

Ticks: The Mini-Menace

June 5, 2020



Tick season is well underway in Virginia.

Ticks can't fly. They don't jump, or fall on you from above. They wait.

Staked out on the very tips of leaves and blades of grass, they sit, raised on their back legs, reaching out with their hooked front limbs in a pose that's called "questing," and they smell you coming. Not your perfume or your stinky sneakers, the scent that ticks detect is your breath—the CO₂ that you exhale—and they lean in. "It just takes the slightest brush and they latch on," said Dr. Richard Marconi, an epidemiologist at Virginia Commonwealth University, "and they don't waste a lot of time looking for a place to feed. They start eating."

Ticks are arachnids, tiny vampire spiders that survive by feeding on the

blood of other creatures. Light-footed and noiseless, they creep over human skin, usually discovered by accident or careful search. Most people don't even feel the bite. Ticks are ancient, dating from the Cretaceous period, but the diseases they transmit to humans have been newly accelerating in recent years as both ticks and humans expand their habitats into the same zones.

Take, for instance, Lyme disease, a bacterial infection from the bite of a deer (or "blacklegged") tick, named for the town in Connecticut where it was first identified in 1975. "Lyme disease wasn't in the state of Virginia at all in the 1980s," said Dr. Mark Lepsch, a physician in U.Va.'s Northridge Internal Medicine group. "Even in the 90s, Lyme cases diagnosed here were likely spread from somewhere farther up on the eastern seaboard. Ten years later, Lyme was the leading tick-borne illness in the state." Today, Virginia is one of 14 key states that account for more than 96% of reported Lyme cases.

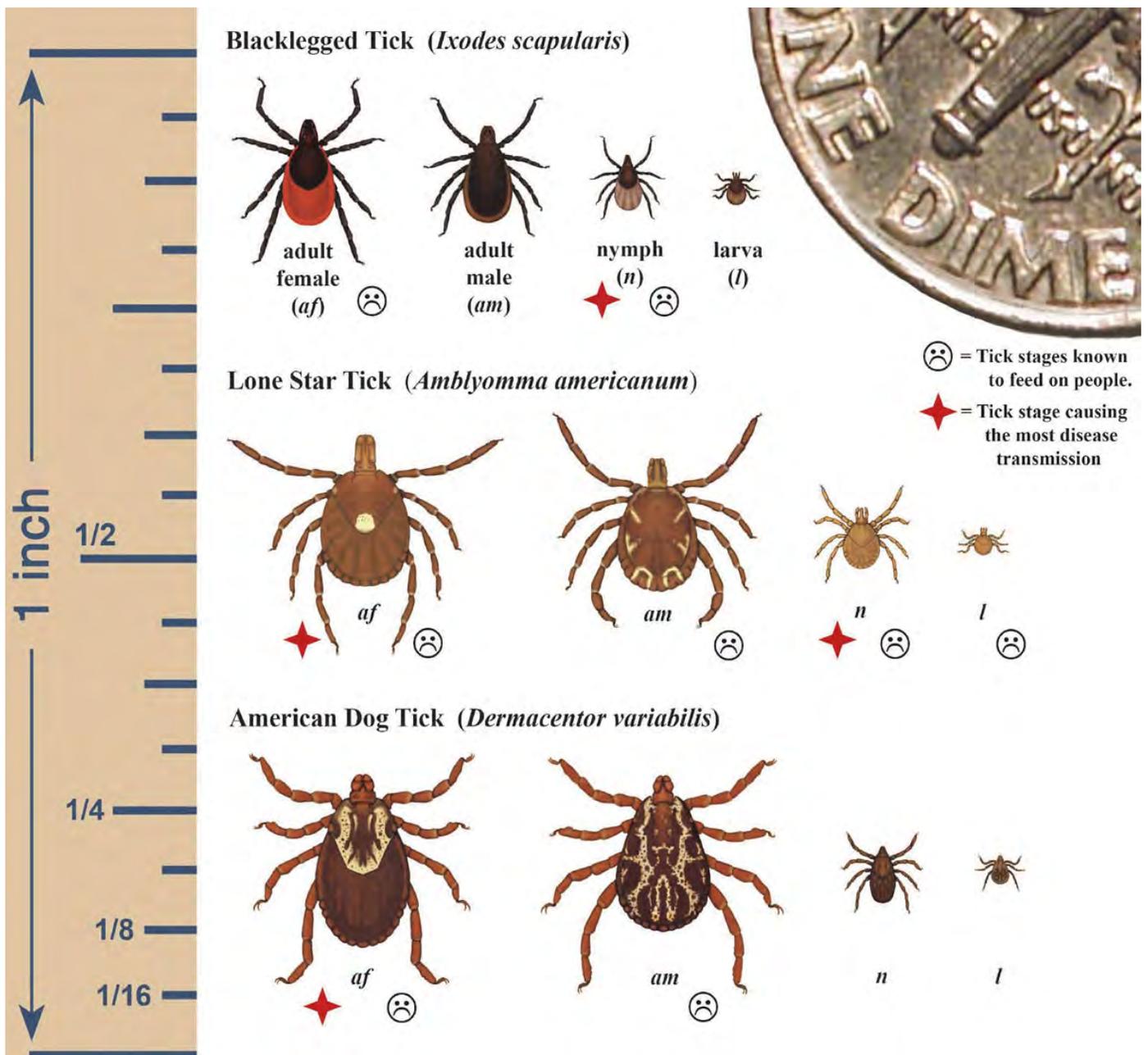
Special delivery

Tick-borne diseases are caused by bacteria that live inside of ticks, but ticks play a role in its transmission in a circular, symbiotic way. "One important thing to know is that these diseases cannot be transmitted from one animal to another," said Marconi. "So, you can't get, say, Lyme from your dog or from another person. The second important thing is that when ticks hatch from eggs they are called larvae, and at that point they are not carrying the disease—there's no transmission from the [mother] female tick to the larvae. The only way a tick becomes infected is if it feeds on an infected animal."

The tick larva takes a bite (called a "blood meal") from a small, already-infected creature—a mouse, chipmunk, or even some types of ground-feeding birds—and becomes infected itself. Like a foul little courier, the tick then moves through other stages of development (nymph, adult) and

passes the bacteria on to animals or people during its next blood meal.

“For Lyme disease to exist in, say, Albemarle county, you have to have a sufficient population of small mammals that serve as ‘reservoirs’ for Lyme disease,” said Marconi. Mice are the most common reservoirs, but deer are also important because they provide convenient transportation. “Deer are basically a vehicle for ticks to travel, and a single deer can cover a lot of ground each day while carrying hundreds or thousands of ticks with it,” he said. “You will not find a deer, particularly here in Virginia or in the Northeast as a whole, that is not relatively loaded with ticks.”



“Changing environmental conditions and land use patterns are very, very favorable for the tick population,” said Marconi. “Warmer winters mean that a lot of the smaller mammals can survive better and serve as reservoirs for ticks, and housing development out in rural areas means that at the edge of all of those nicely cut lawns is low brush and taller grass, which ticks love.”

The most common tick-borne illnesses in Virginia are Lyme disease, Rocky Mountain Spotted Fever, and ehrlichiosis, as described in the nearby table. Symptoms can range from mild to life-threatening. “Ehrlichiosis might be a mild case where you feel tired for a month, or you can die from it,” said Lepsch. Rocky Mountain spotted fever can come on quickly and land a person in the hospital with severe flu-like symptoms. As for treatment, timing is everything.

“If you treat these diseases right up front, patients get better,” said Lepsch, “but if people come in a month after exposure, then the body has used its own antibodies to fight off the bacteria.” The antibodies that target Lyme can later become toxic to a person’s own body and, though chronic Lyme disease is not well-understood, can result in persistent pain and neurocognitive problems. “One big myth is that the disease is curable with antibiotics months or years later,” said Lepsch. “The problem with Lyme is that if you miss it up front and people develop the sequelae [antibodies], there’s not a darn thing we can do.”

An underreported threat

The Centers for Disease Control has concluded that the number of reported Lyme disease cases—about 30,000 per year—likely vastly understates the problem. Labs, not physicians, do the reporting of diagnoses to the CDC, which is triggered by the ordering of a lab test that comes up positive. The problem is, few doctors order the test.

“In 2014 the CDC studied insurance records to figure out how often Lyme was being diagnosed by doctors but not reported,” said Marconi. “They found that compliance with reporting is at best around 5%, so the actual number of cases could range from 340,000 to 600,000 per year.” These larger estimates include situations where a doctor treats a patient with antibiotics for a suspected, but not tested, Lyme disease case, but there are also an unknown number of people who have Lyme symptoms they attribute to something else, and never visit a doctor at all.



An adult deer tick in its "questing" pose, on a leaf near you. Photo: Anna Perez, courtesy of the Centers for Disease Control.

If a test for Lyme disease exists, why don't doctors order it? The answer, says Lepsch, is expediency. "If you're bitten by a tick and infected with its bacteria, you're usually not going to get sick with symptoms for five to fourteen days afterward," he said. "But everybody's getting tick bites and they're worried. So if a patient has a high risk story, like a tick that was attached for more than 24 hours, or a 'bull's-eye' rash, we go ahead and

give them an antibiotic like Doxycycline to treat the infection."

So, while Lepsch might only see a few actual cases each year where the infection has progressed to full-blown Lyme disease per season, he prescribes dozens of small antibiotic doses as preventative care, none of which go into the CDC's numbers.

Allergic to meat

Researchers are puzzling through another tick-related illness that causes some people who are bitten by a Lone Star tick to develop an allergy to a specific carbohydrate in meat. People with this "alpha-gal" allergy can experience hives, stomach pain, and difficulty breathing three to six hours after eating any kind of mammalian meat, and the reaction can be life-threatening. Dr. Lepsch's father was one of the first tick-related meat allergy cases to be diagnosed at U.Va. hospital in the mid-2000s.



"My dad had intermittent periods where he'd swell up like crazy but no allergists could figure it out, until finally [U.Va. researchers] Tom Platts-Mills and Scott Commins made the connection," said Lepsch. "The allergy does seem to be malleable, in that if you get away from eating meat it can wane, and you can get better."



Ivy resident Amy Sikes suffers from an allergy to meat thanks to a Lone Star tick bite. Submitted photo.

Ivy resident Amy Sikes was halfway through a steak burrito bowl when her doctor called to tell her she'd tested positive for the meat allergy. "There is a range of sensitivity and I was on the low end, but a few months later I pulled two ticks off of me and my levels had gone up," said Sikes, who now steers entirely clear of red meat. "I would love to have a bacon cheeseburger, but not enough to risk a visit to the ER." Besides her diet, Sikes' biggest change has been that now she and her family wear 40%

DEET bug spray when outside.

Like many people who suffer from the alpha-gal allergy, Sikes must also be wary of medications that are encased in gelatin capsules, because much of that gelatin is derived from beef and pork byproducts. "During a recent surgery, the residents had to find alternative blood thinners and other medicines for me," she said, "and my pharmacist keeps a list of what I can take, including all of the generic products." Sikes said she'll wait a few years and if her sensitivity levels decrease, she'll try small amounts of meat again. "I'm incredibly looking forward to that," she said.

A potential vaccine

The Centers for Disease Control (CDC) has recently sounded the alarm on tick-borne diseases, noting that the number of reported cases of Lyme disease in the U.S. has tripled since the late 1990s and cases of all tick-borne diseases increased by 22% from 2016 to 2017. The CDC says that both the range and variety of ticks in the U.S. is increasing due to factors such as changing land use patterns, including the reforestation of northeastern states, as well as climate change patterns that may provide more hospitable environments for ticks.

Surges in tick-borne diseases have led to increased funding for researchers like Dr. Marconi at VCU. Marconi started working on Lyme disease in the late 1980s and came to VCU in 1994, where he created a successful and widely used vaccine to treat Lyme in dogs, called Vanguard. His lab recently received a \$2.5 million grant from the National Institutes of Health to develop a vaccine for humans, reflecting the increasing prioritization of research into tick-borne diseases.

"Some minor adjustments at the science level were needed to bring the vaccine up to human standards," said Marconi, "and now we've reached the testing phase. The lengthy part is to advance the vaccine through clinical

trials, which are very expensive and take a long time, and to deal with the regulatory issues. I'd say the best-case scenario would place availability at five years out." Fortunately, there are other avenues for researchers to gather data on diseases like Lyme.

"People often don't have a good feel for how prevalent tick-borne diseases are in their area because we don't screen humans for things like Lyme disease," said Marconi. "But we do screen our pets." A 2018 study in Great Britain showed that 10 percent of dogs tested positive for Lyme. "When you think about any infection that affects 10 percent of the population, that's remarkable."

While Marconi emphasizes that if humans are treated, they will likely come through a tick infection just fine, he notes that animals who have an undetected infection may end up with a chronic case of Lyme disease, for which there is no cure. "If you think of this from the perspective of the disease itself, it has evolved so that these infections generally do not kill their hosts," he said. "They cause damage over time, but they try not to do it too quickly. They want to live in that host mammal for as long as they possibly can."

You know what to do

See the nearby graphic for the Virginia Department of Health's guidance on how to protect yourself against tick bites. If you are bitten, pull the tick straight out of your skin with tweezers, clean the affected area with soap and water, and either flush the tick down the toilet or keep it in a sealed plastic bag to show your physician in the event you become sick within the next 30 days.

Common diseases caused by tick bites in Virginia if left untreated

The Virginia Department of Health says that common tickborne illnesses in Virginia include Lyme disease, Rocky Mountain spotted fever,

and ehrlichiosis. Symptoms for each of these illnesses can range from mild to potentially life-threatening.

Lyme disease is caused by the bite of an infected blacklegged (deer) tick. Symptoms develop three days to a month after exposure, and include a “bull’s-eye” skin rash that spreads, fever, headache and fatigue. If untreated, it can cause arthritis, facial paralysis and memory problems.

Spotted fever rickettsia (including Rocky Mountain spotted fever) is caused by the bite of an infected American dog tick. Symptoms appear two days to two weeks after exposure, including fever, rash, headache, nausea, vomiting, abdominal and muscle pain and lack of appetite.

Ehrlichiosis is caused by the bite of an infected Lone Star tick. Symptoms develop one to two weeks after exposure, and include fever, chills, severe headache, muscle aches, nausea, vomiting, diarrhea and confusion. If untreated, it can cause nervous system damage, respiratory failure and uncontrolled bleeding.

Protect Yourself from Tick Bites

To protect against tick bites and the diseases they may cause, the Virginia Department of Health (VDH) and the Centers for Disease Control and Prevention (CDC) recommend that you:

- Avoid areas with high grass and leaf litter, and walk in the center of trails when hiking.
- Use EPA-registered insect repellents containing DEET, picaridin, IR3535, oil of lemon eucalyptus, para-menthane-diol, or 2-undecanone. Always follow product instructions.
- Use products that contain permethrin to treat clothing and gear, such as boots, pants, socks and camping tents. Do not apply permethrin directly to a person to prevent tick bites.
- Treat dogs for ticks. Dogs are very susceptible to tick bites and to

some tickborne diseases.

- Conduct a full-body tick check using a hand-held or full-length mirror to view all parts of your body upon returning from tick- infested areas. Remove any ticks right away.
- Bathe or shower as soon as possible after being outdoors to wash off and more easily find crawling ticks before they bite you.
- Wash and keep clothes in a dryer on high heat for 10 minutes after fully dry to kill ticks.



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Logging to Begin on Bucks Elbow Mountain

December 4, 2020

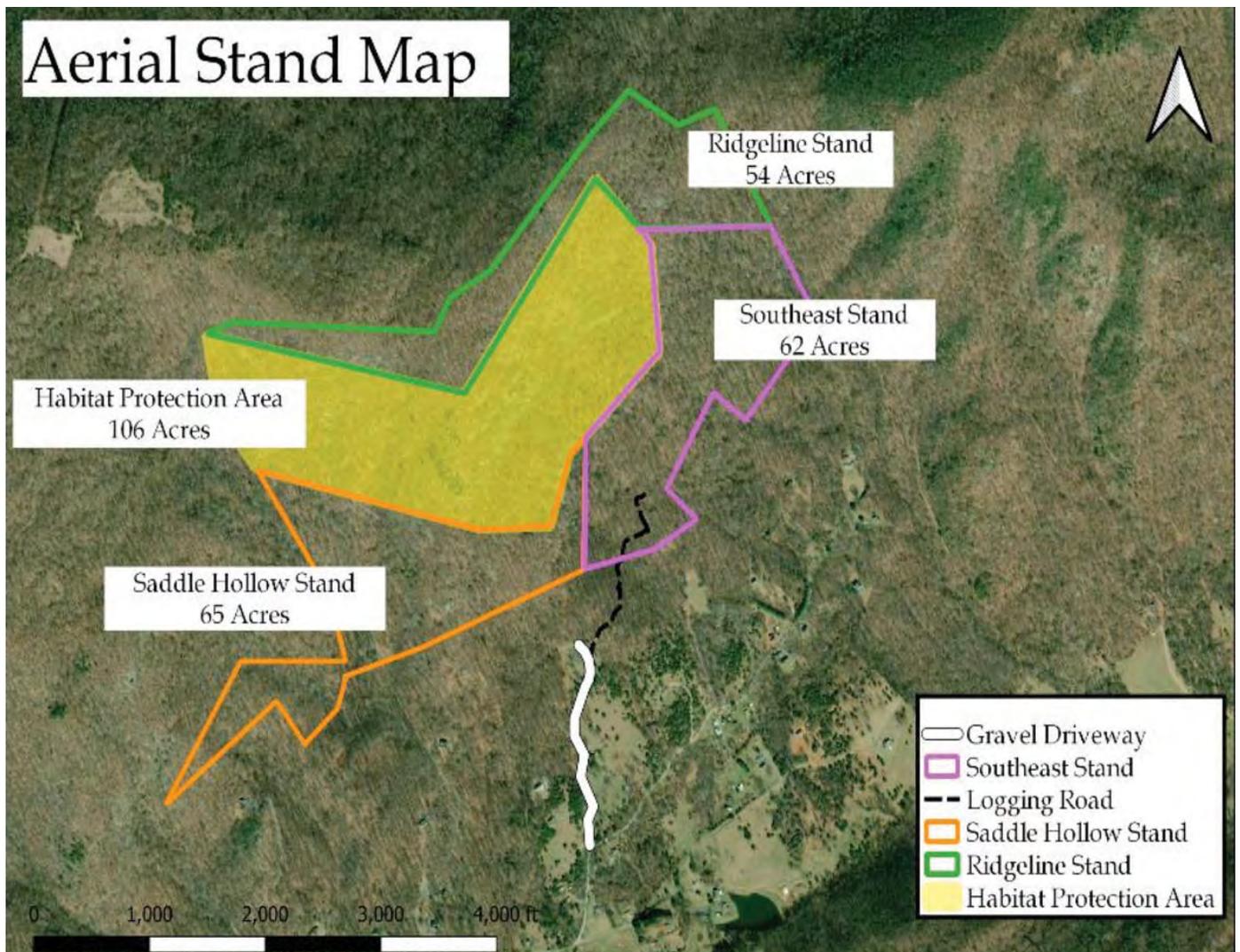


View looking north over Old Trail. The timber haul road for the impending logging operation on Bucks Elbow Mountain can be glimpsed just below the cell tower. Mitchell Carr's 300-acre parcel covers much of the mountainside visible above that point. Photo: Lisa Martin.

A timber harvest operation is slated to begin soon on the upper portion of Bucks Elbow Mountain, which rises above Mint Springs Park northwest of Crozet. Mitchell Carr, who has owned the 300-acre parcel of forestland directly north of Emerald Ridge since the 1960s and has always intended to log it, says the time is right. "The emerald ash borer is killing all the ash up there, and if we can harvest them before the root system dies then we may get some good regeneration," said Carr. "Otherwise, all those dead trees will be a tremendous fire hazard on the mountain, just a tinderbox ready to

go off."

The outline of Carr's property resembles a huge, leaping whale with its tail section pointing southwest toward the park, and the tract is visible from many parts of Crozet. While Carr has delineated three harvest stands along its northern, eastern, and southern edges (see map below), a wide, 92-acre swath across the middle is designated as a Habitat Protection Area and cannot be disturbed. The parcel is rocky and steep—the long ridge that forms its northernmost boundary rises 1,100 feet in altitude in just under 3,000 feet of terrain—and the trees there are mostly oak and hickory varieties, white ash, and yellow poplar.



A map outlining the three timber harvest stand sites on Mitchell Carr's Bucks Elbow Mountain property, as well as the central Habitat Protection Area (recently revised to measure 92 acres). The white line is a gravel drive leading to the parcel from Saddle Hollow Road, and the black dashed line is the portion cut through a neighboring property. Courtesy Virginia Department of Forestry.

The long haul

Carr's plan to harvest the timber has for decades been hindered by a thorny problem: the land has no public road frontage, and thus no way to transport logs off the property. For many years Carr tried sweet-talking his neighboring landowners, offering financial or land deals in exchange for permission to cross their properties to reach Mint Springs Road. "We got a call in 2002 or so, asking if we'd allow them to log and bring it through our property," said Brian Day, Emerald Ridge resident. "We said we had no interest in doing that at all, and of course cutting down trees [to make a haul road] is against our neighborhood covenants."

Nearby residents in Saddle Hollow Farm (just east of Emerald Ridge) were dubious as well and similarly rejected Carr's overtures. "Mr. Carr's property manager approached us and asked about getting access to the upper parcel," said Charles Greenhut, who has lived on Saddle Hollow Road for seven years. "The plan was to come up through the combination of my neighbor's yard and my property, but we were cautious. Ultimately it was not a very attractive offer to us and we were perfectly fine keeping the trees on our land intact."

Finally, in 2019, Carr was able to purchase two adjoining parcels that stacked northward up from Saddle Hollow Road. That acquisition left just one 300-yard stretch of land remaining between his new road access and his timber stands, and that stretch belonged to Victor Luftig and his wife. "Almost twenty years ago, Carr got in touch with us directly and tried to offer us money or land in exchange for the portion of our property that he wanted to cross," said Luftig. "He said he wanted to build homes for his two sons and that he had no commercial interest in the land."

The Luftigs were not persuaded that the transaction would be in their interest and declined, thinking the matter closed. "Earlier this year we were shocked to discover that Carr had just gone ahead and built a road across the part of our property farthest from our home," said Luftig. "He wrote to

us after the fact asserting the same right-of-way that he obviously didn't feel sure about years ago." The bulldozed haul road now connects Carr's southeast timber stand to his own parcels below.



A view of part of the haul road built through Victor Luftig's property by Mitchell Carr's timber harvest operation.

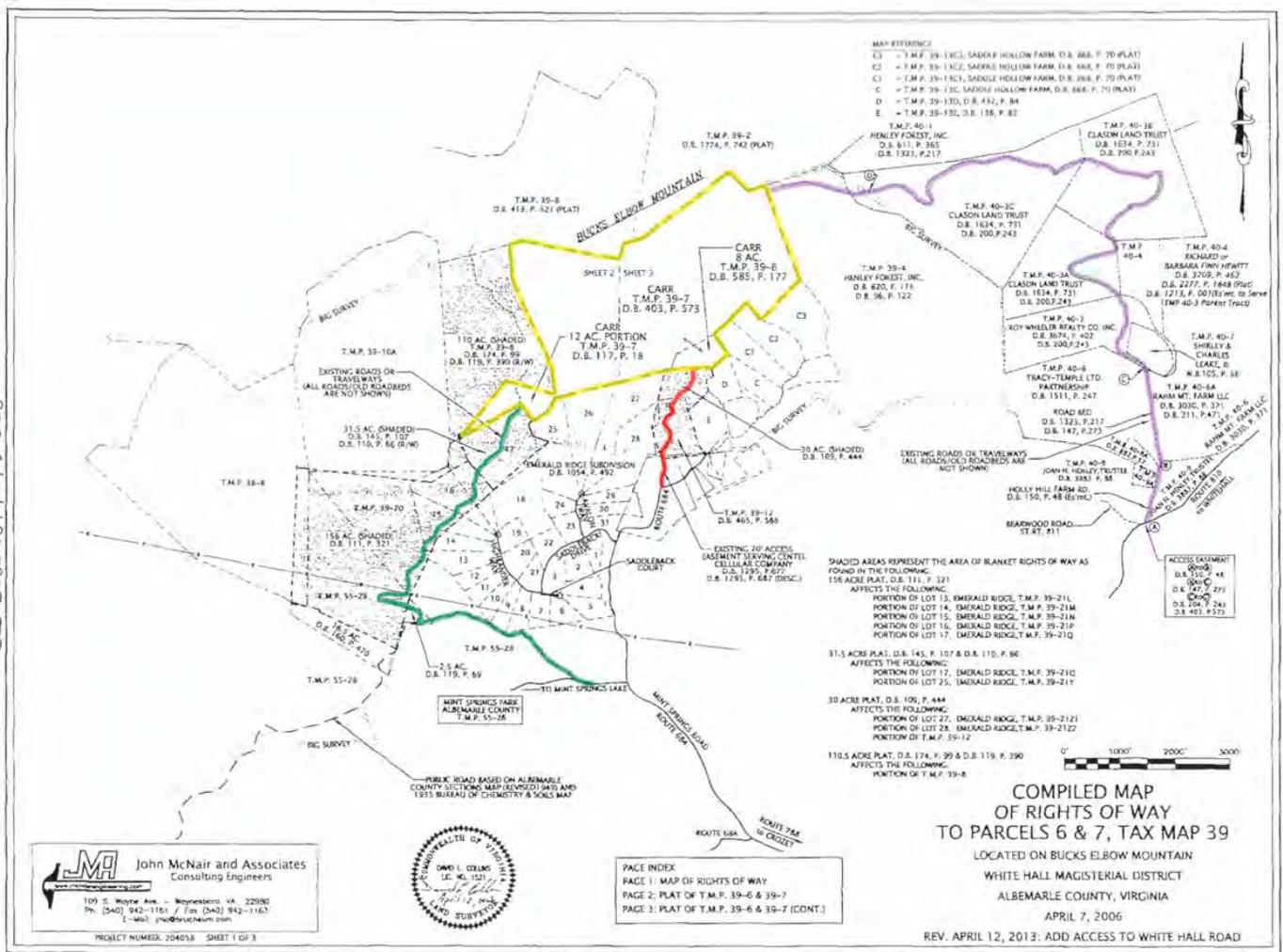
In pursuing this latest strategy, Carr is banking on language contained in the original property deed that first conveyed the land to Crozet's Wayland family of orcharding fame back in 1898—a vague but intentional requirement that “a right of way is expressly reserved through the tract ... in favor of the purchaser or purchasers of any other part of the ‘Big Survey’ ... to be located at such point as shall be practicable and at the same time as little injurious as possible.” The “Big Survey” is how the original 4,000 acres of mountainside was referred to in the 1800s. Since then more than 100 property transfers (called “conveyances”) have subdivided the original

tract, many containing the same right of way language.

In 2006, Carr paid tens of thousands for a formal survey of the entire mountainside to map out exactly where the rights-of-way to and from his forested parcel might lie. This was an “overwhelming” task according to the surveyor, David L. Collins. “I’ve been doing this since 1972, and that was the most difficult survey I’ve ever done,” said Collins of the job he did while working for John McNair & Associates. “It was an incredible amount of research work to track back those parcels and see how they were deeded. For parcels that didn’t have public road frontage, there was a ‘blanket easement’ in the deed to get to a road.”

Collins followed old roadbeds “not even wide enough for a horse to get through” that crisscrossed the mountain, and he and McNair mapped out three distinct rights of way from Carr’s property (see map below). One access route runs west of Emerald Ridge and through part of Mint Springs Park, one to the east through Henley Forest property, and the third—and shortest—heads straight south.

Deed Book 4377 P. 303



A 2006 map depicting three rights of way from Mitchell Carr's Bucks Elbow Mountain property (outlined in yellow) to public road access. Blanket rights of way are represented by shaded areas. The planned timber harvest operation will use the red route as a haul road. Courtesy Albemarle County Land Records.

Last fall, Collins and Carr walked what looked like an old roadbed on the eastern edge of Victor Luftig's property and sited Carr's haul road there, within a shaded area of the map that defines the blanket easement. Collins stands by his research, but Luftig said, "There is no right-of-way for that property in our deed, nor did it show up in the title chain.

"We communicated our distress to the county," said Luftig, "but were told that the county doesn't involve itself in disputes between property owners and that we'd have to take up the matter in court, which we haven't the means to do." Beyond the right-of-way issue, he said, "We think his logging the area would cause environmental degradation as his acreage is steeper than the 'critical slope' the county identifies as a concern for erosion."

The forest for the trees

On a clear day, looking from the entrance of Western Albemarle High School toward Old Trail, one can make out a cell tower halfway up Bucks Elbow Mountain, and Carr's land sprawls to the north and west from there. Carr bought the cell tower property to run the timber haul road through, but it's also the site of a 2018 plane crash in which Carr's son Kent was killed. Passing by the site on his way up and down the mountain is a "two-edged sword," he said. "Of course it's stressful, but I like owning it and being able to come and go as I please and to be custodian over it. But it does cut both ways."

Now that the haul road is in place, the harvesting operation is imminent. Though Virginia landowners are not required to get a permit per se to log their own forests, the Virginia Department of Forestry (VDOF) does require inspections of the site by forestry officials within the first 20 days of the start of a harvesting operation and every 45 days thereafter until the operation is closed. Inspectors check for stream water management and erosion issues and help guide the operation in a sustainable way for the forest.



"I worry about the viewshed for the entire community," said Day in Emerald Ridge, "and I'm very concerned about the runoff. I am sure it will be a clearcutting operation, and the stream in the hollow of our property will likely get plugged up and could cause flooding. It'll be a great big hole in the forest, a giant eyesore on the view from Crozet."

Bucks Elbow Mountain residents are also worried about the effects of

logging vehicles moving through the narrow neighborhood roads. "We hope any operation will be conducted safely—there are families with children on Saddle Hollow and Mint Springs Roads," said Greenhut, whose property borders Carr's timber stand and is near the area that will be used for staging and processing logs. "The grades are extremely steep, and the lines of sight are extremely poor."

Richard Defibaugh built his house on the mountain in 1982 and also declined a recent appeal from Carr to pass through his property before Carr acquired the cell tower parcel next door. Defibaugh's father and brother were loggers and he is familiar with the tandem axle trucks many modern harvesters use. "My wife is scared to death of this operation," he said. "She is terrified she's going to meet a logging truck on the road and go into a ditch. If you live in this area you know to find a nearby driveway to go up when you meet another vehicle. Those trucks are going to tear up the roads we have up here."

Carr's Forest Stewardship Management Plan (a document that is encouraged, but not required, by the VDOF) calls for a "shelterwood harvest" where trees are removed in a series of partial cuts, leaving some of the canopy intact while thinning below to allow sunlight to reach the forest floor so seedlings can grow from the seeds of older trees. Bucks Elbow Mountain's appearance for Crozet residents both near and far will depend on the percentage of trees remaining.

"We're going to do a timber stand improvement cut on only about 40 to 60 acres [in the southeast stand]," said Carr. "We don't believe in clearcutting hardwoods, and if you clear cut on steep ground you have a real erosion problem. So, we'll do it by hand—you get down on your knees and notch it and cut it by hand with a chainsaw—and use a small skidder with cable hooks to pull it out." As for the percentage of trees that will be logged, Carr said it will vary.

"The plan is to remove the trees that are dead, dying, or diseased," he said,

“as well as some of the invasive species up there. There’s a lot of wind-blown downed trees and a lot that have been damaged by lightning or ice, some massive big old trees that are 20 years old that have gone down. It’s good forest management to get those out.”

Carr’s management plan recommends that up to 80% of the stand be cut—from more than 100 square feet of tree coverage per acre down to 20 or 30 square feet per acre—but Carr says they’ll cut only the ash at that rate. “We will not take it down to less than 50% on any of the stands except for small parcels of, say, five to eight acres where it’s nothing but ash, where we’d take all of that.” The plan recommends harvesting the remaining canopy trees in 2030 or 2035, which would then allow the advanced hardwood regeneration to grow.



Longtime Saddle Hollow Farm resident Richard Defibaugh, whose property borders Mitchell Carr’s parcel through which Carr’s lower timber haul road runs. Defibaugh and his wife are concerned about large logging trucks clogging and tearing up the narrow mountain roads. Photo: Lisa Martin.

Some neighbors question why Carr insisted on constructing the haul road through Victor Luftig's property now, after years of asking permission from neighbors. "If he really had the right of way back then [in 2006], why didn't he just do it then?" said Day. "We have a homeowners' association but it's only 28 families, and who can fight him? I'm just guessing that Carr is in a financial position to out-lawyer what any of us could afford."

Others wonder about his ultimate motives. "I got the feeling this was not really about logging," said Defibaugh, "because the property was logged some years back and they came out over Henley's orchard, and I was wondering why they couldn't use that same right of way now. If his goal is to divide the property up and to sell it off, then he'd need more than one access road, so I had the feeling he was trying to gain multiple access roads so the county would allow him to divide it up."

Carr says the much longer Henley right-of-way was not viable for this project. "The eastern route through Henley forest would have been way too far to go for this harvest," he said. "It's much farther to get to the staging site [along the property's southern edge], and that road would have to be cleared of fallen trees and washouts." Though his 300-acre property is currently listed for sale at over \$1 million, a housing development there is not in the cards because the whole parcel is in a permanent VDOF conservation easement.

"It's a pretty mountain, and we've enjoyed having it and have spent a lot of time hiking it," said Carr. After sixty years on Bucks Elbow, he says he is mindful of neighbors' concerns but resolute about the validity of his rights to access his property. "We have three deeded rights of way to the land that I own," he said. "It is what it is."

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*These days we may look a little differently,
but we still need GOD and each other.*



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Dick Woods Project Tests Limits of Farm Winery Rules

June 5, 2020



Hillcrest Vineyard and Winery, under construction in western Albemarle county. Photo: Malcolm Andrews.

A new “farm winery” is under construction in western Albemarle, one of more than two dozen of the popular agritourism destinations already studding the county. Dubbed Hillcrest Vineyard and Winery, perched atop Turk Mountain on Dick Woods Road in Afton, the project has been underway for over a year with few publicly available details. As Hillcrest’s plans finally begin to take shape both on the ground and in required county filings, the property’s neighbors are unsettled by what they’ve seen so far.

“It’s very disturbing that the nature of the entire mountaintop, a big wildlife habitat covered in trees, was utterly changed in the blink of an eye,” said

Alice Scruby, 30-year Dick Woods Road resident. Hillcrest's nearest neighbors have been taken aback by the sheer scale of the project, from the extensive clearcutting and flattening of the property's topography to the massive stone buildings that now overlook the valley below.

"I don't think the project is consistent with an agricultural/forestal district designation," added Scruby's husband, Timothy. "They should be rezoning that property and the owner should have to get permission from the Board of Supervisors. It's clearly a commercial enterprise."



The tasting building under construction at Hillcrest Vineyard and Winery on Dick Woods Road in Afton. Submitted photo.

Little is known about the owner of Afton's newest vineyard. In February of 2018, a real estate company called Augusta Professional Park, LLC bought two parcels totalling of 167 acres for \$4 million. Augusta Professional Park is owned by Michael McGinnis, Jr., who is president of Innovative Refrigeration Systems, Inc., headquartered in Lyndhurst, and whose wife owns Little

North Mountain Vineyard in Swoope. Mr. McGinnis did not respond to multiple requests for an interview for this story.

Hoping for not awful

Crews began clearing land in 2018 and planted a few grapevines in the spring of 2019, and local residents assumed it would be another vineyard in the vein of Pollack or Cardinal Point, or even the small, family-owned Turk Mountain vineyard next door. Hillcrest's neighbors have an independent streak—they appreciate the beauty and simplicity of rural living and are quick to defend property rights. When the new winery began cutting down trees and laying foundations, some locals emailed county officials to check the rules, but they understood that agricultural regulations allow wide latitude for farm wineries.

"We concluded there was nothing to be done," said neighbor Don Fender, who can see the Hillcrest tasting room building from his porch, "and we hoped it wouldn't be awful." But problems began to arise, and they were hard to ignore.

"In February of 2019 they started clearcutting on the east side of the property, working their way from Dick Woods Road up to the ridgeline," said Fender. "They hauled dirt from that site [the eventual location of the wine processing center] for months on end, and the dump trucks were just destroying the road. There was no attempt at all to control the runoff." Smaller waterways such as Stockton Mill and Andersons Creek filled with silt, spilling into the roads in a muddy mess. VDOT officials told Fender that as long as they were within the appropriate weight limit, those trucks could roll.

After dozens of acres of mountaintop and critical slopes were clearcut, nearby Ortman Road resident Leah Stearns filed a complaint in May with Virginia's Department of Environmental Quality (DEQ) about the water issues, which included large-scale erosion problems, the damming of

streams, and bulldozers running back and forth through creeks. A DEQ representative agreed to inspect the site but noted in his response that “[t]he clearing of timber/forest for the purposes of planting and growing grapes or viticulture is exempt from both erosion and sediment control and stormwater management regulations.”

The construction of two buildings—a 7,200 square foot tasting room and a 9,000 square foot event venue, each three stories tall—began in the fall of 2019. “When they started building the venue space, I called the county and left a complaint, noting there were no building permits filed and a significant erosion problem,” said Ginny DeVries, whose property borders Hillcrest at the top of the mountain. “When the county called back four weeks later, they said they couldn’t do anything about it. That’s what I’ve realized in all of this—there’s really nobody in charge of any of it.”

Agriculture creep

Though state laws and guidance dictate much of the regulation of modern rural wineries, counties do have some leeway to tailor local zoning ordinances to control growth. To understand the Hillcrest Vineyard neighbors’ frustrations, one must first recognize the set of broadly defined and sometimes ambiguous rules that govern farm wineries, breweries, and distilleries in Virginia.

Albemarle county defines a “farm building” as a non-residential structure that is used to store, produce, or sell farm products, animals, or equipment. The state of Virginia allows a licensed “farm winery” to use its farm buildings to sell wine to the public, and has loosened permitting and regulatory requirements so that farmers face fewer obstacles than purely commercial enterprises do in getting their wares to buyers. In recent years, large stand-alone “event venues” on vineyard properties have been swept into the category of farm buildings, though observers question how such venues qualify under the county’s stated definition or original intent for farm structures.



Tim and Alice Scruby, Dick Woods Road residents and neighbors to Hillcrest Vineyard and Winery. Photo: Lisa Martin.

Alice Scruby pointed to the looming buildings at Hillcrest as an example of a clear category error. "It seems to us that the spirit of these regulations was to help preserve existing or even new farm operations that were truly community farms, family farms," she said, "but this is a multimillion-dollar corporate effort. I'm a property rights advocate, but this is beyond the pale. The scope is inappropriate for such a rural road and neighborhood, and it's going to have a life-altering impact on neighbors."

Farm wineries are allowed to offer tastings and sell their products by right, but they need a county zoning clearance to hold events on the property if there will be more than 50 vehicle trips per day or outdoor amplified music at the events. The right to hold large events with more than 200 people in attendance requires a Special Use Permit from the county Board of Supervisors. Hillcrest is not currently asking to go beyond the 200-person limit, but under either type of permit a farm winery may hold an unlimited

number of events per year in any of its buildings.

Basic safety



Dick Woods Road at its western end is a narrow track, partly paved before transitioning to gravel, both hilly and curvy as it passes Hillcrest. “My number one concern [about the vineyard project] is neighborhood safety,” said Fender. “I’ve already concluded that I can no longer walk or ride my bicycle or walk my dog between our house and Rt. 151—that’ll be gone for all of us.” Neighbors say the road is already tricky to negotiate when two SUV’s try to pass each other or when the school bus is running its route. Now they worry about intoxicated drivers from the winery trying to navigate unfamiliar country roads, especially given the limited sight lines at the Hillcrest entrance.

DeVries, who among all of the neighbors is closest to the event venue, said her concerns run the gamut. “I am worried about noise, light pollution, water pollution, and running out of water,” she said. “We’re on a well here. If they get a permit like at Veritas [a nearby Afton winery], how will that work? Veritas has thousands of people over there for Starry Nights.”

While Veritas is in Nelson county and is thus subject to different ordinances, Albemarle zoning officials have confirmed that there is nothing stopping Hillcrest from allowing many more than 200 visitors to assemble in and around its tasting room, which would not count as an “event” if people are not in the event space proper. The county’s required zoning clearance only limits attendance at “events,” and the normal business of the winery (such as tastings) does not factor into that limit.



Hillcrest Vineyard and Winery, under construction in western Albemarle county. Photo: Malcolm Andrews.

As if anticipating this potential loophole, a Hillcrest project manager inquired (in publicly available county correspondence) whether the winery might, for instance, host 200 people at an event in the venue space and another 100 in the tasting room simultaneously, and principal planner Rebecca Ragsdale replied that it could.

Now that the immense scale of the project is clear, DeVries also wonders about basic safety. “My biggest concern moving forward is that these enormous buildings don’t have to be regulated as normal buildings—they don’t have to have an appropriate number of exits, sprinkler systems, fire alarms, or to be within a certain distance of fire hydrants. If there’s a fire in the kitchen of the entertainment hall with 200 people in there, that could be a serious problem.”

In fact, none of the usual state-mandated building inspections—intended to check things like the structure’s concrete footings, foundation integrity, and

electrical, mechanical, plumbing, and fire safety—are required for the event space since the county considers it a farm building. Farm buildings are exempt from regulation by the Virginia Uniform Statewide Building Code, so they require neither USBC building inspections nor a Certificate of Occupancy.

In an unusual move, Hillcrest is operating as its own contractor, using Innovative Refrigeration Systems equipment and employees for construction. There's no specific limit on how big a building can be, nor how many can be constructed on the property, as long as they comply with erosion and water protection and setback rules. Hillcrest submitted building applications to the county in mid-April of 2020, more than six months after beginning construction and only after neighbors began asking pointed questions of county officials.

A 2018 committee convened by the Virginia General Assembly reviewed whether a special, commercial-type building code ought to be applied to "agritourism enterprises" such as event venues (separate from other farm buildings), but the group failed to provide clarity on the issue. The committee was unable to reach even a consensus on a definition of a "farm structure that is used for public gatherings," and expressed concern that the cost of complying with commercial building codes may be prohibitive for most Virginia farms. They recommended that stakeholder group discussions continue in the future.

A good neighbor

Beyond the land disturbances, neighbors are most put off by Hillcrest's lack of transparency and apparent disregard for the rules. "What really bothers us is that they started doing all this building with no permitting and no communication to the neighbors whatsoever," said Fender's wife, Katherine. "Why not make a flyer and stick in the mailboxes, saying 'hello, this is our plan,' and then maybe we would have been less anxious about it." As recent county filings have been made public, local residents have learned snippets

of new information such as a plan for a 25- to 50- foot tall water tower to be built on the mountaintop next to the tasting room, and the mention, in passing, that the property intends to be called Hazy Mountain Vineyard instead of Hillcrest.



Hillcrest Vineyard and Winery, under construction in western Albemarle county. The tasting building is in the center, the event venue to the right. Photo: Malcolm Andrews.

Stearns has served as voluntary point person to convey news and research with other neighbors of the Hillcrest project. “The reason I got involved is because I was seeing a certain irreverence for the process,” she said. She checked county records early on and learned that permits had not been filed for some of the buildings already under construction, and she read neighbors’ concerns on social media about creek runoff and erosion from clearcutting.

“I know that growth is inevitable, but when I went over [to the property] in April I was horrified,” she said. “I knew I had to do something.” After she

consulted with local land use attorney Maynard Sipe, Sipe launched a petition on Change.org calling for the Alcoholic Beverage Commission to deny Hillcrest's February 2020 application for a brewery license (on top of the winery license they already hold). The petition has garnered over 300 signatures so far, and Sipe has filed a formal objection to the ABC on behalf of a specific resident as well.

"Maybe if this owner turns out to be a good neighbor, maybe in a couple of years this community would consider whether we can tolerate a brewery up there," said Tim Scruby, "but so far it doesn't inspire confidence."

Stearns hopes that lessons learned from Hillcrest might help the next community facing this problem. "We might be able to temper [the Hillcrest project] somewhat, but the larger issue of broadly written farm winery rules needs to be examined because it's out of control," she said. "State-supported agriculture is a great, strong, good thing, but the regulations for it should not be bent into obviating or circumventing the permitting, inspection, and regulation processes for commercial endeavors. Event spaces appear to be commercial, not agricultural."

Addendum: Board of Supervisors White Hall representative Ann Mallek's comments regarding the Hillcrest Vineyard and Winery development: *The County staff has been engaged from the first neighbors' complaints to explain to the owners about their responsibilities and to explain to the neighbors the areas of exemption. Under current Virginia law, agricultural practices such as timbering or laying out new vineyards are exempt from local permits and jurisdiction but must abide by rules of erosion and sedimentation control overseen by the Department of Forestry (DOF), Virginia Department of Agriculture and Consumer Services (VDACS), and the Department of Environmental Quality (DEQ). Buildings used for the agricultural operation are also exempt from the building code at this time, but are not exempt from Virginia Stormwater Management Program permitting with the County and DEQ. There may also be applicable zoning*

regulations that apply.



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