



## TIMBER SALE

Virginia Tech Foundation, Inc./ McCormick Farm

### TIMBER SALE CONTRACT

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, **2021** (the "Effective Date"), by and between the Commonwealth of Virginia, Department of Forestry, hereinafter called the "Department", the Virginia Polytechnic Institute and State University Foundation, Inc. hereinafter called "VTF", and \_\_\_\_\_, of \_\_\_\_\_, Virginia, \_\_\_\_\_ hereinafter called the "Purchaser".

#### WITNESSETH THAT:

#### ARTICLE I

- (1) The Department and the VTF agree to sell and the Purchaser agrees to buy all standing timber **designated** for harvesting (**Stand D6**) on approximately **10.9** acres found on the property of the Virginia Tech Foundation, Inc. / McCormick Farm (VTFMF) property located off State Route 706 (Steeles Fort Road), near Raphine, VA in Rockbridge County. The area for harvest is to be clearcut, (**Stand D6** shown on the attached map - Attachment A) and bounded by three vertical slashes of orange / red paint facing into the area to harvest or by roads / open areas. The volume for removal is estimated to be approximately **83.57 MBF (International ¼) of hardwood and pine sawtimber, and 140 short tons (2,000 lbs.) of hardwood and pine pulpwood**. These volumes are only estimates and not guaranteed. Each bidder / purchaser is encouraged to use their own cruise data to compute bids.
- (2) The Department and VTF guarantees the title to said timber and to defend it against all claims for taxes, mortgages or other legitimate encumbrances at its own expense. However, title to all forest products shall remain with the Department and VTF until payment made in full by Purchaser.
- (3) The Department and VTF, hereby expressly grants to the Purchaser the right of ingress and egress across to and upon the sale area (**Stand D6**) identified on the attached map.

#### ARTICLE II

- (1) The Purchaser agrees to pay the Department the sum of (\$ \_\_\_\_\_) \_\_\_\_\_ dollars for all the timber sold hereunder. The full payment is due and payable within ten (10) days from the date hereof. No timber shall be cut, nor shall this contract be deemed to be in effect, until payment has been made in full. Checks made out to the "Department of Forestry" will be submitted to Ed Stoots, Virginia Department of Forestry, P. O. Box 100, Salem, VA, 24153.
- (2) **A deposit of two thousand dollars (\$2,000.00) made payable to the "Department of Forestry" accompanying the Purchaser's successful offer will serve as a performance bond for the duration of this contract. The Purchaser understands that this performance bond will refund upon the successful completion of the harvesting provisions of this contract.** Furthermore, Purchaser shall understand that forfeiture of this deposit / bond can occur for noncompliance of same provisions.
- (3) **Ingress and egress only from the access specified.**

- (4) Due to Covid-19 concerns, the Purchaser and its employees, contractors or subcontractors, or vendors who might access the site will adhere to the Commonwealth of Virginia's COVID-19 guidelines. Any personnel who are sick or become sick during operations should leave the property and asked not to return until well.
- (5) The Purchaser agrees to notify State Lands Coordinator Ed Stoots at 540-492-0152 **at least 10 business days prior to the commencement of harvest activities. Purpose of the notification is to hold a pre-harvest meeting prior to harvest to ensure all parties understand the location of timber to harvest, are aware of any site hazards, address ingress & egress to the site by the Purchaser's operations, decking / landing locations jointly identified.**
- (6) Unless a written extension of time is granted by the Department, or barring forfeiture of cutting rights for noncompliance of contract provisions, all stumpage sold hereunder removed within **22 months** of the Effective Date unless an extension granted in writing. The termination date shall be **December 31, 2023.**
- (7) The boundaries of the harvest units (Stand D6), or any harvest unit thereof, shown on the attached map (Attachment A) that is made a part hereof, and where designated on the ground by the Department is approved to meet the anticipated needs of the parties. Approximate acreages stated by harvest area or unit are not guaranteed. Stream courses / equipment exclusion zones, or stream crossings identified will require limits of care that have been identified and marked on the ground with a **band of blue paint** that will require a crossing to be jointly located with the purchaser providing any temporary culverts or log mats, and other sensitive areas (if any) that might require limits of care. Harvest Unit boundaries designated by **three (3) orange slash marks facing into the unit** to harvest unless said boundaries are bordering roads, open grass areas, or power lines.
- (8) The Purchaser shall designate in writing, unless otherwise agreed to, a representative authorized to receive notices regarding performance under this contract and take related action. Such designation should occur prior to the actual harvest of any timber.

### ARTICLE III

- (1) Timber harvested to be fell, skidded and concentrated in such manner as to cause the least possible waste and the least amount of damage to any designated crop trees, streams, creeks, ditches, springs and soils.
  - (a) Stumps shall be cut in such manner as to cause the least possible waste and no higher than 8 inches above ground level; except on misshapen trees, or other adverse conditions such as exposed or defective trees where cutting below 8 inches is not practical.
  - (b) Logging debris accumulated outside the harvest area shall be pulled back into the area.
  - (c) No trees, tops, limbs or logging debris allowed in streams, creeks, vernal pools, drainage ditches or springs.
  - (d) The Purchaser and the Department shall mutually lay out the designated system of temporary roads (if needed) and decking locations over which the timber sold hereunder shall be removed and all skidding activities will be concentrated to flow into these temporary roads or decks. Decking along existing (non-State or locality) permanent roads allowed, but the road must remain open at all times, and no skidding allowed on any State, Locality, or property permanent / paved roads.
  - (e) The Department and the Purchaser shall mutually agree to suspend logging activities during such time, as these activities would result in detrimental consequences to forest soils during prolonged periods of inclement weather.
  - (f) All right, title, and interest in and to any included timber shall remain with the Department and VTF until paid for, at which time title shall vest to the Purchaser. Title to any included timber that has been paid for, but not removed from the harvest area prior to Termination Date shall remain with the Department and VTF.

- (g) In the event the included timber to which the Department and VTF holds title to is destroyed, the Department shall make an appraisal to determine for each product/species the difference between the appraised value immediately prior to the loss and the appraised value after the loss. The Purchaser shall not be obligated to accept and pay for timber destroyed or damaged except through written agreement. Damages to timber would include events such as fire, wind, flood, or similar cause but does not include damage caused by the Purchaser's operations or those of any subcontractor.
- (2) Timber harvested by the Purchaser from standing trees removed in such a manner as to cause the least possible damage to the existing main haul/access/State roads and create no public hazard at entranceways to primary and secondary Virginia highways. Purchaser shall obtain any VDOT entry permits at Purchaser's expense. Entry permits are required.
- (a) Access to the harvest area is adequate and main hauls will be confined to this system for all the Purchaser's workers, materials, subcontractors, and logging equipment including transport trucks necessary for the removal of said timber; the right to designate or approve, or improve the location of any new road across VTF land is specifically reserved.
  - (b) During and upon completion of the harvest operation, the Purchaser shall comply with the Water Quality and BMP standards listed in the "Virginia's Forestry Best Management Practices for Water Quality, Fifth Edition" issued by the Virginia Department of Forestry. The Department reserves specifically the right to request corrective action of the Purchaser in maintenance and stabilization of forest roads, trails, culvert pipes, water bars, side ditches, lead-off ditches, decks, skid trails and streams where destructive action of the Purchaser has contributed to a BMP or Water Quality problem.
  - (c) The Purchaser shall guard against the unnecessary transfer of mud and debris by vehicle onto the public highway system or paved property road of the Commonwealth of Virginia, whereby the same poses a threat to public safety. Furthermore, the Purchaser assumes the responsibility for the prevention and any corrective action necessary to eliminate this source of hazard should a problem develop during the harvest.
  - (d) All logging operations on state forested lands trained and certified under the state's professional logger program such as Virginia's SHARP Logger Program.
  - (e) Skidding of trees shall be directed in a manner that prevents creation of channels or gullies that concentrate water flow to adjacent streams, ditches, or other water bodies.
  - (f) Log landings will be located outside the riparian corridors and need approved by the Department before use. All equipment used for harvesting and hauling operations serviced outside of riparian corridors. Ruts shall be smoothed to restore hydrology and drainage paths.
  - (g) If during harvest implementation, endangered species such as the red cockaded woodpecker, or other species identified shall be avoided, and all activity will cease within a ¼-mile diameter buffer around the area or roost trees, until consultation with the Department.
  - (h) All prehistoric caves, sensitive areas, and historic areas excluded from ground disturbance when identified. Any discovery by the purchaser of additional areas, resources, species, or members of species needing special protection shall be promptly reported to the Department and the purchaser shall immediately suspend operations within the area discovered. Any trees not allowed to be felled into any areas identified.
  - (i) Purchaser shall maintain roads, commensurate with Purchaser's use.
  - (j) Fences damaged (if any) by the Purchaser's operations repaired including any fence section removed to facilitate the removal of trees harvested.

- (3) The Purchaser agrees to exercise the utmost care and caution to prevent the occurrence and spread of forest fires on the area for harvest and on adjoining areas. The Purchaser further agrees to observe and comply with all the forest fire laws of the State of Virginia, which may be applicable. The Purchaser held liable for costs associated with controlling any fire caused by him/her or any subcontractor involved in the harvest operation or for fire damage to residual trees and adjacent forest stands. This includes any equipment used in the harvest or activities associated with harvest operations Purchaser also agrees to report all fires immediately. Effective muffler systems installed by the manufacturer as standard equipment maintained on exhausts of trucks, power saws and other internal combustion engines used in the Purchaser's Operations. When the Department advises the Purchaser that local fire weather conditions are becoming critical. The Purchaser shall keep with gasoline chain saws at all times 1) a fire extinguisher (A:B:C Dry Chemical, 5 lb. min.); and 2) a Standard Grade Round point Long-handled shovel (48" min.), and/or a Standard Grade Long-handled Fire Rake (48" min.) and take precautionary measures requested by the Department. Any equipment furnished by the Department shall be stored in sealed boxes provided for this purpose and shall be transported to locations in the immediate vicinity of current logging and milling operations on Harvest Area. The Department reimbursed for any damage to or loss of fire-fighting equipment furnished by the Department, which occurs on Negligently-Caused Fires or because of using equipment for unauthorized purposes.
- (4) The Purchaser shall limit or restrict operations in accordance with the Fire Danger Rating schedule shown below. The Department will determine fire danger ratings by using the National Fire Danger Rating System. The Department shall notify the Purchaser of predicted fire danger that may limit or restrict operations. In all cases, the actual weather elements shall govern over the predicted weather elements in determining Fire Danger. Fire danger ratings are based on a severity index from A (low) to E (highest).

Fire Danger Rating:	Limitations or Restrictions on Purchaser Operations:
A to C:	Normal fire precautionary operations
C+ to D (Very High)	Department may suspend any or all of Purchaser's operations.
E (Extreme)	In addition to above restrictions, internal combustion engines Or other spark-producing equipment shall not be operated within any areas of the timber sale without specific written approval by the Department.

- (5) So far as practicable, the Purchaser shall protect specified roads and other improvements (such as State or Private roads, trails, telephone lines, ditches, fences, and culverts), along with any improvements not owned by the Department. Purchaser shall protect all known survey monuments, witness corners, reference monuments, signs, and bearing trees. Any damage to specified roads or other improvements repaired and replaced by the Purchaser and at their cost.
- (6) Areas known by the Department and needing special protection of plants, animals, cultural resources, and/or cave resources (if known) are shown on Attachment A and/or identified on the ground, and shall be avoided by wheeled or tracked machines, nor will trees be allowed to be felled into such areas unless agreed to in advance. If additional areas needing special measures for protection are discovered after the contract is signed those measures may be revised or newly prescribed in which case timber volumes and values may be adjusted based upon the timber contracted values and volumes by product. Any discovery by the Purchaser of additional areas, resources, species, or members of species needing special protection promptly reported to the Department.
- (7) If Purchaser maintains storage facilities for oil, gas, or oil products on the harvest area, Purchaser shall take appropriate preventive measures to ensure that any spill of such oil, gas, or oil products does not enter any stream or other water of the Commonwealth. If Purchaser maintains a total of oil or oil products storage in excess of 1,320 gallons in containers of 55 gallons or greater, Purchaser shall prepare a Spill Prevention Control and Countermeasures Plan. Such plan shall meet applicable EPA requirements including certification by a registered professional engineer. Purchaser shall notify the Virginia Department of Emergency Management Response Center, as well as the Virginia Department of Environmental Quality, and the Department's project manager of all releases of hazardous substances. On or in the vicinity of the harvest area caused by the Purchaser and/or the Purchaser's employees, agents, subcontractors, or their employees or agents, directly or indirectly, as a result of Purchaser's operations.

#### ARTICLE IV

- (1) The Department reserves the right to postpone timber removal under terms of this contract for gross noncompliance with the agreed upon provisions herein, to the extent, however, that in case of dispute over the terms of this agreement, the Purchaser may submit a dispute to the State Forester. The Department may also interrupt or cancel harvesting operations due to a court order or other legal sanction. The Department reserves the right to modify, cancel, or suspend the contract to prevent environmental degradation or resource damage, including, but not limited to, harm to habitat, plants, animals, cultural resources, or cave resources. Suspension might also incur to ensure consistency with land and resource management plans.

#### ARTICLE V

- (1) The Purchaser's signature within this contract certifies that this purchase is made without prior understanding, agreement, or in connection with any corporation, firm or person submitting a bid for the same material and is in all respects, fair and without collusion or fraud. The Purchaser understands that collusive bidding is a violation of the Virginia Governmental Fraud Act – Section 18.2-498.1 and federal law and can result in fines, prison sentences, and civil damage awards.
- (2) **COUNTERPARTS; FACSIMILE:** This contract may be executed in several counterparts, and all counterparts so executed shall constitute one agreement binding on all parties, notwithstanding the fact that all parties have not signed the original or the same counterpart. If this paragraph is initialed by both parties, the parties agree the delivery of a PDF copy of the signature of either party via facsimile or electronic mail shall have the same binding effect as the delivery of an original signature on an original document.

\_\_\_\_\_ / \_\_\_\_\_ (initials)

- (3) The Purchaser shall obtain certifications from any Subcontractor regarding debarment, suspension, ineligibility, and voluntary exclusion, including additional subcontractors obtained after award of this contract. Purchaser may rely upon certification of a prospective Subcontractor that not proposed for debarment, debarred, suspended, ineligible, or voluntarily excluded from participating in covered transactions or timber sales. Purchaser shall keep certifications of Subcontractors on file until the Termination Date.
- (4) The Purchaser, and all solicitations and advertisements for employees placed by or on behalf of the Purchaser, will state that such Purchaser is an equal opportunity employer.
  - (a) The Purchaser will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, sex or national origin is a bon-a-fide occupational qualification reasonably necessary to the normal operation of the Purchaser.
  - (b) The Purchaser agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this nondiscrimination clause.
- (4) **DRUG, FIREARMS, TOBACCO FREE WORKPLACE:** The Purchaser acknowledges and certifies that it understands that the following acts by the Purchaser, its employees, and/or agents performing services on the property are prohibited:
  - (a) **The unlawful manufacture, distribution, dispensing, possession or use of alcohol or other drugs; and**
  - (b) **Any impairment or incapacitation from the use of alcohol or other drugs (except the use of drugs for legitimate medical purposes).**
  - (c) **No firearms of any kind allowed on the Property, neither concealed nor open carry.**

The Purchaser further acknowledges and certifies that it understands that a violation of these prohibitions constitutes a breach of contract and may result in default action taken by the Commonwealth in addition to any criminal penalties that may result from such conduct.

- (5) The Purchaser certifies and warrants that by his/her signature within this contract that he/she has neither offered nor received any kickbacks from any other bidder in connection with his/her bid on this solicitation. A kickback is defined as an inducement for the award of a contract, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any payment, loan subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
- (6) The Purchaser shall indemnify, and hold harmless the Commonwealth of Virginia, the Department, and VTF, and their officers, agents and employees from any claims, suits, liability or damage arising from or caused by negligence on the part of the Purchaser in harvesting the timber designated for removal herein conveyed.
- (7) The Department is prevented from doing business with corporations or their principals that have been convicted of a felony criminal violation under any State law within the preceding 24 months and/or have unpaid State Tax Liability. Appropriate certifications provided by the Purchaser when required.
- (8) The required bid deposit / performance bond shall protect the Commonwealth, the Department, and VTF in event the Purchaser defaults before a contract executed. The Department will hold the deposit until the harvest is complete and the Purchaser has fulfilled all contracted provisions.
- (9) This contract may not be assigned, sublet or transferred, without the written consent of the Department

**By signing below, I consent to the submission of this contract by electronic means.**

DEPARTMENT:

COMMONWEALTH OF VIRGINIA,  
DEPARTMENT OF FORESTRY

By: \_\_\_\_\_  
Name: Eugene E. (Ed) Stoots  
Title: State Lands Coordinator, Acting  
Director of Agency Lands

VIRGINIA TECH / VTF:

VIRGINIA POLYTECHNIC INSTITUTE AND STATE  
UNIVERSITY

By: \_\_\_\_\_  
Name: Dwayne L. Pinkney  
Title: Senior Vice President and Chief Business  
Officer

PURCHASER

\_\_\_\_\_  
By: \_\_\_\_\_  
Name:  
Title:

**IN WITNESS WHEREOF, the parties have affixed their signature and seals.**

WITNESS:

\_\_\_\_\_  
PURCHASER:

\_\_\_\_\_  
TELEPHONE NUMBER

Approved at \_\_\_\_\_, VA under the above conditions \_\_\_\_\_, 2021

DEPARTMENT

\_\_\_\_\_  
STATE LANDS COORDINATOR

VIRGINIA TECH / VTF ---- VIRGINIA POLYTECHNIC INSTITUTE AND STATE UNIVERSITY

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

Name: Dwayne L. Pickney

Title: Senior Vice President and Chief Business Officer

Date:\_\_\_\_\_

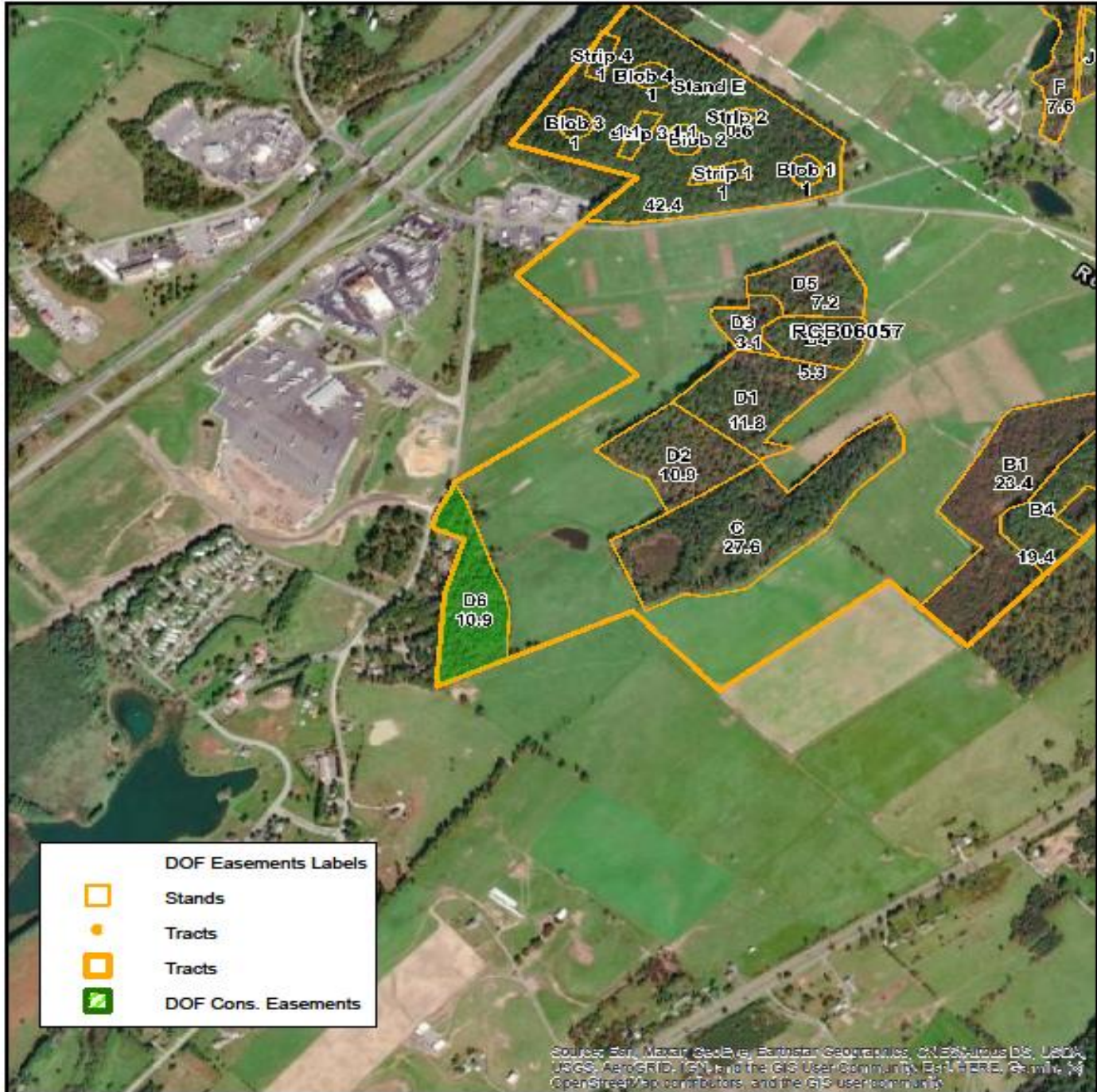
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# McCormick Farm Proposed Sale Area (Green)

Patricia Nylander  
(540)363-7002  
patricia.nylander@dof.virginia.gov  
11/6/2020



While VDOF has attempted to ensure that the features shown on this map are accurate, VDOF did not perform survey work or otherwise verify information provided to it in preparing this map and all features and acreages shown are approximate. VDOF expressly disclaims all warranties of any type concerning this map, and any use of the map assumes you understand and agree with this disclaimer.

0 425 850 1,700 Feet