

**MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
October 25, 2016**

Trustees Present:

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

Trustees Absent:

Ralph Robertson
Milly Welsh

Others Present:

Deborah Bowers, Carroll County Program Administrator
Michelle Cable, MALPF Administrator
Diane Chasse, MALPF Administrator
Debbie Herr Cornwell, Caroline County Program Administrator
Nancy Russell-Forrester, Assistant Attorney General, Department of General Services
William Gorski, Anne Arundel County, Planner
Justin Hayes, Assistant Attorney General, Department of Agriculture
Jonathan Herman, Carroll County Landowner
Kim Hoxter, MALPF Monitoring, Enforcement and Database Coordinator
Jeanine Nutter, Prince George's County Program Administrator
Donna Sasscer, Saint Mary's County Program Administrator
Brad Taylor, St. Mary's County Landowner
James Wallace, Assistant Secretary for Administration, MDA
Carol West, MALPF Executive Director
Amanda Wilson, Fiscal Specialist

Others Present By Web Conferencing:

Chris Boggs, Washington County Assistant Program Administrator
Kaylee Justice, Baltimore County Staff
Steve O'Connor, Cecil County Program Administrator
Eric Seifarth, Washington County Program Administrator
Ethan Strickler, Frederick County Staff

Bernard L. Jones, Sr., Chair, called the meeting to order at 9:02 a.m. at the Maryland Department of Agriculture building, Annapolis, Maryland. The guests and then the Board and staff introduced themselves.

I. APPROVAL OF MINUTES

A. Approval of Open Minutes from September 27, 2016.

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Motion #3: To approve an agricultural subdivision of the Easement property creating an approximately 124 acre parcel and an approximately 51 acre parcel with recommended conditions.

Motion: Catherine Cosgrove Second: Michael Calkins
Status: Approved

C. CECIL COUNTY

1) 07-88-02Sub #1 Stoltzfus, Elam & Lizzie ~84 acres

Request –Cecil County:

Request acknowledgement of a pre-existing dwelling that was not documented at the time of easement acquisition.

Recommendation:

Staff recommends approval, with condition that the dwelling may never be subdivided from the property.

Ms. Cable introduced the item. Mr. O'Connor was available for questions or comments. Mr. O'Connor informed Board that the county advisory board recommended that any replacement dwelling may never be larger than the current footprint. The Board decided to follow standard MALPF practice and not include any size limitation on the dwelling.

Motion #4: To approve the request to acknowledge a pre-existing dwelling that was not documented at the time of easement acquisition with recommended condition that the dwelling may never be subdivided, as presented.

Motion: Susanne Brogan Second: Jerome Klasmeier
Status: Approved

D. ST. MARY'S COUNTY

1) 18-82-03 Lierman, Terry and Lipscomb, Ronald ~118 acres

Request – St. Mary's County:

Request to approve the release of 3 pre-existing dwellings from the easement on up to 6 acres.

Recommendation:

Staff recommends approval of the release of acreage around the 3 dwellings and a fee access over the existing driveway to access the area, subject to documenting access for the easement owners to cross and re-cross the driveway and to document the right of the Foundation to use the driveway for inspection purposes.

Ms. Chasse introduced the item. Ms. Sasscer and Mr. Taylor were available for questions or comments.

Motion #5: To approve the release of 3 pre-existing dwellings from the easement on up to 6 acres as presented.

Motion: Catherine Cosgrove Second: Donald Moore
Status: Approved

E. HARFORD COUNTY

1) 12-88-02 Howard, Amabel ~155 acres

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Request – Harford County:

Request to approve up to a 2-acre lot from the easement to exclude a pre-existing dwelling and to approve a right-of-way to access the lot.

Recommendation:

Staff recommends conditional approval of the lot and a right-of-way over the existing driveway to access the lot. First, per local Board recommendation and landowner agreement, the right-of-way would become void if the lot was sold to a third party. This will be documented by the attached right-of-way document. Second, the parcels under the easement must be re-joined under common ownership.

Discussion:

Staff explained the release of the pre-existing dwelling would be completed in a two-stage process. First a preliminary release of the area so a lot can be created and the loan on the property modified to be over the lot only. Then the final release could be completed once Ms. Perri transfers the 13 acres back to Ms. Howard. The Board was concerned that staff does not have anything from the lender to indicate that it is willing to modify its loan. Staff said that we will require a letter from the lender prior to obtaining a preliminary release.

Motion #6: To approve up to a 2-acre lot from the easement to exclude a pre-existing dwelling and to approve a right-of-way to access the lot. Approval includes staff recommendations and with the condition that the landowner is given one year to resolve any mortgage issues. If mortgage issues cannot be resolved within one year, the landowner is to make a new request to the Board.

Motion: Catherine Cosgrove Second: Donald Moore
Status: Approved

V. EASEMENT PETITIONS

A. FREDERICK COUNTY

1. 10-17-14 Mills, Roger, Jr. 154.23 acres

Request is to approve the application withholding .57 acres from the easement with 0 development rights associated. Withheld acreage is for an existing cell tower and access. Staff recommends the area be called a Permitted Use Envelope. After the cell tower lease is terminated and not renewed within a year, the Permitted Use Envelope will dissolve and the area shall only be used for agriculture.

Motion #7: To approve the request as presented.

Motion: Susanne Brogan Second: Catherine Cosgrove
Status: Approved

2. 10-17-15 Pike's View LLC 48.84 acres

Request is to approve the application for a property that is less than 50.0 acres in size and not adjoining an existing easement property.

Mr. Calkins visited the property on October 18, 2016 and found it to be acceptable. The property meets the criteria of "extraordinary agricultural capability" as it is located in an agricultural zone, contains 97% qualifying soils, it is of significant size, and a letter is forthcoming from the Frederick County Soil Conservation District that will attest that a soil conservation plan is in place and is fully implemented according to a schedule in the plan.

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Motion #8: To approve the request as presented. Approval is conditional on receipt of the letter from the Frederick County Soil Conservation District.

Motion: Michael Calkins Second: Susanne Brogan
Status: Approved

B. BALTIMORE COUNTY

1. 03-17-02 Foster, Vernon & Richard, Trustees ~110.384 acres

Request is to approve the application withholding 1 acre lot around a pre-existing dwelling.

2. 03-17-07 Lionel Kemp Ensor, Jr. Residual Trust ~100.3 acres

Request is to approve the application withholding 0.4 acre to adjust the lot line of a previously conveyed lot.

3. 03-17-18 Whipperman, Bill & Kristy ~20.33 acres

Request is to approve the application withholding a 1.33 acre non-subdividable building lot. The withhold area will establish a permitted building envelope within the easement to serve as the primary residence.

Motion #9: To approve the requests as presented.

Motion: Catherine Cosgrove Second: Michael Calkins
Status: Approved

VI. PROGRAM POLICY

A. CARROLL COUNTY

1. Request by Carroll County Program Administrator to address the Board regarding COMAR 15.15.01.17 F. Granting Easements and Rights-of-Way.

Ms. Cable provided information to the Board regarding the referenced regulation and how the Foundation has implemented the regulation when requests are submitted. Ms. Cable informed the Board that the Foundation has always reviewed and interpreted the regulation in its entirety, not applying the paragraphs separately. Therefore, unless a right of way or easement request falls into the two listed exceptions stated by the regulation, the Foundation is not permitted to approve a subsequent easement or right of way request.

Ms. Bowers addressed the Board regarding the negative impact that the referenced regulation has had on landowners in Carroll County. Ms. Bowers informed the Board that it was Carroll County's opinion that the Foundation has been interpreting and applying the regulation too narrowly, and each separate paragraph of the regulation should be interpreted and applied independently. Ms. Bowers stated that there were multiple occurrences in Carroll County when landowners were not permitted to bring a request before the Board because MALPF staff informed the county that the request did not meet the criteria in the regulation and therefore the Board was legally unable to approve the request. Ms. Bowers detailed two specific examples, one of a septic easement overlay and the other a right of way easement for a neighbor to use a driveway of the MALPF easement property.

Ms. Bowers stated that their county representative, Delegate Krebs, has been contacted and made aware of the situation. Ms. Bowers stated that the Delegate was open to assisting Carroll County in their efforts to revise the language to facilitate requests by Carroll County farmers.

Mr. Hayes informed the Board that the Foundation has been consistent in its interpretation and implementation of the regulation, which is supported by Maryland law.

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Mr. Hayes told the Board that beyond the two types of exceptions listed in the referenced regulation, the Foundation has approved other regulation and policy that allow for environmental-type overlay easements (forest mitigation/conservation easement and stream restoration easements, for example).

The Board was informed that an overlay committee was established but has yet to meet. The committee is tasked to review current regulations and policies regarding all types of overlay easements. Ms. Chasse is the MALPF staff person assigned to manage the committee. The Board recommended the committee should begin its review in the near future. It was confirmed that Ms. Bowers was one of the county administrators appointed to the committee.

The Board expressed concern that MALPF staff had not brought landowner requests for their review regarding these overlay easement requests. MALPF staff informed the Board that the Board previously directed staff not to bring requests that were not legally permissible for the Board to approve, as it was an inefficient use of everyone's time. In those instances, staff has consulted with the Board Chair to make the final decision whether or not to bring the request before the Board.

The Board decided that going forward, MALPF staff should bring all requests from landowners to the Board for their review, whether or not the request is legally permissible for the Foundation to approve or not. MALPF staff stated they would act accordingly in the future.

VII. INFORMATION AND DISCUSSION

- A. Fiscal Year 2017 Quarterly Inspection Report
- B. News Articles
- C. Little Pipe Creek Rural Legacy Area – Hege Property request/stewardship issue

Ms. Bowers presented background material regarding a subdivision request of the Hege property, a Rural Legacy Program easement that the Foundation and Carroll County co-hold as grantees. Ms. Bowers provided information regarding the configuration of the subdivision request as well as reminding the Board that this is not a Foundation easement, but a Rural Legacy easement; therefore, the Foundation regulations and policies do not apply in this instance.

The Board thanked Ms. Bowers for her presentation. As advice from Counsel was necessary, the Board deliberated the request during closed session.

VIII. CLOSED SESSION

Bernard L. Jones Sr. asked for a motion for adjournment of the meeting to move into a closed session, pursuant to the applicable provisions of General Provisions Article Section 3-305 (b): (7) to consult with counsel to obtain legal advice; and (8) to consult with staff, consultants, or other individuals about pending or potential litigation.

Motion #10: To adjourn the regular session to move into a closed session to consult with counsel to obtain legal advice; and to consult with staff, consultants, or other individuals about pending or potential litigation.

Motion: Michael Calkins Second: Catherine Cosgrove
Status: Approved

The Open Board Meeting was adjourned at approximately 10:43 a.m.

The Closed Meeting of the Board was held from 10:54 a.m. to 11:30 a.m. on October 25, 2016 at the Maryland Department of Agriculture building, Annapolis, Maryland, pursuant to the provisions of the General Provisions Article Section 3-305 (b): Annotated Code of Maryland:

General Provisions Article Section 3-305(b):

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

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

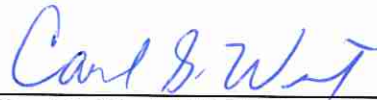
During the Closed Meeting, the following Board members were present: Bernard L. Jones, Sr., Chair, Michael Calkins, Vice-Chair, William Allen, Susanne Brogan, representing Treasurer Nancy Kopp, Catherine Cosgrove, James Eichhorst, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture, Jerome Klasmeier, representing Comptroller Peter Franchot, Tom Mason, Donald Moore, Dan Rosen, representing Secretary Wendi Peters, Maryland Department of Planning,

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

TOPICS DISCUSSED:

- A. Approval of August 23 2016 Closed Session Minutes
- B. Status Report of Pending Legal Issues
- C. Rural Legacy Easement – File No. 11,948-D, Hege, Marlin 47.5 acres

Respectfully Submitted:



Carol S. West, MALPF Executive Director