

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
June 25, 2019

Trustees Present:

Michael Calkins, Chair
William Allen, Vice-Chair
Jerome Klasmeier, representing Comptroller Peter Franchot
Deborah Herr Cornwell, representing Secretary Robert McCord, Maryland
Department of Planning
Catherine Cosgrove
Taylor Huffman
Bernard L. Jones, Sr.
Joe Wood
J. Bruce Yerkes (via phone conferencing)

Trustees Absent:

Julie Oberg, representing Secretary Joseph Bartenfelder, Maryland Department
of Agriculture
Treasurer Nancy Kopp

Others Present:

Michelle Cable, MALPF Executive Director
Diane Chasse, MALPF Administrator
Chana Turner, MALPF Administrator
Sarel Cousins, MALPF Administrator
Amanda Wilson, MALPF Fiscal Specialist
Kim Hoxter, MALPF Monitoring, Enforcement and Database Coordinator
Justin Hayes, Assistant Attorney General, Department of Agriculture
Patrick Martyn, Assistant Attorney General, Department of General Services
Joanna Kille, Treasurer's Office
Kim and Crofton Briscoe, Calvert County Landowners
Ronald Marney, Calvert County Program Administrator
Mike Scheffel, Montgomery County Program Administrator
Charles Rice, Charles County Program Administrator
Billy Gorski, Anne Arundel County Planner
Jeanine Nutter, Prince George's County Program Administrator
Martin Sokolich, Talbot County Program Administrator
Todd Nichols, Chief, Office of Environmental Design, Environmental Program Division,
State Highway Administration
Cheryl Jordon, Assistant Chief, Office of Environmental Design, Environmental Program
Division, State Highway Administration

Others Present By Phone Conferencing:

Rob Tracey, Kent County Program Administrator
Carla Gerber, Kent County Assistant Program Administrator
Donna Sasscer, St. Mary's County Program Administrator
Beth Beales, Caroline County Program Administrator
Beth Groth, Charles County Assistant Program Administrator
Kaylee Justice, Baltimore County Assistant Program Administrator
Donna Smith, Queen Anne's County Program Administrator
Ray Clarke, Talbot County Engineer
Anthony Kupersmith, Talbot County Attorney

Mr. Calkins, Chair, called the meeting to order at 9:03 a.m. at the Maryland Department of Agriculture building, Annapolis, Maryland. The guests and then the Board and staff introduced themselves.

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I. APPROVAL OF MINUTES

A. Approval of Open Minutes from May 28, 2019.

Motion #1: To approve minutes from May 28, 2019
Motion: Wood Second: Jones
Status: Approved

II. ADDITION / DELETION OF AGENDA ITEMS

Item VI.B. will be discussed out of order, prior to item IV.C.1.

III. ANNOUNCEMENTS

Ms. Cable informed the Board that she and Secretary Bartenfelder testified before the Public Service Commission regarding the creation of a new transmission line coming down through Pennsylvania through Harford and Washington Counties. The proposed transmission line would impact six MALPF easements.

Ms. Cable reminded the Board that Round One will be closing in July and Round Two offers will begin. She reminded the Board that it is very important to have a quorum on the July 23rd meeting to be able to stay on track with the offers.

IV. EASEMENT AMENDMENTS

A. WITHDRAWN

B. ST. MARY'S COUNTY

1. 18-99-11 Tennyson. SHA ~195 acres

Request – St. Mary's County:

Request approval to exclude ~14.39 acres of easement property in lieu of formal condemnation by the Maryland Department of Transportation - State Highway Administration (SHA) for a wetland mitigation bank in connection with a road improvement project for State Highway MD 5 (Point Lookout Road) (the project).

Recommendation:

Staff recommends the Board consider the attached documentation provided by SHA as to whether SHA has provided sufficient proof to meet the statutory requirements of the Agriculture Article, Section 2-515(a)(2)(iii), that the condemning authority (SHA) has demonstrated:

1. A greater public purpose exists than that served by the Foundation easement; and
2. There is no reasonable alternative site.

If the Board finds these proofs adequate, then the Board may recommend approval to the Board of Public Works to partially release the MALPF easement on the 14.39 acres, including a condition that the area shall be a non-subdividable wetland envelope that must perpetually remain in common ownership with the easement property. If partial release of the easement is approved by the BPW, MALPF must be reimbursed at the per-acre value for which the easement was originally acquired.

If the Board does not find SHA's proofs adequate, the Board should deny the request.

Ms. Turner introduced the item. SHA representatives, Mr. Todd Nichols and Ms. Cheryl Jordon, were available to address the Board (SHA or SHA representatives).

Ms. Turner expressed Staff concerns about whether SHA has adequately demonstrated that the project meets the requirements of Section 2-515 (a)(2)(iii)(1) and (2) (required

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proofs) as detailed above. Most of the Board's discussion focused on the proof required to show that there is no reasonable alternative site for the project. The Board asked SHA to greater detail its search efforts to find a suitable site to mitigate the project. SHA stated that it follows the regulations and guidelines established by the EPA and the U.S. Army Corps of Engineers *2008 Final Mitigation Rule* (the Rule). The Rule's guidelines recommend that condemnation of property owned by "unwilling landowners" is to be pursued only as a last resort, and that working with "willing landowners" is preferred. SHA explained the difficulties in finding willing landowners with properties that have the features required to mitigate or establish mitigation banks for its projects.

The Board asked SHA if it completed its research of all the properties on the list of possible sites that had been narrowed from 112 to 10 sites. SHA said that once the Tennysons reached out to it [through the local Soils Conservation District], SHA did not pursue any of the remaining unreached properties on the 10-site list. The Board determined that SHA had not provided adequate proof that there is no reasonable alternative site based on the fact that its research of the entire 10-site possibilities was not completed. The Board also discussed whether a willing landowner with a MALPF easement would ever satisfy the criterion of proof of that there is no reasonable alternative site available for mitigation.

The Board asked the SHA representatives if the entire 14.939 acres are needed to mitigate the project. SHA stated that only a portion was needed to mitigate the project, and that the 14.939 acres also includes acreage for a mitigation bank. The Board asked SHA to provide the separate acreages needed 1) for mitigation of the Route 5 project; and 2) to create the mitigation bank for future projects.

Ms. Cable asked why earlier efforts for an overlay of the SHA easement were abandoned. SHA explained that in addition to its agency, the project needs approval by Army Corps of Engineers and the Maryland Department of Environment and that, pursuant to the Rule, the Army Corps of Engineers is only interested in properties that are free and clear of covenants and restrictions. The Board encouraged SHA to further discuss the possibility of an overlay with the Army Corps, and that Staff would be willing to meet with SHA to further this discussion.

Ultimately, the Board decided that SHA had not met the burden of proof necessary to show that no reasonable alternative site exists for the project, and suggested that SHA 1) complete its research on the remaining properties on the 10-site list; and also to provide a breakdown of the requested acreage to show how many acres are needed to mitigate the project, and how many acres are proposed for a mitigation bank. The Board expressed that they would entertain another request for the project if it included this information.

The Board did not focus on the question of whether SHA's required proof satisfied the criterion to show that its proposed wetland mitigation easement serves a greater public purpose than MALPF's easement.

Motion #2: To deny request until further analysis of all possible alternative mitigation sites have been investigated.

Motion: Cosgrove Second: Jones
Approved: Cosgrove, Jones, Allen, Huffman, Yerkes, Wood
Opposed: Klasmier, Herr-Cornwell
Status: Approved

C. CALVERT COUNTY

1. 04-84-06 Briscoe, Crofton ~71 acres

Request – Calvert County:
Request retroactive approval for special occasion events area.

Recommendation:
Staff recommends approval pursuant to Section 2-513(d), Agriculture Article, Annotated Code of Maryland (special events statute) conditioned upon 1) the landowner providing a survey within three months of the date of Board approval as provided below; and 2) landowner entering into an unrecorded agreement with the Foundation to memorialize the

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location of the special occasion events area, specifying the means of access to the special events area and acknowledging that the special events area will be extinguished upon a transfer of the property.

Staff further recommends that should the landowners request to hold events in excess of the limit set by the county (no more than 24 events annually) that the request be subject to review and approval at Staff level.

Ms. Turner introduced the item. Ronald Marney, the Calvert County Program Administrator, and Mr. and Ms. Briscoe were available to address the Board. Mr. Marney provided the Board two additional maps, labeled MAP 1 and MAP 2, to illustrate two parking area locations for the event. MAP 1 has the parking area immediately adjacent to the barn used for events. MAP 2 has the parking area near the entry of the farm, adjacent to the equestrian operation, with an access lane down to the barn.

The Briscoes informed the Board that they use the parking as shown in MAP 1. The area shown for parking in MAP 2 was sporadically used in cases of significant inclement weather that made the parking area designated in MAP 1 too wet.

An additional clarification was provided by Ms. Briscoe, informing the Board that there was no need to establish a septic reserve area, as all events are served by portable restroom trailers.

Motion #3: To approve the request to retroactively approve the establishment of a special occasion events area, as shown on the map labeled MAP 1, subject to Staff recommendations.

Motion: Wood Second: Jones
Status: Approved

D. BALTIMORE COUNTY

1. 03-05-01 Rossier, Grace ~133 acres

Request – Baltimore County:

Request approval for a child lot for daughter Jennifer Wolinski Lambert

Recommendation:

Staff recommends approval.

Ms. Turner introduced the item. Kaylee Justice was available by phone conference to answer questions from the Board.

Motion #4: To approve the request for approval for a child lot of up to 2.0 acres for the landowner's daughter, Jennifer Wolinski Lambert.

Motion: Jones Second: Allen
Status: Approved

E. TALBOT COUNTY

1. 20-87-01sub#1 Collins, Rodney, Jr., Laura, and Michael ~193 acres

Request – Talbot County:

Request approval for release of .762 acres to be transferred in fee-simple to the County to widen Goldsborough Neck Road. The County plans to construct storm-water and utility related improvements and has delivered notice of its intention to condemn the requested acreage.

Recommendation:

Staff recommends approval per the attached letter provided by the County which discusses the statutory requirements of the Agriculture Article, Section 2-515(a)(2)(iii), in which the condemning authority (Talbot County) has demonstrated:

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1. A greater public purpose exists than that served by the Foundation easement; and
2. There is no reasonable alternative site.

Ms. Chasse introduced the item.

Motion #5: Based on the facts provided by the Talbot County Attorney, Anthony Kupersmith, in a letter dated June 12, 2019, that documents how the release request meets Agriculture Article, Section 2-515(a)(2)(iii), motion to approve the request to release .762 acres subject to Board of Public Works approval and payback.

Motion: Cosgrove Second: Jones
Status: Approved

2. 20-87-01sub#2 Brooks, John and Sherrill ~58 acres

Request – Talbot County:

Request approval for release of 1.006 acres to be transferred in fee-simple to the County to widen Goldsborough Neck Road. The County plans to construct storm-water and utility related improvements and has delivered notice of its intention to condemn the requested acreage.

Recommendation:

Staff recommends approval per the attached letter provided by the County which discusses the statutory requirements of the Agriculture Article, Section 2-515(a)(2)(iii), in which the condemning authority (Talbot County) has demonstrated:

1. A greater public purpose exists than that served by the Foundation easement; and
2. There is no reasonable alternative site.

Ms. Chasse introduced the item.

Motion #6: Based on the facts provided by the Talbot County Attorney, Anthony Kupersmith, in a letter dated June 12, 2019, that documents how the release request meets Agriculture Article, Section 2-515(a)(2)(iii), motion to approve the request to release 1.006 acres subject to Board of Public Works approval and payback.

Motion: Jones Second: Cosgrove
Status: Approved

F. CARROLL COUNTY

1. 06-80-05Be Weicht, Edwin and Margaret ~41.59 acres

Request – Carroll County:

Request approval for a land exchange to reconfigure a previously-released family lot to comply with local health department regulations.

Recommendation:

Staff recommends approval.

Ms. Turner introduced the item.

Motion #7: To approve the request for a land exchange to reconfigure previously-released family lot to comply with local health department regulations.

Motion: Cosgrove Second: Huffman
Abstain: Jones
Status: Approved

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V. NEW AGRICULTURAL PRESERVATION EASEMENT PETITIONS:

N/A

**VI.
VII.**

PROGRAM POLICY

A. Montgomery County Recertification

Ms. Cousins presented the item. Ms. Herr-Cornwell provided the Department of Planning's agreement with recommending approval. Mr. Scheffel was available to address the Board.

Motion #8: To approve the Montgomery County request for recertification.

Motion: Jones Second: Wood
Status: Approved

B. Special Occasion Events Area- Policy Implementation

In anticipation of the Board's consideration of the first special occasion event area (area) at this meeting (see item IV.C.1. above), Staff provided the Board with suggested subjects and inquiries that it may want to consider while deliberating the area request, and encouraged the Board to pose additional questions or clarifications. Staff asked if there any other questions or information that the Board considers pertinent to special occasion event area requests.

The Board discussed whether or not any required septic reserve area would be included within the 2-acre maximum area of the event designation envelope. As the law is silent regarding septic reserve areas, it was determined that the Board is able to decide whether or not to include any septic reserve area within the 2-acre envelope.

The Board instructed Staff to develop an application form based on the items addressed in the policy discussion to provide landowners a list of the questions/topics/information to be included in any future special occasions events request.

VIII. INFORMATION AND DISCUSSION

A. Fiscal Year 2019 June Inspection Report

Please refer to the list of counties for the inspection results as of June 5, 2019. In summary, seven counties, Anne Arundel, Cecil, Charles, Montgomery, St. Mary's, Talbot and Washington have completed inspections and reports are turned in. Multiple other counties have completed inspections and are currently working on reports. Dorchester County has indicated that they cannot meet their goals.

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General Provisions Article Section 3-305(b):

(3) to consider the acquisition of real property for a public purpose and matters directly related to the acquisition;

(7) to consult with counsel to obtain legal advice; and

(8) to consult with staff, consultants, or other individuals about pending or potential litigation.

During the Closed Meeting, the following Board members were present: Michael Calkins, Chair, Jerome Klasmeier, representing Comptroller Peter Franchot, Deborah Herr Cornwell, representing Secretary Robert McCord, Maryland Department of Planning, William Allen, Cathy Cosgrove, Taylor Huffman, Bernard Jones, Joe Wood, and J. Bruce Yerkes (via phone conferencing). The following Board members were absent: Julie Oberg, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture, and Treasurer Nancy Kopp.

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

TOPICS DISCUSSED:

- A. Approval of May 28, 2019 Closed Session Minutes
- B. Status Report of Pending Legal Issues
- C. FY 2019 Round One Offers
- D. Legal advice regarding existing overlay Conservation Easement on a Carroll County MALPF easement property.

Respectfully Submitted:



Michelle Cable, MALPF Executive Director