



Memorandum

To: VOF Trustees

From: Tamara Vance, Deputy Director for New Easements

Date: March 17, 2016

Re: Proposed Revisions to the Easement Guidelines

This memorandum briefly summarizes changes to the new proposed VOF Easement Project Guidelines, proposed for adoption March 24, 2016. The last update of VOF Guidelines was in January 2010, and we are taking the opportunity while updating, to expand information on VOF's decision making process.

Easement Project Guidelines (revised March 24, 2016) clarify the basis for evaluating new easement proposals. The "Interim Easement Guidelines for 2016" are posted on the VOF website. While there are no major changes to previous Guidelines, staff recommends these improvements to better explain VOF's analysis, considerations, and reasoning regarding the development of a "good" easement project. Where the current Guidelines are vague in some areas, the proposed revisions are more explicit about elements taken under consideration during evaluation and development of new projects for Board review and approval. This includes both the process for defining conservation values and public benefits and for describing expectations for specific protections in the terms of the easement deed. The following considerations are better explained and defined:

- adjacent land owned by the same donor, proposed to be left out of the easement, whether small parcel, [e.g. house lot parcel on the edge, internal "donut hole"] or larger acreage [e.g. farm next door]. (see Section III. B.).
- threat of development in the area of the proposal, and the intensity of existing land development in the area [e.g. rural areas with minimal residential development pressure, versus tidal river waterfront areas]. (see Section III. C.).
- emphasis on determining the conservation values specific to an individual property (see introduction, Section I, and Section III F.).
- overall acreage and density of retained rights for parcels; no minimum acreage; expectations for properties over 1000 acres. (see Section III. C.).

Process for adoption: Accepted by the VOF Board at its September 2015 meeting as "Interim Easement Guidelines for 2016 Projects", written public comment was accepted through March 1, 2016. While notice was sent through the VaULT listserve, no comments were received. Staff recommends adoption of "Easement Project Guidelines" at the March 24, 2016 Board Meeting.



Easement Project Guidelines

(adopted 3-25-16)

These guidelines are provided to inform landowners considering the donation of an open-space easement to the Virginia Outdoors Foundation (VOF). They are intended to describe the types of resources VOF strives to protect and the potential restrictions considered necessary to protect them. Each property is unique and will be considered on a case-by-case basis.

An open-space easement is an interest in property voluntarily offered by a landowner that limits the property's uses in order to protect its conservation and open-space values. A property's open-space values might include farm and forest land and wildlife habitat, as well as historic, natural, scenic, scientific, or public recreational values of a property (see Appendix for further explanation). These values are identified by staff, and protected through the terms in the deed of easement, and then described in the documentation of the property contained in VOF files and records. VOF also takes into consideration the degree of development in the area, and the threat of conversion of the property to intensive uses. A proposed easement must protect the property in perpetuity and yield a significant public benefit.

Typical restrictions necessary to protect the open-space values of the property include limitations on divisions of the property and on the number and size of buildings and structures that can be constructed on the property, and the creation of restricted-build areas to protect scenic views of the property, prime soils, streams, and/or other natural features.

I. GENERAL CHARACTERISTICS OF OPEN-SPACE EASEMENTS:

The Public Benefit of Easement Properties:

Though most VOF easements do not require landowners to permit public access, protected properties do have significant benefit to the public, such as protection of water quality, retention of productive farm and timberland, and protection of scenic views enjoyed by travelers along public roads, rivers or from parks. It is this public benefit that helps qualify easements for federal and state tax benefits.

Conservation Values on Easement Properties:

Conservation values to be protected by an open-space easement might include: productive agricultural or timberlands, scenic vistas, rare species, caves, unique geologic features, rivers or streams, wetlands, wildlife habitat and corridors, and/or historic resources (See Appendix for more information on specific resources).

Other conservation attributes of a property might include:

- a) inclusion in a private or governmental conservation program, plan, inventory or register, such as National Audubon Society's "Important Bird Areas", Virginia Department of Conservation and Recreation's "Virginia Outdoors Plan", The Nature Conservancy's "Ecological Portfolios" or one of VOF's ten "Special Project Areas", or

- b) areas adjacent to other conservation lands, such as: existing VOF or other conservation easements, designated scenic rivers or scenic roads, state or national parks or forests, wilderness areas, wildlife management areas, state natural area preserves, historic battlefields or other historic properties.

II. CONSISTENCY WITH COMPREHENSIVE PLANS AND INTERFERENCE WITH PUBLIC WORKS PROJECTS:

By statute, VOF must be sure that the protection of open-space land is consistent with the official comprehensive plan of the locality in which the property is located, so that the easement program complements county planning rather than works against it. The language of the comprehensive plan, the property's designation on the locality's future land use map, and/or the locality's approval of the easement proposal should provide the indicator of that consistency.

When considering acceptance of an easement, VOF weighs whether an easement on a property may interfere with an anticipated or planned public works project. VOF considers the extent to which planning for the public works project has been finalized and the practicality and availability of other options for construction of the public works project. VOF could either insert provisions in the deed of easement to forestall a conflict between a public works project and protection of the conservation values of the property or decide not to accept the easement. Where an existing road or railroad or utility expansion is in an existing plan, that expansion should not be blocked and will be accommodated by the terms of the easement.

III. EASEMENT TERMS:

The terms of an open-space easement vary according to the specific characteristics of the individual property, including its size and conservation values and the degree of protection needed to protect those particular values. A property will be considered as a single unit for the purpose of permitted easement divisions despite the number of tax parcels making up the property or the number of subdivisions that may be permitted by the locality in which the property is situated. Many properties contain conservation values that warrant a particular limitation on development (such as properties containing rare species or properties providing a scenic view from public roads). In such cases, fewer parcels and/or siting limitations on dwellings and other buildings and structures will probably be appropriate.

A. Open Space Guidelines: There is no minimum acreage for VOF easements. Properties under 100 acres with strongly significant or multiple conservation values and development potential may qualify for a VOF easement if the development potential is substantially reduced. Though each property is different, properties of over 200 acres probably contain sufficient open-space values by virtue of their size to qualify for a VOF easement, if easement terms adequately protect conservation values. (See section C. below for further considerations related to acreage.)

B. Excluding parcels or portions of a property: In developing an easement project, VOF considers adjacent tax map parcels owned by the prospective donor as a whole, rather than as individual parcels. An easement effectively combines the tax parcels together for consideration of the easement, even though there may be existing rights for dividing the property under the subdivision regulations of the locality in which the property is located. To achieve the best conservation protection of the property possible, excluding a portion of a property proposed for easement is discouraged, as future development of adjacent land may impair conservation values of the easement property.

For example, exclusion of a relatively small parcel in the center of the property, (a “donut hole”) from the property going under easement is discouraged, as is excluding other adjacent property owned by the prospective donor. Exceptions may be considered in certain circumstances. For example, for a house lot on small acreage which does not contain multiple internal division rights may be excluded if it lies at the boundary or in a corner of the property, provided that the number of dwellings and/or divisions (if any) on the proposed easement property are reduced. It is generally recommended that if a large portion of the property is proposed to be excluded from an easement project, the remaining property in easement should not be further divided. For example, if a donor wishes to place 300 of 500 contiguous acres owned in an easement, the recommendation would be for the easement to restrict the 300 acres to allow no division. For the donor’s consideration: Leaving out a portion of a property may lessen the appraiser’s valuation of the easement gift.

An adjoining property owned by the same owner, but unrelated to the proposed easement property by virtue of topography or other natural feature, may not be considered an excluded portion of the property proposed for easement. Requests to omit parcels or portions of a property will be considered on a case-by-case basis based on the above criteria.

C. Division of Land:

To protect open space, properties should remain as a whole to the extent possible and divisions or creation of new parcels should be minimized. Parcelization has the greatest negative impact on open-space and keeping properties intact provides the most open-space and conservation benefit.

In general, the density recommendations set forth below indicate the maximum that will be favorably recommended by VOF staff, when presenting projects to the VOF Board of Trustees for its consideration. However, fewer parcels are sometimes more appropriate in order to protect specific conservation values or additional parcels may be accommodated in certain circumstances (for example, if the property is split by a road or river), provided that the other terms of the easement help create an otherwise equivalently protective easement. Protective terms might include controls on building locations (setbacks from roads and waterways), further limitations on the size or number of dwellings or other buildings or structures, or creation of natural resource protection zones for scenic high elevations, rare species or karst features on the property.

For the density acreage guidelines below, please note that the acreage may be less important than the *net developable area* of the property. If a significant portion of the property could not

reasonably be developed, for example, if it contains mostly steep mountain land or wetlands, more limitation on divisions and improvements may be appropriate than on a property of a similar size without such physical limitations. In addition, these non-developable areas often require additional protection of their conservation values.

To accomplish meaningful protection of conservation values in remote rural areas where population densities and development pressures are relatively low, fewer parcels may be recommended than in highly urbanizing areas near major cities.

Other important factors that VOF considers when determining recommended easement terms include:

- The threat of development and existing parcel sizes in the neighborhood.
- Location of the property in relation to county-designated growth areas or corridors or planned roads or utility lines.
- The presence of resources with significant public value such as streams feeding a community water supply reservoir or constituting a native trout stream.

General Acreage Density Guidelines :

Please read the section immediately above, as the information there is important for understanding the number-based recommendations below:

Properties with fewer than 150 acres should have strongly significant or multiple conservation values and are recommended to remain as a whole.

Properties of 150 to 300 acres are recommended to remain as a whole or in no more than two parcels.

Properties of 300 to 600 acres are recommended to remain as a whole, but in some circumstances may be recommended favorably for an easement if not divided into more than one parcel per 100 acres, depending on conservation attributes and their protection by other easement terms.

Properties of 600 to 800 acres are preferred to remain as a whole, but may be recommended favorably for an easement if not divided into more than five or six parcels.

Properties of 800 to 1,000 acres: are preferred to remain as a whole or in as few parcels as possible, but may be recommend favorably for an easement if not divided into more than six or seven parcels,

For properties over 1000 acres, VOF staff will recommend a maximum of eight parcels. On a case-by-case basis, additional parcels may be favorably recommended, with the aim of achieving an overall density of one additional parcel for each additional 500 acres. This sliding scale is intended to encourage the preservation of large intact tracts of land, which tend to have high open-space and conservation values and which are becoming increasingly rare.

D. Guidelines for Dwellings:

Number of Dwellings: One dwelling for each of the retained parcel rights is normally recommended. A second often smaller dwelling for one or more of any permitted parcels for uses such as a guest cottage or apartment, small cabin, farm manager's house, or farm workers' quarters may be recommended, provided that the aggregate square footage of above-ground enclosed living area of the two dwellings is limited. Habitable dwellings of any kind (i.e., cabins, apartments, mobile homes, etc.) will count in the number of permitted dwellings and the aggregate square footage of above-ground enclosed living area.

Note: Landowners should check with their county planning departments and individual mortgage lenders on whether the presence of more than one dwelling per parcel will be permitted under county regulations. Also, it is important to note that the size of an indivisible parcel may raise issues when obtaining a building permit or a new mortgage.

Sizes of Dwellings: Generally, the total square footage of above-ground enclosed living area for the dwelling(s) on a permitted parcel should not exceed an aggregate of 4,500 to 6,500 square feet of above-ground enclosed living area, and each individual dwelling should not exceed a threshold size (customarily 3,000 to 4,500 square feet of above-ground enclosed living area or smaller) without VOF's prior review and written approval. Large houses generally have a more significant impact on a property's conservation values, so smaller sizes are encouraged in most circumstances, though larger houses may be acceptable depending on their locations.

Locations of Dwellings and other Large Buildings: Location of dwellings or other large buildings or structures can have a major impact on the view from public places, such as roads, rivers, parks, outlooks, etc. or on a natural or historic resource located on the property. Both the size and location of such dwellings or buildings can adversely impact a property's natural and open-space values. For this reason VOF will often suggest limitations on placement of dwellings or other large buildings or structures.

E. Farm Buildings and Structures:

Generally, an easement contains a threshold size for individual farm buildings and structures of 4,500 square feet in ground area (or if the property is less than 50 acres in size 2,500 square feet in ground area). On large working farms, especially those retaining lower densities, the size threshold for review of new farm buildings or structures may be increased up to 10,000 square feet as long as conservation values are otherwise protected. Requests for individual larger farm buildings (such as riding arenas or poultry houses), will be considered on a case-by-case basis and will require siting limitations. (An alternate easement form is available for commercial agricultural properties, which includes a relatively small defined farmstead area with unlimited farm buildings and related uses by right, in exchange for which it will be recommended that the property have half the recommended division rights.)

F. Other Typical Restrictions:

Forestry: Forestry is permitted, provided that VOF has approved a pre-harvest plan prior to a timber harvest and that Best Management Practices are used to control erosion and protect water quality.

Riparian (stream buffer or wetlands) Protection: To achieve water quality protection, stream buffers are strongly recommended along perennial streams (solid blue lines on USGS topographical maps), rivers, or other significant water resources on or adjacent to the property. VOF prefers to incorporate buffers that exclude livestock from the waterway, and may require this for important waterways.

Mining: Mining and other earth-disturbing activities that would alter the natural topography of the land are not permitted with exceptions for such things as construction of permitted improvements, generally accepted farming practices, and erosion and sediment control measures.

Scenic Protection: To protect scenic resources, building envelopes, no-build areas or setbacks from roads, rivers, or historic structures may be appropriate.

Monitoring and Enforcement: VOF must be able to inspect the property periodically in order to enforce the restrictions set forth in the deed of easement, and the deed of easement makes provision for such monitoring and enforcement. Permission is sought from the landowner in advance of a monitoring visit, except in the case of emergencies

Other: Large signs, accumulation of junk or trash, and certain commercial structures, such as large scale cell towers, are not permitted.

Additional restrictions desired by the landowner beyond those identified above and outside of those contained in the standard form easement must have clearly delineated conservation purposes, be readily observable by staff during routine monitoring visits, and be practicable to monitor and enforce. A VOF easement cannot undertake, for example, terms which would take daily or frequent monitoring such as a prohibition on hunting or trapping, application of pesticides or bio-solids, or the riding of ATV's on a property.

IV. EASEMENT APPROVAL:

All VOF easement proposals must be approved by the VOF Board of Trustees at one of its quarterly meetings. Once an easement proposal has been approved, it may be finalized and recorded any time within one year of approval.

If an approved easement proposal has not been executed and recorded within one year from the date of acceptance by the VOF Trustees, it must be resubmitted to the Trustees for approval. Reconsideration of a project after the one year initial approval date may be subject to a \$1,000 fee.

ATTACHMENT A:
Guidelines for VOF Staff

Use in Evaluating Potential Easement Properties

Criteria for determining property conservation values:

NATURAL (meets one of the following):

- A. The property is in a relatively natural state defined by areas:
- With little or no land disturbance or clearing of vegetation;
 - Providing habitat for rare, threatened, or endangered species;
 - Of high biological diversity as determined by a qualified professional;
 - Within a designated wilderness area;
 - Having unique geological features.
- B. The property includes lands designated by a federal, state, or local government, or recognized organization as:
- Wetlands;
 - Wildlife habitat;
 - Riparian corridors, public water supply watersheds, Chesapeake Bay Resource Protection Areas, Resource Management Areas, flood plain protection areas, or other lands important to water quality or quantity;
 - Steep or critical slopes; or
 - Prime or other important agricultural or forestal soils.

SCENIC (meets one of the following):

- A. The property is listed in a state, or regional, or local landscape inventory (including site-specific listing in the local Comprehensive Plan).
- B. The property is part of the scenic rural landscape or scenic panorama seen from a public area such as from a park, nature preserve, road, recreational water body, trail, or historic structure or land area, is open to or used by the general public, and possesses scenic characteristics. For visual accessibility from a public road to provide significant public benefit, it should be a well-travelled road and/or pass through an area of high aesthetic value, by virtue of the scenic qualities of the natural and manmade features of the landscape. Federal tax law suggests examples of factors used in defining a particular view as "scenic" include: 1) the compatibility of the land use with other land in the vicinity; 2) the degree of contrast and variety provided by the visual scene; 3) the openness of the land; and 4) the harmonious variety of shapes and textures.

HISTORIC (meets one of the following):

- A. The property is an historically important land area, such as:
- An independently significant land area (for example an archaeological site or a battlefield) that is listed on or meets the criteria for listing on the State and/or National Register;

- A land area listed on the State and/or National Register or within a Rural Historic District;
- A land area identified by the City or County Comprehensive Plan as having local historic significance; or
- A land area identified and documented by a recognized organization as having local historical significance.

B. The property includes an historic structure and/or resides in an historic setting. Examples include:

- Any building, structure, or land area that is listed on or meets the criteria for listing on the State and/or National Register;
- A supporting structure located within a registered Historic District;
- A structure identified by the City or County Comprehensive Plan as having historical significance; or
- A structure identified and documented as having local historic significance (including an example of an architectural style, an association with an historical event, or an association with an historical figure).

NOTE: In the case of a property that has a State and/or National Register site on it, VOF recommends that the landowner consider donating an historic preservation easement to the Virginia Department of Historic Resources.

SCIENTIFIC:

The property includes a site used for scientific research or is determined to be appropriate for the systemic (systematic) and objective collection of data under the direction of a qualified individual in the field of natural science. Examples include a colony of trees resistant to a wide-spread virus, or a unique karst cave system.

OPEN-SPACE:

The preservation of the property is pursuant to a clearly delineated governmental policy or provides scenic enjoyment to the general public as described above. Examples of governmental policy include farmland and forests within an Agricultural and Forestal District, or forestland within a Mountainside Overlay or Conservation District, land within a Rural Historic District or other designation indicative of State conservation policy. Please refer also to Open Space Guidelines in III A. above.

RECREATIONAL:

The property is regularly accessible for use and enjoyment by the general public and contains resources of educational value or offers recreational opportunities, such as a water area used by the public for boating or fishing, or a nature or hiking trail open to the public.

ATTACHMENT B

Guidance from Internal Revenue Code

Internal Revenue Code Section 170(h)(4)(A) defines conservation purposes as:

- i) The preservation of land areas for outdoor recreation by, or the education of, the general public,
- ii) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,
- iii) The preservation of certain open space (including farmland and forest land) where such preservation is ----
 - (I) For the scenic enjoyment of the general public and will yield a significant public benefit, or
 - (II) Pursuant to a clearly delineated Federal, State, or local governmental conservation policy and will yield a significant public benefit.
- iv) The preservation of an historically important land area or a certified historic structure.

NOTE: The Virginia Outdoors Foundation cannot guarantee that an easement will qualify for a federal income tax deduction under IRS criteria or a state tax credit under Virginia law. Donors should consult with qualified tax advisors to determine the tax effect in their particular situation. VOF is not involved in determining the value of an easement for tax purposes. This determination must be made by a qualified independent appraiser.