

CLARKE COUNTY
Conservation Easement Authority
Friday – 13 May 2022 – 10:00 am
A/B & Main Conference Room, 2nd Floor Government Center

AGENDA

1. Call to Order
2. Approval of Agenda
3. Approval of Minutes of the meeting of 8 April 2022
4. Bank Account balances
 - a. VDACS funding
 - b. Rollback tax information
 - c. Funding Jeff Murphy DUR Purchase
5. Campaign for the Authority
 - a. Ms. Cardillo reports
 - b. Land Conservation Workshop – Loudoun County
6. Discussion Items
 - a. Building Envelope requirement – attached opinion from Mr. Mitchell
 - b. Powhatan School request for composting toilet– attached opinion from Mr. Mitchell
 - c. Kohn well – Update from Mr. Feaga
 - d. VaULT Conference – update from Mr. Feaga
 - e. Policy development – large agricultural structures – examples
7. Adjournment – The next meeting is scheduled for Friday June 10th 10 am

CLARKE COUNTY
Conservation Easement Authority
draft Minutes – 8 April 2022 draft

A regular meeting of the Conservation Easement Authority was held at 10:00 am on Friday 8 April 2022, in the A/B conference room, 2nd Floor Government Center.

Present: R. Buckley, R. Bacon, T. Catlett, and John Hedlund
Absent: M. Jones, W. Thomas
Phone in: G. Ohrstrom
Staff: A. Teetor, J. Feaga, R. Couch-Cardillo
Other: Hallie Harriman, Piedmont Environmental Council

Call to Order Mr. Buckley called the meeting to order at 10 am. He took a minute to introduce the newest appointment to the Authority, John Hedlund. Mr. Hedlund will represent the Berryville District.

Agenda On motion of Ms. Bacon, seconded by Mr. Hedlund, the Authority unanimously approved the agenda.

Minutes On motion of Mr. Ohrstrom, seconded by Ms. Bacon, the Authority unanimously voted to approve the minutes of March 10, 2022 as presented.

Bank Account: Ms. Teetor reviewed the financial spreadsheets. Current fund balances show a total fund balance of \$420,437.27 consisting of \$131,541.83 in the donations account, \$234,918.80 in stewardship/restricted, and \$53,976.64 in local funds. Ms. Teetor stated that the positive balances reflect receipt of all reimbursement requests for the RSP Enterprises, LLC grant purchase. Monthly expenses were for production and mailing of the winter newsletter, sponsorship of the VAULT conference, and expenses related to the awards luncheon. Revenues from rollback tax were reviewed. Ms. Teetor will present a summary of the March rollback at the May meeting. Members also discussed the funds available from VDACS. Ms. Teetor will provide a summary of the remaining VDACS funds at the May meeting.

Public Relations: Ms. Cardillo stated that so far in 2022 we have already received \$5,691 from 45 donors which is 20 more donors than last month indicating the impact of the winter newsletter. She is working on the spring newsletter that will go out in the tax bills. She stated that the Pritchards, who own Smithfield Farm are not interested in being featured, so Ms. Cardillo asked for other suggestions. Ms. Teetor mentioned Mr. Pratt who placed 180 acres off of Mt. Carmel Road into easement last year. Mr. Ohrstrom stated that the story could expand to include benefits of spending local funds on easements. Another suggestion was to interview the Tony and Donna Koon who placed their 216 acre farm in easement in 2009 as part of a grant purchase. They have reinvested the easement purchase funds to expand into a high tech milking operation and are working on establishing a creamery on the farm. Members agreed this would be a great feature story. Ms. Cardillo also brought up the 20th anniversary celebration. Members agreed on either June 15th or 16th from 5-7pm depending on the availability of Long Branch. The event will include a small highlighting the accomplishments and future goals of the Authority. Another upcoming event is the Conservation easement information workshop. Ms. Teetor had been contacted by Brook Middleton, a tax credit broker, who

organizing a similar workshop in Loudoun County. Ms. Teetor will get the agenda and other information for member consideration at the next meeting. Ms. Cardillo also updated members on the Take a Hike Project. The event maybe delayed until November as the Blue Ridge Wildlife Center, a principal organizer, has been shut down due to avian influenza. Other activities include development of information to include in the welcome wagon to new residents. Ms. Catlett attended the first new resident welcome event was held at the Barns of Rosehill. She stated that for a first time event she thought it was well attended. More events are anticipated later this year.

Discussion

a. Bruce and Debbie Anderson – request to increase square footage of structures This is a continued discussion from the last meeting. Bruce and Deborah Anderson have applied to the easement authority for approval of an easement donation. The property consists of two parcels, Tax Map# 30-A-74 consists of 30.76 acres with an existing house and a <600 square foot apartment, and Tax Map# 30-A74A consisting of 2.0 acres with 1 DUR.

The Andersons have requested an exception to the maximum square footage allotment for parcels between 30 and 40 acres of 20,000 sq ft.. At the December meeting members discussed the Anderson's proposal to allow for an exceedance of 20,000 sq ft. for a total amount of 40,000 sq ft.. Members discussed the request to exceed the 20,000 square foot cap for structures and determined that 1) it sets precedence for other future easements, 2) it isn't fair to others that have had to adhere to the requirement, and 3) that having over 2% impervious area detracts from the conservation value of the property. Based on these reasons the request was denied.

Staff presented a summary of the Anderson's request and how it adheres to the County's easement policies. The properties meet the criteria for consideration by the Authority for an easement donation. The applicant's request to exceed the impervious surface square footage in order to construct a cover over the existing riding arena does not meet with the Authorities policy of a maximum of 20,000 square feet for properties between 30 and 40 acres. The Andersons would prefer not to have the easement help by a private land trust, and the 2 acre property could not be considered on its own as it doesn't meet the criteria for zero DURs.

Members discussed the potential of allowing large agricultural buildings so long as there use and visual impact is not contrary to the terms of the easement. Ms. Harriman suggested that the Authority consider a provision regarding outdoor lighting. Mr. Feaga suggested that criteria for donations could be less strict than easement purchases. Mr. Hedlund opined that uses and structure size are not necessarily one size fits all. Mr. Buckley stated that it is a tough decision and needs to be discussed thoroughly. After further discussion, members asked staff to develop a draft policy that would address the conditions where large buildings would be permitted, for what uses, and of what materials and siting conditions.

b. Building envelope requirement

Staff contacted Mr. Mitchell to get his opinion as to whether or not building envelopes should be required on every easement. Mr. Mitchell has had two trials this month for the County has not had time to review the material. A report will be submitted at the April meeting.

c. Powhatan School request for composting toilets

The Crocker Conservancy is a property that was donated to the Powhatan School and placed in Conservation Easement with the Authority in 2011, Tax Map# 29-A-16. The property is being used for outdoor education. The school has made several permitted improvements including construction of a covered outdoor pavilion, wetlands boardwalk and trails. *On motion of Ms. Wallace, seconded by Ms. Thomas, members voted to*

approve the use of property for the cross country meet and conservation fair, to not approve the donation for the speaker, and to approve use of the composting toilets on condition that the footprint be included as part of the allowable square footage, and that Mr. Mitchell reviews the Deed to insure that this type of structure could be permitted.

There is no record of Mr. Mitchell being contacted to review the deed. Therefore on motion of Mr. Hedlund, seconded by Ms. Bacon, members gave preliminary approval for the use of composting toilets at the Crocker Conservancy pending Mr. Mitchell's approval.

Report on Applications for Easement Purchase/Donation

On motion of Ms. Bacon, seconded by Mr. Ohrstrom the Authority unanimously approved going 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. On motion of Ms. Bacon, seconded by Mr. Ohrstrom the Authority unanimously approved reconvening in Open Session. Mr. Ohrstrom moved, seconded by Ms. Bacon, to certify that to the best of the member's knowledge:

- (i) only public business matters lawfully exempted from Open Meeting requirements under Chapter 2.2-3700, et sec., of the Code of Virginia, as amended, pursuant to Section 2.2-3711-A3 of the Code of Virginia, as amended, to discuss the Acquisition or Sale of Property, and
- (ii) only such public business matters as were identified in the motion by which the Closed meeting was convened were heard, discussed, and considered in the meeting by the Authority. The vote on the above motion was:

Ms. Bacon	Aye	Mr. Buckley	Aye	Mr. Hedlund	Aye
Ms. Thomas	Absent	Mr. Ohrstrom	Aye	Ms. Jones	Absent
Ms. Catlett	Aye				

On motion of Mr. Ohrstrom, seconded by Mr. Hedlund members voted to approve a DUR purchase of \$40,000/DUR, multiplied by the income factor of 88%, for a total of \$140,800 for the purchase of 4 DURs on the property owned by Jeff Murphy, Tax Map#'s 3-A-55C & 3-A-55D.

Adjournment There being no further business, Ms. Catlett moved and Ms. Bacon seconded that the Authority adjourn to the next regularly scheduled meeting Friday April 8th in the Government Center A/B/Conference room at 10 am. The motion to adjourn was approved unanimously.

Randy Buckley, Chair

Alison Teetor, Clerk to the Authority

FY2022

	Total Fund Balance	Donations (128)	Stewardship/Restricted Funds Account (210)	Local Funds (000)
SOV FY22	356,559	113,355	215,557	27,647
Fiscal Year 2022				
July Rev/AR		1,350	92	116,799
July Exps/AP		-55	-250	0
July Exp Moon Easement Purchase				
Aug Rev/AR		240	92	-80,713
Aug Exps/AP		-2,413	0	40,855
Sept Rev/AR		5,165	89	82
Sept Exps/AP		-2,760	0	-573
Oct Rev/AR		3,255	92	4,169
Oct Exps/AP		-2,558	-1,103	-245
Nov Rev/AR		3,430	89	4,542
Nov Exps/AP		-1,367	0	-924
Dec Rev/AR		11,084	22,550	2,003
Dec Exps/AP		-3,464	0	-165
Dec Exp Smithfield Farm Purchase				
Jan Rev/AR		6,085	103	5,699
Jan Exps/AP		0	-2,500	-750
Feb Rev/AR		504	107	121,875
Feb Exps/AP		-96	0	-495
Mar Rev/AR		2,853	106	92,074
Mar Exps/AP		-1,908	0	-7
Apr Rev/AR		1,650	0	282,968
Apr Exps/AP		-1,728	0	-19
May Rev/AR		0	0	0
May Exps/AP		0	0	0
June Rev/AR		0	0	0
June Exps/AP		0	0	0
YTD Rev/AR	739,997.67	35,615.82	23,320.83	681,061.02
YTD Exps/AP	674,161.56	16,348.69	3,852.82	653,960.05
Adjustments	0			
YTD FUND BALANCE (AR & AP)	422,395.02	132,621.65	235,025.27	54,746.10

VDAACS

- 75,738.77 Expires 12/31/2021 (FY2019)
- 58,333.00 Expires 06/30/22 (FY2020) *waiting for verification
- 54,000.00 Expires 06/30/23 (FY2021)
- 156,476.00 Expires 06/30/24 (FY2022)
- 344,547.77
- 40,356.50
- 76,375.00
- 70,500.00
- 157,316.27 AVAILABLE Estimated YTD BALANCE-VDAACS

Anticipated Easement Closings:

- Moon Property CLOSED Actual Exp/Rev Above
- Smithfield Farm CLOSED Actual Exp/Rev Above
- Murphy DUR Purchase TBD

ESTIMATED YTD FUND BALANCE 422,395 132,622 235,025 54,748

FY22 Expenditure Appropriations	Appropriated	Actual Expenses	Appropriated Balance Remaining
General Expenses	45,000	23,214	21,786
Lizzie Moon Property	80,713	80,713	0
Smithfield Farm	570,070	570,235	-165
	695,783	674,162	

Clarke County:
Includes expenses not specifically designated to an easement (including donation, stewardship and monthly Hall, Monahan expenses).

Through 05/05/2022

Conservation Easement Expense Detail - FY22

	Donations (128)	Stewardship (210)	Local Funds (000)
July	55.00 Winchester Printers <u>55.00</u>	157.89 Bradley Comeaux Inspections 91.84 Bradley Comeaux Mileage <u>249.73</u>	80,713.00 CE Purchase - Lizzie Moon Property <u>80,713.00</u>
August	500.00 Gloria Marconi - Banner 960.00 Robin Couch Cardillo 550.65 Photo Exhibit postcards 105.27 Banner 297.00 Magnets <u>2,412.92</u>	<u>0.00</u>	<u>0.00</u>
Sept	450.00 Gloria Marconi Summer 21 Newsletter 955.34 Winchester Printers Summer 21 1,280.00 Robin Couch Cardillo-report prep 75.00 Gloria Marconi ESMT Revisions <u>2,760.34</u>	<u>0.00</u>	407.50 Hall, Monahan, Engle legal services July 165.00 Hall, Monahan, Engle legal services Aug
Oct	126.35 A. Teetor Con. Easement Map 581.35 Winchester Printers - CCEA Reception Invite 1,850.55 Monks BBQ CCEA Donation Reception <u>2,558.25</u>	1,000.00 Benjamin Rogers intern 103.09 Benjamin Rogers Mileage <u>1,103.09</u>	572.50 162.50 Hall, Monahan, Engle legal services Sept 82.50 Hall, Monahan, Engle legal services Sept
Nov	550.00 Gloria Marconi ESMT Fall'21 Newsletter 816.66 Robin Couch Cardillo Reports ESMT Meeting <u>1,366.66</u>	<u>0.00</u>	<u>245.00</u> 287.50 Hall, Monahan, Engle legal services Oct 636.00 Purchase Power Postage
Dec	560.00 Robin Couch Cardillo CEA Prep reports/Meetings 200.00 Gloria Marconi Design/Prod. EOY letter 1,503.94 Winchester Printers Annual Appeal Printing 1,200.00 Eric Wright-Tent Rentals <u>3,463.94</u>	<u>0.00</u>	<u>923.50</u> 165.00 Hall, Monahan, Engle RSP docs for closing 570,069.80 Hall, Monahan, Engle Smithfield Farm Property
Jan	<u>0.00</u>	<u>0.00</u>	<u>570,234.80</u>
Feb	96.00 WordPress.com Premium <u>96.00</u>	2,500.00 Singhas & Michael Kohn Well Repairs <u>2,500.00</u>	750.00 Hall, Monahan, Engle legal services Dec <u>750.00</u>
Mar	538.00 Robin Couch Cardillo CEA services 450.00 Gloria Marconi Design/Prod. Winter 2022 90.00 Truist - CEA award 560.00 Robin Couch Cardillo CEA services 250.00 Vault - Annual Conf Sponsor 20.00 Crown Trophy Annual Awards <u>1,908.00</u>	<u>0.00</u>	495.00 Hall, Monahan, Engle legal services Jan <u>495.00</u> 6.96 Purchase Power - Postage
Apr	1,087.58 Winchester Printers winter newsletter 640.00 Robin Couch Cardillo CEA March <u>1,727.58</u>	<u>0.00</u>	<u>6.96</u> 19.29 Purchase Power - Postage
YTD Totals	Donations <u>16,348.69</u>	Stewardship <u>3,852.82</u>	Local Funds <u>653,960.05</u>

MEMORANDUM

TO: Conservation Easement Authority
FROM: Alison Teetor
SUBJECT: Current balance of VDACS funds
DATE: May 3, 2022

At the April easement authority meeting, members discussed the DUR purchase for Jeff Murphy. Half of the funding for DUR purchase easements comes the Virginia Department of Conservation and Recreation (VDACS). Jennifer Perkins administers the office of Farmland Preservation and provided this summary of our current grant award balances.

FY 2020	FY 2021	FY 2022	TOTALS
use by June 30, 2022	use by June 30, 2023	use by June 30, 2024	
\$50,614.00	\$54,000.00	\$156,476.00	\$261,090.00

According to Ms. Perkins the FY20 dollars need to be used this spring and in order to get it through their Finance Department before the end of the fiscal year, the deed should be recorded by May 31 per Addendum A in the contract.

Discussion of the Murphy DUR purchase is later on the agenda

MEMORANDUM

TO: Conservation Easement Authority
FROM: Alison Teetor
SUBJECT: Rollback tax information
DATE: May 3, 2022

At the April easement authority meeting, members discussed the Conservation Easement Fund balances particularly the landuse rollback tax that in March contributed \$8,617 to the easement authority Local Funds.

Attached is a summary of the rollback tax calculation from March.

Roll-back taxes consist of the difference between the land use value assessment and the fair market value assessment for a period of up to six years plus simple interest per year on that sum. The roll-back tax is assessed against the person who changes the land to a non-qualifying use.

Property can be withdrawn from the land use program without penalty at any time; however, it will remain subject to possible roll-back taxes for up to six years if the use or acreage changes.

Real estate which is being taxed as land use will be subject to additional taxes known as roll-back taxes if:

- The landowner changes the use of the property to a non-qualifying use
- The landowner transfers or sells less than the minimum acreage required to qualify for land use taxation as agricultural or forest land. (If the remaining acreage is not enough to qualify, it is also subject to roll-back taxes and comes out of the program)
- Property can be withdrawn from the land use program without penalty at any time; however, it will remain subject to possible roll-back taxes for up to six years if the use or acreage changes.

The roll-back tax occurs because the tax dollars saved under the land use program are only a deferment based on the use of the land.

Ms. Teetor contacted Donna Peake the Commissioner of Revenue who provided the following explanation of how rollback tax is applied.

A roll back is done on a property if a house is built. The code requires we roll back 5 years plus the current year. Rollback is calculated only for the house site which is usually 1 acre.

For example:

Mr. Simms was taxed at \$400 for the acre of land. When a house is built on that acre the value goes up to \$100,000 for the house site. The house triggers a Roll Back which means Mr. Simms must pay the difference for 6 years on that acre as if a house is on that land. He then gets a bill for 1 acre at \$99,600 . We then have to go back over the 6 year period and assess that acre at 99,600 x the tax rate of each of those years . It is due with in 30 days of billing. We encourage people who are building to come in and see us so they don't have sticker shock.

If they are in the EASEMENT PROGRAM, they do not get Roll Backs.

99,600 x .67 cents = \$667.32 for the roll back for 2021 as you can see over 6 years the roll backs will add up

Over a period of 6 years - that is 5 years + the current year the roll back is usually around \$4000.00

State and County Regulations

Clarke County Code Section § 165-45. Use value and fair market value states:

The use value and fair market value of any qualifying property shall be placed on the land book before delivery to the Treasurer, and the tax for the next succeeding tax year shall be extended from the use value.

§ 165-46. Rollback tax.

A. There is hereby imposed a rollback tax in such amount as may be determined under Code of Virginia, § 58.1-3237. Change in use or zoning of real estate assessed under ordinance; roll-back taxes, upon any property as to which the use changes to a non-qualifying use.

B. The owner of any real estate liable for rollback taxes shall report to the Treasurer, on forms to be prescribed, any change in the use of such property to a non-qualifying use and shall pay the rollback tax then due. On failure so to report and pay within 60 days following such change in use, such owner shall be liable for an additional penalty equal to 10% of the amount of the rollback tax, which penalty shall be collected as a part of the tax. In addition to such penalty, there is hereby imposed interest of 1/2% of the amount of the rollback tax for each month or fraction thereof during which the failure continues.

State Code Section 58.1-3237-C. states:

In localities which have adopted a sliding scale ordinance, the roll-back tax shall be equal to the sum of the deferred tax from the effective date of the written agreement including simple interest on such roll-back taxes at a rate set by the governing body, which shall not be greater than the rate applicable to delinquent taxes in such locality pursuant to § 58.1-3916, for each of the tax years. The deferred tax for each year shall be equal to the difference between the tax levied and the tax that would have been levied based on the fair market value assessment of the real estate for that year and based on the highest tax rate applicable to the real estate for that year, had it not been subject to special assessment. In addition the taxes for the current year shall be extended on the basis of fair market value which may be accomplished by means of a supplemental assessment based upon the difference between the use value and the fair market value and based on the highest tax rate applicable to the real estate for that year.

<https://law.lis.virginia.gov/vacode/title58.1/chapter32/section58.1-3237/>



Clark County TRAIN | 04/14
PAYMENTS BY RECEIPT

04/14/2022 10:50
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INCLUDE BILL TYPE: K
SOURCE: ALL
ENTRY DATE RANGE FROM: 03/01/2022 TO 03/31/2022

RECEIPT CT YEAR	BILL NAME	REFERENCE	TOTAL PAID	BILL BALANCE	ENT-DATE	INT-EFF	CLERK	DEPOSIT	TYPE
00813122	RE 2020	1000057 SIMS AARON WAYNE &	39.46	.00	03/09/22	03/09/22	2600atay		PMT
00813123	RE 2020	1000058 SIMS AARON WAYNE &	560.94	.00	03/09/22	03/09/22	2600atay		PMT
00813124	RE 2021	1000018 SIMS AARON WAYNE &	35.87	.00	03/09/22	03/09/22	2600atay		PMT
00813125	RE 2021	1000019 SIMS AARON WAYNE &	509.84	.00	03/09/22	03/09/22	2600atay		PMT
00813126	RE 2016	8592 TAVENNER LINDA D T	62.93	.00	03/09/22	03/09/22	2600atay		PMT
00813127	RE 2016	8593 TAVENNER LINDA D T	894.51	.00	03/09/22	03/09/22	2600atay		PMT
00813128	RE 2017	1000031 TAVENNER LINDA D T	57.65	.00	03/09/22	03/09/22	2600atay		PMT
00813129	RE 2017	1000032 TAVENNER LINDA D T	819.49	.00	03/09/22	03/09/22	2600atay		PMT
00813130	RE 2018	1000048 TAVENNER LINDA D T	53.68	.00	03/09/22	03/09/22	2600atay		PMT
00813131	RE 2018	1000049 TAVENNER LINDA D T	762.97	.00	03/09/22	03/09/22	2600atay		PMT
00813132	RE 2019	1000026 TAVENNER LINDA D T	49.70	.00	03/09/22	03/09/22	2600atay		PMT
00813133	RE 2019	1000027 TAVENNER LINDA D T	706.45	.00	03/09/22	03/09/22	2600atay		PMT
00813135	RE 2017	1000024 MELLIUS HENRY J III	707.16	.00	03/09/22	04/15/16	2600atay		PMT
00813136	RE 2020	1000019 MELLIUS HENRY J III	707.16	.00	03/09/22	04/15/16	2600atay		PMT
00813137	RE 2020	1000049 MELLIUS HENRY J III	612.54	.00	03/09/22	04/15/16	2600atay		PMT
00813138	RE 2021	1000004 MELLIUS HENRY J III	607.56	.00	03/09/22	04/15/16	2600atay		PMT
00813140	RE 2016	8585 HARDING MARY ELLEN	722.10	.00	03/09/22	04/15/16	2600atay		PMT

TOTAL PAYMENT AMT: 7,910.01

** END OF REPORT - Generated by Susan Braithwaite **

RECEIPT COUNT: 17



Finance Committee Items

Berryville-Clarke County Government Center, 2nd Floor
101 Chalmers Court, Berryville, Virginia 22611

May 9, 2022, Immediately following work session

Item No.	Description	Page
A.	<u>FY22 Clarke County Department of Social Services Supplemental Appropriation Requests:</u> The Department of Social Services is requesting supplemental revenue and expenditure appropriation for the following items: <ol style="list-style-type: none">1. The Department will receive revenue in the amount of \$250 for their Respite Care budget line. These are federal funds with no local match required. They will cover additional expenses that the Department has incurred for respite care.2. The Department has received additional revenue in the amount of \$2,000 for the IV-E Foster Care budget line. These funds are also 100% federal and do not require a local match. <p>The Finance Committee should consider approval of the following: <i>“Be it resolved that FY22 Department of Social Services budgeted expenditure and appropriation be increased by \$2,250, and budgeted revenue be increased by the same amount, for the purpose of receiving additional federal funds for Respite Care and IV-E Foster Care.”</i></p>	... 52 53
B.	<u>FY22 Conservation Easement Supplemental Appropriation Request:</u> The Conservation Easement Authority is requesting a supplemental appropriation for an application filed by Jeff Murphy for DUR easement purchase. The Authority is requesting appropriation of \$141,000. <p>The Finance Committee should consider approval of the following: <i>“Be it resolved that FY22 budgeted expenditure and appropriation to the Conservation Easement fund be increased \$141,000, that revenue from the Commonwealth be recognized in the amount of \$70,500, all for the purpose of purchasing Conservation Easement on the land of Jeff Murphy.”</i></p>	54
C.	<u>FY22 Health Insurance Supplemental Request:</u> The Director of Joint Administrative Services is requesting a supplemental appropriation of \$300,000 from fund balance designation to the Self-Funded Health Insurance Account, for the purpose of processing future claims and to handle monthly variations in revenue received and expenses paid. The Finance Committee previously approved a transfer of \$100,000 from fund balance to the Health Insurance Fund; however, a supplemental	56

MEMORANDUM

TO: Finance Committee, Chris Boies
FROM: Conservation Easement Authority, Alison Teetor
DATE: April 28, 2022
SUBJECT: Application for DUR purchase – Jeff Murphy – Tax Map#'s 3-A-55C & 3-A-55D

Jeff Murphy has applied to the easement authority for approval of an easement DUR purchase. The property consists of two parcels 3-A-55C, 121.12 acres, with 1 existing house and 5 remaining DURs. The second parcel 3-A-55D consists of 1.8 acres with 1 DUR. The property is located at 2486 Longmarsh Rd. approximately .4 miles south of the intersection with Old Charlestown Road. The large parcel has an existing house built in 1984. The current land use is for hay and pasture. Mr. Murphy is planning to run a race horse training facility on the property. The applicant would like to retire 4 of the remaining 6 DURs and retain the right to subdivide one additional 3 acre parcel.

The parcel is zoned AOC and is in land use. Therefore the following guidelines for accepting properties for easement purchase are used:

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

The property meets 3 of the 4 criteria by scoring over 35, being over 40 acres, and giving up 4 DURs. It is not next to an adjacent easement. The property resource score is 62.8, points were given for retiring 4 DURs, and having about an acre of wetlands. There is an intermittent stream feeding a small pond and Mr. Murphy has expressed interest in creating a riparian buffer around the area. A site visit was conducted March 29th. Based only on the property resource score the and the owner income, the property owner is eligible for the maximum offer of \$35,200/DUR.

An easement purchase price of \$140,800 was approved by the easement authority at their April meeting. The Authority requests appropriation of \$141,000, in order to cover estimated closing costs. Funding sources include \$70,500 from the County's local fund balance and \$70,500 from VDACS.

Recommendation: Appropriate \$141,000 in funds for the DUR easement purchase for Jeff Murphy.



Jeff Murphy Properties
 Tax Map 3-A-55C, 121.52 acres, 1 ext. hse, 5 DUR
 Tax Map 3-A-55D, 1.8 acres, 1 DUR



Clarke County GIS
 April 25, 2022

460 230 0 460 Feet



- Parcel Boundary
- Conservation Easements
- Scenic Byway
- Public Road
- Private Road
- Intermittent Stream
- Perennial Stream

Location Map



Aerial Imagery 2015 Commonwealth of Virginia



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

May 6, 2022

Clarke County Conservation Easement Authority
Fundraising Report
May 2022 meeting

Donor Statistics

See attached Master Report

- 2022 year-to-date total: \$7,341 from 53 donations

Ongoing

-20th anniversary celebration for Easement Authority

- Thursday, June 16, 2022, 5:00 to 7:00 pm, Long Branch
- Inviting area VIPs, easement property owners, special guests (ran into Eric Digges of Greenway Court, original easement holder – he and brothers as special guest?)

-Conservation easement information workshop

- Finalize a September date and book venue (Camino Real, Millwood Country Club?)
- Update on potential speakers (Brooke Middleton, panel of easement landowners, PEC)

-Spring newsletter

- Featured Edge-Wood Dairy and Koons family – big plans!

Agenda

Conservation BBQ Dinner Wednesday, May 4, 2022 @ 6 PM

Introduction Fred Lee George, President Game Club

- 1) Info on Conservation Easements & Financial Benefits from donating a Conservation Easement

Jack Hanssen, Attorney-Moyes & Associates, Leesburg, VA

- 2) Valuation of Conservation Easements
Norman Myers, MAI-Myers Appraisal Service
Leesburg, VA

- 3) Stewardship of Conservation Easement
Ashton Cole, Land Trust of Virginia

- 4) Question and Answer Session

Federal Conservation Easements and Virginia Tax Credits

JACK C. HANSSEN, ESQ.
MOYES & ASSOCIATES, P.L.L.C.

Overview of Virginia Program

A Conservation Easement is a permanent restriction placed on real estate by a property owner through a Deed of Easement limiting use and development rights associated with the property to protect conservation values associated with the property.

Overview of Virginia Program

- **Allows for donations of “Qualified Conservation Contribution,” which is a contribution of qualified real property to a qualified organization exclusively for conservation purposes.**
- **Easement must be exclusive and in perpetuity.**
- **Conservation purposes are public recreation, habitat protection, open space protections, and historic properties. Most easements are for open-space protection.**

Overview of Virginia Program

The restrictions contained in the Deed of Easement will result in a loss of value in the property.

- Reduction in value determined by a “Qualified Appraisal”
- Appraisal prepared by a “Qualified Appraiser”
- A Qualified Appraisal is an appraisal conducted by a qualified appraiser in accordance with generally accepted appraisal standards. Section 170(f)(11)(E)(i) and (ii).

Overview of Tax Benefits

- 1. Federal Charitable Deduction**
- 2. State Income Tax Deduction**
- 3. Transferable State Income Tax Credit**
- 4. Reduced State Property Taxes (land use)**

Federal Charitable Deduction

Section 170(h) allows for a federal charitable income tax deduction for the amount of the donation.

Limitations

1. Section 170(e)(1)(A) limited to basis in easement for short term property.
2. Quid Pro Quo-Under new SALT regulations must reduce donation by amount of tax credits received (more below).
3. Deduction limited each year to 50% of AGI, with a 15-year carryforward. (100% for farmers).

State Income Tax Deduction

Virginia allows a state income tax deduction for conservation easement donations by individuals and corporations. Sections 58.1-322.03 and 58.1-402(c)(16) of the Virginia Code.

In addition, a donor will receive land use taxation for real property purposes on account of the easement and not based on uses.

Transferable State Income Tax Credit

In addition to the federal benefits of a 50% charitable deduction (15 year carryforward), Virginia provides a transferable tax credit equal to 40% of the amount of the donation.

- Transferable VA tax credit (Can sell to other VA taxpayers)
- 10-year carryforward
- \$20,000 (\$40,000 for a couple) per year/per taxpayer limitation
- \$75,000,000 per year cap on Land Preservation Credits issued

Donor Issues on Tax Credit Issuance

- No State of Federal income recognition event on issuance. *Tempel v. Commissioner*, 136 T.C. No. 11 (2011) and VA Code Sec. 58.1-513(E).
- Use of tax credit by donor will reduce their Schedule A federal income tax deduction for state income taxes paid. Chief Counsel Advisory 201140724 (November 25, 2011).
- Credit is non-refundable.
- Credit will reduce federal charitable deduction (see quid pro quo below).

Donor Issues on Sale Of Tax Credits

- No VA income tax on sale of credits. Section 58.1-513(E).
- Federal income tax on sale of credits.
- Capital gain and long-term/short-term rules apply *Tempel v. Commissioner*, 136 T.C. No. 15 (2011) *aff'd*. 744 F.3d 648 (10th Cir. 2014).
- Basis in Tax Credit unclear under current law.

Example

Mr. & Mrs. Smith own a 200-acre farm in Loudoun County with no home, but they intend to build a retirement home on the property. An appraiser values the land at \$20,000 an acre for a total value of \$4,000,000. The Smiths are interested in donating a conservation easement on the property whereby the property could not be subdivided in perpetuity. The Smiths, however, retain the right to divide the property into two 100 acre lots. An appraiser determines that the per acre value of the property after the donation of the conservation easement will be \$10,000 per acre or a total \$2,000,000. The benefits to the Smith family are as follows:

HYPOTHETICAL OF BENEFITS (NOT AN APPRAISAL OR PREDICTION)

Before	\$	4,000,000.00
After	\$	2,000,000.00
Donation	\$	2,000,000.00
Fed Deduct	\$	1,200,000.00
LPC Credit	\$	800,000.00

Example-Federal

Federal Charitable Income Tax Deduction: \$1,200,000
(Subject to 50% AGI limitation and 15 year carryforward)
Assume the Smith's AGI is \$200,000 for each of the next 15 years and they are in a 34% tax bracket, the Smith's would have a \$100,000 tax deduction each year, with an overall economic value of \$34,000 per year.

Example-Tax Credits

Virginia State Income Tax Credit: The Smiths would receive a state income tax credit of \$800,000, of which they can use \$20,000 (\$40,000 for couples) for per year, subject to a 10-year carry forward. Assume however, that the Smiths sell their tax credits in the first year for net sales proceeds (after transfer fees and commissions for a broker) of 80 cents for each dollar sold. The Smiths would realize \$640,000 from the sale of the tax credits.

Example-Summary

Summary of Potential Financial Benefits

Federal and State Deduction over 16 Years:

Donation Amount after reduction for Tax Credits \$1,200,000

Federal (28%) and Virginia (5.75%) tax savings

\$408,000

Donor must have the income to use the tax deduction

Proceeds from Sale of Tax Credit (**this is Cash**):

640,000

Total Potential Financial Benefits

\$1,048,000

QUESTIONS

Jack Hanssen, Esquire
Moyes & Associates, P.L.L.C.
21 North King Street
Leesburg, VA 20176

Jack@Moyeslaw.com
(703) 777-6800

Requirement of Building Envelopes

I find that a requirement of building envelopes on all conservation easements would be advisable.

Some provisions to consider:

1. Building envelopes to be required for all residential and agricultural structures, except for small shelters for animals which do not exceed 200 square feet.
2. A survey plat locating all building envelopes shall be attached to or be recorded simultaneously with the Deed of Easement.
3. Any relocation of a building envelope after recordation of the Deed of Easement shall be upon written permission granted in the sole discretion of the Grantee upon Grantee's determination that the relocation will not impair the conservation values of the easement. A survey plat of the building envelope to be relocated shall be submitted with the request for relocation of the building envelope.

Virginia Outdoors Foundation Deed Template

3. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES

Buildings, structures, roads, and utilities. No buildings, structures, roads, or utilities, other than the following, are permitted on the Property:

(i) **Buildings and structures.**

(a) Existing and new buildings and structures on the Property with the right to construct, use, enlarge, maintain, and replace such buildings and structures, all subject to the impervious coverage limitations set forth in Section II Paragraph 2 above, the siting restrictions set forth in Section II Paragraph 3(v) below, and any other restrictions set forth elsewhere in this Easement. No more than ____ detached (freestanding) dwellings may be maintained or constructed on the Property.

(b) Any new building or structure with a roof area and any additional impervious surface, together exceeding 10,000 square feet in ground area, must have Grantee's prior review and written approval, which approval will take into consideration the impact of the size, height, and siting of the proposed building or structure on the Conservation Values of the Property.

(c) No building may exceed 35 feet in height, measured from the average grade of the foundation thereof, excepting cupolas, chimneys, antennas, silos, or other structural features having the prior written approval of Grantee.

Piedmont environmental Council - Deed Template

2. BUILDINGS AND OTHER STRUCTURES:

No permanent or temporary Structure shall be constructed, placed, or erected on the Property other than:

A. RESTRICTIONS ON NUMBER AND SIZE OF PERMITTED STRUCTURES.

Grantor shall be permitted and limited to the following:

i. Residences. One (1) Building containing a Residence, such as detached or attached dwellings, barn or garage apartments, which may be used by one or more persons or families.

a. Any Building containing such Residence or a portion thereof shall not individually exceed three thousand, five hundred (3,500) square feet of Ground Area without Grantee's Prior Written Approval.

b. Intentionally Blank

c. The one Existing Structure containing a Residence on the Property, located at _____ and having a Ground Area of approximately _____ Two Thousand Three Hundred Forty (2,340) square feet and, further, described as the Main house and attached back deck in the Baseline Documentation Report, shall be counted as the one permitted Building containing a Residence and in the permitted square feet of Ground Area.

ii. Structures Appurtenant to Residences. Structures commonly and appropriately incidental to the Residences permitted in Paragraph II.A.i and sized appropriately to serve as subordinate appurtenances to such Residences are permitted, provided that the aggregate Ground Area for all such Structures shall not exceed two thousand, five hundred (2,500) square feet in Ground Area.

iii. Agricultural Structures. Agricultural Structures are permitted, except that an Agricultural Structure exceeding two thousand, five hundred (2,500) square feet in Ground Area shall not be constructed on the Property unless Prior Written Approval for the Agricultural Structure shall have been obtained from Grantee. For purposes of this paragraph (iii), an Agricultural Building or Structure shall mean a building or structure originally constructed and used for the activities specified in Sections (7)(A)(i), (iii), and (iv).

iv. Small-Scale Miscellaneous Structures. Small-Scale Miscellaneous Structures (defined below), the existence of which is consistent with the Conservation Purposes of this Easement and which will not impair the Conservation Values protected herein are permitted. Such Structures shall be limited to stream crossings (including Structures over the Riparian Protection Zone to access crossings), fencing poles and/or trellising, walls, permitted signs, mailboxes, feeding and watering troughs, or other Structures that do not individually exceed three hundred (300) square feet in size ("Small-Scale Miscellaneous Structures").

v. intentionally blank.

vi. Temporary Structures Temporary Structures on the Property, such as, but not limited to, tents, platforms, stages, and porta-potties are permitted, provided that such temporary structures (a) shall be used for no more than ten (10) days during each calendar year; (b) shall be removed from the Property, or stored within another permanent Structure permitted on the Property, and the area occupied by such structures is restored to the approximate condition of the surrounding undisturbed land within thirty (30) days of the completion of the event or activity for which such structures were provided, or within thirty (30) days of the end of the consecutive ten-day period allowed for use of such structures, whichever first occurs; and (c) are used only for an activity or use that is expressly permitted on the Property by another provision of this Easement.

Grantee shall be permitted to give its Prior Written Approval for Structures that exceed the Ground Area limitations provided above, but in all cases such Prior Written Approval shall be subject to the Impervious Coverage limitation provided below in Section II.6.

B. LOCATION OF STRUCTURES:

i. Limited Building Area. One (1) Limited Building Area is hereby established on the Property, with said Limited Building Area containing approximately Two and eight-tenths acres (2.8) acres and its location shown on Exhibit I: Sketch Plat for Conservation Easement.

ii. Structures Permitted Outside Limited Building Area. Except as provided in Subparagraph B. iii following, no Buildings and Structures shall be permitted outside the Limited Building Area except for the following: (1) Small-Scale Miscellaneous Structures.

iii. Existing Structures. Existing Structures may be used, maintained, and replaced in their current locations, as shown in the Baseline Documentation Report. Any Structure not shown in the Baseline Documentation Report shall be located in accord with the following Section II.2.B.iv. Existing Structures that are located

within the Limited Building Area may be enlarged or replaced, subject to the limitations of Section II.2.A regarding the number and size of permitted Structures.

iv. New Structures. Structures not shown in the Baseline Documentation Report shall be located within the Limited Building Area, except as provided in Section II.2.B.ii.

v. Confirmation of Proposed Location for New Structures. Prior to construction of any new Structure subject to this Section II.2 that individually exceeds two thousand, five hundred (2,500) square feet in Ground Area, Grantor shall provide Notice to Grantee in the manner provided in Section V.8. to confirm that the proposed new Structure complies with this Section II.2.

8. NOTICE TO GRANTEE AND GRANTOR: For the purpose of giving notices hereunder the current address of Grantee is 45 Horner Street, Warrenton, Virginia 20186. Notice to Grantor shall be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently Waverley Farm, 13434 Waverley Farm Drive, Somerset, Virginia 22972.

Grantor agrees to notify Grantee in writing (i) within sixty (60) days before construction or siting of any new Structure permitted by Section II.2 or before exercising any reserved right that may have an adverse effect on the Conservation Values or other conservation interests associated with the Property; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the Conservation Purposes; and (ii) within sixty (60) days of any inter vivos transfer, other than a deed of trust or mortgage, of all or any part of the Property or interest in the Property. Failure to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way or the rights of Grantee hereunder, nor shall it affect the validity of such conveyance. For the avoidance of doubt Grantor is not required to provide notice to Grantor for any proposed new Structure that does not exceed 1,000 square feet in Ground Area,

Land Trust of Virginia – recorded deed of easement NERD Farms 2019

2.3 BUILDINGS AND STRUCTURES. No Buildings or Structures, whether permanent or temporary, shall be built or maintained on the Property other than as follows:

2.3.1 Primary Dwelling: One (1) Primary Dwelling, which does not exist on the Effective Date, shall be permitted. Such Primary Dwelling shall not exceed three thousand five hundred (3,500) square feet in Ground Area, unless Prior Written Approval shall have been obtained from the Grantee.

2.3.2 Secondary Dwelling: One (1) Secondary Dwelling, which does not exist on the Effective Date, shall be permitted. Such Secondary Dwelling shall not exceed one thousand five hundred (1,500) square feet in Ground Area, unless Prior Written Approval shall have been obtained from the Grantee.

2.3.3 Accessory Buildings: Accessory Buildings are permitted, but the aggregate Ground Area of Accessory Buildings combined on the Property shall not exceed two thousand (2,000) square feet, unless Prior Written Approval shall have been obtained from Grantee.

2.3A Farm Buildings: Farm Buildings are permitted, but the aggregate Ground Area of all Farm Buildings combined on the Property shall not exceed fifty-six thousand (56,000) square feet, unless Prior Written Approval shall have been obtained from Grantee.

2.3.5 Structures: Other Structures associated with the permitted activities under this Easement may be built or maintained only when Prior Written Approval shall have been given by the Grantee.

2.4 ADDITIONAL BUILDING AND STRUCTURE RESTRICTIONS. The following Restrictions apply to all Buildings and Structures.

2.4.1 Building Envelopes: New Buildings and Structures must be located within either of the two (2) areas marked on the attached plat as the "Building Envelopes". Prior to construction of any new Buildings or Structures, Grantor shall survey the area to ensure said Building or Structure is located within said Building Envelope. A copy of each survey shall be provided to Grantee prior to such construction.

2.4.2 Prior Notice: Grantor must give Grantee written notice pursuant to Section 5.6 before beginning construction, replacement, relocation, or enlargement of any Building, Structure, Road or Utility on the Property.

2.4.3 Exemptions: The restriction of Section 2.4.1 shall not apply to fencing, stone walls, permitted signs, mailboxes, feeding and watering troughs, Structures (but not Buildings) necessary for Pre-Approved Nutrient Bank Activities, or small run-in sheds for horses or other animals that are consistent with generally accepted agricultural, animal husbandry or equine practices; provided, no more than two (2) run-in sheds, each of which shall not be larger than 288 square feet in size each, may be constructed outside of the Building Envelopes. Such run-in sheds shall not be constructed within two hundred (200) feet of the centerlines of State Routes 659 or 660.

2.4.4 Building Height: The height of any Building or Structure shall not be more than thirty-five (35) feet, as measured from final grade to ridge of roof, unless Prior Written Approval shall have been obtained from the Grantee.

2.4.5 Downlighting: Use of exterior lighting in all areas shall be limited to fully horizontally shielded lighting fixtures. The light element (lamp or globe) of a fixture shall not extend below the cut off shield.

2.5 AGGREGATE GROUND AREA The aggregate Ground Area of all Buildings and Structures on the Property, shall not exceed seventy thousand (70,000) square feet without Prior Written Approval of the Grantee. For purposes of calculating aggregate Ground Area, all Buildings and Structures, including those existing on the Effective Date and those added after that time, shall be included.

2.6 CONSISTENCY WITH CONSERVATION VALUES. New, replaced, relocated, repaired, renovated, or enlarged Buildings or Structures must not adversely affect, be inconsistent or conflict with, diminish, impair nor interfere with the Conservation Values of the Property.

2.7 RIGHT TO CONSTRUCT, REPAIR, MAINTAIN, RENOVATE AND REPLACE. Except for restrictions herein regarding Aggregate Ground Area, the Restrictions above shall not preclude the repair or replacement of any Buildings, Structures, fencing, mailboxes, gate posts, and permitted signs existing as of the date of this Easement.

0639
0772

Other Structures

Sec	Description	Area	BaseRate	Deprec	Story Height	YearBlt	Value
1	GARAGE-METAL	1,280	\$12.00	MANUAL	1.00	0	\$15,360
2	MISC STRUCTURE	4,608	\$6.00	MANUAL	1.00	0	\$27,648
3	SHED-EQUIPMENT	3,072	\$4.00	MANUAL	1.00	0	\$12,288
4	SHELTER-FRAME	135	\$4.00	MANUAL	1.00	0	\$540
5	MISC STRUCTURE	26,000	\$5.00	MANUAL	1.00	0	\$130,000
6	SHED	192	\$5.00	MANUAL	1.00	0	\$960

Total 35,287 square feet

Composting Toilets on Powhatan Conservation Easement

Suggested language for motion permitting composting toilets on the Powhatan Conservation Easement:

The Grantee having determined that the installation of up to two composting toilets would not impair the conservation values of the conservation easement, the installation of up to two composting toilets is approved, provided that the total footprint square footage of the composting toilets shall be included as part of the total square footage of 3,000 square feet permitted as part of the collective footprint of all buildings and structures on the property as set forth in paragraph F of Section 3 of the Deed of Easement.

Section 3-D-3 of the Clarke County Zoning Ordinance, the Grantor does hereby voluntarily and permanently terminate two (2) unused DURs on Tax Map No. 29-A-17, leaving two (2) unused DURs and zero (0) Exceptions remaining on Tax Map No. 29-A-17.

2. **DIVISION.**

A. Division of the Property is prohibited.

B. A boundary line adjustment of Tax Parcel 29-A-17, of which the Property is a part, shall be permitted as above-described and as shown on the Boundary Line Adjustment plat of W. Stuart Dunn, C.L.S., dated May 3, 2011, which plat is to be recorded immediately following this Easement. Said boundary line adjustment shall not change the property subject to this Easement.

C. Additional boundary line adjustments of the Property with adjoining parcels of land are permitted and shall not be considered divisions of the Property, provided that Grantee is made party to the deed creating the boundary line adjustment and at least one of the following conditions is met:

(i) The entire adjacent parcel is subject to a recorded open-space easement owned by Grantee; or

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

3. **BUILDINGS AND STRUCTURES; PHYSICAL IMPROVEMENTS**

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

(i) Shelters or other open-air structures, not exceeding 1,000 square feet in ground area, constructed and used in conjunction with activities permitted in paragraph 4;

(ii) One (1) equipment shed, not exceeding 1,000 square feet in floor area.

B. Hiking trails, cross-country track trails, and other physical improvements other than structures may be made to the Property for use in activities permitted in Paragraph 4.B; provided, however, a cross-country track trail in the Riparian Buffer set forth in paragraph 6, below, shall be limited to the access path to bridges crossing Roseville Run and Spout Run; and provided, further, that any cross-country track trail shall be constructed of pervious materials (not paved).

C. Grantor, or their assigns, within thirty (30) days of recordation of this Easement, shall mark the existing boundary between the Property and the Powhatan School, which boundary will be vacated by the boundary line adjustment plat referenced in Paragraph 2.B., above, with a fence, monuments, or other permanent markers so as to make the boundary readily identifiable on the ground.

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

E. Private roads and utilities to serve permitted buildings or structures, and roads with permeable surfaces for other permitted uses, such as farming or forestry, may be constructed and maintained. 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 10.

F. The collective footprint of all buildings and structures on the Property, excluding roads, shall not exceed 3,000 square feet, 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.

4. **INDUSTRIAL, COMMERCIAL, RECREATIONAL, AND EDUCATIONAL ACTIVITIES.**

A. 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; and (iii) temporary 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.

B. Recreational and educational activities on the Property shall be limited to the following: (i) educational and scientific outdoor classes and activities; (ii) gardening; (iii) passive recreational activities such as hiking, bird-watching, etc., and (iv) cross-country track activities.

5. **MANAGEMENT OF FOREST.**

A. Best Management Practices, 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 preharvest plan consistent with the Forest Stewardship Management Plan shall be submitted to Grantee for approval 30 days before beginning any material timber harvest.

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.

6. **RIPARIAN BUFFER.** To protect water quality, a 100-foot buffer strip shall be maintained in forest or be permitted to revegetate naturally along each edge of the

Virginia Outdoors Foundation Deed Template

3. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES

Buildings, structures, roads, and utilities. No buildings, structures, roads, or utilities, other than the following, are permitted on the Property:

(i) **Buildings and structures.**

(a) Existing and new buildings and structures on the Property with the right to construct, use, enlarge, maintain, and replace such buildings and structures, all subject to the impervious coverage limitations set forth in Section II Paragraph 2 above, the siting restrictions set forth in Section II Paragraph 3(v) below, and any other restrictions set forth elsewhere in this Easement. No more than ____ detached (freestanding) dwellings may be maintained or constructed on the Property.

(b) Any new building or structure with a roof area and any additional impervious surface, together exceeding 10,000 square feet in ground area, must have Grantee's prior review and written approval, which approval will take into consideration the impact of the size, height, and siting of the proposed building or structure on the Conservation Values of the Property.

(c) No building may exceed 35 feet in height, measured from the average grade of the foundation thereof, excepting cupolas, chimneys, antennas, silos, or other structural features having the prior written approval of Grantee.

Piedmont environmental Council - Deed Template

2. BUILDINGS AND OTHER STRUCTURES:

No permanent or temporary Structure shall be constructed, placed, or erected on the Property other than:

A. RESTRICTIONS ON NUMBER AND SIZE OF PERMITTED STRUCTURES.

Grantor shall be permitted and limited to the following:

i. Residences. One (1) Building containing a Residence, such as detached or attached dwellings, barn or garage apartments, which may be used by one or more persons or families.

a. Any Building containing such Residence or a portion thereof shall not individually exceed three thousand, five hundred (3,500) square feet of Ground Area without Grantee's Prior Written Approval.

b. Intentionally Blank

c. The one Existing Structure containing a Residence on the Property, located at _____ and having a Ground Area of approximately _____ Two Thousand Three Hundred Forty (2,340) square feet and, further, described as the Main house and attached back deck in the Baseline Documentation Report, shall be counted as the one permitted Building containing a Residence and in the permitted square feet of Ground Area.

ii. Structures Appurtenant to Residences. Structures commonly and appropriately incidental to the Residences permitted in Paragraph II.A.i and sized appropriately to serve as subordinate appurtenances to such Residences are permitted, provided that the aggregate Ground Area for all such Structures shall not exceed two thousand, five hundred (2,500) square feet in Ground Area.

iii. Agricultural Structures. Agricultural Structures are permitted, except that an Agricultural Structure exceeding two thousand, five hundred (2,500) square feet in Ground Area shall not be constructed on the Property unless Prior Written Approval for the Agricultural Structure shall have been obtained from Grantee. For purposes of this paragraph (iii), an Agricultural Building or Structure shall mean a building or structure originally constructed and used for the activities specified in Sections (7)(A)(i), (iii), and (iv).

iv. Small-Scale Miscellaneous Structures. Small-Scale Miscellaneous Structures (defined below), the existence of which is consistent with the Conservation Purposes of this Easement and which will not impair the Conservation Values protected herein are permitted. Such Structures shall be limited to stream crossings (including Structures over the Riparian Protection Zone to access crossings), fencing poles and/or trellising, walls, permitted signs, mailboxes, feeding and watering troughs, or other Structures that do not individually exceed three hundred (300) square feet in size (“Small-Scale Miscellaneous Structures”).

v. intentionally blank.

vi. Temporary Structures Temporary Structures on the Property, such as, but not limited to, tents, platforms, stages, and porta-potties are permitted, provided that such temporary structures (a) shall be used for no more than ten (10) days during each calendar year; (b) shall be removed from the Property, or stored within another permanent Structure permitted on the Property, and the area occupied by such structures is restored to the approximate condition of the surrounding undisturbed land within thirty (30) days of the completion of the event or activity for which such structures were provided, or within thirty (30) days of the end of the consecutive ten-day period allowed for use of such structures, whichever first occurs; and (c) are used only for an activity or use that is expressly permitted on the Property by another provision of this Easement.

Grantee shall be permitted to give its Prior Written Approval for Structures that exceed the Ground Area limitations provided above, but in all cases such Prior Written Approval shall be subject to the Impervious Coverage limitation provided below in Section II.6.

B. LOCATION OF STRUCTURES:

- i. Limited Building Area. One (1) Limited Building Area is hereby established on the Property, with said Limited Building Area containing approximately Two and eight-tenths acres (2.8) acres and its location shown on Exhibit 1: Sketch Plat for Conservation Easement.
- ii. Structures Permitted Outside Limited Building Area. Except as provided in Subparagraph B. iii following, no Buildings and Structures shall be permitted outside the Limited Building Area except for the following: (1) Small-Scale Miscellaneous Structures.
- iii. Existing Structures. Existing Structures may be used, maintained, and replaced in their current locations, as shown in the Baseline Documentation Report. Any Structure not shown in the Baseline Documentation Report shall be located in accord with the following Section II.2.B.iv. Existing Structures that are located

within the Limited Building Area may be enlarged or replaced, subject to the limitations of Section II.2.A regarding the number and size of permitted Structures.

iv. New Structures. Structures not shown in the Baseline Documentation Report shall be located within the Limited Building Area, except as provided in Section II.2.B.ii.

v. Confirmation of Proposed Location for New Structures. Prior to construction of any new Structure subject to this Section II.2 that individually exceeds two thousand, five hundred (2,500) square feet in Ground Area, Grantor shall provide Notice to Grantee in the manner provided in Section V.8. to confirm that the proposed new Structure complies with this Section II.2.

8. NOTICE TO GRANTEE AND GRANTOR: For the purpose of giving notices hereunder the current address of Grantee is 45 Horner Street, Warrenton, Virginia 20186. Notice to Grantor shall be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently Waverley Farm, 13434 Waverley Farm Drive, Somerset, Virginia 22972.

Grantor agrees to notify Grantee in writing (i) within sixty (60) days before construction or siting of any new Structure permitted by Section II.2 or before exercising any reserved right that may have an adverse effect on the Conservation Values or other conservation interests associated with the Property; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the Conservation Purposes; and (ii) within sixty (60) days of any inter vivos transfer, other than a deed of trust or mortgage, of all or any part of the Property or interest in the Property. Failure to comply with this requirement shall not impair the validity of the Easement or limit its enforceability in any way or the rights of Grantee hereunder, nor shall it affect the validity of such conveyance. For the avoidance of doubt Grantor is not required to provide notice to Grantor for any proposed new Structure that does not exceed 1,000 square feet in Ground Area,

Land Trust of Virginia – recorded deed of easement NERD Farms 2019

2.3 BUILDINGS AND STRUCTURES. No Buildings or Structures, whether permanent or temporary, shall be built or maintained on the Property other than as follows:

2.3.1 Primary Dwelling: One (1) Primary Dwelling, which does not exist on the Effective Date, shall be permitted. Such Primary Dwelling shall not exceed three thousand five hundred (3,500) square feet in Ground Area, unless Prior Written Approval shall have been obtained from the Grantee.

2.3.2 Secondary Dwelling: One (1) Secondary Dwelling, which does not exist on the Effective Date, shall be permitted. Such Secondary Dwelling shall not exceed one thousand five hundred (1,500) square feet in Ground Area, unless Prior Written Approval shall have been obtained from the Grantee.

2.3.3 Accessory Buildings: Accessory Buildings are permitted, but the aggregate Ground Area of Accessory Buildings combined on the Property shall not exceed two thousand (2,000) square feet, unless Prior Written Approval shall have been obtained from Grantee.

2.3A Farm Buildings: Farm Buildings are permitted, but the aggregate Ground Area of all Farm Buildings combined on the Property shall not exceed fifty-six thousand (56,000) square feet, unless Prior Written Approval shall have been obtained from Grantee.

2.3.5 Structures: Other Structures associated with the permitted activities under this Easement may be built or maintained only when Prior Written Approval shall have been given by the Grantee.

2.4 ADDITIONAL BUILDING AND STRUCTURE RESTRICTIONS. The following Restrictions apply to all Buildings and Structures.

2.4.1 Building Envelopes: New Buildings and Structures must be located within either of the two (2) areas marked on the attached plat as the "Building Envelopes". Prior to construction of any new Buildings or Structures, Grantor shall survey the area to ensure said Building or Structure is located within said Building Envelope. A copy of each survey shall be provided to Grantee prior to such construction.

2.4.2 Prior Notice: Grantor must give Grantee written notice pursuant to Section 5.6 before beginning construction, replacement, relocation, or enlargement of any Building, Structure, Road or Utility on the Property.

2.4.3 Exemptions: The restriction of Section 2.4.1 shall not apply to fencing, stone walls, permitted signs, mailboxes, feeding and watering troughs, Structures (but not Buildings) necessary for Pre-Approved Nutrient Bank Activities, or small run-in sheds for horses or other animals that are consistent with generally accepted agricultural, animal husbandry or equine practices; provided, no more than two (2) run-in sheds, each of which shall not be larger than 288 square feet in size each, may be constructed outside of the Building Envelopes. Such run-in sheds shall not be constructed within two hundred (200) feet of the centerlines of State Routes 659 or 660.

2.4.4 Building Height: The height of any Building or Structure shall not be more than thirty-five (35) feet, as measured from final grade to ridge of roof, unless Prior Written Approval shall have been obtained from the Grantee.

2.4.5 Downlighting: Use of exterior lighting in all areas shall be limited to fully horizontally shielded lighting fixtures. The light element (lamp or globe) of a fixture shall not extend below the cut off shield.

2.5 AGGREGATE GROUND AREA The aggregate Ground Area of all Buildings and Structures on the Property, shall not exceed seventy thousand (70,000) square feet without Prior Written Approval of the Grantee. For purposes of calculating aggregate Ground Area, all Buildings and Structures, including those existing on the Effective Date and those added after that time, shall be included.

2.6 CONSISTENCY WITH CONSERVATION VALUES. New, replaced, relocated, repaired, renovated, or enlarged Buildings or Structures must not adversely affect, be inconsistent or conflict with, diminish, impair nor interfere with the Conservation Values of the Property.

2.7 RIGHT TO CONSTRUCT, REPAIR, MAINTAIN, RENOVATE, AND REPLACE. Except for restrictions herein regarding Aggregate Ground Area, the Restrictions above shall not preclude the repair or replacement of any Buildings, Structures, fencing, mailboxes, gate posts, and permitted signs existing as of the date of this Easement.

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0772

Other Structures

Sec	Description	Area	BaseRate	Deprec	Story Height	YearBlt	Value
1	GARAGE-METAL	1,280	\$12.00	MANUAL	1.00	0	\$15,360
2	MISC STRUCTURE	4,608	\$6.00	MANUAL	1.00	0	\$27,648
3	SHED-EQUIPMENT	3,072	\$4.00	MANUAL	1.00	0	\$12,288
4	SHELTER-FRAME	135	\$4.00	MANUAL	1.00	0	\$540
5	MISC STRUCTURE	26,000	\$5.00	MANUAL	1.00	0	\$130,000
6	SHED	192	\$5.00	MANUAL	1.00	0	\$960

Total 35,287 square feet