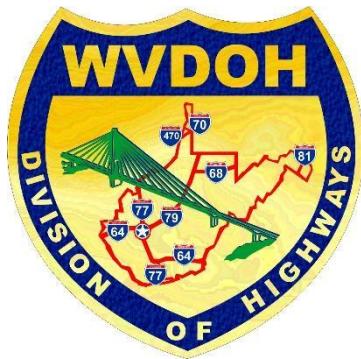


WEST VIRGINIA TASKFORCE ON INFRASTRUCTURE DEPLOYMENT CLEARINGHOUSE



**REPORT TO THE LEGISLATIVE OVERSIGHT COMMISSION ON
DEPARTMENT OF TRANSPORTATION ACCOUNTABILITY**

December 20, 2023

GOALS

The Taskforce on Infrastructure Deployment Clearinghouse was created to study the best practices for the creation of a clearinghouse with information on public rights of way to facilitate infrastructure installations in an economic and timely manner. Per West Virginia Code §17-2E-10, infrastructure deployment means the deployment of underground infrastructure in public rights of way.

TASKFORCE MEMBERS

Commissioner of the Division of Highways (or designee)

Sarah Leigh Runyon, P.E.
Nate Tawney, Esquire
Travis Long
Sondra Mullins

Director of the Division of Environmental Protection (or designee)

Robert Rice

Director of the Historic Preservation Section of the Department of Arts, Culture, and History (or designee)

Susan Pierce

Representative of Miss Utility of West Virginia

Jerry Poage, Executive Director

West Virginia Department of Economic Development, Office of Broadband

Kelly Workman

Designees from the Legislative oversight Commission on Department of Transportation Accountability

Delegate Daniel Linville
Delegate Clay Riley

LEGISLATIVE RECOMMENDATIONS

Through its efforts, the Taskforce was able to ascertain an existing entity that it believes, if the Legislature desires to create an infrastructure clearinghouse, would be well-suited to develop the same. The WV GIS Technical Center (WVGISTC) has experience building map tools similar to what the Legislature is considering, and already does so for West Virginia and other states. Currently, however, the work that it performs for West Virginia is more limited in scope. See Appendix A for an example of the report that is produced from Kentucky's Interagency Coordination Tool and an example of a report from West Virginia.

WVGISTC could build and maintain a statewide hub to serve as an infrastructure clearinghouse tool that is map-based with specific layers for relevant information with respect to, and in coordination with, all applicable state agencies. The Taskforce feels that utilizing WVGISTC would be the simplest and most cost-effective way to develop such a tool.

The Taskforce would recommend that policymakers take into consideration, aside from legal prohibitions, how much information it makes publicly available and to whom. For example,

it was revealed during the Taskforce meetings that the highest volume of traffic to all state agency websites was from the People's Republic of China.

REGULATORY HURDLES AFFECTING INFRASTRUCTURE DEPLOYMENT

The Taskforce identified the following regulatory hurdles that commonly become an issue in deployment of underground infrastructure:

A. National Environmental Protection Act (NEPA)

NEPA is a US federal law that was signed into law on January 1, 1970. NEPA requires federal agencies such as the FHWA to assess the environmental effects of their proposed actions prior to making decisions. The range of actions covered by NEPA is broad and includes: making decisions on permit applications, adopting land management actions, and constructing highways and other publicly-owned facilities. Using the NEPA process, agencies evaluate the environmental and related social and economic effects on their proposed actions. Agencies also provide opportunities for public review and comment on those evaluations. The purpose of NEPA is to ensure that federal agencies consider the environmental impacts of their proposed actions and inform the public of those impacts.

B. United States Fish and Wildlife Service

The Endangered Species Act of 1973 (ESA) is a US law that protects fish, wildlife, and plants that are threatened or endangered. Section 7 of ESA requires all Federal agencies to use their authorities to conserve endangered and threatened species in consultation with US Fish and Wildlife Service (USFWS). Section 7 directs federal agencies to ensure that any action they authorize, fund, or carry out does not jeopardize the continued existence of an endangered or threatened species or designated or proposed critical habitat.

C. United States Army Corps of Engineers

The U.S. Army Corps of Engineers (USACE) regulatory program regulates work and structures that are located in, under or over navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899, the discharge of dredged or fill material into waters of the United States under Section 404 of the Clean Water Act, and the transportation of dredged material for the purpose of disposal in the ocean under Section 103 of the Marine Protection, Research and Sanctuaries Act. "Waters of the United States" are navigable waters, tributaries to navigable waters, wetlands adjacent to those waters, and/or isolated wetlands that have a demonstrated interstate commerce connection.

D. National Historic Preservation Act of 1966, as amended

Section 106 of the National Historic Preservation Act requires Federal agencies to take into account the effects of their undertakings on historic properties. In accordance with section 101(b)(3) of the act, the State Historic Preservation Office advises and assists Federal agencies in carrying out their section 106 responsibilities and cooperates with such agencies, local governments, and organizations and

individuals to ensure that historic properties are taken into consideration at all levels of planning and development. 36 C.F.R. § 800, “The Protection of Historic Properties,” outlines the review process.

E. WV Department of Environmental Protection

Typically, West Virginia's regulations mimic United States federal regulations. While some provisions are unique to our state, they are parallel to the regulations that are required by the federal government in all states. Specific provisions, permits and regulations to which a company must comply are subject to the specific details of the project.

For Industrial facilities, typically there are three broad types of pollutants which fall under regulation: Water, Air, and Waste (which can be separated into hazardous and solid waste), as well as certain land requirements.

Water:

When building a facility, the company (or the construction company) will be required to obtain construction permits. A storm water construction permit is required for a facility to build on more than one undisturbed acre. For factory wastewater, a permit is required to discharge into a stream with the proper treatment, unless the company is tying into an existing wastewater treatment facility (in which case the permit holder may need to modify their permit).

Levels of pollutants are needed for permit specificity. If you are processing the waste water through the treatment facility at a site (e.g., Publicly Owned Treatment Works, or “POTW”), the facility should modify their permit via the process of a major modification. They will most probably have to process this through an anti-degradation review process which will require 6 months of monitored data for the Pollutants of Concern (“POCs”). Possibly that data exists through existing organizations such as ORSANCO (<http://orsanco.org/>) or the host facility. If not, the company must obtain that data. Companies should work with the DEP to properly identify the pollutants of concern, a proper stream monitoring location, and to ensure appropriate sampling protocols are employed along with appropriate test methods prior to conducting sampling. That the methodology can be ironed out so that the data can be used expeditiously. Additionally, federal effluent guidelines/pretreatment requirements may be applicable to the wastewater.

Tanks that are above ground and can hold more than 1320 gallons are subject to state requirements (among other requirements) and may need to register with the state. *See W.Va. Code § 22-30-1 et seq.* If those tanks hold petroleum-based products, there are additional federal requirements under the Spill Pollution Control and Countermeasures program (as noted below).

A 401 certification (state) and a 404 permit (Corps of Engineers) may be required for stream crossings, dredging and discharge of dredged material, or wetlands impact.

A storm-water pollution prevention plan (“SWPPP”) or groundwater protection plan (“GPP”) may well also be required. The SWPPP and the GPP are commonly attached to both the construction NPDES permit and the Multisector General Stormwater Permit.

Air:

Of course, these requirements depend on the potential air emissions from a company. Most facilities are required to obtain a minor source air permit. Common requirements within the permit are based on federal regulations, not WV state regulations. If they do trigger what is referred to as “major status,” a company can typically become a synthetic minor (out of major status) for these New Source Review requirements if it employs pollution control devices.

The state is in attainment/maintenance for all pollutants in all areas. The only exceptions are two partial counties in the Northern Panhandle for SO₂. The two areas are a piece of Brooke County and a piece of Marshall County that are technically in non-attainment status. However, both areas are, and have been monitoring and modeling attainment. Both have re-designation requests submitted (with maintenance plans to follow). Both areas were basically single source issues where the facilities are already under consent orders and have the reductions in place. So, while both are technically in non-attainment status today, both are waiting for EPA to approve the submittals back to attainment.

In general terms, air emissions may be separated into Regulated Pollutants and Hazardous Air Pollutants (“HAPs”). These include Volatile Organic Chemicals (“VOCs”), which can be both hazardous and regulated. There are 187 HAP's, either alone or combined, that can trigger a company to fall under the federal MACT standards (Maximum Achievable Control Technology). General thresholds are; 10 tons or greater of individual HAP or 25 tons or greater combined. Additionally, there are federal Urban Air Toxics rules that are typically for smaller sources. These are generally federal requirements (by individual source type-70 ea.), and the company may be subject to these new requirements.

A company will need a Minor Source permit if they have the potential to emit (“PTE”), which is defined as 2lbs/hour or 5 tons/year of HAP, or 6lbs/hour and 10 tons/year of regulated pollutants, or 144 lbs/calender day. A company will need a Major Source permit (“PSD”) if they have the PTE: 250 ton/year PTE or 100 ton/year-28 individual categories (e.g.-Coke Batteries, Utility Boiler, Fiberglass Plants or have the PTE of 100,000 ton/yr of CO₂e). Due to the attainment status mentioned earlier, a major Non-attainment New Source Review permit is not likely to be required.

A major source operating permit (Title V) may be required (depending upon emissions) within a year of commencement of operations. These permits mirror the federal requirements. West Virginia does not have thermal air quality regulations (i.e., no regulations for steam).

Waste:

Under federal and state regulations there are two main components to waste: (1) Subpart C: Hazardous - Generally, there are three levels of registration which may be required for Hazardous Waste. These are regulated as: very small quantity generator (“VSQG”) <100kg/mo, Small Quantity Generator 100-1000 kg/mo accumulate <180 days, Large Quantity Generator (“LQG”) >1000 kg/mo accumulate <90days; and (2) Subpart D: Solid (nonhazardous) - solid waste that does not fall under requirements and can be discarded in an approved landfill. These requirements very closely mimic federal requirements.

There are special requirements called “universal wastes” to encourage the recycling of used oil, fluorescent bulbs, certain batteries, thermostats, old pesticides and other items. There are also requirements for oil storage and used oil.

Land:

Typically, it is prudent for a facility to have a Phase I (and potentially a Phase II) assessment completed. The Phase I assessment retains its status for 180 days from issuance. Additionally, it is fairly common that former industrial sites have a concern due to their history. One of the advantages that West Virginia holds is that the state operates a Voluntary Remediation Program (“VRP”). This program allows a site to process through the program to a certain risk level. This process, with the appropriate regulatory language and probable deed restrictions for the future (no drinking wells can be drilled/used on the site, for example), can give a company and its investors a level of liability assurance regarding protection from previous contamination.

If the selected site is subject to corrective action under the Resource Conservation and Recovery Act (“RCRA”), DEP will work with EPA to address those issues. Should site remediation be needed, the VRP is often the path used. The VRP provides a Certificate of Completion that provides liability relief for site contamination evaluated and remediated through the program.

Sustainability:

The DEP is proactive in promoting sustainability within our region and world. We have programs that welcome corporate partners and allow organizations to showcase their commitment to the community, the state, and the environment. A few of those programs include the Watershed groups within the Division of Water and Waste Management and the REAP program within the Division of Land Restoration.

Other requirements:

There are numerous regulations with which a company must comply that are environmental but fall outside of the regulatory authority and purview of the WVDEP. Some of these are denoted herein only in an attempt to help one understand that there are a plethora of requirements.

The EPA requires companies to comply with Spill Pollution Control and Countermeasure (SPCC) requirements for above and underground storage tanks that contain various oils. The aboveground section of this rule is similar to the West Virginia Aboveground Storage Tank Water Resources Protection Act in that tanks that are aboveground and greater than 1320 gallons (among other requirements) are required to obtain an SPCC. The source may also be subject to Toxic Release Inventory and Tier II requirements from the other legislation (The Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), the Emergency Planning and Community Right-to-Know Act (“EPCRA”), and the Superfund Amendments and Reauthorization Act (“SARA”)).

Another requirement to which the source should be aware is the Risk Management Plan section of Section 112(r) of the Clean Air Act. While most sources are simply required to follow the “General Duty Clause”, other levels of requirements may be triggered.

F. WV Office of Broadband

Applicable Broadband Permits:

1. WVDOH MM109 / Dig Once
2. SHPO
3. Railroad Crossings
4. Local Permits
5. Private Easements
6. NEPA (applies to certain federal programs)
7. Federal Land-National Park Service
8. Pole Attachment Permits

Pole Attachment Permits

West Virginia’s Public Service Commission has adopted rules addressing the pole attachment application process, including detailed deadlines for distinct steps, and a complaint process modeled on the FCC’s pole attachment complaint process. Under the West Virginia Public Service Commission’s pole attachment complaint process, an attacher can have the Public Service Commission adjudicate the reasonableness of a pole owner’s decision to approve, reject, or approve subject to conditions of a pole attachment application, and the reasonableness of the charge proposed by the pole owner. The Public Service Commission made revised Rules for the Government of Pole Attachments effective as of January 13, 2023.

W. Va. Code Chapter 31G also addresses pole access. W. Va. Code §31G-6-2 preempts local government pole attachment ordinances in favor of broadband service for pole attachments. Furthermore, §31G-6-2(b) states explicitly that the pole attachment policies of Investor-Owned Utilities, Incumbent Local Exchange Carriers, and Competitive Exchange Carriers will be “strictly construed in favor of encouraging and assisting broadband installation and deployment.” *See* W. Va. Code §31G-6-2.

West Virginia's pole attachment regulations are comparable to those at the FCC and have similar OTMR timeframes. *See* West Virginia Code of State Rules §150-38-10. Regarding make-ready charges, pole owners must provide detailed estimates on a pole-by-pole basis and:

“...may not charge a new attacher to bring poles, attachments, or third-party equipment into compliance with current published safety, reliability, and pole owner construction standards guidelines if such poles, attachments, or third-party equipment were out of compliance because of work performed by a party other than the new attacher prior to the new attachment.” 150 C.S.R. 38-10-4.

While pole attachment regulations set a framework for attaching, companies must negotiate pole attachment agreements directly with pole owners. These agreements must comply with state regulations, and if a pole owner refuses to negotiate in good faith and/or follow the regulations, a company may file a complaint with the Public Service Commission, even before it has an agreement with the pole owner. *See* 150 C.S.R. 38-4-4 and 150 C.S.R. 1-6.

AVAILABILITY OF INFORMATION

The Taskforce found that across State agencies there is a lot of information made available to the public relative to that particular agency's customary business. In other cases, there may be information available but not necessarily in a forward-facing platform, and in even other cases information that is not made available to the public for legal or other reasons. Below is a summary of the agencies and data and information either already available or that could be made available in a more comprehensive format.

A. State Historic Preservation Office

1. The WV State Historic Preservation Office maintains information about historic sites at <https://mapwv.gov/shpo/> Public layers include locations of cultural resources listed in the National Register of Historic Places, resources documented using the WV Historic Property Inventory Form, and cemeteries. These resources are linked to their associated nomination forms, inventory forms, or reports. Archaeological sites are included on a password protected layer that is available upon request to archaeologists who meet National Park Service professional qualifications (36 CFR 61).
2. Activities occurring within WV Division of Highways rights-of-way are addressed in a programmatic agreement signed by the Federal Highways Administration, WV Department of Transportation, WV Division of Culture and History (now Dept. of Arts, Culture, and History) and the Advisory Council on Historic Preservation. This agreement includes internally screened projects by WV DOT staff. (#18: Joint or multiple use permits with other agencies or encroachment permits.)

B. WV DEP

1. The WV DEP maintains a significant amount of public information specific to the agency's permitting, reclamation and remediation activities (Air, Water, Land, Waste, Oil & Gas, Mining, Open dumps). This information is available in a spatial/map format and can be found at <https://dep.wv.gov/Data/Pages/default.aspx>. With the exception of critical infrastructure such as public water intakes, data housed at DEP is available to the public. DEP works with and utilizes baselayer data maintained by the West Virginia GIS Technical Center <https://wvgis.wvu.edu/>

C. WV Office of Broadband

The West Virginia Department of Economic Development (WVDED) Office of Broadband collects and maintains a variety of broadband data either restricted by state code or license agreements. The Office of Broadband utilizes available data to analyze the availability and use of broadband in West Virginia, administer grant programs, and create public facing maps within the terms of applicable license agreements.

1. Mapping Data

The Office of Broadband provides mapping resources at <https://broadband.wv.gov/> as briefly described below.

West Virginia Broadband Projects Dashboard

<https://wvbroadband.maps.arcgis.com/apps/dashboards/c94bd122d0504db4942cb0200bc20314>.

This public map currently provides information concerning all projects funded through the American Rescue Plan Act (“ARPA”). Information regarding projects funded through other sources will be added in the future. Currently, users can sort by ARPA program, company, county, or other metrics. Project progression is also provided to illustrate whether projects are complete or still in construction.

West Virginia Broadband Availability Map

<https://experience.arcgis.com/experience/1289f8f2fe6042be833e3cd863551e88>

This public map provides an overview of broadband data in West Virginia and within each county. Statistics are based upon data provided by the Federal Communications Commission (FCC) Broadband Data Collection (BDC) data and are updated according to FCC data releases. Data maintained by the Office of Broadband is governed by associated licenses and terms of use.

2. Speed Test Data

The Broadband Enhancement Council maintains several licenses with Speedtest® by Ookla.® Ookla is a speed and performance data platform for internet connectivity. Ookla collects millions of data points of unique speed tests taken by consumers and makes them available in a variety of formats. The Office of Broadband has utilized this data to identify unserved and underserved areas, monitor performance of internet service providers, and monitor growth of the broadband industry in West Virginia.

Restrictions on use of data, subscriptions, and materials are governed by license agreements. The license allows up to a limited number of users which are reserved for state employees, members of the Broadband Enhancement Council, or designated individuals approved Ookla.

Speed test data in the form of test result points may only be published at an extent that does not expose sensitive subscriber-level information. Aggregated data may be shared or publicly published at a minimum area of 150m.

Licenses:

a. Speedtest Custom

- Customized Speedtest instance build using HTML-5 and optimized for both mobile and desktop use. Speedtest Custom serves as a testing portal separate from other Speedtest databases where data is collected for tests taken solely through the portal.
- Speedtest Custom is currently hosted on broadband.wv.gov and is embedded into a statewide broadband survey.

b. Speedtest Intelligence – Fixed

- Online portal access and CSV files of aggregated, raw, and analyzed Speedtest fixed data from West Virginia. The platform serves as a data analytics aggregator as well as providing raw results in CSV format.
- Speedtest Intelligence collects millions of speed test taken by consumers and analyzes the performance results of internet service providers. Fixed refers to technology such as copper, cable, fixed wireless, and fiber.
- This license includes 12-months of historical fixed test data and 12-months of ongoing access.

c. Speedtest Intelligence – Mobile

- Online portal access and CSV files of aggregated, raw, and analyzed Speedtest mobile data from West Virginia. Speedtest Intelligence collects millions of speed test taken by consumers and analyzes the performance results of mobile providers.
- This license includes 12-months of historical fixed test data and 12-months of ongoing access.

d. Cell Analytics

- Cell analytics serves as analytic platform for cellular networks by collecting data on wireless service quality, RF measurements, data usage, user density, cover (propagation)m and other key mobile network performance metrics.
- This license includes 12-months of ongoing access.

e. Tower Source

- The U.S. tower industry's largest and most comprehensive independent vertical asset database focusing on ownership and manage of wireless infrastructure assets.
- Tower source includes an online analytical platform and CSV files of towers assets in West Virginia.

Restricted Speedtest Data: Raw data – Raw data that provides subscriber-level and ISP information with coordinates of test location.

Available Speedtest Data: Area based aggregates of speed and performance data no smaller than 150m area.

D. WV Division of Highways

The WVDOH utilizes information from state and federal agencies such as WVDNR, USFWS, USACE, WVSHPD, and WVDEP to develop a project. Some types of sensitive information, such as site information on endangered species and archaeology sites, cannot be shared by the DOH. DOH labels these areas as environmentally sensitive areas and buffers the project area.

1. Web Maps and Apps

- a. The West Virginia Department of Transportation (WVDOT) has the following web mapping applications accessible to the public at this

website:

<https://transportation.wv.gov/IT/GIS/Pages/MappingApplications.aspx>

- ADA Curb Ramp Inventory
- County Highway Maps
- Geometry & Measures
- Route ID Builder
- West Virginia Highway Plans Locator
- WVDOT Airport Locations
- WVDOT Annual Average Daily Traffic (AADT)
- WVDOH Fuel Sites
- WVDOH Municipal Separate Storm Sewer System (MS4) Inspection Map
- WVDOT Park and Ride Locations
- WVDOT River Port Locations
- WVDOT Snow Removal and Ice Control (wv511)
- WV Trails Inventory
- WVDOT Projects Map

b. WVDOT produces the following sets of maps available to the public here: <https://transportation.wv.gov/IT/GIS/MAPS/Pages/default.aspx>

- City Maps
- General County Highway Maps
- Milepoint Maps
- Urban Area Maps
- WV Tourism Map
- WVDOT Fuel Facility Map Book
- WVDOT Interstate Lane Closure Map
- Federal and State Functional Classification Maps
- National Highway System Map

c. WVDOT maintains internal web applications at <https://sites.google.com/wv.gov/dot/IT> including:

- Road Analyzer
- 1937 County Highway Map Viewer
- Parcel and Route Viewer
- Roadway History application
- Roadway Surface Type Viewer
- Environmental Viewer (in development)

d. WVDOT maintains a host of publicly available REST service endpoints at:

- <https://gis.transportation.wv.gov/arcgis/rest/services>

- e. The WVDOT Open Data Portal makes WVDOT-related GIS data and mapping services publicly available at:
 - <https://data-wvdot.opendata.arcgis.com/>

E. United States Fish and Wildlife Services (USFWS)

USFWS recommends that agencies use IPAC (Information for Planning and Consultation) [IPaC: Home \(fws.gov\)](#) to get a species list for a specific location. IPAC requires the user to create an account with a login ID and password. Once a location is put into IPAC the system will generate a species list. Project information is monitored by the USFWS and is available to private citizens or public employees who need information to assist in determining how activities being proposed may impact sensitive natural resources, and who would like to obtain suggestions for ways to address these impacts.

NECESSARY/REQUIRED ACCESS RESTRICTIONS

The West Virginia Freedom of Information Act, WV Code §29B-1-4. Exempts archaeological information from disclosure resulting from FOIA request unless requested by an archaeologist qualified according to 36 C.F.R. §61.

National Historic Preservation Act, 54 U.S.C. § 307103, restricts access to information and Authority to Withhold from Disclosure.

The Endangered Species Act, 16 U.S.C. §§1531-1544, does not allow for sharing point data to the public on endangered species.

The National Environmental Policy Act 42 U.S.C. § 4321, requires all projects with a federal nexus must go through the NEPA process.

The information below outlines the restrictions related to broadband information.

A. Office of Broadband Protection of Proprietary Data

The Office of Broadband maintains information concerning awards under the West Virginia Broadband Investment Plan. The Office of Broadband publicly publishes limited information for awards made under the American Rescue Plan Act on the [West Virginia ARPA Dashboard. Future mapping updates will include information concerning other projects, such as:](#)

1. Projects funded and administered by the WVDED under the Infrastructure Investment and Jobs Act BEAD Program, Appalachian Regional Commission or Community Development Block Grant.
2. Projects funded and administered by other federal agencies, including the FCC Rural Digital Opportunity Fund (“RDOF”).

3. Projects funded and administered by the U.S. Department of Agriculture, Appalachian Regional Commission or other known entities.

B. Broadband Program Data

1. Publicly Available Broadband Program Data:

- a. Awarded areas – GIS Polygons
 - GIS data showing awarded areas at the polygon level. Awards can be demonstrated and shared using the H3 Geospatial Indexing System. The Office of Broadband utilizes the H3 Resolution 8 hexagons to demonstrate broadband awards.
 - Available in shapefile, geodatabase, or csv format.
- b. GIS addresses – awarded address locations – (publicly published but not downloadable)
 - Address level data of awards may be published publicly; however, this data is only available to be shared with designated users and by request.
 - Awarded addresses are from the Target Area Address dataset. The Target Area Address is a dataset derived from the West Virginia Statewide Address Mapping System.
- c. High-Level key metrics of publicly announced awards
 - Award data for the following metrics:
 - * § Grant award
 - * § Matching funds
 - * § Total project cost
 - * § Targeted areas (unserved locations)
 - * § Addresses passed (all addresses served or unserved passed by the awarded infrastructure)
 - * § Fiber mileage
 - Available in CSV format and included with GIS files.

2. Restricted Award and Project Data (including but not limited to):

- d. Engineering designs
- e. Subscriber-level information
- f. Vendor and supplier data
- g. Internal labor rates
- h. GIS addresses
 - Connections
 - Targeted locations
 - Addresses passed

B. Applicable State Code:

1. §31G-1A-4. Collection of data

- a. In order to ascertain, categorize, analyze, map, and update the status of broadband in the state, as well as to enable the Office of Broadband to make informed policy and legislative recommendations, the Office of Broadband may establish a voluntary data collection program. The program may include voluntarily submitted data from internet service providers, including any home or region data rate meters utilized by the provider. The program may also utilize and collect voluntarily submitted data rate information submitted by any person reflecting the person's personal data rate at a particular IP address. This personal data rate may be based upon a web-based test or analysis program.**
- b. Any and all data collected by the Office of Broadband shall not be deemed public information and is not subject to public release or availability pursuant to §29B-1-1 et seq. of this code.**
- c. Any data collection program established by the Office of Broadband shall:**
 - Make clear to those providers or persons submitting information that the data rate speed may become public, including specific reference to the person's physical address;**
 - Make clear this is a voluntary data collection program and that submission of information shall be deemed consent to use and make public such data rate information; and**
 - Not include any person's personal web history or search information, or otherwise publicly identify the person's name in connection with an IP address or physical address.**
- d. The Office of Broadband may establish guidelines and additional rules governing a data collection program through the legislative rulemaking pursuant to the provisions of §29A-3-1 et seq. of this code.**

2. §31G-1A-5. Protection of proprietary business information

- a. Broadband deployment information provided to the Office of Broadband or its consultants and other agents, including, but not limited to, physical plant locations, subscriber levels, and market penetration data, constitutes proprietary business information and, along with any other information that constitutes trade secrets, shall be exempt from disclosure under the provisions of §29B-1-1 et seq. of this code: Provided, That the information is identified as or would**

reasonably be contemplated to be confidential information when submitted to the Office of Broadband.

- b. Trade secrets or proprietary business information obtained by the council or the Office of Broadband from broadband providers and other persons or entities shall be secured and safeguarded by the state. Such information or data shall not be disclosed to the public or to any firm, individual, or agency other than officials or authorized persons of the state.
- c. The official charged with securing and safeguarding trade secrets and proprietary data for the Office of Broadband is the Secretary of Economic Development, who is authorized to establish and administer appropriate security measures.

C. Office of Broadband – NTIA, FCC, CostQuest Fabric Data

Broadband Data Restrictions:

The Office of Broadband maintains a license agreement with CostQuest and the National Telecommunications Information Administration (NTIA) for address level data known as the “Fabric.” This data is a list of broadband serviceable locations that the FCC uses to collect broadband availability information. The Office of Broadband has assigned broadband availability classifications to each fabric location in West Virginia.

Restrictions on use of materials are maintained by a license agreement with NTIA and CostQuest. This data is currently not available to publish publicly or share with other parties.

Appendix A

Kentucky's Interagency Coordination Tool

West Virginia Report (Example)

KENTUCKY INTERAGENCY COORDINATION TOOL

KICT (3.0)

PROJECT REPORT



Inquiry Date:	2023-05-01	
Client:	Darren Clark	
Program:	Environmental Quality Incentives Program (EQIP)	
Site Name:	Darren Clark	
County:	Calloway	
Location:	F#6468 T#12813	
Lat/Long:	-88.40109277651287, 36.51794788586578	
Planner:	Korybeth.Elkins	
Scenario:	Other	
Acreage:	91.7	
PRACTICES SUBMITTED FOR REVIEW	AMOUNT	UNIT
Cover Crop (340)	94	Ac.

CLEAN AIR ACT

POTENTIAL IMPACT INFORMATION

Based on the information submitted it has been determined that this project occurs in the following regulated air quality zone:

None

Potential impacts associated with this area are identified below:

None

MITIGATION CONSIDERATIONS & EFFECT DETERMINATION

A. Mitigation Considerations

Based on the information submitted, the following strategies should be considered to avoid adverse effects to air quality for the practice(s) shown. If feasible, the strategies listed below should be relayed to the client, incorporated into the conservation plan, layout/specifications and operation and management of the practice.

Practice	Mitigation Consideration for Practice Implementation
N/A	None

B. Effect Determination

It has been determined that the activities described have a No Effect (NE) determination on areas protected under the Clean Air Act. This determination should be considered and recorded in all environmental documentation. If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners should revise and resubmit this data accordingly.

KENTUCKY INTERAGENCY COORDINATION TOOL

KICT (3.0)

POTENTIAL BENEFITS

If mitigation considerations are implemented as outlined, the following practices may provide beneficial contributions to air quality in the air quality zone identified in this report:

Practice	Potential Benefits Provided by this Activity
N/A	None

CULTURAL & HISTORIC RESOURCES

POTENTIAL RESOURCE AND IMPACT INFORMATION

The area submitted for review may contain the following classes of cultural resources:

None

Based on the information submitted it has been determined that one or more of these cultural resource classes could be affected as a result of installation of one or more conservation practices.

None

REQUIRED STRATEGIES & EFFECT DETERMINATION

A. Required Avoidance Measures

Based on the information submitted, the following strategies are required to be implemented to avoid adverse effects to the resources listed above. The strategies listed below must be incorporated into the conservation plan, layout and/or specifications.

Practice	Required Additional Strategies For Practice Implementation
N/A	None

B. Effect Determination (tentative)

No further requirement under the National Historic Preservation Act is necessary at this time. Proceed with planning and implementation. Maintain a copy of this report as documentation of investigation according to NRCS policy. If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners must revise and resubmit this data accordingly.

NOTE: If resources are discovered during implementation, immediately cease activities and contact the Cultural Resources Specialist.

ENVIRONMENTAL JUSTICE

POTENTIAL IMPACT INFORMATION

Based on the information submitted it has been determined that this project area may occur within the following demographic areas:

None

Based on the information submitted, the following potential impacts should be considered:

None

CONSIDERATIONS & EFFECT DETERMINATION

A. Considerations

Based on the information submitted, the following should be considered for the practice(s) shown.

KENTUCKY INTERAGENCY COORDINATION TOOL

KICT (3.0)

Practice	Consideration for Practice Implementation
N/A	None

B. Effect Determination (tentative)

It has been determined that the activities submitted could have a No Effect (NE) determination on Environmental Justice as described in the Executive Order 12898, and 190-GM, Part 414.30. This determination is offered as a screening only and should be reviewed in the context of application and may not apply.

The determination above is a tentative determination. Planners should examine the context of how practices are delivered, the location where the practice is being implemented and the scope of the practice and its effects. Therefore, the effect determination shown above may not be accurate. Planners should use sound judgement in determining the degree and scope of any impact(s) or non-impacts shown. The final determination should be recorded in all appropriate environmental documentation. If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners must revise and resubmit this data accordingly.

POTENTIAL BENEFITS

Some practices that may have potential benefits associated with them are as follows:

Practice	Potential Benefits Provided by this Activity
N/A	None

ENDANGERED AND THREATENED SPECIES

POTENTIAL SPECIES AND IMPACT INFORMATION

The area submitted for review may contain populations or critical habitat of:

Indiana bat, northern long-eared bat

The following adverse impacts could potentially occur as a result of installation of one or more of the conservation practices listed:

None

REQUIRED STRATEGIES & EFFECT DETERMINATION

A. Required Strategies

Based on the information submitted, the following strategies are required to be implemented to avoid adverse effects to the species listed above. The strategies listed below must be incorporated into the specifications, conservation plan, layout and/or specifications.

Practice	Required Additional Strategies For Practice Implementation
N/A	None

B. Effect Determination

It has been determined that the activities are considered to have No Effect (NE) on federally listed, candidate or eagle species or their habitats. No further consultation under the Endangered Species Act is required with the U.S. Fish and Wildlife Service. Proceed with planning and implementation. Maintain a copy of this report as documentation of investigation according to NRCS policy. If practices are added, quantities, locations or other significant changes occur prior to installation, conservation planners must revise and resubmit this data accordingly.

NOTE: If any of the required strategies listed above cannot be implemented, or the strategy specifically requires coordination or consultation with USFWS the proposed practice is determined as May Adversely Affect (MAA) as a direct or indirect result of

KENTUCKY INTERAGENCY COORDINATION TOOL

KICT (3.0)

implementation and will then require consultation with U.S. Fish and Wildlife Service.

MANAGEMENT RECOMMENDATIONS

The following are considerations that may be used to support conservation, but are NOT REQUIRED to avoid adverse effects. When possible utilize these strategies during conservation planning of this area:

Practice	Management Recommendation
N/A	None

POTENTIAL BENEFITS

If all avoidance and required measures are implemented as outlined in this report, the following practices may beneficially affect species or their habitats:

Practice	Potential Benefits Provided by this Activity
N/A	None

FLOODPLAIN MANAGEMENT

POTENTIAL FLOODPLAIN AND IMPACT INFORMATION

Based on the information submitted it has been determined that this project area may occur in or near the following floodplain:

None

The following potential adverse impacts to floodplains include:

None

AVOIDANCE MEASURES & EFFECT DETERMINATION

A. Avoidance Measures

Based on the information submitted, the following strategies should be considered to avoid adverse effects to floodplain(s) for the practice(s) shown. If feasible, strategies listed below should be incorporated into the conservation plan, layout/specifications and operation and management of the practice.

Practice	Required Additional Strategies For Practice Implementation
N/A	None

If practices will affect floodplains, NRCS policy requires that conservation planners ensure the following prior to providing further technical and financial assistance.

(1) Agricultural floodplains have been used for producing food, feed, forage, fiber, or oilseed for at least 3 of the 5 years before the request for assistance

(2) Agricultural production is in accordance with any official state or designated area water quality plans

B. Effect Determination (tentative)

It has been determined that the activities described have a No Effect (NE) determination on floodplain areas protected under Executive Order 11988 and NRCS policy in GM 190 Part 410, Subpart B, Section 410.25.

IMPORTANT: The determination above assumes that actual practice placement is within the floodplain and meets NRCS policy regarding technical and financial assistance. This determination may differ depending upon placement of practices within the area of interest, implementation of avoidance measures and other factors. Planners must verify the location of the floodplain with respect to

KENTUCKY INTERAGENCY COORDINATION TOOL

KICT (3.0)

actual practice location. The final determination should be recorded in all appropriate environmental documentation. If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners must revise and resubmit this data accordingly. Notify the client/landowner and document the necessity to obtain any permits prior to implementation.

POTENTIAL BENEFITS

If floodplain avoidance measures are implemented as outlined in this report, the following practices may provide beneficial contributions to floodplain ecology in the area identified:

Practice	Potential Benefits Provided by this Activity
N/A	None

INVASIVE SPECIES

Based on the information submitted it has been determined that this project occurs in close proximity to known populations of potentially invasive species that include the following:

None

The following adverse impacts could potentially cause or promote the introduction or spread of invasive species due to installation, maintenance and operation of one or more of the conservation practices listed:

None

CONSIDERATIONS & EFFECT DETERMINATION

A. Considerations

Based on the information submitted, carefully consider the following information when implementing practices in this area. As appropriate, the strategies listed below should be considered during conservation planning and applied when developing layout/specifications and operation and management plans for the practice listed.

Practice	Consideration for Practice Implementation
N/A	None

B. Effect Determination (tentative)

It has been determined that the activities described have a No Effect (NE) determination to invasive species under Executive Order (E.O.) 13112 and NRCS policy located in 190-GM, Part 414. This determination is based solely on known and reported data held by the Kentucky Nature Preserves Commission and other sources and is not comprehensive. Invasive species are dynamic and not all populations have been identified. If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners should revise and resubmit this data accordingly.

Note: This determination must always be field verified. Utilize this determination to screen the area for potential invasive species. There could be undocumented potentially invasive species present on site. Document the determination, rationale and effects in conjunction with on-site analysis. Therefore, the final determination shown above may differ.

POTENTIAL BENEFITS THAT MAY FACILITATE CONTROL OF INVASIVE SPECIES

The following practices may assist with prevention, introduction, spread, or promotion of known populations of invasive species:

Practice	Potential Benefits Provided by this Activity
N/A	None

KENTUCKY INTERAGENCY COORDINATION TOOL

KICT (3.0)

NATURAL AREAS

POTENTIAL IMPACT INFORMATION

Based on the information submitted it has been determined that this project occurs in close proximity to the following designated natural area:

None

The following adverse impacts could potentially occur as a result of installation of one or more of the conservation practices listed:

None

CONSIDERATIONS & EFFECT DETERMINATION

A. Considerations

Based on the information submitted, carefully consider the following information when implementing practices within, near or adjacent to natural areas. As appropriate, the strategies listed below should be considered during conservation planning and applied when developing layout/specifications and operation and management plans for the practice listed.

Practice	Consideration for Practice Implementation
N/A	None

B. Effect Determination (tentative)

The activities described has a determination of No Effect (NE) on natural areas protected under federal regulations (GM 190 Part 410.23). If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners must revise and resubmit this data accordingly. Always verify presence or absence of resources on site during the planning process.

Note: This determination does not take into consideration natural areas that are unofficially designated by private landowners or other entities. Landowners may designate natural areas on their property. Planners should consider those privately designated areas in addition to officially designated areas.

POTENTIAL BENEFITS

The following practices may provide beneficial contributions to known adjacent natural areas:

Practice	Potential Benefits Provided by this Activity
N/A	None

PRIME FARMLAND

POTENTIAL IMPACT INFORMATION

Based on the information submitted it has been determined that this project contains the following important farmlands:

Prime Farmland, Farmland Of Statewide Importance

Depending upon how the practice is implemented, the placement of practices within or near these areas could have potential adverse impacts as shown below:

None

AVOIDANCE MEASURES & EFFECT DETERMINATION

A. Avoidance

KENTUCKY INTERAGENCY COORDINATION TOOL

KICT (3.0)

Based on the information submitted, carefully consider the following information when implementing practices that may impact prime farmlands. As appropriate, the strategies listed below should be considered during conservation planning and applied when developing layout/specifications and operation and management plans for the practice listed.

Practice	Required Avoidance Measures for Practice Implementation
N/A	None

B. Effect Determination (tentative)

It has been determined that the activities described have a determination of No Effect (NE) to prime farmlands described under NRCS policy under the Farmland Protection Policy Act and 7 CFR 658.5. This determination should be considered and recorded in all environmental documentation. If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners must revise and resubmit this data accordingly. Always verify presence or absence of resources on site during the planning process.

Note: If the determination above is May Affect, the actual placement of practices within the area of interest may not impact prime farmlands depending upon many factors. Therefore, the final determination shown above may differ. Always document the determination, rationale and effects in conjunction with on-site analysis.

RIPARIAN AREAS

POTENTIAL IMPACT INFORMATION

Based on the information submitted the following resource is present:

Riparian Area

Depending upon how the practice is implemented, the placement of practices within or near these areas could have potential adverse impacts as shown below:

There is a potential to adversely affect riparian area function by the change in vegetation, or vegetation type.

There is a potential to adversely affect water quality (at least short term) through animal waste, livestock introduction, pesticides, sediment, pollutants or various human activities entering or occurring within or adjacent to, streams, wetlands or other surface waterbodies.

CONSIDERATIONS & EFFECT DETERMINATION

A. Considerations

Based on the information submitted, carefully consider the following information when implementing practices within or near riparian areas. As appropriate, the strategies listed below should be considered during conservation planning and applied when developing layout/specifications and operation and management plans for the practice listed.

Practice	Consideration for Practice Implementation
Cover Crop (340)	Where feasible and practical minimize the impacts, disturbance and removal of existing native riparian vegetation at an appropriate width to maintain existing functions.
Cover Crop (340)	During practice installation and function, implement measures to ensure that the transport of excess nutrients, sediments, pesticides or toxic substances to streams, wetlands and adjacent waterbodies and associated riparian areas does not occur.

B. Effect Determination (tentative)

KENTUCKY INTERAGENCY COORDINATION TOOL

KICT (3.0)

The activities described has a determination of May Affect (MA) on riparian areas described under NRCS policy in located in GM 190 Part 411.3. If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners must revise and resubmit this data accordingly. Always verify presence or absence of resources on site during the planning process.

Note: Within the area of interest, the actual placement of practices may not be in sites that influence riparian areas. Verify the location of the riparian area with respect to actual practice location. Therefore, the final determination shown above may differ from the final effect. In addition, there may be riparian zones that do not appear or are too small to be included in this inventory. Always verify effects with on-site analysis.

POTENTIAL BENEFITS

If avoidance measures are implemented as outlined in this report, the following practices may provide beneficial contributions to riparian ecology:

Practice	Potential Benefits Provided by this Activity
Cover Crop (340)	This practice may be beneficial if it is installed for the purpose of reducing or eliminating animal wastes, sediment, pesticides, or other pollutants from a surface water resource such as a stream or wetland and associated riparian area.

SCENIC BEAUTY

POTENTIAL IMPACT INFORMATION

Based on the information submitted it has been determined that this project may be located in or near the following:

None

Depending upon how the practice is implemented, the placement, type or method of installation within or near these areas could have potential adverse impacts as shown below:

None

CONSIDERATIONS & EFFECT DETERMINATION

A. Considerations

Based on the information submitted, carefully consider the following information when implementing practices that may impact scenic areas. As appropriate, the information listed below should be considered during conservation planning and applied when developing layout/specifications and operation and management plans for the practice listed.

Practice	Consideration for Practice Implementation
N/A	None

B. Effect Determination (tentative)

The activities described has a determination of No Effect (NE) to scenic areas described in NRCS policy under GM Title 190, Part 410.24.. If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners must revise and resubmit this data accordingly. Always verify presence or absence of resources on site during the planning process.

Note: The determination shown above may not apply depending on many factors and the professional judgement of the planner. This report may not reflect conditions at the field level and therefore may differ from the final determination shown on environmental evaluations. Planners should always consider the aesthetics of practice implementation regardless of the setting and verify any

KENTUCKY INTERAGENCY COORDINATION TOOL

KICT (3.0)

determination at all available scales.

POTENTIAL BENEFITS

This project (when implemented along with any applicable mitigation considerations) could have a beneficial effect to scenic areas as shown below.

Practice	Potential Benefits Provided by this Activity
N/A	None

WETLANDS

POTENTIAL IMPACT INFORMATION

Based on the information submitted it has been determined that this project may contain or be adjacent to an area that is classified as:

None

The placement of practices within or near these areas could have potential adverse impacts as shown below.

None

AVOIDANCE MEASURES & EFFECT DETERMINATION

A. Avoidance Measures

Based on the information submitted and if verified, the following strategies should be implemented to avoid adverse effects for the practice(s) shown. If wetlands are found to be impacted, the strategies listed below must be incorporated into the conservation plan, layout/specifications and operation and management of the practice.

Practice	Required Avoidance Measures for Practice Implementation
N/A	None

B. Effect Determination (tentative)

The activity described has a determination of No Effect (NE) to wetlands protected under Executive Order 11990 and NRCS policy located at 190-GM, Part 410, Subpart B, Section 410.26. If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners must revise and resubmit this data accordingly.

Note: This report does not grant or constitute permission or permitting in any manner. Due to the scale, size and other limitations, this information is for resource screening purposes only and should not be considered final. Wetlands may occur that are not taken into consideration by this report. ALWAYS verify the presence or absence of wetlands through on-site analysis and field verification.

Therefore, the final determination shown above may differ. Document the determination, rationale and effects in conjunction with on-site analysis on the Environmental Evaluation. Certain activities may require a Clean Water Act (CWA) permit or other permission. Refer to the CWA information as necessary.

POTENTIAL BENEFITS

If all the required avoidance measures are implemented as outlined in this report, the following practices could potentially be beneficial for any field-verified wetlands.

Practice	Potential Benefits Provided by this Activity
N/A	None

KENTUCKY INTERAGENCY COORDINATION TOOL

KICT (3.0)

WILD AND SCENIC RIVERS

POTENTIAL IMPACT INFORMATION

Based on the information submitted it has been determined that this project occurs within or near a protected river segment as shown below:

None

Depending upon how the practices are implemented, the placement of practices within or near these areas could have potential adverse impacts as shown below:

None

AVOIDANCE MEASURES & EFFECT DETERMINATION

A. Avoidance Measures

Based on the information submitted, the following strategies should be implemented to avoid adverse effects for the practice(s) shown. The strategies listed below must be incorporated into the conservation plan, layout/specifications and operation and management of the practice.

Practice	Required Avoidance Measures for Practice Implementation
N/A	None

B. Effect Determination

The activities described has a determination of No Effect (NE) to areas protected under The National Wild and Scenic Rivers Act of 1968 (Public Law 90-542). If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners must revise and resubmit this data accordingly.

Note: Notify the client/landowner and document the necessity to obtain any permits prior to implementation.

Kentucky Special Use Waters (Provided for additional consideration)

This project area contains or occurs near the following KY Special Use Waters:

None

The following information should be carefully considered during practice implementation. Also, verify if dredging or filling within or near these waters is associated with the project. Refer to the Clean Water Act information if available.

Practice	Considerations
N/A	None

Note: Notify the client/landowner and document the necessity to obtain any permits prior to implementation.

POTENTIAL BENEFITS

If all the required avoidance measures are implemented as outlined in this report, the following practices could potentially be beneficial for the identified stream types:

Practice	Potential Benefits Provided by this Activity
N/A	None

INTENDED USE: This document is to be utilized for planning and documenting compliance with NRCS policy for certain special environmental concerns. These include the Endangered Species Act, the Bald and Golden Eagle Protection Act, Section 106 of the National Historic Preservation Act, the Clean Air Act, The Wild and Scenic Rivers Act, Farmland Protection Policy Act, Executive Orders 11988, 11990, et. al. in compliance with the National Environmental Policy Act (NEPA) and NRCS policy. It is specific to activities in which NRCS staff is providing individual conservation

KENTUCKY INTERAGENCY COORDINATION TOOL

KICT (3.0)

technical assistance and/or funding under various Farm Bill programs; or for purposes of ranking to enroll in USDA programs. Projects that are larger in scope are not to utilize this methodology and will continue to follow NRCS policy and procedures as stated in GM Title 190, Part 410 - Compliance with NEPA and 190-VI-National Environmental Compliance Handbook (NECH).

Disclaimer: The information provided in this report is based on the best current data available to NRCS. It is provided by the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, Office of State Archaeology, Kentucky Heritage Council, The State Historic Preservation Officer and The Kentucky State Nature Preserves Commission, KY Division for Air Quality and others. Data is also provided through NRCS internal methods (i.e. Soils Datamart). Errors or gaps in information and data may occur. Therefore, planners should always field-verify the site to determine the exact locations, suitability of habitats and presence of resources through on-site analysis. Occurrences of protected resources could be located within the identified area of interest that is not included in this report. Responses provided by the KICT indicating the absence of resources may indicate that the area has not been surveyed or unknown data exists, rather than confirmation that the area lacks protected resources. Upon discovery of protected resources or modification to original plans and designs, further coordination may be required. If protected resources are identified during implementation or construction, immediately cease the activity and contact the agency representative responsible for activities under NEPA. This information is relevant only for the practices/activities identified and does not constitute formal consultation or permitting under any regulatory agencies. This document does not grant permission or act as an authorization for any activity. Planners should always check with local authorities and local governments to determine if permits are needed. The information contained herein should not be distributed to third parties without the written consent of the landowner. If you feel the information contained in this report is erroneous, please contact the KICT local or state administrator.

PROJECT REPORT



Inquiry Date:	2022-03-04	
Client:	Andrew Seldon	
Site Name:	Andrew Seldon	
County:	Hampshire	
Location:	Capon Bridge, WV	
Acreage:	25.1	
PRACTICES SUBMITTED FOR REVIEW	AMOUNT	UNIT
Access Road (560)	750	Ft.
Animal Mortality Facility (316)	1	No.
Critical Area Planting (342)	0.3	Ac.
Heavy Use Area Protection (561)	0.3	Ac.
Mulching (484)	0.3	Ac.
Roof Runoff Structure (558)	442	Ft.
Roofs and Covers (367)	3	No.
Underground Outlet (620)	560	Ft.
Waste Storage Facility (313)	2	No.

Floodplain Management

I. Potential Floodplain And Impact Information

Based on the information submitted it has been determined that this project area may occur in or near the following floodplain:

None

It has been determined that the following potential adverse impacts to floodplains include:

None

AVOIDANCE MEASURES & EFFECT DETERMINATION

A. Avoidance Measures

Based on the information submitted, the following strategies should be considered to avoid adverse effects to floodplain(s) for the practice(s) shown. If feasible, strategies listed below should be incorporated into the conservation plan, layout/specifications and operation and management of the practice.

Practice	Required Additional Strategies For Practice Implementation
N/A	None

If practices will affect floodplains, NRCS policy requires that conservation planners ensure the following prior to providing further technical and financial assistance.

(1) Agricultural floodplains have been used for producing food, feed, forage, fiber, or oilseed for at least 3 of the 5 years before the request for assistance

Intracgency Coordination Tool (V2)

(2) Agricultural production is in accordance with any official state or designated area water quality plans

B. Effect Determination

It has been determined that the activities described have a No Effect (NE) determination on floodplain areas protected under Executive Order 11988 and NRCS policy in GM 190 Part 410, Subpart B, Section 410.25.

IMPORTANT: The determination above assumes that actual practice placement is within the floodplain and meets NRCS policy regarding technical and financial assistance. This determination may differ depending upon placement of practices within the area of interest, implementation of avoidance measures and other factors. Planners must verify the location of the floodplain with respect to actual practice location. The final determination should be recorded in all appropriate environmental documentation. If other practices are added, quantities, locations or other significant changes occur prior to installation conservation planners must revise and resubmit this data accordingly. Notify the client/landowner and document the necessity to obtain any permits prior to implementation.

IV. Potential Benefits

If floodplain avoidance measures are implemented as outlined in this report, the following practices may provide beneficial contributions to floodplain ecology in the area identified:

Practice	Potential Benefits Provided by this Activity
N/A	None

Threatened, Endangered, Candidate, Eagle and Rare Species Report

I. Potential Species And Impact Information

Based on the information submitted, the area may contain populations or critical habitat of :

Federally Listed Myotis Species

It has been determined that the following adverse impacts could potentially occur as a result of installation of one or more of the conservation practices listed above:

There is a potential to adversely affect federally listed by the removal or establishment of trees or tree cover.

There is a potential to adversely affect federally listed species through a resulting change in landuse or land clearing activities.

II. Required Strategies & Effect Determination

A. Required Strategies

Based on the information submitted, the following strategies are REQUIRED to be implemented to avoid adverse affects to TEC species or their habitats. The strategies listed below must be incorporated into the conservation plan, layout and/or specifications.

Practice	Required Additional Strategies For Practice Implementation
Access Road (560), Underground Outlet (620), Waste Storage Facility (313)	Conduct any tree removal associated with this practice between November 15th and March 31st. Trees with a diameter at breast height (DBH) of less than 3 inches may be removed anytime during the year. No trees that exhibit exfoliating bark characteristics such as shell and shag bark hickories and white oak species; or dead and dying trees with exfoliating bark, broken tree tops, splintered or split areas; trees with cavities or hollowed areas shall be removed during this period.

B. Effect Determination

It has been determined that if all the required additional strategies listed above are implemented, the activities described are considered Not Likely to Adversely Affect (NLAA) the TEC species or its habitats. No further consultation under the Endangered

Intragency Coordination Tool (V2)

Species Act is required with the U.S. Fish and Wildlife Service. Proceed with planning and implementation. Maintain a copy of this report as documentation of investigation according to NRCS policy. If practices are added, quantities, locations or other significant changes occur prior to installation, conservation planners must revise and resubmit this data.

Note: If any of the required strategies listed above cannot be implemented, or the strategy specifically required coordination or consultation with USFWS the proposed practice is determined as May Adversely Affect(MAA) as a direct or indirect result of implementation and will then require consultation with U.S. Fish and Wildlife Service.

III. Management Recommendations

The following are considerations that may be used to support conservation, but are NOT REQUIRED to avoid adverse effects. When possible utilize these strategies during conservation planning of this area:

Practice	Management Recommendation
Access Road (560)	Maintenance or enhancement of forested buffers along streams is recommended for the benefit of the species.

IV. Potential Benefits

If all avoidance and required measures are implemented as outlined in this report, the following practices may beneficially affect TEC species or their habitats:

Practice	Potential Benefits Provided by this Activity
Critical Area Planting (342)	This practice may be beneficial if planned and conducted in coordination with WVDNR and/or USFWS for benefit of the species. Contact the NRCS State Biologist and/or USFWS to initiate these efforts.
Critical Area Planting (342)	This practice is considered beneficial if it provides additional habitat in the form of cover (native woody vegetation), pollinating insects (native forbs), or restores natural, light, thermal or hydrologic regimes.

Intended Use: This document is to be utilized for planning and documenting compliance with NRCS policy, the Endangered Species Act, Bald and Golden Eagle Protection Act and some components of the National Environmental Policy Act. It is specific to activities in which NRCS staff is providing individual conservation technical assistance and/or funding under various Farm Bill programs; or for purposes of ranking to enroll in USDA programs. Projects that are larger in scope are not to utilize this methodology and will continue to follow NRCS policy and procedures as stated in GM Title 190, Part 410 - Compliance with NEPA and 190-VI-National Environmental Compliance Handbook (NECH).

Disclaimer: The information provided in this report is based on the best current data available to the U.S. Fish and Wildlife Service and the West Virginia Division of Natural Resources. However, errors or gaps in information and data may occur. Therefore planners should always check the site to determine the exact locations or suitability of habitat through on-site analysis. Occurrences of species or habitats could be located within the identified area of interest that is not included in this report. Responses provided by the ICT indicating the absence of TEC species may indicate that the area has not been surveyed or unknown data exists, rather than confirmation that the area lacks critical habitat or species. Verification of this information should always be performed on site. Upon discovery of protected resources or modification to original designs, further coordination may be required. If nesting eagles, Endangered, Threatened or Candidate species or their habitats are identified during implementation or construction activities, immediately cease the activity and contact your agency representative responsible for activities under the Endangered Species Act or Bald and Golden Eagle Act activities. This information is relevant only for the practices/activities identified and does not constitute formal consultation with the USFWS. The information contained herein should not be distributed to third parties without the written consent of the landowner. If you feel the information contained in this report is erroneous please contact the NRCS West Virginia State Biologist at (304) 284-7581.

REQUEST FOR CULTURAL RESOURCES REVIEW

1. Field Office & NRCS Planner:			
2. Date:	3. County:	4. Program:	
AREA OF POTENTIAL EFFECT (APE)			
5. List the practice(s). Include practice name, code, and the size of the APE in acres or linear feet:			
6. Participant/Sponsor:		Farm #	Field #
7. Proposed Construction Date:			
8. 7.5 Minute USGS Quad:		Lat/Long:	
9. Current Land Use//Ground Cover//Slope %:			
10. Landform (Check One): <input type="checkbox"/> Floodplain <input type="checkbox"/> Terrace <input type="checkbox"/> Ridge Top <input type="checkbox"/> Gap/Saddle <input type="checkbox"/> Bench <input type="checkbox"/> Other			
11. Soil Type:			
PROJECT SITE INSPECTION			
12. After conducting a field inspection of APE, is there evidence of any of the following: (Check type)			
<input type="checkbox"/> Stone or Brick foundations, <input type="checkbox"/> Stone piles, <input type="checkbox"/> Mounds, <input type="checkbox"/> Dug Well, <input type="checkbox"/> Depression, <input type="checkbox"/> Ornamental Plantings, <input type="checkbox"/> Flint/Chert outcrops, <input type="checkbox"/> Flint/Chert flakes or <input type="checkbox"/> Projectile points, <input type="checkbox"/> Rock Overhangs, <input type="checkbox"/> Manmade features or <input type="checkbox"/> objects over 50 years old.			
Describe what was found:			
13. Send this form, along with a portion of a 7.5 minute quad map at 1:24,000 scale with APE identified and a conservation plan map with practices marked to: Cultural Resources Coordinator.			
To be completed by the Cultural Resources Specialist:			
<input type="checkbox"/> Cultural Resources are not likely to be affected. Proceed with implementation.			
<input type="checkbox"/> Cultural Resources are likely to be present. Site visit required.			
_____ CRS Signature		_____ Date	
Site visit was completed on			
<input type="checkbox"/> Proceed with practice implementation.			
<input type="checkbox"/> Do not proceed with practice implementation.		_____ CRS Signature	
		_____ Date	

