

**Appalachian Corridor H  
Parsons-to-Davis SFEIS**

Appendix B  
Settlement Agreement

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

\_\_\_\_\_  
CORRIDOR H ALTERNATIVES, INC.,  
et al.,

Plaintiffs,

v.

RODNEY SLATER, Secretary,  
U.S. Department of Transportation, et al.,

Defendants.  
\_\_\_\_\_ )

))  
))  
)) Case No. 1:96-CV-2622 (TFH)  
))  
))  
) SETTLEMENT AGREEMENT

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**EXHIBITS:**

- Exhibit 1: List of “Projects”
- Exhibit 2: Illustration of “Projects”
- Exhibit 3: Map of “Battlefield Area”
- Exhibit 4: Map of “Blackwater Area”
- Exhibit 5: List of Plaintiff Contacts

**SIGNATURE PAGES:**

- Corridor H Alternatives, Inc.
- West Virginia Highlands Conservancy
- West Virginia Citizen Action Group
- West Virginia Environmental Council
- Concerned Citizens Coalition
- Harrison County Environmental Citizens Organization
- Ohio Valley Environmental Coalition
- Downstream Alliance
- Northern Shenandoah Valley Audubon Society
- Student Environmental Network
- Heartwood
- Resource Alliance
- Reynolds Estates Landowners
- Cedar Creek Battlefield Foundation
- Sierra Club
- West Virginia Department of Transportation
- Federal Highway Administration
- U.S. Department of Justice



## SETTLEMENT AGREEMENT

This Agreement is entered into this 7th date of February, 2000 by and between Corridor H Alternatives, Inc. (“CHA”), West Virginia Highlands Conservancy, West Virginia Citizen Action Group, West Virginia Environmental Council, Concerned Citizens Coalition, Harrison County Environmental Citizens Organization, Ohio Valley Environmental Coalition, Downstream Alliance, Northern Shenandoah Valley Audubon Society, Student Environmental Network, Heartwood, Resource Alliance, Reynolds Estates Landowners, Cedar Creek Battlefield Foundation, and Sierra Club (collectively, “Plaintiffs”); the West Virginia Department of Transportation (“WVDOT”); and the United States of America, acting by and through the Federal Highway Administration (“FHWA”), an agency within the United States Department of Transportation.

### RECITALS

WHEREAS, on August 2, 1996, the FHWA issued a Record of Decision (“August 1996 ROD”) approving the general location and design for the Appalachian Corridor H highway (“Corridor H”) between Elkins, West Virginia, and the West Virginia/Virginia state line;

WHEREAS, on November 19, 1996, Plaintiffs filed an action in the United States District Court for the District of Columbia (“District Court”) alleging that FHWA had issued the August 1996 ROD in violation of the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq. (“NEPA”), and Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303

("Section 4(f)"), which action was docketed as Corridor H Alternatives v. Slater, Case No. 96-CV-2622 (TFH) ("Lawsuit # 1");

WHEREAS, on October 8, 1997, the District Court issued an opinion in Lawsuit # 1 holding that FHWA had complied with NEPA and Section 4(f) in issuing the August 1996 ROD;

WHEREAS, on October 23, 1997, Plaintiffs appealed the District Court's decision in Lawsuit # 1 to the U.S. Court of Appeals for the District of Columbia Circuit ("Court of Appeals");

WHEREAS, on September 24, 1998, CHA filed a new action in the District Court challenging "findings of no constructive use" made by FHWA, pursuant to Section 4(f), for two specific properties, Corricks Ford Battlefield and the Kerns House, which action was docketed as Corridor H Alternatives v. Slater, Case No. 98-CV-2256 ("Lawsuit # 2");

WHEREAS, on November 5, 1998, Plaintiffs requested that the District Court issue an injunction pending appeal in Lawsuit # 1 to prevent WVDOT from proceeding with any further construction of Corridor H outside an approximately 3.5-mile section near Elkins;

WHEREAS, on November 23, 1998, the Court of Appeals granted the injunction pending appeal in Lawsuit # 1, prohibiting WVDOT from proceeding with any construction of Corridor H other than construction of the approximately 3.5-mile section that Plaintiffs stated they did not oppose;

WHEREAS, on February 9, 1999, the Court of Appeals issued an opinion and judgment affirming the District Court decision upholding FHWA's compliance with NEPA, but reversing the District Court's decision with respect to Section 4(f), and instructing the District

Court to issue an order prohibiting FHWA from proceeding further with Corridor H pending completion of the remaining studies required under Section 4(f);

WHEREAS, on March 30, 1999, pursuant to an agreement among the parties, the District Court dismissed Lawsuit # 2 without prejudice to CHA's right to challenge any future findings of no constructive use that might be made by FHWA with respect to Corricks Ford Battlefield and the Kerns House;

WHEREAS, on April 20, 1999, the Court of Appeals issued an order providing, inter alia, that FHWA and WVDOT may proceed with construction of that portion of Corridor H known as the Northern Elkins Bypass, and that the District Court has discretion to preside over settlement negotiations and to approve any settlement that may be reached by the parties, provided that such settlement is not inconsistent with the Court of Appeals' February 9, 1999 opinion in Lawsuit # 1;

WHEREAS, on April 26, 1999, FHWA issued an Amended ROD authorizing construction of the Northern Elkins Bypass to proceed;

WHEREAS, on May 5, 1999, the District Court issued an order referring the case to the court's mediation program and further providing, inter alia, that "if the case settles in whole or in part, counsel shall advise the Court of the settlement by filing a stipulation";

WHEREAS, on May 5, 1999, the District Court issued an order that, inter alia, enjoined any further construction, design, or right-of-way acquisition on Corridor H pending completion of the remaining studies of historic properties for the project and issuance of an Amended ROD for Corridor H, and also provided that the Court would "retain jurisdiction of this case,

including the authority to modify this order as appropriate, pending the outcome of ongoing settlement negotiations among the parties”;

WHEREAS, the parties desire to eliminate, to the maximum extent possible, the potential for future litigation;

WHEREAS, the parties recognize that any settlement involving potential alignment shifts for Corridor H must take into account the interests and concerns of those potentially affected by such alignment shifts, and must not pre-determine or prejudice the outcome of any future studies regarding such alignment shifts;

WHEREAS, WVDOT is committed to the completion of Corridor H as a continuous four-lane highway, and FHWA supports WVDOT’s efforts to achieve that objective provided that such efforts are carried out in compliance with all applicable laws;

WHEREAS, CHA has a continuing interest in, and different priorities for, transportation improvements in West Virginia and the Appalachian region, which do not include the completion of Corridor H as a continuous four-lane highway, and that CHA intends to continue advocating those priorities;

WHEREAS, WVDOT intends to sequence the construction of Corridor H in a manner that allows for the completion of useable sections to the greatest extent practicable within each construction season, or over a series of consecutive construction seasons where necessary due to funding, weather, engineering, environmental, or other factors;

NOW, Therefore, the parties agree as follows:

## I. DEFINITIONS

Whenever the terms listed below are used in this Agreement, the following definitions shall apply:

1. “Advance Notice Statute” means any federal or state statutory provision under which Plaintiffs would be required to provide notice to a federal or state agency before filing a lawsuit challenging a decision by that agency.

2. “Advisory Council” means the Advisory Council on Historic Preservation and any successor departments, agencies, or instrumentalities of the United States.

3. “Agreement” means this Agreement.

4. “Amended ROD” means any ROD issued by FHWA for any Project under this Agreement.

5. “Baker” means the village of Baker, West Virginia.

6. “Baker-to-Wardensville Project” means the portion of Corridor H from Baker (at WV Route 259, 0.6 miles east of the intersection with WV Route 259/55) to Wardensville (at County Route 23/12, 0.2 miles south of WV Route 259).

7. “Battlefield Alignment” means the alignment for the Kerens-to-Parsons Project that FHWA approved in the August 1996 Corridor H ROD, or any other alignment for the Kerens-to-Parsons Project that is located at least partly within the Battlefield Area.



8. "Battlefield Area" means the area within and around the Corricks Ford Battlefield, as depicted on Exhibit 3.
9. "Battlefield Avoidance Alignment" means any alignment for Corridor H that is located entirely outside the Battlefield Area.
10. "Bismarck" means the village of Bismarck, West Virginia.
11. "Bismarck-to-Forman Project" means the portion of Corridor H from Bismarck (at WV Route 42, 0.4 miles south of the intersection with WV Route 42/93) to Forman (at County Route 5, near Thorn Run).
12. "Blackwater Alignment" means the alignment for the Thomas-Davis Section that FHWA approved in the August 1996 Corridor H ROD, or any other alignment for the Thomas-Davis Section that is located at least partly within the Blackwater Area.
13. "Blackwater Area" means the area within and around the Blackwater Valley, south of Thomas, as depicted on Exhibit 4.
14. "Blackwater Avoidance Alignment" means any alignment for Corridor H that is located entirely outside the Blackwater Area.
15. "CHA" means Corridor H Alternatives, Inc., any corporations that are subsidiaries of CHA or are otherwise legally affiliated with CHA, any successors-in-interest to CHA, and any existing or future entities, associations, or groups formed by or with the direct involvement of any persons who, as of the Effective Date, are directors or officers of

CHA partly or entirely for the purpose of opposing Corridor H or any Project or for the purpose of promoting alternatives to Corridor H or any Project.

16. “Corridor H” means all or a portion of the Appalachian Corridor H highway, between Aggregates, West Virginia, and the West Virginia/Virginia State Line.

17. “Court of Appeals” means the United States Court of Appeals for the District of Columbia Circuit.

18. “Davis” means the town of Davis, West Virginia.

19. “Davis-to-Bismarck Project” means the portion of Corridor H from Davis (at WV Route 93, 0.7 miles east of WV Route 32) to Bismarck (at WV Route 42, 0.4 miles south of the intersection with WV Route 42/93).

20. “Delivery Date” when used in reference to the delivery of document to any Party under this Agreement is the date on which the delivery of that document to that Party is completed in accordance with the procedures established in Section II, Part E of the Agreement, except as otherwise specifically provided in this Agreement.

21. “District Court” means the United States District Court for the District of Columbia.

22. “Effective Date” means the date on which the District Court enters an order in Lawsuit # 1 approving the Agreement.

23. “Elkins-to-Kerens Project” means the portion of Corridor H from Elkins (at the terminus of the Northern Elkins Bypass, 0.55 miles east of County Route 11) to Kerens (0.2 miles north of County Route 7).

24. “Exhibit” means an exhibit attached to the Agreement.

25. “Facsimile Delivery Procedure” is the delivery procedure specified in Section II, Part E, Paragraph 2 of this Agreement.

26. “Feasible” and “Feasibility” when used in quotation marks have the same meaning as those terms are given in Section 4(f), as interpreted through governing case law, regulations, guidance, and policy statements.

27. “FHWA” means the Federal Highway Administration and any successor departments, agencies, or instrumentalities of the United States.

28. “Forman” means the town of Forman, West Virginia.

29. “Forman-to-Moorefield Project” means the portion of Corridor H from Forman (at County Route 5, near Thorn Run) to Moorefield (at County Route 15, 0.5 miles west of WV Route 55).

30. “Greenland Gap” means the valley between Scherr and Greenland, West Virginia, from a point just west of the intersection of County Route 1 and WV Route 93 to the intersection of County Route 1 and County Route 3/3.

31. “Hardship Acquisition” has the same meaning as that term is given in 23 C.F.R. § 771.117(d)(12), footnote 3.

32. “Improved Roadway Alternative” means any alternative that calls for the improvement of an existing two-lane or three-lane roadway, or the construction of a new two-lane or three-lane roadway, in lieu of the completion of all or a portion of Corridor H as a four-lane, divided highway.

33. “Keeper” means the Keeper of the National Register, or any other official within the United States Department of the Interior vested with authority to determine the eligibility of historic properties for listing in the National Register, pursuant to 16 U.S.C. § 470a.

34. “Kerens-to-Parsons Project” means the portion of Corridor H from Kerens (0.2 miles north of County Route 7) to Parsons (County Route 219/4, 0.2 miles south of the northernmost point at which County Route 219/4 intersects with US Route 219).

35. “Lawsuit # 1” means all stages of the lawsuit that was originally docketed as Corridor H Alternatives, et al. v. Pena et al., Case No. 96-CV-2622 (TFH), in the District Court and was docketed as Corridor H Alternatives et al. v. Slater, Case No. 97-5301, in the Court of Appeals.

36. “Lawsuit # 2” means the lawsuit docketed as Corridor H Alternatives v. Slater et al., Case No. 98-CV-2256 (TFH) in the District Court.

37. “Moorefield” means the Town of Moorefield, West Virginia.

38. “Moorefield-to-Baker Project” means the portion of Corridor H from Moorefield (at County Route 15, 0.5 miles west of WV Route 55) to Baker (at WV Route 259, 0.6 miles east of the intersection with WV Route 259/55).

39. “MSBV EA” means the August 1999 Environmental Assessment for the Middle South Branch Valley Alternatives for Corridor H.

40. “National Register” means the National Register of Historic Places, as maintained by the United States Department of the Interior, pursuant to 16 U.S.C. § 470a.

41. “NEPA” means the National Environmental Policy Act of 1970, 42 U.S.C. § 4321, et seq.

42. “NEPA Document” means any document or report prepared by or on behalf of FHWA or WVDOT pursuant to NEPA for a Project, including but not necessarily limited to any Environmental Assessment, Finding of No Significant Impact, Draft SEIS, Final SEIS, or Amended ROD, but not including any pre-decisional, deliberative, or privileged materials.

43. “NPS” means the National Park Service and any successor departments, agencies, or instrumentalities of the United States.

44. “Paragraph” (when used in reference to a portion of the Agreement) means a portion of the Agreement contained under a heading that begins with an arabic numeral (1,2,3, etc.)

45. “Parsons-to-Davis Project” means the portion of Corridor H from Parsons (at County Route 219/4, 0.2 miles south of US Route 219) to Davis (at WV Route 93, 0.7 miles east of WV Route 32).

46. “Part” when used in reference to a portion of the Agreement means a portion of the Agreement contained under a heading that begins with an upper-case letter (A,B,C, etc.)

47. “Parties” means the United States, acting by and through FHWA; WVDOT; and the Plaintiffs.

48. “Plaintiffs” means all named Plaintiffs in Lawsuit # 1, including CHA, the West Virginia Highlands Conservancy, the West Virginia Citizen Action Group, the West Virginia Environmental Council, the Concerned Citizens Coalition, the Harrison County Environmental Citizens Organization, the Ohio Valley Environmental Coalition, the Downstream Alliance, the Northern Shenandoah Valley Audubon Society, the Student Environmental Network, Heartwood, the Resource Alliance, the Reynolds Estates Landowners, the Cedar Creek Battlefield Foundation, and the Sierra Club, any corporations that are subsidiaries of a Plaintiff or are otherwise legally affiliated with a Plaintiff, as well as any successors-in-interest to any such organization, and (except in the case of the Sierra Club) any existing or future entities, associations, or groups formed by or with the direct involvement of any persons who, as of the Effective Date, are directors or officers of any Plaintiff partly or entirely for the purpose of opposing Corridor H or any Project or for the purpose of promoting alternatives to Corridor H or any Project.

49. “Programmatic Agreement” means the Programmatic Agreement entered into by FHWA, the Advisory Council, and the SHPO with respect to Corridor H on November 8, 1995.

50. “Project” means a section of Corridor H for which an Amended ROD may be issued pursuant to this Agreement.

51. “Project Status Report” means any document required to be prepared by WVDOT pursuant to Section IV, Part B, Paragraph 6 of this Agreement.

52. “Protective Acquisition” has the same meaning as that term is given in 23 C.F.R. § 771.117(d)(12), footnote 3.

53. “Prudent” and “Prudence” when used in quotation marks have the same meaning as those terms are given in Section 4(f), as interpreted through governing case law, regulations, guidance, and policy statements.

54. “Return Receipt Delivery Procedure” is the delivery procedure specified in Section II, Part E, Paragraph 1 of this Agreement.

55. “ROD” means a Record of Decision issued pursuant to NEPA.

56. “Section” when used in reference to a portion of the Agreement means a portion of the Agreement contained under a heading that begins with an upper-case roman numeral (I, II, III, etc.)

57. “Section 106” means Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. § 470f.

58. “Section 106 Activities” means any activities required to be undertaken for a Project pursuant to Section 106, including but not necessarily limited to activities required to be undertaken pursuant to the Programmatic Agreement.

59. “Section 4(f)” means Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. § 303(c).

60. “Section 4(f) Activities” means any activities required to be undertaken for a Project pursuant to Section 4(f).

61. “Section 4(f) Document” means any finding, evaluation, report, or other document prepared by or on behalf of FHWA or WVDOT pursuant to Section 4(f) with respect to a Project, including but not necessarily limited to any finding of no constructive use and any approval of the use of a Section 4(f) Resource, but not including any pre-decisional, deliberative, or privileged materials.

62. “Section 4(f) Resource” means any park, recreation area, wildlife or waterfowl refuge or historic site that is protected under Section 4(f).

63. “SEIS” means a Supplemental Environmental Impact Statement, prepared by FHWA and WVDOT in accordance with NEPA and other applicable laws and regulations.



64. “SHPO” means the West Virginia State Historic Preservation Officer, or an official authorized to act on his or her behalf for purposes of Section 106.

65. “Stand-Down Period” when used in reference to any Amended ROD is a period of 15 calendar days following the date on which Plaintiffs receive a copy of that Amended ROD from WVDOT pursuant to this Agreement.

66. “Thomas” means the Town of Thomas, West Virginia.

67. “Thomas-Davis Section” means the portion of the Parsons-to-Davis Project from a point west of Thomas (approximately 0.9 miles east of the intersection of US Route 219 and Forest Road 18, near Big Run) to a point east of Davis (at WV Route 93, 0.7 miles east of WV Route 32).

68. “United States” means the United States of America, including its departments, agencies, and instrumentalities.

69. “Use” when used in quotation marks in this Agreement has the same meaning as that term is given in Section 4(f), as interpreted through governing case law, regulations, guidance, and policy statements.

70. “USFS” means the United States Forest Service and any successor departments, agencies, or instrumentalities of the United States.

71. “Wardensville” means the Town of Wardensville, West Virginia.

72. “Wardensville-to-Virginia Project” means the portion of Corridor H from Wardensville (at County Route 23/12, 0.2 miles south of WV Route 259) to a point on WV Route 55 approximately 100 feet west of the West Virginia/Virginia state line.

73. “WVDOT” means the West Virginia Department of Transportation, including the West Virginia Division of Highways, and any successor departments, agencies, or instrumentalities of the State of West Virginia.

74. “WVDOT-Owned Right-of-Way” means all property owned by WVDOT as right-of-way for any highway, other roadway, or recreational trail.

## **II. GENERAL PROVISIONS**

### **A. Parties Bound**

This Agreement is binding upon the United States, including FHWA; the State of West Virginia, including WVDOT; and the Plaintiffs.

### **B. Amendments**

This Agreement may be amended by mutual written consent of all Parties. Any amendments to this Agreement will become effective upon approval by the District Court.

### **C. Integration**

The Agreement (including the Exhibits) constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Agreement. The Parties acknowledge that there are no representations, agreements, or

understandings relating to the settlement other than those expressly contained in the Agreement. The following Exhibits are attached to and incorporated into the Agreement:

1. Exhibit 1: List of “Projects”
2. Exhibit 2: Illustration of “Projects”
3. Exhibit 3: Map of “Battlefield Area”
4. Exhibit 4: Map of “Blackwater Area”
5. Exhibit 5: List of Plaintiff Contacts

#### **D. Federal Authority**

This Agreement shall not be construed to (1) deprive any official of the United States of authority to revise, amend, or promulgate regulations, (2) commit any official of the United States to expend funds not appropriated by Congress or to seek appropriations from Congress, or (3) limit the ability of Congress to amend the laws of the United States.

#### **E. Delivery of Documents**

Documents required to be delivered to any Party under this Agreement shall be delivered to that Party in accordance with the Return-Receipt Delivery Procedure or the Facsimile Delivery Procedure, as specified in the applicable provision of the Agreement, or via any other procedure that is specifically authorized in this Agreement or that may subsequently be agreed-upon by the Parties in writing. Compliance with such procedures shall completely satisfy a Party’s obligation to deliver any document to another Party pursuant to this Agreement.

##### **1. Return-Receipt Delivery Procedure**

Any Party may transmit a document to another Party pursuant to the “Return Receipt Delivery Procedure” by transmitting that document to the other Party at each of the addresses specified in this Paragraph via either of the following methods: (1) U.S. Postal Service, certified mail, return receipt requested, or (2) any commercial delivery service that provides a written return receipt bearing the signature of the recipient.

**a. Return-Receipt Delivery to Plaintiffs**

Documents delivered to the Plaintiffs pursuant to the Return-Receipt Delivery Procedure shall be delivered to each of the individuals specified in Exhibit 5 at the addresses specified therein, unless those individuals or their successors give notice of a change to the other Parties in writing. Notwithstanding any other provision of this Agreement, the Delivery Date for any document delivered to the Plaintiffs pursuant to the Return-Receipt Delivery Procedure shall be the date on which a return receipt for that document is signed by the President of Corridor H Alternatives, Inc.

**b. Return-Receipt Delivery to WVDOT**

Documents delivered to WVDOT pursuant to the Return-Receipt Delivery Procedure shall be delivered to each of the following individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing:

Sheila D. Jones, Esq.  
William G. Malley, Esq.  
Cutler & Stanfield, L.L.P.  
700 14<sup>th</sup> St. NW  
Tenth Floor  
Washington, DC 20005

(202) 624-8400

Randolph T. Epperly, Jr.  
West Virginia Division of Highways  
1900 Kanawha Blvd. East, Building 5  
Room 129  
Charleston, WV 25305  
(304) 558-6266

***c. Return-Receipt Delivery to FHWA***

Documents delivered to FHWA pursuant to the Return-Receipt Delivery Procedure shall be delivered to each of the following individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing:

Brett Gainer, Esq.  
Office of the Chief Counsel  
Federal Highway Administration  
10 S. Howard St.  
Suite 4000  
Baltimore, MD 21201  
(410) 962-0936

Thomas Smith  
Division Administrator  
Federal Highway Administration  
700 N. Washington St.  
Suite 200  
Charleston, WV 25301  
(304) 347-5928

**2. Facsimile Delivery Procedure**

Any Party may transmit a document to another Party pursuant to the “Facsimile Delivery Procedure” by transmitting that document to the other Party at the facsimile number and addresses specified in this Paragraph via both of the following methods: (1) facsimile transmission and (2) any commercial overnight delivery service.

**a. Facsimile Delivery to Plaintiffs**

Documents delivered to the Plaintiffs pursuant to the Facsimile Delivery Procedure shall be delivered to the facsimile number and address specified below, unless the Plaintiffs give notice of a change to the other Parties in writing:

Andrea Ferster, Esq.  
1100 17th St. NW  
Tenth Floor  
Washington, DC 20036  
(202) 974-5142  
(202) 331-9680 (facsimile)

**b. Facsimile Delivery to WVDOT**

Documents delivered to WVDOT pursuant to the Facsimile Delivery Procedure shall be delivered to the facsimile number and address specified below, unless WVDOT gives notice of a change to the other Parties in writing:

Sheila D. Jones, Esq.  
William G. Malley, Esq.  
Cutler & Stanfield, L.L.P.  
700 14<sup>th</sup> St. NW  
Tenth Floor  
Washington, DC 20005  
(202) 624-8400  
(202) 624-8410 (facsimile)

**c. Facsimile Delivery to FHWA**

Documents delivered to FHWA pursuant to the Facsimile Delivery Procedure shall be delivered to the facsimile number and address specified below, unless FHWA gives notice of a change to the other Parties in writing:

Brett Gainer, Esq.  
Office of the Chief Counsel  
Federal Highway Administration  
10 S. Howard St.

Suite 4000  
Baltimore, MD 21201  
(410) 962-0936  
(410) 962-4586 (facsimile)

### **III. RESOLUTION OF MAJOR ISSUES IN DISPUTE**

#### **A. Elkins to Kerens**

##### **1. Issuance of Amended ROD**

FHWA may issue an Amended ROD granting approval for the Elkins-to-Kerens Project without any further study or consultation.

##### **2. Implementation of Amended ROD**

Following the issuance of the Amended ROD for the Elkins-to-Kerens Project, FHWA and WVDOT may proceed immediately, without any Stand-Down Period, with any remaining final design activities, right-of-way acquisition, and construction within the Elkins-to-Kerens Project.

##### **3. Right to Challenge Amended ROD**

Plaintiffs hereby waive the right to bring an action under the Administrative Procedure Act or any other law alleging that FHWA's issuance of the Amended ROD for the Elkins-to-Kerens Project was not granted in accordance with NEPA, Section 4(f), Section 106, or any other applicable law or regulation.

## **B. Kerens to Parsons**

### **1. Alignment Shift Study (SEIS)**

FHWA and WVDOT will prepare a Supplemental Environmental Impact Statement (“SEIS”) to examine one or more potential alignment shifts for the Kerens-to-Parsons Project. The SEIS will be prepared in accordance with NEPA and all other applicable laws in existence at the time the SEIS is prepared and the following provisions:

#### ***a. Range of Alternatives***

The SEIS will evaluate a reasonable range of alternatives for completing the Kerens-to-Parsons Project. The range of alternatives will include one or more Battlefield Avoidance Alignments and the Battlefield Alignment.

#### ***b. Evaluation of Alternatives***

The SEIS will evaluate the Battlefield Avoidance Alignment(s) to determine whether any such alternative (1) is “feasible” and “prudent” and (2) does not “use” any land protected by Section 4(f). The evaluation required by this Paragraph will be included in draft form in the Draft SEIS and in final form in the Final SEIS.

### **2. Alignment Selection**

In the Final SEIS, FHWA and WVDOT will select the alignment for the Kerens-to-Parsons Project in accordance with the following provisions:



a. **If Any Battlefield Avoidance Alignment is “Prudent” and “Feasible” and Avoids All Section 4(f) Resources:**

If FHWA determines that there is a Battlefield Avoidance Alignment that is “prudent” and “feasible” and does not “use” any Section 4(f) resources, FHWA will include this determination together with the supporting rationale in the Final SEIS.

WVDOT may then select as its preferred alternative any Battlefield Avoidance Alignment that is “prudent” and “feasible” and does not “use” any Section 4(f) resources and FHWA may approve the selection of that alternative in an Amended ROD for the Kerens-to-Parsons Project.

b. **If None of the Battlefield Avoidance Alignments Is “Prudent” and “Feasible”:**

If FHWA determines that no Battlefield Avoidance Alignment is both “prudent” and “feasible,” FHWA will include this determination together with the supporting rationale in the Final SEIS. WVDOT may then select as its preferred alternative the Battlefield Alignment and FHWA may approve the selection of that alternative in an Amended ROD for the Kerens-to-Parsons Project.

c. **If None of the “Prudent” and “Feasible” Battlefield Avoidance Alignments Avoids the Use of Section 4(f) Resources:**

If FHWA determines one or more of the Battlefield Avoidance Alignments is “prudent” and “feasible,” but also determines that any such alternative involves the unavoidable “use” of Section 4(f) lands, FHWA and WVDOT will proceed as follows:

(1) **Re-Consider “Prudence” and “Feasibility” of Battlefield Alignment**

FHWA will re-evaluate the “prudence” and “feasibility” of the Battlefield Alignment, by taking into consideration all relevant factors, including but not limited to the cost of mitigation associated with that alignment, and determine whether the Battlefield Alignment is “prudent” and “feasible.”

If FHWA determines that the Battlefield Alignment is not “prudent” and/or is not “feasible,” FHWA will include this determination together with the supporting rationale in the Final SEIS. WVDOT may then select as its preferred alternative the “prudent” and “feasible” Battlefield Avoidance Alignment that minimizes harm to Section 4(f) resources and FHWA may approve the selection of that alternative in an Amended ROD for the Kerens-to-Parsons Project.

(2) **Re-Consider “Use” of 4(f) Resources by Battlefield Alignment**

If FHWA determines that the Battlefield Alignment is “prudent” and “feasible,” FHWA will re-evaluate its July 16, 1998 finding that the Battlefield Alignment does not “use” any Section 4(f) resources. This re-evaluation will be conducted in light of the administrative record for the previous finding as well as any additional information or changed circumstances that may exist at that time.

If FHWA determines that the Battlefield Alignment “uses” any Section 4(f) resource, FHWA will include this determination together with the supporting rationale in the Final SEIS. FHWA will then weigh the harm to Section 4(f) resources caused by the Battlefield Alignment

against the harm to Section 4(f) resources caused by the “prudent” and “feasible” Battlefield Avoidance Alignments.

If FHWA determines that the Battlefield Alignment causes greater harm to Section 4(f) resources than one or more of the Battlefield Avoidance Alignments, or causes substantially equal harm to Section 4(f) resources when compared to one or more of the Battlefield Avoidance Alignments, FHWA will include this determination together with the supporting rationale in the Final SEIS. WVDOT may then select as its preferred alternative the “prudent” and “feasible” Battlefield Avoidance Alignment that minimizes harm to Section 4(f) resources and FHWA may approve the selection of that alternative in an Amended ROD for the Kerens-to-Parsons Project.

**(3) Select Battlefield Alignment If It Is Prudent and Feasible and Avoids All Section 4(f) Resources**

If FHWA determines that the Battlefield Alignment is “prudent” and “feasible,” and further determines that the Battlefield Alignment avoids all Section 4(f) Resources, FHWA will include this determination together with the supporting rationale in the Final SEIS. WVDOT may then select the Battlefield Alignment as its preferred alternative and FHWA may approve the selection of that alternative in an Amended ROD for the Kerens-to-Parsons Project.

**3. Issuance of Amended ROD**

FHWA may issue an Amended ROD granting approval for the Kerens-to-Parsons Project after (1) completing the SEIS for the Kerens-to-Parsons Project, (2) completing all Section 106 Activities and Section 4(f) Activities for this Project, and (3) making any findings required by this Agreement.

#### **4. Implementation of Amended ROD**

Following the issuance of an Amended ROD for the Kerens-to-Parsons Project, FHWA and WVDOT may proceed with any remaining final design activities, right-of-way acquisition, and construction of the Kerens-to-Parsons Project.

#### **5. Right to Challenge Amended ROD**

Except as specifically provided in Section IV of this agreement, Plaintiffs retain the right to file an action under the Administrative Procedure Act or other applicable authority challenging an Amended ROD for the Kerens-to-Parsons Project based on alleged non-compliance with any applicable law or with any additional requirements imposed by this Agreement or the Programmatic Agreement.

### **C. Parsons to Davis**

#### **1. Alignment Shift Study (SEIS)**

FHWA and WVDOT will prepare an SEIS to evaluate one or more alignment shifts for the Thomas-Davis Section of the Parsons-to-Davis Project. The SEIS will be prepared in accordance with NEPA and all other applicable laws in existence at the time the SEIS is prepared and with the following provisions:

##### **a. Range of Alternatives**

The SEIS will evaluate a reasonable range of alternatives for completing the Thomas-Davis Section of the Parsons-to-Davis Project. The range of alternatives will include one or more Blackwater Avoidance Alignments and the Blackwater Alignment.

***b. Evaluation of Alternatives***

The SEIS will evaluate the Blackwater Avoidance Alignment(s) to determine whether there is any such alternative that (1) is “feasible” and “prudent” and (2) does not “use” any land protected by Section 4(f). The evaluation required by this Paragraph will be included in draft form in the Draft SEIS and in final form in the Final SEIS.

**2. Additional Public Involvement Opportunities**

In addition to the public involvement efforts required by law, WVDOT also will undertake the following efforts to enhance opportunities for the affected communities to participate in conducting the study and in selecting the preferred alternative for the Thomas-Davis Section.

***a. Community Advisory Group***

WVDOT will establish and consult with a Community Advisory Group (“CAG”) of not more than twelve (12) members representing a cross-section of the interests potentially affected by the location of Corridor H in the Davis and Thomas areas.

***(1) Role***

The role of the CAG will be to broaden the opportunities for public involvement in all phases of the SEIS for the Thomas-Davis Section, from the initial scoping stage through the final selection of a preferred alternative. This role will include three major elements: (1) identifying the range of interests potentially affected by the location and design of the Thomas-Davis Section, including economic development, transportation, environmental, and historic preservation interests (i.e., stakeholders); (2) evaluating a range of approaches to resolving

any actual or potential conflicts among those interests; and (3) if possible, identifying a particular alternative that is acceptable to all stakeholders.

**(2) Membership**

WVDOT will establish a 60-day period during which members of the CAG may be appointed. The right to appoint members will be allocated as follows:

1. The City Council of the City of Thomas (appoints two members)
2. The City Council of the Town of Davis (appoints two members)
3. Tucker County Planning Commission (appoints one member)
4. Tucker County Convention & Visitors Bureau (appoints one member)
5. Tucker County Development Authority (appoints one member)
6. Region VII Planning and Development Council (appoints one member)
7. Alpine Heritage Preservation, Inc. (appoints one member)
8. Tucker County Gateway Project (appoints one member)
9. Highlands Trail Foundation (appoints one member)
10. Friends of the 500th (appoints one member)

If any entity listed in this Paragraph fails to exercise its right to appoint a member or members of the CAG within the 60-day period specified herein, WVDOT will consult with CHA regarding the selection of the remaining member or members. In consultation with CHA, WVDOT will then: (1) appoint the remaining member or members, (2) invite another entity to appoint the remaining member or members, or (3) extend the period within which the appointing entity may appoint a member or members to the CAG.

The power to appoint a member is plenary: it includes the power to appoint, to remove, and to replace, and the exercise of this power is solely within the discretion of the appointing authority.

**(3) Facilitator**

In consultation with CHA, WVDOT will retain the services of a facilitator, who will be responsible for scheduling and facilitating meetings of the CAG and for serving as a liaison between the CAG and WVDOT. In selecting a facilitator, WVDOT will seek an individual from the Canaan Valley Institute or elsewhere with the following characteristics: (1) experience as a facilitator, (2) familiarity with Davis and Thomas and the surrounding area, (3) familiarity with transportation and environmental issues, (4) independence and objectivity, and (5) ability to devote sufficient time to the project. WVDOT will not select as the facilitator any past or current employee of FHWA, WVDOT, or the consultant preparing the SEIS, nor will WVDOT select any person with a known personal interest in the location of the Thomas-Davis Section. WVDOT may retain the facilitator either directly or as a sub-contractor to the consultant preparing the SEIS.

**(4) Meetings**

The dates, agendas, and formats for meetings of the CAG will be determined by the members of the CAG in conjunction with the facilitator, not by WVDOT. However, WVDOT will take appropriate actions within its authority to ensure that all meetings of the CAG are open to the public; are held at locations convenient to members of the Davis and Thomas communities; and are held on a regular basis throughout the development of the SEIS.

**(5) Access to Project Records**

WVDOT will provide opportunities for members of the CAG to review technical reports, maps, and other materials during the preparation of the SEIS, to the extent that such materials would otherwise be available to the public at large. All information provided to members of the CAG will be considered a matter of public record and therefore may be distributed without restriction to the public at large.

**(6) Coordination with NEPA Process**

WVDOT will inform the members of the CAG of upcoming events in the NEPA process so that the members of the CAG will have an opportunity to schedule their meetings accordingly. WVDOT will not be required by this Agreement to postpone any action based on the meeting schedule of the CAG.

**(7) Effect on WVDOT Decisions**

WVDOT will consider the views expressed by the members of the CAG, whether individually or collectively, in reaching its decisions regarding the scope of the SEIS and the location and design of the Thomas-Davis Section. WVDOT will not be required to adopt recommendations made by members of the CAG, individually or collectively, nor will WVDOT be required to give such recommendations greater weight than recommendations made by any other agency, organization, or individual.



**b. City Councils**

FHWA and WVDOT will provide an opportunity for the city councils of Thomas and Davis to express their views on the alignments under consideration. FHWA and WVDOT will solicit the views of the city councils as follows:

**(1) Invitations**

After completion of the public comment period on the Draft SEIS, WVDOT will transmit a letter to each city council requesting that the council express its views on the location and design of the Thomas-Davis Section. The transmittal of these letters will initiate an additional 60-day period for each city council to consider the alternatives examined in the SEIS and to express its views on one or more of those alternatives.

**(2) Identification of Preferred Alternative**

In its letter to each city council, WVDOT will identify its preferred alternative for the Thomas-Davis Section and will explain its reasons for selecting that alternative. The identification of a preferred alternative by WVDOT at this stage of the process will not preclude WVDOT from changing its preferred alternative at a later stage based on the city councils' comments or other new information or changed circumstances.

**(3) Presentations to City Councils**

In its letter to each city council, WVDOT will offer to make a presentation to each city council outlining WVDOT's reasons for selecting its preferred alternative for the Thomas-Davis Section. WVDOT will request that the City Council provide an opportunity for CHA to express its views on the preferred alternative at any such presentation.

**(4) Effect of Decision by City Councils**

If, during the 60-day period specified above, either city council adopts a resolution opposing all of the Blackwater Avoidance Alignments or supporting the Blackwater Alignment, FHWA and WVDOT will have the right (but not the obligation) under this Agreement to discontinue consideration of the Blackwater Avoidance Alignments without preparing a Final SEIS for the Thomas-Davis Section. Under those circumstances, FHWA and WVDOT would then be free to proceed with any remaining steps in the approval process for the Blackwater Alignment.

### **3. Alignment Selection**

If the Blackwater Avoidance Alignments have not been eliminated from consideration based on the actions of the city council(s) of Davis and/or Thomas, pursuant to this Agreement, FHWA and WVDOT will proceed with preparation of a Final SEIS for the Thomas-Davis Section. In the Final SEIS, FHWA and WVDOT will select the alignment for the Thomas-Davis Section in accordance with the following provisions:

***a. If Any Blackwater Avoidance Alignment is Prudent and Feasible and Avoids All Section 4(f) Resources:***

If FHWA determines that there is a Blackwater Avoidance Alignment that is “prudent” and “feasible” and does not “use” any Section 4(f) resources, FHWA will include this determination together with the supporting rationale in the Final SEIS. WVDOT may then select as its preferred alternative any Blackwater Avoidance Alignment that is “prudent” and “feasible” and does not “use” any Section 4(f) resources and FHWA may approve the selection of that alternative in an Amended ROD for the Parsons-to-Davis Project.

**b. If None of the Blackwater Avoidance Alignments Is Prudent and Feasible:**

If FHWA determines that no Blackwater Avoidance Alignment is both “prudent” and “feasible,” FHWA will include this determination together with the supporting rationale in the Final SEIS. WVDOT may then select as its preferred alternative the Blackwater Alignment and FHWA may approve the selection of that alternative in an Amended ROD for the Parsons-to-Davis Project.

**c. If None of the Prudent and Feasible Blackwater Avoidance Alignments Avoids the Use of Section 4(f) Resources:**

If FHWA determines one or more of the Blackwater Avoidance Alignments is “prudent” and “feasible,” but also determines that any such alternative involves the unavoidable “use” of Section 4(f) lands, FHWA and WVDOT will proceed as follows:

**(1) Determine Whether Blackwater Alignment is “Prudent” and “Feasible”**

FHWA will evaluate the “prudence” and “feasibility” of the Blackwater Alignment, by taking into consideration all relevant factors, including but not limited to the cost of mitigation associated with that alignment, and determine whether the Blackwater Alignment is “prudent” and “feasible.”

If FHWA determines that the Blackwater Alignment is not “prudent” and/or is not “feasible,” FHWA will include this determination together with the supporting rationale in the Final SEIS. WVDOT may then select as its preferred alternative the “prudent” and “feasible” Blackwater Avoidance Alignment that minimizes harm to Section 4(f) resources and FHWA

may approve the selection of that alternative in an Amended ROD for the Parsons-to-Davis Project.

**(2) Determine Whether Blackwater Alignment “Uses” Any Section 4(f) Resources**

If FHWA determines that the Blackwater Alignment is “prudent” and “feasible,” FHWA will determine whether the Blackwater Alignment “uses” any Section 4(f) resources.

If FHWA determines that the Blackwater Alignment “uses” any Section 4(f) resource, FHWA will include this determination together with the supporting rationale in the Final SEIS. FHWA will then weigh the harm to Section 4(f) resources caused by the Blackwater Alignment against the harm to Section 4(f) resources caused by the “prudent” and “feasible” Blackwater Avoidance Alignments.

If FHWA determines that the Blackwater Alignment causes greater harm to Section 4(f) resources than one or more of the Blackwater Avoidance Alignments, or causes substantially equal harm to Section 4(f) resources when compared to one or more of the Blackwater Avoidance Alignments, FHWA will include this determination together with the supporting rationale in the Final SEIS. WVDOT may then select as its preferred alternative the “prudent” and “feasible” Blackwater Avoidance Alignment that minimizes harm to Section 4(f) resources and FHWA may approve the selection of that alternative in an Amended ROD for the Parsons-to-Davis Project.

**(3) Select Blackwater Alignment If It Is Prudent and Feasible and Avoids All Section 4(f) Resources**

If FHWA determines that the Blackwater Alignment is “prudent” and “feasible,” and further determines that the Blackwater Alignment avoids all Section 4(f) Resources, FHWA

will include this determination together with the supporting rationale in the Final SEIS. WVDOT may then select the Blackwater Alignment as its preferred alternative and FHWA may approve the selection of that alternative in an Amended ROD for the Parsons-to-Davis Project.

#### **4. Issuance of Amended ROD**

FHWA may issue an Amended ROD granting approval for the Parsons-to-Davis Project after (1) completing an SEIS that evaluates alignment shifts in the Thomas-Davis Section, as specified in this Agreement, (2) completing all Section 106 Activities and Section 4(f) Activities for the Parsons-to-Davis Project, and (3) making any findings required by this Agreement.

#### **5. Implementation of Amended ROD**

Following the issuance of an Amended ROD for the Parsons-to-Davis Project, FHWA and WVDOT may proceed with any remaining final design activities, right-of-way acquisition, and construction of the Parsons-to-Davis Project.

#### **6. Additional Commitments**

FHWA and WVDOT will continue to consult with the NPS and the USFS regarding the potential impacts of the Parsons-to-Davis Project on the Big Run Bog National Natural Landmark and Canyon Rim Road and Canyon Rim Trail. FHWA and WVDOT also will consult with CHA on these issues. Through such consultation, FHWA and WVDOT will ensure that the construction limits for the Parsons-to-Davis Project are located entirely outside the drainage area for Big Run Bog. In addition, FHWA and WVDOT will ensure that the Parsons-

to-Davis Project is consistent with the recommendations of the USFS regarding access from Corridor H onto Canyon Rim Road.

### **7. Right to Challenge Amended ROD**

Except as specifically provided in Section IV of this agreement, Plaintiffs retain the right to file an action under the Administrative Procedure Act or other applicable authority challenging an Amended ROD for the Parsons-to-Davis Project based on alleged non-compliance with any applicable law or with any additional requirements imposed by this Agreement or the Programmatic Agreement.

### **D. Davis to Bismarck**

#### **1. Issuance of Amended ROD**

FHWA may issue an Amended ROD granting approval for the Davis-to-Bismarck Project after completing all Section 106 Activities and Section 4(f) Activities for this Project.

#### **2. Implementation of Amended ROD**

Following the issuance of an Amended ROD for the Davis-to-Bismarck Project, FHWA and WVDOT may proceed with any remaining final design activities, right-of-way acquisition, and construction of the Davis-to-Bismarck Project.

#### **3. Right to Challenge Amended ROD**

Plaintiffs hereby waive the right to bring an action under the Administrative Procedure Act or any other law alleging that FHWA's issuance of the Amended ROD for the Davis-to-Bismarck Project was not granted in accordance with NEPA, Section 4(f), Section 106, or any other applicable law or regulation. This waiver includes, but is not limited to, any claim

that the Davis-to-Bismarck Project “constructively uses” any Section 4(f) resource. This waiver is subject to the following exceptions:

- (1) Plaintiffs do not waive the right to file an action alleging that the Amended ROD for this Project was issued prior to completion of the Section 106 Activities and/or Section 4(f) Activities for this Project;
- (2) Plaintiffs do not waive the right to file an action alleging that FHWA has not complied with its obligations under the Programmatic Agreement; and
- (3) Except as specifically provided in Section IV, Part D, of this Agreement, the Plaintiffs do not waive the right to file an action challenging any findings made pursuant to the Endangered Species Act in the Amended ROD.

## **E. Bismarck to Forman**

### **1. Issuance of Amended ROD**

FHWA may issue an Amended ROD granting approval for the Bismarck-to-Forman Project after completing all Section 106 Activities and Section 4(f) Activities for this Project.

### **2. Implementation of Amended ROD**

Following the issuance of an Amended ROD for the Bismarck-to-Forman Project, FHWA and WVDOT may proceed with any remaining final design activities, right-of-way acquisition, and construction of the Bismarck-to-Forman Project.

### **3. Right to Challenge Amended ROD**

Plaintiffs hereby waive the right to bring an action under the Administrative Procedure Act or any other law alleging that FHWA’s issuance of the Amended ROD for the Bismarck-

to-Forman Project was not granted in accordance with NEPA, Section 4(f), Section 106, or any other applicable law or regulation. This waiver includes, but is not limited to, the claim that the Bismarck-to-Forman Project “constructively uses” any Section 4(f) resource. This waiver is subject to the following exceptions:

- (1) Plaintiffs do not waive the right to file an action alleging that the Amended ROD for this Project was issued prior to completion of the Section 106 Activities and/or Section 4(f) Activities for this Project;
- (2) Plaintiffs do not waive the right to file an action alleging that FHWA has not complied with its obligations under the Programmatic Agreement;
- (3) Except as specifically provided in Section IV, Part D, of this Agreement, the Plaintiffs do not waive the right to file an action challenging any findings made pursuant to the Endangered Species Act in the Amended ROD;
- (4) If the Keeper determines that Greenland Gap is (or is included within) a historic resource eligible for the National Register, and if FHWA then determines that Corridor H will not “use” that historic resource, Plaintiffs do not waive the right to file an action under the Administrative Procedure Act challenging that finding based on alleged non-compliance with Section 4(f); and
- (5) If the Keeper determines that Greenland Gap is (or is included within) a historic resource eligible for the National Register, and if FHWA issues an Amended ROD approving the “use” of that historic resource, Plaintiffs do not waive the right to file an action under the Administrative Procedure Act challenging that approval based on alleged non-compliance with Section 4(f).



## **F. Forman to Moorefield**

### **1. Selection of Alternative B.**

WVDOT will identify Alternative B, as defined in the MSBV EA, as its preferred alternative for the portion of the Forman-to-Moorefield Project that was evaluated in the MSBV EA. FHWA may approve the preferred alternative identified by WVDOT, provided that such approval is not inconsistent with federal environmental or other laws.

### **2. Issuance of Amended ROD**

FHWA may issue an Amended ROD granting approval for the Forman-to-Moorefield Project after completing all remaining Section 106 Activities and Section 4(f) Activities for this Project, including Section 106 Activities required for Alternative B as defined in the MSBV EA.

### **3. Implementation of Amended ROD**

Following the issuance of an Amended ROD for the Forman-to-Moorefield Project, FHWA and WVDOT may proceed with any remaining final design activities, right-of-way acquisition, and construction of the Forman-to-Moorefield Project. WVDOT will sequence the construction of this Project in a manner that results in the completion of the portion of this Project between the Moorefield interchange (including connecting roads to U.S. 220) and County Route 15 as a useable section.

### **4. Right to Challenge Amended ROD**

Plaintiffs hereby waive the right to bring an action under the Administrative Procedure Act or any other law alleging that FHWA's issuance of the Amended ROD for the Forman-to-Moorefield Project was not granted in accordance with NEPA, Section 4(f), Section 106, or any other applicable law or regulation. This waiver includes, but is not limited to, the claim that the Forman-to-Moorefield Project "constructively uses" any Section 4(f) resource. This waiver is subject to the following exceptions:

- (1) Plaintiffs do not waive the right to file an action alleging that the Amended ROD for this Project was issued prior to completion of the Section 106 Activities and/or Section 4(f) Activities for this Project;
- (2) Plaintiffs do not waive the right to file an action alleging that FHWA has not complied with its obligations under the Programmatic Agreement;
- (3) Except as specifically provided in Section IV, Part D, of this Agreement, the Plaintiffs do not waive the right to file an action challenging any findings made pursuant to the Endangered Species Act in the Amended ROD; and
- (4) If FHWA issues an Amended ROD that does not approve Alternative B, but instead approves an alignment for Corridor H that directly uses land within the Middle South Branch Valley Historic District, Plaintiffs may file an action under the Administrative Procedure Act challenging that Amended ROD based on alleged non-compliance with Section 4(f).

## **G. Moorefield to Baker**

### **1. Issuance of Amended ROD**

FHWA may issue an Amended ROD granting approval for the Moorefield-to-Baker Project after completing all Section 106 Activities and Section 4(f) Activities for this Project.

## **2. Implementation of Amended ROD**

Following the issuance of an Amended ROD for the Moorefield-to-Baker Project, FHWA and WVDOT may proceed with any remaining final design activities, right-of-way acquisition, and construction of the Moorefield-to-Baker Project.

## **3. Right to Challenge Amended ROD**

Plaintiffs hereby waive the right to bring an action under the Administrative Procedure Act or any other law alleging that FHWA's issuance of the Amended ROD for the Moorefield-to-Baker Project was not granted in accordance with NEPA, Section 4(f), Section 106, or any other applicable law or regulation. This waiver includes, but is not limited to, the claim that the Moorefield-to-Baker Project "constructively uses" any Section 4(f) resource. This waiver is subject to the following exceptions:

- (1) Plaintiffs do not waive the right to file an action alleging that the Amended ROD for this Project was issued prior to completion of the Section 106 Activities and/or Section 4(f) Activities for this Project;
- (2) Plaintiffs do not waive the right to file an action alleging that FHWA has not complied with its obligations under the Programmatic Agreement; and
- (3) The Plaintiffs do not waive the right to file an action challenging any findings made pursuant to the Endangered Species Act in the Amended ROD, except to

the extent that such claims are waived pursuant to Section IV, Part D, Paragraph 4 of this Agreement.

#### **H. Baker to Wardensville**

With respect to the Baker-to-Wardensville Project, the Parties agree as follows:

##### **1. Issuance of Amended ROD**

FHWA may issue an Amended ROD granting approval for the Baker-to-Wardensville Project, after completing all Section 106 Activities and Section 4(f) Activities for this Project.

##### **2. Implementation of Amended ROD**

Following the issuance of an Amended ROD the Baker-to-Wardensville Project, FHWA and WVDOT may proceed with any remaining final design activities, right-of-way acquisition, and construction of the Baker-to-Wardensville Project.

##### **3. Right to Challenge Amended ROD**

Plaintiffs hereby waive the right to bring an action under the Administrative Procedure Act or any other law alleging that FHWA's issuance of the Amended ROD for the Baker-to-Wardensville Project was not granted in accordance with NEPA, Section 4(f), Section 106, or any other applicable law or regulation. This waiver includes, but is not limited to, the claim that the Baker-to-Wardensville Project "constructively uses" any Section 4(f) resource. This waiver is subject to the following exceptions:

- (1) Plaintiffs do not waive the right to file an action alleging that the Amended ROD for this Project was issued prior to completion of the Section 106 Activities and/or Section 4(f) Activities for this Project;

- (2) Plaintiffs do not waive the right to file an action alleging that FHWA has not complied with its obligations under the Programmatic Agreement; and
- (3) Except as specifically provided in Section IV, Part D, of this Agreement, the Plaintiffs do not waive the right to file an action challenging any findings made pursuant to the Endangered Species Act in the Amended ROD.

## **I. Wardensville to Virginia State Line**

### **1. Issuance of an Amended ROD**

FHWA may issue an Amended ROD for the Wardensville-to-Virginia Project after all Section 106 Activities and Section 4(f) Activities for this Project have been completed.

### **2. Wardensville Improvements**

Within five (5) years after issuance of an Amended ROD for the Wardensville-to-Virginia Project, WVDOT will make available a total of \$1 million in federal enhancement funds or other funds for streetscape improvements and other permanent capital improvements within Wardensville. Before granting such funds, WVDOT will consult with Wardensville mayor, town recorder, and town council and the public regarding the terms and conditions upon which the grant will be made.

### **3. Implementation of Amended ROD**

Following the issuance of an Amended ROD for the Wardensville-to-Virginia Project, WVDOT may proceed with final design, right-of-way acquisition, and construction of this Project subject to the following restrictions:

#### **a. Restrictions on Final Design**

WVDOT may proceed with final design activities (including surveying work and aerial photography) in the Wardensville-to-Virginia Project only under the following conditions:

(1) **Right to Proceed with Final Design Needed for Hardship Acquisition**

Following the issuance of an Amended ROD for this Project, WVDOT may proceed with final design for this Project to the extent necessary to carry out Hardship Acquisition for the Project, provided that (1) WVDOT may proceed with such final design work only after receiving a written request for Hardship Acquisition from the affected property owner and after FHWA makes a written determination that the request meets the applicable criteria for Hardship Acquisition; (2) for purposes of such final design, WVDOT will rely on mapping based on aerial photography; and (3) for purposes of such aerial photography, WVDOT will ensure that any visible physical markers used as “control points” are removed within 10 calendar days after the necessary photographs have been taken.

(2) **Right to Proceed with Final Design Needed for Protective Acquisition**

Following the issuance of an Amended ROD for this Project, WVDOT may proceed with final design for this Project to the extent necessary to carry out Protective Acquisition for the Project, provided that (1) WVDOT may proceed with such final design work only after FHWA makes a written determination that the request meets the applicable criteria for Protective Acquisition; (2) for purposes of such final design, WVDOT will rely on mapping based on aerial photography; and (3) for purposes of such aerial photography, WVDOT will

ensure that any visible physical markers used as “control points” are removed within 10 calendar days after the necessary photographs have been taken.

**(3) Right to Proceed with All Final Design**

When the conditions for construction of this Project have been met, pursuant to sub-paragraph (c) of this Paragraph, WVDOT may proceed with all final design for this Project without any restriction.

**b. Restrictions on Right-of-Way Acquisition**

WVDOT may proceed with right-of-way acquisition in the Wardensville-to-Virginia Project only under the following conditions:

**(1) Right to Proceed with Hardship and Protective Acquisition**

Following issuance of the Amended ROD, WVDOT may proceed with Hardship Acquisition or Protective Acquisition for this Project. WVDOT will not solicit any requests for Hardship Acquisition.

**(2) Right to Proceed with All Right-of-Way Acquisition**

When the conditions for construction of this Project have been met, pursuant to sub-paragraph (c) of this Paragraph, WVDOT may proceed with all right-of-way acquisition for this Project without any restriction.

**c. Restrictions on Construction**

WVDOT may proceed with construction of the Wardensville-to-Virginia Project when one of the following conditions occurs:

**(1) Four-Lane in Virginia**

The Virginia Department of Transportation obtains FHWA approval, in the form of a ROD for completion of Corridor H in Virginia as a four-lane highway connecting the Virginia state line to Interstate 81; or

**(2) Unacceptable Level of Service in West Virginia**

WVDOT determines that operating conditions on WV Route 55 between Route 259 North (near Wardensville) and the Virginia state line have reached Level of Service “E” as defined by the Highway Capacity Manual at least two hours per day (not necessarily two consecutive hours), and WVDOT’s determination is confirmed by an independent expert jointly selected by WVDOT, FHWA, and CHA from the faculty of the Civil Engineering Department of West Virginia University or other comparable academic institution; or

**(3) Potential Loss of Federal Funding**

Federal legislation requires that the Appalachian Development Highway System be completed by a date certain in order to avoid the rescission of previously authorized and appropriated federal-aid highway funding for that System; or

**(4) Passage of Time**

Twenty years has elapsed from the Effective Date.

**4. Right to Challenge Amended ROD**

Plaintiffs hereby waive the right to bring an action under the Administrative Procedure Act or any other law alleging that FHWA’s issuance of the Amended ROD for the Wardensville-to-Virginia Project was not granted in accordance with NEPA, Section 4(f), Section 106, or any other applicable law or regulation. This waiver includes, but is not limited



to, the claim that the Wardensville-to-Virginia Project “constructively uses” any Section 4(f) resource. This waiver is subject to the following exceptions:

- (1) Plaintiffs do not waive the right to file an action alleging that the Amended ROD for this Project was issued prior to completion of the Section 106 Activities and/or Section 4(f) Activities for this Project;
- (2) Plaintiffs do not waive the right to file an action alleging that FHWA has not complied with its obligations under the Programmatic Agreement and
- (3) Except as specifically provided in Section IV, Part D, of this Agreement, the Plaintiffs do not waive the right to file an action challenging any findings made pursuant to the Endangered Species Act in the Amended ROD.

#### **IV. IMPLEMENTATION OF SETTLEMENT AGREEMENT**

##### **A. Initial Announcement and Implementation Steps**

###### **1. Announcement**

The Parties will announce the Agreement in a joint press release, which will be accompanied by a jointly prepared summary of the Agreement. The Parties will publicly distribute the joint press release and the accompanying summary of the Agreement to the media and the public on the date that the Agreement is filed with the District Court or on such other date as may be agreed-upon by the parties through their respective counsel. The Parties will refrain from making any public comments regarding the terms of the Agreement prior to the date on which the joint press release is publicly distributed.

###### **2. Efforts to Build Public Support**

WVDOT and the Plaintiffs will make a good-faith effort to build public support for the Agreement.

## **B. Completion of NEPA, Section 106, and Other Studies**

### **1. Alignment Shift Studies**

FHWA and WVDOT will initiate the alignment shift studies mandated by Sections II-B and II-C of this Agreement as soon as practicable after the Effective Date.

### **2. Compliance with Programmatic Agreement**

FHWA and WVDOT will continue to comply with the existing Programmatic Agreement for all Projects, including Projects where alignment shifts are being studied, except as follows: FHWA will request that the Advisory Council allow the section designations in the Programmatic Agreement to be modified to conform to the Project designations in this Agreement. FHWA and WVDOT will oppose any amendment of the Programmatic Agreement that would reduce or eliminate CHA's right to review and comment on Section 106 reports, unless CHA does not oppose the amendment.

### **3. Improved Roadway Alternative**

With respect to all remaining NEPA, Section 106, and other studies involving Corridor H, regardless of whether those studies are specifically described in this Agreement, Plaintiffs waive their right to submit comments in any form requesting the consideration or approval of an Improved Roadway Alternative or contending that such an alternative is required to be

considered or approved under any law, regulation, or policy. Plaintiffs do not otherwise waive any right to advocate for an Improved Roadway Alternative.

#### **4. Project Termini**

With respect to all remaining NEPA, Section 106, and other studies involving Corridor H, regardless of whether those studies are specifically described in this Agreement, Plaintiffs waive their right to submit comments in any form that are based in any way on the argument that the Projects lack independent utility or logical termini or limit the consideration of alternatives for other Projects.

#### **5. Completion of Ongoing Section 106 Activities**

Nothing in this Agreement will be interpreted to preclude FHWA and WVDOT from proceeding with the ongoing Section 106 Activities for the Corridor H alignment that was approved in the August 1996 ROD.

#### **6. Project Status Reports**

Within 30 days after the Effective Date, and at least once every six months thereafter until construction of each Project is completed, WVDOT will transmit to the Plaintiffs a Project Status Report for the next 12-month period in accordance with the Return-Receipt Delivery Procedure. The Project Status Report will contain the following information, to the best of WVDOT's knowledge based on existing information, with respect to each Project for which construction has not yet been completed:

- (1) Estimated schedule for the remaining Section 106 Activities and Section 4(f) Activities for the Project (if any).

- (2) Estimated schedule for alignment shift studies for the Project (if any).
- (3) Estimated date for issuance of Amended ROD for the Project.
- (4) Estimated date for commencement of final design and right-of-way acquisition for the Project.
- (5) Estimated date for advertising and letting construction contracts for the Project.
- (6) Estimated date for commencement of construction of the Project.
- (7) Estimated date for completion of construction of the Project.
- (8) Approximate termini for construction sections, if construction of the Project will take place over more than one construction season.
- (9) Status of U.S. Route 50 study, which is to be performed pursuant to Section V, Paragraph 2 of this Agreement.
- (10) Status of efforts to enforce weight limits on U.S. Route 219, between Elkins and Thomas, pursuant to Section V, Paragraph 7, of this Agreement.

#### **7. NEPA Documents**

WVDOT will transmit copies of all NEPA Documents to the Plaintiffs, within ten (10) working days after those documents receive final agency approval, via the Return-Receipt Delivery Procedure.

#### **8. Section 4(f) Documents**

FHWA will transmit copies of all Section 4(f) Documents to the Plaintiffs, within ten (10) working days after those documents receive final agency approval, via the Return-Receipt Delivery Procedure.

## **9. Other Documents**

WVDOT will transmit copies of the following documents to the Plaintiffs, within the time frames specified below, via the Return-Receipt Delivery Procedure:

- (1) Any written request for Hardship Acquisition of right-of-way for the Wardensville-to-Virginia Project (to be transmitted to the Plaintiffs within 10 days after receipt of the request by WVDOT);
- (2) Any written determination by FHWA or WVDOT that Hardship or Protective Acquisition is appropriate for a particular parcel of land for the Wardensville-to-Virginia Project, together with the documentation relied upon in making that determination (to be transmitted to the Plaintiffs within 10 days after final approval of the determination by FHWA or WVDOT, as the case may be);
- (3) Any written request or proposal from the Advisory Council or the SHPO for an amendment of the Programmatic Agreement (to be transmitted to the Plaintiffs within 10 days after receipt of the request or proposal by WVDOT), and
- (4) Any advertisement for bids for construction contracts for any portion of any Project (to be transmitted to the Plaintiffs within 10 days after the initial publication of the advertisement),

### **C. Dispute Resolution**

#### **1. ADR Obligations**

If any dispute arises regarding any Party's compliance with the terms of this Agreement, and such dispute has not yet become the subject of litigation, all Parties will

attempt to resolve such dispute in good faith through the alternative dispute resolution (“ADR”) procedures established in this Agreement.

## **2. ADR Procedures**

Any Party may initiate ADR proceedings under this Agreement by transmitting a written request for ADR via the Facsimile Delivery Procedure . When ADR proceedings are initiated in this manner, the Parties shall proceed as follows:

### **a. Step 1: Direct Negotiation**

Within ten (10) calendar days after the initiation of ADR proceedings under this Agreement, the Parties shall confer (in person or by telephone) regarding the issues in dispute and shall seek in good faith to resolve the dispute without the involvement of a third-party mediator.

### **b. Step 2: Mediation**

The Parties may agree at any time to select a private third-party mediator to assist in the resolution of the issues in dispute. Moreover, any Party may unilaterally propose the appointment of a private third-party mediator if the issues in dispute are not fully resolved within ten (10) calendar days after the initial conference among counsel in Step 1. Any such proposal shall be made in writing and shall be transmitted via the Facsimile Delivery Procedure. If such a proposal is made, the Parties shall confer (in person or by telephone) within five (5) days after the date of that proposal regarding the selection of the mediator.

Counsel for the Parties shall seek in good-faith to agree upon a mediator and to resolve the remaining issues in dispute as expeditiously as possible.

**c. Written Agreement**

If an agreement is reached on any issues in dispute, whether at Step 1 or Step 2, the Parties will state the agreement in writing, and the agreement will be signed by each Party that participated in the ADR process (or by their counsel), thus concluding the ADR process with respect to those issues.

**d. FHWA and WVDOT's Right to Terminate**

FHWA and WVDOT will each have the right to terminate an ongoing ADR process if (1) 60 calendar days have elapsed since the initiation of ADR proceedings or (2) any Plaintiff commences litigation regarding any aspect of the Amended ROD that is the subject of the ADR process. The FHWA and WVDOT may exercise this right, individually or jointly, only by providing written notice to CHA via the Facsimile Delivery Procedure. The termination becomes effective on the Delivery Date for the termination notice.

**e. Plaintiffs' Right to Terminate**

The Plaintiffs have the right to terminate an ongoing ADR process at any time. The Plaintiffs may exercise this right, individually or jointly, only by providing written notice to FHWA and WVDOT via the Facsimile Delivery Procedure. The termination becomes effective on the Delivery Date for the termination notice.

***f. Automatic Termination***

The ADR process will be terminated automatically, by operation of this Agreement, on the date any Plaintiff commences litigation regarding any matter specifically at issue in the ADR process.

***g. Expenses***

Each Party will be responsible for any expenses (including attorneys' fees) that it incurs while participating in ADR procedures pursuant to this Agreement. FHWA and WVDOT will be responsible for paying for the services of the mediator, if a mediator is retained pursuant to the ADR procedures in this Agreement.

**3. Effect of ADR on Ongoing and Planned Activities**

The initiation of ADR proceedings with respect to any Project shall affect activities in that Project as follows:

***a. ADR Initiated Before Amended ROD is Issued***

If ADR proceedings are initiated with respect to a Project before the Amended ROD is issued for that Project, FHWA and WVDOT will be allowed to proceed during the ADR process with any and all ongoing or planned activities in that Project.

***b. ADR Initiated During Stand-Down Period***

During the Stand-Down Period, FHWA and WVDOT will not let any final design contracts, conduct any right-of-way acquisition, or let any construction contracts for the Project covered by that Amended ROD. If ADR proceedings are initiated with respect to an Amended ROD during the Stand-Down Period for that Amended ROD, FHWA and WVDOT



will not let any final design contracts, conduct any right-of-way acquisition, or let any construction contracts for the Project covered by that Amended ROD until ADR efforts regarding that Amended ROD have been concluded in accordance with this Agreement.

***c. ADR Initiated After the Stand-Down Period***

If ADR proceedings are initiated with respect to an Amended ROD after the end of the Stand-Down Period for that Amended ROD, FHWA and WVDOT will be allowed to proceed during the ADR process with any and all ongoing or planned activities in that Project.

**4. Litigation**

The filing of a request for ADR following the issuance of an Amended ROD is not a prerequisite for seeking judicial relief with respect to any aspect of that Amended ROD.

**D. Future Litigation**

**1. Improved Roadway Alternative**

Plaintiffs waive all existing and future legal claims or requests for relief that are based in any way on the argument that FHWA and/or WVDOT failed to give sufficient consideration to, or improperly failed to select, an Improved Roadway Alternative.

**2. Project Termini**

Plaintiffs waive all existing and future legal claims or requests for relief that are based in any way on the argument that the Projects lack independent utility or logical termini or limit the consideration of alternatives for other Projects.

**3. Injunctive Relief**

Plaintiffs waive the right, in any action relating to a particular Project or Projects, to seek injunctive relief relating to any Project other than the Project or Projects at issue in that action. In particular, but without limiting the foregoing, Plaintiffs waive the right, in any action challenging an Amended ROD, to seek injunctive relief with respect to any Project other than the Project or Projects approved in that Amended ROD.

#### **4. Waiver of Pre-Existing Claims**

Plaintiffs waive the right to file any action, with respect to any Project, that is based on a final agency action taken, or finding made, prior to the Effective Date.

#### **5. Litigation Initiated by Others**

With respect to any claims that the Plaintiffs themselves have waived under this Agreement, the Plaintiffs agree that (1) they will not invite or solicit others to bring such claims, or invite or solicit others to lend financial assistance for the purpose of assisting others in bringing such claims, through the use of (a) newspaper, radio, or television advertisements taken out in the name of the Plaintiff, (b) newsletters, correspondence or other documents bearing the Plaintiff's official letterhead or logo, or (c) materials electronically posted on the Plaintiff's official Internet site; (2) they will not lend financial assistance to others for the purpose of assisting them in filing such claims, and (3) they will not seek to appear as *amici curiae*, individually or collectively, in the litigation of such claims; provided, however, that the Sierra Club is not bound by clauses (1) and (2) of this Paragraph but is bound by clause (3), which prohibits the Plaintiffs from appearing as *amici curiae* in the litigation of claims that the Plaintiffs have waived under this Agreement.

**6. Deadlines for Challenging Amended ROD**

Plaintiffs hereby waive the right to file any action challenging an Amended ROD that does not comply with the deadlines set forth in this Paragraph.

**a. General Rule.**

Except as provided in sub-paragraph (b) of this Paragraph, the deadline for any Plaintiff to file an action challenging an Amended ROD is the later of the following dates: (1) the 30th calendar day after the Delivery Date for that Amended ROD or (2) if ADR proceedings have been initiated with respect to the Amended ROD during the Stand-Down Period, the 30th calendar day after the termination of those ADR proceedings.

**b. Special Requirements for Advance-Notice Statutes**

The following deadlines apply to any action filed by any Plaintiff challenging an Amended ROD under an Advance Notice Statute:

(1) The Plaintiff must provide the required notice of intention to sue, in accordance with the Advance Notice Statute, by the later of the following dates: (1) the 30th calendar day after the Delivery Date for the Amended ROD or (2) if ADR proceedings have been initiated with respect to the Amended ROD during the Stand-Down Period, the 30th calendar day after the termination of those ADR proceedings.

(2) The Plaintiff must file the claim challenging the Amended ROD under the Advance Notice Statute no later than 30 calendar days after the expiration of the notice period required by the Advance Notice Statute. FHWA and WVDOT will not object to the filing of such a claim in the form of an amendment to a complaint previously filed by the same Plaintiff challenging the same Amended ROD.

**c. Effect on FHWA and WVDOT Activities**

The deadlines established in this Agreement are not intended to limit in any way the ability of FHWA and WVDOT to proceed with final design, right-of-way, and/or construction activities following the issuance of an Amended ROD. The only restrictions imposed on such activities by this Agreement are the restrictions imposed in Section III, Part I, Paragraph 3, and Section IV, Part C, Paragraph 3 of this Agreement.

**7. Challenges to Post-Amended-ROD Decisions**

Except to the extent provided in Section IV, Part D, Paragraphs 1-5, the Plaintiffs do not waive the right to file an action, with respect to any Project, based on claims that arise after the issuance of the initial Amended ROD for that Project. For purposes of this Paragraph, a claim “arises after” the issuance of an Amended ROD only if that claim (1) is based on a final agency action that occurs after the issuance of the Amended ROD and (2) could not have been filed in an action challenging the Amended ROD itself.

**8. Corridor H in Virginia**

Plaintiffs do not waive any existing or future claims with respect to any aspect of Corridor H between the West Virginia/Virginia state line and Interstate 81 in Virginia.

**9. Enforcement of Order Approving Settlement Agreement**

Notwithstanding any other provision of this Agreement, the Plaintiffs do not waive the right to enforce any provision of this Agreement or the order of the District Court approving this Agreement or the right to seek appropriate injunctive relief on an interim or permanent basis consistent with the terms of this Agreement.

**10. Reservation of Rights by FHWA and WVDOT**

FHWA and WVDOT reserve any and all defenses that may be raised in any future actions that may be filed by any Plaintiff with respect to any aspect of Corridor H, including but not limited to defenses based on theories of standing, mootness, laches, waiver, estoppel, and res judicata.

### **11. No Admission of Right to Sue**

References in this Agreement to the “right” of the Plaintiffs to bring certain causes of action should not be construed as an admission FHWA or WVDOT that such a right actually exists under applicable laws. Such references are included in this Agreement solely for the purpose of limiting the scope of the Plaintiffs’ waiver of rights; they are not intended to confer rights on the Plaintiffs that would not otherwise exist.

## **V. ADDITIONAL ISSUES**

### **1. Removal of Signs in Right-of-Way**

WVDOT will ensure that all unauthorized signs relating to Corridor H that have been erected within WVDOT-Owned Right-of-Way are removed within thirty (30) calendar days after the Effective Date. WVDOT also will ensure that, if any new unauthorized signs relating to Corridor H are erected within WVDOT-owned Right-of-Way after the Effective Date, such signs are removed within ten (10) calendar days after WVDOT receives written notice of their existence and location. Notwithstanding any other provision in this Paragraph, WVDOT will not be required by this agreement to remove any sign within a specific time period if such removal would be inconsistent with WVDOT’s obligations under applicable statutes and regulations, including those governing the removal of obstructions from highway rights-of-way.

## **2. Study of U.S. 50 Improvements**

Commencing in the year 2000, WVDOT will undertake a study of improvements to U.S. Route 50 from WV Route 972, near Keyser, to the Virginia state line. Upon completion, WVDOT will transmit one copy of the study to Plaintiffs at the following address:

Lee Wakefield  
Corridor H Alternatives  
P.O. Box 463  
Wardensville, WV 26851  
(304) 874-3188

## **3. Re-Design of Connection to U.S. 219 at Kerens**

WVDOT will evaluate the connection between Corridor H and U.S. Route 219 at Kerens to determine whether the current design complies with applicable design standards. If any design deficiencies are identified, WVDOT will make a good-faith effort to eliminate such deficiencies. Before making any final decision regarding the connection between Corridor H and U.S. Route 219 at Kerens, WVDOT will transmit engineering drawings depicting the alternative designs that it is considering to the Plaintiffs at the following address, in person or via any commercial overnight delivery service, and will provide the Plaintiffs with five (5) calendar days to comment on those design plans via telephone or in writing:

Ruth Blackwell Rogers  
Moon Run  
Kerens, WV 26276  
(304) 636-2662

## **4. Release of Traffic and Safety Data**

WVDOT will publicly release the following information that was provided to the Plaintiffs during the mediation process: (1) information concerning traffic volumes and level of

services, and (2) information concerning the total number of accidents and the accident rates on specific roadway sections.

### **5. Funds for Recreational Trails**

The Parties will jointly seek judicial approval of an order authorizing the immediate release of federal-aid highway funds for all recreational trail projects approved in the August 1996 Corridor H ROD in Grant , Tucker, and Randolph Counties.

### **6. Attorneys Fees**

Pursuant to the Order approving this Agreement, WVDOT shall pay the Plaintiffs at the Equal Access to Justice Act rate for the attorneys' fees incurred by the Plaintiffs in connection with the mediation process that resulted in this Agreement within 90 days after the Effective Date. The amount to be paid to the Plaintiffs for attorneys fees' pursuant to this Paragraph is \$ 24,529 If WVDOT does not pay the Plaintiffs' attorneys' fees within 90 days after the Effective Date, and the Plaintiffs then bring an action to compel compliance with the order requiring payment of such fees, WVDOT shall pay the Plaintiffs at the Equal Access to Justice Act rate for the attorneys' fees incurred by the Plaintiffs in connection such action. The United States, including FHWA, will not be responsible for paying any portion of the attorneys' fees awarded to CHA pursuant to this Paragraph.

### **7. Truck Traffic on Route 219**

WVDOT agrees to make reasonable efforts to enforce weight limits on truck traffic on U.S. Route 219 between Elkins and Thomas and to provide status reports on such efforts pursuant to Section IV, Part B, Paragraph 6.

###

THIS IS THE END OF THE TEXT OF THE SETTLEMENT AGREEMENT.  
EXHIBITS 1-5 IMMEDIATELY FOLLOW THIS PAGE.  
THE EXHIBITS ARE IMMEDIATELY FOLLOWED BY THE SIGNATURE PAGES.



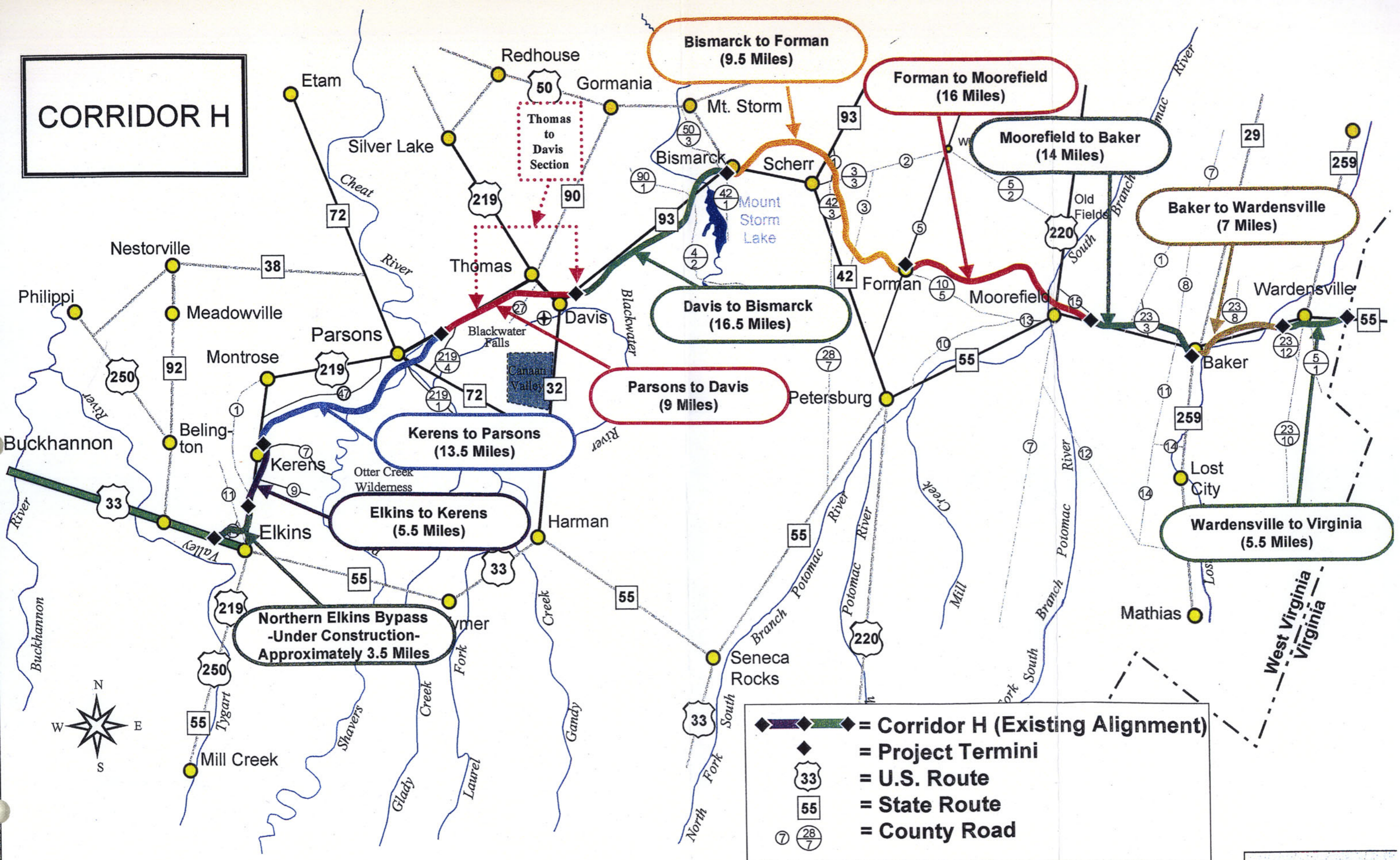
### Exhibit 1: List of "Projects"

Project	Western Terminus	Eastern Terminus	Length (approx.)
Elkins to Kerens	Elkins (at the terminus of the Northern Elkins Bypass, 0.55 miles east of County Route 11)	Kerens (0.2 miles north of County Route 7)	5.5 miles
Kerens to Parsons	Kerens (0.2 miles north of County Route 7)	Parsons (at County Route 219/4, 0.2 miles south of the northernmost point at which County Route 219/4 intersects with US Route 219)	13.5 miles
Parsons to Davis	Parsons (at County Route 219/4, 0.2 miles south of the northernmost point at which County Route 219/4 intersects with US Route 219)	Davis (at WV Route 93, 0.7 miles east of WV Route 32)	9 miles
Davis to Bismarck	Davis (at WV Route 93, 0.7 miles east of WV Route 32)	Bismarck (at WV Route 42, 0.4 miles south of the intersection with WV Route 42/93)	16.5 miles
Bismarck to Forman	Bismarck (at WV Route 42, 0.4 miles south of the intersection with WV Route 42/93)	Forman (at County Route 5, near Thorn Run)	9.5 miles
Forman to Moorefield	Forman (at County Route 5, near Thorn Run)	Moorefield (at County Route 15, 0.5 miles west of WV Route 55)	16 miles
Moorefield to Baker	Moorefield (at County Route 15, 0.5 miles west of WV Route 55)	Baker (at WV Route 259, 0.6 miles east of the intersection with WV Route 259/55)	14 miles
Baker to Wardensville	Baker (at WV Route 259, 0.6 miles east of the intersection with WV Route 259/55)	Wardensville (at County Route 23/12, 0.2 miles south of WV Route 259)	7 miles
Wardensville to Virginia	Wardensville (at County Route 23/12, 0.2 miles south of WV Route 259)	Virginia Line (a point on WV Route 55 approximately 100 feet west of the West Virginia/Virginia state line)	5.5 miles

**Exhibit 2: Illustration of "Projects"**



# CORRIDOR H



◆—◆—◆ = Corridor H (Existing Alignment)  
◆ = Project Termini  
33 = U.S. Route  
55 = State Route  
7 / 28 / 7 = County Road

\* This map is not to scale.

Exhibit 2



**Exhibit 3: Map of "Battlefield Area"**

2500 0 2500 5000 Feet



Parsons

219

72

219

219  
4

219

"Battlefield Area"

72

Corridor H  
-Current Alignment-

Corricks Ford  
Battlefield

47

Exhibit 3

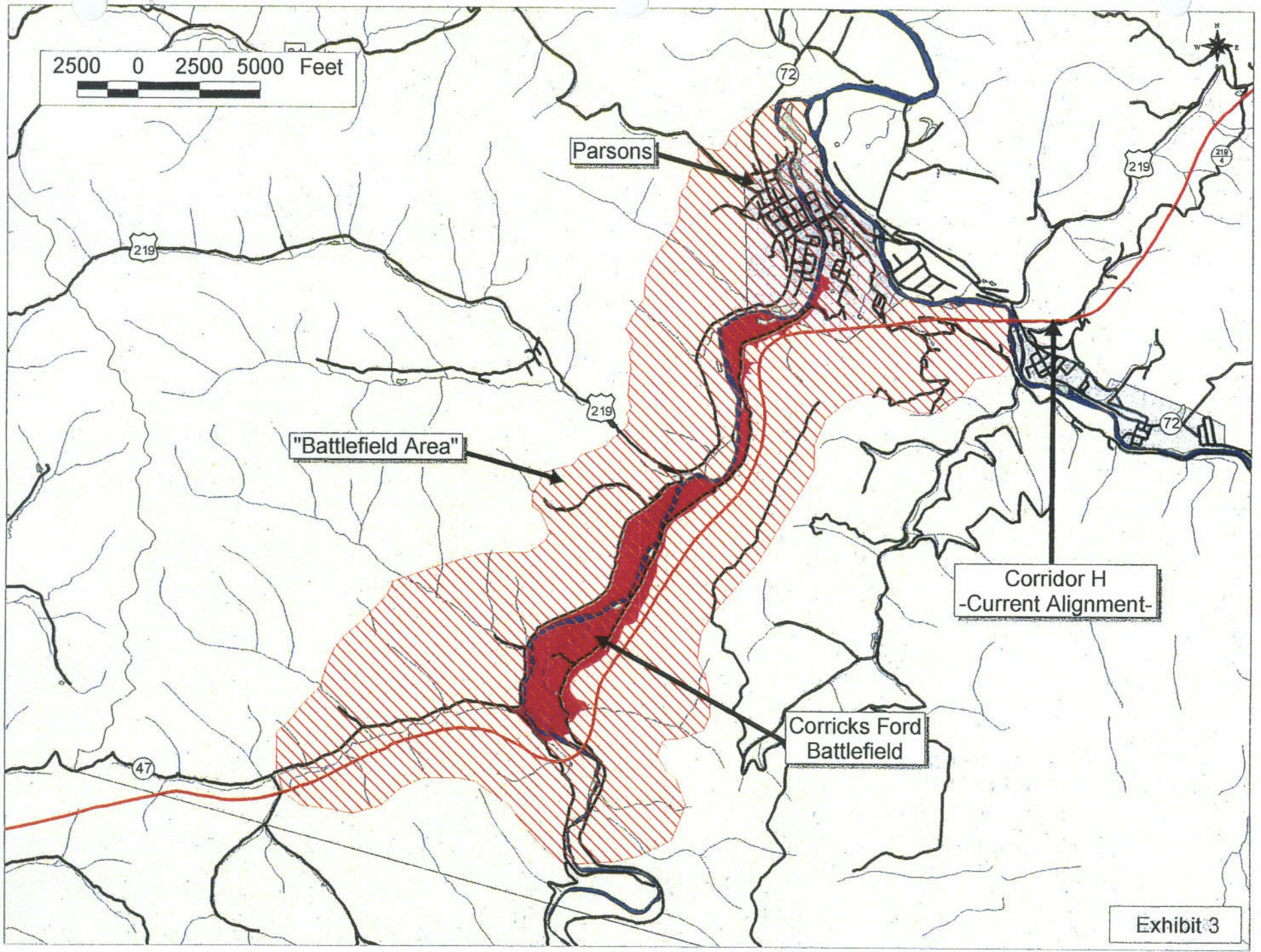


Exhibit 4: Map of "Blackwater Area"

Settlement Agreement – Filed February 7, 2000  
Corridor H Alternatives v. Slater, 96-CV-2622 (TFH)  
U.S. District Court for the District of Columbia



3000 0 3000 6000 Feet



Thomas

Douglas

Davis

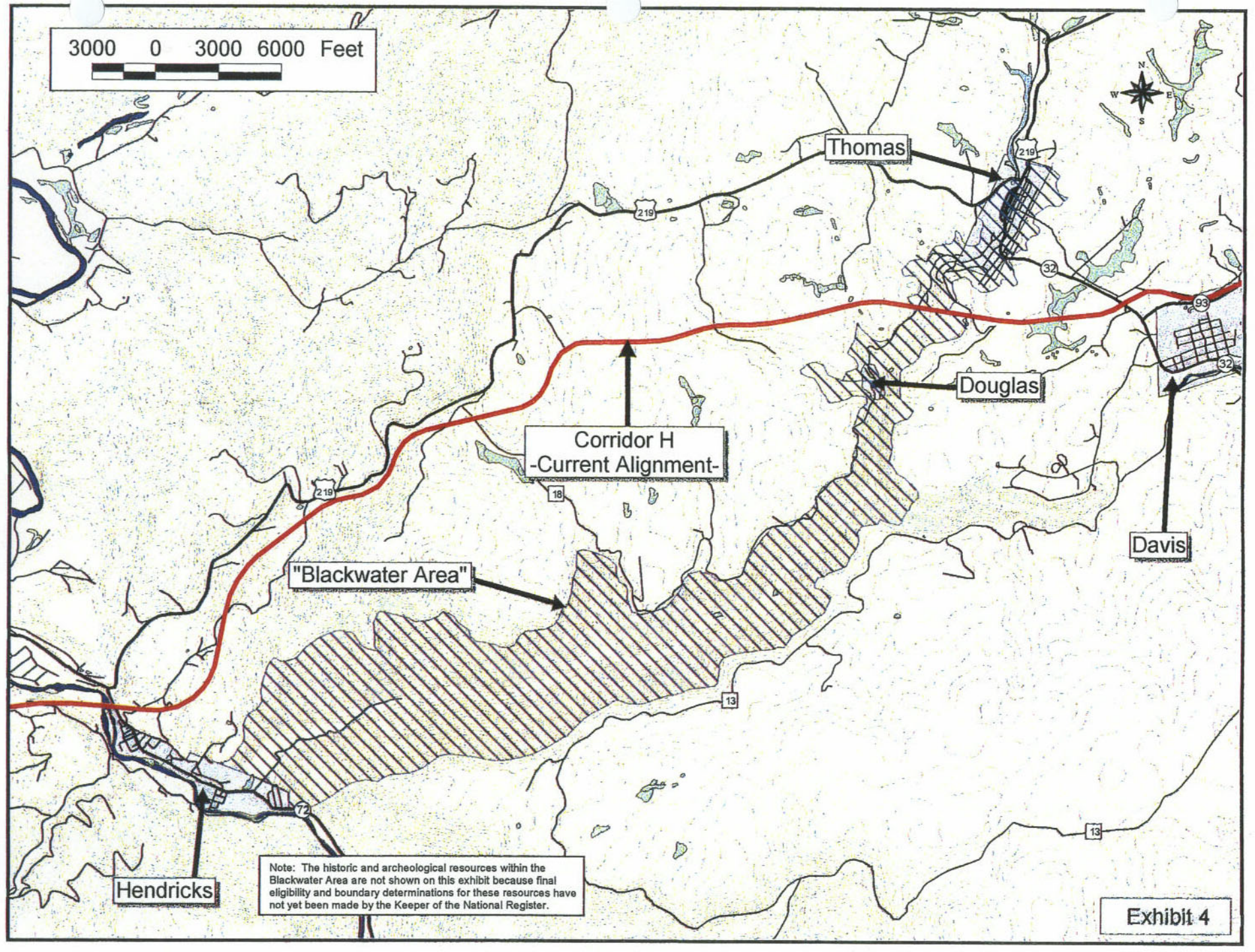
Hendricks

Corridor H  
-Current Alignment-

"Blackwater Area"

Note: The historic and archeological resources within the Blackwater Area are not shown on this exhibit because final eligibility and boundary determinations for these resources have not yet been made by the Keeper of the National Register.

Exhibit 4





## Exhibit 5: List of Plaintiff Contacts

Andrea Ferster, Esq.  
1100 17th St. NW  
Tenth Floor  
Washington, DC 20036  
(202) 974-5142

Lee Wakefield  
Corridor H Alternatives  
HC 68 Box 78 A  
Wardensville, WV 26851  
(304) 874-3188

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(304) 897-6048

Laura Spadaro, Chapter Chair  
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Michael Slimak  
Reynolds' Estates Landowners  
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Suzanne Lewis  
Cedar Creek Battlefield Foundation:  
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Middletown, VA 22645  
(540) 869-2064

On behalf of the United States Department of Justice:



Aimee Bevan  
Trial Attorney  
General Litigation Section  
Environment and Natural Resources Division

Dated: 12-2-99

On behalf of Plaintiff Corridor H Alternatives, Inc.

Hugh Rogers  
Hugh Rogers, President

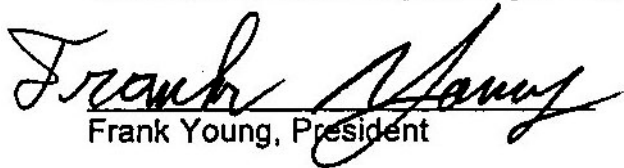
Dated: Dec. 1, 1999

On behalf of Plaintiff West Virginia Citizen Action Group:

  
\_\_\_\_\_  
Norm Steenstra, Executive Director

Dated: 11/30/99

On behalf of West Virginia Highlands Conservancy:

  
Frank Young, President

Dated: 12-9-99

On behalf of Plaintiff West Virginia Environmental Council:

Donald S. Garvin, Jr.  
Donald S. Garvin, Jr., President

Dated: November 30, 1999

On behalf of Plaintiff Concerned Citizens Coalition:

  
Vivian Stockman, President

Dated: 12/7/99





On behalf of Plaintiff Ohio Valley Environmental Coalition:

Dianne Bady  
Dianne Bady, Executive Director

Dated: 11/30/99

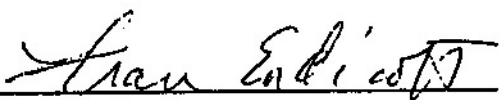
On behalf of Plaintiff Downstream Alliance:



\_\_\_\_\_  
Dave Houser, President

Dated: 12-1-99

On behalf of Plaintiff Northern Shenandoah Valley Audubon Society:

  
Fran Endicott

Dated: Dec. 1, 1999

On behalf of Plaintiff Student Environmental Network:

Leah Divine  
Leah Divine

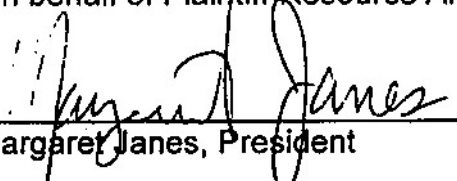
Dated: 12/01/99

On behalf of Plaintiff Heartwood:

Alison Cochran, Executive Director  
Alison Cochran, Executive Director


Dated: November 29, 1999

On behalf of Plaintiff Resource Alliance:

  
\_\_\_\_\_  
Margaret Jones, President

Dated: 11/30/99

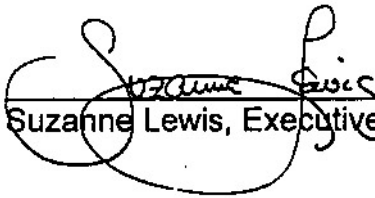
On behalf of Plaintiff Reynolds Estates Landowners:

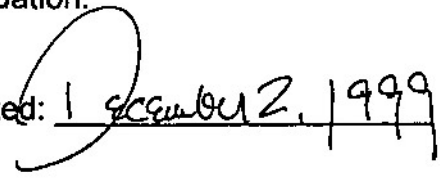
  
\_\_\_\_\_  
Michael Slimak, President

Dated: Dec 3, 1999



On behalf of Plaintiff Cedar Creek Battlefield Foundation:

  
Suzanne Lewis, Executive Director

Dated: 

On behalf of Plaintiff Sierra Club:



Executive Director Title

Dated: 2/1/2000

On behalf of Defendant West Virginia Department of Transportation:

  
Samuel G. Bonasso

Dated: December 1, 1999

On behalf of the Federal Highway Administration:



Thomas Smith  
Division Administrator, West Virginia

Dated: December 1, 1999