

*March 30, 2007 - The Governor has set a goal for conservation of 400,000 additional acres during his term. VOF does not have adequate staff resources to address the current public demand for conservation easements throughout the Commonwealth and therefore has developed an interim protocol for prioritizing projects. Acreage alone is not a perfect solution for setting priorities. However, we feel that acreage working in concert with an analysis of conservation values and potential resource protection will permit us to achieve the greatest public benefit while supporting the Governor's goal.*

*Interim Easement project Priority Protocol:*

- *Proposed easement projects of greater than 100 acres will receive first priority for VOF easement officers, with the largest acreage properties with strongest protections receiving the highest priority.*
- *Proposed easement projects of less than 100 acres but greater than 40 acres will have second priority. Authorization by VOF Deputy Directors is required, with approval based on highest and/or multiple conservation values and strongest protections.*
- *Proposed easement projects of less than 40 acres will have the lowest priority. Properties must have multiple, significant conservation resources and the easement must provide the highest level of resource protection. Staff may not initiate work unless the proposed project has received recommendation by two Deputy Directors and approval of the Executive Director.*

Revised January 17, 2006

## **Easement Guidelines**

### **Virginia Outdoors Foundation**

These guidelines are intended to provide guidance to landowners but are not to be considered as regulations. The guidelines assist the Trustees of the Virginia Outdoors Foundation (VOF) in evaluating a proposed donation or conveyance of an easement. Specific circumstances may warrant flexibility and departure from these guidelines. To be accepted, a proposed easement must preserve and protect in perpetuity the open-space values of the individual property. The open-space values, including any historic, natural, scenic, scientific, and recreational values, are assessed during the evaluation of the property; are described in the easement deed itself; and are described in the documentation of the property contained in VOF files and records.

#### **I. GENERAL CHARACTERISTICS OF AN OPEN-SPACE EASEMENT**

##### **A. The public benefit of an open-space easement**

- An easement is a gift that significantly benefits the public and the Commonwealth. The General Assembly has found that preserving permanent open-space is a public purpose that

benefits the citizens of the State. The public benefit of an easement might include the uniqueness of the property and the likelihood that its development would degrade the scenic, natural or historic character of the area; it might include preserving a local or regional landscape for its scenic or tourism benefit, or the contribution the open-space makes to a public or private conservation program such as water quality protection or rural historic landscape preservation. The easement need not permit public access to benefit the public, but to be accepted by VOF an easement must have significant public benefit.

- The VOF Board and staff make use of both the State and Federal Codes for guidance. Virginia Code 10.1-1800 establishes that it is in the public interest for the VOF to preserve areas of the Commonwealth having natural, scenic, historic, scientific, open-space, or recreational characteristics (see Attachment A). In determining the public benefit of an easement, VOF may also refer to the Internal Revenue Code Section 170(h)(4)(A) definitions of the conservation purposes of easements (see Attachment B).

#### B. The conservation values of an open-space easement

- The open-space characteristics of the property, including the existence of wetlands, riparian corridors, wildlife habitat, biological diversity, unique species, historic resources, productive agricultural and forest lands, scenic resources, unique geological features, critical slopes, priority watersheds or public drinking water supplies;
- The geographic location of the property within the Commonwealth, including its proximity to designated statewide resources such as Scenic Rivers, Scenic Highways or Virginia By-ways, state or national parks, wilderness areas, properties listed on the Virginia Landmarks Register, State Forests, Wildlife Management Areas, State Natural Area Preserves or land under conservation easement;
- The importance of the conservation values to be protected by the easement, particularly in the context of the intensity of surrounding development and the role that the property plays in the cultural geography of the area.

#### C. Compliance with governmental policy

- The identification of the property in a statewide planning document such as The Virginia Outdoors Plan or the Virginia Landmarks Register;
- The classification or identification of the property in the local government's Comprehensive Plan, and the current zoning of the property; the easement being considered shall be consistent with and should promote the goals of the local land use plan;
- The extent to which the easement is likely to interfere with anticipated or planned public works projects. In considering this factor, the Trustees shall weigh the importance of the property's conservation values against the nature of the anticipated public works project, the extent to which planning for the public works project has been finalized, and the practicality and availability of other options for achieving the purpose of the public works project.

## II. SPECIFIC EASEMENT PROVISIONS

The specific terms of open space easements vary according to the characteristics of the individual property. Properties should be evaluated on a case-by-case basis, taking into account the following:

- The acreage of the property, topography, natural features, and man-made attributes;

- The average parcel sizes and topography of the surrounding area. Regional differences exist and may be a factor with regard to overall parcel or house density; for example, the intense development pressure on Chesapeake Bay waterfront properties is quite different from the severe physical constraints placed on development in steep mountainous terrain;
- The conservation values to be protected, the property's individual characteristics, and the level of protection needed to sustain those particular values;
- There is no minimum size for properties considered for easement; however, properties of less than 50 acres must contribute to or add to a designated conservation resource to be accepted for easement by VOF. For example, such a parcel may be adjacent to an existing park; front on a designated scenic river or road; be within a Rural Historic District or in the immediate viewshed of a property listed on the State and/or National Historic Register; be in the immediate viewshed of a designated public scenic resource, such as the Blue Ridge Parkway; be located on important waterfront; provide critical infill adjacent to other conservation easements. In addition, prior to developing an easement proposal on a property of less than 50 acres, staff must evaluate the property to determine the significance of the resources, the specific restrictions necessary to protect the identified resource (such as no-build area, buffer area, etc.), and whether any development rights are being extinguished by virtue of the proposed easement.

A. DIVISION: To protect open space, properties should remain as a whole to the extent possible and parceling should be minimized. The appropriate level of protection is determined by factors described above. For some easement properties, such as mountain terrain or highly visible flat open land, it may be appropriate to require fewer parcels than the levels suggested.

In general, the following density restrictions are encouraged:

- Properties under 100 acres should remain intact, i.e., no subdivision permitted;
- Properties between 100 and 149 acres are encouraged to remain as a whole. Where necessary or appropriate, a maximum of one division (two parcels) may be permitted provided that one of the parcels is small and located so as to minimize the effect on the remainder, or additional restrictions are being placed on the property so as to ensure the preservation of the property's conservation values;
- Properties of 150 to 249 acres are encouraged to remain as a whole; a maximum of one division (two parcels) may be permitted;
- Properties of 250 to 299 acres are encouraged to remain as a whole or in two parcels. Where necessary or appropriate, a maximum of two divisions (three parcels) may be permitted provided that one of the parcels is small and located so as to minimize the effect on the remainder, or additional restrictions are being placed on the property so as to ensure the preservation of the property's conservation values;
- Properties of 300 acres to 599 acres, a maximum density of one parcel per 100 acres, e.g. 400 – 499 acres = maximum of four parcels;
- Properties of 600 acres to 799 acres, a maximum of six parcels;
- Properties of 800 acre to 999 acres, a maximum of seven parcels;
- Properties of 1,000 acres or more, a maximum of eight parcels. Additional parcels may be allotted on a case by case basis.

There is, in most cases, no minimum acreage requirement for parcel size. Subdivided parcels may be a cluster of small lots that retain the maximum open-space on the remainder in order to maintain a viable size for farm or forestry use. The sliding scale for larger properties (over 600 acres) is intended to encourage the preservation of large intact tracts of land.

**B. LOCATION, SITING, NUMBER AND SIZE OF DWELLINGS & OTHER BUILDINGS:**

Buildings (dwellings, farm buildings, winery structures) impact the open-space character of land, and the easement provisions must ensure that retained building rights do not impair the conservation values of the individual property.

- Important public viewsheds and highly visible or environmentally sensitive areas of a property may require specific protection. Properties placed under easement to protect a scenic, natural, or historic resource, may require building setbacks from that resource (such as a scenic river or road), or "no-build" areas, square footage limits or building siting envelopes. VOF may require prior written approval of the siting and location of large dwellings or farm buildings (i.e. exceeding 4,500 square feet) or for buildings that are visible from immediately outside the property.
- In certain cases, existing buildings or man-made attributes contribute to the visual character of the area and define, in part, the conservation values of the property. Protection of these cultural landscape features is encouraged by prohibiting the willful demolition of identified features.

**C. DWELLINGS:** In general, the following restrictions for dwellings apply:

- Each parcel may have one principal single-family residence and appropriate incidental non-residential outbuildings or structures.
- Secondary dwelling units are permitted to the extent they are necessary or appropriate to the use of the property and do not impair the conservation values of the property. Secondary dwellings (residential units subordinate to the primary dwelling, including tenant houses, guest houses, pool houses, cottages, and barn or garage apartments) typically do not exceed 2,000 square feet of living area in size. The location, placement, and scale of the secondary dwelling units as well as the topography and use of the land aid in determining the acceptable number. For instance, a working farm or large estate may justify additional secondary dwellings for management purposes. Clustering or placement of secondary dwelling units within a farm building may allow for a greater number of secondary dwellings without compromising the conservation values. Except in circumstances such as described above, secondary dwellings are usually permitted on a scale of one per 100 acres.

**D. FARM BUILDINGS:** Farm buildings and structures of 4,500 square feet or less in ground area are permitted without review by the Grantee on properties of over 50 acres; larger buildings are permitted with prior written approval of the Grantee. For properties smaller than 50 acres, farm buildings and structures of 2,500 square feet or less are permitted; larger buildings require prior written approval. If warranted, on large working farms, the size threshold at which the review for farm buildings is required may be as large as 10,000 square feet.

**E. OTHER RESTRICTIONS:** Easements typically contain other standard restrictions:

- Forestry: Forestry activities are generally permitted provided there is a stewardship plan and Best Management Practices are used. Forest goals, such as maintaining a scenic forest,

maintaining biological diversity, soil conservation or water quality protection, may be stated in the Plan. Additional limitations may be appropriate on specific properties.

- Riparian Protection: To achieve water quality protection, vegetated riparian or stream buffers are strongly recommended.
- Mining: Mining and other activities that would alter the natural topography of the land are not permitted.
- To maintain scenic quality, large signs, accumulation of junk or trash, or commercial structures such as large scale cell towers are not permitted.
- The easement also contains provisions that ensure the ability to enforce and monitor the easement.
- Proposed restrictions other than those identified in the standard form easement must have a clearly delineated conservation purpose, must be capable of being observed by VOF during routine monitoring visits, and must be practical to enforce.

### **III. SPECIAL PROJECT AREAS**

The Board of Trustees of the Virginia Outdoors Foundation may designate areas as Special Project Areas. Special Project Areas are particular geographic regions of the Commonwealth where protection through easements is especially warranted, and where the Foundation expects to concentrate resources. One or more of the following factors may aid in justifying the designation of Special Project Areas:

- A. The area is of statewide natural, scenic, historic, scientific, open-space, or recreational significance. One or more of the following documents may help identify such significance:
  - The Virginia Outdoors Plan;
  - The locality's Comprehensive Land Use Plan;
  - Chesapeake Bay Preservation Areas Study;
  - Division of Natural Heritage database;
  - The Virginia Landmarks Register;
  - Other statewide or federal planning documents.
- B. Local landowners have indicated their support.
- C. A local land trust, conservation group, other organization, or State or Federal agency has expressed an interest in working with VOF to encourage protection of the area.
- D. The local government has indicated an interest in protection of the area through easements.

### **IV. TERMS OF APPROVAL**

If an approved easement has not been executed and recorded within two years of the date of acceptance by the VOF Trustees, it must be resubmitted to the Trustees for approval.

The terms of a VOF easement shall not be construed to permit any use of the property which is otherwise prohibited by federal, state, or local law or regulation.

**Guidelines for VOF Staff to Use in Evaluating Potential Easement Properties**

Criteria for determining property characteristics:

**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 locally 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 visually accessible from a park, nature preserve, road, recreational waterbody, trail, or historic structure or land area, is open to or used by the general public, and possesses scenic characteristics. 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 note on minimum acreage.

**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.