

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
February 25, 2014

TRUSTEES PRESENT:

John Draper, Jr., Chair
Bernard L. Jones, Sr., Vice Chair
Susanne Brogan, representing Treasurer Nancy Kopp
Craig Highfield
Jerome W. Klasmeier, representing Comptroller Peter Franchot
Patricia A. Langenfelder
Donald T. Moore
James (Bubby) Norris, Jr.
Jonathan C. Quinn
Eugene Roberts, Jr.
Dan Rosen, representing Secretary Richard E. Hall, Maryland Department of Planning
James Wallace, representing Secretary Earl F. Hance, Maryland Department of Agriculture

TRUSTEES ABSENT:

None

OTHERS PRESENT:

Gary Allen, Prince Georges County, Sustainable Forestry Council
Bill Amoss, Harford County, Program Administrator
Richard Baldus, Charles County, Charleston Partnership
Stephen C. Barnhart, Carroll County, Surveyor
Michelle Cable, MALPF Administrator
Diane Chasse, MALPF Administrator
Rama Dilip, MALPF Administrative Specialist
Mary Lane Dubel, Baltimore County, Landowner
Michael L. Dubel, Baltimore County, Landowner
Nancy Forrester, Assistant Attorney General, Department of General Services
Angela Gaither, MALPF Secretary
Carla Gerber, Kent 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
Steven Koehn, Department of Natural Resources, State Forestry
Donna Landis-Smith, Queen Anne's County, Program Administrator
Wally Lippincott, Baltimore County, Program Administrator
Jeanine Nutter, Prince George's, Program Assistant
Eric Sprague, Anne Arundel County, Sustainable Forestry Council
Margaret Weicht, Carroll County, Landowner
Roy Weicht, Carroll County, Landowner

OTHERS PRESENT BY WEB CONFERENCING:

Anne Bradley, Frederick County, Program Administrator
Debbie Herr Cornwell, Caroline County, Program Administrator
Jeffery Holtzinger, Frederick County, Attorney for Mr. Claggett
Ned Sayre, Harford County, Ag Preservation Outreach Specialist
Eric Shertz, Cecil County, Program Administrator
Martin Sokolich, Talbot County, Program Administrator
Nicholas Wood, Frederick County, Landowner

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In the fall of 2008, the Weichts submitted a request to establish a forest mitigation bank on the ~92+ acres they owned at that time. That request was the initial catalyst that informed the MALPF Staff that the Staley property had been illegally subdivided. Since there was a violation of the easement property, the forest mitigation bank request could not be processed at that time.

Over the following 5 years, the Foundation worked with Mrs. Staley and the Weichts to resolve the subdivision violation. The ultimate result was that Mrs. Staley sold the second parcel of the easement property to the Weichts in 2013. As the easement property was once again under a single ownership, and in fact the Weichts consolidated the tax parcels of the easement property into a single tax account and parcel, the subdivision violation was resolved.

Since the original forest mitigation bank request was unable to be processed through no fault of the Weichts, and since the re-submission is an identical request to the 2008 submission, MALPF Staff, with consultation of counsel, determined that the request should be reviewed under the 2008 forest mitigation policy and procedures (attached). The Board has reviewed and approved similar situations of easement owners in the past, when a request was initially submitted but not processed due to a reason outside the landowner's control. In those situations, the Board determined that the request should be viewed applying the policies that were current at the time of the initial request (Board decision October 2011).

2008 MALPF Forest Mitigation Policy and Procedures:

The Weicht request meets the criteria provided in the 2008 policy. The policy is attached, but listed below is a description of the requirements necessary as part of the request.

LAND ELIGIBLE FOR FOREST MITIGATION

For land under a MALPF easement to be eligible for consideration for forest mitigation, it must be other than Class I, II, or III unless, subject to the approval of the MALPF Board, mitigation on that land will serve a resource conservation purpose, e.g., buffering a stream, as part of a Soil and Water Quality Plan prepared by the Soil Conservation District.

The soils proposed for the forest mitigation bank are 88% Class II and III soils; the other 12% are non-qualifying soils. The Soil Conservation and water Quality Plans provided with the application state that the proposed forest mitigation on the property will increase the existing buffers for the watercourses on the farm, and also provide enhanced wildlife habitat, both benefiting overall resource conservation for the property.

APPLICATION PROCEDURE

The person applying for forest mitigation/forest mitigation banking is responsible for

- having a current Soil and Water Quality Plan, developed by the local Soil Conservation District, that describes the resource conservation purpose served by the mitigation,
- if applicable, having a Forest Stewardship Plan, developed within the last ten years by a professional forester licensed in Maryland,
- completing an application for the mitigation/banking, and
- submitting the application to the county MALPF program administrator.

[The Weicht submission provided all this information and documentation.]

The county MALPF program administrator is responsible for

- reviewing the application for completeness,
- presenting the application to the county agricultural advisory committee for its recommendation, and
- if the county agricultural advisory committee approves the application, sending the application to the Foundation.

[The County administrator provided this information and documentation.]

The Foundation staff is responsible for

- reviewing the application for completeness;
- submitting the application to MDA's Resource Conservation Operations for an opinion on the appropriateness of the mitigation/mitigation bank;

[Resource Conservation reviewed the request, their input is included as an attachment that supports the creation of the forest mitigation areas to support a legitimate resource conservation purpose.]

- submitting the application to the Maryland Department of Planning for a written statement indicating whether the development to be facilitated by the forest mitigation is in a Priority Funding Area, is consistent with the local comprehensive plan and State Planning Policy, and is not likely to encourage or support substantial further development in areas the Foundation is attempting to preserve; and *[The request is to create a forest mitigation bank that would be available to meet the future needs of potential development projects. Since this request is not associated with a specific development project, MDP's review was not requested.]*
- submitting the application to the Board, complete with the required documents and statements and the staff recommendation.

BOARD ACTION

When it has received a recommendation from the Foundation staff, based on information from the county, the Soil Conservation District, the Maryland Department of Planning, and the Maryland Department of Agriculture's Resource Conservation Operations, the Board will determine if the mitigation is appropriate for the easement land and if the development project facilitated by the proposed mitigation is compatible with the Foundation's goals and objectives. The Board will consider:

- The restrictions that would be imposed on the current and future production options for the land; *[The forest conservation easement would limit the mitigation bank area to forestry uses, permitting harvesting only under an approved forest management plan approved by DNR.]*
- The potential effects of the forest mitigation on the ability of subsequent owners of the land to conduct profitable activities on the land, compatible with the Foundation's easement; *[The forest mitigation easement will limit the use of these acres to forestry in perpetuity. This does impact future owners, but the area impact is still able to contribute to a productive operation through timber harvesting.]*
- The amount of land proposed for mitigation, *[The size of the plan is approximately 23% of both easement properties combined. The 2008 policy does not place a limit on the size of a forest mitigation easement; however, the size of the proposed area must be taken into account when the Board deliberates their decision.]*
- The resource conservation purpose being served, if applicable, *[The purpose and benefit of establishing the forest mitigation easement will be for improved water quality and wildlife habitat.]*
- The recommendation of the county agricultural advisory board, and *[The county supports the request.]*
- Whatever other considerations it finds appropriate and necessary to determine the proposal's compatibility with the Foundation's goals and objectives.

Additional considerations

If the forest mitigation/forest mitigation bank request is for a property that was approved for MALPF easement purchase by the Board of Public Works prior to October 1, 2004, and is therefore eligible to apply for termination of the easement after twenty-five years, then the owner shall be required to amend the deed of easement to waive the right to request termination of the easement after twenty-five years, and clarify the perpetual nature of the easement.

Unless it determines that the State's interest in the land is somehow compromised by the doing so, if the Board approves a forest mitigation proposal or forest mitigation bank proposal, it will

- maintain the superior position of the Foundation's easement on the mitigation acreage, making appropriate adjustments in the forest conservation easement, and
- not concern itself with mitigation payments from the developer to the landowner.

The following language shall be included in the forest mitigation overlay easement:

"The parties hereto acknowledge that the land encumbered hereby has been encumbered previously by

Recommendation:

In accordance with our Agricultural Subdivision regulations, staff recommends approval.

Staff also suggests that Mr. Claggett make one of the pre-existing dwellings on his property non-subdividable from the easement. Having a house with his property protects the future profitability of his subdivided property.

Background:

Mr. Claggett is the original easement grantor (1985). There are three pre-existing dwellings. These are all reserved by Mr. Claggett on the south parcel, which he plans to retain, as well as three family lot rights.

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 farm will be divided to facilitate separate farming operations on the land. Mr. Claggett will retain ownership of the ~76 acre parcel on the south side of Jefferson Pike and continue the ongoing grain operation, which is farmed under a lease with adjoining lands. The 55-acre north parcel would be sold to Mr. Millard Wesley Shafer who owns an adjoining parcel and wishes to expand his farming operation (dairy) with additional crop acreage.

- (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 conducted upon the two farms by expanding the farming operation on the north side of the road with an adjoining parcel. Mr. Claggett or a future owner will not have to manage a farm separated by the road.

- (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, given the size of the parcels and the quality of the soils (100% and 85% Class I-III soils).

Mr. Shafer has agreed to be responsible for the expenses associated with the transaction and corrective easement process. They have also been informed that the termination request provision will be extinguished through the corrective easements for both newly configured easement properties.

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

Ms. Chasse presented the item. Ms. Anne Bradley, Frederick County Program Administrator, and Mr. Claggett's attorney, Mr. Jeff Holtzinger, were available by web conference for questions and comments.

Discussion:

The applicant's attorney, Mr. Holtzinger, confirmed that Mr. Claggett or Mr. Shafer will submit necessary surveys. He also acknowledged that any liens need to be subordinated in the corrective easement process.

Mr. Draper asked if Mr. Claggett was agreeable to making one of the pre-existing dwellings non-subdividable from his portion and Mr. Holtzinger replied that Mr. Claggett is in agreement with that

condition.

Motion #3 Approve an agricultural subdivision of property creating a ~55 acre parcel, more or less, and a ~76 acre parcel, more or less.

Motion: Dan Rosen Second: Jerry Klasmeier
Status: Approved

2. 10-86-01 Sub #1 Wood, Nicholas ~128.4 acres

Request - Frederick County:

The request for approval of a 2.97-acre forest conservation easement as an overlay on the MALPF easement property in order to comply with the County's Forest Conservation Law, which is triggered by the construction of a new driveway.

Recommendation:

Staff recommends approval of the request, subject to local board approval, and with a written statement from Mr. Wood that he will do an Overlay Easement on his portion of the property, which will remove the 25-year termination clause.

15.15.13.03. 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.

This is not a lot release request but it is necessary residential development as per the Mr. Wood's email, i.e. a new driveway for a pre-existing residence.

(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;
County has agreed to this.

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

Subordination is not recommended by counsel – instead use "Acknowledgment" language.

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

The document allows prescribed harvests.

The property has a Forest Management Plan which is being updated and should be complete by the time of this meeting. The Soil and Water Conservation Plan is current.

The regulations also require:

15.15.13.05. E. If the forest easement overlay request is for a property subject to an easement with a 25-year termination clause, the landowner shall amend the deed of easement to waive the right to request termination of the easement after 25 years and to clarify the perpetual nature of the easement.

Background:

Mr. Wood is the child of the original grantor of the easement (Mary Elizabeth Day Wood). He owns a portion of the easement property. In December 2006, an agricultural subdivision was approved and then a reconfiguration was approved in 2008. The farm was divided into two agricultural uses consisting of ~128 acres for a wine grapes and hay business operated by Mrs. Susan Wilson and ~128 acres for the hay and livestock business operated by her brother Nicholas Wood.

In November 2011 a request was made for retroactive approval for an overlay Utility Easement for an

existing public water line installed by Frederick County without the permission of the Foundation. At the same meeting a request was made for a 1.12 acre Water and Sewer Overlay Utility Easement with an additional temporary construction easement of 0.37 acre. These requests were approved.

In January 2012, a pre-existing dwelling was released on Susan Wilson's portion of the easement.

The County Agricultural Advisory Board has not yet reviewed the current request, but it is coming to the Foundation Board because there is urgency in getting approval, as the landowners do not have a driveway currently.

Ms. Chasse presented the item. Ms. Anne Bradley, Frederick County Program Administrator, and the Mr. Nicholas Wood, landowner, were available by web conference for questions and comments.

Discussion:

Having been told that the approval of his request would require that he give up the right to request termination of the easement in the future, Mr. Wood stated that he does not plan to take his land out of preservation but would like to have the option to do so sometime in the future.

Ms. Chasse stated that applicants seeking these types of overlay easements must waive their right to petition for easement termination because MALPF does not want landowners to add any restrictions to their property such as Forest Conservation Easements and then come back later to say that their property is no longer profitable due to the added restrictions. That is, to use further restrictions as a reason to seek exclusion from the program.

Ms. Brogan asked whether the applicant understood that the Board would require a waiver of the right to petition the Board for easement termination.

Mr. Hayes stated that Ms. Chasse explained the policy and the rule is very clear in COMAR that the Board has no discretion to allow the applicant to forego the waiver of the 25 year out.

Ms. Brogan concluded that Mr. Wood has two choices: either to go forward and agree with the required waiver or to withdraw the application to preserve his 25 year termination clause and find another solution.

Mr. Hayes agreed that the applicant can mitigate off site. There is also a possibility for an alternative route that would not cause a need to remove trees.

Mr. Wood said he wished to withdraw his application.

V. EASEMENT PETITIONS

VI. PROGRAM POLICY

A. Harford County Recertification request

Recommendation: Recertify for Fiscal Years 2015-2017 (July 1, 2014 – June 30, 2017).

Mr. Rosen presented the item and Ms. Chasse and Mr. Bill Amoss, Program Administrator, were available for questions and comments.

Discussion:

Mr. Rosen stated that the Maryland Department of Planning recommends recertification of Harford County's Land Preservation Program for another 3 years from July 1, 2014 – June 30, 2017. In the past he had some concerns with the county because the zoning was 1 unit per 12 acres with family conveyances allowed, but things can change in 3 years.

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The septic's law has improved the zoning and Harford County has put its entire priority preservation area and a lot of the land around it into Tier IV.

Mr. Rosen concluded that having very little development and a large amount of preserved land is what makes this program worthwhile.

Motion #4: Approve Harford County's request for recertification.

Motion: James Norris, Jr. Second: Jonathan Quinn
Status: Approved

B. Proposed Changes to Agricultural Subdivision/Corrective Easements

Foundation Staff recently reviewed the COMAR regulations governing agricultural subdivision requests. These regulations are found in Chapter 12 of the COMAR section applicable to the MALPF program. A copy of Chapter 12, with the proposed changes, is attached to this memorandum for the Board's review.

Discussion of specific proposed changes

On page 2:

B. (4) It is not often that a landowner requests an agricultural subdivision on a property that has already been subdivided but, should it happen, this is notice to the landowner that the Board will consider the previous subdivision in its review.

~~C. This is a specific example of a provision that the Foundation may request. Nancy Forrester has advised against having examples in the regulations.~~

F. (1)(a) This revision is intended to raise the bar on permitting subdivisions under 50 acres.

Page 3 under "Previously Unapproved Subdivision":

This revision allows easement grantors who are requesting retroactive approval to use all provisions found in Regulation .04(F), including the ability to request a subdivisions less than 50 acres due to certain physical characteristics of land. Currently, easement grantors seeking retroactive approval for subdivisions are limited to the subdivision rules that existed at the time of the subdivision. Staff believes that it is reasonable to allow the proposed standard in lieu of the more restrictive standard for retroactive approval requests. Notably, if easement grantors rejoin their illegally subdivided land, they would be eligible to request agricultural subdivision for parcels less than 50 acres under the provisions of Regulation .04(F).

[Note: Some have said that those coming in for retroactive approval should be held to a higher 50- acre standard, but it is also true that, in those cases, negotiations can lead to settlements which do not require 50 acres for a subdivision.]

Page 5: This sentence gives a time requirement on the landowner to submit the funds and documentation (survey) within one year of the Board's agricultural subdivision approval. The Foundation can give extensions. The intent is that staff can authorize an extension.

This sentence could also be inserted in the Corrective Easements Regulation so that all Corrective Easements would have a one-year timeframe.

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

Discussion:

Mr. Lippincott mentioned that his agricultural board had discussed the proposed changes and responded by letter. They particularly took issue with a phrase referring to the movement of equipment.

Ms. Cable added that the phrase "restricting the movement of equipment" is referring to "steep slopes and

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other features". After discussion, staff agreed to revise the language to make it clear.

Mr. Lippincott also requested that agricultural subdivision approvals be valid for longer than one year. After discussion, the Board agreed to recommend the approval time to 3 years.

The proposed changes will be made and the regulations will be back for discussion at the March 25, 2014 meeting. Prior to moving to the next agenda item, the Board discussed one other proposed change to the regulations and decided that it was not necessary, as the Board all ready has the discretion to consider previous subdivisions in its review of a new subdivision.

Motion #5: Delete proposed Item B. (4) as it is not often that a landowner requests an agricultural subdivision on a property that has already been subdivided but, should it happen, this is notice to the landowner that the Board will consider the previous subdivision in its review.

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

C. Water Recharge Easement Update

The Water Recharge Easement (WRE) committee reviewed the impacts of permitting WREs to be overlaid on MALPF easement properties, and if so, how the MALPF Board of Trustees should review any such request. This process began in 2011. The WRE committee met multiple times in 2011 through 2013, with the last meeting with MD Department of Environment staff in August 2013.

The overall question to be addressed surrounded how the MALPF Board should review any such request from a MALPF landowner, whether a specific MALPF policy should be established or not. After much discussion, obtaining input from experts in the field, and the final meeting with MDE staff that administers and approves all WRE in the State of Maryland, the recommendation of the WRE committee is not to create a new policy specifically for WREs.

The MDE staff that administers and regulates all WRE for Maryland reviews WRE requests in accordance with MDE policies on the allocation of water. The analysis performed by MDE uses very conservative figures and data when determining how much water allocation is permissible per WRE request. MDE now has a database that tracks all WRE easements that can be utilized when requests come in that impact MALPF easement properties.

After meeting with MDE staff, the WRE committee agreed that there is no need to establish a MALPF policy for WRE at this time. Instead, take any requests that are submitted on a case by case basis, using the general Overlay Easement policy and rely on MDE staff and their policies to provide the technical input and recommendation regarding the impact of the WRE on the MALPF property and the future of agricultural operations on the farm.

The WRE committee recommends that after there have been multiple WRE requests on MALPF easements, at that time, revisit the possibility of creating a policy, and ultimately a regulation, specifically for WRE.

Ms. Cable presented the item. Mr. Jones, Water Recharge Easement Committee Chair, was available for questions and comments.

The Board agreed that no action is required.

D. Uses Policy Addition – Food Preparation and Sales/seating

Request

Staff requests that Board members consider this proposed policy over the next month and it will come back to the Board in the February meeting.

Background

The Board members on the Uses Committee are Don Moore, Dan Rosen, and Pat Langenfelder. The Chair was Vera Mae for the first two meetings, but she is no longer on the Board, so Dan Rosen is now the Chair. We had good representation of MALPF staff and County Administrators* at all meetings. The Committee met three times— on September 24, 2013, November 26th, 2013, and February 11th, 2014 - to discuss the issue of whether food preparation and sales should be permitted on Foundation Easement properties. In most counties, these activities are not permitted on agriculturally-zoned land. But for the counties that do allow some form of restaurant service on farm properties, the committee is recommending the attached guideline, which would be added to the Uses Policy.

*The following County Administrators were present in person or by “Go-To Meeting”:

September: Debbie Herr Cornwell, Wally Lippincott, Anne Bradley, Donna Sasscer, Martin Sokolich, Donna Landis-Smith and Katherine Munson.

November: Donna Sasscer, Debbie Herr, Wally Lippincott, Anne Bradley, Donna Sasscer, Martin Sokolich, Eric Shertz, Bill Amoss, Carla Gerber, Chris Boggs, Eric Seifarth, Jeannie Nutter and Katherine Munson.

February: Anne Bradley, Debbie Herr Cornwell, Wally Lippincott, Charles Rice, Eric Shertz, Katherine Munson, Martin Sokolich, Jeannie Nutter, and Donna Sasscer.

Mr. Rosen presented and discussed the item. Ms. Chasse, Administrator was available for questions and comments.

Discussion:

Mr. Rosen stated that the committee did not talk about the percentages of the items sold or the dollar amounts. They decided to discuss the square footage of the seating area instead. Overall, he concluded that all activities should comply with the Uses Policy. Any food preparation and sales/seating must be in support of the farm operation.

The Board agreed to take out the word "district" and asked staff to clarify "covered area". The Board will re-visit this item again at the March 25, 2014 meeting.

E. Family Lot Law – preliminary releases notification update

A law was passed during the 2012 legislative session, effective July 1, 2012, that specifies time limits that impact all family lots released under the MALPF Program (enclosed). The law provides that a preliminary release becomes void if a non-transferable building permit in the name of the landowner, or child of the landowner, is not received by the Foundation within 3 years from the date of the preliminary release. The law applies to all lots that have been approved and preliminarily released by the Foundation as of the effective date of the law.

The law was purposely retroactive in nature to facilitate the administering of the intent of the family lots. Family lots were established to permit the original easement grantor, and their children, the ability to construct a home to live and work on the farm. The history of easement owners exercising their family lot rights, more specifically the child lots, have created situations where there are numerous “orphan lots” created around the state that are not permitted to be developed. The 2012 law was passed so that easement owners do not exercise their family lot rights until the approved lot holder is actually ready to construct a dwelling. The 2012 law included a retroactive provision to provide a mechanism for the Foundation to ensure that there are not family lots that have been created through the preliminary release process that will become orphan lots, or worse, that the lots have been illegally transferred to a third party without fulfilling the requirements of the release.

There have been two requested before the Board to request extensions of existing preliminary releases. More are expected over the next 18 months, prior to the June 30, 2015, expiration date of these releases. Enclosed is a summary of the number of notifications that were sent out by county, and the status of these preliminarily released lots.

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

Discussion:

Mr. Jones expressed concern about the high number of lots that received notifications and are still unresolved in Carroll County compared to the rest of the counties. The large number in Carroll County does not look good for the Board or the County. He would like to see more effort to resolve these matters.

Ms. Cable stated that Carroll County has a large number of MALPF easements, so they have more lots than other counties. The lots with houses built, but no final release, should now be simple to resolve after the Board delegated authority to MALPF Staff last month to use the Use & Occupancy Permit dates to grant occupancy credit towards the required 5-year requirement. Staff will need to follow-up on those instances and obtain copies of the Use & Occupancy permits.

Mr. Draper stated that he had received phone calls from landowners impacted by this law. He said there was a concern that notifications to landowners were not done in a timely manner. Ms. Cable responded and stated that most of the impacted landowners received notification within the year after the law was passed. However, the Baltimore County landowners were the last ones to be notified, unfortunately almost 18 months after the passage of the law. The letter to those landowners included information about obtaining extensions of the preliminary release so the owners would have the full 3-year time period the law provides.

Mr. Draper explained that this law does not extinguish the original owner's family lot rights. It solely establishes a term on the validity of the preliminary releases. If the preliminary releases expire, the original owners may submit a new request for a family lot at the time the owner/child is ready to actually build a dwelling.

Ms. Mary Dubel and her son, Michael Dubel, addressed the Board regarding how this law impacts them. Mr. Dubel asked about the effective date of the new law. Mr. Draper stated that the law that imposes the 3-year time limit was passed during the 2012 legislative session. Mr. Dubel expressed concern and displeasure that he was never contacted as a landowner that would be impacted by the law. If he had known, he would have come in and testified on this matter.

Mr. Lippincott mentioned that the MALPF Board and Staff informed the county administrators, who could have provided comments on the bill during the 2012 session. The 2012 bill was not provided to landowners. The General Assembly passed the bill, which was effective on July 1, 2013.

Ms. Forrester gave a brief history of the lot release process, including the conditions the release agreements require of the lot owner. The family lots are approved and released for a child/owner to live in the house on the farm; not for the purpose of creating and selling the lot to generate income. The 2012 law enables the Foundation to better enforce the conditions and the purpose of the release agreements that the landowners enter into for the family lots.

Ms. Dubel stated that she has four children, two of which have approved child's lots. One of the lots is in the process of obtaining the final release. The other lot is Michael's and he is not able to build a house in the near future. She went on to mention correspondence from a previous administrator regarding the ability to create child lots for her other two children. Ms. Dubel expressed her displeasure that she received a letter notifying her of the law almost a year and half after the passage of the law that informed her that Michael had until June 2015 to complete his final release or request an extension. Mr. Draper stated to her that he thinks that the extension process should take care of her concern. Ms. Forrester advised her that she will have to make a formal request to the Board for an extension.

The Board agreed for Ms. Dubel to work with Mr. Lippincott to present a formal request to the Board at a future meeting.

VII. INFORMATION AND DISCUSSION

- A. News Articles
- B. 2014 Legislative Update

SB 71 – Value of Easement (MDA supports the bill)

MALPF Bill - Will limit the purchase of MALPF easements to no more than 75% and no less than 25% of the appraised fair market value of the property. The bill was heard by the Education, Health and Environmental Affairs (EHEA) Committee on January 14, 2014. The bill has passed the Senate and is waiting for 'crossover' to be heard by the House Environmental Matters Committee. Heard in EHEA Committee on January 14, 2014.

SB 259 & HB 861 – Renewable Energy Generation Facilities (MDA supports the bill with amendments)

Sen. Mac Middleton - The bill will allow MALPF easement properties to install commercial renewable energy generation facilities to include: solar, wind, methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant, and poultry litter-to-energy.

The Senate bill was heard in EHEA on February 4, 2014. The House bill was heard in ENV on February 19, 2014.

The Department of Agriculture supports the bill and has requested adoption of the following amendments. The amendments will:

- 1) Apply the date of June 30, 2014 (FY 2015 easement applications) for which all new easements will contain language to allow the landowner to request the installation of renewable energy generation facilities on their easement property. As the bill is currently written, the date of September 30, 2014 would interfere with the current (FY 2013) cycle as some of these easements will settle prior to and others will settle after September 30, 2014.
- 2) Make it clear that any requests for the installation of renewable energy generation facilities, whether on existing or future MALPF easements, will require the approval of the local agricultural advisory board and must conform with all local and state laws and regulations.
- 3) Amend the bill to change the word "parcel" to "property" so that a landowner may not increase the percentage or acreage if an easement consists of more than one parcel of record. We initially overlooked this wording when the bill was heard in the Senate two weeks ago.

The Chesapeake Bay Foundation opposes the bill but offers the following amendments:

- 1) Remove language referring to "Tier 1 Renewable Source" of energy which would allow: wind, solar, methane from anaerobic decomposition of organic materials in a landfill or wastewater treatment plant, and poultry litter to energy. Instead, "Authorized Renewable Energy Source" would mean: solar, wind, and anaerobic digestion of poultry litter if placed on fallow land".
- 2) Require that the 5% or 5 acres will 1) include permanent roads or structures that are necessary for access for operation and maintenance purposes; and 2) not include any temporary impacts necessary for construction of the facility.
- 3) Insert item (C)(5) "A landowner who uses land subject to an easement for the generation of electricity in accordance with this subsection shall:
 - (I) Maintain records of:
 1. The amount of electricity generated; and
 2. Any income received from the electricity generated; and

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(II) Remit 10% of any income received from the electricity generated to the Maryland Agricultural Land Preservation Fund.”

SB 176 & HB 576 – Sustainable Growth and Agricultural Preservation Act of 2012 – Diminution in Value of Real Property – Compensation (MDA opposes the bill)

Delegate Fisher – This bill would require the Department of Agriculture to compensate any landowner who experiences a decrease in the fair market value of their property as a result of the Septics Law.

HB 1402 - Agricultural Transfer Tax – Distribution to Mel Noland Woodland Incentives Fund (MDA requests a recommendation from MALPF)

MD. Dept. of Natural Resources - This bill would increase from \$200,000 to \$300,000 the amount of ag transfer tax required to be deposited by the Comptroller into the Mel Noland Woodland Incentives Fund. It would also require reimbursement to the Comptroller along the ag transfer tax on parcels of land that are at least 90% woodland. The current law says that the parcels have to be 100% wooded.

SB 709 & HB 789 – Income Tax Credit – Preservation and Conservation Easements (MDA takes no position on Income Tax legislation)

Del. Stein – The bill will allow a credit against state income tax of \$5,000 per individual or \$10,000 for husband and wife to be transferable so that a taxpayer unable to apply the credit to income tax liability can sell the credit to a third party. The total amount of all credits allowed each year would be capped at \$2,000,000. Would apply to donated and purchased easements approved by the Board of Public Works for MET, MALPF, Rural Legacy and DNR.

HB 1437 – MALPF – Lot Release – Demonstrated Financial Hardship (MDA requests a recommendation from MALPF)

Requires that the MALPF Board of Trustees grant a 5 year extension of a preliminary release for a family lot if the landowner or child of the landowner demonstrates financial hardship.

To obtain a copy of this and other bills for this legislative session, please go to www.mgaleg.maryland.gov.

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

Discussion:

SB 259 & HB 861 – Renewable Energy Generation Facilities (MDA supports the bill with amendments)

Mr. Draper had concerns regarding the Chesapeake Bay Foundation's amendment and asked if it included new road construction and structures, but Ms. Chasse replied that she was not sure and would confer with Ms. West on this matter.

SB 176 & HB 576 – Sustainable Growth and Agricultural Preservation Act of 2012 – Diminution in Value of Real Property – Compensation (MDA opposes the bill)

Ms. Chasse mentioned that this would require MALPF to get 3 appraisals of every property that inquires and to pay them back but no funding source is determined.

HB 1402 - Agricultural Transfer Tax – Distribution to Mel Noland Woodland Incentives Fund (MDA defers to MALPF)

Ms. Chasse mentioned that this Transfer Tax funds the general operations of the program and does not include funds allocated to purchase easements.

Ms. Chasse wanted to hear from Mr. Highfield concerning the money that is going into the Mel Noland Woodland Incentives Fund. Mr. Highfield mentioned that the bill would allow annually the fund increase from \$200,000 and to \$300,000. The Woodland Incentive Fund provides a cost share program for anyone with forested acres that wants to do an active management plan and what is recommended in a Forestry Stewardship Plan.

Mr. Allen and Mr. Sprague are encouraging the Board to support the bill. The Sustainable Forestry Council has denied some landowners the entitlements of this program. More than 75% of the forest land in Maryland is privately owned and 8 out of 10 landowners own less than 10 acres. These private landowners are provided incentives for outreach because they have about 75% of work orders. Over the past 20 years several large parcels have been reduced to smaller sizes.

Mr. Sprague stated that the level of contributions to the Woodland Incentive Fund has not change since 1986. This is because of the threshold that only 100% forested properties are taxed. Making minor changes to the law will provide for additional activities to be carried out.

Mr. Wallace explained that the Ag Transfer Tax is what supports the operating and administration expenses for MALPF. Ms. Brogan asked about how much money MALPF has received. Mr. Wallace stated about \$1.8 million dollars to operate the program. He stated the easement acquisition program is funded by a different source.

The Board agreed to refer to Secretary Hance on MDA's specific position - whether to oppose or not support the bill.

Motion #6: Recommend to the Secretary of Agriculture to either oppose or not support HB 1402 Agricultural Transfer Tax – Distribution to Mel Noland Woodland Incentives Fund.

Motion: Eugene Roberts, Jr. Second: Bernard Jones
Favor: Dan Rosen, Susanne Brogan, James Wallace, James Norris, Jr., Patricia Langenfelder and Eugene Roberts.
Against: Craig Highfield
Status: Approved

HB 1437 – MALPF – Lot Release – Demonstrated Financial Hardship (MDA defers to MALPF)

Ms. Chasse mentioned that Ms. West is planning to meet Delegate Kach concerning this bill because it creates a new criteria based on a financial hardship. Ms. Brogan stated that this bill restricts the Board on what flexibility they currently can exercise.

The Board agreed to inform the Secretary of how this bill restricts their authority and does not seem necessary.

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

Motion: Bernard Jones, Sr. Second: Eugene Roberts, Jr.
Favor: John Draper, Jr., Bernard L. Jones, Sr., Susanne Brogan, Craig Highfield, Jerome Klasmeier, Patrica A. Langenfelder, Donald T.

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Moore, James (Bubby) Norris, Jonathan Quinn Jr., Eugene Roberts, Jr., Dan Rosen, and James Wallace.
Status: Approved

The Open Board Meeting was adjourned at approximately 11:23 a.m.

The Closed Meeting of the Board was held from 11:30 a.m. to 11:50 a.m. at the Maryland Department of Agriculture building, Annapolis, Maryland, pursuant to the provisions of State Government Article Sections 10-508(a) (3), Annotated Code of Maryland:

State Government Article Section 10-508(a):

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

During the Closed Meeting, the following Board members were present:

John Draper, Jr, ,Bernard L. Jones, Sr., Susanne Brogan, Craig Highfield, Jerome Klasmeier, Patrica A. Langenfelder, James (Bubby) Norris, Jr., Eugene Roberts, Jr., Dan Rosen, and James Wallace.

TOPICS DISCUSSED:

- VIII.A Approval of January 28, 2014 Closed Session Minutes
- VIII.B Status Report of Pending Legal Issues
- VIII.C 11-86-03 Hauser, Jerry and Barbara
- VIII.D FY 2013/2014 easement offers Round 2

The Closed Meeting was adjourned at 11:50 a.m.

Respectfully Submitted:

Angela Gaither, MALPF Secretary

Carol S. West, Executive Director