

02-108090

EK2367PG1209

Exempted from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3), 58.1-811 (D) and 10.1-1803

THIS DEED OF GIFT OF EASEMENT, made this 11th day of November, 2002, between BRIAN W. FITZGERALD and CAROLINE D. FITZGERALD, husband and wife, herein called the "Grantors", the VIRGINIA OUTDOORS FOUNDATION, an Agency of the COMMONWEALTH OF VIRGINIA, herein called the "Grantee", whose address is 203 Governor Street, Suite 317, Richmond, VA. 23219, CITIBANK, FSB, herein called the "Bank", and CARDA TRUST, herein called the "Trust".

WITNESSETH:

WHEREAS, the Open Space Land Act of 1966 (Chapter 17, Title 10.1, §§10.1-1700 to 10.1-1705 of the Code of Virginia, as amended) declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open-space land; and

WHEREAS, Chapter 18, Title 10.1 of the Code of Virginia (§§ 10.1-1800 to 10.1-1804, as amended) declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historical, scientific, open-space and recreational lands of the Commonwealth; and

WHEREAS, the Grantors are the owners in fee of the Property (as defined below), known as Oak Stream Farm, which they desire preserved as open-space land in the public interest; and

WHEREAS, the Property is located to the north of the John Mosby Highway/U.S. Route 50 which is eligible for designation as a Virginia Scenic By-way, and contributes to the scenic views enjoyed by the public therefrom; and

WHEREAS, the Property contains productive agricultural land traversed by traditional stone fences and provides scenic views of farmland enjoyed by the public from U. S. Route 50; and

WHEREAS, the Property is located within the John S. Mosby Heritage Area and was the site of a Civil War cavalry battle on June 19, 1863 known as the Battle of Middleburg which centered around the "Blacksmith Shop" on present day Route 50 and surrounding area; and

WHEREAS, the high knoll on the northern portion of the Property and surrounding stone walls at the brow of the hill is a scenic feature of the landscape and may also have been the site of a clash on June 19, 1863 for control of such a commanding position; and

WHEREAS, the Property is located within the Goose Creek watershed, an area planned for special environmental protection in the Fauquier County and Loudoun County Comprehensive Plans, Goose Creek being a public water supply source and Goose Creek having been designated a

State Scenic River by Act of the General Assembly of the Commonwealth of Virginia on March 25, 1976; and

WHEREAS, the Loudoun County Comprehensive Plan encourages the use of open space easements to protect agricultural resources, preserve farms, forests and open space and the rural character of the landscape in Rural Areas; and

WHEREAS, the preservation of the Property will further the goals of the Loudoun County Comprehensive Plan by preserving the County's "cultural and scenic character by conservation of archeological sites and historic structures and their settings"; and

WHEREAS, the preservation of the Property will further goals of the Loudoun County Comprehensive Plan by preserving agricultural land, as well as scenic, historic, and environmentally sensitive areas of the County.

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the Grantors do hereby grant and convey to the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, the real estate consisting of 66.0129 acres, more or less, described below, located in Blue Ridge (formerly Mercer) Magisterial District, Loudoun County, Virginia west of Middleburg, fronting on State Route 754 (Kirk Branch Road), and hereinafter referred to as the "Property:"

Lot 1-B, containing 21.3824 acres, more or less, as shown on plat entitled "Subdivision, Lot 1, the Property of Oak Stream Limited Partnership" recorded in Deed Book 1180 at Page 292, among the Land records of Loudoun County, Virginia.

AND BEING the same property conveyed to Brian W. Fitzgerald and Caroline D. Fitzgerald, husband and wife, by deed from Oak Stream Limited Partnership, a Virginia limited partnership, dated April 25, 1997 and recorded April 27, 1997 in Deed Book 1496 at Page 0751 among the land records of Loudoun County, Virginia.

Lot 2, containing 22.7752 acres, more or less, as shown on plat entitled "Preliminary - Record Plat - The Property of Oak Stream Limited Partnership" attached to Deed of Subdivision and Reservation recorded in Deed Book 1122 at Page 915 among the land records of Loudoun County, Virginia.

AND BEING the same property conveyed to Brian W. Fitzgerald and Caroline D. Fitzgerald, husband and wife, by deed from William B. Wolf, III and M. Francesca S. Wolf, husband and wife, dated February 15, 1994 and recorded February 15, 1994 in Deed Book 1289 at Page 525 Among the land records of Loudoun County, Virginia.

Lot 3, containing 21.8553 acres, more or less, as shown on plat entitled "Preliminary - Record Plat - The Property of Oak Stream Limited Partnership" attached to Deed of Subdivision and Reservation recorded in Deed Book 1122 at Page 915 among the land records of Loudoun County, Virginia.

AND BEING the same property conveyed to Caroline D. Fitzgerald by deed from Oak Stream Limited Partnership, a Virginia limited partnership, dated July 20, 1994 and recorded July 26, 1994 in Deed Book 1321 at Page 1065 among the land records of Loudoun County, Virginia.

The above-described tracts are shown as pin # 599-29-5481: 21.3824 acres, pin # 599-39-6060: 22.7752 acres., and pin # 599-49-7130: 21.8553 acres, on Tax Map 86 among the land records of Loudoun County and total 66.0129 acres in the aggregate. The Property shall be considered to be one parcel for the purposes of this easement, and the restrictions and covenants of this easement shall apply to the Property as a whole rather than to such individual parcels.

AND SUBJECT, HOWEVER, to the restriction that the Grantee or its successors and assigns may not transfer or convey the open-space easement herein conveyed to the Grantee unless the Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in the conveyance accomplished by this deed are to be continued in perpetuity, and (2) the transferee is an organization then qualifying as an eligible donee as defined by section 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder.

Restrictions are hereby imposed on uses of the Property pursuant to the public policies set forth above. The acts which the Grantors, their heirs, successors, personal representatives and assigns, covenant to do and not to do upon the Property, and the restrictions which the Grantee is hereby entitled to enforce, are and shall be as follows;

1. Accumulation or dumping of trash, refuse, or junk is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products or agricultural byproducts on the Property, as long as such practices are conducted in accordance with applicable governmental laws and regulations.
2. Display of billboards, signs, or other advertisements is not permitted on or over the Property except to state the name and/or address of the owners, to advertise the sale or lease of the Property, to advertise the sale of goods or services produced incidentally to a permitted use of the Property or to provide notice necessary for the protection of the Property and for giving directions to visitors. No such sign shall exceed nine (9) square feet in size.
3. Division or subdivision of the Property in any manner is prohibited. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered a prohibited division of the Property, provided that the Grantee is notified in writing prior to the completion of any such boundary line adjustment and at least one of the following conditions is met:
 - A) The entire adjacent parcel is subject to an existing, recorded open-space easement conveyed to the Grantee;
 - B) The proposed boundary line adjustment is reviewed and approved in advance by the Board of Trustees of the Grantee.

4. Management of forest resources, including commercial timber harvest, shall be in accord with a forest stewardship plan approved by the Grantee, which approval shall not be withheld so long as such forest stewardship plan is in accord with Best Management Practices of the Virginia Department of Forestry. All forestry activities shall be carried out so as to preserve the environmental and scenic qualities of the area. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any material forestry activity is undertaken. The Grantors, or their successors and assigns, shall notify the Grantee no later than thirty (30) days prior to the start of any material forest activity as well as within seven (7) days of its completion.
5. Grading, blasting or earth removal shall not materially alter the topography of the Property except for construction to create private ponds, or as required in the construction of permitted buildings, connecting private roads, and utilities as described in Paragraph 6. Generally accepted agricultural activities shall not constitute any such material alteration. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted private roads. Notwithstanding the foregoing, no grading, blasting, or earth removal is permitted on the Property if it will materially diminish or impair the conservation values protected by this Easement. Mining on the Property is prohibited.
6. No permanent or temporary building or structure shall be built or maintained on the Property other than (i) the existing primary family dwelling, which may be repaired, renovated, reasonably enlarged, or replaced in the same location, (ii) the existing and any new non-residential outbuildings or structures commonly and appropriately incidental to the existing primary family dwelling, (iii) the existing secondary family dwelling, which may be repaired, renovated, reasonably enlarged, or replaced in the same location, (iv) the existing and any new non-residential outbuildings commonly and appropriately incidental to the existing secondary family dwelling, (v) a new barn apartment, and (vi) all existing farm buildings and structures. All existing farm buildings and structures may be repaired, renovated, reasonably enlarged or replaced in the same location. New farm buildings and structures may be constructed; provided, however, any new farm buildings or structures exceeding 4,500 square feet in ground area may not be constructed on the Property unless prior written approval for said building or structure is obtained in writing from Grantee, which approval shall not be unreasonably withheld, and provided further that Grantee's approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the conservation values of the Property protected by this Easement. All existing and any new private roads and utilities that serve permitted buildings or structures may be constructed and maintained.
7. Industrial or commercial activities other than the following are prohibited: 1. agriculture, viticulture, aquaculture, silviculture, horticulture, and equine activities, 2. temporary or seasonal outdoor activities which do not permanently alter the physical appearance of the Property, and which are consistent with the conservation values herein protected, 3. activities which can be and in fact are conducted within permitted buildings without material alteration to the external appearance thereof. Temporary outdoor activities involving one hundred (100) or more people shall not exceed seven (7) days in duration unless approved by the Grantee in advance in writing.

8. Representatives of the Grantee may enter the Property (but not building interiors) from time to time for purposes of inspection and enforcement of the terms of this easement only after written permission from or reasonable written advance notice to the owner or the owner's designated representative.
9. The Grantors, their heirs, successors, personal representatives and assigns, shall notify the Grantee in writing within sixty (60) days following any transfer or sale of the Property or any part thereof. In any deed conveying all or any part of the Property, this easement shall be referenced by Deed Book and Page Number.
10. The Grantor hereby grants to the Grantee the right to enforce the conservation restrictions contained herein pursuant to applicable state law specifically including the right to require restoration of the Property to a condition of compliance with the terms hereof.

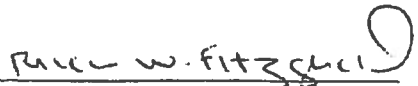
Citibank, FSB, herein, the Bank, is the Noteholder under a certain Deed of Trust dated May 24, 2002 and recorded May 30, 2002 in the Clerk's Office of the Circuit Court of Loudoun County, Virginia in Deed Book 2184 at Page 2076, which subjects the Property to the Bank's lien. The Bank and the Trustee(s) (under said Deed of Trust), hereby consent to the terms and intent of this easement, and agree that the lien represented by said Deed of Trust shall be held subject to this Deed of Gift of Easement.

CARDA Trust, herein, the Trust, is the Noteholder under a certain Deed of Trust dated August 31, 1994 and recorded August 31, 1994 in the Clerk's Office of the Circuit Court of Loudoun County, Virginia in Deed Book 1328 at Page 0250, which subjects the Property to the Trust's lien. The Trust and the Trustee(s) (under said Deed of Trust), hereby consents to the terms and intent of this easement, and agree that the lien represented by said Deed of Trust shall be held subject to this Deed of Gift of Easement.

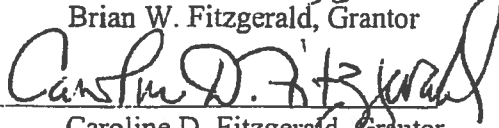
Although this easement in gross will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to or, use with respect to the Property. The Grantors, their heirs, successors, personal representatives and assigns, hereby retain the exclusive right to such access and use, subject to the terms hereof.

Acceptance of this conveyance by the Grantee is authorized by Section 10.1-1801 of the Code of Virginia and is evidenced by the signature of the Director of the Northern Virginia Office hereto. Assignment of this easement is governed by Section 10.1-1801 of the Code of Virginia.

WITNESS the following signatures and seals.



Brian W. Fitzgerald, Grantor



Caroline D. Fitzgerald, Grantor

BK 2367PG 1214

CitiMortgage, Inc. F/R/A
Citicorp Mortgage, Inc. Attorney-In-Fact for
Citibank, FSB:

Benjamin C. Winnick, Trustee
Benjamin C. Winnick, Trustee

By: Sally A. Hoffmann
Sally A. Hoffmann
Its: Assistant Vice President

Trustee, Trustee
Trustee

CARDA TRUST:
Bessemer Trust Co. of Florida
Trustee
By: Marsha C. Witt
Its: Marsha C. Witt
Principal

Accepted:
VIRGINIA OUTDOORS FOUNDATION,

By: Leslie H. Grayson
Leslie H. Grayson, Director of the Northern
Virginia Office

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF Jackson/Spartanburg, TO WIT:

I, Susan Miller, a Notary Public for the Commonwealth
aforesaid, hereby certify that Brian W. Fitzgerald, Grantor, personally appeared before
me this day and acknowledged the foregoing instrument.

WITNESS my hand and official seal this 18th day of Dec, 2002.

Susan Miller
Notary Public

My commission expires: My Commission Expires October 31, 2005 (SEAL)

Loudoun County Mapping System



7,038,202



7,036,748

11,688,685

Map Width=1,661 feet

11,690,346

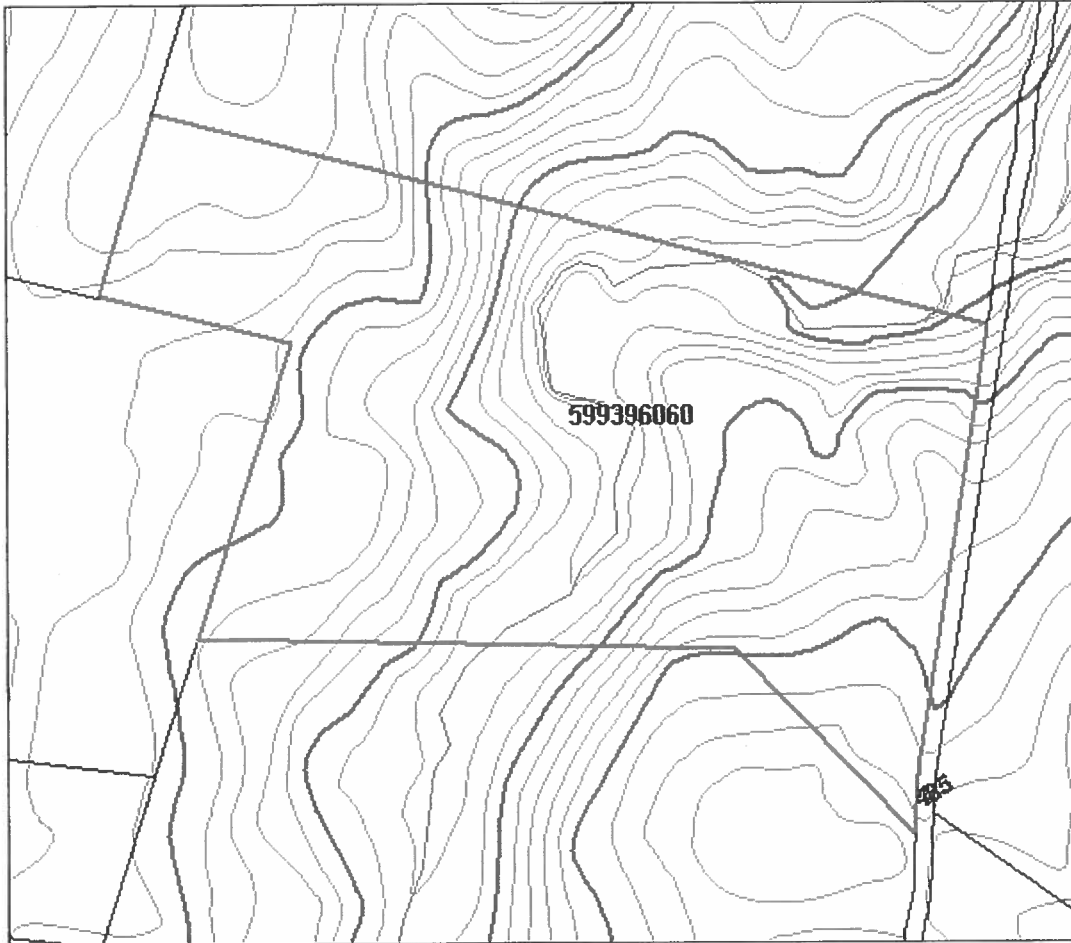
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PIN	Address
599295481	

Loudoun County Mapping System



7,039,002



7,037,434

11,688,691

Map Width=1,793 feet

11,690,484

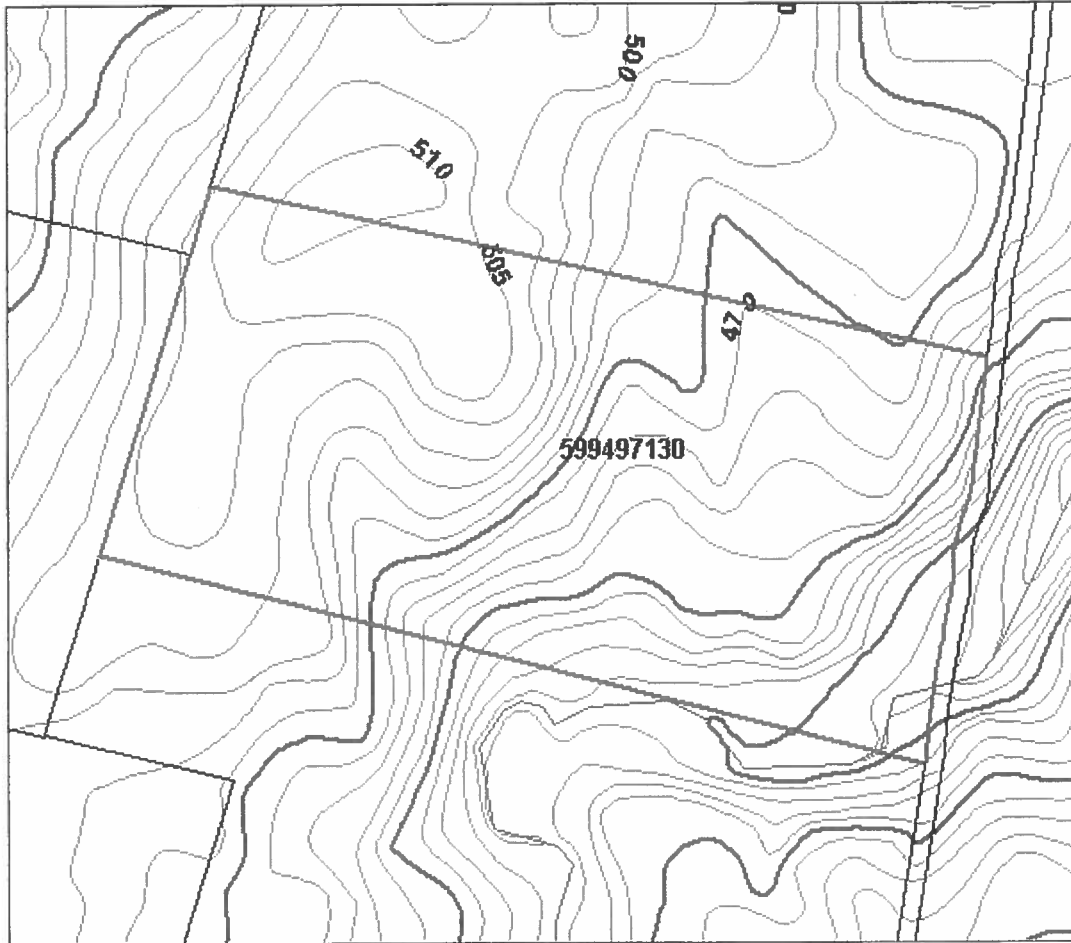
Created on 5/4/2010 10:58:31 AM

PIN	Address
599396060	23377 Kirk Branch Rd Middleburg 20117

Loudoun County Mapping System



7,039,751



7,038,165

11,688,783

Map Width=1,813 feet

11,690,596

Created on 5/4/2010 11:02:07 AM

PIN	Address
599497130	

subject parcel contains, within its boundaries; Steep Slopes and/or the Mountainside Development Overlay District (MDOD). A Locational Clearance must be / land disturbing activity. As a result, this Location Clearance Form/Map must be completed and submitted with the zoning permit application or to Locational Floor, Building and Development) for other land disturbing activities not requiring a zoning permit (wells, drainfields, etc.).



0 425 850 Feet

2005 & 2007 Black and White Imagery by
Map Created:

- applicant must accurately illustrate all of the following on the above Locational Clearance Map:
- Proposed use location (structures, additions, retaining walls, etc.)
- Proposed accessways (driveways, construction access, etc.)
- Well and drainfield locations, when applicable





425

850 Feet

2005 & 2007 Black and White Imagery by VARGIS LL
 Map Created: 5/3/2010

ist accurately illustrate all of the following on the above Locational Clearance Map:
 use location (structures, additions, retaining walls, etc.)
 accessways (driveways, construction access, etc.)
 rainfield locations, when applicable
 limits of all land disturbing activity
 ce lines for water, sewer and power





The applicant must accurately illustrate all of the following on the above Locational Clearance Map:

- 1) Proposed use location (structures, additions, retaining walls, etc.)
- 2) Proposed accessways (driveways, construction access, etc.)
- 3) Well and drainfield locations, when applicable
- 4) Proposed limits of all land disturbing activity
- 5) Conveyance lines for water, sewer and power

Results of the review may include but are not limited to: approval of Locational Clearance, request for clarification of information, requirement of additional permits and/or studies, as required by the Zoning Ordinance, or rejection. If the review does not result in approval of Locational Clearance, the applicant will be contacted. For additional information, see **Zoning Ordinance Sections 4-1600 and 5-1508** for the Requirements and Standards that will be reviewed.

By signing below, you acknowledge that: 1) you have read and understand the above information; 2) the above information represents existing and proposed conditions to the best of your knowledge; 3) any work that has been done without a County approved Locational Clearance may be subject to corrective measures; and 4) you grant permission to County staff to enter the property and make such investigations as deemed necessary for this Locational Clearance.

<ul style="list-style-type: none"> ⊙ Wells/Drainfields Topography Soil Unit Steep Slopes VERY MODERATE MDOD Somewhat Sensitive Sensitive Highly Sensitive FOD Minor Floodplain Major Floodplain Potomac River Drains Not Evaluated Intermittent Perennial Limestone OD Soil Point Features Rock Outcrop Soil Unit

<p>REQUIRED INFORMATION:</p> <p>Check All that apply: <input type="checkbox"/> Owner <input type="checkbox"/> Applicant <input type="checkbox"/> Representative</p> <p>Print Name: _____</p> <p>Signature: _____ Date: _____</p> <p>Locational Clearance for LC PIN #: _____</p> <p>Site Address: _____</p> <p>City: _____ State: _____ Zip: _____</p>	<p>COUNTY STAFF USE ONLY</p> <p>Locational Clearance Approval:</p> <p>LC #: _____ Date: _____</p> <p>Reviewed by: _____</p> <p>Approved by: _____</p> <div style="text-align: center;"> </div>
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Note: The applicant may schedule a "Locational Clearance Meeting" with staff to discuss the project/Locational Clearance process by calling 703-777-0397.
 Locational Clearance Mapper, Version 2.11

** your land faces into these categories.*

Dotted Red = Very

Dotted yellow = Moderate