

AGRICULTURAL PRESERVATION WORK GROUP MEETING MINUTES

May 2, 2007

1. **Attendance:** Tom Dernoga, Marilynn Bland, Phil Carr, Boyd Campbell, Daniel Filippelli, Fred Tutman, Debra Naylor, Charles Renninger, Stephanie DeVille-Eugene, William Moore, Richard Krueger

2. **Meeting Agenda:**

- I. **Approval of Minutes (April 18)**

Amendments to the April 18 minutes were provided by Debra Naylor and Peter Duvall to clarify and accurately reflect their statements during the April 18 meeting. The amended minutes are posted on the Agricultural Preservation Work Group link found on the County Council webpage.

- II. **Discussion**

- Transfer of Development Rights (TDRs)
TDRs for Tree Mitigation**

Margaret Addis of the County Attorney's Office provided a brief overview of TDRs indicating that it is the most popular program for the purpose of extinguishing density. Ms. Addis also made available copies of a discussion paper "How Well Can Markets for Development Rights Work? Farmland Preservation Program" prepared by Resources for the Future in Washington, D.C. (<http://www.rff.org>).

In follow up with the presentation/discussion held on March 28, 2007, CJ Lammers of the M-NCPPC Environmental Planning Section was present and provided the following questions/responses that were received from the State Department of Natural Resources (DNR) regarding agricultural preservation and woodland conservation mitigation banking:

M-NCPPC Question:

1. Regarding the provisions of 5-1607 of the Annotated Code (below). It is our understanding that this provision does not allow the use of land for woodland conservation if it is currently under an easement. Does this include only forested areas or does it also include afforested or reforested areas? Is there some other provision in the Code that addresses the use of afforest/reforestation?

DNR Response:

NRA 5-1607 (b)(2)(ii) allows for "...acquisition as a mitigation technique of an offsite protection easement for existing forested land not currently protected..." The key words are "not currently protected" and "existing forested land". Land can be protected by other methods besides an easement. If the existing forested area is already protected, then it cannot be used as an offsite mitigation area. All mitigation areas (retention and planted) need to be placed under a long-term protection agreement. This leads to the following questions with regards to planting: If the area is currently protected, do you want to place a second easement over the area? Does the first easement allow you to? Which would take precedent in case of a problem?

M-NCPPC Question:

2. For Rural Legacy properties that are purchased with Rural Legacy funds, are they eligible to be used as woodland conservation off-site mitigation banks? What if only an easement is purchased? The problem with purchased properties is that they are now in public ownership and the requirement for woodland conservation is equal to the acreage of trees that exist on the property - unless they are afforested, there are no available woodlands.

DNR Response:

I have checked with the Rural Legacy Program and found that they have been discouraging woodland mitigation on properties with Rural Legacy easements. I am waiting for a response regarding woodland mitigation on land purchased with Rural Legacy funds but not under easement.

M-NCPPC Question:

3. It is our understanding that MALPF, because it does not provide permanent protection, might be eligible for use as off-site woodland conservation

mitigation banks. Can you tell us how this program is viewed? How about properties protected under the CREP program?

DNR Response:

I would suggest you check with MALPF directly. I am waiting a response from MDA. There was a policy regarding this written about 5-6 years ago, which may have changed due to the change in administrations.

With regards to CREP, it depends. If the CREP contract is in place first, then the forested area is “currently protected” and cannot be used as a mitigation bank. After the 15-year CREP contract has expired, it is no longer “currently protected” and can be used as an off-site mitigation bank. If the area is under an easement, it would be considered protected and thus not eligible for banking.

M-NCPPC Question:

4. MET (Maryland Environmental Trust) - it is our understanding that MET does not allow mitigation banks on land they already have under easement. It is our understanding that in the past they have accepted properties that already contain woodland mitigation banks. Do you know their current status on this issue?

DNR Response:

Here is the response from MET: The current policy of the MET Board is that regulatory easements including forest conservation areas are not accepted, nor are easements on land that will be used in the future for mitigation banking or transfer of development rights. However, if all the credits/density have been sold or transferred, then the board will generally accept an easement on that land. The reasoning is that the acceptance of the donation should not encourage development anywhere else.

M-NCPPC Question:

4. We've heard about a program called Forest Conservation Management Agreement (FCMA) that might be a program where property owners could participate in both the program and woodland conservation mitigation banking. Can you send us information on this program?

DNR Response:

The information piece is currently being finalized by my office. A draft of the document is being prepared. This is a program that allows the harvesting of forest products while allowing for forest conservation banking.

The work group engaged in considerable discussion on this topic. Ms. Addis expressed concern regarding the accuracy the State responses and suggested that further clarification and contact information for the DNR representative who provided the responses should be obtained. She also noted that there are different implementations among the Maryland counties.

CJ Lammers raised the question that if a property is encumbered by a Purchase of Development Rights (PDR) easement which does not restrict trees from being removed, can it be used for tree mitigation.

Tom Dernoga commented that it is important that the work group has an understanding of the State's position because the County must adhere to the State law, and if necessary, the group can recommend that the law be changed.

Yates Clagett of the Soil Conservation District requested clarification that this issue of "double dipping" is not settled based on the DNR response because this is an important issue for property owners who are considering programs that will ensure that they are getting the equity for their property.

III. Discussion/Comments from observers in attendance

Gary Rubino commented that if a property owner submits a forest management plan, they can apply for an agricultural assessment.

- 3. Next Meeting:** May 16, 2007 at 3:00 p.m.
- 4. Adjourn:** The meeting was adjourned at 4:45 p.m.