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Board Finalizes Terms for Pipeline Conversions



Following the largest, most rigorous review for open-space conversion under the Virginia Open-space Land Act in the law's 50-year history, the Virginia Outdoors Foundation's board finalized the terms for conversion by two natural gas pipeline developers—Atlantic Coast Pipeline and Mountain Valley Pipeline—that sought permanent construction and maintenance rights-of-way on 11 VOF easements in Highland, Bath, Augusta, Nelson, and Roanoke counties.

"Conversion or diversion," as described in the Open-space Land Act, allows development to occur on protected open space when the developers demonstrate public need and provide substitute land with greater conservation value. In conversion, the protective restrictions remain in place, usually through an easement. In diversion, the protections are removed.

The conversion applications were accepted at a public hearing on October 16 in Richmond after three years, three previous public meetings, and hundreds of comments from organizations and citizens both for and against the applications. Since learning about the projects in 2014, VOF pushed for avoidance of all easements and successfully got both pipelines to avoid at least three dozen other easements (the MVP pipeline now does not cross any VOF easements; the application was for a permanent access road). When it became clear in July that total avoidance would not be an option, VOF focused its efforts on minimization and mitigation as prescribed in the Open-space Land Act—a process that has been used 14 times in VOF's history, though never on this scale.

Siting and approval of interstate gas pipelines is determined by the Federal Energy Regulatory Commission (FERC) under the Natural Gas Act. In VOF's decision, the trustees found that the developers failed to demonstrate the projects are "essential to the orderly development and growth of the locality" under state law, but that this requirement is superseded and preempted by the Natural Gas Act, which grants the developers the power of federal eminent domain. Trustees also determined that the Natural Gas Act does not strip VOF's authority to require substitute land of greater conservation value as outlined in the Open-space Land Act.

The board unanimously adopted two resolutions that included several conditions, such as restrictions on the width of the rights-of-way, the transfer to VOF of more than 1,100 acres of substitute land in Highland, Nelson, and Roanoke counties, and the transfer

of \$4.075 million in stewardship funding for the long-term care and maintenance of those properties. The VOF easements, which prohibit above-ground structures, will remain in place.

Eight environmental groups spoke against the conversion requests at the October meeting. Some argued that condemnation was a better option even if it meant VOF conceding mitigation and losing the easements and their conservation values entirely.

VOF board chair Stephanie Ridder responded, "I don't understand how people can say that we would do better to have these easements condemned by eminent domain. Were it my choice, I would stand in front of the pipeline and stop it, but that's not going to work. I do think it is going to have harmful effects on the environment, and particularly the water, and it breaks my heart that that's happening, but that is not because VOF didn't try to stop it in every way that we could, and to mitigate in the ways that were possible to us, and to obtain some kind of compensation to the Commonwealth for the land that is lost. Were we to go to court, and were the court to find, as it would, that FERC has eminent domain, there exists the possibility that nobody gets anything but a few pennies on the acreage. There are cases that say pipelines aren't even a taking for easements."

VOF trustee Elizabeth Obenshain, who cofounded the New River Land Trust and served as its first executive director, expressed dismay at comments suggesting VOF could successfully fight condemnation. "I made sure in meeting with wonderful landowners, who ended up donating several thousand acres of land in our region, that they always understood that a conservation easement could be protection against condemnation by local or state government, but it was never protection against federal condemnation because, since the time of Alexander Hamilton, federal has always trumped state and local."

"VOF has never had an easement condemned, primarily because of the long-established conversion process in state law," adds VOF Executive Director Brett Glymph. "The trustees and counsel felt that allowing our easements to be condemned would set a terrible precedent and jeopardize the very reason why the Open-space Land Act is one of the strongest state conservation laws in the nation. This decision was a difficult one, but we firmly believe it was in the best interests of both the public and the long-term sustainability of Virginia's open-space conservation program."

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Upholding the Public Trust

Letter from the Executive Director

As explained on the front page of this newsletter, VOF's board of trustees recently concluded its three-year review of proposed conversions by two natural gas pipelines on 11 VOF easements in four counties. The article explains what happened, and more articles on our website chronicle the project's history. I want to take time here to elaborate on the decision, how it was guided by state law, and what it means for our program moving forward.

VOF works on behalf of all Virginians, from conservationists to developers to everyone in between. Our job is to balance development with conservation so that future generations can enjoy the same natural resources that we enjoy. Sometimes these two interests conflict with one another, and there can be strong disagreement about which interest is more important. Occasionally, development wins. But in their wisdom, the architects of our program created a mechanism to ensure that the public's interest in protected open space would never be lost. That mechanism is expressed in 10.1-1704 of Virginia Code, and we refer to it as the "conversion or diversion" of open space.

The idea behind this mechanism is straightforward: If there ever comes a time when protected land is needed for development that is deemed necessary for the public, then that development may be permitted as long as substitute land of greater conservation value is provided. Not only does this ensure no net loss of conservation value to the Commonwealth, it ensures a net gain.

VOF has used this process 14 times in our history to allow for the expansion of public works such as roads, rails, and other in-state infrastructure on our easements. In all of those cases, the requests for conversion (in which the easement remains in place) and diversion (in which the easement is extinguished) were relatively minor, and the determination of public need was ours to make.

With the Atlantic Coast Pipeline and Mountain Valley Pipeline we faced two new circumstances. First was scale. The projects proposed to cross a combined 11 easements—10 for pipeline access and one for a construction and maintenance road. Second, because both projects cross state lines, they must receive certification from the Federal Energy Regulatory Commission (FERC) under the federal Natural Gas Act. This certification establishes both siting and public need. The certificates, which were granted on October 13, come with federal eminent domain authority to condemn real estate interests, including VOF interests.

Some pipeline opponents argued that condemnation would have been a better outcome for the Commonwealth than conversion. Our board and legal counsel at the Office of the Attorney General disagreed. A VOF easement has never been condemned in 50 years. We felt that going through condemnation and losing everything would be more damaging to the program and set a worse precedent than going through the long-established process of conversion, which allows us to control the outcome and protect the Commonwealth's interests.

That is what our trustees did on October 16. They held the developers accountable to the highest standard in our history and ensured not just a conservation gain for the Commonwealth, but a maximum gain. It was, as VOF Chair Stephanie Ridder said, a "clear choice" given our limited authority.

In the weeks following our public meeting, some accused VOF of betraying the trust of its easement donors. They omit the fact that, while some of the affected landowners opposed our decision, a majority supported it. That support came because, early in the process, we made certain landowners understand the limit of our power, we did our best to advocate for their interests (which are separate from VOF's legal interests), and we worked hard to be transparent, responsive, thorough, and accountable. Whether navigating the complex FERC process or inspecting the entire length of the proposed route through our easements, we maintained our professional integrity at every step.

There will likely be continued debate over the conversion process, and more requests to use it in the future. In whatever challenges we face, our goal will remain the same: to uphold the public trust and ensure the best possible conservation outcome for the Commonwealth.

Brett Glymph, Executive Director
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VOF Hires Stewards at Bull Run Preserve

The Bull Run Mountains Natural Area Preserve (BRMNAP) in Fauquier and Prince William counties is one of VOF's crown jewels. This year, under new hours that aim to better manage human activity in the sensitive ecosystem, more than 6,500 people visited the preserve.

Tracking visitors is one of the new management practices VOF launched in 2017 to better steward this unique natural landscape located off I-66 just 35 miles outside of Washington, D.C. To help implement these practices, VOF has hired four part-time stewards who are stationed at the preserve during open hours, Friday through Sunday from 8am to 6pm. The preserve stewards greet and educate visitors, as well as collect trail usage data and monitor trail conditions. They work from a small ranger station (pictured above) that is completely powered by a solar battery pack generator and a double solar panel array.

Although the preserve offers hiking trails, its primary purpose as a state-designated Natural Area Preserve is for the protection of rare plants, animals, and natural communities. Active management aims to prevent recreational use of the property from potentially damaging sensitive ecological resources.

The management team also must deal with unexpected problems on the preserve, often in partnership with volunteers. For example, a tornado tore through the preserve on August 11th. It left a swath of damage and downed trees that blocked the access road and rendered most of the public trails impassable. The preserve was closed immediately out of concern for public safety, and work began with the leadership of Janis Stone from the Potomac Appalachian Trail Club (PATC) to assess damage and create a work plan to enable at least some

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BY THE NUMBERS

The Virginia Outdoors Foundation protects approximately 156,000 acres of open space along designated Virginia Scenic Byways.



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STEWARDSHIP CORNER

Beyond Traditional Monitoring

Answers to common questions from landowners about their easements.

Since VOF's creation as a state agency by the Virginia General Assembly in 1966, the organization has undergone changes over the years to adapt to a growing number of easement properties and projects that take place both on and off easement land. In the early days of VOF, stewardship visits to easement properties were essential to establish successful landowner partnerships and to monitor and enforce the terms of the open-space easement deeds. Stewardship today has built upon those positive relationships with easement landowners while also addressing increasing influences from expanding infrastructure projects, construction activities, and estate planning as properties transition to new ownership and management. VOF receives many questions from landowners on this topic. Here are some of the most common.

What is VOF's Stewardship Program?

VOF views open-space preservation on private land as a partnership with landowners to promote livable, workable, and sustainable landscapes. VOF's stewardship program is responsible for making sure that the conservation goals stated in the open-space easement deeds are maintained over time. The stewardship staff provide a range of professional services to ensure the continued protection of Virginia's treasured resources found on privately held easement properties.

What are some of the main duties of VOF's stewardship staff?

The duties of VOF's stewardship staff vary throughout the Commonwealth depending upon the needs and planned activities that occur throughout regions that stretch from the coastal plains of eastern Virginia to western Virginia's Appalachian plateau. However, some responsibilities remain constant, such as answering landowner questions regarding stewardship or management of landscapes, conducting reviews of diverse activities on easement properties, and visiting conserved lands through stewardship visits to ensure the easement provisions are being upheld.

How have these duties changed to adapt to landowner needs and requests?

In recent years, VOF's stewardship program has expanded beyond stewardship visits to keep pace with an increasing need for thorough reviews of various projects taking place on easement land. Traditional monitoring has given way to creative

stewardship through data sharing and enhanced partnerships with other agencies, local governments and third parties. This information sharing combined with joint efforts has become necessary to tackle the large volume of work over vast areas of land. For example, original donors of easement properties convey their land to new owners over time, and there may be questions about the terms of the easements and whether planned activities would follow the easement language. Increasingly, VOF staff are spending significant amounts of time reviewing proposals related to future construction projects, forest management operations, and small-scale utility projects to ensure that plans are in alignment with open-space easement deeds.

How have these duties changed to adapt to needs and requests coming from outside easement land?

In addition to small-scale projects taking place on easement properties, VOF has also been receiving more projects to review related to larger-scale transmission lines, gas pipelines, and road improvements that cross open-space easement properties to serve unencumbered land. VOF works with VDOT, utility, and rail companies to strive for avoidance of VOF conserved lands as a top priority. VOF applies the standard protocol used by most environmental organizations of avoidance, minimization, and mitigation as a last resort for potential encroachment from public projects. If an encroachment cannot be avoided, a thorough review takes place to assess the project's impacts on easement properties and the conservation values identified in the open-space easement deeds. In cases where a public works project is found to be inconsistent with the terms of a property's open-space easement, the project applicant may seek the conversion or diversion of open-space as provided under the Open-space Land Act.

What will VOF's Stewardship Program look like in the future?

With an ever-growing portfolio, VOF anticipates that conserved lands will more and more be in the path of proposed large-scale utility and transportation projects. Also, as many properties encumbered by open-space easements change hands, stewardship efforts will focus on demonstrating the importance of the land's conservation values and the associated restrictions governing each property. Such efforts are needed to build and maintain the public-private partnerships that are central to the Virginia Outdoors Foundation, and to carry the organization through its next 50 years.

Protecting the Clinch River Valley

Neal Kilgore remembers the fish kill on the Clinch River well. “I was about 10 years old. My friend and I would go fishing in the river often; but one day, all of a sudden, fish started coming up to the surface, struggling like they were trying to breathe. We had no idea what was going on. We just jumped in the river and started grabbing the biggest fish. We thought we’d hit the jackpot.”

What the boys didn’t know was that there had been a leak of hazardous wastewater from the power plant just upriver that was poisoning the water. “Later, my dad took us for a drive up the river road, and as far as we went, there were dead fish, all the way across and so many deep they could have supported your weight if you tried to walk over them.

“That’s what motivated me to get into environmental protection,” he says. “I could see the need.”

Now an easement specialist in southwestern Virginia for VOF, Kilgore helps landowners living in the Clinch River Valley to protect their land from over-development. “People have begun to realize what a special place we have here,” he says. He started working with VOF in 2006. In the decade since, he has increased the amount of land protected by VOF easements in the Clinch-Powell watershed to more than 5,500 acres.

VOF’s work here is one piece of a larger effort. Groups like the Nature Conservancy, the Clinch River Valley Initiative, and the Clinch-Powell Clean Rivers Initiative are helping people and the outdoors to coexist in economically and environmentally compatible ways. The Virginia Department of Conservation and Recreation also offers informational resources to landowners who have caves or sinkholes on their land — features common in the region, which is characterized by karst topography. Karst contains



aquifers that can provide large supplies of water, and thousands of Virginians get their clean drinking water from these aquifers.

It will take continued vigilance and concern from local citizens to ensure the Clinch River Valley’s success. While still grappling with agricultural pollution and the environmental impacts from decades of coal mining, the Clinch River Valley has retained its status as a biodiversity hotspot. In 1990, it was designated one of the Nature Conservancy’s 39 “Last Great Places” for its largely intact ecosystem, which hosts 48 imperiled and vulnerable animal species, including 29 varieties of rare freshwater mussels and 19 species of fish.

“It’s amazing that it’s rebounded the way it has, but the river is a mirror for how you treat the land,” Kilgore adds. “If you don’t manage the land well, then the river can’t survive.”

BULL RUN MOUNTAINS *continued from page 3*

trails to reopen. Thanks to the efforts of Janis, PATC volunteers, and VOF staff, the preserve reopened and managed to offer access to most of the trails within a week.


The preserve staff has also been engaging in outreach activities to better educate the public about the preserve and recent management changes. On September 30, we hosted a “Pumpkins at the Preserve” event to celebrate Virginia Public Lands Day. A local produce vendor (and VOF easement donor) offered cider tastings and heirloom pumpkins to visitors, and VOF staff made available information about VOF as well as two neighboring nonprofits, the Bull



Run Mt. Conservancy and Turn the Mill Around Campaign. VOF hiking guides highlighted the special features and flora of the preserve.

In addition to all of this, VOF’s preserve ranger and science coordinator, Joe Villari, is working with PATC’s Janis Stone to document liverwort plant diversity across BRMNAP and anchor specimens within a state herbarium so that they are permanently

accessible to interested researchers.

For more information about BRMNAP, including trail maps and announcements, visit bullrunmountains.org. 

Virginia Outdoors Festival

On September 9, VOF held its second annual Virginia Outdoors Festival at White House Farm in Page County, just outside of Luray. The free public event aimed to increase awareness about VOF's work to protect land across the Commonwealth, and featured activities for people of all ages. Several hundred people attended throughout the day. We thank easement donor Scott Plein and White House Farm Foundation Executive Director Chris Anderson for hosting the event and providing logistical and program support.



(1-2) One of the festival highlights was a native wildlife presentation by Luray Zoo that featured, among other things, a barred owl. **(3-4)** Visitors participated in multiple tours, including the historic White House, one of the oldest buildings in Page County. **(5-6)** Local basketmaker Clyde Jenkins and Hill House Nursery were among the vendors who shared their crafts and products. **(7)** The farm's flora and fauna reminded guests why land conservation is important. **(8)** Kids created native seed balls at the "Maker Station" using a special soil/clay mix. **(9)** Downriver Canoe Company provided free canoe rides on the South Fork of the Shenandoah River. **(10)** Friends of the North Fork were among the conservation groups with educational booths. **(11)** Face painting by Rainbow Designs was a hit with the kids.



EASEMENT SPOTLIGHT


Hazel Hollow, Pulaski County

Hazel Hollow in Pulaski County is an 11-acre strip of green space that hugs the northern bank of the New River just across from the City of Radford. Its potential for development as residential riverfront property is obvious and might have been inevitable. Instead, thanks to the wishes of a VOF easement donor, the vision of county planners and administrators, and funding from both the Virginia Land Conservation Fund and the VOF-administered Preservation Trust Fund (PTF), the property will soon become a part of a greenway that provides breathing space to a rapidly developing area, connecting it to the fishing, boating and wildlife viewing possibilities on the banks of the river, and linking a series of existing trails across the region.

A key component of the project, located just down river from Hazel Hollow, is the 100-acre Smith Farm, gifted to VOF in 2012. Margaret Smith's dream was to preserve the farm as open space for a public park. "Her donation sparked the project, really," says Jared Linkous, county engineer. "Thanks to her, we have the beginning of a county park presence." Trails on Smith Farm are slated for a fall 2017 ground-breaking and will extend to Hazel Hollow through the county's acquisition of a small parcel between the two properties. An old elementary school site to the north will provide trailhead parking and playing fields for outdoor sports.

The greenway features a rich mix of recreational, historic

and natural resources. Eagle and waterfowl habitat along the river contributes to the Virginia Birding and Wildlife Trail. The Bike 76 Trail meets up with Hazel Hollow on the greenway's northern edge. This bike route is included in the master plan for the Beaches to Bluegrass Trail, a statewide multi-use route that aims to link existing routes across communities from the Virginia Beach oceanfront to Cumberland Gap on the border with Tennessee. To the west is a railroad bridge included on Virginia's Civil War Trail. Damage from cannons fired by Union troops is still visible on the piers that support it. Next to it, a proposed pedestrian bridge would span the river, linking to the Bisset Park trail and the Riverway Greenway in the City of Radford and potentially extending the Beaches to Bluegrass Trail along one of its proposed routes. Bisset Park further links to Wildwood Park, another VOF easement in the city.

Despite its small size, the Hazel Hollow parcel will play an outsized role in implementing the greenway and increasing outdoor opportunities for people in the New River Valley. Playing fields? Check. Hiking and biking trails? Check. Places to launch a kayak, canoe or tube? Check. Chances to view wildlife or experience historic sites? Check. And it is all part of a larger network of regional trails that could eventually span the state from east to west. Hazel Hollow may be just 11 acres, but for this section of the New River it makes all the difference. 



A new trail along Hazel Hollow will end at this train crossing—a Civil War battle site.



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More than 350,000 acres of soil on VOF-protected lands are designated by the USDA as prime farmland.

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VOF easement in Campbell County