

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR BUCKINGHAM COUNTY**

**CARLOS AROSTEGUI,**

Plaintiff,

v.

**THE BUCKINGHAM COUNTY  
BOARD OF SUPERVISORS,**

and

**ATLANTIC COAST PIPELINE, LLC;**

Defendants.

Case No.

CL17000015-00

Received and Filed in  
Buckingham Circuit Court  
2/21/17 2:20 AM/PM  
D.C.

**COMPLAINT FOR DECLARATORY RELIEF**

This is an action seeking declaratory relief regarding the Buckingham County Board of Supervisors' issuance of a special use permit for a proposed natural gas transmission compressor station. Because the permit was issued in violation of the Buckingham County Zoning Ordinance and the Virginia Code, and because the Board's decision was unreasonable, arbitrary, capricious, not fairly debatable, and injurious to actual and justiciable property interests, Plaintiff Carlos Arostegui respectfully requests this Court declare the permit to be void. In support of this request, Mr. Arostegui states:

**PARTIES**

**A. Plaintiff Carlos Arostegui**

1. Carlos Arostegui is a resident of Buckingham County, Virginia. Mr. Arostegui owns, resides on, and operates Whispering Creek Farm, a cattle and dairy farm located on an approximately 184-acre tract of land in the County's James River District, described as Tax Map Section 91, Lot 23 in the County's records. Mr. Arostegui purchased this property on

October 31, 2003, and his decision to do so was largely influenced by his appreciation of the rural character of the area.

2. Mr. Arostegui's property is located approximately 2,175 feet from the parcel at issue in this action and in the underlying proceedings before the Buckingham County Planning Commission and Board of Supervisors.

**B. Defendants**

i. The Buckingham County Board of Supervisors

3. The Buckingham County Board of Supervisors is the governing body of Buckingham County, Virginia, and is comprised of seven Supervisors.
4. The Board is authorized to issue special use permits subject to the provisions of Title 15.2, Chapter 22 of the Code of Virginia and the provisions of the Buckingham County Zoning Ordinance. *See* Virginia Code §§ 15.2-2201, 15.2-2286(A)(3); Buckingham County Zoning Ordinance at 48.

ii. Atlantic Coast Pipeline, LLC

5. Atlantic Coast Pipeline, LLC, is a limited liability company organized and existing under the laws of the State of Delaware and created to develop, own, and operate the Atlantic Coast Pipeline, an approximately 564-mile-long interstate natural gas transmission pipeline system that includes an aboveground compressor station on a parcel (the Variety Shade Parcel) formerly owned by Variety Shade Landowners of Virginia, Inc.; located in the James River Magisterial District of Buckingham County, Virginia; and further described as Tax Map Section 91, Lot 60, containing approximately 68 acres.
6. Atlantic Coast Pipeline, LLC, is proposed to be a "natural gas pipeline company" within the meaning of the federal Natural Gas Act, 15 U.S.C. § 717, *et seq.*, and is therefore not a

public utility according to the Federal Energy Regulatory Commission (FERC). *See Transcontinental Gas Pipe Line Co.*, 141 FERC ¶ 61,091 (2012). Furthermore, Atlantic Coast Pipeline, LLC, is not now, nor will it be, engaged in the business of furnishing utility natural gas service or natural gas service to the general public. It is not regulated as to rates and service pursuant to Title 56 of the Code of Virginia. Furthermore, it is a foreign corporation under Article IX, Section 5 of the Constitution of Virginia, and is therefore not a public service company in the Commonwealth of Virginia.

7. The Plaintiffs believe that Atlantic Coast Pipeline, LLC, is or may be a person to be joined if feasible under Rule 3:12 of the Rules of the Supreme Court of Virginia and/or a necessary party to the proceedings under Virginia Code § 15.2-2314.

## **JURISDICTION AND VENUE**

### **A. Jurisdiction**

8. This Court has jurisdiction over declaratory judgment actions under Virginia Code § 8.01-184.
9. Furthermore, this Court has jurisdiction under Virginia Code § 15.2-2285(F) because this action was filed within thirty days of the Board's decision to grant a special exception.

### **B. Standing**

10. Mr. Arostegui possesses interests adversely impacted by the Board's issuance of the January 11, 2017 special use permit for the Buckingham Compressor Station, creating an actual and justiciable controversy.
11. Mr. Arostegui is aggrieved by the Board's issuance of a special use permit for the Buckingham Compressor Station. Mr. Arostegui resides on, owns, and works on real property in close proximity to the Variety Shade Parcel. Mr. Arostegui therefore has a

“direct, immediate, pecuniary, and substantial interest” in the Board’s decision to issue the permit.

12. As authorized by the special use permit, the Buckingham Compressor Station will harm Mr. Arostegui’s personal and/or property rights and will impose burdens on him and his property different from any burdens suffered by the general public. These harms include diminution in property value; difficulty in selling or leasing his property; and interferences with his legitimate use and enjoyment of his property due to, among other things: increased noise audible on his property, physical trespass of pollutants onto his property, increased risk of health problems due to inhalation of pollutants on his property, intrusion of obnoxious odors onto his property, increased exposure to risk of personal and property damage by fire or explosion, increased farm and/or homeowners’ insurance premiums, adverse impacts to viewsheds from his property, and/or adverse impacts to the rural and agrarian character of the area surrounding his property.
13. The harms identified above in paragraph 12 would affect only landowners and residents in relative proximity to the proposed Buckingham Compressor Station and are therefore not injuries shared by the general public.
14. Furthermore, the harms identified above in paragraph 12 are more severe for properties, like Mr. Arostegui’s, that are used for agricultural and other outdoor activities or that would be marketed toward buyers interested in those activities.
15. The harms identified above in paragraph 12 result from the particular use of the Variety Shade Parcel for a gas transmission facility like the Buckingham Compressor Station. As contrasted with public utility booster stations, gas transmission compressor stations are significantly larger, operate at a significantly higher horsepower, produce significantly

more noise, emit significantly higher levels of pollution, and are less commonly associated with rural and agricultural areas. Furthermore, transmission pipelines like those served by the Buckingham Compressor Station are larger in diameter and operate under much higher pressures compared to pipelines operated by local distribution companies and other gas utilities. As such, the harms and potential harms identified above in paragraph 12 would be avoided or substantially mitigated if the Variety Shade Parcel were used for an actual “public utility booster or relay station” rather than a natural gas transmission compressor station.

16. In addition to the harms discussed above, Atlantic Coast Pipeline, LLC, proposes to install components of its transmission pipeline under Mr. Arostegui’s property. Mr. Arostegui has not granted and does not intend to voluntarily grant an easement permitting the installation of those components. As such, Mr. Arostegui alleges, upon information and belief, that Atlantic Coast Pipeline, LLC, will seek to acquire an easement through eminent domain proceedings, which would encumber his property so as to allow the installation and operation of underground components. Mr. Arostegui further alleges, upon information and belief, that if the Buckingham Compressor Station were to be constructed and operated on an appropriately-zoned parcel rather than on the Variety Shade Parcel, Atlantic Coast Pipeline, LLC, would be required to reroute its transmission pipeline and that any revised route would not require the installation of components on his property. As such, construction and operation of the Buckingham Compressor Station on the Variety Shade Parcel is a but-for cause for the seizure and/or encumbering of his property through eminent domain. The Board’s approval of the proposed Station is therefore a but-for cause of a particularized harm to Mr. Arostegui’s property rights.

17. In addition, Mr. Arostegui is a Buckingham County taxpayer with standing to challenge the Board's *ultra vires* action.

**C. Venue**

18. Venue is proper in this Court under Virginia Code § 15.2-2285(F) because the Court has jurisdiction over the land affected by the challenged decision.
19. Venue is also proper in this Court under Virginia Code §§ 8.01-185 and 8.01-262 because the Board's principal office is located in Buckingham County and the causes of action arose in Buckingham County.

**LEGAL FRAMEWORK**

**A. Dillon's Rule**

20. Under Virginia law, county governments have only those powers that are: (a) expressly granted to them by the General Assembly, (b) necessarily or fairly implied from such express grants, or (c) are essential and indispensable. *Commonwealth v. County Board of Arlington*, 217 Va. 558, 574, 232 S.E. 2d 30, 40 (1977).
21. If there is any reasonable doubt whether a county government has a certain power, the doubt must be resolved against the county government. *Sinclair v. New Cingular Wireless PCS*, 283 Va. 567, 576, 727 S.E. 2d 40, 44 (2012).

**B. The Virginia Planning, Subdivision of Land, and Zoning Act**

22. The Virginia Planning, Subdivision of Land, and Zoning Act, Virginia Code §§ 15.2-2200, *et. seq.*, (the Zoning Act) "is intended to encourage localities to improve the public health, safety, convenience, and welfare of their citizens and to plan for the future development of communities" in order, in relevant part, "that the need for mineral resources and the needs of agriculture, industry, and business be recognized in future growth; . . . that residential areas be provided with healthy surroundings for family life; that agricultural and forestal

land be preserved; and that the growth of the community be consonant with the efficient and economical use of public lands.” Virginia Code § 15.2-2200.

i. Article 2 – Local Planning Commissions

23. The Zoning Act authorizes county governments to establish local planning commissions “in order to promote the orderly development of the locality and its environs” by “serv[ing] primarily in an advisory capacity to the governing bod[y].” Virginia Code § 15.2-2210.

ii. Article 3 – The Comprehensive Plan

24. The Zoning Act requires that a local planning commission “prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction” and that every governing body of a locality “adopt a comprehensive plan for the territory under its jurisdiction.” Virginia Code § 15.2-2223(A).
25. A comprehensive plan must include “the locality’s long-range recommendations for the general development of the territory covered by the plan”—including the “designation of areas for various types of public and private development and use, such as different kinds of residential, including age-restricted, housing; business; industrial; agricultural; mineral resources; conservation; active and passive recreation; public service; flood plain and drainage; and other areas.” Virginia Code § 15.2-2223(C).
26. Once a locality adopts a comprehensive plan, “no . . . public utility facility or public service corporation facility other than a railroad facility or an underground natural gas or underground electric distribution facility of a public utility as defined in subdivision (b) of § 56-265.1 within its certificated service territory, whether publicly or privately owned, shall be constructed, established, or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by

the [local planning] commission as being substantially in accord with the adopted comprehensive plan or part thereof.” Virginia Code § 15.2-2232(A).

27. Once the local planning commission has made a determination as to the accordance or non-accordance of the public utility facility with the comprehensive plan, the commission must “communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefor.” Virginia Code § 15.2-2232(B).

28. The governing body may then overrule the local planning commission’s determination by a vote of a majority of the governing body’s membership. Virginia Code § 15.2-2232(B).

iii. Article 7 – Zoning

29. The Zoning Act also authorizes the governing bodies of local governments to divide the territory under their jurisdiction into districts of such number, shape, and area as it may deem best to carry out the purposes of zoning and to “regulate, restrict, permit, prohibit, and determine” both (a) the “use of land, buildings, structures and other premises for agricultural, business, industrial, residential, flood plain and other specific uses” and (b) the “size, height, area, bulk, location, erection, construction, reconstruction, alteration, repair, maintenance, razing, or removal of structures.” Virginia Code § 15.2-2280.

30. The Zoning Act defines a “special exception” as “a special use that is not permitted in a particular district except by a special use permit granted under the provisions of th[e Zoning Act] and any zoning ordinances adopted” under the Act. Virginia Code § 15.2-2201.

31. Under Virginia law, the terms “special exception” and “special use permit” are interchangeable. *Board of Supervisors of Fairfax County v. Southland Corp.*, 224 Va. 514, 521, 297 S.E. 2d 718, 721 (1982).



32. The Zoning Act allows counties to include within zoning ordinances “reasonable regulations and provisions . . . [f]or the granting of special exceptions under suitable regulations and safeguards.” Virginia Code § 15.2-2286(A)(3).
33. One of the “reasonable regulations and provisions” a county can include in its zoning ordinance is a provision reserving unto the county’s governing body “the right to issue . . . special exceptions.” Virginia Code § 15.2-2286(A)(3).
34. However, a county’s governing body cannot issue a special exception in violation of the applicable zoning ordinance. Any such special exception is, as a matter of law, “arbitrary and capricious, and not fairly debatable, thereby rendering [it] void and of no effect.” *Newberry Station Homeowners Association v. Board of Supervisors of Fairfax County*, 285 Va. 604, 621, 740 S.E.2d 548, 557 (quoting *Renkey v. Arlington County Board*, 272 Va. 369, 376, 634 S.E.2d 352, 356 (2006)). Any action by the governing body on a special use permit application “must be taken within the framework of the zoning ordinances and state statutes on zoning.” *Cole v. City Council of Waynesboro*, 218 Va. 827, 838, 241 S.E. 2d 765, 772 (1978).

### **C. The Buckingham County Comprehensive Plan**

35. On or about September 14, 2015, the Buckingham County Board of Supervisors adopted the Buckingham County Comprehensive Plan 2015 – 2020.
36. The Comprehensive Plan states that rural, agricultural, and forestry areas “are located the furthest distance from the County’s centralized public services, creating public safety concerns about dangerously long response times for fire, rescue, and law enforcement.” Comprehensive Plan at 187.

37. The Comprehensive Plan also states that “[p]rotecting and preserving farmland, forest uses, livestock operations, wetlands, significant wildlife habitats, and water resources are of primary importance” in rural, agricultural, and forestry areas. Comprehensive Plan at 187.

**D. The Buckingham County Zoning Ordinance**

38. The Buckingham County Board of Supervisors has enacted the Buckingham County Zoning Ordinance under Virginia Code § 15.2-2280.

39. The Zoning Ordinance provides that its “stated and express purpose [is] to create land use regulations which shall encourage the realization and implementation of the Comprehensive Plan.” Buckingham County Zoning Ordinance at 8. “To this end, development is: to be encouraged to take place in clusters to promote efficient and cost effective use of land; to be situated so as to make possible future economies in the provision of services by the public and private sections; and to be so located as to protect the watershed, protect surface and groundwater supplies, discourage development in flood plains, wetlands, and conservation areas.” *Id.*

40. Consistent with these purposes, the Buckingham County Zoning Ordinance divides the County into fourteen distinct zoning districts, two of which are relevant in this action.

i. District 1 — Agricultural District (A-1)

41. The Buckingham County Zoning Ordinance establishes District 1 — Agricultural District (A-1) “for the purpose of preserving and promoting rural land uses. These include forestall lands, areas significant for the environment such as lakes, reservoirs, streams, parks, and less intensive farming operations that are more traditional in character.” Buckingham County Zoning Ordinance at 9.

42. The Zoning Ordinance provides that the A-1 Agricultural District is “established for the

purpose of facilitating existing and future farm operations traditionally found in Buckingham County; preserving farm and forest lands; conserving water and other natural resources; reducing soil erosion; preventing water pollution; protecting watersheds; and reducing hazards from flood and fire.” Buckingham County Zoning Ordinance at 9.

43. The Buckingham County Zoning Ordinance states that the intent of the Board in establishing the A-1 Agricultural District is “to discourage the random scattering of residential, commercial, or industrial uses.” Buckingham County Zoning Ordinance at 9.
44. The A-1 Agricultural District is an “inclusive” district, meaning it “permits only those [land] uses specifically named” therein. *See Board of Supervisors of Madison County v. Gaffney*, 244 Va. 545, 550, 422 S.E. 2d 760, 763 (1992). Accordingly, “the burden is on the property owner to show that the use he proposes is one that is included or permitted” within the District. *Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County*, 271 Va. 336, 349, 626 S.E. 2d 374, 382 (2006).
45. The Buckingham County Zoning Ordinance provides that “public utility booster or relay stations” is a use permitted in the A-1 Agricultural District by “a Special Use Permit following recommendation by the Planning Commission in accordance with [the Buckingham Zoning Ordinance] and the Code of Virginia.” Buckingham County Zoning Ordinance at 11–12.
46. The Buckingham Zoning Ordinance does not list “gas transmission facility” or “non-utility booster station,” as a use permitted by right or by special use permit within the A-1 Agricultural District.

ii. District 6 — Industrial District–Heavy (M-2)

47. The Buckingham Zoning Ordinance establishes District 6 — Industrial District–Heavy

(M-2) to authorize “industries which have a public nuisance potential and will be subject to intensive review for locational impact on surrounding land uses and environment.” Buckingham County Zoning Ordinance at 35.

48. The Buckingham Zoning Ordinance provides that “Oil Gas Transmission Facility” is a use “permitted only by special use permit” in the M-2 Heavy Industrial District. Buckingham County Zoning Ordinance at 36.

iii. Permitting Procedures

49. The Buckingham County Zoning Ordinance requires that all “[b]uildings or structures shall be started, reconstructed, enlarged, or altered only after a zoning permit has been obtained” from the County Zoning Administrator. Buckingham County Zoning Ordinance at 48.
50. “If[,] in the Administrator’s judgment, the proposed construction constitutes a special use for the district in which the construction lies, the application for a zoning permit shall be referred to the Planning Commission, which shall meet within 30 days to consider the application. A public hearing shall be held at which parties in interest and citizens shall have an opportunity to be heard.” Buckingham County Zoning Ordinance at 49. “The Commission shall transmit a recommendation based on its consideration of the application to the Board of Supervisors not more than 30 days after the public hearing(s).” *Id.* The County Board of Supervisors shall then “hold a public hearing and shall either approve or deny the application.” *Id.*
51. The Buckingham Zoning Ordinance provides that if, on the other hand, “a use is not specifically permitted and an application is made by a property owner to the Administrator for such use, the Administrator shall refer the application to the Planning Commission which shall make its recommendations to the governing body within sixty (60) days. If the recommendation of the Planning Commission is approved by the governing body, the

ordinance shall be amended to list the use as a permitted use in that district, henceforth. Both the Planning Commission and Board of Supervisors shall hold a public hearing after advertising in accordance with [Virginia Code] Section 15.2-2204.” Buckingham County Zoning Ordinance at 49.

52. Section 15.2-2204 requires that any amendments to a zoning ordinance be advertised “once a week for two successive weeks in some newspaper published or having general circulation in the locality.” Such an advertisement must include a “descriptive summary of the proposed action and a reference to the place or places within the locality where copies of the proposed . . . amendment[ ] may be examined.”

#### **E. The Virginia Declaratory Judgments Act**

53. The Virginia Declaratory Judgments Act, Virginia Code §§ 8.01-184, *et seq.*, authorizes circuit courts to “make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed.” Virginia Code § 8.01-184. These adjudications may include resolving “[c]ontroversies involving the interpretation of . . . statutes, municipal ordinances and other governmental regulations.” *Id.*
54. The Declaratory Judgments Act allows circuit courts to grant “further relief based on a declaratory judgment order or decree . . . whenever necessary or proper.” Virginia Code § 8.01-186.

### **FACTUAL BACKGROUND**

#### **A. Background on the Natural Gas Pipeline System**

55. The United States’ natural gas pipeline system is comprised of three distinct industries:
- a. Production, which includes gathering systems that transport raw natural gas from production wells to processing plants or larger transmission systems;

- b. Transmission, which includes high-pressure, large diameter pipelines, compressor stations, and metering facilities that connect field production and processing operations with local distribution companies; and
- c. Distribution, which includes smaller-diameter pipelines for mains and services and other infrastructure to receive high-pressure gas from transmission pipeline, reduce the pressure, and deliver the gas to end-use consumers.

The United States Department of Commerce categorizes those three industries as separate and distinct industries—belonging to separate and distinct industrial groups, subsectors, and sectors—in its North American Industry Classification System (NAICS), the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data.

- 56. Transmission pipeline systems operate on a much larger scale than distribution pipeline systems. As compared to distribution pipeline systems, transmission pipelines are much larger in diameter and operate under much higher pressures.
- 57. Gas production, transmission, and distribution systems all use compressor or “booster stations” to varying degrees. These stations are comprised of equipment that helps adjust the pressure and flow of gas through a pipeline system and auxiliary equipment and buildings associated with that task.
- 58. While both gas transmission systems and gas distribution systems may include booster stations, booster stations associated with gas distribution systems are much smaller than those used in interstate gas transmission systems. Distribution booster stations also produce lower levels of noise and air pollution than transmission booster stations. In addition, distribution booster stations don’t typically include large supervisory control and data

acquisition (SCADA) system towers, like those associated with transmission booster stations.

59. Due to their larger size, higher levels of noise and air pollution, and greater impact to viewsheds, gas transmission compressor stations have a much higher nuisance potential than gas distribution booster stations.
60. Because they distribute natural gas to end-use consumers, natural gas distribution networks in Virginia provide utility gas service and are operated by public utilities. Conversely, natural gas transmission pipelines are not considered “public utilities” under state and local laws. *City of San Benito v. Kinder Morgan Texas Pipeline*, 411 F. Supp. 2d 683, 688 (S.D. Texas 2006) (gas pipeline that was “not a local distribution line . . . serv[ing] the residents” of city was not a “public utility” under city’s ordinance); *Transcontinental Gas Pipe Line Co.*, 141 FERC ¶ 61,091 (November 2, 2012) (interstate natural gas transmission pipelines are not public utilities and are therefore exempt from state laws regarding public utilities).

#### **B. The Proposed Atlantic Coast Pipeline**

61. Atlantic Coast Pipeline, LLC, is currently seeking approval from the Federal Energy Regulatory Commission (FERC) to construct the Atlantic Coast Pipeline—described in filings before FERC as “a proposed interstate natural gas transmission system that will serve the growing energy needs of multiple public utilities and local distribution companies in Virginia and North Carolina.”
62. In filings before FERC, Atlantic Coast Pipeline, LLC, has stated that the Pipeline will transmit natural gas through pipes up to 42 inches in diameter and under pressures up to 1,400 pounds per square inch gauge (psig).

63. The Pipeline’s customers are all electric generation or local gas distribution companies in North Carolina and Virginia. The Pipeline will not furnish natural gas to the general public, nor are members of the general public entitled as a matter of right to use the Pipeline’s facilities. Although Atlantic Coast Pipeline, LLC, has suggested the Pipeline may also indirectly provide natural gas to specific, industrial users, proposals to do so have included the provision of natural gas to those industrial users by local distribution companies or other natural gas utilities rather than by Atlantic Coast Pipeline, LLC, itself.
64. The Pipeline’s rates will not be regulated the Virginia State Corporation Commission, nor will the pipeline be a “public service company” under Virginia law.
65. As proposed, the Pipeline will be a “non-utility gas service”—rather than a “natural gas utility”—under the Virginia Utility Facilities Act, Virginia Code §§ 56-265.1, *et seq.*
66. FERC has not issued a certificate of public convenience and necessity approving the Pipeline project.

**C. The Proposed Buckingham County Compressor Station**

67. As part of the Pipeline project, Atlantic Coast Pipeline, LLC, has proposed to construct and operate a compressor station on the Variety Shade Parcel, which is located within the Buckingham County Zoning Ordinance’s A-1 Agricultural District and is approximately 2,175 feet from Mr. Arostegui’s property.
68. As proposed, the Buckingham Compressor Station would house multiple natural gas-fired turbines with a combined horsepower of up to 55,000 under standard conditions.
69. In addition to the natural gas-fired turbines, the Buckingham Compressor Station proposal includes various buildings, an auxiliary generator, a tank farm, multiple gas coolers,



multiple gas heaters, blow-down and exhaust silencers, a pipeline launcher and receiver, multiple filters/separators, and a microwave communications tower.

70. Atlantic Coast Pipeline, LLC, has not disclosed the size of the microwave communications tower associated with the Buckingham Compressor Station, stating elsewhere that “design of [its] microwave tower network is still under design.”
71. According to filings before FERC and the Virginia Department of Environmental Quality, the proposed Buckingham Compressor Station would emit up to 50.2 tons per year of nitrogen oxides, 95.2 tons per year of carbon monoxide, 32.7 tons per year of volatile organic compounds, 7.33 tons per year of sulfur dioxide, 43.9 tons per year of particulate matter, and 5.63 tons per year of other air pollutants categorized as “hazardous air pollutants” (HAPs) under the Clean Air Act, 42 U.S.C. §§ 7401, *et seq.*, or as “air toxics” under the Virginia State Air Pollution Control Law, Virginia Code §§ 10.1-1300, *et seq.*
72. Nitrogen oxides and volatile organic compounds react in the presence of sunlight to form ground-level ozone, which can trigger a variety of health problems including chest pain, coughing, throat irritation, and airway inflammation. It can also reduce lung function; harm lung tissue; and worsen bronchitis, emphysema, and asthma, leading to increased medical care. People most at risk from breathing air containing ozone include people with asthma, children, older adults, and people who are active outdoors, especially outdoor workers like Mr. Arostegui.
73. Carbon monoxide can cause harmful health effects by reducing oxygen delivery to organs, including the heart and brain, and tissues. For people with a reduced capacity for pumping oxygenated blood to the heart due to various forms of heart disease, short-term exposure to

carbon monoxide further affects their body's already-compromised ability to respond to the increased oxygen demands of exercise or exertion.

74. Particulate matter is comprised of microscopic solids or liquid droplets small enough to be inhaled and introduced into the lungs or bloodstream, potentially causing serious health problems. Particulate matter pollution may also cause reduced visibility.
75. HAPs and air toxics are air pollutants reasonably anticipated to result in an increase in mortality or an increase in serious, irreversible, or incapacitating reversible, illness. The HAP most commonly associated with combustion of natural gas is formaldehyde, a carcinogen and a skin, eye, nose, and throat irritant.
76. The air pollutants emitted by the Buckingham Compressor Station will physically trespass onto Mr. Arostegui's property, and operation of the Station will increase the concentration of air pollutants on Mr. Arostegui's property.
77. According to filings before FERC and documents produced by FERC, the Buckingham Compressor Station will also result in an increase in audible noise at nearby residences.
78. According to documents produced by FERC, transmission compressor stations like the Buckingham Compressor Station are "industrial facilit[ies]" that may negatively impact the character of an "agricultural/residential" or "rural residential area." *See Millenium Pipeline Company, LLC*, 140 FERC ¶ 61,045 (2012); Environmental Assessment for the Minisink Compressor Project, FERC Docket No. CP11-515-000 (2012). In addition, FERC recognizes that compressor stations associated with natural gas transmission pipelines generally "result in permanent change in the visual appearance of the project areas and result in long-term impacts on visual resources." *Id.* at 21.

79. Documents produced by FERC also recognize “the general potential for property values to be negatively impacted by the construction of nearby energy infrastructure” and that “proximity to [a] proposed compressor station could have an impact on property values.” *Millenium Pipeline Company, LLC*, 140 FERC ¶ 61,045 (2012).
80. While the Buckingham County Comprehensive Plan does refer to the proposed Atlantic Coast Pipeline, it does not mention a compressor station or any aboveground facilities associated with the Pipeline, and no such feature is shown on the adopted master plan or any part thereof.

#### **D. Procedural History**

##### **i. The Special Use Permit Application**

81. On or about July 6, 2016, Atlantic Coast Pipeline, LLC, submitted an “Application for a Special Use Permit” to the Buckingham County Zoning Administrator for a “Natural Gas Compressor Station and associated appurtenances” on the Variety Shade Parcel and within the Buckingham County Zoning Ordinance’s A-1 Agricultural District. The Special Use Permit Application did not state the designated special land use under which the request was made.
82. On or about August 22, 2016, the Zoning Administrator referred the Special Use Permit Application to the Buckingham County Planning Commission as Case No. 16-SUP236, noting that “[t]he Agriculture District (A-1) requires that utility generating, boosting, relaying, etc. stations must obtain a [special use permit].”

##### **ii. Proceedings Before the Planning Commission**

83. On September 26, 2016, the Buckingham County Planning Commission convened a public hearing on Case No. 16-SUP236.

84. The Planning Commission reconvened its public hearing on October 17, 2016, and again on October 24, 2016.
85. Mr. Arostegui appeared in person before the Planning Commission at its October 17, 2016 hearing, commenting that the proposed Station was not a land use permitted in the A-1 Agricultural District and that the County could therefore grant the permit application only if the Station was to be located in an area designated as part of the M-2 Heavy Industrial District. Other members of the public provided similar comments to the Planning Commission at the September 26, October 17, and October 24, 2016 hearings, noting that the proposed Station was not a “public utility booster or relay station” but was instead a “gas transmission facility.”
86. On November 21, 2016, the Planning Commission voted to transmit a recommendation to the Board of Supervisors to approve the permit application in Case No. 16-SUP236. In so deciding, the Planning Commission did not address the comments provided by Mr. Arostegui and others regarding the facility’s status as a “gas transmission facility” rather than a “public utility booster or relay station” or regarding Atlantic Coast Pipeline, LLC’s status as a “non-utility gas service provider” rather than a “public utility.”

iii. Proceedings Before the Board of Supervisors

87. On January 5, 2017, the Board of Supervisors convened a public hearing on Case No. 16-SUP236. Multiple members of the public again advised the Board that the proposed Station was not a “public utility booster or relay station” and, therefore, was not a permitted use in the A-1 Agricultural District.
88. At the conclusion of the January 5, 2017 hearing, the Board voted to issue the special use permit. The Board did not address the comments provided by Mr. Arostegui and others regarding the facility’s status as a “gas transmission facility” rather than a “public utility

booster or relay station” or regarding Atlantic Coast Pipeline, LLC’s status as a “non-utility gas service provider” rather than a “public utility.”

iv. The Final Permit

89. On or about January 11, 2017, the Board of Supervisors issued a special use permit to Atlantic Coast Pipeline, LLC, permitting the “construction and operation of a Compressor Station on tax map 91-60.”
90. The special use permit provides that the “only use of the property shall be compression, measurement and regulation of natural gas and its transfer above ground and underground, except that a Microwave Tower shall be permitted provided a separate [special use permit] is approved by the Board.”
91. The special use permit also provides, however, that “[n]othing in this approval shall be deemed to obligate the County to . . . grant any permits or approvals except as may be directly related hereto, i.e. microwave tower.”
92. The special use permit states that, aside from the “compression, measurement and regulation of natural gas and its transfer above ground and underground” and aside from a microwave tower, “[n]o *other non A-1 use* shall be made of the property.” (Emphasis added).
93. The County has issued no other formal authorization or approval of the proposed Buckingham Compressor Station, including any authorization or approval under Virginia Code § 15.2-2232.

## CLAIMS FOR RELIEF

### FIRST CLAIM FOR RELIEF:

#### VIOLATION OF THE BUCKINGHAM COUNTY ZONING ORDINANCE

94. The Plaintiffs incorporate by reference all allegations contained above in paragraphs 1 through 93.
95. The A-1 Agricultural District of the Buckingham County Zoning Ordinance is an inclusive zoning district, meaning that the Ordinance “permits only those [land] uses specifically named” in the relevant provisions of the Ordinance. *See Board of Supervisors of Madison County v. Gaffney*, 244 Va. 545, 550, 422 S.E. 2d 760, 763 (1992).
96. The Buckingham County Zoning Ordinance permits “public utility booster or relay stations” within the A-1 Agricultural District, provided the applicant receives a special exception from the Board.
97. The proposed Buckingham Compressor Station is not a “public utility booster or relay station” because Atlantic Coast Pipeline, LLC, is not a public utility and because the Station is not a component of a public utility distribution system or other system providing utility gas service under Virginia law. The proposed Buckingham Compressor Station is, instead, a non-public utility booster station and/or a gas transmission facility.
98. The Buckingham Zoning Ordinance does not permit gas transmission facilities within the A-1 Agricultural District—either by right or by special permit from the Board of Supervisors. The Ordinance permits those facilities only by special permit in the M-2 Heavy Industrial District.
99. The Buckingham Zoning Ordinance does not permit non-public utility booster or relay stations within the A-1 Agricultural District—either by right or by special permit from the Board of Supervisors.

100. Accordingly, the proposed use of the Variety Shade Parcel within the A-1 Agricultural District for the operation and construction of the Buckingham Compressor Station is an unpermitted use under the Zoning Ordinance.

101. The Board therefore violated the Zoning Ordinance by issuing the January 11, 2017 special use permit for the Buckingham Compressor Station.

**SECOND CLAIM FOR RELIEF:**

**ULTRA VIRES ACTION ON SPECIAL USE PERMIT APPLICATION**

102. The Plaintiffs incorporate by reference all allegations contained above in paragraphs 1 through 101.

103. Virginia Code § 15.2-2201 requires that the Board grant special use permits only according to “the provisions of [the Zoning Act] and any zoning ordinances adopted” under the Act.

104. The General Assembly has not granted the Board the authority to grant special use permits that violate the provisions of the Zoning Act or the provisions of any zoning ordinances adopted under the Act.

105. The Buckingham County Zoning Ordinance is a zoning ordinance adopted under the Zoning Act. The Board is therefore authorized to grant special use permits only according to the provisions of the Zoning Ordinance:

106. As detailed above in paragraphs 95 through 101, the Zoning Ordinance does not permit the issuance of a special use permit for a non-public utility booster or relay station or for a gas transmission facility within the A-1 Agricultural District.

107. The Board therefore exceeded the powers granted to it under Virginia Code § 15.2-2201 by issuing the January 11, 2017 special use permit for the proposed Buckingham Compressor

Station—which is a non-public-utility booster or relay station and/or a gas transmission facility—within the A-1 Agricultural District.

108. The Board also exceeded the powers granted to it under Virginia Code § 15.2-2201 by failing to follow the Zoning Ordinance’s procedures for authorizing a land use that is not specifically permitted within the proposed zoning district.

109. In the alternative—and assuming *arguendo* that the Buckingham Compressor Station *is* a public utility booster station—the Board exceeded the powers granted to it under Virginia Code § 15.2-2201 by issuing the special use permit in violation of the Zoning Act’s requirement that no public utility facility be authorized unless: (A) the “general location or approximate location, character, and extent thereof has been submitted to and approved by the [local planning] commission as being substantially in accord with the adopted comprehensive plan or part thereof”; (B) the local planning commission “communicate[s] its findings to the governing body . . . with written reasons therefor”; and (C) the governing body approves the facility. *See* Virginia Code § 15.2-2232.

110. The Board’s issuance of the January 11, 2017 special use permit was therefore an *ultra vires* act and the permit is void *ab initio*. *See School Board of Amherst County v. Burley*, 255 Va. 376, 378–79, 302 S.E.2d 53, 55 (1983).

### **THIRD CLAIM FOR RELIEF:**

#### **UNREASONABLE, ARBITRARY, CAPRICIOUS, AND NOT FAIRLY DEBATABLE ACTION ON SPECIAL USE PERMIT APPLICATION**

111. The Plaintiffs incorporate by reference all allegations contained above in paragraphs 1 through 110.

112. As detailed above in paragraphs 95 through 101, Atlantic Coast Pipeline’s permit application failed to meet the requirements of the Buckingham County Zoning Ordinance



for the issuance of a special use permit in the A-1 Agricultural District. The Board's issuance of the January 11, 2017 special use permit for the Buckingham Compressor Station was therefore unreasonable, arbitrary, capricious, and not fairly debatable. *Newberry Station Homeowners Association v. Board of Supervisors of Fairfax County*, 285 Va. 604, 621, 740 S.E.2d 548, 557 (quoting *Renkey v. Arlington County Board*, 272 Va. 369, 376, 634 S.E.2d 352, 356 (2006)).

113. Furthermore, the Board's issuance of the January 11, 2017 special use permit for the Buckingham Compressor Station was unreasonable, arbitrary, capricious, and not fairly debatable because the Board could not assess the impact of the Station on the property values of nearby properties, the impact of the Station on the viewsheds from nearby properties, the impact of the Station on the nature and character of the surrounding area, and the Station's conformity with the Buckingham County Comprehensive Plan without further information on the proposed microwave communication tower—including, notably, the tower's height and, therefore, how visible it would be from nearby properties and other surrounding viewpoints.

114. Furthermore, the Board's issuance of the January 11, 2017 special use permit for the Buckingham Compressor Station was unreasonable, arbitrary, capricious, and not fairly debatable because the applicant failed to carry its burden of "show[ing] that the use [it] propose[d] is one that is included or permitted" in the A-1 Agricultural District by the Buckingham County Zoning Ordinance. *See Board of Supervisors of Fairfax County v. Board of Zoning Appeals of Fairfax County*, 271 Va. 336, 349, 626 S.E. 2d 374, 382 (Va. 2006). Atlantic Coast Pipeline, LLC, failed to provide the Planning Commission or the Board with any evidence, testimony, or other statement suggesting either (a) that it was a

public utility or (b) that its proposed Buckingham Compressor Station was a *public utility* booster station as opposed to a natural gas transmission booster station.

115. Furthermore, the Board's issuance of the January 11, 2017 special use permit for the Buckingham Compressor Station was unreasonable, arbitrary, capricious, and not fairly debatable because neither the Planning Commission nor the Board addressed the fact that the applicant's proposed use was not a "public utility" booster station—a deficiency raised by public commenters, including Mr. Arostegui, in both written and oral comments to both bodies. See *Motor Vehicle Manufacturers Association v. State Farm Mutual Auto Insurance*, 463 U.S. 29, 43 (1983) (action is arbitrary and capricious if it "entirely fail[s] to consider an important aspect of the problem"). See also *Perez v. Mortgage Bankers Association*, 135 S. Ct. 1199, 1203 (2015) (requirement that legislative action be subject to public comment includes requirement that decisionmaker "consider and respond to significant comments received during the period for public comments").

116. Because, as detailed above in paragraphs 112 through 115, the Board's issuance of the January 11, 2017 special use permit for the Buckingham Compressor Station was unreasonable, arbitrary, capricious, and not fairly debatable, the Board's decision and the permit are void and of no effect. *Newberry Station Homeowners Association v. Board of Supervisors of Fairfax County*, 285 Va. 604, 621, 740 S.E.2d 548, 557 (quoting *Renkey v. Arlington County Board*, 272 Va. 369, 376, 634 S.E.2d 352, 356 (2006)).

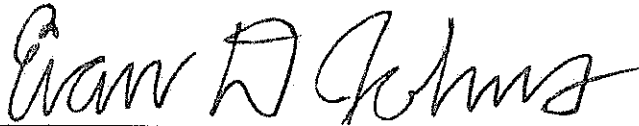
### **RELIEF REQUESTED**

Based on the facts and law discussed above, Mr. Arostegui respectfully asks this Court to:

- (a) declare that the proposed Buckingham Compressor Station is not a public utility booster station and is not among the land uses permitted in the A-1 Agricultural Zoning District by the Buckingham County Zoning Ordinance;

- (b) declare that the Board of Supervisors acted beyond the scope of its authority by issuing the January 11, 2017 special use permit for the Buckingham Compressor Station in violation of the Buckingham County Zoning Ordinance and the Zoning Act;
- (c) declare that the Board of Supervisors acted arbitrarily, capriciously, and beyond fair debate as to reasonableness in issuing the January 11, 2017 special use permit for the Buckingham Compressor Station in violation of the Buckingham County Zoning Ordinance and without further information about the microwave communications tower associated with the Station;
- (d) declare that the January 11, 2017 special use permit for the Buckingham Compressor Station is *void ab initio*, or otherwise vacate, void, nullify, invalidate, or revoke the permit; and
- (e) grant any other relief this Court deems appropriate.

Respectfully submitted,



**EVAN D. JOHNS** (Virginia State Bar No. 89285)  
**ISAK HOWELL** (Virginia State Bar No. 75011)  
APPALACHIAN MOUNTAIN ADVOCATES  
415 Seventh Street Northeast  
Charlottesville, Virginia 22902  
Telephone: (434) 529-6787  
Facsimile: (304) 645-9008  
Email: [ejohns@appalmad.org](mailto:ejohns@appalmad.org)  
[ihowell@appalmad.org](mailto:ihowell@appalmad.org)

*Counsel for Carlos Arostegui*