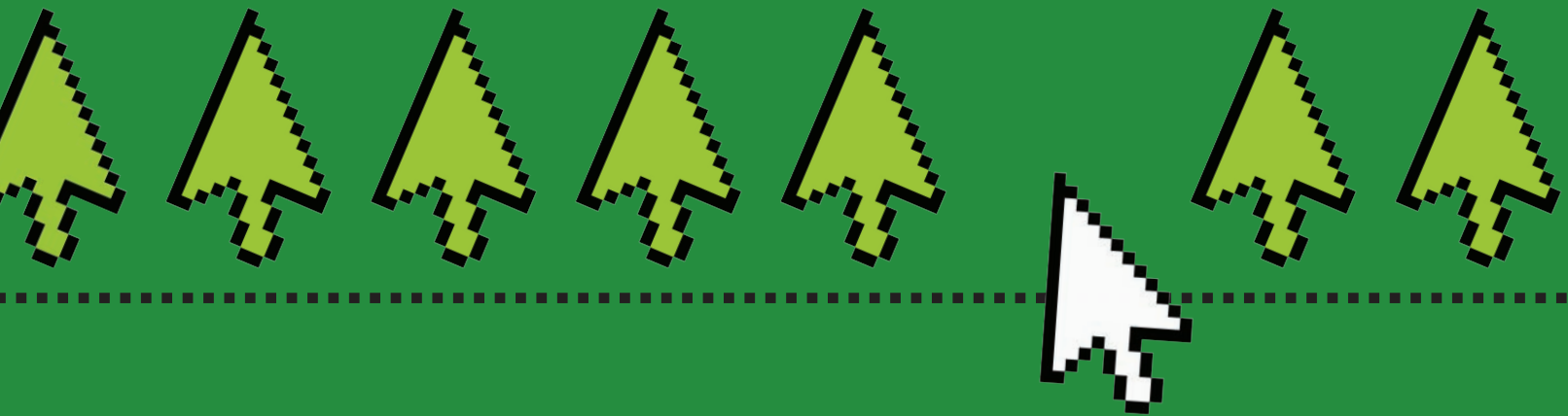


BY A. Bruce Dotson

YOU'VE GOT MAIL





TECHNOLOGY AIDS EASEMENT HOLDERS

What good is a brilliantly written conservation easement if it isn't closely monitored? It is, after all, merely a piece of paper, unless the holder has the capacity and determination to monitor the land for the long term. Over the coming years, the challenge of stewardship will only grow as the number of easements multiplies. It is up to individual land trusts to monitor, enforce and defend their easements. But one county in Virginia is lending a hand to easement holders, and the process could possibly be replicated by others.

Virginia ranks as one of the top states in the nation in numbers of conservation easements, and Albemarle County claims second place among the state's counties in protected acreage. In recent years, the county and the organizations holding easements within its boundaries have partnered to create an innovative process that helps meet the stewardship challenge. The process piggybacks on the

county's computerized mapping and permit tracking system, which automatically sends a weekly e-mail to easement holders notifying them of any newly filed building or planning applications on their easement properties. In operation since April 2007, this system illustrates how cooperative attitudes and technology can enhance the monitoring capacity of land trusts and others holding easements.

Albemarle County is committed to protecting and maintaining agriculture, forestry and open space in its nearly 700-square-mile rural area. It uses a combination of tools, including designated growth areas, rural area zoning and a county purchase of development rights program, which complements the conservation easement programs of other organizations. Taken together, easements now cover more than 76,000 acres, or 16% of the land in the county.

With robust growth, Albemarle County relies on computerized systems to track permits and the regulatory review process, as well as

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to map patterns of growth and change for long-range planning. Planner Scott Clark explains how the partnership between the county and easement holders came about: “The planning staff needed a way to map land conservation in the county. We contacted each of the organizations that hold easements to get the initial list. With the help of all the holders, we put together a database that includes every parcel that’s under conservation easement, and once a year we ask for updates. We soon realized this data could also be used to help the county, as well as other holders, to monitor activity on those parcels.”

At about this same time the largest holder of easements, the Virginia Outdoors



TOP: Eased land in Albemarle County, Virginia.

LEFT: Most agricultural conservation easements allow agricultural buildings and stables, possibly subject to size or locational limitations.

BOTH PHOTOS: PIEDMONT ENVIRONMENTAL COUNCIL

Foundation (VOF), approached a number of counties regarding a possible memorandum of agreement, pledging to keep the counties up to date about its easement holdings; in return, the counties would notify VOF of any permit or similar filings on lands under VOF easement. Sherry Buttrick, easement manager of the Central Virginia office of VOF, describes this kind of information exchange and early notice as essential, emphasizing that “violation avoidance is always better than trying to repair a problem that’s already occurred.”

Once set up, the Albemarle reporting system is virtually automatic, and costs to operate it are minimal. Damon Pettitt, GIS coordinator with the county, explains how it works: “Organizations holding easements have shared their information with the county and this is recorded in the database. The system then compares this database to a permit

tracking system where landowners applying for building permits or for planning approvals also identify the parcels where their work will take place. Weekly, the system scans these applications and identifies any matches between the two databases. A match triggers an e-mail to the list of easement holders.” Once the county sends the notification, the rest is up to the easement holder.

Now that the system has been operating for a few years, the scope and frequency of applications on easement-protected land demonstrates the magnitude of the monitoring task facing easement holders. Between 2007 and 2009, applications were filed on nearly 13% of the parcels under easement.

What then does a “hit” or match by the computerized system mean? It does not necessarily indicate a violation—that depends on the terms of the easement and the purpose of the permit application. Once notified by a weekly e-mail, the easement holder can investigate further.

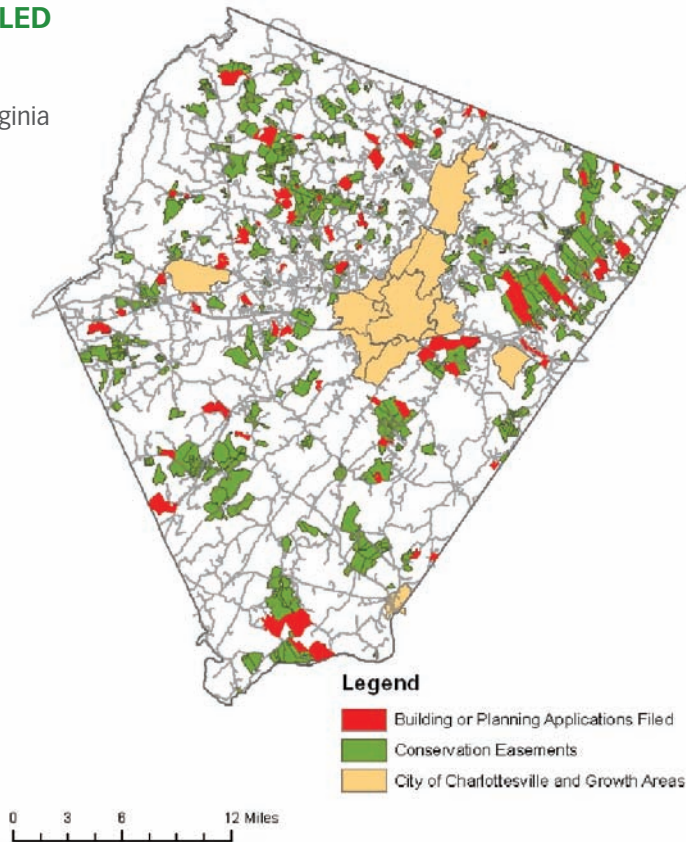
For example, building permit applications could signify new home construction, which

might be problematic because easements typically restrict the number of additional homes allowed on the property. Similarly, residential additions might be a concern if there is a maximum square footage or footprint specified in the easement or the easement prohibits expansion of buildings. Demolition might be of concern for historic resources, as could site-disturbing activity for any use if it occurs on a sensitive part of a property. Farm buildings, such as barns, are often permitted on easement property within defined size ranges. Other permitting situations that merit further investigation might include storage buildings, mobile office trailers, swimming pools, elevators, alarm systems, tents or signs; these applications might indicate that other changes are taking place that warrant a conversation with the property owner, especially if the owner is not the original grantor of the easement.

Planning applications need to be carefully scrutinized. If the easement does not allow further divisions of the land, a subdivision application raises a red flag. Site plan review applications signal impending construction activity and should be investigated further as well. Conversely, water protection applications (for example, a stream bank restoration project), once investigated, might enhance conserva-

BUILDING OR PLANNING APPLICATIONS FILED 2007-2009

Albemarle County, Virginia



tion values. Home occupations generally have minimal or no impact on a protected property, but in rare cases could grow into a prohibited commercial use or expand in scale to negatively impact a property's conservation values.

Other applications are quite diverse and include items like requests for zoning clearance or letters of determination regarding the number of residential units allowed by zoning. Frequently a difference exists between what local zoning allows and the terms of an easement, so the request for a letter could warrant a discussion with the owner. Each application's significance needs to be determined, bearing in mind the resource constraints of the organization.

What do easement holders in Albemarle County say about their experience with the e-mail notification system? The Nature Conservancy received 23 notification e-mails between 2007 and 2009. David Fox, Virginia easement stewardship coordinator reports, "It has been especially helpful when there's an absentee or a group ownership and the land is

managed by a third party. The manager may not be fully familiar with the terms of the easement and may not report certain activities to us as required. The county system serves as a valuable safety net."

As the holder of easements covering 58,308 acres in the county, VOF received e-mail notifications 110 times over the two-year period. Erin Wilson, stewardship assistant, says, "With the number of easements we're managing, we're not able to visit sites as often as we would like, so these weekly e-mails give us some confidence that we're not missing things that could be important." Stewardship Manager Melissa Collier adds, "This early notice system helps us avoid surprises. It builds good working relations with both the landowner and the county."

For easements held by Albemarle County, Scott Clark notes that investigating the various applications has revealed a need to tighten some of the language in the county's easement template. Several new definitions are

now being added to reduce the chances of differing interpretations and to more clearly spell out expectations.

Potential shortcomings of the automated system do exist. If an activity does not require a permit, it will not appear on the county's tracking system. Likewise, if a permit is required but an owner fails to obtain one, the notification system is not triggered. Because not all activities that might be of concern to an easement holder require a permit, it is advisable to remain vigilant and to avoid exclusive reliance on the weekly permit-based e-mails.

There is also the possibility that some landowners might feel like "Big Brother" is watching and resent the county notifying the easement holder, even if there is nothing to hide.

Rex Linville of the Piedmont Environmental Council recalls experience in other jurisdictions where notification depended entirely on a phone call from a sympathetic local government official who "thought we might want to know about this one" or an "eyes on the land" call from a neighbor. He notes that not every jurisdiction will have the computer capabilities to replicate Albemarle's automated system and, in those instances, the informal phone call approach can be helpful.

Most grantors, however, may appreciate the extra vigilance a system such as this one provides, offering additional assurance that the land they seek to preserve and protect is being actively monitored and stewarded even after the ink is dry. 🌱

Editor's Note: The Land Trust Alliance presents these case studies to offer general lessons learned and ideas on conservation defense. All land trusts are encouraged to follow Land Trust Standards and Practices. Practice 11C states: The land trust monitors its easement properties regularly, at least annually, in a manner appropriate to the size and restrictions of each property, and keeps documentation (such as reports, updated photographs and maps) of each monitoring activity.

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