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Comments: Comments of The Nature Conservancy on the Draft ROD for the ACP

Attached please find The Nature Conservancy's objection to the Draft ROD for the Atlantic Coast Pipeline.

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September 5, 2017

Glen Casamassa

Associate Deputy Chief - National Forest System

USDA Forest Service

201 14th Street SW, Washington DC 20250

RE: Notice of Objection to Draft Record of Decision for the Atlantic Coast Pipeline Plan Amendment

Dear Mr. Casamassa:

The purpose of this letter is to state The Nature Conservancy's objection to the Draft Record of Decision (Draft ROD) for the Atlantic Coast Pipeline Plan Amendment, issued by Tony Tooke in his former role as Regional

Forester, Southern Region, 1720 Peachtree Road, NW, Atlanta, GA 30309; and Mary Beth Borst, Acting Regional Forester Eastern Region, 626 East Wisconsin Ave, Milwaukee, WI 53202. The proposed project would be located on the Monongahela National Forest (MNF) in West Virginia and the George Washington National Forest (GWNF) in Virginia. This Notice of Objection filed pursuant to Title 36 CFR Part 218.

The mission of The Nature Conservancy is to conserve the lands and waters on which all life depends. The Conservancy is a leading conservation organization working in all 50 states and more than 35 countries. We have helped conserve nearly 15 million acres of land in the United States and more than 118 million acres with local partner organizations globally.

The proposed route of the ACP crosses through the Central Appalachian Whole System Project, which is an area of deep investment for the Conservancy. Within this region, The Conservancy has worked with public agencies, corporations, private landowners, and local communities to undertake land protection, management, and restoration actions across public and private lands. We have worked with others to develop and implement strategies to protect the best, large, intact habitats that will continue to support a diversity of species, in the face of a changing landscape and a changing climate. In particular, we have worked with the USFS to found and administer the Central Appalachians Fire Learning Network, a collaborative effort to develop and implement scientifically based ecological fire management objectives to restore healthy forests on public and private lands in western Virginia.

On April 6, 2017, the Conservancy submitted comments on the Draft Environmental Impact Statement (DEIS) addressing issues raised in a scoping letter for the DEIS we filed with the Federal Energy Regulatory Commission (FERC) on April 28, 2015, and in a supplemental scoping letter filed on June 2, 2016. The following recommendations made in our scoping letters relate to our objection to this Draft ROD:

- * The recommended alternative for the Atlantic Coast pipeline avoid all preserves, conservation easements and Critical Habitats;
- * The best available data, expert consultation, and field inventory are used to identify and avoid impacts to biologically significant cave systems along this and all other mid- Atlantic shale gas pipeline routes, and that natural cover be retained within an extended buffer around any cave or karst features within the project footprint;
- * Avoidance of both direct and indirect impacts be demonstrated by the applicant, and supported by robust, quantitative, and repeatable analyses;
- * The loss of site resilience to climate change consequent to an interruption in connectedness within large patches of intact habitats is considered to be an indirect effect of pipeline construction for which mitigation is required;
- * Potential impacts to ground and surface waters due to sedimentation and erosion during both normal and high intensity rain events during construction are comprehensively evaluated and minimization strategies are based upon techniques shown to have been effective in projects of comparable scale in similar terrain and climate and if this is not achievable a detailed justification of the efficacy of the proposed measures for managing and mitigating sedimentation and erosion impacts is provided;
- * Compensatory mitigation recommendations consider landscape context, are in addition to business as usual and equivalent to functions and values lost, are located to benefit the area in which impacts occurred, incorporate temporal loss of functions and values, and are durable over time;
- *

Any amendments to a Forest Land and Resource Management Plan to accommodate construction of the ACP be consistent with specific management designations for the areas the project would affect, and that such a finding of consistency be based on a complete analysis of potential project impacts (i.e. Final EIS).

The Conservancy objects to the decision to amend the MNF LRMP through project specific modifications exempting the ACP from standard SW07 (Limits on use of wheeled and/or tracked equipment).

The Conservancy objects to the decision to amend the GWNF LRMP through project specific modifications exempting the ACP from standard FW-85 (Inventory for Old Growth).

Standard SW07

In the Draft ROD, this standard would be amended so as to not apply to the construction, operation and maintenance, and restoration and rehabilitation of the ACP where the applicable mitigation measures identified in the COM Plan and SUP would be implemented.

The justification for this given in the Draft ROD is that "ACP Project mitigation measures identified in the COM Plan and SUP are designed to avoid and minimize impacts associated with wheeled and/or tracked motorized equipment on the defined steep slopes."

The Conservancy notes, however, that the FEIS for the ACP states that "The FS is still working with Atlantic on site-specific designs which would be used to minimize the potential risks for sliding and other slope instabilities and would require additional site designs," (p 4-442).

We further note that the Draft ROD states that "approval to begin operations on NFS land will require incorporating changes into the COM Plan that are necessary to meet the requirements of regulations at 36 CFR 251 Subpart B and ensure consistency with the Forest LRMP's as amended. The SUP will require Atlantic's use and occupancy to be conducted in accordance with Atlantic's COM Plan and other terms and conditions deemed necessary to comply with the requirements of 36 CFR 251."

The Conservancy believes that the steep slope conditions that are cited in SW07 and will be encountered by ACP represent very extreme conditions that constitute a high risk of failure, which is exactly why this standard was originally promulgated. It is not possible to determine the evidence base for, or adequacy of, mitigation measures that are still under negotiation. In this respect, the Draft ROD is directly counter to the Conservancy's recommendation quoted above that "potential impacts to ground and surface waters due to sedimentation and erosion during both normal and high intensity rain events during construction are comprehensively evaluated and minimization strategies are based upon techniques shown to have been effective in projects of comparable scale in similar terrain and climate and if this is not achievable a detailed justification of the efficacy of the proposed measures for managing and mitigating sedimentation and erosion impacts is provided."

Standard FW-85

The Draft ROD states that "The need to modify Standard FW-85 will depend upon Atlantic completing an old growth inventory on the portion of the corridor on the GWNF using the specified inventory criteria. The inventory is required by the standard FW-85 to identify existing old growth conditions. Since the harvesting of trees for the purpose of clearing a right-of-way for a pipeline can occur on both lands suitable and not-suitable for timber production, FW-85 does not prevent the cutting of old growth trees for this purpose."

The Conservancy notes, however, that The Forest Service Handbook Forest Service Handbook (FSH) 1909.12 Chapter 63 - Plan Components for Timber Harvest for Purposes Other Than Timber Production states:

On lands not suited for timber production, plan components may only allow timber harvest to occur to protect multiple use values other than timber production and for salvage, sanitation, public health, or safety, as provided by the rule at 36 CFR 219.11(c): Timber harvest for purposes other than timber production. Except as provided in paragraph (d) of this section, the plan may include plan components to allow for timber harvest for purposes other than timber production throughout the plan areas, or portions of the plan areas, as a tool to assist in achieving or maintaining one or more applicable desired conditions or objectives of the plan in order to protect other multiple-use values, and for salvage, sanitation, or public health or safety. Examples of using timber harvest to protect other multiple use values may include improving wildlife or fish habitat, thinning to reduce fire risk, or restoring meadow or savanna ecosystems where trees have invaded. (36 CFR 219.11).

The Draft ROD goes on to state that "If standard FW-85 does need to be amended because the old growth inventory is not completed, the relevant planning rule requirement to this change is 36 CFR 219.8(a)(1) which states that a plan must include plan components to maintain or restore the ecological integrity of terrestrial ecosystems, including plan components to maintain or restore structure, function, composition, and connectivity." And - citing estimates of potential old-growth to be affected - to find that "Given the small amount of possible old growth that could be affected, compared to the amount identified across the entire Forest, I have determined that there would not be any "substantial adverse effects" to the ecological integrity of the existing old growth communities on the GWNF."

In response, The Nature Conservancy observes the following:

1. We do not believe that the construction of a pipeline right of way is consistent with the multiple use values cited in 36 CFR 219.11(c).

- 2.

The conclusion (in the absence of data) that only a small percentage of the acres of old growth in the specified forest types fails to address the other criteria for substantial adverse effects including structure, function, composition, and connectivity. An ecologically valid analysis of impacts to old growth forests would consider not merely the acreage of other existing old-growth stands, but their distribution across ecological gradients (i.e. latitude, elevation and geology) among bio-regions (i.e. ecoregional subsections). Such an analysis would also evaluate the landscape context of the stands, (i.e. the extent to which to stands occur within large intact patches of contiguous forest) which will strongly determine the stands' ecological resiliency.

With respect to the intactness of the forest surrounding old growth stands, the USFS maintains a database of inventoried stands, called the Field Sampled Vegetation (FSVeg) dataset. We overlaid old growth stands in this dataset that would be intersected by the ACP on the Virginia Natural Lands Assessment data layer of intact forests created by the Virginia Department of Conservation and Recreation (VDCR). This overlay indicates that all the currently known occurrences of old growth stands along the ACP route are within large intact forest cores that are classified by VDCR as having either outstanding or very high ecological integrity. The context of these old growth forests within these large patches of interior forest is strongly conducive to the resilience of those stands in the face of ecological disturbances including the effects of climate change, which is a factor the Draft ROD fails to consider

3. In our both our April 2015 and June 2016 scoping comments The Conservancy requested that FERC observe the full mitigation hierarchy by first seeking to avoid impacts, then minimize impacts, then finally requiring or recommending compensation for remaining unavoidable impacts. The Conservancy specifically requested that ACP avoid impacts to Critical Habitats for conservation. In that letter we described Critical Habitats as designated areas with high biodiversity value, consistent with the definitions of Critical Habitats as outlined in the International Finance Corporation Performance Standard 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources. For the Central Appalachians, these habitats include very large and diverse patches of intact forest.

4.

The applicant has stated its intention to inventory for old-growth. The use of the data resulting from this inventory would be consistent with the procedural provision that the process use the best available scientific information. We submit that the ROD's conclusion in the absence of this inventory does not meet this standard.

Based on the above observations, The Conservancy strongly recommends that the USFS base its impact analysis on an old-growth inventory performed by the applicant, in compliance with 36 CFR 219 Procedural Provisions. We further recommend that the analysis of the relative importance of the old growth forest address the factors identified in paragraph 2, above. The identification of actual impacts to old growth through an inventory followed by the establishment of appropriate avoidance, minimization, and if needed compensatory mitigation measures would provide a far more credible, transparent and significantly less arbitrary method for ensuring the maintenance of ecological integrity of terrestrial ecosystems on public land.

In conclusion, The Conservancy finds that the Draft ROD fails to provide an opportunity for substantive evaluation of the efficacy of actions proposed to minimize the likelihood of slope failure or significant erosion and sedimentation impacts. The Conservancy also finds that the project is likely to adversely affect old growth forests systems embedded within large intact patches of contiguous forest in a manner that will render them less resilient to the impacts of climate change. We believe that the Draft ROD should be rescinded until information is available that would allow a more accurate evaluation of impacts and the means by which they will be avoided, minimized, and compensated for.

Thank you for the opportunity to provide comments to the USFS on this important issue. If you have any questions about these comments, please contact Judy Dunscomb, Senior Conservation Scientist at jdunscomb@tnc.org or (434) 951-0573.

Sincerely,

Locke Ogens Virginia State Director Thomas Minney West Virginia State Director

Cc: Dr. Elizabeth Gray, Mid-Atlantic Division Director

Nels Johnson, North American Energy Program Director

Campbell Moore, Central Appalachians Whole System Project Director

Clyde Thompson, Supervisor, Monongahela National Forest

Joby Timm, Supervisor, George Washington and Jefferson National Forests