

## **SECTION IV: SECTION 4(F) AND 6(F) ANALYSES**

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In accordance with FHWA guidance, this Supplemental Final Environmental Impact Statement (SFEIS) incorporates by reference the Final Environmental Impact Statement (FEIS) and the subsequent Record of Decision (ROD) for the Appalachian Corridor H Project, both issued in 1996. The Parsons-to-Davis Project Supplemental Draft Environmental Impact Statement (SDEIS) was signed and circulated for public and agency comment in December 2002.

In 2003 and 2004, Preferred Alternative Reports were prepared and circulated for agency concurrence. The Revised Original Preferred Alternative (ROPA) has been identified as the preferred alternative for the Parsons-to-Davis Project. This SFEIS incorporates updated information and analysis since the December 2002 SDEIS, as appropriate. Substantive comments received on the SDEIS, are addressed throughout the document and corresponding responses are provided in Appendix A. Substantive comments received on this SFEIS will be addressed in the Amended Record of Decision.

### **4.1 PROJECT HISTORY**

#### **4.1.1 INTRODUCTION**

The 2000 Settlement Agreement states in part: "The SEIS will evaluate a reasonable range of alternatives for completing the Thomas-Davis Section of the Parsons-to-Davis Project. The range of alternatives will include one or more Blackwater Avoidance Alignments and the Blackwater Alignment." The Settlement Agreement continues: "The SEIS will evaluate the Blackwater Avoidance Alignment(s) to determine whether there is any such alternative that 1) is "feasible" and "prudent" and 2) does not "use" any land protected by Section 4(f). The evaluation required by this paragraph will be included in draft form in the Draft SEIS and in final form in the Final SEIS." The final Section 4(f) as well as Section 6(f) analyses are included in this section of the SFEIS.

As defined in the 2000 Settlement Agreement "Section 4(f) means Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C § 303(c)." Section 4(f) regulations are provided in 49 CFR 771.135 and in various Federal Highway Administration (FHWA) guidance documents. Section 4(f) regulations define "land" protected by Section 4(f) as a "significant publicly owned public park, recreation area, or wildlife or waterfowl refuge, or any significant historic site" (49 CFR 771.135 (a)(1)).

#### **4.1.2 DESCRIPTION OF THE PROJECT**

The West Virginia Department of Transportation (WVDOT), in conjunction with the FHWA, is proposing to construct an approximately 9-mile long highway between Parsons and Davis in Tucker County, West Virginia. This Parsons-to-Davis Project is a component of the Appalachian Corridor H Project which is a proposed 100-mile highway between Elkins and the West Virginia-Virginia state line, spanning Randolph, Tucker, Grant, and Hardy counties in West Virginia.

As a result of legal challenges, a Settlement Agreement required the WVDOT and FHWA to prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate one or more alignment shifts for the Thomas-Davis Section of the Parsons-to-Davis Project to determine if avoidance of the Blackwater Area, also defined in the Settlement Agreement (Appendix B), was prudent and feasible. Additionally, discovery of an endangered species within the limits of the Original Preferred Alternative (OPA) between Parsons and Davis has necessitated that the SEIS address the entire length of the Parsons-to-Davis Project and not just the Thomas-Davis Section. Therefore, the Study Area was expanded to encompass the entire Parsons-to-Davis Project.

### 4.1.3 PURPOSE AND NEED

The Parsons-to-Davis Project is a component of the Appalachian Corridor H Project. As a section of that corridor, it is expected to contribute to addressing needs identified in the 1996 Corridor H FEIS:

- Improve east-west transportation through northeastern West Virginia.
- Promote economic development in the region, and
- Preserve or improve the quality of life in the region.

Additionally, at the local level, communities have identified two specific “quality of life” needs that could be addressed by the Parsons-to-Davis Project:

- Reduce truck traffic through the City of Thomas.
- Improve emergency response times and access to emergency facilities.

A detailed discussion of the need for and purpose of the project is presented in *Section I: Project Background and Need*.

## 4.2 SECTION 4(F) OVERVIEW

This report has been prepared pursuant to Section 4(f) of the Department of Transportation Act of 1966 as amended (49 U.S.C. 3030), Section 138 of the Federal-aid Highway Act of 1968, and FHWA regulations in 23 CFR 771.135. The U.S. Department of Transportation Act of 1966, Section 4(f) states, in part, that:

“the Secretary shall not approve any program or project which requires the use of any publicly owned land from a park, recreation area, or wildlife and waterfowl refuge of national, state, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from a historic site of national state or local significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreation area, wildlife and waterfowl refuge or historic site resulting from such use.”

### 4.2.1 SECTION 4(F) USE DEFINED

#### 4.2.1.1 *Direct Use*

A direct use of a Section 4(f) resource occurs:

- When land is permanently incorporated into a transportation facility, or
- When there is a temporary occupancy of land that is adverse in terms of the statute’s preservationist purposes.

#### 4.2.1.2 *Constructive Use*

Constructive use of a Section 4(f) resource occurs when the transportation project does not incorporate land from a Section 4(f) resource, but the project’s proximity impacts are so severe that the protected activities, features, or attributes that qualify a resource for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the resource are substantially diminished (23 CFR 771.135).

## 4.3 IDENTIFICATION AND DESCRIPTION OF SECTION 4(F) RESOURCES IN THE STUDY AREA

There are three resources in the study area where Section 4(f) is potentially applicable (Exhibit IV-1):

- City of Thomas Park (proposed);

- Blackwater Industrial Complex Archaeological and Historic District (Blackwater Industrial Complex) - considered eligible as an historic district with the West Virginia Central and Pittsburg (WVC&P) Railway and the Coketon study area considered contributing resources to the historic district; and
- West Virginia Central and Pittsburg (WVC&P) Railway - considered individually eligible as a discontinuous historic district with one individually eligible contributing resource – the Stone Arch Bridge over an unnamed tributary of the North Fork of the Blackwater River near William, West Virginia.

Each of these resources and their Section 4(f) applicability is discussed in further detail below.

#### **4.3.1 CITY OF THOMAS PARK (PROPOSED)**

##### **4.3.1.1 Physical Description**

The City of Thomas owns a 145-acre parcel in the Study Area that it intends to develop as a public park (City of Thomas, 1998) (Table IV-1). No park facilities are currently present on the parcel. Exhibit IV-1 provides a map showing the relationship of the proposed park with the Revised Original Preferred Alternative (ROPA).

**Table IV-1  
Description of Thomas Park (Proposed)**

<b>Property Size</b>	145 acres
<b>Ownership</b>	City of Thomas
<b>Function</b>	Public Park
<b>Existing and Planned Facilities</b>	Public Park
<b>Access and Usage</b>	Public Recreation
<b>Relationship to other similarly used property in the area</b>	None
<b>Applicable clauses affecting ownership</b>	None
<b>Unusual Characteristics</b>	None

##### **4.3.1.2 Section 4(f) Applicability**

Based on consultation with the owner of the park facility (City of Thomas), it has been determined that Section 4(f) is not applicable to the proposed park. The City of Thomas is continuing to develop plans for the park. By resolution dated March 13, 2001 (Appendix A), the City stated: "The City of Thomas passed a resolution stating that we would like to develop the property as a park but we would like to do it jointly with the West Virginia Division of Highways and the Federal Highway Administration such that Corridor H may be located within property boundaries [of the park]." The FHWA Section 4(f) Policy Paper dated June 7, 1989 outlines whether or not Section 4(f) applies to joint development (i.e., when a tract is reserved for a highway corridor at the time the development plan for the tract is established). The Policy Paper states: "The requirements of Section 4(f) do not apply to the subsequent highway construction on the reserved right-of-way as previously planned." Therefore, Section 4(f) is not applicable to the planned City of Thomas Park.

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

**4.3.2.1 Physical Description**

The Keeper of the National Register (Keeper) has determined the Blackwater Industrial Complex Archaeological and Historic District (Blackwater Industrial Complex) (Table IV-2) is eligible for the National Register under criteria A, B, C, and D as a historical and archaeological district. In a letter dated August 2, 2001 (Savage, August 2, 2001, letter is included in Appendix A), 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.”

The Blackwater Industrial Complex encompasses a 10-mile stretch of the WVC&P Railway and the Coketon study area that are both considered contributing resources to the district. The Coketon study area has been determined by the West Virginia State Historic Preservation Office (WVSHPO) to be eligible for inclusion in the National Register of Historic Places (NHRP) under Criterion D for its information potential (Pierce, January 17, 2001, letter is included in Appendix A). Exhibit IV-1 provides a map showing the relationship of this resource and its contributing resources with the ROPA.

**Table IV-2  
Description of Blackwater Industrial Complex Archaeological and Historic District**

<b>Property Size</b>	1,700 acres
<b>Ownership</b>	Various
<b>Function</b>	None
<b>Existing and Planned Facilities</b>	None
<b>Access and Usage</b>	None
<b>Relationship to other similarly used property in the area</b>	None
<b>Applicable clauses affecting ownership</b>	None
<b>Unusual Characteristics</b>	None

#### **4.3.2.2 Historical Background**

A detailed description and history of the Blackwater Industrial Complex is presented in the Keeper of the NRHP's August 2, 2001 Determination of Eligibility Notification and is included here by reference (Appendix A).

#### **4.3.2.3 Section 4(f) Applicability**

The district has been determined to be eligible for listing on the NRHP; therefore, Section 4(f) is applicable to this resource.

### **4.3.3 THE WEST VIRGINIA CENTRAL & PITTSBURG (WVC&P) RAILWAY**

#### **4.3.3.1 Physical Description**

The rail corridor, historically known as the West Virginia Central & Pittsburg (WVC&P) Railway and locally known as the Western Maryland Railway, extends in its entirety from Cumberland, Maryland to Elkins, West Virginia. An approximately 10-mile portion of the rail corridor from immediately west of Hambleton continuing to Thomas, within the Blackwater Industrial Complex is the focus of this analysis (Table IV-3) and is considered a contributing resource to the Blackwater Industrial Complex (see above). This portion of the railway is characterized by steep terrain, many drainages, and dramatic structures. The WVC&P Railway is also considered individually eligible as a discontinuous historic district with one individually eligible contributing resource – the Stone Arch Bridge over an unnamed tributary of the North Fork of the Blackwater River near William. Exhibit IV-1 provides a map showing the relationship of this resource and its contributing resources with the ROPA.

**Table IV-3  
Description of the West Virginia Central & Pittsburg (WVC&P) Railway**

<b>Property Size</b>	For the purposes of this analysis, the focus is on the section of the WVC&P Railway within the Blackwater Industrial Complex Archaeological and Historic District, which according to the Keeper of the NHRP is 10 miles long and approximately 50 feet wide (Total Area = 60.6 acres).
<b>Ownership</b>	United States of America and John Crites (the deeds indicate the property line extends along the center of the railbed).
<b>Function</b>	Access to private land, public hiking trail.
<b>Existing and Planned Facilities</b>	Abandoned railbed is slated for Bike Path development
<b>Access and Usage</b>	Access points at lock locations; Public use for recreation and education.
<b>Relationship to other similarly used property in the area</b>	Monongahela National Forest
<b>Applicable clauses affecting ownership</b>	The United States Forest Service Monongahela National Forest (USFS MNF) is bound by law to provide landowner access to private lands surrounded by USFS MNF property.
<b>Unusual Characteristics</b>	The property line extends along the center of the railbed.

### **4.3.3.2 Historical Background**

A complete detailed description and history of the WVC&P Railway is presented in *Appalachian Corridor H: Sections 12 and 13, Architectural and Historical Documentation* (submitted to the Keeper of the NRHP, March 1999), and is included here by reference.

### **4.3.3.3 Section 4(f) Applicability**

The WVC&P Railway has been determined to be individually eligible for listing on the NRHP as a discontinuous historic district; therefore, Section 4(f) is applicable to this historic resource.

## **4.4 IMPACTS ON PROPERTIES WHERE SECTION 4(F) IS APPLICABLE**

### **4.4.1 BLACKWATER INDUSTRIAL COMPLEX ARCHAEOLOGICAL AND HISTORIC DISTRICT**

The Blackwater Industrial Complex is traversed by the ROPA/Preferred Alternative. The ROPA/Preferred Alternative will cross above the Blackwater Industrial Complex on structure (i.e. bridge) (Exhibit IV-2). The structure will be designed with piers located in the historic boundary; however, those piers will be designed so that property/structures that are individually eligible (e.g., WVC&P Railway grade) will not be directly impacted by the project nor will property be used that contributes to the factors that make the district historic (i.e., contributing resources).

A final Criteria of Effects (COE) Report was prepared for this resource in accordance with the 1995 Programmatic Agreement developed for the Appalachian Corridor H Project and Section 106 of the National Historic Preservation Act. The final COE Report (February 2004) was provided to resource agencies and stakeholders after a draft version (June 2002) had been circulated and comments on the draft had been addressed. The final COE Report specifically addressed the potential effect of the ROPA/Preferred Alternative on this resource. The final COE Report (February 2004) is incorporated here by reference, and its findings are summarized below.

The final COE Report was prepared in accordance with 36 CFR 800 and specifically evaluated: 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 study area). The methodology used in assessing the potential impacts was based on the type of impact: direct physical, visual, auditory, or induced development in land use. Each type of impact and its methodology for evaluation is described in the final COE Report.

After the analyses were conducted for the final COE Report, it was concluded that 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;
- 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 United States Forest Service Monongahela National Forest (USFS MNF); and the topography of the area.

Consultation with the WVSHPO has determined that through careful placement of piers within the boundaries of the resource, the project will have no adverse effect to the Blackwater Industrial Complex (see letters dated June 23, 2004 and October 30, 2002, included in Appendix A). Additionally, the USFS MNF concurred with the findings of the final COE Report in a letter dated April 14, 2004 (Appendix A).

Further, the ROPA/Preferred Alternative will cross the National Register boundary of the Blackwater Industrial Complex on structure. The structure will be designed with piers located within the historic boundary; however, those piers will be placed so that property that is individually eligible (e.g., WVC&P Railway grade) will not be used by the project nor will property be used that contributes to the factors that make the district historic (i.e., contributing resources). Since the ROPA/Preferred Alternative does not take property that is individually historic or contribute to the factors that make the district historic, and since the project will have no adverse effect to the resource, the FHWA made a final determination that the ROPA/Preferred Alternative would not result in a Section 4(f) use of the Blackwater Industrial Complex. FHWA policy states that. "In the absence of an adverse effect determination, Section 4(f) will not apply (FHWA, Section 4(f) Policy Paper, March 1, 2005, 3. Historic Sites, Question/Answer C – reproduced in toto below). Therefore, it has been concluded that the project as proposed will not constitute a Section 4(f) use of the Blackwater Industrial Complex.

Question C: How does Section 4(f) apply in historic districts on or eligible for National Register?

Answer C: Within a National Register (NR) listed or eligible historic district, Section 4(f) applies to the use of those properties that are considered contributing to the eligibility of the historic district, as well as any individually eligible property within the district. It must be noted generally, that properties within the bounds of an historic district are assumed to contribute, unless it is otherwise stated or they are determined not to be. For those properties that are not contributing elements of the district or individually significant, the property and the district as a whole must be carefully evaluated to determine whether or not it could be used without substantial impairment of the features or attributes that contribute to the NR eligibility of the historic district.

The proposed use of non-historic property within an historic district which results in an adverse effect under Section 106 of the NHPA will require further consideration to determine whether or not there may be a constructive use. If the use of a non-historic property or non-contributing element substantially impairs (see Question 2 B) the features or attributes that contribute to the NR eligibility of the historic district, then Section 4(f) would apply. In the absence of an adverse effect determination, Section 4(f) will not apply [emphasis added]. Appropriate steps, including consultation with the SHPO and/or THPO, should be taken to establish and document that the property is not historic, that it does not contribute to the National Register eligibility of the historic district and its use would not substantially impair the historic district.

#### **4.4.2 THE WEST VIRGINIA CENTRAL AND PITTSBURG (WVC&P) RAILWAY**

Based on consultation with the WVSHPO, it has been determined that the ROPA/Preferred Alternative would not have an adverse effect on this resource or its contributing structures nor does the project have an adverse effect on the Blackwater Industrial Complex to which the WVC&P Railway is a contributing resource. With respect to historic resources on the NHRP or eligible for listing on the NHRP, constructive use does not occur when compliance with Section 106 of the

National Historic Preservation Act results in a determination of “no effect” or “no adverse effect” (23 CFR 771.135(p)(5)(i)). Therefore, none of the alternatives under consideration “use” this Section 4(f) protected resource.

#### **4.5 SECTION 4(F) CONCLUSION**

It is the finding of this analysis of Section 4(f) that no resources eligible for protection under Section 4(f) will be directly or constructively used by the ROPA/Preferred Alternative. Further, none of the Blackwater Alternatives or Blackwater Avoidance Alternatives considered during the SEIS directly or constructively use a Section 4(f) protected resource.

#### **4.6 SECTION 6(F) ANALYSIS**

In accordance with Section 6(f) of the 1965 Land and Water Conservation Fund Act (LWCFA), overall evaluations were conducted for properties considered to be qualified for Section 6(f) evaluations. The stated purpose of the LWCFA (16 USC 4601-4 et seq.) is to assist in preserving, developing, and assuring access to outdoor recreation resources by providing funds and assistance to states in planning, acquisition, and development of needed land and water areas and facilities. Section 6(f) of the LWCFA (16 USC 4601-8(t)(3)) states that “No property acquired or developed with assistance under this section shall, without the approval of the Secretary [of the Interior], be converted to other than public outdoor recreation uses.” Approval of such conversions is contingent upon the substitution of other recreation properties of at least equal fair market value and of reasonably equivalent usefulness and location.

State and local governments often obtain grants through the LWCFA to acquire or make improvements to parks and recreation areas. Section 6(f) of the LWCFA prohibits the conversion of property acquired or developed with these grants to a non-recreational purpose without the approval of the United States Department of the Interior (DOI) – National Park Service (NPS).

##### **4.6.1 RESOURCE IDENTIFICATION AND CONVERSION EVALUATION**

Based on coordination with the DOI and the West Virginia Division of Community Development, there are no Section 6(f) properties in the Study Area. Therefore, the ROPA/Preferred Alternative will not require any conversions of Section 6(f) property to transportation use. Further, none of the Blackwater Alternatives or Blackwater Avoidance Alternatives considered during the SEIS requires any conversion of Section 6(f) property in the Study Area.