

# The Recorder

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## VOF yet to weigh land swaps

### Easement decision up to foundation, feds say

BY JOHN BRUCE • STAFF WRITER



*Anti-pipeline protesters hoisted signs and banners attendees arrived for Saturday's gubernatorial debate Hot Springs.*

MONTEREY — The Virginia Outdoors Foundation board has not yet scheduled consideration of Dominion's proposed land switches in Bath, Highland and Nelson counties to allow crossing conservation easements by the proposed Atlantic Coast Pipeline.

The Federal Energy Regulatory Commission's final environmental impact statement states the decision rests with the VOF.

"We note that ... pipeline operators must obtain easements from landowners and land-managing agencies to construct and operate natural gas facilities, or acquire the land on which the facilities would be located," the final EIS from FERC states. "As such, (Dominion) would need to acquire long-term easements from the VOF to construct and operate the new project facilities on VOF-held easements.

"It is acknowledged that a VOF open-space easement limits present and future property development rights, and that activities such as establishing rights-of-way or other easements require advance notification and/or written approval from the VOF. However, these negotiations are between the landowner, VOF, and Atlantic.

"While FERC has disclosed the impacts of the project on these areas, the VOF would determine if the project is compatible with the goal of each easement crossed, would determine whether to approve or not approve Atlantic's permit request, and, as necessary, include ... conditions as part of any permits or approvals."



*Two pipeline supporters arrived late Saturday but were greatly outnumbered by anti-pipeline protesters. (Recorder photos by Geoff Hamill)*

The next scheduled foundation meeting is Sept. 28, but the board has not yet determined if the trade-off would be on the agenda. “Now that the final Environmental Impact Statement is out, we’ll work with the trustees and counsel to determine next steps,” spokesman Jason McGarvey said this week.

The proposed pipeline route would cross 8.7 miles of easements held by the VOF; they include:

- Teague — A 737-acre property used for cattle and recreation.
- Normandy Capitol — A 794-acre property, nearly all of which is classified as high priority conservation area adjacent to the George Washington National Forest. About 360 acres lies within the Burnsville Cove Conservation Site; and more than 9,200 acres has been identified by as having important karst resources. The property lies within the area designated by the National Audubon Society as the Allegheny Highlands Important Bird Area.
- Rice — A 298-acre property adjacent to the GWNF and other lands protected by open-space easements. The property lies within the area designated by the Audubon Society as the Allegheny Highlands Important Bird Area.
- Chandler — A 53-acre property adjacent to the GWNF and another property in open-space easement within the Windy Cove Conservation Site, which includes important karst resources.
- Revercomb — A 701-acre property used to raise cattle, hay, and crops adjacent to the GWNF. A portion of the easement lies within the Windy Cove Conservation Site.
- The Wilderness LLC/ Koontz — A 729-acre property adjacent to the GWNF. The primary dwelling on the property is historic, dating to 1797.

- Bright and Wilfong — A 330-acre property used to raise cattle and to grow hay. Upland hardwood forests are selectively timbered. It, too, is adjacent to the GWNF.
- Berry — A 113-acre property that consists of small farms and hunt camps, adjacent to the GWNF.
- Saunders/Scott Timberland — A 356-acre property.
- Brandon — A 191-acre property.

FERC noted open land uses and vegetation types would continue following construction, but forested areas would experience a permanent impact as a result of converting the right of way to open land. “This, in turn, would result in different vegetation and wildlife,” the agency said.

Dominion is “evaluating route variations or adjustments to avoid or minimize impacts on the remaining easements. For easements that cannot be avoided, as appropriate, (Dominion) would compensate the landowner for the right of way easement and losses and penalties, if any, related to the conservation easement. (Dominion) is working with VOF to develop plans to minimize and mitigate construction and operation impacts of the project,” FERC said.

“In addition, Atlantic has proposed to provide two high quality open-space parcels as compensatory mitigation to VOF, in fee title, for the impacts associated with ACP — the Hayfields Farm in Highland County, and the Rockfish River property in Nelson County,” the agency added.

“Regardless of the degree of compensatory mitigation, we note that the VOF has asserted the ACP should avoid crossing VOF open space easements. Through the easement, the VOF has an interest in the specific conservation values of a property and a legal obligation to protect these values. Per the VOF, VOF easements in general provide public benefits by protecting in perpetuity significant tracts of mostly undeveloped land that contribute to the protection of water quality, productive soils, natural heritage resources, historic resources, and scenic viewsheds.

“The VOF also notes that Virginia’s investments in conservation could be jeopardized by the project, and the degradation of protected resources may also result in a loss of confidence in the effectiveness of open-space easements by the public.

“We received numerous comments on the draft EIS regarding placement of the pipeline on VOF easements. Comments from the VOF noted that the construction, maintenance, and operation of ACP is inconsistent with the open space protections afforded by the subject easements, and that ACP would constitute a conversion of the easement property as outlined in Virginia Code § 10.1-1704. The VOF further states that the impact associated with this conversation would be very significant.”

VOF requested the following conditions be included with the final EIS. If the Board of Trustees finds that ACP applications meet the requirements of Section 10.1-1704, VOF staff would recommend the following conditions:

- Issuance of a certificate by FERC and all other necessary state and federal permits for the proposed ACP route crossing this easement.

- VOF approval and sign off of final right of way easement permitting only a 50-foot-wide easement for one 42-inch-diameter underground natural gas pipeline and the associated permanent access road easement. No 4-403 Land Use, Special Interest Areas, and Visual Resources above-ground structures are permitted within this permanent right-of-way except for above ground pipeline markers as required by law.

- (Dominion) transfer of fee-simple interest to VOF of the proposed 1,034-acre Hayfields Farm Property and Rockfish River Parcel as Substitute Land for the converted areas of the open-space easement property.

- The acceptance of funds from Atlantic to: serve as a Stewardship Fund to support the VOF with the operation and management of the substitute properties; and partially offset the VOF's unreimbursed costs associated with the ACP.

“Additional site-specific conditions may be developed with (Dominion) representatives and the current landowner of the easement property such as minimizing the width or extent of the permanent easement and construction footprint where feasible, developing pollinator corridors, and restoring other natural habitat areas to help preserve the purpose of the open-space deed of easement,” FERC said.