

MARYLAND AGRICULTURAL LAND PRESERVATION FOUNDATION
OPEN MEETING MINUTES
May 27, 2014

TRUSTEES PRESENT:

John Draper, Jr., Chair
Susanne Brogan, representing Treasurer Nancy Kopp
Michael Calkins
Craig Highfield
Patricia A. Langenfelder
Donald T. Moore
Eugene Roberts, Jr.
Dan Rosen, representing Secretary Richard E. Hall, Maryland Department of Planning
Mary Ellen Setting, representing Secretary Earl F. Hance, Maryland Department of Agriculture

TRUSTEES ABSENT:

Bernard L. Jones, Sr., Vice Chair
Jerome W. Klasmeier, representing Comptroller Peter Franchot
James (Bubby) Norris, Jr.
Jonathan C. Quinn

OTHERS PRESENT:

Jack Bell, Baltimore County, Landowner
Patti Bell, Baltimore County, Landowner
Donald Belt, Baltimore County, Landowner
Jennifer Belt, Baltimore County, Landowner
Michelle Cable, MALPF Administrator
Diane Chasse, MALPF Administrator
Tamekia Dent, MALPF Temporary Staff
Rama Dilip, MALPF Administrative Specialist
Kevin Elden, Anne Arundel County, Attorney for the Dee Corporation
Phyllis Fegely, Baltimore County, Landowner
Wayne Fegely, Baltimore County, Landowner
Nancy Forrester, Assistant Attorney General, Department of General Services
Angela Gaither, MALPF Secretary
Carla Gerber, Kent County, Program Administrator
Billy Gorski, Anne Arundel County, Assistant Program Administrator
Rob Gunter, Queen Anne's County, Program Administrator
Justin Hayes, Assistant Attorney General, Maryland Department of Agriculture
Debbie Herr-Cornwell, Caroline County, Program Administrator
Kim Hoxter, MALPF Monitoring, Enforcement, and Database Coordinator
Wally Lippincott, Baltimore County, Program Administrator
Craig Nielsen, Assistant Attorney General, Maryland Department of Agriculture
Turhan Robinson, Principal Counsel, Office of Attorney General, Department of General Services
Donna Sasscer, St. Mary's County, Program Administrator
Donna Landis-Smith, Queen Anne's County, Soil Conservation Specialist
James Wallace, MDA, Director of Administrative Services
Carol West, MALPF, Executive Director
Robin Weisse, Baltimore County, Landowner

OTHERS PRESENT BY WEB CONFERENCING:

Bill Amoss, Harford County, Program Administrator
Chris Boggs, Washington County, Program Assistant
Ned Sayre, Harford County, Ag Preservation Outreach Specialist
Eric Seifarth, Washington County, Program Administrator
Martin Sokolich, Talbot County, Program Administrator

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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, Board, and staff introduced themselves.

I. APPROVAL OF MINUTES

A. Approval of Open Minutes: April 22, 2014 Minutes.

Motion #1: Approve minutes for April 22, 2014.

Motion: Patricia Langenfelder Second: Michael Calkins
Status: Approved

II. ADDITION / DELETION OF AGENDA ITEMS

Ms. West stated that there will be a deletion of item VII.A - DNR Presentation on climate change impact and land preservation. Hopefully, this item will be presented at June's Board Meeting. Also item IV. D.1 Harford County will be moved to the first item on the agenda for discussion.

III. ANNOUNCEMENTS

Maryland Agriculture Land Preservation Foundation has an addition to their Board of Trustees, Michael Calkins is representing the Young Farmers. He is also Vice Chair with the Young Farmers Advisory Committee for the Governor.

Mr. Calkins resides in Howard County. He and his wife operate a horse boarding and training operation in Glenwood, Maryland. Mr. Calkins is currently employed at Howard County Soil Conservation District as a Storm Water Management Resource Specialist. He previously worked for the Department of Agriculture role as a Resource Conservation Assistant.

Ms. Donna Landis-Smith, formerly Program Administrator for Queen Anne's County, introduced the new Program Administrator for Queen Anne's County, Rob Gunter. He will be taking over the MALPF responsibilities. Ms. Smith has taken a new position as a Soil Conservation Specialist with the County.

Ms. West sadly announced that Jonathan Quinn's mother passed.

She also mentioned that MALPF hired a new administrator, Susan Turner. Ms. Turner currently lives in Baltimore, but is from Colorado. She worked for a land conservation program in Colorado. Ms. Turner's first day is June 11th.

IV. EASEMENT AMENDMENTS

A. BALTIMORE COUNTY

1. 03-97-02 #1 Cornwell, Kim & John ~55 acres

Request – Baltimore County:

Request to adjust a released child's lot configuration by exchanging ~3/4 acres of land, resulting in the child's lot remaining 1.0 acre. The child's lot is intended for Patti Bell.

Recommendation:

Staff recommends approval, subject to mandatory conditions outlined below.

Background:

Wayne & Phyllis Fegely are the original grantors of the easement over 103.856 acres, established in April 2000 (the "Original Land"). There were two pre-existing dwellings documented and ~8 acres were withheld at the time the easement was established. The Original Land was approved for agricultural subdivision in 2010, and is now held under Corrective Easement #1 and Corrective Easement #2. The

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current request concerns Corrective Easement #1. The history of requests, approvals, and actions on the Original Land is as follows:

1. January 2006: Staff administratively approved release of one of the pre-existing dwellings (1-acre) as shown on the map.
2. December 2010: Board approved the following items:
 - a. Adding ~6 acres that were previously withheld from the Original Land, in order to create a parcel that met the 50 acre requirement for Corrective Easement #2. (Without those 6 acres, Corrective Easement #2 would have been less than the required 50 acre size minimum for an agricultural subdivision.)
 - b. Adding 2 acres to the Original Land. These two acres were previously withheld and included a dwelling. These 2 acres are part of what is now Corrective Easement #1, and the existing dwelling was made non-subdividable.
 - c. A 1.922 acre owner's lot surrounding a pre-existing dwelling for Mr. & Mrs. Fegely, and still owned by them.
 - d. A 1.0 acre child's lot for Patti Bell, as shown on the map. This child's lot was preliminarily released on September 12, 2011 from the area comprising what is now Corrective Easement #1.
 - e. A 1.0-acre non-subdividable child's lot for Robin Weisse, located on land encumbered by Corrective Easement #2, which land Robin Weisse and her husband now own.
 - f. Subdivision of Original Land into ~55 acres (Corrective Easement #1, including the 2 acres added in per b. above) now owned by Kim & John Cornwell (Fegley's daughter) and ~52 acres (Corrective Easement #2, including the 6 acres added in per a. above) now owned by Robin & John Weisse (Fegley's daughter).
3. The Corrective Easements #1 and #2 were recorded in April 2012.
4. The resulting subdivided lands were transferred to both Cornwell and Weisse immediately after the Corrective Easements were recorded.

The child lot for Patti Bell was preliminarily released in 2011, and is due to expire on July 1, 2015. In 2013, the owners informed staff that the approved lot configuration would not support the driveway access, type of house, and geothermal system they wanted to establish, although the current configuration of the lot is buildable, and has passed perc tests. Staff was also informed by the owners that prior to finalizing of the agricultural subdivision, the owners were aware that the configuration of the child's lot was not conducive to their plans, but did not inform MALPF prior to consummating the subdivision transaction. Since the property is no longer owned by the original grantors, and the lot has already been subdivided from the easement property, the only method available to adjust the lot configuration is through a land exchange.

The exchange of ~3/4 acres of land will not have any significant impact on the farming operation, as the lot is being shifted slightly to the west from the current location. The soils of the acreage coming into and out of the easement are equivalent in terms of qualifying soils.

The County Advisory Board approved this request. The new lot location has been approved by Baltimore County Groundwater for a septic system and by the Baltimore County Office of Planning.

Mandatory Conditions:

Upon Foundation approval, the land exchange must be approved by the Board of Public Works. In addition:

1. Landowners will be responsible for the title and survey expenses associated with this request; title must be procured on both the land currently comprising the child's lot, and the land currently comprising Corrective Easement #1;
2. A survey of the boundary of the new Corrective Easement #1 must be provided, along with a written metes and bounds description pursuant to MALPF standard requirements;
3. A survey of the boundary of the newly configured 1 acre child's lot must be provided, along with a written metes and bounds description;
4. Deeds of Exchange with associated lender releases for the acreage being exchanged, must be provided for review prior to execution;
5. An amended Preliminary Release and Agreement ("Amended Preliminary Release") must be executed. The Amended Preliminary Release will have a three-year term, and will specify that

the original preliminary release is void. The Amended Preliminary Release must also require that the 1 acre lot be rejoined to the land under Corrective Easement #1 if the conditions of the Amended Preliminary Release are not fulfilled;

6. An Amended Corrective Easement #1, with lender subordination(s), must be executed; and
7. Existing mortgages or deeds of trust encumbering the land described in Corrective Easement #1 must be modified to encumber the new legal description for Corrective Easement #1.

The Landowners have been informed that this matter is not a priority for the Foundation and that the transaction may not be able to be completed for over a year.

Ms. Cable presented the item. Mr. Wally Lippincott, Jr., Baltimore County, Program Administrator, and Mr. & Mrs. Jack and Patti Bell and Mr. Wayne Fegley were present for questions and comments.

Discussion:

Mr. Lippincott affirmed Ms. Cable's summary, and informed the Board that Mr. Bell would like to address them about alternative lot configurations and the history of how the current request before the Board came to be.

Mr. Bell thanked the Board for the opportunity to discuss the history of the child's lot approved for his wife, Patti Bell. Mr. Bell went into detail of the multiple proposed configurations of the lot, and how initially the family had hoped this request could be a lot reconfiguration instead of a land exchange. Mr. Bell provided the Board handouts of alternative lot configurations, what he called Option A, Option B (which is the formal request before the Board), and Option C. These configurations were developed from information provided by Ms. Cable regarding the land exchange requirements, the make-up of the soils in this area of the property, the physical characteristics of the property, the Bell's desire of a geothermal energy system, and the engineering of the access of the driveway to this lot and the farm in general.

The Bells and Fegleys had numerous conversations and meetings with Baltimore County staff and NRCS staff, including a meeting with Ms. Cable, as well as e-mail correspondence regarding the lot configuration. The Bells stated that they understood why the request had to be via a land swap and not a lot reconfiguration since the original owners of the easement no longer own the property; however, Mr. Bell wanted to present his request to the Board regarding the alternative lot configurations and the rationale behind why they preferred them over the Option B before the Board today.

Ms. Cable informed the Board that the other configurations proposed by the Bells did not meet the soils requirement of a land exchange. The regulation governing land exchanges is clear that in terms of the soils classifications, the land exchange must result in at least an equal soil exchange, if not an increase of higher quality soils coming into the easement. The current configuration before the Board, Option B, is the only configuration of this lot that meets the criteria and the only recommendation that MALPF Staff can recommend for approval.

Mr. Fegley shared with the Board his experience with the land in question, expressing that the area for the lot in Option B is actually more productive farmland than what was proposed in Options A or C. Ms. Cable reiterated that MALPF Staff has to go by the official soils designation, not by the farmer's experience. It is a matter of treating all MALPF easements equally when assessing them around the State.

Mr. Roberts understands that MALPF Staff and attorneys must comply with the regulations, but he thinks the farmer's experience should be taken into account and made a motion to approve the reconfiguration of Option C, presented by the owners. No other Board member seconded the motion.

Mr. Draper and Ms. West concluded that the rest of the Board agreed to vote on what the owners referred to as Option B, which is what the official request was before the Board that day in the memo provided by MALPF Staff.

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Status: Approved

B. QUEEN ANNE'S COUNTY

1. 17-98-09 Adams, John & Betty ~115 acres

Request – Queen Anne's County:

Request to exclude up to 2.0 acres from the easement for an owner's lot.

Recommendation:

Staff recommends approval. The request meets the requirements of the Foundation's Lot Location Guidelines. If the county requires a road dedication along Little Eagle Road, that acreage must be included within the approved acreage to be release for the lot.

Background:

John & Betty Adams are the original grantors of this easement, established in 2001. There are no documented pre-existing dwellings. No requests have been made regarding this easement property. Mr. & Mrs. Adams also own an adjacent easement property (17-98-08, ~120 acres) and have made no family lot requests regarding that easement either.

This owner's lot will be located along Little Eagle Rd., adjacent to other residential lots. The location of the lot meets the Foundation's Lot Location Policy.

The request has been approved by the County and is in accordance with all County requirements. The reimbursement amount will be \$1,000.00per-acre being released.

Ms. Cable presented the item. Rob Gunter, Queen Anne's County, Program Administrator, and Donna Landis-Smith from Soil Conservation, were present for questions and comments.

Discussion:

Ms. Cable asked Mr. Rob Gunter and Ms. Donna Landis-Smith about a building that was labeled dwelling on the survey plat that was right on the property line, as there was no documented pre-existing dwelling on this easement property. Ms. Landis-Smith replied that there is no dwelling on this easement property; there is a dwelling on the adjacent farm that is owned by the same people and also under a MALPF easement. Ms. Smith thinks that this is an error on the survey plat.

Motion #4 Approve request to exclude up to 2.0 acres from the easement for an owner's lot.

Motion: Susanne Brogan Second: Michael Calkins
Status: Approved

C. ANNE ARUNDEL COUNTY

1. 02-81-12 Dee Corporation ~392 acres
(William Chesley, President)

Request – Anne Arundel County:

Request approval of a land exchange to resolve an outstanding illegal overlay easement on the subject property. The property owner has agreed to relinquish the right to subdivide one of the pre-existing dwellings (up to 2.0 acres) on the property in exchange for the release of a 0.7399 acre area from the preservation easement. The area proposed for release from the preservation easement is currently encumbered with an unapproved overlay easement benefitting the neighboring property owners ("Veshlage Easement").

Recommendation:

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Per the terms of COMAR 15.15.11.03.C (1), Staff recommends approval of the request.

Background:

The property was encumbered with the MALPF easement in 1984. There are five documented pre-existing dwellings on the property. One owner's lot was released in 1987. Dee Corporation, the current owner, acquired the property in 2006. During its November 2013 meeting, the Board reviewed and denied a request for retroactive approval of the Vehslage Easement on the MALPF easement property. No other requests have been submitted for this easement property.

COMAR 15.15.11.03 C (1). governs how the Foundation administers land exchanges.

C. Boundary Line Adjustment.

(1) If the proposed corrective easement involves the adjustment of boundary lines and part of the land encumbered by the easement is to be released, then:

a. An equal or greater amount of land of equal or better soil types must be added to the land under easement;

b. The value of the easement will not be diminished by the proposed exchange;

c. The proposed exchange shall be approved by the Board of Public Works; and

d. The landowner shall pay for the cost of all title work, title insurance premiums, surveys and documentation necessary on both the land under easement and the land to be added by corrective easement.

Per the terms of the easement, under the Covenants, Conditions, Limitations and Restrictions, Paragraph A.(1)(d):

“(d) On request to the Foundation, an owner may exclude from the easement restrictions 1 acre per each single dwelling, which existed at the time of the sale of the easement, by a land survey and recordation provided at the expense of the owner.”

MALPF Staff suggested the current proposal as a solution to the easement overlay violation. The owner can request a release of up to 2.0 acres around each of the five documented pre-existing dwellings, which releases those acres from all of the restrictions of the MALPF easement. The property owner is agreeing to exchange the one acre (possibly 2 acre) area of the pre-existing dwelling for the encumbered 0.7399 acre area of the Vehslage Easement. This would result in a minimum net gain to the easement area of 0.26 acres (potentially 1.26 acres if the owner can prove a need for a 2 acre release area), all qualifying soils. Instead of requiring the owner to go through the actual release process, the proposed solution enables the Board to approve the end result of the land exchange, without the additional recorded documents to be completed for the lot release. The waiver of the right to exercise a pre-existing lot release will be documented in the corrective easement.

The owners have identified the pre-existing dwelling they are willing to permanently tie to the easement property, which is identified on the enclosed map. MALPF Staff believes this proposal is an overall benefit to the easement, as it will result in a dwelling always being associated with the property and there will be a slight increase in the amount of acreage under easement. Releasing the Vehslage Easement area from the MALPF easement will have no impact on the agricultural operation of the farm due to the small size and location, as shown on the enclosed map.

The Anne Arundel County Agricultural Advisory Board recommends approval of the request.

If approved by the Foundation, the Board of Public Works must approve the release of the 0.7399 acres. The transaction will be documented through a corrective easement to be recorded in the Land Records of Anne Arundel County that establishes the revised easement perimeter and makes the identified pre-existing dwelling non-subdividable from the easement property. The landowner has been informed that this matter is not a priority for the Foundation and that the transaction may take a year to accomplish.

Ms. Cable presented the item. Mr. Billy Gorski, Anne Arundel County, and Mr. Kevin Elden, Attorney for Dee Corporation were present for questions and comments.

VI. PROGRAM POLICY

A. Washington County – Re-Certification Request

Reporting Period: Fiscal Years 2010-2013
Recommendation: Certify for July 1, 2014 through June 30, 2017

Mr. Rosen and Ms. Cable presented the item. Mr. Eric Seifarth, Washington County Program Administrator, and Chris Boggs, Program Assistant, were available by web conference for questions and comments.

Discussion:

Mr. Rosen stated that MDP would like for Washington County to adopt their tier maps under the Septic law prior to the next re-certification review period.

Motion #6: Approve Re-Certification for July 1, 2014 through June 30, 2017.

Motion: Patricia Langenfelder Second: Craig Highfield
Status: Approved

VII. INFORMATION AND DISCUSSION

A. DNR Presentation on climate change impact and land preservation
(Deleted - This item will be presented at June's Board Meeting.)

B. News Articles

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: Eugene Roberts, Jr... Second: Patricia Langenfelder
Favor: John Draper, Jr., Susanne Brogan, Craig Highfield, Patricia A. Langenfelder, Donald T. Moore, Eugene Roberts, Jr., Dan Rosen, and Mary Ellen Setting.
Status: Approved

The Open Board Meeting was adjourned at approximately 10:08 a.m.

The Closed Meeting of the Board was held from 10:18 a.m. to 11:05 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;

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

John Draper, Jr., Susanne Brogan, Michael Calkins, Craig Highfield, Patricia A. Langenfelder, Donald T. Moore, Jr., Eugene Roberts, Jr., Dan Rosen, and Mary Ellen Setting.

TOPICS DISCUSSED:

VIII.A Approval of March 25, 2014 Closed Session Minutes

VIII.B Status Report of Pending Legal Issues

VIII.C Mullinix Preliminary Review

VIII.D 07-13-04 Kilby, Inc. survey/legal description

The Closed Meeting was adjourned at 11:05 a.m.

Respectfully Submitted:

Angela Gaither, MALPF Secretary

Carol S. West, Executive Director