UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Atlantic Coast Pipeline, LLC
Eastern Gas Transmission and Storage, Inc.
Docket Nos. CP15-555-007 & CP15-554-009

THE NISKANEN CENTER,
LORA BAUM, VICTOR BAUM, DEMIAN JACKSON, BRIDGET K. HAMRE, LOUIS RAVINA, YVETTE RAVINA, CAROLYN FISCHER, MELISSA BARR, WILLIAM BARR, WISTERIA JOHNSON, DAWN AVERITT, RICHARD AVERITT III, MCLAURIN COMPANY, INC., DONOVAN MCLAURIN, DARLENE SPEARS, HERSHEL SPEARS, HORIZONS VILLAGE PROPERTY OWNERS ASSOCIATION, INC., AND FRIENDS OF NELSON

MOTION TO INTERVENE AND COMMENTS ON THE DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT FOR THE ATLANTIC COAST PIPELINE RESTORATION PROJECT AND SUPPLY HEADER RESTORATION PROJECT

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I. Introduction

Intervenors the Niskanen Center and affected landowners and landowner advocacy organizations Lora Baum, Victor Baum, Demian Jackson, Bridget K. Hamre, Louis Ravina, Yvette Ravina, Carolyn Fischer, Melissa Barr, William Barr, Wisteria Johnson, Dawn Averitt, Richard Averitt III, McLaurin Company, Inc., Donovan McLaurin, Darlene Spears, Hershel Spears, Horizons Village Property Owners Association, Inc., and Friends of Nelson (collectively, "Landowners"), respond to the Federal Energy Regulatory Commission's ("FERC") Draft Supplemental Environmental Impact Statement for the Atlantic Coast Pipeline Restoration Project and Supply Header Restoration Project ("SEIS") (July 23, 2021, Accession No. 20210723-3006).

As discussed further below, the SEIS fails to fully consider a number of issues relating to easements, land use, and land restoration.

To begin with, the SEIS flatly refuses to address issues concerning release of easements or easement conditions: "Contractual issues regarding easement agreements are not environmental issues and therefore are outside the scope of the supplemental EIS" (SEIS, ES-1) even though FERC admits, for example, that "Long-term impacts would be experienced on any parcels where Atlantic or EGTS maintain permanent easement rights." *Id*., 4-67. While "contractual issues" concerning those easements may not seem to be an environmental issue, FERC turns a blind eye to it and nowhere discusses *how those "long term impacts" on thousands of tracts of land would be materially different if that land was returned to the property owners,* which most certainly is an environmental issue. FERC has utterly failed to consider the environmental and land use impacts of alternatives where FERC has: (1) required ACP to immediately surrender temporary easements on all property where there has been no tree-cutting

or land-disturbing activities ("Undamaged Property"), and thus no justification for ACP to be using those easements for *any* purpose except to continue its campaign of harassing landowners; (2) imposed a date certain on restoration and then surrendering temporary easements on property that has had tree cutting or other land-disturbing activities ("Damaged Property"); (3) releasing landowners from all use restrictions on all permanent easements; and (4) surrendering those permanent easements to the property owners.

The SEIS also fails to consider the impact of ACP's ability to freely transfer those easements to third parties, often with no requirement to notify landowners, and fails to consider the impacts its actions will have on abandonment provisions in those easements. FERC should use its authority to condition its approval of ACP's amendment request on ACP treating the date it decided that it was giving up on the project (or, at the latest, on July 5, 2020, when it made its public announcement of this decision) as triggering the clock on all easement abandonment provisions.

To the extent FERC has refused to consider any of these alternatives because it does not believe it has the authority to condition its approval of ACP's requested certificate amendment on any or all of these actions, it has failed to say so and, in any event, it is wrong.

In addition to these failings, the SEIS failed to consider landowner-by-landowner desires for land restoration issues, and FERC should require ACP to conduct a landowner-by-landowner survey for not only what each landowner wants done with felled trees or already laid pipeline, but also for how final restoration, including grading and planting, should be conducted.

The SEIS also failed to acknowledge that it bases its consideration of *all* restoration work on Damaged Property on the 2013 restoration plans that were written on the assumption that there would be a 150'-wide clear-cut corridor and functioning pipeline running through each

piece of property. As a result, the SEIS does not consider any additional mitigation that is now possible in the absence of the pipeline.

Lastly, the SEIS fails to acknowledge the need for a robust landowner notification system, and ignores the fact that easements granted under threat of eminent domain are inherently coercive, and thus landowners who have granted such easements have not been fairly compensated for those easements.

Niskanen

Niskanen Center, Inc. ("Niskanen") is a Washington D.C.-based non-profit think-tank and advocacy organization with a strong interest in securing Americans' rights to their property. It is a fundamental matter of justice that government should forcibly take private property only as a measure of last resort, when truly for public use, and must compensate the property owners sufficient to render them indifferent to the taking.

Landowners

1. **Lora Baum and Victor Baum**

Lora and Victor Baum own a beautiful 31.5-acre property in Warm Springs, Bath County, Virginia. On their land, they own a log cabin that was originally constructed around 1900 and that was reconstructed in 2006. This cabin, along with a recently built stone patio, was specifically placed to take advantage of the magnificent view of meadows, valleys, and the mountains. *See* Niskanen's Comment (Accession No. 20210416-5358), Exhibit 1A, Baum Photos of Patio View. During the warmer months of the year, the patio is where the Baums enjoy their meals so that they can savor the majestic views. This home was bought for their retirement, and much of their retirement savings are invested in it.

The Baums first heard that ACP was considering routing the pipeline through their county and property in early 2016. They submitted comments to FERC on March 12, 2016, July 19, 2016, and February 12, 2017, in which they opposed the pipeline's route. Accession Nos. 20160314-5001, 20160719-5086, and 20170213-5015. They continued to oppose the pipeline throughout the project. *See, e.g.*, Accession No. 20180327-0012. Now ACP has an easement that runs within 100 yards of their house and straight though the meadow that their beloved patio overlooks, devaluing their property significantly, and undermining the very peace and serenity that they sought for retirement. *See* Niskanen's Comment, Exhibit 1B, Photos of Easement Route Through Baum Land. ACP's easement and work space collectively amount to more than five acres of their land. The easement consists of a permanent easement and a temporary work easement. Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 2.

2. Demian Jackson and Bridget K. Hamre

Demian Jackson and Bridget K. Hamre live with their young family on their 105-acre property in Shipman, Virginia. They manage about five acres of a personal farm that contains fruit trees and a large vegetable garden. Jackson built the house himself. Niskanen's Comment, Exhibit 2B, Photos of Jackson/Hamre Land That Easement Would Destroy.

Originally, ACP planned for the pipeline to run right through Jackson and Hamre's house and farm, *right through their child's bedroom*, which obviously would have destroyed the life that their family had built. Niskanen's Comment, Exhibit 2A, Photos of Easement Route Through Jackson/Hamre Land. They spent a substantial amount of time fighting this route and eventually were able to get the easement moved to the middle of their property. *See* Accession Nos. 20160928-5192 and 20161222-5098. Jackson and Hamre had dreamed of cultivating and building on this land and then building homes and passing it down to their three children.

Unfortunately, the easement cuts through one of the nicest building sites on the land and covers more than ten and a half acres of the Jackson/Hamre property. Niskanen's Comment, Exhibit 2A, Photos of Easement Route Through Jackson/Hamre Land. Not only did ACP nearly destroy their home, it now also threatens to destroy their dream of building beautiful homes for their children, all for a pipeline that will never be built. ACP's easement consists of a permanent easement, a temporary work easement, and a temporary workspace, more than 10 and a half acres of the Jackson/Hamre property. Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 2, 4.

3. Louis Ravina and Yvette Ravina

The Ravinas' land is located just outside Churchville in Augusta County, Virginia. With about 160 acres, the Ravinas both live and work on their picturesque farm. Niskanen's Comment, Exhibit 3A, Photos of Ravina Farm and Land. As Louis is an engineer, Louis and Yvette built and expanded their home themselves and have been living there for about 30 years. To further beautify and protect the land, they partnered with the Virginia Department of Forestry and planted about nine thousand white pines as part of erosion protection for the Chesapeake Bay. They currently rent out part of their farm for cattle grazing to a local farmer, and they also maintain a large vegetable garden for personal use. The Ravinas are proud of their land and are passionate about the farming for which they use it.

When they first heard of the ACP pipeline, the Ravinas were distraught, and actively opposed the project. Niskanen's Comment, Exhibit 3C, Ravina Objections and Comments to Water Quality Certification (Aug. 15, 2017). ACP began a condemnation proceeding against the Ravinas in July 2018. They agreed to mediation in early 2019 to avoid the stress of a trial, and they reached a settlement with ACP after an exhausting day on March 28, 2019. *See* Niskanen's

Comment, Exhibit 3D, Ravina Easement Agreement. ACP's pipeline easement spans about 125 feet and cuts through hay fields and tree lines in the middle of their property. Niskanen's Comment, Exhibit 3B, Photo of Easement Route on Ravina Land.

In addition to building a pipeline on their land, ACP planned to build a 250' diameter, 12.5' water depth, open top tank that would have held about 2.5 million gallons of water for pipeline testing, which would have been viewable from the Ravinas' home window. *See* Niskanen's Comment, Exhibit 3C, Ravina Objections and Comments to Water Quality Certification (Aug. 15, 2017). During negotiations, the Ravinas fought hard against building the tank on their property. Eventually, ACP agreed to refrain from building the open tank but still insisted on keeping the 300' x 300' easement it planned to use for this purpose. In addition to this square easement, ACP's easement collectively covers around 14 acres of their property. ACP's easement consists of a permanent easement, a temporary work easement, and a temporary workspace. Niskanen's Comment, Exhibit 3D, Ravina Easement Agreement, p. 2, 6. The Ravinas had originally wanted to sell the front part of their property, but the easements are a severe hinderance to this plan.

ACP used intimidation tactics to quickly obtain access to the land for their own advantage. Prior to the Ravinas signing an easement, ACP sent the sheriff to their home at 8:30pm one evening. Once at the home, the sheriff, at ACP's behest, demanded that the Ravinas allow ACP on their land the next day to conduct extensive surveys to prepare pipeline plans for their land. ACP continued to intimidate the Ravinas during easement negotiations, when ACP sent three attorneys to negotiate on their behalf with this older couple in an effort to make them feel under threat. They were allotted one day for negotiations and were told that if they did not

sign by a certain time the next morning, then the deal was off. The Ravinas were only given one night to review the easement before signing.

4. Carolyn Fischer

Carolyn Fischer's home is located in the Horizons Village community, a neighborhood that has legally binding covenants to protect and conserve the area's environment. *See* the Horizons Village in Nelson County, Virginia website at https://horizonsvillage.org/. Fischer has lived on the land for over 12 years and her home sits on eight and a half acres where she cultivates gardens, harvests the dead wood, and maintains pot-bellied pigs, dogs, and cats. Before ACP obtained its easement, Fischer had planned to build a cottage on her property for rental income. However, once ACP came, she had to put that project on hold since the investment would have been substantial and ACP's presence put the property in limbo. The ACP easement now crosses Fischer's steep and minimally developed driveway in front of her property. The easement impedes Fischer's ability to upgrade the driveway. At 70, Fischer is still maintaining and working her land and would eventually like to retire and sell her land, however, ACP's easement now greatly diminishes its value.

ACP's easement consists of a permanent easement and a temporary work easement. Niskanen's Comment, Exhibit 4A, Fischer Easement Agreement, p. 2. The easement covers about 1 acre of Fischer's eight and a half acres property. Niskanen's Comment, Exhibit 4A, Fischer Easement Agreement, p. 4. Notably, Fischer's easement agreement does not contain an abandonment clause. The easement tarnishes the status of Fischer's land and limits how she might be able to plan to use her land for the future.

5. Melissa Barr and William Barr

Melissa and William Barr purchased 8.28 acres of land in Nellysford, Virginia in February 2014. Located at the end of a cul-de-sac on a picturesque lot, the Barrs' land includes gorgeous mountain views, seasonal creeks, wetlands, and habitats for threatened species. Spruce Creek runs along one part of the lot, providing the land with fresh water from the mountains of Wintergreen. With Melissa's parents living less than a quarter mile away, the Barrs dreamed of building a home for their family and using the land to raise chickens and bees and to cultivate a large vegetable garden. Their plan was that once William retired from the United States Marine Corps, they would build their home and live on the land for the rest of their lives, offering a haven and some peace from the chaotic lives they lived as a military family.

Unfortunately, within six months of purchasing their land, the Barrs found out that ACP intended to build a pipeline through their property. ACP's communication with the Barrs was lacking; the Barrs would not hear from ACP for extended periods of time for a half year or more. When it came time to conduct a survey on the property or discuss terms of settlement, ACP seemed very rushed to receive approvals or responses from the Barrs. The Barrs did not receive any regular updates on construction until approximately three years into the process, when they were finally assigned a construction liaison. On June 2, 2015, ACP filed a suit against the Barrs to enter their property to survey the land. Niskanen's Comment, Exhibit 5B, Barr Nelson County Case. ACP did enter the property to do a cultural survey where they conducted digging to assess the land and planted flags.

ACP's activities caused great frustration and uncertainty for the Barrs. For seven months in 2017, William Barr was deployed in the Horn of Africa. During that time, William had limited access to internet and was unable to get timely notice of ACP's activities. He often felt helpless

and distracted – ACP was interfering with his land and his family's future while he was sacrificing and serving his country.

On October, 12, 2018, ACP filed a suit to condemn the Barrs' land for the pipeline. *See* Niskanen's Comment, Exhibit 5A, Barr District Court Case. ACP did not immediately serve the Barrs with notice of the condemnation. They found out about the suit more than two months later, when Melissa's mother, an attorney, happened to be searching the docket and noticed the filing. Prior to ACP filing, ACP had not reached out to negotiate easement terms.

The easement crosses the front part of their property, right in front of the site where their home is to be built. Niskanen's Comment, Exhibit 5C, Photos of Barr Land. The Barrs will have to build around the easement, as the easement encroaches on their building plans. *See* Accession No. 20210305-5258. To bring in construction materials and equipment, they would have to cross the easement, which currently is not permitted according to the easement terms. ACP's easement consists of a permanent easement and a temporary work easement. Niskanen's Comment, Exhibit 5D, Barr Easement Agreement, p. 2.

6. Wisteria Johnson

Wisteria Johnson lives on the land she co-owns with her sister in Shipman, VA. Spanning over 500 acres, the land has been with Johnson's family for over seven generations. Descendants of Native American tribes and of people who were slaves, Johnson and her family view the land as part of their heritage and the story of their family. *See* Michael Martz, *Alternative pipeline routes create new heartaches in Nelson County*, Richmond Times Dispatch (Mar. 15, 2015), https://richmond.com/news/virginia/alternative-pipeline-routes-create-new-heartaches-in-nelson-county/article_24227ab1-308a-5402-bd5d-9dc1995b537a.html. Beyond being their home, the family uses the land to raise black angus cattle, to forest timber, and to grow hemp. With 14

children between Johnson and her sister, along with grandchildren, their growing family has a future staked on the land. While some want to build homes on the land, one of Johnson's sons is a counselor and dreams of building on the land a therapy and recreation center for children.

ACP first contacted Johnson around the fall of 2014. Initially, her family strove to stop the easement through protesting at community meetings and other communal events. *See* Emily Brown, *Family on pipeline route fights ACP to preserve its history*, The News & Advance (Jul. 19, 2017), https://newsadvance.com/nelson_county_times/news/family-on-pipeline-route-fights-acp-to-preserve-its-history/article_1463165d-dad8-5f11-bdcf-7beeba63d73f.html. But then they found out that ACP might execute a quick take of the property and this information crushed Johnson and her family. Under the dark cloud of eminent domain, Johnson signed an easement agreement with ACP. As Johnson described it, "we were hopeless, we felt like tied prisoners led to the gallows."

ACP now has an easement on Johnson's land that includes a permanent right of way, a temporary right of way, extra work space, agricultural lands, and an access road that altogether covers about ten and a half acres. Niskanen's Comment, Exhibit 6A, Johnson Easement Agreement, p. 5. This easement impacts the area where Johnson's daughter wanted to build her home. The easement imposes considerable restrictions on Johnson's use of her own property. Johnson's easement includes a wetland provision that requires her to cooperate with ACP to ensure that any regulated water or wetlands are properly maintained, to notify ACP any time her plans might disturb the wetlands within the easement area, and to notify ACP if she intends to obtain any permits to conduct the disturbance. Niskanen's Comment, Exhibit 6A, Johnson Easement Agreement, p. 6.

7. Dawn Averitt and Richard Averitt, III

Richard Averitt, III, a retired Marine Corps Colonel who fought in Vietnam, and his daughter, Dawn Averitt, own about 74 acres in beautiful Nellysford, VA. Dawn built a home in the front of the property in which she lived and raised her three daughters for about 10 years. Most of the landed is wooded, and the Averitts tended a garden, and love to explore their land through hiking and recreation. Niskanen's Comment, Exhibit 7A, Photo of Averitt Land. Before ACP, the Averitts planned to use this property and the surrounding properties as a family homestead, where all the cousins and extended family could live and be together. For Dawn, this land is not just a place to live, it is a legacy to leave for her daughters. Dawn suffers from a life-threatening disease and purchased this land about 20 years ago so that she could pass on stability and something of value to her daughters should she become disabled or pass away.

In 2014, Dawn put the home up for sale, with the hopes of using the proceeds to build a home for herself and another two to three homes for her daughters towards the back of the property. However, shortly after listing the home, ACP arrived with its plan to build a pipeline through the area, the market completely stalled, forcing Dawn to remove the listing. For the next six years, the house either sat empty or was rented out for half the cost of the mortgage, causing Dawn significant financial hardship.

After opposing ACP for a long time, it became clear to the Averitts that ACP would condemn the property should it not obtain an easement through negotiation. Originally, ACP had planned to build a permanent access road across the property that would have crossed Dawn's front yard and circled her house. To avoid as much harm as possible, the Averitts eventually signed the easement so that the access road would be removed and the pipeline would run behind the house but not encircle it. ACP had planned to blast the side yard and backyard of the home as it was in the incineration zone. The pipeline would have also cut through the backside of the

property where the future homes of Dawn and her daughters were to sit, and all the houses would have been within the blast zone or the incineration zone.

During this process, the Averitts felt as if they were a commodity. ACP sued the Averitts for access to survey their land. The pressure was relentless and ACP made it clear that it would move forward with its plans no matter what the Averitts said or wanted. The Averitts were served papers and received many documents via certified mail, which seemed to the Averitts as scare tactics by ACP. For nearly six years, they were in a constant state of fear and panic. The Averitts felt that ACP decreased the value of their home, and caused years of financial hardship, stress, and conflict.

ACP's easement covers more than 5.5 acres on the Averitts' land and unnecessarily curtails the Averitts' full use and enjoyment of their land. ACP's easement consists of a permanent easement and a temporary work easement. Niskanen's Comment, Exhibit 7B, Averitt Easement Agreement, p. 2.

8. McLaurin Company, Inc. and Donovan McLaurin

Donovan McLaurin is the sole owner of McLaurin Company, Inc. As part of this business, Donovan owns four parcels of land in Wade, North Carolina, that all contain ACP easements that were taken by preliminary injunction under ACP's eminent domain authority. *See* Declaration of Donovan McLaurin, Exhibit 1.

Parcel 1 was purchased in 2011 and is about 37 acres. He had planned to build his home there and had spent time and resources preparing the site, which included the preparation of architectural plans, the payment and acquiring of permits, installation of electrical line, water line, and a permit box for construction. Additionally, Donovan had planned to build four other homes on the site to sell. He had planned to make it a beautiful place to live and to ensure that

each home had direct access to the Cape Fear River. Plans for the property were moving forward as Donovan had already received approval from the Cumberland County Joint Planning Board. However, all the plans were halted once ACP seized the land.

Donovan currently lives on Parcel 2, which is about 169 acres, and which he purchased in 1998. Originally, Donovan planned to establish a sub-division on the land. The goal was to make this a desirable place to live by creating trails and constructing horse stables so that people living there could house their horses onsite as well. Purchased in 1984, Parcel 3 is about 12 acres. Donovan planned to use this land for recreation and as a common area for the other developments. Donovan also planned to develop homes on Parcel 4, which was also purchased in 1984, and is also about 12 acres.

On February 6, 2018, ACP filed a complaint against Donovan to condemn his land, and subsequently met with the judge, without Donovan's presence, on February 23, 2018. *See* ACP Condemnation Complaint Against McLaurin, Exhibit 2. The judge issued a Notice of Hearing for March 14, 2018, which only gave Donovan's attorney a few days to prepare for the case. Shortly thereafter, on March 16, 2018, the judge issued an order that permitted ACP to take possession of the land and begin construction. *See* Order on Preliminary Injunction, McLaurin, Exhibit 3.

On Parcel 1, ACP has a Permanent Easement of 1.08 acres and a Temporary easement of 1.93 acres, which cut through the middle of the property. *See* McLaurin Plot 1 Easement Map and Photos, Exhibit 4. On Parcel 2, ACP has a permanent easement of 3.2 acres and a temporary easement of 2.37 acres. *See* McLaurin Plot 2 Easement Map and Photos, Exhibit 5. On Parcel 3, ACP has a permanent easement of .33 acres and a temporary easement of .38 acres. *See* McLaurin Plot 3 Easement Map, Exhibit 6. On Parcel 4, ACP has a permanent easement of .64

acres and a temporary easement of .88 acres. *See* McLaurin Plot 4 Easement Map, Exhibit 7. In total, ACP acquired permanent easements of 5.25 acres and temporary easements of 5.56 acres. The easements cut through wetlands, streams, forests, creeks and roads and comes within a short distance of a neighborhood with many homes.

From the outset, ACP was disrespectful to Donovan and his property. The appraiser that ACP sent insisted on incorrectly listing the land as farmland to decrease its value. Donovan specifically requested that the surveyor inform him before entering the property. However, the surveyor neglected to do so and, during a review of the property, Donovan observed that the surveyor had already planted flags all throughout the property without Donovan's knowledge. Once the court granted ACP control of the land, ACP immediately seized the property and critically damaged the land. *See* McLaurin Photos of Easement and Damage, Exhibit 8. It constructed long roads of wooden planks for trucks traffic that smothered plant life and damaged the soil. ACP removed large sections of high-caliber fencing on Parcel 1. ACP bulldozed deep excavations and continued the excavation right up to a cliff that dropped to the creek. ACP razed acres of trees. These demolition activities disrupted drainage and stream patterns, destroyed trees, plants and animal habitats, and subverted streams and creeks. Beyond the destruction to the land, Donovan was no longer able to build his home or any of the other homes as he intended. In fact, all of Donovan's plans were halted given the extent and severity of the damage to the land wrought by ACP.

9. Darlene Spears and Hershel Spears

Darlene and Hershel Spears purchased their home in 2002, located in Nellysford, Virginia, as a place to retire. Their home is located on 43 acres of mostly forested land. There was one house on the land when they first purchased it, and carved out a separate lot in order to

build a new home. At times, they have family who come to live in the original house on the land. The Darlene and Hershel enjoy living in the remote and peaceful setting amongst the thickly wooded land, where wildlife such as deer, turkey, and bear frequent. *See* Spears Photos of Property, Exhibit 9. The yard surrounding their home features some beautiful boulders, which they treasure. Regrettably, ACP's presence altered this experience.

ACP filed a condemnation claim against the Spears. The parties were scheduled to go to trial, but when they attended other hearings before the same judge who would decide their case, the Spears saw that ACP won every time and realized that the only way to protect some aspects of their home was to reluctantly agree to an easement for less money than their neighbors received. Originally, the pipeline was slated to run though their boulders right up within 200 feet of their front door, where their well, electrical wires, and driveway are located. In fact, pipeline crossed the driveway and would have severely limited the Spears access to their own driveway. *See* Spears Photos of Easement Area, Exhibit 10. The Spears requested that ACP give 24 hours' notice before entering their property, but surveyors came without notice and often confused the Spears property with their neighbors. The entire process was extremely upsetting to the Spears – they spent over five years fighting ACP, which negatively impacted their lives.

ACP's easement consists of a permanent easement, a temporary easement, and an access road easement. Exhibit 11, Spears Easement Agreements, p. 5. The permanent easement covers 1.39 acres, the temporary easement covers 1.80 acres, and the access road easement covers 0.78 acres. *Id*.

Darlene Spears and Hershel Spears respectfully move for intervention in the above-referenced proceedings.

10. Horizons Village Property Owners Association, Inc.

Horizons Village Property Owners Association, Inc. ("Horizons Village") is a neighborhood that has legally binding covenants to protect and conserve the area's environment. *See* the Horizons Village in Nelson County, Virginia website at https://horizonsvillage.org/. Many landowners in the Horizons Village neighborhood signed easements with ACP under the threat of condemnation.

ACP's easement unnecessarily curtails the neighborhood's residents full use and enjoyment of the land and completely undermines the mission and purpose of the neighborhood. ACP's easement consists of a permanent easement and a temporary work easement that together amount to over four and a half acres, and an access road that amounts to almost three acres in addition. Niskanen's Comment, Exhibit 8A, Horizons Village Easement Agreement, pp. 5-6. Should ACP modify the pipeline placement more than 10 feet, then a separate agreement must be executed, the recording of which would be at the expense of Horizons Village. Niskanen's Comment, Exhibit 8A, Horizons Village Easement Agreement, p. 8.

11. Friends of Nelson

Friends of Nelson is a non-profit organization that aims to protect the property rights, property values, rural heritage and the environment for the citizens of Nelson County, Virginia. *See* Friends of Nelson website at https://friendsofnelson.com/. Many of their members have signed easements with ACP under the threat of condemnation.

II. Background

<u>The Atlantic Coast Project - The Certificate and Abandonment</u>

On October 13, 2017, FERC issued a conditional certificate of public convenience and necessity and blanket certificate ("Certificate") to Atlantic Coast Pipeline, LLC, Dominion Transmission, Inc., and Atlantic and Piedmont Natural Gas Company, Inc. (jointly "ACP"),

under NGA section 7(c) (15 U.S.C. § 717f(c)); *Atlantic Coast Pipeline, LLC,* 161 FERC ¶ 61,042 (2017). The authorized project included 604 miles of new pipeline designed to transport up to 1.5 billion cubic feet per day of natural gas, which would traverse West Virginia, Virginia, and North Carolina. *Id*. at P. 1. The Certificate required that ACP construct and place the project into service by October 13, 2020. *Id*.

Once FERC issued the Certificate, ACP had the authority to condemn any and all property in their path with no requirement to engage in good faith negotiation efforts. Not surprisingly, ACP began condemnation proceedings almost immediately, *e.g.*, filing condemnation actions in North Carolina on December 1, 2017, only six weeks after FERC issued the Certificate. Lauren Ohnesorge, *Atlantic Coast Pipeline files first eminent domain action in North Carolina*, Triangle Business Journal (Dec. 4, 2017), https://www.bizjournals.com/triangle/news/2017/12/04/atlantic-coast-pipeline-files-first-eminent-domain.html. ACP began some of these condemnation proceedings while in the midst of ongoing negotiations with farmers and their families. *Id*. (regarding Orpha Gene Watson, the farmer from O.J. Farms). These proceedings and negotiations produced various forms of easements, depending (largely) on whether the landowner had the time and resources to resist, what information the landowner was given or had access to, whether the landowner had an attorney, and community cohesiveness and support.

Easements obtained under threat of eminent domain are inherently coerced, and not surprisingly, as courts were rapidly awarding ACP possession on the basis of preliminary injunctions, landowners felt compelled to settle based on ACP's threats that they would take them to court and take their land that way. *See* Lewis Kendall, *The Atlantic Coast Pipeline Is a Bust, but Property Owners Along the Route Are Stuck in Limbo*, Indy Week (Feb. 24, 2021),

https://indyweek.com/news/northcarolina/atlantic-coast-pipeline-feature/?fbclid=IwAR1EC4ECgurpUirnO4iHCNVu2ghxAYk2-2k3NrsLjPrS6aszC9sfNq2fCss.

On June 16, 2020, ACP requested a two-year extension of time to construct and place into service ACP and Supply Header Project ("SHP"). Accession No. 20200616-5174. On July 5, 2020, ACP announced that it was canceling the pipeline project. Accession No. 20210302-3019. After the ACP cancellation announcement, on July 10, 2020, ACP submitted a request to modify its June 16, 2020 request. Accession No. 20200710-5088. In this modified request, ACP requested: 1. a one-year extension of time to abandon and restore the pipeline project areas, and 2. a two-year extension of time to construct and put into service the SHP facilities. *Id.*

On July 17, 2020, FERC published a notice acknowledging ACP's modified request and set a 15-day comment period to respond to the request. Accession No. 20200717-3050. On October 27, 2020, FERC issued an "Information Request" requiring ACP to submit a disposition and restoration plan within 60 days. Accession No. 20201027-3057. In response, on January 4, 2021 ACP filed its Disposition and Restoration Plan ("ACP Plan"). Accession No. 20210104-5278 (letter indicating that ACP previously filed its plan on Dec. 16, 2021 but had technical difficulties).

The ACP Plan acknowledges that it already permanently destroyed some land, including cutting 222.5 miles of trees (of which 108.4 miles of cut trees were left where they were cut) installed 31.4 miles of pipe, and another 82.7 miles of clearing and grading. *Id*. at 1. On March 2, 2021, FERC filed a Notice of Amendment of Certificates and Opening of Scoping Period to allow for comments on the ACP Plan. Accession No. 20210302-3019.

On May 07, 2021, FERC issued an Environment Information Request to ACP. Accession No. 20210507-3045. Among other items, FERC requested that ACP address its plans for the

permanent easements, temporary easements, workspaces, and access roads that it has acquired with FERC's authorization of the Section 7 Certificate. *Id*. at 1. ACP supplied a partial response on May 17, 2021, addressing in part FERC's questions on what ACP planned to do with the property it obtained to construct the project: in essence that it would deal with each easement on a case-by-case basis. Accession No. 20210517-5093. ACP supplied the remainder of its response to other questions from FERC on June 7, 2021. Accession No. 20210607-5185. Finally, on July 23, 2021, FERC filed the SEIS for the ACP restoration project. Accession No. 20210723-3006.

Restrictions on Landowner Use

If these easements remain under ACP's control, landowners will continue to live under severe restrictions on the use and enjoyment of their land. These restrictions – on what can be done to, on top of, and near the land – would also hold the threat of litigation over the landowner's heads should they ever ignore them, even now that they have become completely meaningless. On the permanent easements, Landowners may not plant or build any permanent or temporary structures or obstructions, such as sheds, trees, poles, etc.; store vehicles or construction equipment; operate heavy machinery or equipment; or remove or deposit earth.[1] Should Landowners wish to operate certain types of construction equipment, vehicles, and other heavy machinery, they must get discretionary approval from ACP.[2]

[1] Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 2; Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 2; Niskanen's Comment, Exhibit 3D, Ravina Easement Agreement, p. 2; Niskanen's Comment, Exhibit 4A, Fischer Easement Agreement, p. 2; Niskanen's Comment, Exhibit 5D, Barr Easement Agreement, p. 2; Niskanen's Comment, Exhibit 6A, Johnson Easement Agreement, p. 2; Niskanen's Comment, Exhibit 7B, Averitt Easement Agreement, p. 2; Exhibit 11, Spears Easement Agreement, p. 2 (the Averitts' and the Spears' easements state that grantors may not perform any of these activities without ACP's written consent); and Niskanen's Comment, Exhibit 8A, Horizons Village Easement Agreement, p. 2.

[2] Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 6.

Many of these easements run through functioning farmland. Some very typical farming equipment would be considered too heavy to operate over a pipeline. For example, the Ravinas use their land for farming hay bales. These hay bales when stacked on a truck can weigh in at 1,400 to 1,500 pounds. The restriction of no operation of heavy equipment over an easement that cuts through the entire property severely hinders the Ravinas ability to use their land, and all for a pipeline that will never be built. Niskanen's Comment, Exhibit 3D, Ravina Easement Agreement, p. 2. Additionally, if landowners wanted to build a house on a certain plot of their land, they would be restricted from crossing the easement with heavy trucks and building materials. It cannot be emphasized too greatly: Given that the pipeline has been cancelled, there is absolutely no purpose to these or any other provisions restricting landowners' ability to use their own property.

ACP Rights on Landowners' Property

The flip side of the easements' restrictions on Landowners are ACP's rights to continue to do pretty much whatever it wants. ACP may conduct many damaging activities on Landowners' property, both on and off easement areas. ACP can clear permanent easements of all obstructions, and to clear, cut, trim and remove all vegetation, trees, and brush from both temporary work easements and permanent easements.[3]

[3] Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 2.; Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 2; Niskanen's Comment, Exhibit 3D, Ravina Easement Agreement, p. 2; Niskanen's Comment, Exhibit 4A, Fischer Easement Agreement, p. 2; Niskanen's Comment, Exhibit 5D, Barr Easement Agreement, p. 2; Niskanen's Comment, Exhibit 6A, Johnson Easement Agreement, p. 2; Niskanen's Comment, Exhibit 7B, Averitt Easement Agreement, p. 2; Exhibit 11, Spears Easement Agreement, p. 2; and Niskanen's Comment, Exhibit 8A, Horizons Village Easement Agreement, p. 2.

ACP may remove timbering materials (trees, slash, and related debris) from the permanent and temporary easements[4] and may chip the materials and disperse them on the easements and anywhere else on Landowners' property.[5] ACP may stack timbering material 6 inches or greater in diameter either on or off the easement areas. Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 5. ACP may burn debris on the easements and may decide where to place log stacks off the easement areas.[6] ACP may "release rain, storm, and/or other surface waters" that collect within the easement area, workspaces, and access roads and redirect the water away from these areas onto other parts of the Landowners' property.[7]

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[4] Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 5; and Exhibit 11, Spears Easement Agreement, p. 6-7.

[5] Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 6-7; Niskanen's Comment, Exhibit 3D, Ravina Easement Agreement, p. 6-7; Niskanen's Comment, Exhibit 4A, Fischer Easement Agreement, p. 5-6; Niskanen's Comment, Exhibit 5D, Barr Easement Agreement, p. 5-6; Niskanen's Comment, Exhibit 6A, Johnson Easement Agreement, p. 8 (Easement does not contain the word "slash"); Niskanen's Comment, Exhibit 7B, Averitt Easement Agreement, p. 6-7; Exhibit 11, Spears Easement Agreement, p. 6-7; and Niskanen's Comment, Exhibit 8A, Horizons Village Easement Agreement, p. 8.

[6] Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 6-7; Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 5 (Easement does not contain burning provision); Niskanen's Comment, Exhibit 3D, Ravina Easement Agreement, p. 6-7; Niskanen's Comment, Exhibit 4A, Fischer Easement Agreement, p. 5-6 (Easement does not contain burning provision); Niskanen's Comment, Exhibit 5D, Barr Easement Agreement, p. 5-6; Niskanen's Comment, Exhibit 6A, Johnson Easement Agreement, p. 8 (easement does not contain burning provision); Niskanen's Comment, Exhibit 7B, Averitt Easement Agreement, p. 6-7; Exhibit 11, Spears Easement Agreement, p. 6-7; and Niskanen's Comment, Exhibit 8A, Horizons Village Easement Agreement, p. 8 (easement does not contain burning provision, and log stacks must be placed adjacent to the permanent easement areas).

[7] Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 7; Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 7 (includes water release from rights-of-way); Niskanen's Comment, Exhibit 3D, Ravina Easement Agreement, p. 7; Niskanen's Comment, Exhibit 5D, Barr Easement Agreement, p. 6; Niskanen's Comment, Exhibit 7B, Averitt Easement Agreement, p. 7; Exhibit 11, Spears Easement Agreement, p. 7; and Niskanen's Comment, Exhibit 8A, Horizons Village Easement Agreement, p. 8 (includes water release from rights-of-way).

ACP may also "enforce trespassing laws and violations" on the permanent and temporary easements.[8] ACP can also hold Landowners liable for "any claims which arise from the sole negligence or willful or wanton misconduct by Grantor *or third parties*," (emphasis added).[9]

Abandonment Clauses

Landowners' easements, as well as a sampling of other ACP easements from the same geographic area, generally address abandonment in one of three ways: (a) an abandonment clause that allows for a reversion of interest after four years of "complete non-use"; (b) an abandonment clause that allows for a reversion of interest after twenty years if ACP has not installed the pipeline; and (c) easements with no abandonment clause.[10] Even the two categories with abandonment clauses have a wide range of language and obligations. Many of the abandonment clauses only explicitly refer to the abandonment of the pipeline itself, post-construction. In any event, FERC should first condition the Certificate Amendment on ACP

[8] Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 7; Niskanen's Comment, Exhibit 3D, Ravina Easement Agreement, p. 7; Niskanen's Comment, Exhibit 5D, Barr Easement Agreement, p. 6; Niskanen's Comment, Exhibit 7B, Averitt Easement Agreement, p. 7; and Niskanen's Comment, Exhibit 8A, Horizons Village Easement Agreement, p. 8.

[9] Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 2; Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 2; Niskanen's Comment, Exhibit 3D, Ravina Easement Agreement, p. 2; Niskanen's Comment, Exhibit 4A, Fischer Easement Agreement, p. 2; Niskanen's Comment, Exhibit 5D, Barr Easement Agreement, p. 2; Niskanen's Comment, Exhibit 6A, Johnson Easement Agreement, p. 2; Niskanen's Comment, Exhibit 7B, Averitt Easement Agreement, p. 2; and Niskanen's Comment, Exhibit 8A, Horizons Village Easement Agreement, p. 2.

[10] There are exceptions to this general rule, *i.e.*, a provision stating that, "The Easement Agreement shall continue in force until such time as the use and operation of the facilities authorized thereunder are relinquished or abandoned subject to and in accordance with abandonment regulations and requirements mandated by the Federal Energy Regulatory Commission (FERC) at which time, the rights granted to the Grantee under the Easement Agreement shall terminate." Niskanen's Comment, Exhibit 8A, Horizons Village Easement Agreement, p. 10. Presumably the Commission's decision as to the requested amendment will terminate ACP's rights under this easement.

acknowledging that its decision to cancel the project serves as the trigger for all easement abandonment clocks.[11]

(a) An abandonment clause that allows for a reversion of interest four years after "complete non-use" of the pipeline.

Many easements contain provisions stating that "in the event of complete non-use of the pipeline by Grantee or its successors or assigns for a period of four (4) consecutive years, this Easement shall be considered abandoned." *See, e.g.*, Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 8. The typical four year "complete non-use" provision is:

> Grantee agrees in the event of complete non-use of the pipeline by Grantee or its successors or assigns for a period of four (4) consecutive years, this Easement shall be considered abandoned. Grantee shall furnish at its expense, upon receipt of written request from Grantor, a release of the Easement. In this event, Grantee shall have the right to abandon the pipeline in place or remove the pipeline. The time during which Grantee fails to use the pipeline due to: (i) authorized acts or orders of federal or state government; (ii) strikes; or (iii) the exercise of shut-in rights under an oil and gas lease shall not be included in calculating the four (4) year period for abandonment.

Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 8; Niskanen's Comment, Exhibit 5D, Barr Easement Agreement, p. 6; Niskanen's Comment, Exhibit 6A, Johnson Easement Agreement, p. 7. FERC should condition the Certificate Amendment on ACP acknowledging that this clause applies even when, as here, the pipeline has not been built; it would be absurd if this clause were to apply only if the pipeline had been built and was then not operated. The alternative would be to allow ACP to claim that these easements have no abandonment provision, and thus profit by its own failure to complete the project.

A variation in the "complete non-use" provision is highlighted below:

[11] While ACP *announced* that it was cancelling the project on July 5, 2020, presumably the decision itself was made before that day. It is the date of the decision, not the date of announcement, that should be the legally relevant one.

> **After the pipeline is approved by the Federal Regulatory Commission to begin commercial service**, Grantee agrees in the event of complete non-use of the pipeline by Grantee or its successors or assigns for a period of four (4) consecutive years, this Easement shall be considered abandoned.

(emphasis added) Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 8-9; Exhibit 11, Spears Easement Agreement, p. 8. Since FERC will never approve commercial service for a non-existent pipeline, unless FERC conditions the Certificate Amendment on ACP acknowledging that this non-use provision was actually triggered by its decision to cancel the project, ACP will be able to argue that it will have never abandoned the pipeline.

b. An abandonment clause with reversion following ACP's failure to place pipeline on the easement.

In addition to the "non-use" provision, some easements also provide that there is a reversion of interest back to the landowner if ACP does not build the pipeline within 20 years:

> Grantee agrees (1) in the event of complete non-use of the pipeline by Grantee or its successors or assigns for a period of four (4) consecutive years after the pipeline is placed into service, the easement granted by the Easement Agreement shall be considered abandoned. . . Grantor and Grantee understand, agree, and acknowledge that any such abandonment, and the rights and obligations related thereto, are specifically subject to the approval of the abandonment by the FERC; or (2) **if Atlantic Coast Pipeline, LLC does not lay the pipeline on the Grantor's property within 20 years, the easement granted by the Easement Agreement shall be considered abandoned**. Grantee shall furnish at its expense, upon receipt of written request from Grantor, a release of the Easement Agreement. The time during which Grantee fails to use the pipeline or to lay pipeline due to: (i) authorized acts or orders of federal or state government; (ii) strikes; or (iii) the exercise of shut-in rights under an oil and gas lease shall not be included in calculating the four-year period for abandonment, or the twenty-year period for abandonment.

(emphasis added) Niskanen's Comment, Exhibit 3D, Niskanen's Comment, Ravina Easement Agreement, p. 8; Niskanen's Comment, Exhibit 7B, Averitt Easement Agreement, p. 8. FERC should condition the Certificate Amendment on ACP's acknowledgment that the 20-year "failure

to lay the pipeline provision" does not apply to the situation, as here when the entire pipeline was cancelled.

C. Easements with no abandonment clause

There are easements that do not contain any language as to what happens with either non-use of pipeline or if ACP never installs the pipe. *See, e.g.*, Niskanen's Comment, Exhibit 4A, Fischer Easement Agreement. ACP would continue to hold rights to this land indefinitely subject to state law provisions, restraining the landowners' ability to use and enjoy their land for generations.

Temporary Work Easements

All of the easements reviewed include a temporary work easement, which allows ACP to use a wider swath of land than the permanent easements to construct and set the pipeline into operation: "[t]he Temporary Work Easement will terminate five (5) years after the commencement of construction on the Permanent Easement."[12] There are some variations on the termination of the temporary work easements. A small number of these easements have a four-year termination clock instead of five. The obvious issue is that the trigger for this clock to start running will never come to pass as ACP will not be starting construction on the permanent easements on the majority of landowner properties. As such, ACP may decide to treat these temporary easements as *de facto* permanent. The Baum and Spears easements have a different triggering event, as the temporary work easement on their land "will terminate five (5) years

[12] Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 1; Niskanen's Comment, Exhibit 3D, Ravina Easement Agreement, p. 2; Niskanen's Comment, Exhibit 4A, Fischer Easement Agreement, p. 1; Niskanen's Comment, Exhibit 5D, Barr Easement Agreement, p. 1; Niskanen's Comment, Exhibit 6A, Johnson Easement Agreement, p. 1; Niskanen's Comment, Exhibit 7B, Averitt Easement Agreement, p. 1; and Niskanen's Comment, Exhibit 8A, Horizons Village Agreement, p. 2.

from the date the pipeline is approved by the Federal Energy Regulatory Commission to begin commercial service," (emphasis added). Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 7; and Exhibit 11, Spears Easement Agreement, p. 8. There are no termination provisions applicable to the maintenance and upkeep rights of way, which means that ACP may claim that they are permanent. FERC should establish a clear date for termination of all temporary easements.

Assignment

The majority of the easements contain an introductory provision that describes that the landowner "grants and conveys, to ATLANTIC COAST PIPELINE, LLC . . . its successors and assigns . . . permanent and temporary easements . . ." *See, e.g.*, Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 1. Many of the easements reviewed do not contain any provisions that limit assignment of the easements, and do not contain any requirements of notice of that assignment.[13]

The Johnson Easement contains a clause that specifically addresses the notice of assignment of the easement:

> Grantee agrees to notify Grantor in writing if Grantee conveys all or a majority portion of its rights under this Agreement to a third party, provided, however, no such notice shall be required in the event of conveyance (a) to an affiliate, subsidiary, or parent, (b) in connection with a merger or consolidation, or (c) to a third party of all or substantially all of Grantee's assets.

[13] Niskanen's Comment, Exhibit 1C, Baum Easement Agreement, p. 1; Niskanen's Comment, Exhibit 3D, Ravina Easement Agreement, p. 1; Niskanen's Comment, Exhibit 4A, Fischer Easement Agreement, p. 1; Niskanen's Comment, Exhibit 5D, Barr Easement Agreement, p. 1; Niskanen's Comment, Exhibit 7B, Averitt Easement Agreement, p. 1; Exhibit 11, Spears Easement Agreement, p. 1; and Niskanen's Comment, Exhibit 8A, Horizons Village Agreement, p. 1.

Niskanen's Comment, Exhibit 6A, Johnson Easement Agreement, p. 6. Notably, this clause does not limit assignment of the easement, it only obligates notice in very narrow circumstances. The Jackson Easement only requires notice to the Jacksons if ACP "conveys all or a majority portion of its rights under this Agreement to a third party." Niskanen's Comment, Exhibit 2C, Jackson Easement Agreement, p. 1, 8.

Landowners with easements that do not contain any assignment clause have no right to any notice as to what entity controls the easement. The ramifications are obvious - if a landowner seeks permission to conduct some type of otherwise prohibited activity on the easement, the landowner is at a loss as to who to contact and, indeed, even when asked ACP is under no obligation to disclose to whom it transferred its easement rights. It is disconcerting for a landowner to have no knowledge of who controls access and activity on their land, and it creates confusion around the landowner's legal right to protect their land from trespassers.

III. THE SEIS FAILS TO ADEQUATELY EVALUATE THE ACP RESTORATION PROJECT'S ENVIRONMENTAL IMPACT.

By granting ACP its Certificate, FERC created, and is ultimately responsible for, this situation. ACP coerced these easements from landowners under the threat of eminent domain, and each contains numerous restrictions on their use of their own property, all for absolutely no purpose. Although the project will never be built, the SEIS acknowledges that ACP not only plans to hold onto the permanent easements forever, but also retain all land-use restrictions. And, for purposes of restoration and monitoring, ACP intends to retain all temporary easements for "3 to 5 years" (SEIS, p. 4-66), even on Undamaged Property that requires neither. Moreover, these easements either contain no abandonment provisions or, when they do, either do not explicitly pertain to a cancelled pipeline (as opposed to "pipeline non-use") or are unclear as to precisely what happens in such a situation. Compounding the problem, the SEIS expressly relies

on ACP doing all restoration in compliance with plans developed more than 8 years ago and which presume the construction and operation of the pipeline; the SEIS never says a word about what additional mitigation measures are now possible in the absence of the pipeline.

FERC has failed to meet its burden of compiling sufficient information so that the public and other governmental bodies can evaluate and critique the agency's action. *Grazing Fields Farm v. Goldschmidt*, 626 F.2d 1068, 1073 (1st Cir. 1980). An EIS that fails to provide the public a meaningful opportunity to review and understand the agency's proposal, methodology, and analysis of potential environmental impacts violates NEPA. *See e.g., California ex rel. Lockyer v. U.S. Forest Serv.,* 465 F. Supp. 2d 942, 948-50 (N.D. Cal. 2006); *see also Idaho ex rel. Kempthorne v. U.S. Forest Serv.,* 142 F.Supp.2d 1248, 1261 (D. Idaho 2001) ("NEPA requires full disclosure of all relevant information before there is meaningful public debate and oversight."). Such information must be included in the draft EIS, as opposed to supplied in the final EIS following public comments because "the purpose of the final EIS is to respond to comments rather than to complete the environmental analysis (which should have been completed before the draft was released)." *Habitat Educ. Ctr. v. U.S. Forest Serv.*, 680 F. Supp. 2d 996, 1005 (E.D. Wis. 2010), *aff'd sub nom. Habitat Educ. Ctr., Inc. v. U.S. Forest Serv.*, 673 F.3d 518 (7th Cir. 2012). There is not adequate information for the public to reasonably assess and comment on the SEIS. At the very least, FERC needs to reissue a revised SEIS: "If a draft statement is so inadequate as to preclude meaningful analysis, the agency *shall* prepare and circulate a revised draft of the appropriate portion." 40 C.F.R. § 1502.9(a).

A. The SEIS fails to consider any of the environmental or land-use issues that would arise from releasing landowners from easement restrictions, or returning temporary and permanent easements to landowners.

1. <u>The SEIS fails to consider the impacts of ACP needlessly retaining temporary easements on Undamaged Property.</u>

ACP claims throughout the SEIS that it cannot release temporary easements since it needs them to complete restoration and monitor the success of that restoration. "Atlantic and EGTS have stated that the temporary construction easements would remain in place until restoration and closeout of federal, state, and local permits and post-construction monitoring periods are complete." SEIS, p. 4-65. ACP states that 1,100 of the pipelines' approximately 3,100 tracts (or around one-third) have had "ground disturbance or tree felling activities", which means that two-thirds of the pipeline route have had no disturbances and do not require continued land-use restrictions and the SEIS that "approximately 2,000 tracts have had no ground disturbance or tree felling activities completed on them". ACP's Restoration Plan, p. 17; SEIS, p. 2-26. Nowhere does the SEIS consider that the majority of these tracts have no damage or construction activity. Since ACP can have no possible reason for keeping them, FERC should require ACP to surrender all temporary easements on Undamaged Property immediately.

2. <u>The SEIS fails to analyze the impacts of requiring ACP to either release land-use restrictions in permanent easements or surrender them to the landowners.</u>

ACP intends to permanently retain all 2,603 permanent easements, and the land-use restrictions they contain (SEIS 4-65), even though the pipeline will never be built. FERC states:

> While we understand there appears to be no obvious cause for Atlantic to retain an easement for disconnected segments of pipe that are not flowing gas, easements between landowners and Atlantic or EGTS are legal instruments and as such, any requests for Atlantic or EGTS to relinquish easements or rights-of-way are not within the scope of this supplemental EIS.

SEIS, p. 4-66. But in the very next paragraph (*id.*) FERC concedes:

> Upon completion of the restoration activities proposed by Atlantic and EGTS, all affected properties would be allowed to revert to their prior use, and there would be no change in land use from the restoration activities. There would, however, be some diminution of use on most of the affected properties as the restoration of forested areas would take many years to complete, agricultural properties may experience reduced crop yields due to changes in soil structure and drainage, and the presence of the pipeline right-of-way

> easement (and the buried pipeline on 175 parcels) would limit certain prescribed activities within the permanent easement.

Even though (1) FERC acknowledges that permanent easements will result in, "some diminution of use on most of the affected properties as . . . agricultural properties may experience reduced crop yields due to changes in soil structure and drainage, and the presence of the pipeline right-of-way easement (and the buried pipeline on 175 parcels) would limit certain prescribed activities within the permanent easement" and (2) Landowners pointed out (Niskanen Comments, Accession No. 20210416-5358, pp. 25-29; 31-32) that FERC has the authority to condition its approval of ACP's application on requiring ACP to either release all restrictions on landowners' use of the easement, or surrender the easement entirely, the SEIS has completely failed to examine either alternative.

This failure violates NEPA, which requires an EIS to examine "alternatives to the proposed action," 42 U.S.C. § 4332(C), and the alternatives analysis is critical to the entire NEPA process. FERC is required to "Evaluate reasonable alternatives to the proposed action" and "Discuss each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits." 40 CFR 1502.14(a), (b). And, "for alternatives that the agency eliminated from detailed study, briefly discuss the reasons for their elimination."

FERC has both failed to analyze a reasonable proposal that was presented to it (as discussed below in Section III, FERC has the authority to condition its approval of ACP's application on such conditions) and failed to provide any reason why it failed to do so. Without explaining *why,* simply saying that an alternative is "not within the scope" of the SEIS is not an explanation.

3. The SEIS fails to analyze the impacts of ACP's actions on easement abandonment clauses, and fails to analyze the impacts of easement transfer provisions.

There other two easement problems that the SEIS fails to address. First, even though Landowners previously pointed this out, ACP may interpret the terms of the abandonment clauses in the easements as making both temporary and permanent easements perpetual **despite its decision to abandon the project.** Niskanen Comments, pp. 22-23. For example, as described above, almost all of the Landowners' have temporary easements on their property, and those provide that "[t]he Temporary Work Easement will terminate five (5) years after the commencement of construction on the Permanent Easement."

If FERC decides not to require immediate return of all easements on Undamaged Property, the obvious issue is that the trigger for this clock to start running will never come to pass as ACP will not be starting construction on the permanent easements on Landowners' property. ACP may then try to keep these temporary easements indefinitely. Moreover, there are no termination provisions applicable to the maintenance and upkeep rights of way, which means that ACP may claim that these are also permanent. If FERC does not condition its approval of ACP's proposed amendment on ACP immediately surrendering all temporary easements on Undamaged Property, it should condition approval on ACP agreeing that the termination provisions in those easements (and also the temporary easements on Damaged Property) were triggered as of the date on which ACP decided to cancel the pipeline (and certainly no later than ACP's July 5, 2020, announcement that it was cancelling the pipeline). These same concerns also apply to abandonment clauses' effect on permanent easements. The SEIS failed to address the impact of the ACP's actions on easement abandonment provisions, and the differing environmental impacts depending on whether FERC conditions its approval of ACP's application on ACP

treating the date of its decision to abandon the project as the date that triggers easement abandonment clauses.

Second, even though Niskanen has raised the issue of ACP's ability to freely transfer its easement rights to third parties (Niskanen Comments, pp. 23-24) and the SEIS states (Table 1.4.1) that "potential for selling/subleasing easement rights" is discussed in section 1.4, neither that section nor any other considers the environmental impacts of this issue.

B. The SEIS fails to perform the required environmental analysis based on ACP's project cancellation and the complete absence of a pipeline.

The SEIS claims to address the full restoration of Damaged Property, but even when ACP is not merely leaving the land as is (with cut trees, cleared land, and installed pipeline), such claims are based entirely on restoration plans that presume that there is a 150'-wide clear-cut corridor and a pipeline operating underneath it. The SEIS structures its environmental analysis around the *Supply Header Project Restoration Plan*, filed on November 20, 2020 by EGTS, and the *Atlantic Coast Pipeline Disposition and Restoration Plan*, filed by ACP on January 4, 2021 (referred to in the SEIS as the "Restoration Plans"; ES-1). In fact, the SEIS states that its purpose aims to "identify and assess the potential impacts on the natural and human environment that would result from the proposed Restoration Projects through implementation of the Restoration Plans." *Id.* In turn, the *Atlantic Coast Pipeline Disposition and Restoration Plan* (p. 4) states that ACP:

> will comply with all the terms and conditions set forth in its existing and planned state and federal permits (see Appendix D) through the termination of those approvals. Additionally, Atlantic will comply with the maintenance provisions and timelines in the *Upland Erosion Control, Revegetation & Maintenance Plan* and *Wetland and Waterbody Construction and Mitigation Procedures* ("Plans and Procedures") which extend to approximately 3 years following construction. The *Plans and Procedures* require two years of monitoring and maintenance in upland areas following construction and a minimum of three years of monitoring in wetland areas following construction.

What the SEIS never acknowledges is that these permits and *'Plans and Procedures*' were all created in the context of actually building and operating a pipeline, and neither the permits nor *Plans and Procedures* address the situation where either no pipeline exists or where a pipeline will never be put into service. The SEIS nowhere acknowledges that The *Plans and Procedures* were published in May 2013, more than eight years ago, and its express purpose was to provide *mitigation measures to minimize environmental impacts of construction and operation of the pipeline*.

The SEIS never considers how the *Plans and Procedures* should be modified to take account of this unanticipated situation. Since there is no pipeline, the SEIS should not rely on the *Plans and Procedures,* but have two completely different foci: (1) at a minimum, what *additional* mitigation measures can be taken in light of the fact that there is not going to be a pipeline on the property, and (2) restoring the land to its original state prior to any ACP disturbance. The SEIS's primary reliance on the *Restoration Plans*, which is primarily based on the 2013 *Plans and Procedures*, completely undermines the entire purpose of an environmental impact statement.

1. <u>The SEIS fails to adequately evaluate impacts on water bodies.</u>

FERC failed to properly evaluate ACP's damage to groundwater, surface water, and wetlands, and failed to require ACP to properly restore these waterbodies to their original condition. As elsewhere, FERC refers to the 2017 FEIS, which was written to address environmental concerns where a pipeline is built and placed into service. SEIS, §§ 4.3.1, 4.3.2. FERC contends that:

> Based on the scope of the ACP Restoration Project, the characteristics of the waterbodies that would be affected, the potential impacts on waterbodies, and Atlantic's implementation of impact avoidance and minimization measures, we conclude that surface waters would not be significantly affected.

SEIS, p. 4-9. However, FERC fails to address landowner concerns. ACP's easements cut through creeks, streams and wetlands on Mr. McLaurin's property. McLaurin Declaration, Exhibit 1. ACP excavated deep trenches, cutting through a cliff that abutted the edge of a creek. This damaged the creeks, streams and water drainage that are tributaries of Cape Fear River. ACP's excavations alongside Mr. McLaurin's creek severely altered the natural slope of the creek and bank. ACP has failed to properly restore Mr. McLaurin's property, and the SEIS does not require that ACP do so, only requiring ACP to conduct restoration in accordance with the Plans and Procedures, failing to consider what additional measures can be taken because there is no pipeline.

Concerning wetlands, FERC states that "[n]o pipe removal or trenching would occur in wetlands." SEIS, p. 4-9. Unfortunately, ACP has already dug significant and damaging trenches in wetlands on Mr. McLaurin's property. The damaging impacts of the timber mats, which FERC claims "would be temporary, and permanent impacts on wetlands resulting from Restoration Project activities are unlikely", have already significantly altered water drainage and increased soil erosion on Mr. McLaurin's property. SEIS, p. 4-10. FERC relies on ACP's *Plan* and *Procedures* and its *SPCC Plan*, without acknowledging that these plans simply do not take account of the actual situation on the ground, and the reasonable alternatives to plans that were developed eight years ago to deal with a situation that no longer exists.

2. The SEIS fails to adequately evaluate impacts on soil and land disturbances.

The SEIS also fails to adequately address the environmental impacts on soil and land disturbances. SEIS, p. 4-6. In Mr. McLaurin's case, ACP's massive excavations and lengthy timber mat construction has severely impacted the soil health, thereby negatively affecting the drainage on the land. Even in its attempted repairs to the land after the pipeline cancellation,

ACP still failed to correctly restore the land to its prior condition. To fill the massive ravine that ACP excavated, ACP moved topsoil and conducted earth moving and grading that left the ground with low spots that disrupt proper drainage. *See, e.g.*, McLaurin Declaration, Exhibit 1, ¶ 20. Additionally, proper topsoil and vegetation have not been replaced. Further excavations near the creek left the slope of the bank damaged, which requires proper restoration and stabilization.

Again, the SEIS's reliance on mitigation efforts outlined in the *Plans and Procedures* addresses neither possible additional mitigation (including within the 150' corridor) nor full and complete restoration of the land.

C. The SEIS fails to account for the ongoing losses suffered by landowners

The SEIS wrongly assumes that the compensation in return for easements is fair and mutually negotiated:

> An easement agreement between a pipeline company and a private landowner typically specifies compensation for losses resulting from construction, including losses of non-renewable and other resources, damages to property during construction, and restrictions on existing uses that would not be permitted on the permanent right-of-way after construction. The easement gives the company the right to construct, operate, and maintain the pipeline, and establishes a defined permanent right-of-way. Landowners are compensated for the use of their land through the easement negotiation process or by the courts through the eminent domain process.

SEIS, p. 4-65.

This categorization of the impacts of eminent domain smacks of willful ignorance. By definition, the easements ACP obtained from landowners are the product of coercion. Courts have readily agreed that when one party has the power of eminent domain, any resulting agreement cannot be considered "voluntary": "It is the fact that one party is possessed of the power of condemnation which keeps this transaction in either case from being a true arm's length bargain." *Nash v. D.C. Redevelopment Land Agency,* 395 F.2d 571, 573 (DC Cir. 1967). "The [Uniform Relocation Act] was intended to benefit those displaced by public agencies with

coercive acquisition power, such as eminent domain." *Moorer v. HUD*, 561 F.2d 175, 182 (8th Cir.1977). As the Arizona Supreme Court recently observed:

> Even a so-called "friendly" condemnation is ultimately not voluntary because Circle City has no choice but to accede to the taking of its assets pursuant to court order. *See* A.R.S. §§ 12-1114(1), -1114(6), -1116(A); *cf. United Water N.M., Inc.*, 910 P.2d at 910 ¶ 15 (stating "a contract or agreement for sale or purchase is a consensual, voluntary relationship" because "both a seller and a buyer have the right to select with whom each will contract, and *neither can be forced to agree*" (emphasis added) (quotation omitted)). . . . **Agreeing on just compensation rather than litigating the issue makes the condemnation no less coercive.**

City of Surprise v. Arizona Corporation Commission, 246 Ariz. 206, 210 (2019) (emphasis added).

Time and again, landowners have conveyed the injustice they experience as a result of the eminent domain under which they live. Darlene and Hershel spears, for example, felt that they were forced to accept lesser payment than their neighbors to ensure that ACP would not take them to trial. After having seized his land over three and a half years ago, ACP still has yet to compensate Donovan McLaurin at all for the use and destruction of his property. McLaurin Declaration, Exhibit 1, ¶ 18. Landowners have repeatedly asserted that the payment they received was not nearly enough to compensate them for the loss of their property, homes, security, and peace. Landowner Wisteria Johnson poignantly described the experience of signing an easement on the land that has been in her family for over seven generations: "we were hopeless, we felt like tied prisoners led to the gallows."

D. The SEIS fails to provide landowners with an appropriate and reliable point of contact.

The SEIS offers no framework or accountability mechanism to ensure that ACP maintains proper communication with landowners or to ensure that landowners have a point of contact for disputes and complaints of any malfeasance by ACP. All the SEIS offers is that "Atlantic plans to continue with its outreach to landowners, including those that were not

impacted by construction activities. . . Atlantic will comply with the applicable legal obligations in its agreements with landowners. Atlantic will coordinate with landowners to ensure the work is completed to the reasonable satisfaction of the landowner." SEIS, p. 2-27.

This is not a plan. This is just FERC allowing ACP to act however it sees fit. ACP has demonstrated that it does not prioritize communication with landowners. From the outset of this project, ACP has neglected its obligations of proper notice, has disregarded landowner requests for advance notification of its workers entering property, has conveyed conflicting information to landowners, has been purposefully vague regarding its intentions with easements, etc.

The SEIS must include a proper landowner notification scheme so that landowners understand exactly what to expect from ACP, when to expect it, and a point of contact if they have any questions. Further, there must be an accountability mechanism to ensure that ACP properly restores damages and to ensure that ACP properly informs landowners of any changes regarding land use restrictions or release of easements.

III. FERC HAS BROAD AUTHORITY TO IMPOSE CERTIFICATE CONDITIONS GOVERNING WHAT HAPPENS ON ACP'S EASEMENTS.

In issuing certificates of public convenience and necessity, FERC "has the power to attach to the issuance of the certificate and to the exercise of the rights granted thereunder such reasonable terms and conditions as the public convenience and necessity may require" (15 U.S.C. 717f(e)), "The Act vests FERC with broad authority to regulate the transportation and sale of natural gas in interstate commerce" (*Minisink Residents for Envtl. Preservation and Safety v. FERC.*, 762 F.3d 97, 101 (D.C. Cir. 2014)), and FERC's section 7 certificates routinely cite *Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 399 (D.C. Cir. 2017); *Myersville Citizens for a Rural Community v. FERC*, 783 F.3d 1301, 1320-21 (D.C. Cir. 2015); *Del. Dep't. of Nat. Res. & Envtl. Control v. FERC*, 558 F.3d 575, 578-79 (D.C. Cir. 2009); and *Pub. Utils. Comm'n.*

of State of Cal. v. FERC, 900 F.2d 269, 282 (D.C. Cir. 1990) as specifically approving of the Commission's authority to impose certificate conditions.

Referring specifically to abandonment, the Supreme Court has noted that, "the Commission's broad responsibilities . . . demand a generous construction of its statutory authority, and that inference is plainly consistent with Congress' regulatory goals." *Fed. Power Commn. v. Moss*, 424 U.S. 494, 500 (1976) (internal quotation and cite omitted).

The SEIS itself explains FERC's broad power to condition any amendment: "The Commission may impose conditions in any authorization it may issue for the Restoration Projects." SEIS, p. 1-6.

In amending a certificate's abandonment provisions, FERC may impose wide-ranging conditions. *See Columbia Gas Transmission, LLC*, 154 FERC ¶ 61116, p. 7 (requiring compliance with environmental conditions); s*ee also, e.g.*, *Natl. Fuel Gas Supply Corp. Transcon. Gas Pipe Line Co., LLC*, 172 FERC ¶ 61039, 61129, P. 3 (where "the Commission grants the requested certificate and abandonment authorizations, subject to conditions.").

That FERC has authority to proscribe the certificate holder's use of the easement is not in doubt, as FERC routinely imposes such conditions and restrictions. For example, ACP's Certificate contains many such conditions, *e.g.*:

> **Following construction**, Atlantic shall replant long-leaf pine within the [Alternative Temporary Work Space] and the temporary construction workspace along the ACP Project route, and outside the 50-foot-wide permanent right-of-way, where it was cleared for construction. Certificate, P.151.
>
> **Following pipeline installation**, the right-of-way will be restored to near pre-construction conditions and use, and agricultural practices could resume. Except for orchards, crops and pasture can be planted directly over the entire right-of-way. Certificate, P.247.

But that is just the tip of the iceberg. ACP's Plan is a 99-page, single-spaced document, imposes requirements for, *inter alia*, erosion control (pp. 3-4); soil restoration (p. 4); soil

compaction (which "will be mitigated through the use of tillage equipment during restoration activities such as a paraplow or similar implement") (p. 5); topsoil segregation, replacement, and soil conditioning (p. 5); re-contouring (including, "restor[ing] the ground surface as closely as practicable to original contours to restore natural overland water flow patterns, aquifer recharge, and drainage patterns; re-contour[ing] disturbed areas in a fashion designed to stabilize slopes, remove ruts and scars, and support successful revegetation; and restor[ing], to original or better condition, drainage ditches, and culverts that are diverted or damaged during construction") (p. 6); re-seeding and pollinator habitat planting, which includes 20 pages (pp. 7-27) of requirements as to the types of seed mix to be used in different areas, such as "step slope to very steep slope seed mixes", "mountain physiographic region seed mixes" (which in turn is divided into different mixes for "excessively to moderately well drained sites", and "somewhat poorly to very poorly drained sites"), "Piedmont physiographic region seed mixes", etc. (In fact, the Plan contains more than 20 pages of extremely detailed instructions for which seeds will be used, in which areas, at what times, etc.). There is also "riparian restoration" (divided into "forested" and "Non-forested" riparian areas); "wetlands restoration", etc. In short, FERC's plenary authority extends to every inch and every aspect of the easement space.

While FERC has imposed limits on the rights ACP may obtain via condemnation[14], its authority explicitly extends *even to areas where the pipeline has negotiated an easement beyond what it could obtain in a condemnation proceeding*. For example, ACP's Certificate provides:

---

[14] *E.g.,* Condition 4, p. 133 (requiring that "exercise of eminent domain authority granted under NGA section 7(h) in any condemnation proceedings related to the order must be consistent with these authorized facilities and locations. [ACP's] rights of eminent domain granted under NGA section 7(h) do not authorize them to increase the size of their natural gas facilities to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas"). This is a standard certificate provision, *e.g.*, *Double E Pipeline, LLC*, 173 FERC ¶ 61074 (Oct. 15, 2020), Environmental Condition 4.

> Atlantic shall not exercise eminent domain authority granted under section 7(h) of the NGA to acquire a permanent pipeline right-of-way exceeding 50 feet in width. **In addition, where Atlantic has obtained a larger permanent right-of-way width through landowner negotiations, routine vegetation mowing and clearing over the permanent right-of-way shall not exceed 50 feet in width.** (*Section 2.2.1.1*) Certificate, p. 138 (emphasis added.)

In other words, FERC explicitly imposes certificate conditions that bind the certificate holder *regardless of what rights it may have coerced from landowners*. In fact, many certificate conditions impose mandatory requirements that do not provide an exception for "unless the landowner agrees", *e.g.*, a holder may only "survey and designate the bounds of an easement but no further, e.g., it cannot cut vegetation or disturb ground pending receipt of any federal approvals." *PennEast, Order on Rehearing*, 164 FERC ¶ 61,098, P. 31; *see also Pacific Connector Pipeline*, 170 FERC ¶ 61,202, P. 101 (PCP "may go so far as to survey and designate the bounds of an easement but no further. . .").

CONCLUSION

The Draft Supplemental Environmental Impact Statement fails to satisfy NEPA because it does not:

1. consider the impacts of ACP needlessly retaining temporary easements on Undamaged Property;

2. consider the impacts of requiring ACP to either release land-use restrictions in permanent easements or surrender those easements to landowners;

3. acknowledge that it bases all restoration on plans drafted eight years ago which assume that a pipeline has been constructed and is operating;

4. consider additional mitigation measures that can be taken in light of no pipeline being built, including within the 150'-wide pipeline corridor, and specifically as to soils and waterbodies;

5. consider complete restoration of property to its original condition;

6. acknowledge that easements granted under threat of eminent domain are inherently coercive, and that payments for such easements do not fairly compensate landowners;

7. require a rigorous landowner notification system; and

8. acknowledge the Commission's broad authority to condition section 7 certificates.

Respectfully submitted,

s/Tiferet Unterman
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Counsel to Landowners and Landowner Organizations

Dated: September 13, 2021

Exhibit 1

McLaurin Declaration

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Atlantic Coast Pipeline, LLC
Eastern Gas Transmission and Storage, Inc.
Docket Nos. CP15-555-007 & CP15-554-009

DECLARATION OF DONOVAN MCLAURIN

I, Donovan McLaurin, state as follows:

1. I am 74 years old and am competent to give this declaration, and all information herein is based on my own personal knowledge, unless otherwise indicated.
2. I am the sole owner of McLaurin Company, Inc. and a life-long resident of Cumberland County, North Carolina.
3. ACP took by condemnation easements that run through four contiguous parcels of land owned by McLaurin Company, Inc. in Wade, North Carolina, only intersected by River Road. The swamp and creek that run adjacent and through the properties are tributaries of the Cape Fear
4. In 2011, I purchased Parcel ID No. 0571-67-7579 (Parcel 1), which is about 37 acres. Before ACP condemned my property, I had planned to build my home on this land, where I would live for the rest of my life. I paid to have architectural plans prepared, paid permitting fees, and started to prepare the home site. I installed an underground electrical line, water line and erected a permit box for construction.
5. I also planned to sub-divide Parcel 1 for the construction of four other homes and had received approval from the Cumberland County Joint Planning Board. All the homes would have had direct access to the Cape Fear River, making them desirable places to live.

6. In 1998, I purchased Parcel ID No. 0571-46-9224 (Parcel 2), which is about 169 acres, and where I currently live. I had planned to create a sub-division with onsite horse stables and trails.
7. In 1984, I purchased Parcel ID No. 0571-54-4768 (Parcel 3), which is about 12 acres, and Parcel ID No. 0571-44-7444 (Parcel 4), also about 12 acres. My plan was to use this land for recreation and as a common area for the other housing developments.
8. All of the building and development plans came to a complete standstill when ACP arrived on the scene.
9. ACP filed a condemnation complaint against all four parcels on February 6, 2018, just a few months after receiving approval from FERC. I was served with legal papers around February 16, 2018. At that time, because I was the sole caregiver for my father who was dying from congestive heart failure, I did not review the papers closely, nor did I hire an attorney to represent me.
10. A few weeks later, I got a letter with a two-day notice that there would be a hearing in the case on Wednesday March 14, 2018, at the federal courthouse in Elizabeth City, which is about 200 miles away. March 14, 2018 was the same day my father died.
11. I learned later that on March 16, 2018, the judge ordered that ACP could immediately take my land and begin construction.
12. All in all, ACP has permanent easements that total 5.25 acres on all four parcels, and temporary easements that impacted another 5.56 acres, for a total of almost 11 acres. The easements cut through creeks, streams, forests, and roads and has fatally impacted my plans for the property.

13. Furthermore, ACP has repeatedly disregarded my requests. For example, the ACP appraiser wrongly listed my property as farmland, which decreases the value of the land. Additionally, I requested that ACP inform me before any surveyor would enter my property. However, while reviewing the property one day, I found that the surveyor had already visited the property and planted flags throughout the property without my knowledge or permission.
14. After the court gave ACP control of the land, in late November 2018, dozens of ACP workers with chain saws entered my property without notice and extensively damaged it as they cleared trees along a 150 ft wide path. They worked nonstop for several days cutting down trees in the wetland areas across my property before their permit from the US Army Corps of Engineers was revoked.
15. To accommodate their truck and machine traffic, ACP built long roads throughout my property that consist of wide wooden planks, which damaged the soil and plant life. On Parcel 1, ACP destroyed and removed extensive segments of good fencing. ACP also excavated deep trenches that cut through a cliff and continued to the edge of the creek, uprooting and destroying large areas of trees, plants, and shrubs. All of ACP's destructive activity damaged streams, creeks and water drainage, as well as trees, plants, and wildlife.
16. After so many years of ACP's control and destruction of my property, I am no longer able to build my home and will no longer be able to use my land as I intended.
17. ACP has also restricted my ability to use my land on the permanent easements. For example, the Complaint and Order said I was not allowed to conduct any earthmoving or construction, to create any structure or obstruction, including water lines, sewer lines,

electric poles, etc., or to store or operate heavy equipment on the permanent easements, without the prior written consent of ACP.

18. Moreover, since seizing my land in early 2018, I have not received any payment from ACP. ACP has been using and destroying my property for about three and a half years without having to pay me a thing.
19. On August 26, 2021, upon request by ACP, the court ordered that the case be stayed.
20. After ACP announced that it cancelled the pipeline, ACP contractors attempted to fill in the massive ravine they had excavated on Parcel 1. In doing so, they moved topsoil from the open area to fill in the ravine. Their earth moving and grading work created low spots such that the land that now does not properly drain. Additionally, ACP has not replaced the topsoil. I would like my land restored to its pre-construction status and I would prefer to conduct that work myself and be compensated fairly by ACP for the work. ACP also excavated near my creek in such a way that it severely changed the natural slope and, so far, ACP has not properly restored this area. I would like the bank to be properly restored and stabilized.
21. On Parcels 2,3, and 4 the wood plank roads have begun to decompose naturally. I am concerned that if ACP is allowed back into that area adjacent to the wetlands, they will do more harm than good and that those planks should be allowed to decompose naturally without further disturbance of the natural terrain.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on: 09/10/2021
Date

SIGNED Donovan McLaurin
DONOVAN McLAURIN

Exhibit 2

ACP Condemnation Complaint Against McLaurin

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Case No. 5:18-cv-00048

ATLANTIC COAST PIPELINE, LLC,

Plaintiff,

v.

10.81 ACRES, MORE OR LESS, IN CUMBERLAND COUNTY, NORTH CAROLINA, LOCATED ON PARCEL IDENTIFICATION NO. 0571-67-7579, WARRANTY DEED BOOK 8581, PAGE 248 AND DELINEATED AS LOT 3 OF PLAT MAP 129, PAGE 39, LESS AND EXCEPT 1.0 ACRE, MORE OR LESS, BEING MORE PARTICULARLY DESCRIBED IN DEED BOOK 127, PAGE 298; LOCATED ON PARCEL IDENTIFICATION NO. 0571-46-9224 IDENTIFIED IN BOOK 4303, PAGE 823, IN PLAT BOOK 118, PAGE 197; LOCATED ON PARCEL IDENTIFICATION NO. 0571-54-4768 IDENTIFIED AS LOT #15, #16, #17, AND #18 AS SHOWN ON PLAT MAP BOOK 137, PAGE 20; LOCATED ON PARCEL IDENTIFICATION NO. 0571-44-7444 IDENTIFIED AS LOT #19 IN PLAT MAP BOOK 7, PAGE 113,

and

MCLAURIN COMPANY, INC.
Serve: Donovan E. McLaurin,
Registered Agent
7133 Powell Street
Wade, North Carolina 28395,

Defendants.

COMPLAINT IN CONDEMNATION

15 U.S.C. § 717f(h); Fed. R. Civ. P. 71.1

Nature of the Case

1. Plaintiff Atlantic Coast Pipeline, LLC ("Atlantic"), pursuant to its power of eminent domain as authorized by Section 7(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), and Federal Rule of Civil Procedure 71.1, files this action for (i) the taking of certain interests in real property; (ii) immediate entry and possession of the real property; and (iii) the ascertainment and award of just compensation to the owners of interest in real property, McLaurin Company, Inc., and any other interested parties (collectively, the "Owner").

Jurisdiction and Venue

2. This Court has original jurisdiction in this matter pursuant to 28 U.S.C. § 1331 and Section 7(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), because: (a) Atlantic is the holder of a certificate of public convenience and necessity issued by the Federal Energy Regulatory Commission ("FERC") for the construction of an interstate natural gas pipeline that crosses West Virginia, Virginia, and North Carolina; (b) Atlantic, despite negotiation efforts, has been unable to acquire by contract, or has been unable to agree with the Owner as to the compensation to be paid for, the necessary easements to construct, operate, and maintain a pipeline for the transportation of natural gas; and (c) the amount claimed by the Owner exceeds $3,000.

3. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because the interests in the real property that Atlantic seeks to condemn are located within the Eastern District of North Carolina.

Parties

4. Atlantic is a Delaware limited liability company with its principal office located at 120 Tredegar Street, Richmond, Virginia 23219. Atlantic is an interstate natural gas company as defined by the Natural Gas Act, 15 U.S.C. § 717a(6), and, as such, is authorized to construct, own, operate, and maintain pipelines for the transportation of natural gas in interstate commerce.

Atlantic's transportation of natural gas in interstate commerce is subject to the jurisdiction and approval of FERC.

5. McLaurin Company, Inc. is the record owner of real property in Cumberland County, North Carolina, described as

(A) Parcel Identification No. 0571-67-7579, as more particularly described in Warranty Deed Book 8581, Page 248 and delineated as Lot 3 of Plat Map 129, Page 39, less and except 1.0 acre, more or less, located in Cumberland County North Carolina and being more particularly described in Deed Book 127, Page 298 of the land records of Cumberland County, and comprised of 35.44 acres, more or less (the "7579 Parcel");

(B) Parcel Identification No. 0571-46-9224, as is more particularly described in Book 4303, Page 823, North Carolina General Warranty Deed and in Plat Book 118, Page 197 of the land records of Cumberland County, and comprised of 169.31 acres, more or less (the "9224 Parcel");

(C) Parcel Identification No. 0571-54-4768, as more particularly described as lot #15, #16, #17, and #18 as shown on Plat Map Book 137, Page 20 of the land records of Cumberland County, and comprised of 11.59 acres, more or less (the "4768 Parcel"); and

(D) Parcel Identification No. 0571-44-7444, as is more particularly described as Lot # 19 in Plat Map Book 7, Page 113 of the land records of Cumberland County, and comprised of 12.0 acres, more or less (the "7444 Parcel") (the aforementioned parcels are collectively referred to herein as the "Property").

6. The 7579 Parcel is depicted in **Exhibit 1-A**; the 9224 Parcel is depicted in **Exhibit 1-B**; the 4768 Parcel is depicted in **Exhibit 1-C**; and the 7444 Parcel is depicted in **Exhibit 1-D**.

7. There may be other persons who claim an interest in the property to be condemned whose names are currently unknown to Atlantic because they could not be ascertained by a diligent inquiry. These persons will be made parties to this action as permitted by Federal Rule of Civil Procedure 71.1(c)(3).

Facts

8. Atlantic is in the process of constructing an approximately 600-mile underground pipeline and related facilities for the purpose of transporting natural gas from West Virginia to Virginia and North Carolina (the "ACP Project").

9. The ACP Project will measure approximately 42 inches in diameter in West Virginia and Virginia, and 36 inches in diameter in North Carolina. Certain extensions of the ACP Project will measure 20 inches in diameter from Northampton County, North Carolina to the City of Chesapeake, Virginia and 16 inches in diameter in Brunswick County, Virginia and Greensville County, Virginia.

10. Natural gas transported by the ACP Project will serve multiple public utilities and is necessary to satisfy the growing energy needs of consumers in Virginia and North Carolina.

11. Atlantic filed an application for a certificate of public convenience and necessity with FERC on September 18, 2015, FERC Docket No. CP15-554-000, in which it sought permission to construct the ACP Project and attendant facilities. On October 13, 2017, FERC issued a certificate of public convenience and necessity (the "FERC Certificate") authorizing Atlantic to construct and operate the ACP Project. A copy of the FERC Certificate is attached as **Exhibit 2**.

12. FERC found that the ACP Project will "primarily serve natural gas demand in Virginia and North Carolina." *See* Ex. 2, at 35, ¶ 79.

13. FERC also found that the "public at large will benefit from increased reliability of natural gas supplies." *See* Ex. 2, at 35, ¶ 79.

14. As a result, the ACP Project "serves a 'public use'" as determined by FERC. *See* Ex. 2, at 34, ¶ 79.

15. Atlantic must begin construction of the ACP Project as soon as possible to ensure completion within FERC's deadline. *See* Ex. 2.

16. The FERC-approved route of the ACP Project crosses the Property. A map depicting the route of the ACP Project is attached as **Exhibit 3**.

17. Atlantic seeks to construct a portion of the ACP Project on the Property. The ACP Project cannot be constructed until Atlantic acquires certain permanent easements (the "Permanent Easements") and temporary easements (the "Temporary Easements") (collectively the "Easements") on the Property. The Easements are necessary for constructing, maintaining, operating, altering, testing, replacing, and repairing the ACP Project.

18. A plat depicting the size and nature of the Easements and the ACP Project's route across the 7579 Parcel is attached hereto as **Exhibit 4-A**. A plat depicting the size and nature of the Easements and the ACP Project's route across the 9224 Parcel is attached hereto as **Exhibit 4-B**. A plat depicting the size and nature of the Easements and the ACP Project's route across the 4768 Parcel is attached hereto as **Exhibit 4-C**. A plat depicting the size and nature of the Easements and the ACP Project's route across the 7444 Parcel is attached hereto as **Exhibit 4-D**.

19. The Permanent Easements to be taken on the Property include a permanent and exclusive easement and right-of-way to construct, operate, maintain, replace, repair, remove or abandon the ACP Project and appurtenant equipment and facilities, as well as the right to change

the location of the installed pipeline within the area of the Permanent Easement as may be necessary or advisable.

20. The Temporary Easements will enable Atlantic to construct the ACP Project and engage in restoration or clean-up activities. The Temporary Easements are requested as of the date of authorized entry onto the Property and their use is required until all work, including restoration, is complete. The Temporary Easements will be effective and condemned for a period not to exceed five (5) years following Atlantic's possession of the Easements.

21. Atlantic also seeks to acquire the right of ingress and egress to and from and through the Easements; the right to transport pipe, vehicles, machinery, persons, equipment, or other materials to and from and through the Easements, and the right of access through any existing roads on the Property.

22. Atlantic also seeks the right to fell trees and clear brush or other vegetation as necessary or convenient for the safe and efficient construction, operation, or maintenance of the ACP Project or to maintain safe and efficient access to and from the ACP Project.

23. The Owner shall retain the right to use the Property in any manner that will not interfere with the use and enjoyment of Atlantic's rights under the Easements. Specifically, the Owner shall not, without the prior written consent of Atlantic: (a) change the depth of cover or otherwise undertake earthmoving or construction within the Permanent Easements; (b) place or permit to be placed any temporary or permanent structure or obstruction of any kind, including but not limited to buildings, swimming pools, sheds, concrete pads, mobile homes, trees, telephone or electric poles, water or sewer lines, or similar structures, within the Permanent Easements; (c) store or operate any heavy equipment in the Permanent Easements, except the use of typical

farming equipment; and (d) construct ponds or lakes in a manner that would flood the Permanent Easements.

24. Atlantic has negotiated with the Owner and has made several efforts to acquire the Easements by contract. However, Atlantic and the Owner have been unable to agree upon the compensation to be paid.

25. Atlantic requests the right to immediate possession of the Easements for purposes of constructing the ACP Project as described above.

26. Pursuant to the authority granted to Atlantic by Congress in Section 7(h) of the Natural Gas Act, 15 U.S.C. § 717f(h), Atlantic now seeks to take by eminent domain the Easements over the Property as depicted herein and in **Exhibits 4-A**, **4-B**, **4-C**, and **4-D**.

WHEREFORE, Atlantic respectfully requests that this Court:

A. Enter an Order of Judgment of Taking by Eminent Domain as to the Easements as described herein;

B. Grant Atlantic immediate possession of the Easements prior to the determination of just compensation upon deposit with the Court of a sum of money representing the value of such Easements as determined by Atlantic's appraisal or land rights valuation analysis;

C. Ascertain and award just compensation to the Owner for the taking of the Permanent Easements;

D. Ascertain and award just compensation to the Owner for the taking of the Temporary Easements; and

E. Grant such other relief as may be just and proper.

This the 6th day of February, 2018.

/s/ Henry L. Kitchin, Jr.
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Exhibit 3

Order on Preliminary Injunction, McLaurin

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN, EASTERN, WESTERN, AND SOUTHERN DIVISIONS

ATLANTIC COAST PIPELINE, LLC, *Plaintiff*, v. 0.25 ACRE, MORE OR LESS, IN NORTHAMPTON COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 2:18-CV-3-BO
ATLANTIC COAST PIPELINE, LLC, *Plaintiff*, v. 8.88 ACRES, MORE OR LESS, IN HALIFAX COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 4:18-CV-11-BO
ATLANTIC COAST PIPELINE, LLC, *Plaintiff*, v. 9.36 ACRES, MORE OR LESS, IN HALIFAX COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 4:18-CV-12-BO
ATLANTIC COAST PIPELINE, LLC, *Plaintiff*, v. 2.27 ACRES, MORE OR LESS, IN HALIFAX COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 4:18-CV-13-BO
ATLANTIC COAST PIPELINE, LLC, *Plaintiff*, v. 0.85 ACRE, MORE OR LESS, IN HALIFAX COUNTY, NORTH CAROLINA, *et al.*, *Defendants.*	)	No. 4:18-CV-14-BO

ATLANTIC COAST PIPELINE, LLC, *Plaintiff,* v. 4.24 ACRES, MORE OR LESS, IN HALIFAX COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 4:18-CV-15-BO
ATLANTIC COAST PIPELINE, LLC, *Plaintiff,* v. 4.77 ACRES, MORE OR LESS, IN HALIFAX COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 4:18-CV-21-BO
ATLANTIC COAST PIPELINE, LLC, *Plaintiff,* v. 11.57 ACRES, MORE OR LESS, IN NASH COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 5:18-CV-13-BO
ATLANTIC COAST PIPELINE, LLC, *Plaintiff,* v. 4.36 ACRES, MORE OR LESS, IN NASH COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 5:18-CV-39-BO
ATLANTIC COAST PIPELINE, LLC, *Plaintiff,* v. 0.13 ACRE, MORE OR LESS, IN CUMBERLAND COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 5:18-CV-42-BO

ATLANTIC COAST PIPELINE, LLC, *Plaintiff,* v. 15.65 ACRES, MORE OR LESS, IN CUMBERLAND COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 5:18-CV-47-BO
ATLANTIC COAST PIPELINE, LLC, *Plaintiff,* v. 10.81 ACRES, MORE OR LESS, IN CUMBERLAND COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 5:18-CV-48-BO
ATLANTIC COAST PIPELINE, LLC, *Plaintiff,* v. 9.11 ACRES, .MORE OR LESS, IN NASH COUNTY, NORTH CAROLINA *et al.*, *Defendants.*	)	No. 5:18-CV-49-BO

These matters are before the Court on plaintiff's motion for partial summary judgment and motion for preliminary injunction granting immediate possession. Also pending is plaintiff's motion for hearing on an expedited basis. A hearing on the motions was held before the undersigned on March 9, 2018, at Raleigh, North Carolina and on March 14, 2018, at Elizabeth City, North Carolina.

BACKGROUND

Plaintiff, Atlantic Coast Pipeline (ACP), has initiated twenty-nine cases in this Court by filing a complaint in condemnation pursuant to 15 U.S.C. § 717f(h) and Federal Rule of Civil Procedure 71.1.

In each complaint, ACP seeks an order allowing the taking of certain interests in real property, immediate entry and possession of real property, and the ascertainment and award of just compensation to the owners of interest in the subject real property pursuant to its power of eminent domain as authorized by Section 7(h) of the National Gas Act. On September 18, 2015, ACP filed an application for a certificate of public convenience and necessity with the Federal Energy Regulatory Commission (FERC), seeking permission to construct an approximately 600-mile pipeline and related facilities for the purpose of transporting natural gas from West Virginia to Virginia and North Carolina. ACP contends that the natural gas transported through its pipeline will serve multiple public utilities and is necessary to satisfy the growing energy needs of consumers in Virginia and North Carolina.

FERC issued ACP a certificate of public convenience and necessity on October 13, 2017, authorizing ACP to construct the pipeline. *See generally* [DE 1-2]. In order to construct the pipeline, ACP must acquire both temporary and permanent, exclusive easements on the subject properties along the FERC-approved pipeline route. ACP contends that the easements are necessary to construct, maintain, operate, alter, test, replace, and repair the pipeline. ACP further seeks to acquire the right of ingress and egress to, from, and through the easements. Landowners on whose property the pipeline is placed will retain the right to use and enjoy the property in any way that does not interfere with ACP's rights under the easement.

With the filing of each complaint, ACP filed a notice of filing of complaint in condemnation pursuant to Fed. R. Civ. P. 71.1(d), which provides notice to landowners of their rights to answer the complaint and present any defense and to appear in the action. *See generally* [DE 1-7]. The notice further provides that failure to serve an answer within twenty-one days of service constitutes consent to the taking

and the Court's authority to proceed and fix compensation. Twenty-two cases remaining pending in this Court, and the instant motions are pending in thirteen of the remaining twenty-two cases.

Two defendant-landowners appeared through counsel at the hearings conducted on the instant motions. While some defendants have filed answers, no defendant in any case has filed a written response to the pending motions. In adjudicating the instant motions, the Court has considered the arguments and defenses raised by the defendants who appeared through counsel at the hearings.

DISCUSSION

At the outset, the Court notes that a stipulation as to the appropriateness of ACP's motion for partial summary judgment and ACP's entitlement to exercise the right of immediate entry, access, and possession of the easements to commence and complete construction of the pipeline has been filed No. 5:18-CV-47-BO. [DE 28]. The pending motions in this case are therefore DENIED AS MOOT.

I. Motion for partial summary judgment.

A motion for summary judgment may not be granted unless there are no genuine issues of material fact for trial and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). If that burden has been met, the non-moving party must then come forward and establish the specific material facts in dispute to survive summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 588 (1986). In determining whether a genuine issue of material fact exists for trial, a trial court views the evidence and the inferences in the light most favorable to the nonmoving party. *Scott v. Harris*, 550 U.S. 372, 378 (2007). However, "[t]he mere existence of a scintilla of evidence" in support of the nonmoving party's position is not sufficient to defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986).

"A dispute is genuine if a reasonable jury could return a verdict for the nonmoving party. . . . and [a] fact is material if it might affect the outcome of the suit under the governing law." *Libertarian Party of Virginia v. Judd*, 718 F.3d 308, 313 (4th Cir. 2013) (internal quotations and citations omitted).

The Court first addresses the issue of sufficient notice to the non-appearing defendants.[1] As provided below,[2] ACP has effected service or appears to have effected service on all defendants either

[1] Counsel has appeared for the defendants in cases No. 4:18-CV-11-BO, No. 4:18-CV-14-BO, and 5:18-CV-39-BO. Although the defendants have answered the complaints, no opposition to the instant motions has been filed, and these defendants did not appear either personally or through counsel at the hearings.

[2] In No. 2:18-CV-3-BO, the unknown remaining heirs of Phil Gray Stewart and Boatmen Bennett Cornelius Stewart remain as defendants. The docket reflects that a certificate of service by publication in accordance with Rule 71.1(d)(3)(B)(i) was filed on February 15, 2018. [DE 14]. However, no certificate of completion of service has been filed in accordance with Rule 71.1(d)(3)(B)(ii). To date, no defendant has come forward to appear, file an answer, or oppose the pending motions.

In No. 4:18-CV-12-BO, the docket reflects that the individual defendants were served on February 20, February 23, and February 27, 2018. [DE 17; 19; 20; 26]. To date, no defendant has come forward to appear, file an answer, or oppose the pending motions.

In No. 4:18-CV-15-BO, the docket reflects that the individual defendants were served on February 16, February 24, February 26, and February 27, February 28 2018; March 1, March 2, March 3, March 4, March 5, and March 7, 2018. [DE 16, 19 – 22, 25 – 33, 40 – 43]. ACP further served defendants in this matter who could not be located by publication, with service complete as of March 11, 2018. [DE 15; 23; 44]. To date, no defendant has come forward to appear, file an answer, or oppose the pending motions.

In No. 4:18-CV-21-BO, the docket reflects that two remaining defendants were served on February 17, and March 7, 2018, and further that service by publication was complete as of March 11, 2018. [DE 15, 26, 27, 29]. To date, no defendant has come forward to appear, file an answer, or oppose the pending motions.

In 5:18-CV-42-BO, the docket reflects that service was effected on the defendant on February 22, 2018. [DE 18]. To date, the defendant has not come forward to appear, file an answer, or oppose the pending motions.

In No. 5:18-CV-48-BO, the docket reflects that service was effected on the defendant on February 16, 2018. [DE 17]. To date, the defendant has not come forward to appear, file an answer, or oppose the pending motions.

personally or by publication. Further, ACP has provide a certificate of service of the notice of this Court's March 14, 2018, hearing, which provides that known defendants were served via overnight delivery as well as regular mail and that all defendants were additionally served by publication in three local newspapers, with publication occurring on the day prior to the hearing. The Court has not been made aware of any defendant who sought or attempted to attend the March 14 hearing but was unable to do so. All defendants served prior to February 22, 2018, appear to have defaulted, and although the time to file an answer has not run for other defendants, the Court is satisfied that they have received adequate notice of this suit and of the hearing such that consideration of ACP's motions in these cases does not violate due process.

ACP seeks entry of partial summary judgment in its favor as to its right to condemn the subject easements under the Natural Gas Act. The Natural Gas Act (NGA) provides that

> When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located, or in the State courts.

15 U.S.C. § 717f; *see also E. Tennessee Nat. Gas Co. v. Sage* (hereinafter *Sage*), 361 F.3d 808, 821 (4th Cir. 2004) (Congress may grant condemnation power to "private corporations executing works in which the public is interested.") (quoting *Mississippi & Rum River Boom Co. v. Patterson,* 98 U.S. 403, 406, (1878) (alteration omitted)). "In order to condemn a property interest, then, [a natural gas company] must prove three elements: (1) it is a holder of a certificate of public convenience and necessity; (2) the property to be condemned is necessary for the construction, operation, and maintenance of the pipelines

at issue; and (3) that it has been unable to acquire the necessary property interest from the owner." *Columbia Gas Transmission Corp. v. An Easement to Construct, Operate, & Maintain a 24-inch Gas Transmission Pipeline Across Properties in Greene Cty.*, No. CIV. 3:07CV00028, 2007 WL 2220530, at *3 (W.D. Va. July 31, 2007).

ACP is an interstate natural gas company as defined by 15 U.S.C. § 717a(6). The record demonstrates and it is undisputed that ACP holds a certificate of public convenience and necessity issued by FERC on October 13, 2017. Although it has been argued that there are challenges to the FERC certificate pending in the court of appeals as well as an application for rehearing filed before FERC, neither of these circumstances operates as a stay of ACP's FERC certificate and the corresponding FERC order without an express order to that effect by the appropriate forum. *See* 15 U.S.C. § 717r(c) (filing of an application for rehearing by FERC commission *shall* not, unless specifically ordered by the commission, operate to stay the commission's order; commencement of proceedings in the court of appeals for review of FERC order *shall* not, unless specifically ordered, operate to stay commission's order) (emphasis added); *see also Columbia Gas Transmission, LLC v. 252.071 Acres More or Less*, No. CV ELH-15-3462, 2016 WL 1248670, at *5 (D. Md. Mar. 25, 2016) (citation omitted) ("when a landowner contends that the Certificate holder is not in compliance with the certificate, that challenge must be made to FERC, not the district court", and "[r]eview of the validity of the Certificate is the exclusive province of the appropriate court of appeals."). There is no evidence that FERC limited or conditioned ACP's eminent domain authority in its certificate, *see Mid Atl. Express, LLC v. Baltimore Cty., Md.*, 410 F. App'x 653, 657 (4th Cir. 2011) (dismissal for lack of subject matter jurisdiction required where FERC certificate expressly conditioned authority to condemn), and ACP has satisfied the first step of the inquiry.

ACP has further satisfied the second step of the inquiry, which asks whether the property to be condemned is necessary. All that ACP must show as to this element "that the easements it seeks align with the FERC-approved route." *Mountain Valley Pipeline, LLC v. Easements to Construct, Operate, & Maintain a Nat. Gas Pipeline Over Tracts of Land in Giles Cty., Craig Cty., Montgomery Cty., Roanoke Cty., Franklin Cty., & Pittsylvania Cty., Virginia*, No. 7:17-CV-00492, 2018 WL 648376, at *12 (W.D. Va. Jan. 31, 2018). ACP has proffered the FERC-approved route and the required easements it seeks, *see* Pl. Hrg. Ex. 4 and 5, and has demonstrated that the subject easements are necessary.

ACP has also satisfied the third step of the inquiry, which requires it to show that it has been unable to reach an agreement to acquire the necessary property from the landowners, in all but two of the cases in which it seeks partial summary judgment.

In No. 4:18-CV-13-BO, defendant Locke testified at the hearing that he is willing to settle with ACP but that he has been unable to engage in reasonable negotiations. Accordingly, the Court finds that a genuine issue of fact exists as to whether ACP is unable to reach an agreement with the subject landowner in this case and summary judgment is therefore inappropriate.

In No. 5:18-CV-13-BO, defendant Winstead testified at the hearing that his first contact with ACP or its agents regarding the pipeline was in May 2014, when surveyors entered his property without permission to conduct a survey. Winstead received an offer from ACP on January 29, 2016, but later was told by another surveyor on his property that the pipeline would not come through his property after all. He also testified that he was informed of this suit in condemnation by a reporter, and received certified mail service a few weeks later. The Court finds that, based on Winstead's testimony, there is a genuine issue of material fact as to whether Winstead has received an adequate opportunity to negotiate for a clearly defined easement. *See, e.g., Sabal Trail Transmission, LLC v. 7.72 Acres in Lee Cty., Alabama,*

No. 3:16-CV-173-WKW, 2016 WL 3248666, at *8 (M.D. Ala. June 8, 2016) (noting that landowner has an interest in negotiating with the gas company). Accordingly, the Court will deny ACP's motion for summary judgment in the Winstead case.

As to the remaining cases, ACP has submitted the affidavit and hearing testimony of its Land Agent, who has testified ACP has been able to reach an agreement with approximately ninety percent of the landowners along the pipeline route. *See also* Land Agent Decl. ¶¶ 15-20. These remaining landowners have either rejected or not responded to ACP's offers. ACP has proffered the offer letters submitted to the remaining defendants, Pl. Hrg. Ex. 6 and 7, and, in the absence of their acceptance by the landowner or any testimony regarding the negotiations, ACP has satisfied the third and final step of the inquiry.

Accordingly, ACP has established the necessary elements and is entitled to partial summary judgment in its favor as to its right to condemn the subject easements under the Natural Gas Act in the following cases: No. 2:18-CV-3-BO; No. 4:18-CV-11-BO; No. 4:18-CV-12-BO; No. 4:18-CV-14-BO; No. 4:18-CV-15-BO; No. 4:18-CV-21-BO; No. 5:18-CV-39-BO; No. 5:18-CV-42-BO; No. 5:18-CV-48-BO; No. 5:18-CV-49-BO.

II. Motion for preliminary injunction.

"A preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 533 U.S. 674, 689 (2008) (quotation and citation omitted). A movant must make a clear showing of each of four elements before a preliminary injunction may issue: (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see also Real Truth About Obama, Inc. v. Fed. Election Comm'n*, 575 F.3d

342, 347 (4th Cir. 2009) (holding that the *Blackwelder* balance-of-hardships test no longer applies in light of *Winter*) *vacated on other grounds*, 130 S. Ct. 2371 (2010) (memorandum opinion). A mandatory injunction which would alter the status quo, as requested here, "should be granted only in those circumstances when the exigencies of the situation demand such relief." *Wetzel v. Edwards*, 635 F.2d 283, 286 (4th Cir. 1980).

In *Sage*, the Fourth Circuit held that once a court determines that a natural gas company has the right to condemn property under the NGA and pursuant to a FERC certificate, "the court may exercise equitable power to grant the remedy of immediate possession through the issuance of a preliminary injunction." *Sage*, 361 F. 3d at 828. Because the Court has denied the motion for partial summary judgment in the Locke and Winstead cases, it finds that ACP cannot satisfy its burden today to demonstrate a likelihood of success on the merits. The motion for preliminary injunction is therefore denied without prejudice in these cases.

As to the remaining defendant parcels and individual defendants addressed by this order, ACP has demonstrated a likelihood of success on the merits as it has established the right to condemn. *See Sage*, 361 F.3d at 830 (success on the merits is apparent where it has been determined that a natural gas company has the right to condemn). ACP has further demonstrated that it is likely to be irreparably harmed in the absence of preliminary relief. ACP has proffered evidence of the costs associated with having to construct the pipeline in a non-linear fashion, and further that it seeks to comply with an agreement entered into with the United States Fish & Wildlife Service to complete the tree felling stage of the project prior to March 31, 2018.[3] *See* Project Manager Decl. ¶¶ 15-17. ACP has further argued

[3] On March 16, 2018, ACP filed a notice to the Court that it has requested an extension of the tree felling deadline from FERC. As the Court is unaware that FERC has issued any decision, it proceeds with its consideration of the instant motion as though the tree felling deadline remains

that it risks being unable to complete the pipeline within the time allotted by FERC if it cannot gain immediate access to the properties; these reasons are sufficient to demonstrate a likelihood of irreparable harm in this circumstance. *See Sage*, 361 F.3d at 828-29.

The court further finds that the balance of equities tips in ACP's favor and that granting an injunction would be in the public interest. ACP has been granted the right to condemn property under the NGA in order to construct a pipeline that will provide the public with reliable natural gas service. FERC has determined that the construction of this pipeline is in the public interest, and while the intrusion into the landowner's interest is great, "[a]t bottom, it is the NGA and the FERC Certificate that are responsible for any injuries to the defendants, and delaying access until just compensation is paid will do nothing to alleviate those burdens." *Dominion Energy Transmission, Inc. v. 8.00 Acres of Land, More or Less, in Doddridge Cty., W. Virginia*, No. 1:18CV24, 2018 WL 1144982, at *6 (N.D.W. Va. Mar. 2, 2018) (citing *Sage*, 361 F.3d at 829).

Accordingly, having considered the relevant factors in light of the applicable standards, the Court determines that a preliminary injunction granting ACP immediate access to the parcels is warranted in the following cases: No. 2:18-CV-3-BO; No. 4:18-CV-11-BO; No. 4:18-CV-12-BO; No. 4:18-CV-14-BO; No. 4:18-CV-15-BO; No. 4:18-CV-21-BO; No. 5:18-CV-39-BO; No. 5:18-CV-42-BO; No. 5:18-CV-48-BO; No. 5:18-CV-49-BO.

While "the constitution does not require that compensation be paid in advance of land occupancy . . . it does require that there be a process in place to give the owner 'reasonable, certain, and adequate provision for obtaining compensation before his occupancy is disturbed.'" *Mountain Valley Pipeline, LLC v. Easements to Construct, Operate, & Maintain a Nat. Gas Pipeline Over Tracts of Land in Giles Cty.,*

March 31, 2018.

Craig Cty., Montgomery Cty., Roanoke Cty., Franklin Cty., & Pittsylvania Cty., Virginia, No. 7:17-CV-00492, 2018 WL 648376, at *19 (W.D. Va. Jan. 31, 2018) (quoting *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 659 (1890)); *see also* Fed. R. Civ. P. 65(c). Therefore, in order to protect the landowners, the Court requires ACP to provide security as follows; the right to immediate possession is conditioned on ACP's compliance with these procedures. *See* Fed. R. Civ. P. 71.1(j).

> ACP shall deposit with the Clerk of this Court (Clerk) an amount representing three times the appraised value of the easement sought on each of the subject parcels as described in plaintiff's hearing exhibit 9. Where the appraised value is less than $3,000, ACP shall deposit three times the amount of $3,001. *See* 15 U.S.C. § 717f(h).
>
> ACP shall additionally obtain and post a surety bond in the amount of two times the appraised value of the easement sought on each of the subject parcels.
>
> The amounts deposited and obtained as security shall not be considered to be a threshold or limit on the amount of just compensation to be determined.
>
> At the time of deposit with the Clerk, ACP shall file a notice on the docket in the respective case identifying the case number, subject parcel, landowner(s), plat number, the appraised value, the amount deposited with the Clerk, and the amount of the surety bond obtained. ACP shall provide a copy of this filing to the Clerk for internal record keeping.
>
> The amounts deposited by ACP with the Clerk shall, at the Clerk's earliest convenience, be deposited into an interest bearing account pursuant to Fed. R. Civ. P. 67(b).

CONCLUSION

For the foregoing reasons, ACP's motions for partial summary judgment and preliminary injunction are GRANTED in the following cases: No. 2:18-CV-3-BO; No. 4:18-CV-11-BO; No. 4:18-CV-12-BO; No. 4:18-CV-14-BO; No. 4:18-CV-15-BO; No. 4:18-CV-21-BO; No. 5:18-CV-39-BO; No. 5:18-CV-42-BO; No. 5:18-CV-48-BO; No. 5:18-CV-49-BO. ACP SHALL provide security in accordance with the above.

ACP's motion for partial summary judgment is DENIED and motion for preliminary injunction is DENIED WITHOUT PREJUDICE in the following cases: No. 4:18-CV-13-BO and No. 5:18-CV-13-BO.

The pending motions in No. 5:18-CV-47-BO are DENIED AS MOOT.

ACP's motion for expedited hearing is DENIED AS MOOT in all cases in which it was filed.

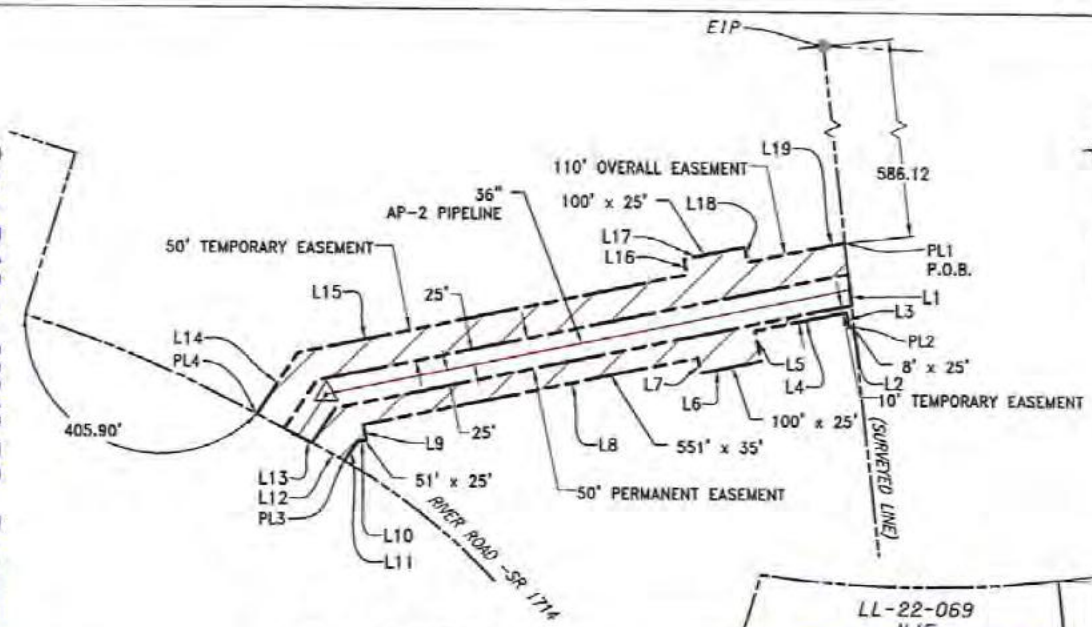
SO ORDERED, this 16 day of March, 2018.

Terrence W. Boyle
TERRENCE W. BOYLE
UNITED STATES DISTRICT JUDGE

Exhibit 4

McLaurin Plot 1 Easement Map and Photos

Document Accession #: 20210913-5226 Filed Date: 09/13/2021



EASEMENT ENLARGEMENT DETAIL
1" = 200'

BEARINGS & DISTANCE ALONG EASEMENT

P.O.B.		
L1	S6° 25' 13"E	135.92'
L2	S80° 27' 17"W	7.56'
L3	N11° 42' 51"W	24.99'
L4	S78° 11' 45"W	150.45'
L5	S11° 42' 32"E	50.15'
L6	S78° 17' 28"W	100.00'
L7	N11° 42' 29"W	25.00'
L8	S78° 11' 27"W	550.71'
L9	S11° 42' 32"E	25.00'
L10	S78° 17' 30"W	13.51'
L11	S35° 21' 24"W	37.80'
L12	N61° 23' 40"W	39.34'
L13	N62° 29' 34"W	120.34'
L14	N33° 36' 34"E	119.77'
L15	N78° 12' 02"E	639.60'
L16	N11° 42' 18"W	25.13'
L17	N78° 17' 27"E	100.00'
L18	S11° 42' 32"E	24.97'
L19	N78° 12' 03"E	160.90'

POINTS WHERE EASEMENTS LEAVE PROPERTY

POINT NUMBER	LATITUDE	LONGITUDE
PL1	N35° 10' 20"	W78° 44' 29"
PL2	N35° 10' 18"	W78° 44' 28"
PL3	N35° 10' 16"	W78° 44' 38"
PL4	N35° 10' 17"	W78° 44' 40"

LEGEND

- SUBJECT PROPERTY LINE
- ADJOINER PROPERTY LINE
- PERMANENT EASEMENT
- GAS PIPELINE
- TEMPORARY EASEMENT
- PROPERTY EVIDENCE (FOUND)
- P.I. (POINT OF INTERSECTION)

NOTES:

1. FIELD SURVEY AND MAPPING COMPLETED BY GAI CONSULTANTS-NC, INC. ON 2017-12-27.
2. COORDINATE SYSTEM USED FOR MAPPING - UTM17N NAD83 (2011) GRID, U.S. SURVEY FEET.
3. PROPERTY LINES DEPICTED ON THIS PLAT DERIVED FROM DEEDS AND PLATS OF RECORD WITH TIES TO AVAILABLE PROPERTY CORNER MONUMENTS AND OTHER EVIDENCE. THIS PLAT IS NOT A PROPERTY BOUNDARY SURVEY. ALL PROPERTY LINE LOCATIONS SUBJECT TO FULL BOUNDARY SURVEY OF THE DEPICTED PARCEL.
4. REFERENCE MADE TO PB 129 PG 39.
5. ALIGNMENT REV 11c AS PROVIDED BY DOMINION ENERGY.

PERMANENT EASEMENT = 47,185 SQ FT / 1.08 AC
TEMPORARY EASEMENT = 84,098 SQ FT / 1.93 AC

NORTH CAROLINA PROFESSIONAL SEAL L-5226 LAND SURVEYOR DONALD F CHANDLER II

SCALE IN FEET
0 500' 1000'

SCALE:	AS SHOWN
DATE:	1/24/18
DRAWN:	OPH
CHKD:	RDF
APPD:	DFC

PLAT SHOWING EASEMENTS ON TAX MAP # 0571-67-7579
MCLAURIN CO., INC
ACP 36" GAS PIPELINE AP-2
CUMBERLAND COUNTY, NORTH CAROLINA
ATLANTIC COAST PIPELINE, LLC
925 WHITE OAKS BOULEVARD
BRIDGEPORT, WV 26330

GAI Consultants, Inc.
385 East Waterfront Drive
Homestead, PA 15120-5005
412-476-2000
FAX 412-476-2037
PA CERT OF AUTH #000189

KEYSTONE CONSULTANTS, INC
32 EAST MAIN ST.
CARNEGIE, PA 15106
412-278-2100

PROJECT NO./ DASH NO.
C140468.00

TASK NO.
05

DRAWING NO.
LL-22-069

11C
REV

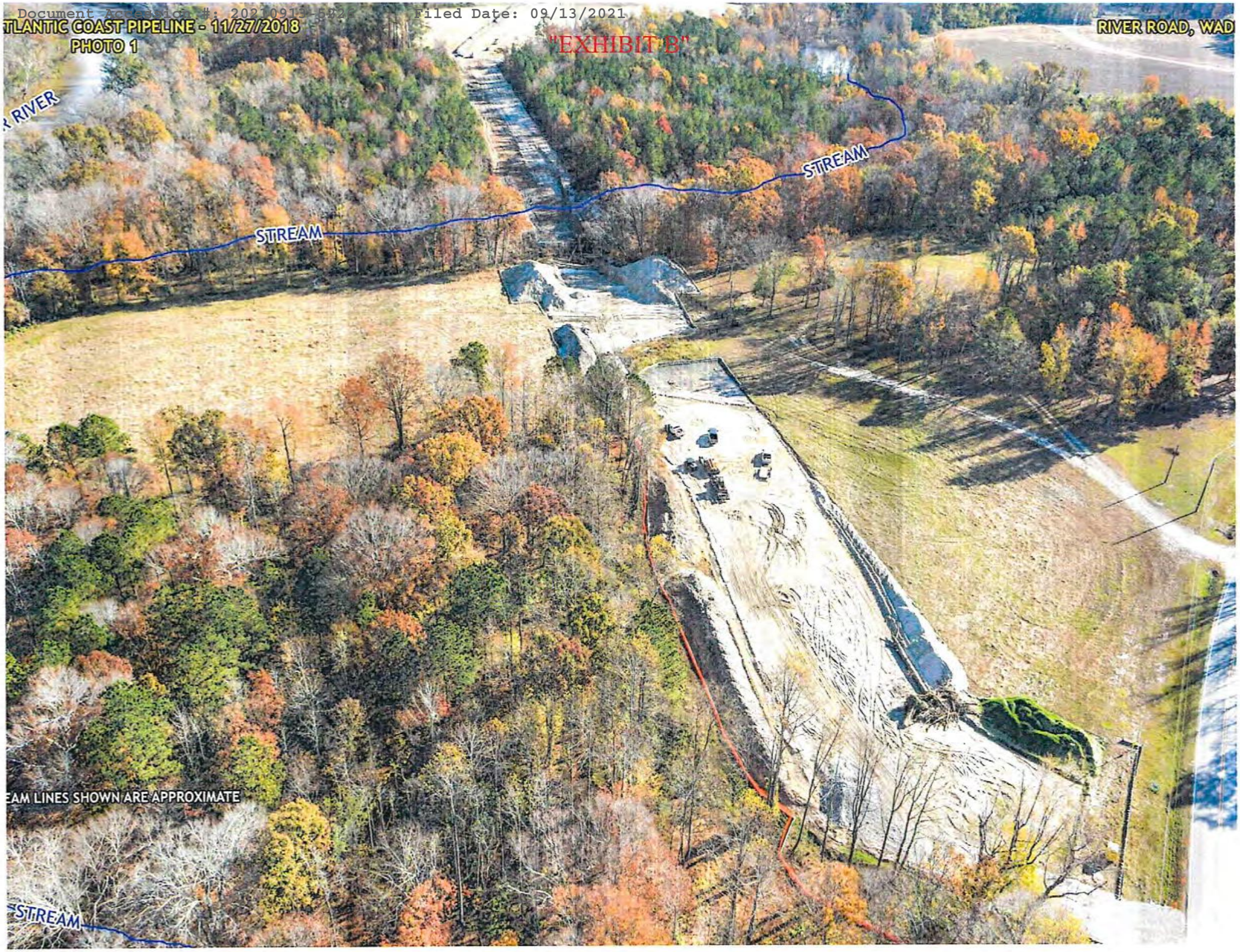
©2017 GAI Consultants, Inc.

[redacted]

"EXHIBIT B"

TLANTIC COAST PIPELINE - 11/27/2018
PHOTO 2
RIVER ROAD, WAD
STREAM
STREAM
SEWER LIFT STATION
CAPE FEAR RIVER
STREAM
(NOTE WORKERS)
STREAM
STREAM LINES SHOWN ARE APP

"EXHIBIT B"


TLANTIC COAST PIPELINE - 11/27/2018
PHOTO 1
RIVER ROAD, WAD
R RIVER
STREAM
STREAM
EAM LINES SHOWN ARE APPROXIMATE
STREAM

"EXHIBIT B"

ED ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 4
RIVER ROAD, WADE, N
(NOTE WORKERS)
STREAM
AM LINE SHOWN IS APPROXIMATE

Document Accession #: 20210913-5226 Filed Date: 09/13/2021

"EXHIBIT B"

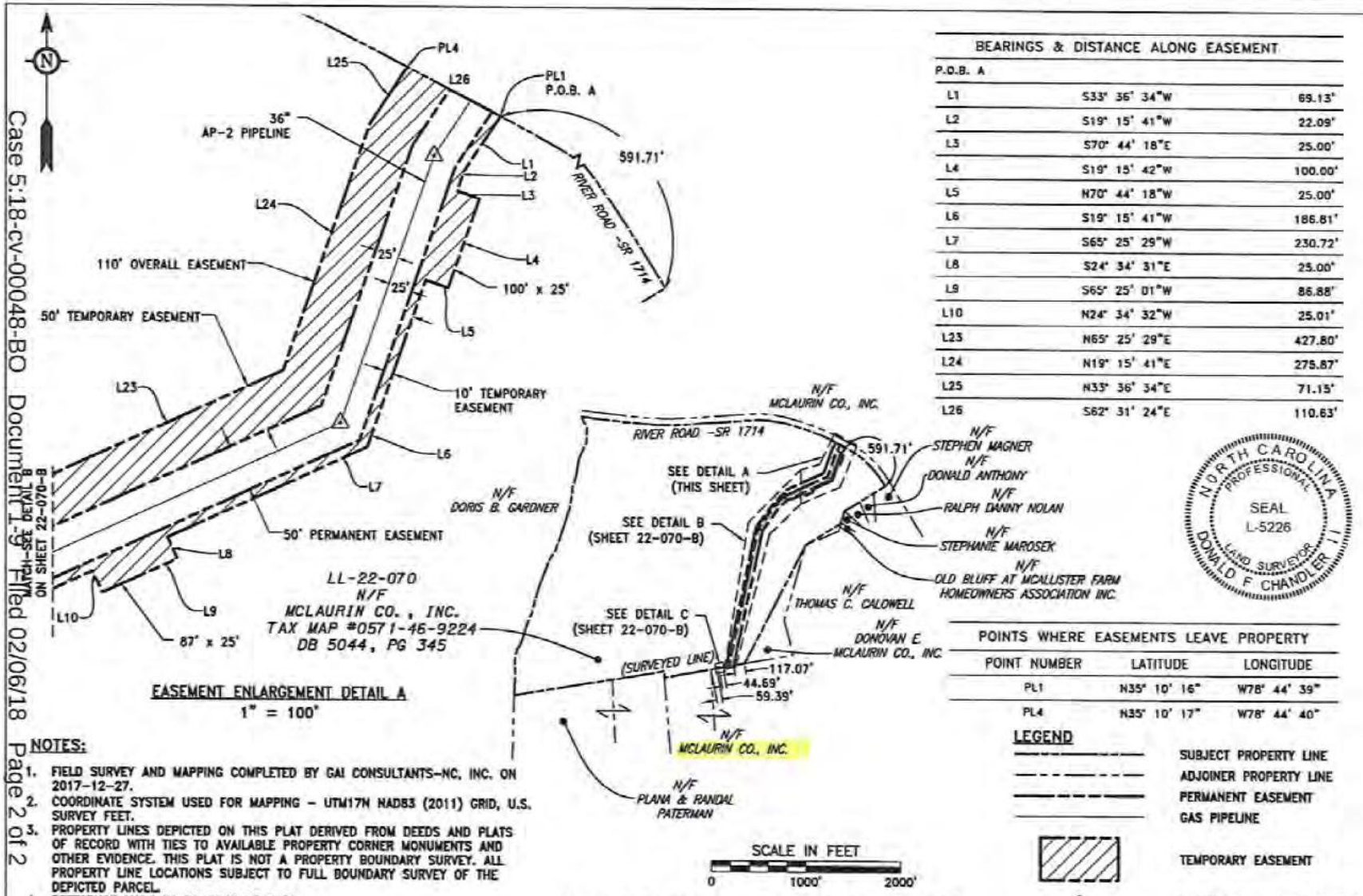
Exhibit 5

McLaurin Plot 2 Easement Map and Photos

Document Accession #: 20210913-5226 Filed Date: 09/13/2021

Case 5:18-cv-00048-BO Document 1-9 Filed 02/06/18 Page 2 of 2

1/11/2018 2:21 PM



EASEMENT ENLARGEMENT DETAIL A
1" = 100'

BEARINGS & DISTANCE ALONG EASEMENT

P.O.B. A		
L1	S33° 36' 34"W	69.13'
L2	S19° 15' 41"W	22.09'
L3	S70° 44' 18"E	25.00'
L4	S19° 15' 42"W	100.00'
L5	N70° 44' 18"W	25.00'
L6	S19° 15' 41"W	186.81'
L7	S65° 25' 29"W	230.72'
L8	S24° 34' 31"E	25.00'
L9	S65° 25' 01"W	86.88'
L10	N24° 34' 32"W	25.01'
L23	N65° 25' 29"E	427.80'
L24	N19° 15' 41"E	275.87'
L25	N33° 36' 34"E	71.15'
L26	S62° 31' 24"E	110.63'

POINTS WHERE EASEMENTS LEAVE PROPERTY

POINT NUMBER	LATITUDE	LONGITUDE
PL1	N35° 10' 16"	W78° 44' 39"
PL4	N35° 10' 17"	W78° 44' 40"

NORTH CAROLINA PROFESSIONAL SEAL L-5226 LAND SURVEYOR DONALD F. CHANDLER

NOTES:

1. FIELD SURVEY AND MAPPING COMPLETED BY GAI CONSULTANTS-NC, INC. ON 2017-12-27.
2. COORDINATE SYSTEM USED FOR MAPPING - UTM17N NAD83 (2011) GRID, U.S. SURVEY FEET.
3. PROPERTY LINES DEPICTED ON THIS PLAT DERIVED FROM DEEDS AND PLATS OF RECORD WITH TIES TO AVAILABLE PROPERTY CORNER MONUMENTS AND OTHER EVIDENCE. THIS PLAT IS NOT A PROPERTY BOUNDARY SURVEY. ALL PROPERTY LINE LOCATIONS SUBJECT TO FULL BOUNDARY SURVEY OF THE DEPICTED PARCEL.
4. REFERENCE MADE TO DB 5044 PG 345.
5. ALIGNMENT REV 11c AS PROVIDED BY DOMINION ENERGY.
6. PARCEL OWNER INFORMATION PROVIDED BY DOYLE LAND SERVICES.

SCALE IN FEET
0 1000' 2000'

PERMANENT EASEMENT = 139,194 SQ FT / 3.20 AC
TEMPORARY EASEMENT = 103,123 SQ FT / 2.37 AC

LEGEND

- SUBJECT PROPERTY LINE
- ADJOINER PROPERTY LINE
- PERMANENT EASEMENT
- GAS PIPELINE
- TEMPORARY EASEMENT
- P.I. (POINT OF INTERSECTION)
- INDEX SHEET

SCALE:	AS SHOWN
DATE:	1/11/18
DRAWN:	OPH
CHKD:	RDF
APPD:	DFC

ACP 36" GAS PIPELINE AP-2
PLAT SHOWING EASEMENTS ON TAX MAP # 0571-46-9224
MCLAURIN CO., INC.
CUMBERLAND COUNTY, NORTH CAROLINA

ATLANTIC COAST PIPELINE, LLC
925 WHITE OAKS BOULEVARD
BRIDGEPORT WV, 26330

KEYSTONE CONSULTANTS INC
32 EAST MAIN ST.
CARNEGIE, PA 15106
412-276-2100

PROJECT NO./ DASH NO.
C140468.00

TASK NO.
05

DRAWING NO.
LL-22-070-A

11c
REV

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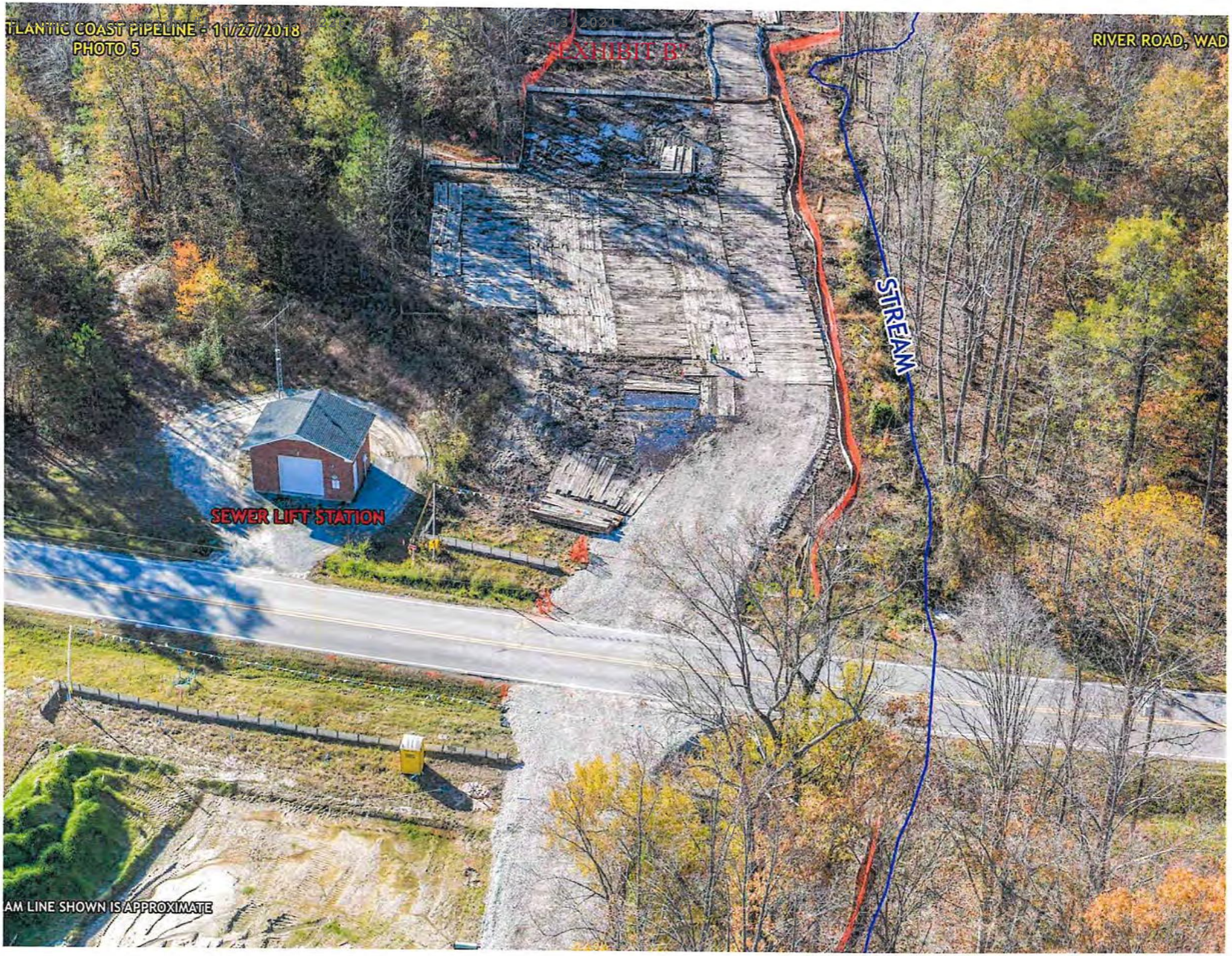
[redacted]


TLANTIC COAST PIPELINE - 11/27/2018
PHOTO 5
"EXHIBIT B"
RIVER ROAD, WAD
STREAM
SEWER LIFT STATION
AM LINE SHOWN IS APPROXIMATE

"EXHIBIT B"

D ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 8
"EXHIBIT B"
RIVER ROAD, WADE, N
APPROXIMATE PROPOSED PIPELINE LOCATION

D ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 7
"EXHIBIT B"
RIVER ROAD, WADE, N
APPROXIMATE PROPOSED PIPELINE LOCATION

Exhibit 6

McLaurin Plot 3 Easement Map

Document Accession #: 20210913-5226 Filed Date: 09/13/2021

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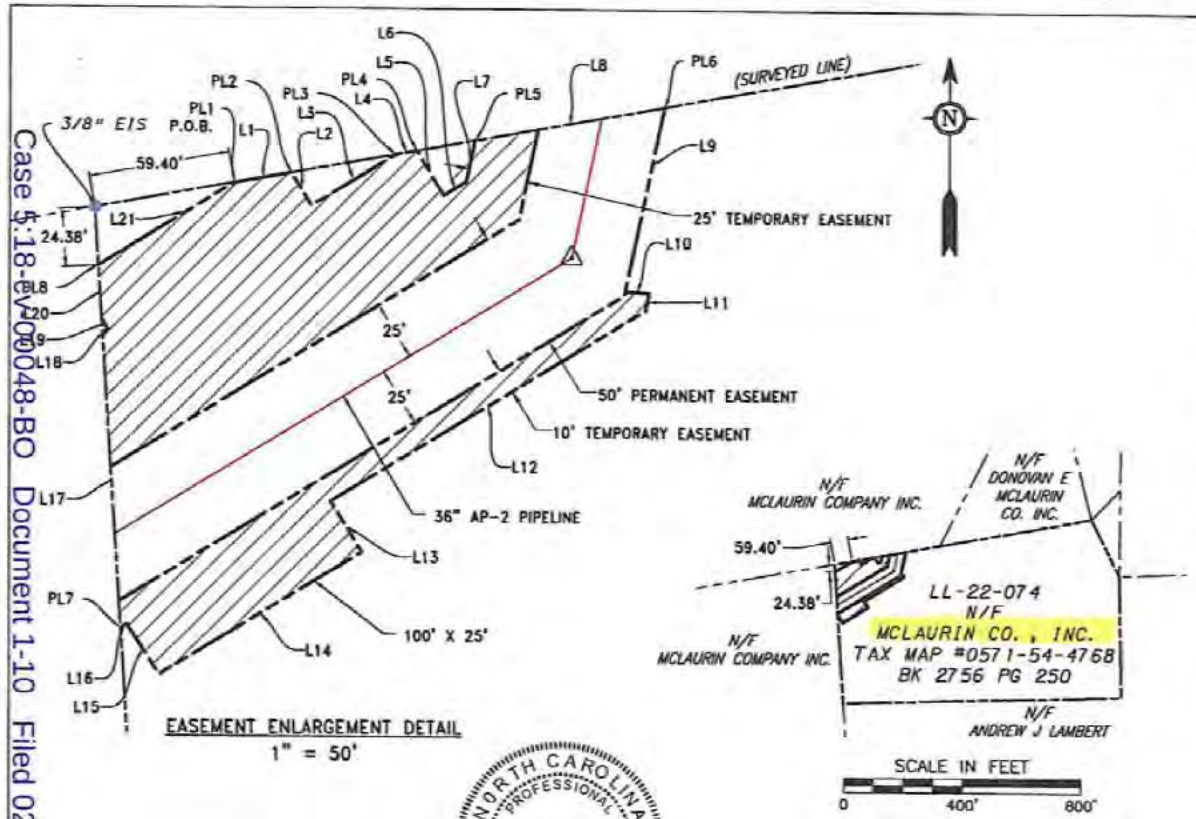

EASEMENT ENLARGEMENT DETAIL
1" = 50'

NORTH CAROLINA PROFESSIONAL SEAL L-5226 LAND SURVEYOR DONALD F CHANDLER II

LEGEND

- SUBJECT PROPERTY LINE
- ADJOINER PROPERTY LINE
- PERMANENT EASEMENT
- GAS PIPELINE
- TEMPORARY EASEMENT
- PROPERTY EVIDENCE (FOUND)
- P.I. (POINT OF INTERSECTION)

PERMANENT EASEMENT = 14,203 SQ FT / 0.33 AC
TEMPORARY EASEMENT = 16,745 SQ FT / 0.38 AC

NOTES:

1. FIELD SURVEY AND MAPPING COMPLETED BY GAI CONSULTANTS-NC, INC. ON 2017-12-27.
2. COORDINATE SYSTEM USED FOR MAPPING - UTM17N NAD83 (2011) GRID, U.S. SURVEY FEET.
3. PROPERTY LINES DEPICTED ON THIS PLAT DERIVED FROM DEEDS AND PLATS OF RECORD WITH TIES TO AVAILABLE PROPERTY CORNER MONUMENTS AND OTHER EVIDENCE. THIS PLAT IS NOT A PROPERTY BOUNDARY SURVEY. ALL PROPERTY LINE LOCATIONS SUBJECT TO FULL BOUNDARY SURVEY OF THE DEPICTED PARCEL.
4. REFERENCE MADE TO BK 2756 PG 250.
5. ALIGNMENT REV 11c AS PROVIDED BY DOMINION ENERGY.

BEARINGS & DISTANCE ALONG EASEMENT

P.O.B.		
L1	N79° 46' 34"E	24.23'
L2	S31° 29' 36"E	16.21'
L3	N58° 30' 23"E	41.64'
L4	N79° 46' 34"E	8.92'
L5	S30° 42' 09"E	21.77'
L6	N58° 30' 23"E	11.08'
L7	N12° 02' 06"E	17.69'
L8	N79° 46' 34"E	81.04'
L9	S12° 02' 06"W	78.74'
L10	S85° 52' 07"E	10.09'
L11	S12° 01' 42"W	7.53'
L12	S58° 30' 24"W	154.88'
L13	S31° 29' 37"E	24.99'
L14	S58° 30' 24"W	99.65'
L15	N32° 17' 42"W	24.99'
L16	S58° 30' 24"W	3.12'
L17	N3° 36' 23"W	124.45'
L18	N58° 30' 24"E	2.56'
L19	N31° 29' 36"W	4.84'
L20	N3° 36' 23"W	22.81'
L21	N58° 30' 24"E	66.75'

POINTS WHERE EASEMENTS LEAVE PROPERTY

POINT NUMBER	LATITUDE	LONGITUDE
PL1	N35° 09' 53"	W78° 44' 56"
PL2	N35° 09' 53"	W78° 44' 56"
PL3	N35° 09' 53"	W78° 44' 55"
PL4	N35° 09' 53"	W78° 44' 55"
PL5	N35° 09' 53"	W78° 44' 55"
PL6	N35° 09' 53"	W78° 44' 54"
PL7	N35° 09' 51"	W78° 44' 57"
PL8	N35° 09' 53"	W78° 44' 57"

SCALE:	AS SHOWN
DATE:	1/3/18
DRAWN:	AES
CHKD:	RDF
APPD:	DFC

ACP 36" GAS PIPELINE AP-2
PLAT SHOWING EASEMENTS ON TAX MAP #0571-54-4768
MCLAURIN CO., INC

CUMBERLAND COUNTY, NORTH CAROLINA

ATLANTIC COAST PIPELINE, LLC
925 WHITE OAKS BOULEVARD
BRIDGEPORT WV, 26330

KEYSTONE CONSULTANTS INC
32 EAST MAIN ST.
CARNEGIE, PA 15106
412-278-2100

PROJECT NO./DASH NO.
C140468.00

TASK NO.
05

DRAWING NO.
LL-22-074

11C
REV

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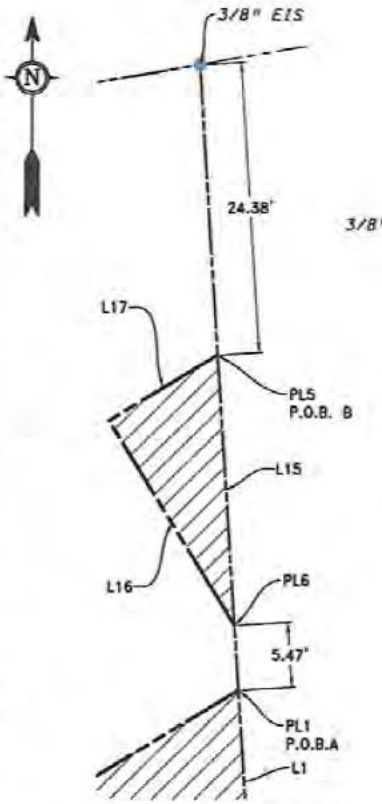
[redacted]

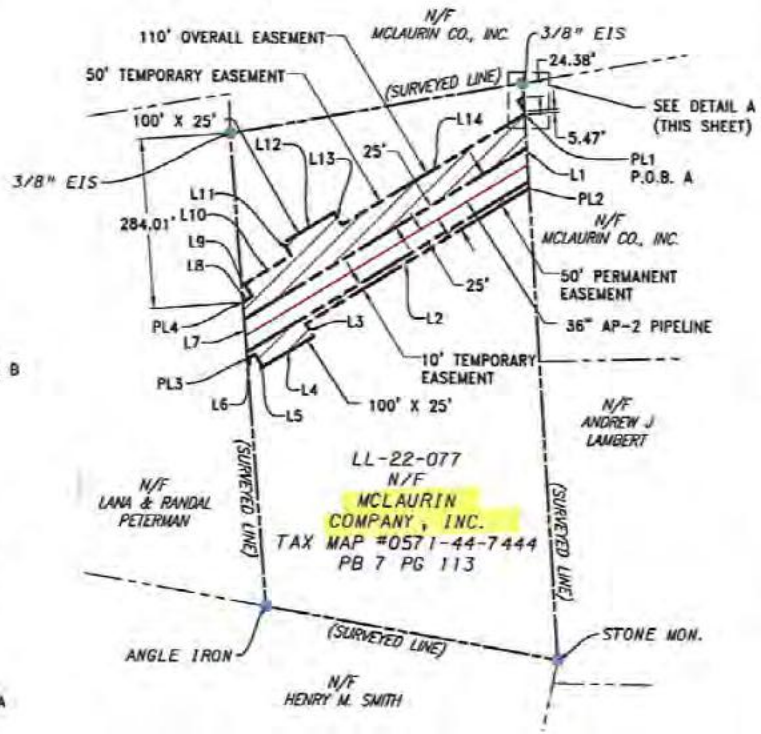
Exhibit 7

McLaurin Plot 4 Easement Map

Document Accession #: 20210913-5226 Filed Date: 09/13/2021



EASEMENT ENLARGEMENT DETAIL A
1" = 10'



BEARINGS & DISTANCE ALONG EASEMENT

P.O.B. A		
L1	S3° 36' 23"E	124.45'
L2	S58° 30' 24"W	440.56'
L3	S31° 35' 35"E	25.22'
L4	S58° 37' 24"W	100.00'
L5	N31° 30' 17"W	25.01'
L6	S58° 30' 31"W	15.28'
L7	N4° 25' 28"W	95.46'
L8	N58° 30' 22"E	18.39'
L9	N31° 29' 34"W	25.00'
L10	N58° 30' 23"E	92.01'
L11	N31° 29' 34"W	25.00'
L12	N58° 30' 23"E	100.00'
L13	S31° 29' 36"E	25.00'
L14	N58° 30' 24"E	360.17'
P.O.B. B		
L15	S3° 36' 23"E	22.81'
L16	N31° 29' 36"W	20.16'
L17	N58° 30' 24"E	10.67'

POINTS WHERE EASEMENTS LEAVE PROPERTY

POINT NUMBER	LATITUDE	LONGITUDE
PL1	N35° 09' 53"	W78° 44' 57"
PL2	N35° 09' 51"	W78° 44' 57"
PL3	N35° 09' 49"	W78° 45' 03"
PL4	N35° 09' 50"	W78° 45' 03"
PL5	N35° 09' 53"	W78° 44' 57"
PL6	N35° 09' 53"	W78° 44' 57"

NOTES:

1. FIELD SURVEY AND MAPPING COMPLETED BY GAI CONSULTANTS-NC, INC. ON 2017-12-27.
2. COORDINATE SYSTEM USED FOR MAPPING – UTM17N NAD83 (2011) GRID, U.S. SURVEY FEET.
3. PROPERTY LINES DEPICTED ON THIS PLAT DERIVED FROM DEEDS AND PLATS OF RECORD WITH TIES TO AVAILABLE PROPERTY CORNER MONUMENTS AND OTHER EVIDENCE. THIS PLAT IS NOT A PROPERTY BOUNDARY SURVEY. ALL PROPERTY LINE LOCATIONS SUBJECT TO FULL BOUNDARY SURVEY OF THE DEPICTED PARCEL.
4. REFERENCE MADE TO PB 7 PG 113.
5. ALIGNMENT REV 11c AS PROVIDED BY DOMINION ENERGY.

NORTH CAROLINA PROFESSIONAL SEAL L-5226 LAND SURVEYOR DONALD F CHANDLER II

PERMANENT EASEMENT = 27,796 SQ FT / 0.64 AC
TEMPORARY EASEMENT = 38,269 SQ FT / 0.88 AC

LEGEND

- SUBJECT PROPERTY LINE
- ADJOINER PROPERTY LINE
- PERMANENT EASEMENT
- GAS PIPELINE
- TEMPORARY EASEMENT
- PROPERTY EVIDENCE (FOUND)

SCALE:	AS SHOWN
DATE:	1/3/18
DRAWN:	AES
CHKD:	RDF
APPD:	DFC

PLAT SHOWING EASEMENTS ON TAX MAP #0571-44-7444 MCLAURIN COMPANY, INC.
ACP 36" GAS PIPELINE AP-2
CUMBERLAND COUNTY, NORTH CAROLINA
ATLANTIC COAST PIPELINE, LLC
925 WHITE OAKS BOULEVARD
BRIDGEPORT WV, 26330

GAI CONSULTANTS - NC, INC.

KEYSTONE CONSULTANTS INC
33 EAST MAIN ST.
CARNEGIE, PA 15106
412-279-2100

PROJECT NO./ DASH NO.
C140468.00

TASK NO.
05

DRAWING NO.
LL-22-077

11C
REV

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[redacted]

1/5/2018 10:44 AM

Exhibit 8

McLaurin Photos of Easement and Damage

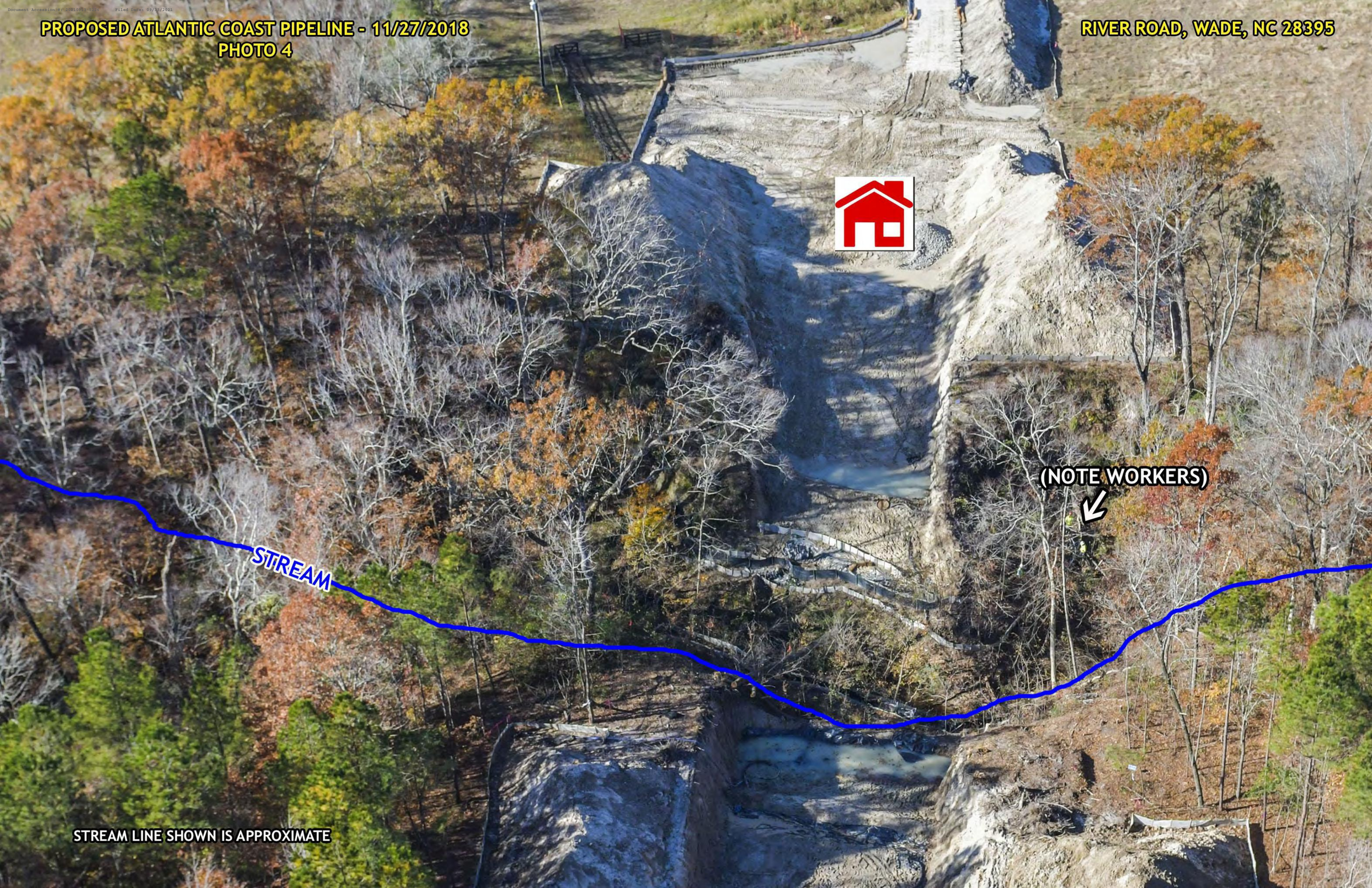
PROPOSED ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 1
RIVER ROAD, WADE, NC 28395
CAPE FEAR RIVER
STREAM
STREAM
STREAM LINES SHOWN ARE APPROXIMATE
STREAM
SEWER LIFT STATION

PROPOSED ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 2

RIVER ROAD, WADE, NC 28395

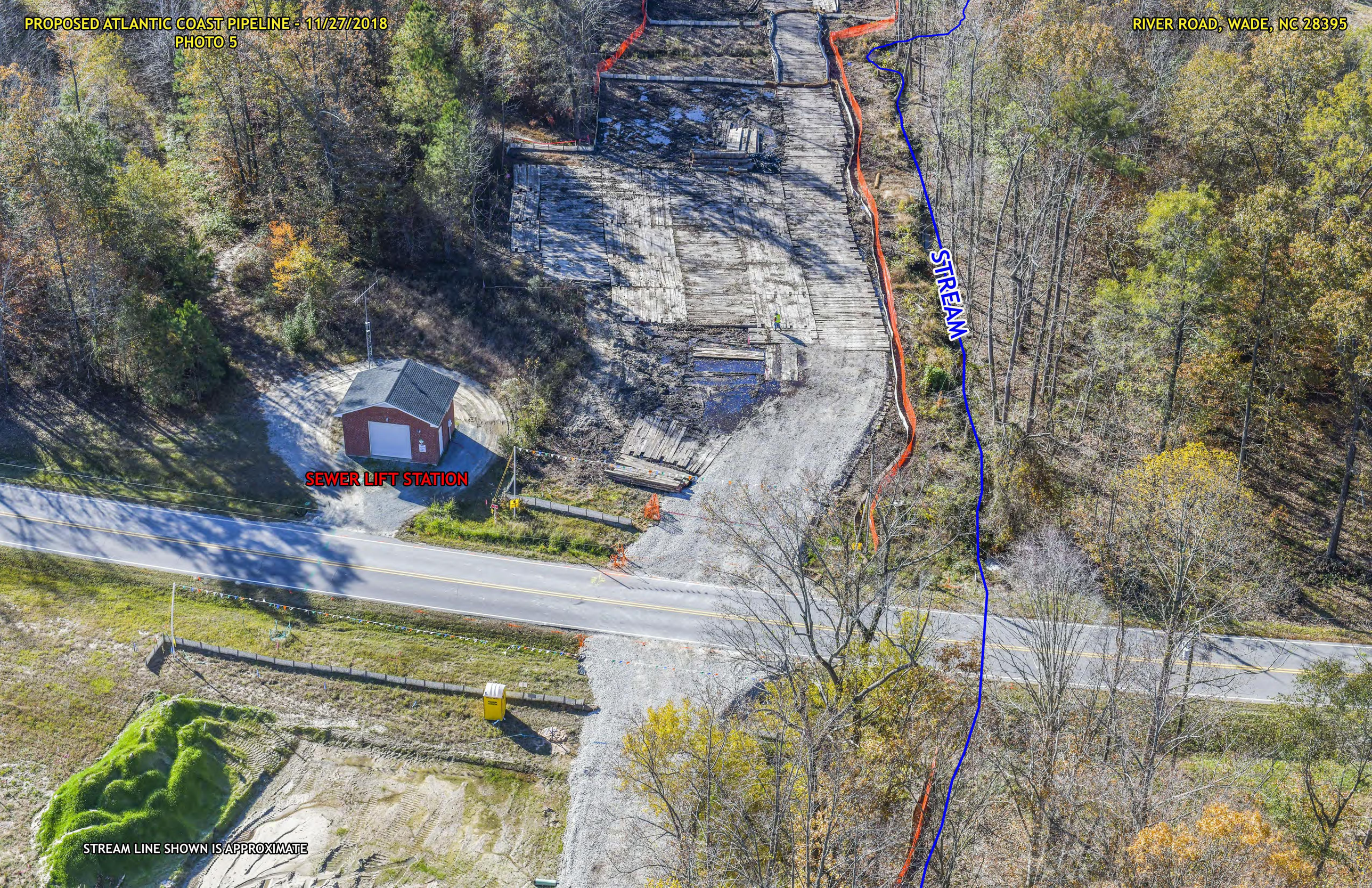
PROPOSED ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 3
RIVER ROAD, WADE, NC 28395
SEWER LIFT STATION
STREAM
STREAM
STREAM
STREAM
CAPE FEAR RIVER
STREAM LINES SHOWN ARE APPROXIMATE

Document Accession #: 20210913-5030 Filed Date: 09/13/2021



PROPOSED ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 5

RIVER ROAD, WADE, NC 28395



Document Accession #: 20210913-5226 Filed Date: 09/13/2021

PROPOSED ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 6

RIVER ROAD, WADE, NC 28395

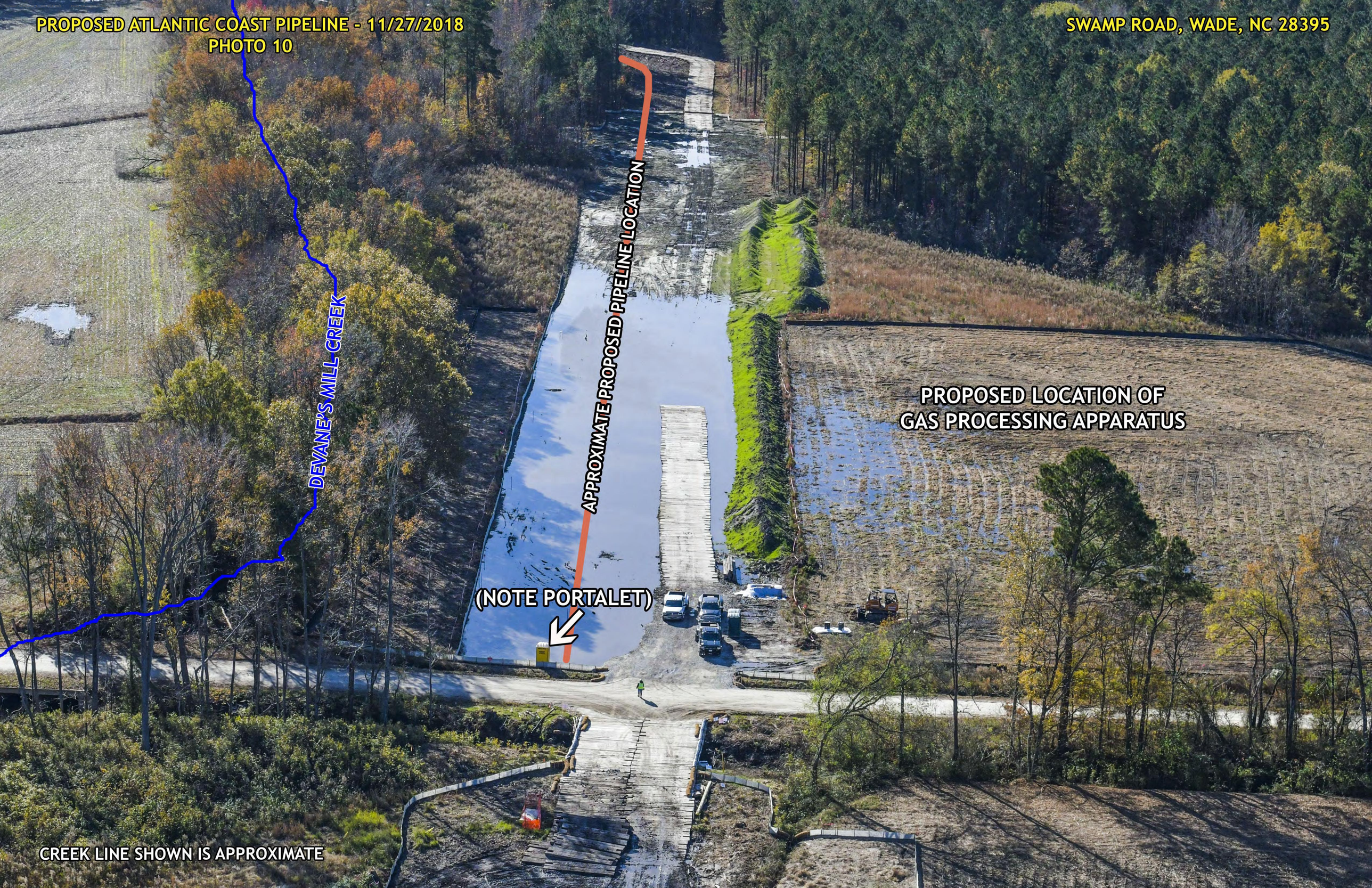
PROPOSED ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 7

RIVER ROAD, WADE, NC 28395

PROPOSED ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 8

RIVER ROAD, WADE, NC 28395

PROPOSED ATLANTIC COAST PIPELINE - 11/27/201
PHOTO 9
RIVER ROAD, WADE, NC 28395
APPROXIMATE PROPOSED PIPELINE LOCATION


PROPOSED ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 10
SWAMP ROAD, WADE, NC 28395
DEVANE'S MILL CREEK
APPROXIMATE PROPOSED PIPELINE LOCATION
PROPOSED LOCATION OF
GAS PROCESSING APPARATUS
(NOTE PORTALET)
CREEK LINE SHOWN IS APPROXIMATE

Electronic Accession Number 15226 Filed Date 1/4/2021

PROPOSED ATLANTIC COAST PIPELINE - 11/27/2018
PHOTO 11

SWAMP ROAD, WADE, NC 28395

APPROXIMATE PROPOSED PIPELINE LOCATION

PROPOSED LOCATION OF GAS PROCESSING APPARATUS

(NOTE PORTALET)

Exhibit 9

Spears Photos of Property

Exhibit 10

Spears Photos of Easement Area

Document Accession #: 20210913-5216 Filed Date: 09/13/2021

Exhibit 11

Spears Easement Agreements

Spears Modification of Easement Agreement

Spears Temporary Road Grant Easement

This Agreement Prepared by
Atlantic Coast Pipeline, LLC
120 Tredegar Street
Richmond, VA 23219

Upon Recording Return to:
Doyle Land Services, Inc. in service to
Atlantic Coast Pipeline, LLC
P. O. Box 1527
Waynesboro, VA 22980

GPIN/TAX ID # 20 A 61

Consideration: $_____

EASEMENT AGREEMENT

Pipeline No.: AP 1

Tract(s): 08-001-B023

THIS AGREEMENT, made and effective September 24, 2019, for and in consideration of the sum of Ten and no/100 Dollars ($10.00), the receipt of which is hereby acknowledged, HERSHEL D. SPEARS and DARLENE G. SPEARS, husband and wife, of 2215 Spruce Creek Ln., Nellysford, VA, 22958, (hereinafter called "Grantor") hereby grants and conveys, to ATLANTIC COAST PIPELINE, LLC, a Delaware Limited Liability Company, of 120 Tredegar Street, Richmond, Virginia, 23219, its successors and assigns (hereinafter called "Grantee") permanent and temporary easements, as more fully described herein, for a right-of-way to construct, install, maintain, repair, replace, change the size of, operate and remove one natural gas pipeline, together with all appurtenant appliances and equipment, for the transportation of natural gas and its naturally-occurring constituents upon and over certain lands of Grantor situated in Rockfish Magisterial District, Nelson County, Virginia, being further described as follows:

> That certain tract of land composed of 41.092 acres, more or less, located in Rockfish Magisterial District, Nelson County, Virginia and being more particularly described as 43.460 acres, more or less, in that plat of re-survey by William S. Callahan, L.S., dated November 5, 2001, recorded in Plat Cabinet 3, Slide 699A, of the public records of said County; LESS AND EXCEPT, a certain tract containing 2.00 acres, more or less, as described in Instrument No. 120001841; LESS AND EXCEPT, a certain tract containing 0.294 acres, more or less, as described in Instrument No. 090003377; LESS AND EXCEPT, a certain tract containing 0.074 acres, more or less, as described in Instrument No. 020003856, all of the public records in said county.

The general location, width, and other bounds of the Permanent Easement and the Temporary Work Easement conveyed herein shall be as depicted on the plat attached to this Easement Agreement as "Exhibit A" and made a part hereof. The Temporary Work Easement will be used during the initial construction and for restoration, clean-up, re-vegetation, and any repair or remediation required by initial pipeline installation. Prior to the start of initial construction on the Permanent Easement, Grantor will receive notice of the commencement of construction. The Temporary Work Easement will terminate five (5) years after the commencement of construction on the Permanent Easement.

Grantee shall have the right to modify the location of the pipeline within the Permanent Easement during initial construction.

Grantee shall have the right to use the Permanent Easement (1) to construct, install, maintain, repair, replace, change the size of, operate and remove anodes and other devices for the cathodic protection of the pipeline, and (2) to construct, install, maintain, repair, replace, change the size of, operate and remove any valves, gates, drips and other appurtenances necessary for the operation of the pipeline.

Grantee shall have the right of ingress and egress to and along the Temporary Work Easement and the Permanent Easement, and to use the Temporary Work Easement and Permanent Easement to transport pipe, vehicles, machinery, persons, equipment and other materials to and from other lands. Further, Grantee shall have the right to use any existing road(s) on the property to access the Temporary Work Easement and the Permanent Easement or to exercise any of the rights granted herein. Grantee shall repair any damage caused by its use of those roads.

Grantor hereby grants to Grantee all other rights necessary or convenient for the full use and enjoyment of the rights herein granted, including but not limited to the right (1) to clear the Permanent Easement of any and all obstructions, and (2) to clear, cut, trim, and remove all vegetation, trees, brush, and overhead branches from the Temporary Work Easement and Permanent Easement; provided that removal of trees and vegetation shall be by mechanical means only.

Grantee agrees to pay for actual damages to crops, trees and fences arising from the exercise of rights granted herein during construction and operation of pipeline, consistent with its obligations under applicable laws.

Grantor shall be entitled to the use and enjoyment of the lands covered by the Permanent Easement, subject to the rights herein granted to Grantee. Grantor shall not construct nor cause to be constructed any permanent or temporary structures or obstructions of any kind within the Permanent Easement, including but not limited to buildings, garages, sheds, pools, mobile homes, trees, poles or towers. No construction equipment or vehicles of any kind shall be stored, nor heavy machinery or equipment operated, within the Permanent Easement; provided, that nothing herein shall prohibit the use of typical farming equipment and farming activities. No earth shall be removed from or filled upon the Permanent Easement without the express written consent of Grantee. Grantor shall be responsible for complying with any state or local "one call" requirements in the event of construction on or near the Permanent Easement.

Grantee agrees to protect, defend, indemnify and hold harmless the Grantor from any and all damages, claims for damages, demands, suits, recoveries, judgments or executions which may arise or be made by reason of injuries or damages to persons or property resulting from Grantee's exercise of the rights granted herein, consistent with Grantee's obligations under applicable laws or regulations. This indemnification shall not extend to any claims which arise from the sole negligence or willful or wanton misconduct by Grantor or third parties.

All equipment, fixtures, and facilities placed on the Permanent Easement by Grantee shall be and remain the property of Grantee. Grantee shall have the right to terminate this Agreement or any portion thereof by filing a release in the same public records in which it is recorded. In the event that Grantee terminates this Agreement, in whole or part, Grantee shall have a reasonable time afterward to remove all of its equipment, fixtures, and facilities unless express permission has been received from the then-owner to abandon such items in-place. Following removal of its equipment and fixtures, Grantee shall restore the lands, as nearly as practicable, to the condition existing prior to termination.

This agreement may be executed in counterparts and shall be binding upon each party executing any counterpart and upon their respective heirs, personal representatives, successors and assigns.

See the ADDENDUM attached hereto as Exhibit "B" for additional provisions to this Easement Agreement.

By acceptance of this easement the Grantee agrees to perform and comply with all conditions and covenants contained herein.

WITNESS the signature(s) of Grantor this date.

WITNESS:

Print Name Christine Coller

GRANTOR:

HERSHEL D. SPEARS

STATE/COMMONWEALTH OF VIRGINIA
~~COUNTY~~ CITY OF RICHMOND to-wit:

The foregoing instrument was acknowledged before me this 24TH day of September, 2019, by HERSHEL D. SPEARS, who appeared before me in the aforesaid jurisdiction. He/She is ☐ personally known to me or ☑ produced VIRGINIA DRIVERS LICENSE as identification.

Notary Public

My commission expires: 6/30/2020
Registration #: 145251

(AFFIX SEAL)

SUSAN M HIERS
NOTARY PUBLIC
REG # 145251
MY COMMISSION EXPIRES 06/30/2020
COMMONWEALTH OF VIRGINIA

WITNESS the signature(s) of Grantor this date.

WITNESS:

Christina Lollar

Print Name Christina Lollar

GRANTOR:

Darlene G. Spears

DARLENE G. SPEARS

STATE/COMMONWEALTH OF VIRGINIA

CITY ~~COUNTY~~ OF RICHMOND to-wit:

The foregoing instrument was acknowledged before me this 24TH day of September, 2019, by Darlene G. SPEARS, who appeared before me in the aforesaid jurisdiction. He/She is ☐ personally known to me or ☑ produced VIRGINIA DRIVERS LICENSE as identification.

Susan M. Hiers

Notary Public

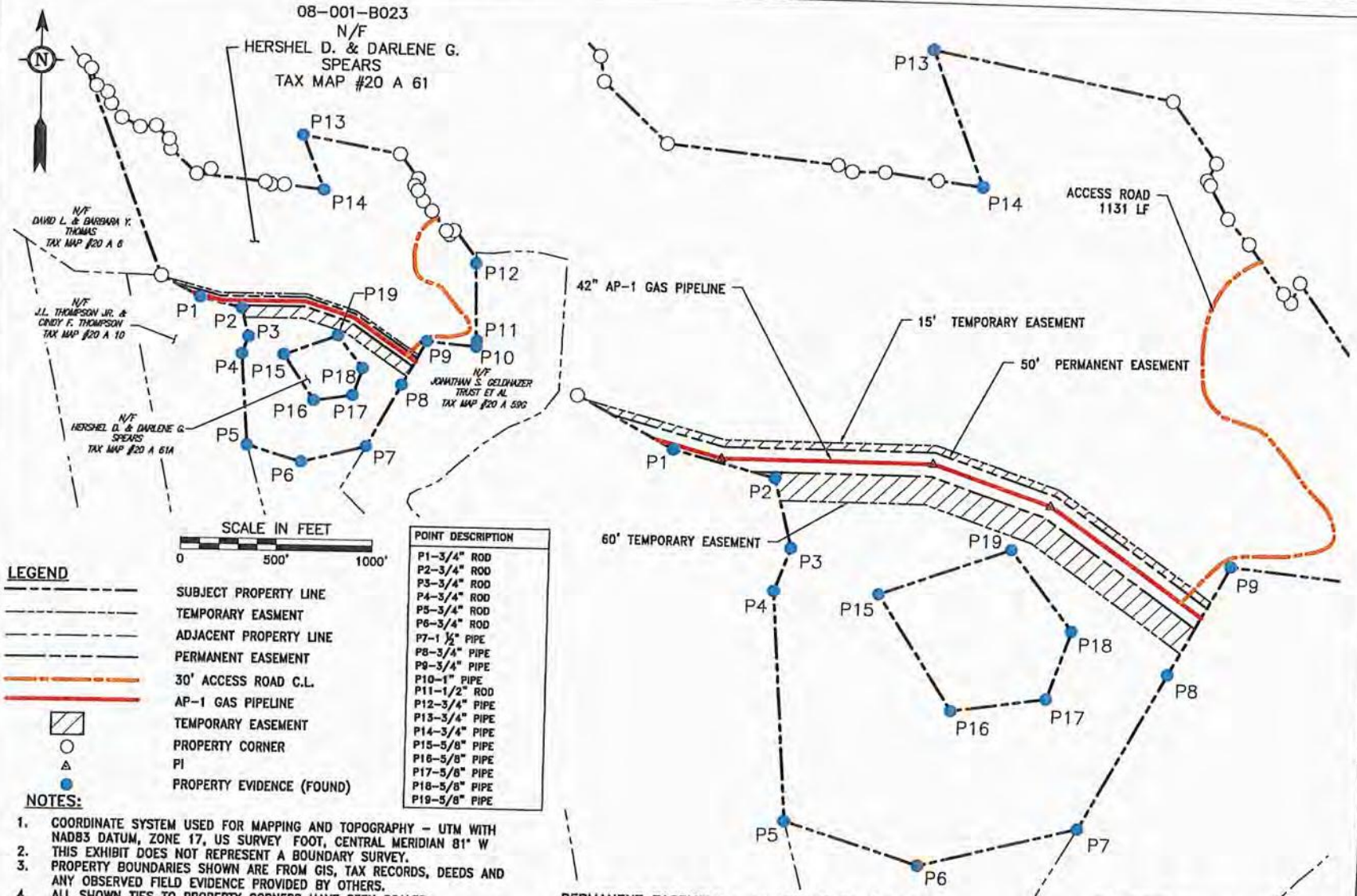
My commission expires: 6/30/2020

Registration #: 145251

(AFFIX SEAL)

SUSAN M HIERS NOTARY PUBLIC REG # 145251 MY COMMISSION EXPIRES 06/30/2020 COMMONWEALTH OF VIRGINIA

Document Accession #: 20210913-5226 Filed Date: 09/13/2021



POINT DESCRIPTION
P1-3/4" ROD
P2-3/4" ROD
P3-3/4" ROD
P4-3/4" ROD
P5-3/4" ROD
P6-3/4" ROD
P7-1 ½" PIPE
P8-3/4" PIPE
P9-3/4" PIPE
P10-1" PIPE
P11-1/2" ROD
P12-3/4" PIPE
P13-3/4" PIPE
P14-3/4" PIPE
P15-5/8" PIPE
P16-5/8" PIPE
P17-5/8" PIPE
P18-5/8" PIPE
P19-5/8" PIPE

LEGEND

- SUBJECT PROPERTY LINE
- TEMPORARY EASMENT
- ADJACENT PROPERTY LINE
- PERMANENT EASEMENT
- 30' ACCESS ROAD C.L.
- AP-1 GAS PIPELINE
- TEMPORARY EASEMENT
- PROPERTY CORNER
- PI
- PROPERTY EVIDENCE (FOUND)

NOTES:

1. COORDINATE SYSTEM USED FOR MAPPING AND TOPOGRAPHY – UTM WITH NAD83 DATUM, ZONE 17, US SURVEY FOOT, CENTRAL MERIDIAN 81° W
2. THIS EXHIBIT DOES NOT REPRESENT A BOUNDARY SURVEY.
3. PROPERTY BOUNDARIES SHOWN ARE FROM GIS, TAX RECORDS, DEEDS AND ANY OBSERVED FIELD EVIDENCE PROVIDED BY OTHERS.
4. ALL SHOWN TIES TO PROPERTY CORNERS HAVE BEEN SCALED.
5. PARCEL OWNER INFORMATION PROVIDED BY DOYLE LAND SERVICES.

PERMANENT EASEMENT = 60,507 SQ FT / 1.39 AC
TEMPORARY EASEMENT = 78,518 SQ FT / 1.80 AC
ACCESS ROAD AREA = 1131 LF x 30' = 33,930 SQ FT / 0.78 AC

SCALE:	AS SHOWN
DATE:	11/7/18
DRAWN:	ACR
CHKD:	BLB
APPD:	WLL

ACP 42" GAS PIPELINE AP-1
EASEMENTS ACROSS PROPERTY OF
HERSHEL D. & DARLENE G. SPEARS
NELSON COUNTY, VIRGINIA

ATLANTIC COAST PIPELINE, LLC
925 WHITE OAKS BOULEVARD
BRIDGEPORT WV, 26300

TripleH enterprises

PROJECT NO./ DASH NO.
C140468

TASK NO.
01

DRAWING NO.
08-001-B023

11C
REV

REVISION 11C

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Exhibit "B"

This ADDENDUM to that certain Easement Agreement dated September 24, 2019 by and between HERSHEL D. SPEARS and DARLENE G. SPEARS, husband and wife, of 2215 Spruce Creek Ln., Nellysford, VA, 22958, (hereinafter called the ("Grantor") and ATLANTIC COAST PIPELINE, LLC, its successors and assigns (hereinafter called "Grantee").

With Property being located in Rockfish Magisterial District, Nelson County, Virginia

All provisions herein are subordinate and subject to Federal, State and Local Regulations. Should there be a conflict between the special provisions listed herein below and the main body of that certain Easement Agreement referenced above, in all cases the special provisions listed below (subject to state, local and federal regulations) shall prevail.

GENERAL TERMS

1. Easement Area

The location, width, and other bounds of the permanent easement (the "Permanent Easement") and the temporary work easement (the "Temporary Work Easement") (the Permanent Easement and the Temporary Work Easement are collectively referred to as the "Easement Area") conveyed in the Easement Agreement to be located as depicted on the plat attached hereto as Exhibit "A", which is incorporated herein by this reference. After initial construction has been completed, the Permanent Easement shall not exceed fifty feet (50') in width. Effective as of the granting of the Easement Agreement, the final location of the Permanent Easement may be further adjusted, and shall be fixed and determined by the installation of the pipeline on Grantor's property within the area of the Permanent Easement shown on Exhibit "A." The final Permanent Easement area shall be twenty-five feet (25') on each side of the center of the installed pipeline. The final Temporary Work Easement shall be adjacent to the Permanent Easement and shall not exceed one hundred twenty-five feet (125') in width from the Permanent Easement. Within a reasonable time after completion of construction on Grantor's property, Grantee will prepare a survey of the final Easement Area and develop a more precise description of the location of the Easement Area (the "Map") and record the Map in the land records of the county where Grantor's property is situated. Grantee agrees to compensate Grantor if the area of the adjusted Permanent Easement or Temporary Work Easement area exceeds the area shown on Exhibit "A" and for which Grantor has been compensated. Any additional compensation will be calculated using the same rates and methods used to calculate the compensation paid to Grantor upon the signing of this agreement and shall only include the amount by which the additional compensation, if any, exceeds the initial compensation. Grantor will NOT be required to reimburse Grantee for any amount paid as consideration for the Easement Agreement including for any acreage for which Grantor received compensation but was not ultimately included in the Permanent Easement or Temporary Work Easement shown on the Map.

2. Timber Stack and Chips

Regarding trees, slash and related debris, removed from the Permanent Easement and Temporary Work Easement under this agreement ("Timbering Material"), Grantor hereby understands, approves and agrees that Grantee may, in its sole discretion and in accordance with any applicable governmental approvals, permits, laws or regulations: (i) chip and disperse Timbering Material both upon and off of the Permanent Easement and Temporary Work Easement; (ii) stack Timbering Material removed from the Permanent Easement or Temporary Work Easement both upon and off of the Permanent Easement and Temporary

Work Easement; (iii) remove Timbering Material from Grantor's property altogether; and (iv) burn slash and debris on the Permanent Easement and Temporary Work Easement in accordance with permit regulations and agency consultations. Grantee agrees to coordinate with Grantor as to a location of any stacking of Timbering Material immediately adjacent to the Permanent Easement and will use commercially reasonable efforts to locate log stacks for landowner access. The final determination as to the location of any stacks of Timbering Material will ultimately be in the sole discretion of Grantee. Grantor further understands, agrees and acknowledges that Grantor will be solely responsible for any damages to the Permanent Easement or Temporary Work Easement caused by Grantor's removal of any Timbering Material following restoration of the Permanent Easement and Temporary Work Easement. Notwithstanding the foregoing, Grantee agrees not to burn within two hundred fifty (250) feet of any existing structure.

3. Dewatering Provision:

To accommodate pipeline construction and minimize potential erosion, Grantor agree(s), understand(s), acknowledge(s) and approve(s) for the Atlantic Coast Pipeline, LLC, its agents, employees and contractors ("Atlantic") to, in accordance with all applicable permits, release rain, storm and/or other surface waters collected within the trenches and/or construction-related and naturally occurring low areas across which the rights-of-way, work spaces and/or access roads of Atlantic are situated, onto the lands of the undersigned beyond/near the right-of-ways, work spaces and/or access roads to flow/disburse with the natural shape of the land away from said rights-of-way. Atlantic will generally discharge the water through a filter bag or, if volumes suggest, a straw bale filter temporarily placed upon the lands of the undersigned near the rights-of-way mentioned above.

4. Wetland Provision

If Local, State or Federally-regulated waters or wetlands (collectively and individually "Regulated Waters or Wetlands") within the Permanent Easement or Temporary Easement are disturbed by Grantee, Grantor acknowledges that Grantee may be required by law to restore and/or re-vegetate any such disturbed Regulated Waters or Wetlands. Additionally, Grantor agrees to: (a) cooperate with Grantee to ensure any such restored or re-vegetated Regulated Waters or Wetlands are maintained as required by applicable laws; (b) notify Grantee in advance of any proposed plans to disturb any Regulated Waters or Wetlands within the Permanent Easement or Temporary Easement; and (c) notify Grantee of Grantor's efforts to obtain any required permits, permit modifications and/or approvals, prior to conducting any proposed disturbance of Regulated Waters or Wetlands within the Permanent Easement or Temporary Easement. Grantor agrees that any permitting and/or disturbance of Regulated Waters or Wetlands by Grantor within the Permanent Easement or Temporary Easement, including any required mitigation and/or penalties, will be at Grantor's own risk and cost.

5. 42-Inch Natural Gas Pipeline

Grantee agrees that the Easement shall be used for one 42-Inch natural gas pipeline and other appurtenances approved by FERC pursuant to the Certificate of Public Convenience and Necessity.

6. Depth of the Pipeline

Pipeline shall be buried with a minimum of 3 feet of cover, 4 feet in agricultural fields. All those locations where rock is encountered, the pipeline may be buried at a lesser depth.

7. Hunting & Fishing & Firearms

Grantee agrees that its employees, agents or independent contractors operating and authorized to exercise Grantee's

rights under this Easement Agreement (or as previously defined), shall have no right to hunt, fish, or fire any firearms on the Grantor's Land.

8. Photography / Video Recording

Grantee will not photograph or video the right of way except for purposes related to the safety and maintenance of the Pipeline. Photographs or video will not be shared with any other entities.

9. Access to Structures

Grantee agrees not to prevent access to dwellings or other structures located on the Grantor's property by foot or by vehicle during construction.

10. Schedule future on-ground access

Except where immediate entry onto the Easement is necessary to protect public health, safety, the environment or the integrity of Grantee's pipelines and facilities ("Emergency Entry"), Grantee will make reasonable effort to notify Grantor 24 hours prior to any construction, maintenance or repair of the Easement. In the case of an Emergency Entry, Grantee will notify Grantor of entry as soon as reasonably possible after the entry occurs.

11. Additional Indemnification

Indemnification of Grantor agreed to by Grantee shall extend to and shall include injuries or damages to persons or property resulting from Grantee's exercise of the rights granted in the Easement Agreement, as well as to the exercise of such rights by Grantee's agents, employees, licensees and assigns, regardless of whether such damage or claim for damage results from mistake, inadvertence, negligence, recklessness, willful or wanton misconduct, or malice of such agents, employees, licensees and assigns.

12. Abandonment

After the pipeline is approved by the Federal Energy Regulatory Commission to begin commercial service, Grantee agrees in the event of complete non-use of the pipeline by Grantee or its successors or assigns for a period of four (4) consecutive years, this Easement shall be considered abandoned. Grantee shall furnish at its expense, upon receipt of written request from Grantor, a release of the Easement. In this event, Grantee shall have the right to abandon the pipeline in place or remove the pipeline. The time during which Grantee fails to use the pipeline due to: (i) authorized acts or orders of federal or state government; (ii) strikes; or (iii) the exercise of shut-in rights under an oil and gas lease shall not be included in calculating the four (4) year period for abandonment.

13. Temporary Work Space Duration

The Temporary Work Easement will be used during the initial construction and for restoration, clean-up, re-vegetation, and any repair or remediation required by initial pipeline installation. The Temporary Work Easement will terminate five (5) years from the date the pipeline is approved by the Federal Energy Regulatory Commission to begin commercial service.

14. Reimbursement of Monies

Grantee agrees that Grantor will keep and will not be required to reimburse Grantee for any amount paid as consideration for the Easement Agreement in the event that Grantee does not undertake construction of the pipeline, changes the route of the pipeline, or abandons the pipeline during or after construction.

15. FERC Certificate

Grantee agrees that if a FERC certificate is not issued or is permanently revoked for the Atlantic Coast Pipeline project, this Easement Agreement shall become null and void. Grantee further agrees that all monies paid for this agreement shall remain the Grantor's.

PRE-CONSTRUCTION

1. Notice of Construction

Grantee agrees to make reasonable efforts to notify Grantor of the commencement of construction on the Property at least two (2) weeks prior to entry.

2. Above-Ground Appurtenances

No above-ground appurtenances will be placed within the Easement granted except markers, vent pipes at road or railroad crossings, and cathodic test station posts that will be located at fence lines, tree rows, top banks of streams, or at other locations so as not to interfere with Grantor operations.

3. Water Testing

Prior to the commencement of construction, Grantee will test all springs and wells identified by Grantor as a water source that are located within 500 feet of the centerline of the pipeline. In order to qualify for testing, such water sources must be located on Grantor's Property, or on a property adjacent thereto for which permission and reasonable access for sampling has been given to Atlantic by the owner. Samples will be delivered to a suitable laboratory, with results provided to Grantor. Where practical, sampling will be made during all four seasons. Upon written notice from Grantor that a tested water source has been damaged as to quality or quantity during construction, post-construction tests will be performed. If those tests and a field evaluation confirms that any damage is attributable to pipeline construction, Atlantic will use reasonable and customary measures to correct it.

4. Erosion Prevention

Grantee shall install temporary erosion controls in accordance with Grantee's approved Erosion and Sedimentation Control Plan immediately after the initial disturbance of the soil and maintain controls throughout construction. Grantee shall restore to original elevation, as nearly as reasonably practical, and shall revegetate ditch of stream banks damaged by the construction, maintenance, operation, repair, inspection, replacement or removal of the pipeline laid under the terms of Easement Agreement.

5. Stabilized Crossing

Grantee will install one (1) Stabilized Pipeline Crossing features as identified on the attached Exhibit "A" plat.

6. Heavy Equipment Clause

If Grantor desires to operate construction equipment or vehicles or otherwise heavy machinery or equipment that exceed the USDOT load requirements for standard axle vehicles within or across the Permanent Easement, Grantor agrees, understands and acknowledges that it must contact 811, as early as possible during the planning process to allow for the accurate location of Grantee's facilities in the field and for sufficient time for Grantee to review and determine any necessary requirements or protective measures to be implemented by Grantor in order to approve the proposed use. Nothing contained herein shall in anyway warrant, guarantee or otherwise provide that any proposed

use will necessarily be approved, which approval shall be determined in Grantee's sole discretion.

7. Wastewater

Grantee will not discharge onto the property any waste water generated or caused by the construction, operation, maintenance, repair, or replacement of the pipeline.

8. Defoliants

Grantee hereby agrees not to utilize chemicals or defoliants as a means of clearing or maintaining the Easement Area, except as mandated by any regulatory agency with jurisdiction over the project.

9. Hydrostatic Testing Water

Grantee will not discharge onto the Property any hydrostatic testing water without prior written consent of Grnator.

10. Slips and Surface Movement-

Any surface damage or movement caused by the Grantee's construction or maintenance during the lifetime of the Agreement shall be the full responsibility of the Grantee to correct and repair to sufficiently stop and prevent any future occurrences. Grantee agrees to repair, correct, and use reasonable efforts to prevent, any surface damage to, or movement of, Grantor's property caused by Grantor's construction or maintenance activities performed under this Agreement.

POST CONSTRUCTION

11. Restoration/Reclamation

Grantee will use reasonable efforts to repair and reclaim any land damaged by construction of a pipeline or other facilities on the above-described land, to a condition as nearly as is reasonably practicable to its original states, in accordance with all applicable laws and governmental rules, regulations and order and Grantees standard reclamation practices. If jute netting is required in lawns or agricultural fields, biodegradable staples shall be used to secure the netting.

12. Private Road and Driveway Restoration.

Should Grantor provide Grantee access to any private roads, driveways, or entrances used to access the work area such roads, driveways, or entrances shall be restored as near as practically possible to their original condition.

13. Seed Mixture and Tree Reclamation

Grantee agrees to reclaim surface areas in the permanent and temporary easement disturbed by construction/installation with fescue.

SIGNED FOR IDENTIFICATION:

GRANTOR:

Hershel D. Spears

HERSHEL D. SPEARS

GRANTOR:

Darlene G. Spears

DARLENE G. SPEARS

PREPARED BY:
ATLANTIC COAST PIPELINE, LLC
120 Tredegar Street
Richmond, VA 23219

Upon Recording Return to:
Doyle Land Services, Inc. in service to
Atlantic Coast Pipeline, LLC
P. O. Box 1527
Waynesboro, VA 22980

MODIFICATION OF EASEMENT AGREEMENT

Pipeline No.: AP 1
Tract(s): 08-001-B023.AR
GPIN/TAX ID #: 20 A 61
Consideration:

THIS MODIFICATION OF EASEMENT AGREEMENT, made and effective this 9th day of October, 2018, by and between **HERSHEL D. SPEARS** and **DARLENE G. SPEARS**, husband and wife, of 2215 Spruce Creek Ln., Nellysford, VA, 22958 (hereinafter referred to as the "Grantor"); and **ATLANTIC COAST PIPELINE, LLC**, a Delaware limited liability company, of 120 Tredegar Street, Richmond, Virginia 23219 (hereinafter referred to as the "Grantee").

WHEREAS, Grantor executed and acknowledged an Easement Agreement on the 24th day of September, 2019, which Easement Agreement is recorded in the land records of Nelson County, Virginia, in Instrument No._____ (the "Easement Agreement"), and which Easement Agreement covers lands situate in Rockfish Magisterial District, Nelson County, Virginia, identified as Tax Parcel Number 20 A 61 (the "Property"); and

WHEREAS, at the request of Grantee, the Grantor has consented and agreed to modify, amend, and supplement said original Easement Agreement for the purposes provided herein.

NOW, THEREFORE, in consideration of Ten and 00/100 Dollars ($10.00), and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, Grantor and Grantee hereby covenant and agree to modify and amend the Easement Agreement as follows:

1. The recitals set forth above are true and accurate and are incorporated herein by this reference.

2. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Easement Agreement, as amended from time to time.

3. Grantee shall install a secured gate at the entrance (and or exit) of any existing fence line in said Easement area upon completion of reclamation. Gate and posts shall be in accordance with ACP standards. Gate access will be granted to both Grantor and Grantee by dual locking system if necessary.

4. Grantor hereby grants and conveys, and to the extent necessary re-grants and re-conveys, to the Grantee permanent and temporary easements, as more fully described in the Easement Agreement, as modified by this agreement and the Map to be recorded, and made a part hereof by this reference, for a right-of-way to construct, install, maintain, repair, replace, change the size of, operate and remove one natural gas pipeline, together with all appurtenant appliances and equipment, for the transportation of natural gas and its naturally-occurring constituents upon and over the Property.

5. In all cases should there be a conflict between the provisions listed in this Modification of Easement Agreement and provisions of the Easement Agreement; the provisions of this Modification of Easement Agreement shall prevail.

6. Except as specifically modified and amended herein, all of the terms, provisions, requirements and specifications contained in the Easement Agreement remain in full force and effect. Except as otherwise expressly provided herein, the parties do not intend to, and the execution of this Modification of Easement Agreement shall not, in any manner impair the Easement Agreement, the purpose of this Modification of Easement Agreement being simply to amend and ratify the Easement Agreement, as hereby amended and ratified, and to confirm and carry forward the Easement Agreement, as hereby amended, in full force and effect.

7. This Modification of Easement Agreement may be executed in counterparts and shall be binding upon each party executing any counterpart and upon their respective heirs, personal representatives, successors and assigns.

8. This instrument shall be binding upon, and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

[THIS SPACE INTENTIONALLY LEFT BLANK]
[SIGNATURES AND ACKNOWLEDGEMENTS APPEAR ON THE FOLLOWING PAGES]

WITNESS the signature(s) of Grantor this date.

WITNESS:

Ashley B Helmick

Print Name Ashley B. Helmick

GRANTOR:

Hershel D. Spears

HERSHEL D. SPEARS

STATE/COMMONWEALTH OF VIRGINIA

COUNTY OF Augusta to-wit:

The foregoing instrument was acknowledged before me this 9 day of October, 2019, by Hershel D. Spears, who appeared before me in the aforesaid jurisdiction. He/She is ☑ personally known to me or ☐ produced _____ as identification.

Notary Public

(AFFIX SEAL)

Rebecca J Spencer
Commonwealth of Virginia
Notary Public
Commission No. 7811636
My Commission Expires 4/30/23

My commission expires: 4/30/23

Registration #: 7811636

WITNESS the signature(s) of Grantor this date.

WITNESS:

Ashley B. Helmick

Print Name Ashley B. Helmick

GRANTOR:

Darlene G. Spears

DARLENE G. SPEARS

STATE/COMMONWEALTH OF VIRGINIA

COUNTY OF Augusta to-wit:

The foregoing instrument was acknowledged before me this 9 day of October, 2019, by Darlene G. Spears, who appeared before me in the aforesaid jurisdiction. He/She is ☑ personally known to me or ☐ produced _____ as identification.

Notary Public

My commission expires: 4/30/23

Registration #: 7811636

(AFFIX SEAL)

Rebecca A. Spencer
Commonwealth of Virginia
Notary Public
Commission No. 7811636
My Commission Expires 4/30/23

GRANTEE:

ATLANTIC COAST PIPELINE, LLC,
a Delaware limited liability company

By: _____

Name: David W. Aman
Authorized Representative

COMMONWEALTH/STATE OF _____

COUNTY/CITY OF _____ to-wit:

On this, the ____ day of _____, 2018, before me, a Notary Public, personally appeared David W. Aman, as Authorized Representative for Atlantic Coast Pipeline, LLC, satisfactorily proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that he/she executed the same for the purposes therein contained.

_____
Notary Public

My commission expires: _____ (AFFIX SEAL)

Registration #: _____

This Agreement Prepared by
Atlantic Coast Pipeline, LLC
120 Tredegar Street
Richmond, VA 23219

Upon Recording Return to:
Doyle Land Services, Inc. in service to
Atlantic Coast Pipeline, LLC
P. O. Box 1527
Waynesboro, VA 22980

GPIN/TAX ID # 20 A 61

Consideration:

TEMPORARY ROAD GRANT EASEMENT AGREEMENT

Pipeline No.: AP 1

Tract(s): 08-001-B023.AR

THIS TEMPORARY ROAD GRANT EASEMENT AGREEMENT, made this 24th day of September, 2019 for and in consideration of the sum of Ten and no/100 Dollars ($10.00), the receipt of which is hereby acknowledged, HERSHEL D. SPEARS and DARLENE G. SPEARS, husband and wife, of 2215 Spruce Creek Ln., Nellysford, VA, 22958, (hereinafter called "Grantor") hereby grants and conveys to ATLANTIC COAST PIPELINE, LLC, a Delaware limited liability corporation, of 120 Tredegar Street, Richmond, Virginia, 23219 its successors and assigns (hereinafter called "Grantee") a temporary easement to use existing roads, to improve said roads, and to open, construct, repair, maintain and use a new vehicular roadway, on, over and through Grantor's lands situated in Rockfish Magisterial District, Nelson County, Virginia, being further described as follows:

> That certain tract of land composed of 41.092 acres, more or less, located in Rockfish Magisterial District, Nelson County, Virginia and being more particularly described as 43.460 acres, more or less, in that plat of re-survey by William S. Callahan, L.S., dated November 5, 2001, recorded in Plat Cabinet 3, Slide 699A, of the public records of said County; LESS AND EXCEPT, a certain tract containing 2.00 acres, more or less, as described in Instrument No. 120001841; LESS AND EXCEPT, a certain tract containing 0.294 acres, more or less, as described in Instrument No. 090003377; LESS AND EXCEPT, a certain tract containing 0.074 acres, more or less, as described in Instrument No. 020003856, all of the public records in said county.

The route of the road(s) for which use is granted by this Agreement, including both existing and new roads, is described in general terms on Exhibit "A" , attached hereto and made a part hereof. Grantee shall be entitled to minor deviations from the route shown on Exhibit "A", as necessary to address surveys, construction, and related issues.

Grantee shall only use so much of the Property as is reasonably necessary for the purposes and rights granted herein, and shall use existing roadways wherever practicable. Except where an existing road exceeds it, the width of the road easement herein granted shall not exceed thirty (30) feet, both for the use and improvement of existing roads and the construction and maintenance of new roads.

Grantor and Grantee agree and acknowledge that this temporary easement does not extend to use by the public, but is limited to the use of ATLANTIC COAST PIPELINE, LLC, its agents, employees, and contractors, assigns, and authorized entities. Grantor shall be entitled to use any roads constructed or improved by Grantee, subject to Grantee's rights hereunder.

Grantor represents that it is the owner of the surface of the Land, and has the right to make this Grant.

The Temporary Work Easement will terminate five (5) years from the date the pipeline is approved by the Federal Energy Regulatory Commission to begin commercial service.

Grantee is entitled to immediately commence the use, and the improvement, of any existing road and the construction of any new road, and may perform any surveys and studies necessary to determine the final route of the Easement. Removal of timber and vegetation necessary for construction of new roads and improvements of existing roads may commence at any time. Grantee agrees to repair any damage it causes to any existing road, and to maintain any new road as necessary for its operations.

Grantee agrees to protect, defend, indemnify and hold harmless the Grantor from any and all damages, claims for damages, demands, suits, recoveries, judgments or executions which may arise or be made by reason of injuries or damages to persons or property resulting from Grantee's exercise of the rights granted herein. This indemnification shall not extend to any claims, which arise from the sole negligence or willful or wanton misconduct by Grantor or third parties.

This agreement may be executed in counterparts and shall be binding upon each party executing any counterpart and upon their respective heirs, personal representatives, successors and assigns.

See the ADDENDUM attached hereto as Exhibit "B" for additional provisions to this Easement Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK]
[SIGNATURES AND ACKNOWLEDGEMENTS APPEAR ON THE FOLLOWING PAGES]

By acceptance of this TEMPORARY ROAD GRANT EASEMENT AGREEMENT, the Grantee agrees to perform and comply with all conditions and covenants contained herein.

WITNESS the signature(s) of Grantor this date.

WITNESS:

Print Name Christine Lollar

GRANTOR:

HERSHEL D. SPEARS

STATE/COMMONWEALTH OF VIRGINIA
CITY
~~COUNTY~~ OF RICHMOND to-wit:

The foregoing instrument was acknowledged before me this 24TH day of September, 2019, by HERSHEL D. SPEARS, who appeared before me in the aforesaid jurisdiction. He/She is ☐ personally known to me or ☑ produced VIRGINIA DRIVERS LICENSE as identification.

Notary Public

My commission expires: 6/30/2020
Registration #: 145251

(AFFIX SEAL)

SUSAN M. HIERS
NOTARY PUBLIC
REG # 145251
MY COMMISSION EXPIRES 06/30/2020
COMMONWEALTH OF VIRGINIA

WITNESS the signature(s) of Grantor this date.

WITNESS:

Print Name Christina Lolle

GRANTOR:

Darlene G. Spears

DARLENE G. SPEARS

STATE/COMMONWEALTH OF VIRGINIA
CITY ~~COUNTY~~ OF RICHMOND to-wit:

The foregoing instrument was acknowledged before me this 24TH day of SEPTEMBER, 2019, by DARLENE G. SPEARS, who appeared before me in the aforesaid jurisdiction. He/She is ☐ personally known to me or ☑ produced VIRGINIA DRIVERS LICENSE as identification.

Susan M. Hiers

Notary Public

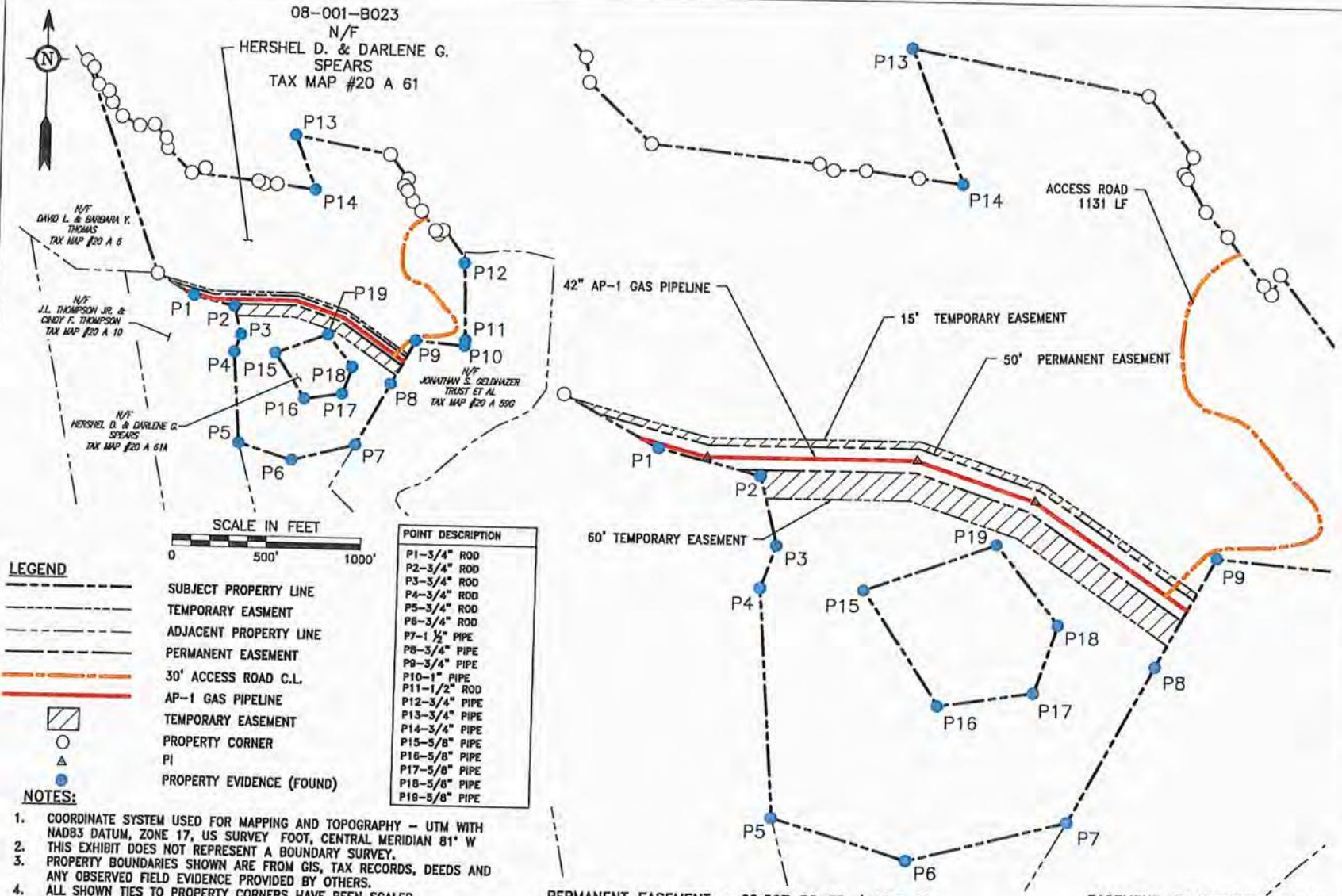
SUSAN M HIERS NOTARY PUBLIC REG # 145251 MY COMMISSION EXPIRES 06/30/2020 COMMONWEALTH OF VIRGINIA

(AFFIX SEAL)

My commission expires: 6/30/20

Registration #: 145251

Document Accession #: 20210813-5226 Filed Date: 09/13/2021



POINT DESCRIPTION
P1-3/4" ROD
P2-3/4" ROD
P3-3/4" ROD
P4-3/4" ROD
P5-3/4" ROD
P6-3/4" ROD
P7-1 ½" PIPE
P8-3/4" PIPE
P9-3/4" PIPE
P10-1" PIPE
P11-1/2" ROD
P12-3/4" PIPE
P13-3/4" PIPE
P14-3/4" PIPE
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ACP 42" GAS PIPELINE AP-1
EASEMENTS ACROSS PROPERTY OF
HERSHEL D. & DARLENE G. SPEARS
NELSON COUNTY, VIRGINIA

ATLANTIC COAST PIPELINE, LLC
925 WHITE OAKS BOULEVARD
BRIDGEPORT, WV 26330

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Exhibit "B"

This ADDENDUM to that certain Easement Agreement dated September 24, 2019 by and between HERSHEL D. SPEARS and DARLENE G. SPEARS, husband and wife, of 2215 Spruce Creek Ln., Nellysford, VA, 22958, (hereinafter called the ("Grantor") and ATLANTIC COAST PIPELINE, LLC, its successors and assigns (hereinafter called "Grantee").

With Property being located in Rockfish Magisterial District, Nelson County, Virginia

All provisions herein are subordinate and subject to Federal, State and Local Regulations. Should there be a conflict between the special provisions listed herein below and the main body of that certain Easement Agreement referenced above, in all cases the special provisions listed below (subject to state, local and federal regulations) shall prevail.

GENERAL TERMS

1. Timber Stack and Chips

Regarding trees, slash and related debris, removed from the Permanent Easement and Temporary Work Easement under this agreement ("Timbering Material"), Grantor hereby understands, approves and agrees that Grantee may, in its sole discretion and in accordance with any applicable governmental approvals, permits, laws or regulations: (i) chip and disperse Timbering Material both upon and off of the Permanent Easement and Temporary Work Easement; (ii) stack Timbering Material removed from the Permanent Easement or Temporary Work Easement both upon and off of the Permanent Easement and Temporary Work Easement; (iii) remove Timbering Material from Grantor's property altogether; and (iv) burn slash and debris on the Permanent Easement and Temporary Work Easement in accordance with permit regulations and agency consultations. Grantee agrees to coordinate with Grantor as to a location of any stacking of Timbering Material immediately adjacent to the Permanent Easement and will use commercially reasonable efforts to locate log stacks for landowner access. The final determination as to the location of any stacks of Timbering Material will ultimately be in the sole discretion of Grantee. Grantor further understands, agrees and acknowledges that Grantor will be solely responsible for any damages to the Permanent Easement or Temporary Work Easement caused by Grantor's removal of any Timbering Material following restoration of the Permanent Easement and Temporary Work Easement. Notwithstanding the foregoing, Grantee agrees not to burn within two hundred fifty (250) feet of any existing structure.

2. Wetland Provision

If Local, State or Federally-regulated waters or wetlands (collectively and individually "Regulated Waters or Wetlands") within the Permanent Easement or Temporary Easement are disturbed by Grantee, Grantor acknowledges that Grantee may be required by law to restore and/or re-vegetate any such disturbed Regulated Waters or Wetlands. Additionally, Grantor agrees to: (a) cooperate with Grantee to ensure any such restored or re-vegetated Regulated Waters or Wetlands are maintained as required by applicable laws; (b) notify Grantee in advance of any proposed plans to disturb any Regulated Waters or Wetlands within the Permanent Easement or Temporary Easement; and (c) notify Grantee of Grantor's efforts to obtain any required permits, permit

modifications and/or approvals, prior to conducting any proposed disturbance of Regulated Waters or Wetlands within the Permanent Easement or Temporary Easement. Grantor agrees that any permitting and/or disturbance of Regulated Waters or Wetlands by Grantor within the Permanent Easement or Temporary Easement, including any required mitigation and/or penalties, will be at Grantor's own risk and cost.

3. Hunting & Fishing & Firearms

Grantee agrees that its employees, agents or independent contractors operating and authorized to exercise Grantee's rights under this Easement Agreement (or as previously defined), shall have no right to hunt, fish, or fire any firearms on the Grantor's Land.

4. Photography / Video Recording

Grantee will not photograph or video the right of way except for purposes related to the safety and maintenance of the Pipeline. Photographs or video will not be shared with any other entities.

5. Access to Structures

Grantee agrees not to prevent access to dwellings or other structures located on the Grantor's property by foot or by vehicle during construction.

6. Additional Indemnification

Indemnification of Grantor agreed to by Grantee shall extend to and shall include injuries or damages to persons or property resulting from Grantee's exercise of the rights granted in the Easement Agreement, as well as to the exercise of such rights by Grantee's agents, employees, licensees and assigns, regardless of whether such damage or claim for damage results from mistake, inadvertence, negligence, recklessness, willful or wanton misconduct, or malice of such agents, employees, licensees and assigns.

7. Temporary Work Space Duration

The Temporary Road Grant Easement will be used during the initial construction and for restoration, clean-up, re-vegetation, and any repair or remediation required by initial pipeline installation. The Temporary Road Grant Easement will terminate five (5) years from the date the pipeline is approved by the Federal Energy Regulatory Commission to begin commercial service.

8. Reimbursement of Monies

Grantee agrees that Grantor will keep and will not be required to reimburse Grantee for any amount paid as consideration for the Easement Agreement in the event that Grantee does not undertake construction of the pipeline, changes the route of the pipeline, or abandons the pipeline during or after construction.

9. FERC Certificate

Grantee agrees that if a FERC certificate is not issued or is permanently revoked for the Atlantic Coast Pipeline project, this Easement Agreement shall become null and void. Grantee further agrees that all monies paid for this agreement shall remain the Grantor's.

PRE-CONSTRUCTION

10. Notice of Construction

Grantee agrees to make reasonable efforts to notify Grantor of the commencement of construction on the Property at least two (2) weeks prior to entry.

11. Water Testing

Prior to the commencement of construction, Grantee will test all springs and wells identified by Grantor as a water source that are located within 500 feet of the centerline of the pipeline. In order to qualify for testing, such water sources must be located on Grantor's Property, or on a property adjacent thereto for which permission and reasonable access for sampling has been given to Atlantic by the owner. Samples will be delivered to a suitable laboratory, with results provided to Grantor. Where practical, sampling will be made during all four seasons. Upon written notice from Grantor that a tested water source has been damaged as to quality or quantity during construction, post-construction tests will be performed. If those tests and a field evaluation confirms that any damage is attributable to pipeline construction, Atlantic will use reasonable and customary measures to correct it.

12. Erosion Prevention

Grantee shall install temporary erosion controls in accordance with Grantee's approved Erosion and Sedimentation Control Plan immediately after the initial disturbance of the soil and maintain controls throughout construction. Grantee shall restore to original elevation, as nearly as reasonably practical, and shall revegetate ditch of stream banks damaged by the construction, maintenance, operation, repair, inspection, replacement or removal of the pipeline laid under the terms of Easement Agreement.

13. Defoliants

Grantee hereby agrees not to utilize chemicals or defoliants as a means of clearing or maintaining the Easement Area, except as mandated by any regulatory agency with jurisdiction over the project.

POST CONSTRUCTION

14. Restoration/Reclamation

Grantee will use reasonable efforts to repair and reclaim any land damaged by construction of a pipeline or other facilities on the above-described land, to a condition as nearly as is reasonably practicable to its original states, in accordance with all applicable laws and governmental rules, regulations and order and Grantees standard reclamation practices. If jute netting is required in lawns or agricultural fields, biodegradable staples shall be used to secure the netting.

15. Private Road and Driveway Restoration.

Should Grantor provide Grantee access to any private roads, driveways, or entrances used to access the work area such roads, driveways, or entrances shall be restored as near as practically possible to their original condition.

16. Gravel

Following final remediation, grantee agrees to cover the temporary Road Grant Easement with gravel of like kind to the remainder of Grantor's existing roadway.

SIGNED FOR IDENTIFICATION:

GRANTOR:

Hershel D. Spears

HERSHEL D. SPEARS

GRANTOR:

Darlene G. Spears

DARLENE G. SPEARS

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