

Burwell Forest Legacy Easement

Summary of Key Terms

The Burwell Conservation Easement is a perpetual open-space conservation easement held by the Virginia Department of Forestry (VDOF) covering approximately 599.64 acres in Charlotte County, Virginia, near Drakes Branch. Its purpose is to keep the property primarily forested and protect its agricultural, wildlife, water-quality, and open-space values. The restrictions run with the land, meaning they apply to future owners as well.

Please note that this summary of easement terms may not include every restriction or permitted activity set forth in the easement; hence a full review of the easement is necessary.

Overview

The property can still be used and developed with the following restrictions:

- No subdivision or splitting the property into separate parcels, except for one reserved right to split off a specified parcel south of State Route 613 (Country Road).
- At least 480 acres (80%) must remain in forest use.
- No more than four detached dwellings are permitted.
- Total impervious coverage is capped at 40,000 sq. ft.
- Most permanent structures over 150 sq. ft. must be within a designated Building Envelope.
- Buildings cannot exceed 40 feet in height, subject to limited exceptions.
- Forestry, agriculture, equine use, hunting/fishing, certain residential and commercial activities are allowed, but must comply with the easement and applicable laws.
- Timber harvesting is allowed, but generally requires an approved Forest Stewardship Management Plan and Pre-Harvest Plan.
- A 50-foot forested riparian buffer is required along streams, watercourses, and water bodies.
- Mining and oil/gas/mineral drilling are prohibited.
- Certain construction, road, utility, forest-conversion, and ecosystem activities require prior written approval from the Virginia Department of Forestry.

1. What the owner is allowed to do

Agriculture, forestry and equine activities are expressly permitted. This includes commercial forestry, timber harvesting, planting and cultivating trees, forest management, prescribed burning, invasive-species control, wildlife-habitat improvements, agricultural production, and processing of agricultural/forest products.

The owner may also conduct:

- Residential activities, subject to the building and land-disturbance restrictions.
- Religious, educational and scientific activities.
- Certain commercial activities.
- Wildlife management.
- Hunting, fishing and other low-impact outdoor recreation.
- Certain ecosystem-service programs, including forest carbon credits, generally for contracts of no more than 40 years unless the Department of Forestry approves otherwise.

The easement does not give the public a general right to enter the property. The owner retains exclusive access and use, subject to the easement. The owner can also grant licenses for permitted uses or access. No more than a de minimis amount of commercial recreational activity is permitted, though the owner may charge access fees for hunting and other permitted recreational uses.

2. Buildings and development

New buildings and structures can be constructed, enlarged, maintained and replaced, provided they comply with the easement's limits. However:

- There may be no more than four detached (freestanding) dwellings on the property.
- New permanent buildings/structures over 150 sq. ft. generally must be located in a designated Building Envelope.
- Buildings over 10,000 sq. ft. require prior written approval from the Department of Forestry.
- Buildings generally cannot exceed 40 feet in height.
- Total impervious coverage—including existing and future buildings, decks, pools, paved patios/parking, and similar improvements—cannot exceed 40,000 sq. ft.

The Department of Forestry may approve an increase in the impervious-coverage limit if the owner can demonstrate that the increase would provide greater protection of the property's conservation values.

3. Agricultural and forestry structures

Some structures can be outside the Building Envelope.

Temporary agricultural structures—such as pole sheds and run-in sheds—may be located outside the envelope if they meet the document's definition. Department approval is required if they exceed 500 sq. ft. or require certain underground utilities.

Temporary forestry structures—including equipment sheds, sawmills, worker shelters, temporary offices, timber landings and equipment parking—are also permitted outside the Building Envelope under specified conditions. They generally cannot remain in one location for more than five years, with a one-year gap before being placed there again. Structures over 500 sq. ft. or involving certain underground utilities require prior approval.

Small miscellaneous structures such as hunting stands, gazebos, fences, boardwalks, footbridges and gates may be outside the Building Envelope without prior review if they are consistent with the conservation purposes. Each must be no more than 150 sq. ft. and cannot require septic/waste-disposal facilities.

4. Roads, driveways and trails

Private roads and driveways serving permitted buildings, farming and forestry are allowed.

However:

- New non-permeable roads or trails require prior written approval.
- Adding a non-permeable surface to an existing road/trail requires approval.
- New stream crossings require approval or must be covered by an approved forestry/pre-harvest plan.
- Hiking, biking and equestrian trails are permitted.
- Roads or driveways serving neighboring properties require prior written approval.

5. Forest management and timber harvesting

The owner can commercially harvest timber, according to an approved Forest Stewardship Management Plan (FSMP). The FSMP must be prepared by a qualified forester and generally updated at least every 10 years, as well as following a significant change in forest conditions or a transfer of ownership.

Timber harvesting also requires an approved Pre-Harvest Plan and generally 30 days' written notice before harvesting. After the harvest, the owner must notify the Department within 7 days of completion.

There are exceptions where no Pre-Harvest Plan or additional permission is required, including:

- Minor noncommercial tree cutting for trail clearing or road daylighting.
- Cutting trees for domestic firewood or carpentry.

- Removing an imminent safety hazard.
- Removing less than three acres for otherwise-permitted construction.
- Removing invasive species.

6. The 80% forest requirement

At least 80% of the property—480 acres—must remain in forest cover or forest use in perpetuity.

Conversion from forest to other land use is allowed only for specified purposes, such as permitted buildings, agricultural uses, approved wildlife-habitat work, or an approved impoundment outside the riparian buffers. If more than 3 acres of forest will be converted during any 90-day period, an approved forest-conversion plan is required.

Harvesting and replanting according to a FSMP is not considered conversion.

7. Streams and 50-foot buffers

A minimum 50-foot forested buffer on each side of applicable streams, watercourses and water bodies must be maintained.

Within these buffers, the following are generally prohibited:

- Tree removal, except for specified circumstances.
- Storage of compost, manure, fertilizer or chemicals.
- Buildings and structures, except specified exceptions.
- Roads/trails, except specified exceptions.
- Plowing, filling, dumping and other earth disturbance.
- Livestock access, except permitted stream crossings.

But the owner can still:

- Plant vegetation.
- Maintain natural habitat.
- Hunt and fish.
- Install fencing.
- Maintain unpaved trails.
- Maintain existing roads.
- Have up to eight stream crossings.
- Have up to ten small water-recreation structures, each no more than 150 sq. ft.
- Mow up to three times per calendar year.
- Conduct approved ecosystem-function projects.

8. Earthwork, ponds and mining

Earthwork cannot materially change the property's topography except for specified purposes, including permitted construction, certain ponds, erosion control, ecosystem restoration, and scientific/educational work. Earthwork exceeding one acre generally requires 30 days' prior notice.

Mining is prohibited. Specifically, surface mining, subsurface mining from the property surface, and drilling for oil, gas or other minerals are prohibited. Dredging is also prohibited except for creating or maintaining permitted ponds.

9. Subdivision and sale

The property must remain one property as a whole, even though it currently consists of four tax parcels. Subdivision, partition, or separate conveyance of a portion is prohibited.

There are limited exceptions:

- Owner reserves the right to split off a single Specified Parcel (part of Tax Map #72-A-24) located south of State Route 613.
- An undivided ownership interest can be transferred.
- Timber rights can be leased or sold.
- The entire property, or a lawfully divided-off portion, can be mortgaged.
- A very small piece along State Routes 642 and 613 can potentially be taken/conveyed for qualifying minor road improvements, subject to the easement's conditions and approvals.

10. Commercial and recreational uses

Commercial activities are allowed if they comply with the easement's restrictions and applicable laws, though no more than a de minimis amount of commercial recreational activity is permitted.

The owner may establish permits and charge access fees for hunting and other recreational uses and for recreational facilities otherwise allowed by the easement.

11. Utilities and renewable energy

Utilities and renewable-energy facilities can be installed to serve permitted buildings, structures and activities, subject to the impervious-coverage limit.

Renewable energy may include solar, wind, water or biomass, and the owner may sell excess power generated incidentally. Utilities serving neighboring properties are possible, but generally require the Department's prior written approval.

12. Enforcement

The Virginia Department of Forestry has inspection and enforcement rights. It may inspect the property, document its condition and investigate compliance, generally after reasonable notice, with emergency exceptions.

If the owner violates the easement, the Department can seek:

- Restoration of the property.
- Damages.
- Replanting of improperly harvested trees, or the value of trees wrongfully harvested (including treble damages for the value of timber wrongfully cut).
- Injunctions stopping prohibited activity.
- Attorney fees, court costs, expert fees and restoration costs where applicable.