

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
January 28, 2020

Trustees Present:

Michael Calkins, Chair
William Allen, Vice-Chair
Richard Colburn, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture
Jerome Klasmeier, representing Comptroller Peter Franchot (Via Phone Call)
Joanna Kille, representing, Treasurer Nancy Kopp
Deborah Herr Cornwell, representing Secretary Robert McCord, Maryland Department of Planning
Catherine Cosgrove
Bernard L. Jones, Sr.
Joe Wood

Trustees Absent:

Taylor Huffman
J. Bruce Yerkes

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
Robert Day, MALPF Office Secretary
Justin Hayes, Assistant Attorney General, Department of Agriculture
Renee Dyson, Assistant Attorney General, Department of General Services
Jeremy Koser, Engineer, JMT, Howard Co.
Jim Morris, Engineer, JMT, Howard Co.
Chandler Denison, JMT
Marc D. Hereth, Landowner, Howard Co.
Edward W. Hereth, Landowner, Howard Co.
Billy Gorski, Planner, Anne Arundel Co.
Jeanine Nutter, Prince George's County Administrator
Mike Steadman, accepted Assistant Attorney General position (start in February)

Others Present By Phone Conferencing:

Jen Wilson, Harford Co.
Beth Beales, Caroline Co.
Adam Gibson, Somerset Co.

Mr. Calkins, Chair, called the meeting to order at 9:05 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 November 26, 2019.

Motion #1: To approve minutes from November 26, 2019.
Motion: Wood Second: Jones
Status: Approved

II. ADDITION / DELETION OF AGENDA ITEMS

N/A

III. ANNOUNCEMENTS

Ms. Cable informed the Board that the 2020 Legislative Session has begun. She reminded the Board that any involvement or interaction they undertake with the Legislature during the Session is in their capacity as a private Maryland citizen, not as a formal opinion as a MALPF Board of Trustee.

Ms. Cable summarized the Governor's submission of the FY21 budget for MALPF, which once again includes the full funding for MALPF of the 17.05% of the Program Open Space Fund:

- TOTAL: \$48,560,470
 - POS "new" money: \$33,605,178
 - "Payback" funds: \$6,455,292
 - County matching funds estimate: \$8,500,000
 - Results in approximately \$870,000 per county for general allotment

Ms. Cable informed the Board that the new MDA AAG, Mike Steadman, has been hired and will start mid-February. Mr. Steadman arrived at the Board meeting after introductions and was briefly introduced to the Board at the end of the Open Session.

Finally, Ms. Cable reminded the Board that it's time to complete their ethics disclosure report, which is due at the end of April.

IV. EASEMENT AMENDMENTS

A. FREDERICK COUNTY

1. File #10-17-07 Crum, David & Barbara ~199 acres

Request:
Request for an overlay Sight Distance Easement overlaying .08775 acres.

Recommendation:
Staff recommends approval of the overlay Sight Distance Easement.

Ms. Chasse introduced the item.

Motion #2: To approve an overlay Sight Distance Easement overlaying .08775 acres.
Motion: Jones Second: Colburn
Status: Approved

B. ST. MARY'S COUNTY

1. File #18-86-01 Pinkerton, Chery Raum & Kevin Jay ~157 acres

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Request:

Request for a 5-year extension to the validity of the preliminary release for the approved child's lot for son, Wendell Raum.

Recommendation:

Under COMAR 15.15.06.05.B.2, Staff recommends approval for the extension, subject to approval of the local advisory board which meets in January prior to the Foundation Board meeting.

Ms. Cousins introduced the item. The St. Mary's County Land Preservation Advisory Board provided a favorable recommendation letter dated January 10, 2020.

Motion #3: To approve a 5-year extension to the validity of the preliminary release for the approved child's lot for son, Wendell Raum.

Motion: Wood Second: Jones
Status: Approved

C. HOWARD COUNTY

1. File #13-79-03 A & B Idiot's Delight, Inc. ~192 acres
Idiot's Delight Corporation II

Request:

1. Request to approve a Stream Restoration Overlay Easement, totaling ~52.63 acres of floodplain (approximately 30% of the easement property).
2. If overlay easement approved, request exception on a case by case analysis for the mitigation credits to be used outside of Priority Funding Areas (PFAs) for future development projects.

Recommendation:

1. It is the opinion of MALPF Staff that the request addresses the required criteria under the Water Resources Overlay Easement Policy and, accordingly, Staff recommends approval conditioned upon the completion of all requirements stated in the Policy.
2. Staff does not recommend Board approval based on the Board's direction when the current Water Resource Overlay Easement policy was established in March of 2019. The Board specifically directed MALPF Staff to keep the PFA requirement as part of the policy for any future mitigation credit use. Ultimately, the final decision is up to the Board as to whether or not to make an exception to the policy.

Ms. Cousins introduced the item. Messer Marc and Edward Hereth were present, as well as the consultants from JMT, Mr. Jim Morris (engineer), Mr. Jeremy Koser (engineer), and Mr. Chandler Denison (director, environmental markets group).

There was significant discussion regarding the PFA exception request. The landowners and JMT requested an exception on a case by case analysis for the mitigation credits to be used outside of PFAs for future development projects. JMT provided additional background information about the history of credits used outside of PFAs by entities or individuals without condemning authority. JMT estimated that 90% of these type of credits are used within PFAs, with the remaining portion often used for smaller development projects for residential purposes (like a driveway improvement, a shed, garage, etc.), as well as credits needed for agricultural operations improvements (like barns, storage sheds, paved areas in livestock operation, etc.).

JMT was asked when any potential credits would be ready to be sold from the project. The answer was not in the near future, even years from now. Given that that was no immediate pressure to sell the credits, Mr. Hayes suggested the Board may want to consider re-evaluating the Policy regarding the sale of credits within PFAs rather than making an exception to the Policy the very first time this portion of the Policy was used.

The Board agreed to discuss exceptions to the PFA requirement at a future date to determine if the Board wishes to amend the PFA policy to allow exceptions. If the Board

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amends the Policy in the future, the landowner can submit a new request to sell credits outside of PFAs on a case by case basis at that time.

Motion #4: To approve request #1, a Stream Restoration Overlay Easement, totaling ~52.63 acres of floodplain (approximately 30% of the easement property).

Motion: Wood Second: Kille
Status: Approved

Motion #5 To deny the request for an exception to the requirement that all future withdrawals from the mitigation bank from offset development in a Priority Funding Area, unless the mitigation credits are to be used by an entity with condemning authority. If the MALPF Policy changes in the future regarding this requirement, the landowner would be able to submit a request under any new terms of the policy.

Motion: Jones Second: Allen
Status: Approved

After the Board voted on the request, Mr. Hereth informed the Board that they will be working with Joy Levy, Howard County Program Administrator, and MALPF staff, to submit an agricultural subdivision of the property in the near future to reflect the actual organization and operation of the property on the ground.

D. HARFORD COUNTY

1. File #12-88-03 Estate of Grayson W. Scarff Jr., ~288 acres

Request:

Request approval of agricultural subdivision to divide the property to create a ~196-acre parcel (Parcel 1, shown with red line), and a ~92-acre parcel (Parcel 2, shown with blue line).

Recommendation:

Staff recommends approval, subject to completing the Corrective Easements including

- 1) Providing a survey plat or plats depicting the divided parcels, along with separate metes and bounds perimeter descriptions of the divided parcels;
- 2) A provision that requires the dwellings to be non-subdivideable (per landowner agreement in the application); and
- 3) A provision waiving all rights to request termination of the easement (per COMAR 15.15.12.04 B).

Ms. Chasse introduced the item. Ms. Wilson was available via phone to address the Board.

Motion #6: To approve the agricultural subdivision to divide the property to create a ~196-acre parcel, and a ~92-acre parcel, incorporating staff recommendations.

Motion: Jones Second: Cosgrove
Status: Approved

2. File #12-00-06 Ehrhardt Farms, LLC ~189 acres

Request:

Request to approve up to a 2 acre lot from the easement for a child's lot for Kevin Ehrhardt.

Recommendation:

Staff recommends approval

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Ms. Chasse introduced the item. Ms. Wilson was available via phone to address the Board.

Motion #7: To approve up to a 2 acre lot from the easement for a child's lot for Kevin Ehrhardt

Motion: Jones Second: Colburn
Status: Approved

V. NEW AGRICULTURAL PRESERVATION EASEMENT PETITIONS:

VI. PROGRAM POLICY

A. Participation in FY 2020 Matching Funds Program

Request:
Request participation in FY 2020 Matching Funds Program.

Recommendation:
Staff recommends approval.

To date, the following counties have submitted requests to participate in the matching funds program for the 2020 easement cycle:

- Anne Arundel County
- Baltimore County
- Caroline County
- Carroll County
- Charles County
- Frederick County
- Harford County
- Kent County
- Prince Georges County
- Queen Anne's County
- Somerset County
- St. Mary's County
- Talbot County
- Washington County
- Worcester County

Motion #8: Approval to Participation in FY 2020 Matching Funds Program.

Motion: Colburn Second: Jones
Status: Approved

B. Harford County Recertification

Recommendation
Harford County's land preservation program complies with the requirements under COMAR 34.03.03; therefore, MDP and MALPF staff recommend, and MDP has approved, recertification for Fiscal Years 2021, 2022, 2023 (July 1, 2020 – June 30, 2023), with a possible extension for Fiscal Years 2024 and 2025 (July 1, 2023 – June 30, 2025) once new regulations are in place to implement HB620 (2018 legislative session).

Ms. Chasse presented the item. Ms. Herr-Cornwell provided the Department of Planning's agreement with recommending approval. Ms. Wilson was available via phone to address the Board.

Motion #9: To approve the recertification of Harford County's land preservation program under COMAR 34.03.03.

Motion: Wood Second: Cosgrove
Status: Approved

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VII. INFORMATION AND DISCUSSION

A. Fiscal year 2020 Quarterly Inspection Report

Refer to the list of counties for the inspection results as of January 9, 2020. In summary, Washington County 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	13
02	Anne Arundel	0	%	0	4	0	%	0	40
03	Baltimore	0	%	0	15	0	%	0	227
04	Calvert	0	%	0	3	0	%	0	32
05	Caroline	0	%	0	11	0	%	0	216
06	Carroll	0	%	0	10	0	%	0	367
07	Cecil	0	%	0	14	0	%	0	88
08	Charles	0	%	0	3	0	%	0	65
09	Dorchester	0	%	0	13	0	%	0	81
10	Frederick	0	%	0	12	0	%	0	131
11	Garrett	0	%	0	1	0	%	0	57
12	Harford	0	%	0	10	0	%	0	129
13	Howard	0	%	0	1	0	%	0	33
14	Kent	0	%	0	9	0	%	0	98
15	Montgomery	0	%	0	3	0	%	0	28
16	Prince George's	NA	%	NA	0	0	%	0	18
17	Queen Anne's	0	%	0	19	0	%	0	162
18	St. Mary's	0	%	0	13	0	%	0	111
19	Somerset	0	%	0	7	0	%	0	45
20	Talbot	0	%	0	6	0	%	0	72
21	Washington	55	%	6	11	6	%	4	72
22	Wicomico	0	%	0	8	0	%	0	52
23	Worcester	0	%	0	5	0	%	0	50

B. Legislative Update

Ms. Turner provided the Board with the status of 2020 legislation which may affect the MALPF.

The first is SB 17/HB 244 – Maryland Agricultural Land Preservation Foundation – 'Valuation of Easement.' If passed into law, this bill would give the Foundation the discretion to use a FMV, determined as provided by statute, to be valid for two years.

The second bill is SB 148/HB 125 – Board of Public Works – Land Acquisition – Requirements. If passed into law, this bill would put limitations on real estate purchased by the BPW. The bill specifically excludes state preservation/conservation programs, including MALPF, from the limitations of the bill. Staff is monitoring amendments to the bill, if any, that may negatively affect the Program.

Staff is tracking the progression of these bills through the legislative process as well as monitoring the stream of bills being introduced daily for any other legislation that may affect the Program.

C. New Articles (sent via email)

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VIII. CLOSED SESSION

Mr. Calkins 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 at 10:15 a.m. 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: Cosgrove Second: Wood
Status: Approved

The Closed Meeting of the Board was held from 10:27 a.m. to 10:40 a.m. on January 28, 2020 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):

(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, William Allen, Vice-Chair, Jerome Klasmeier (via phone), representing Comptroller Peter Franchot, Joanna Kille, representing Treasurer Nancy Kopp, Deborah Herr Cornwell, representing Secretary Robert McCord, Maryland Department of Planning, Catherine Cosgrove, Bernard Jones, Joe Wood, and Richard Colburn, representing Secretary Joseph Bartenfelder, Maryland Department of Agriculture.

The following Board members were absent: Taylor Huffman and J. Bruce Yerkes.

The following legal representatives were also present during the closed session meeting: Justin Hayes, Assistant Attorney General, Maryland Department of Agriculture, Renee Dyson, Assistant Attorney General, Maryland Department of General Services.

TOPICS DISCUSSED:

- A. Approval of November 26, 2019 Closed Session Minutes
- B. Status Report of Pending Legal Issues
- C. Legal advice regarding stewardship matter

Respectfully Submitted:



Michelle Cable, MALPF Executive Director

