

AGENDA
JEFFERSON COUNTY COMMISSION
THURSDAY, DECEMBER 1, 2011
9:30 A.M.

County Commission Meeting Room
located at the Old Charles Town Library
200 E. Washington Street, Charles Town, WV

CALL TO ORDER

PLEDGE OF ALLEGIANCE

APPROVAL OF MINUTES

APPROVAL OF PURCHASE ORDERS

APPROVAL OF ACCOUNTS PAYABLE

PUBLIC COMMENT

PRESENTATIONS:

1. 9:45 a.m. Presentation of Resolution in Recognition of Joseph A. Hankins for his service on the Jefferson County Public Service District Board

2. 10:00 a.m. John Allen, Historic Landmarks Commission
- The Jefferson County Historic Landmarks Commission requests a one time grant of \$25,000 to cover the purchase price of the 18-acre Shepherdstown Cement Mill property on the Potomac River - Discussion/Action

3. 10:15 a.m. Mark Dyck, Jefferson County Development Authority
- Request that the Jefferson County Commission consider the elimination of all impact fees on non-residential projects for a period of not less than twenty-four (24) to forty-eight (48) months - Discussion/Action

4. 10:30 a.m. **BREAK**

5. 10:45 a.m. Elizabeth Wheeler, Jefferson County Farmland Protection Board
- Approval of three deeds of farmland conservation easements - Discussion/Action
 - a) J. L. Burch Sr. property
 - b) D.A. Gray property
 - c) J. H. Writt property

6. 11:00 a.m. Lynn Fields, Probate Office
- Approval/Closing of estates - Discussion/Action

7. 11:15 a.m. Stephen Groh, Assistant Prosecuting Attorney
 - Update Regarding Planning Commission Legal Issues and Decisions:
 - a) Faraway Farms
 - b) Gibson property
 - c) Miscellaneous pending issues
8. 11:30 a.m. Stephanie Grove, Assistant Prosecuting Attorney
 - Legal Updates
9. 11:45 a.m. J. Michael Cassell, Esq.
 - Request for an amendment to the Zoning Map by James and Barbara Gibson, owners of real estate known as Allstadt's Corner - Discussion/Action
10. 12:15 p.m. Roger Goodwin, Chief County Engineer
 - a) Request approval of the complete release of the Construction Bond security for Robert S. and Amy R. Leonard - Brookstone Subdivision, Lots 1-6 & 7 - Residue (File #06-37) in the amount of \$266,235.00 - Letter of Credit #5203902 with Jefferson Security Bank, Shepherdstown, WV - Discussion/Action
 - b) Report on the Westridge Hills Test Wells project

UNFINISHED BUSINESS:

11. Proposed change in Jefferson County Magisterial Districts - Discussion/Action

NEW BUSINESS:

12. Request approval to reappoint Chris Jackson to the Jefferson County Deputy Civil Service Commission as recommended by the Jefferson County Deputy Sheriff's Association - Discussion/Action

COUNTY ADMINISTRATOR REPORTS

COUNTY COMMISSION REPORTS

ADJOURN

CORRESPONDENCE:

Letter received from Joy M. Oakes, Senior Regional Director, Mid-Atlantic Region, National Parks Conservation Association regarding the proposed rezoning of Allstadt's Corner.

Letter received from Stacy DeLong to R. M. Kelley at the Jefferson County Emergency Services Agency.

Notice of Intent to Appoint individuals to the Board of Zoning Appeals on December 15, 2011.

Memorandum from Roger Goodwin, Chief County Engineer enclosing the bond and security for Cello Partnership d/b/a Verizon Wireless/Cottontail File #S11-03.

Letter of resignation from the Jefferson County Emergency Services Agency received from Brendan Soennecken.

Letter of resignation from the Jefferson County Emergency Services Agency received from Paul Rosa.

Notice that the Jefferson County Commission will conduct interviews and make appointments to the Jefferson County Public Service District and the Jefferson County Emergency Services Agency on December 8, 2011.

Weekly settlement reports for the Charles Town Races received from the West Virginia Lottery for week ending November 19, 2011.

Letter of resignation from the Jefferson County Building Commission received from Beverly S. Hughes.

Letter from Good Shepherd Interfaith Volunteer Caregivers regarding the Annual Summary.

Letter from the Arts & Humanities Alliance (AHA!) seeking membership and donations.

Letter from the Children's Home Society of West Virginia thanking the Commission for its \$5,000 contribution.

Memorandum received from Jennifer Brockman, Director of Planning & Zoning announcing that the next Public Meeting regarding the US 340 East Gateway Plan will be on Tuesday, December 6, 2011 at 7:00 p.m. in the KOA Campground Community Room.

Letter received from Joe Anderson, Mayor of Harper Ferry requesting that the Jefferson County Commission hold a public hearing on the application of James and Barbara Gibson to rezone 12.97 acres at the intersection of US 340 and Millville Road.

Jefferson County 4-H Newsletter for November and December 2011 received from the Extension Service of West Virginia University.

Letter regarding the Statewide Transportation Improvement Program (STIP) received from the WV Dept. Of Transportation, Division of Highways.

Thank you note received from Hospice of the Panhandle regarding Day of Caring 2011.

Thank you note to Patsy Noland and the Jefferson County Commission from Hospice of the Panhandle.

Letter from Comcast regarding cable channel contract renewals.

Weekly settlement reports for Hollywood Casino at the Charles Town Races received from the West Virginia Lottery for week ending November 19, 2011.

At all times the County Commission reserves the right to rearrange agenda times because of time constraints and to accommodate the Commission schedule or the public.

Minutes

Jefferson County Commission

Thursday, November 17, 2011

A meeting of the Jefferson County Commission was held on Thursday, November 17, 2011 in the County Commission meeting room at the Old Charles Town Library located at 200 E. Washington Street, Charles Town, WV 25414. Present were Commissioners Patricia Noland, Dale Manuel, Frances Morgan, Lyn Widmyer and Walt Pellish; Tim Boyde, County Administrator, Debbie Stellato, Administrative Assistant and Jimmy Eddy, Bailiff. (An audio tape of this November 17, 2011 meeting is available through the Jefferson County Commission Office.)

The meeting was called to order at 9:30 a.m. by Commissioner Noland.

PLEDGE OF ALLEGIANCE

Commissioner Pellish led the Pledge of Allegiance.

Commissioner Widmyer raised a Point of Order with regard to Agenda Item #5:

“County Commission to discuss considering whether to add as an agenda item: - Peter Corum and Fred Blackmer – Approval of Zoning Map Amendment – Discussion/Action.”

Ms. Widmyer recommended that Item #5 be removed from the November 17, 2011 agenda for the following reasons:

It was placed on the agenda in violation of the State Open Meeting Requirements of the State Open Meeting Act;

It violates the Jefferson County agenda policies; and the County Commission agreed at the meeting on November 10, 2011 to address the zoning requests in early December.

Ms. Widmyer stated that she called the West Virginia Ethics Commission and learned that the Open Governmental Proceedings Act requires that amendments to the agenda be made not later than two (2) days before its meeting. The agenda before the Commission was revised after the close of business on Tuesday, November 15th and she stated that that is a violation of the Open Meetings Act.

Ms. Widmyer requested a ruling from the Chair that this agenda request is out of order.

Ms. Noland stated that she was not ready to remove Item #5 yet and explained that she received an email from Fred Blackmer on November 15th stating that he had requested this item be placed on the agenda on November 17, 2011 and had just become aware that his item was not on the November 17th agenda. Ms. Noland pointed out that Mr. Blackmer was present and that she would have him explain what transpired.

Ms. Morgan and Ms. Widmyer objected. Ms. Noland asked Mr. Blackmer to come down and explain what transpired with his agenda item.

Ms. Morgan moved to strike Agenda Item #5 from the Agenda. Ms. Widmyer requested a ruling from the Chair in accordance with Robert's Rules of Order on whether or not that can be done. Ms. Noland stated that she would not strike Item #5 at that time. Ms. Morgan asked if there was a second to her motion to strike. Ms. Widmyer seconded the motion. Ms. Noland asked for any discussion and a vote on the motion. The

motion to strike failed 3 – 2, with Ms. Noland, Mr. Manuel and Mr. Pellish voting “no.”

Ms. Noland stated that the Commission would continue in order with the scheduled items and comments on Item #5 would be held until its appropriate place on the agenda.

APPROVAL OF MINUTES

Motion by Mr. Manuel to approve the Minutes of the November 10, 2011 Special Session as presented. Motion seconded by Mr. Pellish and unanimously approved.

Motion by Mr. Manuel to approve the Minutes of the November 10, 2011 regular meeting as presented. Motion seconded by Ms. Noland and unanimously approved.

APPROVAL OF PURCHASE ORDERS:

Motion by Mr. Pellish to approve Purchase Orders in the amount of \$35,597.00, being purchase order numbers: 48824, 50546, 50545, 50630, 50632, 50633, 50635, 53236, 53243, 53265, 53266, 53182, 50629, 52947, and 50566. Motion seconded by Mr. Manuel and unanimously approved.

APPROVAL OF ACCOUNTS PAYABLE:

Motion by Ms. Morgan to approve the accounts payable in the amount of \$428,226.39. Motion seconded by Mr. Manuel and unanimously approved subject to Mr. Boyde’s review of one invoice.

PUBLIC COMMENT

Debbie Royalty of the League of Women Voters – commented that she was opposed to having Item #5 on the Agenda.

David Tabb, Jefferson County Resident – (1) commented on the Jefferson County Departments, Boards and Commissions reporting quarterly and annually as discussed at the meeting on November 10, 2011;

(2) commented on the Chesapeake Bay Task Force; and (3) procedures for scheduling a public hearing.

Kathy Knight, Jefferson County Resident – commented on the Chesapeake Bay Initiative.

Mike Austin, President of Shepherdstown Community Club (formerly Shepherdstown Men’s Club) – requested the Commission to delay any decision on Item #5 due to rezoning initiatives and lack of understanding by the community.

Harvey Heyser, Zoning Officer, Corporation of Shepherdstown – speaking on behalf of the Mayor of the Corporation of Shepherdstown, Mr. Heyser requested that the Commission postpone any action on Item #5 until Shepherdstown’s Planning Commission meets.

Amy Amos, Homemaker in Jefferson County – expressed opposition to the Commission taking any action on Item #5 until sometime in early December after the Shepherdstown Planning Commission meets.

PRESENTATIONS:

Jimmy Pierson, Ranson Parks and Recreation – funding request in the amount of \$18,500.00 for renovations to the concession stand at the Ranson Civic Center.

Following Mr. Pierson's presentation and request for funding, there was unanimous consent by the Commissioners to have Mark Schiavone, Director of Capital Planning and Management, check to see if the \$18,500.00 could be funded by impact fees and report back to the Commission.

Martin Burke, Jefferson County Historic Landmarks Commission – request for a one time grant of \$25,000.00 to cover a portion of the purchase price of the 18-acre Shepherdstown Cement Mill property on the Potomac River.

Unanimous consent by the Commissioners to place this request on the December 1, 2011 Agenda for discussion.

The Commission took a short break at 10:32 a.m.
The Commission reconvened at 10:41 a.m.

Roger Goodwin, Chief County Engineer –

Request for approval of partial release of the construction bond security in the amount of \$266,234.00 for Summit Point Automotive Research Center, LLC – Summit Point Tactical Training Center, Phase II (File #S11-11).

Motion by Mr. Manuel to approve the partial release of the construction bond security in the amount of \$266,234.00 for Summit Point Automotive Research Center, LLC – Summit Point Tactical Training Center, Phase II (File #S11-11). Motion seconded by Mr. Pellish and unanimously approved.

Request for approval of the complete release of the construction bond security in the amount of \$23,261.00 for Linda W. Case – Craftworks at Cool Spring, Inc. (File #S10-03) with the Bank of Charles Town, Charles Town, West Virginia.

Motion by Ms. Morgan to approve the complete release of the construction bond security in the amount of \$23,261.00 for Linda W. Case – Craftworks at Cool Spring, Inc. (File #S10-03) with the Bank of Charles Town, Charles Town, West Virginia. Motion seconded by Mr. Manuel and unanimously approved.

Mr. Goodwin explained his Executive Summary Report on the Chesapeake Bay Initiative – Planning for Storm Water Management. Before his presentation Mr. Goodwin introduced Jonathan Saunders, County Engineer, Joe Kent, the County's new Land Inspector and Matt Pennington, the Chesapeake Bay Coordinator for Region 9.

Ms. Morgan recommended placing Mr. Goodwin's report on the County Website for public viewing.

Motion by Ms. Widmyer that Staff is directed to proceed to develop a Storm Water Management Ordinance to present to the public and the Commission. Motion seconded by Mr. Pellish and unanimously approved.

Motion by Ms. Widmyer that Staff continue to work with the Environmental Protection Agency with regard to grant funding to support Staff in their efforts to come up with a Storm Water Management Ordinance specific to Jefferson County. Motion seconded by Ms. Morgan. Motion carried 4 – 1 with Mr. Pellish voting "no."

Mr. Goodwin commented that he will be on the December 1, 2011 Agenda to present the Commission with a final report on the Westridge Hills Test Wells project.

UNFINISHED BUSINESS:

Work Plans for Certain Departments, Boards and Commissions (LW) – Mr. Boyde presented the proposed form for Departmental Reporting to the Commission and the list where he had selected the appropriate Boards and Commissions to file quarterly forms. The Commission recommended that the “IT Committee” be added to the list of Boards and Commissions and that the selected Departments, Boards and Commissions also file annual reports.

Motion by Mr. Manuel to accept the list of selected Boards and Commissions as presented by Mr. Boyde with the addition of the “IT Committee.” Motion seconded by Mr. Pellish and unanimously approved.

NEW BUSINESS:

Kaylan Thibodeau, Washington High School French Club – request approval to set up a bake sale in front of the Courthouse on December 3, 2011.

Motion by Ms. Widmyer to approve the set up of a bake sale by Kaylan Thibodeau and the Washington High School French Club on December 3, 2011 and request Staff to ascertain who is the responsible party and research the liability issue. Motion seconded by Ms. Morgan and unanimously approved.

Request to discuss whether to add as an Agenda item – Peter Corum and Fred Blackmer – Approval of Zoning Map Amendment.

Discussion among the Commissioners as to whether or not Item #5 should be added to this agenda or whether it should be placed on the December 1st or December 8th agenda. If scheduled for December 1, 2011, Ms. Brockman would not be able to attend the meeting, but would be available on December 8, 2011.

Legal counsel, Stephanie Grove, recommended that discussion on the matter be delayed so that the decision is not open to attack, especially because of the late notice on the agenda.

Ms. Widmyer moved that Item #5 not be added to this November 17, 2011 Agenda.

Ms. Morgan, based on counsel’s legal advice, renewed her motion to strike Item #5 from the November 17, 2011 Agenda. Ms. Widmyer seconded the motion and the motion failed 3 – 2 with Ms. Widmyer and Ms. Morgan voting “yes” and Ms. Noland, Mr. Manuel and Mr. Pellish voting “no.”

Mr. Blackmer spoke to the Agenda issue.

Ms. Brockman suggested that the item be placed on the December 8, 2011 Agenda at which time she would be available to present the recommendations of the Jefferson County Planning Commission.

Ms. Morgan made a motion that the Item be moved to the December 8, 2011 Agenda to allow Ms. Brockman to be present to explain the Jefferson County Planning Commission’s recommendation. Ms. Widmyer seconded the motion and it was carried 4 – 1 with Mr. Pellish voting “no.”

DEPARTMENT HEAD REPORTS:

Todd Fagan, Director of the GIS Addressing Department submitted a written quarterly report on behalf of his Department.

COUNTY ADMINISTRATOR REPORTS:

County Administrator Tim Boyde:

Reported that he received approval of the Memorandum of Understanding from the State of West Virginia. Loudoun County has requested that they be sent weekly reports on progress with the Mutual Aid Agreement and Loudoun has agreed to extend the Mutual Aid Agreement now in effect for thirty (30) days until all issues are resolved.

COUNTY COMMISSIONER REPORTS

Commissioner Widmyer:

- Assisted with tree planting on a portion of the Rt. 9 bike path.
- Reported that on January 14, 2012 there will be a full council meeting of Region 9.

Commissioner Manuel:

- Attended a Jefferson County Emergency Services Agency meeting. Next meeting November 29, 2011 at 7:00 p.m.
- Attended a Jefferson County Council on Aging meeting.
- Attended a Jefferson County Parks and Recreation meeting.

Commissioner Pellish:

- Attended a West Virginia Development Authority meeting.

Commissioner Noland:

- Attended a Jefferson County Council on Aging meeting.

Commissioner Morgan:

- Attended a Jefferson County Farmland Protection Board meeting.
- Attended a Jefferson County Historic Landmarks Commission meeting.

There being no further business, motion by Mr. Manuel to adjourn. Motion seconded by Ms. Noland and unanimously approved. Upon rising at 12:20 p.m. the meeting was adjourned until Thursday, December 1, 2011.

PATRICIA A. NOLAND, PRESIDENT

PURCHASE ORDERS TO BE APPROVED
November 14, 2011

DEPARTMENT	PURCHASE ORDER	AMOUNT	VENDOR	DESCRIPTION
COUNTY CLERK	50548	\$ 131.17	PIFFER OFFICE SUPPLY	Calendars, binder clips, tape, highlighters
COURTHOUSE	50637	\$ 1,312.80	DONALD B. RICE TIRE CO.	Auto supplies
MAINTENANCE	50618	\$ 1,411.75	CDW GOVERNMENT	Computer supplies
HOMELAND SECURITY	53180	\$ 900.00	BARVARIAN INN & LODGE	Training & New Partners Luncheon (Citizens Corp Grant)
	53190	\$ 405.74	CHANNING BETE CO., INC.	Home emergency supply checklist (Citizens Corp Grant)
OTHER BUILDINGS	50638	\$ 595.24	DAYCON	Cleaning supplies
	50639	\$ 720.19	BK OFFICE SUPPLY	Copy paper
	50640	\$ 275.73	JEFFERSON RENTALS	Equipment rental
	50641	\$ 1,440.00	BK OFFICE SUPPLY	Furniture
	50642	\$ 780.52	KNOLL, INC.	Cubicle sections for desk
PROSECUTING ATTORNEY	50435	\$ 567.43	STAPLES	Office supplies
	50434	\$ 357.94	MATTHEW BENDER & CO., INC	WV Code 11 RV11
	50436	\$ 693.00	COPIER PLUS	Service call for copier

	50438	\$	327.00	SNOWSHOE HOSPITALITY ACCOUNTING	CLD - Grove
	SHERIFF	50479	\$ 69,400.00	GREENBRIER MOTOR CO.	3 Dodge chargers
	SHERIFF TAX	49539	\$ 5,341.10	SPIRIT OF JEFFERSON	Deliquent property tax list
		49540	\$ 251.52	J&S BUSINESS FORMS	Jury & witness checks
	WVU EXTENSION	48119	\$ 771.75	WPS	Toner
GRAND TOTAL			\$ 85,682.88	Printed at 11:33 a.m. on 11/28/11	

Commission Office Use Only ✓

Date on Agenda: ~~11/21/11~~ ~~12/16/11~~ 10/12/11

Appt Time or New Business: 10:00 am

AGENDA REQUEST FORM

Name: Nichelle Hosby

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 5 min

Date Requested – 1st Choice: 10-13-2011

Date Requested – 2nd Choice: _____

If a specific date is needed, please provide reason for specific date:

Subject: Resolution in Recognition of Joseph A. Hankins for his service on the Jefferson County Public Service District Board

Please provide the County Commission with a description of your request or presentation, including any background information:

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **move to accept the Resolution of Recognition to Joseph A. Hankins for his service to the Jefferson County Public Service District Board and to allow the president to affix her signature.**

Attachments:

RESOLUTION IN RECOGNITION OF JOSEPH A. HANKINS FOR HIS SERVICE ON THE
JEFFERSON COUNTY PUBLIC SERVICE DISTRICT BOARD

WHEREAS, the Jefferson County Commission formed the Jefferson County Public Service District Board in December 1983,

WHEREAS, the Jefferson County Public Service District Board is comprised up of volunteers of Jefferson County Citizens who are knowledgeable and committed to serving the residents in Jefferson County, WV; and

WHEREAS, Joseph A. Hankins was appointed by the Jefferson County Commission to the Jefferson County Public Service District Board in March 2004 and has served in his capacity as a Volunteer since that time; and

WHEREAS, Joseph A. Hankins continues to provide a valuable service to Jefferson County as a member of the Jefferson County Public Service District Board by providing his knowledge and applying his professional expertise in order to provide safe and affordable clean water to the residents of Jefferson County, WV; and

WHEREAS, the Jefferson County Commission recognizes that the people of Jefferson County will benefit from the knowledge and expertise provided by Joseph A. Hankins for future generations to come as the result of his involvement, dedication and loyalty to the Jefferson County Public Service District Board; and

THEREFORE, the Jefferson County Commission hereby recognizes Joseph A. Hankins for his years of service as a loyal and dedicated member of the Jefferson County Public Service District Board and in appreciation of his service to the citizens of Jefferson County, West Virginia.

By ORDER of the Jefferson County Commission:

Patricia A. Noland, President

30 September 2011

Ms. Patsy Noland
President
County Commission of Jefferson County
P.O. Box 250
Charles Town, WV 25414

Commissioner Noland,

Please consider this letter a courtesy reminder of the upcoming end of my appointed term on December 1, 2011 as a member of the Board of the Jefferson County Service District. I have served on this Board since my first appointment in March 2004 and re-appointment in December 2005. For reasons both professional and personal, I will not request re-appointment and will complete my Board service on the expiration date indicated.

It has been a pleasure and an honor to serve the community through the Public Service District Board. I appreciate the trust and responsibility shown in my appointment to this critical local government role. I have had the opportunity to work with outstanding Board members, dedicated District staff and talented consultants during my service on this Board. It has always been a pleasure and as I have stated many times, I learned much more on balance than I ever contributed in expertise through the experience of Board service.

It is with no small disappointment that I observe that two of the critical issues that faced the District nearly eight years ago when I started on the Board still remain today. As a community we are still struggling to provide adequate public infrastructure services to under- and un-served portions of rural Jefferson County. And it remains my opinion that we have insufficient resources and investments ready to meet the future economic development and environmental quality needs of the County. For that failure I will take a full measure of personal responsibility though, in failed outcome, it was not from lack of effort on my part or anything other than full dedication by District staff.

During my tenure on the District Board, a number of very complicated issues have developed and some of these have required very difficult decisions and negotiations. I found the learning curve to be steep. I have been pleased to work with the District's staff, consultants and my fellow Board members to try to resolve these challenges in the best interests of the community, our customers and within the scope of a highly regulated utility mission.

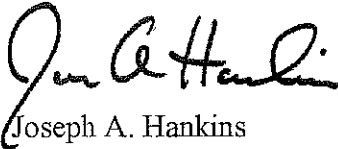
In departure, I ask that you pursue quickly and proactively new PSD Board applicants and make a timely appointment. As a three member Board, it is critical to have a full and balanced member complement. There is a long history of appointments that thoughtfully balance the perspective and professional experience on the Board. I believe a critical missing

component in the current Board member background is public finance, management and control. While the District is in solid financial condition now, the capital and operating investments required to meet emerging regulatory compliance and capacity upgrades for growth will be much larger than anything the District or its customers have experienced to date.

In closing, I offer my sincerest appreciation and full respect to General Manager Susanne Lawton and to all the permanent staff and consultants of the Jefferson County Public Service District. While my time on the Board is limited in term, they have dedicated careers and personal passions to the public sector provision of safe and affordable clean water services. The next Board member will be fortunate to join such a team.

Thank you for your time and consideration.

Respectfully,



Joseph A. Hankins
977 Turner Road
Shepherdstown, WV 25443-4175
304-876-1138
joseph.hankins@gmail.com

cc: Mr. Tim Boyd, County Administrator, Jefferson County
Ms. Susanne Lawton, General Manager, JCPSD

<p>Commission Office Use Only</p> <p>Date on Agenda:</p> <p>Appt Time or New Business:</p>
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AGENDA REQUEST FORM

Name: Historic Landmarks Commission

Department or Entity: _____

Estimation of amount of time needed for appointment: _____

Date Requested – 1st Choice: December 1, 2011

Date Requested – 2nd Choice: _____

If a specific date is needed, please provide reason for specific date:

Subject: The Jefferson County Historic Landmarks Commission requests a one time grant of \$25,000 to cover a portion of the purchase price of the 18-acre Shepherdstown Cement Mill property on the Potomac River

Please provide the County Commission with a description of your request or presentation, including any background information:

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):

Attachments:

Jefferson County Historic Landmarks Commission Presentation

Jefferson County Commission meeting

December 1, 2011

The Jefferson County Historic Landmarks Commission requests a one time grant of \$25,000 to cover a portion of the purchase price for the 18-acre Shepherdstown Cement Mill property on the Potomac River.

History

The Shepherdstown Cement Mill (aka Boteler's Mill) is one of the premiere industrial and Civil War sites in Jefferson County. The eighteen-acre site is located on River Road about one mile east of Shepherdstown on the Potomac River. The cement mill operated between 1828 and 1904 producing hydraulic cement used in construction projects in Washington, DC and the C&O canal. The Mill was also the location of last battle of the Maryland Campaign; September 19-20, 1862 as Confederate troops retreated from the Battle at Antietam.

Mr. Harry Blunt, of New London, NH, owns the property. The Blunt family has owned the Mill for over one hundred years and wants the property to be placed in the public domain, preserved, and its history interpreted.

Synopsis of Contract Terms:

- Purchase price \$375,000
- Conservation easement or deed restriction to be executed to protect property until it's transferred to NPS, required in contract by Mr. Blunt.
- Closing on November 30, 2011 or before the end of 2011

Funds to acquire the mill come from six Federal, State, local, and non-profit sources, a public private partnership:

• WVDOH, transportation enhancement grant,	\$200,000
• Civil War Trust	\$111,000
• Save Historic Antietam Foundation	\$34,000
• Jefferson County Commission	\$25,000
• Shepherdstown Battlefield Preservation Assoc.	\$5,000
TOTAL	\$375,000
• JC Historic Landmarks Comm. (closing costs)	\$2,500 est.

Once acquired, the JC Landmarks Commission will contract for and submit a National Register nomination to ensure the Shepherdstown Cement Mill is nationally recognized for its industrial and Civil War history. The Landmarks Commission will also initiate the process to donate the land to the National Park Service to guarantee the mill is preserved, managed, and interpreted in conjunction with either the Antietam National Battlefield or Chesapeake and Ohio Canal.

Benefits to Jefferson County

- Preservation of a nationally significant historic and Civil War site.
- Publicly accessible parkland with 2000ft of Potomac River frontage.
- Costs for site preservation, management, interpretation, safety, and security will shift to Federal government upon transfer to the NPS.
- Tourist attraction, bringing more visitors to Jefferson County

Jefferson County Historic Landmarks Commission Presentation
Jefferson County Commission meeting
November 17, 2011

The Jefferson County Historic Landmarks Commission requests a one time grant of \$25,000 to cover costs to acquire the 18-acre Shepherdstown Cement Mill property on the Potomac River.

History

The Shepherdstown Cement Mill (aka Boteler's Mill) is one of the premiere industrial and Civil War sites in Jefferson County. The eighteen-acre site is located about one mile east of Shepherdstown on the Potomac River. The cement mill operated between 1828 and 1904 producing hydraulic cement used in construction projects in Washington, DC and the C&O canal. The Mill was also the location of last battle of the Maryland Campaign; September 19-20, 1862 as Confederate troops retreated from the Battle at Antietam.

On November 9, 2011 after fourteen months of discussion and negotiation the JCHLC received a signed contract for the sale of the property from the current owner Mr. Harry Blunt. The JCHLC is in the process of gathering the pledged funds and developing a conservation easement to place on the property at time of settlement. The Blunt family has owned the Mill for over one hundred years and wants the property to be placed in the public domain, preserved, and its history interpreted.

Synopsis of Contract Terms:

- Purchase price \$375,000
- Conservation easement to be executed to protect property until it's transferred to NPS, required in contract by Mr. Blunt.
- Closing on or about November 30, 2011

Funds to acquire the mill come from six Federal, State, local, and non-profit sources, a public private partnership:

- | | |
|--|--------------|
| • WVDOH, transportation enhancement grant, | \$200,000 |
| • Civil War Trust | \$110,000 |
| • Save Historic Antietam Foundation | \$34,000 |
| • Community Participation Project, Delegate John Doyle | \$25,000 |
| • Shepherdstown Battlefield Preservation Assoc. | \$5,000 |
| • JC Historic Landmarks Comm. (closing costs) | \$2,500 est. |

Once the Cement Mill is acquired, the JC Landmarks Commission will contract for and submit a National Register nomination to ensure the Shepherdstown Cement Mill is nationally recognized for its industrial and Civil War history. The Landmarks Commission will also initiate the process to donate the land to the National Park Service to guarantee the mill is preserved, managed, and interpreted in conjunction with either the Antietam National Battlefield or Chesapeake and Ohio Canal.

Benefits to Jefferson County

- Preservation of a nationally significant historic and Civil War site.
- Publicly accessible parkland with 2000ft of Potomac River frontage.
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- Tourist attraction, bringing more visitors to Jefferson County

<p>Commission Office Use Only</p> <p>Date on Agenda: 12/1/11</p> <p>Appt Time or New Business: 10:45AM</p>
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AGENDA REQUEST FORM

Name: Mark Dyck

Department or Entity: President, Jeff Co Development Authority

Estimation of amount of time needed for appointment: 10 minutes

Date Requested – 1st Choice: 12/1/2011

Date Requested – 2nd Choice: 12/8/2011

If a specific date is needed, please provide reason for specific date:

Subject:

Present resolution from JCDA Board of Directors regarding lifting Impact Fees.

Please provide the County Commission with a description of your request or presentation, including any background information:

TO PRESENT A MOTION REGARDING COMMERCIAL IMPACT FEES AS PASSED BY THE JCDA. THE JCDA REQUESTS THAT THE JC COMMISSION PASS A MOTION REFLECTING THE ONE FORWARDED BY THE JCDA

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):

Attachments:

Resolution

**Board of
Directors
2011-2012**

Mark Dyck
President

Howard Mills
Vice President

Ann Paonessa
Secretary/Treasurer

James D. Campbell
Linda Case
Helen Detmer
Paul Espinosa
Annette Gavin
Ira Hale
Conrad C. Hammann
Joshua Householder
Eric Lewis
Howard Mills
P. David Mills
Walter Fellish
James A. Tolbert

Staff

Vacant
Executive Director

Shepherd Ogden
Agriculture
Development Officer

Elizabeth Wheeler
Administrator, JC
Farmland Protection
Board

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JEFFERSON COUNTY
DEVELOPMENT AUTHORITY

Resolution

Whereas, the Jefferson County Development Authority (JCDA) was created to encourage and support economic development and job growth in Jefferson County, and

Whereas, the JCDA was also created to develop, market and sell real estate in Jefferson County's Burr Business and Industrial Park, and

Whereas, the economy of the United States, West Virginia and Jefferson County have been experiencing a well-documented downturn for the past several years, and

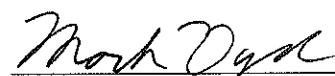
Whereas, given current economic conditions, Jefferson County must be more aggressive in competing for expanding or relocating businesses, and

Whereas, the costs associated with expanding or relocating a business within or to Jefferson County makes Jefferson County less competitive with neighboring areas, and

Whereas, several studies have found that commercial or industrial projects and properties pay more in taxes and fees and add more economic value in wages and cash injections to the local economy than the cost of the government services they require, and

Whereas, the JCDA believes that it could successfully market a temporary reduction in certain costs associated with expanding or relocating a business within or to Jefferson County to gain a competitive edge over the next two to four years,

Now therefore be it resolved, that the Jefferson County Development Authority requests that the Jefferson County Commission consider the elimination of all impact fees on non-residential projects for a period of not less than twenty-four (24) to forty- eight (48) months.



Mark Dyck, President

November 16, 2011

<p>Commission Office Use Only</p> <p>Date on Agenda:</p> <p>Appt Time or New Business:</p>
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AGENDA REQUEST FORM

Name: Elizabeth Wheeler

Department or Entity: Jefferson County Farmland Protection Board

Estimation of amount of time needed for appointment: 5 - 10 minutes

Date Requested – 1st Choice: December 1, 2011

Date Requested – 2nd Choice: _____

If a specific date is needed, please provide reason for specific date:
We are scheduled to close the easements on December 19, and have only a small window of opportunity to complete the transactions.

Subject: **Approval of three deeds of farmland conservation easements**

Please provide the County Commission with a description of your request or presentation, including any background information:

The attached easements (BB, DD, W) are ready to close in December. Matching funding is provided for all easements through the USDA/Natural Resources Conservation Service and the Jefferson County Farmland Protection Program. Easement BB contains a significant donation of value by the landowners. The acreage of the four easements is 314.01 acres with a cost to the JCFPB of \$523,500.00. The BB property is composed of two easements, one of which is a 10.06 acre parcel that is a donation to the Jefferson County Farmland Protection Board and co-held by the Land Trust of the Eastern Panhandle.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **that the Jefferson County Commission approve the purchase by the Jefferson County Farmland Protection Board for the Jefferson County Farmland Protection Program of four conservation easements on the properties in Jefferson County owned by the following persons: J. L. Burch Sr., D.A. Gray and F.J. Gray, J.H. Witt.**

Attachments: **Map of easement locations; 3 deeds of easement**

Deed of Conservation Easement

This **DEED OF CONSERVATION EASEMENT** ("Easement") is made this _____ day of _____, 2011, by Jack L. Burch, Sr. ("Grantor"), whose mailing address is P.O. Box 118, Summit Point, WV 25446, to the Jefferson County Farmland Protection Board ("FPB" or "Grantee") having its mailing address at P.O. Box 731, Charles Town, WV 25414, and the Land Trust of the Eastern Panhandle ("Trust" or "Co-holder"), having the same rights as conveyed to the Grantee and whose mailing address is P.O. Box 2240, Martinsburg, WV 25402. For purposes of this agreement, references to the rights, duties and obligations of Grantor and Grantee apply equally and in full force to any successors to the parties to this agreement.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Jefferson County, West Virginia, consisting of 185.16 acres of land, as described in a deed of record in the office of the Clerk of the County Commission, Jefferson County at Deed Book 733, at Page 104, and includes as an appurtenance the easement providing grantor with access to County Road 1-11 recorded in the aforesaid Clerk's Office in Deed Book 1091, at Page 421.

WHEREAS, the conservation easement hereby conveyed by this Deed of Conservation Easement is a 10.06 acre portion (the "Property") of the 185.16 acre parcel of land which was conveyed to the Grantor by deed of record in the Clerk's Office of the said County in Deed Book 733, Page 104. The 10.06 acre portion of the 185.16 acre parcel that is affected by this Deed of Conservation Easement consists of two parts: (1) the 9.82 acre portion of the 185.16 acre parcel on which Grantor conveyed certain property rights to PATH Allegheny Transmission Company, LLC by a Memorandum of Easement dated August 20, 2010 and recorded in the Clerk's Office of Jefferson County at Deed Book 1083, at Page 381 ("PATH easement"); and (2) a 0.24 acre triangle-shaped portion of the 185.16 acre parcel located to the south of the westernmost portion of this PATH easement and therefore not contiguous with the property to the north of the PATH easement and not part of the deed of conservation easement made by the Grantor to the Grantee, the Trust and the United States of America and recorded immediately preceding this Deed of Conservation Easement.

WHEREAS, by deed of conservation easement (the primary deed of conservation easement) bearing even date herewith and recorded in the aforesaid Clerk's Office immediately preceding this Deed of Conservation Easement, made by the Grantor to the Grantee, the Trust and the United States of America, the Grantor conveyed certain property rights affecting all of the 185.16 acre parcel, with the exception of the 10.06 acre parcel conveyed by this Deed of Conservation Easement, described by the deed of record in the aforesaid Clerk's Office in Deed Book 733, at Page 104, and this Deed of Conservation Easement is intended to be read and construed in *pari materia* with the primary deed of conservation easement. Specific reference is hereby made to Exhibit A of the primary Deed of Conservation Easement.

WHEREAS, the Property possesses agricultural, including prime, unique and significant soils; open space and natural values (collectively, "Conservation Values") of great importance to

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Grantors, the people of Jefferson County, and the people of the State of West Virginia, and all current and future generations of mankind;

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee, and incorporated by reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the Property at the time of this contract and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement;

WHEREAS, Grantors and Grantee have the exclusive common purpose of preserving the agriculture and open space character of the Property;

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity;

WHEREAS, the Legislature of the State of West Virginia ("Legislature") has recognized the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of the State of West Virginia;

WHEREAS, the Legislature has declared that agriculture is a unique life support industry, and recognizes the need to prevent the irreversible loss of agricultural land. The Legislature authorizes the State of West Virginia and its counties so desiring to protect agricultural land and woodland as open-space land, to develop programs and to accept qualifying properties voluntarily entered into the program;

WHEREAS, the County Commission of Jefferson County, West Virginia ("County Commission") has declared that the agriculture community of Jefferson County provides sources of agricultural products for the citizens of the state; enhances tourism, protects worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming; and controls urban expansion which is consuming land, topsoil and woodland of the county;

WHEREAS, the County Commission has resolved to provide persons of Jefferson County an opportunity to voluntarily protect agricultural land by creating the Jefferson County Farmland Protection Board and authorizing it to create and administer the Jefferson County Farmland Protection Program;

WHEREAS, the Trust is a non-profit corporation incorporated under the laws of the State of West Virginia and a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code and qualified under Section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, whose purpose is to preserve land for natural, historic, open space, scenic, recreational, environmental, agricultural, scientific, charitable, educational and aesthetic purposes;

WHEREAS, the Grantee is a public agency established to provide landowners with an opportunity to voluntarily protect agricultural land in Jefferson County by the voluntary placement of conservation or preservation easements on eligible Property;

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WHEREAS, the Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in Jefferson County and that by the acceptance of this Easement that it will act in good faith to uphold the conservation easement and not seek to benefit from its conversion or elimination. It agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come in the future; and,

NOW, THEREFORE, in consideration of the above and the mutual covenants, good and valuable consideration, terms, conditions and restrictions contained herein, and pursuant to the laws of West Virginia, Grantor hereby voluntarily grants, bargains, and conveys to Grantee a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth in this Easement. It is the purpose of this Easement to assure that the Property will be retained forever in its natural, agricultural, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, including its prime, unique, and important soils.

To achieve these objectives, the terms, conditions, and restrictions of this Easement are hereinafter set forth.

I. TERMS, CONDITIONS AND RESTRICTIONS

Grantor reserves to himself, and to his personal representatives, heirs, successors, and assigns, all rights accruing from her ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. The following terms, conditions and restrictions clarify and govern the intent of Grantor and Grantee:

1. **Use and Quiet Enjoyment.** Grantor has the right to benefit from all aspects of the quiet enjoyment of the Property. Grantor has the right to engage in any and all personal recreational uses of the Property, including but not limited to hiking; touring; swimming; camping, biking; hunting and fishing; that require no development of the land and are consistent with the Conservation Values.

2. **Agricultural Uses of the Land.** Grantor may engage in any and all agricultural uses of the Property. For example, the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; equestrian uses; livestock and fowl uses and livestock and fowl products; bees and apiary products; fruits nuts and vegetables of all kinds; nursery, floral and greenhouse products; aquaculture; a grain mill; and the processing and storage of the agricultural products produced principally on the Property are permitted. Any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, riding instruction or related activities, shall be considered an agricultural activity. However, such activities or businesses must be consistent with the Conservation Values.

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3. Activities for Religious, Charitable or Educational Purposes or to Foster Tourism.

Activities or businesses undertaken for charitable or educational purposes or to foster tourism may be conducted on the Property in order to foster rural economic uses while protecting the rural character of the Property. Such activities or businesses must be compatible with and supportive of the rural character of the Property, and must remain incidental to the agricultural and open space character of the Property.

- (a) Accommodation of tourists and visitors is permitted for rural recreational activities such as hayrides, corn mazes, etc.
- (b) Commercial operation of dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles whether or not considered to foster tourism is prohibited.
- (c) Extensive commitment of land resources as required by golf courses, racetracks, tennis clubs, baseball, soccer and other ball fields and similar uses whether or not considered to foster tourism is prohibited.

4. Transfer of Development Rights.

The Property and any portion thereof shall not be included as part of the gross area of other Property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open spaces requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of Grantees, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Property.

5. Subdivision. It is the intention of Grantor to protect the open space values of the Property. Accordingly, subdivision of the Property is prohibited and transfer or other conveyance of the Property as a separate parcel from the 185.16 acre parcel of which the Property is a portion is prohibited.

6. Maximum Impervious Surface Coverage. The total surface coverage of impervious surfaces on the Property shall be subject to the limitations defined below.

- (a) Impervious surfaces shall be defined as any material which covers land and inhibits the percolation of stormwater directly into the soil, including, but not limited to, buildings, roofs, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas.
- (b) Coverage of the Property by all impervious surfaces, including driveways and parking areas, is prohibited.

7. Removal of Natural Resources. Ditching, draining, diking, filling, excavating, removal of topsoil or sand, gravel or rock on the Property is prohibited, except when such activities are conducted in order to carry out activities permitted under this Easement, are in accordance with a conservation plan, do not exceed and are restored within a reasonable time period. The exploration, development, mining or extraction of minerals, oil, gas or any other hydrocarbon substance from the Property is prohibited.

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8. Management of Woodland Resources. Removal, destruction and cutting or harvesting of trees, shrubs, and other woodland resources is prohibited except:

- (a) Non-commercial forestry activities which include the following: Agriculturally related low-impact timber harvest and sale including the management of the forest for timber, and/or for wildlife and forest health where those activities are conducted in accordance with a Forest Stewardship Plan prepared or reviewed by a licensed, registered West Virginia forester which has been updated no more than ten (10) years prior to the harvest. The Forest Stewardship Plan must be approved by Grantee. This easement allows for the growing and sale of Christmas trees, orchard products and nursery stock; and the growing and sale of ornamental plants and woodland products for human consumption. Only commercial timber harvest shall be prohibited.
- (b) To the extent necessary for application of sound disease or insect control practices and removal of non-native invasive species;
- (c) To control or prevent fire, damage to improvements, and the endangerment of life;
- (d) To cut firewood for use on the property;
- (e) For access otherwise permitted in this Easement; To remove, destroy and cut orchard tree species which may include the cutting thereof for firewood for use on the Property or for sale. The sale of orchard tree species firewood is exempt from the Forest Stewardship Plan if grown within the agricultural operation.
- (f) For the maintenance or the improvements of pastures whether existing presently or in the future.

9. Construction. Because the Property does not fall within any part of the 185.16 acre parcel where structures are permitted, there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or any other temporary or permanent structure or facility on or above the premises.

10. Signs. Except for no-trespassing signs, for-sale signs, no-hunting signs, signs identifying this Easement, and signs to advertise an on-site activity or business, all other signs, advertisements and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet per sign.

11. Wastes. Dumping or storage of trash, garbage, hazardous substances, abandoned vehicles or machines or other material on the Property is prohibited. However, composting of biodegradable material used or produced on the Property to improve gardens and pastures on the Property is permitted so long as composting and its application is consistent with a conservation plan.

12. Utilities. Grantor shall not sell, lease or grant an easement covering any portion of the Property where such sale, lease or easement is for the purpose of construction and installation of underground or above-ground utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations, and cellular telephone or other communication towers. Grantor may install utilities necessary for the permitted residential and agricultural structures; PROVIDED, HOWEVER, that this deed of conservation easement is made expressly subject and subordinate to any utility easements or rights of way of record as of the date of this deed of conservation easement, or evident from a visual inspection of the property, and the rights and appurtenances thereunto

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belonging, including the Memorandum of Easement to PATH Allegheny Transmission Company, LLC.

II. GENERAL PROVISIONS

1. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.

2. **Rights of the Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee or their agent by this Easement:

(a) To preserve and protect the Conservation Values of the Property;

(b) To enter upon the Property on a yearly basis (or more frequently if violations are observed or suspected) in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to *General Provision—Grantee's Remedies*.

3. **Grantee Notification/Approval.** Grantor reserves for himself the right to engage in any and all activities not expressly prohibited herein and not inconsistent with the purpose of this Easement without seeking the approval of the Grantee.

4. **Grantee's Remedies.**

(a) **Notice of Violation; Corrective Action.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action within 60 days sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) **Injunctive Relief.** The Grantee, its successors or assigns, jointly or severally shall have the right to enforce these restrictions by injunction and other appropriate proceedings, including, but not limited to, the right to require Grantor to restore the Property to the condition existing at the time of this Easement in order to correct any violation(s) of this Easement. The Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee shall be entitled to the injunctive relief in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

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(c) **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation costs of suit and attorneys' fees, and costs or restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantors. If Grantor prevails in action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee. Costs incurred by Grantee in enforcing the terms of this Easement against third party shall be borne by Grantee.

(d) **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

(e) **Rights of Enforcement.** Under this Conservation Easement, the Jefferson County Farmland Protection Board and the Land Trust of the Eastern Panhandle are granted the right of enforcement in order to protect the public investment. The Jefferson County Farmland Protection Board or its assigns has the right to prevent any activity on or use of the Protected Property that is inconsistent with this Conservation Easement and to require the restoration of such areas or features of the Protected Property that may be damaged by any inconsistent activity or use, pursuant to paragraph

(f) **Conservation Plan.** Grantor, his heirs, successors, or assigns, shall have the right to engage in agricultural uses on the Protected Property consistent with a conservation plan prepared in consultation with the NRCS and approved by the Conservation District and their assigns. For example, other production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; swine; poultry and poultry products; etc., and the processing and storage of the agricultural products produced principally on the Property are permitted.

5. **Grantee and Co-holder's Rights and Obligations.** Grantee shall have the primary responsibility of stewardship and monitoring of this easement, determining if a violation has occurred, and for approving any amendments to the Deed of Conservation Easement. These duties may be fulfilled directly by Grantee or its agent, or Grantee may arrange to have the Co-holder fulfill these duties. Grantee will share with the Co-holder monitoring and stewardship information, including but not limited to written notices to Grantee and monitoring reports, in the event that the Co-holder is not acting to complete these duties through an arrangement with Grantee.

The Grantee is responsible for any costs incurred in enforcing the terms of the easement, including any attorney's fees and any costs of the suit. Grantee can recover cost from Grantor or third party as described in the Grantee's Remedies above. The Grantee and Co-holder shall make every good faith effort to determine a unified course of action should a potential or actual violation of the easement arise.

Co-holder shall have the right to enforce the terms of the Easement if Grantee becomes unable or refuses to enforce the Easement, or if Co-holder in its sole discretion finds that the Grantee's enforcement action or consent fails to protect the conservation purposes of the Easement. In such case, the provisions of paragraph 4 above apply equally to the Co-holder.

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6. **Acts Beyond the Grantor's Control.** Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantor agrees that Grantee has the right to pursue enforcement action against the responsible parties.

7. **Costs, Legal Requirements and Liabilities.** Grantor, his heirs, successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

8. **Control.** Nothing in this Easement shall be construed as giving rise to any right or ability of the Grantee, to exercise physical or managerial control over the day-to-day operations of the Property, or any responsibility to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. §§ 9602 et seq.).

9. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property or residences contained thereon by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement.

10. **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and members, directors, officers, employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: an 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 solely to the negligence of any of the Indemnified Parties and only that negligent party shall be deprived of this protection.

11. **Environmental Warranty.** "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

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Grantor warrants that he is in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

Grantor warrants that he has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits. Moreover, Grantor hereby promises to indemnify and hold harmless the Grantee against all costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

12. Proceeds for Extinguishment. The conveyance of this Easement gives rise to a Property right immediately vested in the Grantee. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, upon approval by the Jefferson County Farmland Protection Board or its successors and by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which the Jefferson County Farmland Protection Board shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be an amount equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property as these values are determined on the date of this Deed, or 56% of the net proceeds. The Grantors are entitled to 44% of the gross sale proceeds or condemnation award. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

In making this Easement, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement.

13. Condemnation. If an Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantor shall be entitled to compensation at not less than the fair market value of the Property determined without regard to the existence of the Easement.

14. Assignment. This Easement is not transferable by the Grantee to any other local, county or state department, board, agency, commission or successor. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, and the Grantee hereby covenants and agrees that in the event it transfers or assigns the Conservation Easement held under this indenture, the organization receiving the interest will be a qualified

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organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code, and Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which were originally intended

The Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the Easement was originally intended to advance. The transfer of the easement to a new or successor transferee or assignee will not create a financial obligation of any kind on the Grantor.

15. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

16. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

17. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt, addressed as follows:

To Grantor: Jack L. Burch, Sr.
P.O. Box 118
Summit Point, WV 25446

To Grantee: The Jefferson County Farmland
Protection Board
P. O. Box 731
Charles Town, WV 25414-0731

To Co-Holder: Land Trust of the Eastern Panhandle, Inc
P.O. Box 2240
Martinsburg, WV 25402

or to such other address as either party from time to time shall designate by written notice to the other.

18. Recordation. Grantee shall record this instrument in timely fashion with the Office of the Clerk of Jefferson County, West Virginia and may re-record it at any time as may be required to preserve its rights in this Easement.

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19. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor, Grantee and the Jefferson County Commission are free to jointly amend this Easement; provided that no amendment shall be allowed that will invalidate this Easement or be inconsistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded as above specified. No such amendment shall be effective unless in writing and signed by all parties hereto.

20. Other Provisions.

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of West Virginia.

(b) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(c) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of the Grantors' title in any respect.

(d) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(e) **Captions.** The captions herein have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

(f) **Subordination.** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.

(g) **Title Warranties.** Grantor warrants that Grantor has good title to the Property; that Grantor has the right to convey this Easement, and that the Property is free and clear of any encumbrances other than the existing utility easements previously mentioned and described.

(h) **Merger.** If Grantee at some future time acquires the underlying fee title in the Property, the interest conveyed by this Easement will not merge with fee title but will continue to exist and be managed as a separate estate.

DEED OF CONSERVATION EASEMENT

DECLARATION OF CONSIDERATION OF VALUE. The undersigned hereby declare under penalty of fine and imprisonment as provided by law, that the conveyance made by this document is a transfer of Property right to county governmental entities, and therefore, is exempt from the West Virginia excise tax due on the transfer of real Property.

IN WITNESS WHEREOF Grantors and Grantee have set their hand:

GRANTOR:

Jack L. Burch, Sr.

Signature

Date

GRANTEE:

Jefferson County Farmland Protection Board

Signature

Date

CO-HOLDER:

The Land Trust of the Eastern Panhandle, Inc.

Signature

Date

DEED OF CONSERVATION EASEMENT

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011 Jack L. Burch, Sr.

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Elizabeth M. Uible, Chairman, on behalf of the Jefferson County Farmland Protection Board.

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____ on behalf of the Land Trust of the Eastern Panhandle, Inc

My commission expires: _____

Notary Public

DEED OF CONSERVATION EASEMENT

SCHEDULE OF EXHIBITS

A. Legal Description of Property Subject to Easement

Deed of Conservation Easement

This **DEED OF CONSERVATION EASEMENT** ("Easement") is made this _____ day of _____, 2011, by Jack L. Burch, Sr. ("Grantor"), whose mailing address is P.O. Box 118, Summit Point, WV 25446, to the Jefferson County Farmland Protection Board ("FPB" or "Grantee") having its mailing address at P.O. Box 731, Charles Town, WV 25414, the Land Trust of the Eastern Panhandle ("Trust" or "Co-holder"), having the same rights as conveyed to the Grantee and whose mailing address is P.O. Box 2240, Martinsburg, WV 25402, and the United States of America ("United States"), by and through the Commodity Credit Corporation, and the acquiring agency, the U.S. Department of Agriculture-Natural Resources Conservation Service ("NRCS"), with its mailing address at 1550 Earl Core Road, Morgantown, WV 26505 as its interest appears herein. For purposes of this agreement, references to the rights, duties and obligations of Grantor and Grantee apply equally and in full force to any successors to the parties to this agreement.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Jefferson County, West Virginia, consisting of 185.16 acres of land, more or less, as described in Exhibit A incorporated herein by reference. This 185.16 acre parcel is also described in a deed of record in the office of the Clerk of the County Commission, Jefferson County at Deed Book 733, at Page 104 and includes as an appurtenance the easement providing grantor with access to County Road 1-11 recorded in the aforesaid Clerk's Office in Deed Book 1091, at Page 421.

WHEREAS, the conservation easement hereby conveyed by this primary Deed of Conservation Easement is a 175.10 acre portion (the "Property") of the 185.16 acre parcel of land of which Grantor is fee simple owner by deed of record in the Clerk's Office of the said County in Deed Book 733, Page 104. The 10.06 acre portion of the 185.16 acre parcel that is not conveyed by this Deed of Conservation Easement consists of two parts: (1) the 9.82 acre portion of the 185.16 acre parcel on which Grantor conveyed certain property rights to PATH Allegheny Transmission Company, LLC by a Memorandum of Easement dated August 20, 2010 and recorded in the Clerk's Office of Jefferson County at Deed Book 1083, at Page 381 ("PATH easement"); and (2) a 0.24 acre triangle-shaped portion of the 185.16 acre parcel located to the south of the westernmost portion of this PATH easement. The 10.06 acre portion that is not conveyed is the subject of a second deed of conservation easement bearing even date herewith and recorded in the aforesaid Clerk's Office immediately following this Deed of Conservation Easement.

.WHEREAS, the Property possesses agricultural, including prime, unique and significant soils; open space and natural values (collectively, "Conservation Values") of great importance to Grantor, the people of Jefferson County, and the people of the State of West Virginia, and all current and future generations of mankind;

WHEREAS, the Farm and Ranch Lands Protection Program (16 USC 3838h and 3838i) purchases conservation easements to protect prime, unique, and other productive soils from conversion to non-agricultural uses. Under the authority of the Farm and Ranch Lands Protection Program, the United States Department of Agriculture's Natural Resources Conservation Service has

DEED OF CONSERVATION EASEMENT

provided \$250,000 to Grantor for the acquisition of this conservation easement, entitling the United States to the rights identified herein;

WHEREAS, Grantee has provided \$250,000.00 under the Jefferson County Farmland Protection Program to purchase a conservation easement on 175.44 acres of the Property;

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee, and incorporated by reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the Property at the time of this contract and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement;

WHEREAS, Grantor and Grantee have the exclusive common purpose of preserving the agriculture and open space character of the Property;

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity;

WHEREAS, the Legislature of the State of West Virginia ("Legislature") has recognized the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of the State of West Virginia;

WHEREAS, the Legislature has declared that agriculture is a unique life support industry, and recognizes the need to prevent the irreversible loss of agricultural land. The Legislature authorizes the State of West Virginia and its counties so desiring to protect agricultural land and woodland as open-space land, to develop programs and to accept qualifying properties voluntarily entered into the program;

WHEREAS, the County Commission of Jefferson County, West Virginia ("County Commission") has declared that the agriculture community of Jefferson County provides sources of agricultural products for the citizens of the state; enhances tourism, protects worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming; and controls urban expansion which is consuming land, topsoil and woodland of the county;

WHEREAS, the County Commission has resolved to provide persons of Jefferson County an opportunity to voluntarily protect agricultural land by creating the Jefferson County Farmland Protection Board and authorizing it to create and administer the Jefferson County Farmland Protection Program;

WHEREAS, the Trust is a non-profit corporation incorporated under the laws of the State of West Virginia and a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code and qualified under Section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, whose purpose is to preserve land for natural, historic, open space, scenic, recreational, environmental, agricultural, scientific, charitable, educational and aesthetic purposes;

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WHEREAS, The Grantee is a public agency established to provide landowners with an opportunity to voluntarily protect agricultural land in Jefferson County by the voluntary placement of conservation or preservation easements on eligible Property;

WHEREAS, the Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in Jefferson County and that by the acceptance of this Easement that it will act in good faith to uphold the conservation easement and not seek to benefit from its conversion or elimination. It agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come in the future; and,

NOW, THEREFORE, in consideration of the above and the mutual covenants, good and valuable consideration, terms, conditions and restrictions contained herein, and pursuant to the laws of West Virginia, Grantor hereby voluntarily grants, bargains, and conveys to Grantee and the United States a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth in this Easement. It is the purpose of this Easement to assure that the Property will be retained forever in its natural, agricultural, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, including its prime, unique, and important soils.

To achieve these objectives, the terms, conditions, and restrictions of this Easement are hereinafter set forth. The parties agree that the United States is granted the same rights as the Grantee under the terms of this Easement. However, the United States will only exercise its rights set forth below at section II 4 (e). Until such time, if ever, the United States exercises its rights under this Easement, Grantee is the primary manager and enforcer of this Easement.

I. TERMS, CONDITIONS AND RESTRICTIONS

Grantor reserves to himself, and to his personal representatives, heirs, successors, and assigns, all rights accruing from his ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. The following terms, conditions and restrictions clarify and govern the intent of Grantor and Grantee:

1. Use and Quiet Enjoyment. Grantor has the right to reside on the Property and to benefit from all aspects of the quiet enjoyment of the Property. Grantor has the right to engage in any and all personal recreational uses of the Property, including but not limited to hiking, touring, swimming, camping, biking, hunting and fishing; that require no development of the land and are consistent with the Conservation Values.

2. Agricultural Uses of the Land. Grantor may engage in any and all agricultural uses of the Property. For example, the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; equestrian uses; livestock and fowl uses and livestock and fowl products; bees and apiary

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products; fruits, nuts and vegetables of all kinds; nursery, floral and greenhouse products; aquaculture; a grain mill; and the processing and storage of the agricultural products produced principally on the Property are permitted. Any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, riding instruction or related activities, shall be considered an agricultural activity. However, such activities or businesses must be undertaken in the permitted agricultural or residential structures and must be consistent with the Conservation Values.

3. Agricultural Structures. Grantor has the right to maintain, construct, and place agricultural structures contributing to the production, primary processing, direct marketing and storage of products produced principally on the Property. Agricultural structures shall be constructed or placed on the Property within the areas described in Exhibit C ("Farmstead Complex Area") and shall be limited by the maximum square footage as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*.

4. Retail Sale of Farm Products. Businesses directly related to the retail sale of farm products produced primarily on the Property that are supportive and agriculturally compatible may be established on the Property. Such businesses include roadside stands or structures to facilitate the direct sale to the public of agriculture products, as long as not more than 2,000 square feet of structures are erected to facilitate such retail sales.

5. Activities for Religious, Charitable or Educational Purposes or to Foster Tourism. Activities or businesses undertaken for charitable or educational purposes or to foster tourism may be conducted on the Property in order to foster rural economic uses while protecting the rural character of the Property. Such activities or businesses must be compatible with and supportive of the rural character of the Property, and must remain incidental to the agricultural and open space character of the Property.

- (a) Non-agricultural commercial and industrial structures and uses are prohibited. Activities or businesses undertaken for charitable or educational purposes or to foster tourism must be undertaken in the agricultural structures permitted under *Agricultural Structures* or *Residential Dwellings*; no other structures are permitted on the Property.
- (b) Stables, horseback riding arenas both within and outside the barn, and supporting pavilion(s) and buildings are considered agricultural buildings. Such buildings shall be located within the Farmstead Complex Area described in Exhibit C, and shall be limited by the maximum square feet as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*.
- (c) Accommodation of tourists and visitors is permitted but only within permitted residential structures and appurtenances, and/or agricultural structures, except for rural recreational activities such as hayrides, corn mazes, etc.
- (d) Accommodation of overnight guests is permitted, but only within permitted residential structures.
- (e) Commercial operation of dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles whether or not considered to foster tourism is prohibited.
- (f) Extensive commitment of land resources as required by golf courses, racetracks, tennis clubs, baseball, soccer and other ball fields and similar uses whether or not considered to foster tourism is prohibited.

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6. **Home-based Businesses.** Any home-based business that does not require a Division of Environmental Protection permit to operate may be conducted on the Property, provided that:

- (a) The occupation or business use must be conducted entirely within the single residential dwelling or appurtenances allowable under *Terms, Conditions and Restrictions—Residential Dwellings*.
- (b) The use of the dwelling for the home occupation shall be clearly incidental and subordinate to the use of the dwelling for residential purposes.

7. **Residential Dwellings.** Grantor and Grantee acknowledge the existence of one single residential dwelling and associated outbuildings, and agricultural buildings currently existing on the Property, as more fully described in Exhibit B. In addition, subject to compliance with Jefferson County Ordinances, Grantor, or his heirs, successors and assigns, may construct a single residential dwelling on each of the Retained Development Rights indicated in Exhibits D-1 and D-2. No other single residential dwellings shall be constructed or placed on the Property.

- (a) Each single residential dwelling shall be contained in a building envelope (“Residential Area”) no greater than two (2) acres per dwelling. The Retained Development Right may be constructed anywhere within the building envelopes described in Exhibits D-1 and D-2.
- (b) Grantor has the right to maintain, repair, enlarge or replace each allowed single residential dwelling as he may so desire, except that the impervious surface of each such single residential dwelling is limited to 5,000 square feet.
- (c) Grantor has the right to construct appurtenances such as garages, sheds and recreational facilities within each building envelope, except that the total allowed impervious surface within each building envelope, including the single residential dwelling(s), shall not exceed 9,000 square feet.
- (d) Each single residential dwelling may house one or more families or occupants, but shall not be converted to a multi-family dwelling.

8. **Transfer of Development Rights.**

The Property and any portion thereof shall not be included as part of the gross area of other Property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open spaces requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of Grantees, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Property.

9. **Subdivision.** It is the intention of Grantor to protect the open space values of the Property. Accordingly, subdivision of the Property is prohibited.

10. **Maximum Impervious Surface Coverage.** The total surface coverage of impervious surfaces on the Property shall be subject to the limitations defined below.

- (a) Impervious surfaces shall be defined as any material which covers land and inhibits the percolation of stormwater directly into the soil, including, but not limited to, buildings,

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roofs, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas.

- (b) The total surface coverage of the Property by all impervious surfaces, including all single residential dwellings, structures considered as an appurtenance to such dwellings, structures associated with agricultural uses, driveways and parking areas, shall not exceed 152,843 square feet.

11. Removal of Natural Resources. Ditching, draining, diking, filling, excavating, removal of topsoil or sand, gravel or rock on the Property is prohibited, except when such activities are conducted in order to carry out activities permitted under this Easement, are in accordance with a conservation plan, do not exceed one (1) acre in total area and are restored within a reasonable time period. The exploration, development, mining or extraction of minerals, oil, gas or any other hydrocarbon substance from the Property is prohibited.

12. Management of Woodland Resources. Removal, destruction and cutting or harvesting of trees, shrubs, and other woodland resources is prohibited except:

- (a) Non-commercial forestry activities which include the following: Agriculturally related low-impact timber harvest and sale including the management of the forest for timber, and/or for wildlife and forest health where those activities are conducted in accordance with a Forest Stewardship Plan prepared or reviewed by a licensed, registered West Virginia forester which has been updated no more than ten (10) years prior to the harvest. The Forest Stewardship Plan must be approved by Grantee. This easement allows for the growing and sale of Christmas trees, orchard products and nursery stock; and the growing and sale of ornamental plants and woodland products for human consumption. Only commercial timber harvest shall be prohibited.
- (b) To the extent necessary for application of sound disease or insect control practices and removal of non-native invasive species;
- (c) To control or prevent fire, damage to improvements, and the endangerment of life;
- (d) To cut firewood for use on the property;
- (e) For construction or maintenance of permitted structures or landscaping within the Residential Area or for access otherwise permitted in this Easement;
- (f) To remove, destroy and cut orchard tree species which may include the cutting thereof for firewood for use on the Property or for sale. The sale of orchard tree species firewood is exempt from the Forest Stewardship Plan if grown within the agricultural operation.
- (g) For the maintenance or the improvements of pastures whether existing presently or in the future.

13. Other Construction. Except as specifically permitted above, there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or any other temporary or permanent structure or facility on or above the premises.

14. Signs. Except for no-trespassing signs, for-sale signs, no-hunting signs, signs identifying this Easement, and signs to advertise an on-site activity or business, all other signs, advertisements and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet per sign.

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15. **Wastes.** Dumping or storage of trash, garbage, hazardous substances, abandoned vehicles or machines or other material on the Property is prohibited. However, composting of biodegradable material used or produced on the Property to improve gardens and pastures on the Property is permitted so long as composting and its application is consistent with a conservation plan.

16. **Utilities.** Grantor shall not sell, lease or grant an easement covering any portion of the Property where such sale, lease or easement is for the purpose of construction and installation of underground or above-ground utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations, and cellular telephone or other communication towers. Grantor may install utilities necessary for the permitted residential and agricultural structures.

17. **Streams, Wetland and Water Bodies.** There shall be no pollution, alteration, or depletion of surface water, natural water courses, lakes, ponds, marshes, wetlands, springs, subsurface water or any other water bodies, nor shall there be activities conducted on the Property which would be detrimental to water purity or which could alter natural water level and/or flow in or over the Property. Nothing in this paragraph shall prohibit the creation or dredging of farm ponds and/or the reasonable use of the available water of the Property for agricultural purposes permitted by this easement. Structures and facilities associated with irrigation, farm pond impoundment, and soil and water conservation on the Property shall be considered an agricultural use. Expansion and construction of ponds and structures outside the Farmstead Complex Area shall be in accordance with the conservation plan. Farm ponds both inside and outside the Farmstead Complex Area shall not exceed one (1) acre in area.

II. GENERAL PROVISIONS

1. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.

2. **Rights of the Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee or its agent by this Easement:

- (a) To preserve and protect the Conservation Values of the Property;
- (b) To enter upon the Property on a yearly basis (or more frequently if violations are observed or suspected) in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and
- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to *General Provision—Grantee's Remedies*.

3. **Grantee Notification/Approval.** Grantor reserves for himself the right to engage in any and all activities not expressly prohibited herein and not inconsistent with the purpose of this Easement without seeking the approval of the Grantee.

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4. Grantee's Remedies.

(a) **Notice of Violation; Corrective Action.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action within 60 days sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) **Injunctive Relief.** The Grantee, its successors or assigns, jointly or severally shall have the right to enforce these restrictions by injunction and other appropriate proceedings, including, but not limited to, the right to require Grantor to restore the Property to the condition existing at the time of this Easement in order to correct any violation(s) of this Easement. The Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee shall be entitled to the injunctive relief in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(c) **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation costs of suit and attorneys' fees, and costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee. Costs incurred by Grantee in enforcing the terms of this Easement against third party shall be borne by Grantee. The preceding two sentences shall not apply to the United States should the United States exercise its rights under (e) below.

(d) **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

(e) **Rights of Enforcement.** Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his assigns, on behalf of the United States, may exercise these rights under the following circumstances: In the event that Grantee fails to enforce any terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any all authorities available under Federal or State Law.

(f) **Conservation Plan.** As required by section 12381 of the Food Security Act of 1985, as amended, the Grantor, his heirs, successors, or assigns, shall conduct all agricultural operations on the highly erodible lands within the Protected Property in a manner consistent with a conservation

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plan prepared in consultation with the NRCS and approved by the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of this Easement. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. The NRCS shall have the right to enter upon the Property, with advance notice to the Grantor and Grantee, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, the NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, the NRCS will inform Grantee of the Grantor's noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event of circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the Grantor may be or become subject.

The conservation plan described above, and all provisions of this section, apply only to the highly erodible land and wetlands conservation requirements. Such highly erodible land and wetlands, if any, are described in the Baseline Documentation and incorporated here by reference. The Grantor agrees that the NRCS shall share, through written communication with the Grantee, information related to monitoring for compliance with the conservation plan; findings of compliance or noncompliance; and any proceedings under appeal rights applicable under NRCS regulations related to a violation of the conservation plan.

In addition, as of the date of this Easement, the Grantor and NRCS certify that the Grantor is in compliance with all highly erodible land and wetland conservation provisions.

5. Grantee and Co-holder's Rights and Obligations. Grantee shall have the primary responsibility of stewardship and monitoring of this easement, determining if a violation has occurred, and for approving any amendments to the Deed of Conservation Easement. These duties may be fulfilled directly by Grantee or its agent, or Grantee may arrange to have the Co-holder fulfill these duties. Grantee will share with the Co-holder monitoring and stewardship information, including but not limited to written notices to Grantee and monitoring reports, in the event that the Co-holder is not acting to complete these duties through an arrangement with Grantee.

The Grantee is responsible for any costs incurred in enforcing the terms of the easement, including any attorney's fees and any costs of the suit. Grantee can recover cost from Grantor or third party as described in the Grantee's Remedies above. The Grantee and Co-holder shall make

DEED OF CONSERVATION EASEMENT

every good faith effort to determine a unified course of action should a potential or actual violation of the easement arise.

Co-holder shall have the right to enforce the terms of the Easement if Grantee becomes unable or refuses to enforce the Easement, or if Co-holder in its sole discretion finds that the Grantee's enforcement action or consent fails to protect the conservation purposes of the Easement. In such case, the provisions of paragraph 4 above apply equally to the Co-holder.

6. Acts Beyond the Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantor agrees that Grantee has the right to pursue enforcement action against the responsible parties.

7. Costs, Legal Requirements and Liabilities. Grantor, his heirs, successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

8. Control. Nothing in this Easement shall be construed as giving rise to any right or ability of the Grantee, or the United States to exercise physical or managerial control over the day-to-day operations of the Property, or any responsibility to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. §§ 9602 et seq.).

9. Taxes. Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property or residences contained thereon by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement.

10. Hold Harmless. Grantor shall hold harmless, indemnify, and defend Grantee and the United States and its members, directors, officers, employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: an 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 solely to the negligence of any of the Indemnified Parties and only that negligent party shall be deprived of this protection.

11. Environmental Warranty. "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health

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protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

“Hazardous Materials” means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Grantor warrants that he is in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

Grantor warrants that he has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits. Moreover, Grantor hereby promises to indemnify and hold harmless the United States against all costs, claims, demands, penalties and damages, including reasonable attorneys’ fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor’s indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

12. Proceeds for Extinguishment. The conveyance of this Easement gives rise to a Property right immediately vested in the Grantee and the United States. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, upon approval by the USDA-NRCS or its successors and by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which the Grantee and the United States shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be an amount equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property as these values are determined on the date of this Deed, or 56% of the net proceeds. The proportional shares of the Grantee and the United States are 50%, and 50% respectively. The Grantor is entitled to 44% of the gross sale proceeds or condemnation award. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

In making this Easement, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement.

DEED OF CONSERVATION EASEMENT

13. Condemnation. Due to the federal interest in this Easement, the United States must consent to any condemnation action. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantor shall be entitled to compensation at not less than the fair market value of the Property determined without regard to the existence of the Easement.

14. Assignment. This Easement is not transferable by the Grantee to any other local, county or state department, board, agency, commission or successor. In the event that the Jefferson County Farmland Protection Board ceases to operate or exist, and the United States declines to take sole title as set forth above at under II. 4. (e) herein, the rights of the Grantee under this Easement shall be transferred to an organization that is qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and is a West Virginia-domiciled organization authorized to acquire and hold conservation easements under the West Virginia Conservation and Preservation Easements Act, (WV Code 8A-12-1 et seq.). The USDA-NRCS or its successor must approve any such transfer in advance.

The Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the Easement was originally intended to advance. The transfer of the easement to a new or successor transferee or assignee will not create a financial obligation of any kind on the Grantor.

15. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

16. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

17. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt, addressed as follows:

To Grantor: Jack L. Burch, Sr.
P.O. Box 118
Summit Point, WV 25446

To Grantee: The Jefferson County Farmland Protection Board
P. O. Box 731
Charles Town, WV 25414-0731

To Co-Holder: Land Trust of the Eastern Panhandle, Inc.
P.O. Box 2240
Martinsburg, WV 25402

To: the United States: Natural Resources Conservation Service

DEED OF CONSERVATION EASEMENT

1550 Earl Core Road
Morgantown, WV 26505

or to such other address as either party from time to time shall designate by written notice to the other.

18. Recordation. Grantee shall record this instrument in timely fashion with the Office of the Clerk of Jefferson County, West Virginia and may re-record it at any time as may be required to preserve its rights in this Easement.

19. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor, Grantee and the United States are free to jointly amend this Easement; provided that no amendment shall be allowed that will invalidate this Easement or be inconsistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded as above specified. No such amendment shall be effective unless in writing and signed by all parties hereto.

20. Other Provisions.

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of West Virginia and the United States.

(b) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(c) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of the Grantor's title in any respect.

(d) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(e) **Captions.** The captions herein have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

(f) **Subordination.** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.

(g) **Title Warranties.** Grantor warrants that Grantor has good title to the Property; that Grantor has the right to convey this Easement, and that the Property is free and clear of any encumbrances.

(h) **Merger.** If Grantee at some future time acquires the underlying fee title in the Property, the interest conveyed by this Easement will not merge with fee title but will continue to exist and be managed as a separate estate.

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DECLARATION OF CONSIDERATION OF VALUE. The undersigned hereby declare under penalty of fine and imprisonment as provided by law, that the conveyance made by this document is a transfer of Property right to Federal and county governmental entities, and therefore, is exempt from the West Virginia excise tax due on the transfer of real Property.

IN WITNESS WHEREOF Grantor and Grantee have set their hand:

GRANTOR:

Jack L. Burch, Sr.

-
Signature

-
Date

GRANTEE:

Jefferson County Farmland Protection Board

-
Signature

-
Date

CO-HOLDER:

The Land Trust of the Eastern Panhandle, Inc.

Signature

Date

DEED OF CONSERVATION EASEMENT

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Jack L. Burch, Sr.

My commission expires: _

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by Elizabeth M. Uible, Chairman, on behalf of the Jefferson County Farmland Protection Board.

My commission expires: _

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2011, by _____ on behalf of the Land Trust of the Eastern Panhandle, Inc.

My commission expires: _

Notary Public

DEED OF CONSERVATION EASEMENT

ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES CONSERVATION SERVICE

The Natural Resources Conservation Service, an agency of the United States Government hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

Authorized Signatory for the NRCS

State of West Virginia

County of _____

On this ___ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State, personally appeared _____ known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that s/he is the _____ (title) of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the deed to be her/his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of West Virginia

Residing at _____

My Commission Expires _____

DEED OF CONSERVATION EASEMENT

SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement
- B. Residential Dwelling
- C. Farmstead Complex Area
- D. D-1 Retained Development Right
D-2 Retained Development Right

Deed of Conservation Easement

This **DEED OF CONSERVATION EASEMENT** ("Easement") is made this _____ day of _____, 2011, by David A. Gray and Franella J. Gray, Husband and Wife, ("Grantors"), whose mailing address is 1252 French Road, Shenandoah Junction, WV 25442, to the Jefferson County Farmland Protection Board ("FPB" or "Grantee") having its mailing address at P.O. Box 731, Charles Town, WV 25414 and the United States of America ("United States"), by and through the Commodity Credit Corporation, and the acquiring agency, the U.S. Department of Agriculture-Natural Resources Conservation Service ("NRCS"), with its mailing address at 1550 Earl Core Road, Morgantown, WV 26505 as its interest appears herein. For purposes of this agreement, references to the rights, duties and obligations of Grantor and Grantee apply equally and in full force to any successors to the parties to this agreement.

WITNESSETH:

WHEREAS, Grantors are the sole owners in fee simple of certain real property in Jefferson County, West Virginia, consisting of 60 acres of land (the "Property"), more or less, as described in Exhibit A incorporated herein by reference. The Property is also described in a deed of record in the office of the Clerk of the County Commission, Jefferson County at Deed Book 958, at Page 120;

WHEREAS, the Property possesses agricultural, including prime, unique and significant soils; open space and natural values (collectively, "Conservation Values") of great importance to Grantors, the people of Jefferson County, and the people of the State of West Virginia, and all current and future generations of mankind;

WHEREAS, the Farm and Ranch Lands Protection Program (16 USC 3838h and 3838i) purchases conservation easements to protect prime, unique, and other productive soils from conversion to non-agricultural uses. Under the authority of the Farm and Ranch Lands Protection Program, the United States Department of Agriculture's Natural Resources Conservation Service has provided \$135,000.00 to Grantors for the acquisition of this conservation easement, entitling the United States to the rights identified herein;

WHEREAS, Grantee has provided \$135,000.00 under the Jefferson County Farmland Protection Program to purchase a conservation easement on 60 acres of the Property;

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee, and incorporated by reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the Property at the time of this contract and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement;

WHEREAS, Grantors and Grantee have the exclusive common purpose of preserving the agriculture and open space character of the Property;

WHEREAS, Grantors further intend, as owners of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity;

DEED OF CONSERVATION EASEMENT

WHEREAS, the Legislature of the State of West Virginia ("Legislature") has recognized the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of the State of West Virginia;

WHEREAS, the Legislature has declared that agriculture is a unique life support industry, and recognizes the need to prevent the irreversible loss of agricultural land. The Legislature authorizes the State of West Virginia and its counties so desiring to protect agricultural land and woodland as open-space land, to develop programs and to accept qualifying properties voluntarily entered into the program;

WHEREAS, the County Commission of Jefferson County, West Virginia ("County Commission") has declared that the agriculture community of Jefferson County provides sources of agricultural products for the citizens of the state; enhances tourism, protects worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming; and controls urban expansion which is consuming land, topsoil and woodland of the county;

WHEREAS, the County Commission has resolved to provide persons of Jefferson County an opportunity to voluntarily protect agricultural land by creating the Jefferson County Farmland Protection Board and authorizing it to create and administer the Jefferson County Farmland Protection Program;

WHEREAS, The Grantee is a public agency established to provide landowners with an opportunity to voluntarily protect agricultural land in Jefferson County by the voluntary placement of conservation or preservation easements on eligible Property;

WHEREAS, the Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in Jefferson County and that by the acceptance of this Easement that it will act in good faith to uphold the conservation easement and not seek to benefit from its conversion or elimination. It agrees by accepting this grant to honor the intentions of Grantors stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come in the future; and,

NOW, THEREFORE, in consideration of the above and the mutual covenants, good and valuable consideration, terms, conditions and restrictions contained herein, and pursuant to the laws of West Virginia, Grantors hereby voluntarily grant, bargain, and convey to Grantee and the United States a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth in this Easement. It is the purpose of this Easement to assure that the Property will be retained forever in its natural, agricultural, and open space condition and to prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, including its prime, unique, and important soils.

To achieve these objectives, the terms, conditions, and restrictions of this Easement are hereinafter set forth. The parties agree that the United States is granted the same rights as the Grantee under the terms of this Easement. However, the United States will only exercise its rights set forth below at section II 4 (e). Until such time, if ever, the United States exercises its rights under this Easement, Grantee is the primary manager and enforcer of this Easement.

DEED OF CONSERVATION EASEMENT

I. TERMS, CONDITIONS AND RESTRICTIONS

Grantors reserve to themselves, and to their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. The following terms, conditions and restrictions clarify and govern the intent of Grantors and Grantee:

1. **Use and Quiet Enjoyment.** Grantors have the right to reside on the Property and to benefit from all aspects of the quiet enjoyment of the Property. Grantors have the right to engage in any and all personal recreational uses of the Property, including but not limited to hiking; touring; swimming; camping, biking; hunting and fishing; that require no development of the land and are consistent with the Conservation Values.

2. **Agricultural Uses of the Land.** Grantors may engage in any and all agricultural uses of the Property. For example, the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; equestrian uses; livestock and fowl uses and livestock and fowl products; bees and apiary products; fruits nuts and vegetables of all kinds; nursery, floral and greenhouse products; aquaculture; a grain mill; and the processing and storage of the agricultural products produced principally on the Property are permitted. Any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, riding instruction or related activities, shall be considered an agricultural activity. However, such activities or businesses must be undertaken in the permitted agricultural or residential structures and must be consistent with the Conservation Values.

3. **Agricultural Structures.** Grantors have the right to maintain, construct, and place agricultural structures contributing to the production, primary processing, direct marketing and storage of products produced principally on the Property. Agricultural structures shall be constructed or placed on the Property either within the areas described in Exhibit C ("Farmstead Complex Area") and shall be limited by the maximum square footage as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*.

4. **Retail Sale of Farm Products.** Businesses directly related to the retail sale of farm products produced primarily on the Property that are supportive and agriculturally compatible may be established on the Property. Such businesses include roadside stands or structures to facilitate the direct sale to the public of agriculture products, as long as not more than 2,000 square feet of structures are erected to facilitate such retail sales.

5. **Activities for Religious, Charitable or Educational Purposes or to Foster Tourism.** Activities or businesses undertaken for charitable or educational purposes or to foster tourism may be conducted on the Property in order to foster rural economic uses while protecting the rural character of the Property. Such activities or businesses must be compatible with and supportive of

DEED OF CONSERVATION EASEMENT

the rural character of the Property, and must remain incidental to the agricultural and open space character of the Property.

- (a) Non-agricultural commercial and industrial structures and uses are prohibited. Activities or businesses undertaken for charitable or educational purposes or to foster tourism must be undertaken in the agricultural structures permitted under *Agricultural Structures* or *Residential Dwellings*; no other structures are permitted on the Property.
- (b) The stables, horseback riding arenas both within and outside the barn, and supporting pavilion(s) and buildings are considered agricultural buildings. Such buildings shall be located within the Farmstead Complex Area described in Exhibit C, and shall be limited by the maximum square feet as described in *Terms, Conditions and Restrictions—Maximum Impervious Surface Coverage*.
- (c) Accommodation of tourists and visitors is permitted but only within permitted residential structures and appurtenances, and/or agricultural structures, except for rural recreational activities such as hayrides, corn mazes, etc.
- (d) Accommodation of overnight guests is permitted, but only within permitted residential structures.
- (e) Commercial operation of dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles whether or not considered to foster tourism is prohibited.
- (f) Extensive commitment of land resources as required by golf courses, racetracks, tennis clubs, baseball, soccer and other ball fields and similar uses whether or not considered to foster tourism is prohibited.

6. **Home-based Businesses.** Any home-based business that does not require a Division of Environmental Protection permit to operate may be conducted on the Property, provided that:

- (a) The occupation or business use must be conducted entirely within the single residential dwelling or appurtenances allowable under *Terms, Conditions and Restrictions—Residential Dwellings*.
- (b) The use of the dwelling for the home occupation shall be clearly incidental and subordinate to the use of the dwelling for residential purposes.

7. **Residential Dwellings.** Grantors and Grantee acknowledge the existence of one single residential dwelling on the property, as more fully described in Exhibit B. No other single residential dwellings shall be constructed or placed on the Property.

- a) The residential dwelling shall be contained in a building envelope (“Residential Area”) no greater than two (2) acres. The Grantors have the right to maintain, repair, enlarge or replace the single residential dwelling as they so desire, except that the impervious surface of the single residential dwelling is limited to five thousand (5,000) square feet.
- b) The Grantors have the right to construct appurtenances such as garages, sheds and recreational facilities within each building envelope except that the total allowed impervious surface within each building envelope, including the single residential dwelling, shall not exceed nine thousand (9,000) square feet.
- c) The single residential dwelling may house one or more families or occupants, but shall not be converted to a multi-family dwelling.

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8. Transfer of Development Rights.

The Property and any portion thereof shall not be included as part of the gross area of other Property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open spaces requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of Grantees, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Property.

9. Subdivision. It is the intention of Grantors to protect the open space values of the Property. Accordingly, subdivision of the Property is prohibited.

10. Maximum Impervious Surface Coverage. The total surface coverage of impervious surfaces on the Property shall be subject to the limitations defined below.

- (a) Impervious surfaces shall be defined as any material which covers land and inhibits the percolation of stormwater directly into the soil, including, but not limited to, buildings, roofs, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas.
- (b) The total surface coverage of the Property by all impervious surfaces, including all single residential dwellings, structures considered as an appurtenance to such dwellings, structures associated with agricultural uses, driveways and parking areas, shall not exceed 52,272 square feet.

11. Removal of Natural Resources. Ditching, draining, diking, filling, excavating, removal of topsoil or sand, gravel or rock on the Property is prohibited, except when such activities are conducted in order to carry out activities permitted under this Easement, are in accordance with a conservation plan, do not exceed one (1) acre in total area and are restored within a reasonable time period. The exploration, development, mining or extraction of minerals, oil, gas or any other hydrocarbon substance from the Property is prohibited.

12. Management of Woodland Resources. Removal, destruction and cutting or harvesting of trees, shrubs, and other woodland resources is prohibited except:

- (a) Non-commercial forestry activities which include the following: Agriculturally related low-impact timber harvest and sale including the management of the forest for timber, and/or for wildlife and forest health where those activities are conducted in accordance with a Forest Stewardship Plan prepared or reviewed by a licensed, registered West Virginia forester which has been updated no more than ten (10) years prior to the harvest. The Forest Stewardship Plan must be approved by Grantee. This easement allows for the growing and sale of Christmas trees, orchard products and nursery stock; and the growing and sale of ornamental plants and woodland products for human consumption. Only commercial timber harvest shall be prohibited.
- (b) To the extent necessary for application of sound disease or insect control practices and removal of non-native invasive species;
- (c) To control or prevent fire, damage to improvements, and the endangerment of life;
- (d) To cut firewood for use on the property;

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- (e) For construction or maintenance of permitted structures or landscaping within the Residential Area or for access otherwise permitted in this Easement;
- (f) To remove, destroy and cut orchard tree species which may include the cutting thereof for firewood for use on the Property or for sale. The sale of orchard tree species firewood is exempt from the Forest Stewardship Plan if grown within the agricultural operation.
- (g) For the maintenance or the improvements of pastures whether existing presently or in the future.

13. Other Construction. Except as specifically permitted above, there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or any other temporary or permanent structure or facility on or above the premises.

14. Signs. Except for no-trespassing signs, for-sale signs, no-hunting signs, signs identifying this Easement, and signs to advertise an on-site activity or business, all other signs, advertisements and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet per sign.

15. Wastes. Dumping or storage of trash, garbage, hazardous substances, abandoned vehicles or machines or other material on the Property is prohibited. However, composting of biodegradable material used or produced on the Property to improve gardens and pastures on the Property is permitted so long as composting and its application is consistent with a conservation plan.

16. Utilities. Grantors shall not sell, lease or grant an easement covering any portion of the Property where such sale, lease or easement is for the purpose of construction and installation of underground or above-ground utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations, and cellular telephone or other communication towers. Grantors may install utilities necessary for the permitted residential and agricultural structures.

17. Streams, Wetland and Water Bodies. There shall be no pollution, alteration, depletion of surface water, natural water courses, lakes, ponds, marshes, wetlands, springs, subsurface water or any other water bodies, nor shall there be activities conducted on the Property which would be detrimental to water purity or which could alter natural water level and/or flow in or over the Property. Nothing in this paragraph shall prohibit the creation or dredging of farm ponds and allow the reasonable use of the available water of the Property for agricultural purposes permitted by this easement. Structures and facilities associated with irrigation, farm pond impoundment, and soil and water conservation on the Property shall be considered an agricultural use. Expansion and construction of ponds and structures outside the Farmstead Complex Area shall be in accordance with the conservation plan. Farm ponds both inside and outside the Farmstead Complex Area shall not exceed one (1) acre in area.

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II. GENERAL PROVISIONS

1. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.

2. **Rights of the Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee or their agent by this Easement:

(a) To preserve and protect the Conservation Values of the Property;

(b) To enter upon the Property on a yearly basis (or more frequently if violations are observed or suspected) in order to monitor Grantors' compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantors, and Grantee shall not unreasonably interfere with Grantors' use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to *General Provision—Grantee's Remedies*.

3. **Grantee Notification/Approval.** Grantors reserves for themselves the right to engage in any and all activities not expressly prohibited herein and not inconsistent with the purpose of this Easement without seeking the approval of the Grantee.

4. **Grantee's Remedies.**

(a) **Notice of Violation; Corrective Action.** If Grantee determines that Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantors of such violation and demand corrective action within 60 days sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) **Injunctive Relief.** The Grantee, its successors or assigns, jointly or severally shall have the right to enforce these restrictions by injunction and other appropriate proceedings, including, but not limited to, the right to require Grantors to restore the Property to the condition existing at the time of this Easement in order to correct any violation(s) of this Easement. The Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantors agree that Grantee shall be entitled to the injunctive relief in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

(c) **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantors, including without limitation costs of suit and attorneys' fees, and costs or restoration necessitated by Grantors' violation of the terms of this Easement shall be borne by Grantors. If Grantors prevail in action to enforce the terms of this Easement, Grantors' costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee. Costs incurred by Grantee

DEED OF CONSERVATION EASEMENT

in enforcing the terms of this Easement against third party shall be borne by Grantee. The preceding two sentences shall not apply to the United States should the United States exercise its rights under (e) below.

(d) **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be construed as a waiver.

(e) **Rights of Enforcement.** Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his assigns, on behalf of the United States, may exercise these rights under the following circumstances: In the event that Grantee fails to enforce any terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any all authorities available under Federal or State Law.

(f) **Conservation Plan.** As required by section 12381 of the Food Security Act of 1985, as amended, the Grantors, their heirs, successors, or assigns, shall conduct all agricultural operations on the highly erodible lands within the Protected Property in a manner consistent with a conservation plan prepared in consultation with the NRCS and approved by the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of this Easement. However, the Grantors may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. The NRCS shall have the right to enter upon the Property, with advance notice to the Grantors and Grantee, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, the NRCS shall work with the Grantors to explore methods of compliance and give the Grantors a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantors do not comply with the conservation plan, the NRCS will inform Grantee of the Grantors' noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event of circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantors to correct such noncompliance, and (c) Grantors have exhausted their appeal rights under applicable NRCS regulations.

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantors to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program

DEED OF CONSERVATION EASEMENT

and are not intended to affect any other natural resources conservation requirements to which the Grantors may be or become subject.

The conservation plan described above, and all provisions of this section, apply only to the highly erodible land and wetlands conservation requirements. Such highly erodible land and wetlands, if any, is described in the Baseline Documentation and incorporated here by reference. The Grantors agree that the NRCS shall share, through written communication with the Grantee, information related to monitoring for compliance with the conservation plan; findings of compliance or noncompliance; and any proceedings under appeal rights applicable under NRCS regulations related to a violation of the conservation plan.

In addition, as of the date of this Easement, the Grantors and NRCS certify that the Grantors are in compliance with all highly erodible land and wetland conservation provisions.

5. Grantee and Co-holder's Rights and Obligations. Grantee shall have the primary responsibility of stewardship and monitoring of this easement, determining if a violation has occurred, and for approving any amendments to the Deed of Conservation Easement. These duties may be fulfilled directly by Grantee or its agent. Grantee will share with NRCS monitoring and stewardship information, including but not limited to written notices and monitoring reports.

The Grantee is responsible for any costs incurred in enforcing the terms of the easement, including any attorney's fees and any costs of the suit. Grantee can recover cost from Grantors or third party as described in the Grantee's Remedies above. The Grantee shall make every good faith effort to determine a unified course of action should a potential or actual violation of the easement arise.

Co-holder shall have the right to enforce the terms of the Easement if Grantee becomes unable or refuses to enforce the Easement, or if Co-holder in its sole discretion finds that the Grantee's enforcement action or consent fails to protect the conservation purposes of the Easement. In such case, the provisions of paragraph 4 above apply equally to the Co-holder.

6. Acts Beyond the Grantors' Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantors for any injury to or change in the Property resulting from causes beyond Grantors' control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantors agree that Grantee has the right to pursue enforcement action against the responsible parties.

7. Costs, Legal Requirements and Liabilities. Grantors, their heirs, successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

8. Control. Nothing in this Easement shall be construed as giving rise to any right or ability of the Grantee, or the United States to exercise physical or managerial control over the day-to-day operations of the Property, or any responsibility to the Property within the meaning of the

DEED OF CONSERVATION EASEMENT

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. §§ 9602 et seq.).

9. **Taxes.** Grantors shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property or residences contained thereon by competent authority, including any taxes imposed upon, or incurred as a result of, this Easement.

10. **Hold Harmless.** Grantors shall hold harmless, indemnify, and defend Grantee and the United States and its members, directors, officers, employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: an 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 solely to the negligence of any of the Indemnified Parties and only that negligent party shall be deprived of this protection.

11. **Environmental Warranty.** "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Grantors warrant that they are in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantors warrant that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

Grantors warrant that they have no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits. Moreover, Grantors hereby promise to indemnify and hold harmless the United States against all costs, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantors or any other prior owner of the Property. Grantors' indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantors with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

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12. Proceeds for Extinguishment. The conveyance of this Easement gives rise to a Property right immediately vested in the Grantee and the United States. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, upon approval by the USDA-NRCS or its successors and by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which the Grantee and the United States shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be an amount equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property as these values are determined on the date of this Deed, or 59% of the net proceeds. The proportional shares of the Grantee and the United States are 50%, and 50% respectively. The Grantors are entitled to 41% of the gross sale proceeds or condemnation award. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

In making this Easement, Grantors have considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. Grantors believe that any such changes in the use of neighboring properties will increase the benefit to the public of continuation of this Easement, and Grantors and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement.

13. Condemnation. Due to the federal interest in this Easement, the United States must consent to any condemnation action. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantors shall be entitled to compensation at not less than the fair market value of the Property determined without regard to the existence of the Easement.

14. Assignment. This Easement is not transferable by the Grantee to any other local, county or state department, board, agency, commission or successor. In the event that the Jefferson County Farmland Protection Board ceases to operate or exist, and the United States declines to take sole title as set forth above at under II. 4. (e) herein, the rights of the Grantee under this Easement shall be transferred to an organization that is qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and is a West Virginia-domiciled organization authorized to acquire and hold conservation easements under the West Virginia Conservation and Preservation Easements Act, (WV Code 8A-12-1 et seq.). The USDA-NRCS or its successor must approve any such transfer in advance.

The Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the Easement was originally intended to advance. The transfer of the easement to a new or successor transferee or assignee will not create a financial obligation of any kind on the Grantor.

15. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

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16. **Estoppel Certificates.** Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

17. **Notices.** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt, addressed as follows:

To Grantors: David A. Gray and Franella J. Gray
1252 French Road
Shenandoah Junction, WV 25442

To Grantee: The Jefferson County Farmland
Protection Board
P. O. Box 731
Charles Town, WV 25414-0731

To the United States: Natural Resources Conservation Service
1550 Earl Core Road
Morgantown, WV 26505

or to such other address as either party from time to time shall designate by written notice to the other.

18. **Recordation.** Grantee shall record this instrument in timely fashion with the Office of the Clerk of Jefferson County, West Virginia and may re-record it at any time as may be required to preserve its rights in this Easement.

19. **Amendment.** If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor, Grantee and the United States are free to jointly amend this Easement; provided that no amendment shall be allowed that will invalidate this Easement or be inconsistent with the purpose of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded as above specified. No such amendment shall be effective unless in writing and signed by all parties hereto.

20. **Other Provisions.**

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of West Virginia and the United States.

(b) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

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(c) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of the Grantors' title in any respect.

(d) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(e) **Captions.** The captions herein have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

(f) **Subordination.** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.

(g) **Title Warranties.** Grantors warrant that Grantors have good title to the Property; that Grantors have the right to convey this Easement, and that the Property is free and clear of any encumbrances.

(h) **Merger.** If Grantee at some future time acquires the underlying fee title in the Property, the interest conveyed by this Easement will not merge with fee title but will continue to exist and be managed as a separate estate.

DEED OF CONSERVATION EASEMENT

DECLARATION OF CONSIDERATION OF VALUE. The undersigned hereby declare under penalty of fine and imprisonment as provided by law, that the conveyance made by this document is a transfer of Property right to ~~Federal and county~~ governmental entities, and therefore, is exempt from the West Virginia excise tax due on the transfer of real Property.

IN WITNESS WHEREOF Grantors and Grantee have set their hand:

GRANTORS:

David A. Gray

Franella J. Gray

Signature

Signature

Date

Date

GRANTEE:

Jefferson County Farmland Protection Board

Signature

Date

DEED OF CONSERVATION EASEMENT

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011 by

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Elizabeth M. Uible Chairman, on behalf of the Jefferson County Farmland Protection Board.

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____ on behalf of the Land Trust of the Eastern Panhandle, Inc

My commission expires: _____

Notary Public

DEED OF CONSERVATION EASEMENT

ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES CONSERVATION SERVICE

The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

Authorized Signatory for the NRCS

State of West Virginia
County of _____

On this ___ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State, personally appeared _____ known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that s/he is the _____ (title) of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the deed to be her/his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of West Virginia
Residing at _____
My Commission Expires _____

DEED OF CONSERVATION EASEMENT

SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement
- B. Residential Dwelling
- C. Farmstead Complex Area

Deed of Conservation Easement

This **DEED OF CONSERVATION EASEMENT** ("Easement") is made this _____ day of _____, 2011, by John H. Witt ("Grantor"), whose mailing address is P.O. Box 790, Shepherdstown, WV 25443, to the Jefferson County Farmland Protection Board ("FPB" or "Grantee") having its mailing address at P.O. Box 731, Charles Town, WV 25414, the Land Trust of the Eastern Panhandle ("Trust" or "Co-holder"), having the same rights as conveyed to the Grantee and whose mailing address is P.O. Box 2240, Martinsburg, WV 25402, and the United States of America ("United States"), by and through the Commodity Credit Corporation, and the acquiring agency, the U.S. Department of Agriculture-Natural Resources Conservation Service ("NRCS"), with its mailing address at 1550 Earl Core Road, Morgantown, WV 26505 as its interest appears herein. For purposes of this agreement, references to the rights, duties and obligations of Grantor and Grantee apply equally and in full force to any successors to the parties to this agreement.

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Jefferson County, West Virginia, consisting of 69.21 acres of land (the "Property"), more or less, as described in Exhibit A incorporated herein by reference. The Property is also described in a deed of record in the office of the Clerk of the County Commission, Jefferson County at Deed Book 431, Page 647;

WHEREAS, the Property possesses agricultural, including prime, unique and significant soils; open space and natural values (collectively, "Conservation Values") of great importance to Grantor, the people of Jefferson County, and the people of the State of West Virginia, and all current and future generations of mankind;

WHEREAS, the Farm and Ranch Lands Protection Program (16 USC 3838h and 3838i) purchases conservation easements to protect prime, unique, and other productive soils from conversion to non-agricultural uses. Under the authority of the Farm and Ranch Lands Protection Program, the United States Department of Agriculture's Natural Resources Conservation Service has provided \$ 138,500.00 to Grantor for the acquisition of this conservation easement, entitling the United States to the rights identified herein;

WHEREAS, Grantee has provided \$138,500.00 under the Jefferson County Farmland Protection Program to purchase a conservation easement on 69.21 acres of the Property;

WHEREAS, the specific Conservation Values of the Property are documented in an inventory of relevant features of the Property, on file at the offices of Grantee, and incorporated by reference ("Baseline Documentation"), which consists of reports, maps, photographs, and other documentation that the parties agree provide an accurate representation of the Property at the time of this contract and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement;

WHEREAS, Grantor and Grantee have the exclusive common purpose of preserving the agriculture and open space character of the Property;

WHEREAS, Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Conservation Values of the Property in perpetuity;

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WHEREAS, the Legislature of the State of West Virginia ("Legislature") has recognized the importance and significant public benefit of conservation and preservation easements in its ongoing efforts to protect the natural, historic, agricultural, open-space and scenic resources of the State of West Virginia;

WHEREAS, the Legislature has declared that agriculture is a unique life support industry, and recognizes the need to prevent the irreversible loss of agricultural land. The Legislature authorizes the State of West Virginia and its counties so desiring to protect agricultural land and woodland as open-space land, to develop programs and to accept qualifying properties voluntarily entered into the program;

WHEREAS, the County Commission of Jefferson County, West Virginia ("County Commission") has declared that the agriculture community of Jefferson County provides sources of agricultural products for the citizens of the state; enhances tourism, protects worthwhile community values, institutions and landscapes which are inseparably associated with traditional farming; and controls urban expansion which is consuming land, topsoil and woodland of the county;

WHEREAS, the County Commission has resolved to provide persons of Jefferson County an opportunity to voluntarily protect agricultural land by creating the Jefferson County Farmland Protection Board and authorizing it to create and administer the Jefferson County Farmland Protection Program;

WHEREAS, the Trust is a non-profit corporation incorporated under the laws of the State of West Virginia and a tax-exempt public charity under Section 501(c)(3) of the Internal Revenue Code and qualified under Section 170(h) of the Internal Revenue Code to receive qualified conservation contributions, whose purpose is to preserve land for natural, historic, open space, scenic, recreational, environmental, agricultural, scientific, charitable, educational and aesthetic purposes;

WHEREAS, The Grantee is a public agency established to provide landowners with an opportunity to voluntarily protect agricultural land in Jefferson County by the voluntary placement of conservation or preservation easements on eligible Property;

WHEREAS, the Grantee affirms that this Easement represents a unique and valuable asset to the quality of life in Jefferson County and that by the acceptance of this Easement that it will act in good faith to uphold the conservation easement and not seek to benefit from its conversion or elimination. It agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the Conservation Values of the Property for the benefit of this generation and the generations to come in the future; and,

NOW, THEREFORE, in consideration of the above and the mutual covenants, good and valuable consideration, terms, conditions and restrictions contained herein, and pursuant to the laws of West Virginia, Grantor hereby voluntarily grants, bargains, and conveys to Grantee and the United States a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth in this Easement. It is the purpose of this Easement to assure that the Property will be retained forever in its natural, agricultural, and open space condition and to

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prevent any use of the Property that will significantly impair or interfere with the Conservation Values of the Property, including its prime, unique, and important soils.

To achieve these objectives, the terms, conditions, and restrictions of this Easement are hereinafter set forth. The parties agree that the United States is granted the same rights as the Grantee under the terms of this Easement. However, the United States will only exercise its rights set forth below at section II 4 (e). Until such time, if ever, the United States exercises its rights under this Easement, Grantee is the primary manager and enforcer of this Easement.

I. TERMS, CONDITIONS AND RESTRICTIONS

Grantor reserves to himself, and to his personal representatives, heirs, successors, and assigns, all rights accruing from his ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. The following terms, conditions and restrictions clarify and govern the intent of Grantor and Grantee:

1. **Use and Quiet Enjoyment.** Grantor has the right to reside on the Property and to benefit from all aspects of the quiet enjoyment of the Property. Grantor has the right to engage in any and all personal recreational uses of the Property, including but not limited to hiking; touring; swimming; camping, biking; hunting and fishing; that require no development of the land and are consistent with the Conservation Values.

2. **Agricultural Uses of the Land.** Grantor may engage in any and all agricultural uses of the Property. For example, the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, dairy and dairy products; poultry and poultry products; equestrian uses; livestock and fowl uses and livestock and fowl products; bees and apiary products; fruits nuts and vegetables of all kinds; nursery, floral and greenhouse products; aquaculture; a grain mill; and the processing and storage of the agricultural products produced principally on the Property are permitted. Any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, riding instruction or related activities, shall be considered an agricultural activity. However, such activities or businesses must be undertaken in the permitted agricultural or residential structures and must be consistent with the Conservation Values.

3. **Agricultural Structures.** Grantor has the right to maintain, construct, and place agricultural structures contributing to the production, primary processing, direct marketing and storage of products produced principally on the Property. Agricultural structures shall be constructed or placed on the Property either within the areas described in Exhibit C ("Farmstead Complex Area") and shall be limited by the maximum square footage as described in *Terms, Conditions and Restrictions-Maximum Impervious Surface Coverage*.

4. **Retail Sale of Farm Products.** Businesses directly related to the retail sale of farm products produced primarily on the Property that are supportive and agriculturally compatible may be established on the Property. Such businesses include roadside stands or structures to facilitate the

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direct sale to the public of agriculture products, as long as not more than 2,000 square feet of structures are erected to facilitate such retail sales.

5. Activities for Religious, Charitable or Educational Purposes or to Foster Tourism.

Activities or businesses undertaken for charitable or educational purposes or to foster tourism may be conducted on the Property in order to foster rural economic uses while protecting the rural character of the Property. Such activities or businesses must be compatible with and supportive of the rural character of the Property, and must remain incidental to the agricultural and open space character of the Property.

- (a) Non-agricultural commercial and industrial structures and uses are prohibited. Activities or businesses undertaken for charitable or educational purposes or to foster tourism must be undertaken in the agricultural structures permitted under *Agricultural Structures* or *Residential Dwellings*; no other structures are permitted on the Property.
- (b) The stables, horseback riding arenas both within and outside the barn, and supporting pavilion(s) and buildings are considered agricultural buildings. Such buildings shall be located within the Farmstead Complex Area described in Exhibit C, and shall be limited by the maximum square feet as described in *Terms, Conditions and Restrictions—Maximum Impervious Surface Coverage*.
- (c) Accommodation of tourists and visitors is permitted but only within permitted residential structures and appurtenances, and/or agricultural structures, except for rural recreational activities such as hayrides, corn mazes, etc.
- (d) Accommodation of overnight guests is permitted, but only within permitted residential structures.
- (e) Commercial operation of dune buggies, motorcycles, all-terrain vehicles, hang gliders, aircraft, jet skis, motorized boats or any other types of mechanized vehicles whether or not considered to foster tourism is prohibited.
- (f) Extensive commitment of land resources as required by golf courses, racetracks, tennis clubs, baseball, soccer and other ball fields and similar uses whether or not considered to foster tourism is prohibited.

6. Home-based Businesses. Any home-based business that does not require a Division of Environmental Protection permit to operate may be conducted on the Property, provided that:

- (a) The occupation or business use must be conducted entirely within the single residential dwelling or appurtenances allowable under *Terms, Conditions and Restrictions—Residential Dwellings*.
- (b) The use of the dwelling for the home occupation shall be clearly incidental and subordinate to the use of the dwelling for residential purposes.

7. Residential Dwellings. Grantor and Grantee acknowledge the existence of two single residential dwellings on the Property as more fully described in Exhibit B-1 (Residential Dwelling) and Exhibit B-2 (Residential Dwelling). No other single residential dwellings shall be constructed or placed on the Property.

- (a) Each single residential dwelling shall be contained in a building envelope (“Residential Envelope”) no greater than two (2) acres.

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- (b) Grantor has the right to maintain, repair, enlarge or replace each allowed single residential dwelling as he may so desire, except that the impervious surface of each single residential dwelling is limited to 5,000 square feet.
- (c) Grantor has the right to construct appurtenances such as garages, sheds and recreational facilities within the building envelopes, except that the total allowed impervious surface within each building envelope, including the single residential dwelling(s), shall not exceed 9,000 square feet.
- (d) Each single residential dwelling may house one or more families or occupants, but shall not be converted to a multi-family dwelling.

8. Transfer of Development Rights. The Property and any portion thereof shall not be included as part of the gross area of other Property not subject to this Conservation Easement for the purposes of determining density, lot coverage, or open spaces requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of Grantees, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Property.

9. Subdivision. It is the intention of Grantor to protect the open space values of the Property. Accordingly, subdivision of the Property is prohibited.

10. Maximum Impervious Surface Coverage. The total surface coverage of impervious surfaces on the Property shall be subject to the limitations defined below.

- (a) Impervious surfaces shall be defined as any material which covers land and inhibits the percolation of stormwater directly into the soil, including, but not limited to, buildings, roofs, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas.
- (b) The total surface coverage of the Property by all impervious surfaces, including all single residential dwellings, structures considered as an appurtenance to such dwellings, structures associated with agricultural uses, driveways and parking areas, shall not exceed 60,295 square feet.

11. Removal of Natural Resources. Ditching, draining, diking, filling, excavating, removal of topsoil or sand, gravel or rock on the Property is prohibited, except when such activities are conducted in order to carry out activities permitted under this Easement, are in accordance with a conservation plan, do not exceed one (1) acre in total area and are restored within a reasonable time period. The exploration, development, mining or extraction of minerals, oil, gas or any other hydrocarbon substance from the Property is prohibited.

12. Management of Woodland Resources. Removal, destruction and cutting or harvesting of trees, shrubs, and other woodland resources is prohibited except:

- (a) Non-commercial forestry activities which include the following: Agriculturally related low-impact timber harvest and sale including the management of the forest for timber, and/or for wildlife and forest health where those activities are conducted in accordance with a Forest Stewardship Plan prepared or reviewed by a licensed, registered West

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Virginia forester which has been updated no more than ten (10) years prior to the harvest. The Forest Stewardship Plan must be approved by Grantee. This easement allows for the growing and sale of Christmas trees, orchard products and nursery stock; and the growing and sale of ornamental plants and woodland products for human consumption. Only commercial timber harvest shall be prohibited.

- (b) To the extent necessary for application of sound disease or insect control practices and removal of non-native invasive species;
- (c) To control or prevent fire, damage to improvements, and the endangerment of life;
- (d) To cut firewood for use on the property;
- (e) For construction or maintenance of permitted structures or landscaping within the Residential Area or for access otherwise permitted in this Easement;
- (f) To remove, destroy and cut orchard tree species which may include the cutting thereof for firewood for use on the Property or for sale. The sale of orchard tree species firewood is exempt from the Forest Stewardship Plan if grown within the agricultural operation.
- (g) For the maintenance or the improvements of pastures whether existing presently or in the future.

13. Other Construction. Except as specifically permitted above, there shall be no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or any other temporary or permanent structure or facility on or above the premises.

14. Signs. Except for no-trespassing signs, for-sale signs, no-hunting signs, signs identifying this Easement, and signs to advertise an on-site activity or business, all other signs, advertisements and billboards of any nature are prohibited. The permitted signs may not exceed 15 square feet per sign.

15. Wastes. Dumping or storage of trash, garbage, hazardous substances, abandoned vehicles or machines or other material on the Property is prohibited. However, composting of biodegradable material used or produced on the Property to improve gardens and pastures on the Property is permitted so long as composting and its application is consistent with a conservation plan.

16. Utilities. Grantor shall not sell, lease or grant an easement covering any portion of the Property where such sale, lease or easement is for the purpose of construction and installation of underground or above-ground utility systems, including, but not limited to, water, sewer, power, fuel, sewerage pumping stations, and cellular telephone or other communication towers. Grantor may install utilities necessary for the permitted residential and agricultural structures.

17. Streams, Wetland and Water Bodies. There shall be no pollution, alteration, depletion of surface water, natural water courses, lakes, ponds, marshes, wetlands, springs, subsurface water or any other water bodies, nor shall there be activities conducted on the Property which would be detrimental to water purity or which could alter natural water level and/or flow in or over the Property. Nothing in this paragraph shall prohibit the creation or dredging of farm ponds and allow the reasonable use of the available water of the Property for agricultural purposes permitted by this easement. Structures and facilities associated with irrigation, farm pond

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impoundment, and soil and water conservation on the Property shall be considered an agricultural use. Expansion and construction of ponds and structures outside the Farmstead Complex Area shall be in accordance with the conservation plan. Farm ponds both inside and outside the Farmstead Complex Area shall not exceed one (1) acre in area.

II. GENERAL PROVISIONS

1. **Access.** No right of access by the general public to any portion of the Property is conveyed by this Easement.

2. **Rights of the Grantee.** To accomplish the purpose of this Easement the following rights are conveyed to Grantee or their agent by this Easement:

(a) To preserve and protect the Conservation Values of the Property;

(b) To enter upon the Property on a yearly basis (or more frequently if violations are observed or suspected) in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property; and

(c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to *General Provision—Grantee's Remedies*.

3. **Grantee Notification/Approval.** Grantor reserves for himself the right to engage in any and all activities not expressly prohibited herein and not inconsistent with the purpose of this Easement without seeking the approval of the Grantee.

4. **Grantee's Remedies.**

(a) **Notice of Violation; Corrective Action.** If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand corrective action within 60 days sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured to its prior condition in accordance with a plan approved by Grantee.

(b) **Injunctive Relief.** The Grantee, its successors or assigns, jointly or severally shall have the right to enforce these restrictions by injunction and other appropriate proceedings, including, but not limited to, the right to require Grantor to restore the Property to the condition existing at the time of this Easement in order to correct any violation(s) of this Easement. The Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee shall be entitled to the injunctive relief in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

DEED OF CONSERVATION EASEMENT

(c) **Costs of Enforcement.** Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including without limitation costs of suit and attorneys' fees, and costs or restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in action to enforce the terms of this Easement, Grantor's costs of suit, including, without limitation, attorneys' fees, shall be borne by Grantee. Costs incurred by Grantee in enforcing the terms of this Easement against third party shall be borne by Grantee. The preceding two sentences shall not apply to the United States should the United States exercise its rights under (e) below.

(d) **Forbearance.** Forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

(e) **Rights of Enforcement.** Under this Conservation Easement, the United States is granted the right of enforcement in order to protect the public investment. The Secretary of the United States Department of Agriculture (the Secretary) or his assigns, on behalf of the United States, may exercise these rights under the following circumstances: In the event that Grantee fails to enforce any terms of this Conservation Easement, as determined in the sole discretion of the Secretary, the Secretary and his or her successors or assigns may exercise the United States' rights to enforce the terms of this Conservation Easement through any all authorities available under Federal or State Law.

(f) **Conservation Plan.** As required by section 12381 of the Food Security Act of 1985, as amended, the Grantor, their heirs, successors, or assigns, shall conduct all agricultural operations on the highly erodible lands within the Protected Property in a manner consistent with a conservation plan prepared in consultation with the NRCS and approved by the Conservation District. This conservation plan shall be developed using the standards and specifications of the NRCS Field Office Technical Guide and 7 CFR part 12 that are in effect on the date of this Easement. However, the Grantor may develop and implement a conservation plan that proposes a higher level of conservation and is consistent with the NRCS Field Office Technical Guide standards and specifications. The NRCS shall have the right to enter upon the Property, with advance notice to the Grantor and Grantee, in order to monitor compliance with the conservation plan.

In the event of noncompliance with the conservation plan, the NRCS shall work with the Grantor to explore methods of compliance and give the Grantor a reasonable amount of time, not to exceed twelve months, to take corrective action. If the Grantor does not comply with the conservation plan, the NRCS will inform Grantee of the Grantor's noncompliance. The Grantee shall take all reasonable steps (including efforts at securing voluntary compliance and, if necessary, appropriate legal action) to secure compliance with the conservation plan following written notification from NRCS that (a) there is a substantial, ongoing event of circumstance of non-compliance with the conservation plan, (b) NRCS has worked with the Grantor to correct such noncompliance, and (c) Grantor has exhausted its appeal rights under applicable NRCS regulations.

DEED OF CONSERVATION EASEMENT

If the NRCS standards and specifications for highly erodible land are revised after the date of this Grant based on an Act of Congress, NRCS will work cooperatively with the Grantor to develop and implement a revised conservation plan. The provisions of this section apply to the highly erodible land conservation requirements of the Farm and Ranch Lands Protection Program and are not intended to affect any other natural resources conservation requirements to which the grantor may be or become subject.

The conservation plan described above, and all provisions of this section, apply only to the highly erodible land and wetlands conservation requirements. Such highly erodible land and wetlands, if any, are described in the Baseline Documentation and incorporated here by reference. The Grantor agrees that the NRCS shall share, through written communication with the Grantee, information related to monitoring for compliance with the conservation plan; findings of compliance or noncompliance; and any proceedings under appeal rights applicable under NRCS regulations related to a violation of the conservation plan.

In addition, as of the date of this Easement, the Grantor and NRCS certify that the Grantor is in compliance with all highly erodible land and wetland conservation provisions.

5. Grantee and Co-holder's Rights and Obligations. Grantee shall have the primary responsibility of stewardship and monitoring of this easement, determining if a violation has occurred, and for approving any amendments to the Deed of Conservation Easement. These duties may be fulfilled directly by Grantee or its agent, or Grantee may arrange to have the Co-holder fulfill these duties. Grantee will share with the Co-holder monitoring and stewardship information, including but not limited to written notices to Grantee and monitoring reports, in the event that the Co-holder is not acting to complete these duties through an arrangement with Grantee.

The Grantee is responsible for any costs incurred in enforcing the terms of the easement, including any attorney's fees and any costs of the suit. Grantee can recover cost from Grantor or third party as described in the Grantee's Remedies above. The Grantee and Co-holder shall make every good faith effort to determine a unified course of action should a potential or actual violation of the easement arise.

Co-holder shall have the right to enforce the terms of the Easement if Grantee becomes unable or refuses to enforce the Easement, or if Co-holder in its sole discretion finds that the Grantee's enforcement action or consent fails to protect the conservation purposes of the Easement. In such case, the provisions of paragraph 4 above apply equally to the Co-holder.

6. Acts Beyond the Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. In the event the terms of this Easement are violated by acts of trespassers that Grantor could not reasonably have anticipated or prevented, Grantor agrees that Grantee has the right to pursue enforcement action against the responsible parties.

DEED OF CONSERVATION EASEMENT

7. **Costs, Legal Requirements and Liabilities.** Grantor, his heirs, successors and assigns retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.

8. **Control.** Nothing in this Easement shall be construed as giving rise to any right or ability of the Grantee, or the United States to exercise physical or managerial control over the day-to-day operations of the Property, or any responsibility to the Property within the meaning of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended (42 U.S.C. §§ 9602 et seq.).

9. **Taxes.** Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property or residences contained thereon by competent authority, including any taxes imposed upon, or incurred as a result of this Easement.

10. **Hold Harmless.** Grantor shall hold harmless, indemnify, and defend Grantee and the United States and its members, directors, officers, employees, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: an 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 solely to the negligence of any of the Indemnified Parties and only that negligent party shall be deprived of this protection.

11. **Environmental Warranty.** "Environmental Law" or "Environmental Laws" means any and all Federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid waste, hazardous materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, subdivision, inland wetlands and watercourses, health protection and similar environmental health, safety, building and land use as may now or at any time hereafter be in effect.

"Hazardous Materials" means any petroleum, petroleum products, fuel oil, waste oils, explosives, reactive materials, ignitable materials, corrosive materials, hazardous chemicals, hazardous wastes, hazardous substances, extremely hazardous substances, toxic substances, toxic chemicals, radioactive materials, infectious materials and any other element, compound, mixture, solution or substance which may pose a present or potential hazard to human health or the environment.

Grantor warrants that he is in compliance with and shall remain in compliance with, all applicable Environmental Laws. Grantor warrants that there are no notices by any governmental authority of any violation or alleged violation of, non-compliance or alleged non-compliance with or any liability under any Environmental Law relating to the operations or conditions of the Property.

Grantor warrants that he has no actual knowledge of a release or threatened release of any Hazardous Materials on, at, beneath or from the Property exceeding regulatory limits. Moreover, Grantor hereby promises to indemnify and hold harmless the United States against all costs, claims,

DEED OF CONSERVATION EASEMENT

demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with the release or threatened release of any Hazardous Materials on, at, beneath or from the Property, or arising from or connected with a violation of any Environmental Laws by Grantor or any other prior owner of the Property. Grantor's indemnification obligation shall not be affected by any authorizations provided by Grantee to Grantor with respect to the Property or any restoration activities carried out by Grantee at the Property; provided, however, that Grantee shall be responsible for any Hazardous Materials contributed after this date to the Property by Grantee.

12. Proceeds for Extinguishment. The conveyance of this Easement gives rise to a Property right immediately vested in the Grantee and the United States. If circumstances arise in the future that render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, upon approval by the USDA-NRCS or its successors and by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which the Grantee and the United States shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be an amount equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property as these values are determined on the date of this Deed, or 53% of the net proceeds. The proportional shares of the Grantee, and the United States are 50%, and 50% respectively. The Grantor is entitled to 47% of the gross sale proceeds or condemnation award. The Grantee shall use its share of the proceeds in a manner consistent with the conservation purposes set forth herein.

In making this Easement, Grantor has considered the possibility that uses prohibited by the terms of this Easement may become more economically valuable than permitted uses, and that neighboring properties may in the future be put entirely to such prohibited uses. Grantor believes that any such changes in the use of neighboring properties will increase the benefit to the public of continuation of this Easement, and Grantor and Grantee intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Easement.

13. Condemnation. Due to the federal interest in this Easement, the United States must consent to any condemnation action. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantor shall be entitled to compensation at not less than the fair market value of the Property determined without regard to the existence of the Easement.

14. Assignment. This Easement is not transferable by the Grantee to any other local, county or state department, board, agency, commission or successor. In the event that the Jefferson County Farmland Protection Board ceases to operate or exist, and the United States declines to take sole title as set forth above at under II. 4. (e) herein, the rights of the Grantee under this Easement shall be transferred to an organization that is qualified under Section 170(h) of the Internal Revenue Code of 1954, as amended, and is a West Virginia-domiciled organization authorized to acquire and hold conservation easements under the West Virginia Conservation and Preservation Easements Act, (WV Code 8A-12-1 et seq.). The USDA-NRCS or its successor must approve any such transfer in advance.

The Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes which the Easement was originally intended to advance. The transfer of the

DEED OF CONSERVATION EASEMENT

easement to a new or successor transferee or assignee will not create a financial obligation of any kind on the Grantor.

15. Subsequent Transfers. Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest.

16. Estoppel Certificates. Upon request by Grantor, Grantee shall within thirty (30) days execute and deliver to Grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

17. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by certified mail, return receipt, addressed as follows:

To Grantor: John H. Witt
P.O Box 790
Shepherdstown, WV 25443

To Grantee: The Jefferson County Farmland
Protection Board
P. O. Box 731
Charles Town, WV 25414-0731

To Co-Holder: Land Trust of the Eastern Panhandle, Inc.
P.O. Box 2240
Martinsburg, WV 25402

To the United States: Natural Resources Conservation Service
1550 Earl Core Road
Morgantown, WV 26505

or to such other address as either party from time to time shall designate by written notice to the other.

18. Recordation. Grantee shall record this instrument in timely fashion with the Office of the Clerk of Jefferson County, West Virginia and may re-record it at any time as may be required to preserve its rights in this Easement.

19. Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor, Grantee and the United States are free to jointly amend this Easement; provided that no amendment shall be allowed that will invalidate this Easement or be inconsistent with the purpose of this Easement, and shall not affect its perpetual

DEED OF CONSERVATION EASEMENT

duration. Any such amendment shall be recorded as above specified. No such amendment shall be effective unless in writing and signed by all parties hereto.

20. Other Provisions.

(a) **Controlling Law.** The interpretation and performance of this Easement shall be governed by the laws of the State of West Virginia and the United States.

(b) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(c) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of the Grantor's title in any respect.

(d) **Successors.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

(e) **Captions.** The captions herein have been inserted solely for convenience of reference and are not a part of this Easement and shall have no effect upon construction or interpretation.

(f) **Subordination.** Any mortgage or lien arising after the date of this Easement shall be subordinated to the terms of this Easement.

(g) **Title Warranties.** Grantor warrants that Grantor has good title to the Property; that Grantor has the right to convey this Easement, and that the Property is free and clear of any encumbrances.

(h) **Merger.** If Grantee at some future time acquires the underlying fee title in the Property, the interest conveyed by this Easement will not merge with fee title but will continue to exist and be managed as a separate estate.

DEED OF CONSERVATION EASEMENT

DECLARATION OF CONSIDERATION OF VALUE. The undersigned hereby declare under penalty of fine and imprisonment as provided by law, that the conveyance made by this document is a transfer of Property right to Federal and county governmental entities, and therefore, is exempt from the West Virginia excise tax due on the transfer of real Property.

IN WITNESS WHEREOF Grantor and Grantee have set their hand:

GRANTOR:

John H. Witt

Signature

Date

GRANTEE:

Jefferson County Farmland Protection Board

Signature

Date

CO-HOLDER:

The Land Trust of the Eastern Panhandle, Inc.

Signature

Date

DEED OF CONSERVATION EASEMENT

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011 by John H. Writt

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by Elizabeth M. Uible, Chairman, on behalf of the Jefferson County Farmland Protection Board.

My commission expires: _____

Notary Public

STATE OF WEST VIRGINIA

COUNTY OF JEFFERSON, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2011, by _____ on behalf of the Land Trust of the Eastern Panhandle, Inc

My commission expires: _____

Notary Public

DEED OF CONSERVATION EASEMENT

ACCEPTANCE OF PROPERTY INTEREST BY THE NATURAL RESOURCES CONSERVATION SERVICE

The Natural Resources Conservation Service, an agency of the United States Government, hereby accepts and approves the foregoing conservation easement deed, and the rights conveyed therein, on behalf of the United States of America.

Authorized Signatory for the NRCS

State of West Virginia
County of _____

On this ____ day of _____, 2011, before me, the undersigned, a Notary Public in and for the State, personally appeared _____ known or proved to me to be the person whose signature appears above, and who being duly sworn by me, did say that s/he is the _____ (title) of the Natural Resources Conservation Service, United States Department of Agriculture, is authorized to sign on behalf of the agency, and acknowledged and accepted the rights conveyed by the deed to be her/his voluntary act and deed.

In witness whereof, I have hereunto set my hand and official seal the day and year first above written.

Notary Public for the State of West Virginia
Residing at _____
My Commission Expires _____

DEED OF CONSERVATION EASEMENT

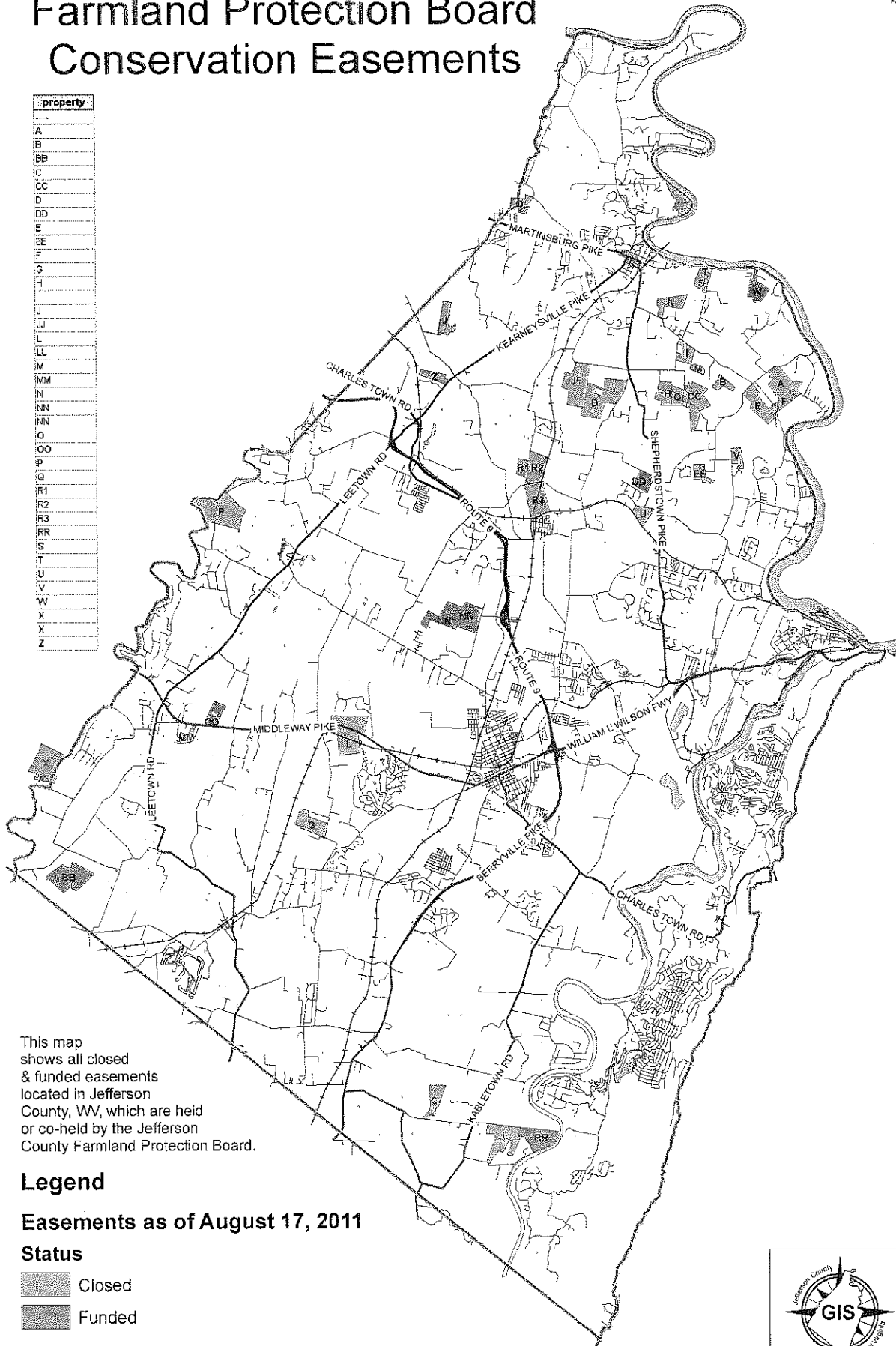
SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement
- B-1. Residential Dwelling
- B-2. Residential Dwelling
- C. Farmstead Complex

Jefferson County Farmland Protection Board Conservation Easements

N
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property
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



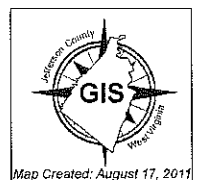
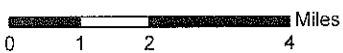
This map shows all closed & funded easements located in Jefferson County, WV, which are held or co-held by the Jefferson County Farmland Protection Board.

Legend

Easements as of August 17, 2011

Status

-  Closed
-  Funded



Commission Office Use Only
 Date on Agenda: 12/1/11
 Appt Time or New Business: 11:00 AM

AGENDA REQUEST FORM

Name: Lynn Fields

Department or Entity: Probate Office

Estimation of amount of time needed for appointment: 10 to 15 minutes

Date Requested – 1st Choice: December 1st, 2011

Date Requested – 2nd Choice: December 8th, 2011

If a specific date is needed, please provide reason for specific date: **Must be before the end of the calendar year because of tax implications.**

Subject: **Approval/Closing of Estates**

Please provide the County Commission with a description of your request or presentation, including any background information: **Closing of several estates that were not ready to be closed in October at the quarterly closing but that must be closed before the end of the calendar year because of tax implications**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **To approve and close estates**

Attachments: **None.**

Commission Office Use Only

Date on Agenda: 12/1/11

Appt Time or New Business:

AGENDA REQUEST FORM

Name: Steve Groh, Esquire

Department or Entity: Jefferson County Commission

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1st Choice: 12-01-2011

Date Requested – 2nd Choice: _____

If a specific date is needed, please provide reason for specific date:

Subject: **Provide Planning Commission Update on Legal Issues and Decisions:**

- 1. Faraway Farms
- 2. James and Barbara Gibson property
- 3. Miscellaneous pending issues

Please provide the County Commission with a description of your request or presentation, including any background information:

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **None necessary.**

Attachments:

<p>Commission Office Use Only</p> <p>Date on Agenda:</p> <p>Appt Time or New Business:</p>
--

AGENDA REQUEST FORM

Name: Stephanie Grove

Department or Entity: Prosecuting Attorney's Office

Estimation of amount of time needed for appointment: 10-15 min

Date Requested – 1st Choice: 12-1-11

Date Requested – 2nd Choice: _____

If a specific date is needed, please provide reason for specific date:

Subject: **Legal Updates**

Please provide the County Commission with a description of your request or presentation, including any background information:

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):

Attachments:

<p>Commission Office Use Only</p> <p>Date on Agenda: <u>12/1/11</u></p> <p>Appt Time or New Business: <u>11:15 am</u></p>

AGENDA REQUEST FORM

Name: J. Michael Cassell, Esq.

Department or Entity: Cassell & Prinz, PLLC

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1st Choice: 12-01-11

Date Requested – 2nd Choice: _____

If a specific date is needed, please provide reason for specific date:

Subject: **James and Barbara Gibson’s Rezoning Petition for Allstadt’s Corner – request for an amendment to the Zoning Map.**

Please provide the County Commission with a description of your request or presentation, including any background information: **Request for deliberation or a decision on the Gibson’s request for an amendment to the Zoning Map, subsequent to the Planning Commission’s public hearing on November 8, 2011 and Staff’s completed report.**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):

Attachments: **Letter from J. Michael Cassell, Esq. requesting placement of this matter on the County Commission Agenda on December 1, 2011.**

J. Michael Cassell, Esq.

CASSELL & PRINZ, PLLC
120 N. George Street, Suite 200
Charles Town, West Virginia 25414
304-728-2012/telephone
304-728-2881/facsimile
jcassell@cassellprinz.com

RECEIVED

November 14, 2011

NOV 14 2011

Mr. Timothy Boyd
County Administrator
County Commission of Jefferson County
Hunterhouse
Charles Town, WV

JEFFERSON COUNTY COMMISSION

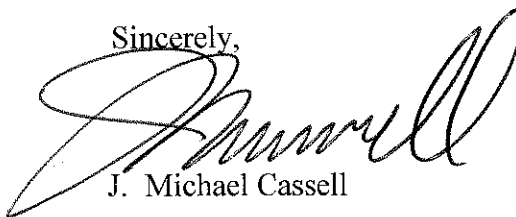
Re: James and Barbara Gibson
Petition for Rezoning

Dear Mr. Boyd:

Mr. and Mrs. Gibson retained me to represent them regarding their Rezoning Petition for Allstadt's Corner. Please place this matter on the County Commission Agenda on December 1, 2011, for deliberation and a decision on the request for an amendment to the zoning map. I am informed that the Planning Commission conducted the Statutory Public Hearing on November 8, 2011. I am also informed that the staff will complete their report within the week. We may provide additional information to you after a review of the Staff Report.

I thank you.

Sincerely,



J. Michael Cassell

cc: James and Barbara Gibson

James G. and Barbara S. Gibson
201 Needwood Farm Lane
Harpers Ferry, West Virginia 25425

November 22, 2011

County Commission
Of Jefferson County, WV
Hunter House
Charles Town, West Virginia 25414

Re: Petition for Zoning Map Amendment
Submitted by James and Barbara Gibson

Ladies and Gentlemen:

This letter is submitted to the County Commission as a summary of the position of support of our request for a Zoning Map Amendment. Attached to this letter are copies of the Petition filed with Exhibits, a copy of the Supplemental Information filed and dated November 8, 2011, a copy of Section 8A-7-9, WV Code as Amended, and a copy of Article 12 of the Zoning Ordinance.

I. Introduction

The property is currently zoned Residential Growth contrary to its current use which has been Commercial since at least 1952. We request a Zoning Map Amendment for the property to be included in the Residential/Light Industrial/Commercial District (See Section 5.8, Jefferson County Zoning and Land Development Ordinance). The property contains 12.97 acres. Since 1983 the Flea Market has operated on the property along with Wilt's Fruit Stand which sells a range of produce and agricultural products. From 1952 until 1983 the property was utilized as a drive-in theatre.

In addition, the property also includes the Allstadt's Ordinary which is where we are currently residing. We have restored this historic property and have placed the property on the National Register of Historic Places. It is currently a Mixed Use Property containing two (2) different Commercial Uses (the flea market and Wilt's Fruit Stand) with the Residential Use of the Allstadt's Ordinary Buildings.

II. The Petition for a Zoning Map Amendment is Consistent with the Comprehensive Plan.

A. Comprehensive Plan Recommendation 4.01 (page 78) states as follows:

“It is the vision of this Comprehensive Plan that development will be concentrated within the designated growth areas.”

The map on page 75 of the Comprehensive Plan clearly shows that this property is within the “growth area” which is described by this recommendation. A copy of the map is attached as an exhibit with the Petition.

The Comprehensive Plan (page 8) also contains two (2) policies which are entirely consistent with this Map Amendment Request.

“1. This plan encourages new development patterns that foster Mixed Use Neighborhoods so that a sense of community begins at the subdivision level.

2. This plan encourages economic development so that residents can live and work in the County.”

In addition to these two policies, two of the Statement of Goals in the Comprehensive Plan (page 19) further reflects the consistency of this request with the Comprehensive Plan.

“3. To encourage growth and development in areas where sewer, water, schools and other public facilities are available or can be provided without unreasonable costs to the community.

4. Encourage and support commercial, industrial, and agricultural activities to provide a diversified and sound local economy.”

It is clear that the fundamental goals and policies of the Comprehensive Plan are to direct development to the “growth area” where infrastructure is already available in a form of water, sewer, and highways.

B. Comprehensive Plan Recommendation 3.03 (page 25) refers to the basic policy that existing Land Uses should be the basis of a Zoning Map Amendment where the basic principles of the Comprehensive Plan are also observed. This property has been a drive-in theatre and a flea market since 1952. Two current Commercial Uses (Flea Market and Fruit Stand) were in existence at the time the

County Commission adopted the Zoning Ordinance in July 1988. The Petition seeks to conform the Zoning Classification of the property with the mixture of Commercial and Residential Uses which have been in existence on the property since the early 1950's.

C. Comprehensive Plan Recommendation 3.13 (page 56) refers to the preservation of historic resources. We have restored the Allstadt's Ordinary Buildings and have maintained them for many years. Recommendation 3.13 specifically states that amendments to the Ordinance should include:

“rewarding the retention and restoration of historic buildings during the Subdivision process with limited increase density to offset the expense of preservation.”

The recommendation goes on to suggest that the Amendments and policies should include the reevaluation of Zoning Restrictions to allow for adaptive reuse of historic properties to encourage their continued occupancy and maintenance. We fall squarely within this important historic preservation recommendation and should be given positive consideration as a result of our contributions to historic preservation in this County.

D. Comprehensive Plan Recommendation 3.18 (page 64) relates directly to new Commercial Development to diversify the economy of Jefferson County, increase the tax base and mitigate the problems of increasing residential growth to provide employment opportunities for the workforce. This Zoning Map Amendment is entirely consistent with the recommendation that additional commercial development is necessary to provide a healthy tax base and workforce in this County. A change from High Density Residential to Mixed Use Zoning will provide an opportunity to further diversify the economy of the County rather than increase High Density Residential Housing.

E. Comprehensive Plan Recommendation 3.25 (page 73) describes the US 340 Corridor as the main transportation artery through the County. The Comprehensive Plan recognizes that it is appropriate and logical that development should occur along this corridor. This Zoning Map Amendment will be subject to all of the subsequent design requirements and traffic improvements which may be adopted to comply with recommendation 3.25 of the Comprehensive Plan.

III. Conditions in the Neighborhood have changed since 1988.

A. Central water and sewer are now available.

The Comprehensive Plan encourages growth and development where central water and sewer services are available.

B. Adjacent properties on three (3) sides of the Allstadt's property are now in the Residential/Light Industrial/Commercial Use District, including the recently rezoned Shenandoah Professional Building to my north (a residential structure converted to commercial use), and River Riders, to my east, which has greatly expanded business since 2004.

Other commercial enterprises have recently located along US 340 since 2004 including Meadow Farms Nursery and Through the Garden Landscaping.

It is also important to note that the Customs and Border Patrol is constructing a large training complex that includes offices, training facilities, and other buildings. This is the most significant change in the neighborhood. Other new commercial enterprises on the US 340 corridor includes the Eckles-Spencer Funeral Home, the Sears Store, the new Sheetz store, Aldi Grocery Store, Benjamin Moore Paint store, and Rock and Tile.

C. Transportation infrastructure has also changed in the neighborhood. There are new traffic Signals on US 340 at Route 230 and at Country Club Road. There is a proposed traffic signal and intersection realignment planned at the Customs and Border Protection Complex. Other major transportation upgrades include the four (4) lane Route 9 upgrade toward Martinsburg and Leesburg. It is also important to note that a new bridge was constructed over the Shenandoah River.

Since this property is already a Commercial Use with considerable traffic impact, the change in zoning should have little or no net increase in traffic.

IV. The Petition comes before the County Commission with a clean slate.

The Planning Commission conducted a public hearing on November 8, 2011 as required by statute. After the hearing the Planning Commission was unable to make a decision on the

Allstadt's property Petition for a Zoning Map Amendment. The Planning Commission had a tie vote which means that the Planning Commission took no action. Although the Planning Commission staff agreed with our petition in many ways, they officially took no position in the Staff Report filed with the Planning Commission. This means that the County Commission can make its decision exclusively on its own judgment regarding the merits of the Petition.

The issue before the County Commission is whether or not the amendment requested in the Petition is consistent with the adopted Comprehensive Plan. We respectfully request that the County Commission find that our Petition for a Zoning Map Amendment is consistent with the adopted Comprehensive Plan.

V. Conclusion.

There are two fundamental reasons that the Zoning Map Amendment is consistent with the Comprehensive Plan and should be approved by the County Commission:

- A. The Allstadt's Property has been in use as a Mixed Use/Commercial-Residential Property since 1952.
- B. The Comprehensive Plan directs future growth in the County to be within the growth area described in the map on page 75 of the Plan.

The Zoning Map Request is both consistent with the Comprehensive Plan and consistent with the Uses applied to the property since at least 1952. We respectfully request that the County Commission approve the Zoning Map Amendment.

Sincerely,

James G. Gibson



Barbara S. Gibson



EXHIBIT 1

PETITION FOR MAP AMENDMENT
James and Barbara Gibson
August 30, 2011

*Rec'd
August 30, 2011
Jennifer S. Matham
County Clerk*

Owner/Applicant:

James G. and Barbara S. Gibson
201 Needwood Farm Lane
Harpers Ferry, WV 25425

RECEIVED

AUG 30 2011

JEFFERSON COUNTY
PLANNING, ZONING AND ENGINEERING

Substantiation for the Request:

1. The property is currently zoned Residential Growth and the Applicant is seeking a map amendment for the Residential/Light Industrial/Commercial District (commonly known as the Mixed-Use District). The Applicant believes that this change is consistent with the 2004 Jefferson County Comprehensive Plan, as explained in this application;
2. There has been a significant change in the neighborhood, since the Jefferson County Zoning Ordinance was adopted in 1988, as explained in this application; and,
3. The Applicant believes that the Residential Zoning Classification is an error due to the long term mixed use nature of the property, as explained in this application.

Tax District, Map and Parcel Number:

Harpers Ferry Tax District, Map 9, Parcel 39.1

Deed Book Reference:

Deed Book 913 at Page 643

Plat:

Attached

Tract Size:

12.97 Acres

Discussion on:

Comprehensive Plan compatibility of the proposed change: See Below.

Any Change of transportation characteristics and neighborhood from when the original ordinance was adopted: See Below.

Typically, an amendment to a zoning map can include three types of justifications based on the jurisdiction. These justifications include: Comprehensive Plan compatibility or consistency; change of neighborhood; and/or error in the zoning map. The Jefferson County Zoning Ordinance requires a discussion on the Comprehensive Plan, transportation characteristics and change of neighborhood. This application will also discuss why the applicant feels that this property should always have been included in the Residential/Light Industrial/Commercial District.

1. Comprehensive Plan Compatibility

The 2004 Comprehensive Plan includes a total of 32 recommendations. Of these 32 recommendations, the Applicant believes that 27 of them are neutral with respect to this application. These neutral recommendations include: 3.01; 3.02; 3.04; 3.05; 3.06; 3.07; 3.08; 3.09; 3.10; 3.11; 3.12; 3.14; 3.15; 3.16; 3.17; 3.19; 3.20; 3.21; 3.22; 3.23; 3.24; 3.26; 3.27; 4.02; 4.03; 4.04; and, 4.05.

The Applicant believes that the remaining five (5) recommendations support the map amendment. These recommendations include the following:

Recommendation 3.03 on page 25 states: "When considering amendments to the Ordinances and Zoning Map to incorporate decisions based on the recommendations of this Plan, the County should address the ordinances in their entirety including: a. The preparation of a comprehensive 'existing land use map'".

Comment: If this 'existing land use map' were to be completed, it would demonstrate that this property is currently residential and commercial. In fact, the Ordinary (currently a residence) on site was used as a tavern, meeting hall and an inn in the early 19th Century. In addition, this property was used as a drive-in theater from 1952 to around 1983 and was then converted to the flea market in 1983 (prior to the adoption of the Zoning Ordinance). As everyone is aware, the flea market is still an ongoing commercial enterprise. Accordingly, when considering this amendment to the Zoning Map, Recommendation 3.03 appears to support the request based on the 'existing land uses'.

Recommendation 3.13 on Page 56 states: "The County should examine existing land use regulations and Planning Commission resources and explore regulation amendments and policies that encourage preservation of historic resources. Some amendments and policies that may want to investigate may include: a. Rewarding the retention and restoration of historic buildings during the subdivision process with limited increased density to offset the expense of preservation; b. Re-evaluating zoning restrictions on the adaptive reuse of historic county-wide in order to encourage their continued occupancy and maintenance".

Comment: The Applicant has already restored the existing buildings on site, including the Ordinary, at their own expense. The Applicant has also placed them on the National Register of Historic Places. Accordingly, it appears that they have already met the intent of subsection 'a' of Recommendation 3.13; and, in order to meet subsection 'b', the property would need the 'Mixed-Use' Zoning Classification.

Recommendation 3.18 on Page 64 states: "The County should continue to pursue new industrial and commercial development in order to diversify its economy, increase the tax base and thereby mitigate the problems of increasing residential growth, and provide quality employment opportunities in the workforce."

Comment: This map amendment would be consistent with this recommendation by the virtue that it would allow the Applicant to pursue these types of projects.

Recommendation 3.25 on Page 73 states: "The County should study the US 340 corridor, including the land use, viewscape, economic development and traffic design and management in order to create an effective strategy for the long term management of this important mixed-use corridor".

Comment: This is a subjective recommendation that is viewed differently by each person. The Applicant is on record in the recent past indicating that this study is futile, since the corridor has already been developed. It is interesting to note that in the implementation section of the Comprehensive Plan (page 106), it only states that to implement this recommendation the County should "Initiate a cooperative planning effort with the WV DOT to improve the US 340 corridor". Unfortunately, the County has little to say in what the DOT does in this corridor. This is evident in that the 340 Study doesn't include the area between Harpers Ferry and the Virginia line, because of the discussions taking place between West Virginia, Virginia and Maryland. This also recently became evident since the State and the Border Patrol and Customs appear to be placing a new traffic signal without local County planning input. Finally, this recommendation is written in the suggestive form (should) versus the mandatory form (shall).

Notwithstanding this, the Applicant feels that this recommendation supports the rezoning application for the following reasons: the land use on this property is already mixed-use; the viewscape looking towards this property already includes the flea market and a rezoning would allow marketing to other commercial/office ventures; it would permit economic development; and, traffic design for new commercial development would necessitate improvements, even though the property already generates commercial traffic. A major purpose of this request is to allow mixed uses on the property that meets current design standards, in order to enhance the views from the top of Allstadts Hill.

Recommendation 4.10 on Page 78 states: "It is the vision of this Comprehensive Plan that development will be concentrated within the designated growth areas".

Comment: With regard to this rezoning application, this is probably the strongest and most definitive recommendation of them all. There is only one map in the Comprehensive Plan that makes land use recommendations. This map is on page 75 of the Plan. Although it shows the limits of four other study areas, it does not mention the '340 Study' area at all. It does, however show the 'Growth Area' as contemplated in recommendation 4.10. The property that the Applicant is requesting a map amendment is located squarely in this Growth Area. What better place to allow a mixed-use community, then one that is already mixed-use and is in the designated growth area where development should be concentrated pursuant to recommendation 4.10?

In addition to these Comprehensive Plan Recommendations, portions of the narrative also support this application. This discussion isn't intended to spark a debate on which narrative portions take precedent over others, since again this is in the eyes of reader. It merely identifies some sections of the Plan that are supportive of this request. Two of the Plan's policies include the following statements:

'This Plan encourages new development patterns that foster mixed-use neighborhoods so that a sense of community begins at the subdivision level'; and,

'This Plan encourages economic development so that residents can live and work in the County'.

Two of the Statement of Goals in the Plan state that the Plan should:

'Encourage growth and development in areas where sewer, water, schools, and other public facilities are available or can be provided without unreasonable costs to the community'; and,

'Encourage and support commercial, industrial, and agricultural activities to provide a diversified and sound local economy'.

With regard to the public services mentioned in the first statement, this property is already zoned Residential, so any commercial component would lessen the demand on schools (school impact fees are in place anyway). Also, public water and sewer are currently available on this site.

Page 71 of the Plan lists a shocking fact. It states that "Land zoned for commercial and industrial use makes up approximately 5% of the County, which is almost evenly split between the I-C District and the mixed use district". If this is true, it would appear to be very difficult for the County to meet recommendation 3.18 listed above (pursue commercial and industrial development); if there is only 5% of the land in the County is zoned for commercial use.

In conclusion, with regard to how this application relates to the Comprehensive Plan, it would appear that the requested map amendment is very much consistent and compatible with the 2004 Jefferson County Comprehensive Plan.

2. Change of Neighborhood

There have been significant changes in the neighborhood that would support the requested change from Residential Growth to the Mixed-Use Zone. These include the following:

Availability of Central/Public Water and Wastewater Treatment Facilities:

Public utilities were not available in this neighborhood when the original zoning ordinance was adopted. These services are now available in the neighborhood as well as directly on this property. As stated earlier, a goal of the Comprehensive Plan is to encourage growth and development where sewer and water services are available.

Adjacent and Confronting Zoning, Commercial and Industrial Subdivision Approval and Intensity of Use has changed:

The zoning classification on the property directly across Route 340 was recently changed from Residential Growth to the Mixed-Use district. As such, the applicant's property is now bordered on the East (River Riders) and the North (Shenandoah Professional Building) by property zoned Residential/Light Industrial/Commercial. This same logic should apply to the applicant's property, especially since this property has had commercial uses on it longer than those adjacent and confronting properties.

Since the adoption of zoning, the intensity of use on the adjacent and confronting properties has also increased. River Riders has greatly expanded their operation to the benefit of the region and the Shenandoah Professional Building is a converted residential structure.

In additions to those changes and expansions, the adjacent Old Standard Quarry is now an approved recorded commercial/industrial subdivision. This is certainly a change in the neighborhood that should favorably justify this application.

Also in the immediate neighborhood, the former Cliffside Inn has undergone extensive renovations to become a Quality Inn. Its renaissance has made it a much more desirable destination.

Addition of the Park Service Parking Lot and Bus Transportation/Tourist Center:

The Park Service parking lot and transportation center was added since the adoption of the zoning ordinance. This parking and transportation has enhanced the transportation network in the area. It also converted open land into a paid parking lot.

Addition of Commercial and Residential Uses in the Neighborhood:

Besides the Shenandoah Professional Building, at least two new commercial enterprises have opened in the immediate neighborhood. These include Through the Garden Landscaping and Meadow's Nursery. These businesses were opened after the zoning ordinance was adopted and are adjacent to two residential developments that were developed after zoning was adopted. These additions further demonstrate that the neighborhood has changed into a mixed-use neighborhood.

Most recently, the Customs and Border Patrol began one of the largest nonresidential developments in the neighborhood. Regardless of who owns it, it is a massive complex that includes offices and training facilities, among other uses. It can't be ignored as a significant change in this particular neighborhood. Based on intensity of use, it is a significant quasi-commercial development in this area.

There have been multiple changes in the slightly expanded neighborhood that would support a change to the Residential/Light Industrial/Commercial District. These include the addition of Eckels-Spencer Funeral Home, the Sears Store along with the multi-unit commercial and warehousing complex in which it is located, the new Sheetz store, the Aldi Grocery Store, Rock and Tile (formerly The Lumber Yard), the Farm and Tractor Supply Store under construction, the zip-line operation along the Potomac River and the townhouse development at Windmill Crossing. All of these projects were developed after the zoning ordinance was adopted. Not only does this demonstrate that the neighborhood has changed to mixed-use, it also demonstrates that mixed-use must be consistent with the Comprehensive Plan, since all of these projects were approved in the past ten or so years.

Finally, with regard to changes in the area since the zoning ordinance was adopted, no discussion would be complete without mentioning the addition of slot machines and table games at the Charles Town Race Track. These enhancements to the Race Track have increased incoming visitors to this area of Jefferson County. Accordingly, the Route 340 Corridor needs to change in order to accommodate the additional commercial growth needed to serve these visitors.

3. *Change of Transportation Characteristics (from when the original ordinance was adopted):*

There have been many changes in the transportation characteristics in this area since the adoption of the zoning ordinance. These include: the reconstruction of the Route 340 Bridge over the Shenandoah River; a new traffic signal at the intersection of Route 230 and Route 340; a new traffic signal at the intersection of Route 24 (Country Club Road) and Route 340; the improvement of the Shipley School access to Route 340; and, the addition of the previously mentioned Harpers Ferry Parking Facility and Bus Transportation Center along Route 340 near Bolivar. There is also a proposed traffic signal and intersection realignment planned at the Customs and Border Patrol Complex. Furthermore, the Planning Staff has reported that West Virginia, Virginia and Maryland are in serious discussions with regard to improving the Route 340 Corridor in the area of the Shenandoah and Potomac Rivers.

All of these improvements have had a positive effect on the transportation characteristics and traffic flow in this area. The opening of the new four lane Route 9 towards Leesburg should also have a positive effect on the traffic flow along Route 340.

Furthermore, the proposed map amendment from Residential Growth to Residential/Light Industrial/Commercial should have very little impact on traffic, since the property is already zoned for high density residential and the site is already utilized commercially.

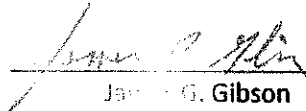

4. Error in the Zoning Map:

The applicant's property had a mix of commercial and residential uses on the property when the original Zoning Ordinance and the Residential/Light Industrial/Commercial District were adopted. As such, the property should always have been included in this mixed-use zone. The property contains the Allstadt residence and an Ordinary which was built in the late 18th Century. An Ordinary was a commercial tavern and meeting place. This reference is to show how early the property was utilized both residentially and commercially. More recently, the property was used as a drive-in movie theater from 1952 until 1983; and, as a large flea market from 1983 until the present. The property also contains the Wilt Fruit Stand and farmers' market, which has been open since 1968. The dwellings have remained on the property.

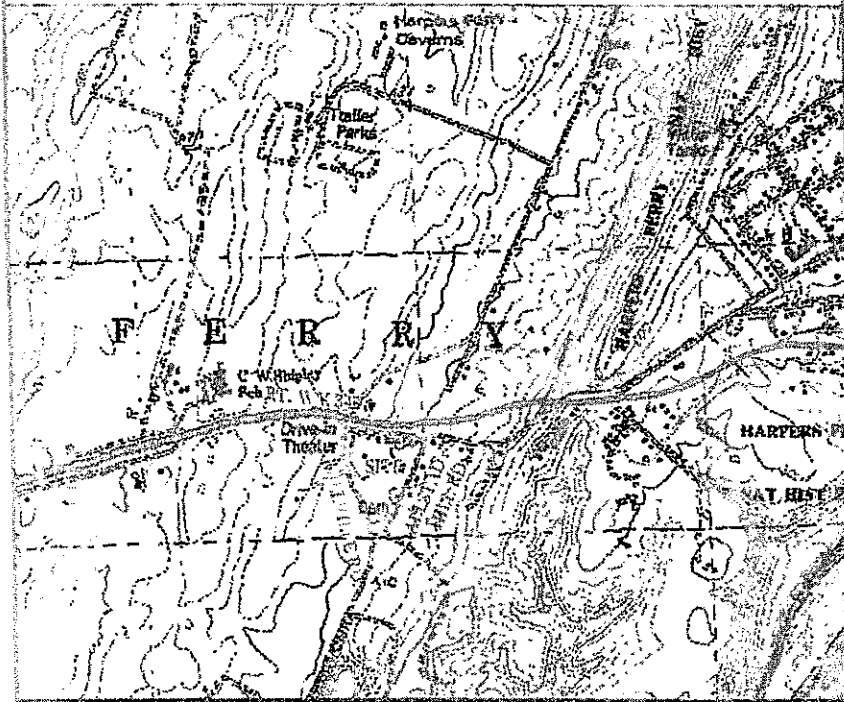
When the Zoning Ordinance was adopted in 1988 and continuing today, the applicant's property contained a large flea market, a fruit stand and several dwelling units. Furthermore, the property is adjacent to one of only a couple of 'Primary' access roads in Jefferson County as defined on a map in the 1987 Comprehensive Plan (the Plan that was in effect at the adoption of the original Zoning Ordinance) and on the same map in the 2004 Comprehensive Plan. Accordingly, the property should have been always been zoned Residential/Light Industrial/Commercial.

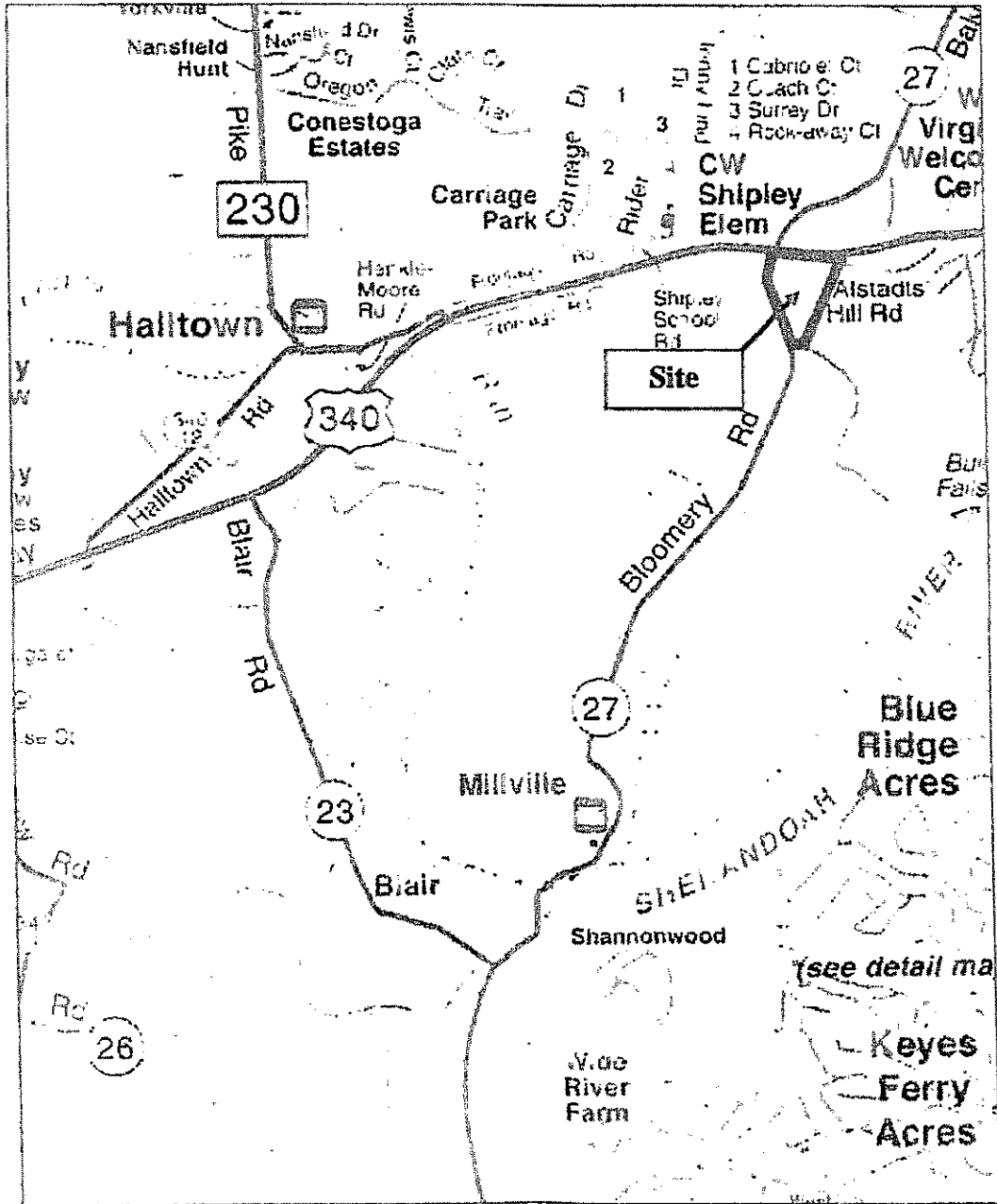
5. Conclusion:

The Applicant is requesting that the County Commission of Jefferson County approve a map amendment to the Jefferson County Zoning Map. This map amendment will change the zoning classification on the applicant's property from the Residential Growth District to the Residential/Light Industrial/Commercial District. This request is supported by the 2004 Jefferson County Comprehensive Plan, along with the other reasons set forth in this petition, which include the Change of Neighborhood and the Error in the Zoning Map.

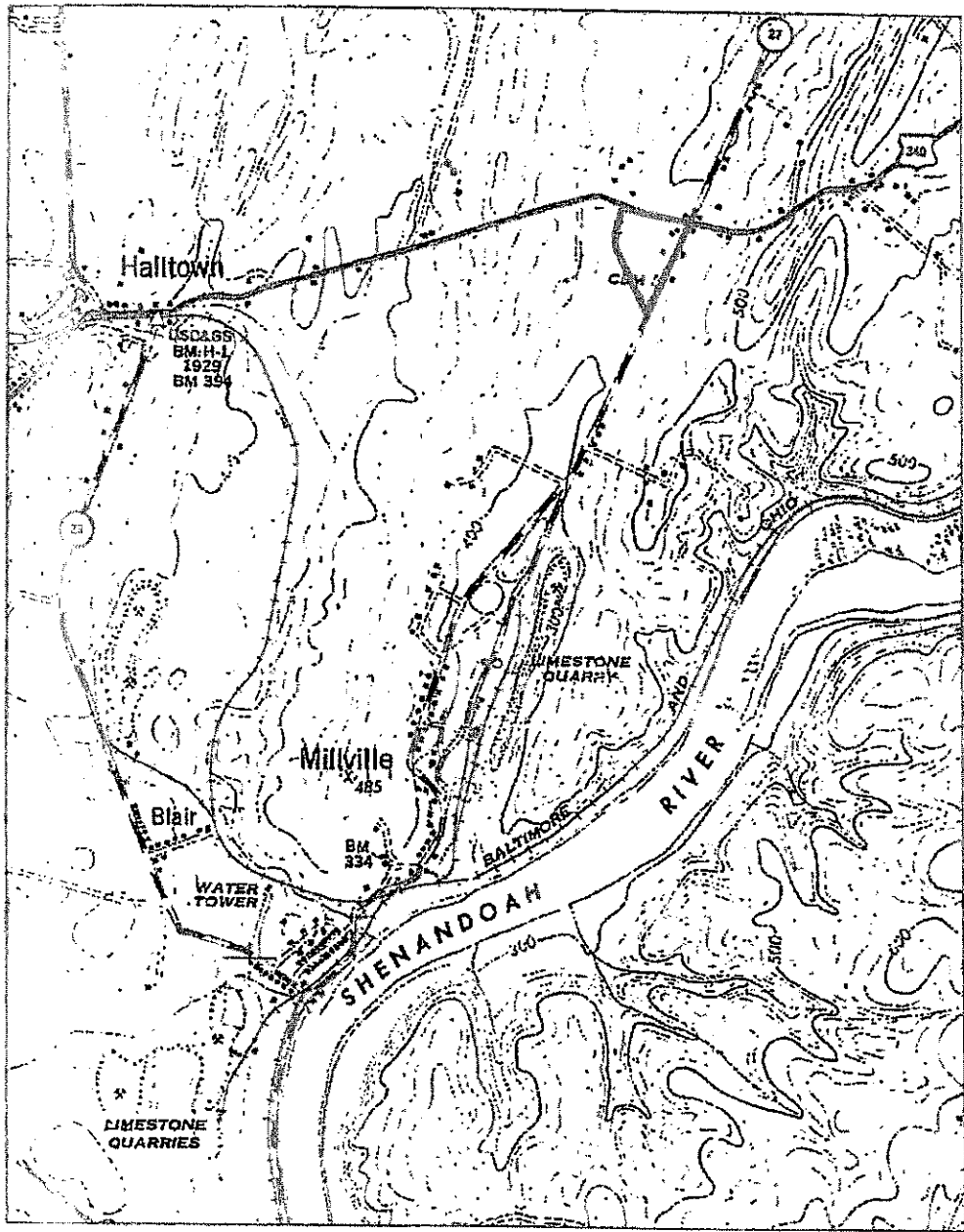
	Aug 29 - 2011		8/29/11
James G. Gibson	Date	Barbara S. Gibson	Date

LOCATION INSET
SCALE: 1"=2000'





Location of Gibson/Flea Market Property








USGS Map of Property

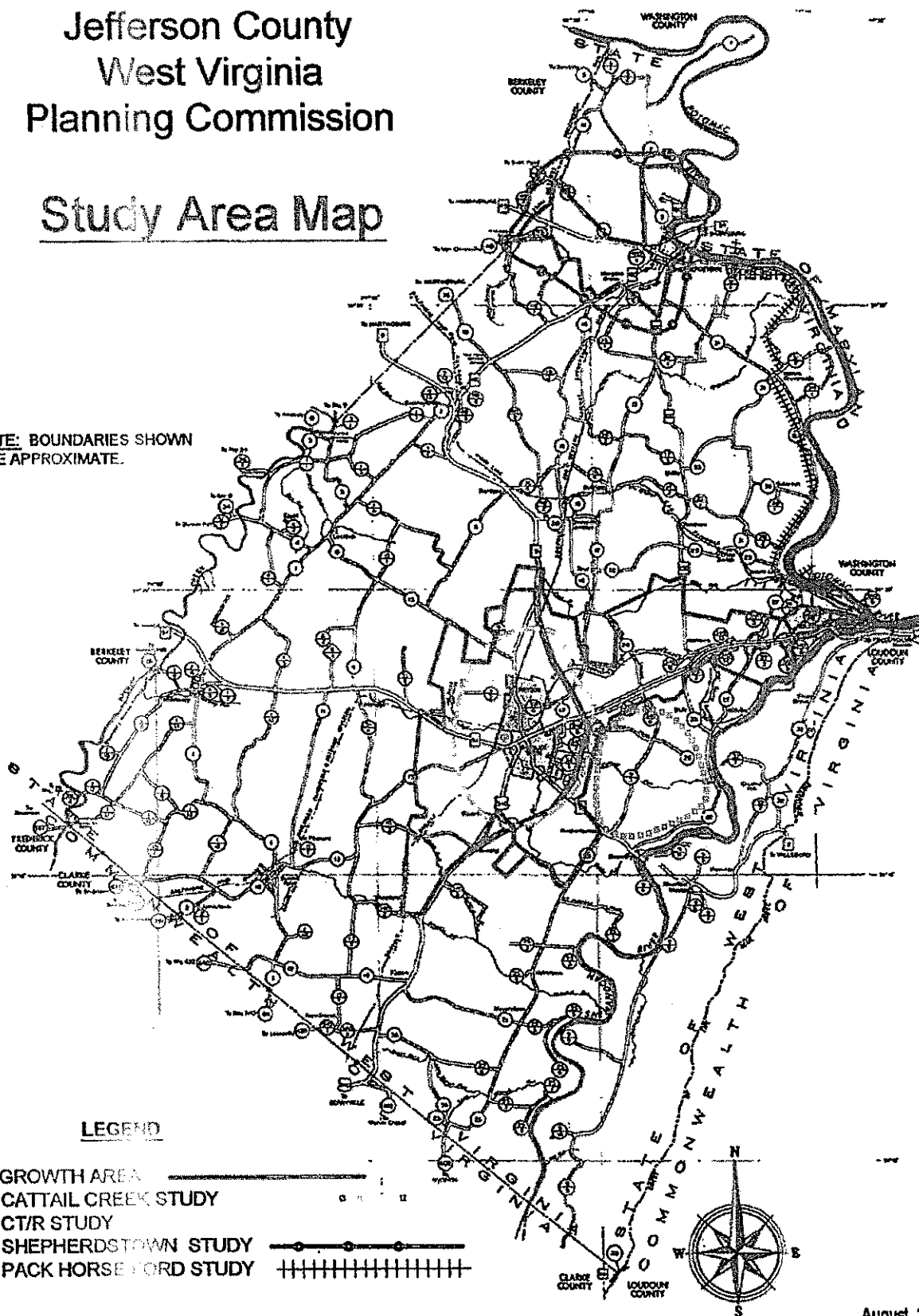
Jefferson County West Virginia Planning Commission

Study Area Map

NOTE: BOUNDARIES SHOWN
ARE APPROXIMATE.

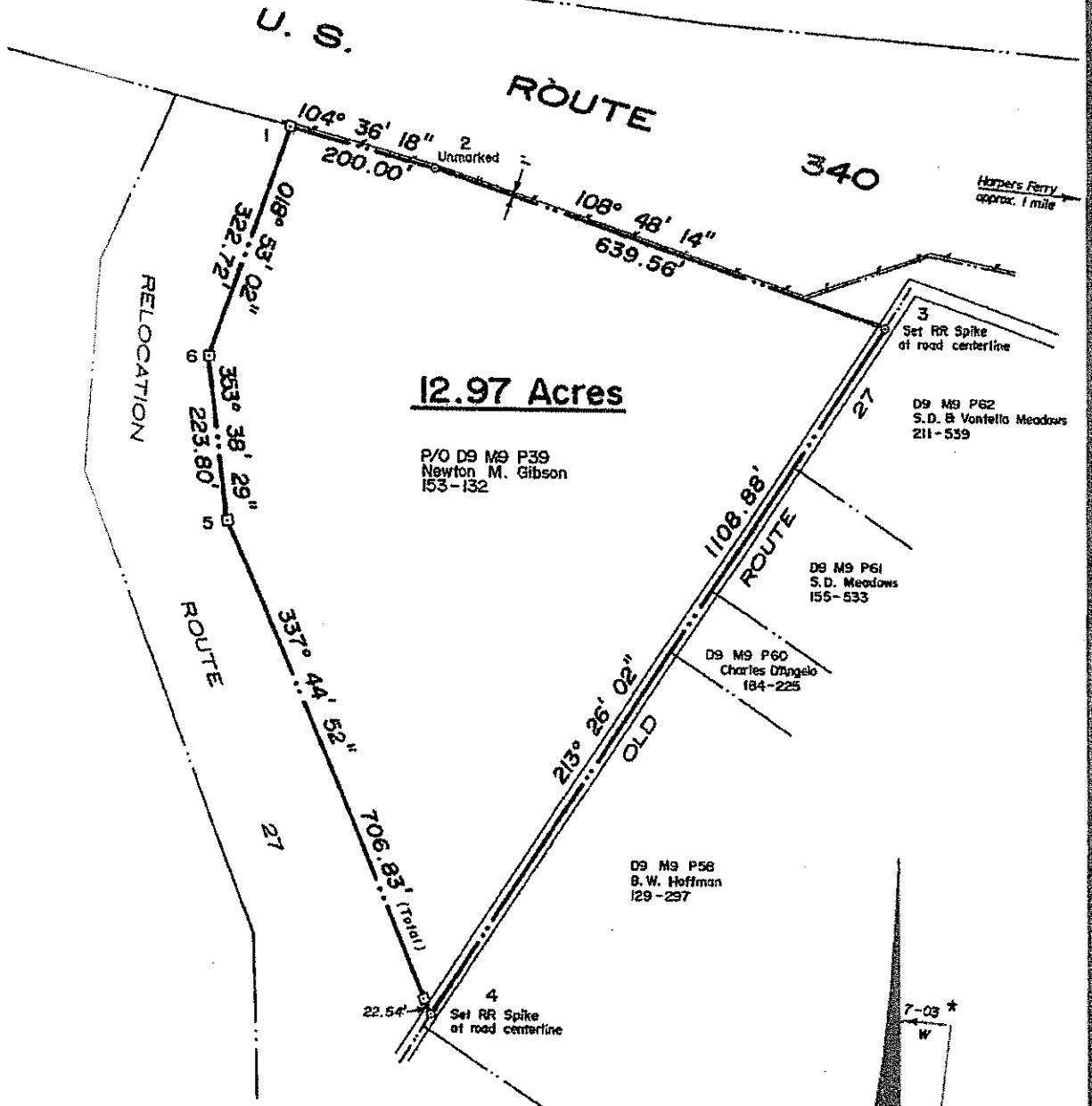
LEGEND

1. GROWTH AREA 
2. CATTAIL CREEK STUDY 
3. CT/R STUDY 
4. SHEPHERDSTOWN STUDY 
5. PACK HORSE FORD STUDY 

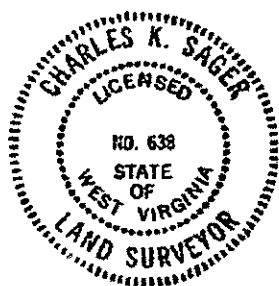


August, 2003
NOT TO SCALE

□ = Dept. of Highways Concrete Monument



Plat of Survey
 showing a portion of the
Newton M. Gibson property
 Harpers Ferry District
 Jefferson County, W.Va.
 Scale: 1" = 200'
 Surveyed: June 1981



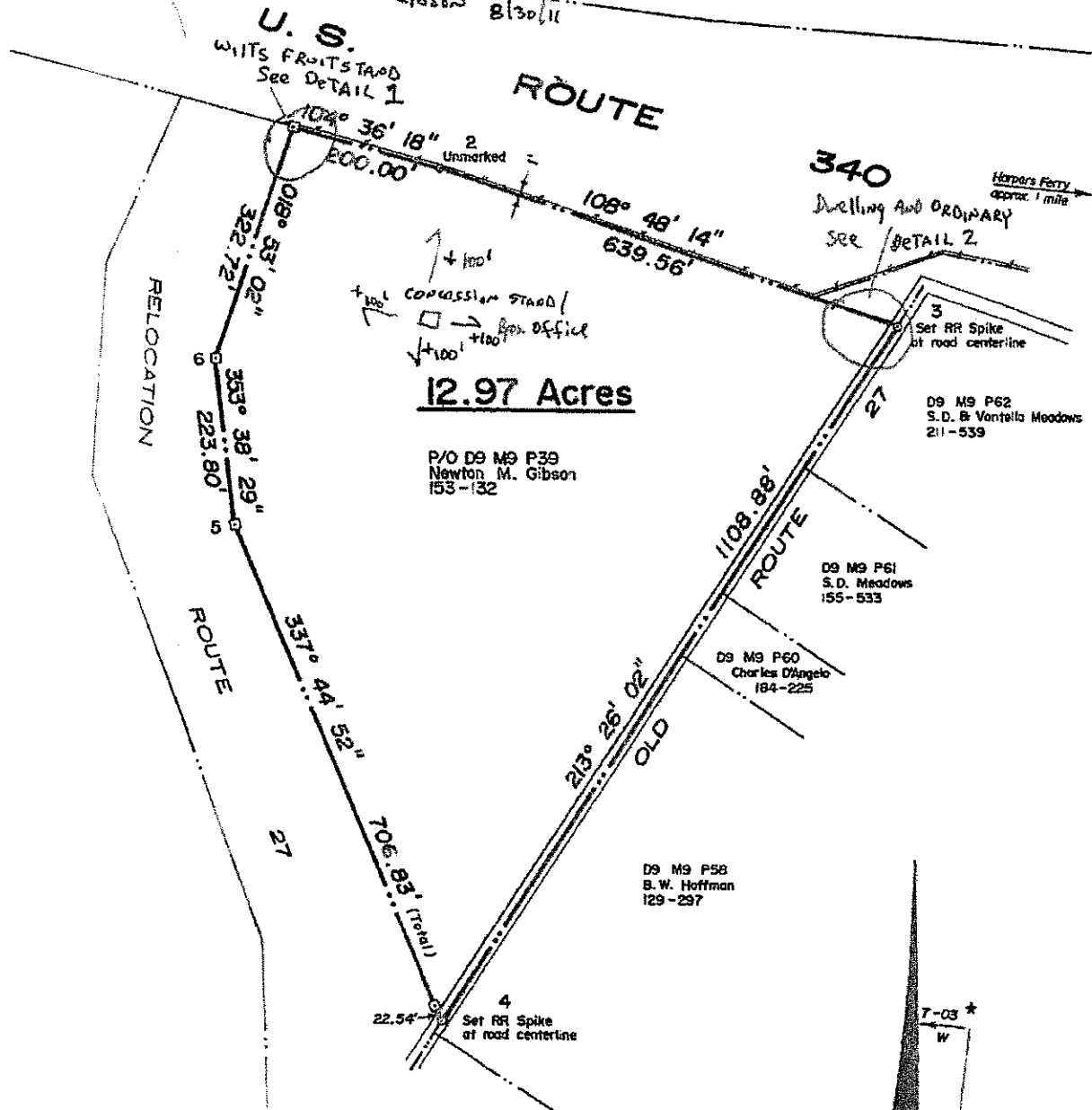
Declination
 measured
 at the
 Ranson, WV
 Magnetic
 Station
 June 1979.

**MAGNETIC
 NORTH**

Charles K. Sager
 Jefferson County Surveyor

ILLUSTRATIONS by JAMES GIBSON 8/30/11

□ = Dept. of Highways Concrete Monument



12.97 Acres

P/O D9 M9 P39
Newton M. Gibson
153-132

D9 M9 P62
S.D. & Vantella Meadows
211-539

D9 M9 P61
S.D. Meadows
155-533

D9 M9 P60
Charles D'Angelo
184-225

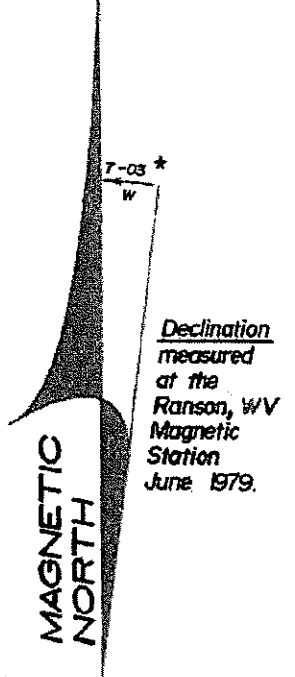
D9 M9 P58
B.W. Hoffman
129-297

Plat of Survey showing a portion of the **Newton M. Gibson** property

Harpers Ferry District
Jefferson County, W. Va.

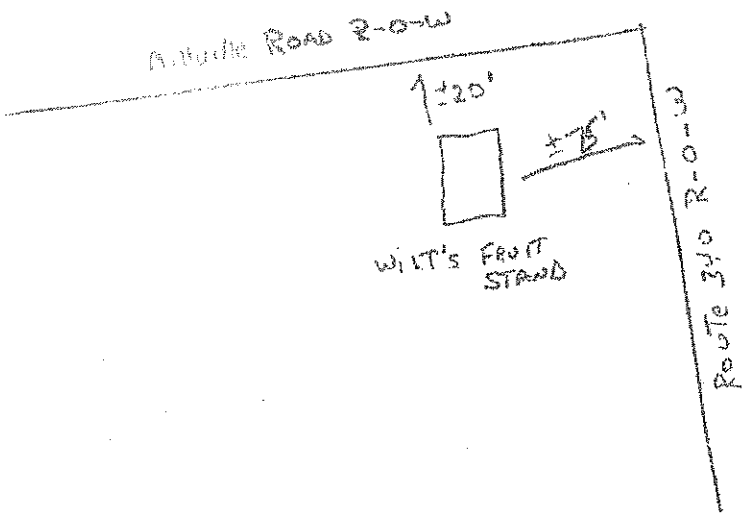
Scale: 1" = 200'
Surveyed: 05 June 1981

Charles K. Sager
Jefferson County Surveyor

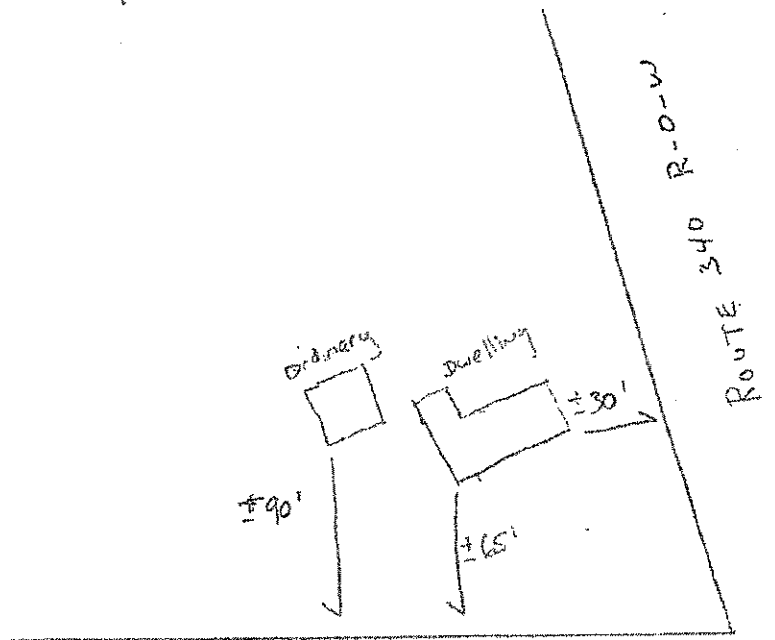


APPALACHIAN SURVEYS, INC.

P.O. BOX 35
CHARLES TOWN, WV 25414



Detail 1



ROAD R-O-W

DETAIL 2

EXHIBIT 2

James and Barbara Gibson
Petition for Map Amendment
Supplemental Information
November 8, 2011
File # Z11-04

This supplemental Information is intended to clarify some issues that have been addressed in the Gibson Rezoning Staff Report dated November 8, 2011. In that report the Staff defers to the Planning Commission to make the decision. The Staff Finding concludes that the application is both 'in compliance and not in compliance with the Plan'. However, the Planning Commission should note that the West Virginia State Code uses the word 'consistency' with the Plan, as opposed to 'compliance'. Also, the Commission should note that only if the Commission recommends that the request is 'inconsistent' with the Plan, then the County Commission must make an additional finding that there have been major changes in the area that weren't anticipated when the Plan was adopted.

Operating under the primary premise that this application is consistent with the 2004 Comprehensive Plan, the applicant's original submittal demonstrated that of the 32 recommendations in the 2004 Comprehensive Plan, 27 of those recommendations are neutral with respect to the application. The remaining 5 recommendations support the map amendment. All 5 of these recommendations are discussed in the original application, but the most conclusive of these 5 is Recommendation 4.10 that states:

"It is the vision of this Comprehensive Plan that development will be concentrated within the designated growth area."

There is only one map in the 2004 Comprehensive Plan that shows the designated growth area. That map (copy attached) shows clearly that the applicant's property falls directly within that growth area. The Staff Report states that since the Plan lacks a land use component, it is hard to discuss a rezoning application in terms of consistency. However, in this case, this property falls directly within the designated growth area on the reference map that is the closest thing that the Comprehensive Plan has regarding future land use. Accordingly, it appears that this application is very much consistent with the Comprehensive Plan.

Whereas the Applicant's original submittal analyzed the recommendations in the Comprehensive Plan, the Staff Report includes a lot of narrative from the Plan. The Applicant chose to primarily focus on the recommendations since they deal with the technical direction that the County should use to move forward with implementation, while the narrative tends to be anecdotal and editorial.

The Staff Report also suggests that the Central Business Districts (CBD) of Charles Town and Ranson can be threatened by commercial rezonings in the County. This is somewhat disingenuous since Ranson and Charles Town themselves annexed and approved large commercial developments (Home Depot, Weis, Kohls, Rite Aid, Sheetz, Aldi, Farm and Tractor Supply, etc.) well outside of their CBDs. However, all of these discussions in the Staff Report digress from the consistency question that is answered in the referenced Recommendation 4.10.

There are 4 major points that support this rezoning that were raised in the original submission that were not addressed in the Staff Report:

1. The Shenandoah Professional Building property across Route 340 from the subject property at the same intersection was just rezoned to the Residential/Light Industrial/Commercial District. The same justification for that rezoning can be applied directly to this rezoning request. In fact, based in part by that action, this Applicant's property is now surrounded on three sides by property that is zoned Residential/Light Industrial/Commercial. As such, this Applicant's property is now a donut hole out of the middle of the Mixed-Use Classification (see attached map);
2. Central/Public Water and Wastewater Facilities are currently available on this property. The Comprehensive Plan certainly supports development where there are existing water and sewer facilities;
3. The immediate neighborhood has already been planned for commercial uses including: the Shenandoah Professional Building; the expansion of River Riders; and the State approval of the 40 plus commercial/office lots on the Old Standard Quarry property. These changes, along with the other outlined changes in the original submission, all took place since the 2004 Plan was written and are major use changes. The Staff Report suggests that it was the National Park Service acquisitions that were not anticipated in 2004. In fact, those changes were anticipated for at least a decade. In the late 1990s, three scenarios were studied to enlarge the Park Boundaries. These studies showed which properties were intended to be included in the Park Boundary. It is important to note that the subject 12.97 acres included in this rezoning application was NOT included within that expansion.
4. The Staff's transportation analysis did not include the fact that this property is already zoned for Residential Growth and already has a high intensity commercial use on the property. As explained in the original submission, the proposed map amendment to the Mixed-Use District should have very little impact on traffic, since the property is already zoned for high density residential and the site is already utilized commercially. In fact, contrary to the statement in the Staff Report, this property has a residential subdivision approved on this property. The subdivision is not 'expired' as indicated in the Staff Report. As the Planning Commission is aware, all parties have agreed to extend the subdivision through July 1, 2012 (see attached order). As the Commission can see, the 'Variance History' on Page 3 of the Staff report is incomplete since it does not reflect the July 2011 agreement.

Finally, there is a Staff Recommendation on pages 19-21 of the Staff Report. In that recommendation, the Staff never once states that this application is inconsistent with the Comprehensive Plan. Article 8A of the West Virginia State Code, as amended, only requires a finding that the map amendment is consistent with the Comprehensive Plan. The Applicant feels that the original submission for a rezoning, along with this supplement, provides the Commission with ample evidence that the proposed map amendment is consistent with the Jefferson County Comprehensive Plan. This evidence supports the rezoning of the 12.97 acres from Residential Growth to Residential/Light Industrial/Commercial.






Attached, please find a revised proposed motion that is supported by the original application and this supplement.

Staff Report
Jefferson County Planning Commission Meeting
November 8, 2011







Image 4



Legend

-  Urban Growth Boundary
-  Parcels
-  Tax District Boundary
-  Public/Quasi-Public Land
-  Appalachian Trail

Zoning District

-  Incorporated Town
-  Industrial-Commercial
-  Residential-Growth
-  Residential-Light Industrial-Commercial
-  Rural
-  Village

Subject Property

Map 2

EXHIBIT 3

Library References

Zoning and Planning ⇨151, 194.
Westlaw Key Number Search: 414k151,
414k194.

C.J.S. Zoning and Land Planning §§ 65, 67, 71,
87 to 89, 95 to 96.

Notes of Decisions

Notice and hearing 1

I. Notice and hearing

Generally, where statute requires publication of notice for public hearing prior to enactment of zoning ordinance, failure to comply with such requirement will render zoning ordinance invalid. Code, 8-24-44. Grady v. City of St. Albans, 1982, 297 S.E.2d 424, 171 W.Va. 18. Zoning And Planning ⇨ 134.1

Failure of city to give any notice or to hold any public hearing before it received zoning ordinance and had first reading on it rendered the ordinance invalid. Code, 8-24-44. Grady v. City of St. Albans, 1982, 297 S.E.2d 424, 171 W.Va. 18. Zoning And Planning ⇨ 134.1

Violation of statute governing notice and public hearing required for zoning ordinance to be validly enacted did not give rise to implied cause of action. Code, 8-24-44. Grady v. City of St. Albans, 1982, 297 S.E.2d 424, 171 W.Va. 18. Zoning And Planning ⇨ 764

§ 8A-7-9. Amendments to the zoning ordinance by petition

(a) After the enactment of the zoning ordinance, the planning commission or the owners of fifty percent or more of the real property in the area to which the petition relates may petition to amend the zoning ordinance. The petition must be signed and be presented to the planning commission or the clerk of the governing body.

(b) Within sixty days after a petition to amend the zoning ordinance is received by the planning commission or the governing body, then the planning commission or the governing body must hold a public hearing after giving public notice. The public notice of the date, time and place of the public hearing must be published in a local newspaper of general circulation in the area affected by the proposed zoning ordinance, as a Class I legal advertisement, in accordance with the provisions of article three, chapter fifty-nine of this code, at least fifteen days prior to the public hearing.

(c) If the petition to amend the zoning ordinance is from the owners of fifty percent or more of the real property in the area, then before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body with the advice of the planning commission, must find that there have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

Acts 2004, c. 153, eff. 90 days after March 13, 2004.

Historical and Statutory Notes

Derivation:

Former § 8-24-46, which also related to petitions for changes to zoning ordinances, was derived

from Acts 1959, c. 118, and Acts 1969, c. 86, and was repealed by Acts 2004, c. 153, eff. 90 days after March 13, 2004.

Library References

Zoning and Planning ⇨192.
Westlaw Key Number Search: 414k192.
C.J.S. Zoning and Land Planning §§ 86, 93.

§ 8A-7-10. Effect of enacted zoning ordinance

(a) After enactment of a zoning ordinance by a municipality or county, all subsequent land development must be done in accordance with the provisions of the zoning ordinance.

(b) All zoning ordinances, and all amendments, supplements and changes thereto, legally adopted under any prior enabling acts, and all actions taken under the authority of any such

ordinances, are here of the governing bo These ordinances sh plan of land use or p

(c) Land, building the same use and su the land, buildings alterations or addit industry or manufa manufacturer but n or acquisition of a development or exp present or future s; may provide for th one nonconforming

(d) If a use of a p property has been the property can sh absence of natural agricultural, indust use. If the proper structures must cor the land, buildings landmark, historic

(e) Nothing in tl of urban areas, the Acts 2004, c. 153, eff.

§ 8A-7-11. Variance

(a) A variance is not involve permit it involve changing

(b) The board c that the variance:

(1) Will not adv property owners o

(2) Arises from variance is sought

(3) Would elimi

(4) Will allow t done.

Acts 2004, c. 153, ef

§ 8A-7-12. Variance

All zoning ordi adopted under p hereby validated action of the gove Acts 2004, c. 153, ef

Derivation:

Former § 8-24- validation of existi

EXHIBIT 4

ARTICLE 12. MAP AND TEXT AMENDMENTS

Section 12.1 Purpose

- (a) These regulations, restrictions, provisions, and the boundaries of districts provided herein may from time to time be amended, modified, or repealed by the County Commission. Any person, individual, board, commission or bureau of the County may petition the County Commission for such change.
- (b) The County Commission shall refer any amendment or alteration of this Ordinance to the Planning and Zoning Commission for analysis, study, report, and recommendations.

Section 12.2 Procedure for Amendment by Governing Body

[AMENDED BY ACT OF THE COUNTY COMMISSION, EFFECTIVE MAY 4, 1989]

- (a) After the enactment of the zoning ordinance, the governing body of the County may amend the zoning ordinance without holding an election.
[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON _____]
- (b) Before amending the zoning ordinance, the governing body with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan.
[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON _____]

Section 12.3 Procedure for Amendment by Petition

- (a) The procedure for amendment shall be as dictated in §8A-1-1 et seq of the West Virginia State Code, as amended.
[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS REINSTATED BY COURT ORDER ON _____]
- (b) Petitions to the County Commission for an amendment must contain the following information:
 - 1. Substantiation for the request
 - 2. Tax District, Map and Parcel number
 - 3. Deed Book reference
 - 4. Plat or sketch pursuant to Section 7.4 (b)
 - 5. Tract size

6. Discussion on:

- a. Comprehensive Plan compatibility of the proposed change.
- b. Any change of transportation characteristics and neighborhood from when the original ordinance was adopted
[PREVIOUSLY INVALIDATED APRIL 8, 2005 AMENDMENTS
REINSTATED BY COURT ORDER ON _____]

<p>Commission Office Use Only</p> <p>Date on Agenda: 12/1/11</p> <p>Appt Time or New Business: 11:30 AM</p>

AGENDA REQUEST FORM

Name: Roger Goodwin

Department or Entity: Department of Engineering

Estimation of amount of time needed for appointment: 5 minutes

Date Requested – 1st Choice: December 1, 2011

Date Requested – 2nd Choice: _____

If a specific date is needed, please provide reason for specific date:

Subject: Bond reduction and/or release.

Please provide the County Commission with a description of your request or presentation, including any background information: Complete release of the Construction Bond security for Robert S. and Amy R. Leonard – Brookstone Subdivision, Lots 1-6 & 7-Residue (File #06-37) – Letter of Credit #5203902 with Jefferson Security Bank, Shepherdstown, West Virginia. The property has been merged back into one parcel of land of 97.55 acres thus eliminating the subdivision.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): I authorize a complete release of Letter of Credit #5203902 in the amount of \$266,235.00 from Jefferson Security Bank which secured the construction bond for Robert S. and Amy R. Leonard – The Brookstone Subdivision, Lots 1-6 & 7-Residue (File #06-37).

Attachments: Bond Release Letter
Site Location Map

Debbie Stellato

From: Sandy McDonald [sandy@jeffersoncountywv.org]
Sent: Tuesday, November 22, 2011 11:08 AM
To: dstellato@jeffersoncountywv.org
Subject: Fw: County Commission Agenda 12/1/2011
Attachments: Brookstone Ridge Subdivision Bond Release .eml (231 KB); Westridge Hills Agenda Request.eml (12.3 KB)

12/1 agenda

----- Original Message -----

From: Rebecca Burns
To: 'Sandy McDonald'; 'Nichelle Hosby'
Cc: 'Engineering Department'; Roger Goodwin ; Stephanie Grove
Sent: Tuesday, November 22, 2011 11:06 AM
Subject: County Commission Agenda 12/1/2011

Sandy and Nichelle,

Please place the following items on the County Commission agenda for December 1, 2011.

1. Westridge Test Wells Project update
2. Bond release request for Brookstone Ridge Subdivision #06-37.

Thank you. Hope you both have a blessed Thanksgiving.

Becky
Becky Burns, Office Manager
Jefferson County Department of Engineering &
Office of Building Permits & Inspections
Office (304)-728-3257



JEFFERSON COUNTY COMMISSION

124 East Washington Street, P.O. Box 250, Charles Town, WV 25414

Phone: (304) 728-3284 - Fax: (304) 725-7916

Web: www.jeffersoncountywv.org

PRESIDENT

Patsy Noland

VICE PRESIDENT

Dale Manuel

COMMISSIONER

Frances Morgan

COMMISSIONER

Walt Pellish

COMMISSIONER

Lyn Widmyer

December 1, 2011

Mr. Dustin Branner
Vice President & Commercial Loan Officer
Jefferson Security Bank

P. O. Box 35
Shepherdstown, West Virginia 25443

RE: Irrevocable Letter of Credit #5203902 dated January 14, 2011 Construction Bond Surety for Robert S. and Amy R. Leonard – The Brookstone Subdivision, Lots 1-6 & 7-Residue (File #06-37).

Dear Mr. Branner:

The Jefferson County Commission authorizes a complete release of \$266,235.00 from the construction bond for Robert S. and Amy R. Leonard – The Brookstone Subdivision, Lots 1-6 & 7-Residue (File #06-37). This property is located on the north side of Scrabble Road (Route 5) at its intersection with Shepherd Grade Road (Route 5/2) and Route 5/7 (Dam 4 Road).

A plat of merger was recorded in the Office of the Clerk of the County Commission on November 8, 2011, in Plat Book 25, Page 317 (Slide 2090A) merging the property back into one parcel of land of 97.55 acres. The merger deed was recorded in said Clerk's Office on November 8, 2011 in Deed Book 1100, Page 672-678.

In summary, you are hereby authorized to fully release the remaining amount for the above referenced Irrevocable Letter of Credit, originally issued in the amount of \$266,235.00. Please contact the Jefferson County Department of Engineering at (304)-728-3257 if you have any questions.

Sincerely,

Patricia A. Noland, President
Jefferson County Commission

PAN:rfb

cc: Robert S. & Amy R. Leonard
5187 Scrabble Road
Shepherdstown, WV 25443
Department of Engineering

COUNTY ADMINISTRATOR
Tim Boyde

DEPUTY COUNTY ADMINISTRATOR
Sandy Shisher McDonald

<p>Commission Office Use Only</p> <p>Date on Agenda: 12/1/11</p> <p>Appt Time or New Business: 11:30 AM</p>

AGENDA REQUEST FORM

Name: Roger Goodwin

Department or Entity: Engineering

Estimation of amount of time needed for appointment: 15 minutes

Date Requested – 1st Choice: December 1, 2011

Date Requested – 2nd Choice: _____

If a specific date is needed, please provide reason for specific date:

Subject: Westridge Hills Potable Water Test Wells Project

Please provide the County Commission with a description of your request or presentation, including any background information: Report on the Westridge Hills Test Wells project.

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):

Attachments:

<p>Commission Office Use Only</p> <p>Date on Agenda:</p> <p>Appt Time or New Business:</p>
--

AGENDA REQUEST FORM

Name: Tim Boyde, County Administrator

Department or Entity: County Commission

Estimation of amount of time needed for appointment: _____

Date Requested – 1st Choice: December 1, 2011

Date Requested – 2nd Choice: _____

If a specific date is needed, please provide reason for specific date:

Subject: **Proposed Change in Jefferson County's Magisterial Districts**

Please provide the County Commission with a description of your request or presentation, including any background information: **Approval of Redistricting**

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve):

Attachments:

SPECIAL SESSION:

State of West Virginia, County of Jefferson, to-wit:

At a Special Session of the County Commission of said County and State held at the Jefferson County Commission Meeting Room on the lower floor of the Old Charles Town Library at 200 E. Washington Street, on Thursday, November 10, 2011 beginning at 7:00 o'clock a.m.

**PUBLIC HEARING -PROPOSED CHANGE IN JEFFERSON COUNTY'S
MAGISTERIAL DISTRICTS**

Ms. Noland called to order a Public Hearing at 7:00 .p.m. regarding the Proposed Change in Jefferson County's Magisterial Districts. Ms. Noland announced that the record would remain open until November 23, 2011 for submission of written public comments.

Present were:	Patricia Noland, President Dale Manuel, Vice President Lyn Widmyer, Commissioner Frances Morgan, Commissioner Walt Pellish, Commissioner
Jefferson County Deputy Administrator:	Sandra McDonald
Administrative Assistant:	Debbie Stellato
Todd Fagan:	Director, GIS Department
Nikki Painter	Chief Deputy Clerk of Elections, County Clerk's Office

Todd Fagan provided a Power Point presentation and explained the rules and guidelines of the proposed magisterial districts and offered background on how the proposed districts were developed.

Public comment was made by:

Fred Blackmer advocated a change from 5 magisterial districts to 10 magisterial districts.

Patricia Rucker supported the proposed magisterial districts and praised the uniting of the residents of Blue Ridge Mountain.

Delegate John Doyle requested that municipalities not be divided.

Todd Metzger offered support for 10 magisterial districts as proposed by Mr. Blackmer.

Fred Blackmer and Ann Paonessa submitted written comments to the Commission.

There being no further public comment the hearing was closed at 7:40 p.m.

PATSY A. NOLAND, PRESIDENT

Ann M. Paonessa
536 S. Mildred St.
Charles Town, WV 25414
304-728-2887
Annpwv@gmail.com

November 9, 2011

Jefferson County Commission
P.O. Box 250
Charles Town, WV 25414
info@jeffersoncountywv.org

Re: Comments for Public Hearing on Proposed Plan for Re-Districting of County Magisterial Districts

Dear Commissioners:

Thank you for the opportunity to submit written comments regarding the proposed plan for the re-districting of Jefferson County's magisterial districts. I apologize that I cannot attend the public hearing to provide my comments for the record in person. I have a previous obligation to attend the City of Charles Town's Parks & Recreation Commission meeting the evening of November 10 at 7pm.

As the Commission is aware, I currently serve as an elected member of the Charles Town City Council. In addition, I am the elected female representative of the Charles Town magisterial district on the Jefferson County Democratic Executive Committee. It is important to note, however, that the following comments are my own as an individual and not those of the Charles Town City Council or the Jefferson County Democratic Executive Committee.

When the state legislature re-drew the state delegate districts, great care was taken by our Eastern Panhandle delegation to ensure that what is now established as the 66th state delegate district would wholly include the incorporated limits of Charles Town and Ranson as well as their currently established urban growth boundaries. I believe that the Eastern Panhandle delegation was right in making it a primary goal to establish a single delegate district to represent both municipalities and I believe the County Commission should strive to do the same when considering the re-drawing of magisterial districts.

The current proposal would reduce the number of municipal residents in the Charles Town magisterial district significantly. Looking at the non-detailed map provided as an overview to the current and proposed magisterial districts, you can see quite clearly that less of the (shaded) municipal boundaries are included in the Charles Town magisterial district in the proposed plan. Additionally, the Charles Town magisterial district will be losing Charles Town Middle School as polling precinct (where both municipal and non-municipal citizens vote) and gaining Fellowship Bible Church on Shenandoah Junction Rd. as well as Jefferson High School in Shenandoah Junction as polling precincts (where, few if any,

NOTICE OF PUBLIC HEARING

COUNTY COMMISSION OF JEFFERSON COUNTY

The County Commission of Jefferson County will hold a Public Hearing on Thursday, November 10, 2011, at 7:00 p.m. in the County Commission meeting room located at the Old Charles Town Library Meeting Room on the ground floor, 200 East Washington Street, Charles Town, WV 25414.

The purpose of the hearing is for public input for a proposed change in the Jefferson County's magisterial districts.

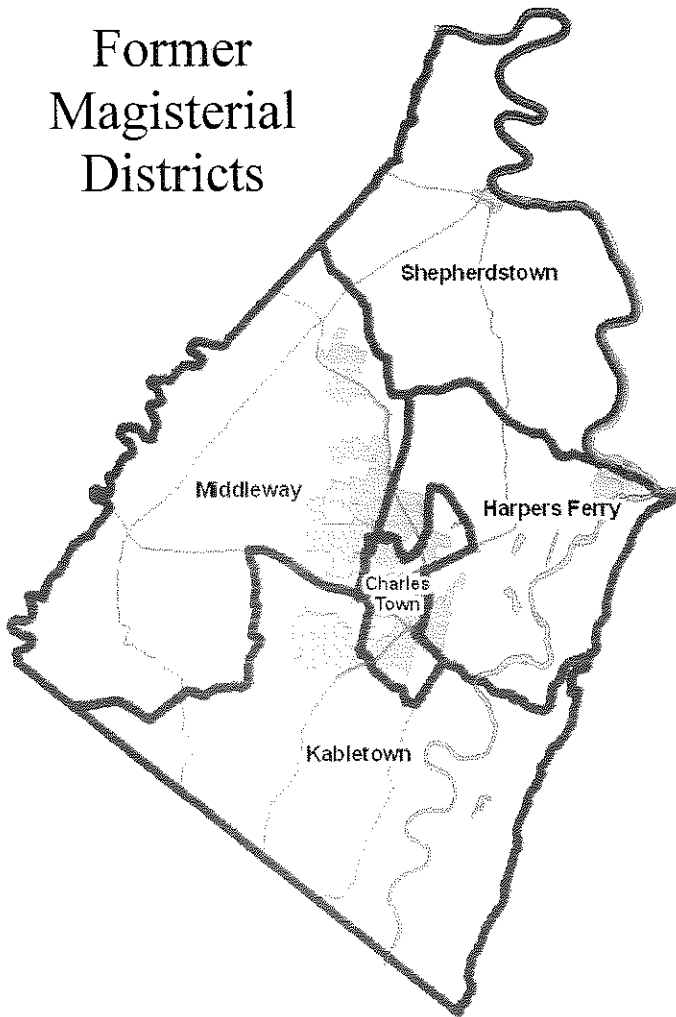
Anyone wishing to provide written or oral comment may do so at this meeting or send comment to info@jeffersoncountywv.org.

The draft redistricting map can be found on the Jefferson County Commission website at <http://www.jeffersoncountywv.org/>

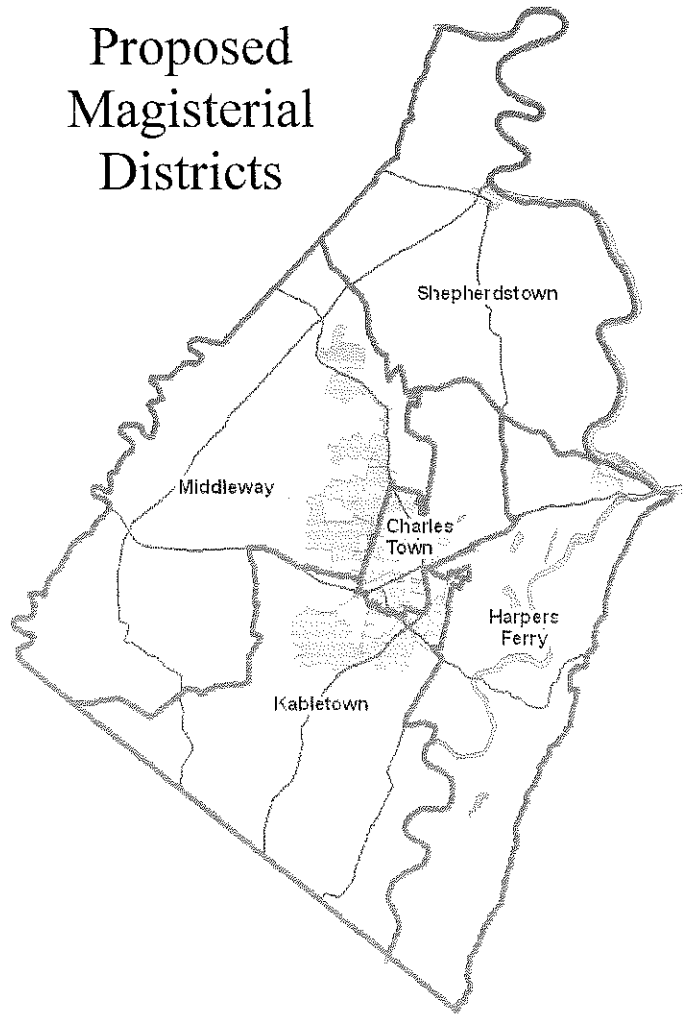
A decision will be made at a later date.

By Order of The County
Commission of Jefferson County
Patricia A. Noland, President

Former Magisterial Districts



Proposed Magisterial Districts

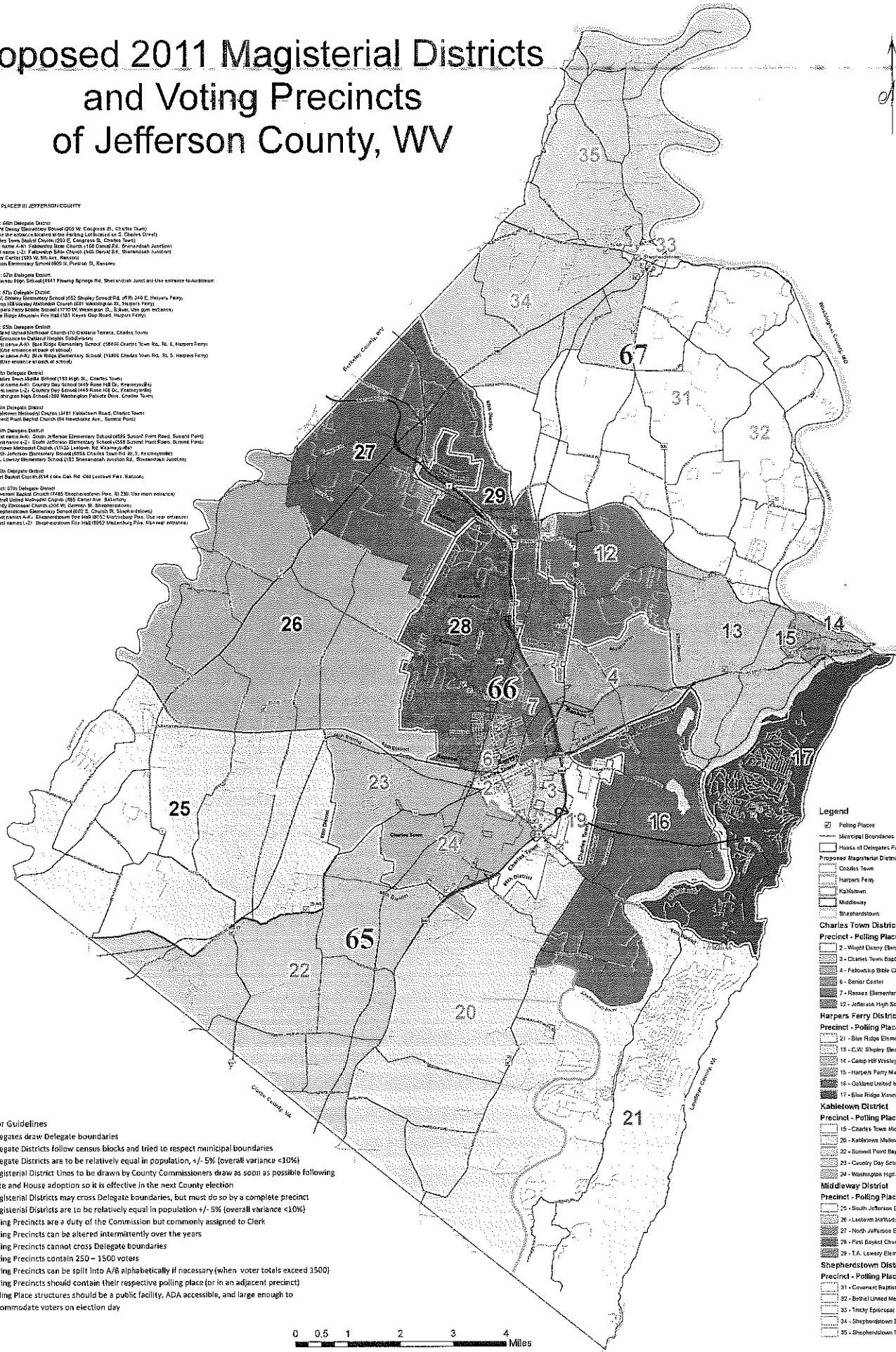


Proposed 2011 Magisterial Districts and Voting Precincts of Jefferson County, WV



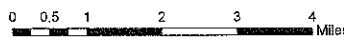
Proposed POLLING PLACES IN JEFFERSON COUNTY

- Charles Town District - 6th Delegate District**
 Precinct 2 - Wright Dewey Elementary School (201 W. Congress St., Charles Town)
 (Use the entrance located across parking lot between St. Charles Street)
- Charles Town District - 7th Delegate District**
 Precinct 3 - Charles Town Baptist Church (200 E. Congress St., Charles Town)
- Charles Town District - 8th Delegate District**
 Precinct 4 - Last name L-2 Fellowship Bible Church (160 Canal St., Shepherdstown Junction)
- Charles Town District - 9th Delegate District**
 Precinct 5 - Senior Center (500 W. 30th St., Charles Town)
- Charles Town District - 10th Delegate District**
 Precinct 6 - Reasen Elementary School (800 H. Pugh St., Charles Town)
- Charles Town District - 11th Delegate District**
 Precinct 12 - Jefferson High School (841 Fleming Springs Rd., Shepherdstown just at the entrance to Auburton)
- Harpers Ferry District - 12th Delegate District**
 Precinct 13 - C.W. Shupey Elementary School (622 Washington St., Harpers Ferry)
 Precinct 14 - Camp Hill Wesley Methodist Church (1770 W. Western St., Baker, 1st entrance)
 Precinct 15 - Harpers Ferry Middle School (1770 W. Western St., Baker, 1st entrance)
 Precinct 16 - Blue Ridge Mountain Fire Hall (1811 Hayes Gap Road, Harpers Ferry)
- Harpers Ferry District - 13th Delegate District**
 Precinct 17 - Oakland United Methodist Church (70 Oakdale Terrace, Charles Town)
 (Entrance on Oakdale Terrace, 70th St.)
- Harpers Ferry District - 14th Delegate District**
 Precinct 18 - (Last name A-H) Blue Ridge Elementary School (18650 Charles Town Rd., Rt. 1, Harpers Ferry)
 (Use entrance at top of school)
- Harpers Ferry District - 15th Delegate District**
 Precinct 19 - (Last name A-H) Blue Ridge Elementary School (18650 Charles Town Rd., Rt. 1, Harpers Ferry)
 (Use entrance at top of school)
- Kabetown District - 15th Delegate District**
 Precinct 20 - Charles Town Middle School (183 High St., Charles Town)
- Kabetown District - 16th Delegate District**
 Precinct 21 - (Last name A-H) Country Day School (145 River Hill Dr., Shepherdstown)
- Kabetown District - 17th Delegate District**
 Precinct 22 - (Last name I-Z) Country Day School (145 River Hill Dr., Shepherdstown)
- Shepherdstown District - 17th Delegate District**
 Precinct 23 - Washington High School (300 Washington Pallade Drive, Charles Town)
- Shepherdstown District - 18th Delegate District**
 Precinct 24 - (Last name A-H) Country Day School (145 River Hill Dr., Shepherdstown)
- Shepherdstown District - 19th Delegate District**
 Precinct 25 - (Last name I-Z) Country Day School (145 River Hill Dr., Shepherdstown)
- Shepherdstown District - 20th Delegate District**
 Precinct 26 - (Last name A-H) Country Day School (145 River Hill Dr., Shepherdstown)
- Shepherdstown District - 21st Delegate District**
 Precinct 27 - (Last name I-Z) Country Day School (145 River Hill Dr., Shepherdstown)
- Shepherdstown District - 22nd Delegate District**
 Precinct 28 - (Last name A-H) Country Day School (145 River Hill Dr., Shepherdstown)
- Shepherdstown District - 23rd Delegate District**
 Precinct 29 - (Last name I-Z) Country Day School (145 River Hill Dr., Shepherdstown)
- Shepherdstown District - 24th Delegate District**
 Precinct 30 - (Last name A-H) Country Day School (145 River Hill Dr., Shepherdstown)
- Shepherdstown District - 25th Delegate District**
 Precinct 31 - (Last name I-Z) Country Day School (145 River Hill Dr., Shepherdstown)



- Legend**
- Polling Place
 - Municipal Boundaries
 - Houses of Delegates Final Plan 2010
 - Proposed Registrar Districts 2011
 - Charles Town District
 - Harpers Ferry District
 - Kabetown District
 - Middletown District
 - Shepherdstown District
- Charles Town District - Polling Place**
- 2 - Wright Dewey Elementary School
 - 3 - Charles Town Baptist Church
 - 4 - Fellowship Bible Church
 - 5 - Senior Center
 - 6 - Reasen Elementary School
 - 12 - Jefferson High School
- Harpers Ferry District - Polling Place**
- 13 - C.W. Shupey Elementary School
 - 14 - Camp Hill Wesley Methodist Church
 - 15 - Harpers Ferry Middle School
 - 16 - Oakland United Methodist Church
 - 17 - Blue Ridge Mountain Fire Hall
- Kabetown District - Polling Place**
- 20 - Charles Town Middle School
 - 21 - Shepherdstown Middle School
 - 22 - Summit Point Baptist Church
 - 23 - Country Day School
 - 24 - Washington High School
- Middletown District - Polling Place**
- 25 - South Jefferson Elementary School
 - 26 - Limestone Methodist Church
 - 27 - North Jefferson Elementary School
 - 28 - First Baptist Church
 - 29 - T.A. Lowery Elementary School
- Shepherdstown District - Polling Place**
- 31 - Covenant Baptist Church
 - 32 - Bethel United Methodist Church
 - 33 - Trinity Episcopal Church
 - 34 - Shepherdstown Elementary School
 - 35 - Shepherdstown Fire Hall

- Rules or Guidelines**
1. Delegates draw Delegate boundaries
 2. Delegate Districts follow census blocks and tried to respect municipal boundaries
 3. Delegate Districts are to be relatively equal in population, +/- 5% (overall variance <10%)
 4. Magisterial District Lines to be drawn by County Commissioners draw as soon as possible following State and House adoption so it is effective in the next County election
 5. Magisterial Districts may cross Delegate boundaries, but must do so by a complete precinct
 6. Magisterial Districts are to be relatively equal in population +/- 5% (overall variance <10%)
 7. Voting Precincts are a duty of the Commission but commonly assigned to Clerk
 8. Voting Precincts can be altered intermittently over the years
 9. Voting Precincts cannot cross Delegate boundaries
 10. Voting Precincts contain 250 - 1500 voters
 11. Voting Precincts can be split into A/B alphabetically if necessary (when voter totals exceed 1500)
 12. Voting Precincts should contain their respective polling place (or in an adjacent precinct)
 13. Polling Place structures should be a public facility, ADA accessible, and large enough to accommodate voters on election day





Jennifer S. Maglian
County Clerk

Jefferson County Clerk's Office Voter Registration & Elections

TO: Jefferson County Commission
Tim Boyde, County Administrator

FROM: Nikki Painter, Chief Deputy Clerk of Elections
Todd Fagan, GIS Director

DATE: October 27th, 2011

SUBJECT: Proposed Magisterial Districts and Voter Precincts

This memo serves as a request for the Commission to review and pre-approve a proposal to redraw magisterial districts and voter precincts in Jefferson County. Following today's pre-approval, this proposal must be available for public review and comment for a period of 30 days before the Commission grants final approval. Voter registration anticipates final Commission approval prior to December 1st, 2011 in order to allow time to send letters and new voter registration cards to any residents affected by change in precinct lines. The entire process must be complete by January 1st, 2012.

The GIS Department matched voter registration records to 911 physical location addresses to analyze distribution among the three new WV State Delegate Districts. In conjunction with Voter Registration staff, we then worked within rules to achieve a district and precinct plan that would minimize, to the extent possible, disruption to voters. Staff also worked hard to eliminate the need to create new precincts, thereby eliminating those associated new costs.

The mapped proposal follows constraints defined by State Code, legislative guidelines and past practices and policies. Among the rules defined are: physical boundary limits, relatively equal population targets, registered voter ranges, polling place requirements, and official responsibilities.

The old and new districts are attached on the following pages.

Recommended motion: Move to pre-approve the Proposed Magisterial District and Voter Precinct Boundaries as presented, for a period of 30 days for public review and set a date certain for final approval on December 1st, 2011.

Nikki Painter, Chief Deputy Clerk: 304.728.3246 or npainter@jeffersoncountywv.org
Wendy Evangelisti, Deputy Clerk: 304.728.3386 or wevangelisti@jeffersoncountywv.org
Address: 100 East Washington Street, PO Box 208, Charles Town WV 25414
Fax: 304.728.1957 **Web Site:** www.jeffersoncountyclerkwv.com

Commission Office Use Only

Date on Agenda: 12/1/11

Appt Time or New Business:

AGENDA REQUEST FORM

Name: Nichelle Hosby

Department or Entity: County Commission

Estimation of amount of time needed for appointment: 4 minutes

Date Requested – 1st Choice: 12/1/11

Date Requested – 2nd Choice: _____

If a specific date is needed, please provide reason for specific date:

Subject: Request for approval of reappointment of Chris Jackson to the Jefferson County Civil Service Commission as recommended by the Jefferson County Deputy Sheriff's Association.

Please provide the County Commission with a description of your request or presentation, including any background information:

Recommended motion (Please type out the wording of the motion that you would like the Commission to approve): **move to reappoint Chris Jackson to the Jefferson County Civil Service Commission as recommended by the Jefferson County Deputy Sheriff's Association for a four year term ending September 30, 2015.**

Attachments:



JEFFERSON COUNTY DEPUTY SHERIFF'S ASSOCIATION

102 Industrial Boulevard, Suite 100
Kearneysville, WV 25430
Telephone: 304-728-3205 Fax: 304-728-3299

November 10, 2011

Jefferson County Commission
124 East Washington St
Charles Town WV 25414

Re: Appointment of Civil Service Representative

Dear Commissioners:

The members of the Jefferson County Deputy Sheriff's Association have reappointed Chris Jackson as their representative on the Civil Service Commission.

If you have any questions or would like further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Hansen", is written over the typed name.

Lt. Thomas H. Hansen
President



National Parks Conservation Association®
Protecting Our National Parks for Future Generations®

November 7, 2011

Ms. Patsy Noland, President
Mr. Dale Manuel, Vice President
Mr. Walt Pellish, Commissioner
Ms. Frances Morgan, Commissioner
Ms. Lyn Widmyer, Commissioner
Jefferson County Commission
P.O. Box 250
Charles Town, WV 25414

Dear President Noland and Members of the Commission:

Thank you for the opportunity to comment on the petition to rezone the property designated as Tax District: Harpers Ferry, Map 9, Parcel: 39:1 – locally known as Allstadt's Corner, between Route 340, Millville Road, and Allstadt's Hill Road. The following is submitted on behalf of the nonpartisan National Parks Conservation Association (NPCA), the nation's leading nonprofit advocacy organization solely dedicated to protecting, restoring, and enhancing America's national parks for this and future generations. NPCA has more than 600,000 members and supporters in West Virginia and across the country.

The property's owners have requested that the 12.97-acre property be rezoned from Residential Growth to Residential/Light Industrial/Commercial. The Allstadt's Corner property currently hosts the Harpers Ferry Flea Market and the Wilt Fruit Stand. The property is adjacent to the Harpers Ferry National Historical Park, a local and national treasure, as well as an economic engine in the region.

Harpers Ferry National Historical Park features extraordinary human history and outstanding scenic beauty. For decades, West Virginia leaders have worked with local and national interests including the NPCA to preserve and protect this extraordinary place, with notable success to date.

The park attracts approximately 270,000 visitors each year, people who travel not only to the park itself to learn about America's Civil War, civil rights, industrial, and transportation history, but many of whom then also visit other historical and cultural attractions in the area. They spend a night or more at an area inn or motel, eat meals at local restaurants, boat or fish the Shenandoah and Potomac rivers with a local outfitter, and otherwise contribute to the region's heritage and eco-tourism economy. A 2006 NPCA report, *The U.S. National Park System: An Economic Asset at Risk*, found that every federal dollar invested in national parks generates an average of four dollars of value in an area's economy. In other words, national parks not only feed our spirits and provide living classrooms about our American history; parks also put bread on the table in local homes.

Permitting commercial or industrial development on Allstadt's Corner is a direct threat to the experience that this community's leaders and partners, including the West Virginia Congressional delegation, have invested in and worked hard to cultivate at the Harpers Ferry



National Parks Conservation Association*
*Protecting Our National Parks for Future Generations**

National Historical Park. Intense development of the parcel would detract from the national park's historic character, and would directly impact the experience of visitors to the School House Ridge section of the Park – where Confederate General Stonewall Jackson's troops were based during the September 1862 siege and defense of Harpers Ferry, which resulted in the largest surrender of U.S. troops and supplies during the Civil War. Additionally, the significant congestion created as a result of increased development at this busy stretch of Route 340 would exacerbate traffic issues, making Harpers Ferry National Historical Park and the businesses in this corridor less attractive to heritage and recreational tourists.

NPCA respectfully requests that you deny this petition for rezoning. Thank you for the opportunity to submit these comments.

Sincerely,

Joy M. Oakes, Senior Regional Director
Mid-Atlantic Region

Cc: The Hon. John D. Rockefeller IV
The Hon. Joe Manchin III
The Hon. Shelley Moore Capito



STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL
CHARLESTON 25305

DARRELL V. McGRAW, JR.
ATTORNEY GENERAL

(304) 558-2021
FAX (304) 558-0140

November 8, 2011

By Certified Mail

R.M. Kelley
Jefferson County Emergency Services Agency
419 Sixteenth Avenue
Ranson, WV 25438

Re: Letter dated September 28, 2011

Dear Mr. Kelley:

I am writing to you as the legal representative of the West Virginia State Fire Marshal and the West Virginia State Fire Commission. I am in receipt of your letter dated September 28, 2011, in which you ask two questions.

First, I must express concern with the description that you have relayed as to how the department would work. The fact that the positions would be supervised by JCSEA is in direct violation of Mabscott Volunteer Fire Department, Inc. v. Houck, 184 W.Va. 37, 399 S.E.2d 180 (1990).

Second, chances are, the designation of the fire department would be changed to a part-paid/combo designation. This is something that would have to be presented to the Fire Commission, and voted on by the Commission. As for the change in the distributions of State funds, that is a question that is better suited for the Auditor's or Treasurer's office to answer, as the Fire Marshal, and the Fire commission do not make any determination as to state funds, other than sending a list advising what departments are in compliance with State law.

Thirdly, you have asked a question concerning pension plans. This is a question that is better suited for the Public Employees Retirement Board to answer as it is the agency which oversees these pensions.

If you have any further questions, please do not hesitate to contact me.

Sincerely,

Stacy L. DeLong
Assistant Attorney General

RECEIVED

NOV 14 2011

Jefferson County Commission

SLD/jd

cc: Sterling Lewis, Jr., Fire Marshal
Jefferson County Commission (by certified mail)

NOTICE OF INTENT TO APPOINT

The Jefferson County Commission proposes to name persons to serve on the following Authorities, Boards, Commissions, or Committees on Thursday, December 15, 2011, or as soon thereafter as the Commission may decide:

Board of Zoning Appeals - One unexpired term ending 1/1/2013
One unexpired term ending 1/1/2014
One three year term ending 1/1/2015

Board of Zoning Appeals - Three alternate members:
One unexpired term ending 1/1/2013
One unexpired term ending 1/1/2014
Three year term ending 1/1/2015

Persons who may be interested in the above listed agency should submit a letter of interest and a resume or statement of qualifications to the Jefferson County Commission, P.O. Box 250, Charles Town, WV 25414, prior to the proposed date of appointment.

Alternates: Alternate members shall have all powers and duties of a regular Board member when sitting on a case and shall continue to participate in the case until a final decision is reached. Alternate members shall serve by rotation based upon seniority of appointment to the Board.

Additional information regarding these appointments may be obtained by calling the Commission Office at (304) 728-3284.

SPIRIT OF JEFFERSON:

PLEASE ADVERTISE ON:

November 16, 23, & 30th, 2011
December 7, 2011

THANKS - JEFFERSON COUNTY COMMISSION

Information

On December 15, 2011 the following interviews and appointments will be held before the County Commission:

- Jefferson County Board of Zoning and Appeals

JEFFERSON COUNTY, WEST VIRGINIA

Engineering Department

116 East Washington Street

P.O. Box 716

Charles Town, West Virginia 25414

Phone: 304-728-3257

Fax: 304-728-3953

Email: engineering@jeffersoncountywv.org

MEMORANDUM

TO: SANDY SLUSHER McDONALD, DEPUTY COUNTY ADMINISTRATOR
JEFFERSON COUNTY COMMISSION

FROM: ROGER L. GOODWIN, CHIEF COUNTY ENGINEER *Roger L. Goodwin/rfb*
ENGINEERING DEPARTMENT

DATE: NOVEMBER 16, 2011

SUBJECT: CELLO PARTNERSHIP D/B/A VERIZON WIRELESS - FILE #S11-03

Please find enclosed the bond(s) and security for the following project(s):

Cello Partnership d/b/a Verizon Wireless/Cottontail File #S11-03, which is secured by Cash-in-Escrow with The Bank of Charles Town located in Charles Town, West Virginia in the amount of \$19,973.00.

The bond(s) is in compliance with the County Bonding Policy. If you have any questions, please give me a call.

RECEIVED

NOV 16 2011

JEFFERSON COUNTY COMMISSION

RLG:rfb

November 15, 2011

Jefferson County Commission
PO Box 250
Charles Town, WV 25414

Dear Commissioners,

Please accept my resignation from the Jefferson County Emergency Services Board, effective December 1, 2011. Disagreements with the direction of the board and personal reasons have led me to resign.

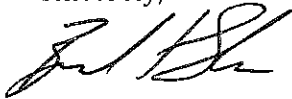
As a community representative to the board I feel that the board should consist of more community representatives and is unevenly comprised of members of the County fire and rescue community who should largely be serving in a non-voting and advisory capacity. In the best interest of the County, it is my parting recommendation that the Commission reconsider the structure of the board.

It is also my recommendation that the Commission and Agency seek to fund enhanced career EMS services (which are most needed) and at the same time provide unified training and resource procurement services for the volunteer fire companies in order that they might fully serve our County with confidence and unity of purpose.

Finally, I do not believe that paid firefighters are needed in the County. Our volunteer companies are perfectly capable of providing fire service. Nor do I believe that the County will require paid firefighters in the future if the full weight of the Agency were to be put toward comprehensive support of the training, procurement and recruitment activities of the volunteer system. What is more, contrary to the findings of our strategic plan, I believe any attempt to add career firefighter services on a piece-meal basis would be counter-productive and a misuse of taxpayer resources.

If you would like to discuss my concerns and observations please feel free to contact me at your convenience. It has been my pleasure to serve on the board and I thank you for the opportunity.

Sincerely,



Brendan Soennecken

PO Box 542
Harpers Ferry, WV 25425
(304)261-8178

RECEIVED

NOV 16 2011

Jefferson County Commission

Sandy McDonald

From: "paul rosa" <paul.rosa@frontiernet.net>
To: "Sandy McDonald" <sandy@jeffersoncountywv.org>
Cc: "Pete Kelley" <wvkelley@frontiernet.net>
Sent: Monday, November 21, 2011 8:36 PM
Subject: JCESA Board Membership

I hereby resign from the Jefferson County Emergency Services Agency Board for medical reasons.

Paul M. Rosa

Information

On December 8, 2011 the following interviews and appointments will be held before the County Commission:

- Jefferson County Public Service District – (1) six year term ending December 1, 2017.
- Jefferson County Emergency Services Agency – (1) unexpired term ending November 2, 2012

**WEST VIRGINIA LOTTERY
WEEKLY SETTLEMENT FOR CHARLES TOWN**

Week Ending Date	Week Ending November 12, 2011
To be Deposited on:	November 18, 2011
Amount Played	79,318,964.84
Amount Won	71,227,501.54
Amount Promo	<u>258,375.00</u>
MWAP Contribution	<u>5,878.19</u>
Adjusted Gross Terminal Revenue	<u>7,827,210.11</u>
Administrative Costs @ 4%	0.00
Excess Lottery Fund @ 4%	<u>313,088.40</u>
Net Terminal Revenue	<u>7,514,121.71</u>
Surcharge @ 10%	751,412.17
State Share Excess @ 58%	435,819.06
Track Share of Capital Reinvestment @ 42%	\$ 315,593.11
Track Share of Capital Reinvestment @ 42% - 96%	\$ 302,969.39
Track Share of Capital Reinvestment @ 42% - 4%	\$ 12,623.72
Adjusted Net Terminal Revenue	<u>6,762,709.54</u>
Racetrack @ 46.50% / 42%	2,840,338.01
Lottery Fund @ 30% / 0%	0.00
Excess Lottery Fund @ 0% / 41%	2,772,710.89
Race Track Purses @ 7% / 14% / 8%	541,016.76
Workers' Compensation Debt Reduction @ 7% / 0%	0.00
Employee Pension Fund @ 1% / .5%	33,813.55
Greyhound Development @ .75%	50,720.32
Thoroughbred Development @ .75%	50,720.32
Racing Commission @ 1%	67,627.10
County/Municipality @ 2%	135,254.20
3% Funds:	
Tourism Promotion Fund @ 1.375%	92,987.26
Development Office Promotion Fund @ .375%	25,360.16
Research Challenge Fund @ .5%	33,813.55
Capitol Renovation and Improvement Fund @ .6875%	46,493.63
2004 Capitol Complex Parking Garage Fund @ .0625%	4,226.69
1% Funds:	
State Capitol Complex Parking Garage @ 1%	-
Cultural Facilities and Capitol Resources @ .5%	33,813.55
Capitol Dome and Capitol Improvements @ .5% / 1%	33,813.55
	<u>6,762,709.54</u>

WEST VIRGINIA LOTTERY

First Benchmark

Charles Town

County / City Split

Fiscal Year 2012

Charles Town
 1999 Net Terminal Revenue \$ 45,603,174
 Benchmark Goal @ 2% \$ 912,063.48

DATE	2% OF ADJ. NET REVENUE	TO JEFFERSON COUNTY	TO FIVE CITIES	BOLIVAR 8.19%	CHARLES TOWN 41.20%	HARPERS FERRY 2.24%	RANSON 34.78%	SHEPHERDS TOWN 13.59%
2 days ending: 7/1/2011 - 7/2/2011	\$ 69,824.12	\$ 69,824.12	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Week Ending:								
07/09/11	\$ 171,717.28	\$ 171,717.28	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/16/11	\$ 143,019.52	\$ 143,019.52	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/23/11	\$ 146,508.00	\$ 146,508.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/30/11	\$ 144,510.28	\$ 144,510.28	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/06/11	\$ 151,495.28	\$ 151,495.28	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/13/11	\$ 149,711.80	\$ 117,350.38	\$ 32,361.42	\$ 2,650.40	\$ 13,332.90	\$ 724.90	\$ 11,255.30	\$ 4,397.92
08/20/11	\$ 143,228.24	\$ 71,614.12	\$ 71,614.12	\$ 5,865.20	\$ 29,505.01	\$ 1,604.16	\$ 24,907.39	\$ 9,732.36
08/27/11	\$ 126,864.28	\$ 63,432.14	\$ 63,432.14	\$ 5,195.09	\$ 26,134.04	\$ 1,420.88	\$ 22,061.70	\$ 8,620.43
09/03/11	\$ 161,675.52	\$ 80,837.76	\$ 80,837.76	\$ 6,620.61	\$ 33,305.16	\$ 1,810.77	\$ 28,115.37	\$ 10,985.85
09/10/11	\$ 169,691.60	\$ 84,845.80	\$ 84,845.80	\$ 6,948.87	\$ 34,966.47	\$ 1,900.55	\$ 29,509.37	\$ 11,530.54
09/17/11	\$ 133,497.24	\$ 66,748.62	\$ 66,748.62	\$ 5,466.71	\$ 27,500.43	\$ 1,495.17	\$ 23,215.17	\$ 9,071.14
09/24/11	\$ 137,859.60	\$ 68,929.80	\$ 68,929.80	\$ 5,645.35	\$ 28,399.08	\$ 1,544.03	\$ 23,973.78	\$ 9,367.56
10/01/11	\$ 137,743.28	\$ 68,871.64	\$ 68,871.64	\$ 5,640.59	\$ 28,375.12	\$ 1,542.72	\$ 23,953.55	\$ 9,359.66
10/08/11	\$ 141,733.80	\$ 70,866.90	\$ 70,866.90	\$ 5,804.00	\$ 29,197.16	\$ 1,587.42	\$ 24,647.51	\$ 9,630.81
10/15/11	\$ 150,525.32	\$ 75,262.66	\$ 75,262.66	\$ 6,164.01	\$ 31,008.22	\$ 1,685.88	\$ 26,176.35	\$ 10,228.20
10/22/11	\$ 137,515.44	\$ 68,757.72	\$ 68,757.72	\$ 5,631.26	\$ 28,328.18	\$ 1,540.17	\$ 23,913.94	\$ 9,344.17
10/29/11	\$ 121,015.96	\$ 60,507.98	\$ 60,507.98	\$ 4,955.60	\$ 24,929.29	\$ 1,355.38	\$ 21,044.68	\$ 8,223.03
11/05/11	\$ 141,347.76	\$ 70,673.88	\$ 70,673.88	\$ 5,788.19	\$ 29,117.64	\$ 1,583.09	\$ 24,560.38	\$ 9,604.58
11/12/11	\$ 135,254.20	\$ 67,627.10	\$ 67,627.10	\$ 5,538.66	\$ 27,862.36	\$ 1,514.85	\$ 23,520.71	\$ 9,190.52
Subtotal	\$ 2,814,738.52	\$ 1,863,400.88	\$ 951,337.54	\$ 77,914.54	\$ 391,951.06	\$ 21,309.97	\$ 330,875.20	\$ 129,286.77

mark Goal @ 2% \$ 912,063.48
 Remainder until 1% / 1% Split \$ -

VIDEO LOTTERY REPORT

FY 2009		FY 2010		FY 2011		FY 2012	
Date	Amount	Date	Amount	Date	Amount	Date	Amount
7/5/2008 *	169,912.56	7/4/2009 *	128,262.42	7/3/2010	115,402.58	7/1-2/2011	69,824.12
7/12/2008	176,592.38	7/11/2009	168,815.08	7/10/2010	205,731.64	7/9/2011	171,717.28
7/19/2008	160,344.08	7/18/2009	160,652.98	7/17/2010	161,386.76	7/16/2011	143,019.52
7/26/2008	162,982.74	7/25/2009	158,869.08	7/24/2010	160,368.28	7/23/2011	146,508.00
8/2/2008	178,171.04	8/1/2009	174,493.08	7/31/2010	157,802.08	7/30/2011	144,510.28
8/9/2008	123,538.04	8/8/2009	138,408.80	8/7/2010	136,494.98	8/6/2011	151,495.28
8/16/2008	82,482.89	8/15/2009	81,222.14	8/14/2010	78,376.68	8/13/2011	117,350.38
8/23/2008	76,426.18	8/22/2009	76,260.31	8/21/2010	76,199.02	8/20/2011	71,614.12
8/30/2008	89,459.86	8/29/2009	80,472.92	8/28/2010	72,460.03	8/27/2011	63,432.14
9/6/2008	91,644.46	9/5/2009	80,798.15	9/4/2010	76,362.84	9/3/2011	80,837.76
9/13/2008	79,729.93	9/12/2009	86,286.92	9/11/2010	82,969.36	9/10/2011	84,845.80
9/20/2008	71,269.36	9/19/2009	70,010.15	9/18/2010	67,638.78	9/17/2011	66,748.62
9/27/2008	79,735.73	9/26/2009	69,316.87	9/25/2010	70,435.06	9/24/2011	68,929.80
10/4/2008	75,186.22	10/3/2009	72,286.04	10/2/2010	71,013.86	10/1/2011	68,871.64
10/11/2008	77,139.04	10/10/2009	69,650.63	10/9/2010	69,311.50	10/8/2011	70,866.90
10/18/2008	80,668.26	10/17/2009	73,560.21	10/16/2010	75,234.62	10/15/2011	75,262.66
10/25/2008	64,379.44	10/24/2009	67,581.66	10/23/2010	70,290.80	10/22/2011	68,757.72
11/1/2008	68,352.42	10/31/2009	64,528.30	10/30/2010	65,615.04	10/29/2011	60,507.98
11/8/2008	70,823.02	11/7/2009	63,741.59	11/6/2010	61,337.62	11/5/2011	70,673.88
11/15/2008	65,565.50	11/14/2009	65,959.64	11/13/2010	64,595.28	11/12/2011	67,627.10
11/22/2008	63,883.80	11/21/2009	59,547.05	11/20/2010	56,010.08		
11/29/2008	69,850.12	11/28/2009	72,399.98	11/27/2010	71,170.90		
12/6/2008	55,696.68	12/5/2009	51,006.51	12/4/2010	53,215.08		
12/13/2008	60,178.04	12/12/2009	52,460.58	12/11/2010	46,944.00		
12/20/2008	52,189.19	12/19/2009	32,834.39	12/18/2010	42,076.76		
12/27/2008	72,205.91	12/26/2009	53,406.34	12/25/2010	50,450.28		
1/3/2009	96,504.65	1/2/2010	92,980.40	1/1/2011	85,152.12		
1/10/2009	53,286.62	1/9/2010	55,020.46	1/8/2011	54,301.30		

1/17/2009	56,068.87	1/16/2010	60,551.28	1/15/2011	54,005.90
1/24/2009	71,474.63	1/23/2010	69,943.53	1/22/2011	60,924.74
1/31/2009	61,089.80	1/30/2010	48,527.75	1/29/2011	48,036.94
2/7/2009	83,539.63	2/6/2010	37,155.14	2/5/2011	60,777.44
2/14/2009	76,054.44	2/13/2010	44,334.00	2/12/2011	67,471.84
2/21/2009	91,838.41	2/20/2010	76,946.12	2/19/2011	72,018.54
2/28/2009	80,806.88	2/27/2010	72,024.40	2/26/2011	75,544.02
3/7/2009	48,837.13	3/6/2010	76,936.85	3/5/2011	74,535.34
3/14/2009	96,025.39	3/13/2010	71,007.37	3/12/2011	66,979.48
3/21/2009	79,002.82	3/20/2010	74,335.38	3/19/2011	73,113.26
3/28/2009	79,250.83	3/27/2010	69,941.88	3/26/2011	68,490.80
4/4/2009	75,968.30	4/3/2010	70,636.28	4/2/2011	70,846.58
4/11/2009	75,964.94	4/10/2010	69,692.79	4/9/2011	67,076.78
4/18/2009	80,598.22	4/17/2010	69,335.92	4/16/2011	64,698.56
4/25/2009	75,571.46	4/24/2010	68,714.11	4/23/2011	67,674.14
5/2/2009	73,957.05	5/1/2010	68,799.06	4/30/2011	66,807.50
5/9/2009	76,697.22	5/8/2010	67,403.54	5/7/2011	66,379.74
5/16/2009	71,925.70	5/15/2010	70,186.32	5/14/2011	66,699.76
5/23/2009	81,395.43	5/22/2010	64,695.71	5/21/2011	63,210.44
5/30/2009	82,161.55	5/29/2010	67,157.40	5/28/2011	64,724.06
6/6/2009	74,895.74	6/5/2010	77,371.80	6/4/2011	74,952.34
6/13/2009	67,327.23	6/12/2010	66,106.29	6/11/2011	62,203.12
6/20/2009	75,500.53	6/19/2010	64,888.48	6/18/2011	61,200.76
6/27/2009	67,354.10	6/26/2010	63,950.29	6/25/2011	65,470.44
6/30/2009 ***	32,059.58	6/30/2010	29,667.19	6/30/2011	34,351.16

1863400.98

4016541.01

4041141.56

TOTALS 4403564.04

Table Game Revenue

FY 2011

Date	Amount
July/August, 2010	154,185.68
September, 2010	94,247.84
October, 2010	105,903.60
November, 2010	108,717.67
December, 2010	118,721.11
January, 2011	106,189.21
February, 2011	105,776.45
March, 2011	120,927.10
April, 2011	130,654.61
May, 2011	130,492.02
June, 2011	121,576.41
July, 2011	141,718.01
August, 2011	137,473.92
September, 2011	110,375.25
October, 2011	124,273.94
	<u>1811232.82</u>

Beverly S. Hughes
456 Berridge Drive
Shepherdstown, WV 25443
304-876-3093
304-671-4481

November 16, 2011

Patsy Noland, President
Jefferson County Commission
PO Box 250
124 E. Washington St.
Charles Town, WV 25414

President Noland and Members of the County Commission:

As a result of a review of the requirements outlined in West Virginia Code regarding the qualifications to serve as a member of the Building Commission, I find that I am unable to serve due to the contract I currently hold with the Jefferson County Board of Education. Therefore, I regretfully resign from my position on the Building Commission.

I looked forward to serving, but do not want to jeopardize the important work of the Building Commission. My contract with the Board of Education could create a perceived conflict of interest and time should not be wasted with legal issues that may arise from this perceived conflict.

To those members of the Commission who supported my appointment, I thank you for the confidence you placed in me.

Sincerely,



Beverly Hughes

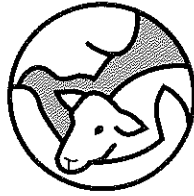
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NOV 18 2011

Jefferson County Commission

MAIN OFFICE

P.O. Box 1882
7311 Martinsburg Pike
Shepherdstown, WV 25443
P: (304) 876-3325
F: (304) 876-1645



Good Shepherd Interfaith Volunteer
CAREGIVERS
A Faith In Action Program

SOUTH JEFFERSON
221 East Washington Street
Charles Town, WV 25414
P: (304) 725-2262

www.gsivc.org

November 15, 2011

Mr. Tim Boyde
Jefferson County Commission
P. O. Box 250
Charles Town, WV 25414-

Dear Mr. Boyde,

Many nights when I should be sleeping, I think of the countless lives touched by Good Shepherd Caregivers—all searching for answers to their unmet needs. Although their circumstances are different, these situations don't seem right to me:

- an 80-year-old woman is left on her own without any visitors or help
- a man in his 70's is living independently and just needing a little assistance with laundry and housekeeping, but has no one to help him
- two young boys under 12 suffering from muscular dystrophy, desperately need their bathroom renovated for handicap access so their mother can bathe them
- a wheelchair-bound adult who hasn't been out of the house for two years due to lack of a handicap ramp

It is hard to sleep when facing the growing needs of our community. My hope is in remembering I am not alone in answering the countless requests of our care receivers. With your dollars, we answer these calls together, looking this challenge right in the eye, not turning our backs on our neighbors.

Please consider your financial contribution as a gift of independence for those in need. Without you, I am sleep deprived, but with you, I am at peace knowing that Good Shepherd Caregivers will continue moving forward and helping so many aging seniors and disabled residents. We cannot go on this journey alone. We need you!

Warmly,

Paula Marrone-Reese
Executive Director

RECEIVED

NOV 17 2011

Jefferson County Commission

P.S. The enclosed annual summary briefly highlights some of our FY11 accomplishments.

Good Shepherd Caregivers 2010-2011 Annual Summary

Good Shepherd Caregivers started the fiscal year with a new home at 7311 Martinsburg Pike, Shepherdstown, WV. The additional space, parking, beautiful building, and serene train garden donated by the Tuckers were all bonuses for care receivers, volunteers and staff. Daily visitors stop by to donate or pick up equipment, assist in the office, give and get information or just to chat with staff. With the change in location there is an increase in community members visiting Good Shepherd to network. All is good!

The goal of improving office efficiency started with creating a new receptionist position, filled by Betty Shipley, through the Title V Program. With this program a 20-hour weekly receptionist was provided free of charge to Good Shepherd. Callers were able to speak to a staff member during working hours instead of receiving a voicemail. Voicemail is still used if the receptionist is already helping another caller or if staff is unavailable. This program ended in June 2011, so Betty joined the Good Shepherd staff as an employee on July 1 when her Title V contract expired.

Having an office in Charles Town and one in Shepherdstown is ideal for Jefferson County residents who are visiting Good Shepherd Caregivers, but it wasn't practical with having such a small staff. Once Nancy Marmorella moved to the Shepherdstown location in January 2011 she started handling all service requests which made a big difference. It took many months to iron out the flaws and the process is still under review to make an even smoother volunteer/care receiver match. There are still plans to use the South Jefferson Office space.

One of the biggest accomplishments for this year was updating office technology. Four new computers and a server were purchased. Updated software was also purchased, and a computer network was installed. This could not have happened without the donations from the community and local and state government.

Every year a non-profit meets its financial goals is a good one. This past year, our partners reached deep into their pockets to keep Good Shepherd Caregivers going strong. Between faith congregations, fundraisers, community and foundation grants, and donor support, we raised over \$154,000.

Monthly, Good Shepherd Volunteers provide over 350 services, 500 hours, and over 6,000 miles to assist with our mission to provide informal, volunteer caregiving to home-based older adult and/or disabled Jefferson County residents to promote independence, security and wellbeing. Volunteers are the heart of Good Shepherd Caregivers.

We also had the opportunity to help over 30 residents with bigger week-long projects during the summer. The projects totaled over \$60,000 in materials donated to them and a work crew to complete each project free of charge.

In August, it was an honor to receive the 2011 Governor's Service Award given to non-profits showing exemplary service to the community.

Good Shepherd Caregivers' Board of Directors and staff are pleased with the accomplishments of the 2010-2011 fiscal year and look forward to serving the community in 2012.



Dear Friends,

"Art is the lifeblood of a community, an expression of its vitality, a way of seeing who we are as a culture and what's important to us. The Humanities is the lens through which we view our common endeavors as a civilization."

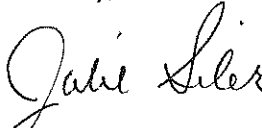
For 35 years, the Arts and Humanities Alliance of Jefferson County has preserved, encouraged, applauded, and supported the arts and humanities in the county. But we cannot do it without your support. AHA! exists because you are part of our effort to maintain and expand our work as champions of the arts and humanities in Jefferson County.

We see a future in which the county has a thriving arts and humanities center, a place where thousands go each year to attend lectures, listen to concerts, watch dance recitals, take classes, exhibit their work, read their poems, work in their studios, and revel in the abundance of creative expression and historical relevance that abounds in this county. Your gift to AHA! helps to make that vision a reality.

This past year, AHA! has funded 27 Jefferson County school teachers for unique and creative arts in education projects through our Teaching Arts Creatively grant program. Through our Community Grants program, AHA! provided \$16,400 in grants for programs such as the children's summer arts programs at CraftWorks at Cool Spring, the American Conservation Film Festival and the Harpers Ferry Historic Foundation brochure, to name a few. Through the Artist in Residence program, we are supporting a three-year photography program that documents the life of the county. AHA! also leads the county's Certified Arts Community effort that builds partnerships between government, business and the arts.

Be part of our vision. If you've been a member in the past please renew your membership, or become a member today.

Sincerely,


Julie Siler
President



PO BOX 2051 • SHEPHERDSTOWN • WV 25443
www.ahajc.org

AHA! is a 501(c)(3) non-profit organization. Your gift is tax-deductible to the fullest extent of the law.



Arts & Humanities Alliance of Jefferson County MEMBERSHIP & GIFT FORM

When you make a gift you will

- ✓ Become a member of the AHA!
- ✓ Receive monthly AHA! Voice e-newsletter
- ✓ Receive AHA! Moment e-announcements of important events, activities and other arts and humanities news
- ✓ A free listing for visual artists, musicians, actors, dancers, poets, writers, etc. in our online Artist Registry
- ✓ The satisfaction of knowing that you are helping to support and grow in the arts and humanities in Jefferson County!

Name(s) _____

Email Address _____

Mailing Address _____

City _____ State _____ Zip Code _____

Day Phone _____ Evening Phone _____

Are you a practicing artist? ____ If so, what do you do? _____

Individual Membership Categories

____ Student or Senior (62+)..... \$15	____ Sponsor..... \$50
____ Teacher..... \$20	____ Patron..... \$100
____ Individual \$30	____ Lifetime member..... \$500

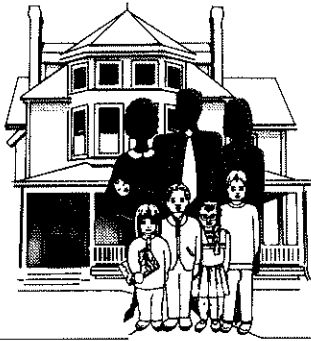
In addition to my membership payment, I would also like to make a gift of \$ _____.
I wish to designate this gift to:

- | | |
|-----------------------------|--|
| ____ AHA! area of most need | ____ Teaching Art Creatively |
| ____ Community Grants | ____ I wish to make this gift in honor or memory of: |

(please print)

Please make checks payable to AHA! Thank you for your support!

AHA! • PO Box 2051 • Shepherdstown • WV 25443



Children's Home Society of West Virginia

1422 KANAWHA BOULEVARD, EAST P.O. BOX 2942
CHARLESTON, WEST VIRGINIA 25330
TELEPHONE 304-346-0795
FAX 304-346-1062
www.childhswv.org

November 1, 2011

Jefferson County Commission
County Clerk's Office
Charles Town, WV 25414

Dear Friends of the Society,

On behalf of the Children's Home Society of West Virginia and the children and families we care for we would like to extend our appreciation and thanks for your contribution of \$5,000. Contributions to the Society are vitality important and enable us to help children and families throughout the state.

The Children's Home Society has been serving children and families for over 115 years. Today we have 12 locations and provide adoption, foster care and emergency child shelter care statewide. Last year we cared for over 9,500 children and families. It is our core belief that all children deserve a lifetime family, a family to call their own. Although many children are abused and neglected each day we strive to promote the well being of all children. While nurturing and protecting these vulnerable children we work to enhance and strengthen their families.

It is the support and dedication of individuals such as you that enables us to continue this important work. We welcome you to visit any of our locations and I encourage you to visit our web site at www.childhswv.org. If you would like additional information regarding our programs and services please feel free to contact me at 304-345-3894 or by email at mwhite@childhswv.org. Again we thank you for your compassion and desire to help children and look forward to speaking with you in the future.

Sincerely,

Mary A. White
Director of Marketing & Development

RECEIVED

NOV 15 2011

Jefferson County Commission

You have received no goods or services for your contribution. West Virginia residents may obtain a summary of the registration and financial documents from the Secretary of State, State Capitol Charleston WV 25305. Registration does not imply endorsement.



Serving Children & Families Since 1896

JEFFERSON COUNTY, WEST VIRGINIA
Department of Planning & Zoning
116 East Washington Street, 2nd Floor
P.O. Box 338
Charles Town, West Virginia 25414

Email: planningdepartment@jeffersoncountywv.org
zoning@jeffersoncountywv.org

Phone: (304) 728-3228
Fax: (304) 728-8126

MEMORANDUM

TO: County Commission
FROM: Jennifer Brockman
DATE: November 18, 2011
RE: Upcoming US 340 Meeting

Please be aware of the date and location of the next Public Meeting regarding the US 340 East Gateway Plan:

Tuesday, December 6, 2011, at 7 pm
KOA Campground Community Room

This meeting will focus on the preferred land use alternative derived from the public input received between September 17th and November 14th regarding the three alternative land use scenarios. The goal of this meeting will be to discuss all comments received to date and to develop public consensus on the preferred alternative. This decision will allow the HEP MPO consultant to run a final transportation impact analysis to provide the county with the transportation implications of the land use alterative.

One additional Public Meeting is being scheduled on Thursday, January 19th at a location to be determined for the purpose of a presentation to the public by the transportation consultant on their analysis of the recommended land use alternative.

All of the US 340 meetings are open to the public and we encourage participation by all Commissioners and interested parties.



Corporation of Harpers Ferry

1000 WASHINGTON STREET

P.O. BOX 217

Harpers Ferry, West Virginia 25425

(304) 535-2206

FAX (304) 535-6520

Joe Anderson

MAYOR

RECORDER

KEVIN CARDEN

TREASURER

SHAUNA JOHNSTONE

TOWN CLERK

CAITLYN DELASHMUTT

COUNCIL MEMBERS

BETSY BAINBRIDGE

GREG VAUGHN

JERRY HUTTON

DAN RISS

CHARLOTTE THOMPSON

Patsy Noland, President

Jefferson County Commission

PO Box 250

Charleston, WV 25414

November 15, 2011

Dear Ms. Noland

I would like to request that the Jefferson County Commission hold a public hearing on the application of James and Barbara Gibson to rezone 12.97 acres from Residential Growth to Residential-Light Industrial- Commercial at the intersection of US 340 and Millville Road.

This is an important decision affecting the Harpers Ferry area, particularly in terms of traffic impacts. The public should be given the opportunity to review and comment on the proposal.

Thank you for your consideration of this request.

RECEIVED

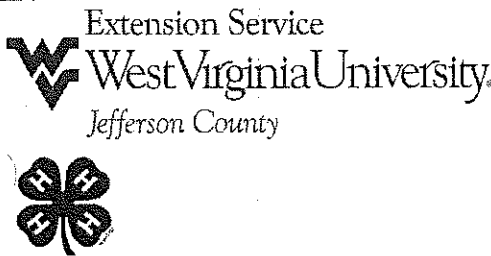
NOV 21 2011

Sincerely,

Joe Anderson (Mayor)

Jefferson County Commission

Historic District
Where The Shenandoah Meets The Potomac



Jefferson County 4-H Report

November & December 2011

CONTACT US:
 1948 Wiltshire Road; Suite 3
 Kearneysville, WV 25430
 Shay.McNeil@mail.wvu.edu
 Phone: 304.728.7413, Ext. 1
 FAX: 304.728.4101
 jefferson.ext.wvu.edu/



Find us on Facebook @
 WVU Jefferson County
 Extension Service



Follow us on Twitter
 @Jefferson_WV_4H

Shay McNeil
 Extension Agent

Be a Model...Meet the Standard

Jefferson County has a very strong 4-H program. As a model program we need to be making sure that we are meeting the standard all the time. Standards and policies are put into place to protect our children, and our volunteers. The most important Essential Element of 4-H is providing a safe emotional and physical environment. 4-H is a wonderful program and we need to ensure that we are representing the program and using the emblem appropriately. In order to do that, we must adhere to the following standards.

1. 4-H member enrollment packets need to be complete. This means that all forms are not only turned-in but that all information has been filled out as well. The packet includes the enrollment cards, an up-to-date health form, a signed code of conduct, and a media release.
2. All volunteers need to have a complete file. This includes current phone and email information, an up-to-date health form, a signed code of conduct, and a job description. It is imperative that we have all of this information and that it is updated annually.
3. All club Fundraisers and Field Trips *must get prior approval* from the Extension Office. Please submit the Fundraiser or Field Trip approval form, which you can obtain from either the Extension Office or from our website, to the Extension Office before the event is held. It is also necessary that you have permission slips and health forms from each member before departing for a Field Trip.
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Congratulations to the Jefferson County WVU Extension Service Office for receiving the 2011 Unit Excellence Award. Way to go Judy Matlick, Jane Tabb, April Blaker, and Pat Bethany for a job well done!

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WVU Extension Service prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, family status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program.

Calendar of events

November

23-25	Thanksgiving Holiday; Extension Office closed
25-29	National 4-H Congress

December

6	Leaders' Association Holiday Dinner and Meeting , 7 p.m., Extension Office
3	Shepherdstown (11 a.m.) & Charles Town/Ranson (2 p.m.) Christmas Parades
10	Market Steer Weigh-In , 9 a.m.-10:30 a.m., Fairgrounds
23-27	Winter Holiday; Extension Office Closed
30	YAC Registration due to Knapp Hall in Morgantown

January

2	New Years Day Observed; Extension Office closed
5	4-H Shooting Sports Instructor's Training Weekend registration due to Extension Office
TBA	Volunteer Training Workshop
15	Extension Camping Instructor (ECI) applications due to Morgantown
16	Martin Luther King Day; Extension Office closed
27-29	Young Adult Conference (YAC), Jackson's Mill
28	State 4-H Air Rifle Event, Braxton County
31	Tri-County Counselor Applications due



2012 Tri-County 4-H Camp Dates
 Younger: June 11-15 (Mon a.m.-Fri 1 p.m.)
 Intermediate: June 18-22 (M-F)
 Older: June 25-19 (M-F)

Interested in counseling? Please Contact:

<u>Younger Camp</u>	<u>Intermediate Camp</u>	<u>Older Camp</u>
Doug Hovatter 304/264-1936 berkeleyextension.com/	Cindy Smalley 304/258-8400 morgan.ext.wvu.edu/	Shay McNeil 304/728-7413 Ext. 1 jefferson.ext.wvu.edu/
Counselor applications will be available online - Due January 31, 2012		

February

7	4-H Leaders Association Meeting, 7 p.m., Extension Office
TBA	State Poster, Dairy Poster and Photos due to Extension Office
17-19	4-H Shooting Sports Instructor's Training Weekend, Jackson's Mill
21	WVU Extension Day at the Legislature, State Capitol, Charleston



Join Maintain Don't Gain
during the holidays. Last year nearly 90% of the persons completing the program either maintained or lost weight. All participants will receive a coupon for free visits to local gyms and will be supported with newsletters during December.

Participants who complete the program will receive an invitation to a Celebration Party at the Clarion Hotel January.



For more information, and a listing of weigh-in sites go to: <http://jefferson.ext.wvu.edu/>

ECI Applications

Have you ever wished 4-H camping could be your job? If you choose to serve as a State 4-H Extension Camp Instructor (ECI), you can turn your love of 4-H camping into a summer job. ECIs travel throughout the state and work at county 4-H camps. They have a variety of responsibilities that include leading council circles, songs, games, classes, sports, etc.

To apply to be an ECI, you must be one year out of high school. If selected, you attend a weeklong training and learn all the expectations of the position.

ECI applications will be available in December at the following website:
<http://4-hyd.ext.wvu.edu/camping/campinstructor>.
 If you would like additional information, please contact the Extension Office.

Market Steer Weigh-In Date Set
December 10
 Jefferson County Fairgrounds
 9 a.m. - 10:30 a.m.



Youth Adult Conference (YAC) provides an environment for young adults to remain in contact with 4-H after membership. It also encourages participation in Extension programs, introduces former members to leadership opportunities, provides experiences for personal growth, and offers fellowship among peers. Registration is found online at the JCEO website or by calling the Extension Office.

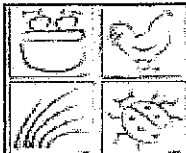
Registration deadline to Knapp Hall December 30, 2011

4-H Leaders Association Holiday Dinner & Meeting

Tuesday, December 6th, 7 p.m. Extension Office

Refreshments will be provided by the Christmas Holiday Meeting Committee. Please bring a gift of no more than \$10 for the gift exchange.

RSVP by contacting Mary Lind at marylogcabin@aol.com or 304/728-2117



13TH ANNUAL CONFERENCE

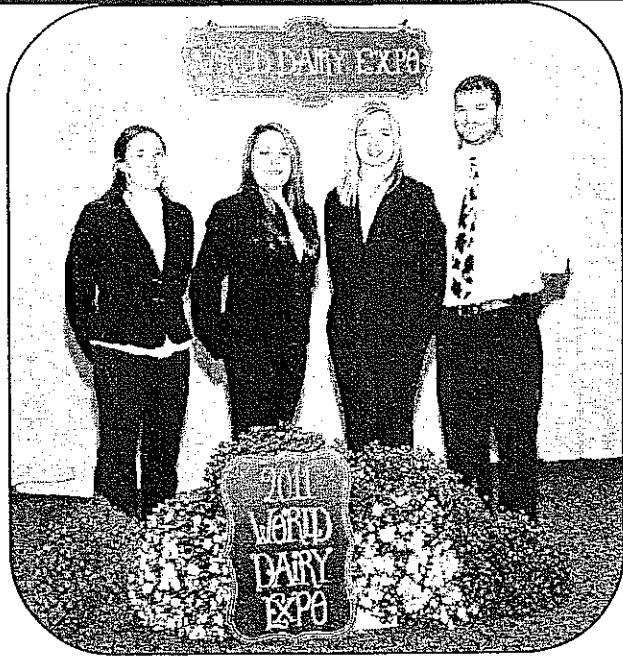
Farm to Institution: Making Local Food Economies a Reality

January 13-14, 2012

National Conference Center, Landsdowne, VA

New Agriculture and Natural Resources Agent to start mid-January, 2012

Michael Harman has been selected to be the next Agriculture and Natural Resources Extension Agent for Jefferson County. Originally from Pendleton County, he has an Associate Degree in Agriculture Technology from Potomac State College. He completed his Bachelors Degree with a major in Animal and Veterinary Science and a Masters in Soil Science from West Virginia University. He also holds a graduate certificate in Public Administration from Indiana State University and is working toward a doctorate with a major in Plant and Soil Science from WVU. Welcome, Michael, to the Jefferson County Extension Team!



4-H Dairy Cattle Judging

World Dairy Expo, Madison, Wisconsin
National 4-H Dairy Judging Contest: There were 30 teams from across the nation and 109 4-H participants.

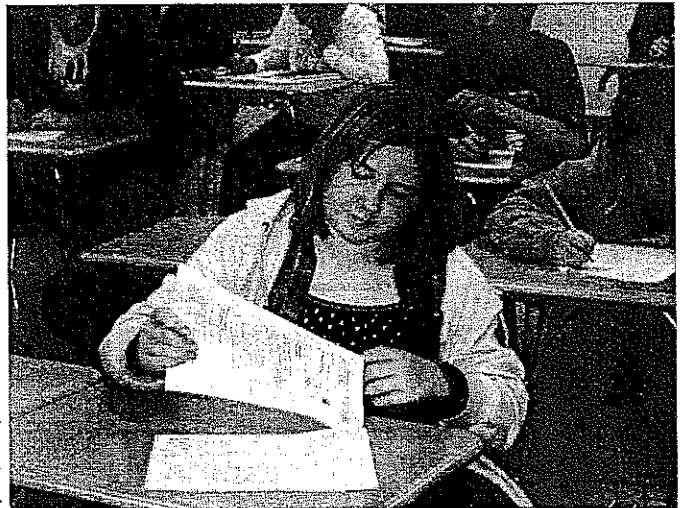
In the Ayrshire Breed, the team placed 4th and Katie Wolf placed 5th as an individual. In oral reasons, Katie Wolf placed 9th overall. In placings & reasons, Katie Wolf placed 23rd.

L-R: Katie Wolf, Sara Duncan, Amanda Smith and coach Jeremy Greene

Officers Training

October 27 - Wildwood Middle School

This year more than 80 officers elect descended upon Wildwood Middle School to be inducted as an officer and to learn about the offices they would be filling for the coming year. Officer's Training School is designed to set the 4-H member up for success in an office and provide tools and helpful hints. These youth took advantage of the opportunity to learn from various leaders and volunteers who used their



time to share their knowledge about the different positions. Thanks to those officers that attended. We wish them well as they lead their clubs into the 2011/2012 4-H year!

Special thanks to the workshop instructors, Lori Grega and the Wise Owls for providing refreshments, and to Cheryl Lawrence for taking pictures.

Health Rocks!



Each club Health Officer received or will receive a 4-H Club Health Activity Guide and each member will be receiving a 4-H Club Health Planner. According to the introduction in the Health Planner it, "is part of an initiative that supports one of the important components of 4-H—the Health H. The goal of the program is to help 4-H'ers and families learn about and try new health habits and improve others. This program shows 4-H'ers ways to have a healthy lifestyle and reinforces positive habits they already practice." This year's focus is on dental health. Health Officers should be using their Activity Guides in club meetings. Ask your 4-H Club leader about your Health Planner.

Big Day 2011

Welcome to 4-H

This year's Big Day was held on October 9th at South Jefferson Elementary. The theme for the year is Welcome to 4-H. We want to welcome old and new to an amazing year in 2011/2012. Almost 70 youth and children participated in a variety of activities that included a rocket launch and games with a parachute. Pictured above are youth displaying the Welcome Banner they made. Big



Day is an annual event done during National 4-H Week to kick off the 4-H year. Thank you to Margaret Liskey for taking pictures.



Congratulations Jefferson County 4-H



Congratulations to Jeff and Susan Brandenburg as well as James Garrett Alger for receiving their All Star pin at this year's All Star Conference held at Jackson's Mill 23-25 September. Jeff and Susan Brandenburg are 4-H volunteers who have worked with the Outspoken for 4-H Bike Ride, as well as other county events. James Garrett Alger is a 4-H member of the

Shepherdstown Ridge Runners Club for ten years and he attends Tri-County Older 4-H Camp. Accolades also go to Loretta Shade and Jane Tabb for receiving the 2011 Outstanding All-Star Award for Jefferson County.

L-R: Susan Brandenburg, Loretta Shade, Jeff Brandenburg.

Jefferson County Recognizes 4-H Excellence

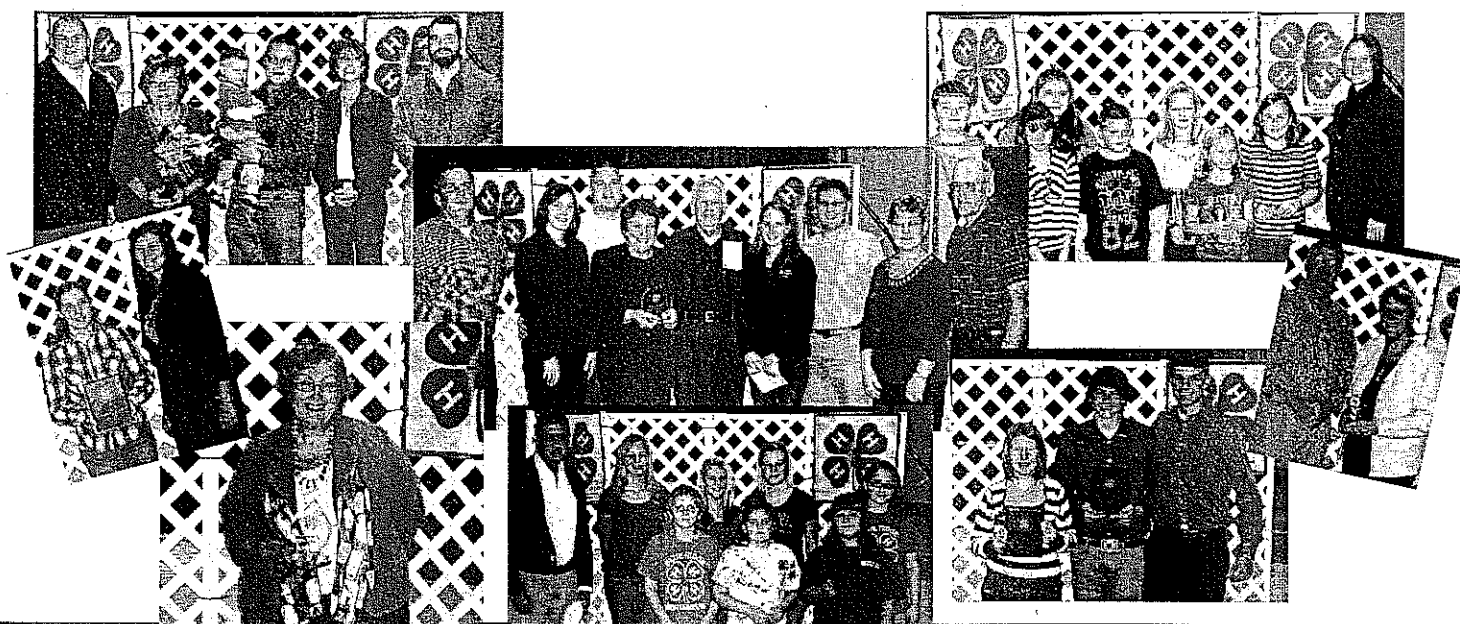
The 2011 Achievement Night celebrated the accomplishments of 4-H members and volunteers from the previous year. Over 200 awards, varying from project pins to volunteer years of service were given out on November 10th at Wright Denny Intermediate School's Auditorium.

This year's Emcee was Ben Harrison. He is a member of two clubs, Summit Point Busy Bees, and Saddles and Smiles. He also was one of this year's recipients of the Outstanding Citizenship award along with Sarah Ring. Ben and Sarah will both receive a scholarship to attend the 2012 Citizenship Washington Focus that will be held in July.

We also took the time to recognize some outstanding 4-H members and leaders. This year's Outstanding 4-H members are Samantha Cogle, a nine year member of the Black Bears 4-H Club, Kent Thomas of Teen Force, and Katie Wolf who is a member of both the Saddle and Evergreen Clubs. Kathy Blue received the 2011 Outstanding 4-H Leader Award and recognized for her efforts with the Clover Buds and All-stars.

One of the most closely guarded awards given out every year is the Family of the Year Award. This year's recipient is the Amon and Peggy Grantham Family. This close knit, fun loving, family is talented and active in the Jefferson County community. They have deep roots and work to preserve the history of the community. The Grantham's definitely bleed 4-H green. Peggy and Amon met at Jackson's Mill and have contributed to the county 4-H program for close to 30 years. All of their children were raised in 4-H, and two of them met their spouses through their participation on the state level. We are truly thankful for all that this family does for the Jefferson County 4-H Program.

For a full listing of all awards or for a copy of the evening's program please contact the Extension office.



4-H Club Reports

Shenandoah Shamrocks 4-H Club Hits the Ground Running

The **Shenandoah Shamrocks 4-H Club** held its first meeting of the 2011-2012 year on Sunday, September 25th at the Leetown Fish Hatchery. Officers were elected: President: **Montana Silveous**, Vice President: **Mary Dewees**, Secretary: **Anna Kate Ours**, Treasurer: **Shelby Silveous**, Reporter: **Ksusha Lowry-Neufeld**, Health Officer: **Shelby Kowalski**, Recreational Leader: **Madeline Foster**, and Historian: **Tamarra Legowik**.

Three CloverBuds – **Emily Hott**, **Ksusha Lowry-Neufeld**, and **Sydney Walker** – graduated and became full-fledged 4-H members. Each girl was awarded a medal during the graduation ceremony.

At the October 10th meeting of the **Shenandoah Shamrocks**, donations of pocket folders were accepted from club members for the Hospitality Center for homeless individuals in Charles Town. The Hospitality Center Guests will use the folders to file their resumes. Donations of canned and other non-perishable goods also were collected as part of the club's community outreach efforts for the Jefferson County Community Ministries "Food Fight" Food Drive.

Club members reported on their experiences during National 4-H Week (October 2nd through the 8th) and 4-H Big Day on October 9th at South Jefferson Elementary School. As part of the 4-H Big Day activities, members made place mats that will be donated to area nursing homes. Club members also made posters illustrating the Big Day theme of "Welcome."

The **Shenandoah Shamrocks 4-H Club** meets the 2nd Monday of every month at the Jefferson County Extension Office at 7 p.m. For more information about the Club and its activities, contact club leader **Barbara Dodson** at bdodson@frontiernet.net
Club Reporter is **Ksusha Lowry-Neufeld**

The Oct. 4-H meeting of **Dolly Madison 4-H Club** was called to order. While parents filled out the Enrollment Cards, the members elected officers. Officers elected: President: **Chyanne Reid**, Vice-President **Alex Owens**, Secretary: **Eleanor Puster**, Treasurer: **Robert Puster**, Reporter: **Eleanor Puster**, Game Leader: **Kimberly Moore**, Song Leader: **Rachel Richardson**, Health Officer: **Robert Puster**.

The club talked about doing the Petting Zoo at the Charles Town Festival and about collecting food for community Ministries. Next Month's meeting will be held at the Extension Office on November 11th at 6:30 p.m.

Reported by: **Eleanor Puster**

Evergreen Starts New 4-H Year

The installation of new officers to lead the Evergreen 4-H Club of Kearneysville are as follows: Pictured left to right **Sara Duncan**, president; **Caitlyn Adams**, How How Leader; **Madison Adams**, health officer; **Amanda Smith**, vice-president; **Kiana Jones**, secretary; **Krista Houser**, treasurer; **Kayla Welsh**, reporter; **Derek Houser**, game leader; **Samantha Milbourne**, scrapbook. Not present was song leader, **Katie Dunbar**.

Leaders Pamela Smith and Toni Milbourne presented year award certificates and pins to members and leaders. Hope Smith presented the Clover Buds awards. Assistant leader is Jeanne DeGrave and project leader Patt Welsh.

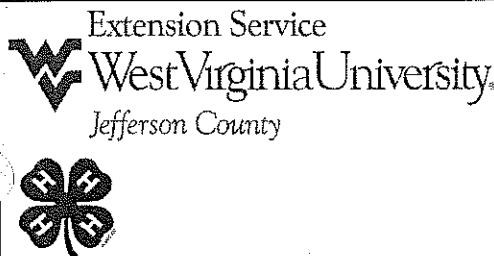
The club plans an exciting new 4-H Year.

Reported by: **Kayla Welsh**



On September 17th, the Dolly Madison 4-H Club participated in the Charles Town Heritage Festival with having a petting farm. Pictured is Benjamin Puster with his goat.





Jefferson County 4-H Report

November & December 2011

CONTACT US:
 1948 Wiltshire Road, Suite 3
 Kearneysville, WV 25430
Shay.McNeil@mail.wvu.edu
 Phone: 304.728.7413, Ext. 1
 FAX: 304.728.4101
jefferson.ext.wvu.edu/



Find us on Facebook @
 WVU Jefferson County
 Extension Service



Follow us on Twitter
 @Jefferson_WV_4H

Shay McNeil
 Extension Agent

Be a Model...Meet the Standard

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4-H Club Reports Continued...

New Club: Country Kin

This year Amy and Alicia Garza are starting a brand new 4-H club called Country Kin! They plan to do a bake sale in November to raise money to start their club's bank account. A big Welcome and Thank you to Amy and Alicia for carrying on a rich 4-H tradition in Jefferson County!



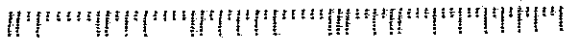
Emma Byrne: 2011/2012 IFYE
Follow her @
<http://mexicoifye.tumblr.com>



Please Recycle

2011 Food Fight

4-H emphasizes citizenship and service to one's community. During the month of October the Jefferson County Extension Office collected items to be donated to Community Ministries in Charles Town, WV. We want to recognize those clubs that participated in our community service project: Kabletown Mountaineers, Black Bears, Dolly Madison, Blue Ridge Mountaineers, Bakerton Country Roads, Country Clovers, Shenandoah Shamrocks, Teen Force, Middleway Climbers, Summit Point Busy Bees and Shining Stars. These clubs donated a combined total of 1065 lbs!! We also need to recognize the Kabletown Mountaineers for donating the most food items per member at almost 23 items a person.



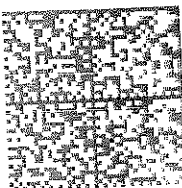
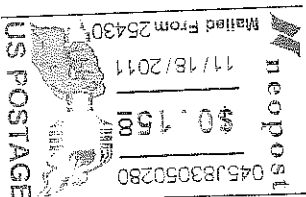
County Administrator
P.O. Box 250
Charles Town, WV 25414

4-H Newsletter

November & December



WVU Jefferson County Extension Office
1948 Wiltshire Rd. Ste. 3
Kearneysville, WV 25430



NONPROFIT
ORG



WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

November 16, 2011

To Whom It May Concern:

The Statewide Transportation Improvement Program (STIP) is a financially constrained document required to show planned Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) expenditures for federal fiscal years 2012-2017. One of the requirements to funding any projects with FHWA or FTA funds is that each proposed project undergo a public "review and comment period". Therefore, additions or deletions to the STIP and certain changes to projects currently in the STIP must meet this requirement before federal funds can be obtained. Accordingly, I am again requesting your assistance in making available (to anyone who wishes to review them) the attached listing of proposed amendment to the approved 2012-2017 STIP.

All written comments are to be received no later than November 30, 2011, and should be addressed to:

Mr. Robert L. Pennington, Director
Program Planning and Administration Division
West Virginia Division of Highways
Building 5, Room A-816
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305-0430

Should you need additional information, please call (304) 558-3113. Thank you for your assistance in this matter; your efforts are indeed appreciated.

Very truly yours,

Robert L. Pennington, Director
Program Planning and Administration Division

RLP:Cb

Attachment

cc: Mr. Kevin Burgess, Federal Highway Administration – w/ attachment
Ms. Brigid Hynes Cherin, Federal Transit Administration – w/ attachment
Ms. Kathleen Zubrzycki, Federal Transit Administration – w/ attachment
Ms. Susan O'Connell, Division of Public Transit – w/ attachment

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NOV 21 2011

Jefferson County Commission

STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM (STIP) FFY 2012-2017
PROGRAM AMENDMENT FOR 2012

COUNTY	FFY	DISTRICT	GROUP	FUNDING OBLIGATION DATE	FUND TYPE	PHASE	ROUTE	PROJECT NAME	TYPE OF WORK	STATE PROJ. NUMBER	FEDERAL PROJECT NUMBER	TOTAL PHASE COST	FEDERAL DOLLAR COST	FEDERAL COST CHANGE
PROJECT COMMENTS														
BOONE	2012	1		12/28/2011	NHS	CON	US119	HARLESS-JULIAN	JOINT REPAIR	S303 119 01638 00	NH0119385D	\$1,500,000	\$1,200,000	\$0
ADD NEW PROJECT														
DODDRIDG	2012	4		3/28/2012	NHS	CON	US050	GREENWOOD-SMITHBURG	RESURF(1.5')	S309 50 00568 00	NH0050264D	\$2,599,968	\$2,079,974	\$0
PROJECT TO BE CANCELLED														
HAMPSHIRE	2012	5		11/28/2011	HSIP	CON	WW127		UPGR SIGNS & GUARDRAIL	S314 127 77777	HSIP0127777	\$25,000	\$22,500	\$0
ADD NEW PROJECT														
HARDY	2011	5		9/28/2011	HSIP	ROW	US048	CORRIDOR HWV 55 CONN	WID CURVE, ADJUST SUPERRELEV, ALIGN SHIFT	X316 H 11740 13	HSIP0048044D	\$10,000	\$8,000	\$0
CANCEL-PHASE NOT NEEDED														
HARRISON	2012	4		12/28/2011	HSIP	ENG	I079	JERRY DOVE IIC LIGHTING	INST LIGHTING	U317 79 77777	HSIP0793777	\$100,000	\$90,000	\$0
ADD NEW PROJECT														
HARRISON	2013	4		2/28/2013	HSIP	CON	I079	JERRY DOVE IIC LIGHTING	INST LIGHTING	U317 79 77777	HSIP0793777	\$1,000,000	\$900,000	\$0
ADD NEW PROJECT														
HARRISON	2012	4		11/28/2011	STP	CON	CO017	ORAL LAKE RD CROSSING	INST ADVANCE FLASHERS & SIGNS	U317 17 00060 00	STPG0038001E	\$27,000	\$27,000	\$0
ADD NEW PROJECT														
HARRISON	2012	4		12/28/2011	STP	CON	WW020	QUIET DELL-NUTTER FORT RD	RESURF (1.5')	S317 20 00688 00	STP0020287D	\$260,000	\$208,000	\$0
CANCEL PROJECT														
HARRISON	2012	4		4/28/2012	NRT	CON	NA	SHINNSTON COMFORT STATION 2011	CONST RESTROOM	U317 COMFO 1 00	NRT201111D	\$37,320	\$29,856	\$0
ADD NEW PROJECT														
HARRISON	2012	4		4/28/2012	STP	CON	WW098	VA MED CTR SIGNAL	INSTALL NEW SIGNAL	S317 98 77777	STPG0098777	\$150,000	\$150,000	\$0
ADD NEW PROJECT														
MARION	2012	4		12/28/2011	STP	CON	US250	MCGEE-WHITEHALL RD	RESURF, PAVED SHOULDERS, GUARDRAIL	S325 250 00000 00	STP0250210D	\$600,000	\$480,000	\$0
CANCEL PROJECT														
MCDOWELL	2012	10		5/28/2012	NHS	CON	WW093	VA STATE LI-JOLO	RESURF(1.5'), GDRL	S324 93 00000 00	NH0093048D	\$1,017,600	\$814,080	\$0
PROJECT TO BE CANCELLED														
MERCER	2012	10		12/28/2011	NHS	ENG	US460	OAKVALE PIPE REPAIR	REPL 46" PIPE	S328 460 01660 00	NH0460777	\$30,000	\$24,000	\$0
ADD NEW PROJECT														

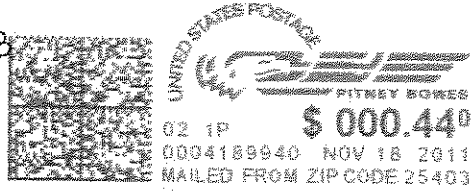
STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM (STIP) FFY 2012-2017
PROGRAM AMENDMENT FOR 2012

COUNTY	FFY	DISTRICT	GROUP	FUNDING OBLIGATION DATE	FUND TYPE	PHASE	ROUTE	PROJECT NAME	TYPE OF WORK	STATE PROJ. NUMBER	FEDERAL PROJECT NUMBER	TOTAL PHASE COST	FEDERAL DOLLAR COST	FEDERAL COST CHANGE
PROJECT COMMENTS														
MERCER	2012	10		2/28/2012	NHS	ROW	US460	OAKVALE PIPE REPAIR	REPL 46" PIPE	S328 460 01860 00	NH04607???	\$10,000	\$8,000	\$0
ADD NEW PROJECT														
MERCER	2012	10		6/28/2012	NHS	CON	US460	OAKVALE PIPE REPAIR	REPL 46" PIPE	S328 460 01860 00	NH04607???	\$300,000	\$240,000	\$0
ADD NEW PROJECT														
MERCER	2012	10		11/28/2011	NHS	ENG	US460	US 460 SINKHOLE STABILIZATION	REP SINKHOLE & DR	S328 460 00165 00	NH0460041D	\$70,000	\$56,000	\$0
ADD NEW PROJECT														
MERCER	2012	10		2/28/2012	NHS	ROW	US460	US 460 SINKHOLE STABILIZATION	REP SINKHOLE & DR	S328 460 00165 00	NH0460042D	\$100,000	\$80,000	\$0
ADD NEW PROJECT														
MERCER	2012	10		8/28/2012	NHS	CON	US460	US 460 SINKHOLE STABILIZATION	REP SINKHOLE & DR	S328 460 00165 00	NH0460043D	\$220,000	\$176,000	\$0
ADD NEW PROJECT														
PRESTON	2012	4		12/28/2011	STP	CON	WW092	ARTHURDALE-REEDSVILLE RD	RESURF(1.5')	S339 92 01448 00	STP0092103D	\$450,000	\$360,000	\$0
CANCEL PROJECT; ADD NEW PROJECT														
PRESTON	2012	4		12/28/2011	STP	CON	WW072	PRESTON-CADDELL RD	RESURF(1.5')	S339 72 01842 00	STP0072079D	\$230,000	\$184,000	\$0
CANCEL PROJECT														
RALEIGH	2012	10		3/28/2012	IM	CON	1064	BRAGG-NEW RIVER DIAMOND GRINDING	DIAMOND GRIND EX CONC	S341 64 ?????	IM06447???	\$1,100,000	\$990,000	\$0
ADD NEW PROJECT														
RALEIGH	2012	10		7/28/2012	NHS	CON	WW054	LESTER-PRIDDY'S HILL	RESURF(1.5'), SCRATCH, SHL, GDR	S341 54 00710 00	NH0054026D	\$763,200	\$610,560	\$0
PROJECT TO BE CANCELLED														
RALEIGH	2012	10		12/28/2011	CMAQ	ENG	WW003	SHADY SPRING RT TURN LN	CONST RT TN LN	U341 3 ?????	CMAQ00037???	\$10,000	\$8,000	\$0
ADD NEW PROJECT														
RALEIGH	2012	10		6/28/2012	CMAQ	CON	WW003	SHADY SPRING RT TURN LN	CONST RT TN LN	U341 3 ?????	CMAQ00037???	\$150,000	\$120,000	\$0
ADD NEW PROJECT														
TAYLOR	2012	4		12/28/2011	STP	CON	US050	GRAFTON RD	RESURF(1.5')	S346 50 01067 00	STP0050314D	\$300,000	\$240,000	\$0
CANCEL PROJECT														
TUCKER	2012	8		4/28/2012	NRT	CON	NA	CORRICKS FORD BATTLEFIELD TRAILS &	CONST NEW TRAIL	U347 TRAIL 1 00	NRT2011112D	\$47,990	\$37,995	\$0
ADD NEW PROJECT														

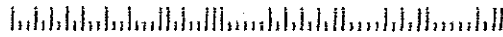
STATEWIDE TRANSPORTATION IMPROVEMENT PROGRAM (STIP) FFY 2012-2017
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COUNTY	FFY	DISTRICT	FUNDING OBLIGATION DATE	FUND TYPE	PHASE	ROUTE	PROJECT NAME	TYPE OF WORK	STATE PROJ. NUMBER	FEDERAL PROJECT NUMBER	TOTAL PHASE COST	FEDERAL DOLLAR COST	FEDERAL COST CHANGE
PROJECT COMMENTS													
TUCKER	2011	8	9/28/2011	APD	CON	US048	DAVIS-BISMARCK SEC 6 (SPLIT FUNDED)(AC PROJ.) SEC 7& 8	CONST 4 LN (COMBINED W/	X347 H 07485 00	ACAP0484246	\$7,750,000	\$6,200,000	(\$8,961,779)
CANCEL - AC PAYMENT NOT MADE FOR 2011													
STATEWIDE	2012	99	12/28/2011	HSIP	ENG	NA999	APP COR TURN MVMT STUDY	CONDUCT TURNING MOVEMENTS STUDY	T699 ACHTM 1 00	HSIP2012040D	\$140,000	\$126,000	\$0
ADD NEW PROJECT													
STATEWIDE	2012	99	12/28/2011	CMAQ	CON	NA999	CLOSED LOOP SIG SYS MAIN	MON, EVALUATE, MAINT REP	S399 LOOP 12 00	CMAQ2012037D	\$600,000	\$480,000	\$0
ADD NEW PROJECT													
STATEWIDE	2013	99	12/28/2012	IM	CON	NA999	I FA DT	TRAF ENG	A399 F13 13 00	IMG9999777	\$3,125,000	\$3,125,000	\$0
ADD NEW PROJECT													
STATEWIDE	2014	99	12/28/2013	IM	CON	NA999	I FA DT	TRAF ENG	A399 F13 14 00	IMG9999777	\$3,125,000	\$3,125,000	\$0
ADD NEW PROJECT													
STATEWIDE	2015	99	12/28/2014	IM	CON	NA999	I FA DT	TRAF ENG	A399 F13 15 00	IMG9999777	\$3,125,000	\$3,125,000	\$0
ADD NEW PROJECT													
STATEWIDE	2016	99	12/28/2015	IM	CON	NA999	I FA DT	TRAF ENG	A399 F13 16 00	IMG9999777	\$3,125,000	\$3,125,000	\$0
ADD NEW PROJECT													
STATEWIDE	2012	99	11/28/2011	CMAQ	ENG	NA999	TRAFFIC SIGNAL SYSTEM	MAINT, REP TRAF SIG(S), ETC	T699 SIGNA 12 00	CMAQ2012036D	\$1,000,000	\$800,000	\$0
ADD NEW PROJECT													
STATEWIDE	2011	99	9/28/2011	ONC	ENG	NA999	USFWS INTERAGENCY	USFWS INTERAGENCY POSITION	T699 USFWF 11 00	RCA2011069D	\$147,500	\$118,000	\$0
CANCEL PROJECT													
STATEWIDE	2011	99	9/28/2011	ONC	ENG	NA999	WWSHPO INTERAGENCY	WWSHPO INTERAGENCY POSITION	T699 WWSHP 11 00	RCA2011070D	\$140,000	\$112,000	\$0
CANCEL PROJECT													

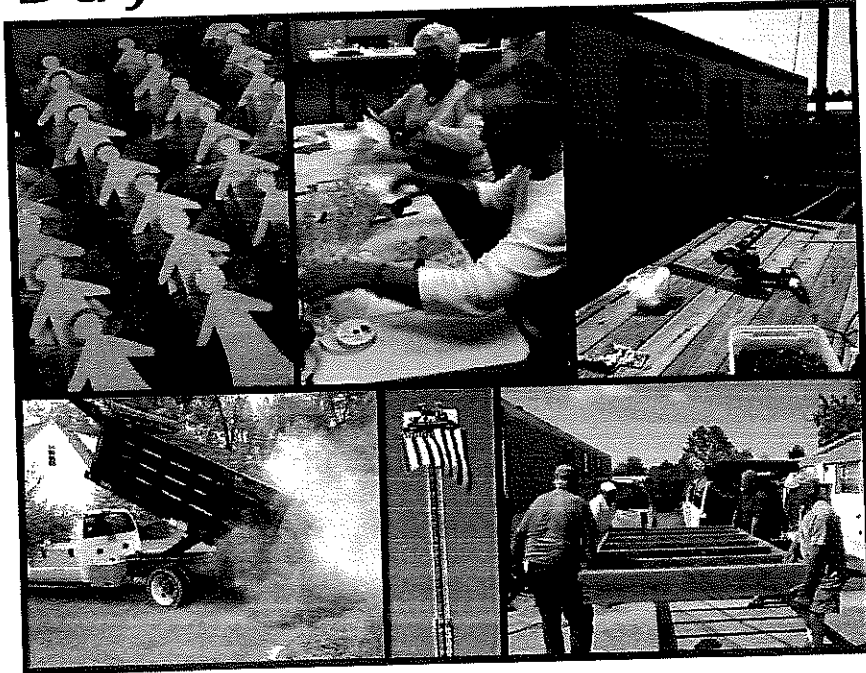
122 Waverly Ct.
Martinsburg, WV 25403



Jefferson County Commission
P.O. Box 250
Charles Town, WV 25414



Day of Caring 2011



Dear Jefferson County Commission,

Thank you so much for waiving the permit fee for the wheelchair ramp that Hospice volunteers built for Day of Caring. Community support means so much to an organization like Hospice. Thanks again!

Sincerely,

Ashley Young

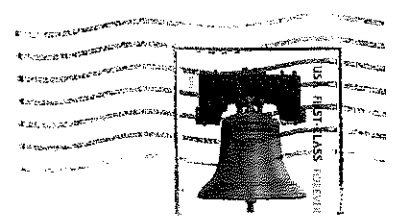
Thank you for caring.

Ashley P. Young

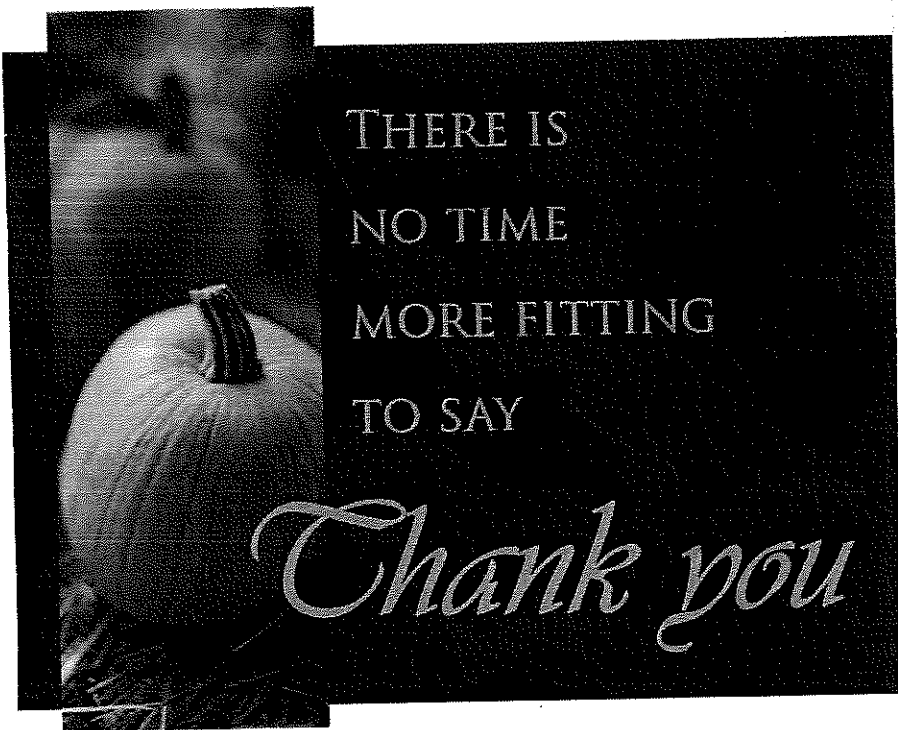
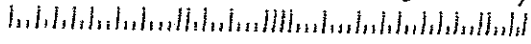
Hospice of the Panhandle



Hospice of the Panhandle
122 Waverly Court
Martinsburg, WV 25403



*Patsy Roland, President
Jefferson County Commission
P.O. Box 250
124 East Washington Street
Charles Town, WV
25414*



THERE IS
NO TIME
MORE FITTING
TO SAY

Thank you

Patsy

DURING THIS SEASON OF THANKSGIVING,
WE AT HOSPICE ARE TRULY GRATEFUL
FOR YOUR SUPPORT.

Therese

Margaret

HOSPICE OF THE PANHANDLE

For all your help, we are so thankful!



21 South Bruffey Street
Salem, Virginia 24153

November 11, 2011

Tim Boyde
Jefferson County Administrator
124 East Washington Street
Charlestown, WV 25414

Dear Mr. Boyde:

The channels that we provide to our customers are carried pursuant to contracts with the owners of those channels. These contracts expire from time to time, and one or more may be scheduled to expire in any given month. Negotiating programming rights agreements is a routine part of our business. We have successfully negotiated renewals of thousands of such agreements without incident.

In order to keep our communities informed of potential programming changes, Comcast has created a webpage containing upcoming programming contract expirations. The webpage is available at www.xfinitytv.com/contractrenewals and will display those channels for which programming contracts are scheduled to expire in the next three months.

At Comcast we are committed to providing our customers with the best in entertainment; we fully expect that we will be able to reach an agreement with the owners of these channels to continue carrying them well into the future. Should that situation change we will notify you immediately.

As always, if you should have any questions or concerns regarding this matter, or any matter, please feel free to contact me at 540-974-5123.

Sincerely,

Paul Comes

Paul Comes
Director, Government and Regulatory Affairs

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NOV 22 2011

Jefferson County Commission

**WEST VIRGINIA LOTTERY
WEEKLY SETTLEMENT FOR CHARLES TOWN**

Week Ending Date	Week Ending November 19, 2011
To be Deposited on:	November 28, 2011
Amount Played	69,270,604.16
Amount Won	62,031,706.73
Amount Promo	<u>208,934.00</u>
MWAP Contribution	<u>5,589.09</u>
Adjusted Gross Terminal Revenue	<u>7,024,374.34</u>
Administrative Costs @ 4%	0.00
Excess Lottery Fund @ 4%	<u>280,974.97</u>
Net Terminal Revenue	<u>6,743,399.37</u>
Surcharge @ 10%	674,339.95
State Share Excess @ 58%	391,117.17
Track Share of Capital Reinvestment @ 42%	\$ 283,222.78
Track Share of Capital Reinvestment @ 42% - 96%	\$ 271,893.87
Track Share of Capital Reinvestment @ 42% - 4%	\$ 11,328.91
Adjusted Net Terminal Revenue	<u>6,069,059.42</u>
Racetrack @ 46.50% / 42%	2,549,004.96
Lottery Fund @ 30% / 0%	0.00
Excess Lottery Fund @ 0% / 41%	2,488,314.33
Race Track Purses @ 7% / 14% / 8%	485,524.75
Workers' Compensation Debt Reduction @ 7% / 0%	0.00
Employee Pension Fund @ 1% / .5%	30,345.30
Greyhound Development @ .75%	45,517.95
Thoroughbred Development @ .75%	45,517.95
Racing Commission @ 1%	60,690.60
County/Municipality @ 2%	121,381.20
3% Funds:	
Tourism Promotion Fund @ 1.375%	83,449.57
Development Office Promotion Fund @ .375%	22,758.97
Research Challenge Fund @ .5%	30,345.30
Capitol Renovation and Improvement Fund @ .6875%	41,724.78
2004 Capitol Complex Parking Garage Fund @ .0625%	3,793.16
1% Funds:	
State Capitol Complex Parking Garage @ 1%	-
Cultural Facilities and Capitol Resources @ .5%	30,345.30
Capitol Dome and Capitol Improvements @ .5% / 1%	30,345.30
	<u>6,069,059.42</u>

WEST VIRGINIA LOTTERY

First Benchmark
Charles Town
County / City Split
Fiscal Year 2012

Charles Town
1999 Net Terminal Revenue \$ 45,603,174
Benchmark Goal @ 2% \$ 912,063.48

DATE	2% OF ADJ. NET REVENUE	TO JEFFERSON COUNTY	TO FIVE CITIES	BOLIVAR 8.19%	CHARLES TOWN 41.20%	HARPERS FERRY 2.24%	RANSON 34.78%	SHEPHERDS TOWN 13.59%
2 days ending: 7/1/2011 - 7/2/2011	\$ 69,824.12	\$ 69,824.12	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Week Ending:								
07/09/11	\$ 171,717.28	\$ 171,717.28	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/16/11	\$ 143,019.52	\$ 143,019.52	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/23/11	\$ 146,508.00	\$ 146,508.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
07/30/11	\$ 144,510.28	\$ 144,510.28	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/06/11	\$ 151,495.28	\$ 151,495.28	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
08/13/11	\$ 149,711.80	\$ 117,350.38	\$ 32,361.42	\$ 2,650.40	\$ 13,332.90	\$ 724.90	\$ 11,255.30	\$ 4,397.92
08/20/11	\$ 143,228.24	\$ 71,614.12	\$ 71,614.12	\$ 5,865.20	\$ 29,505.01	\$ 1,604.16	\$ 24,907.39	\$ 9,732.36
08/27/11	\$ 126,864.28	\$ 63,432.14	\$ 63,432.14	\$ 5,195.09	\$ 26,134.04	\$ 1,420.88	\$ 22,061.70	\$ 8,620.43
09/03/11	\$ 161,675.52	\$ 80,837.76	\$ 80,837.76	\$ 6,620.61	\$ 33,305.16	\$ 1,810.77	\$ 28,115.37	\$ 10,985.85
09/10/11	\$ 169,691.60	\$ 84,845.80	\$ 84,845.80	\$ 6,948.87	\$ 34,956.47	\$ 1,900.55	\$ 29,509.37	\$ 11,530.54
09/17/11	\$ 133,497.24	\$ 66,748.62	\$ 66,748.62	\$ 5,466.71	\$ 27,500.43	\$ 1,495.17	\$ 23,215.17	\$ 9,071.14
09/24/11	\$ 137,859.60	\$ 68,929.80	\$ 68,929.80	\$ 5,645.35	\$ 28,399.08	\$ 1,544.03	\$ 23,973.78	\$ 9,367.56
10/01/11	\$ 137,743.28	\$ 68,871.64	\$ 68,871.64	\$ 5,640.59	\$ 28,375.12	\$ 1,542.72	\$ 23,953.55	\$ 9,359.66
10/08/11	\$ 141,733.80	\$ 70,866.90	\$ 70,866.90	\$ 5,804.00	\$ 29,197.16	\$ 1,587.42	\$ 24,647.51	\$ 9,630.81
10/15/11	\$ 150,525.32	\$ 75,262.66	\$ 75,262.66	\$ 6,164.01	\$ 31,008.22	\$ 1,686.88	\$ 26,176.35	\$ 10,228.20
10/22/11	\$ 137,515.44	\$ 68,757.72	\$ 68,757.72	\$ 5,631.26	\$ 28,328.18	\$ 1,540.17	\$ 23,913.94	\$ 9,344.17
10/29/11	\$ 121,015.96	\$ 60,507.98	\$ 60,507.98	\$ 4,955.80	\$ 24,929.29	\$ 1,355.38	\$ 21,044.68	\$ 8,223.03
11/05/11	\$ 141,347.76	\$ 70,673.88	\$ 70,673.88	\$ 5,788.19	\$ 29,117.64	\$ 1,583.09	\$ 24,580.38	\$ 9,604.58
11/12/11	\$ 135,254.20	\$ 67,627.10	\$ 67,627.10	\$ 5,538.66	\$ 27,862.36	\$ 1,514.85	\$ 23,520.71	\$ 9,190.52
11/19/11	\$ 121,381.20	\$ 60,690.60	\$ 60,690.60	\$ 4,970.56	\$ 25,004.53	\$ 1,359.47	\$ 21,108.19	\$ 8,247.85
Subtotal	\$ 2,936,119.72	\$ 1,924,091.58	\$ 1,012,028.14	\$ 82,885.10	\$ 416,955.59	\$ 22,669.44	\$ 351,983.39	\$ 137,534.62

Benchmark Goal @ 2% \$ 912,063.48

Remainder until 1% / 1% Split \$ -

VIDEO LOTTERY REPORT

FY 2009			FY 2010			FY 2011			FY 2012		
Date	Amount	Date	Amount	Date	Amount	Date	Amount	Date	Amount	Date	Amount
7/5/2008 *	169,912.56	7/4/2009 *	128,262.42	7/3/2010	115,402.58	7/1-2/2011	69,824.12				
7/12/2008	176,592.38	7/11/2009	168,815.08	7/10/2010	205,731.64	7/9/2011	171,717.28				
7/19/2008	160,344.08	7/18/2009	160,652.98	7/17/2010	161,386.76	7/16/2011	143,019.52				
7/26/2008	162,982.74	7/25/2009	158,869.08	7/24/2010	160,368.28	7/23/2011	146,508.00				
8/2/2008	178,171.04	8/1/2009	174,493.08	7/31/2010	157,802.08	7/30/2011	144,510.28				
8/9/2008	123,538.04	8/8/2009	138,408.80	8/7/2010	136,494.98	8/6/2011	151,495.28				
8/16/2008	82,482.89	8/15/2009	81,222.14	8/14/2010	78,376.68	8/13/2011	117,350.38				
8/23/2008	76,426.18	8/22/2009	76,260.31	8/21/2010	76,199.02	8/20/2011	71,614.12				
8/30/2008	89,459.86	8/29/2009	80,472.92	8/28/2010	72,460.03	8/27/2011	63,432.14				
9/6/2008	91,644.46	9/5/2009	80,798.15	9/4/2010	76,362.84	9/3/2011	80,837.76				
9/13/2008	79,729.93	9/12/2009	86,286.92	9/11/2010	82,969.36	9/10/2011	84,845.80				
9/20/2008	71,269.36	9/19/2009	70,010.15	9/18/2010	67,638.78	9/17/2011	66,748.62				
9/27/2008	79,735.73	9/26/2009	69,316.87	9/25/2010	70,435.06	9/24/2011	68,929.80				
10/4/2008	75,186.22	10/3/2009	72,286.04	10/2/2010	71,013.86	10/1/2011	68,871.64				
10/11/2008	77,139.04	10/10/2009	69,650.63	10/9/2010	69,311.50	10/8/2011	70,866.90				
10/18/2008	80,668.26	10/17/2009	73,560.21	10/16/2010	75,234.62	10/15/2011	75,262.66				
10/25/2008	64,379.44	10/24/2009	67,581.66	10/23/2010	70,290.80	10/22/2011	68,757.72				
11/1/2008	68,352.42	10/31/2009	64,528.30	10/30/2010	65,615.04	10/29/2011	60,507.98				
11/8/2008	70,823.02	11/7/2009	63,741.59	11/6/2010	61,337.62	11/5/2011	70,673.88				
11/15/2008	65,565.50	11/14/2009	65,959.64	11/13/2010	64,595.28	11/12/2011	67,627.10				
11/22/2008	63,883.80	11/21/2009	59,547.05	11/20/2010	56,010.08	11/19/2011	60,690.60				
11/29/2008	69,850.12	11/28/2009	72,399.98	11/27/2010	71,170.90						
12/6/2008	55,696.68	12/5/2009	51,006.51	12/4/2010	53,215.08						
12/13/2008	60,178.04	12/12/2009	52,460.58	12/11/2010	46,944.00						
12/20/2008	52,189.19	12/19/2009	32,834.39	12/18/2010	42,076.76						
12/27/2008	72,205.91	12/26/2009	53,406.34	12/25/2010	50,450.28						
1/3/2009	96,504.65	1/2/2010	92,980.40	1/1/2011	85,152.12						
1/10/2009	53,286.62	1/9/2010	55,020.46	1/8/2011	54,301.30						

1/17/2009	56,068.87	1/16/2010	60,551.28	1/15/2011	54,005.90
1/24/2009	71,474.63	1/23/2010	69,943.53	1/22/2011	60,924.74
1/31/2009	61,089.80	1/30/2010	48,527.75	1/29/2011	48,036.94
2/7/2009	83,539.63	2/6/2010	37,155.14	2/5/2011	60,777.44
2/14/2009	76,054.44	2/13/2010	44,334.00	2/12/2011	67,471.84
2/21/2009	91,838.41	2/20/2010	76,946.12	2/19/2011	72,018.54
2/28/2009	80,806.88	2/27/2010	72,024.40	2/26/2011	75,544.02
3/7/2009	48,837.13	3/6/2010	76,936.85	3/5/2011	74,535.34
3/14/2009	96,025.39	3/13/2010	71,007.37	3/12/2011	66,979.48
3/21/2009	79,002.82	3/20/2010	74,335.38	3/19/2011	73,113.26
3/28/2009	79,250.83	3/27/2010	69,941.88	3/26/2011	68,490.80
4/4/2009	75,968.30	4/3/2010	70,636.28	4/2/2011	70,846.58
4/11/2009	75,964.94	4/10/2010	69,692.79	4/9/2011	67,076.78
4/18/2009	80,598.22	4/17/2010	69,335.92	4/16/2011	64,698.56
4/25/2009	75,571.46	4/24/2010	68,714.11	4/23/2011	67,674.14
5/2/2009	73,957.05	5/1/2010	68,799.06	4/30/2011	66,807.50
5/9/2009	76,697.22	5/8/2010	67,403.54	5/7/2011	66,379.74
5/16/2009	71,925.70	5/15/2010	70,186.32	5/14/2011	66,699.76
5/23/2009	81,395.43	5/22/2010	64,695.71	5/21/2011	63,210.44
5/30/2009	82,161.55	5/29/2010	67,157.40	5/28/2011	64,724.06
6/6/2009	74,895.74	6/5/2010	77,371.80	6/4/2011	74,952.34
6/13/2009	67,327.23	6/12/2010	66,106.29	6/11/2011	62,203.12
6/20/2009	75,500.53	6/19/2010	64,888.48	6/18/2011	61,200.76
6/27/2009	67,354.10	6/26/2010	63,950.29	6/25/2011	65,470.44
6/30/2009 ***	32,059.58	6/30/2010	29,667.19	6/30/2011	34,351.16

TOTALS 4403564.04

4041141.56

4016541.01

1924091.58

Table Game Revenue
FY 2011

Date	Amount
July/August, 2010	154,185.68
September, 2010	94,247.84
October, 2010	105,903.60
November, 2010	108,717.67
December, 2010	118,721.11
January, 2011	106,189.21
February, 2011	105,776.45
March, 2011	120,927.10
April, 2011	130,654.61
May, 2011	130,492.02
June, 2011	121,576.41
July, 2011	141,718.01
August, 2011	137,473.92
September, 2011	110,375.25
October, 2011	124,273.94
	<u>1811232.82</u>

Ethics Reporter

Since the Last Reporter

Since the September edition of the **REPORTER**, the West Virginia Ethics Commission published three Advisory Opinion interpreting provisions of the West Virginia Governmental Ethics Act and the laws governing Boards of Education. There were no opinions published in October.

At its November 3 meeting, the West Virginia Ethics Commission approved opinions relating to the permissibility of a candidate for county assessor continuing to own a real estate brokerage business if elected to office, the permissibility of a county board of health, who has organizational and business affiliations that will be affected by the

board's actions, to vote on matters affecting these interests, and another similar opinion concerning the permissibility of a board of health member voting on matters affecting a fraternal organization to which he belongs.

ADVISORY OPINION REPORT

Advisory Opinion 2011-14 concerned the permissibility of a candidate for county assessor continuing to own a real estate brokerage business if elected to office.

The candidate is a sole practitioner in the real estate business and does not employ any agents. He relies exclusively on the industry's multiple listing service to have access to properties for sale.

In this case, the Commission reviewed the provisions of 6B-2-5(h), which restricts the ability of a full time official purchasing,

selling or leading real property from anyone with interests pending or at issue before the agency the official serves.

In its opinion, the Commission ruled that both state law and prior precedent of the Commission (A.O. 96-52) clearly reveal that an elected county assessor could not properly operate a real estate brokerage business while serving in office. The assessor, or his subordinates, has regulatory authority over all property in a county at some level and it would be a violation for the assessor to own and operate a real estate firm. The assessor is not restricted from selling property he personally owns and there is no inherent prohibition against continuing to hold a real estate license during the term of office.

Advisory Opinion 2011-15 concerned the permissibility of a county board of health member,

**November, 2011
Page Three**

employee) that was challenging a board of health rule in court. The board member indicates that she had no involvement in the fraternal organization's decision to sue to board of health and is now seeking guidance on whether she may participate in matters concerning the lawsuit or in other matters that affect the regulatory interests of the fraternal organization.

The Commission again reviewed 6B-2-5(b)(e) and (j) as described in the previous case.

The Commission determined for this case, that the same standard should apply as was set in 2011-15 and that the board member could not permissibly participate in any matter concerning the litigation pending between the board of health and the fraternal organization given the board member's relationship with the group and the obvious sensitivity and confidentiality of legal proceedings.

Similarly, the Commission also ruled that the board member could permissibly participate in regulatory or other matters that generally affected the interests of the fraternal organization and its members because any board actions would apply to individual businesses as a member of a "class" and not as a matter that was personal to the board of health member.

**TOPICAL INDEX
UPDATE
WEST VIRGINIA
ETHICS
COMMISSION
ADVISORY
OPINIONS**

(Only includes opinions published since the September edition of THE REPORTER)

**BOARDS AND
COMMISSIONS**

2011-15:
Permissibility of a county board of health member, who is the past president of a fraternal organization that has sued the Board, and who has personal business interests that will be affected by the board's rules, may vote on matters concerning these interests (See

also COUNTY GOVERNMENT)

2011-16:
Permissibility of a county board of health member, who is a member of a fraternal organization, voting on matters that may affect the organization. (See also COUNTY GOVERNMENT)

**BOARDS OF
EDUCATION**

NONE PUBLISHED

**COUNTY
GOVERNMENT**

2011-14:
Permissibility of a candidate for county assessor continuing to own a real estate brokerage business if elected to office

2011-15:
Permissibility of a county board of health member, who is the past president of a fraternal organization that has sued the Board, and who has personal business interests that will be affected by the board's rules, may vote on matters concerning these interests (See also BOARDS AND COMMISSIONS)

**WEST VIRGINIA ETHICS COMMISSION
2011 ADVISORY OPINIONS
INDEXED BY TOPICAL SECTOR
(Includes opinions published through November 3, 2011)**

BOARDS AND COMMISSIONS

2011-06:

Permissibility of a public service district board member participating in an investigation of a utility company when the member previously participated in cases before the Public Service Commission involving that utility in a private capacity (See COUNTY GOVERNMENT also)

2011-15:

Permissibility of a county board of health member, who is the past president of a fraternal organization that has sued the board, and who has business interests that will be affected by the board's rules, voting on matters concerning these interests (See also COUNTY GOVERNMENT)

2011-16:

Permissibility of a member of a county board of health, who is a member of a fraternal organization, voting on matters that may affect the organization (See also COUNTY GOVERNMENT)

BOARDS OF EDUCATION

2010-23:

Permissibility of a board of education using public resources to promote an excess levy

2010-24:

Permissibility of a board of education purchasing property from other county officials

2011-10:

Permissibility of an employee of a board of education continuing their employment if their spouse is selected to become the superintendent

COUNTY GOVERNMENT

2011-01:

Permissibility of a county commissioner conducting business with the county in multiple situations

2011-02:

Permissibility of a county commissioner's business contracting with a conservation district

STATE GOVERNMENT

2010-22:

Permissibility of a retired state employee's business contracting with his former agency within one year of his retirement

2011-05:

Permissibility of using public funds to pay local service club dues for university president and spouse

2011-11:

Permissibility of a state agency department being considered as charitable for purposes of soliciting support

2011-13:

Permissibility of state employees receiving reimbursement for health club or gym fees while traveling on business in cases where the hotel does not provide free access to such facilities

TRADE ASSOCIATIONS AND LOBBYISTS

NONE PUBLISHED

MISCELLANEOUS

NONE PUBLISHED

ADVISORY OPINION NO. 2011-15

Issued On November 3, 2011 By The

2011 NOV -7 AM 10:27

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

An Appointed Member of a Board of Health who is the past president of a fraternal organization which sued the Board of Health and who has business interests affected by the Board of Health regulations seeks guidance on voting.

FACTS RELIED UPON BY THE COMMISSION

The Requester is an appointed Member of a Board of Health. He owns a company which leases video lottery machines to two locations within the county. There are approximately sixty-five locations in the county which have these machines. He states that his wife owns or operates several businesses where video lottery machines are located. He further states that he has other business interests in the county.

The Board of Health has adopted Clean Indoor Air regulations which, with limited exceptions, prohibit smoking in public places. Hence, this regulation impacts various businesses, including businesses which have video lottery machines.

The Requester is the former president of a fraternal organization which, while he was president, sued the Board of Health. In the lawsuit the fraternal organization sought to have certain portions of the Clean Indoor Air regulations declared invalid. The Circuit Court denied the requested relief and dismissed the case. The fraternal organization has appealed the lower Court's decision to the Supreme Court and the case is still pending.

The fraternal organization is a non-profit corporation whose members are various fraternal orders, clubs and associations in the county. The Requester states that he is no longer president of the organization or a board member.¹ He is a member of a fraternal order which belongs to the organization.

The Requester generally inquires whether he, as a Board of Health Member, may vote on matters involving the Clean Indoor regulations or the lawsuit. He states that it is his understanding that he should not vote

¹ The Secretary of State's online database still lists the Requester as the President of the non-profit organization. In rendering this opinion, the Commission is relying upon the representation of the Requester that he is no longer President. Regardless, this fact is not controlling in regard to the holding of the Commission herein.

ADVISORY OPINION

The Commission finds that, in his capacity as a Board of Health Member, the Requester may not be involved in matters relating to a lawsuit which was filed by a fraternal organization while the Requester was president. The Board of Health has the right to defend the lawsuit as it sees fit. For purposes of determining litigation strategy, it is entitled to engage in full and frank discussions with its attorney.

It is essential that these attorney-client communications remain confidential. While there is no allegation that the Requester would reveal this confidential information to the organization, the limitations in the Ethics Act are intended to safeguard against the potential for abuse. Moreover, as the president of the organization at the time the lawsuit was filed, he has a vested interest in the outcome of the litigation. While he may no longer serve as president of the organization, it would be inconsistent with the spirit and intent of the Ethics Act, and relevant provisions therein, for the Requester to be involved in decisions or privy to information thereto relating to the Board's defense of the lawsuit.

Hence, the Commission finds that the voting provisions in the Ethics Act, when read in conjunction with the private gain provisions, require the Requester to recuse himself from being involved in deliberations or votes relating to the lawsuit. Pursuant to W.Va. Code § 6B-2-5(j)(3), in order for recusal to be proper, it is necessary for the Board Member to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during the period, fully disclosing his interests, and recusing himself from discussing or voting on the issue. Additionally, the minutes/record of the meeting must reflect the basis for the recusal and that the board member left the room during all consideration, discussion and vote on the item under consideration.

This conclusion is consistent with past opinions of the Commission. In Advisory Opinion 99-19, an elected Member of a Board of Education (BOE), prior to her election, was a named party in a lawsuit against the BOE. The litigation was still pending at the time of her election. While she had her name removed from the lawsuit, still, the Commission ruled that as a BOE Member, she could not be involved in decisions concerning the pending litigation.²

In regard to voting on the Clear Air regulations, a different analysis applies. The Ethics Act permits a public servant to vote on matters in which they have a financial interest so long as the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class consists of five or more similarly situated persons or businesses.

² As the Commission has concluded that he may not vote based upon the fact that he was the president of the organization at the time the organization filed the lawsuit, the Commission declines to analyze in this opinion whether his **membership** in the fraternal order which belongs to the organization precludes him from voting on the lawsuit.

ADVISORY OPINION NO. 2011-16

Issued On November 3, 2011 By The

2011 NOV -7 AM 10: 27

WEST VIRGINIA ETHICS COMMISSION

SECRETARY OF STATE

OPINION SOUGHT

An Appointed Member of a Board of Health who is also a member of a fraternal order seeks guidance on voting on matters which may affect the fraternal order.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a member of a fraternal order. She is not employed by the fraternal order nor is she a board member. She does not receive any financial benefit from her membership in the fraternal order. She does, on a volunteer basis, perform book work for the organization. The fraternal order operates a video lottery establishment.

The Requester is a Member of the Board of Health. She is a retired respiratory therapist.

The local Board of Health has adopted Clean Indoor Air regulations which, with limited exceptions, prohibit smoking in public places. Hence, this regulation impacts various fraternal organizations, including the Requester's. The Requester's fraternal order supports a regulation which allows certain establishments to have smoking and non-smoking areas.

Her fraternal order is a member of a county-wide fraternal organization whose members consist of various fraternal groups. This fraternal organization filed a lawsuit against the Board of Health. In the lawsuit the fraternal organization sought to have certain portions of the Clean Indoor Air regulations declared invalid. The Circuit Court denied the requested relief and dismissed the case. The fraternal organization has appealed the lower Court's decision to the Supreme Court.

The Requester states that as a member of the fraternal order, she has had no involvement in the lawsuit and, if authorized as a Board of Health Member to participate in decisions relating to the lawsuit, would not reveal confidential information to her fraternal order or the organization of which the order is a member. Nevertheless, she states that she wants to avoid any conflict of interest and hence seeks guidance from the Commission on voting on the lawsuit. She also seeks guidance on voting on Clean Indoor Air regulations.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads in relevant part:

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.

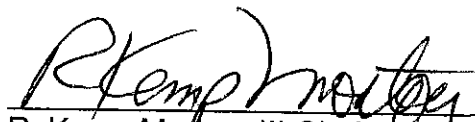
named party, still the fraternal order is indirectly a party through its membership in the organization.

Based upon the facts presented, the Commission finds that the Requester may not vote on matters relating to the lawsuit. For purposes of determining litigation strategy, the Board is entitled to engage in full and frank discussions with its attorney. It is essential that these attorney-client communications remain confidential. While there is no allegation that the Requester would reveal this confidential information to the fraternal order or organization of which it is a member, the limitations in the Ethics Act are intended to safeguard against the potential for abuse.

Hence, the Commission finds that the voting provisions in the Ethics Act, when read in conjunction with the private gain provisions, require the Requester to recuse herself from discussions or votes relating to the lawsuit. See Advisory Opinions 92-31, 99-19 and 2011-15. Pursuant to W.Va. Code § 6B-2-5(j)(3), in order for recusal to be proper, it is necessary for the Board Member to excuse herself from participating in the discussion and decision-making process by physically removing herself from the room during the period, fully disclosing her interests, and recusing herself from discussing or voting on the issue. Additionally, the minutes/record of the meeting must reflect the basis for the recusal and that the board member left the room during all consideration, discussion and vote on the item under consideration.

In regard to voting on the Clear Air regulations, a different analysis applies. The Requester has no financial interests which are affected by the Clean Air regulations. While she is a member of a non-profit fraternal order which has an interest in the regulations, her membership in the fraternal order does not require her to be recused from voting on Clean Air regulations. See A.O. 2009-06 where the Commission ruled that a City Council Member may vote on matters relating to a church in which he is a member absent a financial interest. See also A.O. 92-31 where the Commission ruled that a Board of Education Member could vote on general policy issues, notwithstanding his prior involvement as a private citizen in a lawsuit.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and W.Va. Code § 61-10-15, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.


R. Kemp Morton, III Chairperson

ADVISORY OPINION NO. 2011-14

2011 NOV -7 AM 10:26

Issued On November 3, 2011 By The

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

A **Candidate for County Assessor** asks whether he may, if elected, continue his career as the owner and broker of a real estate business.

FACTS RELIED UPON BY THE COMMISSION

The Requester is the owner and broker of a real estate business that operates in the county where he resides and in surrounding counties. He does not employ any agents. He uses a multiple listing service for real property.

A County Assessor is an elected position responsible for assessing all property within the county each year. See W. Va. Code § 11-3-1. The Assessor employs various individuals to assist in assessments and other statutory duties of the office.

If elected, the Requester desires to continue operating his real estate business in the county in which he would serve. He also wants to keep his real estate license active.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5 (h) reads, in relevant part:

(1) No full-time official may seek ... to purchase, sell or lease real or personal property to or from any person who:

(A) Had a matter on which he or she took, or a subordinate is known to have taken, regulatory action within the preceding twelve months; or

(B) Has a matter before the agency on which he or she is working or a subordinate is known by him or her to be working.

ADVISORY OPINION

The Ethics Act prohibits public officials from seeking to purchase, sell or lease real or personal property to or from any person who is, or has been within the preceding twelve months, subject to their personal regulatory authority or the regulatory authority of a subordinate. W.Va. Code § 6B-2-5(h)(1). The Requester asks whether the Ethics Act prohibits him from continuing to engage in his real estate business if he is elected.

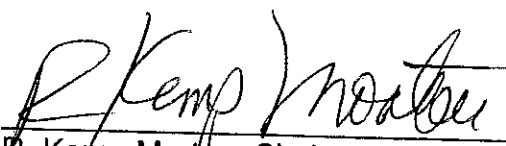
The Attorney General for the State of New York was asked whether an appointed town assessor who engages in the business of home construction, necessitating that the assessor appraise houses he constructs and subsequently sells, creates a prohibited conflict of interest, and wrote: "We conclude that a local government should include in its code of ethics standards that define and prohibit private conduct in conflict with official duties. Where substantial conflicts are inevitable, a town should act to prohibit assessors from engaging in the business of home construction in the town." 1984 N.Y. Op. Atty. Gen. (Inf.) 86, 1984 WL 186562 (N.Y.A.G.).²

This prohibition does **not**, however, apply to purely personal transactions. For example, the Requester may buy, sell or lease a personal home. See W. Va. Code § 11-3-17 (authorizing the assessor to assess the property of deputy assessors, and a deputy assessor to assess the assessor's property). Instead, the Ethics Act prohibits an assessor from engaging in real estate transactions for commercial purposes, either through a business such as the Requester's, or more informally by buying, selling or leasing property on the side.

In light of the foregoing, the Commission hereby finds that the Requester, if elected, may not seek to purchase, sell or lease real property to or from any person in the county in which he serves. Specifically, the Requester, if elected, may **not** continue his career as the owner and broker of a real estate business within the county where he serves.³

Further, the Requester has indicated that, if elected, he does not want to give up his real estate license. Nothing in the Ethics Act requires the Requester to do so, but other laws, policies or regulations that the Ethics Commission lacks jurisdiction to interpret may apply. The Requester should consult the Prosecuting Attorney as well as the appropriate real estate licensing board for this determination.⁴

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.*, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.


R. Kemp Morton, Chairperson

² In another New York opinion, the State Board of Equalization and Assessment determined that a town assessor may not accept a contract to conduct appraisals for the county due to his pecuniary interest in the contract. 1973 WL 20599 (N.Y.Bd.Equal). & Assoc.).

³ The Requester may continue to do business in other counties so long as he does not: use his official position in any way that would give him an advantage; conduct his business on county time; or use county resources (including staff) to conduct his private real estate business.

⁴ The Ethics Commission additionally makes no finding regarding whether an elected full-time assessor may have secondary employment and/or a business. See W. Va. Code § 7-7-4(8).

ADVISORY OPINION NO. 2011-15

Issued On November 3, 2011 By The

2011 NOV -7 AM 10: 27

WEST VIRGINIA ETHICS COMMISSION

SECRETARY OF STATE

OPINION SOUGHT

An Appointed Member of a Board of Health who is the past president of a fraternal organization which sued the Board of Health and who has business interests affected by the Board of Health regulations seeks guidance on voting.

FACTS RELIED UPON BY THE COMMISSION

The Requester is an appointed Member of a Board of Health. He owns a company which leases video lottery machines to two locations within the county. There are approximately sixty-five locations in the county which have these machines. He states that his wife owns or operates several businesses where video lottery machines are located. He further states that he has other business interests in the county.

The Board of Health has adopted Clean Indoor Air regulations which, with limited exceptions, prohibit smoking in public places. Hence, this regulation impacts various businesses, including businesses which have video lottery machines.

The Requester is the former president of a fraternal organization which, while he was president, sued the Board of Health. In the lawsuit the fraternal organization sought to have certain portions of the Clean Indoor Air regulations declared invalid. The Circuit Court denied the requested relief and dismissed the case. The fraternal organization has appealed the lower Court's decision to the Supreme Court and the case is still pending.

The fraternal organization is a non-profit corporation whose members are various fraternal orders, clubs and associations in the county. The Requester states that he is no longer president of the organization or a board member.¹ He is a member of a fraternal order which belongs to the organization.

The Requester generally inquires whether he, as a Board of Health Member, may vote on matters involving the Clean Indoor regulations or the lawsuit. He states that it is his understanding that he should not vote

¹ The Secretary of State's online database still lists the Requester as the President of the non-profit organization. In rendering this opinion, the Commission is relying upon the representation of the Requester that he is no longer President. Regardless, this fact is not controlling in regard to the holding of the Commission herein.

ADVISORY OPINION

The Commission finds that, in his capacity as a Board of Health Member, the Requester may not be involved in matters relating to a lawsuit which was filed by a fraternal organization while the Requester was president. The Board of Health has the right to defend the lawsuit as it sees fit. For purposes of determining litigation strategy, it is entitled to engage in full and frank discussions with its attorney.

It is essential that these attorney-client communications remain confidential. While there is no allegation that the Requester would reveal this confidential information to the organization, the limitations in the Ethics Act are intended to safeguard against the potential for abuse. Moreover, as the president of the organization at the time the lawsuit was filed, he has a vested interest in the outcome of the litigation. While he may no longer serve as president of the organization, it would be inconsistent with the spirit and intent of the Ethics Act, and relevant provisions therein, for the Requester to be involved in decisions or privy to information thereto relating to the Board's defense of the lawsuit.

Hence, the Commission finds that the voting provisions in the Ethics Act, when read in conjunction with the private gain provisions, require the Requester to recuse himself from being involved in deliberations or votes relating to the lawsuit. Pursuant to W.Va. Code § 6B-2-5(j)(3), in order for recusal to be proper, it is necessary for the Board Member to excuse himself from participating in the discussion and decision-making process by physically removing himself from the room during the period, fully disclosing his interests, and recusing himself from discussing or voting on the issue. Additionally, the minutes/record of the meeting must reflect the basis for the recusal and that the board member left the room during all consideration, discussion and vote on the item under consideration.

This conclusion is consistent with past opinions of the Commission. In Advisory Opinion 99-19, an elected Member of a Board of Education (BOE), prior to her election, was a named party in a lawsuit against the BOE. The litigation was still pending at the time of her election. While she had her name removed from the lawsuit, still, the Commission ruled that as a BOE Member, she could not be involved in decisions concerning the pending litigation.²

In regard to voting on the Clear Air regulations, a different analysis applies. The Ethics Act permits a public servant to vote on matters in which they have a financial interest so long as the public official, his or her spouse, immediate family members or relatives or business with which they are associated are affected as a member of, and to no greater extent than any other member of a profession, occupation, class of persons or class of businesses. A class consists of five or more similarly situated persons or businesses.

² As the Commission has concluded that he may not vote based upon the fact that he was the president of the organization at the time the organization filed the lawsuit, the Commission declines to analyze in this opinion whether his **membership** in the fraternal order which belongs to the organization precludes him from voting on the lawsuit.

ADVISORY OPINION NO. 2011-16

Issued On November 3, 2011 By The

2011 NOV -7 AM 10:27

WEST VIRGINIA ETHICS COMMISSION

OPINION SOUGHT

An Appointed Member of a Board of Health who is also a member of a fraternal order seeks guidance on voting on matters which may affect the fraternal order.

FACTS RELIED UPON BY THE COMMISSION

The Requester is a member of a fraternal order. She is not employed by the fraternal order nor is she a board member. She does not receive any financial benefit from her membership in the fraternal order. She does, on a volunteer basis, perform book work for the organization. The fraternal order operates a video lottery establishment.

The Requester is a Member of the Board of Health. She is a retired respiratory therapist.

The local Board of Health has adopted Clean Indoor Air regulations which, with limited exceptions, prohibit smoking in public places. Hence, this regulation impacts various fraternal organizations, including the Requester's. The Requester's fraternal order supports a regulation which allows certain establishments to have smoking and non-smoking areas.

Her fraternal order is a member of a county-wide fraternal organization whose members consist of various fraternal groups. This fraternal organization filed a lawsuit against the Board of Health. In the lawsuit the fraternal organization sought to have certain portions of the Clean Indoor Air regulations declared invalid. The Circuit Court denied the requested relief and dismissed the case. The fraternal organization has appealed the lower Court's decision to the Supreme Court.

The Requester states that as a member of the fraternal order, she has had no involvement in the lawsuit and, if authorized as a Board of Health Member to participate in decisions relating to the lawsuit, would not reveal confidential information to her fraternal order or the organization of which the order is a member. Nevertheless, she states that she wants to avoid any conflict of interest and hence seeks guidance from the Commission on voting on the lawsuit. She also seeks guidance on voting on Clean Indoor Air regulations.

CODE PROVISIONS RELIED UPON BY THE COMMISSION

W. Va. Code § 6B-2-5(b) reads in relevant part:

A public official or public employee may not knowingly and intentionally use his or her office or the prestige of his or her office for his or her own private gain or that of another person.


named party, still the fraternal order is indirectly a party through its membership in the organization.

Based upon the facts presented, the Commission finds that the Requester may not vote on matters relating to the lawsuit. For purposes of determining litigation strategy, the Board is entitled to engage in full and frank discussions with its attorney. It is essential that these attorney-client communications remain confidential. While there is no allegation that the Requester would reveal this confidential information to the fraternal order or organization of which it is a member, the limitations in the Ethics Act are intended to safeguard against the potential for abuse.

Hence, the Commission finds that the voting provisions in the Ethics Act, when read in conjunction with the private gain provisions, require the Requester to recuse herself from discussions or votes relating to the lawsuit. See Advisory Opinions 92-31, 99-19 and 2011-15. Pursuant to W.Va. Code § 6B-2-5(j)(3), in order for recusal to be proper, it is necessary for the Board Member to excuse herself from participating in the discussion and decision-making process by physically removing herself from the room during the period, fully disclosing her interests, and recusing herself from discussing or voting on the issue. Additionally, the minutes/record of the meeting must reflect the basis for the recusal and that the board member left the room during all consideration, discussion and vote on the item under consideration.

In regard to voting on the Clear Air regulations, a different analysis applies. The Requester has no financial interests which are affected by the Clean Air regulations. While she is a member of a non-profit fraternal order which has an interest in the regulations, her membership in the fraternal order does not require her to be recused from voting on Clean Air regulations. See A.O. 2009-06 where the Commission ruled that a City Council Member may vote on matters relating to a church in which he is a member absent a financial interest. See also A.O. 92-31 where the Commission ruled that a Board of Education Member could vote on general policy issues, notwithstanding his prior involvement as a private citizen in a lawsuit.

This advisory opinion is limited to questions arising under the Ethics Act, W. Va. Code § 6B-1-1, *et seq.* and W.Va. Code § 61-10-15, and does not purport to interpret other laws or rules. In accordance with W. Va. Code § 6B-2-3, this opinion has precedential effect and may be relied upon in good faith by other public agencies unless and until it is amended or revoked, or the law is changed.


R. Kemp Morton, III Chairperson