

# WILLIAMS MULLEN

Direct Dial: 804.420.6463  
jwalker@williamsmullen.com

October 22, 2014

## BY EMAIL AND FEDERAL EXPRESS

Ms. Brett Glymph  
Executive Director  
Northern Piedmont Region – Warrenton  
VIRGINIA OUTDOORS FOUNDATION  
39 Garrett Street, Suite 200  
Warrenton, Virginia 20186

Dear Ms. Glymph:

I am writing this letter on behalf of my client, the Piedmont Environmental Council (“PEC”). It is PEC’s understanding that Martha Boneta will appear at the November 6, 2014 board meeting of the Virginia Outdoors Foundation (the “VOF”) to complain about PEC’s monitoring of the conservation easement (the “Easement”) that PEC and VOF co-hold on a 64-acre parcel of real property in Paris, Virginia (the “Property”) that is owned by Piedmont Agriculture Academy, LLC (“PAA”). Martha Boneta is the managing member of PAA. The purpose of this letter is to provide accurate background information relating to the Easement and thereby respond to the erroneous and misleading allegations that have been asserted against PEC. This information is either objectively verifiable or unrefuted by objectively verifiable facts. PEC respectfully requests that you include this letter with the materials that are distributed to the VOF Board prior to its November 6, 2014 meeting.

At the outset, PEC takes exception to PAA’s/Boneta’s allegations that PEC has been abusive in monitoring the Easement on the Property. In evaluating PAA’s/Boneta’s claims of abuse, please note that PAA/Boneta and PEC have been involved in two prior lawsuits in the Circuit Court of Fauquier County, Virginia regarding the Easement. In both instances, where the veracity of PAA’s/Boneta’s allegations were put to the ultimate test of actual proof submitted under oath, the allegations against PEC went nowhere.

The reality is that the vast majority of allegations asserted against PEC are simply allegations without factual support. Consequently, PAA’s advocates have chosen to participate in the court of public opinion by disseminating misinformation designed to inflame the public rather than accurate information designed to inform the public.

## **I. THE HISTORY OF THE EASEMENT**

In 2000, PEC purchased approximately 1,232 acres of Ovoka Farm from Mr. Phillip S. Thomas with funding from private donors. At that time, the Ovoka Farm property was made up of 35 separate parcels of land. Over the ensuing twelve years, PEC protected the Ovoka Farm property with conservation easements that limited the number of times that the Ovoka Farm property could be divided and specified permitted and prohibited certain uses of the land in order to preserve its unique character. From PEC’s perspective, the protection of the

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spectacular landscape surrounding Paris is one of the organization's signature accomplishments in its 41 year history.

Subject to the easements, PEC sold portions of the Ovoka Farm property to both public and private landowners, with a significant portion going to the National Park Service to realign and to improve the segment of the Appalachian Trail that passes through the area. In 2006, PEC conveyed the subject Easement on the 64-acre parcel that constitutes the Property to VOF and to itself as co-holders of the Easement. The Easement eliminated more than a dozen division rights and highlighted the historic importance of the site as a bivouac of General "Stonewall" Jackson prior to the battle of First Manassas.

The Property is part of one of the most spectacular landscapes in Virginia, which tens of thousands of people pass through each year. It is visible from a highly visited section of the Appalachian Trail and is part of the open space that surrounds the village of Paris, one of the anchors of the Crooked Run Rural Historic District. Historically, the parcel was part of a farm surrounding "Liberty Hall," a house which dates to the 1770's and stands today directly across Gap Run Road from the Property.

After PEC donated and placed the Easement on the Property in 2006, PEC sold the Property to Boneta. PEC sold the Property to Boneta with the Easement in place in order to preserve the Property's unique historic, scenic, and cultural values. The Easement allowed few changes to the exterior appearance of the Property and allowed for just one permanent residence – an apartment of no more than 1,600 square feet to be constructed within the large 4,000 square foot Barn Complex. To safeguard the historic and scenic values of the Property, the farm soils on the Property, and the character of the existing structures (the Barn Complex, a blacksmith's shed, a cattle feeding shed, and a silo) on the Property, the Easement also placed strict limits on the number of people who could visit the Property each day in connection with the commercial or industrial activities permitted under the Easement. Additionally, the Easement authorized PEC to conduct regular inspections of the Property to assure compliance with the Easement.

Significantly, Boneta purchased the Property from PEC at well below the initial asking price due to the restrictions contained within the Easement, and those restrictions were reviewed with and acknowledged by Boneta during the contract negotiations and again at the time of the sale. Thus, Boneta was fully aware of the Easement and all of its terms and restrictions at the time that she bought the Property from PEC. In 2007, Boneta gifted the Property to PAA, a Virginia limited liability company of which Boneta is the managing member.

Since PEC sold the Property to Boneta, PEC has attempted to work with Boneta to ensure that her changes to the Property are consistent with the terms of the Easement. Unfortunately, PEC has not enjoyed the same type of relationship with Boneta that it has enjoyed with the landowners of the 50 other properties on which it holds conservation easements.

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## II. PEC'S MONITORING OF THE EASEMENT AND THE FIRST LAWSUIT BETWEEN THE PARTIES

As the VOF is well aware, monitoring conservation easements is a standard procedure that is required by the governmental agencies that oversee land trusts and easements. Most often, these visits are friendly meetings between the landowner and land trust staff. It is standard procedure for the land trust to take photographs while on-site to memorialize and to document the condition and the use of the Property at the time of the visit. Notwithstanding Boneta's allegations to the contrary, PEC has always used best efforts to respect the privacy of landowners and to make these visits as timely, efficient, and pleasant as possible. Indeed, PEC holds or co-holds 51 easements on 7,589 acres of land and interacts with scores of property owners in connection with the monitoring of its easements. To the best of PEC's current knowledge, information, and belief, PAA/Boneta is the only property owner against which PEC has been involved in litigation regarding easement enforcement issues in PEC's 41 year history.

### 1. The First Lawsuit

In 2009, PEC had credible evidence that Ms. Boneta (then Malawer) had made changes to the interior of the 4,000 square foot Barn Complex and to the interior and exterior of the blacksmith's shed on the Property (the "Smithy") in violation of the Easement's terms. In order to find out if these construction projects were Easement violations, PEC attempted to arrange a monitoring visit with Ms. Boneta as provided for in the Easement. The fact that Ms. Boneta refused to allow PEC access to the Property to determine whether PAA was in compliance with the Easement's terms is a critical fact that PAA has chosen to omit in describing its history with PEC.

In order to fulfill its legal obligation to enforce the Easement, and believing in good faith that Boneta was violating the terms of the Easement with no intention of changing course, PEC filed suit against PAA/Boneta in 2009 (the "First Lawsuit"). PEC filed the First Lawsuit to seek the Court's guidance as to the scope of PEC's rights and responsibilities under the Easement, as well as to determine whether PAA was violating the Easement. PAA/Boneta responded by challenging the validity of the Easement in the First Lawsuit.

The First Lawsuit ended in 2011 when (a) the parties entered into a Settlement Agreement, a copy of which is attached in pertinent part as **Exhibit 1**, and (b) the Court entered an Agreed Final Order on October 11, 2011, a copy of which is attached as **Exhibit 2**. The Settlement Agreement makes it clear that PAA and Boneta expressly agreed to the very easement monitoring procedures about which they now complain. See Exhibit 1.

In the Settlement Agreement, which Boneta signed on behalf of PAA, PAA/Boneta expressly agreed that:

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- PEC may conduct interior inspections of the interior of the Barn Complex and the Smithy on the Property up to four (4) times per year “for the purpose of determining if improvements have been made to accommodate residential use.”
- PEC has the additional and continuing right to conduct exterior monitoring visits to the Property.
- PAA is required to give PEC notice of any application by PAA for a building permit or certificate of occupancy for any residential use of the Barn Complex.
- The Easement does not permit the Smithy to be used for residential purposes except as a temporary residence during construction of the Barn apartment and then only with notice to PEC and for not more than six months. See Exhibit 1, ¶¶ 1-4.

Further, the Court’s Agreed Final Order, to which PAA also expressly agreed, plainly confirms the validity of PEC’s Easement and PEC’s Easement rights as set forth above. See Exhibit 2, ¶¶ 1-5. ***Thus, the first piece of litigation ended with Boneta’s acknowledging and agreeing to PEC’s inspection rights under the Easement on behalf of PAA, and the Court’s affirming and upholding the same.***

## 2. PEC Has Inspected The Property Far Less Often Than Boneta Agreed That It Could Do.

A misperception being perpetuated by PAA and its advocates is that PEC is constantly visiting the Property to conduct inspections and that these inspections last a significant period of time, thereby depriving PAA of its “peaceful enjoyment” of the Property. In fact, in the three (3) year period since the Court entered the Agreed Final Order in September, 2011, PEC has conducted a total of nine (9) inspections of the Property, with no more than three (3) inspections of the Property in a calendar year. These actual inspections are far fewer than those authorized under the Settlement Agreement and the Agreed Final Order, which permit four (4) interior inspections and additional monitoring visits at reasonable times upon reasonable notice.

All of PEC’s inspections were conducted with PAA’s/Boneta’s prior knowledge and consent and after notice to PAA/Boneta and to counsel. Examples of such notices are attached as **Exhibit 3**. The interior inspections typically last 20-30 minutes. When a monitoring inspection is conducted on the date of an interior inspection, it will typically take an additional 15-20 minutes. Consequently, PEC has spent less than three (3) hours per year on the Property in each of the last 3 years. PEC has not, therefore, interfered with PAA’s peaceful enjoyment of the Property.

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### 3. PAA's Conduct Continues To Put Its Compliance With The Easement And The Court's Final Order At Issue.

PAA claims that it has not taken advantage of its right to construct a 1,600 square foot apartment inside the 4,000 square foot Barn Complex. PAA also claims that it has not set up the Smithy to serve as a residence. Yet, during the course of PEC's visits, PEC has observed numerous changes that PAA has made to the Barn and to the Smithy, notwithstanding the Easement's restrictions on the residential use of these structures. These changes include, but are not limited to, the following:

- Installation of a stove, full refrigerator, washer and dryer in the Smithy;
- Construction of a platform in the Smithy on which a mattress could be placed;
- Placement of a metal bed frame in the loft of the Smithy and tables and chairs in the lower level of the Smithy;
- Installation of closet doors in the Smithy to conceal a water heater and sleeping bags;
- Completion of a full kitchen in the Barn with full sized refrigerator, stove, sink, dishwasher, and cabinetry;
- Completion of multiple bathrooms in the Barn Complex; and
- Placement of a futon in a second level room in the Barn Complex.

As noted by PAA's counsel, PAA has made all of these improvements *without* the issuance of a building permit or an occupancy permit and without prior notice to PEC as required by the Court's Agreed Final Order of October 11, 2011 and the Easement. Unquestionably, these changes to the Barn and the Smithy appear to be designed to accommodate residential use, and they provide PEC with a good faith belief that PAA's improvements may be in violation of the Easement. It is with this context and background, and in light of the Settlement Agreement and Agreed Final Order, that one must view the video in which PEC asked PAA for permission to look in concealed spaces, such as closets, in the Barn and the Smithy.

Regarding PAA's conduct during the inspections, PEC's employees on-site have been subjected to intense harassment from large groups of PAA/Boneta supporters, some of whom have videotaped the PEC employees concurrently and called them derogatory names like "Nazis." At the last inspection in June, 2014, one of the Boneta supporters wore a machete and a hunting knife in plain view on his belt. During an inspection on March 25, 2014, Boneta refused to allow PEC's employees to have access to interior rooms in the Barn and the Smithy as outlined in a letter from PEC's counsel to PAA's counsel attached hereto as **Exhibit 4**. Such

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conduct is clearly inconsistent with the terms of the Easement, the Settlement Agreement, and the Court's Agreed Final Order.

### III. THE SECOND LAWSUIT BETWEEN THE PARTIES

In September, 2013, PAA filed a lawsuit (the "Second Lawsuit") against two of its neighbors (the Thomases) and PEC, alleging, among other things, that PEC violated the Virginia Conservation Easement Act by entering into a joint litigation agreement with the Thomases, that PEC and the Thomases had conspired to force PAA to sell the Property, and that PEC and the Thomases had attempted to convince county officials to cite PAA with zoning violations.

The defendants filed motions to dismiss the case (demurrers and pleas in bar), contending that PAA's claims were factually and legally deficient as a matter of law. In fact, PEC has not conspired with the Thomases to force PAA to sell the Property. Likewise, PEC has not attempted to convince county officials to cite PAA with zoning violations.

The Second Lawsuit ended on September 5, 2014 when the Court granted PAA's motion to non-suit its case voluntarily. Significantly, PAA filed its non-suit motion after the Court had ordered PAA to produce documents supporting its allegations but before PAA had to produce such documents. Likewise, PAA's dismissal occurred just a few weeks before a hearing on defendants' motions to dismiss the case. Before taking its non-suit, PAA failed to produce a single document supporting its claims in response to discovery requests propounded in the case.

### IV. THE ACTUAL FACTUAL RECORD

This past summer, while the Second Lawsuit was pending, a series of on-line articles relating to PEC's monitoring and enforcement of the Easement were published in various on-line publications and blogs. Like the allegations asserted by PAA/Boneta in the prior lawsuits between the parties, these on-line postings are notable for inaccuracies and omissions regarding PEC, PEC's employees, and the Easement. Given the misleading content of these on-line postings, PEC believes that it would be helpful for VOF to know the following facts when considering PAA's allegations:

- Boneta purchased the Property from PEC with full knowledge of the Easement and PEC's continuing property rights and responsibilities under the Easement.
- PEC placed the Easement on the Property to protect scenic, historic, and cultural resources, specifically the view from Route 17 and Route 50, both Virginia Scenic Byways.
- As a non-profit, PEC did not receive any tax credits for its donation of the Easement.

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- Boneta did not receive tax credits for the Easement because she did not place the Easement on the Property.
- Boneta realized a substantial financial benefit from the Easement because its restrictions permitted her to purchase the Property at well below what its asking price would have been without the Easement's restrictions.
- In 2007, PEC did make an error regarding the Easement which resulted in PAA's constructing a fence on the Property. PEC acknowledged its mistake, and PAA/Boneta made no claim for this error in the First Lawsuit.
- All of PEC's inspections of the Property have been conducted with Boneta's prior knowledge, participation and consent after notice to her and her counsel. See, e.g., Exhibit 3.
- Interior inspections in structures typically last 20-30 minutes, and an additional 15-20 minutes is needed for the monitoring visits. PAA/Boneta expressly agreed to these inspections at the conclusion of the First Lawsuit.
- In the last three years, PEC has conducted a total of 9 inspections of the Property, with no more than 3 inspections per calendar year, which is fewer than authorized by the Settlement Agreement that Boneta executed on PAA's behalf and the Court's Final Agreed Order. During each of the last 3 years, PEC's inspections of the Property have taken a total of less than 3 hours per year.
- As noted in PAA's counsel's letter, the Barn Complex and Smithy, for which PAA has not sought a building permit, contain a "kitchen," "bathrooms . . . shower/tubs, [and] laundry rooms."
- During PEC's inspections, PEC employees go out of their way to respect PAA's property and have not "wiped their muck covered boots" on PAA's furniture.
- PEC has sought permission from PAA/Boneta to photo-document its inspections of the Property so that there is a full and unbiased record of what occurs on each of its visits. With the exception of the last visit, PAA/Boneta has refused PEC's requests.
- The Settlement Agreement, which Boneta signed on behalf of PAA, and the Court's Agreed Final Order in the First Lawsuit, confirmed, among other things, (1) the validity of the Easement, (2) PEC's rights to conduct interior inspections of the Barn and the Smithy four (4) times per year to determine "if improvements have been made to accommodate residential use," (3) PEC's additional right to conduct monitoring visits to inspect the exterior of the Property, and (4) the restriction on using the Smithy for

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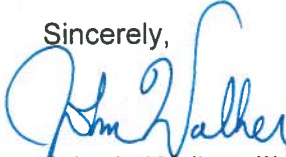
residential purposes except as a temporary residence during construction of the Barn apartment and then only with notice to PEC and for not more than six months. See Exhibit 1, ¶¶ 1-4; Exhibit 2, ¶¶ 1-5.

- PEC instituted the First Lawsuit because PAA refused to allow PEC to inspect the Property.
- PEC has not worked with either county officials or neighbouring property owners to force PAA to sell the Property or to have PAA cited with zoning violations. Indeed, PAA did not produce a single document in the Second Lawsuit supporting these allegations and instead voluntarily dismissed the case when the Court ordered PAA to produce documents supporting its claims.
- During the First Lawsuit, there was concurrent litigation involving the Property between PAA/Boneta and the Thomases. Since PEC and the Thomases shared some alignment of interest in concurrent litigation adverse to PAA, counsel for PEC and counsel for the Thomases entered into a Joint Representation and Confidentiality Agreement, which is standard practice between parties similarly aligned in litigation to cloak their communications with privilege. This fact is by no means evidence of any actionable conspiracy between PEC and the Thomases under Virginia law. Further, the litigation agreement has absolutely nothing to do with the Easement or the Property.

## V. CONCLUSION

The uncontroverted facts outlined above show that PEC has tried to be reasonable in dealing with PAA/Boneta and that PAA's/Boneta's allegations against PEC are misleading and lack factual support. PEC respectfully requests the opportunity to be heard at the VOF board meeting on November 6, and to answer any questions from the Board. Thank you very much.

Sincerely,



John L. Walker, III

Enclosures



RTM/ks/msp  
07/18/11



ORIGINAL

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT, dated the 2<sup>nd</sup> day of September, 2011, by and between The Piedmont Environmental Council, a Virginia nonstock corporation ("PEC") and Piedmont Agriculture Academy, LLC, a Virginia limited liability company ("Piedmont") provides as follows:

WHEREAS, Piedmont is the owner of property located in Marshall Magisterial District, Fauquier County, Virginia, on the south side of U.S. Route 50 and west side of U. S. 17, containing 64.0031 acres (the "Property"); and

WHEREAS, the Property is subject to an open space and conservation easement conveyed to the Virginia Outdoors Foundation ("VOF") and the PEC, as co-holders, by Deed of Gift of Easement dated July 26, 2006, recorded in the Office of the Clerk of the Circuit Court of Fauquier County, Virginia, in Deed Book 1227 at Page 574 ("Easement"); and

WHEREAS, there is pending in the Circuit Court of Fauquier County, Virginia (Case No. CL09000401-01) a suit filed by the PEC against Piedmont alleging violations of the Easement by Piedmont with respect to exterior alterations to the Smithy, expansion of the size of the run-in shed, the size of

a residential unit in the Barn Complex, and interior alterations to the Smithy to provide for residential use (“the Lawsuit”); and

WHEREAS, the parties agreed to a monitoring visit to the Property by the PEC on August 19, 2010; and

WHEREAS, the PEC agrees that the alleged violations of the Easement with respect to the exterior alterations of the Smithy and the expansion of the size of the run-in shed have been corrected to the satisfaction of the PEC as of the time of the monitoring visit; and

WHEREAS, in settlement of the Lawsuit, the PEC agrees that, at the time of the monitoring visit on August 19, 2010, neither the interior of the Barn Complex nor the interior of the Smithy was being utilized for residential use and that the interior of the Barn Complex and the interior of the Smithy were not in violation of the Easement as of that date; and

WHEREAS, the PEC and Piedmont desire to settle the Lawsuit upon the terms hereinafter set forth.

NOW, THEREFORE, the parties do hereby agree as follows:

1. Piedmont agrees that the PEC may conduct inspections of the interior of the Barn Complex and the Smithy, not exceeding four (4) times per year, upon at least seven (7) days written notice to Piedmont, for the purpose of determining if improvements have been made to accommodate residential

use. This paragraph shall be specifically enforceable by the PEC, by injunction or otherwise.

2. In addition, Piedmont acknowledges the continuing right of the PEC to conduct monitoring visits to the Property (but not building interiors except to check size of any apartment in the Barn Complex) at reasonable times and in a reasonable manner upon prior reasonable notice to Piedmont, as provided in Paragraph 8 of the Easement.

3. Piedmont agrees that a residential use of the Barn Complex will not be commenced without first obtaining a building permit, if required, and a certificate of occupancy from Fauquier County, Virginia, and that Piedmont will give the PEC notice of any application by Piedmont for such building permits and/or occupancy permits for the Barn Complex.

4. The PEC agrees that the existing Smithy is a permitted structure under the Easement, and Piedmont acknowledges and agrees that the Easement does not permit the Smithy to be used for residential purposes; provided, however, PEC agrees that Piedmont may use the Smithy as a temporary residence, with prior written notice to the PEC, from the time of application for a building permit referenced in Paragraph 3, supra, until the issuance of a certificate of occupancy permit referenced in Paragraph 3, supra, but in no event shall the Smithy be so used as a temporary residence more

than once or for a period of more than six (6) months. Any such temporary residential use of the Smithy shall be in compliance with all local and state regulations and laws.

5. The Lawsuit shall be dismissed by the entry of a Final Order, in the form of the Final Order attached hereto as Exhibit A.

6. This Agreement shall inure to the benefit of and be binding upon, the parties, their successors and assigns.

7. NOTICES: All notices, demands, or other communications that may be necessary or proper hereunder shall be deemed duly given if personally delivered, sent via certified mail, return receipt requested, or sent overnight courier service, such as Federal Express, UPS, or Airborne, addressed respectively as follows:

If to PEC:

Piedmont Environmental Council  
ATTN: Heather Richards  
45 Horner Street  
Warrenton, VA 20186

With copy to:

Robert T. Mitchell, Jr., Esquire  
9 East Boscawen Street  
Winchester, VA 22601

If to Piedmont:

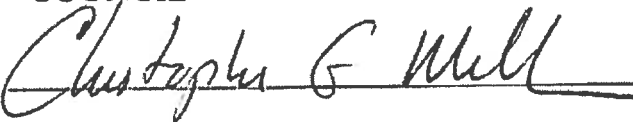
Piedmont Agriculture Academy, LLC  
ATTN: InCorp Services, Inc.  
7288 Hanover Green Drive  
Mechanicsville, VA 23111

With copy to:

Michelle A. Rosati, Esquire  
Holland and Knight  
1600 Tyson's Blvd., Suite 700  
McLean, VA 22102

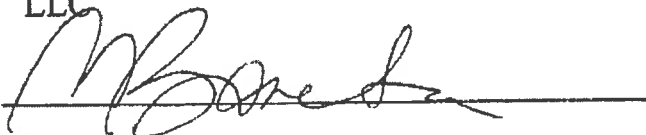
THE PIEDMONT ENVIRONMENTAL  
COUNCIL

By:



PIEDMONT AGRICULTURE ACADEMY,  
LLC

By:



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Fee Amt: \$21.00 Page 1 of 6  
Fauquier County, VA  
Gail H Barb Clerk of Circuit Court  
File# 2011-00008240  
BK 1377 PG 2081-2086

VIRGINIA:

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

THE PIEDMONT ENVIRONMENTAL  
COUNCIL,

Plaintiff,



v.

CASE NO. CL 09000401

PIEDMONT AGRICULTURE  
ACADEMY, LLC

Defendant.

**AGREED FINAL ORDER**

Come now the parties, by counsel, and by agreement submit this Final Order for entry by the Court.

The Court finds as follows:

A. The Defendant is the owner of property located in Marshall Magisterial District, Fauquier County, Virginia, on the south side of U.S. Route 50 and west side of U.S. 17, containing 64.0031 acres ("Property").

B. The Property is subject to an open space and conservation easement conveyed to the Virginia Outdoors Foundation ("VOF") and the Plaintiff, as co-holders, by Deed of Gift of Easement dated July 26, 2006, recorded in the land records of this court in Deed Book 1227 at Page 574 ("Easement").

C. The parties have agreed to resolve all issues in this case by a written Settlement Agreement, which has been executed by the parties, and by the entry of this Agreed Final Order.

It is therefore ADJUDGED, ORDERED and DECLARED as follows:

1. The Plaintiff may conduct inspections of the interior of the Barn Complex and the Smithy, not exceeding four (4) times per year, upon at least seven (7) days written notice to Defendant, for the purpose of determining if improvements have been made to accommodate residential use.

2. In addition, the Plaintiff shall have the continuing right to conduct monitoring visits to the Property (but not building interiors, except to check size of any apartment in the Barn Complex) at reasonable times and in a reasonable manner upon prior reasonable notice to the Defendant, as provided in Paragraph 8 of the Easement.

3. No residential use of the Barn Complex (as the Barn Complex is defined in the Easement) shall be commenced without first obtaining a building permit, if required, and a certificate of occupancy from Fauquier County, Virginia, and the Defendant shall give the Plaintiff notice of any application by the Defendant for a building permit and/or occupancy permit for the Barn Complex.

4. The existing Smithy is a permitted structure under the Easement.

5. The Easement does not permit the Smithy to be used for residential purposes; provided, however, the Smithy may be used as a temporary residence, with prior written notice to the Plaintiff, from the time of application for a building permit referenced in Paragraph 3, supra, until the issuance of a certificate of occupancy permit referenced in Paragraph 3, supra, but in no event shall the Smithy be so used as temporary residence more than once or for a period of more than six (6) months. Any such temporary residential use of the Smithy shall be in compliance with all local and state regulations and laws.

6. This Order does not amend the terms of the Easement, and the Easement shall be construed consistent with the terms of this Order.

7. With respect to the violations of the Easement alleged in the Complaint, any such violations had been corrected by the date of an inspection by the Plaintiff on August 19, 2010, and as of August 19, 2010 none of the violations of the Easement alleged in the Complaint existed.

8. This case is hereby dismissed, such dismissal being with prejudice as to the violations alleged in the Complaint, as of August 19, 2010.



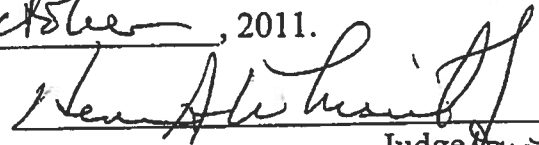
9. This Order shall be binding upon the Plaintiff and the Defendant and subsequent owners of the Property and holders of the Easement.

10. The Clerk is directed to record this Order in the land records of this Court, indexed in the names of (i) Piedmont Agriculture Academy, LLC, (ii) The Piedmont Environmental Council, and (iii) Virginia Outdoors Foundation.

11. This Order is endorsed on behalf of the Virginia Outdoors Foundation, as a co-holder of the Easement, to indicate its understanding of the issues involved in this case and its acknowledgement of this Order.

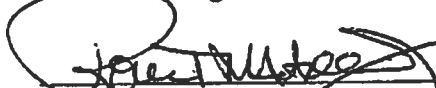
This Order is FINAL.

ENTER this 11<sup>th</sup> day of October, 2011.

  
\_\_\_\_\_  
Judge Designate

Herman A. Whisenant, Jr.  
Judge Designate

Seen and Agreed:

  
\_\_\_\_\_  
Robert T. Mitchell, Jr., Esquire

Robert T. Mitchell, Jr., Esquire

VSB#: 003190

HALL, MONAHAN, ENGLE, MAHAN & MITCHELL

9 East Boscawen Street

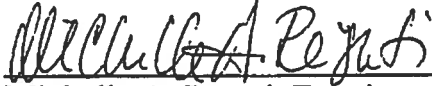
P. O. Box 848

Winchester, Virginia 22604-0848

(540) 662-3200 (540) 662-4304 (Fax)

Counsel for Plaintiff

Seen and Agreed:



Michelle A. Rosati, Esquire

VSB#: 35668

HOLLAND & KNIGHT LLP

1600 Tysons Boulevard, Suite 700

McLean, VA 22102

(703) 720-8600 (703) 720-8610 (Fax)

Counsel for Defendant

Seen and Acknowledged:



Kerry Brian Hutcherson  
Staff Counsel  
Virginia Outdoors Foundation  
Capitol Place Building  
1108 Main St., Suite 700  
Richmond, VA 23219  
(804) 371-0563

A COPY TESTE: GAIL H. BARB, CLERK

BY   
Deputy Clerk

FAUQUIER COUNTY CIRCUIT COURT, VA

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FAUQUIER COUNTY, VA  
GAIL H BARB CLERK OF CIRCUIT COURT

 , clerk



## PIEDMONT ENVIRONMENTAL COUNCIL

*Safeguarding the landscape, communities and heritage of Virginia's Piedmont by involving citizens in related public policy and land conservation*

Piedmont Agriculture Academy, LLC  
Attn: Incomp Services, Inc.  
7288 Hanover Green Drive  
Mechanicsville, VA 23111

Michelle A. Rosati, Esquire  
Holland and Knight  
1600 Tyson's Blvd., Ste 700  
McLean, VA 22102

BY FED EX

March 6, 2014

Dear Ms. Boneta,

This letter shall provide written notice that the Piedmont Environmental Council is rescheduling our inspection of the interiors of the Barn Complex and Smithy, which was previously scheduled for February 14, but cancelled due to inclement weather. We are available to conduct the inspection beginning from 9:00 a.m. through 2:00 p.m. on either **March 19, 20 or 25**. Please let me know which day and time are best for you on or before March 14, 2014. If I do not hear back from you by March 14, then I will assume that you are available on all of the proposed dates, and PEC will conduct the inspection on **March 20, 2014** beginning at **10:00 a.m.** We expect that Kristie Kendall and Rob Marmet will represent PEC during this visit.

This inspection is conducted pursuant to the Agreed Final Order which authorizes PEC to conduct interior inspections of the Barn Complex and Smithy for the purpose of determining if improvements have been made to accommodate residential use.

Please respond to me either by telephone at (540) 347-2334 or by email to [hrichards@pecva.org](mailto:hrichards@pecva.org).

Sincerely,

Heather M. Richards  
Vice President, Conservation and Rural Programs  
Piedmont Environmental Council

cc: Michelle A. Rosati (By Email – [Michelle.Rosati@hklaw.com](mailto:Michelle.Rosati@hklaw.com))  
John L. Walker, III

## Walker III, John L.

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**From:** Walker III, John L.  
**Sent:** Thursday, June 05, 2014 1:53 PM  
**To:** "Michelle.Rosati@hklaw.com" (Michelle.Rosati@hklaw.com)  
**Subject:** PEC Porkchop Inspections - June, 2014

Hey Michelle – As you know, on May 28, the Piedmont Environmental Council forwarded the attached letter to Piedmont Agriculture Academy (via overnight delivery) and to you (via overnight delivery and email), requesting PAA to notify PEC as to which of 3 dates, June 12, 13, or 16, was the best date for PEC to conduct the inspections referenced in the letter. The May 28 letter further provided that, if PEC did not hear back from PAA on or before today, then PEC would assume PAA's availability on all three of these dates and would conduct the inspections on June 12, 2014 beginning at 10:00 a.m. Thus far, PEC has not heard back from PAA. If PAA would prefer for the inspections to take place on June 13 or June 16 rather than on June 12, then please let Heather Richards or me know today via email. Otherwise, PEC will proceed with the inspections on June 12 at 10:00 a.m. Thank you. Sincerely, John



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John Walker III  
Attorney  
Williams Mullen  
200 South 10th Street, Suite 1600  
P.O. Box 1320 (23218-1320)  
Richmond, Virginia 23219  
T 804.420.6463  
F 804.420.6507  
[jwalker@williamsmullen.com](mailto:jwalker@williamsmullen.com)  
[www.williamsmullen.com](http://www.williamsmullen.com)

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## PIEDMONT ENVIRONMENTAL COUNCIL

*Safeguarding the landscape, communities and heritage of Virginia's Piedmont by involving citizens in related public policy and land conservation*

Piedmont Agriculture Academy, LLC  
Attn: Incomp Services, Inc.  
7288 Hanover Green Drive  
Mechanicsville, VA 23111

Michelle A. Rosati, Esquire  
Holland and Knight  
1600 Tyson's Blvd., Ste 700  
McLean, VA 22102

BY FED EX

May 28, 2014

Dear Ms. Boneta,

This letter shall serve as written notice to Piedmont Agriculture Academy, LLC that the Piedmont Environmental Council ("PEC") needs to schedule a visit to the Porkchop property (the "Property") to perform a full monitoring inspection of the Property and an inspection of the interiors of the Barn Complex and Smithy. We are available to conduct the inspections beginning from 9:00 a.m. through 2:00 p.m. on either **June 12, 13 or 16**. Please let me know which day and time are best for you on or before June 5. If I do not hear back from you by June 5, then I will assume that you are available on all of the proposed dates, and PEC will conduct the inspection on **June 12** beginning at **10:00 a.m.** We expect that Mike Kane and Rob Marmet will represent PEC during this visit.

These inspections are authorized under and will be conducted pursuant to the terms of the Conservation Easement that PEC and the Virginia Outdoors Foundation co-hold on the Property, the Settlement Agreement between the parties dated September 2, 2011, and the Court Order entered on October 11, 2011.

Please respond to me either by telephone at (540) 347-2334 or by email to [hrichards@pecva.org](mailto:hrichards@pecva.org). Thank you.

Sincerely,

Heather M. Richards  
Vice President, Conservation and Rural Programs  
Piedmont Environmental Council

cc: Michelle Rosati (By Email: [Michelle.Rosati@hklaw.com](mailto:Michelle.Rosati@hklaw.com))  
John L. Walker, III

# WILLIAMS MULLEN



Direct Dial: 804.420.6463  
jwalker@williamsmullen.com

April 23, 2014

Our File No.: 016917.0253

**VIA EMAIL @ michelle.rosati@hklaw.com**  
**AND U.S. MAIL**

Michelle Rosati, Esquire  
HOLLAND & KNIGHT  
1600 Tysons Boulevard  
Suite 700  
Tysons Corner, VA 22102

Re: Easement Inspection Issues.

Dear Michelle:

As you know, on March 25, 2014, The Piedmont Environmental Council ("PEC") conducted its most recent interior inspections of the Barn Complex and the Smithy on the property (the "Property") owned by Piedmont Agricultural Academy, LLC ("PAA"). The inspections were conducted pursuant to the terms of the Conservation Easement that PEC and VOF co-hold on the Property, the Settlement Agreement between the parties dated September 2, 2011 (the "2011 Settlement Agreement"), and the Court Order entered October 11, 2011 (the "2011 Court Order"). Kristie Kendall and Mike Kane of PEC conducted the inspection on PEC's behalf. Per my email of March 24, 2014 to you, Mr. Kane had to fill in for Rob Marmet of PEC because of an unexpected medical issue.

Unfortunately, serious issues arose during the inspection that we need to address. It is PEC's goal for the parties to have a respectful and professional relationship and to appreciate each other's property rights with respect to the subject Property. Thus, PEC hopes that the parties can resolve these issues amicably without court intervention.

## **1. PAA's Restricting PEC from Access to Interior Spaces During Inspections**

### **a. The Barn Complex**

In the far right corner of the Barn Complex's first level, there is a door with a "peep hole" but no door knob. During the most recent site visit, Ms. Kendall requested that Ms. Boneta of PAA open the door with the peep hole. Ms. Boneta refused, asserting that Ms. Kendall could see everything in the room through the peep hole. Ms. Kendall politely repeated her request to Ms. Boneta multiple times, but Ms. Boneta refused Ms. Kendall's request in each instance. Eventually, Ms. Boneta opened the door and allowed Mr. Kane to inspect the room, but she refused to allow Ms. Kendall to do so.

It was improper for PAA to prevent Ms. Kendall of PEC from gaining access to and inspecting the room. As PAA knows, Ms. Kendall, unlike Mr. Kane, has attended almost all of

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Michelle Rosati, Esquire  
HOLLAND & KNIGHT  
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the site visits, and, therefore, she was in the best position to determine whether PAA had made any changes to the Property that were relevant to the easement inspection.

In addition, another issue arose regarding the inspection of a small room on the northeastern end of the third level of the Barn Complex. The room at issue has a door with glass on its upper half. During the inspection, the room was dark with no lights on. The room's darkness prevented Ms. Kendall from adequately inspecting the room by merely looking through the door's glass window. Consequently, Ms. Kendall requested that Ms. Boneta open the room's door so that she could see inside. Ms. Boneta refused to do so. In light of the foregoing, it is PEC's belief that PAA restricted PEC from adequately inspecting the interior of the Barn Complex in violation of the 2011 Order.

## **b. The Smithy**

PAA engaged in similar conduct towards Ms. Kendall during PEC's inspection of the Smithy building. Ms. Boneta of PAA opened the door to the Smithy and informed Ms. Kendall that she was not allowed to proceed past the threshold. Ms. Boneta added that Ms. Kendall could see everything from where Ms. Kendall was standing. In fact, Ms. Kendall could not see the entire space from the threshold. Consequently, Ms. Kendall asked whether she could remove her shoes and walk inside in order to view the Smithy's loft. Ms. Boneta refused Ms. Kendall's request, asserting that Ms. Kendall did not need to see the loft area in order to complete her inspection.

To the contrary, Ms. Kendall did need to see the loft area in order for PEC to complete its inspection. The 2011 Court Order specifically provides in pertinent part that PEC may conduct inspections of the interior of the Smithy and that in no event may the Smithy be used as a temporary residence more than once or for a period of more than six (6) months. The 2011 Settlement Agreement likewise confirms PEC's right to inspect the Barn Complex and the Smithy for the purpose of determining if improvements have been made to accommodate residential use. Therefore, determining the loft's condition and its use is a critical part of each inspection. Ultimately, Ms. Boneta allowed Mr. Kane access to the Smithy but refused to allow Ms. Kendall inside. Once inside, Mr. Kane observed what appeared to be a bed platform in the loft area. However, Ms. Boneta refused to allow Mr. Kane to receive a camera from Ms. Kendall in order to take a photograph of the loft area containing the bed platform. Based upon PAA's actions, it is PEC's position that PAA prevented PEC from conducting a reasonable inspection of the interior of the Smithy in violation of the 2011 Court Order.



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## 2. PAA's Preventing PEC from Taking Photographs During Inspections

As noted above, PAA prevented PEC from taking photographs of the Smithy, and PAA has sought to restrict PEC from taking photographs on previous inspections. Simply put, photographs are necessary to memorialize and to document PEC's inspections, and the taking of photographs is standard procedure in easement inspections for this reason. Photographs present an objective view of the Property and thereby show the Property precisely as it was. Thus, if an issue were ever to arise regarding the Property's condition, photographs would be of tremendous benefit to the fact-finder, and no one would appreciate this fact more than Judge Parker. We are not aware of any authority that allows PAA to prevent PEC from taking photographs during its site visits. If you are aware of such authority, please let me know, and I will review it.

Another reason that taking photographs is a standard operating practice for PEC and other land trusts when stewarding conservation easements is because, under the land conservation policies adopted by these organizations, staff members who monitor or inspect easement properties are often not authorized to make their own determinations as to whether a violation of an easement has occurred. Instead, the policies require that the potential violation be documented in writing and photographs and then referred to the appropriate stewardship officer to make any such determination.

Again, during this last visit, when PEC attempted to take photographs during the inspection, Ms. Boneta of PAA physically blocked Ms. Kendall from handing the camera to Mr. Kane. This conduct cannot continue. In an effort to resolve the issue amicably, PEC is willing to share with PAA any photographs that PEC takes during its inspections as soon as practicable after the inspection. We certainly believe that it is in both parties' best interests to have an objective record of the Property's condition at the time of each site visit, and we trust that PAA does too.

\* \* \*

As stated above, PEC wants the parties to have a respectful and professional relationship. Throughout this most recent inspection, however, Ms. Boneta repeatedly accused the PEC employees of overstepping their authority when they were only trying to do their jobs in accordance with the easement, the 2011 Settlement Agreement, and the 2011 Court Order. Regrettably, the PEC employees who conducted inspections in 2013 were subjected to similar harassment and, at times, feared for their safety. That is why it is necessary for two PEC employees to conduct the inspections. PEC requests that PAA allow PEC to have access to the interior spaces of the structures during the inspections and to take photographs to document the inspections. This request is consistent with the purpose and the terms of the Easement, the

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2011 Settlement Agreement, and the 2011 Court Order. The resolution of these issues will enable PEC to conduct its inspections more quickly, and the parties will avoid the time and expense associated with your involvement and mine. I believe that we should be able to resolve the above issues amicably and that our clients will be better off in the long run if we do so. Please let me know if you concur.

I look forward to hearing from you. Thank you.

Sincerely,



John L. Walker, III

JLW, III/dad

cc: Turner A. Broughton, Esquire

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