

DRAFT

**MINUTES**  
**VIRGINIA OUTDOORS FOUNDATION (VOF)**  
**BOARD OF TRUSTEES MEETING**  
MONTPELIER – LEWIS HALL  
APRIL 22, 2014

Attendees:

**BOARD MEMBERS**

Stephanie Ridder, Chair  
Charles Seilheimer  
Peter Bance  
Elizabeth Obenshain  
Brent Thompson  
Childs Burden  
Matt Lohr

**OTHER ATTENDEES**

Charlie Westbrook, Atoka Conservation Exchange  
Rex Linville, Piedmont Environmental Council  
(PEC)  
Pete Glubiak, Attorney  
Fred Fisher, Office of the Attorney General  
Steve Owens, Office of the Attorney General  
Richard Mahevich, Office of the Attorney General  
Nan Mahone, Conservation Partners  
Jeffrey F. Clark, Orlean Volunteer Fire Department  
Tom Marable, Fauquier County Volunteer  
Association  
Rod DeArment, Flat Duck Farm  
Lowell Smith, interested citizen  
A. R. "Pete" Dunning, Boyce VA  
Ruth Harp, interested citizen  
Lee Merrill, Rockbridge Area Conservation Council  
(RACC)  
Emily Francis, Virginia League of Conservation  
Voters  
Peter Hujik, PEC  
Rick Parrish, Southern Environmental Law Center  
Fred Carlyle, interested citizen

**STAFF**

Brett Glymph, Executive Director  
Leslie Grayson, Deputy Director, Policy &  
Acquisitions  
Tamara Vance, Deputy Director, Easements  
Bruce Stewart, Staff Attorney  
Martha Little, Deputy Director, Stewardship  
Sherry Buttrick, Assistant Director, Easements  
Kristin Ford, Assistant Director, Easements  
Ruth Babylon, Easement Project Manager  
Bobbie Cabibbo, Executive Assistant  
Anna Chisholm, Finance Manager  
Carroll Courtenay, Easement Assistant  
Josh Gibson, Easement Project Manager  
Harry Hibbitts, Assistant Director, Stewardship  
Kerry Hutcherson, Staff Attorney  
Neal Kilgore, Easement Project Manager  
Jason McGarvey, Communications and Outreach  
Manager  
Dave Morton, IT/GIS Manager  
Erika Richardson, Stewardship Manager  
Philip Reed, Director, Landowner Relations  
Laura Thurman, Easement Project Manager

## DRAFT

Charlie Seilheimer called the Virginia Outdoors Foundation Board of Trustees meeting to order at 11:10 am at the delegation of the Chair, Stephanie Ridder. Charlie remarked that he feels both privileged and pleased to be on the board, and especially to have been the Chair. There is no board or staff in his experience that is as talented or dedicated as the board and staff of this organization. VOF is of the government but has been able to act in an entrepreneurial way and he is very proud of what the VOF mission.

Charlie introduced the governor's choice for Chair, Stephanie "Steph" Ridder. Steph thanked Charlie for being a great mentor and guiding her through the workings of VOF. She complemented the staff for her experience with them as her land is under easement. Steph remarked that Brett Glymph has been superb and she believes the next few years are going to be challenging.

Charlie then introduced the governor's new appointment to the VOF Board of Trustees, Matt Lohr.

### **PUBLIC COMMENTS**

Rod DeArment lives and farms a VOF easement in Boyce. The kennel approved by VOF would accept dogs from the Washington DC area for day or overnight boarding, or training. Section 7 of the easement prohibits commercial enterprises and the Code of Virginia says dogs are not agriculture. VOF has determined previously that under this easement breeding and boarding of dogs is an acceptable commercial use. Mr. DeArment demurred to this determination stating that the proposed enterprise is not like a hound kennel for hunting, in that they are for profit. Many people have contacted him with dismay as a result of VOF's decision. This kennel will not be built because the Board of Supervisors in Clarke County has turned down the Special Use Permit request. He asked that the Michael Hobart paper, along with a map of area easements be distributed to the Board of Trustees. (These documents along with a copy of his comments are on file with permanent record of this meeting.)

Tom Marable spoke on the topic of the 1704. All the information is in the packets and he thanked the staff and board for the support.

Lowell Smith said that the following comments represent both his wife's and his comments. This proposed kennel is located on a knoll highly visible on a state designated byway and has surrounding wetlands that would have a road right through these lands. Many citizens are in disbelief that VOF approved this kennel, including the Clarke County Board of Supervisors. Allowing non-agriculture on any conserved land risks the public's general support to give tax subsidies. The review and approval process is inadequate. Please review the procedure and policies that allow this, and use more care in reviewing the precise restrictions in each deed and adhering to these restrictions. (A copy of Mr. Lowell's comment is on file with the permanent record of this meeting.)

Pete Dunning has been associated with VOF, has easements and has appraised them; he has defended them in front of IRS. He has a long history with VOF and believes in what VOF does, in general, is great. He thinks it is important to do easements smaller than 100 acres.

Brett Glymph stated that there is not a prohibition on the consideration of easements smaller than 100 acres.

Public comments were closed at 12:40 p.m.

### **Approval of the Order of Business**

Move the template discussion for animal care uses to right before considerations of new easement projects. Dinger project has been deferred. Motion made by Childs Burden to approve Agenda as amended; motion seconded by Charlie Seilheimer and passed unanimously.

DRAFT

### **Approval of Minutes from the VOF Board of Trustees meeting on October 23 & 24, 2013**

Amend minutes to replace the word “developed” with “planned” by Randall Arndt; replace “without full knowledge of the board” to “without an official vote of the Board of Trustees”; fix Mr. Bowers name to remove the apostrophes; and Mr. Wellford owns Kendale not Kenlock. Motion made by Childs Burden to approve minutes as amended; motion seconded by Charlie Seilheimer and passed unanimously.

### **Executive Director’s Report**

Brett Glymph reported that the Governor is firmly committed to our mission. Brett recently heard the Governor and Secretary Ward speak and they are committed to preserving as much land as possible, without respect to any one number, with priorities for water quality, the Chesapeake Bay, geographical diversity and increased minority participation.

Brett has worked with Secretary Ward drafting a letter to our congressional delegation supporting the federal enhancements for easement donations.

The oil and gas forum that took place on March 13, 2014 was by all accounts a success. She encouraged all present to view that forum, which is available on the VOF website. Community input was solicited and the forum hit all of its goals: to educate as well as provide that forum to our partners. Thank you to Jason McGarvey for a job well done.

Our Richmond office has moved, we are now sharing space with DCR and the move represents a significant cost savings as well providing an opportunity to continue to strengthen our relationship with DCR.

### **Directors’ Reports**

#### **Tamara Vance Deputy Director, Easements**

Tamara reminded the trustees about the rigorous staff review that the land conservation projects go through before they appear in the board book. There are biweekly Stage I conference calls with easement managers, focusing on conservation values. Not all projects make it through that review. Then the projects are brought to a regional staff meeting where stewardship staff and our staff attorneys read the deeds and the project goes through a more detailed review.

Last year we had our 4<sup>th</sup> highest year for acreage recordation. Over 70,000 acres of land was preserved through approximately 200 projects. The Virginia Department of Taxation moved their easement acceptance date from December 1<sup>st</sup> to November 1<sup>st</sup> and it is then necessary for us to get our “big” meeting in September versus October.

Brett noted that the dates for the meetings in September and November have been adjusted to September 11 & 12 and November 6<sup>th</sup>.

#### **Martha Little, Deputy Director, Stewardship**

VOF has 3,482 unique easements and we have implemented a new system, SMART, to be able to give us information on all stewardship activities, including monitoring, amendments, FOIA responses, interpretations and issues. In our first quarter staff monitored 11% of easements.

## DRAFT

### Leslie Grayson, Deputy Director, Policy & Acquisitions

A short history of owned lands was presented onscreen. (A copy of this presentation is kept with the permanent record of this meeting and is available on request.) In addition, there is an Owned Lands Report in your board book.

### Sale Parcels

Motion made by Charlie Seilheimer to approve the sale of two lots (lot one and two in Bull Run Mountain Estates) at 97% of their listing price (the appraised value); motion seconded by Matt Lohr and passed unanimously.

Leslie reported that as further detailed in the Owned Lands Report (included in Board book materials), we have been working for the past 18 months to update an agreement with our partner Rockbridge Area Conservation Council (RACC) related to land management and public use of House Mountain. The prior agreement expired in November 2013 and RACC was given the formal 60 days notice as required. Brett interjected that we will be receiving advice of counsel on this matter in closed session

Staff is requesting authorization to proceed with closing on board approved land sale projects, only under the following two conditions; 1.) the bona fide offer is close to the approved listing price, AND 2.) the sale parcel is valued at less than \$50,000. This request is in order to accommodate a preferred closing date for the buyer with respect to parcels of modest value. With only 4 board meetings a year, staff does not want to lose or delay closing on a sale because of board meeting timing. The Board of Trustees will continue to approve the proposed sale of any VOF property prior to listing. Motion made by Beth Obenshain to allow staff to proceed to closing without full Board of Trustees approval if the approval of Executive Director and Board of Trustees Chairperson is obtained and if the offer is close to listing price and the parcel is valued at less than \$50,000.; motion seconded by Charlie Seilheimer and passed unanimously.

### Philip Reed, Landowner Relations Director's Report

Philip reported that he is currently:

- a resource for our current landowners and is planning to have landowner events
- continuing to develop our relationship with VDACS and Farm Bureau
- attending Natural Resource Conservation Service (NRCS) meetings
- setting up regional advisory boards, comprised of landowners, appraisers, attorneys and local VOF office staff member beginning with Southside
- the Virginia United Land Trust (VaULT) representative

Philip noted that VOF has approximate 20 easements under the Farm and Ranch Protection Program (FRPP), and that Nation Resources Conservation Services has a new program awarding certification as preferred easement holder. VOF has made a decision to apply for certification and he will be the staff liaison for that project.

Matt Lohr thanked VOF because of our willingness to be part of the Farm Link program that will benefit with VOF's involvement

### Committee Assignments

Steph Ridder asked that Childs Burden and Charlie Seilheimer continue serve on the Finance and Personnel Committee.

Volunteers were sought to staff the Preservation Trust Fund Committee. Beth Obenshain, Brent Thompson, and Childs Burden volunteer to staff that committee.

As VOF's 50<sup>th</sup> anniversary is approaching, it was decided that formation of a Board Committee for the 50<sup>th</sup> Anniversary to guide and liaison with a staff committee (to be formed) was important. Matt Lohr,

## DRAFT

Charlie Seilheimer and Peter Bance volunteered to be on that committee. The Chair, Steph Ridder is an ex-officio member of all committees.

### **1704 Henchman's Lea / Orlean Fire Department**

Motion made by Charlie Seilheimer to accept this transfer of land and approve the 1704 request as presented, motion seconded by Childs Burden and passed unanimously.

Meeting adjourned for lunch at 12:56 p.m.

Meeting called to order at 2:04 p.m.

### **CONFLICT OF INTEREST TRAINING FOR TRUSTEES**

The Office of the Attorney General presented *General Knowledge Center Conflict of Interest* training modules one and two.

### **POLICY**

#### **Easement Template Review**

A presentation entitled *Existing Animal Care Facilities* was viewed (a copy of this presentation is kept on file with the permanent record and is available upon request). Leslie Grayson explained that the template goes through many reviews and has changed over the years and will continue to in the future. Childs Burden asked what the process is to review a request such as these kennels. The staff member first confers with Deputy Directors and Executive Director, an analysis is done, an interpretation is communicated to the owner.

Steve Owens reminded us that there are two different processes, the county process and VOF's process. The County has police power and we have a contractual responsibility. Our authority is with respect to the easement and to protect the values of the easement and the county decides how it is going to use its authority.

Childs Burden asked if light pollution is controlled by any easements. Mr. Seilheimer explained that prior boards have asked the question and the answer at that time is that noise and light is a county issue, not easement/VOF controlled.

Steve Owens asked that that we go in to Executive Session if we are going to discuss the DeArment easement since Mr. DeArment has threatened to sue VOF over its interpretation

Pete Dunning shared his concerns that the easement says no commercial or industrial activities other than agricultural.

Matt Lohr said with easements in general, the agricultural community appreciates that farmers need long term flexibility and as we try to convince farmers to put easements on their property we need to keep that flexibility in mind.

Rich Mahevich reminded us of the perpetuity of easements and we do not know what agricultural will be in the future.

### **PRESERVATION TRUST FUND LAND CONSERVATION PROJECTS**

There is \$175,000 available in Preservation Trust Fund money. The easements today are asking for approximately \$21,000. In June we will have over \$150,000 to allocate.

## DRAFT

**Easement - Dodson, Connie - Giles County -287.9 acres** Note that the Summary Sheet incorrectly states that there is a 100' foot buffer and the aggregate for buildings is 8,000 sq. ft. vs. 11,000 sq. ft. Motion made by Charlie Seilheimer to approve easement as amended and awarding \$6,500 in PTF monies; motion seconded by Elizabeth Obenshain and passed unanimously.

**Easement - Kirby, Roald B. & Elliot "Ellie" Scott – Grayson County - 95 +/-acres PTF only**  
Amend easement to remove public infrastructure expansion (PIE) language and the map included in the board book shows specific watering points and that is incorrect, flexibility is needed. Motion made by Childs Burden to approve easement as amended and award \$6,500 in PTF monies; motion seconded by Charlie Seilheimer and passed unanimously.

Elizabeth Obenshain left the room.

**Easement-McCrea, Barbara and Thomas – River View Farm-Westmoreland County - 76.1 acres**  
Motion made by Childs Burden to approve easement as presented and award \$10,000 in PTF monies of which \$5,000 is to be used for a survey; motion seconded by Charlie Seilheimer and passed unanimously.

Mr. Seilheimer asked the staff to guide applicants a little better so that the requests are fully filled out and understood.

### **LAND CONSERVATION PROJECTS**

**Amendment - Duncan, Larry - Clark County - Adding 65.1365 acres** - Motion made by Charlie Seilheimer to approve easement as presented; motion seconded by Matt Lohr and passed unanimously.

Elizabeth Obenshain returned to the meeting.

**Easement – RECONSIDERATION - EM&ES Land LLC, (Reeves- Main Farm ) - Augusta County - 334.651 acres** - Amend easement to clarify PIE language to expand roadway to a maximum of 50 feet wide total. Note that a new list of building sizes will be included in the permanent record of this meeting as it was not clear in the book. Motion made by Childs Burden to approve easement as amended; motion seconded by Charlie Seilheimer and passed unanimously.

**Easement - Gercke, James and Adele – March Tract-Rockbridge County - 134.829 acres** Amend the easement sighting language to swap the words east and west; it is the western part that has the dwellings. Motion made by Charlie Seilheimer to approve easement as amended; motion seconded by Elizabeth Obenshain and passed unanimously.

**Easement – RECONSIDERATION-Macdonald, Bruce N. & Sonia B.-Rockbridge County - 9.625 acres** – Charlie Seilheimer made a motion to approve easement on full 14.402 acres with the understanding that the right of first refusal stands on the 4.777 acres; motion seconded by Brent Thompson and passed unanimously.

**Amendment – Mackay - Smith, Justin, and Williams, Ian & Debora – Clarke County - no new acres added** – Motion made by Charlie Seilheimer to approve amendment as presented; motion seconded by Matt Lohr and passed unanimously.

**Easement - RLP Investments, LC “Carey Tract” – Amelia County – 214 acres** - Amend easement to exempt Civil War signs from the sign provisions. Motion made by Charlie Seilheimer to approve easement as amended; motion seconded by Peter Bance and passed unanimously.

## DRAFT

**Easement - ACUB/Full Purchase - Mt. Sion LLC - Caroline County - 843.162 acres** Amend easement to add 500' road setback in the restricted build area on Route 2. Motion made by Peter Bance to approve easement as amended; motion seconded by Elizabeth Obenshain and passed unanimously.

**Easement - Clarke, T. Henry IV & Penelope T. – Bedford County - 639.35 +/- acres** Note: 6 acres has a title issue and the easement needs to be approved either with or without the 6 acres. Motion made by Charlie Seilheimer to approve the easement without the 6 acres with the stipulation that if clear title happens before recordation the 6 acres must be included in the easement; motion seconded by Matt Lohr and passed unanimously.

**Easement - Trower, Peter & Griggs, Marcella J.- Montgomery County - 61.718 +/- acres** - Amend easement to add the language included in the hand out. (Attachment A) Motion made by Charlie Seilheimer to approved easement as amended; motion seconded by Peter Bance and passed unanimously.

**Easement - Busick family –Wythe County - 115 +/- acres** - Motion made by Childs Burden to approve easement as presented; motion seconded by Elizabeth Obenshain and passed unanimously.

**Easement - Baber, James P. – Cumberland County - 551.3 +/- acres** - Motion made by Peter Bance to approve easement as presented; motion seconded by Charlie Seilheimer and passed unanimously.

**Easement - Edmunds, James II – Halifax County - 732.6 acres** - Amend easement to move the retained right for a hunting lodge to the buildings paragraph. Motion made by Charlie Seilheimer to approve easement as amended; motion seconded by Peter Bance and passed unanimously.

**Easement - Vercellotti, Douglas W. & Barbara F. – Springer Forest Farm - Halifax County - 220.13 acres** Amend easement to move the retained right for a hunting lodge to the buildings paragraph. Motion made by Charlie Seilheimer to approve easement as amended; motion seconded by Childs Burden and passed unanimously.

**Easement – RECONSIDERATION - Brandon, Howard B. Jr. - Brunswick County - 143.471 acres** Motion made by Charlie Seilheimer to approve easement as presented; motion seconded by Elizabeth Obenshain and passed unanimously.

## **POLICY**

### Oil & Gas

Brett Glymph said that after the forum and the additional insight from our partners, we would like to hear from the board.

Steph Ridder proposes that VOF have no onsite drilling on easement land. Motion made by Childs Burden that we have no on-sight drilling on easement land. That is VOF would no longer accept easements that retained the right to do onsite drilling for oil & gas; motion seconded by Elizabeth Obenshain.

Brent Thompson says he thinks it is too soon to make such a determination that perpetuity is a long time. Do we incentivize or remove incentives to put land in to easement. If that is what this ban is going to do to tip the balance for someone to not put land under easement, then we have lost. The very cookbook rights we retain might actually be superior to that which would prevail in the absence of easement. We may well incentivize a landowner to drop the idea of easement when economics say the oil and gas route is much better. We would lose the easement and might put the land in a more relaxed regulatory environment with fewer safeguards than we would provide and that makes it cheaper and less environmentally sound if there is not an easement on the property.

## DRAFT

Elizabeth Obenshain shared concerns about competing interests and conflict between state agencies. Does VOF say no when another agency approves the plans? The other point is if there are retained oil and gas rights in the easement at all; if it is that we do generally allow oil and gas drilling on property then a landowner would assume we allow fracking and then 2 years from now VOF decides to say no to any fracking the landowner would feel confused. Keeping the right to review the oil and gas drilling plans does NOT say we do not allow fracking.

Peter Bance: VOF is getting a black eye and is caught in a bind, because we care about it in the Taylorsville Basin but not the southwest of Virginia?

Brent Thompson: what might be acceptable in one region might be alien and problematic in another. Is it possible that there is framework, where the retention of those rights in one part vs. where mining and extraction have been around for a hundred years.

Charlie Seilheimer urged a moderate approach because perpetuity is a long time. There is no question in his mind that fracking is not environmentally safe today, but we don't know whether new technologies that come up might be possible and safe.

Childs Burden: Our reputation is taking a hit in the kneecaps, maybe a ganging on, but we are in the crosshairs. The forum was productive and unanimous except for Shore Oil. Fracking problems are not just the scar on the acres; it is the pipelines and other things. We are under constant scrutiny for tax incentives by the legislature.

Peter Bance believes in time counties will step up and make it unaffordable for the companies to drill.

Stephanie Ridder called for a vote of the motion on the floor, which is that VOF will decline to accept charitable gifts of easement where landowners retain the right to do onsite surface drilling. The vote taken was 6 for and one against with Brent Thompson voting no.

Motion made by Matt Lohr to go in to closed session as provided for in the Code of Virginia §2.2-3711 (A) (7) to take advice from counsel on the matter of house Mountain management agreement and management plan; to discuss strategy with counsel in matters where litigation is imminent and where its disclosure would be likely to prejudice or disadvantage the position of Virginia Outdoors Foundation in that litigation, namely, Clark County kennel special use permit application, Fassifern Farm in Bath county, Trump golf course in Albemarle; and to discuss strategy with counsel that is presently in litigation, namely VOF v. David Berry in Augusta County Circuit Court, Morris v. Morris in Rappahannock County Circuit Court; Motion seconded by Elizabeth Obenshain and passed unanimously.

Upon returning from Closed Session, it was certified by voice vote of Trustees that to the best of each member's knowledge only matters lawfully exempted from FOIA and identified in the motion with the exception of Bowers v. VOF, Richmond Circuit Court, by which the Closed Session was convened were heard, discussed or considered. Mr. Burden replied aye, Mr. Thompson replied aye, Mr. Bance replied aye, Mrs. Lacy replied aye, Mr. Chafin replied aye, Mrs. Obenshain replied aye and Mr. Seilheimer replied aye.

Mr. Seilheimer left the meeting. 7:20 pm

Meeting adjourned at 7:30 p.m.

**NOTES ON TROWER & GRIGGS EASEMENT PROPOSAL**

Senior staff has asked for some clarification on the Trower & Griggs easement project at the April 2014 VOF Board of Trustees meeting.

This project is located in a region with substantial karst topography, and in order to further protect water quality the landowner wants to limit tree harvest to only a few exceptions.

In light of recent violation issues on easement properties with a similar limitation on timbering ability, we have devised alternate language for use on this and similar such projects in the future.

**CHANGES TO BOARD VERSION OF THE TROWER & GRIGGS DEED:**

1. In the Forestry section (Paragraph 4: Management of Forest):
  - a. Remove ***"It is the intent of Grantor that the existing woodlands be maintained in their natural state..."*** from the beginning of the first paragraph
  - b. Edit exception (vi) to read ***"that have died naturally or are diseased or storm damaged"***
  - c. Add ***"Notwithstanding the above..."*** to the beginning of last paragraph, then edit first sentence of last paragraph to read ***"Notwithstanding the above, if a commercial salvage operation is required for trees that have died naturally or are diseased or damaged, Best Management Practices (BMPs), as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality during any such operation."***
  
2. In the Commercial uses section (Paragraph 3: Activities on the Property):
  - a. Reverse order of agriculture and forestry in 3(i)(a) so that forestry is listed first
  - b. Also in the Commercial Paragraph (Paragraph 3: Activities on the Property), add parenthetical ***"(as limited in Section II Paragraph 4 below)"*** after ***"Forestry"*** so that interpretation can be more easily directed to the limitations on timbering that exist on the property
  
3. Add a recital (to this and future project with limited timbering ability) which describes forest diversity, character, rare species, karst or other applicable characteristics of the property and mention that these characteristics support a more restrictive limitation on timbering