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Pressured agency fields fears over future of conservation program

BY JOHN BRUCE • STAFF WRITER

MONTEREY — Early this year, the Virginia Outdoors Foundation received more than 1,200 pages of statewide messages opposing Dominion's applications to convert open-space conservation easements and clear the way for the planned Atlantic Coast Pipeline.

The Recorder obtained a second batch of emails and other correspondence through the Freedom of Information Act, most of which were sent in January and early February by landowners and others concerned the proposal would wipe out the tax-dollar funded conservation easement program.

Landowners with VOF easements use words like disturbed, horrified, puzzled, disappointed and betrayed to illustrate their feelings about VOF considering the trade-off, despite the agency's continued opposition to the pipeline project, and talk of the General Assembly cutting off its funding.

Included in the volumes of messages is a memo from a Dominion law firm arguing the applications for "diversion or conversion" of 11 easements affected meets legal criteria of "essentiality" and "accordance with the official comprehensive plan" as section 10.1-1704 of the Virginia Open-Space Land Act requires.

According to Dominion's attorneys, the proposed pipeline would be essential to the orderly growth of localities with VOF easement crossings because of \$25 million in property tax payments over the first seven years of operation. Bath would get \$4,131,461, and Highland would get \$1,661,555, they claimed.

Employing local residents, support from local vendors, economic benefits to community services such as hotels and restaurants, as well as \$243 million in reduced annual energy costs across the state would be essential, the company contends.

In terms of orderly growth, Dominion said it has an "open tap policy" allowing end-users to "tap into the pipeline (which) would promote not just orderly economic development but also necessary critical infrastructure such as schools and hospitals."

Such taps start at \$5 million, a figure the Highland County Economic Development Authority deemed unaffordable.

As far as being “in accordance with” the comprehensive plans in affected counties, Dominion attorneys assert the phrase means the same as “not inconsistent with,” under state law. Because none of the comprehensive plans of counties with VOF easements specifically prohibit gas pipelines, Dominion concludes pipelines are welcome.

Dominion “recognizes that several of the affected localities that oppose the project have raised concerns over protecting karst areas, conserving prime soils, protecting water resources and avoiding steep slopes,” a company memo states. “For each and every concern that has been identified, (Dominion) has already developed plans, procedures, ‘best in class’ programs and other practices to address, avoid, minimize and/or mitigate the concern.

“Far from being in conflict, the proposed project is actually consistent with key aspects of the local comprehensive plans,” the law firm argued.

For example, the Bath County Comprehensive Plan includes a “smart growth principle,” whereby the county “should promote infrastructure to be added in a coordinated manner.”

Highland’s plan says Virginia “has a growing need for reliable and affordable energy that is environmentally friendly and produces the resources necessary for economic development” and the county will “balance growth by encouraging a mix of compatible uses in areas with appropriate utility and infrastructure support.”

Bath County has gone on record opposing the proposed pipeline.

Highland has registered a list of concerns, and is likely to provide an update to federal regulators and the congressional delegation. The Highland EDA is officially opposed to the project.

In other correspondence, Dominion downplays the impact of the proposed easement conversions, saying only 54.59 acres, or 1.2 percent, of the roughly 4,500 acres would be affected by a route that dissects most of the easements.

In return, VOF would gain bragging rights to the 1,034-acre Hayfields Farm, Dominion said. While roughly seven miles away in mountainous terrain, Hayfields allegedly carries a real estate value about 20 times as that of easement land proposed for exchange.

In conclusion, Dominion said it “believes that VOF has a good faith and reasoned basis to conclude that the statutory factors have been satisfied.”

Less than 2 percent of the comments VOF received before its Feb. 9 board meeting agree. Most of the correspondence arrived in response to an appeal to VOF landowners across the state launched by Piedmont Environmental Council.

“It is my understanding that this would be the largest conversion of open space land in your organization’s history,” Mary Blanchard told VOF. “I am hoping that the board votes no. As a landowner in Highland County, I am concerned with many issues that pertain to the Atlantic Coast Pipeline. Now I am grappling with the meaning of land conservancy in regards to land protection. To give one’s land to a conservancy to be protected and then to have an easement ultimately granted to a private company seems to breach that trust.

“Is this pipeline essential to the orderly development and growth of Bath County? I do not believe that the pipeline is essential to orderly development and growth of Bath County, nor do I think the landowners

intended to have a pipeline put across their property when putting their trust in your organization. I thought VOF, the landowners, and Bath County were partners to some degree. What public entities have come forward to state that this pipeline is essential to Bath County?"

The Dominion Pipeline Monitoring Coalition told VOF, "While the communities along the route will not receive benefits, they will bear many costs, including loss of property values and related property tax revenue, loss of tourism-related economic development, threat to public and private water supplies, and safety risks from possible leaks, accidents and explosions."

The Clarke County Easement Authority told VOF that it's "extremely concerned" about Dominion Resources application to convert easements. "We believe that accepting this proposal would be precedent-setting and could jeopardize the future of easement programs across Virginia. We also cannot understand why VOF is considering this proposal now, because Dominion Resources does not actually have an 'approved' route yet. It seems to us that this action on VOF's part is very premature and unnecessary at this time.

"We recognize the importance of VOF as the partner of all land conservation organizations holding easements across the commonwealth, and also applaud their past history of being a champion for conservation and for its thousands of easement partners across the commonwealth. We recognize that (Section) 10.1-1 704 provides an avenue by which, under very limited circumstances, land from a state agency-held easement can be diverted from open-space use. However, diversion at this scale is entirely unprecedented in Virginia. Further, it is our understanding that localities in the region have determined that the project is inconsistent with their comprehensive plans and not essential to the orderly growth and development of the locality, both requirements for approving a conversion," the authority said.

"Given the promise that VOF would protect these lands in perpetuity, and that the state would defend our easements, we chose VOF over private land trusts to hold our easements," Fred and Christine Andreas told the foundation. "Now, however, if VOF caves to Dominion, the promise of future protection will be broken. VOF easements will be without enduring protective value. We urge VOF to stand firm, even in the face of threats to cut off VOF funds. If the Virginia legislature defunds VOF, it will have to 'sleep' until the legislature changes. A sleep, be it four or eight years, is a better choice than betraying trust."

"While my property is not currently threatened by the ACP, I did not make my gift of easement to VOF with the idea that VOF would later allow an industrial bully to ram a giant pipeline across my land," wrote John Sweet of Mustoe. "I am certain that those Bath County landowners who are threatened feel the same way. The ACP is not essential energy infrastructure. It is a money-grabbing scheme by Dominion to extract as much money as it can in the shortest possible time and damn the consequences for others."

"We believe VOF needs to oppose FERC originated authority for eminent domain condemnation of conservation easements as a whole," Ryan and Mary Hodges said. "Especially in this case, where that tool is loaned to a for-profit company's preferred need; Dominion does not have to pass through VOF easements. It is simply the cheapest route for them to take. It's the route that offers them the profit potential they find acceptable. We are aware that there is a lot of case law that supports a federally originated condemnation of state conservation easements, but we believe VOF needs to publically challenge that history. We think of VOF easements as perpetual, superior, and defended by the Virginia Attorney General. We believe we are looking at the beginning of the end of VOF easements if Dominion is allowed a backdoor key to void easements, and the public realizes that the worst fears we have for our land are not protected or defended by VOF."

“If the VOF accepts this exchange, the reputation and mission of the VOF will be permanently damaged,” Norman Bell told the foundation. “When landowners place their property under your conservation easement, they do so to protect the land as it is for future generations. Altering the conservation easement conditions to give a bullying corporation the right of way it needs to make huge private profits makes no sense and is contrary to your mission. I have no doubt that the Virginia Outdoors Foundation will no longer enjoy a reputation as the protective champion for Virginia’s beautiful open spaces. This acceptance of corporate profit over conservation will serve notice to the citizens of the commonwealth that they no longer have an effective shield for lands that they treasure and love. I doubt that you want that to happen under your leadership.”

Richard Brooks wrote, “Beginning more than a decade ago, my family forged three easements with the Virginia Outdoors Foundation to protect our farm in Millboro, a farm that has been a focal point for our family since 1945. This commitment was meaningful for our family because we share your values, particularly when it comes to water quality. Certainly, we wanted to protect our land and our magnificent view shed, but more importantly, we wanted to protect our 1.5 miles of the Cowpasture River from any development that might negatively affect it. This was a multi-generational commitment for us: three generations participated, and three generations agreed. Today, my family is uncertain about VOF’s commitment to its original values and to landowners who still believe that these easements are inviolable. I urge VOF to: support the clean water, wildlife habitat, working farmland, rural character and scenic views protected by conservation easements; preserve the essential trust that exists between landowners and VOF, critical to the future of land conservation in Virginia; deny Dominion’s unprecedented and irresponsible request to permanently impair conservation values on any conserved properties. Please stand with the easement holders who trusted you and your stated values. Tell Dominion that easements can’t be traded and that the ACP doesn’t belong on protected land.”

Greg Buppert of the Southern Environmental Law Center told VOF, “Unlike Dominion’s proposal, each of the previously approved conservation easement conversions also provided a clear benefit to the locality where the property was located. For instance, in 2006 VOF approved the conversion of 0.4 acres in Fauquier County to provide space for a driveway to a school. The locality supported the small conversion. Similarly, in Franklin County in 2000 and 2007, VOF approved the conversion of 0.87 acres and 0.24 acres respectively to improve access to public schools. Other approved conversions were made to facilitate construction of a town water tank, expand a county-owned landfill and to make room for construction of a larger volunteer fire station.

“These approved conversions, which were very small and almost exclusively expansions of existing rights of way, improved access to schools and allowed for updates to essential services like waste disposal, water supply, and fire protection,” he said. “The proposed route through properties protected by conservation easements is inconsistent with the comprehensive plans of all four affected counties. The Board of Supervisors in Bath County opposes any approval of the Atlantic Coast Pipeline and the Bath County Planning Commission unanimously passed a resolution against the pipeline, contending that the pipeline would be in direct conflict with, or cost the county significant resources to mitigate six of the goals and 20 of the objectives adopted in the Bath County Comprehensive Plan. One of the objectives that would be thwarted by the pipeline is the development and support of initiatives designed to ‘preserve Bath County’s rural historic character,’ including conservation easements.

“If approved,” Buppert continued, “the pipeline would affect eight ecologically important conservation easements across Bath County ... The pipeline is incompatible with Highland County’s comprehensive plan.

In recognition of the importance of preserving the county's unique rural character, Highland's comprehensive plan acknowledges that designated areas for development should be encouraged in lieu of random and scattered growth. The land protected by the conservation easement for which Dominion requests conversion is not located in an area designated for development, and therefore conversion is incompatible with the county's plan. The objectives of Highland's land use plan would also be undermined by the proposed route. The objective to maintain and promote Highland's special rural character would be undermined by the construction of a large industrial pipeline across lands protected for their rural value. Further, Highland's efforts to ensure that effective land use planning is kept in balance with the freedom and rights of individual landowners would be undermined by conversion of land that has been deliberately set aside for conservation."

Lynn Broaddus told VOF, "I am horrified to learn that the VOF easements, paid for in part by public dollars, are threatened by private energy interests. As so often happens, publicly protected open space is simply too inviting for developers looking for the path of least resistance for the project of the day."

"If the proposed exchange is allowed, you can expect multiple, similar requests from landowners, utility companies and public entities such as the Virginia Department of Transportation," said William Latane. "I also believe that landowners considering future easements should and would doubt the dependability of VOF as a partner. In short, I believe granting the proposed exchange would effectively gut the land conservation efforts of VOF. For those reasons, while I may support the concept of the ACP, I strongly believe VOF should deny the proposed exchange."

"We have a conservation easement in Highland County that is not in the Dominion projected path (though it was just a few miles from the earlier route)," wrote Carol Bandy. "From the viewpoint of an easement owner, I find the idea of a conversion totally unacceptable, to put it mildly. I know our easement was to save this piece of property for what it had that was unique. I expect that was the goal of most of the easement owners. There is no way a conversion can replicate another piece of property. Equal assessed property value has nothing to do with it. Had we known that Dominion would essentially claim eminent domain, and you would capitulate, we would never have done an easement. Dominion does not need this pipeline here (or anywhere). It will not bring electricity to the small areas, as I was told personally that the cost for a community would be prohibitive."

Rene Dennis wrote, "When the Dennis family placed our property in permanent conservation easement with VOF, it was with the contractual understanding that 'we grant unto the county and to the VOF and its successors and assigns forever and in perpetuity an Open Space Conservation Easement of the nature and character and to the extent hereinafter set forth over the property, the purposes of which are to preserve the environment of the property and to maintain permanently the natural and cultural values and the dominant scenic and agricultural character of the property.' This is a perpetual easement, with commercial and industrial uses prohibited. Clearly Dominion Resources Inc. is not only a threat to the intended conservation easements they propose to assault, but also to people, like us, the Dennis family, that entrusted their property to the promise that it would be conserved in perpetuity."

"We have two large tracts of land in Bath County that are under conservation easement with VOF — Meadow Lane Lodge and Cottages (owner is the Philip R. Hirsh Family Limited Partnership) and Fort Dinwiddie Farm (owners are Glenn and Philip R. Hirsh Jr.)," wrote Glen Hirsh. "These two properties together comprise over 1,300 acres and are separated from each other by two miles of the Jackson River. Our entire family supports the clean water, wildlife habitat, working farmland, rural character, and scenic

views protected by our conservation easement. To allow the ACP to cross any easement, let alone 9 or 10 of them, is an absolute betrayal of our trust,” she said.

“My land, these lands, were put into your care to protect and preserve them. It should not be allowed that you would destroy these properties and all creatures that live on them and/or swim the waters. Not to mention the financial ruin that these property owners and the surrounding property owners will suffer. VOF should not consider throwing all these people under the bus for Hayfields Farm. And in the end, if this goes forward and springs dry up, you may find that you have created a catastrophe of monumental proportions. Recently, I received an email from VOF asking me what I have done to my property: roads, buildings, timber, and could she come for a visit. In the past, I would have welcomed her but today, I think VOF is on the verge of losing not only my cooperation but also future easements. Everyone trusted you, shame on you if you allow this to happen.”

Melissa Hollands asked, “What are the tax implications of this pipeline ‘taking’ for these landowners? Why not just tell the landowner they can go ahead and let someone explore for gas or oil, or some other mineral? Pick one. Those landowners are precluded by most of these easements from so doing. What right does the VOF or the commonwealth have to set aside these restrictions? I have read a lot of easements in my day. I don’t remember seeing a provision for anything remotely resembling what is now proposed vis-a-vis this pipeline path to benefit a privately-held, for-profit entity ... This proposal is absurd.”

“As residents and property owners of 44 acres in Highland County, we feel strongly that the foundation’s commitment to the 10 property holders who put their faith in Virginia’s conservation easement program should be upheld,” said James and Janine Hughes. “As property owners who would consider placing some, if not all, of our 44 acres into a conservation easement at some time in the future, our confidence in the integrity of Virginia Outdoors Foundation and Virginia’s conservation easement program would be completely eroded, should you grant Dominion Resources’ request. The proposed Atlantic Coast Pipeline is not a good fit with Highland County. The potential benefits stated by Dominion Resources (basically, tax revenues) are far outweighed by the losses we would see in terms of future growth and development. Highland County’s comprehensive plan emphasizes continued development of tourism and attraction of new residents to the county. Both of these would suffer with the pipeline coming through our county.

“Furthermore,” they continued, “the plan’s emphasis on attracting small industry to our area wouldn’t be helped — Highland County would have no access to the natural gas flowing through this pipeline. The Virginia Outdoors Foundation has a history of being very judicious and conservative in granting conversions of conservation easements in the past, strictly following the criteria stipulated in Virginia codes. We trust that you will continue to follow that path.”

“I remember the conservation easement program was fairly young when my mother, Anne McGuire, inherited our Bath County farm from my father, Lockhart. What you, as a board, are facing right now is exactly the kind of decision our family was entrusting you with — to do the right thing — when we put the property under conservation easement,” wrote Amanda McGuire. “If it had ever occurred to us there would be a risk the outdoors foundation would cave to big energy, we certainly never would have chosen to do this. While we may not be one of the 10 properties that are affected by the Atlantic Coast Pipeline, we’re very aware, ‘There but for the grace of God go I.’

“Recently,” she added, “some Bath and Highland residents were reminded that the corridor opened up by this unnecessary infrastructure could be used well into the future for anything other transport companies may desire. This is a huge mistake, and goes contrary to everything the Virginia Outdoors Foundation

stands for. It was enough that you compromised values around the issue of the battlefield at Cross Keys, please do not make this a precedent for other conservation cases to come across the state and the country. I apologize for any scolding tone. I know you are in an extremely difficult position, and under a lot of pressure from a Goliath, but as has been pointed out by many others, you could still stand up for what is right. My husband and I have been living here on the farm beside the Cowpasture River since 1994. Now our children also consider it home.

“Our vacation rental business grows more each year, and guests come back again and again knowing there is no place like it anywhere else,” she said. “We are just a mile downstream from Fort Lewis Lodge, and it is impossible to imagine the impact would have on their property and business. None of this addresses the countless families throughout our area who rely on the many springs for their drinking water. This is an issue Dominion has barely addressed in all of its planning and talk of mitigating damage. There is no mitigating a damaged water supply any way, in accordance with the plan. For an entity such as Dominion to take a step beyond that, and to cause harm to properties whose owners were planning very specifically, and at their own expense for legal counsel, to protect their land, is exponentially destructive. The code also spells out a conversion of easement land must be ‘essential to the orderly development and growth of the locality.’ Again, the pipeline itself, and thus the conversion of those easements are as far from essential as they could possibly be. Please consider carefully the opportunity you are faced with today. Vote to oppose the conversion of 10 properties to allow the ACP to progress. The Commonwealth of Virginia, conservationists from much farther afield, and just average citizens who have no alternative drinking water are watching carefully, and hope you will act in favor of truth and justice.”

The VOF board meets next March 30 at a location to be announced.

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