

The Recorder

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2017-02-16 / Top News

Open-space foundation tables easement decision

Opposition to Dominion's plan dominates hearing

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BY *Many in the audience stood when Ryan Hodges of Warm Springs asked the people from Bath County to rise.*

HENRICO – It was no Valentine's love fest.

Opponents of Dominion Resource's proposal to convert open space land easements outnumbered advocates more than three-to-one during a long awaited and heated hearing at the Department of Game and Inland Fisheries headquarters last week.

Thursday, Feb. 9, the Virginia Outdoor Foundation voted to defer consideration of Dominion's application to convert portions of open-land conservation easements with Hayfields Farm and another property in Nelson County to help expedite licensing and construction of the company's proposed Atlantic Coast Pipeline.

VOF chair Stephanie Ridder convened the board's open session after meeting behind closed doors for less than 10 minutes to discuss potential litigation and real estate negotiation.



John Cowden told the board he found 12 plans and 27 objectives in the comprehensive plan in conflict with the proposal.

She cited numerous emails from the public on how to proceed that were being received by the board “as we meet,” she said.

“It’s our consensus to keep this matter open,” Ridder said.

The motion from board member Beth Obenshain to defer carried unanimously after a long day impassioned, overwhelming opposition from an audience of 100 people who often applauded those who spoke against the application.

“We’re still trying to figure that out,” VOF spokesman Jason McGarvey said, when asked what lies ahead for the applications. The board meets next on March 30. The agenda is not set. Meeting dates will be posted at <http://www.virginiaoutdoorsfoundation.org/events/list>.



“I don’t feel the application meets the code at all,” Hodges said.

During morning public comments and remarks by affected landowners, 12 people spoke in favor of Dominion’s application, and 37 voiced opposition.

Opponents included Bath County Planning Commission chair John Cowden and Augusta County Supervisors chair Tracy Pyles.

Landowners of Berry, Revercomb and Bright conservation easement lands expressed support on prerecorded videos.

Landowner Robert Koontz voiced his opposition on video as well.

“If approved, I will go to court,” Normandy Capital LLC easement landowner Chuck Burke said. “I don’t want to have to do it.”

Many speakers shared their sympathy with the VOF board for facing tremendous legal pressure from Dominion and opposing landowners and conservation groups. “You’re between a rock and a hard place,” Sierra Club pipelines conservation program coordinator Kirk Bowers told the board. “Dominion will challenge you in court if you don’t approve, and we will challenge you if you do.”



Chuck Burke said he would take legal action if the applications were approved.

Others felt the debate was premature and the board should defer action on the application until the Federal Energy Regulatory Commission decides whether to license the 600-mile, \$5.1 billion project. FERC will have an open house from 5 p.m. to 9 p.m. Tuesday, Feb. 28 in The Highland Center for those wishing to provide comments in person on the draft environmental impact statement.

The board met in closed session two hours after hearing public comments and before hearing an afternoon presentation by Dominion. The audience shrank to less than half its size from the morning.

Southern Environmental Law Center executive director Greg Buppert told The Recorder that VOF should say no to the application. VOF “staff has been clear that Dominion should avoid easements.”



VOF “staff has been clear that Dominion should avoid easements,” said Greg Buppert of SELC.

Ridder prefaced the hearing by explaining she felt there had been some misinformation or misunderstanding about VOF. No group works harder to protect easements than VOF staff, she emphasized. “We have done everything we can to stop this pipeline,” Ridder said, adding that VOF has repeatedly told Dominion it should avoid crossing or intersecting open-space easements.

“All we can do is object,” Ridder said. “We can’t stop the pipeline.”

Ridder pointed out many easements have been avoided during the past two years of negotiations. To the extent the VOF has negotiated, she explained, the impact has been minimized. Ultimately the decision of whether to permit the pipeline does not rest with VOF but with FERC, Ridder added.



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“We can’t stop the pipeline.” Many in the audience stood when Ryan Hodges of Warm Springs asked the people from Bath County to rise. “I don’t feel the application meets the code at all,”

Hodges said. “It doesn’t meet our comprehensive plan, either.” He pleaded for VOF not to use the open-space land law “to create a back door for other corporations to undo all the work that has gone before.”

Steve Van Lear splits his time between Staunton and property in Bath County his family has owned for generations. VOF has an obligation to itself and to follow the VOF mission statement, he told the board. “Don’t stand behind FERC,” Van Lear said. “You need to stand in front of FERC.” He said VOF should oppose FERC as a matter of integrity.

Cowden holds easements, operates Fort Lewis Lodge, and owns land in the proposed pipeline’s path. He told the board he found 12 plans and 27 objectives in the comprehensive plan to be in conflict with the proposal. Neither is the Atlantic Coast Pipeline essential to the county, he said, adding, “Dominion does not value the hopes and dreams of rural landowners.”

Bath landowner Ellen Ford has conservation easements, but she cautioned against “anyone to enter a conservation easement with VOF.”

Little Valley landowner Bill Limpert said he and his wife considered entering a VOF conservation easement for their land that includes old-growth forest. “That won’t happen if you approve the application,” Limpert told the board.

Michael Godfrey of Swope has 730 acres of farmland in conservation easements. He explained the reason he lives in Virginia is that investors forced a pipeline across his land in North Carolina. He received half of what he paid for the land due to the pipeline. “No person in their right mind will buy a quality-of-life farm with this time bomb under it,” Godfrey said.

Pyles said the pipeline would cross 56 miles of Augusta, which he represents as a supervisor. He received a resounding applause after suggesting, “If they (Dominion) want to go somewhere else, then God bless them, but stay out of Augusta County.”

FERC’s draft Environmental Impact Statement describes Little Valley as vulnerable to severe harm, Gary Robinson said. The proposed pipeline would require removing a quarter mile of the top of Little Mountain, he added.

Addressing the statutory language of the open-space land act, Evan Johns, attorney for affected landowners Robbie and Robert Koontz, said if Dominion is really concerned about alternative resources, then it should consider natural gas and other routes.

Bath landowner Jeff Staples said he wanted to become an easement holder, but if a utility grabs land, then he would have to rethink that. He drew a long round of applause when he noted Hayfields Farm is beautiful, and Dominion should donate it to the state in recognition of the five years the company has operated as an unregulated utility.

Several speakers represented groups opposing the land swap.

Dominion says its applications are essential to the growth of an orderly energy system, Morgan Butler of Southern Environmental Law Center said. “That’s a far cry from being essential to a locality’s orderly growth.”

At the end of the day, the question of whether Dominion’s proposed open-space easement conversions are specifically necessary for the “orderly growth and development” of Bath County remained unanswered. Dominion skirted the issue, only citing more county tax money if the pipeline is built and cheaper electricity statewide. The “orderly growth” requirement is key to a law governing conversion of open-space easements the proposed Atlantic Coast Pipeline would cross, mostly in Bath.

It’s not at all clear whether Hayfields Farm meets the same conservation values as the easements, Rex Linville of the Piedmont Environmental Council said. He hoped the VOF board would protect the conservation easement land values.

David Perry of the Blue Ridge Land Conservancy said he understood the overarching authority lies with FERC, but VOF can deny Dominion’s application. The request is premature, does not meet the statute, and “raises giant red flags,” Perry said.

The open-space land act sets an extremely high bar not met by Dominion’s application, added Vickie Rodner of The Nature Conservancy. “Whether the pipeline is needed is not relevant,” Rodner said, adding a proposal for compensation needs to wait until after avoidance and mitigation have been achieved.

The conversion proposal “is a big mistake,” said Lynne Cameron, past president of the Virginia Wilderness Committee, adding the biggest threat to land is fragmentation, and the proposed pipeline would fragment some of the greatest expanses of forestland on the East Coast. Cameron said she has been leading hikes to the area of the 10 easements and has determined the pipeline would impact the area’s scenic beauty. “Hayfields Farm might provide some public access, but the easements offer more.”

Landowners entrust VOF with their life savings, Voices from Bath co-chair Mary Hodges said. “You are poised to make a decision before FERC has made a decision,” Hodges said told the board. “Do not abandon us and allow these conversions.”

An energy supplier and other interests to the east of Nelson County expressed support for the proposed land swap.

Virginia Natural Gas signed up as a partner with Dominion because it had to curtail delivery to large customers during the polar vortex of 2014, president Jim Kibler said. “This (pipeline) is a big deal for Hampton Roads.” He said pipelines are operated on open-space land all the time, and the need for natural gas grows daily.

John Snoddy of Kyanite Mining Corp., Buckingham County’s largest employer, supports the pipeline because the company plans to switch from oil to natural gas to fuel its kilns for producing high-temperature application materials.

The Atlantic Coast Pipeline is “absolutely essential to Cumberland County” and “critical to any development at all,” said county administrator Vivian Giles. She urged VOF to allow the proposed pipeline to cross easements.

Madeline Abbott, who owns several farms in southside Virginia, said there was a pipeline five miles away from one of her properties and it was not invasive. “I have no doubt the project is not only safe but much needed.”

Five of the 11 affected VOF conservation easements were represented on video. Robert Koontz spoke against the land swaps of the Wilderness and the Koontz properties. “We hope VOF would stand with us,” Koontz said. “If you vote to approve before FERC approves this route, that’s a surrender. What landowner would put land in a conservation easement when VOF would swap it? We regret our decision.”

Three others spoke in favor of the conversions.

“It suited me,” affected landowner and pipeline proponent Franklin Berry said on video. The pipeline route “went through the best place on our whole property,” he said of his roughly 115-acre easement. The video included a still photo of him with a deer he killed in Pennsylvania on a pipeline easement. “I hunt where there are pipelines,” he said.

Dominion’s right of way agent “was helpful keeping the dogs from being hit” by vehicles, said Lester Bright on video. He has 342 acres in a VOF conservation easement and supports the proposed pipeline’s path on his land. “I feel underground is safer than over ground. Everything will be just the way it is. I feel it’s the safest way.”

William Phillips and Cindy Revercomb have about 703 acres in an easement and favor the path on their property. Dominion moved the proposed route a mile away from a 500-gallon per minute spring that serves three houses, and decided to follow an abandoned railroad bed on the proposed route, they said.

“We have made every effort to avoid conservation easements,” said Dominion external affairs manager Molly Plautz. FERC’s draft EIS “affirmed our route.” The final EIS is expected in June, Plautz added.

Dominion has reviewed the comprehensive plans of each locality and none of them constrain natural gas infrastructure, Plautz said. For each concern identified, Dominion has developed plans and studies to mitigate, avoid or minimize conflicts with comprehensive plans, Plautz said.

“Significant benefits” to Augusta, Bath, Highland and Nelson counties would arrive in the form of property taxes — \$25 million in the first seven years — and in reduced energy costs: \$243 million across the state annually, said Dominion director of natural gas infrastructure development Brian Wilson.

Dominion argued The \$4.25 million value of Hayfields Farm outmatches the \$800,000 value of the 10 easements, and because it adjoins a state wildlife management area, conversion would offer the potential for additional public benefits under state management.

David Whitehurst, director of Virginia Department of Game and Inland Fisheries Bureau of Wildlife Resources, said Hayfields offers “an awful lot of wildlife habitat.” He cited management challenges, as well as aquatic and recreational opportunities.

Harry Hibbits, VOF assistant director of stewardship, outlined the affected properties, conservation values and features directly impacted by the project from west to east, including:

- The Teague property in Highland County, where the project would impact six acres of intact forest, over an acre of important soils, 1/4 acre of steep slopes, three water features and native brook trout habitat along Stoney Run, located in the center of the property;
- Normandy Capital property in Bath County, where the project would impact eight acres of intact forest, 3.5 acres of important soils, 1/2 acre of steep slope and the property lies in the Burnsville Cove Conservation Site, an area identified by the DCR’s Division of Natural Heritage as having significant karst resources including notable caves and sinkholes;
- The Rice property in Bath, where the project would impact three acres of forest, almost a half acre of important soils 1.5 acres of steep slopes, and the property lies in the Windy Cove Conservation Site, a 23,000-acre area identified by DCR’s Division of Natural Heritage as having important karst resources;
- The Campbell property in Bath, where the project would impact less than an acre of forest, less than half an acre of steep slope and the property is in the Windy Cove Conservation Site for its important karst resources. The property also contains over 4,700 feet of streams, which aid in maintaining water quality in the Cowpasture River watershed;
- The Revercomb property in Bath, where the project would impact 6 3/4 acres of intact forest, over eight acres of important soils, numerous tributaries, and the property borders the George Washington National Forest on the east and west for over 7,000 feet;
- The Koontz property in Bath, where the project would impact over three acres of forest, over 2.5 acres of important soils, numerous tributaries, and the property is bound on all sides by either the national forest or other VOF open-space easements;
- The Wilderness property in Bath, where the project would impact over three acres of forest, more than three acres of important soils, numerous tributaries, and the property is also bound on numerous sides by the George Washington National Forest and a VOF open-space easement;
- The Bright property in Bath, where the project would impact 2.5 acres of forest, nearly one acre of steep slopes. Here the route would follow the western edge of the property, along Brushy Ridge, also known as Mary Ridge, which has a very high level of ecological integrity based on data from DCR. The George Washington National Forest is to the west;

- The Berry property in Bath and Augusta, where the project would impact over 1.5 acres of forest and nearly one acre of steep slopes. The route would cross the eastern edge of the property, continuing along Brushy Ridge, which also has a very high level of ecological integrity based DCR data. The George Washington National Forest is along the southern boundary.

Hibbits went on to describe Hayfields Farm. “Hayfields Farm is located approximately 9 1/2 miles from these nine VOF easements,” he said. “It is within Highland County and consists of approximately 1,034 acres. It is found 7.5 miles south of McDowell and shares a 1.3-mile boundary with the Virginia Department of Game and Inland Fisheries Highland Wildlife Management Area to the southeast. This property includes:

- About 410 acres of intact forest with high conservation values as designated by the Virginia Department of Forestry;
- About 350 acres of prime soil or farmland of statewide importance;
- Nearly 215 acres of steep slope terrain;
- Over one mile of the Bullpasture River, known for native brook trout habitat; and
- Three dwellings and multiple farm buildings, including a cabin dating to the 1820s.

In a prepared statement following the hearing, Dominion spokesman Aaron Ruby said, “The 1,100 acres of pristine, undeveloped lands we’re proposing to donate to VOF is almost 21 times greater than the 55 acres that would be impacted by our pipeline crossings. We continue to believe this is a fair and appropriate proposal. We firmly believe it’s consistent with the VOF’s mission and will advance the goal of expanding land conservation in Virginia. The Hayfield Farms and Rockfish River properties are truly magnificent properties, and they will add tremendous conservation value to the VOF. Most importantly, our proposal will allow residents of these communities to enjoy the beauty, ecological integrity and recreational use of these properties for generations to come.”

Further, Ruby added, “We’ve always strived to balance the urgent public need for this project with the need for responsible environmental stewardship, and we believe our application reaches that balance. We’ll continue to work with the VOF board and staff to address any questions or concerns they may have, and we look forward to the board’s continued consideration of our application.”