

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
August 27, 2019**

Trustees Present:

Michael Calkins, Chair
William Allen, Vice-Chair
Jerome Klasmeier, representing Comptroller Peter Franchot
Treasurer Nancy Kopp
Deborah Herr-Cornwell, representing Secretary Robert McCord, Maryland
Department of Planning
Julie Oberg, representing Secretary Joseph Bartenfelder, Maryland Department
of Agriculture
Catherine Cosgrove
Taylor Huffman
J. Bruce Yerkes

Trustees Absent:

Bernard L. Jones, Sr.
Joe Wood

Others Present:

Michelle Cable, MALPF Executive Director
Diane Chasse, MALPF Administrator
Chana Turner, MALPF Administrator
Sarel Cousins, MALPF Administrator
Amanda Wilson, MALPF Fiscal Specialist
Kim Hoxter, MALPF Monitoring, Enforcement and Database Coordinator
Robert Day, MALPF Office Secretary
Justin Hayes, Assistant Attorney General, Department of Agriculture
Patrick Martyn, Assistant Attorney General, Department of General Services
Joanna Kille, Treasurer's Office
Donna Sasscer, St. Mary's County Program Administrator
Eric Freidly, MDOT-SHA
William Buettner, MDOT-SHA
Sonal Ram, MDOT-SHA
Joe Barley, Carroll Co. Land Owner
Jeanine Nutter, Prince George's County Program Administrator

Others Present By Phone Conferencing:

Adam Gibson, Somerset County, Program Administrator
Rob Tracey, Kent County, Program Administrator
Beth Beales, Caroline County, Program Administrator
Deborah Bowers, Carroll County, Program Administrator
Kaitlyn Clifford, Howard County, Howard County Government
Devyn King, Cecil County, Program Administrator
Donna Smith, Queen Anne's County Program Administrator

Mr. Calkins, Chair, called the meeting to order at 9:06 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 July 23, 2019.

Motion #1: To approve minutes from July 23, 2019, with correction noted by Ms. Cable.

Motion: Yerkes Second: Klasmeier
Status: Approved

II. ADDITION / DELETION OF AGENDA ITEMS

N/A

III. ANNOUNCEMENTS

Ms. Cable announced that Robert Day has joined MALPF as the new Office Secretary. She also informed the Board that the Maryland State Fair was open and encouraged people to attend if possible. Ms. Cable also encouraged and recommended the Board to open the link that was sent via e-mail to the Maryland Department of Planning's "Dashboard" link of land preservation in Maryland. It is very interesting.

IV. EASEMENT AMENDMENTS

A. CARROLL COUNTY

1. File # 06-88-12Ae Clear Ridge Farms, LLC (Joseph Barley) ~49.47 acres

Request –Carroll County:
Request approval for a tenant house.

Recommendation
Staff recommends approval of a tenant house.

Ms. Chasse introduced the item. Ms. Bowers was available by phone to address the Board.

Treasurer Kopp asked if more than one person can live in the tenant house. Staff said that yes more than one can live in the house, but the house is limited in size to 2,000 square feet.

Motion #2: Approve the request for a tenant house as presented.

Motion: Cosgrove Second: Yerkes
Status: Approved

2. File # 06-97-06 Culp, Stanley and Kimberly ~119.45 acres

Request – Carroll County:
Request approval for an owner's lot.

Recommendation:
Staff recommends approval.

Ms. Chasse introduced the item. Ms. Bowers was available by phone to address the Board.

Motion # 3: To approve the request off an owner's lot, up to 2.0 acres.

Motion: Allen Second: Cosgrove
Status: Approved

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B. ST. MARY'S COUNTY

1. File # 18-00-21A Burch Jr., F. Elliot ~92.0 acres

Request – St. Mary's County:

Request approval for up to 2.0 acres for a child's lot for Kelli Mattingly.

Recommendation:

Staff recommends approval.

Ms. Cousins introduced the item. Ms. Sasscer was available to address the Board.

Motion # 4: To approve the request for up to 2.0 acres for a child's lot for Kelli Mattingly.

Motion: Huffam Second: Oberg
Status: Approved

2. File # 18-99-11 Tennyson, Paul et al. ~ 195 acres

Request – St. Mary's County:

Request approval to overlay ~14.939 acres of MALPF-eased property with a Grant of Easement (overlay easement) to the Maryland Department of Transportation - State Highway Administration (MDOT SHA) for an easement for wetland and stream mitigation in connection with a road improvement project for State Highway MD 5 (Point Lookout Road) (the project), and to provide acreage for a mitigation bank.

Recommendation:

Staff recommends approval of the overlay easement pursuant to the Foundation's Water Resource Easement Overlays Policy dated March 26, 2019, subject to the Landowners, MDOT SHA and the Foundation entering into an escrow agreement to withhold 50% of the funds payable to the Landowners from MDOT SHA for and in consideration of the overlay easement. The escrow will remain in effect until the Landowners have entered into a corrective easement that 1) waives the Landowners' right to request termination of the easement after 25 years, and states that the Foundation's easement is perpetual; and 2) cures the subdivision violation described below. Both the Grant of Easement and the escrow agreement shall be subject to final review and approval of the Office of the Attorney General.

Ms. Turner introduced the item. Ms. Ram, Mr. Buettner, and Mr. Freidly, were available to address the Board. Treasurer Kopp expressed concern about the State paying the landowners for the overlay easement as the State had previously paid the landowners for a MALPF conservation easement over the same land. In response, discussion ensued regarding the use/s of marginal lands and the differences between MALPF's easement and the overlay easement. Purchase prices for easements are calculated, in part, by the percentage of qualifying soils of the entire property. Of the ~195 acres of the easement property, the ~14.939 acres proposed for the wetland site consist of some of the property's least productive soils. The property had been under a CRP lease, which compensates landowners to take marginal lands such as this acreage out of production.

Concern was also expressed about ~7 acres of the proposed wetland not being used to mitigate the MD Route 5 project, but to serve as a bank for other/future projects. MDOT SHA representatives explained that the credits could only be used within a "service area," which is an area designated within the same watershed of the proposed wetland. MDOT SHA further explained that banking is an important element in mitigating road improvement projects, as qualifying sites are difficult to identify. This was illustrated by MDOT SHA's response to the Board's question raised in the June, 2019 meeting about whether MDOT SHA's search satisfied the statutory requirement of condemning authorities to prove that there is "no reasonable alternative site," for the proposed wetland. NOTE: the question of "no reasonable alternative site" is now moot since that requirement only needed to be addressed for a release of acreage under or in lieu of condemnation, and is not required for an overlay easement.

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Motion # 5: Motion to approve the overlay easement pursuant to the Foundation's Water Resource Easement Overlays Policy dated March 26, 2019, for an ~7 ac. wetland mitigation and an ~7 ac. wetland mitigation bank in connection with the MD 5 road improvement project, and providing consent to SHA to enter the property before the escrow is settled, without citing a violation subject to:

1) the Landowners, MDOT SHA and the Foundation entering into an escrow agreement to withhold 50% of the funds payable to the Landowners from MDOT SHA for and in consideration of the overlay easement. The escrow will remain in effect until the Landowners have entered into a corrective easement that

a) waives the Landowners' right to request termination of the easement after 25 years, and states that the Foundation's easement is perpetual; and

b) cures the subdivision violation described below. Both the Grant of Easement and the escrow agreement shall be subject to final review and approval of the Office of the Attorney General;

2) Landowners agreement to update the SCWQP on the entire easement property to document the new wetland use;

3) SHA agrees and will be responsible for any negative impact to easement property outside of wetland site if damage caused as a result of the wetland creation and/or maintenance;

4) Consent to SHA to enter the property being withdrawn if the escrow is not established w/in 45 days of bd. approval; and

5) Receipt by MALPF of written approval from the St. Mary's Soil Conservation and Water Quality District stating that the Overlay practices will achieve the resource conservation purposes of the farm and are based on Natural Resource Conservation Service standards and specifications.

Motion: Allen Second: Cosgrove
Status: Approved

V. NEW AGRICULTURAL PRESERVATION EASEMENT PETITIONS:

A. Carroll County

1. 06-20-04 Groves Mill LLC (Gregory & Della Dell) ~157.13 acres
(includes unpaid acres)
Request to approve the application withholding 6 acres. The 6 acres will require a Declaration of Restrictions that documents one development right with the 6 acres.
2. 06-20-02 Red Properties, LLC ~38.906 acres
(withheld acres subtracted)

Request to approve the application, which is adjacent to a County-held easement of 51 acres, and which withholds 4.004 acres, made up of three pieces. There will be three Declaration of Restrictions, two of them will document no development rights and one of them will document one development right.

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Motion # 6: To approve the Carroll County requests as presented
 Motion: Cosgrove Second: Klasmeier
 Status: Approved

B. Cecil County

1. 07-20-06 Farmington Acres, LLC ~106.3054 acres
 (withheld acres subtracted)

Request to approve the application withholding 44 acres. Forty acres are part of a potential future MALPF parcel that lies on the opposite side of a public road and will not require a Declaration of Restriction. The additional 4 acres are zoned business local and will require a Declaration of Restriction that document no development rights associated with the 4 acres.

2. 07-20-09 Losten’s Dairy, LP ~581.822 acres
 (withheld acres subtracted)

Request to approve the application withholding ~8 acres from the easement with 2 development rights associated. Withheld acreage is for dwelling and buildings located on the parcel.

3. 07-20-11 Mason, Alan & Pamela ~166.29 acres (Include wetland uses, envelope area; withheld acres subtracted)

Request to approve the application withholding 4 acres from the easement with 2 development rights associated. Withheld acreage is for the ability to create two future residential lots. In addition, request approval of designating two areas of the property as non-subdivideable permitted use envelopes, ~8.6 acres for a solar project and ~9.8 acres for a stream restoration project. The areas and their designated access lanes will be included, but unpaid, in the MALPF easement. Both permitted use areas will never be subdivided and owned separately from the overall farm. In addition, when the solar project area is no longer used for the solar project, the area may be used for other non-residential commercial operations that are consistent with the rural landscape and permitted by Cecil County.

4. 07-20-12 McKeown Family, LLC ~220 acres
 (includes permitted use envelope)

Request to approve the application withholding designating a sand and gravel mining area, including access, of ~9.5 acres as a non-subdivideable permitted use envelope. The mining area and designated access lane will be included but unpaid, in the MALPF easement. The permitted uses area will never be subdivided and owned separately from the overall farm. In addition, request approval to acknowledge an existing private landing strip on the property that has the ability to expand as previously approved by the duly authorized organization. Once use of the mining area is discontinued for a year, standard easement language will apply.

5. 07-20-13 Quiet Acres Farm, Inc., and John Loller, Trustee ~238+ acres
 (withheld acres subtracted)

Request to approve the application withholding ~2 acres from the easement with 1 development right associated. Withheld acreage is for the ability to create one future residential lot.

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6. 07-20-16 Vosters, May Lee Howard ~240.0 acres
(withheld acres subtracted)

Request to approve the application withholding 9 acres from the easement with 1 development right associated. Withheld acreage is for an existing dwelling and future meadery to be separate parcels within the withheld area. The one development right retained will be used for the portion of the withheld area that allows the dwelling. No development right is required for the meadery operation and a future dwelling may not be constructed or maintained upon the parcel containing the meadery.

Motion # 7: To approve the Cecil County requests as presented

Motion: Yerkes Second: Herr-Cornwell
Status: Approved

C. Talbot County

1. 20-20-03 Firth Trusts ~301.869 acres
(Lou Satchell and Margery Keen, Trustees) (withheld acres subtracted)

Request to approve the application withholding 40 acres. The 40 acres will require a Declaration of Restrictions that documents two development rights with the 40 acres. The withheld acreage will be accessed by a right-of-way easement.

2. 20-20-06 Harrison, James and Annette ~28 acres
(withheld acres subtracted)

Request to approve the application withholding 2 acres. The 2 acres will require a Declaration of Restrictions that documents one development right with the 2 acres. The withheld acreage will be accessed by a right-of-way easement.

3. 20-20-08 Dulin, Robert & Althea ~167.80 acres
(withheld acres subtracted)

Request to approve the application withholding 5.4 acres. The 5.4 acres will require a Declaration of Restrictions that documents one development right with the 5 acres. The 0.4 acres will not have a development right as it is the right-of-way for Lot 2. There is also 13.47 acres of protected open space that will be covered by the Foundation easement but will not be paid acres.

4. 20-20-10 Gannon, Thomas & Dorothy ~148.02 acres
(withheld acres subtracted)

Request to approve the application withholding 3 acres. The 3 acres will require a Declaration of Restrictions that documents one development right with the 3 acres.

5. 20-20-11 Dulin, Michael and Theresa ~70 acres
(withheld acres subtracted)

Request to approve the application withholding 3 acres. The 3 acres will require a Declaration of Restrictions that documents one development right (existing house) with the 3 acres.

Motion # 8: To approve the Talbot County requests as presented

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5. 18-20-12 Hays, William N. Jr., Winsley A., & James R. ~171 acres
(withheld acres subtracted)

Request to approve the application withholding 1 acre with 1 development right associated. Withheld acreage is for future development around barn.

6. 18-20-13 Lyon, William V. Sr. & Rose Marie ~71.68 acres
(withheld acres subtracted)

Request to approve the application withholding 5 acres with 1 development right associated. Withheld acreage is for the ability to create one future residential lot.

Motion # 11: To approve the St. Mary's County request as presented, with the exception of 18-20-11, as it had a separate approval motion.

Motion: Huffman Second: Cosgrove
Status: Approved

E. Washington County

1. 21-20-05 Horst, Keith & M Roseanne & John & Linda ~193.61 acres
(includes unpaid acres)

Request to approve the inclusion of a 20.49 acre Conservation Reserve Enhancement Program easement area within the property that will be included in the MALPF easement for no compensation.

2. 21-20-06 Horst, John A. Linda F. & Brent E. & Mary E. ~119.19 acres
(includes unpaid acres)

Request to approve the inclusion of a 2.32 acre forest conservation easement area within the property that will be included in the MALPF easement for no compensation.

3. 21-20-08 Izer, Sandra D., Trustee ~127.07 acres
(Includes unpaid acres)

Request to approve the inclusion of a 4.02 acre forest conservation easement area within the property that will be included in the MALPF easement for no compensation.

Motion #12: To approve the Washington County requests as presented.

Motion: Herr-Cornwell Second: Oberg
Status: Approved

F. Worcester County

1. 3-20-06 Everett Glenn Holland, Trustee of Everett Glenn ~53.81 acres
Holland Revocable Trust & Jean Truitt Holland (withheld acres subtracted)
Trustee of Jean Truitt Holland Revocable Trust

Request to approve the application withholding 2 acres from the easement with 1 development right associated. Withheld acreage is for an existing home that will be subdivided from the property. Offer is contingent on 23-19-08 going to settlement since the easement application acreage is approximate and there is a possibility that the surveyed acreage may not meet MALPF acreage requirements equaling 50-acres without the inclusion of the 23-19-08 easement parcel.

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2. 23-20-08 Everett D. Holland Life Estate and Mark Holland ~199.12 acres (withheld acres subtracted)

Request to approve the application withholding 0.41 acres from the easement. Withheld acreage is for a donation to St. James United Methodist Church for a burial site.

Motion #13: To approve the Worcester County requests as presented

Motion: Herr-Cornwell Second: Klasmeier
Status: Approved

G. Frederick County

1. 10-20-02 Checchia, Antonio and Jennifer ~144.0422 acres (withheld acres subtracted)

Request to approve the application withholding 8 acres. The 8 acres will require a Declaration of Restrictions that documents one development right with the 8 acres.

2. 10-20-10 Shank Family Farm, LLC ~122.4 acres (withheld acres subtracted)

Request to approve the application withholding 35.6 acres, 28 acres are non-contiguous land, 7 acres are eased by Dominion Power and 0.6 acres are unusable land on the west side of Tabor Road. A Declaration of Restriction that document no development rights is required for the 7.6 acres.

Motion #14: To approve the Frederick County request as presented

Motion: Herr-Cornwell Second: Allen
Status: Approved

VI. PROGRAM POLICY

A. Withheld Acreage Policy Discussion

Request:

MALPF Staff would like the Board to review the current withheld acreage policy and determine whether or not it should be revised, specifically regarding guidance when withholding acreage surrounding existing dwellings (if any changes are recommended, they would not apply until the FY2021 application cycle).

Ms. Cable discussed the current Withheld Acreage Policy with the Board and asked whether the Board wanted to make any changes. Overall the Board is comfortable with the policy as-is, since it allows the Board the ability to review each application request on a case-by-case basis. The Board asked Staff to revise the Policy to add an overall statement that encourages/stresses the importance and benefit of each easement property retaining the right to a dwelling (whether that is retaining an existing dwelling or through lot selection).

The Board decided not to establish a committee to revisit the Withheld Acreage Policy at this time, but will keep it under consideration as the rest of the FY 2020 applications are brought before the Board to review any withheld acres or permitted uses envelopes.

VII. INFORMATION AND DISCUSSION

N/A

VIII. CLOSED SESSION

Mr. Calkins asked for a motion for adjournment of the meeting to move into a closed session,

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pursuant to the applicable provisions of General Provisions Article Section 3-305 (b): (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 #15: To adjourn the regular session at 11:58 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: Cosgrove Second: Herr-Cornwell
Status: Approved

The Closed Meeting of the Board was held from 12:07 p.m. to 12:13 p.m. on August 27, 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):

(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, Jerome Klasmeier, representing Comptroller Peter Franchot, Treasurer Nancy Kopp, Deborah Herr Cornwell, representing Secretary Robert McCord, Maryland Department of Planning, and Julie Oberg, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture, William Allen, Cathy Cosgrove, Taylor Huffman, and J. Bruce Yerkes.

The following Board members were absent: Bernard Jones and Joe Wood,

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

TOPICS DISCUSSED:

- A. Approval of July 23, 2019 Closed Session Minutes
- B. Consideration of FY 2019 option contract.
- C. Advice from legal counsel.

Respectfully Submitted:



Michelle Cable, MALPF Executive Director