

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
September 23, 2014

TRUSTEES PRESENT:

John Draper, Jr., Chair
Bernard L. Jones, Sr., Vice Chair
Susanne Brogan, representing Treasurer Nancy Kopp
Michael Calkins
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 Richard E. Hall, Maryland Department of Planning
Mary Ellen Setting, representing Secretary Earl F. Hance, Maryland Department of Agriculture

TRUSTEES ABSENT:

Craig Highfield

OTHERS PRESENT:

Jessica Armacost, Maryland Department Agriculture
Deborah Bowers, Carroll County, Acting Program Administrator
Scott Bowling, Charles County, Landowner
Michelle Cable, MALPF Administrator
Diane Chasse, MALPF Administrator
Rama Dilip, MALPF Administrative Specialist
Nancy Forrester, Assistant Attorney General, Department of General Services
Laura Frock, Carroll County, Landowner
Angela Gaither, MALPF Secretary
Carla Gerber, Kent County, former Program Administrator
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
Kim Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Stephen O'Connor, Cecil County, Program Administrator
Charles Rice, Charles County, Program Administrator
Ralph Robertson, Carroll County former Program Administrator
Noah Schaeffer, Carroll County, Landowner
Martin Sokolich, Talbot County, Program Administrator
Katrina Tucker, Kent County, Program Administrator
Chana Turner, MALPF Administrator
James Wallace, MDA, Director of Administrative Services
Brenda Fleming Warren, Howard County, Landowner
Brian Warren, Howard County, Landowner
Carol West, MALPF Executive Director

OTHERS PRESENT BY WEB CONFERENCING:

Bill Amoss, Harford County, Program Administrator
Debbie Herr-Cornwell, Caroline County, Program Administrator
Fatimah Hasan, Prince George's County, National Capital Area Planning
Ned Sayre, Harford County, Assistant Program Administrator

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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: August 26, 2014 Minutes with changes.

Motion #1: Approve minutes for August 26, 2014.

Motion: Patricia Langenfelder Second: Michael Calkins
Status: Approved

II. ADDITION / DELETION OF AGENDA ITEMS

A. NONE

III. ANNOUNCEMENTS

Ms. West gave an update of the following announcements:

- A. One Closed Session Item was added to the agenda.
- B. The Maryland Million Event is scheduled for October 18, 2014 and the Board members were presented with VIP invitations for them and a guest.
- C. Advised the Board members that the Ethics forms will no longer be submitted on paper and must be filed electronically.
- D. Additional news articles were handed out at the Board Meeting.

IV. EASEMENT AMENDMENTS

A. HOWARD COUNTY

1. 13-82-06 Fleming, Shirley ~176.4 acres

Request –Howard County:

Request to exclude up to 2.0 acres from the easement for a child's lot for Brenda Lee Fleming-Warren.

Recommendation:

Staff recommends approval. Staff considered a similar Board decision from August regarding family lot locations and order of releases. The present request is different because the location of the lot does not impede access for any agricultural equipment nor does it create a challenging configuration of fields for the on-the-ground operation of the farm. The agenda item from August presented these challenges and is therefore distinguishable.

Background:

Shirley Fleming is an original owner of the easement property. The easement was established in May 1985. There are two pre-existing dwellings documented on the easement property. In July 2005, a child's lot location was approved for this easement property for Scott Fleming, but has not yet been released.

Brenda's child lot will be located internally on the property, near a residential lot that was excluded from the easement area and is currently occupied by Shirley Fleming. Brenda's proposed child's lot is also adjacent to the previously approved (but not yet released) child's lot assigned to Scott Fleming. Access to the lot will use existing farm lanes. The County has stated that the lot does not require fee simple ownership of an access lane. Therefore, the proposed lot will not require any road frontage dedication.

The lot is not located adjacent to a public road, along the perimeter of the easement, nor adjacent to an

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existing residential lot. However, the lot will utilize existing access lanes, and if the previously approved child's lot for Scott Fleming is released and built upon, the lots will be clustered with the existing residential lot that was never included in the easement. In addition, the family has chosen two additional lot locations for the remaining two children of the original owners. The applicant proposes to cluster all four child lots, sharing the access lane adjacent to the existing residential lot. The Foundation's Lot Location Policy favors clustered dwellings and use of existing access lanes shared by those dwellings. The aerial map shows the location of the current lot request, the previously approved location for Scott's lot, as well as the planned location for the additional child lots.

Shirley Fleming and Brenda Fleming-Warren have provided additional information that addresses the reasons behind the location of the lot for Brenda, in regards to the Foundation's Lot Location Policy preferences.

The easement property still meets minimum soils requirements after the release of the child's lot. The request has been approved by the County and is in accordance with all County requirements. The reimbursement amount will be \$1,000.00 per-acre being released.

Additional Information:

MALPF Staff inspected this easement property in June 2013. Staff sent notice to the owner of several matters that need to be addressed. The owners have been responsive and are working to clean up the easement property and remove the two house trailers from the farm. They have been given an October 1, 2014, date to resolve the matters (second extension request).

Ms. Cable presented the item. Mr. Brian Warren and Ms. Brenda Fleming-Warren, landowners were available for questions and comments.

Motion #2 Approve request to exclude up to 2.0 acres from the easement for a child's lot for Brenda Lee Fleming-Warren.

Motion: James Norris Second: Eugene Roberts, Jr.
Status: Approved

B. CHARLES COUNTY

- | | | |
|--------------|--|------------|
| 1. 08-00-01c | Bowling, Lloyd S., Sr. &
Westwood Manor Farm, LLC | ~165 acres |
| 08-94-05 | Wolfe, Nancy | ~354 acres |

Request – Charles County:

Request a retroactive approval of an agricultural subdivision that reconfigures two easements into a ~171 acre easement property and a ~348 acre easement property. Approximately 6 acres will be transferred from easement 08-94-05 to easement 08-00-01c.

Recommendation:

In accordance with the Foundation's Agricultural Subdivision regulations, Staff recommends approval.

Background:

Easement 08-00-01c (the Northern Easement): Winifred G. Bowling and W.W. Bowling & Sons Limited Partnership were the original grantors of the easement; established in 2002. There are no pre-existing dwellings documented on this easement. The easement currently consists of two tax parcels: Parcel 107, owned by Lloyd S. Bowling, Sr. and part of Parcel 112, owned by Westwood Manor Farm, LLC. No requests have been made to the Foundation regarding this easement property.

The Northern Easement was subdivided creating internal boundary lines of two separate parcels owned differently. Lloyd Bowling, Sr. will convey Tax Parcel 107 to Westwood Manor Farm, LLC, and merge the entire easement property under one tax parcel. This will resolve that aspect of subdivision violation impacting just the Northern Easement.

Easement 08-94-05 (the Southern Easement): Walter W. Bowling, Jr. and W.W. Bowling & Sons Limited Partnership were the original grantors of the easement; established in 1998. There is one pre-existing dwelling documented on this easement. The easement currently consists of two tax parcels: part of Parcel 112, owned by Westwood Manor Farm, LLC, and Parcel 13, owned by Nancy Wolfe. No requests have been made to the Foundation regarding this easement property.

Nancy and Lawrence Wolfe acquired Parcel 13 in 2006, which was the majority of the Southern Easement. Lawrence Wolfe is deceased. The Bowling family retained ~6 acres to the north of an access lane that runs between the two easement properties, part of what is now Parcel 112, which was originally included in the Southern Easement that MALPF acquired in 1998. It is this division of the Southern Easement that is the subject of the current retroactive agricultural subdivision request being presented today.

Subdivision Regulation Criteria:

Under COMAR 15.15.12.05 (Previously Unapproved Subdivisions), if the Board approves an agricultural subdivision, approval shall accommodate a plan that the Foundation has determined will benefit the agricultural operation. If the Foundation does not approve the agricultural subdivision, the land shall be restored to its original configuration under the easement. The required Corrective Easements may include other additional terms, conditions, waivers, or restrictions that the Foundation considers appropriate to protect the agricultural purpose and the future profitability of resulting divided parcels. The regulations provide landowners the ability to request a retroactive subdivision if the following conditions are met:

C. Requirements. An approval of the agricultural subdivision shall require that the owners comply with all of the requirements of this chapter, but, if any of the resulting divided parcels of the subdivision are less than 50 acres, the Foundation may waive the 50-acre requirement if:

(1) At the time of the subdivision:

(a) The Foundation's regulations permitted the resulting divided parcels to be less than 50 acres;
or

The subdivision will transfer ~6 acres from one easement and join it into another MALPF easement. The subdivided parcel is less than 50 acres, but meets the exception criteria since it will be joined with another MALPF easement property that is currently greater than 50 acres.

(b) The subdivision met the requirements of Regulation .04F of this chapter.
Not applicable.

(2) The subdivision served an agricultural purpose;

The 6-acre area to be divided from the Southern easement and joined with the Northern Easement consists of a shallow water area and woodlands. Much of both easement properties are enrolled in the Conservation Reserve Program, establishing enhancement for areas of marginal lands, or wetlands, that are not conducive or productive farmland. The shallow water area in the 6-acres in question allows for a natural collection area of water that provides habitat for water fowl. While this may not seem to be an obvious agricultural purpose, establishing water collection/retention areas can benefit the surrounding agricultural fields for drainage in wet areas, as well as help control water runoff impacting the internal farm lanes and alleviate run off and erosion issues.

(3) The subdivision enhanced or had no effect upon the agricultural operations being conducted upon the land;

The subdivision has had no effect on the agricultural operations being conducted on either the Northern or Southern Easement properties. These are both large easement properties that the division of 6-acres from one to the other does not have any noticeable impact on land use, and is beneficial from a management aspect as the property line now follows the road way; providing a clear delineation of the boundaries between the properties.

(4) The resulting divided parcels have sustained agricultural production independent of each other from the time of the subdivision;

The Northern and Southern Easements have sustained successful, independent operations since the division occurred in 2006. The owners of each easement have managed a complimentary operation of the properties over the years, including active agricultural areas as well as enhancing wetland and woodland areas on the properties.

(5) The resulting divided parcels still meet minimum soils requirements, as provided by COMAR 15.15.01.03D; and

The reconfigured easement properties both consist of over 85% qualifying soils (wetland acres are not included in the percentage calculation of qualifying soils per MALPF Regulations).

(6) The landowners present evidence satisfactory to the Foundation to make a determination that the resulting divided parcels have sufficient potential to sustain agricultural production independent of each other in the future.

Based on information provided by the landowners, Foundation Staff believes the two reconfigured easement properties have the ability to sustain agricultural operations independent from each other in the future.

In accordance with the regulations: (1) the owners have stated that Westwood Manor Farm, LLC will be responsible for the expenses associated with the transaction and corrective easement process; (2) the owners have been informed that a new perimeter survey may be required as part of the corrective easement transaction; and (3) that the termination request provision will be extinguished through the corrective easements for both newly configured easement properties. Since the current owners of both easements are subsequent owners, no new residential lots are permitted on either property. The Southern Easement will continue to retain the full rights associated with the one pre-existing dwelling.

The owners will be informed that this request is subject to the newly effective Agricultural Subdivision Regulations (effective 9/1/2014), with the following condition. COMAR 15.15.12.07 states:

07. Requirements upon Approval.

C. If the funds and documentation required by this regulation are not provided by the landowner to the Foundation within 3 years of Foundation board approval, then, unless an extension request is submitted within 3 years and approved by Foundation staff, the approval is void.

This request has been approved by the local advisory board and meets Planning & Zoning requirements.

Ms. Cable presented the item. Mr. Charles Rice, Program Administrator of Charles County, and Mr. Scott Bowling, son of landowner and representative for Westwood Manor Farm, LLC, were available for questions and comments.

Discussion:

Mr. Bowling expressed his appreciation to present this request to the Board, and provided a history of the multi-generational ownership of these farms in the Bowling family. The transfer between family members created the subdivision violation of the easement. The family didn't realize the easement boundary line did not follow the farm lane. The subdivision of the easement was not intentional. He confirmed the fact that if approved, Westwood Manor Farm, LLC will be responsible for the expenses associated with the transaction.

Motion #3 Approve request of a retroactive agricultural subdivision that reconfigures two easements into a ~171 acre easement property and a ~348 acre easement property. Approximately 6 acres will be transferred from easement 08-94-05 to easement 08-00-01c.

Motion: Eugene Roberts, Jr. Second: Mary Ellen Setting
Status: Approved

C. KENT COUNTY

1. 14-06-03 McHenry, Howard and Rebecca ~100 acres

Request - Kent County:

Request to relocate a previously-approved child's lot, and to retain the right to relocate and rebuild the pre-existing dwelling site at some point in the future. Relocating the child's lot will require demolishing the pre-existing dwelling. The relocated pre-existing dwelling site will require location approval by the MALPF Board, and shall be reviewed by the Board pursuant to COMAR 15.15.04.

Recommendation:

MALPF Staff recommends approval.

Background:

Mr. and Mrs. McHenry are the original grantors of the easement established December 6, 2007. The property has one pre-existing dwelling as designated on the attached map. On October 25, 2011, the MALPF Board of Trustees approved a lot exclusion of 1.5 acres for a child's lot for the owners' son, Dudley. There have been no other requests on this farm.

Payback in the amount of \$4,200.00 was tendered in December, 2011, however, the Preliminary Release and Agreement was never completed by the landowners.

The owners are now requesting the approved child's lot be relocated, shifting it slightly north. The newly-configured lot will partially overlap the current pre-existing dwelling site. The existing farm lane will continue to serve as access to the proposed child's lot.

In order to relocate the child's lot, the County requires demolition of the pre-existing dwelling. The owners would like to retain the right to relocate and rebuild the pre-existing dwelling in a yet-to-be determined location on the farm, subject to MALPF Board approval. The relocated dwelling site will be non-subdividable from the farm, resulting in a building envelope with no occupancy requirements running with the land, unless there is another family lot available.

Exclusion of this lot has a negligible effect on the overall operation of the farm. The property will continue to meet qualifying soils criteria once the lot is released.

This request has been approved by the Kent County Agricultural Land Preservation Advisory Board, and is in accordance with all County requirements.

Ms. Turner presented the item. Ms. Katrina Tucker, Program Administrator and Ms. Carla Gerber, GIS Specialist both representing Kent County, were available for questions and comments.

Motion #4 Approve requests to relocate a previously-approved child's lot, and to retain the right to relocate and rebuild the pre-existing dwelling site at some point in the future. Relocating the child's lot will require demolishing the pre-existing dwelling. The relocated pre-existing dwelling site will require location approval by the MALPF Board, and shall be reviewed by the Board pursuant to COMAR 15.15.04.

Motion: Jonathan Quinn Second: Michael Calkins
Status: Approved

D. CECIL COUNTY

1. 07-01-21Ac

Sandy Bottom Preserve, LLC
(Stephen & Sally Zook)

~81.9 acres

Request – Cecil County:

Request approval of a land exchange that will add a 1-acre withheld residential lot into the easement area in exchange for creating a 1-acre non-subdividable residential building envelope to remain encumbered with the MALPF easement.

Recommendation:

Per the terms of COMAR 15.15.11.03.C (2), Staff recommends approval of the request, provided that the existing trailer be removed within 60 days of the issuance of a use & occupancy permit for the new dwelling and the land restored to agricultural use, or the trailer be converted to a non-residential agricultural purpose.

Background:

The property was encumbered with the MALPF easement in 2003, while the Eastern Shore Land Conservancy held the fee simple ownership of the property. There are no pre-existing dwellings documented. A 1-acre dwelling lot surrounding an existing residential trailer was withheld from the easement. No requests have been submitted for this easement property.

COMAR 15.15.11.03 C (2). governs land exchanges under the circumstances of the current request.

C. Boundary Line Adjustment.

(2) If the proposed corrective easement involves the adjustment of boundary lines and no part of the land encumbered by the easement is to be released, then the Foundation may approve the corrective easement if it will either enhance or have no effect upon the agricultural operations being conducted upon the land. The Foundation may not pay additional consideration for land gained by any corrective easement without Board of Public Works approval.

MALPF Staff and the Cecil County Program Administrator suggested the current proposal as a solution to the circumstances surrounding the existing residential trailer, health code requirements, and the terms of the MALPF easement. No lot rights were reserved under the MALPF easement, therefore the only avenue available to relocate the withheld dwelling lot to the easement property is via a land exchange.

The owners are requesting a land exchange to add the currently withheld 1-acre lot to the easement area in exchange for the creation of a 1-acre residential building envelope that will be non-subdividable from the easement property. This will result in an additional acre of qualifying soils being added to the easement. The proposed building envelope acre will stay under easement, and residential prohibition will be waived for that acre as the Foundation will benefit by having a permanent home associated with the land. In addition, the proposed building envelope area consists of inferior soils compared to the acre coming under easement.

MALPF Staff believes this proposal is an overall benefit to the easement, as it will result in a dwelling always being associated with the property and one acre of high-quality soils will be added to the easement. The new dwelling will include new septic field reserve area, which is needed. The change in the location of the permitted residential acre will have a positive impact on the agricultural operation of the farm due to the reasons listed in the above paragraph.

The Cecil County Agricultural Advisory Board and the Cecil County Office of Planning & Zoning recommend approval of the request.

Since no acres would be released from the easement, if approved by the Foundation, Board of Public Works approval is not required for this land exchange transaction.

Ms. Cable presented the item. Mr. Stephen O'Connor, Program Administrator for Cecil County, was available for questions and comments.

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Motion #5 Approve request of a land exchange that will add a 1-acre withheld residential lot into the easement area in exchange for creating a 1-acre non-subdividable residential building envelope to remain encumbered with the MALPF easement. The approval is subject to all conditions suggested by Staff.

Motion: Jonathan Quinn Second: Donald Moore
Status: Approved

E. Withdrawal

F. CARROLL COUNTY

1. 06-80-07ex1 Estates of Edgar A. & Lillian C. Schaeffer ~297 acres

Request – Carroll County:

Request approval of an agricultural subdivision of the easement property creating an ownership of one tax parcel consisting of ~140 acres and a second ownership of two non-contiguous tax parcels consisting of a total of 157 acres (a 36.7 acre parcel and a 120.3 acre parcel).

Recommendation:

In accordance with our Agricultural Subdivision regulations, staff recommends denial of the request as presented. Staff provides an alternative suggestion for subdivision below.

Background:

Edgar A. Schaeffer was the original Grantor of the easement, established in 1982, consisting of three separate tax parcels. Two Districts were combined to create the one larger ~297 acre easement. There was one documented pre-existing dwelling on the property that was approved to be released in 1986; however, it was never released (see information below regarding this matter). A child's lot for Noah Schaeffer was approved with the Final Release completed in 1992. No other requests have been made regarding this easement property.

The Estates of Edgar and Lillian Schaeffer are making the agricultural subdivision request. Noah Schaeffer and Laura Flock, children of the original Grantor, are the representatives of the Estates. The current subdivision request would divide ownership of the property between the siblings. The proposal results in Noah Schaeffer owning two non-contiguous parcels of land (part-of Parcel 300, parcel 2A, consisting of ~36.7 acres; and Parcel 16, consisting of ~120.3 acres), totaling ~157 acres, and Laura Flock owning the parcel that connects them (Parcel 215, consisting of ~140 acres).

Due to the configuration of the request, even though the request is for Noah Schaeffer to own a total of ~157 acres, Staff must review this request as if it were two separate subdivisions due to the non-contiguous nature of the proposed subdivided parcels.

Subdivision Regulation Criteria:

B. Exception for Agricultural Subdivision.

Under COMAR 15.15.12.04 B., Exception for Agricultural Subdivision. "The Foundation may give written approval to a landowner's request for an agricultural subdivision of the land and separate ownership of the resulting divided parcels for reasons the Foundation considers sufficiently extraordinary to justify an exception to the prohibition against subdivision. The approval for an agricultural subdivision is not an absolute right of a landowner, and requests shall be reviewed by the Foundation on a case-by-case basis to determine if, in the Foundation's opinion:"

- (1) The proposed agricultural subdivision serves an agricultural purpose;
The proposed subdivision divides the ownership of the property to match the planned separate operations of Noah and Laura. Noah has been farming the ~36-acre and ~120 acre parcels as part of his agricultural operations for almost 30 years. He has been farming the

third ~140 acre parcel for other family members during that time period. The requested subdivision will divide the ownership to match the planned separation of the agricultural operations as part of settling the Estates of the Edgar and Lillian Schaeffer to provide approximately equal tillable lands to each of the siblings.

- (2) The proposed agricultural subdivision will enhance or have no effect upon the agricultural operations being conducted upon the land; and
When reviewing the proposed subdivision as a single division (~140 acre portion and ~157 acre portion), the division will have little effect upon the agricultural operations being conducted on the land, as the parcels are currently being operating under separate management plans.
- (3) The resulting divided parcels from the agricultural subdivision are able to sustain long-term agricultural production, independent from each other.
When reviewing the proposed subdivision as a single division (~140 acre portion and ~157 acre portion), given the provided history that the parcels have been operated under separate management plans, each parcel will be able to continue to maintain agricultural production independently of the other. However, when you factor in the ~157 acre portion is actually divided into two non-contiguous parcels consisting of 120.3 acres and 36.7 acres, there is no information provided that supports the 36.7 acre parcel could sustain a viable, long-term, independent operation.

Due to the configuration of the proposed subdivision, this request also must meet the exception to the 50 acre size requirement. COMAR 15.15.12.04 E expressly requires that “the resulting divided parcels shall each be at least 50 acres.” The portion of the proposed subdivision that is part of Parcel 300, parcel 2A (~36.7 acres) is adjacent to the portion of the proposed subdivision that Laura Flock would own. Since the proposal has the adjacent portions of the property to be owned by different people, the 36.7 acre parcel does not satisfy the 50 acre requirement.

Under COMAR 15.15.12.04 F., Exceptions to Acreage Requirement: “The Foundation may permit resulting divided parcels of less than 50 acres of land if:”

(1) The resulting parcel of less than 50 acres continues to meet minimum soil requirements as provided by COMAR 15.15.01.03D independently of the original farm and one of the following conditions exists for the resulting divided parcel comprised of less than 50 acres:

- (a) The Foundation determines that there exists a physical separation of land, created by:
- (i) Bodies of water;
 - (ii) Public roads; or
 - (iii) Features that significantly restrict the movement of agricultural equipment from one portion of the land to another;
- None of these conditions exist.*

(b) The resulting divided parcel comprised of less than 50 acres is conveyed to owners of adjoining land encumbered by an easement in favor of the Foundation, and both of the following occur:

- (i) The owner amends the easement encumbering the adjoining land to encumber the resulting divided parcel, or an overlay easement in favor of the Foundation is placed over the entire acreage constituting the resulting divided parcel and the adjoining land; and
- (ii) The resulting divided parcel and the adjoining land together meet minimum soils requirements as provided by COMAR 15.15.01.03D; or

The owners are proposing to divide it from a larger easement property, not join it to make a larger, contiguous easement property.

(c) The resulting divided parcel comprised of less than 50 acres:

- (i) Is conveyed to owners of adjoining land encumbered by an easement containing terms which are acceptable to the Foundation; and

(ii) An overlay easement in favor of the Foundation is placed over the entire acreage constituting the resulting divided parcel and the adjoining land.

The owners are proposing to divide it from a larger easement property, not join it to make a larger, contiguous easement property.

(2) The resulting divided parcel or parcels remaining after the subdivision of the smaller parcel are at least 50 acres and continue to meet the minimum soils criteria, as provided by COMAR 15.15.01.03D.

The resulting divided parcels will not be at least 50 acres as one parcel will consist of only 36.7 acres. Since the owners did not submit the subdivision request as three separate parcels, it is unclear whether or not the ~36.7 acre parcel meets the minimum soil criteria.

The owners have been informed that they will be responsible for the expenses associated with the transaction and corrective easement process; however, they did not provide an acknowledgement of that responsibility nor did they say who will pay for the transactional expenses. They have also been informed that the termination request provision will be extinguished through the corrective easements if an agricultural subdivision is approved.

Edgar Schaeffer provided a letter of intent before his passing to document his desire to allow Laura Flock to obtain a child's lot. If the subdivision is approved, Laura is still eligible to request a child's lot while the property is still owned by the estate, or if it is transferred to her and/or Noah Schaeffer's ownership.

This request has been approved by the local advisory board and meets Planning & Zoning requirements.

Additional Matters:

Pre-Existing Dwelling Status: As mentioned above, in 1986 the Foundation approved the release of 1.0 acre surrounding the pre-existing dwelling from the easement property. However no release agreement was ever completed. It does not appear that the owners ever submitted the necessary legal description that would initiate MALPF Staff to prepare the release document. In 1988, the owners subdivided a 1.0 acre lot surrounding the pre-existing dwelling and transferred the ownership of the lot from the original owner, Edgar Schaeffer, to Edgar and Lillian Schaeffer.

Earlier this year, MALPF Staff informed the County of this situation and what was needed in order to resolve this matter, a subdivision violation since the lot was never released from the easement. MALPF Staff asked for a legal description and the Estate information of Lillian Schaeffer, in order to prepare the release document. The requested information has not been provided and therefore no release has been completed to date for the pre-existing dwelling lot.

Potential Unapproved Subdivision Violation: In 1989, the owners of the easement property conveyed 0.0171 acres and 0.3015 acres of land to Built-Good, Inc., totaling 0.318 acres. This conveyance was never requested, nor approved, by the Foundation. An investigation is being conducted into whether these parcels were a part of what is encumbered by the Easement. If the acreage is subject to the Easement, this would be deemed a violation that the Board is urged to consider in its decision whether to permit the proposed agricultural subdivision. Pursuant to COMAR 15.15.12.04 H, "the Foundation may deny a request for an agricultural subdivision if an easement violation exists upon the land."

Staff Subdivision Configuration Suggestion: MALPF Staff has had multiple conversations with Carroll County Staff regarding this subdivision request, and has conducted a visit to the property and met with Noah Schaeffer and Laura Flock, representatives of the Estates. MALPF Staff has significant concerns regarding the subdivision configuration and discussed the situation with County Staff and the Estate representatives.

MALPF Staff suggested that in order for the subdivision request to meet the required criteria of the Regulations, the 36.7 acre parcel should remain under the same ownership as the 140 acre parcel. This would create a subdivision of the original easement property along Sullivan Road, which is consistent with the Regulations.

The proposed request states that Noah Schaeffer has been farming the smaller, 36.7 acre parcel along with the 120.3 acre parcel on the other side of the road for numerous years. MALPF Staff contends that this can continue without his actual ownership of the parcel, just as he had been doing for several years. The only difference would be that his sister owns the land, and not his parents. The MALPF Corrective Easement would permit a lease from Mrs. Frock to Mr. Schaeffer of 20 years, minus a day, renewable forever. This option would permit the current operation of the lands to continue, but not divide the easement property into a less-than 50-acre parcel from the remainder of the easement properties.

Ms. Cable presented the item. Mr. Ralph Robertson and Ms. Deborah Bowers, Carroll County Staff, and Mr. Noah Schaeffer and Ms. Laura Flock were available for questions and comments.

Discussion:

Mr. Robertson informed the Board that he and the County Advisory Board supported the request. The plan of ownership will have two separate, distinct agricultural operations. Mr. Schaeffer is planning to use his pasture for growing crops to support an expanded beef cattle operation and Ms. Flock plans to diversify the current operation into orchards or produce production.

Mr. Schaeffer informed the Board about the history of the 36.7 acre parcel. It had historically been a separately owned parcel that was under its own MALPF District Agreement. The original easement grantor, Edgar Schaeffer, put the parcel into the district program to enable the neighboring property to qualify to enter the MALPF Program as well. Edgar Schaeffer ultimately included the 36.7 acre parcel in with the other two parcels as one MALPF easement property.

Mr. Draper stated that the Board understands the history of the ownership of the parcels, and that they are farmed separately, but the law stipulates that the Foundation may not approve a subdivision of less than 50 acres. Mr. Schaeffer replied that he understands, but wants the 36.7 acres to be merged with the 120 acres to satisfy the 50 acre minimum size requirement.

Ms. West mentioned that part of MALPF's concern is that the proposed configuration could enable future owners to transfer the 36.7 acre separate tax parcel without careful review of the terms of the easement. This would result in a subdivision violation, which MALPF has seen numerous times along county tax parcel lines without Foundation approval.

Mr. Hayes read COMMAR 15.15.12.04B, which expressly requires that the resulting divided parcels be at least 50 acres. He thinks that the Board should review this regulation when considering this application.

MALPF Staff reminded the Board that last month it reviewed an application to determine whether separate non-adjointing parcels may be placed under a single easement. Those two portions of the proposed applicant property were much closer than these non-contiguous parcels. The Board determined that the Frederick County property consisted of non-contiguous parcels and therefore could not be combined into one easement application.

Mr. Rosen asked MALPF attorneys if there is a way to consider that the 36.7 acre parcel is part of the whole subdivided portion proposed for Noah Schaeffer's ownership, not viewing it as a standalone parcel. Mr. Robertson stated that in Carroll County, non-contiguous parcels are permitted under one fee simple deed and one tax parcel number. If the subdivision is approved, the fee simple deeds can be written to incorporate both tax parcels under one deed. Mr. Hayes asked Mr. Robertson how far away do parcels have to be for the Board to consider it one easement or two separate easements.

Ms. West mentioned if the landowners were applying to sell a new easement to MALPF under the proposed subdivision configuration, it would not be accepted as one easement due to the non-contiguous aspect of the parcels. While the Foundation has approved non-contiguous easement applicants in the past, we have learned from our past actions and no longer permit it.

Mr. Calkins stated that he understood and supported the landowner's request as presented. Mr. Roberts

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agreed if this was a new application that the Board would deny it, but the landowners have cooperated for several generations and he too would support the request as presented.

Mr. Quinn said the landowner can have less than 50 acres if it is contiguous to another property in the program. Ms. West replied that the landowner can have less than 50 acres to come into the program, but once the landowner is in the program the regulations require that they must have 50 acres.

Mr. Draper added that the difficult part is looking at this property as if it is two subdivision requests, creating three separately owned easements, or one subdivision request creating two separately owned easements. The Board has to decide how they will view this item since the landowners are proposing two parcels.

Ms. Forrester suggested that if the Board does decide to approve the request as presented, to consider including a condition that the 36.7 acre parcel would only ever be permitted to be owned by either the owner of the 120-acre parcel or the owner of the 140-acre parcel. The 36.7 acre parcel may never become a stand-alone easement parcel.

Mr. Draper asked if this condition would be included in the deed of easement and Ms. Forrester replied affirmatively. Mr. Draper asked Mr. Schaeffer and Ms. Frock if the Board included this condition, would they consent. Mr. Schaeffer and Ms. Frock agreed to the condition.

Mr. Jones asked for clarification regarding the condition, stating that the regulation does not permit a subdivision of less than 50-acres currently, so why specifically state that the 36.7-acre parcel must always be joined with one of the two larger parcels. Ms. Forrester responded that the public road that divides the parcels establishes an exception for an owner to request a less than 50-acre subdivision in the future.

Motion #6	Approve request of an agricultural subdivision of the easement property creating an ownership of one tax parcel consisting of ~140 acres with a second ownership of two non-contiguous tax parcels consisting of a total of 157 acres (a 36.7 acre parcel and a 120.3 acre parcel).
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Motion:	Michael Calkins	Second:	Eugene Roberts, Jr.
Status:	Denied		

Motion #7	Approve with amended condition that the 36.7 acre parcel may only ever be owned in common with either the 120-acre parcel or the 140-acre parcel; the 36.7-acre portion may never be a stand-alone easement property.
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Motion:	Michael Calkins	Second:	Bernard Jones, Sr.
Status:	Approved		

Question:

Ms. Cable brought back to the Board's attention the possible subdivision violation that she described in the agenda memo from 1989. She recommended including another condition to resolve the 1989 subdivision violation before proceeding with the newly approved agricultural subdivision transaction. Mr. Draper mentioned that the only way the Board could do that would be to table the motion already voted on. Ms. Cable mentioned that it would not be in the benefit of the Foundation or the landowners to pursue two separate transactions for the resolution of the violation and the agricultural subdivision.

The Board agreed to reopen the discussion of the amended motion to discuss separate or combined transactions to document the new easement subdivision and the past violation.

Discussion:

Ms. Cable reviewed the agenda item regarding the 1989 possible subdivision violation that transferred 0.318 acres to an adjacent property owned by Built-Good, Inc. By looking at the deed reference it appears to impact the MALPF easement property, but the subdivision was never submitted to the Foundation for review or approval. Therefore, this is an illegal subdivision violation.

Mr. Schaeffer referred to the map and the three house lots between the yellow and blue locations on the map. His father subdivided this into three building lots and most likely that necessitated a boundary line adjustment to meet lot requirements. Ms. Flock stated that her father must have had an approval for this boundary line adjustment at that time. Mr. Robertson and Ms. Cable stated that he likely obtained County approval, but not Foundation approval.

Mr. Draper had some discussion with Ms. West and they agreed that the Board should either table the new agricultural subdivision approval until the violation has been corrected or have a separate motion that the new agricultural subdivision transaction may not proceed until this violation has been resolved.

Mr. Robertson requested that the Board make a decision on the new subdivision and a separate decision regarding the violation matter.

Mr. Draper said if the application is viewed as dividing two parcels he does not see how the Board would be violating the law. If it is looked at as dividing three parcels perhaps violation would exist. However, the amendment requiring that the 36.7 acres only be sold to the other property makes a good compromise allowing the subdivision to occur.

Motion #8	Approve the amended request of the agricultural subdivision, with the above-stated condition that the 36.7 acre parcel must remain under common ownership with either the 120-acre parcel or the 140-acre parcel. In addition, the new agricultural subdivision transaction may not proceed until the previous subdivision violation has been resolved to the Foundation's satisfaction.
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Motion:	Michael Calkins	Second:	Eugene Roberts, Jr
Status:	Approved		

V. EASEMENT PETITIONS

A. HARFORD COUNTY

1. 12-15-02 Whiteford Packing Company, Incorporated (Peter Tutalo) ~308.233 acres
2. 12-15-07 Jeffrey Amling and Charles Noell ~246.413 acres
3. 12-15-05 George and Vera Houzouris
~56.82 acres

Ms. Chasse presented the items and was available for questions and comments.

12-15-02 Whiteford Packing Company, Incorporated (Peter Tutalo)

Request is to approve the Whiteford Packing Company, Incorporated (Peter Tutalo) petition for a preservation easement withholding 8 acres with 3 development rights associated with it. The landowner is reserving the right to an unrestricted lot for the future development.

Mr. Norris asked why only 7 on-site rights are associated with the property. Mr. Draper said that the Septics Law dictated the development rights.

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12-15-07 Jeffrey Amling and Charles Noell

Request is to approve the Jeffrey Amling and Charles Noell petition for a preservation easement withholding .70 acres with 0 development rights associated with it. The landowner having waived lot rights, but there are 3 pre-existing dwellings.

12-15-05 George and Vera Houzouris

Request is to approve the George and Vera Houzouris petition for a preservation easement withholding 1 acres with 1 development right associated with it. The landowner having waived lot rights, there will be none associated with the farm for future development.

Motion #9 Approve Harford County Easement Petitions 1-4 as requested

Motion: Jonathan Quinn Second: Michael Calkins
Status: Approved

B. CECIL COUNTY

1. 07-15-05 Maccari, Palmarino & Dorothy ~46.238 acres

Request to approve the Maccari, Palmarino & Dorothy, petition to waive the 50-acre size requirement to sell a MALPF easement under the extraordinary capability exception per the regulations.

Ms. Cable presented the item and was available for questions and comments.

Discussion:

Ms. Cable mentioned that Mr. O'Connor, Mr. Quinn and Mr. Moore conducted a site visit of this property. Mr. Moore and Mr. Quinn reported their findings and recommend that the property meets the size exception criteria to sell an easement to MALPF.

Ms. Forrester asked whether it is possible to combine the tax parcels 410 and 358 and Mr. O'Connor replied that it is possible under county regulations. Ms. Forrester asked whether this was an arduous process. Mr. O'Connor responded as far as county cost, it is only \$25.00, with the survey being the bigger expense. Ms. Forrester stated that if this property were to get an offer from MALPF, a survey would be required due to the multiple-parcel configuration.

Motion #10 Approve petition of the Maccari property to be eligible to sell an easement to MALPF, with a condition that parcels 410 and 358 be combined.

Motion: Jonathan Quinn Second: Mary Ellen Setting
Status: Approved

C. WORCESTER COUNTY

1. 23-15-07 Porter Mill Properties, LLC (Scrimgeour, Harold and Robert) ~178.22 acres

Ms. Chasse presented the item and was available for questions and comments.

Request is to approve the Porter Mill Properties, LLC (Scrimgeour, Harold and Robert) petition for a preservation easement withholding .43 acres with 0 development right associated with it. The landowners selected an unrestricted lot right.

Motion #11 Approve Worcester County Easement Petition item 1 as requested.

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Motion: Bernard Jones, Sr. Second: Susanne Brogan
Status: Approved

D. SOMERSET COUNTY

1. 19-15-02 Butler, George, Jr., Terri and Gregory ~84.15 acres

Ms. Chasse presented the item and was available for questions and comments.

Request is to approve the Butler, George, Jr., Terri and Gregory petition for a preservation easement withholding 84.20 acres with 1 development right associated with it. The landowners are reserving family lot rights for future development.

Motion #12 Approve Somerset County Easement Petition item 1 as requested.

Motion: Bernard Jones, Sr. Second: Michael Calkins
Status: Approved

E. ST. MARY'S COUNTY

1. 18-15-03 Montfort, Barbara et al. ~92 acres
2. 18-15-08 Abell, Norbert and Deborah ~84.3618 acres

Ms. Chasse presented the item and was available for questions and comments.

18-15-03 Montfort, Barbara et al.

Request is to approve the Montfort, Barbara et al. petition for a preservation easement withholding 33 acres with 3 development rights associated with it. The landowners are reserving family lot rights for future development.

18-15-08 Abell, Norbert and Deborah

Request is to approve the Abell, Norbert and Deborah petition for a preservation easement withholding 2 acres with 1 development right associated with it. The landowners selected an unrestricted lot right.

Motion #13 Approve St. Mary's County Easement Petitions 1-2 as requested.

Motion: Donald Moore Second: Susanne Brogan
Status: Approved

F. CARROLL COUNTY

1. 06-15-01 Lippy Brothers Farm ~92 acres
(T. Edward Lippy)

Ms. Cable presented the item and was available for questions and comments.

Request is to approve the Lippy Brothers Farm (T. Edward Lippy) petition for a preservation easement withholding 4 acres with 1 development right associated with it. The landowner is reserving the right to an unrestricted (in terms of ownership), non-subdividable building envelope lot for future development. Location of building envelope to be approved by the Foundation in the future.

Ms. West questioned the total number of development rights associated with the property as a whole. Ms. Cable stated that 4 dwelling rights was provided on the application, but that she would look further

into it.

Motion #14 Approve Carroll County Easement Petition item 1 as requested.

Motion: Bernard Jones, Sr. Second: Mary Ellen Setting
Status: Approved

G. ANNE ARUNDEL COUNTY

- | | | | |
|----|----------|---|----------------|
| 1. | 02-15-01 | Carter, William G., Jr. & Trimble, Nancy W. | ~134.81 acres |
| 2. | 02-15-03 | Dee Corporation (William Chesley) | ~147.618 acres |

Ms. Cable presented the item and was available for questions and comments.

02-15-01 Carter, William G., Jr. & Trimble, Nancy W.

Request is to approve the Carter, William G., Jr. & Trimble, Nancy W. petition for a preservation easement withholding 6.56 acres with 1 development right associated with it. The landowner waived lot rights for additional residential development of the easement property in the future.

02-15-03 Dee Corporation (William Chesley)

Request is to approve the Dee Corporation (William Chesley) petition for a preservation easement withholding 2.5 acres with 2 development rights associated with it. The landowners selected an unrestricted (in terms of ownership), non-subdividable building envelope lot right, requesting location approval of the building envelope at this time.

Motion #15 Approve Anne Arundel County Easement Petitions item 1 and 2 as requested.

Motion: Michael Calkins Second: Susanne Brogan
Status: Approved

G. TALBOT COUNTY

- | | | | |
|----|----------|------------------------------------|----------------|
| 1. | 20-15-03 | Brooks, John O. and Sherrill G. | ~165.000 acres |
| 2. | 20-15-07 | Dulin, Robert and Althea | ~158.098 acres |
| 3. | 20-15-08 | Harrison, James and Annette | ~28. acres |
| 4. | 20-15-12 | Hutchison, Harold and Regina | ~89.85 acres |
| 5. | 20-15-14 | Rathell Family Limited Partnership | ~175.21 acres |

Ms. Turner presented the items. Ms. Turner and Martin Sokolich, Program Administrator representing Talbot County, were available for questions and comments.

20-15-03 Brooks, John O. and Sherrill G.

Request is to approve the Brooks petition for a preservation easement withholding 3 acres with 1 development right associated with it. The landowners having waived lot rights, there will be none associated with the farm for future development.

The location and use of the withheld acreage was discussed. Further, Ms. West emphasized that as the landowners have elected to waive lot rights, there will never be a dwelling associated with the farm.

20-15-07 Dulin, Robert and Althea

Request is to approve the Dulin petition for a preservation easement withholding 5 acres with 1

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development right associated with it. The landowners are reserving family lot rights for future development.

Ms. West emphasized that in addition to the withheld acreage, as the landowners have elected family lot rights, all of which are subdividable, there will never be a dwelling associated with the farm.

20-15-08 Harrison, James and Annette

Request is to approve the Harrison petition for a preservation easement withholding 2 acres with 1 development right associated with it. The landowners are reserving family lot rights for future development.

As this property is less than 50 acres, clarification was made that it shall come into the program contingent upon settlement on the Sump property, whose application was concurrently submitted for the FY2015 cycle. There was further discussion regarding the size of the farm, and its being contiguous to the Sump property as well as other preserved lands.

20-15-12 Hutchison, Harold and Regina

Request is to approve the Hutchison petition for a preservation easement withholding 1.2 acres with 1 development right associated with it. The landowners having waived lot rights, there will be none associated with the farm for future development.

20-15-14 Rathell Family Limited Partnership

Request is to approve the Rathell Family Limited Partnership petition for a preservation easement withholding 2 acres with 1 development right associated with it. The landowner is reserving the right to 1 unrestricted lot for future development.

Motion #16 Approve Talbot County Easement Petitions 1-5 as requested.

Motion: Patricia Langenfelder Second: Michael Calkins
Status: Approved

VI. PROGRAM POLICY

- A. Draft Regulations – Chapter 01 Guidelines for the Maryland Agricultural Land Preservation Program

Ms. West presented the item and was available for questions and comments.

Discussion:

The MALPF Board preliminarily agreed to approve the Draft Regulations - Chapter 01 Guidelines for the Maryland Agricultural Land Preservation Program. Next the Draft Regulations are forwarded to the County Program Administrators to review and comment by a proposed deadline; then they are sent back to the Board to consider the County Program Administrator's comments. Following the second review, the Board will finalize their vote at either October's or November's Board Meeting.

Motion #17 Approve request for Draft Regulations – Chapter 01 Guidelines for the Maryland Agricultural Land Preservation Program.

Motion: James Norris, Jr. Second: Bernard Jones, Sr.
Status: Approved

- B. Draft Regulations – Chapter 14 Renewable Energy Generation Facilities Approval for a Farm Subject to an Agricultural Land Preservation Easement

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Ms. West presented the item and was available for questions and comments.

Discussion:

Ms. West mentioned that MALPF will not be accepting applications for Renewable Energy beyond June 30, 2018. This is due to the law that has a sunset provision of June 30, 2019 for approval and MALPF is asking for no applications to be presented a year prior, to give staff time to go through the regular application review and approval process. MALPF has not yet received requests for information from any landowners. MALPF has met with the Maryland Energy Administration and their comments have been incorporated into this draft.

Mr. Nielsen concluded that the final Regulations will be sent to the Administrative, Executive and Legislative Review (AELR) Committee and then published in the Maryland Register. The AELR can make comments and conduct hearings.

Ms. Brogan made several comments to be incorporated into the draft before it is forwarded to the Program Administrator's. The Board voted to approve the draft with her comments.

Ms. Brogan had concerns on how large the digester would be and Mr. Draper responded about 10 acres but with all the things that accompany the digester it would reduce the locations size down to 3 acres. Ms. West mentioned that it would be a challenge to properties with 100 acres where they are restricted to 5% and the property should be at least 5 acres.

The MALPF Board preliminarily agreed to approve the Draft Regulations with changes to be forwarded to the County Program Administrators and the relevant industry experts to review and comment. Comments will be received by MALPF staff by a proposed deadline, after which the Board will consider any comments. The Board will conduct a final vote at either October's or November's Board Meeting.

Motion #18 Approve request with changes to the Draft Regulations – Chapter 14 Renewable Energy Generation Facilities Approval for a Farm Subject to an Agricultural Land Preservation Easement

Motion: Susanne Brogan Second: Michael Calkins
Status: Approved

C. MALPF Deed of Easement – Draft Language for Authorized Renewable Energy Source (ARES)

Ms. West presented the item and was available for questions and comments.

Discussion:

Ms. West mentioned that this memo is proposing language to be placed into the Deed of Easement. MALPF has one easement that was approved after June 30, 2014 so this easement must include the new language. Also MALPF will be using some version of this language when they request to amend any existing easements. MALPF staff is reminding the Board that it is required by law to use this new language when amending an easement.

Ms. Brogan stated that the Draft Regulations should use the word Facilities after ARES. She added that until the regulations on MALPF Deed of Easement are finalized and approved; that this will generate when easements are approved. Mr. Hayes mentioned that if a landowner that had an easement in 1980 wanted to amend their easement to allow an Authorized Renewable Energy Facility (ARES) MALPF will allow the landowner to amend their easement, but they will have to wait until the regulations are completed to do so.

The MALPF Board preliminarily agreed to approve with changes to the MALPF Deed of Easement Draft Language for 14 Renewable Energy Source (ARES).

Motion #19 Approve request for MALPF Deed of Easement – Draft

Language for Authorized Renewable Energy Source (ARES)
with additions of "Facilities."

Motion: Susanne Brogan Second: Bernard Jones, Sr.
Status: Approved

VII. INFORMATION AND DISCUSSION

A. News Articles

VIII. CLOSED SESSION

John W. Draper, Jr. asked for a motion for adjournment of the meeting to move into a closed session, pursuant to the provisions of State Government Article Section 10-508 (a) (3) to consider the acquisition of real property for a public purpose and matters directly related thereto.

Motion #20 To adjourn the regular session to move into a closed session to consult with counsel to consider the acquisition of real property for a public purpose and matters directly related thereto.

Motion: Bernard Jones, Sr. Second: Patricia Langenfelder
Favor: John Draper, Jr., Bernard Jones, Sr., Susanne Brogan, Michael Calkins, Jerome W. Klasmeier, Patrica A. Langenfelder, Donald T. Moore, James Norris, Jr., Jonathan Quinn, Eugene Roberts, Jr., Dan Rosen, and Mary Ellen Setting.
Status: Approved

The Open Board Meeting was adjourned at approximately 11:42 a.m.

The Closed Meeting of the Board was held from 11:51 a.m. to 12:35 p.m. at the Maryland Department of Agriculture building, Annapolis, Maryland, pursuant to the provisions of State Government Article Sections 10-508(a) (3), Annotated Code of Maryland:

State Government Article Section 10-508(a):

[X] (3) To consider the acquisition of real property for a public purpose and matters directly related there thereto;

During the Closed Meeting, the following Board members were present: John Draper, Jr., Bernard Jones, Sr., Susanne Brogan, Michael Calkins, Jerome W. Klasmeier, Patrica A. Langenfelder, Donald T. Moore, James Norris, Jr., Jonathan Quinn, Eugene Roberts, and Jr., Dan Rosen..

TOPICS DISCUSSED:

VIII.A Approval of July 22, 2014 Closed Session Minutes
VIII.B Talbot County 20-15-13 Jones-Raymond, Lisa and Douglas ~60.525 acres
VIII.C Cecil County Farms – Growth Tier III & IV Areas

The Closed Meeting was adjourned at 12:35 p.m.

Respectfully Submitted:

Angela Gaither, MALPF Secretary

Carol S. West, Executive Director