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**HOWARD COUNTY AGRICULTURAL PRESERVATION BOARD (APB)  
AND STATE AGRICULTURAL PRESERVATION ADVISORY BOARD (APAB)**

**January 28, 2019**

**Attendance:**

Board Members: Mickey Day (Chair)  
Jamie Brown  
Cathy Hudson  
Ann Jones (Vice Chair)  
Savannah Kaiss

Staff: James Zoller, Executive Secretary / Agricultural Coordinator (OCS)  
Beth Burgess, Planning Manager  
Joy Levy, Administrator (ALPP)  
Lisa O'Brien, Senior Assistant County Solicitor  
Matthew Hoover, Administrative Aide (OCS)

Guest: Lindsay DeMarzo, Clean Water Specialist (OCS)

Mickey Day called the meeting to order at 7:05PM.

**Action Items**

**1) Minutes from the meeting of December 17, 2018**

Mr. Day asked if there were any additions or corrections. Ms. Hudson made a correction for the APB meeting schedule section, where it stated they discussed not doing the 4<sup>th</sup> Monday, but they discussed not doing the 3<sup>rd</sup> Monday. Ms. Jones made a correction about the number of farms on the Soil Conservation list. It was a list of 1100 people and not a list of 1100 farms. Mr. Brown motioned to approve the minutes with the corrections and it was seconded by Ms. Hudson. All members in attendance approved the minutes.

**2) Review of draft of Water Easement Overlay Policy**

Ms. Jones recused herself from the policy discussion, because at her farm may request an overlay easement with the Highway Department. Ms. DeMarzo went over the policy draft, which she helped create. She used the Non-Title Wetland Mitigation Policy as a base. She also looked at the Forest Conservation Planting Policy and the Maryland Agricultural Land Preservation Foundation (MALPF) document. She assisted in writing the MALPF policy,

because of her involvement with the Patrick Farm project. She stated, the biggest point is that most of the policies, which MALPF also found, deal with mitigation. Now they are looking at new projects and programs that are coming in that are not just mitigation for a development. They want to separate mitigation from the other circumstances, which is why they wanted to come up with another policy to handle those situations.

A lot of the policy is based off the Wetland Mitigation, but in some areas, she added in "stream restoration" and removed "mitigation." In the first paragraph where it starts with policy she put "that are not for the purposes of mitigation." She added in areas that fall within the Green Infrastructure Network (GIN) should be prioritized for the conservation areas and the buffer planting activities.

Ms. Hudson wanted to know why they are doing this and how the board fits into this. Ms. DeMarzo stated they did the stream restoration at the Patrick Farm, who has a MALPF easement, so they had to take it to the MALPF board for approval. MALPF had a policy for wetland mitigation and forest mitigation but they didn't have anything for stream restoration. They had to go through a whole process with MALPF explaining the differences and why this isn't mitigation. They had a lot of restrictions on an overlay easement because it was mitigation. They worked with them on how to handle non-mitigation scenarios for things that will get the county MS4 credits. Ms. Hudson asked if they would get these requests from the county trying to get MS4 credits and Ms. DeMarzo said, yes. They wanted to have it at the local level, because they anticipate similar scenarios like the Patrick Farm project. Ms. Hudson asked if this would be just for Agricultural Preservation land and Ms. DeMarzo stated, yes. This is how the board can assess and look at a proposed overlay easement, which is a secondary easement, on top of the existing agricultural easement.

Ms. DeMarzo continued to go over the changes. On the second and third paragraph, they are the same, except for removing mitigation and adding stream restoration buffer planting. The paragraph starting conservation practice, on the second line, she added "Likewise, Conservation Practice area should be contiguous," because they don't want isolated areas of Conservation Practices.

In the criteria for how you evaluate. Number one, she added some language that the evaluation will be site specific soil and hydrology features a plan showing proposed boundaries actions to be taken to restore the stream or wetland areas and concept designs.

Number two, which they had in the original wetland mitigation, "the project should not alter hydrology in a way that diverts water from pasture, crop land or other farm water" and she added "without ensuring sufficient alternative sources." If an alternative source is provided the Board should consider if it would be acceptable. An example of this is if the stream is being used as a water source for animals and is altered or changed, and is no longer accessible, so they put in a watering station. Hydrologic features should not be vastly altered above what is needed for the conservation practices. Ms. Hudson asked, if they diverted the stream flow what about the people affected downstream? Mr. Brown advised, they would be diverting it around something and bringing it back into the same stream. Ms. DeMarzo agrees it should be clarified, so as not to affect downstream and will compose some language for the second draft.

Number three, she removed a line in the Wetland Policy that states "if the project is subject to the Howard County sub-division and land development regulations, a twenty-five-foot wetland buffer maybe required." She didn't see how in this circumstance it would be subject to subdivision land development regulations, so she wasn't sure that sentence needed to stay in, but wanted to see what the Board thought about it.

Number four was wetland creation and she added "and additional buffer plantings."

Number five is new and she is suggesting adding "wetland creation maybe considered within a larger stream or wetland restoration project or as standalone project should conditions be suitable."

Number six, she added Green Infrastructure Network (GIN) expansion into the sentence as an area to provide buffers.

Number seven was added because of the Patrick Farm, which is "all conservation practice areas that are to be protected from future pasturing shall be fenced by the time of project implementation with at least temporary fencing." She also added, "permanent fencing must be installed at the conclusion of the construction."

Eight, Nine and Ten she kept the same. She wasn't sure what nine meant or referenced. She wanted to know if anyone had any insight on it and if it should be left in. Ms. Hudson thinks it may be addressing a place that has been really altered and potentially changing the ground water. Mr. Zoller and Ms. DeMarzo agreed with that, so she will keep number nine in the draft.

Number eleven, "if the proposed conservation practice's easement overlay is approved, the board recognizes that the final easement boundaries are subject to slight modification during construction and allows up to a 10% adjustment in the final easement overlay size. She advised that MALPF is currently allowing a 25% difference without taking it back to the board. Ms. Hudson suggested keeping it at 10% and if there is an issue with that they can adjust it.

Number twelve, the "Conservation Practice areas should include buffer plantings in accordance with the APB Forest Conservation planting policy with minimums of stream buffers at least fifty feet on each side of the stream from top of bank, and wetlands at least twenty-five from the edge of wetland.

It was asked how a scenario would arise for a request to come to a farmer? Ms. DeMarzo advised, while work was being completed at the Patrick's Farm the contractors were approached by neighbors asking how they could do this type of project. They could approach the county about a similar project and if the county has funding they could put out an RFP to hire a contractor. Also, the county has had several companies approach them asking if they are interested in continuing this type of project.

Mr. Day asked if there have been any stream restoration projects on non-agricultural preservation ground or are there any planned. Ms. DeMarzo stated, the county has done a lot on county property, some on HOA property and some on private property.

It was asked if there was a size limit and Ms. DeMarzo stated, no. When they initially went to MALPF they only allowed five acres, but they needed fifteen or sixteen acres. It didn't make sense for them to do only part of it, so MALPF went back and revised their policy.

Mr. Brown asked if something goes wrong on the Patrick Farm project would the county fix it and Ms. DeMarzo advised that the County would. Mr. Day asked what hurdles did they encounter during the project and Ms. DeMarzo stated, one issues they had was with the deed because someone passed away and another issue was going to MALPF, because they didn't have a policy.

Ms. DeMarzo suggested they may want to keep Wetland policy for mitigation and have this policy for MS4 credits. She thinks the Board may get stream restoration mitigation in the future too. She also thinks they could go with one policy for all situations. Ms. Hudson asked if this was an overlay and Ms. DeMarzo advised her that it was. Ms. Hudson asked what does that mean and Ms. DeMarzo advised that there is one existing easement and you are putting a second one on a portion of it.

Mr. Zoller advised there is a paragraph on the policy draft that states the APB will forward the proposal for MALPF to review, only if all county requirements were met. They are getting clarification to see if that is necessary.

Ms. DeMarzo advised that she will provide a highlighted changed version to the board members. After the revisions are completed a copy of it will be provided to the board.

### 3) Review of draft of Rules of Procedures

Mr. Zoller went over the draft for the APB Rules of Procedures. Mr. Zoller took out "Land" from the title to make it Agricultural Preservation Board. Mr. Zoller looked at the county code to mirror what is in it.

Section 1.01 *Purpose*. The Agricultural Preservation Board shall make recommendations to County Executive and he added "the County Council" on easement acquisitions, criteria and methods for calculating the price for purchase of an easement, program policy and agricultural policy in general. To provide written or oral testimony on agricultural and agricultural preservation issues. The board will listen to concerns and ideas of the community on agricultural issues affecting the county and report annually on the status of the program and issues of interest or concern to the agricultural community. Mr. Zoller asked, should they specify who they are reporting to. Ms. Levy advised that it is sent to County Council and the County Executive so that is who they should state they will report to. Mr. Zoller stated, he thinks Administrator of Agricultural Land Preservation Program, Ms. Levy, will do her report and the board will do their own report. Ms. Jones suggested it be worded so they could do more than one report a year.

Mr. Zoller went over the qualifications for the board members section. In the code it states, at least three of the members shall receive at least 50% of their annual income at the time of their appointment from active farming. In the policy, it was added, "or other agricultural endeavors." Ms. O'Brien advised that the state has a definition for their board members, which the county should follow. It was asked, why "agricultural endeavors" was still in the part for "at least two members should receive no income from agricultural endeavors during their tenure on the board?" It was advised, because it stated that in the code it had to remain in the policy. Mr. Zoller also added, "at least one member should own and farm property subject to an easement in the county ALP program," because it is in the code.

A discussion was started about if the board had ultimate authority on requests such as tenant houses. It was advised that the board makes recommendations but does not have the final say. It was advised, only DPZ and the County have the final say on the requests that come through the board. The decision the board makes reflects heavily on what the Department of Planning and Zoning (DPZ) recommends. The Department of Planning and Zoning administers the program, the zoning regulations and the sub-division regulations. All the processing of the plan happens at DPZ and then goes through the County for signatures. It isn't considered a final decision of the County until the County Executive has signed it.

The Executive Secretary was changed from DPZ to OCS. Everything remained the same except they took out the Executive Secretary preparing staff reports for easement requests, which will still be handled by DPZ. The Administrator of Agricultural Land Preservation Program, of the Department of Planning and Zoning, shall attend meetings for all easement requests and acquisitions and whenever requested by the Executive Secretary or Board; prepare staff reports for all easement requests, prepare the written recommendations of the board where applicable and other duties as required by the act.

Ms. Hudson asked, what the definition of personal interest? Ms. O'Brien stated, the board members would have to ask themselves if they can be fair and if a Board member makes the decision that it is a personal interest they should recuse.

305 Page 3, changed the Executive Secretary to Administrator because it involved staff reports and on-site inspections

3.08, if there are agricultural land preservation matters the administrator will introduce each of them.

3.08 (d), in the meeting section, it was put that "the Board will allow the public to make comments on agricultural concerns for a period of fifteen minutes with the limit of three minutes per person. If the board feels further time

is needed to discuss a concern it can be added to the next meeting agenda. All individuals wanting to discuss a concern with the board must sign in on arrival of the meeting. Public comment will be on a first come first serve basis and be a maximum of five individuals per meeting.” Mr. Zoller came up with this and was open for suggestions. The board members in attendance thought this was good and stated, if needed, they could adjust it later.

3.09 *Opportunity for Public Comment.* Any person should have the opportunity to testify before the board at the meeting regarding the merits of an Easement Request or agricultural concern.

3.10 *Oath.* A discussion was started about if it is needed and Ms. O’Brien stated it wasn’t necessary for an advisory board.

4.00 *Public hearings.* Ms. Jones advised that “oath” should come out of three places. James advised that some of the changes involve switching the Executive Secretary to Administrator in some sections too. They also must decide if the public hearings section needs to be included.

Mr. Day asked about the minimum number of meetings, which states there shall be at least one meeting every three months. He asked does the off months count as a missed month? It was advised, that the non-meeting month will count as a missed month.

A discussion was started about the 3.07 *Notice of Meetings.* Notice of meetings shall be submitted to the Howard County Public Information Office and advertised on the Howard County website, at least seven days preceding the meetings. It was asked if tonight’s meeting was posted and Mr. Zoller advised it was not because of issues with changing ownership of the webpage from DPZ to OCS.

Mr. Day asked about holding meetings via conference call. Ms. O’Brien stated that it must meet the Open Meetings Act requirements. You would need to have a notice and would have to have a speaker, so the public would be able to hear the board member/members that have called in.

Ms. Jones suggested adding “or is requested by the board” at the end of 4.02 *Staff Reports.* “Additional documents may be attached to the staff report as the Administrator deems necessary to assist the Board in its analysis, or is requested by the board.”

Mr. Zoller advised they are going to get some clarification on the Public Hearing section and will bring in a final draft.

## **Discussion Items**

### **1) Program Updates**

**a. Solar Projects** – Ms. Levy stated that the APB has reviewed four solar projects and Ms. Gowan has taken those recommendations to the County Executive. They shared the recommendation of the board and that DPZ’s recommendation was consistent with that. He accepted the recommendations for all of them.

**b. Agricultural Preservation Tax Credit** – Ms. Levy stated the issue with the Agricultural Preservation tax credit has been resolved. There was a deep look in how it was being implemented and it resulted in letters being sent out to everybody in the Agricultural Preservation program. The letters made people aware of the changes and how it was being implemented. One change is people involved in the program must apply every year, because the law states that it must be applied for every year. Ms. Hudson asked if this is something the Board can take to the County Council to get changed? Ms. Levy advised that one person has done this already, but she doesn’t know the outcome. She also stated, the Board can add their voices on the subject. Ms. Levy stated, if you were eligible but weren’t getting it, it would be starting this coming tax year. Ms. Levy stated that it is not going backwards. They have thirty days from when the tax bills go out for them to apply for the credit. They are hoping

people apply prior to the bills going out and are suggesting that people apply for it now. Mr. Brown stated he wouldn't have known about this if he hadn't received the check. Soil Conservation and Farm Bureau are going to get this out to the Agricultural Preservation people, so they know about the process. The form is listed on the County website. [Tax Credit Forms](#)

c. **Senate Bill 25** – Ms. Gowan advised that she received a call from, Maureen Arthurs, the Director of Government Affairs for Executive Calvin Ball. Ms. Jones sent an email regarding the bill but the Maryland Association of Counties (MACo) decided not to take a position. Ms. Jones state she couldn't get any of the counties to speak to MACo about it. The email was forwarded to Ms. Arthurs, because she is the representative for MACo. Ms. Arthurs reported back, to Ms. Gowan, that the counties advised MACo didn't think it had a direct impact on counties. Ms. Arthur advised Ms. Gowan that if Ms. Jones thought it did have an impact on Howard County that the Executive would like to know more about it and for Ms. Jones to contact her directly.

d. **Opening up Development or Agricultural Preservation again** – The county doesn't have the ability to purchase easements at this time. It was asked, what if someone contacted the county stating they wanted to join Agricultural Preservation what would they do and It was advised that they would be referred to MALPF. Mr. Day asked what if someone wanted their property scored? Ms. Levy stated she could score them, under the current system, so they know what it would be if it was reopened with the same scoring system. It wouldn't go any further unless Mr. Ball changes what has been in effect. Mr. Brown asked why the budget mattered in the next five years when the County doesn't pay upfront. It was advised, the decision was made based on the cash flow analysis conducted by the County.

## 2) **Solar Policy**

Ms. Levy brought in the meeting minutes and notes from the previous meetings from when the policy was created. The initial analysis was looking at where were the Community Solar Farms were likely to happen, which was done during the November 2017 meeting. In the December 2017 meeting, they went over scenarios, so they could visualize what the impacts could be. All the information provided was captured in the minutes for those meetings. Ms. Levy advised, if there was any additional information the Board wanted she would provide it for them.

Mr. Day stated his number one concern is the siting of the CSFs. It states, "the siting of the Commercial Solar Facilities (CSF) on the parcels or parcels supports the primary agricultural purpose of the easement property." During the discussion of the Warfield property they ran into a little bump, because the solar facility is going on the best agricultural part of that farm.

Ms. Kaiss asked how they decided the solar facility had to be 34% or less of the property's size. It was advised by Ms. Levy the number was derived from the difference between the 66% of the soils class one through four. She suggested it be 34% of farmable land and not total land area. She stated the Khademi farm bothered her because the whole farm land was in solar, because the rest of the property was wooded.

Ms. Jones suggested looking at the CSFs they didn't like and what would have happened if the criteria was different. When they were creating the policy, they didn't think that when putting the CSFs in they would be putting them on the most farmable land.

Mr. Day asked if the whole meeting must be public and if there is any opportunity for the Board to go to a closed session to discuss. Ms. O'Brien stated there are exceptions on the Open Meetings Act and there is a process for it. Ms. O'Brien can't think of a situation that would allow them to do this. Mr. Day thought, after the discussion of the Warfield property, because they discussed it in front of the solar company, the solar company knew they were going to approve it and he didn't think they would put a lot of research in the suggested location.

Ms. Gowan advised, if they feel like their concerns are not being adequately addressed or taken seriously by the owner, they could formulate their recommendation in such a way that you they are not recommending denial of it because they are finding the criteria are met, but with a condition or a recommendation that the Hearing Examiner should consider an alternative location. They can give her more than just they met these two findings. They can frame it so that they are not necessarily approving it, but the Board wants them to go to her and justify the location. Ms. Gowan stated the language in the code is the Boards advisory review should be in writing and DPZ shall evaluate and provide a recommendation on the Boards advisory review. It doesn't say recommendation for approval or denial, which leaves it more open ended. The Board doesn't have to say yes or no.

Ms. Jones wonders, can they take the point system that was initially used for the farm and say what would the impact be if these resources were no longer in that point system. Not that it was just eligible to participate, but that they were paid X amount more because they had, under the leases scoring, better prime and productive soils.


Mr. Day asked what would have happened if they denied the Warfield project. In the Code, it states that DPZ must evaluate the Boards advice. In their report, they would have said here is the Agricultural Boards deliberation and they would have had to come up with their own evaluation of the Boards deliberation.

Mr. Day asked about when the staff recommends approval. It was stated that the staff recommends approval based off the APB policy but Ms. Levy isn't making independent review. It was suggested by Mr. Day and Mr. Brown to state that "it meets the criteria," instead of staff recommends approval when presenting the staff report.

Ms. Hudson brought up that one of the Solar companies wanted to put in a pollinator habitat. She read an article about how they are doing cash crops underneath the solar, in arid areas, which helps keep the solar panels from melting. She wants to know, could they add that they have something where you must do one of the following, so it is not just a solar area. Ms. O'Brien said they could put a tag in stating in consideration of these numerated things. Ms. O'Brien thinks that at the time the bill was considered, there was a perception of those considering it, that there could be a coexistence between solar and agricultural operations.

The board decided that they want to look at the policy at future meetings.

Ms. Jones moved to adjourn and Mr. Brown seconded. The motion passed unanimously and the meeting adjourned at 9:57PM.

  
Matthew Hoover, Administrative Aide  
Office of Community Sustainability

