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IN THE

SUPREME COURT OF VIRGINIA

MOUNT ALDIE, LLC,

Appellant,

v.

LAND TRUST OF VIRGINIA, INC.,

***Appellee*.**

Record No. 160305

Brief of the Commonwealth of Virginia as *Amicus Curiae* in Support of Appellee

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PRELIMINARY STATEMENT

Pursuant to Rule 5:30 of this Court, the Commonwealth of Virginia respectfully files this brief as *Amicus Curiae* in Support of Appellee Land Trust of Virginia, Inc. ("LTV") in this appeal from decisions of the Circuit Court of Loudoun County memorialized by Orders dated June 12, 2015,[1] June 20, 2015,[2] November 2, 2015,[3] November 3, 2015,[4] and December 1, 2015,[5] and a Letter Opinion dated October 22, 2015.[6] The Appellant has been granted two assignments of error in this case, but the Commonwealth files this brief to address a single issue: whether the easement here must be strictly construed, as Mt. Aldie asserts, or liberally construed, as the deed of easement expressly requires, to promote its conservation purpose.

The Commonwealth submits that applying a common-law strict construction presumption here would be contrary to the express terms of the easement, the expectations of the easement's original grantors and

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[1] JA 1135.

[2] *Id.* at 1139.

[3] *Id.* at 1708.

[4] *Id.* at 1711.

[5] *Id*. at 1718.

[6] *Id*. at 1670.

grantees, and the Commonwealth's public policy of conserving its open spaces and natural resources and preserving its historic resources.

STATEMENT OF THE CASE

In 2008, Shamrock Properties, LLC ("Shamrock") granted a conservation easement under the Virginia Conservation Easement Act[7] to LTV,[8] encumbering the property at issue in this matter. In 2009, Shamrock conveyed the property to Mount Aldie, LLC ("Mt. Aldie").[9] The express purpose of the easement was and remains:

> to retain, preserve and protect the Conservation Values of the Property in the public interest in perpetuity. . . . By so doing, the Grantor and Grantee have the common purpose of preventing, through the enforcement powers granted to the Grantee, any use or development of the property that will adversely affect, or is inconsistent with or will conflict with, diminish, impair or interfere with the "Conservation Values". The Conservation Values of the Property are its values as open-space land preserved for open-space and rural uses, agriculture, including livestock

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[7] Va. Code Ann. § 10.1-1009 to -1016 (2012).

[8] JA 23.

[9] *Id.* at 45. By virtue of its purchase of the land, Mt. Aldie stepped into the shoes of and assumed the role of the grantor with respect to the conservation easement. *See* Va. Code Ann. § 10.1-1014 (2012) ("[A] conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements."). Absent a release of record, which has not been asserted here, the conservation easement is binding on subsequent owners of the property.

> production, scenic, historic and watershed aspects of the Property . . . .[10]

In May 2009, Mt. Aldie purchased the property subject to the recorded easement.[11]

In 2013, Mt. Aldie performed tree removal and other work on the property. This dispute arises from, among other issues, the extent of Mt. Aldie's tree removal and other work, and whether those activities required approval from LTV as holder of the conservation easement.

Following a hearing on the parties' Motions for Summary Judgment, on June 12, 2015 the Circuit Court entered an Order granting summary judgment to LTV on the issue of liability.[12] After trial later that month, the court issued a Trial Order adopting the advisory jury's finding awarding $115,000 in damages to LTV.[13] Following more hearings on the issue of fees and costs, the court awarded LTV $81,679.64 in expert witness fees and costs and $41,284.81 in staff expenses.[14]

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[10] *Id*. at 28.

[11] *Id*. at 45.

[12] *Id.* at 1135.

[13] *Id*. at 1139.

[14] *Id.* at 1708, 1718.

On June 24, 2016, Mt. Aldie's petition for appeal was granted as to two assignments of error.[15] On appeal, Mt. Aldie argues, in part, that the trial court erred in granting summary judgment because conservation easements are negative easements in gross, are disfavored, and therefore must be strictly and narrowly construed.[16] The Commonwealth submits this brief to address Mt. Aldie's argument on that issue alone.

Conservation easements held by private parties and open-space easements held by public bodies, including the Commonwealth, are very similar and function in much the same way. These easements are intended to protect and preserve open space, historic resources and other vital resources of the Commonwealth and to further important public policy interests of the Commonwealth. The Commonwealth submits that conservation easements and open-space easements are favored under the law, and that the terms of such easements should be construed to achieve the valid conservation purposes set forth in the Constitution of Virginia and the Virginia Code.

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[15] *Id.* at 1885.

[16] Opening Brief of Appellant at 30-31 (citing *Wetlands Am. Trust v. White Cloud Nine*, 291 Va. 153, 163, 782 S.E.2d 131, 137 (2016).

ARGUMENT

A. Standard of review

The interpretation of a conservation easement created under the Conservation Easement Act is a question of law reviewed de novo.[17]

B. Ambiguities in deeds of easement should be resolved in favor of the grantee and against the grantor.

Under accepted rules of construction, any ambiguity in a deed is resolved in favor of the grantee and against the grantor:[18]

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[17] "We review de novo a circuit court's interpretation of covenants, deeds, options, and other related documents." *Beeren & Barry Invs. v. AHC, Inc.*, 277 Va. 32, 37, 671 S.E.2d 147 (2009) (citing *Perel v. Brannan*, 267 Va. 691, 698, 594 S.E.2d 899, 903 (2004); *Wilson v. Holyfield*, 227 Va. 184, 187, 313 S.E.2d 396, 398 (1984)). *See also, e.g.*, *Rodriguez v. Leesburg Bus. Park*, 287 Va. 187, 193, 754 S.E.2d 275, 278 (2014).

[18] *CNX Gas Co. v. Rasnake*, 287 Va. 163, 167, 752 S.E.2d 865, 867 (2014). *See also Hamlin v. Pandapas*, 197 Va. 659, 664, 90 S.E.2d 829, 833 (1956) (interpreting easement language and stating that "[i]n the construction of language contained in a deed the grantor must generally be considered as having intended to convey all that the language he employed is capable of passing to the grantee, and where the description admits of two constructions, it will be construed most favorably to the grantee"); *Stephen Putney Shoe Co. v. Richmond, F. & P. R. Co.*, 116 Va. 211, 221-22, 81 S.E. 93, 97 (1914); *Kirby v. Town of Claremont*, 243 Va. 484, 490, 416 S.E.2d 695, 700 (1992); *Painter v. Alexandria Water Co.*, 202 Va. 431, 436 117 S.E.2d 674, 678 (1961); *Hite v. Luray*, 175 Va. 218, 224, 8 S.E.2d. 369, 371 (1940) ("[A] deed is construed most strongly against the grantor and in favor of the grantee."); *Bailey v. Town of Saltville*, 279 Va. 627, 633, 691 S.E.2d 491, 493 (2010); *Wetlands Am. Trust,* 291 Va. at 179, 782 S.E.2d at 146 (Roush, J., dissenting); *contra id.*, 291 Va. at 163, 782 S.E.2d at 137.

> "Thus, an instrument granting an easement . . . must, consistent with its language, be most strongly construed against the grantor and most favorably to the grantee, and construed so as to pass to the grantee the greatest possible estate."[19]

"This rule has been called one of the most just and sound principles of the law because the grantor selects his own language."[20] Section 10.1-1014 of the Conservation Easement Act states that, "[e]xcept as otherwise provided in this chapter, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated, or otherwise altered or affected in the same manner as other easements."[21] Accordingly, any ambiguity in a deed of easement should be resolved in favor of the grantee and against the grantor.

The relevant deed here is the Deed of Gift of Easement in which the grantor—Shamrock, the original landowner—conveyed the easement to LTV, the grantee. During the period Shamrock owned the property, any dispute over ambiguous restrictions in the easement would have been resolved in favor of LTV. That rule did not change when Mt. Aldie acquired the property from Shamrock subject to the recorded easement. Mt. Aldie

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[19] *Painter*, 202 Va. at 436, 117 S.E.2d at 674 (1961) (quoting 3 C.J.S., Waters, § 27-b, at 644).

[20] *Hite*, 175 Va. at 224, 8 S.E.2d at 371.

[21] Va. Code Ann. § 10.1-1014 (2012).

stepped into Shamrock's shoes and thereby undertook its obligations as grantor. Accordingly, any ambiguities in the deed should now be construed against Mt. Aldie in favor of LTV.

C. **The common-law presumption in favor of strictly interpreting restrictive covenants does not apply here because the easement expressly provides that it must be liberally construed to effect its conservation purposes and policies.**

Relying on common-law principles and this Court's recent decision in *Wetlands America Trust v. White Cloud Nine*, Mt. Aldie argues that, as negative easements in gross, conservation easements must be strictly construed against LTV, the party attempting to enforce the easement.[22] But *Wetlands* is inapposite, and the Court's holding there is irrelevant, because the deed of easement here expressly requires that the terms of the easement "be liberally construed . . . to effect [its] purposes":

> Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policies and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the for[e]going, lawful acts or uses not expressly prohibited by this Easement are permitted on the Property. Grantor intends that the grant

[22] *See* Opening Brief of Appellant at 30-31 (quoting *Wetlands Am. Trust v. White Cloud Nine*, 291 Va. at 163, 782 S.E.2d at 137).

> of this Easement qualify as a "qualified conservation contribution" as that term is defined in Section 170(h)(1) of the IRC and Treasury Regulations § 1.170A-14, and the restrictions and other provisions of this instrument shall be, where possible, construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution.[23]

The purpose of easements created under the Conservation Easement Act or the Open-Space Land Act, like the easement here, is to promote the Commonwealth's public policy of conserving its open spaces and natural resources and preserving its historic resources. As set forth below, that policy of promoting preservation is not only reflected in the Constitution of Virginia, it has been reinforced by multiple statutes enacted by the General Assembly over the past half-century. Moreover, the parties to the easement expressly agreed that its provisions would be "liberally construed" to further that policy, "[a]ny general rule of construction to the contrary notwithstanding."[24] Applying a common-law strict construction presumption here would upset the expectations of the original grantors of the easement, and be unjust to the grantees, who are obligated to enforce the easements to promote and protect public policy.

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[23] JA 35 (Deed of Gift of Easement, art. V, § 5).

[24] *Id.*

1. The Constitution of Virginia reflects the Commonwealth's public policy of promoting conservation and preservation.

In Virginia, the conservation of open space and natural resources and the preservation of historic resources have long been recognized as worthy goals of public policy, the promotion of which is beneficial to the public. As this Court recognized in *United States v. Blackman*, for forty-five years "this public policy [has been] expressly embodied in Article XI of the Constitution of Virginia":[25]

> "§ 1. To the end that the people have clean air, pure water, and the use and enjoyment for recreation of adequate public lands, waters, and other natural resources, it shall be the policy of the Commonwealth to conserve, develop, and utilize its natural resources, its public lands, and its historical sites and buildings. Further, 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.
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> § 2. In the furtherance of such policy, the General Assembly may undertake the conservation, development, or utilization of lands or natural resources of the Commonwealth, the acquisition and protection of historical sites and buildings, and the protection of its atmosphere, lands, and waters from pollution, impairment, or destruction, by agencies of the Commonwealth or by the creation of public authorities, or by leases or other contracts with agencies of the United States, with other states, with units of government in the

[25] 270 Va. 68, 79, 613 S.E.2d 442, 447 (2005).

> Commonwealth, or with private persons or corporations . . . ."[26]

The Court acknowledged that there is an "apparent conflict between the common law preference for unrestricted rights of ownership of real property and the public policy of this Commonwealth as expressed in Article XI of the Constitution of Virginia."[27] Thus, at least since *Blackman*, it has been clear that an application of the common law that impairs the Commonwealth's express policy of protecting its open spaces, natural resources, and heritage is repugnant to the Constitution.[28]

2. <u>The General Assembly has enacted numerous statutes and promoted the use of easements to further the Commonwealth's policy of conservation and preservation.</u>

The General Assembly has acted in a number of ways to further the conservation goals set forth in the Constitution of Virginia, investing significant funds and resources into programs specifically designed to

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[26] *Id.* (quoting Va. Const. art. XI).

[27] *Id.* at 76, 613 S.E.2d at 445.

[28] *See Wetlands Am. Trust*, 291 Va. at 178, 782 S.E.2d at 145 (Roush, J., dissenting) (relying on the Court's "reasoning in *Blackman* that both the Constitution of Virginia and Virginia's various statutes promot[e] conservation and historic preservation" and Virginia's "oft-stated policy . . . in favor of conservation easements" as a "clear[ ] rejection of the common law strict construction principle.").

foster and promote the use of conservation and open-space easements. For instance, the General Assembly enacted the Open-Space Land Act[29] and the Conservation Easement Act,[30] which specifically authorize the use of easements to promote land conservation and protect natural, cultural and historic resources.

The Conservation Easement Act defines conservation easements as interests in land,

> the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.[31]

An official Opinion of the Attorney General of Virginia has likewise recognized that the statutory purpose of conservation easements is "to facilitate conservation and historic preservation in furtherance of the Commonwealth's policy to protect its natural resources and historic sites."[32] The Opinion underscores that "the statutory framework of [the Open-Space

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[29] Va. Code Ann. § 10.1-1700 *et seq.* (2012).

[30] Va. Code Ann. § 10.1-1009 *et seq.* (2012).

[31] Va. Code Ann. § 10.1-1009 (2012). The Open-Space Land Act includes identical language in its definition of open-space easements. *See* Va. Code Ann. § 10.1-1700.

[32] 2012 Op. Va. Att'y Gen. 31, 32.

Land Act and the Conservation Easement Act] demonstrate[s] [that] *conservation easements serve a much more public function than conventional easements*."[33] The General Assembly has made no changes to these statutes since the Opinion was issued, and thus is understood to have acquiesced in the Attorney General's interpretation.[34]

In addition to *authorizing* conservation easements, the Commonwealth has taken steps to *encourage* and *manage* them for the benefit of the public. It has invested heavily in those efforts. Among other things, it has:

- created the Virginia Outdoors Foundation to solicit and steward conservation easements on behalf of the Commonwealth;[35]
- initiated the Virginia Land Conservation Fund, managed by the Virginia Land Conservation Foundation, to "[a]cquir[e] fee simple title or other rights, including the purchase of development rights, to interests or privileges in property for the protection or preservation of ecological, cultural or historical resources, lands for recreational purposes, state forest lands, and lands for threatened or endangered species, fish and

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[33] *Id.* (emphasis added).

[34] "[T]he General Assembly is presumed to have knowledge of the Attorney General's interpretation of statutes, and the General Assembly's failure to make corrective amendments evinces legislative acquiescence in the Attorney General's interpretation." *Tazewell Cty. Sch. Bd. v. Brown*, 267 Va. 150, 163, 591 S.E.2d 671, 677 (2004) (quoting *City of Winchester v. Am. Woodmark Corp.*, 250 Va. 451, 458, 464 S.E.2d 148, 153 (1995).

[35] Va. Code Ann. § 10.1-1800 *et seq.* (2012).

wildlife habitat, natural areas, agricultural and forestal lands and open space";[36]

- provided funds, through the Land Conservation Foundation, to state agencies, including the Virginia Outdoors Foundation, to advance the purposes of the Land Conservation Foundation;[37]

- charged the Virginia Board of Historic Resources with designating historic landmarks and districts, establishing preservation practices, and acquiring historic preservation easements, among other things;[38]

- empowered other State agencies, including the Department of Conservation and Recreation and the Department of Forestry, to hold conservation easements and made them responsible for stewarding and enforcing their provisions;

- required the Governor to recommend in each year's budget bill an appropriation from the general fund to the Virginia Land Conservation Fund, the Civil War Site Preservation Fund and the Virginia Farmland Preservation Fund.[39]

In *Blackman*, this Court recognized the evolution of Virginia's public policy towards support of conservation and open-space easements:

> The 1962 amendment and clarification of Code § 55-6 with regard to the transferability of easements in gross has facilitated, in part, Virginia's long recognition of the value of conserving and preserving the natural beauty

[36] Va. Code Ann. § 10.1-1020(A)(1) (2012).

[37] Va. Code Ann. § 10.1-1020(A)(2).

[38] Va. Code Ann. § 10.1-2204 (2012).

[39] Va. Code Ann. § 2.2-1509.4 (2014 Supp.).

> and historic sites and buildings in which it richly abounds . . . .[40]

After tracing the long history of the General Assembly's actions in granting authority and creating agencies authorized to hold easements, the Court correctly concluded that "[t]hese statutes evince a strong public policy in favor of land conservation and preservation of historic sites and buildings . . . ."[41]

The conservation easement here should be construed to uphold that "strong public policy." As the Restatement (Third) of Property explains, "unless contrary to the intent of the parties, a servitude should be interpreted to avoid violating public policy. Among reasonable interpretations, that which is more consonant with public policy should be preferred."[42]

3. <u>It would be unjust to strictly construe the conservation easement here, given the express intent of the grantors and grantees to uphold the purpose and policy of conservation.</u>

Finally, strictly construing the easement here, contrary to the express terms of the easement, would not only undermine the easement's

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[40] *Blackman*, 270 Va. at 78, 613 S.E.2d at 447.

[41] *Id.* at 79, 613 S.E.2d at 447.

[42] Restatement (Third) of Property: Servitudes § 4.1 (2000).

conservation purpose, it would contravene the expectations of the original grantors and grantees of the easement. As provided in the Restatement (Third) of Property, "[e]xpressly created servitudes are typically the result of contractual transactions."[43] Accordingly, "[a] servitude should be interpreted to give effect to the intention of the parties ascertained from the language used in the instrument, or the circumstances surrounding creation of the servitude, and to carry out the purpose for which it was created . . . ."[44] Here, the "written expressions of the parties' intent" make clear their agreement that the easement "shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policies and purposes of Grantee."[45]

Strictly construing the easement instead would also undermine thousands of conservation and open-space easements across the Commonwealth that have been drafted and entered into with the understanding that they would be construed in favor of the conservation goals espoused. That understanding is critical to enforcing easements that burden properties forever and binds third parties or succeeding generations

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[43] Restatement (Third) of Property: Servitudes § 4.1(1) (2000).

[44] *Id.*

[45] JA 35 (Deed of Gift of Easement, art. V, § 5).

of owners who were not privy to the original conservation goals of the easement grantor.

Virginia's statutes are drawn to allow perpetual protection of the conservation values protected by conservation and open-space easements.[46] Perpetual protection is required to receive any federal tax benefit.[47] Indeed, the deed of easement here expressly states the grantor's intention that the easement "qualify as a 'qualified conservation contribution' as that term is defined in Section §170(h)(1) of the IRC and Treasury Regulations § 1.170A-14."[48] The statutes contain provisions to protect the viability of these easements in the future. The Conservation Easement Act creates a default mechanism to guarantee succession if an easement holder disappears or becomes unqualified to hold the easement.[49] The Open-Space Land Act contains what is essentially a no-net-loss-of-open-space provision: a prohibition against either diversion or conversion of property protected by an open-space easement without

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[46] Va. Code Ann. §§ 10.1-1010, -1701, -1703 (2012).

[47] I.R.C. § 170(h)(2)(C), (5)(A); Treas. Reg. § 1.170A-14(b)(2).

[48] JA 35 (Deed of Gift of Easement, Art. V, § 5). *See also id.* (further providing that "the restrictions and other provisions of this instrument shall be, where possible, construed and applied in a manner that will not prevent this Easement from being a qualified conservation contribution").

[49] Va. Code Ann. § 10.1-1015 (2012).

replacement of the affected property by property of equal quality and character.[50]

As this Court has recognized, the Conservation Easement Act "facilitated the continued creation of such easements by providing a clear statutory framework under which tax exemptions are made available to a charitable organization devoted to those purposes and tax benefits and incentives . . . to the grantors of such easements."[51] In 1999, the General Assembly expanded the tax incentives for donating conservation easements by enacting the Land Conservation Incentives Act.[52] Donors of qualifying easements receive credits that offset Virginia income-tax obligations. The credits equal 40% of the fair market value of the donated interest.[53] The grantor can also claim charitable-tax deductions for the fair market value of the donation that reduce federal and state taxable income.

These significant benefits do not come freely: specific obligations must be exchanged for the right to claim tax deductions. In return for the

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[50] Va. Code Ann. § 10.1-1704 (2012).

[51] *Blackman*, 270 Va. at 81, 613 S.E.2d at 448.

[52] Va. Code Ann. § 58.1-510 *et seq.* (2013).

[53] Va. Code Ann. § 58.1-512(A) (2013).

near-term tax benefits,[54] the General Assembly demanded natural and historic-resource protections that last *in perpetuity*. Qualifying easements are required by statute to include enforceable provisions that ensure that the easement holder can enforce the conservation restrictions forever.[55] Accordingly, the Act balanced the immediate tax benefit to the grantor with an obligation by the grantor (and his successors) to forever protect the land under the conservation easement by complying with the easement's terms and restrictions.

Virginia's program has been successful in promoting land conservation under this program. As of January 2012:

> more than 2,500 donations of interests in land [were] made under the credit . . . cover[ing] approximately 540,000 acres in Virginia . . . . The Department of Taxation ha[d] issued $1.25 billion in credits[,] . . . and the Land Preservation Tax Credit [offset] taxpayer liabilities by $120 million in TY 2008.[56]

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[54] Originally, allowable credits could be claimed for the year of donation and carried forward for five additional years. By 2008, allowable credits could be claimed for the year of donation with unused credits potentially carried forward for ten years, subject to certain limitations for specific tax years. *See* Va. Code Ann. § 58.1-512(C)(1) (2016 Supp.).

[55] Va. Code Ann. § 58.1-512(C)(2).

[56] Review of the Effectiveness of Virginia Tax Preferences, Sen. Doc. 4, (Jan. 2012), at 49-51, Joint Legislative Audit and Review Commission. *See also* Virginia Outdoors Foundation Website (showing 782,851 acres protected by easement), *available at* www.vofonline.org (last visited Aug. 17, 2016).

These conservation and open-space easements fill the land records of the county or city in which the property is located, where they must be recorded. A purchaser of property that is subject to one of these easements takes title with notice of the restrictions. In fact, the purchaser is typically able to make the purchase at a reduced price *because of* the restrictions imposed by the easement.

Given the lengths to which the General Assembly has gone to preserve the protections afforded by these easements, it is not logical or consistent to conclude that the language of the easements should be interpreted in a way to disadvantage the easement holder. This interpretation denies the Commonwealth the benefit of the thousands of bargains in which it provided the grantor with tax credits and tax deductions in exchange for easements allowing grantees to permanently protect the important natural and historic assets. Under such an interpretation, landowners would be able to grant conservation easements, accept the associated generous near-term tax benefits, and later sell the property to a third party to hold free of the contemplated perpetual restrictions. That result would contravene the purposes and goals of the Open-Space Land Act, the Land Conservation Incentives Act, the Conservation Easement Act, and the Constitution of Virginia.

Furthermore, interpreting easements strictly against the grantee inhibits the ability of the parties to the easement to craft an instrument that is viable in perpetuity. The perpetual nature of conservation easements requires couching both prohibitions and permitted activities in general terms. Such an approach recognizes that flexibility is essential in a document that is intended to apply in perpetuity. Conservation easements cannot be limited to balancing existing activities on the land with current environmental concerns and the need to allow the land to remain economically viable. The easements must permit the accommodation of all of these concerns in perpetuity. It is impossible to predict what forms agriculture, for instance, may take in the decades after an easement is donated. Conservation easements are, therefore, drafted in a manner intended to provide flexibility while protecting the identified resources. Failure to review these easements in light of their public purpose is unjust to the public, unjust to the intent of the original grantors of the easement, and unjust to grantees, who are obligated to enforce the easements to promote and protect public policy.

CONCLUSION

Consistent with its express terms, the easement here should be "liberally construed" to effect its purpose of promoting conservation. Strictly

construing the easement instead would contravene the Commonwealth's long-held policy of protecting and preserving open space and historic assets—a policy reflected in the Constitution of Virginia and numerous statutes—and would undermine the Commonwealth's heavy investment in the infrastructure and support necessary to encourage the donation of these easements in perpetuity.

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By: __*/S/*_____

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RULE 5:26(H) CERTIFICATE

I hereby certify, pursuant to Rule 5:26(h) of the Rules of the Supreme Court of Virginia, that the foregoing brief complies with the requirements of Rule 5:26.

/S/

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CERTIFICATE OF TRANSMISSION AND SERVICE

On August 29, 2016, the required copies of this brief were filed electronically with this Court and hand delivered to the Clerk's Office in compliance with Rule 5A:19(f). A copy was emailed to James P. Campbell, Esquire, counsel for appellant, at jcampbell@campbellflannery.com and Stephen M. Sayers, Esquire, counsel for the appellee at ssayers@hunton.com.

In accordance with Rule 5A:4(d), I certify that this document contains 5,358 words, in compliance with Rules 5A:19(a) and 5A:21(g).

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