

THE USE OF EASEMENTS FOR THE PROTECTION OF THE
APPALACHIAN TRAIL IN VIRGINIA

by

Charles Joseph Reed

Major paper submitted to the Graduate Faculty of the
Virginia Polytechnic Institute and State University
in partial fulfillment of the requirements for the degree of

MASTER OF SCIENCE

in

Forestry

APPROVED:

W. E. King, Chairman

W. A. Flick

W. A. Leuschner

G. J. Buhyoff

August, 1975
Blacksburg, Virginia

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INTRODUCTION

In March of 1971, the General Assembly of Virginia passed an act to provide that the Commonwealth of Virginia, through the Division of Parks of the Department of Conservation and Economic Development, be authorized to enter into such agreements and to acquire such interests as may be necessary to establish, protect and maintain the Appalachian Trail.

Since the enactment of this act the Division of Parks has been actively engaged in the promotion and protection of the Appalachian National Scenic Trail. Individuals owning lands crossed by the Appalachian Trail in Virginia have been identified and contacted concerning the Trail and the Division's role in its protection and acquisition of a right of way for the Trail has begun.

Emphasis is being placed on the acquisition of easements to provide the necessary right of way for the Appalachian Trail. This represents a rather ambitious use of a less than fee ownership device only recently being used on a large scale by Government agencies. Though not new to Virginia as easements were used along the Skyline Drive and Blue Ridge Parkway, within the scope of the Appalachian Trail program being attempted by the Division of Parks easements will play a far more dominant role in providing the recreational resource. Easements will not only be used to provide a scenic buffer, but they will also be used to provide much of the actual right of way for the Appalachian Trail.

TRAIL SITUATION IN VIRGINIA

The Appalachian Trail in Virginia enters from the north at Harpers Ferry and follows the mountain ridges of Northern Virginia down through the Shenandoah National Park. Entering the George Washington National Forest, the Trail generally parallels the Blue Ridge Parkway until it crosses the James River and enters the Jefferson National Forest. Here the Trail turns west towards Pearisburg and then continues generally southwest until it crosses Mt. Rogers, the highest mountain in Virginia. Passing down the main street of Damascus, the Trail shortly leaves the State.

The Commonwealth of Virginia took positive action to promote and protect the Appalachian National Scenic Trail in 1971 when a special session of the General Assembly enacted House Bill 160. Sponsored and championed by Delegate William Lemmon, this bill gave responsibility for the management of the Appalachian Trail within the Commonwealth to the Virginia Division of Parks, an operating arm of the Department of Conservation and Economic Development. The act authorized the Division of Parks to

. . . enter into written cooperative agreements with landowners, private organizations and individuals and to acquire by agreement, gift or purchase land, rights of way and easements for the purpose of establishing, protecting and maintaining a₁walking trail right of way across the Commonwealth.

Despite the enactment of this bill and the inclusion of the Appalachian Trail as an initial component of a nation system of trails as designated in the 1968 National Trails System Act (PL 90-543), the

continuity and uniqueness of the Appalachian Trail is described as remaining "fragile as a frayed rope--and it is taut against the cutting edge of entrenched private ownership and burgeoning public use."²

Over forty-two percent of the Appalachian Trail's total two thousand mile length remains on private property. In Virginia, one hundred miles of the Trail lies on privately owned property. It is for this non-federally-owned portion of the Appalachian National Scenic Trail that the Division of Parks is attempting to provide a protected right of way.

Critical situations prevail along the Trail not only where the right of way is unacquired, but also where the Trail is being pressured by escalating land values and housing subdivisions. At numerous points along the Trail scattered vacation hidaways and clustered second home developments are encroaching on the Trail. One development in Virginia projects five thousand housing units on thirteen thousand acres now traversed by nine miles of the Appalachian Trail.

The problem of encroaching development is compounded by the corresponding escalation of the value of the surrounding land. In Virginia, this situation has not yet reached a point comparable to the New York-New Jersey section of the Trail where an acre of land can cost as much as twenty thousand dollars,³ but already rising land values are placing the possibility of buying large acreages along the Trail beyond the limits of State financing.

As the land is subdivided and sold to an increasing number of private owners acquisition becomes even more difficult. There is a situation in one state where a nineteen mile stretch of Trail formerly owned by a

handful of people is now owned by eighty-eight individuals.⁴ Negotiating for a linear right of way is difficult in the best of circumstances and is only compounded by the expanding number of landowners.

The Trail is also experiencing mounting pressure from overuse. It is within a day's drive of ninety million Americans and each year more and more of these people are hiking and backpacking. Due to the nature of the Trail with its multiple access points, figures of the number of users are difficult to obtain. However, an estimated four million people hiked some portion of the Appalachian Trail in 1973.⁵ Over two hundred and eighty four thousand visitors to the Great Smokey Mountains National Park hiked the Trail that year.⁶ In Virginia during that year, two million of the two and a half million visitors to the Shenandoah National Park which includes ninety five miles of the Appalachian Trail were estimated to have hiked the trails within the park.⁷ Inevitably, the large number of people making use of the Trail has brought a destructive impact on popular and accessible portions. This is evidenced in vandalized and burned shelters, destroyed vegetation, defaced rocks and cliffs, clearings strewn with garbage, and fires left smoldering.

The impact of increased use is not only felt in the physical conditions of the Trail or the aesthetic and recreational experience of hiking, but also in the attitude of the landowners along the Trail. Land owners have voiced complaints against the invasion of their privacy, trespassing with trail bikes, litter, fire hazards, and the poor sanitation practices of hikers. The result of this situation is often the closing of the Appalachian Trail by the landowner on his property. When this happens

the Trail often has to be routed along the highway to bypass the landowner until a new route for the Trail can be located and negotiated.

In the face of these mounting pressures, the Virginia Division of Parks has embarked on a program to secure a right of way for the Appalachian National Scenic Trail. Under this program, the Division is acquiring primarily through the use of easements, those rights in the land felt necessary to protect the continuity and integrity of the Trail.

EASEMENTS

To more fully understand the easement device, consider the origin of the term "fee simple." In medieval Europe a lord would grant a man, perhaps a knight, a tract of land to use. In return for this grant, the man would be obligated to perform certain services, or fees, such as defending the lord's castle during times of battle. The land which required the fewest services in return, the simplest fee, was the closest to outright ownership.

An analogy often used is that a landowner owning property in fee simple actually owns a number of rights which may be visualized as a bundle of sticks. Such rights include the right to build or farm the land, to prohibit trespass, or to sell all his rights in the land or only part of his rights. When one wishes to acquire the man's property, one usually purchases the entire bundle of rights. However, to achieve a particular purpose such as providing a continuous trail route, it is only necessary to acquire the right to enter the property to hike on the Trail. The Commonwealth will buy those rights it needs to maintain the Appalachian Trail in the form of an easement and leave the rest of the bundle with the owner. Ownership of the property remains with the landowner except that the portion of the land over which the State has the easement is now subject to the rights conveyed in the easement. The original landowner may still do anything within the law regarding his land except that he may not prevent anyone from using the Trail through the easement or any other act within the scope of the easement document.

Legally, an easement can be defined as:

. . . a privilege without profit, which the owner of one tenement has a right to enjoy in respect of that tenement in or over the tenement of another person; by reason where of the latter is obliged to suffer, or refrain from doing something on his own tenement for the advantage of the former.

Most articles written on easements define two general classes; positive and negative. The distinction lies in the nature of the rights acquired by the easement. With a negative easement one acquires the right to demand that the landowner refrain from certain uses of his land. A positive easement acquires the right to use the land of another for a particular purpose. The Appalachian Trail easements acquired by the Commonwealth of Virginia are positive easements in that the right to use the land as a route for the Trail is acquired.

In legal terms an easement is either an easement in "gross" or "appurtenant." An easement in gross is interest in another's land when the holder of the easements owns no land of his own nearby to benefit from the easement. An appurtenant easement is interest in another's land when the holder of the easement does possess land nearby that benefits from the easement. The most common example of an appurtenant easement is the right of way one might own across the land of his neighbor to provide access to his land. The land subject to the right of way is known as the "servient" tenement and the adjacent land, whose owner receives the right of way, is known as the "dominant" tenement.

In Michie's Jurisprudence of Virginia and West Virginia it is stated that:

Whether an easement is appurtenant or in gross is to be determined by the intent of the parties as gathered from the language employed, considered in the light of surrounding circumstances.

And in American Jurisprudence it is stated that:

It is not necessary . . . that the servient tenement be adjacent to the dominant tenement.

Whether an easement in a given case is appurtenant or in gross depends mainly on the nature of the right and the intentions of the parties creating it. If the easement is in its nature an appropriate and useful adjunct of the land conveyed, having in view the intention of the parties as to its use, and there is nothing to show that the parties intended it to be a mere personal right, it should be held to be an easement appurtenant and not an easement in gross.¹⁰

This is important because there are certain legal problems generally associated with easements in gross that do not occur with appurtenant easements. One of these problems is whether an easement in gross is assignable. Since such easements are generally held to be personal to the grantee they could not be assigned or inherited. This question of assignability is of particular concern in that it would mean a private organization holding an easement for the Appalachian Trail would be unable to transfer the easement to the Division of Parks for administration and management. It also would mean that if that organization were to cease to exist, the easement would no longer be in existence.

Another problem encountered with gross easements is how to bind subsequent purchasers of the land over which an easement exists to respect the conditions of the existing easements. The problem arises often because there is no physical evidence of an easement and subsequent

purchasers may not know of the obligation they have incurred.

The reason that these problems exist with gross easements is because they are generally held by the courts to be personal to the grantee, and thus they can not be assigned or inherited. That is why it is important to construct and handle the deed of easement in such a manner as to leave no doubt as to its intended purpose. The deed form of the easement must be precise as to what rights are being granted to the Commonwealth for the Trail. Loosely drawn easements are frowned upon in the courts and if there is any question as to the intention of the easement, the courts will side with the fee owner of the land and not the holder of the easement.

Because the Division of Parks, as an agency of the Commonwealth of Virginia holds a truly proprietary interest in protecting the Trail and in seeing that the easement is enforced, it constitutes a rather indisputable dominant tenement. Also, since the deed of easement makes it clear that the intent of the easement is to provide a trail right of way for public use and that it is not meant to be a mere personal right in the land, it should be considered an appurtenant easement in intent and thus enforceable. In addition, all the Appalachian Trail easements are recorded in their respective County Court House, so that there is a permanent visible record of the easement. In this way, subsequent buyers of land subject to an easement cannot claim to have had no knowledge of its existence.

EASEMENT PROGRAM IN VIRGINIA

The easement program is being used in Virginia as an alternative to fee acquisition. In the past, the primary means of acquiring property for recreational purposes in the Commonwealth has been the acquisition of property in fee, that is acquisition of the entire property with the entire associated legal rights. In general terms, an easement is a stipulation placed on a section of land which regulates its use in some way and does not involve the purchase of all the rights in the land.

There are certain limitations associated with fee acquisition that helped prompt the decision to use easements in a project of the scope of protecting the Trail. First, substantial cost would be involved for the purchase of a right of way one hundred miles long to provide just the trail itself, and the cost of acquiring additional acreage to provide facilities, access points, water sources, and the protection of the Appalachian Trail environment in addition to the right of way would be prohibitive. Second, acquisition in fee by a state agency results in the removal of the property from local real estate tax rolls which is objectionable to local citizens.

Easements, however, are generally less costly than outright purchase and thus permit the effective spreading of scarce acquisition funds over a much larger area. Also, easements allow the property to remain in productive use. People may continue to work the land and to live on it. And the property remains on the tax rolls, although usually at a lower assessment value. Because the landowner can continue to use his

land, there is also the increased likelihood of easement donations.

An easement being considered "interest in land restricting the manner in which an owner may develop or use his property, or allowing the holder of the easement to use the property in some specific way"¹¹ constitutes a legal restriction on a parcel of land for the benefit of someone other than its owner. As a matter of form, an easement acquired by the Division for the Trail embodies these limitations or rights in a deed. This document constitutes a legally binding transfer of certain property rights and are recorded in the records of the local County Court House.

Generally, the Division has tried to obtain a

. . . perpetual easement for the purpose of developing and maintaining the Appalachian Trail, consonant with the provisions of the National Scenic Trail as part of the National Scenic Trail System, and to preserve the natural and scenic beauty thereof.¹²

The Division of Parks tries to acquire by a deed of easement a right of way for the Trail at least two hundred feet in width which is usually considered the minimum width of corridor needed to protect the right of way. The exact location of the Trail route within the easement is subject to modification and is at the discretion of the Division so as to best maintain the physical and aesthetic qualities of the Trail.

The Division forbids the landowner "to cut or remove any timber in the easement or place or develop any structure or undertake any operation therein, except pursuant to operations attended to the present use of the land."¹³ In return, it provides that the landowner "shall not be liable to any user of the Trail";¹⁴ that the Division will assume the

"responsibility for developing and administering the easement for use by the public as a trail limited to foot traffic";¹⁵ that the Division will "apply and enforce any applicable State Park regulations";¹⁶ and that if the Division should abandon the easement or fail to comply with any of the conditions of the easement contract, that the property will revert back to the landowner.

The easement used by the Division of Parks is rather flexible in that it can be adapted to the particular situation of the landowner and allows the landowner to have an active part in providing the easement. For instance, many landowners do not object to the Trail crossing their property, however, they do not wish to have an easement bisecting their land. In such cases where the character of the lands permits, the Division may work with the landowner to route the Trail along his property line so as not to cut across the land. Or in cases where this is not possible, the deed of easement may stipulate that the landowner can construct a road crossing the easement.

APPRAISALS

The appraisal of an easement is in actuality "the estimation of the damage to the market value caused by the taking of a limited amount of the total benefits of the ownership of real property."¹⁷ However, before any such estimation can be made, it is necessary to know the nature and duration of the easement and the physical relationship of the easement to the total property.

It is important that the appraiser be aware of the rights being conveyed by the easement. Thus, not only should the appraiser read the actual legal form of the easement to be acquired, but if he has any doubts as to the rights being conveyed, he should inquire of his client for clarification. This is essential in appraising for a right of way for the Appalachian Trail because all the easements, though designed to accomplish the same basic end, are specifically written to fit the situation of the individual landowner.

It is also necessary to know the physical relationship of the easement to the total property. In order to be aware of the geography of the landowner's property, the appraiser should have a properly prepared survey which indicates the total property and the precise location of the easement. Of course, just because a survey has not been furnished is no reason not to do a thorough physical inspection of the land; not only of the easement area, but also any part of the property affected by the easement. The effect that an Appalachian Trail right of way would have if it followed an owner's property line or traversed a steep

and narrow crest line is obviously different than if it besected a planned subdivision or passed along one side of his home.

There are three approaches to the appraisal of real estate generally accepted today: the market approach, the income approach, and the cost approach.

The most common approach to determining the value of an easement is the market approach. There are five basic steps in this process: 1) a definition of the kind of sale; 2) the selection and analysis of previous comparable sales; 3) the determination of the comparability of the previous sales with the tract being appraised; 4) the adjustment for value changes between the sale of comparable properties and the time of the present appraisal; and 5) the evaluation of the value of the property before and after the imposition of the easement.

Once the appraiser has located comparable sales he has to bring their sales value up to present levels of sale because only by doing this can the earlier sales he has discovered be considered as comparable. Even though a nearby piece of property similiar to the one being appraised for an Appalachian Trail easement was sold only last year, it does not make it a comparable sale until an adjustment has been made in the sale price to compensate for whatever change has taken place in the area real estate market during the year between sales.

Once the appraiser has arrived at an estimate of the value of the property as if no easement was to be taken, he re-evaluates the property as if the easement were imposed and the difference would represent the value of the easement. In doing this he takes into account the conditions

of the easement and their effect on the value of the property. For example, suppose a section of land for which an easement for the Trail is obtained is appraised as most suitable for second home development, but the Trail easement did not allow the construction of residences. Then the appraiser might determine that the parcel is now most suitable to be used as farm land. Thus, he would reappraise the land as farm land and the difference would be the value of the easement.

The other two methods of appraising do not have much applicability to the easement program in Virginia. The cost method, which is best suited to the appraisal of buildings, could best be used to analyze improvements on a property.

The income approach has little applicability to the easement program for the Appalachian Trail. In using this method, the appraiser analyzes the value of the property from the viewpoint of its income potential and comes up with a figure representing the net income value of the property. This might provide an accurate basis on highly productive property or in determining the value of timber income forgone if cutting timber in the easement is prohibited. However, on most small farms and mountain properties encountered in the Appalachian Trail program in the Commonwealth, there is not a great deal of income generated on the properties.

Most authorities feel that the market value approach is the best method of appraising a fair market value for land. However, the income and cost approach are important as a means of explaining market value. Basically, market value as an appraisal approach is felt superior because it actually includes the income and cost elements associated with a

property and also those non-income features associated with land such as attractiveness or nearness to a town which are difficult to measure by the income or cost approach. Also, the market value approach is generally acceptable to the courts because of its objective nature and this aspect is of considerable importance in any government land acquisition program.

TAXES

Though there is by no means enough information available on the Appalachian Trail program in Virginia to date to state so conclusively it is generally felt that the imposition of an easement for the preservation of the Trail has the immediate effect of reducing the fair market value of the property by at least the fair market value of the easement. This reduction in the fair market value of the property can effect not only real estate taxes, but federal and state income tax, and inheritance taxes.

Real estate taxes are based on the fair market value of the property taxed. It logically follows that if the imposition of an easement reduces the fair market value of the property, there should be a corresponding reduction in the assessed value of the property. In reality this might not occur because often local laws and practices may leave considerable leeway as to whether adjustments are made in tax assessments.

There may also be an added bonus to the landowner who grants an easement to the State. The fact that the easement is a restriction upon future use of the land could prevent the assessed value from being raised and, in effect, afford the property owner a tax freeze. Of course there is no guarantee that this will remain permanent. If the property is sold at a later date, the price paid will be an indication of its fair market value and will become the basis on which it will be assessed.

For purposes of federal income tax, if the landowner is willing to

give the Division of Parks an easement for the right of way of the Appalachian Trail, the gift of easement is deductible as a charitable deduction under section 170 of the Internal Revenue Code. In order to obtain the deduction, it is required that the gift be in perpetuity and that the easement constitute a valuable property right and be enforceable under state law. Both these conditions are met if an easement is donated for the Appalachian Trail to the Division of Parks.

How much of a deduction is allowable is based on the percentage limitations established by the Code and the value of the easement. The Tax Reform Act of 1969 set the maximum deduction for charitable contributions as fifty percent of the landowner's adjustable gross income per year, and he may carry forward any unused portion of the deduction for the next five years and use them over that period.

In terms of state income tax in Virginia, the donation of a gift of easement to the Division for the Appalachian Trail parallels the federal law.

The limitations on fair market value that usually result from the imposition of an easement for the Trail may enable some landowners in Virginia to effect reductions in terms of estate tax. This can be accomplished in either of two ways. If the easement is donated during the owner's lifetime, estate tax savings will result because of the reduction in the fair market value of the property due to the easement. Secondly, if the Trail easement is bequeathed to the Division of Parks or to some tax exempt organization, an estate tax charitable deduction will be available under section 2055 of the Internal Revenue Code.

CONCLUSION

Though the Division of Parks is stressing the use of easements to provide protection for the Appalachian Trail through the Commonwealth of Virginia, it is as yet too early to objectively state that this approach is justified. Easements represent only one of the methods available to accomplish the goals of the Virginia trails legislation. For instance, wider use of cooperative agreements could be instituted; or the land for the Trail could be purchased in fee simple; or perhaps the Division could implement a purchase and lease back program. While these acquisition methods have their role within the Appalachian Trail program in Virginia, there are certain aspects of the easement device that tend to make its use desirable.

To purchase the entire right of way for the Trail in fee would obviously require large amounts of money. Considering the present financial situation affecting government spending, it is unlikely that the General Assembly of Virginia would appropriate the necessary funds. In this regard, easements offer a distinct advantage over the purchase of land in fee or for fee purchase and lease back as less funds are required.

Though it is generally accepted that the purchase of an easement is less than the purchase of the same land in fee, this need not always be true. It depends largely on the scope of the easement and its effect on the remainder of the land. For example, to acquire an easement for a highway right of way through a parcel of farm land leaves the farmer

no use of that land once it is paved. An easement for the Appalachian Trail, however, may still leave the landowner the right to use his land pursuant to its present use as farm or wood land and may even allow the construction of buildings where it is felt that they will not jeopardize the integrity of the Trail. Obviously the landowner is retaining a greater interest and value in the land under a trail easement as opposed to a highway easement. This difference is reflected in the cost of the easement.

To date the cost of easements for the Appalachian Trail in Virginia has been running at fifty percent of the fee value of the land. It should be remembered though that the data at this point is inadequate for any conclusive remarks on the cost of easements versus the cost of fee simple. Indeed, one advantage of attempting to acquire easements is the likelihood that someone will be more willing to donate an easement for the Trail than land in fee. The limited data available bears this hypothesis out. This aspect of donations would further reduce the cost of purchase under an easement program.

But suppose that the cost of an easement for the Trail through a second home development was very close to the fee value of the land. This is very possible if the easement was to prohibit the construction of dwellings. In such an instance it would drive up the overall cost of an easement program. It would also indicate that perhaps the property should be bought in fee as there is always more control over lands purchased in fee and the cost of the easement would be so close to the cost of the land in fee.

The use of purchase and lease back has been suggested by some for use along the Trail in Virginia. However, this method has certain disadvantages that, while not negating its use in the Trail program, make it a less desirable means of dealing with the acquisition problem. Basically this method involves the purchase of the property in fee and then leasing the land for grazing or some other compatible use.

The lease back technique does not provide the tax advantages of easements to encourage cooperation from a landowner, and it requires substantial funds for acquisition. The major disadvantage, however, is that this method requires that the administering agency periodically renegotiate the lease. This is an additional administrative cost that a carefully thought out easement can avoid.

Another advantage of easements is that they do not remove land from the local tax rolls. This can be an important factor in obtaining the support of the local government for an acquisition program.

The discussion thus far has dwelt upon the positive aspects of easements. It should be realized that there are certain limits to the use of easements. Though they may cost less than lands in fee, they are vulnerable to legal attack. This can occur because the terms are not clear or because the administrative office was unable to abide by the terms of the easement. When the agency cannot follow the conditions set in the agreement, the easement may revert back to the landowner. As of this time, the easement program in the Commonwealth has not been tested in court.

Easements are usually considered a greater burden to maintain and enforce than property purchased in fee or under a lease back program.

Under the present easement used along the Appalachian Trail by the Division of Parks, the Division agrees to maintain the easement as a right of way for the Appalachian Trail, and to enforce those park regulations applicable to the Trail. If this is not done, then the property could revert back to the landowner. Thus, it is necessary to maintain the easement or risk the chance of losing it. At the same time it is necessary to enforce the conditions of the easement binding the actions of the landowner to see that he complies with those restrictions. This problem may be even more difficult if the easement is too vague as to what are the actual restrictions on the landowner.

Easements are also more difficult to negotiate than fee purchases. It is easy for a landowner to understand the concept of fee simple, but when less than fee simple is required many landowners are uncertain as to what rights are involved. This can mean that acquisition programs involving easements may take much longer to accomplish as it requires a great deal of patient negotiating with landowners to make sure they understand what rights they are relinquishing.

Therefore, easements should do away with as much legal wording as possible and keep restrictions to a minimum. While it should be narrow enough to meet the objectives of the program, the easement still needs to maintain some flexibility so that in future years, as unforeseen developments arise, they might be handled within the scope of the easement. For example, in some instances it may be desirable to include a provision allowing the construction of residence with written approval from the Division.

One aspect of a good easement program that is important to its success is the attitude of the administrators and the negotiators of the agency involved in the program. If the agency personnel are not enthusiastic about the project and about the easement device, it will not be imaginatively employed. The negotiators need to be educated so that they understand the limits associated with easements so as to be able to keep easements in perspective as they relate to the goals of the project. This is necessary for those negotiating the easement for they have to sell the device to the landowner.

To date, the Division of Parks has provided protection for eleven and a half miles of the Appalachian National Scenic Trail through the Commonwealth of Virginia. Of this, the total acquired in fee accounts for only one-half mile; that acquired through easements three and a half miles; with the majority at this time, a distance of about seven and a half miles, under an agreement with a municipality. Sometime in the near future the Division hopes to complete the acquisition of a nine mile section of the Appalachian Trail under an easement agreement. Negotiations are also nearing completion to acquire by easements another five mile section of Trail from a landowner willing to donate the entire five mile right of way.

The Appalachian Trail program presents a very real challenge to the conventional fee purchase of land for recreational purposes. Hopefully, the program will prove to be a successful experiment. If so, it may well lead to wider future application of the acquisition device in not only other state trail programs, but also in the purchase and development of state scenic rivers, natural and historic areas, and even state parks.

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APPENDICES

APPENDIX I

Example Easement

THIS DEED OF EASEMENT, made this _____ day of _____, 19____, by and between _____ of _____ County, Virginia party of the first part hereinafter referred to as the landowner, and the Commonwealth of Virginia by the Department of Conservation and Economic Development, Division of Parks, party of the second part hereinafter referred to as the Division, acting pursuant to the provisions of Section 10-21.3:1 of the Code of Virginia of 1950, as amended.

WITNESSE: That for and in consideration of the sum of _____ cash in hand paid by the party of the second part to the landowner, and other good and valuable consideration, the receipt of which is hereby expressly acknowledged, the landowner doth grant and convey unto the Division with general warranty of title a perpetual easement for the purpose of developing and maintaining the Appalachian Trail, consonant with the provisions of the National Scenic Trails Act applicable to the Appalachian Trail as part of the National Scenic Trails System, and to preserve the natural scenic beauty thereof; said perpetual easement being over and across the following described land;

Being all that tract of land conveyed to _____ from _____ by deed dated _____, and recorded in deed book _____, page _____, records of _____ County, Virginia.

Said easement being a corridor of land _____ feet wide, more particularly described as follows:

BEGINNING at a point . . .

The exact location of the Trail route within the easement granted is at the discretion of the Division and is subject to modification if such is deemed necessary to maintain the physical and esthetic qualities of this route. As a part of the consideration for the conveyance of this easement, witness the mutual covenants of the parties hereto.

1. The landowner agree not to cut or remove any timber in the easement or place or develop any structure or undertake any operation therein, except pursuant to operations attendant to its present use of the land over which this easement is conveyed.
2. The landowner shall not be liable to any user of the Trail for injuries suffered on the easement unless the injuries are caused by his willful or wanton misconduct.
3. The Division assumes the responsibility for developing and administering the easement for use by the public as a trail limited to foot traffic except as hereinafter provided, and at its discretion for placing and maintaining Trail signs and markers and facilities incident to such use upon the easement granted, and may enter into cooperative agreements with agencies of the Federal Government or with private organizations to provide for the maintenance of the Trail, related facilities, markers and signs.
4. The Division shall prohibit the use of motorized vehicles by the general public along the easement; provided, that the landowner may use or authorize use of motorized vehicles on or across the Trail for purposes incident to ownership and management of the land; and provided that the Division may authorize the use of the Trail by motorized vehicles for emergencies and for performing work necessary for the purpose of forest fire prevention and control, insect, pest and disease control and the removal of damage caused by natural disaster.
5. The Division agrees to apply and enforce any applicable State Park regulations found in the publication Virginia State Park Regulations, November 12, 1967, and any subsequent editions thereof which are not inconsistent with the provisions of the National Trails System Act or this Deed.
6. The Division agrees to remove all signs and structures placed along the easement in the event of the reversion of this easement to the landowner; such reversion to result in the event

of the deliberate failure of the Division to comply with any of the foregoing conditions or in the event that the Trail is relocated off the easement herein granted.

The landowner covenants that it is seized of the land in fee simple upon and over which this easement is conveyed and that it has the right to convey the said easement to the Division.

WITNESS the following signatures and seals:

Landowner

By: _____

Attest:

Commonwealth of Virginia, Department of Conservation and Economic Development
Division of Parks

By: _____

Attest:

STATE OF VIRGINIA

COUNTY OF _____, to wit:

I, _____, a Notary Public,

in and for the State of Virginia, at large, do certify that _____

_____ whose name is signed to the foregoing and

annexed writing, bearing the date on the _____ day of _____,
19____.

Notary Public

STATE OF VIRGINIA

COUNTY OF _____, to wit:

I, _____, a Notary Public,
in and for the State of Virginia, at large, do certify that _____

_____ whose name is signed to the foregoing
and annexed writing, bearing the date on the _____ day of _____,
19____, has acknowledged the same before me in the County aforesaid.

My Commission expires _____. Given under my hand this
_____ day of _____, 19____.

Notary Public

APPENDIX II - Acquisitions

Grantor		Instrument	Distance (ft)	Area (Acre)
Dodd	12/74	Fee Simple	983.23±	3.58±
Floyd	12/73	Easement	5,804.00±	14.24±
	4/74	Easement		1.02±
Morehead, et. al.	3/75	Easement	9,967.91±	44.32±
Potomac	9/74	Easement		10.01±
Appalachian	9/74	Easement		10.03±
Trail Club	9/74	Easement		.55±
	9/74	Easement		.92±
Roanoke City	12/73	Agreement	41,900.00±	192.38±
Steppe	12/74	Easement	2,905.26±	13.34±
TOTALS				
Total Easement		8	18,677.17±	94.33±
Total Fee Simple		1	983.23±	3.58±
Total Agreement		1	41,900.00±	192.38±
Grand Total		10	61,560.40±	290.29±

APPENDIX III - Acquisition Costs

Grantor	Survey Fees(\$)	Appraisal Fees(\$)	Acquisition Cost(\$)	Legal Fees(\$)	Recording Fees(\$)
Dodd	637.25	350.00	3,400.00	200.00	27.48
Floyd			100.00		10.00
Morehead et.al.	3,521.50	750.00	8,865.00		21.00
Potomac Appalachian Trail Club					10.00 11.00 10.00 10.00
Roanoke City					
Steppe	1,345.00	580.00	1,000.00		12.00
TOTALS					
Total Easement	4,866.50	1,330.00	9,965.00		84.00
Total Fee Simple	637.25	350.00	3,400.00	200.00	27.48
Grand Total	5,503.75	1,680.00	13,365.00	200.00	111.48

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THE USE OF EASEMENTS FOR THE PROTECTION OF THE
APPALACHIAN TRAIL IN VIRGINIA

by

Charles Joseph Reed

(ABSTRACT)

The current status of the Appalachian Trail in the Commonwealth of Virginia is presented, and the role that easements will play in promoting Virginia's efforts to protect the Trail is investigated. Various aspects of easements are analyzed, including approaches to the appraisal of easements, and the effect of easements on income and property taxes.

In concluding, easements are compared with fee acquisition of recreational lands and purchase and lease back. Both positive and negative aspects of easements as reflected in the Virginia Appalachian Trail program are discussed.