

MALPF Board Open Meeting Minutes 08-23-2016

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
August 23, 2016**

Trustees Present:

Bernard L. Jones, Sr., Chair
William Allen
Susanne Brogan, representing Treasurer Nancy Kopp (by web conferencing)
Michael Calkins
Catherine Cosgrove
James Eichhorst, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture
Jerome Klasmeier, representing Comptroller Peter Franchot
Tom Mason
Donald Moore
Ralph Robertson
Dan Rosen, representing Secretary Wendi Peters, Maryland Department of Planning
Milly Welsh

Trustees Absent:

Others Present:

Kevin Atticks, Grow and Fortify
Jon Azrael, Baltimore County Landowner
Tim Boudall, Baltimore County RES
Lynn Buhl, Maryland Department of the Environment
Michelle Cable, MALPF Administrator
James Caldwell, Howard County Government
Tom Croghan, Anne Arundel County, MWA
Lindsay Demarzo, Howard County Government
Tamekia Dent, MALPF Office Secretary
Kelly Dudeck, Grow and Fortify
Robert Ensor, Howard County Soil Conservation District
Howie Feagh, Howard County
Mitchell Ford, Howard County Planning Tech
Nancy Russell-Forrester, Assistant Attorney General, Department of General Services
David Godley, Howard County, RES
William Gorski, Anne Arundel County, Planner
Justin Hayes, Assistant Attorney General, Department of Agriculture
Kim Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
George Kelly, Howard County, RES
Jason Keppler, MDA, Nutrient Management
Joy Levy, Howard County Program Administrator
Stanislaw Maliszewski, Baltimore County Landowner
Charles Mewshaw, Carroll County Landowner
Sherry Mewshaw, Carroll County Landowner
Jeanine Nutter, Prince George's County Program Administrator
Morenike Oyenusi, Howard County
David Patrick, Howard County
Patricia Pittman, Anne Arundel County Landowner
Barbara Politto, Anne Arundel County Program Administrator
Donna Sasscer, Saint Mary's County Program Administrator
Lewis Taylor, Howard County

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Chana Turner, MALPF Administrator
Julia Vitkoff, Baltimore County Landowner
Carol West, MALPF Executive Director
Amanda Wilson, Fiscal Specialist
Diane Chasse, MALPF Administrator

Others Present By Web Conferencing:

William Amoss, Harford County Program Administrator
Chris Boggs, Washington County Assistant Program Administrator
Deborah Bowers, Carroll County Program Administrator
Debbie Herr-Cornwell, Caroline County Program Administrator
Kaylee Justice, Baltimore County Office Assistant
Eric Seifarth, Washington County Program Administrator
Donna K. Landis-Smith, Queen Anne's County Program Administrator
Katrina Tucker, Kent County Program Administrator

Bernard L. Jones, Sr., 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 from June 28, 2016.

Motion #1: To approve minutes from June 28, 2016.

Motion: Susanne Brogan Second: Michael Calkins
Status: Approved

II. ADDITION / DELETION OF AGENDA ITEMS

N/A

III. ANNOUNCEMENTS

Ms. West requested volunteers to serve on the Uses Committee. Mr. Rosen will chair the committee. Mr. Calkins and Mr. Allen will serve. Ms. Cable will contact the County Program Administrators to ask for volunteers.

The Board was provided an updated roster of MALPF Board members. From the At-Large members, they will be voting for a Vice-Chair (preferably for a member whose term will run longer than June 30, 2017). A vote is to take place at the September 27, 2016 meeting.

Ms. West informed the Board that a 21-member group will be visiting from China to learn about the Program on September 2 from 10 – 12 noon. Board members are invited to join the meeting if they are available.

IV. EASEMENT AMENDMENTS

A. HOWARD COUNTY

13-80-06D Patrick, B. David, Dennis, and Michael ~91 acres

Request - Howard County:

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Request to approve a 15+ acre stream restoration easement as an overlay on the MALPF easement property.

Recommendations:

See background below for analysis for multiple recommendations.

Option A: If Board determines to review the request subject to COMAR 15.15.01.17.F - Granting Easements and Rights-of-Way, then Staff does not recommend approval.

Option B: If Board determines to review the request subject to the requirements of COMAR 15.15.13. - Guidelines for Forest Easement Overlays, which Staff believes is the most applicable to the current request, then the configuration of the easement area must be reduced to meet the maximum size limitation of 10% of the property size (~9+ acres).

Option C: If the Board determines to review the request subject to the 1997 Foundation Policy on Overlay easements, then Staff recommends approval of the request with conditions.

Regardless of which option the Board decides to apply to the current request, Staff recommends the following conditions to be included with any potential approval:

1. The MALPF easement must be amended to waive the 25-year provision to request to termination of the easement.
2. The county-held restoration easement must be reviewed and approved by MALPF staff and assistant attorneys general. Specifically:
 - a. must reach agreement on language acknowledging MALPF's superior right in title, and
 - b. must reach agreement on the language that allows for timber harvesting – whether or not Howard County has the sole authority to approve any future harvest in the overlay easement area.

Ms. Cable introduced the item. Ms. Levy, Ms. DeMarzo, and Mr. Patrick were available for questions or comments. Mr. Patrick gave brief history of his family ownership of the farm, as he is 4th generation farmer. Mr. Patrick stated his opinion that the improvements the stream restoration project will provide not only helps for environmental reasons, but also the overall health of the farm.

Ms. DeMarzo informed the Board she was the lead county staff person working on this project. She summarized the project and showed the Board a video recorded by a drone that flew over the property so the Board could see the property and the stream that would be restored. Ms. DeMarzo then brought up the following individuals to speak on behalf of their respective organizations regarding their support/partnership of this project:

Bob Ensor, Howard County Soil Conservation District
Howie Feaga, Howard County Farm Bureau and Howard County Ag Advisory Board
Lynn Buhl, MD Department of the Environment
Lewis Taylor, Howard County Office of Law
David Godley, Resource Environmental Solutions, LLC

At 9:50 a.m. Mr. Jones asked for a motion to temporarily adjourn the meeting to move into a closed session, pursuant to the applicable provision of General Provisions Article Section 3-305 (b): (7) to consult with counsel to obtain legal advice.

Motion #2: To adjourn the regular session to move into a closed session to consult with counsel to obtain legal advice.

Motion: James Eichhorst Second: Catherine Cosgrove

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Status: Approved

A Closed Session meeting was held from 9:55 to 10:14, at which time Mr. Jones asked for a motion to reconvene the open session meeting.

When the open session reconvened, the Board asked Ms. DeMarzo who from Howard County would be responsible for monitoring the terms of the easement. Ms. DeMarzo informed the Board that it would be a combination of monitoring. The first year after the restoration is completed the contractor, RES, is responsible for maintenance and monitoring. After that, the County would share monitoring responsibility with the Howard County Soil Conservation District staff as well as the Bureau of Environmental Services.

The Board asked Mr. Taylor whether Howard County would be willing to consider the Foundation as a co-holder of the stream restoration easement. Mr. Taylor informed the Board that option had not been considered or discussed, but they would be willing to pursue the idea. The Board also discussed the concern regarding the stream easement language that gives Howard County the exclusive authority to deny future timber harvesting. After discussion, Howard County agreed to work with MALPF Staff and attorneys to provide the Foundation the ability to review and reverse any denial the County may issue regarding future timber harvesting requests. With this added language, the Board determined that it wouldn't be necessary to co-hold the easement.

The Board discussed the conditions recommended in the staff memo with the County and Mr. Patrick, asking them to confirm their consent with those conditions. Mr. Patrick stated he and his family would agree to remove the 25-year termination clause. Ms. DeMarzo and Mr. Taylor agreed to work with MALPF staff and attorneys on the easement language to acknowledge the MALPF easement as superior right in title as well as revise the language regarding the possibility of timber harvesting in the stream restoration easement area.

- Motion #3: To approve "Option C" of the staff memo of a 15+ acre stream restoration easement as an overlay on the MALPF easement property in accordance with the 1997 Foundation Policy of Overlay Easement, subject to the following conditions:
1. The MALPF easement must be amended to waive the 25-year provision to request to termination of the easement.
 2. The county-held restoration easement must be reviewed and approved by MALPF staff and assistant attorneys general. Specifically:
 - a. must reach agreement on language acknowledging MALPF's superior right in title, and
 - b. must reach agreement on the language that allows the Foundation to review and reverse any denial from Howard County for a future timber harvesting request in the overlay easement area.

Motion: Don Moore Second: Milly Welsh
Abstain: Michael Calkins
Status: Approved

B. HARTFORD COUNTY

- 1) 12-83-02e O'Neill, Patrick and Bettina O'Neill Collie ~106 acres

Request – Hartford County:

Request to re-approve a 2-acre lot from the easement for a child's lot for Bettina O'Neill Collie.

Recommendation:

Staff recommends re-approval.

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Ms. Chase introduced the item. Bill Amoss was not available for questions or comments, as he was no longer on the Go-To Meeting.

Motion #4: To re-approve the 2-acre child's lot for Bettina O'Neill Collie.

Motion: Michael Calkins Second: Catherine Cosgrove

Status: Approved

C. CARROLL COUNTY

1) 06-91-52 Forney, Thomas and Barbara ~146 acres

Request – Carroll County

Request to approve re-assignment of child lots, and to increase the size of both 1.0-acre child lots to up to 2.0 acres each

Recommendation

Staff recommends approval of the request.

Ms. Turner introduced the item. Ms. Turner and Ms. Deborah Bowers were available for questions or comments.

Motion #5: 1) That the size of each lot be increased from 1.0 acre to up to 2.0 acres; 2) that the lot originally approved for David be relocated ~140' from its originally-approved location to provide adequate distance from a 100' stream buffer; and 3) that the lots be swapped so that Thomas Jr. will use the lot location previously approved for David, and that David will use the lot location previously approved for Thomas, Jr.

Motion: Catherine Cosgrove Second: Michael Calkins

Status: Approved

2) 06-83-04Be Mewshaw, Charles III and Sherry ~61 acres

Request – Carroll County

Request to approve winery.

Recommendation

Staff recommends approval of the request.

Ms. Turner introduced the item. Mr. Mewshaw, Mrs. Mewshaw, and Ms. Bowers were available for questions or comments.

Motion #6: To approve the winery request as presented, subject to conditions provided in the Foundation Staff Report.

Motion: Milly Welsh Second: Jerry Klasmeier

Status: Approved

3) 06-84-01e Schisler, Bernard ~182 acres

Request- Carroll County

Request to approve child lot.

Recommendation

Staff recommends approval for the exclusion of up to 2.0 acres for a child lot for Jessica Meri Beall.

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A. N/A

VI. PROGRAM POLICY

A. 2017 Legislation Update:

Discussion

VII. INFORMATION AND DISCUSSION

A. End of Fiscal Year 2016 Inspection Report

B. Presentation on Agri-tourism – Kevin Atticks/Kelly Dudeck, Grow and Fortify

C. News Articles

VIII. CLOSED SESSION

Bernard L. Jones Sr. 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): (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 #10: To adjourn the regular session to move into a closed session 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
Status: Approved

Second: Michael Calkins

The Open Board Meeting was adjourned at approximately 11:50 a.m.

The Closed Meeting of the Board was held from 12:05 p.m. to 12:40 p.m. on August 23, 2016 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: Bernard L. Jones, Sr., Chair, William Allen, Susanne Brogan, representing Treasurer Nancy Kopp (by web conferencing), Michael Calkins, Catherine Cosgrove, James Eichhorst, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture, Jerome Klasmeier, representing Comptroller Peter Franchot, Tom Mason, Donald Moore, Ralph Robertson, Dan Rosen, representing Secretary Wendi Peters, Maryland Department of Planning, Milly Welsh

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

TOPICS DISCUSSED:

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- A. Approval of June 28, 2016 Closed Session Minutes
- B. Status Report of Pending Legal Issues
- C. 03-90-06 Zastaria, LLC – Sign Complaint
- D. 03-80-03 Peters, William & Craig – Request for Civil Penalties

Respectfully Submitted:



Carol S. West, MALPF Executive Director