



Agenda
Jefferson County Planning Commission
Tuesday, March 11, 2025 at 7:00 PM

**By order of the President of the Jefferson County Planning Commission,
Public Participation is available in-person only.
The meeting will be broadcast live via ZOOM for viewing purposes only.**

In-Person Meeting Location: Washington High School Auditorium located through the special event entrance adjacent to the stadium parking lot
300 Washington Patriots Dr, Charles Town, WV 25414

ZOOM Broadcast Information*: Meeting ID: 886 8336 6198
Meeting Link: <https://us02web.zoom.us/j/88683366198>

**If watching live broadcast, please ensure your microphone is muted and be mindful that your video is streaming to others.*

1. **Approval of Meeting Minutes:** February 25, 2025
2. **Request for postponement**

The following items are open for public comment

3. **Item Postponed to March 25, 2025: Public Workshop for the [REDACTED] Concept Plan.** The proposal consists of a Major Residential Subdivision with 62 lots and associated infrastructure. Property Owner: [REDACTED]. Developer: [REDACTED]. Property Location: [REDACTED]. Parcel ID: [REDACTED]; Size: ~211 acres; Zoning District: Rural (File #25-3-SD).
4. **Item Postponed to March 25, 2025: Public Hearing:** Waiver from Article 24, Section 24.113.B.10 of the Subdivision Regulations, to request to waive the Phase I Archaeological Survey requirement for Preliminary Plats. Property Owner: [REDACTED]. Developer: [REDACTED]. Property Location: [REDACTED]. Parcel ID: [REDACTED]; Size: ~211 acres; Zoning District: Rural (File # 25-5-PCW).
5. **Item Postponed to March 25, 2025: Public Workshop for the [REDACTED] Concept Plan.** The proposal consists of a Major Residential Subdivision with 20 lots and associated infrastructure. Property Owner: [REDACTED]. Property Location: [REDACTED]. Parcel ID: [REDACTED]; Size: 100 acres; Zoning District: Rural (File #25-4-SD).
6. **Item Postponed to March 25, 2025: Public Workshop for the [REDACTED] Concept Plan.** The proposal consists of a Major Residential Subdivision with 99 lots and associated infrastructure. Property Owner: [REDACTED]. Property Location: [REDACTED]. Parcel IDs: [REDACTED]; Size: ~126 acres; Zoning District: Residential Growth (File #25-5-SD).

7. **Item Postponed to March 25, 2025: Public Hearing:** Waiver from Section 2.3.A.3 of Appendix B of the Subdivision Regulations to allow for the use and development of one entrance due to limited frontage of the property and the proposed 99 lot installation. Property Owner: [REDACTED]. Property Location: [REDACTED]. Parcel IDs: [REDACTED]; Size: ~126 acres; Zoning District: Residential Growth (File # 25-6-PCW).
8. **Item Postponed to March 25, 2025: Public Hearing:** Waiver from Section 2.2.G of Appendix B and Section 22.206.B.2 the Subdivision Regulations to allow a proposed 99 lot installation to utilize two primary, disconnected, cul-de-sacs that allows more than 24 lots to be served. Property Owner: [REDACTED]. Property Location: [REDACTED]. Parcel IDs: [REDACTED]; Size: ~126 acres; Zoning District: Residential Growth (File # 25-7-PCW).
9. **Public Workshop:** [REDACTED] Concept Plan for a Major Site Development. The proposal consists of the following: Phase 1: a 304,000 square foot bottling facility with associated parking on a proposed 30-acre parcel; and, Phase 2: a 696,000 square foot bottling facility with associated parking on a proposed 66-acre parcel. The proposal will include the required stormwater management facilities. Property Owners: [REDACTED]; [REDACTED]; Parcel ID: [REDACTED]; Size: ~260 acres; Zoning District: Industrial Commercial; Parcel ID: [REDACTED]; Size 13.22 acres; Zoning District: Rural (supply well). Property Owner: [REDACTED]; Parcel ID: [REDACTED]; Size: 8.31 acres; Zoning District: Rural (waterline easement) (File #24-6-SP).

There is no public comment for the following items.

- 10. Reports from Legal Counsel
 - 11. Planner's Memo
 - 12. President's Report
 - 13. Actionable Correspondence
 - 14. Non-Actionable Correspondence
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DRAFT Meeting Minutes
Jefferson County Planning Commission
February 25, 2025

The Jefferson County Planning Commission met on February 25, 2025, at 7:00 pm with the following Planning Commission members present: Mike Shepp, President; Wade Louthan, Secretary; Cara Keys, County Commission Liaison; Tim Smith; Bruce Chrisman; and Daniel Hayes were present in person. J Ware was present via ZOOM.

Aaron Howell, Vice President, was absent with notice. Donnie Fisher was absent without notice.

Staff members present included Luke Seigfried, County Planner; Johnathan Saunders, County Engineer; Nathan Cochran, County Attorney; and Colin Uhry, Planning & Zoning Clerk.

Mr. Shepp called the meeting to order at 7:00 pm and confirmed a quorum was present.

1. Approval of Meeting Minutes: November 12, 2024 Meetings

Mr. Shepp stated the minutes stand approved as presented.

2. Request for postponement

Mr. Seigfried noted to the Planning Commission that Agenda Item 3 was postponed due to discussion of completeness the Planning Commission made on January 14, 2025. Mr. Siegfried also mentioned that the applicant requested the Planning Commission determine the completeness of the project, which is discussed under Agenda Item 5.

The following items are open for public comment.

- 3. Public Hearing for the Birdhill Meadows Preliminary Plat.** The proposal consists of the following: Construction of 104 Single-Family Detached Homes, Construction of 76 Townhomes, and Construction 39 Villas. The proposed site improvements will include stormwater management facilities, roadway infrastructure, and public utilities. Property Owner: [REDACTED]. Property Location: Vacant parcel located .35 miles northeast of the intersection of [REDACTED] and [REDACTED], Kearneysville, WV. Parcel ID: [REDACTED]; Size: 194.72 acres; Zoning District: Residential Growth (File #24-12-SD).

This item was postponed until a future meeting date dependent on the determination made by the Planning Commission under Agenda Item 5.

- 4. Public Hearing:** Variance from Note 14 of Plat Book 14 Page 54 to allow the residue and two proposed lots access off of [REDACTED] Road for a proposed three lot minor subdivision. Property Owner: [REDACTED]. Property Location: [REDACTED]. Parcel ID: [REDACTED]; Size: 80.15 acres; Zoning District: Rural (File #25-1-PCV).

Mr. Seigfried provided an overview of the staff report.

Mr. Rory Chapman, consultant, was present in person. Mr. Chapman explained the nature of the request.

Mr. Shepp opened the floor for public comment. There were no members signed up for public comment.

Mr. Shepp closed the floor for public comment.

Ms. Keys motioned to approve the request as presented. Mr. Smith seconded the motion, which carried unanimously.

There is no public comment for the following items.

- 5. Discussion and Action:** Request by the applicant for the Planning Commission to vote to approve or deny the Birdhill Meadows Preliminary Plat as complete in accordance with Sections 24.113 and 24.114 of the Subdivision Regulations, for the purpose of scheduling a Public Hearing for this project. Property Owner: [REDACTED]. Property Location: Vacant parcel located .35 miles northeast of the intersection of [REDACTED] and [REDACTED], Kearneysville, WV. Parcel ID: [REDACTED]; Size: 194.72 acres; Zoning District: Residential Growth (File #24-12-SD).

Mr. Seigfried provided an overview of the staff report and explained the role of the Planning Commissions' Completeness determination to the Commissioners.

Mr. Jason Gerhardt, engineer, was present in person. Mr. Gerhardt explained the nature of the request.

Mr. Shepp questioned the benefit of finding the application complete prior to the completion of the NPDES public comment period and approval of the WVDEP. Mr. Saunders noted that only the public notice date and future Planning Commission meeting would be impacted.

Mr. Hayes questioned if the WVDEP permit pending was for the entire project or solely Phase I. Mr. Gerhardt noted the permit is only Phase I of the project.

Mr. Hayes questioned the difference between projects being "complete" versus "substantially complete", Mr. Saunders noted it was determined at the state code level.

Mr. Hayes questioned the possibility of the public comment window having to reopen post advertising. Mr. Seigfried stated it would depend on the conditions changed and Mr. Saunders made mention of the project not needing to be readvertised, with the posted Planning Commission packet sufficing.

Ms. Keys questioned if public comments could lead to the applicant having to resubmit for a new permit, opening the public comment window again. Mr. Shepp and Mr. Gerhardt noted they have never seen that happen in their careers.

Ms. Keys motioned to find the application incomplete at this time, pending staff's approval to find the project complete and able to be scheduled for a public hearing. Mr. Louthan seconded the motion.

Mr. Hayes requested an amendment to the motion to include timelines regarding when the 45 day legal advertisement begins. Mr. Shepp noted there was already a motion of the floor. Ms. Keys and Mr. Louthan rescinded the motion.

Ms. Keys motioned to find the application incomplete at this time, pending WVDEP approval for Permit #WVR112829, directing staff to make their completeness determination with the approved permit in hand, with the 45 day advertising window starting then to be placed on the next corresponding Planning Commission meeting. Mr. Hayes seconded the motion, which carried unanimously.

6. Discussion and Possible Action Related to the Comprehensive Plan Update: Review of the amended 2045 Comprehensive Plan

Mr. Seigfried provided an overview of the amendments the County Commission made to the 2045 Comprehensive Plan.

Ms. Keys recused herself for the duration of this Agenda Item.

Mr. Cochran explained that should the Planning Commissioners approve the amendments, the 2045 Comprehensive Plan would go into effect. Mr. Cochran further stated that if the Commissioners disagreed with the amendments the Commission would need to send a letter to County Commission explaining their stance.

Mr. Shepp motioned to accept the amendments to the 2045 Comprehensive Plan as made by the Jefferson County Commission. Mr. Chrisman seconded, which carried unanimously.

7. Discussion and Possible Direction: Discuss draft amendment to the Completeness Determination Policy initiated on June, 13, 2023 regarding Concept Plan, Preliminary Plat, and Major Site Development submissions and completeness requirements and the required permits listed in Section 24.113, Section 24.122, and Appendix A Section 1.3 of the Subdivision Regulations.

Mr. Seigfried provided an overview of the amendments of the Completeness Determination Policy, asking for clear direction on what a “critical permit” is defined as.

Ms. Keys noted “sanitary” was misspelled and Staff noted the edit to be made to the Completeness Determination Policy.

Mr. Hayes questioned the purpose of the update to the Completeness Determination Policy. Mr. Shepp explained a conversation had at the January 14, 2025 Planning Commission meeting and the direction given to staff regarding completeness and approving with conditions. Mr. Cochran explained the legal ramifications of the process. Mr. Seigfried noted the benefit of having a baseline for developers to look over when submitting projects, with the option of developers also requesting an audience with the Planning Commission to determine completeness.

Mr. Hayes motioned to approve the Completeness Determination Policy with the edit of correcting the spelling of the word “sanitary”. Ms. Keys seconded the motion, which carried unanimously.

8. Reports from Legal Counsel

No reports given.

9. Planner’s Memo

Mr. Seigfried noted the upcoming Planning Commission meetings in March and put emphasis on the fact that all Commissioners must be in person on the March 11, 2025 meeting, as there will be no option to communicate via ZOOM.

10. President’s Report

None.

11. Actionable Correspondence

a. 1/28/25: Jean Zigler

b. 2/18/25: Jacquelyn Milliron

12. Non-Actionable Correspondence

None.

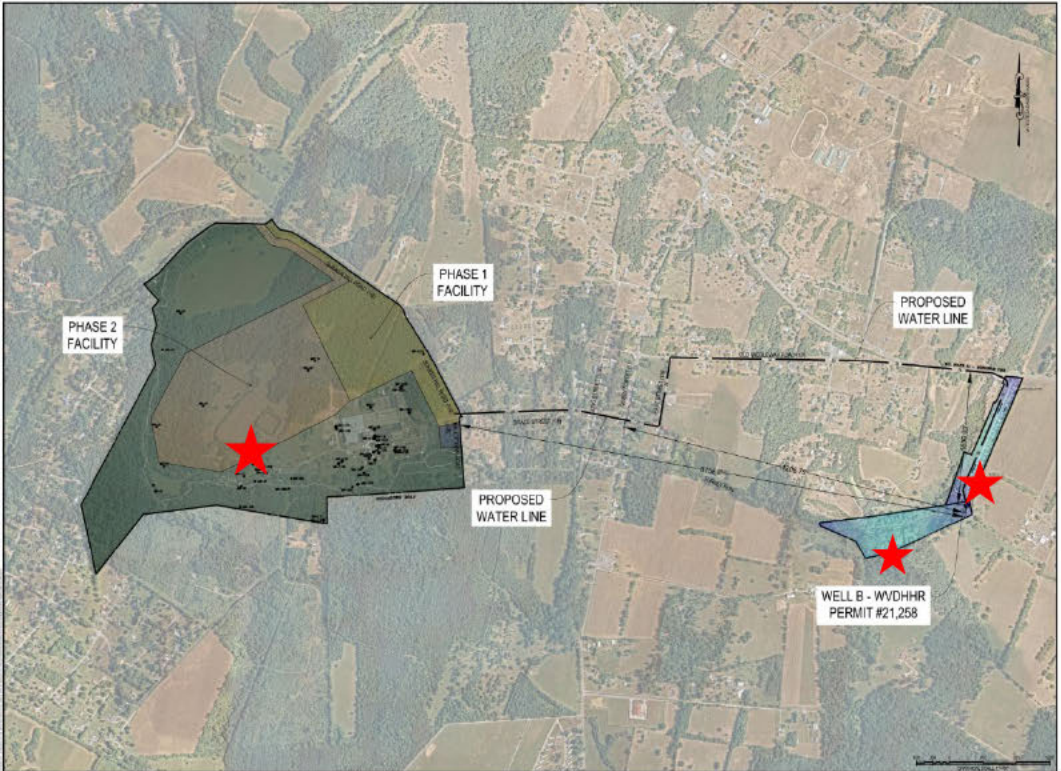
Mr. Hayes motioned to adjourn the meeting at 7:47 pm. Mr. Louthan seconded the motion, which carried unanimously.

These minutes were prepared by Colin Uhry, Planning & Zoning Clerk.

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Jefferson County Planning Commission
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Revised Concept Plan Public Workshop (PC File: 24-6-SP)

Item # 9: Revised Concept Plan Public Workshop: The proposal consists of constructing two water-bottling facilities in two phases with a total of 1,000,000 square foot in new building area. The project will include internal access roads with two commercial entrances, a water treatment facility for use by a local utility company, and stormwater management.

Owners/Applicant:	[REDACTED]	
Consultant:	[REDACTED]	
Property Location & Legal Description	<p>Parcel IDs: [REDACTED] Size: ~260 acres; 13.25 acres; and 8.31 acres; Zoning District: Industrial-Commercial and Rural</p> 	
Adjacent Zoning:	North, South, East, & West: Rural	
Proposed Activity:	Water Bottling Factory	
History:	<p>08/08/2023 – Planning Commission Waiver for 4-lot Subdivision Approved The site of the previous the 3M Plant (opened in 1961 and closed in 2005) and Eastman Kodak Co (2005 - 2006) S91-01 3M Plat Addition Site Plan S91-09 3M Plant Boiler Room Addition S95-11 3M Plant Oil Containment 2015 Commercial Liability Partners worked with the WV DEP on a voluntary remediation program to prepare for resale for industrial uses</p>	
Concept Plan Status:	Submitted:	09/27/2024
	Sufficiency Letter, with minor comments:	10/01/2024
	Planning Commission Determined Concept Plan Incomplete:	11/12/2024

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[REDACTED] Revised Concept Plan Public Workshop (PC File: 24-6-SP)

	Public Workshop Rescheduled:	12/16/2024
	Public Workshop Rescheduled:	02/11/2025

Introduction and Summary of Request

The Concept Plan for [REDACTED] consists of the following:

- The phased development of two Bottling Facility buildings on two separate parcels with a total of 1,000,000 square foot in building area
 - 304,000 square foot for proposed phase 1 Bottling Facility
 - 696,000 square foot for proposed phase 2 Bottling Facility
- A non-residential minor subdivision to create four parcels
 - Two parcels for two bottling facilities
 - One parcel for the existing facility (former 3M Plant)
 - One parcel for water treatment facility
- 569 paved parking spaces
- Two proposed access easements
- Stormwater management facilities

Zoning Information

The two heavy manufacturing and distribution structures totaling up to 1 million square feet proposed to be located on the site of the former 3M/Kodak Plant are permitted on Parcel [REDACTED] which is zoned Industrial Commercial and has historically been used for industrial/manufacturing uses.

1. The proposed groundwater wells in the Rural Zoning District are permitted in accordance with the following excerpts from the Jefferson County Subdivision and Land Development Regulations and WV Code 8A:
 - Per Division 20.200 of the Jefferson County Subdivision and Land Development Regulations states that “developments for the purpose of extraction or harvesting of resources and for roads on agricultural land for the purpose of conducting the agricultural operation” are excluded from processing under the Subdivision Regulations.
 - Per WV Code Section 8A-7-10 “Effect of Enacted Zoning Ordinance” states the following:
 - (d) If a use of a property that does not conform to the zoning ordinance has ceased and the property has been vacant for one-year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned: *Provided, That neither the absence of natural resources extraction or harvesting nor the absence of any particular agricultural, industrial or manufacturing process may be construed as abandonment of the use.* If the property is shown to be abandoned, then any future use of the land, buildings or structures shall conform with the provisions of the zoning ordinance regulating the use where the land, buildings or structures are located, unless the property is a duly designated historic landmark, historic site or historic district.
 - (e) *Nothing in this chapter authorizes an ordinance, rule or regulation preventing or limiting, outside of municipalities or urban areas, the complete use (i) of natural resources by the owner;*

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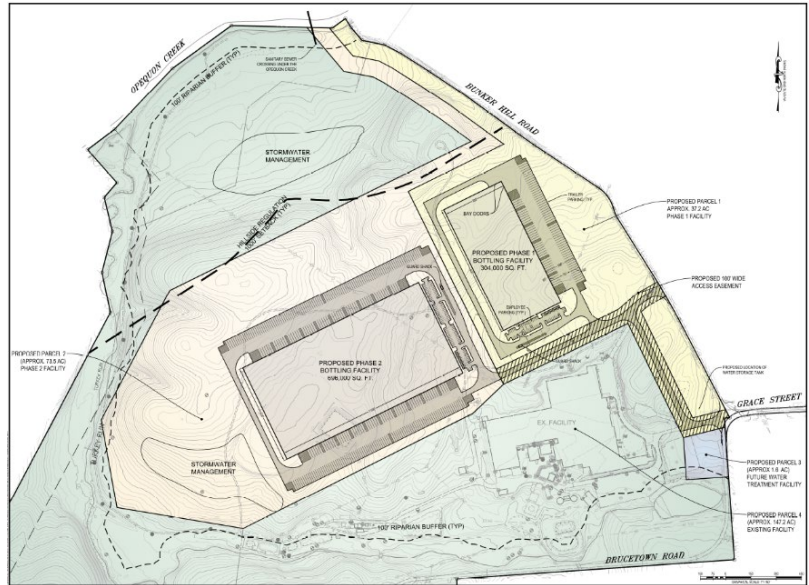
Revised Concept Plan Public Workshop (PC File: 24-6-SP)

or (ii) of a tract or contiguous tracts of land of any size for a farm or agricultural operation as defined in §19-19-2 by the owner. For purposes of this article, agritourism includes, but is not limited to, the definition set forth in §19-36-2.

Site Plan Category

Section 20.204 Subdivision Regulations identifies a project as a *Major Site Development* if the proposal “require the development of new infrastructure or the extension of off-tract infrastructure or where the proposal does not meet the definition of a minor site development.” A major site development shall adhere to Full Site Plan requirements in all proposals.

Therefore, a Major Site Plan, with a Concept Plan, will need to meet all the requirements of the Subdivision regulations. The first step in processing this Site Plan is this Concept Plan and the required Public Workshop. The graphic above depicts the proposed project.



Staff Determination of Application Sufficiency and Concept Plan Completeness Review

In accordance with the current Subdivision Regulations, the Major Site Plan Concept Plan process incorporates a sufficiency and completeness review in a single step. Upon submission and review of the applicant’s Concept Plan, Staff found the submitted plan “sufficient” (i.e. meeting all requirements of Section 24.119 of the Jefferson County Subdivision and Land Use Regulations). These requirements, as well as the current review status for each requirement for the proposed Mountain Pure project, are provided below:

	Description	Status
1. General Location	A map or aerial photograph showing an area of 500 feet around the property. Zoning boundaries shall be located on this document.	Provided on the Concept Plan
2. Concept Plan	In accordance with the content and formatting guidelines provided in Appendix A, <i>Plan & Plat Standards</i> .	Provided
3. Zoning Information	a) Zoning District in which the proposed development is located. b) Density calculations. c) Site resource map d) Use designation for all adjoin and confronting parcels	Provided

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4. Proposal Description	A written description of the proposal with general identification of the number of dwelling units or floor area proposed, commentary, zoning, and development option selected if the development is residential.	Provided on the Concept Plan
5. Traffic Impact Data	<ul style="list-style-type: none"> a) Average Daily Trip (ADT) figures for the adjoining or accessible State road. b) Trip generation figures c) Nearest key intersection that will serve the proposed project as classified by the current Comprehensive Plan. d) "Highway Problem Areas" according to the current Comprehensive Plan that falls within a one-mile radius of the project. 	<u>ADT</u> is 29 for Bunker Hill Rd; 812 for Grace St; and 3,055 for Leetown Rd; <u>Trip Generation</u> : Average Daily Trips est. to be 770 trips; 610 employee trips, 160 trucks trips <u>Key intersection</u> : Leetown Rd and Middleway Pk; Highway Problem Area #36
6. Traffic Study	A traffic study may be required only at the request and direction of the West Virginia Division of Highways. Any required traffic study or a letter from the West Virginia Division of Highways outlining the proposed improvements shall be received with the first submission of the Site Plan.	WV DOH has responded that the 3M Site Redevelopment Traffic Impact Study (5/1/23) is sufficient.
7. Agency Reviews	The applicant shall distribute the concept plan to all reviewing agencies found in Section 23.203 and 23.204 no later than 7 days after the review.	Letters to required agencies provided. Responses received are below.
D. Department	The Department review shall include the following: <ul style="list-style-type: none"> 1. Whether the density, use, and plan meet the requirements of the Zoning Ordinance and any other zoning issues that can be identified at the Concept Plan submission and any zoning issues the developer shall address in a Site Plan submittal. 2. Staff opinion as to whether the plan meets the Site Plan criteria of these Regulations. The Department shall review the Concept Plan for modifications that would improve the plan. 	Staff determined that the proposed Concept Plan meets the requirements of the Zoning Ordinance and the Subdivision Regulations as a Major Site Development with a Concept Plan.
E./F. WVDOH	WVDOH shall submit a letter to the Office of Planning and Zoning indicating issues and data requirements or notice that there are no issues or data requirements. If WVDOH determines that a traffic study is needed, parameters shall be provided. The review shall indicate whether a traffic impact study will be required based on analysis required in Section 24.119.B.5.	WV DOH has determined that a Traffic Impact Study for this specific project is not necessary as it was previously considered in the 3M Site Redevelopment TIS (5/1/23)
G. Public Service	The review shall indicate whether there are existing water and sewer systems in place that can handle the development. If not, the review shall indicate the type or extent of a system that shall be proposed by the developer to best meet the County's needs in that area of the County.	This project is proposed to be served public water and sewer by Berkeley County Public Service Water and Sewer Districts.

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H. Recommended Conditions	All reviews shall contain recommended conditions for moving forward to a site plan or reasons why the plan should be denied.	See below
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Concept Plan Review

1. External Agency Reviews (attached)

Comments have been received from the following agencies (see attached):

- a. The applicant has provided “Intent to Serve” letter from Berkeley County Public Service Sewer District stating that domestic sewer service will be provided (but not for process water).
- b. The applicant has provided “Intent to Serve” letter from Berkeley County Public Service Water District stating that a mainline extension is required and that water service up to 10,000 gallons per day can be provided.
- c. Historic Landmarks Commission provided a letter objecting to the proposed project based on the anticipated negative impact on historic Middleway caused by the increased truck traffic required by the proposed project and impact of installing a water pipeline through Middleway.

As of this date, no other agency review comments have been received.

2. Input received by staff from External Agencies

Charles Town Utility Board (CTUB) has confirmed that it holds the permit from the Division of Highways to allow the proposed pipeline to connect parcel 34 to parcel 9 through the DOH right-of-way. CTUB has agreed to provide the water to the project and will take over the water treatment plant proposed to be located on Parcel 3 at a later date.

The WV Department of Health (DH) has confirmed that the applicant has an active water well construction permit and part of the permitting process required a water well pump test to determine if withdrawal will impact other local wells. Any withdrawals above the approved pump test rate would require a new well pump test.

The Division of Highways has approved the Traffic Impact Study for the redevelopment of the site.

3. Staff Recommendation related to Concept Plan

The Subdivision Regulations state that unless there are reviews indicating that the development cannot conform to the Zoning Ordinance, be serviced by public services, or provide its own utilities, or other factors that make the development impossible, Planning staff is required to accept or deny the concept plan as complete. Upon accepting the application as complete, Planning staff is required to place it on the next possible Planning Commission agenda as a public workshop, which is advertised at least fourteen (14) days in advance of the meeting and posted on the property.

Planning staff had found that the Concept Plan for the proposed Mountain Pure phased development plan to be “Complete” based on the information provided prior to the November 12th Public Workshop. Following the Public Workshop, Planning Commission found the Concept Plan to be “Incomplete”, as it did not provide information on all parcels affiliated with the project. Additional information was submitted by the applicant on November 15th and staff determined it addressed what Planning Commission deemed would be necessary for the Concept Plan to be “Complete”. This information included parcel information of two additional parcels included in the project and the proposed pipeline that would provide the process water to the proposed facilities. Additional information was provided

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Revised Concept Plan Public Workshop (PC File: 24-6-SP)

including a reduction in the trip generation data based on the TIS, additional proffers, and data on the supply well.

On December 16th, the Special Meeting planned for December 17th to hold the Public Workshop was rescheduled by court order to be held on the regular Planning Commission meeting on February 11th. On February 11th the Regular Meeting planned for February 11th to hold the Public Workshop was cancelled due to inclement weather and postponed to the March 11th regular Planning Commission meeting.

The Office of Planning and Zoning Staff finds the Concept Plan for the proposed [REDACTED] phased development plan, located along Brucetown Rd and Bunker Hill Rd at the intersection with Grace Street, to be “complete” based on the information provided related to the criteria above; however, the following standards will need to be addressed prior to approval of the Site Plan, which is expected to be submitted in phases:

- a. WV DOH approval for the proposed entrances, and any Traffic Impact Study recommendations, if required, will be required in conjunction with the Site Plan.
- b. Water and sewer utility permits from Berkeley County Public Service Water and Sewer Districts will be required in conjunction with the Site Plan.

Prior to Site Plan approval, any state permits related to wells and groundwater extraction will be required to be submitted to the County for our files.

4. Planning Commission Direction

The Concept Plan Public Workshop allows for the Planning Commission and the general public to comment on the proposed plan before complete engineering design and cost are incurred. The Subdivision and Land Development Regulations outline the procedure:

1. The applicant makes a short presentation.
2. Staff explains outside agency comments and whether the plan can meet the standards of the Zoning Ordinance.
3. Public comment is solicited.

Following the applicant’s presentation, staff’s explanation, and the solicitation of public comment, the Planning Commission shall provide direction to the applicant as required under Concept Plan Direction outlined in the Subdivision Regulations. The Planning Commission has the option of providing this direction at the same meeting during which the Concept Plan public workshop takes place, or at a subsequent meeting that occurs within 14 days of the meeting at which the Concept Plan public workshop is closed.

Section 24.121 of the Subdivision and Land Development Regulations outlines the direction to be provided to the applicant during a Minor Site Plan Concept Plan review:

“The Planning Commission shall direct the preparation of a Site Plan subject to conditions to be addressed in the site plan application. The purpose of this review is to guide the developer so that when the site plan application is formally reviewed by the staff, there should not be a whole range of issues being raised for the first time. The

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developer shall cite conditions and demonstrate that they have been met or otherwise addressed.”

It should be noted that the direction provided to the applicant in the Major Site Plan Concept Plan Public Workshop shall be applicable for a period of two years, with the provision that any amendments to the Subdivision and Land Development Regulations or the Zoning and Land Development Ordinance in the second year shall be applicable.

ATTACHMENTS:

- Jefferson County Historic Landmarks Commission Findings (01-24-25)
- Berkeley County Public Service Sewer District (08-18-21)
- Berkeley County Public Service Water District (05-28-24)
- Traffic Impact Study (05-01-23)



November 5, 2024

To: Jefferson County Planning Commission Members

Project Name: Integrity Federal Services
Mountain Pure
Project/Phase: 3138-0102 – Concept Plan

The Jefferson County Historic Landmarks Commission (JCHLC) reviewed the concept plan for the [REDACTED] project and objects based on the traffic impact study alone. Increased truck traffic in the village of Middleway, which is listed on the National Register of Historic Places as a Historic District, would destroy the village's charm. As an advocate for the preservation of the village's unique character, I believe allowing heavy truck traffic through its historic streets not only threatens the integrity of the village's architectural heritage but also poses a serious risk to the safety and well-being of the community.

Middleway dates to the 18th and 19th centuries, and is home to many significant historical structures, each carefully preserved to reflect the rich cultural legacy of the area. The narrow streets and historic buildings are integral to the village's charm and historical value both for residents and visitors. Heavy truck traffic will lead to further erosion of the historic infrastructure. The vibrations and heavy loads risk damaging delicate structures and eroding the village's historic fabric in ways that may be irreversible.

In addition to the physical damage to our heritage, the presence of large trucks disrupts the pedestrian-friendly atmosphere that defines the village. The increased noise, air-pollution, and safety hazards associated with such traffic would affect the quality of life for residents. The streets were never designed to accommodate such traffic volumes and access by large trucks presents a threat to public safety and the integrity of the village's heritage.

In conclusion, JCHLC objects to this plan based on the traffic impacts on the village of Middleway. JCHLC urges the JC Planning Commission to require an alternate route that bypasses the historic core of the village.

Thank you for your attention to this matter,

Martin Burke

Martin Burke
Chair, JCHLC

cc: Jennie Brockman



January 24, 2025

To: Office of Zoning and Planning/Jefferson County Planning Commission
116 E. Washington Street, 2nd Floor
Charles Town, West Virginia 25414

Project Name: [REDACTED], 24-6-SP Concept Plan

The purpose of this letter and attached report is to provide the Jefferson County Historic Landmarks Commission's review of the [REDACTED] concept plan (File No: 24-6-SP). As a reviewing agency, the JCHLC has unanimously agreed that the plan should be denied based on the impact it would have on the historic district of Middleway. The Middleway Historic District has been on the National Register of Historic Places for more than forty years and its historic significance and unique character cannot be understated.

The Jefferson County Zoning and Land Development Ordinance, Article 4, Section 4.4.C, states that "Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places *shall not be permitted.*"

The developer proposes to route heavy traffic and a water transport line directly through the historic district. We urge you to deny this and any plan that routes significant truck traffic and/or any connections to the facility through the historic district. The JCHLC feels strongly that this project would destroy the historical character of the village and result in significant immediate and long-term impacts on historic Middleway including a variety of impacts from heavy truck traffic to potentially disturbing or destroying underground archeological resources through the installation of a water transport pipeline. It is the JCHLC's responsibility to protect our county's valuable historic resources and it is within your power to help us ensure their protection by denying this concept plan.

Thank you,

Addison Reese

Jefferson County Historic Landmarks Chair

Reviewing Agency Report
Jefferson County Historic Landmarks Commission
Project Name: [REDACTED], 24-6-SP Concept Plan

Introduction

This report is provided by the Jefferson County Historic Landmarks Commission (JCHLC) pursuant to the Jefferson County Subdivision and Land Development Regulations (Subdivision Regulations). This report provides an overview of the Subdivision Regulation requirements of the JCHLC in the concept plan process, identifies and briefly characterizes historical resources that may be affected, identifies potential impacts, and provides recommendations based on these findings and the Subdivision Regulations and the Jefferson County Land Development and Zoning Ordinance.

The JCHLC recommends that Concept Plan 24-6-SP be denied based on the prohibitions in the Zoning Ordinance (Section 4.4 Prohibited Uses, C). The plan is also incompatible with Section 3.4 D. 4. a. and Section 1.1, Purpose K.

Requirement for JCHLC Review in the Subdivision Regulations (Authority)

The concept plan review process is delineated in the Subdivision Regulations, at Section 24.119. Subsection 7. describes Agency Reviews, stating in part, “The reviewing agencies shall conduct reviews of the proposed concept plan,” and goes on to indicate that the reviewing agencies are listed in Section 23.203 and 23.204.

Section 23.203, Subsection C requires that: “**Jefferson County Historical Landmarks Commission:** This body shall submit a report and findings on whether historical resources exist on the site of the proposed subdivision of site development. If there are, they shall submit findings on whether the proposal meets the requirement of zoning with respect to such structures or places at Concept Plan stage.”

Section 24.119. H. of the Subdivision Regulations requires that all reviewing agencies provide recommendations to the Planning Commission. Section 24.119. H. states, “**Recommended Conditions.** All reviews shall contain recommended conditions for moving forward to a site plan or reasons why the plan should be denied.”

Therefore, the next two sections include findings on historical resources, whether the proposal meets the requirements of zoning with respect to these historical resources, and make recommendations to deny Concept Plan 24-6-SP.

Findings of Historical Resources

As required by the Jefferson County Subdivision and Land Development Regulations, at **Section 23.203 subsection C**, “Jefferson County Historical Landmarks Commission: This body shall submit a report and findings on whether historical resources exist on the site of the proposed subdivision of site development.”

To that end, the JCHLC has considered whether historic resources exist on the site of proposed development in Concept Plan 24-6-SP and how those resources would be impacted by the proposed development. The JCHLC had a special meeting on January 15, 2025 to review the concept plan. The public was invited to comment on this concept plan prior to and during the special meeting. The board received comments from three groups working to promote historic preservation in Jefferson County including the Preservation Alliance of West Virginia, Middleway Conservancy, Jefferson County Foundation, as well as Middleway residents and business owners passionate and active in preserving the historic resources of Middleway and the surrounding area. There were no public comments in favor of the concept plan during the meeting. Commenters presented concerns regarding the possible and likely impacts of the development described in this concept plan. To better understand the implications of this development on historic resources, some members of the JCHLC conducted site visits and performed additional research pertaining to Middleway’s history and the proximity of resources to the proposed development.

The development described by this concept plan includes parcels on the east side of Middleway where the groundwater wells are located, traverses through the Middleway Historic District for more than 1800 feet where the water transport pipeline will be constructed and operated, and several parcels on the west side of Middleway to the site where the developer would like to construct and operate a large-scale water extraction and bottling facility. Also, the concept plan indicates that there will be an average of 770 daily trips, including 160 tractor trailers, driving through the historic district of Middleway each day. It is important to note that the concept plan has little detail and there may be other elements of the development beyond those described here that will affect historic resources including but not limited to tall structures such as water towers, lighting, or noise.

Middleway, historically known as Smithfield, is rich in historic resources. After conducting independent research, consulting with other preservation organizations and experts, and receiving public input, the JCHLC found the following resources to be the most seriously endangered by the development described in the concept plan. Although listed separately, these resources are all interconnected as they are either physically part of the Middleway historic district or contribute to and are part of the larger history of the village.

- 1) **The Middleway Historic District** has been recognized by the United States Federal Government via the inclusion on the National Register of Historic Places in 1980.¹ The National Register Historic Places Inventory Nomination form will be included at the end of this report.

The Middleway Historic District is significant because it is an exceptional example of a typical, rural, and well-preserved crossroads town from the 18th and 19th centuries—its oldest structure dating back to 1750. As outlined in the National Register of Historic Places Inventory, the historic district contains sixty structures, many of which are log. Additionally, the district is home to treasures like Scollay Hall, which was used as a hospital during the Civil War. The buildings in the district are mostly in good condition, and there has been a recent trend of restoration and renovation of the historic structures. The district's significance lies in its representation of a typical crossroads town from its period, with a mix of residential, commercial, religious, and social structures. It remains distinct from its surroundings due to its concentration of older buildings, making it a time capsule.

The Middleway Historic District will be impacted by the increase in tractor trailer truck traffic by 160 heavy trucks per day. This will negatively affect both the atmosphere and the historic architectural features (buildings, sidewalks, etc.) of the Middleway Historic District. The development will traverse the Middleway Historic District through or past some of the most important features of the historic district for more than 1800 feet. Earth moving activities, trenching, and maintenance for the installation of the water transport pipe has the potential to damage or destroy historic structures, other architectural features, buried human remains, and archeological resources. The character of the Middleway Historic District may also be impacted by yet unknown elements of the development.

- 2) **Smithfield Crossing Battlefield** and accompanying soldiers' burial ground on East Street, Middleway. This multi-day, wide-ranging battle took place in and around Middleway at the end of August 1864. Continued development of the property west of Middleway has the potential to damage or destroy archeological resources from the Smithfield Crossing Battle. The Civil War Hospital sits at the southeast corner of Grace and Queen Streets contributes to both the Smithfield Crossing Battlefield and the Middleway Historic District. The 160 tractor trailers will rumble down just a few feet from the building as they pass each day. These trucks loaded with the heavy water from the plant will be applying the brakes as they come down to the stop sign right next to the Civil War Hospital. This truck traffic has the potential to negatively impact the Civil War

¹ Middleway Historic District. National Register of Historic Places Nomination and Inventory for Middleway, WV. Compiled by James E. Harding October 23, 1979.
<https://wvculture.org/wp-content/uploads/2021/03/Middleway-historic-district.pdf>

Hospital both catastrophically through a truck accident and insidiously over time through increased vibration, exhaust, dust, and road treatment chemicals.

3) **Burial Grounds.**

- a. The Soldiers' Burial Ground was a temporary burial field for soldiers who died during the Smithfield Crossing battle (and other nearby battles), or died later as a result of their injuries or disease at the war hospital in Middleway on the north side of the Union Church. James E. Taylor's famous Civil War-era sketchbook depicts the soldiers' burial ground and shows the temporary markers that were erected at the time (see image in Appendix A). In addition to the unmarked soldier burials, there are two other cemeteries along the path of development. The Episcopal Graveyard on the corner of Grace and East Street as well as the Union Cemetery along East Street may also be impacted by the portion of the development that traverses East Street (see photos in Appendix A). There are two marked graves for Civil War soldiers in front of Grace Church but it has been reported that ground penetrating radar (GPR) located three burials in that place. Additionally, 76 other burials were located with GPR across the street at the Union Cemetery (Photos in Appendix A). These burial grounds may be impacted by the portion of the development that traverses East and Grace Streets. There is a high likelihood of additional unlocated/unmarked burials, and human remains, along with grave markers and/or funerary objects could be disturbed or destroyed during the construction of the water transport pipeline or during operation and maintenance of this portion of the development.

The JCHLC would also like to note that this revised concept plan still leaves a great deal of uncertainty. The concept plan includes a Phase 2 component of the project, the details of which are not included in this version of the concept plan. The tenth page of the concept plan shows that Phase 2 is more than double the size of the building suggested in Phase 1, however, no details are given to help us understand the impacts of a second phase of the development. We therefore reserve the right to evaluate the project again and submit additional reports such as this one as further details become available.

Requirements of Zoning

As required by the Jefferson County Subdivision and Land Development Regulations, at **Section 23.203 subsection C**, (Page 48) “If there are (*Historic Resources*), they (*JCHLC*) shall submit findings on whether the proposal meets the requirement of zoning with respect to such structures or places at Concept Plan stage.”(Emphasis added for clarity). We therefore performed a review of the Jefferson County Zoning Ordinances. Our review found that this project **does not meet the requirements of the Zoning Ordinances** and is in fact incompatible with them. It therefore should be denied.

It is in **Section 4.4 Prohibited Uses, C** (Zoning Ordinance, page 50) we find the strongest evidence that **Concept Plan 24-6-SP does not meet the requirements** of Jefferson County Zoning Ordinances. It states, “Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places *shall not be permitted.*” (Emphasis added).

According to **Section 3.4 D. 4. a.** (Zoning ordinance page 48), the Middleway Historic District qualifies as a **Category I Historical Site**, as it is listed on the National Registry of Historic Places. **Section 4.4 Prohibited Uses, C** (Zoning Ordinance, page 50) states, “Any development which would destroy the historical character of a property listed on the West Virginia or National Register of Historic Places *shall not be permitted.*” (Emphasis added).

The JCHLC finds for the reasons stated below that this development will destroy the historic character of the village of Middleway through the impacts of the increased vehicular traffic, the portion of the development that traverses the historic district (water transport pipeline), and possibly yet unknown elements of the development that may impact the development.

The increased truck traffic by 160 tractor trailers a day (one truck every 9 minutes on average) will be associated with noise, vibrations, dust, exhaust, displacement of road treatment chemicals onto sidewalks and historic structures, safety risks, risk of catastrophic structure damage due to vehicular accident, and visual offense that will clearly and obviously destroy the historic character of the village of Middleway. Immediately the atmosphere that is critical to the historic character of the village will be destroyed. Over time the very structures that make up the historic district will be deteriorated or destroyed.

The construction activities related to the water transport pipeline has the potential to cause damage to historic structures, buried human remains, and other archeological resources related to the historic district, the cemeteries, and the battlefield.

There also may be yet unknown elements of the development that will contribute to or on their own destroy the historical character of the historic village of Middleway. This would include but not be limited to elements that interrupt the view shed such as smokestacks, water storage

towers, light pollution from outdoor lighting, or noise from the development that could be heard from the historic district.

Section 1.1 Purpose K (Zoning ordinance, page 9) lists “**Encourage Historic Preservation**” as one of eleven purposes for which the zoning ordinances were created. In listing this purpose, the zoning ordinances are clearly seeking to protect and preserve the historic resources of Jefferson County that impart a distinctive character to the county. The JCHLC seeks to honor this purpose.

We believe that allowing the proposed development will deteriorate and may sabotage the historic preservation that is currently ongoing and discourage further preservation efforts. The JCHLC notes that a project such as this, where the proposed development dwarfs the current established settlement by many folds, where the construction of and continued operation puts historic resources at risk and forces dramatic changes to the traffic to the detriment of the historic preservation, is the antithesis of the idea of encouraging Historic Preservation. **We therefore find this Concept Plan, 24-6-SP to be incompatible with Zoning Ordinance Section 1.1 Purpose K.**

As the Middleway Historic District is a Category I Historical Site, **Section 4.6, subsection A** (Zoning Ordinance, Page 52) is triggered. This subsection defines that “Industrial uses are subject to this subsection, unless otherwise specified in this Ordinance. Any uses (not including parking) or buildings subject to compliance with this Section shall be located at least 200 feet from: 4. Any parcel, historic structure, or designated historic district which has been listed on the West Virginia or National Register of Historic Places.”

Applicant has characterized its land use as an Industrial User in their Concept Plan, thus triggering this subsection. The portion of the development that traverses the Middleway Historic District (water transport pipeline) is a “use” as defined in **Section 4.6, subsection A**. The zoning ordinance is therefore clear. As a listed historic district on the National Register of Historic Places, Middleway must be provided with a 200-foot buffer zone from the proposed development.

The JCHLC finds that the development described by Concept Plan 24-6-SP will destroy the historical character of a property listed on the National Register of Historic Places. For this reason, the development fails to meet the requirement of zoning with respect to historical resources, and according to the Zoning Ordinance this Concept Plan **shall be denied**.

The JCHLC also finds that the development described by Concept Plan 24-6-SP will not adhere to the setback limitations for historic resources and will actively deteriorate current and deter further historic preservation efforts in direct contradiction to the goals of the Zoning Ordinance. In addition, this development will destroy the historical character of the Middleway historic district and adds an additional risk of physically damaging or destroying other historical resources.

Recommended Conditions

As required by **Section 24.119. H. “Recommended Conditions**. All reviews shall contain recommended conditions for moving forward to a site plan or reasons why the plan should be denied.” On January 15, 2025, after comment from the public and discussion among members, the JCHLC unanimously voted to recommend that Concept Plan 24-6-SP be **denied** due to obvious and unavoidable conflict of the site development with the elements of the Zoning Ordinance as described in the above section. We reiterate these reasons below.

Denial of Concept Plan

JCHLC recommends denial of the concept plan as the development will destroy the historic character of the village of Middleway as described in **Section 4.4 C** of the Jefferson County Zoning Ordinance. Furthermore, we find this project to be counterproductive to the **Purpose K in Section 1.1** (Zoning Ordinance, page 9) “**Encourage Historic Preservation**”, as this project will put at risk the historic preservation that has occurred in Middleway and threatens continued and future preservation efforts.

Regardless, the 45-day review period provided in the Jefferson County Subdivision and Land Development Regulations Section 24.119 for reviewing agencies such as the JCHLC should restart as the applicant failed to give notice to the board in the time required by the regulation. All conditions listed below should be included in the resubmission. Additionally, JCHLC reserves the right to produce and submit a second report to complement this one during the 45-day review period.

Recommended Conditions

The JCHLC urges you to deny this concept plan for the reasons described above. However, in the event that the Planning Commission decides to accept this Concept Plan despite this strong recommendation and the clear requirement in the Zoning Ordinance, we strongly recommend the following conditions, that are each based in the Zoning Ordinance as cited above, be placed on your direction as permitted in Section 24.121 A and B:

- 1) **A vehicle bypass that avoids the Middleway Historic District with a 200-foot buffer zone.** Upon our study of the area surrounding Middleway, there appears to be the potential for several such bypasses. As our expertise is in historic preservation and not civil engineering, we make no direct suggestion for a location of a bypass, but encourage the applicant to find several alternative, viable paths that can be examined by the JCHLC at a future date. This bypass must respect the 200-foot buffer rule established by **Section 4.6, subsection A**.
- 2) **Any waterline to the facility should completely bypass the Middleway Historic District.** The water transport pipeline should be built such that it does not enter the

Middleway Historic District. **Section 4.6, Subsection A** requires that industrial developments cannot be closer than 200 feet to a Historic Resource on the National Register. This is measured from the center of a building or a property. In this case, because we are considering a district composed of many structures, we suggest that the 200-foot buffer zone be made from either the perimeter of the district or each Structure on the outside perimeter of the district.

- 3) **The development shall not have any other elements that would impact the historical character of the historic district of Middleway.** This would include but not be limited to vertical structures (water storage tanks, smokestacks, etc.) interrupting the viewshed or creating significant noise, or light pollution. Proof of an uninterrupted viewshed would need to be provided to JCHLC in the form of balloon height tests, in which large, brightly colored weather balloons are raised to the height of the tallest structures and observed from multiple locations around the Historic District and from the Structures within the Historic district
- 4) All efforts should be made to avoid damage to the historic resources already identified as well as underground resources. As such, the JCHLC recommends that the entirety of the village of Middleway, including the Historic District as identified on the National Register of Historic Places, and the area immediately outside the Historic District should be avoided by all construction having to do with the development including for but not limited to water transport pipes or roadways, and by the eventual ongoing operations included in the proposal.

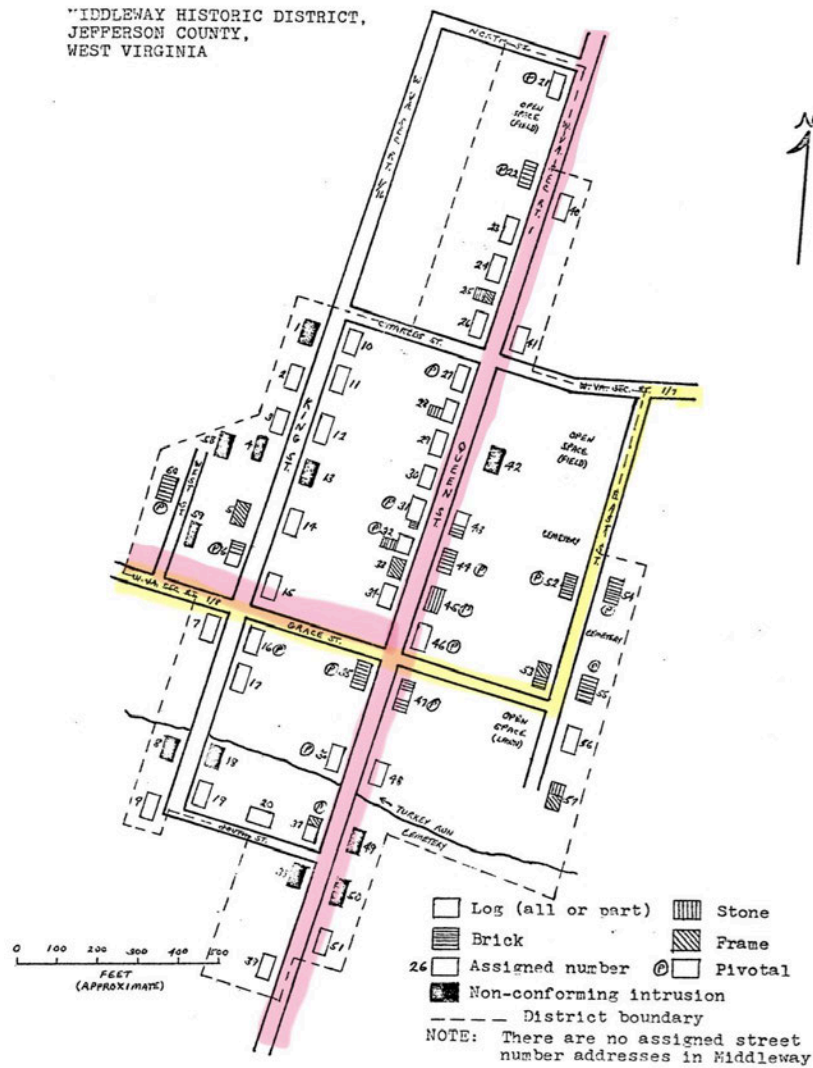
Conclusions

Although it is outside the scope of this report, the JCHLC would like to note that this report is just a brief overview of the historic resources in Middleway along the development path. The approval of this concept plan would destroy the historic character of the historic district of Middleway and would consequently harm their historic tourism hub. The JCHLC strongly encourages Jefferson County agencies and government to prioritize investment in existing resources, both historical and otherwise, and to oppose development projects that seek to fundamentally alter the county's character.

Again, the Jefferson County Historic Landmarks Commission urges the Jefferson County Planning Commission to follow the Jefferson County Zoning Ordinances and Jefferson County Subdivision and Land Development Regulations they were appointed to uphold and deny Concept Plan 24-6-SP.

Appendix A – Historic Resources and Source Documents

- 1) **Middleway Historic District** - In 1980, the village of Middleway was accepted for inclusion on the National Register of Historic Places, maintained by the U.S. Department of the Interior. The original application and inventory of resources will be included with this report. Below is an image from the nomination. The yellow highlighted path is Grace and East Street, the path of the proposed water line. The pink highlighted path is Queen Street to Grace Street, the planned throughway for heavy traffic.

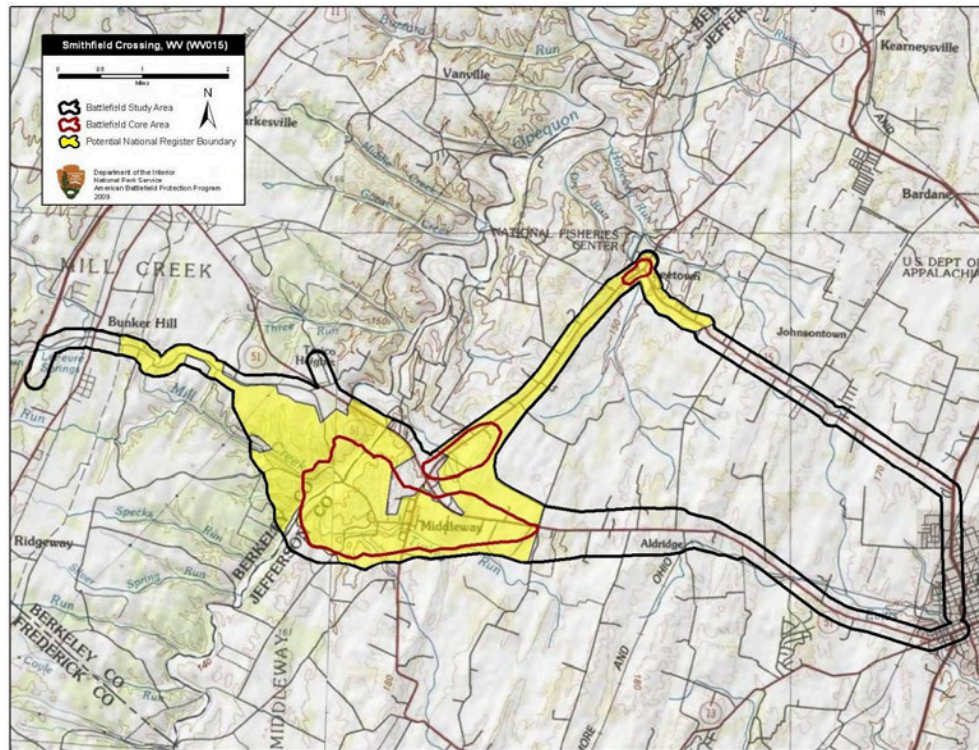




Above: Oldest confirmed structure in the historic district (circa 1750). The house has multiple historic names including Sam Stones Tavern, Virginia Inn, and the Bates House. It sits at the corner of Grace and Queen. Photo courtesy of Jessie Norris (Middleway Conservancy).

- 2) **Smithfield Crossing Battlefield-** The Battle of Smithfield Crossing was fought over several days from August 25, 1864 to August 29, 1864. “This broad skirmish extended from Leetown, WV on the north, almost to Bunker Hill, WV on the west, and to Childs Road to the east. The most intense fighting occurred between Opequon Creek and Childs Road with fighting occurring throughout the village of Smithfield, as Middleway was generally known at that time. The battle, which resulted in some 300 casualties, was significant as the beginning of the final act between Confederate General Jubal Early's retreating forces and Union General Philip Sheridan's troops in the final Shenandoah Valley campaign. The outcome of the battle is considered a draw, but allowed Union forces to regain control of the Opequon Creek crossing on Bunker Hill Road after having been driven back towards Charles Town.”² In August 2014, the Middleway Conservancy held commemorative events, including a battle reenactment, to honor the 150th anniversary of the Battle of Smithfield Crossing. There is great potential for historic tourism development related to this battle.

² The Battle of Smithfield. Middleway Conservancy. <https://middlewayconservancy.org/battle-of-smithfield>



The Battle of Smithfield Crossing: <https://alfredgibbs.com/smithfield-va-aug-28-1864/>

3) Cemeteries

- a. **Soldier's Burial Ground-** At the corner of East Street and Grace Street is the site of a former burial ground for soldiers killed in the Battle of Smithfield Crossing and other nearby Battles including the Battle of Antietam. Sollay Hall, which at the time of the Civil War was being used as a hospital, hosted the recuperation of many soldiers. These included participants of the Battle of Smithfield Crossing and other nearby battles including Antietam, among others. Those who passed in battle or died later from injuries or disease were interred in a field. Intended as a temporary burial ground, many men were later claimed by family members and disinterred. However, an unknown number of unmarked graves still exist, some of which may be located near to or under the current road. The Middleway Conservancy has been concerned for many years about the uncertain scale of this graveyard and that it remains unmarked. The construction of the water transport line to service the bottling plant could disturb remaining burials.



Image from Google Earth of the field that was the burial ground for soldiers (Retrieved 1-20-25)



A depiction of the soldiers' burial ground. **Graves of Union Cavalry and Infantry killed in the battle of Smithfield, Aug. 29, 1864³**

- b. The proposed water pipeline path would go past multiple known burial grounds. The cemetery at Grace Episcopal Church Cemetery (circa 1850) and the Union Church Cemetery (circa 1805). As with many other old graveyards, there are unmarked burials. Some modern fencing had been erected to protect but the cemeteries have generally been unfenced since their inception. The proximity of

³ Taylor, James E. With Sheridan Up the Shenandoah Valley in 1864: Leaves from a Special Artist's Sketchbook and Diary. Cleveland, OH: Western Reserve Historical Society. 1989. 332.

the proposed water transport line to these graveyards is extremely concerning as there is potential for unmarked burials up to and under the road. Additionally, ground destabilization could cause grave markers to sink or become damaged during the construction and continued operation of the suggested waterline.



Left: Grace Episcopal Cemetery, Right: Union Cemetery. East Street is part of the proposed path for the water transport line.

In *July 2023*, members of Grace Episcopal Church pursued ground penetrating radar at the Union Church to locate burials in an open portion of the graveyard. The final ground penetrating radar report identified 76 unmarked burials.



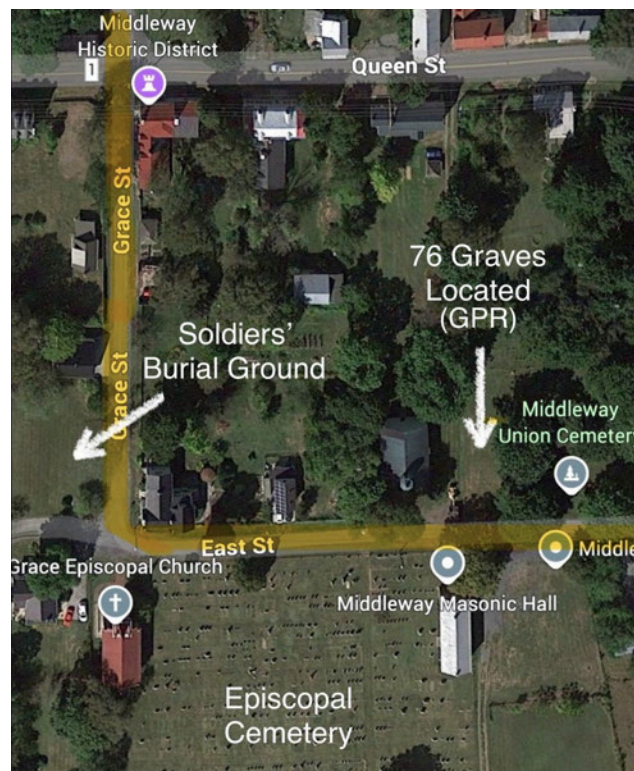
GPR, July 2023. East Street in background



Example of a buried grave marker identified through GPR.
Photos courtesy of Grace Episcopal Church.



Above: Page 8 of the water transport pipeline engineering packet.⁴ The portion of the proposed water transport pipe depicted in this diagram is drawn on the map below to provide context.



This map shows the burial grounds along the path of the proposed water transport pipeline. The yellow line represents the proposed path.

⁴ Middleway Water Bottling Project Design Documents.
<https://wearetheobserver.com/wp-content/uploads/2025/01/CTUB-FOIA-2025-001-Response-Sidewinder-pipeline-design-2023.pdf>

Appendix B – Potential Impacts on Historic Resources From this Development

This appendix highlights the potential impacts from this development foreseen in Concept Plan 24-6-SP.

Trucks and Increased Traffic Volume

The issue brought up by most public commenters, and the one seen as detrimental by JCHLC, is dramatically increased traffic through the historic district of Middleway, WV. Middleway has been faced with increasing amounts of traffic, especially trucks. The community has pushed for years to have a bypass road or additional safety measures put in place. Multiple homeowners have faced vehicles wrecking into their homes, some of which are situated just feet from the modern road.

The concept plan predicts approximately 160 tractor trailer trucks traversing the streets of Middleway daily, or the equivalent of one truck every nine minutes. These trucks will enter Middleway from Route 51 onto Leetown Road. They will continue into Middleway on Queen Street (Leetown Road becomes Queen Street at the eastern border of Middleway and reverts to Leetown Road on the western border) and will take a right onto Grace Street to proceed to the facility.



Images from Google Earth (Retrieved 1/20/25). Note the proximity of historic homes to the road.

The concept plan provides parking for several hundred employees (400 parking spaces), all of whom would be driving to the facility and leaving via Grace Street.



View from Grace Street approaching the stop sign at Queen Street. Image retrieved from Google Earth 1/22/25



View from Grace Street. Image retrieved from Google Earth 1/22/25

Undoubtedly, this increased volume of large vehicle traffic and commuting employees will corrode the historic character of Middleway. More specifically, the JCHLC is concerned about the following vehicle-related issues affecting the Historic District of Middleway.

- 1) **Vibration** – Large-scale vehicles driving through Middleway have the potential to cause damage to the delicate historic properties that line the streets of Middleway.⁵ As previously mentioned, most of the structures in the historic district are situated within several feet of the road, and the fear is that non-stop vibration will cause damage to all parts of these historic structures, including foundations, basements, walls and roofs. Unless a specific study is undertaken, the extent of the potential damage is uncertain. Regardless, JCHLC believes this damage can be avoided by denying the concept plan or requiring a bypass road to avoid the Historic District.
- 2) **Noise** – Another concern is the noise associated with increased traffic. It has been suggested by independent civil engineers that in order to make the turn on to Grace Street, trucks may need to use their Jake Brake (aka compression release brake or decompression brake). This braking system is known to be extremely noisy and sometimes jarring. Due to the compact nature of the village, the entire historic district would be impacted by the increase in noise—making it less desirable for tourism and potentially unnerving for residents.
- 3) **Truck Exhaust** – The trucks incoming and outgoing each day to the facility would expel diesel fumes in Middleway. Exhaust has a corrosive effect on durable materials such as the brick buildings and log cabins in Middleway. Due to the close proximity of homes to the road, some trucks could be idling just feet from the front door of a historic home. Additionally, the exposure for residents and visitors is another concern. The smell of exhaust would certainly impact the historical character and would impact the visitor experience, negatively impacting historic tourism.
- 4) **Traffic Accidents**– The streets of Middleway were laid out centuries ago and designed for foot traffic, horses and carriages. The large trucks that would be required to transport the facility’s product are too large to safely traverse the narrow streets of Middleway. Trucks already cross into oncoming traffic when turning onto Grace Street, and residents have reported vehicles driving into yards or walkways and/or striking a building. The number of trucks per hour increases the likelihood that accidents may occur. As the historic structures are located quite close to the road, there is concern that they could be struck. Beyond the primary concern of safety,

⁵ Impact of Traffic Vibration on Heritage Structures. International Journal of Advanced Technology in Engineering and Science Volume No.03, Issue No. 03, March 2015
http://www.ijates.com/images/short_pdf/1425546317_P6-15.pdf

these accidents can cost homeowners tens of thousands of dollars and oftentimes things that are damaged are irreplaceable (American chestnut logs, original bricks, etc.). Even if repairs are possible, skilled craftspeople are often difficult to find. The JCHLC is aware of several historic structures in the Middleway Historic District that have already been involved in and damaged by vehicular accidents within the past several years. This increase in traffic also creates concerns for the safety of visitors and residents of Middleway walking through the village.



These photos were submitted to the JCHLC by a Middleway resident whose historic home was struck by a vehicle (2023). Damages totaled more than \$60,000





This is an example of mismatched bricks after the structure was hit by a vehicle. (Middleway, WV)

- 5) **Potential for Fuel Spill-** The tight turning radius onto Grace Street, and the general narrow width of Queen Street and other streets in Middleway, make the potential for road accidents high. JCHLC is concerned that the accompanying potential for fuel spills
- 6) **Need for Bollards-** The suggestion has been made informally by the applicant that the potential for traffic accidents could be reduced by the installation of bollards in front of historic structures. Bollards throughout the historic district would significantly alter the historic character of the district and further narrow the already narrow streets.

Heavy truck traffic through a historic district would have a significantly negative impact, causing damage to the physical structures due to vibrations and weight, physically striking buildings, disrupting the aesthetic appeal with noise and visual intrusion, and creating safety concerns for pedestrians and residents. Middleway is a hub for heritage tourism, and heavy traffic will negatively impact the ability of visitors (and residents) to appreciate the historic district and the historic structures. Visitors typically park their cars on the side of the street and walk across the narrow streets of the village. This amount of heavy traffic will make it unsafe and undesirable for visitors. Additionally, this heavy traffic will deter people from providing activities and historic-related businesses, as the safety of their patrons would be a concern.

Water Transport Line

Although not included in Concept Plan 24-6-SP, the critical piece of infrastructure for this project is a water pipeline connecting the Applicant's wells on Russell Lane (outside of Middleway), underneath Old Middleway Lane, left onto East Street, and finally right onto Grace Street to arrive at the facility site.

- 1) **Damage During Construction** - All construction equipment and supplies will be transported to the site through Middleway via Queen Street and Grace Street. The installation of the subterranean pipeline will occur on East Street and Grace Street. The JCHLC fears the historic structures that line these streets to be in danger of damage.
- 2) **Grave Sites** – Both the **Grace Episcopal Cemetery, Union Church Cemetery, and Soldier's Burial Ground** contain an unknown number of graves that lay on or over the surveyed boundaries and may continue under the current road. It is likely that the installation of the water transport line would disrupt unmarked graves, grave markers or other funerary objects. Unless a professional archeologist is on-site, the contents of unmarked burials may be difficult to spot amongst construction rubble.
- 3) **Water Leakage** – Due to the area's karst topography, sinkholes are a common feature in Middleway and Jefferson County at large. A leak in the water transport line could provoke the development of a sinkhole, potentially causing catastrophic damage to the historic structures along the pipeline's path.

Additional Potential Impacts

As mentioned above, there are many unknowns about the true scope of the project described in Concept Plan 24-6-SP. There is no publicly available information about the design of the facility or the second phase of this project which is expected to be twice the size of the initial phase.

These are a few additional potential impacts on the historic district:

- 1) **Viewshed** – A visual impact assessment is impossible to conduct at this time as there is no publicly available design plan. However, the viewshed of Middleway Historic District could be impacted if the design plan includes things like smoke stacks or water towers. The JCHLC is only a “reviewing agency” during the concept plan stage and not the site plan stage where more information related to these concerns would be available.
- 2) **Light Pollution** – Outdoor night lighting in the parking lots of the plant portion of the development described by this concept plan will create light pollution in the Middleway Historic District. This would impact the historic character of the Middleway Historic District.
- 3) **Noise** – The scale of this operation will result in noise coming from the facility. Additional noise could impact the historical character of the district.

USE TO COPY

United States Department of the Interior
Heritage Conservation and Recreation Service

National Register of Historic Places
Inventory—Nomination Form

See instructions in *How to Complete National Register Forms*
Type all entries—complete applicable sections

For HCRS use only

received

date entered

1. Name

historic Smithfield; Middleway; Wizard Clip

and/or common Middleway Historic District (preferred)

2. Location

street & number CR1 off USS1 _____ not for publication

city, town Middleway _____ vicinity of _____ congressional district Second

state West Virginia code 54 county Jefferson code 037

3. Classification

Category	Ownership	Status	Present Use	
<input checked="" type="checkbox"/> district	_____ public	<input checked="" type="checkbox"/> occupied	<input checked="" type="checkbox"/> agriculture	_____ museum
_____ building(s)	<input checked="" type="checkbox"/> private	<input checked="" type="checkbox"/> unoccupied	<input checked="" type="checkbox"/> commercial	_____ park
_____ structure	_____ both	<input checked="" type="checkbox"/> work in progress	_____ educational	<input checked="" type="checkbox"/> private residence
_____ site	Public Acquisition	Accessible	_____ entertainment	<input checked="" type="checkbox"/> religious
_____ object	_____ in process	_____ yes: restricted	_____ government	_____ scientific
	_____ being considered	<input checked="" type="checkbox"/> yes: unrestricted	_____ industrial	_____ transportation
		_____ no	_____ military	<input checked="" type="checkbox"/> other: lodge

4. Owner of Property

name Multiple ownership

street & number

city, town _____ vicinity of _____ state

5. Location of Legal Description

courthouse, registry of deeds, etc. Jefferson County Courthouse

street & number Washington and George Streets

city, town Charles Town state West Virginia

6. Representation in Existing Surveys

title Jefferson County Historic
Landmarks Commission

has this property been determined eligible? ☒ yes _____ no

date 1972-73 _____ federal _____ state ☒ county _____ local

depository for survey records c/o Dr. John A. Washington
Harewood, R.F.D. 2

city, town Charles Town state West Virginia

7. Description

Condition		Check one	Check one
<input type="checkbox"/> excellent	<input type="checkbox"/> deteriorated	<input type="checkbox"/> unaltered	<input checked="" type="checkbox"/> original site
<input checked="" type="checkbox"/> good	<input type="checkbox"/> ruins	<input checked="" type="checkbox"/> altered	<input type="checkbox"/> moved
<input type="checkbox"/> fair	<input type="checkbox"/> unexposed		date _____

Describe the present and original (if known) physical appearance

Middleway community is located in the rolling farmland of Jefferson County, West Virginia, just off State Route 51 and about one mile east of Opequon Creek, the divide between Jefferson and Berkeley counties. The countryside in this area is rapidly changing; a history of more than two hundred years of crops, livestock and orchards is being constantly pressed by housing developments and industry. A manufacturing plant has located about $\frac{1}{2}$ mile west of Middleway in recent years, taking advantage of the waters from an underground lake that feeds Turkey Run, the town's raison d'etre and power source for its once prominent mills. While the old north-south Shepherdstown-Berryville Road and east-west Charles Town Turnpike are no longer main thoroughfares except for local traffic, their former routes comprise the street system which includes Queen, King, Grace, Charles, North, South, East and West, appropriately assigned names from the days of the community's birth.

A comparative flatness of land from north to south gives way to gentle rises on both east and west. Building location and design continues in patterns well established, with densest concentrations along Queen and King streets, especially between Grace and Charles. Open spaces still abound, however, comprised of lots long vacant or set aside as cemeteries and the large backyards prevalent in days of greater self-sufficiency in foodstuffs. Outbuildings remain, too, log and stone smokehouses and small stone barns that attest to rustic qualities which seem quickly devoured by nearby development (or lack of proper development in the sometimes uncontained sprawl of mobile home parks and commercial strips) stretching out from Charles Town.

Perhaps because of these pressures, Middleway has not only discovered itself but has also been discovered as a rather tightly knit grouping of building types and vernacular architecture representative of this rural Jefferson County town of eighteenth and early nineteenth century roots. Houses arose as products of nature and necessity, a fact evident in the district's sixty major buildings, more than half of which are primarily or partly constructed of logs. And while brick is the next most evident facing material, rough field stone is seen in both residences and outbuildings, forming an in-town complement to grand and beautiful local farmhouses built of native limestone.

Central-entrance, single-pile, two-story, gable-roofed dwellings predominate, many having an ell formed from a now attached outside kitchen or somewhat later extension. An exterior end chimney of stone to the second level with brick cap above is common to log houses (e.g., sketch map #36), while the inside end chimney is seen in most brick residences (e.g., #44). Dormers appear occasionally (e.g., #45), 6/6 window sash are (were) predominant (e.g., #46), and louvered shutters (wooden rather than plastic or aluminum) are frequently seen (e.g., #32). In a community that probably has the greatest concentration of log dwellings in the county, it is striking, however, that logs are rarely seen except in outbuildings. The reason for this is that clapboards were early applied (e.g., #16), and where they were not used a covering

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of hand-split laths and plaster (e.g., #41) put a polished face on what might have been thought a too crude or rough framed house in a crossroads town of the early 1800s.

Colors are mostly subdued, blending with natural surroundings; weathered gray exteriors are intermixed with red brick, limestone, blue- and yellow-painted clapboards and white plaster shells. The recurring standing-seam metal roofs are in hues of red, gray and rust. Decorative features on the outsides are simple for the most part, but the fanlighted entrance and Ionic capitals of porch columns at Scollay Hall (#47) stand out, as do the board-and-batten sided front of the former Daniel Fry House (#27) and a significant number of later nineteenth-century porches with saw-worked balusters and brackets and some turned posts (e.g., #44).

As originally laid out, the town was to consist of two major north-south and east-west streets, the former named King and Queen and the latter called Grace and Charles. In addition, connectors serving as boundaries were added as North, South, East and West streets. An east-west alley system (long unmaintained) was also included. Lots of an approximate one-third acre in size (roughly 90' x 180' rectangles) were standard. This fundamental layout remains intact today, and a grouping of houses on King and Queen streets between South Street and the Methodist Church (#22) is basically unchanged.

Buildings along Queen Street have facade lines quite close to the road, with concentrations here being densest in the community. Lots at extremities have apparently remained unused for buildings over the years and are now more akin to small farms (e.g., #21 at Queen and North streets). Especially close are buildings along Queen Street between the corners of South and Charles, where a business center originally developed. Smith Tavern (no longer standing), a former landmark of importance, was located on the east side of Queen Street just south of Turkey Run; Scollay Hall (#47), the brick store that served as a hospital during the War between the States (#35), and the Virginia Inn (#46) share a corner at Grace and Queen, and shops and a former post office (#27) located northward.

Elsewhere the concentration of buildings is somewhat less dense, if only because structures are often times of smaller dimensions than those along Queen Street. King Street is a principal residential neighborhood, with a house on nearly every lot from South Street to Charles. West Street has never really developed (in fact, this

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"street" is hardly worthy of a name), but East Street has always been the center of religious and social activity, for here Episcopal and Lutheran churches (#55 and #52, respectively), an A.F. & A.M. lodge (#54), and two cemeteries located. Vacant and open lots (about 15% of the lots and perhaps 20% of the land) now form grown-over fields, garden plots, and storage and parking areas.

Outside of Turkey Run, which flows from east to west between Grace and South streets, there are no natural features of enduring importance. Changes in the overall layout of the town have been few, and alterations of housing types, densities and relationships to open spaces have not been appreciable over the years, except for deterioration and loss of several of the older buildings which had been part of community evolution.

Middleway's significance primarily lies within its existence as a reasonably prosperous crossroads town from mid-eighteenth through the nineteenth centuries. Rather than having been center of one or more important or momentous events, home of especially noteworthy individuals, or a concentration of outstanding architectural styles, technologies, interpretations and designs, the community merely has survived, well intact, as a fitting example of its period.

During this time, the configuration of buildings, open spaces, roads and natural features was about as it is today. Dwellings, outbuildings, business structures, churches and lodge primarily were constructed from around 1790 (perhaps sections of some as early as 1750) until 1860, with a few replacements or additions of note coming after the War between the States (e.g., the 1883 Methodist Church, #22). Materials were fundamentally those logs, bricks and stones yet remaining, activity probably concentrated around churches, lodge, stores and inns still in use, and traffic crossed through on its way to Shepherdstown, Berryville and Charles Town via extant roadways. What has changed, however, is that the mill is long since gone, stores are now conveniences for local trade, inns are known today by name only, and roads simply act to siphon passersby and residents alike to newer thoroughfares that bypass the community.

As has been true always, buildings of the town are primarily dwellings; even where commercial or professional uses existed before (e.g., the office at house #31), these were frequently adjunct to residential purposes. The two stores on Queen Street (buildings #33 and #35) have served that function, at least at times, during a long past, and the same may be said of the churches and lodge.

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Scollay Hall (#47) has a large space set aside today as a commercial dining room of the "country inn" variety, but old Virginia Inn (#46) is strictly residential now. At various intervals during the nineteenth and early twentieth centuries, at least two dwellings (#36 and #48) were used in part as "academies" or schools; this pattern became extinct, however, with the advent of a better free school system, community school movements and more recent consolidation practices.

As little as ten years ago one might have passed through Middleway and remarked that its buildings were in various states of repair or disrepair, with generally good to fair conditions evident and a downward trend noted. Today there has been a turnabout of sorts, but in some ways it is not too much for the better. Remaining buildings are being lived in more and left vacant less, they are undergoing a "clean up, paint up, fix up" cycle in various degrees, and many have been or are being "restored, rehabilitated, renovated and modernized." Fortunately, most of what is being accomplished is carried out slowly and with thought, but aluminum siding, replacement windows with 1/1 or 2/2 sash, composition roofs, and "mobile" homes are exceptions. The general condition of buildings is now into the "good" range and the trend is upward, yet, as is true in most instances, a lack of knowledge and a need for an education program point to a possibility of difficulties still to come.

What direction Middleway takes is important, because it is now distinct from its surroundings in many respects. Of foremost significance is its existence as a town with a concentration of older buildings. To its north, along W.Va. Route 51, is a conglomeration of newer dwellings, trailer parks, gas stations and convenience groceries. To its east is a large amount of open land and strip housing development of the post-1950 era, a similar occurrence as to its south. This type of housing continues a short distance out of town on the west, almost reaching to the location of a large industrial plant operated by Minnesota Mining and Manufacturing Corporation (fittingly, this complex is near the site of early town mills, the eighteenth century industry that gave rise to the community itself).

Archeological potential of this area is uncertain. Located as it is along a spring-fed run that empties into Cnequon Creek about a mile west of town, prehistoric migrations and settlements might possibly have occurred. Most of the land has been disturbed for housing, farming and industrial purposes, however, and archeological potential is more probably limited to the historic era, perhaps in the study of building history through site excavation along the run. In addition,

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Civil War activity was prevalent over a period, for Middleway was on direct lines from Harpers Ferry (through Charles Town) and Sharpsburg (via Shepherdstown), and remnants of passage of troops might remain.

There are sixty major buildings within district boundaries, eleven of which merit rating as non-conforming intrusions (see sketch map). At least eight log or stone smokehouses, two older frame barns (there are also a few newer, small, frame barns), and two small stone barns add to the distinction of the district. Following is a list of all major buildings with assessment as to character and a brief description where necessary:

1. Non-conforming intrusion (mid-twentieth century house).
2. Typical small, two-story log (at least in part) dwelling.
3. Typical small, two-story log (at least in part) dwelling. This building has recently burned and is now in a deteriorated state.
4. Non-conforming intrusion (mobile home).
5. This is a newer building, but it does not detract from the district. Size, design and materials are such that it blends well.
6. Pivotal structure. Good example of a double house with sections of log and brick. The former is a typical, two-story unit with plaster-covered exterior.
7. Typical small, two-story log (at least in part) dwelling with ell.
8. Non-conforming intrusion (new two-story, round-log house).
9. Typical small, two-story log (at least in part) dwelling with rear extension or addition.
10. Typical small, two-story log (at least in part) dwelling.
11. Larger two-story log (at least in part) dwelling with ell. Aluminum siding is now replacing clapboards and several alterations have been made to doors and windows.
12. Typical small, two-story log (at least in part) dwelling.
13. Non-conforming intrusion (mid-twentieth century cinder block house).
14. Typical small, two-story log (at least in part) dwelling.
15. Typical small, two-story log (at least in part) dwelling.
16. Pivotal structure. This example of the typical three-bay, single-pile, two-story log house with stone exterior end chimney and clapboarded facade, although deteriorating, may represent a directional force. Whether it is torn down or rehabilitated and reused can influence Middleway's future.
17. Typical small, two-story log (at least in part) dwelling.
18. Non-conforming intrusion (mid-twentieth century, single-story house).
19. Typical small, two-story log (at least in part) dwelling with a frame addition to the east side.

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20. Typical small, two-story log (at least in part) dwelling. It has been covered with a false-brick siding.
21. Pivotal structure. Substantial two-story log house with plaster-covered exterior. The property includes a large open space, and the dwelling (with associated log smokehouse) is important as a northern boundary to the district. The potential exists for use of its surrounding land for newer housing.
22. Pivotal structure. Although plain in appearance except for detailing in a brick cornice and open bell tower, the brick Methodist Church of 1883 (it has a newer addition) has a long tradition in community religious and social history.
23. This dwelling is probably partly of log construction, but it has had a number of alterations to basic lines.
24. Typical small, two-story log (at least in part) dwelling with associated log smokehouse. It has been covered with a false-brick siding.
25. This old storage and work shop or garage consists of a stone rear section and a frame addition at the front.
26. Typical small, two-story log (at least in part) dwelling with rear extension. A log smokehouse is on this lot.
27. Pivotal structure. Large two-story log (at least in part) dwelling with clapboarded sides and board-and-batten sided front. This is a good example of the five-bay log house found on Queen Street. A small stone barn is at the rear of the property.
28. This is a sizable log and stone house with a small stone barn on the back lot.
29. Typical small, two-story log (at least in part) dwelling.
30. Typical small, two-story log (at least in part) dwelling. There is also a log smokehouse on this property.
31. Pivotal structure. Another good example of the longer log house; a small, one-story brick office is on the south side.
32. Pivotal structure. This two-section log house includes a one-story stone ell that may be one of the oldest buildings in town.
33. Around 1850 a two-story frame store/house was constructed on this lot. Until this day it remains as the only building with its gable facing the street (except for the brick churches and lodge).
34. Typical, small, two-story log (at least in part) dwelling with a frame addition to the rear.
35. Pivotal structure. This two-story brick store has inside end chimneys, jack-arch lintels and a corbeled cornice. It was used as a hospital after the battle at Antietam Creek in 1862.
36. Pivotal structure. Excellent example of the small, two-story log house. The front section is plaster covered, while an ell

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- has clapboards. The north end chimney is stone to the second level and brick above. A stone smokehouse is at the rear.
37. Pivotal structure. Combination log, frame and half-timber house. A frame section along the north front was added to the original log part, and a half-timbered, brick-infilled passageway was later constructed to attach what was probably a log kitchen at the rear.
38. Non-conforming intrusion (mid-twentieth century, one-story house).
39. Typical small, two-story log (at least in part) dwelling.
40. Larger two-story log house. It has had a number of alterations, including changes to window and door configuration.
41. Typical small, two-story log (at least in part) dwelling. This plaster-covered building has had several small additions; it now lists to one side.
42. Non-conforming intrusion (mid-twentieth century, single-story house).
43. Another example of the combination house, part log and part brick.
44. Pivotal structure. This is a long, two-story brick house with a one-story brick kitchen unit attached at the south end. It includes a good example of the later nineteenth century porch, with saw-worked balusters and brackets, that abounds in the community.
45. Pivotal structure. This is the only all stone house in town. It is $2\frac{1}{2}$ stories high with an ell, inside end chimneys and dormers. There is a stone smokehouse at the rear.
46. Pivotal structure. Log sections of one, $1\frac{1}{2}$ and two stories combine to form a long and deep ell-shaped dwelling. The property includes a stone smokehouse and small frame barn.
47. Pivotal structure. Two brick sections (one of two stories and the other $2\frac{1}{2}$) are to either side of an older log unit. Detailing, though not extravagant, is probably the best in Middleway. It includes a geometrically divided fanlight and sidelights around the entrance to the newer brick section and a porch with a roof supported by Ionic capiteled columns. There is also a log smokehouse and small frame barn on the large lot.
48. Typical small, two-story log (at least in part) dwelling with an ell that includes a small stone unit.
49. Non-conforming intrusion (mid-twentieth century, one-story house).
50. Non-conforming intrusion (mid-twentieth century, one-story house).
51. Typical small, two-story log (at least in part) dwelling.
52. Pivotal structure. Former Union Church is a large brick edifice of c. 1823 construction with an open bell tower added around 1853. Plain, almost severe lines are part of its attraction. It is now used as an adjunct to Grace Episcopal Church.

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53. Combination house of brick and frame sections; the latter includes late nineteenth century elements seldom seen (but not distracting) in Middleway.
54. Pivotal structure. Triluminar Lodge, A.F. & A.M. Simple rectangular, two-story brick building with a 1960s, brick-veneered addition at the rear. This 1851 lodge hall has served an important function in the social life of the community.
55. Pivotal structure. The Gothic features of the c. 1851 Grace Episcopal Church, including the high spires of its bell tower, are impressive in this town of simplicity.
56. Small, two-story log or frame dwelling with ell.
57. Larger house consisting of an older frame section and a more recent stone addition.
58. Non-conforming intrusion (mid-twentieth century, one-story house).
59. Non-conforming intrusion (mobile home).
60. Pivotal structure. This small brick church was constructed about 1887. Along with building #22 it represents the long division of American Methodism, this being the Methodist Protestant Church and that being the Methodist Episcopal Church, South. It is now used as the Middleway Full Gospel Pentecostal Church.

8. Significance

Period	Areas of Significance—Check and justify below			
<input type="checkbox"/> prehistoric	<input type="checkbox"/> archeology-prehistoric	<input type="checkbox"/> community planning	<input type="checkbox"/> landscape architecture	<input checked="" type="checkbox"/> religion
<input type="checkbox"/> 1400-1499	<input type="checkbox"/> archeology-historic	<input type="checkbox"/> conservation	<input type="checkbox"/> law	<input type="checkbox"/> science
<input type="checkbox"/> 1500-1599	<input type="checkbox"/> agriculture	<input type="checkbox"/> economics	<input type="checkbox"/> literature	<input type="checkbox"/> sculpture
<input type="checkbox"/> 1600-1699	<input checked="" type="checkbox"/> architecture	<input type="checkbox"/> education	<input type="checkbox"/> military	<input type="checkbox"/> social/
<input checked="" type="checkbox"/> 1700-1799	<input type="checkbox"/> art	<input type="checkbox"/> engineering	<input type="checkbox"/> music	<input type="checkbox"/> humanitarian
<input checked="" type="checkbox"/> 1800-1899	<input type="checkbox"/> commerce	<input checked="" type="checkbox"/> exploration/settlement	<input type="checkbox"/> philosophy	<input type="checkbox"/> theater
<input type="checkbox"/> 1900-	<input type="checkbox"/> communications	<input type="checkbox"/> industry	<input type="checkbox"/> politics/government	<input type="checkbox"/> transportation
		<input type="checkbox"/> invention		<input checked="" type="checkbox"/> other (specify)
				Community development

Specific dates

Builder/Architect

Statement of Significance (in one paragraph)

Middleway Historic District is significant because it has survived, rather well intact, through nearly two centuries of growth and decline, varying degrees of prosperity and poverty, and changing tastes, attitudes and styles. A boom during the so-called Smithfield Promotion of the 1790s combined with increasing population and community commitment before the War between the States to produce a concentration of buildings reflecting time and place: the late eighteenth and early nineteenth centuries on the fringes of a frontier only recently gone farther west. What remains is a grand collection of log, brick and stone structures representative of a simple vernacular interpretation of period architecture and a town plan that is both fundamental and characteristic of its day. Holding this together is a thread of strong tradition, running from a consciousness of the town's former importance, through a continuation of the Wizard Clip legend, to a potential rallying of revived community spirit.

Explanation of Significance Statement

The John Smiths, senior and junior, along with Rees Smith, son and brother, apparently first visited the area of today's Middleway about 1729. By 1734 they had established a grist and hemp mill (the latter did not prosper) along Turkey Run just west of the present town, a mill that soon became a point of concentration for farming families and later tradesmen who stopped and settled nearby. Thoughts of laying out a legislatively incorporated village must have occurred to the Smiths even before the Revolutionary War, for when it finally came to fruition in 1798, its main streets were called King and Queen, hardly appropriate if not decided upon before 1776.

The 1790s were important in area history for two major reasons: first, the Smithfield Promotion got underway (a concerted effort to gather a town population with attendant trade activity), and secondly, Adam Livingston became exceedingly troubled by the unexplained sound of snipping scissors. In consideration of nomination of Middleway Historic District, the former is by far the more meaningful, but the latter adds an element not normally encountered.

A small settlement composed primarily of simple log cabins or houses had begun along Turkey Run by the middle of the eighteenth century. What the John Smiths wanted, however, was a full-fledged corporate entity with trustees and regulations. A promotion to accomplish this began about 1794, several years after a sawmill was added to their industrial complex about $\frac{1}{2}$ mile west of the proposed town. By 1798 when Smithfield was chartered by an act of the Virginia legislature, many, maybe most, of the lots had been subscribed and buildings were quickly erected (within three years of sale as required by law). These early structures might

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have been expected to give way to second and third generation houses over a period of more than 175 years, but because of a downturn in community development after the War between the States, rarely did buildings go beyond enlargement of the early log dwelling with a rear addition.

These residences usually had three bays across the front with center entrance, a single-pile, two-story configuration, and a stone chimney, often with a brick cap, on one side. Because this was a growing and important crossroads town, the rough finish of logs was not suitable, so wide clapboards from the sawmill were applied or split laths and whitewashed plaster were employed to cover the exterior. By about the second decade of the nineteenth century, brick came into popular use, especially in dwellings, stores and offices along Queen Street (the central business district, so to speak), and this material was usually used for churches and such mid-century edifices as Triluminar Lodge (#54).

That second major occurrence of the 1790s will be noted briefly, for it did not fundamentally change Smithfield's history or have an ingrained effect on the community. As a legend, though, it has always held a grip on the minds and imaginations of townsfolk, for they have referred to the village as Wizard Clip or Clip and called themselves Clippers. Basically, as some versions of the story go, a traveler took lodging with one Adam Livingston, a gentleman who lived with his family on the road out of town to the west, because there was no room at the local inn. During the night he died, seized by a sudden illness and crying at times for the Livingstons to summon a priest. Soon after this stranger's burial, Adam Livingston saw coals popping out of his fireplace, he and a passerby tried to remove a nonexistent rope from the road in front of Livingston's house, and an almost constant clipping sound, as if scissors were snipping, invaded his dwelling. Townspeople who would dare to enter the house would come out with tattered clothes cut into crescent shapes, the "scissors" seeming to have been maneuvered to reduce them to shreds or half-moons. After seeking advice in Smithfield, Winchester and Leetown, Livingston, a mental wreck by this time, went to Shepherdstown to seek aid from a priest. After much discussion, Father Dennis Cahill visited Livingston's house and exorcised the spirit, leaving the town to consider these unexplained events for generations to come.

Returning to the more mundane, Smithfield was fortunate to have reached an era of some prosperity by 1810, when the town included two meetinghouses, three stores, an apothecary shop, a distillery, four

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shoemakers, five weavers, three blacksmiths, three tailors, a wagon maker, a saddle-tree maker, one hatter, an attorney and a physician. It was about this time, too, that the name of Middleway was more and more used, despite the fact that the corporate title of Smithfield remained unchanged. Apparently the U.S. Post Office Department forced this change, for confusion arose with mails destined for an older Smithfield, Virginia, along the James River. Conjecture is that the Middleway designation was chosen because it was approximately fifteen miles between the village and each of the towns of Martinsburg, Shepherdstown, Harpers Ferry and Winchester.

From a population of 221 in 1810, Middleway grew to 337 in 1820. By 1850 there were 349 whites and 95 slaves, and in 1870 the census indicated 267 whites and 94 blacks. Little had changed over this sixty year period insofar as the community's building stock was concerned. There were, however, at least two significant alterations which have had a lasting effect. The first was the War between the States, an occurrence that elicited a strong outflow of sympathy and support for the Confederacy; the second was an end to prosperity and a general decline in population as well as status.

Smithfield had sponsored a military company, called the Middleway Blues, almost since its creation. Although ceremonial in nature, its activities must have impacted the community in many respects, and a pride in service and strong ties to the southern militia tradition were instilled. With the coming of civil strife, Middleway sent forth many of its young men to join Confederate forces. Those who remained knew their village was located on a direct route to the arsenal and armory town of Harpers Ferry, and they well might have expected movements in and out of the area. These expectations came to pass, but it was the unexpected clash at Antietam Creek near Sharpsburg that had a greater effect, for after that 1862 engagement, troops departed Shepherdstown and headed south through Middleway, a large group of wounded being cared for at the former store/house on the corner of Queen and Grace streets (#35). A semblance of quiet was broken again in 1864, when the so-called Battle of Smithfield, a modest affair, encircled the town with skirmishing for several days. When war ended, men returned to reminisce, but southern sympathies in this new state of West Virginia led to some difficulties.

While the Civil War occurred at such a time that it appeared to cause the beginning of decline for Smithfield, the real genesis may have been earlier opposition to running a proposed valley branch of the Baltimore and Ohio railroad line from Harpers Ferry to Winchester

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via Middleway. This happened in the 1850s, and the railroad eventually skirted the town, following a route several miles to the south and east. By the 1870s, Smithfield's roads were no longer so important; commodities that had once come to the mill for processing were sent elsewhere. Complications led to a significant population decline as many moved west, leaving the corporate shell to wither away by the end of the century. Eventually it became a quiet, unincorporated village, totally bypassed by more important thoroughfares farther north and east.

This decline has proved to be the savior of Middleway's late eighteenth and early nineteenth century character. The remaining log and brick buildings display a setting of materials and associations that has retained the historical and architectural cohesiveness established during the Promotion of the 1790s and continued through the 1850s. General age, density, size and construction techniques of these buildings form a physical and mental image of what a small, aspiring rural town was like during that period, and what non-conforming intrusions exist today have generally concentrated on the edges of the district, thereby creating minimal effects of pressures from without rather than from within. Even with the demolition of several important structures over the years, overall character has only recently been affected internally with increased use of modern materials, such as aluminum siding. Integrity of the district has not been impaired overly or even significantly, but small inroads have the potential to become major concerns.

Middleway Historic District basically follows the boundaries of John Smith's original town, but the scope of his paper layout has been circumscribed where necessary to exclude newer development that would change the character and impair district integrity if included. As a town with a considerable concentration of log buildings, in particular, and simple vernacular architecture from the late eighteenth and early nineteenth centuries, in general, Middleway has a quality unlike that of other communities in Jefferson County and relates only marginally to other towns in the region or state as a whole. This quality is inherent in building relationships and materials; the integrity of place and time is well established and retained.

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NATIONAL REGISTER OF HISTORIC PLACES INVENTORY -- NOMINATION FORM

Middleway Historic District, Jefferson County, West Virginia

CONTINUATION SHEET

ITEM NUMBER 10 PAGE 2

UTM References (continued):

I. 18/242950/4354440
J. 18/242900/4354240
K. 18/242760/4354270
L. 18/242750/4354220
M. 18/242660/4354240
N. 18/242680/4354340
O. 18/242610/4354350
P. 18/242560/4354330
Q. 18/242600/4354530
R. 18/242560/4354660
S. 18/242600/4354650
T. 18/242720/4354750
U. 18/242780/4354740
V. 18/242830/4354970

UNITED STATES DEPARTMENT OF THE INTERIOR
HERITAGE CONSERVATION AND RECREATION SERVICE

**NATIONAL REGISTER OF HISTORIC PLACES
INVENTORY -- NOMINATION FORM**

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Middleway Historic District, Jefferson County, West Virginia

CONTINUATION SHEET

ITEM NUMBER 10

PAGE 3

Verbal boundary description and justification (continued):

file with the Historic Preservation Unit, Department of Culture and History, The Cultural Center, Capitol Complex, Charleston, WV 25305. Included are lots 6, 7, 8, 9, 10, 11, 12, those sections of 18 marked as old lots (41), (44), (45) and (48), 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 49, 50, 51, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73 and 74 on Map 22A and lots 2, 3, 4, 5, 6, 7, those sections of 8 marked as old lots (86), (87) and (90), that section of 9 marked as old lot (91), 10, 15, 16, 17, 18, 19.1, 19.2, 20, 21, 22, 22.1, 22.2, 23, 24, 25, 26, 27, 28 and 29 on Map 22 B.

Beginning at the corner of North and Queen Streets, the boundary follows Queen Street southward to the line dividing lots 45 and 49 (Map 22A), turning eastward along that line to the line dividing lots 49 and 48 (Map 22A), thence southward in a straight line to Charles Street. Here the boundary follows Charles Street eastward to its intersection with East Street, thence southward along East Street to the parking lot adjacent to (on the north side of) Triluminar Lodge, A.F. & A.M., turning eastward to the end of that lot, then southward to the north line of lot 74 (Map 22A), turning eastward along that lot line to its eastern end, then southward along that lot line to its southern end, then eastward along that lot line to its intersection with the eastern line of lot 28 (Map 22B). From that point it turns southward and continues in a straight line to include lots 19.1 and 19.2 (Map 22B), turning westward along lot 19.2 (Map 22B) to lot 18 (Map 22B), then southward along lot 18 (Map 22B) to its southern end, then westward along lot 18 (Map 22B) to its intersection with lot 16 (Map 22B). It turns southward along the eastern end of lot 16 (Map 22B) and continues in a straight line to the southern end of lot 15 (Map 22B), thence along the southern edge of lot 15 (Map 22B) to the intersection with Queen Street. It continues southward along Queen Street to the intersection with the southern end of lot 10 (Map 22B), turning westward along lot 10 (Map 22B) to the west edge of old lot 91 as marked in parentheses (Map 22B), then northward in a straight line to the intersection with South Street. It continues westward along South Street to its intersection with King Street, thence southward along the eastern edge of lot 4 (Map 22B), then northward along the western end of lots 4, 3 and 2 (Map 22B) to the intersection of the latter with Grace Street. Crossing Grace Street, it continues northward along the western end of lot 6 (Map 22A) to its northern end, thence eastward along that line to the intersection of West Street. It continues northward along the western line of lots 10, 11,

UNITED STATES DEPARTMENT OF THE INTERIOR
HERITAGE CONSERVATION AND RECREATION SERVICE

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INVENTORY -- NOMINATION FORM**

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Middleway Historic District, Jefferson County, West Virginia

CONTINUATION SHEET

ITEM NUMBER 10 PAGE 4

Verbal boundary description and justification (continued):

and 12 (Map 22A) to the intersection with the dividing line between lots 22 and 40 (Map 22A). The line then continues northward in a straight line along this dividing line between lots 22 and 40 (Map 22A) and on to the intersection with North Street. The boundary then continues eastward along North Street, connecting with the beginning line at the intersection of North and Queen Streets.

District boundaries have been selected to coincide, as much as practical, with the town map as delineated by S. Howell Brown on his map of May 12, 1883, as reproduced in Robert L. Bates' The Story of Smithfield (Middleway), Jefferson County, West Virginia (Vol. I, pp. 171-72). Modifications have been made to eliminate concentrations of what would be considered non-conforming intrusions that have been constructed on formerly vacant land at the extremities of the district.

9. Major Bibliographical References

- Bates, Robert L. "Middleway, a Study in Social History," West Virginia History, XI (Oct. 1949-Jan. 1950), 5-43.
- _____. The Story of Smithfield (Middleway), Jefferson County, West Virginia. 2 vols. Endicott, N.Y.: Robert L. Bates, 1958.
- Marshall, A.L. Adam Livingston; The Wizard Clin; The Voice. Kearneysville, W.V.: Livingston Publications, 1978.

10. Geographical Data

Acreage of nominated property Approximately 40 acres

Quadrangle name Middleway, W.Va.

Quadrangle scale 1:24000

UMT References

A

1	8
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2	4	2	8	9	0
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4	3	5	4	9	5	0
---	---	---	---	---	---	---

Zone Easting Northing

B

1	8
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2	4	2	8	6	0
---	---	---	---	---	---

4	3	5	4	8	4	0
---	---	---	---	---	---	---

Zone Easting Northing

C

1	8
---	---

2	4	2	9	0	0
---	---	---	---	---	---

4	3	5	4	8	3	0
---	---	---	---	---	---	---

D

1	8
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2	4	2	8	8	0
---	---	---	---	---	---

4	3	5	4	7	2	0
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E

1	8
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2	4	2	9	4	0
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4	3	5	4	7	1	0
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F

1	8
---	---

2	4	2	9	2	0
---	---	---	---	---	---

4	3	5	4	5	5	0
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G

1	8
---	---

2	4	3	0	3	0
---	---	---	---	---	---

4	3	5	4	5	3	0
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H

1	8
---	---

2	4	3	0	0	0
---	---	---	---	---	---

4	3	5	4	4	2	0
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Verbal boundary description and justification

Boundaries of Middleway Historic District are as delineated in red on tax maps for Middleway District (#7), Maps 22A and 22B, Jefferson County, West Virginia, dated April 23, 1963 (revisions on October 25, 1972), and on

List all states and counties for properties overlapping state or county boundaries

state	code	county	code
-------	------	--------	------

state	code	county	code
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11. Form Prepared By

name/title James E. Harding, Historian

organization Historic Preservation Unit

Dept. of Culture and History

date October 23, 1979

The Cultural Center

street & number Capitol Complex

telephone (304) 348-0240

city or town Charleston

state West Virginia

12. State Historic Preservation Officer Certification

The evaluated significance of this property within the state is:

☐ national ☐ state ☒ local

As the designated State Historic Preservation Officer for the National Historic Preservation Act of 1966 (Public Law 89-665), I hereby nominate this property for inclusion in the National Register and certify that it has been evaluated according to the criteria and procedures set forth by the Heritage Conservation and Recreation Service.

State Historic Preservation Officer signature

Clarence Morrow
State Historic Preservation Officer

title Director, Historic Pres. Unit, W.V. Dept. of Culture and History date December 17, 1979

For HCPRS use only

I hereby certify that this property is included in the National Register

date

Keeper of the National Register

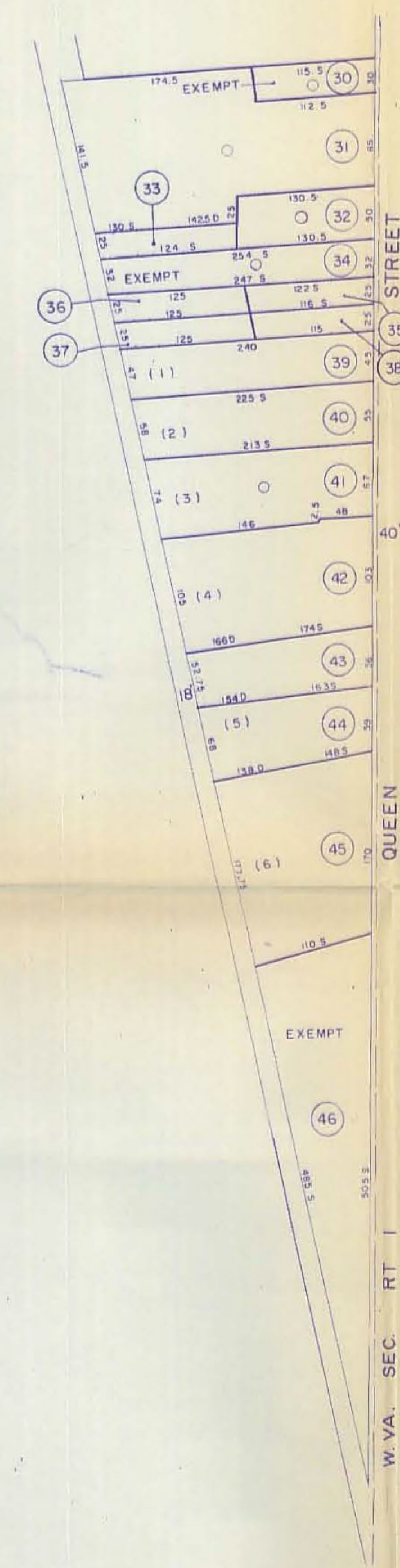
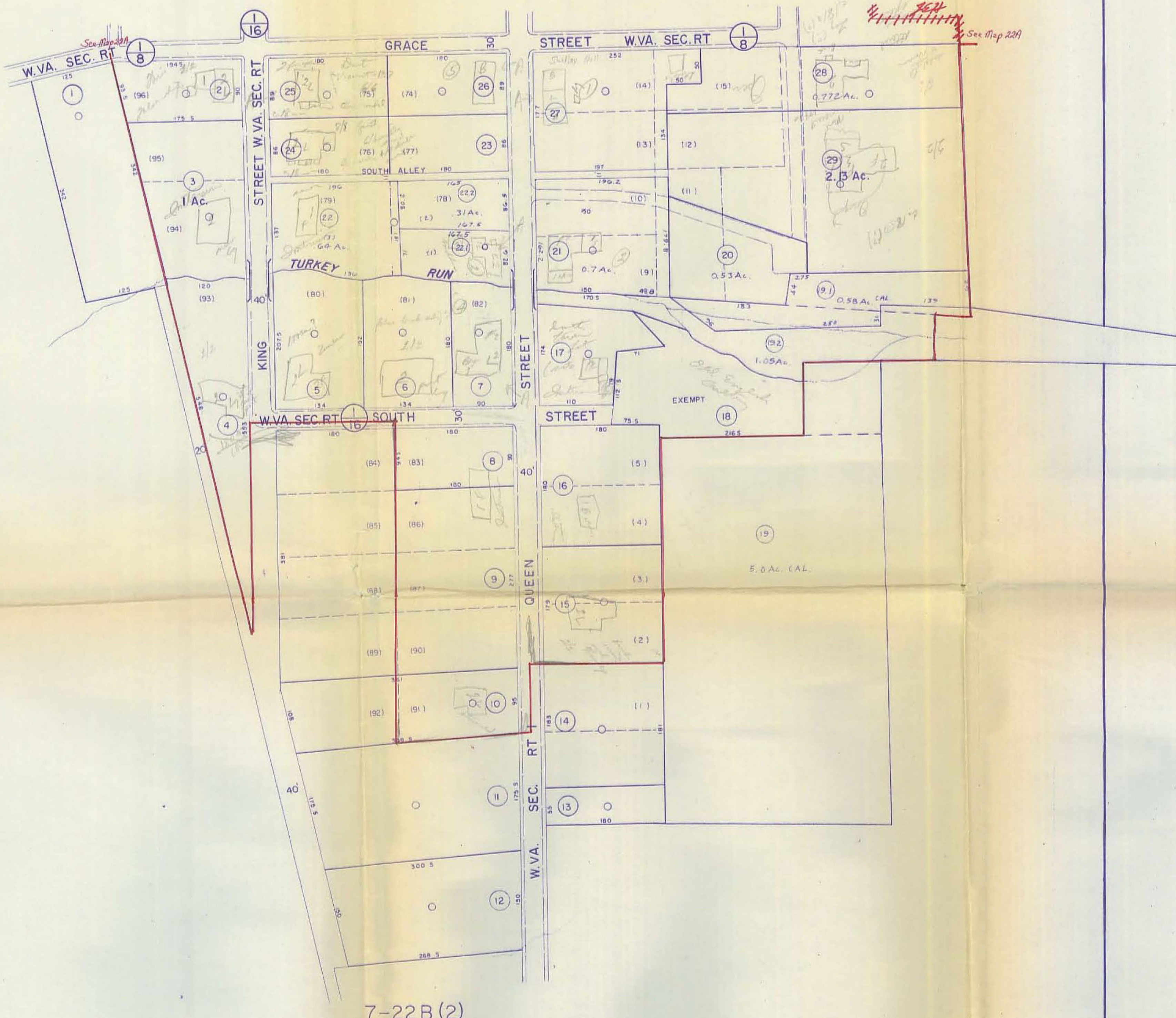
Attest:

date

Chief of Registration

7-22 A

7-22B(1)



7-22B(2)

(1)

(2)

Boundary, Middleway Historic District

For Tax Purposes Only

Prepared by
American Air Surveys, Inc.
Pittsburgh, Pa.

Legend

Property line	Original lot line
Edge of pavement or roadway	Dead lot number - in parenthesis
Corporation line	Parcel or index number - in circle
District line	Improvement
County line	Railroad
Stream	District Number
	PLAT DIMENSION
	ACRES

Revisions

1	4-23-63	
2	10-25-72	
3		
4		
5		
6		
7		
8		

COUNTY OF JEFFERSON

Office of Assessor

CHARLES TOWN, W. VA.

MIDDLEWAY DISTRICT

District 7 Map No. 22 B

Date, Aerial Photography: 1962
Photo No.: 156
Date, Map: April 23, 1963
Scale: 1" = 100'



For Tax Purposes Only

Prepared by
American Air Surveys, Inc.
Pittsburgh, Pa.

Legend

Property line	Original lot line
Edge of pavement or roadway	Deed lot number in parenthesis
Corporation line	Parcel or index number in circle
District line	Improvement
County line	Railroad
Stream	District Number
PLAT DIMENSION	Scaled Dimension
DEED DIMENSION	PLAT DIMENSION
	DEED DIMENSION

Revisions

1	4-23-63	9
2	10-28-72	10
3		11
4		12
5		13
6		14
7		15
8		16

All tax maps created under the provisions of
municipal legislation are the property of the
City of West Virginia and the reproduction,
distribution or sale of such tax maps or
any copies thereof without the written permission
of the State Tax Commission is prohibited.

COUNTY OF JEFFERSON

Office of Assessor

CHARLES TOWN, W. VA.

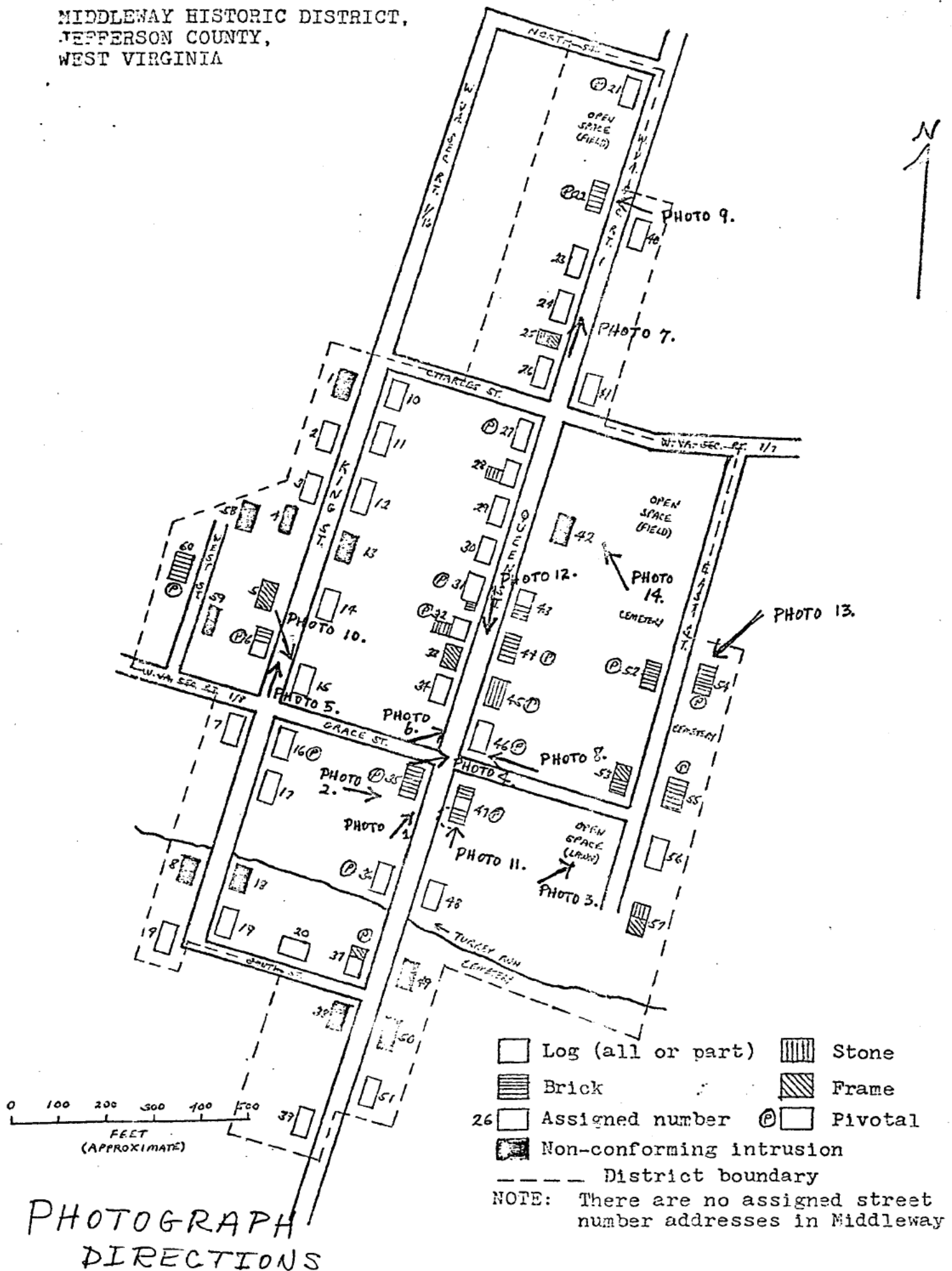
MIDDLEWAY DISTRICT

District 7 Map No. 22 A.

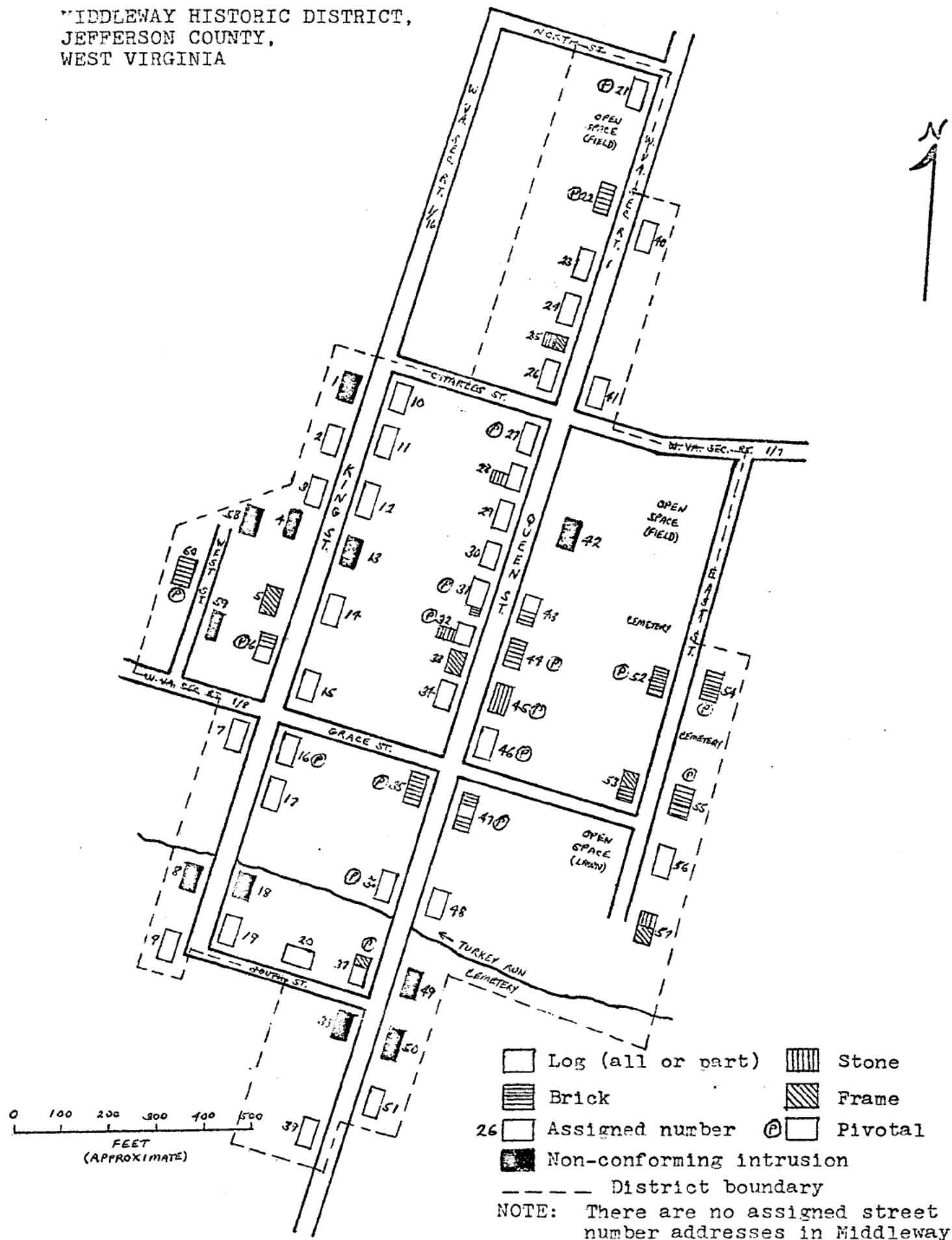
Date, Aerial Photography: 1962
Photo No.: 156

Date, Map: April 23, 1963
Scale: 1" = 100'

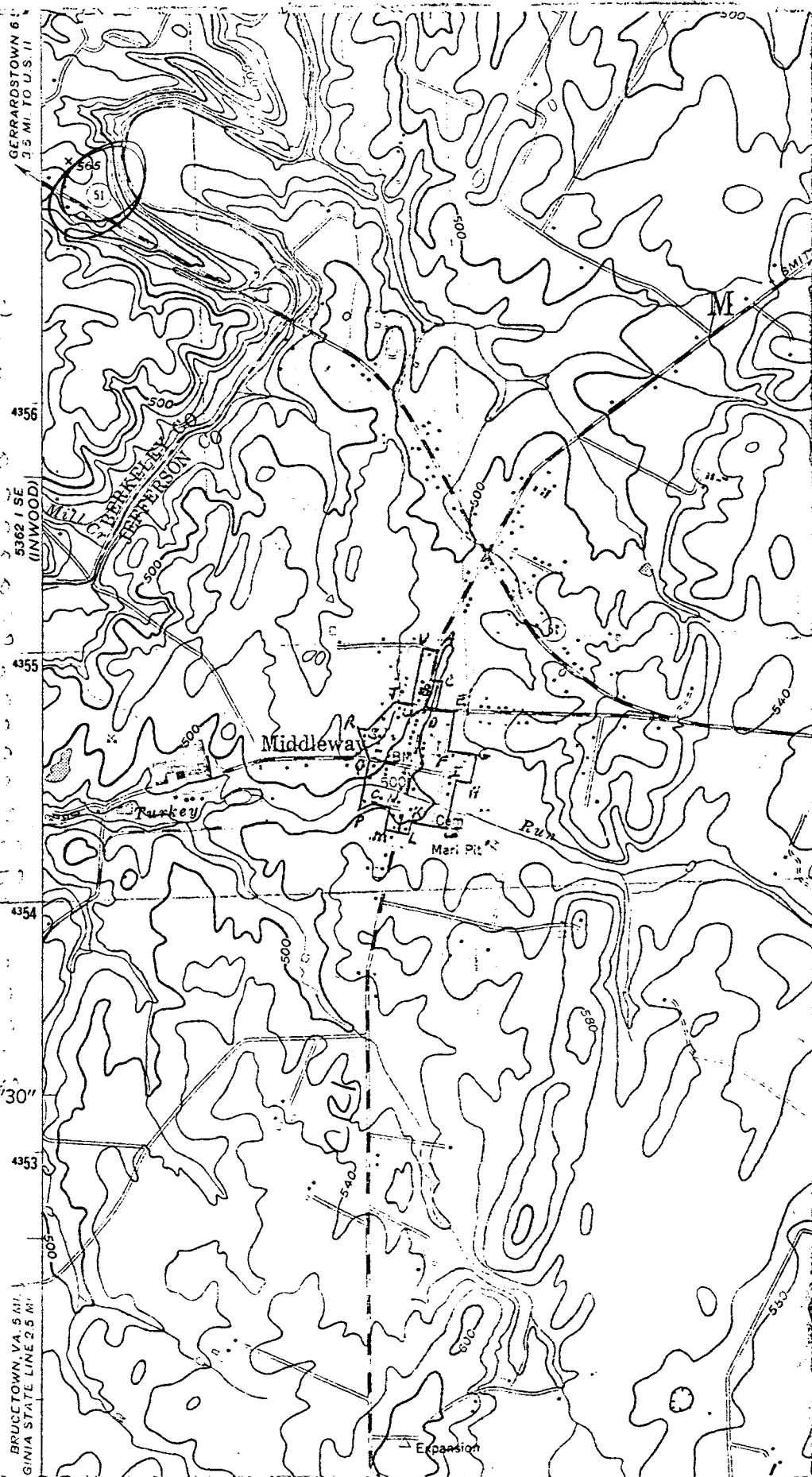
MIDDLEWAY HISTORIC DISTRICT,
JEFFERSON COUNTY,
WEST VIRGINIA



MIDDLEWAY HISTORIC DISTRICT,
JEFFERSON COUNTY,
WEST VIRGINIA



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CHURCH
OF THE
METHODIST
EPISCOPAL
CHURCH
OF THE
SOUTH
1884



Planning Department

From: Planning Department
Sent: Monday, January 27, 2025 9:22 AM
To: 'Addison Reese'
Subject: RE: [REDACTED], 24-6-SP Concept Plan

Good morning Addison,

This email is to confirm receipt of your response on behalf of the Historic Landmarks Commission for the [REDACTED] Concept Plan Public Workshop, which is scheduled for February 11, 2025.

A copy of this letter will be included in the project's agency review comments folder.

Thank you and have a nice day.

Jennilee Hartman, Zoning Clerk
Office of Planning and Zoning
304-728-3228

From: Addison Reese <addisonrreese@gmail.com>
Sent: Thursday, January 23, 2025 10:44 PM
To: Planning Department <PlanningDepartment@jeffersoncountywv.org>
Subject: [REDACTED], 24-6-SP Concept Plan

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

The Jefferson County Historic Landmarks Commission is a reviewing agency for [REDACTED] Concept Plan, 24-6-SP. The attached document contains the JCHLC's review of the concept plan, historic resources in the project area, and recommendations based on our assessment. As the chair of the JCHLC, I would also like to present this information at the February 11th meeting during the public workshop.

Thank you,

Addison Reese
JCHLC Chair

BERKELEY COUNTY PUBLIC SERVICE WATER DISTRICT

251 Caperton Blvd.
Martinsburg, WV 25403
Telephone: 304.267.4600 & FAX: 304.267.3864

To Whom It May Concern:

INTENT TO SERVE PUBLIC WATER FOR SUBDIVISIONS AND/OR LAND DEVELOPMENTS

Property Owner:

[REDACTED]

Ste 380
Newport Beach, CA 92660

Phone: (310)365-5183

Property Location:

[REDACTED]

Property Address:

TBD

Description of Proposed Project: Commercial/Industrial (2 lot subdivision with 2 services)

[] Has public water service. Water main of adequate size exists in the public right-of-way adjoining the property. All lots must have frontage on public main in order to have water service. All lots of proposed subdivision/land development that do not have frontage on an existing water main will require a mainline extension for water service. As the details of the project are reviewed and hydraulic model evaluations are determined, additional infrastructure provisions, onsite and offsite, may be required to ensure adequate service to existing customers as well as the proposed development.

[x] Requires a mainline extension for public water service to and/or within the proposed subdivision/land development. Interior of proposed subdivision/land development will require a mainline extension for water service. The Developer shall execute an alternate mainline extension agreement with the District for the above noted project which must be approved by the Public Service Commission of West Virginia. Pursuant to the agreement not to exceed 10,000 gallons of water per day. Proposed mainline extension is from the District's existing main on Specks Run Road. All mainline extensions shall be completed in accordance with the Berkeley County Public Service District Developer Policy, Procedures and Standards for Water Systems.

This Intent to Serve Public Water is only an intent to serve water. Water service is not guaranteed until a tap application (i.e., a formal request for immediate and continuous service) is approved for an individual lot(s). This Intent to Serve Public Water does not convey District acceptance or approval of the proposed project for permitting by State or other regulatory agencies.

This Intent to Serve Public Water expires one year from date of issue.

BERKELEY COUNTY PUBLIC SERVICE WATER DISTRICT

By: Robin Shade

Date: May 28, 2024

Its: District Representative

FOR PLAN REVIEW PURPOSES ONLY. NOT TO BE USED TO OBTAIN BUILDING PERMIT.

BERKELEY COUNTY
PUBLIC SERVICE SEWER DISTRICT

P.O. Box 944
Martinsburg, WV 25402
Phone: (304) 263-8566
Fax: (304) 267-7478



Curtis B. Keller
General Manager

Board of Directors:
John Kunkle, Chairman
John E. Myers, Secretary
Greg Rhoe, Treasurer

August 18, 2021

Re: Intent to Serve – Middleway Property – Map 2, Parcel 9

Dear [REDACTED]

This letter is to provide notice of the Berkeley County Public Service Sewer District's intention to serve the proposed Middleway Property, located in Jefferson County, [REDACTED]. The sewer service for this property is for domestic purposes only and not for any process water with an estimated 10,000 gpd maximum. All design and construction of on-site and off-site line extensions including the Opequon Creek crossing will be the responsibility of the contractor.

The District will provide sanitary sewer service to the project and may enter into a COVA Agreement with the developer for construction of the necessary improvements, which may include both on-site and off-site improvements along with an on-site pump station. Individual applications will need to be completed and payment of the tap fee may be required before construction of the project on the lot(s) will be permitted.

If you have any questions, please feel free to call my office at 304-263-8566.

Sincerely,

A handwritten signature in blue ink that reads "Rodney Hanes".

Rodney Hanes
Assistant General Manager



Berkeley County Public Service Sewer District
PO Box 944, Martinsburg, WV 25402
Telephone Direct 304-263-8566

Jennilee Hartman

From: Luke Seigfried
Sent: Friday, November 15, 2024 12:46 PM
To: Jennifer Brockman
Subject: FW: [REDACTED] Project in Jefferson County
Attachments: [REDACTED] Concept Plan.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

FYI

Best,
Luke

Luke Seigfried (He, Him, His)
County Planner
Department of Engineering, Planning, & Zoning
Jefferson County, WV

From: Clohan, Kenneth L <kenneth.l.clohan@wv.gov>
Sent: Friday, November 15, 2024 12:06 PM
To: Luke Seigfried <lseigfried@jeffersoncountywv.org>
Cc: Kevin A McDonald <kevin.a.mcdonald@wv.gov>; Perry J Keller <perry.j.keller@wv.gov>; Luke I Miller <Luke.I.Miller@wv.gov>
Subject: Re: Mountain Pure; Project in Jefferson County

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or on clicking links from unknown senders.

Luke,

The size of development was already considered in the approved Traffic Impact Study for 3M Site Redevelopment by AMT dated 5/1/23 so there shouldn't be a need for further traffic study.

Also, the design has started for a single-lane roundabout at WV 51 and Leetown Road based on the existing traffic. Ideally, this would be built prior to opening of the [REDACTED] facility but construction may not start on the roundabout until spring of 2026.

Ken

Kenneth L. Clohan, Jr., P.E.
District Five Traffic Engineer - WVDOH
304-350-3670

On Fri, Nov 1, 2024 at 12:30 PM Luke Seigfried <lseigfried@jeffersoncountywv.org> wrote:

Good afternoon Ken,
I am sorry if I should be directing this to someone else but I wanted to know if DOH has determined if a Traffic study will be required for the [REDACTED] project? The right of way entry permit is 05-2024-0381. If you do not know, who should I be speaking with about the need for a traffic study?

Best,

Luke

Luke Seigfried (He, Him, His)

County Planner

Department of Engineering, Planning, & Zoning

Jefferson County, WV

**West Virginia Department of Transportation
Division of Highways
Right of Way Entry Permit Application**

PERMIT NO. 05-2024-0381

By signing below, APPLICANT agrees to all terms and conditions (see page 2) associated with this permit to enter upon, under, over, or across the state road right(s) of way of the State of West Virginia.

Applicant: [REDACTED]
Address: [REDACTED] City: NEWPORT BEACH State: CA Zip: 92660
Phone Number: [REDACTED] Email: _____
Route Type: ☐ US ☐ WV ☒ County Route Number: 1/8 Milepost 2.846 County: 19 - Jefferson
☐ Interstate ☐ HARP

Latitude/Longitude at/along Roadway (in decimal degrees): 39.30371/-77.98996

Description of Work: To maintain an existing entrance to Sindwinder Enterprises, LLC. (old 3M Plant) it is being issued as a residential entrance. This shall be maintained so that water and debris will not flow or be tracked onto the roadway. Also, should this parcel be used commercially, farther subdivided, or be located within a subdivision with internal access, this permit will be invalid. Applicant shall apply for a new permit to fit altered conditions.

Length of Installation: _____ Estimated Construction Duration: _____

DOH Project Number/Name (if applicable): _____

Inspection Fees (must check one):

- ☐ For any inspection fees incurred under this permit
☐ At \$0.85 per linear foot of water line installed under this permit
☐ At \$3.37 per linear foot of sewer line installed under this permit

APPROVED

AUG 29 2024

WV DOT
District 5

Applicant: [Signature] Applicant Title: CO-MANAGER
Applicant Printed Name: [REDACTED] Date: 6/28/24
DOH Reviewer: [Signature] DOH Reviewer Title: Permit Supervisor
DOH Approver: [Signature] DOH Approver Title: District Manager/Engineer

FOR DIVISION USE ONLY

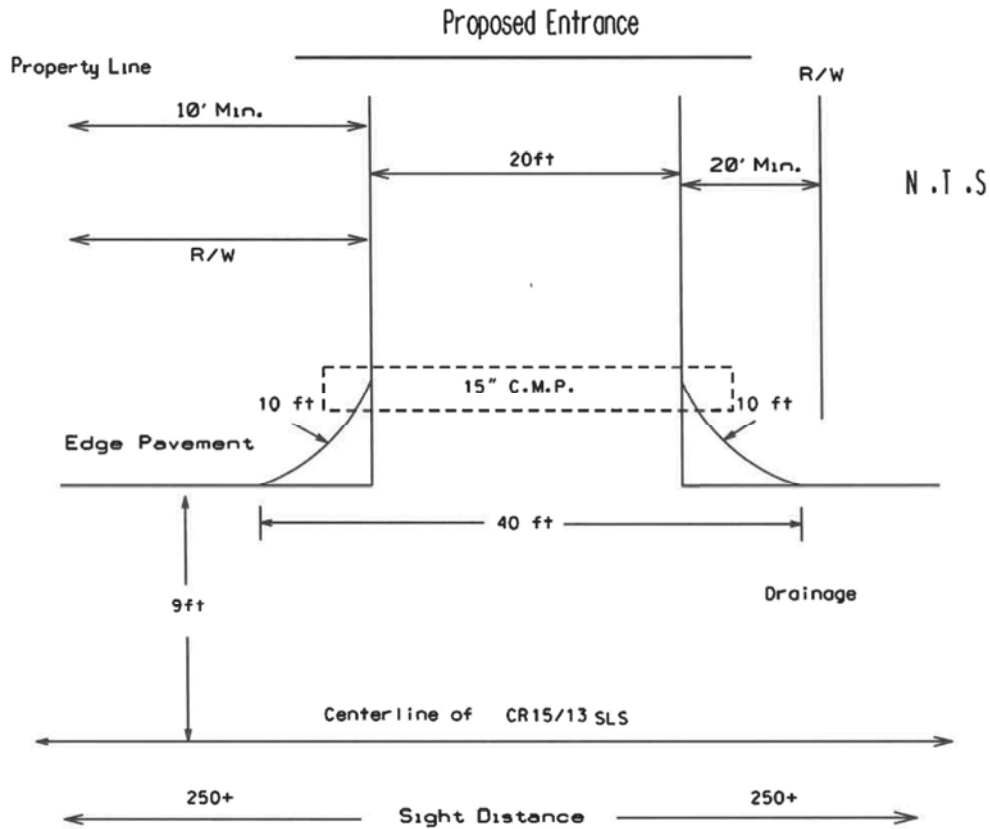
DEPOSIT/BOND REQUIRED: ☐ YES ☒ NO DEPOSIT/BOND AMOUNT: \$ _____
☐ Check Attached ☐ Bond Attached ☐ Bond On File BOND NUMBER: _____ DATE: _____

INSPECTION: ☐ By Owner/Consultant ☐ By Division
☐ Full Time ☐ Part Time ☐ Periodic
☐ Reimbursable (Authorization _____) ☐ No Cost

PERMIT ISSUE DATE: 6/14/2024

TERMS AND CONDITIONS

1. This permit, between the WEST VIRGINIA DEPARTMENT OF TRANSPORTATION, DIVISION OF HIGHWAYS, a statutory corporation, hereinafter called "DIVISION" and APPLICANT, a person, firm or corporation, listed on page one.
2. In consideration of the conditions hereinafter set forth and in accordance with all state and federal laws, including but not limited to, W. Va. Code §17-2E-1 et seq., §17-4-8, §17-16-6, §17-16-9, §31H-1-1 et seq., and any related rules, regulations, policies, manuals, or guidelines, APPLICANT does hereby apply to enter DIVISION's right(s) of way listed on page one, for the purpose listed in Description of Work on page one.
3. APPLICANT shall deposit with DIVISION an official, certified or cashier's check, or executed bond with surety satisfactory to DIVISION to cover any damage and inspection costs DIVISION may sustain by reason of the issuing of this permit, including any expense incurred in restoring said right(s) of way to original condition or the proper repair of any and all damages arising from, related to, or otherwise connected to said entry.
4. APPLICANT agrees to reimburse DIVISION for inspection costs as listed on page one.
5. **APPLICANT shall notify DIVISION at least 48 hours in advance of the date the work will begin. Failure to comply may result in cancellation of this permit.**
6. APPLICANT shall notify DIVISION upon completion of any work authorized under this permit. If APPLICANT's work is anticipated to extend beyond the estimated construction duration indicated on page one, APPLICANT shall notify the DIVISION as soon as possible. Failure to comply may result in additional charges.
7. APPLICANT agrees to protect all users of the road right(s) of way, as well as all employees and equipment of APPLICANT and DIVISION, at all times in accordance with the current Division of Highways manual, "Manual on Temporary Traffic Control for Streets and Highways" (<https://transportation.wv.gov/highways/traffic/Pages/default.aspx>).
8. APPLICANT agrees to comply with all applicable state and federal laws related to the entry that is the subject of this permit, including but not limited to the requirement to provide DIVISION copies of any NEPA clearance documentation for utility installations along or across the Interstate Highway System and/or controlled-access right(s) of way.
9. The person, firm or corporation to whom a permit is issued agrees to defend, indemnify, and hold the State of West Virginia and DIVISION harmless on account of any damages to persons or property which may arise during the process of the work authorized by this permit or by reason thereof.
10. Applications for permission to perform work within highway right(s) of way shall be made on DIVISION's standard permit form and shall be signed by the authorized representative of the person, firm or corporation applying.
11. The APPLICANT shall give detailed information concerning the nature of the entry and any work to be performed, and the application must include plans sufficient to show the same.
12. Any work authorized under this permit shall be completed on or before one calendar year from the issue date listed on page one, unless otherwise specified or approved by DIVISION.
13. APPLICANT, its agents, successor, heirs or assigns, contractors or any other person, firm or corporation working under APPLICANT's real or apparent authority, shall perform the work in a manner satisfactory to DIVISION. Damage to the right(s) of way resulting at any time from work authorized under this permit shall be repaired by APPLICANT. Unsatisfactory repairs, at the sole discretion of DIVISION, may be corrected by DIVISION or its authorized agent and the cost thereof paid by APPLICANT.
14. DIVISION shall not be liable for any damage or costs incurred by APPLICANT arising from or related to DIVISION's construction or maintenance of DIVISION's facilities.
15. Utility installation(s) shall be in accordance with the current manual, "Accommodation of Utilities on Highway Right of Way" (<https://transportation.wv.gov/highways/right-of-way/Pages/Utility-Publications.aspx>).
16. Driveway construction shall be in accordance with the current manual, "Rules and Regulations for Constructing Driveways on State Highway Rights-of-Way" (<https://transportation.wv.gov/highways/traffic/Pages/default.aspx>).
17. DIVISION reserves the right to cancel this permit at any time.
18. This permit is issued only insofar as DIVISION has a right to do so. APPLICANT has sole responsibility to secure all necessary rights or permissions for any third-party property interests related to the entry, known or unknown. APPLICANT, by signing on page one, hereby warrants that, to the extent its entry onto DIVISION's right(s) of way involves or affects any other entity's property, real or personal, on or within DIVISION's right(s) of way, that APPLICANT has full legal authorization or the legal right to do so. To the fullest extent permitted by law, APPLICANT agrees to defend, indemnify, and hold harmless DIVISION for damage to any persons or property arising from APPLICANT's breach of this representation and warranty.
19. All attachments are incorporated into this permit! To the extent of any conflict, the terms of this permit shall control.
20. APPLICANT agrees to keep any surface facilities installed pursuant to this permit clear of vegetation for so long as APPLICANT's facilities are located on DIVISION's rights of way. APPLICANT agrees to remove promptly any vegetation in, on, or around such facilities that poses a risk or hazard to the safety of the travelling public.

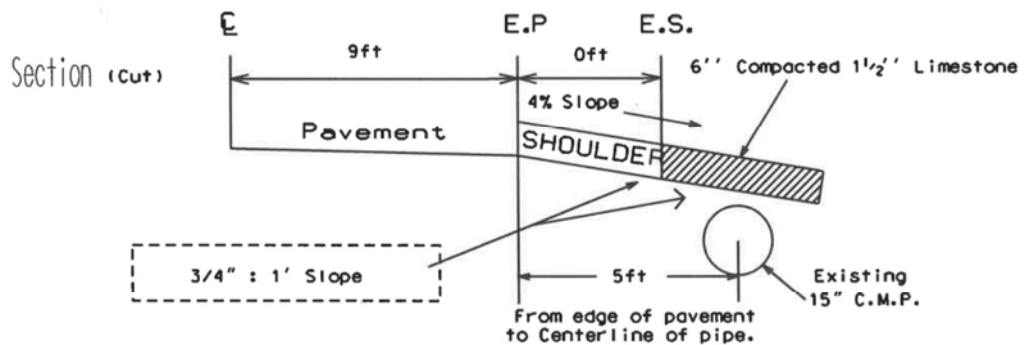


NO OBSTRUCTION PERMITTED BETWEEN PAVEMENT EDGE AND R/W LINE

REMARKS:

Existing entrance to be used as a residential entrance
for Sidewinder Enterprises LLC.

Posted Speed Limit 15 MPH



GPS 39.30371
-77.98996

MP 2.846

NAME _____
ADDRESS: _____
LOCATION: @ inter of CR _____

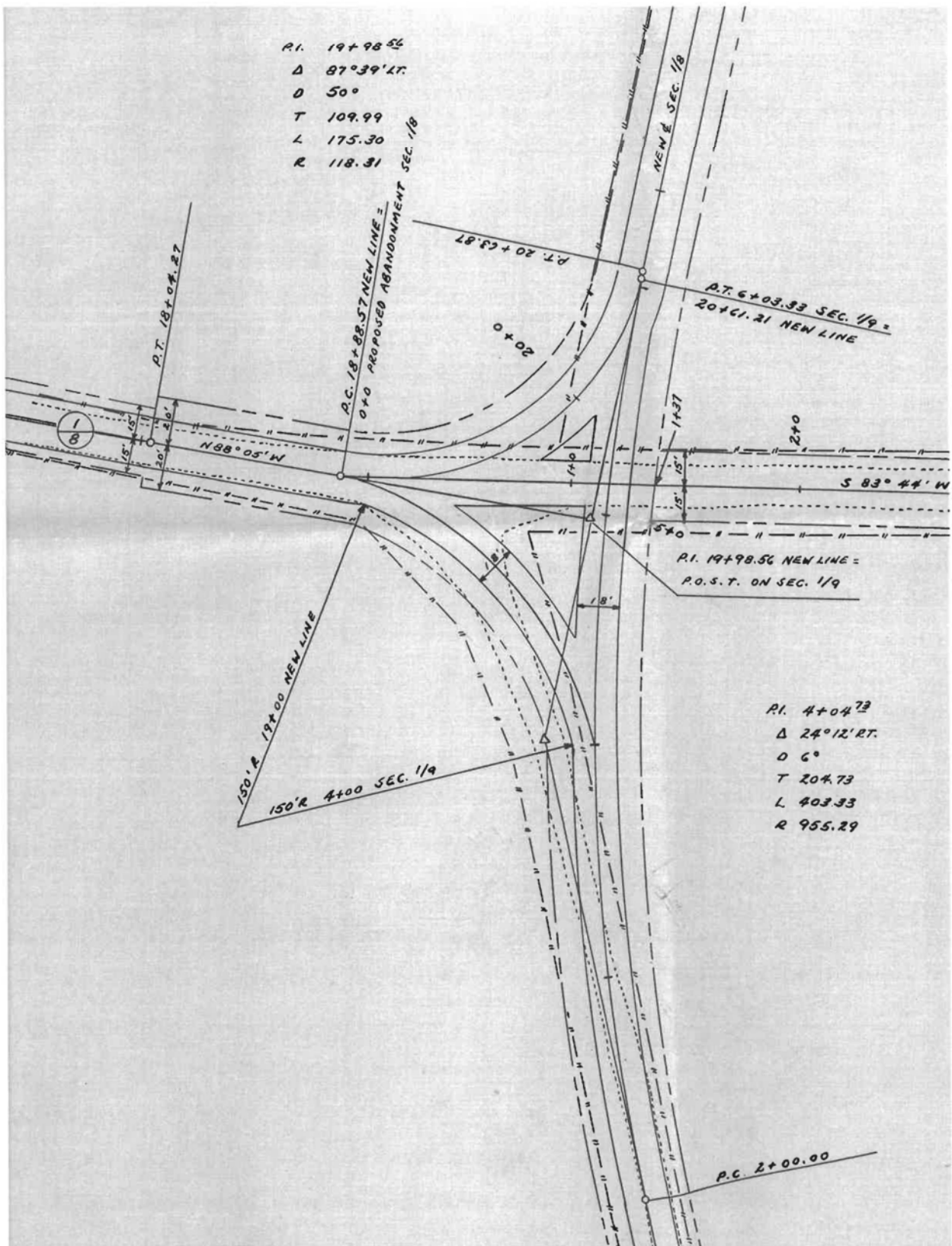
COUNTY _____ Jefferson _____
ROUTE _____ 1/8 _____
PROJECT _____
DATE _____ 6/14/24 _____



@ intersection of



P.I. 19+98.56
 Δ 87°39'17"
 D 50°
 T 109.99
 L 175.30
 R 118.31



05-2024-0381

Entrance Permit Application

PLEASE PRINT LEGIBLY

DATE APPLIED FOR:	April 24, 2024	<div>Contractor or Engineer (If applicable)</div> <div>NAME: Integrity Federal Services</div> <div>PHONE NO: [REDACTED]</div> <div>ADDRESS: [REDACTED]</div> <div>EMAIL: [REDACTED]</div>
COUNTY:	Jefferson	
OWNER/DEVELOPER NAME:	[REDACTED]	
ROUTE NO:	1/9	
PHONE NO:	[REDACTED]	
ADDRESS OF APPLICANT:	[REDACTED]	
EMAIL ADDRESS:	[REDACTED]	

EXACT LOCATION OF APPROACH (Please be specific. Example: East side of John Doe Road, 1.25 miles north of

Jane Doe Road): The entrance is located at the intersection of [REDACTED]
[REDACTED] The entrance would be located approx. 2,000' from [REDACTED]

NOTE: Property owner must stake location of approach or approaches out in field with blue and gold ribbon.

TYPE OF APPROACH:

	(Please mark)	WIDTH (16' - 20')
Private	X	16'
Commercial		min 25'
Minor Subdivision		
Major Subdivision		min 25'
Heavy Equipment		
Miscellaneous (state purpose)		

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COMMERCIAL APPROACH (See B for required documentation)

SUBDIVISION (Minor - See C for required documentation, Major - See D for required documentation)

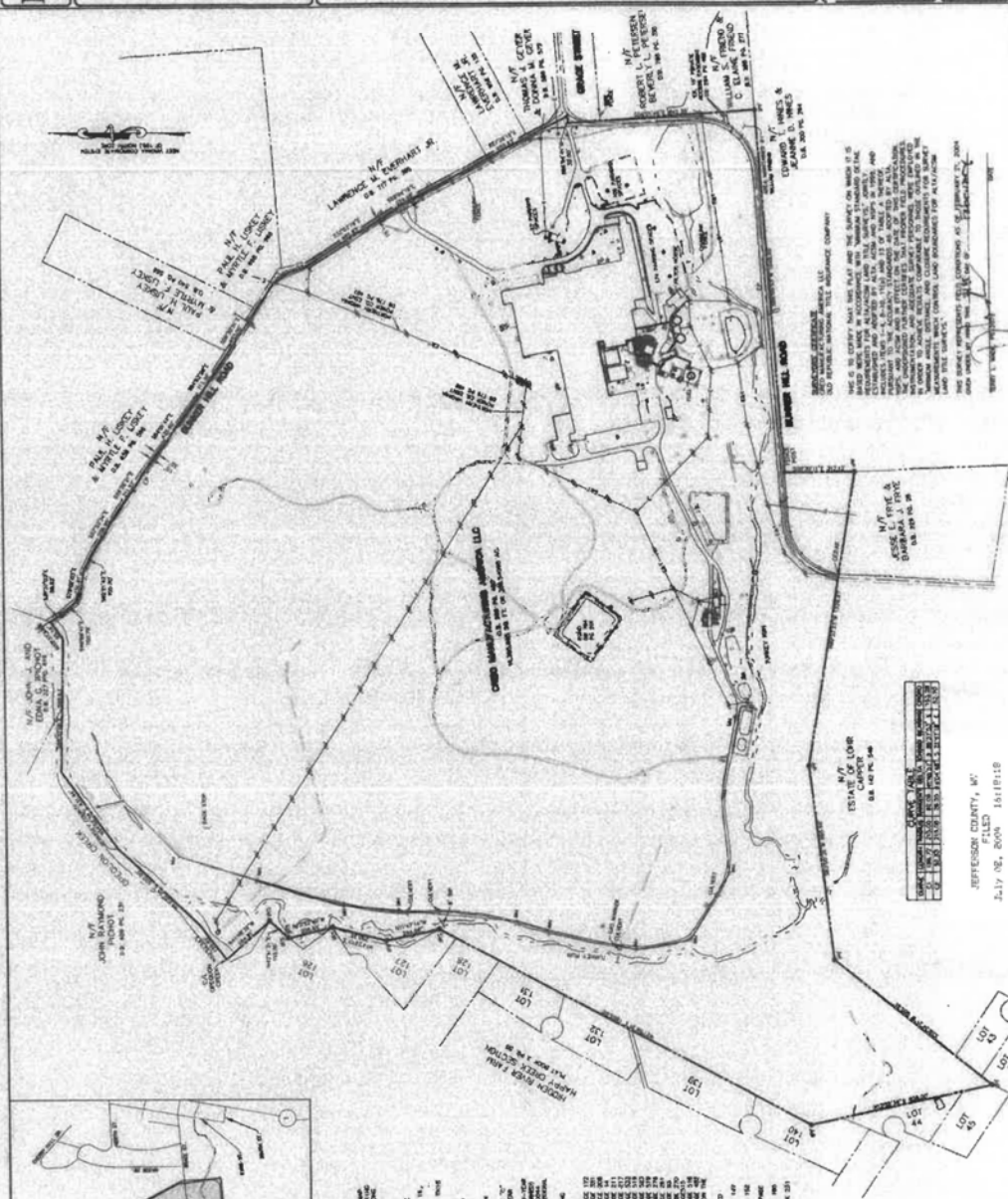
HEAVY EQUIPMENT (See E for required documentation)

MISCELLANEOUS (See F for required documentation)

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<http://www.transportation.wv.gov/highways/engineering/Manuals/Traffic/Driveway.pdf>

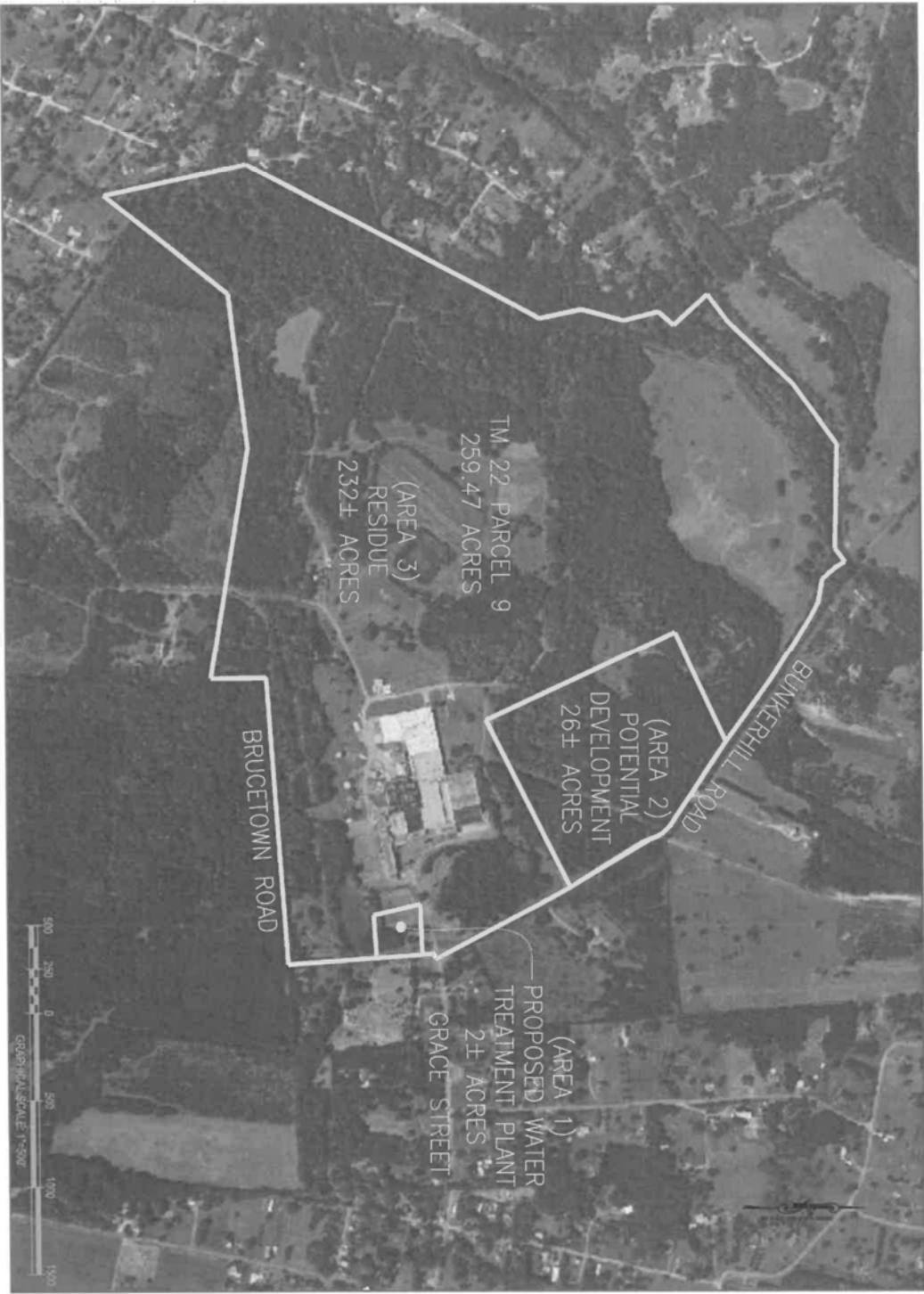


THIS IS TO CERTIFY THAT THIS PLAY AND THE SURVEY ON HANDS IS
THE PROPERTY OF THE NATIONAL TIRE AND RUBBER COMPANY
INCORPORATED, 1000 N. W. 10TH AVENUE, MIAMI, FLORIDA 33136
AND THAT THE SAME IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY
FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING
PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE
AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF
THE NATIONAL TIRE AND RUBBER COMPANY, INCORPORATED.

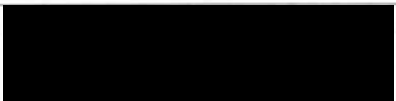
JEFFERSON COUNTY, NC
FILED
July 26, 2006 10:18:10
JOHN E. OTT
COUNTY CLERK
REGISTRATION NC: 200407161
PLATS (24 X 18)
SHEET: 00021 Page: 0014

- [illegible]

[illegible]



DATE	BY	REVISION
10/1/2011	J. B. B.	1.00
10/1/2011	J. B. B.	1.01
10/1/2011	J. B. B.	1.02
10/1/2011	J. B. B.	1.03
10/1/2011	J. B. B.	1.04
10/1/2011	J. B. B.	1.05
10/1/2011	J. B. B.	1.06
10/1/2011	J. B. B.	1.07
10/1/2011	J. B. B.	1.08
10/1/2011	J. B. B.	1.09
10/1/2011	J. B. B.	1.10
10/1/2011	J. B. B.	1.11
10/1/2011	J. B. B.	1.12
10/1/2011	J. B. B.	1.13
10/1/2011	J. B. B.	1.14
10/1/2011	J. B. B.	1.15
10/1/2011	J. B. B.	1.16
10/1/2011	J. B. B.	1.17
10/1/2011	J. B. B.	1.18
10/1/2011	J. B. B.	1.19
10/1/2011	J. B. B.	1.20



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Entrance Permit Application

PLEASE PRINT LEGIBLY

DATE APPLIED FOR:	April 24, 2024	<div>Contractor or Engineer (If applicable)</div> <div>NAME: [REDACTED]</div> <div>PHONE NO: [REDACTED]</div> <div>ADDRESS: [REDACTED]</div> <div>EMAIL: [REDACTED]</div>
COUNTY:	Jefferson	
OWNER/DEVELOPER NAME:	[REDACTED]	
ROUTE NO:	1/9	
PHONE NO:	[REDACTED]	
ADDRESS OF APPLICANT:	[REDACTED]	
EMAIL ADDRESS:	[REDACTED]	

EXACT LOCATION OF APPROACH (Please be specific. Example: East side of John Doe Road, 1.25 miles north of Jane Doe Road): The entrance is located at the intersection of [REDACTED] Rd. The entrance would be located approx. 2,000' from [REDACTED]

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Miscellaneous (state purpose)		

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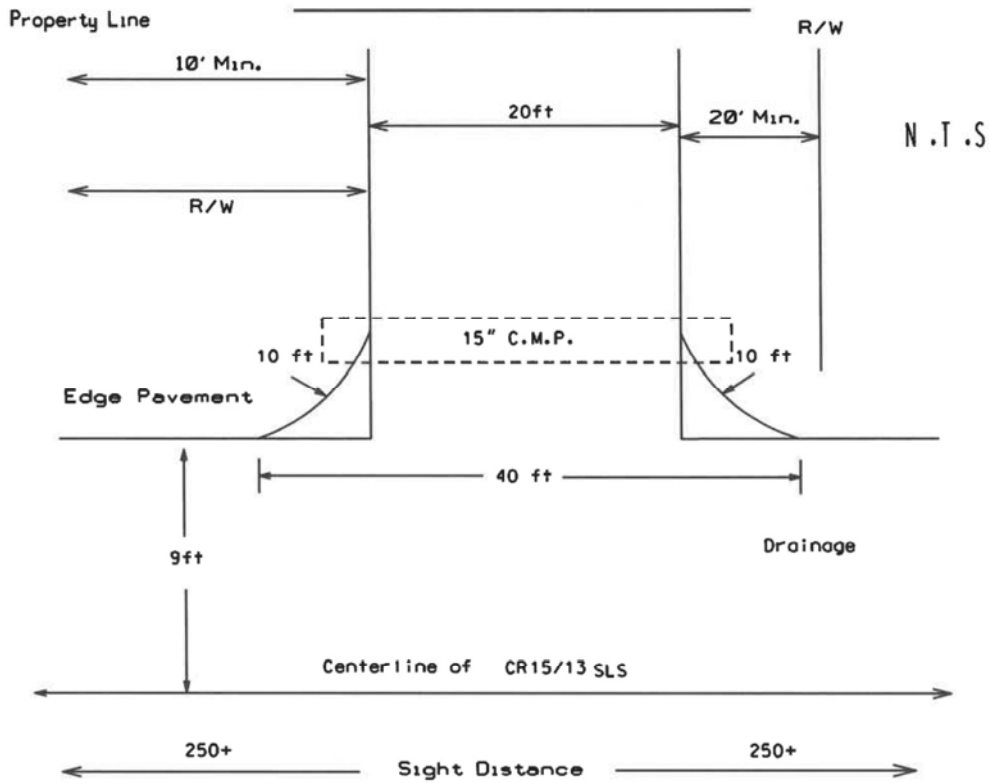
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R/W *[Signature]*

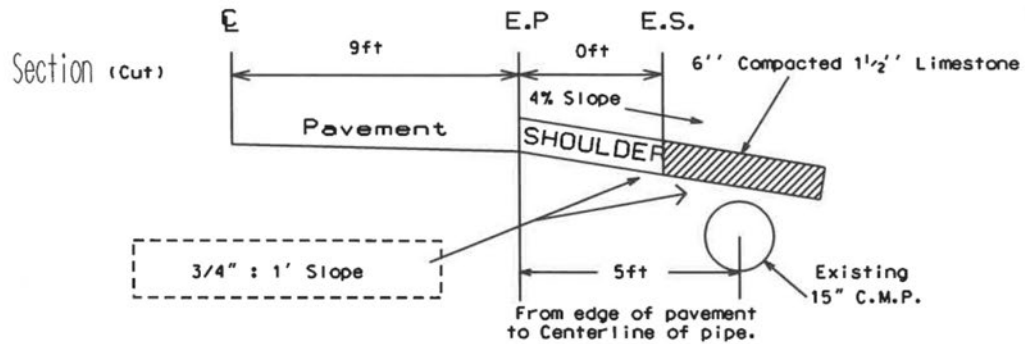


NO OBSTRUCTION PERMITTED BETWEEN PAVEMENT EDGE AND R/W LINE

REMARKS: Existing entrance to be used as a residential entrance for Sidewinder Enterprises LLC.

Posted Speed Limit 15 MPH

R/W (see attached)



GPS 39.30371
-77.98996

MP 2.846

NAME Sidewinder Enterprises LLC.
ADDRESS: 4340 Von Karman Avenue 380
Newport Beach CA 92660
LOCATION: @ inter of CR 1/8, 1/9 and Grace Street

COUNTY Jefferson
ROUTE 1/8
PROJECT
DATE 6/14/24

JEFFERSON COUNTY FILE NUMBER: 24-6-SP

OWNER / APPLICANT:

PROPOSED USE:

PARCEL 9 USE - INDUSTRIAL - HEAVY MANUFACTURING AND DISTRIBUTION
PARCEL 33.9 - WATER LINE
PARCEL 34 - EXISTING WELL, PERMIT #21,258 WILL SUPPLY WATER TO THE
BOTTLING PLANT

CONCEPT PLAN REVIEW CHECKLIST NOTES:

B.1. SEE GENERAL LOCATION MAP FOR ZONING DISTRICTS WITHIN 500' OF THE SUBJECT PROPERTY.

- B.2. A CONCEPT PLAN BE FOUND ON SHEET 3.
1. SEE SHEET 3 FOR THE LAYOUT OF LOTS, PARKING AREAS, RECREATION AREAS, ROADS, AND BUILDING AREAS.
 2. PROPOSED BUILDING AREAS IS 1,000,000 SF TOTAL.
 3. BUILDING FOOTPRINTS MAY BE MODIFIED ON SITE PLAN, BUT WILL NOT EXCEED 1,000,000 SF.
- B.3. ZONING INFORMATION:
1. PARCEL 9 - INDUSTRIAL/COMMERCIAL ZONING DISTRICT
 2. PARCEL 33.9, 34 - RURAL DISTRICT
 3. DENSITY CALCULATIONS - NA
 4. SITE RESOURCE MAP - SEE SHEET 2 AND 3
 - 4.1. 2' CONTOURS PROVIDED ON SITE RESOURCE MAPS
 - 4.2. NATURAL FEATURES SHOWN ON SITE RESOURCE MAPS
 - 4.3. SLOPE DELINEATION PER SECTION 22.50 - THE SLOPE WITHIN THE HILLSIDE SETBACK IS MEAN 10.9%.
 - 4.4. FLOODPLAIN SHOWN ON SITE RESOURCE MAP, FEMA MAP 54037C0115E IDENTIFIES ZONE A, AE AND FLOODWAY AE ON THE SUBJECT PROPERTY.
 - 4.5. ADJOINING PROPERTY USES ARE SHOWN ON SHEET 2 AND 3
- B.4. PROJECT DESCRIPTION
1. BOTTLING PLANT ZONING - THE BOTTLING PLANT IS A PERMITTED USE IN THE ZONE. USE INCLUDES HEAVY MANUFACTURING AND DISTRIBUTION.
 2. WELL ARE PERMITTED IN ALL ZONES IN JEFFERSON COUNTY AND ARE NOT SUBJECT TO TABLE APPENDIX C. WELL ON PARCEL 34 IS PERMITTED THROUGH WV DEPARTMENT OF ENVIRONMENTAL HEALTH SERVICES.
 3. THE CONCEPT PLAN IS FOR THE DEVELOPMENT OF TWO BOTTLING FACILITIES, PHASE 1 (304,000SF) AND PHASE 2 (696,000 SF) TOTALING 1,000,000SF. THE WELL ON PARCEL 34 IS EXISTING. THE CONCEPT PLAN SHOWS THE CONNECTION BETWEEN THE BOTTLING FACILITIES AND THE WELL, INCLUDING A WATER LINE ON PARCEL 33.9.
 4. THE CONCEPT PLAN INCLUDES THE PROPOSED BUILDINGS, PARKING, SWM FACILITIES AND OTHER IMPROVEMENTS REQUIRED BY JEFFERSON COUNTY REGULATIONS.
 5. THE PARCEL 9 PARTICIPATED IN THE WV VWP PROGRAM, SEE SHEET 5 FOR DETAILS.
 6. PARKING TABULATIONS AS FOLLOWS:
 - 6.1. PARKING PHASE 1 - 62 STANDARD SPACES, 94 TRAILER SPACES
 - 6.2. PARKING PHASE 2 - 101 STANDARD SPACES, 312 TRAILER SPACE
 - 6.3. TOTAL PARKING - 163 STANDARD SPACES, 406 TRAILER SPACES
 - 6.4. PARKING TOTALS MAY BE ADJUSTED WITH SITE PLAN, BUT WILL MEET ALL JEFFERSON COUNTY MINIMUM STANDARDS.

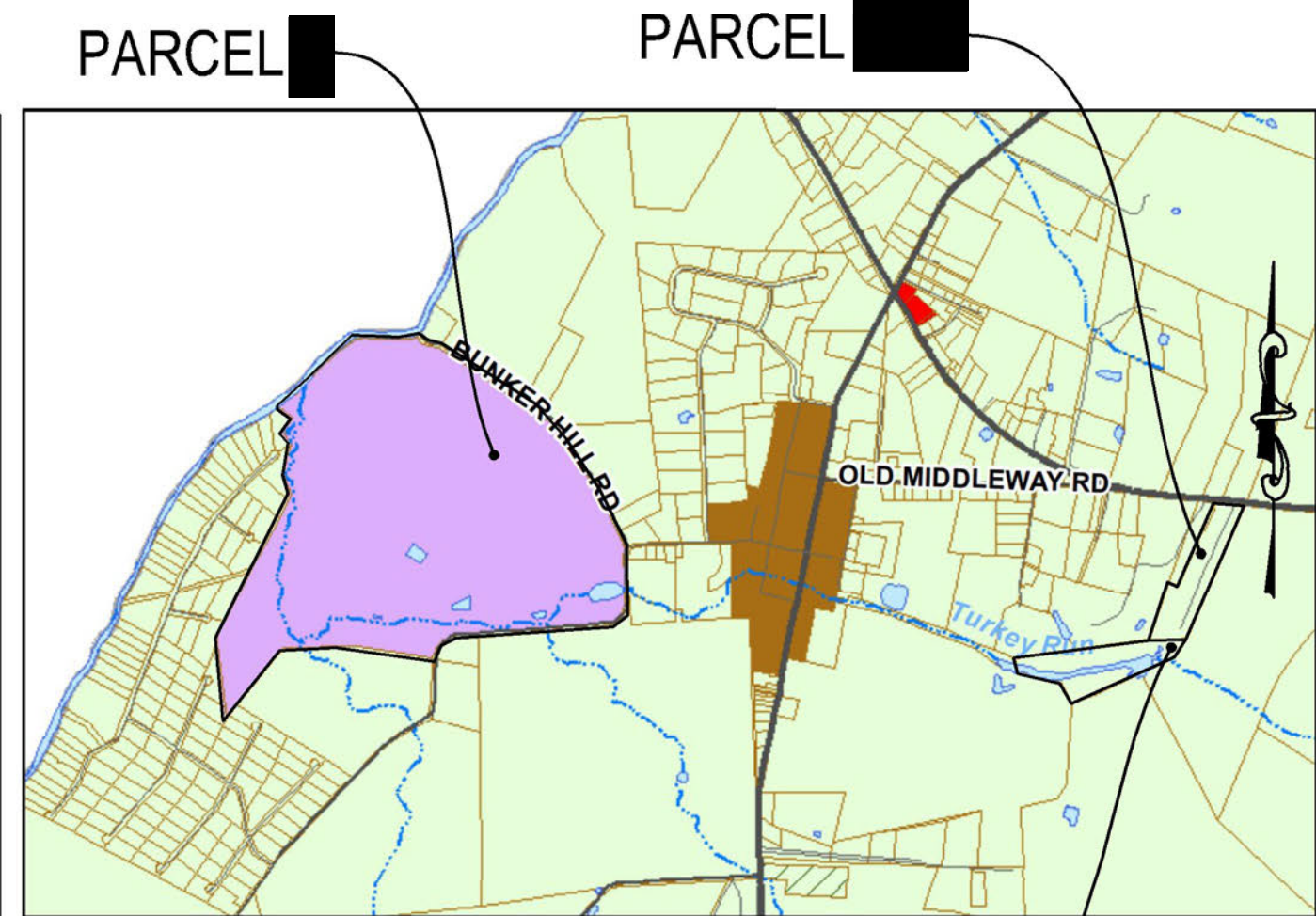
- A. TRAFFIC IMPACT DATA
 1. BUNKER HILL ROAD (CO. RT. 1/9)/ WVD0H ROUTE ID - 1940001090000 / AVERAGE DAILY TRIPS - 29
 2. GRACE STREET (CO. RT. 1/8) / WVD0H ROUTE ID - 1940001080000 / AVERAGE DAILY TRIPS - 812
 3. LEETOWN ROAD (CO. RT. 1/1) / WVD0H ROUTE ID - 1940001000000 / AVERAGE DAILY TRIPS - 3,055
 4. DATA SOURCE - WVDOT DIVISION OF HIGHWAYS, PERFORMANCE MANAGEMENT DIVISION, TRAFFIC MONITORING UNIT DATA SOURCE YEAR - 2023
- 4.1. TRIP GENERATION FOR PARCEL 9 IS BASED ON TRAFFIC IMPACT STUDY SUBMITTED TO WVDOT. PARCELS 34/33.9 IS ASSUMED TO GENERATE NO MORE THAN 2 TRIPS PER DAY TO MONITOR THE WELL AND NONE IN THE PEAK HOUR.
 - 4.2. DAILY TRIPS 770 - 610 EMPLOYEE TRIPS, 160 TRUCK TRIPS
 - 4.3. AM PEAK HOUR TRIPS - 132
 - 4.4. PM PEAK HOUR TRIPS - 184
 - 4.5. THE NEAREST KEY INTERSECTION AS DEFINED IN THE CONCEPT PLAN CHECKLIST IS THE INTERSECTION OF LEETOWN ROAD (RT. 1) AND MIDDLEWAY PIKE (WV RT 51).
 - 4.6. HIGHWAY PROBLEM AREA #36 WITHIN 1 MILE OF PARCEL 9, IT IS 1,300' FROM PARCEL 33.9 AND 34.
 - 4.7. PURSUANT TO SECTION 24.119 B.6. OF THE SUBDIVISION REGULATIONS, THE DEVELOPER HAS AN APPROVED TIS FROM WVDOT
- B.6. AGENCY REVIEWS
 1. AGENCY REVIEWS: LETTERS WILL BE SENT TO THE REQUIRED REVIEW AGENCIES AS REQUIRED BY THE CONCEPT PLAN REVIEW CHECKLIST. A COPY OF THE LETTERS WILL BE PROVIDED TO COUNTY STAFF.
- B.7. A LIST OF ALL ADJOINING PROPERTIES AND OWNERS ADDRESS ARE INCLUDED AS PART OF THIS SUBMISSION. PROPERTY OWNERS INFORMATION IS PROVIDED PURSUANT TO JEFFERSON COUNTY ASSESSOR'S RECORDS SEE TABLE LOCATED ON SHEET 2 AND 3 FOR ADJACENT PROPERTY OWNER INFORMATION.
- E. A LETTER TO WVDOT HAS BEEN SENT REQUESTING THE IDENTIFICATION OF ANY ISSUES, DATA REQUIREMENTS OR NOTICE THAT THERE ARE NONE.
- F. PURSUANT TO SECTION 24.119 B.6 OF THE SUBDIVISION REGULATION, THE DEVELOPER WILL PROVIDE A TRAFFIC IMPACT STUDY IN ACCORDANCE WITH THE FOLLOWING CRITERIA WITHIN ONE YEAR.
 - G. DOMESTIC WATER SERVICE WILL BE PROVIDED BY BERKELEY COUNTY PUBLIC SERVICE WATER DISTRICT (BCPSWD). AN INTENT TO SERVE LETTER HAS BEEN OBTAINED AND PROVIDED TO COUNTY STAFF.
 - H. SEWER SERVICE WILL BE PROVIDED BY BERKELEY COUNTY PUBLIC SERVICE SEWER DISTRICT (BCPSSD). AN INTENT TO SERVE LETTER HAS BEEN OBTAINED AND PROVIDED TO COUNTY STAFF.

CONCEPT PLAN CONDITIONS:

1. PRIOR TO THE START OF PLANT OPERATIONS THE INTERSECTION OF LEETOWN ROAD AND ROUTE 51 WILL BE IMPROVED. IT IS CURRENTLY ANTICIPATED THAT THIS IMPROVEMENT WILL BE A TRAFFIC CIRCLE. THE FORM OF THE FINAL IMPROVEMENT IS AT THE DISCRETION OF WVDOH.
2. THE APPLICANT WILL SUBMIT A WELL MONITORING PLAN WITH THE SITE PLAN. THE PLAN WILL INCLUDE THE FOLLOWING:
 - 2.1. PROPERTY OWNERS WITHIN 1/2 MILE OF THE SUPPLY WELL MAY REQUEST WELL MONITORING
 - 2.2. PROPERTY OWNERS AT THE FOLLOWING LOCATIONS MAY REQUEST WELL MONITORING
 - 2.2.1. QUEEN STREET - FROM SOUTH STREET TO ROUTE 1/16, GRACE STREET, WEST STREET, EAST STREET, OLD MIDDLEWAY ROAD
3. THE OWNER SHALL MEET WITH MIDDLEWAY RESIDENTS TO DISCUSS TRAFFIC IMPACT TO HISTORICAL STRUCTURES AND TRAFFIC CALMING PRIOR TO THE SUBMISSION OF THE SITE PLAN.
4. WATER WITHDRAWAL TO BE IN CONFORMANCE WITH WV OFFICE OF ENVIRONMENTAL HEALTH SERVICES PERMIT #21,258 WHICH PERMITS A 1,000GPM WELL.
5. APPLICANT WILL CONDUCT GROUND WATER SAMPLING ON PARCEL 9 AFTER PLANT IS OPERATIONAL. WATER SAMPLES WILL BE TAKEN FROM THE MONITORING WELLS CONSTRUCTED DURING THE VRP TESTING. WELL LOCATIONS SHALL BE SUBMITTED WITH THE SITE PLAN

GENERAL LOCATION MAP

SCALE:1"=2,000



PARCEL

PROJECT DESCRIPTION:

THE DEVELOPMENT PROPOSES UP TO 1,000,000 SQUARE FEET OF BUILDING AREA FOR BOTTLING FACILITIES, FALLING UNDER HEAVY MANUFACTURING, WAREHOUSING AND DISTRIBUTION USE AND A WELL TO TRANSMIT WATER TO THE BOTTLING FACILITY. PARCEL 9 WILL BE SUBDIVIDED AS A NON-RESIDENTIAL SUBDIVISION UNDER THE MINOR SUBDIVISION PROCESS PER THE WAIVER OBTAINED ON 08/08/2023, JC FILE #23-20-CW. THE PARCEL LINES FOR THE PROPOSED MINOR SUBDIVISION ARE DEPICTED ON THE CONCEPT PLAN. TWO ENTRANCES ARE PROPOSED, WITH ACCESS TO THE SITE PROVIDED VIA A 10' EASEMENT ONTO BUNKER HILL ROAD. THE SITE'S DEVELOPMENT IS PROPOSED TO BE PHASED. THE WELL ON PARCEL 34 IS EXISTING. A WATER LINE WILL BE INSTALLED ON PARCEL 33.9 AND EXTEND TO PARCEL 9.

ZONING ORDINANCE SUMMARY:

- ZONING REQUIREMENTS:**
PARCEL 9
 ZONE - INDUSTRIAL COMMERCIAL DISTRICT
 EXISTING USE - VACANT HEAVY MANUFACTURING FACILITY
 PROPOSED USE - INDUSTRIAL - HEAVY MANUFACTURING AND DISTRIBUTION
PARCEL 33.9
 ZONE - RURAL DISTRICT
 EXISTING USE - MOBILE HOME PARK
 PROPOSED USE - MOBILE HOME PARK, AND WATER LINE
PARCEL 34
 ZONE - RURAL DISTRICT
 EXISTING USE - WELL B (SUPPLY WELL PERMIT #21,258)
 PROPOSED USE - WELL B (SUPPLY WELL PERMIT #21,258)
2. ENVIRONMENTAL:
 COVENANTS RECORDED ON PARCEL 9 IN PER VRP # 15024 WILL APPLY TO THE DEVELOPMENT. THESE COVENANTS INCLUDE NO WELL DRILLING WITHIN THE PLUME AREA AND WITHIN 300' OF MONITORING WELL 114D, CONTROLLED GRADING FOR PORTIONS OF PARCEL 9.
 ENVIRONMENTAL STANDARDS CONTAINED IN SECTIONS 8.9.A.1 THROUGH 8.9.A.8 OF THE JEFFERSON COUNTY ZONING AND LAND DEVELOPMENT ORDINANCE WILL APPLY.
3. LANDSCAPING:
 THE APPLICANT WILL MEET ALL LANDSCAPE AND BUFFER REQUIREMENTS OF THE JEFFERSON COUNTY ZONING AND SUBDIVISION ORDINANCES..
4. SITE LIGHTING:
 SITE LIGHTING IS PROPOSED FOR THIS SITE IN THE FORM OF POLE MOUNTED STREET LIGHTS AND BUILDING MOUNTED LIGHTS. FINAL DESIGN AND LOCATION IS SUBJECT TO RECOMMENDATIONS BY A QUALIFIED LIGHTING ENGINEER.
5. USE REQUIREMENTS:
- | | <u>REQUIRED</u> | <u>PROVIDED</u> |
|--|-----------------|-----------------|
| LOT SIZE: | 3 AC | 37 AC; 73 AC |
| LOT WIDTH: | N/A | N/A |
| BUILDING HEIGHT: | 75' (MAX.) | ±50' |
| IMPERVIOUS AREA LIMIT: | 90% (MAX.) | 40% |
| BUILDING SETBACKS: | | |
| FRONT: | 50' (MIN.) | 50' (MIN.) |
| SIDE: | 50' (MIN.) | 50' (MIN.) |
| REAR: | 50' (MIN.) | 50' (MIN.) |
| *25' (MIN.) IF ADJACENT TO AN INDUSTRIAL USE | | |
| PARKING/DRIVE AISLE SETBACKS: | | |
| FRONT: | 25' (MIN.) | 25' (MIN.) |
| SIDE: | 25' (MIN.) | 25' (MIN.) |
| REAR: | 25' (MIN.) | 25' (MIN.) |
| *20' (MIN.) IF ADJACENT TO AN INDUSTRIAL USE | | |
| DISTANCE REQUIREMENT: | | |
| FRONT, SIDE, REAR: | 200' (MIN.) | 200' (MIN.) |
| BUFFERS (SCREENED / UNSCREENED): | | |
| FRONT: | 25(S) | 25(S) |
| *N/A IF ADJACENT TO AN INDUSTRIAL USE | | |
| SIDE & REAR: | 20(S) | 20(S) |

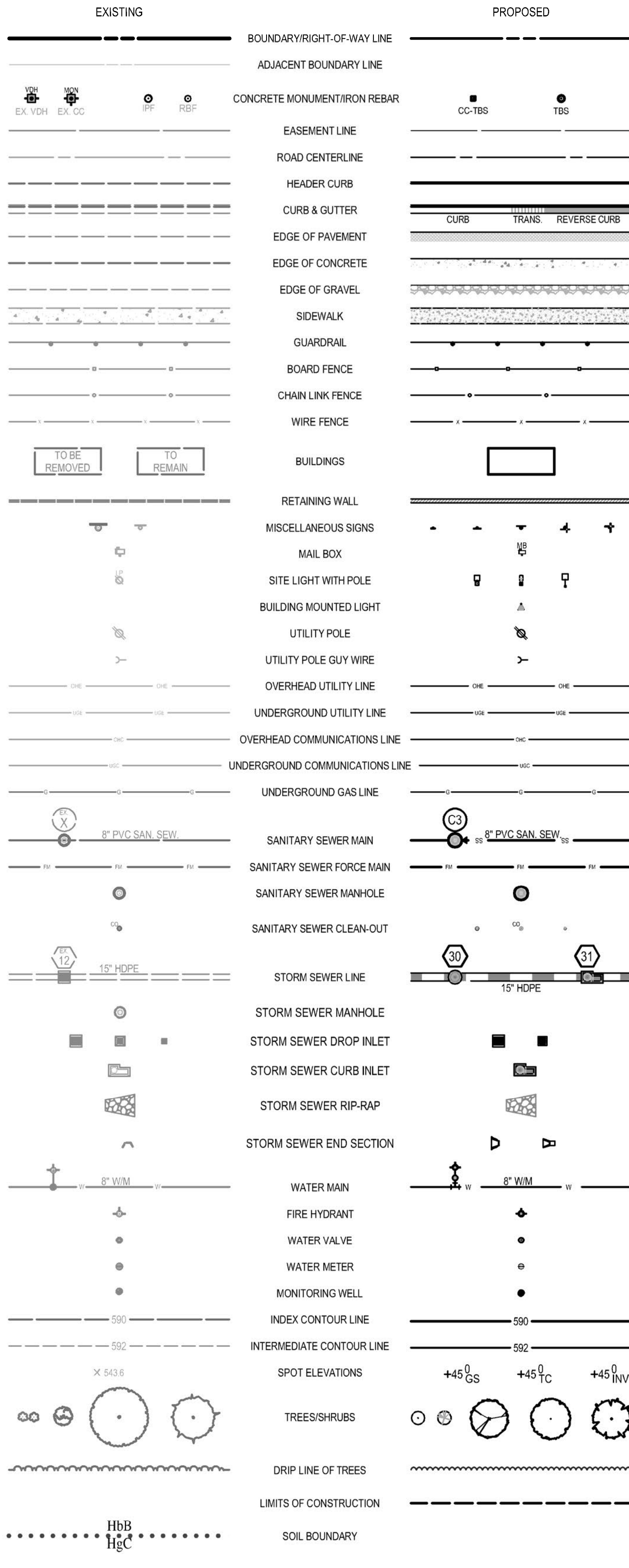
PARKING TABULATIONS:

1. REQUIRED: (MANUFACTURING PLANT)
1 SPACE PER EMPLOYEE ON MAXIMUM WORKING SHIFT
TOTAL PARKING SPACES REQUIRED = 150 SPACES
2. PROVIDED:
TOTAL PARKING SPACES PROVIDED = 163 SPACES (INCLUDES ADA ACCESSIBLE SPACES)
406 TRACTOR TRAILER SPACES

SUPPLY WELL SUMMARY:

1. THE SUPPLY WELL FOR THE BOTTLING FACILITY IS AN EXISTING PERMITTED WELL, PERMIT #21258.
2. THE PERMIT WAS GRANTED BY THE WV OFFICE OF ENVIRONMENTAL HEALTH SERVICES, THE REGULATORY AGENCY FOR WELLS IN JEFFERSON COUNTY.
3. THE WELL PERMIT IS FOR 1,000GPM
4. THE WELL PERMIT ALLOWS THE FACILITY TO SUPPLY THE PHASE 1 INDUSTRIAL FACILITY (BOTTLING PLANT), THE PHASE 2 INDUSTRIAL FACILITY (BOTTLING PLANT AND UP TO 250 CUSTOMERS IN MIDDLEWAY.
5. PERMITTING AND REGULATION OF THE EXISTING SUPPLY WELL.
- 5.1. JEFFERSON COUNTY DEPARTMENT OF ENGINEERING, PLANNING AND ZONING DO NOT PERMIT OR APPROVE WELLS, IT DOES NOT REGULATE WELLS THROUGH THE ZONING ORDINANCE OR SUBDIVISION ORDINANCE. WHEN WELL APPROVALS ARE REQUIRED DOCUMENTATION MUST BE PROVIDED FROM THE REGULATING AGENCY.
- 5.2. WV STATE CODE - §84-7-10 EFFECT OF ENACTED ZONING ORDINANCE. DOES NOT PERMIT ANY ZONING ORDINANCE TO LIMIT OR RESTRICT THE COMPLETE USE OF NATURAL RESOURCES BY THE OWNER. WHILE WELLS CAN AND ARE REGULATED BY THE STATE OF WV, JEFFERSON COUNTY CANNOT USE THEIR ZONING ORDINANCE TO REPLACE THE AUTHORITY HELD BY THE STATE.
- 5.3. DURING THE PERMITTING OF WELL B (#21258) THE APPLICANT PREPARED A DETAILED STUDY THAT WAS SUBMITTED TO AND REVIEWED BY THE WV OFFICE OF ENVIRONMENTAL HEALTH SERVICES.

CIVIL LEGEND:



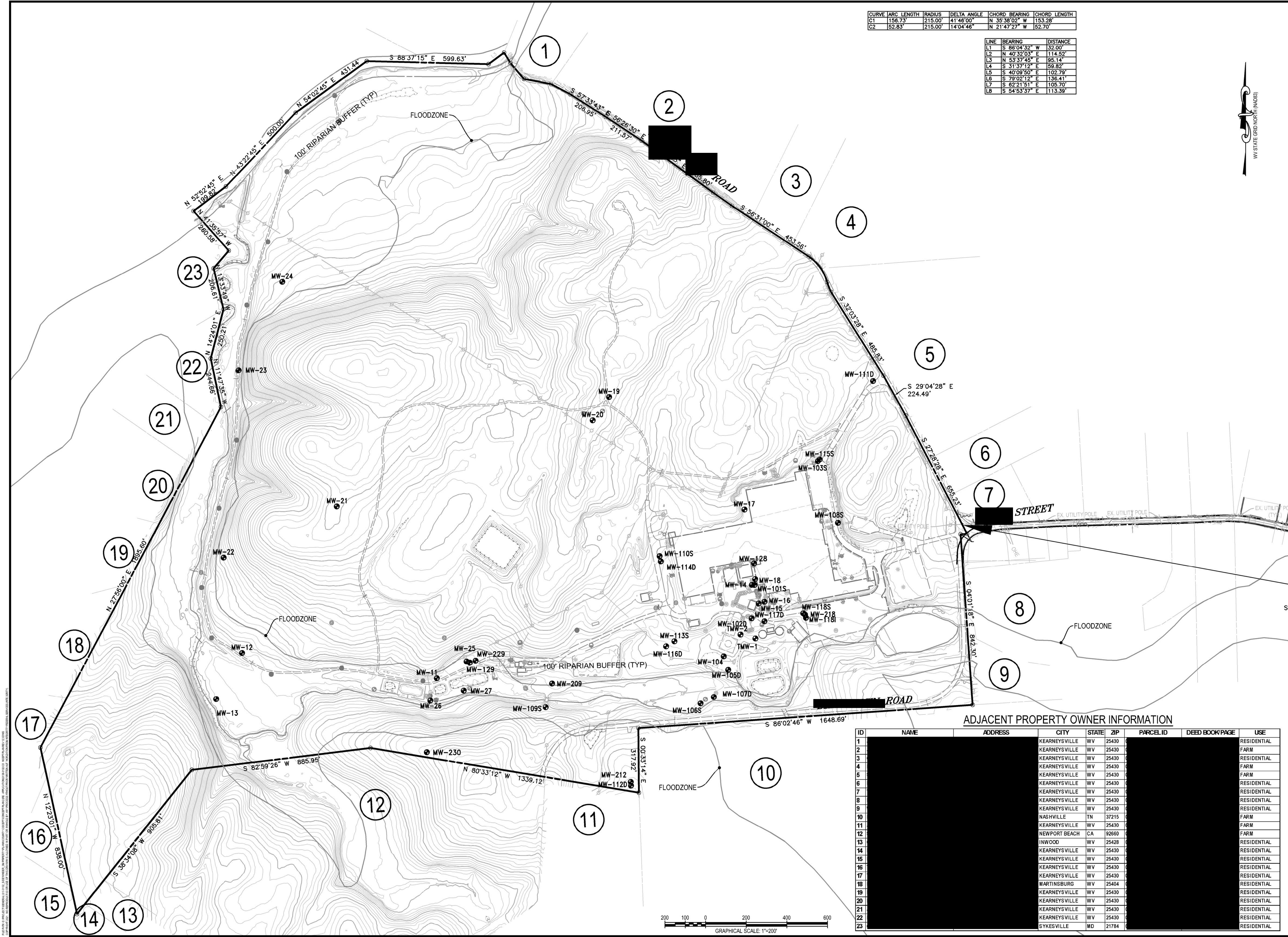
JEFFERSON COUNTY - COMPLETE LIST OF WAIVERS/VARIANCES

(TABLE 1.2-2)

ORDINANCE	SECTION OF ORDINANCE	DESCRIPTION OF WAIVER OR VARIANCE	DATE GRANTED
SUBDIVISION	20.201C & 20.202	TO ALLOW A NON-RESIDENTIAL SUBDIVISION TO PROCESS AS A MINOR SUBDIVISION	08/08/2023

REVISED PER COUNTY COMMENT IS REVIEWED 10/11/2024	REVISIONS
REVISED PER COUNTY COMMENT WITH COUNTY STAFF 10/7/2024	
REVISED PER PLANNING COMMISSION INCOMPLETE ITEMS 11/15/2024	
REVISED PER COUNTY COMMENTS REVIEWED 12/02/2024	

SCALE:	HORIZ.: AS NOTED VERT.:		
DATE: SEPTEMBER 24, 2024			
JOB: 3138-0102			
DRAWN: ABP		CHECK: JPG	
CADD: COVER SHEET-REV 12.3.DWG			
UNCS: N/A			
SHEET:			



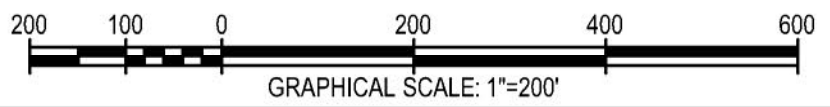
CURVE	ARC LENGTH	RADIUS	DELTA ANGLE	CHORD BEARING	CHORD LENGTH
C1	156.73'	215.00'	41°46'00"	N 35°38'02" W	153.28'
C2	52.83'	215.00'	14°04'46"	N 21°47'27" W	52.70'

LINE	BEARING	DISTANCE
L1	S 86°04'32" W	32.00'
L2	N 40°32'03" E	114.52'
L3	N 53°37'45" E	95.14'
L4	S 31°37'12" E	59.82'
L5	S 40°09'50" E	102.79'
L6	S 79°02'12" E	136.41'
L7	S 62°21'51" E	105.70'
L8	S 54°53'37" E	113.39'



ADJACENT PROPERTY OWNER INFORMATION

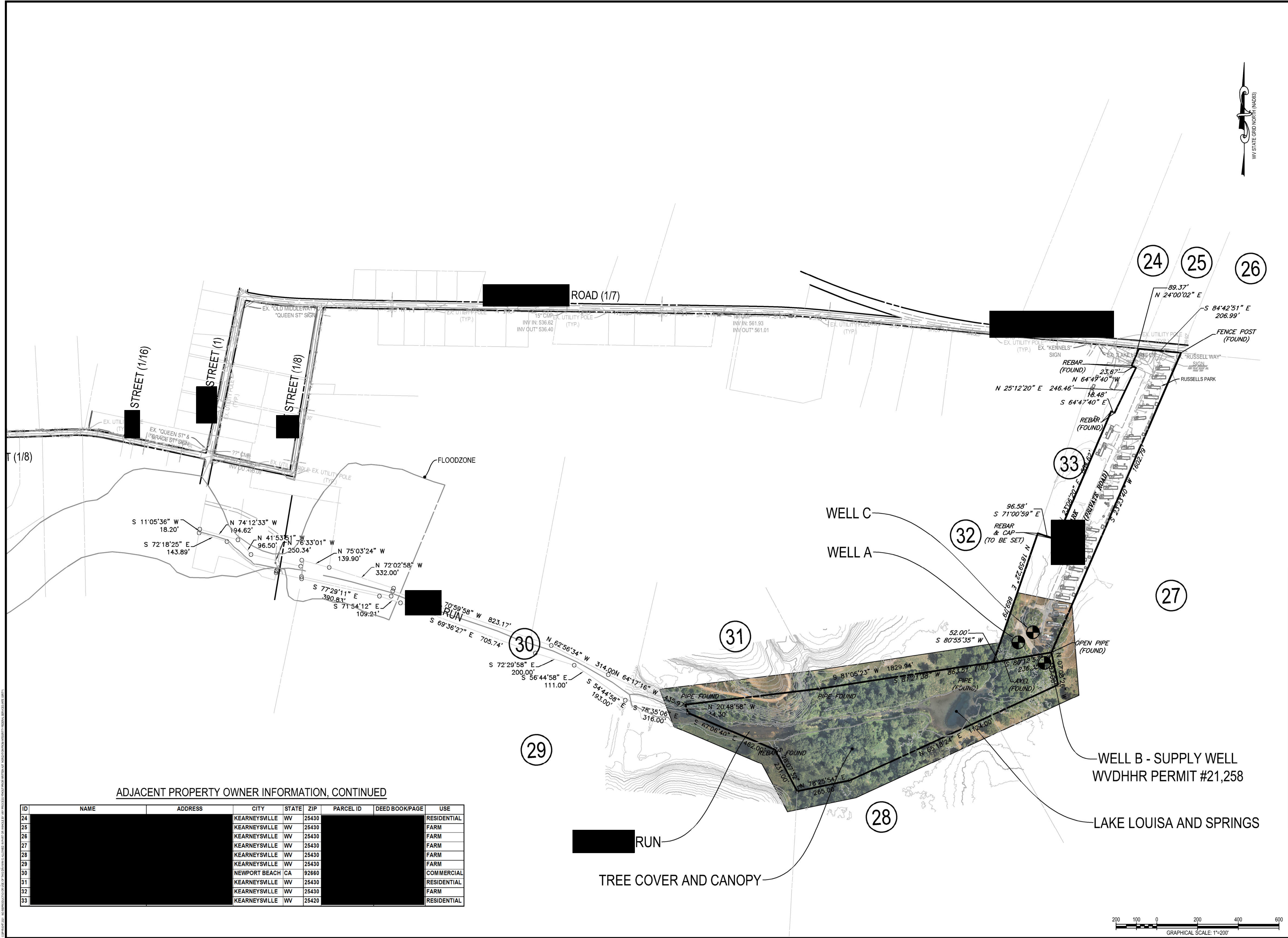
ID	NAME	ADDRESS	CITY	STATE	ZIP	PARCEL ID	DEED BOOK/PAGE	USE
1			KEARNEYSVILLE	WV	25430			RESIDENTIAL
2			KEARNEYSVILLE	WV	25430			FARM
3			KEARNEYSVILLE	WV	25430			RESIDENTIAL
4			KEARNEYSVILLE	WV	25430			FARM
5			KEARNEYSVILLE	WV	25430			FARM
6			KEARNEYSVILLE	WV	25430			RESIDENTIAL
7			KEARNEYSVILLE	WV	25430			RESIDENTIAL
8			KEARNEYSVILLE	WV	25430			RESIDENTIAL
9			KEARNEYSVILLE	WV	25430			RESIDENTIAL
10			NASHVILLE	TN	37215			FARM
11			KEARNEYSVILLE	WV	25430			FARM
12			NEWPORT BEACH	CA	92660			FARM
13			INWOOD	WV	25428			RESIDENTIAL
14			KEARNEYSVILLE	WV	25430			RESIDENTIAL
15			KEARNEYSVILLE	WV	25430			RESIDENTIAL
16			KEARNEYSVILLE	WV	25430			RESIDENTIAL
17			KEARNEYSVILLE	WV	25430			RESIDENTIAL
18			MARTINSBURG	WV	25404			RESIDENTIAL
19			KEARNEYSVILLE	WV	25430			RESIDENTIAL
20			KEARNEYSVILLE	WV	25430			RESIDENTIAL
21			KEARNEYSVILLE	WV	25430			RESIDENTIAL
22			KEARNEYSVILLE	WV	25430			RESIDENTIAL
23			SYKESVILLE	MD	21784			RESIDENTIAL



SEAL:

REVISIONS
REVISED PER COUNTY COMMENTS RECEIVED 10/7/2024
REVISED PER MEETING WITH COUNTY STAFF 10/7/2024
REVISED PER PLANNING COMMISSION INCOMPLETE ITEMS 11/5/2024
REVISED PER COUNTY COMMENTS RECEIVED 12/02/2024

SCALE:	HORIZ.: 1"=200'
	VERT.:
DATE:	SEPTEMBER 24, 2024
JOB:	3138-0102
DRAWN:	ABP
CHECK:	JPG
CADD:	3138-0102-CONCEPT PLAN-REV 12.0.DWG
NCS:	N/A
SHEET:	



ADJACENT PROPERTY OWNER INFORMATION, CONTINUED

ID	NAME	ADDRESS	CITY	STATE	ZIP	PARCEL ID	DEED BOOK/PAGE	USE
24			KEARNEYSVILLE	WV	25430			RESIDENTIAL
25			KEARNEYSVILLE	WV	25430			FARM
26			KEARNEYSVILLE	WV	25430			FARM
27			KEARNEYSVILLE	WV	25430			FARM
28			KEARNEYSVILLE	WV	25430			FARM
29			KEARNEYSVILLE	WV	25430			FARM
30			NEWPORT BEACH	CA	92660			COMMERCIAL
31			KEARNEYSVILLE	WV	25430			RESIDENTIAL
32			KEARNEYSVILLE	WV	25430			FARM
33			KEARNEYSVILLE	WV	25420			RESIDENTIAL

SEAL:

REVISED PER COUNTY COMMENTS RECEIVED 10/7/2024

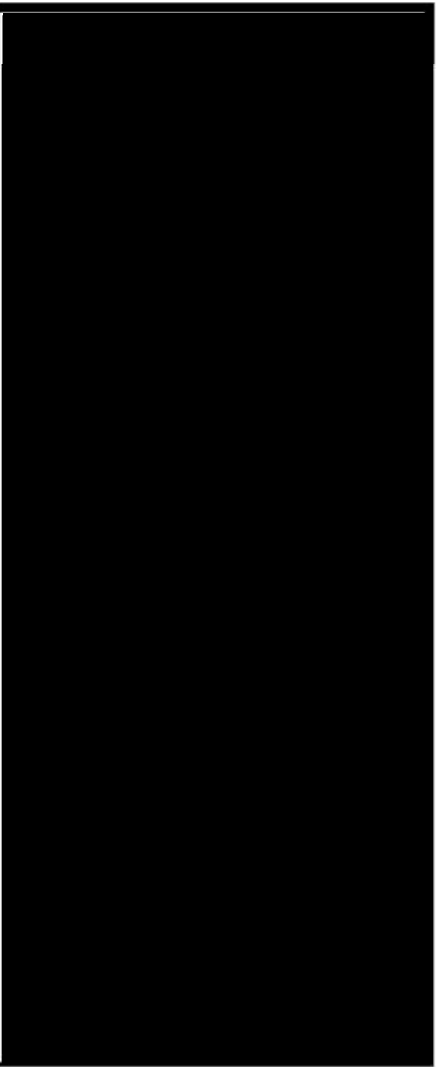
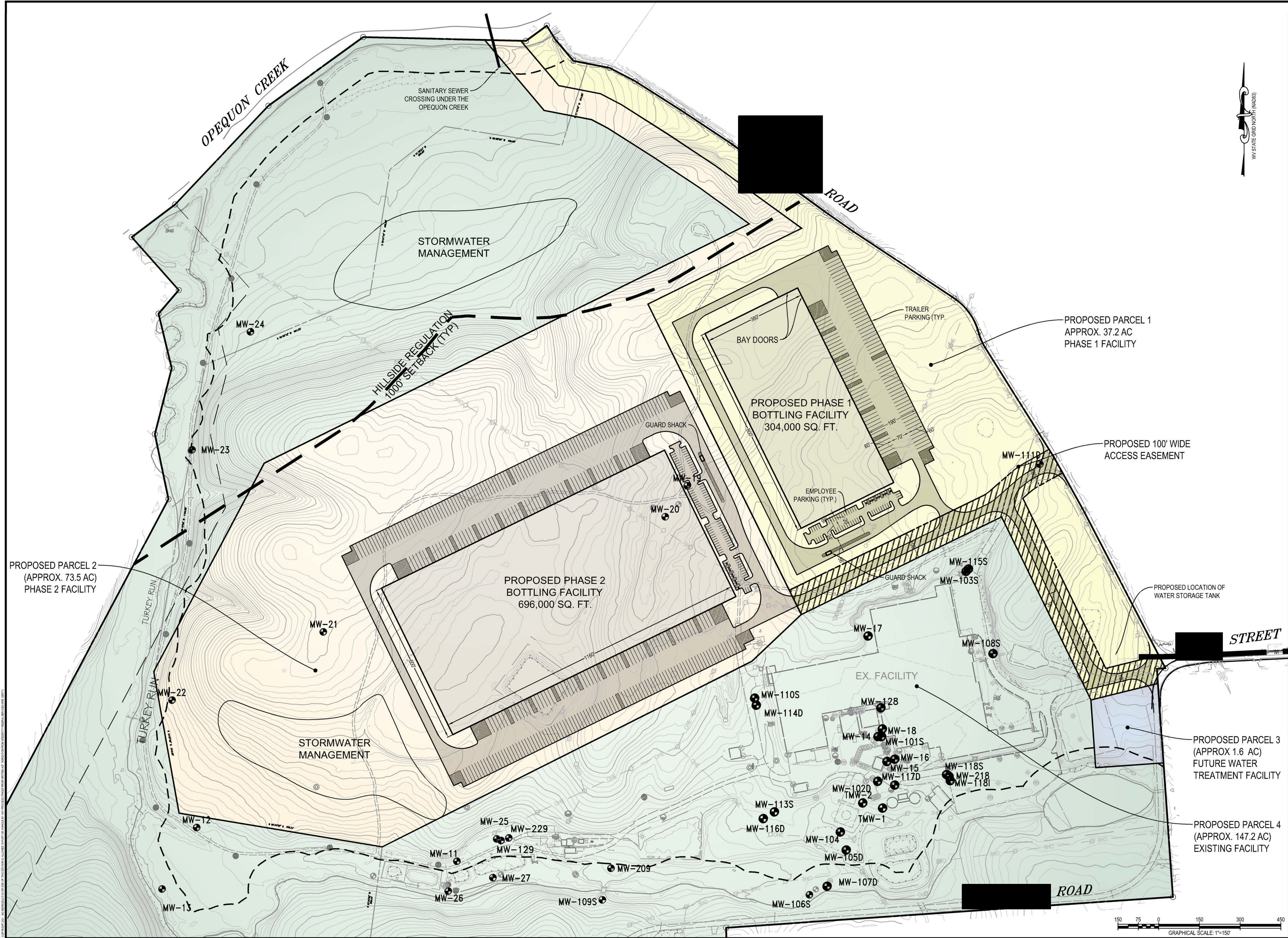
REVISED PER MEETING WITH COUNTY STAFF 10/7/2024

REVISED PER PLANNING COMMISSION INCOMPLETE ITEMS 11/15/2024

REVISED PER COUNTY COMMENTS RECEIVED 12/02/2024

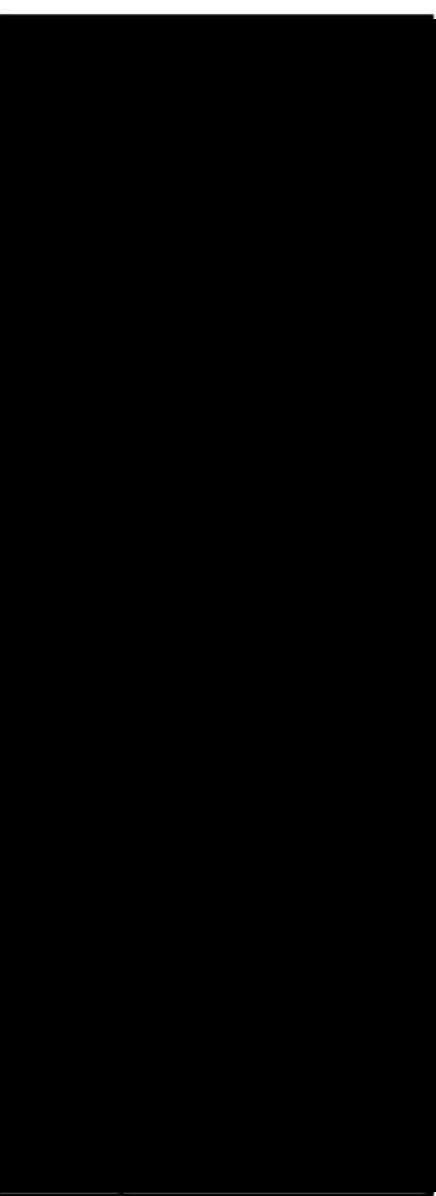
REVISIONS

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3 OF 6



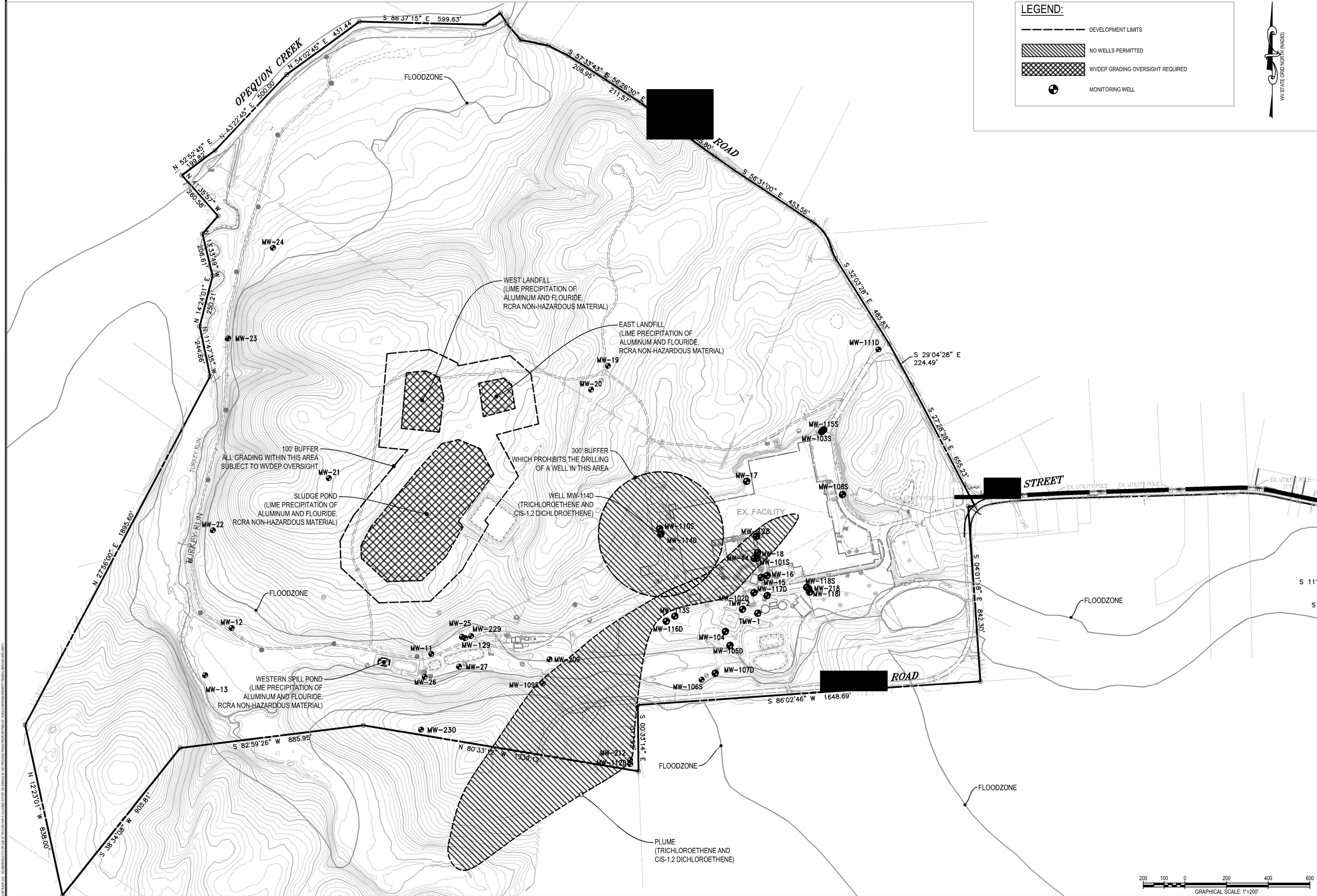
SEAL:

REVISIONS	
REVISED PER COUNTY COMMENTS RECEIVED 10/7/2024	
REVISED PER MEETING WITH COUNTY STAFF 10/7/2024	
REVISED PER PLANNING COMMISSION INCOMPLETE ITEMS 11/15/2024	
REVISED PER COUNTY COMMENTS RECEIVED 12/02/2024	



SCALE:	HORIZ.: 1"=150'
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DATE:	SEPTEMBER 24, 2024
JOB:	3138-0102
DRAWN:	ABP
CHECK:	JPG
CADD:	3138-0102-CONCEPT PLAN-REV 12.3.DWG
NCS:	N/A
SHEET:	4 OF 6

VRP-15024 CERTIFICATE OF COMPLETION ISSUED JUNE 15, 2018



SEAL:

REVISIONS	
REVISED PER COUNTY COMMENTS RECEIVED 10/7/2024	
REVISED PER MEETING WITH COUNTY STAFF 10/7/2024	
REVISED PER PLANNING COMMISSION INCOMPLETE ITEMS 11/15/2024	
REVISED PER COUNTY COMMENTS RECEIVED 12/02/2024	

SCALE:	HORIZ.: 1"=200'
	VERT.:
DATE:	SEPTEMBER 24, 2024
JOB:	3138-0102
DRAWN:	ABP
CHECK:	JPG
CADD:	3138-0102-CONCEPT PLAN-REV 12.3.DWG
NCS:	N/A
SHEET:	6 OF 6



[Redacted]
[Redacted], Suite 300
Martinsburg, WV 25404
[Redacted]
[Redacted]
[Redacted]

Writer's Contact Information

[Redacted]
[Redacted]

24-6-SP

Received via email 03/05/25 (jth)

March 5, 2025

VIA E-MAIL (planningdepartment@jeffersoncountywv.org)

Jefferson County Planning Commission
P.O. Box 716
Charles Town, WV 25414

Re: Applicant's Responses to Opponents' Comments

Ladies & Gentlemen,

This firm represents [Redacted] ("[Redacted]") with respect to its application for approval of a Major Site Plan for the [Redacted] project located near Middleway, West Virginia, including the Concept Plan process currently ongoing.

Enclosed please find [Redacted]'s responses, as the applicant, to comments to opponents of the Concept Plan and project.

[Redacted] and this firm thank you for your attention and consideration.

Sincerely,

[Redacted]

cc: [Redacted], Esq.

APPLICANT'S RESPONSES TO OPPONENTS' COMMENTS

I. PLANNING COMMISSION HAS LIMITED JURISDICTION AND DISCRETION

A. **WV follows Dillon's Rule:** "The county [commission] is a corporation created by statute, and possessed only of such powers as are expressly conferred by the Constitution and legislature, together with such as are reasonably and necessarily implied in the full and proper exercise of the powers so expressly given. It can do only such things as are authorized by law, and in the mode prescribed." *Syl. Pt 4, State ex rel. W. Va. Parkways Auth. v. Barr, 716 S.E.2d 689 (W. Va. 2011).*

B. **"A Planning Commission has only those powers, duties and jurisdiction as given to it in the ordinance creating it."** *WV Code § 8A-2-1(e).*

C. **The PC has limited discretion, and no discretion when requirements are met.**

1. **"Discretion.** The administration of these Subdivision and Land Development Regulations provides for discretion only where specifically authorized. While WV law requires a public hearing for land use proposals, there is no discretion in the review and approval process outside of the requirements of the Zoning Ordinance or the Subdivision and Land Development Regulations. A proposed plat or plan that meets the ordinance and regulatory standards must be approved. Only when there are specific findings that the application does not meet the standards of the ordinance or the regulations, is denial possible." *S&LD Regs Div. 23.200(A).*

2. **"When an applicant meets all requirements, plat approval is a ministerial act and a planning commission has no discretion in approving the submitted application."** *Syl. Pt. 8, Kaufman v. Planning & Zoning Comm'n of City of Fairmont, 298 S.E.2d 148 (W. Va. 1982).*

D. **The PC has limited authority regarding approval of developments.** "The County Planning Commission shall be the agency overseeing the review of subdivisions and site development. This is a function that grants limited authority for the approval. The duties are identified in WV Code §8A-2-11 and the Planning Commission By-Laws." *S&LD Regs Div. 23.300.*

E. **The PC has no authority to deny Concept Plan. It is required to, and can only, provide direction to the applicant.**

1. **"Major Site Plan Concept Plan - Public Workshop.** At the scheduled Planning Commission meeting, the Planning Commission shall hold a public workshop to take public comments, concerns, and inputs on the proposed concept plan. This workshop is intended to provide the developer and the Planning Commission with said public input." *S&LD Regs. § 24.120.*

2. **"Major Site Plan Concept Plan – Direction.** After the close of the public workshop, the Planning Commission shall, during their regular meeting or at a specific public meeting within 14 days, provide direction on the concept plan. . . ." *S&LD Regs § 24.121.*

3. **"Direction.** The Planning Commission shall direct the preparation of a site plan subject to conditions to be addressed in the site plan application. The purpose of this

review is to guide the developer so that when the site plan application is formally reviewed by the staff, there should not be a whole range of issues being raised for the first time. The developer shall cite conditions and demonstrate that they have been met or otherwise addressed.” *S&LD Regs § 24.121(A)*.

4. Opponents refer to Section 24.119(I) of the Subdivision Regulations as authority for the PC’s authority to deny a Concept Plan. That provision applies to Staff (not the PC) and pertains to Staff’s determinations whether the Concept Plan is complete and its review under Section 24.119(D) and determination whether the proposal meets the requirements of the ZO. The provision is not applicable to the subsequent stages.

II. ZONING REVIEW IS NOT WITHIN THE PLANNING COMMISSION’S ROLE

A. The Zoning Administrator/Staff performs the Zoning Review and determines compliance with the ZO.

1. **“Responsibility.** The zoning review is a function of Staff under provisions of the Zoning Ordinance. Any appeal of Staff’s decision shall be heard by the Board of Zoning Appeals.” *S&LD Regs § 20.301(B)*.

2. **“Report to Planning Commission.** Staff shall submit a report to the Planning Commission along with the agenda for each meeting at which a subdivision plat or site plan is to be discussed. The report shall contain a **final decision** as to whether the subdivision plat or site plan meets the standards of the Zoning Ordinance.” *S&LD Regs § 20.301(C)*.

3. **“Zoning Compliance.** The Department shall review all plat or site plan applications for zoning compliance. They shall provide the Planning Commission with a written opinion as to whether the plat or site plan complies with the Zoning Ordinance. If the staff determines that waivers are appropriate, staff shall recommend approval of these waivers to the Planning Commission.” *S&LD Regs § 23.202(A)*.

a. **“Administration.** This Division specifically identifies the administrative bodies that are charged with making a determination of compliance. . . .” *S&LD Regs Div. 23.200(C)*.

4. **“The Zoning Administrator shall administer and enforce the Zoning and Land Development Ordinance,”** the specified duties of which include interpreting the provisions of the Ordinance as required by law. *ZO § 3.2(A)*.

B. The Zoning Administrator’s decision regarding zoning compliance is absolute.

1. **“General.** A zoning review shall be conducted concurrently with the review of an application for a subdivision plat or site plan. A review shall be provided at each phase of the process. Subdivision plats or site plans that do not meet the zoning standards shall not be approved. Conversely, no subdivision plat shall be denied on the basis of zoning if the Zoning Administrator has decided (or the Board of Zoning Appeals has decided on appeal) that the proposed development complies with the Zoning Ordinance.” *S&LD Regs § 20.301(A)*.

C. The Zoning Administrator determines prohibited uses of land under Section 4.4 of the ZO.

1. The WV Supreme Court has reviewed the responsibilities of the Zoning Administrator under the Jefferson County ZO and concluded that the ZO “grants the zoning administrator the responsibility for making determinations of prohibited uses of land in Section 4.4.” *Jefferson Utilities v. Jefferson County Bd. of Zoning Appeals*, 624 S.E.2d 873, 881 (W. Va. 2005).

D. The PC has no authority to reject or override the zoning determinations of the Zoning Administrator/Staff.

1. The PC is given no such authority under the Subdivision Regulations or Zoning Ordinance.
2. As specified in S&LD Regs § 20.301(B) and ZO §§ 3.2(B), 3.4(A)(3)(a), & 6.1, appeals are to the Board of Zoning Appeals – not to the PC.

III. THE ZONING ADMINISTRATOR HAS DETERMINED COMPLIANCE WITH THE ZONING ORDINANCE

A. The Staff Reports dated December 17, 2024, and February 11, 2025, expressly state that “the proposed groundwater wells in the Rural Zoning District are permitted” and that “Staff determined that the proposed Concept Plan meets the requirements of the Zoning Ordinance and the Subdivision Regulations as a Major Site Development with a Concept Plan.” The Zoning Administrator has made its final decision regarding those matters.

IV. THE ZONING ADMINISTRATOR CORRECTLY DETERMINED THAT A WATER WELL IS A LAWFUL AND PERMITTED USE IN THE RURAL ZONING DISTRICT

A. **WV Code Chapter 8A (which authorizes land use planning and zoning) does not authorize local laws that prevent or limit the use of natural resources by the owner** (except in urban areas), as follows:

1. “Nothing in this chapter authorizes an ordinance, rule or regulation preventing or limiting, outside of municipalities or urban areas, the complete use (i) of natural resources by the owner; or (ii) of a tract or contiguous tracts of land of any size for a farm or agricultural operation as defined in §19-19-2 by the owner. . . .” *WV Code § 8A-7-10(e)*.
2. Therefore, a zoning ordinance or other regulation may not purport to prohibit or limit a property owner’s use of any natural resource, including water. The ZO cannot be interpreted to restrict the withdrawal of groundwater by means of a well – whether by Section 1.3(D) or otherwise.
3. Opponents question whether water is a “natural resource.” WV Code § 22-26-1 makes clear that water is a natural resource.
4. Opponents argue that § 8A-7-10(e) only applies to an owner’s personal use of the natural resource and not to a commercial use.
 - a. The statute is broad and does not contain any such limiting language.
 - b. The word “use” has a broad meaning. It is defined by Black’s Law Dictionary as “The application or employment of something; esp., a long-continued possession and employment of a thing for the purpose for which it is adapted, as distinguished from a possession and employment that is merely temporary or occasional.” Nothing in that definition limits use to personal non-

commercial use.

c. The opponent's argument ignores that West Virginia has a long history of extraction of mineral natural resources, coal, oil, gas, etc., that the statute also applies to those natural resources, and that the legislature certainly considered application to those natural resources when adopting the statute. The legislature certainly did not intend to authorize a property owner to mine coal to only feed his pot-belly stove or drill for natural gas to only fuel his furnace. The obvious intent of the section is to allow use of natural resources, whether for private or commercial purposes, subject only to regulation by the state – with no interference by local government.

5. Opponents claim that the applicant is arguing that § 8A-7-10(e) preempts the Zoning Ordinance. While preemption may be a valid argument, it misses the point.

a. Section 8A-7-10(e) is relevant with respect to Dillon's Rule. Dillon's Rule says a County can only do what it is expressly or implicitly authorized to do. Section 8A-7-10(e) makes clear that no ordinance, rule, or regulation adopted pursuant to Chapter 8A may restrict the use of natural resources. Unless other law authorizes local government to restrict extraction of groundwater – which no law does – such restriction is impermissible.

b. Further, opponents cite the case of *SWN Prod. Co. v. City of Weirton*, 895 S.E.2d 227 (W. Va. Int. Ct. App. 2023), and imply that case stands for the proposition that § 8A-7-10(e) has no preemptive effect. That is false. The case dealt with a municipality attempting to regulate natural gas extraction under a land development ordinance (pursuant to § 8A-7-10(e)'s exception for urban areas) despite the fact that WV oil and gas statutes applied to the extraction operations. The Court held that the municipality's development ordinance was preempted by the oil and gas statutes. The case does not reflect that § 8A-7-10(e) does not preempt zoning ordinances and regulations.

6. Opponents also assert that the ZO's purported regulation of mineral extraction somehow proves it can regulate the extraction of natural resources despite the clear prohibition of § 8A-7-10(e). The fact that a county may have a regulation does not mean that it is lawful and enforceable.

B. WV Code § 8A-7-3(e) expressly designates specified water systems as permitted uses in all zoning districts.

1. "Essential utilities and equipment are a permitted use in any zoning district."
WV Code § 8A-7-3(e).

2. "'Essential utilities and equipment' means underground or overhead electrical, gas, communications not regulated by the federal communications commission, water and sewage systems, including pole structures, towers, wires, lines, mains, drains, sewers, conduits, cables, fire alarm boxes, public telephone structures, police call boxes, traffic signals, hydrants, regulating and measuring devices and the structures in which they are housed, and other similar equipment accessories in connection therewith. Essential utility equipment is recognized in three categories:

- (1) Local serving;
- (2) Nonlocal or transmission through the county or municipality; and

(3) Water and sewer systems, the activities of which are regulated, in whole or in part, by one or more of the following state agencies:

- (A) Public service commission; or
- (B) Department of environmental protection; or
- (C) The Department of Health. WV Code § 8A-1-2(f).

3. The subject water well and associated facilities are permitted by the W Va Department of Health as a public water system and will be regulated by the Department of Health and by the PSC once turned over to CTUB. The water system is accordingly essential utilities and equipment for the purposes of Section 8A-7-3(e) and is permitted by right with no further authorization or approval necessary or applicable under the ZO or Subdivision Regulations.

4. Section 4.7 of the ZO parallels WV Code § 8A-7-3(e) in providing that: “Essential utility equipment, as defined in Section 2.2, shall be permitted in any district, as authorized and regulated by law and ordinances of Jefferson County, it being the intention hereof to exempt such essential utility equipment from the application of this Ordinance.”

C. **Some opponents’ arguments that groundwater extraction is not permitted in any zoning district is not only ridiculous, but presumably does not reflect the position of opponents who use wells.**

V. DEVELOPMENTS FOR EXTRACTION OF RESOURCES ARE NOT SUBJECT TO THE SUBDIVISION REGULATIONS

A. **Division 20.200 and Section 20.204 of the Subdivision Regulations expressly exclude from the regulations’ requirements developments for the extraction of resources.**

1. **“Types of Development.** Unless explicitly stated within the individual sections listed in this Division, all requirements of these Regulations apply to each of the types of development listed below. Appendix A and Appendix B are included as requirements. Each development type shall comply with the requirements of the zone district in which it is located and may be limited by that zone’s restrictions. Residue parcels from which development rights have been utilized prior to the effective date of these Regulations shall remain as residue parcels. Such parcels shall be limited to the number of development rights to which the parcel was entitled prior to the effective date of these Regulations. Excluded are developments for the purpose of extraction or harvesting of resources and for roads on agricultural land for the purpose of conducting the agricultural operation.” *S&LD Regs Div. 20.200.*

2. **Major Site Development.** *Major site developments* are those proposals that require the development of new infrastructure or the extension of off-tract infrastructure or where the proposal does not meet the definition of a minor site development. This covers the development of one or more parcels of land where there is no subdivision into separate lots. If the development requires easements for drainage or other purposes, private roads, or parking, and access to public roads is involved that serve one or more land uses, it is a site development. Excluded are developments for the purpose of extraction or harvesting of resources and for roads on agricultural land for the purpose of conducting the agricultural operation. Re-

subdivision or adjustments of lot lines are also excluded. Major site development shall adhere to Full Site Plan requirements in all proposals. *S&LD Regs § 20.204.*

3. Opponents argue that “developments for the purpose of extraction or harvesting of resources” is modified by “on agricultural land” so that the exception applies only to resource extraction on agricultural land.

a. The appropriate reading of the provisions is that they apply to separate situations – (i) to all developments for the purpose of extraction or harvesting of resources, and (ii) to developments for roads on agricultural land for the purpose of conducting agricultural operation.

b. The opponent’s interpretation would apply to “developments for the purpose of extraction or harvesting of resources on agricultural land for the purpose of conducting the agricultural operation” – which is nonsensical in applying to dual purposes of extraction of resources and conducting agricultural operations.

c. The apparent intent of the provisions is to recognize in the Subdivision Regulations WV Code § 8A-7-10(e) discussed above, which clearly pertains to two separate things – (i) use of natural resources and (ii) use of tracts for agricultural operations.

VI. NO FURTHER AGENCY REVIEWS ARE REQUIRED

A. No additional Agency Reviews are required at the Concept Plan stage.

B. Sections 23.203 and 23.204 of the Subdivision Regulations specify, respectively, the County and other agencies involved in the site development process.

1. Of the six (6) reviews covered by Section 23.203:

a. Only the review of the Historic Landmarks Commission at Subsection C is required at the Concept Plan stage – which review has been performed;

b. The reviews at Subsections A and B are expressly required only at the Preliminary Plat stage;

c. The review at Subsection D pertains only to residential development and is not applicable to the proposed project;

d. The review at Subsection E may be conducted at either the Concept Plan or Preliminary Plat stage – but is largely irrelevant to the proposed project; and

e. The Regulations do not specify the stage for the review at Subsection F, which concerns the Stormwater Management Plan. However, because the Stormwater Management Plan is submitted only at the Preliminary Plat stage under Sections 24.113(B)(12) and 24.122(B)(11), its review must occur then.

2. Of the four (4) reviews covered by Section 23.204:

a. The reviews at Subsections A and D are expressly required only at the Preliminary Plat stage;

b. The review at Subsection B pertains only to residential development and is not applicable to the proposed project; and

- c. The review at Subsection C applies at the Concept Plan stage only if the adequacy of emergency response and lifesaving services are potentially affected by the proposed project.

VII. LOCAL GOVERNMENTS (INCLUDING COUNTIES) DO NOT HAVE JURISDICTION WITH RESPECT TO WATER SUPPLIES AND WATER WELLS

A. **No provision of the WV Code or Constitution authorizes or empowers a PC (or a County Commission) to regulate groundwater wells and/or water supplies.** Any such regulation of groundwater wells by the PC is therefore prohibited under Dillon’s rule.

B. **Such power and authority are reserved to the State.** Chapter 16 of the WV Code places regulatory authority over such matters with the WV Department of Health and its Bureau for Public Health.

C. **That structure is appropriately adopted in the Subdivision Regulations, which do not pretend to place in the PC authority over water supply and wells** but instead reflect that such authority lies exclusively in the State Bureau of Health and the County Health Department through the following provisions:

1. **“On-Site Water Supply and Sanitary Waste Disposal.** The Jefferson County Health Department and West Virginia Department of Health shall be responsible for the review of any on-site water supply or sanitary waste disposal for the proposed development. Approval needed at Preliminary Plat stage.” *S&LD Regs § 23.203(A).*

2. **“Plat/Plan Requirements.** . . . The Preliminary Plat or Site Plan shall show or be accompanied by:

. . .

25. Note on the plat or plan, the West Virginia Bureau of Health and/or Jefferson County Health Department permit numbers for water/well and septic/sanitary sewer systems; and provide a copy of the approved plans and permits.” *S&LD Regs, Appendix A – Plan & Plat Standards, § 1.3(A)(25).*

3. **“Final Plat.** . . . The Final Plat shall show or be accompanied by:

. . .

28. Note on the plat, the West Virginia Bureau of Health and/or Jefferson County Health Department permit numbers for water/well and septic/sanitary sewer systems; and provide a copy of the approved plans and permits.” *S&LD Regs, Appendix A – Plan & Plat Standards, § 1.4(28).*

4. **“Individual well and/or septic systems, where allowed, shall be approved by the Jefferson County Health Department.** A copy of the approved Health Department permit shall be submitted prior to approval of the Preliminary or Final Plat.” *S&LD Regs, Appendix B – Engineering Standards, § 3.1(A)(1).*

5. **“Water and sanitary sewer systems, water treatment plants, waste water treatment plants, storage tanks, etc., shall be designed and constructed according to the regulations of the West Virginia Bureau of Health, the West Virginia Department of Environmental Protection and federal regulations, as applicable.**

A copy of the approved West Virginia Bureau of Health permit and a complete set of the approved plans shall be submitted prior to approval of the Preliminary Plat. The plans shall include the utility system plan, profiles, details, and specifications necessary for construction of the system. . . .” *S&LD Regs, Appendix B – Engineering Standards, § 3.1(B)(2)*.

Each of those provisions requires only that wells be properly permitted by the appropriate bodies – the state and/or county health departments – and that evidence of such be presented to the PC. The PC has no role beyond confirming that contemplated wells are lawfully permitted.

VIII. WV LAW RECOGNIZES THE RIGHT TO WITHDRAW GROUNDWATER SUBJECT TO THE COMMON LAW

A. No provision of the WV Code or Constitution authorizes or empowers a PC (or a County Commission) to regulate the withdrawal of groundwater. Any such regulation by the PC is therefore prohibited under Dillon’s rule.

B. WV policy recognizes that the groundwaters of the State are available for use by all persons subject to the common law doctrines of riparian ownership and reasonable use which have been the law in WV since the founding of the state.

1. “It is also the public policy of the State of West Virginia that the water resources of this state with respect to the quantity thereof be available for reasonable use by all of the citizens of this state.” *WV Code § 22-11-2(b)*.

2. “The West Virginia Legislature further finds that it is the public policy of the state that the water resources of the state be available for the benefit of the citizens of West Virginia, consistent with and preserving all other existing rights and remedies recognized in common law or by statute, while also preserving the resources within its sovereign powers for the common good.” *WV Code § 22-26-1(b)(2)*.

3. “The waters of the State of West Virginia are claimed as valuable public natural resources held by the state for the use and benefit of its citizens. The state shall manage and protect its waters effectively for present and future use and enjoyment and for the protection of the environment. Therefore, it is necessary for the state to determine the nature and extent of its water resources, the quantity of water being withdrawn or otherwise used and the nature of the withdrawals or other uses: Provided, That no provisions of this article may be construed to amend or limit any other rights and remedies created by statute or common law in existence on the date of the enactment of this article.” *WV Code § 22-26-3(a)*.

4. The common law to which use of water is subject includes the Reasonable Use Rule. That Rule does not place a hard limit on the withdrawal of groundwater. There is no regulatory body that enforces the Rule. Rather, it is a rule used to determine disputes pertaining to the allocation of water among users. It is applied to determine whether a person’s use of groundwater unreasonably harms another person so that the injured person will have a basis for a lawsuit to recover damages or seek an injunction.

5. The common law is utilized throughout the eastern part of the United States because of the abundance of water resources. Government has chosen not to regulate water use and water withdrawal and leave those rights with the people. The

legislature required that a study of the state's water resources be made by the WVDEP who produced a report in 2013 and has also produced annual reports regarding water use. The agency has not found a water deficit or concerns related to water uses and has not recommended that water use be limited or be regulated by the state or local government.

IX. MIDDLEWAY'S DESIGNATION AS A HISTORIC DISTRICT DOES NOT PROHIBIT THE PROJECT

A. The determination of whether a use is prohibited under Section 4.4 of the ZO is not the role of either the HLC or the PC. It is the role of the Subdivision Administrator as discussed above.

B. The use of the primary site as an industrial site is grandfathered as a legally non-conforming use and, therefore, its use cannot be prohibited under the ZO.

1. "This Section (4.3) does not apply to industrial uses that existed at the adoption of the ordinance. Such industries may expand provided that they meet the site plan standards of this Ordinance, in addition to those of the Jefferson County Subdivision and Land Development Regulations. . . ." *ZO § 4.3(G)*.

2. "(d) If a use of a property that does not conform to the zoning ordinance has ceased and the property has been vacant for one-year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned: *Provided*, That neither the absence of natural resources extraction or harvesting nor the absence of any particular agricultural, industrial or manufacturing process may be construed as abandonment of the use. If the property is shown to be abandoned, then any future use of the land, buildings or structures shall conform with the provisions of the zoning ordinance regulating the use where the land, buildings or structures are located, unless the property is a duly designated historic landmark, historic site or historic district." *WV Code § 8A-7-10(d)*.

3. If the streets were to be considered an industrial use, they would similarly be grandfathered.

C. Zoning district requirements prevail when in conflict with historic district regulation. *WV Code § 8-26A-3*.

D. The Historic Landmarks Commission has greatly overstepped its designated role under the Subdivision Regulations.

1. "**Jefferson County Historical Landmarks Commission.** This body shall submit a report and findings on whether historical resources exist on the site of the proposed subdivision of site development. If there are, they shall submit findings on whether the proposal meets the requirement of zoning with respect to such structures or places at Concept Plan stage." *S&LD Regs § 23.203(C)*.

2. The HLC's first task is to determine "whether historical resources exist on the site." If not, the HLC role is complete. There are no historical resources on the project site.

3. Despite the HLC's fanciful conclusion that the waterline to be operated by CTUB is part of the project site, that is clearly not the case under any reasonable interpretation of the Regulations. It is ludicrous to assert that installation of a

waterline that will serve an industrial user (as well as residential users) is problematic when the waterline would be entirely permissible for any other user.

4. While the HLC recites that Section 1.1(K) of the ZO states a purpose of the ZO is to “Encourage Historic Preservation,” it must be understood that other purposes, including the following, are set forth respectively at subsections (F), (G), and (J): (i) Encourage and support commercial, industrial, and agricultural activities while maintaining land use, order and compatibility; (ii) Encourage an improved appearance of Jefferson County with relationship to the use and development of land and structures; and (iii) Provide a guide for private enterprise in developing and building a strong economic community.

5. The PC should consider the HLC’s reports as just another public comment.

E. Further, the ZO expressly provides in Section 3.4(D)(3) that “Historic Preservation is not to infringe on the property owner’s rights.” While that provision may be intended to apply to the owner of the historic property, the concept must apply to owners of other properties. The section goes on to state that the HLC “is encouraged to protect historic sites in Jefferson County by raising capital to purchase historic sites and battlefields at fair market value.”

F. Opponents’ assertions that the Middleway Historic District, or its character, will be destroyed by the project are pure conjecture and should be disregarded.

1. In *Far Away Farm, LLC v. Jefferson County Bd. of Zoning Appeals*, 664 S.E.2d 137 (W. Va. 2008), members of the public had asserted that roads were insufficient for increased traffic and that the area was the site of a civil war battle and of historical significance. At a public hearing, in response to those and presumably other additional public comments, the developer presented evidence that impacts on traffic would be insignificant, its water system was unlikely to interfere with local wells, the property was not historically significant, and no recorded archeological sites were on the property. The WV Supreme Court concluded that “[a]necdotal evidence and mere speculation and conjecture about potential traffic problems is simply insufficient to overcome expert testimony” and that no other evidence refuting or contradicting the developer’s evidence was presented. 664 S.E.2d at 145.

a. The Court further noted that:

“In reaching our decision in this case, we were certainly mindful that many members of the public are concerned about the dangers of over development and the strain placed on local resources by an expanding population. However, zoning ordinances must be interpreted to balance the rights of individual property owners with the needs of the community. Such ordinances can only be effective if they are applied in an even-handed manner with the utmost adherence to the procedural rights of all parties. In this case, the BZA simply did not have the authority to reject FAF’s application for a permit under the amended Ordinance because it was not in effect at the time the permit was requested. Furthermore, the evidence in the record shows that FAF satisfied all of the requirements necessary to obtain the permit. Consequently, we must reverse the decision of the circuit court which affirmed the BZA’s decision and direct

the Jefferson County Planning and Zoning Commission to issue the permit to FAF.” *664 S.E.2d at 145.*

2. Further, allegations that increased traffic will harm the Historic District ignore that the historic structures have existed many years, that current traffic is significant, that increased truck and other traffic existed during the operation of the 3M facility, and that the structures have survived. There is no basis to assume they will crumble to the ground due to the project’s traffic.
3. Numerous other historical areas with far greater traffic than that to result from the project do not appear to be destroyed – such as Harpers Ferry and Hillsboro, Va.

X. THE PLANNING COMMISSION IS NOT AUTHORIZED TO DETERMINE SUITABILITY OF ROADS

A. No provision of the WV Code or Constitution authorizes or empowers a PC (or a County Commission) to determine the adequacy of roads serving a proposed project. Any such regulation by the PC is therefore prohibited under Dillon’s rule.

B. WVDOH determines the adequacy of roads.

1. “The provision of safe access to adjoining roads and interconnections between adjoining developments is important to a transportation system that works. Access to the State's roads is governed by WVDOH, which is responsible for the review of the site plan for access to the adjoining road network. It is the purpose of these Regulations to encourage connectivity between adjoining uses along arterial and collector roads to reduce the need for traffic to go onto major roads to reach nearby uses. The following governs the review of access and interconnection:

A. Access. The West Virginia Division of Highways (WVDOH) shall review all site plan applications and indicate whether it approves of the proposed access in terms of location and sight distances, acceleration and deceleration lanes, turn lanes, traffic signs and/or signals, and the capacity of the road to handle the proposed traffic.

. . . .” *S&LD Regs § 21.201.*

2. “The West Virginia Division of Highways (WVDOH) is responsible for all roads, except those intended to remain private and/or maintained by a Homeowner’s Association. WVDOH shall determine the safety of the roads, access locations, and off-site improvements. Staff shall coordinate with the WVDOH to make all determinations of safety. Likewise, the capacity of the adjoining roads is a technical issue to be determined by WVDOH. At the approval of concept plans, the Planning Commission may require the developer to work with WVDOH to specifically address off-site or capacity issues or concerns.” *S&LD Regs § 20.302(F)(1).*

* * *



Ms. Brockman,

The following summary is in response to the question posed by staff;

Please provide a narrative/cover/letter that describes the whole project and how this plan is more complete than the previous submittal that the PC deemed as incomplete.

At the concept review meeting on November 12, 2024, the Planning Commission made the finding that the plan was incomplete because it did not include the parcel with the existing/permitted supply well. There were no other findings related to the concept plan that were included in the motion by the planning commission.

To address the Planning Commission findings, the following parcels have been added to the concept plan:

1. Parcel 34 – this parcel is the location of the supply well. The parcel is owned by the applicant.
2. Parcel 33.9 – this parcel is used to access the well as well as a future water supply line that will be a portion of the water system proposed to convey water to the bottling plant. Wells A and C are located on this parcel. The parcel is owned by the applicant.




In addition the applicant has provided the following:

1. A plan showing the location of the water line from the supply well to the bottling plant.
2. A plan showing the location of the plume, groundwater monitoring well locations and the areas with non-hazardous material that required WVDEP oversight during grading. The ground watering wells will be the locations
3. Revised conditions have been added to the concept plan to address community concerns related to well monitoring, traffic, water withdrawal rate and ground water sampling.
4. Narratives related to the well testing and plume.

In addition to the above information the following is being provided in this letter.

1. Updated Project Narrative
2. Well Summary
3. Plume Summary

Project Narrative

 () aims to develop a 13-acre bottling facility in Middleway, WV.  shall work closely with an end user, a third-party distributor of packaged water and other beverages, to provide reliable, clean spring water. The project is projected to create construction and long-term local jobs, generate tax revenue, and enhance economic prosperity for local business in and around Jefferson County, WV, and the Appalachian region. Mountain Pure is seeking approval for construction of this modern, state-of-the-art water

packaging facility. As such, the plant is proposed to include packaging lines, and a large capacity water storage tank and other water storage facilities.

The project was created for the purpose of packaging clean and reliable water.

██████████ shall invest heavily in the Jefferson County community and West Virginia as a good corporate citizen, commercial taxpayer, and neighbor. Jefferson County stands to generate millions in tax revenues to support county services for citizens. The proposed project will be among the highest annual tax-paying companies in Jefferson County.

PROTECT OUR LOCAL ENVIRONMENT - Water utilized shall be tested regularly for to maintain standards and compliance with both state and federal requirements for bottled water. This is a top priority.

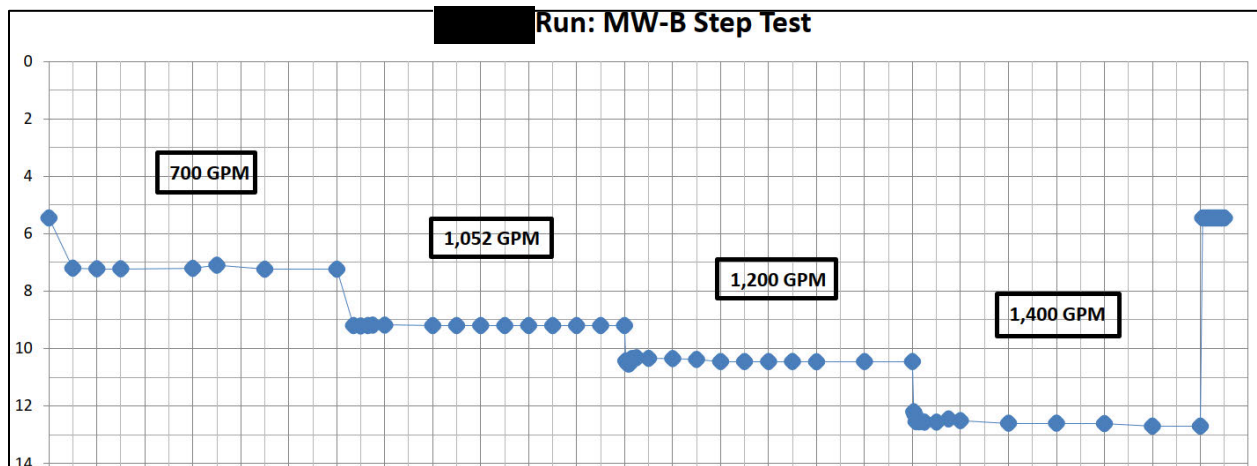
UTILIZE STATE-OF-THE-ART TECHNOLOGY, FOCUSING ON SUSTAINABILITY, CUSTOMIZATION, AND EFFICIENCY - The company shall deploy advanced technologies to measure, manage, distribute, and maintain water supply while reducing emissions and protecting against any local water depletion.

PROVIDE GOOD JOBS AND LOCAL ECONOMIC IMPACT - Through the creation of hundreds of local well-paying jobs, Mountain Pure shall invest heavily in the Jefferson County community and West Virginia as a good corporate citizen, commercial taxpayer, and neighbor. Jefferson County stands to generate millions in tax revenues to support county services for citizens. The proposed project will be among the highest annual tax-paying companies in Jefferson County.

SITE HISTORY - The site was originally occupied in the 1980's by Berkeley Woolen Company and used for textile manufacturing before it was acquired by The 3M Company. 3M converted it into a photographic equipment and supply facility. After the change of ownership in 1996 and 2004, the facility continued to be used for printing plate manufacturing until 2006. Since 2006 the facility has been vacant, but the ownership changed again in 2015 when Commercial Liabilities Partners WV, LLC purchased the site from Kodak and in 2019 when Shenandoah Extraction and Processing, LLC acquired the property. Finally in 2021, S ██████████ purchased the site from Shenandoah Extraction and Processing, LLC, as the concept for ██████████ was born.

Well Summary

1. The three wells have been drilled.
 - a. MW-A was used as a monitoring well during the pump test.
 - b. MW-B is the supply well for the bottling plant.
 - c. MW-C was drilled after the pumping test and is intended to be used as a backup well to MW-B.
 - d. All wells were drilled to approximately 225'.
2. Well permitting was completed through the Jefferson County Health Department and the WV Office of Environmental Health Services.
3. Well MW-B is the supply well and is permitted for use by the West Virginia Office of Environmental Health Services.
 - a. Well is permitted for 1,000gpm.
 - b. The pump elevation is 70' below ground level. This is 10' higher than the pump elevation during the pumping test.
4. The water level for well MW-B was 5.49' below the surface.
5. The uppermost major water bearing zone was found at 87'. Two additional major water bearing zones are located at 118' and 176'.
6. For the pumping test, the pump was placed at 80' below the surface.
7. A stepped draw down test was conducted at 700, 1052, 1200, 1400 gallons per minute, with each step being pumped for 2 hours. Each step resulted in an initial change in the water level, the water level then stabilized. The water level dropped 7' +/- during the 1,400gpm step test to an elevation of 12.5' below the ground level. The number on the left indicates the depth of the water below the surface. The water level recovered fully upon completion of the test.



8. Based on the results of the step test the decision was made to pump water at 1,200gpm for the constant rate pumping test. The test ran for 124.5 hours or almost 5 days. The following table summarizes the pumping test data.

Table 1: Summary of Well and Pumping Test Data

Well ID	Well Type	Approximate Latitude**	Approximate Longitude**	Total Well Depth (ft bgs)	Casing Depth (ft bgs)	Static Depth to Water (ft bgs)*	Depth to Potential Water-Bearing Fractures (ft bgs)	Approximate Distance from Pumping Well MW-B (ft)	Pumping Test Rate (gpm)	Max. Change in Water Level During Aquifer Test (ft)
										MW-B (124.5-hr)
MW-B	Pumping (Proposed Production)	39.300675°	-77.968529°	225	78	5.49	87-88, 118-119, and 173-187	0	1,200	5.35
MW-A	Observation	39.300922°	-77.968996°	255	121	5.75	141-150, 155-156, 163-165, and 167-169	160' West	N/A	0.57
PW-1	Observation	39.304666°	-77.966652°	Unknown	Unknown	18.8	Unknown	1,550' Northeast	N/A	2.06<
Spring	Observation	39.300120°	-77.969513°	Unknown	N/A	4.2	N/A	350 Southwest	N/A	0.11>

9. The hydrological study modeled the impact to groundwater levels at 1 year, 6 years, 12 years and 30 years.

	Pumping Test April, 2022	1 year	6 year	12 year	30 year
Surface Elevation	518.00	518.00	518.00	518.00	518.00
Existing Groundwater Elevation	512.51	512.51	512.51	512.51	512.51
Pump Elevation (70' below surface)	448.00	448.00	448.00	448.00	448.00
Change in Water Level (at well)	-5.35	-11.1	-11.25	-11.3	-11.35
Depth to Groundwater (at well)	10.84	16.59	16.74	16.79	16.84
Groundwater Elevation with Pumping	507.16				
Estimated Groundwater Elevation with Pumping		501.41	501.26	501.21	501.16

10. The ground water level (with pumping) remains high at the supply well when compared to the surface elevations within Middleway. The chart shows elevations documented during the pump test and projected elevations. After 30 years of pumping the water elevation at the supply well remains above the ground elevation of Middleway.

			Water Level at supply well in feet above or below the surface elevation				
Location	Surface Elevation (ft)	Distance (ft)	April, 2022	1 year	6 year	12 year	30 year
Queen Street/Old Middleway Road	501	4,200	6.16	0.41	0.26	0.21	0.16
Queen Street/Grace Street	498	4,100	9.16	3.41	3.26	3.21	3.16
Route 51/Leetown Road	501	4,900	6.16	0.41	0.26	0.21	0.16
Middleway Pike/Old Middleway Road	565	1,700	-57.84	-63.6	-63.7	-63.79	-63.84

11. The hydrological study included the monitoring of Turkey Run at Queen Street in Middleway. The monitoring was conducted to ensure that recycling of water from Lake Louise to Well B was not occurring. The flow in Turkey Run increased by 1,156 GPM, indicating that the water from the pumping test was not being recycled.
12. The hydrological study included assessment of offsite impacts, 5,000' from well MW-B
- After 1 year of pumping during drought conditions the estimated change in the water level is 4' +/-.
 - After 30 years of pumping (1,200gpm) the estimated change in the water level is 3' +/-.
13. Per the County-Wide Groundwater Assessment commissioned by the Jefferson County Commission in 2012 the average well depth in the Western Unit (including Middleway) was 281'.

3M Plant Plume

The 3M Plant participated in a Voluntary Remediation Program, overseen by the WV Department of Environmental Protection. A certificate of completion was issued on June 15th, 2018. The certificate of completion imposed specific conditions on the development of the site, including the following:

1. No wells are to be drilled within the limits of the plume or within 300' of well MW114D.
2. Grading within the limits of the plume or within 300' of well MW114D would require engineering control overseen by the WVDEP.

The chemicals which constitute the plume are dichloroethene and trichloroethene. As part of the VRP program 26 monitoring locations were set up to test water. The water monitoring exhibit is attached, the following is a summary.

Dichloroethene

- In 2015 there were 6 locations where dichloroethene was found above the reporting limit, 1 of these locations was over the WVDEP de minimis limits.
- In 2018 there were 5 locations where dichloroethene was found above the reporting limit, 4 of these locations were over the WVDEP de minimis limits.
- In 2018 there was 1 testing location where dichloroethene was not present above the reporting limits where it had previously been above the limits.
- The 1 location where dichloroethene was found above the de minimis levels tested 63% lower over the 3 year period. The data gathered from the well monitoring program indicated that the dichloroethene within the plume is breaking down.

Trichloroethene

- In 2015 there were 13 locations where Trichloroethene was found above the reporting limit, 10 of these locations were over the WVDEP de minimis limits.
- In 2018 there were 10 locations where trichloroethene was found above the reporting limit, 7 of these locations were over the WVDEP de minimis limits.
- In 2018 there were 3 testing locations where Trichloroethene was not present above the reporting limits where it had previously been above the limits.
- All locations where trichloroethene was found above the de minimis levels tested at least 32% lower over the 3 year period. The data gathered from the well monitoring program indicated that the trichloroethene within the plume is breaking down.

June 12, 2023

Newport Beach, CA 92660

Re: Wetland/Waterway Presence/Absence Determination

Triad Project No. 03-23-0484

Dear Mr. [REDACTED]

[REDACTED] (Triad) performed an evaluation to determine the presence or absence of suspect jurisdictional waters of the U.S. and/or waters of the state for the proposed warehouse at the above-referenced site. The study limit for this evaluation is shown on the attached exhibit. The following is a summary of this evaluation and the findings.

Methodology - This evaluation was performed in general accordance with the U.S. Army Corps of Engineers (USACE) Wetlands Delineation Manual (Y-87-1), dated January 1987 and the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (ERDC/EL TR-12-9), dated April 2012.

Office Analysis - Triad reviewed the applicable U.S. Geological Survey Topographic Map, Web Soil Survey, U.S. Fish & Wildlife Service National Wetlands Inventory Wetlands Mapper, Google Earth Pro aerial photographs, and the Federal Emergency Management Agency National Flood Hazard Layer. The only surface water features identified at the site are industrial wastewater lagoons/settling ponds, the mapped soils are predominantly non-hydric, except for the northern and southern fringes of the study area, and the study area is in an area of minimal flood hazard (Zone X).

Site Reconnaissance - Patrick Upham and Tim Kellerman of Triad conducted a reconnaissance at the site on June 6, 2023, which was during a period of severe drought.

Findings - The office analysis and site reconnaissance confirmed the absence of suspect jurisdictional waters of the U.S. and waters of the State. Several wastewater lagoons/settling ponds and several upland gullies were evaluated at the site via ground truthing as were other areas of the site. None of these features or any other areas at the site should be considered jurisdictional waters of the U.S. or waters of the State.

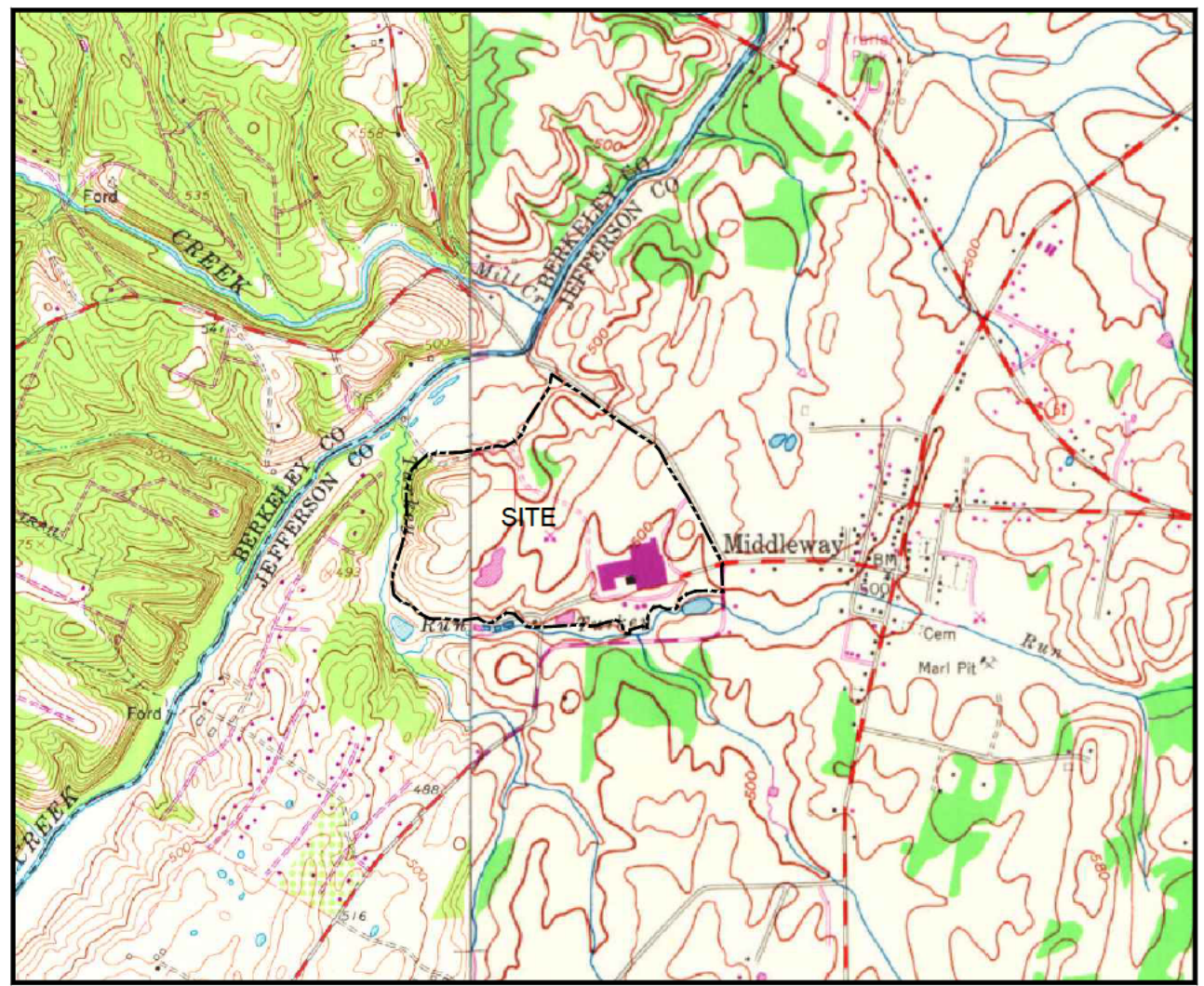
We appreciate the opportunity to provide our services on this project. Should you have any questions concerning our findings, please contact the undersigned at 301-797-6400.

[REDACTED]
[REDACTED]
June 12, 2023
Page 2

Prepared by:

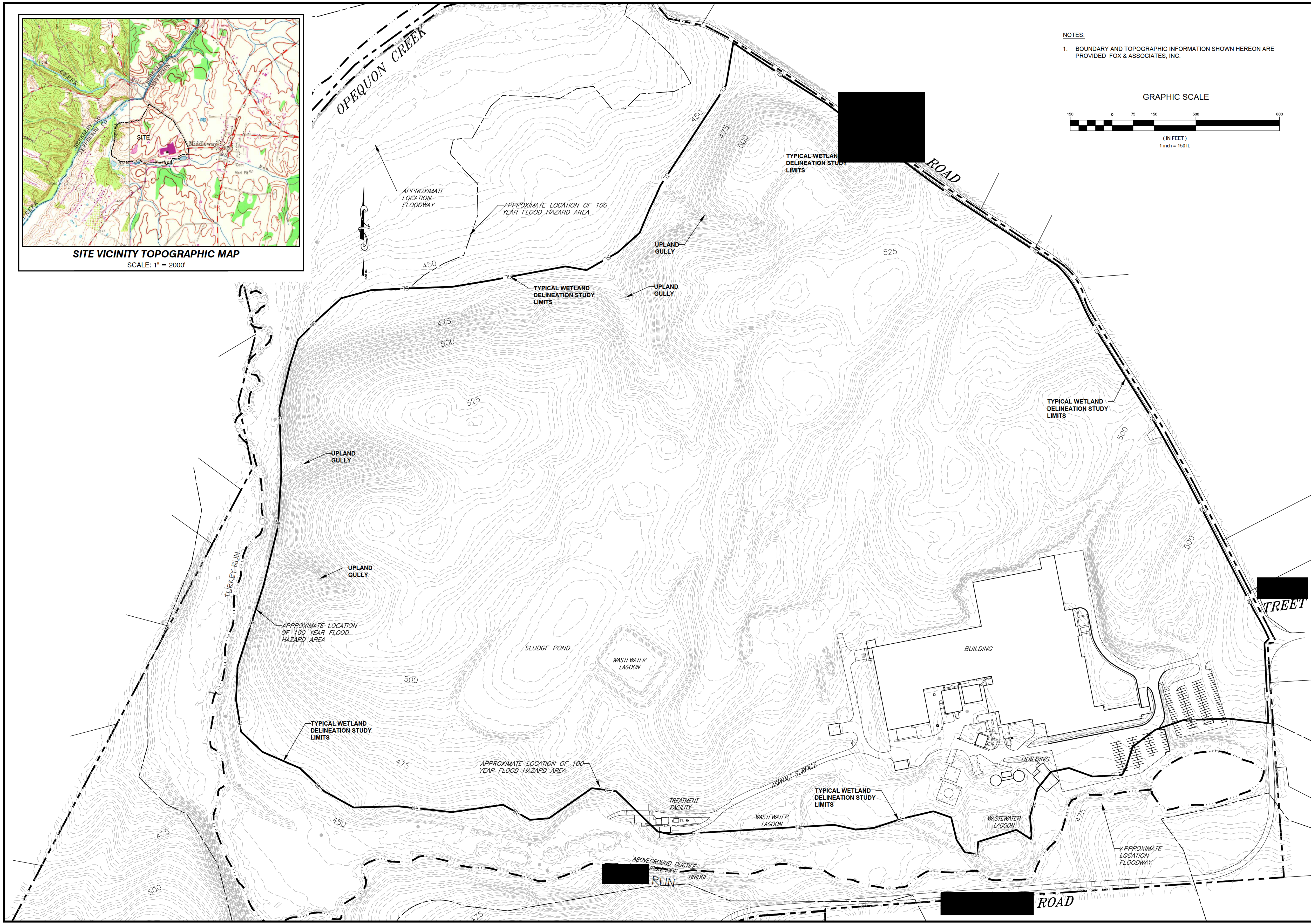
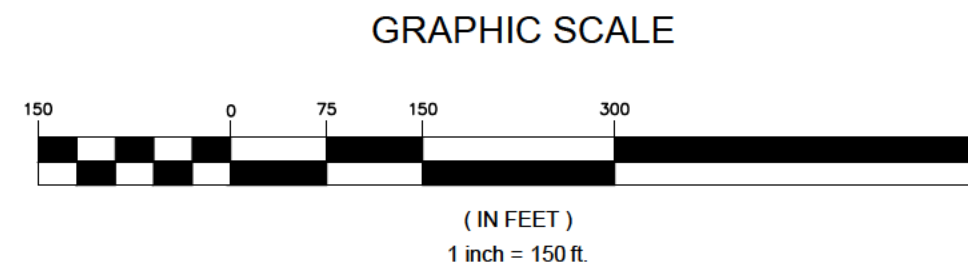
[REDACTED]
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[REDACTED]

Attachment: Study Area Exhibit



SITE VICINITY TOPOGRAPHIC MAP
SCALE: 1" = 2000'

NOTES:
1. BOUNDARY AND TOPOGRAPHIC INFORMATION SHOWN HEREON ARE PROVIDED FOX & ASSOCIATES, INC.



<div>CADD FILE: 03-23-0484-WetStudy.dwg</div>		<div>CHECKED BY: T.J.K.</div>		<div>SCALE: 1" = 150'</div>		<div>DATE: 6-7-2023</div>		<div>REV #</div>		<div>DATE</div>		<div>DESCRIPTION</div>		<div>BY</div>	
<div>SHEET NUMBER: SLE JOB NO.: 03-23-0484</div>															