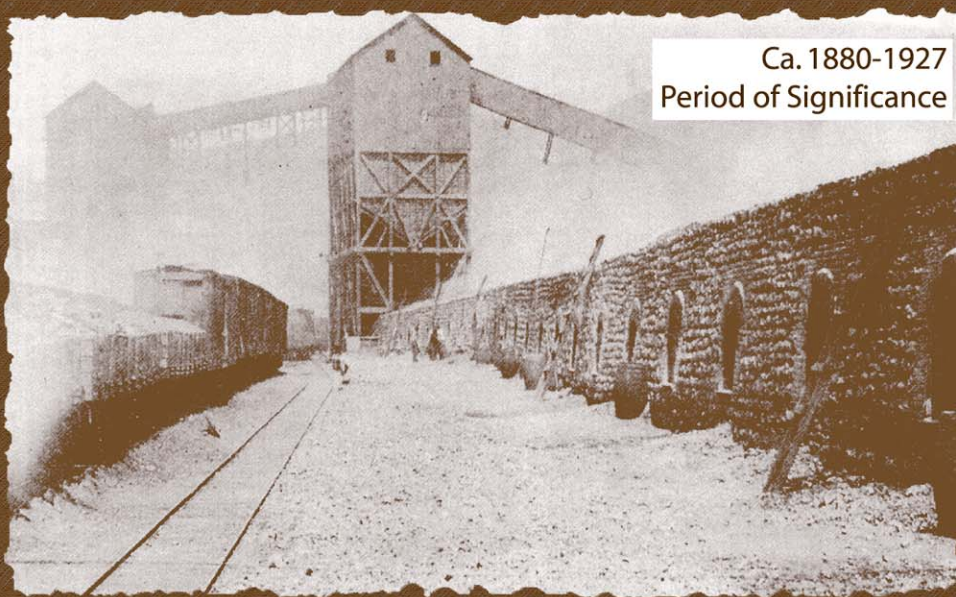


**APPALACHIAN CORRIDOR H
BLACKWATER INDUSTRIAL COMPLEX
ARCHAEOLOGICAL & HISTORIC DISTRICT
CRITERIA OF EFFECTS (COE) REPORT**



Ca. 1880-1927
Period of Significance

March 2004

prepared for:
WV Division of Highways



prepared by:
Michael Baker Jr., Inc.

Baker



Current 1990-2003

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1.0 INTRODUCTION

1.1 Overview

This purpose of this report is to present the final Criteria of Effects (COE) evaluation of potential impacts on historic and cultural resources associated with the Parsons-to-Davis Project of Appalachian Corridor H. This COE evaluation has been prepared in accordance with the Programmatic Agreement developed for the Appalachian Corridor H Project and meets the requirements of Section 106 of the National Historic Preservation Act.

This final COE report is organized as follows:

- Introduction
- Project Description and Location
- Methodology
- Assessment of the Effect of the ROPA on the Blackwater Industrial Complex
- Summary of Evaluation Results
- Additional Coordination Activities
- Exhibits and Appendices

1.1.1 *Draft COE Report*

A draft COE report was prepared in June 2002. The draft COE report concluded that the project would have “no effect” on the Blackwater Industrial Complex Archaeological and Historic District (Blackwater Industrial Complex). The parties who were provided the draft COE for review and comment are discussed in the paragraphs that follow.

The draft COE report was submitted to the West Virginia Division of Culture and History (WVDCH) for review and comment. In a comment letter dated October 30, 2002 (see Appendix C), the WVDCH, which serves as the West Virginia State Historic Preservation Office (WVSHPO) found that the project would have “no adverse effect” on the Blackwater Industrial Complex. In reaching this conclusion, the WVSHPO objected to the draft COE report’s focus on the percentages of the district that would experience visual or noise impacts. The WVSHPO stated that “[w]hat must be considered is the relative change to a district that is composed of buried and exposed industrial fragments of a major coke producing facility.” Based on this approach, the WVSHPO concluded that “[a]lthough it will be an alteration to the existing landscape, the bridge will not inhibit one’s understanding of the historic resource. The significance of the physical remnants is best served through interpretation on-site. The addition of a bridge will not inhibit this understanding.”

The draft COE report was provided to the United States Department of Agriculture, Forest Service, Monongahela National Forest (USFS) for review and comment. In its initial comments dated July 26, 2002 (see Appendix D), the USFS expressed concerns related to potential visual, auditory, and physical impacts related to the project. In October 2002 the USFS, West Virginia Department of Transportation (WVDOT), Division of Highways (WVDOH) and the Federal Highway Administration (FHWA) agreed to enter into a Memorandum of Understanding (MOU) (see Appendix E) to outline specific measures to mitigate the effects of the Kerens-to-Parsons and Parsons-to-Davis projects of Corridor H on the Monongahela National Forest (MNF). While the MOU does not serve as a Section 106 MOU under 36 CFR 800 regulations, it does address mitigation elements related to cultural resources within the MNF. In a letter dated October 24, 2002 (see Appendix D), the USFS

stated the project would not have an adverse effect. Additional coordination activities within the USFS are discussed in detail later in this report.

The draft COE report was provided to Corridor H Alternatives (CHA) (a consulting party in the Section 106 process) for review and comment. Ms. Andrea Ferster, legal counsel to CHA, provided comments on the draft COE Report on the behalf of CHA in a letter dated December 12, 2003 (see Appendix D). Ms. Ferster's letter states that CHA does not agree with the draft COE report's finding of "no effect" and instead recommends a finding of "adverse effect" based on visual and auditory effects to the historic resource and its setting. In large part, this recommendation is based on a contention that the "unaltered landscape" and currently quiet environment in the Blackwater Industrial Complex contribute to the significance of the district. In addition, Ms. Ferster's letter questions the USFS's motivations for entering into the MOU with WVDOH, and suggests that the MOU would be ineffective in mitigating the project's impacts because (according to Ms. Ferster's letter) the MOU only included commitments to provide "signage" for historic resources.

The draft COE was provided to the Community Advisory Group (CAG) of the Parsons-to-Davis Project for review and comment. No substantive comments were received from the CAG on this report.

1.1.2 Final COE Report

This final COE report has been updated to address the comments received on the draft COE report and to address other changes that have occurred since the draft COE report was issued in June 2002. The key changes in this report include the following:

- The analysis of visual impacts has been revised to explain the reasons why the current setting (forested, rural) is different from the setting during the period of historic significance.
- The analysis of noise impacts has been revised to include more precise noise impact estimates, using the FHWA Traffic Noise Model, rather than an extrapolation from existing noise levels.
- The report summarizes the key provisions of the MOU with the USFS, and explains that the MOU outlines mitigation for impacts associated with the project.
- The report includes more extensive and detailed graphics.
- The report concludes that the project will result in "no adverse effect" (rather than "no effect" as in the draft COE report dated June 2002) on the Blackwater Industrial Complex.
- The analysis in the report has been updated in response to comments received from the WVSHPO, the USFS, and consulting parties (see Appendices C and D). This report also summarizes these comments.
- The report recognizes that the WVDOH has selected a preferred alternative, which is known as the Revised Original Preferred Alternative (ROPA) and describes the ROPA. The ROPA is different from the Original Preferred Alternative (OPA), which was discussed in the draft COE report. However, the ROPA and OPA are identical in

the section that passes through the Blackwater Industrial Complex. Therefore, the selection of the ROPA has not required any change in the analysis in this report.

1.2 Section 106 Process

FHWA issued a Record of Decision (ROD) in August 1996 for the Corridor H highway between Elkins and the West Virginia-Virginia state line. The ROD approved the completion of Corridor H between Elkins and the state line as a four-lane highway with partial control of access on new and existing location. The total length of the approved alternative was approximately 100 miles.

The ROD stated that FHWA and WVDOH would complete the evaluation of impacts on cultural resources for Corridor H in accordance with a Programmatic Agreement (PA), which was approved in 1995 by FHWA, WVDOH, the WVDCH, and the Advisory Council on Historic Preservation (ACHP). The PA allowed for the preparation of cultural resource reports for Corridor H on a section-by-section basis. The 1995 PA listed 14 sections, numbered 3-16, in West Virginia. Since the 1996 ROD was issued, FHWA and WVDOH have prepared numerous cultural resource reports for Corridor H. In accordance with the 1995 PA, all of the required reports have been completed by section (or groups of sections), except the Parsons-to-Davis Project (formerly incorporating all or part of sections 12, 13 and 14).

In February 2000, FHWA and WVDOT entered into a Settlement Agreement with plaintiffs that had filed lawsuits challenging FHWA's approval of Corridor H. Under the terms of the Settlement Agreement, Corridor H has been divided into nine separate projects (Figure 1):

- Elkins-to-Kerens
- Kerens-to-Parsons
- Parsons-to-Davis
- Davis-to-Bismarck
- Bismarck-to-Forman
- Forman-to-Moorefield
- Moorefield-to-Baker
- Baker-to-Wardensville
- Wardensville-to-Virginia state line.

The Settlement Agreement requires a separate Amended ROD to be issued for each of the above projects. The Amended ROD is issued for a project only after the required studies for that project have been completed and all other requirements specified in the Settlement Agreement for that project have been met.

The Settlement Agreement also calls for FHWA to request "that the Advisory Council [on Historic Preservation] allow the section designations in the Programmatic Agreement (PA) to be modified to conform to the Project designations in this Agreement." Accordingly, FHWA submitted a letter to the ACHP on May 1, 2000 proposing an amendment to the PA. The proposed amendment would make the section designations in the PA conform to the project designations in the Settlement Agreement. Both the original 1995 PA and the 2000 amendment to the 1995 PA are included in Appendix A.

To date, reporting requirements for all section designations in the 1995 PA and project designations in the 2000 amendment to the 1995 PA have been completed except for the requirements for the Parsons-to-Davis Project. This report serves to complete the Section 106 process as outlined in the 2000 amendment to the 1995 PA.

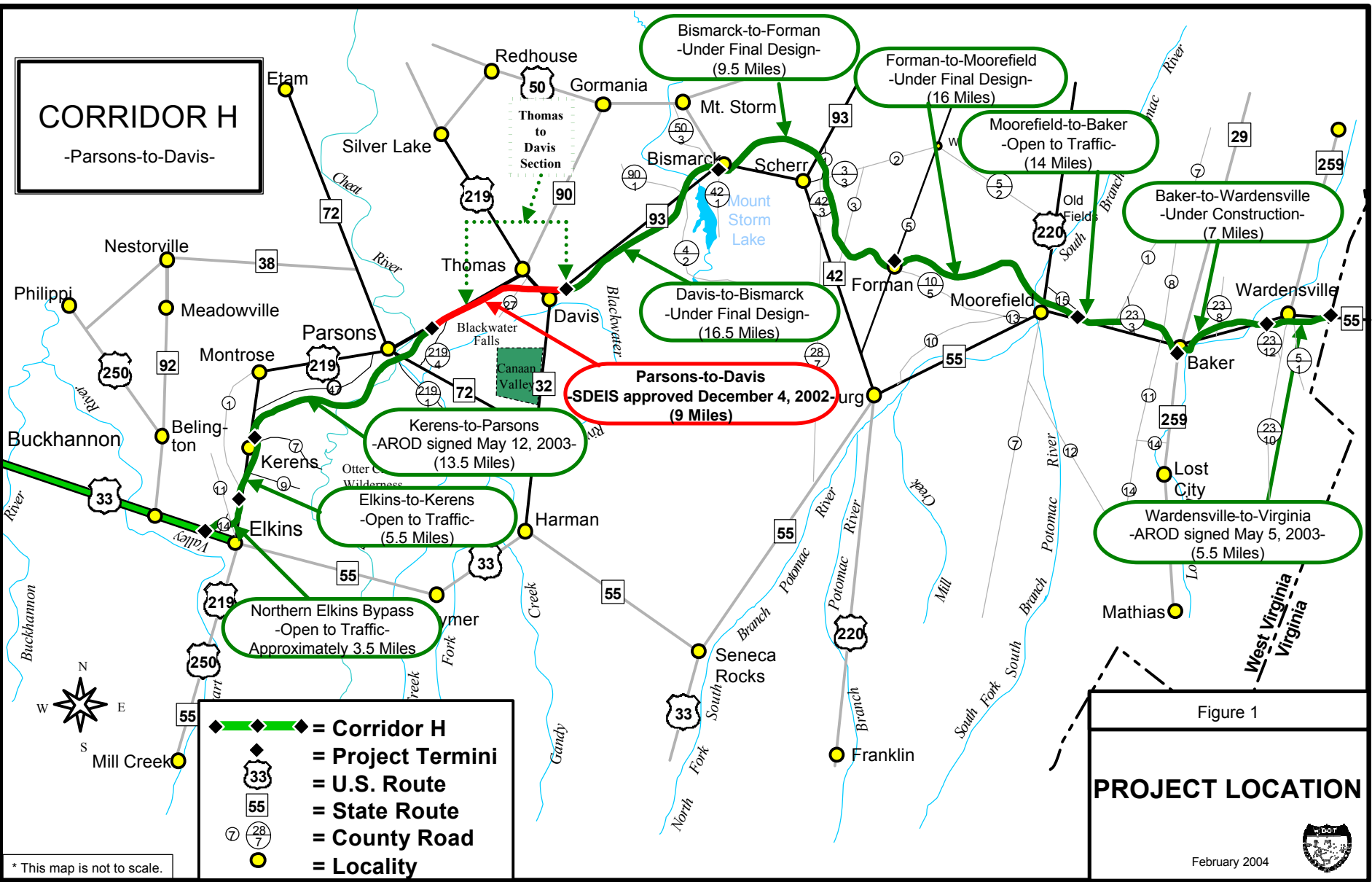
This report was prepared according to federal and state laws pertaining to cultural resources. Federal and state mandates dealing with cultural resources include: the Federal Highway Act of 1966, as amended; the National Environmental Policy Act (NEPA) of 1969; the National Historic Preservation Act (NHPA) of 1966, as amended; Executive Order 11593; the Archaeological and Historic Preservation Act of 1974; Section 4(f) of the Department of Transportation Act; and the West Virginia State Code Chapter 29.

1.3 Applicability of Section 106 Regulations

The Section 106 consultation process for the Corridor H project is being conducted under the 1995 PA. The PA required compliance with specific sections of the Section 106 regulations that were in effect at the time the PA was signed—(e.g., 36 CFR 800.5, which governs the evaluation of effects on historic resources). On May 18, 1999, the ACHP published new Section 106 regulations in the Federal Register, which became effective on June 17, 1999. In guidance accompanying those regulations, the ACHP stated that, except in unusual cases, the parties to a PA would be required to comply with the regulations that were in effect when the PA was signed. The only exception recognized by the ACHP in its guidance was for situations in which a PA referred to the Section 106 regulations generally, without mentioning specific provisions. That exception does not apply here because the PA for Corridor H required compliance with specific provisions of the old Section 106 regulations. Therefore, this report has been prepared in accordance with the old Section 106 regulations (i.e., the regulations that were in effect when the PA was signed in 1995).

CORRIDOR H

-Parsons-to-Davis-



* This map is not to scale.

- = Corridor H
- = Project Termini
- = U.S. Route
- = State Route
- = County Road
- = Locality

Figure 1

PROJECT LOCATION

February 2004



2.0 PROJECT DESCRIPTION AND LOCATION

2.1 Project History

2.1.1 Appalachian Development Highway System

In 1965, Congress enacted the Appalachian Regional Development Act (ARDA). The ARDA established the Appalachian Regional Commission (ARC). The ARC was given responsibility for coordinating development of the Appalachian Development Highway System (ADHS), which was established by Congress in the ARDA. As authorized by the ARDA, the ARC designated 28 corridors as part of the ADHS, including the Appalachian Corridor H Project (Corridor H), a west-east route connecting I-79 at Weston, West Virginia to I-81 at Strasburg, Virginia.

Consistent with the goals of the ARDA, the purpose of Corridor H is to stimulate economic development in rural, northeastern West Virginia by linking existing north-south routes in this area with a new west-east highway that meets the design standards adopted by the ARC for all highways in the ADHS.

2.1.2 Environmental Studies for Corridor H

Between the early 1980s and the early 1990s, WVDOT completed environmental studies for the portion of Corridor H between I-79 and Elkins, West Virginia. Environmental studies for the remainder of Corridor H, from Elkins to I-81, were being conducted during the early 1980s but had been put on hold until 1990 due to lack of funding.

In 1990, WVDOT and FHWA began to conduct supplemental environmental studies for the Elkins-to-I-81 section of Corridor H. Due to the size and complexity of the project, a “tiered” environmental impact study was initiated. A preferred alternative was identified for the project in the 1996 Corridor H Final Environmental Impact Statement (FEIS).

In August 1996, FHWA issued a ROD approving the alignment for Appalachian Corridor H between Elkins and the West Virginia/Virginia state line. (No decision was made on the portion of Corridor H in Virginia to I-81 because the Virginia Department of Transportation [VDOT] had withdrawn from the project in January 1995.) The 1996 Corridor H ROD approved the Preferred Alternative identified in the 1996 Corridor H FEIS.

In 1998 and 1999, concerns were raised regarding the impacts of the 1996 Preferred Alternative in the vicinity of Big Run Bog, a National Natural Landmark. While the 1996 Preferred Alternative did not directly impact the bog itself, the National Park Service (NPS) expressed concerns regarding indirect impacts associated with the bog’s watershed. The watershed of Big Run Bog was delineated, a hydrological analysis was conducted, and the 1996 Preferred Alternative alignment was shifted to the north and removed from the bog’s watershed.

2.1.3 Settlement Agreement

In September 1996, a lawsuit was filed challenging FHWA approval of the project. In October 1997, the U.S. District Court for the District of Columbia dismissed the lawsuit. The plaintiffs appealed the U.S. District Court decision to the U.S. Court of Appeals for the District of Columbia Circuit.

In February 1999, the U.S. Court of Appeals issued an opinion in the case. The U.S. Court of Appeals held that the procedures established in the August 1996 ROD for completing the review of historic resources did not comply with Section 4(f) of the Department of Transportation Act. Because of that ruling, the U.S. Court of Appeals ordered FHWA and WVDOT not to proceed further with construction of Corridor H until the Section 106 of the National Historic Preservation Act process had been completed.

In March 1999, FHWA and WVDOT requested permission from the U.S. Court of Appeals to continue constructing the portion of Corridor H known as the Northern Elkins Bypass. The plaintiffs in the Corridor H lawsuit did not oppose this request. In April 1999, the U.S. Court of Appeals issued an order clarifying that FHWA and WVDOT could proceed with the construction of the Northern Elkins Bypass while the remaining historic resource reviews for the remainder of Corridor H were completed.

Following the decision by the U.S. Court of Appeals, the parties to the Corridor H lawsuit agreed to enter into voluntary mediation as part of the U.S. District Court Mediation Program. The mediation process resulted in a Settlement Agreement, which was approved by the U.S. District Court in February 2000. Under the Settlement Agreement (2000 Settlement Agreement), the remainder of Corridor H in West Virginia was divided into nine separate projects including the Parsons-to-Davis Project (Figure 1).

As part of the Settlement Agreement, FHWA and WVDOT committed to prepare a Supplemental Environmental Impact Statement (SEIS) for the Parsons-to-Davis Project.

2.2 Overview of the Project and Supplemental Environmental Review

The WVDOT and FHWA are proposing to construct a nine-mile section of Corridor H between Parsons and Davis in Tucker County, West Virginia. The Parsons-to-Davis Project's western terminus is east of Parsons, 0.2 miles south of the northernmost point at which Tucker Co. 219/4 (Mackeyville Road) intersects US 219. The Project's eastern terminus is located north of Davis at WV 93 and 0.7 miles east of WV 32. The proposed facility will be a four-lane divided highway built on new location with partial control of access.

The proposed project will expedite the movement of west-east traffic across Backbone Mountain, providing access to and from the communities of Parsons, Thomas and Davis, and providing additional access to and from the recreational facilities located in Canaan Valley (located south of the project). Traveling between Parsons and Davis currently requires vehicles to travel on US 219, a two-lane highway that serves as the principal transportation route between these localities.

In December 2002, the Supplemental Draft Environmental Impact Statement (SDEIS) was



approved and circulated for review and comment. The FHWA and WVDOT initially established a comment period ending on February 21, 2002. However, as requested by Corridor H Alternatives (a plaintiff in the lawsuit), the comment period was later extended to April 22, 2003.

The public hearing for the project was held at the Blackwater Lodge in Davis, West Virginia on Thursday February 6, 2003. Information regarding the SDEIS was presented in detail with project personnel providing information and answering questions. Formal comments were taken via a certified court reporter, in written form, and on the project website. Generally, attendees at the public hearing expressed concerns about the project costs and the lack of a connection to Tucker County High School (TCHS) given the safety issues associated with US 219.

Approximately 34 comments were received on the SDEIS. The comments received on the SDEIS were taken into consideration in modifying the alternatives studied and identifying the preferred alternative. Formal response to these comments will appear in the Supplemental Final Environmental Impact Statement (SFEIS) as is consistent with FHWA NEPA regulations.

2.3 Description of the Preferred Alternative

In 1996, the ROD for Corridor H approved a preferred alternative for the Corridor H project. In 1998, WVDOT incorporated the Big Run Bog avoidance shift into the 1996 preferred alternative in order to move the preferred alternative alignment completely outside of the Big Run Bog watershed and eliminate the relocation of (and impacts associated with) Forest Road 717 and Canyon Rim Road (Forest Road 18). The 1996 preferred alternative with the Big Run Bog shift became the Original Preferred Alternative (OPA) that was defined and evaluated in the December 2002 Parsons-to-Davis SDEIS.

Based on information provided in the SDEIS, comments raised during the SDEIS process, and new information, the Revised Original Preferred Alternative (ROPA) was developed and evaluated. A Preferred Alternative Report (PA Report) was prepared and circulated to the resource agencies in January 2004. The PA Report provides detailed information regarding the development, evaluation, and selection of the ROPA as the Preferred Alternative for the Parsons-to-Davis Project. (Figure 2).

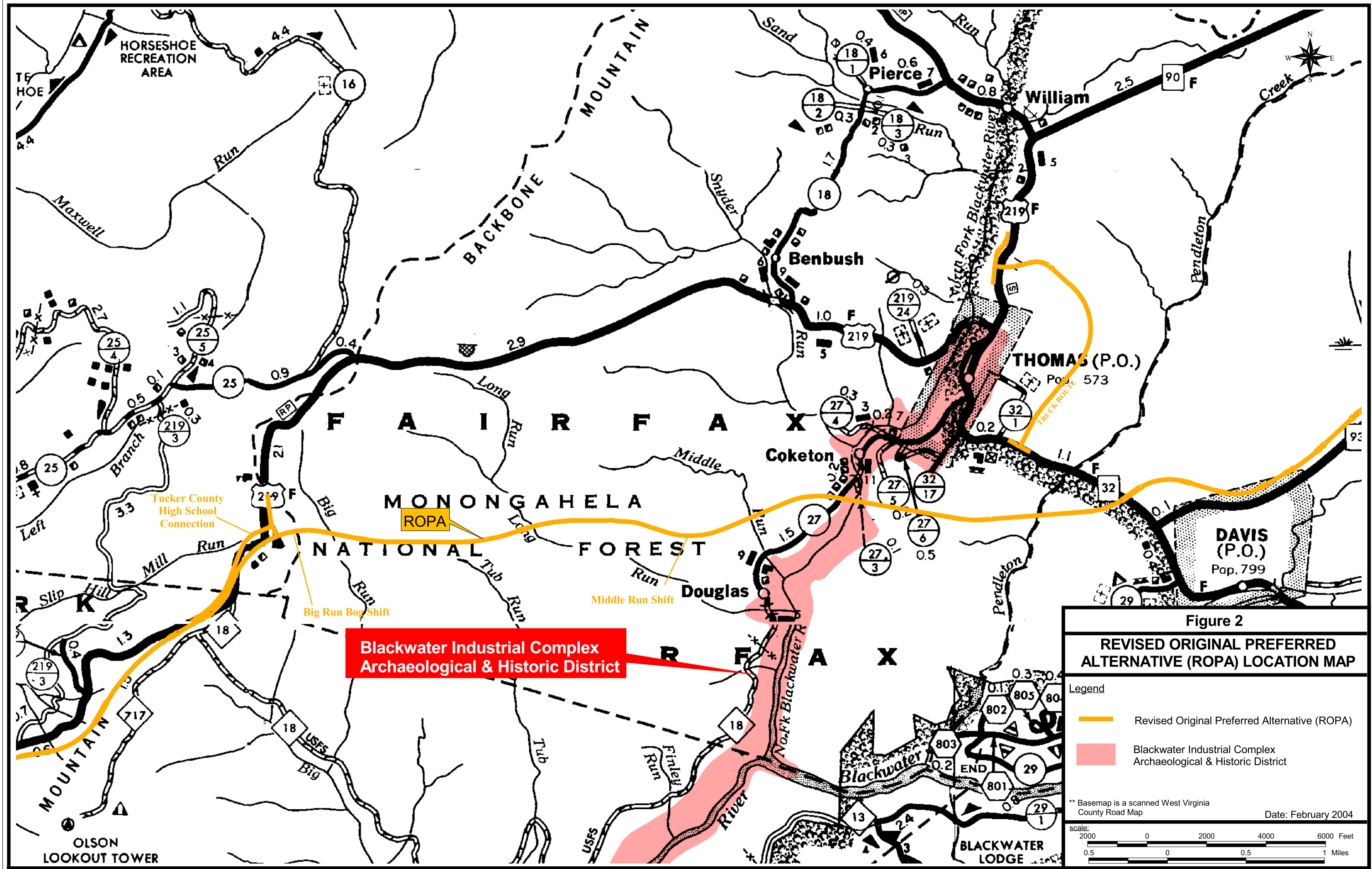
The ROPA differs from the OPA in the following ways:

- It provides a direct connection to US 219 just south of TCHS as requested by the public and the Community Advisory Group (CAG) in order to provide safer access to TCHS.
- It further reduces wetland impacts associated with Middle Run (referred to as the Middle Run shift in the SDEIS).
- It incorporates the Truck Route (TR) developed specifically to address heavy truck traffic in the city of Thomas which will allow for better flow of heavy truck traffic to the Tucker County Landfill, which services 10 counties in West Virginia, without impacting the landfill's current or future operations.

Exhibits 1 through 7 (shown at the end of this report, before the appendices) graphically depict the important differences between the OPA and the ROPA for the Parsons-to-Davis Project.

While the draft COE report analyzed the OPA, rather than the ROPA, in the vicinity of the Blackwater Industrial Complex, both the OPA and the ROPA cross the resource in the same location. (Exhibit 5). Comments received on the Draft COE report are therefore applicable to the ROPA as well.

The ROPA has been developed and evaluated in accordance with applicable NEPA regulations and the 2000 Settlement Agreement. The ROPA meets the project's purpose and need, does not "use" land from any known Section 4(f) resource, and further minimizes impacts associated with the OPA. It also is the least costly alternative, saving between \$16 million and \$70 million when compared to the other alternatives considered.



**Blackwater Industrial Complex
 Archaeological & Historic District**

ROPA

Tucker County
 High School
 Connection

Big Run Bog Shift

Middle Run Shift

HORSESHOE
 RECREATION
 AREA

F A I R F A X
 M O N O N G A H E L A
 N A T I O N A L
 F O R E S T

THOMAS (P.O.)
 Pop. 573

DAVIS
 (P.O.)
 Pop. 799

Coketon

Douglas

William

Benbush

OLSON
 LOOKOUT TOWER

BLACKWATER
 LODGE

3.0 METHODOLOGY

3.1 Introduction

In August 2, 2001, the Keeper of the National Register of Historic Places (National Register) determined that the Blackwater Industrial Complex is eligible for the National Register under criteria A, B, C, and D as a historic and archeological district (Savage August 2, 2001, Appendix B).

This final COE report presents an analysis of the potential effects of the proposed project on the Blackwater Industrial Complex, a historic resource within the Parsons-to-Davis Project. This final COE report was prepared in accordance with 36 CFR 800 and specifically evaluates: 1) the effect of the ROPA on the Blackwater Industrial Complex and 2) the impacts specific to the area immediately adjacent to the bridge crossing (Coketon resource area). The methodology used in assessing the potential impacts is based on the type of impact--direct physical, visual, auditory, or induced development in land use--and the established guidelines and criteria for their evaluation. Each type of impact and its methodology for evaluation is described below.

3.2 Direct Physical Impact Assessment Methodology

Direct physical impacts include any encroachment on the National Register boundary of a given historic resource that would involve the acquisition of any or all of the property. The assessment of this type of impact involves evaluating where the proposed action is located in relation to each historic resource and determining whether there is any acquisition of land from within the National Register boundary of each resource.

3.3 Visual Impact Assessment Methodology

36 CFR 800 does not specify a methodology for the assessment of potential visual impacts. In the absence of specific guidelines, a variety of tools were used, including, before and after depictions, photographic renderings, and a Geographic Information System (GIS) viewshed analysis.

3.4 Auditory Impact Assessment Methodology

36 CFR 800 does not specify a methodology for the assessment of potential auditory impacts. In the absence of specific guidelines, the FHWA Noise Abatement Criteria (NAC) (23 CFR 772) were used to evaluate the potential auditory impacts on the historic resources in the APE.

The FHWA has established NAC for five different land use categories that are presented in 23 CFR 772, Table 1, and reproduced below as Table 1 of this document. The appropriate category for the historic resource evaluated in this report is Category B, which includes picnic areas, recreational areas, and parks (see Table 1). The NAC for Category B areas is 67 decibels (dBA). The FHWA's recommended "approach" criterion for Category B is 66 dBA. The WVDOH typically follows the FHWA's NAC for traffic generated noise levels. Therefore, for all highway projects in West Virginia, there is a "traffic noise impact" (as defined in 23 CFR 772) if the design year sound levels equal or exceed 66 dBA.

Table 1
Noise Abatement Criteria (NAC)

Activity Category	Leq (h)	L<INF>10 (h)	Description of Activity Category
A	57 dBA* (Exterior)	60 dBA* (Exterior)	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	67 dBA* (Exterior)	70 dBA* (Exterior)	Picnic areas, recreation areas, playgrounds, active sports areas, parks, residences, motels, hotels, schools, churches, libraries, and hospitals.
C	72 dBA* (Exterior)	75 dBA* (Exterior)	Developed lands, properties, or activities not included in Categories A or B above.
D	--	--	Undeveloped lands.
E	52 dBA* (Interior)	55 dBA* (Interior)	Residences, motels, hotels, public meeting rooms, schools, churches, libraries, hospitals, and auditoriums.

* dBA = hourly a-weighted sound level in decibels
Source: 23 CFR 772, Table 1

The FHWA has allowed the individual states to define standards for determining what constitutes a "substantial increase" over existing noise levels. The WVDOH defines a substantial noise increase as an increase of at least 16 dBA (WVDOH 1998 Design Directive, DD-207). Therefore, if the design year sound level exceeds the noise levels in the current year by 16 dBA, there is a traffic noise impact as defined in 23 CFR 772. The WVDOH guidance also defines several categories of noise increases that are below the level of a traffic noise impact. These categories of evaluation are presented in Table 2 below.

Table 2
Noise Increase Evaluation in West Virginia

Increase Evaluation Category	Change in Sound Level (Predicted Sound Level - Current Sound Level)
NO IMPACT	0 to 5 dBA*
MINOR IMPACT	6 to 10 dBA*
MODERATE IMPACT	11 to 15 dBA*
SUBSTANTIAL IMPACT	equal to or greater than 16 dBA*

* dBA - hourly a-weighted sound level in decibels

3.5 Potential for Induced Development

The potential for induced development was studied in the *Secondary and Cumulative Impacts Technical Report* prepared for Appalachian Corridor H as part of the Alignment Selection Supplemental Draft Environmental Impact Statement (Baker 1994b). As identified in that report, the interaction of the following variables can serve to predict the potential for commercial development at a planned highway intersection: volume of traffic, visibility of the land, distances to nearby communities or other intersections, and availability of infrastructure (water and sewer).

Where the volume of traffic on the existing cross route is high, the visibility of the land surrounding the proposed intersection is high, the distance to nearby communities is short, and the infrastructure is readily available, there is a high potential for commercial development. Conversely, where existing traffic is low in volume, the visibility is low, the distance is long, and the infrastructure is not available, planned, or practical, there is a low potential for commercial development. Other site-specific factors such as topography and accessibility may also contribute to the potential for induced development.

In order to provide a worst-case analysis of the environmental impacts that could result from induced development, the Corridor H Development Model was created and applied in the *Secondary and Cumulative Impacts Technical Report* (Baker 1994b: 3-25). The application of this model did not predict secondary impacts to the historic resource discussed in this report.

4.0 ASSESSMENT OF THE EFFECT OF THE ROPA ON THE BLACKWATER INDUSTRIAL COMPLEX

The determination of whether the ROPA will have an “adverse effect” on the Blackwater Industrial Complex (and whether the ROPA will have an “adverse effect” on the Blackwater Industrial Complex) is based upon how the features that contribute to the site’s historical significance will be impacted. Currently, the Blackwater Industrial Complex site is heavily forested, rural, and enjoys low levels of noise. The site’s current setting, however, is far different than the setting during site’s period of significance (Ca. 1880-1927). At that time, the site was deforested and used for heavy industrial purposes that generated high levels of noise and smog. The uses of the Blackwater Industrial Complex, which have long been abandoned, involved coal mining, coke production and railroad operations that utilized mine portals, powerhouse and turbine operations, mine building, mine tipples and bee hive style coke ovens.

As the WVSHPO has recognized, it is the remains from these industrial operations – the buried and exposed industrial fragments and physical remnants associated with the major coke producing facility – that contribute to the historical significance of the Blackwater Industrial Complex (Pierce, October 30, 2002, Appendix C) The features that contributed to the historical significance were not the heavy forestation and rural and quiet nature of the site that are present today. Focusing on the “physical remnants” that are the contributing features of this district, the WVSHPO concluded that while the proposed project will have an effect on the resource, “the change to the landscape will not adversely effect the historic characteristics ” and “will not inhibit future understanding of the Blackwater Industrial Complex and the Coketon Study Area.” (Pierce, October 30, 2002, Appendix C)

This section of the final COE report evaluates the effect of the ROPA on the Blackwater Industrial Complex, taking into account the elements that contribute to its historic significance. The three areas that were evaluated include direct physical impacts, visual impacts, and auditory impacts. As discussed in more detail below, the project will have an “effect” but no adverse effect on the Blackwater Industrial Complex. This finding is based on the following considerations:

- the piers of the bridge will be confined to non-contributing areas, and thus there will be no physical impacts on any contributing elements of the district;
- the bridge will be visible, but the view of the bridge will not adversely affect any contributing element of the district, because the current setting (forested, quiet, and rural) is not a contributing element of the district; and
- the increased noise levels resulting from the presence of the bridge will not adversely affect the resource because the current quiet setting is not a contributing element of the district; and
- the project will not cause induced development in the Blackwater Industrial Complex, due to a lack of direct access; the fact that much of this area is owned and managed by the USFS; and the topography of the area.

4.1 Historic Resources

4.1.1 National Register Eligibility Assessment and Description

The Keeper of the National Register (Keeper) has determined the Blackwater Industrial Complex is eligible for the National Register under criteria A, B, C, and D. In a letter dated August 2, 2001 (Savage, August 2, 2001, Appendix B), the Keeper determined that the:

“The Blackwater Industrial Complex continues to convey its historic meaning as a significant concentration of contiguous, interrelated historic industrial and archeological resources throughout the Blackwater River corridor from Thomas to Hendricks, in Tucker County, West Virginia. The complex contains a 10-mile stretch of the 1888 West Virginia Central and Pittsburg Railway (WVC&P) grade with associated bridges and culverts, the abandoned community of Limerock along with the historic mining towns of Thomas, Coketon and Douglas, including numerous historic buildings, mine portals, stone foundations of the Coketon power house, several mine buildings and two mine tipples, many other unidentified structure foundations, and the standing remains of approximately 300 (out of the original 1,235) bee hive style coke ovens. The Complex’s numerous historic and archeological features located outside of the Coketon area in conjunction with the significant resources within the Coketon study area combine in a geographic concentration from one end of the Blackwater Industrial Complex to the other. Because of this continuity of important resources, the entire Blackwater Industrial complex is considered one entity and the Coketon study area evaluated within this larger context.”

“The Coketon study area includes key resources such as the banks of bee hive style coke ovens and the WVC&P railroad grade that may or may not be individually eligible, but which nonetheless, are contributing resources that tie the larger Blackwater Industrial Complex together. Due north of the Coketon area, significant resources such as those of the Thomas Commercial Historic District, extant examples of workers’ housing, the Davis company office building, the former department store building, and the railroad grade, are characteristic examples of the seamless continuity of the Complex’s historic material remains.”

In determining that the Blackwater Industrial Complex was eligible for the National Register, the Keeper did not find that the district’s current setting (i.e. rural, forested and quiet) contributed to the historic significance of the resource. Instead, the Keeper found that the significant features within this area are the remaining physical structures – e.g. bridges, culverts, historic buildings, mine portals, stone foundations, mine buildings, mine tipples, structure foundations, and coke ovens. Similarly, the WVSHPO has recognized that the contributing features of the district are the “buried and exposed industrial fragments of a major coke producing facility.” (Pierce, October 30, 2002, Appendix C)

The findings of the Keeper and the WVSHPO are consistent with the National Park Service guidance for determining the significance of the setting when evaluating historic and archeological resources. Under that guidance, a district or site’s current setting

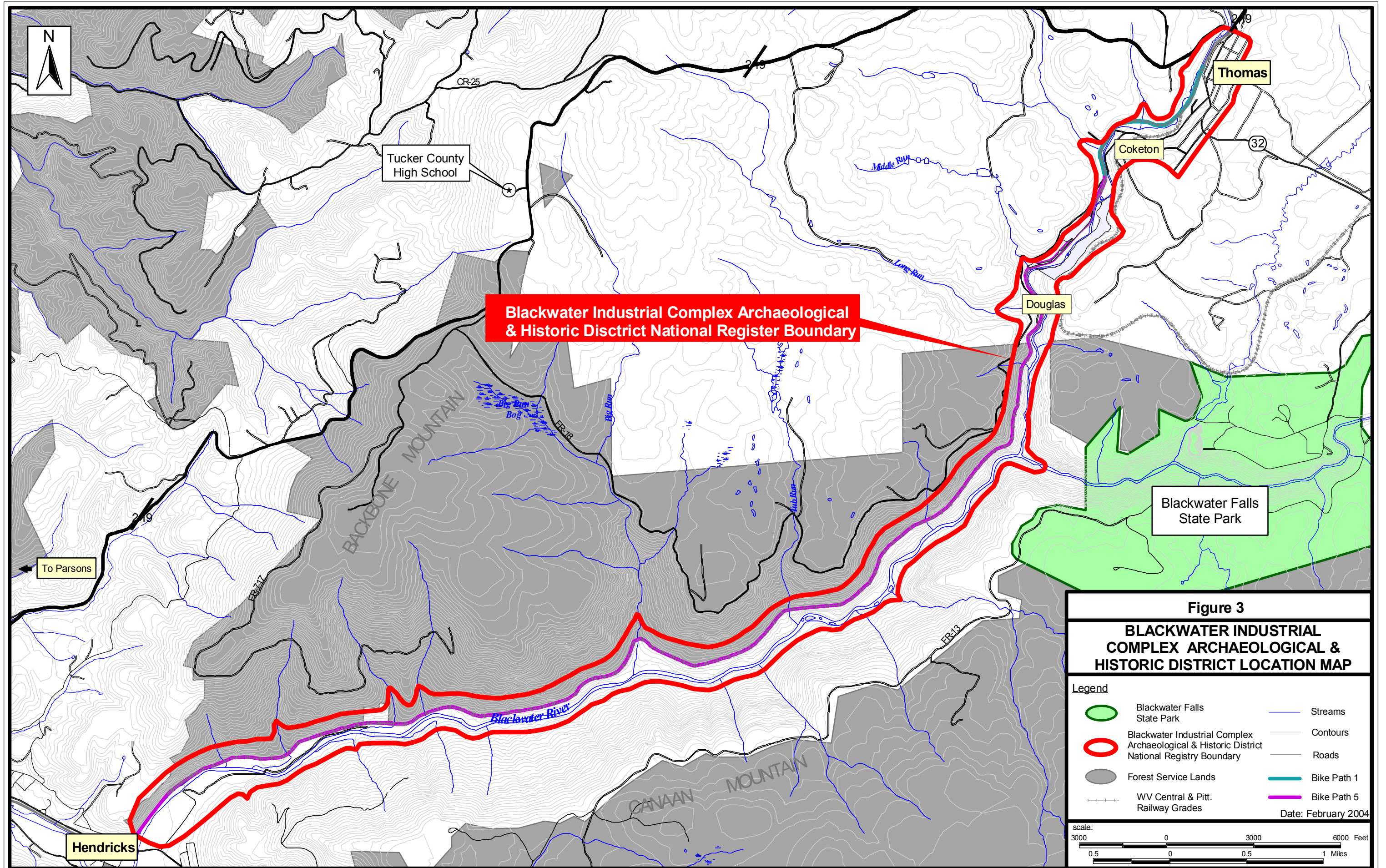
(which may include elements such as topographic features, open spaces, views, landscapes and vegetation) only conveys significance if the setting “appears as it did during the site’s or district’s period of significance” and is “integral to the importance of the site or district.” National Register Bulletin 36: Guidelines for Evaluating and Registering Archeological Properties (2001). See also National Register Bulletin 15, How to Apply the National Register Criteria for Evaluation. In this case, as explained below in Section 4.1.5, the current setting is dramatically different from the setting during the period of historic significance (see Figure 5). Therefore, as indicated by the correspondence from the Keeper and WVSHPO, the current rural and forested setting does not contribute to the significance of the Blackwater Industrial Complex.

4.1.2 Boundary Description

The location of the ROPA and the recommended National Register boundaries of the Blackwater Industrial Complex are depicted on Figure 3. The APE for the Blackwater Industrial Complex is demarcated by its recommended National Register boundary.

4.1.3 Relationship of the Project and the Resource

The proposed project will cross above the Blackwater Industrial Complex on a dual structure bridge. The approximately 1040 foot long bridge will be approximately 162 feet (bridge height at lowest ground elevation, i.e., Blackwater River) above the resource. The bridge will be located above the portion of the Blackwater Industrial Complex that has been extensively disturbed by mining reclamation projects. The bridge will be located away from the town of Thomas and the less disturbed areas of the district (i.e. the southern portion of the canyon). The relationship of the proposed bridge structure to the Blackwater Industrial Complex is depicted in Figure 4.



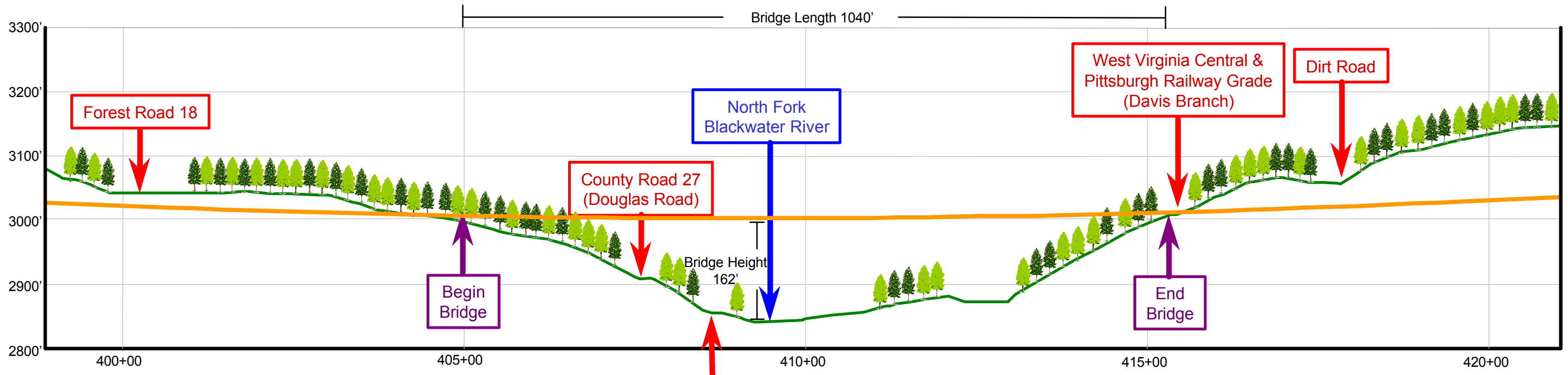


Figure 4
BRIDGE LOCATION
CROSS SECTION

Legend

- 400+00 Stationing in feet
- 3300' Vertical Elevation
- Revised Original Preferred Alternative (ROPA)
- Existing Land Surface
- Existing Trees (average height 59')

Date: February 2004

4.1.4 Direct Physical Impact Assessment to the Resource

Because of the height (162 feet) and length (1040 feet) of the bridge, a small amount of property within the National Register boundaries of the Blackwater Industrial Complex will have to be acquired for the placement of bridge piers and the foundations of the piers. Therefore, there will be a physical impact to the resource (within its proposed National Register boundary). However, piers can and will be sited in the reclamation areas associated with the Douglas Highwall and Albert Highwall Projects to avoid direct encroachment on contributing resources within the Blackwater Industrial Complex.

EVALUATION RESULTS

Although there will be a physical impact to the resource within its proposed National Register boundary, this impact is associated with the bridge pier locations, which will be placed to avoid any contributing resources. Therefore, while there will be an effect to the resource, there will be no adverse effect to the Blackwater Industrial Complex. Furthermore, because the piers will be sited in mining reclamation areas and will not impact contributing resources to the Blackwater Industrial Complex, there will be no removal or otherwise adverse alteration(s) to contributing resources.

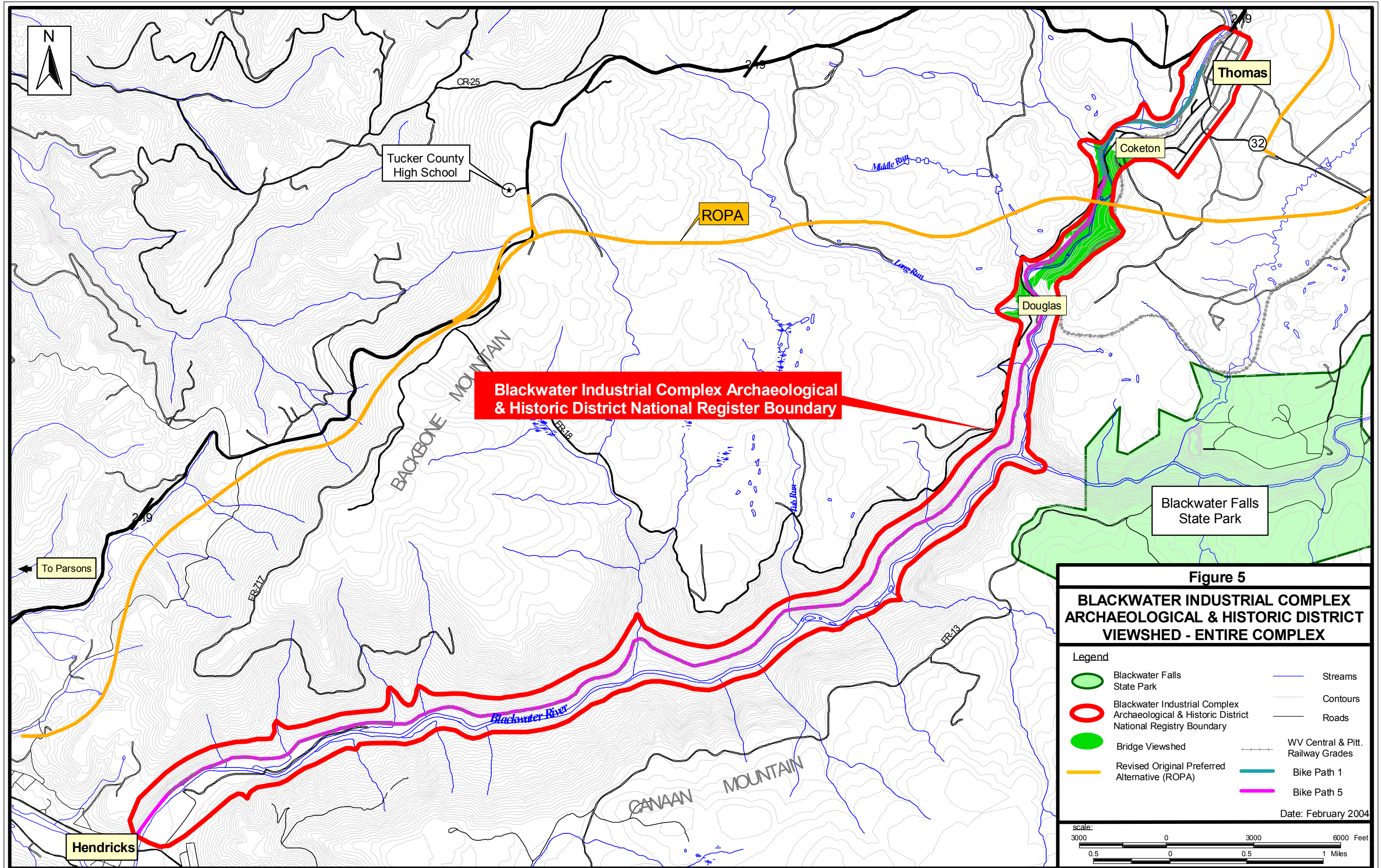
4.1.5 Visual Impact Assessment to the Resource

Given the general size of the bridge structure (regardless of bridge type) and the topography of the area, the proposed project will be visible from within the Blackwater Industrial Complex. A viewshed analysis was conducted to assess potential visual impacts to the Blackwater Industrial Complex by determining the larger extent to which the proposed project will be visible from within the resource. Figure 5.

Generally, it is important to note the current setting of the resource (heavily forested and rural) is quite different than during its period of significance (industrial and largely deforested). The Keeper's letter dated August 2, 2001 states,

“ ...along the integral railroad grade between the towns of Thomas and Douglas, the extant resources in Coketon, both above and below ground, represent the material remains of the most significant mining facility of the Davis Coal and Coke Company – the absolute center of the massive former industrial complex of Henry G. Davis, one of West Virginia's foremost political and industrial leaders. Additionally, the mining operations and railroad fueled the boom-town expansion and prosperity of the company towns of Thomas and Douglas included in this area. These towns are also vital components of the larger mining industry landscape, providing the housing, commercial and social environment of the region.”

Documentation presented during the Determination of Eligibility (DOE) phase for this project presented abundant material in the form of photographs, newspaper research, engineering drawings, etc. that depict and attempt to convey what the Blackwater Industrial Complex setting must have been like during its prime. The change that has taken place in the area over the past 50+ years (since the end of the period of historic significance) is dramatic. The photographs in Figure 6 are taken from the DOE documentation and serve to provide an overall basis for understanding the context for potential effects to this resource and the features that make it eligible for listing on the National Register (i.e. the contributing features).



Blackwater Industrial Complex Archaeological & Historic District National Register Boundary

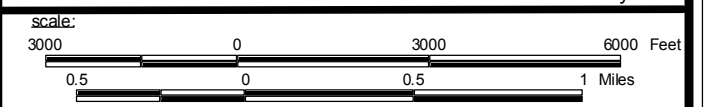
Figure 5

**BLACKWATER INDUSTRIAL COMPLEX
ARCHAEOLOGICAL & HISTORIC DISTRICT
VIEWSHED - ENTIRE COMPLEX**

Legend

- Blackwater Falls State Park
- Blackwater Industrial Complex Archaeological & Historic District National Registry Boundary
- Bridge Viewshed
- Revised Original Preferred Alternative (ROPA)
- Streams
- Contours
- Roads
- WV Central & Pitt. Railway Grades
- Bike Path 1
- Bike Path 5

Date: February 2004



BACKBONE MOUNTAIN

CANAAN MOUNTAIN

Tucker County High School

ROPA

Thomas

Coketon

Douglas

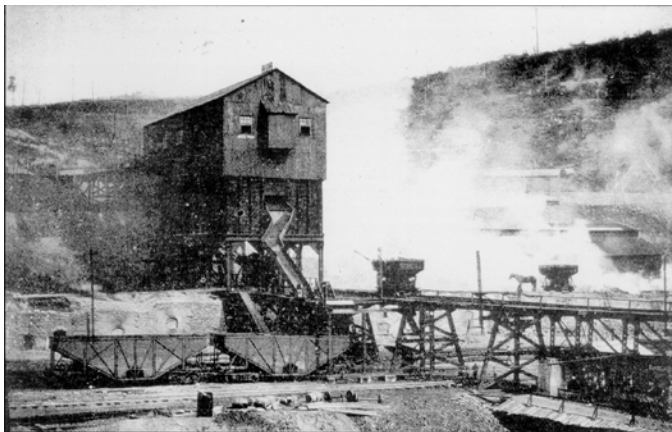
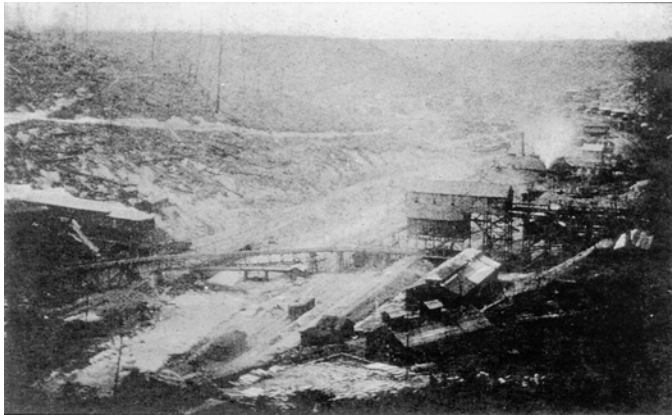
Blackwater Falls State Park

To Parsons

Hendricks

Figure 6
Photographs comparing the same or similar areas during the
Period of Significance (ca. 1880-1927) and of the Current Period (1990-2003)

Period of Significance (ca. 1880-1927)



Current Period (1990-2003)



The Keeper's letter also states, "The area represents the distinct patterns of social organization and architecture produced through 19th and early 20th-century industrial development. Coal mining and coke production resources, railroad resources, commercial buildings, workers' housing, company-related buildings and structures are of character defining construction and spatial arrangement." The remains of these features provide physical evidence of the area's industrial past. In addition to extant structures, including the railroad, it is important to note the effect of the area's industrial use on the surrounding landscape during its period of significance; due to the need for timber products, the surrounding area was largely de-forested (and remained so for decades). In addition, in contrast to the current setting, this area was characterized during the period of significance by smoke filled valleys from coke production. Presently, this former industrial area is heavily forested and almost rural in setting and appearance.

Contributing resources in the viewshed of the Coketon area are shown on Figure 7. Views from selected contributing resources are depicted in *before and after* renderings shown in Figure 8 and Figure 9. The views shown do not represent all of the contributing resources in the Blackwater Industrial District; however, they are representative of views from any of the contributing resources. Although the bridge type has not yet been determined, the bridge type shown in Figure 9 is typical of other bridges selected for other sections of the Corridor H project. These renderings are presented to give to reviewer a sense of scale relative to the proposed project and the Coketon resource area of the Blackwater Industrial Complex.

EVALUATION RESULTS

The viewshed analysis indicates the project (specifically, the bridge crossing for the Blackwater River) will be visible from within a portion of the Blackwater Industrial Complex (this includes the view from the project's bridge, and the view of the project from the ground). Approximately 163 acres of the entire 1693 acres complex will be within the viewshed of the bridge crossing location. The project viewshed includes various contributing and non-contributing elements of the resource; including the mining reclamation area near the Coketon resource area.

As discussed above, the current setting is not a contributing feature of the resource; rather the contributing features are the "buried and exposed industrial fragments of a major coke producing facility." (Pierce, October 30, 2002, Appendix C) Thus, while the bridge would be visible from a small portion of the district, the visual impact of the bridge would not alter any of the contributing features of the resource.

This finding is consistent with the Keeper's analysis of the changes that resulted from mining reclamation activities that greatly altered the landscape in the district. In its eligibility notification (letter dated August 2, 2001), the Keeper's office stated in part that "the post-mining reclamation of a relatively small area has not significantly disturbed the Coketon [area's] resources in a manner that would necessitate Coketon's evaluation as a discontinuous district" and that "the effects of the Coketon area reclamation project have had a relatively insignificant impact on the resources and the conveyance of their historical and archaeological importance." (Savage, August 2, 2001, Appendix B) Similarly, the construction of a bridge over this district (with piers located outside contributing areas) would alter the visual environment within the district but would not significantly affect the ability of the contributing features to convey their historical and archeological importance.

The proposed project will cross over the Blackwater Industrial Complex National Register boundaries at the location of the reclamation project. Because of the location of the crossing, it will add little to the relatively insignificant impact on the resources and will not interfere with the conveyance of their historical and archaeological importance to an observer. In the vicinity (and under) the proposed crossing, the original contours of the Blackwater Industrial Complex have been significantly altered by the reclamation project. Placement of the bridge and its associated piers in this location will therefore not alter any features of the historic location, setting or features of the resource's contributing elements that have not been previously altered by the reclamation project. Thus, the project's impact on existing features will also be insignificant.

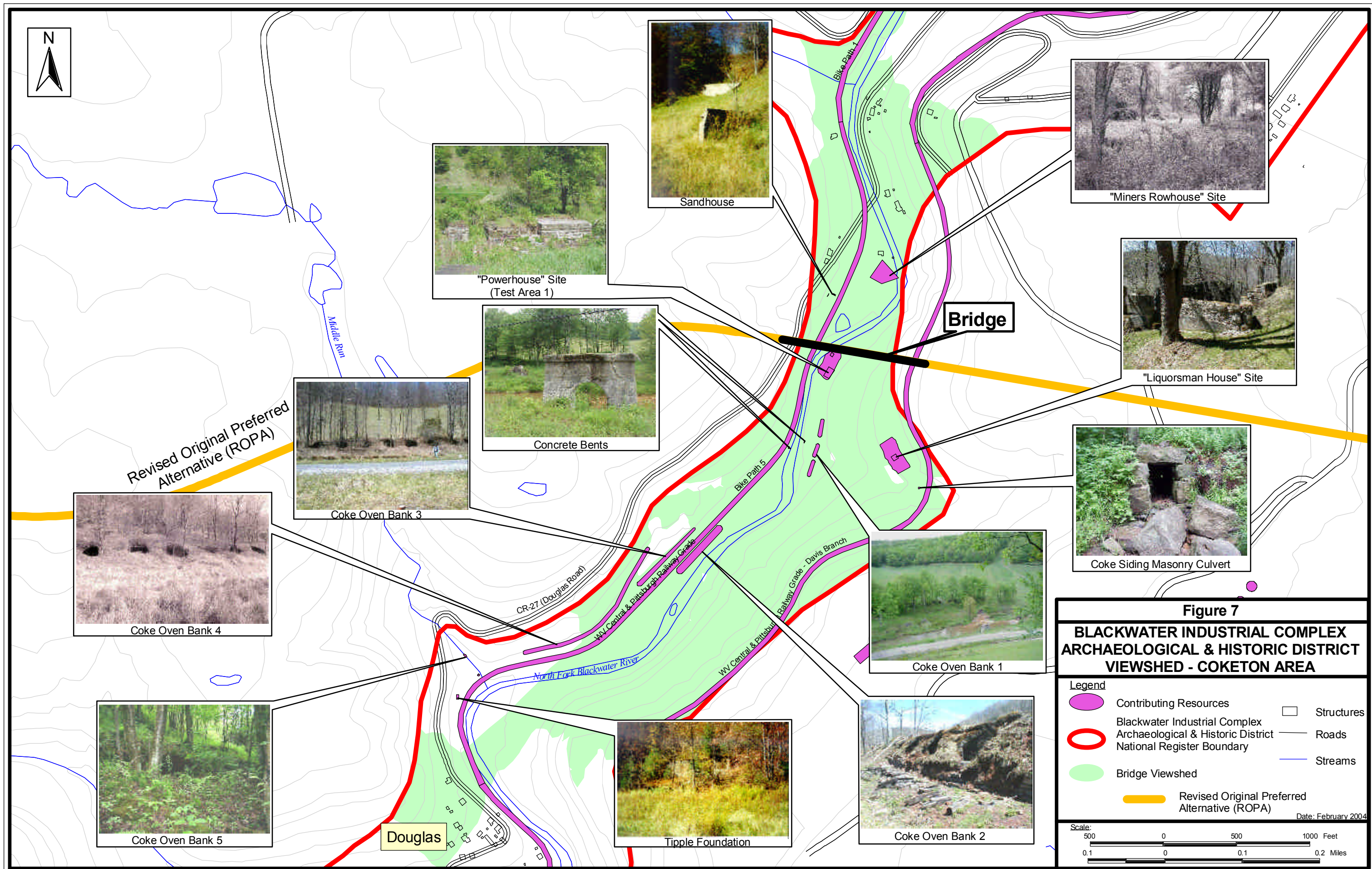







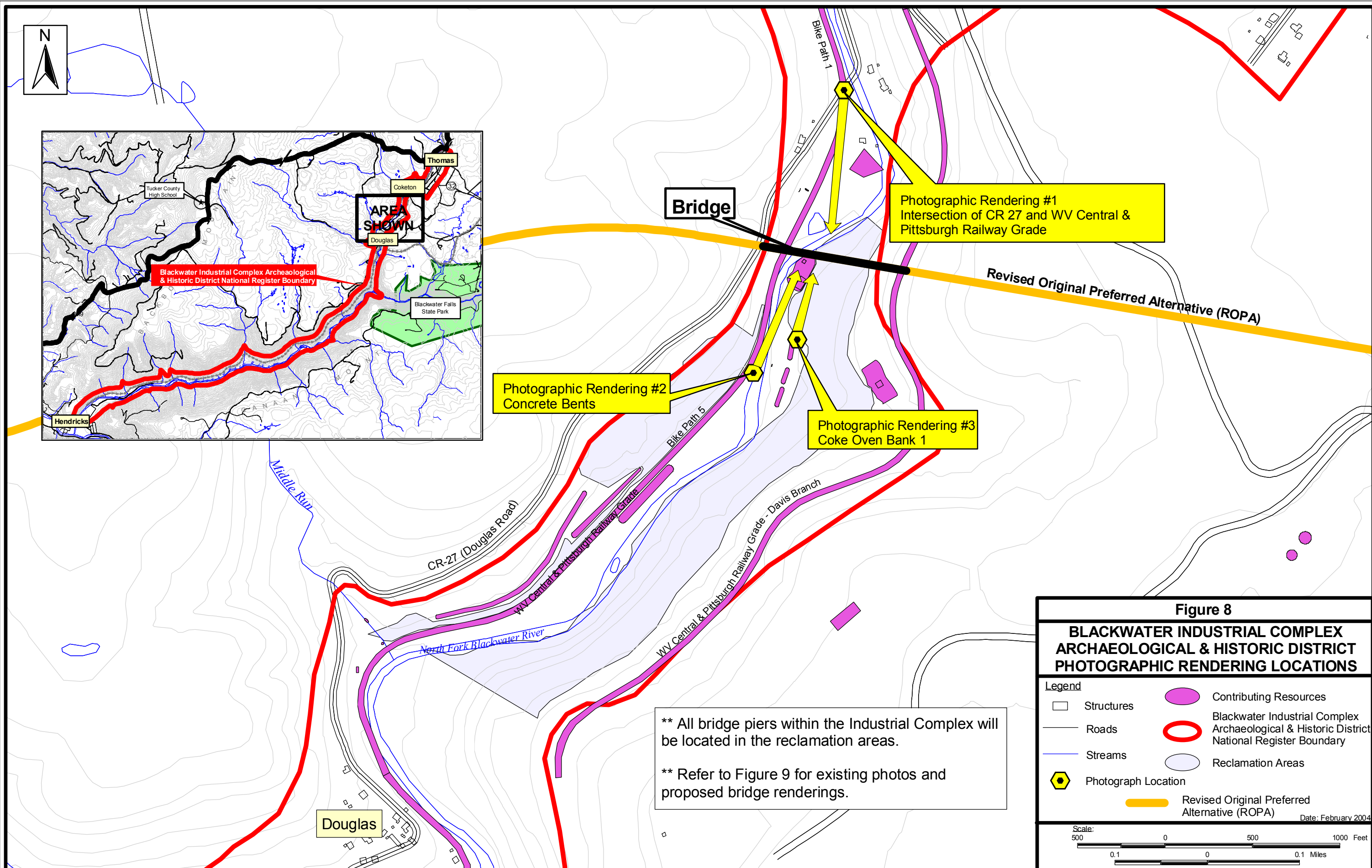


Figure 7
BLACKWATER INDUSTRIAL COMPLEX
ARCHAEOLOGICAL & HISTORIC DISTRICT
VIEWSHED - COKETON AREA

Legend

	Contributing Resources		Structures
	Blackwater Industrial Complex Archaeological & Historic District National Register Boundary		Roads
	Bridge Viewshed		Streams
	Revised Original Preferred Alternative (ROPA)		

Scale:
 500 0 500 1000 Feet
 0.1 0 0.1 0.2 Miles
 Date: February 2004



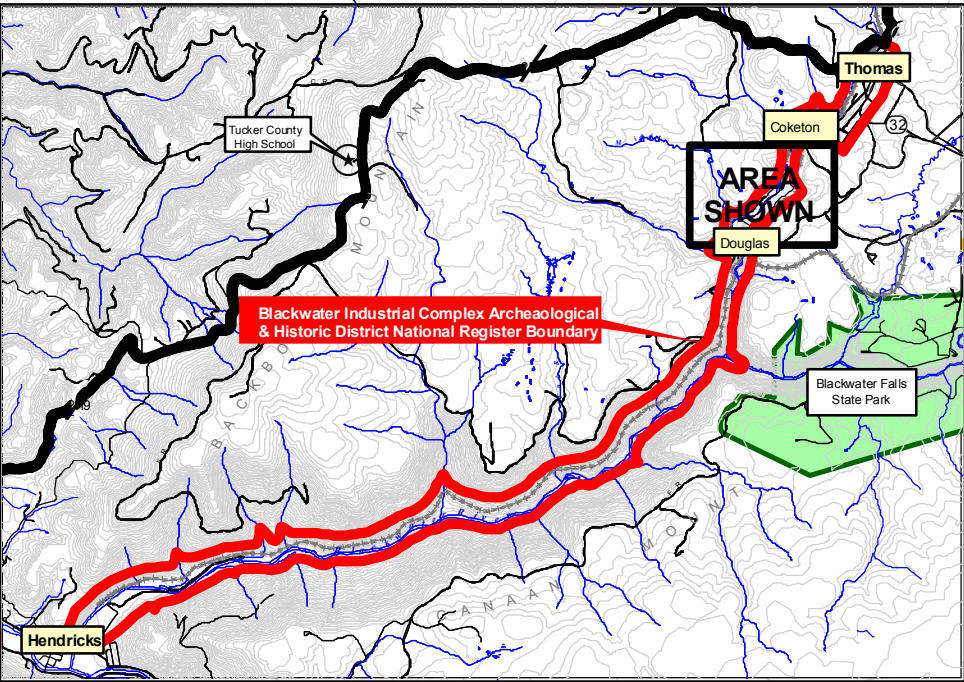
Bridge

Photographic Rendering #1
Intersection of CR 27 and WV Central & Pittsburgh Railway Grade

Photographic Rendering #2
Concrete Bents

Photographic Rendering #3
Coke Oven Bank 1

Revised Original Preferred Alternative (ROPA)



** All bridge piers within the Industrial Complex will be located in the reclamation areas.
** Refer to Figure 9 for existing photos and proposed bridge renderings.

Figure 8

**BLACKWATER INDUSTRIAL COMPLEX
ARCHAEOLOGICAL & HISTORIC DISTRICT
PHOTOGRAPHIC RENDERING LOCATIONS**

Legend

Structures	Contributing Resources
Roads	Blackwater Industrial Complex Archeological & Historic District National Register Boundary
Streams	Reclamation Areas
Photograph Location	Revised Original Preferred Alternative (ROPA)

Date: February 2004

Scale: 500 0 500 1000 Feet
0.1 0 0.1 Miles

Figure 9 Bridge Renderings

Rendering #1:

Taken from the intersection of CR 27 and WVC&P Railway grade looking south.
Approximate distance to location of bridge = 920 ft.



Rendering #2:

Taken from Concrete Bents looking north
Approximate distance to location of bridge = 740 ft.



Rendering #3:

Taken from the northern tip of coke oven bank #1 looking north
Approximate distance to location of bridge = 490 ft.



Therefore, while the bridge over the North Fork of the Blackwater River and its pier locations will introduce an additional visual element to the district, particularly in the vicinity of the Coketon resource area, the bridge will not alter the historic characteristics of the resource that qualify the property for inclusion in the National Register. Hence, the project will have an effect, but no adverse effect, on the Blackwater Industrial Complex.

4.1.6 Auditory Impact Assessment to the Resource

As discussed above, this district was the site of heavy industrial activity with high noise levels during the period of historic significance. Thus, the current quiet setting is not a contributing element of the district's historic significance. Changes in noise levels do not have the potential to alter significance characteristics of the resource. Nonetheless, the potential for increased noise levels has been evaluated. As explained below, this analysis has shown that only a small portion of the district would be exposed to increased noise levels and even in those areas, the increased noise levels would not rise to the level that would interfere with a person's attempt to visualize those historic activities that occurred during the period of significance.

The methodology for analyzing noise impacts in the draft COE report was designed to determine project noise levels at each of the sensitive receptors, and was carried out in a conservative fashion so that a "worst case" noise impact assessment could be determined. Specifically, noise modeling was conducted assuming no elevation differences between the proposed project (highway) and the identified sensitive receptors, along with no intervening terrain or vegetative features (trees) to provide additional shielding from the traffic noise. Based in part on additional comments received regarding the draft COE report noise analysis, a detailed traffic noise analysis utilizing a FHWA model was performed to predict potential noise encroachments (impacts), if any, in this area. The results of this analysis are presented in this final report.

Based on additional comments received regarding possible traffic noise impact within the Blackwater Industrial Complex, a detailed traffic noise analysis for the ROPA was performed to predict potential noise encroachments (impacts), if any, in this area. Model predicted noise levels were obtained using the FHWA Highway Traffic Noise Model (TNM) and followed WVDOT noise policy guidelines. In making these predictive noise levels, peak hour traffic volumes (loudest) and speeds, vehicle fleet mix (truck percentages), vegetative shielding (trees), and both terrain (elevation contours) and roadway elevations were included in the modeling analysis, as these characteristics reflected the set of traffic characteristics which would yield the worst hourly traffic noise on a regular basis under normal operating conditions. In addition to these parameters, modeling input included standard 3-foot tall concrete parapets on each side of the proposed bridge crossing that would span across the North Fork of the Blackwater River. This three-dimensional (3-D) modeling technique allowed for a more accurate prediction of traffic noise at identified receptor locations (Table 3).

Traffic noise impacts are identified when they are predicted as a result of either of two conditions: 1) the predicted design year build alternative traffic noise level approaches (within 1 dBA) or exceeds the Noise Abatement Criteria (a NAC impact); or, 2) the predicted design year build alternative traffic noise level exceeds the existing sound level by 16 dBA or more (a substantial increase impact).

During the period of significance for the Blackwater Industrial Complex, the day-to-day operations of lumbering, coal mining, and coke ovens, coupled with those of steam-

driven locomotive engines and associated railroad depot, maintenance facilities, and other railroad-related activities would have made this once busy industrial area an extremely noisy environment for individuals to both work and live.

Figure 10 references sound levels for several common activities. As shown in the figure, those sound levels associated with typical factory and industrial-type operations occur in the mid 80-decibel range. This is considered very loud as measured on a subjective scale. It is reasonable to assume that these sound levels – if not even higher levels - were of the magnitude associated with the Blackwater Industrial Complex during its daily operations. The Blackwater Industrial Complex during its period of significance was never a noise-sensitive receptor but rather a noise generator.

To assess the auditory impact on the Blackwater Industrial Complex, contributing resources near the proposed crossing of the Coketon resource area were used as noise-sensitive receptors for the TNM model run(s). The predicted existing noise levels and design year projected noise levels at each of these receptors within the Coketon area of Blackwater Industrial Complex, are shown in Table 3 and Figure 11.

Table 3
Model Predicted Noise Levels at the Blackwater Industrial Complex Archaeological and Historic District Crossing

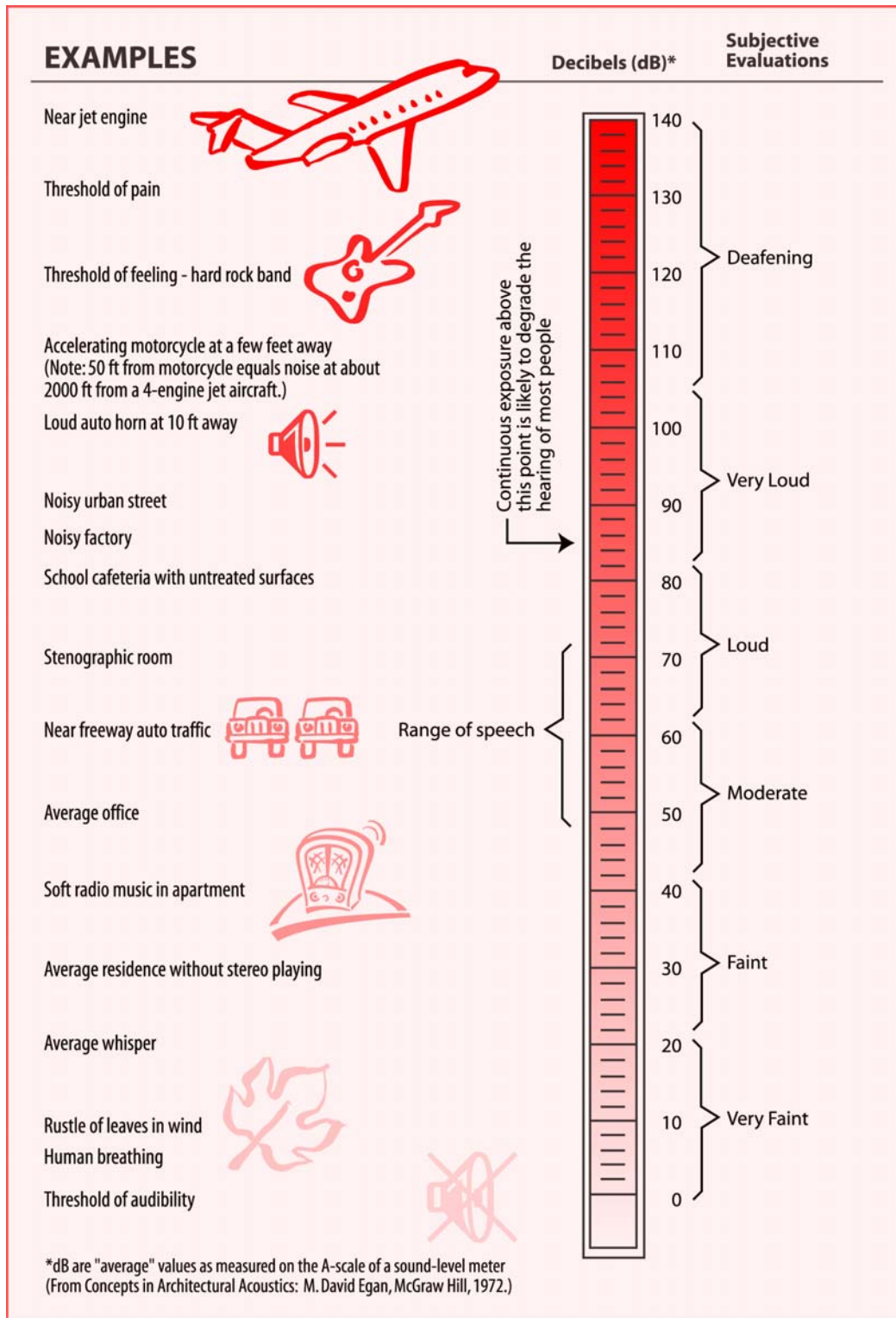
Receptor Location	Existing Noise Level (dBA)	Build Alternative Noise Level (dBA)	Noise Level Change (dBA)	Noise Level Increase Criteria
Liquorman’s House Site	40	40	0	No Increase
Powerhouse Site	44	56	+12	Moderate
Miners Rowhouse Site	43	56	+13	Moderate
Sandhouse Site	46	59	+13	Moderate
Concrete Bents Site	43	55	+12	Moderate
Coke Oven Bank # 1	43	55	+12	Moderate
Coke Oven Bank # 2	42	49	+7	Minor
Coke Oven Bank # 3	42	47	+5	No Increase
Coke Oven Bank # 4	42	45	+3	No Increase
Coke Oven Bank # 5	44	46	+2	No Increase
Tipple Foundation	46	48	+2	No Increase

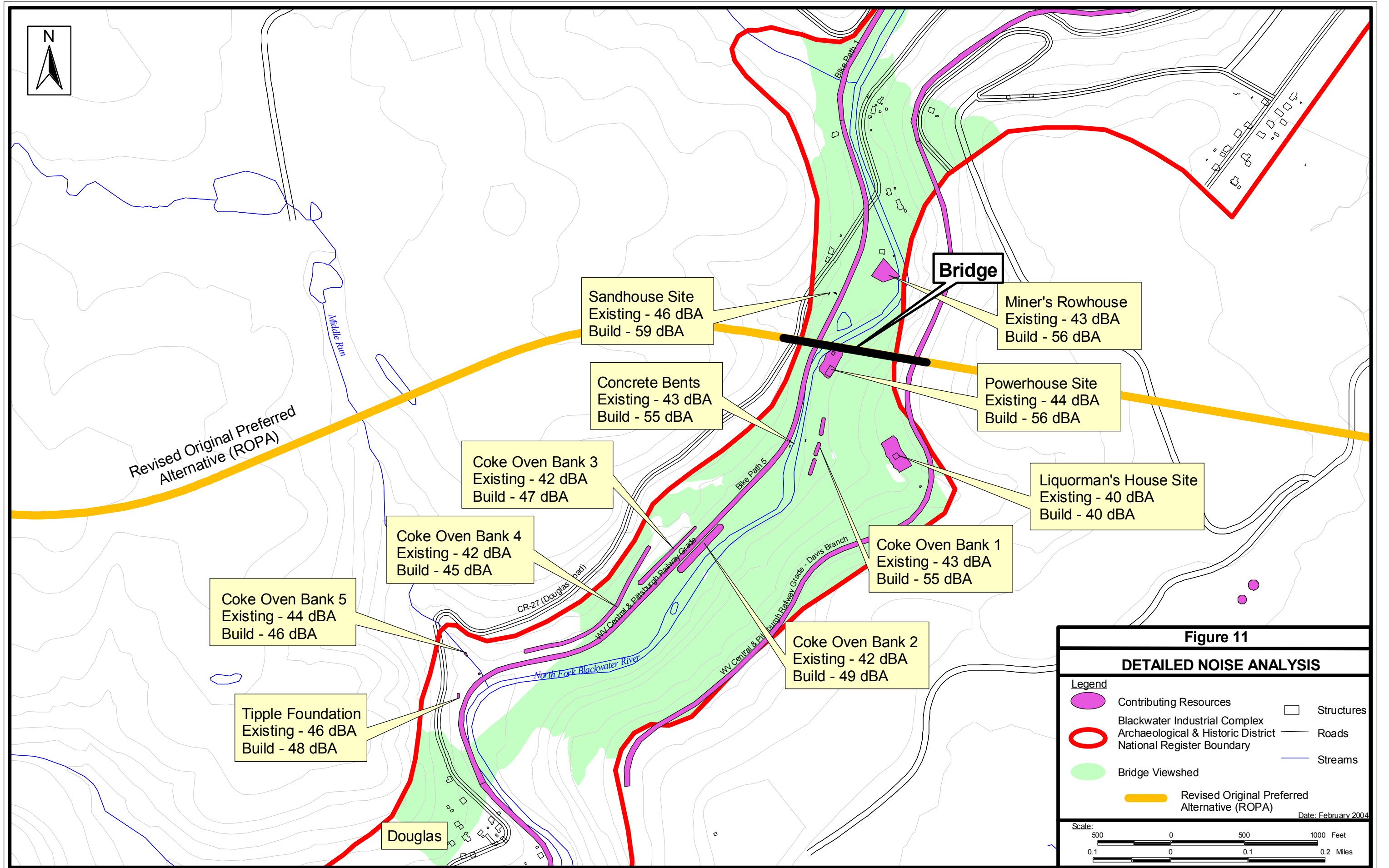
* dBA - hourly A-weighted sound level in decibels

The WVDOH noise level increase criterion used in the Table above is as follows:

- | | |
|----------------|-------------------------------------|
| 0 – 5 dBA | No Noise Increase |
| 6 – 10 dBA | Minor Noise Increase |
| 11 – 15 dBA | Moderate Noise Increase |
| 16 dBA or more | Substantial Noise Increase (Impact) |

Figure 10
Common Sound Levels





EVALUATION RESULTS

Based on the refined traffic noise analysis (TNM 3-D modeling), the Coketon resource area of the Blackwater Industrial Complex would not experience a noise impact from the proposed project.

Existing noise levels near the proposed Blackwater River Bridge crossing in the Blackwater Industrial Complex area, ranged from 40 dBA at the Liquorman's House site to 54 dBA at Receptor 786 – Residential dwelling site. Predicted design year noise levels ranged from 40 dBA at the Liquorman's House site to 59 dBA at the Sandhouse site. Corresponding noise level increases were predicted by the model to range from 0 to +13 dBA over the existing year. There were no modeled receptors that experienced noise levels which exceeded either the NAC or WV substantial noise increase criteria (Table 3). Only 3% of the entire district will at most be affected by the minor to moderate noise increases (1.6% of the entire district will experience a noise level increase that, constitutes a minor impact and 1.1% of the entire district will experience a noise level increase that constitutes a moderate impact).

These impacts will not affect the ability of the Coketon area or the entire district to “convey its historic meaning as a significant concentration of contiguous, interrelated historic industrial and archaeological resources” (Savage, August 2, 2001, Appendix B) for the additional reason that the current quiet setting is not a contributing element to the historic significance of this district. This is because during the period of significance, noise levels in this area were generally high due to its industrial uses. The property's location, setting, or use, which may be relevant depending on the property's significant characteristics are not affected. Therefore, there will not be an auditory effect to the resource. This assessment is consistent with the letter from the USFS dated July 26, 2002 (Thompson, July 26, 2002, Appendix C) concerning noise.

4.1.7 Secondary and Cumulative Impact Assessment

The project does not provide direct access from Corridor H to the Blackwater Industrial Complex. Access will be provided by the proposed bike trail that was developed as a mitigation element for the Corridor H Project. The bike path will be located on the abandoned West Virginia Central and Pittsburg Railway grade that runs through the Blackwater Industrial Complex. The WVSHPO indicated in its letter commenting on the effect of the bike trail on the Blackwater Industrial Complex that “the increased use of the bike path may create secondary effects [on the Blackwater Industrial Complex], but these should be of a positive nature” (Pierce, October 30, 2003, Appendix C). Thus, potential secondary impacts of a positive nature may occur as a result of the development of the bike trail. Finally, the Blackwater Industrial Complex lies wholly within the MNF. As such, the location and extent of any development that might be induced by the project to locate within the Blackwater Industrial Complex would be under the control of the MNF. A summary of potential secondary and cumulative effects is presented in Table 4.

4.2 Archaeological Resources

The entire length of the ROPA as it crosses the National Register Boundary of the Blackwater Industrial Complex has been investigated archaeologically. Phase I investigations within this area demonstrated that much of the area has been strip mined and/or deep mined and reclaimed in many areas to a different contour, destroying any potential for those disturbed areas to contain intact archaeological remains. The surveyed ROPA within the Blackwater Industrial District did not contain substantive archaeological resources (Manzano et al. 1996; Bastianini and Hinks 1999).

The ROPA crosses the Blackwater Industrial Complex, which extends along the North Fork Blackwater River and Blackwater River from Thomas to Hendricks, Tucker County, West Virginia. That district was identified as a potentially significant district in two studies conducted in the early to mid-1990s (Davis et al. 1992, Davis 1997). Intensive historic research concerning the Coketon area, embedded within that district, was conducted in 1999 as part of the Appalachian Corridor H project. That research provided additional information supporting the National Register eligibility of the district (Harris et al. 2000).

Two separate “actions” that occurred in the area surrounding and within the ROPA destroyed the archaeological integrity of the APE. These two actions were: strip-mining in the mid to late 20th century and; reclamation activities (Douglas and Albert Highwall Projects) undertaken by WV in the early 1990’s to repair the environmental damage of strip – mining. Each is briefly discussed below.

Prior to the 1993 reclamation efforts, the landscape and topography of the area within the ROPA and surrounding it was decidedly different than the landscape and topography of the period of significance; it was riddled with a combination of spoil piles and other physical vestiges (e.g., benches, high walls) of modern strip mining activities that postdate the ca. 1890 - 1927 period of significance for the Blackwater Industrial Complex and the Coketon colliery (Figure 12). That mid-to late twentieth-century strip mining along the valley walls would have severely damaged or destroyed any archaeological resources and the context of those resources not damaged or destroyed would likely have been compromised. Any residual archaeological remains that may have survived the strip mining would have been destroyed during the reclamation.

During 1992-1993 reclamation activities within a portion of this section of the Blackwater Industrial Complex were undertaken by the WV Department of Environmental Protection in an attempt to control acid drainage resulting from exposed spoil piles, high walls and significant discharge of acid water from abandoned mine portals. Two reclamation projects were undertaken; one on each side of the valley. They were named the Douglas and Albert Highwall projects and are delineated on project mapping (Exhibit 5, shown at the end of this report, before the appendices). Each of these projects involved significant areal coverage and excavation. For example, the Douglas Highwall project: eliminated 4,200 feet of highwall; excavated, handled and regraded approximately 360,000 cubic yards of spoil and refuse material; backfilled and re-vegetated 62 acres; placed over 500 linear feet of underdrain in various locations; placed 550 linear feet of riprap (stony cobble) along the regraded slope along the North Fork Blackwater River; installed 1,500 linear feet of trapezoidal ditches to receive acid drainage discharge from the sub-drains; installed 6 seals on historic open mine portals and; installed approximately 1.5 miles of silt control devices. The Albert Highwall project resulted in

similar levels of disturbance. Today, the most visually apparent change that resulted from the reclamation efforts was the complete recontouring of the hillside areas flanking the valley bottom and the elimination of massive spoil piles (Figure 13). Those reclaimed areas do not now possess any substantive archaeological potential.

Figure 12
May 1992 view of the (pre Douglas and Albert Highwall Reclamation Projects)
(Note the massive spoil piles and adjacent ponds in this pre-reclamation photograph.)



Skousen, 2004

Figure 13
August 1993 view (post Douglas and Albert Highwall Reclamation Projects) of the a portion
of the Blackwater Industrial Complex and approximate ROPA bridge location..
(Note the recontoured hillsides in this post-reclamation photograph. The Powerhouse Site
lies in the clump of trees at the lower right side of the photograph.)



Skousen, 2004

Picture Legend	
1.	Approximate Bridge Location
2.	North Fork of the Blackwater River
3.	West Virginia Central and Pittsburgh Railway grade
4.	West Virginia Central and Pittsburgh Railway grade Davis Branch

Archaeological investigations conducted within the APE of the ROPA confirmed the absence of archaeological resources. Those investigations did not identify any surviving archaeological remains that would be directly impacted by planned construction of the highway. However, three archaeological sites located near the alignment were investigated.

- The Powerhouse Site (46Tu299) contains remains of the community's electricity-generating powerhouse, constructed in 1900.
- The Miner Rowhouse site (46Tu300) contains archaeological deposits relating to Davis Coal and Coke Company-constructed dwellings inhabited by company laborers.
- The "Liquorman's House" site (46Tu301) contains building remains that may be from an explosives storage facility used for mining, with subsequent possible use as a dwelling.

All three sites were evaluated as contributing components to the proposed historic district. The archaeological investigations also mapped the locations of other observed archaeological remains, including five banks of coke ovens, remains of two tipples, and two concrete bents and concrete trestle supports for a railroad spur. The railroad grades and two associated masonry culverts for the West Virginia Central & Pittsburg (sic) Railway grade and the Davis Branch of the West Virginia Central & Pittsburg (sic) Railway grade also were documented (Harris et al. 2000).

Those portions of the West Virginia Central & Pittsburg Railway grade and the Davis Branch of the West Virginia Central & Pittsburg (sic) Railway grade that cross the ROPA consist solely of railroad grade beds that have been converted into unimproved roads. Both railroad lines within the ROPA were cut into moderately steep hillsides, in otherwise low probability areas for archaeological remains. No surviving railroad-related structures (e.g., trestles, culverts, bridges, etc.) are evident within the ROPA. The railroad beds retain locational integrity, but have been modified through removal of the tracks, and subsequent grading and road maintenance activities. These modern activities have compromised any archaeological integrity that the railroad beds within the ROPA may once have possessed.

Based on the historical and archaeological work conducted within the boundaries of the Blackwater Industrial Complex, coupled with interagency consultation, WVDCH has concluded that the bridge crossing of Appalachian Corridor H (along the OPA) will have no adverse effect the historic characteristics of the eligible resources and that direct impacts will not occur...and indirect effects will not inhibit future understanding of the Blackwater Industrial Complex...". (Pierce, October 30, 2002, Appendix C)

Therefore, because the ROPA will avoid all archaeological sites within the Blackwater Industrial Complex, the project will have no effect on archaeological resources associated with the Blackwater Industrial Complex.

5.0 SUMMARY OF EVALUATION RESULTS

Table 4
Criteria of Effect Evaluation Summary for the
Blackwater Industrial Complex Archaeological and Historic District

Categories of Effect	Summary Explanation	Effect Determination
Physical Destruction of or damage to all or part of the property	Bridge piers and abutments will be placed within the boundaries of the historic district. However those structures will be placed in those areas previously disturbed by highwall reclamation activities. So, while the placement of such structures will result in damage to a small part of the property [historic district] as it now exists, that damage will be limited to an area already damaged by strip-mine and reclamation activities.	No Adverse Effect
Alteration of a property, including restoration, rehabilitation, repair, maintenance, stabilization, hazardous material remediation and provision of handicapped access, that is not consistent with the Secretary's Standards for the Treatment of Historic Properties (36 CFR part 68) and applicable guidelines	The proposed bridge for the highway will alter a small portion of the areas altered as the result of the 1992-93 reclamation projects and thus will have an effect on the resource. This effect however will not inhibit understanding of the historic resource. In addition the bicycle path associated with Corridor H in the Blackwater Industrial Complex will have an effect as discussed in WVDOH's separate Phase I Cultural Resources Management Report prepared in May 2003 for that project. The WVSHPO has concluded that the bike path will have no adverse effect on the Blackwater Industrial Complex (Pierce, December 31, 2003, Appendix C)	No Adverse Effect
Removal of the property from its historic location		Not Applicable
Change of the character of the property's use or of physical features within the property's setting that contribute to its historic significance	The bridge crossing will not change the uses of the property but will introduce a new physical feature into the resource's setting. However, introduction of this new feature will not inhibit understanding or interpretation of the resource. The bike path will allow and encourage public access to a currently relatively isolated resource. This access could result in secondary and cumulative effects but these effects according to the WVSHPO "should be of a positive nature" (Pierce, December 31, 2003, Appendix C)	No Adverse Effect

Categories of Effect	Summary Explanation	Effect Determination
<p>Introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features</p>	<p>The Blackwater Industrial Complex is eligible for National Register listing for under Criteria A, B, C and D.</p> <p>It is eligible under Criterion A and B because of its past significance in the economic and social development of WV and the nation and its association with Henry G. Davis. The proposed bridge and the bike-path will not alter or effect those issues. Indeed the bike-path coupled with the interpretative signage envisioned will enhance the public's ability to understand the historic significance of this resource and the importance of Henry G. Davis in the history of WV and the nation.</p> <p>The Blackwater Industrial Complex is eligible under Criterion C as a "significant and distinguishable entity embodying distinctive characteristics of methods of construction related to a definable period" (Savage, August 2, 2001, Appendix B). The bridge, its components (e.g., piers, abutments) or its construction will not require impacting or altering any extant constructed structure that remains within the resource. The bike path will require some rehabilitation and modification of structures but these activities will not constitute an adverse effect (Pierce, December 31, 2003, Appendix C).</p> <p>The Blackwater Industrial Complex is eligible under Criterion D because the "area contains significant, intact archaeological deposits that have the ability to produce important information" (Savage, August 2, 2001, Appendix B). As discussed above, archaeological investigations were conducted within the area of the bridge crossing and no significant pre-historic or historic archaeological deposits were discovered.</p> <p>The WVSHPO has also concurred that construction and operation of the bike path will not effect any intact archaeological properties (Pierce, December 31, 2003, Appendix C)</p>	<p>No Adverse Effect</p>

Categories of Effect	Summary Explanation	Effect Determination
<p>Neglect of a property which causes its deterioration, except where such neglect and deterioration are recognized qualities of a property of religious and cultural significance to an Indian tribe or Native Hawaiian organization</p>	<p>Due to funding and staffing constraints, the Blackwater Industrial Complex has remained a relatively isolated and neglected and historic resource investigations within it have been limited. The Corridor H project will reverse the neglect. Specifically, as part of the Corridor H project, FHWA and WVDOH have entered into a formal MOU (Appendix E) with the MNF to provide substantial funding for MNF personnel and equipment to investigate, evaluate, interpret and curate archaeological and historic resources under the stewardship of the MNF investigations. In addition to these investigations, FHWA and WVDOH funding will be made available to develop, produce and erect a series of interpretive signs so that those members of the public utilizing the bike path will be able to interpret and understand the historic significance of the Blackwater Industrial Complex.</p>	<p>No Adverse Effect</p>
<p>Transfer, lease, or sale of property out of Federal ownership or control without adequate and legally enforceable restrictions or conditions to ensure long-term preservation of the property's historic significance [36 CFR Part 800.5(a)(2);emphasis added]</p>		<p>Not Applicable</p>
<p>Determination</p>		<p>No Adverse Effect</p>

6.0 ADDITIONAL COORDINATION ACTIVITIES

As demonstrated in sections 4 and 5 of this report, FHWA and WVDOH thoroughly evaluated the effect that the Parsons-to-Davis section of Corridor H would have on the Blackwater Industrial Complex, and determined that there would be "no adverse affect" on historic or cultural resources. Notwithstanding this determination, WVDOH and FHWA will take additional steps that, while not required by Section 106 or the Programmatic Agreement, will increase environmental stewardship and provide visitors to the Blackwater Industrial Complex with a better appreciation of its historic resources.

6.1 Environmental Enhancement Measures

The entire Corridor H project is being designed and executed consistent with the principles of developing and implementing context sensitive solutions and environmental stewardship, which are reflected in environmental enhancement measures developed specifically for the project. Examples of the enhancement measures developed and implemented to date include: the construction of a rails-to-trails facility from Elkins to Parsons utilizing an old abandoned West Virginia Central & Pittsburg (sic) Railway grade, community enhancement funds for the town of Wardensville, and the construction of two large (15+ acres each) wetland sites. Further examples will be developed and implemented for this project. As related to the Blackwater Industrial Complex, other examples will include: the extension of the rails-to-trails trail through the North Fork Blackwater River canyon to Hambleton, development and placement of interpretive signs along the trail to explain the history of the Blackwater Industrial Complex, and the provision of funds to the MNF so that it can conduct appropriate investigations to better understand the history of the industrial district.

Development and implementation of these enhancement measures has been and will continue to be coordinated through various resource agencies (e.g., MNF, West Virginia State Historic Preservation Office, West Virginia Department of Natural Resources). This coordination was specified in the 1996 FEIS, ROD and Mitigation Document (Appalachian Highway Corridor H FEIS, Volume III, 1996) that covers the entire Corridor H project. Specific coordination related to construction across the North Fork Blackwater River canyon and historic district will include additional coordination requested by the West Virginia Department of Culture and History in its letter of October 30, 2002 (Appendix C), including:

- Continued consultation during the final design process for the bridge structure;
- Inclusion of specific site location information related to archaeological resources and industrial ruins within the Blackwater Industrial Complex in design and construction documents;
- Monitoring of sensitive areas during construction activities to ensure avoidance;
- Placement of secure fencing (highly visible) around the "Powerhouse Site"; and
- Location of temporary construction areas (staging areas, etc.) on previously surveyed areas that contained no cultural resources.

6.2 Memorandum of Understanding Among FHWA, WVDOH and USFS-MNF

Both the Kerens-to-Parsons and Parsons-to-Davis projects impact resources within the MNF. For this reason, FHWA and WVDOH have coordinated and consulted with USFS-MNF on the Corridor H project since its inception, and USFS-MNF is a cooperating agency to the Corridor H NEPA process as well as a consulting party to the Section 106 process. In order to outline project-specific measures to mitigate and minimize the potential effects of both sections of Corridor H on historic, archeological, environmental, and recreational resources within the Monongahela National Forest, FHWA, USFS-MNF, and WVDOH entered into an MOU in June 2003. (Appendix E).

The parties entered into the MOU to "promote the protection and public understanding of the historic and archeological resources located in the MNF while also establishing procedures to assure that any impacts of construction within the MNF are appropriately addressed" (Appendix E). Thus, the dual purpose of the MOU is to mitigate environmental impacts and require that steps be taken that will enhance the historical value of the resources by providing the public with better access to, and a better understanding and appreciation of, the resources.

The elements of the MOU are wide-ranging, and include all of the following:

- Re-affirming the commitment to redevelop the existing abandoned railway corridor located within the Blackwater canyon area as a bicycle/pedestrian path;
- Funding to further investigate, evaluate, interpret and curate archaeological and historic resource data in the Blackwater Industrial Complex under the stewardship of the MNF, including the dissemination of information related to these studies;
- Funding to design, produce, and install interpretive signing/displays to be placed within the boundaries of the Blackwater Industrial Complex (along the bicycle/pedestrian path); and
- Conducting a boundary survey of the Railway corridor from Parsons to Thomas (with monumentation of the existing railway).

The MOU requires WVDOH to provide \$1.2 million of funding, which is to be used exclusively for the activities listed above. To enhance the historical value of the resources, the activities funded by the MOU include a comprehensive set of efforts to "investigate, evaluate, interpret, and curate" historic and archaeological resources, while also providing for "interpretative signage" to make these resources accessible to the public.

The USFS-MNF MOU also outlines specific coordination regarding the mitigation of impacts to the MNF, including continued interaction between the MNF and WVDOH during the final design process, to establish suitable locations for waste/borrow sites; establish appropriate placement/relocation(s) of trail crossings, parking areas, and trail-heads; utilize natural stream channel design for all high quality stream relocations within the MNF; and institute best management practices for erosion control with MNF. As part of this coordination, USFS-MNF will attend field reviews and review construction plans within MNF boundaries. Finally, all commitments outlined in Volume II of the 1996 FEIS will also be met, where applicable.

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8.0 LIST OF PREPARERS

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Tim Zinn, Senior Architectural Historian



Andrew P. Kuchta, Environmental Scientist (Auditory Impact Studies)



James White, Environmental Scientist (Auditory Impact Studies)

Stephen Hinks, Senior Archeologist












Wendy L. Vachet, Project Manager

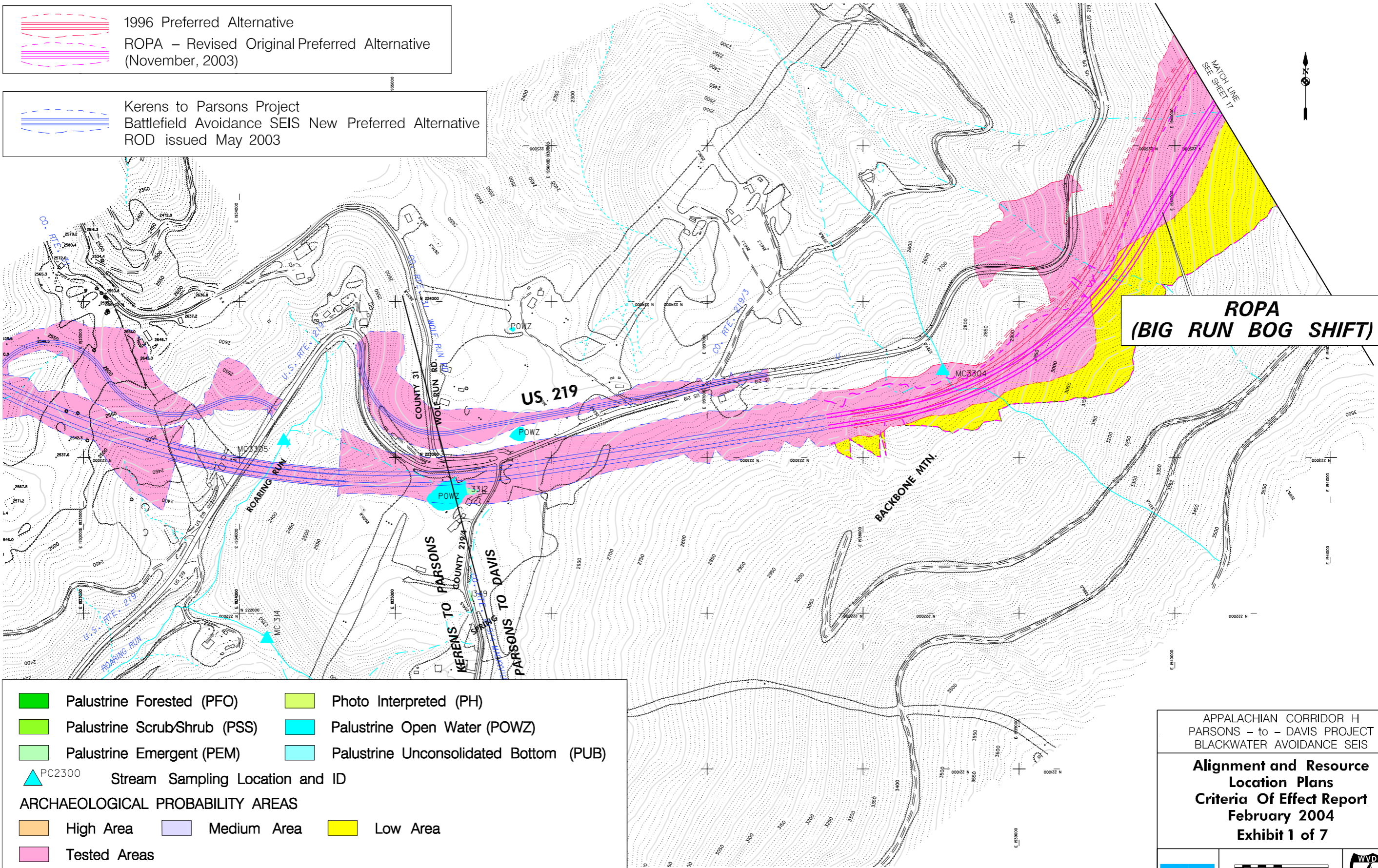
Exhibits

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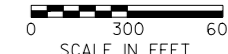

 Kerens to Parsons Project
 Battlefield Avoidance SEIS New Preferred Alternative ROD issued May 2003

**ROPA
(BIG RUN BOG SHIFT)**








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 Palustrine Scrub/Shrub (PSS)	 Palustrine Open Water (POWZ)
 Palustrine Emergent (PEM)	 Palustrine Unconsolidated Bottom (PUB)
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 Low Area	
 Tested Areas	







APPALACHIAN CORRIDOR H
 PARSONS - TO - DAVIS PROJECT
 BLACKWATER AVOIDANCE SEIS
**Alignment and Resource
 Location Plans
 Criteria Of Effect Report
 February 2004
 Exhibit 1 of 7**



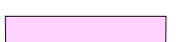




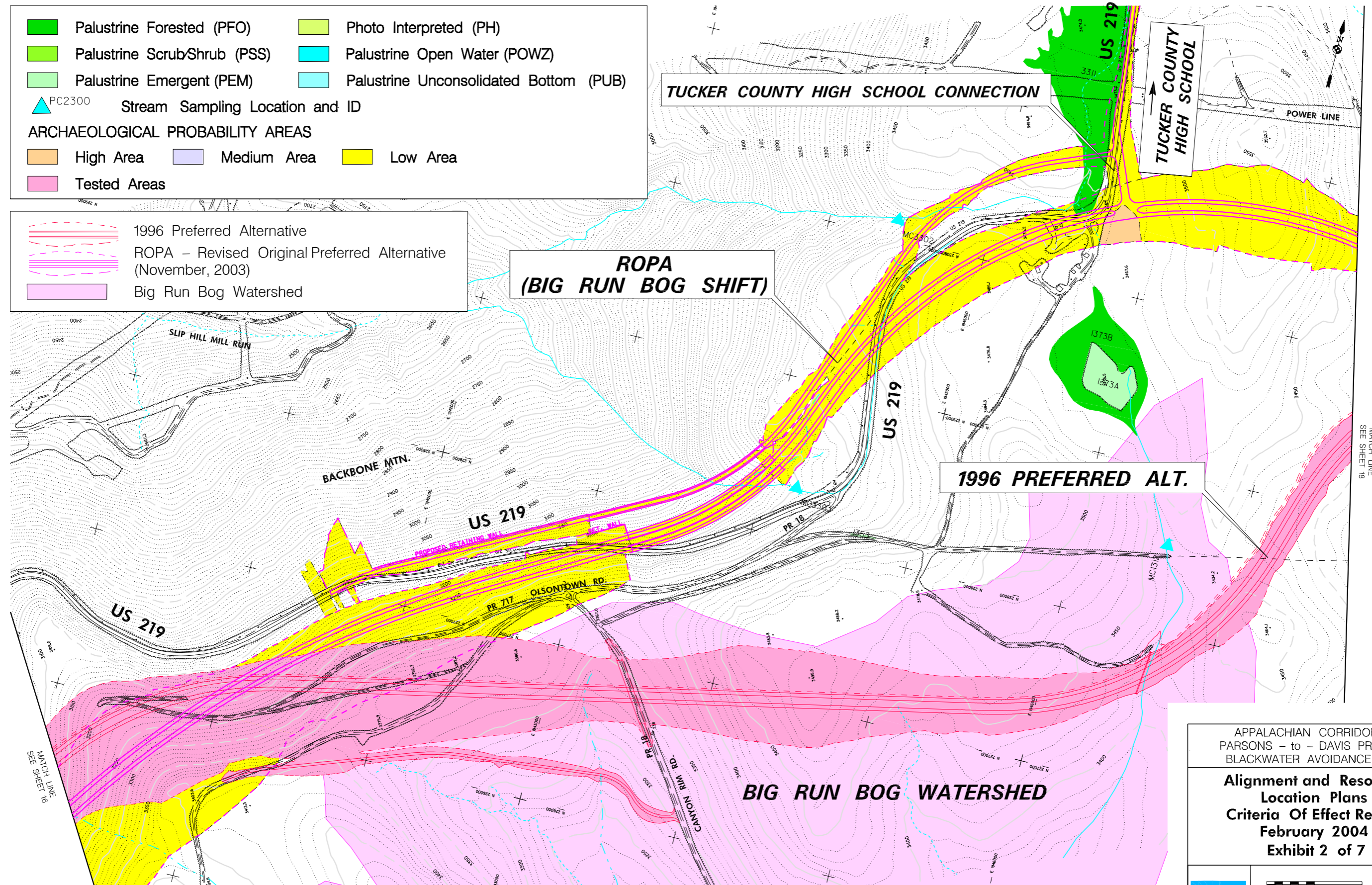
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	Palustrine Emergent (PEM)		Palustrine Unconsolidated Bottom (PUB)
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ARCHAEOLOGICAL PROBABILITY AREAS

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	Tested Areas				


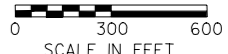

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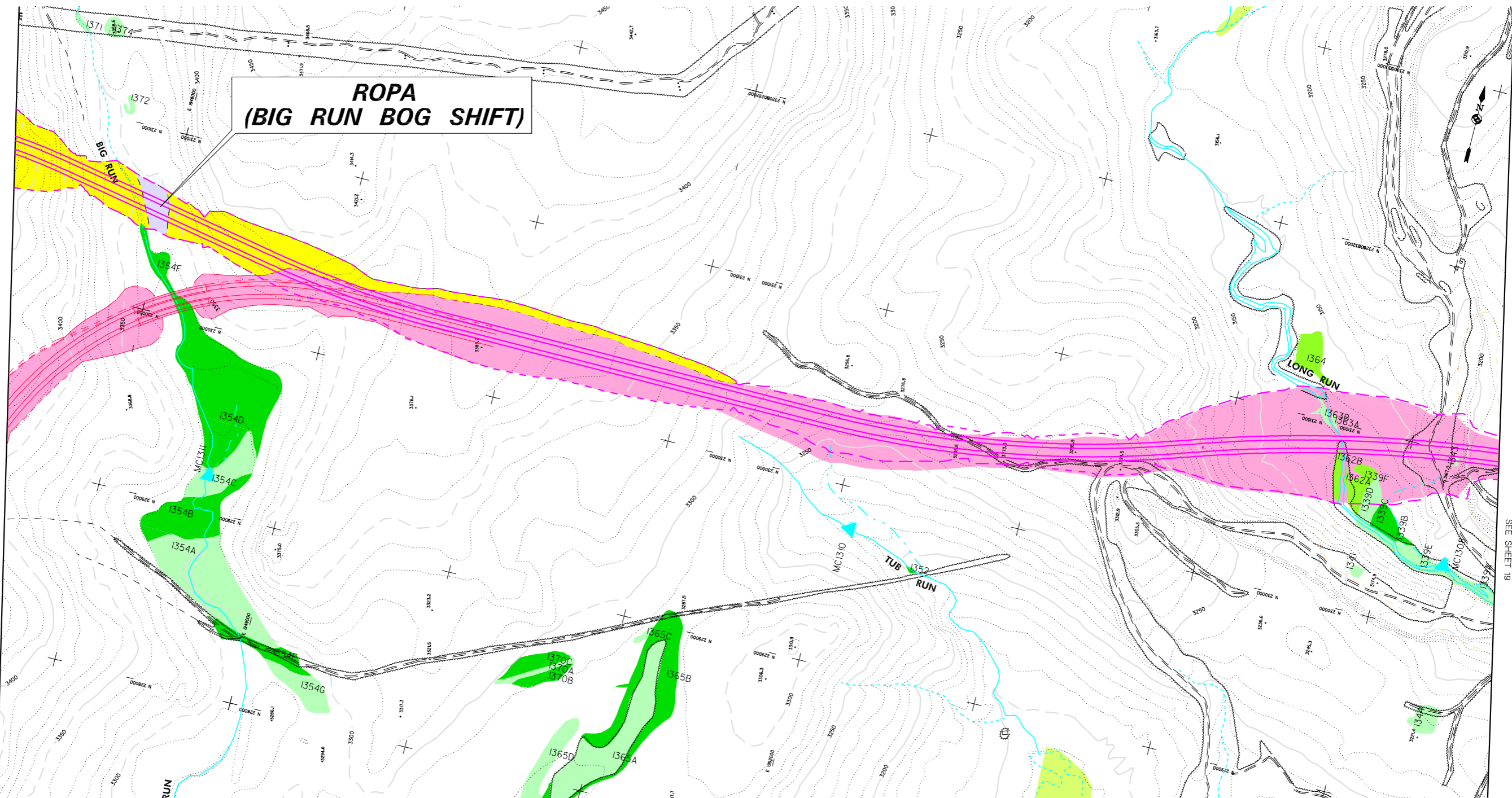
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APPALACHIAN CORRIDOR H
PARSONS - to - DAVIS PROJECT
BLACKWATER AVOIDANCE SEIS

**Alignment and Resource
Location Plans
Criteria Of Effect Report
February 2004
Exhibit 2 of 7**

PRELIMINARY DESIGN



**ROPA
(BIG RUN BOG SHIFT)**

	Palustrine Forested (PFO)		Photo Interpreted (PH)
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	Palustrine Emergent (PEM)		Palustrine Unconsolidated Bottom (PUB)
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ARCHAEOLOGICAL PROBABILITY AREAS			
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	Low Area		
	Tested Areas		

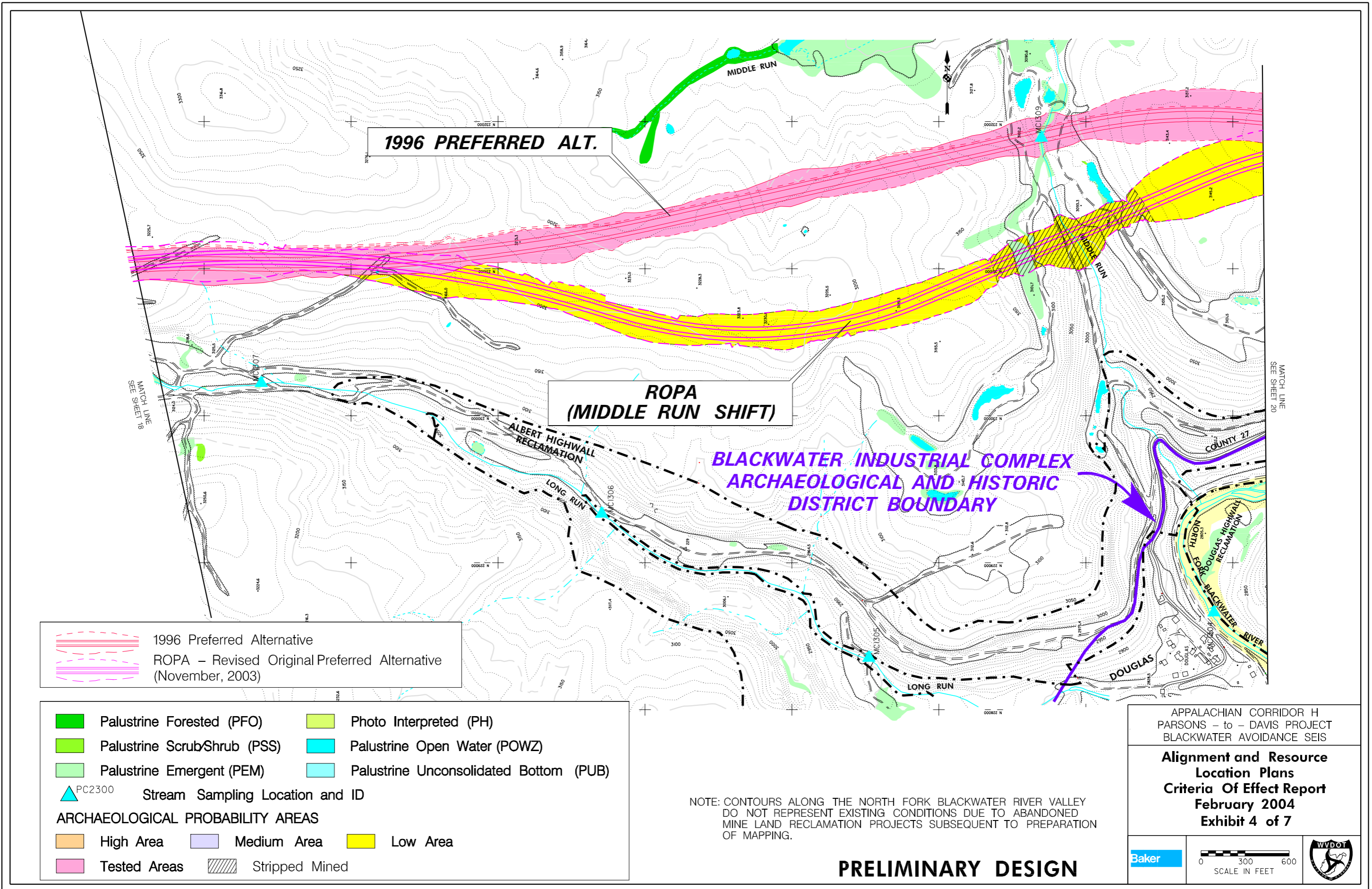
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APPALACHIAN CORRIDOR H
PARSONS – to – DAVIS PROJECT
BLACKWATER AVOIDANCE SEIS

**Alignment and Resource
Location Plans
Criteria Of Effect Report
February 2004
Exhibit 3 of 7**

	SCALE IN FEET	



PRELIMINARY DESIGN















1996 PREFERRED ALT.

**ROPA
(MIDDLE RUN SHIFT)**

**BLACKWATER INDUSTRIAL COMPLEX
ARCHAEOLOGICAL AND HISTORIC
DISTRICT BOUNDARY**

 1996 Preferred Alternative
 ROPA – Revised Original Preferred Alternative (November, 2003)

 Palustrine Forested (PFO)	 Photo Interpreted (PH)
 Palustrine Scrub/Shrub (PSS)	 Palustrine Open Water (POWZ)
 Palustrine Emergent (PEM)	 Palustrine Unconsolidated Bottom (PUB)
 PC2300 Stream Sampling Location and ID	
ARCHAEOLOGICAL PROBABILITY AREAS	
 High Area	 Medium Area
 Low Area	
 Tested Areas	 Stripped Mined

NOTE: CONTOURS ALONG THE NORTH FORK BLACKWATER RIVER VALLEY DO NOT REPRESENT EXISTING CONDITIONS DUE TO ABANDONED MINE LAND RECLAMATION PROJECTS SUBSEQUENT TO PREPARATION OF MAPPING.

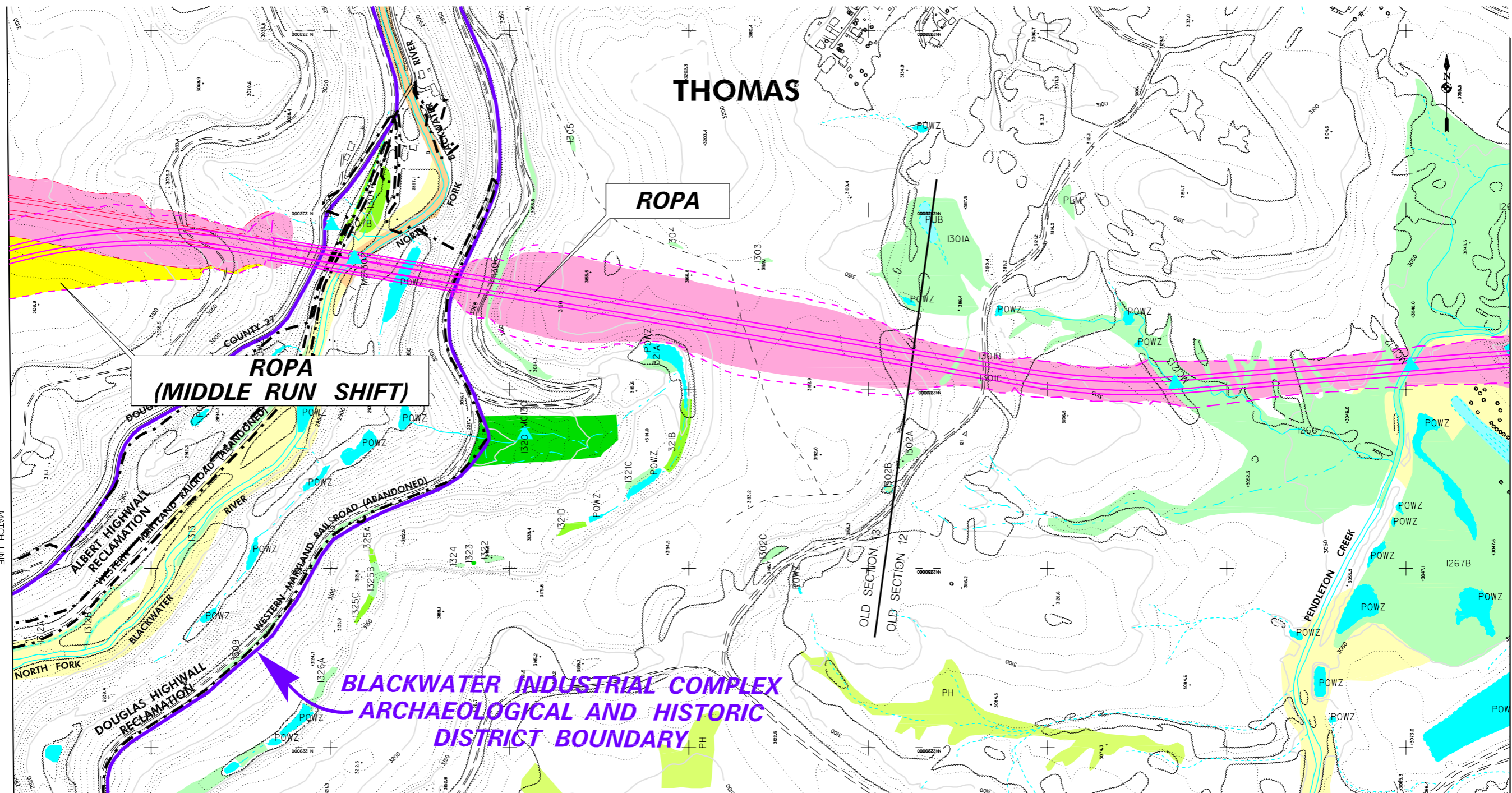
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PARSONS – to – DAVIS PROJECT
BLACKWATER AVOIDANCE SEIS

**Alignment and Resource
Location Plans
Criteria Of Effect Report
February 2004
Exhibit 4 of 7**

Baker



PRELIMINARY DESIGN



	Palustrine Forested (PFO)		Photo Interpreted (PH)	PH	
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	Palustrine Emergent (PEM)		Palustrine Unconsolidated Bottom (PUB)		
	Stream Sampling Location and ID				
ARCHAEOLOGICAL PROBABILITY AREAS					
	High Area		Medium Area		Low Area
	Tested Areas				

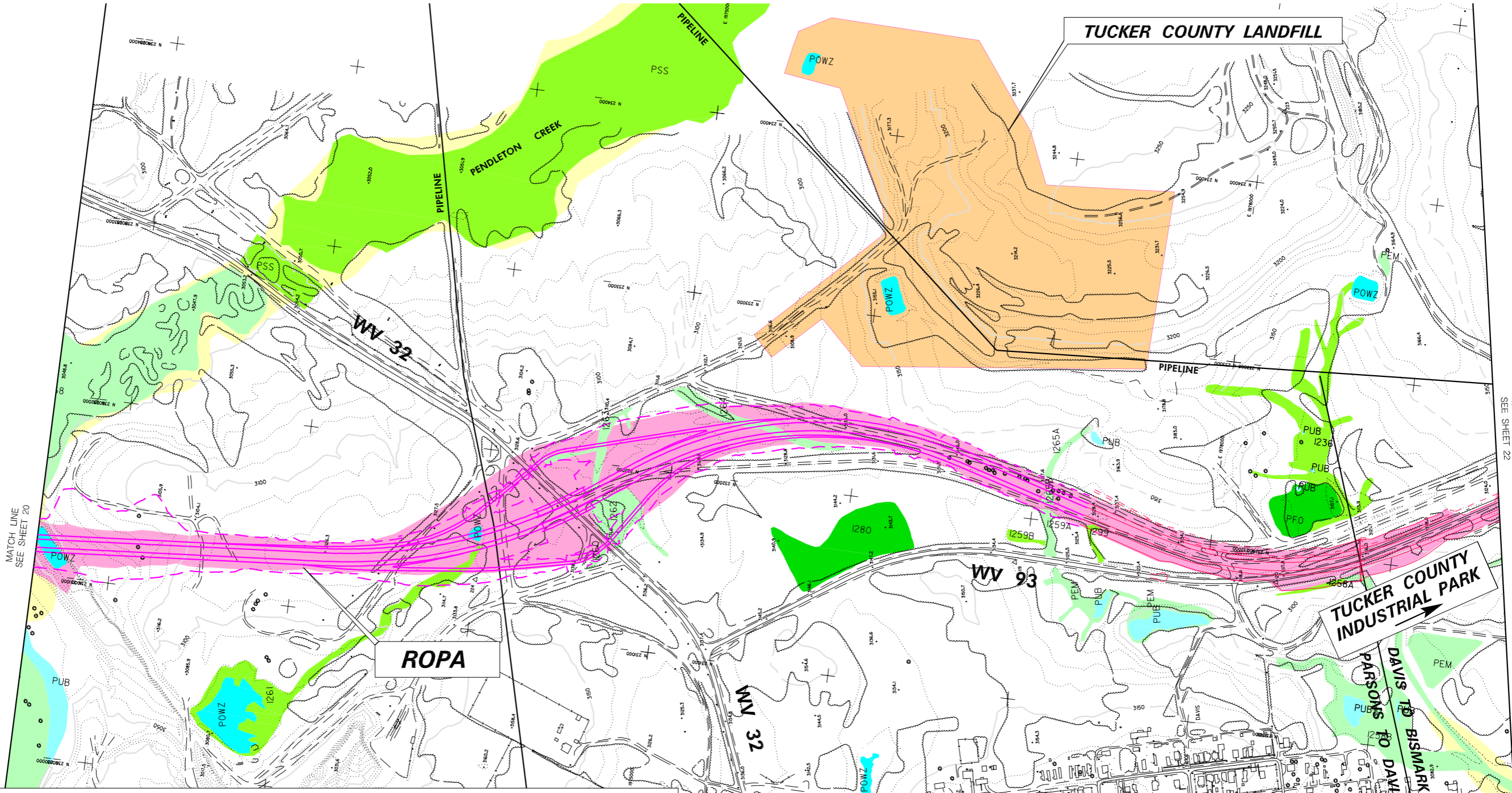
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NOTE: CONTOURS ALONG THE NORTH FORK BLACKWATER RIVER VALLEY DO NOT REPRESENT EXISTING CONDITIONS DUE TO ABANDONED MINE LAND RECLAMATION PROJECTS SUBSEQUENT TO PREPARATION OF MAPPING.

PRELIMINARY DESIGN

APPALACHIAN CORRIDOR H
PARSONS – to – DAVIS PROJECT
BLACKWATER AVOIDANCE SEIS

**Alignment and Resource
Location Plans
Criteria Of Effect Report
February 2004
Exhibit 5 of 7**



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| | Palustrine Emergent (PEM) | | Palustrine Unconsolidated Bottom (PUB) |
| | Stream Sampling Location and ID | | |
| ARCHAEOLOGICAL PROBABILITY AREAS | | | |
| | High Area | | Medium Area |
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| | Tucker County Landfill |












APPALACHIAN CORRIDOR H
 PARSONS – to – DAVIS PROJECT
 BLACKWATER AVOIDANCE SEIS

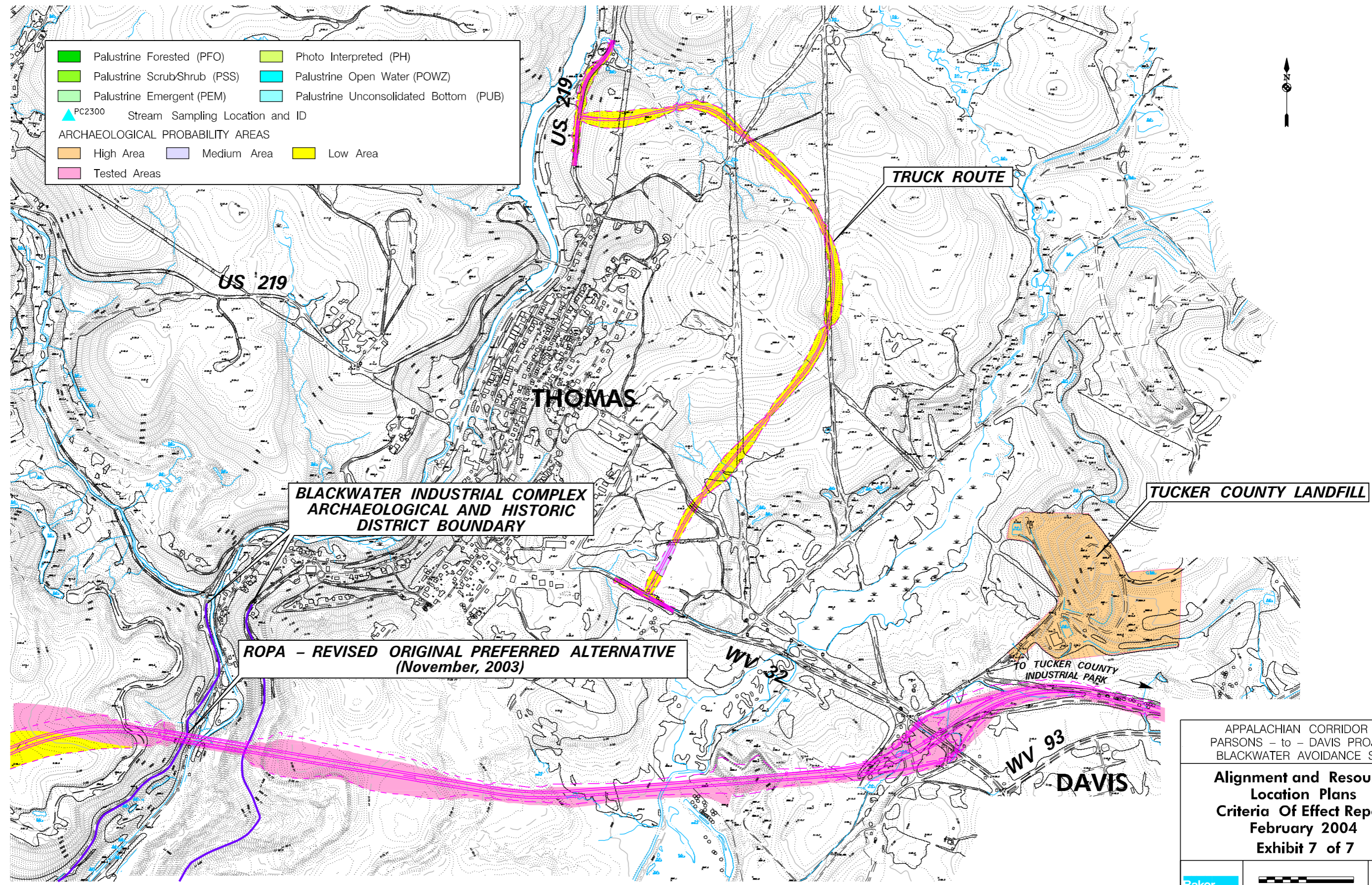
**Alignment and Resource
 Location Plans
 Criteria Of Effect Report
 February 2004
 Exhibit 6 of 7**

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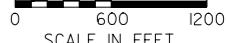

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	Palustrine Emergent (PEM)		Palustrine Unconsolidated Bottom (PUB)
	PC2300 Stream Sampling Location and ID		
ARCHAEOLOGICAL PROBABILITY AREAS			
	High Area		Medium Area
	Low Area		
	Tested Areas		



APPALACHIAN CORRIDOR H
PARSONS - TO - DAVIS PROJECT
BLACKWATER AVOIDANCE SEIS

**Alignment and Resource
Location Plans
Criteria Of Effect Report
February 2004
Exhibit 7 of 7**

PRELIMINARY DESIGN

Appendix A

Programmatic Agreement

1995 Programmatic Agreement amendment (amended in 2000)

1995 Programmatic Agreement

Bill McCARTNEY 10 ✓



U.S. Department of Transportation

Federal Highway Administration

West Virginia Division

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



August 7, 2000

IN REPLY REFER TO:
Federal Project APD-0484(059)
State Project X142-H-38.99
Appalachian Corridor H
Programmatic Agreement - Amendment

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

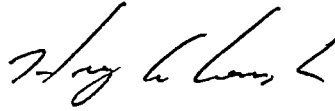
Dear Mr. Epperly:

As required by the Corridor H Settlement Agreement, by letter dated May 1, 2000, the Federal Highway Administration (FHWA) submitted to the Advisory Council on Historic Preservation (ACHP) a proposed Amendment to the existing Corridor H Programmatic Agreement. The purpose of the Amendment was to revise the project designations in Appendix A of the agreement. By e-mail dated July 28, 2000, the ACHP concurred in the proposed revision. By letter dated August 7, 2000, the FHWA forwarded a copy of the revised Appendix to the ACHP to confirm our agreement. In addition, a copy of the revised Appendix has been provided to the Forest Supervisors of the Monongahela National Forest and the George Washington National Forest (signatories to the Programmatic Agreement). The FHWA also forwarded copies of the revised Appendix, and all other pertinent correspondence between the FHWA and ACHP regarding the proposed amendment, to all seventeen (17) parties identified in Exhibit 5 (List of Plaintiff Contacts) of the Corridor H Settlement Agreement via the Return-Receipt Delivery to Plaintiffs procedure. As described in our May 1 letter to the ACHP, all future submissions of either Criteria of Effects (COE) reports or Mitigation Plans should be developed in accordance with the revised project designations (with exception to the Lahman House and Hott House). If needed, the COE report for the Lahman House (formerly in Section 7) will be submitted to the ACHP as an independent submission. The Mitigation Plan for the Hott House will be submitted to the ACHP at the same time other resources within former Section 3 are submitted; however, FHWA will request that the Hott House be reviewed independently of the other resources.

Enclosed for your information is a copy of the letter sent to each of the twenty (20) parties contacted by the FHWA. In order to complete the amendment process, the FHWA is requesting the West Virginia Division of Highways forward to the West Virginia State Historic Preservation Officer a copy of our

August 7 letter transmitting the revised Appendix to the ACHP. If you have any questions or comments concerning this information, please contact me at (304) 347-5268 or via e-mail at Henry.Compton@fhwa.dot.gov.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Henry E. Compton". The signature is written in a cursive style with a large, sweeping initial "H".

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

Enclosures

APPENDIX A: PROJECT SECTION DESCRIPTIONS

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 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)	9.0 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 Route 42/93)	16.5 miles
Bismarck to Forman	Bismarck (at WV Route 42, 0.4 miles south of the intersection with 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)	16.0 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)	14.0 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)	7.0 miles
Wardensville to Virginia State Line	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

PROGRAMMATIC AGREEMENT

AMONG
THE FEDERAL HIGHWAY ADMINISTRATION,
THE WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICER
AND
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
REGARDING
THE CONSTRUCTION OF APPALACHIAN CORRIDOR H,
ELKINS TO THE WEST VIRGINIA/VIRGINIA STATE LINE
STATE PROJECT: X142-H-38.99 C-2; FEDERAL PROJECT: APD-484 (59),
IN HARDY, GRANT, TUCKER, AND RANDOLPH COUNTIES,
WEST VIRGINIA

WHEREAS, the Federal Highway Administration (FHWA) proposes to construct a facility between Elkins, West Virginia and the West Virginia/Virginia State Line, designated as Appalachian Corridor H (the Project); which consists of the Project Build Alternative - Line A (including Option Areas I and F); and

WHEREAS, the FHWA has determined that the Project may have an effect upon properties eligible for inclusion in the National Register of Historic Places (Register) and has consulted with the Advisory Council on Historic Preservation (Council), the West Virginia State Historic Preservation Officer (WVSHPO), and the Virginia State Historic Preservation Officer (VASHPO) pursuant to 36 CFR Part 800, *Protection of Historic Properties*, regulations implementing Section 106 of the National Historic Preservation Act, (16 U.S.C. 470f), as amended; and

WHEREAS, the West Virginia Department of Transportation (WVDOT) has participated in the development of the Project, and has been invited to concur in this agreement; and

WHEREAS, the United States Department of Agriculture, Forest Service, Monongahela National Forest (Monongahela National Forest) and the George Washington National Forest (George Washington National Forest); Capon Springs and Farms; Corridor H Alternatives (CHA); the Association for the Preservation of Civil War Sites (APCWS); and, the Hampshire County, West Virginia, Planning Commission participated in the consultation and have been invited to concur in this agreement; and

WHEREAS, the FHWA has conducted the following cultural resources studies with regard to said Project; and documentation has been provided to the WVSHPO and the VASHPO:

Corridor Selection Supplemental Draft Environmental Impact Statement (SDEIS) Historic and Archaeological Resources Technical Report November 1991 ; 1st Revision, November 1992 ;

Additional Assessment of Historic Structures and Prehistoric Site Sensitivity for Corridor Scheme Options D and E Utilizing Historic Aerial Photography, addendum to the Corridor Selection SDEIS Historic and Archaeological Resources Technical Report, (September 1994);

Alignment Selection SDEIS Appalachian Corridor H, Elkins to Interstate 81 Cultural Resources Technical Report - Volumes 1-3 (September 1994 ; 1st Revision, November 1994; 2nd Revision, January 1995);

Alignment Selection SDEIS Appalachian Corridor H, Elkins to Interstate 81 Cultural Resources Model Test Report: Development and Field Testing of a Prehistoric Site Sensitivity Model for the Corridor H Project Area, West Virginia and Virginia (September 1994);

WHEREAS, due to the size and complexity of the project and the desirability of prioritizing both final design and cultural resources work in accordance with proposed schedules, the project has been divided into 14 sections (sections 3 to 16) located within West Virginia, as defined in Appendix A (See figure 1).

NOW, THEREFORE, the FHWA the WVSHPO and the Council agree that the project will be implemented in accordance with the following stipulations in order to take into account the effect of the project on historic properties:

Stipulations

The FHWA will ensure that the following measures are carried out:

I. Project Sequencing

A. Unless otherwise agreed to by the parties to this agreement, the proposed cultural resources investigations and resulting reports [i.e., Management Summaries, Phase I/Phase II Reports, Determination of Eligibility Reports, Criteria of Effect Reports, Mitigation Reports(e.g., Phase III Data Recovery Reports) and Treatment Plans] will be conducted by section, beginning with Section 6 and followed sequentially by Sections 5, 4, 3, Walnut Bottom Run Wetlands Replacement Area (located within Section 7), Cherry Fork Wetlands Replacement Area (located within Section 16), and Sections 7, 16, 15, 14, 13, 12, 11, 10, 9, and 8.

B. The FHWA affirms that avoidance of adverse effects to cultural resources remains the preferred course of action and that design activities in any Section will not preclude the shifting of the Project centerline, or the cut and fill boundaries, in any adjacent Section if necessary to avoid, minimize or mitigate adverse impacts to historic resources. No design engineering shall be finalized in any Section until Stipulations II.A-G, III.A-D and IV.A have been completed. No work shall proceed in any section which precludes consideration of alternate alignments in Sections where treatment of historic properties has not yet been finalized.

II. Historic Resources

A. Historic resources are defined as all non-archaeological resources consisting of historic buildings, structures, objects, and districts.

B. The FHWA will identify and evaluate all identified buildings, districts, structures, and objects located within the APE for Register eligibility in accordance with 36 CFR Part 800.4(c). This work will comply with the West Virginia Division of Culture and History, Historic Preservation Unit *Guidelines for Phase I Surveys, Phase II Testing, Phase III Mitigation and Cultural Resource Reports* (October 1991, and as amended).

C. Determination of Eligibility reports, by section, will be submitted to the WVSHPO for review and comment. The reports will include research design and methods, location information, property descriptions, photographs, site plans, boundary descriptions, pertinent maps, a location specific context statement to evaluate eligibility, eligibility assessments according to the National Register Criteria, and updated West Virginia Historic Resource Inventory forms (and as needed, Virginia Historic Resource forms). Unless otherwise directed by the FHWA in order to comply with Project design scheduling, sequencing of Determination of Eligibility Report submissions will be as stated in Appendix C.

D. If a concurrence regarding eligibility of a resource cannot be reached, FHWA shall obtain a determination from the Secretary of the Interior in accordance with 36 CFR Part 800.4. If the evaluation results in the identification of resources that are eligible for inclusion in the Register, FHWA will ensure that avoidance of adverse effects to the resource is the preferred alternative.

E. The FHWA, in consultation with the WVSHPO, will assess the effects of the Project on all Register eligible properties in accordance with 36 CFR Part 800.5. Criteria of Effect reports, by section (as noted Appendix B), will be submitted to the WVSHPO for review and concurrence. The reports will include property descriptions, photographs, application of the Criteria of Effect and Adverse Effect, pertinent maps, and related information. Project effects will be assessed with regard to physical as well as indirect effects, e.g., visual, audible, and atmospheric effects.

F. The FHWA affirms that they will utilize all feasible, prudent and practicable measures to avoid adverse effects to Register-eligible properties. If it is determined by WVDOT that avoidance may not be possible, FHWA will ensure that a report is prepared section by section and submitted to the WVSHPO for review and comment. This report would evaluate design modifications that will avoid

adverse effects to the cultural resource and take into account feasibility of engineering, cost and other appropriate factors. Consultation based on this report will occur prior to any design engineering or conceptual planning that would compromise the ability to make alterations, to determine whether avoidance of adverse effects to historic resources is practicable.

G. Subsequent to SHPO concurrence that avoidance of the resource is neither prudent nor feasible, or is impracticable, and based upon the results of the Cultural Resource Avoidance Feasibility Reports, the parties shall consult to develop a mitigation plan on a section-by-section basis incorporating appropriate measures to avoid and/or minimize effects to historic resources. Mitigation plans will be subject to approval by the WVSHPO and the Council. The FHWA will ensure that any such mitigation plans are implemented prior to Project construction within the designated area of effect.

III. Archaeological Resources

A. The FHWA will conduct a Phase I reconnaissance and sub-surface testing program within areas of the Project Build Alternative where ground disturbance may result, including all staging, borrow, and designated blast zones (defined as excavation areas). Phase I management summaries of each section will be submitted by WVDOT to the WVSHPO for review and concurrence. The results of Phase I reconnaissance shall be documented by section in a Phase I Management Summary which shall include locational information, descriptions of fieldwork, methods employed, results of fieldwork, pertinent maps, photographs (if required), completed West Virginia Archaeological Site Forms, and recommendations and scope(s) of work for Phase II investigations. Unless otherwise directed by the FHWA in order to comply with Project design scheduling, sequencing of Phase I management summary submissions shall follow the schedule provided in Appendix B.

B. When Phase I survey efforts indicate the presence of archaeological resources that require Phase II testing as determined by FHWA in consultation with the WVSHPO, Phase II sub-surface archaeological testing as detailed in the Phase I Management Summaries will be conducted in accordance with the Secretary of the Interior's "Standards and Guidelines for Archeology and Historic Preservation" (48FR44716). FHWA will insure that the WVSHPO is provided with an opportunity to review and comment on the Scope of Work (SOW) contained in the Phase I management summary prior to its implementation. If the WVSHPO does not object within 30 days from the receipt of the Phase II SOW, FHWA may implement the Phase II SOW for that section in accordance with the SOW. Following completion of field work, a Phase II management summary will be prepared and provided to the WVSHPO by WVDOT for review and comment. Phase II management summaries will document location information, description of fieldwork, methods employed and results of fieldwork. The summaries will contain descriptions of stratigraphy and features, appropriate mapping, site plans, photographs and evaluation of eligibility according to the National Register Criteria.

C. If FHWA and the WVSHPO agree that an archaeological site is not eligible to the Register then no further cultural resource investigation of that site will be conducted. If FHWA and the WVSHPO agree that an archaeological site is eligible to the NRHP then FHWA will ensure that

Stipulations IID and IIE of the agreement are implemented. If the FHWA and WVSHPO cannot concur regarding eligibility of an archaeological site, FHWA shall obtain a determination from the Secretary of the Interior in accordance with 36 CFR Part 800.4. If the evaluation results in the identification of an archaeological site that is eligible for inclusion in the Register, FHWA will ensure that avoidance of the site is the preferred alternative.

D. FHWA shall consider means to avoid all archaeological sites determined eligible for inclusion on the Register. If it is ascertained by WVDOT that avoidance of an archaeological site determined eligible to the Register may not be possible, FHWA will ensure that a report detailing why avoidance is not feasible is prepared and submitted to the WVSHPO for review and concurrence. This report will evaluate design modifications to avoid the archaeological site and take into account feasibility of engineering, cost and other appropriate factors. Consultation regarding this report will occur prior to any design engineering or conceptual planning that would compromise the ability to make alterations to avoid the resource. Subsequent to consultation, WVSHPO and FHWA will consider appropriate measures to address the findings of the report. If WVSHPO and FHWA cannot concur on the appropriate course of treatment, FHWA will seek the Council's participation in consultation.

E. If it is determined by FHWA and WVSHPO that avoidance of an archaeological site is neither prudent nor feasible, or is impracticable, the FHWA will develop a Phase III data recovery plan in consultation with the WVSHPO in order to mitigate the adverse effects. The Council will be afforded an opportunity to comment on said plan. The data recovery plan will be subject to approval by the WVSHPO and the Council prior to implementation and will be completed prior to the initiation of construction within the area of effect.

F. Within one week of receiving Phase I reports and Phase II reports by section from the consultant given in Appendix B, WVDOT shall distribute to the WVSHPO for review and concurrence. These reports will provide detailed information on archaeological sites identified during the course of the Phase I survey and subsequent Phase II archaeological testing; and will contain all appropriate location information, site and artifact data, specific prehistoric and/or historic contextual information with regard to site descriptions, site mapping, applicable photographs, illustrations, in addition to recommendations for appropriate data recovery. These reports shall incorporate the findings of the Phase I and Phase II management summary reports. These reports will not be used as the basis for determinations of Register eligibility regarding archaeological sites since those determinations will be made on the basis of the Phase II management summary reports. All reports will comply with the West Virginia Division of Culture and History, Historic Preservation Unit "Guidelines for Phase I Surveys, Phase II Testing, Phase III Mitigation and Cultural Resource Reports (October 1991, and as amended).

G. Any artifactual material(s) recovered during the course of Project investigations will be cleaned, labeled, documented, and packaged pursuant to 36 CFR 79 and the *West Virginia Division of Culture and History Curatorial Guidelines - Collections Management Facility* (n.d.). Unless otherwise agreed to, all artifacts recovered outside of public lands, as well as all supporting documentation (i.e., field notes, mapping, laboratory notes, photographs, and reports), will be delivered to the Collections Management Facility, West Virginia Division of Culture and History upon

completion of the Section 106 process. Artifacts material(s) recovered on public lands (e.g. National Forest lands) as well as all supporting documentation (i.e., field notes, mapping, laboratory notes, photographs, and reports), will be delivered to their respective owners upon completion of the Section 106 process.

IV. Marked and Unmarked Cemeteries, and Burial Places

A. FHWA will ensure that all marked cemeteries within the Area of Potential Effect will be inventoried and evaluated for eligibility in the Register in accordance with 36 CFR Part 800.4. If determined eligible, avoidance and review of alternatives to direct impact will be considered as laid out in Stipulation II.F. All procedures for identifying and evaluating burial places will comply with guidelines established in the National Park Service Publication, *National Register Bulletin 41 - Guidelines for Evaluating and Registering Cemeteries and Burial Places* (1992), West Virginia Code 29-1-6b, and the Native American Graves Protection and Repatriation Act of 1990 (P.L. 101-601).

V. Archaeological Monitoring

During the completion of Stipulation III, FHWA will ensure that an appropriate plan for archaeological monitoring of construction areas is developed and implemented as detailed below. It is understood that the measures outlined below will go into effect after the intensive Phase I, Phase II and Phase III archaeological fieldwork has been completed for Sections 3-16 and should not be construed as a replacement strategy for said work.

1) Archaeological monitors, here defined as persons meeting at a minimum the Secretary of the Interior's Professional Qualifications Standards (48 FR 44738-9), shall be employed during all soil excavation activities during construction of sections 3-16 of the proposed Appalachian Corridor H project in the following areas: 1) areas defined as having a high potential for containing intact archaeological deposits including but not limited to floodplain, saddles, and ridge tops and 2) areas where previously recorded archaeological sites are in close proximity, approximately within 15-20 meters, to the proposed construction limits although no evidence of their existence was discovered during the initial intensive systematic archaeological field survey effort. Where determined appropriate through consultation with the WVSHPO known site locations will be cordoned off with construction fencing and flagged. No heavy equipment use will be permitted in these areas.

2) The FHWA shall ensure archeological monitors will be on-site during all soil excavation activities in the project areas as specified in paragraph 1 of this plan. The monitors shall maintain surveillance on the construction area as the soil is removed, to identify locations in which the buried cultural strata are exposed. In all areas in which cultural strata is exposed, the monitors will conduct pedestrian investigations to identify whether any significant archaeological features are present. During the execution of the archeological monitoring, the monitors shall maintain a daily written and photographic record of the construction excavation in progress. The archeological monitor will provide monthly progress reports. The report will briefly summarize the purpose, methodology, and results of the monitoring. Each monthly report shall include a site map illustrating portions

completed, and any archeological features recorded during the monitoring.

VI. Unanticipated Discovery

A. In the event of the identification of a feature containing potentially significant archeological features following completion of intensive Phase I, II, and III Archaeological field work, the monitor will stake an area with a ten foot radius around the feature, with safety ribbon tied between the stakes. The monitor will instruct the construction contractor to avoid any additional soil excavation or machine movement through the staked area until such time as the resource can be evaluated for Register eligibility and appropriate treatment plan is developed and implemented. Based upon the type of feature and artifacts found in association with it, the monitor shall determine the potential eligibility of the feature for listing on the Register. Documentation of the finding will be provided to the WVSHPO in a weekly management summary. When the WVSHPO concurs that cultural features are not Register eligible, the monitors shall excavate the remainder of the feature, and then immediately notify the construction contractor that construction activities may resume in the area.

B. In the event the identification of a feature containing human remains is found, treatment shall proceed according to the measures in stipulation VII.

VII. Human Remains

Throughout this agreement, reference to human remains includes "cultural items" defined as associated funerary objects, unassociated funerary objects, sacred objects, and items of cultural patrimony.

A. The FHWA will ensure that the discovery of unmarked cemeteries, human remains and associated grave goods and funerary objects during the course of cultural resources investigations or construction activity related to said Project will be brought to the immediate attention of the WVSHPO. The monitors will instruct the construction contractor that the staked area must be avoided until appropriately treated. The monitor shall then proceed to notify the FHWA, as well as the WVSHPO, of the discovery. The location shall be covered in plastic and backfilled with soil, to protect the location until excavation of the human remains can be authorized. No human remains will be intentionally excavated until consultation with the WVSHPO has occurred.

B. FHWA will ensure that all appropriate associated lineage groups or descendant families are contacted. If the human remains are non-Native American in origin, and are associated with unmarked graves and/or cemeteries, the FHWA will contact the appropriate local authorities (e.g. police, coroner's office). If the human remains are Native American in origin, the FHWA will ensure that the appropriate Native American groups are contacted concerning the discovery of human remains and afforded an opportunity to comment on the implementation of stipulations.

C. The FHWA will ensure that the treatment of human remains is in full compliance with the West Virginia Unmarked Burial Law.

D. The FHWA will ensure that the WVSHPO and the Council are provided with information such as the location, description and disposition, concerning the discovery of human remains within 24 hours if the discovery is made during the work week, or the following work day if the discovery is made on a weekend/holiday. No activities that may disturb such sites will be conducted until a treatment plan has been developed in consultation with WVSHPO and appropriate interested parties, the WVSHPO and the Council have been afforded an opportunity to comment, and the plan is implemented.

E. The FHWA affirms that they will avoid human remains encountered during work associated with the Project, where feasible. The location of the burial will be noted on Project mapping, and the location will be cordoned off by fencing to ensure further non-disturbance of the burial site by Project activities. The exposed portion of the burial will be mapped, illustrated, and photographed before being restored to its pre-discovery condition.

F. If avoidance of human remains is considered not feasible, as determined in consultation with the WVSHPO, the following steps will be taken by FHWA:

1) NON-NATIVE AMERICAN HUMAN REMAINS

- a) The non-Native human remains will be evaluated for eligibility in the Register in accordance with 36 CFR Part 800.4. If it is determined by FHWA and WVSHPO that the remains are not eligible, FHWA will ensure that the remains are either avoided or removed to an appropriate reinternment location.
- b) If the remains are determined eligible, FHWA will evaluate feasibility of avoidance in consultation with the WVSHPO. If construction limits can be altered to avoid the remains, the remains will be restored to pre-discovery conditions, cordoned off and avoided. If the remains cannot be avoided, the following steps will be taken to ensure their proper excavation:
 - i. The burial(s) will be documented fully prior to excavation. Documentation will consist of appropriate detailed mapping, illustrations, and photographs.
 - ii. Excavation of human remains will be undertaken in a careful, respectful, and complete manner in accordance with proper archaeological methods. In addition, excavation of human remains will not involve the use of chemicals which may damage bones during or after excavation.
 - iii. Bones will be labeled and packaged with appropriate locational and contextual information and their location plotted on measured illustrations.

iv. Any artifacts found in association with human burials will be labeled and packaged with appropriate locational and contextual information and their location plotted on measured illustrations.

v. All soil associated with the excavation of a human burial will be saved and stored in labeled packaging.

vi. In the event that scientific analyses will be conducted on human remains, the FHWA, in consultation with the WVSHPO, the Council, and interested persons will devise an appropriate schedule for the completion of said scientific studies.

vii. When claimed by cultural or familial descendants, human remains and associated artifacts shall be reburied following the completion of the post-excavation treatment plan. The FHWA, in consultation with the WVSHPO, and the Council, will ensure the return of human remains to an agreed upon recipient for repatriation within a year following completion of analysis.

viii. When human remains and associated artifacts (grave goods) from unmarked graves are not claimed by descendants the FHWA, in consultation with the WVSHPO, has the option to rebury the remains after archaeological investigations have been completed, or to place them into the state museum where they will be cared for with dignity and respect as determined by the WVSHPO, or designee, or interested parties.

2) NATIVE AMERICAN REMAINS

a) If it is determined that the human remains are Native American in origin the Native human remains will be evaluated for eligibility in the Register in accordance with 36 CFR Part 800.4. If it is determined by FHWA and WVSHPO that the remains are not eligible, the FHWA will ensure that the remains are either avoided or removed to an appropriate reinterment location.

b) FHWA will consult with the WVSHPO and all appropriate Native American tribes and groups regarding any decisions to avoid, preserve in place, or excavate any Native American remains discovered during archaeological monitoring activities. If the avoidance of human remains in the construction corridors is not feasible, then the burial will be excavated following the procedures outlined in below:

i. Prior to examination of the remains, all soil around the burial will be carefully removed and saved in labeled containers.

ii. Photographs will be taken of the burial in place, with detail photographs taken to show noteworthy features.

- iii. Detailed measured drawings will be developed to record the archaeological feature, the positions of the bones, and any related artifacts.
 - iv. Based upon the information gathered from the above measures, FHWA will determine, to the best of its ability, the cultural affiliation of both the remains and associated grave goods.
 - v. FHWA will notify the WVSHPO, and the Council, as well as any tribe determined to be culturally affiliated with the remains, of their determination of cultural affiliation as well as the basis for this determination.
 - vi. The WVSHPO will then provide the FHWA with comments on their conclusions of cultural affiliation for the remains within 14 calendar days.
 - vii. All comments received within the 14 calendar days will be used by the FHWA in making its final determination of cultural affiliation. The final determination by FHWA will be communicated to the WVSHPO, and the Council. If a particular tribe is determined to be affiliated with the remains, the WVSHPO will consult with them regarding further treatment of the remains.
 - viii. Unless any party objects, FHWA shall proceed with the excavation of the remains.
 - ix. The Native American groups will be invited to attend the excavation and FHWA will welcome them to perform any religious ceremonies or rituals regarding the excavation of the remains.
- c) If the remains are determined eligible, FHWA will evaluate feasibility of avoidance in consultation with the WVSHPO. If construction limits can be altered to avoid the remains, the remains will be restored to pre-discovery conditions, cordoned off and avoided. If the remains cannot be avoided, the following steps will be taken to ensure their proper excavation:
 - d) The FHWA will coordinate with the appropriate Native American groups, as determined by the methods outlined above, to discuss scientific testing of the remains for which the groups have demonstrated cultural affiliation.

VIII. Performance Standards, Report Submission Schedule and Review Responsibilities

A. All historic and archaeological work will be conducted under the direct supervision of a person or persons who meet, at a minimum, the appropriate qualification standards set forth in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation, 48 FR 44738-9, and who have experience in the region and in the pertinent sub-fields of their disciplines. All archeological work will be conducted with reference to and be consistent with the principles contained in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic

Preservation and in the Council's Treatment of Archeological Properties, as well as the Guidelines for Phase I surveys, Phase II Testing, Phase III Mitigation and Cultural Resource Reports established by the WVSHPO in 1991. All other survey work will be conducted according to the Secretary of the Interior's Standards for Identification and Evaluation as well as WVSHPO Guidelines.

B. The FHWA will submit all Project reports defined as: Phase I management summaries, Phase II management summaries, combined Phase I/II technical reports, Determination of eligibility Reports, Criteria of Effect Reports, Cultural Resource Avoidance Feasibility reports and Data Recovery Plans, addressed in this agreement to the WVSHPO for review within a period not to exceed 90 days from completion of the fieldwork. Unless otherwise noted, WVSHPO will review and comment on Project reports within 45 calendar days of receipt of said reports. If the reports cannot be reviewed in this time frame, the WVSHPO will so inform the FHWA. The WVSHPO must approve treatment plans.

C. The Council will be afforded an opportunity to comment in all instances where an adverse effect may occur. The Council will provide comments on these issues within 45 calendar days upon receipt of all pertinent documentation.

D. The FHWA will ensure that all consulting parties are notified when Determination of Eligibility reports, Management Summary reports, and Archaeological reports are available for inspection. Consulting parties will be notified concurrence by copies of transmittal letters of said reports to WVSHPO. If the Project report includes activities affecting Forest Service lands, a copy of the report will be furnished directly to the Monongahela or George Washington National Forest, as appropriate. The consulting parties may examine any Project report submitted to the WVSHPO by contacting the FHWA in order to obtain a copy of a Project report. Project reports distributed to the consulting parties, with the exception of the Monongahela National Forest and the George Washington National Forest, will not include archaeological location specific information (e.g., UTM coordinates, station markers, and mapping). The consulting parties shall have 30 days from receipt to provide comments to FHWA.

E. The WVDOT shall provide two copies of all final reports to the WVSHPO in accordance with the WVSHPO's guidelines for surveys. One copy of the report will include original photographs or halftones and will be on acid free paper. Any completed site forms will also be on acid free paper when sent to the WVSHPO.

IX. FUTURE COOPERATION WITH VASHPO

FHWA will ensure that the appropriate level of review with the VASHPO is conducted if it is determined that the Project will impact that state's historic properties.

X. Public Participation

A. FHWA will ensure that an active public participation program is carried out. In addition to promptly notifying all consulting parties of the availability of the Determination of Eligibility, Management Summary and Archaeological reports, these reports will be made available for review to interested persons and the general public at the FHWA West Virginia Division Office and the WVSHPO. The views of consulting parties, interested persons and the general public will be considered in the determination of appropriate actions to avoid, minimize or mitigate adverse effects to historic properties. The Report Submission Schedule and Review Responsibilities for these actions are further detailed in section III F. of this agreement.

B. As stated in Section 304(16U.S.C. 470w-3) of the National Historic Preservation Act of 1966, as amended, the signatories to this Agreement and participating consulting parties will withhold from disclosure to the public, information about the location, character, or ownership of a historic resource if it is determined that disclosure may (1) cause a significant invasion of privacy; (2) risk harm to the historic resource; or (3) impede the use of a traditional religious site by practitioners.

C. Under the Archaeological Resources Protection Act of 1979 (16 U.S.C. 470hh), the signatories to this Agreement and participating consulting parties will withhold from disclosure to the public, information concerning the nature and location of any Archaeological resource located on public lands for which the excavation or removal requires a permit or other permission.

D. The FHWA, the WVDOT and the WVSHPO reserve the right to restrict information concerning the location, character, or ownership of a historic resource as stipulated in the West Virginia Code, Chapter 29 B, Article 1.

E. Prior to construction, FHWA will investigate the cultural affiliation of various Native American groups that may have inhabited the vicinity at various times during the prehistoric and protohistoric periods. All Native American groups which have the potential to be culturally affiliated with the vicinity will be notified of the potential to discover human remains, FHWA will contact the West Virginia Council on American Indian Burial Rights, Inc., as an Interested Party, regarding the discovery or excavation of any Native American remains encountered during archaeological monitoring.

F. FHWA will provide the selected Native American groups with a draft treatment plan section by section and request their comments. The plan describes FHWA efforts regarding the avoidance or preservation in place of the remains, the excavation of the remains, the scientific testing of the remains, and the determination of the repatriation or reburial of the remains.

XI. Amendments to Programmatic Agreement

Any party to this agreement may request that it be amended, whereupon the parties will consult in accordance with 36 CFR Part 800.13 to consider such amendment.

XII. Dispute Resolution

A. Should any party object to any documentation completed or actions proposed pursuant to this agreement FHWA will, within 30 calendar days, consult in good faith with the appropriate parties to resolve the dispute. If the FHWA determines that the dispute cannot be resolved, the FHWA will forward all documentation relevant to the dispute to the Council. Within 30 calendar days after receipt of all pertinent documentation, the Council will either:

1. Provide the FHWA with recommendations, which the FHWA will take into account in reaching a final decision regarding the dispute; or
2. Notify the FHWA that it will comment pursuant to 36 CFR Part 800.6(b) and proceed to comment. Any Council comment provided in response to such a request will be taken into account by the FHWA in accordance with 36 CFR Part 800.6(c)(2) with reference to the subject of the dispute.

B. Any recommendation or comment provided by the Council will be understood to pertain only to the subject of the dispute. The FHWA responsibility to carry out all actions under the agreement that are not the subjects of the dispute will remain unchanged. If the Council fails to pursue either Stipulation VII or VIII.B, as listed above, within the 30 calendar days mentioned, the FHWA may proceed with its plans.

XIII. Monitoring

The Council and the WVSHPO may have access to activities carried out pursuant to this Agreement, and the Council will review such activities if so requested. The FHWA will cooperate with the Council and the WVSHPO in carrying out their monitoring and review responsibilities.

Execution of this agreement and implementation of its terms evidence that the FHWA has taken into account the effects of the Appalachian Corridor H Project on historic properties and has afforded the Council the opportunity to comment on the Project and its effects on historic properties.

PROGRAMMATIC AGREEMENT
APPALACHIAN CORRIDOR H
ELKINS TO THE WEST VIRGINIA/VIRGINIA STATE LINE

FEDERAL HIGHWAY ADMINISTRATION

BY: David E. Bender 10/6/95
David E. Bender, Division Administrator Date

WEST VIRGINIA STATE HISTORIC
PRESERVATION OFFICER

BY: William G. Farrar 10/5/95
William G. Farrar, Deputy Date

ADVISORY COUNCIL ON HISTORIC PRESERVATION

BY: Cathryn B. Slater 11-8-95
Cathryn B. Slater, Chairman Date

CONCUR:

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

BY: Fred VanKirk 10/5/95
Fred VanKirk, Secretary/Commissioner Date

CONCUR:

MONONGAHELA NATIONAL FOREST

BY: Jim Page 10/9/95
Jim Page, Forest Supervisor Date

CONCUR:

GEORGE WASHINGTON NATIONAL FOREST

BY: William Damon 10/12/95
William Damon, Forest Supervisor Date

APPENDIX A: PROJECT SECTION DESCRIPTIONS

SECTION 16:	Route 3/3 near Kerens to Elkins	9.1 mi (14.6 km)
SECTION 15:	Shavers Fork near Pleasants Run to Route 3/3 near Kerens	5.9 mi (9.5 km)
SECTION 14:	Black Fork to Shavers Fork near Pleasants Run	5.1 mi (8.2 km)
SECTION 13:	Blackwater River to Black Fork	9.7 mi (15.6 km)
SECTION 12:	Gatzmer to Blackwater River	7.7 mi (12.4 km)
SECTION 11:	Mt. Storm Lake to Gatzmer	6.9 mi (11.1 km)
SECTION 10:	Two miles west of Scherr to Mt. Storm Lake	6.7 mi (10.8 km)
SECTION 9:	Route 3 to two miles west of Scherr	6.4 mi (10.3 km)
SECTION 8:	Grant County Line to Route 3	6.3 mi (10.1 km)
SECTION 7:	South Branch of Potomac River to Grant County Line	6.8 mi (10.9 km)
SECTION 6:	Route 1 to South Branch of Potomac River	7.1 mi (11.4 km)
SECTION 5:	State Route 259 to Route 1	8.1 mi (13.0 km)
SECTION 4:	Route 23/12 to State Route 259	7.5 mi (12.1 km)
SECTION 3:	West Virginia/Virginia State Line to Route 23/12	4.6 mi (7.4 km)

Appendix B

Keeper Eligibility Determination

- | | |
|-------------------|---|
| August 2, 2001 | Determination of Eligibility Notification from the Keeper to FHWA of the National Register Eligibility of the Coketon Area/Blackwater Industrial Complex |
| June 28, 2001 | Letter from USFS to Keeper commenting on the USFS position on the NRHP eligibility of the Coketon Industrial Site and its relationship to the Blackwater Industrial Complex. |
| April 3, 2001 | Letter from FHWA to WVDOH forwarding the Determination of Eligibility Notification for the Coketon Study Area. More documentation requested. |
| March 16, 2001 | Determination of Eligibility Notification from the Keeper to FHWA for the Coketon Study Area. More documentation requested. |
| February 14, 2001 | Letter from FHWA to Keeper forwarding additional requested information on the Coketon Study Area. |
| March 8, 1999 | Letter from FHWA to Keeper forwarding the Final DOE Report dated March 1999 for Sections 12-13 of the Appalachian Corridor H highway project and requesting determinations of eligibility, non-eligibility, and boundaries for the properties discussed in the report. |

DOT/FHWA/WV DIVISION Fax:3043475103
Aug-02-01 01:24pm From-N P S PARK HISTORY

Aug 6 2001 13:42 P.01
+2029431244 T-002 P.02/00 r-000



United States Department of the Interior

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

IN EARLY REFERENCE TO:

DETERMINATION OF ELIGIBILITY NOTIFICATION

National Register of Historic Places
National Park Service

Name of Property: Corridor H-Coketon Study Area-Additional Information
 Location: Tucker County State: WEST VIRGINIA
 Request submitted by: Henry E. Compton, P.E. Right of Way & Environment Specialist, WV Division, FHWA
 Date received: 07/03/01 Additional information received: 7/24/01

Opinion of the State Historic Preservation Officer:
 Eligible Not Eligible No Response Need More Information

Comments:
 The Secretary of the Interior has determined that this property is:
 Eligible Applicable criteria: A,B,C, D Not Eligible

Comments:
 See attached comments regarding the Coketon study area as it relates to the Blackwater Industrial Complex.
 Documentation insufficient
 (Please see accompanying sheet explaining additional materials required)

[Signature]
 Keeper of the National Register
 Date: 8/2/01

OPTIONAL FORM 10 (7-90)

FAX TRANSMITTAL # of pages 7

To <u>BON HARR</u>	From
Dept./Agency	Phone # <u>EC</u>
Fax #	Fax #

NSN 7540-01-317-7868 5099-101 GENERAL SERVICES ADMINISTRATION

DETERMINATION OF ELIGIBILITY NOTIFICATION**National Register of Historic Places
National Park Service****Coketon Study Area/Blackwater Industrial Complex
Tucker County, West Virginia**

p. 3

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

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

Each of the criteria are addressed below.

Criterion A

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

DETERMINATION OF ELIGIBILITY NOTIFICATION**National Register of Historic Places
National Park Service****Coketon Study Area/Blackwater Industrial Complex
Tucker County, West Virginia**

p. 4

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

Criterion B

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

Criterion C

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

DETERMINATION OF ELIGIBILITY NOTIFICATION**National Register of Historic Places
National Park Service****Coketon Study Area/Blackwater Industrial Complex
Tucker County, West Virginia**

p. 5

Criterion D

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

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

Aug-02-01 01:25pm From: N P S PARK HISTORY

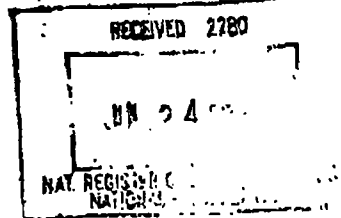
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T-002 P.07/08 F-690

United States
Department of
AgricultureForest
ServiceMonongahela
National Forest200 Sycamore Street
Elkins, WV 26241
(304) 636-1800

File Code: 2360

Date: June 28, 2001



Ms. Carol Shull
Keeper
National Register of Historic Places
800 North Capitol Street, NE
Suite 400
Washington, D.C. 20002

Dear Ms. Shull,

This letter is a response to a request for information I received today in a telephone conversation with Ms. Erika Seibert of your office. Specifically, I was asked to comment upon the position of the Forest Service regarding the NRHP eligibility of the Coketon Industrial Site and its relationship to the Blackwater Industrial Complex. Also, I am responding to the opinion, expressed by staff of Michael Baker, Inc. during the meeting held at Coketon this Monday, that the Coketon site constitutes a "discontinuous" Historic District.

The Forest Service position set forth in a letter dated June 30, 1998, addressed to the West Virginia Department of Transportation, is still our current position. We hold that the Coketon property is eligible to the NRHP under all four criteria. We also submit that the West Virginia Central and Pittsburgh Railroad grade is a contributing feature of the site, and should be considered alongside the larger site. Further, it is clear that the Coketon site is but a small part of the larger Blackwater Industrial Complex. The Forest's position on the NRHP eligibility of Coketon, associated with the larger Blackwater Industrial Complex, was supported by the WV SHPO in their letter to Norman Roush dated December 17, 1996 and by your office in a review letter dated March 16, 2001.

The notion that Coketon is part of a discontinuous Historic District is, from our point of view, inconsistent with previous opinions expressed by the Forest Service, the WV SHPO and your office. Also, as a point of fact it should be noted that the railroad grade, a landscape feature that retains significant integrity, is a continuous, unifying feature that seamlessly joins all the individual properties in the Blackwater Industrial Complex, including Coketon.

Should you require further documentation, or have any questions or comments, please do not hesitate to contact me at (570) 296-9632 prior to August 10, 2001, and at (304) 636-1800, ext. 245, on or after August 13, 2001.



DOT/FHWA/WV DIVISION Fax:3043475103

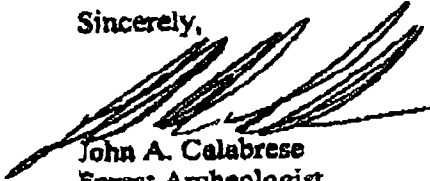
Aug 6 2001 13:45 P.07

Aug-02-01 01:26pm From-N P S PARK HISTORY

+2029491244

T-002 P.08/08 F-800

Sincerely,



John A. Calabrese
Forest Archeologist

cc: Dallas Erch, Acting Forest Supervisor
Kimberley Johnson, Asst. Forest Supervisor, Natural Resources
Richard Cook, Asst. Forest Supervisor, Lands
Liz Schuppert, Cheat District Ranger
William Kerr, Program Manager, Recreation, Heritage, and Wilderness
Lynn Hicks, Forest Engineer



U.S. Department of Transportation

Federal Highway Administration

West Virginia Division

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

HD → DD
work with ed
in a meeting. 3 ✓

April 3, 2001

IN REPLY REFER TO:

Federal Project APD-0484(059)
State Project X142-H-38.99 C-2
Corridor H-Coketon Study Area
Eligibility Determination
Tucker County



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APR 06 2001

ENGINEERING DIVISION
WV DOH

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

Dear Mr. Epperly:

By letter dated February 14, 2001, the Federal Highway Administration (FHWA) submitted a copy of the revised Determination of Eligibility report to the Keeper of the National Register of Historic Places for concurrence on the eligibility of the Coketon Study Area and concurrence in the proposed boundary of the eligible resource. A copy of the Keeper's March 16, 2001, Determination of Eligibility Notification been enclosed for your review. The Keeper has again requested additional information regarding the eligibility and boundary of the Coketon Study Area. The FHWA suggests that a field review of the site be conducted among staff of the FHWA, WVDOH, West Virginia State Historic Preservation Officer and the Keeper. To avoid further delay, we suggest the field meeting be held as soon as possible.

If there are any questions concerning this matter, please contact me at (304) 347-5268 or via e-mail at Henry.Compton@fhwa.dot.gov.

Sincerely yours,

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

Enclosure

Dep State Hwy Eng
Project Development

APR 05 2001

RECEIVED



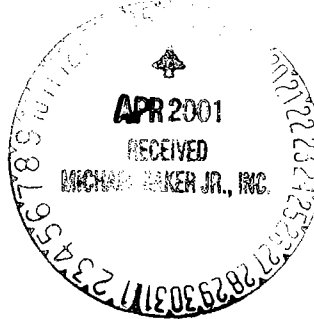
United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO: 2280

To: Henry E. Compton
Right of Way and Environment Specialist
FHwA
WV Div
Geary Plaza, Suite 200
700 Washington St., E
Charlestown, WV 25301



A	I	Init	A	I	Init
		Div Administrator			Admin Coordin/Sec
		Asst. Div Admin			Admin Coordinator
		Supv. Mgt Eng			Financial Asst
		Financial Manager			AE-1 Design
		Planning Eng			AE-2 Operations
		Structres Eng			AE-3 Materials
		ROW/Envir Eng			Asst Struc/Res Eng
		Safety/Traffic Eng			Computer Specialist
		Res/T ² Eng			Structres Trainee
		Trans Specialist			FMCSA
		Library			File _____

The Director of the National Park Service wishes to inform you of our determination pursuant to the National Historic Preservation Act, as amended, and Executive Order 11593 in response to your request for a determination of eligibility for inclusion in the National Register of Historic Places. Our determination appears on the enclosed material.

As you know, your request for our professional judgment constitutes a part of the Federal planning process. We urge that this information be integrated into the National Environmental Policy Act analysis and the analysis required under section 4(f) of the Department of Transportation Act, if this is a transportation project, to bring about the best possible program decisions.

This determination does not serve in any manner as a veto to uses of property, with or without Federal participation or assistance. The responsibility for program planning concerning properties eligible for the National Register lies with the agency or block grant recipient after the Advisory Council on Historic Preservation has had an opportunity to comment.

Attachment



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.

Washington, D.C. 20240

IN REPLY REFER TO:

DETERMINATION OF ELIGIBILITY NOTIFICATION

National Register of Historic Places
National Park Service

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

Location: Tucker County

State: WEST VIRGINIA

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

Date received: 02/20/01

Additional information received

Opinion of the State Historic Preservation Officer:

Eligible

Not Eligible

No Response

Need More Information

Comments:

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

Eligible

Applicable criteria:

Not Eligible

Comments:

Documentation insufficient

(Please see accompanying sheet explaining additional materials required)

Erica Martin Seibert
for Keeper of the National Register

Date: 3/16/01

**Coketon Study Area
Tucker County, WEST VIRGINIA**

Reviewers' Comments:

After carefully reviewing the material you submitted in February 2000 and the supplementary information included with your current request, we agree with the position of the Monongahela National Forest, as stated in their June 30, 1998, letter to Mr. Randolph Epperly. The Coketon Study Area cannot be evaluated in isolation from the larger, eligible Blackwater Industrial Complex.

Please provide us with copies of the 1992 *Phase II Evaluation of the Davis Coal and Coke Company and Western Maryland Railroad Industrial Complex at Tucker County, West Virginia*, by Jeffery B. Davis, Todd Swann, and Ruth Brinker; the 1997 follow-up report prepared by Davis et al.; and all other available information pertaining to the Blackwater Industrial Complex.

Marilyn Harper
Historian
and
Erika Seibert
Archeologist
National Register of Historic Places
March 16, 2001



U.S. Department
of Transportation

Federal Highway
Administration

West Virginia Division

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

February 14, 2001

RECEIVED

FEB 16 2001

ENGINEERING DIVISION
WV DOH

IN REPLY REFER TO:
Federal Project APD-0484(059)
State Project X142-H-38.99
Corridor H - Coketon Study Area
Supplemental Information
Tucker County

Carol Shull, Keeper
National Register of Historic Places
1849 C Street, NW
Washington, DC 20240

Dear Ms. Shull:

By letter dated February 14, 2000, the Federal Highway Administration (FHWA) submitted a Determination of Eligibility (DOE) report for resources within the former Sections 8, 9, 10, 12 and 13 of the Appalachian Corridor H highway project in Grant and Tucker Counties, West Virginia. By memo dated March 31, 2000 (copy enclosed), your office responded to our request and concurred with five of the six findings presented in the DOE report. For one resource, Coketon Study Area, your office requested additional information to support our contention the Coketon Study Area remains eligible for the National Register of Historic Places. In response to your request, the enclosed report has been developed.

Tab 1 of the report contains a memorandum that has been developed to reply to the specific concerns and/or issues raised in your March 31 memo. Directions for utilizing the overlay of the 1992 base mapping prepared for the Douglas and Albert Highwall projects are located in Tab 2. Tab 3 holds figures 1-5 referred to in the explanatory memo. Tab 4 contains a copy of a previously developed report entitled *Coketon: Documentation for the Memorandum of Agreement* and a copy of the MOA executed for the Albert and Douglas Highwall reclamation projects. A copy of a letter from the West Virginia State Historic Preservation Officer concurring in the findings presented in this report can be found in Tab 5, along with a copy of your March 31 memo.

With submission of this report, we request your concurrence in our finding that the Coketon Study Area is eligible for the National Register of Historic Places as a discontinuous historic district and as part of the National Register eligible Blackwater Industrial Complex, also as a discontinuous historic district.

If you need additional information or have any questions regarding the enclosed information, please contact me at (304) 347-5268 or via e-mail at Henry.Compton@fhwa.dot.gov. Thank you for your attention to this matter.

Sincerely yours,

Sgd. Henry E. Compton

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

Enclosures

cc: File, Reading, HEC, WVDOH
HEC:021401 (s:hec\letters\sections89101213keeper2.wpd)



U.S. Department of Transportation

Federal Highway Administration

West Virginia Division

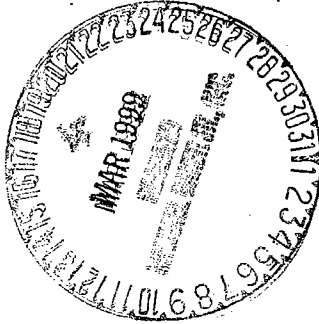
Geary Plaza, Suite 200
700 Washington Street, East
Charleston, West Virginia 25301
(304) 347-5928

March 8, 1999

IN REPLY REFER TO:

Determinations of Eligibility, Sections 12-13
Appalachian Corridor H
Federal Project No. APD-0484 (059)
State Project No. X142-H-38.99
Tucker County, West Virginia

369 4856



Carol Shull, Keeper
National Register of Historic Places
800 North Capitol St., NE
Suite 400
Washington, DC 20002

Dear Ms. Shull:

Enclosed please find a copy of the final Determination of Eligibility Report for Sections 12-13 of the Appalachian Corridor H highway project in Tucker County, West Virginia, dated March 1999. The report presents our findings regarding National Register eligibility and boundaries for architectural and historical resources in the area of potential effect (APE) for Sections 12-13 of Corridor H, except for resources contained within the Coketon Study Area, which will be addressed in a separate submission. With this letter, we are requesting determinations of eligibility, non-eligibility, and boundaries for the properties discussed in the report, pursuant to 36 C.F.R. § 63.2.

This report evaluates six individual resources in Tucker County and concludes that each of them is ineligible for the National Register. The report also evaluates two potential historic districts, in the Davis and Hambleton areas in Tucker County, and concludes that neither area contains an eligible historic district. Finally, the report evaluates the West Virginia Central & Pittsburgh (WVC&P) Railroad and concludes that it is eligible as a discontinuous historic district, under Criteria A and C, with boundaries drawn to include the historic engineering structures but to exclude the rail-less railroad grade, which no longer has sufficient integrity to contribute to the resource. This finding is consistent with your office's determination of eligibility for the portion of the WVC&P railroad that is located in Sections 14-16 of Corridor H (December 1997).

In a letter dated November 16, 1998, the West Virginia State Historic Preservation Officer (SHPO) concurred in all of the proposed findings of eligibility and non-eligibility in the report. (Please refer to Appendix C for copies of the SHPO's correspondence.)

In addition to the SHPO's comments, we also received comment letters from two consulting parties in the Section 106 process, the Monongahela National Forest (MNF), which has jurisdiction over some of the land covered by this report, and Corridor H Alternatives, Inc., a citizens group. (Please refer to Appendix D for copies of this correspondence.) These comment letters questioned the report's findings regarding the Coketon Study Area. Responses to those comments will be included in a separate submission regarding the Coketon Study Area, which will include archeological studies of the resources remaining in the area. These archeological studies will examine the ruins of the former mining operations in the Coketon area, and therefore will provide a more complete record for determining the potential for a historic district and/or individually eligible resources in that area.

Thank you for taking the time to examine our findings regarding the National Register eligibility of cultural resources in Sections 12 and 13 of the Appalachian Corridor H highway project. If requested, we would be pleased to accompany you and/or your staff on a field view of any of the resources evaluated in this report. If you have any questions or need further documentation, or if you would like to arrange a field view, please call me or David Leighow at (304) 347-5928. We look forward to receiving your determination within the 45-day review period. Thank you for your attention to this matter.

Sincerely yours,

SGD. DAVID A. LEIGHOW

David A. Leighow
Environment/Civil Rights/Right of Way Team Leader

Enclosure

cc: File, Reading
DALeighow:oj, 030499
(s:\dall\corr\12-13.wpd)

Appendix C

WVSHPO Correspondence

- December 31, 2003 **Letter from WVSHPO to WVDOH** commenting on the Phase I Cultural Resources Management Report for Bike Path #1 and Bike Path #5.
- October 30, 2002 **Letter from WVSHPO to WVDOH** commenting on the draft COE Report dated June 2002 for the Blackwater Industrial Complex.
- July 19, 2002 **Letter from USFS to WVSHPO** advising that a copy of USFS's comments on the draft COE Report dated June 2002 will be forwarded to them.
- January 17, 2001 **Letter from WVSHPO to WVDOH** commenting on additional information provided for the Coketon Study Area.
- February 15, 2000 **Letter from WVSHPO to WVDOH** commenting on additional information provided for Sections 8, 9, 10, 12, and 13.
- November 19, 1999 **Letter from WVSHPO to WVDOH** commenting on the Phase I investigation report for Corridor H sections 11, 12, and 13.
- September 16, 1999 **Letter from WVSHPO to WVDOH** commenting on Additional Cultural Resource Documentation Report for Sections 8, 9, 10, 12, and 13.
- September 4, 1996 **Letter from WVSHPO to WVDOH** commenting on the Phase I Archaeological Investigations in the Appalachian Corridor H Project Area – Management Summary – Section 13 report.

RECEIVED

JAN 07 2004

**ENGINEERING DIVISION
WV DOH**



**WEST VIRGINIA DIVISION OF
CULTURE AND HISTORY**

December 31, 2003

**James Sothen
West Virginia Division of Highways
Building 5, Room 110
Capitol Complex
Charleston, WV 25305**

**RE: Appalachian Corridor H -Bike Path #1, City of Thomas to County Route 27 and
Bike Path #5, County Route 27 to Hendricks
FR# 91-246-MULTI**

Dear Mr. Sothen,

We have received the Phase I Cultural Resources Management Report for the above referenced bike paths. Please accept the following comments according to Section 106 of the National Historic Preservation Act of 1966, as amended and its regulations, 36 CFR 800, "The Protection of Historic Properties."

The project as defined consists of several construction activities associated with the creation of bike paths #1 and #5. They include graveling and paving of the railroad grade, pipe culvert replacements and re-decking and re-planking of two existing bridges. The author, Ms. Chandra L. Inglis-Smith, has also defined the area of potential effect clearly. As stated in the report, the West Virginia Central and Pittsburg Railway (WVC&P) grade was determined eligible by the Keeper of the National Register of Historic Places. The report describes the eligible resources and also reviews the potential effects to each identified historic resource. We concur that no intact archaeological properties will be effected by this project. We also agree that the project will have no adverse effect to the WVC&P Blackwater Railway Grade, the WVC&P Discontiguous District, the Blackwater Industrial Complex Historic and Archaeological District. We concur that there will be no effect to the Thomas Commercial Historic District nor the Thomas Cottrill Opera House. We note that the increased use of the bike paths may create secondary effects, but these should be of a positive nature. Impact to nearby cultural resources from increased pedestrian activity is indeterminate at this time. It is assumed that DOH has contacted the Monongahela National Forest for their comments and that they have no objections to these plans.

Page 2
James Sothen
December 31, 2003

No further consultation is required at this time. The report indicates that appropriate notes will be added to construction documents to alert contractors to the location of historic resources and the necessary care during construction. Monitoring by DOH staff is also understood to occur. Should the project scope change, please notify my office. As always, should cultural resources be discovered during construction, activity should cease in that area and our office contacted immediately for evaluation.

Thank you for your cooperation. The report was very clearly prepared. We regret the delay in its review. If you have any questions or concerns, please contact my office.

Sincerely,

A handwritten signature in cursive script that reads "Susan M. Pierce". The signature is written in dark ink and is positioned above the printed name and title.

Susan M. Pierce
Deputy State Historic Preservation Officer



**WEST VIRGINIA DIVISION OF
CULTURE AND HISTORY**

October 30, 2002

Mr. James E. Sothen
Building 5, Room 450
Capitol Complex
Charleston, West Virginia 25305

RE: Corridor H -Blackwater Industrial Complex
Archaeological and Historic District
FR#: 91-246-MULTI-229

Dear Mr. Sothen:

We have reviewed the draft Criteria of Effect Report for the above mentioned project. As required by Section 106 of the National Historic Preservation Act, as amended, and its implementing regulations, 36 CFR 800: "Protection of Historic Properties," we submit our comments.

Although the Blackwater Industrial Complex has been affected by previous reclamation activity it retains its historic significance and much of its archaeological integrity. The Report states on page 14 that there will be no effect to the historic resource as defined by the Keeper of the National Register of Historic Places. We don't agree with this assessment. Although it is stated that the pier placement will avoid all identified archaeological sites; there will be piers within the designated historic areas. As stated, any direct impact to the contributing features of the historic district will be avoided. We ask continued consultation with our office as final design and planning for the bridge crossing occur. Planning and construction documents must clearly delineate the location of the archaeological resources and industrial ruins within the historic district. Monitoring during construction is also important to insure avoidance. We request that the "Powerhouse Site" (46Tu299) be surrounded by snow fencing or other highly visible material to assist in its avoidance, and that no heavy machinery or equipment be allowed within or near the site. We also request that all staging areas, equipment storage, etc. be located in portions of the project area previously surveyed and found to contain no cultural materials.

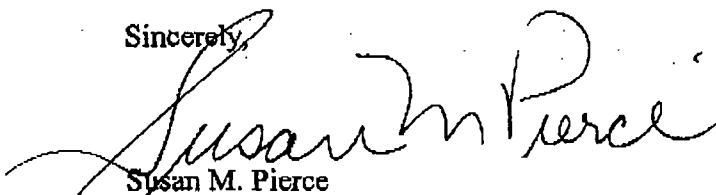
Page 2
James E. Sothen
October 30, 2002

The report also evaluates the potential visual and auditory changes to the historic district. We do not agree with the method used in the report to determine the percentage of the historic district impacted by the change. Although areas at a greater distance from the bridge crossing will suffer a lesser impact, the actual area of crossing will experience visual and auditory change. Creating a mathematical percentage of impacted area does not eliminate the immediate impact to the district at the bridge crossing. What must be considered is the relative change to a district that is composed of buried and exposed industrial fragments of a major coke producing facility. The existing landscape has changed through abandonment and reclamation. Although it will be an alteration to the landscape, the bridge will not inhibit one's understanding of the historic resource. The significance of the physical remnants is best served through interpretation on-site. The addition of a bridge will not inhibit understanding. *(The modern New River Gorge Bridge which serves U.S. Route 19 illustrates this point. Although obtrusive to the landscape, this bridge does not adversely effect one's ability to appreciate early modes of transportation in the Gorge historically. Fayette Station Bridge exemplifies the cultural theme of transportation.)* We believe that there will be an effect, but the change to the landscape will not adversely effect the historic characteristics of the eligible resource. Direct impacts will not occur as stated by the report and indirect effects will not inhibit future understanding of the Blackwater Industrial Complex and the Coketon Study Area.

Finally, please know that we have thoughtfully considered the recent comments provided by the Monongahela National Forest (MNF). Since the issuance of their letter dated July 26, 2002, the recent letter dated October 22, 2002 and the October 8, 2002 meeting, we understand that the DOH and the MNF have resolved the concerns raised by the Forest Service's staff.

We appreciate the opportunity to be of service. *If you have questions regarding our comments or the Section 106 process, please call me or Joanna Wilson, Senior Archaeologist, at (304) 558-0220.*

Sincerely,



Susan M. Pierce
Deputy State Historic Preservation Officer

SMP: jlw

cc: Clyde Thompson, USDA, Monongahela National Forest



United States
Department of
Agriculture

Forest
Service

Monongahela National Forest

200 Sycamore Street
Elkins, WV 26241
304-636-1800

File Code: 2360

Date: July 19, 2002

Ms. Susan Pierce
Deputy State Historic Preservation Officer
West Virginia Division of Culture and History
The Cultural Center
1900 Kanawha Boulevard, East
Charleston, WV 25305-0300

Dear Ms. Pierce,

As the Corridor H environmental process advances, I would like to take this opportunity to advise your office that the Forest Service remains an interested and affected party in the Section 106 process. The Operating Plan of the ARPA permit issued to the West Virginia Division of Highways for those portions of Corridor H on Forest Service land stipulates that the Forest will review reports as part of the Section 106 process. I have attached a copy of the Operating Plan for your information.

The latest Criteria of Effects report issued by the West Virginia Division of Highways will be sent to my staff by the DOH next week; we will forward to you a copy of our comments on effects to archaeological and historic resources on Forest Service land. I expect that, if we receive the document in a timely manner, you will have our comments no later than the end of next week.

I request that the Forest Archaeologist be sent copies of any correspondence between your office, the FHWA, the WVDOH, and any other interested and affected parties relating to the Section 106 process on Forest Service land in or potentially impacted by Corridor H and its associated mitigation measures.

I and my staff look forward to continue our work with your office on this matter. Should you have any questions, please do not hesitate to contact me or our Forest Archaeologist, Mr. John Calabrese, at (304) 636-1800.

Sincerely,


CLYDE N. THOMPSON
Forest Supervisor

CNT:jac

cc: Norse Angus (WVDOH), Ed Compton (FHWA)

RECEIVED

JUL 22 2002

ENGINEERING DIVISION
WV DOH



**Amendment to the Annual Operating Plan
For
Special Use Permit #CHT-7**



**WV Department of Transportation
Corridor H Field Surveys**

This amendment outlines specific measures to be followed during cultural resource investigations which are necessary to complete the environmental analysis required by the February 24, 2000 settlement agreement, corridor H Alternatives versus Slater, 96-CV-2622, US District Court for the District of Columbia (Battlefield avoidance SEIS and Blackwater avoidance SEIS).

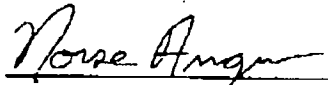
Under the terms and conditions of the Monongahela National Forest Special Use Permit CHT-7, issued to the West Virginia Department of Transportation, Division of Highways, the permit may be modified at the Forest's discretion. Under the authority of Title 16 USC 470 aa-mm (Archaeological Resources Protection Act), as implemented in 36 CFR 296 (Protection of Archaeological Resources: Uniform Regulations), the following amendments are hereby added to Permit CHT-7 as a mandatory part of the ARPA permit process:

- 1) West Virginia Department of Transportation, Division of Highways, and its agents are hereby given permission to conduct cultural resources surveys and site evaluations on Monongahela National Forest lands as part of Section 106 of the National Historic Preservation Act compliance for the Corridor H project with the following terms and conditions:
 - a) Work shall be confined to the Blackwater Canyon and Battlefield Avoidance areas as defined in the original permit;
 - b) Phase Ib archaeological and historic survey work shall conform to a predictive model and methodology mutually agreed to between the WV DOH and the Forest Service, compatible with the Forest's programmatic agreement with the West Virginia State Historic Preservation Office; that predictive model and survey procedures are included as Attachments A and B;
 - c) Phase II site evaluation procedures shall be discussed and agreed upon between the WV DOH and the Forest Archaeologist prior to conducting Phase II work;
 - d) All artifacts, samples, collections, copies of records, data, photographs, and other documents resulting from the work conducted under the permit shall be deposited with the Monongahela National Forest, Supervisor's Office, Elkins, WV, no later than 90 days after submission of a final report;

- e) No additional reporting requirements are added; however, copies of any reports resulting from work carried out under this permit shall be submitted to Forest Archaeologist for review as part of the Section 106 process.

It is important to note that initiation of cultural resources survey work, or other activities under the authority of the permit, signifies the permittee's acceptance of the terms and conditions of the permit, including the above amendments.

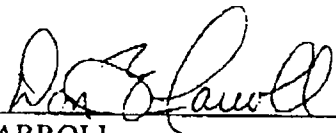
Failure to comply with the terms and conditions set forth above may result in a violation of Title 16 USC 470 aa-mm (as implemented in 36 CFR 296.15).



Norse Angus
WV Department of Highways



Date



DON CARROLL
Acting Forest Supervisor



Date

File



**WEST VIRGINIA DIVISION OF
CULTURE AND HISTORY**

January 17, 2001

RECEIVED

JAN 26 2001

Mr. James Sothen
West Virginia Division of Highways
Building 5, Room 110
Capitol Complex
Charleston, WV 25305



ENGINEERING DIVISION
WV DOH

RE: Appalachian Corridor H, Section 10 & 11
State Project X142-H-38.99
FR#: 91-246-MULTI-183

Dear Mr. Sothen:

We have received the Baker memorandum and additional information for the Coketon Study Area. As required by Section 106 of the National Historic Preservation Act, as amended, and its implementing regulations, 36 CFR 800: "Protection of Historic Properties," we submit our comments.

We appreciate Ms. Harris' efforts to respond to the Keeper's questions regarding this resource area. We concur with her determination that reclamation activities, while destructive to some aspects of the area, have not negatively affected the resource's potential to provide significant archaeological information. It is our opinion, therefore, that the Coketon Resource Area remains eligible for inclusion in the National Register of Historic Places under Criterion D for its information potential. We also concur with the proposal that both the Coketon Resource Area and the Blackwater Industrial Complex be considered discontinuous historic districts due to recent alterations to the landscape.

We appreciate the opportunity to be of service. *If you have questions regarding our comments or the Section 106 process, please call Marc Holma, Senior Structural Historian for Review and Compliance, or Joanna Wilson, Senior Archaeologist, at (304) 558-0220.*

Sincerely,

Susan M. Pierce
Susan M. Pierce
Deputy State Historic Preservation Officer

SMP:jlw

cc: State Historic Preservation Officer Lou Capalini
Deputy State Historic Preservation Officer Susan M. Pierce



**WEST VIRGINIA DIVISION OF
CULTURE AND HISTORY**

February 15, 2000

Mr. James Sothen
Division of Highways
Building 5, Room 110
Capitol Complex
Charleston, WV 25305

RE: Corridor H, Sections 8,9,10
12 & 13
FR#: 91-246-MULTI-146

Dear Mr. Sothen:

We have reviewed the additional information submitted for the above mentioned project. As required by Section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulations, 36 CFR 800: "Protection of Historic Properties," we submit our comments.

Architectural Resources:

In our January 28, 2000 letter we requested a National Register boundary recommendation for the West Virginia Central and Pittsburg (sic) Railroad located in the Humbleton Study Area. This information was submitted on February 4, 2000 and is the subject of the current correspondence. We concur with the demarcation for the WVC&P Railroad as illustrated in the map that accompanied your aforementioned letter. As described in that letter, the boundary "encompasses the current railroad right of way." This is interpreted as meaning the rails and ties, the grade, and all railroad related hardware such as switches, signals, and trestles.

Archaeological Resources:

The addendum satisfactorily addresses our concerns regarding the boundaries for the Liquorman's House, Powerhouse and Miner's Rowhouse sites. We find that the consultant has justified these decisions adequately, and we concur with the boundaries as they stand. We appreciate the attention given to this matter.

We appreciate the opportunity to be of service. If you have questions regarding our comments or the Section 106 process, please call Marc Holma, Structural Historian, or Joanna Wilson, Senior Archaeologist, at (304) 558-0220.

Sincerely,

Susan M. Pierce
Susan M. Pierce
Deputy State Historic Preservation Officer

SMP:mb/jlw

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

EEO/AA EMPLOYER



**WEST VIRGINIA DIVISION OF
CULTURE AND HISTORY**

November 19, 1999

Mr. James Sothen
Division of Highways
Building 5, Room 110
Capitol Complex
Charleston, WV 25305

RE: Corridor H, Sections 11,12 & 13
State Project X142-H-38.99 C-2
FR#: 92-146-MULT-138


Dear Mr. Sothen:

We have reviewed the Phase I investigation report for the above mentioned project. As required by Section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulations, 36 CFR 800: "Protection of Historic Properties", we submit our comments.

The report satisfactorily addresses our concerns regarding the presence of cultural resources within the project area, although we understand that landowner permission was not granted for two portions of the survey area and as such they were not surveyed. Phase I survey of the remainder of the project area located no archaeological materials. We will complete our review of this section upon receipt of survey results from the portion of Section 13 and the access ramp in Parcel T285-22.

We appreciate the opportunity to be of service. If you have questions regarding our comments or the Section 106 process, please call Joanna Wilson, Senior Archaeologist, at (304) 558-0220 extension 146.

Sincerely,


Susan M. Pierce
Deputy State Historic Preservation Officer

SMP:jlw



WEST VIRGINIA DIVISION OF
CULTURE AND HISTORY

September 16, 1999

Mr. James Sothen
Division of Highways
Building 5, Room 110
Capitol Complex
Charleston, WV 25305

RE: Appalachian Corridor H, Sections 8,9,10,12, and 13
State Project X142-H-38.99 02
FR#: 91-246-MULTI-128

Dear Mr. Sothen:

We have reviewed the "Additional Cultural Resources Documentation" report for Sections 8, 9, 10, 12, and 13 of Appalachian Corridor H. As required by Section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulations, 36 CFR 800: "Protection of Historic Properties," we submit our comments.

In June 1996, West Virginia Division of Highways (WVDOH) submitted determinations of National Register eligibility reports for cultural resources in Sections 8, 9, 10, 12, and 13 of the Appalachian Corridor H Project to the West Virginia State Historic Preservation Office (WVSPO) for review. We commented on the report in a December 30, 1998, letter. In this letter, we concurred with WVDOH's evaluations for the cultural resources located within the study sections. Our comments were forwarded to the Keeper of the National Register for her appraisal.

The Keeper made final judgements of National Register eligibility and expressed them in an April 16, 1999, memorandum. She agreed with most of the original determinations, however, the Keeper differed with WVDOH and WVSPO on five resources. These resources are: Folk Victorian House (L1-01), Old Allegheny Church of the Brethren (116-03), Greenland Gap, the Hambleton Study Area (158-22), and the Davis Study Area (012-01). An eligibility recommendation for an additional resource, the Coketon Study Area, was deferred until further archaeological investigation was conducted. The current report addresses the results of this analysis and forwards an eligibility determination for the Coketon Study Area.

Architectural Resources:

Folk Victorian House (L1-01): This resource, determined eligible by the Keeper of the National Register in the April 16, 1999, memorandum, is located outside the Area of Potential Effect (APE) for the Appalachian Corridor H project. As a result, a National Register boundary was not proposed for this property. Unless the Preferred Alignment changes, no further work is necessary for this resource.

Page 2
September 16, 1999
Mr. James Sothen

Old Allegheny Church of the Brethren (116-03): This resource was determined eligible for the National Register by the Keeper in her April 16, 1999, memorandum. The report prepared by Michael Baker, Jr., Inc. recommends that the current ½ acre tax parcel serve as the National Register boundary for this resource. This demarcation includes the church and enough surrounding land to convey the property's historic setting. We concur with this boundary.

Hambleton Study Area (158-22): In her April 1999, memorandum, the Keeper requested additional information regarding the possibility of a National Register historic district in Hambleton. Baker revisited the subject area and again determined that the existing building stock in Hambleton does not retain sufficient integrity to convey the community's history. We agree and reiterate our determination of ineligibility for the Hambleton Study Area as a historic district that we first expressed in a November 16, 1998, letter. Although Hambleton does not contain a historic district, there are extant individual resources potentially eligible for the Register. Chief among these is the West Virginia Central & Pittsburg (sic) Railroad. Baker identifies the railroad as National Register eligible in their initial report for Sections 12 and 13, and again in the current report (page 147). We expressed our concurrence in the November 16, 1998, correspondence. Please recommend boundaries for the West Virginia Central & Pittsburg Railroad and include it in the upcoming Criteria of Effects report.

Davis Study Area (012-01): In her April 1999, memorandum, the Keeper requested additional information regarding the possibility of a National Register historic district in Davis. Baker revisited the subject area and again determined that the existing building stock in Davis does not retain sufficient integrity to convey the community's history. We agree and reiterate our determination of ineligibility for the Davis Study Area as a historic district that we first expressed in a November 16, 1998, letter.

Archaeological Resources:

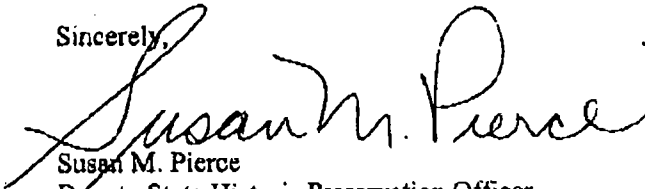
We concur with the consultant's recommendation that the Coketon Study Area be considered eligible for inclusion in the National Register under Criterion D. The presence of intact subsurface deposits grants this study area the potential to provide significant information concerning the coal industry at the turn of the century. We recommend additional investigation of the "Liquorman's House" site prior to further development. The current boundary around this site is unclear based upon report maps, and appears to greatly exceed the areas where subsurface testing was conducted. Later discussion of the site indicates that the boundary includes visible surface scatter, yet the ephemeral nature of a surface scatter does not usually lend itself to a determination of eligibility. If the boundary is to remain extensive, we recommend that the surrounding area be shovel tested in order to justify this determination. We also ask that the report be amended to justify the boundaries established for the "Powerhouse" and "Miners Rowhouse" sites. Although charts in table 2-19 explain the boundaries, reasons for their establishment are not clearly stated within the text. As stated in our letter dated November 16, 1998, we concur with the recommendation that the Coketon Study area be considered eligible under Criterion A, but in concert with similar resources in the Douglas and Thomas areas. We are not opposed to the establishment of a "discontiguous" historic archaeological district, but withhold acceptance of the current boundaries until the above mentioned amendments are addressed.

Page 3
September 16, 1999
Mr. James Sothen

Regarding Greenland Gap, we are of the opinion that none of the archaeological resources identified in this area are representative of Civil War-related activities. No further archaeological investigation is necessary.

We appreciate the opportunity to be of service. If you have questions regarding our comments or the Section 106 process, please call Marc Holma, Structural Historian, or Joanna Wilson, Senior Archaeologist, at (304) 558-0220.

Sincerely,



Susan M. Pierce
Deputy State Historic Preservation Officer

SMP:mh, jlw



WEST VIRGINIA DIVISION OF
CULTURE AND HISTORY

September 4, 1996

Mr. Norman H. Roush
Division of Highways
Building 5, Room 109
Capitol Complex
Charleston, WV 25305

RE: Corridor H - Management
Summary - Section 13
FR: 91-246-MULTI

Dear Mr. Roush,


We have reviewed the following report: "Phase I Archaeological Investigations in the Appalachian Corridor H Project Area - Management Summary - Section 13", submitted by Michael Baker, Jr., Inc.. In accordance with Section 106 of the National Historic Preservation Act, we submit our comments on the above referenced project.

According to the report, one archaeological site, the Gnegy Site was identified. It is our understanding that field investigations were interrupted when investigators were barred from conducting further field work. In addition, approximately 3.7 miles or 42% of Section 13 remains unsurveyed because access was denied by property owners.

Therefore, it is our opinion that additional shovel testing be conducted to determine the boundaries of the Gnegy Site. Once this additional work has been conducted, our office will make a determination on whether Phase II investigations are necessary. In addition, the remainder of the project area must be surveyed once access to the property has been acquired.

We appreciate the opportunity to be of service. If you have any questions, please contact Patrick Trader, Senior Archaeologist.

Sincerely,


Susan M. Pierce
Deputy State Historic Preservation
Officer for Resource Protection

SMP:PDT

Appendix D

Consulting Party Correspondence

- December 12, 2003 **Letter from CHA to FHWA** commenting on the draft COE Report dated June 2002 for the Parsons-to-Davis project.
- October 24, 2002 **Letter from USFS to WVDOT** submitting revised comments on the draft COE Report dated June 2002 for the Parsons-to-Davis project.
- July 26, 2002 **Letter from USFS to WVDOT** commenting on the draft COE Report dated June 2002 for the Parsons-to-Davis project.

LAW OFFICES OF
ANDREA C. FERSTER
1100 SEVENTEENTH STREET, N.W., 10TH FLOOR
WASHINGTON, D.C. 20036
(202) 974-5142
(202) 331-9680 (fax)

December 12, 2003

RECEIVED
DEC 16 2003
ENGINEERING DIVISION
WV DOH

Mr. Tom Smith
Division Administrator
Federal Highway Administration
Geary Plaza, Suite 200
700 Washington Street East
Charleston, WV 25301

Re: Appalachian Corridor H: Parson to Davis

Dear Mr. Smith:

Corridor H Alternatives (CHA), a consulting party to the Section 106 process for the above-referenced project, hereby provides its comments on the Draft Criteria of Effects Report prepared by Michael Baker Jr., for the Blackwater Industrial Complex Archaeological and Historic District, which was circulated to the consulting parties on August 30, 2002, pursuant to Section X.A of the Programmatic Agreement for Appalachian Corridor H. For the following reasons, CHA disagrees with the Draft Report's proposed determination that the construction of the Original Preferred Alignment for the Parsons to Davis segment of Appalachian Corridor H will have "no effect" on historic resources. Instead, the information provided in the Draft Criteria of Effect Report, as well as subsequent correspondence from consulting parties, plainly indicates that this alignment will have an adverse effect on the Blackwater Industrial Complex Archaeological and Historic District.

As the Draft Criteria of Effects report concedes, the proposed project will cross above the Blackwater Industrial Complex on a dual structure, 950-foot bridge in the vicinity of Coketon. The bridge will be approximately 180 feet above the historic district, and the piers and foundations for the bridge will be placed within the National Register boundaries of the historic district. In addition, the Draft Report concedes that the bridge structure will be plainly visible from numerous vantage points within the historic district. In fact, as the simulated photographs in the Draft Report graphically illustrate, the bridge will appear as a substantial intrusion that significantly diminishes the integrity of the landscape and setting for this historic district. The project will also increase noise levels within the historic district in some locations by more than 22 decibels, an increase that the Draft Report concedes will constitute a substantial noise impact under the West Virginia noise standards, and will exceed the FHWA's noise abatement criteria applicable to even non-sensitive resources, 23 CFR Part 772, Table 1.

Mr. Tom Smith
December 12, 2003
Page 2

The proposed finding of "no effect" in the Draft Criteria of Effects Report appears to stem from a misapprehension that the FHWA is only required to consider effects to features or structures that have specifically been identified as contributing features to the historic district, such as the WVC & P Railroad grade or the coke ovens, and that open space, natural, and topographical features are non-contributing aspects of the Historic District. This plainly erroneous evaluation standard may have been based on the initial view of the West Virginia State Historic Preservation Officer ("SHPO"), when the agencies were in the process of assessing the historic significance of the Blackwater Industrial Complex, that the Blackwater Industrial Complex should be considered a discontinuous historic district due to reclamation activities that have altered portions of the area. However, the Keeper of the National Register expressly rejected this narrow view of the significance of the Blackwater Industrial Complex, and instead determined that the boundaries of the historic district should include the entire 1,693-acre complex. The bridge will be visible from, and indeed located within, substantial portions of the Blackwater Industrial Complex Archaeological and Historic District other than the reclamation area.

There is no support for the view that the unaltered landscape of the Blackwater Industrial Complex, including its open space and nature features, are not contributing resources to this historic district. Rather, this unaltered landscape plainly contributes to the setting of the specifically identified features, and the overall significance, of the Blackwater Industrial Complex Archaeological and Historic District. As the National Park Service guidance recognizes, the setting for archaeological districts "includes elements such as topographic features, open space, views, landscapes, vegetation, man-made features . . . and relationships between buildings and other features." National Park Service Bulletin No.36, "Guidelines for Evaluating and Registering Historical Archaeological Sites and Districts (2000). As one court held, the FHWA "must consider more than individual buildings and structures in an historic district when analyzing the impact of a project," but must also include elements as "[t]opographical features such as a gorge or the crest of a hill", "[v]egetation", and "[r]elationships between buildings and other features or open space." *Concerned Citizens Alliance, Inc. v. Slater*, 176 F.3d 686, 697 (3d Cir. 1999) (citing National Park Service National Register Bulletin No. 15).

As the Advisory Council on Historic Preservation previously explained in the context of this project, "we do not agree that a highway located a mere 100, 200 or even 300 from that property is "in the distance," particularly when that intrusive element is large in scale than it is distant from the property. Such a structure becomes . . . the dominate feature in the viewshed, intrusive and out of character with a relative intact rural setting." Letter to Mr. Samuel G. Bonasso, PE, Secretary WVDOT, from John M. Fowler, Executive Director, ACHP (June 9, 1999) (copy attached). Indeed, as the U.S. Forest Service ("USFS") stated in its comments on the Draft Criteria of Effects Report, "a bridge of the proportions necessary for this project cannot fail to have an adverse effect on the integrity of setting, feeling and, possibly, association" of the Blackwater Industrial Complex. See Letter from Clyde N. Thompson, Monongahela National

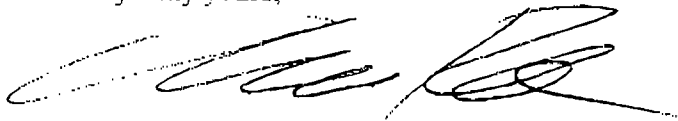
Mr. Tom Smith
December 12, 2003
Page 3

Forest Supervisor, USFS, to Ben Hark, West Virginia Department of Transportation ("WVDOT"), dated July 29, 2002. Although the USFS subsequently changed its determination of adverse effect based on WVDOT's willingness to providing funding to the USFS for a "program of signage," better signage will not in any way avoid, minimize, or mitigate the adverse effects so eloquently described in the USFS's original letter. The USFS's change of position merely reflects a political compromise struck by the agency as a condition of obtaining funds from WVDOT rather than a consensus that signage will in any way alleviate the project's adverse effects.

Finally, Corridor H Alternatives, Inc. disagrees with the conclusion in the Draft Criteria of Effects Report that the auditory impacts of the project will not result in an adverse effect on the Blackwater Industrial Complex Archaeological and Historic District because the noise-impacted area only represents approximately 8% of the total area occupied by the Historic District. Draft Criteria of Effects Report, at 12-14. As the courts have recognized, the determination of the impact on protected properties "requires a far more subtle calculation than merely totaling the number of acres to be asphalted." *D.C. Federation of Civic Association v. Volpe*, 459 F.2d 1231 (D.C. Cir. 1971), *supp. op.*, 459 F.2d 1263, *cert. denied*, 405 U.S. 1030 (1972). Rather, the agency's conclusions "must bear some relevance to the value, significance, and enjoyment of the lands at issue." *Allison v. Department of Transportation*, 908 F.2d 1024, 1029 (D.C. Cir. 1990). The period of significance of the Blackwater Industrial Complex Archaeological and Historic District pre-dates the modern automobile, and the area's setting is predominantly rural. The significant noise generated by highway traffic will be out-of-character with the Historic District and diminish its integrity, and therefore contributes to the adverse effect of the undertaking.

Please don't hesitate to contact me at (202) 974-5142 if you have any questions or need any additional information.

Very truly yours,



Andrea C. Ferster

Enc.

cc: Mr. Don Klima, Advisory Council on Historic Preservation
Ms. Susan Pierce, WV State Historic Preservation Office
Mr. James Sothen, West Virginia Department of Transportation
Mr. Clyde Thompson, Supervisor, Monongahela National Forest

Advisory Council On Historic Preservation

The Old Post Office Building
1100 Pennsylvania Avenue, NW, #808
Washington, DC 20004

JUN - 9 1999

Mr. Samuel G. Bonasso, P.E.
Secretary, West Virginia
Department of Transportation
1900 Kanawha Boulevard
Building Five, Room 110
Charleston, WV 25305-0430

Ref: Appalachian Corridor H
Federal Project APD-0484(059)
West Virginia

Dear Mr. Bonasso:

This letter follows up our earlier response to your concerns regarding the Council's handling of effects determinations. You raised concerns as to whether Council staff adhered to two basic legal principles: the Council's regulations implementing Section 106 of the National Historic Preservation Act and the Administrative Procedures Act.

We have carefully reviewed the position paper you provided which is clearly the product of considerable thought by your department. While we commend your efforts, we are, regrettably, at odds with your analysis and resulting conclusions. The issue of setting can present challenges to those involved in assessing how projects may affect historic properties. Existing guidance and accumulated experience offer some direction; however, all such professional judgements remain somewhat subjective and must be tempered by a healthy dose of common sense.

First the evaluation process: National Register guidance, as quoted in your paper, does state that property boundaries should include the surrounding land that "*contributes to the significance of the resource by functioning as its setting.*" You also cite the National Register Manual for State Historic Preservation Review Boards which directs that boundaries should include "*all the aspects or qualities that contribute the [the property's] significance.*" Underlying this National Register guidance is the fundamental principle that historic properties cannot be understood or appreciated if divorced from the environment in which they exist. The relationship of an historic property to its surroundings, and the historical and visual integrity of that relationship, are important factors in defining the geographic and three dimensional nature of the property as it exists today.

2

National Register guidance states that the physical features that constitute the setting of a historic property can be either natural or manmade including such elements as: topographic features (a gorge or the crest of a hill); vegetation; simple manmade features (paths or fences) and relationships between buildings and other features or open space. It further states that these features and their relationships should be examined not only within the exact boundaries of the property, but also between the property and its *surroundings* (*How to Apply the National Register Criteria for Evaluation*, p. 45).

In the context of the Council's regulations, the environment comprising a property's setting extends beyond the visual to audible and atmospheric elements. For this reason, these elements are included in the consideration of impacts to setting, and it is within our purview to consider them as part of the environment. It is our view, one informed by the Council's Criteria of Effect and years of experience working with a wide range of properties, that any discussion of setting must recognize current noise conditions as part of the environment. Your reading that ambient noise levels are somehow separate from the setting is incorrect.

With regard to determining how properties are affected; unfortunately, your reference to the Council's regulations is repeatedly misquoted throughout your letter which may have led to your confusion about the appropriate application of those regulations. The Criteria of Effect (36 CFR § 800.9(a)) specifically cites location, setting, and use as factors which should be considered in addition to a property's significant characteristics in determining effect. The Criteria of Adverse Effect (36 CFR § 800.9(b)) states: "*An undertaking is considered to have an adverse effect when the effect on a historic property may diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association....*" The Council has consistently determined that introduction of a major modern engineering feature, such as a 150-foot double span overpass or a massive berm in close proximity to an historic structure in a substantially pristine setting, is an adverse effect. This finding is consistent with your paper's method of considering dominant elements in the viewshed of an historic structure, and it is consistent with professional preservation practice.

The Council's interpretation of this issue of setting has never been "*if you can see it, then it's an adverse effect*" as suggested by your paper. We agree that a highway visible "*in the distance*" to a person standing on the front step of an historic property might not, in itself, be considered an adverse effect. However, we do not agree that a highway located a mere 100, 200 or even 300 feet from that property is "*in the distance*," particularly when that intrusive element is larger in scale than it is distant from the property. Such a structure becomes, according to your methodology, the dominant feature in the viewshed, intrusive and out of character with a relatively intact rural setting.

We also take exception to your allegation that Council staff did not adhere to the Administrative Procedure Act. We refer you to our correspondence dated December 15, 1998 (copy enclosed), which contains a specific discussion of your misinterpretation of the concept of setting and its relationship to historic properties. In the context of that discussion, we believe our notation of

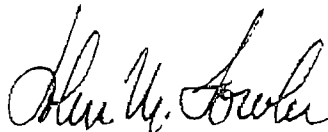
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proximity and scale of the proposed construction within these rural surroundings would lead a reasonable observer to conclude that these structures would constitute an intrusion within the setting, changing the character of a historic property's relationship with its surroundings. We maintain that decisions made in this case were consistent with the governing legal standards, as well as with previous decisions made by the Council.

We regret the delay in responding; however, we have recently learned that you chose to widely distribute your letter to others without providing any notice to the Council. Consequently, we would appreciate receiving a list of parties and addresses to which your letter was directed so we might share our response with them. Since responsibility for making the determinations in question lies with the Federal Highway Administration, any further communication regarding the issues you have raised should also include their views.

We welcome any opportunities to discuss these issues further and would certainly be willing to meet with you and your staff for that purpose. We recommend that any further meeting to address these questions includes representatives of the Federal Highway Administration and the National Register. You may contact me at (202) 606-8505 should you wish to set up a mutually agreeable time to meet. We look forward to continuing the good working relationship among our respective staffs.

Sincerely,



John M. Fowler
Executive Director

Enclosure



United States
Department of
Agriculture

Forest
Service

Monongahela National Forest

200 Sycamore Street
Elkins, WV 26241
304-636-1800

RECEIVED

Code: 2360

Date: October 24, 2002

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

OCT 28 2002

ENGINEERING DIVISION
WV DOH

In Re: Revised Comments on *Appalachian Corridor H, Blackwater Industrial Complex, Archaeological and Historic District, Criteria of Effects Report*, June, 2002.

Dear Mr. Sothen,

Pursuant to the terms of the National Historic Preservation Act of 1966, as amended, and its implementing regulations, 36 CFR 800: Protection of Historic Properties, and pursuant to the terms of the Archaeological Resources Protection Act of 1979 (ARPA) permit issued to the WVDOH for its Corridor H work on National Forest lands, as amended to WVDOH Special Use Permit CHT-01, we are submitting revised comments for the above-referenced report. These revised comments take into consideration the outcome of a meeting held between members of our respective staffs and the Federal Highway Administration on October 8, 2002 in Elkins.

It was decided at the October 8, 2002 meeting to implement a program to mitigate the potential effects of the construction of Corridor H to historic properties on Monongahela National Forest land. Such properties include portions of the National Register eligible Blackwater Industrial Complex.

In a previous letter, dated July 26, 2002, we indicated that the proposed construction of a flying bridge over the Blackwater Industrial Complex would constitute an adverse visual effect that would impact the site's integrity of setting, feeling and, potentially, its integrity of association. Such effects would undermine the continuing eligibility of the site under Criterion D. At that time we indicated that an appropriate and effective means of mitigating this effect would be to undertake a program of interpretive signage along the former West Virginia Central and Pittsburgh Railroad grade. We suggested at that time that this program of signage be funded by the WVDOH and implemented by the Forest Service.

This mitigation effort was tentatively agreed to at the October 8th meeting in Elkins, and confirmed in a further communication with a representative of the Federal Highway Administration, Mr. Henry E. Compton, on October 17, 2002. Given the implementation of this agreement, to be formalized in a Memorandum of Understanding in the very near future, we can now find that the proposed construction of the flying bridge as described in the above-mentioned report will not constitute an adverse effect to the integrity of setting, feeling, or association of the Blackwater Industrial Complex.



Also, in the July 26th letter we expressed some concerns about construction activities in areas of the site where they may potentially impact intact archaeological deposit. Further consultation with your staff, discussion with individuals involved in the initial reclamation efforts, and in consideration of the larger mitigation measures agreed to, have led us to conclude that the construction of the proposed flying bridge will not constitute an adverse effect to buried archaeological or historic resources. During project implementation we recommend that construction activities avoid areas that were not in the reclamation area, but which are shown on historic maps and documents as the location of structures and features associated with the Blackwater Industrial Complex.

We appreciate the opportunity to comment on this matter. Should you require further information, please contact our Forest Archaeologist, Mr. John Calabrese, at (304) 66-1800, ext. 245.

Sincerely,


CLYDE N. THOMPSON
Forest Supervisor

CNT:jac

Cc: Henry E. Compton, Federal Highway Administration
Susan Pierce, WV State Historic Preservation Office
Sandra Forney, USDA, Forest Service, Eastern Region



United States
Department of
Agriculture

Forest
Service

Monongahela National Forest

200 Sycamore Street
Elkins, WV 26241
304-636-1800

File Code: 2360
RECEIVED

JUL 29 2002

ENGINEERING DIVISION
WV DOH

Mr. Ben Hark
Environmental Section Head
West Virginia Division of Highways, Engineering
Division
1900 Kanawha Boulevard, East
Building 5, 4th Floor
Charleston, WV 25305-0430

In Re: Draft, *Appalachian Corridor H, Blackwater Industrial Complex, Archaeological and Historic District, Criteria of Effects Report*, June 6, 2002; received by USDAFS on Monday, July 22, 2002.

Dear Mr. Hark,

Under Section 106 of the National Historic Preservation Act of 1966, as amended, and its implementing regulations, 36 CFR 800, we are submitting our comments on the aforementioned report.

General Comments

Detailed Design Plans/Area of Potential Effect

While the alignment of Corridor H and the bridge spanning Coketon are clearly marked, there is no indication of the planned support and construction facilities that will be required to construct a bridge of that size. These areas, in addition to the span and piers, constitute the actual Area of Potential Effect (APE) of the proposed project. We ask that we be provided copies of detailed plans showing the actual APE, including work staging areas, access corridors, cut-and-fill areas, and any and all construction related activities on National Forest land in or in the vicinity of construction activities.

Until such time as this information is made available to us for comment, we are unable to determine if such activities constitute an effect to the National Register eligible site of Coketon and its many contributing archaeological and historic resources.

Archaeological Survey Coverage

Areas that have been subjected to archaeological survey and testing are not explicitly denoted, nor is there a discussion of the location of potential buried structures, features, and deposits that are currently buried under fill brought in during reclamation activities. According to a November 21, 2000 Memorandum from Katry Harris of Michael J. Baker, Inc. to Ben Hark of the WVDOH, the WVDEP did not prepare the required site maps showing destroyed, extant, and remaining archaeological structures, features and deposits before and after reclamation activities (Harris 2000:3). Therefore, in the absence of archaeological field investigations of the APE, the effects of construction in the APE are unclear.



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Historic documentation of the Coketon area, in addition to actual archaeological survey and testing, may be of help in identifying areas of potential deposit. We have attached a copy of an 1896 Fowler print of Coketon, showing the area under question, for your information.

Specific Responses to Sections of the Report

Physical Impacts: Chapter 4, Page 11, Paragraph 3 and Table 4(A)

Direct physical impacts to the site, as mentioned above, do not take into consideration the full APE. In order to assess the effects of the project, the APE must be clearly defined. If it is determined that the proposed project will alter or detract from the information potential of resources that have the potential to contributing to the National Register District-eligible site of Coketon through the destruction of features, sites, or other deposit, the project would have an adverse effect on the Coketon district. Such an effect would include undermining the research potential of potentially contributing resources and commensurately detracting from the continuing eligibility of the affected resources under Criterion D.

Visual Impacts: Chapter 4, Page 11, Paragraphs 4 through 6 and Table 4(B)

The visual effects analysis states on Page 11, Paragraph 4, that the bridge will be visible from only 8% of the entire nearly 10-mile long Blackwater Industrial Complex. However, as stated on Page 11, Paragraph 6: "Viewsheds from those numerous contributing resources that lie outside of the Coketon area and within the Blackwater Industrial Complex Archaeological and Historic District would not include the proposed project." It is unclear from the language employed if the bridge would not be visible from the rest of the Blackwater Complex outside of Coketon. Clarification of this point is necessary.

Also we take exception to the statement (Table 4[B]) that the placement of the bridge on the landscape will not affect the ability of the site to "convey its historic meaning as a significant concentration of contiguous, interrelated historic industrial and archaeological resources," owing to alterations from the previously mentioned reclamation project. This statement contradicts the Keeper's (August 2001) finding that "we find that the effects of the Coketon area reclamation have had a relatively insignificant impact on the resources and their conveyance of their historic and archaeological importance." Also, whatever the final design of the piers and span, a bridge of the proportions necessary for this project cannot fail to have an adverse effect on the integrity of setting, feeling and, possibly, association of the site. The definitions of each of these three terms are found in the National Register *Bulletin Guidelines for Evaluating and Registering Historical Archaeological Sites and Districts* (1993:19-20) and are as follows:

Integrity of Setting "includes elements such as topographic features, open space, views, landscapes, vegetation, man-made features. . . , and relationships between buildings and other features."

Integrity of Feeling is conveyed if "its features in combination with its setting convey an historic sense of the property during its period of significance. Integrity of feeling enhances a property's ability to convey its significance under all of the criteria."

Integrity of Association is retained on a property "if it is the place where the event or activity occurred and is sufficiently intact to convey that relationship to an observer."

The placement of the bridge will: 1) alter the views and landscapes of Coketon, thereby impacting its integrity of setting; by altering its setting as in 1) the placement of the bridge will adversely affect the integrity of feeling of Coketon and, quite possibly, affect its integrity of association.

Maintaining the integrity of setting, feeling, and association of a site or district is directly related to its continuing eligibility under Criterion D. Therefore, since the integrity of setting, feeling, and, possibly, association of the Coketon site will be adversely affected by the placement of the bridge, the eligibility of the site to the Register under Criterion D will potentially be undermined commensurately. This finding is consistent with the guidelines for assessing adverse effects found in 36 CFR 800.5

Auditory Impacts: Chapter 4, Pages 12 through 13; Table 4(B).

This section of the report (Page 12, paragraph 6) states that "...the Coketon area of the Blackwater Industrial Complex Archaeological and Historic District would experience a noise impact ranging from moderate to substantial from the project." Despite the fact that it is recognized that there will be audible impacts from the bridge, the finding is one of "no effect." We question the consistency of these two statements.

However, it is recognized that the site was formerly a very loud and noisy industrial site. The impacts accruing from the added noise therefore will not have an effect to the historic integrity of the Coketon area. Such auditory impacts may affect the enjoyment of visitors to the area, but that is an issue entirely separate from Section 106 concerns.

Secondary and cumulative Impact Assessment: Chapter 4, Page 13

This section of the report states that since the bridge only spans the site and does not provide direct access to the site, that there are no secondary effects accruing from the bridge. Also, the effects of the planned bicycle path on the former West Virginia Central and Pittsburgh Railroad grade are not considered as effects because "Any access or development would be controlled by those plans and policies controlled by the Monongahela National Forest." There is no mention made in the report that the terms of the February 7, 2000 settlement agreement entered into between Corridor H Alternatives and the USDOT state, indirectly through reference to the 1996 ROD for Appalachian Corridor H, Elkins to I-81, which in turn references the Final Environmental Impact Statement for the same section, dating to June 1995, that the mitigation measures for Corridor H include a bicycle path through the Coketon area. The bicycle path itself is a mitigation measure for Corridor H and its effects therefore should be considered as secondary effects to the overall project considered here.

Thus, the increased traffic flow and access to the site, by both pedestrian and cycling users of the trail, have the potential to increase vandalism and have other unforeseeable cumulative effects to the integrity of the Coketon area.

Conclusions and Recommendations

Owing to the fact that the project may have direct physical impacts to potentially present resources within the APE whose contributing or non-contributing status to the district is not known, we cannot recommend that the finding of "no effect" be maintained for these impacts. Until such time as the presence and integrity of the subsurface archaeological deposit in the APE has been ascertained through fieldwork, we will continue to hold this position in relation to the direct physical impacts of the project.

Also, the visual impacts of the project will, in our estimation, adversely affect the integrity of setting, feeling and, possibly, association of the Coketon area and thereby undermine its eligibility to the NRHP under Criterion D.

Therefore, we recommend that: 1) the actual area of potential effect be determined and that area be archaeologically surveyed and evaluated for effects under Section 106; 2) in order to mitigate the adverse effects to the integrity of setting of the site caused by placement of the bridge and the associated cumulative effects of the bicycle path, that the WVDOT undertake the development of a program of interpretive signage stretching from Thomas to the Hendricks gate. Such a program should focus on the industrial, social, and economic contributions of the Blackwater Industrial Complex and Coketon to the history of West Virginia and the nation. In addition, owing to Forest Service regulations and our internal agency responsibilities, the Forest Service should have design and production responsibilities for signage, while the WVDOT and the FHWA should bear all financial responsibility for signage.

We hope that our comments have been of use to you and look forward to continuing our review responsibilities under Section 106 of the National Historic Preservation Act.

Sincerely,


CLYDE N. THOMPSON
Forest Supervisor

CNT:juc

Enclosures

cc: Sandra Forney (FS Region 9), Ed Compton (FHWA), Susan Pierce (WVSHPO)

Appendix E

Memorandum of Understanding (MOU)

Agreement entered into by and between the FHWA, WVDOT, and MNF in June 2003.



U.S. Department
of Transportation

**Federal Highway
Administration**

West Virginia Division

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

June 9, 2003

IN REPLY REFER TO:

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

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

Dear Mr. Epperly:

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

Sincerely yours,

Sgd. Henry E. Compton

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

Enclosure

MEMORANDUM OF UNDERSTANDING

Between

the Federal Highway Administration,

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

and

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

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

A. PURPOSE:

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

B. BACKGROUND:

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

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

Page 2 of 5

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

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

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

C. AGREEMENTS

1. Historic and Archeological Resources.

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

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

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

Page 3 of 5

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

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

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

3. Boundary Survey of Railway Corridor from Parsons to Thomas

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

4. Agreements to Transfer Funds.

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

5. Limitations on Use of Funds

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

6. Annual Accounting of Expenditures by MNF

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

7. Use of Federal Funds

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

Page 4 of 5

8. Construction Impacts within MNF

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

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

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

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

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

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

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

9. Effective Date

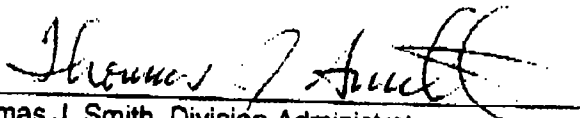
This MOU will become effective upon signature by all parties and shall remain in effect until terminated by any party.

10. Termination and Amendments

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

Page 5 of 5

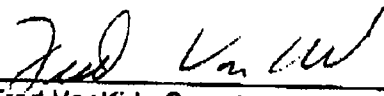
SIGNED:



 Thomas J. Smith, Division Administrator
 Federal Highway Administration

6/9/03

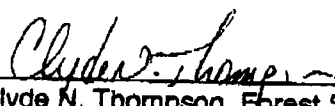
 Date



 Fred VanKirk, Secretary
 West Virginia Department of Transportation

4/9/03

 Date



 Clyde N. Thompson, Forest Supervisor
 Monongahela National Forest

3/27/03

 Date