

WHY VOF MUST NOT CONVERT ITS CONSERVATION EASEMENTS

As part of its proposal to build a 42-inch-diameter natural gas pipeline across Virginia, Dominion Resources (Dominion) wants to cut through ten properties in the central Appalachians that are protected by conservation easements. Dominion has submitted an unprecedented request asking the Virginia Outdoors Foundation (VOF) to abandon the easements' protections on portions of those ten properties and allow the land to be "converted" to right-of-way for the construction and operation of its pipeline.

VOF must deny Dominion's request at its February 9, 2017 meeting for the following compelling reasons:

Granting the conversions would be contrary to Virginia law.

A fundamental premise of conservation easements is that they are intended to protect a specific property in perpetuity. For that reason, Virginia law narrowly limits the instances in which public bodies like VOF may approve conversions of land over which they hold an easement.

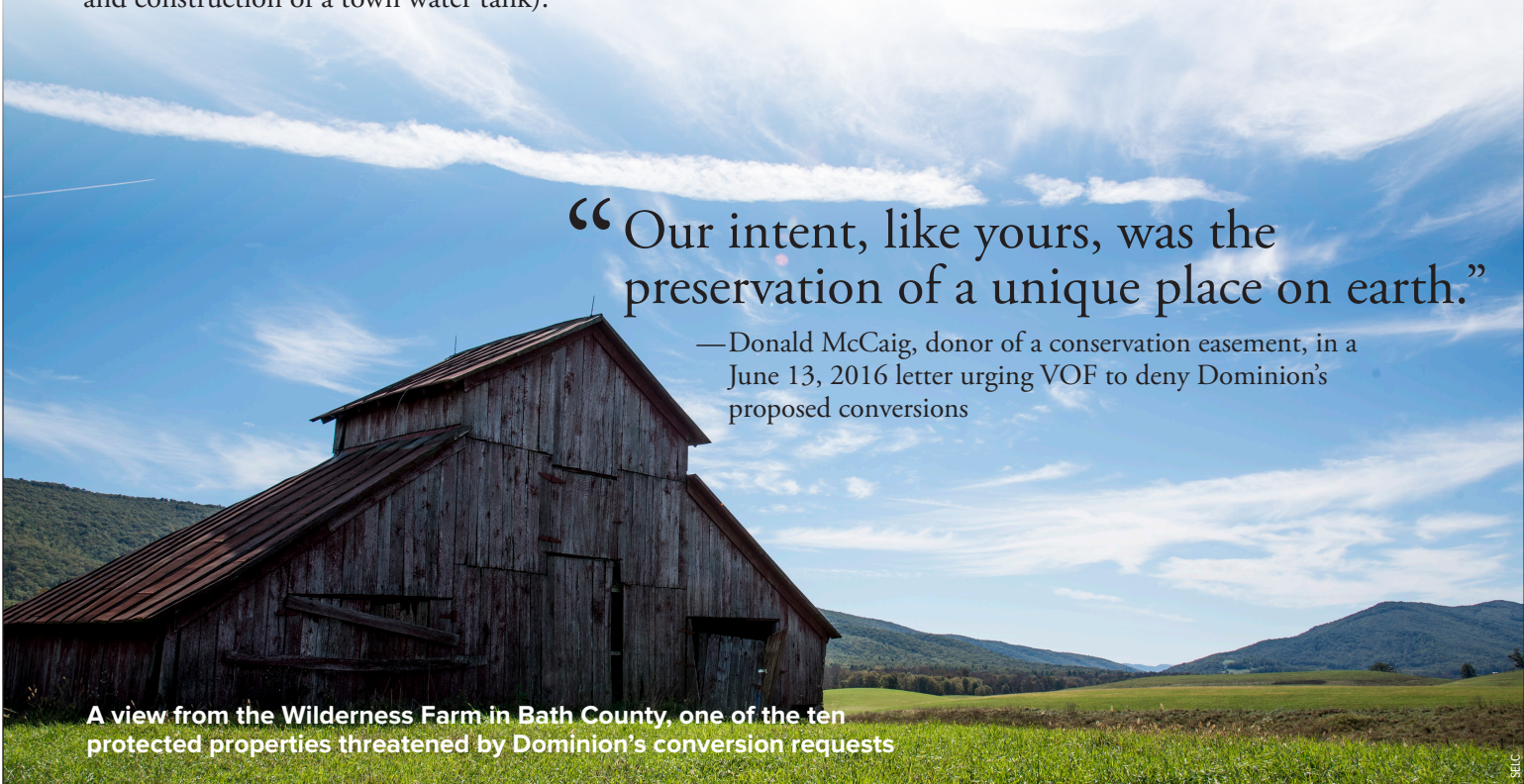
Specifically, Va. Code Ann. § 10.1-1704 allows land protected by a conservation easement to be converted out of conservation use only if the proposed conversion is both: (i) "essential to the orderly development and growth of the locality," and (ii) "in accordance with the official comprehensive plan for the locality" in which the parcel is located.

The failure of Dominion's proposed conversions to meet either one of these statutory requirements, let alone both, is most evident in the fact that three of the four localities in which the protected properties are located (Bath, Augusta, and Nelson Counties) have formally expressed opposition to the pipeline or the proposed conversions. (The fourth locality—Highland County—has not taken a position.) If the very localities the statute refers to have not deemed the pipeline or the requested conversions to be essential to their orderly growth and in accordance with their respective comprehensive plans, VOF cannot reasonably make those determinations itself.

Dominion has argued that the pipeline is essential to Virginia's localities as a whole and to a "comprehensive energy system," but such claims—even if they were true—are irrelevant to VOF's responsibilities under Virginia law. The only relevant question before VOF is whether the proposed conversions satisfy the statutory requirements with respect to each specific locality: Bath, Augusta, Nelson, and Highland Counties.

The conversions would be unprecedented in both scope and purpose.

Over the five decades it has been in existence, VOF has approved only 13 statutory conversions for a total of 38 acres. These have typically been small conversions (the majority have been less than one acre) and for uses that would provide a direct benefit to the locality where the property was located (e.g., improved access to public schools and construction of a town water tank).



“Our intent, like yours, was the preservation of a unique place on earth.”

—Donald McCaig, donor of a conservation easement, in a June 13, 2016 letter urging VOF to deny Dominion's proposed conversions

A view from the Wilderness Farm in Bath County, one of the ten protected properties threatened by Dominion's conversion requests

Against this backdrop, Dominion's request is unprecedented in scope and purpose. If granted, it would permanently convert nearly 55 acres of protected land—150% of the total acreage converted in VOF's 50-year history. In addition, 73 acres would be temporarily converted for things like construction staging areas. And hundreds to thousands of additional acres on those properties and adjacent rural lands would be affected by the permanent changes the pipeline would inflict on the landscape. Further, unlike prior VOF conversions, the project would provide little benefit to the affected localities, as the pipeline would not deliver natural gas to customers in Bath, Augusta, Nelson, or Highland Counties.

Beyond the direct damage to the parcels at issue and the surrounding landscape, approval of Dominion's conversion requests would set a destructive precedent that would weigh heavily on VOF to consent to other destructive and large-scale conversion requests like this—as well as any less intrusive projects—in the future.

The conversions would undermine public trust in Virginia's conservation easement program.

Perhaps the most lasting damage from a decision to grant the conversions would fall on the integrity of Virginia's conservation easement program. One of the key factors motivating landowners to donate or sell conservation easements is their personal attachment to a specific parcel of land and their desire to protect that property and landscape for future generations. If VOF grants these conversions, current and prospective easement donors in Virginia will no longer be able to rely on the crucial expectation that their land will be permanently protected.

Denying the conversions sends a strong signal to FERC and to easement donors that conservation easements mean something.

Ultimately, the Federal Energy Regulatory Commission (FERC) has the final word on the pipeline. FERC has not yet approved the pipeline or a specific route, and a decision is not expected until later this year at the earliest. Further, FERC has raised questions about the impacts the proposed route would have on VOF conservation easements, and a vote by VOF denying the conversions could help convince FERC to require Dominion to redraw its proposed route to avoid the protected properties entirely. A vote to approve the conversions, on the other hand, would be a green light to FERC to approve the route.

Even if FERC ultimately grants Dominion the authority to use eminent domain to extinguish the easements over VOF's objections, a VOF vote on February 9 to deny these conversions would send a vital message to current and future easement donors that VOF takes its conservation commitments and Virginia's easement program seriously. And no offer Dominion could make in exchange for VOF approval is worth more than that.

“Given the promise that VOF would protect these lands in perpetuity, and that the state would defend our easements, we chose the VOF over private land trusts to hold our easements. Now, however, if VOF caves to Dominion, the promise of future protection will be broken.”

—Fred and Christine Andreae
of Bentonville, VA, in a
January 12, 2017 letter to VOF

To add your voice to those asking VOF to stand strong, please email VOF's Executive Assistant, Bobbie Cabibbo, at bcabibbo@vofonline.org. Please include your mailing address and daytime phone number, and address your comment to Stephanie Ridder, Chair of the VOF Trustees.