Protecting Land and Battlefields in Jefferson County, West Virginia: A Landowner’s Guide

A Guide to the Protection of Private Property in Civil War Battlefields in Jefferson County, West Virginia
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Cover: View northeast toward Maryland from Trough Road in the advance and retreat route in the Shepherdstown Battlefield Boundary. Photo: Mark Muse.

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By the Jefferson County Farmland Protection Board with the Jefferson County Historic Landmarks Commission and the Land Trust of the Eastern Panhandle, in cooperation with the American Battlefield Protection Program of the National Park Service.
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LIST OF ACRONYMS

ABPP    American Battlefield Protection Program
JCFPB   Jefferson County Farmland Protection Board
JCHLC   Jefferson County Historic Landmarks Commission
NRCS    Natural Resources Conservation Service, United States Department of Agriculture
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Introduction

Since the 1990s, landowners in Jefferson County, West Virginia have worked with local, state and national organizations to protect rural lands with important agricultural, natural and historical qualities. Many of these lands are also the sites of Civil War battles waged more than 150 years ago. This guidebook provides information about voluntary conservation programs available to landowners, with a focus on battlefield lands.

The Civil War raged across Jefferson County from 1862–1864, with opposing armies attracted by its strategic location and rich farmland. In 1862 they fought over the armory at Harpers Ferry and again in the aftermath of the Battle of Antietam; in 1863, there was a clash in the county after the Battle of Gettysburg; and in 1864 the Shenandoah Valley Campaign began with two battles here.

Today, Jefferson County contains five Congressionally recognized Civil War battlefields and many other sites where the two sides clashed.

Some of these battlefield lands have been protected permanently from development, mainly in Harpers Ferry National Historical Park. In the rest of Jefferson County, much of the battlefield lands remain intact today because land use has changed little from its historical agricultural use during the Civil War. As long as agriculture remains a strong part of the rural economy, these historic landscapes will survive for the benefit of residents and visitors alike. Yet, as population in the county has expanded in the past few decades, an increasing amount of this productive and historically significant land has been converted to residential and commercial use.

To date, landowners have voluntarily protected approximately 4,300 acres of privately owned land in the county, with funding from local and national sources and donations. The National Park Service’s American Battlefield Protection Program (ABPP) provided $2 million to protect 863 acres in the three congressionally recognized battlefields: Shepherdstown, Summit Point and Smithfield Crossing (Middleway). Another 7,000 acres in the battlefields could benefit from battlefield and farmland conservation programs.
About This Guide

This Landowner’s Guide was prepared by the Jefferson County Farmland Protection Board (JCFPB), the Land Trust of the Eastern Panhandle (LTEP) and the Jefferson County Historic Landmarks Commission (JCHLC). Its purpose is to provide information to landowners about the voluntary land protection options they can use to plan for the future of their land and to take part in the protection of Jefferson County’s rural lands and historic battlefields of national importance. The Guide will discuss the four lesser-known, and largely unprotected congressionally recognized battlefields (Shepherdstown, Williamsport, Summit Point and Smithfield Crossing) in more detail than the area of the Battle of Harpers Ferry, which is largely protected as a National Historical Park.

The Guide helps land-owning families to:

- Learn about retiring development rights on agricultural and natural lands through the sale or donation of agricultural and battlefield conservation easements.
- Understand the financial benefits of permanent land protection.
- Find resources and support for management of agricultural and natural resources.
- Plan for the future of family lands.
- Explanations of how landowners may sell agricultural conservation easements and battlefield protection easements.
- Descriptions of bargain sales and donations of conservation easements and how they may be used for financial planning.
- Examples of different conservation methods and tax and financial planning benefits.
- A sample application form and a model deed of easement for a battlefield easement.

As you read the guide, think about your situation today and how you would like to see your property used in the future. What is the heritage of your land? Who would you like to see own and manage the land? Are you concerned about development or undesirable changes to your property?

The Guide provides a “conservation toolbox” to help landowners make decisions about the future of their land.

The Guide includes:

- Westward view toward North Mountain in Berkeley County from Leetown Road, in the advance and retreat area in the Battle of Smithfield Crossing.
YOUR LAND, YOUR CHOICES

Like many landowners, you may have considered how to maintain the character and use of your property for yourself and your family. Many families in the county have held the same property for generations, and wish to pass on their legacy and traditions to future generations. Others, who are new to the land, value the natural, agricultural and historic features of their property, and wish to maintain these qualities. Fortunately, there are many different choices available for landowners to reach their individual goals for their property.

Land protection, also called land conservation, means making a legally recognized plan that retires the development rights on land permanently to protect its natural, agricultural and cultural features in the future.

Even if you are not ready to make long-term decisions about your land, there is much you can do to protect it into the future. Being a good steward of the soil and natural resources is the most basic way to practice conservation. Jefferson County’s famously productive land offers many opportunities for farming and forestry. Appendix IV lists conservation and natural resource management organizations that offer guidance and funding for best practices to help you manage your natural resources and improve your land’s productivity.

One of the most important decisions landowners will make is to plan for the transition of their land to the next generation. Making decisions about future land protection and long-term conservation practices also helps families navigate the often complicated estate planning process that every generation faces.

FINDING CONSERVATION PARTNERS

Conserving land involves three key elements: a property with resources worth protecting, a landowner motivated to protect it, and the right tools for the task. You, the landowner, have the first two elements. The third is a network of conservation professionals who can help you decide what options are best for you and your property. Appendix IV lists conservation organizations that serve Jefferson County, including those with resources for landowners of property associated with Civil War events.

PROTECTING OUR HERITAGE

The easternmost county of West Virginia, Jefferson County is one of West Virginia’s top-producing agricultural areas. Its working farms are major contributors to the local economy, culture and the quality of life, and define the character of the
county. Despite the loss of farmland and dramatic changes in agricultural practices, the county in 2015 had roughly 67,000 acres of farmland, approximately 50 percent of its area. Preservation of Jefferson County’s rural and historic heritage is tied to the continued vitality of agriculture.

The County also lies at the crossroads of the history of the state and the nation. The Washington family was among the earliest settlers in colonial times, and generations of pioneers passed through the area on their way west. Its farms, historical landscapes, and unique architecture continue to attract visitors to Jefferson County.

The County’s place in Civil War history is of particular significance. Protecting historic battlefields as they may have been seen through the eyes of Civil War soldiers is essential to understanding the war’s pivotal events that shaped America’s political, constitutional, social and economic landscape.

**WHAT YOUR LAND OFFERS**

Every parcel of land is unique. Many properties in Jefferson County have natural resources or special features that are worth protecting. A working farm may have prime soils, wildlife habitat and abundant springs. A tree-lined creek may support native trout or provide clean drinking water for people downstream. A rolling pasture for grazing cattle may once have been a battleground. Often a single property contains several different resource values that can qualify for conservation.

No one knows a property like its owner. Understanding your land and knowing your wishes for its future will help you decide the steps to take to meet your needs and your goals.
In local lore, Confederate soldiers used this farm lane off Trough Road to get water from Rattlesnake Run during the Battle of Shepherdstown.
At the time of the Civil War, valuable weaponry was manufactured in the national armory at Harpers Ferry and crucial rail lines crossed Jefferson County (then part of Virginia) linking the East Coast with the Midwest. Armies needed to cross Jefferson County to reach other parts of the region. In addition, the county was part of the Shenandoah Valley known as the “Granary of Virginia.” This rich, well-watered land was among the most productive in the nation, and its agricultural wealth spurred the growth of related businesses and industry. The abundant crops and materials produced in the area supported the war effort for the Confederate troops, causing Northern troops to wage a campaign to destroy these sources of sustenance. Appendix II contains an overview of the fighting in Jefferson County year by year during the Civil War and accounts of each of the five battles.
Congressionally Recognized Battlefields in Jefferson County and Current Preservation Status

The five congressionally recognized Civil War battlefields in Jefferson County are Harpers Ferry, (WV010) Shepherdstown (WV016), Battle of Williamsport, (MD004), Summit Point (WV014), and Smithfield Crossing (Middleway) (WV015).1 The map on page 19 shows the boundaries of the Core Areas and their surrounding Battlefield Boundaries as well as the advances and withdrawals and/or retreats—all according to the National Park Service's American Battlefield Protection Program. Below are brief descriptions of each of the battles, what has been protected, and what remains to be protected.2

Battle of Harpers Ferry (September 1862)

Early in 1862, Union troops established a garrison at Harpers Ferry, where an estimated 20,000 muskets and rifles were stored, along with parts and, notably, the machines to make these weapons. On September 13, 1862, General Thomas “Stonewall” Jackson’s Confederate forces surrounded Harpers Ferry. They bombarded it with artillery from Loudoun and Maryland Heights on September 14. Union forces surrendered on September 15, after which Jackson marched the 15 miles northwest to Antietam, arriving in time to affect the outcome of the battle there. Most of the Harpers Ferry battlefield is now contained in the 4,000-acre Harpers Ferry National Historical Park. The park includes both Loudoun and Maryland Heights, in Virginia and Maryland, respectively, and also the North and South Schoolhouse Ridge battle areas west of Harpers Ferry. ABPP maps show additional areas that could be protected, mainly along the Shenandoah River downstream from Millville. Also, the route from Harpers Ferry to the Antietam Battlefield follows Bakerton Road and Engle Molers Road to Trough Road and the Potomac River. This route was part of the approach to the Battle of Antietam making properties alongside possibly eligible for conservation easements.

Battle of Shepherdstown (September 1862)

After the Battle of Antietam on September 17, Confederate General Robert E. Lee withdrew his forces across the Potomac River at Pack Horse Ford (also called Boteler’s Ford), at the intersection of River and Trough roads, located east of present-day Shepherdstown.

The Union forces pursued the Confederate troops on September 19 and 20, 1862, pushing them off of the high ground on the south side of the Potomac. Confederate General A.P. Hill then counter-attacked, forcing Union troops back across the Potomac. More than a third of the 800 soldiers in the 118th Pennsylvania Regiment were killed in the fight. This rearguard action discouraged both further Federal pursuit and another Confederate 1862 invasion of the North.

The Jefferson County Historic Landmarks Commission has acquired several key parcels, totaling 25 acres, on the Potomac at Pack Horse Ford, with funds from the Civil War Trust, the Shepherdstown Battlefield Preservation Association, the Save Historic Antietam Foundation and the ABPP. The Land Trust of the Eastern Panhandle and the Jefferson County Farmland Protection Board (JCFPB) hold conservation easements funded by ABPP and the JCFPB, on two privately owned Core Area battlefield parcels, totaling 59 acres, inland from and adjacent to those 25 acres. The landowners continue to farm the land but cannot build additional buildings.

ABPP maps show about 950 acres in the Core Area of the Shepherdstown Battlefield that could be eligible for protection as well as some in the larger Battlefield Boundary.

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1 The Civil War Sites Advisory Commission assigns a unique reference number to each battlefield site. The two letters at the beginning of the number signify the state where the battle occurred. The three digits are the unique number for the site within that state.

2 Other clashes, often labeled “skirmishes,” occurred in the county from 1862–64. These areas do not qualify for ABPP easement funding, but if they are farmland, the Jefferson County Farmland Protection Board may consider them for easement funding.
Looking east toward Flowing Springs Road from Elmwood, a Federal-style house near Shepherdstown, built in 1797 by Edward Lucas III. During the Civil War the house was used as a field hospital. The property remains a working farm, protected by the Jefferson County Farmland Protection Program.
In a separate effort in 2014, the National Park Service’s Special Resource Study recommended a boundary adjustment of Antietam National Battlefield to include a 510-acre area in the Core Area of the Shepherdstown Battlefield. If the U.S. Congress approves the designation, the Park Service would only be allowed to buy land in this area from willing landowners. Property outside the designated park area would still be eligible for funding for conservation easements and fee simple purchase through the ABPP grant program.

**Battle of Williamsport (July 1863)**

After the Battle of Gettysburg (July 1–3, 1863), General Robert E. Lee’s Army of Northern Virginia began to retreat back to Virginia. After sporadic attacks on the retreating columns and a sharp engagement at Williamsport, Maryland on July 14, 1863, both sides crossed the Potomac at various points into Virginia (present-day West Virginia.) Lee positioned two cavalry brigades near Shepherdstown to guard the crossings at Pack Horse and Shepherd’s fords as the main body of his army moved southward. On July 16 Federal Cavalry, having crossed the Potomac River two days earlier at Harpers Ferry, pushed Confederate pickets back through Shepherdstown along modern-day Route 230. The Federal advance then moved toward Kearneysville on modern-day Route 480, but was met just east of the small village by the main detachment of Confederate Cavalry under Fitzhugh Lee and John Chambliss. The Confederate counter attack pushed the Federals back toward Shepherdstown.

The contest would take place in the fields on either side of and along Route 480 with final action taking place near Butler’s Woods (located between modern day Route 480 and Morgan Grove Road) during the night of the 16th. Early the next morning the Federal cavalry, having not received any reinforcements, withdrew, rejoining the main body of the Union Army at Harpers Ferry. The viewshed within the Battlefield Boundary along Route 480 retains much of its historical rural character, despite some recent residential development. Presently, no parcels involved in these actions have been protected.

**Battle of Summit Point (August 1864)**

Ordered to destroy the Confederate force defending the Shenandoah Valley, Union General Philip Sheridan positioned his troops in a wide arc west and south of Charles Town. On August 21, Confederate General Jubal Early marched along what is now Rt. 51 toward Charles Town. Separately,
Confederate General Richard Anderson led a Confederate column from Winchester. Anderson’s troops clashed with Union forces near Summit Point, but he withdrew rather than chase the Union forces toward Charles Town. Meanwhile, Early swept over several grand estates but met strong resistance from Federal troops along that arc closer to Charles Town—partly on the Claymont estate, built in 1840 by Bushrod Corbin Washington, grandnephew of President George Washington. Ultimately, hearing nothing from Anderson, Early withdrew.

Two important parcels involved in this action are protected: 219 acres around the Harewood estate on Rt. 51 (another Washington family property) and 264 acres around the Claymont estate, lying between Huyett Road and Summit Point Road. The Harewood easement, protected in 2007, is held by the LTEP and the JCFPB. It was funded by the ABPP, NRCS, the JCFPB and The Nature Conservancy. The Claymont easement, protected in 2012, was funded by the ABPP and is held by the LTEP and the JCFPB. In both cases, the landowners donated a significant portion of the value of the easement.

Many acres remain unprotected in the Core Area or Battlefield Boundary of this clash, particularly along Route 51 and Huyett Road, and in Summit Point itself.

**Battle of Smithfield Crossing (Middleway) (August 1864)**

Fighting resumed August 28, as Federal cavalry drove Confederate forces around Leetown back to Smithfield (now called Middleway), where a covered bridge offered one of the few all-weather
crossings over the Opequon Creek. Facing an entire Federal cavalry division, the Confederate troops retreated across the Opequon, only to return the next day with two divisions and artillery on the heights across the Opequon. Union forces withdrew east along Middleway Pike to the Childs Road ridge, where they were joined by an infantry division. Confederate forces stopped their advance and fell back to bases near Bunker Hill, leaving the bridge under Union control.

Only one easement, covering 73 acres on Middleway Pike east of Middleway, protects any portion of the Smithfield Crossing Battlefield. It was protected in 2011 funded by the ABPP and the JCFPB. The easement is held by the JCFPB and the LTEP. Core Areas of the battlefield lie on both sides of the Opequon centered on Middleway, and along Leetown Road, including in Leetown itself. The Battlefield Boundary includes a larger area along Middleway Pike and Leetown Road.

The Threat to Jefferson County Battlefields

Although the county’s strong agricultural economy allows battlefields and the farmland areas that they contain to remain relatively intact, it cannot be expected that agricultural land use alone will be enough to protect these hallowed grounds. The conversion of farmland to other uses continues to alter the rural landscape. Between 2007 and 2012, the period of the last agricultural census, land in farms decreased by seven percent, or 5,126 acres.³

Many parts of Jefferson County today would still be largely recognizable to the men and women of earlier centuries who made history here. As urban sprawl continues, however, it becomes less and less likely that those same men and women from 150 years ago, visiting the county 25 years from now, would see a rural landscape that is even remotely familiar.

³ USDA NASS, 2012 Census of Agriculture, Ag Census Web Maps. Available at: www.agcensus.usda.gov/Publications/2012/Online_Resources/Ag_Census_Web_Maps/Overview/
Jefferson County is justly famous for its rural historical character, natural landscapes and strong agricultural foundation. Conservation offers new options for the landowners who care for the lands that contribute to this unique quality of life. The following section describes the primary organizations that help landowners protect their land. Appendix IV (“Conservation Organizations Serving Jefferson County West Virginia”) lists additional organizations and resources for information and technical assistance.

The organizations described below specialize in particular aspects of land conservation but also work together to achieve mutual goals.

**CONSERVATION RESOURCES FOR RURAL LANDOWNERS**

**Local Government Organizations**

**Jefferson County Farmland Protection Board.** Authorized under state law in 2000 and established by the Jefferson County Commission in 2002, the Jefferson County Farmland Protection Board (JCFPB) protects farmland throughout the County by purchasing conservation easements from willing sellers and accepting donations of conservation easements. The Board collaborates with partner organizations to provide effective stewardship of the easements to ensure the long-term protection of farmland.

Funding for the Board was established under a state law passed in 2002 that allows West Virginia counties to levy a transfer tax on real estate transactions to fund the purchase of development rights from willing landowners. Jefferson County’s easement funding is generated through the local real estate transfer tax and private donations.

The County’s revenue is matched by grant funding from the United States Department of Agriculture Natural Resources Conservation Service (USDA/NRCS), the National Park Service/American Battlefield Protection Program, private sources, and donations of easement value.

**Jefferson County Historic Landmarks Commission (JCHLC).** The Jefferson County Historic Landmarks Commission is a branch of the Jefferson County government and operates under authority granted to landmarks commissions by the West Virginia legislature. The Landmarks Commission focuses on heritage education and tourism, historic preservation, and historic resource development. JCHLC’s primary mission is to preserve historic sites and structures within the unincorporated areas of Jefferson County and to educate people about the county’s heritage.
The Jefferson County Farmland Protection Board and the Jefferson County Historic Landmarks Commission are two county governmental organizations that are eligible to accept federal funds from the ABPP for land protection and public education. Both organizations collaborate with the Land Trust of the Eastern Panhandle to accomplish the work of battlefield protection.

**Private Non-Profit Organizations**

**Land Trust of the Eastern Panhandle (LTEP).** The LTEP is a private, non-profit organization incorporated in West Virginia in 1995. Its mission is to encourage land owners in the tri-county area of the Eastern Panhandle of West Virginia to preserve the rural landscapes, scenic beauty, and historical character and to encourage wise stewardship of the region’s natural resources. It holds and co-holds conservation easements on agricultural, non-agricultural and forest land and it partners with other conservation and preservation organizations. The LTEP actively promotes battlefield easements funded by the ABPP. It is the lead holder of these easements in Jefferson County, with the JCFPB serving as the fiscal agent.

**Shepherdstown Battlefield Preservation Association.** The association works locally to raise awareness and support for the protection of the 1862 Battle of Shepherdstown. Efforts by the group resulted in a National Park Service Special Resource Study that recommended inclusion of the Shepherdstown Battlefield in the Antietam National Battlefield in Shepherdstown, West Virginia.

**Civil War Trust.** Based in Washington DC and Hagerstown, Maryland, the Civil War Trust supports battlefield preservation efforts with funds to purchase key battlefield properties, including lands that may be added to the existing Harpers Ferry National Historical Park or the future Shepherdstown Battlefield Park. The Trust has partnered with the Landmarks Commission and the Land Trust of the Eastern Panhandle to purchase land in fee simple and to place easements on battlefield land at Shepherdstown through ABPP’s Battlefield Land Acquisition Grant program.

**Federal Organizations**

**National Park Service’s American Battlefield Protection Program (ABPP).** The ABPP provides grant funding for the protection of land within the County’s five Congressionally recognized Civil War battlefields through its Battlefield Land Acquisition Grant program. The ABPP also assists groups in Jefferson County through its Battlefield Preservation Planning Grant Program and offers technical assistance in their efforts to raise awareness about the voluntary land protection opportunities available to landowners.

**United States Department of Agriculture Natural Resources Conservation Service (NRCS)** provides American farmers with financial and technical assistance to voluntarily make conservation improvements to their land, and provides incentives to farmers, ranchers and forest landowners wanting to put wetlands, agricultural land, grasslands and forests under long-term easements.
Conservation Easements

In recent years, conservation easements have become an important method for protecting privately-owned land in the United States, covering over 47 million acres nationally. In Jefferson County, the Jefferson County Farmland Protection Board, the Jefferson County Historic Landmarks Commission and the Land Trust of the Eastern Panhandle, as of 2015, have protected 4,300 acres, including 863 battlefield acres in the Congressionally recognized Shepherdstown, Summit Point and Smithfield Crossing (Middleway) Battlefields.

WHAT IS A CONSERVATION EASEMENT?

A conservation easement is a voluntary legal agreement between a landowner and a conservation organization that places permanent restrictions on the landowner’s property to preserve certain qualities and uses of the land. The goal of an easement is to remove development pressures on the land in order to keep the land available for uses that do not harm the protected features. Most conservation easements restrict uses in order to protect natural, scenic or historic features, while allowing traditional uses, such as farming and forestry. In the case of land in a Civil War battlefield, it has the added advantage of preserving for the public a piece of American history.

The landowner enters into an agreement with an entity qualified to hold the conservation easement, such as a local land trust or a farmland protection board or a state or national organizations. When granting a conservation easement to an organization, the landowner retains title to the land and continues to use the land, subject to the agreed upon restrictions.

The conservation values of the property and the restrictions created to preserve those values, along with the rights reserved by the landowner, are detailed in a legal document known as a Deed of Conservation Easement. This deed is filed with the local county land records. As an easement is a permanent restriction on the property, it remains in effect when the land changes ownership. The organization holding the easement is legally bound to ensure that the terms of the easement are upheld.

Easements can vary greatly in their design and in the financial results for the landowners. Several examples of local conservation easements on page 30 and in Appendix I “Sample Form for Deed of Conservation Easement” illustrate the outcomes for landowners.
CONSERVATION EASEMENTS: FREQUENTLY ASKED QUESTIONS

What are the size requirements for a property?
The Farmland Protection Board will not usually consider properties less than 20 acres, or properties that do not have qualifying agricultural soils. However, consideration may be given to a small property if it has high quality soils and abuts an already protected farm, if the owner offers a donation of the easement, or if it falls within a battlefield. The Landmarks Commission and the Land Trust of the Eastern Panhandle will consider any property as long as it meets their criteria for protection. LTEP will consider properties somewhat under 20 acres under special circumstances.

Does granting an easement require public access to my property? A conservation easement does not automatically grant public access to a property. The land remains private property and is protected from trespass just like any other private property. Only if the easement’s conservation purpose is to preserve land for public outdoor recreation or education is public access required. In the case of ABPP Battlefield Land Acquisition Grants, public access can be as minimal as the property being viewable from a public right-of-way.

Can I build on an easement? Placing an easement on land does not mean it cannot be developed at all. The terms of the easement must be strong enough to protect the particular conservation values of the property, but can allow very limited development as long as it is compatible with the conservation protections. The landowner and the easement holder negotiate the specific terms of the easement. Typically, the restrictions prohibit future development or commercial or industrial use. A common example is the reservation of an area for a future barn or residence.

Can I leave land out of an easement? When a landowner wishes to protect a property and also set aside a portion of that property outside of the easement, the details should be worked out in advance before negotiating an easement. This allows the owner to build a structure, or carry out other activities without being hindered by restrictions. If a parcel is to be set aside for an heir, it should be subdivided in advance, to enable the future owner to build, or take out a loan. Land that is set aside outside the easement will not be eligible for easement funding.

Unlike a simple deed restriction, a conservation easement ensures permanent monitoring and enforcement by a third party with the ability to defend the easement, such as a land trust and/or a farmland protection board. The easement holder will defend all the restrictions created by the landowner with future owners of the property.

How long does a conservation easement last? Because a conservation easement protects the land in perpetuity, all future landowners are bound by the restrictions.

Who owns the land? The landowner who places the easement on their property continues to own the property just as they did before the easement was recorded, subject to the restrictions in the easement. The land can be sold, rented, bequeathed, and transferred, as it was before. The conservation easement is recorded in the courthouse with the property deed and passed on to future owners of the land.

How are the deed restrictions documented? The condition and conservation values of the property at the time the easement is established is recorded in a Baseline Documentation Report, complete with a copy of the recorded deed, photos, and latitude and longitude coordinates. The report is used to monitor and enforce the easement and is signed by landowner and holder at the time the easement is legally finalized. The landowner has a copy of this report, and the land trust or farmland protection board insures that future landowners receive copies as well.
Who is responsible for monitoring activities on conservation easements? The organization that holds the easement—in the County’s case, a land trust or farmland protection board—is responsible for enforcing the restrictions described in the deed of easement and in the baseline documentation.

How is the easement monitored? The easement holder visits the property once a year to confirm that the property’s conservation values remain in the condition documented in the baseline report.

What happens if the terms of the easement are not followed? If the easement holder identifies a condition or change to the property that is harming the protected values, the landowner will be informed and given the opportunity to correct the problem in a reasonable amount of time. If the problem has not been corrected, the easement holder may take legal action against the landowner. If an infraction is severe, for example, the construction of a building on protected land, where new construction is not allowed, the landowner may face legal action forcing removal of the structure and restoration of the land at the landowner’s expense.

Is there help to correct an easement infraction? Part of the easement holder’s responsibility is to communicate with landowners about the conservation values on their land, and if needed, provide information to help them achieve their conservation goals. This may take the form of informing landowners about resources for technical assistance for restoration of conservation values or to maintain or improve the conservation values on their property.

What about historic structures? The ABPP easement can be used to protect historic structures from demolition or incompatible future alterations, for example. If a property contains an historic structure, an ABPP easement can contain language that guides future activities on or within the structure as per the Secretary of Interior’s Standards and Guidelines. Historic structures can also be protected by preservation easements, which typically are managed by a State Historic Preservation Office which can help monitor and provide approvals on activities related to historic preservation.

LANDOWNER BENEFITS

Permanent Protection: A conservation easement assures landowners that their property will remain undeveloped as they have directed. After the original landowner ceases to own the property, the easement holder will be there to make sure the owner’s wishes are upheld.

Continued Private Ownership: Land protected by a conservation easement is still private property. An easement usually does not change the way private land is used. Most owners design their easements to make sure that future owners will continue to use the land in ways that follow the intended protections.

Tailored for the Property and the Landowner: An easement is designed to meet the landowner’s intentions and to fit the property it protects. An easement for a small property may be quite different from one created for a large working farm. Some owners choose to protect their entire property, while others plan to keep out parcels from a property for children, or for income.

Financial Incentives: Conservation easements can provide significant financial benefits, including funds to improve the property or to meet other financial goals. Easements can provide tax advantages that can make it financially possible to keep a farm in the family.

Permanent land conservation can be a complicated process and should be undertaken very carefully. Landowners should make decisions only with full knowledge of the consequences of the land protections they are considering, and with the advice of their own legal and financial counselors. Conservation professionals work to make sure that all those involved understand how an easement works, and remain available to respond to ongoing questions.
“Estate planning is not about death and taxes but is about leaving your legacy for the living. Protecting family land is part of an effective plan to leave your land intact for generations to come.”

—Farmer and Battlefield Easement Donor
Financial Incentives for Conservation Easements

ESTABLISHING THE VALUE OF A CONSERVATION EASEMENT

The value of an easement is the difference between the fair market value (FMV) of the land before the easement is created (the land’s “highest and best use”) and the value of the land after the easement restrictions have been put in place.

Easement value is created most often by giving up the residential development rights associated with the land. Landowners who want payment or wish federal tax benefits for a donation of the value must obtain a “qualified appraisal” to determine this value. Easements vary greatly in value. The following simple example illustrates the reduction of a property value when the development rights are retired.

Sample Easement Value Calculation

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>FMV before easement</td>
<td>$1,200,000</td>
</tr>
<tr>
<td>FMV after easement</td>
<td>~$800,000</td>
</tr>
<tr>
<td>Easement Value</td>
<td>$ 400,000</td>
</tr>
</tbody>
</table>

WHAT IS A QUALIFIED APPRAISAL?

West Virginia’s County Farmland Protection Boards and the federal funding partners (NRCS and ABPP) require appraisals performed by a certified general appraiser in accordance with the Uniform Appraisal Standards for Federal Land Acquisition (UASFLA or “Yellow Book”). A qualifying appraisal cannot be more than 12 months old at the time of closing.

PURCHASE OF CONSERVATION EASEMENTS

Landowners can apply to be paid to protect their land, i.e., for the value of the conservation easement placed on it. Funding for the purchase of conservation easements is available from federal, state and local sources, through competitive application programs administered locally by land trusts and/or the farmland protection board.

West Virginia’s Voluntary Farmland Protection Act (Code §8A-12-1 et seq) authorized the creation of county farmland protection boards and programs and the creation of the West Virginia Agricultural
Land Protection Authority. Counties are empowered to fund their farmland protection programs through a real estate transfer tax. In Jefferson County, the rate is $2.20 per thousand of the real estate transfer value. The JCFPB is also authorized to accept federal funds from the NRCS and the ABPP.

A county farmland protection board can pay for all or part of the easement value, subject to availability of funds. Applications are scored according to criteria established by the West Virginia Voluntary Farmland Protection Act. The boards might obtain matching funds from the NRCS. If the property is in a Congressionally recognized Civil War, Revolutionary War or War of 1812 battlefield site, ABPP may pay for half the value of the easement, with the other half matched either by non-federal funds from a board and/or by a donation by the landowner of the balance of the easement value. The value of the donation can be used for a federal tax deduction. Landowners should consult with their legal counsel about receiving a federal tax deduction from the donation value.

**TAX BENEFITS OF PERMANENT LAND CONSERVATION**

The public benefits greatly from the conservation of farmland, waterways, forests and other significant historic and natural resources. Because of this strong public purpose, state and federal tax codes offer incentives for landowners who donate conservation easements to qualified private land trusts and public agencies.

**Easement Tax Benefits**

- Federal Charitable Gift Deduction
- Estate Tax Benefits
- Low Property Taxes

**Federal Charitable Gift Deduction**

The value of the conservation easement can possibly be used as a charitable donation and all or part of the value may be deducted from your taxable income.

Under the current IRS code, if the property has been owned for more than one year, the amount of the donation allowed as a percentage of the donor’s adjusted gross income (AGI) is 50 percent for most donors, and 100 percent for qualified farmers. Any excess value that remains can be carried forward for up to 15 years.

**Requirements To Qualify for Federal Tax Benefits**

Under the Internal Revenue Code §170(h), a conservation easement must be in perpetuity, provide a public benefit, and be granted exclusively for conservation purposes.

- Qualified conservation purposes identified by the tax law fall into four categories:
  - the preservation of land areas for outdoor recreation by, or the education of, the general public;
  - the protection of a significant, relatively natural habitat for fish, wildlife, or plants;
  - the preservation of certain open space (including farmland and forest land) pursuant to a “clearly delineated” governmental conservation policy, or for scenic purposes, resulting in a significant public benefit; or
  - the preservation of a historically important land area or certified historic structure.

Important: Tax policy changes frequently. Consult your tax advisor for the most recent information.

Federal Funds from ABPP and NRCS must be matched by non-federal sources, which can include a local or state match such as funds from a farmland protection board, or a landowner’s donation of easement value, also known as a bargain sale. Federal funds cannot be matched by other federal funding sources.
Documenting a Conservation Easement Donation

If the landowner donates all or part of the value of the property, and wishes to take a tax deduction for that value, the IRS requires the following documentation to be filed with the tax return:

- An appraisal to IRS standards. The appraisal can be conducted within 60 days before the date of the easement, or it can be done afterwards, up to the date of the filing of the tax return, as long as the appraisal specifies it is valuing the property as of the date of the easement. Make sure the appraiser knows this is an IRS appraisal and that the appraiser completes and signs the IRS forms. The easement holder also must approve the IRS appraisal and sign the IRS forms, and provide the donor with a letter acknowledging the donation.
- A letter from the easement holder to the donor acknowledging the donation, known as a “contemporaneous written acknowledgement substantiation letter.”
- Supplemental Statement that describes the property and the conservation values that have been protected correctly and completely and in detail.

TAX DEDUCTION EXAMPLE

A landowner earning more than 50 percent of her income from farming donates an easement valued at $200,000, and has an adjusted gross income (AGI) of $50,000/year. The tax incentive allows her to deduct 100 percent of her AGI ($50,000) for the year of the donation and each of fifteen additional years. In four years, she could deduct $200,000. A non-farmer can deduct 50 percent of AGI ($25,000) each year, and realize a $200,000 deduction in eight years.

Estate Tax Benefits

For landowners with large estates, donated conservation easements may provide financial relief to families who wish to keep their land intact. The current (2016) estate value threshold for estate tax is $5.45 million. High estate taxes and high development value of land may force heirs to subdivide or sell land in order to pay estate taxes. A conservation easement may help with this problem in three ways:

1. Reduction in Value of Estate. The deceased’s estate will be reduced by the value of the donated conservation easement. As a result, taxes will be lower because heirs will only have to pay estate taxes on preserved land values.
2. Estate Exclusion. Section 2031(c) of the tax code provides additional estate tax incentives for properties subject to a donated conservation easement. When property has a qualified conservation easement, up to an additional 40 percent of the value of land (subject to a $500,000 cap) may be excluded from the estate when the landowner dies. This exclusion is in addition to the reduction in land value created by the easement.
3. After Death Easement. Heirs may also receive these benefits (but not the income tax deduction) by electing to donate a conservation easement after the landowner’s death and prior to filing the estate return (called a “post mortem” election).

Landowners should always consult a qualified attorney and financial advisor when making decisions about their own situation.

Low Property Taxes

West Virginia Code specifies that land under a conservation easement is taxed as agricultural land. If the property is not already receiving farm-use valuation, this can result in lower property taxes.
Gifts of Land

The Jefferson County Farmland Protection Board may accept an outright donation of land from a property owner, provided that it meets the Board’s criteria for agricultural protection. JCFPB may lease the acquired property for agricultural uses or may restrict the property to agricultural uses and sell the property at fair market value for use as a farm. Any property acquired by the JCFPB and then sold shall be sold subject to a conservation easement. If the property is leased, the lessee shall pay to the Jefferson County Commission, in addition to rent, an annual fee set by the county commission. The amount of this annual fee shall be commensurate with the amount of property taxes which would be assessed in accordance with the provisions of this code upon the property if the property were held by a private landowner.

Any profits resulting from the sale of property restricted to agricultural uses shall be deposited in the JCFPB’s farmland protection fund.

The Jefferson County Historic Landmarks Commission (JCHLC) may accept the donation of land for either preservation purposes or as a gift to further the mission of the Commission. If property is donated for preservation purposes it must meet one of the following criteria:

- Be a structure or site listed on the JCHLC’s inventory of Jefferson County Historic Resources and be Category I, II, III of importance, or be in a recognized National Register Historic District
- Be within the Core Areas or Battlefield Boundaries, as defined by the ABPP, of one of the five Civil War battlefields in Jefferson County.

Once acquired, the property may be held and managed by the JCHLC or sold. Property acquired by the JCHLC with a high preservation importance and then sold shall be sold subject to a conservation and/or preservation easement. If the property is leased, the lessee shall pay rent to the JCHLC. In addition to rent, an annual fee is required. The annual fee shall be commensurate with the amount of the property taxes that would be assessed upon the property if a private landowner held the property. Revenues from the sale of property are restricted to historic preservation uses.

EXAMPLES OF OPTIONS FOR PROTECTING BATTLEFIELD LAND

Conservation easements offer landowners great flexibility. An easement can apply to an entire property, or a portion of it. A landowner may choose to take payment for the entire value of an easement, to do a “bargain sale,” or to take the full value as a tax deduction. The examples of four battlefield easements below illustrate the different approaches landowners have taken.

A landowner with 230 acres in a Battlefield Boundary of one of the battles, as shown on ABPP maps, found the entire property was eligible for ABPP funding. Ultimately, the landowner decided to put only 59 acres into a conservation easement. The appraised value for a conservation easement on the 59 acres was $446,550. The landowner received $132,495 from the ABPP and used the balance as a federal tax deduction. When the landowner died, the entire property, including the 59 acres under easement passed to the landowner’s heir. It remains a farm.

Another landowner had 37 acres in the Core Area of one of the battlefields, land that was leased out to pasture cattle. The land qualified for ABPP funding and scored high enough as farmland under Farmland Protection Board criteria to be eligible also for farmland protection funding. An appraisal established that a conservation easement on the 37 acres was worth $238,800. The landowner received full value for the easement—half from the ABPP and half from the FPB. The landowner later sold the property—still under easement. The new owner raises horses on the farm and built a new barn.

A farmer decided to place a conservation easement on 73 of his acres that lay within a Battlefield
Boundary. The easement appraised at a little over $5,000 per acre, or $371,000 for the 73 acres. The landowner asked for only $35,000 from the JCFPB, which together with the money from the ABPP gave the landowner a total of just over $220,000, plus eligibility for a federal tax deduction for the balance of the value of the easement.

A couple owned 80.4 acres, of which about 25 was in a Battlefield Boundary. They placed their entire property under conservation easement, receiving a potential federal tax deduction of $402,000, or $5,000 per acre. They donated the entire easement, and received no money from the JCFPB or the ABPP.

Note: The per acre value of these easements varied depending on the location of the property and the year in which the easement was done. In each case, the appraisal had to meet Federal standards for IRS and ABPP purposes.

“The conservation easement I put on my farm ensures the protection of land that has been in my family for generations. It also makes financial sense. By donating part of the easement value, I received generous tax benefits I can use for 10 years. The money I received from the sale of my development rights is in a trust fund that will support the farm for years to come. I no longer have to worry about the next generation feeling forced to sell the land because they can’t afford to pay for taxes and upkeep. I have not regretted for one minute my decision to put my farm into the battlefield protection program.”

—Battlefield Landowner
APPENDIX I
Example Deed of Conservation Easement

PARTS OF A CONSERVATION EASEMENT

A conservation easement is described in a document called a “Deed of Conservation Easement” that includes several parts:

Identification of the Parties: The “Grantor” is the landowner, and the “Grantee” is the easement holder.

Paragraphs that start with “Whereas” and “Therefore”: These parts include sections of state and local code (such as the public purpose of protecting open space and farmland), the intention of the parties to preserve the property and sources of funding, if a grant is used to purchase the easement or purchase the land, with the easement donated.

Restrictions: Limitations on the use of a property that the current and future owners agree to obey and that the Grantee has the right and duty to enforce. Restrictions vary according to the property and resources being protected. Typical restrictions can include limits of allowed impervious surfaces, management requirements such as an Agricultural Land Easement Plan or Forest Management Plan, or defining a parcel for buildings.

Other items: Procedures for enforcement of the easement and for notification when the land is sold, witnesses and signatures.

The following is an example of language for an easement funded by the ABPP. Since the ABPP generally does not permit new construction—even additions to existing structures—within the easement area, landowners normally exclude the area containing their house and any agricultural structures from the easement. The State Historic Preservation Office (SHPO) may be included in the easement as a technical reviewer for certain proposed preservation activities or other activities that could jeopardize the values and resources of the battlefield, such as ground disturbances or visual effects. The NRCS has different requirements but does allow for a residential area and farmstead area within certain limits. The following language can change depending on requirements of the ABPP, JCFPB and even the IRS at the time of the easement.
SAMPLE FORM FOR DEED OF CONSERVATION EASEMENT

DEED OF CONSERVATION EASEMENT

This DEED OF CONSERVATION EASEMENT ("Conservation Easement") made this day of , 20__, by and between__________, of __________, WV, the party of the first part, hereinafter referred to as the "Grantor", and THE JEFFERSON COUNTY FARMLAND PROTECTION BOARD ("FPB") having its mailing address at P. O. Box 731, Charles Town, WV 25414-0731, and THE LAND TRUST OF THE EASTERN PANHANDLE, INC., a West Virginia corporation ("Land Trust") having its mailing address at P. O. Box 2240, Martinsburg, WV 25402, parties of the second part hereinafter collectively referred to as the "Grantees." For purposes of this agreement, references to the rights, duties and obligations of the Grantor apply equally and in full force to any successors in interest to the Grantors (such successors and the Grantors hereinafter sometimes collectively referred to as "Property Owner").

WITNESSETH:

WHEREAS, the Grantor, is the owner in fee simple of certain parcels of real property which have agricultural, historic, scenic, natural, open-space and aesthetic values in their present state which have not been subject to extensive development or exploitation, which property is located in ________ District, Jefferson County, West Virginia, and consists of approximately ___ acres more particularly described in Exhibit A attached hereto and incorporated herein by this reference, hereinafter called the "Protected Property"; and

WHEREAS, The Grantees are “Holders” as defined under West Virginia Code §20-12-1 et. seq. empowered to hold perpetual conservation and preservation easements in Jefferson County, West Virginia; and

WHEREAS, the Land Trust is a non-profit corporation incorporated under the laws of the State of West Virginia as a tax exempt public charity under Section 501(c)(3) and 509(a)(2) of the Internal Revenue Code of 1986, as amended (or any successor section) and the regulations promulgated thereunder, ("Code") qualified under Section 170(h) of the 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; and

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

WHEREAS, the Protected Property, which consists of unimproved farmland and woods, provides “open space (including farmland and/or forestland)” as that phrase is used in P. L. 96-541, 26 USC § 170(h)(4)(A)(ii), that benefit the general public, specifically through the preservation of prime agricultural land, maintenance of cropland, and pastureland and the practice of soil and water conservation measures; and

WHEREAS, the Protected Property is an “historically important area” as that phrase is used in 26 USC § 270(h)(4)(A)(iv), specifically being land that lies approximately half in the core area and half in the Battlefield Boundary of the Battle of ______________ as determined by the Civil War Sites Advisory Commission (the "CWSAC"), which Commission was appointed by Congress and the Secretary of the Interior in 1990 to identify and evaluate the United States’ historically significant battlefield sites; and

WHEREAS the Battle of ___________, which has been given a Priority ________ rating by the CWSAC, occurred on ________ 18__, at the beginning of __________...
WHEREAS, preservation of the Protected Property is pursuant to clearly delineated Federal and local governmental conservation policies and will yield a significant public benefit, specifically permanent protection of nationally significant historic landscape and permanent protection of prime agricultural land; and

WHEREAS, the National Park Service’s American Battlefield Protection Program (“ABPP”) under the authority of the American Battlefield Protection Program Authorization of 2009 (54 U.S.C. 308103), awarded a grant from the Land and Water Conservation Fund to the Jefferson County Farmland Protection Board to acquire this easement and, as such, is subject to paragraph 6(f)(3) of the Land and Water Conservation Fund Act (16USC460L-8(f)(3):

WHEREAS, in accordance with the American Battlefield Protection Authorization and with paragraph 6(f)(3) of the Land and Water Conservation Fund Act (“LWCF”), lands and interests in land acquired with the Land and Water Conservation Fund assistance can be converted to a use other than conservation only upon the written permission of the Secretary of the Interior, acting through the ABPP, and only upon the substitution of other land of equal market value and usefulness for conservation/recreation purposes to be perpetually protected for conservation purposes;

WHEREAS, the specific conservation values of the Protected Property are more particularly documented in an Easement Documentation Report, prepared by the Grantees and signed and acknowledged by the Grantor on this date, establishing the baseline condition of the Protected Property at the time of this grant and including reports, maps, photographs, and other documentation, and to be used for the purpose of monitoring compliance with the terms thereof; and

WHEREAS, the Grantor and Grantees have the exclusive common purpose of conserving the above-described conservation values of the Protected Property by means of placing restrictions on the use which may be made of the Protected Property in perpetuity; and

WHEREAS, the State of West Virginia has authorized the creation of Conservation Easements pursuant to the West Virginia Conservation and Preservation Easements Act, West Virginia Code §20-12-1 et seq., and the West Virginia Voluntary Farmland Protection Act, West Virginia Code §8A-12-1 et seq. (2004), and Grantor and Grantees wish to avail themselves of the provisions of that law;

NOW THEREFORE, the Grantor, for and in consideration of the facts above recited and of the mutual covenants, terms, conditions and restrictions herein contained does hereby give, grant, bargain, sell and convey unto the Grantees a Conservation Easement in perpetuity over the Protected Property of the nature and character and to the extent hereinafter set forth, and the Grantees accept the said Conservation Easement.

1. **Purpose.** It is the purpose of this Conservation Easement to assure that the Protected Property will be retained in perpetuity predominately in its present natural, scenic, open space condition to protect the land involved in the Battle of Smithfield Crossing; and to prevent any use of the Protected Property that will impair or interfere with the conservation values or interests of the Protected Property described above, including the prime, unique and other productive soils. Grantor intends that this Conservation Easement will confine the use of the Protected Property to such activities as are consistent with the purpose of this Conservation Easement.

2. **Prohibited Uses.** Any activity on or use of the Protected Property inconsistent with the purpose of this Conservation Easement is prohibited, and any other activity on or use of the Protected Property which is consistent with the purpose of this Conservation Easement but which would result in destruction of other significant conservation interests is also prohibited unless such other activity on or use of the Protected Property is necessary for the protection of the purpose of this Conservation Easement. Any activity on or use of the Protected Property...
that would result in the conversion of the protected Property to a new use without the express permission of the Secretary of the Interior acting through the ABPP is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited except as provided in paragraph 3, below:

2.1 **Structures.** Construction or placement of any building or other permanent structure, whether for residential or agriculture purposes, on the Protected Property is prohibited; except as permitted in paragraph 3.4 below.

2.2 **Mining.** The exploration, development, mining, surface mining or extraction of soil, sand, gravel, mineral, oil, gas or any other substance from the Protected Property is prohibited.

2.3 **Waste.** Dumping or storage of trash, garbage, abandoned vehicles or machines or other material on the Protected Property is prohibited. However, composting of biodegradable material used or produced on the Protected Property to improve gardens, pastures, or cropland is permitted so long as composting and its application is consistent with guidelines of the US Department of Agriculture-NRCS.

2.4 **Surface Water.** There shall be no pollution, alteration, depletion or extraction of surface water, natural water courses, lakes, ponds, wetlands, subsurface water or any other water bodies, nor shall there be activities conducted on the Protected Property, which would be detrimental to water purity, or which could adversely affect natural water level and/or flow in or over the Protected Property.

2.5 **Motorized Vehicles.** The use of motorized vehicles, boats, and aircraft is prohibited, except that motorized vehicles may be used as necessary for agricultural operations on the Protected Property.

2.6 **Commercial Forestry.** There shall be no commercial forestry on the Protected Property. The harvesting of timber, either existing naturally on the Protected Property or grown for commercial purposes, for trade or profit shall be prohibited. The growing of Christmas trees, orchards and nursery stock; or the removal, sale and renewal of such, shall not be deemed to be commercial forestry or harvesting of timber. In addition, ornamental plants and woodland products grown for human consumption are not considered commercial forestry or harvesting of timber. Nothing in this paragraph shall prohibit the right to cut and remove dead trees, to cut emergency fire breaks, to cut and remove storm damaged trees that cannot be saved or that pose a danger to people or vehicles, to cut firewood or fence posts for use of Grantors, or to control invasive, exotic species, such as the tree of heaven. Diseased or insect-infected trees may be removed subject to a written evaluation by a qualified forester and approval of the Grantees. If significant portions of forested land require conversion to open field, such as in the event of a natural disaster or other necessity, Grantor must receive written approval from Grantee indicating that the proposed removal and disposal of timber will not harm or destroy the battlefield’s historic setting, nor any character-defining landscape features, nor any archeologically significant deposits, sites or features within the area to be cleared.

2.7 **Roads and Impervious Surfaces.** No portion of the Protected Property shall be paved or otherwise covered with impervious surfaces. 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, the area covered by permanent or nonpermanent structures, macadam and pavement, gravel and stone driveways and parking areas. The existing gravel driveway to the existing residence that is part of the property but not included in the easement can be maintained by usual means, including grading and addition of new gravel as necessary.

2.8 **Utilities.** Installation, maintenance, repair, replacement, removal or relocation of electric, gas, water and wind power facilities, sewer lines, or other public or private utilities, including telephone or other communications services over or under the Protected Property is prohibited, except as necessary to serve the Protected Property and the existing residence and associated outbuildings, and uses permitted by this Conservation Easement, including the agricultural purposes in accordance with paragraph 3.1 below. Notwithstanding the preceding
sentence, the construction or installation of telecommunications structures, including towers, buildings, antennas, satellite and microwave dishes and any other telecommunications support facilities are prohibited on the Protected Property.

2.9 Signs. Except for “no trespassing” signs, “for sale” signs and signs identifying this Conservation Easement, its funding from the LWCF, and the owner of the Protected Property, all other signs, advertisements and billboards of any nature are prohibited. The permitted signs may not exceed nine (9) square feet each.

2.10 Topography. Ditching, draining, diking, filling, excavating, removal of topsoil or sand, gravel or rock on the Protected Property is prohibited under this Conservation Easement, except when done in accordance with guidelines of the U.S. Department of Agriculture - Natural Resources Conservation Service (NRCS) and the area impacted does not exceed one (1) acre in total and is restored within a reasonable time period. Also, no grading, blasting or earth removal is permitted without prior written approval of the West Virginia Division of Culture and History that it will not diminish or impair the conservation values of the Property.

2.11 Commercial and Industrial Activities. Non-agricultural commercial and industrial activities and structures are prohibited. Agricultural structures allowable under paragraph 3.4 below shall not be considered commercial or industrial structures. In any event, any use of the Protected Property which may be considered to be commercial shall be subordinated to and directly supportive of the use of the Protected Property as a farm for farming purposes.

2.12 Recreation. “More than a de minimus use for commercial recreational activity”, as such phrase is used in Section 203 1 (c)(8)(B) of the Code, is prohibited. Commercial recreational uses shall not include personal recreational uses as defined under paragraph 3.1 below.

2.13 Subdivision. The Protected Property may never be divided, partitioned or subdivided by any present or future owner.

2.14 Transfer of Development Rights. The Protected 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 space 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.

2.15 Protection of Historic Features. Archeologically significant deposits, sites, or features on the Protected Property shall not be intentionally disturbed or excavated except by or under the supervision of a professionally qualified archeologist and provided that plans for such archeological activity have been submitted to, and approved in writing by the West Virginia Division of Culture and History (DCH) or its successor organization prior to any ground disturbing activities. Artifacts and objects of antiquity professionally excavated from archeological deposits, sites, or features on the Protected Property shall be treated and preserved according to the guidelines and standards of the DCH. The Grantor shall take all reasonable precautions to protect archeological deposits, sites, or features on the Protected Property from looting, vandalism, erosion, mutilation, or destruction from any cause. Ground disturbing activity or earth removal may require archeological survey or investigation if, in the opinion of the Grantees, such ground disturbing activity or earth removal may impact archeologically significant deposits, sites, or features on the property. Archeological survey or investigation may be undertaken on the Property only if a scope of work for such survey or investigation is reviewed and approved in writing in advance by the WV DCH and only if said survey or investigation is performed in accordance with the Secretary of the Interior’s Standards for Archeological and Historic Preservation and under the supervision of a professionally qualified archeologist.
meeting or exceeding the Secretary of the Interior’s Standards for Archeology and Historic Preservation. Any such survey or investigation shall be designed to protect, preserve or recover archeologically significant deposits, sites, or features in the area of the proposed ground disturbing activity. Artifacts and objects of antiquity recovered from the Property shall remain in Grantor’s possession. Grantor may choose to donate any or all artifacts and objects of antiquity to Grantees or to another educational or museum organization with WV DCH’s approval.

3. **Grantor’s Reserved Rights.** The Grantor hereby reserves the following rights:

3.1 **Quiet Enjoyment and Agricultural Uses.** The right to undertake or continue any activity or use of the Protected Property not prohibited by this Conservation Easement, and consistent with the purposes of the Conservation Easement. The Property Owner has the right to benefit from all aspects of the quiet enjoyment of the Protected Property not inconsistent with the purposes of the Conservation Easement. The Property Owner has the right to engage in any and all personal recreational uses of the Protected Property, including but not limited to hiking, touring, camping, biking, and hunting, that require no development or disturbance of the land. The Property Owner may engage in any and all agricultural uses of the Protected Property.

(a) These agricultural uses include the production of plants and animals useful to man, including, but not limited to, forage, grain and field crops; pasturage, beef cattle, dairy and dairy products; swine; 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; any secondary agricultural activity, including but not limited to farm mechanics, blacksmithing, riding instructions or related activities; and the processing and storage of the agricultural products produced principally on the Protected Property.

(b) Any temporary structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the Protected Property or other properties managed by the Grantor which do not create an impervious surface shall be considered an agricultural use of the land. No permanent agricultural structures shall be constructed on the Protected Property; however, fences, loafing sheds and watering troughs are permitted.

(c) Activities or businesses undertaken for charitable or educational purposes or to foster agritourism may be conducted on the Protected Property in order to foster rural economic uses while protecting the rural character of the Protected Property. Such activities or businesses must be compatible with and supportive of the rural character and Conservation Values of the Protected Property, and must remain incidental and subordinate to and directly supportive of the use of the Protected Property as a farm for farming purposes.

(d) Non-agricultural commercial and industrial structures and uses are prohibited. Activities or businesses undertaken for charitable or education purposes or to foster agritourism may be undertaken on the Protected Property; no permanent structures are permitted on the Protected Property.

(e) Accommodation of tourists and visitors shall not take place on the Protected Property, except for rural recreational activities such as hayrides, corn mazes, etc.

(f) Accommodation of overnight guests shall not take place on the Protected Property.

(g) Any commercial operation of dune buggies, motorcycles, all terrain vehicles, hang gliders, aircraft (including helicopters and planes and related structures such as helicopter pads and landing strips), jet skis, motorized boats or any other types of mechanized vehicles (other than farm equipment) whether or not considered to foster agritourism shall be prohibited.
Appendix I: Parts of a Conservation Easement

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(h) 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 shall be prohibited.

3.2 Conveyance. The right to sell, give, mortgage, lease, or otherwise convey the Protected Property, provided such conveyance is subject to the terms of this Conservation Easement and written notice, is provided to Grantees in accordance with Paragraph 18.5 below.

3.3 Residential Dwellings and Structures. The Grantor, Grantees and ABPP acknowledge that no residential dwellings or other permanent structures currently exist on the Protected Property.

3.4 Agricultural Structures. The right to construct place and maintain minor (de minimus) agricultural structures such as watering troughs, feeding stations or loafing sheds on the Protected Property. Temporary structures contributing to the production, primary processing, direct marketing and storage of agricultural products produced principally on the Protected Property which do not create an impervious surface shall be considered an agricultural use of the land. Permanent structures shall not be constructed on the Protected Property.

3.5 Farm Roads. The right to use and maintain existing farm roadways, which are dirt, on the Protected Property and to construct such additional such roadways as may be necessary in the future for continued agricultural use of the Protected Property or for access to property of the Grantor not included in the Protected Property, provided that no additional gravel roads may be added.

3.6 Well and Septic. The right to install well and septic drain fields solely for the benefit of residential structures on adjacent property owned by the Grantor, and to use and maintain an existing drain field on the Protected Property for such purposes without further permission from the Grantees.

3.7 Limitation and Notification. Provided, however, that the rights reserved in paragraphs 3.1 and 3.4 above shall be subject to the prohibition contained in Section 2.11 above, and written notice shall be provided by Grantor to Grantees in accordance with paragraph 18.5 below before exercise of any such reserved rights.

4. Grantees’ Rights. To accomplish the purpose of this Conservation Easement, the following rights are conveyed to the Grantees by this Conservation Easement:

4.1 Preservation. The right to preserve and protect the conservation values of the Protected Property.

4.2 Right of Entry. The right to enter the Protected Property at all reasonable times and, if necessary, across other lands retained by the Grantors, for the purposes of (a) inspecting the Protected Property to determine if the Grantors are complying with the covenants and purposes of this Conservation Easement; (b) enforcing the terms of this Conservation Easement; and (c) taking any and all actions with respect to the Protected Property as may be necessary or appropriate, with or without order of court, to remedy or abate violations thereof.

4.3 Enforcement. 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 10. In the event of a proposed conversion of the Protected Property to a use other than those specified herein, the Grantees will consult with the West Virginia Division of Culture and History (DCH). If, following that consultation, the Grantees determine that conversion is appropriate, the Grantees shall, in accordance with Section 6(f)(3) of the Land and Water Conservation Fund Act (16 USC 460L-8(f)(3)), propose such conversion to the Secretary of the Interior acting through the ABPP. Any such proposal shall also include the proposed mitigation for the conversion. The proposal shall also include a letter from DCH setting out its opinion on the advisability of the proposed conversion and the adequacy
of the proposed mitigation. The Secretary shall approve such conversion only if he finds it to be in accord with the then existing comprehensive statewide outdoor recreation plan and only upon such conditions as he deems necessary to assure the substitution of other appropriate properties of at least equal fair market value and of reasonably equivalent usefulness and location.

4.4 Periodic Onsite Inspections. The Grantees are responsible for periodic onsite inspections and for receiving notice in writing of any pending changes in usage of the Protected Property that may result in a conversion to other uses than those uses specified herein.

4.5 Multiple Grantees: Rights and Obligations. The Land Trust shall have the primary responsibility for stewardship and monitoring of this Conservation Easement, determining if a violation has occurred, and for approving any amendments with the prior approval of the American Battlefield Protection Program to the Conservation Easement. These duties may be fulfilled directly by the Land Trust or its agent. The Land Trust will share with the other parties to this Conservation Easement monitoring and stewardship information, including but not limited to written notices and monitoring reports. The Land Trust is responsible for any costs incurred in enforcing the terms of the Conservation Easement, including any attorney’s fees and any costs of a suit. The Land Trust can recover costs from the responsible Protected Property Owner(s) or third party pursuant to Paragraph 10.4. The Land Trust and the FPB shall make every good faith effort to determine a unified course of action should a potential or actual violation of the Conservation Easement arise. The FPB shall have the right to enforce the terms of the Conservation Easement if the Land Trust becomes unable or refuses to enforce the Conservation Easement, or if the FPB in its sole discretion finds that Land Trust’s enforcement action or consent fails to protect the conservation purposes of this Conservation Easement. In such case where the FPB individually enforces the terms of the Conservation Easement without the agreement or consent of the Land Trust, then the FPB shall be individually responsible for its own costs but can recover those costs in the same manner as permitted to the Land Trust.

5. Access. The parties hereby acknowledge that the Protected Property is visible from a public right-of-way (______________), and that members of the general public may view the Protected Property from said right-of-way. Consequently, unless expressly provided herein, nothing contained in this Conservation Easement shall give or grant to the public a right to enter upon or to use the Protected Property or any portion thereof where no such right existed in the public immediately prior to the execution of this Conservation Easement.

6. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Protected Property, including the maintenance of comprehensive general liability insurance coverage. Grantor shall keep the Grantees’ interest in the Protected Property free of any liens arising out of any work performed for, materials furnished to or obligations incurred by Grantor. Grantor agrees to release, hold harmless, defend and indemnify Grantees from any and all liabilities which Grantees may suffer or incur as a result of or arising out of the activities of Grantor on the Protected Property, including, but not limited to, the violation of any environmental laws. Grantees agree to release, hold harmless, defend and indemnify Grantor from all liabilities including but not limited to injury, losses, damages, judgments, costs, expenses and fees which Grantor may suffer or incur as a result of or arising out of the activities of Grantees on the Protected Property.

7. Taxes. The Grantor agrees to pay any real estate taxes or other assessments levied on the Protected Property. If the Grantor becomes delinquent in payment of said taxes or assessments, such that a lien created against the land is to be executed upon, any of the Grantees, at its option, shall, after written notice to the Grantor, have the right to purchase and acquire the Grantor’s interest in said Protected Property by paying funds to discharge said lien or delinquent taxes or assessments, or to take such other actions as may be necessary to protect the Grantees’
interests in the Protected Property and to assure the continued enforceability of this Conservation Easement.

8. **Title.** The Grantor covenants and represents that the Grantor is the sole owner and is seized of the Protected Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that the Protected Property is free and clear of any and all liens and encumbrances, including but not limited to, any mortgages not subordinated to this Conservation Easement; that no party other than the Grantor is in possession or is entitled to possession under a lease or otherwise of the Protected Property, and that the Grantees shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement.

9. **Hazardous Waste.** The Grantor covenants and represents that to the best of its knowledge no hazardous substance or toxic waste exists nor has been generated, treated, stored, used, disposed of, or deposited in or on the Protected Property, and that there are not now any underground storage tanks located on the Protected Property.

10. **Grantees’ Remedies.** In the event that any of the Grantees become aware of a violation of the terms of this Conservation Easement, the Grantees may give notice to the Grantor of such violation, at Grantor’s last known post office address via certified mail, return receipt requested, and request corrective action sufficient to abate such violation and restore the Protected Property to its previous condition at the time of this grant. Grantor agrees that the Easement Documentation Report shall be deemed to provide objective information concerning the Protected Property’s condition at the time of this grant. Any breach of the terms of this Conservation Easement by the Grantor shall entitle any of the Grantees to bring an action at law or equity in a court of competent jurisdiction seeking any and all remedies available, including but not limited to: enforcement of the terms of this Conservation Easement; requiring the restoration of the Protected Property to its previous condition; enjoining such non-compliance by ex parte temporary or permanent injunction in a court of competent jurisdiction; and/or to recover any damages arising from such noncompliance. Such damages, when recovered, may be applied by any of the Grantees, in their sole discretion, to corrective action on the Protected Property. If such court determines that the Grantor has failed to comply with this Conservation Easement, Grantor shall reimburse Grantees for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney’s fees, in addition to any other payments ordered by such court.

10.1 **Emergency Enforcement.** If any Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, the Grantee may pursue its remedies under this paragraph without prior notice to Grantor or without waiting for the period for cure to expire.

10.2 **Violations Due to Causes beyond Grantors’ Control.** Nothing herein shall be construed to entitle the Grantees to institute any enforcement proceedings against the Grantor for any changes in the Protected Property due to causes beyond the Grantor’s control, such as changes caused by fire, flood, storm, earthquake or the unauthorized wrongful acts of third persons. In the event of violations of this Conservation Easement caused by unauthorized wrongful acts of third persons, at Grantees’ option, Grantor agrees to assign its right of action to Grantees, to join in any suit, and/or to appoint Grantees its attorney-in-fact for the purposes of pursuing enforcement actions.

10.3 **Standing.** By virtue of the Grantees’ acquisition of rights under this Conservation Easement, any Grantee shall be entitled, at its option, to stand before appropriate courts of law to pursue remedies or other matters which are necessary or incidental to the protection of the Protected Property.

10.4 **Costs of Enforcement.** Any costs incurred by Grantees in enforcing the terms of this Conservation Easement against Grantor, including without limitation costs of suit and attorneys’ fees, and any costs or restoration necessitated by Grantor’s violation of the terms of this Conservation Easement, shall be borne by Grantor. If
Grantor prevails in any action to enforce the terms of this Conservation Easement, Grantor’s costs of suit, including, without limitation, attorneys’ fees, shall be borne by Grantees. Any costs incurred by Grantees in enforcing the terms of this Conservation Easement against any third party shall be borne by Grantees.

10.5 Forbearance. Forbearance by any Grantee to exercise its rights under this Conservation Easement in the event of any breach of any term of this Conservation Easement by Grantor shall not be deemed or construed to be a waiver by Grantees of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of any of Grantees’ rights under this Conservation Easement. No delay or omission by Grantees 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.

11. Parties Subject to Conservation Easement. The covenants agreed to and the terms, conditions, and restrictions imposed by this Deed shall not only be binding upon the Grantor but also its future lessees, agents, personal representatives, successors and assigns, and all other successors to Grantor in interest and shall continue as a servitude running in perpetuity with the Protected Property. The term “Grantor” shall include the Grantor and the Grantor’s heirs, executors, administrators, successors and assigns and shall also mean the masculine, feminine, corporate, singular or plural form of the word as needed in the context of its use. The term “Grantees” shall include the Jefferson County Farmland Protection Board and its successors and assigns; and The Land Trust of the Eastern Panhandle, Inc. and its successors and assigns.

12. Subsequent Transfers. The Grantor agrees that the terms, conditions, restrictions and purposes of this Deed or reference thereto will be inserted by Grantor in any subsequent deed or other legal instrument by which Grantors divest either the fee simple title or any interest in any part or all of the Protected Property; and Grantor further agrees to notify Grantees of any pending transfer at least thirty (30) days in advance.

13. Merger. The Grantor and Grantees agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Protected Property.

14. Assignment. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, and each of the Grantees hereby covenant and agree that in the event it transfers or assigns the Conservation Easement it holds under this indenture, the organization receiving the interest will be an eligible donee as that term is defined in Treasury Regulation Section 1.170A-14(c), which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Code, and each 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 contribution was originally intended to advance. The FPB covenants and agrees, in addition, that it will only transfer its interest in the conservation easement to a public conservation or preservation agency.

15. Extinguishment. The conveyance of this Conservation Easement gives rise to a property right immediately vested in Grantees with a fair market value equal to the proportionate value that the Conservation Easement at the effective date hereof bears to the value of the Protected Property as a whole at that time. That proportionate value of the Grantees’ right shall remain constant. If circumstances arise in the future that render the purpose of this Conservation Easement impossible to accomplish, this Conservation Easement can only be terminated or extinguished, whether in whole or in part, upon approval by the Secretary of the Interior acting through the ABPP in accordance with the requirements of section 6(f)(3) of the Land and Water Conservation Fund Act and by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which the Grantor and Grantees shall be entitled, after the satisfaction of prior claims and the requirements of Section 6(f)(3) of the Land and Water Conservation Fund Act and by judicial proceedings in a court of competent jurisdiction.
Conservation Fund Act, from any sale, exchange, or involuntary conversion of all or any portion of the Protected Property subsequent to or as a result of such termination or extinguishment, shall be determined in accordance with the formulas below, unless applicable state law provides that the Grantors are entitled to the full proceeds without regard to the terms hereof. If the Conservation Easement is extinguished or terminated, in whole or in part, then ABPP, the Farmland Protection Board and the Land Trust are together entitled to a share equal to 60 percent (60%) of the gross sale proceeds representing an amount equal to the ratio of the appraised value of this Conservation Easement to the unrestricted fair market value of the Protected Property as these values are determined on the date of this Conservation Easement. Of that ___ percent (___%), the ABPP shall get _____ percent (___%), the Land Trust, _____ percent (___%), the Farmland Protection Board _____ percent (___%). The Grantor is entitled to _____ percent (___%) of the gross sale proceeds or condemnation award. The ABPP, the Farmland Protection Board and the Land Trust shall each use their share of the proceeds for land conservation in a manner consistent with the conservation purposes set forth herein. In making this Conservation Easement, Grantor has considered the possibility that uses prohibited by the terms of this Conservation 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 Conservation Easement, and Grantor and Grantees intend that any such changes shall not be deemed to be circumstances justifying the termination or extinguishment of this Conservation Easement.

16. Eminent Domain. Whenever all or part of the Protected Property is taken in exercise of eminent domain by public, corporate, or other authority so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor and the Grantees shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking, which proceeds shall be divided in accordance with the proportionate value of the Grantees' and Grantor's interests, and the Grantees' proceeds shall be used as specified above. Approval of the Secretary of the Interior acting through the ABPP in accordance with the requirements of Section 6(f)(3) of the Land and Water Conservation Fund Act will be required. All expenses incurred by the Grantor and the Grantees in such action shall be paid out of the recovered proceeds.

17. Conversion or Diversion. Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the property may be converted or diverted from its open-space use except in compliance with the provisions of paragraph 10.1-1704 of the Open-Space Land Act, which Act does not permit loss of open-space, and if approved by the Secretary of the Interior, acting through the ABPP, in accordance with paragraph 6(f)(3) of the Land and Water Conservation Fund Act. In the event of a proposed conversion of the Property to a use other than those specified herein, Grantor shall consult with Grantee. If following that consultation, Grantee determines that conversion is appropriate, Grantor shall, in accordance with paragraph 6(f)(3) of the Land and Water Conservation Fund Act (16USC 4601-8(f)(3)), propose such conversion to the Secretary of the Interior, acting through the ABPP. Any such proposal shall include the proposed mitigation for the conversion. The proposal shall also include a letter from the Grantee setting out its opinions on the advisability of the proposed conversion and the adequacy of the proposed mitigation. The Secretary shall approve such conversion only if he or she finds it to be in accord with the American Battlefield Protection Program Authorization of 2009 (16USC469k-1), and only upon such conditions he or she deems necessary to assure the substitution of other appropriate properties of at least equal fair market value and of reasonably equivalent usefulness and location. In the event of a breach of paragraph 6(f)(3) of the Land and Water Conservation Fund Act, there shall be no remedy other than immediate compliance with paragraph 6(f)(3), nor may grant funds be repaid to nullify the conditions of paragraph 6(f)(3).

18. Amendment. If circumstances arise under which an amendment to or modification of this Conservation Easement would be appropriate, ABPP, the Land Trust, the Farmland Protection Board, and the Grantor are free to
jointly amend this Conservation Easement, provided that no amendment shall be allowed that will invalidate this Conservation Easement or be inconsistent with the purpose of this Conservation 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.

19. **Miscellaneous Provisions.**

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

19.2 **Recording and Re-recording.** This Conservation Easement shall be recorded in the Office of the Clerk of the County Commission, Jefferson County, West Virginia, immediately upon execution thereof, and in no case later than sixty (60) days after execution hereof. The Grantees are authorized to record or file any notices or instruments appropriate to assuring the perpetual enforceability of this Conservation Easement; for such purpose, the Grantor appoints each of the Grantees its attorney-in-fact to execute, acknowledge and deliver any necessary instrument on its behalf. Without limiting the foregoing, the Grantor agrees to execute any such instrument upon request.

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

19.4 **Counterparts.** The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed as original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded copy shall be controlling.

19.5 **Notices.** Any notices required in this Conservation Easement shall be sent by registered or certified mail to the following address or such address as may be hereafter specified by notice in writing:

**Grantor:**

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

**Grantee:** The Land Trust of the Eastern Panhandle  
P. O. Box 2240  
Martinsburg, WV 25402

**Third Party Beneficiary:** National Park Service  
American Battlefield Protection Program  
1201 Eye St., NW, 2287  
Washington, DC 20005

19.6 **Effective Date.** This Conservation Easement shall be effective immediately upon execution hereof.

19.7 **Governing Law.** The terms and provisions hereof shall be governed, and the rights, duties, and obligations
of the parties hereto shall be determined, by reference to the laws of the State of West Virginia and the laws of the United States.

19.8 Entire Agreement. This agreement shall be deemed to constitute the entire and only agreement between the parties, and no oral statements or representations or other written matter not contained or referenced herein shall have any force or effect.

19.9 Subordination. Any mortgage or lien arising after the date of this Conservation Easement shall be subordinated to the terms of this Conservation Easement.

TO HAVE AND TO HOLD the said Conservation Easement unto said Grantees forever.

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 both a gift to a charitable nonprofit corporation without consideration and 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, the Grantor has executed and sealed this document the day and year first above written.

GRANTOR

________________________

________________________

Date

GRANTEE

________________________

Land Trust of the Eastern Panhandle

________________________

Date

________________________

Jefferson County Farmland Protection Board

Date

Schedule of Exhibits

Exhibit A: Legal Description of Property Subject to Easement
APPENDIX II

Right: Part of the Arsenal at Harpers Ferry.
Overview of the Civil War in Jefferson County, WV

DEFENDING THE BREADBASKET OF THE CONFEDERACY

1861—The day before the Virginia Secession Convention recommended that Virginia secede from the Union, former Virginia Governor Henry Wise met with militia officers to discuss securing the federal armory at Harpers Ferry. On April 17, “Wise announced that Virginia militia were at that instant seizing the federal armory at Harpers Ferry.”4 The next day Harpers Ferry was under control of the Commonwealth of Virginia.

Virginia’s interest in the Harpers Ferry armory was understandable. Over the six decades since its inception, the armories at Harpers Ferry turned out over 500,000 guns.5 Stored in the arsenals were an estimated 20,000 completed muskets and rifles, parts and, significantly, the machines needed to make guns, making Harpers Ferry a very important asset.6

But Harpers Ferry’s armories were not the only things of importance in Jefferson County. Although weapons production was by far the leading manufacturing industry in Jefferson County, the largest industry was agriculture. Jefferson County was among the top five producers of wheat in Virginia, and the eight counties which comprised the Lower Valley7 earned the nickname “Breadbasket of the Confederacy.”8

7 Berkeley, Clarke, Frederick, Jefferson, Morgan, Page, Shenandoah and Warren counties.
Transportation was a critical factor in the Lower Shenandoah Valley. When Virginia left the Union in 1861 there were two bridges across the Potomac River. One at Harpers Ferry carried both the Baltimore and Ohio Railroad and vehicular traffic, and a bridge at Shepherdstown was part of the turnpike to Boonsboro, MD. Several fords and ferries on the Shenandoah and a road network connected these crossing points to commercial centers. Jefferson County was served by the Chesapeake and Ohio Canal. During the Civil War the canal shipped tons of goods annually and was a vital link in the Union supply chain.\(^9\) River locks at both Harpers Ferry and Shepherdstown enhanced the necessity of controlling Shepherdstown and Harpers Ferry.\(^\text{10}\)

Most important were the railroads, the Winchester & Potomac and the Baltimore and Ohio were operating in Jefferson County. Many of the same attributes which made Jefferson County, Virginia a prosperous place also made it a place of great strategic importance. The fords, roads, ferries, bridges, and railroads became military targets. Control of the region was vital to both sides.

\textbf{1862} —“All seem to think that we will have to surrender or be cut to pieces.”

\textit{—Private Louis B. Hull, 60th Ohio Infantry}\(^\text{11}\)

Early in 1862, Union troops established a garrison at Harpers Ferry. Through 1865 sizable portions of Jefferson County were either occupied or regularly patrolled by the Union Army. The occupation by thousands of Union soldiers had a huge impact on the civilian population of Jefferson County. Loyalties were tested, crops and goods were seized, and structures were destroyed. That impact was intensified because many Jefferson men were serving the Confederacy.

Major General Thomas “Stonewall” Jackson’s 1862 Valley Campaign came to Jefferson County in May. After suffering defeat at Front Royal and Winchester, the Union army retreated down the Valley and crossed the Potomac River into Maryland. The only Federal troops remaining in the Valley were Colonel Dixon Miles’ aptly named Railroad Brigade at Harpers Ferry. Miles had men posted at strategic locations over a distance of 380 miles to protect the B&O railroad.

The Union quickly responded to Jackson’s threat. Brigadier General Rufus Saxton brought fresh troops to Harpers Ferry, eventually bringing the total troop strength to 8,000. In addition, cannon were placed across the Potomac on Maryland Heights.

General Saxton initially placed his troops across Bolivar Heights, but he became anxious as Jackson’s Confederates occupied School House Ridge. Aware that Jackson was attempting to outflank his position, Saxton moved his troops to Camp Hill.
Late on May 30 Jackson unleashed his attack in the midst of a spring thunderstorm. The Confederates quickly overran Bolivar Heights and confronted the Union line on Camp Hill. Jackson, aware of a Union threat in his rear, withdrew to fight another day.12

The summer of 1862 was relatively peaceful, until early September when General Robert E. Lee led his Confederate army into Maryland. Lee’s supply line was threatened by the garrison at Harpers Ferry as well as Martinsburg, to continue his advance the Union garrisons had to be eliminated.

On September 10, Jackson left the main Confederate force at Frederick, Maryland, dividing his command into three parts. Jackson approached Harpers Ferry by a route which took him first toward Martinsburg on September 11, forcing Union troops under Brigadier General Julius White to retreat to Harpers Ferry. Jackson sent Major General Lafayette McLaws to secure Maryland Heights, where he arrived by September 12. The final puzzle piece, Loudoun Heights, was the target of Brigadier General John Walker, which he reached by September 13.

At Harpers Ferry, Colonel Miles was desperate. Aware of Lee’s position, and after requesting relief, the telegraph wires were cut, which isolated him from all communication. The last orders he received were to hold Harpers Ferry at all costs.

By late afternoon on September 13, Harpers Ferry was surrounded by Confederate forces. As September 14 dawned, Union troops discovered Walker’s men hurriedly putting artillery into position on Loudoun Heights, while McLaws was doing the same on Maryland Heights.

The key to Harpers Ferry was the high ground, and Jackson now held the heights. With his guns in place Jackson opened fire. Sundown ended the Confederate artillery barrage of Harpers Ferry on September 14.

The next morning Jackson renewed the attack, threatening an assault on the Union right and an artillery barrage, aided by additional Confederate guns positioned on Loudoun Heights. Colonel Miles held a quick council of war and determined to surrender. Unfortunately, he was struck by shrapnel, receiving a mortal wound. General Julius White completed the Union surrender.

Upon the surrender of Harpers Ferry, Jackson ordered his forces to march to Sharpsburg, some 15 miles to the northwest. Major General Ambrose Powell Hill remained at Harpers Ferry in charge of the surrender of the Union stronghold of 12,500 Union troops; the highest number of Union soldiers surrendered during the Civil War. The Confederates also seized 73 cannons, 200 wagons, 1,200 mules, and 13,000 small arms.

Following Lee's defeat at Antietam, both armies rested in place on September 18, tending to their wounded comrades. After nightfall the Confederate Army retreated to Virginia, crossing the Potomac River at Pack Horse Ford.

Union Major General George B. McClellan sent troops in pursuit of the Confederates, and initial success forced Lee to order General Hill back to the Potomac to confront the pursuing Federals. Meeting Hill's more numerous troops, the Union advance was repulsed and became a hasty retreat. This action, the Battle of Shepherdstown, marked the end of Lee's Maryland Campaign.

Following the disaster at Harpers Ferry, the Union became determined to maintain control of this strategic point. The heights surrounding Harpers Ferry were fortified with artillery. The main garrison was increased and protected by forward posts centered at Charles Town, with a line of pickets stretching to the Shenandoah River fords at Kabletown and Myerstown, and another line covering Pack Horse Ford at Shepherdstown.

On October 16, 1862, the final episode of a busy year in Jefferson County occurred when Union Brigadier General Andrew Humphreys’ division crossed the Potomac at Pack Horse Ford and advanced to oppose Confederates who were tearing up the tracks of the B&O railroad near Kearneysville. The Confederates counterattacked Humphreys’ men, driving them back. The Federals made a stand two miles south of Shepherdstown on the Flowing Springs Road, and then slowly retreated, across the Potomac into Maryland.

1863—“An ACT admitting the county of Jefferson…” 13

When Virginia seceded in May 1861, delegates from several western counties met to determine how they could remain loyal to the United States. Their solution was to form the new state of West Virginia. However, when the 35th Star was added to the Union, Jefferson County was not one of the 48 counties in the new state.

The official date for West Virginia’s entry into the Union was June 20, 1863, but prior to statehood state officials “ordered an election to allow the residents of Jefferson and Berkeley counties to determine whether their counties should be located in West Virginia or Virginia.”14 By a vote of 248 to 2, Jefferson County chose West Virginia over Virginia. The state of West Virginia acted quickly, and on November 2, 1863, the Legislature of West Virginia passed, “An ACT admitting the county of Jefferson into, and making the same, part of this state.”15

On October 18, 1863, Jefferson County public buildings were destroyed when Confederate Brigadier General John Imboden’s artillery attack on the Union garrison in Charles Town, commanded by Colonel Benjamin L. Simpson. Although Imboden succeeded in capturing most of Simpson’s force, the Union army retained control of Charles Town, but the court house, market house and jail lay in ruins.

As 1863 came to an end, Virginia had lost Jefferson County, as this strategic location was transformed from farmland and a bustling industrial area to battleground.

1864—“I do not mean that houses should be burned.”

—General Ulysses S. Grant

Lieutenant General Ulysses S. Grant’s plan for the Union Army’s 1864 campaign included operations in the Shenandoah Valley. Union Brigadier General George Crook and Major General Franz Sigel were ordered to move south and meet in the vicinity of Staunton, Virginia, drawing the attention of any Confederate troops in The Valley, and preventing them from supporting Lee’s army. Sigel, on May 15 was defeated by the Confederates at New Market. He was replaced by Major General David Hunter, who assumed command in West Virginia on May 21, 1864.


Hunter’s offensive campaign was halted by Confederate Lieutenant General Jubal Early’s army at Lynchburg. Instead of retreating down the Valley, Hunter withdrew west of the Allegheny Mountains into the relative safety of West Virginia. Early’s army then moved north unopposed to fill the void left by Hunter. On July 9 Early defeated Union Major General Lew Wallace at Monocacy, and by July 11 Early was in sight of Washington.

In response to Early’s foray into Union territory, The Valley and its residents became a target of the Union Army. No longer just a strategic access point, The Breadbasket of the Confederacy was now defined as enemy territory. In a change of policy, Confederate supporters and their property were vulnerable. On July 14th, Grant wrote to Chief of Staff Major General Henry Halleck:

“If Hunter cannot get to Gordonsville and Charlottesville to cut the railroad, he should make all the Valley south of the Baltimore and

Blazer’s Swashbucklers—a unit of army scouts commanded by Captain Richard Blazer assigned to counter guerilla “bushwhackers” harassing Union forces—picketed on the Charles Town Pike.
Ohio Road a desert as high up as possible. I do not mean that houses should be burned, but all provisions and stock should be removed, and the people notified to move out.”

General Hunter arrived in Harpers Ferry on July 15, familiar ground as he had relatives living in the Lower Valley. He issued Special Orders Number 128, ignoring the direct order of General Grant, his instructions were brief and to the point: “Capt. F. G. Martindale, First New York (Lincoln) Cavalry, will proceed with the cavalry under his command to Charlestown, W. Va., and burn the dwelling-house and outbuildings of Andrew Hunter, not permitting anything to be taken there from except the family.”

On July 17, Martindale executed the order, and Andrew Hunter’s home, Hunter’s Hill, was burned.

Two days later, Martindale was sent to Shepherdstown where he burned the dwellings of Alexander Robinson Boteler and Edmund Jennings Lee. Boteler, a member of the Confederate Congress, was the grandson of Richard Henry Lee and grand-nephew of Francis Lightfoot Lee, both signers of the Declaration of Independence. He was also a cousin of Confederate General Robert Edward Lee.

After first putting Boteler’s home Fountain Rock to the torch, Martindale arrived at Bedford, built in the early 1800s. On the day Martindale arrived, Edmund Lee’s wife, Henrietta Bedinger Lee, was there with her children. Ignoring her pleas to spare her home, Martindale’s men set Bedford afire.

On August 5, Major General Philip Henry Sheridan was put in command of the Middle Division, which included Hunter’s Department of West Virginia. Sheridan arrived in Harpers Ferry and assessed the situation, telling Grant, “I find affairs somewhat confused, but will soon straighten them out.”

On Sunday, August 21, 1864, Confederate forces moved north from Winchester and encountered Sheridan’s forces near Smithfield and Cameron Station. Confusion among the Confederate leaders, and Sheridan’s reluctance to fight a major engagement, led to a drawn battle.

A week later, the two armies skirmished once again at the Smithfield Bridge over Opequon Creek. In Sheridan’s words, Early took exception to Union control of the bridge and attacked. The Confederates succeeded in driving the federal cavalry, but Sheridan threw in reinforcements and at day’s end the Smithfield Bridge was once again under the control of the Union Army. The Battle of Smithfield was the final action of the Shenandoah Valley Campaign in Jefferson County.

Sheridan succeeded in converting Jefferson County to a county completely under the dominion of the new state of West Virginia, a Union stronghold. This conversion came at a high price.

1865—“No person who…has given or shall give voluntary aid …shall be a citizen of the state”

The fighting ended in April 1865 and the damage in Jefferson County was severe. The Harpers Ferry armory would never again open its doors. A number of farms, mills, and other commercial buildings had been destroyed. Private residences and public buildings were destroyed or suffered from use as barracks and field hospitals. Normal commerce had almost disappeared. None of the county’s weekly newspapers were in operation. Restoring civilian life to its pre-war condition would be a challenge.

Jefferson County’s incorporation into West Virginia created a unique political problem. Many Jefferson County men served in the Confederacy. They returned home to the new state of West Virginia to discover the West Virginia Constitution stated, “No person who, since the 1st day of June,
1863, has given or shall give voluntary aid or assistance to the rebellion against the United States shall be a citizen of the state or be allowed to vote at any election held therein.” Stripped of citizenship they were politically powerless. The political struggle was worsened by the temporary re-location of the county government from Charles Town to Shepherdstown which erupted in 1869 when the West Virginia legislature considered a proposal to make the move permanent.

It took a decade, but Jefferson County did recover. In 1870, an effort to re-join Virginia was denied by the United States Supreme Court. In 1872 the county seat was returned to Charles Town, and the court house, county jail, and market house were re-built. Newspapers were printed, and farmers returned the fields to their intended use. The 1880 census recorded an increase in the county’s population, further evidence that the devastation of the Civil War was in the past.

—P. Douglas Perks

**CIVIL WAR BATTLES IN JEFFERSON COUNTY 1862–1864**

This section describes four of Jefferson County’s five major Civil War battles (Shepherdstown, Williamsport, Summit Point and Smithfield Crossing), that are lesser-known, accompanied by battle maps. Much of the area of the Battle of Harpers Ferry (September 13–16, 1862) described in the previous section, is protected as a National Historical Park.

**Battle of Shepherdstown**

**September 17, 1862**

On September 17, 1862, the bloodiest single-day battle in American history was fought near Sharpsburg MD. General Robert E. Lee’s Confederate Army of Northern Virginia suffered its first major defeat, inflicted at the hands of Union Major General George B. McClellan and the Union’s Army of the Potomac. It was not the end of Lee’s...
ambitious plan to sustain his army on northern soil. The pivotal battle of the Maryland Campaign occurred a few miles southwest of Sharpsburg at a Potomac River crossing near the village of Shepherdstown, West Virginia. 21

After his initial success, General Lee, suffering severe defeat at South Mountain on September 14 and barely avoiding disaster on the 17th, decided to slip quietly away. Gathering his forces during September 18, his army left fires burning and moved toward Shepherdstown Ford on the Potomac River.

The Battle of Shepherdstown occurred from an aggressive pursuit by McClellan's Union forces trying to strike Lee's army as they retreated across the Potomac River into Virginia. Lee had left a small force of infantry to support the 44 cannon he detailed to deter the Federal army. Lee's dispatches and orders show he intended to move north and re-enter Maryland at Williamsport, Maryland. Although Lee had suffered staggering losses at Sharpsburg, over 10,000 men, he still believed his force strong enough and the stakes important enough to continue his campaign. 22

For McClellan, the chance to strike an army engaged in a difficult river and canal crossing offered good odds of success. With his own cavalry following Lee's ragged ranks, and the virtually fresh Fifth Army Corps close behind, McClellan was willing to take advantage of any sign of weakness in the Confederate position and plans. Thus McClellan pushed his forces toward the river hoping to inflict the fatal blow to Lee's army. 23

If McClellan had succeeded in wrecking Lee's army, he could rightfully have claimed a total


23 McGrath, pp. 52–3.

Illustration: James E. Taylor
victory that might have ended the war and gained him lasting fame and perhaps political offices. Lee hoped to move upstream and cross back into Maryland. If he could have taken and held Hagerstown with his army, the Union forces would have dispersed to guard in all directions, increasing his chances of inflicting a defeat on the Union army. Maybe Lee could even have affected the fall elections and end the war in a stalemate. Both of these scenarios, and many variations of them, were still possible at dawn on September 19 as Lee’s battered army left the Potomac River in their wake, moving south toward Opequon Creek. What happened at the river crossing known by a multiplicity of names, Blackford’s, Boteler’s, Packhorse, or Shepherdstown, literally decided the outcome of the overall campaign.

Lee’s rearguard forces occupied the almost vertical bluffs on the south side of the river, a seemingly impregnable position. But there were too few to adequately defend the position. A determined rush at twilight by Federal forces drove the Confederates from the bluffs, leaving behind a few cannon and some prisoners. Fearing that more Confederates were nearby, the Union troops fell back to the Maryland side of the river.

On the morning of September 20 McClellan ordered a reconnaissance-in-force to locate Lee’s army. Hampered by a confusion of orders that deprived them of cavalry to scout ahead, a Union force advanced toward the Opequon while another followed the river road to occupy Shepherdstown. Lee, receiving news of the Union advance, ordered General Thomas Jackson back to the ford to protect the rear of Lee’s army. Meeting the Union advance, Jackson sent a division to drive back across the rolling fields south of the river toward the bluffs above the river. The Union soldiers conducted their retreat in orderly fashion, but a miscommunication of orders left one Union regiment, the 118th Pennsylvania Infantry, isolated and facing overwhelming odds as Confederate soldiers surrounded them. Almost all of the Union casualties in the battle were from this regiment, as many were killed on the bluffs or drowned attempting to cross the river. The Union pursuit was suspended and Jackson’s men returned to the Opequon. Casualties were light compared to other battles, with 677 killed, wounded and missing in the brief fighting near the ford. Of the 366 Union casualties, 269 were from the 188th PA.

It was on the steep bluffs of the river, amongst the buildings of an old cement mill on the riverbank that the campaign was decided. The fighting was short, but vicious, severe and bloody for the numbers engaged, and the ultimate results were far-reaching. Lee, convinced his men too exhausted and too reduced to continue the campaign, ordered a retreat to his supply base at Winchester. His ambitious plans for Maryland and Pennsylvania remained unfulfilled. McClellan’s losses and the sudden appearance of a large Confederate rear guard convinced him that Lee’s army was still powerful enough to discourage further pursuit. Content with achieving the goals which President Abraham Lincoln set out for him, McClellan secured the river as a boundary and turned to re-supplying his army. Thus it was the fight at Shepherdstown that convinced both commanders that the September Campaign of 1862 was at an end, and that neither would completely succeed in their desired missions.

The Battle of Shepherdstown Ford was the bloodiest battle in West Virginia during the entire war. It was also a victory that made it possible for Lincoln to issue the Emancipation Proclamation freeing southern slaves and hastening the end of the war. No other battle this small made such a dramatic change in the war.

—Dr. Thomas G. Clemens

24 McGrath, p. 82–3.
25 McGrath, p. 92.
26 Harsh, pp. 463–5.
The Battle of Williamsport
July 6–16, 1863

Following three days of intense fighting at the Battle of Gettysburg, General Robert E. Lee's defeated Army of Northern Virginia began its retreat back to Virginia under perilous circumstances. Since the evening of July 3, the Confederate army initiated its retreat with lead elements headed toward Hagerstown and Williamsport. The line would eventually extend for 15 miles with a long stretching wagon train of wounded guarded by General John D. Imboden cavalry. The retreat was harassed by probes and attacks on the Confederate line taking place along the Fairfield Road, Greencastle and Hagerstown, Maryland. At certain points, citizens, angered at the Confederate invasion, resisted the caravan as it moved through points of Greencastle and Hagerstown. In some instances they attacked wagons carrying the wounded.

Over the next ten days, the Confederate Army and Federal Cavalry maneuvered and counteracted against one another culminating in vicious combat at Williamsport on July 14. Though 500 rebel prisoners were captured and brigade commander General Johnston Pettigrew was lost, the Confederate forces commanded by General Henry Heth repelled the Federal attack. In doing so, they enabled the final elements of Lee's Army to cross the Potomac River at Falling Waters, Virginia (present day West Virginia.)

Following his crossing of the Potomac, Lee ordered two brigades of cavalry to guard the fords at Shepherdstown. Federal cavalry would test those positions two days later after crossing at Harpers Ferry and pushing Confederate pickets back toward Kearneysville. Much of the fighting would be taking place on the Winchester Road (modern day Route 480) and on the fields located to the north and south. The conflict escalated as the Union troopers were met on the northern edge of Kearneysville by the main elements of the two brigades of Confederate cavalry. One of those brigades was commanded by Lee's nephew, Fitzhugh Lee and the other by John Chambliss. Lee and Chambliss pushed the Federal advance back, retracing the path to Shepherdstown with fierce fighting culminating for the day at a thick patch of forest just south of town. As the fighting subsided and morning came, the Federal cavalry opted to withdraw to Harpers Ferry rather than resume defending their position.

The Confederate Army continued to withdraw southward into the Shenandoah Valley and surrounding regions, and the Union forces followed from their positions located outside of Harpers Ferry, where the main body of the Army of the Potomac themselves had re-entered Virginia on July 17. The war would continue for two more years.

—Robert Aitcheson III

The Battle of Summit Point
August 21, 1864

The struggle for control of the Shenandoah Valley was approaching a climax by the summer of 1864. Federal General Philip Sheridan was ordered to conquer what some called the “Breadbasket of the
Confederacy” by not just defeating, but destroying the last significant force that Confederates had to defend the Valley.

General Robert E. Lee’s Army of Northern Virginia, from losses in the recent campaigns, had lost its capacity for offensive operations. Facing Union General Ulysses S. Grant’s superior numbers, Lee was forced to withdraw southward to protect Richmond.

By June, Lee was bottled up in a siege of Petersburg, Virginia, forcing him to seek a diversion that might draw northern troops elsewhere. Lee thus dispatched General Jubal Early’s corps to the Shenandoah Valley, hoping it might sweep it clear of Union forces, and then maneuver northward, forcing Grant to detach troops from his army at Petersburg.

Early’s troops drove a Union army at Lynchburg on June 17, then swept north across the Potomac, fighting a makeshift Federal force at Monocacy, Maryland on July 9. Grant sent the VI Corps, commanded by Major General Horatio Wright, to protect Washington DC. With insufficient force to take the capital, Early retreated back into the Valley.

Grant determined that Early’s force needed to be neutralized. On August 7, 1864, he placed General Philip Sheridan in command of the newly created Army of the Shenandoah, consisting of Wright’s VI Corps, the XIX corps under Brigadier General William Emory, and Brigadier General George Crook’s VIII Corps, plus the cavalry corps of Brigadier General Alfred Torbert; a total of 23,000 infantry and 8,000 cavalry. Sheridan pursued Early to the mouth of the Shenandoah Valley in Jefferson County, where he established a position that formed a wide arc west and south of Charles Town.

Early’s force included Major General Fitzhugh Lee’s splendid cavalry division, and he expected assistance from the Confederate division of Lieutenant General Richard H. Anderson, bringing his total to 23,000. Anderson’s division had been detached from the Army of Northern Virginia to supplement Early’s efforts in the Valley by operating east of the Blue Ridge. Events, however, carried Anderson into the Valley, and as Early’s superior, he was entitled to overall command. Early believed he could only offer suggestions to Anderson, not command him, so they led two separate forces into battle; it was an awkward situation.

Early wanted to bring on a decisive engagement, but Sheridan was under orders from Grant to refrain from a major effort until his force had overwhelming superior numbers to assure success. The upcoming presidential election added a serious political consideration that further limited Sheridan’s plans.
Nonetheless, Early was determined to force Sheridan into a decisive battle. On the morning of August 21, 1864, he marched from Winchester toward Charles Town at the head of a column comprised of his own troops, moving up the Valley Pike (Route 11) to Bunker Hill, and turned east toward the Opequon Creek crossing west of Smithfield. Anderson led a converging column which approached from the direction of Winchester and Berryville along Hardesty Road and Berryville Pike (present Route 340). Early was convinced that once the two columns combined, they would achieve a decisive victory over Sheridan.

Sheridan had placed Wright’s VI Corps in a position between a mile and a half and two miles west of Charles Town near Welch’s Spring. The First Division of the IV Corps deployed to the right of the Smithfield Pike, with the Second Division to the left. Initially the Third Division was in reserve, but upon the approach of Early’s forces, it was moved into line on the left of the Second Division. Crook’s VIII Corps was deployed to the left of the VI, the whole line forming an arch which covered the Smithfield Pike and Summit Point Road. Late in the engagement the Federal line was extended to the north with the inclusion of the First Division of Emory’s XIX Corps. The Federal cavalry were picketing west and southwest of this line at Smithfield, Summit Point and Berryville.

The battle began about 6:00 am as advance elements of Early’s column reached the bridge over Opequon Creek, west of Smithfield (Middleway). There, they found a small Union cavalry detachment. These Federals succeeded in delaying Early’s column, but threatened by Confederate flanking maneuvers, they fell back to their main line. For the moment, the retreat of the Federals left open the road to Charles Town, but with no word about Anderson’s situation, Early chose to halt his advance temporarily.

Around 10:00 am, while the situation to their north was moving slowly, elements of Fitzhugh Lee’s cavalry, leading Anderson’s advance from Winchester, collided with elements of Brigadier

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37 Ibid., 155-156.
Appendix II: Overview of Civil War and Description of Battles

General James Wilson’s Federal cavalry division near Summit Point. Major General Joseph Kershaw’s Confederate infantry soon joined the fray, with more Confederate troops following. Wilson’s cavalry put up a stubborn defense, aided by several artillery batteries. Nonetheless, Confederate infantry soon threatened both flanks of the Federal cavalrymen, and by 2:00 pm, Wilson’s men began to fall back to the main Federal line west and south of Charles Town. Although several hours of daylight remained, without either consulting or informing Early, Anderson called off his advance and encamped, removing any hope that Early had for achieving a decisive victory.

When Early resumed his advance, his forces rapidly covered the five miles between Smithfield and Sheridan’s lines, roughly marked by the present Route 51. Confederates dove past Cameron’s Depot, and swept over such fine old estates as Harewood, Sulgrave, Cedar Law, and Locust Hill. This last structure was used as a sharpshooters nest by Federal troops before they were driven out by Confederate artillery. The action took a more serious tone as Early turned the advance over to Major General Robert Rodes’ division, who attacked the VI Corps’ picket line south of the Smithfield Pike. Confederate artillery was able to hold off the Federal forces.

LOCUST HILL IN THE CROSSFIRE

William Bainbridge Packette, a child at the time of the Battle of Summit Point, offered a vivid account of events from the middle of the battle in his “Recollections of the Battle of Cameron Depot, which occurred on August 21st, 1864.” The Packette family, including seven children, was at home at Locust Hill on Sunday August 21, with their visitors, four young ladies who were Washington cousins, and some twelve “colored people,” slaves owned by the patriarch John Packette.

The house had been occupied and recaptured by Federal and Confederate forces over several days. When Sheridan’s men again took possession of the house, they sent the family to the cellar, under guard. As the house came under fire from Confederate shelling, “...it appeared to us that the house was falling down and as a matter of course, we were in a state of fright and consternation and didn’t know what to do, rushed into another room... The guards drove us back...at the point of bayonets, we had scarcely gotten out of the kitchen room when a shell came through the west wall...and exploded in the kitchen tearing the stove and room to pieces.”

Lieutenant H. G. Nichols, sent by General Sheridan, escorted the family out of the house through the cornfield towards safety at their neighbor Henry Davenport’s Altona Farm “...as the shelling was going on and the crossfire continued and shells were dropping in the cornfield as we were going along...fortunately none of us, neither our family nor our guests nor our colored people - got a scratch on us.”

Today, a remnant of the ruins of the Packett House (Locust Hill), marked by shot and shells are located on property belonging to the Locust Hill Country Club, marked by a historical sign.

success was brief, as a counterattack soon drove the Rebels back.

Slightly north of the Smithfield Pike, the Federal picket lines were restored as two regiments in a sunken lane delivered a devastating fire on the advancing Confederates. Rodes ordered up two artillery batteries to drive off the determined Yankees, but Union fire forced the withdrawal of the Southern guns. Sheridan galloped along the firing line of the VI Corps, rousing his troops as his men dug in for the expected battle.

Meanwhile the fighting south of the pike continued. As Confederate divisions arrived from Cameron Depot, Early positioned them along his expanding line, nearly reaching the Summit Point Road to the south. From the growing intensity of the engagement, Sheridan believed that a full-scale battle was developing, prompting him to order the withdrawal of Federal cavalry from Berryville to his southern flank. He also transferred a division of the XIX Corps to strengthen the VI Corps line, which had faced the weight of Early’s assault.

Early desperately wanted to continue his attack, but hearing nothing of Anderson’s column, he reluctantly called off the attacks. Although the actions on August 21 were small, they generated nearly 1,000 total casualties. The fighting that day had been an opportunity for Early and Anderson to combine forces and achieve a victory over Sheridan; failure to communicate effectively doomed their efforts.

The fight convinced Sheridan that his position was not favorable. He withdrew to a much stronger line centered on the village of Halltown, four miles west of Harpers Ferry on a peninsula formed by the Potomac and Shenandoah Rivers. This line allowed him to threaten Early’s rear.

—Frank Surdu, with Matt Borders and Robert Aitcheson III

The Battle of Smithfield Crossing, August 25–29, 1864

Location and Background

In 1864 Middleway (known as Smithfield at the time) was located at the intersection of two main roads in the lower Shenandoah Valley. Just to the west was an important crossing of Opequon Creek, (the Opequon) a strategic terrain feature of the lower Valley. One road, now Leetown Road (WV County Road 1), led north to Leetown and Shepherdstown and south to Summit Point and Berryville. The other, more important, road was Middleway Pike, now WV Route 51, leading east to Charles Town and Harpers Ferry. West of Smithfield, another road (now Bunker Hill Road) led across a covered wooden bridge spanning the Opequon and a few miles further west to Bunker Hill located on the Valley Pike (U.S. Route 11). The covered bridge offered one of the few all-weather crossings of the Opequon and access from Harpers Ferry to the Valley Pike, the major thoroughfare for commerce and army movements up and down the Valley. The area had been the site of many patrols and skirmishes in prior campaigns of the war.

Smithfield was located between the two armies. The U.S. Army of the Shenandoah, commanded by Major General Phillip Sheridan, was centered at Harpers Ferry and Charles Town to the east. To the west of the Opequon, the Confederate Army of the Valley District, commanded by Lieutenant General Jubal Early, was headquartered with most of his troops at Bunker Hill. The Opequon became the front line and the bridge at Smithfield an important crossing.

August 28, 1864—Cavalry Battle

Having been stalled in his offensive against Union forces, Early and the bulk of his forces withdrew

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40 OR Vol. 43 (Part 1), 19.
41 Ibid., 156.
on August 27 to the west of the Opequon, centered at Bunker Hill. Similarly, Lieutenant General Anderson pulled back beyond the Opequon to Bruccetown, a small village about five miles south of Bunker Hill and six miles northeast of Winchester. A thin cavalry screen was left to patrol the area and observe and report Union Army movements.43

To determine the Confederates’ location, early in the morning of August 28 Brigadier General Wesley Merritt’s First Cavalry Division headed out of their camps near Charles Town toward Leetown (assumed to be Leetown Pike), but they could have been coming from Shepherdstown south on Leetown Rd. (WV Road 1). Colonel Alfred Gibbs’ Reserve Brigade was in the lead. They encountered Confederate pickets from Col. William Jackson’s Brigade of Virginians of Major General Lunsford Lomax’s Division and pushed them aside. At Leetown the First Cavalry Division turned south and continued pushing the Confederates toward Smithfield on Leetown Road.44

In the meantime, Lomax dispatched Major Dudley Evans of the 20th Virginia set an ambush for the Union cavalry coming south down the Leetown Road toward Smithfield. Gilmor’s brother and 45 men using Enfield (infantry) rifles set up in the trees to the east side of the road shooting into the oncoming troops while the Maryland troops charged north between the stone walls edging the road.45 The Union cavalry counter-charged and a hand-to-hand fight began between the stone walls. The site of this fight is estimated to be on Leetown Road between Archer Road and North Childs Road, but could be anywhere in that general vicinity.

The fight continued until the Union brought up another regiment and the fight spilled out around the walls. The Confederates made a retreat down the road to Smithfield and through the village to a ridge to the west of the village. They left sharpshooters in the village to harry and delay the oncoming Union cavalry.

Once through the village the Union cavalry were subjected to artillery fire from the ridge to the west of Smithfield and to the north of Bunker Hill Rd. (WV Route 1), where Lomax and Fitzhugh Lee had come up with most of Lomax’s

44 Ibid., p. 153
45 Gilmore, Harry, Four Years in the Saddle, New York: Harper and Brothers, 1866, pp. 239-240.
available cavalry. Merritt brought up Battery D of the Second U.S. Horse Artillery, located on the hill just to the east of Leetown Road and Marshall Street, to engage the Confederate artillery, while he sent Brigadier General George Custer and his First Brigade of Michigan cavalry around to his left to get behind the Confederates on the ridge, likely using what is now Worcester Lane from Leetown Road west toward the Opequon.46

Under artillery fire, having discovered Custer’s movement due to the premature fire of Custer’s skirmishers, and seeing an entire division deploying for the attack, Lomax retired across the Opequon Bridge and back to Bunker Hill. Lee retired to the south, eventually encamping at Brucetown. Merritt followed up to the creek and stationed vedettes on the west side of the Opequon to warn of any further activity.47 The division remained in and around the village overnight.

Battle of Smithfield
August 29, 1864

On the morning of the 29th, at Sheridan’s request, Custer’s First Brigade was sent on a reconnaissance toward Bunker Hill to locate the Confederates. As he headed toward Bunker Hill along what is now Specks Run and Giles Mill Roads, Custer encountered Major General Stephen Ramseur’s and Major General John Gordon’s infantry divisions. These divisions immediately moved against Custer, with orders from Early to chase the Federals across the Opequon.48

With the two Confederate divisions approaching, Merritt deployed his division in defense of the crossing. He dismounted the cavalry and deployed Custer’s First Brigade on the right, Colonel Louis Di Cesnola’s Second Brigade on the left with the line extending along the Opequon from Priest’s Field to just southwest of the then-existing bridge over the Opequon at Bunker Hill Road. Gibbs’ Reserve Brigade was placed in reserve just west of Smithfield.

At about 11:30 a.m. the Confederates began an artillery bombardment from batteries on the heights across the Opequon. The attack developed with Ramseur’s Division crossing the creek around the bridge and directly west of Smithfield. To the south of Ramseur, Gordon’s Division crossed the creek and then attacked on Ramseur’s right with the rightmost brigade hooking around Merritt’s left.49 As Ramseur’s leftmost brigade began to swing around Merritt’s right flank, Merritt realized he was in danger of being trapped and began a withdrawal to the east.50

Merritt’s division continued an organized retreat through Smithfield centered on the Middleway Pike (Old Middleway Road and WV Route 51) toward Charles Town, picking defensive positions for delaying actions until they were about two miles from Smithfield, or along the ridge where Childs Road is located.

In the meantime, Sheridan had called up Brigadier General James Ricketts’ Third Infantry Division and sent them to support the Union cavalry on the ridge. The Confederates, seeing the reinforcements, were unwilling to continue the fight. They stopped their advance and retired through Smithfield back to their bases around Bunker Hill.

Aftermath

The Battle of Smithfield left 10 killed and 75 wounded Confederates, and about 100 killed and wounded Federal troops.51 Temporary graves in Smithfield held those killed in battle; some

46 Patchan, pp. 154-55.
47 A mounted sentry on picket or guard duty was called a vedette. Also spelled “vidette,” the word derives from the Latin meaning to “watch” or “see.”
48 Ibid., p. 156.
Confederates later were buried in permanent graves at the Masonic Cemetery and the Old English Cemetery in the village. The local hospital, converted from a store after the battle of Antietam and staffed by local doctors, probably treated some of the wounded troops. Smithfield showed the effects of the battle long afterward; indeed, some effects linger to this day. Fire claimed four houses and several other structures; many homes had shell scars and bullet holes. Even now the lintel over the vestry room door of Grace Episcopal Church holds a bullet from the battle.

While Grant, Lincoln and Secretary of War Edwin Stanton were content to restrain Sheridan, unwilling to risk another military disaster in the midst of the election, Sheridan frequently probed Confederate positions, awaiting intelligence concerning a reduction in Early’s forces. By September, word came of the fall of Atlanta by General William T. Sherman’s army. Confederate General Anderson’s division was recalled by General Lee to defend Petersburg. Things were now in place for a Union offensive in the Valley. General Grant personally visited General Sheridan in Charles Town on September 17. Sheridan received orders to destroy Early’s force and clear the Valley of all Confederate opposition. Sheridan aimed to attack the Confederates stationed near Winchester, Virginia. On September 19, 1864, Sheridan assaulted the Confederate army in what would be the largest and bloodiest battle fought in the Shenandoah Valley: the Battle of Third Winchester. Early’s force was pushed back with heavy casualties. Early’s army would continue to fight up through 1865, but Third Winchester marked a turning point and a battle in which the Confederates were unable to fully recover.

—William Chappell

52 Bates, p. 102.
Appendix III: Conservation Organizations Serving Jefferson County, WV
CONSERVATION ORGANIZATIONS SERVING JEFFERSON COUNTY, WV

Local Conservation Organizations

Jefferson County Farmland Protection Board
Elizabeth Wheeler, Director
Jefferson@wvfp.org
www.jefferson.wvfp.org
(304) 724-1414

Jefferson County Historic Landmarks Commission
Martin Burke, Chairman
HLCinfo@jeffersoncountywv.org
http://jeffersoncountyhlc.org
(304) 728-3228

Land Trust of the Eastern Panhandle
Grant Smith, President
rgrantsmit@aol.com,
www.landtrustep.org
(304) 876-2583

Potomac Conservancy
Tracy Lind, Land Protection Director
lind@potomac.org
www.potomac.org
(540) 667-3606

State Conservation Organizations

The Nature Conservancy in West Virginia
Keith Fisher, Director of Conservation
keith_fisher@tnc.org
www.nature.org/WestVirginia
(304) 637-0160 ext. 104

Outdoor Heritage Conservation Fund
c/o West Virginia Division of Forestry
www.wvcommerce.org/resources/conservation/ohcf

West Virginia Agricultural Land Protection Authority
Lavonne Paden, Director
authority@wvfp.org
www.wvfp.org
(304) 754-6955

West Virginia Land Trust
Brent Bailey, Executive Director
info@wvlandtrust.org
www.wvlandtrust.org
(304) 413-0945

WV Natural Resource Conservation Service (USDA/NRCS)
Joseph.Hatton@wv.usda.gov
www.nrcs.usda.gov/wps/portal/nrcs/site/wv/home/
(304) 284-7564

West Virginia State Historic Preservation Office
www.wvculture.org/shpo
1900 Kanawha Blvd E, Charleston, WV 25305
(304) 558-0220

National Conservation Organizations

American Battlefield Protection Program
National Park Service
1201 Eye Street, NW 2287
Washington, DC 20005
www.nps.gov/abpp
(202) 354-2037

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Natural Resource Conservation Service
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For Conservation Cost Share and Best Management Practices

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GLOSSARY OF TERMS

**Bargain Sale**: A bargain sale of property to a charitable organization is partly a sale or exchange and partly a charitable contribution. If a charitable deduction for the contribution is allowable, you must allocate your adjusted basis in the property between the part sold and the part contributed based on the fair market value of each.

**Basis**: The value assigned to an asset from which gain or loss is determined for income tax purposes when the asset is sold. For assets acquired by purchase, basis is cost. Special rules govern the basis of property received by virtue of another’s death or by gift, the basis of stock received on a transfer of property to a controlled corporation, the basis of the property transferred to the corporation, and the basis of property received upon the liquidation of a corporation.

**Battlefield Boundary**: The Battlefield Boundary of a battlefield contains all resources and actions related to or contributing to the battle event, and includes the locations and geographic features that directly contributed to the development and ending of the battle. The Battlefield Boundary should include the Core Area, and the approach and withdrawal/retreat routes of the military units. The Battlefield Boundary is restricted to the immediate flow of battle after one side or the other has moved to initiate combat. The Battlefield Boundary ends where the opposing forces disengaged and withdrew.

**Carry-forward**: (in U.S. income tax law) a special provision allowing part of a net loss or of an unused credit in a given year to be apportioned over one or several subsequent years.

**Conservation Values**: the biological, ecological, agricultural, historic, archeological, or open space attributes of the land that is the focus of a conservation project. It may include species, biological communities, ecological processes, natural resources, cultural resources or socio-ecological value such as open space. Typically there are multiple values on any one property.

**Core Area**: The Core Area of a battlefield is the area of direct combat on the battlefield. A Core Area includes critical land where fighting occurred and casualties were sustained. There may be multiple Core Area boundaries on a battlefield, but all must fall fully within the Battlefield Boundary.

**Prime Soils**: Prime farmland, as defined by the U.S. Department of Agriculture, is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It could be cultivated land, pastureland, forestland, or other land. Specific details about the criteria for prime farmland is available at the local office of the Natural Resources Conservation Service.

ENDNOTES

Taylor, James E. The James E. Taylor Sketchbook with Sheridan Up the Shenandoah Valley in 1864: Leaves from a Special Artist’s Sketchbook and Diary. Dayton, Ohio: Morningside House, 1989. Illustrations reprinted with permission from The Western Reserve Historical Society, Cleveland, OH.
PROTECTING LAND AND BATTLEFIELDS IN JEFFERSON COUNTY, WEST VIRGINIA: A LANDOWNER’S GUIDE provides clear and complete information about how landowners can protect their land and contribute to the preservation of Jefferson County’s important Civil War battlefields for generations to come.

The Landowners Guide describes how landowners may use conservation easements and gifts of land to protect private land and plan for its future use. The Guide includes an explanation of tax benefits and descriptions of financial details of actual conservation easements.

Conservation can help ensure that important battlefield sites and historic working farms will be available to provide a link for future generations to places where conflict and sacrifice changed the course of our nation’s history.

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