

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
July 23, 2019**

Trustees Present:

William Allen, Vice-Chair
Jerome Klasmeier, representing Comptroller Peter Franchot
Deborah Herr Cornwell, representing Secretary Robert McCord, Maryland
Department of Planning
Julie Oberg, representing Secretary Joseph Bartenfelder, Maryland Department
of Agriculture (via conference call)
Bernard L. Jones, Sr.
Joe Wood
J. Bruce Yerkes

Trustees Absent:

Michael Calkins, Chair
Treasurer Nancy Kopp
Catherine Cosgrove
Taylor Huffman

Others Present:

Michelle Cable, MALPF Executive Director
Chana Turner, MALPF Administrator
Sarel Cousins, MALPF Administrator
Kim Hoxter, MALPF Monitoring, Enforcement and Database Coordinator
Justin Hayes, Assistant Attorney General, Department of Agriculture
Nancy Forrester, Assistant Attorney General, Department of General Services
Joanna Kille, Treasurer's Office
Devyn King, Cecil County Program Administrator
Steve O'Connor, Cecil County Chief of Planning & Zoning
Doris McCreary, Cecil County Landowner
David McCreary, Cecil County Landowner
Billy Gorski, Anne Arundel County Planner
Anne Jones, Land Preservation Trust
Jeanine Nutter, Prince George's County Program Administrator

Others Present By Phone Conferencing:

Beth Beales, Caroline County Program Administrator
Adam Gibson, Somerset County Program Administrator
Kristen Tremblay, Somerset County
Shannon O'Neill, Frederick County
Rob Tracey, Kent County Program Administrator
Ron Marney, Calvert County Program Administrator
Deborah Bowers, Carroll County Program Administrator
Jen Wilson, Harford County
Martin Sokolich, Talbot County Program Administrator

Mr. Allen, Vice-Chair, called the meeting to order at 9:08 a.m. at the Maryland Department of Agriculture building, Annapolis, Maryland. The guests and then the Board and staff introduced themselves.

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I. APPROVAL OF MINUTES

A. Approval of Open Minutes from June 25, 2019.

Motion #1: To approve minutes from June 25, 2019.

Motion: Woods Second: Jones
Status: Approved

II. ADDITION / DELETION OF AGENDA ITEMS

N/A

III. ANNOUNCEMENTS

Ms. Cable informed the Board that the FY 2020 applications have been received by July 1st. Every county except Calvert and Howard has submitted at least one application. Four counties submitted the optional "extra" applications permitted, with the final list of applicants due to MALPF by July 31st. The final total number of applicants to be submitted to DGS for appraisal will be around 200.

Ms. Cable also informed the Board that staff met with SHA staff as a follow up to an item presented at the June meeting. A revised request is anticipated to be submitted to the Board at the August meeting.

Finally, a new MALPF Office Secretary has been hired and will begin work on August 7th.

IV. EASEMENT AMENDMENTS

A. CARROLL COUNTY

1. 06-89-11 Reifsnider, Jon and Debra ~192.25 acres

Request – Carroll County:

Request for a 5-year extension to the validity of the preliminary release for the approved childs' lot for daughter Sarah Ann Brentlinger.

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for the extension.

Ms. Cable introduced the item. Ms. Bowers was available via conference call to address the Board.

Motion #2: To approve the request for a 5-year extension to the validity of the preliminary release for the approved childs' lot for daughter Sarah Ann Brentlinger

Motion: Jones Second: Wood
Status: Approved

2. 06-81-11 McIntire family ~165 acres

Request:

To retroactively approve a Deed of Conservation Easement held by the Land Preservation Trust (LPT) subject to condition that an Amended Deed of Conservation Easement be recorded which permits one tenant house on the property and provides that any conflicts between the Foundation Easement and the LPT Deed of Conservation Easement will be resolved in favor of the Foundation Easement as the first recorded instrument.

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Recommendation:

Staff recommends approval.

Ms. Cable introduced the item. Ms. Bowers was available via conference call to address the Board. Ms. Jones was available to address the Board as a representative from the overlay easement grantor, Land Preservation Trust. Ms. Jones stated the staff recommended conditions were acceptable.

Motion #3: To retroactively approve the Land Preservation Trust (LPT) overlay easement, subject to conditions that an Amended Deed of Conservation Easement be recorded which permits one tenant house on the property and provides that any conflicts between the Foundation Easement and the LPT Deed of Conservation Easement will be resolved in favor of the Foundation Easement as the first recorded instrument.

Motion: Jones Second: Wood
Status: Approved

B. FREDERICK COUNTY

1. 10-01-12 Moser, Laurie ~159 acres

Request - Frederick County:

To approve the relocation of a pre-existing dwelling.

Recommendation:

Staff recommends approval subject to the completion of an Amendment that will make the house non-subdividable and update/clarify the subdivision prohibition language. The approval is conditioned upon the removal of the existing dwelling, and restoration of the existing dwelling site to agricultural use, within 60 days after the use and occupancy permit is issued for the new dwelling, or sooner, if required under county law, and letters from the Soil Conservation District and County Planning and Zoning per COMAR 15.15.04.04. In addition, Staff also recommends the amendment to include language that waives the 25-year provision to request to termination of the easement (purchaser has agreed to this condition).

The Amendment will also describe the terms and conditions of the Foundation's approval for the dwelling relocation per COMAR 15.15.04.05.

Ms. Cable introduced the item. Ms. O'Neill was available via conference call to address the Board.

Motion #4: To approve the request to relocate the pre-existing dwelling, subject to the staff recommended conditions listed above.

Motion: Wood Second: Jones
Status: Approved

C. CECIL COUNTY

1. 07-06-08 McCreary Farm LLC ~119 acres

Request - Cecil County:

1) a land exchange to add ~1.44 acres to the easement property in exchange for the release of ~.7 acres of easement property on which the landowners' farmers' market is located;

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- 2) leniency regarding MALPF's requirement that the majority of products be produced on site (51% rule) pursuant to Section A11. Farm Markets and Road Side Stands of the Guidelines for Requested Uses of Land in the Maryland Agricultural Land Preservation Foundation Program (uses policy); and
- 3) the landowners moving their cottage-industry kitchen into an unused portion of the farmers' market building for a seasonal bakery.

Recommendation:

- 1) Staff recommends review of the land exchange pursuant to COMAR 15.15.11,
- 2) Staff recommends approval to grant leniency from the 51% rule, and
- 3) Staff recommends approval to allow the cottage-industry kitchen to be relocated to the farmers market building for seasonal use.

Staff recommends the following conditions to be included with any approval:

For the land exchange request:

- A) Approval of the land exchange by ACEP.
- B) If approved by ACEP, the landowners' request will be further subject to the following MALPF regulatory criteria:

For the expanded uses request:

1. approval of leniency from the 51% rule, so long as the majority of the produce and agricultural products sold at the market is locally or regionally produced. For purposes of this approval, "produce" includes produce and meat grown/raised on site and agricultural products that are locally or regionally produced;
2. products produced in the kitchen are to include locally or regionally produced produce, as defined herein;
3. Board confirmation that the use of food trucks on the property on Friday, Saturdays, and occasional holidays or approved on-site festivals or gatherings, is consistent and permissible under the MALPF Program;
4. food cooked/baked on site is produced on the landowners' farm or local farms;
5. the kitchen/bakery will not have open access for the public, nor will it be leased for use by other commercial operators. Food prepared in the kitchen is to be sold in the farmers' market or off-site. Any expansion of the use of the kitchen, including but not limited to direct access to the public, indoor seating, or preparation of non-local or non-regional foods will require further consideration by the local Board and MALPF.
6. The local Board heard these requests on June 13, 2019, and recommended approval. The local Board's approval of the expanded uses and kitchen is valid for the remainder of the 2019 season and the entirety of the 2020 season. If the local Board extends the terms of its June 13 approval, MALPF staff may administratively approve the recommended extension.
7. Within 30 days of the date of this letter the landowners shall sign and return a copy of the approval letter acknowledging and agreeing to the terms and conditions provided herein. The landowners shall enter into an unrecorded agreement relative to the farmers' market and kitchen uses as provided above, which shall remain in effect until the land exchange described above is consummated, or until the deadline set by the local Board expires, whichever occurs first.

Ms. Turner introduced the item. Mr. O'Connor, Ms. King, Mr. McCreary, and Mrs. McCreary were available to address the Board and answer questions.

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Land Exchange. Ms. Turner advised the Board that federal funding was involved in the purchase of the easement by the Farm and Ranch Lands Protection Program (FRPP), now under the auspices of the Agricultural Conservation Easement Program (ACEP). ACEP generally prohibits the release of lands eased with its funds (unless, in ACEP's discretion, such a request would provide extraordinary benefit to the United States). Mr. McCreary stated that if his father, the original grantor of the easement, had known of the federal funding and restrictions involved, he would not have consummated the easement transaction. Ms. Turner reminded Mr. McCreary, and advised the Board, that the Deed of Easement contains a Recital stating that the Grantor acknowledges receipt of federal funding for payment for the easement, and therefore, Grantor is subject to the provisions of the FRPP, n/k/a ACEP, federal program. Ms. Turner advised the Board that regardless of the federal restrictions on land exchanges, the landowners insist that MALPF forward the land exchange request to ACEP for consideration.

Expanded uses. Consideration of this request included MALPF's 51% rule policy in general, and as it specifically applies to the McCreary's farm market. The question arose as to what the landowners estimate the current percentage of on-site products being sold at the market (between 25% to well over 51% on any given day). There was further (unresolved) discussion as to how to measure/define "majority" in relation to the percentage of products sold at farm markets were grown or raised on site. It was suggested that "majority" could be calculated as an average of products sold over the course of a season. However, this suggestion was not further considered.

The Board confirmed that that the use of food trucks on the property on Fridays, Saturdays, occasional holidays, and for approved, on-site festivals and/or gatherings, is consistent with and permissible under the MALPF Program.

Motion #5: To approve the request for the expanded uses of the farm, incorporating staff recommended conditions 1-7 listed above.

Motion: Jones Second: Wood
Status: Approved

Motion #6: To approve the request for the land exchange, incorporating staff recommended conditions A & B listed above.

Motion: Wood Second: Jones
Status: Approved

V. NEW AGRICULTURAL PRESERVATION EASEMENT PETITIONS:

A. Harford County

1. 12-20-02 Kern, Joyce ~157.13 acres (includes unpaid acres)

Request is to approve the application designating a 0.64 acre area (including access) as a non-subdivideable permitted use envelope for the use of a cell tower. There are zero development rights associated with it. The area may be used for a cell tower lease for as long as a lease is current. After a period of one year after the expiration of the lease, the envelope will dissolve and the area shall be returned to agricultural use.

2. 12-20-03 Keyes, David & Kelly ~34.65 acres (withheld acres subtracted)

Request is to approve the application withholding ~3.7 acres from the easement with zero development rights associated with it. Withheld acreage is commercially zoned. There is a creamery operation on the property, with a store front open daily. The creamery operation is consistent with the Foundation's Permitted Uses Policy.

3. 12-20-04 Harkins, Herbert & Patricia ~148.05 acres (withheld acres subtracted)

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Request is to approve the application withholding ~3.0 acres from the easement with 1 development right associated. Withheld acreage is for the ability to create one future residential lot. There is also a ~2.56 acre Forest Conservation Easement on the property that will be included within the MALPF easement but will not be included in the compensation.

4. 12-20-08 Jones, Gordon, Lura, & Gurvis ~51.06 acres (includes unpaid acres)

Request is to approve the application designating 1-acre as a non-subdivideable building envelope from the easement with 1 development right associated, as located on the map.

Motion #7: To approve the Harford County requests as presented.

Motion: Jones Second: Wood
Status: Approved

B. Prince George's County

1. 16-20-01 Bonnie Breeze Farm, Inc. ~244.16 acres (includes unpaid acres)
c/o Dwayne Catterton

Request to approve the inclusion of a ~3.0 acre area as a designated envelope to allow a future utility easement to be constructed within the property that will be included in the MALPF easement for no compensation.

The Board discussed the configuration of the property with the railroad tracks and the PEPCO line separating portions of the property. As the owner actively farms the divided areas, and there is legal access to the entire property, the Board accepted the application configuration as presented.

Motion #8: To approve the Prince George's County request as presented.

Motion: Jones Second: Wood
Status: Approved

C. Queen Anne's County

1. 17-20-01 Leager, Donald ~94.168 acres (withheld acres subtracted)

Request is to approve the application withholding ~1.248 acres from the easement with zero development rights associated with it to adjust a property line with the neighboring property. There is also a ~15.368 acre Deed Restricted Open Space on the property that will be included within the MALPF easement but will not be included in the compensation.

2. 17-20-06 Blackdog Farms at Kingsdale LLC ~148 acres (w/held acres subtracted)
(c/o Chris Rhodes)

Request is to approve the application withholding ~74.86 acres from the easement with zero development rights associated with it for a future wetland restoration easement project to be established. Any MALPF easement offer will require a legal access to both the MALPF easement area as well as delineating access to the withheld area.

Motion #9: To approve the Queen Anne's County requests as presented.

Motion: Jones Second: Wood
Status: Approved

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VI. PROGRAM POLICY

A. 2020 Legislation – Committee Recommendations

Ms. Cornwell asked Ms. Turner to present the recommendations of the Legislative Committees to the Board. Ms. Turner requested the Board to consider the following three bills to forward to the Secretary of Agriculture to consider as departmental bills for the 2020 Legislative Session:

1. MALPF – Valuation of Easement (2-Year appraisals)

This bill would allow, but not require, Maryland Agricultural Land Preservation Foundation (MALPF) to use an appraised value for an application property up to two years. The bill would amend §2-511(d)(1) of the MALPF statute.

2. MALPF – Lot Location Approval

This bill will standardize the requirements for location approval of family lots and unrestricted lots, with the local Advisory Board providing a recommendation as to the location of a requested lot, which shall be subject to approval of the Foundation. The bill would amend § 2-513(b)(2)(ix) of MALPF's statute (family lots) and § 2-513(b)(3)(vi) of MALPF's statute (unrestricted lots).

3. MALPF – Application Cycle Closed - Formal Notice

The bill will clarify and differentiate when applications are rejected due to insufficient information or ineligible criteria versus when an application does not receive offers due to lack of funds at the end of the cycle. The bill would amend § 2-510(l)(1) of the MALPF statute.

Motion #10: To recommend the three bills to be presented to the Secretary of Agriculture to be considered as departmental bills for the 2020 Legislative Session.

Motion: Jones Second: Wood
Status: Approved

In addition, Ms. Turner asked the Board to establish a committee to investigate the possibility of establishing an Easement Valuation System (EVS) similar to the Rural Legacy Program, and other county easement programs, as an alternative to the appraised fair market value method to establish the easement value for MALPF easements.

Motion #11: To establish a committee to investigate an EVS for MALPF.

Motion: Jones Second: Klasmeier
Status: Approved

VII. INFORMATION AND DISCUSSION

A. End of Fiscal Year 2019 Inspection Report

Please refer to the list of counties for the inspection results for FY 2019. As of July 12, 2019, Baltimore, Kent, Somerset and Worcester Counties indicated they completed inspections, but they have not submitted all the reports. Dorchester County missed its goals and has sent a letter to the Board explaining their situation and requests an extension to complete inspections and submit reports.

Two counties are short of the 10% state inspection goal, however, Ms. Hoxter has accepted these values. Every year, Allegany County needed to submit 1 inspection. This year they have acquired enough easements that next year, they will need to conduct 2 inspections. Carroll County's reports were a few short because they counted subdivided easements reports as easements.

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Completed Inspections
Targets:

100%

10%

	COUNTY	FEDERAL			STATE				
		Percent	Completed	Total	Percent	Completed	Total		
01	Allegany	NA	%	NA	0	8	%	1	13
02	Anne Arundel	100	%	4	4	10	%	4	40
03	Baltimore	20	%	3	15	4	%	9	221
04	Calvert	100	%	3	3	19	%	6	32
05	Caroline	100	%	11	11	10	%	21	215
06	Carroll	100	%	10	10	9	%	33	363
07	Cecil	100	%	14	14	11	%	10	88
08	Charles	100	%	3	3	10	%	6	58
09	Dorchester	0	%	0	13	0	%	0	80
10	Frederick	100	%	12	12	11	%	14	131
11	Garrett	100	%	1	1	16	%	9	57
12	Harford	100	%	10	10	11	%	14	128
13	Howard	100	%	1	1	13	%	4	32
14	Kent	0	%	0	9	0	%	0	98
15	Montgomery	100	%	3	3	11	%	3	28
16	Prince George's	NA	%	NA	0	11	%	2	18
17	Queen Anne's	100	%	19	19	10	%	16	157
18	St. Mary's	100	%	13	13	10	%	11	107
19	Somerset	100	%	7	7	0	%	0	43
20	Talbot	100	%	6	6	11	%	8	72
21	Washington	100	%	11	11	11	%	8	71
22	Wicomico	100	%	8	8	11	%	6	53
23	Worcester	80	%	4	5	11	%	5	46

Motion #12: To grant Dorchester County an extension to September 1, 2019, for submitting the FY 2019 monitoring reports.

Motion: Jones Second: Cornwell
Status: Approved

B. Request to Close FY 19 Easement Acquisition Cycle Round One

Ms. Cable requested the Board to formally close the FY 2019 Round One offer cycle, so the Round Two offer cycle can begin in closed session today.

Motion #13: To close the FY 2019 Round One offer cycle.

Motion: Jones Second: Klasmeier
Status: Approved

C. News Articles

VIII. CLOSED SESSION

Mr. Allen 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.

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Motion #14: To adjourn the regular session at 10:50 a.m. 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: Jones Second: Klasmeier
Status: Approved

The Closed Meeting of the Board was held from 10:58 a.m. to 11:23 a.m. on July 23, 2019, 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: William Allen, Vice-Chair, Jerome Klasmeier, representing Comptroller Peter Franchot, Deborah Herr Cornwell, representing Secretary Robert McCord, Maryland Department of Planning, Julie Oberg, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture (via phone), Bernard Jones, Joe Wood, and J. Bruce Yerkes.

The following Board members were absent: Michael Calkins, Chair, Treasurer Nancy Kopp, Cathy Cosgrove, and Taylor Huffman.

The following legal representatives were also present during the closed session meeting: Justin Hayes, Assistant Attorney General, Maryland Department of Agriculture, and Nancy Forrester, Assistant Attorney General, Maryland Department of General Services. Joanna Kille, with the Treasurer's Office, was also present.

TOPICS DISCUSSED:

- A. Approval of June 25, 2019 Closed Session Minutes
- B. Status Report of Pending Legal Issues
- C. FY 2019 Round 2 Offers

Respectfully Submitted:



Michelle Cable, MALPF Executive Director

