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Dominion seeks Hayfields Farm easement trades

BY JOHN BRUCE • STAFF WRITER



The home of Kenneth McGraw at Hayfields was lovingly renovated and decorated by his wife, the late Pat Ross, a well-known author. The farm has been listed for sale at about \$4 million



Hayfields adjoins state land, and enjoys two miles of river frontage looking down the Bullpasture River valley. (Recorder photos by Anne Adams)

MONTEREY — Dominion has proposed swapping Hayfields Farm near McDowell for a number of state conservation easements in the realigned path of the proposed Atlantic Coast Pipeline.

If approved, the swaps would be unprecedented, Virginia Outdoors Foundation spokesman Jason McGarvey said.

VOF administers 750,000 acres of open-space conservation easements across the state.

Dominion spokesman Aaron Ruby said the pipeline company is unable to avoid crossing conservation easements on the realigned route through southern Highland, northern Bath, and western Augusta counties. “We’ve made every attempt to avoid conservation easements when selecting the route. However, due to safety, environmental, construction or other constraints, we haven’t been able to completely avoid all easements. In these cases, we’re proposing to offset these crossings by donating lands of greater conservation value to the easement holder,” Ruby explained.

“The original route we proposed in September 2015 crossed only one VOF easement. However, in order to address concerns raised by the U.S. Forest Service, in February we adopted an alternative route to avoid sensitive areas of the Monongahela and George Washington National Forests. Despite our good faith efforts to explore numerous options to avoid crossing easements on this route, we were unable to avoid nine additional easements held by the VOF,” he continued.

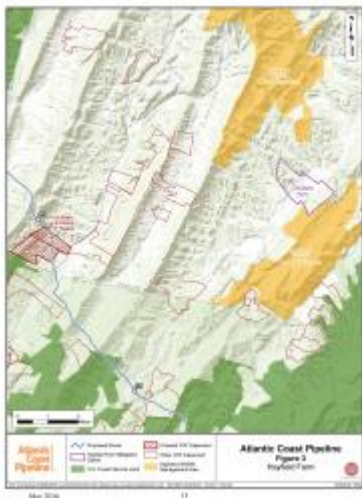
“We’ve worked closely with VOF staff over the last several months to address these issues. To offset the crossing of approximately 68 acres through these easements, we’re proposing to donate one parcel in Highland County,

Va. (Hayfields), and a second parcel in Nelson County, Va., which total close to 1,200 acres. We’re proposing to place the entirety of these parcels under

permanent conservation easement. This proposal represents a nearly 18-to-1 land swap ratio, which we believe is a fair and responsible offer. We believe our proposal is consistent with the mission of the VOF and will advance the goal of land conservation in Virginia,” Ruby said.



Dominion Resources has applied to the Virginia Outdoors Foundation for approval to exchange conservations easements it cannot avoid along the route of the Atlantic Coast Pipeline for an easement on Hayfields.



Map shows Hayfields Farm in Highland County. (Courtesy Dominion)

VOF has a process for converting or diverting open space land under easement, under Virginia Code section 1704 — the “1704 process.” There is a \$5,000 flat fee charged to applicants other than state or local governments, or other public agencies, and VOF charges fees for additional staff time if their work exceeds 30 hours.

McGarvey said that process has only been used 14 times in the last 50 years of VOF’s existence, and none of those applications were controversial. Mostly they were for things like widening a road, for example.

Under Virginia law, converting or diverting land secured by such easements is only allowed when it is determined to be “essential to the orderly development and growth of a locality,” in accordance with a locality’s comprehensive plan, and there another property of equal value than the land converted is substituted. The substituted land must also be nearly as feasible “equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted.”

McGarvey said this conversion process has never impaired VOF’s program, and in fact, makes it stronger. “You can’t simply condemn an easement, you have to go through this process. That’s why Virginia’s program is so strong, because land really can’t be condemned. It’s a strong law.”

The difference this time, is that VOF is handling 11 applications for converting easement property at once — all related to land the pipeline is proposed to cross. “We have not done anything like this on this scale before,” he said.

But, he stressed, “Nothing has been decided yet.”

The VOF board will meet June 30. At that time, the legal aspects of the proposal from Dominion will be discussed and decided. The meeting is open to the public and the agenda will be posted on VOF’s website in advance (www.virginiaoutdoorsfoundation.org).

“We work closely with the Secretary of Natural Resources, the Department of Game and Inland Fisheries, all state agencies ... so if this goes through, it will be done in line with the commonwealth’s goals,” McGarvey explained.

The application will be approved, or not, at the June board meeting. If Dominion’s applications are approved, there are details to iron out, he said. “We have not done anything on this magnitude,” he said, “but the board takes this very seriously. They have a legal obligation ... they will look at the extent of their authority. The board will make sure they are following the law.”

McGarvey said the larger ramifications of the process shouldn’t change. “The process itself is not unprecedented,” he said.

Conservation easements held by the VOF do not protect property, per se. “The easements protect conservation values,” McGarvey explained. “They do not protect the landowner’s interests ... easements don’t just protect a certain property. The landowners still have legal rights ... easements cannot protect all interests against all threats.”

When there is an application for a conversion, he said, “there is a very high threshold to meet. We try to find another way to protect property in the same vicinity so the public isn’t losing anything. This is in the public’s interest. At the same time, the

board members are very mindful of people who have given conservation easement gifts. They view us as a partner, and we're doing the best we can to make sure to value that."

The "1704 process" does not require a local government's approval or denial, McGarvey said, "but we certainly ask them for their opinion, and give that serious consideration. We're balancing all competing interests and the legal aspects guide a lot of this."

The ACP comes under federal jurisdiction for certification; how might that affect this state process? "We don't know," McGarvey said. "We have not had a project before with ... federal authority. It's usually the Virginia Department of Transportation, or a county government. We don't know yet how this might play out. We've been hearing other things are at play, like federal law might trump state law."

VOF, he said, gets its legal advice from Virginia's attorney general. "The board will discuss this at the June meeting," he said.

A group of county residents exploring options for a state park in Highland toured Hayfields two weeks ago to determine whether the property would be suitable. Hayfields is one of several properties the group toured, and the tract was highly regarded as having features and characteristics that would lend itself well to that use. McGarvey said if Dominion succeeded with its proposal to purchase the property and give a conservation easement to VOF on the land, that would not preclude consideration of Hayfields for a state park.

Hayfields, a roughly 1,100-acre farm between McDowell and Williamsville owned by Kenneth McGraw, has two miles of Bullpasture River frontage, and adjoins state land. It is listed for sale at an asking price of roughly \$4 million. One area of VOF concern is the southernmost tip of the Burnsville Cove, a system of caves straddling the Bath-Highland county line under a conservation easement, through which the pipeline study corridor passes.

Normandy Capital LLC entered into an agreement with VOF in 2013 to place a conservation easement on 794 acres near Burnsville because of the land's extensive karst topography.

Chuck Burke of Normandy Capital prepared a statement for the VOF dated May 26 that concluded any or all of the easement was unavailable for conversion and ineligible for taking through eminent domain. Burke said Normandy would "take full advantage of all legal recourse" against Atlantic Coast Pipeline LLC to protect "the significance of the gift" covered under the Code of Virginia.

The statement cites numerous federally endangered species. "Caves in the Burnsville Cove contain federally endangered bats such as the Indiana bat, Northern long-eared bat, and the Virginia Big-eared bat. They also contain populations of the soon to be stated listed tri-colored bat and little brown bat." In addition, Burke noted at least six special invertebrate species in the cove.

"As a result, the Burnsville Cove has been designated by the Virginia Cave Board and the Virginia Department of Conservation and Recreation, on the recommendation of the Virginia Speleological Survey, as one of the most significant karst areas in Virginia. In spite of this many of the caves remain un-surveyed for bats and un-sampled for invertebrate fauna," Burke's statement said.

"The proposed GWNF-6 route through the Burnsville Cove Significant Karst Area is too risky to be allowed to proceed as sited," he continued. "Sediments and pollution laden sediments can have devastating effects on invertebrate fauna within the affected drainage systems of the Burnsville Cove. Airborne pollutants could be transferred from the eastern syncline to the western syncline affecting over three-quarters of the Burnsville Cove, not only threatening the endangered bats but cave explorers. The Atlantic Coast Pipeline must not be allowed to mitigate or compensate its way across this sensitive habitat. This proposed route across the Burnsville Cove Significant Karst Area must be denied and rerouted."

The proposed route would also cross three special biological areas, called shale barrens, said to contain a federally endangered member of the mustard family and a critically imperiled butterfly. The George Washington National Forest's forest resource plan states that such areas are not suited to designation as utility corridors, said the Potomac Appalachian Trail Club's Southern Shenandoah Valley Chapter in a recent comment to FERC.

The Virginia Outdoors Foundation board meets June 30 at 10 a.m. in the Virginia State Capitol Building, Senate Room 3, 1000 Bank Street in Richmond.