



## OPEN-SPACE CONVERSION REQUEST

**Applicant:** Atlantic Coast Pipeline, LLC

**Board Meeting:** February 9, 2017



**Landowner:** James L. Rice III

**VOF Easement:** BAT-03354

APPLICATION FOR OPEN SPACE CONVERSION, § 10.1-1704  
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**List of Exhibits:**

Exhibit A – ACP Application for the Conversion of Open-Space

Exhibit B – Correspondences

Exhibit C – VOF Baseline Documentation Report (BDR)

Exhibit D – VOF Open-Space Deed of Easement (DOE)

Exhibit E – Staff Investigation and Analysis

Exhibit E2 – Permanent Impact Profile

Exhibit F – §10.1-1704 of the Open Space Land Act

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<b>VOF Open-Space Easement:</b>	<b>BAT-03354</b>
<b>Property Owner:</b>	James L. Rice III
<b>Open-Space Easement Acreage:</b>	297.857
<b>County:</b>	Bath

<b>Applicant:</b>	<b>Atlantic Coast Pipeline, LLC</b>
<b>Acres to be permanently converted:</b>	~ 6.48 acres (6.47 acres for pipeline right-of-way and 0.01 acres for permanent road easement)
<b>Acres to be temporarily disturbed:</b>	~ 9.97 acres
<b>Total impacted acreage:</b>	~ 16.45 acres
<b>Acres of substitute land:</b>	~ 1,034 acres (for the nine impacted easements in western Virginia)

**Application Overview:**

Atlantic Coast Pipeline, LLC (ACP) is seeking approval at the February 9, 2017 Board meeting for approximately 6.48 acres of land to be permanently converted, from the above referenced open-space easement, pursuant to § 10.1-1704, for the construction, operation and maintenance of a 42-inch diameter underground natural gas pipeline. The pipeline would cross approximately 1.06 miles of the open-space easement and require a 125-foot construction easement with 50 feet being maintained in permanent easement. A permanent road may cross 0.01 acre of the property. ACP’s application for the conversion of a portion of this open space is included as Exhibit A.

**Background:**

The Virginia Outdoors Foundation (VOF) became aware of the Atlantic Coast Pipeline (ACP) project in mid-2014. Due to the scope and scale of the proposed pipeline project VOF determined that any permanent encroachments associated with the project would be inconsistent with the terms of the open-space easements and result in the conversion or diversion of open space land, pursuant to Virginia Code § 10.1-1704 of the Open-Space Land Act.

As plans for the ACP developed and further information became available, VOF recognized the need to correspond with the Federal Energy Regulatory Commission (FERC). In 2015 VOF wrote FERC regarding alternative routes and concerns related to potential intersections with VOF open-space easements. VOF also communicated directly with ACP representatives associated with the development of the ACP, in hopes that direct dialog would help protect the interests held by VOF for the Commonwealth. This collaborative relationship with FERC and ACP appeared to be successful, since by the end of 2015 only one VOF open-space easement appeared to be intersected by the proposed ACP.

Then, in a letter from ACP, dated February 16, 2016 a revised route segment known as GWNF-6 was announced, see Exhibit B. In Virginia this route segment was identified to address concerns from the U.S. Forest Service related to Cow Knob Salamander habitat within the George Washington National Forest (GWNF). Although the GWNF-6 route avoids significant portions of the National Forest, the revised route continues to intersect portions of the National Forest in Highland, Bath and Augusta Counties.

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VOF met with ACP representatives on February 19, 2016 to discuss the numerous VOF open-space easements intersected by the new GWNF-6 route. ACP explained avoidance of the open-space easements was challenging due to comments received from the U.S. Forest Service. VOF met with ACP again on April 11, 2016 to discuss avoidance of the easements as well as substitute land and the different types of compensatory mitigation property VOF has received in relation to prior applications for the conversion of open space. In the end, it was determined and agreed upon that ACP would file a conversion/diversion (“1704”) application for each of the 10 open-space easement properties they proposed to cross. VOF originally received those applications from ACP in May, 2016 and revised applications in January, 2017.

On August 29, 2016, VOF was notified by FERC that it was requiring ACP to conduct further analysis on an alternative segment of the pipeline route through a portion of the Rockfish Valley in Nelson County known as the Spruce Creek Route Variation. On September 9, 2016, VOF issued a letter to FERC stating that if the new route was being evaluated, then it would require an additional “1704” application for an 11<sup>th</sup> easement property. The VOF letter urged FERC to reject the Spruce Creek route as a viable option and not include it in the Draft EIS. In addition, the VOF letter asked for the reconsideration of the primary route that will cross the 10 other VOF open-space easements. Finally, on December 5, 2016, VOF issued another letter to FERC in response to ACP statements made on November 9, 2016 reiterating that the ACP would constitute a violation of VOF open-space easements and that 1704 application approval would be required for each impacted property.

List of correspondences and meetings (Letters found in Exhibit B):

<b>Date</b>	<b>Correspondence or Meeting</b>
06-25-2014	VOF letter to Dominion Transmission, Inc.
03-20-2015	VOF letter to FERC
08-11-2015	VOF meeting with ACP
08-13-2015	VOF letter to FERC
08-24-2015	VOF letter to Dominion Resources Services, Inc.
11-05-2015	VOF Energy and Infrastructure Committee Meeting: Presentation by ACP
12-15-2015	VOF meeting with ACP
02-16-2016	Dominion Transmission, Inc. letter to FERC (route GWNF-6 announced)
02-19-2016	VOF meeting with ACP
03-24-2016	VOF Energy and Infrastructure Committee Meeting: ACP project update
04-07-2016	VOF letter to FERC
04-11-2016	VOF meeting with ACP
05-26-2016	VOF Energy and Infrastructure Committee Meeting: ACP project update
06-30-2016	VOF Board of Trustees Meeting: ACP project update
07-11-2016	VOF and ACP staff site visit to Hayfields Farm
08-29-2016	FERC letter to VOF and affected landowners along the Spruce Creek Route
09-06-2016	VOF letter to FERC
09-29-2016	VOF Board of Trustees Meeting: ACP project update
10-24-2016	VOF and ACP staff site visit to Rockfish River Parcel
10-26-2016	VOF staff site visit to Hayfields Farm
12-05-2016	VOF letter to FERC

**VOF Easement Information:**

Property Features: (from the Baseline Documentation Report, Exhibit C)

Property is a mix of upland rolling fields (approximately 60 acres) and forested slopes bordering the George Washington National Forest and other lands protected by open-space easements held by the Grantee. It fronts and straddles Scotchtown Draft Road in a rural area of Bath County. The land borders the “Jerkentight” Roadless Area – one of the areas of the GWNF that is eligible for listing as a Wilderness Area. White Sulphur Spring Branch flows parallel to the road through this property for about ½ mile. There is a pond and an unnamed stream flowing to the Branch and on to Stuart Run, part of the Cowpasture River watershed. The property is visible from SR 627, but the land rises quickly on the eastern side of the road. Shenandoah Mountain Trail runs along the ridgeline of Sister Knob approximately 1.5 miles north of this property. Within the Audubon Society’s Alleghany Highlands Important Bird Area.

Conservation Values: (from the Open-Space Deed of Easement, Exhibit D)

**R-11** The Property shares more than one mile of boundary with the George Washington and Jefferson National Forest, with approximately half of that boundary being with the Sister Knob Roadless Area of the Forest, so that protecting this Property helps buffer public lands and increases wildlife habitat.

**R-12** Approximately one mile of an unnamed seasonal stream and a half mile of White Sulphur Spring Branch, both tributaries of Stuart Run and part of the Cowpasture River watershed, flow through this Property. Preventing excessive development helps protect water quality downstream. According to the U. S. Environmental Protection Agency, “Construction activities disturb soil and may release sediment and other pollutants to local streams. EPA estimates that conversion of land produces 40 million tons per year of new sediment during construction. States have identified sediment as the leading cause of impairment to America’s rivers.” (Growth and Water Resources EPA 842-F-02-008. June 2002).

**R-13** The Property fronts State Route 627 for approximately one-half mile and provides scenic enjoyment of a rural and essentially undeveloped landscape to the traveling public.

**R-14** The Property lies within the Windy Cove Conservation Site, over 23,000 acres identified by the Department of Conservation and Recreation’s Division of Natural Heritage as having important karst resources, and the land is across State Route 627 from the Sister Knob Conservation Site, over 1,700 acres identified by the Department of Conservation and Recreation’s Division of Natural Heritage as having habitat for numerous endangered plant species. This easement helps buffer and protect those resources from intensive development.

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**R-15** The Property lies within the Alleghany Highlands Important Bird Area, designated by the National Audubon Society as having habitat for hundreds of bird species and as being important for migrating birds.

**R-16** The Property contains an area identified by the Virginia Department of Conservation and Recreation's Natural Heritage Division as habitat for a rare plant, one that thrives in disturbed areas along roads.

**Staff Investigation and Analysis:**

Site Visit:

Staff walked the proposed route of the ACP on May 16, 2016, which had been surveyed and flagged by ACP representatives. Staff followed the flagging and collected GPS points at incremental segments along the route. These segments, represented through photo points, are visible in the photo point map and photo album included as Exhibit E. Please note the difference between some of the “VOF Photopoints” and the “Proposed ACP Route – Rev. 10a.”

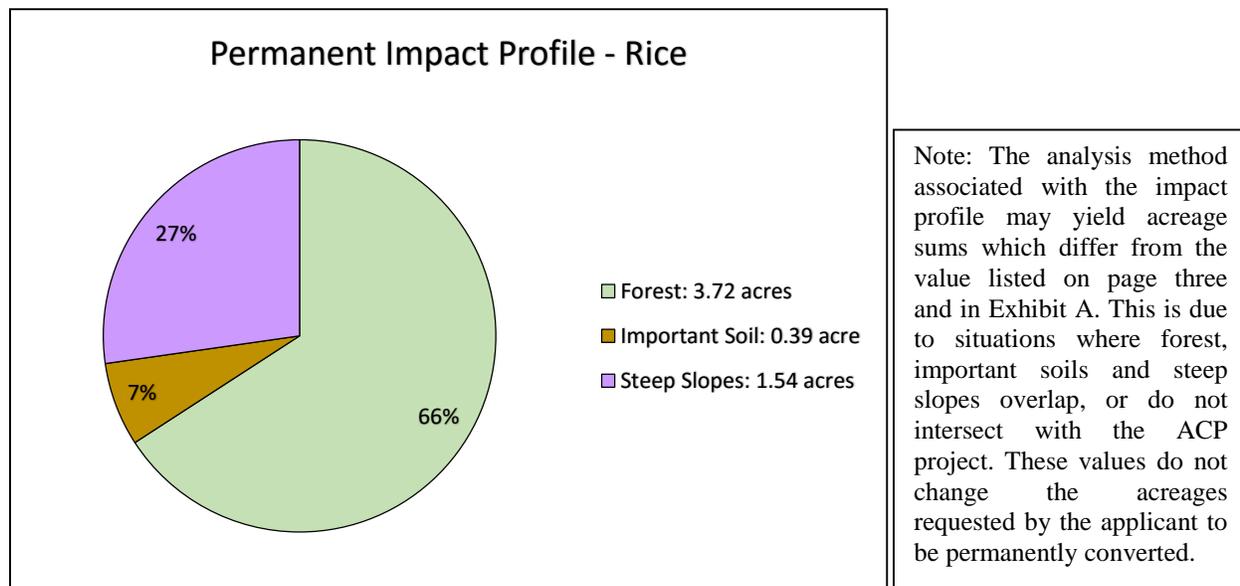
Route Description:

After circumventing Fort Lewis, the proposed ACP route approaches the Rice easement heading in a southeast direction somewhat parallel to Scotchtown Draft Road, State Route 627. The ACP enters the property at the north and follows a forested ridgeline in a southeast direction until it exits the property in the middle of the southeastern boundary. Soon after exiting the Rice easement another VOF easement is encountered and the direction of the ACP begins to transition to a northeastern course.

Permanent Impact Profile: (supplemental to information on page 3)

The table available in Exhibit E2 contains detailed information regarding potential impacts to the conservation values and features shared by each open-space easement intersected by the ACP. A snapshot of this information for the Rice easement is included below:

Pipeline length	Road length	Total length
1.06 miles	~0.01 mile	1.07 miles



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**Response to the Code of Virginia, § 10.1-1704 of the Open-Space Land Act:**

(§ 10.1-1704 code provided in Exhibit F and portions in outline format below)

VOF required the applicants to comply with section 10.1-1704 of the Code of Virginia for the proposed natural gas pipeline projects and their impacts to VOF easements.

*A. No open-space land, the title to or interest or right in which has been acquired under this chapter and which has been designated as open-space land under the authority of this chapter, shall be converted or diverted from open-space land use unless*

*(i) the conversion or diversion is determined by the public body to be*

*(a) essential to the orderly development and growth of the locality and*

VOF 1704 procedures<sup>1</sup> states that the project applicant must prove essentiality. Essentiality is defined as “*essential to the orderly development and growth of the locality.*” Therefore, the applicant must demonstrate that the 1704 request is essential to the orderly development and growth of the locality. The applicant must submit a letter or statement and/or materials from the local government, regional, state or federal entity to this effect.

The applicant must also provide examples of all alternatives considered, including project alterations or other options that were considered to avoid the need to convert or divert open-space land and why those alternatives were not realistic. Clear evidence should be provided that there are no other feasible alternatives and that the 1704 process is not just the most cost-effective solution. This evidence might include letters from professionals consulted, certified engineering studies and/or plans, local planning documents, and environmental analyses. VOF requires that the applicant submit a letter or statement from the regulatory authority that determines essentiality.

**Response:** In its applications, ACP addresses this issue in detail and presents its arguments for why the project is “essential” and why they believe that there are no feasible alternatives to crossing the VOF easement. See Exhibit A, section 2.0 and section 3.0.

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<sup>1</sup> Virginia Outdoors Foundation, Diversion or Conversion of Open-Space Land (“1704”) External Procedures

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*(b) in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion and*

VOF procedures<sup>1</sup> require compliance with Local Comprehensive Plan, defined as “*in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion.*” The applicant must demonstrate that the proposed project is in accordance with the current comprehensive plan of the local government. Copies of the applicable section of the current plan are required as well as statements from the local planning staff, Planning Commission or Board of Supervisors. Specific references to goals, objectives, or strategies as well as the future land use map are strongly recommended.

**Response:** ACP presents its case that the proposed project is in accordance with the current comprehensive plan for Bath County in Exhibit A, section 4.0. As part of VOF’s due diligence, on April 19 and December 21, 2016 we asked the County if they had any “response to the question of whether or not the project is in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion as stated below in the section from 10.1-1704 of the Code of Virginia.” While the county comprehensive plan does not specifically address the siting or location of interstate transmission lines or corridors they responded with a statement in opposition to the ACP available in Exhibit G.

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*(ii) there is substituted other real property which is*

*(a) of at least equal fair market value,*

VOF procedures<sup>1</sup> require that there is substituted other real property which is of at least equal fair market value. The applicant must propose substitute conservation land and demonstrate that the property is of at least equal fair market value. Equivalent fair market value must be established by a Virginia Certified General Real Estate Appraiser, with experience in conservation easement appraisals, agreeable to both VOF and the applicant, or the appraisal may be contracted by VOF, but in either case, the appraisal must be paid for by the applicant. Appraisers who also have experience appraising land located in the same locality where the 1704 is proposed are recommended. The appraisal must include valuation of both the eased property proposed for diversion and the proposed substitute land. The easement property must be appraised using the “before” and “after” technique (i.e., what would the current land value be if it was unencumbered vs. what is the land currently worth with the existing easement). The replacement land must be valued using the same method (i.e., what is the replacement land currently worth vs. what will it be worth as protected under the Open Space Land Act). The appraiser needs to determine value of easement to be diverted and value of property protected and serving as replacement land.

**Response:** ACP has provided certified appraisals from an experienced conservation easement appraiser agreeable to both VOF and ACP demonstrating that the fair market value of the 1,034-acre Hayfields Farm will exceed the fair market value of the land impacted by the ACP on this easement, as well as the eight (8) other affected VOF open-space easements in western Virginia. See Exhibit A, section 5.0.

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*(b) of greater value as permanent open-space land than the land converted or diverted and*

VOF procedures<sup>1</sup> require that the replacement land-conservation value be “*of greater value as permanent open-space land than the land converted or diverted.*” The applicant should provide maps and photos of the property to be substituted for the open space land and a description of the conservation values to be protected. In the materials submitted, the applicant must make a case for the substituted land being of “greater value as open space” than the land proposed to be diverted from open space.

**Response:** ACP provides a description and map and photos of the property to be substituted for the open space land and compares the conservation values of the Rice property being impacted to the conservation values of the proposed substitute land within Exhibit A, section 6.0. In addition, VOF staff conducted their own analysis of the conservation values of the substitute property in consultation with other state natural resource protection agencies and using its own resources. See Exhibit H, Substitute Land Report – Hayfields Farm.

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*(c) of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted.*

VOF procedures<sup>1</sup> provide requirements for the location and usefulness of the substitute land. It must be “*of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted.*” The applicant should provide information on the proximity of the proposed substitute land to the existing protected open space land through maps, plats, and descriptions. If the proposed substitute land is not adjacent to the existing protected open-space land, then the applicant should provide a clear explanation for why this was not possible and how the proposed property will provide clear replacement conservation values. The applicant must also make a case for the proposed substitute land being of “equivalent usefulness” to the land proposed to be diverted from open space.

**Response:** As referenced in Exhibit A, section 7.0, Hayfields Farm is located approximately 9.7 miles northwest of the Rice open-space easement. Because the substitute land is not adjacent to the Rice property, ACP explains in its application why the land is of equivalent usefulness and location as permanent open-space land.

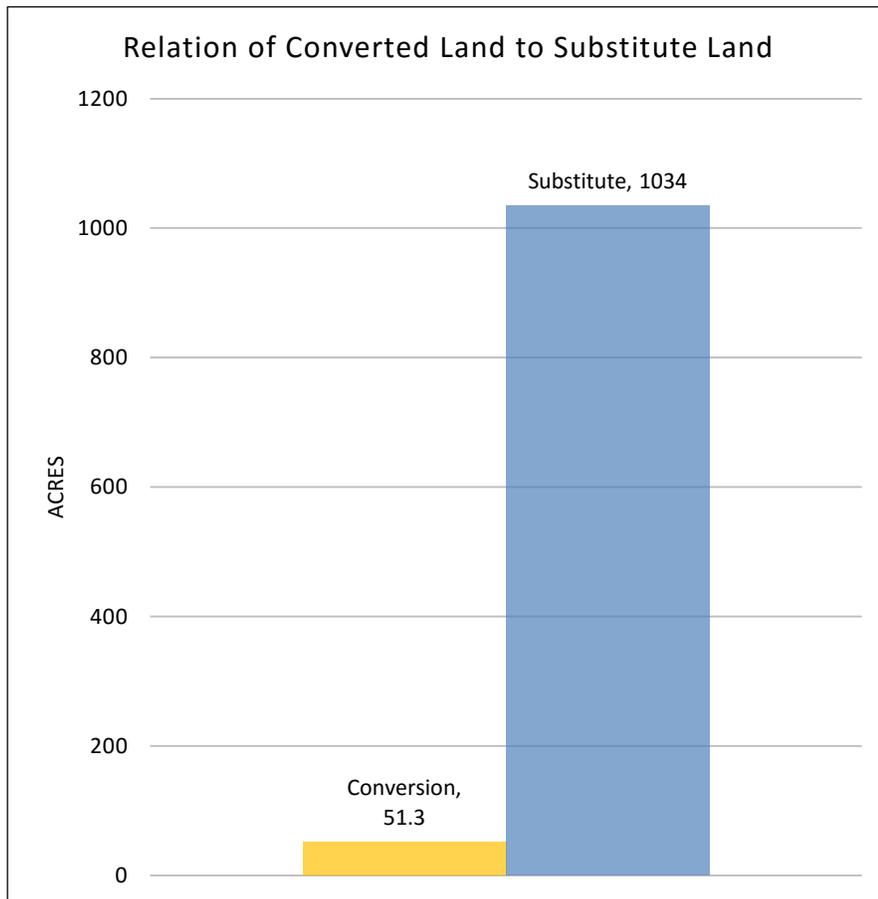
VOF staff also addresses equivalent usefulness in Exhibit H, Substitute Land Report – Hayfields Farm. The Hayfields Farm property has the potential to serve multiple conservation goals and opportunities for the Commonwealth of Virginia. The property has important habitat and wildlife benefits as well as the potential to serve public access or recreational needs in the region. The property includes multiple resource values including scenic, upland forest, wildlife habitat, water quality, potential karst and agricultural resources.

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**Contextual Information:**

The table below represents the proportion of substitute acres contributed by each VOF easement in relation to the 1,034-acre Hayfields Farm property. The ratio of substitute land to converted land is approximately 20:1. Note: The Saunders & Saunders open-space easement and the Rockfish River property are not included in the ratio calculation, table or graph.

Easement Donor	Permanent encroachment area in acres	Percent of Hayfields Farm associated with each easement	Acres of Hayfields Farm associated with each easement	Substitute Ratio
Teague	6.07	11.83%	122.35	20.16
Normandy	13.01	25.36%	262.23	20.16
<b>Rice</b>	<b>6.48</b>	<b>12.63%</b>	<b>130.61</b>	<b>20.16</b>
Chandler	0.80	1.56%	16.12	20.16
Revercomb	8.72	17.00%	175.76	20.16
Koontz	4.13	8.05%	83.24	20.16
Wilderness	8.27	16.12%	166.69	20.16
Bright	2.30	4.48%	46.36	20.16
Berry	1.52	2.96%	30.64	20.16
<b>Total</b>	<b>51.30</b>	<b>100.00%</b>	<b>1,034</b>	-



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**Conclusion:**

If the Board of Trustees finds that ACP applications meet the requirements of Section 10.1-1704, staff would recommend the following conditions:

- Issuance of a Certificate of Public Convenience and Necessity (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 ROW easement permitting only a permanent 50-foot easement for one 42-inch diameter underground natural gas pipeline and the associated permanent access road easement. No above-ground structures are permitted within this permanent ROW with the exception of above ground pipeline markers as required by law.
- ACP transfer of fee-simple interest to VOF of the proposed 1,034-acre Hayfields Farm Property as Substitute Land for the converted areas of the open-space easement property.
- The acceptance of funds from ACP to: (i) serve as a Stewardship Fund to support VOF with the operation and management of the substitute properties, and (ii) partially offset VOF's unreimbursed costs associated with the ACP.
- Written requests from both VOF and ACP to FERC to include the above stated requirements as conditions of the FERC approval.

Additional site specific conditions may be developed with ACP representatives and the current landowner of the easement property such as minimizing the extent of the permanent easement and construction footprint where feasible, developing pollinator corridors and restoring other natural habitat areas in order to help preserve the purpose of the open-space deed of easement.