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Linda Reeves  
Dept. of Environmental Protection  
3900 Commonwealth Blvd., MS 500  
Tallahassee, FL 32399-3000

Jim Byard, Jr.  
Dept. of Economic & Community Affairs  
P.O. Box 5690  
Montgomery, AL 36103-5690

Becky Kelley  
Dept. of Natural Resources  
2600 Hwy 155 SW, Suite C  
Stockbridge, GA 30281

Dr. Sam Polles  
Dept. of Wildlife, Fisheries and Parks  
P.O. Box 451, 1505 Eastover Drive  
Jackson, MS 39211-6374

**Re: Ensuring pipeline compliance with all Land and Water Conservation Fund requirements, starting with the Sabal Trail and Magnolia Extension projects**

Dear LWCF State Liaison Officers:

The undersigned groups<sup>1</sup> urge you to take swift action to ensure that existing pipelines and new pipeline proposals comply with all Land and Water Conservation Fund (“LWCF”) requirements.<sup>2</sup> As you know, the LWCF State Assistance Program (“LWCF Program”) has provided over 4 billion dollars<sup>3</sup> and other federal assistance to protect land for public outdoor recreation across the country. In Alabama, Florida, Georgia, and Mississippi, pipeline projects now threaten that investment. Specifically, in your states, at least 11 LWCF-funded areas, including popular state and local parks, are in the crosshairs of the connected Sabal Trail<sup>4</sup> and Magnolia Extension projects. Yet, to our best knowledge, no one is ensuring LWCF compliance by such projects. Going forward this needs to be prioritized to protect the public’s significant investment in public lands.

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<sup>1</sup> The groups are Sierra Club, Gulf Restoration Network, Natural Resources Defense Council, Flint Riverkeeper, Save Our Santa Fe River, WWALS Watershed Coalition, and Earthjustice.

<sup>2</sup> Congress transferred the provisions of the Land and Water Conservation Fund Act of 1965 to a new section of the U.S. Code, leaving the provisions virtually unchanged. We refer to the currently enacted provisions as “LWCF requirements” and cite their new location in the U.S. Code.

<sup>3</sup> *See, e.g.*, Statement of Michael Connor, Deputy Secretary, U.S. Department of the Interior (DOI), Before the Senate Energy and Natural Resources Committee (Apr. 22, 2015) *available at* <https://goo.gl/jI05Fz> [hereinafter “2015 DOI Testimony”].

<sup>4</sup> “Sabal Trail” is the widely used shorthand for 3 connected pipeline projects—the Sabal Trail Project, the Hillabee Expansion Project, and the Florida Southeast Project. They are also known as the “Southeast Market Pipelines Project or SMPP.” *See, e.g.*, FERC, Order Issuing Certificates and Approving Abandonment, Docket Nos. CP14-554-000, CP15-16-000, CP15-17-000 (Feb. 2, 2016) *available at* <http://goo.gl/zMAFo2>.

Since its start in 1965, the LWCF Program has guarded against “converting” lands purchased or improved with its funds to “other than public outdoor recreation uses.”<sup>5</sup> Constructing and operating infrastructure to pipe natural gas, natural gas liquids, crude oil, and other petrochemicals can readily convert land to industrial use. Conversions can occur even when the infrastructure is not sited directly on LWCF-funded property, as the toxic pollution, light, noise, smell, truck traffic, and accidents such as the explosion of pipelines and associated surface facilities can transform an entire landscape.

Conversions are prohibited under federal law and LWCF funding agreements absent sufficient mitigation and approval from the National Park Service (NPS) following the rigorous requirements established by Congress and by NPS in consultation with the States. The requirements include compliance with the National Environmental Policy Act and replacing any converted land with land of “reasonably equivalent usefulness and location.”<sup>6</sup> Proper, early compliance planning ensures that requirements like these can inform project designs to reduce harmful impacts, avoid conversions where possible, and assure that the public fully recoups any converted land.

However, in your states, pipeline companies do not appear to be planning for compliance as they move forward with massive new projects. Left unchecked, we fear this will lead to unlawful conversions that may badly damage the multi-billion dollar public investment, not to mention the work of many decades to secure access to the great outdoors for all.

If the LWCF Program is to achieve its worthy goals, States must take seriously their responsibilities as program co-leads and prioritize pipeline compliance. This includes guiding local efforts to monitor potential conversions, assessing their impacts, and helping NPS decide whether conversions are appropriate and meet all the requirements for approval.

For these reasons, detailed in the remainder of our letter, we urge to you to take the following actions to ensure pipeline compliance in your states:

1. Immediately notify all relevant pipeline regulators of LWCF compliance obligations and ask that they stay their reviews of pipeline proposals until you complete yours. Or, at a minimum, ask that the regulators condition any approvals on LWCF compliance.
2. Investigate the connected Sabal Trail and Magnolia Extension projects’ impacts on LWCF-funded areas in your states, including but not limited to the 11 areas identified below. Publicly disclose the results of this investigation.

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<sup>5</sup> 54 U.S.C.A. § 200305(f)(1).

<sup>6</sup> 36 C.F.R. § 59.3.

3. Determine if conversions are necessary for the connected Sabal Trail and Magnolia Extension projects and, if so, whether they are appropriate for the protected lands at stake. Publicly disclose the determination and the supporting documentation, including any conversion application(s) submitted to NPS.
4. Conduct a comprehensive review of all other pipelines in your states to identify potential conversions of LWCF-funded areas. Publicly disclose the results of this review.
5. Conduct regular supplemental reviews of new and existing pipelines to identify potential conversions of LWCF-funded areas. Publicly disclose the results of these reviews.
6. Going forward, provide meaningful public participation opportunities regarding pipeline compliance activities.

## **I. The Public Investment In LWCF-Funded Areas Is Worth Protecting.**

As LWCF State Liaisons Officers, we appreciate your dedication to the LWCF Program. It enjoys bipartisan support and widespread popularity for providing matching federal grants and other assistance to acquire and improve state and local parks across the nation and in every single state.<sup>7</sup> Just last year, when it reauthorized the LWCF Program, Congress affirmed its wisdom and the desirability “for all levels of government and private interests to take prompt and coordinated action to the extent practicable”—“to conserve, develop, and utilize [adequate outdoor recreation resources] for the benefit and enjoyment of the American people.”<sup>8</sup>

We agree; there is a compelling case for “prompt and coordinated action” because the public investment in public recreation is absolutely worth protecting. That worth is directly and regularly experienced by our hundreds of thousands of members and supporters. Like the general public, we recreate in LWCF-funded areas because they “offer affordable opportunities for relaxing; spending meaningful time with family and friends; building healthy bodies and minds; and bringing communities together for celebration, reflection and healing,” as the Secretary-Treasurer of the National Association of State Park Directors aptly put it.<sup>9</sup>

We also value LWCF-funded areas because they are one of our main economic drivers, as illustrated by the following facts and figures:

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<sup>7</sup> See 2015 DOI Testimony (“State and local parks and projects that have received assistance from the LWCF are located in over 98 percent of counties in the United States.”).

<sup>8</sup> 54 U.S.C.A. § 200101.

<sup>9</sup> Statement of William Bryan, Secretary-Treasurer, NASPD, and Director, Missouri State Parks and Recreation (Nov. 18, 2015) *available at* <http://goo.gl/1Egefq>.

- ◇ The LWCF Program stimulates active outdoor recreation, which contributes \$646 billion annually to the economy, supporting 6.1 million jobs.
- ◇ 20 new jobs are created for every \$1 million invested in park and recreation conservation projects such as those funded through LWCF State Assistance.
- ◇ The 725 million annual visits to America’s state park system — a recipient of LWCF State Assistance funding — contribute \$20 billion to local and state economies.
- ◇ Americans spend more annually on bicycling gear and trips (\$81 billion) than they do on airplane tickets and fees (\$51 billion).<sup>10</sup>

Moreover, now that Congress has reauthorized the LWCF Program and appropriated hundreds of millions of dollars for state assistance, Alabama, Florida, Georgia, and Mississippi may gain significant amounts of new funding through the program if they can show compliance with LWCF requirements. Failing to do so would jeopardize a state’s eligibility for much needed assistance at a time of budget shortfalls. Specifically, federal law requires NPS to withhold approval of all payments from the LWCF until NPS “receives appropriate written assurance from the State that the State has the ability and intention to ... operate and maintain by acceptable standards, at State expense, the properties or facilities acquired or developed for public outdoor recreation use.”<sup>11</sup> Additionally, NPS (like all federal awarding agencies) “must manage and administer” federal awards to States “in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination.”<sup>12</sup>

In short, the public investment in LWCF-funded areas is worth protecting, and States actually need to enforce the protections to sustain the program for present and future generations.

## **II. States Are Co-leads With NPS In The Conversion Review Process.**

The key protection for LWCF-funded areas is the conversion review process and States have a critical role. In fact, States must lead enforcement efforts, along with NPS, and adhere to

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<sup>10</sup> *Id.*, Attachment 3, LWCF State Assistance Program Fact Sheet (citing DOI LWCF funding history).

<sup>11</sup> 54 U.S.C.A. § 200305(f)(1).

<sup>12</sup> 2 C.F.R. § 200.300.

the long-standing requirements to minimize conversions so that LWCF-funded areas may be “continually maintained in public recreation use”—the program’s ultimate and worthy goal.<sup>13</sup>

The conversion review process runs as follows: States must submit conversion requests to NPS “in writing.”<sup>14</sup> NPS then “consider[s]” the request if the State can show that: (1) “[a]ll practical alternatives to the proposal have been evaluated;” (2) the “fair market value of the property” has been assessed by an “approved appraisal;” (3) the “property proposed for replacement is of reasonable equivalent usefulness and location as that being converted;” (4) the proposed replacement property also meets eligibility requirements for LWCF funding (including not already being used for public recreation); (5) all other relevant federal agencies have been consulted; (6) NEPA and Endangered Species Act reviews are complete; (7) state agencies have been consulted; and (8) the conversion is “in accord” with the “comprehensive statewide outdoor recreation plan” (often called a “SCORP”).<sup>15</sup> Importantly, “[r]esponsibility for compliance and enforcement of these provisions rests with the State for both State and locally-sponsored projects.”<sup>16</sup>

Thus, States cannot allow a conversion without notifying NPS and obtaining NPS approval in writing. The LWCF Manual explains that “[w]hen it is discovered that a Section 6(f)(3) area [i.e., an LWCF-funded area] has been converted without NPS approval, a conversion proposal must be submitted and reviewed by NPS for retroactive action.”<sup>17</sup> If the unauthorized conversion is still “in progress, the State must notify the project sponsor to cease immediately.”<sup>18</sup> Ultimately, to come into compliance, States in this situation will have to provide replacement property and undergo review, consistent with NPS regulations, or lose LWCF eligibility or face other sanctions.<sup>19</sup>

To be clear, it is in the interest of States to maintain their role as the LWCF Program co-lead with NPS, and to faithfully carry out their responsibilities in the conversion review process. This is evident from States accepting LWCF assistance for more than five decades and, in funding agreements with NPS, consistently re-affirming the above terms and conditions for

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<sup>13</sup> 36 C.F.R. §59.3(a).

<sup>14</sup> *Id.* § 59.3(b)(1).

<sup>15</sup> 36 C.F.R. § 59.3(b); LWCF Manual at Ch. 8 (describing these requirements in detail).

<sup>16</sup> 36 C.F.R. § 59.1.

<sup>17</sup> LWCF Manual at Ch. 8-10.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at Ch. 8-17; 43 C.F.R. §12.83.

submitting conversions for NPS review. The dividends speak for themselves, as we highlighted in Part I, above.

Additionally, the States' co-lead role in the conversion review process is a practical imperative: States are uniquely situated to monitor and submit potential conversions for NPS review because they are much closer than NPS headquarters staff or even regional staff to the actual conditions on the ground. States also have a unique understanding of the boundaries of LWCF-funded areas. Indeed, in our experience it can be difficult for the public to access maps showing the boundaries of what is protected, for instance, because some boundaries were set in an era that predates widespread computer use, or because not all states proactively post the boundary maps online. Additionally, state agency personnel generally have closer ties than NPS to local communities, and the latter often are the first to discover the approaching threat of pipelines, for instance, from encounters with pipeline companies' land surveyors.

### **III. Sabal Trail and Magnolia Extension Exemplify the Threat of Pipelines.**

NPS has informed us that it has not been able to identify a single pipeline conversion application from your states. Our own research has only yielded one such application, concerning a pipeline in New Jersey.<sup>20</sup> As that application shows, pipelines can, of course, convert LWCF-funded areas.<sup>21</sup>

The missing conversion applications from your states are alarming given the massive footprint of existing and proposed pipelines there and (and elsewhere), as shown in the map below. Note that the map does not even capture the full scale of the problem because it shows mid-stream pipelines that transport natural gas, thus, omitting upstream gathering lines, downstream distribution lines, as well as the many pipelines that transport natural gas liquids, crude oil, and other petrochemicals. Yet all types of pipelines threaten the health of our communities and the recreation and tourism sectors of our economies—in myriad ways—as documented in the strenuous protests to the rapid development of even more pipelines.<sup>22</sup>

Taken together, the scale of the currently contemplated pipeline projects—including the construction and operation of the pipes, compressor stations, metering and regulating stations,

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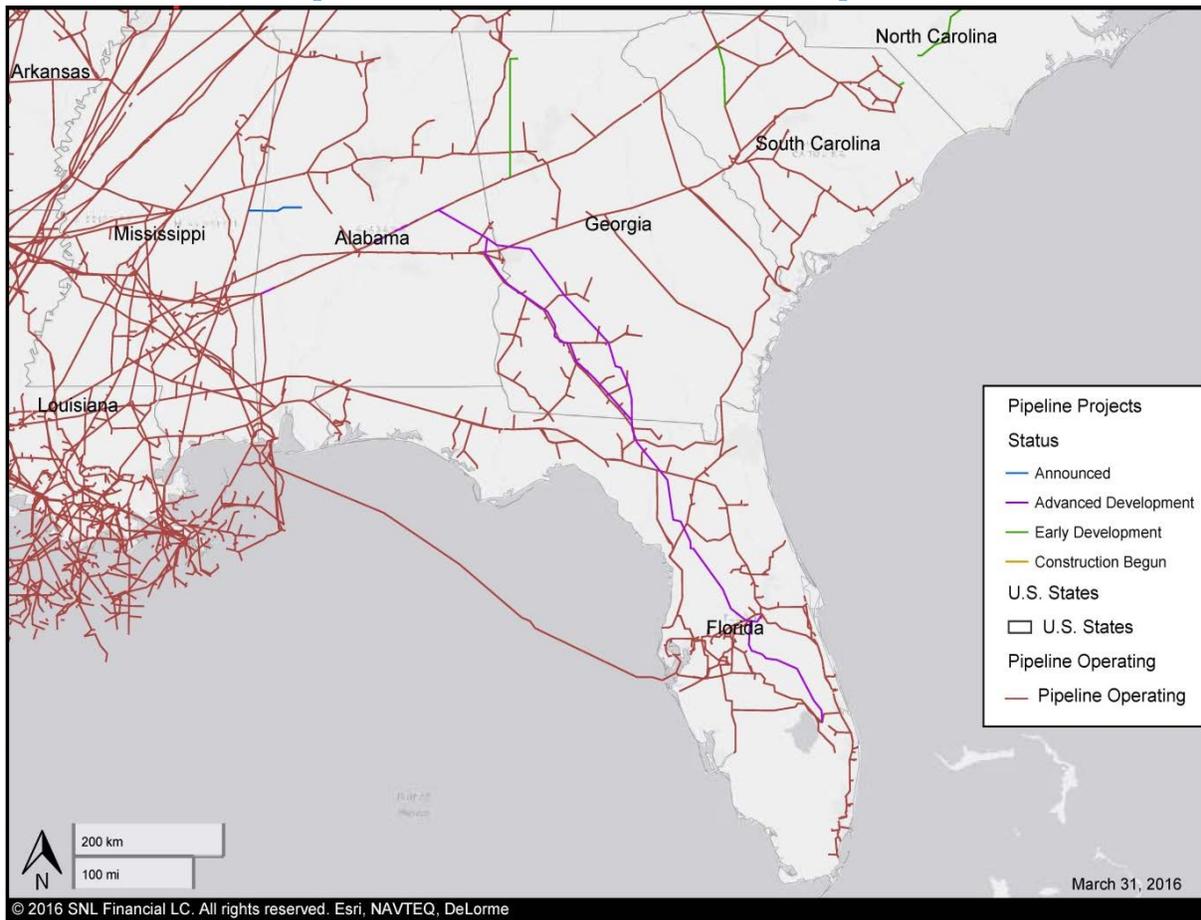
<sup>20</sup> <http://goo.gl/fEK28L>.

<sup>21</sup> *Id.*, Conversion Proposal, at 2 (PDF p. 31) (NPS “concluded that the conversion would apply to both the new leased area for the pipeline ROW and the temporary workspace needed during construction.”).

<sup>22</sup> See, e.g., Kiokee-Flint Group et al., Request for Rehearing of Mar. 3, 2016 (Sabal Trail) available at <http://goo.gl/c9sMJJ>; Gulf Restoration Network et al., Request for a Supplemental EIS of Mar. 10 (Sabal Trail); see also Oilprice.com, *Gas Pipeline Uses 160 Eminent Domain Suits To Get Property In 3 States* (Mar. 31, 2016) (Palmetto Pipeline and Sabal Trail) available at <http://goo.gl/t3ZjvO>.

and appurtenant facilities—make it almost certain that some projects will, if they have not already, convert LWCF-funded areas and badly damage the recreation value of these areas to the public. As we noted above, such conversions are unlawful if they are not approved by NPS pursuant to the conversions review process.

**Map of Southeast Mid-Stream Natural Gas Pipelines<sup>23</sup>**



The connected Sabal Trail and Magnolia Extension projects exemplify our serious concerns that pipelines are not planning for compliance with LWCF requirements. Sabal Trail alone comes dangerously close to at least 11 distinct LWCF-funded areas in Alabama, Florida, and Georgia, while the connected Magnolia Extension project would cut through additional land in Mississippi and Alabama. To our best knowledge, the companies behind these projects have not yet acknowledged LWCF compliance obligations, much less published any compliance plans.

We list below the 11 LWCF-funded areas that appear to be in Sabal Trail’s crosshairs. This list will likely expand with input from States and NPS given the limited information on the boundaries of LWCF-funded areas that is readily available to the public, and the fact that we

<sup>23</sup> The map was prepared by SNL Financial LC based on publicly available sources as of Mar. 31. 2016.

have not yet been able to glean enough information about the Magnolia Extension’s route to investigate its impacts on protected areas.

**LWCF-Funded Areas in Sabal Trail’s Crosshairs**

<b>Alabama</b>	
<i>County</i>	<i>Potentially Impacted LWCF-Funded Areas</i>
Lee County <sup>24</sup>	Lee County Public Lake Spring Villa Park
Tallapoosa County <sup>25</sup>	Horseshoe Bend National Military Park <sup>26</sup>
<b>Florida</b>	
<i>County</i>	<i>Potentially Impacted LWCF-Funded Areas</i>
Multiple	Florida-Georgia Longleaf Initiative <sup>27</sup>
Osceola County <sup>28</sup>	Kissimmee Lakefront Park
Marion County <sup>29</sup>	SR 200 Park Sawallis Park
Levy County <sup>30</sup>	Bronson Recreation Park
<b>Georgia</b>	
<i>County</i>	<i>Potentially Impacted LWCF-Funded Areas</i>
Multiple	Florida-Georgia Longleaf Initiative <sup>31</sup>
Dougherty County <sup>32</sup>	Dellwood Park
Stewart County <sup>33</sup>	City of Lumpkin Stewart County Project

<sup>24</sup> Route available at <http://goo.gl/mT9tqp>.

<sup>25</sup> Route available at <http://goo.gl/ZfMWod>.

<sup>26</sup> Horseshoe Bend is a federal LWCF project managed by NPS.

<sup>27</sup> See DOI, USDA, *LWCF: 2016 Budget Request* (Mar. 19, 2015) (“Lands targeted for acquisition represent the highest priority to protect and restore critical habitat for several listed species, and protect and restore the headwaters of the free-flowing Suwannee and St. Mary’s Rivers – the largest intact watershed in the East.”) available at <https://goo.gl/IUfpbC> [hereinafter “2016 LWCF Budget Request”].

<sup>28</sup> Route available at <http://goo.gl/yUBByu>.

<sup>29</sup> Route available at <http://goo.gl/R380Fl>.

<sup>30</sup> Route available at <http://goo.gl/3tKJ4N>.

<sup>31</sup> 2016 LWCF Budget Request, *supra* note 25.

<sup>32</sup> Route available at <http://goo.gl/nRwgEQ>.

<sup>33</sup> Route available at <http://goo.gl/TQa9u9>.

#### **IV. Ensuring Pipeline Compliance Going Forward.**

Non-compliance may be occurring through miscommunication, or because pipeline companies and States were not aware of the full extent of their responsibilities. For example, it has come to our attention that some States are treating pipeline proposals as underground utility easements, a category of project that is exempted from conversion review requirements. This categorical application of the exemption is incorrect and contrary to the intent of the conversion provisions in federal law and LWCF funding agreements because, as we noted above, the construction and operation of pipeline infrastructure, such as the large compressor stations that are required for inter-state pipelines, will result in “permanent above ground changes” as documented in public permitting records.<sup>34</sup> Moreover, NPS and States have long agreed that potential conversions require notice to NPS and case-by-case reviews; there is no justifiable reason to waive these requirements for large-scale industrial projects that can transform an entire landscape.

For all the foregoing reasons, we urge you to take swift actions, enumerated above, to clarify and enforce the compliance obligations of pipeline companies that are siting projects in Alabama, Florida, Georgia and Mississippi.

We thank you for your consideration.

Sincerely,

Kelly Martin  
**Sierra Club**

Amy Mall  
**Natural Resources Defense Council**

Cynthia Sarthou  
**Gulf Restoration Network**

Pamela I. Smith  
**Save Our Santa Fe River**

John S. Quarterman  
**WWALS Watershed Coalition**

Gordon Rogers  
**Flint Riverkeeper**

Bradley Marshall  
**Earthjustice**

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<sup>34</sup> See, for example, public comments on Sabal Trail/Southeast Market Pipelines Project filed in FERC Docket Nos. CP14-554-000, CP15-16-000, CP15-17-000, and in USACE Permit Application Nos. SAM-2014-00238, SAM-2014-00655, SAS-2013-00942, SAJ-2013-03030, SAJ-2013-03099

Cc:

Joel Lynch  
Chief, State and Local Assistance Programs, NPS Headquarters

Nancy Carter  
Chief, Land Resources Program Center, NPS Southeast Regional Office

Gwenevere P. Smith  
Chief, Recreation Programs Branch, NPS Southeast Regional Office

Nathaniel J. Davis, Sr.,  
Deputy Secretary, FERC

James S. Cherry II  
Mobile District Regulatory Division, U.S. Army Corps of Engineers

Terry C. Kobs  
Savannah District Regulatory Division, U.S. Army Corps of Engineers

Mark R. Evans  
Jacksonville District Regulatory Division, U.S. Army Corps of Engineers