

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION**  
**OPEN MEETING MINUTES**  
**February 24, 2015**

**TRUSTEES PRESENT:**

John Draper, Jr., 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 David Craig, Maryland Department of Planning  
Mary Ellen Setting, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture

**TRUSTEES ABSENT:**

Bernard L. Jones, Sr., Vice Chair  
Craig Highfield

**OTHERS PRESENT:**

Jack Bell, Baltimore County, Landowner  
Patti Bell, Baltimore County, Landowner  
Michelle Cable, MALPF Administrator  
Diane Chasse, MALPF Administrator  
Mike Clark, Howard County, Landowner  
Veronica Cristo, Calvert County, Program Administrator  
Amber Curtis, Carroll County, Attorney for Ensor Family  
Tamekia Dent, MALPF Staff  
Rama Dilip, MALPF Administrative Specialist  
Charles Ensor, Baltimore County, Landowner  
James Ensor, Jr. Baltimore County, Landowner  
James Ensor, Sr. Baltimore County, Landowner  
Steve Ernst, Washington County, Landowner  
Wayne Fegely, Baltimore County, Former Landowner  
Phyllis Fegely, Baltimore County, Former Landowner  
Nancy Forrester, Assistant Attorney General, Department of General Services  
Angela Gaither, MALPF Secretary  
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  
David Kelleher, Department of General Services, Appraiser  
Wally Lippincott, Jr., Baltimore County, Program Administrator  
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture  
Jeanine Nutter, Prince George's County, Program Administrator  
Stephen O'Connor, Cecil County, Program Administrator  
Donna Sasscer, St. Mary's County, Program Administrator  
Art Schultz, Washington County, Landowner  
Vera Mae Schultz, Washington County, Landowner  
Chana Turner, MALPF Administrator  
James Wallace, Assistant Secretary, Administration, MDA  
Thomas Weems, Calvert County, Landowner  
Carol West, MALPF Executive Director

**OTHERS PRESENT BY WEB CONFERENCING:**

Bill Amoss, Harford County, Program Administrator  
Betty Bauer, Washington County, Landowner  
Chris Boggs, Washington County, Program Assistant  
Deborah Bowers, Carroll County, Program Administrator  
Anne Bradley, Frederick County, Program Administrator  
Eric Seifarth, Washington County, Program Administrator  
Katrina Tucker, Kent County, 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: November 25, 2014 Minutes with changes.

Motion #1: Approve minutes for November 25, 2014.

Motion: Susanne Brogan                      Second: Michael Calkins  
Status: Approved

**II. ADDITION / DELETION OF AGENDA ITEMS**

- A. Item (IV.C.1.a) Calvert County - Weems Property was replaced by a handout.
- B. Item (IV.G.1.a) for Washington County – Schultz/Bauer Revocable Trusts changed to item (IV.G.3.a).
- C. Item (IV.H.1.a) St. Mary's County – Belvidere Farms Property was withdrawn.
- D. Item (IV.H.1.b) St. Mary's County - Magnani handout with additional information.
- E. Item (VI.a.) Program Policy Memorandum – Lot Reimbursement Request was a handout.
- F. New February Agenda added that included January's Agenda items in black and February's in red.

**III. ANNOUNCEMENTS**

- A. Board Members were given MALPF's FY 2014 Annual Report and the MDA 2015 Calendar
- B. Ms. West reminded Board Members to complete their Ethics forms on or before April 30, 2015 and to confirm their completion by email.
- C. Harford Counties Program Assistant, Ned Sayre passed away
- D. 2015 vehicle mileage rates have increased from .56 cents to .57 1/2 cents.
- E. MALPF has been notified that the Mullinix's have withdrawn their petition against the Foundation. Ms. Cable attended the Howard County Advisory Board Meeting on February 23, 2015.
- F. Ms. West mentioned that she, Ms. Setting and Mr. Wallace will be leaving around 1:00 p.m. to attend the Maryland Department of Agriculture's Capital Budget Hearing at 2:00 p.m. in the Senate. On Wednesday, February 25, 2015 they will continue with their Capital Budget Hearing in the House, at 4:30 p.m.
- G. Mr. Wallace updated the Board on the Program's FY 2016 budget. He mentioned that the Program's FY 2016 budget is recommended for the following:
  - \$22.7 million bond money as payback for previous years of transfer tax being remitted to the general fund.
  - \$9.8 million transfer tax (this money will be moved to the general fund).
  - The contribution of the Counties from their retained agricultural transfer taxes and other sources.

-The Department's Legislative Analyst has recommended to the Budget Committees that since Program Open Space was funded at 50% MALPF should also be funded at 50%, cutting the MALPF proposed \$22.7 million budget to \$11.3 million. We will be discussing the proposed budget cuts at the upcoming Senate and House Meetings.

**IV. EASEMENT AMENDMENTS**

**A. PRELIMINARY RELEASE EXTENSION REQUEST**

**1. CARROLL COUNTY**

a) 06-80-18e                      Mann, Roland                      ~64.25 acres

**Request – Carroll County:**

Request for a 5-year extension to the validity of the preliminary release for the approved child's lot for Kristine Moser.

**Recommendation:**

Under COMAR 15.15.06.05.B.2, Staff recommends approval for a 5 year extension.

**Background:**

Roland Mann is the original grantor of an easement over ~145 acres, established in 1984. There are two documented pre-existing dwellings on the entire property. The following is a summary of the Foundation approvals impacting this easement property:

1. April 1993: Child's lot for son, Jeremiah Mann. Completed single-phase release process August 1993. (located on Parcel A)
2. June 1993: Tenant house approval (located on Parcel B).
3. August 2001: Agricultural subdivision approved that ultimately separated the farm into two portions, ~64.25 acre Parcel A that Mann retains ownership and ~79.12 acre Parcels B & C that was transferred in 2004.
4. September 2001: Owner's lot approved on Parcel A (no action has occurred on this lot approval)
5. September 2001: Relocation of one of the pre-existing dwellings from Parcel B to Parcel A. Approval included conditions that 1) the current dwelling be demolished and the location returned to agriculture, and 2) the new location of the pre-existing dwelling may not be subdivided from that portion of the easement property (what we now call a non-subdividable building envelope).
6. November 2001: Child's lot for daughter, Kristine Moser on Parcel A (subject of current extension request; lot subdivided and created separate tax parcel, but still owned by Roland Mann under same deed as parent easement property).
7. June 2004: Parcels B & C was transferred to new owners, Osborne/Bikle.
8. March 2005: Parcel B – Approval to re-designate the pre-existing dwelling as an agricultural support structure (office and storage) that was to be demolished as a condition of the 2001 relocation approval. Approval included condition that owners must enter into an Agreement to Relocate a Dwelling that was recorded in the Land Records.

Mr. Mann is requesting a 5-year extension of the validity of the preliminary release for his daughter, Kristine Moser, child's lot. While all of the engineering (well, septic, subdivision) of the lot has been completed, due to financial circumstances, Ms. Moser is unable to construct a dwelling as of yet.

The Board has previously reviewed and approved extension requests up to five years, with the owners having the ability to request another extension at that time if needed. The Board has the ability to approve extensions of the preliminary releases, as stated below.

COMAR 15.15.06.05.B. states:

"B. The preliminary release becomes void:

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- (1) Upon the death of the person for whom the release was intended if the Foundation has not yet received a building permit; or
- (2) If the Foundation does not receive a nontransferable building permit in the name of the landowner or the child within 3 years of the date of recordation of the preliminary release, **unless extended by a majority vote of the Foundation Board of Trustees.** (emphasis added).

The Preliminary Release that was issued for this lot states:

*“...the Releasor hereby conditionally releases that parcel of land ...from restriction contained in the agricultural preservation easement, subject, however, to the terms and conditions hereinafterset forth, **including the condition that its use be for the purpose of constructing a dwelling house for the child’s residence.**” [emphasis added]*

Further on, the Preliminary Release lists the conditions of the release, including:

“3. ...it is the intent of this instrument to release the above described 1.00 acre parcel of land from agricultural easement restrictions set forth in the above mentioned Deed of Easement for the purpose of constructing a dwelling. The parties agree that this right may not be transferred to any person...”

Therefore, if the lot’s ownership is transferred through voluntary or involuntary means prior to the execution and recording of the final release, the lot right will be void, and the lot must return to the ownership of whoever owns the Easement property at that time.

If this request is approved, an amended preliminary release will be recorded to document the extension that specifies a new termination date of the preliminary release.

The request has been approved by the local advisory board and meets local planning and zoning requirements.

Ms. Cable presented the items. Ms. Deborah Bowers, Carroll County Program Administrator, was available by web conferencing; both were available for questions and comments.

Motion #2 Approve request for a 5-year extension to the validity of the preliminary release for the approved child’s lot for Kristine Moser.

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

b) 06-80-15Bex2 Blacksten, Richard & R. Charlene ~50.7 acres

Request – Carroll County:

Request for a 5-year extension to the validity of the preliminary release for the approved owner’s lot.

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for a 5 year extension.

Background:

Richard and R. Charlene Blacksten are the original grantors of an easement over ~50.7 acres, established in 1982. There is one documented pre-existing dwelling on the property. The Board has previously approved three child’s lots, which have been fully released from the easement property. While the Board approved the owner’s lot and a preliminary release for that lot has been recorded, a final release has not been recorded nor has a non-transferrable building permit been acquired. Accordingly, the landowners want to extend the term of the preliminary release.

Mr. and Mrs. Blacksten are requesting a 5-year extension of the validity of the preliminary release for their owner’s lot. While all of the engineering (well, septic, subdivision) of the lot has been completed, the

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Blackstens had not contemplated building on the lot until recently. However, due to financial circumstances, they have not yet been in a position to construct the dwelling but expect to do so with the financial assistance of family within the next few years.

The Board has previously reviewed and approved extension requests up to five years, with the owners having the ability to request another extension at that time if needed. The Board has the ability to approve extensions of the preliminary releases, as stated below.

COMAR 15.15.06.05.B. states:

“B. The preliminary release becomes void:

- (1) Upon the death of the person for whom the release was intended if the Foundation has not yet received a building permit; or
- (2) If the Foundation does not receive a nontransferable building permit in the name of the landowner or the child within 3 years of the date of recordation of the preliminary release, **unless extended by a majority vote of the Foundation Board of Trustees.**” (emphasis added).

The Preliminary Release that was issued for this lot states:

*“...the Releasor hereby conditionally releases that parcel of land ...from restriction contained in the agricultural preservation easement, subject, however, to the terms and conditions hereinafter set forth, **including the condition that its use be for the purpose of constructing a dwelling house for the owner’s residence.**”* [emphasis added]

Further on, the Preliminary Release lists the conditions of the release, including:

“3. ...it is the intent of this instrument to release the above described 1.627acre parcel of land (LOT 1) from agricultural easement restrictions set forth in the above mentioned Deed of Easement for the purpose of constructing a dwelling. The parties agree that this right may not be transferred to any person...”

Therefore, if the lot is transferred through voluntary or involuntary means prior to the execution and recording of the final release, the lot right will be void, and the lot must be rejoined with the Easement property at that time.

If this request is approved, an amended preliminary release will be recorded to document the extension that specifies a new termination date of the preliminary release.

The request has been approved by the local advisory board and meets local planning and zoning requirements.

Ms. Cable presented the items. Ms. Deborah Bowers, Carroll County Program Administrator, was available by web conferencing; both were available for questions and comments.

Motion #3	Approve request for a 5-year extension to the validity of the preliminary release for the approved owner’s lot.		
Motion:	Eugene Roberts, Jr.	Second:	Mary Ellen Setting
Status:	Approved		

2. CALVERT COUNTY

a) 04-84-02ex2	Hutchins, Dale	~68 acres
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### Request – Calvert County:

Request is for a 5-year extension to the validity of the preliminary release for the approved child's lot for Dale Hutchins.

### Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for a 5 year extension.

### Background:

Raymond E. Hutchins, Sr. and Elsie Hutchins were the original grantors of an easement over ~204 acres, established in 1986. There are two documented pre-existing dwellings on the entire property. The property was since agriculturally subdivided into three parcels. Each parcel was deeded to one of the original grantors' three sons (see paragraph 4. below). The following is a summary of the Foundation approvals impacting this easement property:

1. September 22, 1992: ~1-acre child lot for son, Raymond E. Hutchins, Jr. Final release recorded June 28, 1995.
2. April 7, 1995: ~1-acre lot surrounding pre-existing dwelling (administratively approved). Release recorded June 20, 1995.
3. May 22, 2007: ~1-acre child lot for son, W. Mark Hutchins. Preliminary release recorded April 6, 2010. *Note: Request for a 5-year extension received from Mr. Hutchins. Awaiting formal request packet from Calvert County.*
4. August 28, 2007: Agricultural subdivision approved, dividing the property into three parcels: a ~60.21-acre parcel ("South Farm"), a ~74.33-acre parcel ("West Farm"), and a ~69.46-acre parcel ("North Farm"). The South Farm was deeded to Mark. The West Farm was deeded to Raymond Jr. The North Farm remained in the name of Raymond Sr., in anticipation of approval of Dale's child lot.
5. October 23, 2007, ~1-acre child lot for son, Dale. Preliminary release recorded April 6, 2010. The lot was transferred to Raymond Sr. and Dale on October 23, 2009.

Mr. Dale Hutchins is requesting a 5-year extension of the validity of the preliminary release for the child lot approved on his behalf. At the time of approval, Mr. Hutchins explained to the Board that it would be several years before he would be in a position to begin construction on the lot. Mr. Hutchins intends to build a house on lot for his retirement years, and believes he will be able to begin construction at some point within the next five years.

The Board has previously reviewed and approved extension requests up to five years, with the owners having the ability to request another extension at that time if needed. The Board has the ability to approve extensions of the preliminary releases, as stated below.

COMAR 15.15.06.05.B. states:

"B. The preliminary release becomes void:

- (1) Upon the death of the person for whom the release was intended if the Foundation has not yet received a building permit; or
- (2) If the Foundation does not receive a nontransferable building permit in the name of the landowner or the child within 3 years of the date of recordation of the preliminary release, **unless extended by a majority vote of the Foundation Board of Trustees.**" (emphasis added).

The Preliminary Release that was issued for this lot states:

*"...the Releasor hereby conditionally releases that parcel of land ...from restriction contained in the agricultural preservation easement, subject, however, to the*

*terms and conditions hereinafter set forth, **including the condition that its use be for the purpose of constructing a dwelling house for the child's residence.*** [emphasis added]

Further on, the Preliminary Release lists the conditions of the release, including:

“3. ...it is the intent of this instrument to release the above described 1.00 acre parcel of land from agricultural easement restrictions set forth in the above mentioned Deed of Easement for the purpose of constructing a dwelling. The parties agree that this right may not be transferred to any person...”

Therefore, if the lot's ownership is transferred through voluntary or involuntary means prior to the execution and recording of the final release, the lot right will be void, and the lot must return to the ownership of whoever owns the Easement property at that time.

If this request is approved, an amended preliminary release will be recorded to document the extension that specifies a new termination date of the preliminary release.

The request has been approved by the local advisory board and meets local planning and zoning requirements.

Ms. Turner presented the items. Ms. Veronica Cristo, Program Administrator representing Calvert County, was available for questions and comments.

Motion #4 Approve request for a 5-year extension to the validity of the preliminary release for the approved child lot for Dale Hutchins.

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

### 3. BALTIMORE COUNTY

a) 03-97-02 #1 Cornwell, Kim & John ~55 acres

Request – Baltimore County:

Request for a 5-year extension to the validity of the preliminary release for the approved child's lot for Patti Bell.

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for a 5 year extension.

Background:

Wayne & Phyllis Fegely are the original grantors of the easement over 103.856 acres, established in April 2000 (the “Original Land”). There were two pre-existing dwellings documented and ~8 acres were withheld at the time the easement was established. The Original Land was approved for agricultural subdivision in 2010, and is now held under Corrective Easement #1 and Corrective Easement #2. The current request concerns Corrective Easement #1. The history of requests, approvals, and actions on the Original Land is as follows:

1. January 2006: Staff administratively approved release of one of the pre-existing dwellings (1-acre) as shown on the map.
2. December 2010: Board approved the following items:
  - a. Adding ~6 acres that were previously withheld from the Original Land, in order to create a parcel that met the 50 acre requirement for Corrective Easement #2. (Without those 6 acres, Corrective Easement #2 would have been less than the required 50 acre size minimum for an agricultural subdivision.)

- b. Adding 2 acres to the Original Land. These two acres were previously withheld and included a dwelling. These 2 acres are part of what is now Corrective Easement #1, and the existing dwelling was made non-subdividable.
  - c. A 1.922 acre owner's lot surrounding a pre-existing dwelling for Mr. & Mrs. Fegely, and still owned by them.
  - d. A 1.0 acre child's lot for Patti Bell, as shown on the map. This child's lot was preliminarily released on September 12, 2011 from the area comprising what is now Corrective Easement #1.
  - e. A 1.0-acre non-subdividable child's lot for Robin Weisse, located on land encumbered by Corrective Easement #2, which land Robin Weisse and her husband now own.
  - f. Subdivision of Original Land into ~55 acres (Corrective Easement #1, including the 2 acres added per b. above now owned by Kim & John Cornwell (Fegley's daughter) and ~52 acres (Corrective Easement #2, including the 6 acres added in per a. above) now owned by Robin & John Weisse (Fegley's daughter). The 1.0 acre child's lot approved for Patti Bell is owned by the Bells and still encumbered with Corrective Easement #1 until a final release is completed and the terms have been met.
3. The Corrective Easements #1 and #2 were recorded in April 2012.
  4. The resulting subdivided lands were transferred to both Cornwell and Weisse immediately after the Corrective Easements were recorded.
  5. May 2014: Board approved an even land exchange of ~3/4 acres to reconfigure the child's lot released for Patti Bell. After Board approval, the owners continued to pursue alternative means to meet Foundation regulations regarding land exchanges and qualifying soils to result in their desired lot location. No action was taken to complete the lot relocation that was approved in May 2014. (See separate Board item for revised land exchange request to relocated child lot.)

The child lot for Patti Bell was preliminarily released in 2011, and is due to expire on July 1, 2015. The easement and lot owners have been working with MALPF and County staff on a viable land exchange to relocate the lot to Patti Bell's desired location. While a likely successful land exchange request is being brought before the Board at this same meeting, completing the land exchange transaction will most likely not be finalized and recorded in the Land Records of Baltimore County prior to July 1, 2015, the expiration date of the current preliminary release. This necessitates the need for the preliminary release extension request.

The owners are requesting the five-year extension to give ample time to complete the land exchange and then proceed with obtaining a building permit, final release, and construction of the dwelling.

The Board has previously reviewed and approved extension requests up to five years, with the owners having the ability to request another extension at that time if needed. The Board has the ability to approve extensions of the preliminary releases, as stated below.

COMAR 15.15.06.05.B. states:

"B. The preliminary release becomes void:

- (1) Upon the death of the person for whom the release was intended if the Foundation has not yet received a building permit; or
- (2) If the Foundation does not receive a nontransferable building permit in the name of the landowner or the child within 3 years of the date of recordation of the preliminary release, **unless extended by a majority vote of the Foundation Board of Trustees.**" (emphasis added).

The Preliminary Release that was issued for this lot states:

*"...the Releasor hereby conditionally releases that parcel of land ...from restriction contained in the agricultural preservation easement, subject, however, to the terms and conditions hereinafterset forth, **including the condition that its use be for the purpose of constructing a dwelling house for the child's residence.**"* [emphasis added]



Further on, the Preliminary Release lists the conditions of the release, including:

“3. ...it is the intent of this instrument to release the above described 1.00 acre parcel of land from agricultural easement restrictions set forth in the above mentioned Deed of Easement for the purpose of constructing a dwelling. The parties agree that this right may not be transferred to any person...”

Therefore, if the lot's ownership is transferred through voluntary or involuntary means prior to the execution and recording of the final release, the lot right will be void, and the lot must return to the ownership of whoever owns the Easement property at that time.

If this request is approved, an amended preliminary release will be recorded to document the extension that specifies a new termination date of the preliminary release.

The request has been reviewed by the local advisory board and meets local planning and zoning requirements.

Ms. Cable presented the item. Mr. Wally Lippincott, Jr., Baltimore County Program Administrator and Mr. Jack Bell, Lot Owner and husband of Patti Bell, were present and available for questions and comments.

Motion #5 Approve request for a 5-year extension to the validity of the preliminary release for the approved child's lot for Patti Bell.

Motion: Michael Calkins                      Second: Patricia Langenfelder  
Status: Approved

**B. FINAL LOT RELEASE RESOLUTION REQUEST**

**1. CECIL COUNTY**

a) 07-95-04c (the "Easement") Quillen, Dennard & Julia ~165.35 acres

**Request – Cecil County:**

Request to re-designate an owner's lot to a non-subdividable dwelling envelope. The dwelling was constructed after the Foundation approved a Preliminary Release for an owner's lot requested by the original Easement grantor. A Final Release has not been approved. Because the Easement property was sold before the original Easement grantor satisfied the 5 year occupancy requirement, this request requires the Foundation to waive the occupancy requirement.

**Recommendation:**

Staff recommends approval in accordance with COMAR 15.15.06.06.B.

**Background:**

Bohemia Manor Corp (Larre Jones, President) was the original grantor of the Easement, established in 1998. There were no pre-existing dwellings on the property. An owner's lot was approved in 1999, with the Preliminary Release recorded in May 2000. While the building permit was issued in May 2000, it was never provided to MALPF Staff to complete the Final Release Agreement for the owner's lot. The dwelling was constructed in 2000 but no lot was ever created or subdivided at the County level.

In 2003, the Quillens purchased the entire Easement property from Bohemia Manor Corp, unaware that the original owner did not fulfill the requirement of occupying the dwelling approved as an owner's lot. MALPF was never notified of the transfer of the property and did not become aware of the transfer, including the owner's lot, until 2013 when sending notifications to easement owners of the new law that impacted all lots that had preliminary releases but no final releases.

In March of 2013, Foundation staff sent a notice to the Quillens informing them of the status of the Easement property, specifically the matter regarding the illegal transfer of the owner's lot without fulfilling the conditions of the lot release. MALPF Staff proposed a solution to the violation that the Quillens have

supported, which is the current request.

Proposed Resolution:

The owner's lot was approved prior to the establishment of the Foundation's Lot Location Policy. The lot is located in the center of the Easement property. The house was constructed in 2000, with the original grantor occupying it for only three years before selling the property, with the house, to the current owners. The Easement property consists of a single tax parcel, with the dwelling that was approved as the owner's lot the primary (the only) residence on the property.

As it is impossible for Mr. Jones to fulfill the 5-year occupancy of the owner's lot as he no longer owns the property, it is in the Board's discretion to approve a waiver of the 5-year occupancy requirement per COMAR 15.15.06.06.B (listed below). The Quillens have agreed to make the dwelling non-subdividable from the Easement property, which benefits the Easement in two ways. First, there will always be a house associated with the Easement property so the owner of the property will be able to live on the farm. Second, if the Final Release was completed as intended, a subdividable lot would have been created in the center of the farm, which could have lead to challenges as the owner of the lot and the owner of the farm could have been different people. This has created challenges for farm owners in the past. By making the dwelling a non-subdividable building envelope and waiving the 5-year occupancy requirement, this results in a win for both the Foundation and the owner of the Easement property.

COMAR 15.15.06.06.B.states:

*B. Before the expiration of the 5-year period, the Foundation may only approve a landowner's or child's request to convey a lot improved with a dwelling upon the occurrence of the following events:*

*(1) Notice to the Foundation of a transfer pursuant to:*

- (a) A bona fide foreclosure of a mortgage or deed of trust; or*
- (b) A deed in lieu of foreclosure;*

*(2) The death of the landowner or the child for whom the lot was released;*

*(3) A decree of divorce where the landowner or child is ordered to sell or convey the lot as part of a bona fide property settlement;*

*(4) A change of employment location of the landowner or child for whom the lot was released if the Foundation determines that it would be impractical for the landowner or child to commute to the new work location; or*

***(5) Any other circumstance, as determined by the Foundation, where it would be impossible for the landowner or child to continue to occupy the dwelling.***

If the Board approves this proposed resolution, the current Easement must be amended to acknowledge the permitted non-subdividable building envelope. This Easement amendment will be recorded in the Land Records of Cecil County.

The County Advisory Board approved this request and it is consistent with County regulations.

Ms. Cable presented the items. Mr. Stephen O'Connor, representing Cecil County, both was available for questions and comments.

**Discussion:**

Ms. West advised the Board to give careful consideration to approving this request as it will set a precedent for other easement violations with similar circumstances. If this request is approved, it establishes a precedent that other lot owners can request a waiver of the 5 year occupancy violation as long as they are willing to make the lot non-subdividable from the easement property.

Ms. West reminded the Board that MALPF staff is recommending this action. MALPF staff's opinion is that while the original owner of the lot did not complete the full 5-year occupancy requirement, the





**Background:**

Walter Huber applied to sell the Easement in July, 2010. As there were no pre-existing dwellings, Mr. Huber withheld 1.0 acre from the Easement application for a future dwelling, and the property was appraised on 127.7 acres. Mr. Huber entered into the option contract with MALPF to sell the Easement but died before the transaction was complete. His estate completed the sale of the Easement, but modified the withheld area request. Instead of withholding one (1) acre from the Easement, the estate requested a 1.0 acre "floating, non-subdividable building envelope." The dwelling location was subject to Foundation approval.

The Foundation approved the location of the non-subdividable building envelope at the July 2014 meeting. The new dwelling triggers the County's forest mitigation requirements, including the need for the forest conservation easement that is the subject of this request. While the owner knew a forest conservation easement would be required, it was not included in the dwelling location request because the specifics were not known at that time.

**COMAR 15.15.13.03. Eligibility.**

A. To be eligible for consideration by the Foundation, a proposal for a forest easement overlay shall meet the requirements of a State or local forest conservation program, be approved by the applicable county's planning authority, and be recommended by the county's agricultural land preservation advisory board.

*The construction of the dwelling and accessory residential structures triggers Carroll County's Forest Conservation Ordinance to mitigate the removal of trees, requiring a forest conservation easement.*

B. To be eligible for consideration by the Foundation, a proposal for a forest easement overlay shall be limited to 10 acres, or 10 percent of the total easement acreage, whichever is smaller. To be eligible, a forest easement overlay shall allow prescribed harvests.

*The 0.59 acre area proposed for the forest conservation easement is well below the size limitations. The terms of the forest conservation easement permits prescribed harvest in accordance with a forest management plan approved by the Maryland Department of Natural Resources.*

E. Mitigation for Residential Development.

(1) If a county requires on-site forest mitigation because of on-site residential development, the landowner shall so inform the Foundation at the time of the lot release request.

(2) If the lot release request is approved, the forest mitigation easement overlay document shall:

(a) Be submitted to the Foundation for review in advance of recordation;

(b) Be subordinate to the agricultural land preservation easement unless otherwise required; and

(c) Allow prescribed harvests unless harvesting is restricted under the soil conservation and water quality plan.

*Current request meets the requirements listed above.*

**COMAR 15.15.13.05. Foundation Application Procedure.**

C. The Foundation shall also take into account the following criteria when reviewing a forest easement overlay proposal:

(1) The restrictions that would be imposed on the current and future production options for the land;

(2) The potential effect of the forest easement on the ability of subsequent owners of the land to conduct

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profitable activities on the land, compatible with the Foundation's easement;

(3) The amount of the land proposed for an easement overlay;

*Analysis for 1-3: The forest conservation easement will have minimal impact on the Easement, restricting 0.59 acres of the 128+ acre Easement property to perpetual forested area that permits harvest in accordance with an approved plan.*

(4) The productivity of the soil or soils;

(5) The resource conservation purpose being served;

*Analysis for 4-5: The 0.59 acres proposed for the forest conservation easement is a mature, forested riparian buffer along a stream in the Pretty Boy Watershed Drainage Basin. The area is in the flood plain, therefore does not contain any qualifying soils. The forest conservation easement will ensure that this area of the riparian buffer will be perpetually forested, providing a water quality benefit in the watershed.*

(6) The recommendation of the county agricultural land preservation advisory board; and  
*Unanimously recommended approval.*

(7) Any other considerations appropriate and necessary to determine the proposal's compatibility with the Foundation's goals and objectives.

The property has a Forest Management and Soil and Water Conservation Plan implemented within the last 10 years.

The following language is recommended to be added to the standard Forest Conservation Easement Agreement to fulfill the requirement listed in E.(2)(b) above:

*The Terms of this Conservation Easement shall be in addition to any local, State or federal laws imposing restrictions to the Property and any real estate interests imposing restrictions to the Property. The parties hereto acknowledge that part of the Property encumbered hereby has been previously encumbered by an Agricultural Land Preservation Easement (ALPE) in favor of the State of Maryland, to the use of the Department of Agriculture, on behalf of the Maryland Agricultural Land Preservation Foundation (MALPF), as more particularly described in the ALPE. It is the intent of the parties hereto to maintain the agricultural integrity of the land and to comply with Maryland statutes, regulations and policies regarding said ALPE. The Grantor and the Grantee acknowledge that the ALPE is superior in title to this Conservation Easement, and that MALPF's written consent is required if this Conservation Easement is to be amended.*

Ms. Cable presented the items. Ms. Cable and Ms. Bowers, Carroll County Program Administrator, were available for questions and comments.

**Discussion:**

A Board member asked whether or not timber could be harvested if the land was encumbered with the county's forest conservation easement. Ms. Cable replied that the Carroll County forest conservation easement permits selective timber harvesting as long as it is in accordance with a forest management plan and approved by the Department of Natural Resources. Ms. Cable added that there are some agreements in other counties that fully prohibit any type of harvest within the forest conservation easement area; those types of easements do not comply with the Foundation's regulations regarding the approval of a forest conversation easement over the MALPF easement.

Motion #8      Approve request of 0.59-acre forest conservation easement as an overlay on the Easement property

Motion:          Donald Moore.                      Second:          Patricia Langenfelder  
Status:          Approved

E. TENANT HOUSE REQUEST

1. CECIL COUNTY

- a) 07-86-01 (the "Easement") Miller, Robert & Diane ~192.18 acres

Request – Cecil County:

The request is for retroactive approval for a second tenant house on the property.

Recommendation:

Foundation staff recommends approval of the retroactive request for a second tenant house as it meets the Foundation's requirements found in COMAR 15.15.03.03.B(2) which states "not more than one tenant house per full 100 acres may be considered by the Foundation for a farm, for example, one house for 100-199.99 acres, two houses for 200-299.99 acres", etc., or demonstration of a compelling need for a tenant house on less than 100 acres.

The regulation defines "tenant house" as "an accessory structure in which a tenant resides consisting of not more than 2,000 square feet, unless provided otherwise by the Foundation, calculated by first multiplying the exterior footprint of the portions of the structure with multiple stories by the number of stories with windows, and then adding the exterior footprint of any portions of the structure with one story, but excluding basements, attics, porches not used as living space, garages, and unenclosed decks."

Staff recommends approval to include a condition that if there is no longer a need for the second tenant house, the dwelling will be removed from the property. Also advise the tenant that if he becomes an owner of the farm, he may no longer occupy the tenant house (same condition applies to any/all future tenants residing in the Foundation approved tenant house). As a separate condition, the tenant house and the land where it is constructed may not be subdivided or separately conveyed from the farm subject to the Easement.

Background:

Robert and Diane Miller are subsequent owners of the Easement property, originally established in 1988. The original owners (also Millers) received Foundation approval for one child's lot in 2000 and the first tenant house in 2003. The current Miller family acquired the property with one pre-existing dwelling as the main residence for the property as well as the original tenant house.

The Millers operate a dairy farm with 210 milking cows and 175 head of young stock. They operate the dairy farm on this Easement property and an adjacent MALPF easement property of ~50 acres, with the total operation consisting of almost 250 acres. The operation is very labor intensive, requiring milking, feeding, health care, and general maintenance of the herd and the facilities. Mr. Miller and his son, along with 4 full time employees, oversee all the activities of the operation. It is necessary to have multiple full time employees living on the premises to facilitate and manage the dairy operation.

An employee occupies the second tenant house. This employee works full time with the dairy cows. By living on the farm, farm employees are readily available to complete the necessary daily work, regardless of conditions. The landowner's letter describes the farm operation, its requirements, and living arrangements. The request meets the Foundation's requirement of demonstrating a compelling need for an additional tenant house on the easement property, as the Easement property is not a full 200 acres.

Both the first and second tenant houses are single-wide mobile homes, less than 1,000 square feet, located adjacent to each other, and use the same means of access. The Cecil County Agricultural Advisory Board unanimously approved the request and it meets with all County requirements.

Ms. Cable presented the items. Ms. Cable and Mr. O'Connor, Cecil County Program Administrator, were available for questions and comments.

Motion #9 Retroactively approve the request for a second tenant house on the property, including the condition that if there is no longer a need for the second tenant house, the dwelling will be removed from the

property.

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

F. LAND EXCHANGE REQUEST

1. BALTIMORE COUNTY

a) 03-97-02 #1                      Cornwell, Kim & John    ~55 acres

Request – Baltimore County:

Request to adjust a released child's lot configuration by adding ~1.79 acres of land into the encumbered easement and releasing 1.0 acre of currently encumbered land. The child's lot is intended for Patti Bell.

Recommendation:

Staff recommends approval, subject to mandatory conditions outlined below.

Background:

Wayne & Phyllis Fegely are the original grantors of the easement over 103.856 acres, established in April 2000 (the "Original Land"). There were two pre-existing dwellings documented and ~8 acres were withheld at the time the easement was established. The Original Land was approved for agricultural subdivision in 2010, and is now held under Corrective Easement #1 and Corrective Easement #2. The current request concerns Corrective Easement #1, owned by Kim and John Cornwell. The history of requests, approvals, and actions on the Original Land is as follows:

1. January 2006: Staff administratively approved release of one of the pre-existing dwellings (1-acre) as shown on the map.
2. December 2010: Board approved the following items:
  - a. Adding ~6 acres that were previously withheld from the Original Land, in order to create a parcel that met the 50 acre requirement for Corrective Easement #2. (Without those 6 acres, Corrective Easement #2 would have been less than the required 50 acre size minimum for an agricultural subdivision.)
  - b. Adding 2 acres to the Original Land. These two acres were previously withheld and included a dwelling. These 2 acres are part of what is now Corrective Easement #1, and the existing dwelling was made non-subdividable.
  - c. A 1.922 acre owner's lot surrounding a pre-existing dwelling for Mr. & Mrs. Fegely, and still owned by them.
  - d. A 1.0 acre child's lot for Patti Bell, as shown on the map. This child's lot was preliminarily released on September 12, 2011 from the area comprising what is now Corrective Easement #1.
  - e. A. 1.0-acre non-subdividable child's lot for Robin Weisse, located on land encumbered by Corrective Easement #2, which land Robin Weisse and her husband now own.
  - f. Subdivision of Original Land into ~55 acres (Corrective Easement #1, including the 2 acres added per b. above) now owned by Kim & John Cornwell (Fegley's daughter) and ~52 acres (Corrective Easement #2, including the 6 acres added per a. above) now owned by Robin & John Weisse (Fegley's daughter). The 1.0 acre child's lot approved for Patti Bell is owned by the Bells and still encumbered with Corrective Easement #1 until a final release is completed and the terms have been met
3. The Corrective Easements #1 and #2 were recorded in April 2012.
4. The resulting subdivided lands were transferred to both Cornwell and Weisse immediately after the Corrective Easements were recorded.
5. May 2014: Board approved an even land exchange of ~3/4 acres to reconfigure the child's lot released for Patti Bell. After Board approval, the owners continued to pursue alternative means to meet Foundation regulations regarding land exchanges and qualifying soils to be able to submit a new land exchange request for their desired lot location. No action was taken to complete the lot relocation that the Foundation approved in May 2014.



The child lot for Patti Bell was preliminarily released in 2011, and is due to expire on July 1, 2015 (Parcel A on attached map). In 2013, the owners informed staff that the approved lot configuration would not support the driveway access, type of house, and geothermal system they wanted to establish, although the current configuration of the lot is buildable, and has passed perc tests. Staff was also informed by the owners that prior to finalizing the agricultural subdivision, the owners were aware that the configuration of the child's lot was not conducive to their plans, but did not inform MALPF prior to consummating the subdivision transaction. Since the property is no longer owned by the original grantors, and the lot has already been subdivided from the easement property, the only method available to adjust the lot configuration is through a land exchange.

The proposed exchange of land will not have any significant impact on the farming operation. The location of the desired lot (Parcel B on attached map) is being shifted and rotated to the west from the original location. The 1.79 acres to be added to the easement consists of 0.86 acres of qualifying soils coming into the easement. The 1.0 acres to be released from the easement consists of 0.83 acres of qualifying soils.

The County Advisory Board approved this request. The new lot location has been approved by Baltimore County Groundwater for a septic system and by the Baltimore County Office of Planning.

Mandatory Conditions:

Upon Foundation approval, the land exchange must be approved by the Board of Public Works. In addition, the Board required the following mandatory conditions with the May 2014 Land Exchange Approval:

1. Landowners will be responsible for the title and survey expenses associated with this request; title must be procured on the land currently comprising the child's lot (Parcel A on attached map), the 0.79 acres to be acquired (Parcel C on attached map), and the land currently comprising Corrective Easement #1;
2. A survey of the boundary of the new Corrective Easement #1 must be provided, along with a written metes and bounds description pursuant to MALPF standard requirements;
3. A survey of the boundary of the newly configured 1 acre child's lot must be provided, along with a written metes and bounds description (Parcel B on attached map);
4. Deeds of Exchange with associated lender releases for the acreage being exchanged between the Cornwells and the Bells, must be provided for review prior to execution;
5. An amended Preliminary Release and Agreement ("Amended Preliminary Release") must be executed. The Amended Preliminary Release will have a three-year term, and will specify that the original preliminary release is void. The Amended Preliminary Release must also require that the 1 acre lot be rejoined to the land under Corrective Easement #1 if the conditions of the Amended Preliminary Release are not fulfilled;
6. An Amended Corrective Easement #1, with lender subordination(s), must be executed; and
7. Existing mortgages or deeds of trust encumbering the land described in Corrective Easement #1 must be modified to encumber the new legal description for Corrective Easement #1.

In addition, it is recommended that the Board also require that the Deed for the .79 acre Parcel, with associated lender release and/or modification be provided for review prior to execution.

The Landowners have been informed that this matter is not a priority for the Foundation and that the transaction may not be able to be completed for over a year.

Ms. Cable presented the item. Ms. Cable, Mr. Lippincott, Jr., and Mr. Bell, were available for questions and comments.

Motion #10 Approve request to adjust a released child's lot configuration by adding ~1.79 acres of land into the encumbered easement and releasing 1.0 acre of currently encumbered land. The approval is subject to all conditions provided in the Staff Report.



The County Advisory Board approved this request in 2012. As there is no significant change in the current request, it was not necessary to obtain re-approval from the County Board. The original County Staff report (dated March 12, 2012) is included with this current request, along with an updated letter from the landowner, the County Administrator, and from the Howard County Soil Conservation District's office.

**COMAR 15.15.11: Corrective Easements criteria and requirements:**

**.03 Criteria.**

**C. Boundary Line Adjustment.**

(1) If the proposed corrective easement involves the adjustment of boundary lines and part of the land encumbered by the easement is to be released, then:

(a) An equal or greater amount of land of equal or better soil types shall be added to the land under easement;

*Per the analysis provided by the Howard County Soil Conservation District, 8.988 acres (out of the 9.19 acres) to be released are qualifying soils and 9.018 acres (out of the 10.19 acres) to be encumbered by the easement are qualifying soils.*

(b) The value of the easement will not be diminished by the proposed exchange;

*The size, quality, and location of the lands to be exchanged will not decrease the value of the easement, and in fact will improve access to a productive area of the easement property. The easement property will also gain an acre in the land exchange, increasing the total acres encumbered by the easement.*

(c) The proposed exchange shall be approved by the Board of Public Works; and

(d) The landowner shall pay for the cost of all title work, title insurance premiums, surveys, and documentation necessary on both the land under easement and the land to be added by corrective easement.

**.05 Requirements upon Approvals.**

A. A landowner may not proceed with plans pursuant to the approval until the corrective easement has been recorded among the land records in the county in which the land is located, unless the Foundation issues a letter permitting the landowner to proceed.

**B. Boundary Line Adjustment.**

(1) If the Foundation approves the request for corrective easement for boundary line adjustment, the landowner shall submit to the Foundation 10 copies of a survey plat, signed and sealed by a surveyor registered in the State of Maryland depicting the land area to be released from the easement, if any, and the land area to be encumbered by the easement, along with separate written metes and bounds descriptions of those areas.

(2) If the Board of Public Works approves the request, the landowner shall remit funds in the amount and manner directed by the Foundation to cover the costs of the transaction as specified in Regulation .03 of this chapter and shall furnish such other documentation as directed by the Foundation.

C. Agricultural Subdivision. In cases of agricultural subdivision, the landowners shall follow the requirements and procedures provided in COMAR 15.15.12.05B. [**NOT APPLICABLE**]

D. Other Corrective Easements. If the request is approved, the landowner shall remit funds in the amount and manner directed by the Foundation to cover the costs of the transaction as specified in Regulation .03 of this chapter and shall furnish such other documentation as directed by the Foundation.

E. 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.

Ms. Cable presented the items. Ms. Cable and Mr. Mike Clark, Landowner, Howard County was available



**(1) At the time of the subdivision:**

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

*As stated above, at the time the subdivision occurred, the Foundation permitted subdivisions with a minimum size of 20 acres.*

**(b) The subdivision met the requirements of Regulation .04F of this chapter.**

**(2) The subdivision served an agricultural purpose;**

*The subdivision occurred because a lending institution foreclosed on the property. The division of the easement property followed an edge of a field and the Hooks acquired the 10+ acre portion of the easement property to add to their 16 acre farming operation.*

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

*The subdivision had little to no impact on the resulting ~42 acre portion of the property and the addition of the 10+ acres to the adjacent property allowed the owners to expand their small beef cattle operation.*

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

*The divided parcels have sustained independent operations since the subdivision occurred in 1994.*

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

*The divided parcels both exceed the minimum soils requirements. The ~16.3 acres to be added to the ~10 acre easement portion of the subdivision also exceed minimum soils requirements.*

**(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.**

*As the landowners have been sustaining independent operations for the past 20 years, Foundation staff believes there is sufficient evidence to conclude the independent operations will continue to be sustainable in the future. The corrective easements will also benefit both portions of the current easement because the 25-year request for termination clause will be removed. The corrective easements will also document that the dwellings on each portion will be non-subdividable, which provides all future owners of each divided portion the ability to live on the farm.*

*In addition, as part of the proposed resolution, ~16.3 acres of previously unencumbered land will be added to Hook's portion of the original easement. The dwelling for the newly configured ~26 acre easement is located on the newly encumbered area. The Hooks have already merged the ~10 acres of original easement area with their ~16.3 acres of unencumbered lands under one tax parcel.*

**Proposed Resolution:**

The 1994 subdivision did not meet the Foundation's subdivision policy at that time because one of the resulting parcels was less than 20 acres. Accordingly, Foundation staff worked with the Hooks, the Kromes, County staff, and the Carroll County Land Trust to devise an acceptable solution. Fortunately,

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the Hooks owned ~16.3 acres adjacent to the 10-acre portion of the easement that was illegally subdivided. The Hooks were willing to encumber the ~16.3 acre portion of their property with a MALPF easement, to be co-held with the Carroll County Land Trust. The Hooks, Foundation, Land Trust, and County have worked together and have reached a proposed agreement on the form of the easement to encumber a total of ~26 acres, which satisfies the size and soils requirements for subdivision in 1994. The Foundation will co-hold the newly configured ~26 acre easement with the Carroll County Land Trust. The easement will be perpetual and will document that the existing dwelling is non-subdividable from the easement property.

Foundation and County staff worked with the Kromes, agreeing upon a solution to the subdivision violation. Foundation Counsel determined that the existing legal descriptions are sufficient for both portions of the easement property, which eliminates the need and expense of obtaining a new survey. Additionally, the Foundation agreed to pay for a third of the title expenses of the transaction, necessitating the Hooks and Kromes to be responsible for the additional \$1,200. Through negotiations initiated by County staff, Mike Ritchey with the law office of Stone, Preston, and Boswell, has agreed to pay the remaining \$1,200 needed to complete the title work necessary for this transaction.

The corrective easement for the Krome's portion of the easement will also remove the 25-year request for termination clause and also document that the existing dwelling is non-subdividable from the easement property. The Krome's corrective easement will be the standard MALPF document with no co-holders involved.

The Carroll County agricultural board has approved the proposed solution for this subdivision violation and it is consistent with county regulations.

Ms. Cable presented the items. Ms. Cable and Ms. Bowers were available for questions and comments.

**Discussion:**

The Board discussed how the actions of the original easement grantors have impacted the subsequent owners, requiring the current owners to resolve the violation that they did not create.

Motion #12      Retroactive Approval of an agricultural subdivision that incorporates ~16.3 acres of previously unencumbered lands to result in two separate easements consisting of ~42.27 acres (Krome property) and ~26 acres (Hook property). Approval included condition that the dwelling on each property will be non-subdividable from the easement property. The approval is also subject to all other conditions mentioned in the Staff Report.

Motion	Michael Calkins	Second:	Bernard Jones
Status:	Approved		

2. BALTIMORE COUNTY

a.) 03-87-02	(the "West Easement")	Ensor family	~147+ acres
03-87-01	(the "East Easement")	Ensor family	~112+ acres

**Request – Baltimore County:**

Request to subdivide ~60 acres of unimproved farmland from the West Easement to be merged with the East Easement. The proposed subdivision will result in the West Easement decreasing to ~86 acres and the East Easement increasing to ~172 acres.

**Recommendation:**

In accordance with the Foundation's Agricultural Subdivision regulations, Staff recommends approval, subject to regulatory conditions.

**Background:**

**West Easement** – Charles Ensor, Sr., Marguerite Ensor, Raymond Ensor, and Gladys Ensor granted the West Easement in 1988. The West Easement consists of two separately described parcels with separate tax account ID numbers (~109 acres and ~37 acres). One pre-existing dwelling was documented on the West Easement. A child's lot was approved in 1989 but never released (no longer valid with transfer of property to subsequent owners). No other requests have been approved regarding this property. Charles Ensor, Jr., Mary Ann Ensor, James Ensor, Jr., and Patricia Ensor obtained ownership in 2002.

**East Easement** – Charles Ensor, Sr., Marguerite Ensor, Raymond Ensor, and Gladys Ensor granted the East Easement in 1988. One pre-existing dwelling was documented on the East Easement. No requests have been approved regarding this property. Charles Ensor, Jr., Mary Ann Ensor, James Ensor, Jr., and Patricia Ensor obtained ownership in 2002.

In 2009, the four owners of the two easement properties entered into deeds of exchange to transfer part of the West Easement property and the entire East Easement property without the Foundation's knowledge or permission. The ownership of the two easement properties in 2009 was transferred in the following configuration:

West Easement ~109 acre parcel: James and Patricia Ensor  
West Easement ~37 acre parcel: James, Patricia, Charles, and Mary Ann Ensor  
East Easement ~112 acres: Charles and Mary Ann Ensor

Foundation Staff did not learn of the transfer of 109 acre parcel under the West Easement until the end of 2013 when the landowners submitted a request to release the pre-existing dwelling (have not proceeded with request due to outstanding violation). To date, SDAT has both the East and West Easement properties still listed under the earlier deeds of ownership.

Upon discovery, Foundation Staff informed the landowners of the violation and have been negotiating an acceptable solution. The owners responded promptly and have been cooperative in devising the proposed solution. The owners decided to request a newly configured subdivision of the West Easement, dividing and merging ~60 acres into the East Easement to meet the criteria to request a subdivision under the Foundation's agricultural subdivision regulation.

Subdivision Regulation Criteria:

Under COMAR 15.15.12.04 B if the Board approves an agricultural subdivision, approval shall accommodate a plan that the Foundation has determined will benefit the agricultural operation. 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 subdivision if the following conditions are met:

- (1) The proposed agricultural subdivision serves an agricultural purpose;

*The West Easement will be divided along existing field lines, retaining the agricultural structures with the resulting ~86 acre West Easement. The remaining ~60 acres of unimproved farmland will be merged into the East Easement, expanding the productive, active farmland of the East Easement. The new boundary line will follow on-the-ground, logical divisions of the farm fields instead of arbitrary lines in the middle of farm fields.*

- (2) The proposed agricultural subdivision will enhance or have no effect upon the agricultural operations being conducted upon the land; and

*The agricultural subdivision will enhance the overall operations of both easement properties. The currently described parcel line of the ~37 acre parcel of the West Easement bisects agricultural structures – the infrastructure of the larger agricultural operation of Cold Bottom Farms. By dividing the West Easement along meaningful lines, the two properties will benefit from the reconfiguration of the boundary lines, while retaining ample size and quality soils to function as independent operations in the future if needed.*

- (3) The resulting divided parcels from the agricultural subdivision are able to sustain long-term agricultural production, independent from each other.

*The resulting parcels meet the size soils criteria of the regulations, supporting the statements*

*provided by the County and the owners that each of the newly reconfigured East and West Easements will be able to maintain agricultural production independently of the other.*

In accordance with the regulations, the four owners have confirmed that they will be responsible for the expenses associated with the transaction and corrective easement process. The owners are aware that the termination request provision will be extinguished through the corrective easements for the newly configured easement properties.

The owners have considered Foundation Staff's request to restrict the pre-existing dwellings on the two easements as non-subdividable. The owners informed Foundation Staff that they want to retain the right to request release of the pre-existing dwellings in the future. As noted above in the regulations, the Board can "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 Board may want to discuss the owners' plans for the pre-existing dwellings, especially given the central location of the dwellings on the easement properties.

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

Ms. Cable presented the items. Ms. Cable, Mr. Lippincott, Jr., Mr. James Ensor, Sr., James Ensor, Jr., and Mr. Charles Ensor, Landowners and Ms. Amber Curtis, Attorney, all were available for questions and comments.

**Discussion:**

Ms. Curtis addressed the Board regarding the matter of the Ensor family retaining the full rights of the pre-existing dwellings for each easement property. She provided additional information regarding the family plans for the farm and possible future ownership structure; including rights of first refusal for each party regarding the other easement property. Ms. Curtis requested the Board to approve the subdivision without a requirement to make the dwellings non-subdividable from the easement properties.

Motion #13 Approve request to subdivide ~60 acres of unimproved farmland from the West Easement to be merged with the East Easement, resulting in the West Easement consisting of ~86 acres and the East Easement consisting of ~172 acres. There is no condition to make the existing dwellings nonsubdividable.

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

3. WASHINGTON COUNTY

- a.) 21-91-44s1 (the "Schultz/Bauer South Easement") ~116+ acres  
Vera Mae Ernst Schultz Revocable Trust & Betty Ann Ernst Bauer Revocable Trust
- 21-91-44s (the "Schultz/Bauer North Easement") ~73+ acres  
Vera Mae Ernst Schultz Revocable Trust & Betty Ann Ernst Bauer Revocable Trust
- 21-92-19 (the "Ernst Easement") ~143+ acres  
Ernst Family Trust, Steven Frederick Ernst, Trustee

**Request – Washington County:**

Request to subdivide 47.008 acres from the Schultz/Bauer South Easement and 2.374 acres from the Schultz/Bauer North Easement to the Ernst Easement. The combined subdivided 49.462 acres will be joined with the adjacent Ernst Easement area. As a result of the proposed subdivision, the Schultz/Bauer South Easement will decrease to 69.368 acres, the Schultz/Bauer North easement will decrease to 70.716 acres, and the Ernst Easement will increase to 193.137 acres.

**Recommendation:**



In accordance with the Foundation's Agricultural Subdivision regulations, Staff recommends approval, subject to conditions agreed upon by the landowners.

Background:

**Schultz/Bauer South Easement** – Vera Mae Ernst Schultz and Betty Ann Ernst Bauer are the original grantors of the Schultz/Bauer South Easement, established in 2000. No pre-existing dwellings are documented nor have there been any requests made regarding this easement property. The owners have submitted letters of intent to document their intention to allow their children to request child lots. The property transferred ownership to the Revocable Trusts in 2004.

**Schultz/Bauer North Easement** – Vera Mae Ernst Shultz and Betty Ann Ernst Bauer are the original grantors of the Schultz/Bauer South Easement, established in 2000. No pre-existing dwellings are documented. An owner's lot for Vera Mae Ernst Schultz was approved in March 2007 (no action has occurred after approval of the lot to create or release it as of yet). There have been no other requests made regarding this easement property. The owners have submitted letters of intent to document their intention to allow their children to request child lots. The property transferred ownership to the Revocable Trusts in 2004.

**Ernst Easement** – Frederick Ernst was the original grantor of the Ernst Easement, established in 2001. Federal funds were used in the purchase of the Ernst Easement. Two pre-existing dwellings are documented on this property. No lots were approved during the original grantor's ownership. The Ernst Family Trust acquired ownership of the property in 2010. No requests have been submitted regarding this property.

Subdivision Regulation Criteria:

Under COMAR 15.15.12.04 B if the Board approves an agricultural subdivision, approval shall accommodate a plan that the Foundation has determined will benefit the agricultural operation. 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 the resulting divided parcels. The regulations provide landowners the ability to request a subdivision if the following conditions are met:

- (1) The proposed agricultural subdivision serves an agricultural purpose;

*The two Schultz/Bauer Easements will be divided to provide additional land to benefit the agricultural operation on the Ernst Easement. The division follows a stream/riparian buffer and will establish the property boundaries along the edge of farm fields, following logical topographic lines instead of a straight line established by survey, bisecting fields. Ernst plans to continue to operate the land as part of his hog and crop agricultural operation. The divided land provides not only a logical boundary line for the farms, but also provides more land between the farmstead and agriculture structures on the Ernst Easement and the property line shared with the Schultz/Bauer South Easement. The intention of this is to proactively prevent potential disagreements between neighbors due to proximity of the farm structures and the boundary line if and when the properties are not owned within the same family and incorporated as part of a larger agricultural operation.*

*The Schultz/Bauer Easements will both be ~70 acres, which meets Foundation Regulations and affords current and future owners a variety of viable agricultural operations. The proposed subdivision will create logical boundary lines between these easements and the Ernst Easement, which will be a benefit for future owners if/when either of the Schultz/Bauer Easements transfers to a non-family member.*

- (2) The proposed agricultural subdivision will enhance or have no effect upon the agricultural operations being conducted upon the land; and

*The agricultural subdivision will enhance the overall operations on the Ernst Easement property and will have negligible impact on the Schultz/Bauer Easement properties. In addition, through the subdivision process, the owners of the Ernst Easement have agreed to make one of the two pre-existing dwellings non-subdividable from the farm, benefitting both the Foundation and all future owners by having a permanent home associated with the land.*

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(3) The resulting divided parcels from the agricultural subdivision are able to sustain long-term agricultural production, independent from each other.

*Each parcel will be able to maintain agricultural production independently of the other, with the subdivided 49.462 acres to be merged with the Ernst Easement. The resulting parcels meet the soils criteria of the regulations.*

This request also meets the exception for the 50 acre size requirement. The regulation states that the Foundation may permit resulting dividing parcels of less than 50 acres of land if:

(1) One of the following exists for the resulting divided parcel comprised of less than 50 acres:

(a) The Foundation determines that physical limitations of the land, including but not limited to, bodies of water, public roads, and steep slopes create constraints making the 50 acre minimum impractical, and the resulting parcel of less than 50 acres continues to meet minimum soils requirements as provided by COMAR 15.15.01.03D independently of the original farm; or

*The proposed subdivision follows the general contour of a stream/riparian buffer.*

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

(i) is conveyed to owners of adjoining land encumbered by an easement in favor of the Foundation; and

*The 49.462 acres will be conveyed and merged with the Ernst Easement.*

(ii) the easement encumbering the adjoining land is amended 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

*A corrective easement will be done for the resulting configuration of both the Schultz/Bauer Easements. An overlay easement will be done for the newly enlarged Ernst Easement area since it was originally federally funded.*

(iii) the resulting divided parcel and the adjoining land together meet minimum soils requirements as provided by COMAR 15.15.01.03D;

*The final configuration of all three properties continues to meet the qualifying soils requirement.*

In accordance with the regulations, Ms. Schultz and Ms. Bauer have confirmed that they will be responsible for the expenses associated with the transaction and corrective easement process. All three easement owners are aware that the termination request provision will be extinguished through the corrective easements/overlay easement for the newly configured easement properties.

Ms. Schultz and Ms. Bauer will retain their right to request family lots on the easements if they retain ownership. The Ernst Family Trust is a subsequent owner; therefore no new dwelling lot rights are available for the Ernst Easement.

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

Ms. Cable presented the items. Mr. Eric Seifarth, Washington County Program Administrator, Mr. Chris Boggs, Washington County Program Assistant, and Ms. Betty Bauer, Landowner, were available by web conferencing. Also in attendance were Mr. Steve Ernst, Landowner, and Ms. Vera Mae Schultz, Landowner, for questions and comments.

**Discussion:**

Mr. Boggs clarified that the proposed division line actually follows the fence line along the stream; the stream itself will not be the property line.

Ms. Vera Mae Schultz stated that the requested subdivision will enhance and benefit the agricultural operations of the properties. An important aspect of this will be a larger security buffer for the Ernst Family building operations, providing more distance between the property line and the buildings containing the livestock.

Motion #14 Approve request to subdivide 47.008 acres from the Schultz/Bauer South Easement and 2.374 acres from the Schultz/Bauer North Easement to be added to the adjacent Ernst Easement area. The resulting configuration will decrease the Schultz/Bauer South Easement to ~69.368 acres, and the Schultz/Bauer North easement to ~70.716 acres. The Ernst Easement will increase to ~193.137 acres. This approval is subject to all conditions listed in the Staff Report.

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

H. FAMILY LOT REQUEST

1. ST. MARY'S COUNTY

- a) 18-85-02 Belvidere Farm and Investment, Inc. ~274 acres  
and Betty M. Guyther - WITHDRAWN
- b) 18-85-03 ("the "Easement") Magnani, Donald and Frances ~123 acres

Request –St. Mary's County:

Retroactive request to exclude one acre from the easement for an owner's home as a non-subdividable dwelling and re-location of a pre-existing dwelling.

Recommendation:

Staff recommends approval. The request meets the requirements of the Foundation's Lot Location Guidelines.

Background:

The Magnanis are the original owners of the Easement. The easement was established in 1986. There is one pre-existing dwelling documented on the easement property. They received Foundation approval for one child's lot in 2006 (child was Adele), but the lot was not subdivided, nor a house built. There have been no other requests.

In 1987, there is some correspondence in the file, however, that indicates that the owners wished to build a home and also build a tenant house. Information from the St. Mary's County Planning Director at that time indicated that the site of the new home was to be the same as the pre-existing dwelling and there was not going to be a tenant house. The owners proceeded to build the new home on the site of the original home, but they moved the original home to another location on the property.

The owner's home is located on a farm lane and clustered with agricultural buildings so it meets the location meets the Foundation's Lot Location Policy. The re-located pre-existing dwelling is accessed by a farm lane and on a forested boundary of the property.

The request has been approved by the local agricultural advisory board and is in accordance with all County requirements. The reimbursement amount will be \$499.50 for the one acre that the owner's residence sits.

Additional Information

If the Foundation approves the landowners' request to relocate the pre-existing dwelling, the landowners shall enter into a written agreement with the Foundation, to be recorded among the county land records, describing the terms and conditions of the Foundation's approval for the site for the relocation of the dwelling. This agreement is required by COMAR 15.15.04.05

Another condition of COMAR (15.15.04.03) is that, if the Foundation approves the new site for an existing dwelling, such approval shall be conditioned upon the removal of the existing dwelling, and restoration of

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the existing dwelling site to agricultural use, within 60 days after the use and occupancy permit is issued for the new dwelling, or sooner, if required under county law. This regulation does not consider this situation where the landowner is entitled to an owner's lot. As well, if the land had been returned to agricultural use, the Foundation could still approve an owner's lot at that location.

Ms. Chasse presented the items. Ms. Chasse and Ms. Donna Sasscer, Program Administrator, representing, St. Mary's County were available for questions and comments.

**Discussion:**

A Board member had concerns about the relocated pre-existing dwelling and wanted to know how much farmland was removed from it. Ms. Chasse replied not very much since the area is along a treeline.

The Board agreed to approve the retroactive request to a) re-locate the pre-existing dwelling and b) approve an owner's home as a non-subdividable dwelling in the original location of the pre-existing dwelling.

Motion #16a Approve retroactive request to re-location of a pre-existing dwelling  
Motion #16b Approve retroactive request for an owner's home as a non-subdividable dwelling in the original location of the pre-existing dwelling.

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

c) 18-85-03 ("the "Easement") Magnani, Donald and Frances ~123 acres

**Request –St. Mary's County:**

Request to exclude up to 2.0 acres from the easement for a child's lot for Ashley Magnani.

**Recommendation:**

Staff recommends approval.

**Background:**

Donald and Delores Magnani are the original owners of the easement property. The easement was established in 1986. There is one pre-existing dwelling documented on the easement property. They received Foundation approval for one child's lot in 2006 (child was Adele), but the lot was not subdivided, nor a house built. There have been no other requests.

Access to the lot will use an existing farm lane. 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 existing residential lot. However, the lot will utilize an existing lane, be on a forested boundary and be clustered with the pre-existing dwelling house.

The Foundation's Lot Location Policy's options for geographical location (in priority order from most to least desirable):

1. Along public roadway and (if they exist) clustered with other dwellings;
2. Along boundary lines, natural boundaries, or the edge of tillable land, and clustered with other dwellings (if they exist);
3. Clustered with farmstead dwellings and buildings; and/or
4. Other

The request has been approved by the County and will be in accordance with all County requirements. The reimbursement amount will be \$499.50 per-acre being released.

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Ms. Chasse presented the items. Ms. Chasse and Ms. Sasscer, Program Administrator, representing St. Mary's County were available for questions and comments.

**Discussion:**

The Board agreed to approve the request to exclude up to 2.0 acres from the easement for a child's lot for Ashley Magnani.

Motion #17 Approve request to exclude up to 2.0 acres from the easement for a child's lot for Ashley Magnani.

Motion: Bernard Jones, Sr.                      Second: Jerry Klasmeier  
Status: Approved

2. FREDERICK COUNTY

a) 10-95-03 Knott, David and Linda                      ~323.349 acres  
and Betty M. Guyther

**Request –Frederick County:**

Request to exclude up to 2.0 acres from the easement for a child's lot for Ryan Knott.

**Recommendation:**

Staff recommends approval.

**Background:**

David and Linda Knott are the original owners of the easement property. The easement was established in 1999. There are two (2) pre-existing dwellings documented on the easement property. *There is one undocumented dwelling which MALPF had required removal as part of a previous child's lot request, but that was not completed; however Ryan is living in it and approval of a child's lot will correct the violation.* In 2002, the Foundation approved the relocation of a dwelling. In 2005, the Foundation approved a 65-acre agricultural subdivision. In 2011, the Foundation approved a child's lot for Kenneth, but the lot was not subdivided, nor a house built. They also received approval for an agricultural subdivision of 65 acres. There have been no other requests.

Access to the lot will use an existing farm lane. The landowner does not wish to subdivide the land due to high County Impact fees. The County will allow the dwelling as a tenant house the landowner only needs to release 1 acre.

The lot is located near a public road and the perimeter of the easement and clustered with other buildings, which is consistent with the policy below.

The Foundation's Lot Location Policy's options for geographical location (in priority order from most to least desirable):

1. Along public roadway and (if they exist) clustered with other dwellings;
2. Along boundary lines, natural boundaries, or the edge of tillable land, and clustered with other dwellings (if they exist);
3. Clustered with farmstead dwellings and buildings; and/or
4. Other

The request has been approved by the County agricultural advisory board and will be in accordance with all County requirements. The reimbursement amount will be \$800 per-acre being released.

Ms. Chasse presented the items. Ms. Chasse and Ms. Bradley, Program Administrator, representing Frederick County by web conferencing, were available for questions and comments.

**Discussion:**

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The Board agreed to approve the request to exclude up to 2.0 acres from the easement for a child's lot for Ryan Knott.

Motion #18 Approve request to exclude up to 2.0 acres from the easement for a child's lot for Ryan Knott.

Motion: Bernard Jones, Sr. Second: Patricia Langenfelder  
Status: Approved

I. LEGAL CORRECTIONS REQUEST

1. WICOMICO COUNTY

a) 22-01-01 (the "Easement") Parker family ~150 acres

Request:

Foundation Staff requests the Board to authorize a corrective easement for the above-referenced Easement for two purposes: 1) to ratify the grant of the Easement by the current landowners (the purpose of the ratification is explained below); and 2) amend the description of the Easement area to reflect the correct acreage.

Background:

There are two issues with the Easement, which are as follows:

1.) While Elisha L. Parker, III, Alan L. Parker, T. Richard Parker, and Robert C. Parker were the grantors of the Easement, they did not have title to the Easement property on the effective date of the Easement, which was September 15, 2003. On September 5, 2003 – ten days before the grantors conveyed the Easement -these four people conveyed the Easement property to Robert C. Parker and Marsha J. Parker. Accordingly, the Easement could be deemed to be ineffective because the grantors did not hold title to the Easement property on September 15, 2003.

2.) The property description for the Easement is incorrect. It references the December 2, 2002 survey titled "Boundary Survey Lands of Elisha L. Parker," recorded among the Plat Records of Wicomico County in Plat Book 14, page 318 (the "2002 Survey"). The 2002 Survey describes a total area of 186.27 acres. All parties agree that this property description is incorrect. Parker and Associates, Inc. prepared a new plat dated June 1, 2007 and titled "Corrected Boundary Survey Plat of the Lands of Elisha L. Parker," which is recorded among the Plat Records of Wicomico County at Cabinet 15, folio 551 (the "2007 Survey"). The 2007 Survey describes a total area of 148.81 acres. When the Foundation paid for the Easement, it compensated the landowners for 150 acres because the district acreage was 150 acres, and the Option Contract approved by the Board of Public Works was for 150 acres. Under the Option Contract, if the acreage is within 2% of the acreage specified by the Option Contract, the purchase price will not be reduced. In this case, the acreage is within 2% of the acreage specified in the Option Contract, therefore no payback is required. .

On May 13, 2014, MALPF staff met with a representative for the current landowners of the Easement. The current landowners of the Easement are Robert C. Parker, Marsha J. Parker Robert A. Parker and Jennifer J. Parker. We discussed the two issues and requested that the current owners of the Easement property sign a corrective deed of easement that will remedy these errors. The corrective easement process will require the current property owners to pay the costs of a title search and an endorsement to the title policy. MALPF Staff requested the current property owners to certify the accuracy of the 2007 Survey by an independent surveyor. That certification is attached to this Staff report.

Accordingly, MALPF Staff requests that the Board authorize a corrective easement to 1) ratify the grant of the Easement by the current owners of the Easement property; and 2) amend the description of the Easement area to reflect the correct acreage as shown on the 2007 Survey.

Ms. Chasse and Ms. Hoxter presented the item. Ms. Chasse and Ms. Hoxter were available for questions and comments.

**Discussion:**

The Board agreed to approve Foundation Staff request to the Board to authorize a corrective easement for the above-referenced Easement for two purposes: 1) to ratify the grant of the Easement by the current landowners; and 2) to amend the description of the Easement area to reflect the correct acreage. The Board conditioned its approval by requiring the Corrective Easement document to contain a waiver of the right to make a termination request after 25 years, thereby ensuring perpetuity of the Corrective Easement.

Motion #19 Approve Foundation Staff requests the Board to authorize a corrective easement for the above-referenced Easement for two purposes: 1) to ratify the grant of the Easement by the current landowners; and 2) to amend the description of the Easement are to reflect the correct acreage, subject to waiver of the right to request termination after 25 years.

Motion: Susanne Brogan                      Second: Eugene Roberts, Jr.  
Status: Approved

J.            **BOUNDARY LINE ADJUSTMENT REQUEST**

1.    HARFORD COUNTY

a) 12-87-03A and 12-90-16 (the "Easement")    H. Turney McKnight ~86.992 acres & 166.613 acres

**Request:**

The landowner requests the Board to retroactively approve a boundary line adjustment between the two Easement properties. The request is consistent with COMAR 15.15.11.03C(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."

**Background:**

The Easements have no previous activity except for an approval for the right-of-way for a road realignment (January 2012). 12-87-03A has a dwelling which was not documented at the time of the Easement so it may not be released. 12-90-16 has two pre-existing dwellings.

On September 18, 1997, Mr. McKnight recorded a Common Boundary Line Agreement ("Agreement") which Agreement transfers .23 acres from McKnight 12-87-03A and .65 acres from the adjacent Wright property (non-easement) to McKnight 12-90-16 for a total transfer of .88 acres. Corrective easements need to be completed to show .23 acre loss from 12-87-03A and .88 acre gain to 12-90-16.

The Harford County Agricultural Advisory Board reviewed and approved the request.

The landowner understands that corrective easements are required and that he is responsible for the expenses for a title search and insurance and a legal description of the .23 acre portion as well as the .65 acre portion. The landowner was advised that he had the alternative of revising the Agreement to return both properties to the original descriptions of the Easements.

Ms. Chasse presented the items. Ms. Chasse and Mr. Bill Amoss, Program Administrator, representing Harford County on web conferencing, were available for questions and comments.

**Discussion:**

The Board agreed to approve the landowner's request to the Board to retroactively approve a boundary line adjustment between the two Easement properties.

Motion #20 Approve the landowner's request to retroactively approve a boundary line adjustment between the two Easement properties, consistent with COMAR 15.15.11.03C(2).

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

**V. EASEMENT PETITIONS**

A. n/a

**VI. PROGRAM POLICY**

A. Request for Administrative Authority for Staff to Review and Approve Lot Reimbursement Requests

As a condition of releasing a family lot from the restrictions of a preservation easement, *"The landowner shall pay the State for any acre or portion [of an acre] released at the price per acre that the State paid the owner for the easement"* (Payback). Agriculture Article, Title 2, Section 513(b)(2)(iii), Annotated Code of Maryland.

Effective July 1, 2013, the Foundation may reimburse the landowner for Payback for a lot, if the criteria of Agriculture Article, Section 505(c), Annotated Code of Maryland are met. A copy of Agriculture Article, Section 505(c), Annotated Code of Maryland is attached.

Presently, staff reviews requests for Payback reimbursement, and evaluates whether the criteria have been met. Once determined that Payback reimbursement is appropriate, staff then brings the request to the Foundation's Board of Trustees for approval. In many cases, determining whether the required criteria are met is an objective process which is handled administratively.

Staff requests that the Foundation's Board of Trustees grant administrative authority for staff to review and approve Payback reimbursement requests when all approval criteria have been met. Some Payback reimbursement requests may require Board approval (see Section 2-505(c)(5)(ii).4.C, underlined below). Staff will exercise its discretion to determine whether the Board should decide upon certain Payback reimbursement requests.

Agriculture Article, Section 2-505(c)(5) provides:

(5) (i) Subject to the prior approval of the board of trustees of the Maryland Agricultural Land Preservation Foundation and in accordance with regulations adopted by the Department, the Maryland Agricultural Land Preservation Foundation may reimburse money paid into the Maryland Agricultural Land Preservation Fund by a landowner for a lot that had been preliminarily released under § 2-513(b)(2) of this subtitle for the purpose of constructing a dwelling house for a landowner or the child of the landowner.

(ii) In the sole discretion of the Maryland Agricultural Land Preservation Foundation, the person for whom the lot was preliminarily released, the person who originally paid for the preliminary release, or another appropriate person may be reimbursed the amount paid to the Fund under § 2-513(b)(2)(iii) of this subtitle if:

1. A dwelling has not been constructed on the lot;



2. A request for reimbursement is made before the preliminary release becomes void under § 2-513(b)(2) of this subtitle;
3. Before reimbursement and at the expense of the owner of the land under the easement:
  - A. The lot is conveyed to the owner free and clear of liens;
  - B. Any recorded plat creating the lot is voided;
  - C. The lot is added to the tax account assigned to the land encumbered by the easement; and
  - D. The preliminary release is voided by an agreement recorded in the land records; and
4. At least one of the following circumstances exists:
  - A. The Foundation has received notice that title to the lot has been transferred under a bona fide foreclosure of a mortgage or deed of trust or a deed in lieu of foreclosure;
  - B. The Foundation has received notice that the landowner or child of the landowner for whom the lot was preliminarily released has died; or
  - C. Any other circumstance in which the Maryland Agricultural Land Preservation Foundation determines that it would be impossible for the landowner or child of the landowner for whom the lot was preliminarily released to fulfill the requirements of the preliminary release.

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

**Discussion:**

It was suggested that the Board approve the request with clarification that, pursuant to Agriculture Article, Section 2-505(c)(5)(ii)(4)(C), where there exists any "...circumstance in which the Maryland Agricultural Land Preservation Foundation determines that it would be impossible for the landowner or child of the landowner for whom the lot was preliminarily released to fulfill the requirements of the preliminary release," the matter must come before the Board for consideration and determination.

Motion #18    Approve request for Administrative Authority for Staff to Review and Approve Lot Reimbursement Requests, except that any request which falls under Agriculture Article, Section 2-505(c)(5)(ii)(4)(C) shall be brought before the Board for consideration and determination.

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

**VII.                      INFORMATION AND DISCUSSION**

**A.    Fiscal Year 2015 Quarterly Inspection Report**

Please refer to the list of counties for the inspection results as of January 6, 2015. In summary, three counties, Carroll, Cecil and Washington, have started inspections. This is normal at this time of year; the majority of the counties conduct most of their inspections in the spring months.

Completed Inspections

Targets:

100%

10%

	COUNTY	FEDERAL			STATE				
		Percent	Completed	Total	Percent	Completed	Total		
01	Allegany	NA	%	NA	0	0	%	0	7
02	Anne Arundel	0	%	0	4	0	%	0	36
03	Baltimore	0	%	0	15	0	%	0	202
04	Calvert	0	%	0	3	0	%	0	32
05	Caroline	0	%	0	11	0	%	0	209
06	Carroll	0	%	0	10	1	%	5	360
07	Cecil	7	%	1	14	1	%	1	85
08	Charles	0	%	0	3	0	%	0	40
09	Dorchester	0	%	0	13	0	%	0	71
10	Frederick	0	%	0	12	0	%	0	114
11	Garrett	0	%	0	1	0	%	0	53
12	Harford	0	%	0	10	0	%	0	119
13	Howard	0	%	0	1	0	%	0	31
14	Kent	0	%	0	9	0	%	0	83
15	Montgomery	0	%	0	3	0	%	0	28
16	Prince George's	NA	%	NA	0	0	%	0	17
17	Queen Anne's	0	%	0	19	0	%	0	144
18	St. Mary's	0	%	0	13	0	%	0	94
19	Somerset	0	%	0	7	0	%	0	37
20	Talbot	0	%	0	6	0	%	0	66
21	Washington	36	%	4	11	4	%	3	67
22	Wicomico	0	%	0	8	0	%	0	48
23	Worcester	0	%	0	5	0	%	0	37

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

B. 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 #19 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: Eugene Roberts, Jr. Second: Michael Calkins  
 Favor: John Draper, Jr., Bernard Jones, Sr., Susanne Brogan, Michael Calkins, Jerome W. Klasmeier, Patrica A. Langenfelder, Donald T. Moore, Jonathan C. Quinn, Jr., Eugene Roberts, Jr., Dan Rosen, and Mary Ellen Setting.

Status: Approved

The Open Board Meeting was adjourned at approximately 11:30 a.m.

The Closed Meeting of the Board was held from 11:35 am. to 12:10 p.m. at the Maryland Department of

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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, Bernard Jones, Sr., Michael Calkins, Jerome W. Klasmeier, Patrica A. Langenfelder, Donald T. Moore, Jonathan C. Quinn, Jr., Eugene Roberts, Jr., Dan Rosen and Mary Ellen Setting.

**TOPICS DISCUSSED:**

- VIII.A Approval of October 28, 2014 and November 25, 2014 Closed Session Minutes
- VIII.B Status Report of Pending legal Issues
- VIII.C Mullinix Update
- VIII.D Montgomery County – Keshishian Revocable Trust 15-85-01

Respectfully Submitted:

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Angela Gaither, MALPF Secretary

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Carol S. West, Executive Director