plant. The proposed easement will be located at the southern portion of the property in a wooded area adjacent to existing railroad tracks; the soil type affected by the utility easement is a Class IV soil, Hatboro-Codorus Silt Loam.

The Frederick County Agricultural Preservation Advisory Board has approved this request.

Ms. Vaughan presented the agenda item.

Mr. Tassone asked what is the land use in the location for the overlay easement?

Ms. Ramacciotti stated in looking at the drawing the Wood's property snakes across the railroad tracks in a small area which is all wooded right now. The Wilson's have an underground passage underneath the railroad at one point to get to that back section while avoiding the trains and Nick Wood ultimately will own that part of the property. He said his father at one point had some livestock and that's the only thing he really ever thought he'd use it for.

Ms. Cable asked if it's a water and sewer line.

Ms. Ramacciotti stated no, it's a sewer interceptor.

Mr. Stahl asked what size is it.

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John Draper, Board Member, stated that it says 30 inches.

Ms. Schultz asked if the County has any requirements for replacing trees that are disturbed during the construction.

Ms. Ramacciotti state that there has already been a loss of trees because of the storms that came through there a few years ago and this area is not heavily wooded

Mr. Stahl explained that the bottom line is from a sewer stand point, it's not good to be planting trees back there in trying to do away with root infiltration.

Ms. Schultz questioned if the County may be planting the trees somewhere else.

Ms. Ramacciotti stated as far as mitigation for the project as a whole, yes, the County has done wetlands mitigation and forest mitigation. The forest mitigation area she believes is further south. The County has already done wetlands mitigation and a planting area on the neighboring property. And there will be more on another adjoining property because there is actually going to be a park nearby.

Mr. Tassone asked Ms. Forrester if the Board was going to approve this request, should comparable language be included to protect the Foundation's interests going forward.

Ms. Forrester answered, yes.

Motion #5: To approve a request for a 1.12 acre Sewer Overlay Utility Easement with an additional temporary construction easement of 0.37 acre contingent upon protecting the Foundation's interests.

Motion: Joe Tassone Second: John Draper

Ms. West asked is there something in place to assure that when projects like this need to be done, if it's an easement property, the County will notify the Foundation.

Ms. Ramacciotti stated that it has always been her understanding that the County will bring the issue to MALPF. They actually took this particular easement to the Frederick County Board in 2005. It has been changed a little bit here and there to address the Wilson's concerns. The original part of this interceptor was, in order to respond to a consent order with MDE, the County ended up breaking that project out which is why it didn't come here earlier. It's now this part of the interceptor project. Then the estate issues with the property came into play so the County has been waiting for those things to play out. This one the County did in 2005, we did on the water line after we made the changes but it was at some point after that it got lost, after it went to Frederick County. The County always had coming to MALPF at the fore front.

Mr. Tassone questioned, if the County is legally obligated to come to MALPF for this purpose.

Ms. Ramacciotti stated there's no specific language in this particular MALPF easement that requires that. This easement was apparently before that language got added. Just looking in the land records it doesn't say that they are required to come to MALPF, it's in the other policies.

Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture, stated it's in the MALPF regulations; it has a force of law.

Ms. Ramacciotti restated in this particular easement the language wasn't there. We knew we were coming here.

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Motion #5A: To approve a request for a 1.12 acre Sewer Overlay Utility Easement with an additional temporary construction easement of 0.37 acre contingent upon protecting the Foundations interests which will be negotiated with MALPF attorneys and Frederick County.

Motion: Joe Tassone                      Second: John Draper  
Status: Approved

**B. CARROLL COUNTY**

1. Withdrawn
2. 06-94-01 Burall, Eric and Faith 155.7313 acres

Request - Carroll County:

Request for up to 2.0 acres for a child's lot for daughter, Erin Burall.

Recommendation:

Staff recommends approval of the request. The Foundation's Lot Location Policy states that lots should be located along public roadways and clustered with other dwellings, when possible. This property has one pre-existing dwelling which, according to Carroll County, is located among the farm buildings and is surrounded by the cow pasture. The newly proposed lot location is along the road and will offer the least impact to the farm operation.

Background:

Mr. & Mrs. Burall are the original easement owners. The property has one pre-existing dwelling. The Board approved a child's lot for Erin at the February 2011 meeting; however, neither of the two identified lot locations perced. The current request is for a new location that has passed the perc test and meets all other County requirements.

The newly proposed location is across the street from the original primary location that was approved for the child's lot along Greenwood Church Road, is currently cropland, and is situated in a corner of the easement property. It is not located adjacent to any pre-existing dwellings.

The request has been approved by the local advisory board and meets Planning & Zoning regulations. If approved, a payback of \$1,689.08 per acre will be required.

Ms. Cable presented the agenda item.

Motion #6: To approve the request for up to 2.0 acres for a child's lot for daughter, Erin Burall.

Motion: Bernard Jones                      Second: John Draper  
Status: Approved

3. 06-80-05A Staley, Jo Paulette 87.943 acres 37.69 acres

Request – Carroll County:

Request a retroactive approval for an overlay right of way easement over a pre-existing road/drive to allow ingress/egress benefitting a neighboring property. An additional request is being brought regarding this property in a separate agenda item.

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### Recommendation:

Staff recommends retroactive approval of the 1992 right of way easement, providing access to neighboring property. The access drive is located in a corner of the Staley property and will not have any impact of the agricultural uses of the property.

### Background:

Harry and Jo Paulette Staley were the original owners of the easement property, consisting of two parcels of record (50.253 acres and 37.69 acres). The Staleys conveyed the 50.253 acre parcel to the Weichts in 2006 without MALPF knowledge or approval. There are two pre-existing dwellings on the property. There is one pre-existing dwelling located on the 37.69 acre parcel that Mrs. Staley owns.

### History of easement property:

- 1/26/83 – easement recorded
- 3/28/89 – Board approved three 1-acre lots for owner, son Ryan, and daughter Kara. Location approval on the 50.253 acre parcel.
- 3/28/89 – Board approved exclusion and relocation of one of the pre-existing dwellings (1-acre on the 50.253 acres parcel).
- 12/12/06 – Mrs. Staley sold the 50.253 acre parcel to the Weichts without MALPF approval (retained ownership of the 37.69 acre parcel) and without MALPF knowledge.
- 9/25/07 – Board approved relocation of two of the 1-acre lots for owner and son Ryan (from the 50.253 acre parcel to the 37.69 acre parcel). MALPF was unaware at that time of the subdivision of the parcels.
- 9/25/07 – Board approved to rescind the 1-acre lot for daughter Kara, due to her death.
- 10/16/09 – Official notice to Mrs. Staley of subdivision violation.
- 5/25/10 – Board approved to rescind the two 1-acre lots for owner and son Ryan because the 2007 relocation approval was done without the Board's knowledge that the Staleys no longer owned the 50.253 acre parcel.

The County Advisory Board approved this request.

Ms. Cable presented the agenda item.

Mr. Stahl noted that this is a property that is already in question with regards to subdivision violation.

Mr. Draper shared his concern that in order to approve, the Board should consider putting a width to the right-of-way.

Ms. West asked if the property next door was an easement property.

Ms. Cable answered yes; the two properties that it impacts are both easement properties. Ms. West stated the amount of development on the neighboring properties is already restricted due to the easement, so the reason MALPF typically limits the width of a ROW is to control development on adjacent and nearby properties. Since the adjacent property is already under easement, the width of the ROW is not an issue.

Mr. Stahl shared he agrees with Mr. Draper, he believes any easement that you grant for a driveway issue should be limited. A right-of-way for a driveway is usually 12 to 12.5 foot.

Ms. Cable stated that previously there was a case brought to the Board for Carroll County that was the same situation, requesting a legal right-of-way over a pre-existing drive to a withheld area and MALPF requested the county administrator to measure the right-of-way so the approved ROW was the same width as the pre-existing driveway.

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Amanda Gibson, Assistant Attorney General, Maryland Department of Agriculture, mentioned the recorded agreement says 10 foot.

Diane Chasse, MALPF Administrator, stated that the agreement says an existing stone 10 foot driveway but that's not the right-of-way.

Ms. Gibson notes that the easement document says 30 feet wide and the survey plat says 10 feet wide.

Ms. Chasses explained the 10 ft is the width of the driveway but their giving them an additional 10 feet on either side of the driveway for the right-of-way.

Ms. Gibson pointed out that this driveway pre-existed the MALPF easement. Under MALPF rules, the Foundation can recognize that we took our easement subject to the 10ft driveway but not the additional 10 ft on either side.

Mr. Jones pointed out that if the Board approves this it will be recorded in the court records as 30 feet.

Ms. West asked if the Board approved the 10 feet, which was there when the easement was purchased, would they have to amend their agreement to agree with the 10 feet.

Ms. Cable stated the primary concern of the width historically has been so it doesn't allow additional developments. She believes since that isn't an issue here there can be a letter stating, while MALPF recognized there's only 10 feet, there can be no more development on the adjacent parcel. That way it can be approved or not approved or it can get tabled until next month's meeting.

Ms. Forrester mention there could be fire and safety issues as well as Carroll County's laws regarding right-of-ways.

Mr. Draper stated this 10 foot issue is totally unacceptable to him as a farmer. He only has one piece of farm equipment that is less than 10 feet. He doesn't have any problem with a 25 foot right-of-way. Most of his equipment is at least 15 feet wide and it looks like this right-of-way is going to a farm field.

Motion #7: To approve the request for retroactive approval for an overlay right-of-way easement according to the deed for 30 feet over a pre-existing road/drive to allow ingress & egress benefitting a neighboring property.

Motion: John Draper                      Second: Joe Tassone  
Status: Approved

4.      06-80-05A      Staley, Jo Paulette                      87.943 acres 37.69 acres

Request – Carroll County:

In 1997 Carroll County upgraded Harney Road, a County publicly maintained road. As part of this upgrade, the County purchased 0.1547 acres in fee from Mr. and Mrs. Staley that was encumbered with a MALPF easement, as well as use over a temporary construction easement for the duration of the road improvement project. The road improvement project was completed and a Deed of Easement was recorded in 1997 between the Staleys and the County Commissioners of Carroll County, Maryland.

Foundation staff is providing this outline of the project for informational purposes only. According to DGS counsel, the MALPF Board does not have discretion to prevent the taking



with a TDR deed restricted easement). The Stitely easement property will become ~154.601 acres.

Recommendation:

In accordance with our newly enacted Agricultural Subdivision regulations, staff recommends approval.

The agricultural subdivision regulation provides landowners the ability to request a subdivision if the following conditions are met:

(1) The proposed agricultural subdivision serves an agricultural purpose;

*The 18.5 acre portion of the Stitely property is a tillable field, separated from the rest of the property by a forested area and will be combined into the crop rotation of the Wayson property. Currently the Stitelys access the field through a woods road, while Mr. Wayson's tillable fields are immediately adjacent to the 18.5 acre portion.*

(2) The proposed agricultural subdivision will enhance or have no effect upon the agricultural operations being conducted upon the land; and

*Since the 18.5 acres will be easier to access through the Wayson property; allowing farm equipment easier access to the field rather than through the woods road. Adding the 18.5 acres to the Wayson crop rotation will be an easier agricultural operation than the current configuration.*

(3) The resulting divided parcels from the agricultural subdivision are able to sustain long-term agricultural production, independent from each other.

*The 18.5 acres will be combined with the Wayson property (joining the tax parcels), which will improve the long-term sustainability of the 18.5 acre parcel because of easier access from the Wayson property, while not affecting the sustainability of remainder of the Stitely property. In addition, the Stitelys plan to sell their property to the current farm operator's son. The sale of these 18 acres to Mr. Wayson provides a much needed inflow of cash that will facilitate the purchase of the Stitely farm.*

This request also meets the exception for the 50 acre size requirement. The regulation states that the Foundation may permit resulting dividing parcels of less than 50 acres of land if:

(c) The resulting divided parcel comprised of less than 50 acres

(i) is conveyed to owners of adjoining land encumbered by an easement containing terms which are acceptable to the Foundation; and

*The Wayson farm is encumbered by a TDR easement that prohibits subdivision and removes the development rights from the property. The TDR easement encumbers ~278 acres of the ~288 acre Wayson farm. The County requires TDR properties to meet the same soils qualifications as MALPF properties, so the Wayson farm consists of at least 50% of MALPF qualifying soils.*

(ii) an overlay easement in favor of the Foundation is placed over the entire acreage constituting the resulting divided parcel and the adjoining land; and

*Mr. Wayson has been informed of the overlay MALPF easement requirement. Rather than placing the overlay MALPF easement on the entire 288+ property, the overlay will cover the 18.5 acres of the Stitely property plus 32-40 acres of the adjacent Wayson property; resulting in a 50-60 acre overlay MALPF easement. The shape and location of the overlay easement has not yet been determined, but MALPF staff will work with the County and Mr. Wayson to determine an acceptable shape and size area for the MALPF overlay easement.*

*The 18.5 acres of the Stitely parcel will be combined to the entire tax parcel of the Wayson property, thereby prohibiting subdivision from the whole Wayson property.*

*Mr. Wayson is an active hunter with multiple ponds on his property that he floods periodically for water fowl hunting season. He also allows commercial hunting on his*

*property and may want to create additional habitat, including ponds, to promote hunting in the future. For these reasons, among others, the MALPF overlay easement will only be over a portion of the Wayson property and not the entire 288+ acres, as there may be inconsistent uses between the hunting activities and the MALPF easement requirements.*

In addition, all landowners who do an agricultural subdivision are required to do Corrective Easements which formalize the approval and remove the right to request termination (if such a right exists in the easement). Mr. Wayson has agreed to pay for the expenses associated with the corrective easements.

**Background:**

Robert and Ruby Stitely are the original owners of the easement. There is one pre-existing dwelling (located on the 154+ acre portion of the farm). There have been no previous requests. The Stitely property consists of 100% qualifying soils.

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

Ms. Cable presented the agenda item.

Donna K. Landis-Smith, Queen Anne's County, Program Administrator, stated that there is one error in the item description. There is no commercial hunting on Mr. Wayson's property; it's just him and his friends. Also, the 18.5 acre field is contiguous with his field and it has a very clean field line. Mr. Wayson would like to put a bigger buffer around his pond. He sometimes floods that pond for waterfowl and would like to increase the buffer. To access the field, Mr. Wayson currently would have to go through a woods but the 18.5 acre piece would allow access more conducive to his farming operation. The Stitelys are now in their 90's and want to sell their farm. The couple who operates their farm has a son who was given the option to buy this farm. The Stitelys have given him an offer that he can't refuse and part of the deal is that these 18.5 acres will then be sold to Mr. Wayson to provide some cash to afford to purchase the farm.

Tom Davis, Queen Anne's County engineer, representing Mr. Wayson, stated that Mr. Wayson's concern is having to place a MALPF overlay easement on ~32 acres of Wayson's land along with the ~18 acres of the Stitely land since Wayson's land is already encumbered with a County deed restriction. Mr. Wayson's request is that his ~32 acres of land not be encumbered further; however, he is willing to consider any concerns that the Board might have.

Mr. Wayson, Queen Anne's County, landowner, added that he also owns a farm that is adjacent to the property. It too is in the preservation program and is encumbered as well.

Mr. Tassone asked Mr. Wayson about the TDR deed restriction on his property that came about by transferring development rights through the noncontiguous development. What are the incompatible or potentially inconsistent uses on the property?

Ms. Cable explained that was more of a concern when there was the commercial hunting aspect. On the noncontiguous development, Ms. Smith shared all of the information necessary with MALPF. In general they match pretty well but there are some things that the county would allow that MALPF does not, like commercial hunting, things that have a commercial aspect.

Mr. Tassone stated that there are potential uses allowed by the open space deed restriction that might not be compatible with the MALPF easement which is why the Board normally looks for an overlay easement on the entire combined new property. This time we are only talking about part of it.

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Ms. Cable stated that this overlay is part of the requirements of MALPF's new regulations and it is silent on whether there has to be an overlay on the entire property. The Board today needs to give guidance on how to proceed.

Mr. Tassone asked how MALPF used to deal with the issue of potential inconsistent uses.

Ms. West explained that this is new; MALPF didn't previously do an overlay on the remainder.

Mr. Tassone asked, when the subdivided parcels are going to be adjoined to another piece of land that was preserved through some other mechanism, how does the Foundation handle how to determine if that mechanism has adequate terms relative to the protection of the Foundations interests.

Ms. Forrester answered, the Foundation doesn't do anything.

Mr. Stahl believes in this situation with the agricultural subdivision issues we need to make sure that the Board read into the motion the specifics associated with the motion. In justification, the Board may take a look at the staff recommendation and make sure that it outlines the three criteria for an agricultural subdivision in this situation. The Board should also be clear whether or not an overlay easement is required to cover the 18.5 acres plus ~32 acres of the Wayson property or the entire Wayson property. Clearly that's in question and what Mr. Wayson is asking is that the overlay easement not be over the top of the remainder of the 32+ acres.

Ms. Cable added, that part of the staff recommendation, was to not have it over the whole 288.603 acres but to work with Mr. Wayson create a 50 acre overlay.

Mr. Stahl asked Mr. Wayson if he is opposed to that.

Mr. Wayson said he would do that as a compromise, he would rather not but he will if that's what it takes to get it done because he is doing some surface mining on his property.

Ms. Cable stated it is in MALPF's regulations that an overlay is required.

Ms. West stated to Mr. Wayson that the reason that MALPF requires that he does an overlay easement over the entire 50+ acre parcel is so that in the future that property could not be sold separately. The Foundation is trying to ensure that the portion that is under MALPF's easement is at least 50 acres to sustain future farming.

Mr. Davis explained that what this is doing is not subdividing this off as a separate 18.5 acre tract; it's adding it to Mr. Wayson's property. His property will end up being around 298 acres. It's not creating a separate lot for the 18.5 acres. It's adding it to his property through an administrative subdivision.

Ms. West stated, in the future when someone else owns the property, this will be the Foundation's assurance that at that time, the property could never be subdivided again and sold separately.

Motion #2: For approval of the agricultural subdivision and that the proposed agricultural subdivision serves an agricultural purpose, the proposed agricultural subdivision will enhance or have no effect upon the agricultural operations being conducted on the land, and that the resulting divided parcels from the agricultural subdivision are able to sustain long term agricultural production independent from each other. Also, asking the landowner to enact an overlay easement in favor of the Foundation in the total amount of at least 50 acres including the 18.5 plus 31.5 or more adjoining.

Motion: Jonathan Quinn                      Second: Bernard Jones  
Status: Approved

D. GARRETT COUNTY

1. 11-82-03 Bachtel, Kenneth R.

Request - Garrett County:

To exclude up to 2.0 acres from the easement for a child's lot for son, Forrest M. Bachtel.

Recommendation:

Staff recommends approval. The lot will be located in the area of a former (burned down) dwelling, clustered with a pre-existing dwelling, and have access to Garrett Highway via an existing driveway. The request meets the requirements of the Foundation's Lot Location Guidelines.

Background:

Mr. Bachtel applied in the FY 2011/12 easement acquisition cycle to sell an easement to the Foundation. An offer was accepted, approved by the Board of Public Works, and the check has been ordered. At the writing of this memo, the check had not yet been received and no settlement date has been set.

The current request is for release of the child's lot to be used by Mr. Bachtel's son, Forrest, to construct a dwelling for his personal use. According to the County, the lot will be located along Garrett Highway and in an area where a previous dwelling burned several years ago (not counted as a pre-existing dwelling). The proposed child's lot will be adjacent to the pre-existing dwelling and will have access via an existing driveway. The County states that the location of the lot will have no negative impact on the overall farm operation.

The request has been approved by the local advisory board and meets Planning & Zoning regulations. A payback of \$2,487.76 per acre will be required.

Ms. West presented the agenda item. She stated that MALPF cannot do a release for this child's lot until Mr. Bachtel's easement has settled and has been recorded in the land records.

Chad Fike, Garrett County, Assistant Program Administrator, and Mr. Bachtel, the landowner, participated in the meeting through the web conferencing facility.

Mr. Fike stated that everything looks okay from the county's end. Mr. Bachtel asked this morning if it made a difference if this was an owner's lot instead of a child's lot. In other words, if he kept the property in his name and his son would still live there.

Mr. Stahl stated that if the son lives there it becomes a child's lot. Either way, it has to be clearly designated which lot it is.

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Ms. West confirmed that the lot is for the person who is going to live there.

Ms. Gibson reminded Mr. Fike that whoever is chosen, Mr. Bachtel or his son, that person has to live in the house for 5 years before he can sell it.

Mr. Fike stated it has already been submitted as a child's lot. He believes that this was understood by Mr. Bachtel, it was a question of who would actually own the lot, Mr. Bachtel or his son.

Mr. Stahl restated that it has to be one way or the other and the bottom line is whoever it goes in favor of has to live there for a minimum of five years.

Mr. Bachtel stated he would like to keep it in his name.

Mr. Stahl asked him if he is going to build the house and live in it for five years.

Mr. Bachtel said his son will.

Mr. Stahl stated that can't be done.

Mr. Fike said it would have to be a child's lot.

Mr. Bachtel said okay then it will have to be a child's lot.

Mr. Stahl confirmed.

Mr. Tassone asked with respect to the fact that they haven't settled on this yet, it's not really a problem since its pending settlement, right?

Ms. Forrester stated that Mr. Tassone is right. She sent the settlement check, the title company has it, and it's just a matter of back and forth mailing. Because there isn't a Board meeting in December, MALPF Staff is trying to help Mr. Bachtel move this forward.

Ms. Schultz inquired, doesn't the Foundation sometimes count a homesite for a destroyed dwelling as a pre-existing dwelling.

Ms. West stated that when Mr. Bachtel did his application, he chose not to do a pre-existing dwelling.

Mr. Draper asked if the Foundation has ever enacted the requirement that the child has to be 18 years old.

Ms. West stated that it is going to be included in legislation this year.

Motion #3: To approve a request to exclude up to 2.0 acres from the easement for a child's lot for son, Forrest M. Bachtel.

Motion: Joe Tassone                      Second: Mr. Draper  
Status: Approved

E. CHARLES COUNTY

1. 08-00-16 Helwig, William G. et al 441.05 acres

Request - Charles County:

To exclude up to 2.0 acres from the easement for a child's lot for son, William G. Helwig, Jr.

Recommendation:

Staff recommends approval. The request meets the requirements of the Foundation's Lot Location Guidelines.

Background:

Mr. William G. Helwig, Mrs. Tommie Leigh Helwig, and Mr. Gerald H. Helwig are the original owners of the easement. There is one pre-existing residence and no requests to the Foundation have been made for this easement property. The easement specified that only the children of William and Tommie Helwig are eligible for child's lots.

The child's lot will be located in an existing cleared forested area, using the existing driveway that leads to the pre-existing dwelling. While the lot is not clustered with the pre-existing dwelling or farm structures, it is in an already cleared area that was previously used to store farm equipment and therefore will have minimal impact to the farming and forestry operation. After the lot is released from the easement, the property will still consist of 74% of qualifying soils.

The request has been approved by the County and is in accordance with all County requirements. The reimbursement amount will be \$1,901.50/acre.

Ms. Cable presented the agenda item.

Charles Rice, Charles County, Program Administrator, stated that Ms. Cable summed it up. He then introduced Mr. Butch Helwig one of the original grantors of the easement.

Mr. Stahl asked Mr. Helwig if he understands the Boards concerns with this lot. The Board often has to consider the Foundation's lot guidelines and the possibility that in the future the owner of that lot might not be related to the owner of the farm. The lot guidelines try to keep the lot's isolated to the outskirts of the farm so that it doesn't affect the operation of the farm as a whole. Due to the fact that this child's lot is so far off of the road, MALPF staff is recommending that it's somewhat problematic. The Foundation tries to keep the child's lots to the edge of the property just because they see problems with it as time goes on.

Ms. West asked Mr. Helwig if he and his son understand that the son has to build the house and he has to live in it for 5 years.

Mr. Helwig answered yes, they do understand.

Mr. Rice stated that a lot of county's require new lots to front on a public road and Charles County does that but obviously this one cannot. A provision was created a few years ago that allows the Planning Commission to grant the creation of a new lot on an agricultural shared access easement. If the property is in a preservation program it can exceed a density of one per 50 acres and it has to be for inner-family transfer. If at any time in the future this lot was to be sold, the Planning Commission would have to approve that request to get them out of the inner-family transfer because it was created on this shared access easement. It's another layer of protection to try to keep it in the family.

Motion #9: To approve the request to exclude up to 2.0 acres from the easement for a child's lot for son, William G. Helwig, Jr.

Motion: John Draper                      Second: Joe Tassone  
Status: Approved

F. WICOMICO COUNTY

1. 22-02-89-03A Williams, Gregory 58.73 acres

Request - Wicomico County:

Request approval of an agricultural subdivision of a 1.5 acre parcel to be added to an adjoining easement property 22-04-01 of 21.088 acres (owned by Douglas Williams). The landowner will retain 57.23 acres.

Recommendation:

In accordance with our newly enacted Agricultural Subdivision regulations, staff recommends approval.

The agricultural subdivision regulation provides landowners the ability to request a subdivision if the following conditions are met:

(1) The proposed agricultural subdivision serves an agricultural purpose;  
*The 1.5 wooded acres is north of Columbia Creek so transferring it to the owner on the north side of the creek will allow access for forestry.*

(2) The proposed agricultural subdivision will enhance or have no effect upon the agricultural operations being conducted upon the land; and  
*Since the 1.5 acres cannot be accessed by the current owner, they are not contributing to the agricultural operations on the land.*

(3) The resulting divided parcels from the agricultural subdivision are able to sustain long-term agricultural production, independent from each other.  
*The 1.5 acres combined with the 21 acre property will improve the sustainability of that property, while not affecting the sustainability of the other.*

This request also meets the exception for the 50 acre size requirement. The regulation states that the Foundation may permit resulting dividing parcels of less than 50 acres of land if:

(b) The resulting divided parcel comprised of less than 50 acres  
(i) is conveyed to owner of adjoining land encumbered by an easement in favor of the Foundation; and  
(ii) the easement encumbering the adjoining land is amended to encumber the resulting divided parcel...

*The landowner will be notified about the requirement for an amendment.*

In addition, all landowners who do an agricultural subdivision are required to do Corrective Easements which formalize the approval and remove the right to request termination (if such a right exists in the easement).

Background:

Gregory Williams is the original owner of both easements. He sold the 58-acre easement first and then the 21 acre parcel qualified by being adjacent to the 58-acre easement. His son, Douglas Williams now owns the 21-acre easement. There have been no previous requests.

The 57 acre parcel consists of 91% of qualifying soils and includes a pre-existing dwelling. The 22.5 acre parcel consists of 89% of qualifying soils and has no structures.

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





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The Closed Meeting was adjourned at 11:40 a.m.

Respectfully Submitted:

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Angela Miller, MALPF Temp. Secretary

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Carol West, Acting Executive Director