

To Trustees: The Amendment policy was adopted in February 2008. The Procedures adopted in 2008 have been updated as of 2014. Only the policy is included here. Procedures are available upon request.

## **Amendment Policy of February 2008**

### **A. General Policy**

While the open-space easements that the Virginia Outdoors Foundation (VOF) holds are perpetual in nature, VOF recognizes that ambiguous language, drafting mistakes, unforeseen changes in circumstances, and a landowner's desire to improve conservation value protection may justify an amendment to a deed of easement.

The general open-space easement amendment policy of VOF is: an easement shall not be amended except in the case where the Board of Trustees (the Board) or Staff are assured that 1) the net effect of the amendment is to enhance public benefit by increasing net conservation value protection on the property, 2) the amendment shall not affect the easement's perpetual duration, and 3) the amendment shall not result in impermissible private benefit or private inurement. With this general policy in mind, the following principles and procedures outline the decision-making process that the Board and Staff will use to evaluate proposed amendments.

### **B. Guiding Principles**

***The following principles shall guide VOF's evaluation of every proposed amendment:***

- 1.** The amendment shall be consistent with the overall purpose of the open-space easement. In some cases, where the easement has multiple purposes, these purposes should be balanced against each other according to the professional expertise and judgment of the VOF Staff and Board. An amendment that is used to implement a conversion or diversion is not required to be consistent with the easement's purpose provided that the requirements of Va. Code § 10.1-1704 are met.
- 2.** The amendment shall result in a net benefit to the protection of the easement's conservation values.
- 3.** The amendment shall not result in any impermissible private benefit or private inurement, as those terms are defined by the Internal Revenue Code, Treasury Regulations, or case law. The outcome of the amendment shall be such that the overall private benefit is outweighed by the overall public benefit. In close cases as determined by VOF Staff, an appraisal will be required to ensure that this principle is followed.
- 4.** If the proposed amendment presents a conflict of interest, the conflict shall be resolved before amending the easement (see applicable laws and VOF conflicts of interest policies).
- 5.** The need for an amendment shall be caused by a) an ambiguity in the provisions of the easement, b) a stewardship problem resulting from an unforeseen change in circumstances or a significant public necessity, or c) VOF's or the landowner's desire to improve the conservation value protection of the easement.

6. The amendment shall be signed by the Grantee (designated VOF Staff), all co-holders (if any), and all current landowners whose rights will be affected by the amendment. If the property is subject to any liens or mortgages/deeds of trust, such liens or mortgages/deeds of trust shall be subordinated to the amended deed. The amendment shall be properly recorded in the locality where the eased land is located.
7. Where feasible, the amendment shall replace the language in the easement with appropriate language from the current easement template.
8. Where feasible, the amendment shall avoid the creation of unwarranted additional stewardship responsibilities such as monitoring, enforcement, or discretionary approvals.
9. The amendment shall conform to the official comprehensive plan for the locality in which the property is located.
10. The amendment shall not undermine the public's confidence in VOF and the land conservation community in general.
11. The time and expense required to process the amendment shall be justified by the increase in conservation value protection resulting from the amendment.
12. The amendment shall be consistent with at least one of the circumstances described in Section C.

*For amendments that are necessary to solve a stewardship problem caused by an unforeseen change in circumstances or a significant public necessity, the following principles shall also apply:*

1. There shall be no feasible alternatives available to solve the stewardship problem other than the proposed amendment. When determining feasibility, financial and economic factors may be considered, but these factors may not be the sole basis for determining that an alternative is not feasible.
2. The amendment shall be necessary to avoid undue hardship to the landowner, and the hardship shall have been caused by circumstances beyond the landowner's reasonable control.
3. If the amendment is being used to implement a conversion or diversion of open-space land, such conversion or diversion shall have been approved by the VOF Board of Trustees and shall have met the requirements of Va. Code § 10.1-1704 (Michie 1950), as amended.

**C. Circumstances where an amendment would be appropriate. These circumstances are provided as examples, but they are not intended to cover all possible situations in which an amendment may be appropriate.**

**1. Correcting an ambiguity (Type 1):** A "deed of amended and restated gift of easement" may be used to clarify or resolve ambiguous language in the deed of easement. For boundary line adjustments, please consult VOF Staff Counsel. When a technical error needs to be corrected, please consult VOF Staff Counsel for a deed of correction.

**2. Upgrading easement language to conform to current template language (Type 2):** While this circumstance by itself will rarely present sufficient reason to amend an easement (due to the time and expense involved with amending the easement), updating easement language is strongly encouraged whenever other proper circumstances for amending an easement are present.

**3. Adding acreage to the eased land or releasing reserved rights (Type 3):** Amendments are appropriate where a landowner wishes to extend the restrictions of an existing open-space easement to apply to additional adjacent acres. In such a circumstance, VOF will apply its normal Guidelines to evaluate the additional property and add it to the existing easement. Also appropriate are amendments that restrict certain rights that were originally retained by the donor. For example, an amendment might eliminate a right to subdivide that was included in the original deed of easement. Landowners may also amend easements to take advantage of changes in tax laws.

**4. Reconfiguring easement boundaries or restrictions (Type 4):** Amendments that modify or add to the rights reserved by the landowner in exchange for additional acreage or the release of other reserved rights may be appropriate. This circumstance must be carefully scrutinized to ensure clearly and convincingly that the above principles have been substantially satisfied. Many of the early Type 4 amendments involved removal of acreage limitations on the parcels permitted by subdivision clauses in the deeds. In these cases, careful study demonstrated that the minimum acreage requirements actually forced division of the property in a manner that damaged the integrity and resource values of the land and that a more sensitive and resource-conserving division would be achieved if the acreage requirement were removed or revised. Other Type 4 amendments that have been approved in the past include amendments that add a significant amount of new land to be encumbered by the easement while modifying the restrictions to permit some additional retained rights for the landowner that VOF deems to be not inconsistent with the conservation purpose of the easement and incidental to the overall public benefit that would be derived from the protection of the additional land.

**5. Reconfiguring easement boundaries or restrictions to serve a significant public necessity (Type 5):** Amendments may be appropriate to effect a change that will serve a significant public necessity. In this circumstance, it is important to determine whether the proposed amendment will be consistent with the overall purpose of the easement. If the proposed amendment is inconsistent, then the requirements of Va. Code § 10.1-1704 must be met and the VOF Board of Trustees must approve the amendment.

**RESOLUTION****VIRGINIA OUTDOORS FOUNDATION (VOF)****BOARD OF TRUSTEES RESOLUTION AUTHORIZING ADMINISTRATIVE APPROVAL  
OF CERTAIN CATEGORIES OF OPEN-SPACE EASEMENT AMENDMENTS**

WHEREAS, over a period of several years, the VOF Board of Trustees (the Board) granted administrative authority to VOF Staff to approve, *inter alia*, certain categories of amendments to VOF's recorded open-space easements; and

WHEREAS, the VOF Staff presented a Amendment Policy and Procedures document to the VOF Board at its meeting on January 24, 2008; and

WHEREAS, at that time it was customary for the Board of Trustees to use a consent agenda as well as a non-consent agenda in order to improve the efficiency and effectiveness of Board meetings; and

WHEREAS, given that the Board had previously granted administrative authority to Staff to approve certain categories of amendments, the Amendment Policy and Procedures were drafted with the assumption that those certain types of amendments would not be presented to the Board for approval; and

WHEREAS, at least one Board member wished to have the opportunity to review all types of amendments, which led the Board to adopt the Amendment Policy and Procedures subject to the requirement that all amendments be presented to the Board and that amendments that formerly could have been approved administratively should be placed on the Board's consent agenda; and

WHEREAS, for the past five years Staff has presented all amendments to the Board for approval and during that time Staff has observed that requiring Board approval for those types of amendments that previously could have been approved administratively adds significant process and paperwork resulting in very little additional benefit often at the expense of the landowner, the Board and Staff, and the public purse.

NOW, THEREFORE, BE IT RESOLVED:

That on this 24<sup>th</sup> day of October 2013, the VOF Board of Trustees does hereby grant the VOF Staff administrative authority to approve amendments of existing open-space easements where such amendments:

- 1) Add acreage and retain all the original terms;
- 2) Further restrict or extinguish retained rights (e.g., subdivision or dwelling rights);

- 3) Remove acreage requirements on size of parcels if Staff is convinced that conservation values are better protected as a result.
- 4) Add the template riparian buffer restriction provision to protect important waterways;
- 5) Correct technical errors; or
- 6) Add the template “*de minimis* commercial recreational use” provision.

AND BE IT FURTHER RESOLVED:

That all amendments not meeting the specifications outlined above or amendments that Staff deem deserving of Board review, shall continue to be submitted to the Board for its consideration.

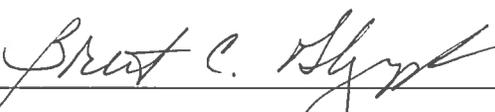
AND BE IT FURTHER RESOLVED:

That before any proposed amendment is approved administratively it shall have been reviewed and approved by a Deputy Director and a Staff Attorney.

AND BE IT FURTHER RESOLVED:

That whenever VOF Staff approve an amendment administratively, the Staff shall provide a summary report of said amendment to the Board at its next meeting.

ADOPTED by a vote of 6 in favor and 0 against.



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ATTEST: Brett C. Glymph, Executive Director

RESOLUTION

**A RESOLUTION OF THE VIRGINIA OUTDOORS FOUNDATION'S  
BOARD OF TRUSTEES AUTHORIZING ADMINISTRATIVE  
APPROVAL OF OPEN-SPACE EASEMENT AMENDMENTS**

WHEREAS, over a period of several years, the Virginia Outdoors Foundation (VOF) Board of Trustees (the Board) has granted administrative authority to VOF Staff to approve, *inter alia*, certain categories of amendments to VOF's recorded open-space easements; and

WHEREAS, the VOF Staff presented an Amendment Policy and Procedures document to the VOF Board at its meeting on January 24, 2008 which was adopted by the Board and the Policy remains unchanged while Procedures have been updated; and

WHEREAS, the Board granted administrative authority to Staff to approve certain categories of amendments by resolution adopted on October 24, 2013; and

WHEREAS, Staff has determined that in order to save Staff time and to benefit landowners requesting amendments, it would be beneficial for the Board to authorize VOF Staff to approve amendments to recorded open-space easements as long as such approvals are in strict accordance with the said Board-approved 2008 Amendment Policy.

NOW, THEREFORE, BE IT RESOLVED:

That on this 25th day of June 2015, the VOF Board of Trustees does hereby grant the VOF Staff administrative authority to approve amendments of existing open-space easements in strict accordance with the Board-approved Amendment Policy.

AND BE IT FURTHER RESOLVED:

That before any proposed amendment is approved by VOF staff administratively it shall have been reviewed and approved by a Deputy Director and a Staff Attorney.

AND BE IT FURTHER RESOLVED:

That the Staff shall provide a summary report of all amendments to the Board at its meeting next following approval of such amendments.

ADOPTED by a vote of: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Brett Glymph, Executive Director