



Next Generation Stewardship:
Ensuring the Long-term Viability
of Conservation Easements



The Big Question

How do we preserve
conservation purposes in a
changing world?

Keys to Long-Term Viability of Easements

They must be:

- Flexible
- Durable
- Workable
- Livable

What is VOF?

Virginia's leader in land conservation: 3,600 easement properties that protect more than 750,000 acres in 106 counties and independent cities

Created by the General Assembly in 1966 as a public body for the purpose of promoting the preservation of open-space land

Primarily protects land through conservation (open-space) easements

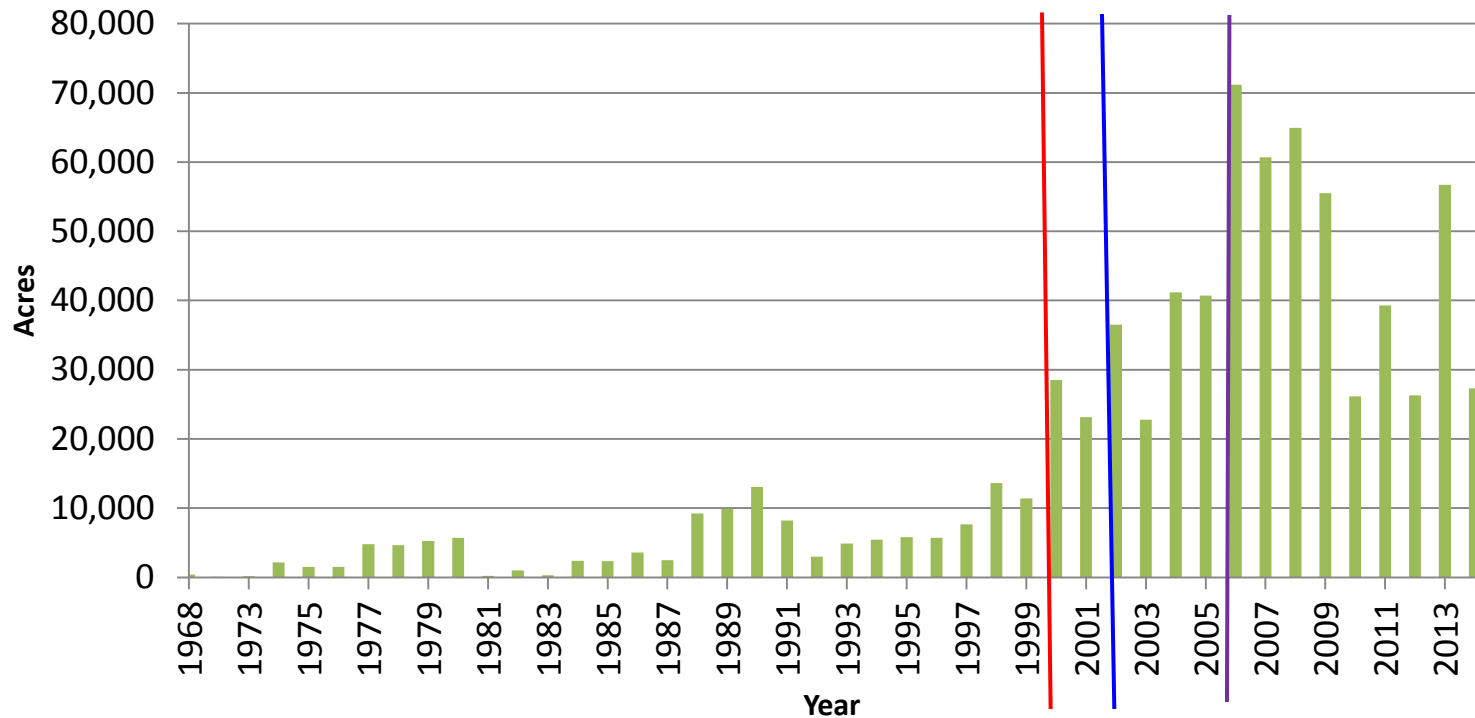
2005-2015: 5 acres every hour

VOF's conserved lands combined = a land area the size of Rhode Island



VOF Portfolio for Private Land Conservation

VOF acreage protected by year



- State tax credit established 2000
- State tax credit made transferrable 2002
- State tax credit reduced to 40% and capped 2006/expanded federal benefits

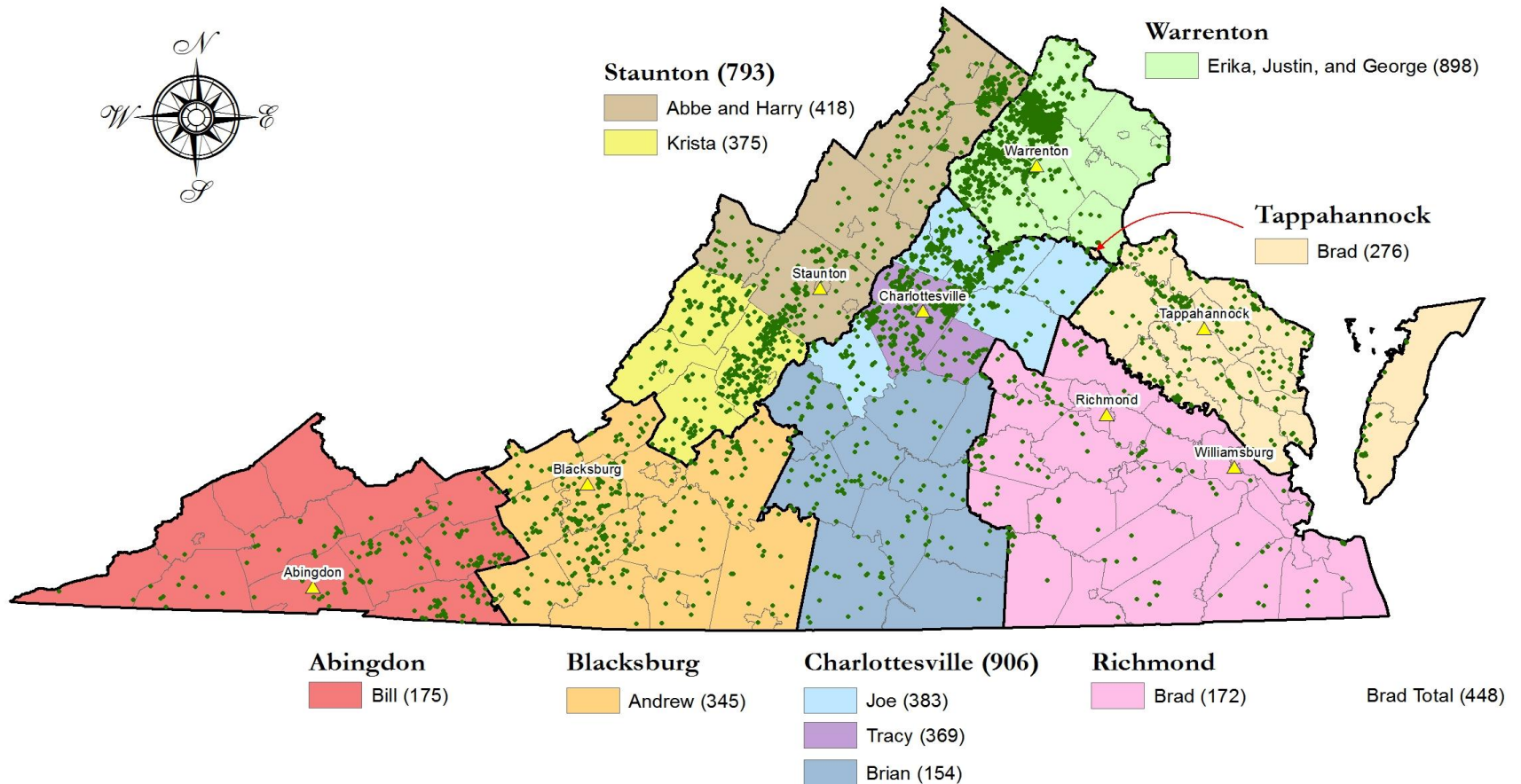
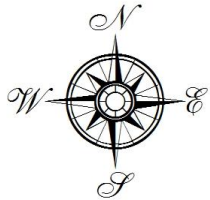
Land Trust Alliance Guidance

The Land Trust Alliance Standards and Practices Guidance suggests one full time staff person can steward between 50-100 Easements

Regional Stewardship



Stewardship Regions - 2015



How are we doing it?



"The Scream" - Edvard Munch

Six Strategies for Long-Term Viability

1. Innovative Monitoring Program*
2. Landowner Communication
3. Enforcement Policies and Procedures*
4. Standardized Review and Approval Process*
5. Establishing Critical Partnerships
6. Preparing for Unanticipated Changes to Existing Easements*

Innovative Monitoring Program

- Present Condition Reports (PCR)*
- Stewardship Field Reports (SFR)*
- Courthouse research
- Geographic Imagery—Aerial monitoring (GIM)*
- Visual Assessments (VA)*
- Landowner Surveys (LS)*
- Volunteer Assistance

Innovative Monitoring Program



EASEMENT MONITORING FORM

VDF Control Number: _____

Monitoring Type: SFR VA GI LS

Monitoring Date: _____ Monitor Name: _____

Monitor: Staff Intern Volunteer

SFR Notification/Permission Date: _____

GI "Before" Date: _____ GI "Before" Source: _____

GI "After" Date: _____ GI "After" Source: _____

Please copy and paste the EMA Owner record or fill-in the appropriate landowner contact information in the box to the right.

If additional space is needed for descriptions of property conditions or activities, please attach a separate memo. Also attach any maps or photos.

Memo Attached Map Attached Photos Attached

Property ID #, Owner Name(s) and Contact Information:

Answer the following questions and include descriptions as appropriate. Check box "Y" for Yes and "N" for No.

Questions	Y	N	Description
Change in ownership or landowner contact information?	<input type="checkbox"/>	<input type="checkbox"/>	
Recorded instruments associated with property? (e.g., subdivision, easement, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	
New buildings, structures, and/or demolitions?	<input type="checkbox"/>	<input type="checkbox"/>	
New roads and/or trails?	<input type="checkbox"/>	<input type="checkbox"/>	
New utilities?	<input type="checkbox"/>	<input type="checkbox"/>	
Industrial or commercial activities?	<input type="checkbox"/>	<input type="checkbox"/>	
Timbered area?	<input type="checkbox"/>	<input type="checkbox"/>	
Logger egress/ingress signs along public road?	<input type="checkbox"/>	<input type="checkbox"/>	
Soil disturbance within riparian buffer?	<input type="checkbox"/>	<input type="checkbox"/>	
Trash, equipment and/or materials stored within riparian buffer?	<input type="checkbox"/>	<input type="checkbox"/>	
Grading, blasting, filling and/or mining?	<input type="checkbox"/>	<input type="checkbox"/>	
Trash, refuse, junk, and/or toxic material?	<input type="checkbox"/>	<input type="checkbox"/>	
Billboards, signs and/or other advertisements?	<input type="checkbox"/>	<input type="checkbox"/>	
Future plans? (e.g., forest management, building construction, subdivision, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	
Landowner questions or issues for follow-up?	<input type="checkbox"/>	<input type="checkbox"/>	

This report and any attached memos, maps, and/or photos accurately depict, to the best of my ability, the condition of the property on the day of monitoring utilizing the type as indicated above. I also hereby state that the monitored property is not owned by a neighbor, friend, family member or other close relation, and that I did not receive any personal or professional benefit or gifts from the property or its owner during this monitoring event.

Signature of Monitor

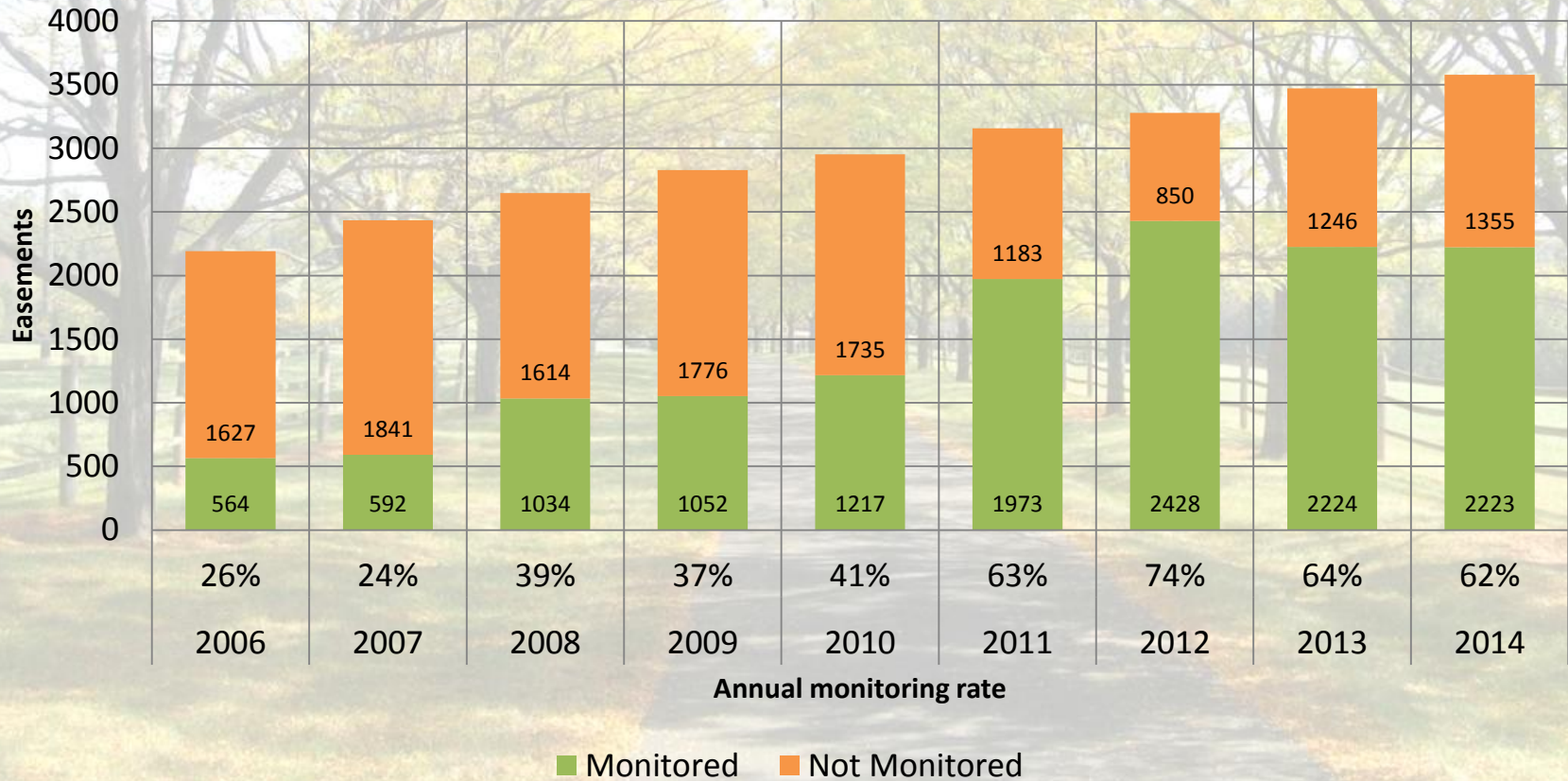
Date of Monitoring Report

Form Date: January 2014



Monitoring Statistics

Monitoring completion rate per year



Flexible – Durable – Workable - Livable

**Flexible – Monitoring Capacity Changed →
Program Evolved**

**Durable – Standardized methods, forms, policies
and procedures**

**Workable / Livable - more efficient monitoring
leaves staff more available for other stewardship
duties and...**

Landowner Communication

Personal Interaction (visits, calls, reviews)

Welcome Packets

Property Sales

- **Efficiency Model**

Newsletters and Calendars

Enforcement Policies and Procedures

Written Policy

Violation Database Review

Updates to Easement Template

Easement Compliance Determination form

Enforcement Policies and Procedures

Easement Compliance Determination (ECD)



Staff Name	Property ID	Control Number	Landowner/Representative Name	Date

Issue Category (Match SMART System)			Issue Profile (Match SMART System)
<input type="checkbox"/> Apps/Notice	<input type="checkbox"/> Other Agmts	<input type="checkbox"/> Third Party	<input type="checkbox"/> Technical
<input type="checkbox"/> Boundary	<input type="checkbox"/> Riparian Buffer	<input type="checkbox"/> Trash	<input type="checkbox"/> Minor
<input type="checkbox"/> Building & Structure	<input type="checkbox"/> Road	<input type="checkbox"/> Use	<input type="checkbox"/> Moderate
<input type="checkbox"/> Division	<input type="checkbox"/> Setback	<input type="checkbox"/> Utility	<input type="checkbox"/> Major
<input type="checkbox"/> Forestry	<input type="checkbox"/> Sign	<input type="checkbox"/> Other: _____	
<input type="checkbox"/> Grading			

SUMMARY OF COMPLIANCE SITUATION:

Potential easement violations observed Items of concern / long-term management issues observed

Description of issue:

Attachments (Including all applicable memos, emails, maps, photos, etc.):

STAFF RECOMMENDATION: *(The situation was reviewed and the following was recommended by Staff)*

Staff Signature: _____ Date: _____

SUPERVISOR APPROVAL: *(Staff recommendation was reviewed by management and the following determined)*

Approved As Submitted *(Include any comments below)* Approved With Changes *(Include any comments below)*
 Denied *(Include reasons below)* Additional Information Needed *(Describe needed information)*

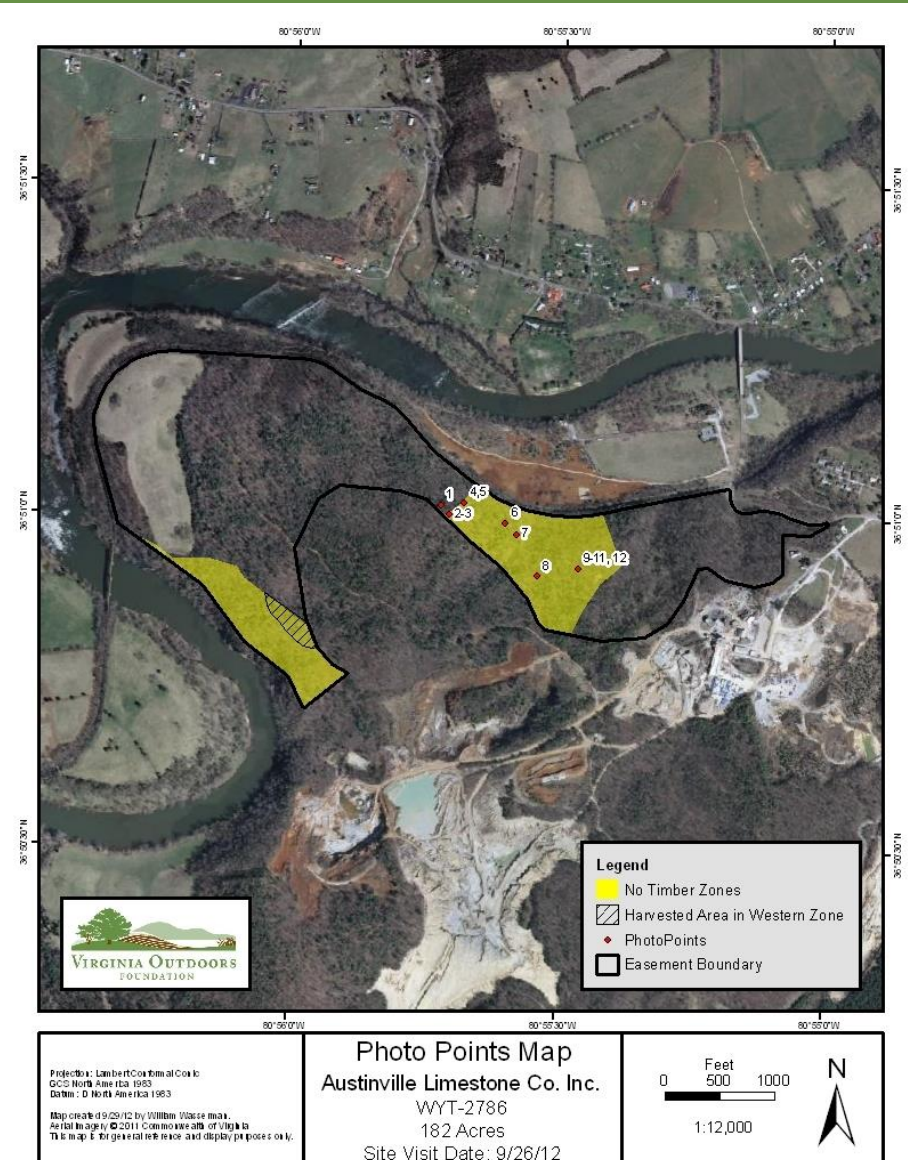
Manager's Signature: _____ Date: _____



Monitoring + Enforcement

- 2008: Austinville Limestone Company donated easement on 182 acres adjacent to the New River Trail State Park in Wythe County, VA.
- Conservation values included habitat for several rare plant species designated by DNH, including *Viola walteri* (the prostrate violet)
- Easement restriction: “To protect the rare plant species on the Property, no timbering is permitted within the areas shown on Exhibit A attached hereto.”

Monitoring + Enforcement



Monitoring + Enforcement

- Timbering discovered during routine SFR in 2012
- Stew staff spoke to loggers on-site and they agreed to avoid the area until they could return to mark boundaries
- VOF staff returned and marked boundaries of “no timbering” zones
- When contacted, landowner admitted that he had not consulted the easement before beginning the harvest

Monitoring + Enforcement



Monitoring + Enforcement



Has a violation occurred?

How severe is the violation?

What conservation values have been impacted?

What is an appropriate response?

How could the damage be remediated?

How could this violation have been prevented?

Flexible – Durable – Workable - Livable

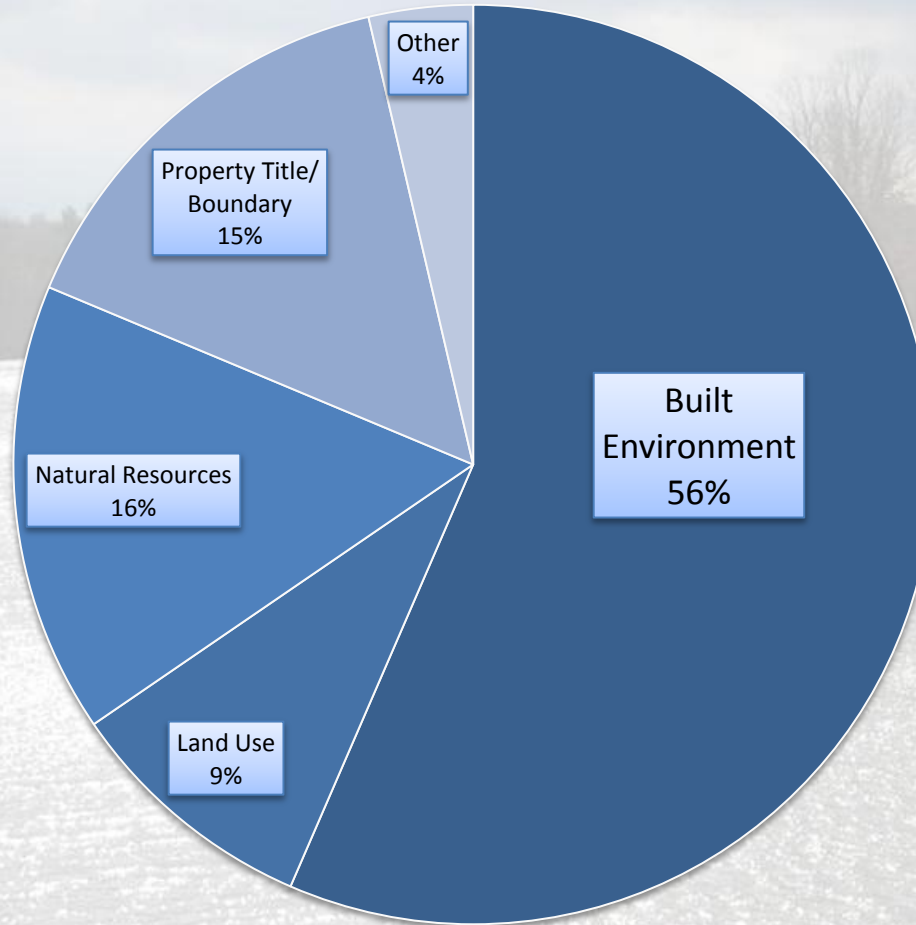
Flexible – Matching enforcement method to severity of violation; working with landowner to creatively resolve violations

Durable – Standardized methods, forms, policies and procedures; Tracking easement violations and standardizing the process for review helps with updating our views of “violations” and may also lead to template edits.

Workable / Livable – our enforcement approach gives landowners some assurance that any violation will be treated in a standard but non-rigid manner

Standardized Review and Approval Process

2014: Requests for Review



Standardized Review and Approval Process

Easement requirement / landowner instigated

1. Notice

A. Contact Log entry

2. Formal Review

A. Request for Review (RFR) Form

Standardized Review and Approval Process

Request For Review (RFR)



Staff Name	Property ID	Control Number	Landowner/Representative Name <small>Note interest in property if requestor is not landowner/representative</small>	Date

PURPOSE OF REQUEST: (To be completed by Stewardship Staff)

Notice	Approval	Interpretation
<input type="checkbox"/> As required by deed <input type="checkbox"/> Other: _____	<input type="checkbox"/> As required by deed <input type="checkbox"/> Upon request (not required by deed) <input type="checkbox"/> Other: _____	<input type="checkbox"/> Unique situation <input type="checkbox"/> Not addressed within deed <input type="checkbox"/> Other: _____

SUMMARY OF REQUEST AND ANALYSIS: (To be completed by Stewardship Staff)

Description of request:

Attachments (Including all applicable memos, emails, maps, photos, etc.):

Relevant deed language and analysis:

STAFF RECOMMENDATION: (The request was reviewed and the following was recommended by Staff)

Staff Signature: _____ Date: _____

SUPERVISOR APPROVAL: (Staff recommendation was reviewed by management and the following determined)

- Approved As Submitted** (Include any comments below)

 Approved With Changes (Include any comments below)
 Denied (Include reasons below)

 1704 is required (Include any comments below)
 Additional Information Needed (List/describe additional information needed)

Manager's Signature: _____ Date: _____

SMART System Issue ID: _____

Form Date: January 2014



Standardized Review and Approval Process

2005

- Easement donated on ~69 acres
- purposes included **scenic protection** and **preservation of agricultural land**

2014

- Washington and Lee approached VOF with a proposal to install a 5-acre solar-energy array on the eased property

Standardized Review and Approval Process

Easement generally prohibited buildings and structures with some exceptions including:

1. Farm buildings and structures, not to individually exceed 4,500 square feet in ground area
2. Utilities and roads to serve permitted buildings and structures

Easement generally prohibited commercial activities with some exceptions including:

agriculture, silviculture, horticulture, viticulture, equine activities

Easement contained restrictions on building within viewshed of Routes 631 and 60

Standardized Review and Approval Process

W&L's design for the project would utilize existing topography to shield the array from viewpoints along Routes 631 and 60

W&L studied alternate sites, but one site was more visible to the traveling public and the other site was heavily forested

Proposal was very conservation friendly, BUT...did the easement allow it?

What would you do?



Standardized Review and Approval Process



Solar sheep farming

Solar panels = farm structures

Flexible – Durable – Workable - Livable

Flexible – the ability to think outside of the box and work with landowners to maintain conservation values while allowing the land to remain active

Durable – Standardized methods, forms, policies and procedures

Workable / Livable – landowners with innovative ideas and strategies for farming or other uses have the opportunity to be heard

Establishing Critical Partnerships

- Local Government Relations
- Department of Forestry Notifications
- State Environmental Review Process
- Online Deed Access
- Co-holders

Current Assessment Summary			
Improvements Value	Land Value	Deferment	Total Taxable Value
\$341,800	\$266,200	\$0	\$608,000

Owners: COOSAW CORPORATION
Mailing Address: PO BOX 346 MIDDLEBURG, VA 20118-0346

Subdivision:
Map Sheet: 6891.00
Landscape: AVERAGE
Road Type: PAVED
Topography: ABOVE GRADE
Book/Page & Instrument: 624408 DEED
Ancestors:
Transfer Notes:

Neighborhood: SECTION 1 NORTH
Tax District: SCOTT
Class: AGRIC - 20-100 ACRES
Acreage: 68.4220
Utilities: SEPTIC TANK
Zoning: AGRICULTURE DISTRICT
Descendents:

Land Conservation Easement Summary			
Virginia Outdoors Foundation (VOF)	Purchase of Development Rights (PDR)	Nature Conservancy (NC)	Open Space Easement (OSP)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Preparing for Unanticipated Changes to Existing Easements

1. Interpretations

- A. RFR form
- B. Tracking
- C. Example

2. Deed of Corrections

3. Boundary Line Adjustments

- A. Policy
- B. Application/Fee

4. Amendments

- A. Policy
- B. Tracking
- C. Example

Preparing for Unanticipated Changes to Existing Easements - Interpretations

300 acre property on Potomac River donated in 2007

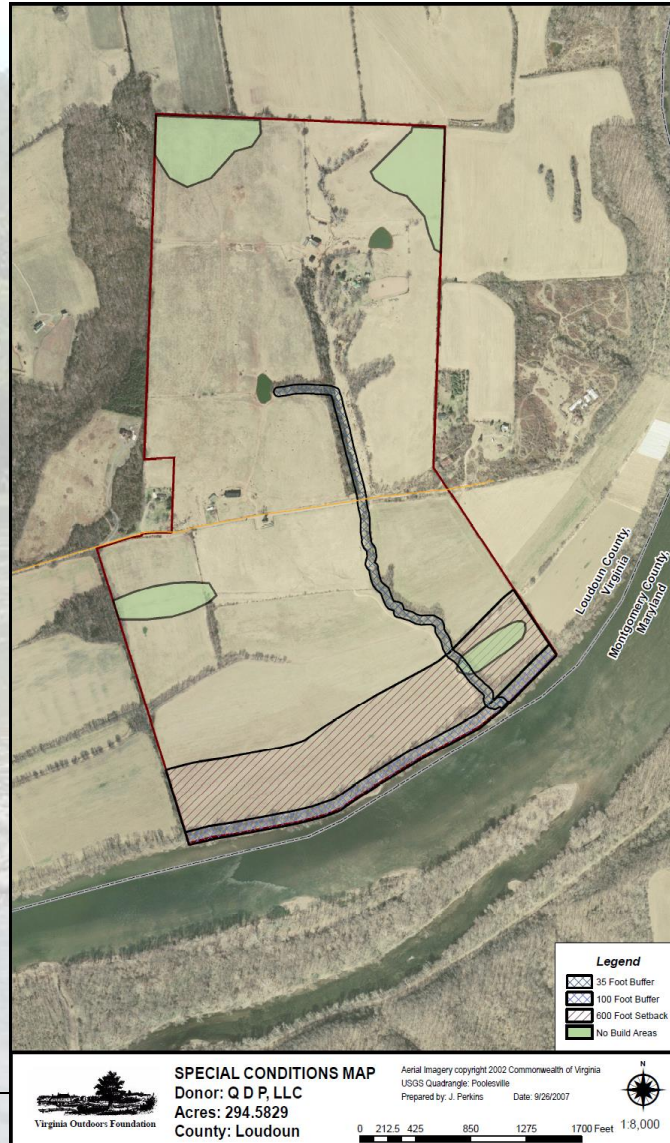
Property for sale, NVRPA interested in purchase to create a passive recreation, public access regional park with river access **BUT** did the easement allow for such a use?

Easement allows for 3 parcels, several dwellings of a certain size, including rehabilitation of the historic house, non-residential outbuildings , farm buildings and a 1% collective footprint. No build zones , setbacks and buffers protect the River and tribs plus archeological deposits. Allowed uses include ag., temporary/seasonal outdoor activities , activities that can be conducted within permitted buildings without material alteration to external appearance.

Review considered the impact of public access and necessary infrastructure (bathrooms, visitors center, roads, parking, trails, boat launches., signage).

What would you do?

Preparing for Unanticipated Changes to Existing Easements - Interpretations



Preparing for Unanticipated Changes to Existing Easements - Amendments

Most VOF easement amendments:

- **Simply add acreage**
- **Further restrict rights that were retained in the original easement**
- **Include standard language from current template**

A minority of VOF amendments are more complicated

Preparing for Unanticipated Changes to Existing Easements - Amendments



← No

Does the landowner want it?



← No

Is it consistent with the conservation purpose?



← No

Is it enforceable?



← Yes

Is there impermissible private benefit or inurement?



← Yes

Is there a conflict of interest?

Does it create unwarranted work for VOF?

→ Yes



Does it comply with the local comp plan?

→ No



Would it undermine public confidence in VOF?

→ Yes



Does the increase in conservation benefit justify the effort?

→ No



Is there a net benefit for the easement's conservation values?

→ Yes



Preparing for Unanticipated Changes to Existing Easements - Amendments

City of VA Beach easement (~305 acres)

Conservation purposes = working farmland, preservation of scenic open-space, and protection of a historic manor house and archeological sites

VOF and Department of Historic Resources (DHR) were named as co-holders

Nearly half of the restrictions in the deed of easement focused on protection of the historic manor house

35 years after the original easement was recorded, the historic manor house was completely destroyed in an accidental fire

Deed was silent regarding whether a replacement dwelling could be built in event of casualty; manor house was DHR's raison d'être for co-holding easement.

What would you do?



Preparing for Unanticipated Changes to Existing Easements - Amendments

Easement amended to:

- **acknowledge accidental destruction of manor house**
- **clarify that replacement dwelling was permitted**
- **clarify some other archaic and ambiguous language in order to enhance enforceability**
- **DHR assigned its interest in the easement to VOF**

Flexible – Durable – Workable - Livable

Flexible – allows for VOF to be open-minded to issues as they arise

Durable – Standardized methods, forms, policies and procedures

Workable / Livable – landowners know if the deed is silent the answer is MAYBE.

Conclusion

VOF uses 5 main strategies (Innovative Monitoring Program, Landowner Communication, Enforcement Policies and Procedures, Standardized Review and Approval Process, Establishing Critical Partnerships and Preparing for Unanticipated Changes to Existing Easements) **to ensure the organization and easement program remain flexible, durable, workable and livable.**

These strategies can be incorporated into your land trust work to ensure the long term viability of your organization and your easement program.

Any questions?