# MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION OPEN MEETING MINUTES SEPTEMBER 26. 2017

# **Trustees Present:**

Michael Calkins, Chair

Jerome Klasmeier, representing Comptroller Peter Franchot

Deborah Herr Cornwell, representing Acting Secretary Robert McCord, Maryland

Department of Planning

Catherine Cosgrove

Bernard L. Jones, Sr.

Tom Mason

Ralph Robertson

Milly Welsh

Joe Wood

J. Bruce Yerkes

#### **Trustees Absent:**

James Eichhorst, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture

Susanne Brogan, representing Treasurer Nancy Kopp

William Allen

#### Others Present:

Michelle Cable, MALPF Administrator

Diane Chasse, MALPF Administrator

Chana Kikoen Turner, MALPF Administrator

Kim Hoxter, MALPF Monitoring, Enforcement and Database Coordinator

Amanda Wilson, MALPF Fiscal Specialist

Tamekia Dent, MALPF Office Secretary

Justin Hayes, Assistant Attorney General, Department of Agriculture

Nancy Forrester, Assistant Attorney General, Department of General Services

Patrick Martyn, Assistant Attorney General, Department of General Services

Billy Gorski, Anne Arundel County Planner

Jeanine Nutter, Price George's County Program Administrator

Deborah Bowers, Carroll County Program Administrator

Bill Amoss, Harford County Porgarm Administrator

Rick Troutman, Carroll County

Patrick O'Neill, Harford County Landowner

Jeff Lynn, Harford County Landowner

Michael Birch, Harford County Attorney, representing Mr. Lynn

# Others Present By Web Conferencing:

Kaylee Justice, Baltimore County staff

Donna Landis-Smith, Queen Anne's County Program Administrator

Steve O'Connor, Cecil County Program Administrator

Bonnie Bevard, Carroll County staff

Michael Calkins, Chair, called the meeting to order at 9:05 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 from August 22, 2017.

Motion #1: To approve minutes from August 22, 2017 with one minor

change.

Motion: Joe Wood Second: Bernard Jones

Status: Approved

# II. ADDITION / DELETION OF AGENDA ITEMS

No changes.

#### III. ANNOUNCEMENTS

There will be a Closed Session meeting that will include requesting approval of the final batch of Round One offers, anticipating recommending closing Round One in October and beginning Round Two.

Ms. Cable thanked the Board and attendees for attending the 40<sup>th</sup> anniversary, 300,000 acres celebration lunch earlier this month. The luncheon was a great success. Ms. Cable also introduced Patrick Martyn to the Board. Mr. Martyn is an Assistant Attorney General with the Department of General Services, who has been working with the MALPF program on new easement transactions.

# IV. EASEMENT AMENDMENTS

# A. CARROLL COUNTY:

1. 06-11-03 Braswell, George

~127 acres

# Request:

Request retroactive approval to relocate non-subdividable building envelope for a residence.

Recommendation: Staff recommends approval contingent upon:

- Information that will confirm, by measurement, or other method acceptable to MALPF, that all improvements will be located within the 1-acre foot print allowable for the non-subdividable building envelope. This will require receipt of a metes and bounds description of the property and a survey, acceptable to MALPF, that is performed in accordance with MALPF instructions.
- 2. Execution and delivery to MALPF of an amendment to the Agreement of Building Envelope previously recorded.

Ms. Turner introduced the item and Mr. Braswell and Ms. Bowers were available for questions. The Board, having no questions, made a motion as follows:

Motion #2: To approve the request to relocate the non-subdivedable

building envelope with staff recommended conditions.

Motion: Joe Wood Second: Milly Welsh

Status: Approved

2. 06-84-08A Haines, Michael and Anita ~95 acres

#### Request:

Request to exclude up to 2.0 acres from the easement for a child lot for son, Brett Haines.

#### Recommendation:

Staff recommends approval.

Ms. Turner introduced the item and Ms. Bowers was available for any questions. The Board, having no questions, made a motion as follows:.

Motion #3: To approve up to 2.0 acres for a child's lot for Brett Haines.

Motion: Catherine Cosgrove Second: Bernard Jones

Status: Approved

3. 06-03-12 Green, Delbert Aaron and Leo David ~115 acres

#### Request:

Request acknowledgement of pre-existing right-of-way and consent to enter into Confirmatory Right- of-Way Agreement.

# Recommendation:

Staff recommends approval contingent upon:

- a provision being added to the Agreement that prohibits expansion of the
  use of the existing ROW and the ROW extension, both as defined below,
  beyond the current configuration of the Krebs property, such that the
  memorialized right-of-way would allow for subdivision of the Krebs property;
  and
- final review of the Agreement by MALPF's legal counsel. Further, MALPF shall have the right to final review and approval of any future proposed amendments, and/or revisions to the Agreement

Ms. Turner introduced the item and Ms. Bowers was available for any questions. The Board tabled the item pending receipt of more information, specifically to 1) ascertain whether the Greens are amenable to the conditions of approval recommended by Staff; 2) attain a better understanding of the status of the dispute over the right-of-way between the Greens and the Krebs; and 3) to be advised as to what effect, if any, the proposed conditions would impose upon any pending litigation or settlement activity between the two parties.

Motion #4: To table the item for future consideration.

Motion: Catherine Cosgrove Second: Joe Wood

Status: Approved

#### B. HARFORD COUNTY

1. 12-83-02 O'Neill, Patrick ~106.11 acres

#### Request

Request approval for up to six (6) auctions per year to sell farm-related items, vehicles, tools, supplies and other personal property.

#### Recommendation

Staff recommends denial of the request, as presented.

Ms. Chasse introduced the item and explained that Staff recommendation for denial is mostly based on the fact that few of the auction items are farm-related. Mr. Amoss and Mr. O'Neill were available for any questions. Mr. O'Neill discussed that his father had held auctions on the farm and that he was continuing in that tradition. Mr. Mason asked if

the items sold at his father's auctions were agricultural items and if the items Mr. Patrick O'Neill now sold were also agricultural items. Mr. O'Neill stated that the items that his father sold were primarily agricultural but now only 5% of the items he auctions are agricultural items.

Motion #5: To approve up to three acutions per year.

Motion: Catherine Cosgrove Second: Milly Welsh

In favor: Cosgrove, Welsh, Jones, Yerkes, Klasmeier

Against: Mason

Abstained: Cornwell, Robertson, Wood

At this time, by recommendation of counsel, the Board adjurned into closed session (10:12 a.m.). The purpose for closing the meeting was to consult with legal counsel to obtain legal advice pursuant to Md. Code Ann., Gen. Prov., 3-305(b).

At 10:30 the Board resumed the open session.

Based on the legal advice provided by counsel regarding statutory use restrictions on Foundation easement properties, the Board made the following motions:

Motion #6: To set aside previous motion and revote.

Motion: Tom Mason Second: Bernard Jones

Against: Jerry Klasmeier Status: Approved

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Motion #7: Deny request to hold auctions as presented based on the

inadvertence of information prior to previous motion and new information provided by counsel during closed session. Direct MALPF staff to work with Mr. O'Neill to investigate alternative options within the governing statute and regulations that would

meet the intent of the landowner.

Motion: Bernard Jones Second: Tom Mason In favor: Jones, Mason, Robertson, Cornwell, Wood, Yerkes

Against: Cosgrove, Welsh, Klasmeier

Status: Approved

Motion #8: Allow counsel to disclose attorney-client privileged information

that was discussed during closed session.

Motion: Bernard Jones Second: Ralph Robertson

Status: Approved (unanimously)

Counsel for the Board described the statutory use restrictions applicable to MALPF easements prohibiting commercial activity that is not farm or forest related. Given the landowner's description that only five percent of auctioned items are agriculturally related, approval of the proposed auction activity appeared to be beyond the statutory authority of the Board.

The Board advised Mr. O'Neill that he will have to do a separate request at a future meeting for events for fundraising, birthdays, and weddings because staff had assumed that those could be held in a one acre area around the home (and not in a proposed 5 acre area) and therefore had not prepared a memo to discuss them.

2. 12-80-01ces SUB#1 Lynn, Jeffery and Leslie ~101 acres

#### Request:

Request retroactive approval for a tenant house and an exchange of designations (tenant

house to pre-existing dwelling and vice versa).

#### Recommendation

Staff requests Board review as the nature of the farm operation does not seem to indicate need for a full-time tenant.

Ms. Chasse introduced the item. Mr. Amos, Mr. Lynn, and Mr. Birch were available for questions. Mr. Lynn stated that Mr. Cisneros duties were discussed as including building maintainance, mowing and care of horses.

Motion #9: To retroactively approve a tenant house and the exchange of

designations between a pre-existing dwelling and tenant house,

with both designated pre-existing dwellings to be non-

subdivideable from the easement property.

Motion: Ralph Robertson

Second: Bernard Jones

Status: Approved

# C. CECIL COUNTY

1. 07-91-19 Great House Holdings, LLC ~118 acres 07-88-07 Helena DuPont Wright, Trustee ~184 acres

#### Request:

Request to memorialize an access easement by a formal right of way agreement and expand it to 25-feet wide for the benefit of MALPF easement properties and MALPF approved lots.

# Recommendation

Staff recommends approval to record a 25' wide right of way agreement to memorialize a condition existing at the time the Foundation purchased its preservation easements, with the following conditions:

- 1. The ROW over Buckworth Road and Bison Lane (shown on Exhibit C of attachments) to benefit the owners of the adjacent 8-acre parcel (Virginia DuPont Suarez) may not be expanded or granted to permit any further residential development or subdivision of the Suarez parcel;
- 2. The ROW over Buckworth Road (shown on Exhibit B of attachments) will allow ingress/egress for the owner of the residential lot (shown as Site F on maps for Agenda Item IV.C.2.), if the Board approves the land exchange request in subsequent item:
- 3. Neither ROW will be used to facilitate any additional residential development on either Easement 07-91-19 or 07-87-08;
- 4. The ROWs may be maintained and improved using pervious or non-pervious materials, in accordance with county requirements; and
- 5. The landowners must submit the proposed ROW document for review by the Office of the Attorney General prior to recording.

Ms. Cable introduced the item. Mr. O'Connor was available via Go-To-Meeting for questions. Ms. Cable provided the Board with background information on the easement properties involved in this request and the adjacent easement properties, as they are owned by the same entity and are interconnected. The Board asked some clarifying questions regarding the location of the existing farm lane and the status of the lots shown on the map.

Motion #10: To approve right of way with recommended staff conditions.

Motion: Milly Welsh Second: Bruce Yerkes

Status: Approved

# 2. 07-91-19 Great House Holdings, LLC

~118 acres

#### Request:

Request approval of a land exchange that will add 2-acres into the easement area in exchange for creating a 1-acre non-subdivideable residential building envelope to remain encumbered with the MALPF easement and releasing an additional 1 acre from the easement.

# Recommendation

Per the terms of COMAR 15.15.11.03.C (1), Staff recommends approval of the request, subject to required regulatory conditions in addition to the following recommended conditions:

- 1. The Suarez Parcel retire the remaining 2 unused development rights.
- 2. The deed/subdivision plat to document the transfer of the 2-acres from the Suarez Parcel to the Great House Holdings, LLC property will include documentation that no further development rights will remain with the Suarez Parcel.
- 3. A Declaration of Restriction be placed upon the Suarez Parcel prohibiting further development (permitting the existing dwelling).

Ms. Cable introduced the item. Mr. O'Connor was available via Go-To-Meeting for questions. Ms. Cable discussed the current request together with the previous item, as they are related to one another.

Motion #11: To approve the land exchange with recommended staff

conditions.

Motion: Milly Welsh Second: Tom Mason

Status: Approved

# V. NEW AGRICULTURAL PRESERVATION EASEMENT PETITIONS:

N/A

# VI. PROGRAM POLICY

A. Draft Revised Regulations for Easement Termination Requests COMAR 15.15.05

Mr. Hayes presented the new regulations for the Board to review and provide comments at October Board of Trustees meeting.

B. Permitted Uses Policy - Revision

#### Request:

MALPF Staff requests the revision of the Permitted Uses Policy, item #10, "Processed (value added) products" to add the following language (shown as **bold/underlined**):

"Some of the products must come from animals raised or crops grown on site; the remainder must come from animals raised in or crops grown in Maryland or regionally produced, <u>unless landowner can demonstrate the need for non-regionally produced products, which shall be specifically approved by the Board</u>."

Ms. Cable introduced the item. Through discussion with Board members, Ms. Cable withdrew the request to revise and present to the Board at a subsequent meeting.

# VII. INFORMATION AND DISCUSSION

Mr. Amoss asked to discuss item of concern with the Board regarding appraisal reviews of new

acquisitions. Mr. Amoss expressed concern on a recommended appraisal value of one of Harford County easement offers. The appraisals in question had a significantly large difference in value, even though percentage wise they were less than 30% different in final value.

Mr. Amoss asked about the circumstances warranting a third appraisal, or a DGS composite review appraisal. Ms. Forrester and Ms. Cable stated that it is the practice of DGS appraisal review to conduct a composite analysis or procure a third appraisal when the difference of values are 30% or greater. The easement property Mr. Amoss was discussing was a large property of 388 acres, and while the difference in the two appraisals was less than the 30% that kicks in a further review, it was a \$705,000 difference. Since the DGS appraiser selected the higher appraised value, Harford County was unable to extend an additional offer to landowners in Round One.

The Board directed MALPF Staff to work with DGS appraisers to learn more about the reason behind the 30% difference as the point that initiates additional reiview. Invistigate if there is an alternative measure to use that would initiate further review when the difference between the appraisal values was large, either by percentage or a dollar difference. For example, further appraisal analysis would be required if the difference of appraised values was 30% of the total value or if the difference in value was greater than \$250,000 - \$500,000, as a suggestion.

#### VIII. CLOSED SESSION

Mr. Calkins asked for a motion for adjournment of the meeting to move into a closed session, pursuant to the applicable 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 to the acquisition; (7) to consult with counsel to obtain legal advice; and (8) to consult with staff, consultants, or other individuals about pending or potential litigation.

Motion # 12: 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 to the acquisition; to consult with counsel to obtain legal advice; and to consult with staff, consultants, or other individuals about pending or potential

litigation.

Motion: Milly Welsh Second: Catherine Cosgrove

Status: Approved

The Closed Meeting of the Board was held from 10:12 a.m. to 10:30 a.m. and again from 11:51 a.m. to 12:15 p.m. on September 26, 2017 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 to the acquisition;
- (7) to consult with counsel to obtain legal advice; and
- (8) to consult with staff, consultants, or other individuals about pending or potential litigation.

During the Closed Meeting, the following Board members were present: Michael Calkins, Chair, Cathy Cosgrove, Milly Welsh, Tom Mason, Jerome Klasmeier, representing Comptroller Peter Franchot, Deborah Herr Cornwell, representing Acting Secretary Robert McCord, Maryland Department of Planning, J. Bruce Yerkes, Ralph Robertson, William Allen, and Joe Wood.

The following Board members were absent: James Eichhorst, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture, Susanne Brogan, representing Treasurer Nancy Kopp, and William Allen.

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

# TOPICS DISCUSSED:

- A. Approval of August 22, 2017 Closed Session Minutes
- B. Status Report of Pending Legal Issues.
- C. Round One Offers

Respectfully Submitted:	
Michelle Cable, Administrator	