

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION**  
**OPEN MEETING MINUTES**  
**January 28, 2014**

**TRUSTEES PRESENT:**

John Draper, Jr., Chair  
Bernard L. Jones, Sr., Vice Chair  
Susanne Brogan, representing Treasurer Nancy Kopp  
Craig Highfield  
Jerome W. Klasmeier, representing Comptroller Peter Franchot  
Patricia A. Langenfelder  
Donald T. Moore  
James (Bubby) Norris, Jr.  
Jonathan C. Quinn  
Eugene Roberts, Jr.  
Dan Rosen, representing Secretary Richard E. Hall, Maryland Department of Planning  
Mary Ellen Setting, representing Secretary Earl F. Hance, Maryland Department of  
Agriculture

**TRUSTEES ABSENT:**

None

**OTHERS PRESENT:**

Richard Baldus, Charles County, Charleston Partnership  
Steve Ball, Charles County, Director  
Michelle Cable, MALPF Administrator  
Diane Chasse, MALPF Administrator  
Aimee Dailey, Charles County, Planner  
Rama Dilip, MALPF Administrative Specialist  
Angela Gaither, MALPF Secretary  
Billy Gorski, Anne Arundel County, Planner  
Justin Hayes, Assistant Attorney General, Maryland Department of Agriculture  
Kim Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator  
Donna Landis-Smith, Queen Annes County, Program Administrator  
Jeanine Nutter, Prince George's, Program Assistant  
Charles Rice, Charles County, Program Administrator  
Robert Stahl, Former Chairman of MALPF Board  
James Wallace, MDA, Director of Administrative Services  
Carol West, MALPF Executive Director

**OTHERS PRESENT BY WEB CONFERENCING:**

Bill Amoss, Harford County, Program Administrator  
Chris Boggs, Washington County, Land Preservation Planner  
Carla Gerber, Kent County, Program Administrator  
Debbie Herr Cornwell, Caroline County, Program Administrator  
Carmela Iacovelli, Baltimore County, Asst. Program Administrator  
Wally Lippincott, Baltimore County, Program Administrator  
Katherine Munson, Worcester County, Program Administrator  
Ned Sayre, Harford County, Ag Preservation Outreach Specialist  
Eric Seifarth, Washington County, Program Administrator  
Eric Shertz, Cecil County, Program Administrator  
Martin Sokolich, Talbot County, Program Administrator

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John W. Draper, Jr., Chair, called the meeting to order at 9:03 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 Open Minutes: November 26, 2013 with minor changes.

Motion #1: Approve minutes for November 26, 2013.

Motion: Jonathan Quinn                      Second: Donald Moore  
Abstained: Patricia Langenfelder and Craig Highfield  
Status: Approved

B. ADDITIONS OR DELETIONS OF AGENDA ITEMS

Mr. Draper mentioned that the Board has two changes on their Uses Subcommittee with Pat Langenfelder to serve as a new member and Dan Rosen to serve as Chair.

Ms. West added item V.C 2014 Legislation, SB 71 – Value of Easement and SB 259 – Renewable Energy Generation Facilities to the agenda.

Secretary Hance presented Robert Stahl, former MALPF Board of Trustees Chairman, with citations from Governor Martin O'Malley and the Maryland Department of Agriculture.

**II. DISTRICT/EASEMENT AMENDMENTS**

A. Withdrawn

B. QUEEN ANNE'S COUNTY

- |    |          |                        |           |
|----|----------|------------------------|-----------|
| 1. | 17-02-05 | Callahan, Brian        | ~88 acres |
|    | 17-90-03 | Bramble, David & Clara | ~75 acres |

Request – Queen Anne's County:

Request approval of an agricultural subdivision of property creating a ~66 acre parcel and a ~22 acre parcel that will be combined with an adjacent ~75 acre MALPF easement property, creating a ~97 acre easement property.

Recommendation:

In accordance with our Agricultural Subdivision regulations, staff recommends approval, with suggested additional conditions described below.

Background:

Brian Callahan is the original easement grantor. The funding for the easement included federal Farm and Ranchland Protection Program (FRPP) monies. There are two pre-existing dwellings documented in the easement application; however, there were actually three dwellings (main house plus two tenant house trailers) at the time the easement was purchased.

In May 2013, the Board reviewed this agricultural subdivision request. The Board tabled the request at that time until the FRPP provided written approval of the subdivision. Initially, the FRPP denied the subdivision request; however, the enclosed November 2013 letter reversed the outright prohibition on subdivision and will allow whatever decision the MALPF Board makes regarding subdivision of this easement.

Subdivision Regulation Criteria:

Under COMAR 15.15.12.04 B if the Board approves an agricultural subdivision, approval shall

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accommodate a plan that the Foundation has determined will benefit the agricultural operation. The required Corrective Easements may include other additional terms, conditions, waivers, or restrictions that the Foundation considers appropriate to protect the agricultural purpose and the future profitability of resulting divided parcels. The regulations provide landowners the ability to request a subdivision if the following conditions are met:

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

*The farm will be divided to facilitate separate farming operations on the land. Mr. Callahan will retain ownership of the ~66 acre parcel on the southwest side of Route 309 and continue the ongoing operation of a training facility for standardbred racehorses. Mr. Callahan plans to sell the ~22 acre parcel that is on the northeast side of Route 309 to his neighbors, the Brambles (#17-90-03), to merge the ~22 acre parcel with their ~75 acre property, which will expand the current grain operation.*

*The subdivision will allow Mr. Callahan to keep and maintain his equestrian operation and sell the acres that have been used to produce grain to the Brambles in order to expand their grain production operation.*

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

*The agricultural subdivision will enhance the overall operations conducted upon the two farms by expanding the grain operation and combining the subdivided parcel with the larger parcel on the same side of the road. Mr. Callahan will no longer have to manage a farm separated by the road and can focus his efforts on the standardbred racehorse training operation.*

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

*Each parcel will be able to maintain agricultural production independently of the other, given the smaller parcel will be merged with another easement property. The resulting parcels meet the soils criteria of the regulations.*

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:

(1) One of the following exists for the resulting divided parcel comprised of less than 50 acres:

(a) The Foundation determines that physical limitations of the land, including but not limited to, bodies of water, public roads, and steep slopes create constraints making the 50 acre minimum impractical, and the resulting parcel of less than 50 acres continues to meet minimum soils requirements as provided by COMAR 15.15.01.03D independently of the original farm; or

*The Callahan easement is divided by Route 309, which is the proposed line of subdivision.*

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

(i) is conveyed to owners of adjoining land encumbered by an easement in favor of the Foundation; and

*The ~22-acre parcel will be conveyed to the owners of the MALPF easement #17-90-03, David and Clara Bramble. They are subsequent owners of ~75 acre easement property with no pre-existing dwellings on the farm.*

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

*A corrective easement will be done for the resulting configuration / ownership of both the Callahan farm and the newly enlarged Bramble farm.*

(iii) the resulting divided parcel and the adjoining land together meet minimum soils requirements as provided by COMAR 15.15.01.03D;

*The final configuration of both properties continues to meet the qualifying soils requirement.*

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In accordance with the regulations, Mr. Callahan and the Brambles have confirmed that they will be responsible for the expenses associated with the transaction and corrective easement process. They have also been informed that the termination request provision will be extinguished through the corrective easements for both newly configured easement properties.

Mr. Callahan is still eligible to request family lots on the ~66 acre portion of the property that he retains ownership.

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

### **Staff Suggested Conditions:**

As a condition to approving this application, Staff suggests that Mr. Callahan make the main house of the pre-existing dwellings on his property non-subdividable from the easement. This condition protects the agricultural purpose and the future profitability of his subdivided property. As noted above, the original easement application only listed two pre-existing dwellings, but the files document that there were, in fact, three dwellings at the time of settlement. By making the main house non-subdividable, the corrective easements could document that the additional two dwellings retain the full pre-existing dwelling rights, as there were two acres not paid for associated with dwellings at the time of the easement settlement.

An additional proposal has been presented to the landowners for consideration, asking them to provide their decision at the Board meeting. Staff has asked the landowners to consider the following:

The Callahan property has two pre-existing dwellings on the farm (assuming the main house is non-subdividable). Currently farm employees reside in each of the dwellings. If Mr. Callahan requests a tenant house through MALPF, one of those pre-existing dwellings can be re-designated as a tenant house and its pre-existing dwelling right can be transferred to the ~22 acre portion of the property that the Brambles are acquiring. This will result in the same physical numbers of dwellings on the Callahan ~66 acres, consisting of one non-subdividable main house, one tenant house, and one pre-existing dwelling. The newly configured Bramble farm will have one non-subdividable dwelling right. As the Brambles are subsequent owners, they do not have the right to construct a house on their current ~75 acre farm they own. This proposal will result in a primary, non-subdividable house for each newly configured easement property.

### **May 2013 minutes discussion section:**

Ms. Cable presented the item, Ms. Donna Landis-Smith, Program Administrator, of Queen Annes County, was present and the landowner was not present for questions and comments.

Ms. Cable informed the Board that this easement was acquired with Farmland and Ranch Protection Program (FRPP) funds. A request has been made to the FRPP administrator regarding the subdivision request but as of the time of the Board meeting, no response has been received. Any Board action would need to be contingent upon FRPP approval.

The Board agreed to table the request until they get a response back from the FRPP.

Ms. Cable presented the item, Ms. Donna Landis-Smith, Program Administrator, of Queen Anne's County, was present for questions and comments. The landowner was not present.

### **January 28, 2014 Discussion:**

Ms. Landis-Smith told the Board she had discussed the recommended Staff conditions associated with this subdivision request with Mr. Callahan and the Brambles. She informed the Board that Mr. Callahan was agreeable to making the main house non-subdividable from the farm and re-designating one of the other pre-existing dwellings as a MALPF approved tenant house. Mr. Callahan was also agreeable to relocating the pre-existing dwelling right to the ~22 acre portion of the subdivision. The Brambles currently are unable to construct a house on the farm because they are subsequent owners. The Brambles are



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All three child lots have been created and are official lots of record with Washington County. The lots approved for Melissa and Bradley are still under Charles Wiles' fee ownership. The lot approved for Jeffery was transferred to Jeffery and Sharron Wiles' ownership in September 2013. None of the three lots are improved. Jeffery Wiles is actively pursuing meeting the County requirements to obtain a building permit. Mr. Wiles informed MALPF Staff that he is contemplating relinquishing the lot approved for Bradley.

Mr. Wiles is requesting a 10 year extension of the validity of the preliminary release for Melissa's child's lot. The reasons provided for this extension request are twofold. First, Mr. Wiles states that the retroactive nature of the law is unfair to landowners who took action and created child lots under the rules of that time in good faith. Second, Mr. Wiles refers to the employment circumstances of Melissa's husband and how that impacts her family's decision. Melissa's husband was serving in the military until recently, with constant possibility of relocation. His current position is with the federal government, which also has a real possibility of transfer. The current plan for Melissa's family is for her husband to retire in 10 years, at which point they would like to build the house on her child's lot. Melissa's family does not want to build a house now because the family may have to sell or rent due to transfer orders through work.

The Board has previously reviewed and approved one request under this new law. That approval was for a three year extension. The Board has the ability to approve extensions of the preliminary releases, as stated below.

COMAR 15.15.06.05.B. states:

"B. The preliminary release becomes void:

(1) Upon the death of the person for whom the release was intended if the Foundation has not yet received a building permit; or

(2) If the Foundation does not receive a nontransferable building permit in the name of the landowner or the child within 3 years of the date of recordation of the preliminary release, **unless extended by a majority vote of the Foundation Board of Trustees.**" (emphasis added)

If the property ownership is transferred through voluntary or involuntary means prior to the execution and recording of the final release for the child's lot, the lot right will be void.

If this request is approved, an amended preliminary release will be recorded to document the extension that specifies a termination date of the release.

The request has been approved by the local advisory board and meets local planning and zoning requirements.

Additional Staff Information:

Staff recommends asking Mr. Wiles what the plans are for the farm over the next five years as well as the long-term plans for the property. If the Board approves the extension for five years, at that time, Mr. Wiles can request another extension after providing an update to the Foundation if any pertinent information has changed in regards to his daughter's situation as well as the plans for the farm.

The law that was passed and became effective in 2012 was purposely retroactive in nature to facilitate the administering of the intent of the family lots. Family lots were established to permit the original easement grantor, and their children, the ability to construct a home to live and work on the farm. The history of easement owners exercising their family lot rights, more specifically the child lots, have created situations where there are numerous "orphan lots" created around the state that are not permitted to be developed. The 2012 law was passed so that easement owners do not exercise their family lot rights until such a time when the approved lot holder is actually ready to construct a dwelling. This included a retroactive provision to provide a mechanism for the Foundation to ensure that there are not family lots



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### **Request – Charles County:**

Request a FIDS (Forest Interior Dwelling Species) overlay easement on ~100 acres of the 244 acre easement area.

### **Recommendation:**

Staff recommends approval, with conditions.

### **Background:**

Charleston Partnership is the original grantor of the easement, established in 2003. There are no pre-existing dwellings on the property. The Board approved a forest conservation easement overlay request for the entire property in November 2003. To date, ~144 acres have been encumbered with multiple forest conservation easements.

This easement is unlike the standard MALPF easement. While MALPF is the easement grantee, the easement was acquired with 100% Green Print funds and was always intended for forest conservation. The form and terms of the easement document are different from other standard MALPF easements, including language for forestry and environmental protection. Unlike most Foundation easements, agricultural preservation is not the primary purpose of this particular easement. The easement does not permit any lots to be created. The easement is also perpetual.

The current request is to permit a FIDS overlay easement to encumber the rest of the MALPF easement property, ~100 acres. A FIDS easement is a type of forest conservation easement, requiring forest stewardship plans before any harvesting may occur, but with conditions that would require consideration for FIDS habitat.

The FIDS easement is governed by the Critical Area Commission. A sample easement has been provided for MALPF review. MALPF attorneys will work with the Critical Area Commission staff to edit the document in a manner that is acceptable and compatible with the existing MALPF easement.

The County Advisory Board approved this request.

### **Staff Recommended Conditions:**

At the time the MALPF easement was established, ~74 acres were withheld from the middle of the property because this area was already encumbered with forest conservation easements. The 74 acre area divides the MALPF protected land areas on the property into two separate pieces.

The Critical Area Commission has informed MALPF Staff that they require a minimum contiguous easement of 100 acres, meaning the ~74 acres that is not currently encumbered by MALPF must be incorporated into the FIDS easement to meet the size requirement for the ~40 acre section of the proposed FIDS easement area. MALPF Staff recommends including a condition of approval that a new, amended and restated easement be recorded for the MALPF easement, where the amended easement will incorporate the previously withheld area in the middle of the farm. Staff recommends that the Foundation not pay consideration for the additional land area. This will ensure that the ~74 acre area in the middle of the property will not be developed if the forest conservation easements that currently encumber the property become void. This condition will also support the Critical Area Commission's requirement for a minimum 100 acre contiguous easement area.

In addition, while the MALPF easement does not permit any lots to be created on this property, it does include the standard language to permit tenant houses. If the FIDS easement is approved and established, the entire property will be required to be a forested property in perpetuity. In that case, there would be no need to construct a tenant house. Therefore, MALPF Staff also recommends removing any language in the amended and restated easement that may permit tenant houses.

Ms. Cable presented and discussed the item. Mr. Charles Rice, Charles County Program Administrator, and Rick Baldus, landowner, were available for questions and comments.

### **Discussion:**

Ms. Cable summarized the request. Mr. Rice provided more details about the terms and requirements of the FIDS easement, including the fact that the Critical Area Commission will require the FIDS easement to encumber the entirety of the property, ~320 acres, which will include the ~74 acres that were not included in the MALPF easement. The FIDS easement is perpetual, with no ability to be terminated or be relocated. The FIDS easement does not permit any dwellings for any purposes to be constructed on the property. Mr. Baldus confirmed Mr. Rice's description of the FIDS easement.

The Board asked Ms. Cable if the staff recommendation and request to the Board should be revised in light of the new information regarding the terms and requirements of the FIDS easement. Ms. Cable stated that, yes, the new request and staff recommendation is to approve the FIDS overlay easement over the entire MALPF easement property, with the condition that the FIDS easement does, in fact, prohibit any subdivision of the property and prohibit the construction of any dwellings on the property. If the terms of the FIDS easement do not include these prohibitions, then the MALPF easement will need to be amended to do so.

The Board discussed the restrictions of the FIDS easement, and since the FIDS easement would be resolving the two issues of concern that the Board had for this property (i.e., subdivision and future tenant dwellings) the Board agreed that there was no need to amend the MALPF easement at this time to restrict the property further since the FIDS easement would effectively alleviate the Foundation concerns.

Motion #4: Approve the request for a FIDS (Forest Interior Dwelling Species) overlay easement over the entire MALPF easement property, conditioned upon the assumption that the FIDS easement is perpetual, will prohibit subdivision and prohibit the construction of any dwellings on the property.

Motion: Susanne Brogan                      Second: James Norris, Jr.  
Status: Approved

**E. BALTIMORE COUNTY**

1. 03-95-05                      Greene, David & Nancy                      ~98 acres

**Request – Baltimore County:**

Request an approval to erect solar panels on the easement property to offset approximately 108% of the current electric utility consumption of this farm (residential and agricultural uses). The panels will be installed behind a barn and will be accessed by an existing farm lane.

**Recommendation:**

Staff recommends approval.

**Background:**

David & Nancy Greene are the original grantors of the easement, established in August 2004. There is one pre-existing dwelling documented on the easement property. In March 2006, the Greens requested to amend the easement to remove the 25-year termination clause, which occurred through amendment recorded in April 2006. No other requests have been made.

The solar panels would encompass approximately 1,400 square feet of land located behind a barn and garage on the farm. This area of land consists of steep slopes, Class VII soils. An existing farm lane will be used to access the solar panels.

Earth and Air Technologies, LLC has provided information regarding the solar panel system, a 20 kW solar photovoltaic system. This solar array will offset approximately 108% of the present electric consumption for farm and residential use on this easement property. The Greens recently added a heat pump that will expand the freezer capacity of their sheep and lamp operation. With the addition of the heat pump, the estimated annual energy use will be over 22,000 kWh.

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The Greens have provided a copy of the property's BG&E power bills from a winter, spring, summer, and fall month to document the electrical usage of the property, both residential and agricultural. The solar panels are predicted to produce approximately 23,800 kWh per year. The estimated energy generated from the solar system that is over the estimated use for agricultural and residential uses is minimal and within the acceptable range consistent with past Board decisions.

The County Advisory Board approved this request.

Ms. Cable presented and discussed the item. Mr. Wally Lippincott, Jr., Program Administrator, and Ms. Carmela Iacovelli, Asst. Program Administrator, Baltimore County, David & Nancy Green, landowners were available by web conference for questions and comments.

**Discussion:**

Mr. Roberts asked if there is a limit to the amount of energy produced that the owners could be reimbursed through the power company. Ms. Cable informed him that the Board has set a limit of approving solar panel installations for the generation of up to 125% of estimated residential and agricultural uses of the property. The landowner would be reimbursed annually for the energy that had been produced that was not used on the property. If the landowner wants to enlarge the solar panel units, it would require an additional request to the Foundation.

Motion #5: Approve the request to erect solar panels on the easement property to offset approximately 108% of the current electric utility consumption of this farm (residential and agricultural uses). The panels will be installed behind a barn and will be accessed by an existing farm lane, as shown on the exhibits submitted with the applicant's request.

Motion: Susanne Brogan                      Second: James Norris, Jr.  
Status: Approved

2. 03-13-06                      Tranquility Manor Farm    ~60 acres

**Request – Baltimore County:**

Request approval for an additional pipeline Right-of-Way (ROW) to be established on the pending MALPF easement property through permanent ROW (1.5 acres), temporary construction easement (0.72 acres), and temporary staging area (9.3 acres).

**Recommendation:**

Staff recommends approval.

**Background:**

Tranquility Manor Farm, owned by the Merryman and Gilmore families, is a pending MALPF easement property. The MALPF contract was executed in September 2013. The owners informed MALPF of the pending pipeline situation from the onset of the application and have been cooperating with MALPF and with Columbia/NiSource (the entity seeking the overlay easement) to determine what, if any, impact the new pipeline would have on the agricultural operation of the farm.

Through extensive correspondence, MALPF determined that the new pipeline will have negligible impact on the long-term viability of the agricultural operation. In fact, there is already a pipeline that traverses the farm. The timeframe that Columbia/NiSource was working under required the property owners to enter into an agreement to permit the pipeline on the property; otherwise Columbia/NiSource would have had to initiate the condemnation process for this portion of the pipeline.

The Foundation has approved the expansion of this pipeline on another MALPF easement in Baltimore County (Stockton Farm). From the information provided from that property, the construction of the

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pipeline is planned to begin in May 2014, continuing through September 2014. The Right-of-Way agreement used for the Tranquility Manor Farm property is similar to the agreement MALPF reviewed previously to protect the long-term agricultural viability of the other Baltimore County property.

The Baltimore County Advisory Board is aware of the pipeline expansion on this property.

Ms. Cable presented and discussed the item. Mr. Wally Lippincott, Jr., Program Administrator, and Carmela Iacovelli, Asst. Program Administrator, Baltimore County was available by web conference for questions and comments. The landowners were not present.

**Discussion:**

Mr. Lippincott stated that the pipeline goes from Owings Mills to Fallstead. There is an existing gas pipeline that will act as a supplementary or back up to the new line. The County Agricultural Advisory Board looked at the properties in the adjacent areas that are also being affected and the Board is aware of this pipeline being established in this area.

Motion #6: Approve the request for an additional pipeline Right-of-Way (ROW) to be established on the pending MALPF easement property through permanent ROW (1.5 acres), temporary construction easement (0.72 acres), and temporary staging area (9.3 acres) as shown on the exhibits submitted with the applicant's request.

Motion: Susanne Brogan                      Second: Eugene Roberts, Jr.  
Status: Approved

**III. AGRICULTURAL PRESERVATION EASEMENT PETITIONS**

A. None

**IV. PROGRAM POLICY**

A. Proposed Changes to Agricultural Subdivision/Corrective Easements

Foundation Staff recently reviewed the COMAR regulations governing agricultural subdivision requests. These regulations are found in Chapter 12 of the COMAR section applicable to the MALPF program. A copy of Chapter 12, with the proposed changes, is attached to this memorandum for the Board's review.

Discussion of specific proposed changes

*On page 2:*

B. (4) It is not often that a landowner requests an agricultural subdivision on a property that has already been subdivided but, should it happen, this is notice to the landowner that the Board will consider the previous subdivision in its review.

C. This is a specific example of a provision that the Foundation may request.

F. (1)(a) This revision is intended to raise the bar on permitting subdivisions under 50 acres.

*Page 3 under "Previously Unapproved Subdivision":*

This revision allows easement grantors who are requesting retroactive approval to use all provisions found in Regulation .04(F), including the ability to request a subdivisions less than 50 acres due to certain physical characteristics of land. Currently, easement grantors seeking retroactive approval for subdivisions are limited to the subdivision rules that existed at the time of the subdivision. Staff believes that it is reasonable to allow the proposed standard in lieu of the more restrictive standard for retroactive approval requests. Notably, if easement grantors rejoin their illegally subdivided land, they would be eligible to request agricultural subdivision for parcels less than 50 acres under the provisions of

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Regulation .04(F).

[Note: Some have said that those coming in for retroactive approval should be held to a higher 50- acre standard, but it is also true that, in those cases, negotiations can lead to settlements which do not require 50 acres for a subdivision.]

*Page 5:* This sentence gives a time requirement on the landowner to submit the funds and documentation (survey) within one year of the Board's agricultural subdivision approval. The Foundation can give extensions. The intent is that staff can authorize an extension.

This sentence could also be inserted in the Corrective Easements Regulation so that all Corrective Easements would have a one-year timeframe.

Ms. Chasse presented and discussed the item and was available for questions and comments.

This was a discussion item and the Board agreed to circulate this copy of the proposed changes to the County Program Administrators to comment. Then the Board will revisit the changes at next month's meeting for a vote.

**B. Five Year Time Requirement for Family Lots**

**Background**

Under the law, landowners that have approved owner's or child's lots must complete Preliminary and Final Releases and they are required to live in the house for a minimum of 5 years from the effective date of the Final Release.

Over the years, there have been many instances where landowners have not completed their Final Releases for several years after completing and residing in their homes. In these cases, Foundation staff used the date of the use and occupancy permit ("U&O") to document when the landowner started residing on the lot. Staff were advised by counsel, Craig Nielsen, that the intent of the law is satisfied by using the U&O permit date to start the 5 year period

Former Assistant Attorney General Amanda Gibson pointed out that the Foundation did not have specific authority to use the date of the U&O permit to initiate the 5 year period. Therefore in a revision of the regulations which became effective on July 8, 2013, a provision was added which reads:

**15.15.06.05 (C)**

If the person for whom the release was intended occupies the dwelling before a final release is issued, the Foundation may give credit for the occupancy toward the 5-year period referred to in Regulation .06 of this chapter.

**Request**

Staff requests that the Foundation Board explicitly grant authority to staff to credit time towards the 5 years occupancy requirement from the date that a U&O is issued.

Ms. Chasse presented and discussed the item and was available for questions and comments.

Motion#7: To grant authority to Staff to use the date of the U&O permit to credit time towards the 5 year occupancy requirement.

Motion: Jonathan Quinn                      Second: James Norris, Jr.  
Status: Approved

**IV. PROGRAM POLICY**

**C. Solar Panel requests – authority designation**

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**Background**

Over the past few years, a number of solar panel requests have been submitted and approved by the Board. The Board has been supportive of these requests, with very little questions or discussions. The Board has granted approval for installing solar panels that generate up to 120% of current residential and agricultural energy consumption on the easement property. The Board has generally approved these requests because:

- 1) the energy produced by the solar panels supports residential and agricultural uses; and
- 2) the size, location and scope of the solar panel systems generally have a negligible impact on the agricultural integrity of the farm.

**Request**

Staff requests that the Foundation Board authorize staff to approve routine requests to construct solar panels that meet the standards that the Board has adopted from past approvals. If a request is submitted that falls outside of the standard, or is unique in some way, those requests would be brought before the Board for its consideration and decision.

Ms. Cable presented and discussed the item and was available for questions and comments.

Motion#8: Authorize MALPF Staff to review and approve solar panel installation requests that fall into the criteria the Board has established.

Motion: James Norris, Jr. Second: Susanne Brogan  
 Status: Approved

**V. INFORMATION AND DISCUSSION**

**A. Fiscal Year 2014 Quarterly Inspection Report**

Please refer to the list of counties for the inspection results as of January 14, 2014. In summary, inspections in two counties, Garrett and Washington are underway. This is normal at this time of year; the majority of the counties conduct most of their inspections in the spring months.

Completed Inspections  
 Targets: 100% 10%

	COUNTY	FEDERAL				STATE			
		Percent	Completed	Total	Percent	Completed	Total		
01	Allegany	NA	%	NA	0	NA	%	NA	5
02	Anne Arundel	0	%	0	4	0	%	0	35
03	Baltimore	0	%	0	15	0	%	0	198
04	Calvert	0	%	0	3	0	%	0	32
05	Caroline	0	%	0	11	0	%	0	209
06	Carroll	0	%	0	10	0	%	0	357
07	Cecil	0	%	0	14	0	%	0	83
08	Charles	0	%	0	3	0	%	0	36
09	Dorchester	0	%	0	13	0	%	0	69
10	Frederick	0	%	0	12	0	%	0	111
11	Garrett	0	%	0	1	2	%	1	51
12	Harford	0	%	0	10	0	%	0	118
13	Howard	0	%	0	1	0	%	0	31
14	Kent	0	%	0	9	0	%	0	81

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15	Montgomery	0	%	0	3	0	%	0	27
16	Prince George's	NA	%	NA	0	0	%	0	15
17	Queen Anne's	0	%	0	19	0	%	0	138
18	St. Mary's	0	%	0	13	0	%	0	89
19	Somerset	0	%	0	7	0	%	0	34
20	Talbot	0	%	0	6	0	%	0	64
21	Washington	55	%	6	11	6	%	4	65
22	Wicomico	0	%	0	8	0	%	0	46
23	Worcester	0	%	0	5	0	%	0	36

Ms. Hoxter presented and discussed the item and was available for questions and comments.

B. News Articles

C. 2014 Legislation – SB 71 Value of Easement and SB 259 Renewable Energy

SB 71 – Value of Easement

SB 71 will limit the purchase of MALPF easements to no more than 75% and no less than 25% of the appraised fair market value of the property. The bill was heard by the Education, Health and Environmental Affairs (EHEA) Committee on January 14, 2014. The bill has passed the Senate and is waiting for 'crossover' to be heard by the House Environmental Matters Committee.

SB 259 – Renewable Energy Generation Facilities

SB 259 was introduced again this year by Sen. Mac Middleton. The bill will allow MALPF easement properties to install commercial renewable energy generation facilities to include: solar, wind, methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant, and poultry litter-to-energy.

You may recall that last year the bill was introduced and the Board had several issues. We discussed your recommendations with Sen. Middleton and he has addressed all of our concerns in this year's version of the bill. Those concerns included:

- 1) Size and Scope:  
Change the proposed area from 5 acres to 5 acres or 5%, whichever is smaller. This would result in a much smaller number of acres potentially being utilized. Also, this change would make this use compatible with other allowed uses policies (i.e. Forest Mitigation – 10 acres or 10%; Wetland Mitigation – 5 acres or 5%; and other allowable uses – 2 acres or 2%).
- 2) Limit types of alternative energy:  
Originally, all uses outlined in the Public Utilities Article as Tier I and Tier 2 would have been eligible. These uses included: Tier 1 - solar, wind, qualifying biomass, methane from anaerobic decomposition of organic materials, geothermal, ocean, fuel cells that produce electricity, small hydroelectric power plant, poultry litter, waste, refuse, thermal energy from a thermal biomass system, and Tier 2 - hydroelectric power. At MALPF's suggestion, potential energy generation projects would be limited to solar, wind, methane from the anaerobic decomposition of organic materials, and poultry litter.
- 3) Compensation:  
The bill contains a provision for MALPF to charge reasonable costs to cover any expenses relating to the Foundation's responsibility to amend an easement and to monitor the enforcement and compliance of the easement.
- 4) Effective date of legislation:  
As recommended by MALPF, the bill will apply to any easement acquired by MALPF before, on, or after the effective date of the Act.

In addition to the changes that have been made to the bill, staff recommends the following changes:

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- 1) On page 5, (2) to read: "Any easement applied for after June 30, 2014 shall authorize the landowner to request, with a recommendation for approval from the local agricultural advisory board and in compliance with all state and local laws and regulations, to use the land subject to the easement for the generation of electricity by a facility utilizing a Tier 1 renewable source provided that:"
- 2) On page 6, (3) to read: "On the written request of a landowner, and with a recommendation for approval from the local agricultural advisory board and in compliance with all state and local laws and regulations, the Foundation may amend an easement to authorize the landowner to use the land subject to the easement for generation of electricity by a facility utilizing a Tier 1 renewable source provided that:"

MDA has not yet taken a position on SB 259. The bill will be heard by the EHEA Committee on Tuesday, February 4, 2014 at 1:00 p.m.

Ms. West presented and discussed the item and was available for questions and comments.

The Board consensus was that this commercial use would be good for landowners to receive some income without jeopardizing their farm operations. There was some concern about the ability for MALPF to recoup some of the cost of purchasing the easement on the affected acres.

**VI. CLOSED SESSION**

John W. Draper, Jr., asked for a motion for adjournment of the meeting to move into a closed session, pursuant to the provisions of State Government Article Section 10-508 (a) (3) to consider the acquisition of real property for a public purpose and matters directly related thereto.

Motion #8	To adjourn the regular session to move into a closed session to consult with counsel to consider the acquisition of real property for a public purpose and matters directly related thereto.		
Motion:	Bernard Jones, Sr.	Second:	Susanne Brogan
Favor:	John Draper, Jr., Bernard L. Jones, Sr., Susanne Brogan, Craig Highfield, Jerome Klassmeier, Patrica A. Langenfelder, Donald T. Moore, James (Bubby) Norris, Jonathan Quinn Jr., Eugene Roberts, Jr., Dan Rosen, and Mary Ellen Setting		
Status:	Approved		

The Open Board Meeting was adjourned at approximately 11:01 a.m.

The Closed Meeting of the Board was held from 11:09 a.m. to 11:20 p.m. at the Maryland Department of Agriculture building, Annapolis, Maryland, pursuant to the provisions of State Government Article Sections 10-508(a) (3), Annotated Code of Maryland:

State Government Article Section 10-508(a):

[X] (3) To consider the acquisition of real property for a public purpose and matters directly related there thereto;

During the Closed Meeting, the following Board members were present:

John Draper, Jr, Bernard L. Jones, Sr., Susanne Brogan, Craig Highfield, Jerome Klassmeier, Patrica A. Langenfelder Donald T. Moore, James (Bubby) Norris, Jr., Jonathan Quinn, Jr., Eugene Roberts, Jr., Dan Rosen, and Mary Ellen Setting.

TOPICS DISCUSSED:

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VI.A Status Report of Pending Legal Issues

VI.B 03-13-01; Greenland-Iceland LLC subdivision intent - update

VI.C FY 2013/2014 easement offers Round 1 & 2

The Closed Meeting was adjourned at 11:20 a.m.

Respectfully Submitted:

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Angela Gaither, MALPF Secretary

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Carol S. West, Executive Director