

Exhibit 1

SELC ACP FOIA Request
December 14, 2017

SOUTHERN ENVIRONMENTAL LAW CENTER

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December 14, 2017

Via Electronic Mail and U.S Mail

Ms. Annette Sasso
National Park Service
U.S. Customs House, 3rd Floor
200 Chestnut Street
Philadelphia, PA 19106
Annette_Sasso@nps.gov

Re: Freedom of Information Act Request Regarding the Atlantic Coast Pipeline

Dear Ms. Sasso:

Pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 and 43 C.F.R. § Part 2, the Southern Environmental Law Center (“SELC”) hereby requests access to the following documents or other public records:

- All documents or other records in the possession of the National Park Service related to the crossing of the Blue Ridge Parkway or Appalachian National Scenic Trail by the Atlantic Coast Pipeline;
 - This request includes all documents or records related to the crossing of the Blue Ridge Parkway or Appalachian National Scenic Trail at the currently identified location and any location previously considered;
 - This request includes all documents or other records related to the request or issuance of any special use permit by the National Park Service to allow the Atlantic Coast Pipeline to cross Park Service administered lands;
 - This request excludes documents which are available on the Federal Energy Regulatory Commission’s publicly available online docket for the Atlantic Coast Pipeline project

This request for documents or other records includes all reports, studies, correspondence, memoranda, e-mails, analyses, meeting notes or other notes of any kind, drafts and working papers, and every other document, recorded communication, or record of any kind (including records which exist electronically). In addition, we request access to each version of a record or

document, whether it is a draft, has been electronically deleted, has attachments, bears annotations, etc. Please include records up to the date that the agency commences its search for responsive records.

If you take the position that any of the above-described public records are not open to public inspection under the FOIA, please explain the basis for your position and identify any statute, rule of law, or other authority upon which you rely. In accordance with FOIA, 5 U.S.C. § 552(b), please produce all segregable portions of responsive documents and justify any redactions by reference to specific FOIA exemptions.

We believe materials responsive to this request will be available electronically. To reduce the administrative burden on the Park Service and minimize costs of printing and copying, we request that those materials be produced electronically if possible. Electronic documents may be produced on CD-ROMs, external USB “thumb drives” or “flash drives,” or by other means. We are happy to arrange transmission of documents over web-based document sharing services such as Sharefile. For any documents that cannot be provided electronically, we request hard copies of the documents.

If fees will be incurred for search time, or if fees will be incurred for document reproduction, SELC requests that the fees be waived as authorized by 5 U.S.C. § 552(a)(4)(A)(iii), because public disclosure of the requested information “is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.”

The National Park Service will grant a FOIA fee waiver request if it determines that the disclosure is “[i]n the public interest because it is likely to contribute significantly to public understanding of government operations or activities” and “[n]ot primarily in [the requester’s] commercial interest.”¹ In deciding whether a fee waiver is in the public interest, the Service considers the following criteria:

- “How the records concern the operations or activities of the Federal government.”²
- “How disclosure is likely to contribute to public understanding of those operations or activities”³
- “How disclosure is likely to significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject”⁴

¹ 43 C.F.R. § 2.45(a).

² *Id.* § 2.48(a)(1).

³ *Id.* § 2.48(a)(2).

⁴ *Id.* § 2.48(a)(3).

- “How the public’s understanding of the subject in question will be enhanced to a significant extent by the disclosure.”⁵

All of these factors weigh in favor of the grant of a fee waiver here. First, the requested records “concern the operations or activities of the Federal government.”⁶ The Park Service is the federal agency charged with administering the Blue Ridge Parkway (“BRP”) and Appalachian National Scenic Trail (“ANST”). The Atlantic Coast Pipeline’s (“ACP”) proposed route crosses both the BRP and ANST. The requested information concerns the Park Service’s review and analysis of the effects of the ACP on the BRP and ANST. Undoubtedly, this information concerns the operations and activities of the government.⁷

Second, the requested records are “meaningfully informative” and have a “logical connection” to government activities, making them “likely to contribute to public understanding” of the Park Service’s work.⁸ The requested information will illuminate, among other things, the factual and scientific information that the Park Service has received, generated, and considered regarding the effects of the ACP on the BRP and ANST. It will also provide insight regarding the Service’s analysis of those potential effects. This will help the public better understand the ACP’s potential consequences, and how those consequences may impact the use of the BRP and ANST.

SELC has the “expertise,” “ability,” and “intent” to disseminate the requested information in a manner that will “contribute to the understanding of a reasonably broad audience of persons interested in the subject.”⁹ SELC is an environmental organization that routinely shares information concerning the activities and operations of government agencies, including information concerning the ACP, via its website, press releases, published reports, in-person presentations, interviews with the media, and direct communications with other interested organizations.¹⁰ SELC intends to review and analyze the information provided in response to this request and to share this information and its analysis with its supporters, other interested organizations, members of the press, and the general public at appropriate times through these

⁵ *Id.* § 2.48(a)(4).

⁶ *Id.* § 2.48(a)(1).

⁷ See, e.g., *Forest Guardians v. Dep’t of Interior*, 416 F.3d 1173, 1178 (10th Cir. 2005) (holding that release of records regarding the scope of BLM’s permit program concerns the operations or activities of BLM).

⁸ 43 C.F.R. § 2.48(a)(2)(i)-(ii).

⁹ *Id.* § 2.48(a)(2)(iii)-(v).

¹⁰ See, e.g., Southern Environmental Law Center, *Proposed Natural Gas Pipeline Threatens Scenic Western Virginia*, available at <https://www.southernenvironment.org/cases-and-projects/proposed-natural-gas-pipeline-threatens-scenic-western-virginia>.

various mediums. Given the nature of the information sought, the high level of public interest in the ACP and SELC's plan for sharing and publicizing the results of its findings with members of the public, there can be little doubt that the information requested will "contribute to public understanding."¹¹

Third, the requested information will "significantly contribute to the understanding of a reasonably broad audience of persons interested in the subject," and greatly "enhance[]" their "understanding of the subject in question."¹² The public's deep concern about the ACP has been well-documented in the press.¹³ Especially given this high level of public interest, the release of the information requested by SELC will significantly enhance public understanding by illuminating the Park Service's activities in relation to the ACP, the data reviewed by the Service, and the Service's analysis of potential effects on the BRP and ANST. To the best of our knowledge, the requested information has not been previously released.¹⁴ Thus, the disclosure would substantially "increase the level of public understanding" of the Service's activities.¹⁵

Finally, SELC has no "commercial interest . . . that would be furthered by the requested disclosure."¹⁶ SELC is a 501(c)(3) nonprofit organization with a public interest mission and, by definition, no commercial interests. The interest in disclosure is in the public interest of obtaining information about the government's analysis regarding the ACP's proposed route and impact on the BRP and ANST—not in promoting any commercial interests of SELC. Although it is a legal organization, SELC does not profit, or otherwise have a commercial interest, in document review or litigation. SELC does not charge its clients for attorney time or enter into contingency agreements, nor does it sell or distribute government information for financial gain. Further, it would not be proper for the agency to claim that, just because SELC is a legal organization, there is some abstract possibility of future litigation which creates a commercial interest, since any such possibility is not itself a commercial interest.¹⁷

¹¹ 43 C.F.R. § 2.48(a)(2). *See also Forest Guardians v. Dep't of Interior*, 416 F.3d 1173, 1180 (10th Cir. 2005) (online newsletter, email lists and website help show that requested information is likely to contribute to public understanding); *D.C. Tech. Assistance Org. v. U.S. Dep't of Housing & Urban Dev.*, 85 F. Supp. 2d 46, 49 (D.D.C. 2000) (noting that "technology has made it possible for almost anyone to fulfill th[e] requirement" that requested documents will likely contribute to an understanding of government activities or operations).

¹² *Id.* § 2.48(a)(3), (4).

¹³ *See, e.g.,* Editorial Board, *Needed Scrutiny of the Atlantic Coast Pipeline*, Dec. 4, 2017, available at <http://www.newsobserver.com/opinion/editorials/article187925849.html>.

¹⁴ 43 C.F.R. § 2.48(3)(i)-(ii), (iv).

¹⁵ *Id.* § 2.48(a)(3)(iii).

¹⁶ *Id.* § 2.48(b).

¹⁷ *See McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1287 n.4 (9th Cir. 1987).

Congress intended federal agencies to be guided by the principle that “fee waivers play a substantial role in the effective use of the FOIA, and they should be *liberally granted* to all requesters other than those who are commercial users.”¹⁸ “[T]he presumption should be that requesters in these categories are entitled to fee waivers, especially if the requesters will publish the information or otherwise make it available to the general public.”¹⁹ Given this presumption, as well as the strong likelihood that the release of the requested information will significantly contribute to the public’s understanding of the activities and operations of the government, the Park Service should grant SELC any necessary fee waivers.

In the event that the Park Service declines to grant the fee waiver request, we understand that the first two search hours and 100 pages of documents are free.²⁰ If the waiver is denied and the request will involve more than two search hours or more than 100 pages of documents, please contact me before the request is processed to discuss this matter.

If you have any questions, please do not hesitate to contact me. I am happy to work with you to clarify the scope of our request and to facilitate the production of the requested public records. Thank you in advance for your assistance.

Sincerely,



Patrick Hunter

Staff Attorney

phunter@selcnc.org

828-258-2023

cc: Marianne Mills, NPS, Marianne_Mills@nps.gov
Charis Wilson, NPS, charis_wilson@nps.gov

¹⁸ 132 Cong. Rec. S14298 (Sept. 30, 1986) (Sen. Leahy) (emphasis added); *Judicial Watch v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003); *McClellan Ecological Seepage Situation v. Carlucci*, 835 F.2d 1282, 1284 (9th Cir. 1987).

¹⁹ *Ettlinger v. FBI*, 596 F. Supp. 867, 873 (D. Mass. 1984) (quoting legislative history).

²⁰ See 43 C.F.R. § 2.39.