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Pipeline project awaits critical state decision

Perspective

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WARM SPRINGS — The decision could make or break the future of their farm.

Robert “Bob” and Roberta “Robbie” Koontz are in arguably the toughest battle of their lives — to preserve hundreds of acres they have worked tirelessly to save from industrial ruin.

When utility powerhouse Dominion Resources moved its planned Atlantic Coast Pipeline from central Highland to a more southwesterly route, the Koontz’s historic property, “The Wilderness,” was sitting midline, and vulnerable, with the proposed gas transmission line headed straight up their driveway.

Never mind they had carefully documented the rich and deep history of the place going back to the 1700s. Never mind they worked closely with the Virginia Outdoors Foundation to place not one but two conservation easements on the land to protect and conserve it. Never mind they are documenting endangered and threatened species that make their place habitat and home.

All that might not matter at all, depending on what happens Feb. 9.

When Dominion re-routed the line after the U.S. Forest Service nixed the original route to avoid sensitive habitat, the company moved the project through properties in southern Highland and northern Bath County — nine of which were, in whole or in part, under conservation easements held by the VOF.

The foundation has explained to the Federal Energy Regulatory Commission the project cannot cross those easements unless they are converted — a legal state process that requires the company to offer another, similar property upon which an easement can be attached.

According to the law, no open-space land acquired and designated as open space land can be converted or diverted from that use unless VOF determines that is “essential to the orderly development and growth of the locality, and in accordance with the official comprehensive plan for the locality in effect at the time of conversion or diversion; and there is substituted other real

property which is of at least equal fair market value, of greater value as permanent open-space land than the land converted or diverted and of as nearly as feasible equivalent usefulness and location for use as permanent open-space land as is the land converted or diverted.”

Dominion proposes to use Hayfields farm in McDowell as the substitute property.

As reported last week, to meet the “essentiality” requirement, Dominion must demonstrate the conversion is essential to the orderly development and growth of the locality and must submit a letter or statement and/or materials from the local government, regional, state, or federal entity to this effect. None was provided in its most recently revised application.

The VOF will hold a hearing Feb. 9 to decide whether Dominion’s proposal holds up under the legal requirements for conversion.

From documents The Recorder acquired through a Freedom of Information Act request, it’s evident this decision is critical to Dominion’s forward progress. Michael Lapidés of Goldman Sachs, Global Investment Research, reached out to VOF Deputy Director Martha Little last November to discuss the issue. Goldman Sachs is monitoring the project’s progress for utility investors, including the state and federal filings required, according to that report.

Little told Lapidés there has never been a case for the foundation involving energy infrastructure with a project this large or for as many acres. “The closest case was a road expansion for a locality landfill project that ‘converted/diverted’ approximately 18 acres,” she told him.

Lapidés sent Little a Dec. 5 report generated by Goldman Sachs noting the “complex permitting and siting process” for the pipeline “still remains ahead.”

“For both (Dominion) and (Duke Energy), once built, we forecast that this project represents roughly \$125 million-\$150 million of net income annually,” the summary states. “Dominion, the project manager for ACP, already announced project delays earlier this year given the need to revise routing of this project.”

Further, it states, “We view the companies’ effort to gain access to conservation easements overseen by the VOF as a key step necessary for construction.”

The summary noted:

- “Our forecast assumes the project comes online at (year end) 2019 but we recognize potential for further delays exists due to siting and routing challenges, especially given (1) the project will run through various national/state forest land and (2) the project intersects or goes through 10-11 sites under VOF oversight or control.”
- “In (a) FERC filing, VOF disclosed (1) that VOF views the ‘minor conversions’ to VOF easements as decidedly not ‘minor’ as they would represent the largest conversion of open space land in the VOF’s 50 year history,

(2) that eight of the easements, in VOF's view, do not contain legal language that permits this scope of activity (the construction of ACP) without impairing conservation values of the affected properties and (3) that VOF views the construction and operation of the interstate gas pipeline as 'inconsistent' with the open space protections afforded by easements."

The report concludes, "While we still assume completion of the project at (year end) 2019, we recognize the effort to route ACP through or near VOF controlled easements remains a key item for ACP and could impact Dominion and Duke earnings power in 2018-19 if incremental delays, due to siting or routing issues, emerge."

The summary contained a link to a report for investors, but Little told The Recorder she was unable to see it, and believes it's only available to the energy company shareholders or project investors.

Another correspondence shared with the VOF was from area resident Peggy Quarles, who wrote Stephanie Ridder, VOF board chair, in November, explaining concerns that since the Federal Energy Regulatory Commission issued the draft Environmental Impact Statement for the project, that might lead VOF to conclude it will be approved for its certificate to build.

Quarles and another person had a conversation with Jennifer Adams of the U.S. Forest Service, a pipeline project coordinator, about FERC and the National Environmental Policy Act process.

"The purpose of the discussion was to clarify our expectations about the draft and final EIS and when there would be an indication of whether or not FERC would approve either the (Mountain Valley Pipeline) or ACP. Jennifer pointed out that the draft EIS for the MVP does not contain a recommendation section and that it does not in any way predict what the forest service or FERC might ultimately decide. This is not obvious — it would be easy to assume that just issuing the draft EIS for the MVP implies approval. She warned us not to make that assumption," Quarles told Ridder.

"Further, in the FERC process, even the final EIS is not the decision document for a certificate. The final EIS is the document of the environmental staff containing recommendations to the commissioners. It is the commissioners who decide and issue a decision document. Jennifer pointed out that the NEPA process may be a decision document for other types of federal actions and that many people are confused."

She continued, "The Forest Service is evaluating the proposed route with the same thoroughness as the earlier route over Cheat Mountain. They did not endorse, promote or cooperate with Dominion on the GWNF6 route (the one through northern Bath County). The final EIS is not the decision document for the Forest Service about the special use permit and plan amendments. In fact, the Forest Service has mentioned along the way a supplemental EIS may be necessary. And we believe that the Forest Service decision is just as critical to your interests as the FERC certificate. If the Forest Service denies the special use permit, your easements will probably not be crossed," Quarles told the VOF chair.

"This is important to VOF because Dominion and others want us to believe that the draft EIS for the ACP will indicate what FERC's decision will be and that VOF should take steps in response.

Based on our conversation with Jennifer, this will not happen. In fact, we may find that we do not know what FERC or the Forest Service will do for quite some time. The likely timing of both actions should be considered. To agree to Dominion's conversion proposal prematurely, even conditionally, before you know what the Forest Service and FERC decisions will be, gives FERC a free pass to ignore the VOF as any kind of barrier to approving the route. And the fact that you may be willing to do so runs the risk of damaging the confidence of current and future landowners in your commitment to protect them. The potential environmental damage of a massive pipeline on these easements far exceeds any allowed landowner uses, such as foresting or agriculture. And it is permanent.

"We urge you again to delay consideration or, even better, reject the Dominion application until it is clearly necessary. If the 1704 conversion must occur, it will be available to you at that time. We believe that Dominion has no incentive to withdraw the

Dominion has no incentive to withdraw the offer, even after the certificates and permits have been issued and appeals exhausted," Quarles said.

The Koontzes are not hopeful.

"Our hopes, dreams and our remaining years will all be ruined if VOF does not reject the proposal," they told the foundation.

Three times they've written to VOF's board to urge the foundation to reject the plan. They have faced an appraiser, who arrived to calculate the value of their land — one paid by Dominion. A real estate agent told them they are unlikely to be able to sell the property as long as the threat of the pipeline project exists. They're tired, their health is precarious, and they're not sure what to do next.

In their Jan. 11 to the VOF board, the Koontzes explained they could not attend the Feb. 9 meeting due to health issues. "The stress of travel and the distress of dealing with the proposed diversion of our property prohibits our participation. It is important that you know that our failure to appear in no way reflects a lack of absolute commitment to preserving our property; property we thought was preserved when we placed it under conservation easement," they wrote.

They told the VOF board it must refuse to accept the conversion/diversion plan from Dominion, arguing:

- Good faith consideration of the easement donors' commitment to preserve their properties requires VOF to reject the proposal, they said. "To elect to agree to the diversion is an abdication of your statutory preservation role. Put the burden on Dominion to convince a court that the proposal is acceptable."
- The proposal fails to meet requirements of the law which "specifically includes two elements which cannot be met, namely a determination that the diversion is (a) essential to the orderly development and growth of the locality, (the locality, Bath County, has publicly rejected that notion), and (b) in accordance with the official comprehensive plan for the locality, (the county specifically found that it was not)."

- Failure to reject the proposal will effectively destroy the foundation’s conservation easement program and jeopardize the efforts of other land trust organizations in Virginia. “What landowner seeking to preserve land in Virginia would consider putting property in a Conservation Easement when it would be manifest that VOF will not defend the conservation values?” they asked.

- Donors will suffer an additional and substantial diminution of the value of their property. “The market for property in the Deerfield area has been significantly depressed,” they said.

- Hundreds of acres of rural lands, remarkable natural and cultural resources will be destroyed. “The width of the easement for the ACP project is such that it will create a jarring scar across the very visible landscape in the Valley. The use of the land will be curtailed and many potential building sites for homes, barns and other improvements allowed under terms of the existing conservation easement will be rendered unbuildable and/or undesirable. And these assessments do not begin to address the effects of a gas line explosion. The effect on the karst topography that exists on our farm has not been evaluated by ACP or any state agency.”

They explained, “We purchased our farm, The Wilderness, which was established by a 1750 land grant, farmed since then and the house constructed in 1797, with the goal of protecting it forever. To that end we committed the bulk of our financial resources to the purchase, preservation and maintenance of the farm, leaving us with limited means. Our plan under the easement was to create and market large tracts of land configured consistent with the streams, ridges and open fields. The proposed location of the pipeline is wholly antithetical to the character of the landscape.”

Robbie Koontz said the appraisal of their farm was somewhat forced. The couple’s attorney agreed to allowing it because he felt it might benefit them with respect to VOF and Dominion. “He also knew the appraiser and thought he would be fair,” she said. “And in the end, Dominion could have obtained a court order. So far, we have refused to allow Dominion to survey our property or set foot on the property until the appraiser. This appraiser is apparently appraising all 11 of the VOF easement properties for Dominion ... This is very disturbing. I do not believe Dominion could have obtained a court order but to date, they apparently do not want to make waves with VOF just yet. We did not allow a Dominion agent to set foot on the property. The appraiser came alone and Bob knew what he looked like.”

The couple is wary of giving Dominion or its contractors permission to do anything on their land. “We had a close brush with this because Dominion once announced to our attorney that they were bringing over their archaeologists in three days or so to assess a big sinkhole on the property that we believe has been the dump for the property perhaps for 100-plus years,” Mrs. Koontz said. “We had protested the ACP passing right next to this sinkhole, through our attorney. I think this was in September, when I was barely out of the ICU. The sinkhole and potential collection of very historic relics is in the path of the ACP. We refused to allow Dominion to come and said we would hire our own archaeologists. I tried to hire an archaeologist but we could not possibly afford them,” she said.

After the VOF decision, she added, the couple might have to stop using their attorney on the pipeline issue. “He will remain our estate planning attorney but really does not want to continue

on with this work,” she said. “And we cannot afford it. He feels that after the VOF decision, our only recourse will be to litigate. We cannot possibly afford to litigate whether ACP can be routed through our property. It is a costly and losing battle due to eminent domain. However, we can litigate about where the ACP crosses our property. Our attorney has met with and talked to Dominion attorneys and representatives several times. Although they moved the ACP on Revercomb property, and apparently on other property, to accommodate his wishes ... Dominion refuses to move the ACP to the edge of our property or at all, including a horrific access road they have mapped out. They will destroy all the prime areas of the 800 acres on this side of State Route 629.”

The couple has consulted with real estate professionals about selling their farm. Mrs. Koontz pointed to a letter she received from a Fishersville representative.

“We were waiting and hoping that more properties would have gone under contract,” the agent told the couple. “However, we are not finding any properties in your area that have been recently sold. We feel due to the fact the gas line is having such an impact on the properties in Bath and Western Augusta County, buyers are afraid to purchase in the event, that the gas line will go through their property making it such undesirable for farming and building their dream homes.”

Further, the agent said, “Your property has been on the market over a year and we have only a handful of interested buyers. We have to disclose that the gas line is coming through this area, whether it is located on the acreage or not. It still has an impact on the value. Buyers do not want to be anywhere close to the gas line. We know there are many safety precautions that will be in place; it doesn’t seem to change buyers’ minds. Unfortunately, we can advertise and spend lots of money, it won’t change people’s minds about the gas line.”

The couple wrote to the Virginia Outdoors Foundation about this problem on Jan. 11, including a copy of the real estate agent’s letter. “Due to our poor health and age, my husband and I have been trying to sell three parcels of our VOF protected property for over a year. Our real estate agents ... are highly qualified, experienced and successful agents. They tell us that potential buyers will not even look at our property due to the ACP. Buyers do not want to be near the ACP, let alone purchase a property with the ACP running through it,” they wrote. “Dominion continues to assert and claim that the ACP will not have a negative impact on property values. Who on earth would believe this? This is an outrageous, deceptive and absurd claim. No buyer wants to purchase property with or even near a gas pipeline. And then possibly have ACP access roads, storage locations and who knows what on their property, as we will, according to Dominion. And then also live in a ‘kill zone’ where their family, animals, friends, livelihood and assets can be blown away.

“Buyers know that their investment in such a property would be grossly diminished in the unlikely event that they could even resell the property in the future. Yet Dominion claims all of these dangerous and invasive ACP structures and activity will not negatively impact the value of our property. Or our livelihood.” The couple urged the VOF to read the letter from Old Dominion, the real estate agency. “They have given us permission to share this letter widely with other property owners and residents of Bath County to reveal what is really happening to property values near the ACP. This information is factual and specific to The Wilderness in Bath County with a VOF conservation easement. Dominion cannot substantiate their claim that

property values on The Wilderness not being negatively impacted. Our property values have been negatively impacted by Dominion and the ACP for over one year now. And there is nothing we can do about it,” the couple wrote. “We will now have the worst of both scenarios. We have a property with many restrictions that, for example, do not allow subdivision, which some buyers want to do. These restrictions were obviously designed to protect and preserve the historic property. At the same time, the property will house the invasive and dangerous Atlantic Coast Pipeline. And property owners on The Wilderness will have to live in or near a kill zone. There will be no protection from Dominion now or in the future — ever. Dominion and the ACP will be a complete unknown and very high risk for the once pristine and very historic property,” they continued. “The ACP as already impacted us negatively because we are unable to sell much of our property. Having 1,000 acres to maintain has become stressful and expensive. Having a great deal of our assets tied up and unavailable to us through no fault of our own is stressful, expensive and unfair. Having to hire an attorney and consultants to fight Dominion is expensive, stressful and unfair. Having to spend hours researching issues and filing comments to FERC is tiring, time consuming and harmful to our health. VOF has done nothing to protect us or even help us. It is almost impossible to believe this corruption exists and honest citizens can have their lives ruined.” The Koontzes kept at it, writing yet a third letter to VOF — this time pointing to environmental impacts from the pipeline project, including damage to the endangered James spiny mussel, after consulting the Virginia Department of Game and Inland Fisheries. “We have worked with the VDGIF on many projects and highly respect them,” Mrs. Koontz said. “We received the highest U.S. and state grants dollars in Virginia in one year, maybe 2005, for establishing wildlife habitats and for projects to improve the land and water, thanks to Bob. (DGIF’s) Al Bourgeois once took me on a ‘bear release’ with a 256-pound male bear, which ranks as one of the high points in my life. VDGIF staff have highly skilled and dedicated biologists including two fishery biologists in Bath County alone. That suggests that there is a lot of important marine life in Bath County that requires support from VDGIF.”

She added, “VDGIF has helped us so many ways including management of our deer population, which we love but recognize can suffer greatly without some management. We had a limited hunting club of VDGIF employees only for the first four years or so that we owned the farm. We knew we could trust them.”

The Koontzes read up on the James spiny mussel, learning it has been critically endangered since 1990 or earlier. “So it has not rebounded while being highly endangered and protected,” Mrs. Koontz said.

“It breaks my husband’s and my heart to think of all the rare resources of this long-pristine and historic property that could be destroyed forever.”

The letter to the VOF explains, “These comments concern the environmental impact of the ACP on our historic property with respect to such things as air, erosion, soil, water, plants, trees, farm crops, agriculture fields, wildlife habitats, all living creatures, endangered species, etc. Are we all merely collateral mortality for the great Dominion and their ACP?” they wrote.

“Dominion and even VOF representatives claim that Dominion has been working with property owners, making compromises, etc. That is certainly not true for us. Our attorney has talked with Dominion about moving the proposed path of the ACP so there is less negative impact on us, our

property values, the farm, our livelihood, etc. Dominion has been unwilling to move their proposed route of the ACP on The Wilderness. No compromise at all. The proposed ACP path will wipe out all of the prime building sites for the property. Dominion moved the path for the farmer living next to us, but not us. No compromise. And Dominion plans a major access road that could run over top of the historic entrance to our farm (our driveway) and right next to the 1797 structure where we live. Dominion has selected the prime areas of our farm for the ACP. The ACP could have been routed along the edge of our property with far less negative impact on us. The access road could also be routed along the edge of the property. I believe Dominion cares nothing for property owners and in fact, they want to punish those of us who do not want to surrender our property rights to them. What other conclusion could we draw from Dominion's behavior towards us?" she said.

"FERC recently released the Environmental Impact Study for the ACP published by Dominion as required by FERC. I have been recovering from a recent surgery and unable to study the report. However, I have seen many comments and evaluations by others that are highly critical of Dominion's process, conclusions, remedies (if any) and the report itself. For example, Dominion never conducted any studies of karst on our property. We have sinkholes and caves, which are evidence of karst. Yet Dominion claims there are no problems with karst in the path of the ACP. Their claim was proven false in the area of Little Valley and they now admit there is karst in this area. They offer excuses that blame everyone else such as mapmakers for the error. This is just one small example of Dominion versus the environment.

"Our farm is a haven for wildlife, trees, plants, fish, etc. There are forests, fields, meadows, ponds and creeks. Our historic 1797 home is unique in Bath County. For example, the first carriage house ever built in Bath still stands and is used today (circa 1800). Previous owners of the property were famous patriots who helped with the settlement of Virginia. We have worked hard to provide the proper environment and protection for these great resources on the property."

The Koontzes explained that conservation easements for their property were key in their strategy to preserve and protect the property.

"We made significant investments in the renovation of the old house while trying to preserve the historic integrity. And we have invested considerable monies in improving and maintaining the property. We have invested considerable resources in improving the farm land and protecting the water. Our goal is to protect this wonderful property and preserve the property for future generations to enjoy," they explained to VOF.

"The negative environmental impact on our property from the ACP is horrific, final and unfair. We have found one specific example of Dominion's lack of regard for the environment of our farm," Mrs. Koontz wrote. "My husband contacted Al Bourgeois, district wildlife biologist with the Virginia Department of Game and Inland Fisheries to inquire about marine life on The Wilderness. Several VGDIF biologists including the fisheries biologists for Bath County investigated areas on our farm and determined that there is a critically endangered species living in Mill Creek on our property. It is the James spiny mussel. There could be more endangered plants and living creatures on the property. And more environmental risks such as karst.

“Not only does Dominion plan to route the ACP near and through water sources feeding Mill Creek, Dominion actually plans to have the ACP cross Mill Creek and then go up very high, steep slopes running next to Mill Creek. This is unacceptable and outrageous. And Dominion never even evaluated our property to identify issues and risks. The James Spiny Mussel is at great risk due to Dominion’s lack of regard for our property and environment.”

Mrs. Koontz provided a series of email correspondence between her husband and VDGIF biologists. “The James Spiny Mussel is just one example of something Dominion does not care about or even know about. I am confident there are many more unknowns that will just become collateral mortality of the ACP. And there is nothing we can do about it. We need your help to keep the ACP off of our property,” she said.

Mrs. Koontz has researched the number of threatened species in Bath County and knows some of them exist at The Wilderness. “We have many, many bats on the property and we love our bats. They used to inhabit our attics but now have moved on to caves. We never harmed any of them in this multi-year relocation program. We have a lot of shale on the property, so one or more of these plants could be on the property. We have regular sightings of wonderful bald eagles. Bald eagles and other eagles live on or near the property,” she said. “Certainly some of the listed plants might be present on the farm.”

The Koontzes’ frustration is endless.

“It makes me just ill that some landowners will speak in favor of VOF agreeing to the land swap,” Mrs. Koontz said. “But sadly, I think some landowners obtain a conservation easement in the first place for the money they receive. And now that Dominion is giving them even more money, they support Dominion.”

The Virginia Outdoors Foundation will hold its hearing Feb. 9 at 10 a.m., though details are subject to change through Feb. 6. The meeting will be held at the Virginia Department of Game and Inland Fisheries, 7870 Villa Park Suite 400, in Henrico. VOF accepts written comments on the issue, and they may be emailed to: bcabibbo@vofonline.org. They should include name, address, and daytime phone number in order to be accepted as part of the official meeting record.