

After two-year battle, Dominion releasing some easements along proposed ACP route

Emma Martin

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Friends of Nelson landowner liaison Joyce Burton holds copies of the Nelson County easements that Atlantic Coast Pipeline has released so far through her advocacy work. The rest of the papers in the box are copies of the remaining easement agreements ACP still holds in Nelson County.

Paige Dingler photos, The News & Advance

During Christmas week 2014, many Nelson County landowners along the Atlantic Coast Pipeline (ACP)'s proposed route received a not-so-festive piece of mail: a notice that Atlantic Coast Pipeline LLC was suing them for survey access to their properties.

The approximately 600-mile pipeline would have run from Harrison County, West Virginia through Virginia — crossing directly through Nelson, Augusta and Buckingham counties — and south into North Carolina. Many Nelson landowners had refused ACP permission to survey their land for the project, the first act of resistance in what would be a six-year fight, according to Joyce Burton, landowner liaison and a former board member of Friends of Nelson, one of the first groups to formally organize around halting the pipeline.

On July 5, 2020, ACP parent companies Dominion and Duke Energy announced the cancellation of the project, citing environmental lawsuits and delays as having increased the estimated price tag from \$5 billion to \$8 billion.

Two years later, most Nelson landowners along the pipeline's proposed path still have easements, or right-of-way agreements, on their properties. These easements would have been used for pipeline construction and don't allow for activities that might interfere with a 42-inch pipeline buried underground — like cutting driveway, constructing a barn or any permanent structure, and moving earth and planting trees.

Such easements are typically 50 feet wide, plus an additional 75-foot temporary easement intended to be used during construction, Burton said. Easements' linear acreage varies depending on how much of a landowner's property they cross.

Since the pipeline's cancellation, Burton has been fighting to have those easements returned to every Nelson landowner on the path. In the past few months, she's finally started to see her work pay off, watching multiple landowners have their easements restored.

The Federal Energy Regulatory Commission (FERC) reviews applications for the construction and operation of natural gas pipelines, and its approval grants an energy company the right of eminent domain to obtain private property for the pipeline.

In a recent phone interview, Burton explained landowners along the pipeline were compensated for the easements ACP required to build the project but didn't have much leverage in the process.

FERC explains the terms in an informational brochure sent to landowners on proposed pipeline routes: "The [pipeline] company negotiates a right-of-way easement and compensation for the easement with each landowner. Landowners may be paid for loss of the land during and after construction, loss of any other resources, and any damage to property. If the Commission approves the project and no agreement with the landowner is reached, the company may acquire the easement under eminent domain ... with a court determining compensation."

Landowners could either sign over when approached by ACP — with the knowledge that the easement would eventually go to the company via eminent domain anyway if they didn't — or have the value of their land decided in court, Burton explained. There was no third option where a landowner could refuse to take the money because they didn't want a pipeline to cross their property.

On Jan. 5, 2021, a day after ACP filed its restoration plan to FERC for repairing land damaged during construction, company spokesperson Aaron Ruby confirmed for the Associated Press that ACP did not intend to voluntarily release the easements and did not have plans to sell them to any third parties at that time.

There's a "human cost," Burton said, to those easements still sticking around post-pipeline, when they continue to affect property values and limit what a landowner can do on their property.

Retired schoolteacher Nancy Holstein was hoping to use her Nelson County property as an investment or move to it, but said in a recent phone interview that her plans have since changed. She wouldn't even consider putting the property on the market with an ACP easement running across it and said for years it's put her life on hold.

She contacted a real estate agent about selling, who asked her, "Don't you know there's a pipeline coming through?" Now that Holstein's easement has been released, she said might reconsider selling in 2023.

"This is something that I need for my retirement," she said.

Wisteria Johnson received notice around 2015 that the new pipeline route would cross right through her property. Johnson and her sister are co-owners of a farm near Elma, a township in the Central District of the county.

The stress of eventually signing over an easement in 2017 put her in the hospital for a week, she said in a recent phone interview.

“These were our mountains that they were trying to come through, mountains that we had been stewards of for thousands of years,” Johnson said.

Johnson said records show her children would be the sixth generation to live on her land. But from family artifacts and oral histories, she thinks her indigenous ancestors lived there long before that. She also has German, Irish and Jamaican ancestry.

Johnson and her sister felt they were betraying the next generation when they signed the easement over. Part of Burton’s advocacy group, Johnson recently had her easement released, and it makes her doubly relieved: “One, the mountains will stay intact. Number two, the next generation can have clear ownership of whatever they’re supposed to be getting. They won’t have to worry about that thing.”

In fall 2021, Burton spearheaded an advocacy initiative with Washington D.C.-based think tank the Niskanen Center to return easements, first with a dozen or so landowners with no physical damage to their properties. She connected with the office of U.S. Sen. Tim Kaine, D-Va., and he intervened on behalf of these landowners to Dominion.

She credits his advocacy for eventually breaking through, and those landowners received a letter in March from Dominion committing to release their easements within six months of FERC’s final order and notice to proceed on its restoration plan. The next few landowners Burton sent Kaine’s way also have had their easements returned.

“Senator Kaine has been helping Virginia landowners get in contact with Dominion and get their land back,” a spokesperson for the senator said in an email. “He is encouraging Dominion to establish a streamlined process for landowners impacted by ACP to restore their rights over their own land.”

Megan Gibson is deputy chief counsel for the Niskanen Center and directs the nonprofit’s litigation department. In a recent phone interview, she said the Niskanen Center offered pro bono litigation to landowners along ACP’s route during the restoration process, and her department works on behalf of impacted landowners along other proposed and existing natural gas pipeline routes.

“We started an advocacy campaign, with landowners and landowner advocates at the forefront — pushing with the help and assistance of Senator Kaine’s office and some of his great staff, really pushing Dominion to give this land back ..., ” she said.

“We’re seeing more and more termination of easement agreements circulating in Nelson County and elsewhere, and we’re hoping that Dominion will continue to do right by the landowners that were so wronged by this process and continue to give the land back —but also restore the land in places where it was damaged to get it back to as close as possible to the way it was before ACP came through and blew through these people’s livelihoods and lands.”

Burton said the first group of landowners was told by Dominion that the company was maintaining the easements because FERC was requiring the company to do restoration work along the route.

According to FERC, before pipeline construction was halted, ACP felled 222.5 miles of trees, installed 31.4 miles of pipe, and completed an additional 82.7 miles of clearing and grading along the pipeline right of way. Burton said Dominion also told landowners it needed to maintain the physically undamaged easements for access to do the required restoration to damaged properties.

But, according to Burton, the only property in Nelson that ACP did any work on was at the entrance to Wintergreen Resort.

Ruby did not address whether Wintergreen Resort was the only damaged property in Nelson but did write that no restoration work is planned by ACP for that property because “the landowners have agreed to leave felled trees in place to avoid disturbing the significant amount of vegetation that has regrown naturally over the last several years.”

He also confirmed ACP had been in communication with several Nelson County landowners and committed to releasing their easements within six months of receiving final FERC approval of its restoration plan, which FERC granted on March 24.

“For the remaining landowners whose properties do not require access, we will begin coordinating the release of their easements, but do not yet have a definite time frame,” Ruby wrote.

“We appreciate everyone’s patience as we worked through the lengthy approval process for the ACP restoration plan. We needed to keep the easements until receiving FERC approval so we would have certainty on which properties require restoration or access. With the limited FERC approval to proceed, we will now begin coordinating the release of easements for landowners whose properties do not require restoration or access.”

Asked what landowners seeking their easements released can do, Ruby directed landowners with questions to contact their land agent — the ACP land supervisor for Nelson and nearby counties is Dave Aman, whose information is available on the ACP website, atlanticcoastpipeline.com.

Burton has been monitoring the ACP website for changes while working with landowners and has watched the answer to a “frequently asked question” about what happens to ACP easements grow slightly more promising.

In September 2020, the answer was, “In the coming months, we will seek approval from FERC and other agencies to complete restoration for areas of the right of way that have been disturbed. We will be evaluating the best way forward for resolving existing easement agreements and will work closely with landowners throughout the process.”

As of Dec. 1, the ACP website’s answer to the easement question — now that the company has obtained FERC approval to proceed with its restoration plan — is “for properties requiring restoration work, easements will stay in place until we complete restoration and post-restoration monitoring. For properties that do not require any restoration work, we are developing a plan to coordinate with landowners to release their easements. Landowners will keep all the compensation they have received.”

In a Dec. 19 email, Ruby confirmed ACP still has no plans to sell the easements, also writing “our only intention is to keep the easements until restoration and post-restoration are complete.”

“Eminent domain was something that resonated with virtually everybody, whether some of the rights to your property were going to be lost because all of a sudden a power company was able to have a 20-foot easement across your property, cut down trees, run a pipeline through it,” said Ernie Reed, Nelson County’s Central District supervisor and former Friends of Nelson president, in a recent interview.

“You lose the ability to have the kind of access to your property you want, to be able to develop your property, and you’ve got a pipeline on it. So what’s going to happen to your property values?” he said.

Burton is happy about the progress but isn’t resting: “Our goal through all of this has been to get this for everybody, and to not just have to have each one be a one-at-a-time advocacy effort. Landowners shouldn’t have to write a letter telling what their individual circumstances and story is in order to get their land back.”

Afton nonprofit spreading native plants, establishing roots in community

Emma Martin
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Ben Kessler (from left), Erica Schapiro-Sakashita and Madeline Smith pick seeds at Little Bluestem Nursery on Oct. 26.
Paige Dinger, the Nelson County Times

Ben Kessler, one of five worker-members for the Afton nonprofit Little Bluestem, told students on a November visit to the nursery that the group isn't trying to teach locals to love the land — “They already do.”

What Little Bluestem is trying to do is boost the Glass Hollow and greater area's ecological diversity, through community education and by propagating and distributing native plants.

Landscape Architecture graduate students from the University of Virginia were a part of that mission on a recent November morning, receiving a lesson in native plants and lending a hand with nursery work.

According to the nonprofit's website — littlebluestem.net — genotypic families of plants are those that tend to grow in the same area and that share genetic material, much like a community of human families.

Kessler explained to students that a group of local genotypic plants will continue to hybridize among themselves, and grow even more adapted to their specific ecosystem with each generation. They'll become more efficient at collecting locally scarce

minerals, synchronize their dormancy with the local schedule of freeze and thaw, and even form relationships with other native organisms such as fungi and pollinating insects.

But divide up that landscape with sidewalks, or plant just one species in a median, and you decrease its odds of survival. Kessler described “parking lots and manicured lawns,” as the “ecological equivalent of a volcanic island.” He explained isolated species will continue to reproduce only with each other rather than with plants that have genetic dissimilarities, and subsequent offspring will grow weaker and less adaptable — a “primary driver of extinction.”

The nonprofit aims to counteract that effect by introducing “fresh blood” — plants from neighboring populations — to small plant communities. Locality is still key though, and worker-members wouldn’t order a grass for the nursery from Oregon, because regional plants are more likely to survive in local conditions.

Little Bluestem is headquartered in an 80-acre valley and bears no resemblance to a commercial nursery, without a greenhouse in sight. Of the more than 150 Central Virginia-native plant species listed on a nursery catalog on the website, only about 30 are currently available for purchase, and by appointment only, so what’s for sale is just what’s growing right now.

Formed in 2019, Little Bluestem receives fiscal sponsorship through the nonprofit Virginia Organizing. Worker-member Lillia Fuquen described the structure as “non-hierarchical,” with all worker members equally responsible for and carrying the work. She said she’s worked in community engagement for years, yet Little Bluestem’s meetings are the most efficient she’s participated in, because everyone is “so focused” on the work.

Kessler led students to a patch of Indian Grass, Hoary Mountain Mint, Golden Rod and the nonprofit’s namesake grass, Little Bluestem, to collect seeds. Then the group headed about a quarter mile to a nearby clearing in the woods that Kessler said was most in need of planting to distribute the seeds.

According to worker-member Kelly Walsh, Little Bluestem has hosted students from the UVA Architecture School two to three times this year already, and Kessler said he hopes students will encounter a different perspective.

The nonprofit thinks long-term, and Kessler said Little Bluestem aims for what it grows and plants to stay where it’s planted. So Walsh explained the organization would prefer for its plants to end up in community-maintained spaces such as parks and schools or in communities of committed people, because an oasis of native plants could die out with the death of a resident in a single-family home.

While it’s still a “fairly new organization,” Walsh said Little Bluestem already has established multiple plots of native plants in the area, and Fuquen added the organization has offered its plants to neighbors and helped plant them.

But they’re “not just obsessed with planting plants,” Kessler said, referencing the group’s recent achievement of an Agricultural Forestal District (AFD) designation for the Glass Hollow area. Little Bluestem also produces a podcast, “By the Seed of Our Plants,” and the first season is available on its website.

Kessler and worker-members organized with 23 of their neighbors to establish a 365-acre AFD with their properties, now named the Glass Hollow AFD. In creating an AFD, a community of landowners agree not to further develop on their properties and

the Nelson County Board of Supervisors unanimously approved Kessler's application to create the county's fifth AFD on Nov. 7.

Friends of Nelson premieres documentary on fight against pipeline, turns over records

Emma Martin

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In this March 2018 file photo, a swath of trees lays fallen at Wintergreen after being cut by crews clearing the route for the Atlantic Coast Pipeline. The News & Advance file

Friends of Nelson board member Ron Enders introduced the organization’s “Lessons Learned” project about its storied fight against the defunct Atlantic Coast Pipeline as a guide for communities facing similar situations.

The hour-long video interview documentary begins where the pipeline fight began: “On May 23, 2014, Dominion Energy wrote to landowners on the route of their newly planned 600-mile pipeline, informing landowners of Dominion’s intent to conduct surveys on their properties. The Atlantic Coast Pipeline was coming to Nelson County, Virginia.”

Interviewed after the “Lessons Learned” release party and screening on Oct. 1, Enders painted a picture: imagine you’re a property owner and you get a letter about a pipeline. You don’t know what direction it’s going, or if anyone else is affected, only that it will cross your property. What do you do?

For Enders, and many of the individuals featured in the documentary, the next step was knocking on his neighbors’ doors.

Friends of Nelson was one of the first groups to formally organize around halting the proposed Atlantic Coast Pipeline. It was canceled entirely on July 5, 2020, with Dominion and Duke energy citing environmental lawsuits and delays as having increased the estimated price tag for the project from \$5 billion to \$8 billion.

Enders and board member Woody Greenberg interviewed 30 people for a total of about 30 hours of film used to create the video, according to Greenberg. Participants in the ACP fight offer advice based on their experiences, creating a video guidebook for environmental and property-rights advocacy and grassroots organizing. Enders said he's also compiling a written guide.

The video is organized into five chapters: organize, get legal help, public relations, political strategies and community perspective, and is now available in full on the Friends of Nelson website, www.friendsofnelson.com.

Friends of Nelson organizers, environmental attorneys, community activists and property owners give their expertise, even delving into detailed legal strategy. Interviewees talk about getting signatures at the farmers' market, garnering media coverage, denying Dominion's request to survey their properties, getting religious groups involved, creating maps, contacting local elected officials, identifying resources that pipelines can't legally cross, and appealing to people with different backgrounds.

Property owner Richard Averitt said people joined the fight for different reasons.

"We had a common cause," he said. "The common cause was we didn't want the pipeline."

That diversity, Averitt said, allowed concerned community members to also organize into smaller work groups with different areas of expertise.

"Do things that are unexpected," former Friends of Nelson president Joanna Salidas advised. "You can't play the game that the big guy has set out. If you play that game, you're going to lose because, you know, they control everything and they have so much more power and resources."

"When the people who are in those decisions, when they see that there are people caring in numbers and going to be negatively affected in numbers, then the ones who are human can make the difference in a vote. And you know, it only takes one vote sometimes," property owner Wisteria Johnson said.

The audience for the screening, many of whom were interviewed for the project, sang along and clapped when a recording of Robin and Linda Williams singing their folk song "We Don't Want Your Pipeline" was played: "we're going to put a stop sign on Dominion's pipeline. Go tell your neighbors, go tell your friends."

Board member Jill Averitt also recognized archivist Ellen Bouton, who recently submitted two years worth of work documenting the ACP fight to the Library of Virginia.

"The records to which many of you contributed consisted of an external hard drive disk containing approximately 14,700 digital files, plus four banker boxes of paper documents, six display boards, four yard signs, three banners and a reusable ACP grocery bag handed out by Dominion as a promo which she used to store the rolled banners in," Averitt said.

Interviewed after the event, Bouton said she knew it would be important to have a record of the community's effort after the pipeline was canceled. The ACP's proposed first route, which changed during the six-year struggle, crossed Afton Mountain and Bouton's property.

The records she turned over include videos, legal documents and 8,000 photos. As part of the Library of Virginia's collection, they'll be available for anyone to view.