

**Appendix I.4. Conservation Easement between Mary Armistead Catlett and W&M for the Catlett Island Component of CBNERRVA.**

BOOK 393 PAGE 419

Conservation Easement

Catlett Island National Estuarine Research Reserve  
in Virginia

THIS CONSERVATION EASEMENT, made this 30 day of August, 1990 by and between Mary Armistead Catlett Burruss, hereinafter called the Grantor, and The College of William and Mary in Virginia, hereinafter called the Grantee.

WITNESSETH

WHEREAS, the Grantor is owner in fee simple of certain real property (hereinafter described and referred to as the "Catlett Islands"), situated in the County of Gloucester, Commonwealth of Virginia, being more particularly described as "forested islands and marshes extending from mean low tide to the wetland/upland border where the marsh meets the treeline on the landward side of the islands" as shown in Exhibit A and described in Exhibit B, attached hereto and incorporated by reference herein; and

WHEREAS, the Catlett Islands have substantial wetlands and forest resources and significant ecological, natural, research, educational, and aesthetic values, which this Conservation Easement will help to preserve and maintain, including the ability to protect water quality and important aquatic resources and habitats of the York River; and

WHEREAS, the specific ecological, natural, research, educational, and aesthetic values of the Catlett Islands are documented in the ecological survey made by the Virginia Institute of Marine Science (VIMS) on behalf of the Grantee and dated August 31, 1990 (Exhibit C), which will serve as an information base for monitoring and enforcement purposes and will be kept current by VIMS; and

WHEREAS, this Conservation Easement is being made with the intention and understanding of both the Grantor and Grantee that the property subject to this easement will be designated as part of the Chesapeake Bay National Estuarine Research Reserve System in Virginia and the National Estuarine Research Reserve System; and

WHEREAS, the Grantor desires and intends that the ecological, natural, research, educational, and aesthetic values of the Catlett Islands shall be preserved and maintained by restricting and limiting the use of the land and contiguous water areas of the property, on the terms and conditions and for the purposes hereinafter set forth, and the Grantee is willing to accept responsibility for managing the property for the purpose of conducting basic scientific and applied research and providing timely and accurate information to the Grantor and the citizens of the Commonwealth regarding the quality and conservation of the resources, both living and non-living, of the Catlett Islands, on the terms and conditions and for the purposes hereinafter set forth;

NOW THEREFORE, as an absolute gift of no monetary consideration (\$0.00) but in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, the Grantor hereby grants and conveys to the Grantee, its successors, and assigns forever and in perpetuity a Conservation Easement in Gross ("Conservation Easement") for the purpose of research, observation, and education and to the extent hereinafter set forth with respect to the Catlett Islands.

To achieve these objectives, the following conditions and restrictions are set forth:

ARTICLE I. DURATION AND GENERAL PURPOSE

1. General Purpose - The purpose of this Conservation Easement is to preserve and protect the environment of the Catlett Islands and to maintain permanently its natural and cultural values and its dominant scenic, rural, woodland, and wetland character so that the property remains suitable for long-term research on natural and human processes occurring within the York River tributary of the Chesapeake Bay. The Grantor and Grantee intend to confine the use of the property to such activities, including, without limitations, those involving hunting, trapping, fishing, gathering oysters, naturalistic uses, and estuarine reserve research purposes.

2. Duration - This Conservation Easement shall be perpetual. The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this Conservation Easement shall not only be binding on the Grantor but also its agents, personal representatives, heirs and assigns and all other successors to its interests and shall continue as a servitude running in perpetuity with the Catlett Islands.

ARTICLE II. MANAGEMENT OBJECTIVES

3. Management Plan Preparation and Implementation - There shall be a Management Plan prepared for the Catlett Islands to provide general guidelines for the current and future use of the property. The Management Plan shall address appropriate wetlands and forest management activities, wildlife and waterfowl needs, and research and education uses of the Catlett Islands, and it shall provide any other applicable guidelines for the conservation of natural resources.

The Management Plan shall be prepared by VIMS, in consultation with other resource management agencies of the Commonwealth, and shall be submitted to be the Grantor and Grantee for their review and approval, within 6 months of the execution of this Conservation Easement. The Grantor and Grantee shall meet at least annually, and more frequently at the request of either party, to review the Management Plan and research results and, where appropriate, to develop more specific recommendations for carrying out certain aspects of the Plan. The Management Plan shall be updated at least every 5 years.

4. On-Site Management - VIMS is the agency designated by the Grantee and the Governor of the Commonwealth of Virginia to manage the Chesapeake Bay National Estuarine Research Reserve System in Virginia. In this capacity, VIMS shall serve as on-site manager for research at the Catlett Islands and shall be responsible for seeing that research conducted on the property is conducted in a manner consistent with the goals of the Chesapeake Bay National Estuarine Research Reserve System in Virginia, the objectives of the Management Plan, and the wishes of the Grantor and Grantee. The on-site manager will be the Grantee's primary representative for the purpose of monitoring the uses of the property for consistency with this Conservation Easement.

5. Natural Area Preservation - The Catlett Islands shall be maintained as open space, wildlife and waterfowl habitat, and a natural field laboratory for research and education. Any industrial or commercial activities shall be prohibited on the Catlett Islands. The protection and conservation of the land subject to this Conservation Easement will be maintained and enforced consistent with the goals and policies of the Chesapeake Bay National Estuarine Research Reserve System in Virginia.

6. Research and Education - The Catlett Islands shall be maintained for research and education activities associated with the Chesapeake Bay National Estuarine Research Reserve System in Virginia. Research and education uses of the Catlett Islands shall be in accordance with the principles, objectives, and performance standards set forth in the Management Plan developed by VIMS and approved by the Grantor and Grantee. A steering committee will be convened by VIMS to assist in the review and approval of proposals for research and education activities at reserve sites. Such approval shall not be unreasonably withheld.

7. Information Exchange - Research and education activities conducted at the Catlett Islands shall be used to enhance awareness, understanding, and wise use of estuarine environments. VIMS shall provide the Grantor and Grantee with an annual report on research and education activities conducted on the Catlett Islands and shall disseminate timely and accurate information to the Governor, General Assembly, State and local agencies, industry, and citizens of the Commonwealth regarding the living and non-living resources of the Catlett Islands and their relationship to the Chesapeake Bay system and the coastal waters of the Commonwealth of Virginia.

#### ARTICLE III. CONTROLLED ACTIVITIES

8. Wetlands and Forest Maintenance - Wetlands shall be protected and maintained in accordance with the Management Plan and the Wetland Guidelines developed pursuant to Chapter 2.1 of Title 62.1 of the Code of Virginia. Forest management activities shall be conducted in accordance with the Management Plan and Best Management Practices promulgated by the Commonwealth of Virginia, Division of Forestry, and recommended by the U.S. Department of Agriculture, Forest Service and Soil Conservation Service. There shall be no other destruction or alteration of wetlands or forests on

the Catlett Islands, except as needed to eradicate noxious plant species or reestablish native plant species and as approved by the Grantor and Grantee. Management activities shall not materially impair the scenic quality of the Catlett Islands.

9. Waterfowl and Wildlife Maintenance - Waterfowl and wildlife maintenance activities shall be conducted in accordance with the Management Plan. In general, such activities shall be limited, where necessary, to maintenance of existing habitat and minor improvements (such as tree thinning to improve understory vegetation, or opening of small areas to provide a greater diversity of habitats) and as approved by the Grantor and Grantee. Any waterfowl and wildlife management activities shall be carried out under the guidance of the Commonwealth of Virginia, Department of Game and Inland Fisheries and the U.S. Department of the Interior, Fish and Wildlife Service. Any plant and insect management activities that may affect species of plants or insects protected under the Virginia Endangered Plant and Insect Species Act shall be carried out under the guidance of the Virginia Department of Agriculture and Consumer Services.

10. Hunting and Fishing - Any hunting shall be carried out in designated areas on and around the Catlett Islands and in accordance with conditions established in the Management Plan and approved by the Grantor and Grantee, and in accordance with rules and regulations promulgated by the Commonwealth of Virginia, Department of Game and Inland Fisheries. The Grantor, or its assigns, may place noncommercial blinds on the Catlett Islands for personal use. Any fishing shall be carried out in accordance with regulations promulgated by the Virginia Marine Resources Commission.

11. Water Quality - There shall be no human activities on or uses of the Catlett Islands that are detrimental or adverse to the maintenance and conservation of surface and subsurface water quality. There shall be no manipulation or alteration of natural water courses, shorelines, marshes or other water bodies, nor shall there be activities conducted on or around the Catlett Islands that could alter either natural water level, flow, or both.

12. Structures, Roads, and Trails - Except as otherwise provided in this Conservation Easement, no new buildings, facilities, structures, piers, roads, or trails shall be constructed on the Catlett Islands, except those designed, constructed and utilized in, and accessory to, research, education, hunting, and naturalistic uses of the property. Any such construction must be planned for in the Management Plan and approved by the Grantor and Grantee. Similarly, removal of existing structures must be planned for in the Management Plan and approved by the Grantor and Grantee. There shall be no compulsion to remove existing structures.

13. Signs and Billboards - Display of billboards, signs or other advertisements is not permitted on or over the Catlett Islands, except to state the name and/or address of the owner, to provide notice of designation as a Chesapeake Bay National Estuarine Research Reserve in Virginia, and/or to post the property against trespass.

14. Subdivision - The Catlett Islands shall not be partitioned or subdivided.

15. Excavation, Dredging, and Mining - Excavation, dredging, mining and removal of loam, gravel, soil, rock, sand, coal, petroleum and other materials on or below ground or alteration of the topography of the land is prohibited on the Catlett Islands, except as related to the collection of geological data. Such activities shall be planned for in the Management Plan and approved by the Grantor and Grantee.

16. Industrial and Commercial Activities - No industrial or commercial activities shall be conducted on the Catlett Islands.

17. Trash, Rubbish, and Waste - There shall be no dumping of soil, trash, ashes, garbage, waste, or offensive materials on the Catlett Islands. There shall be no filling in of any wetland, pond or waterway, and such dumping shall be absolutely prohibited. Neither the Grantor or the Grantee shall be responsible for unauthorized dumping.

18. Off Road Vehicles - Neither the Grantor or the Grantee shall authorize the operation of motor vehicles, trail bikes or all-terrain vehicles on the Catlett Islands, and such use shall be prohibited. The Grantor shall not be responsible for unauthorized use.

#### ARTICLE IV. ENFORCEMENT AND REMEDIES

19. Injunctive Relief and Restoration - Upon any breach of the terms of this Conservation Easement by the Grantor, its successors or assigns, or the Grantee, its successors or assigns, the breaching party may be subject to suit to: (1) enjoin any breach or enforce any covenant by temporary restraining order, preliminary and/or permanent injunction; (2) require that the property be restored promptly to the condition required by this Conservation Easement; or (3) seek any other remedy available, in law or equity, to assure compliance with the terms of this Conservation Easement.

20. Perpetual Right of Enforcement - Failure on the part of the Grantee to enforce any covenant or provision hereof shall not discharge or invalidate such covenant, or any other covenant, condition, or provision hereof, or affect the right of the Grantee to enforce the same in the event of a subsequent breach or default.

#### ARTICLE V. GRANTOR'S RIGHTS

21. Grantor's Rights - The Grantor expressly reserves to itself, its personal representatives, heirs, successors or assigns the right to:

- a. Continue the naturalistic uses of the Catlett Islands subject to the conditions set forth above;

- b. Continue to hunt, fish, trap, and gather oysters on and around the Catlett Islands subject to applicable laws;
- c. Improve, repair, restore, alter, remove, remodel, or replace permitted structures, provided that such activity is consistent with the Management Plan; and
- d. Continue the use of the Catlett Islands for all purposes consistent with this Conservation Easement.

ARTICLE VI. RIGHTS OF GRANTEE

22. Rights of Grantee - To accomplish the purpose of this Conservation Easement, the following rights are conveyed to the Grantee by this Conservation Easement:

- a. To preserve and protect the conservation values of the Catlett Islands;
- b. To enter upon the Catlett Islands at reasonable times in order to conduct approved research and educational projects and to monitor Grantor's compliance with and otherwise enforce the terms of this Conservation Easement; provided that such entry shall be upon prior reasonable notice to Grantor, such entry shall be by water, and shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Catlett Islands;
- c. To give permission to research scientists to conduct research and educational projects approved for the Catlett Islands National Estuarine Research Reserve, provided that permittees carry and display an official permit issued by the Grantee and approved by the Grantor; and
- d. To prevent any activities or use of the Catlett Islands that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Catlett Islands that may be damaged by any inconsistent activity or use.

ARTICLE VII. GRANTOR'S AND GRANTEE'S LIABILITY

23. Upkeep by Grantor - The Grantor, its successors, and assigns further agrees that he/she shall be responsible for upkeep of the Catlett Islands and shall hold the Grantee, its successors or assigns, harmless from any charges or liens arising out of upkeep or taxes.

24. Taxes - The Grantor agrees to pay any and all real property taxes and assessments levied by competent authority on the property.

25. Grantor's Liability - The Grantor, its successors, and assigns shall not be held responsible for injury to persons or damages to property arising out of any research or educational activity being conducted on the Catlett Islands pursuant to the Management Plan and this management agreement, except those arising out of the negligence of the Grantor, its successors, and assigns. All persons participating in research or educational activities at the Catlett Islands must sign a liability release form indemnifying and holding harmless the Grantor, its agents and guests, from any and all liability, claims, or expenses for injury, death or damages to self or property, including without limitation attorney's fees, resulting from or arising out of or in anyway relating to the activities of the Grantee, any of its representatives, agents or guests, or resulting from, or occurring in the course of transit to or from the Catlett Islands. A copy of the release form appears as Exhibit D.

The Grantee has inspected the Catlett Islands and accepts their condition "as is" as described in Exhibit C. Any existing conditions or future conditions relating to permitted uses of the Catlett Islands by the Grantor, including, without limitation, any hunting and fishing activities, shall not constitute conditions giving rise to a claim of negligence on the part of the Grantor or to any potential liability for damage to property or injury to person. The Grantor's liability for all other activities on the Catlett Islands shall remain in effect.

26. Grantee's Liability - The Commonwealth of Virginia and all its agencies and institutions are covered by a self-insurance program as authorized by Section 2.1-526.8 of the Code of Virginia which is based upon a comprehensive general liability manuscript policy form as shown in Exhibit E. All persons who are not employees of the Commonwealth must receive approval from the Grantor and furnish evidence of liability coverage in the amount of \$100,000/\$300,000/\$100,000 before participating in research or education activities at the Catlett Islands. All persons, whether employees of the Commonwealth or not, shall sign a liability release form referenced in paragraph 25 and appearing in Exhibit D.

ARTICLE VIII. PUBLIC ACCESS

27. Public Access - The granting of this Conservation Easement does not grant to the public any right to enter the property. The Grantee's right of entry does not include access to the interior of buildings or structures. All other protections against trespass by the public shall remain in effect.

ARTICLE IX. MISCELLANEOUS

28. Assignment, Transfer, and Reversion - The Grantee may assign its rights under this Conservation Easement to the Virginia Institute of Marine Science in such manner as to achieve the purposes and conditions herein. If any such assignee shall cease to exist or abandon this Conservation Easement or the rights and duties of enforcement herein set forth, or if proceedings

are instituted for condemnation of this Conservation Easement, the Conservation Easement and rights of enforcement shall revert to the Grantee. If the Grantee shall be dissolved and if the terms of the dissolution fail to provide a successor, then the Court shall appoint an appropriate successor as Grantee.

The Grantor agrees for itself, its personal representatives, heirs, successors, and assigns to send in writing to the Grantee the names and addresses of any party to whom the Catlett Islands is to be transferred at the time said transfer is executed. The Grantee agrees to hold this Conservation Easement exclusively for conservation purposes, and that it will not transfer the Conservation Easement in exchange for money, other property, or services. This provision shall not preclude the Grantee from using the monetary value of any donations or gifts from the Grantor as match for money, other property, or services that will contribute to filling the objectives of the Management Plan or the terms of this Conservation Easement.

29. Relationship of Easement to Property Value - The Grantor and the Grantee agree that the donation of the Conservation Easement gives rise for purposes of this paragraph 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 Conservation Easement bears to the value of the Catlett Islands at the time of the gift.

30. Eminent Domain - Whenever all or part of the Catlett Islands are taken in the exercise of eminent domain and such taking abrogates the restrictions imposed by this Conservation Easement, the Grantor and the Grantee shall join in appropriate actions at the time of such taking to recover the full value of the taking and all incidental or direct damages resulting from the taking. All expenses incurred by the Grantor and the Grantee in this action shall be paid out of the recovered proceeds.

31. Inclusion of Terms in Subsequent Deeds - The Grantor agrees that the terms, conditions, restrictions and purposes of this grant will be inserted by them in any subsequent deed or other legal instrument by which the Grantor divests itself of any interest in the Catlett Islands.

32. Construction and Severability - It is the intention of the parties hereto that this Conservation Easement, which is by nature and character negative in that the Grantor has restricted and limited their right to use the the Catlett Islands rather than granted any affirmative rights to the Grantee except as otherwise set forth herein, be construed at all times and by all parties to effectuate its terms, conditions and purposes. If any provision of this Conservation Easement or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of the Conservation Easement and the application of such provisions to persons or circumstances other than those as to which it is found to be invalid shall not be affected thereby.



33. Notification - The Grantor agrees to notify the Grantee, in writing, before exercising any reserved right the exercise of which may have an adverse impact on the conservation interests associated with the Catlett Islands. Any notices by the Grantor to the Grantee pursuant to any provision hereof shall be sent by registered or certified mail, return receipt requested, addressed to Mary Armistead Catlett Burruss, Route 1, Box 591, Hayes, Virginia 23072.

IN WITNESS WHEREOF, the Grantor and Grantee have hereunto set their hands and seals the day and year above written.

State of Virginia  
County of Gloucester, to-wit:

Grantor:

The foregoing instrument was acknowledged before me this 30th day of August 1990 by Mary A.C. Burruss,

Mary A. C. Burruss

(SEAL)

Susan W. Carter  
Notary Public

August 30, 1990

(DATE)

My commission expires: 8/31/93.

ACCEPTED BY

AS GRANTEE:

State of Virginia  
County of Gloucester, to-wit:

The foregoing instrument was acknowledged before me this 2nd day of November 1990 by William F. Merck, III.

William F. Merck, III

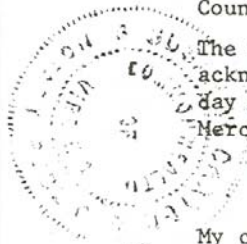
(SEAL)

Susan W. Carter  
Notary Public

November 2, 1990

(DATE)

My commission expires: 8/31/93.



APPROVAL AS TO FORM:

R. C. Kaut

Assistant Attorney General for the  
Attorney General of Virginia

RECOMMEND:

[Signature]

Director  
Division of Engineering and Buildings

RECOMMEND:

[Signature]

Director  
Department of General Services

APPROVED FOR THE GOVERNOR:

Pursuant to the provisions of Section 2.1-504.2, Code of Virginia (1950), as amended, and by authority of Executive Order 78 (89), I hereby approve the acquisition of this conservation easement from Mary Armistead Catlett Burruss, which is more fully described herein, and the execution of this document.

[Signature]  
Secretary of Administration,  
for the Governor of Virginia

10-02-90  
Date