Appalachian Corridor H

Parsons-to-Davis Project
Blackwater Avoidance SEIS

AMENDED PREFERRED ALTERNATIVE REPORT

November 2004

Appalachian Corridor H
Parsons, WV to Davis, WV
Blackwater Avoidance SEIS
Amended Preferred Alternative Report
FHWA-WV-EIS-92-01-SD
State Project: X142-H-38.99 C-2
Federal Project: APD-484 (59)

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1.0 Introduction

In accordance with the "July 1992 Consensus on Integrating NEPA/Section 404 Process for Transportation Projects," West Virginia Department of Transportation, Division of Highways (WVDOH) circulated (in early January 2004) a Preferred Alternative report to the participating resource agencies for the Parsons to Davis Project. In that report, WVDOH identified the Revised Original Preferred Alternative (ROPA) as its preferred alternative for the Parsons to Davis Project. WVDOH established a 30-day period for the agencies to submit comments on the report. The comment period ended on February 12, 2004.

Of the resource agencies that received the Preferred Alternative report, only the United States Environmental Protection Agency (EPA) and the United States Fish and Wildlife Service (FWS) provided written comments within the comment period (EPA, February 12, 2004 and FWS, February 4, 2004, Appendix A). EPA and FWS did not concur with the alternative identified as the Preferred Alternative for various reasons as discussed and addressed below in this Amended Preferred Alternative Report.

The United States Department of Agriculture, Forest Service, Monongahela National Forest (Mon Forest) provided written comments after the comment period had ended. In its comments (Mon Forest, May 7, 2004, Appendix A), the Mon Forest did not disagree with the alternative identified as the preferred alternative nor did it concur in its identification. The comments offered by the Mon Forest will be:

- the subject of additional investigations conducted as part of the NEPA process;
- used to develop additional mitigation measures in concert with the Mon Forest during the remainder of the NEPA process and in accordance with a Memorandum of Understanding among the Mon Forest, WVDOH, and the Federal Highway Administration (FHWA) (FHWA, June 9, 2003, Appendix A);
- or responded to as part of the SFEIS.

This report responds specifically to the comments submitted by EPA and FWS on the January 2004 Preferred Alternative report. Based on this amendment, together with the January 2004 report, FHWA and WVDOH are renewing their request to the resource agencies for concurrence in selection of the ROPA as the preferred alternative for this project.

2.0 EPA and FWS Comments

The EPA suggested that "WVDOH reconsider identifying the ROPA as the Preferred Alternative" because "EPA believes that the Revised Original Preferred Alternative (ROPA), when compared to the other feasible alternatives examined in the SDEIS has considerably more environmental impacts". Based on its letter, EPA's recommendation and impact conclusions appear to be based on three impact "areas". As stated in its letter:

- failure of the ROPA to avoid the Blackwater Area;
- higher wetland and stream impacts than other alternatives considered; and
- no comparisons among alternatives of how and to what degree the West Virginia Northern Flying Squirrel (WVNFS) habitat is impacted by the various alternatives.

The FWS stated in part that it could not concur with WVDOH's selection of a preferred alternative until the "Division of Highways conducts an accurate evaluation of the alternative's [sic] impacts on WVNFS, and incorporates that information into the NEPA evaluation/Preferred Alternative Report".

3.0 Response to Comments

Additional information has been obtained and studies have been undertaken since the circulation of the January 2004 Preferred Alternative report. This additional information addresses the three areas of concern expressed in EPA's comment letter (EPA, February 12, 2004, Appendix A) and also addressed the FWS's request for a more detailed analysis of "the degree of direct and indirect disturbance between alternatives and to aid in the selection of the least damaging alternative as it relates to the WVNFS (FWS, February 4, 2004, Appendix A). Each of these areas is discussed below.

3.1 Blackwater Avoidance Area

The "Blackwater Avoidance Area" was designated in the February 2000 Corridor H Settlement Agreement, which resolved a lawsuit challenging the project. The Settlement Agreement required consideration of alternatives that avoided the Blackwater Avoidance Area, but left open the option of selecting an alternative that crossed through that area.

As defined in the Settlement Agreement, the Blackwater Avoidance area included potential historic and archeological resources associated with coal and coke production in the Blackwater Valley, as well as the surrounding viewshed. At the time of the agreement, no determination had been made regarding the National Register eligibility of these potential historic and archeological resources.

During preparation of the Draft SEIS, FHWA and WVDOH determined, in consultation with the West Virginia State Historic Preservation Office (WVSHPO) and the Keeper of the National Register of Historic Places (National Register), that the historic and archeological resources within the Blackwater Valley are eligible for the National Register of Historic Places as part of the "Blackwater Industrial Complex Archaeological and Historic District" (National Register, August 2, 2001, Appendix A).

As proposed, the ROPA would cross over the North Fork of the Blackwater River canyon on a bridge structure. Because of the width of the canyon, piers associated with the bridge would encroach on the Blackwater Industrial Complex Archeological and Historic District.

Subsequent to the circulation of the January 2004 Preferred Alternative report in January, 2004, a Criteria of Effect Report was prepared and sent to the WVSHPO for its review. The Criteria of Effect Report was also sent to the Mon Forest for its review and comment because the agency owns that portion of the historic district over which the ROPA will cross. The Criteria of Effect report concluded that the ROPA would have "no adverse effect" on the Blackwater archeological and historic district, because the bridge crossing would be located in disturbed areas that do not contribute to the significance of the historic district. After reviewing the report, both the WVSHPO and the Mon Forest concurred that the project as proposed would have "no adverse effect" on the Blackwater Industrial Complex Archaeological and Historic District (WVSHPO, June 23, 2004 and

Mon Forest, April 14, 2004, Appendix A). Therefore, because the bridge avoids impacting contributing areas within the district, the project does not involve a "use" of a Section 4(f) resource.

3.2 Wetland and Stream Impacts

As detailed in the January, 2004 Preferred Alternative Report, the ROPA does have higher total wetland and stream impacts in comparison to other alternatives. However, as stated in the January 2004 Preferred Alternative report, the wetland impacts were generally small impacts on small, low quality emergent systems and these impacts were mitigated by the construction of high functioning wetland replacement sites over 6 years ago. Based on these factors, FHWA and WVDOH concluded in the January 2004 Preferred Alternative report that, on balance, the wetland impact disparity among the alternatives did not "outweigh" other factors that favored selection of the ROPA – namely, (1) the cost differences between the ROPA and the other alternatives under consideration and (2) the ability of the ROPA to best serve the project's local purpose as defined in the SDEIS. Similarly, FHWA and WVDOH concluded that the stream length impact disparity among the alternatives did not "outweigh" these other considerations, which favored selection of the ROPA.

Following the release of the January 2004 Preferred Alternative Report, FHWA and WVDOH conducted additional analysis of the WVNFS habitat in the project area. As explained below, this analysis showed that the ROPA has the least impact of any alternative on "suitable" and "highly suitable" habitat of the endangered WVNFS. This additional benefit of the ROPA further supports the judgment that the advantages of this alternative outweigh its slightly greater impacts to wetlands and streams.

3.3 West Virginia Northern Flying Squirrel

Subsequent to circulation of the January 2004 Preferred Alternative Report and the receipt of comments, additional studies were conducted relative to the impact differences among the alternatives on the WVNFS and its habitat. These impact differences were presented to the FWS in an August 2004 Biological Assessment (BA). The BA concluded that all alternatives under consideration will have direct and indirect impacts to the "highly suitable" and "suitable" habitat for the WVNFS, some of which may be occupied by populations of the WVNFS, and that any of the alternatives adopted would be "likely to adversely affect" the WVNFS. The BA also, found that "of the alternatives under consideration, the ROPA is likely to have less overall direct and indirect effects [on the WVNFS] than those other alternatives under consideration because:

- the ROPA requires the removal of the fewest number of acres of either suitable or highly suitable habitat;
- the ROPA's removal of highly suitable habitat primarily occurs on the highly suitable habitat's edge and minimizes removal of "core" highly suitable habitat; and
- the ROPA has less of a barrier effect and better preserves landscape permeability than the other alternatives because of the magnitude of cut/fill slopes is less."

In its October 14, 2004 comments on the BA (FWS, October 14, 2004, Appendix A), the FWS stated in part that:

> *"Based on mapping of WVNFS habitat within the action area, all of the build alternatives would directly impact 'highly suitable' and 'suitable' WVNFS habitat. Additional direct and indirect effects including fragmentation, barriers to travel*

> *corridors and disposal of fill material are anticipated for all build alternatives. The BA therefore `concludes that all the alternatives evaluated, except the no-build alternative, would be likely to adversely affect the WVNFS. The ROPA is the shortest route and would involve the least amount of cut and fill. As a result, the BA further concludes that the ROPA would impact the least amount of 'highly suitable' and 'suitable' WVNFS habitat."*

The completion of the BA satisfies the FWS's and EPA's request for additional information comparing the alternatives in terms of their potential impacts on the WVNFS and its habitat. This new information shows that the alternative with the lowest impacts on the WVNFS and its habitat is the ROPA. Therefore, this new information further supports selection of the ROPA.

4.0 Conclusion and Next Steps

After consideration of the comments and re-analyses that resulted from those comments, WVDOH re-affirms its January 2004 decision to identify the ROPA as the preferred alternative. This decision is based on the following summarized information:

- it best meets the purpose and need for the project;
- it is similar to the other alternatives in terms of its overall environmental impacts and where its impacts are greater (e.g., wetlands), the impacts have already been fully permitted and mitigated;
- it has been found to have no adverse effect on the Blackwater Industrial Complex Archaeological and Historic District;
- based on the actions of the city councils of Thomas and Davis as detailed in the February 2000 Corridor H Settlement Agreement its identification is consistent with that settlement agreement;
- it has the least direct and indirect potential impact on the West Virginia Northern Flying Squirrel;
- it is $16 million to $70 million less expensive than any other alternatives; and in particular, is $46 million less expensive than any of the Blackwater Avoidance Alternatives; and
- it is consistent with applicable regulatory requirements, including Section 4(f).

While the ROPA has been identified at this stage of the Blackwater SEIS process as the preferred alternative, its identification does not preclude WVDOH from changing the preferred alternative's identification at a later stage based on resource agencies' comments or other new information or changed circumstances (Settlement Agreement, III (C)(b)(2).

Following receipt of resource agency comments on this Amended Preferred Alternative Report, formal Section 7 consultation will be initiated with the FWS.

Appendix A

Agency Correspondence

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

FEB 12 2004

James E. Sothen, P.E., Director
Engineering Division
West Virginia Division of Highways
1900 Kanawha Boulevard East
Building Five, Room 110
Charleston, WV 25305-0430

Re: Appalachian Corridor H, Parsons-to-Davis
Supplemental Draft Environmental Impact Statement; Preferred Alternative Report

Dear Mr. Sothen:

The Environmental Protection Agency (EPA) has reviewed the Preferred Alternative Report for the Supplemental Draft Environmental Impact Statement (SDEIS) in accordance with the July 1992 Consensus on Integrating NEPA/Section 404 Process for Transportation Projects. Based on this review, EPA concurs that the environmental impacts have been adequately disclosed in the SDEIS and that the West Virginia Division of Highways (WVDOH) has subsequently identified a Preferred Alternative to be carried forward in the Final SEIS. However, EPA believes that the Revised Original Preferred Alternative (ROPA), when compared to the other feasible alternatives examined in the SDEIS, has considerably more environmental impacts and suggests that WVDOH reconsider identifying the ROPA as the Preferred Alternative.

The ROPA differs from the Original Proposed Alternative (OPA) in three manners: the Truck Route (TR) is incorporated, there is a shift at Middle Run to reduce wetland impacts, and there is a direct connection to US 219. Even with these slight differences, EPA believes the ROPA to be the most environmentally impacting alternative, when compared to the other alternatives examined in the SDEIS. In the Settlement Agreement, the WVDOH was directed to examine at least one alternative to avoid the Blackwater Area, which has been done. However, the Preferred Alternative identified does not avoid this area, and, in comparison to those avoidance alternatives, the ROPA has higher wetland and stream impacts. In addition, the Preferred Alternative Report also lacks any comparisons addressing how and to what degree the West Virginia Northern Flying Squirrel habitat is impacted by the various alternatives.

We understand that the wetland impacts for the OPA have already been permitted and mitigated for, and that the WVDOH is not required to select for implementation the alternative identified in the EIS as being "environmentally preferable". However, the environmentally preferred alternative does need to be identified in both the Final SEIS and the Record of Decision, whether or not that is the alternative which DOH actually chooses to pursue.

Thank you for providing us the opportunity to provide comments on this project. If you have any questions regarding our comments, please contact Jessica Martinsen at 215-814-5144.

Sincerely,

William Arguto
NEPA Team Leader
Office of Environmental Programs

United States Department of the Interior

FISH AND WILDLIFE SERVICE

West Virginia Field Office
694 Beverly Pike
Elkins, West Virginia 26241

February 4, 2004

Mr. James E. Sothen
WV Dept. of Transportation, DOH
1900 Kanawha Boulevard East,
Building Five, Room 110
Charleston West Virginia 25305-0430

Re: Appalachian Corridor H, Preferred Alternative Concurrence, Parsons to Davis, West Virginia

Dear Mr. Sothen:

On January 7, 2004, U.S. Fish and Wildlife Service (Service) received the Appalachian Corridor H, Parsons to Davis Project; Preferred Alternative Report dated December 2003. The West Virginia Division of Highways (WVDOH) requests that the Service concur with selection of the preferred alternative as identified in that report. The following comments concerning impacts to fish and wildlife resources are provided as per the National Environmental Policy Act (40 CFR 1501.6) (NEPA) and the Endangered Species Act (87 Stat. 884, as amended:16 U.S.C. 1531 et seq.) (ESA).

The federally endangered West Virginia Northern Flying Squirrel (*Glaucomys sabrinus fuscus*) (WVNFS) is known to occur in the vicinity of the proposed project. The Preferred Alternative Report states that all the project alternatives have the potential to adversely impact the WVNFS, and would require formal consultation under the ESA to address these impacts. However, the report does not provide any information that will allow for a comparison of the alternatives in regard to those impacts. It should be noted that even though all the alternatives will require formal consultation, the alternatives may vary in the level and significance of their impacts to WVNFS. These impacts should be accurately compared and evaluated so that they can be fully considered in the NEPA evaluation/Alternative Selection process.

The Service provided comments on the WVNFS Biological Assessment (BA) for this project in a letter dated October 11, 2002. In that letter, we recommended that the BA be revised and "a more thorough evaluation of the presence of suitable habitat along the alignments be

accomplished to compare the degree of direct and indirect disturbance between alternatives and to aid in the selection of the least damaging alternative as it relates to the WVNFS." The Service met with members of your staff, and the Federal Highway Administration on January 15, 2004 to discuss this project. During that meeting we outlined a process to address ESA and WVNFS issues, and recommended that a preferred alternative not be selected until after the Division of Highways conducts an accurate evaluation of the alternative's impacts on WVNFS, and incorporates that information into the NEPA evaluation/Preferred Alternative Report. The Service can not concur with your selection of a preferred alternative until that information has been provided.

We appreciate your willingness to meet and discuss this issue and look forward to continuing a positive cooperative relationship to ensure all applicable environmental regulations are fulfilled. Should you have further questions regarding this matter, please contact Ms. Barbara Douglas of my staff at (304) 636-6586, or at the letterhead address.

Sincerely,

Thomas R. Chapman
Field Supervisor

United States Department of Agriculture | Forest Service | Monongahela National Forest | 200 Sycamore Street Elkins, WV 26241 304-636-1800

File Code: 7700
Date: May 7, 2004

James E. Sothen, Director
Engineering Division
West Virginia Department of Transportation, Division of Highways
1900 Kanawha Boulevard, Building Five
Charleston, WV 25305-0430

Dear Mr. Sothen:

Additional comments have been provided by various specialty areas from within the Monongahela NF regarding Appalachian Corridor H, Parsons to Davis, Preferred Alternative CONCURRENCE, State Project X142-H-38.99, Federal Project APD-484(59). We trust these comments will strengthen the project.

Ecology

1. The document displays the likely acres of National Forest Land impacted by the road construction (pp. 22-23). It appears that the footprint of the road may impact a few acres of two areas with our Management Prescription 8.0. Our Forest plan directs us to manage 8.0 areas with a view towards "the preservation of unique ecosystems or areas for scientific or recreational purposes." One such area is the Big Run Bog National Natural Landmark and Botanical Area, and while the action will not occur within the watershed of the bog, it appears that some of the MP8.0 area the Forest has identified around the bog may be impacted. An older map for the area shows the boundary to be just to the pipeline, and not the road (FR 717) as shown in Figure 1. The other area is the Olsen Tower Deferred Rotation Study Area, used by the Fernow Experiment Forest. A closer review of any electronic maps available from the WVDOT is warranted.

2. The Forest has a concern for the likely spread and introduction of non-native invasive species because of the road construction. The document reviewed did not include mitigation measures. The Forest is interested in the seed mixtures to be used on the highway and associated disturbed areas, and recommends that aggressive non-native invasive species not be used unless absolutely necessary to control erosion. As borrow and waste areas are created during construction, an assessment of non-native invasive species and the likelihood of their transport should be made and such impacts mitigated as possible. Knowing that roads serve as corridors for non-native invasive species, the Forest is interested in long-term treatment of species such as purple loosestrife should this species become established on the new road, possibly threatening the Big Run Bog.

Hydrology

1. The ROPA alignment traverses National Forest lands in the headwaters of Mill Run and Slip Hill Mill Run, then turns east and leaves National Forest ownership until it crosses the NF lands along the railroad grade adjacent to the North Fork Blackwater River. It also cuts through the headwaters of a fork of Big Run but on private land, upstream from National Forest lands, and this fork of Big Run does not flow through the National Natural Landmark Big Run Bog.

2. Corridor H construction can be expected to have very substantial sediment effects on streams, including those mentioned above, regardless of mitigation. Mitigation will reduce effects, but may not make them insignificant. For example, portions of Corridor H near Elkins have been in place for some years and exhibit substantial erosion of the cut slopes above the highway, and likely very substantial sediment delivery to the receiving streams (Tygart Valley River and Leading Creek).

3. Mill Run and Slip Hill Mill Run are native brook trout streams. National Forest sediment monitoring during the 1990s documented portions of these streams that have higher than desired levels of fine sediment in potential spawning habitat locations. Fine sediment monitoring over the period of years from 1994 to 1998 found that portions of those streams had spawning gravel fine sediment levels that exceeded the point at which substantial impairment of trout reproduction begins to occur. That "threshold" level of impairment is generally considered to be about 20 percent fine sediment. The Mill Run/Slip Hill Mill Run channels had fine sediment levels in spawning gravel sites approaching or exceeding the "threshold" level in four out of five years of monitoring. In the most recent year of monitoring (1998) fine sediment levels were the highest of the five years of monitoring, at 28 and 27 percent respectively. This is well above the theoretical level at which impaired trout reproduction begins to occur. There are a number of sediment source areas in the headwaters of these streams that contribute sediment to these channels, such as the existing Highway 219, and other sources.

4. The preferred alternative report (page 22) indicates that "soils on this side of Backbone Mountain are highly erodible. Construction in this area could lead to additional sediment loads in Slip Hill Mill Run,..." The Forest Soil Scientist's review and comments on this document indicated the highly erosive nature of the soils on the mountain slopes through which the ROPA highway location will pass. Those soils originate from the Mauch Chunk surficial geology within that area, although other soils through which the ROPA location would pass are also highly erodible. This portion of the highway traverses steep slopes and sensitive soils, and will likely have extensive areas of soil disturbance. Considerable modification of surface flow patterns is to be expected. It appears likely that an additional sediment burden will be placed on these streams (Mill Run and Slip Hill Mill Run) resulting from highway construction, despite mitigation efforts. That additional sediment burden is likely to have effects on trout reproductive success, and possibly for the longer-term condition.

5. Mitigation measures planned for the highway need to be closely reviewed, and input made to that plan. Comments made by the WVDNR concerning "wasting areas" also need to be closely reviewed. Where are the wasting areas planned for within the Mill Run/Slip Hill Mill Run

watershed? Are there opportunities for relocation to better sites that may pose a reduced risk of sedimentation in these streams?

6. Monitoring of the effects of the new highway in Mill Run and its tributaries should be considered. This is a valuable native trout stream, despite it's apparent impaired condition with regard to sediment. Sediment monitoring should be conducted to document the pre- and post highway construction effects, and the long-term effects as well. Does the WVDOT have a process for carrying out or funding that long-term monitoring?

Soils

1. (Page 22 of 33): Reference to the sensitivity of the soils on Backbone Mountain in the Monongahela National Forest (MNF) is made on this page. These soils are referred to as highly erodible. "To construct the highway along Backbone Mountain will require large cuts." The document makes note of the presence of sensitive soil types along this section of Backbone Mountain. The specific soil types present are the Cateache and Shouns soil series. The underlying geology is the Mauch Chunk Formation. This formation is the cause of many mass wasting and slippage concerns across the Forest and on other sections of Corridor H. This is evident from the problems already observed along Corridor H where Mauch Chunk geology is present (e.g., the Crystal Springs intersection near Elkins). Areas underlain by Mauch Chunk geology should be considered for special mitigation in order to address the highly weatherable bedrock and instability of the bedrock once exposed to water and air. No mitigation measures were mentioned in the document. Also, as referred to in previous meetings with the FHWA, appropriate mitigation, in our estimation, consists not of choosing revegetation options that accounts for the potential stabilization of cut banks (especially large cut banks); rather, appropriate mitigation consists of the design of the cut and fill slopes that will account for instability, erosion, and water drainage off these cuts and fills. We would like to see this concern specifically addressed when crossing the Mauch Chunk geologic formation. We would also like the opportunity to review and comment on sedimentation designs and plans to account for additional sediment generated off of these large cuts.

2. The Forest Service has particular concern of surface mine refuse piles and sedimentation ponds on federal lands through which Corridor H would traverse. The Forest Service recommends that the WVDOT and FHWA to follow the same guidelines as they are in other areas of the project when dealing with these special areas. These guidelines include all of the recommendations made by West Virginia University, Dr. John Sencindiver and Dr. Jeff Skousen, in a 2003 report. Guideline examples include examining the content of spoil piles and ponds from the perspective of acidity production, heavy metal content and potential environmental effects both on-site and off-site to water bodies.

3. It would be beneficial to have a meeting on the above mentioned concerns about the Mauch Chunk geology and associated sediment and about the presence of strip mines, refuse piles, and sedimentation ponds with planners and engineers in charge of the project.

4. Also, the Forest would like to reiterate our willingness and expectation that we participate in a joint field trip or trips with FHWA and Forest Service to examine mitigation measures for sediment and soil erosion concerns on other portions of Corridor H or similar projects.

Wildlife

The US Fish and Wildlife Service is involved in discussions with the FHWA and the WVDOH regarding potential effects to wildlife, specifically threatened and endangered species and compliance with the Endangered Species Act.

Cultural Resources

Major areas of concern regarding cultural resources and Section 106 concerns have already been addressed with the Forest Service. We concur that the proposed preferred alternative will have no effect to cultural resources, consistent with our letters of July 26th and October 24th, 2002. The implementation of a program of interpretive signage, recommended by us in our July 26, 2002 letter, and also recommended by the WV SHPO in an October 30th, 2002 letter. The funding for this program of interpretation has been supplied by the FHWA and the WVDOH through our June 6th, 2003 MOU.

As the project develops and more specific design plans are developed, Forest Heritage staff will continue to comment and consult with the WVDOH, FHWA, and the WV SHPO in order to continue minimizing and mitigating potential impacts of Corridor H to cultural resources.

Thank you for the opportunity to provide comments as this project moves through its various development phases.

Sincerely,

Michil Jones

FOR CLYDE N. THOMPSON
Forest Supervisor

cc: John A Calabrese, Randall G Biller

U.S. Department
of Transportation

**Federal Highway
Administration**

West Virginia Division

Geary Plaza, Suite 200
700 Washington Street, East
Charleston, West Virginia 25301
(304) 347-5928

June 9, 2003

IN REPLY REFER TO:
Federal Project APD-0484(059)
State Project X142-H-38.99 C-2
Appalachian Corridor H
Various Counties
Memorandum of Understanding

Randolph T. Epperly, Jr., P.E.
Deputy State Highway Engineer -
Project Development
West Virginia Division of Highways
Charleston, WV 25305

Dear Mr. Epperly:

Enclosed please find a copy of the fully executed Memorandum of Understanding among the Federal Highway Administration, Monongahela National Forest and West Virginia Department of Transportation. If there are any questions concerning this matter, please contact me at (304) 347-5268 or via e-mail at Henry.Compton@fhwa.dot.gov.

Sincerely yours,

Sgd. Henry E. Compton

Henry E. Compton, P.E.
Right of Way & Environment Specialist

Enclosure

MEMORANDUM OF UNDERSTANDING

Between

the Federal Highway Administration,

**the West Virginia Department of Transportation,
Division of Highways,**

and

**the United States Department of Agriculture, Forest Service,
Monongahela National Forest**

The MEMORANDUM OF UNDERSTANDING (MOU) is hereby entered into by and between the Federal Highway Administration, hereinafter referred to as the FHWA; the West Virginia Department of Transportation, Division of Highways, hereinafter referred to as the WVDOH; and the United States Department of Agriculture, Forest Service, Eastern Region, Monongahela National Forest, hereinafter referred to as the MNF.

A. PURPOSE:

The purpose of this MOU is to document measures that have been or will be employed to facilitate continued coordination among the WVDOH, FHWA and the MNF during the development and implementation of the Appalachian Corridor H highway project. This MOU will outline project specific measures to minimize and mitigate the effects of Appalachian Corridor H to the MNF and to outline review processes for activities that cannot be defined until final design activities have been undertaken (e.g., excess excavation sites, trail relocations, trailhead parking areas, etc.). In addition, the MOU will document actions that have been or will be taken by the respective parties for the redevelopment of the existing abandoned railway corridor located within the Blackwater Canyon area into a bicycle/pedestrian path.

B. BACKGROUND:

The WVDOH, FHWA and the MNF have worked cooperatively since the inception of the Appalachian Corridor H highway project to minimize impacts to forest resources. The MNF has been and continues to be a Cooperating Agency in the environmental process and a Consulting Party in application of Section 106 of the National Historic Preservation Act.

In August 1996, FHWA issued a Record of Decision (ROD) approving the alignment for Appalachian Corridor H between Elkins and the West Virginia/Virginia state line. The 1996 Corridor H ROD approved the Preferred Alternative identified in the 1996 Corridor H FEIS. In late 1996, legal challenges to the 1996 Corridor H ROD were presented in U.S. District Court in Washington, D.C. On October 8, 1997, the U.S. District Court ruled in favor of the FHWA and WVDOH. The plaintiffs subsequently filed an appeal with the U.S. Court of Appeals. As a result of the findings made during the appellate review, the case was referred to mediation in early 1999. As a result of the mediation, a Settlement

Agreement (February 2000) was reached among the parties. The Settlement Agreement divided the 100-mile long Corridor H corridor into nine separate projects. The Settlement Agreement required that the two projects affecting the Monongahela National Forest (Kerens to Parsons and Parsons to Davis) have Supplemental Environmental Impact Statements prepared. The SEIS's for each of these sections are currently under development with anticipated completion in calendar year 2003. The MNF has been and continues to participate in the review of all aspects of the environmental development process.

The West Virginia State Historic Preservation Officer (SHPO) has concurred that both the Kerens to Parsons project and the Parsons to Davis project would have "no adverse effect" on historic and archeological resources. This finding concludes the Section 106 consultation process under the Section 106 programmatic agreement for Corridor H. The FHWA and WVDOH have agreed to continue coordinating with the SHPO during final design and construction of these projects.

While Corridor H will not have an adverse effect on historic and archeological resources within the MNF, the highway will increase access to the Forest and has the potential to cause impacts within the Forest, depending on the routes that are selected in the environmental process for the Kerens to Parsons and Parsons to Davis projects. Accordingly, the WVDOH, FHWA and MNF have agreed to enter into this MOU in order to promote the protection and public understanding of the historic and archeological resources located within the MNF, while also establishing procedures to assure that any impacts of construction within the MNF are appropriately addressed.

C. AGREEMENTS

1. Historic and Archeological Resources.

The WVDOH will provide the MNF a total of $1,200,000.00 beginning on July 1, 2003. The funding will be distributed over a five year period as follows:

July 1, 2003: 30% of the funds distributed ($360,000)
July 1, 2004: 20% of the funds distributed ($240,000)
July 1, 2005: 20% of the funds distributed ($240,000)
July 1, 2006: 20% of the funds distributed ($240,000)
July 1, 2007: 10% of the funds distributed ($120,000)

The funding is to be used exclusively for personnel and equipment costs to investigate, evaluate, interpret and curate archaeological and historic resources under the stewardship of the MNF, production costs associated with disseminating the results of archaeological and historical fieldwork, and the design, installation, and production of interpretive signing, displays, and other devices for public dissemination. A portion of the interpretive signing/displays is to be placed within the boundaries of the National Register Eligible Blackwater Industrial Complex along the proposed bicycle/pedestrian path. Acknowledgement will be made to the financial contribution of the WVDOH and the FHWA in all public documents and displays.

2. Bicycle/Pedestrian Trail on Railroad Grade in Blackwater Canyon

Upon successful completion of the environmental process for the Parsons to Davis project, the WVDOH will construct a bicycle/pedestrian trail on the existing railroad grade through the Blackwater Canyon area. Trail design will accommodate any outstanding rights and reservations existing along the trail to be determined by the WVDOH. In addition, access to private properties located along the trail will be accommodated in trail design and construction to the extent that MNF lands are required for that access.

After completion of the Blackwater Canyon bicycle/pedestrian path by the WVDOH, the MNF will agree to assume overall maintenance responsibilities for the facility. An agreement to this effect shall be executed between the WVDOH and MNF upon final acceptance of the project.

3. Boundary Survey of Railway Corridor from Parsons to Thomas

In addition to the funding noted in item #1, the WVDOH will provide the MNF a total of $229,000 to conduct, with its contractors, a boundary survey with monumentation of the existing abandoned railway corridor from Parsons to Thomas. The funding will be disbursed upon approval of this MOU.

4. Agreements to Transfer Funds.

The WVDOH will prepare two additional implementing agreements to transfer the funds committed in numbered paragraphs 1 and 3 of this MOU. The WVDOH and the MNF shall execute these agreements.

5. Limitations on Use of Funds

The MNF will use the funding providing by the WVDOH for only the activities authorized in this MOU. Funds will be used employing a CWFS (Cooperative Work Forest Service) job code. The 5-year financial plan included as Attachment A to this agreement will be followed as closely as possible.

6. Annual Accounting of Expenditures by MNF

The MNF will provide a detailed accounting of all expenditures at the end of each State of West Virginia Fiscal Year. No additional funds shall be provided until the report has been submitted to the WVDOH for review. The report should also include a summary of the findings made during any archaeological investigations conducted using the provided resources. At the end of year 5, a complete summary report shall be submitted to the WVDOH outlining the utilization of the available funding, a summary of any projects that were completed and an overall report on archaeological findings.

7. Use of Federal Funds

The Federal Highway Administration concurs that federal funds (including Appalachian Development Highway System funds) may be used for all activities defined in this Interagency Agreement.

8. Construction Impacts within MNF

The following terms and conditions shall apply if the environmental process results in the selection of an alternative located within the MNF for any portion of Corridor H:

a. The WVDOH will work with the MNF to establish any excess excavation and/or borrow sites or construction access roads within the Forest to minimize environmental impacts. The WVDOH/MNF will agree during the project development process to areas within the MNF that may be suitable locations for development of these ancillary facilities. The final construction plans will depict these agreed upon areas.

b. In addition to any stipulations outlined in the Letter of Consent (the document that allows access to the MNF for construction of the highway), all preliminary construction plans for projects located within or near the forest boundaries will be submitted to MNF for review. The WVDOH will provide the MNF a minimum of 14-calendar day notice to all field and/or office reviews. The MNF will make every effort to provide representation at the reviews.

c. The WVDOH will work with the MNF to establish appropriate replacement and/or relocation sites for any trails crossed and/or relocated by Corridor H. Additionally, the WVDOH will establish parking areas and trailheads as mutually agreed upon by the MNF.

d. The MNF will provide comments on all plan submissions and related information no later than 30 days from receipt of information.

e. The WVDOH will use natural stream design for all high quality stream relocations within the boundaries of the Forest.

f. The WVDOH will use Best Management Practices for all erosion control within the Forest. The MNF staff will be invited to attend all erosion control reviews, comment on erosion control plans and participate in field views of the construction projects as needed.

9. Effective Date

This MOU will become effective upon signature by all parties and shall remain in effect until terminated by any party.

10. Termination and Amendments

Any signatory may terminate this MOU upon 90 days written notice to the other. Its provisions can be amended or supplemented in writing. Unless terminated, this MOU will remain in full force and effect until completion of the Kerens to Parsons and Parsons to Davis projects.

SIGNED:

Thomas J. Smith. Division Administrator
Federal Highway Administration

4/9/03
Date

Fred VanKirk, Secretary
West Virginia Department of Transportation

4/9/03
Date

Clyde N. Thompson, Forest Supervisor
Monongahela National Forest

3/27/03
Date

3 ✓

United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240

DETERMINATION OF ELIGIBILITY NOTIFICATION

National Register of Historic Places
National Park Service

Name of Property: Corridor H–Coketon Study Area–Additional Information

Location: Tucker County. State: WEST VIRGINIA

Request submitted by: Henry E. Compton, P.E. Right of Way & Environment Specialist, WV Division, FHwA

Date received: 07/03/01 Additional information received: 7/24/01

Opinion of the State Historic Preservation Officer:

_X_ Eligible __Not Eligible __No Response __Need More Information

Comments:

The Secretary of the Interior has determined that this property is:

_X_ Eligible Applicable criteria: A,B,C, D __Not Eligible

Comments:
See attached comments regarding the Coketon study area as it relates to the Blackwater Industrial Complex.

__Documentation insufficient
(Please see accompanying sheet explaining additional materials required)

for Keeper of the National Register

Date: 8/2/01

OPTIONAL FORM 99 (7-90)
FAX TRANSMITTAL # of pages ▶ 7
To BEN HARK From
Dept./Agency Phone # ECI
Fax # Fax #
NSN 7540-01-317-7368 5099-101 GENERAL SERVICES ADMINISTRATION

DETERMINATION OF ELIGIBILITY NOTIFICATION

National Register of Historic Places
National Park Service

Coketon Study Area/Blackwater Industrial Complex
Tucker County, West Virginia p. 2

We have carefully reviewed the two reports, *A Phase II Evaluation of the Davis Coal and Coke Company and the Western Maryland Industrial Complex at Tucker County, West Virginia* (Davis, Swan and Brinker, 1992) and *What's a Coke Oven?: Archeological Investigations Within the Blackwater Industrial Complex* (Davis, 1997), provided to us at our onsite visit of June 25, 2001, to the project area; a letter of June 28, 2001 (received July 24) from John Calabrese, Monongala National Forest Archeologist reiterating the USFS opinion of eligibility (copy attached) and the supplementary mapping submitted by FHwA on July 2. The SHPO has confirmed that the State has no other documentation on record beyond the two aforementioned reports, on which it previously based its determinations of eligibility for the entire Blackwater Industrial Complex.

We have concluded that the Coketon study area retains its significance and integrity as an integral part of the larger Blackwater Industrial Complex, which is eligible for the National Register under criteria A, B, C, and D as a historic and archeological district. Post-mining reclamation of a relatively small area has not significantly disturbed the Coketon resources in a manner that would necessitate Coketon's evaluation as a discontiguous district, nor does it support the evaluation of the Blackwater Industrial Complex as a discontiguous district. As with most historic districts some areas or resources may be classified as noncontributing. As has been pointed out, the character of the industrial mining landscape had been somewhat diminished already when the Blackwater Industrial Complex was initially determined eligible by the SHPO and FHwA; however, we find that the effects of the Coketon area reclamation project have had a relatively insignificant impact on the resources and the conveyance of their historic and archeological importance. The Blackwater Industrial Complex continues to convey its historic meaning as a significant concentration of contiguous, interrelated historic industrial and archeological resources throughout the Blackwater River corridor from Thomas to Hendricks, in Tucker County, West Virginia. The Complex contains a 10-mile stretch of the 1888 West Virginia Central and Pittsburg Railway (WVC&P) grade with associated bridges and culverts, the abandoned community of Limerock along with the historic mining towns of Thomas, Coketon and Douglas, including numerous historic buildings, mine portals, stone foundations of the Coketon power house, several mine buildings and two mine tipples, many other unidentified structure foundations, and the standing remains of approximately 300 (out of the original 1,235) bee hive style coke ovens. The Complex's numerous historic and archeological features located outside of the Coketon area in conjunction with the significant resources within the Coketon

DETERMINATION OF ELIGIBILITY NOTIFICATION

National Register of Historic Places
National Park Service

study area combine in a geographic concentration from one end of the Blackwater Industrial Complex to the other. Because of this continuity of important resources, the entire Blackwater Industrial Complex is considered one entity and the Coketon study area evaluated within this larger context.

The Coketon study area includes key resources such as the banks of bee hive style coke ovens and the WVC&P railroad grade that may or may not be individually eligible, but which, nonetheless, are contributing resources that tie the larger Blackwater Industrial Complex together. Besides being located along the internal railroad grade between the towns of Thomas and Douglas, the extant resources in Coketon, both above and below ground, represent the material remains of the most significant mining facility of the Davis Coal and Coke Company-- the absolute center of the massive former industrial complex of Henry G. Davis, one of West Virginia's foremost political and industrial leaders. Additionally, the mining operations and railroad fueled the boom town expansion and prosperity of the company towns of Thomas and Douglas included in this area. These towns are also vital components of the larger mining industry landscape, providing the housing, commercial and social environment of the region. Due north of the Coketon area, significant resources such as those of the Thomas Commercial Historic District, extant examples of workers' housing, the Davis company office building, the former department store building, and the railroad grade, are characteristic examples of the seamless continuity of the Complex's historic material remains.

Each of the criteria are addressed below.

Criterion A
The Blackwater Industrial Complex, including the Coketon study area, is eligible under Criterion A. The production of coal and coke is clearly significant in the economic and social development of West Virginia and the nation during the late 19th and early 20th centuries. Much of the country's coal came from West Virginia during this time period. Tucker County, where the Blackwater Industrial Complex is located, produced coke for a period of 49 years starting in 1884, and by 1900 it ranked third in the state in production. The Blackwater Industrial Complex's most active period, in terms of coal and coke produced, lasted from 1884 to the 1920s. During these productive years the Complex laid claim to the steepest mainline railroad in the East and to being one of the State's largest coking facilities and one of its highest producing coal facilities. Moreover, during the late 19th and early 20th centuries, the Davis Coal and Coke

DETERMINATION OF ELIGIBILITY NOTIFICATION

National Register of Historic Places
National Park Service

Coketon Study Area/Blackwater Industrial Complex
Tucker County, West Virginia p. 4

company was one of the largest and most well-known coal and coke companies in the world, exemplifying the property's specific association with these important events in industrial history. At the turn of the 20th century the company was producing more than 10,000 tons of coal daily from its more than 100,000 acres throughout the region, half of which was produced at the Coketon/Thomas location. As an integral component of the Complex, the Coketon area resources include the standing remains of hundreds of bee hive style coke ovens, mine portals, foundations of various related buildings, support tiers, and the railroad grade, which together convey the area's rich industrial past. Despite the reclamation in one relatively small area of Coketon within the overall Complex, extant subsurface and standing features retain adequate integrity to convey the area's historic industrial use.

Criterion B
The Blackwater Industrial Complex, including the Coketon study area, is eligible under Criterion B for it's association with Henry G. Davis, a coal baron, entrepreneur, member of the West Virginia legislature and U.S. Senator. Davis and his brothers developed and owned the Davis Coal and Coke Company, a company that directly influenced the social and economic development of the local and regional areas. This influence is reflected in the remaining resources associated with the development of the company and its effects on the local and regional community. The Blackwater Industrial Complex is directly associated with the activities and events for which Davis is well-known, illustrating his importance in local, regional, and state history.

Criterion C
The Blackwater Industrial Complex, including the Coketon study area, is eligible under Criterion C as a significant and distinguishable entity embodying distinctive characteristics of types and methods of construction related to a definable period. The area represents the distinct patterns of social organization and architecture produced through 19th and early 20th-century industrial development. Coal mining and coke production resources, railroad resources, commercial buildings, workers' housing, company-related buildings and structures are of character-defining construction and spatial arrangement. Remains of the coke ovens represent a distinctive, significant property type—the bee hive style variety, which were phased out when better cooking technology was discovered. Stone work throughout the district in the ovens, foundations, bridges (some of which are believed to have been built by immigrant Italian stone masons) and culverts represents examples of excellent period workmanship.

DETERMINATION OF ELIGIBILITY NOTIFICATION

National Register of Historic Places
National Park Service

Coketon Study Area/Blackwater Industrial Complex
Tucker County, West Virginia

Criterion D

The Blackwater Industrial Complex, including the Coketon study area, is eligible under Criterion D. Archeological survey and testing of the subsurface remains has indicated that the area contains significant, intact archeological deposits that have the ability to produce important information about the physical mining of coal and production of coke as well as the experience of workers. Recent excavations of a coke oven have revealed new information about the construction and design of specific ovens in the district. Because of the good integrity of the archeological resources, further archeological investigations of the ovens and other structures associated with the industrial development of the area may be able to produce detailed information about coal and coke production, the development of late 19th and early 20th-century technology, and the influence of railway transportation to this industry. Furthermore, excavation and analysis of workers' housing remains and associated artifacts may shed light on community social structure, ethnic and class divisions, political influences, company policies, cultural styles and trends, and individual wants and needs.

Erika Martin Seibert, Archeologist
Beth L. Savage, Architectural Historian

WEST VIRGINIA DIVISION OF
CULTURE AND HISTORY

June 23, 2004

Mr. James E. Sothen
WV Division of Highways
Building Five, Room 110
Capitol Complex
1900 Kanawha Boulevard East
Charleston, WV 25305

RE: Blackwater Industrial Complex- Archaeological and Historic District
Criteria of Effects Report, Appalachian Corridor H
FR# 91-246-MULTI

Dear Mr. Sothen,

We have received the Criteria of Effects Report for the Blackwater Industrial Complex-Archaeological and Historic District. We provide our comments as required by Section 106 of the National Historic Preservation Act of 1966, as amended and its regulations, 36 CFR 800, "The Protection of Historic Properties."

In our letter dated October 30, 2002 we provided comments regarding the potential effects to the Blackwater Industrial Complex. After review of the March 2004 report, we maintain that opinion. The bridge crossing will effect the district, but the district is composed of primarily historic archaeological features. There will be auditory and visual changes to the area, but the historic nature of the site will not adversely change. The significance of the physical remnants can be interpreted; the bridge will not adversely effect that understanding. Please know that we have thoughtfully considered the opinions of the public as evidenced in the appendices. However, the area has been extensively reclaimed; these changes should be considered as well when evaluating the impact of the proposed bridge to the existing elements of the historic district

Thank you for the opportunity to comment. If you have any questions, please contact our office.

Sincerely,

Susan M. Pierce
Deputy State Historic Preservation Officer

THE CULTURAL CENTER • 1900 KANAWHA BOULEVARD, EAST • CHARLESTON, WEST VIRGINIA 25305-0300
TELEPHONE 304-558-0220 • FAX 304-558-2779 • TDD 304-558-3562
EEO/AA EMPLOYER

United States Department of Agriculture | Forest Service | Monongahela National Forest | 200 Sycamore Street
Elkins, WV 26241
304-636-1800

File Code: 2360
Date: April 14, 2004

James E. Sothen, P.E.
Director, Engineering Division
West Virginia Department of Transportation,
Division of Highways
1900 Kanawha Boulevard, East
Building 5, Room 110
Charleston, WV 25305-0430

Re: *Appalachian Corridor H, Blackwater Industrial Complex, Archaeological and Historic District Criteria of Effects (COE) Report*

Dear Mr. Sothen,

Pursuant to the terms of the National Historic Preservation Act of 1966, as amended, and its implementing regulations, 36 CFR 800: Protection of Historic Properties, and pursuant to the terms of the Archaeological Resources Protection Act (ARPA) of 1979 permit issued to the WVDOH for its Corridor H work on National Forest lands, as amended to WVDOH Special Use Permit CHT-01, we are responding to your request for concurrence with the findings presented in the above-referenced report.

Based upon the documentation provided in the report, and the design plans that avoid effects to archaeological and historic resources that contribute to the Blackwater Industrial Complex District, considered alongside the continued implementation and execution of the June 9, 2003 MOU between the USDAFS, the WVDOH, and the Federal Highway Administration, and in light of the expected continued implementation and execution of the August 11, 2003 Agreement entered into between the USDAFS and the WVDOH, we concur with the findings of the above-referenced report. Specifically, we find that the proposed project will have *no effect* to contributing elements of the District, and recommend that project activities proceed as planned.

We look forward to continuing our review responsibilities for this project. In particular, we look forward to reviewing detailed design plans as they become available. Should you have any questions about this response, or require further information, please do not hesitate to contact our Forest Archaeologist, Mr. John Calabrese, at (304) 636-1800, ext. 245.

Sincerely,

CLYDE N. THOMPSON
Forest Supervisor

CNT:jac

cc: Henry E. Compton, Federal Highway Administration

United States Department of the Interior

FISH AND WILDLIFE SERVICE

West Virginia Field Office
694 Beverly Pike
Elkins, West Virginia 26241

October 14, 2004

Mr. James E. Sothen
WV Dept. of Transportation
Division of Highways
1900 Kanawha Boulevard, East
Building Five, Room 110
Charleston West Virginia 25305-0430

Re: Appalachian Corridor H, Parsons to Davis, West Virginia

Dear Mr. Sothen:

The U.S. Fish and Wildlife Service (Service) has reviewed the Appalachian Corridor H Parsons to Davis Project, Biological Assessment for the West Virginia Northern Flying Squirrel (BA) and provides the following comments. The West Virginia Division of Highways (WVDOH) in conjunction with the Federal Highway Administration (FHA) proposes to construct an approximately 9-mile section of the proposed Corridor H highway between Parsons and Davis, Tucker County, West Virginia. These comments are submitted in accordance with section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

On August 9, 2004 the Service received a draft copy BA for the West Virginia Northern Flying Squirrel (*Glaucomys sabrinus fuscus*) (WVNFS). On August 23, 2004 the Service met with members of your staff, your project consultants, and the FHA to discuss the conclusions and content of the BA as well as future actions on this project. On September 8, 2004 the Service received a revised version of the BA that incorporated changes recommended at our previous meeting.

The BA evaluates four alternatives including the no build alternative, two "squirrel avoidance alternatives" (with sub-alternatives), and the Revised Original Preferred Alternative (ROPA). Based on mapping of WVNFS habitat within the action area, all of the build alternatives would directly impact "highly suitable" and "suitable" WVNFS habitat. Additional direct and indirect effects including fragmentation, barriers to travel corridors, and disposal of fill material are anticipated for all build alternatives. The BA therefore concludes that all the alternatives evaluated, except the no build alternative, would be likely to adversely affect the WVNFS. The

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To A. ROGERS	From N. ANGUS
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ROPA is the shortest route and would involve the least amount of cut and fill. As a result, the BA further concludes that the ROPA would impact the least amount of "highly suitable" and "suitable" WVNFS habitat.

The Service concurs that all build alternatives are "likely to adversely affect" the WVNFS. Therefore, formal consultation will be required if the WVDOH wishes to proceed with construction of the proposed project as described in any of the alternatives evaluated.

The Service has not received a request to initiate formal consultation from the WVDOH. As consistent with National Environmental Policy Act procedures and agreements made during project meetings, the WVDOH will use the information developed in this BA to aid in selecting a preferred project alternative. The selected alternative will then be presented in a Revised Preferred Alternative Report. Once the preferred alternative is selected, the WVDOH will work with the Service and other resource trustees to develop appropriate conservation and minimization measures that will be incorporated into the selected alternative. These measures should benefit and enhance WVNFS conservation efforts consistent with section 7(a) of the ESA, and minimize project impacts to the WVNFS to the extent practicable. Formal consultation will not be initiated until these steps are completed and the Service receives a completed initiation package that fully describes the proposed project.

Additionally, for your future information, please note that recent captures near Otter Creek cabin have documented WNNFS at elevations as low as 2300 ft above sea level. We appreciate your commitment to working with the Service to address endangered species issues, and we look forward to continuing our cooperative efforts on this project. If you have further questions regarding this letter, please contact Ms. Barbara Douglas of my staff at (304) 636-6586, or at the letterhead address.

Sincerely,

Thomas R. Chapman
Field Supervisor