

# Virginia Outdoor Foundation Stewardships: The Protectors of Our Conservation Easements

## Description

So, you have a conservation easement on your property. Now what? We turned to the Virginia Outdoor Foundation for a more in-depth explanation of what happens behind the scenes.

### **How does VOF determine the suitability of a property for a conservation easement?**

VOF has a thorough review process for all proposed easements. It begins with a landowner meeting to discuss their wants and needs for the future of the property. Then, staff assess the conservation values of the property through site visits and geospatial analysis using natural and cultural resources data from public and private sources. These values include things such as water resources, soil quality, historic landmarks, scenic qualities, public access points, and more. The staff uses this assessment to work with landowners and their legal representatives to draft a proposed easement. This proposal is brought before VOF's board of trustees, which then votes to approve or reject the easements. If they approve it, staff work with the landowner to perform a baseline documentation report of all developed and undeveloped resources on the property. This report will serve as the basis for enforcement of any restrictions in the easements. Once all of this work is done, both VOF and the landowner execute the easement and record it in the local circuit court as a permanent deed of easement encumbering the property.

### **When does VOF take over stewardship and what does that entail?**

Stewardship begins immediately upon execution of the easement. Stewardship comprises monitoring and enforcing the restrictions in the deed of easement, reviews and interpretations of the deed terms, potential buyer reviews, landowner relations and education, and records management. Staff monitors the easement through a variety of means, such as site visits, communications with the landowner, looking at publicly available satellite imagery to note changes in the property, and reviewing land records and other local records to determine if a property has been sold or a landowner has applied for a development-related permit. The frequency of these activities varies from easement to easement, but we try not to be too burdensome to the landowner. If we discover development or activity on a property that may conflict with the restrictions in the easement, we move to the enforcement stage. This typically involves talking to the landowner first, and many potential violations can be prevented or corrected through voluntary cooperation. If a landowner challenges VOF's determination of a violation, we may pursue legal action.

### **Who has enforcement authority?**

Only the easement holder is authorized to enforce an easement. In the case of a dispute, a court may need to make a final determination.

### **Is enforcement authority vested solely in the conservation easement or is there a regulatory or statutory basis for enforcement authority?**

Publicly held easements in Virginia are authorized by a specific law called the Open-Space Land Act (OSLA) found at Virginia Code Â§ 10.1-1700, *et seq.* This statutory basis is reserved for local and state government entities only, including VOF. Easements held by private land trusts are authorized under a different law called the Virginia Conservation Easement Act (VCEA) found at Virginia Code Â§ 10.1-1009, *et seq.* The key difference between the two types of easements is that OSLA easements may not be terminated, whereas VCEA easements may be terminated through a court process. OSLA easements may only be converted/diverted through the process set for in Virginia Code Â§ 10.1-1704.

### **Is a lien placed on the property if a violation is discovered?**

VOF has not taken such action to date, but explores all options in enforcement situations.

### **Have there been any cases of legal action being taken against current or subsequent property owners?**

There have been numerous enforcement measures taken against subsequent property owners over our 60-year history, but they represent a very small percentage of our total portfolio. Furthermore, most easement violations are resolved before going to court. VOF works very hard to be a partner with our landowners rather than an adversary. Many easement violations are the result of a misunderstanding or lack of knowledge on the part of a subsequent landowner. It is rare that a landowner willfully violates an easement. In the rare instances where a violation cannot be resolved, VOF has litigated the dispute with the landowner.

### **Can subsequent owners request to amend or terminate the easement?**

Subsequent landowners may amend easements only if the amendment strengthens the conservation value protections in the original easement, such as increasing acreage, eliminating a development right, or adding other types of protections such as riparian buffers.

Under Virginia state law, an easement held by a public entity such as VOF may not be terminated. If a property under easement must be converted or diverted to a use not compatible with the easement's protections, then it must follow a specific process spelled out in state code under Virginia Code Â§ [10.1-1704](#). This protection is among the strongest in the nation and ensures that the conservation values preserved for public benefit are never lost.

### **What type of circumstance would allow conversion or diversion?**

One example of a previously approved Conversion/Diversion case was in Fauquier County in 2014. Orlean Volunteer Fire and Rescue Department (OVFRD) owned a 4.4-acre lot surrounded on three sides by a VOF easement.

To accommodate the growing needs of the rural community it serves, the OVFRD needed to expand its facilities to include overnight accommodations and other necessary infrastructure, which required the construction of a new, larger building.

For various reasons, the drain field for the new building could not be located on the OVFRD lot. The easement owner and VOF were willing to accommodate the drain field as an overlaying easement, but Fauquier County regulations require that the drain field be located on the lot it serves. This course of

action required a subdivision of the easement property.

Letters from OVFRD and County of Fauquier Department of Fire Rescue and Emergency Management stated that the project was essential to Fauquier County as it would facilitate improvements to fire and rescue response time for citizens.

All other possible alternatives were considered and deemed not feasible.

The VOF BOT approved a conversion of .27 acres for the drain field and accepted .55 acres of new open land with no structures as replacement land.

**How many properties/acres are currently in Stewardship?** VOF stewards approximately 4,445 properties under open-space easement, totaling 895,000 acres.

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*The Virginia Outdoors Foundation is Virginia's leader in land conservation, having protected more than 910,000 acres in 114 counties and cities since it was established by the Virginia General Assembly in 1966. Today, VOF receives both public and private support for its work and protects a wide variety of open spaces, from farms and forests to parks and historic landscapes. VOF partners with federal, state, local, and private conservation organizations to achieve its mission. Learn more at <http://vof.org>.*

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