

## Policy and Procedure 10-2

# Open-Space Easement Monitoring

<b>Issued By:</b>	Robert W. Farrell, State Forester
<b>Effective Date:</b>	March 15, 2021
<b>Codes/Mandates:</b>	Constitution of Virginia: <a href="#">Article XI Sections 1 and 2</a> Code of Virginia: <a href="#">§10.1-1700 through 10.1-1705</a> Open-Space Land Act
<b>References:</b>	Internal Revenue Code: <a href="#">§170(h)(1)</a> Qualified Conservation Contribution United States Treasury Regulation: <a href="#">§1.170A-14(c)(1)</a> Qualified Organization IFRIS Landowner Questionnaire IFRIS Field Monitoring Report
<b>Forms:</b>	N/A

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## PURPOSE

Establish a uniform methodology and application of easement monitoring: a) actively uphold easement terms; b) proactively prevent violations of easement terms; c) establish and maintain regular and consistent communication with easement property owners; d) sustain positive and constructive relationships with easement property owners; and e) satisfy IRC monitoring requirements.

## POLICY

It shall be VDOF policy to monitor easement properties on an annual basis in accordance with these procedures.

## DEFINITIONS

“Agency” and “VDOF” mean the Virginia Department of Forestry.

“BDR” means Baseline Documentation Report.

“**Commonwealth**” means the Commonwealth of Virginia.

“**Donor**” means a landowner who conveys an easement to VDOF, including a donor’s designee, legal counsel or representative.

“**Easement**” means open space easement conveyed to VDOF under the Open Space Land Act.

“**Easement development**” means all necessary steps and required documents to draft an easement.

“**Easement property**” means the tract of land, parcel or acreage which is encumbered by an easement.

“**Execution**” means the act of signing the easement and/or BDR.

“**FCC**” means **Forestland Conservation Coordinator**

“**FC PST**” means Forestland Conservation program support technician.

“**FC staff**” means Forestland Conservation Program personnel individually or collectively, usually referring to forest conservation specialists, forestland conservation coordinator and the forestland conservation program manager.

“**FMR**” means Field Monitoring Report.

“**FOIA**” means the Virginia Freedom of Information Act (VA. Code § 2.2-3700 *et seq.*).

“**IRC**” means Internal Revenue Code.

“**LNG**” means Landowner Notification Guide.

“**LOQ**” means Landowner Questionnaire.

“**Manager**” means forestland conservation program manager or designee.

“**Recordation**” means the act of presenting the executed easement to the local Circuit Court Clerk and the subsequent entering of the easement into the public record.

“**OSLA**” means the Open Space Land Act.

“**Program**” means VDOF easement program.

## PROCEDURES

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The VDOF easement monitoring procedures consists of the following components:

- ◆ Baseline Documentation Report (BDR)
- ◆ Landowner Notification Guide (LNG)
- ◆ Annual Monitoring
  - Landowner Questionnaire (LOQ)
  - Field Monitoring Report (FMR)

### Baseline Documentation Report (BDR)

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A BDR is required on all easements. A BDR addendum is required on all easement amendments that add acreage to the easement. The purpose of the BDR or BDR addendum is to document the conditions that exist on the easement property at the time of recordation and is the basis upon which subsequent monitoring will be evaluated.

- ◆ Forestland Conservation (FC) staff will complete the BDR or BDR addendum, during easement or amendment development, respectively. The BDR or BDR addendum will contain the components according to program guidelines. The BDR or BDR addendum will be executed simultaneously with signing of the easement or easement amendment.
- ◆ Following recordation of the easement, copies of the BDR or BDR addendum are provided as follows:
  - The donor is provided one originally signed BDR or BDR addendum.
  - A second originally signed BDR or BDR addendum is placed in the permanent (red) easement folder.

- A color copy of the originally signed BDR or BDR addendum is placed in the easement monitoring (blue) folder.
- The originally signed BDR or BDR addendum is scanned and placed in the digital easement property folder.
- ◆ The BDR and any accompanying documentation are subject to public disclosure under the Freedom of Information Act (FOIA).

## Landowner Notification Guide (LNG)

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The LNG is a brief summary provided to the donor or a new easement property owner of the activities that require notification to VDOF and/or agency approvals according to the easement terms.

- ◆ FC staff will prepare and provide the LNG when:
  - A new easement is recorded.
  - There is new ownership of an easement property.
  - A permitted division of the easement property is exercised and the parcel is conveyed to a new owner.
- ◆ FC staff may arrange a conference with the donor or new property owner to review the LNG, summarize the easement terms, answer any questions, and describe subsequent easement stewardship and monitoring procedures.
- ◆ A copy of the LNG will be placed in the digital easement folder.

## Annual Monitoring

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All easements shall be monitored annually. Monitoring will be initiated by February 1<sup>st</sup> and completed by September 30<sup>th</sup> of each calendar year.

- ◆ Annual monitoring consists of an alternating schedule of the LOQ and the FMR.
  - The LOQ will be sent to all easement property owners in odd years.
  - The FMR will be conducted on all easement properties in even years.

## Exceptions

- ◆ FC staff determines that a response on an LOQ warrants a site visit. If so, a full FMR will be conducted.
- ◆ A new easement or easement amendment. Both an LOQ will be sent and an FMR will be conducted the year following recordation.
- ◆ The easement property has changed ownership since the previous monitoring. Both an LOQ will be sent to the new property owner and an FMR will be conducted on the easement property in the current or subsequent monitoring cycle.
- ◆ A permitted division of the easement property is exercised and the parcel is conveyed to a new owner. An LOQ will be sent to both the new property owner and owner of the residual easement property and an FMR conducted on both properties in the current or subsequent monitoring cycle.

Monitoring documentation is subject to public disclosure under FOIA.

## Landowner Questionnaire (LOQ)

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The LOQ is a voluntary self-reporting survey generated by the agency and sent to easement property owners. Easement property owners complete the survey, summarizing any current or planned activity affected by the easement terms or that may affect the easement terms or conservation values of the property. FC staff will review the LOQ responses to determine if any follow up is needed.

- ◆ The forestland conservation program support technician (FC PST) will prepare paper and/or LOQs for all easement property owners. The LOQs may be generated individually for each easement or collectively as a report from IFRIS. Only one LOQ will be provided to the primary contact of each easement property.

- ◆ The FC PST will mail the paper LOQs directly from Headquarters to the easement property owner with a requested return date of June 1. A pre-addressed, stamped return envelope will be provided with the LOQ.
- ◆ If the property owner(s) elect to receive the LOQ electronically, electronic copies will have a requested return date of June 1. The FC PST will print electronic LOQ upon receipt and provide copies to the forestland conservation coordinator (FCC) and place digital copies in the appropriate digital easement property folder according to the program filing guidelines.
- ◆ Easement property owners will complete, sign and return the LOQ to the FC PST by June 1. The FC PST will follow up on LOQs more than 30 days overdue. FC staff will follow up on LOQs that are more than 60 days overdue.
- ◆ Within two weeks of receipt of the paper LOQ:
  - The FC PST will create the LOQ in IFRIS for the appropriate easement by transcribing the information from the paper version.
  - The FC PST will certify that the information has been entered accurately and completely as provided by the easement property owner and submit the LOQ.
  - The FC PST will scan and file the LOQ in the appropriate digital easement property folder according to program filing guidelines. Digital copies of all LOQs will be maintained in the digital easement property folder.
  - The FC PST will provide hard copies of the LOQ to the FCC. Hard copies of the five most recent LOQ will be maintained in the easement monitoring (blue) folder.
- ◆ Within two weeks of the LOQ being entered into IFRIS, FC staff will review the information and certify whether the monitoring has been satisfactorily completed.
  - If the monitoring is satisfactory, FC staff will determine what, if any, follow-up is necessary, whether an easement stewardship event needs to be opened and make any needed updates to easement data.
  - If the monitoring is not satisfactory, FC staff will follow up with the easement property owner to complete or clarify the LOQ.

## Field Monitoring Report (FMR)

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The FMR is documentation of a site visit to the easement property. VDOF field staff, upon prompting by FCC, will conduct a site visit, complete the FMR and enter the information in IFRIS by September 30. FCC will review the FMR to determine if any follow up is needed.

- ◆ By February 1, the FCC will notify appropriate senior area foresters of FMRs needed in their work areas.
- ◆ VDOF field staff will print the FMR and may print the summary for individual easements from IFRIS. The FCC will provide any additional information requested.
- ◆ VDOF field staff will schedule and conduct the easement property site visit. The role of VDOF field staff is one of observation and “change detector”, documenting any changes from the BDR or previous monitoring report. VDOF field staff are not expected to interpret easement terms or whether an activity is in violation of the easement.
  - Notification will be given to the easement property owner no less than one week prior to site visit. It is preferred that the landowner be present during the site visit.
  - VDOF field staff will view as much of property as possible, known changes since the last site visit, and known problem spots.
- ◆ FC staff (primarily FCC) will accompany field staff on the FMR site visit if one of the following conditions exists:
  - It is the first monitoring of the easement property and field staff is not familiar with the property.
  - New owner of all or a portion of the easement property.
  - New FC staff, senior area forester or field staff assigned to the easement property.
  - At the request of the regional forester, deputy regional forester, manager, senior area forester or field staff.

- There has been a significant change in the terms of the easement, property conditions or amount of development since the last site visit.
- ◆ Within one week of the site visit, VDOF field staff will create the FMR in IFRIS for the appropriate easement by entering the information from the paper version completed on-site. VDOF field staff will certify that the information entered accurately describes the current condition of the easement property.
  - If VDOF field staff do not provide the original hard copy of the FMR to FC staff, the completed FMR can be printed or saved as a PDF from IFRIS.
  - Digital copies of all FMRs will be maintained in the digital easement property folder.
  - Hard copies of the five most recent FMRs will be maintained in the easement monitoring (blue) folder.
- ◆ Within two weeks of the FMR being entered into IFRIS, FC staff will review the information and certify whether the monitoring has been satisfactorily completed.
  - If the monitoring is satisfactory, the FCC will determine what, if any, follow-up is needed, whether an easement stewardship event needs to be opened and make any needed updates to easement data.
  - If the monitoring is not satisfactory, FC staff will follow up with the appropriate VDOF field staff to complete or clarify the FMR.

## Follow-up Correspondence with Landowner

Upon certification of the monitoring, the FCC will send a follow-up letter to the easement property owner informing them their property has been monitored, thanking them for their partnership and cooperation, following up on any stewardship events and offering to answer any questions they might have.

## IFRIS Time and Accomplishment Recording

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### Time Recording

- ◆ Any and all time spent on annual monitoring shall be recorded in IFRIS as follows:
  - Conservation Easement Mgt > Other Monitoring Activities

### Accomplishment Recording

- ◆ There is no Accomplishment Code for easement monitoring in IFRIS.

## File Management

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Copies of signed follow-up letters and any other associated documentation are retained in the digital easement folder.

## AUTHORITY

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This policy and procedure is issued by the Virginia state forester.

## INTERPRETATION

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The forestland conservation program manager and assistant state forester are responsible for the interpretation of this policy and procedure.

## APPROVAL

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I certify that this policy and procedure is approved and ready for publication.

Karl Didier

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Forestland Conservation Program Manager Name (Print)

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