

June 8, 2016

Brett Glymph
Executive Director
39 Garrett St., Suite 200
Warrenton, VA 20186

Dear Ms. Glymph:

I am writing to comment on Virginia Outdoors Foundation's consideration of a proposal under §10.1-1704 of the Code of Virginia to divert land from open-space use so that it may be used for the Atlantic Coast Pipeline (ACP).

Let me begin by saying that it is our desire that the final route for the ACP avoids all conservation easements. As you know, The Nature Conservancy is, like VOF, one of the nation's largest land trusts. Like VOF, we are deeply invested in the sacred trust that exists between landowners and land trusts with regard to conservation easements. And like VOF, the Conservancy has invested a considerable amount of staff time in determining both the potential impacts of the ACP on natural resources and the question of how those impacts can be avoided, minimized and offset.

The Conservancy has repeatedly asked both the ACP project developer and the Federal Energy Regulatory Agency (FERC) to fully implement the mitigation hierarchy with respect to the project. Among the impacts that we have asked them to avoid are all conservation easements, nature preserves and critical habitats.¹ Route Alternative GWNF6, announced several months ago by the ACP project developer, avoids some irreplaceable critical habitats about which we had expressed concerns, but it also impacts a number of VOF conservation easements. We reiterated in a letter to FERC on June 2 our belief that all impacts to conservation easements must be avoided.

We recognize that §10.1-1704 provides an avenue through which, under very limited circumstances, land under a VOF easement can be diverted from open-space use. Under this statute, VOF can only allow such a diversion after making a finding that the diversion is "essential to the orderly development and growth of the locality." The Conservancy submits that such a finding cannot be made at this time. There exists no rationale for concluding that the project, which is at this stage merely a proposal,

¹ *"Critical Habitats" is not used here in the same way as it is used by the U.S. Fish and Wildlife Service (FWS), but rather to designate areas with high biodiversity value consistent with the definitions outlined in the International Finance Corporation Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources. Within that framework Critical Habitats include: occurrences of Federally Listed Endangered or Threatened species, and endemic and/or restricted range species; highly threatened and unique ecosystems; and areas associated with key evolutionary processes.

constitutes "essential" development. Only if granted a Certificate of Public Convenience and Necessity by FERC will the project have been determined by a government agency to be necessary. At that point, the project developer would be granted federal condemnation authority and VOF would likely need to consider the implications of that if the route goes through land in which it has interests. Unless and until that occurs, however, consideration of whether the ACP might meet the statutory test outlined in section 10.1-1704 is premature. We urge VOF to delay consideration of the proposed diversion until after the FERC certificate is granted.

While the ACP as currently proposed would not impact any TNC easements, there is another interstate natural gas pipeline proposal currently before FERC (the Mountain Valley Pipeline) that would impact one of our easements. We are taking the same approach to that proposal as we urge VOF to take here: we will not agree to any diversion of that property from the uses required to be maintained by the conservation easement. If that proposed pipeline is approved and the project developer chooses to take the land by eminent domain, then we will discuss compensation with the developer at that time.

Please note that we are not expressing any opinion about the land that the ACP project developer is proposing as a substitution for the land diverted from open-space use. The mitigation hierarchy must, in our view, be implemented sequentially. Only after impacts are avoided and then minimized to the fullest extent possible is it appropriate to consider how to offset the remaining impacts. No evaluation of the proposed substitution can legitimately be made until after FERC acts on the ACP application and after VOF considers the statutory test outlined above.

Thank you for taking The Nature Conservancy's views into account as VOF makes its decisions regarding this matter.

Sincerely,

A handwritten signature in black ink that reads "Michael L. Lipford". The signature is written in a cursive style with a large, looped initial "M".

Michael L. Lipford
Virginia Executive Director

cc: The Honorable Molly Joseph Ward, Virginia Secretary of Natural Resources