

Bart Svoboda

From: Scott Clark
Sent: Friday, July 15, 2022 11:16 AM
To: Bart Svoboda; Richard DeLoria
Subject: ACEA & Kindrick Fill

Hi, Bart—

I'm not sure if this will come up in the Board hearing for the Kindrick SE or not, but I wanted to let you know – at last night's meeting, the ACEA heard a short presentation about Mr Kindrick's farm-improvement plan (including the fill) on his ACE-easement property. They took no action (as the deed doesn't require any prior approval for this work). There was some discussion, but in general the Authority seemed to feel that the NRCS farm improvement plan was appropriate under the terms of the easement that permit "erosion control and restoration."

--Scott

Scott Clark (he/him)

Albemarle County

Community Development Department - Senior Planner II

Secretary, Albemarle Conservation Easement Authority

434-296-5832 ext. 3249

401 McIntire Road, North Wing, Charlottesville VA 22902

002600

This deed was prepared by the Albemarle County Attorney.

Tax Map 20, Parcel 10A; Tax Map 32, Parcels 1 and 2

This deed is exempt from taxation under Virginia Code §§ 58.1-811(A)(3) and 58.1-811(C)(4).

DEED OF EASEMENT

THIS DEED OF EASEMENT, made this 6th day of February, 2004, between **ALLAN B. KINDRICK** and **ADA M. KINDRICK**, Grantors, hereinafter collectively referred to as the "Grantors," and the **COUNTY OF ALBEMARLE, VIRGINIA**, a political subdivision of the Commonwealth of Virginia, hereinafter sometimes referred to as the "County," and the **ALBEMARLE COUNTY PUBLIC RECREATIONAL FACILITIES AUTHORITY**, a public body established pursuant to Virginia Code § 15.2-5600 *et seq.*; the County and the Albemarle County Public Recreational Facilities Authority are hereinafter collectively referred to as the "Grantees."

WITNESSETH

WHEREAS, the Grantors are the owners in fee simple of the real property located in Albemarle County that is described below and hereinafter referred to as the "Property;"

WHEREAS, under the County's Acquisition of Conservation Easements ("ACE") Program, codified in Appendix A.1 of the Albemarle County Code, the County is authorized to acquire conservation easements over qualifying properties in order to accomplish the purposes of the ACE Program and the Open-Space Land Act (Virginia Code § 10.1-1700 *et seq.*);

WHEREAS, the Grantors have voluntarily agreed to have the Property be subject to the terms of this conservation easement (hereinafter, the "Easement");

WHEREAS, the Grantees' acquisition of this easement furthers the purposes of the ACE Program in that the acquisition, among other things, assures that Albemarle County's resources are protected and efficiently used, establishes and preserves open-space, preserves the rural character of Albemarle County, and furthers the goals of the Albemarle County Comprehensive Plan to protect Albemarle County's natural, scenic and historic resources, promotes the continuation of a viable agricultural and forestal industry and resource base, and protects Albemarle County's surface water and ground water supplies;

WHEREAS, the Grantees' acquisition of this Easement limits the division rights for the Property as more fully set forth herein;

WHEREAS, the Grantors and the County have entered into an agreement under the terms of which the County has agreed to pay the Grantors the total sum of three hundred thirty-three thousand seven hundred dollars (\$333,700.00) for this Easement;

WHEREAS, by an unrecorded Exchange Agreement dated November 7, 2003 (the "Exchange Agreement"), the Grantors and Title Services L.C., agreed that the Grantors would convey the Easement to Title Services L.C. in exchange for suitable like-kind property pursuant to Section 1031 of the Internal Revenue Code of 1986; and

WHEREAS, pursuant to the provisions of the Exchange Agreement, Title Services L.C. has authorized and directed the Grantors to convey the Easement directly to the Grantees.

NOW, THEREFORE, in consideration of the recitals and the mutual benefits, covenants and terms herein contained, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the Grantors hereby grant, convey, covenant and agree as follows:

1. **GRANT AND CONVEYANCE OF EASEMENT.** The Grantors hereby grant and convey to the Grantees and their successors and assigns, with GENERAL WARRANTY AND ENGLISH COVENANTS OF TITLE, a conservation easement (the Easement) in gross over the Property described below, restricting in perpetuity the use of the Property in the manner set forth herein:

All that certain tract or parcel of land situated in the County of Albemarle, Virginia, containing 87.7 acres, more or less, being the residue of the 95½ acre tract shown on a plat by J.R. Ferguson, Surveyor, dated November 26, 1981, and recorded in the Clerk's Office of the Circuit Court of the County of Albemarle, Virginia, in Deed Book 86, page 434; LESS AND EXCEPT the 7.80 acre tract conveyed to the Board of County Supervisors of Albemarle County, Virginia, and shown on a plat by William S. Roudabush, Jr., dated August 1966, and recorded in said County, Deed Book 423, page 49; and

All those two adjoining tracts or parcels of land situated in the County of Albemarle, Virginia, containing in the aggregate 156.03 acres, more or less, consisting of a tract containing 152.12 acres, more or less, shown on a plat by J.R. Ferguson, Deputy for J.T.E. Simms, S.A.C., dated May 27, 1890, and recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in Deed Book 103, page 484, and a tract containing 14.21 acres, more or less, described by metes and bounds in an instrument recorded in said County in Deed Book 113, page 419; LESS AND EXCEPT the 0.29 acre tract, more or less, conveyed to the Board of County Supervisors of Albemarle County, Virginia, and shown on a plat by William S. Roudabush, Jr., dated August 1966, and recorded in said County, in Deed Book 423, page 49; and FURTHER LESS AND EXCEPT a 10.39 acre

tract, more or less, as shown on a plat by Wm. Morris Foster, L.S., dated October 1, 1985, and recorded in said County, in Deed Book 859, page 542, and

All that certain tract or parcel of land situated in the County of Albemarle, Virginia, containing 10.39 acres, more or less, shown on a plat by Wm. Morris Foster, L.S., dated October 1, 1985, and recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia, in Deed Book 859, page 542.

2. **USES AND ACTIVITIES.** In order to accomplish the purposes of the ACE Program and the Open-Space Land Act (Virginia Code § 10.1-1700 *et seq.*), the Property shall be subject to the following restrictions:

A. **Division of the Property and boundary line adjustments.** The Property may be divided and its boundary lines may be adjusted only as provided herein:

1. **Division.** The Property is currently comprised of three (3) separate parcels. However, for all purposes of this Easement, the Property shall be considered to be one (1) parcel as though the above-described parcels are combined into one (1) parcel. However, the Property may be divided, subdivided or resubdivided into not more than two (2) separate parcels and if such division, subdivision or resubdivision occurs, one (1) of the parcels may be approximately ten (10) acres in size. If the Property is not divided, subdivided or resubdivided as provided in this paragraph, then the Property may be sold or conveyed only as a whole; no parcel shall be sold or separately conveyed. If the Property is divided, subdivided or resubdivided as provided in this paragraph, then each resulting parcel may be sold or conveyed separately, together with any easements of right of way which may be required for access to and from such resulting parcels.

2. **Boundary line adjustments.** The exterior boundary lines of the Property shall not be adjusted unless the property sharing the same boundary line is subject to a substantially equivalent conservation easement and the adjustment is approved in writing by each Grantee. Boundary line adjustments within the Property shall be approved if the adjustment is consistent with the Easement.

B. **Construction, installation, location, placement of structures and improvements.** There shall be no construction, placement or maintenance of any structure or improvements on the Property unless the structure or improvements are either on the Property as of the date of this Easement or are authorized as follows:

1. Location of structures. Each structure for which a building site is required shall be located on a building site shown on a site plan approved by the County.

2. Types of structures. On the ten (10) acre (approximate) parcel which may be created as provided in subparagraph 2(A)(1), no permanent or temporary building or structure shall be built or maintained other than the following: (a) one (1) principal single-family dwelling unit; provided that if this parcel has an existing single-family dwelling unit on it, the single-family dwelling unit described herein shall be in addition to the existing single-family dwelling unit; (b) two (2) secondary single-family dwelling units such as, but not limited to, a rental dwelling, guest house, servant's quarters or hunting cabin; (c) structures such as outbuildings, swimming pools, decking detached from the single-family dwelling units, gazebos, garages, and tool sheds; and (d) farm buildings or structures. On the remainder of the Property, or on the Property in its entirety if the ten (10) acre (approximate) parcel is not created as provided in subparagraph 2(A)(1), no permanent or temporary building or structure shall be built or maintained other than the following: (a) one (1) principal single-family dwelling unit; provided that if this parcel has an existing single-family dwelling unit on it, the single-family dwelling unit described herein shall be in addition to the existing single-family dwelling unit; (b) two (2) secondary single-family dwelling units such as, but not limited to, a rental dwelling, guest house, servant's quarters or hunting cabin; (c) structures such as outbuildings, swimming pools, decking detached from the single-family dwelling unit, gazebos, garages, and tool sheds; and (d) farm buildings or structures.

3. Size of structures. No farm building and farm structure shall exceed a structural footprint of four thousand five hundred (4,500) square feet unless prior written permission for a greater footprint is obtained from each Grantee.

4. Improvements. The following may be constructed, installed, located or placed, provided they are otherwise consistent with this Easement; (a) driveways and other improvements and facilities customary and related to the use of a single parcel; and (b) improvements and facilities related to a land division including, but not limited to, public streets or private roads, and drainage and other utility facilities required by the County.

C. Commercial and industrial uses prohibited; description of uses not deemed to be commercial and industrial uses. No industrial or commercial uses shall be conducted on

Property; provided, however, that the following uses are not deemed to be commercial or industrial uses for purposes of this Easement and are specifically permitted:

1. *De minimis* commercial recreational uses.
2. Agricultural uses including, but not limited to, establishing, reestablishing, maintaining or using cultivated fields, orchards or pastures (including clearing woodland areas for conversion to crop or pastureland) in accordance with generally accepted agricultural practices, including horticultural specialties; livestock, including all domestic and domesticated animals, and allowing such livestock access to streams and streambeds on the Property; and livestock products. The processing of agricultural products is not an agricultural use, except as an accessory use.
3. Forestal uses including, but not limited to, reforestation, site preparation, timber harvesting and forest management activities undertaken to produce wood products and/or improve the health and productivity of the woodland. Following all timber harvesting operations, all logging roads and skid trails shall be adequately maintained to minimize erosion and the degradation of streamwater quality. The processing of wood products is not a forestal use, except as an accessory use.
4. Temporary or seasonal activities that do not permanently alter the physical appearance of the Property and are otherwise consistent with this Easement including, but not limited to, the sale of agricultural products grown or raised on the Property, and the granting of licenses to enter and use the Property for hunting or fishing.
5. Activities that can be and in fact are conducted within permitted buildings, without material alteration to the external appearance thereof.
6. Uses subordinate and customarily incidental to a principal use of the Property that are not expressly prohibited by and are otherwise consistent with this Easement.
7. Uses or activities not expressly excepted herein, but which are determined by each Grantee in writing not to be a commercial or industrial use, and to be consistent with this Easement. In making this determination, the Grantees may consider, among other things, whether the scope of a use or activity excepted herein has evolved over time as a result of changes in the law or customary practices.

D. Billboards and signs. There shall be no display of billboards, signs or other advertisements on the Property, except to: (1) state solely the name of the Grantors, the name of the farm, and/or the address of the Property; (2) advertise the sale or lease of the Property; (3) advertise the sale of goods or services produced as permitted by this Easement; (4) give directions to visitors; or (5) provide warnings pertaining to trespassing, hunting, dangerous conditions and other similar such warnings. No sign shall exceed twenty-four (24) square feet.

E. Grading, blasting, earth removal and mining. Grading, blasting or earth removal shall not materially alter the topography of the Property; provided that grading, blasting or earth removal shall be allowed for dam construction to create private conservation ponds or lakes, and during the construction of permitted structures or associated improvements, and that such activities employ applicable Best Management Practices. Common agricultural activities such as plowing, erosion control and restoration, and the burial of dead animals, are not activities that materially alter the topography of the Property. Mining on the Property is prohibited.

F. Management of agricultural and forestal resources. Applicable Best Management Practices, as established by a responsible state agency, shall be used in all construction, agricultural and forestal activities to control erosion and protect water quality.

G. Accumulation of waste material. There shall be no accumulation or dumping of trash, refuse or junk on the Property. This restriction shall not prohibit customary agricultural, horticultural or wildlife management practices including, but not limited to, establishing brush, compost or manure piles, or the routine and customary short-term accumulation of household trash.

3. MISCELLANEOUS PROVISIONS

A. No public right of access to Property. This Easement does not create, and shall not be construed to create, any right of the public to enter upon or to use the Property or any portion thereof, except as the Grantors may otherwise allow.

B. Easement applies to the whole Property and runs with the land. This Easement shall apply to the Property as a whole rather than to individual parcels, and shall run with the land and be binding upon the parties, their successors, assigns, personal representatives, and heirs.

C. Enforcement. In addition to any remedy provided by law to enforce the terms of this Easement, the parties shall have the following rights and obligations:

1. Monitoring. Representatives of either Grantee may enter the Property from time to time for the purpose of inspection and enforcement of the terms of this Easement after permission from or reasonable notice to the Grantors or the Grantors' representative.

2. Restoration. Upon any breach of any term of this Easement by the Grantors, either Grantee may require by written demand to the Grantors that the Property be restored promptly to the condition required by this Easement.

3. Remedy. The Grantors hereby grant to the Grantee the right to bring an action at law or in equity to enforce the conservation restrictions contained herein, specifically including the right to require restoration of the Property to a condition of compliance with the terms of this easement, to recover any damages arising from non-compliance, and to enjoin non-compliance by ex parte temporary or permanent injunction. If the court determines that the Grantors failed to comply with this easement, the Grantors shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorneys fees, in addition to any other payments ordered by such court. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this easement by any prior failure to act and the Grantors hereby waive any defenses of waiver, estoppel or laches with respect to any failure to act by the Grantee.

4. No third party right of enforcement. Nothing in this Easement shall create any right in the public or any third party to maintain any suit or action against any party hereto.

D. Extinguishment. The Grantors agree that the grant of the perpetual conservation restriction in this easement gives rise to a property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the grant bears to the value of the Property as a whole at that time. If a subsequent unexpected change in the conditions surrounding the Property makes impossible or impractical the continued use of the Property for the conservation purposes specified herein, the restrictions set forth in the easement can be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of section 10.1-1704 of the Virginia Code. In any sale or exchange of the Property subsequent to such extinguishment, the Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set out above, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment

bears to the then value of the Property as a whole. The Grantee shall use all its share of the proceeds from the sale of such property in a manner consistent with the conservation purposes of this easement and of the Open-Space Land Act.

E. No buy-back option. The Grantors shall not have the option to reacquire any property rights relinquished by this Easement.

F. Notice of proposed transfer or sale. The Grantors shall notify each Grantee in writing at the time of closing on any transfer or sale of the Property. 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 and shall state that this Easement is binding upon all successors in interest in the Property in perpetuity.

G. Relation to applicable laws. This Easement does not replace, abrogate or otherwise supersede any federal, state or local laws applicable to the Property.

H. Reference to existing laws. All references to existing laws shall include such laws as they may be hereafter amended or recodified, whether they are referenced herein or not.

I. Severability. If any provision of this Easement is determined to be invalid by a court of competent jurisdiction, the remainder of this Easement shall not be affected thereby.

J. Recordation. Upon execution by the parties, this Easement shall be recorded with the record of land titles in the Clerk's Office of the Circuit Court of Albemarle, Virginia.

K. Authority to convey easement. The Grantors covenant that they are vested with good title to the Property and may convey this Easement.

L. Authority to accept easement. The Grantees are authorized to accept this Easement pursuant to Virginia Code § 10.1-1701.

M. Proceeds from eminent domain. If the rights or restrictions established by this Easement are extinguished by eminent domain or other similar proceedings, the County shall be entitled to the proceeds pertaining to the extinguishment of its rights and interests under this Easement, as determined pursuant to subparagraph 3.D above. The values shall be determined by a qualified appraisal performed by an appraiser mutually agreed to by the Grantors and the County.

N. Transfer of easement by grantees. Neither Grantee nor their successors and assigns may convey or lease this Easement unless the conveyance or lease is conditioned as follows: (1) the conveyance or lease are subject to contractual arrangements that will assure that

the Property is subject to the restrictions and conservation purposes set forth in this Easement, in perpetuity; and (2) the transferee is an organization then qualifying as an eligible donee as defined by section 170-(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder, or is a public body within the meaning of Virginia Code § 10.1-1700.

O. Construction. This Easement shall be construed to promote the purposes of this Easement, the ACE Program, and the Open-Space Land Act.

WITNESS the following signatures and seals.

GRANTOR

Allan B. Kindrick
Allan B. Kindrick

GRANTOR

Ada M. Kindrick
Ada M. Kindrick

COUNTY OF ALBEMARLE,
VIRGINIA

ALBEMARLE COUNTY PUBLIC
RECREATIONAL FACILITIES AUTHORITY

By: Robert W. Tucker, Jr.
Robert W. Tucker, Jr.
County Executive

By: G. David Emmitt
G. David Emmitt
Chairman

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Charlottesville:

The foregoing *Deed of Easement* was signed, sworn to and acknowledged before me this 9th day of February, 2004, by Allan B. Kindrick, Grantor.

Deborah P. Johnson
Notary Public

My Commission Expires: May 31, 2004

COMMONWEALTH OF VIRGINIA
CITY/COUNTY OF Charlottesville :

The foregoing *Deed of Easement* was signed, sworn to and acknowledged before me this
9th day of February, 2004, by Ada M. Kindrick, Grantor.

Daniel R. Johnson
Notary Public

My Commission Expires: May 31, 2004

COMMONWEALTH OF VIRGINIA
~~CITY~~/COUNTY OF Albemarle :

The foregoing *Deed of Easement* was signed, sworn to and acknowledged before me this
10th day of February, 2004, by Robert W. Tucker, Jr., County Executive, on behalf
of the County of Albemarle, Virginia, Grantee.

Glenn B. Mullins
Notary Public

My Commission Expires: June 30, 2005

COMMONWEALTH OF VIRGINIA
~~CITY~~/COUNTY OF Albemarle :

The foregoing *Deed of Easement* was signed, sworn to and acknowledged before me this
11th day of February, 2004 by G. David Emmitt, Chairman, on behalf of the
Albemarle County Public Recreational Facilities Authority, Grantee.

Eileen B. Scarron
Notary Public

My Commission Expires: 4-30-07

Approved as to form:

By: Gina Knight
County Attorney

RECORDED IN CLERKS OFFICE OF
ALBEMARLE ON
February 12, 2004 AT 12:30:32 PM
\$0.00 GRANTOR TAX PD
AS REQUIRED BY VA CODE §58.1-802
STATE: \$0.00 LOCAL: \$0.00
ALBEMARLE COUNTY VA

P. Minak DC

Instrument Control Number

002600

**Commonwealth of Virginia
Land Record Instruments
Cover Sheet - Form A**

[ILS VLR Cover Sheet Agent 1.0.66]

Doc ID: 000653790012 Type: DEE
Recorded: 02/12/2004 at 12:30:32 PM
Fee Amt: \$16.00 Page 1 of 12
Albemarle County VA
Shelby Marshall Clerk Circuit Court
File# 2004-00002600
BK 2689 PG 59-70

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Date of Instrument: [09/10/2003]

Instrument Type: [DE]

Number of Parcels [3]

Number of Pages [10]

City ☐ County ☒ [Albemarle County] (Box for Deed Stamp Only)**First and Second Grantors**

Last Name	First Name	Middle Name or Initial	Suffix
[Kindrick]	[Ada]	[M.]	[]
[Kindrick]	[Allan]	[B.]	[]

First and Second Grantees

Last Name	First Name	Middle Name or Initial	Suffix
[County of Albemarle, Vir]	[]	[]	[]
[Albemarle County Publi]	[]	[]	[]

Grantee Address (Name) [County of Albemarle, Virginia]
 (Address 1) [401 McIntire Road]
 (Address 2) []
 (City, State, Zip) [Charlottesville] [VA] [22902]
 Consideration [333,700.00] Existing Debt [0.00] Assumption Balance [0.00]

Prior Instr. Recorded at: City ☐ County ☒ [Albemarle County] Percent. in this Juris. [100]
 Book [1428] Page [662] Instr. No []
 Parcel Identification No (PIN) [02000-00-00-010A0]
 Tax Map Num. (If different than PIN) [03200]
 Short Property Description [10.39 acres, White Hall, Albemarle County]
 Current Property Address (Address 1) [4815 Jacob's Run]
 (Address 2) []
 (City, State, Zip) [Earlsville] [VA] [22936]

Instrument Prepared by [County Attorney's Office]
 Recording Paid for by [County Attorney's Office]
 Return Recording to (Name) [County Attorney's Office]
 (Address 1) [401 McIntire Road]
 (Address 2) []
 (City, State, Zip) [Charlottesville] [VA] [22902]
 Customer Case ID [] []

Cover Sheet Page # 1 of 2

Instrument Control Number

Commonwealth of Virginia
Land Record Instruments
Continuation Cover Sheet
Form C

[ILS VLR Cover Sheet Agent 1.0.66]

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Date of Instrument: [09/10/2003]

Instrument Type: [DE]

Number of Parcels [3]

Number of Pages [3]

City ☐ County ☒ [Albemarle County] (Box for Deed Stamp Only)**Grantors/Grantees/Parcel Continuation Form C**

Last Name	First Name	Middle Name or Initial	Suffix
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Prior Instr. Recorded at: City ☐ County ☒ [Albemarle County] Percent. in this Juris. [100]
 Book [618] Page [642] Instr. No []
 Parcel Identification No (PIN) [03200-00-00-00100]
 Tax Map Num. (If different than PIN) [03200]
 Short Property Description [155.52 acres, White Hall, Albemarle County]
 Current Property Address (Address 1) [4815 Jacob's Run]
 (Address 2) []
 (City, State, Zip) [Earlsville] [VA] [22936]

Prior Instr. Recorded at: City ☐ County ☒ [Albemarle County] Percent. in this Juris. [100]
 Book [618] Page [642] Instr. No []
 Parcel Identification No (PIN) [03200-00-00-00200]
 Tax Map Num. (If different than PIN) [03200]
 Short Property Description [87.26 acres, White Hall, Albemarle County]
 Current Property Address (Address 1) [4815 Jacob's Run]
 (Address 2) []
 (City, State, Zip) [Earlsville] [VA] [22936]

Cover Sheet Page # 2 of 2

