

Finding of No Significant Impact (FONSI)

US 340 Rock Slide Repair Project

State Project No. S319-340-15.78.00

Federal Project No. NHPP-0340(063)D

Harpers Ferry, Jefferson County, WV

January 10, 2022

Prepared for:

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FEDERAL HIGHWAY ADMINISTRATION
FINDING OF NO SIGNIFICANT IMPACT: US 340 ROCK SLIDE REPAIR
JEFFERSON COUNTY, WV

WV State Project: S319-340-15.78.00
Federal Project: NHPP-0340(063)D

The Federal Highway Administration (FHWA) and the West Virginia Department of Transportation, Division of Highways (WVDOH) have prepared an Environmental Assessment (EA) to identify and evaluate the potential environmental impacts as a result of the proposed US 340 Rock Slide Project, located in Jefferson County, West Virginia.

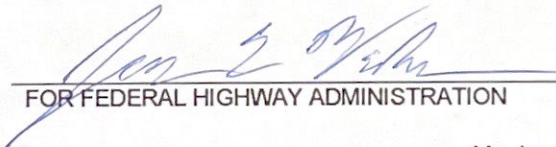
The EA analyzed the potential impacts of the proposed action on the natural, physical, cultural, and socioeconomic environments. In accordance with the appropriate federal regulations (40 CFR 1502.14 [a]; 23 CFR 771.123 [c]) and FHWA Technical Advisory T 6640.*A, two alternatives were evaluated. They included the No-Action and Action Alternative. The Action Alternative consists of the remediation of three slopes within the US 340 project area. Following the screening evaluation that included engineering design, environmental data, and public input, the Action Alternative was carried forward for detailed analysis.

Impacts from the Action Alternative are not anticipated to be significant on the natural, physical, social, and cultural environs. The combined effects of this project with foreseeable future projects are not anticipated to produce significant cumulative impacts to these resources.

This Finding of No Significant Impact (FONSI) was prepared pursuant to the Council on Environmental Quality Regulations (40 CFR, Parts 1599-1508). The FHWA has determined that the construction of the Action Alternative will have no significant impact on the human environment with the meaning of the *National Environmental Policy Act of 1969* (42 USC 4321 et seq.). This FONSI is based on an EA which has been independently evaluated by the FHWA and determined to adequately and accurately discuss the need, environmental issues, and impacts of the proposed project and appropriate mitigation measures. It provides sufficient evidence and analysis for determining that an Environmental Impact Statement is not required.

03/28/2022

DATE OF APPROVAL



FOR FEDERAL HIGHWAY ADMINISTRATION

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1 INTRODUCTION

This document provides the basis for a determination by the Federal Highway Administration (FHWA) of a Finding of No Significant Impact (FONSI) for the proposed US 340 Rock Slide Repair Project. This determination is made in accordance with the National Environmental Policy Act of 1969 (NEPA); the Council on Environmental Quality's (CEQ) implementing regulations for NEPA (40 CFR §1500-1508), FHWA's implementing regulations for NEPA (23 CFR §771), U.S. Department of Transportation (USDOT) FHWA guidelines (Technical Advisory T 6640.8A, October 30, 1987 – *Guidance for Preparing and Processing Environmental and Section 4(f) Documents*), the Fixing America's Surface Transportation Act (FAST) (Public Law 114-94, December 4, 2015, 129 Stat. 1312), and related guidance.

The West Virginia Department of Transportation, Division of Highways (WVDOH) in cooperation with FHWA, prepared the Environmental Assessment (EA) and Section 106 Evaluation (of the National Historic Preservation Act). These documents describe potential adverse effects on the human and natural environment and the integrity of historic resources that may result from the proposed project. The EA was prepared pursuant to 23 CFR § 771 and issued on November 9, 2021. WVDOH prepared this FONSI, which incorporates, by reference, the EA and other cited documentation.

2 EXISTING CONDITIONS

US 340 is a high-traffic, north/south, two-lane highway that serves local, commuter, and truck traffic from West Virginia, Virginia, and Maryland (**Figure 2-1**). This corridor experiences high traffic volume from season tourism due to its recreational and historical significance in the region, including the Appalachian Trail to the west of the Study Area. The existing slopes along US 340 NB consist of natural rock slopes (cliffs and rock spires), boulder fields and debris channels, along with roadway rock cuts associated with the original construction of the roadway along the Potomac River in the 1950s. The cut slopes and the exposed rock of natural slopes vary in height from 150 feet to greater than 600 feet above the roadway. Rockfalls and other failures have been documented along US 340 over the last two decades. The rockfall events appear to have historically occurred primarily in the spring and winter months and appear to correspond with freeze-thaw cycles and wetter seasons. A majority of the failures that occur along US 340 are rockfalls of minor volume and impact, however large rockfall events have occurred in the past and continue to pose a risk in the future. The cut slopes in the project study

area exhibit varying degrees of rockfall activity that present potential hazards to the travelling public and require ongoing maintenance by the WVDOH.

Figure 2-1: Project Location



3 PROJECT PURPOSE AND NEED

The purpose of the proposed project is to implement rockfall protection and stabilization measures associated with the existing slopes along US 340 NB, while considering local traffic impacts during construction and future development of the US 340 corridor.

US 340 is a high-traffic volume corridor serving local, commuter and truck traffic from West Virginia, Virginia, and Maryland. In addition, this corridor also experiences high traffic volume from seasonal tourism due to its recreational and historical significance in the region. Current Average Daily Traffic along this section of US 340 is 23,910 vehicles per day (vpd). Due to the volume of traffic and that US 340 is the main route through this area, rockfalls pose a threat to public safety not only due to the rockfall itself, but from road closures that result from rockfalls and the potential impact to emergency vehicle response times. As identified in the Design Study prepared in April 2018, there is a high potential for rockfall in the area and an established public safety need to implement rockfall protection and stabilization mitigation measures for the priority slopes (HDR 2018).

4 ALTERNATIVES CONSIDERED

The alternatives considered for this project include the Action Alternative, which consists of the repair of three slides, Slope1, Slope 2, and Slope 3, located within the project area and the No-Action Alternative. There are a variety of mitigation techniques available and many of these techniques will be used combination to mitigate the slide areas within the US 340 project area.

4.1 No-Action Alternative

The No-Action Alternative would result in no repairs to the three rockslide areas. Rock would continue to fall and pose a safety hazard to the traveling public. The No-Action Alternative does not meet the project purpose and need; therefore, it was not carried forward.

4.2 Action Alternative

The Action Alternative consists of the remediation of three slopes within the US 340 project area. Slope 1 would be remediated using a combination of localized rock bolting, maintenance scaling, rockfall barrier, attenuator drape, and an attenuator barrier. Slope 2 remediation activities would consist of localized rock bolting, rock slope drape, maintenance scaling, and rockfall barrier. Remediation activities for Slope 3 would consist of localized rock bolting, localized pinned mesh, attenuator barrier, maintenance scaling, and attenuator drape.

To complete the remediation activities, WVDOH studied the closure of US 340 with a 23-mile detour; however, based on comments received at a February 2020 public meeting, an additional option to maintain traffic during remediation activities was studied to determine if there was a viable option to the detour. The following are options for traffic control during remediation activities:

Option A

The traffic control plan associated with Option A consists of a full detour for the duration of the project. The detour is an approximately 23-mile route around the site from near Charles Town, WV, south into Virginia, then north on VA Route 671 to near the eastern terminus of the project area in Virginia near the intersection of US 340 and WV Rt. 671. This option provides the contractor the ability to work in multiple areas along the corridor and to avoid the installation of temporary traffic treatments. Duration of the project, road closure, and detour would be approximately 90-days.

Option B

The Option B traffic control plan consists of staged traffic patterns to permit vehicular traffic along US 340 during remediation activities during a portion of construction. The 23-mile detour would still be necessary during the times when work performed in high-risk areas could result in potentially dangerous rockfall and to accommodate larger equipment. Following the detour period, temporary traffic control measures would be installed, and improvements made to the existing shoulder. Two lane traffic would maintained to construct widening and the slope remediation along the corridor, with a reduced work zone speed limit. This option would require full closure and a detour for 65 days to improve the shoulder and the overall length of the project would be 170 days.

5 PUBLIC INVOLVEMENT, AGENCY COORDINATION, AND PUBLIC OPPORTUNITY TO COMMENT

WVDOH held two informational public workshops and meetings. They were held in an open house format with no formal presentation. The in-person public scoping meeting was held on February 6, 2020. Due to the COVID-19 pandemic, a virtual public meeting was held for the availability of the Environmental Assessment on November 9, 2021. Information about the advertising and outreach conducted for the meetings, as well as comments that were received, is included in Appendices A and B.

5.1 2020 Public Meeting

WVDOH conducted its first public meeting, an informational public workshop, on February 6, 2020. The public workshop was held at the Mather Training Center in Harpers Ferry, West Virginia to present the project, including the proposed remediation activities and detour.

One hundred and twenty five (125) members of the public, representatives from the NPS, and HEMMPO attended the meeting. The majority of the attendees understood the need for the project, but also expressed concern about the detour.

The public was encouraged to submit written comments either at the meeting or submit via mail or email. The comment period was February 6 through March 6, 2020. Appendix A contains the comments received during the comment period.

The key issue raised during the 2020 comment period was concern for the length of the detour.

5.2 2021 Public Meeting

The second public meeting was conducted virtually on November 9, 2021 from 4:00 PM to 7:00 PM. The purpose of this public meeting was to present the findings of the EA, Section 4(f), and Section 106 Evaluation. A total of 47 people signed into the public meeting and discussed the project with WVDOH. A total of 64 people visited the public meeting during the public comment period.

WVDOH prepared a public meeting handout and exhibit boards and made these materials available on the project website (transportation.wv.gov) as well as the EA. Project information and comment sheets were also available to the public at www.US340HarpersFerry.com. The public meeting materials described the proposed project, remediation treatments, associated impacts, cost, and schedule. Meeting attendees were invited to ask questions regarding the proposed project to the project team staff and provide written comments.

During the 2021 public comment period, WVDOH received 13 written comments from agencies, organizations, and the public. Comments were accepted in writing at the public meeting via a chat feature on the website, and also through e-mail, United States mail, and the project website until December 9, 2021.

WVDOH has addressed the comments from the 2021 public meeting in this FONSI. Appendix B contains these comments, along with individual responses, where appropriate. Table 4-1 lists the comments as well as the responses. Based on input received during the public comment period the key issue raised was concern for the length of the detour; however, the majority of those providing written comments were in favor of Option A, full closure of US 340 and detour for 90-days.

Table 5-1: Written Comments Received during the 2021 Public Comment Period

Comment ID	Comment	Response
1	I'm a resident of Charles Town that commutes through this vital area of 340 for work. What time frame are we looking at shutting it down? As a Meteorologist I hope it's during the Spring	Remediation activities are anticipated to start late 2022.
2	Hi i would like to sign up for project updates and construction updates regarding the US 340 Rock Slide Repair Project.	Comment noted
3	What is the anticipated project construction date? As the detour runs through the area of Loudoun which I serve, I'd like to provide accurate information to locals who may ask. Sincerely,	Construction is anticipated to start late 2022. Specific dates will be posted in local newspapers, on changeable messaging boards, MPO websites, and notices at train and bus stations well in advance of the start of remediation activities.
4	This will not be the most aesthetic solution but probably the safest. Could large retaining sound barrier style walls provide similar protection while looking better??	The placement and selection of various rockfall remediation types and size is based on our field work and analysis of the site. The remediation treatments such as pinned mesh, attenuator barriers, and attenuator drapes will utilize materials are colored similar to the natural rock face.
5	Based on initial information I looked at I would prefer a total shut down for the project. Gets it done quicker, worker safety is better and everyone knows commute change will be just over 2 months time...with partial shut down you have more driver/traffic frustration, increased danger for the workers and more limited time constraints trying to manage traffic while working. I propose to shut it down and get the work done. I would rather know I have to detour for a certain time period vs. Not knowing how long each day I may sit in the traffic coming and going. For me with an infant timing is everything when leaving for work and coming home. Adding time disrupts feeding and sleep and not knowing how much that time may differ each day with a partial shut down would make for some maybe not so pleasant days/nights. At least with a complete detour, I will be able to manage time better. Can the detour routes handle the increased	<p>Remediation activities are anticipated to start late 2022. We appreciate your input on Option A for the full detour.</p> <p>Traffic analysis for the major intersections along the detour route was evaluated and presented at the November 9, 2021 Public Meeting. Issues related to level of service and queuing were identified. We expect to see degraded level of service and queuing at several key intersections, including the VA 9 with VA 671 intersection. There have been discussions with VDOT about making improvements at this location; however at this time VDOT has decided to not implement these improvements.</p>



Comment ID	Comment	Response
	traffic load though? Has that been considered in the complete detour plan?	
7	Hello, I drive from Ranson, WV to Potomac, MD for work. I feel like it would be best to just keep it shut down for 90 days and complete all construction. It's only an extra 25 more days than the other option which I feel is not that much. Especially since it could be an extra 40 days of construction even though traffic could go through. Thank you	We appreciate your input on Option A for the full detour.
8	We live up Chestnut Hill Road. If option B is implemented, would we be able to access 340 after the phase 1 detour is complete?	Access to CR 32 from US 340 will be maintained to the greatest extent possible during construction. However, there may be some activities which require closure for a period of time.
9	<p>The EA states "Closure of US 340 during construction activities will equally affect all traffic (both EJ and non-EJ populations) using the roadway. Since the US 340 roadway will be closed to all traffic during remediation activities, no disproportionately high and adverse effects on EJ populations will occur under the Action Alternative." EPA does not necessarily agree with the EA's conclusion that no affected populations will suffer adverse or disproportionate impacts because all populations in the study area will experience similar or equivalent impacts. EPA notes that certain populations (e.g., low-income and/or people of color populations) may face elevated susceptibility to impacts that may affect other populations less severely. Therefore, EPA encourages WVDOH to address the potential for adverse impacts in areas of potential EJ concern even if less vulnerable areas may face similar environmental conditions. EPA recommends that WVDOH conduct EJ analyses with the most current available data; perform comprehensive community outreach; and identify opportunities for impact avoidance, minimization, and/or mitigation as needed to limit adverse impacts.</p> <p>For example, public transportation may be limited, or route times may be affected by the 23 mile detour, which could negatively affect</p>	Data from the United States Census Bureau (https://data.census.gov/cedsci/) was analyzed from the most recent American Community Survey (ACS) 5-year estimate (2015-2019 ACES data) at the time of writing the US-340 Environmental Assessment. EPA's EJ Screen was reviewed; however, at the time of the data collection the information available through EJ Screen was for 2014-2018 and the data available through the Census Bureau was 2015-2019; therefore, the more current data was used for the EJ analysis. The 2015-2019 ACS data was analyzed at the State and County level compared to the lowest census group level available, typically Census Tract or Block Group. The 2016-2020 ACS 5-year estimates are not available at this time; therefore the 2015-2019 data is the most current. Demographic surveys including age, race, and minority populations and economic surveys including poverty and employment was reviewed in order to identify minority and low-income populations. Census Tracts or Block Groups within the Project Area which exceeded or had higher percentages than their referenced State and County for the demographic and economic data was flagged. While there was one block group that met the criteria for low-income criteria for minority populations and one block group that met the criteria for minority populations it was determined that all users of US 340 would be affected the same and that the temporary detour



Comment ID	Comment	Response
	<p>communities of potential EJ concern that rely on public transportation. As stated on page 38 “The Eastern Panhandle Transit Authority (EPTA), which has stations throughout West Virginia and Maryland, services the surrounding areas of the Study Area. The EPTA MARC-C and MARC- H bus routes traverse the Study Area using US 340 to stations in Harpers Ferry, WV and Brunswick, MD. These bus routes would be affected by the temporary closures of US 340.” Significant effort should be made to minimize or mitigate for this disruption in public transportation.</p> <p>EPA appreciates that the project is considering two options for the detour. We encourage WVDOH to continue to work with the community to develop solutions that will minimize the impact of temporarily closing US 340. Additional mitigation measures may be necessary to ensure all potential impacts to the affected communities are fully evaluated and addressed.</p>	<p>and closure of US 340 to remediate the rock slides would not be predominately borne by minority and/or low-income individuals or is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the general population. While the 23-mile detour will add time and potentially increase fuel costs for all users this may be considered a hardship for low-income users. However, a 90-day temporary closure does not equal a substantial impact or an adverse disproportionate impact to the low-income population. Based on this assessment it was determined that a more involved EJ analysis was not necessary. Verbiage has been included in the FONSI to indicate that low-income populations may experience a temporary hardship and to mitigate potential adverse effects from the temporary hardship imposed on all users.</p> <p>To mitigate potential adverse effects of the proposed roadway closure, announcements will be made to alert the traveling public of the pending detour at least two months ahead of the start of construction. The announcements will be:</p> <ul style="list-style-type: none">• Posted on the Project web page;• Placed in the local newspaper;• Posted at bus and train stations; and• Provided to EPTA for posting on their website. <p>Advance notice of the temporary road closure will allow the traveling public the ability to plan for the short-term disruption in travel through the project area. Project contact information will be provided in the announcement to solicit comments and concerns related to potential hardship costs associated with the 90-day detour. Comments and concerns will be evaluated on a case-by-case basis to determine whether additional measures to reduce the impacts of the detour are warranted. This continued outreach will ensure that potential impacts to low-income and minority travelers are fully evaluated and addressed.</p>



Comment ID	Comment	Response
		<p>The Eastern Panhandle Transit Authority understands there are no options to the detour. Additionally, there is no regular bus route that runs to Brunswick. They only run the bus twice a day and that is to pick up riders at 5:45 p.m. and 8 p.m. Four trains leave Martinsburg in the morning, but four trains cannot be housed overnight in Martinsburg, so two are housed in Brunswick in the evening and do not continue on, so riders who take the morning trains out of Martinsburg and take the later trains back, get off in Brunswick and take the bus to either Harpers Ferry, Duffield, or Martinsburg. The buses will continue to be at the Brunswick Station to pick up the 5:45p.m. and 8p.m. passengers throughout the US 340 closure and detour. EPTA indicated that bus service would be maintained uninterrupted throughout the 90-day roadway closure .</p> <p>Based on input received from the public during the November 2021 public meeting, the majority of comments received at the meeting and during the public comment period were in favor of closing the road for 90-days versus closing the road for 65-days and then having a partial closure for 65-days. Additionally, due to safety factors, it was determined that the full closure was the safest for the traveling public and for the contractors performing the remediation activities.</p>
10	<p>I would like to submit comments regarding the US 340 Rock Slide Repair Project. I live in Charles Town, but frequent Washington and Frederick County often for work and personal reasons. I think Option A, the 90-eday closure beginning in November of next year is the best option. This limits the amount of time the detour has to be used. I also think an absolute cut off date should be implemented, preventing the project extending into spring of 2023. Rt. 340 is an essential road, and while it is important that we make it save, doing so in a timely manner is just as important. Thank you for your time and consideration.</p>	<p>Thank you for your comments. Your concerns are noted.</p>
11	<p>Dear Mr. Long,</p>	<p>Two options were evaluated for traffic and both will require a closure and a detour. Option A is a full detour for 90 days. Option B, is a</p>



Comment ID	Comment	Response
	<p>Thank you for providing us the opportunity to comment on the US 340 Rock Slide Repair Project. The Flynns have owned a home in the Harpers Ferry National Historical Park since 1980 and, hence, experienced the rebuilding of the Rt. 340 Shenandoah River Bridge with its attendant inconveniences.</p> <p>This letter is to strongly urge you and your colleagues to keep one lane open throughout the repair project.</p> <p>A 22-mile detour through Charles Town will have detrimental consequences on the fifty-some percent of residents in Jefferson County who commute daily to DC or Baltimore. People will be late for work. Some will fall asleep at the wheel, given the extra two hours commuting. Others will have to quit their jobs. This is very serious. Adding two-plus hours to our daily commutes because of road closure is unrealistic.</p> <p>Instead of closing Rt. 340 during construction, we ask that you keep one lane open at all times. I provide two examples of where this happens on a regular basis:</p> <ul style="list-style-type: none">• The Pacific Coast Highway through California, where State Route 1 borders the ocean to the West and steep hills to the East. Rocks fall down the hills on a regular basis, requiring the kind of repair you propose for Rt. 340. Because very wealthy people live along the Pacific Coast Highway, the road is never fully closed for more than a couple hours – and only during extreme conditions. Otherwise, commuters patiently wait to transit along the single open lane, something I've experienced many times when visiting California.• The second example is from my hometown of DC along the George Washington Parkway, also a congested roadway with natural outcroppings requiring occasional major repairs. Again, the	<p>combination of full closure and detour (65 days) and a work zone (65 days).</p> <p>The majority of comments received during the public comment period were in favor of the full closure and 90-day detour. Additionally, the full closure and 90-day detour are safest for the traveling public and for the contractors performing the remediation activities.</p> <p>An incentive clause to complete the project sooner than 90-days will be included in the contract for the selected contractor.</p>



Comment ID	Comment	Response
	<p>very wealthy people who live along the GW Parkway demand that one lane is always passable, with exceptions.</p> <p>I realize that the majority of people who pass by Harpers Ferry along Rt. 340 are not wealthy. Hence, they do not have the political clout to ensure that the construction crew keeps one lane open throughout the project. So, I am writing on behalf of all of us commuters who cannot afford to add two-plus hours of commuting time each day.</p> <p>Lastly, an estimated construction time of 90 days could easily end up being 120 days, leaving us stranded for months! Why wasn't this project done during C-19 when the few of us who continue to commute to work on the frontlines faced little to no traffic? The past is the past.</p> <p>Today, please help us to ensure that Rt. 340 will remain partially open throughout the US 340 Rock Slide project.</p>	
12	<p>Please take steps to make sure there is no disruption to the transportation on Route 340 in the project area during the six-month primary tourism season May, June, July, August, September, and October inclusive.</p> <p>Please aim to begin this project November 1st, and complete it by February 1st (90 days) This squarely outside of the tourism season and provides the most room for error if the project were to fail to begin on the intended date, or if the project experienced unforeseen and unintended complications and delays during construction.</p> <p>Please choose "Option A" 90 Day Full Detour"! Rip the band-aid off and get the project done. It was a recent experience that led us to support Option A. In September WVDO closed one lane of 304 between Harpers Ferry Road and Chestnut Hill Road to clean out the roadside ditches of eroded material and debris. The crews</p>	<p>Remediation activities are anticipated to start late 2022. We appreciate your input on Option A for the full detour.</p> <p>An incentive clause to complete the project sooner than 90-days will be included in the contract for the selected contractor.</p>



Comment ID	Comment	Response
	<p>reduced traffic to one lane and rotated East-bound and West-bound traffic. This created one hour backups (outside of rush hour) in both directions. It showed us that the one lane traffic option isn't helpful to businesses or the public and creates a backup which far exceeds the expected detour route duration (Estimated at 32 minutes), anyway. One lane closure would have nearly the same effect as full closure and so it is NOT WORTH the extra 40 days of closure to allow for one lane of traffic.</p> <p>Please make alterations to stoplights and signage along the detour route, and please staff the intersections along the entire detour route to facilitate the change in volume/patterns of cars. To neglect this feature will cause to the "30 minute detour" to escalate many times that amount of time.</p> <p>Please consider developing a contractual contingency plan to handle delays in either the start of the project, or handle delays in the project itself related to unforeseen factors. I'd strongly suggest having an absolute cutoff date for the initiation of the project. In other words, if the project doesn't begin before a date like January 1st then it be shelved until the next year (November 2023) (January 1st start date means April 1st completion date, best case scenario with the Option A 90 Day Closure). Having this built into the contract may be the only way to ensure that delays don't push the project into the tourism season. There are probably other contractual ways to do this, please consider the one I suggested or one that may be proven.</p>	
13	<p>With respect to the Traffic Control Plan, NPS recommends implementation of Option A, Full Detour, which will decrease the total length of temporary impacts (Air Quality, Noise, Travel Patterns and Community Facilities/Services) and result in a significant cost savings.</p> <p>Based on a portion of the protective structures are to be located outside WVDOH right-of-way and on NPS property, two issues that</p>	<p>We appreciate your input on Option A for the full detour.</p> <p>WVDOH and FHWA understand that no "Temporary Easements" and Temporary Construction Easements" will be obtained. However, a NPS Special Use Permit will be required prior to any work on NPS property. This has been added as an Environmental Mitigation Commitments in Section 7, Table 7-1.</p>



Comment ID	Comment	Response
	<p>need to be addressed are: 1) the mechanism by which NPS authorizes WVDOH's initial construction, and 2) future maintenance of the same. A Special Use Permit (SUP-Construction) will be required from NPS for the initial construction. Therefore, we recommend replace the phrases "Temporary Easements" and "Temporary Construction Easements" wherever found in the EA with the term "NPS Special Use Permit" to clarify this requirement.</p> <p>For the purposes of long-term maintenance of WVDOH facilities on NPS property, WVDOH must obtain a Highway Easement Deed (HED). An HED is issued by the Federal Highway Administration (FHWA) on behalf of the NPS and will allow for the WVDOH facility to be located on NPS land. NPS stands ready to coordinate and review such an application to FHWA.</p>	<p>A commitment to obtain the NPS Special Use Permit and a Highway Easement Deed for future maintenance, has been added to the Environmental Mitigation Commitments in Section 7, Table 7-1.</p>

6 PROJECT REFINEMENTS SINCE ISSUANCE OF THE ENVIRONMENTAL ASSESSMENT

WVDOH has not refined the proposed project in response to comments received; therefore, no changes to the EA were necessary. Based on comments received during a meeting with the NPS prior to the EA being issued, WVDOH and FHWA, in addition to previous coordination with the WVDCH and VASHPO, coordinated with Maryland Historical Trust (MHT) with regard to historic properties and viewsheds. MHT determined in a letter dated November 17, 2021 that the project would have No Adverse Effect on historic properties (Appendix D).

7 MITIGATION MEASURES TO MINIMIZE HARM

The EA describes the proposed project, its likely effects, and potential mitigation measures to avoid or minimize those effects. FHWA requires these mitigation commitments (Table 6-1) as a condition of FHWA’s finding that the proposed project will have no significant impact. These mitigation commitments are based on the mitigation measures identified in the published EA and the Temporary Use 4(f) (Attachment C). Satisfaction of the mitigation commitments will be a condition of any future FHWA funding for the proposed project.

Table 7-1: Environmental Commitments

Environmental Resource Impact	Environmental Commitment ID	Environmental Mitigation and Commitment
Environmental Justice	1	Announcements will be placed in the local newspaper, at bus stations, train stations, and provided to The Eastern Panhandle Transit Authority (EPTA) to post on their website. Additionally, Changeable Message Signs will be used to make the traveling public aware of the pending detour. These activities will be initiated 2 months in advance of the start of the project. Advance notice of the temporary road closure and subsequent detour will allow all members of the traveling public the ability to plan for the temporary disruption in day to day travel through the project area, including additional travel times. Project contact information will be provided in the announcement to solicit comments and concerns related to potential hardship costs associated with the 90-day detour. Comments and concerns will be evaluated on a case-by-case basis to determine whether additional measures to reduce the impacts of the detour are warranted. This continued outreach will ensure that potential impacts to low-income and minority travelers are fully evaluated and addressed.
Community Facilities and Services	2	Representatives of WVDOH will meet with the Eastern Panhandle Transit Authority prior to the beginning of the road closure and detour to discuss posting of notices for MARC riders who utilize a 5:45 p.m. and 8 p.m. bus.
Changes in Travel Patterns	3	Under the proposed project, temporary detours will be established for automobiles and buses. WVDOH will provide advance notice of the temporary road closure and subsequent detour will allow all members of the traveling public the ability to plan for the temporary disruption in day to day travel through the project area, including additional travel times.



Environmental Resource Impact	Environmental Commitment ID	Environmental Mitigation and Commitment
Historic Resources	4	No adverse effect will occur to historic resources or viewsheds; however, remediation treatments will be powder coated with colors to blend with the existing rock face.
Publicly Owned Land/ Section 4(f) Properties	5	<p>WVDOH will coordinate to obtain a NPS Special Use Permit to allow for slide remediation activities to occur on NPS property.</p> <p>Highway Easement Deed will be obtained for future maintenance on NPS property.</p> <p>Under the proposed project, there may be temporary impacts to the Loudoun Heights Trail associated with temporary closures when remediation activities may be unsafe for trail users. Signs will be posted during these times to notify trail users of the temporary closure.</p>
Water Quality	6	No permanent impacts. Temporary impacts may occur due to runoff associated with remediation activities. BMPs will be implemented by the contractor.
Vegetation	7	Any disturbed areas will be re-vegetated using a native seed mixture during construction.
Migratory Birds, Terrestrial Wildlife, Aquatic Species	8	<p>Construction noise could temporarily affect any migratory birds, terrestrial wildlife, or aquatic species. WVDOH will work with its contractors to minimize, to the extent reasonably practicable, construction-related noise disturbances. According to the WVDOH <i>2002 Construction Manual</i>, during pre-construction, the Engineering Division will:</p> <ul style="list-style-type: none"> • Identify land uses or activities that may be affected by noise from construction. • Determine appropriate noise criteria limits for the identified receptors. • Document any measures required during construction to minimize or eliminate adverse construction noise impacts to the surrounding area. <p>In addition, the project special provisions will document any restrictions or noise abatement measures required of the contractor. These could include shields or physical barriers, or limiting work hours, among others.</p>
Aesthetics and Visual Resources	9	Impact would be minor and powder coatings would be used on the remediation treatments to minimize visual impacts and blend the treatments with the existing rock face.
Air Quality	10	With the application of appropriate BMPs to limit dust emissions during rehabilitation, the proposed project will not cause any significant, short-term particulate matter air quality impacts. Adherence to dust control measures in the WVDOH Standard Specifications Roads and Bridges will help minimize the effects of construction on air quality.



Environmental Resource Impact	Environmental Commitment ID	Environmental Mitigation and Commitment
Noise	11	<p>Contract documents will specify noise limits for construction equipment. According to the WVDOT <i>2002 Construction Manual</i>, during pre-construction, the Engineering Division will:</p> <ul style="list-style-type: none"> • Identify land uses or activities that may be affected by noise from construction. • Determine appropriate noise criteria limits for the identified receptors. • Document any measures required during construction to minimize or eliminate adverse construction noise impacts to the surrounding area. <p>In addition, the project special provisions will document any restrictions or noise abatement measures required of the contractor. These could include shields or physical barriers, or limiting work hours, among others.</p>
Traffic	12	<p>Per the TTCP developed for this project, the contractor will need to obtain a Land Use Permit from the Virginia Department of Transportation prior to the start of remediation activities.</p>

8 ENVIRONMENTAL DETERMINATIONS AND FINDINGS

8.1 NEPA Finding

FHWA served as the lead federal agency under NEPA for the proposed project. WVDOH will construct the proposed project in accordance with the design features and mitigation measures presented in the EA, Section 4(f) Evaluation, and Section 106 Evaluation. The EA for this project complies with NEPA, 42 USC § 4331, et. seq., and 23 CFR § 771.121.

After reviewing the EA and supporting documents, including public comments and responses, FHWA finds that the proposed project will result in temporary effects on some resources as identified in Table 7-1. The project will not result in permanent effects. Mitigation measures that WVDOH will implement to avoid or minimize effects on these resources were described previously in Table 6-1.



Table 8-1: Permanent and Temporary Effects of the Proposed Project

Environmental Resource Category	Mitigation Commitment ID (Table 6-1)	Temporary Effects During Construction? (Yes/No)	Permanent Effects? (Yes/No)
Environmental Justice	1	Potential	No
Right-of-way Acquisition	N/A	No	No
Residential Displacements	N/A	No	No
Business Displacements	N/A	No	No
Community Facilities/Services	2	Yes	No
Bicycle/Pedestrian Facilities	N/A	No	No
Community Cohesion	N/A	No	No
Change in Travel Patterns	3	Yes	No
Land Use	N/A	No	No
Archaeological Resources	N/A	No	No
Historic Resources	N/A	No	No
Section 4(f) Properties	4	Yes	No
100- and 500-year Floodplain	N/A	No	No
Streams	N/A	No	No
Water Quality	N/A	No	No
Wetlands	N/A	No	No
Wild and Scenic Rivers	N/A	No	No
Natural and Wild Areas	N/A	No	No
Vegetation	5	Yes	No
Wildlife (migratory birds, terrestrial wildlife, and aquatic wildlife)	6	Yes	No
Rare, Threatened, and Endangered Species	N/A	No	No



Environmental Resource Category	Mitigation Commitment ID (Table 6-1)	Temporary Effects During Construction? (Yes/No)	Permanent Effects? (Yes/No)
Prime and Unique Farmland	N/A	No	No
Geologic Resources	N/A	No	No
Aesthetics and Visual Resources	N/A	No	No
Energy	N/A	No	No
Groundwater	N/A	No	No
Waste Sites	N/A	No	No
Air Quality	7	Yes	No
Noise	8	Yes	No
Traffic Capacity	N/A	No	No
Cumulative Impacts	N/A	No	No
Secondary Impacts	N/A	No	No

Pursuant to 23 CFR § 771.121, FHWA finds that the proposed project with mitigation to which WVDOH has committed will have no significant impact on the environment. The record provides sufficient evidence and analysis for determining that an Environmental Impact Statement is not required.

8.2 Federal Uniform Relocation Act Compliance

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 61) and its implementing regulations, 49 CFR § 24, ensure the fair and equitable treatment of persons whose real property is acquired or who are displaced as a result of a federal or federally assisted project.

The proposed project would not require acquisition of property; however, if that should change any acquisitions would be conducted in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

8.3 Section 106 Finding

In compliance with Section 106 of the National Historic Preservation Act of 1966 and in accordance with the Criteria of Adverse Effect described in 36 CFR § 800.5, FHWA determined that the proposed project would not have an Adverse Effect on historic properties.

The West Virginia Division of Culture and History (WVDCH) and the Virginia State Historic Preservation Office (VASHPO), and MHT concurred with these determinations on January 21, 2021, September 21, 2020, November 11, 2021 respectively. Additionally, FHWA determined that no archaeological sites were present within the study area and no additional archaeological investigations were warranted. WVDCH and VASHPO concurred with this determination on April 28, 2020 and September 21, 2020 respectively.

FHWA also assessed the viewshed impacts on historic properties and determined there would be a minor impact on the viewshed. Coordination with the SHPO determined there would be no adverse effect to historic resources.

Based on the historic resources analysis included in the EA as well as the consultation with WVDCH and VASHPO, **FHWA finds, in accordance with 36 CFR § 800, that the Section 106 coordination and consultation requirements for the proposed project have been fulfilled.**

8.4 Endangered Species Act of 1973 (ESA) Findings

The ESA intends to protect threatened and endangered species and the ecosystems on which they depend (16 USC §§ 1531-1544). The ESA requires a federal agency to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any listed species or result in direct mortality or destruction or adverse modification of critical habitat of listed species (50 CFR § 402). This requirement is fulfilled under Section 7 of the ESA by review of the proposed actions and consultation with the appropriate agency responsible for the conservation of the affected species (16 USC § 1536 *et seq.*). If necessary, mitigation is required to avoid jeopardizing listed species or their habitat.

Section 7 of the ESA requires all federal agencies to consult with the U.S. Fish and Wildlife Service (USFWS) for freshwater species and inland flora and fauna (50 CFR § 402). The proposed project is not anticipated to affect bald eagles.

The Action Alternative will not affect rare, threatened, or endangered species or their habitat. A letter was sent to USFWS on July 15, 2021 stating the WVDOH is making a Not Likely to Adversely Affect (NLAA) determination on the US 340 project on behalf of FHWA and

requesting concurrence on the determination. The determination was made that the Indiana bat should not be adversely affected because only one acre of trees will be cleared, and the project is not in a known-use area. In addition, the northern long-eared bat should not be adversely affected by the project due to the small amount of tree clearing and the project is not in a known-use area. Additionally, any effects to the northern long-eared bat would be covered under the 4(d) rule.

Based on the studies conducted and the determinations made by USFWS, FHWA finds the proposed Project satisfies the requirements of Section 7 of the Endangered Species Act.

8.5 Wetlands Finding

USDOT seeks to assure the protection, preservation, and enhancement of the nation's wetlands to the fullest extent practicable during the planning, construction, and operation of transportation facilities and projects (DOT Order 5660.1A). Executive Order 11990 requires that new construction located in wetlands be avoided unless there is no practicable alternative to the construction. It also requires that the proposed project include all practicable measures to minimize harm to wetlands that may result from construction.

Under Section 404 of the Clean Water Act (CWA)(33 U.S.C. 1251 et seq), USACE regulates discharges of dredged or fill materials into waters of the United States, including wetlands (33 CFR § 323). USACE requires that adverse effects on wetlands be avoided or minimized to the extent practicable (40 CFR § 230).

The Shenandoah and Potomac Rivers are located adjacent to the study area; however, no impacts to the rivers will occur and there are no wetlands within the study area. Therefore, no Section 404 or 401 permits are required. Given the proximity to the Shenandoah and Potomac Rivers BMPs will be implemented during remediation activities. These BMPs may include erosion control and temporary seeding of all exposed soils, segregation and protection of fuel supplies and other hazardous materials, containment of re-suspended sediment via silt curtains, and other applicable measures for the protection of surface waters. These requirements will be incorporated into the project construction specifications and will be coordinated with the appropriate federal and state agencies.

With the BMP commitments in Table 6-1, **FHWA finds that the proposed Project satisfies the requirements of Executive Order 11990 and Section 404 of the CWA.**

8.6 Floodplains Finding

The protection of floodplains and floodways is required by Executive Order 11988; USDOT Order 5640.2, Floodplain Management and Protection; Federal-Aid Highway Program Manual 6-7-3-2, Location and Hydraulic Design of Encroachments on Floodplains; and 23 CFR § 650. The intent of these regulations is to avoid or minimize highway encroachments within the 100-year floodplains, where practicable, and to avoid land use development that is incompatible with floodplain values. Where encroachments are unavoidable, the regulations require taking appropriate measures to minimize impacts.

The proposed project will not encroach on floodplains; therefore, **FHWA finds that the proposed project will have no significant impacts on 100-year floodplains or floodways.**

8.7 Environmental Justice Finding

Executive Order 12898 provides that “each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and/or low-income populations.” A disproportionately high and adverse effect on minority or low-income populations is defined as an adverse effect that: (a) is predominantly borne by a minority population and/or a low-income population; or (b) will be suffered by the minority population and/or low-income population and is appreciably more severe or greater in magnitude than the adverse effect that will be suffered by the non-minority population and/or non-low-income population (USDOT Order 5610.2(a)).

Based on the analysis contained in the EA, low-income populations may incur a temporary hardship as a result of the detour and possible increases in fuel costs; however, there are no alternatives to the proposed project that can be implemented safely. FHWA and WVDOH have committed to placing announcements in the local newspaper, at bus stations, train stations, and provided to EPTA to post on their website. Additionally, Changeable Message Signs will be used to make the traveling public aware of the pending detour. This can be done 2 months in advance of the start of the project. Advance notice of the temporary road closure and subsequent detour will allow all members of the traveling public the ability to plan for the temporary disruption in day to day travel through the project area, including additional travel times. As a result, **FHWA finds that the project may result in a low-income population incurring a hardship, the detour will be temporary, and a 90-day temporary closure does**

not equal a substantial impact or an adverse disproportionate impact to the low-income population.

To mitigate potential adverse effects of the proposed roadway closure, announcements will be made to alert the traveling public of the pending detour at least two months ahead of the start of construction. The announcements will be:

- Posted on the Project web page;
- Placed in the local newspaper;
- Posted at bus and train stations; and
- Provided to EPTA for posting on their website.

Advance notice of the temporary road closure will allow the traveling public the ability to plan for the short-term disruption in travel through the project area. Project contact information will be provided in the announcement to solicit comments and concerns related to potential hardship costs associated with the 90-day detour. Comments and concerns will be evaluated on a case-by-case basis to determine whether additional measures to reduce the impacts of the detour are warranted. This continued outreach will ensure that potential impacts to low-income and minority travelers are fully evaluated and addressed.

8.8 Air Quality Conformity Finding

The Clean Air Act (CAA) (42 U.S.C. §7401 et seq.) and its associated regulations (40 CFR § 50) are the basic federal statutes and regulations governing air pollution. The Transportation Conformity Rule (40 CFR § 93, Subpart A) requires that projects that are developed, funded, or approved by USDOT and by metropolitan planning organizations or other recipients of federal funds demonstrate conformity with the State Implementation Plan (SIP) developed pursuant to the CAA. A determination of conformity is made by the metropolitan planning organization and USDOT.

The Hagerstown/Eastern Panhandle Metropolitan Planning Organization (HEPMPO) HEPMPO planning region, including Harpers Ferry, is classified as being in “attainment” for all criteria pollutants. HEPMPO has made conformity determinations on the Long Range Transportation Plan (LRTP) and Transportation Improvement Plan (TIP). Both the LRTP and TIP are in conformity for all criteria pollutants. The project is included in the Fiscal Year 2017–2020 TIP as MPO ID number J2015-05 and is considered “exempt” from air quality conformity analysis.

8.9 Section 4(f) Finding

Section 4(f) of the USDOT Act of 1966 (49 USC § 303) is a national policy that states that the Secretary of Transportation may not approve transportation projects that use publicly owned parks, recreation areas, wildlife and waterfowl refuges, or any significant historic site unless a determination is made that there is no prudent or feasible alternative to using that land, and that all possible planning has been done to minimize harm.

The Action Alternative will result in the removal of loose rock and minor vegetation associated with these areas and will require a NPS Special Use Permit to access areas on NPS property that will require slope remediation. These areas total approximately 0.521 acres of HFNHP Property. Additionally, the Loudon Heights Trail will not be directly impacted; however, temporary closures of the trail may be warranted when slide repair activities may be unsafe for trail users. The Section 4(f) Evaluation is included in Appendix D.

FHWA finds that the proposed project meets the requirements for temporary occupancy as outlined in 23 CFR § 774.13(d).

9 CONCLUSION

Based on the EA and its associated supporting documents, FHWA finds that, pursuant to 23 CFR § 771.121, there are no significant impacts on the environment associated with the development and operation of the proposed project. Preparation of an Environmental Impact Statement is not warranted.