COUNTY OF AUGUSTA

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF COMMUNITY DEVELOPMENT
P.O. BOX 590
COUNTY GOVERNMENT CENTER
VERONA, VA 24482-0590

MEMORANDUM

TO: Augusta County Planning Commission
FROM: Leslie Tate, Senior Planner
DATE: October 3, 2019
SUBJECT: Regular Meeting

The regular meeting of the Augusta County Planning Commission will be held on **Tuesday, October 8, 2019 at 7:00 p.m.**, at the Augusta County Government Center, in the Main Board Meeting Room, 18 Government Center Lane, Verona, Virginia.

The Planning Commission will meet beginning at **4:00 pm** in the **Board of Supervisors' Conference Room** (behind the Board Meeting Room) at the Augusta County Government Center for a staff briefing and site visit. We will have dinner in the Community Development Conference Room at 6:15.

Attached are the agenda and meeting materials for Tuesday's meeting.

If you have any questions about any of the material, please feel free to contact me. If you won't be able to attend the meeting, please let Sara or me know as soon as possible.

LT/st

Staunton (540) 245-5700 | TOLL FREE NUMBERS FAX (540) 245-5066 | Waynesboro (540) 942-5113

A G E N D A

Regular Meeting of the Augusta County Planning Commission

Tuesday, October 8, 2019 7:00 P.M.

1. CALL TO ORDER

2. DETERMINATION OF A QUORUM

3. APPROVAL OF THE MINUTES
   A. Approval of the Regular Meeting on September 10, 2019

4. PUBLIC HEARING

   A. A request to amend the Augusta County Comprehensive Plan Future Land Use Map from Low Density Residential (1/2 to 1 unit per acre) to Urban Open Space for approximately 160 acres (portion of TMP 043 26 – approx. 470 total acres) owned by Gap Valley Farm LLC located at 1957 Buffalo Gap Highway (Rt. 42) on either side of Buffalo Gap Highway north of the intersection of Buffalo Gap Highway and Parkersburg Turnpike (Rt. 254) in Swoope in the Pastures District. The proposed general use of the property is agriculture and open space through placement of a conservation easement.

   B. An ordinance to amend Article XIV. Manufactured Home Subdivision (MHS) Districts. Section 25-141. Additional Purpose, Section 25-142. Additional permitted use, and Section 25-144. Additional prohibited use.

   C. A request to amend and restate proffers on approximately 9.7 acres owned by V R Associates located on the east side of Lee Highway, (Rt. 11) and approximately 0.2 of a mile north of the intersection with Lee Highway (Rt. 11) and Weyers Cave Road (Rt. 256) in Weyers Cave in the North River District. The applicant is amending proffer # 3 to state: Prior to the issuance of a building permit for the 101st residential unit on the multifamily portions shown on the rezoning exhibit accessing Route 11 through the property Dharti Street will be constructed through the property extending to the boundary line with parcel 19-116.

5. MATTERS TO BE PRESENTED BY THE PUBLIC

6. NEW BUSINESS

7. OLD BUSINESS

8. MATTERS TO BE PRESENTED BY THE COMMISSION

9. STAFF REPORTS

A. Presentation of the Advisory Committee approved Draft Stuarts Draft Small Area Plan
B. Information for Commission – Code of Virginia, Section 15.2-2310 (Board of Zoning Appeals Items)

10. ADJOURNMENT

Agenda Item # 4 A

Date 10/8/19

COUNTY OF AUGUSTA
STAFF REPORT
Gap Valley Farm, LLC
Request to amend Comprehensive Plan Future Land Use Designation
October 8, 2019

SUMMARY OF REQUEST: A request to amend the Augusta County Comprehensive Plan Future Land Use Map from Low Density Residential (1/2 to 1 unit per acre) to Urban Open Space for approximately 160 acres (portion of TMP 043 26 – approx. 470 total acres) owned by Gap Valley Farm LLC located at 1957 Buffalo Gap Highway (Rt. 42) on either side of Buffalo Gap Highway north of the intersection of Buffalo Gap Highway and Parkersburg Turnpike (Rt. 254) in Swoope in the Pastures District. The proposed general use of the property is agriculture and open space through placement of a conservation easement.

VICINITY ZONING: General Agriculture to the north, east, south and west. General Business zoning to the south. Single Family Residential zoning to the north (same strip along Buffalo Gap Highway).

CURRENT ZONING: General Agriculture with a strip of Single Family Residential 15 zoning on approx. 260 ft. on either side of Buffalo Gap Highway (Rt. 42).

CURRENT COMPREHENSIVE PLAN PLANNING POLICY AREA/FUTURE LAND USE DESIGNATION: Community Development Area/Low Density Residential (portion)

PROPOSED COMPREHENSIVE PLAN PLANNING POLICY AREA/FUTURE LAND USE DESIGNATION: Community Development Area/Urban Open Space (portion)

Soils: Class I, II, and III soils are considered the best for farming.

Tax Map #	043-26
Acreage of Class 1- Green	0
Acreage of Class 2 - Yellow	25
Acreage of Class 3 - Red	53
Acreage of Class 4 - Blue	74.931
Acreage of Class 6 - Orange	10
Acreage of Class 7 - Brown	35
Acreage of Woodland	272
Acreage of House Site	1
Total Acreage	470.931

COMMENTS FROM ENGINEER: No comments received.

COMMENTS FROM ZONING ADMINISTRATOR: This change should not have a negative impact on the surrounding areas.

COMMENTS FROM ACSA:

1. Generally, there is no water service on or along the subject properties. There is an existing 8" waterline ending at the southwest corner of the TM# 43-26. Due to issues associated with "effective storage" as defined by the Virginia Department of Health, the Service Authority is currently unable to approve system extensions in the Churchville System. The primary contributor to the effective storage issue is the elevation of existing customer connections relative to the elevation of the existing water tank (affecting the ability of the Service Authority to maintain adequate pressure throughout the system as required by the Virginia Department of Health Regulations). Portions of the properties along Buffalo Gap Highway are located in the Community Development Area, however, elevations of the properties are such that it would not be possible to adequately serve all portions of the properties from the existing system. Fire flow for the entire Churchville Water System is below County minimums. Relocation of the water tank to a higher elevation in the future will improve the ability to serve the Community Development Area portions of the properties but it may not completely resolve all issues (future tank elevation established in the Service Authority's Master Plan, 2010). There is no definite timeline for constructing a new tank for the Churchville Water System. In summary, the feasibility of serving the Community Development portions of the subject properties is difficult and there is no clear timeline for making major system improvements. If the subject properties are designated as open space and/or a conservation easement, Authority Staff would recommend removal of all properties south of the existing water line from the Community Development Area due to restrictions/limitations on growth and utilities. Authority Engineering Staff are available to discuss as needed.

2. There is no public sewer available in the area of the subject parcel.

COMMENTS FROM HEALTH DEPARTMENT: No comment received.

COMMENTS FROM FIRE-RESCUE: Fire-Rescue sees little to no impact on service delivery from this request. Fire-Rescue has no further comment.

COMMENTS FROM VDOT:

1. VDOT does not object to the land use designation amendment or the creation of the conservation easement.

2. Any form of access, regardless of conservation easement, will be reviewed and permitted by VDOT.
3. Unless changed since reviewing, the draft easement language appears to allow right-of-way acquisition for road maintenance and minor upgrades, but prohibits acquisition for the purpose of road widening. While there are no known major road improvements (outside of 2021 shoulder and guardrail improvements) currently funded, this property is near the intersection of two primary roads and in the vicinity of a school. Should funding become available, the Department would likely support intersection improvements which could include additional through and/or turn lanes. VDOT recommends revising the language to allow acquisition of right-of-way for the purpose of road widening.
4. Comments provided by VDOT Staunton District Planning pertaining to the conservation easement are attached.

SCHOOL BOARD STAFF COMMENTS: The request for a conservation easement as part of a change to Urban Open Space for approximately 160 acres on this property on either side of Buffalo Gap Highway will have no significant impact on these three (3) schools.

The table below indicates the enrollment as of Sept 30, 2019.

School	Enrollment	Capacity
Churchville Elementary	395	592
Beverley Manor Middle	713	800
Buffalo Gap High	479	740

Pros:

1. Public sewer is not available to serve the property.
2. Serving the Community Development portions of the property with water is difficult due to issues with effective storage, prohibiting extensions within the Churchville system, and fire flow standards for the Churchville system are below required minimums.
3. Approximately 76 acres fall within soil classification I, II, and III which are considered the best for farming; although, staff is unable to identify if such soils are within the Community Development Area acreage.
4. The draft conservation easement language has identified several unique conservation values for the property (See attached).
5. It appears that language within the easement would not prohibit the extension of public utilities to serve adjacent properties in the Community Development Area to the south.

Cons:

1. A strip of land on either side of Buffalo Gap Highway is zoned Single Family Residential, although this was done in 1960.
2. Current easement language, does not appear to permit road widening projects.

COMMUNITY DEVELOPMENT STAFF RECOMMENDATION: The Service Authority has stated that serving portions of the Community Development Area with public water is difficult. The request would leave intact the Community Development Area, in case such water service could be provided through the property of request to the adjacent properties to the south of the parcel of request that are also in the Community Development Area; although, the Service Authority has concluded that serving such adjacent properties would be made more difficult with the placement of the conservation easement, which limits growth of the service area. The draft easement language, also attached, has identified a number of unique conservation values. Furthermore, 76 acres of the property fall within soil classification I, II, and III which are considered the best for farming; although, staff is unable to identify if such soils are within the Community Development Area acreage.

The conservation easement will preserve existing agriculture and the rural and scenic beauty of Augusta County near the public school. The Comprehensive Plan does not designate land to the east or west of this request for development, and most of the area designated for low density residential development to the south of this request has already been developed with minimal business zoning and development and residential development on substantially subdivided General Agriculture zoned lots. The current plan does not support a significant amount of new development surrounding the parcel of request. Therefore, staff recommends approval of the Comprehensive Plan future land use designation amendment from low density residential to urban open space for the placement of a conservation easement.

Agenda Item # 4 A

Date 10/8/19

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STAFF REPORT
Gap Valley Farm, LLC
Request to amend Comprehensive Plan Future Land Use Designation
October 8, 2019

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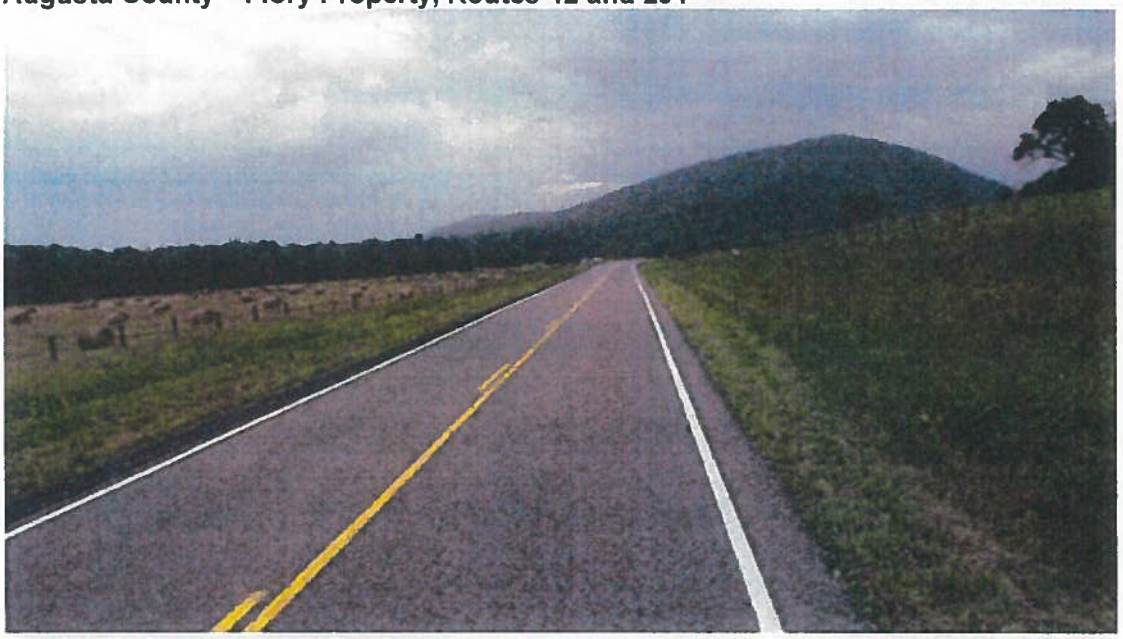
VDOT Virginia Department of Transportation

Staunton

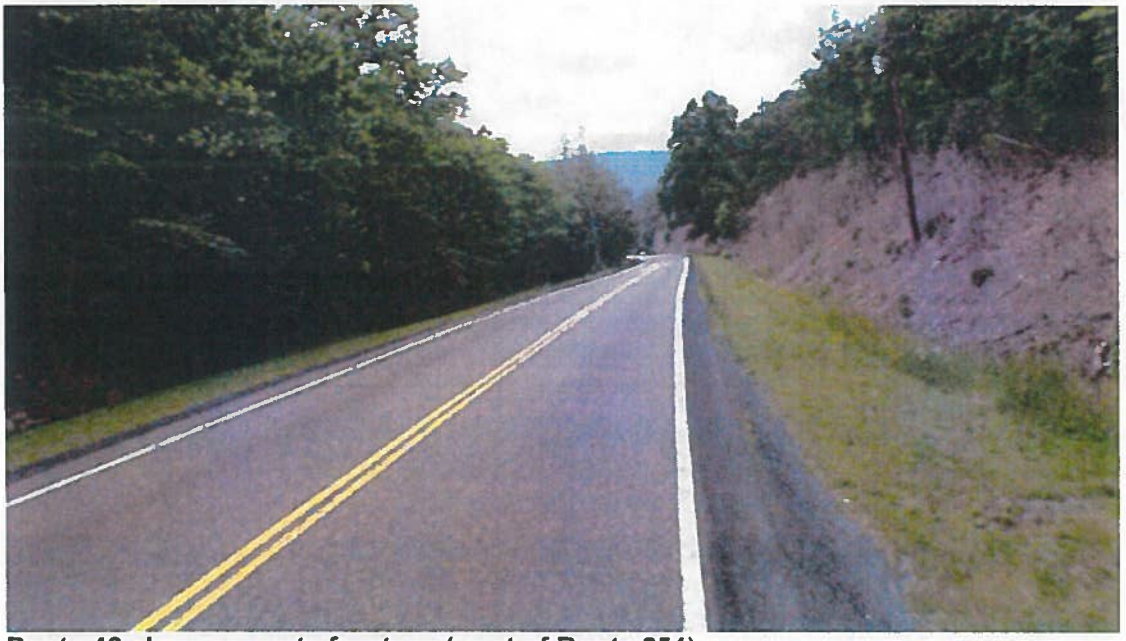
VOF Conservation Easement / ROW Review

September 6, 2019

Augusta County – Flory Property, Routes 42 and 254



Route 42 along property frontage



Route 42 along property frontage (west of Route 254)

The property consists of one parcel (043-26) that is approximately 470 acres, zoned GA, General Agricultural and SF15 (Single Family Residential). The property has a future, land use designation of Rural Conservation Area on the west side of Route 42 and Low Density Residential on the east side of Route 42 per the Augusta County Comprehensive Plan.

Route 42 (Buffalo Gap Highway) (per Statewide Planning System):
- Primary Road
- Minor Arterial – 2 lane
- 1,800 Average Daily Traffic (2018)
- 24' average pavement width
- 4' earth shoulders (both directions)
- 55 mph posted (per SPS)
- No structures along property frontage (per GIS information)
- No Future Year Improvement Recommendation

Route 254 (Parkersburg Turnpike) (per Statewide Planning System):
- Primary Road
- Minor Arterial – 2 lane
- 3,600 Average Daily Traffic (2018)
- 22' average pavement width
- 2-3' earth shoulders (both directions)
- good vertical and horizontal alignment
- 55 mph posted (per SPS)
- Bridge Structure #1047 located in southeast property corner over Buffalo Branch (77.2 sufficiency rating)
- No Future Year Improvement Recommendation

No projects along this section of Route 42 are included in the VDOT FY 2020 SYIP, the Augusta County Comprehensive Plan, or the Central Shenandoah Planning District Commission 2035 Rural Long Range Transportation Plan. The section of Route 254 along the property frontage contains an active safety project of shoulder widening, guardrail improvements, and rumble strips (UPC 107021). The work will be completed in existing right-of-way and is scheduled to be completed in 2021.

Right-of-way plans on file with VDOT indicate the following right-of-way widths:

Route	Plan	Right-of-Way Width
Route 42 north of Route 254	#2407-09	80'
Route 42 west of Route 254	#2407-01	60' transitioning to 80'
Route 254 east of Route 42	#254-451	50'

VDOT Recommendation:

The open space easement should accommodate a future minimum 80' wide right-of-way along Routes 42 and 254, if said right-of-way does not exist.

VOF ~~Standard~~Cost-Only PTF Template February 7, 2018

This sample deed is provided to assist landowners and their attorneys in preparing deeds of easement to be conveyed to Virginia Outdoors Foundation (VOF~~)~~ in projects in which a preservation trust fund payment is being made to a landowner. As each property contains unique conservation values, staff may recommend provisions appropriate to individual properties. Landowners should discuss present and future land management practices with staff before preparation of the deed of easement. VOF does not provide legal or tax advice or warrant that this sample will meet all IRS or Virginia Department of Taxation requirements or the Virginia Land Conservation Foundation's Conservation Value Review Criteria for easements valued $2.5 million dollars or more. An easement will permanently change how the property may be used and its market value. Because this change can have major estate planning and tax consequences, landowners should consult legal counsel prior to submission of their proposed easement to the VOF Board of Trustees for its consideration. Selection of alternative provisions should be made and guidance instructions in italics and brackets should be deleted.

NOTE TO TITLE EXAMINERS: This open-space easement contains restrictions on permitted uses and activities on the property described below, which run with the land and are applicable to the property in perpetuity.

Prepared by: [*landowner's attorney*]

Return to: Virginia Outdoors Foundation
(*Fill in regional office address here.*)

TAX MAP NO. 43-26 (portion)

Exempt from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT (with cost reimbursement to Grantor) (this "Easement"), made this ___ day of _____, 2019 between GAP VALLEY FARM, LLC, a Virginia limited liability company, collectively "Grantor"; the VIRGINIA OUTDOORS FOUNDATION, an agency of the COMMONWEALTH OF VIRGINIA, ("Grantee") (the designations "Grantor" and "Grantee" refer to Grantor and Grantee and their respective successors and assigns); witnesseth:

RECITALS:

R-1 Grantor is the owner in fee simple of real property situated in Augusta County, Virginia, containing in the aggregate 400[LT1] +/- acres as further described below (the "Property"), and desires to give, grant, and convey to Grantee a perpetual open-space easement over the Property as herein set forth.

R-2 Grantee is a governmental agency of the Commonwealth of Virginia and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code (references to the Internal Revenue Code in this Easement shall be to the United States Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provisions of any subsequent federal tax laws and regulations) (the "IRC") and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual open-space easement over the Property as herein set forth.

R-3 Chapter 461 of the Virginia Acts of 1966 provides in part "that the provision and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic, and scenic areas, and to conserve land and other natural resources" and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land. The balance of the Chapter is codified in Chapter 17, Title 10.1, Sections 10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the "Open-Space Land Act").

R-4 Pursuant to the Open-Space Land Act, the purposes of this Easement (as defined below in Section I) include retaining and protecting open-space and natural resource values of the Property, and the limitation on division, residential construction, and commercial and industrial uses contained in Section II ensures that the Property will remain perpetually available for agricultural, forestal, or open-space use, all as more particularly set forth below.

R-5 Chapter 525 of the Virginia Acts of 1966, Chapter 18, Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia, declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space, and recreational lands of the Commonwealth.

R-6 As required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the County of _____ Comprehensive Plan adopted on _____, and the Property is located within an area that is designated as _____ on the county's future land use map[LT2].

R-7 This Easement is intended to constitute in part (i) a "qualified conservation contribution" as defined in IRC Section 170(h)(1) and as more particularly explained below, and (ii) a qualifying "interest in land" under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 *et seq.* of the Code of Virginia (1950), as amended).

R-8 This Easement is intended to be a grant "exclusively for conservation purposes" under IRC Section 170(h)(1)(C), because it effects "the preservation of open space (including farmland and forest land)" under IRC Section 170(h)(4)(A)(iii); specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies, is for the scenic enjoyment of the general public, and will yield a significant public benefit.

R-9 This open-space easement in gross constitutes a restriction granted in perpetuity on the use that may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental conservation policies set forth below:

(i) Land conservation policies of the Commonwealth of Virginia as set forth in:

a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

b. The Open-Space Land Act cited above;

c. Chapter 18, of Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia cited above;

d. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, Sections 58.1-510 through 58.1-513 of the Code of Virginia cited above, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces, and forested resources;

e. Grantee's formal practices in reviewing and accepting this Easement. Grantee has engaged in a rigorous review, considered and evaluated the benefits provided by this Easement to the general public as set forth in these recitals, and has concluded that the protection afforded the open-space character of the Property by this Easement will yield a significant public benefit and further the open-space conservation objectives of Grantee and the Commonwealth of Virginia. Treasury Regulation Section 1.170A-14(d)(4)(iii)(B) states that such review and acceptance of a conservation easement by a governmental entity tends to establish a clearly delineated governmental conservation policy as required under IRC Section 170(h)(4)(A)(iii);

f. Governor Northam's state land conservation strategy of identifying and protecting high value lands and conservation sites across the Commonwealth of Virginia. The Property or a portion thereof is located on the Governor's Conserve Virginia Map under the Natural Habitat & Ecosystem Diversity category; and

(ii) Land use policies of the County of Augusta as delineated in:

(a) The Augusta County Comprehensive Plan 2007 – 2027 (the "Plan"), which was most recently updated by the Augusta County Comprehensive Plan Update 2014/2015 adopted on August 26, 2015 (the "Plan Update"), to which Plan the restrictions in this Easement conform and which contains the following:

The overall county vision that "Agriculture will continue to be the predominant land use in the county and a major part of the economy.... The county's scenic beauty and natural environment will be preserved, with farms, forests, mountains, rivers and streams

providing the framework and context for development in the urban areas, and continuing to define the landscape in the rural areas." (p. 42) This vision is reconfirmed by Plan Update.

The establishment of four (4) Planning Policy Areas, with goals, objectives and policies for each. The Property is located in an Agricultural Conservation Area. "Agricultural Conservation Areas are areas which have mainly farm or forestal uses and have generally the lowest overall density of residential uses, have no public water or sewer service, and have most of the county's intensive agricultural operations. These areas are planned to remain in predominantly agricultural and forestal uses with very little additional residential development." (p. 46).

The repeated recognition of the use of conservation easements as an appropriate way of achieving the goals, objectives, and policies of the Plan. See Agriculture Goal 1, Objective B, Policy 2 (p. 49); Land Use and Development Goal 2, Objective B, Policy 2 (p. 74); Natural Resources Goal 1, Objectives A-D, Policy 2 (p. 79); and Goal 4, Objective A, Policy 1 (p. 85); These goals, objectives and policies are carried forward in the Plan Update; and

(b) The Augusta County Zoning Ordinance. The Property is zoned General Agriculture by Augusta County. Preservation of the Property as open-space land is consistent with this zoning, which "is intended to allow an area to be devoted to agricultural use; to conserve, protect, and encourage the development, improvement, and preservation of agricultural land for the production of food and other agricultural products; to retain major areas of natural ground cover for conservation purposes; and to retain forests." (Section 25-71.A, adopted by the Board of Supervisors 2/10/10, effective 3/1/10); and

(c) Section 22.15 of the Code of Augusta County, as enabled by Virginia Code Section 58.1-3231, which provides for use-value assessment of certain property in the county as real property devoted to agricultural, horticultural, forestal or open-space uses, the Property having been approved for land use assessment by the county.

d. [*If available, add this*: Correspondence dated _____ from _____County acknowledging that contribution of this Easement to Grantee and the restrictions set forth herein conform to the land use plan and policies of the county[LT3];]

(iii) Land conservation policies of the United States as set forth in: _____.

R-___ The Property fronts State Highway 42, named "Scenic Highway" despite not being designated a scenic road, for approximately 3,500 feet and State Route 254 for approximately 2,500 feet. These two roads average between 2,200 and 3,200 vehicles per day and the Property is highly visible from portions of each. Preventing excessive development helps to preserve the rural and agricultural viewshed for the driving public from these roads.

R-___ The Property borders the George Washington National Forest (GWJNF) for over 1,900 feet. The GWNF is owned and managed by the United States Department of Agriculture (USDA) for resource conservation. According to the USDA's Strategic Plan (2014-2018) one of the department's five strategic goals is to "Ensure Our National Forests and Private Working Lands are Conserved, Restored, and Made More Resilient to Climate Change, While Enhancing Our

Water Resources", and included in one of the objectives of this goal is for the USDA to work with landowners "to protect forest and agricultural land from conversion to urban and other developed land use through conservation easements and strategic land acquisition". The preservation of this Property by the restrictions set forth herein will contribute to that goal of the USDA and provide a wildlife and open-space buffer for the GWJNF.

R-___ Approximately 188 acres of the Property have been identified by the Virginia Department of Forestry as having a high or very high ranking in "Forest Conservation Value", and protection of the Property in perpetuity hereunder helps ensure that the forested areas remain available for wood products, watershed protection, and wildlife habitat.

R-___ According to a U. S. Forest Service Report released on December 18, 2012, scientists at the U. S. Forest Service and partners at universities, nonprofits, and other agencies predict that "urban and developed land areas in the United States will increase 41 percent by 2060. Forested areas will be most impacted by this growth, with losses ranging from 16 to 34 million acres in the lower 48 states. Preservation of the Property in a relatively undeveloped state hereunder helps ensure that the forested areas on the Property remain available for timber production and other forest uses in perpetuity.

R-___ The Property has been in Grantor's family for over 100 years and is eligible for recognition as a "Virginia Century Farm" under a Virginia Department of Agriculture and Consumer Services program that "recognizes and honors those farms that have been in operation for at least 100 consecutive years and the generations of Virginia farm families whose diligent and dedicated efforts have maintained these farms, provided nourishment to their fellow citizens and contributed so greatly to the economy of the Commonwealth". The restrictions set forth herein help ensure that the Property is available for agricultural production in the future.

R-___ The Property is a working family farm and contains over 12 acres of Prime Farmlands and 119 acres of Farmland of Statewide Importance as designated by the U.S. Department of Agriculture, Natural Resource Conservation Service. Limiting development helps protect those soils and keeps the land available for farming in the future.

R-___ The U. S. Environmental Protection Agency has stated that "Construction activities disturb soil and may release sediment and other pollutants to local streams. EPA estimates that conversion of land produces 40 million tons per year of new sediment during construction. States have identified sediment as the leading cause of impairment to America's rivers." (Growth and Water Resources EPA 842-F-02-008. June 2002). Preventing intensive development of the Property by the restrictions set forth herein helps retain topsoil and protect water quality.

R-___ The Property contains over 1,300 feet of frontage on Buffalo Branch as well as several seasonal streams flowing into Buffalo Branch, a tributary of the Middle River, part of the Shenandoah River watershed. Grantor fenced off most of these tributaries to create riparian buffers of varying widths through participation in the Virginia Agricultural Best Management Practices Cost Share Program and the Environmental Quality Improvement[LT4] Program administered by the Headwaters Soil and Water Conservation District and the Natural Resources Conservation

Service of the U.S. Department of Agriculture. The restrictions set forth herein are consistent with and supplementary to the purposes of those programs in helping preserve water quality.

R-___ Buffalo Branch is located within the Chesapeake Bay watershed, and the Property contributes in a relatively undeveloped state to the goals of the Chesapeake Bay Preservation Act Sections 10.1-2100 *et seq.* of the Code of Virginia (1950), as amended, and supports the land conservation goals of the interstate Chesapeake Bay Program and the Federal Executive Order 13508 (5/19/09), the strategy of which is to permanently protect two million acres in the Bay watershed by 2025.

Also with respect to the Chesapeake Bay watershed, an open-space easement on the Property contributes to the "Goals and Outcomes" of the 2014 Chesapeake Watershed Agreement, to which Governor McAuliffe affirmed the Commonwealth's commitment on June 16, 2014, as a member of the Chesapeake Executive Council, making Virginia a partner in the agreement among six states, the District of Columbia, The Chesapeake Bay Commission, and seven federal agencies. Limitation on development of the Property by the restrictions set forth herein helps achieve the following goals contained in such agreement:

- Land Conservation Goal: By 2025, protect an additional two million acres of lands throughout the watershed . . . and reduce the rate of conversion of agricultural lands, forests, and wetlands as well as the rate of changing landscapes from more natural lands that soak up pollutants to those that are paved-over, hardscaped or otherwise impervious.

- Water Quality Goal: Reduce pollutants to achieve the water quality necessary to support the aquatic living resources of the bay and its tributaries and protect human health.

R - ___ The Virginia Department of Conservation and Recreation has developed the Virginia Natural Landscape Assessment project (the "VNLA") as part of the Virginia Conservation Lands Needs Assessment to identify, prioritize and link natural lands as targets for protective activities, such as the adoption of conservation easements and the restoration of habitat. The VNLA has identified a portion of the Property as having an ecological core of outstanding integrity. Limiting development of the Property herein helps protect these natural lands.

R-___ Pursuant to Section 10.1-1801.1 of the Code of Virginia, Grantee has approved an Open-Space Lands Preservation Trust Fund Payment to Grantor as a person conveying an open-space easement on agricultural, forestal, or other open-space land for costs associated with the conveyance of this Easement to Grantee.

R-___ This Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in these recitals and in Section I below.

R-___ Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II.

R-___ Grantee has determined that the restrictions set forth in Section II (the Restrictions) will preserve and protect in perpetuity the conservation values of the Property and will limit use of the

Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by this Easement.

R-___ Grantee, by acceptance of this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein and made a part hereof, and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant, and convey to Grantee for the public purposes set forth in Section I below an open-space easement in gross (this "Easement") over, and the right in perpetuity to restrict the use of, the Property, which is described below [*or* in SCHEDULE A attached hereto and made a part hereof] [*VOF prefers that the legal description be set forth below rather than in a SCHEDULE A.*] and consists of 400[LT5] +/- acres located in Augusta County, Virginia, near Buffalo Gap, fronting on Virginia Highways 42 and 254, to-wit:

_____ [*attorney to insert legal description keyed to each tax parcel*] _____

The Property is shown as a portion of Tax Map No. 43-26 among the land records of the County of Augusta, Virginia. **Even if the Property may have been acquired previously as separate parcels, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.**

SECTION I -PURPOSES

The conservation purpose of this Easement is to preserve and protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are described in the above recitals, are documented in the Baseline Documentation Report described in Section IV below, and include the Property's open-space, scenic and natural values and its value as land preserved for rural uses such as forestry and agriculture (including livestock production).

Pursuant to the Virginia Land Conservation Foundation's Conservation Value Review Criteria, the further conservation purpose of this Easement is preservation of land for agricultural use, forestal use and preservation of scenic open space, and/or preservation of open space designated by local government[LT6].]

Grantor covenants that no acts or uses are currently being conducted or will be conducted on the Property which are: (i) inconsistent with the conservation purposes of the donation or (ii)

consistent with the conservation purposes of the donation, but are destructive of other significant conservation interests unless such acts or uses are necessary for the protection of the conservation interests that are the subject of the donation.

SECTION II – RESTRICTIONS

Restrictions are hereby imposed on the use of the Property pursuant to the public policies set forth above. The acts that Grantor covenants to do and not to do upon the Property and the restrictions that Grantee is hereby entitled to enforce are and shall be as follows:

1. DIVISION.

(i) The Property shall not be divided into, or separately conveyed as, more than three parcels (two divisions permitted). For purpose of this Easement, division of the Property includes, but is not limited to, recordation of a subdivision plat, judicial partitioning of the Property, testamentary partitioning of the Property, or pledging for debt of a portion of the Property.

(ii) Grantor shall give Grantee written notice prior to making the/a division of the Property. In the event of a division and conveyance of a portion of the Property as provided in this Paragraph 1, the grantor making the conveyance retains the right to make the further permitted division of the remainder of the Property not so conveyed, except to the extent any permitted divisions are allocated by that grantor in the instrument creating the division or another recorded instrument.

(iii) The acquisition of a *de minimis* portion of the Property adjacent to Virginia Highways 42 and 254 for minor road improvements shall not be considered a division of the Property, and neither the acquisition of such a *de minimis* portion of the Property nor the use of the portion of the Property so acquired shall be prohibited by this Easement, provided that Grantee approves such conveyance or taking, which approval shall be contingent upon the project including all reasonable actions, such as making landscaping or topographic improvements, to minimize the project's impact on the Property and prevent harm to its conservation values. Grantor reserves its separate right to approve such acquisition. Use of the Property for such a project is limited to minor improvements to Virginia Highways 42 and 254 in their present alignments, including, but not limited to, maintenance, correction, repair, or upgrading of the existing public roads. Such improvements could include, but are not limited to, the addition or renovation of ditches, box culverts, drainage swales, side slopes, curbing, re-grading, or enhancements, such as pull-offs, bike lanes, and restoration projects. For the purpose of this paragraph, "minor road improvements" does not include the addition of new travel lanes, except bike lanes. Any portion of the Property acquired from Grantor pursuant to this paragraph shall remain subject to the terms and restrictions of this Easement.

(iv) In the event that the/a permitted division of the Property requires a road or street dedication, such dedication shall not be considered a separate conveyance of a portion of

the Property or a division of the Property, and this Easement shall remain in force with respect to the dedicated portion.

2. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.

(i) **Buildings, structures, roads, and utilities.** No buildings, structures, roads, or utilities, other than the following, are permitted on the Property, provided, however, that certain permitted buildings and structures are subject to the siting restrictions set forth in Section II Paragraph 2(iv) below]:

(a) **Dwelling unit(s)and non-residential outbuildings and structures**. Five dwelling units ["dwellings"], such as detached or attached dwellings, barn or garage apartments, or cabins, each of which may be used by one or more persons or families.

(1) Such dwellings shall not individually exceed 4,500 square feet of above-ground enclosed living area without Grantee's prior review and written approval, which approval shall take into consideration the impact of the size, height, and siting of the proposed dwellings on the conservation values of the Property.

(2) Notwithstanding the permitted size of individual dwellings set forth above, the five dwellings shall not exceed an aggregate of 17,500 square feet of above-ground enclosed living area.

(3) The dwelling currently existing on the Property shall be counted in the number of permitted dwellings and in the permitted aggregate square feet of above-ground enclosed living area.

(4) Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of a/the dwelling on the Property.

(5) In the event of division of the Property as provided in Section II, Paragraph 1, the grantor making the division retains all permitted dwelling rights and the rights under Section II, Paragraph 2(iii) below unless such rights are allocated among the parcels in the instrument creating the division or another recorded instrument. If permitted dwelling rights and/or rights under Section II, Paragraph 2(iii) below are allocated among the parcels, the square footage of above-ground enclosed living area should also be so allocated.

(6) Non-residential outbuildings and structures commonly and appropriately incidental to such dwellings sized appropriately to serve as amenities to residential use are permitted;

(b) **Farm buildings and structures.** Farm buildings and structures, except that a farm building or farm structure exceeding 10,000 square feet in ground area may[LT7] not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee. Approval shall be limited to consideration of the impact of the size, height, and siting of the proposed building or structure on the conservation values of the Property. For purpose of this paragraph (b), a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section II, Paragraph 3(i)(a) below;

Notwithstanding the above, one large farm buildings not individually exceeding 30,000 square feet in ground area is permitted with the prior written approval of Grantee. Approval shall be limited to consideration of the impact of the size, height, and siting of the proposed building or structure on the conservation values of the Property. See siting restriction for large farm building in Section II, Paragraph 2(iv) below.

(c) **Buildings for the processing and sale of farm or forest products or for certain animal-related uses**. Buildings not exceeding four thousand five hundred (4,500) square feet of enclosed area in the aggregate and not individually exceeding two thousand five hundred (2,500) square feet of enclosed area for the processing and sale of farm or forest products produced or partially produced on the Property or, with Grantee's prior written approval, buildings for kennels, wildlife rehabilitation centers, veterinary clinics, or similar enterprises. For purpose of this paragraph (c), a building for the processing and sale of farm or forest products or for animal-related uses shall mean a building originally constructed and used for the activities specified in Section II, Paragraph 3(i)(b) below. Approval of buildings for animal-related uses shall be contingent upon Grantee's determination that the construction of such buildings is consistent with the conservation purposes of this Easement and protective of the conservation values identified herein and that the buildings are located at sites on the Property not adversely impacting such conservation values. In the event of division of the Property as provided in Section II, Paragraph 1, the grantor making the division retains all permitted rights to buildings for the processing and sale of farm or forest products or for certain animal-related uses unless the right to construct such building or buildings is allocated among the parcels in the instrument creating the division or another recorded instrument;

(d) **Roads, driveways, and trails.**

(1) Private roads and driveways to serve permitted buildings and structures and roads with permeable surfaces for permitted uses and activities, such as farming or forestry.

(2) Private roads or driveways and access easements over same to serve adjacent properties, provided that such roads or driveways have the prior written approval

of Grantee, which approval shall take into consideration the impact of the roads or driveways on the conservation values of the Property.

(3) Public roads required to be constructed and dedicated in conjunction with permitted divisions of the Property, provided that Grantee determines that the construction, maintenance, and dedication of such public roads will not impair the conservation values of the Property and gives prior written approval of such construction. Any such dedication shall not be considered a separate conveyance of a portion of the Property or an additional division of the Property, and this Easement shall remain in effect with respect to the portion of the Property so dedicated.

(4) Trails, including, but not limited to, hiking, biking, and equestrian trails;

(e) **Utilities and alternative energy structures.**

(1) Public or private utilities within existing rights-of-way therefor, consistent with any recorded instrument granting such rights-of-way.

(2) Public or private utilities to serve permitted buildings, structures, or activities on the Property. In addition, public or private utilities to be constructed in whole or in part to serve other properties, provided Grantee determines that the construction and maintenance of such utilities will cause no impairment of the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval of such construction and maintenance shall take into consideration the visibility and any other possible adverse impact of such utilities on the conservation values of the Property. Grantor reserves its separate right to approve any public or private utilities.

(3) Alternative energy structures used to harness natural renewable energy sources, such as sunlight, wind, water, or biomass, to serve permitted buildings, structures, or activities on the Property, which limitation shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment.

(4) Alternative energy structures constructed in whole or in part to serve other properties, provided Grantee determines that the construction and maintenance of such structures will cause no impairment of the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval of such construction and maintenance shall take into consideration the visibility and any other possible adverse impact of such structures on the conservation values of the Property;

(f) **Small-scale miscellaneous buildings and structures.** Small-scale miscellaneous buildings and structures, the existence of which is consistent with the conservation purposes of this Easement and which will not impair the conservation values protected herein, such as hunting stands, wildlife observation

structures, fences, and boardwalks [*If applicable*: , structures for crossing streams or wetlands or portions of docks or piers (all subject to the limitations set forth in Section II, Paragraph 5(ii) below)]; and

(g) **Signs**. Signs (but not billboards or other signs larger than 32 square feet in area).

(ii) **Construct, use and maintain**. Grantor shall have the right to construct and use any dwellings, other buildings, structures, roads, driveways, trails, and utilities permitted in Section II, Paragraph 2(i) above and to repair, maintain, renovate, expand, and replace any permitted dwellings, other buildings, structures, roads, driveways, trails, and utilities on the Property, within the limitations set forth in this Easement.

(iii) **Alternative use of square footage of dwellings**. All or a portion of the allowable square footage for dwellings set forth in Section II, Paragraph 2(i)(a) above may be allocated to any number of buildings to be used for natural resource-based educational, scientific, or recreational purposes, provided that Grantee determines that the conversion of dwellings or the construction of new buildings for such purposes is consistent with the conservation purposes of this Easement, determines that such conversion or construction will not impair the conservation values protected herein, and gives prior written approval of such conversion or construction. The approval of such construction shall take into consideration the impact of the size, height, and siting of the proposed building(s) on the conservation values of the Property.

[*In order to comply with Treasury Regulation Section 1.170-14(c)(2) and the Virginia Land Conservation's Conservation Value Review Criteria it is strongly recommended that site control of dwellings and other buildings be included herein to prevent destruction of significant conservation interests such as scenic vistas, historic features, farmland, etc. with suggestions set forth for a subparagraph (iv) below.*]

(iv) **Siting of buildings and structures.** To protect the scenic values of the Property and to buffer the George Washington National Forest, no buildings or structures larger than 1,000 square feet in ground area shall be constructed within the designated Restricted Build Area on the forested area on the West side of the Property as shown on the sketch attached hereto as EXHIBIT ___. And no building or structure larger than 100 square feet in ground area would be allowed within 400 feet of the west side of Virginia Highway 42 as measured from the center line of the road. And no dwelling shall be built east of Virginia Highway 42 as shown on the aforementioned EXHIBIT. (See Section II, Paragraph 5(i) for further restrictions on improvements in the riparian protection zones.)

(v) **Collective footprint limitation**. For the purpose of this paragraph, the collective footprint is the ground area measured in square feet of the buildings and structures set forth in Section II, Paragraph 2(i)(a) through (c), (e), and (f) and Section II, Paragraph 2(iii) above and all other impervious surfaces, excluding linear surfaces, such as roads, driveways, walls, fences, and boardwalks The collective footprint shall not exceed **ONE PERCENT (1 %)** of the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection

of the conservation values of the Property, Grantee may approve such increase. In the event of division of the Property, the collective footprint of each created parcel shall not exceed **ONE PERCENT (1 %)** percent of the total area of such parcel unless otherwise allocated in the instrument of transfer or another recorded instrument or allocated de facto by conveyance of a parcel with existing structures. [*Proviso: Carefully calculate the permitted footprint for any parcel(s) with small acreage. For example, the one-half percent collective footprint for a ten-acre parcel is 2,178 square feet unless otherwise allocated in the instrument of transfer.*]

3. INDUSTRIAL AND COMMERCIAL ACTIVITIES ON THE PROPERTY.

(i) Industrial or commercial activities on the Property are limited to the following:

(a) agriculture (including livestock production), equine activities, or forestry;

(b) processing or sale of farm or forest products produced or partially produced on the Property and approved animal-related uses in buildings permitted in Section II, Paragraph 2(i)(c) above;

(c) small-scale commercial or industrial operations incidental to and compatible with activities set forth in (a) above that Grantee approves in writing as being consistent with the conservation purposes of this Easement;

(d) activities, other than those already permitted in (a) and (b) above, that can be, and in fact are, conducted within permitted buildings without material alteration to their external appearance, provided that such activities to be conducted in buildings exceeding 10,000 square feet in ground area are subject to the written approval of Grantee, which approval shall take into consideration the impact of the activities and any proposed associated infrastructure improvements on the conservation values of the Property;

(e) the sale of excess power generated in the operation of alternative energy structures and associated equipment to serve permitted buildings, structures, and activities on the Property as provided in Section II, Paragraph 2(i)(e)(3) above and the sale of power generated in the operation of alternative energy structures to serve other properties as permitted with approval in Section II Paragraph 2(i)(e)(4);

(f) activities to restore or enhance wetlands or streams or restore, enhance, or develop other ecosystem functions on the Property including, but not limited to, stream bank restoration, wetland and stream mitigation, biological carbon sequestration, and biodiversity mitigation, provided that such activities are not in conflict or inconsistent with the conservation purposes of or the restrictions set forth in this Easement and that prior written approval for same shall have been obtained from Grantee. Grantee is not responsible for monitoring any such activities and has no obligation to enforce the provisions of any permit(s), restriction(s), or easement(s) therefor. Subject to Grantee's approval, Grantor is free to participate in same in Grantor's discretion and to retain any remuneration derived therefrom;

(g) outdoor activities that do not permanently alter the physical appearance of the Property and that do not impair the conservation values of the Property herein protected; and

(h) natural resource-based educational, scientific, or recreational activities, provided that they are consistent with the conservation purposes of this Easement and do not impair the conservation values protected herein.

[*Optional addition*: (*Adding this may enable Grantor to obtain an estate tax benefit under IRC §2031(c*[LT8]*).*)

(ii) Notwithstanding any other provision of this Easement, no commercial recreational use (except for *de minimis* commercial recreational uses) shall be allowed on the Property.]

4. MANAGEMENT OF FOREST.

(i) Best Management Practices (BMPs), as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material timber harvest (whether of healthy or diseased trees) or land-clearing activity is undertaken. A pre-harvest plan shall be submitted to Grantee for approval no later than fourteen (14) days before the proposed date of a material timber harvest, which approval shall take into consideration whether the pre-harvest plan is consistent with the terms of this Easement. The pre-harvest plan shall describe the BMPs to be used in sufficient detail to ensure that water quality will be protected.

(ii) The cutting, clearing, or removal of trees on less than ten (10) acres of the Property at any one time does not constitute material timber harvesting or land clearing, and does not require the use of BMPs or a pre-harvest plan, if:

(a) the cutting, clearing or removal trees is necessary for the construction or maintenance of permitted roads, trails, driveways, trails, utilities, buildings, structures, food plots, or ponds;

(b) the trees are used for firewood for Grantor's domestic use;

(c) the trees are invasive species;

(d) the trees pose a threat to the health or safety of persons, property or livestock;

(e) the trees are dead, deceased, or dying; or

(f) the cutting, clearing, or removal of trees is necessary for other permitted activities on the Property, except timber harvesting or land clearing, provided that the clearing of land to preserve or reclaim fields is permitted.

[*VOF strongly recommends, and may require, that riparian protection zones be maintained for certain water-related features, as referenced below.*]

5. RIPARIAN PROTECTION ZONES.

To protect water quality and natural habitat, riparian protection zones (RPZs) shall be maintained on the Property as shown on EXHIBIT ___, attached hereto and made a part hereof, and as shown in the Baseline Documentation Report.

Such zones are made up of a 20-foot riparian buffer along the edges of the intermittent streams on the Property, as measured from the top of the banks of the streams, and a 100-foot riparian buffer along the edges of Buffalo Branch on the Property aas measured from the top of the bank of the Branch.

(i) Within the RPZ there shall be:

(a) no buildings or other substantial structures constructed, except as permitted in Section II Paragraph 5(ii) below;
(b) no new paved roads or paving of existing roads without Grantee's approval;
(c) no storage of manure, fertilizers, chemicals, machinery, or equipment;
(d) no removal of trees, except
(1) removal of invasive species,
(2) removal of dead or diseased trees,
(3) removal of trees posing a threat to human or livestock health or safety,
(4) minimal removal of trees for the purpose of maintaining existing roads,
(5) minimal removal of trees for creation of small wildlife plots,
(6) minimal removal of trees for construction and maintenance of new permitted roads, stream crossings, dams, and any other structures permitted in subparagraph (ii) below; and

(e) no plowing, cultivation, filling, dumping, or other earth-disturbing activity, except as may be reasonably necessary for the activities set forth in Section II Paragraph 5(ii) below.

In addition, livestock shall be excluded from the tributaries and from the RPZ on Buffalo Branch except (a) for brief periods of flash grazing, (b) during times of drought or other emergencies, (c) for stream crossings, or (d) for watering at limited access points[LT9].

(ii) Permitted within the RPZ are:

(a) erosion control or restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above;
(b) fencing along or within the RPZ;

(c) construction and maintenance of stream crossings (including improvements over the RPZ to access crossings) for pedestrians, livestock, and vehicles, which crossings minimize obstruction of water flow;
(d) creation and maintenance of trails and roads without hard surfaces, and maintenance of existing trails and existing and new permitted roads;
(e) creation and maintenance of natural habitat and small wildlife plots;
(f) planting of trees, shrubs, grasses, or other vegetation; and
(g) clearing, grading and dam construction and maintenance to create and maintain ponds (but not storm water retention or detention ponds to serve other properties).
(h) diversion of water for agricultural use on the Property; and,
(i) construction and maintenance of portions of shoreline stabilization structures.

(iii) Subsequent to the Effective Date, Buffalo Branch or its tributaries may meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above. In such event, the RPZ shall remain the same width, but move relative to the movement of the waterways. Any buildings or structures that were outside of the original RPZ and are determined to be within the new RPZ shall not be considered in violation of these restrictions and may be maintained and replaced at such locations, but not enlarged.

6. GRADING, BLASTING, FILLING AND MINING.

(i) Grading, blasting, filling, or earth removal shall not materially alter the topography of the Property except (a) for clearing, grading, and dam construction to create and maintain ponds (but not storm water retention or detention ponds to serve other properties), (b) for restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3(i)(f) above, (c) for erosion and sediment control pursuant to an erosion and sediment control plan, or (d) as required in the construction of permitted buildings, structures, roads, driveways, trails, and utilities. Grantee may require appropriate sediment and erosion control practices to be undertaken for buildings, structures, roads, driveways, trails, or utilities that require Grantee's approval in Section II, Paragraph 2(i) above, as a condition of such approval.

(ii) Grading, blasting, filling, or earth removal in excess of one acre for the purposes set forth in subparagraphs (a) through (d) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities, including the conversion of forest land into farmland, shall not constitute a material alteration of the topography. Surface mining on the Property, subsurface mining from the surface of the Property, and drilling for oil or gas or other minerals on the Property are prohibited. Dredging on or from the Property is prohibited, except for maintenance of any ponds on the Property.]

SECTION III – ENFORCEMENT

1. RIGHT OF INSPECTION. Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or Grantor's representative, provided, however, that

in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time.

2. ENFORCEMENT.

(i) Grantee, in accepting this Easement, commits to protecting the conservation purposes of the Easement and has the resources necessary to enforce the restrictions set forth herein. Grantee has the right to bring a judicial proceeding to enforce the restrictions, which right specifically includes the right (a) to require restoration of the Property to its condition on the Effective Date or to require restoration of the Property to its condition prior to a violation hereof, provided that such prior condition was in compliance with the provisions of this Easement; (b) to recover any damages arising from non-compliance; (c) to compel Grantor to disgorge to Grantee any proceeds received in activities undertaken in violation of the restrictions set forth herein; (d) to require Grantor to replant or pay for the replanting of trees on the Property in the event that Grantor harvests timber in violation of any restrictions set forth in Section II above; (e) to enjoin non-compliance by temporary or permanent injunction; and (f) to pursue any other appropriate remedy in equity or law. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs, expert-witness costs, and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to ensure compliance with this Easement, and Grantor hereby waives any defense of waiver, estoppel, or laches with respect to any failure to act by Grantee.

(ii) Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage to the Property or change in the condition of the Property (a) caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or (b) resulting from prudent action taken by Grantor to avoid, abate, prevent, or mitigate such damage to or changes in the condition of the Property from such causes.

(iii) Nothing in this Easement shall create any right in the public or any third party to maintain any judicial proceeding against Grantor or Grantee.

SECTION IV – DOCUMENTATION

Grantor has made available to Grantee, prior to conveyance of this Easement, documentation sufficient to establish the condition of the Property at the time of the conveyance, and documentation retained in the office of Grantee, including, but not limited to, the Baseline Documentation Report (BDR), describes the condition and character of the Property at the time of the conveyance. The BDR may be used to determine compliance with and enforcement of the terms of this Easement. However, the parties are not precluded from using other relevant evidence or information to assist in that determination. The parties hereby acknowledge that the BDR contained in the files of Grantee is an accurate

representation of the Property and contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulation Section 1.170A-14(g)(5)(i).

SECTION V – GENERAL PROVISIONS

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions, and restrictions contained in this Easement are binding upon, and inure to the benefit of, Grantor and its successors in title to the Property, or any portion thereof or interest therein, and Grantee and its successors or assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

2. **NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Subject to the terms hereof, Grantor retains the exclusive right to such access and use including, but not limited to, the right to hunt, fish, or trap on the Property.

3. **GRANTOR'S REPRESENTATIONS AND WARRANTIES**. Grantor represents, covenants, and warrants that (i) Grantor has good fee simple title to the Property (including the mineral rights located under the surface of the Property), (ii) Grantor has all right and authority to give, grant and convey this Easement, (iii) the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record), including, but not limited to, any leases, option contracts, mortgage liens, deeds of trust liens, or other liens not subordinated to this Easement, and (iv) no consent of any third party is required for Grantor to enter into this Easement. [*Add if applicable*: (v) each person and/or entity signing on behalf of Grantor is authorized to do so, *and/or* (vi) Grantor is duly organized and legally existing under the laws of the Commonwealth of Virginia *and/or* (vii) all beneficiaries' consents have been obtained to enter into this Easement[LT10].]

4. **ACCEPTANCE**. Grantee accepts this conveyance pursuant to Virginia Code Section 10.1-1801, which acceptance is evidenced by the signature of a Deputy Director or Staff Attorney by authority granted by Grantee's Board of Trustees.

5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or shall be proffered or dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; proffered or dedicated as open space in, or as part of, any real estate development plan; or proffered or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No development rights that have been encumbered or extinguished by this Easement shall be

transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement, or otherwise.

6. **CONSTRUCTION**. Pursuant to the public policy of the Commonwealth of Virginia favoring land conservation, any general rule of construction to the contrary notwithstanding (including the common-law rule that covenants restricting the free use of land are disfavored and must be strictly construed), it is the intent of the parties hereto that this Easement and all language contained herein shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policies and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation that is consistent with the purposes of this Easement (to protect the conservation values of the Property and prevent the exercise of reserved rights in a way that would impair such values) and that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purposes of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify in part as a "qualified conservation contribution" as that term is defined in IRC Section 170(h)(1) and Treasury Regulation Section 1.170A-14, and the restrictions and other provisions of this Easement shall be construed and applied in a manner that will not prevent it from being in part a qualified conservation contribution.

7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS**. This Easement shall be referenced by deed book and page number, instrument number, or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or the conveyance or limit the Easement's enforceability in any way.

8. **NOTICE TO GRANTEE AND GRANTOR.** For the purpose of giving notices hereunder the current address of Grantee is Main Street Centre, 600 East Main Street, Suite 402, Richmond, Virginia 23219, and any notice to Grantor shall be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently 1957 Buffalo Gap Highway, Swoope, VA 24479.

Grantor shall notify Grantee in writing at or prior to closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property.

In addition, Grantor agrees to notify Grantee in writing before exercising any reserved right, which may have an adverse effect on the conservation interests associated with the Property as encumbered by this Easement. (The purpose of requiring such notice is to afford Grantee an adequate opportunity to monitor such activities to ensure that they are carried out in a manner consistent with the purposes of this Easement; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purposes of this Easement.)

Failure of Grantor to comply with these requirements shall not impair the validity of the Easement or limit its enforceability in any way.

9. **TAX MATTERS**. The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in Treasury Regulation Section 1.170A-13(c)(5), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from conveyance of this Easement, that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable.

10. **GOODS AND SERVICES.** By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement~~.~~, except for a payment to Grantor for costs assisting in the placement of the Property under easement from the Open-Space Lands Preservation Trust Fund pursuant to Section 10.1-1801.1 of the Code of Virginia.

11. **NO MERGER**. Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.

12. **ASSIGNMENT BY GRANTEE**. Assignment of this Easement is permitted by Virginia Code Section 10.1-1801, but Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity, (ii) the transferee then qualifies as an eligible donee as defined in IRC Section 170(h)(3) and the applicable Treasury Regulations, and (iii) the transferee is a public body as defined in Section 10.1-1700 of the Open-Space Land Act.

13. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the conveyance of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that this Easement on the Effective Date bears to the value of the Property as a whole at that time.

14. **CONVERSION OR DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act, which does not permit loss of open space.

15. **EXTINGUISHMENT.** If any unexpected change in the conditions surrounding the Property can make impossible or impractical the continued use of the Property for the conservation purposes of this Easement, the provisions of this Easement can be extinguished through a judicial proceeding. In such case, on a sale or exchange of the Property subsequent to and resulting from such an extinguishment, Grantee shall be entitled

to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section V, Paragraph 13 above. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this Easement and the Open-Space Land Act.

16. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property by an amended deed of easement, provided that no amendment shall (i) affect this Easement's perpetual duration, (ii) conflict with or be contrary to or inconsistent with the conservation purposes of this Easement, (iii) reduce the protection of the conservation values, (iv) affect the qualification of this Easement in part as a "qualified conservation contribution" or "interest in land", (v) affect the status of Grantee as a "qualified organization" or "eligible donee", or (vi) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Clerk's Office of the Circuit Court of Augusta County, Virginia.

17. **COST RECOVERY CHARGES. Grantee reserves the right to recover its costs incurred in responding to requests initiated by Grantor involving matters such as boundary line adjustments, easement amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, access or utility easements over the Property, and review of gas or oil plans. Such cost recovery charges shall be determined and periodically adjusted by its Board of Trustees, as set forth in a published fee schedule.**

18. **JOINT OWNERSHIP**. If Grantor at any time owns the Property or any portion of or interest therein in joint tenancy, tenancy by the entirety, or tenancy in common, all such tenants shall be jointly and severally liable for all obligations of Grantor set forth herein.

19. **SEVERABILITY**. It is the express intent of the parties hereto that all provisions of this Easement be considered and construed as part of the whole and that no provision shall be applied in isolation without consideration of the overall purposes of this Easement. Nevertheless, if any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

20. **ENTIRE AGREEMENT**. This instrument [*Add if applicable*: Schedule(s) ___, *and/or* Exhibit(s) _____] set(s) forth the entire agreement of the parties with respect to this Easement and supersede(s) all prior discussions, negotiations, understandings, or agreements relating to the Easement[LT11].

21. **CONTROLLING LAW**. The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia and the United States, resolving any ambiguities or questions of the validity of specific provisions in a manner consistent with the provisions of Section V, Paragraph 6 above in order to give maximum effect to its conservation purposes.

22. **RECODIFICATION AND AMENDMENT OF STATUTES AND REGULATIONS** This Easement cites various federal and state statutes and regulations applicable to open-space easements. In the event that such statutes or regulations are re-codified or amended, this Easement will be interpreted and enforced according to the re-codified or amended statutes and regulations most closely corresponding to those cited herein and carrying out the purposes recited herein.

23. **RECORDING**. This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Augusta, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.

24. **COUNTERPARTS**. This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.

25. **DEFINITIONS.** For purposes of this Easement, the phrase "Effective Date" shall mean the date upon which this Easement was first put to record in the Office of the Clerk of the Circuit Court of Augusta County, Virginia. The words "currently" or "existing" shall mean currently or existing on the Effective Date. Time shall be calculated in calendar days, not business days.

[*Add Additional Grantor paragraph, when only one spouse owns the Property or portions thereof.*]

_____, Additional Grantor, husband/wife of Grantor, joins in the execution of this Easement to evidence his/her consent to the gift of easement herein made and its exclusion from the augmented estate of Grantor pursuant to Virginia Code §64.2-308.9 A.2. as now written or hereafter amended[LT12].

WITNESS the following signatures and seals: [Counterpart signature pages follow.]

[Counterpart signature page 1 of 4 of deed of open-space easement]

_____
Grantor

_____
Grantor

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by _____.

_____
Notary Public

My commission expires: _____
(SEAL) Registration No. _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this ___ day of _____, 20___ by _____.

_____
Notary Public

My commission expires: _____
(SEAL) Registration No. _____

[Counterpart signature page 2 of 4 of deed of open-space easement]

Accepted:
VIRGINIA OUTDOORS FOUNDATION,

By: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this _____ day of _____, 20___ by_____, a Deputy Director/Staff Attorney of the Virginia Outdoors Foundation.

_____
Notary Public

My commission expires: _____
Registration No. _____

(SEAL)

[Counterpart signature page 3 of 4 of deed of open-space easement]

Lender:

By: _____

Its: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this _____ day of _____, 20___ by_____ [*name of officer*], _____ [*title of officer*] of _____ [*name of corporation*], a _____ [*state of incorporation*] corporation, on behalf of the corporation.

_____
Notary Public

My commission expires: _____
Registration No. _____

(SEAL)

[Counterpart signature page 4 of 4 of deed of open-space easement]

_____, Trustee

_____, Trustee

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

The foregoing instrument was acknowledged before me this _____ day of _____, 20___ by _____, Trustee.

_____
Notary Public

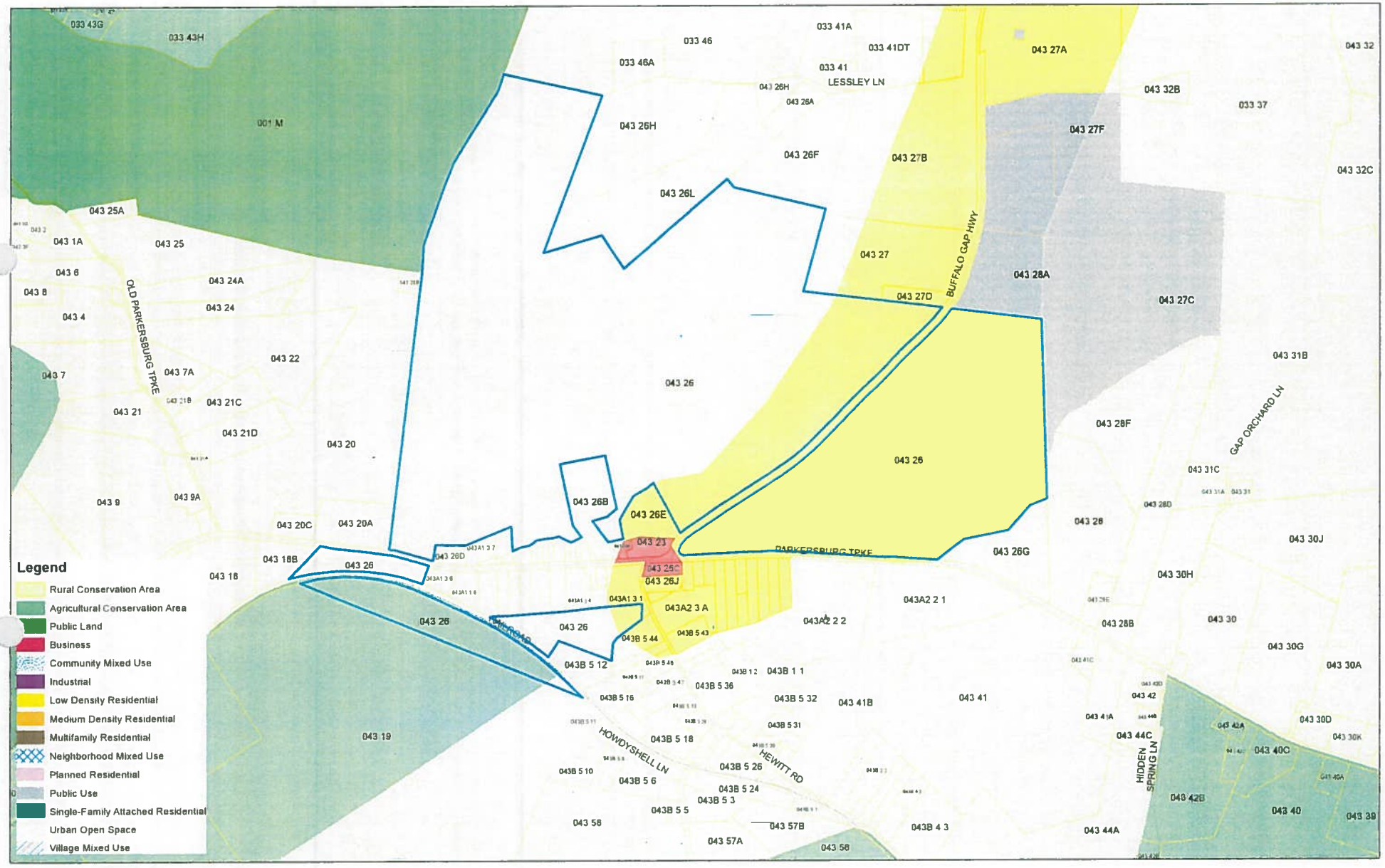
My commission expires: _____
(SEAL) Registration No. _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, TO WIT:

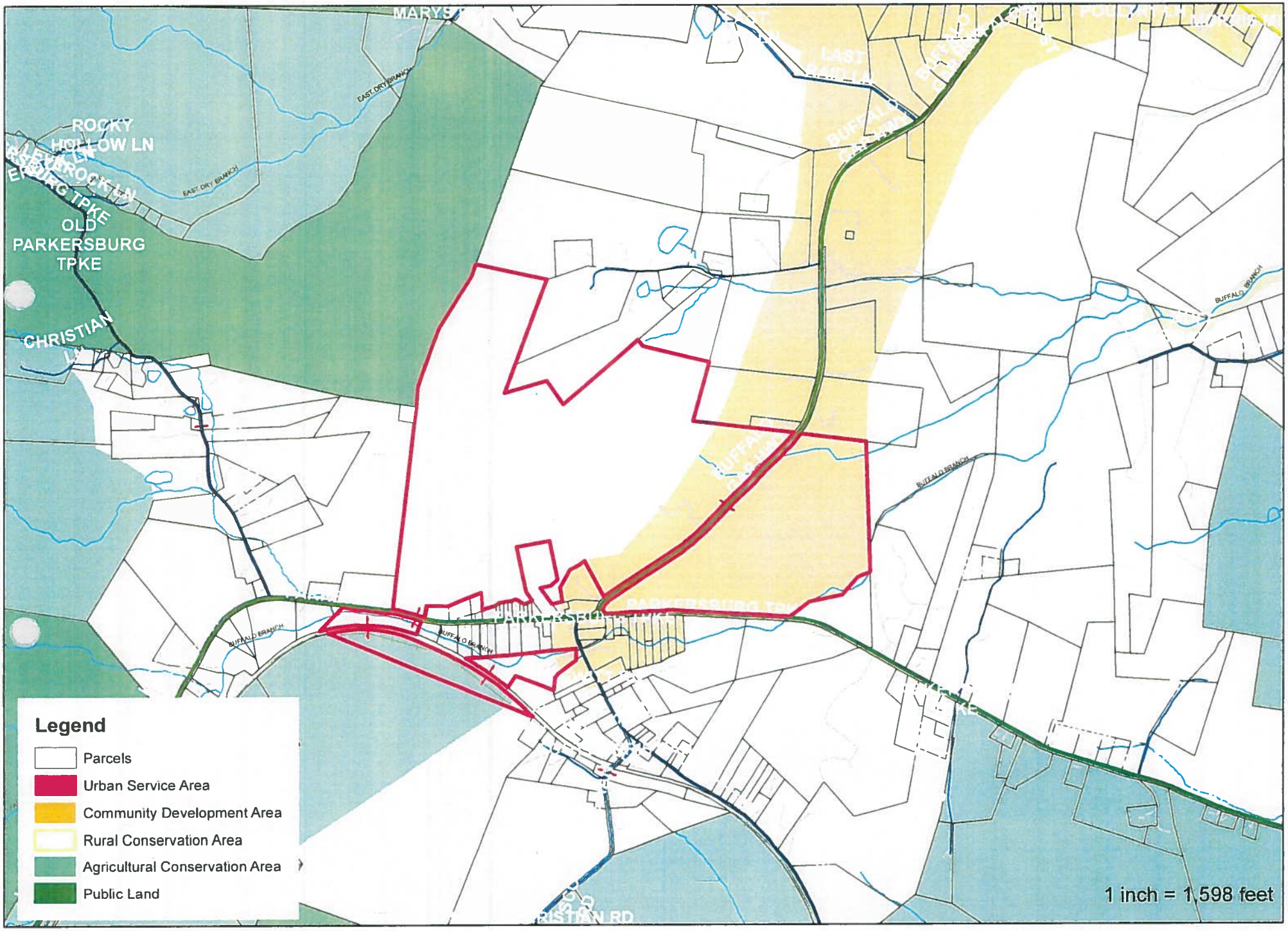
The foregoing instrument was acknowledged before me this _____ day of _____, 20___ by _____, Trustee.

_____
Notary Public

My commission expires: _____
(SEAL) Registration No. _____



1 inch = 796 feet



1 inch = 1,598 feet

Agenda Item # 4B

Date 10/8/19

Article XIV. Manufactured Home Subdivision (MHS) Districts.

§ 25-141. Additional Purpose.

The Manufactured Home Subdivision District is intended to allow residential development in the form of subdivisions, with individual ownership of lots, for manufactured homes, or other residential uses as specifically prescribed in §25-142 and §25-143.

§ 25-142. Additional permitted use.

The following additional use is permitted within Manufactured Home Subdivision Districts: Manufactured homes utilized as single-family dwellings, modular constructed single family dwellings, and stick built single family dwellings.

Cross reference – For additional permitted uses, see § 25-113 of this division, but see § 25-144 below.

§ 25-143. Additional use permitted by Special Use Permit.

The following uses shall be permitted within Manufactured Home Subdivision Districts only upon the approval of a Special Use Permit by the board of zoning appeals: Mobile homes which do not constitute manufactured homes as defined by this chapter and utilized as single-family dwellings.

Cross reference – For additional uses permitted by Special Use Permit, see § 25-115 of this division.

~~**§ 25-144. Additional prohibited use.**~~

~~The following use is prohibited within Manufactured Home Subdivision Districts: Single-family dwellings that are not either manufactured or mobile homes as defined by this chapter.~~

COUNTY OF AUGUSTA
STAFF REPORT
Ordinance Amendment
Article XIV. Manufactured Home Subdivision (MHS) Districts
October 8, 2019

An ordinance to amend Article XIV. Manufactured Home Subdivision (MHS) Districts. Section 25-141. Additional Purpose, Section 25-142. Additional permitted use, and Section 25-144. Additional prohibited use.

Amendment adds modular and stick built single family dwellings as a permitted use in the Manufactured Home Subdivision zoning district.

PROPOSED ORDINANCE TEXT:

Article XIV. Manufactured Home Subdivision (MHS) Districts.

§ 25-141. Additional Purpose.

The Manufactured Home Subdivision District is intended to allow residential development in the form of subdivisions, with individual ownership of lots, for manufactured homes, or other residential uses as specifically prescribed in §25-142 and §25-143.

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Cross reference – For additional uses permitted by Special Use Permit, see § 25-115 of this division.

~~**§ 25-144. Additional prohibited use.**~~

~~The following use is prohibited within Manufactured Home Subdivision Districts: Single-family dwellings that are not either manufactured or mobile homes as defined by this chapter.~~

COMMUNITY DEVELOPMENT STAFF COMMENTS: The Manufactured Home Subdivision District applies to only one residential development within the County, located off of Augusta Farms Road.

Article LXX. Transition, of the Augusta County Zoning Ordinance, states:

"B. No new area shall be zoned Manufactured Home Subdivision (MHS) after December 31, 2002. Areas zoned MHS on December 31, 2002, shall remain zoned MHS, and shall remain subject to the zoning regulations applicable to MHS districts on December 31, 2002, until rezoned to another classification in accordance with the law. Although not set forth herein, Article XIV shall remain in effect for this limited purpose until all areas zoned MHS have been rezoned. (Ord. 11/26/02, eff. 1/1/03)"

Essentially, the Manufactured Home Subdivision (MHS) District was intended to allow residential development, in the form of subdivisions, with individual ownership of lots, for manufactured homes. This zoning district has been removed from the code but all zoning regulations in effect in 2002 still apply to the one district zoned MHS.

The amendment would give the lot owners within this community the ability to replace a manufactured home with a modular or stick built single family dwelling. As this applies to one community within the area, staff does not see any larger countywide effect on an affordable housing option. Rather, it gives landowners the ability to construct the type of single family dwelling of their choice. Land on either side of the Manufactured Home Subdivision is either zoned Manufactured Home Park or Multi-Family Residential. The ordinance amendment would be creating the ability for Single Family Residential development to occur in an area zoned mostly for multi-family and manufactured home development, but it only effects one specific community and would be at the discretion of the landowner within that community. Staff recommends approval of the ordinance amendment.

Agenda Item # 4C

Date 10/8/19

COUNTY OF AUGUSTA
STAFF REPORT
V R ASSOCIATES
Proffer Condition Amendment
October 8, 2019

SUMMARY OF REQUEST: A request to amend and restate proffers on approximately 9.7 acres owned by V R Associates located on the east side of Lee Highway, (Rt. 11) and approximately 0.2 of a mile north of the intersection with Lee Highway (Rt. 11) and Weyers Cave Road (Rt. 256) in Weyers Cave in the North River District. The applicant is amending proffer # 3 to state: Prior to the issuance of a building permit for the 101st residential unit on the multifamily portions shown on the rezoning exhibit accessing Route 11 through the property Dharti Street will be constructed through the property extending to the boundary line with parcel 19-116.

> *After some discussions with staff and the landowner's representative for the rezoning, and after the advertisement for the newspaper ran, the landowner's representative offered the following change to the proposed amendment of proffer # 3 which reads as follows: Prior to issuance of a building permit for the 101st residential unit, Dharti Street will be constructed through the property extending to the boundary line with parcel 19-116. Upon the first building Certificate of Occupancy within the business zoned portion of this property, an access easement shall be recorded for the public or private street connection.*

The applicant restates (not amends) existing Proffer #1, #2, and #4 as detailed below.

EXISTING PROFFERS:

1. If at the time of development 19-147A is zoned General Agriculture, a buffer consisting of a ten foot wide strip of land with a six foot opaque, vinyl privacy fence will be constructed along the adjacent property line of the business portion of the property.

2. The intersection of Route 11 and the proposed connector street as shown on the rezoning exhibit prepared by Hamrick Engineering has been designed to accommodate up to 250 vehicles per day at the peak hour. Once that capacity has been reached based on the ITE traffic generation rates, additional transportation improvements may be needed. Therefore, once the capacity has been reached and prior to the approval of any building permit for any building accessing Route 11 through this property, the developer shall submit to Augusta County and VDOT, for review and approval, additional traffic analysis, projecting the additional vehicle trips to

be generated by any development on the business property and taking into consideration any remaining undeveloped portions accessing Route 11 through this property. In addition, prior to the issuance of said building permits the Applicant or his successors or assigns shall construct or bond any and all road improvements, as required by the findings of the additional traffic analysis.

3. Prior to the issuance of a building permit for the 101st residential unit on the multi-family portion A shown on the rezoning exhibit accessing Route 11 through the property or any development on the business property, Dharti Street will be constructed through the property extending to the boundary line with parcel 19-116.

4. As part of site plan approval for any development on the property sufficient right-of-way and access to a public street will be provided and constructed to parcel 19-147A.

PROPOSED PROFFERS: Restate (as currently approved) proffers #1, #2, and # 4. Propose the following amendment for Proffer #3.

Proffer #3: Prior to the issuance of a building permit for the 101st residential unit on the multi-family portions A shown on the rezoning exhibit accessing Route 11 through the property ~~or any development on the business property,~~ Dharti Street will be constructed through the property extending to the boundary line with parcel 19-116.

Additional version of Proffer #3: Prior to issuance of a building permit for the 101st residential unit ~~on the multi-family portion A shown on the rezoning exhibit accessing Route 11 through the property or any development on the business property~~, Dharti Street will be constructed through the property extending to the boundary line with parcel 19-116. Upon the first building Certificate of Occupancy within the business zoned portion of this property, an access easement shall be recorded for the public or private street connection.

VICINITY ZONING: General Agriculture to the north, Multi-Family to the east, General Business & General Agriculture to the south and General Agriculture to the west.

PREVIOUS ZONING: Multi-Family (2011), General Business (2011)

COMPREHENSIVE PLAN PLANNING POLICY AREA/FUTURE LAND USE DESIGNATION: Urban Service Area/Mixed Use

SOILS: Not applicable.

SCHOOL BOARD STAFF COMMENTS: No comment.

COMMENTS FROM ENGINEER: Incorporated into Community Development Staff recommendation.

COMMENTS FROM ZONING ADMINISTRATOR: No comment.

COMMENTS FROM ACSA: No comment.

COMMENTS FROM HEALTH DEPARTMENT: No comment.

COMMENTS FROM FIRE-RESCUE: No comment.

TRAFFIC:

Rt. 11 Lee Hwy

-AADT: 5,600 (2018)
-Speed Limit: 55 mph N.; 45 mph S.
-K-Factor: 0.102, Dir. Factor: 0.653
-Functional Classification: Minor Arterial

Rt. 2035 Valley College Cir./Landings Dr

-AADT: Not Counted
-Speed Limit: Unposted
-Functional Class.: Local

COMMENTS FROM VDOT: The original plan that included the proffer to construct Dharti Street intended to provide an Interparcel roadway through and adjacent to multiple parcels that would otherwise have only direct access to Rt. 11. Current access management regulations require Interparcel movements such as this when developing adjacent to Collector and Arterial roadways. The proposed proffer amendment would allow for commercial development on Parcel 19D-1-6 without constructing the Interparcel connector.

The Interparcel movement between the mixed uses of commercial and residential is essential in keeping with the intent of access management regulations. VDOT does not recommend approval of the proffer amendment as presented.

COMMUNITY DEVELOPMENT STAFF RECOMMENDATION: The amended proffer eliminates development on the business zoned portion of the property as one of the triggers requiring construction of the road connection through the property. The amendment states that the road construction will be required prior to the issuance of the 101st residential unit building permit. The amendment would essentially permit the applicant to construct a maximum of 100 residential units, and business development as permitted by the existing General Business zoning, and not construct the proposed road connection extending through the property to the adjacent tax map parcel, which is also planned for development. In addition,

the proposed amendment does not clarify to what access easement that proffer is referring, making it difficult to interpret.

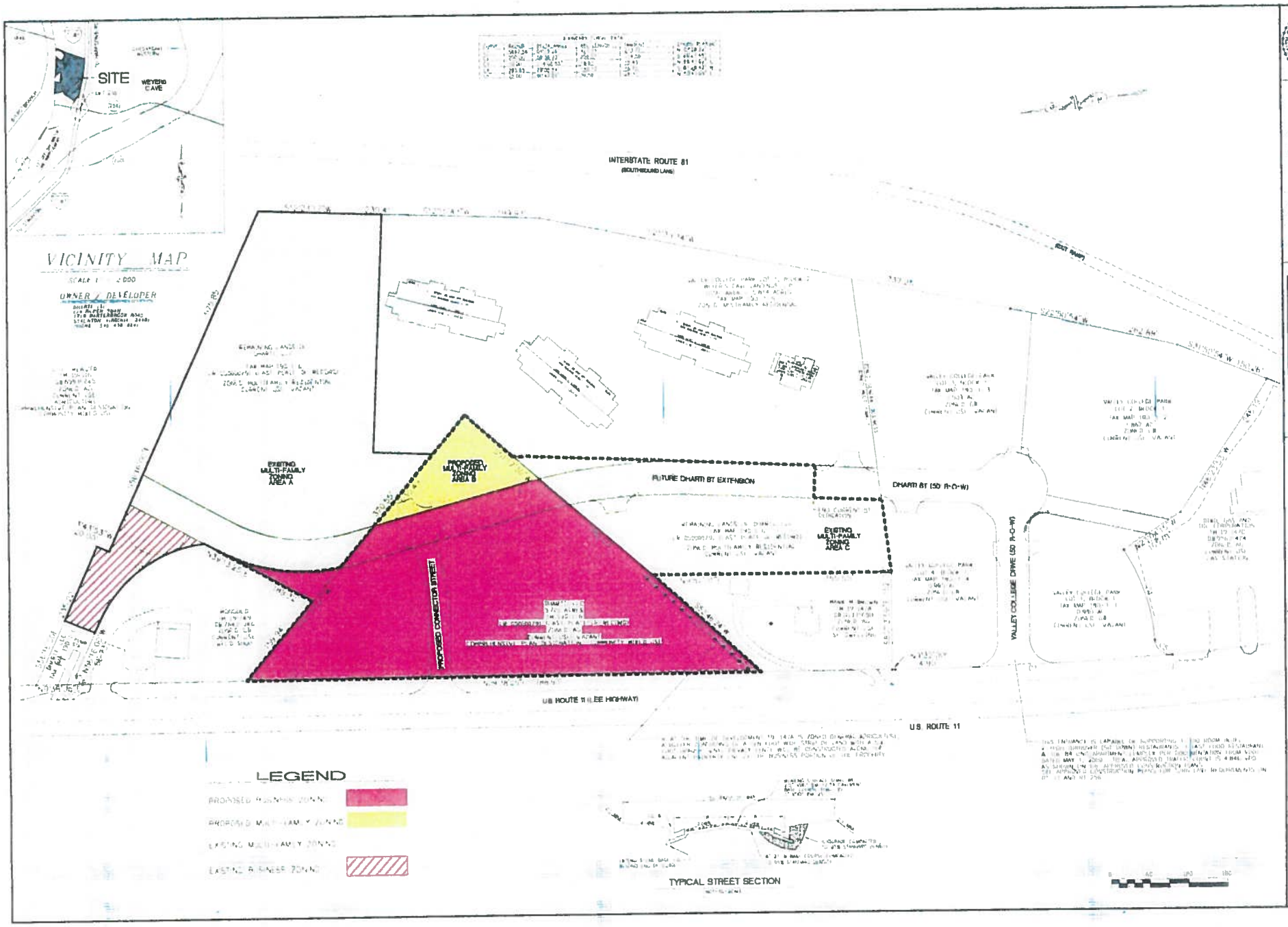
Staff has concerns that the proffers as proposed, will not provide for an appropriate phasing of the connector road. The connector road is important for reducing the number of entrances on Route 11 and provides for interconnectivity so that residents can access business development and other adjacent development without having to enter Route 11. Interparcel connectivity is necessary to meet the safety and roadway efficiency concerns that drive access management guidelines and regulations, especially with mixed use development on Collector or Arterial roadways.

While it appears that the developer intends to shift away from a business only development in the business zoned portion, with the request and approval of a Special Use Permit for 3 floors of apartments above a ground floor business, the SUP does not preclude the landowner from shifting back to a business only development on the business zoned portion. For that reason, staff also feels like the proffers as submitted do not address the above concerns.

We also have concerns with Proffer #2 in light of requested changes to Proffer #3 and the submitted site plan. If the applicant's goal is to no longer build the depicted extension road through the property to TMP 19-116 as a connector road, between US 11 and the former Dharti Street, then Proffer #2 becomes difficult to interpret.

Staff would recommend the proffer consider a phased approach to building the former Dharti Street extension. Staff also feels that the amended proffers need to include a new rezoning exhibit which more accurately reflects the requested proffer condition. At this time, staff does not recommend approval of the proffer amendment as submitted.


GB 5-25-78
6-25-92
019 149
GB 6-25-92
019 148
019 156
GB 1-27-11
(P)
019D 1 6
MF 1-27-11
(P)
MF 9-22-87
LEE HWY
019D 1 5
LANDINGS LN
GA
MF 1-27-11
(P)
019 147A
LANDINGS DR
019 143
019D 1 4
COLLEGE
PARK DR
019D 1 3
I81 S


SITE
WEYERS CAVE
VICINITY MAP
OWNER / DEVELOPER
INTERSTATE ROUTE 81
(SOUTHBOUND LANE)
EXISTING MULTI-FAMILY ZONING AREA A
PROPOSED MULTI-FAMILY ZONING AREA B
FUTURE DHARTI ST EXTENSION
DHARTI ST (50' R-O-W)
EXISTING MULTI-FAMILY ZONING AREA C
PROPOSED CONNECTOR STREET
VALLEY COLLEGE DRIVE (50' R-O-W)
U.S. ROUTE 11 (LEE HIGHWAY)
U.S. ROUTE 11
LEGEND
PROPOSED RESIDENTIAL ZONING
PROPOSED MULTI-FAMILY ZONING
EXISTING MULTI-FAMILY ZONING
EXISTING RESIDENTIAL ZONING
TYPICAL STREET SECTION
HAMRICK ENGINEERING P.C.
REZONING EXHIBIT
VALLEY COLLEGE PARK
NORTH RIVER DR.
AUGUSTA COUNTY, VA