

CLARKE COUNTY
Conservation Easement Authority
THURSDAY – 20 JULY 2017 – 10:00 AM
A/B Conference Room, 2nd Floor Government Center
AGENDA

1. Approval of Agenda
2. Approval of Minutes of the meetings of 29 June 2017
3. Bank Account balances
4. Campaign for the Authority
5. Review of revised deed template
6. Easement Donation/Purchase
 - a. Arden – easement donation – final approval
 - b. Armbrust – easement donation – final approval
 - c. Greenhalgh – DUR purchase – Fairfield
7. Report on Applications for Easement Purchase
 - a. *Possible Closed Session to discuss real estate*
 - b. *Motion to go into Closed Session pursuant to Section 2.2-3711-A3 of the Code of Virginia, as amended, to discuss the Acquisition or Sale of Property and Section 2.2-3711(A)(7) for consultation with legal counsel regarding specific legal matters requiring the providing of legal advice.*
8. Adjournment - next meeting – Thursday August 17th 10 am

CLARKE COUNTY
Conservation Easement Authority
draft Minutes – 29 June 2017 draft

A regular meeting of the Conservation Easement Authority was held at 10:00 am on Thursday, 29 June 2017, in the A/B Conference Room, 2nd Floor Government Center.

Present: R. Buckley, W. Thomas, M. Jones, L. Wallace, G. Ohrstrom
Absent: B. Byrd, P. Engel
Staff: A. Teetor, R. Couch Cardillo

Agenda On motion of Mr. Ohrstrom, seconded by Ms. Wallace, the Authority unanimously approved the agenda with the addition of a new easement donation application from Linda Armbrust.

Minutes On motion of Ms. Thomas, seconded by Ms. Jones, the Authority unanimously voted to approve the minutes of May 25, 2017.

Bank Account: Ms. Teetor handed out the spreadsheets and reviewed the expenditures. Current fund balances show a total fund balance of \$234,440 consisting of \$65,643 in the donations account, \$96,542 in stewardship, and \$72,256 in local funds. No expenses were incurred in June.

Public Relations: Ms. Cardillo updated members on the number of donations in 2017 stating that \$7,174 has been donated by 66 donors to date. Regarding the Donor Reception, she felt everyone had a good time. Members agreed and added that the craft beer was a great addition. Ms. Jones reported that one person was disappointed that there was not an auction for individual flowers. Members agreed that auctioning in bulk or by silent auction was easier and not as time consuming. Ms. Cardillo then discussed the recent Winchester Star article regarding the Economic Development Advisory Committee initiative. She asked members if they thought the Authority should reach out to the Chair, John Milleson, to see if they would be interested in having the Authority as a resource to discuss the land conservation mission. Mr. Ohrstrom agreed to reach out to Mr. Milleson. Another outreach idea was to sit down with David Lillard, editor of the Observer to establish a communication channel again utilizing the Authority as a resource for information on land conservation. Mr. Ohrstrom will ask Mr. Lillard if he would like to meet with a couple of members over coffee, as Mr. Lillard works for the Downstream Project.

Discussion

Report on Easement Inspections Ms. Teetor reported that the summer interns have been conducting inspections since May. A report detailing their progress is included in the packet. They estimate that they will complete the inspections by the end of July.

Easement Donation/Purchase

a. Arden - Frances Arden has applied to the easement authority for approval of an easement donation. The property is located on the west side of Old Chapel Road approximately 4/10 of a mile south of the intersection with Browntown Road. The property currently consists of two parcels Tax Map# 21-A-46, 10.47 acres, that has an existing house constructed in 1900 and 0 DURs, and Tax Map# 21-A-46A, 8.1 acres, vacant, with 1 DUR. The applicant proposes to merge the 2 parcels and retire the 1

remaining DUR. The property meets 2 of the 4 criteria. The property resource score is 55.5. The applicant would retire the remaining DUR. It is not next to an existing easement and it is less than 40 acres. Points were given for retiring 1 DUR, have frontage on the railroad, being within the Prospect Hill Spring drainage basin, and having a structure that is potentially contributing to a rural historic district. On motion of Mr. Ohrstrom, seconded by Ms. Thomas the Authority gave preliminary approval and asked staff to schedule a site visit.

b. Arkfeld - Eric Arkfeld, owner Opequon Cattle Company has applied to the easement authority for approval of an easement purchase using grant funds. The property is located at the very northwest tip of the County in the 2,500 block of Swimley Road. The property is identified by Tax Map# 1-A-1. It is vacant and consists of 154 acres with 5 DUR's. The primary use is for grazing and hay production. The applicant proposes to retire 4 of the 5 remaining DURs. The property meets all of the 4 criteria. The property resource score is 68.29. The applicant would retire 4 of the 5 remaining DURs. It is next to 2 existing easements and it is more than 40 acres. Points were given for retiring 4 DURs, and having frontage on the Opequon Creek. Potential grant opportunities include ALE (formally FRPP) federal, and the Virginia Land Conservation Fund (state). Although this is a desirable property it may be weak for the grant applications as typically ALE requires 50% important farmland soils and this property only has 13%. On motion of Ms. Wallace, seconded by Ms. Thomas members gave preliminary approval and authorized staff to apply for the grants. A site visit will be completed if grants are approved.

c. Estep - Marilyn Estep has applied for an easement donation. The property is located on the south side of Briggs Road approximately 4/10 of a mile east of the intersection with Bishop Meade Road. The parcel is identified as Tax Map# 22-A-42 and consists of 29 acres, with 1 existing house and 2 DURs. The property meets 3 of the 4 criteria. The property resource score is 68.36. The applicant would retire both of the remaining DUR's. It is next to an existing easement. It is under 40 acres. Points were given for retiring 2 DURs, have frontage on a perennial stream, Chapel Run, and the property has been in the family for more than 50 years. On motion of Ms. Wallace, seconded by Mr. Ohrstrom the Authority gave final approval and asked staff to see if the applicant would consider keeping 1 DUR.

d. Elrod - Application for Easement Donation – Warrick & Andrea Elrod have applied for an easement donation. The property is located on the south side of Harry Byrd Highway (Route 7) at 420 Rock Hall Farm Lane. The parcel is identified as Tax Map# 6-A-27 and consists of 78.65 acres, with 1 existing dwelling and 1 DUR. The applicant would retain the remaining DUR and would like to subdivide one lot of approximately 15 acres. Staff reported that Mr. Elrod is obtaining an appraisal and is planning to move forward with the easement.

e. Desrosiers/Eagley – Ms. Teetor reported that Mr. Desrosiers called and stated that the tax benefits for donating an easement were not as much as he had anticipated and he withdrew their application.

f. Greenhalgh – Fairfield – Ms. Teetor reported that Mr. Greenhalgh has submitted an application for a DUR purchase on Fairfield. The property is located on the east side of Lord Fairfax Highway (Route 34) approximately 1 mile south of the West Virginia line. The parcel is identified as Tax Map# 9-3-1B and consists of 35.87 acres, with 4 exemptions and 2 DURs. As the property did not sell at auction, Mr. Greenhalgh called and stated that he would like to come in to discuss the terms of the draft deed.

g. Armbrust - Linda Armbrust has applied to the easement authority for approval of an easement donation. The parcel consists of 18.9 acres located on the north side of Pyletown Road (Route 620) just east of her property located at 1886 Pyletown Road approximately 1.8 miles west of the intersection of Pyletown Road and Route 340. The property has two (2) unused Dwelling Unit Rights (DUR)s, and is vacant. The applicant would like to retire one DUR. In reviewing the parcel, at three of 4 criteria have been met. The Property Resource Score is 66.93, one DUR is being extinguished, it is next to an existing easement, it is less than 40 acres in size. The parcel is open pasture and used for grazing and hay production. It is within the groundwater recharge area and the Prospect Hill Spring drainage. The parcel has frontage on Pyletown Road, a State scenic byway for 900'. The parcel is within the Chapel Rural Historic District.

Other Ms. Wallace stated that due to family obligations in various parts of the US she is resigning her position on the Authority effective after the July meeting. Members expressed their regret at having her leave and thanked her for her tremendous contribution to the Authority.

Adjournment There being no further business, Mr. Ohrstrom moved and Ms. Thomas seconded that the Authority adjourn to the next meeting is scheduled for Thursday July 20th at 10:00 am. The motion was approved unanimously.

Randy Buckley, Chair

Alison Teetor, Clerk to the Authority

JAS - B Bennett
 Through 06/30/2017 - FY17 Books still open for adjusting entries
Fund 235 - Conservation Easement Balances

	Total Fund Balance	Donations	Stewardship Account	Local Funds
EYOY 2016				
Fiscal Year 2017	259,959	161,083	86,478	12,398
July Rev/AR		400	33	0
July Exps/AP		-50	0	0
Aug Rev/AR		1,340	33	-8,248
Aug Exps/AP		-2,115	-2,160	82,427
Sept Rev/AR		714	32	-208
Sept Exps/AP		-1,949	0	-81,020
Sept Exp Moore & Dorsey Inc purchase		-81,020	0	1,589
Oct Rev/AR		432	12,093	-453
Oct Exps/AP		-2,258	0	4,456
Nov Rev/AR		1,025	32	-3,310
Nov Exps/AP		-2,080	0	147,822
Dec Rev/AR		5,516	0	-2,195
Dec Exps/AP		-1,762	0	-138,670
Dec Exp Susan Digges & Digges Farm purchase		-32,225	0	309,302
Jan Rev/AR		19,499	0	-605
Jan Exps/AP		-1,560	0	-311,262
Jan Exp Cool Spring Farm purchase		-5,738	0	400
Feb Rev/AR		9,165	0	-1,073
Feb Exps/AP		-1,995	0	58,095
Mar Rev/AR		2,150	0	-415
Mar Exps/AP		-2,929	0	2,823
Apr Rev/AR		1,278	0	0
Apr Exps/AP		-1,309	0	690
May Rev/AR		1,241	0	-290
May Exps/AP		-1,311	0	-373
June Rev/AR		2,220	0	
June Exps/AP		-4,417	0	
YTD Rev/AR	664,809	44,981	12,223	607,605
YTD Exps/AP	692,997	142,718	2,160	548,120
Adjustments	0			
YTD FUND BALANCE (AR & AP)	231,771	63,346	96,542	71,883

Anticipated Easement Closings:

- Moore & Dorsey Inc (Approp 07/2016)-CLOSED-Actual EXPS above
- Cool Spring Farm, Mike Cassidy-CLOSED-Actual EXPS above
- Digges Farm LLC -CLOSED- Actual EXPS above
- Susan Digges -CLOSED- Actual EXPS above
- Bill & Jane Johnston-Estimated

ESTIMATED YTD BALANCE

231,771

63,346

96,542

71,883

100,859.52 AVAILABLE Estimated YTD BALANCE-VDACS

Brenda Bennett:
 Accts Rec for Moore & Dorsey easements (VDACS), Rec'd 12/21/16

Brenda Bennett:
 Land Use rollback tax

Brenda Bennett:
 Land Use rollback tax

Clarke County:
 Land Use rollback tax - \$8,097
 Accts Rec for Digges Farm- \$20,084.50 -Rec'd 01/2017
 Accts Rec for Digges Farm-70,250.00-Rec'd 3/2017
 Accts Rec for Susan Digges- \$12,140.50-Rec'd 01/2017
 Accts Rec for Susan Digges-\$37,250.00-Rec'd 03/2017

Clarke County:
 Land Use rollback tax - \$3,927
 Land Use rollback tax for Cool Spring Farm - \$305,375-Rec'd \$126,125 03/2017, Rec'd \$179,250 3/21/17

Clarke County:
 Land Use rollback tax - \$400

Clarke County:
 Land Use rollback tax=500+42,946.24+4648.44
 Transfer from general fund-\$10,000

Clarke County:
 Land Use rollback tax=-2,823

Clarke County:
 Land Use rollback tax=690

VDACS

- 101,322.82 Expires 12/31/2016 (FY2015)
- 42,319.18 Expires 12/31/2017 (FY2016)
- 86,950.00 Expires 12/31/2018 (FY2017)
- 230,592.00**
- 82,427.48
- 0.00
- 20,084.50
- 12,140.50
- 15,080.00 estimated

JAS - B Bennett
 Through 06/30/2017 - FY17 Books still open for adjusting entries

	Local Funds	Actual Expenses	Appropriated Balance	Remaining
FY16 Expenditure Appropriations				
General Expenses	30,000	43,062	-13,062	
Moore & Dorsey Inc - closed in Sept	160,000	162,040	-2,040	
Cool Springs - closed in Jan	317,100	317,000	100	
Susan Digges - closed in Dec	70,500	65,010	5,490	
Digges Farm - closed in Dec	111,375	105,885	5,490	
Bill & Jane Johnston - Estimated	30,160		30,160	
	719,135	692,997	26,138	

Clarke County:
 includes expenses not specifically designated to an easement (including stewardship and monthly Hall, Monahan invoices)

Conservation Easement Expense Detail - FY17

	Donations	Stewardship	Local Funds
JULY			
	25.00 Downstream Project-Domain Reg/Renewal		
	25.00 Downstream Project-Domain Reg/Renewal		
	50.00		
AUGUST			
	9.08 Pitney Bowes		
	450.00 Gloria Marconi-Summer '16 Newsletter		
	640.00 Robin Cardillo-Svcs for CEA		
	300.00 Clarke Co Rulian-Fair Sponsorship	2,000.00 M. McGuigan-Inspection	447.50 Hall, Monahan-Legal Svcs July 2016
	580.00 Winchester Printers-Envelopes	45.90 M. McGuigan-Mileage	3,000.00 Myers & Woods-Apprsl rpt-Cool Springs Farm
	136.00 Winchester Printers-CCEA Banner	113.94 M. McGuigan-Mileage	Dunn Land Surveys-Boundary Srvy Cool Springs
	2,115.08	2,159.84	1,800.00 Boykin Realty Appraisal-Cool Springs Farm
SEPT			
	946.63 Robin Cardillo-Svcs for CEA		207.50 Hall, Monahan-Legal Svcs Aug 2016
	1,002.73 Winchester Printers-Newsletter & postage		81,020.00 Hall Monahan -Moore & Dorsey, Inc Purchase
	81,020.00 Hall Monahan -Moore & Dorsey, Inc Purchase		81,227.50
	82,969.36	0.00	
OCT			
	20.20 Postage		452.50 Hall, Monahan-Legal Svcs Aug 2016
	1,000.00 Donation to CCHS		
	720.00 Robin Cardillo-Svcs for CEA		
	68.00 Winchester Printers-CCEA Banner		
	450.00 Gloria Marconi-Fall '16 Newsletter		
	2,258.20	0	452.50
NOV			
	790.04 BMS Direct - Fall Newsletter 2016		2,815.00 Hall, Monahan-Legal Svcs Oct 2016
	1,290.00 Robin Cardillo-Svcs for CEA		495.00 Maral Kaliban-Grnwy Court Consulting Svcs
	2,080.04	0	3,310.00
DEC			
	200.00 Gloria Marconi - End of Yr appeal letter		365.00 Hall, Monahan-Legal Svcs Nov 2016
	439.75 BB&T - PA & CEA Items		300.00 Dunn Land Surveys-Susan Digges property
	68.00 Winchester Printers-CCEA Banner		1,530.00 Hall, Monahan-Legal Svcs Dec 2016
	1,054.10 Robin Couch Cardillo-End of Yr appeal svcs		2,195.00 sub-total
	1,761.85 sub-total		52,869.50 Hall, Monahan, Engle-Susan Digges purchase
	12,140.50 Hall, Monahan, Engle-Susan Digges purchase		85,800.50 Hall, Monahan-Digges Farm purchase
	20,084.50 Hall, Monahan-Digges Farm purchase		140,865.00
	33,986.85	0	
JAN			
	823.72 Winchester Printers-2016 Annual Appeal ltr		
	16.02 Postage		
	720.00 Robin Couch Cardillo-Services for CEA		605.00 Maral Kaliban-Greenway Court
	1,559.74 sub-total		311,262.00 Hall, Monahan, Engle-Cool Spring Farm purchase
	5,738.00 Hall, Monahan, Engle-Cool Spring Farm purchase		311,867.00
	7,297.74	0	
FEB			
	1,413.62 Robin Couch Cardillo-Services for CEA		1,072.50 Hall, Monahan-Legal Svcs Jan 2017
	35.00 Crown Trophy - Engraved Plate		
	546.44 BB&T - Services for CEA		1,072.50
	1,995.06	0	
MAR			
	450.00 Gloria Marconi - Winter Newsletter		
	720.00 Robin Couch Cardillo-Services for CEA		
	63.17 BB&T - Services for CEA		
	25.00 Downstream Pjt - Domain Name Reg.		
	445.00 Winchester Printers-Remittance envelopes		
	215.00 Winchester Printers - Envelopes		
	1,011.10 Winchester Printers - Svcs for CEA newsletter		415.00 Hall, Monahan-Legal Svcs Feb 2017
	2,929.27	0	415.00
APR			
	560.00 Robin Couch Cardillo-Services for CEA		
	250.00 Northern Virginia Conservation Trust		
	450.00 Gloria Marconi - CEA Srng Newsletter 2017		
	48.50 Purchase Power - postage		
	1,308.50	0	0.00
MAY			
	1,301.07 Robin Couch Cardillo-Services for CEA		290.00 Hall, Monahan-Legal Svcs Mar & Apr 2017
	9.73 Postage		
	1,310.80	0	290.00
JUNE			
	847.25 BMS Direct - CEA Services		
	1024.02 Robin Couch Cardillo-Services for CEA		
	202.25 BB&T - HPC Awards Luncheon		
	2,015.00 Jordan Springs Market-Catering for CEA Reception		
	216.24 Robin Couch Cardillo-Services for CEA		
	86.92 Robin Couch Cardillo-Services for CEA		
	25.00 Downstream Pjt -Domain name renewal		372.50 Hall, Monahan-Legal Svcs May thru June 2017
	4,416.68	0	372.50
YTD Totals	142,718	2,160	548,120



R O B I N C O U C H C A R D I L L O

July 14, 2017

Clarke County Conservation Easement Authority
Fundraising and Public Relations Report
July 2017 meeting

Donor Statistics

See attached Master Report

- 2017 total: \$8,494 from 78 donors

Ongoing

- *Clarke County's Economic Development Advisory Committee's initiative*

- Any update on outreach to committee?

- *Media outreach*

- Update: A sit-down with *The Observer* –Planning background meeting with Editor David Lillard; probably late July, when David returns from vacation

- *Summer newsletter*

- In the works; will go out early August

- *Donor cultivation*

- Planning a series of “coffees” with supporters; inviting 5-6 donors periodically for informal coffee chats (probably at Cordial Coffee)
- Gives supporters opportunity to hear goals/work of Authority, chance to ask questions and provide leads to other landowners; builds donor relationships
- Coffees to begin in September

Fundraising Results: Clarke County Conservation Easement Authority

As of July 14, 2017

	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Amount	\$13,345	\$19,090	\$20,871	\$25,649	\$26,396	\$25,843	\$23,530	\$42,266	\$36,260	\$57,356.00	\$24,778.00	\$8,494.00
# Donations	115	161	208	209	203	195	181	200	169	158	164	78
YE Donor Appeal	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
YE Donor Appeal Amount	\$8,465	\$8,310	\$8,477	\$10,134	\$8,376	\$12,815	\$7,250	\$15,706	\$17,635	\$47,003	\$15,665	
Donor Respondents	73	59	87	86	76	68	50	69	51	61	47	
YE Prospect Amount	\$2,115	\$2,115	\$425				\$40		\$1,650	\$104	\$25	
Prospect Respondents	24	24	7				1		3	2	1	
Winter Newsletter	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Dollar Amount	\$2,700	\$2,700	\$2,074	\$5,820	\$2,810	\$2,520	\$3,415	\$1,975	\$3,705	\$3,420	\$2,725	\$2,585
Respondents	23	19	19	38	26	27	32	28	26	27	19	20
Spring Newsletter	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Donor: Dollar Amount	\$3,775	\$455	\$2,074	\$5,820	\$2,810	\$2,520	\$3,415	\$1,975	\$3,705	\$3,420	\$2,725	\$2,585
Donor: Respondents	35	5	19	38	26	27	32	28	26	27	19	20
Donor: Spring Newsletter: Dollar Amt	\$2,200	\$2,200	\$940	\$460	\$450	\$825	\$765	\$165	\$1,380	\$100	\$75	\$1,050
Donor: Spring Newsletter: Respondents	16	16	19	10	4	11	5	4	9	1	3	7
Summer Newsletter	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Dollar Amount	\$2,370	\$2,370	\$2,020	\$1,330	\$1,883	\$2,735	\$1,580	\$5,040	\$3,215	\$1,927	\$2,115	
Respondents	20	20	27	22	33	26	21	22	27	22	28	
Fall Newsletter	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Donor: Dollar Amount	\$2,210	\$2,210	\$765	\$260	\$7,300	\$2,946	\$4,630	\$2,660	\$2,325	\$1,250	\$600	
Donor: Respondents	12	12	5	7	25	26	30	27	14	3	6	
Taxpayer Fall Newsletter Dollar Amt	\$1,430	\$1,430	\$90	\$1,405	\$65	\$605	\$715	\$240	\$760		\$325	
Taxpayer Fall Newsletter: Respondents	25	25	4	8	2	8	9	5	5		5	
Over the Transom	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Dollar Amount	\$3,380	\$3,380	\$3,380	\$4,175	\$1,900	\$868	\$1,457	10,500	\$1,550	\$257	\$362	\$1,230.00
Donor Respondents	17	17	17	11	5	6	2	2	2	3	12	6
Donor Thank-You Party	2006											
Dollar Amount	\$1,105											
Donor Respondents	6											
Photo Revenue					\$747	\$57	\$67			\$	\$	\$104
Notecards												
Gift-in-Kind (admin work donated by Kate Petranek)						\$346	\$473	\$469				

Prepared by and return to:

Robert T. Mitchell, Jr., Esquire
P. O. Box 848
Winchester, VA 22604-0848

TAX MAP NO: _____

Exempt from recordation taxes under Virginia Code §58.1-801
pursuant to §58.1-811 (A)(3)

DEED [OF GIFT] OF EASEMENT

THIS DEED [OF GIFT] OF EASEMENT (“this Easement”), dated the ___ day of _____, 2____, by and between _____, ([collectively] “Grantor”); the COUNTY OF CLARKE, VIRGINIA, (“County”), the CLARKE COUNTY CONSERVATION EASEMENT AUTHORITY (“Authority”), and, _____ (“_____“), (collectively, “Grantee”), parties of the second part (the designations “Grantor” and “Grantee” refer to the Grantor and Grantee and their respective successors and assigns); _____ (if *lien*), (the “Bank”), party of the third part; and _____ and _____, Trustees (the “Trustees”) party of the fourth part.

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of real property situated on _____ (road or highway) in Clarke County, Virginia, containing in the aggregate _____ acres as further described in attached SCHEDULE A (the “Property”), and desires to give and convey to Grantee a perpetual conservation and open-space easement over the Property; and

WHEREAS, the County and the Authority are authorized by the Open-Space Land Act to accept, hold, and administer open-space easements and possess the authority to accept and are willing to accept this easement under the terms and conditions hereinafter set forth; and

WHEREAS, Chapter 461 of the Acts of 1966, codified in Chapter 17, Title 10.1, Section 10.1-1700 through 10.1-1705 of the Code of Virginia, as amended (the “Open-Space Land Act”), declares that the preservation of open-space land serves a public purpose by the following: curbing urban sprawl, preventing the spread of urban blight and deterioration, and encouraging more economic and desirable urban development; helping provide or preserve necessary park, recreational, historic, and scenic areas, conserving land and other natural resources; and authorizing the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land; and

WHEREAS, pursuant to Sections 10.1-1700 and 10.1-1703 of the Open-Space Land Act, the purposes of this Easement include retaining and protecting open-space and natural resource values of the Property, and limiting division, residential construction, and commercial and industrial uses contained in Section II, ensuring that the Property will remain perpetually available for agriculture, livestock production, forest or open-space use, all as more particularly set forth below; and

WHEREAS, this Easement is granted “exclusively for conservation purposes” under IRC §170(h)(1)(C) because it effects “the preservation of open space (including farmland and forest land)” under IRC 170(h)(4)(A)(iii). Specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies and will yield a significant public benefit; and

WHEREAS, this open-space easement in gross constitutes a restriction granted in perpetuity on the use that may be made of the Property and is in furtherance of and pursuant to the clearly delineated governmental policies set forth below: *(Cite federal,*

state or local governmental policies that will be advanced by the preservation of the Property, and the public benefit of such preservation)

(i) Land conservation policies of the Commonwealth of Virginia as set forth in:

a. Section 1 of Article XI of the Constitution of Virginia, which states that it is the Commonwealth's policy to protect its atmosphere, lands, and waters from pollution, impairment, or destruction, for the benefit, enjoyment, and general welfare of the people of the Commonwealth;

b. The Open-Space Land Act cited above;

c. Chapter 18, of Title 10.1, Sections 10.1-1800 through 10.1-1804 of the Code of Virginia; *(if VOF a co-holder)*

d. The Virginia Land Conservation Incentives Act, Chapter 3 of Title 58.1, Sections 58.1-510 through 58.1-513 of the Code of Virginia, which supplements existing land conservation programs to further encourage the preservation and sustainability of the Commonwealth's unique natural resources, wildlife habitats, open spaces, and forest resources;

e. *(If applicable)* Chapter 32, of Title 58.1, §§58.1-3230 through 58.1-3244 of the Code of Virginia, which authorizes special use-value tax assessments for real estate devoted to agricultural, forestal, horticultural, and open-space use;

f. *(If applicable)* The Agricultural and Forestal Districts Act, Chapter 43 of Title 15.2, §§15.2-4300 through 15.2-4314 of the Code of Virginia, which encourages the conservation, protection, development, and improvement of agricultural and forestal lands for the production of food and other agricultural and forestal products and as valued natural and ecological resources that provide essential open spaces for clean air sheds, watershed protection, wildlife habitat, as well as for aesthetic purposes and as an economic and environmental resource of major importance.

g., h., i., etc. (any other applicable state policies); and

(ii) Land use policies of the County of Clarke as delineated in:

a. its Comprehensive Plan to which plan the restrictions set forth in this deed conform and that contain the following goals, objectives and strategies: to

“preserve and protect the agricultural, natural, and open-space character of unincorporated areas”, “encourage agricultural operations and productivity and ensure the preservation and availability of agricultural lands for the continued production of crops and livestock”, “preserve the natural beauty and protect the ecology of forested areas to ensure that development in those areas is in conformance with their environmental limitations”, and “protect natural resources, including soil, water, air, scenery, and fragile ecosystems”; and

b. its tax code, Article VII, 11-23 of the Clarke County Code, which specifically recognizes the importance of the continued preservation of the Property as open space, forestal, and agricultural land by providing special assessment of the Property for real property tax purposes; and

WHEREAS, at the time of execution of this Easement, the Property consists of _____ acres, more or less, and has allocated to it an aggregate of _____ () unused Dwelling Unit Rights (DURs) pursuant to Section 3-D-2 of the Clarke County Zoning Ordinance, and _____ () Exception[s] [] pursuant to Section 3-D-4. _____ () DURs and _____ () Exception[s] [] will remain with the Property; _____ () DURs are being terminated by the Grantor incidental to this Easement; and

WHEREAS, *(Cite here any other studies or plans that will be advanced by the Property’s preservation, conservation awards, or other recognition that the Property has received)*; and

WHEREAS, *(List here the particular conservation attributes of the Property and the public benefit they yield)*; and

WHEREAS, this Easement will yield significant public benefit to the citizens of the Commonwealth as set forth in Section I; and

WHEREAS, Grantor and Grantee desire to protect in perpetuity the conservation values of the Property as specified in Section I by restricting the use of the Property as set forth in Section II; and

WHEREAS, Grantee has determined that the restrictions set forth in Section II (the "Restrictions") will preserve and protect in perpetuity the conservation values of the Property, which values are reflected in Section I; and

WHEREAS, Grantee has determined that the Restrictions will limit use of the Property to those uses consistent with, and not adversely affecting, the conservation values of the Property and the governmental conservation policies furthered by the Easement; and

WHEREAS, Grantee, by acceptance of this Easement, designates the Property as property to be retained and used in perpetuity for the preservation and provision of open-space land pursuant to the Open-Space Land Act.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant, and convey to Grantee a conservation and open-space easement in gross (Easement) over, and the right in perpetuity to restrict the use of, the Property, the Property being more particularly described in SCHEDULE "A", which is attached hereto and made a part hereof, and consists of _____ acres located in _____Magisterial District, Clarke County, Virginia.

The Property is shown as Tax Map No. _____ among the land records of the County of Clarke, Virginia. Even if the Property consists of more than one parcel for real estate tax or any other purpose, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

SECTION I -PURPOSE

The conservation purpose of this Easement is to preserve land for (*State one or more from DCR criteria as applicable* – agricultural use, forestal use, natural habitat and biological diversity, historic preservation, natural resource based outdoor recreation or education, watershed preservation, preservation of scenic open space, or preservation of open space designated by local government) and to protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are its open-space (*and if applicable-* scenic, natural, historic, scientific or recreational) values and its values as land preserved for open-space and rural uses including agriculture, livestock production, and forestry (*In Section II add specific restrictions needed to provide protection for such values.*) The limitations on division, residential construction, and commercial and industrial uses contained in this Easement are to ensure that the Property will remain perpetually available for agricultural, forestal, and/or open-space uses as may be more particularly described herein. Grantor covenants that no acts or uses that are inconsistent with the conservation purposes of this Easement or the conservation values herein protected shall be conducted on the Property.

SECTION II – RESTRICTIONS

Restrictions are hereby imposed on the use of the Property pursuant to the public policies set forth above. The acts that Grantor covenants to do and not to do upon the Property, and the restrictions that Grantee is hereby entitled to enforce, are and shall be as follows:

- 2.1 DWELLING UNIT RIGHTS.** The Property currently has _____ () unused dwelling unit rights (DURs) pursuant to Section 3-D-2 of the Clarke County Zoning Ordinance, and _____ () Exception[s] pursuant to Section 3-D-4 of the Clarke County Zoning Ordinance. Pursuant to Section 3-D-3 of the Clarke County Zoning Ordinance, the Grantor does hereby voluntarily and permanently

terminate _____ () unused DURs on the Property, leaving _____ () unused DUR[s] and _____ () Exception[s] remaining on the Property.

2.2 DIVISION.

A. Division of the Property is prohibited. The Property shall not be sold, conveyed, or devised except as a whole. [*alternate where appropriate: See VOF guidelines: The Property shall not be divided into, or separately conveyed as, more than _____ parcels. Grantor shall give Grantee written notice prior to making any division of the Property. In the event of a division of the Property as provided in this Paragraph 2, the grantor making the conveyance retains the right to make any further permitted division(s) of the Property unless permitted divisions are allocated by that grantor in the instrument creating the division or other recorded instrument.*] For purposes of this Easement, division of the Property includes, but is not limited to, creating a subdivision plat, judicial partitioning of the Property, testamentary partitioning of the Property, or pledging for debt a portion of the Property.

B. Boundary line adjustments with adjoining parcels of land are permitted and shall not be considered separate conveyance of portions of the Property or divisions of the Property, provided that Grantee approves such adjustments, is made party to the deed creating the boundary line adjustment and the following conditions are met:

(i) The entire adjacent parcel is subject to a recorded open-space easement and any portion of the Property transferred and incorporated into the adjacent parcel remains expressly subject to the restrictions set forth in this Easement or a more restrictive conservation easement approved by Grantee; and

(ii) The proposed boundary line adjustment shall have been reviewed and approved in advance by the Authority.

C. Question: Do we want a paragraph that addresses road frontage (see para, 2,1 (iii) of VOF Template)?

2.3 BUILDINGS AND STRUCTURES.

A. No buildings or structures other than the following are permitted on the Property:

(i) _____ single-family dwelling(s), of which ____ exist(s) on the date of this Easement. Such dwellings except for the existing dwelling(s) shall not (“individually” if more than one) exceed 4,500 square feet of above-ground enclosed living area without Grantee’s prior review and written approval [*See Guidelines for guidance as to number of dwellings.*]; and

(ii) [_____] secondary dwelling(s), of which ____ exist(s) on the date of this Easement, not to exceed [600 square feet of above-ground enclosed, heated living space if no dwelling unit right is used] [2000 square feet of above-ground enclosed, heated living space if a dwelling unit right is used]; and

(iii) non-residential outbuildings and structures commonly and appropriately incidental to the dwellings permitted in subsections (i) and (ii) of this paragraph, and sized appropriately to serve as an amenity to single-family residential use, (*Optional addition: select one*) provided that the aggregate footprint of such nonresidential outbuildings and structures for each permitted dwelling shall not exceed 2500 square feet in ground area unless prior written approval shall have been obtained from Grantee that a larger footprint is permitted considering the purpose of this Easement and the scale of the proposed outbuilding or structure in relation to the surrounding area; and

(iv) **farm buildings or structures**, except that a farm building or farm structure exceeding 4,500 square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee, which 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. **For purposes of this subparagraph, a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in paragraph 2.4(i).** *This is part of the language that caused problems in Wetlands America case. The Court found this language*

and the later referenced language ambiguous and interpreted in favor of the property owner.

(v) Do we want to specifically address buildings for processing and sale of farm or forest products? See VOF Template at Section II.2(c).

B. *(If applicable)* In the event of division of the Property as provided in paragraph 1, permitted dwellings shall be allocated (between/among) the parcels in the instrument creating the division or other recorded instrument.

C. Grantor shall give Grantee 30 days' written notice before beginning construction or enlargement of any dwelling on the Property.

D. *[Add where appropriate: To protect the scenic values of the Property, no dwelling or other building shall be constructed within 200 feet of the _____ State Road, or above the _____ contour elevation, or within the designated no-build area shown on the sketch attached hereto as Exhibit ____.]*

E. Private roads and utilities to serve permitted buildings or structures, *(if applicable: private roads and utilities to parcels created by permitted divisions of the Property)*, private roads or driveways and access easements over same to serve adjacent properties, and roads with permeable surfaces for other permitted uses, such as farming or forestry, may be constructed and maintained, provided that such roads, driveways or easements have the prior written approval of the Grantee.- Public or private utilities whose construction and maintenance Grantee determines will not impair the Property's conservation values may be constructed and maintained if Grantee gives its prior written approval; provided, however, easements for the location of underground utilities are permitted pursuant to paragraph 2.10.

Questions: do we want to carve out utilities from above paragraph and have separate para. for utilities? Do we want to address alternative energy structures? See VOF Template Sections II.2(e) and (f).

Question: what about small scale structures? VOF Template Sections II.2(g).

F. The collective footprint of all buildings and structures on the Property, including parking areas (?) but excluding roads, shall not exceed 1% (*staff may recommend adjusting this percentage depending upon the characteristics of the Property*) of the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values protected herein, Grantee may approve such increase. For the purpose of this paragraph the collective footprint is the ground area measured in square feet of the structures set forth in subsections (i) through (iv) above and all other impervious surfaces, excluding roads. (*Addition where appropriate: In the event of division of the Property, the collective footprint of all structures and all other impervious surfaces on each parcel, including parking areas (?) but excluding roads, shall not exceed 1% of the total area of such parcel unless otherwise allocated either in the instrument of transfer or in other recorded instrument.*)

NB: the Court in the Wetlands America case permitted a parking lot of sufficient size to service the retail facility that was permitted. The Authority will need to make some policy recommendations on these types of uses of conservation properties. Are they permitted and if yes, are there any size restrictions other than the 1% footprint? I added parking lots to improvements that are restricted by the 1% footprint in this draft, but that might not be what the Authority ultimately decides.

2.4 INDUSTRIAL OR COMMERCIAL ACTIVITIES. Industrial or commercial activities other than the following are prohibited: ___

(i) **Agriculture**, livestock production (animal husbandry), equine activities, forestry, and related small-scale incidental commercial or industrial operations that Grantee approves in writing as being consistent with the conservation values of this Easement.;

(ii) **Processing and sale of products produced on the Property.**;

NB: Wetlands America case had same language in easement as highlighted above. Court interpreted this as permitting retail establishment to sell products grown or processed on the subject property and an adjacent property as well as parking lot. Policy decision needed on this...

(iii) **T**emporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property and that do not diminish the conservation values herein protected.;

(iv) **A**ctivities that can be and in fact are conducted within permitted buildings without material alteration to their external appearance. Activities to be conducted in buildings exceeding 10,000 square feet in ground area are subject to the written approval of the Grantee, which approval shall take into consideration the impact of the activities and any proposed associated infrastructure on the conservation values of the Property. Temporary outdoor activities involving 100 or more people shall not exceed 7 consecutive days in any 90-day period without prior written approval of the Grantee. [Optional: Notwithstanding any other provision of this easement, no commercial recreational use (except for *de minimis* commercial recreational uses) shall be allowed on the Property. **NB: Per VOF notes, this language may enable Grantor to obtain an estate tax benefit under IRC 2031(c).**]

v. Activities to restore or enhance wetlands or streams or restore, enhance, or develop other ecosystem functions on the Property including, but not limited to, stream bank restoration, wetland and stream mitigation, biological carbon sequestration and biodiversity mitigation, provided that such activities are not in conflict or inconsistent with the conservation purpose of or the restrictions set forth in this Easement and that prior written approval for same shall have been

obtained from Grantee. Grantee is not responsible for monitoring any such activities and has no obligation to enforce the provisions of any permit(s), restriction(s), or easement(s) therefor. Subject to Grantee's approval, Grantor is free to participate in same in Grantor's discretion and to retain any remuneration derived therefrom.

vi. Natural resource-based educational, scientific, or recreational activities, provided that they are consistent with the conservation purposes of this Easement and do not impair the conservation values protected herein.

2.5 MANAGEMENT OF FOREST.

A. Best Management Practices (BMPs), as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any timber harvest or land-clearing activity is undertaken. A Forest Stewardship Management Plan approved by the VA Department of Forestry shall guide all material timber harvest activities on the Property. A pre-harvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval 30 days before beginning any material timber harvest. The pre-harvest plan shall describe the BMPs to be used in sufficient detail to ensure that water quality will be protected. [*Optional language: Select from this menu where appropriate: The objectives of the Forest Stewardship Management Plan may include, but are not limited to, forest health, biodiversity, timber management, wildlife habitat, scenic forest, aesthetics, recreation, water and air quality, carbon or other mitigation banking programs, historic and cultural resource preservation, natural area preservation, or any combination thereof.*] Grantee shall be notified 30 days prior to the clearing of over 10 acres of forestland for grassland, crop land, or in association with the construction of permitted buildings.

B. Noncommercial *de minimis* harvest of trees for trail clearing, firewood, or Grantor's domestic use or trees that pose an imminent hazard to human health or safety, or that are an invasive species shall not require a Forest Stewardship Management Plan.

RIPARIAN BUFFER (*provision where land adjacent to the body of water is forested or naturally vegetated*) **NB: VOF provisions on riparian buffers are more restrictive.**

- 2.6 RIPARIAN BUFFER.** To protect water quality, a 100-foot buffer strip shall be maintained in forest or be permitted to revegetate naturally along (the, each) edge of the _____ [River, Creek, perennial stream, intermittent stream] as measured from the top of the bank (or if applicable from the high water mark in tidal creeks, streams, etc.)). Within this buffer strip there shall be (a) no buildings or other substantial structures constructed; (b) no storage of compost, manure, fertilizers, chemicals, machinery, or equipment; (c) no removal of trees except removal of invasive species or removal of dead, diseased, or dying trees or trees posing an imminent human health or safety hazard; and (d) no cultivation or other earth-disturbing activity, except as may be reasonably necessary for (i) either wetland or stream bank restoration or erosion control, pursuant to a government permit, (ii) fencing along or within the buffer area; (iii) construction and maintenance of stream crossings that do not obstruct water flow; (iv) creation and maintenance of foot or horse trails with unimproved surfaces; and (v) dam construction to create ponds. Limited mowing to control non-native species or protect trees and other plants planted in forested buffers is permitted.

RIPARIAN BUFFER (*provision where the land adjacent to the body of water is not forested or naturally vegetated*)

- 2.6 RIPARIAN BUFFER.** To protect water quality there shall be no plowing, cultivation, or other earth-disturbing activity in a 100-foot buffer strip along (the, each) edge of the _____ [River, Creek, perennial stream, intermittent stream] as measured from the top of the bank (or if applicable from the high water mark in tidal creeks, streams, etc.), except as may be reasonably

necessary for (i) either wetland or stream bank restoration or erosion control, pursuant to a government permit; (ii) fencing along or within the buffer area; (iii) construction and maintenance of stream crossings that do not obstruct water flow; (iv) creation and maintenance of foot or horse trails with unimproved surfaces; and (v) dam construction to create ponds. Within this buffer strip there shall be (a) no buildings or other substantial structures constructed; (b) no storage of compost, manure, fertilizers, chemicals, machinery or equipment; and (c) no removal of trees except removal of invasive species or removal of dead, diseased, or dying trees or trees posing an imminent human health or safety hazard. Mowing within buffer areas is permitted.

- 2.7 GRADING, BLASTING, MINING.** Grading, blasting, or earth removal shall not materially alter the topography of the Property except for (i) dam construction to create ponds; (ii) wetlands or stream bank restoration pursuant to a government permit; (iii) erosion and sediment control pursuant to a government-required erosion and sediment control plan; or (iv) as required in the construction of permitted buildings, structures, roads, and utilities. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in such construction. Grading, blasting, or earth removal in excess of one acre for the purposes set forth in subparagraphs (i) through (iv) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities shall not constitute a material alteration. Surface mining, subsurface mining, dredging on or from the Property, or drilling for oil or gas on the Property is prohibited. *[If mineral rights are retained, add a provision conditioning the exercise of such rights on Grantee's approval, 30 days prior to the exercise of any such rights, of a plan submitted by Grantor showing how the proposed activities will affect the conservation values of the Property both during and after completion of such activities.]* NB: Wetlands America case interpreted the highlighted language as permitting construction of building/lot in an otherwise erodible area so long as site was not highly erodible after grading for

the building was completed, even though the Wetlands easement prohibited construction in “highly erodible areas.”

2.8 ACCUMULATION OF TRASH. Accumulation or dumping of trash, refuse, junk, or toxic materials is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creating brush piles, composting, or storing farm machinery, organic matter, agricultural products, or agricultural byproducts on the Property.

2.9 SIGNS. Display of billboards, signs, or other advertisements is not permitted on or over the Property except to: (i) state the name and/or address of the owners of the Property and/or the name of the Property or Farm, (ii) advertise the sale or lease of the Property, (iii) advertise the sale of goods or services produced incidentally to a permitted use of the Property, (iv) provide notice necessary for the protection of the Property, (v) give directions to visitors, or (vi) recognize historic status or participation in a conservation program. Temporary political signs are allowed. No signs shall exceed nine square feet in size or the County’s Zoning Ordinance requirements, whichever is more restrictive. NB: I think this is the only provision in our current template that is more restrictive than VOF!

2.10 UTILITY EASEMENTS: Easements for the location of underground utilities may be placed on the property by voluntary conveyance either by Grantor or by condemnation.

2.11 RIGHTS OF GRANTOR: Notwithstanding any of the foregoing provisions, the Grantor expressly reserves to themselves and their successors and assigns the right to do the following:

(a) Continue the agricultural, forestry, and naturalistic uses of the Property.

(b) Continue to hunt, fish, or trap on the Property, subject to relevant laws.

(c) Improve, repair, restore, alter, remodel, or replace the existing and the permitted structures with structures of similar size and purpose, provided that the changes are compatible with the conservation purposes of the Property and all other provisions of this Easement.

(d) Continue the use of the Property for all purposes not inconsistent with this Easement.

SECTION III – ENFORCEMENT

- 3.1 RIGHT OF INSPECTION.** Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate, or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time.
- 3.2 ENFORCEMENT.** Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right to require restoration of the Property to a condition of compliance with the terms of this Easement as existed on the date of the gift of the Easement, except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from noncompliance; and to enjoin noncompliance by *ex parte* temporary or permanent injunction. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs, and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to insure compliance with this Easement, and Grantor hereby waives any defenses of waiver, estoppel, or laches with respect to any failure to act by Grantee. Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage or change to the condition of the Property caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or by any prudent action taken by Grantor to avoid, abate, prevent, or mitigate damage or changes to the Property from such causes.

SECTION IV – DOCUMENTATION

Documentation retained in the office of Grantee including, but not limited to, the Baseline Documentation Report (“Documentation Report”), describes the condition and character of the Property at the time of the gift. The Documentation Report may be used to determine compliance with and enforcement of the terms of this Easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination. Grantor has made available to Grantee, prior to donating this Easement, documentation sufficient to establish the condition of the Property at the time of the gift. The parties hereby acknowledge that the Documentation Report contained in the files of Grantee is an accurate representation of the Property.

SECTION V – GENERAL PROVISIONS

- 5.1 DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions, and restrictions contained in this Easement are binding upon, and inure to the benefit of, the parties hereto and their successors and assigns, and shall continue as a servitude running in perpetuity with the Property. Landowner’s rights and obligations under this Easement terminate upon proper transfer of Landowner’s interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- 5.2 NO PUBLIC ACCESS.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public either a right of access to or use of the Property. Grantor retains the exclusive right to such access and use, subject to the terms hereof.
- 5.3 TITLE.** Grantor covenants and warrants that Grantor has good title to the Property, that Grantor has all right and authority to grant and convey this Easement, and that the Property is free and clear of all encumbrances (other than

utility and access easements) including, but not limited to, any mortgages not subordinated to this Easement.

5.4 ACCEPTANCE. Acceptance of this conveyance by Grantee is authorized by Virginia Code Section 10.1-1701 [*If a co-holder will take under the Conservation Easement Act, add:* and Section 10.1-1010] [*If the Virginia Outdoors Foundation is a co-holder add:* Section 10.1-1801] and is evidenced by the signature of the Chair of the Authority, by authority granted by the Authority Board, and by the Chair of the Board of Supervisors, by authority granted by the Board of Supervisors.

5.5 INTERACTION WITH OTHER LAWS. This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, shall be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open-space requirements under otherwise applicable laws, regulations, or ordinances controlling land use and building density. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, a cluster development arrangement, or otherwise.

5.6 GRANTEE APPROVAL:

A. The Grantor shall notify the Authority (hereafter “Grantor’s Notice”) prior to undertaking any activities permitted under Section II, paragraphs [2, 3, 4, 5, 6, and 7].

B. Grantor’s Notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to enable the Grantees to make informed judgments as to its consistency with the terms of this Easement.

C. In addition, if such permitted activity requires Grantor to obtain a permit or other governmental approval, Grantor shall disclose on the application

for such permit or other governmental approval that the property is subject to this Easement.

D. It shall be the responsibility of the Authority to determine its position and to notify and determine the County's and any other co-holder's position on the request for approval. The Authority shall respond to the Grantor within thirty (30) days of receipt of Grantor's Notice, advising the Grantor of the approval or disapproval of the request or advising the Grantor that circumstances require additional time to respond to the request. Such circumstances shall include the complexity of the request or proposed project, the amount of information submitted with the request, and the need for on-site inspections or consultations.

E. If the Authority does not notify Grantor of the decision on the request within ninety (90) days of receipt of the Grantor's Notice, then the Grantees and any co-holder shall be deemed to have approved the request, and the Grantor may proceed with the action for which approval was requested.

F. In order for a request to be approved, it must be approved by each Grantee and any other co-holder.

G. If the Authority, the County, or any other co-holder should disagree on whether a request should be approved or disapproved, the parties should review possible remedies prior to the expiration of the ninety (90) day period. If no resolution to the disagreement can be found prior to the end of the ninety (90) day period, the disagreement shall be documented in writing and the Authority should notify the Grantor of the disapproval of the request.

H. No approval required hereunder shall be unreasonably withheld. In no event, however, shall approval be given to any activity that would result in the termination of this Easement or the development or construction of any structures not provided for herein.

5.7 CONSTRUCTION. Pursuant to the public policy of the Commonwealth of Virginia favoring land conservation, any general rule of construction to the contrary notwithstanding (including the common law rule that covenants

restricting the free use of land are disfavored and must be strictly construed), this Easement shall liberally be construed in favor of the grant to effect the purposes of the Easement and the policies and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a “qualified conservation contribution” as that term is defined in Section 170(h)(1) of the Internal Revenue Code and Treasury Regulations §1.170A-14, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution. NB: One of the big problems with Wetlands America opinion is that it strictly interpreted the restrictions in the easement in favor of the property owner and against the restriction. This added language should help prevent that type of interpretation.

- 5.8 NOTICE TO GRANTEE OF ADVERSE EFFECTS.** Grantor agrees to notify Grantee in writing before exercising any reserved right that Grantor believes may have an adverse effect on the conservation or the open-space values or interests associated with the Property.
- 5.9 REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number, or other appropriate reference, in any deed or other instrument conveying any interest in the Property and shall specifically reference the obligation for payment of a Transfer Fee upon a sale of the Property, as provided in Paragraph 10, *infra*.
- 5.10 SUBSEQUENT TRANSFER OF PROPERTY/TRANSFER FEE.**

A. Grantor agrees to notify Grantee in writing prior to closing on any inter vivos transfer, other than a deed of trust or mortgage, of all or any part of the Property.

B. At the closing on the transfer for value of all or any part of the Property, the purchaser shall pay to the Clarke County Conservation Easement Authority a Transfer Fee equal to one percent (1%) of the full consideration paid for the Property, or portion thereof, including improvements thereon, and including any contiguous land that is part of the same transfer, including improvements thereon.

5.11 TAX MATTERS. The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in IRS regulations [see §1.170A-13(c)(5)], and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from donation of this Easement, or that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable. By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

5.12 MERGER. Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.

5.13 ASSIGNMENT BY GRANTEE. Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or conveyance on the requirement that (1) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity and (2) the transferee then qualifies as

an eligible donee as defined in Section 170(h)(3) of the IRC as amended and in the applicable Treasury Regulations.

5.14 GRANTEE'S PROPERTY RIGHT. Grantor agrees that the conveyance of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time.

5.15 EXTINGUISHMENT, CONVERSION, DIVERSION. Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act that do not permit extinguishment of open-space easements or loss of open space. Nevertheless, should an attempt be made to extinguish this Easement, such extinguishment can be made only by judicial proceedings and only if in compliance with Section 10.1-1704. In any sale or exchange of the Property subsequent to an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section 5.14 above, but not to be less than the proportion that the value of this Easement at the time of extinguishment bears to the then value of the Property as a whole. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purpose of this easement and the Open-Space Land Act.

5.16 AMENDMENT. Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property, provided that no amendment shall affect this Easement's perpetual duration or reduce the Property's conservation values. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded among the land records of the County of Clarke, Virginia.

5.17 COST RECOVERY CHARGES. Grantee reserves the right to recover its costs incurred in responding to requests initiated by Grantor involving matters such as boundary line adjustments, easement amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, and access or utility easements over the Property. **NB. I liked this but it looks like VOF's Board of Trustees has a published fee schedule for these types of cost and I am not sure how difficult it would be for us to do something similar.**

5.18 JOINT OWNERSHIP. If Grantor at any time owns the Property or any portion of or interest in joint tenancy, tenancy by the entirety or tenancy in common, all such tenants shall be jointly and severally liable for all obligations of Grantor set forth in herein.

5.197 SEVERABILITY. If any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

5.2018 ENTIRE AGREEMENT. This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement.

5.2119 CONTROLLING LAW. The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia.

5.220 RECORDING. This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Clarke, Virginia, and Grantee may rerecord it any time as may be required to preserve its rights under this Easement.

5.231 SUBORDINATION. The Bank is the noteholder of a note secured by a Deed of Trust on the Property dated _____ and recorded in the Clerk's Office

of the Circuit Court of Clarke County, Virginia in Deed Book _____ at Page _____. The Bank hereby consents to the terms and intent of this Easement and agrees that the lien represented by said Deed of Trust shall be held subordinate to and subject to this Easement, and the Bank joins in this Deed to reflect its direction to the Trustee to execute this Easement to give effect to the subordination of such Deed of Trust to this Easement.

[Add additional Grantor paragraph when only one spouse owns the Property or portions thereof]

_____, Additional Grantor, husband/wife/spouse of Grantor, joins in the execution of this Easement to evidence his/her consent to the gift of easement herein made and its exclusion from the augmented estate of Grantor pursuant to Virginia Code § 64.2-305 or any omitted spouse share pursuant to Virginia Code § 64.2-_____, as now written or as may be amended.

WITNESS the following signatures and seals:

Grantor

Grantor

COMMONWEALTH OF VIRGINIA,

CITY/COUNTY OF _____, To-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2____, by _____.

Notary Public

My commission expires: _____

Registration No. : _____

(SEAL)

COUNTY OF CLARKE, VIRGINIA, Grantee

By: _____
Chairman, Board of Supervisors

STATE OF VIRGINIA, At-Large

CITY/COUNTY OF _____, To-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2____, by _____, on behalf of the COUNTY OF CLARKE, VIRGINIA, Grantee.

Notary Public

My commission expires: _____
Registration No. : _____

(SEAL)

CLARKE COUNTY CONSERVATION EASEMENT
AUTHORITY, Grantee

By: _____
Chairman, Board of Directors

STATE OF VIRGINIA, At-Large
CITY/COUNTY OF _____, To-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2____, by _____, on behalf of the CLARKE COUNTY CONSERVATION EASEMENT AUTHORITY, Grantee.

Notary Public

My commission expires: _____
Registration No. : _____

(SEAL)

(Bank)

By: _____

STATE OF VIRGINIA

CITY/COUNTY OF _____, To-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2____, by _____, on behalf of the (Bank).

Notary Public

My commission expires: _____
Registration No. : _____

(SEAL)

, Trustee

STATE OF VIRGINIA

CITY/COUNTY OF _____, To-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2____, by _____, Trustee.

Notary Public

My commission expires: _____
Registration No. : _____

(SEAL)

SCHEDULE "A"

Reference on Pg 8

VOF Section I, paragraph 2.1- Road frontage

(iii) The acquisition of a *de minimis* portion of the Property adjacent to State Route(s) _____ for minor road improvements shall not be considered a division of the Property, and neither the acquisition of such a *de minimis* portion of the Property nor the use of the portion of the Property so acquired shall be prohibited by this Easement, provided that Grantee approves such conveyance or taking, which approval shall be contingent upon the project including all reasonable actions, such as landscaping or topographic improvements, to minimize the project's impact on the Property and prevent harm to its conservation values. Grantor reserves its separate right to approve such acquisition. Use of the Property for such a project is limited to minor improvements to Route(s) _____ in its/their present alignment(s), including, but not limited to, maintenance, correction, repair, or upgrading of the existing public road(s). [*Optional addition: Such improvements could include, but are not limited to, the addition or renovation of ditches, box culverts, drainage swales, side slopes, curbing, re-grading, or enhancements, such as pull-offs, bike lanes, and restoration projects.*] For the purpose of this paragraph, "minor road improvements" does not include the addition of new travel lanes, except bike lanes. Any portion of the Property acquired from Grantor pursuant to this paragraph shall remain subject to the terms and restrictions of this Easement. [*This de minimis paragraph is not applicable if the Property has no road frontage.*]

Reference on Pg 10

VOF Section II.2(c)

(c) Buildings for the processing and sale of farm or forest products or certain animal-related uses. Buildings for the processing and sale of farm or forest products produced or partially produced on the Property not exceeding 4,500 square feet of enclosed area in the aggregate and not individually exceeding 2,500 square feet of enclosed area. For purposes of this paragraph (c), a building for the processing and sale of farm or forest products shall mean a building originally constructed and used for the activities specified in Section II, Paragraph 3(i)(b) below. In addition, subject to the written approval of Grantee, kennels, wildlife rehabilitation centers, veterinary clinics, or buildings used for similar enterprises (with the square footage limitations set forth above) may be constructed; approval shall be contingent upon Grantee's determination that the construction of such buildings is consistent with the conservation purposes of this Easement and protective of the conservation values identified herein and that the buildings are located at sites on the Property not adversely impacting such conservation values [If applicable: In the event of division of the Property as provided in Section II, Paragraph 1, the grantor making the division retains all permitted rights to buildings for the processing and sale of farm or forest products unless the right to construct such building or buildings is allocated (between or among) the parcels in the instrument creating the division or other recorded instrument.]; and

Reference on Pg 10, 11 & 14
VOF Section II.2.(e) & (f) & (g)

(e) **Utilities.** Public or private utilities to serve permitted buildings, structures, or activities on the Property [*If applicable:* and public or private utilities to serve parcels created by (the) permitted division(s) of the Property]. Public or private utilities to be constructed in whole or in part to serve other properties shall not be constructed on, under, or over the Property unless Grantee determines that the construction and maintenance of such utilities will cause no more than minimal impairment of the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval or disapproval of such construction and maintenance shall take into consideration the visibility and any other adverse impact of such utilities on the conservation values of the Property. Grantor reserves its separate right to approve such public or private utilities; and

(f) **Alternative energy structures.** Alternative energy structures used to harness natural renewable energy sources, such as sunlight, wind, water, or biomass, and scaled to provide electrical energy or pump water for permitted dwellings, other buildings, structures, and activities on the Property, which limitation shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment, including, but not limited to, solar panels, wind turbines, and micro-hydro installations; and

(g) **Small-scale miscellaneous buildings or structures.** Small-scale miscellaneous buildings and structures, the existence of which is consistent with the conservation purposes of this Easement and which will not impair the conservation values protected herein, such as hunting stands, wildlife observation structures, fences, and boardwalks, [*If applicable:* structures for crossing streams or wetlands or portions of docks or piers (all subject to the limitations set forth in Section II, Paragraph 5(ii) below)].

5. RIPARIAN PROTECTION ZONE(S). [*Make everything in this Paragraph plural if there are two or more riparian protection zones on the Property, e.g., a creek traverses the Property, so both sides are buffered.*]

To protect water quality and natural habitat, a riparian protection zone (RPZ) shall be maintained on the Property [*If applicable, add:* as shown on Exhibit ____, attached hereto and made a part hereof, and as shown in the Baseline Documentation Report].

[*Option 1 for watercourse only with buffer*] Such zone is made up of a _____-foot riparian buffer along the edge of the [*Add as appropriate:* _____ River, _____ Creek, perennial stream, and/or intermittent stream] on the Property, as measured [*Select:* from the top of the bank of the _____ (or if tidal watercourse) from the high water mark of the _____].

(and/or)

[*Option 2 for watercourse and contiguous wetlands with buffer*] Such zone is made up of wetlands contiguous to the [*Add as appropriate: _____ River, _____ Creek, perennial stream, and/or intermittent stream on the Property*] and a ___-foot wetland buffer extending in a landward direction from the edge of the wetlands.

(i) Within the RPZ there shall be:

- (a) no buildings or other substantial structures constructed;
- (b) no new paved roads or paving of existing roads without Grantee's approval;
- (c) no storage of manure, fertilizers, chemicals, machinery or equipment;
- (d) no removal of trees, except
 - (1) removal of invasive species,
 - (2) removal of dead or diseased trees,
 - (3) removal of trees posing a threat to human or livestock health or safety,
 - (4) minimal removal of trees for the purpose of maintaining existing roads,
 - (5) minimal removal of trees for creation of small wildlife plots, and
 - (6) minimal removal of trees for construction and maintenance of new permitted roads, stream crossings, dams, and any other structures permitted in subparagraph (ii) below; and
- (e) no plowing, cultivation, filling, dumping, or other earth-disturbing activity, except as may be reasonably necessary for the activities set forth in Section II Paragraph 5(ii) below.

[*Recommended additional language if livestock could be maintained on the Property, but are to be excluded from the RPZ or the watercourse.*]

In addition, livestock shall be excluded from the [*Select: RPZ or the _____ (whatever watercourse)*] except (a) for brief periods of flash grazing, (b) during times of drought or other emergencies, (c) for stream crossings or (d) for watering at limited access points.

(ii) Permitted within the RPZ are

- (a) erosion control or restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above;
- (b) fencing along or within the RPZ;
- (c) construction and maintenance of stream crossings (including improvements over the RPZ to access crossings) for pedestrians, livestock and vehicles, which crossings minimize obstruction of water flow;
- (d) creation and maintenance of trails and roads without hard surfaces, and maintenance of existing and new permitted trails and roads;
- (e) creation and maintenance of natural habitat and small wildlife plots;

- (f) planting of trees, shrubs, grasses, or other vegetation; and
- (g) clearing, grading and dam construction to create ponds (but not storm water retention or detention ponds to serve other properties),

[Add other applicable exceptions as needed such as: diversion of water for agricultural use on the Property, construction and maintenance of portions of shoreline stabilization structures, and/or portions of piers or docks for recreational or aquaculture purposes with access thereto.]

[Use only for Option I] (iii) Subsequent to the recordation of this Easement the _____ *[whatever watercourse]* may meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3 (i)(f) above. In such event, the RPZ shall remain the same width, but move relative to the movement of the _____ *[whatever watercourse]*. In such event, any buildings or structures that were outside of the original RPZ and are determined to be within the new RPZ shall not be considered in violation of these restrictions and may be maintained and replaced at such locations, but not enlarged.

MEMORANDUM

TO: Conservation Easement Authority
FROM: Alison Teetor
DATE: July 13, 2017
SUBJECT: Application for Donation – Frances Arden

Frances Arden has applied to the easement authority for approval of an easement donation. The property is located on the west side of Old Chapel Road approximately 4/10 of a mile south of the intersection with Browntown Road. The property currently consists of two parcels Tax Map# 21-A-46, 10.47 acres, that has an existing house constructed in 1900 and 0 DURs, and Tax Map# 21-A-46A, 8.1 acres, vacant, with 1 DUR. The applicant proposes to merge the 2 parcels and retire the 1 remaining DUR.

The parcel is zoned AOC and is currently in use value taxation, in accord with the Commissioner of Revenue's requirements, therefore a donation may be considered if at least two of the following four guidelines are met:

- 1) the parcel's Property Resource Score is at least 35;
- 2) at least one dwelling unit right is extinguished by the conservation easement;
- 3) the parcel is adjacent to a parcel already under permanent conservation easement;
- 4) the property has a minimum area of 40 acres.

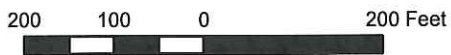
The property meets 2 of the 4 criteria. The property resource score is 55.5. The applicant would retire the remaining DUR. It is not next to an existing easement and it is less than 40 acres. Points were given for retiring 1 DUR, have frontage on the railroad, being within the Prospect Hill Spring drainage basin, and having a structure that is potentially contributing to a rural historic district.

Recommendation

A site visit was conducted July 11, 2017. Recommend final approval.



Frances Carroll Arden
 Tax Map# 21-A-46, 10.47 acres, 1 ext. dwl., 0 DURs
 Tax Map# 21-A-46A, 8.1 acres, 1 DUR



Clarke County GIS
 June 22, 2017



- | | |
|-----------------------|---------------------|
| Conservation Easement | Intermittent Stream |
| Public Road | Perennial Stream |
| Private Road | |

Location Map



MEMORANDUM

TO: Clarke County Easement Authority
FROM: Alison Teetor
DATE: July 13, 2017
SUBJECT: Application for Donation – Armbrust

Linda Armbrust has applied to the easement authority for approval of an easement donation. The parcel consists of 18.9 acres located on the north side of Pyletown Road (Route 620) just east of her property located at 1886 Pyletown Road approximately 1.8 miles west of the intersection of Pyletown Road and Route 340.

The parcel is zoned AOC and is eligible for landuse. Therefore the following guidelines for accepting properties for easement donation are used:

- 1) the parcel's Property Resource Score is at least 35;
- 2) at least one dwelling unit right is extinguished by the donated conservation easement;
- 3) the parcel is adjacent to a parcel already under permanent conservation easement;
- 4) the property has a minimum area of 40 acres.

The Authority requires that a property meet at least two of the four guidelines for acceptance.

The property has two (2) unused Dwelling Unit Rights (DUR)s, and is vacant. The applicant would like to retire one DUR. In reviewing the parcel, at three of 4 criteria have been met. The Property Resource Score is 66.93, one DUR is being extinguished, it is next to an existing easement, it is less than 40 acres in size.

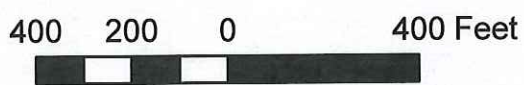
The parcel is open pasture and used for grazing and hay production. It is within the groundwater recharge area and the Prospect Hill Spring drainage. The parcel has frontage on Pyletown Road, a State scenic byway for 900'. The parcel is within the Chapel Rural Historic District.

Recommendation

A site visit was conducted July 11th. Recommend final approval.



Linda Armbrust
21-((A))-6, 18.5 acres. 2 DURs



June 27, 2017
 Clarke County GIS

Aerial Imagery 2015, Commonwealth of Virginia

-  Parcel Boundary
-  Conservation Easements
-  Public Road
-  Scenic Road
-  Private Road

Location Map

