

Stewards of the Potomac Highlands

PO Box 341

Wardensville, WV 26851

PotomacHighlandStewards.org



Nov. 13, 2023

Via Email

Mr. Travis Long, P.E, Director
Tech. Support Division WVDOH
travis.e.long@wv.gov

Hon. Pete Buttigieg, Secretary
U.S. Department of Transportation
DOTExecSec@dot.gov

Mr. Shailen Bhatt, Administrator
Federal Highway Administration
shailen.bhatt@dot.gov

Mr. Jeff Blanton, Division Administrator
Federal Highway Administration, WV Division
jeffrey.blanton@dot.gov

Mr. Jason Workman, Director (Program Development)
Federal Highway Administration, WV Division
jason.workman@dot.gov

Mr. Douglas Kirk, Environmental Compliance Officer, WVDOH
douglas.w.kirk@wv.gov

Re: Corridor H Comments — Wardensville to the VA Line
X316-H-125.16, NHPP (0484)118, Hardy County

Dear Mr. Long:

Stewards of the Potomac Highlands (“Stewards”) respectfully submits the following comments on the West Virginia Division of Highways’ planned construction of the Appalachian Corridor H project from Wardensville to the Virginia state line.

Stewards—a 501(c)(4) environmental group established in 2001—works in West Virginia’s northeastern counties and neighboring counties to protect the area’s rich heritage and support an environmentally and socially sustainable, locally-controlled economy. Economically and culturally, our area has a proud tradition of small farm and forest ownership and historic towns. However, the proposed Corridor H highway project (Wardensville to Virginia state line section), if built, will fundamentally alter many of the iconic values that make this area so incredibly unique. This project will have economic, environmental, and other ripple consequences, decades—indeed, centuries—into the future. Stewards has long been involved in the Corridor H highway project, especially the Wardensville to Virginia state line section, and remains concerned about the understudied effects of this road to nowhere.

On June 5, 2023, Stewards formally requested that the Federal Highway Administration (“FHWA”), in partnership with the West Virginia Department of Highways (“WVDOH”), prepare a supplemental environmental impact statement (“EIS”) for the Wardensville to Virginia state line section of the Corridor H highway project pursuant to the Administrative Procedure Act (“APA”)(5 U.S.C. §§ 553(e), 555(e)) and the National Environmental Policy Act (42 U.S.C. §§ 4321-4347). We further requested a response, pursuant to the APA, letting us know that a supplemental EIS would be prepared or explaining why one would not be prepared. No response has been presented. To date, WVDOH pursues appraisals to enable the purchase of rights-of-way and has begun core drilling along their preferred route. These actions, and others, raise serious questions about whether the agencies intend to engage in the NEPA process in good faith. Thus, we take this opportunity to comment on the need for a supplemental EIS and additionally comment on issues with the project as it has been conducted in recent years.

Statutory and Regulatory Framework

NEPA's implementing regulations, promulgated by the Council on Environmental Quality ("CEQ"), *see* 40 C.F.R. §§ 1500-1508, state that agencies "[s]hall prepare supplements to either draft or final [EISs] if a major Federal action remains to occur, and: (i) The agency makes substantial changes to the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts." *Id.* § 1502.9(d)(1)(i), (ii). Those regulations further explain that agencies "[m]ay also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so." *Id.* § 1502.9(d)(2).

FHWA's parent agency—the U.S. Department of Transportation ("DOT")—has promulgated additional NEPA regulations that overlap and supplement the obligations imposed on FHWA by CEQ's regulations. Pertinent here, while FHWA may conduct a "Re-evaluation" under certain circumstances, 23 C.F.R. § 771.129, a supplemental EIS is required where "[c]hanges to the proposed action would result in significant environmental impacts that were not evaluated in the EIS"; or "[n]ew information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS." *Id.* § 771.130(a)(1), (2). If FHWA "is uncertain of the significance of the new impacts, the applicant will develop appropriate environmental studies or, if . . . appropriate, an EA [Environmental Assessment] to assess the impacts of the changes, new information, or new circumstances." *Id.* § 771.130(c).

Brief Factual Background

The Wardensville to Virginia state line section of Corridor H, now estimated to cost \$189 million for a mere 6.8 miles of highway, would adversely affect (and possibly destroy) the character and rural landscape of Wardensville, considered the "Gateway to the Mountains," by razing homes, bisecting farms and impacting the lives of homeowners in its path. This easternmost section of the road would

cross through the iconic George Washington National Forest, and it would bypass and thus severely impair the economy of Wardensville’s historic Main Street district. The far-reaching consequences of this project will have economic, environmental, and other ripple effects immediately and long into the future.

Nonetheless, it appears that WVDOT and FHWA are insistent on moving forward with construction of this project, notwithstanding the serious adverse effects it will cause to local communities, citizens, and the natural ecosystem. Corridor H has long been mired in lawsuits and controversy, leading to a situation in which 27 years have passed since FHWA issued the 1996 Final EIS (“FEIS”) for this still-unbuilt section. The 2003 amended Record of Decision (“ROD”) for the Wardensville to Virginia Line section – an analysis which is itself now 20 years old - concluded that “no new information or changed circumstances exist that would require supplementation of the [1996] FEIS.” (*FHWA, Amended ROD, at 4.*) As a result, FHWA has not conducted *any* NEPA compliance for this project since 1996—nearly three decades ago.

In February 2022, WVDOT and FHWA announced a Re-evaluation to determine whether this project warrants a supplemental EIS, and in its September 21, 2023 meeting handout announced that an EA would be issued in 2024. Stewards credits the agencies’ decision to take this first step toward NEPA compliance, even if long overdue. Nevertheless, WVDOT and FHWA’s handout announced that right-of-way acquisition would begin in early 2023, and estimated that project construction would commence in late 2024; this presumes the re-evaluation’s result before it has even begun. Further, the agencies stated that they would begin core boring activities along the Preliminary Alignment. WVDOT obtained an NPDES permit for the core drilling in July 2023. The permitting occurred without WVDEP providing public notice of the draft permit as required by state and federal law. Nonetheless, core drilling has begun along the State’s preferred route.

DISCUSSION

It is beyond legitimate dispute that the Wardensville to Virginia state line section of the Corridor H highway project warrants a supplemental EIS under NEPA and its implementing regulations. Not only is the 1996 EIS severely outdated and entirely stale simply by virtue of its age, but new information and circumstances of major import have arisen in the last 27 years such that preparation of supplemental EIS is essential. Below, we provide several representative examples of new information or changed circumstances that individually—and certainly collectively—trigger the obligation to prepare a supplemental EIS. An EA alone is entirely insufficient.

- **Purpose and need—and changing values**

FHWA stated in its 2003 Amended ROD that the Wardensville to Virginia state line segment would provide for easier travel to and from work, for recreation and shipping, as well as improved linkage among major roadways, including to I-81 / I-66 in Virginia. However, it appears that the purpose and need underlying the 2003 Amended ROD is no longer valid and thus must be reexamined, as must a reasonable range of alternatives that can meet the current purpose and need, in a supplemental EIS based on modern information.

Traffic counts for 2023 at <https://gis.transportation.wv.gov/aadt/> show that traffic volume on Route 55 and all area roads and highways averages between 999 and 5,000 vehicles per day, including on the built four-lane sections of Corridor H, all the way to Moorefield. While there are some safety issues and busier times of the day or week, the volume hardly calls for a four-lane highway from Wardensville to the Virginia line.

WVDOH has stated that the new purpose and need for Appalachian Corridor H is, “[t]o improve east-west transportation, to promote economic development in the region, and to preserve or improve the quality of life in the region.” First, this speaks to overall purpose and need of the entire Appalachian Corridor H, most of which has already been built. The Wardensville to VA line section of Corridor H is not necessary to meet this goal. Additionally, Virginia has no plans to build its section, so east-west

transportation improvements will be minimal with a four-lane ending at the state line. Highway officials have publicly stated that they plan to force Virginia to build the four-lane by bringing traffic to the state line. We do not know of any authority by which WVDOH can accomplish this; indeed the stated intention to pressure eventual construction beyond the state line suggests that analyzing the environmental impacts only as far as the border constitutes illegal segmentation.

Moreover, another longstanding stated purpose for this section of Corridor H was to allow through traffic to avoid passing through downtown Wardensville, a purpose which is now obsolete. The area has since been declared a historic district and has attracted significant tourism investments during the last 20 years since FHWA issued the 2003 Amended ROD. Recent studies internationally have documented adverse effects of highway bypasses on small town Main Streets that are indistinguishable from this downtown historic district. This also necessitates that a supplemental EIS is required to examine the purpose and need for this segment of Corridor H considering actual, current information about the project and the needs of the affected communities.

The WVDOH has made clear, in its Sept. 21 public meeting handout, that they are in the process of obtaining rights-of-way for property that will displace Wardensville area residents. These residents whose homes and land are taken by Corridor H face both an emotional and economic dilemma. The area's average income is lower than the state and national average, but land and house prices are rapidly escalating. The median household income in Wardensville, WV, in 2021 was \$40,833, which was 25.5% less than the median annual income of \$51,248 across the entire state of West Virginia. Wardensville's median age is 44.5, almost two points older than West Virginia, which tends to have an elderly population. About a quarter of the town's residents are below poverty level, and 60% have not finished high school. These demographics show that a good portion of those displaced are likely to be people who are elderly, who have a fixed-income, or both. Besides the trauma of losing a long-term residence, they will have difficulty finding a place to live in the area, given the increases in rent and housing prices.

The impact that building this highway will have on the socioeconomic status of these individuals and the area as a whole must be studied—including possible effects from loss of population on the town’s already-limited tax base.

- **Endangered and Threatened Species**

We plan to submit detailed comments on these issues after the Environmental Assessment.

However, we want to be sure to raise these preliminary points.

There have been major, legally substantive changes in the last 27 years related to several federally protected species listed under the Endangered Species Act, 16 U.S.C. §§ 1531-1544. This includes both new listing determinations by the U.S. Fish and Wildlife Service for species such as the Northern Long Eared bat and the Rusty Patched bumble bee. It also includes significant new information and scientific understanding as to the stressors and risks (such as climate change and habitat fragmentation from highways and other development projects) that these and many other imperiled species (e.g., Indiana bat, Virginia big-eared bat) face. Even if WVDOH and FHWA intend to consult with the U.S. Fish and Wildlife Service under section 7 of the ESA, 16 U.S.C. § 1536(a)(2), to obtain incidental take authorization for these species in connection with this project, the agencies have a separate legal obligation under NEPA to take a hard look at these issues—which were not yet known and/or had not yet occurred at the time of the 1996 EIS—in a supplemental EIS, in order to comply with NEPA and its implementing regulations.

Field surveys in the project area documented several wood turtles (*Glyptemys insculpta*) in the mainstem of Waites Run and associated tributaries, as well as Slate Rock Run headwater tributary in 2020. The Wood Turtle is listed as a Species of Greatest Conservation Need in the State Wildlife Action plan in all 17 states where it occurs and is considered endangered by the International Union for Conservation of Nature. It has been petitioned for listing under the Endangered Species Act. [According](#)

[to the U.S. Fish and Wildlife Service](#), a determination of the wood turtle's status is expected in 2023.

Some of the biggest reasons contributing to the turtle's decline are roadways and increased development—which Corridor H will exacerbate. Not only, then, will the turtle be harmed during construction of this highway, but by the further development that is an intended consequence.

- **George Washington National Forest**

It is our understanding that WVDOH and FHWA have not requested a special use permit from the George Washington National Forest pursuant to the National Forest Management Act, although such a permit is required before any entity may undertake any activity on National Forest System lands. Because any such authorization—whether for temporary or permanent activities on National Forest System lands—must comport with the George Washington National Forest Plan and the laws it implements, it is imperative that effects to National Forest System resources be included in a supplemental EIS. Because WVDOH and FHWA have not yet taken a hard look at those issues, this too underscores the need for a supplemental EIS.

- **Watersheds at risk**

Serious water quality concerns will be caused or exacerbated by construction and operation of the project. Corridor H construction would bridge two tributaries to the Cacapon River—Trout Run and Waites Run—and also cut into Anderson Ridge and North Mountain, both areas of karst terrain, with drainage into the Cacapon River watershed. Trout Run and Waites Run are both classified as Tier 3 protected streams, which is the highest protection designated under the water quality standards mandated by the Clean Water Act. They are also naturally reproducing native brook trout streams.

The project area is largely categorized by karst terrain. In general, the connection between surface water and groundwater in karst terrain is not well understood, and the Groundwater section of the Final

EIS in 1996 reflects this lack of available knowledge: Vol. I, P. III-38 and III-48-53. WVDOH plans for the road to cross the town's Wellhead Protection Area, which houses the spring-fed wells that provide drinking water to the town's 267 residents and over 100 residents outside town limits. Because karst springs include channels for rainwater to sink into the ground, even excavation at higher strata levels could interfere with the entire water system.

In the 1994 assessment of potential impacts of Appalachian Corridor H on selected springs conducted by Ozark Underground Laboratory report to Michael Baker Jr. Inc, dated Sept. 23, 1994, geologist Thomas Aley repeatedly mentions the lack of information on the Wardensville spring – its hydrology, setting, or recharge area. A dye trace study for the Final EIS in 1996 was inconclusive as to the underground routing of water on Anderson Ridge. The Technical Report by Michael Baker Inc. in 2019 proposed the drilling of three to four monitoring wells at selected locations, but included no specific plans for mitigation if Corridor H construction affects the quantity or quality of the Wardensville wells or neighboring private wells.

The 1994 comments on the Alignment EIS by geologist Eberhard Werner for the group Corridor H Alternatives challenge Aley's assumption that a 154-foot-deep cut in Anderson Ridge won't intersect the saturated part of the aquifer feeding the Wardensville Spring. We question WVDOH's assumption in the 2019 Technical Report on the Wardensville wells that construction higher than Mean Sea level would not affect the water table. Blasting and cutting on Anderson Ridge and North Mountain risk contamination of the community's water supply.

In the 1996 Final EIS, the 2003 ROD and Technical Report of 2019 and since, WVDOH, to our knowledge, has not provided the public with a true mitigation plan in the case the town water supply is adversely affected, either in quantity or quality. This is unacceptable.

During the 1993 Corridor Selection EIS, comments were raised by Capon Springs and Farms Inc. about possible impacts of North Mountain Corridor H blasting on the historic Capon Spring on the West

Virginia side of the mountain and the resort which uses it as a sole drinking water source for up to 250 guests plus resort staff. The 1996 Final EIS reviewed Capon Springs recharge area, (Vol. I-III- 43-44), admitted that Corridor H would impact 1500 feet of it and. WVDOH mapped the recharge area as a rectangle (Vol. II, Exhibit III-5) to barely miss the Corridor H route, while mapping the long, thin Oriskany aquifer stretching southwest to northeast. This aquifer could be the actual recharge site.

In the 1994 Alignment EIS which included the Virginia section, maps showed Corridor H directly impacting Cold Spring along Route 55 less than two miles from the West Virginia line—a spring used by residents and visitors as a steady source of clean, drinkable water. The Final EIS mentions this spring, Vol. I: p. III-46, and agrees construction would impact it, but gives little information on its hydrology because it is not a “sole source” of drinking water. Further study of this is necessary.

Because of Virginia’s decision not to build its section of the Corridor H project, reported in the Final EIS in 1996, the final EIS does not directly address some Virginia environmental resources near the state line which could be impacted by construction on the West Virginia side. Addressing these impacts is necessary now. The Shenandoah County, VA Board of Supervisors in a letter to Thomas Nelson, FHWA on Oct.11- 2022, stated, “In fact, we believe that building an Interstate of this magnitude to the Virginia line would have a significant adverse impact on Shenandoah County and this must be considered before construction of the 6.8 mile section proposed from Wardensville to the Virginia state line begins.” Impacts. (This letter specifically cited potential Corridor H impacts on Virginia historic resources including the Civil War sites Bele Grove plantation and the Cedar Creek and Fishers Hill battlefields.)

Another new and growing area of environmental concern to Stewards and across the nation is PFAS, or “forever chemicals.” PFAS and PFOS have widely been detected in drinking water, including sites in Hardy County, WV. Sources for these unhealthy chemicals include dynamite and pollution leaking or being washed from oil and heavy machinery. WVDOH needs to describe in the EA/ EIS how it would

prevent and mitigate PFAS pollution in a manner protective of drinking water sources in the Wardensville-VA Line section during and after any Corridor H construction.

Many possible impacts of Corridor H on local water quality were not well understood when originally studied in the 1990s; one indication was the inconclusive dye tracing study results. Water quality is of even greater concern today, and past studies are insufficient. Given the significant impacts this project would cause to surface and groundwater, including Tier 3 protected streams and important drinking water sources, a supplemental EIS is warranted to fully examine the impacts of water quality and feasible alternatives that would result in no or less effects to water quality, health, and safety.

- **Alternatives**

Alternatives, including electing not to build the road, must be studied under NEPA. Stewards submits that the “no-build” alternative makes sense for this proposed highway to nowhere. The purpose and need of the highway has changed continuously since it was first proposed. Moreover, building the highway will harm the local economy and local residents and have unnecessary and unacceptable impacts on the environment. Plainly, this expensive eyesore of a highway does not make sense today. The “no-build” alternative to Corridor H must be thoroughly explored and studied for this section.

Additionally, Mayor Betsy Orndoff Sayers, in comments submitted Dec. 12, 2022, on behalf of the Town of Wardensville, proposed an alternative exit along Carpenters Ave., which would bring tourist traffic directly to Main Street. While making a change in 2023 to eliminate an access point on North Mountain due to “engineering reasons,” WVDOH failed to address her suggested alternative.

In Stewards’ conversations with area residents, alternative solutions to local traffic problems came up. One suggestion we heard was for an electric, blinking speed sign to control Main Street traffic. Several people suggested passing lanes for Route 55 on North Mountain instead of the proposed four-

lane highway, which would reduce construction costs, avoid some impacts in George Washington National Forest, and avoid the recharge areas for the Capon Spring and Cold Spring outlined in the FEIS.

These alternatives, including the no-build option, must be thoroughly studied. The WVDOH's public statements that they are not open to design change, but made some design changes of their own during the last year including eliminating the North Mountain exit, along with their apparent decision to ignore the alternatives submitted by the Town of Wardensville. Such practices do not comply with NEPA.

- **Public Input**

WVDOH has held public meetings in Wardensville regarding Corridor H in 2018, 2022, and 2023, but Stewards is concerned over the lack of information in the resulting public documents regarding environmental, traffic, and social impacts. Red flags included WVDOH's July 2023 application to WVDEP for an NPDES permit for Corridor H core drillings around Wardensville in July 2023 without the required public notice; WVDOH staff's promised 6 p.m "presentation" at the Sept. 21, 2023 public meeting which turned out to be a five minute announcement referring citizens to information tables and did not allow for a public Q&A; WVDOH's failure to address questions raised in our letter dated Dec. 12, 2022 regarding stream data collected by WVU professor Elizabeth Buzby, contracted by WVDOH; and the broken comment link on the WVDOH website which led to our request, granted by WVDOH, for a comment period extension from Oct.23 to Nov. 13, 2023. Public input and participation are key to both NEPA compliance and compliance with other environmental laws.

Accordingly, for the above and many other reasons, this project cannot proceed lawfully under NEPA unless and until FHWA and WVDOH prepare a supplemental EIS addressing significant new information and changed circumstances bearing on the project and its impacts and alternatives, subject to meaningful public participation and comment. An environmental assessment (EA) alone is inappropriate given the circumstances.

Therefore, in addition to requesting a full EIS, we request that WVDOH and FHWA hold a formal public hearing in Wardensville once the draft Environmental Assessment is issued, giving citizens a chance for assembly to hear a full presentation and have questions answered publicly by appropriate representatives from WVDOH and other government agencies.

CONCLUSION

As described above, our position is that NEPA and its implementing regulations require FHWA and WVDOH to prepare a Supplemental EIS for the Wardensville to Virginia state line section of the Corridor H highway project. Even had there not been significant changes to the project's purpose, the public need for the project, the quality of the surrounding environment, and advances in our understanding of nature and science in the previous three decades, the 1996 EIS is of such age as to be severely outdated. Because significant new information *and* changed circumstances have arisen, as demonstrated by the non-exhaustive representative examples above, the agency has a duty to supplement the nearly 30-year-old EIS. Any other outcome would flout NEPA and its implementing regulations. The Supplemental EIS, in our view, needs to include complete right-of-way maps showing areas impacted by roadbuilding, cuts and fills, and property takings for auxiliary activities including sediment ponds. By including these, the EIS will show the true impacts and costs of Corridor H.

Given WVDOH's obvious legal duty to prepare a supplemental EIS for this project, we are extremely troubled by efforts of government contractors currently approaching property owners in the path of the preferred route to appraise property values and conduct invasive core drilling, including building roads to drilling sites. WVDOH contends it is spending state, not federal funds on these activities, but such action subverts the express purposes underlying NEPA by taking action *before* completion of the agency's NEPA analysis, including the pending EA or EIS. To wit, these actions seriously compromise the objectivity and integrity of any remaining NEPA review of the project. Taking invasive action in favor of the agencies'

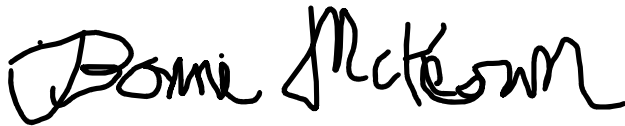
preferred alternative represents a clearcut example of the kind of “predetermination” that is prohibited by NEPA. 40 C.F.R. § 1502.2(f).

“The goal of the statute is to ensure ‘that federal agencies infuse in project planning a thorough consideration of environmental values.’” *Bob Marshall All. v. Hodel*, 852 F.2d 1223, 1228 (9th Cir. 1988) (quoting *Conner v. Burford*, 835 F.2d 1521, 1532 (9th Cir. 1988)). That consideration necessarily entails taking “into proper account all possible approaches to a particular project (*including total abandonment of the project*) which would alter the environmental impact and the cost-benefit balance.” *Id.* (quoting *Calvert Cliffs’ Coordinating Comm., Inc. v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109, 1114 (D.C. Cir. 1971)). For this reason, NEPA prohibits a reviewing agency from weighting the scale in favor of a particular outcome or alternative. 40 C.F.R. § 1502.2(f); *see also Metcalf v. Daley*, 214 F.3d 1135, 1142 (9th Cir. 2000) (holding that NEPA prohibits environmental analyses “designed to rationalize a decision already made.”); *Hausrath v. U.S. Dep’t of the Air Force*, 491 F. Supp. 3d 770, 800 (D. Idaho 2020) (“The kind of thorough consideration of environmental values called for by NEPA is not possible when the end result . . . is predetermined.” (quoting *Ocean Mammal Inst. v. Gates*, 546 F. Supp. 2d 960, 977 (D. Haw. 2008)).

Thus, if government contractors take any action on land in the path of the agencies’ preferred alternative *before* preparation of a supplemental EIS (or at least the conclusion of the Re-evaluation process which WVDOT has announced, in its Sept. 21 meeting handout, to include the preparation of an EA), it would offend the very purpose of the agency’s ongoing NEPA review for the project—i.e., to determine as a threshold matter whether, where, and how to permit the project. The core drilling now underway no doubt requires considerable amounts of taxpayer dollars. This sunk cost further entrenches the agencies’ interest in constructing the project in WVDOT’s preferred location, and analytically prejudices other alternatives like the No-build alternative or alternatives with less economic and environmental impacts on the Wardensville community. The decision to conduct core drilling and pursue

purchase of rights-of-way along the preferred route casts serious doubt on the Re-evaluation process. These actions and comments from the agencies indicate that the planned 2023-24 EA is merely for show so WVDOH and FHWA can continue with their preferred route, thus failing to comply with NEPA requirements to consider all alternatives, including project abandonment. We appreciate this early opportunity to comment to continue pushing for the logical and legally necessary Supplemental EIS, and we intend that our comments be helpful to the agencies.

Yours Truly,

A handwritten signature in black ink, reading "Bonni McKeown". The signature is fluid and cursive, with the first name "Bonni" and last name "McKeown" clearly distinguishable.

Bonni McKeown, President,
Stewards of Potomac Highlands

Cc: WV State Highway engineer D.Alan.Reed@WV.gov,
WVDOT Secretary Jimmy Wriston DOT.Secretary@WV.gov
US Forest Service John.barger@usda.gov , Joby.timm@usda.gov
WVDOH District 5: lee.j.thorne@wv.gov
US Fish & Wildlife service, WV Jennifer_I_Norris@fws.gov,
WV Dept. of Environmental Protection: Katheryn.d.emery@wv.gov
EPA Region III: Davis.Jamie@epa.gov