

The Recorder

IN THE COMMUNITY, ABOUT THE COMMUNITY, SINCE 1877.

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Slippery slopes

The Virginia Outdoors Foundation, as a state agency, needs to hold strong — now more than ever — to its core mission and principals. We need to help.

As we've reported, the VOF board faces a tough decision under pressure from one of Virginia's most powerful political and economic private companies — Dominion Resources — and the energy giant's plans for the proposed Atlantic Coast Pipeline.

So far, we have not been impressed with too many state agencies involved in reviewing Dominion's interstate gas pipeline. Perhaps that's because Gov. Terry McAuliffe has jumped in with both feet to support the project from the outset. As our state leader, his position has earned heaps of disrespect from those opposed to Dominion's plans. McAuliffe is cozy with Dominion officials, and has steadfastly refused to acknowledge how severely the ACP could impact his constituents, and public lands, in this region of the commonwealth.

You have reason to be alarmed about where things stand at the VOF.

Dominion's pipeline is designed to cross nearly a dozen private properties that were put under conservation easements held by the VOF. The landowners negotiated those easements in good faith, to protect their properties against development, and with the understanding the easements would preserve these lands in perpetuity.

Dominion has applied for "conversions" — a mitigation measure whereby VOF would surrender the parts of its easements in the pipeline's path, converting part of these properties to allow for the project.

Conversions require, under law, that another similar property be put under conservation easement; one of Dominion's partners bought a farm in Highland County for this purpose. The company offers up that farm for conservation to make up for the land under easement it will take.

Dominion had dubbed the conversions "minor."

The VOF said: Not so much.

The foundation was quick to tell the Federal Energy Regulatory Commission, which is reviewing the ACP, that its conversion process has never been used in a situation to this extent in its 50 years of existence.

So, FERC instructed Dominion to prove it could gain the VOF's approval.

The VOF board will not address Dominion's application until February, yet FERC intends to issue a draft Environmental Impact Statement this month. As we've pointed out, the issue needs to be settled before that draft EIS is published, giving citizens a chance to exercise their right to comment on the VOF decision first — especially those whose land would be affected.

As we report this week, VOF is clarifying its position. The foundation noted that crossing conservation easements requires meeting the law spelled out in the Open-Space Land Act. VOF maintains that building the pipeline on these properties does not fall within the scope of what's permitted in the easement language, and cannot be built without impairing the conservation values of those properties. The question is not whether this is, or is not, a conversion, as Dominion described it, but whether Dominion can meet the statutory requirements of the Act.

The Act requires that conversion of property under easement must be "essential" to the orderly development and growth of a locality, and in accordance with a locality's comprehensive plan.

Dominion requested the VOF board hold off on making this determination until later in the federal review process (and VOF agreed). This was surely by design. It's reasonable to think that if a draft EIS is issued, Dominion will feel it can more forcefully make its point to VOF that the project is far enough along in the process toward FERC approval, and thus, the pipeline is now "essential."

Dominion claims that projects like the ACP, which would cross multiple localities, must be evaluated as a whole, not just by the impacts to any one locality in isolation. The ACP, it says, is essential for "a comprehensive energy system." But that's not what the law says.

Dominion also points to the Virginia Energy Plan, which tends toward making all state agencies give preferential treatment and use discretion where energy policy is concerned. The Open-Space Land Act doesn't address this point, either.

Finally — and this is where the governor comes in — Dominion points to the federal Natural Gas Act, noting localities do not have jurisdiction over siting interstate gas pipelines.

If Dominion pushes the VOF to approve of its conversions because federal law might trump state law in this situation, will McAuliffe support the state he's been elected to serve and protect? We wonder. His record on this project the last two years is less than stellar.

Back in 2007, then VOF executive director G. Robert Lee made a presentation about land conservation to the General Assembly's joint legislative subcommittee studying the long-term funding sources for preserving open space and farmland.

“The Virginia Open-Space Land Act may be the strongest conservation easement authorizing language of any state jurisdiction in the nation,” Lee said. “Virginia Code Section 10.1-1704, in particular, provides an extraordinary deterrent to easement extinguishment or conversion or diversion of open-space land. None of the more than 2,000 easements held by the Virginia Outdoors Foundation in trust for the commonwealth has been completely extinguished or converted or diverted.”

He explained two laws that require conservation easements conform to the comprehensive plan adopted by the locality in which the property is located and, he noted, “conservation easements held by Virginia state agencies, as agents of the Sovereign, typically provide more protection against eminent domain proceedings.”

Is all this authority about to be stripped?

As opposition groups have told FERC, if this conversion is allowed, “it would seriously undermine public trust in the state’s conservation easement program and jeopardize the continued vitality of this critically important tool for open-space land protection,” and, the conversions are not consistent with state law.

The easements in question range from 53 to 794 acres, and cover a total of 4,211 acres. That’s a lot of land, and those easements aren’t just protecting owners. The landowners used VOF easements to protect ecologically sensitive areas, endangered and special species, and they do it to prevent exactly this kind of industrial pillage, not just for themselves but for future generations.

VOF must not approve Dominion’s plan. It would be like giving the nearby logging company the authority to cut down every tree on your property without your consent simply because the wood can provide fuel and the company can make money.

FERC must not issue a draft EIS for the project until this matter is settled because if VOF doesn’t approve the plan, Dominion will have to choose another route, which will result in another round of reviews for a different location.

And if this comes down to an argument about state law versus federal law, McAuliffe must staunchly defend Virginia’s efforts for land conservation — our state statutes have been in place for five decades, and VOF’s work has been highly successful.

We urge any citizen in Virginia with a VOF easement to stand up for the agency’s mission, and make it clear to the board that your easements should stand solid against development and eminent domain takings, whether or not you’re in the pipeline path. If this conversion is approved, no one’s land is safe from private industries that might want to develop it.