

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

TRUSTEES PRESENT:

John Draper, Jr., Chair
Bernard L. Jones, Sr., Vice Chair
Susanne Brogan, representing Treasurer Nancy Kopp
Jerome W. Klasmeier, representing Comptroller Peter Franchot
Patricia A. Langenfelder
Donald T. Moore
James (Bubby) Norris, 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:

Craig Highfield
Jonathan C. Quinn
Eugene Roberts, Jr.

OTHERS PRESENT:

Michelle Cable, MALPF Administrator
Tamekia Dent, MALPF Temporary Staff
Rama Dilip, MALPF Administrative Specialist
Nancy Forrester, Assistant Attorney General, Department of General Services
Angela Gaither, MALPF Secretary
Billy Gorski, Anne Arundel County, Planner
Justin Hayes, Assistant Attorney General, Maryland Department of Agriculture
Kim Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Wally Lippincott, Baltimore County, Program Administrator
Jeanine Nutter, Prince George's, Program Assistant
Donna Sasscer, St. Mary's County, Program Administrator
Carol West, MALPF Executive Director

OTHERS PRESENT BY WEB CONFERENCING:

Bill Amoss, Harford County, Program Administrator
Anne Bradley, Frederick County, Program Administrator
Deb Dwyer, Landowner, Caroline County
Chad Fike, Garrett County, Program Assistant
Carla Gerber, Kent County, Program Administrator
Debbie Herr Cornwell, Caroline County, Program Administrator
Carmela Iacovelli, Baltimore County, Program Assistant
Milton Nagel, Landowner, Caroline County
Martin Sokolich, Talbot County, Program Administrator
Nicholas Wood, Frederick County, Landowner

MALPF Board Open Meeting Minutes 3-25-2014: Page 1

John W. Draper, Jr., Chair, called the meeting to order at 9:01 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: February 25, 2014 Minutes.

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

Motion: Patricia Langenfelder Second: James B. Norris, Jr.
Status: Approved

II. ADDITION / DELETION OF AGENDA ITEMS

Item VII.B. 2014 Legislative Update, was added to the agenda for discussion.

III. ANNOUNCEMENTS

Ms. West mentioned that Tamekia Dent, temporary staff, has replaced Fouad Boumoncef, to continue on with the project of digitizing MALPF's files.

The Mullinix termination request for the fourth easement property has been reviewed and denied by Howard County Ag Advisory Board. The Howard County Council will review the request next and provide MALPF with their decision.

Ms. West reminded the At Large Board members to complete their financial disclosure forms by April 30, 2014.

The MALPF Board needs to replace Vera Mae Schultz as the MALPF representative on the Rural Legacy Advisory Committee (RLAC) from the At Large Board members. The RLAC meets yearly and reviews the applications submitted from the local sponsors. The RLAC provides recommendations to the Rural Legacy Board regarding the amounts of grant awards and other programmatic decisions.

IV. EASEMENT AMENDMENTS

A. BALTIMORE COUNTY

1. 03-98-15Ac Wisner Farms, Inc. ~77.95 acres

Request – Baltimore County:

Request to exclude up to 2.0 acres from the easement for a child's lot for David B. Wisner.

Recommendation:

Staff recommends approval. If the county requires a road dedication along Black Rock Road, that acreage must be included within the 2.0 acre maximum size of the lot.

Background:

Wisner Farms, Inc. is the original owner of the easement property. The easement was established in July 2001. No requests have been made impacting this easement property. Wisner Farms, Inc., owns another farm (03-87-24), and two child lots were approved on that farm. The other child lots were for other eligible children of the original shareholders of Wisner Farms, Inc.

This child's lot will be located along the NW boundary of the property, clustered with other residential lots along Black Rock Road. Access will be over an existing farm lane to Black Rock Road (application did not state whether or not access will be fee simple over the lane or a right of way). The location of the lot meets the Foundation's Lot Location Policy.

MALPF Board Open Meeting Minutes 3-25-2014: Page 2

The request has been approved by the County and is in accordance with all County requirements. The reimbursement amount will be \$3,500.00 per-acre being released.

Ms. Cable presented the item. Mr. Wally Lippincott, Baltimore County Program Administrator, Mr. David Wisner and Deb Dwyer, the landowners, were present for questions and comments.

Discussion:

Ms. Cable asked about the location of the access as it was not apparent on the map as well as whether or not the County would require any road dedication when establishing the lot. Mr. Wisner stated that the access exists over the lane that follows the perimeter of the property. Ms. Cable went on to ask whether the access to the lot would be by a right of way or fee simple. Mr. Wisner responded that he needed fee simple access. Mr. Lippincott added that since Black Rock Road is slated to be a large road he believes the County will require road dedication. Ms. Cable informed the owners that any road dedication must be included within the 2-acre release of the lot.

Motion #2: Approve the request to exclude up to 2.0 acres from the easement for a child's lot for David B. Wisner

Motion: Susanne Brogan Second: Donald Moore
Status: Approved

2. 03-83-09 Dubel, David & Mary ~119.6 acres

Request – Baltimore County:

Request for an unlimited extension to the validity of the preliminary release for the approved child's lot for Michael Dubel.

Recommendation:

Under COMAR 15.15.06.05.B.2., Staff recommends approval for a 5 year extension, with the ability for the owners to request an additional extension at that time.

Background:

David and Mary Dubel are the original grantors of the easement, established in 1986. There is one pre-existing dwelling documented for this easement property. The only requests affecting this easement have been child lots. There have been two lots approved for children for this easement property. The final size configuration for Rene Dubel's lot (one of the two child lots) was approved in July 2002. The preliminary release was recorded in August 2002, and the final release has recently been forwarded to the family for execution. The final size configuration for Michael Dubel's lot was approved in July of 2002 with the preliminary release recorded in August in 2002. The lot was transferred into Michael's ownership in May 2003.

Mr. & Mrs. Dubel are requesting an unlimited extension of the validity of the preliminary release for Michael's child lot. There are two primary reasons provided for this extension request, all of which are stated in the attached letter. First, the Dubels state that the retroactive nature of the law is unfair to landowners who took action and created child lots under the rules of that time in good faith. Second, changes in financial circumstances have prevented Michael from building a home on his lot. He does not anticipate being able to build a house for a number of years.

The Board has previously reviewed and approved two requests under this new law, including a 3-year and a 5-year extension. The Board has the ability to approve extensions of the preliminary releases, as stated below.

COMAR 15.15.06.05.B. states:

“B. The preliminary release becomes void:

MALPF Board Open Meeting Minutes 3-25-2014: Page 3

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

The Preliminary Release that was issued for this lot states:

*“...the Releasor hereby conditionally releases that parcel of land lying in Baltimore County, Maryland, consisting of 1.515 acres only ...from restriction contained in the agricultural preservation easement, subject, however, to the terms and conditions hereinafter set forth, **including the condition that its use be for the purpose of constructing a dwelling house for the child’s residence.**”* [emphasis added]

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

“3. ...it is the intent of this instrument to release the above described 1.515 acres parcel of land from agricultural restrictions set forth in the above mentioned Deed of Easement for the purpose of constructing a dwelling. The parties agree that this right may not be transferred to any person....”

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

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

The request has been approved by the local advisory board for a 10-year extension and meets local planning and zoning requirements.

Additional Staff Information:

Staff recommends that the Board ask the Dubels about the plans for the farm over the next five years as well as the long-term plans for the farm. If the Board approves the extension for five years, the Dubels can request another extension prior to the expiration of the five year term, after providing an update to the Foundation with any pertinent information about their son’s ability to construct a dwelling as well as the plans for the farm.

The law that was passed and became effective in 2012 was to facilitate administering of the intent of the family lots. This law is not “unfair” to landowners who hold lots under preliminary release. The Preliminary Release (and State law that existed prior to the 2012) are clear that a child’s lot may only be released permanently from Easement if the child constructs a dwelling and resides in that dwelling. The 2012 law merely provides a remedy to the Foundation to ensure that landowners are complying with the intent of the law. By limiting the time frame for the validity of the Preliminary Release, landowners are reminded on a regular basis of the purpose of the family lots, namely, family lots are permitted to be established to enable the original easement grantors, 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 cannot be legally developed under the provisions of State law and the terms of the Preliminary Releases. The 2012 law was passed so that easement grantors do not exercise their family lot rights until the approved lot holder is ready to construct a dwelling. The 2012 law included a 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 different family member or a third party.

MALPF Board Open Meeting Minutes 3-25-2014: Page 5

Recommendation:

Staff recommends approval.

Background:

Mr. Maust is the original owner of the easement property. The easement was established in 2003. There is one pre-existing dwelling and there have been no requests for lot exclusions.

When the easement was established, Mr. Maust withheld 15 acres that had been previously mined. On June 27, 2006 the Board approved a swap of 6.47 acres of easement property for 6.47 acres of non-easement property. The swap was never completed and in April 2011 the swap approval was rescinded.

In April 2011, the Board approved subsurface coal mining activities to be permitted underneath the easement property.

The current request from Columbia Gas of Maryland (CMD) would change the designation of an existing service gas line that is underneath the easement property to a main line. The current service line was installed prior to the establishment of the MALPF easement, but no ROW was entered into between Mr. Maust and CMD. Since the service line now serves more than one property owner, CMD needs to enter into a formal ROW agreement so they can manage, monitor, and maintain the line. No new construction will occur with this gas line ROW.

The Right-of-Way agreement has been provided for the Foundation's review.

The Garrett County Advisory Board is aware of the pipeline expansion on this property and has no concerns with the re-designation of the line from a service line to a main line.

Ms. Cable presented the item. Mr. Chad Fike, Garrett County Program Assistant, was present by web conferencing for questions and comments.

Motion #4	Approve the request for a permanent gas pipeline Right-of-Way (ROW) to be established on the MALPF easement property, as shown on exhibits provided to the Board in the corresponding Staff Report.		
-----------	---	--	--

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

C. CAROLINE COUNTY

1. 05-87-07A ~143 acres	05-87-01	Nagel, JoAnne	~87 acres
----------------------------	----------	---------------	-----------

Request – Caroline County:

Request a retroactive approval of an agricultural subdivision that reconfigures two easements into an ~78 acre easement property and an ~152 acre easement property. Approximately 9 acres will be transferred from easement 05-87-07A to easement 05-87-01.

Recommendation:

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

Background:

Myers and JoAnne Nagel were the original easement grantors of easement #05-87-07A; Myers Nagel is deceased. The easement was established in 1998. There was one pre-existing dwelling documented on this easement. The original easement consisted of two tax parcels, parcel 14 (~78 acres) and parcel 41

(~9 acres). Parcel 41 was transferred to Milton and Claire Nagel in 1995 without Foundation approval.

Myers Nagel was the original easement grantor of easement #05-87-01; JoAnne Nagel is the subsequent owner. The easement was established in 1990. There were two pre-existing dwellings documented on this easement. The original easement consisted of two tax parcels, parcel 15 (~34 acres) and parcel 24 (~109 acres).

There have been no prior requests submitted for either easement property.

Subdivision Regulation Criteria:

Under COMAR 15.15.12.05 (Previously Unapproved Subdivisions), if the Board approves an agricultural subdivision, approval shall accommodate a plan that the Foundation has determined will benefit the agricultural operation. If the Foundation does not approve the agricultural subdivision, the land shall be restored to its original configuration under the easement. 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 retroactive subdivision if the following conditions are met:

C. Requirements. An approval of the agricultural subdivision shall require that the owners comply with all of the requirements of this Chapter, but if any of the resulting divided parcels of the subdivision are less than 50 acres, the Foundation may waive the 50 acre requirement if:

(1) At the time of the subdivision, the Foundation's regulations permitted the resulting divided parcels to be less than 50 acres;

The subdivision will transfer 9 acres from one easement and join it into another MALPF easement. The subdivided parcel is less than 50 acres, but meets the exception criteria since it will be joined with another MALPF easement property that is currently greater than 50 acres.

(2) The subdivision served an agricultural purpose;

Milton and Christina Nagel live in the dwelling on the 9-acre parcel 41. Parcel 41 is not a viable stand-alone easement, which is why the Nagels are requesting to join Parcel 41 with the main family farm, easement #05-87-01. Milton manages the agricultural operation for easement #05-87-01. By joining parcel 41 with easement #05-87-01, and Milton and Christina assuming ownership of that easement property, Milton will then own, live on, and operate the farm. This will be a benefit to the overall agricultural operation, with the owner being the operator of the farm as well as living on the farm.

The Nagel family has owned the easement properties for multiple generations. The reconfiguration of the easement properties will have no negative impact on the continued farming operations, and each easement property will continue to be available for a successful, independent agricultural operation in to the future. A public road divides easement #05-87-01, but the landowners are able to move agricultural equipment across the road at this time with ease.

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

The subdivision of parcel 41 could have had a negative impact on the easement, which is why it is being joined to the larger easement property. By joining parcel 41 to easement property #05-87-01, it will enhance the effectiveness of the agricultural operation by having the owner of the farm also be the operator of the farm and also live on the property.

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

The two original easement properties have been owned by the Nagel family for some time. The land subject to Easement #05-87-07A was acquired by the Nagels to expand their agricultural operation. The properties have been able to sustain productive agricultural operations separately prior to the Nagels' ownership, and can continue to be successful as separate operations into the future.

MALPF Board Open Meeting Minutes 3-25-2014: Page 7

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

The reconfigured easement properties both consist of 100% qualifying soils.

(6) The landowners present evidence satisfactory to the Foundation to make a determination that the resulting divided parcels have sufficient potential to sustain agricultural production independent of each other in the future.

Based on information provided by the landowners, Foundation Staff believes the two reconfigured easement properties have the ability to sustain agricultural operations independent from each other in the future.

The subdivision results in all three pre-existing dwellings located on the reconfigured easement #05-87-01. Milton and Christina Nagel will be the owners of this easement property and have agreed to make two of the three dwellings non-subdividable from the easement. The third dwelling will retain all the current pre-existing rights. There will be a permanent dwelling on each side of the road.

The reconfigured easement #05-87-07A will have no pre-existing dwelling. JoAnne Nagel will continue to own this easement and she retains the ability to request family lots.

In accordance with the regulations, the owners have stated that JoAnne Nagel will 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. Cable presented the item. Ms. Debbie Herr Cornwell, Caroline County, Program Administrator and Mr. David Nagel, landowner, were present by web conferencing for questions and comments.

Motion #5 Approve the request of a retroactive agricultural subdivision that reconfigures two easements into an ~78 acre easement property and an ~152 acre easement property. Approximately 9 acres will be transferred from easement 05-87-07A to easement 05-87-01.

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

D. DORCHESTER COUNTY

1. 09-99-04 Legg, George (III) (50.26 acres) ~118.01 acres
 Greenhawk, Marie (67.75 acres)

Request – Dorchester County:

1. Both applicants request the Board to authorize corrective easements that will transfer 2 acres of land from Mr. Legg's property to Ms. Greenhawk's property.
2. If the Board approves the first request, Mr. Legg requests reimbursement for his 2 acre owner's lot.

Recommendation:

Staff recommends approval for both requests, subject to the property owners acknowledging that they will be responsible for the title work and surveys required for the Corrective Easements.

Since this is not an agricultural subdivision request, waiving the right to request termination is not required, nor does staff recommend making it a condition of approval since Mr. Legg is eliminating an owner's lot right. However, staff will inquire with the landowners as to whether they wish to eliminate the right on their individual Corrective Easements.

Background:

Mr. George Legg, III is the original grantor of this easement, which was established in 2002. The easement covers 118.01 acres of land, which is bisected by Mount Holly Road. There are no pre-existing dwellings or improvements on the property. In 2003, Mr. Legg requested an agricultural subdivision of the easement property and the Board approved the request. The agricultural subdivision divided the easement into two areas consisting of 50.26 acres (the "North Parcel") and 67.75 acres (the "South Parcel"). Due to the 50 acre minimum requirement for agricultural subdivisions at that time, Mr. Legg incorporated into the North Parcel 2 acres of land (the "2 Acre Area") lying south of Mount Holly Road. In short, without these additional two acres, the North Parcel would only consist of 48.26 acres. The 2 Acre Area is shown on the attached map. Mr. Legg chose to designate the 2 Acre Area as an owner's lot for the North Parcel. The owner's lot has not been released.

In 2004, Mr. Legg sold the South Parcel to Ms. Marie Greenhawk. At that time, separate Foundation easements were not required to acknowledge the sale of the South Parcel to Ms. Greenhawk; thus the original 2002 easement (09-99-04) still applies to both properties.

Through this request, Mr. Legg seeks to transfer the 2 Acre Area to Ms. Greenhawk. This transfer would produce two new easement areas. The North Parcel will consist of 48.26 acres and the South Parcel will consist of 69.75 acres. To accomplish this result, staff recommends that Mr. Legg and Ms. Greenhawk agree to sign two separate Corrective Easements for each new easement area.

As noted above, the Board already approved an agricultural subdivision for this property in 2003. However, because the current request will produce a parcel less than 50 acres (i.e. the North Parcel will consist of 48.26 acres), the Board must decide whether the proposed request meets the exception to 50 acre minimum requirement. At the time of the 2003 subdivision, there were no exceptions to the 50 acre minimum requirement. Therefore, the 2 Acre area had to be incorporated into the North Parcel. Staff believes that the exception outlined in COMAR 15.15.12.04.F applies to the applicants' request. The exception states:

F. Exceptions to Acreage Requirement. The Foundation may permit resulting divided parcels of less than 50 acres of land if the Foundation determines that physical limitations of the land, including but not limited to, bodies of water, public roads, and steep slopes create constraints making the 50 acre minimum impractical, and the resulting parcel of less than 50 acres continues to meet minimum soils requirements as provided by COMAR 15.15.01.03D independent of the original farm and the resulting divided parcel or parcels remaining after the subdivision of the smaller parcel are at least 50 acres and continue to meet the minimum soils criteria, as provided by COMAR 15.15.01.03D.

In this case, Mount Holly Road divides the North Parcel from the 2 Acre Area. This physical limitation of the land creates a constraint making the 50 acre minimum requirement impracticable because the owner of the North Parcel must cross Mount Holly Road to reach the 2 Acre Area. We know that the both parcels will continue to meet minimum soils requirements because the easement property is 100% Class I, II and III soils.

The ability to do Corrective Easements for to adjust boundary lines is found in COMAR:

Corrective Easement Criteria (COMAR 15.15.11.03)

.03 Criteria

A. Approval. The approval for a corrective easement by the Foundation is not an absolute right of a landowner, and requests shall be reviewed by the Foundation on a case by case basis. A request shall be reviewed to determine if the proposed corrective easement will either enhance or have no effect upon any agricultural operation being conducted upon the land. A corrective easement may be used to adjust boundary lines, resolve easement violations, or accommodate a plan that the Foundation has determined will benefit the agricultural operations on the land encumbered by an easement, and may include such other additional terms, conditions, waivers, or restrictions that the Foundation deems appropriate to protect the agricultural viability of the farm.

MALPF Board Open Meeting Minutes 3-25-2014: Page 9

This request enhances the agricultural use of the farm due to the 2 acres being transferred to the owner of the property on the same side of the road.

The Dorchester County Agricultural Land Preservation Board approved these requests. The requests meet Planning and Zoning requirements.

Ms. Cable presented the item for Ms. Chasse. The landowners were not present.

Discussion:

Ms. Cable informed the Board that both she and Rodney Banks, Dorchester County Program Administrator, believed that Mr. Legg plans to waive the right to request any additional family lots on the easement area he will retain. Ms. Cable will seek clarification from Mr. Legg regarding family lots through the Board's decision letter so it will be accurately reflected in the terms of the corrective easement.

The Board questioned why this request was characterized as a boundary line correction and not a new subdivision request. The Board decided that this is a second subdivision request, using the public road as the reason the easement is able to be divided into a less than 50 acre parcel. Since that test from the subdivision regulation is being used, the requirement of removing the 25-year termination clause from the subdivision regulation must also apply if the Board approves the request.

Ms. Brogan asked if both the Legg and the Greenhawk easement owner will be subjected to the removal of the 25 year clause as a condition of the Board's approval of this 2-acre subdivision. Mr. Draper mentioned if the landowner objects to this condition, then the current configuration of the easement will remain the same. In addition the landowner has an option to make a request to come before the Board to advise them of their decision not to proceed.

Motion #6 Pursuant to the agricultural subdivision regulations, the Board approves the request to transfer 2 acres from the Legg portion of the easement area and add the same 2 acres to the Greenhawk portion of the easement area. The public road that divides the easement property provides the basis for a parcel less than 50 acres. Per the agricultural subdivision regulations, the corrective easements will remove the 25-year termination clause from all parcels, making the easements perpetual.

Motion: Susanne Brogan Second: Patricia Langenfelder
Status: Approved

Motion #7 Approve the request for Mr. Legg's reimbursement of his 2 acre owner's lot, subject to satisfaction of all statutory requirements necessary for reimbursement.

Motion: Patricia Langenfelder Second: James Norris, Jr.
Status: Approved

V. EASEMENT PETITIONS

None

VI. PROGRAM POLICY

A. Proposed Changes to Agricultural Subdivision/Corrective Easement Regulations

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.~~ **In February meeting, Board decided that it can do this under the current regulation.**

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. **March meeting: Please review separate page showing proposed revision per Feb. discussion.**

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).

Page 5: This sentence gives a time requirement on the landowner to submit the funds and documentation (survey) within ~~one~~ **three** years 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~~ **three**-year timeframe.

Ms. Cable presented the item.

Motion #8: Approve the proposed changes to the Agricultural Subdivision and Corrective Easement Regulations.

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

B. Uses Policy – Food Preparation and Sales/seating

Request

Staff requests that Board members vote on the attached proposed policy, which was discussed at 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.

Ms. Cable presented and discussed the item.

Motion #9: Approve proposed changes to the permitted uses policy regarding food preparation and sales/seating.

Motion: Bernard Jones, Sr. Second: James Wallace
Status: Approved

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.

Heard in ENV Committee on March 19, 2014. Being voted on March 25, 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.

Both SB 259 and HB 861 received lots of amendments in the last couple of weeks.

As currently written and as passed by both the House and Senate Committees, the bill contains the following language:

- Impacts any new application approved by the BPW after June 30, 2014.
- 'Authorized renewable energy source' means:
 - 1) Solar;
 - 2) Wind;
 - 3) Anaerobic digestion of poultry litter if placed on fallow land; and
 - 4) Anaerobic digestion of livestock manure if placed on fallow land.
- 5% or 5 acre size limitation must contain any permanent roads or structures (not temporary staging areas).

MALPF Board Open Meeting Minutes 3-25-2014: Page 12

- Landowner requests to amend existing easements must have recommendation of local ag advisory board and must be in accordance with all federal, state and local laws.
- The facility owner must remit 5% of any lease payment paid to the landowner to MALPF. MALPF must use the proceeds to purchase easements.
- The lease must include provisions to require the facility owner to remove the facility if it is no longer used to generate electricity.
- A landowner who is in violation of federal, state, or local laws while operating a facility is also in violation of the MALPF easement and will be subject to civil penalty.
- There will be a 5 year sunset for the legislation:
 - MALPF cannot approve any new requests after June 30, 2019.
 - Will not impact any facility approved prior to July 1, 2019.
 - MALPF is responsible for reporting to the Legislature on or before December 1, 2018 on the implementation of the Act.

HB 1402 - Agricultural Transfer Tax – Distribution to Mel Noland Woodland Incentives Fund (MDA defers to 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. Current law requires that transfer taxes paid from parcels that are 100% wooded go directly into the Woodland Incentive Fund. This bill would remove any transfer tax paid by properties that are 90-99% wooded from coming to MALPF and send it directly to the Woodland Incentive Fund – up to the \$300,000 maximum.

Hearing was held on March 11, 2014. Since this was a late filed bill, the Committee only heard testimony from the sponsor. MDA provided written testimony but was not able to testify verbally. The bill has been held in the Committee.

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

The bill was scheduled to be heard on March 11, 2014. I spoke with Del. Kach and the landowner and explained that the bill would not have the expected outcome. Del. Kach withdrew the bill.

Additional Discussion:

Mr. Wallace provided updated information on the Capital Budget legislation: There is \$15.2 million in bond money for FY15. The Governor is paying back the program in FY16, 17 and 18. The \$15.2 million is from reimbursements of previous years transfer tax being moved to the general funds. This bill went to the senate and is currently on the house floor. The capital budget is being heard by the House Finance subcommittee soon.

Mr. Draper explained that the reason MALPF went to the 2 year cycle was to try to match the available federal money because MALPF was not receiving enough funding each year to make offers in each county. Ms. West will have the amounts of the initial general allotted fund for each county at next month's Board meeting based on the final approved funding. At that time, she will ask the Board if it wants a 1 or 2 year cycle with the \$15.2 million or join the FY 2015 funds with FY 2016.

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.

MALPF Board Open Meeting Minutes 3-25-2014: Page 13

Motion #9 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: James Wallace
Favor: John Draper, Jr., Bernard L. Jones, Sr., Susanne Brogan, Jerome Klasmeier, Patrica A. Langenfelder, Donald T. Moore, James (Bubby) Norris, Dan Rosen, and James Wallace.

Status: Approved

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

The Closed Meeting of the Board was held from 10:16 a.m. to 10:25 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, Jerome Klasmeier, Patrica A. Langenfelder, James (Bubby) Norris, 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

The Closed Meeting was adjourned at 10:25 a.m.

Respectfully Submitted:

Angela Gaither, MALPF Secretary

Carol S. West, Executive Director