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Enhancing and Advancing Land Conservation

August 12, 2024

Mr. Jason Kalwa and Mr. James Gilroy
Public Service Enterprise Group, Inc. (PSEG)
80 Park Plaza
Newark, NJ 07102-4194

RE: Objection to Proposed Maryland Piedmont Reliability Project Powerline Locations on Permanently Preserved Land

Dear Mr. Kalwa and Mr. Gilroy:

The undersigned individuals and organizations are opposed to locating powerline infrastructure on preserved lands. We represent private non-profit corporations as described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), whose purposes include the preservation and protection of scenic, natural, recreational, productive, and open space lands. As such, we are authorized by the IRS to accept donated conservation easements and authorized by the State of Maryland and our respective counties to purchase and hold conservation easements. The only exception is the Land Trust Alliance, which joins this letter as the voice of the national land trust community, representing about 950 conservation organizations dedicated to supporting the efforts of land trusts and government entities to conserve land now for future generations.

The Importance of Permanence

Most conservation easements are granted "in perpetuity," meaning they are intended to protect forever the land they encumber for the conservation purposes specified in the deed of conveyance. Placing land in a conservation easement is a promise that it will not be converted to another use. Explicit protections for conserved lands must be included in any transmission planning process. Failure to provide such protections could put these critically important places at risk of development.

Siting Powerline Infrastructure on Conserved Lands is in Conflict with Federal Tax Policy.

In order to qualify for a Federal Income Tax Deduction as allowed by the Federal Tax Code under section 170 (h) the easement must:

- Be held in **perpetuity**; and
- Meet one of the following federally recognized **conservation purposes (IRS code section 170(h))**, **providing significant public benefit through**:
 - The preservation of land areas for **outdoor recreation by, or the education of, the general public**;
 - The protection of a **relatively natural habitat of fish, wildlife, or plants, or similar ecosystem**;
 - The preservation of certain open space (including **farmland and forest land**); or
 - The preservation of a **historically important land area or a certified historic structure**.

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Recognizing the significant public benefit resulting from the preservation of farms, forests and open spaces, the State of Maryland has adopted a suite of land preservation programs -- including: the Maryland Land Preservation Foundation (MALPF), the Rural Legacy Program, Program Open Space, and the Maryland Environmental Trust. Nineteen counties, including Baltimore City, exercise their authority to levy a transfer tax in addition to the State's 0.5% transfer tax rate. Many local governments, including Baltimore, Carroll, Harford, and Howard counties have also funded their own preservation programs. This public investment is not only direct, with tax incentives granted and public funds appropriated for easement purchase programs, but also indirect.

The public invests in conservation easements by funding government entities that hold and enforce easements; by approving tax-exempt status for more than 1,363 land conservation organizations across the nation; by supporting substantial tax deductions and credits for easement donations, land donations and cash; and by funding oversight of the administration and enforcement of easements on behalf of the public. Dozens of charitable foundations and corporations and thousands of citizens have donated millions of dollars to land trusts for land conservation over decades. This investment must be honored. Often landowners participating in one of the above programs sell at significant discounts and enjoy some federal income tax deductions, as at a minimum, these easements meet the requirements of 170 (h) outlined above.

Each property presented for consideration for a conservation easement goes through a rigorous review process to determine that it meets one or more of the above characteristics. Additional conservation attributes, such as high-quality agricultural soils, are often required if the property is to be funded under another state or local program.

Once a conservation easement is accepted, whether donated, purchased or a combination thereof, the land trusts accept the perpetual responsibility of the stewardship and enforcement of that easement. Land trusts are not allowed, under federal income tax law, to change the purposes of the easement or to alter the terms in any way that would diminish the conservation values.

Furthermore, as non-profits established for the preservation and protection of scenic, natural, recreational, productive, and open space lands – land trusts cannot divert resources to other public purpose, no matter how important that public purpose may be. All public charities must adhere to this standard. State and local governments levy taxpayer money for the express purpose of preserving scenic, natural, recreational, productive, and open space lands. Government is not at liberty to take back this taxpayer investment for other competing priorities.

Extinguishment Erodes Public Confidence and is Contrary to Public Policy

The most important asset of a land conservation organization – or any government entity holding conservation easements – is public confidence in its mission. When easement holders fail to defend their conservation easements; when governments condemn land or easements by eminent domain; when adverse judicial decisions and statutory changes weaken the laws upholding conservation easements, these losses erode confidence in conservation efforts across America. Extinguishing a conservation easement to promote development contravenes the state enabling statutes and federal regulations. It undermines public confidence in the conservation easements themselves and in the entities charged with

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the permanent protection of important conservation lands. It thwarts the landowner's voluntary choice to permanently protect private land from development.

Safeguarding our Future with Conservation

America loses a football field worth of forests, grasslands, ag land, deserts, and natural places to development every 30 seconds.¹ This amounts to approximately 1.39 million acres per year of natural areas, wilderness, historic sites, farms and forests, resources that are critical to our economic future, our public health and our quality of life. Federal and state lawmakers across the country have enacted laws and adopted policies supporting the permanent protection of our rapidly diminishing yet critically important natural capital of clean air and water, wildlife habitat and natural lands. Conservation easements are key to these efforts. They serve a vital public need that has been recognized by lawmakers, scientists and scholars. In comment (a) of Section 7.11 of the Restatement (Third) of Property - Servitudes, the American Law Institute explains that the importance of conservation easements, "underscored by statutory requirements that they be perpetual, will continue to increase as population growth exerts ever-greater pressures on undeveloped land, ecosystems, and wildlife."

Allowing transmission lines to travel through preserved properties is inherently detrimental to the scenic, natural, recreational, productive, and open space attributes of the properties that land trusts are obligated to protect. Doing so violates the requirements of the IRS, the purpose of our non-profits, and most importantly the trust that landowners have placed in land trusts to protect their land in perpetuity. As such, the undersigned organizations strongly object to the siting of the Proposed Piedmont Reliability Project on permanently preserved land.

Sincerely,

Josh Hastings
Executive Director
Forever Maryland

And the Following Organizations:

David Lillard
Executive Director
Catoctin Land Trust

Joel Dunn
President and CEO
Chesapeake Conservancy

Allison Colden
Maryland Executive Director
Chesapeake Bay Foundation

Steven K. Kline
President and CEO
Eastern Shore Land Conservancy

¹ David M. Theobald and others, "Loss and fragmentation of natural lands in the coterminous U.S. from 2001 to 2017" (Truckee, CA: Conservation Science Partners, 2019), available at <https://www.cspinc.org/public/CSP%20Disappearing%20US%20Exec%20Summary%20011819.pdf>.

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