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Dominion reapplies for easement conversions

BY JOHN BRUCE • STAFF WRITER

MONTEREY – The state board controlling open-space land conservation easements will decide next month whether Dominion’s request to swap easements meets the letter of the law.

But the question of whether Dominion’s proposed open-space easement conversions are specifically necessary for the “orderly growth and development” of Bath County remains unanswered.

Dominion’s latest conversion applications skirt the issue, only citing more county tax money if the pipeline is built and electricity for localities the pipeline would cross.

The “orderly growth” requirement is key to a law governing conversion of open-space easements, mostly in Bath, that the proposed Atlantic Coast Pipeline would cross. A ruling anticipated next month will decide if Dominion cinches the go-ahead to swap easements for Hayfields Farm in McDowell and closes in on regulatory licensing to build the \$5 billion, 600-mile interstate high-pressure natural gas project, as proposed, after a string of delays.

Last Thursday, Jan. 12, Dominion submitted revised applications for conversion of open space on 10 Virginia Outdoors Foundation easements in Highland, Bath, Augusta and Nelson counties in the path of the proposed Atlantic Coast Pipeline.

But the applications devote much more space to route alternatives and construction requirements than Bath’s growth and development.

The VOF board of trustees is scheduled to consider the applications Feb. 9 in Henrico.

Dominion first submitted draft applications in May 2016 to VOF’s Energy and Infrastructure Committee. In its revised applications, Dominion is seeking a permanent right of way to build the proposed pipeline.

“VOF staff have worked with both Dominion and the affected landowners throughout the process to ensure minimal impact to the easements and maximum protection of the public’s interest in the conservation values being affected,” VOF spokesman Jason McGarvey said in a press release. “This includes reducing the requested right of way from 75 feet in the draft

applications to 50 feet. It also includes prohibiting aboveground structures, prohibiting future additional pipelines, and restoring the surface area with native grasses and pollinator habitat. Other restrictions in the VOF easements will also remain in effect. In addition, VOF staff provided significant input on the substitute land included in the applications to ensure that it would provide maximum benefit to the public if the easement conversions occur.

“In the fall of 2016, VOF learned that an 11th easement in Nelson County could be impacted by a proposed alternate route and voiced its opposition to FERC,” he continued. “In its draft Environmental Impact Statement issued on Dec. 30, FERC wrote that it does not recommend that route. VOF’s trustees will, on Feb. 9, determine whether the applications meet the requirements of (the Virginia Open-Space Land Act), which says, ‘No open-space land, the title to or interest or right in, which has been acquired under this chapter, and which has been designated as open-space land under the authority of this chapter, shall be converted or diverted from open-space land use unless (i) the conversion or diversion is determined by the public body to be (a) essential to the orderly development and growth of the locality and (b) in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion and (ii) there is substituted other real property which is (a) of at least equal fair market value, (b) of greater value as permanent open-space land than the land converted or diverted and (c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted.’

“While our preference is to avoid VOF easements entirely, we believe that the requirements under section 1704 of the Open Space Land Act ensure that the public’s interest in our easements remains fully protected,” VOF executive director Brett Glymph said. “The key question our board will consider in February is: does the Atlantic Coast Pipeline satisfy the requirements of the law?”

Each application points out the proposed pipeline would affect a relatively small amount of land on each easement, either temporarily for construction, or permanently for operation.

“At VOF’s request, (Dominion) submitted an application for approval of the proposed crossing as a conversion or diversion under (the Virginia Open-Space Land Act). Given the nature of the impacts proposed herein, no diversion will occur, and (Dominion) questions if and to what extent any conversion will occur. Nonetheless, in the spirit of cooperation, (Dominion) is proceeding as VOF requested, and believes that it meets the conditions set forth ...” the application states.

The conversion proposal would depart from the law’s past, and shadow its predecessors under the open-space act, typically involving less than an acre and mostly intending to provide simple road access.

As an example of the applications, in 2002, Robert and Roberta Koontz transferred a roughly 274-acre open-space easement on their property, The Wilderness, located in Bath between Walker Mountain and North Sister Knob, to the VOF.

“VOF conservation values associated with this easement include the protection of scenic views of Walker Mountain, and enhancing the rural and scenic character of the surrounding area according to the easement,” Dominion’s application says.

To meet the “essentiality” requirement under the law, Dominion must demonstrate the conversion is essential to the orderly development and growth of the locality and must submit a letter or statement and/or materials from the local government, regional, state, or federal entity to this effect. None was provided.

“The conversion/diversion of the Koontz easement for a 42-inch diameter underground natural gas pipeline within a 50-foot-wide right of way is essential to the orderly development and growth of Virginia’s localities,” Dominion stated in its application, “including those crossed and served by ACP ... In addition, while numerous alternatives to avoiding the Koontz easement were analyzed, none were determined to be feasible and, as a result, conversion/diversion of a small portion of that easement is necessary.”

Other local easements in the proposed pipeline’s path include:

- About 115 acres of Franklin Lee and Pamela Elaine Berry in Augusta and Bath counties;
- About 342 acres of Lester Bright in Bath County;
- About 53 acres of Rebecca and Curtis Chandler in Bath County;
- About 794 acres of Normandy Capital LLC in Bath County;
- About 703 acres of William Phillips and Cindy Powell Revercomb in Bath County;
- About 295 acres of James Rice III in Bath County;
- About 737 acres of Keith and Penny Teague in Highland County; and
- About 730 acres of the Wilderness LLC, in Bath County.

Of those, at least one owner expressed confidence in Dominion’s application proposals in a letter to the VOF in September last year. “As a VOF member, we feel that Dominion has gone above and beyond to try to preserve our family farm,” wrote Lester and Cynthia Bright, Bath County landowners. “The company has worked with us to keep the pipeline on the edge of our property and hidden from clear view, they are also working with us on access roads, looking at using pre existing roads that are also out of clear view. We also feel that if Dominion is offering fair compensation to VOF and/ or the state, for crossing VOF easements, that the offer should be considered, because if FERC approves the pipeline, compensation may no longer be offered if eminent domain is used. We will also add that Dominion has done multiple environmental studies on our farm.”

In each application, Dominion emphasized the U.S. Forest Service rejected the original route and cited reasons for honing in on its selected route.

“In September of 2015, (Dominion) proposed a route to the north that would avoid the (identified) easement completely, but would cross areas on Cheat Mountain and Shenandoah Mountain on U.S. Forest Service property in West Virginia and Virginia, respectively,” the

company said. “The USFS filed comments with the FERC on Jan. 19, 2016, indicating that construction of this route was not compatible with the Land and Resource Management Plans for the Monongahela National Forest and GWNF due to the presence of sensitive species.

“Based on the USFS comments, (Dominion) was forced to consider an alternative route south of the southward extent of Shenandoah Mountain and South Sister Knob,” Dominion continued. “Routes (farther) south of the proposed route and Deerfield Valley also were studied; however, they would have encountered USFS management prescription units that are not compatible with utility corridors, varying topography not suitable for pipeline construction, and additional VOF easements. Furthermore, routes to the south of the proposed route and the Deerfield Valley added length to the project and did not minimize impacts to the environment or VOF easements.

“To address USFS’ comments and considering other constraints, (Dominion) proposed the current route, which resolves concerns over potential impacts to sensitive species on USFS lands, but due to multiple competing constraints, requires the crossing of VOF easements, including the (identified) easement ... (Dominion) considered a route that traverses farther to the south of the proposed route, but encountered USFS management prescription units (i.e., protected areas associated with sensitive species) that are not compatible with utility corridors, as well as steep terrain, rock outcrops that are not compatible with pipeline construction, and additional VOF easements.

“A route option ... would require side slope construction, which necessitates the need for larger temporary workspace, and more land disturbance, increasing impacts to critical wildlife habitat area. More specifically, within a side slope area, cut-and-fill operations used to create a flat area require the excavation and movement of large volumes of soil to create a safe and level work surface. This requires a construction right of way footprint upwards of 200 to 300 feet wide, thereby increasing environmental and visual impacts. The excavation occurs by excavating soil from the high side of the right of way to the low side. The wider construction footprint requires more tree clearing, soil stabilization, and restoration, which further increase soil destabilization risk. Additionally, and especially over longer distances, the potential for slips or slope failure is greater in areas of side-slope construction relative to construction along the natural fall of a slope. Restoration success is hindered by the quantity of unconsolidated fill replaced to restore initial contours.

“In turn, this increases risk of slips and resulting erosion and sedimentation into receiving water. The southern route alternative added length to the project and did not minimize impacts to the environment or VOF easements. For these reasons, this alternative was not considered to be viable or constructible. Routing alternatives to the north of the proposed route were also considered; however, those routing alternatives would have crossed habitat for the Cow Knob salamander, which is listed as a very high conservation need (Tier II) species in the Virginia Wildlife Action Plan, and is protected by the USFS through the GWNF Land and Resource Management Plan.

“A northern alignment would also place the route in an area requiring side slope construction, which is infeasible for the reasons described above ... Safely getting materials and heavy equipment to this location for construction would be challenging. The lack of existing access would require additional infrastructure through sensitive environmental areas and steep slopes,

resulting in increased land disturbance. Taking into consideration the increased disturbance, safety and restoration concerns associated with side slope construction, access challenges and the required crossing of multiple other VOF easements, (Dominion) determined that the northern route alternative would not be viable or constructible.

“(Dominion) evaluated more localized adjustments and refinements to avoid and minimize impacts to VOF easements and sensitive environmental areas along the route, including the (identified) easement. However, with numerous other VOF easements in the surrounding area, as well as a documented high density complex of karst features to the north, (Dominion) was not able to identify any (other) option that would meet the project need ... The requested conversion ... will enable (Dominion) to proceed with a constructible route that has the least overall environmental impact among the potential alternatives, adjustments and refinements ... The route passes through more favorable topography, minimizing environmental impacts and disturbance associated with side slope construction. The proposed route traverses a landscape less prone to environmental concerns associated with side slope construction, and minimizes the crossing of significant karst features, artesian wells, and underground springs that provide a local source of water for the landowners in the area.”

Dominion’s applications say they conform to Bath’s comprehensive plan.

“The comprehensive plan outlines planning goals in the areas of land use/environmental balance, economic opportunity, social well-being and educational quality. (Dominion) supports those goals by aiding with economic development and mitigating impacts to environmental resources. The ACP route through Bath County has been designed to minimize impacts on natural and scenic resources. The preferred route is the shortest and least impactful alternative for crossing Bath County. This route crosses eight VOF easements within Bath County (one is located partly in both Bath County and Augusta County) and one easement within Highland County; however, as supported by the aforementioned alternatives analysis, the proposed baseline route will minimize disturbances to environmental resources, karst topography and sensitive species habitat. Further, the proposed route avoids crossing through the GWNF where possible. These avoidance measures are consistent with the comprehensive plan’s goals to preserve natural resources.”

Each application says the Hayfields Farm property “provides greater value as open space when compared to” any of the easements under consideration.

No supporting documentation was provided.

In closing each application states, the project “meets the conditions for VOF approval of its application pursuant to (the Virginia Open-Space Land Act) for an essential project to meet the orderly development and growth of Virginia’s localities. By providing access to low-cost natural gas supplies, the ACP will increase the reliability and security of natural gas supplies in Virginia and North Carolina, and thereby meet expected demand for natural gas powered electric generation as well as produce significant tax benefits for Bath County and the other localities crossed by the pipeline in those states.”

The VOF board meeting will be from 9 a.m. to 5 p.m. Feb. 9 at Virginia Department of Game and Inland Fisheries, 7870 Villa Park Drive, Suite 400, Henrico, Va. 23228.

Public comments may be emailed to bcabibbo@vofonline.org.

Comments must include name, address, and daytime phone number