

County Council Of Howard County, Maryland

2014 Legislative Session

Legislative Day No. 3

Resolution No. 28 -2014

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION recommending the denial of Elizabeth Mullinix's request to terminate a Maryland Agricultural Land Preservation Foundation easement on property located on the south side of Carrs Mill Road, containing approximately 142 acres, more commonly known as the "Clevenger Farm".

Introduced and read first time March 5, 2014.

By order Sheila M. Tolliver  
Sheila Tolliver, Administrator

Read for a second time at a public hearing on March 17, 2014.

By order Sheila M. Tolliver  
Sheila Tolliver, Administrator

This Resolution was read the third time and was Adopted , Adopted with amendments\_\_\_, Failed\_\_\_, Withdrawn\_\_\_, by the County Council on April 7, 2014.

Certified By Sheila M. Tolliver  
Sheila Tolliver, Administrator

Approved by the County Executive April 9, 2014

Ken Utman  
Ken Utman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1           **WHEREAS**, the Maryland Agricultural Land Preservation Foundation  
2 (“MALPF”) acquired an agricultural land preservation easement on 332 acres of land  
3 from Clifton L. Clevenger, III by the Deed of Easement dated August 12, 1981 and  
4 recorded among the Land Records of Howard County, Maryland (the “Land Records”) at  
5 Liber 1066, Folio 43 which was later subdivided pursuant to the subdivision plat entitled  
6 “Clevenger Property, Lot 1” recorded among the Land Records as Plat 5860; and

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8           **WHEREAS**, Elizabeth C. Mullinix and J. David Mullinix acquired Lot 1,  
9 comprising approximately 142 acres known as the “Clevenger Farm”, from Clifton L.  
10 Clevenger, III on May 23, 1985, subject to the Deed of Easement, by deed recorded  
11 among the Land Records at Liber 1354, Folio 498; and

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13           **WHEREAS**, Elizabeth C. Mullinix is the surviving tenant by the entirety of the  
14 Clevenger Farm which is located on the south side of Carrs Mill Road as shown in Tax  
15 Map 14, Parcel 329, Lot 1, and as shown in the attached maps; and

16  
17           **WHEREAS**, the deed of easement (the “MALPF easement”) is an agricultural  
18 preservation easement and prohibits the landowner from using the property for any  
19 commercial, industrial, or residential purpose, with limited exceptions; and

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21           **WHEREAS**, the MALPF easement states “the easement shall be in perpetuity”  
22 and may only be released by MALPF as provided in Section 2-514 of the Agriculture  
23 Article of the Annotated Code of Maryland, which law requires that a MALPF easement  
24 shall be held “for as long as farming is feasible on the land”; and

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26           **WHEREAS**, the MALPF easement may only be terminated under extraordinary  
27 circumstances and with the approval of the County’s governing body; and

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29           **WHEREAS**, the County has issued a policy statement entitled “County Review  
30 of MALPF 25-Year Easement Termination Requests” (the “County policy”) wherein  
31 certain criteria are established for the County’s evaluation of a request to terminate a  
32 MALPF easement; and

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**WHEREAS**, on or about December 9, 2013 MALPF received and forwarded to the County, Elizabeth Mullinix’s Application for Review for Termination of an Agricultural Land Preservation Easement (the “Application”) requesting the termination of the MALPF easement on the Clevenger Farm; and

**WHEREAS**, in accordance with State law, the Howard County State Agricultural Preservation Advisory Board conducted a review of the Application and held a meeting on January 27, 2014 and recommended denial of the Application; and

**WHEREAS**, the County Executive received the recommendation of the Howard County State Agricultural Preservation Advisory Board and the County Council held a public hearing on this matter on March 17, 2014; and

**WHEREAS**, the County has considered the criteria included in the County policy; and

**WHEREAS**, the County has determined that terminating the MALPF easement would have a negative effect on the County’s land preservation policies and actions, including the public investment by the County and State in the preservation of agricultural land; and

**WHEREAS**, the County has determined that termination of the MALPF easement would negatively impact the County’s growth management policies and actions; and

**WHEREAS**, the County has determined that termination of the MALPF easement would have a negative effect on County policies and actions supporting agricultural economic development; and

1           **WHEREAS**, the County has determined that termination of the MALPF  
2 easement would have a negative effect on vicinal protected land and properties that are  
3 already protected and/or in agricultural use; and  
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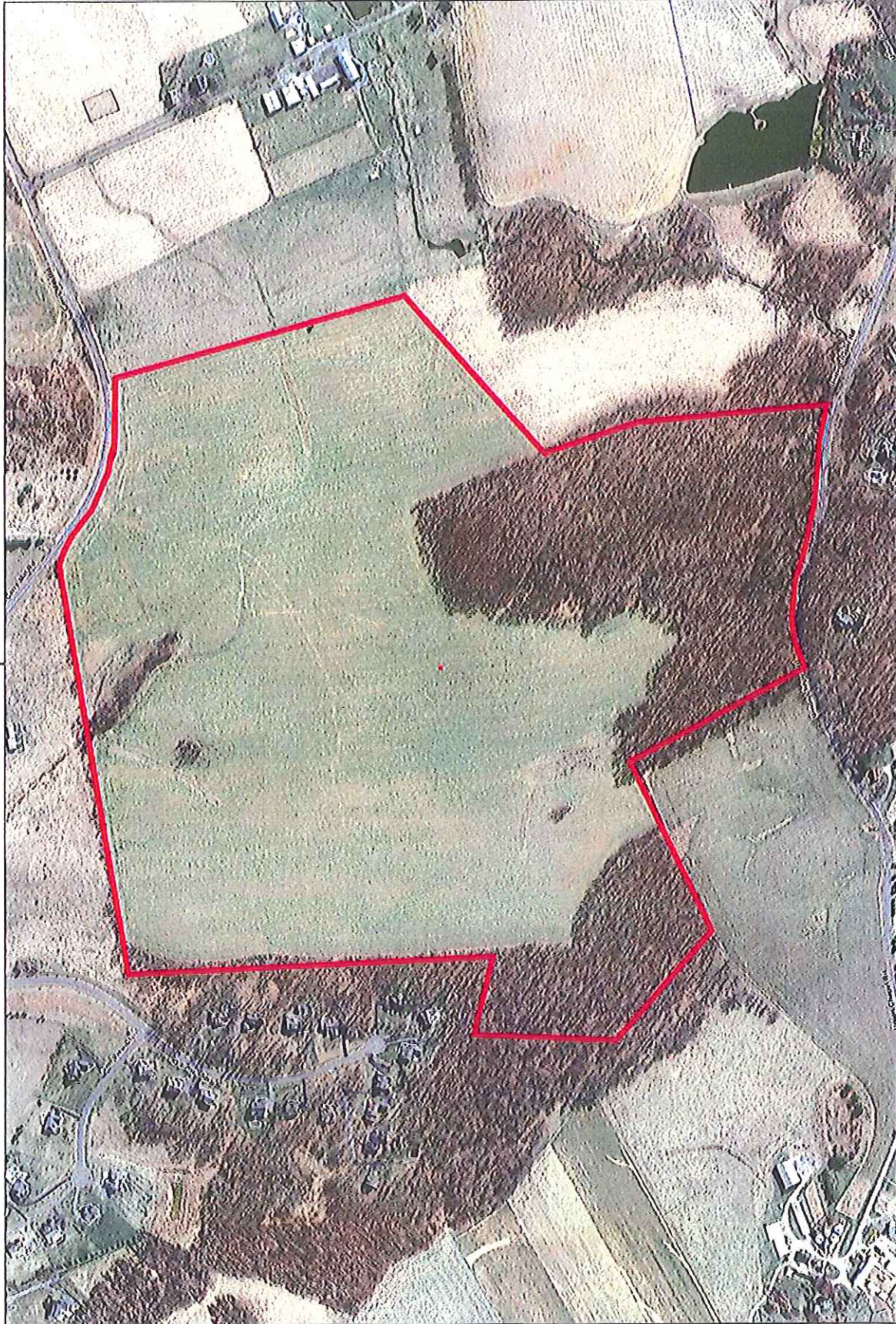
5           **WHEREAS**, the County has evaluated the Clevenger Farm and has determined  
6 that the Clevenger Farm is highly desirable for agricultural land preservation as if it were  
7 currently being considered for easement purchase; and  
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9           **WHEREAS**, for the foregoing reasons, in accordance with State law, the County  
10 recommends denial of the Application.  
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12           **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard  
13 County, Maryland, this 8<sup>th</sup> day of April, 2014 that the County hereby  
14 recommends to MALPF that MALPF deny Elizabeth Mullinix's application to terminate  
15 the MALPF easement on the Clevenger Farm.



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-77°2'17"

-77°2'17"

39°17'57"



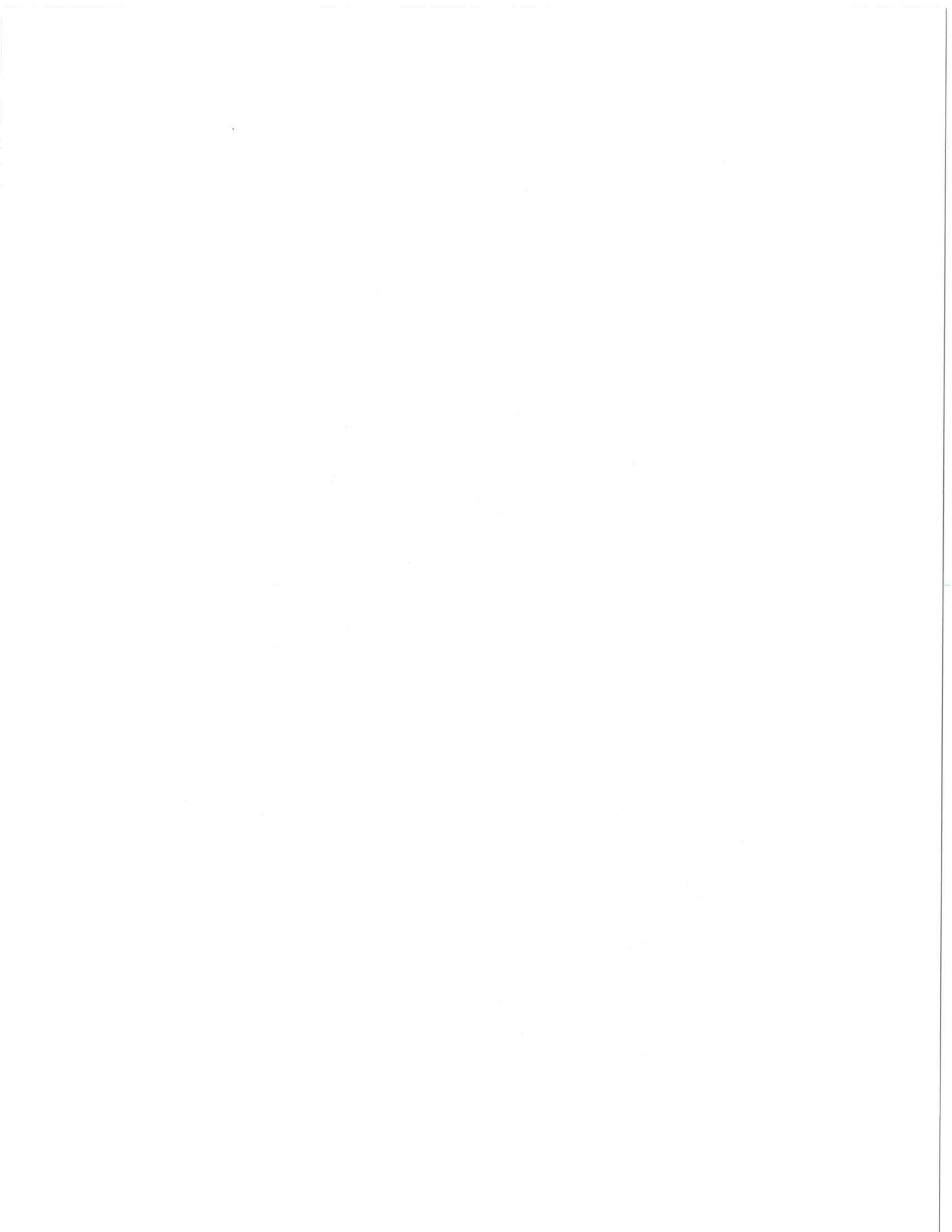
By: Joy Lewy  
Office: Resource Conservation Division  
Map Width: 5,200.27 ft.  
Print Date: 1/15/2014

# Clevenger Farm

Aerial

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39°17'66"

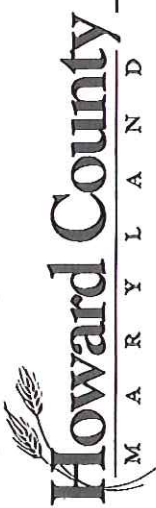


By: Joy Levy  
 Office: Resource Conservation Division  
 Map Width: 3.05 mi.  
 Print Date: 1/15/2014

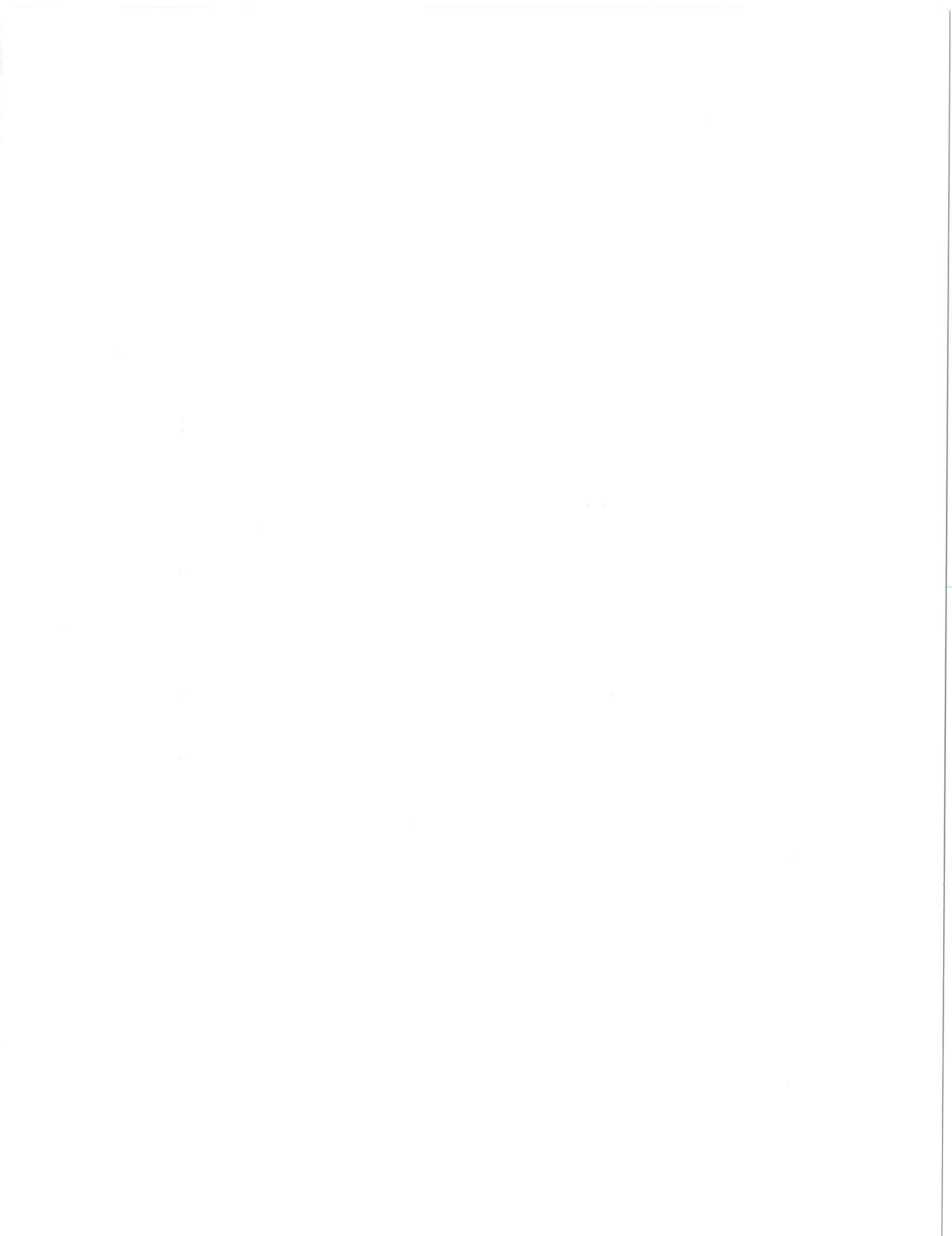
# Clevenger Farm

## Land Preservation

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39°17'66"







# Howard County

## Internal Memorandum

**Subject:** Testimony on Council Bill No. \_\_\_ -2014, Termination of MALPF easement  
**To:** Lonnie Robbins, County Administrative Officer  
**Through:** Marsha McLaughlin, Director, Department of Planning and Zoning *mm*  
**From:** Joy Levy, Administrator, Agricultural Land Preservation Program *JL*  
**Date:** January 30, 2014

The Department of Planning and Zoning, of which the Agricultural Land Preservation Program (ALPP) is a part, supports Council Bill No. \_\_\_ - 2014, to recommend to the Maryland Agricultural Land Preservation Foundation (MALPF) denial of Elizabeth Mullinix's request to terminate the easement on her 142-acre property, located on Union Chapel Road in Woodbine.

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 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 and the County Council. The signed 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

The APAB met on January 27, 2014 and reviewed the termination request based on the five criteria above. Their recommendation is for denial, based on their determination that granting the request would be inconsistent with the County's policy.

There is no direct fiscal impact associated with this recommendation.

cc: Jennifer Sager, Legislative Coordinator, Department of County Administration  
Beth Burgess, Chief, Resource Conservation Division

