

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION**  
**OPEN MEETING MINUTES**  
**March 24, 2015**

**TRUSTEES PRESENT:**

John Draper, Jr., Chair  
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 David Craig, Maryland Department of Planning  
Mary Ellen Setting, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture

**TRUSTEES ABSENT:**

Susanne Brogan, representing Treasurer Nancy Kopp  
Michael Calkins  
Bernard L. Jones, Sr., Vice Chair

**OTHERS PRESENT:**

Anne Bradley, Frederick County, Program Administrator  
Michelle Cable, MALPF Administrator  
Diane Chasse, MALPF Administrator  
Veronica Cristo, Calvert County, Program Administrator  
Tamekia Dent, MALPF Staff  
Rama Dilip, MALPF Administrative Specialist  
Nancy Forrester, Assistant Attorney General, Department of General Services  
Billy Gorski, Anne Arundel County, Assistant Program Administrator  
Rob Gunter, Queen Anne's County, Program Administrator  
Justin Hayes, Assistant Attorney General, Maryland Department of Agriculture  
William Hutchins, Calvert County, Landowner  
Sharon Hutchins, Calvert County, Landowner  
David Kelleher, Department of General Services, Appraiser  
Robert (Bob) Kresslein, Frederick County, Attorney for Robinson Family  
La Keshia Murray, MALPF Administrative Staff  
Jeanine Nutter, Prince George's County, Program Administrator  
Barbara Polito, Anne Arundel County, Program Administrator  
Sarah Taylor-Rogers, Prince Georges County, Rogers Family Representative  
Donna Sasscer, St. Mary's County, Program Administrator  
Chana Turner, MALPF Administrator  
James Wallace, Assistant Secretary, Administration, MDA  
Carol West, MALPF Executive Director

**OTHERS PRESENT BY WEB CONFERENCING:**

Bill Amoss, Harford County, Program Administrator  
Chris Boggs, Washington County, Program Assistant  
Deborah Bowers, Carroll County, Program Administrator  
Daniel Brandewie, Talbot County  
Debbie Herr Cornwell, Caroline County, Program Administrator  
Fatimah Hasan, Prince Georges County, MNCPPC  
Stephen O'Connor, Cecil County, Program Administrator  
Eric Seifarth, Washington County, Program Administrator  
Martin Sokolich, Talbot County, Program Administrator  
Katrina Tucker, Kent County, Program Administrator

**MALPF Board Open Meeting Minutes 3-24-2015: Page 1**

John W. Draper, Jr., Chair, called the meeting to order at 9:00 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**

A. Approval of Open Minutes: February 24, 2015

Motion #1: Approve minutes for February 24, 2015.

Motion: Eugene Roberts      Second: Jonathan Quinn  
Status: Approved

**II. ADDITION / DELETION OF AGENDA ITEMS**

- A. Item IV.C.1 St. Marys County – Belvidere Farm Property was withdrawn.
- Item IV.F.1 Frederick County – Horsey Property – Memo from Bill Beach as handout
- Item VI.A Draft Policy to Enforce Potential Easement Violations – revision as handout
- Item VI.C Anne Arundel County Recertification – map as handout

**III. ANNOUNCEMENTS**

- A. La Keshia Murray has joined the MALPF staff as a temporary Secretary
- B. There will be a MALPF Staff/Program Administrator’s meeting with Advisory Board Chairs and the MALPF Board Members. It will be a full day session on Thursday, May 14, 2015 from 9:00 a.m. to 4:00 p.m. To be held here at MDA headquarters.
- C. Mary Ellen Setting gave an update of the ARES (Alternative Renewable Energy) regulations. The proposed regulations are being held from review by the Administrative, Executive and Legislative Review (AELR) committee at the request of the current administration’s transition team. MALPF staff will brief Secretary Bartenfelder on the proposed regulations and he will review all of the Department’s proposed regulations on a case-by-case basis.

**IV. EASEMENT AMENDMENTS**

A. ANNE ARUNDEL COUNTY

- 1. 02-83-01                      Zang, Laura                                      ~70.5 acres

Request – Anne Arundel County:

Request for a 3-year extension to the validity of the preliminary release for the approved owners lot.

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for a 3 year extension.

Background:

Laura and William Zang were the original grantors of the easement, established in 1985 (William Zang is deceased). There were two documented pre-existing dwellings on the property, one of which has been released. The Board previously approved three family lots, two lots for children and an owner’s lot, in 1988. One of the child’s lots has been fully released, the second child’s lot was preliminarily released, which has been voided and the lot merged back into the same ownership as the easement property. The owner’s lot is the subject of the current request.

Ms. Zang is requesting a 3-year extension of the validity of the preliminary release for her owner’s lot. She has recently engaged an engineer to begin the work to obtain the necessary permits from the county to begin construction on a dwelling on the lot. The engineering and county approval process will not be completed prior to June 30, 2015, which is why an extension request is before the Board today.

The Board has previously reviewed and approved extension requests up to five years, with the owners having the ability to request another extension at that time if needed. The Board has the ability to

**MALPF Board Open Meeting Minutes 3-24-2015: Page 2**

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).

The Preliminary Release that was issued for this lot states:

*“...the Releasor hereby conditionally releases that parcel of land...from restriction of the District Agreement and the DOE, SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS.”* [emphasis added]

Further on, the Preliminary Release lists the conditions of the release, including:

“3. ...it is the intent of this instrument to release the above described 1.00 acre parcel of land for the personal residential use of the landowners. The parties agree that this right may not be transferred to any person for five (5) years from the date of the final release...”

Therefore, if the lot’s ownership is transferred through voluntary or involuntary means prior to the execution and recording of the final release, the lot right will be void, and the lot must return to the ownership of whoever owns the Easement property at that time.

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

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

Ms. Cable introduced the item. Billy Gorski, Anne Arundel County Staff, and Barbara Polito, Anne Arundel County Administrator, were available for questions or comments.

Motion #2 Approve request for a 3-year extension to the validity of the preliminary release for the approved owners lot for Laura Zang.

Motion: Patricia Langenfelder Second: Mary Ellen Setting  
Status: Approved

2. 02-79-01E Chaney, E. Stewart & Dorothy D. ~79.4 acres

Request – Anne Arundel County:

Request for a 5-year extension to the validity of the preliminary release for the approved child’s lot for Anna Chaney (Lot#3) and S. Hamilton Chaney (Lot #4).

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for a 5 year extension.

Background:

E. Stewart and Dorothy Chaney are the original grantors of the easement, established in 1988. There were three pre-existing dwellings documented for this easement property, two of which have been

**MALPF Board Open Meeting Minutes 3-24-2015: Page 3**

released (Lots #1 and #2). The Board approved two child's lots in April 2005, Lot #3 for Anna Chaney and Lot #4 for S. Hamilton Chaney. These two child lots have been preliminarily released and are the subject of the current request.

The Chaney's are requesting a 5-year extension of the validity of the preliminary release for both S. Hamilton's and Anna's child's lots. Due to extended recession over the past decade, it has not been financially feasible for S. Hamilton or Anna to begin construction of a dwelling to date. They would like an extension of the release to give their children the ability to build on the lot in the future, if circumstances enable them to do so.

The Board has previously reviewed and approved extension requests up to five years, with the owners having the ability to request another extension at that time if needed. 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).

The Preliminary Release that was issued for this lot states:

*"...the Releasor hereby conditionally releases that parcel of land ...from restriction of the District Agreement and the DOE, SUBJECT TO THE FOLLOWING TERMS AND CONDITIONS."* [emphasis added]

Further on, the Preliminary Release lists the conditions of the release, including:

"3. ...it is the intent of this instrument to release the above described 1.627acre parcel of land (LOT 1) from agricultural easement restrictions set forth in the above mentioned Deed of Easement for the purpose of constructing a dwelling. The parties agree that this right may not be transferred to any person for five (5) years from the date of the final release,..."

Therefore, if the lot is transferred through voluntary or involuntary means prior to the execution and recording of the final release, the lot right will be void, and the lot must be rejoined with the Easement property at that time.

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

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

Ms. Cable introduced the item. Ms. Polito and Mr. Gorski were available for questions or comments.

Motion #3 Approve request for a 5-year extension to the validity of the preliminary releases for S. Hamilton Chaney's and Anna Chaney's approved child's lots.

Motion: Eugene Roberts, Jr.      Second: Jonathan Quinn  
Status: Approved

B. CALVERT COUNTY

1) 04-84-02ex2                      Hutchins, Mark                      ~53.94 acres

Request – Calvert County:

Request is for a 5-year extension to the validity of the preliminary release for the approved child's lot for W. Mark Hutchins.

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for a 5 year extension.

Background:

Raymond E. Hutchins, Sr. and Elsie Hutchins were the original grantors of an easement over ~204 acres, established in 1986. There are two documented pre-existing dwellings on the entire property. The property was since agriculturally subdivided into three parcels. Each parcel was deeded to one of the original grantors' three sons (see paragraph 4. below). The following is a summary of the Foundation approvals impacting this easement property:

1. September 22, 1992: ~1-acre child lot for son, Raymond E. Hutchins, Jr. Final release recorded June 28, 1995.
2. April 7, 1995: ~1-acre lot surrounding pre-existing dwelling (administratively approved). Release recorded June 20, 1995.
3. May 22, 2007: ~1-acre child lot for son, W. Mark Hutchins. Preliminary release recorded April 6, 2010. *Note: Request for a 5-year extension received from Mr. Hutchins. Awaiting formal request packet from Calvert County.*
4. August 28, 2007: Agricultural subdivision approved, dividing the property into three parcels: a ~60.21-acre parcel ("South Farm"), a ~74.33-acre parcel ("West Farm"), and a ~69.46-acre parcel ("North Farm"). The South Farm was deeded to Mark. The West Farm was deeded to Raymond Jr. The North Farm remained in the name of Raymond Sr., in anticipation of approval of Dale's child lot.
5. October 23, 2007, ~1-acre child lot for son, Dale. Preliminary release recorded April 6, 2010. The North Farm, including Dale's child lot was transferred to Raymond Sr. and Dale on October 23, 2009. On January 26, 2011, Raymond Sr. transferred all his interest in the North Farm, including Dale's child lot, to Dale.
6. February 24, 2015, A five-year extension of the validity of the preliminary release for Dale's child lot.

Mr. W. Mark Hutchins is requesting a 5-year extension of the validity of the preliminary release for the child lot approved on his behalf. Mr. Hutchins intends to build a house on his child lot for his retirement years, but is not yet ready to begin construction.

The Board has previously reviewed and approved extension requests up to five years, with the owners having the ability to request another extension at that time if needed. 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

**MALPF Board Open Meeting Minutes 3-24-2015: Page 5**

(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]

The Preliminary Release that was issued for this lot states:

*“...the Releasor hereby conditionally releases that parcel of land ...from restriction contained in the agricultural preservation easement, subject, however, to the terms and conditions hereinafter set forth, **including the condition that its use be for the purpose of constructing a dwelling house for the child’s residence.**”* [emphasis added]

Further on, the Preliminary Release lists the conditions of the release, including:

“3. ...it is the intent of this instrument to release the above described 1.00 acre parcel of land from agricultural easement restrictions set forth in the above mentioned Deed of Easement for the purpose of constructing a dwelling. The parties agree that this right may not be transferred to any person...”

Therefore, if the lot’s ownership is transferred through voluntary or involuntary means prior to the execution and recording of the final release, the lot right will be void, and the lot must return to the ownership of whoever owns the Easement property at that time.

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

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

Ms. Turner presented the item. Ms. Veronica Cristo, Program Administrator representing Calvert County, was available for questions and comments.

Motion #4 Approve request for a 5-year extension to the validity of the preliminary release for the approved child lot for W. Mark Hutchins.

Motion: Don Moore Second: Mary Ellen Setting  
Status: Approved

2) 04-86-05 Gott, Donald ~85.70 acres

Request – Calvert County:

Request is for a 5-year extension to the validity of the preliminary release for the approved child’s lot for Galen Gott.

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for a 5 year extension.

Background:

Donald Gott is the original grantor of an easement over ~ 85.70 acres of land, established in 1988. There are four family lots associated with the easement property.

On March 27, 2007, the Board approved a Wetland Mitigation Easement as an overlay easement over three sites, covering a total area of 4.3 acres.

On February 28, 2006, the Board approved a child lot for Mr. Gott’s son, Galen. The preliminary release was recorded July 12, 2011. The following conveyances have occurred relative to the child lot:

On February 28, 2006, the Board approved a child lot for Mr. Gott's son, Galen. The preliminary release was recorded July 12, 2011. The following conveyances have occurred relative to the child lot:

- On October 21, 2011, the lot was conveyed from Donald Gott to Galen Gott.
- On April 17, 2013, the lot was conveyed from Galen to his mother, Kim Gott. In his written extension request, Galen explains that after his grandmother died, he made the conveyance so that he could qualify for a loan to purchase her home which, though not part of the easement property, is located within the boundaries of the farm. To date, a building permit has not been obtained nor has the child lot been improved. As such, this conveyance is in violation of the terms and conditions of the easement, the terms and conditions of the preliminary release, Agriculture Article, Title 2, Subtitle 5, Annotated Code of Maryland, and COMAR 15.15.06.07.
- On December 18, 2014, Donald Gott was notified of the illegal transfer of the lot from Galen to Kim. Once the Gotts were made aware that the conveyance created a violation of the easement, they immediately re-conveyed the lot to Galen.
- On January 16, 2015, a deed was recorded conveying the land back to Galen. This conveyance has cured the violation.

Galen intends to build his residence on the child lot, however, given his present financial circumstances, he needs to wait until he is able to either lease his grandmother's house to a tenant farmer or sell it to a family member. Staff will request that the county program administrator monitor ownership of the lot until Galen is able to build on the lot.

The Board has previously reviewed and approved extension requests for up to five years, with the owners having the ability to request another extension at that time if needed. 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 of 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]

The Preliminary Release that was issued for this lot states:

*"...the Releasor hereby conditionally releases that parcel of land ...from restriction contained in the agricultural preservation easement, subject, however, to the terms and conditions hereinafterset forth, **including the condition that its use be for the purpose of constructing a dwelling house for the child's residence.**"* [emphasis added]

Further on, the Preliminary Release lists the conditions of the release, including:

"3. ...it is the intent of this instrument to release the above described 1.00 acre parcel of land from agricultural easement restrictions set forth in the above mentioned Deed of Easement for the purpose of constructing a dwelling. The parties agree that this right may not be transferred to any person..."

Therefore, if the lot's ownership is transferred through voluntary or involuntary means prior to the execution and recording of the final release, the lot right will be void, and the lot must return to the ownership of whoever owns the Easement property at that time.

**MALPF Board Open Meeting Minutes 3-24-2015: Page 7**

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

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

Ms. Turner presented the item. Ms. Veronica Cristo, Program Administrator representing Calvert County, was available for questions and comments.

Motion #5 Approve request for a 5-year extension to the validity of the preliminary release for the approved child lot for Galen Gott.

Motion: Donald Moore                      Second: Pat Langenfelder  
Status: Approved

C. ITEM WITHDRAWN

D. CARROLL COUNTY

1) 06-00-10                      Bassler, Philip & Rita                      ~110.3 acres

Request –Carroll County:

Request to exclude 2.0 acres from the easement for a child’s lot for Kelly Ann Bassler Steele.

Recommendation:

Staff recommends approval. (The county required road dedication along Hyser Road is included in the 2.0 acre lot configuration.)

Background:

Philip & Rita Bassler are the original grantors of the easement property. The easement was established in August 2002. There is one pre-existing dwelling on the property. The Board approved a child’s lot in April 2014 for their other daughter, Katie Bassler Holmes. No other requests have been made regarding this easement property.

This child’s lot will be located along Hyser Road on the western boundary of the property (1<sup>st</sup> choice location shown on map). The lot location meets the Foundation’s Lot Location Policy. The owners have already conducted perk tests for this location and have obtained positive results. The engineer has provided information to support the need for the full 2.0 acres for the lot.

The request has been approved by the County and is in accordance with all County requirements. The reimbursement amount will be \$1,957.09 per-acre being released.

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]

The Preliminary Release that was issued for this lot states:

*“...the Releasor hereby conditionally releases that parcel of land ...from restriction contained in the agricultural preservation easement, subject, however, to the*



*terms and conditions hereinafterset forth, **including the condition that its use be for the purpose of constructing a dwelling house for the child's residence.*** [emphasis added]

Further on, the Preliminary Release lists the conditions of the release, including:

“3. ...it is the intent of this instrument to release the above described 1.00 acre parcel of land from agricultural easement restrictions set forth in the above mentioned Deed of Easement for the purpose of constructing a dwelling. The parties agree that this right may not be transferred to any person...”

Therefore, if the lot's ownership is transferred through voluntary or involuntary means prior to the execution and recording of the final release, the lot right will be void, and the lot must return to the ownership of whoever owns the Easement property at that time.

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

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

Ms. Cable introduced the item. Deborah Bowers, Carroll County Program Administrator, was available for questions or comments.

Motion #6	Approve request for a 2.0 acres child's lot for Kelly Ann Bassler Steele.		
Motion:	Jonathan Quinn	Second:	Patricia Langenfelder
Status:	Approved		
2. 06-02-04	Bork, Lisa		~67.24acres

Request – Carroll County:

Request an approval to increase the size of an owner's lot up to 2.0 acres and complete a final release of the owner's lot, waiving the 5 year occupancy requirement.

Recommendation:

Staff recommends approval in accordance with COMAR 15.15.06.06.B.

Background:

Basha's Barn, LLC (David Miller, General Manager of LLC) was the original easement grantor, established in 2003. There is one documented pre-existing dwelling located on the property. The Board approved a 1.0 acre owner's lot in October 2003, with the Preliminary Release recorded in November 2003. No other requests have been submitted regarding this easement property.

Mr. Miller obtained the building permit for the owner's lot dwelling in December 2003, constructed the dwelling, and was issued a use and occupancy permit in April 2004. While Mr. Miller obtained these permits and constructed the dwelling, he never submitted them to MALPF in order to complete the final release of the owner's lot. Mr. Miller lived in the owner's lot dwelling until the easement property, along with the preliminarily released owner's lot, was acquired by Compass Properties, Inc. ("Compass") at a foreclosure sale in 2012. The owner's lot was never subdivided into a separate parcel at the county level.

In February 2013, MALPF Staff informed Compass that the owner's lot was only preliminarily released. MALPF provided this notice when it sent letters regarding the new law that establishes a 3-year term limit on all new and existing preliminary releases. Compass requested a final release because the original grantor lived in the dwelling for over five years and because the easement property, lot included, was transferred through a foreclosure. During this process, it was discovered that the well and septic fields benefiting the dwelling on the owner's lot are not located on the owner's lot. Due to that fact, the county

is unable to approve the subdivision of the owner's lot in the approved 1.0 acre configuration.

Compass continued to work with the county, MALPF, and engineers to determine if a revised configuration of the lot (no greater than 2.0 acres) would meet regulations and requirements to allow the subdivision. A proposed configuration was developed; however, Compass sold the property to the current owner, Lisa Bork, in 2014, prior to resolving the owner's lot situation. A condition of the sale was that Compass would continue to work with county and MALPF to resolve the owner's lot situation.

Proposed Resolution:

In order to meet county and state health code and set back requirements to enable the owner's lot to be subdivided from the parent easement property, the configuration of the owner's lot needs to increase by ~0.99 acres. The reconfiguration of the lot requires the Board to approve an increase in size of the lot to ~1.99 acres as well as waiving the 5-year occupancy requirement that begins with the recording date of a final release.

The Board has the discretion to approve an increase in lot size when documentation is submitted to support the larger size for health code purposes or other county requirements. The increase in size for this lot fits that requirement to incorporate the well and septic system within a ~1.99 acre lot.

The Board also has the discretion to approve a waiver of the 5-year occupancy requirement per COMAR 15.15.06.06.B (listed below). The intent of the final release has been met (the original grantor lived in the dwelling for over 5 years before Compass acquired the property) and the transfer of the property was due to a foreclosure.

COMAR 15.15.06.06.B.states:

*B. Before the expiration of the 5-year period, the Foundation may only approve a landowner's or child's request to convey a lot improved with a dwelling upon the occurrence of the following events:*

*(1) Notice to the Foundation of a transfer pursuant to:*

- (a) A bona fide foreclosure of a mortgage or deed of trust; or***
- (b) A deed in lieu of foreclosure;*

*(2) The death of the landowner or the child for whom the lot was released;*

*(3) A decree of divorce where the landowner or child is ordered to sell or convey the lot as part of a bona fide property settlement;*

*(4) A change of employment location of the landowner or child for whom the lot was released if the Foundation determines that it would be impractical for the landowner or child to commute to the new work location; or*

***(5) Any other circumstance, as determined by the Foundation, where it would be impossible for the landowner or child to continue to occupy the dwelling.***

If the Board approves this proposed resolution, a Final Release Agreement will be created to document the change in the size and configuration of the lot and will be recorded in the Land Records of Carroll County. An additional payback will be required for the additional 0.99 acre being released at a rate of \$3,010.19/acre.

The County Advisory Board approved this request and it is consistent with County regulations.

Ms. Cable introduced the item. Ms. Bowers was available for questions or comments.

Motion #7 Approve the expansion of the owner's lot up to 2.0 acres and waive the 5-year occupancy requirement of the final release.

Motion: James Norris                      Second: Patricia Langenfeld  
Status: Approved

E. WASHINGTON COUNTY

1. 21-90-10 Wiles, Charles & Martha ~188 acres

Request – Washington County:

Request an extension for the preliminary release of Bradley Wiles' child (Lot #2).

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for a 5 year extension.

Background:

Charles and Martha Wiles are the original grantors of the easement, established in 2002. There is one pre-existing dwelling documented for this easement property. The following is a chronology of the history of the lots approved for this property:

1. June 2002: While property under district, approved one owner's lot (Lot #1) and two child lots (for Gregory – Lot #2, and Melissa – Lot #3).
2. October 2002: Family decided to wait to complete lot creation until after easement settlement.
3. November 2002: Easement closed.
4. July 2005: Preliminary release recorded for Melissa's child's lot (Lot #3).
5. December 2006: Board approved redesignation of owner's lot to a child's lot for Jeffery Wiles (Lot #1).
6. May 2007: Preliminary release recorded for Jeffery's child's lot (Lot #1).
7. March 2008: Board approved redesignation of the child's lot approved for Gregory to another son, Bradley (Lot #2).
8. March 2008: Preliminary release recorded for Bradley's child's lot (Lot #2).
9. October 2013: MALPF Staff informed Wiles family of the new 2012 law that retroactively established a 3-year time limit on the validity of all preliminary releases, which impacts all three of the children lots for this property.
10. January 2014: Board approved 5-year extension for Melissa's child's lot (Lot #3).
11. June 2014: Final Release recorded for Jeffery Wiles' child's lot (Lot #1).

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.

While the Board approved Bradley's child's lot and a preliminary release for that lot has been recorded, a final release has not been recorded nor has a non-transferrable building permit been acquired. Accordingly, the landowners want to extend the term of the preliminary release.

Mr. and Mrs. Wiles are requesting a 5-year extension of the validity of the preliminary release for their son, Bradley's child's lot. Due to financial circumstances, and the uncertainty in the near future about a possible change in career/job for Bradley, they have not yet been in a position to construct the dwelling as of yet. They would like an extension of the release to give Bradley time to explore options and determine if constructing a dwelling on this lot in the next five years is feasible.

The Board has previously reviewed and approved extension requests up to five years, with the owners having the ability to request another extension at that time if needed. 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

**MALPF Board Open Meeting Minutes 3-24-2015: Page 11**

(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]

The Preliminary Release that was issued for this lot states:

*"...the Releasor hereby conditionally releases that parcel of land ...from restriction contained in the agricultural preservation easement, subject, however, to the terms and conditions hereinafter set forth, **including the condition that its use be for the purpose of constructing a dwelling house for the owner's residence.**"* [emphasis added]

Further on, the Preliminary Release lists the conditions of the release, including:

"3. Subject to the proceeding Paragraphs 1 and 2 it is the intent of this instrument to release the above described 1.0 acre parcel of land for the personal residential use of the landowner or the landowner's child. The parties agree that this right may not be transferred to any person for 5 years from the date of the final release,"

Therefore, if the lot is transferred through voluntary or involuntary means prior to the execution and recording of the final release, the lot right will be void, and the lot must be rejoined with the Easement property at that time.

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

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

Ms. Cable introduced the item. Eric Seifarth, Washington County Program Administrator, was available for questions or comments:

Motion #8	Approve request for a 5-year extension to the validity of the preliminary release for the approved child's lot for Bradley Wiles.		
Motion:	Eugene Roberts, Jr	Second:	Mary Ellen Setting
Status:	Approved		

2)	21-90-01csR	Misty Meadow Farms, Inc (Herbst Family)	~183.9 acres
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Request - Washington County:

Request approval for multiple agriculturally-related, commercial activities as permitted farm related uses under Agriculture Article Section 2-513 (b)(1)(i), and as outlined in the MALPF Policy: "Guidelines for Uses."

Recommendation:

Staff finds the proposals meet the criteria and intent of the Guidelines for Uses and recommends approval of the requests.

Background:

Misty Meadow Farms, Inc. is the original easement grantor, established in 2000. There are four documented pre-existing dwellings on the property. In 2010, the Board approved a creamery and farm store on this easement property (which included permission for an accessory sales area limited to a 600 square feet area). In July 2014, the Board approved a subdivision of an adjacent MALPF easement property that will merge an additional 30 acres into this easement property (transaction has not been completed). As part of the 2014 subdivision approval, one of the pre-existing dwellings on this property (the "Main House") will be designated as non-subdividable.

## **MALPF Board Open Meeting Minutes 3-24-2015: Page 12**

Misty Meadows Farm operates an active dairy, over 150 head of cattle, on a total of ~480 acres. The current owners continued in the family tradition of the dairy operation and decided to expand the operation by adding the creamery and farm store. The previously approved creamery and farm store has been a successful endeavor for Misty Meadow Farms. With the increase in customers coming onto the farm, Misty Meadow Farms has expanded the operation beyond the original MALPF approval of a farm stand and creamery. While the Board has not approved these expanded uses, they appear permissible under the MALPF Policy titled "Guidelines for Uses."

Attached is a letter describing:

- 1) the ongoing uses proposed for approval;
- 2) the corresponding section of the MALPF Guidelines for Uses Policy;
- 3) an inventory of the structures associated with the uses;
- 4) photographs and aerial images of the operation; and
- 5) a description of how these uses relate to and support the primary agricultural operation of the farm.

Of the ongoing uses listed in the application letter, MALPF Staff can approve numbers 1 through 4. However, the Board must approve use number 5. Because there are multiple use categories involved, the Board should review the entire comprehensive request.

Request #5 seeks retroactive approval to permit food preparations and on site sale/seating relating to and supporting an agricultural operation. As stated in the request, the permanent structure used to support this activity is the same structure, parking, and seating area that was included as part of the 2010 approval of the creamery and farm stand. Misty Meadow Farms offers a small selection of prepared foods for sale, some of which include products not produced on the farm. However, the majority of the prepared food sale items do include products/ingredients that are produced on the farm.

MALPF Staff visited this location and believes that the prepared food items offered for sale, and the small seating area provided, are consistent with the MALPF Policy (see analysis below). As shown on the aerial imagery, the area dedicated to the various uses are all clustered at the front of the farm, off the existing farm road, and have minimal impact to the operation conducted on the remainder of the 183+ acre farm. The customer activities either promote/support the larger agricultural operation on the farm, and/or include educational aspects that impart knowledge about agricultural operations as a whole, and on this farm specifically.

The Board must consider the following criteria for a proposed food preparation and on-site sales/seating area relating to and supporting an agricultural operation:

1. Must not interfere with the agricultural or silvicultural operations;

Since no additional areas will be established to service the on-site sales/seating area for selling prepared food items beyond the structures approved for the creamery/farm store (including using previously approved parking area and means of access), there is no new impact to the agricultural operations on the farm. As part of the 2010 creamery/farm store approval, documentation was provided by a soil conservationist with the NRCS stating that the establishment of the creamery and farm store will not interfere with the implementation or maintenance of any best management practices included in the property's soil conservation and water quality plan. An extension agent from the University of Maryland also provided his professional opinion that the creamery and farm store will in no manner be detrimental to the nutrient management plan for the property.

The establishment of the creamery, farm store, selling prepared foods, and the other activities included in this request not only does not interfere with the current agricultural and silvicultural operations, they have improved the agricultural operation by enabling the owners to sell their products directly to customers, incorporating "value added" processing of the agricultural products grown on the farm (making ice cream, selling meats and cheeses, using products in prepared foods).

2. Must not limit future agricultural or silvicultural production;

As stated under #1, the additional selling of prepared food items does not establish any new structures,



**Background:**

The Robinsons are subsequent owners of the farm. (John and Alice Sigillito granted the original easement in 1985). There are two documented pre-existing dwellings on the property and two dwellings that were not documented as pre-existing. They were there when the Robinsons purchased the property in 2013. The Robinsons have agreed to remove one (a trailer). The other dwelling— adjacent to the silo — will either be turned into a farm office or the landowners will request a tenant house. In 2004, a previous owner requested an agricultural subdivision but it was tabled. No other requests have been approved by the Foundation regarding this property.

The reason the owners are requesting such a large exclusion is because the plan to hold weddings in the barn and the County requires a large septic area for that purpose. Also, by excluding the barn, the Foundation does not need to review and approve the use for weddings.

**COMAR 15.15.11: Corrective Easements criteria and requirements:**

**.03 Criteria.**

**C. Boundary Line Adjustment.**

(1) If the proposed corrective easement involves the adjustment of boundary lines and part of the land encumbered by the easement is to be released, then:

(a) An equal or greater amount of land of equal or better soil types shall be added to the land under easement;

*Per the map provided by Frederick County, the soils of the 2.46 acres coming under the easement are the same as about 4 acres of land coming out of the easement.*

(b) The value of the easement will not be diminished by the proposed exchange;

*Bill Beach will advise on whether the monetary value will be diminished.*

*The agricultural value of the swap is the Foundation's gain. The land coming in is agricultural productive and the land coming out has structures and is not productive. In addition, the addition of a non-subdividable dwelling is beneficial for the easement's long-term viability.*

(c) The proposed exchange shall be approved by the Board of Public Works; and

(d) The landowner shall pay for the cost of all title work, title insurance premiums, surveys, and documentation necessary on both the land under easement and the land to be added by corrective easement.

**.05 Requirements upon Approvals.**

A. A landowner may not proceed with plans pursuant to the approval until the corrective easement has been recorded among the land records in the county in which the land is located, unless the Foundation issues a letter permitting the landowner to proceed.

**B. Boundary Line Adjustment.**

(1) If the Foundation approves the request for corrective easement for boundary line adjustment, the landowner shall submit to the Foundation 10 copies of a survey plat, signed and sealed by a surveyor registered in the State of Maryland depicting the land area to be released from the easement, if any, and the land area to be encumbered by the easement, along with separate written metes and bounds descriptions of those areas.

(2) If the Board of Public Works approves the request, the landowner shall remit funds in the amount and manner directed by the Foundation to cover the costs of the transaction as specified in Regulation .03 of this chapter and shall furnish such other documentation as directed by the Foundation.







John W. Draper, Jr. asked for a motion for adjournment of the meeting to move into a closed session, pursuant to the provisions of General Provisions Article Section 3-305 (b): (3) to consider the acquisition of real property for a public purpose and matters directly related thereto; (7) to consult with legal counsel to obtain legal advice; and (8) consult with staff, consultants, or other individuals about pending or potential litigation.

Motion # 14      To adjourn the regular session to move into a closed session to consider the acquisition of real property for a public purpose and matters directly related thereto; to consult with legal counsel to obtain legal advice; and consult with staff, consultants, or other individuals about pending or potential litigation..

Motion:            Eugene Roberts, Jr.                      Second:            Jonathan Quinn  
Favor:             John Draper, Jr., Craig Highfield, Jerome W. Klasmeier, Patrica A. Langenfelder, Donald T. Moore, James Norris, Jonathan C. Quinn, Jr., Eugene Roberts, Jr., Dan Rosen, Mary Ellen Setting.  
Status:            Approved

**The Open Board Meeting was adjourned at approximately 11:25 a.m.**

The Closed Meeting of the Board was held from 11:34 am. to 11:54 am. at the Maryland Department of Agriculture building, Annapolis, Maryland, pursuant to the provisions of the General Provisions Article Section 3-305 (b): , Annotated Code of Maryland:

General Provisions Article Section 3-305(b):

- (3) To consider the acquisition of real property for a public purpose and matters directly related there thereto;
- (7) to consult with legal counsel to obtain legal advice; and
- (8) consult with staff, consultants, or other individuals about pending or potential litigation.

During the Closed Meeting, the following Board members were present: John Draper, Jr., Craig Highfield, Jerome W. Klasmeier, Patricia A. Langenfelder, James "Bubby" Norris, Donald T. Moore, Jonathan C. Quinn, Jr., Eugene Roberts, Jr., Daniel Rosen, and Mary Ellen Setting.

The following legal representatives were also present during the closed session meeting: Nancy Forrester, Assistant Attorney General, Department of General Services and Justin Hayes, Assistant Attorney General, Maryland Department of Agriculture.

**TOPICS DISCUSSED:**

- A      Approval of February 24, 2015 Closed Session Minutes
- B      Status Report of Pending Legal Issues
- C      Revisit of Decision to Withdraw Easement Offer – 16-09-04 Rogers Property

Respectfully Submitted:

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George Stevens, MALPF Secretary

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Carol S. West, Executive Director