



**VIRGINIA LAND
CONSERVATION FOUNDATION
GUIDANCE DOCUMENT ON
CONSERVATION EASEMENT
DISPUTE RESOLUTION
Adopted October 27, 2015**

Summary:

In accordance with [§ 10.1-1021.2 of the Code of Virginia](#), this document serves to provide guidance to any private owner of the fee interest in land that is subject to a perpetual conservation easement pursuant to the Conservation Easement Act, Chapter 10.1 ([§ 10.1-1009 et seq.](#)) of Title 10.1 of the *Code of Virginia*, any holder of such an easement, or any holder of a third-party right of enforcement of such an easement, regarding procedures for submitting a request to the Virginia Land Conservation Foundation to resolve a dispute that arises out of or relates to the interpretation or administration of their conservation easement. Such request shall not be part of a dispute already in litigation. The Virginia Land Conservation Foundation shall utilize the process set forth in the Administrative Dispute Resolution Act, Chapter 41.1 ([§ 2.2-4115 et seq.](#)) of Title 2.2 of the *Code of Virginia* and the procedures outlined in this guidance to respond to requests.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the Virginia Land Conservation Foundation (Foundation) and the Department of Conservation and Recreation (Department). This guidance provides a general interpretation of the applicable Code but is not meant to be exhaustive in nature. Each situation may differ and may require additional interpretation of the Administrative Dispute Resolution Act, the Conservation Easement Act, and the Virginia Land Conservation Foundation statutes, Chapter 10.2 ([§ 10.1-1017 et seq.](#)) of Title 10.1 of the *Code of Virginia*.

Virginia Land Conservation Foundation Conservation Easement Dispute Resolution

I. Background:

In accordance with [§ 10.1-1021.2](#) of the *Code of Virginia*, the Foundation's Board has been directed to adopt guidelines by which specified parties may request the Foundation to resolve a dispute related to the interpretation or administration of a conservation easement. This guidance serves to set out such procedures.

II. Definitions

"Conservation easement" means a nonpossessory interest of a holder in real property, whether easement appurtenant or in gross, acquired through gift, purchase, devise, or bequest imposing limitations or affirmative obligations, the purposes of which include retaining or protecting natural or open-space values of real property, assuring its availability for agricultural, forestal, recreational, or open-space use, protecting natural resources, maintaining or enhancing air or water quality, or preserving the historical, architectural or archaeological aspects of real property.

“Chair” means the Secretary of Natural Resources.

“Department” means the Department of Conservation and Recreation.

“Director” means the Director of the Department of Conservation and Recreation. For the purposes of this document, the Director serves as the Executive Secretary to the Foundation.

"Dispute resolution proceeding" means any structured process, excluding arbitration, in which a neutral assists parties to a dispute in reaching a voluntary settlement by means of dispute resolution processes such as mediation, conciliation, facilitation, partnering, fact-finding, neutral evaluation, use of ombudsmen or any other proceeding leading to a voluntary settlement.

“Foundation” means the Virginia Land Conservation Foundation or VLCF created pursuant to Chapter 10.2 ([§ 10.1-1017 et seq.](#)) of Title 10.1 of the *Code of Virginia*.

"Holder" means a qualified charitable organization pursuant to §§ [10.1-1009](#) and [10.1-1010](#) of the *Code of Virginia*, which holds a nonpossessory interest in real property through a conservation easement that imposes limitations or affirmative obligations, the purposes or powers of which include: (i) retaining or protecting the natural or open-space values of real property; (ii) assuring its availability for agricultural, forestal, recreational, or open-space use; (iii) protecting natural resources; (iv) maintaining or enhancing air or water quality; or (v) preserving the historic, architectural or archaeological aspects of real property.

"Mediation" means a process in which a neutral facilitates communication between the parties and without deciding the issues or imposing a solution on the parties enables them to understand and resolve their dispute.

"Mediation program" means a program of the Foundation, administered by the Department, through which mediators or mediation is made available and includes the Director, agents and employees of the program.

"Mediator" means a neutral who is an impartial third party selected by agreement of the parties to a dispute to assist them in mediation.

"Neutral" means an individual who is trained or experienced in conducting dispute resolution proceedings and in providing dispute resolution services. For the purposes of this Guidance, it is limited to an individual who has no interest or prior knowledge of the issue associated with a dispute brought to the Foundation.

"Third party right of enforcement" means a right provided in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation, charitable association or charitable trust which, although eligible to be a holder, is not a holder.

III. Authority:

The Virginia Land Conservation Foundation statute ([§ 10.1-1021.2](#) of the *Code of Virginia*) contains the following authorities applicable to this guidance:

§ 10.1-1021.2. Additional powers of the Foundation; requests for conservation easement dispute mediation.

Any private owner of the fee interest in land that is subject to a perpetual conservation easement pursuant to Chapter 10.1 ([§ 10.1-1009 et seq.](#)), any holder of such an easement, or any holder of a third-party right of enforcement of such an easement may submit a request, pursuant to guidelines adopted by the Foundation, that the Foundation utilize the process set forth in the Administrative Dispute Resolution Act, Chapter 41.1 ([§ 2.2-4115 et seq.](#)) of Title 2.2, to resolve a dispute that is not part of a dispute already in litigation and arises out of or relates to the interpretation or administration of a conservation easement made or entered into pursuant to Chapter 10.1 ([§ 10.1-1009 et seq.](#)).

Should the affected parties agree to mediation, all memoranda, work products, or other materials contained in the case file of a mediator are confidential and all materials in the case file of a mediation program are confidential pursuant to [§ 2.2-4119](#) of the *Code of Virginia*.

IV. Process:

Any private owner of the fee interest in land that is subject to a perpetual conservation easement pursuant to the Conservation Easement Act, any holder of such an easement, or any holder of a third-party right of enforcement of such an easement may submit a request to the Foundation to resolve a dispute related to the interpretation or administration of a conservation easement. Accordingly, standing for submitting a request to the Foundation (those parties eligible to participate) shall be limited to:

- 1) Any private owner of the fee interest in land that is subject to a perpetual conservation easement;
- 2) Any holder of a perpetual conservation easement; or
- 3) Any holder of a third-party right of a perpetual conservation easement.

Note: This Guidance is limited to conservation easements held by non-profit entities under the Virginia Conservation Easement Act; it does not include those open space easements held by state agencies or other public bodies under the Open-Space Land Act, Chapter 17 ([§§ 10.1-1700 et seq.](#)) of Title 10.1 of the *Code of Virginia*.

Such requests shall be in writing, shall be submitted to the Executive Secretary of the Foundation (the Director of the Department), and shall contain the following preliminary information:

- 1) The name and contact information for the requestor;
- 2) The standing of the requestor;
- 3) A statement from the requestor saying they wish to voluntarily enter mediation;
- 4) Contact information for all of the other parties with standing;
- 5) Whether or not the matter is currently under or pending litigation;
- 6) A short narrative outlining the issue of concern and how it relates to the interpretation or administration of a conservation easement.

Upon receiving a request for mediation the Executive Secretary of the Foundation or their designee, shall contact the other parties who have standing to see if they wish to participate in mediation.

All parties with standing must choose to participate before the Foundation will proceed with mediation. If all parties agree, the Executive Secretary of the Foundation shall advise the Chair of the request and offer the Department's recommendation. If not all parties agree to participate,

the Executive Secretary of the Foundation shall notify the requestor that mediation is not agreed to by all parties.

The Chair has sole discretion as to whether the Foundation and the Department participate in a specific dispute resolution proceeding via mediation.

If the Chair determines that the matter does not merit mediation by the Department on behalf of the Foundation, the Executive Secretary of the Foundation shall respond to the requestor explaining the reasons for denial.

If the Chair determines that the matter does merit mediation, all parties with standing shall be notified of the decision and shall be subsequently notified when a date and location of the mediation has been agreed to by the participating parties.

On behalf of the Foundation, the Department shall assign a trained mediator of the Department to mediate the dispute.

Prior to the date of the mediation, the assigned mediator shall contact each party seeking additional information regarding the issue and to determine what the potential barriers are.

In general, the mediator will bring the parties together, set out the rules, and facilitate the mediation session. While the specific tools used may depend on the mediator, it should be expected that the mediator may provide each party an opportunity to speak uninterrupted, summarize the issues, define the problem to be solved, collectively brainstorm options, come to agreement over a solution and its terms, and assist in drafting an agreement for adoption by the parties. All aspects of the mediation shall remain confidential unless all participating parties agree to their release. However, the written settlement agreement will not be confidential unless the parties agree in writing.

The Foundation shall be apprised at meetings that a request for mediation has been received and the status of the mediation (pending, underway, discontinued, completed) but the names of the parties will not be shared publicly. The settlement agreement will be provided to the Foundation unless the parties expressly agree in writing that it remain confidential.

Note: Parties to a disagreement may at anytime seek mediation services independent of those available from the Foundation. Expenses for such mediation shall be the sole responsibility of the parties involved.

V. Adoption, Amendments, and Repeals:

This document was adopted by the Virginia Land Conservation Foundation on October 27, 2015, and may be amended or repealed as necessary by the Foundation.