

Program Administrators — June 1, 2011 meeting

In advance of our meeting regarding the discussion on amendments to HB209 from the 2011 Legislative Session, I have prepared a conceptual idea that may help address the concerns raised by some Counties as well as provide us an opportunity to further discuss this important piece of legislation.

### **Concerns raised about HB209**

We need to focus on the discussion that has occurred among a few counties regarding their concerns on how the family-child lot option was totally eliminated by HB209. To this end, we have been thinking about how to preserve a family-child lot option.

I suggest that we consider two types of reserved lots under this program that could provide a viable option and not jeopardize the integrity or intent of the program. My suggestion is to consider a “restricted lot option” that would apply a greater limitation on number of reserved lot rights. These restricted lots could expand flexibility on use and address how these lots will be considered as part of the easement appraisal process.

The following language may ease some of the concerns that have been expressed.

Provide landowners with two options that must be exercised at the time of easement application.

They would choose from one of the following options:

#### **Option 1.**

Retain one and only one “Restricted lot” option, provided

1. The property is over 50 acres in size;
2. This restricted lot option would be personal to the landowner who originally sold an easement (which means only the Grantor as previously defined) could request its use. This also means that future landowners would not be able to exercise the release for the restricted lot.
3. Limited its use to family members. While the use of the lot would be limited to family members it would not be limited just the (Grantors) child.
4. This right would not run with the land. Since this right would not run with the land, the retention of this 1 restricted lot would not require reduction in easement value as part of the appraisal process. **This point is critically important to Counties like Baltimore and Montgomery that have restrictive agricultural zoning.**

5. A restricted lot right option may only be reserved and exercised by the (Grantor), this right cannot be exercised by future landowners.
6. If the (Grantor) elects to exercise this lot right, then the exclusion and release process would require formal approval by the Board of Trustees and repayment of the acreage that is excluded and released from the easement associated with the lot will be at a pro-rata amount represented in per acre value paid under the original easement.

## Option 2

Alternatively, a landowner at the time of easement application could reserve an unrestricted lot right subject to certain conditions. Unlike the restricted lot option, any reserved unrestricted lot rights would be considered in the appraisal for the easement valuation since these rights would run with the land. These rights would not be limited to family members and could be exercised by any future landowner. Landowners exercising these lots would be required to obtain formal approval of the Board of Trustees for the exclusion and release for the acreage associated with the lot from the easement.

A sliding scale for calculating unrestricted lot rights was proposed as part of HB209 and I believe the scale needs to be modified to reflect the average farm size in the central part of Maryland is smaller than the average farm size in more rural counties.

I would suggest the following amendment to HB209 regarding the sliding scale for calculating unrestricted lot rights. These are as follows:

**(I) THE NUMBER OF LOTS THAT A LANDOWNER MAY RESERVE UNDER THIS SECTION MAY NOT EXCEED:**

- 1. ONE LOT IF THE SIZE OF THE LAND TO BE PLACED UNDER EASEMENT IS AT LEAST 50 ACRES BUT FEWER THAN 120 [150] ACRES;**
- 2. TWO LOTS IF THE SIZE OF THE LAND TO BE PLACED UNDER EASEMENT IS AT LEAST 120 [150] ACRES BUT FEWER THAN 250 ACRES; OR**
- 3. THREE LOTS IF THE SIZE OF THE LAND TO BE PLACED UNDER EASEMENT IS AT LEAST 250 ACRES;**

I believe if we include these two options that provides alternatives for landowners who apply to the MALPF program and revise the sliding scale for the number of unrestricted lot rights which may be retained, we would achieve an outcome would be more equitable for each county and address the needs for landowners. We need flexible tools that can encourage landowner participation in this program and I believe these suggested amendments may provide an avenue that would allow greater flexibility for landowner participation.