



## Conservation Easement Authority Meeting Agenda

*Community Development Conference Room*

**June 5<sup>th</sup>, 2024**

**5:30 PM – 6:30 PM**

To have your comments read aloud during the “Public Comment” period please either utilize the dedicated email address: [thinkle@shenandoahcountyva.us](mailto:thinkle@shenandoahcountyva.us), or mail in or drop off comments via a physical letter to the County Government Center addressed to the Conservation Easement Authority. Please consider submitting comments by 4:00 pm, June 5<sup>th</sup>, 2024.

### **AGENDA**

1. Welcome and Greetings
2. Approve or Amendment of the June 5<sup>th</sup>, 2024 CEA Meeting Agenda
3. Review of the Draft Minutes from March 27<sup>th</sup>, 2024 CEA Meeting
4. Public Comment
5. Updates:
  - a. Shenandoah Valley Conservation Collaborative: RCPP
  - b. CEA Funding
  - c. CEA PDR 22-02-01 Part 1: Terry & Linda Baker, Bruebeck Lane
  - d. VAULT & CNU Conferences.
6. Discussion:
  - a. CEA-DDR 23-02-01: Donation of Development Rights for a Conservation Easement on Tax Map Parcel 034-A-014, covering a total of 3 acres. The parcel is to be used by the SVBF to develop a park for Toms Brook.
  - b. Preview on strategic planning exercise.
7. Next Meeting Topics:
  - a. Easement updates.
  - b. Shenandoah 2045
8. +/-
9. Other Discussion
10. Adjourn
11. Next Meeting of CEA August 7<sup>th</sup>, 2024 5:30 pm.

MINUTES OF MEETING OF THE SHENANDOAH COUNTY CONSERVATION  
EASEMENT AUTHORITY

March 27<sup>th</sup>, 2024

A regular meeting of the Shenandoah County Conservation Easement Authority was held in the Community Development Conference Room, 600 North Main Street, Woodstock, Virginia on March 27<sup>th</sup>, 2024.

CEA Members present: Chair Dee Hockman, Vice Chair Doug French, Kelly Watkinson, and Planning Commissioner Debbie Keller.

CEA Members absent: Supervisor Josh Stephens and Marla Mooney.

Others Present: Tyler Hinkle County Planner, McKenzie Allen Associate Planner.

Chair Dee Hockman called the CEA meeting to order at 5:42 pm.

1. **Agenda**

Chair Hockman asked if anyone would like to make a motion, Vice Chair French made a motion to approve the agenda as presented. Chair Hockman seconded the motion. All in favor. This motion carried.

2. **Minutes**

Chair Hockman asked if anyone would like to make a motion, Vice Chair French made a motion to approve the minutes as presented. Commissioner Keller seconded the motion. All in favor. This motion carried.

3. **Public Comment**

No comments.

4. **Shenandoah Valley Conservation Collaborative**

Mr. Hinkle refreshed everyone that there is \$4.5 million available for easements in the region and that they are currently working with Kevin Tate on reviewing the potential for Steve Bower's easement.

5. **CEA Funding**

Mr. Hinkle noted that the CEA has \$380,000 to use for conservation purposes across the County and will receive up to an additional \$25,000 for the next fiscal year.

6. **Discussion on CEA PDR 22-02-01**

Mr. Hinkle provided an update on the proposed easement and provided an overview on the draft deed of easement and the signed offer letter. He noted that this would go to the Board of Supervisors for information on April 9<sup>th</sup> with potential action April 23<sup>rd</sup>.

Kelly Watkinson made a motion to approve the purchase of development rights for part 1 of PDR 22-02-01. Vice Chair French seconded the motion. All in favor. This motion carried.

7. **Discussion on potential staff training**

Ms. Allen provided an overview of potential staff training opportunities by joining the Land Trust Alliance for an annual cost of \$300. Members expressed interest in supporting staff training and stated they would like to support such efforts. Commissioner Keller made a motion to use \$300 to pay for membership with the Land Trust Alliance. Chair Hockman seconded the motion. All in favor. This motion carried.

8. **Shenandoah 2045**

Mr. Hinkle noted that a presentation was provided to the Planning Commission on March 7<sup>th</sup> and that all members are welcome to attend the upcoming workshops as they work through edits on the plan.

**Next Meeting:** June 5<sup>th</sup>, 2024. Meeting adjourned at 6:30 PM

**Minutes recorded by Tyler Hinkle**

*Mission statement of the CEAs: "To retain the rural character, ensure agricultural sustainability, and protect historic and natural resources in Shenandoah County by promoting, holding/co-holding and purchasing Voluntary Conservation Easements".*



**CEA Donation Of Development Rights, #23-02-01**  
**Shenandoah Valley Battlefield Foundation, Applicant**  
**Staff Report for the Conservation Easement Authority & the Board of Supervisors**  
**Prepared: January 26<sup>th</sup>, 2023 Amended May 31<sup>st</sup>, 2024**  
**Staff Contact: Tyler Hinkle, County Planner**

*This report is prepared by the Shenandoah County Office of Community Development to provide information to the Planning Commission and the Board of Supervisors to assist them in making a decision on this request.*

Agenda Date: June 5th, 2024

Consent:

Regular: X

Closed Session:

Action: X

Information:

Public Hearing: X

Item Title: CEA #23-02-01, Donation Of Development Rights of real property zoned A-1, consisting of 3 acres, at 3307 South Main St, Toms Brook, VA 22660. Shenandoah Valley Battlefield Foundation, Applicant

**INTRODUCTION:** Shenandoah Valley Battlefield Foundation, has applied for a Donation Of Development Rights of real property zoned A-1, consisting of 3 acres, at 3307 South Main St, Toms Brook, VA 22660.

The applicant noted in their application that their Donation Of Development Rights was for the following purpose: “This conservation easement would ensure protection of a portion of the Toms Brook waterway and core battlefield land of the Toms Brook Battlefield.”

The applicant is requesting for the County to be the sole holder of the easement.

The land was purchased with a Virginia Outdoors Foundation Grant in 2022 and is required to be placed into a permanent conservation easement as terms of the grant.

**LOCATION:** On 3 acres, at 3307 South Main St, Toms Brook, VA 22660.

**TAX MAP ID#, AREA:** 034-A-014

**MAGISTERIAL DISTRICT:** Stonewall

**ELECTORAL DISTRICT:** 5

**PROPERTY ZONING & PRESENT USE:**

Zoned: Agriculture (A-1)

Present Use: Agriculture

**ADJACENT LAND USE & ZONING:**

Direction	Zoning	Land Use
North	Agriculture (A-1)	Agriculture
South	Toms Brook R-SFD 10	Residential and Vacant
East	Agriculture (A-1)	Agriculture
West	Agriculture (A-1)	Agriculture

**IN VICINITY OF:**

**Administrative Aspects**

**Town:** Toms Brook.  
**Town Growth Area:** Yes.  
**Public Service Area:** Yes.

**Settlement Community:** None.  
**Old Valley Pike Overlay:** No.  
**Scenic By-Way:** No.

**Forest Resources**

**Forested Land:** Yes.

**Wildlife Core/Corridor:** No.

**Land Resources**

**Prime Soil:** Yes, Class 1.  
**Virginia Conservation Importance:** Yes.  
**Ag & Forestal District:** No.

**Protected Land:** No.  
**Fault Line:** No.  
**Mineral Resources:** None.

**Topographic Resources**

**Ridgeline Area:** No.  
**Critical Slopes:** Yes.

**Sinkhole:** No.

**Water Resources**

**Floodplain:** Yes.  
**Dam Break Area:** No.  
**100 Ft Stream Buffer:** Yes.  
**Stream:** Yes.

**North Fork:** No.  
**Wetlands:** Yes.  
**Well:** None.  
**Spring:** None.

**Historic Resources**

**Battlefield:** Toms Brook Core Area.  
**Historic Property:** Toms Brook Battlefield.

**Designated Viewshed:** Yes.  
**Archeological Site:** No.

**Technological Resources**

**High Voltage Lines:** No.  
**Electric Poles Or Lines:** No.

**Pipeline:** No.  
**Telecommunication Tower:** No.

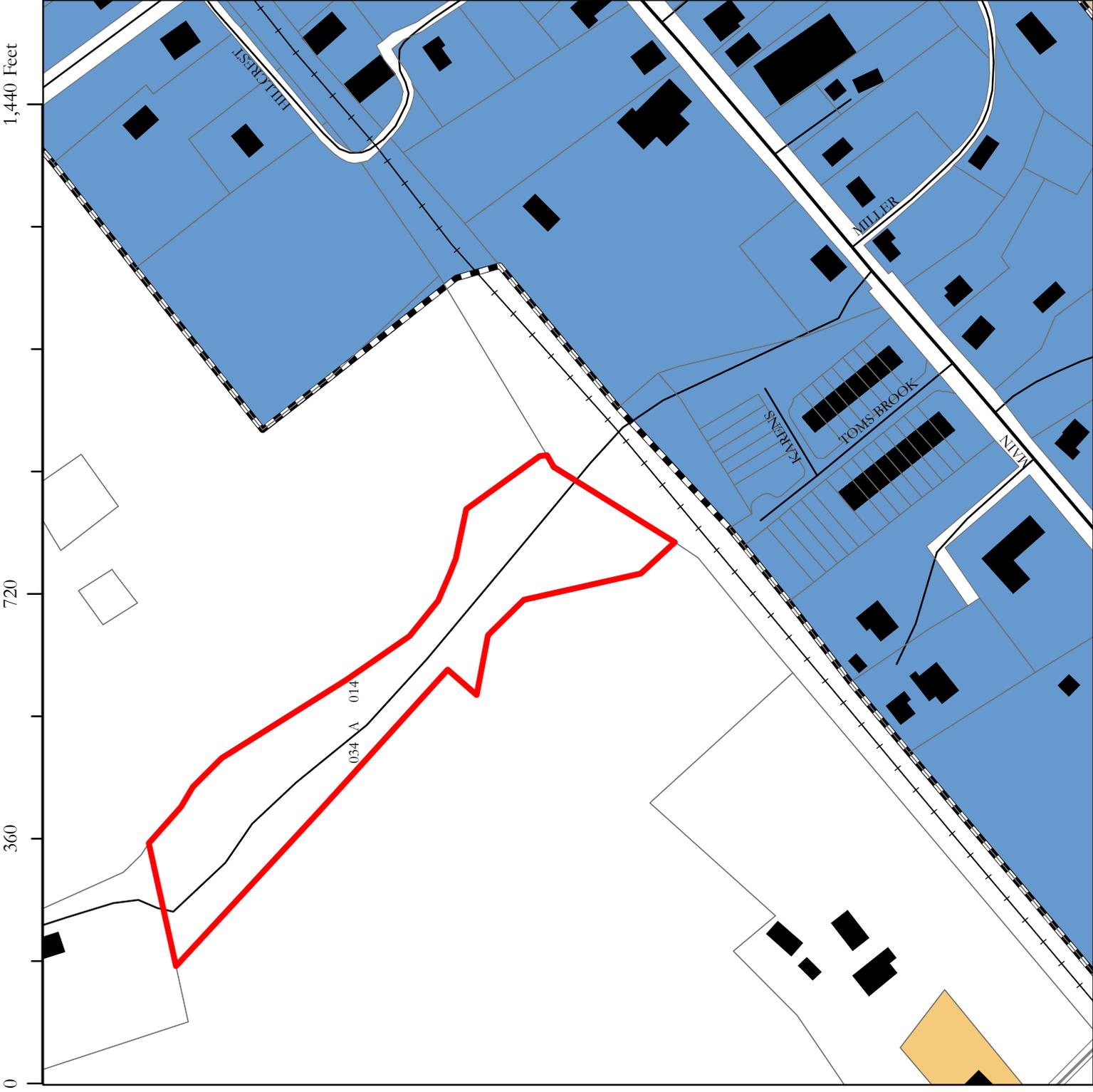
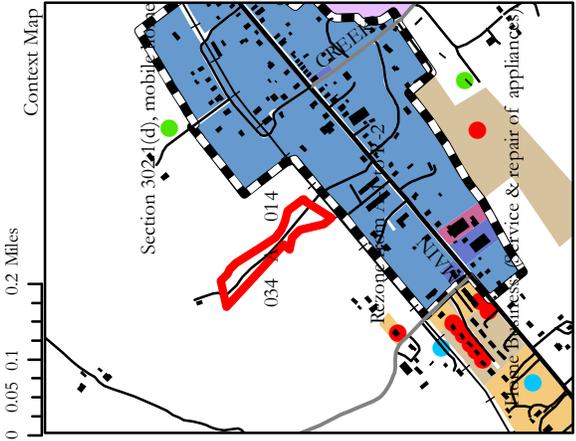
**PAST PLANNING COMMISSION ITEMS:** None.

**VIRGINIA DEPARTMENT OF CONSERVATION AND RECREATION:**

<https://vanhde.org/content/map>

The Conserve Virginia mapping service known as the Virginia Natural Heritage Data Explorer has designated the property of Statewide Conservation Importance for Water Quality Improvement, in addition the site has high suitability for agriculture and has areas of moderate impact to water quality.

# CEA DDR 23-02-01 Zoning



**Legend**

- DDR 23-02-01
- Parcels
- County Boundary
- Town Boundary

**Roads**

- Interstate
- Primary
- Private
- School Access
- Secondary
- State Maintained
- US Route
- Driveway
- Buildings

**Road Type**

- BZA
- REZ
- SUP

**ZONING**

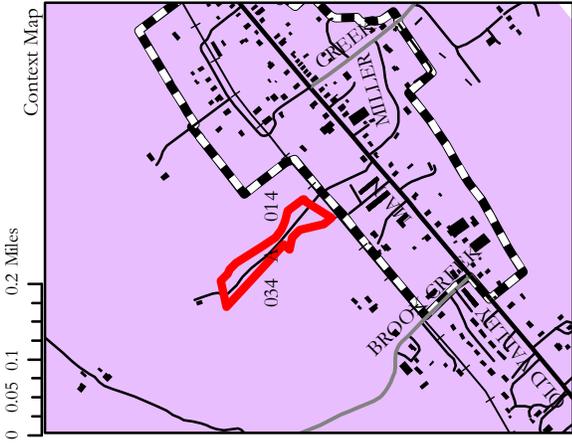
- Railroad

**Zone**

- Shenandoth A-1
- Shenandoth B-1
- Shenandoth B-2
- Shenandoth C-1
- Shenandoth M-1
- Shenandoth M-2
- Shenandoth R-1
- Shenandoth R-2
- Shenandoth R-3
- Shenandoth R-4
- Toms Brook B-1
- Toms Brook B-2
- Toms Brook R-APT
- Toms Brook R-SHD 10

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Office Of Community  
Development

# CEA DDR 23-02-01 Future Land Use Map

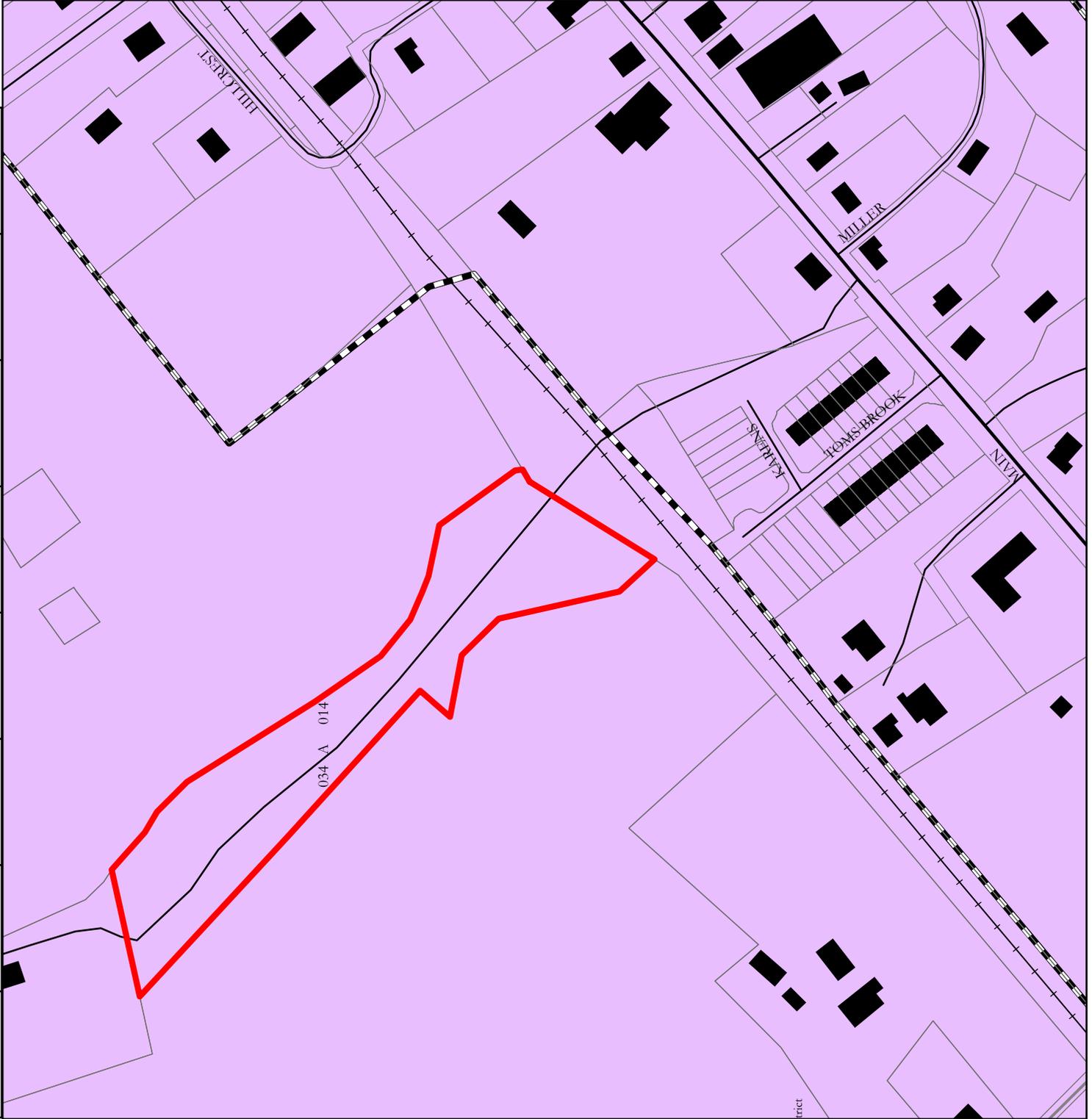
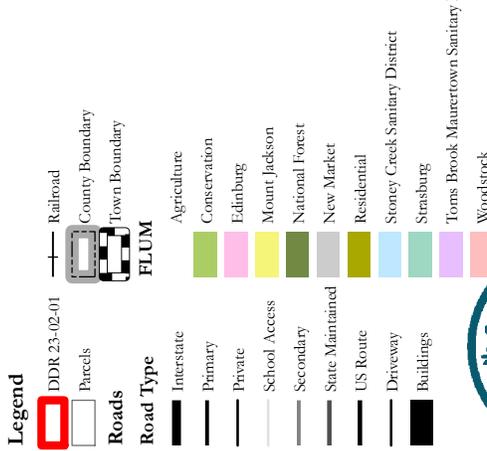


1,440 Feet

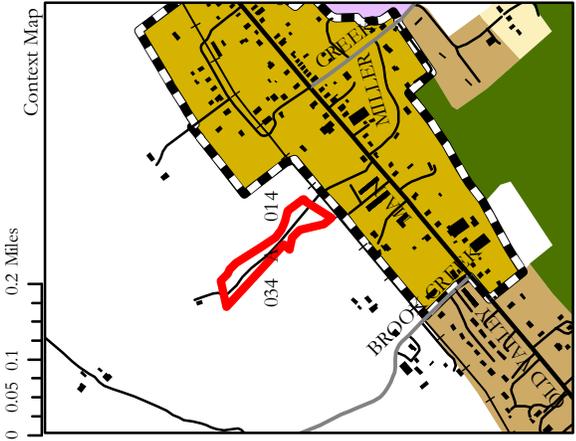
720

360

0



# CEA DDR 23-02-01 General Land Use Map



0 360 720 1,440 Feet



**Legend**

- DDR 23-02-01
- Parcels
- Railroad
- County Boundary
- Town Boundary

**Roads**

- Interstate
- Primary
- Private
- School Access
- Secondary
- State Maintained
- US Route
- Driveway
- Buildings

**GLUM**

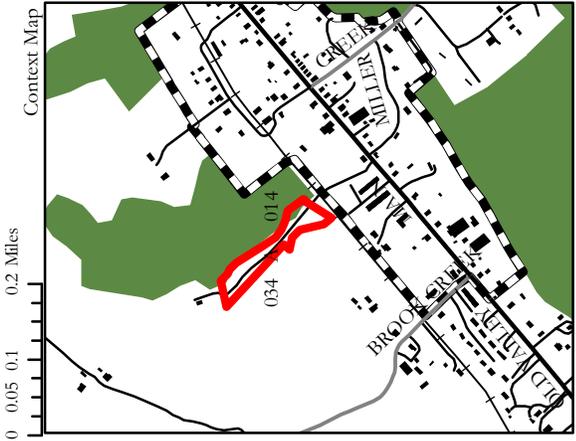
**Landuse**

- Commercial
- Farm
- Industrial
- National Forest
- Public/Government-Owned
- Residential
- Town
- Woodland

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# CEA DDR 23-02-01 Forest Resources

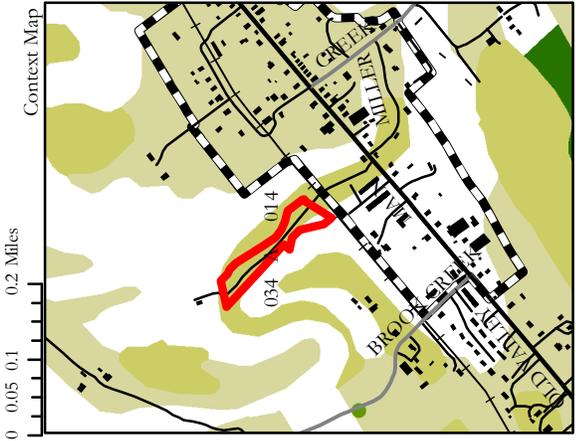


**Legend**

- DDR 23-02-01
- Parcels
- Roads**
  - Railroad
  - County Boundary
  - Town Boundary
  - Forest Trails
- Road Type**
  - Interstate
  - Primary
  - Private
  - School Access
  - Secondary
  - State Maintained
  - US Route
  - Driveway
  - Buildings
- Forest Type**
  - National Forest
  - State Forest
  - Wildlife Habitat Cores
  - Wildlife Habitat Core Edges
  - Wildlife Corridor
  - Wildlife Corridor Edge
  - Forested Land

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# CEA DDR 23-02-01 Land Resources



**Legend**

- DDR 23-02-01
- Parcels
- Roads
  - Interstate
  - Primary
  - Private
  - School Access
  - Secondary
  - State Maintained
  - US Route
  - Driveway
  - Buildings
- Railroad
- County Boundary
- Town Boundary
- Mineral Resources**
  - Bulk Mineable Resources
  - Carbonate Resources
  - Clay and Shale
  - Energy Resources
  - Industrial Minerals
  - Metallic Resources
- Prime Soil Class**
  - 1
  - 2
  - 3
  - Conservation Easements
  - AFD
  - Parks



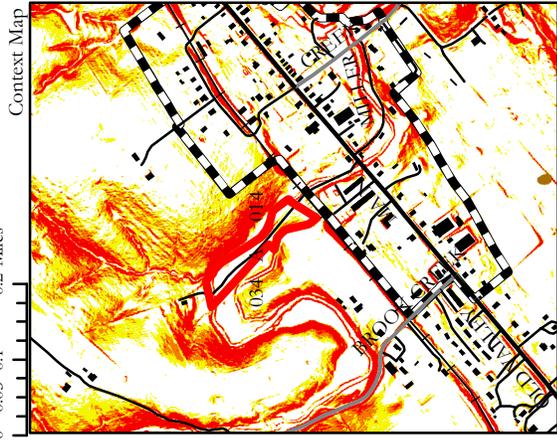
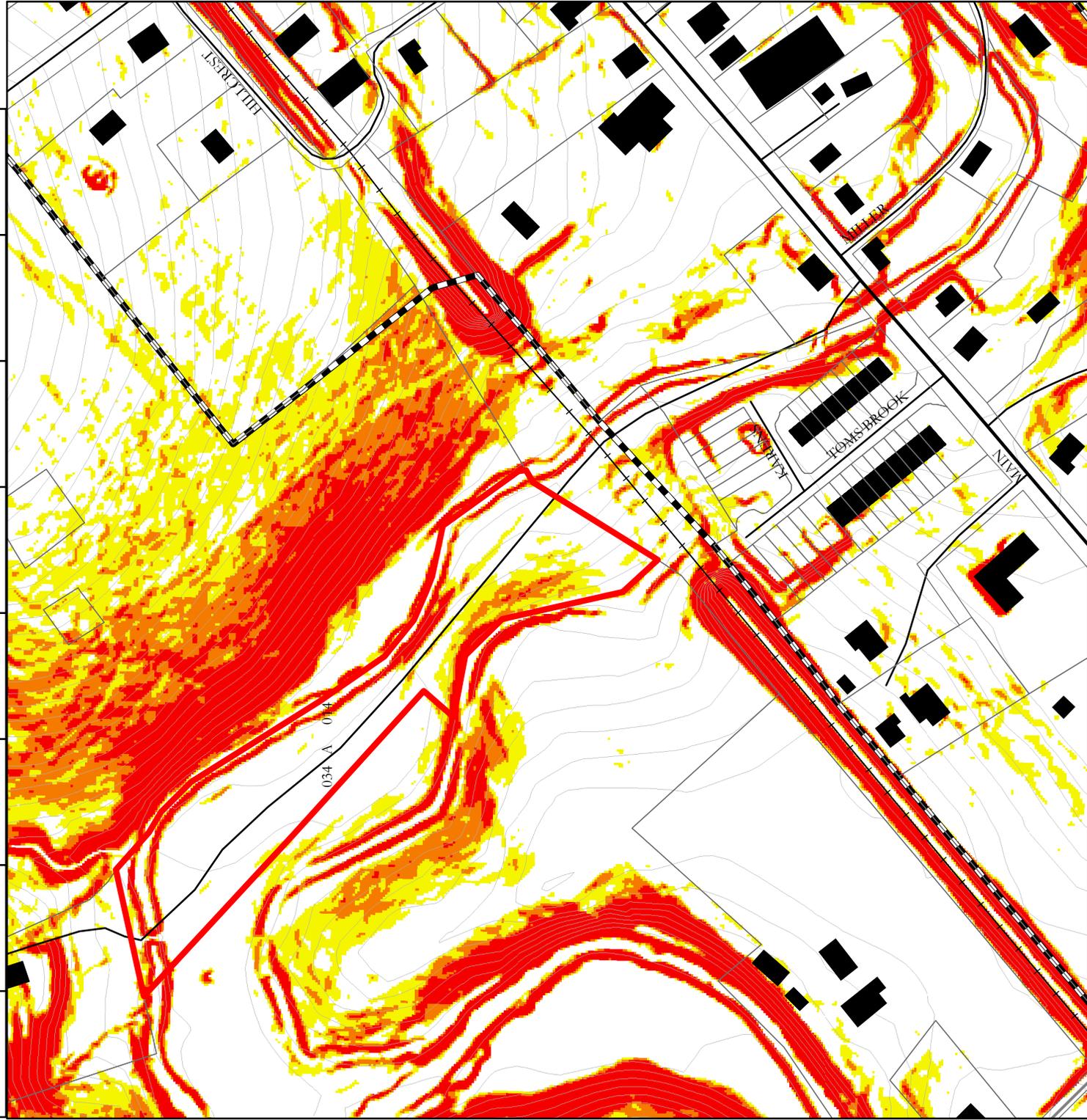
# CEA DDR 23-02-01 Topo Resources

1,440 Feet

720

360

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## Legend

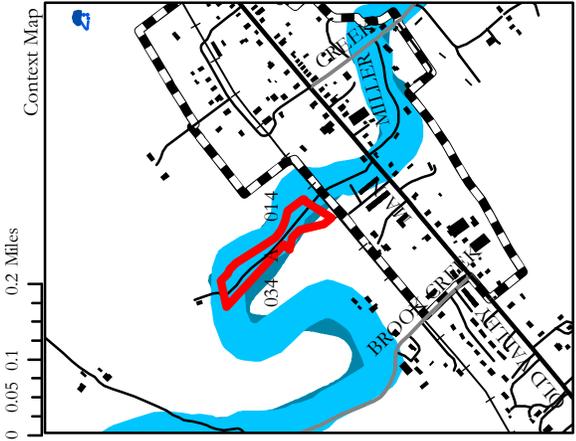
- DDR 23-02-01
- Parcels
- Railroad
- County Boundary
- Town Boundary
- Contours
- Sinkholes
- Roads**
- Interstate
- Primary
- Private
- School Access
- Secondary
- State Maintained
- US Route
- Driveway
- Buildings
- Road Type**
- 15-20%
- 20-25%
- 25%+
- Critical Slopes**
- 15-20%
- 20-25%
- 25%+



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# CEA DDR 23-02-01 Water Resources



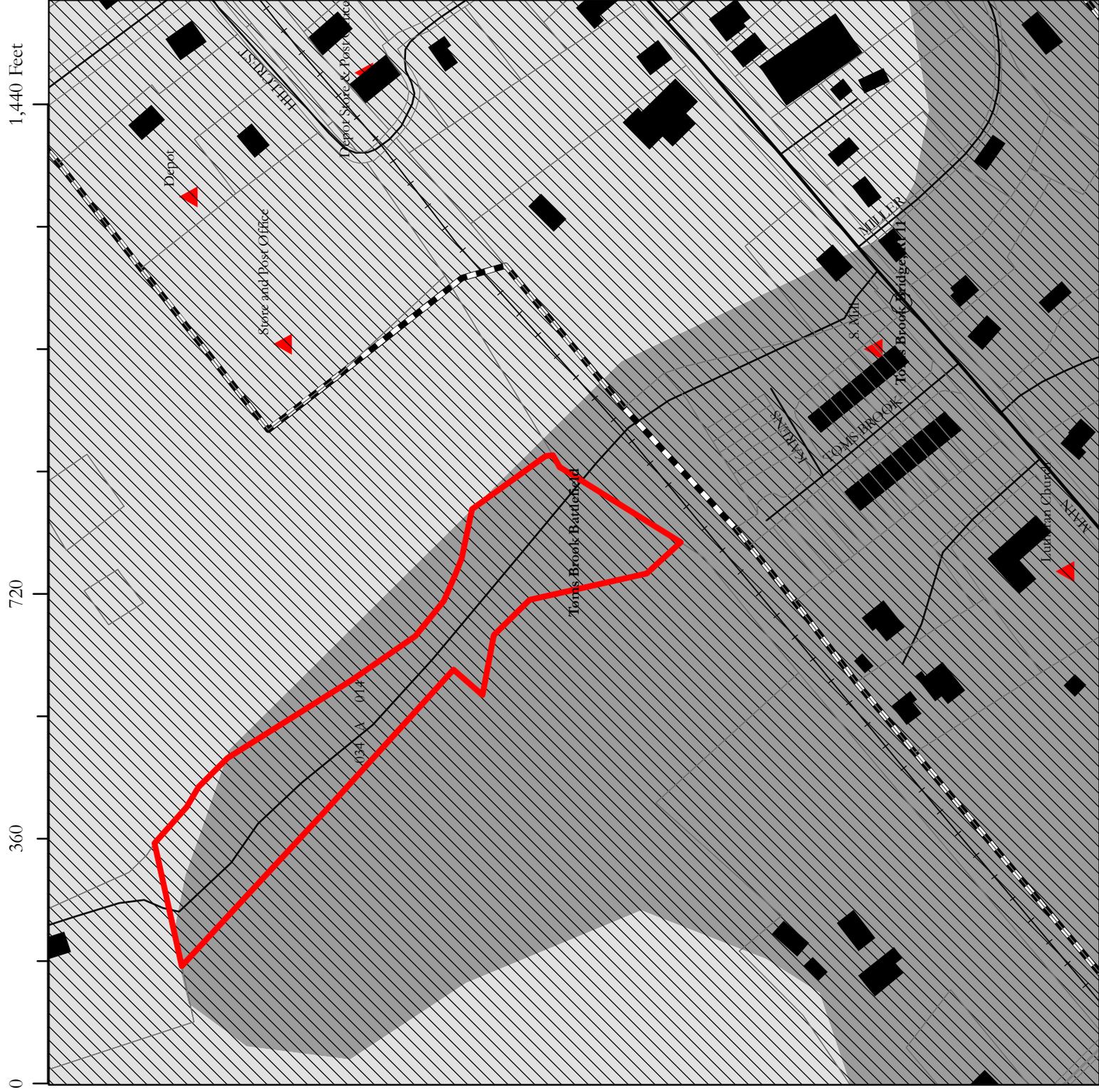
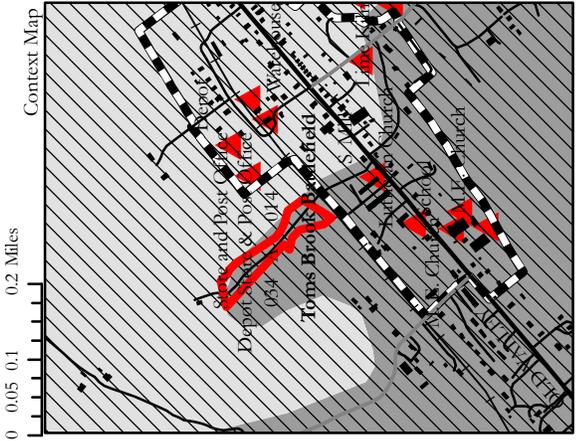
**Legend**

- DDR 23-02-01
- Parcels
- Roads
  - Interstate
  - Primary
  - Private
  - School Access
  - Secondary
  - State Maintained
  - US Route
  - Driveway
  - Buildings
- Railroad
- County Boundary
- Town Boundary
- Water Wells
- Thermal Springs
- Wetlands
- Streams
- Stream Buffers
- Floodplain
  - 1% Annual Chance - A
  - 1% Annual Chance - AE
  - 0.2% Annual Chance
  - Lake Laura Dam Break Area
  - Bird Haven Dam Break Area

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# CEA DDR 23-02-01 Historic Resources

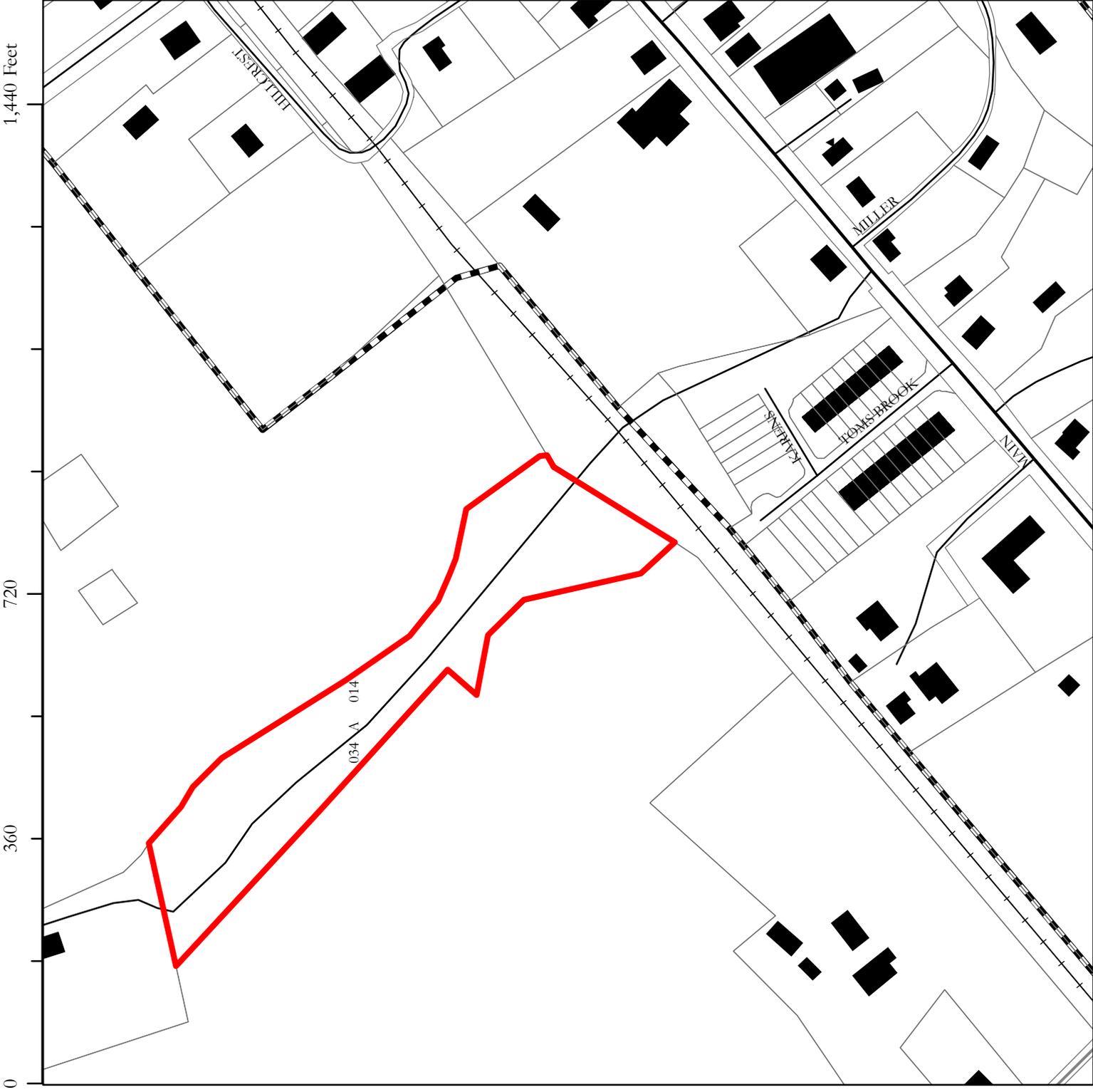
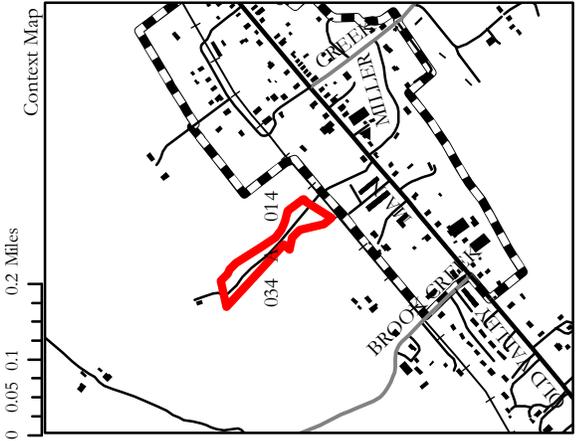


- Legend**
- DDR 23-02-01
  - Parcels
  - Roads**
  - Road Type**
  - Interstate
  - Primary
  - Private
  - School Access
  - Secondary
  - State Maintained
  - US Route
  - Driveway
  - Buildings
  - Railroad
  - County Boundary
  - Town Boundary
  - Former Roadways
  - Historic Locations
  - Archaeological Sites
  - Places Of Importance
  - Battlefield**
  - Core
  - Study

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# CEA DDR 23-02-01 Tech Resources



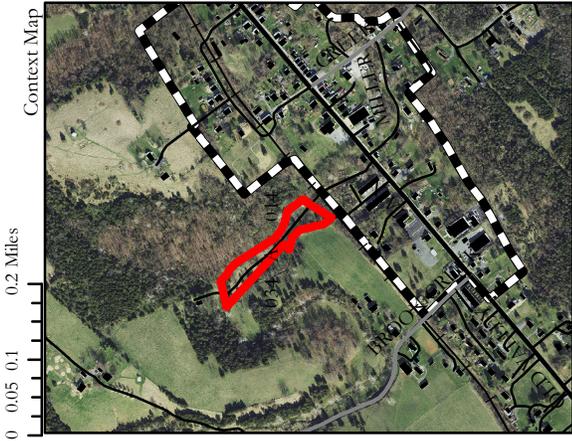
- Legend**
- DDR 23-02-01
  - Parcels
  - Railroad
  - County Boundary
  - Town Boundary
  - Telecommunication Towers
  - High Voltage Transmission Line
  - High Voltage Link
  - SVEEC Poles
  - SVEEC Overhead
  - SVEEC Underground
  - Pipeline
  - Interstate
  - Primary
  - Private
  - School Access
  - Secondary
  - State Maintained
  - US Route
  - Driveway
  - Buildings

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# CEA DDR 23-02-01

## Aerial



1,440 Feet

720

360

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- Legend**
- DDR 23-02-01
  - Parcels
  - Railroad
  - County Boundary
  - Town Boundary
- Roads**
- Interstate
  - Primary
  - Private
  - School Access
  - Secondary
  - State Maintained
  - US Route
  - Driveway
  - Buildings
- Road Type**
- Red: Band\_1
  - Green: Band\_2
  - Blue: Band\_3

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# 1128 - Bowman Property (Tom's Brook)

## Application Details

**Funding Opportunity:** 1001-Preservation Trust Fund (PTF) - FY23 - Fall Round  
**Funding Opportunity Due Date:** Aug 22, 2022 5:00 PM  
**Program Area:** Preservation Trust Fund  
**Status:** Submitted  
**Stage:** Final Application

**Initial Submit Date:** Aug 22, 2022 4:36 PM  
**Initially Submitted By:** Jack Owens  
**Last Submit Date:**  
**Last Submitted By:**

## Contact Information

### Primary Contact Information

**Name\*:** Mr. Jack Paul Owens  
Salutation First Name Middle Name Last Name

**Title:** Resource Management Associate

**Email\*:** [jowens@svbf.net](mailto:jowens@svbf.net)

**Address\*:** 9386 S Congress St.

New Market Virginia 22844  
City State/Province Postal Code/Zip

**Phone\*:** 540-740-4545 Ext.  
Phone  
### ### #####

**Fax:** ### ### #####

### Organization Information

**Organization Name\*:** Shenandoah Valley Battlefields Foundation

**Organization Type\*:** Non-Profit Organization

**Tax Id:** 54-2007460

**Organization Website:** <https://www.shenandoahatwar.org/>

**Address\*:** PO Box 897

New Market Virginia 22844-  
City State/Province Postal Code/Zip

**Phone\*:** 540-740-4545 Ext.  
### ### #####  
**Fax:** ### ### #####

## PTF Application

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### **Project Information**

The project title will be used in public relations and grant documents should funding be awarded.

**Is the project title the same as the application title?\*** Yes

**Type of Applicant\*:** Non-Profit Organization

Would you like to be considered for any other VOF grant program if eligible?

**Other VOF Grant Program\*:** Yes

### **Land Protection Plan**

Projects may consist of land acquisition, easement acquisition, and/or components critical for public use of the land such as infrastructure and the associated necessary engineering, design, and planning. Land protection is a required deliverable for all projects.

**Select the real estate structure that best describes the project\*:**

#### **Describe briefly here**

Additional information may be provided later in the application.

:

### **Land Protection Partner**

A real estate interest must be conveyed to VOF or a locality to be eligible for PTF funding. Some examples of how this requirement could be met are through ownership, an easement, a dedication to Open-Space, a right of way, or a lease.

#### **Land Protection Partner**

This will be the partner which takes ownership of the property, holds the easement, deed restrictions or other method of land protection.

:

**Please name specific land protection partner:**

If requesting VOF as holder of real-estate interest, please contact VOF at [grants@vof.org](mailto:grants@vof.org) before submitting the application. VOF will review request and determine if they are best partner.

**Is documentation of land protection partner/method included with this application?**

Proposals with a confirmed land protection partner are more competitive.

\*:

Please upload documentation showing there is a willing, eligible, land protection partner should funding be awarded.

### **Partner Documentation Letter:**

### **Project Location**

(latitude/longitude required\*, other location info such as street address or tax parcel ID optional)

\*See [Google Maps Guide](#) for directions on using Google Maps or contact [grants@vof.org](mailto:grants@vof.org) to ask for help getting latitude/longitude coordinates.

**Project Location\*:** 38.94679 -78.44305  
Latitude (00.00000) Longitude (-00.00000)

Please provide any additional information to help locate the project site.

**Other Location Information (such as street address or tax parcel ID):** 3307 S Main St, Toms Brook, VA 22660  
Other Location Info

The number of acres indicated below will be required to be protected in perpetuity should the proposal be awarded funding.

**Total Acres to Be Protected\*:** 3.00

A GIS boundary for the property is requested if available.

**GIS Boundary of Property/  
Project Area Available?** No

**(shapefile/geodatabase/KML/KMZ)\*:**

Provide a brief summary of this project in the space below.

**Brief Summary\*:**

This project is for the preservation of the 3-acre Bowman property located near the Town of Toms Brook in Shenandoah County, VA. If awarded the grant would assist the Shenandoah Valley Battlefields Foundation in a fee simple purchase of the property. Once purchased the Battlefields Foundation along with partners will work to clean up the stream and landscape, establish trails to connect to other preserved lands nearby, and encourage public use of the property.

**Project Description**

Describe the property, including the existing conditions (size and composition of property, natural resource values, recreational, scenic, and cultural resources, and/or significant landscape features).

**Project Description\*:**

The Bowman property is a 3-acre parcel in Toms Brook, Shenandoah County. The property has the waterbody of Tom's Brook running through it for approximately 520 feet from the northwest to the southeast. There are also possible remains of a mill race trace on the property. The property has an undeveloped farm to the west and an undeveloped wood lot to the east. There is an inactive train trestle that acts as the property's southern border.

Describe the planned method of land protection for this project (i.e., how the PTF requirement for a conveyance of real estate interest to VOF or a locality will be met)

**Land Protection\*:**

If awarded the Shenandoah Valley Battlefields Foundation will purchase the Bowman property and work with the Virginia Outdoors Foundation (VOF) to hold an open-space easement on the property.

List the proposed goals and objectives of the project.

**Goals and Objectives\*:**

There are many goals and objectives for the Bowman Project. The first is for the Battlefields Foundation to purchase and preserve the property. Another goal would be to clean and remove any invasive plant species on the property, which would also include cleaning the waterbody of Tom's Brook as the section that runs through Bowman property is in need of erosion prevention and management. We also plan to create a trail for public access and install interpretive signage to discuss the properties Civil War and local history as well as the importance of Tom's Brook.

Is this project part of a larger movement (e.g. Have other projects of a similar nature happened near this one? Is this one of many that are ongoing in this area?)

**Part of a Larger Movement\*:**

The purchase of the Bowman property would add to the 820 acres preserved already by the Shenandoah Valley Battlefields Foundation and partners at the Tom's Brook Battlefield. If awarded, the funds would assist in the first and only piece of preserved land of the Battle of Tom's Brook that lies between Interstate 81 and U.S. Route 11. The purchase of the Bowman property would allow for a connection for the Tom's Brook Battlefield that has been cut in half by development and roads by walking trails.

How will this area be managed in the future?

**Future Management\*:**

This site will be managed in the future by the Shenandoah Valley Battlefields Foundation as well as assistance from partners such as the Town of Toms Brook and the Friends of the North Fork of the Shenandoah.

**Plan and Policy Alignment**

**Local Comprehensive Plan or Master Plan\*:** Yes

**Date of Plan:** 08/01/2013

**Page #:** 20-21

Cut and paste the relevant plan excerpt below or provide the URL if you have one:

**Relevant Plan Excerpt:**

[http://www.tomsbrookva.net/assets/Toms\\_Brook\\_Comprehensive\\_Plan.pdf](http://www.tomsbrookva.net/assets/Toms_Brook_Comprehensive_Plan.pdf)

**Regional Plan\*:** Yes

**Name of Regional Plan:** Shenandoah County Comprehensive Plan

**Date of Plan:** 06/28/2005

**Page #:** 9-2 or 173

Cut and paste the relevant plan excerpt below or provide the URL if you have one:

**Relevant Plan Excerpt:**

<https://shenandoahcountyva.us/planning/wp-content/uploads/sites/35/2019/08/2025-Comprehensive-Plan-Updated-2019.pdf>

**Virginia Outdoors Plan\*:** Yes

**Year of Plan:** 2018

**Page #:** 12.2-12.3 or 71-72

Cut and paste the relevant plan excerpt below or provide the URL if you have one:

**Relevant Plan Excerpt:**

<https://www.dcr.virginia.gov/recreational-planning/document/vopall2018.pdf>

Does this project meet stated economic goals of VEDP or another state agency? Examples include land focused economic development (Ag & Forestry Industries, brownfields redevelopment)

**VEDP or Another State Agency Plan\*:** No

Does project contribute to coastal resilience?

**Coastal Resilience\*:** No

Does project meet any other state defined policy goals? (Public Drinking Water, Carbon Sequestration, Nutrient Mitigation, Impaired Streams, etc.?)

**Other State Defined Policy Goals\*:** No

Use the space below to briefly describe any other plans that support this project, including relevant excerpts:

**Other Plans:**

Does this property have undocumented historic or cultural resources?

**Historic or Cultural Resources\*:** Yes

Please describe them and their significance below.

**Please Describe:**

A trace of a mill race shows signs of possible mill activity. The Town of Toms Brook thrived economically and grew in the mid to late 1800s because of milling in the Town and along the Brook.

**Project Purpose**

Select the purpose that best fits the objectives of the project.

If you are uncertain which best summarizes your project, please contact grants staff ([grants@vof.org](mailto:grants@vof.org)).

**Purpose\*:** Provide public access

Please select which category best describes the project.

**Category:** Historic

## Public Access Characteristics

**Calendar\*:** The project site will be open to the public daily (excluding nights/holidays).  
Please choose one.

**Additional Information:**

**Area\*:** 100% of the project site will be open to the public.  
Please choose one.

**Additional Information:**

**Accessibility\*:** The project site is accessible by foot, bike, scooter, etc. (connected to sidewalk or an existing public park).  
Select all that apply.

**Additional Information:**

## Community Description

Describe the community being served by this project.

Describe the importance of this project to the community and address how this project will better serve the community.

**Community Description\*:**

This project will assist the local community by creating an open space for individuals to use for recreation and outdoor education. The purchase of the Bowman property would not only allow for the 3 acres to be open for the public but would be a point of connection to other preserved areas within walking distance of the Bowman property.

Describe how the community has been involved in the development of this proposal and/or will be involved in the implementation of this project. Describe how community support is shown for this project.

**Community Involvement\*:**

The Toms Brook and Shenandoah Valley community has been involved with the Bowman project by calling and writing in support of this effort. The Town of Toms Brook and Friends of the North Fork of the Shenandoah River as well as the Northern Shenandoah Valley Regional Commission has been involved in the possibility of the preservation of the Bowman property, giving advice and voicing the importance and support during the application and property negotiation process. As well as discussing and planning for the future of the site.

How does this project address a specific need in the community or provide a unique service to the community?

**Community Need/Service\*:**

The preservation of the Bowman property would allow for the addressing of the erosion management and prevention of Tom's Brook that has been identified by the Town and other environmental organizations. Also, this would automatically create a 3-acre open space area for the community of Toms Brook, such one does not yet exist for that locality.

If yes, please describe what type of public access might be considered below.

**Please Describe\*:**

**Is the property an active, working farm?\***

**Describe Activity\*:**

Does the property have, or has the owner begun the process of obtaining, a farm management plan that specifies Best Management Practices (BMPs) that will be implemented in the daily operation of the farm?

**Farm Management Plan\*:**

Please list the type of farm management plans that will be followed (examples include conservation plan, nutrient management plan, resource management plan, etc.).

**Type of Plans\*:**

Have Best Management Practices (BMPs) been implemented on the farm?

**BMPs Implemented\*:**

Describe what practices are being utilized on the farm.

**Describe Practices\*:**

**Is the property in active timber production?**

\*:

**Describe Activity\*:**

Does the property have, or has the owner begun the process of obtaining a written forest stewardship management plan?

**Forest Stewardship Management Plan\*:**

Has the property been recognized by any programs or received any special designations? (Examples include clean water farm award, grand basin winner)

**Property Recognized\*:**

**Please List\*:**

Has the property been recognized as a Virginia Century or Bicentennial Farm?

**Virginia Century or Bicentennial Farm\*:**

**Additional Information:**

Has the property been recognized as a Virginia Century Forest?

**Virginia Century Forest\*:**

**Additional Information:**

**Partnerships**

Partners	Type of Support/Involvement
Town of Toms Brook	Involved with future site management and accessibility planning.
Friends of the North Fork of the Shenandoah River	Environmental consulting.

### Funding

While the budget section of this application must be completed, which includes documentation of any matching funds, please use the space below to describe any details about the budget or funding that could not be captured in a chart format.

#### How Will Funds be Budgeted\*:

The total \$28,000 requested would be used in its entirety to purchase the property from the current landowners as that is the agreed-upon purchase price. All due diligence costs will be covered by the Battlefields Foundation which may include but are not limited to; surveys, appraisals, and closing costs.

Explain if the grant funding is a key component to getting the project started or completed.

#### Grant Funding\*:

The grant funding is a key component to getting the project completed as the funds used will allow the Shenandoah Valley Battlefields Foundation to purchase the property.

Address how reduced funding would impact the scope of the project. Please address viability and scope at 75% and 50% of the requested funding.

#### Reduced Funding\*:

If the requested funding was reduced, the impacts on the project would be significant as it could possibly extend the timeline of the project and require the Battlefields Foundation to source additional funds from fundraising and private donations, as in this application we are asking for the exact amount required to purchase the property.

#### Additional Information

Is there additional information to be shared about this project?\*: No

## Estimated Timeline/Plan of Work

### Estimated Timeline/Plan of Work

Start Date	Completion Date	Activity	Status	Responsible Party
03/18/2022	11/11/2022	Collect and send copies of title work and any easements to VOF.	Underway	Jack Owens and Lisa Hawkins
06/03/2022	06/03/2022	Property purchase price agreement.	Completed	Jack Owens and Scot Bowman
10/11/2022	11/11/2022	Perform and obtain boundary survey.	Not yet started	Jack Owens
10/11/2022	11/11/2022	Create and send copy of draft deed to VOF for approval. for	Not yet started	Jack Owens and Keven Walker
10/11/2022	11/11/2022	Phase I Environmental Site Assessment	Not yet started	Jack Owens and WECl

## Budget

### Budget

Item	Expense Estimated or Actual Cost?
Purchase of Bowman property	\$28,000.00 Actual
	\$28,000.00

### Other Fund Sources

Match Source	If other, please list	If Grant Program, please list Grant Funding Source Name	Funding Status	If requested, please list the anticipated award date	Match Type	If other, please list	Planned Use	Match Amount
No Data for Table								

### Budget Summary

Total Requested Amount:	\$28,000.00
Total Match Amount:	\$0.00
Total Project Cost:	\$28,000.00

Match Percentage:

0.00%

## Supplemental Material

### Required Supplemental Material

Named Attachment	Required	Description	File Name	Type	Size	Upload Date
Aerial photograph with property boundary shown	✓					
Locality tax map with parcel highlighted	✓					
Photographs showcasing the property, community, or project	✓					

### Optional Supplemental Material

Description	File Name	Type	Size	Upload Date
Civil War Trust Map of the Battle of Tom's Brook showing the Bowman property in yellow and the Civil War fighting that took place through and around the property.	<a href="#">Battle of Toms Brook Map with Bowman.png</a>	png	1 MB	08/21/2022 09:35 PM
Letter of support by local citizen Susie Wilburn.	<a href="#">Susie Wilburn Letter of Support.docx</a>	docx	12 KB	08/21/2022 09:21 PM
Letter of support from the Town of Toms Brook.	<a href="#">Town of Toms Brook Letter of Support.PDF</a>	PDF	137 KB	08/21/2022 09:24 PM
Map showing the 3-acre Bowman property highlighted in blue with the Town of Toms Brook also identified.	<a href="#">Bowman Map.png</a>	png	997 KB	08/21/2022 09:41 PM
The Bowman property is highlighted in blue on a United States Topographic Map.	<a href="#">Bowman USA Topo Map.png</a>	png	1 MB	08/21/2022 09:37 PM
The Bowman property is highlighted in blue, the map also includes another property that is in the process of being preserved in red, and a pink line represents a trail that will connect the two properties.	<a href="#">Bowman Map with trail.png</a>	png	1 MB	08/21/2022 09:39 PM

Town of Toms Brook  
PO Box 90  
Toms Brook, VA 22660  
540-436-8000/fax 540-436-8743  
<http://tomsbrookva.net/>  
[mayor@tomsbrookva.net](mailto:mayor@tomsbrookva.net)



Virginia Outdoor Foundation

**REFERENCE:** Purchase of Bowman Property by Battlefield Foundation

It has come to the attention of the town of Toms Brook, a location that has great significance in the history of the United States, that the Battlefield Foundation aims to purchase several acres just west of the town, but property connected to the town by an ill-kept lane. The town of Toms Brook supports the purchase of this property for several reasons explained below.

The first reason the town supports this purchase is that the proposed Battlefield's conservation easement of the property protects the environmental areas around the town as the Bowman property lies adjacent to the Toms Brook creek. At this time, the creek's banks are eroding due to lack of care by adjacent landowners and by development. Acreage that is protected encourages oversight and protections that come through conservation efforts. According to legend, this creek is the town's namesake. In addition, this creek, meandering through and around the town, feeds into the Shenandoah River and, therefore, the Chesapeake Bay, a protected waterway.

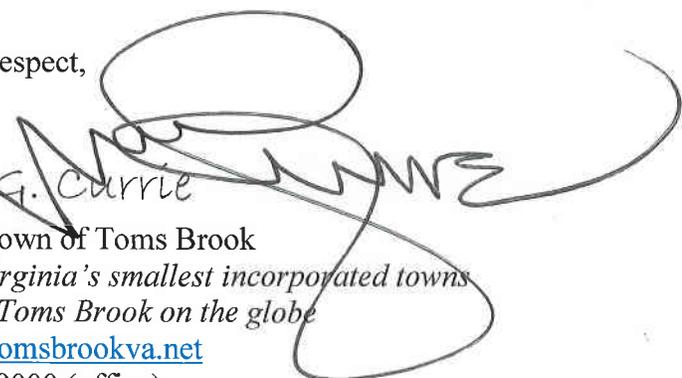
The second reason the town supports the purchase of this property is that the purchase supports the town's comprehensive plan's four pillars: cultural heritage, natural setting, growth management, and community. The Battle of Toms Brook was part of the Valley campaign during the American Civil War. In addition to the historical significance, the conservation of this property provides for the preservation of the town's goal to remain one of the smallest incorporated towns in the state of Virginia, the only Toms Brook on the globe, because the town would be able to maintain and regulate growth, a cooperative effort made with Shenandoah County.

A third reason the town supports the preservation of this property is the preservation promotes the economic development of the community as Toms Brook becomes a destination location for those seeking both outdoor space and historical reference. In addition, as the movement toward preserving the current Norfolk Southern railway as a rails to trails park, the Bowman property's preservation promises access for connection to outdoor services and possible cottage industry development.

Finally, this property lies under the trestle of the Norfolk Southern line. The town's seal - the trestle and the green fields below that trestle with the historical marker commemorating the battle in the forefront of the seal - illustrate the importance of the areas within the town's limits and the properties just adjacent.

The preservation of land around the town of Toms Brook is the goal of the leadership and community of Toms Brook. We recommend the VOF support this effort as we work in tandem to protect the outdoors for all residents and all communities.

With all respect,



Lisa G. Currie

Mayor, Town of Toms Brook

*One of Virginia's smallest incorporated towns*

*The only Toms Brook on the globe*

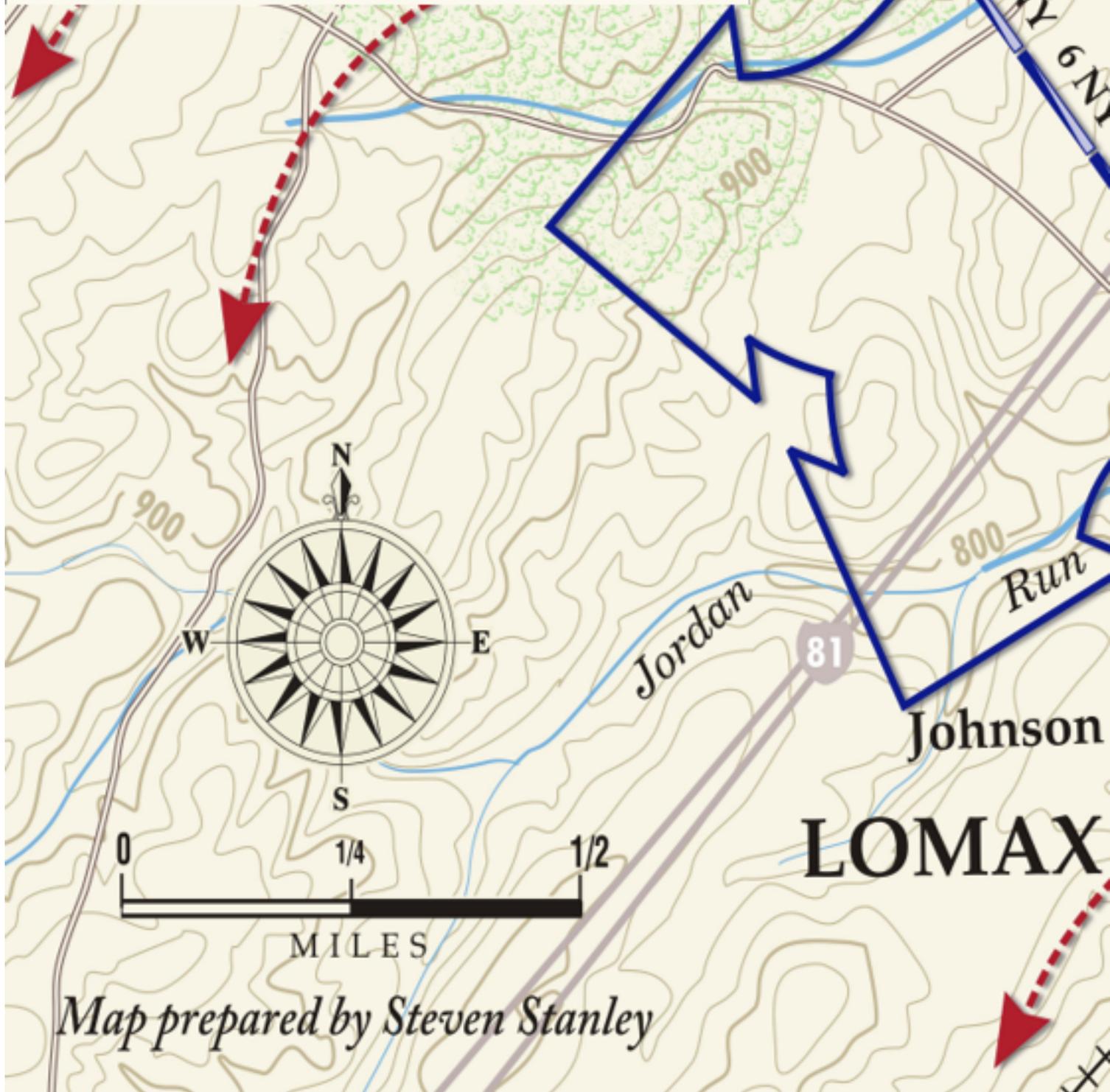
[mayor@tomsbrookva.net](mailto:mayor@tomsbrookva.net)

540-436-8000 (office)

# CIVIL WAR TRUST

## BATTLE OF TOM'S BROOK, VA

OCTOBER 9, 1864

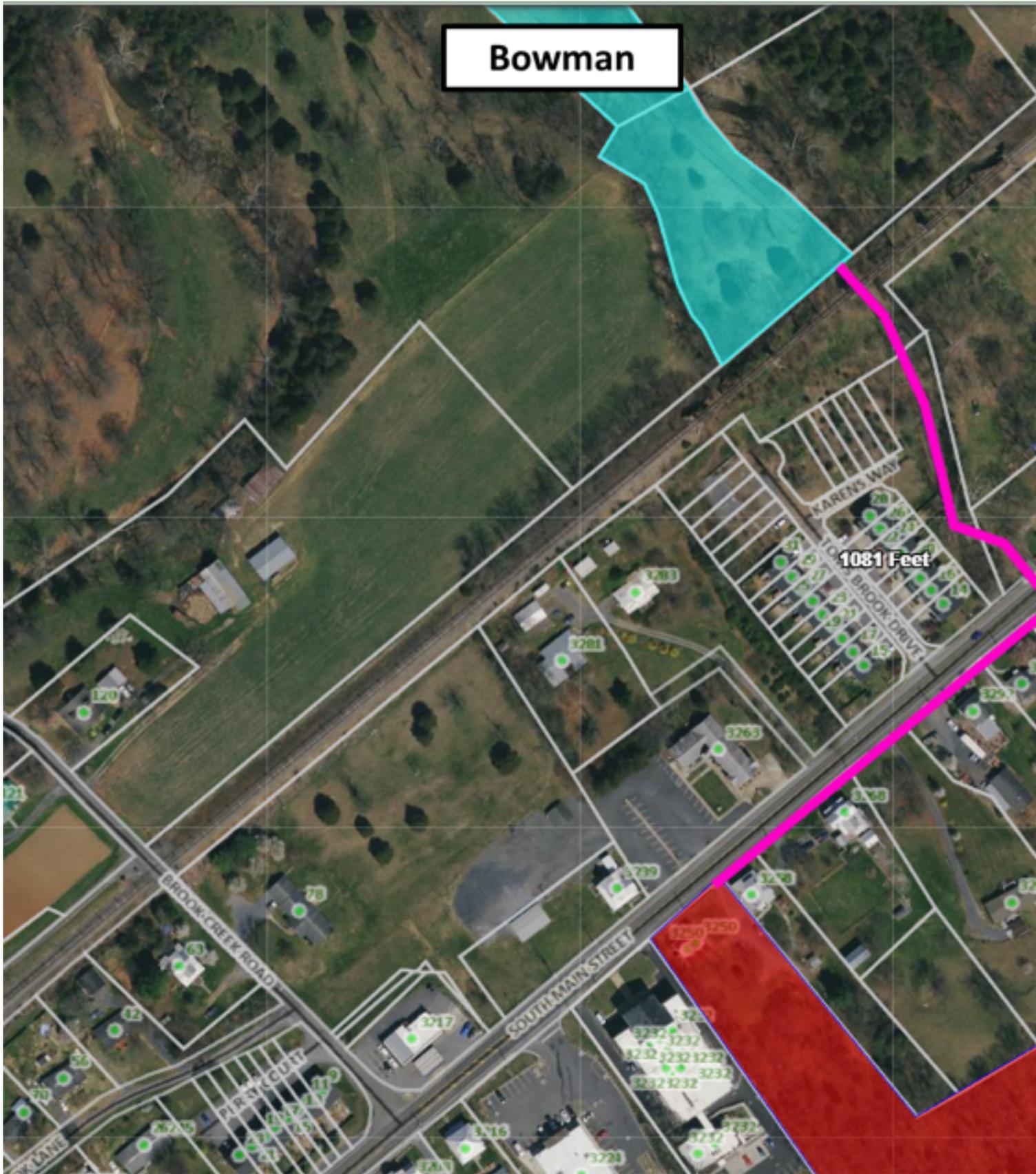


*Map prepared by Steven Stanley*



**Bowman**

**1081 Feet**





**Bowman**

120

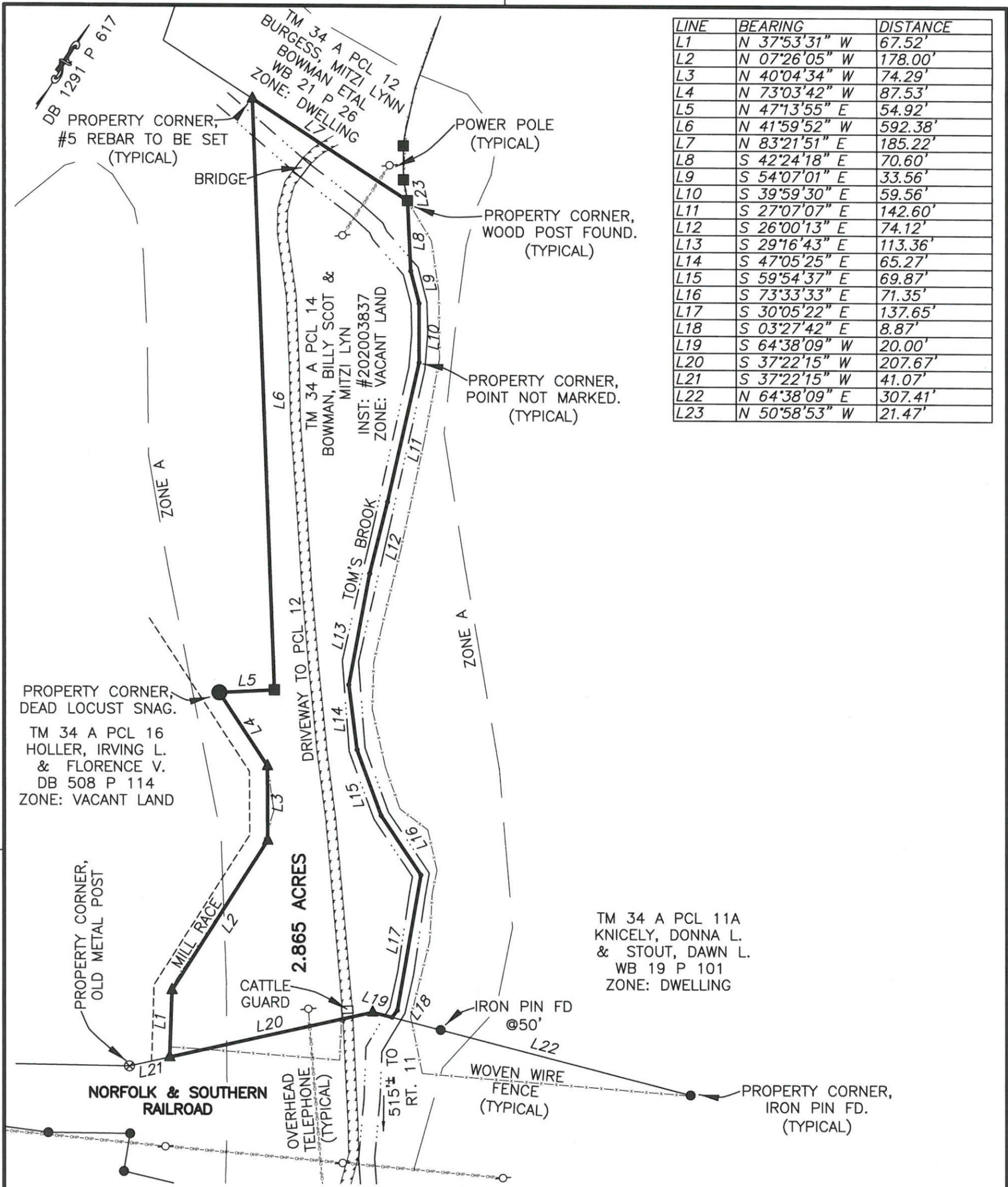
3281

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HENRY WA  
SOUTH M

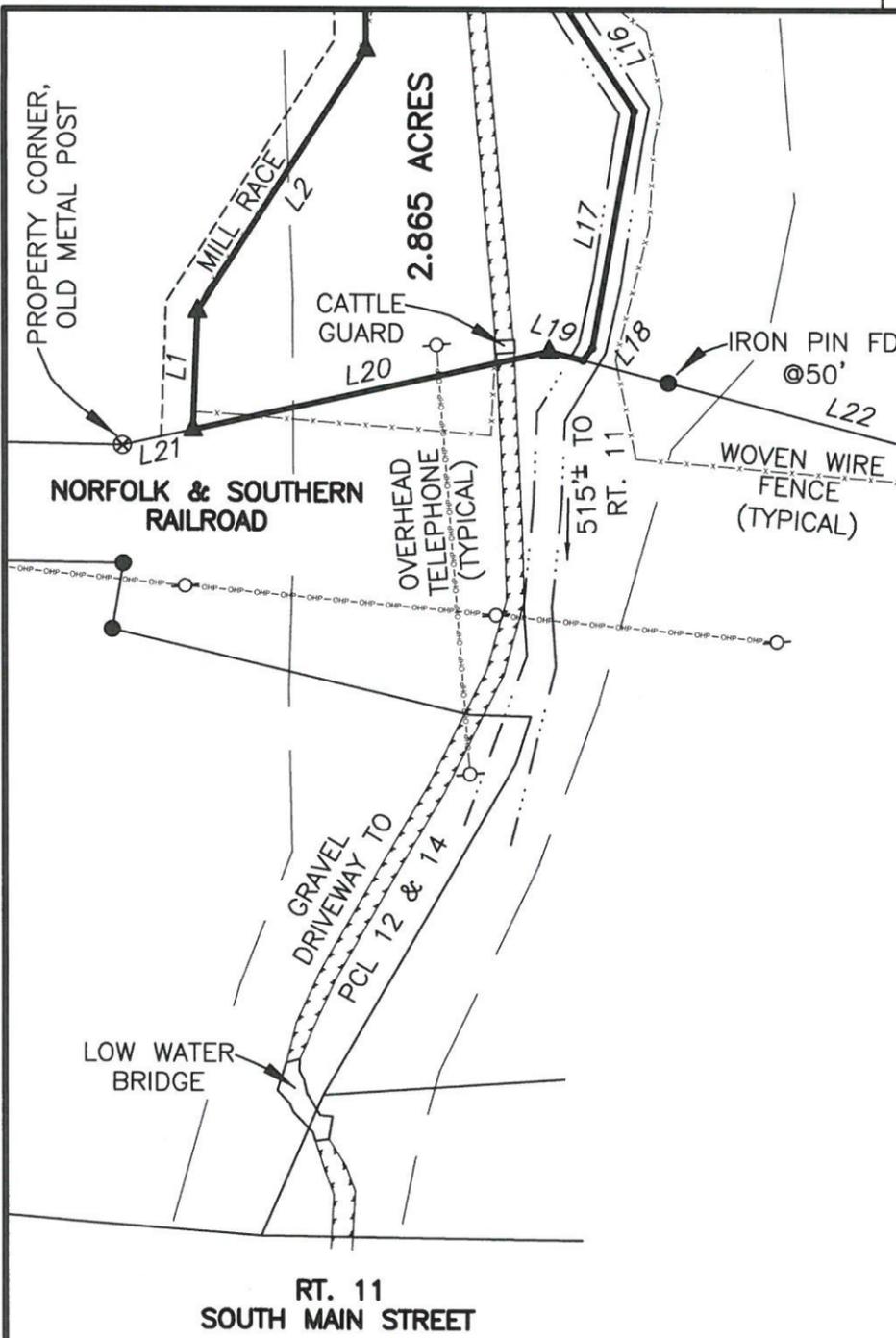
LINE	BEARING	DISTANCE
L1	N 37°53'31" W	67.52'
L2	N 07°26'05" W	178.00'
L3	N 40°04'34" W	74.29'
L4	N 73°03'42" W	87.53'
L5	N 47°13'55" E	54.92'
L6	N 41°59'52" W	592.38'
L7	N 83°21'51" E	185.22'
L8	S 42°24'18" E	70.60'
L9	S 54°07'01" E	33.56'
L10	S 39°59'30" E	59.56'
L11	S 27°07'07" E	142.60'
L12	S 26°00'13" E	74.12'
L13	S 29°16'43" E	113.36'
L14	S 47°05'25" E	65.27'
L15	S 59°54'37" E	69.87'
L16	S 73°33'33" E	71.35'
L17	S 30°05'22" E	137.65'
L18	S 03°27'42" E	8.87'
L19	S 64°38'09" W	20.00'
L20	S 37°22'15" W	207.67'
L21	S 37°22'15" W	41.07'
L22	N 64°38'09" E	307.41'
L23	N 50°58'53" W	21.47'



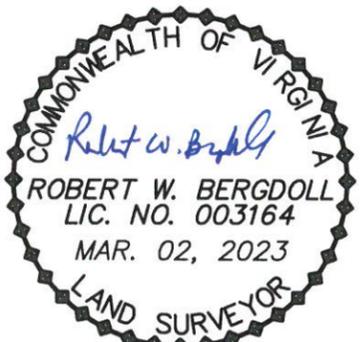
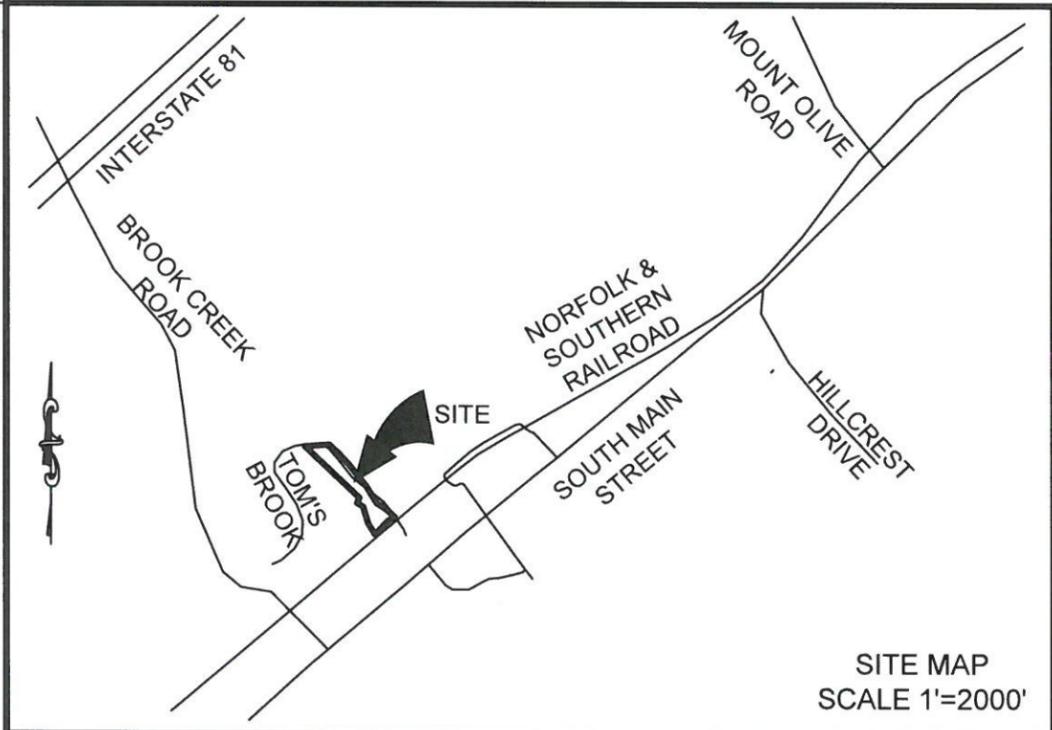
THIS DOCUMENT IS NOT FINAL UNLESS THE SEAL IS SIGNED & DATED

BOUNDARY SURVEY PLAT  
**TM 34 A PCL 14**  
 TOM'S BROOK  
 STONEWALL DISTRICT  
 SHENANDOAH COUNTY, VA

<b>BERGDOLL SURVEYING, LLC.</b> P. O. BOX 36 MOUNT SIDNEY, VIRGINIA 24467 540 416-4081	DSN: RWB	DWG: RWB	FILE: 22094	PROJ: 22094
	DATE: MAR. 02, 2023 PLOTTED: MAR 02, 2023	SCALE: 0 100 200		SHEET 1 OF 2



1. THIS PLAT IS BASED UPON A CURRENT FIELD SURVEY OF FEBRUARY 22-24, 2023.
2. A TITLE REPORT WAS NOT PROVIDED, THEREFORE, ALL ENCUMBRANCES MAY NOT BE SHOWN ON THIS PLAT.
3. GRAPHICALLY, PORTIONS OF THIS PROPERTY IS SHOWN IN ZONE A, SPECIAL FLOOD HAZARD AREA SUBJECT TO INUNDATION BY THE 1% CHANCE FLOOD, PER FLOOD INSURANCE RATE MAP, 5117C0154C, WHICH HAS AN EFFECTIVE DATE OF JULY 16, 2003. NO FIELD SURVEYS WERE PERFORMED TO DETERMINE THIS ZONE.
4. NO GRAVES OR PLACES OF BURIAL WERE OBSERVED DURING THE SURVEY.
5. THIS PROPERTY WILL BE SUBJECT TO A HISTORIC PRESERVATION AND OPEN-SPACE EASEMENT HELD BY THE VIRGINIA BOARD OF HISTORIC RESOURCES.



THIS DOCUMENT IS NOT FINAL UNLESS THE SEAL IS SIGNED & DATED

BOUNDARY SURVEY PLAT  
**TM 34 A PCL 14**  
TOM'S BROOK  
STONEWALL DISTRICT  
SHENANDOAH COUNTY, VA

<b>BERGDOLL SURVEYING, LLC.</b> P. O. BOX 36 MOUNT SIDNEY, VIRGINIA 24467 540 416-4081	DSN: RWB	DWG: RWB	FILE: 22094	PROJ: 22094
	DATE: MAR. 02, 2023 PLOTTED: MAR 02, 2023	SCALE:		SHEET 2 OF 2

Prepared by: Brooke R. Hannah, Esquire (VSB #92270)

Return to: Shenandoah County Conservation Easement Authority  
600 N Main Street,  
Suite 107,  
Woodstock, Virginia 22664

TAX MAP NO. *or* PIN: 034-A-014

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 fees under Sections 17.1-266 and 17.1-279

**THIS DEED OF GIFT OF EASEMENT** (this “Easement”), made this \_\_\_ day of \_\_\_\_\_, 2024, between **SHENANDOAH VALLEY BATTLEFIELDS FOUNDATION** (“Grantor”), a Virginia non-stock corporation (sometimes referred to herein as “Grantor SVBF”; and the **SHENANDOAH COUNTY CONSERVATION EASEMENT AUTHORITY**, a public entity (“CEA”) ( “Grantee”) (the designations “Grantor” and “Grantee” refer to Grantor and Grantee and their respective successors and assigns); and with a right retained by the **VIRGINIA OUTDOORS FOUNDATION** (“VOF”) an agency of the Commonwealth of Virginia, in the event of a conversion or diversion of the property); and, as a third party with rights to enforce this Easement, **SHENANDOAH COUNTY BOARD OF SUPERVISORS**, a public entity (“Board”) indexed as additional Grantee.

**RECITALS:**

**R-1** Grantor is the owner in fee simple of certain real property lying and being in Stonewall Magisterial District, Shenandoah County, Virginia, containing 2.865 acres, more or less, as further

described below (the “Property”), and desires to give, grant, and convey to Grantee a perpetual open-space easement over the Property as set forth herein.

**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 are 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 Regulations Section 1.170A-14(c)(1) and is willing to accept a perpetual open-space easement over the Property as set forth herein.

**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 (1950), 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, construction of buildings and other structures, 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** CEA, a body politic and corporate organized under the laws of the Commonwealth of Virginia for the purpose of acquiring conservation easements, as a means of assisting in the preservation of farm and forest land, open space, scenic vistas, historic sites, water resources, environmentally sensitive lands, and Shenandoah County’s rural character, is a “qualified organization” and “eligible donee” under Section 170(h)(3) of the Internal Revenue Code and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual conservation easement over the Property as herein set forth.

**R-6** The Shenandoah County Board of Supervisors (the “Board”) has enacted an ordinance that authorizes, in accordance with the Open-Space Land Act and other applicable law, CEA to accept, subject to approval by the Board, donations of conservations easements from landowners; sets forth a clear, consistent, and equitable administrative process governing such purchases; and outlines the goals and purposes of Shenandoah County’s land preservation program.

**R-7** 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 Shenandoah Comprehensive Plan adopted on June 28<sup>th</sup>, 2005, and revised in June of 2019, and the Property is located within an area that is designated as Toms Brook/Maurertown Sanitary District on the county’s future land use map.

**R-8** This Easement is intended to constitute (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-9** 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, and is for (1) the preservation of land areas for outdoor recreation by, or the education of, the general public under IRC Section 170(h)(4)(A)(i), (2) the protection of a relatively natural habitat of fish, wildlife, or plants or similar ecosystem, under IRC Section 170(h)(4)(A)(ii) *and/or* (3) the preservation of an historically important land area or a certified historic structure under IRC Section 170(h)(4)(A)(iv).]

**R-10** This conservation 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 (1950), as amended, 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 (1950), as amended, 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 Regulations 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. Former Governor Northam's state land conservation strategy of identifying and protecting high-value lands and conservation sites across the Commonwealth of Virginia as shown on the program's ConserveVirginia Map. The Property or a portion thereof is located on the ConserveVirginia Map under the Water Quality Improvement category;

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

a. its comprehensive plan adopted on June 28, 2005 and revised in June of 2019 (the "Plan"), to which plan the restrictions set forth in this Easement conform and which contains the following:

(1) The Plan contains the objectives to “protect the Shenandoah River, other streams, and the County’s ground water”; and to “maintain the rural and open space character of areas outside of public service areas.”

(2) The Plan also includes a strategy to “encourag[e] the use of conservation, scenic, historic and other voluntary easements to permanently preserve land.”

b. Section 146-65 *et seq.* of the Shenandoah County Code, which provides for use value assessment of real estate devoted to agricultural, forestal, horticultural or open-space uses, the Property having been approved for use value assessment by the county;

c. Correspondence dated November 16, 2023 from Shenandoah 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. Furthermore, because of the location of the Property in an annexation area of the Town of Toms Brook, Virginia, correspondence dated August 22, 2022 the Town of Toms Brook that shows approval of the granting of the Easement over the Property.

**R-11** The Property fronts a portion of State Route 11 (on South Main Street) in Shenandoah County just outside the Town of \_Toms Brook\_. Protection of the Property helps protect the viewshed for the public users of these roads, including the viewshed of the area referred to as the Toms Brook Train Trestle.

**R-12** The Property is shown, in part, to be under a Class V designation on the Virginia Department of Conservation and Recreation’s (“DCR”) Development Vulnerability Model.

**R-13** The Property is located on the Tom’s Brook Battlefield and part of the Property is located on an archeological site recognized by Shenandoah County as a Core Battlefield Area of Toms Brook Battlefield.

**R-14** 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-15** 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-16** 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-17** Pursuant to Chapter 18, Title 10.1, Section 10.1-1801.1 the Virginia Outdoors Foundation (VOF) has provided a Open-Space Lands Preservation Trust Fund Grant in the amount of \$28,000 to Grantor for the protection and enhancement of public open space, as more fully described in the Virginia Outdoors Foundation Open-Space Lands Preservation Trust Fund Grant Agreement hereto as Exhibit A.

**R-18** 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 and consists of 2.865 acres located in Shenandoah County, Virginia, near Toms Brook, fronting on State Route 11, to-wit:

All that certain lot or parcel of land containing 2.865 acres, more or less, together with all improvements thereon, and all rights, privileges, easements, appurtenances, and rights of way thereunto belonging or in anywise appertaining, situate, lying and being in Stonewall Magisterial District, Shenandoah County, Virginia, a short distance west of the corporate limits of the Town of Toms Brook, and being more particularly described as “2.865 ACRES” on a plat entitled “BOUNDARY SURVEY PLAT TM 34 A PCL 14 TOM’S BROOK STONEWALL DISTRICT SHENANDOAH COUNTY, VA”, made by Robert W. Bergdoll, L.S., dated March 2, 2023, which plat is attached to and recorded herewith as Exhibit B.

TOGETHER WITH a Deed of Right of Way dated June 21, 1985, recorded in the Clerk’s Office of the Circuit Court of Shenandoah County, Virginia (the “Clerk’s Office”), in Deed Book 518, page 46, for the purpose of ingress and egress to and from the real estate and U. S. Route 11 being of a uniform width of fifteen (15’) feet as further set forth in a deed of right way recorded in the Clerk’s Office in Deed Book 299, page 296.

This is the same real estate acquired by Shenandoah Valley Battlefields Foundation, a Virginia nonstock corporation, by deed dated December 6, 2023, from Billy Scot Bowman and Mitzi Lynn Bowman Burgess (also known as Mitzi Lyn Bowman Burgess), which deed is recorded in the Clerk’s Office as Instrument No. 202306187.

The Property is shown as Tax Map No. 034-A-014 among the land records of the County of Shenandoah, Virginia.

### **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, natural, historic, scientific, and recreational values.

Pursuant to the Virginia Land Conservation Foundation's Conservation Value Review Criteria, the further conservation purpose of this Easement is for the preservation of land for natural habitat and biological diversity, and natural resource-based outdoor recreation and education, historic preservation, watershed preservation, preservation of scenic open space, and preservation of open space designated by local government.

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 destructive of other significant conservation interests unless such acts or uses are necessary for the protection of the Conservation Values.

### **SECTION II – RESTRICTIONS**

Restrictions are hereby imposed on the uses 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 as follows:

**1. DIVISION.**

**(i) The Property shall be maintained as a whole, and separate conveyance of a portion of the Property is prohibited, regardless of the number of tax map parcels or tracts it currently encompasses and regardless of the subdivision regulations of Shenandoah County as they now exist or may change from time to time. The Property shall not be divided into or separately conveyed as more than 1 parcel(s), regardless of the number of tax parcels or tracts it currently encompasses, and regardless of the subdivision regulations of Shenandoah County as they now exist or may change from time to time. For purposes of this Easement, division of the Property also includes, but is not limited to, (a) recordation of a subdivision plat, (b) judicial partitioning of the Property, (c) testamentary partitioning of the Property, or (d) pledging for debt of a portion of the Property.**

**2. IMPERVIOUS COVERAGE LIMITATIONS.**

(i) Impervious coverage is the roof area measured in square feet of all buildings and structures with roofs and the ground area measured in square feet of all impervious structures or surfaces without a roof including, but not limited to, paved parking or patio areas, paved basketball or tennis courts, or swimming pools, but not including roads, driveways, or linear surfaces such as fences or walls. Total impervious coverage, including that of both existing and additional improvements, may not exceed 0.25% of the entire property.

**3. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES**

(i) No buildings, structures, roads, or utilities, other than the ones currently existing at the recording of this easement are permitted on the Property with exception to those described below:

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

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

(2) Private roads or driveways and access easements over the Property 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) Trails with pervious surfaces, including, but not limited to, hiking, biking, and equestrian trails, , provided that any such trail shall not exceed six (6) feet in width without Grantee's prior written approval; and, but not limited to, hiking, biking, and equestrian trails.

(4) Public roads required to be constructed and dedicated in conjunction with (the) permitted division(s) 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 will not be considered a separate conveyance of a portion of the Property or an additional division of the Property, and this Easement will remain in effect with respect to the portion of the Property so dedicated.

**(b) Utilities and renewable energy facilities.**

(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 and renewable energy facilities used to harness natural renewable energy sources such as sunlight, wind, water, or biomass to serve permitted buildings, structures, or activities on the Property. Such limitation will not prohibit the sale of excess power generated incidentally in the operation of renewable energy facilities; and

(3) Public or private utilities, including renewable energy facilities as described above, to be constructed in whole or in part to serve other properties, provided Grantee determines, in its sole discretion, that the construction and maintenance of such utilities or facilities 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 will take into consideration the visibility and any other possible adverse impact of such utilities or facilities on the Conservation Values

of the Property. Grantor reserves its separate right to approve any public or private utilities.

(c) **Signs.** Signs not exceeding 32 square feet in area.

(d) **Siting of buildings and structures.** No new structures or buildings are permitted to be constructed on the property under the terms of this easement.

(ii) **Right to construct, use, and maintain.** Grantor shall have the right to construct roads, driveways, trails, and utilities permitted in Section II, Paragraph 3(i) above and to repair, maintain, renovate, expand, and replace any permitted roads, driveways, trails, and utilities on the Property, within the limitations set forth in this Easement.

(iii) **Collective footprint limitation.** The collective footprint of all buildings and structures on the Property, excluding linear surfaces, such as roads, driveways, walls, fences, and boardwalks, shall not exceed 0.25% of the total area of the Property. 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 3(i) (a) and (b), excluding linear surfaces, such as roads, driveways, walls, fences, and boardwalks.

#### **4. ACTIVITIES PERMITTED ON THE PROPERTY.**

No activities other than the following are permitted on the Property:

- (i) Agricultural, forestal and equine activities, including processing of agricultural and forestal products with Grantee approval;
- (ii) Residential activities compatible with the limitations on buildings, structures, impervious surfaces, and ground disturbance contained herein and local, state, and federal regulations;
- (iii) Commercial activities compatible with the limitations on buildings, structures, impervious surfaces, and ground disturbance contained herein and local, state, and federal regulations, provided, however, that such commercial activities may not be inconsistent with the conservation purposes of this Easement;
- (iv) Management of wildlife;
- (v) Natural resource-based educational and scientific activities, provided that they are consistent with the conservation purposes of the Easement and do not impair the conservation values protected herein; and
- (vi) Development of ecosystem functions on the land, including necessary equipment and structures with the prior written approval of Grantee, taking into

consideration the effect of such development on the Conservation Values of the Property; and

(vii) Outdoor recreational activities requiring little or no surface alteration of the land.

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

#### **4.1 ARCHAEOLOGICAL RESOURCES GENERALLY:**

(i) A Ground Disturbing Activity may require archaeological survey or investigation, if, in the opinion of Grantee, such ground disturbing activity or earth removal may impact archaeologically significant deposits, sites, or features on the Property, whether known or unknown as of the Effective Date. The following agricultural activities are exempt from this requirement:

(a) cultivation of agricultural fields, including plowing, tilling, disking, harrowing, and use of harvesting machinery;

(b) use of aboveground irrigation equipment that does not involve Ground Disturbing Activities subject to the terms of this Section 4.1.

(ii) New buried irrigation lines necessary or convenient for the continued agricultural use of the Property may be installed on the Property, subject to the terms of Section 3.12 and this Article IV, and provided the prior written approval of Grantee has been obtained for the attendant Ground Disturbing Activity.

(iii) In determining whether to require an archaeological survey under this Section, and in addition to other factors that the Grantee

is required or permitted to consider hereunder, the Grantee shall consider the likelihood that any archaeological resources on the portion of the Property affected were already disturbed by activities on the Property before the Effective Date, and, if so, whether the proposed Ground Disturbing Activity is likely to increase the negative impact on such resources under the circumstances.

(iv) Archaeological Survey and Investigation may be undertaken on the Property only if a scope of work for such survey or investigation is reviewed and approved in writing in advance by Grantee and under the supervision of a professionally qualified archaeologist meeting or exceeding the *Secretary of the Interior's Professional Qualifications Standards*. All Archaeological Survey and Investigation must be completed prior to the commencement of the proposed Ground Disturbing Activity. Grantor shall be responsible for all costs and expenses associated with any archaeological survey and investigation being undertaken because of Grantor's proposal to engage in Ground Disturbing Activity.

#### **4.2 TREATMENT OF ARTIFACTS:**

Artifacts, both prehistoric and historic, recovered from Archaeological Survey and Investigation of the Property pursuant to Section 4.1 or otherwise ("Artifacts") shall remain the personal property of Grantor, unless otherwise provided by law. Prior to Grantor's donation of Artifacts to an organization or institution other than Grantee for curation, Grantor shall provide Grantee with written notice of such donation, which written notice shall include: (a) the name of the organization or institution, (b) the location where the Artifacts will be stored, treated, curated, and preserved, and (c) an affirmation that the Artifacts will be treated consistent with the *Virginia Department of Historic Resources State Collection Management Standards* (as amended or superseded).

#### **4.3 TREATMENT OF HUMAN REMAINS:**

If human remains are identified during Archaeological Survey and Investigation of the Property pursuant to Section 4.1 or during any other Ground Disturbing Activity, then Grantor shall immediately cease all activities at the specific location(s) where human remains have been found and notify Grantee. Grantor shall comply with all laws applicable to the discovery of human remains, including without limitation, notifying local law enforcement and obtaining any necessary permits or authorizations for treatment of the human remains. Grantor shall be responsible for all costs and expenses associated with the treatment and removal of the human remains discovered because of Grantor's proposal to engage in Ground Disturbing Activity.

#### **4.4 TREATMENT OF ARCHAEOLOGICAL RESOURCES:**

Grantor shall take all reasonable precautions to protect archaeological deposits, sites, or features on the Property from looting, vandalism, erosion, mutilation, or destruction from any cause. Relic hunting on the Property is expressly prohibited.

#### **5. MANAGEMENT OF FOREST.**

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 or land-clearing activity is undertaken. A pre-harvest plan must be submitted to Grantee for approval no later than fourteen (14) days before the proposed date of a material timber harvest, which approval will take into consideration whether the pre-harvest plan is consistent with the terms of this Easement. BMPs must be used when such a harvest is undertaken.

The following activities do not constitute material timber harvesting or land clearing and do not require the use of BMPs or a pre-harvest plan: the cutting, clearing, or removal of trees on less than one (1) acre of the Property at any one time (i) for the construction or maintenance of permitted roads trails, utilities, buildings, structures, or ponds, (ii) for firewood for Grantor's domestic use, (ii) which are invasive species; (iii) which pose a threat to the health or safety of persons, or property; (iv) which are dead, diseased, or dying; or (v) for other permitted activities on the Property, except timber harvesting or land clearing.

All cutting, clearing, or removal of trees must comply with all other restrictions set forth in this Easement involving protected areas of the Property.

#### **6. PROTECTION OF WATERS.**

To protect water quality and natural habitat, the following must be maintained on the Property:

- (i) **PROHIBITED ACTIVITIES.** The following activities are prohibited within the riparian buffer(s) and/or the RPZ(s):
  - (a) Storage of compost, manure, fertilizers, or chemicals;
  - (b) Construction of buildings or structures except as set forth in subparagraph (ii) below;
  - (c) Construction, maintenance, or paving of roads except as set forth in subparagraph (ii) below;

- (d) Removal of trees except (1) removal of invasive species, (2) removal of dead, diseased or dying trees, including salvage harvests in response to a natural disaster, (3) removal of trees posing a threat to human or livestock health or safety, (4) minimal removal of trees for creation of small wildlife plots, (5) removal of trees for construction and maintenance of permitted roads, stream crossings or other structures permitted in subparagraph (ii) below, and (6) harvesting of trees with submission of a pre-harvest plan and compliance with Best Management Practices for Water Quality Guide as promulgated by the Virginia Department of Forestry; and
  - (e) Plowing cultivation, filling, dumping, or other earth-disturbing activities except as may be necessary for the activities permitted in subparagraph (ii) below.
  - (f) The raising of livestock. In the event the property owner decides to use livestock in a manner to maintain vegetative and or invasive plant species growth, a temporary fence restricting livestock from the stream of Toms Brook shall be erected 15 feet along the edge of Tom's Brook, this permitted use of livestock shall not exceed 7 days a year.
- (ii) **PERMITTED ACTIVITIES.** The following activities are permitted within the riparian buffer(s) and/or the RPZ(s):
- (a) Fencing along or within such area(s);

- (b) Construction and maintenance of stream crossings for pedestrians, livestock, and vehicles, which crossings minimize obstruction of water flow;
  - (c) Creation and maintenance of improvements over such area(s) to access crossings;
  - (d) Creation and maintenance of trails;
  - (e) Maintenance of existing roads and trails;
  - (f) Creation and maintenance of natural habitat and small wildlife plots;
  - (g) Planting of trees, shrubs, grasses, and other vegetation; and
  - (h) Development of ecosystem functions on the land, including necessary equipment and structures, with the prior written approval of Grantee as permitted in Section II, Paragraph 5 (iii) above.
  - (i) Installation of wayside interpretive signs on property;
  - (j) Installation of in ground benches;
- (iii) In addition, livestock must be excluded from the riparian buffer(s) and/or the RPZ(s) except (a) during times of drought or other emergencies, (b) for stream crossings or (c) for watering at limited access points.]

**7. LANDSCAPE ALTERATION, EXCAVATION, AND MINING.**

- (i) Grading, blasting, filling, excavation, or earth removal may 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 4 (vi) above, (c) as required in the construction of permitted buildings, structures, driveways, roads, trails, and utilities, or (d) for erosion and sediment control pursuant to an erosion and sediment control plan.
- (ii) Grading, blasting, filling, or earth removal in excess of one acre for the purposes set forth in subparagraph (i) above require 30 days' prior notice to Grantee.
- (iii) Generally accepted agricultural activities will not constitute a material alteration of the topography.
- (iv) 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.

**8. ACCUMULATION OF TRASH.** Accumulation or dumping of trash, refuse, junk or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted wildlife management practices, such as creation of brush piles or the accumulation of farm equipment and materials, or material

stockpiles so long as they remain out of the public view from a public right of way.

### **SECTION III – ENFORCEMENT**

1. **RIGHT OF INSPECTION.** Employees, agents, and other representatives of Grantee may enter the Property from time to time for purposes of (i) inspection (including photographic documentation of the condition of the Property), (ii) flagging or otherwise marking the boundaries of specific areas or zones on the Property that are restricted as to the structures or activities allowed thereon in Section II above, and (iii) enforcement of the terms of this Easement after reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to observe, document, 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 Values and advancing the conservation purposes of this 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 in Section II of this Easement; (d) to require Grantor to replant or pay for the replanting of trees on the Property harvested in violation of the restrictions involving timber or trees set forth in Section II of this Easement, (e) to require Grantor to pay the costs of ascertaining the value of the timber harvested in violation of restrictions involving timber or trees set forth in Section II of this Easement; (f) to pay to Grantee three times the value of the timber on the stump for the value (at the time of harvesting) of such timber harvested in violation of restrictions involving timber or trees set forth in Section II of this Easement, constituting the agreed-upon harm to the Conservation Values protected herein caused by such wrongful harvest; (g) to enjoin non-compliance by temporary or permanent injunction; and (h) to pursue any other appropriate remedy in equity or at law. If the court determines that Grantor failed to comply with this Easement, Grantor must 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 will 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 will 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 creates any right in the public or any third party to maintain a judicial proceeding against Grantor or Grantee. The conveyance of this Easement to Grantee does not affect the property rights of contiguous landowners or vest in any contiguous or nearby landowner rights in the Property or the administration of this Easement by Grantee.

- 3. THE SHENANDOAH COUNTY BOARD OF SUPERVISORS' RIGHT OF ENFORCEMENT.** The Shenandoah County Board of Supervisors is hereby granted a contingent right of enforcement for all those restrictions that the Conservation Easement Authority, as a Grantee, is entitled to enforce in order to protect the public interest and the investment of County resources in this Easement.

#### **SECTION IV – DOCUMENTATION**

Grantor has made available to Grantee, prior to conveyance of this Easement, documentation sufficient to describe the condition and character of the Property, and the Baseline Documentation Report (BDR), describes the condition and character of the Property on the Effective Date. 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).

Grantee may compile written reports and photographic documentation of the condition of the Property from time to time as a result of inspection of the Property pursuant to Section III 1. above.

#### **SECTION V – GENERAL PROVISIONS**

1. **DURATION.** This Easement will 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 will 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 will survive transfer.
  
2. **PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** The property will have a right of public access. The property will be open to the public and may be closed for no more than 31 days a year for property management purposes. In the event of an emergency on the property such as acts of vandalism or natural disasters (flooding), the property may be closed to the public longer than 31 days.

- 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, deed 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.]
- 4. ACCEPTANCE.** Grantee accepts this conveyance.
- 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 may 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 may 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 be liberally construed in favor of the grant to effect the purposes of this 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 will 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 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 will be construed and applied in a manner that will not prevent it from being a qualified conservation contribution.
- 7. REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement must 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 will not impair the validity of this Easement

or the conveyance or limit this 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 600 North Main Street, Suite 107, Woodstock, Va 22664, and any notice to Grantor should 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 P.O. Box 897 New Market, VA 22844.

**Grantor must 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.**

- (i) In addition, Grantor agrees to notify Grantee in writing before exercising any reserved or permitted right that may have an adverse effect on the Conservation Values of the Property as encumbered by this Easement or that, because of unforeseen or changed circumstances, involves activities or structures regarding which this Easement is silent or ambiguous. (The purpose of requiring such notice is to afford Grantee an adequate opportunity to either (a) prohibit or approve and monitor such activities to ensure that they are carried out in a manner not having an adverse impact on the Conservation Values of the Property or (b) to prohibit or permit the construction of such structures, depending upon whether the construction of such structures will have an adverse impact on the Conservation Values of the Property.) Such notice must describe the proposed activity or structure in sufficient detail to allow Grantee to judge the consistency of the proposed

activity or construction of the proposed structures with the purposes of this Easement. Grantee may grant its consent if it determines, in its sole discretion, that the performance of such activities or the construction of such structures does not confer upon Grantor an impermissible private benefit, does not violate any of the terms of this Easement, and does not have an adverse impact on the Conservation Values of the Property. Grantor may not engage in the proposed activities or construction of such structures unless and until Grantor receives Grantee's approval in writing.

- (ii) Failure of Grantor to comply with these requirements will not impair the validity of this 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 this Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of this Easement.

11. **NO MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement will not merge into the fee interest, but will 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 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 open-space uses except (i) in accordance with the Open-Space Land Act, which does not permit loss of open-space land and (ii) unless such conversion or diversion is determined by both Grantee and VOF to be in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act.

**15. EXTINGUISHMENT.**

- (I) Grantor and Grantee agree that if a subsequent unexpected change in the conditions surrounding the Property that is the subject of the donation of this perpetual conservation easement renders impossible or impractical the continued use of the Property or a portion thereof for conservation purposes, the conservation purpose may nonetheless be treated as protected in perpetuity if (1) the easement is extinguished by a judicial proceeding and (2) all of Grantee's portion of the proceeds (as determined below) from a subsequent sale or exchange of the Property or portion thereof are used by Grantee in a manner consistent with the conservation purposes of the original contribution.
  
- (II) Grantor and Grantee agree that the donation of this perpetual conservation easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation easement, at the time of the gift, bears to the fair market value of the Property as a whole at that time. The proportionate value of Grantee's property rights remains constant such that if a subsequent sale, exchange, or involuntary conversion of the Property occurs, Grantee is entitled to a portion of the proceeds at least equal to that proportionate value of the perpetual conservation easement.

- 16. AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's Conservation Values or add acreage to the restricted property by an amended deed of easement, provided that no amendment may (i) affect this Easement's perpetual duration or remove this Easement from any portion of the Property, (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 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 will be effective unless documented in a notarized document executed by Grantee and Grantor and recorded in the Clerk’s Office of the Circuit Court of Shenandoah County, Virginia.

17. **REVIEW FEES.** Grantee reserves the right to charge Grantor, and Grantor agrees to pay to Grantee, a fee to reimburse Grantee for its actual and reasonable expenses (including those of its staff) incurred for Grantee to review and approve any right that is reserved by Grantor in this Easement, and which is required by this Easement to be reviewed and approved by Grantee before being exercised, in accordance with the policies of the Grantee at the time the review is made. Grantee also 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, and access or utility easements over the Property.
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 will 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 will 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 will not be affected thereby.

20. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to this Easement.
21. **CONTROLLING LAW.** The interpretation and performance of this Easement will 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 will be recorded in the land records in the Clerk's Office of the Circuit Court of Shenandoah County, Virginia, and Grantee may take any

steps necessary in said clerk's office to preserve its rights under this Easement in the future.

24. **COUNTERPARTS.** This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered, will be an original, but all of which will constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto will not affect the validity of this Easement.
25. **HAZARDOUS SUBSTANCES: WARRANTY AND INDEMNITY.** Nothing in this Easement shall be construed as giving rise to any right or ability in Grantee to exercise physical or management control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA) or any corresponding Commonwealth of Virginia statute or regulation or Shenandoah County ordinance. Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable law, and hereby promises to indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, without regard to its merit, liability, or expense, including reasonable attorneys' fees, arising from or with respect to any release of hazardous substance or waste or violation of environmental laws.
26. **INDEMNIFICATION.** Grantor hereby agrees to indemnify and hold harmless Grantee and its directors, officers, agents, volunteers, and employees (collectively, Grantee's Indemnified Parties) from and against any and all liabilities, penalties, causes of action, claims, demands,

orders, judgments, or administrative actions against Grantee's Indemnified Parties, including, without limitation, reasonable attorney's fees arising from Grantee's interest in the Property as Grantee under this Easement and in connection with: (i) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence of any of Grantee's Indemnified Parties or arising out of Grantee's Indemnified Parties' physical presence on the Property; or (ii) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, ordinance or requirement, by any person other than any of the Grantee's Indemnified Parties, in any way affecting, involving, or relating to the Property which directly lead to a loss suffered by Grantee's Indemnified Parties.

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

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

[Counterpart signature page 1 of 4 of deed of conservation  
easement]

**SHENANDOAH VALLEY BATTLEFIELDS FOUNDATION,**  
a Virginia nonstock corporation

By: \_\_\_\_\_, Grantor  
Keven Walker, Chief Executive Officer

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, TO WIT:

The foregoing instrument was acknowledged before me this  
\_\_\_ day of \_\_\_\_\_, 2024, by Keven Walker, Chief Executive  
Officer of Shenandoah Valley Battlefields Foundation, a Virginia  
nonstock corporation, on behalf of the corporation.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

[Counterpart signature page 2 of 4 of deed of conservation  
easement]

Accepted:

**SHENANDOAH COUNTY  
CONSERVATION EASEMENT AUTHORITY,**

By: \_\_\_\_\_  
Delila Hockman

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, TO WIT:

The foregoing instrument was acknowledged before me this  
\_\_\_ day of \_\_\_\_\_, 2024, by Delila Hockman, Chair of the  
Shenandoah County Conservation Easement Authority.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

[Counterpart signature page 3 of 4 of deed of conservation  
easement]

Accepted:  
**VIRGINIA OUTDOORS FOUNDATION,**  
an agency of the Commonwealth of Virginia

By: \_\_\_\_\_  
its: \_\_\_\_\_

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, TO  
WIT:

The foregoing instrument was acknowledged before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2024, by \_\_\_\_\_  
\_\_\_\_\_, its \_\_\_\_\_ of the  
Virginia Outdoors Foundation, an agency of the Commonwealth of  
Virginia.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_

[Counterpart signature page 4 of 4 of deed of conservation  
easement]

Accepted:  
**SHENANDOAH COUNTY  
BOARD OF SUPERVISORS**

By: \_\_\_\_\_  
Dennis Morris, Chair of the Shenandoah County  
Board Of Supervisors

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF \_\_\_\_\_, TO  
WIT:

The foregoing instrument was acknowledged before me this  
\_\_\_\_\_ day of \_\_\_\_\_, 2024, by Dennis Morris, Chair of the  
Shenandoah County Board of Supervisors.

(SEAL)

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_  
Registration No. \_\_\_\_\_