

Memorandum on Revision of the Virginia Outdoors Foundation's Model Deed of Open-Space Easement

The Virginia Outdoors Foundation (VOF) revises its model deed of open-space easement (the Model Deed) from time to time to better protect the conservation values of the properties it takes under easement and better enable administration of easements. A new Model Deed dated January 27, 2023, has been drafted, which revises and replaces the July 8, 2021 Model Deed.

Listed below are the significant changes that have been made to the July 8, 2021 Model Deed and that appear in the new Model Deed:

1. Optional provisions have been added allowing for the consolidation of tax parcels.
2. In **Section II Paragraph 2 Impervious Coverage Limitations** buildings and structures are no longer measured in part by the area of roofs because of the difficulty in making such measurements. Buildings and structures (“three-dimensional building and structures”) are now measured by the square footage of ground area. Impervious surfaces (“two-dimensional surfaces”) are not counted against the impervious coverage limitations unless they exceed 500 square feet in area.
3. In subparagraph (iii) of the same **Section II Paragraph 2** if the square footage of parcels is not allocated in a deed dividing the property, the parcels are allocated square footage of impervious coverage based on the respective sizes of the parcels created by the division.
4. In **Section II Paragraph 3 Buildings, Structures, Roads, Driveways, Trails, and Utilities** subparagraph (ii) (formerly subparagraph (v)) has been revised to except renewable energy structures from the requirement that all buildings and structures exceeding 500 square feet in area must be located in specific areas of the property designated as building envelopes.
5. In **Section II Paragraph 4 Activities Permitted on the Property** subparagraph (ii) has been revised to allow for more activities on the Property. It reads as follows: “Residential, religious, educational, and scientific activities in compliance with the limitations on buildings, structures, impervious surfaces, and ground disturbance contained herein and in compliance with local, state, and federal laws and regulations”.
6. **Paragraph 8** has been added to **Section II** involving measurements and determination of permeability. It reads as follows: “All measurements of length, width, square footage, height, and quantity set forth in Section II Paragraphs 1 through 7 above may be made only by employees, agents, or other representatives of Grantee in accordance with common and standard methods of measurement. In addition, determination of whether a particular surface is permeable or impermeable may be made only by employees, agents, or other representatives of Grantee.”

7. Paragraph **1 Right of Inspection** of **Section III Enforcement** has been revised to allow entry on the property by remote inspection methods (for example, flyovers and drones)
8. **Section IV Documentation** has been revised to allow for documentation of the condition of the property not only by photography, but also by use of other visual media.
9. **Paragraph 5 Interactions with Other Laws of Section V General Provisions** has been revised in part to add an explanation that “even though certain structures, infrastructures, or activities are permitted on the Property by this Easement, this does not guarantee that such structures, infrastructures, or activities will be permitted by federal, state, or local governments, which permission will depend upon federal, state, or local laws or regulations.”
10. **Section II Paragraph 8** has been divided into **Paragraphs 8 and 9. Paragraph 9 Notice and Approval** revised previous subparagraph (ii) of **Paragraph 8** to require the grantor to not only notify VOF before exercising a reserved right that may have an adverse effect on any conservation interests associated with the easement or any conservation values of the property, but also to require grantor to notify VOF “before undertaking any activity or exercising any reserved right that, because of unforeseen and changed circumstances, involves activities regarding which the easement is silent or indeterminate.” The text also sets forth examples of unforeseeable changes that could occur with respect to the property, such as changes in the climate, the weather, land use, science, and technology, and other unforeseeable circumstances that justify notice and approval by VOF.

Remember that by resolution of the VOF Board of Trustees adopted on October 11, 2022, the following provisions of the Model Deed as posted on the VOF website must be included, as written, in all easements presented to the board for its consideration:

Section III Enforcement including Paragraph 1 Right of Inspection and Paragraph 2 Enforcement;

Section IV Documentation

Section V Paragraph 1 Duration

Section V Paragraph 6 Construction

Section V Paragraph 8

Section V Paragraph 17 Cost Recovery Charges

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