

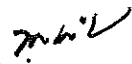


# Howard County

## Internal Memorandum

**Subject:** *Testimony on CR\_\_\_\_\_ - 2012 (MALPF 25-Year Termination Requests for three Mullinix properties)*

**To:** *Lonnie Robbins  
County Administrative Officer*

**From:** *Marsha McLaughlin, Director   
Department of Planning and Zoning*

**Date:** *December 17, 2012*

The Department of Planning and Zoning supports Council Resolution \_\_\_\_\_ - 2012 to recommend to the Maryland Agricultural Land Preservation Foundation (MALPF) denial of the Mullinix family's request for release from the MALPF program for three properties.

There are almost 4,000 acres of land in Howard County that are encumbered by agricultural preservation easements held by MALPF. The MALPF easements are governed by the Agriculture Article of the Annotated Code of Maryland (the "Code") and the Code of Maryland Regulations ("COMAR"). Each MALPF easement is of "perpetual duration and may be terminated only under extraordinary circumstances" (COMAR Section 15.15.05.01A). Chapter 15.15.05 of COMAR and Section 2-514 of the Code set forth the circumstances under which a landowner may request termination of the MALPF easement and the criteria used by MALPF to reach a decision on the request for termination. As part of its evaluation, MALPF determines whether future profitable farming is feasible on the land.

The County's role in evaluating a request for easement termination is to consider factors relating to local land use policies. The County's Agricultural Preservation Advisory Board (APAB) is required to make a recommendation to the County Executive and the County Council. The signed Council Resolution shall be forwarded to MALPF for its consideration in making a decision on the termination request.

In anticipation of potential requests for termination, the County Executive approved a policy in 2007 that established the criteria the County would use to evaluate the effect a proposed termination would have on our local land use policies. The five criteria are:

- Effect of termination on County preservation policies and actions, including public investment by the County and State
- Effect of termination on County growth management policies and actions
- Effect of termination on County policies and actions supporting agricultural economic development
- Extent of vicinal protected land and effect of termination on properties that are protected and/or in agricultural land use
- Evaluation of the subject property to determine its desirability for acquisition as if it were currently being considered for easement purchase



# Agricultural Land Preservation Program Howard County, Maryland



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## COUNTY REVIEW OF MALPF 25-YEAR EASEMENT TERMINATION REQUESTS

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### **Purpose**

The purpose of this document is to clarify the process for reviewing properties that have applied to terminate a Maryland Agricultural Land Preservation Foundation (MALPF) easement. The Agricultural Preservation Advisory Board recommended approval to the County Executive, who approved the policy on April 4, 2007.

### **Regulatory Background of Easement Termination**

The MALPF easements are governed by the Agriculture Article of the Annotated Code of Maryland (the "Code") and the Code of Maryland Regulations ("COMAR"). Each MALPF easement is of "perpetual duration and may be terminated only under extraordinary circumstances." (COMAR Section 15.15.05.01A) Chapter 15.15.05 of COMAR and Section 2-514 of the Code set forth the circumstances under which a landowner may request termination of the MALPF easement and the criteria used by MALPF to reach a decision on the request for termination. MALPF determines whether future profitable farming is feasible on the land. The County's role in evaluating a request for easement termination is to consider factors relating to local land use policies. The County's Agricultural Preservation Advisory Board is required to make a recommendation on the request for termination based on current land regulations, local comprehensive planning and any local priorities for the preservation of agricultural land to the County Executive who shall prepare a resolution for consideration by the County Council of Howard County. The signed resolution shall be forwarded to MALPF for its consideration in making a decision on the termination request.

### **Criteria for County's Evaluation of Request for Easement Termination**

Based on COMAR and the Code, the following criteria for termination shall be considered:

- Effect of termination on County preservation policies and actions, including public investment by the County and State
- Effect of termination on County growth management policies and actions
- Effect of termination on County policies and actions supporting agricultural economic development
- Extent of vicinal protected land and effect of termination on properties that are protected and/or in agricultural land use
- Evaluation of the subject property to determine its desirability for acquisition as if it were currently being considered for easement purchase

### **Howard County Easements**

This policy does not apply to any Howard County agricultural preservation easements, whether purchased or dedicated. All Howard County agricultural preservation easements are perpetual, and there is no provision for termination.

### **For More Information**

Joy Levy, Administrator  
Agricultural Land Preservation Program  
410-313-5407  
jlevy@co.ho.md.us

**HOWARD COUNTY**  
**STATE AGRICULTURAL PRESERVATION ADVISORY BOARD**

3430 Courthouse Drive  
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410-313-5407  
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Sean Hough, Chairman

Ricky Bauer, Member  
Howie Feaga, Member  
Shirley Matlock, Member  
Lynn Moore, Member

Joy Levy, Executive Secretary

December 10, 2012

County Executive Ulman  
3430 Court House Drive  
Ellicott City, MD 21043

Dear County Executive Ulman,

At its November 26, 2012 meeting, the Howard County State Agricultural Preservation Advisory Board (APAB) voted to recommend denial of the request to terminate the agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation (MALPF) on three farms owned by the Mullinix family.

The three properties are:

- “Murray Farm”, 166 acres owned by the Mullinix Brothers Partnership in Mt. Airy
- “Howard Farm”, 201 acres owned by the Mullinix Brothers Partnership in Dayton
- “Home Farm”, 110 acres owned by Mark, Michael and Stephen Mullinix in Dayton

In accordance with state law, Agriculture Article, Section 2-514, the APAB reviewed each termination request for consistency with local land use priorities. The “County Review of MALPF 25-Year Easement Termination Requests” policy (the Policy) was adopted by the County in April of 2007 to guide the review process. The five criteria established in the Policy to evaluate a request to terminate a MALPF easement are:

1. Effect of termination on County preservation policies and actions, including public investment by the County and State
2. Effect of termination on County growth management policies and actions
3. Effect of termination on County policies and actions supporting agricultural economic development
4. Extent of vicinal protected land and effect of termination on properties that are protected and/or in agricultural land use
5. Evaluation of the subject property to determine its desirability for acquisition as if it were currently being considered for easement purchase

The APAB reviewed each termination application submitted by the Mullinix family and the analysis of the five criteria for each property completed by Department of Planning and Zoning staff. The APAB determined that a termination of the agricultural land preservation easement on each of the three farms is not consistent with the County’s Policy, and accordingly, the APAB voted unanimously to recommended denial of the requests to terminate the MALPF easement on the Murray Farm, the Howard Farm and the Home Farm.

Sincerely,

Sean Hough, Chairman  
Agricultural Preservation Advisory Board

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HOWARD COUNTY DEPARTMENT OF PLANNING AND ZONING  
3430 Courthouse Drive ■ Ellicott City, Maryland 21043 ■ 410-313-2350

Marsha S. McLaughlin, Director

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TDD 410-313-2323

HOWARD COUNTY  
AGRICULTURAL PRESERVATION ADVISORY BOARD (APAB)  
November 26, 2012

Staff Report

- Owners:** Mullinix Brothers Partnership  
14420 Howard Road  
Dayton, MD 21036
- Farm Location:** “Murray Farm”  
East side of Shaffersville Road  
Tax Map 7, Parcel 490, 166 +/- acres
- Easement Designation:** MALPF Easement 13-82-03-Be
- Request:** The property owner is requesting termination of the MALPF easement on the subject farm.
- Staff Recommendation:** APAB recommendation to the County Executive to recommend denial to the County Council of the request to terminate the MALPF easement on the subject farm.

**Summary:**

The Mullinix Brothers Partnership is the current owner of the subject property and the original grantor of the easement, which was placed in the Maryland Agricultural Land Preservation Foundation (MALPF) program on May 22, 1985. The farm has been under easement for over 27 years. The request for termination was considered complete and accepted by MALPF on October 1, 2012.

**Statute and Regulations Governing MALPF Easement Termination:**

The MALPF easements are governed by the Agriculture Article of the Annotated Code of Maryland (the “Code”) and the Code of Maryland Regulations (“COMAR”). Each MALPF easement is of “perpetual duration and may be terminated only under extraordinary circumstances” (COMAR Section 15.15.05.01A). Chapter 15.15.05 of COMAR and Section 2-514 of the Code set forth the circumstances under which a landowner may request termination of the MALPF easement and the criteria used by MALPF to reach a decision on the request for termination. As part of its evaluation, MALPF determines whether future profitable farming is feasible on the land. The County’s role in evaluating a request for easement termination is to consider factors relating to local land use policies. The County’s Agricultural Preservation Advisory Board is required to make a recommendation on the request for termination based on current land regulations, local comprehensive planning and any local priorities for the preservation of agricultural land to the County Executive, who shall prepare a resolution for

consideration by the County Council of Howard County. The signed resolution shall be forwarded to MALPF for its consideration in making a decision on the termination request.

**Staff Analysis:**

Per the “County Review of MALPF 25-Year Termination Requests” policy (the “County Policy”) as approved by the Howard County Executive on April 4, 2007, the following five criteria are to be used in determining whether the easement should be terminated:

*1. Effect of termination on County preservation policies and actions including public investment by the County and State*

Howard County has a long, committed history of preserving agricultural land. The County was one of the earliest participants in the MALPF program, and the first in the state to initiate a locally funded program. Howard County was the first jurisdiction in the nation to establish the installment purchase agreement (IPA) method of payment for easement acquisition. Once the County established the IPA in 1989, participation in the MALPF dropped off dramatically, and almost all subsequent acquisitions were through the County’s Agricultural Land Preservation Program (ALPP). The IPA has enabled the ALPP over the years to leverage limited funding to protect thousands of acres of farmland. Of the over 250 properties encumbered by some type of agricultural easement, 113 are funded by IPAs, with final payment dates beginning in 2019 and continuing through 2031.

Although most of the land preserved through the ALPP occurred many years ago in the program’s early acquisition stage, the County still places a high priority on acquiring agricultural easements. As noted in Plan Howard 2030, the County should facilitate additional ALPP application cycles and recruit owners of uncommitted land to preserve their farms. The recently completed application cycle known as Batch 14 added over 1,220 acres of preserved ground. As of today, the County has preserved 21,646 acres under agricultural easement, 3,960 acres of which are protected by MALPF easements and the remaining 17,686 acres are under ALPP easements.

The County has spent or committed (through the IPAs) almost \$253 million over the last 30 years to keep land in agricultural use and free of development pressure. This includes approximately \$7 million in county matching funds for MALPF easements. A release of the subject property from the MALPF easement restrictions is contrary to the County’s stated goal of investing in the preservation of agricultural land.

One of the goals of the ALPP is to preserve large, contiguous blocks of farmland. The subject property is almost completely surrounded by other preserved land. Allowing the termination would create a 166 acre “donut hole” in an otherwise large swath of preserved land.

*2. Effect of the termination on County growth management policies and actions*

The “Murray Farm” is located in the RC (Rural Conservation) zoning district. The stated purpose of the RC in the Howard County Zoning Regulations is to “conserve farmland and to encourage agricultural activities, thereby helping to ensure that commercial agriculture will continue as a long term land use and a viable economic activity within the County.” The Zoning Regulations also state that agriculture is the preferred land use in the RC, and that the district is intended to encourage the preservation of large blocks of farmland. Low density, clustered residential development is allowed in the district as well.

Growth projections for western Howard County are made with the assumption that preservation easements prohibit development. The County makes decisions about future public services and infrastructure that communities will need based on these projections. Compared to residential development, farms require fewer public services, such as schools, police and fire protection, and road maintenance. The almost 4,000 acres that are preserved through the MALPF program have always been considered encumbered land, and therefore not

available for development. The projections for western Howard County's public services are based on the continued lack of development potential of all land under easement.

The termination of the easement on the subject property would impact our growth management policies in two ways. First, the County's longstanding policy to preserve as much farmland in the RC as possible would be compromised. In addition, and perhaps more importantly, there are decade's worth of planning assumptions that would have to be reconsidered in light of such a significant amount of acreage becoming available for development. The subject property is 166 acres and could achieve 39 lots in a standard cluster subdivision.

### ***3. Effect of termination on County policies and actions supporting agricultural economic development***

Howard County has one of the most established and highly regarded Agricultural Business Development and Marketing (ABDM) programs in the State. The program, which is housed within the Economic Development Authority, assists farmers with business plan development, product marketing and farm management succession. The ABDM also serves as an information clearinghouse, providing a critical link between the farmer looking to begin a new enterprise (or expand a current one) and the resources necessary to do so. The ABDM program advocates for the industry as a whole, as well as for individual farmers.

Just as the County has invested significant staff and funding to preserve agricultural land, the commitment to preserving the farmer's livelihood is also a well established policy goal. Plan Howard 2030 calls for the ABDM to further expand its programs to support and enhance agribusiness through farmer training, diversification of operations and assistance with funding. There have been many success stories over the years of County farmers diversifying or expanding their operations and realizing major increases in their profit margins. Particularly encouraging are several recent situations where the next generation has either taken over control of the day to day management of the farm, or has begun a new niche operation side by side with the traditional use. There are at least a handful of young farmers, mostly on land that is in preservation, that have succeeded in innovating the family farm business and making it more profitable in the last several years.

Proximity of non-farm residential neighbors is viewed by farmers as a mixed blessing. One the on hand, those not accustomed to the sights, sounds and smells associated with agriculture may complain when they live next door to a working farm. On the other hand, in Howard County, many of those residential neighbors are affluent and are interested in purchasing their food locally. Anecdotal evidence suggests that the demand for locally grown products has skyrocketed here and will continue to be a strong trend into the future. Representatives from the County and from MALPF have met several times over the years with the Mullinix family to discuss ideas for diversifying their operation while remaining consistent with the MALPF easement terms. So far, none of those suggestions have been followed, despite the county resources that are available for assistance.

### ***4. Extent of vicinal protected land and/or land in agricultural use and effect of termination on properties that are protected and/or in agricultural use***

Just as the County relies on preserved farms remaining protected from development, so do adjacent property owners, especially other farmers of preserved land. While it is true, as noted above, that residential neighbors provide a ready market, it is still easier for farmers to conduct business if they are surrounded by other agricultural uses.

There is concern within the farm community about both the immediate impact of the potential terminations and the larger implications as well. Adjacent and nearby farmers fear the consequences on their own operations, but are also apprehensive about the "domino effect". If the Mullinix termination request is granted on the subject farm, other farmers in the MALPF program may be encouraged to apply for termination.

The subject property is over 80% surrounded by other farms in preservation. In addition, within a mile of the property there are almost 1,900 acres under some type of easement or other permanent protection.

**5. Desirability of the subject property if it were currently being considered for easement purchase**

When property owners apply to the ALPP program, the method used to determine the easement purchase price is a scoring system that evaluates ten different criteria that are intended to capture the value of the applicant properties as farmland. The case the Mullinix family needs to make in order to successfully petition for termination is that their properties have no value for farming. A high score on the ALPP scoring system would indicate otherwise.

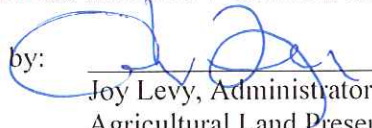
The County's scoring system has been in place for many years and has been amended over time by the County Council to adapt to changing priorities. The maximum possible number of points is 1,000. The three most significant criteria include parcel size, soils capability and productivity, and adjacency to other protected land. Collectively, these criteria encompass 600 of the 1,000 points. Other items include percentage of property actively being farmed, whether the farm is owner operated or rented, and the status of the Soil Conservation and Water Quality Plan.

Each of the three applicant farms has been scored using the ALPP system (completed score sheets are attached to each staff report). The results are shown below. The first set of numbers is the scores for the three Mullinix farms. The second set combines the Mullinix farms with the scores for the recently completed Batch 14 application cycle. The subject property scored 908 out of 1000 points, which is higher than any of the Batch 14 properties. Given its size, soils capability and adjacency to a large contiguous block of preserved land, this property would be highly desirable if applying for easement acquisition.

<b>PROPERTY</b>	<b>SCORE</b>
<b><i>Mullinix Farms</i></b>	
Murray	909
Howard	831
Home	763
<b><i>Mullinix and Batch 14 Combined</i></b>	
<i>Murray</i>	909
<i>Howard</i>	831
Carroll, C & P	819
<i>Home</i>	763
Rea	735
Carroll, Ian	702
Ferguson	679
Zepp	661
Mannarelli	657

**Staff Recommendation:**

In accordance with the provisions of the County Policy, staff recommends that the APAB recommend denial of the request to terminate the MALPF easement on the "Murray Farm".

Prepared by:  \_\_\_\_\_ Date: 11/20/12 \_\_\_\_\_  
Joy Levy, Administrator  
Agricultural Land Preservation Program

Attachments:

- Score Sheet
- Aerial Photo
- Preservation Map
- Soils Map





# Howard County Agricultural Land Preservation Program

## 2009 PRICE FORMULA WORKSHEET

Owner Mullinix Brothers Tax Map 7 Parcel(s) 490 Acres 166

Farm Address Murray Farm

			<b>POINTS</b>
<b>1.</b>	<b>Parcel Size</b> - Maximum 200 points		<u>166</u>
	1 point per acre	<u>166</u> points	
<b>2.</b>	<b>Soil Capability</b> - Maximum 100 points		<u>100</u>
	Class I	<u>33</u> acres x 3.0 = <u>99</u> points	
	Class II	<u>99</u> acres x 2.0 = <u>198</u> points	
	Class III	<u>27</u> acres x 1.0 = <u>27</u> points	
	Total	<u>159</u> acres = <u>324</u> points	
<b>3.</b>	<b>Soil Productivity</b> - Maximum 100 points		<u>93</u>
	<u>93</u> Land Evaluation Score x 1.0	<u>93</u>	
<b>4.</b>	<b>Agency to Preserved Land</b> - Maximum 100 points		<u>100</u>
	75 to 100% perimeter adjacent to preserved land	<u>81%</u> 100 points	
	50 to 74% perimeter adjacent to preserved land	<u>75</u> points	
	25 to 49% perimeter adjacent to preserved land	<u>50</u> points	
	Less than 25% perimeter adjacent to preserved land	<u>25</u> points	
<b>5.</b>	<b>Concentration of Preserved Lands</b> - Maximum 100 points		<u>100</u>
	More than 1000 acres of preserved land within 1 mile	<u>1896</u> 100 points	
	750-999 acres of preserved land within 1 mile	<u>75</u> points	
	500-749 acres of preserved land within 1 mile	<u>50</u> points	
	Less than 500 acres of preserved land within 1 mile	<u>25</u> points	
<b>6.</b>	<b>Zoning</b> - Maximum 100 points		<u>100</u>
	RC District	<u>100</u> points	
	RR District	<u>0</u> points	
<b>7.</b>	<b>Current Land Use</b> - Maximum 100 points		<u>100</u>
	75% or more of property in agricultural use	<u>87%</u> 100 points	
	50 to 74% of property in agricultural use	<u>75</u> points	
	25 to 49% of property in agricultural use	<u>50</u> points	
	Less than 25% of property in agricultural use	<u>25</u> points	
<b>8.</b>	<b>Implementation of Soil Conservation and Water Quality Plan</b> - Maximum 100 points		<u>75</u>
	Current plan fully implemented	<u>100</u> points	
	Current plan not fully implemented	<u>75</u> points	
	Plan needs updating	<u>50</u> points	
	Plan not implemented or no plan on record	<u>0</u> points	
<b>9.</b>	<b>Ownership and Operation</b> - Maximum 50 points		<u>25</u>
	Owner operated	<u>50</u> points	
	Non-owner operated	<u>25</u> points	
	No current operation	<u>0</u> points	
<b>10.</b>	<b>Road Frontage</b> - Maximum 50 points		<u>50</u>
	<u>3174</u> Lin Ft / 100 = <u>31.74</u> x 2.0 on scenic road = <u>63.48</u> points		
	<u>0</u> Lin Ft / 100 = <u>0</u> x 1.0 on other road = <u>0</u> points		

**TOTAL POINTS - Maximum 1000 points** 909

**PRICE CALCULATION - Maximum \$40,000 per acre** **\$36,360**

909 points x \$40/point = \$36,360.00



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39°20'1."

39°20'1."

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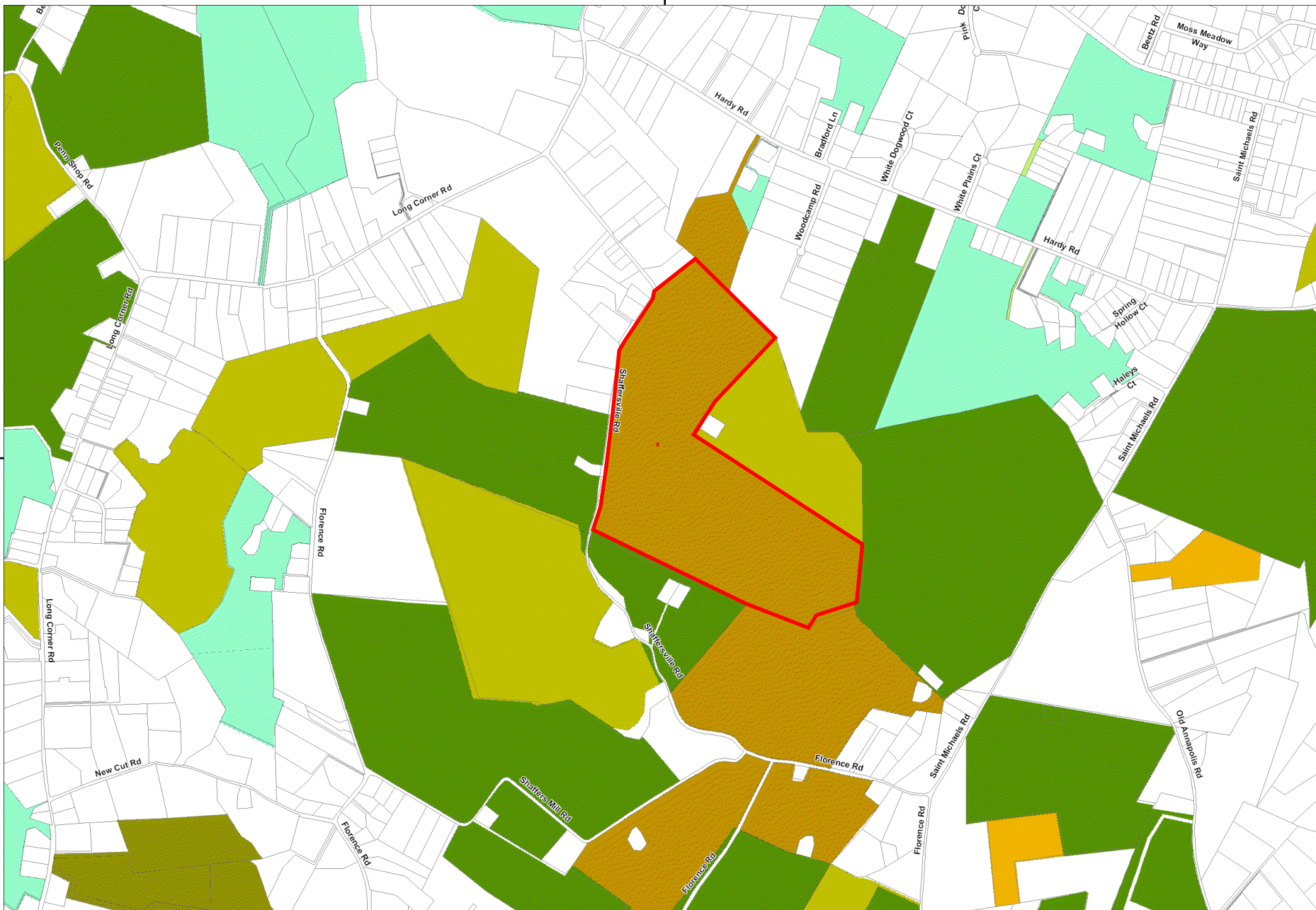
Murray Farm

Aerial

By: Joy Levy  
Office: Resource Conservation Division  
Map Width: 1.34 mi.  
Print Date: 10/24/2012



-77°7'.49"



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39°19'59"

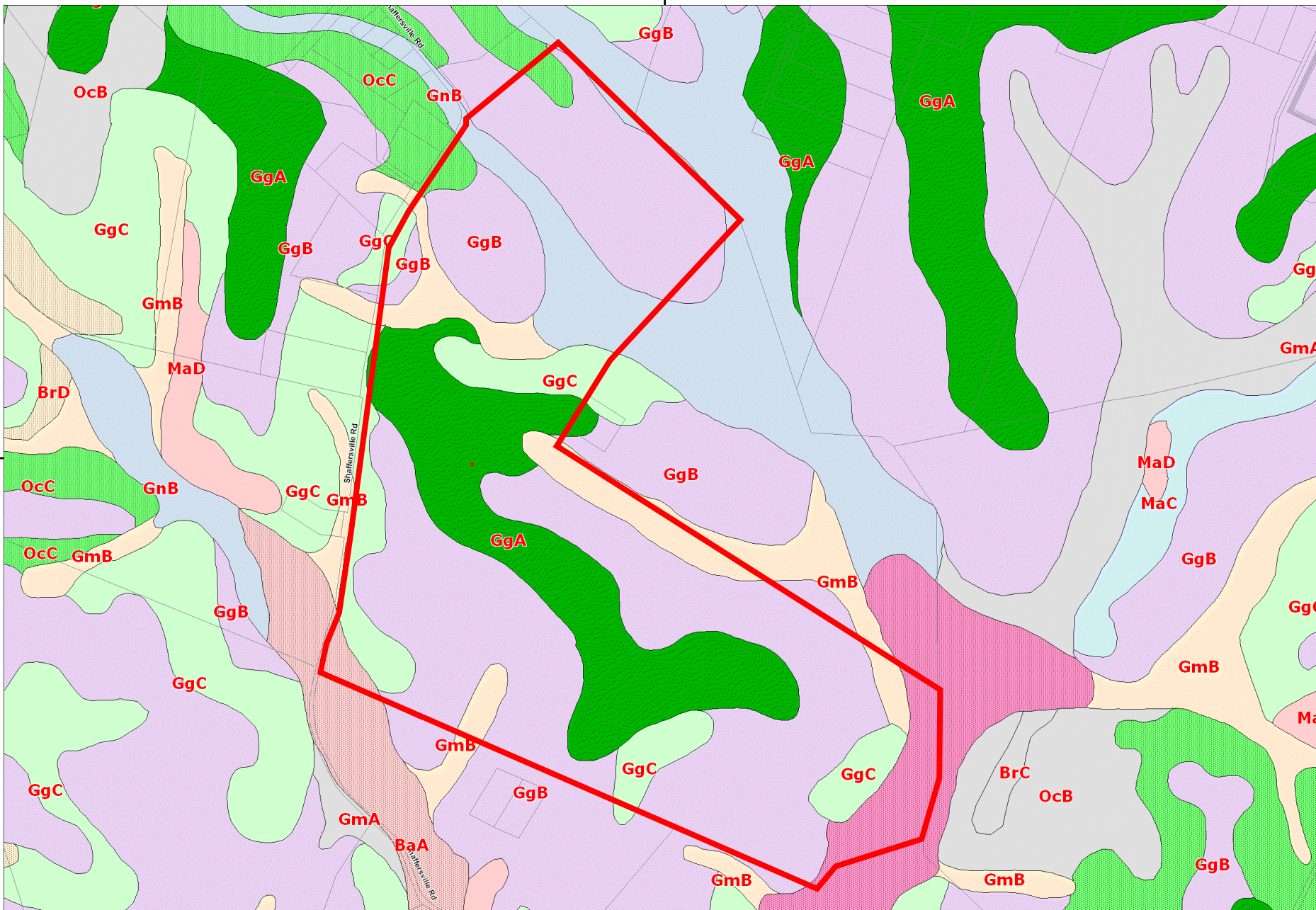
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