



OPEN-SPACE CONVERSION REQUEST

Applicant: Atlantic Coast Pipeline, LLC

Board Meeting: February 9, 2017



Landowners: Steven L. and Victor G. (Vic) Saunders

VOF Easement: NEL-03560

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

Exhibit G – Nelson County Statements

Exhibit H – Substitute Land Report – Rockfish River Parcel

APPLICATION FOR OPEN SPACE CONVERSION, § 10.1-1704

Atlantic Coast Pipeline, LLC
 NEL-03560 (Saunders & Saunders)

VOF Open-Space Easement:	NEL-03560
Property Owner:	Steven L. and Victor G. (Vic) Saunders
Open-Space Easement Acreage:	356.30
County:	Nelson

Applicant:	Atlantic Coast Pipeline, LLC
Acres to be permanently converted:	~ 3.28 acres (1.99 acres for pipeline right-of-way and 1.29 acres for permanent road easement)
Acres to be temporarily disturbed:	~ 3.30 acres
Total impacted acreage:	~ 6.58 acres
Acres of substitute land:	~ 86 acres (Rockfish River Parcel for this one easement)

Application Overview:

Atlantic Coast Pipeline, LLC (ACP) is seeking approval at the February 9, 2017 Board meeting for approximately 3.28 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 0.3 mile of the open-space easement and requires a 125-foot construction easement with 50 feet being maintained in permanent easement. A permanent road would cross the property for approximately 0.3 mile as well. 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.

APPLICATION FOR OPEN SPACE CONVERSION, § 10.1-1704

Atlantic Coast Pipeline, LLC
 NEL-03560 (Saunders & Saunders)

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 why 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 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 that they proposed to cross. VOF received those applications from ACP in early May.

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 additional “1704” application for an 11th 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 our open-space easements and that a 1704 application approval would be required for each impacted property.

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

Date	Correspondence or Meeting
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 Replacement 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)

The easement property is privately-owned by Steven L. and Victor G. (Vic) Saunders of Harrisonburg, Virginia. The property is located in the Rockfish River watershed in southeastern Nelson County, near an area known as “Wheeler Cove.” It is comprised of mostly mountainous terrain on the slopes of Willoughby and Bailey Mountains, along and above the Norfolk-Southern Railroad. Portions of the property drain to Falls Run and to Dutch Creek, which is listed by DEQ as “fully supporting” wildlife habitat and recreational uses. The higher elevations of the property are visible from SR 840, SR 639 and SR 617 (Rockfish River Road), which is a designated State Scenic Byway.

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

WHEREAS, the Property contains approximately 600 feet of frontage on Dutch Creek and the eastern slopes drain to Dutch Creek. The western slopes drain to Falls Run. Falls Run flows to Dutch Creek, a tributary of the Rockfish River. The Rockfish River is listed by the Virginia Department of Environmental Quality as “fully supporting” wildlife habitat and recreational uses. Protecting the river and tributary helps to protect water quality in the watercourses in this watershed and those downstream, most notably the James River; and

WHEREAS, the Property lies within the area designated by the Audubon Society as the Central Piedmont Important Bird Area, one of several regions in Virginia supporting habitat and species diversity for species in decline, including the Northern Bobwhite, Prairie Warblers, Wood Thrush and Kentucky Warblers; and

WHEREAS, portions of the Property are visible from State Routes 639, 840 as well as State Route 617 (Rockfish River Road), which is a designated Virginia Byway and part of the Virginia Department of Game and Inland Fisheries’ Birding and Wildlife Trail system. Protecting this Property from excessive development helps protect a scenic viewshed from this road for the traveling and birding public; and

Staff Investigation and Analysis:

Site Visit:

Staff walked the proposed route of the ACP on April 29, 2016. Maps and photographs pertaining to recent field investigations by staff are available in Exhibit E.

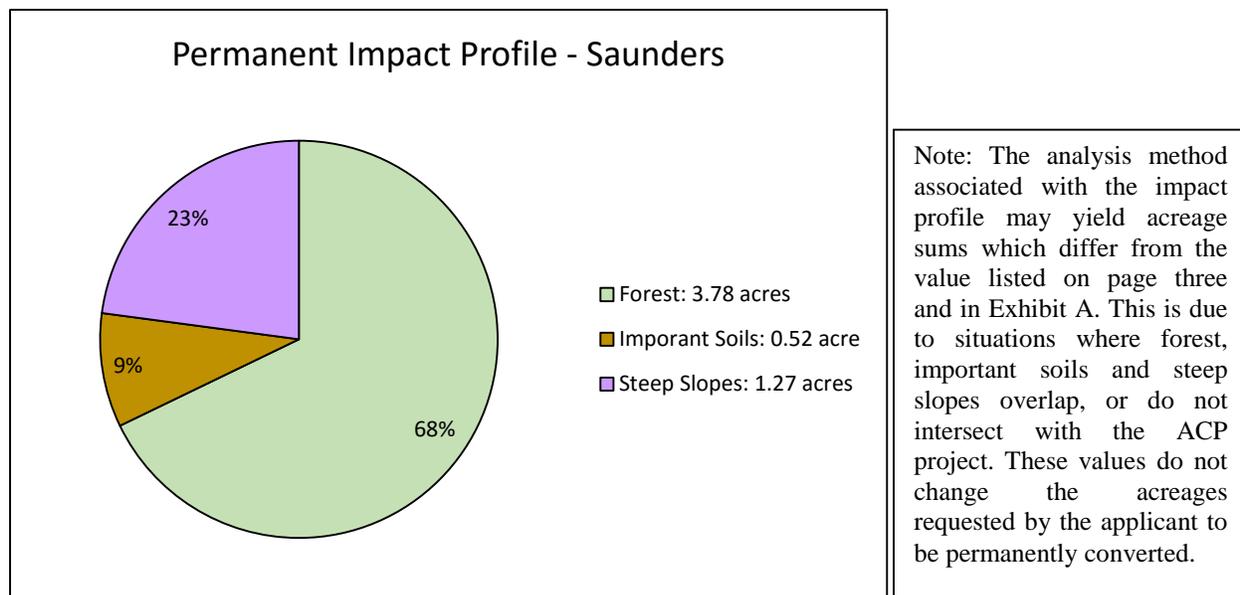
Route Description:

The ACP alignment runs through a clearing near the top of Willoughby Mountain, and then down the ridgeline toward Bailey Mountain, through previously-timbered hardwood forestland, paralleling an existing ATV trail. The installation of the ACP will require clearing and grading of a portion of previously-timbered hardwood forest area along the ridgeline in the northwestern portion of the easement property. This area was timbered approximately 25 years ago, and has been allowed to naturally regenerate. This portion of the property is within the designated “No Build” area above the 1000’ USGS contour line. The edge of the potential 125’ temporary construction easement may come within 100’ of the edge of the 35’ stream buffer on an unnamed tributary of Falls Run. Portions of this area of the property are somewhat visible from SR 639 (Laurel Road), but the specific alignment will not be visible from SR 639 due to existing vegetation and topography along the road.

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

The table below contains detailed information regarding potential impacts to the conservation values and features shared by this open-space easement intersected by the ACP:

Pipeline length	Road length	Total length
0.3 mile	0.3 mile	0.6 mile



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 procedures¹ 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.

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

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

VOF procedures¹ 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 Nelson County in Exhibit A, section 4.0. As part of VOF’s due diligence, 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.

(ii) there is substituted other real property which is

(a) of at least equal fair market value,

VOF procedures¹ 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 86-acre Rockfish River Parcel will exceed the fair market value of the land impacted by the ACP on this one easement. See Exhibit A, section 5.0.

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

VOF procedures¹ 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 Saunders 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 – Rockfish River Parcel.

(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 procedures¹ 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.

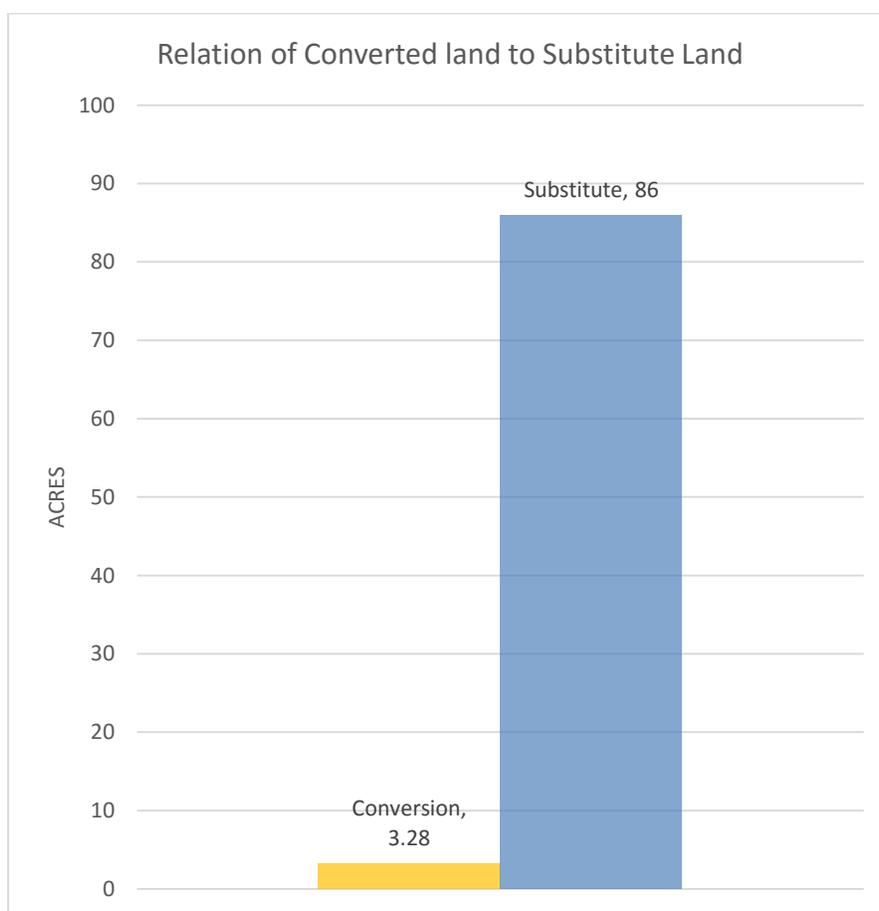
Response: As referenced in Exhibit A, section 7.0, the Rockfish River Parcel is located approximately 0.5 miles northeast of the Saunders open-space easement. Because the substitute land is not adjacent to the Saunders property, ACP explains in its application why the land is of equivalent usefulness and location as permanent open-space land.

VOF staff also addresses equivalent usefulness in Exhibit H, Substitute Land Report – Rockfish River Parcel. The Rockfish River Parcel 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, and water quality.

Contextual Information:

The table below represents the proportion of substitute acres contributed by the Saunders & Saunders VOF easement in relation to the 86-acre Rockfish River Parcel property. The ratio of substitute land to converted land is approximately 26:1. Note: The easements associated with the Hayfields Farm replacement parcel are not included in the ratio calculation, table or graph.

Easement Donor	Permanent encroachment area in acres	Acres provided with the Rockfish parcel as substitution land	Substitute Ratio
Saunders	3.28	86	26.22



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 86-acre Rockfish River Parcel 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.