

FINAL

MINUTES
VIRGINIA OUTDOORS FOUNDATION BOARD OF TRUSTEES MEETING
FEBRUARY 8, 2011
IVY CREEK FOUNDATION NATURAL AREA, CHARLOTTESVILLE

Attendees:

BOARD OF TRUSTEES:

Hank Hartz
Mark Allen
Charlie Seilheimer
Jeff Walker

Not Present – Suzanne Lacy, Ben Chafin, and Harry Atherton

STAFF:

Bob Lee, Executive Director
Leslie Grayson, Deputy Director, Policy and Land Acquisitions
Martha Little, Deputy Director, Stewardship
Tamara Vance, Deputy Director, Easements
Ruth Babylon, Easement Project Manager
Bobbie Cabibbo, Executive Assistant
Kristin Ford, Assistant Director, Easements
Brian Fuller, Assistant Director, Stewardship
Jason McGarvey, Communications & Outreach Manager
Bruce Stewart, Staff Attorney
Estie Thomas, Easement Project Manager
Laura Thurman, Easement Project Manager

OTHER ATTENDEES:

Todd Hochrein, VA Credit Exchange
Brett Glymph, Office of the Attorney General
Heather Richards, Piedmont Environmental Council
Kelly Watkinson, Potomac Land Conservancy
Fred Fisher, Office of the Attorney General
Nancy Ambler, Wood Thrush Conservation

Rob Farrell, Department of Forestry
Mary Helen Morgan, concerned citizen & Middle Peninsula Land Trust
Ben and Carol Weddle, landowners
Nan Mahone Wellborn, Conservation Partners
Cindy Weinstock - ConserVA

PUBLIC COMMENT

Heather Richards from Piedmont Environmental Council shared concerns regarding the rail storage portion of the proposed Public Infrastructure Rail Provision. She urged that the Board of Trustees not accept the language as presented.

ORDER OF BUSINESS

The Plasticulture presentation is delayed until April. Two items – the Fulks and Burch Easements will be inserted between Consent Amendment Agenda and the Non-Consent Easements.

APPROVAL OF MINUTES

Charlie Seilheimer moved to approve the October 27, 2010 House Mountain Tour, October 28, 2010 Preservation Trust Fund and Policy & Easement consideration minutes as presented; motion seconded by Jeff Walker and passed by a vote of 3 to 0 with Mark Allen abstaining.

SPECIAL PROJECT AREA

Kelly Watkinson of the Potomac Land Conservancy presented a slide show supporting the request that North Fork of the Shenandoah River Headwaters: Cedar and Passage Creek Watersheds be designated a VOF Special Project Area. Charlie Seilheimer moved the resolution; motion seconded by Jeff Walker and passed unanimously. (Attachment A)

DIRECTOR'S REPORT

Bob Lee reported that VOF is planning a land conservation community function on May 14 at Elmwood Farm near Culpeper. We are looking for sponsors and will not proceed with the event in absence of a base level of support. Land Trust Alliance is sponsoring a reception on Tuesday, February 15, 2011 for those who supported the federal deduction legislation passed late in 2010 and Trustee Allen will represent VOF.

Martha Little reported that 1100 comprehensive stewardship reports were completed in 2010. There is an 8% violation rate, all being minor or technical in nature. Several staff members put forth ideas for 2011 VaULT conference presentations.

Tamara Vance reported that 128 projects totaling 25,185 acres were completed in 2010 (22 of which were amendments) and 55 projects (15,000 acres) were passed but not recorded in 2010. Of the new 2010 projects 30 (or 28%) were less than 100 acres.

LEGISLATIVE UPDATE

Hank Hartz reported that he met with many legislators stressing that all easement buffers and acres of water protection count towards the Chesapeake Bay Land Conservation goal, not just those that go through the DCR review. He reminded us that the Secretary Domenech is very focused on water quality.

House Bill 1820 – Charlie Seilheimer moved that VOF take the position that in the event a cap is placed on the amount of the tax credit available to an individual or entity in any one year the cap not be stated in terms of a dollar amount but rather as a percentage; motion seconded by Jeff Walker and passed unanimously.

Following two items were taken up for discussion to accommodate the guest speakers present.

Burch Easement Middlesex County 614 acres - Estie Thomas updated the board on this easement and the need for additional matching funds. Mary Helen Morgan also spoke reminding the Board that there is \$712,000 (\$204,000 VOF/PTF and \$508,000 FRPP) committed to this project but more matching funds are needed to ensure the preservation of this high conservation value property on the Rappahannock River. She said it is one of the last large farms on the River in that area and very important to the community.

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Jeff Walker made a motion to borrow \$394,000 from legal defense fund to ensure this easement is completed with a 5-year pay back from future Preservation Trust Funds (PTF). Motion withdrawn.

Jeff Walker made a motion that we borrow \$300,000 from legal defense fund with a 5-year pay back from future PTF funds. Motion withdrawn.

Because real property interest acquisition is at stake, this matter was deferred to a Closed Session.

Weddle Easement – 89 acres – Warren County The current VDOT Right of Way is 22 feet and VDOT has plans to expand it in future to 32 feet. Added to the deed is language allowing expansion of Right of Way not to exceed 16 feet from the centerline as the road exists in its current alignment. Landowners were present and agreed with this provision.

The landowners requested that the easement include language to require all new utility lines be placed underground. The existing VOF policy requires three items in order to include a provision requiring underground utilities:

1. the landowner needs to request it (the landowner has)
2. the easement must be on Scenic byway or have identified scenic resources (the Weddle property is)
3. Only utility lines visible to the public from the scenic resource will be required to be placed underground.

Mr. Weddle (landowner) was recognized. He noted that this proposed easement is surrounded by many other easements in the area. Mr. Weddle requested that his easement require all future transmission lines both public and private be underground. He understood the concern that the requirement would likely impose a heavy financial burden on future landowners. Complicating matters was that requiring underground lines in the future could negatively affect other identified conservation values, such as the karst features on this property. Department of Natural Heritage staff were consulted and reported that karst would only be a problem if there were sinkholes.

The VOF Board supported the adopted policy on underground utilities, which favors protection of public values including views from scenic roads. Mark Allen suggested Mr. Weddle investigate the concept of a restrictive covenant. Mr. Hartz reminded the body that we would need to amend the VOF policy in order to do what Mr. Weddle is asking. Mark Allen made a motion to approve the easement keeping it consistent with policy i.e. not requiring ALL utility lines be underground only those visible from the Scenic Byway; motion seconded by Charlie Seilheimer and passed unanimously.

Lunch Break - 12:20 pm

Returned at 12:55 pm

ORDER OF BUSINESS

The Conflict of Interest training is postponed to the next meeting when all board members are scheduled to be present.

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STRATEGIC PLAN UPDATE

Bob Lee, Martha Little, Tamara Vance, Leslie Grayson, Anna Chisholm, Jason McGarvey and Sara Ensley spoke to the board. (Presentation is part of the record and is in the propagated Agenda)

POLICY DISCUSSION

PUBLIC INFRASTRUCTURE RAIL PROVISION

Board of Trustees agree that the specific deed language in the proposed policy be revised in order to clearly prohibit storage of rail cars and the construction of structures or facilities except those needed for safety and that can't be accommodated elsewhere.:

The full text as revised reads:

*This Property is bordered by property of _____ (“the railroad”).
[Optional language: Property of _____ (“the railroad”) traverses the
Property.] The provisions of this Easement shall not prevent the railroad, or its
successors, from acquiring and using a portion of the Property solely for the
improvement or expansion of its rail line or the addition of a parallel rail line (which
acquisition and use shall not constitute a division or subdivision of the Easement),
provided that (i) the portion of the Property taken does not exceed a ___-foot strip
parallel and adjacent to the current railroad property, (ii) the Virginia Department of
Rail and Public Transportation advises Grantee that there is no prudent and feasible
alternative to using a portion of the Property for such rail line improvement or
expansion, (iii) Grantee determines that the proposed rail line improvement or
expansion or addition of a parallel rail line includes all reasonable actions, such as
landscaping and/or topographic improvements, necessary to minimize the project’s
impact on the Property and prevent harm to its conservation values, and (iv) the strip
or any portion of the strip acquired pursuant hereto is not used for the storage of
railcars or other tangible personal property or the construction of above-ground
structures or facilities other than those necessary for safe operation of trains, which
structures or facilities cannot be located elsewhere.*

*Grantor reserves its separate rights to approve such acquisition. Any strip acquired
from Grantor pursuant to this paragraph shall remain subject to all terms and
restrictions of this Easement. Notwithstanding the foregoing, any limitations on a
railroad are subject to any rights which the railroad may have under federal law.*

Charlie Seilheimer moved to adopt the proposed policy for addressing planned widening or expansion of existing rail infrastructure on new easements and to make changes to the specific language as noted above; motion seconded by Mark Allen and passed unanimously.

ORDER OF BUSINESS

PLASTICULTURE presentation postponed

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STAFFORD COUNTY FIRE STATION 1704 BRIEFING

Board of Trustees after brief discussion recommended that VOF Staff proceed to process Virginia Code Section 10.1-1704 (conversion/diversion) as proposed by the Staff for April Board consideration.

WIAVER OF FEE REQUEST

Fulks Easement - After the Board of Trustees passed this project, it was sent to DCR for a VLCF criteria review. The review caused some delay and as a result the easement was not recorded within one year. Policy requires a fee for reconsideration. Jeff Walker made motion to waive the fee; motion seconded by Mark Allen and passed unanimously.

AMENDMENT CONSENT AGENDA

Wynot, Roanoke County – Adding a parcel, but there is a discrepancy in acreage amount, 39 vs. 54+. Approval requested for adding the entire tax map parcel despite the acreage discrepancy in county records.

Swift – Fauquier County - Adding one acre of land with an existing house. In addition, landowner wants to add the impervious cap language to the deed; however, the property already exceeds the normal 1% cap of impervious cover. Request approval and staff will limit the cap to the percentage of cover as it exists today.

Rasco - Carroll County - adding a 123-acre parcel, with the right for one new dwelling.

Charlie Seilheimer moved approval of Amendment Consent Agenda with changes as noted above; motion seconded by Jeff Walker and passed unanimously.

EASEMENTS – NON CONSENT

Atkins - Rappahannock County 236.773 acres Charlie Seilheimer moved to accept as presented, motion seconded by Jeff Walker and passed unanimously.

Cassidy – Fluvanna County - 66 + acres Philip Reed is staff member putting this easement before the board, the Agenda is incorrect. Charlie Seilheimer moved to approve easement as presented, motion seconded by Jeff Walker and passed unanimously.

Kinnear – Rockbridge County – 235.8 acres Charlie Seilheimer made a motion to accept the easement as presented; motion seconded by Mark Allen and passed unanimously.

Lawrence - King George County – 46.590 acres Motion made by Charlie Seilheimer to approve easement as presented; motion seconded by Jeff Walker and passed unanimously.

Nottingham – Northampton County – 172.76 acres Motion made by Jeff Walker to approve easement as presented; motion seconded by Mark Allen and passed unanimously.

Branscombe – Withdrawn from consideration

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Gilmore – Pulaski County – 205.63 acres Motion made by Jeff Walker to approve easement as presented; motion seconded by Mark Allen and passed unanimously.

Sharpe - Henry County - 201 +/- acres Motion made by Charlie Seilheimer to approve easement as presented; motion seconded by Jeff Walker and passed unanimously.

Younger – Halifax County – 232.62 acres Motion made by Mark Allen to approve easement as presented; motion seconded Jeff Walker and passed unanimously.

Pace - Orange County - 96.69 acres - Withdrawn from consideration

Kincer – Wythe County – 154.34 acres Easement moved to Non-Consent Agenda. Note: there is a discrepancy between the deed and the Summary Sheet. The expansion for the cemetery is intended to allow up to 1 acre vs. the ½ acre in the deed. In addition, amend the easement to include appropriate template language for road expansion. Motion made by Charlie Seilheimer to approve easement with amendments; motion seconded by Mark Allen and passed unanimously.

EASEMENTS – CONSENT AGENDA

Amberger – Orange County - 276.39 acres - Mark Allen moved to approve Easement Consent Agenda as presented; motion seconded by Charlie Seilheimer and passed unanimously.

CHANGE IN MEETING DATES

Motion made by Charlie Seilheimer to change the April 2011 meeting from Thursday & Friday the 28th and 29th of April to Wednesday and Thursday the 27th and 28th of April; motion seconded by Jeff Walker and passed unanimously.

Motion made by Mark Allen to go into *Closed Session* for discussion of legal matters as provided for in the Code of Virginia §2.2-3711(A)(3); motion seconded by Jeff Walker and passed unanimously. Upon return from closed session, Executive Director, Bob Lee certified by role call that the Board of Trustees discussed only matters that convened the closed session and nothing else. Charlie Seilheimer responded yes, Hank Hartz responded yes, Jeff Walker responded yes; and Mark Allen responded yes.

Motion made by Charlie Seilheimer to give an additional \$200,000 in funding to the Burch project. The Easement Defense Fund will loan monies to the Preservation Trust Fund. The Easement Defense Fund is to be paid back in no more than 5 years from future anticipated Preservation Trust Fund monies. This \$200,000 is in addition to the \$204,000 already committed; motion seconded by Mark Allen and passed unanimously.

Submitted by:
Bobbie Cabibbo

RESOLUTION**A RESOLUTION BY THE BOARD OF TRUSTEES
OF THE VIRGINIA OUTDOORS FOUNDATION (VOF)
TO DESIGNATE THE NORTH FORK SHENANDOAH RIVER HEADWATERS:
CEDAR AND PASSAGE CREEK WATERSHEDS A SPECIAL PROJECT AREA**

WHEREAS, Potomac Conservancy, Inc. has nominated “North Fork Shenandoah River Headwaters: Cedar and Passage Creek Watersheds” for Special Project Area designation; and

WHEREAS, the VOF Guidelines define factors justifying the designation of Special Project Areas; and

WHEREAS, Cedar Creek and Passage Creek watersheds are areas of statewide significance; and

WHEREAS, the Virginia Outdoors Plan identifies both Cedar and Passage Creek as major recreational streams in the region and identifies Cedar Creek in its entirety as qualifying for designation as a Virginia Scenic River, as well as lists both Cedar Creek and portions of Passage Creek as eligible for study for National Wild and Scenic River System designation; and

WHEREAS, Shenandoah County and Frederick County Comprehensive Plans support the protection of rural lands and natural resources within these watersheds; and

WHEREAS, the Division of Natural Heritage, in the Virginia Department of Conservation and Recreation has identified significant portions of these watersheds as Conservation Sites, Stream Conservation Units and General Habitat Locations; and

WHEREAS, Cedar and Passage Creek watersheds contain 28 species of plants and animals identified as rare by the Division of Natural Heritage including Canby’s Mountain-lover, which is “imperiled” at state and global levels; Long Dash Skipper, which is “critically imperiled” in Virginia; and the Wood turtle, which is “listed threatened” and “critically imperiled” in Virginia; and

WHEREAS, the Division of Natural Heritage has identified unique and rare ecosystem features in Cedar and Passage Creek watersheds including areas of Mountain Dry Calcareous Forest, Central Appalachian Shale Barrens, karst features, caves, bluffs, Appalachian Bogs, and cliffs; and

WHEREAS, a portion of the Cedar Creek watershed has been designated a national historical park within the larger Shenandoah Valley Battlefields National Historic District, established to protect both historic resources and the natural landscape features that contributed to historic events; and

WHEREAS, the proposed special project area contains scenic and forested land that buffers the George Washington & Jefferson National Forests, Devils Backbone State Forest, and the Cedar Creek and Belle Grove National Historic Park; and

WHEREAS, Cedar Creek and Passage Creek are major tributaries of the North Fork of the Shenandoah River and the protection of riparian lands in these watersheds will protect important drinking water sources and contribute to the health of the Chesapeake Bay; and

WHEREAS, water quality data places these two streams among the cleanest and least disturbed in the Shenandoah Valley region; and

WHEREAS, support for the Special Project Area designation has been expressed by the local community through support from landowners, partners, and governments including; the Fort Valley Ruritans, George Washington & Jefferson National Forest, Cedar Creek and Belle Grove National Historical Park, Friends of the North Fork Shenandoah River, Trout Unlimited, Shenandoah University, Virginia Department of Forestry, Frederick County, and Shenandoah County; now therefore, be it

RESOLVED by the Virginia Outdoors Foundation Board of Trustees this 8th day of February 2011, That the North Fork of the Shenandoah River Headwaters: Cedar and Passage Creek is hereby designated a VOF Special Project Area.

ADOPTED by a vote of: 4 in favor and 0 against

ATTEST:



G. Robert Lee, Executive Director