

# The Recorder

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## Landowner: ‘Dominion would just dig us up and throw us out’

BY JOHN BRUCE • STAFF WRITER



*Bob Koontz said he traveled 30,000 miles between Texas and Virginia in search of retirement land before choosing Wilderness Farm in northern Bath County and donating the property under a conservation easement. He and his wife plan to fight for the land. (Photo courtesy SELC)*

MONTEREY – Call it a Catch-22 for rural America.

Looking back, landowners say they went from feeling secure to defenseless, despite donating acreage to a legally binding, state-run program to prevent development.

Dominion’s modified Atlantic Coast Pipeline route could violate agreements of at least 10 property owners who placed their land in a special trust, the Southern Environmental Law Center charged in a filing to federal regulators last week.

Doing so, SELC said, would jeopardize confidence in Virginia’s conservation easement program and betray easement donors.

For its part, Dominion maintains the impact would be “mini

mal.”

“You think, my goodness, what does a conservation easement mean?” northern Bath County landowner Roberta “Robbie” Koontz said in an interview with SELC.

She and her husband, Bob, years ago put their 1,200 acres in the state conservation easement program with the Virginia Outdoors Foundation. Last winter, Dominion included their property in the proposed pipeline route, along with nine other tracts under VOF conservation easements.

“We’ve worked all our lives,” she said. “We’ve been good, loyal citizens and taxpayers. We think, how can this be happening to us?”

Mr. and Mrs. Koontz thought the easement program would prevent development. “Going into it, we really felt very protected,” Robbie Koontz said. “Now, we feel completely vulnerable.”

Her husband says they plan to fight for their land, Wilderness Farm, which includes a small family cemetery on a bluff where they would like to be buried. “Now, I’m worried Dominion would just dig us up and throw us out,” he said.

Concerns over endangering the conservation easement program are unfounded, Dominion said.

“From the beginning, our goal has always been to avoid crossing conservation easements to the greatest extent possible,” Dominion spokesman Aaron Ruby told The Recorder. “However, due to environmental and other constraints, we were unable to avoid crossing all conservation easements along the 600-mile route ... Our original route crossed only one Virginia Outdoors Foundation easement. However, in order to avoid some environmentally sensitive areas in the national forests, earlier this year we had to adjust the route.

“To offset the minimal impact of these crossings, we’ve proposed to donate more than 1,200 acres of pristine conservation land to the easement holder (VOF),” he said.

He was referring to Hayfields Farm south of McDowell, a large parcel recently purchased by The Conservation Fund as a way to offset taking the other 11 easements. Dominion has applied to the VOF for a “conversion” of land under easement, essentially “trading” the 11 easements with one easement on the Hayfields tract. “That’s more than 17 times as many acres as would be minimally impacted by the ACP, which we believe is a fair and appropriate offer. We believe our proposal is consistent with the mission of VOF and will advance the goal of expanding land conservation,” Ruby said.

SELC attorneys filed a motion with the Federal Energy Regulatory Commission to reject Dominion’s proposed pipeline route. The lengthened route would stretch from West Virginia, through Virginia to North Carolina, at a cost of \$5 billion. The company modified and extended the route after the U.S. Forest Service objected over disturbing an endangered salamander species with the original route.

SELC represents the Shenandoah Valley Network, Highlanders for Responsible Development, Shenandoah Valley Battlefields Foundation, and the Natural Resources Defense Council.

“When the U.S. Forest Service rejected Dominion’s original route for the Atlantic Coast Pipeline earlier this year, Dominion wasn’t about to let go of a project that promises to be very lucrative for its shareholders,” SELC senior attorney Greg Buppert said. Instead, investor-owned

Dominion proposed an equally destructive route requiring an unprecedented taking of conservation easement land, Buppert explained.

The SELC challenge centers on the conservation easement program administered by VOF. Landowners can place large rural parcels into the program to prevent future development. That's what Mr. and Mrs. Koontz did when they purchased their historic farm and manor house. The home dates to 1797 and traces its lineage to soldiers and generals who fought in the Revolutionary War, the couple said.

"This was something we wanted to give to the people of Virginia," Bob Koontz said. "We wanted it to be looked after. That was our gift. We didn't want it broken up into little parcels."

Robbie Koontz said the pipeline would cut through some of their orchards and could damage several underground springs that feed the property's creeks. She said a construction access road would be built across their driveway.

"This property survived the French and Indian War, the Civil War, world wars, all sorts of things," she said. "And now to see it destroyed by Dominion is really unbelievable."

When a protected property such as Wilderness Farm is used for development, the change in status is called a "conversion." Since the conservation easement program was started in 1966, only 13 properties under VOF easements have been converted. All were for small projects, such as a school's turning lane and a town's water tank.

Dominion's request to convert at least 10 protected properties is "unprecedented," Buppert says, adding it doesn't comply with state law.

Virginia law requires conversions to be essential to the county or locality where the property is located and in accordance with that locality's comprehensive plan. In this case, Buppert said, not only is the pipeline unessential, it does not benefit the counties of Bath, Highland, Augusta or Nelson.

The pipeline would carry natural gas to other areas, not the areas where the property is being converted. "The conservation easements threatened by the Atlantic Coast Pipeline play such a vital role in this region," said Kate Wofford, executive director of the Shenandoah Valley Network. "They protect intact forestland, water quality, scenic views, and rare cave habitat — and they help to preserve the unique rural character of this extraordinary place. Landowners who have voluntarily placed their property under conservation easements trust that the land they love will be protected in perpetuity."

Wofford said landowners might stop putting their properties into conservation easements if this is what will become of them. Numerous landowners have expressed precisely that concern to the VOF, she said, and the foundation shares that concern.

Dominion is pressuring the VOF to approve its request, but so far, the foundation is holding firm and has expressed its opposition to the conversions to the Federal Energy Regulatory Commission, SELC said.

The SELC motion points out Bath supervisors and planning commission have gone on record in opposition, and the pipeline route is at odds with county comprehensive plans. SELC argues the proposed conversion would conflict with the intent of the conversion process itself.

“Up until now, conservation easement conversions have been infrequent and small. If the pipeline is allowed to disrupt or destroy the conservation purposes of this much land (71.25 acres proposed for conversion on parcels totaling 4,700 acres) protected by conservation easements, existing and future easement donors will no longer be able to rely on an expectation that conversions will be few and far between.

“Unlike Dominion’s proposal, each of the previously approved conservation easement conversions also provided a clear benefit to the locality where the property was located,” the SELC filing states. “For instance, in 2006, VOF approved the conversion of 0.4 acres in Fauquier County to provide space for a driveway to a school. The locality supported the small conversion. Similarly, in Franklin County in 2000 and 2007, VOF approved the conversion of 0.87 acres and 0.24 acres, respectively, to improve access to public schools. Other approved conversions were made to facilitate construction of a town water tank, expand a county-owned landfill, and to make room for construction of a larger volunteer fire station. These approved conversions, which were very small and almost exclusively expansions of existing rights of way, improved access to schools and allowed for updates to essential services like waste disposal, water supply, and fire protection.”

Approving the Dominion request would instantly double VOF conversions approved since VOF was formed 50 years ago, SELC said.

Also last week, VOF announced it would hear Mountain Valley Pipeline and Atlantic Coast Pipeline conversion applications at its Feb. 9, 2017 board meeting, if the current alignments and project schedules remain unchanged.

No meeting time or location was announced yet.

VOF decided the February meeting would be the appropriate time to hear the applications because FERC has already issued a Draft Environmental Impact Statement for the MVP, and expects to issue a draft EIS for the ACP as early as December.

“Trustees want to ensure that VOF has an opportunity to submit formal comments to FERC before a certificate of public convenience and necessity is issued. VOF believes this timing is important to protect the public’s interest in its easements through the FERC process,” the foundation said. “VOF has been working with the pipeline developers for more than two years to determine what impacts may occur to VOF-protected lands. The foundation has emphasized its preference to avoid all protected lands.”

If the existing route cannot be avoided, VOF told Dominion it considers the construction, operation and maintenance of large-scale gas pipelines a violation of existing easements. “This would trigger a process in Virginia law known as ‘conversion of open space.’ This process, spelled out in the Open Space Land Act, outlines requirements that are designed to protect the public’s interest in open-space lands when a violation is unavoidable,” the foundation explained.

“As shown in the Draft EIS, the proposed route for MVP crosses two VOF easements in Montgomery County. Company officials are hopeful that they can still avoid all VOF easements; however, VOF is exercising what it feels is a prudent approach by asking MVP to move through the conversion process as a precaution.

“The proposed ACP route crosses 10 VOF easements in Bath, Highland, Augusta and Nelson counties, and a variation known as the Spruce Creek Route crosses an 11th easement in Nelson County. VOF has asked ACP to initiate the conversion process for all 11 easements.”

VOF told FERC the easements possess “multiple important conservation values protected in perpetuity by the deed of easement.”

VOF spokesman Jason McGarvey added, “We’re encouraging (Dominion) to avoid the easements, but to also be prepared to follow Virginia law and go through the conversion process if FERC eventually issues a certificate of public convenience and necessity. Initiating the conversion process in February, before a final EIS is issued, helps to ensure that will happen.”

The foundation explained, “ACP and MVP submitted draft applications to VOF’s Energy and Infrastructure Committee in May. Since then, VOF has been gathering more input on the projects, as well as input from affected landowners and other interested parties. It has also asked the companies to refine their applications based on new information in the FERC process. VOF will post the applications on its website as soon as they become available.”

Those who wish to comment on the process may submit written comments addressed to the Virginia Outdoors Foundation board through the Warrenton office, electronically to [bcabibbo@vofonline.org](mailto:bcabibbo@vofonline.org), or in person during the public comment portion of the Feb. 9 meeting.”