

In The
Supreme Court of the United States

UNITED STATES FOREST SERVICE, ET AL.,
Petitioners,

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, ET AL.,
Respondents.

ATLANTIC COAST PIPELINE, LLC,
Petitioner,

v.

COWPASTURE RIVER PRESERVATION ASSOCIATION, ET AL.,
Respondents.

On Writs of Certiorari to the United States
Court of Appeals for the Fourth Circuit

**BRIEF OF THE CITY OF STAUNTON, VIRGINIA
AND NELSON COUNTY, VIRGINIA, AS *AMICI
CURIAE* IN SUPPORT OF RESPONDENTS**

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**STATEMENT OF INTEREST
OF *AMICI CURIAE*¹**

Amicus curiae, the City of Staunton, Virginia (the “City”), is a municipality located in the historic Shenandoah Valley. *Amicus* Nelson County, Virginia (the “County”), is a political subdivision of the Commonwealth and is located in central Virginia, in the foothills of the Blue Ridge Mountains. The City and County have the powers vested in localities under Virginia law and all powers pertinent to the conduct of the affairs and functions of municipal government consistent with the Constitution and Code of Virginia. *See* VA. CONST. art. VII, § 3; Va. Code §§ 15.2-1100, 1102, 1200, 1201. The City is the county seat of Augusta County, which the Appalachian Trail (the “Trail”) traverses. In fact, the City rests a short distance from the Trail, the George Washington and Jefferson National Forests, and Shenandoah National Park. These natural resources play a critical role in the tourism economy upon which the City of Staunton depends. *See, e.g., Awesome Hikes: Mountain Views and Waterfalls*, STAUNTON CONVENTION AND VISITOR’S BUREAU, <https://visitstaunton.com/alternative-spring-break-five-awesome-hikes/> (last visited Jan. 9, 2020).

¹ Pursuant to Supreme Court Rule 37, *amici curiae* have the consent of Petitioners and Respondents for the filing of this brief. No counsel for any party authored this brief in whole or in part, and no person or entity other than above-named *amici curiae* or their counsel made a monetary contribution intended to fund its preparation or submission.

The County encompasses 474 square miles, much of which lies within the George Washington National Forest, and tourism in the National Forest and along the Appalachian Trail form an essential component of the County's economy. The County is also home to Wintergreen Resort, a mountain resort that attracts visitors year-round. Families come primarily from the Mid-Atlantic and Southeastern regions to enjoy unparalleled views and to vacation at this nationally known destination. The Appalachian Trail is a popular destination in its own right for Nelson County, given that forty-five miles of the Trail are located within the County and the Trail connects to popular hiking routes within Wintergreen Resort. *See Blue Ridge Hiking at Wintergreen, WINTERGREEN RESORT, <https://www.wintergreenresort.com/Hiking/>* (last visited Jan. 16, 2020); *Appalachian Trail Community: Nelson County, Virginia, APPALACHIAN TRAIL CONSERVANCY, <https://appalachiantrail.org/home/conservation/a-t-community-program/at-community-partners/nelson-county-va>* (last visited Jan. 16, 2020).

The City and County maintain overriding and sustained interests in the irreplaceable natural features of the Appalachian Trail. The clear-cutting of forest corridors and disruption of viewsheds along the Trail threaten to severely diminish the value of this national resource and iconic tourist destination.

SUMMARY OF ARGUMENT

The City and County, as *amici curiae*, respectfully ask this Court to affirm the Fourth Circuit's determination that Congress never granted the U.S. Forest Service authority to grant a right-of-way under the Mineral Leasing Act to construct a major natural gas pipeline across the Appalachian Trail, a unit of the National Park System within the George Washington National Forest.

Tourism provides more than \$270 million in expenditures for the City of Staunton and Nelson County combined, contributing approximately \$20 million in state and local tax receipts annually. See Virginia Tourism Corporation, THE ECONOMIC IMPACT OF DOMESTIC TRAVEL ON VIRGINIA COUNTIES 2018, at 27-28 (Sept. 2019), <https://www.vatc.org/wp-content/uploads/2019/09/2018-Economic-Impact-of-Domestic-Travel-on-Virginia-and-Localities.pdf>. The Virginia Outdoors Plan, developed by the Virginia Department of Conservation and Recreation in partnership with federal and state agencies, including the National Park Service and the U.S. Forest Service, highlights the critical role that land conservation plays in developing these economic opportunities. See Va. Dep't of Conservation and Recreation, VIRGINIA OUTDOORS PLAN 2018, at 1.3 (2018), <https://www.dcr.virginia.gov/recreational-planning/document/vopall2018.pdf> (hereinafter VIRGINIA OUTDOORS PLAN).

The Appalachian Trail is an integral part of the tourist economy on which *amici curiae* depend. Contrary to Petitioners' claims, the Appalachian

Trail is not merely a thoroughfare that brings people through a region—it is a tourist destination and feature in its own right, like other units of the National Park System. It is the Appalachian Trail *experience* that proves to be an important contributor to the City’s and County’s economies. Given the centrality of outdoor recreation to their economies, *amici curiae* the City of Staunton and Nelson County are deeply reliant on the natural and cultural landscapes that the Appalachian Trail preserves.

Importantly, the National Park Service has adopted this understanding of the Trail in prior cases. In *Clark Stone Co., Inc. v. North Carolina Department of Environment and Natural Resources*, 594 S.E.2d 832, 839 (N.C. Ct. App. 2004), the National Park Service provided evidence affirming that a gravel mine more than two miles from the Appalachian Trail would have a significant adverse effect on the purposes for which the Trail was established. *Id.* at 835. This assessment was rooted in application of a North Carolina law that required protections for any “publicly owned park, forest, or recreation area,” which according to the National Park Service included the Appalachian Trail. *Id.* at 838. In a similar vein, the National Trails System Act established the Appalachian Trail “for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas” through which the Trail might pass. 16 U.S.C. § 1242(a)(2).

ARGUMENT

I. The City and County Rely on National Park System Protections for the Appalachian Trail.

Federal Petitioners and Petitioner Atlantic Coast Pipeline (“ACP”) erroneously insist that the Appalachian Trail is merely and exclusively a “footpath” that traverses federal, state, and private lands. *See* Br. of ACP Pet’r, at 20. In this way, Petitioners ask the Court to view the Trail as no different than any other thoroughfare. Br. of Federal Pet’rs, at 25 (alleging that the “central flaw in the [Fourth Circuit’s] logic lies in the fact that the Appalachian Trail is a ‘trail,’ not ‘land.’”); *id.* at 26-27 (“In other words, a “trail” is simply a route “across,” “over,” or “through” a region of land.”). Yet, Petitioners’ assertion fundamentally ignores that the Trail serves as a nationally significant tourist attraction and natural resource attribute in its own right. Simply put, people do not use the Trail as a means for traveling from Point A to Point B. Rather, they visit places like Staunton and Nelson County in order to hike on the Trail and enjoy being outdoors. They might travel to our region by car, but they come *for* the Trail and all of its attributes.

Federal land conservation for the Trail is integral to promoting recreational and tourism-based economies, in addition to preserving the Trail’s natural integrity. *See* VIRGINIA OUTDOORS PLAN, at 12.5 (“Most of the popular forms of outdoor recreation—hiking, water access, visiting natural areas and park—are either dependent on resource lands and water or are enhanced by their proximity

to them. Land protection is essential for ensuring outdoor recreation opportunities for Virginia's growing population.”). The City and the County have continued to rely on an understanding that the Trail is a resource in its own right, and that as federal land the Appalachian National Scenic Trail is part of the National Park System. The City and County, in fact, have long promoted recreation and tourism that depend on amenities like the Trail. *See* CITY OF STAUNTON COMPREHENSIVE PLAN 2018-2040, at 5-1 (adopted July 11, 2019) (describing the City as providing “[a] quality of life founded on clean and accessible waterways, scenic views, woodlands, and outdoor recreation is particularly important in today’s society. It is important to manage natural resources so that they continue to provide social, economic, and environmental benefits to people over time while supporting other natural functions”), <https://www.ci.staunton.va.us/home/showdocument?id=6446>; NELSON COUNTY COMPREHENSIVE PLAN AS APPROVED BY THE NELSON COUNTY BOARD OF SUPERVISORS AND NELSON COUNTY PLANNING COMMISSION, at 49 (adopted Oct. 8, 2002) (“Based on citizen and county input, greenways were developed ... [f]or increased recreational and tourism opportunities, [and to] provide connections to key destination points and attractions including: [the] George Washington National Forest, Shenandoah National Park, ... and the Appalachian Trail”), <http://www.nelsoncounty-va.gov/government/nelson-county-comprehensive-plan/>.

Evidence on the significance of the Trail as a resource is well-documented. The nonprofit Appalachian Trail Conservancy estimates that over three million visitors are attracted to the Trail each

year to take advantage of its recreational opportunities. See *Explore the Trail*, APPALACHIAN TRAIL CONSERVANCY, <https://www.appalachiantrail.org/home/explore-the-trail> (last visited Jan. 19, 2020). The popularity of the Trail, in fact, rivals that of other nationally prominent National Park Service lands, such as Olympic National Park and Glacier National Park, which recorded 3.1 million visitors and 2.9 million visitors in calendar year 2018, respectively. See *Visitation Numbers*, NATIONAL PARK SERVICE, (Sept. 23, 2019), <http://www.nps.gov/aboutus/visitation-numbers.htm>.

The Forest Service also has recognized the value provided to communities like *amici curiae* from outdoor recreation resources on federal lands, which include “business activity generated from spending by recreation visitors, increased property values and business attraction because of natural amenities those resources provide, and health benefits from physical activity and stress reduction.” Eric M. White, *et al.*, U.S. Dep’t of Agriculture, FEDERAL OUTDOOR RECREATION TRENDS: EFFECTS ON ECONOMIC OPPORTUNITIES, at 21 (Nov. 2016), https://www.fs.fed.us/pnw/pubs/pnw_gtr945.pdf. Forest Service data confirm increased participation in outdoor activities on federally-owned lands, including lands that form part of the Appalachian Trail. See Eric M. White, *et al.*, National Center for Natural Resources Economic Research, FEDERAL OUTDOOR RECREATION TRENDS: EFFECTS ON ECONOMIC OPPORTUNITIES, at 3 (Oct. 2014), https://www.fs.fed.us/research/docs/outdoor-recreation/ficor_2014_rec_trends_economic_opportunities.pdf (finding significant increases in recreational

activity on federal lands over a ten-year period from 1999 to 2009).

The Commonwealth of Virginia likewise has benefited from an increase in appreciation for outdoor recreation opportunities provided by the Trail. See VIRGINIA OUTDOORS PLAN, at 2.3-2.4 (finding hiking to be one of the top outdoor activities for growth in Virginia, with 21% of Virginians engaging in hiking in 2017). Communities in the Central Shenandoah and Thomson Jefferson regions, which include both the City and the County, report the *highest* engagement with their surrounding natural environment and outdoor recreation opportunities as compared to other Virginia residents. See Va. Dep't of Conservation and Recreation, 2017 VIRGINIA OUTDOORS DEMAND SURVEY, at 28 (Table III-2) (Dec. 2017), <https://www.dcr.virginia.gov/recreational-planning/document/vop-app-02-outdoors-survey.pdf> (hereinafter VIRGINIA OUTDOORS DEMAND SURVEY) (finding that *amici curiae's* residents are the most likely to visit natural areas (80% to 83% of residents) and more likely to participate in hiking and backpacking trips than Virginians on average).

Increased participation in recreational activities along the Trail “stimulate[s] local tourism, which by extension, benefits Virginia’s economy wherever there is an abundance of recreating opportunities.” VIRGINIA OUTDOORS PLAN, at 1.2. A recent state-government survey confirmed the critical importance not simply of the Trail, but of the *scenery* along the Trail. An astonishing 89% of survey respondents rated the scenery as “very important” or “somewhat important” when making travel plans. VIRGINIA OUTDOORS DEMAND SURVEY, at 22 (Figure III-31).

Tourism is not a fringe benefit to the economy of *amici curiae*; it is absolutely integral. Statewide, outdoor recreation activities generate \$21.9 *billion* in expenditures in Virginia annually, while supporting 197,000 jobs. See OUTDOOR INDUSTRY ASSOCIATION, VIRGINIA, https://outdoorindustry.org/wp-content/uploads/2017/07/OIA_RecEcoState_VA.pdf (last visited Jan. 13, 2020). For the City, tourism-related domestic travel generated \$59.6 million in expenditures, contributing more than \$4 million in state and local tax receipts. See Virginia Tourism Corporation, THE ECONOMIC IMPACT OF DOMESTIC TRAVEL ON VIRGINIA COUNTIES 2018, at 28 (Sept. 2019), <https://www.vatc.org/wp-content/uploads/2019/09/2018-Economic-Impact-of-Domestic-Travel-on-Virginia-and-Localities.pdf>. For the County, expenditures exceeded \$211 million and generated more than \$15 million in tax revenue. See *id.* at 27. The City's *per capita* spending on parks and recreation has widely exceeded statewide investments, at \$101.68 *per capita* compared to a statewide figure of \$71.09. See VIRGINIA OUTDOORS PLAN, at 13.35. Meanwhile, in the County, there are more than 46,000 acres of land that have been proactively conserved, either through acquisition of conservation and other easements or through ownership. See *id.* at 13.63 (Table 10.6).

To protect its economic investments in tourism and outdoor recreation, the City adopted a Comprehensive Plan that includes a “community character” goal to “minimize degradation of scenic and natural resources.” CITY OF STAUNTON COMPREHENSIVE PLAN 2018-2040, at 1-2. The City's Comprehensive Plan goes on to identify key economic opportunities in tourism and affirms that

the City's "Visit Staunton" initiative "aspires to be nationally recognized as the Shenandoah Valley's preferred getaway destination." *Id.* at 6-17. It documents accolades that Staunton has earned in recent years, including listings among TRAVEL + LEISURE's "America's Favorite Mountain Towns" (2014), and SOUTHERN LIVING's "Small Towns We Love" (2012-13). *Id.* at 6-17, 6-18.

The County's Comprehensive Plan establishes an economic development goal to "encourage tourism as a viable means to diversify the local economy." See NELSON COUNTY COMPREHENSIVE PLAN, at 6. The County Plan further recognizes "the preservation of the viewsheds of scenic vistas as an important part of the county's tourism program." *Id.* at 11. Consistent with its Plan, the County has registered as an "Appalachian Trail Community" partner. See *Appalachian Trail Community: Nelson County, Virginia*, APPALACHIAN TRAIL CONSERVANCY, <https://appalachiantrail.org/home/conservation/a-t-community-program/at-community-partners/nelson-county-va> (last visited Jan. 16, 2020). Regional-scale plans similarly have promoted the significance of the Trail corridor and the natural, scenic qualities of the landscape surrounding the Trail. Thus, the Virginia Outdoors Plan promotes "trail towns ... along Virginia state trails and parks, [and the] Appalachian Trail." VIRGINIA OUTDOORS PLAN, at 8.10.

Together, these various plans promote the *amici curiae's* reliance on the Appalachian Trail corridor to grow their economies through tourism and recreation. Allowing construction of a major natural gas pipeline across this unit of the National Park System would cause significant harm to the

Appalachian Trail experience, which in turn would adversely impact the economies of adjacent communities like the City and the County.

II. Petitioner Atlantic Coast Pipeline Fails Even to Acknowledge the Environmental Risks of Its Proposed Project.

Petitioner Atlantic Coast Pipeline alleges that preventing the construction of its pipeline project would “not even promote environmental protection,” and even goes so far as to offer the outlandish claim that “the Atlantic Coast Pipeline, like other natural gas pipelines, will do much for the environment.” Br. of ACP Pet’r, at 47. These brazen assertions ignore the peer-reviewed science on climate change and the need to offset energy services provided by natural gas infrastructure with zero-carbon renewable energy alternatives and investments in energy efficiency. The United Nations’ Intergovernmental Panel on Climate Change (“IPCC”) has forecast the need for dramatic reductions in usage of natural gas—between 13% to 62%, absent carbon capture and sequestration, by the year 2050. *See* Joeri Rogeli, *et al.*, GLOBAL WARMING OF 1.5°C: AN IPCC SPECIAL REPORT, at 97 (Oct. 2018). These reductions are necessary as part of any mitigation pathway compatible with keeping global warming to within 1.5°C of pre-industrial levels. *See id.* A massive investment in natural gas infrastructure that would remain in use for decades is plainly inconsistent with the IPCC’s guidance.

In addition to the climate-related harms attributed to reliance on natural gas, there are also acute concerns with respect to water quality for the

City of Staunton and Nelson County. One of the City's primary sources for public water supplies is Gardner Spring, which can provide as much as 4.5 million gallons of water per day. *See CITY OF STAUNTON COMPREHENSIVE PLAN 2018-2040*, at 8-22. The path of the Atlantic Coast Pipeline would cross right through the critically important Gardner Spring recharge area. The City's concern about this impact has long been established, beginning with a resolution adopted by Staunton City Council in October of 2014. *See Resolution of the Council of the City of Staunton, Virginia, in Opposition to Atlantic Coast Pipeline (Oct. 23, 2014)* (included in the Appendix to this brief). After years of study, the City reaffirmed its opposition. In a letter to the Virginia Department of Environmental Quality in February of 2017, the City sounded the alarm on the threat to its public water supply:

We submit that both Dominion and the Federal Energy Regulation Commission ... have utterly failed to account yet for the potentially catastrophic consequences of the project as to the route of the line that would be unacceptably within the ambit of our water source known as Gardner Spring. ... That recharge area is vital, because the bulk of the water that feeds Gardner Spring comes from an extensive underground aquifer system....

See Letter from the Hon. Carolyn W. Dull, Mayor, City of Staunton, to Ms. Julia Wellman, Va. Dep't of

Envtl. Quality (Feb. 21, 2017), <https://www.abralliance.org/wp-content/uploads/2017/03/Staunton-City-Council-letter-of-opposition-to-ACP.pdf>.

The harms to the County may be even more severe. The Atlantic Coast Pipeline would bisect the entirety of Nelson County, with the construction process requiring the clear-cutting of a 125-foot path along the pipeline route. See Emily Brown, *Dominion Touts Atlantic Coast Pipeline Progress, Mountain Construction Concerns Opponents*, NELSON COUNTY TIMES (Apr. 27, 2017), <https://atlanticcoastpipeline.com/news/2017/4/27/dominion-touts-atlantic-coast-pipeline-progress-mountain-construction-concerns-opponents.aspx>.

The risks from deforestation along the pipeline route would be acute for the County, which is home to steep, mountainous slopes. The threat here is not theoretical; Nelson County was the site of catastrophic mudslides and the tragic loss of life following Hurricane Camille in August of 1969. See Jeffrey Halverson, *Unprecedented Rain: Hurricane Camille's Deadly Flood in the Blue Ridge Mountains*, WASHINGTON POST (Aug. 19, 2013), <https://www.washingtonpost.com/news/capital-weather-gang/wp/2013/08/19/unprecedented-rain-hurricane-camilles-deadly-dlood-in-the-blue-ridge-mountains/>. Evidence submitted by the County to the Federal Energy Regulatory Commission describes “the potential for cleared pipeline right-of-way within mountainous areas, including Nelson County, Virginia, to become more susceptible to rock slides and landslides.” See Federal Energy Regulatory Commission, ATLANTIC COAST PIPELINE AND SUPPLY HEADER PROJECT: FINAL

ENVIRONMENTAL IMPACT STATEMENT, VOL. I, Docket Nos. CP15-554-000, CP15-554-001, CP15-555-000, and CP15-556-000 FERC/EIS-0274F, at 4-30 (July 2017). Indeed, the County has long highlighted environmental concerns with the pipeline project, as “the proposed route through Nelson County traverses much of our most scenic, rugged, and undeveloped terrain,” and “would have a harmful effect on tourism, a critical component of the economy of Nelson County.” See Nelson County Board of Supervisors, Resolution in Opposition of the Atlantic Coast Pipeline (Sept. 9, 2014) (included in the Appendix to this brief).

Simply stated, *amici curiae* object to Petitioner’s description of the pipeline project as environmentally beneficial. The City and County have documented numerous environmental concerns with the Atlantic Coast Pipeline through the permitting processes before federal and state agencies. Visual impacts, the potential for landslides, and harms to water quality remain persistent worries.

III. The National Park Service Has Accorded the Appalachian Trail the Same Level of Protection as Other Park Service Units.

Petitioner Atlantic Coast Pipeline wrongly argues that Respondents “asserted a novel *substantive* barrier” in defending the Appalachian Trail’s status as a unit of the National Park System. See Br. of ACP Pet’r, at 14 (emphasis in original). The legal claim is not new. Fifteen years ago the National Park Service and the U.S. Forest Service

understood that “the purposes of the Appalachian Trail” merited the same level of protection that Respondents seek here. *See Clark Stone Co., Inc. v. North Carolina Department of Environment and Natural Resources*, 594 S.E.2d 832, 839 (N.C. Ct. App. 2004). Evidence submitted on behalf of federal agencies in *Clark Stone* was premised on those historic purposes.

Benton MacKaye, the visionary behind the Trail, described the Virginia portion of the Trail as “the wooded wilderness of the southern Appalachians where [one] finds preserved much of the primal aspects of the days of Daniel Boone.” *See Benton MacKaye, An Appalachian Trail: A Project in Regional Planning*, 9 J. AM. INST. ARCHITECTS 325-330 (Oct. 1921). MacKaye envisioned the Trail as a means to connect humans with nature in an increasingly industrial world. His vision has largely been achieved through federal land conservation efforts directed by Congress. *See National Park Service, APPALACHIAN NATIONAL SCENIC TRAIL RESOURCE MANAGEMENT PLAN*, at I-2 (2008), https://www.nps.gov/appa/learn/management/upload/Appalachian_Trail_Resource_Management_Plan.pdf (describing the National Trails System Act’s authorization of federal land acquisition to create and protect a corridor for the Trail). MacKaye’s understanding of the landscape surrounding the Trail in Virginia continues to play a part in the region’s natural and cultural heritage.

Federal Petitioners concede that the National Trails System Act of 1968 “does not define the word ‘trail,’” Br. of Federal Pet’rs, at 26, but they overlook the fact that the Trail, as Congress intended, serves a prominent role in the tourism economy of the

region, attracting sightseers and outdoor enthusiasts alike, just as other National Park Service lands provide analogous benefits to their local communities.

Congress provided that a “national scenic trail,” like the Appalachian Trail, is established “to provide for maximum outdoor recreation potential *and for the conservation and enjoyment of the nationally significant scenic, historic, natural, or cultural qualities of the areas through which such trails may pass.*” 16 U.S.C. § 1242(a)(2) (emphasis added). The Appalachian Trail is also a “unit” of the National Park System. *See* 54 U.S.C. § 100501. As the National Park Service’s management policies confirm, “Regardless of the many names and official designations of the park units that make up the national park system, all represent some nationally significant aspect of our natural or cultural heritage.” *See* U.S. Department of the Interior, National Park Service, MANAGEMENT POLICIES 2006, ISBN 0-16-076874-8, Section 1.2, at 8, https://www.nps.gov/policy/MP_2006.pdf (last visited Jan. 10 2020).

The proper analysis of the issue in the present case bears a striking similarity to the analysis of “the purposes of the Appalachian Trail” at issue in *Clark Stone Co., Inc. v. North Carolina Department of Environment and Natural Resources*, 594 S.E.2d 832, 839 (N.C. Ct. App. 2004), which was popularized in Jay Erskine Leutze’s book, *STAND UP THAT MOUNTAIN: THE BATTLE TO SAVE ONE SMALL COMMUNITY IN THE WILDERNESS ALONG THE APPALACHIAN TRAIL* (Scribner Paperback Ed. 2013).

The North Carolina court in *Clark Stone* affirmed state environmental authorities’ revocation of a

mining permit after learning of a proposed gravel mine that would be in the viewshed of the Appalachian Trail. Mr. Leutze summarized the case for his lay audience, explaining, “In 1968 the National Trails System Act designated the Appalachian Trail a National Scenic Trail, giving the footpath the status of a congressionally authorized unit managed by the Department of the Interior. In legal terms, [Clark Stone’s] crusher might as well have been going in next to Yellowstone, or Yosemite.” *Id.* at 34.

The Atlantic Coast Pipeline represents a far more direct menace to the Trail than did the gravel mine at issue in *Clark Stone*. The *Clark Stone* mine, after all, would not have crossed through Trail lands, with drilling on both sides of the Trail. Indeed, the “distance between the [T]rail ... and the mine site [was] approximately 2 miles.” *Clark Stone*, 594 S.E.2d at 834 (quoting evidence from the Department of Environment and Natural Resources). A state official “testified that the mining operation was ‘clearly visible in good weather from [the Appalachian Trail]’ and an acoustical analysis estimated that ‘the mining site’s ‘primary jaw-crusher is the major noise problem’ and ‘would be noticed by and would likely be a major irritant to any hearing person walking the [T]rail.’” *Id.* at 835 (alterations in original).

Despite the fact that the mining project would only be visible at a distance and only “in good weather,” the North Carolina Court of Appeals upheld revocation of the permit because the activity would have had “a significant adverse effect *on the purposes* of the Appalachian Trail,” and state mining law mandated consideration of whether “the

operation will have a significant adverse effect on the purposes of a publicly owned park, forest, or recreation area.” *Id.* at 838-39 (emphases added).

The relevancy for the current case is apparent. The Appalachian Trail was not dismissed as a mere footpath in North Carolina; it was not irrationally discredited as “a ‘trail,’ [but] not ‘land.’” Br. of Federal Pet’rs, at 25. Rather, the Trail was acknowledged, as it must be here, as “a publicly owned park, forest, or recreation area.” 594 S.E.2d at 838. This interpretation is precisely how the City of Staunton and Nelson County understand the Trail. The Appalachian Trail experience is an invaluable resource, like any other National Park, and it draws thousands of visitors to our region.

As the National Park Service’s park manager for the Appalachian National Scenic Trail affirmed in *Clark Stone*, protecting the purpose of the Trail required accounting for “adverse visual effects” within “the vicinity” of the Trail. See Br. of Intervenor-Appellants Appalachian Trail Conference and National Parks Conservation Association, *Clark Stone Co., Inc. v. North Carolina Department of Environment and Natural Resources*, Case No. 02-CVS-001916, 2003 WL 23336740 (N.C. App.) (Appellate Brief), at 7-8 (filed July 9, 2003) (quoting the affidavit of the National Park Service’s Park Manager). The U.S. Forest Service in *Clark Stone* also conceded the importance of analyzing impacts beyond the limited footprint of the path alone, and “concluded that Clark Stone’s quarry did not meet the higher standard of scenic protection that the Forest Service demands because the mine is not ‘subordinate in the viewed landscape’” from the

Trail. *Id.* at 8-9 (quoting the U.S. Forest Service’s landscape architect).

With respect to the current controversy over the Atlantic Coast Pipeline, a former director of the National Park Service has similarly described the Appalachian Trail as a National Park System resource, noting that Petitioner Atlantic Coast Pipeline “wants to do something that has never been done in the half century since the iconic hiking path was enshrined in law: force a pipeline across the Appalachian Trail on federal land managed by the Forest Service.” See Jonathan Jarvis, *A Step Too Far for the Appalachian Trail*, POLITICO (Aug. 29, 2019) at <https://www.politico.com/agenda/story/2019/08/29/appalachian-trail-dominion-energy-000943>.

Importantly, Mr. Jarvis assumed that Petitioner’s approach would be to go to Congress to amend the law, rather than to this Court to re-interpret it: “To get its way, the company must persuade lawmakers to overturn a federal court decision and change a law that has protected important parts of the trail for almost 50 years. Congress should say no.” *Id.*

The Mineral Leasing Act, 30 U.S.C. §§ 185(a), 185(b)(1)-(3), and 185(c), grants the Secretary of the Interior authority to grant gas pipeline rights-of-way across “Federal lands”. 30 U.S.C. §185(a). “Federal lands” means “all lands owned by the United States except lands in the National Park System.” 30 U.S.C. 185(b)(1). Federal Petitioners’ curious argument is that the Trail is not “land” under these statutes for the purposes of the determining “lands in the National Park System,” but nevertheless *is* “land” for the purposes of granting pipeline rights-of-way across “Federal Lands.” See Br. of Federal Pet’rs, at 41. As the *Clark Stone* litigation

illustrates, Federal Petitioners' summation of the Trail is contradicted by the experience of those who use it and by the tourist economies of communities that rely on it. It is more than a mere footpath. It is a vital, national resource.

CONCLUSION

Amici Curiae City of Staunton and Nelson County, Virginia ask that the judgment of the U.S. Court of Appeals for the Fourth Circuit be affirmed.

Respectfully submitted,

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DATED: January 22, 2020

APPENDIX

I. Resolution R2014-67, Nelson County Board of Supervisors, Resolution in Opposition of the Atlantic Coast Pipeline (Adopted September 9, 2014):

WHEREAS, a joint venture led by Dominion has proposed a gas pipeline (Atlantic Coast Pipeline formerly Southeast Reliability Project) to run from West Virginia to North Carolina, crossing Nelson County from the Blue Ridge Mountains to the James River; and

WHEREAS, the proposed route through Nelson County traverses much of our most scenic, rugged, and undeveloped terrain; and

WHEREAS, the construction of the pipeline through the watershed of the Rockfish River would disturb and damage surface water resources at or near every stream crossing; and

WHEREAS, the construction and existence of a gas pipeline of the magnitude proposed would have a harmful effect on tourism, a critical component of the economy of Nelson County; and

WHEREAS, real estate along or near the proposed route would be adversely impacted, harming not only those property owners directly in the path of the pipeline, but also neighboring properties; and

WHEREAS, the building and continued presence of a gas pipeline through the county would impose a significant burden on local government resources including but not limited to our largely volunteer fire and rescue services; and

WHEREAS, Nelson County would not derive any perceptible benefit from the project sufficient to compensate us for the harm caused to property owners, tourism, natural resources, and the ongoing disruption of life in the county for a period of years.

NOW, THEREFORE, BE IT RESOLVED, that the Nelson County Board of Supervisors hereby firmly opposes the construction and operation of the Atlantic Coast Pipeline.

Adopted: September 9, 2014

Attest: Stephen A. Carter, Clerk, Nelson County Board of Supervisors

Available online at: <https://www.abralliance.org/wp-content/uploads/2019/03/Nelson-County-Resolution-9-9-2014.pdf>

II. Resolution of the Council of the City of Staunton, Virginia in Opposition to Atlantic Coast Pipeline (Adopted October 23, 2014):

WHEREAS, Dominion Virginia Power has entered into what the company describes as a joint venture with three other major U.S. energy companies—Duke Energy, Piedmont Natural Gas and AGL Resources—to build and own a natural gas pipeline which will traverse portions of three states, including 11 counties and two cities in the Commonwealth of Virginia; and

WHEREAS, the proposed project will pass in close proximity to a public water source and boundary of the City; and

WHEREAS, representatives of Dominion Virginia Power, upon the invitation of City Council of the City of Staunton, Virginia, made a presentation about the project to Council at its meeting on August 28, 2014, held at Robert E. Lee High School to accommodate an overflow audience; and

WHEREAS, reflective of the considerable public interest in the project, dozens of individuals at the meeting, through questions submitted to City Council and comments made during the public comment period, registered their strong opposition to the project, as proposed; and

WHEREAS, members of City Council share many of the concerns expressed by citizens of the City and desire, as a body, to express their opposition to the project.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Staunton, Virginia, that:

1. Council joins with other localities in the Commonwealth of Virginia, including the counties of Augusta and Nelson, in their expressions of concern about and opposition to the Atlantic Coast Pipeline.
2. Council opposes the construction of the Atlantic Coast Pipeline and urges Dominion Virginia Power and all others involved to reduce reliance on natural gas and to seek solutions for the 21st century, including conservation and renewable energy such as solar and wind power, that will satisfy future energy needs without imperiling the natural bounty and beauty of our region and the health and safety of our citizens.
3. In the event Dominion Virginia Power and its partners submit an application for construction of the Atlantic Coast Pipeline to the Federal Energy Regulatory Commission ("FERC"), Council, in the strongest possible terms, urges FERC to withhold approval of the project, on the basis that the natural gas to be transported is not believed to be required to serve the energy needs of Virginia or North Carolina (a significant portion of which can be satisfied by conservation and renewable energy sources) and,

therefore, the pipeline will neither serve the public interest nor satisfy the legal standard of “public convenience and necessity.”

4. Council respectfully requests that the Governor of Virginia reconsider his public endorsement of the Atlantic Coast Pipeline, and, after consultation with the City of Staunton and other localities that would be impacted by the project and consideration of risks to the environment (including threats to karst environments and water supplies locally in the Shenandoah Valley, elsewhere in the Commonwealth of Virginia and in the District of Columbia and the State of Maryland) and the state’s economy (including its agricultural and tourism sectors), oppose the project.

5. Council respectfully requests that Senator Mark Warner, Senator Tim Kaine and Congressman Bob Goodlatte join publicly in opposition to the project, communicate their opposition to FERC and take appropriate action to encourage FERC to withhold approval of the project.

6. In the event Dominion Virginia Power and its partners elect to proceed with the construction of the Atlantic Coast Pipeline, and the project is approved by FERC, Council implores Dominion Virginia Power and its partners to give full consideration to the use of existing utility and highway corridors for the project, so as to minimize, to the greatest extent possible, the impacts of construction, maintenance and operation of the project.

7. Council directs that the Clerk of Council send a copy of this resolution to Dominion Virginia Power, Senator Mark Warner, Senator Tim Kaine, Congressman Bob Goodlatte, Governor Terry McAuliffe and Cheryl A. Lafleur, Chairman of FERC.

Adopted this 23rd day of October, 2014.

Carolyn W. Dull, Mayor

Attest: Linda Little, Clerk of Council

Available online at: https://www.abralliance.org/wp-content/uploads/2019/03/City-of-Staunton-Resolution-10_23_2014.pdf