

EXAMPLE RIPARIAN/OPEN SPACE EASEMENT

THIS DEED OF EASEMENT is entered into this ____ day of _____, by and between _____, Grantors, and the THOMAS JEFFERSON SOIL AND WATER CONSERVATION DISTRICT, Grantee, whose address is 706 Forest Street, Suite G, Charlottesville, Virginia 22903.

- - W I T N E S S E T H - -

WHEREAS, the parties to this deed recognize the need to promote and assure the protection of water quality and desire to improve and maintain wildlife habitat;

WHEREAS, Article XI of the Constitution of the Commonwealth of Virginia provides that "it shall be 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";

WHEREAS, the Virginia Conservation Easement Act, Section 10.1-1009 et sec of the Code of Virginia (1950), as amended, contemplates the creation of nonpossessory interests in real estate for the purposes of maintaining or enhancing water quality;

WHEREAS, the Virginia Open-Space Land Act, Section 10.1-1700 et sec of the Code of Virginia (1950), as amended, defines land held for conservation purposes as open-space land and provides that public bodies may acquire interests in land for those purposes; and,

WHEREAS, Section 10.1-547 of the Code of Virginia (1950), as amended, authorizes the acquisition of easements for those purposes by the Grantee.

NOW therefore, in consideration of ten dollar (\$10.00) and the mutual covenants herein and the acceptance by Grantee, the Grantors do hereby grant and convey to the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of the real estate consisting of _____ acres described below and located in _____ Magisterial District, _____ County, Virginia near _____ and fronting on State Route(s) _____ and hereinafter referred to as the "Property:"

(Property Description)

The Riparian Buffer is that land being 100 feet from the south bank of the North Anna River, and 100 feet from the west bank of Sycamore Creek

This easement is granted IN PERPETUITY to the Grantee and its successors as may be determined by modification of the enabling statutes cited herein. The covenants and restrictions herein recited shall be binding on the successors and assigns of both the Grantor and the Grantee. The specific existing status of the Property is further documented in an inventory of relevant features labeled "Baseline Report", a copy of which is maintained on file at the office of the Grantee, and is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant.

The Grantor, grantor's heirs, successors, personal representatives and assigns shall notify the Grantee within 60 days of the conveyance of the ownership of the "Property", and agree to inform successors of the restrictions herein. In any deed conveying all or any part of the "Property", this Easement shall be referenced by Deed Book and Page Number in the deed of conveyance.

The Grantor hereby covenants for himself and his successors in interest that the following restrictions shall be observed in the use of the described "Property":

1. Subdivision of the property in any manner is prohibited.
2. No permanent or temporary building or structure shall be built or maintained on the Property.
3. There shall be no mining, excavating, dredging, or removing from the Property of soil, loam, peat, gravel, sand, hydrocarbons, rock, or other mineral resource or natural deposit and no changing of topography through the placement of soil or other substances or material such as land fill or dredging spoils, except for: (1) movement or placement of soil, rock, or other earth materials, vegetative matter, and compost reasonably necessary for the purpose of combating erosion or flooding or to enhance habitat values; and (2) disturbance of soil by or under the supervision of a professionally qualified archaeologist for the purpose of excavating archaeological significant site. Prior to commencing such activities, plans for these activities must be submitted to and approved by the Grantee.
4. There shall be no dumping, burying, or storing of waste, sewage, garbage, vehicle or appliances, or any toxic, hazardous or offensive materials on the Property. There shall be no activities conducted on the Property that cause erosion or siltation. There shall be no conduct on the Property which could reasonably be expected to cause depletion of a stream or wetland, unless the activity is conducted to restore or enhance wildlife habitat or water quality.
5. Streamside areas are delineated and labeled "Riparian Buffer Areas" on the "Aerial Map", a copy of which is attached hereto to be recorded with this deed. The following additional restrictions shall be observed in the use of "Riparian Buffer Areas":
 - i. The Riparian Buffer Areas shall be preserved in perpetuity in their natural state.

- ii. Construction of buildings is prohibited in the Riparian Buffer Areas; however, by way of example and not limitations, structures such as boardwalks, foot trails, wildlife management structures, observation decks, and picnic tables may be constructed with the advance written consent of, and according to designs approved by, the Grantor and Grantee.
 - iii. In order to maintain the ecological values of the “Riparian Buffer Areas”, indigenous vegetation shall be preserved, or allowed to evolve by natural succession where it does not exist, to the maximum extent possible. The target vegetative cover in the “Riparian Buffer Areas” shall be indigenous riparian forest with ground cover, shrub, and tree canopy layers.
 - iv. With approval from the Grantee, the Grantor may remove vegetation determined to pose a health or safety risk to users of the Property or the lands abutting the “Riparian Buffer Area”. The Grantor also may remove or control vegetation that is determined to be an “invasive species”. What is an “invasive species” shall be determined by reference to the appropriate federal or state agency list at the time. Before removing vegetation, the Grantor shall confer with the Grantee to agree on the extent and method of vegetation removal. The Grantee may require mitigation with comparable native vegetation.
 - v. With approval from the Grantee, the Grantor may remove dead, diseased, and dying trees. Before removing vegetation, the Grantor shall confer with the Grantee to agree on the extent and method of vegetation removal.
 - vi. With approval from the Grantee, fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where bank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the water’s ecosystem.
 - vii. There shall be no vehicular crossing of the “Riparian Buffer Areas” without the prior written approval of Grantee as to location, design and construction and such crossing shall be maintained according to standards established by Grantee.
 - viii. No livestock shall be allowed within the “Riparian Buffer Areas” without the prior written approval of the Grantee and the implementation of a management plan that meets the standards established by Grantee.
6. The provisions herein shall be deemed individual and severable and the invalidity or partial invalidity or unenforceability of any one provision or any portion thereof shall not affect the validity or enforceability of any other provision herein.

Wherever Grantee’s consent or approval is required under the terms of this Easement for any activity proposed to be undertaken by Grantor, Grantor shall submit a written request for such consent or

approval to Grantee at the address provided in the preamble of this Easement, or at such other address as may be provided by Grantee to Grantor from time to time. Such request shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the terms of this Easement. Grantee shall permit such proposed activity if it determines that the proposed activity is consistent with the terms of this Easement. Notwithstanding the foregoing, Grantor and Grantee shall have no authority to permit or conduct any activity that would violate the purposes of this Easement, materially impair the conservation values of the Property or result in the termination of this Easement. Upon Grantee's request, Grantor shall reimburse Grantee for reasonable administrative costs associated with Grantee's consideration of any activity proposed to be undertaken by Grantor.

The easement provided for herein shall include the right of the Grantee, including its officers, employees and agents, to the following within the easement area:

1. The Grantee shall have the right and easement of ingress and egress over the easement area and any other lands of the Grantor abutting the easement area for the purposes of inspecting the condition of the easement area. Grantee shall notify the Grantor if the activities or the conditions within the easement area are not in accordance with the provisions of this deed of easement.
2. Grantee shall have the right to periodically enter along the "Riparian Buffer Areas" and place along its boundaries durable conspicuous markers (which shall not exceed 144 square inches in area) identifying the boundaries of the "Riparian Buffer Areas" and giving information on the means of contacting Grantee. Such markers shall not be spaced less than fifty feet from each other. Nothing contained herein shall obligate Grantee to place such markers, nor shall the failure to place such markers in any way waive any right herein granted to Grantee.

The Grantee covenants that it will exercise this easement on the following terms:

1. Although this easement will benefit the public, nothing herein shall be construed to grant any right of public use or right of public access to the subject property from either the public road or otherwise whatsoever. Except as required to supervise, inspect, and control the use of the easement area, this easement does not convey to the Grantee any right of access to the property without the consent of the Grantor or his successors. It is anticipated that at least an annual inspection by the Grantee or its agents will be scheduled.

Reassignment or Termination of the Grantee. The Grantee may assign its rights under this Easement to any entity that is a "qualified organization" as identified by the Internal Revenue Service and the Code of Virginia.

Modifications. Grantor and Grantee may jointly amend this Easement provided that any amendment of this Easement must be consistent with the purpose of this Easement and shall not affect its perpetual duration. Any such amendment shall not be effective unless and until recorded in the land records.

Change in Legal Status. If for any reason the legal status of the Property changes in such a way that the Open Space Easement is extinguished, the Property condemned, or the Easement document found legally ambiguous, water quality and wild life habitat should continue to be protected.

Enforcement. The provisions herein shall be enforceable by any proceeding at law by the Grantor or Grantee. Failure by any agency or owner to enforce any covenant or restriction contained herein shall in no event be deemed a waiver of the right to do so thereafter. Upon any breach or threatened potential breach of this Easement by Grantor, the Grantee may, after reasonable notice to Grantor, take such action as the Grantee determines to be necessary or appropriate to enforce the covenants and restrictions set forth in this Easement. The Grantee shall be entitled to pursue any cause of action which may be available to the Grantee at law or equity to prevent or correct any breach of such covenants and restrictions, including obtaining injunctive relief to prevent or rectify any breach of this Open-space Easement. The Grantee shall be entitled to recover damages for violations of the terms of this Easement, including damages for the loss of those conservation values that are protected by this Easement.

WITNESS the following signatures.

GRANTOR(S):

GRANTEE:

THOMAS JEFFERSON SOIL AND WATER CONSERVATION DISTRICT:

Chair, Thomas Jefferson Soil and Water Conservation District Board of Directors

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____:

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

Notary Public

My Commission Expires:

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____:

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

Notary Public

My Commission Expires:

COMMONWEALTH OF VIRGINIA

CITY/COUNTY OF _____:

The foregoing instrument was acknowledged before me this ____ day of _____, _____, by _____, on behalf of the Thomas Jefferson Soil and Water Conservation District.

Notary Public

My Commission Expires: