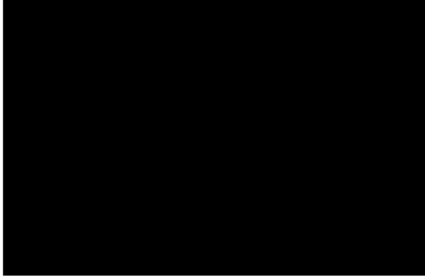




**File Code:** 6270  
**Date:** May 29, 2020



This is our final response to your Freedom of Information Act (FOIA) request #2019-FS-R8-05764-F of July 31, 2019. Your request was received in this office on July 31, 2019. In your letter you requested the following records:

1. Any and all correspondence, including emails and attachments, in possession of Joby P. Timm that matches the following search terms: "Mountain Valley Pipeline", "MVP", "intelligence", "protest".
2. Any and all supporting documents, internal briefings, memorandums, or relevant records as they relate to Closure Orders, 08-08-11-18-02 and 08-08-11-18-03.
3. Any and all security briefing materials, memos, or communication, including emails and attachments, in possession of Joby P. Timm that were provided by private security individuals/companies or any of the following entities: EQT, Dominion Energy, Virginia State Police, or Department of Homeland Security. This may be limited to matters regarding the Mountain Valley or the Atlantic Coast Pipeline.
4. Please constrain the search for the above requests between December 1, 2017 and the processing date of this request.

A reasonable search was conducted by this office and the office of the George Washington and Jefferson National Forests. All responsive records were referred to the Office of the General Counsel (OGC), U.S. Department of Agriculture (USDA) for review on August 15, 2019.

Upon review of these records (350 pages) it has been determined that 310 pages are being released in full, 37 pages have been partially redacted in accordance with 5 U.S.C. § 552(b)(4), 5 U.S.C. § 552(b)(5), and 5 U.S.C. § 552(b)(6). We have referred 3 pages of records to the office of Senator Tim Kaine (Virginia) for a release determination. Please contact his office directly for questions involving these 3 pages of records.

### **Exemptions**

FOIA Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4), protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential." This exemption is intended to protect the interests of both the government and submitters of information. The very existence of Exemption 4 encourages submitters to voluntarily furnish useful commercial or financial information to the government and provides the government with an assurance that required submissions will be reliable.



The exemption also affords protection to those submitters who are required to furnish commercial or financial information to the government by safeguarding them from the competitive disadvantages that could result from disclosure. The exemption covers two distinct categories of information in federal agency records, (1) trade secrets, and (2) information that is (a) commercial or financial, and (b) obtained from a person, and (c) privileged or confidential. Certain information contained in these responsive records contain specific business information, internal file links and other Forest Service related business information that would be considered private, privileged or confidential in nature and have been redacted under this exemption.

FOIA Exemption 5 protects from disclosure inter-agency or intra-agency memorandums or letters which would not be available by law to a party, other than a party in litigation with the agency. Incorporated in Exemption 5 are three primary privileges:

1. The deliberative process privilege,
2. The attorney work-product privilege, and
3. The attorney-client privilege.

We have determined that portions of the records requested must be withheld pursuant to all three of the privileges extended under Exemption 5 of the FOIA, 5 U.S.C. 552(b)(5).

#### *Deliberative Process Privilege*

We are withholding portions of documents under the deliberative process privilege. The deliberative process privilege prevents injury to the quality of agency decisions. For the deliberative process privilege to apply, three requirements must be met: (1) the communication must be inter-or intra- agency, (2) the communication must be pre-decisional and developed prior to the adoption of an agency policy, and (3) the communication must be deliberative, and a direct part of the deliberative process that makes recommendations or expresses opinions on legal or policy matters. The three policy purposes that constitute the basis for the deliberative process privilege are: (1) to encourage open, frank discussions on matters of policy between subordinates and superiors, (2) to protect against premature disclosure of proposed policies before they are adopted, and (3) to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency's action.

These records contain recommendations, advice or analysis between subordinates and supervisors. Some records are draft versions or in draft form and would not be available to the public as to avoid any confusion regarding the agencies decisions and must be withheld pursuant to the deliberative process component of Exemption 5 of the FOIA, 5 U.S.C. § 552(b)(5).

#### *The Attorney Work-Product Privilege*

The attorney work-product privilege protects records and documents prepared by an attorney or at an attorney's direction in contemplation or anticipation of litigation, including administrative proceedings. The withheld information consists of communications between USDA OGC attorneys and the client agency, the Forest Service, regarding records of law enforcement investigations, when the investigation is based upon specific wrongdoing and represents an attempt to obtain evidence and build a case against the suspected, information shared with a party holding a common legal interest with the agency, and reports prepared to provide background on a Federal Torts Claim Act for USDA OGC and at the request of an OGC attorney.



### *The Attorney-Client Privilege*

The attorney-client privilege of FOIA Exemption 5 protects confidential communication between an attorney and a client relating to legal matters for which the client has sought professional advice. The privilege applies to facts divulged by a client to an attorney and communications between attorneys which reflect client-supplied information.

Release of the information would reveal the strategy, thought processes, communications, and interactions between attorney and client that assist the attorney in protecting the interests of the client in addressing legal issues specific to the George Washington and Jefferson National Forests. The information reflects specific legal communication between OGC attorneys and employees of the Forest Service concerning the pipelines.

FOIA Exemption 6 permits the Government to withhold all information about individuals in “personnel and medical and similar files,” where the disclosure of such information “would constitute a clearly unwarranted invasion of personal privacy.” In determining whether a particular disclosure would constitute an unwarranted invasion of personal privacy, the Forest Service must balance the public’s right to disclosure against the privacy interest of the individual whose privacy might be affected by disclosure. The determination of whether the disclosure of private information is required under FOIA Exemption 6 turns not on the identity of the requester or on the particular purpose for which the records are sought, but on the nature of the information requested and its relationship to the core purpose for which Congress enacted the FOIA: to shed light on an agency’s performance of its statutory duties. We have determined that certain personal information that would be considered private, privileged or confidential in nature must be withheld pursuant to Exemption 6 of the FOIA, 5 U.S.C. § 552(b)(6).

### **Fees**

Pursuant to Title 7 Code of Federal Regulations (CFR), Subtitle A, Part 1, Subpart A, Appendix A, the FOIA allows for the assessment of search and duplication costs. The first 100 pages of duplication and 2 hours of research time are provided free of charge. Since no records were found, no search and duplication costs are being assessed with this response.

### **Appeal Rights**

This concludes the Southern Region’s response to your FOIA request. The FOIA provides you the right to appeal this response. Any appeal must be made in writing, within 90 days from the date of this letter to the Chief, USDA Forest Service.

Additionally, due to the concerns surrounding the COVID-19 virus we are only accepting appeals electronically at this time. Please email your appeal to [SM.FS.WOFOIA@usda.gov](mailto:SM.FS.WOFOIA@usda.gov). The term “FOIA APPEAL” should be placed in capital letters in the subject line of the email along with the FOIA case number (2019-FS-R8-05764-F) assigned to your request. To facilitate the processing of your appeal, please attach a copy of this letter to your request as well.

If you need further assistance or would like to discuss any aspect of your request, please contact the FOIA Public Liaison at 202-205-1542. Additionally, you may contact the Office of Government Information Services (OGIS) National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road-OGIS  
College Park, Maryland 20740-6001  
e-mail: [ogis@nara.gov](mailto:ogis@nara.gov)  
telephone: 202-741-5770  
toll free: 877-684-6448  
facsimile: 202-741-5769

If you have questions regarding this FOIA request, you may contact Douglas Meloche at (404) 347-4427 or [douglas.meloche@usda.gov](mailto:douglas.meloche@usda.gov).

Sincerely,



KEN ARNEY  
Regional Forester

Enclosures

cc: Sarah Kathmann, Douglas Meloche

**Forest Service-Transcon Weekly Check-in****Date:** March 8, 2018**Time:** 8:30-10 am (Eastern)**Location:** Conference Call

Attendees	Forest Service	Jennifer Adams, Connie Jankowiak, Todd Hess, Jim Twaroski, Jessica Rubado, Kelly Bridges, Mike Madden, Richard Guercin, Amy Coleman*
	Transcon	Jeff Davis, Greg Gryniewicz, Alli Rhodehamel-Leung, Mike Warner
	Galileo Project	Maria Martin, Peter Rocco

\*partial meeting attendance

**Action Items**

- Jennifer checks with ACP on the status of their review of the pre-felling checklist. *Complete.*
- Connie follows up with Russ MacFarlane regarding pre-treatment for invasive species.
- Jennifer checks with Clyde and Job regarding information sharing with the Pipeline Compliance Surveillance Inspector group.
- Galileo coordinates a Forest Service/FERC meeting. *In progress.*
- Transcon submits their review of the Spread 4 undulating edge marking. Anticipated March 9.
- Jennifer follows up with Brianna Smrekar regarding bio resumes. *Complete.*
- Mike W follows up with Tom Collins about geotechnical support.
- Jennifer follows up with engineers about 3<sup>rd</sup> party support.
- Participants complete their review of the communication plan by 12pm on March 9.
- Jennifer checks with FERC on whether or not ACP can lay down gravel with existing authorizations. *Complete, graveling allowed once FERC LNTP is issued.*

**Discussion Summary**

- The pre-timber felling and construction phase checklists are not meant to be authorizing documents; they are summaries of the protection measures and requirements found in the authorization documents that need to be implemented. The use of the checklists could help minimize compliance issues.
- There is concern that the “light duty” road use by ACP will harm roads given the anticipated amount of pickup truck traffic and weather conditions. It is unclear if ACP is permitted to lay down gravel within the existing authorizations (application of gravel would require blading and heavy trucks) or if laying gravel down prior to use is a requirement in the road permits.
- There is concern that there will not be enough parking pull outs on the access roads ACP is authorized to use. ACP is not permitted to park off road.
- The Monongahela National Forest issued a 120-day long temporary closure order covering permitted roads and within 200’ of the pipeline ROW. The George Washington National Forest is working on a 1-year closure which will also include some recreation areas affected by the road closures.

- It does not appear pre-treatment for invasive species is needed at this time. What species may be present at this time will be removed during site preparation. There will be a need for pre-treatment during the construction phase.
- ACP has not yet been permitted to develop wash stations, the expectation is they will wash trucks in town and come into the forests clean. They will also have to wash after crossing through areas with invasive species. The timber contract does not allow for self-inspection so the Forest Service would need to inspect the vehicles, however it does not appear the Forest Service can inspect private vehicles.
- The forests met on March 7 with the Pipeline Compliance Surveillance Initiative. The group is a conglomerate of various non-governmental organizations with an emphasis on using public effort and scientific methods to track ACP's affect to the environment and adherence to regulations and permit requirements. While there is a shared interest in monitoring, it is not clear what information the Forest Service can share outside of the Freedom of Information Act process. Jennifer will be talking with management and is considering asking public affairs to develop a weekly summary of activities for publication.
- Mike M is generally happy with ACP's efforts to reduce effects to the heritage sites. He believes a reduction in the limit of disturbance width by 25' in a few areas would further reduce effects. Mike intends to touch base with the Virginia State Historic Preservation Office later in the day. He noted the Monacan Tribe, which recently became a federally recognized, has ties to this area.
- There are still a few uncertainties in the communication plan, notably around the area closures, communication with the SHPO, US Fish and Wildlife Service, and the candy darter.

#### Upcoming Meetings (Times in Eastern)

- March 8, External FS-ACP Weekly Check-in Call, 1-3pm
- March 15, Internal FS Weekly Check-in Call, 8:30-10:30
- March 15, External FS-ACP Weekly Check-in Call, 1-3pm
- March 16, Internal Site Design Plans Review, 10am-12pm



**From:** Timm, Joby -FS  
**To:** (b)(6)  
**Cc:** [Rubado, Jessica - FS](#)  
**Subject:** Order Number 08-08-11-18-03 MVP Project Emergency Closure Order  
**Date:** Tuesday, April 03, 2018 3:21:12 PM  
**Attachments:** [image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

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(b)(6)

Thank you for your emails regarding the MVP Emergency Closure Order.

As Regional Forester Ken Arney mentioned in his response to Save Monroe, we will rescind Closure Order 08-08-11-01. We have updated the maps to ensure they reflect the current boundaries of the current Closure Order 4. The current closure order 4 is located at the following link:

[https://www.fs.usda.gov/Internet/FSE\\_DOCUMENTS/fseprd573775.pdf](https://www.fs.usda.gov/Internet/FSE_DOCUMENTS/fseprd573775.pdf).

We will continue to revise the Closure Order as safety issues, forest user access needs, and recommendations from our Office of General Counsel are brought to our attention. Each new Closure Order revises, supersedes, and replaces previous orders, as stated in the Order. We will continue to post the current Closure Order on the George Washington and Jefferson National Forest website and post signs in appropriate areas. You may also contact Jessica Rubado to request clarification our Closure Orders. You can contact Jessica at 503-314-0767 or [jrubado@fs.fed.us](mailto:jrubado@fs.fed.us). - JOB



**Joby P. Timm**  
**Forest Supervisor**  
**Forest Service**  
**George Washington and Jefferson National Forest**

p: 540-265-5118

c: 540-339-2523

f: 540-265-5110

[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)

Supervisors Office  
5162 Valleypointe Parkway  
Roanoke, VA 24019  
[www.fs.fed.us](http://www.fs.fed.us)



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**From:** Jankowiak, Connie L -FS  
**To:** [Ballew, Katie J -FS](#); [Morris, Troy - FS](#); [MacFarlane, Russ -FS](#); [Thompson, James H -FS](#); [Grace Ellis;.mvp@transcon.com](#); [Lauren Johnston](#)  
**Cc:** [McKeague, Dan -FS](#)  
**Subject:** RE: MVP and road closure  
**Date:** Friday, February 09, 2018 11:21:55 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

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Thanks Katie. Appreciate the information on timelines in order for a closure order as that will definitely be a deciding factor in getting anything in place.

Lauren & Grace – Can you check your records to see if you have anything in regard to discussions on closure orders? Thanks!



**Connie L Jankowiak**  
**Acting Special Project Coordinator**  
**Forest Service**  
**George Washington & Jefferson National Forests**  
p: 540-265-5114  
[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)  
5162 Valleypointe Parkway  
Roanoke, VA 24019  
[www.fs.fed.us](http://www.fs.fed.us)  
  
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---

**From:** Ballew, Katie J -FS  
**Sent:** Friday, February 9, 2018 12:58 PM  
**To:** Jankowiak, Connie L -FS <[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)>; Morris, Troy - FS <[troymorris@fs.fed.us](mailto:troymorris@fs.fed.us)>; MacFarlane, Russ -FS <[rmacfarlane@fs.fed.us](mailto:rmacfarlane@fs.fed.us)>; Thompson, James H -FS <[jamesthompson@fs.fed.us](mailto:jamesthompson@fs.fed.us)>; Grace Ellis <[grace.ellis@galileoaz.com](mailto:grace.ellis@galileoaz.com)>; [mvp@transcon.com](mailto:mvp@transcon.com)  
**Cc:** McKeague, Dan -FS <[dmckeague@fs.fed.us](mailto:dmckeague@fs.fed.us)>  
**Subject:** RE: MVP and road closure

We had discussed this a year ago along with the PAO's Office and the Rangers were tasked with deciding what they needed. I obviously support the Rangers and will assist in any fashion that I am capable. It can take up to a year to get an official closure order in place and we might have passed the window of opportunity. An emergency order will not be issued because long term planning on construction doesn't constitute an emergency. District Ranger McKeague along with his LEO would be a good source of information as to where a closure order(s) would be the most effective.



**Katie Ballew**  
**Patrol Captain**  
**Forest Service**  
**Supervisors Office George Washington and Jefferson National Forest**  
p: 540-265-5150

c: 540-524-0437  
f: 540-265-5204  
[katiejballew@fs.fed.us](mailto:katiejballew@fs.fed.us)

5162 Valleypointe Parkway  
Roanoke, VA 24019  
[www.fs.fed.us](http://www.fs.fed.us)



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**From:** Jankowiak, Connie L -FS  
**Sent:** Friday, February 09, 2018 12:49 PM  
**To:** Morris, Troy - FS <[troymorris@fs.fed.us](mailto:troymorris@fs.fed.us)>; MacFarlane, Russ -FS <[rmacfarlane@fs.fed.us](mailto:rmacfarlane@fs.fed.us)>; Thompson, James H -FS <[jamesthompson@fs.fed.us](mailto:jamesthompson@fs.fed.us)>; Grace Ellis <[grace.ellis@galileoaz.com](mailto:grace.ellis@galileoaz.com)>; [mvp@transcon.com](mailto:mvp@transcon.com)  
**Cc:** McKeague, Dan -FS <[dmckeague@fs.fed.us](mailto:dmckeague@fs.fed.us)>; Ballew, Katie J -FS <[katiejballew@fs.fed.us](mailto:katiejballew@fs.fed.us)>  
**Subject:** FW: MVP and road closure  
**Importance:** High

Good Afternoon –

I am looking for any information and/or decisions that have been made in regard to Closure Orders surrounding MVP project, timber felling or other. If there are others who may recall, please loop them into this message.

Dan– Can you give us an idea of your areas of safety concern for the timber felling and then separately any areas of concern once actual timber removal and construction start.

Katie – Do you have specific areas that you would see high potential to be problematic?

Thank you!



**Connie L Jankowiak**  
**Acting Special Project Coordinator**  
**Forest Service**  
**George Washington & Jefferson National Forests**  
p: 540-265-5114  
[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)

5162 Valleypointe Parkway  
Roanoke, VA 24019  
[www.fs.fed.us](http://www.fs.fed.us)



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**From:** LeMaster, Elizabeth -FS

**Sent:** Friday, February 9, 2018 12:26 PM

**To:** Jankowiak, Connie L -FS <[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)>

**Cc:** McKeague, Dan -FS <[dmcckeague@fs.fed.us](mailto:dmcckeague@fs.fed.us)>; Timm, Joby -FS <[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)>; Ballew, Katie J -FS <[katiejballew@fs.fed.us](mailto:katiejballew@fs.fed.us)>

**Subject:** FW: MVP and road closure

Connie, could you follow up on the need to get a closure order for MVP activities? Dan (Ranger on the Eastern Divide) asked about this, and I wasn't sure on the status. After talking to Katie and Job, I don't think we have moved forward with any closures related to timber felling, then for other activities. We typically don't close roads for timber harvest, but will rely on signage. Please check with Dan on areas of safety concern.

Thanks, Beth



**Elizabeth (Beth) T. LeMaster**  
**Deputy Forest Supervisor**

**Forest Service**

**George Washington and Jefferson National Forests**

p: 540-265-5118

[elemaster@fs.fed.us](mailto:elemaster@fs.fed.us)

5126 Valleypointe Parkway

Roanoke, VA 24019

[www.fs.fed.us](http://www.fs.fed.us)



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**From:** Abing, Timothy -FS

**Sent:** Friday, February 9, 2018 11:23 AM

**To:** LeMaster, Elizabeth -FS <[elemaster@fs.fed.us](mailto:elemaster@fs.fed.us)>

**Subject:** MVP and road closure

Beth: In looking for something else in MVP POD, I came across this:

During construction on FS Property, motorized access will be maintained along Pocahontas (FR #972), Mystery Ridge (FR #11080), and Brush Mountain (FR #188) Roads at all times to FS personnel, other personnel authorized by the FS, and emergency response officials. The pipeline will be parallel to Mystery Ridge Road and cross the road one time. Mountain Valley will also cross Brush Mountain Road. While Mountain Valley open cuts and crosses Mystery Ridge and Brush Mountain Roads, the roads will be closed to all through traffic for approximately five days. Should access for the FS or emergency purposes be necessary during those five days, the disturbed area will be covered with a steel plate. Following construction each day, the open trench across Brush Mountain Road



**Timothy Abing**  
**Director - Lands, Minerals, and Uses**

**Forest Service**  
**Southern Region**

**p: 404-347-3989**

**c: 404-387-7898**

**f: 404-347-2437**

**[tabing@fs.fed.us](mailto:tabing@fs.fed.us)**

1720 Peachtree Road NW, Suite 792S

Atlanta, GA 30309-2405

**[www.fs.fed.us](http://www.fs.fed.us)**



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**From:** (b)(6)  
**To:** [Timm, Joby -FS](#)  
**Cc:** [Williams, Ginny -FS](#); [Robbins, Rebecca - FS](#); [Brown, JoBeth -FS](#); [Bridges, Kelly - FS](#); [Adams, Jennifer - FS](#); [Jankowiak, Connie L -FS](#); [Morris, Troy - FS](#); [Maria Martin](#); [Lauren Johnston](#); [Peter Rocco](#); [Grace Ellis](#); [Rubado, Jessica - FS](#)  
**Subject:** Re: MVP and ACP Trail and Road Access Closure Inquiry:  
**Date:** Friday, February 23, 2018 5:30:59 PM  
**Attachments:** [image004.png](#)  
[image003.png](#)  
[image001.png](#)  
[image002.png](#)

---

Thank you, Job.

(b)(6)

On Fri, Feb 23, 2018 at 8:14 AM, Timm, Joby -FS <[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)> wrote:

(b)(6)

Thank you for reaching out regarding your maps and photos and your inquiry into trail and road closures near Braley Pond. Relative to road and trail closures, we're still working out the details of road and trail closures and any potential impacts to public access for both of the pipeline projects. The Atlantic Coast Pipeline does plan to cross the access road to Braley Pond, although just adjacent to Forest Service lands on private land. Since it is on private land we may need to refer you to another party for information. We'll be in touch when the details of trail and road activities by the pipeline projects are more developed and we have a more informed answer to give you. -JOB



**Joby P. Timm**  
**Forest Supervisor**  
**Forest Service**

**George Washington and Jefferson National Forest**

p: [540-265-5118](tel:540-265-5118)

c: [540-339-2523](tel:540-339-2523)

f: [540-265-5110](tel:540-265-5110)

[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)

Supervisors Office

5162 Valleypointe Parkway  
Roanoke, VA 24019

[www.fs.fed.us](http://www.fs.fed.us)



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ORDER NO. 09-21-18-02

**EMERGENCY CLOSURE ORDER OF THE FOREST SUPERVISOR  
RESTRICTING OCCUPANCY AND USE, TO WIT:  
MONONGAHELA NATIONAL FOREST,  
MARLINTON RANGER DISTRICT, WEST VIRGINIA**

Under the authority of the Act of Congress dated June 4, 1897, as amended (16 U.S.C. 551), and pursuant to the Secretary of Agriculture's Regulations set forth as 36 CFR Part 261, Subpart B (36 CFR 261.50(a) and (b)), the following acts and omissions are prohibited on the Monongahela National Forest located within Pocahontas County, West Virginia due to hazards associated with construction of the Atlantic Coast Pipeline. Said areas being described and designated as shown on the map set forth as Exhibit A, which is attached hereto and made a part hereto.

1. For the protection of public health and safety, going into or be upon any area which is closed by this Order by foot, horseback, or by non-motorized or wheeled conveyance (bicycle). 36 CFR § 261.53 (e)
2. Operating, leaving, possessing, or parking a motor vehicle on roads closed by this Order where construction associated with pipeline activity is occurring and when closed by a sign, gate, or barricade. 36 CFR § 261.54 (e)

**The following areas are Ordered Closed:**

- An area 200 feet on either or both sides of the pipeline right-of-way centerline on National Forest System (NFS) land

**This Order applies to the following roads:**

- Allegheny Road (Forest Road 55) from its junction with State Route 84 north to the pipeline centerline (2.8 miles)
- Upper Shock Run Road (FR 1017) from the pipeline centerline north 200 feet
- Buzzard Ridge Road (FR 1026) from where the road crosses onto NFS land (near US 219) north and east to where the road exits NFS land (4.2 miles)
- Sugar Camp Road (FR 1012) from where the road crosses onto NFS land (near SR 92) north to the pipeline centerline (1.78 miles)

**THESE RESTRICTIONS ARE NECESSARY FOR PUBLIC SAFETY AND TO PROTECT NATIONAL FOREST PROPERTY/RESOURCES. THEY ARE IN ADDITION TO THE GENERAL PROHIBITIONS SET FORTH IN 36 CFR PART 261. THIS ORDER WILL TERMINATE 120 DAYS FROM THE SIGNED DATE OF THE ORDER OR, PRIOR TO THE TERMINATION DATE WHEN WITHDRAWN BY A TERMINATION ORDER OF THE FOREST SUPERVISOR.**


Pursuant to the provisions of 36 CFR 261.50(e), the following persons are exempt from this order:

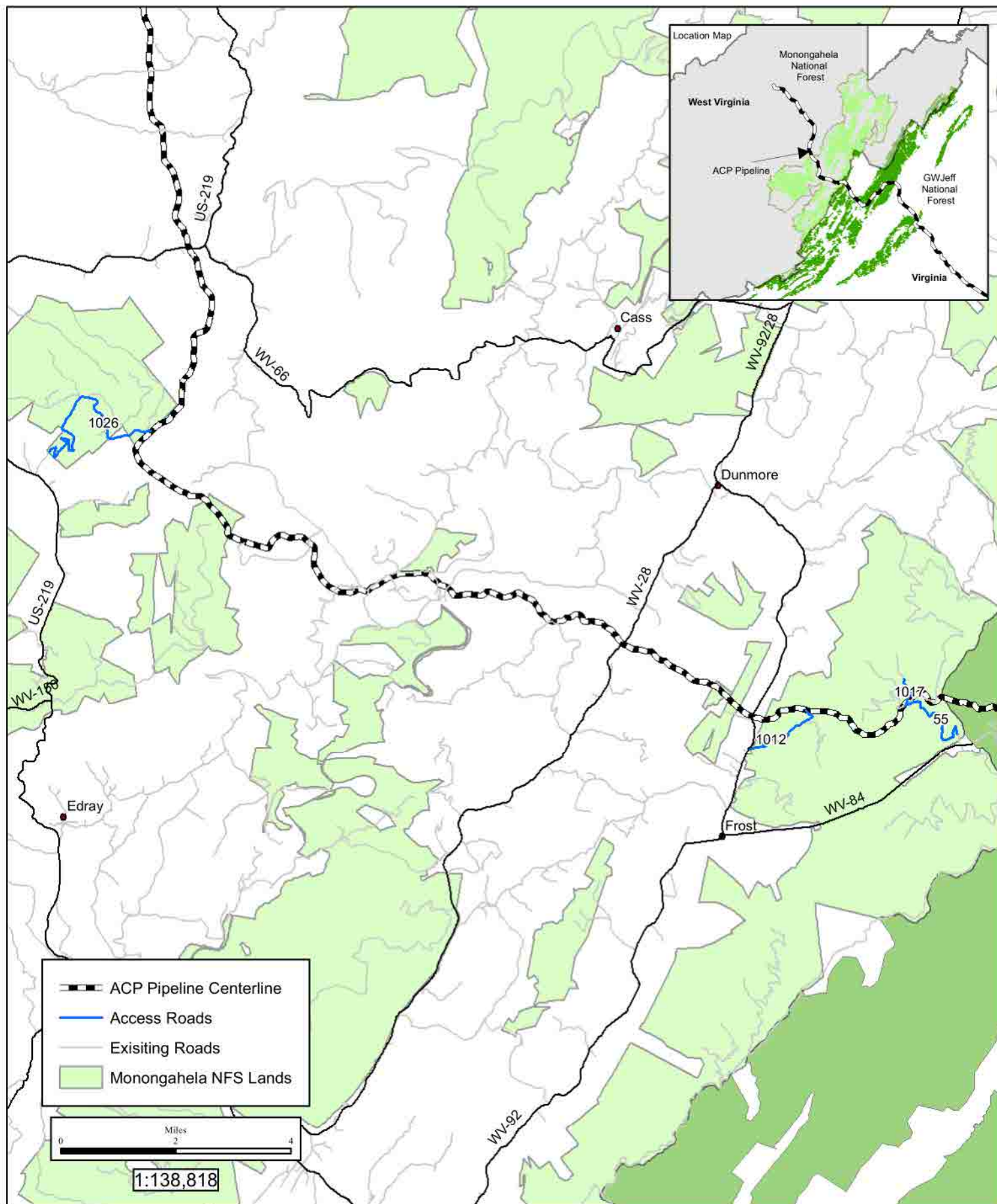
1. Persons with permit specifically authorizing the otherwise prohibited act or omission (36 CFR 261.50(e)(1));

2. Owners or lessees of land in the area (36 CFR 261.50(e)(2);
3. Residents in the area (36 CFR 261.50(e)(3);
4. Any Federal, State, or local officer, or member of any organized rescue or fire fighting force in the performance of an official duty (36 CFR 261.50(e)(4).

**Violation of these prohibitions is punishable by a fine of not more than \$5000.00 for an individual or \$10,000.00 for an organization, or imprisonment for not more than six (6) months, or both (16 U.S.C. 551 and 18, U.S.C. 3559 and 3571).**

Dated this 7<sup>th</sup> day of March 2018, at Elkins, West Virginia.

  
CLYDE N. THOMPSON  
Forest Supervisor  
Monongahela National Forest



MNF GIS  
UTM, Zone 17  
NAD 83  
TMB  
03/07/2018

**Closure Order**  
**Atlantic Coast Pipeline (ACP), Natural Gas Pipeline**  
**Exhibit A, Order No 09-21-18-02**  
**Monongahela National Forest**

Original data was compiled from multiple source data and may not meet  
the U.S. National Mapping Accuracy Standard of the Office of Management and Budget.  
This map has no warranties as to its contents or accuracy.





**From:** (b)(6)  
**To:** Timm, Joby -FS  
**Cc:** Williams, Ginny -FS; Robbins, Rebecca - FS; Brown, JoBeth -FS; Bridges, Kelly - FS; Jankowiak, Connie L -FS; Morris, Troy - FS; Maria Martin; Lauren Johnston; Peter Rocco; Grace Ellis; Rubado, Jessica - FS; Ballew, Katie J -FS; Ellsworth, Kacy L -FS; Abing, Timothy -FS; Andrew Downs  
**Subject:** Re: Law Enforcement Activity and MVP Permit Status  
**Date:** Tuesday, March 06, 2018 3:34:19 PM  
**Attachments:** image009.png  
image010.png  
image011.png  
image012.png

---

Thanks, Job,

At the time I made my query, about 2 weeks ago, the activity was in Craig's Creek Valley, near the Old Growth Forest and the Inventoried Roadless Area. I understand that chainsaws are currently being deployed on those lands.

Have two quick questions about the BLM permit:

\* Who is the Authorized Officer? Is that your role?

\* On section 2.b.iii, it is stated that:

"A TUP in association with the permanent right-of-way authorizing the use of workspace outside the permanent right-of-way during the construction of the Project. The TUP would encompass an area on federal lands (in addition to the permanent **SOfoot right-of-way**) that is approximately **51.4 acres**."

*Should that read "(in addition to the permanent 50-foot right-of-way) that is approximately 51.4 acres." ???*

Am copying (b)(6)

Hope to see you at the Southern Regional Partnership meeting this week.

(b)(6)

On 3/5/2018 3:58 PM, Timm, Joby -FS wrote:

(b)(6)

Thank you for your inquiries about law enforcement activities, and the status of permits for the Mountain Valley Pipeline (MVP). Relative to law enforcement activities, the Forest Service isn't conducting or aware of any police activity specifically associated with the pipeline projects except for monitoring a protest near the Appalachian National Scenic Trail on Peter's Mountain on the MVP right-of-way.

Relative to permits, use of National Forest System lands by the Mountain Valley Pipeline, LLC was authorized, with Forest Service concurrence, through a Bureau of Land Management (BLM) right-of-way grant (that's standard protocol when more than one federal agency administers land involved in a project). That right-of-way grant is available at the BLM website at the following link: [https://eplanning.blm.gov/epl-front-office/projects/nepa/75521/130234/158380/Attachment\\_C:\\_Right\\_of\\_Way\\_Grant\\_and\\_Temporary\\_Use\\_Permit.pdf](https://eplanning.blm.gov/epl-front-office/projects/nepa/75521/130234/158380/Attachment_C:_Right_of_Way_Grant_and_Temporary_Use_Permit.pdf).

As of March 2, 2018, MVP has all of the permits needed from the Forest Service, BLM and the Federal Energy Regulatory Commission to begin the tree felling activities in preparation for pipeline construction on National Forest System lands.

We will not be posting the timber sale contract or road use permit on our webpage. A request for a copy of either item can be made through the Freedom of Information Act if you would like to review them.

If you have additional questions or concerns please contact Jessica Rubado, Public Affairs Officer for the MVP and Atlantic Coast Pipeline projects at [jrubado@fs.fed.us](mailto:jrubado@fs.fed.us) or 503-314-0767. -JOB



**Joby P. Timm**  
**Forest Supervisor**  
**Forest Service**  
**George Washington and Jefferson National Forest**  
p: 540-265-5118  
c: 540-339-2523  
f: 540-265-5110  
[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)

Supervisors Office  
5162 Valleypointe Parkway  
Roanoke, VA 24019  
[www.fs.fed.us](http://www.fs.fed.us)



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**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS**  
**EASTERN DIVIDE RANGER DISTRICT**

Order Number 08-08-11-18-02

**Mountain Valley Pipeline Project Emergency Closure**

Pursuant to the provisions of Title 36, Code of Federal Regulations, Section 261.50 (a) and (b), the following acts are prohibited due to hazards associated with constructing the Mountain Valley Pipeline on the Eastern Divide Ranger District, George Washington and Jefferson National Forests, West Virginia and Virginia.

1. For the protection of public health and safety, going into or be upon any area which is closed by this Order by foot, horseback, or by non-motorized or wheeled conveyance (bicycle). 36 CFR 261.53
2. Operating, leaving, possessing, or parking a motor vehicle on roads closed by this Order where construction associated with pipeline activity is occurring and when closed by a sign, gate, or barricade. 36 CFR 261.54 (e)

This Order applies to an area 200 feet on both sides of the centerline of the pipeline right-of-way on National Forest System lands as shown on the maps attached to and made a part of this Order (Attachment 1 and Attachment 2), excluding however, the footpath of the Appalachian Trail and the Brush Mountain East Road.

This Order applies to the following roads:

- Mystery Ridge Road (FR #11080) for its entire length.
- Pocahontas Road (FR #972) from the first Forest Service gate on Pocahontas Road to the intersection with Mystery Ridge Road.

The prohibitions of this Order shall remain in effect for a period of 12 months from the date of execution unless terminated earlier by the Authorized Officer.

Pursuant to Title 36 Code of Federal Regulations, Section 261.50(e), the following persons are exempt from the prohibitions contained in this order:

- Any Federal, State, or Local Officer, or member of an organized rescue or firefighting force engaged in the performance of an official duty.
- Persons working under a permit, contract, or agreement issued by a Federal, State, or Local regulatory entity which specifically authorizes activity within the area and roads covered by this Order.



The prohibitions are in addition to the general prohibitions in 36 CFR Part 261, Subpart A.

Executed in Roanoke, Virginia this 10<sup>TH</sup> day of March, 2018.

A handwritten signature in blue ink, appearing to read "Joby P. Timm", is written over a horizontal line.

JOBY P. TIMM

Forest Supervisor

George Washington and Jefferson National Forests

Violation of these prohibitions is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, imprisonment for not more than 6 months, or both. (16 U.S.C. 551 and 18 U.S.C. 3559 and 3571).

National Environmental Policy Act and Civil Right Statements  
Supporting Forest Supervisor Closure Order for Atlantic Coast Pipeline Project  
George Washington and Jefferson National Forest  
North River, Warm Springs, and Glenwood-Pedlar Ranger Districts  
Order # 08-08-02/06/13-18-03

**NEPA**

Section 102 of the National Environmental Policy Act (NEPA) requires federal agencies to prepare detailed statements of proposed major federal actions significantly affecting the quality of the human environment (42 U.S.C. § 4332). The proposed action to enact an Emergency Closure Order will result in no tangible or perceptible effects to the natural and physical environment, and the effects cannot be meaningfully evaluated. No direct, indirect, cumulative, ecological, aesthetic, historic, cultural, economic, social, or health effects must be analyzed. Therefore NEPA Section 102 (2)(c) would not apply. Closure Orders issued under 36 CFR part 261 – Prohibitions to provide short-term protection for public health and safety, are a category of action that may be categorically excluded and for which a project or case file and decision memo are not required. (36 CFR 220.6(d)(1)) This action is consistent with the George Washington National Forest 2014 Revised Land and Resource Management Plan. No additional NEPA documentation is required to proceed with implementation of this Order.

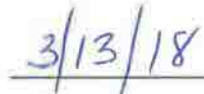
**Social Economic Effects**

There are insufficient social economic effects from the proposed actions to be meaningfully evaluated and that would require analysis.



Karen Overcash

Forest Environmental Coordinator



Date

**Civil Rights**

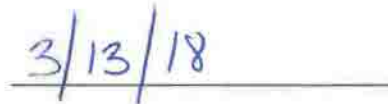
Major civil rights are those consequences of proposed policy actions that, if implemented, would negatively and disproportionately affect groups or classes of people by virtue of their race color, sex, national origin, age, relation, family status, or disability. As Environmental Coordinator, I have considered the impact of this proposal on the civil rights of minorities, women, persons with disabilities, and other protected groups. In considering the effects of the proposed Emergency Closure Order, I determined that the civil rights of any protected group or class of people would not be affected by this project. Therefore, it is my determination that there will be no potential for major civil rights or social impacts related to the Emergency Closure Order for the Atlantic Coast Pipeline project located on the

George Washington and Jefferson National Forests and a Civil Rights Impact Analysis (CRIA) and/or Civil Rights Impact Statement (CRIS) are not required. Although the actions appear as if they would affect ten (10) or more persons or entities either inside or outside the Forest Service, I feel the CRIA and CRIS are not needed because the decision is for protecting the safety of the all members of the public from hazards associated with constructing the pipeline, regardless of their protected class. Furthermore, an administrative action such as this is not listed as one of the six specific categories for which the preparation of a civil rights impact statement is required (see Forest Service Manual 1730).



Karen Overcash

Forest Environmental Coordinator



Date

TERMINATION OF ORDER

GEORGE WASHINGTON & JEFFERSON NATIONAL FORESTS

Pursuant to Title 36 C.F.R. 261.50(a) and (b), the prohibition listed in Order Number 08-08-11-18-02, applicable to the George Washington & Jefferson National Forests, dated March 7, 2018, and signed by JOBY P. TIMM is hereby terminated.

Date

3/13/18

By



JOBY P. TIMM

Forest Supervisor

George Washington & Jefferson National  
Forests

## Alexa Esquivel

---

**From:** (b)(6)  
**Sent:** Tuesday, March 13, 2018 4:30 AM  
**To:** Jankowiak, Connie L -FS  
**Cc:** Adams, Jennifer - FS; Thompson, Clyde N -FS; (b)(6)  
Bridges, Kelly - FS; Rubado, Jessica - FS; Abing, Timothy -FS  
**Subject:** Re: More questions about access to the National Forests  
**Categories:** DF Maybe

Thanks for the update on that.

(b)(6)

On Tue, Mar 13, 2018 at 7:19 AM, Jankowiak, Connie L -FS <[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)> wrote:

The closure order for ACP on the GWJ is still in progress and has not yet been signed



Connie L Jankowiak  
Acting Special Project Coordinator  
Forest Service

George Washington & Jefferson National Forests

p: [540-265-5114](tel:540-265-5114)

[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)

[5162 Valleypointe Parkway](#)

Roanoke, VA 24019

[www.fs.fed.us](http://www.fs.fed.us)



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---

**From:** Adams, Jennifer - FS  
**Sent:** Monday, March 12, 2018 5:25 PM  
**To:** (b)(6)  
**Cc:** Thompson, Clyde N -FS <[cnthompson@fs.fed.us](mailto:cnthompson@fs.fed.us)>; (b)(6)  
(b)(6); Bridges, Kelly - FS <[kellybridges@fs.fed.us](mailto:kellybridges@fs.fed.us)>;  
Jankowiak, Connie L -FS <[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)>; Rubado, Jessica - FS <[jrubado@fs.fed.us](mailto:jrubado@fs.fed.us)>  
**Subject:** RE: More questions about access to the National Forests



(b)(6) —Clyde will reassess the need for the closure on the MNF toward the end of the 120-day period and make a determination at that time whether or not a longer closure order is needed.

Jessica—Can you send Lew a link to where the closure order for the GWNF is posted?



**Jennifer P. Adams**  
**Acting Ecosystems Group Leader**  
**Forest Service**

**Monongahela National Forest,**

**Supervisor's Office**

**p: [304-635-4457](tel:304-635-4457)**

**f: [304-637-0582](tel:304-637-0582)**

**[jenniferpadams@fs.fed.us](mailto:jenniferpadams@fs.fed.us)**

200 Sycamore Street

Elkins, WV 26241

[www.fs.fed.us](http://www.fs.fed.us)



**Caring for the land and serving people**

**From:** (b)(6)

**Sent:** Monday, March 12, 2018 4:08 PM

**To:** Adams, Jennifer - FS <[jenniferpadams@fs.fed.us](mailto:jenniferpadams@fs.fed.us)>

**Cc:** Thompson, Clyde N -FS <[cnthompson@fs.fed.us](mailto:cnthompson@fs.fed.us)>; (b)(6)

(b)(6)

**Subject:** Re: More questions about access to the National Forests

Jennifer -

Since writing you yesterday with questions on access to National Forest lands during the construction of the ACP (another copy is attached), I have learned of the Notice posted last Friday announcing selected closures in the MNF:



<https://www.fs.usda.gov/alerts/mnf/alerts-notices/?aid=45474>. As these announced closures are for 120 days and for only specific locations, will there be a general policy issued about MNF access during construction of the ACP and/or will there be rolling alerts for specific closures as circumstances arise?

I have not been able to find a comparable notice about any closures in the GWNF. Do you know if such closures are being contemplated and if so where? Or, is there someone other than you with the GWNF to whom I should pose the question?

Thanks for any information you can provide. I'm getting LOTS of questions!

(b)(6)

(b)(6)

On Sun, Mar 11, 2018 at 7:17 PM (b)(6) wrote:

I suppose it would help you if I actually attached the questions posed to me. This time, it is attached.

(b)(6)

On Sun, Mar 11, 2018 at 6:49 PM, (b)(6) wrote:

Jennifer -

Since writing you earlier this afternoon with one question about the use of mechanized vehicles for tree-felling, I received additional questions - attached - regarding the whole subject of public access to Forest lands during the construction of the ACP. We discussed this topic during our meeting in Elkins last Wednesday. At that time, you and your colleagues responded to (b)(6) query that you were still addressing the question yourselves and didn't have yet a definitive answer, at least that is the take-a-way I had from the exchange. Given the more specific questions set forth in the attachment, what can I tell our people at this time in response?

If a phone call is better to discuss this, my number is (b)(6)  
(b)(6) As I mentioned in my earlier email, it is increasingly likely I will be in Highland all-day Monday due to expected inclement weather (rather than in Elkins to attend Clyde's meeting) and I will definitely be here on Tuesday.

I appreciate any clarifications you can provide. This is an issue of growing concern among many in our coalition who deeply care about the GWNF and MNF and their access to the National Forests.

(b)(6)

(b)(6)

On Sun, Mar 11, 2018 at 5:42 PM, (b)(6) wrote:

Jennifer -

I have been informed by some of our people that tree-felling has begun in the GWNF and MNF, per your telling us last Wednesday that authority had been granted on March 2 by the Forest Service. One question that was posed to me today concerns an area of the GWNF, near Dowell's Draft in western Augusta County:

"Does the GWNF permit include motorized access?"

Can you clarify what is and is not permitted in tree-felling on MNF and GWNF lands at this time?

Thanks.

(b)(6)

PS - I am scheduled to be in Elkins tomorrow, per an invitation from Clyde, to participate in the all-day meeting of forest partner organizations. However, due to predicted weather over my way, that's looking iffy, so an email response sometime Monday morning (or sooner) would be much appreciated.

(b)(6)





---

**From:** Miller, Lynette M - FS <lynnettemiller@fs.fed.us> on behalf of FS-George Washington and Jefferson National Forests PublicAffairs <GeorgeWashingtonAndJeffersonNationalForests-PublicAffairs@fs.fed.us>  
**Sent:** Thursday, April 26, 2018 11:41 AM  
**To:** Grace Ellis; Lauren Johnston  
**Subject:** For PR: FW: Need Approval and FYI: from Senator Kaine's office - forwarded but sent to JoBeth originally

Lynette Miller  
Environmental Coordinator  
Forest Service  
WO Business Operations, Enterprise Program  
c: 406-210-0264  
[lynnettemiller@fs.fed.us](mailto:lynnettemiller@fs.fed.us)

Flagstaff, AZ 86001

[www.fs.fed.us](http://www.fs.fed.us)



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---

**From:** Johnson, Stephanie N -FS  
**Sent:** Wednesday, April 25, 2018 3:58 AM  
**To:** FS-George Washington and Jefferson National Forests PublicAffairs <GeorgeWashingtonAndJeffersonNationalForests-PublicAffairs@fs.fed.us>  
**Cc:** Timm, Joby -FS <jtimm@fs.fed.us>; Abing, Timothy -FS <tabing@fs.fed.us>; Robbins, Rebecca - FS <rebeccarobbins@fs.fed.us>; Ransom, Ashlee D -FS <adransom@fs.fed.us>; Miller, Lynette M - FS <lynnettemiller@fs.fed.us>  
**Subject:** Re: Need Approval and FYI: from Senator Kaine's office - forwarded but sent to JoBeth originally

This is a reasonable response. Please send me the final along w the request so we can share w WO. Thanks.

Sent from my iPhone

On Apr 24, 2018, at 8:27 PM, FS-George Washington and Jefferson National Forests PublicAffairs <[GeorgeWashingtonAndJeffersonNationalForests-PublicAffairs@fs.fed.us](mailto:GeorgeWashingtonAndJeffersonNationalForests-PublicAffairs@fs.fed.us)> wrote:

(b)(5); Deliberative Process Privilege



(b)(5), Deliberative Process Privilege



(b)(5), Deliberative Process Privilege



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**From:** Hess, Todd A -FS  
**To:** [Peter Rocco](#); [Maria Martin](#); [Jankowiak, Connie L -FS](#); [Wright, Daniel J -FS](#); [Greg Gryniewicz \(GregG@transcon.com\)](#); [Boyd, James -FS](#); [Thompson, James H -FS](#); [Jeff Davis \(jdavis@transcon.com\)](#); [Adams, Jennifer - FS](#); [Rubado, Jessica - FS](#); [Twaroski, Jim -FS](#); [Bridges, Kelly - FS](#); [Hise, Laura B -FS](#); [Miller-Allard, Lisa - FS, Elkins, WV](#); [Miller, Lynette M - FS](#); [Helms, Mary S -FS](#); [Mike Warner \(mwarner@transcon.com\)](#); [Nik Gillen \(ngillen@transcon.com\)](#); [Irvine, Peter -FS](#); [Nelling, Raymond -FS](#); [Tanguay, Steve -FS](#); [Morris, Troy - FS](#); [Wilson, Will -FS](#); [Madden, Michael J -FS](#); [Guercin, Richard - FS](#); [Collins, Thomas K -FS](#); [Alexa Esquivel](#); [Alli Rhodehamel-Leung \(allirl@transcon.com\)](#); [Coleman, Amy - FS](#)  
**Subject:** ACP COM Plan - "close"  
**Date:** Thursday, March 15, 2018 7:10:50 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

Howdy ACP Gang:

This is what I was referring to with certain language being used in ACP's COM Plan for closure order. Leadership is working on certain closure orders on both Forests through our laws and regulations.

COM Plan

### 2.1.3 Access

Page 17

New Access Road 07-001.AR1-AR 7 would follow GWNF Forest Road 1755 for about 0.4 mile

between Stover Shop Road and the pipeline right-of-way at about MP 121.1.

Forest Road 1755 would

require substantial improvements along its entire length to accommodate construction equipment, and so

has been considered a new road for purposes of the COM Plan. This segment of Forest Road 1755 would be closed to the public during road construction.

### 2.1.6 Construction Safety & Security

Page 38

Atlantic will, in close coordination with the FS, post signs at various strategic locations informing

the public about the pipeline construction, any road or trail closures or detours, restricted areas, etc.

Along portions of the construction right-of-way between road and trail

crossings, ACP will post signs at or near the edge of the work area at spacings of about 200 feet or as dictated by terrain and visibility, warning the public that the construction right of way is closed to public entry. Measures to ensure the safety of the public are discussed in more detail in Section 18, Public Access Plan.

#### 18.4 NATIONAL FOREST-SPECIFIC MEASURES

Page 201

At portions of the construction right-of-way between road and trail crossings, ACP will post signs at or near the edge of the work area, at approximate 200 feet spacings or as dictated by terrain and visibility, warning the public that the construction right of way is closed to public entry.



**Todd A. Hess**  
**Special Use Manager**  
**Forest Service**  
**Monongahela National Forest**

**p: 304-635-4453**

**f: 304-637-0582**

**[tahess@fs.fed.us](mailto:tahess@fs.fed.us)**

200 Sycamore Street

Elkins, WV 26241

**[www.fs.fed.us](http://www.fs.fed.us)**



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**From:** Neylon, Megan  
**To:** [Jankowiak, Connie L -FS](#)  
**Cc:** [MVP; Grace Ellis; Lauren Johnston; Ballew, Katie J -FS; Thompson, James H -FS; Irvine, Peter -FS; Timm, Joby -FS; Winningham, Jarret -FS; Nik Gillen; Morris, Troy - FS; McKeague, Dan -FS; Overcash, Jesse L -FS](#)  
**Subject:** RE: REPLY REQUESTED - RE: Use of UTV's on Peters Mountain  
**Date:** Friday, March 09, 2018 11:16:38 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

Connie,

Thank you. We appreciate this. I will let our team know.

Megan

---

**From:** Jankowiak, Connie L -FS [mailto:[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)]  
**Sent:** Friday, March 09, 2018 12:00 PM  
**To:** Neylon, Megan <[MNeylon@eqt.com](mailto:MNeylon@eqt.com)>  
**Cc:** MVP <[mvp@transcon.com](mailto:mvp@transcon.com)>; [grace.ellis@galileoaz.com](mailto:grace.ellis@galileoaz.com); Lauren Johnston <[lauren.johnston@galileoaz.com](mailto:lauren.johnston@galileoaz.com)>; Ballew, Katie J -FS <[katiejballew@fs.fed.us](mailto:katiejballew@fs.fed.us)>; Thompson, James H -FS <[jamesthompson@fs.fed.us](mailto:jamesthompson@fs.fed.us)>; Irvine, Peter -FS <[pirvine@fs.fed.us](mailto:pirvine@fs.fed.us)>; Timm, Joby -FS <[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)>; Winningham, Jarret -FS <[jwinningham@fs.fed.us](mailto:jwinningham@fs.fed.us)>; Nik Gillen <[ngillen@transcon.com](mailto:ngillen@transcon.com)>; Morris, Troy - FS <[troymorris@fs.fed.us](mailto:troymorris@fs.fed.us)>; McKeague, Dan -FS <[dmckeague@fs.fed.us](mailto:dmckeague@fs.fed.us)>; Overcash, Jesse L -FS <[jovercash@fs.fed.us](mailto:jovercash@fs.fed.us)>  
**Subject:** [EXTERNAL] FW: REPLY REQUESTED - RE: Use of UTV's on Peters Mountain  
**Importance:** High

Hi Megan –

Based on discussions with FS staff in the SO and the District Ranger it has been determined that use of a UTV for safety purposes during the tree felling operations would be allowed on Mystery Ridge Road. The only area of Mystery Ridge Road which can be utilized is that portion which is under the current road permit from the Forest Service that MVP recently self-imposed a no vehicular traffic on for it's employees/contractors.

The limits of the usage are as follows:

- Mystery Ridge Road where MVP is no longer utilizing light duty trucks and only on the area that was covered by the road permit;
- For safety purposes only, not for hauling supplies or people back and forth
- Maximum of two (2) UTV's to be staged/parked on Mystery Ridge for safety purposes only
- UTV's are not allowed outside of the area which was designated on the road permit for light duty trucks
- This use is only approved during tree felling operations for the ROW and will not extend into the road construction phase.
- All standard UTV safety precautions must be used at all times, including watching for vehicular traffic of Law Enforcement and inspector traffic on this road.

Please note the following:

- Forest Service concurrence with UTV use can be revoked at any time by the District Ranger or the Forest Supervisor
- This does not remove the obligation of MVP to continue to monitor and maintain Mystery Ridge Road to a standard that will ensure Law Enforcement and inspector vehicles are able to drive it.

If you have any questions or need clarification please let me know.



**Connie L Jankowiak**  
**Acting Special Project Coordinator**  
**Forest Service**  
**George Washington & Jefferson National Forests**

p: 540-265-5114  
[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)  
5162 Valleypointe Parkway  
Roanoke, VA 24019  
[www.fs.fed.us](http://www.fs.fed.us)



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---

**From:** Jankowiak, Connie L -FS

**Sent:** Friday, March 09, 2018 7:25 AM

**To:** Thompson, James H -FS <[jamesthompson@fs.fed.us](mailto:jamesthompson@fs.fed.us)>; Irvine, Peter -FS <[pirvine@fs.fed.us](mailto:pirvine@fs.fed.us)>; Morris, Troy - FS <[troymorris@fs.fed.us](mailto:troymorris@fs.fed.us)>

**Cc:** [grace.ellis@galileoaz.com](mailto:grace.ellis@galileoaz.com); Lauren at Galileo <[lauren.johnston@galileoaz.com](mailto:lauren.johnston@galileoaz.com)>; MVP <[mvp@transcon.com](mailto:mvp@transcon.com)>; Nik Gillen <[ngillen@transcon.com](mailto:ngillen@transcon.com)>; Ballew, Katie J -FS <[katiejballew@fs.fed.us](mailto:katiejballew@fs.fed.us)>

**Subject:** REPLY REQUESTED - RE: Use of UTV's on Peters Mountain

**Importance:** High

Jim/Pete/Troy - I received a call from Megan asking who to send this to. I am looking to you guys for answers as I do not know what the Forest has typically allowed. I did recommend that if this were denied (which she thinks it will be as other requests for use of UTV have been when not for safety reasons), that they designate one truck that is taken up the road every day simply to be there for safety reasons.

The non-use of that stretch of road has been self-imposed by them due to road conditions and the inability to get heavy equipment in there to rework the road (not allowed until road designs are received and approved). She seemed like that might be okay, however they are trying to keep all their traffic off the road, including limited use by their security personnel. Because of that she was going to send this request to us.

Please respond to me at your earliest convenience. Thanks!

Nik – are you aware of anything in the POD that discusses use of UTV on project.



**Connie L Jankowiak**  
**Acting Special Project Coordinator**  
**Forest Service**  
**George Washington & Jefferson National Forests**

p: 540-265-5114  
[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)  
5162 Valleypointe Parkway  
Roanoke, VA 24019  
[www.fs.fed.us](http://www.fs.fed.us)



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---

**From:** Neylon, Megan [<mailto:MNeylon@eqt.com>]  
**Sent:** Thursday, March 8, 2018 7:32 PM  
**To:** Jankowiak, Connie L -FS <[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)>  
**Cc:** Grace at Galileo <[grace.ellis@galileoaz.com](mailto:grace.ellis@galileoaz.com)>; Lauren at Galileo <[lauren.johnston@galileoaz.com](mailto:lauren.johnston@galileoaz.com)>; Thompson, James H -FS <[jamesthompson@fs.fed.us](mailto:jamesthompson@fs.fed.us)>; MVP <[mvp@transcon.com](mailto:mvp@transcon.com)>; Nik Gillen <[ngillen@transcon.com](mailto:ngillen@transcon.com)>; Irvine, Peter -FS <[pirvine@fs.fed.us](mailto:pirvine@fs.fed.us)>  
**Subject:** Use of UTV's on Peters Mountain

Hi Connie,

MVP would like to request the use of UTVs while completing tree clearing activities on Peters Mountain. As discussed yesterday, MVP has agreed to not use Mystery Ridge Road for truck traffic until the road can be repaired. However, there is a safety concern during tree clearing operations. MVP would like to have a mode of transportation available to get an injured worker off of the mountain quickly should an incident occur. I do not recall any discussion in the POD that UTVs would not be used.

As you know we are beginning to work on Peters Mountain, a quick response would be greatly appreciated.

Thank you,

Megan E. Neylon  
Supervisor - Permitting  
Mobile: 304-841-2086  
Office: 724-873-3645  
2200 Energy Drive, 2<sup>nd</sup> Floor  
Canonsburg, PA 15317  
[MNeylon@eqt.com](mailto:MNeylon@eqt.com)

To learn about EQT's sustainability efforts visit: <https://csr.eqt.com>

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*To learn about EQT's sustainability efforts visit: <https://csr.eqt.com>*



**Forest Service-Transcon Weekly Check-in****Date:** March 15, 2018**Time:** 8:30-10:30am (Eastern)/6:30-8:30am (Mountain)/5:30-7:30am (Pacific)**Location:** Conference Call

Attendees	Forest Service	Jennifer Adams, Connie Jankowiak, Ray Nelling, Todd Hess, Will Wilson, Carol Croy, Jessica Rubado, Tom Collins, Mike Madden, Rich Guercin
	Transcon	Jeff Davis, Greg Gryniewicz, Alli Rhodehamel-Leung, Nik Gillen, Mike Warner
	Galileo Project	Maria Martin, Peter Rocco

*Meeting Attachment: 20180315 ACP Weekly Report***Action Items**

- **Jennifer** follows up with Tim Abing requesting an update on variance requests related to the open trench length.
- **Transcon** processes the first batch of variance requests.
- **Connie** sends Carol's email about the differences to West Virginia and Virginia time of year restrictions (TOYR). *Complete.*
- **Alli** posts the weekly summary on the SharePoint site. *Complete.*
- **Todd** sends the Construction, Operations, and Maintenance Plan reference regarding road closures. *Complete.*
- **Jennifer** sends Jessica a request for the latest briefings
- **Jennifer** checks with Clyde Thompson about establishing a first amendment rights area.
- **Jennifer** and **Connie** update the regional offices on closure order discussions.
- **Mike W** gives Mike M the names of the lead inspector and staff for Spread 5A.
- **Jennifer** and **Transcon** coordinate a meeting with Jacob DeAngelo. *Complete.*
- **Transcon** closes the loop with Jim Thompson and Ginny Williams (copying WJ Cober) on the completion of the undulating edge survey.
- **Alli** forwards the shapefile of leave trees to Tom. *Complete.*
- **Invitees** respond to the FERC/Forest Service doodle poll.
- **Transcon** notifies FERC that the Forest Service is okay with pedestrian use of the area just outside the limits of disturbance (LOD) where travel within the LOD is not safe.

**Discussion Summary**

- Jeff noted the variance FERC recently sent to the Forest Service was an administrative action on FERC's side. The Forest Service had previously approved the use of the roads but the roads were not part of FERC's authorization. FERC provided the variance request to the Forest Service so the Forest Service could confirm they provided the approval.
- Jeff said the Forest Service will be responsible for considering variances on National Forest System (NFS) lands. Once one is approved, it will go to FERC for their approval; it is likely FERC will want to check in with the Forest Service before they approve the request. He noted the Forest Service variance review process includes check-ins with resource specialists. He said the first few go arounds may be complicated as folks get familiar with the process. Mike said Transcon is working with ACP to make sure the variance is complete before it is submitted for Forest Service review.

- ACP is requesting a variance from trench length standards from the Virginia Department of Environmental Quality (DEQ). While this is a DEQ requirement, it does not necessarily mean the Forests will automatically allow the longer open trench lengths on NFS system lands (assuming the DEQ approves). Forest specialists have expressed concerns about the potential effects of longer open trenches but the regional office may defer to the DEQ standards. Carol said the project analysis assumed the standard open trench length, exceeding that length would require additional National Environmental Policy Act analysis.
- Attendees expect ACP to submit a variance request for TOYR established in the Migratory Bird Plan and Biological Opinion. The restrictions began on the George Washington National Forest (GWNF) yesterday and will begin on March 31 on the Monongahela National Forest (MNF). It is likely the Fish and Wildlife Service and FERC will decide on the variance before the Forest Service is asked to make a decision. Cathy said making changes to conditions in the BO will require reopening consultation.
- Tom said the pending variance request to shift temporary workspaces away from a stream needs to include consideration of any steep slope issues. It may not make sense to move the workspace away from the stream if the new location is on a steep slope with a higher risk of erosion problems. That is, it may defeat the purpose of moving the workspace. Carol said the aquatics team will also need to weigh in since the proposed move is to address concerns about affects to streams. Mike W noted those were a good comments and stated resources specialists will have an opportunity to weigh in on variances before a decision is made.
- Jennifer suggested the team coordinate GoToMeetings to review the first variances. Connie agreed that was a good idea but expressed concern about being able to find a time when everyone could attend.
- Transcon estimates about 51% of the trees in the GWNF were felled before the TOYR restrictions began.
- Alli presented the draft version of the attached weekly summary via GoToMeeting.
- Transcon will not report minor problems, such as not using secondary spill containment, to FERC unless the problem is not rectified or ACP continues to make the same mistake.
- Field staff are sometimes walking just outside the edge of the LOD due to safety concerns. The area within the LOD is dangerous to traverse once the trees are felled. Transcon does not perceive this as a significant issue but asked if the Forest Service was okay with it. Ray and Jeff said foot traffic outside of the LOD in response to these safety concerns was acceptable.
- There is a larger discussion between the forests and regional offices about the extent of the closure order. Several recreation areas will be affected and it is unclear if the closure will only be effect when construction is active. Connie is trying to find out if any recreation events may be affected by closures. Jessica said some members of the public want to observe the pipeline construction and want to know how to do so without violating the closure order. A call to discuss with public affairs, recreation specialists, and local offices is needed but the time is not ripe.
- Law enforcement is preparing in case there are protests. There are some tree sitters on the Mountain Valley Pipeline project.
- Mike W said it would be helpful if folks in the field had talking points to provide general answer to commonly asked questions.



- Mike M said his revisions to the realignment to minimize effects to heritage sites were submitted to ACP. He recommended a narrowing of the LOD to reduce effects to the sites. He also stressed the need to have monitors in the field to make sure cultural resources are protected. Mike W said Transcon will send out resource specialists to supplement compliance monitors efforts. Mike M also said the flagging and fencing should be done by knowledgeable staff, preferably GAI since they did the survey work.
- Mike W said that at first glance the road designs are an improvement over the last submission. Mike Tripp will go into the field to see the MNF roads. He added that Mike T already spent some time reviewing the plans with GWNF engineers.
- Red spruce trees are found along the extension of FR1026. ACP committed to moving seedlings that would be affected but has not provided a plan for doing so. There is a connection between this effort and the road designs under review.
- Transcon completed the undulating edge review and is taking photos of current conditions as weather allows.

#### Upcoming Meetings (Times in Eastern)

- March 15, External FS-ACP Weekly Check-in Call, 1-3pm
- March 16, Internal Site Design Plans Review, 10am-12pm
- March 22, Internal FS Weekly Check-in Call, 8:30-10:30
- March 22, External FS-ACP Weekly Check-in Call, 1-3pm

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Wednesday, March 15, 2018 (period of review March 10-14)

**Compliance Inspectors Present During this Period:** Bill Clayton, Julian Lawler, Terry Slater, Iris Kosky, Haven Livingston, Dan Pittenger, Regina Black, Marisa Ishimatsu

#### Preconstruction Activities:

Activity	Location
Tree Felling	83.9-86.8; 105-107; & 115-120
Road Maintenance	None

- Construction Update
- Construction Schedule
  - Tree felling was not completed by 3/14/18 on the GWNF. 51.74% of the trees have been felled.
    - Approximately one to two additional weeks will be required to fell the remaining trees on the GWNF.
    - ACP is currently working on filing for an extension.
  - Tree felling on the MNF will begin on 3/15/18.
- Compliance Status
  - Tree Felling
    - March 10, 2018
      - Spread 4A
        - Several fell outside of LOD near MP 106.4
        - Several trees fell outside of LOD between MPs 119.4 and 200.0
      - Spread 3A
        - Several areas on the southern edge of the LOD near station number 86.8
        - One oak was knocked over by a cut tree which landed outside of the LOD near MP 86.8.
    - March 11, 2018
      - Spread 4A
        - Approximately 20 instances of trees falling outside of the LOD between 118.8 and 19.5. About 25% of this was due to a falling tree hitting another tree, thereby causing the second tree to fall in unpredictable directions
        - Several trees fell outside of the LOD near MP 106
      - Spread 3A
        - Several trees fell outside of the LOD near 84.7
        - Several trees were observed to have fallen out of the LOD, including some high-topped stumps that are documented between 86.1-86.6
    - March 12, 2018
      - No work due to snow
    - March 13, 2018
      - Spread 4A

- Several trees fell outside of the LOD near MP 116
  - Several trees fell outside of the LOD near MP 116.4
  - Several trees fell outside of the LOD near MP 118.5.
  - Several instances where trees were cut too high (up to 3 ft.) near MP 118.5
- Spread 3A
  - Several trees fell outside the LOD between 84.6 and 84.9
  - Several trees fell outside of the LOD between 118.7 and 119.8
  - One tree fell outside of the LOD near MP 85.
- March 14, 2018
  - Spread 4A
    - Trees fell across watercourses SAUA416 and SAUA418. All slash was decked and piled outside of the high-water mark per the COM Plan
      - Several trees fell outside of the LOD near the watercourses (MP 117.1).
    - Approximately 22 trees fell outside of the LOD between MPs 115 and 116.
    - Several trees fell outside of the LOD near MP 116.4
    - Several trees fell outside of the LOD near MP 116.9
  - Spread 3A
    - Several trees fell outside the LOD between 86.4 and 86.5
    - A considerable number of trees were felled outside of the LOD between MPs 83.9 and 84.7.
      - Transcon inspectors will verify this problem area on 3/17/18.
- Road Conditions
  - Forest Service road 449 is holding up so far, however, gravel is needed in two steep areas near the stream fords about 0.5 mi. in. (March 11, 2018- Noted by Terry Slater)
  - County roads have been used to hike into the LOD
  - No maintenance has taken place
- Biological Resources
  - Eagle surveyors were present and surveying ahead of tree crews.
- Cultural Resources
  - N/A
- Visual Resources
  - N/A
- Variances
  - 3/13/18: ACP requested an additional temporary workspace to be located closer than 100' to several waterbodies where steep terrain and road and waterbody complex crossings are present. The combination of roads adjacent to waterbodies, coupled with steep slopes, presents a significant challenge that requires as much working space as possible.
- Miscellaneous
  - On 3/10/18, human waste was left on the edge of the LOD at MP 106.4
  - On 3/11/2018, Bill Clayton interacted with a Mr. Bright, an adjacent landowner. The



conversation was cordial. He left the surrounding premises within 5 minutes of communication.

- No Transcon inspectors on site March 12th due to hazardous weather conditions
- On 3/13/18, a sawyer was badly cut due to direct contact with a saw while falling.
  - The crew was shut down for the day and the sawyer received medical attention.
  - Sawyer is believed to have fallen/slipped due to ice build-up on boots
- On 3/13/18, crews attempted to refuel a container without secondary containment and within 100 ft. of a stream. Crews were unable to produce a spill kit when asked. As suggested by the CIC, the crew moved locations and used secondary containment.
- On 3/14/18, crews attempted to refuel a container within 100 ft. of a stream near MP 117.1.
- A complete list of trees felled outside of the LOD is being kept by ACP.
- Felling crews were observed walking outside of the staked LOD line between MPs 83.9 and 85.
  - This action was approved by the Forest Service for safety purposes on 3/15/18.

#### **Meetings Held**

- ACP Weekly Internal and External Meeting (March 15, 2018)

#### **Upcoming Meetings**

- March 15, External FS-ACP Weekly Check-in Call, 1-3pm
- March 16, Internal Site Design Plans Review, 10am-12pm
- March 22, Internal FS Weekly Check-in Call, 8:30-10:30
- March 22, External FS-ACP Weekly Check-in Call, 1-3pm

**UNITED STATES DEPARTMENT OF AGRICULTURE  
GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS**

Order Number 08-08-11-18-03

**Revised Mountain Valley Pipeline Project Emergency Closure**  
*This Revised Order Terminates and Supersedes Order Number 08-08-11-18-02*

Pursuant to the provisions of 16 U.S.C. § 551, and 36 C.F.R. §§ 261.50 (a) and (b), the following acts are prohibited due to hazards associated with constructing the Mountain Valley Pipeline on the Eastern Divide Ranger District, George Washington and Jefferson National Forests, West Virginia and Virginia.

**A. Prohibitions:**

1. It is prohibited to be within 100 feet from the outer edge of each side of the disturbance corridor of the Approved Pipeline Route right-of-way [ROW] on National Forest System lands as shown on the maps attached hereto and made a part hereof as Attachment 1 dated March 19, 2018 and Attachment 2 dated March 19, 2018. For purposes of this closure order, the "disturbance corridor" is defined as the visible ROW that has been cut through the National Forest following the Approved Pipeline Route. For areas on the Approved Pipeline Route where the disturbance corridor has not yet been cut through the National Forest, it is prohibited to be within 200 feet on either side of the centerline of the Approved Pipeline Route on National Forest System lands as shown on the maps attached hereto and made a part hereof as Attachment 1 dated March 19, 2018 and Attachment 2 dated March 19, 2018. 36 C.F.R. § 261.53(e).

2. It is prohibited to be on any portion of Mystery Ridge Road (a/k/a FSR #11080) as shown on the map attached hereto and made a part hereof as Attachment 1, dated March 19, 2018. 36 C.F.R. § 261.54(e).

3. It is prohibited to be on the Pocahontas Road (a/k/a FSR #972) segment situated between the first Forest Service gate on Pocahontas Road and the intersection of Pocahontas Road with Mystery Ridge Road as shown on the map attached hereto and made a part hereof as Attachment 1, dated March 19, 2018. 36 C.F.R. § 261.54(e).

**B. Exclusions:**

1. The tread width of the Appalachian Trail is excluded from this Emergency Closure Order. For purposes of this closure order, the tread width is defined as twenty-four (24) inches on each side of the centerline of the Appalachian Trail as shown on the map attached hereto and made a part hereof as Attachment 1, dated March 19, 2018.

2. The entirety of Brush Mountain Road (a/k/a FSR #188) is excluded from this Emergency Closure Order. Brush Mountain Road is shown on the map attached hereto and made a part hereof as Attachment 2, dated March 19, 2018.

**C. Duration:** The prohibitions of this Order shall remain in effect through March 31, 2019, unless terminated earlier by the Authorized Officer.

**D. Prior Orders:** This Order revises, supersedes and replaces Order Number 08-08-11-18-02, dated March 10, 2018, which is hereby revoked and terminated.

**E. Exemptions:** Pursuant to 36 C.F.R. §§ 261.50(e), the following persons are exempt from the prohibitions contained in this order:

1. Any Federal, State, or Local Officer, or member of an organized rescue or firefighting force engaged in the performance of an official duty. 36 C.F.R. § 261.50(e)(4).

2. Persons working under a permit, contract, or agreement issued by a Federal, State, or Local regulatory entity which specifically authorizes activity within the area and on the roads covered by this Order. 36 C.F.R. §§ 261.50(e)(1), and (6).

**F. General Prohibitions:** The General Prohibitions set forth in 36 C.F.R. Part 261, Subpart A (§§ 261.1 – 261.23), remain in effect. The prohibitions set forth herein pursuant to 36 C.F.R. Part 261, Subpart B (§§ 261.50 – 261.58) are in addition to the General Prohibitions.

Executed in Roanoke, Virginia this 19 day of March, 2018.



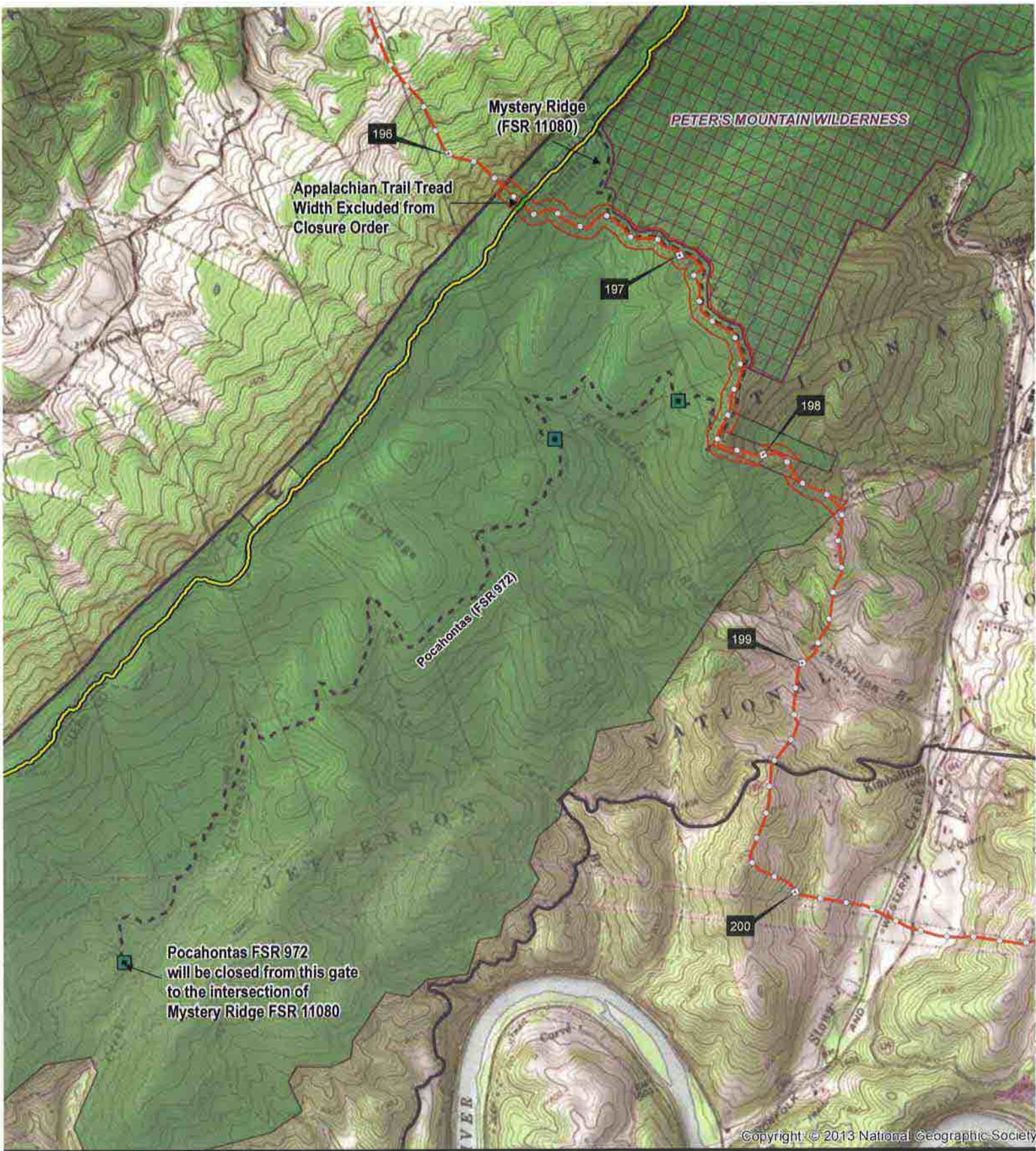
JOBY P. TIMM

Forest Supervisor

George Washington and Jefferson National Forests

**Violation of these prohibitions is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, imprisonment for not more than 6 months, or both. 16 U.S.C. § 551, and 18 U.S.C. §§ 3559 and 3571.**





#### Vicinity Map

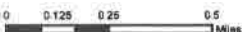


#### References

Background data is ESRI NGS, Topo\_US data, supplemented with Mountain Valley Pipeline project data and Forest Service Land Status Records System ownership and boundary data.

#### Disclaimer

The USDA Forest Service makes no warranty, expressed or implied regarding the data displayed on this map, and reserves the right to correct, update, modify, or replace this information without notification.



#### Legend

- Milepost
- Tenth-mile
- Seasonal Gate
- Approved Pipeline Route
- 100' buffer on either side of the Limits of Disturbance of Approved Pipeline Route
- Closed U.S. Forest Service Road
- Appalachian Trail
- Appalachian Trail Tread excluded from Closure Order
- Administrative Forest Boundary
- National Wilderness Area
- National Forest System Lands

Map Created: March 19, 2018

#### Attachment 1: Mountain Valley Pipeline Emergency Closure Order

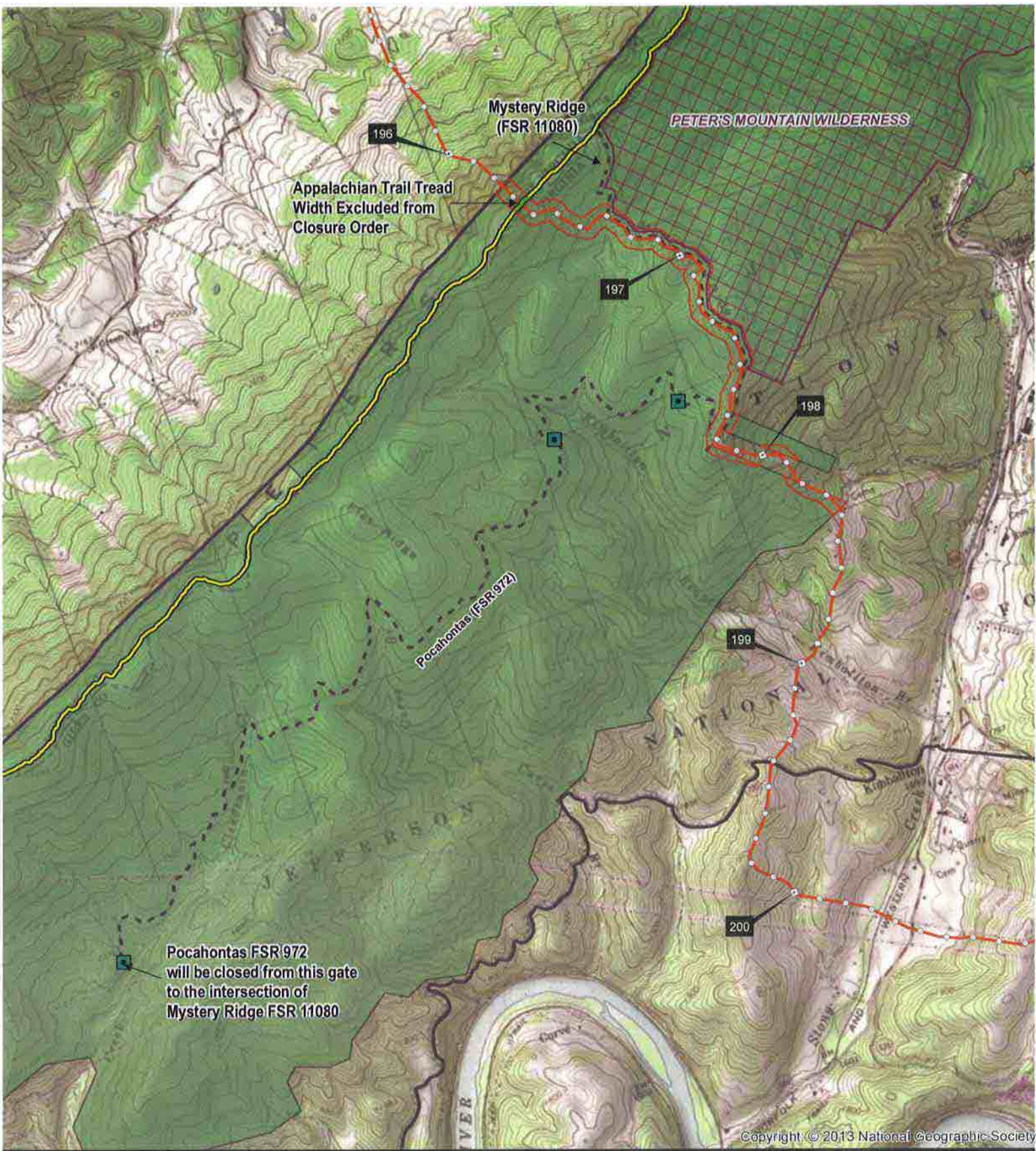


U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



Copies of this map are available for public inspection in the Office of the Regional Forester, Southern Region, Atlanta, GA.





#### Vicinity Map



#### References

Background data is ESRI NGS\_Topo\_US data, supplemented with Mountain Valley Pipeline project data and Forest Service Lands Status Records System ownership and boundary data.

#### Disclaimer

The USDA Forest Service makes no warranty, expressed or implied regarding the data displayed on this map, and reserves the right to correct, update, modify, or replace this information without notification.

0 0.125 0.25 0.5 Miles

#### Legend

- Milepost
- Tenth-mile
- Seasonal Gate
- Approved Pipeline Route
- 100' buffer on either side of the Limits of Disturbance of Approved Pipeline Route
- Closed U.S. Forest Service Road
- Appalachian Trail
- Appalachian Trail Tread excluded from Closure Order
- Administrative Forest Boundary
- National Wilderness Area
- National Forest System Lands

Map Created: March 19, 2018

#### Attachment 1: Mountain Valley Pipeline Emergency Closure Order



U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



Copies of this map are available for public inspection in the Office of the Regional Forester, Southern Region, Atlanta, GA.



**Forest Service-Transcon Weekly Check-in****Date:** March 22, 2018**Time:** 8:30-11am Eastern**Location:** Conference Call

Attendees	Forest Service	Jennifer Adams, Connie Jankowiak, Daniel Wright, Ray Nelling, Russ MacFarlane, James Boyd, Todd Hess, Mike Madden, Jim Twaroski, Jessica Rubado, Briana Smrekar, Richard Guercin, Tom Collins
	Transcon	Jeff Davis, Alli Rhodehamel-Leung, Nik Gillen, Mike Warner, Nadine Benally
	Galileo Project	Maria Martin, Peter Rocco

**Meeting Attachment:** *Transcon Weekly Report from 3/22/2018***Action Items**

- **Transcon** further investigates the leave island felling problem area. *Complete, upon further review it appears the trees were between two leave islands but this is being confirmed.*
- **Connie** follows up with Ginny Williams, WJ Cober, and Jennifer on addressing the trees cut from the undulating edge leave island. *Dependent on the item above.*
- **Trancon drafts up a non-compliance** for the leave island felling for Forest Service consideration. *Dependent on the item above.*
- **Alli** sends pictures of trees felled across the stream on spread 4A. *Complete.*
- **Jim** checks with Pete Tupis regarding trees cut inside the leave island. Also reminds Pete to notify Transcon when he becomes aware of any issues with felling.
- **Galileo** includes road inspection and waterbody crossings as items in the March 30 internal call agenda. *Complete.*
- **Connie** notifies Tim Abing/regional office that Jonathan Berry has comments on ACP's site specific design drawings. *Complete.*

**Discussion Summary**

- Alli reviewed the draft version of the attached final weekly summary. Discussion focused on the following:
  - Trees falling out of the limits of disturbance (LOD). Challenging weather and ground conditions may be feeding into the number of trees falling out of the LOD. It appears ACP's fellers are using techniques to prevent this but there are still a greater number of trees falling out of the LOD than on a similar project. This is becoming a problem area and ACP needs to be aware of the forest's concerns.
  - 5 trees were cut from one of the undulating edge leave islands. Transcon found out about this on Tuesday and was unable to verify due to weather on Wednesday. It is unclear how the removal of the 5 trees would affect the purpose of the leave islands or how to address the loss of the trees. *Follow-up: it appears that the cut trees may actually be between two leave islands.*
  - Trees were felled across a stream on Spread 4A. Slash was removed from the stream and piled above the high-water mark as required. Tom noted a concern that

the trees were felled from a steep slope. Felling the trees, particularly at the toe of the slope, may destabilize the slope.

- There is evidence of foot traffic through an environmental resource exclusion area. The forests had previously given informal approval for ACP personnel to walk outside of the LOD to address short-term safety concerns related to maneuvering around felled trees in the right-of-way (ROW). Upon further discussion, it appears this approval needs to be rescinded. If ACP needs to walk outside the LOD, they need to request a variance. As an extension of the Forest Service, Transcon staff are allowed to walk outside the ROW. Jeff said Transcon's staff will do so only when necessary.
- ACP's inspectors have not been notifying Transcon EIs about issues in the field but have been receptive when Transcon has brought issues to them.
- Connie noted that none of the compliance issues have been major but it seems that ACP may not be taking the requirement to notify FS/Transcon as seriously as they should.
- A few variances related to the workspace shifts are being developed. Transcon is working with ACP to make sure the necessary information is in the variance. The variance needs to include a more specific description of the purpose of the workspace, detailed information on topography, a description of the earthwork that may be needed to move the workspace upslope, and the potential affects to resources for the original and proposed new location.
- There have been some questions from the public about the George Washington National Forest (GWNF) closure order which is still under review. It is not yet clear where detours would allow the public to access areas that would otherwise be closed. A more detailed discussion will be needed once the closure order is finalized.
- Jonathan Berry has detailed comments on ACP's site-specific designs. Both these comments and the presentations Jonathan and Tom put together can be provided to ACP. The regional office should lay eyes on the presentations and comment before they are submitted to ACP. Jonathan's conclusion is that the factor of safety is below industry standards.

#### Upcoming Meetings (Times in Eastern)

- March 22, External FS-ACP Weekly Check-in Call, 1-3pm
- March 22, External Site Design Plans Review, 3-5pm
- March 23, Internal MNF Road Design, 9-11am
- March 28, Internal GWNF Road Design, 2-4pm
- March 29, Internal FS Weekly Check-in, 8:30-10:30
- March 29, External FS-ACP Weekly Check-in, 1-3pm
- March 29, External GWNF Road Design, 3-5pm
- March 30, External MNF Road Design, 9-11am

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, March 22, 2018 (period of review March 15-21)

**Compliance Inspectors Present During this Period:** Bill Clayton, Julian Lawler, Terry Slater, Dan Pittenger, Regina Black, Marisa Ishimatsu

#### Preconstruction Activities:

Activity	Location
Tree Felling	80.4 to 80.9; 81.2 to 81.9; 83.9 to 84.3; 86.1 to 86.5
Road Maintenance	None

- Construction Update
- Construction Schedule
  - Crews have confirmed that no work has been completed on the GWNF since 3/14/18.
  - Tree felling was anticipated to be complete on the MNF on 3/22/18 however, weather has prevented this.
    - Timber felling on the MNF will continue into next week.
- Compliance Status
  - Tree Felling
    - March 15, 2018
      - Spread 4A
        - No work
      - Spread 3A
        - Several trees fell outside of the LOD between MP 86.1 and 86.3
        - Several trees fell outside of the LOD between MP 80.4 and 80.7
        - Several trees fell outside of the LOD at MP 86.5
    - March 16, 2018
      - Spread 4A
        - No work
      - Spread 3A
        - No issues noted during spot check
    - March 17, 2018
      - Spread 4A
        - No work
      - Spread 3A
        - Several trees fell outside of the LOD between MP 80.7 and 80.8
        - Several trees fell outside of the LOD between MP 84.05 and 84.2 (verification of 3/14 Observation)
        - Several trees fell outside of the LOD between MP 80.7 and 80.8
    - March 18, 2018
      - Spread 4A
        - No work
      - Spread 3A
        - Several trees fell outside of the LOD at MP 81.8
        - Several trees fell outside of the LOD at MP 80.8



- March 19, 2018
  - Spread 4A
    - No work
  - Spread 3A
    - Several trees fell outside of the LOD at MP 81.7
- March 20, 2018
  - Spread 4A
    - No work
  - Spread 3A
    - No work this day due to rain. Inspectors spot checked.
    - Several trees felled outside of the LOD between 81.4 and 81.7
    - One painted LOD tree had been knocked over by felled trees at MP 81.6.
    - Five trees were cut within a designated feathering area near MP 81.2
    - One tree was cut outside the LOD near MP 81.4
- March 21, 2018
  - Spread 4A
    - No work
  - Spread 3A
    - No work due to weather
- Road Conditions
  - County roads have been used to hike into the LOD
  - No road maintenance has taken place
- Biological Resources
  - Eagle surveyors were present and surveying ahead of tree crews.
- Cultural Resources
  - N/A
- Visual Resources
  - N/A
- Variances
  - Transcon received two variance requests on 3/16/18 and three on 3/19/18.
    - Transcon requires additional information from ACP before proceeding with the review.
- Miscellaneous
  - On 3/17/18, an access path was observed behind ESA signage near 84.1. 38.30462937, -79.80790749

## Meetings Held

- ACP Weekly Internal and External Meeting (March 22, 2018)

**Upcoming Meetings**

March 22, External FS-ACP Weekly Check-in Call, 1-3pm  
March 22, External Site Design Plans Review, 3-5pm  
March 23, Internal MNF Road Design, 9-11am  
March 28, Internal GWNF Road Design, 2-4pm  
March 29, Internal FS Weekly Check-in, 8:30-10:30



**From:** Rubado, Jessica - FS  
**To:** (b)(6)  
**Cc:**  
**Subject:** RE: Another Error on the MVP FS Closure notice  
**Date:** Friday, March 23, 2018 10:25:35 AM  
**Attachments:** [20180319 MVP Closure Order on JNF.pdf](#)

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(b)(6)

Thank you for bringing to our attention the errors in the Mountain Valley Pipeline Emergency Closure Order.

The closure order #08-08-11-18-01 dated 3/7/2018 was replaced by MVP Closure Order #08-08-11-18-02 dated 3/10/2018. This closure order has also been replaced with Revised Mountain Valley Pipeline Project Emergency Closure Order # 08-08-11-18-03, dated 3/19/2018, which is attached. This closure order is also available on our website at <https://www.fs.usda.gov/detailfull/gwj/home/?cid=stelprdb5407016&width=full>. Our purpose in revising the closure orders was to correct errors, clarify the applicability of the Closure Order, and ensure accuracy on the maps. We hope our clarification addressed your concerns; please let us know if this additional closure order does not address the concerns that you articulated during our discussion and in this message.

If you have additional questions about the Mountain Valley Pipeline Project on National Forest System lands, please direct them to me at 503-314-0767 or [jrubado@fs.fed.us](mailto:jrubado@fs.fed.us).

Best,  
Jessica

Jessica Rubado  
Public Affairs Officer  
Forest Service  
Washington Office, Business Operations, Enterprise Program  
p: 503-314-0767  
[jrubado@fs.fed.us](mailto:jrubado@fs.fed.us)  
[www.fs.fed.us](http://www.fs.fed.us)

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-----Original Message-----

**From:** (b)(6)  
**Sent:** Monday, March 12, 2018 6:40 PM  
**To:** Rubado, Jessica - FS <[jrubado@fs.fed.us](mailto:jrubado@fs.fed.us)>

(b)(6)

**Subject:** Another Error on the MVP FS Closure notice

Jessica,

There is another error that I am bringing to your attention on the Mountain Valley Pipeline Emergency Closure Order (attachment 2).

This error is very important to correct. The attachment 2 map is NOT the FERC approved route which now includes Variation 250. The route error occurs between milepost 221 and 222.5 on that map.

I would like verification that the USFS has corrected in totality every map that is incorrect in this area on private property as this is VERY concerning that the Forest Service is making so many mistakes that we are catching just

**UNITED STATES DEPARTMENT OF AGRICULTURE  
GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS**

Order Number 08-08-11-18-03

**Revised Mountain Valley Pipeline Project Emergency Closure**  
*This Revised Order Terminates and Supersedes Order Number 08-08-11-18-02*

Pursuant to the provisions of 16 U.S.C. § 551, and 36 C.F.R. §§ 261.50 (a) and (b), the following acts are prohibited due to hazards associated with constructing the Mountain Valley Pipeline on the Eastern Divide Ranger District, George Washington and Jefferson National Forests, West Virginia and Virginia.

**A. Prohibitions:**

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**C. Duration:** The prohibitions of this Order shall remain in effect through March 31, 2019, unless terminated earlier by the Authorized Officer.

**D. Prior Orders:** This Order revises, supersedes and replaces Order Number 08-08-11-18-02, dated March 10, 2018, which is hereby revoked and terminated.

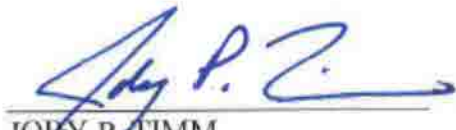
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**F. General Prohibitions:** The General Prohibitions set forth in 36 C.F.R. Part 261, Subpart A (§§ 261.1 – 261.23), remain in effect. The prohibitions set forth herein pursuant to 36 C.F.R. Part 261, Subpart B (§§ 261.50 – 261.58) are in addition to the General Prohibitions.

Executed in Roanoke, Virginia this 19 day of March, 2018.



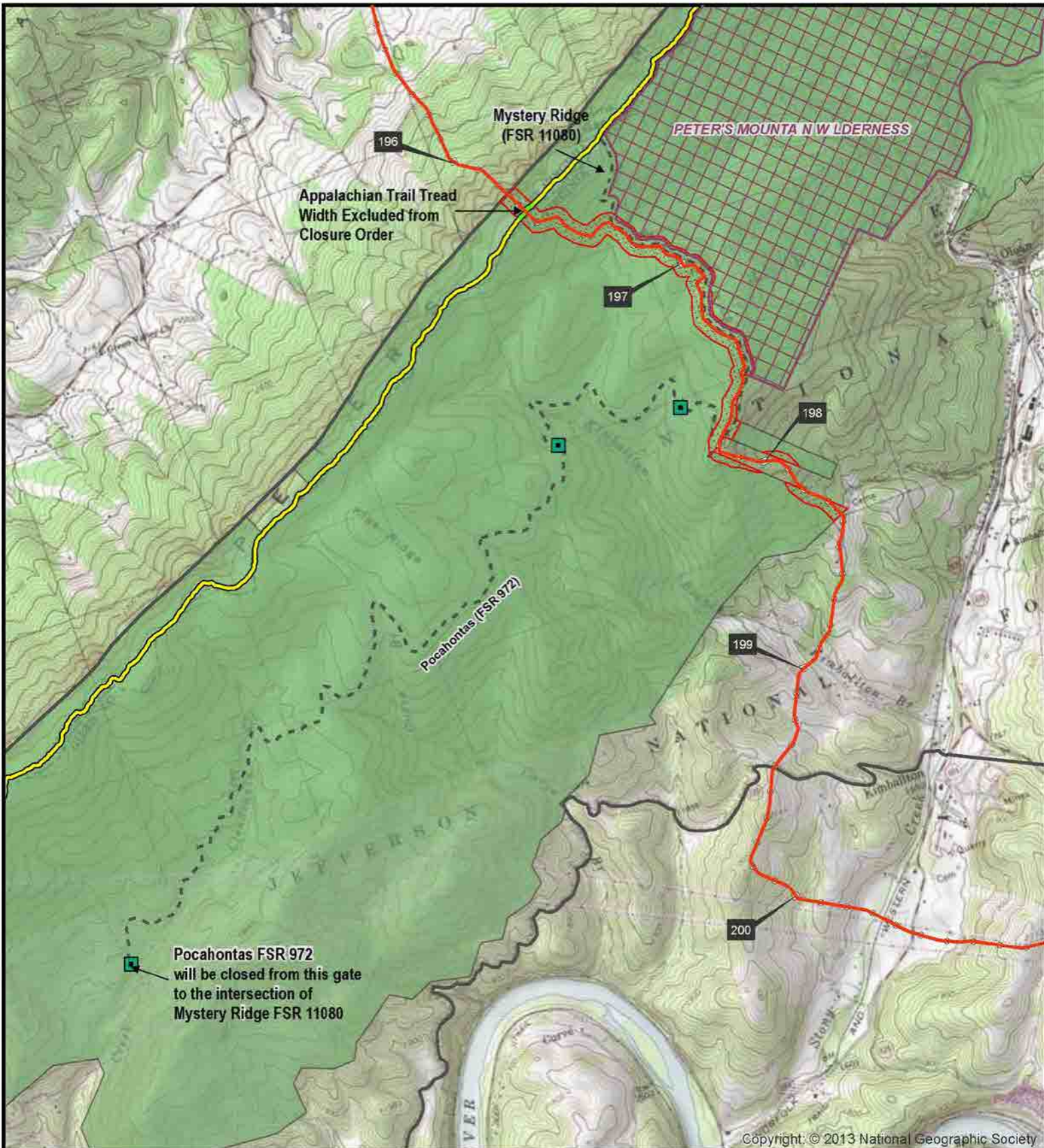
JOBY P. TIMM

Forest Supervisor

George Washington and Jefferson National Forests

**Violation of these prohibitions is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, imprisonment for not more than 6 months, or both. 16 U.S.C. § 551, and 18 U.S.C. §§ 3559 and 3571.**





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#### Vicinity Map



#### References

Background data is ESRI NGS, Topo, US data, supplemented with Mountain Valley Pipeline project data and Forest Service Lands Status Records System ownership and boundary data.

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Map Created: March 19, 2018

#### Attachment 1: Mountain Valley Pipeline Emergency Closure Order

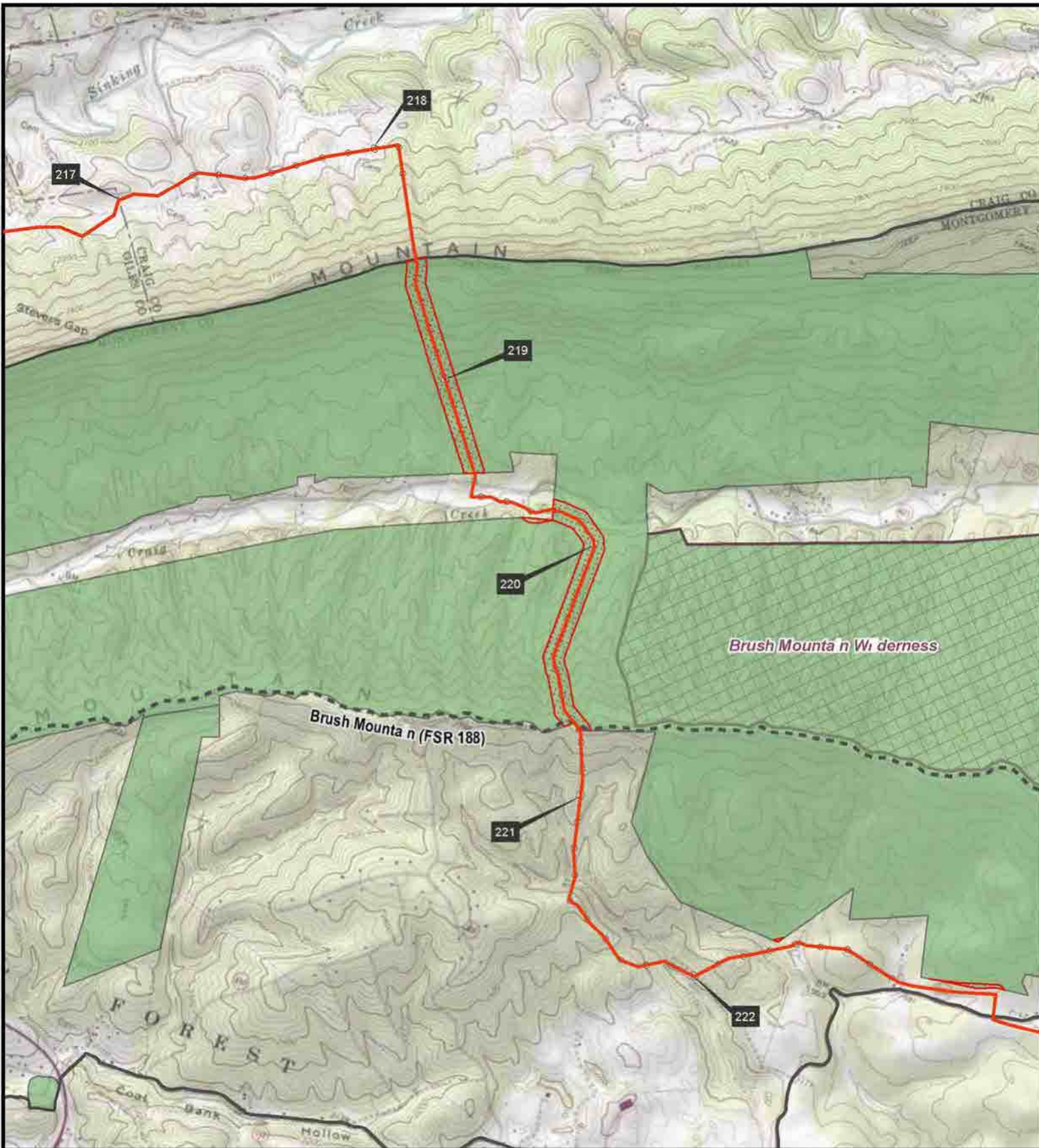


U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



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0 0.125 0.25 0.5 Miles

Map Created: March 19, 2018

#### Attachment 2: Mountain Valley Pipeline Emergency Closure Order



U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



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today on only one part of the MVP route. This project that the Forest Service has allowed to cross public land is now by necessity crossing private land.

It is important that every map that you have for this Mountain Valley Pipeline Project be accurate.

I am copying all my neighbors on this email as it greatly concerns all of us.

Thanks,

(b)(6)

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

**UNITED STATES DEPARTMENT OF AGRICULTURE  
GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS**

Order Number 08-08-11-18-03

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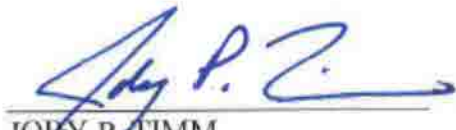
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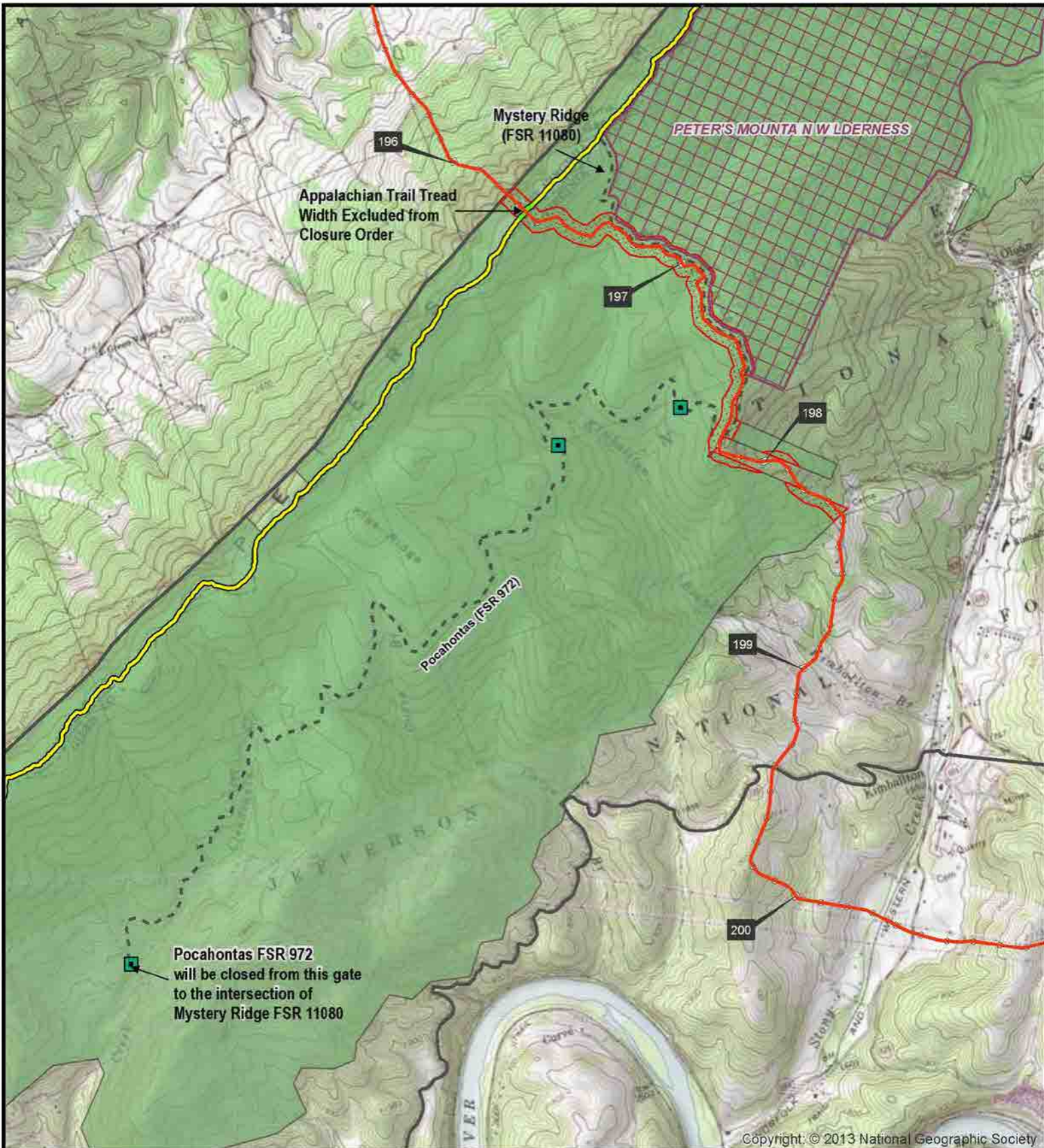
JOBY P. TIMM

Forest Supervisor

George Washington and Jefferson National Forests

**Violation of these prohibitions is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, imprisonment for not more than 6 months, or both. 16 U.S.C. § 551, and 18 U.S.C. §§ 3559 and 3571.**





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#### Vicinity Map



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Map Created: March 19, 2018

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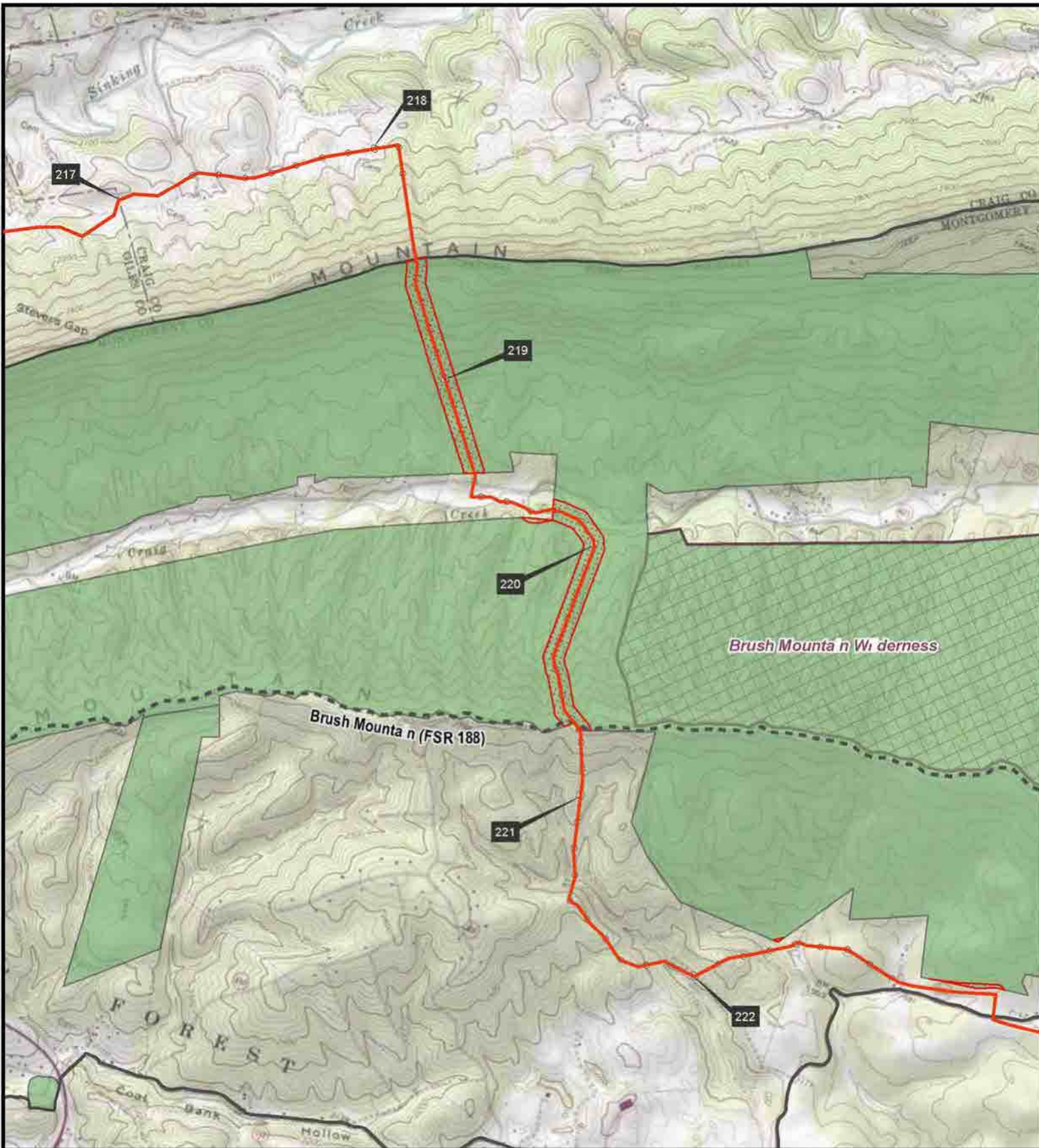


U.S. Forest Service  
Southern Region  
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Map Created: March 19, 2018

#### Attachment 2: Mountain Valley Pipeline Emergency Closure Order



U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



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**From:** Timm, Joby -FS  
**To:** (b)(6)  
**Cc:** Rubado, Jessica - FS  
**Subject:** Mountain Valley Pipeline Emergency Closure Order  
**Date:** Saturday, March 24, 2018 7:47:36 AM  
**Attachments:** [image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)  
[20180319 MVP Closure Order on JNF.pdf](#)  
**Importance:** High

---

(b)(6)

Thank you for your letter regarding the MVP Project Emergency Closure Order.

The closure order #08-08-11-18-01 dated 3/7/2018 referenced in your letter was replaced by MVP Closure Order #08-08-11-18-02 dated 3/10/2018. This closure order has also been replaced with Revised Mountain Valley Pipeline Project Emergency Closure Order # 08-08-11-18-03, dated 3/19/2018, which is attached and also available at the following link: <https://www.fs.usda.gov/detailfull/gwi/home/?cid=stelprdb5407016&width=full>. Closure Orders like these are issued under 36 CFR part 261 which are a category of action that may be categorically excluded and for which a project or case file, decision memo, and public comment are not required.

The construction corridor is not being expanded to 400 feet, but remains as disclosed in the Record of Decision. The area under the closure order is wider than the approved right-of-way to ensure public safety in the surrounding area of the project. A small portion of Peters Mountain Wilderness Area is within the buffer area of the closure order along the approved right-of-way. This is for public safety and is not excluded from the closure order. There will be no additional traffic within the Wilderness Area as the buffer zone is simply to provide for public safety. This will in no way degrade the Wilderness value. The Appalachian National Scenic Trail and Brush Mountain Road are already excluded from the closure order.

The primary purpose of the closure order is to keep the public safe in the area surrounding the approved right-of-way and the associated tree felling and construction that will occur. As outlined above and in other correspondence, safety must be considered above all else. That being said, the small buffer zone along Peters Mountain Wilderness Area will be under the closure order until which time it is determined by the Forest Supervisor that it can be safely occupied by the public.

If you have additional questions about the Mountain Valley Pipeline Project on National Forest System lands, please direct them to Jessica Rubado at 503-314-0767 or [jrubado@fs.fed.us](mailto:jrubado@fs.fed.us). – JOB



**Joby P. Timm**  
**Forest Supervisor**  
**Forest Service**  
**George Washington and Jefferson National Forest**  
p: 540-265-5118  
c: 540-339-2523



**UNITED STATES DEPARTMENT OF AGRICULTURE  
GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS**

Order Number 08-08-11-18-03

**Revised Mountain Valley Pipeline Project Emergency Closure**  
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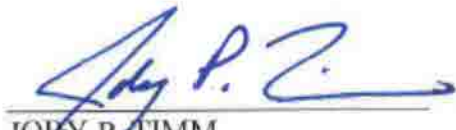
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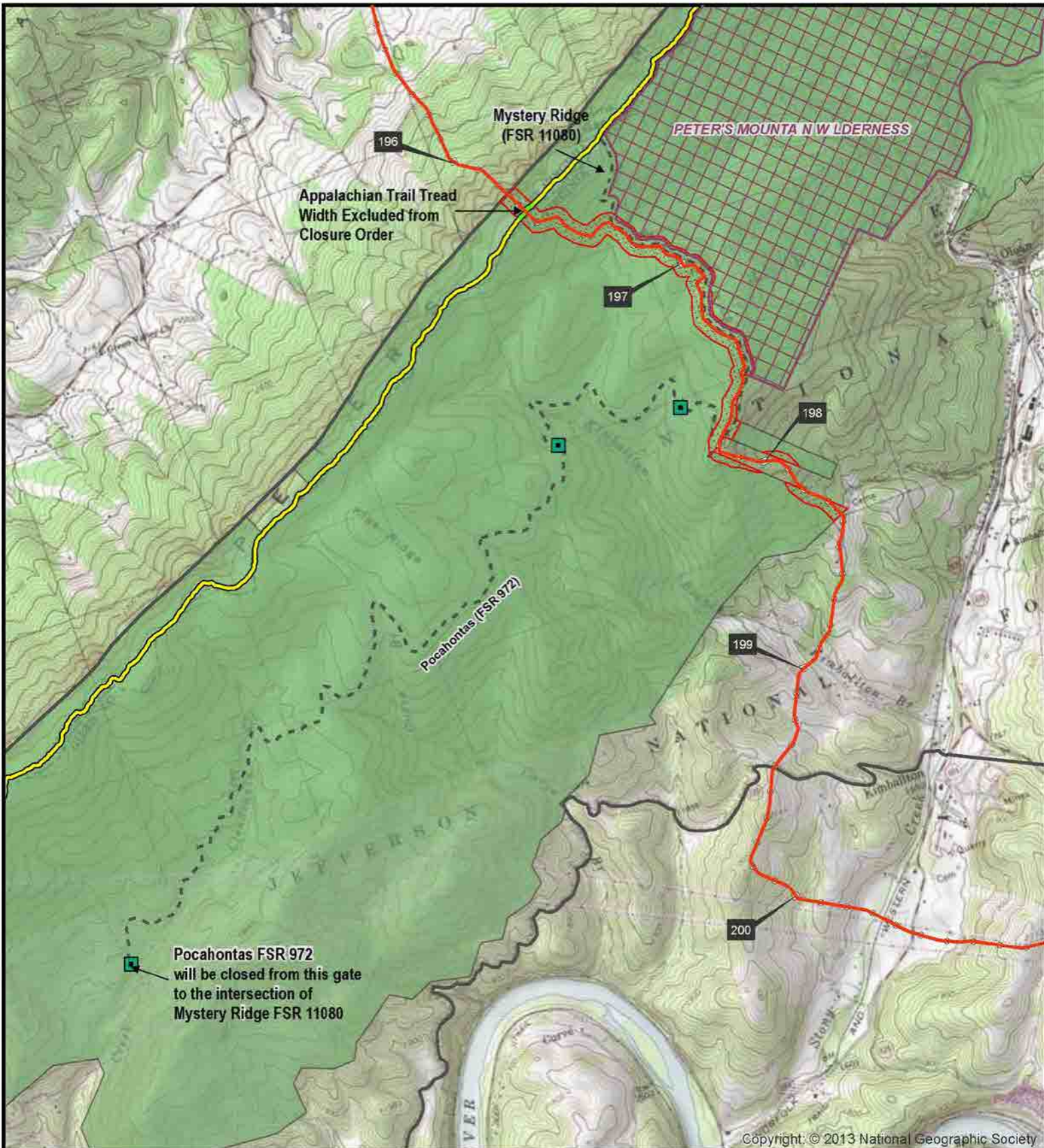
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#### Vicinity Map



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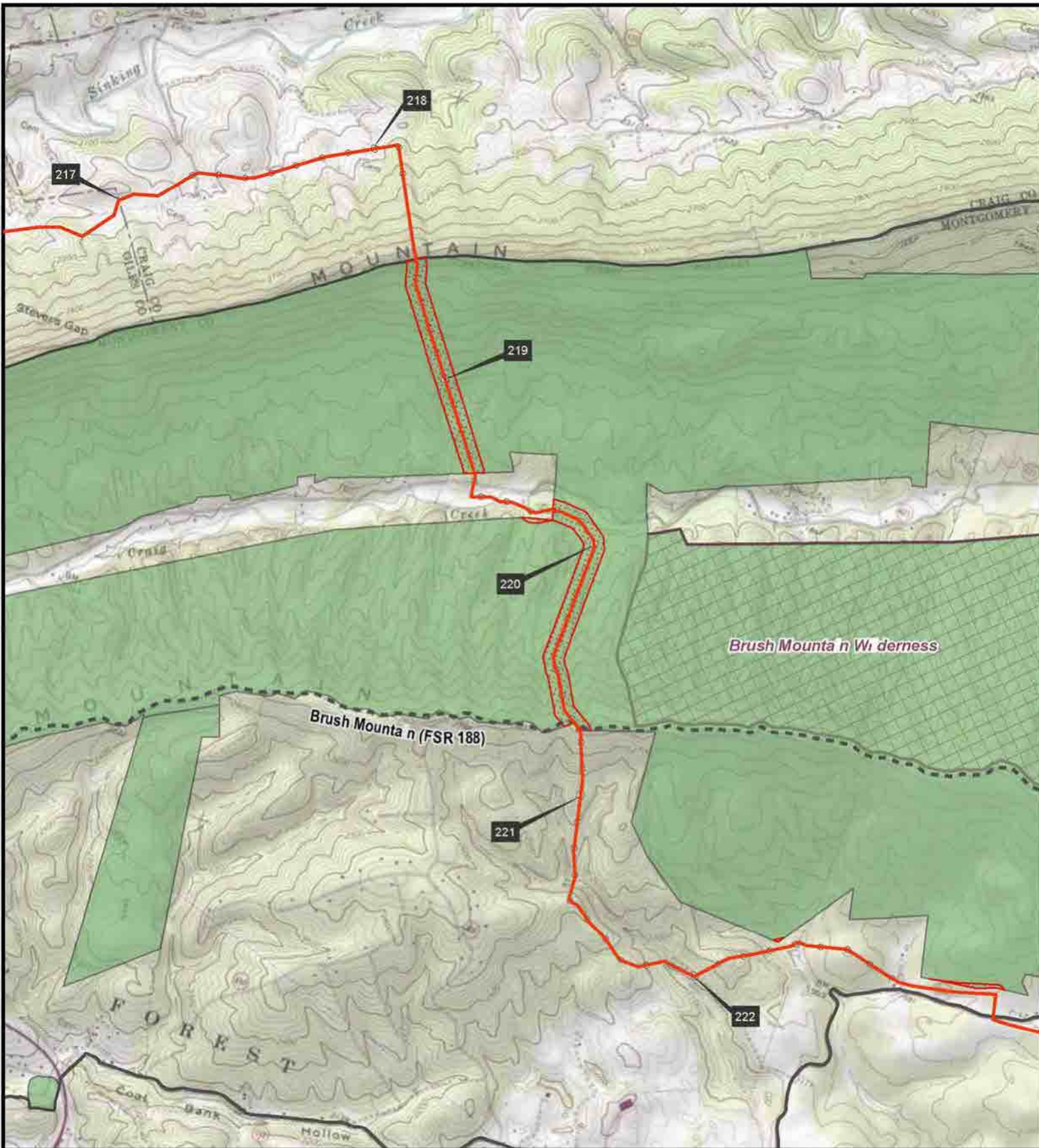


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U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



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f: 540-265-5110

[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)

Supervisors Office  
5162 Valleypointe Parkway  
Roanoke, VA 24019

[www.fs.fed.us](http://www.fs.fed.us)



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**UNITED STATES DEPARTMENT OF AGRICULTURE  
GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS**

Order Number 08-08-11-18-03

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**C. Duration:** The prohibitions of this Order shall remain in effect through March 31, 2019, unless terminated earlier by the Authorized Officer.

**D. Prior Orders:** This Order revises, supersedes and replaces Order Number 08-08-11-18-02, dated March 10, 2018, which is hereby revoked and terminated.

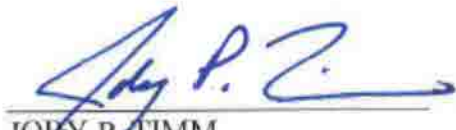
**E. Exemptions:** Pursuant to 36 C.F.R. §§ 261.50(e), the following persons are exempt from the prohibitions contained in this order:

1. Any Federal, State, or Local Officer, or member of an organized rescue or firefighting force engaged in the performance of an official duty. 36 C.F.R. § 261.50(e)(4).

2. Persons working under a permit, contract, or agreement issued by a Federal, State, or Local regulatory entity which specifically authorizes activity within the area and on the roads covered by this Order. 36 C.F.R. §§ 261.50(e)(1), and (6).

**F. General Prohibitions:** The General Prohibitions set forth in 36 C.F.R. Part 261, Subpart A (§§ 261.1 – 261.23), remain in effect. The prohibitions set forth herein pursuant to 36 C.F.R. Part 261, Subpart B (§§ 261.50 – 261.58) are in addition to the General Prohibitions.

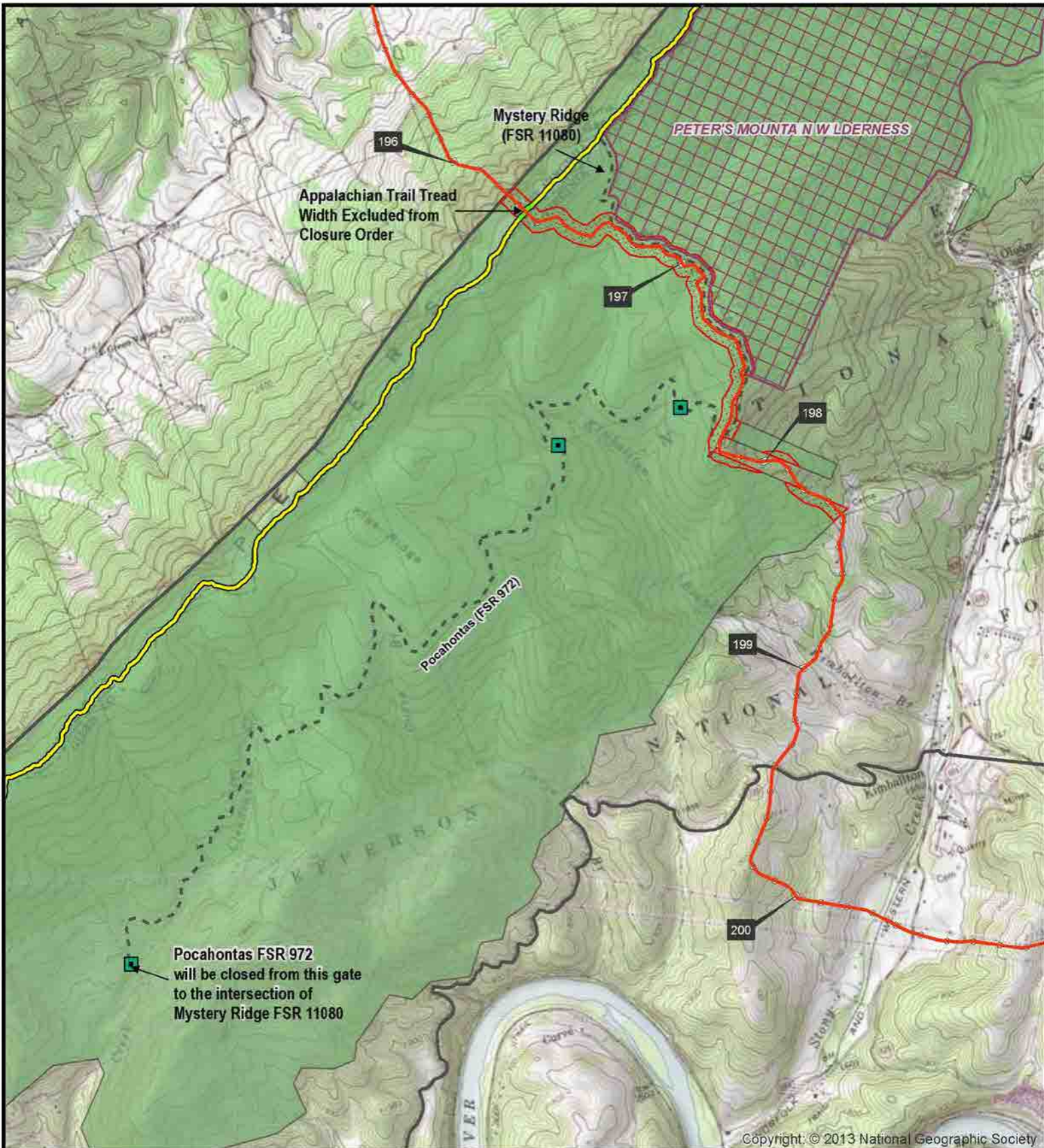
Executed in Roanoke, Virginia this 19 day of March, 2018.



JOBY P. TIMM  
Forest Supervisor  
George Washington and Jefferson National Forests

**Violation of these prohibitions is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, imprisonment for not more than 6 months, or both. 16 U.S.C. § 551, and 18 U.S.C. §§ 3559 and 3571.**





Copyright: © 2013 National Geographic Society

#### Vicinity Map



#### References

Background data is ESRI NGS, Topo, US data, supplemented with Mountain Valley Pipeline project data and Forest Service Lands Status Records System ownership and boundary data.

#### Disclaimer

The USDA Forest Service makes no warranty, expressed or implied regarding the data displayed on this map, and reserves the right to correct, update, modify, or replace this information without notification.

#### Legend

- Milepost
- Tenth-mile
- Seasonal Gate
- Approved Pipeline Route
- 100' buffer on either side of the Limits of Disturbance of Approved Pipeline Route
- Closed U.S. Forest Service Road
- Appalachian Trail
- Appalachian Trail Tread excluded from Closure Order
- Administrative Forest Boundary
- National Wilderness Area
- National Forest System Lands

Map Created: March 19, 2018

#### Attachment 1: Mountain Valley Pipeline Emergency Closure Order

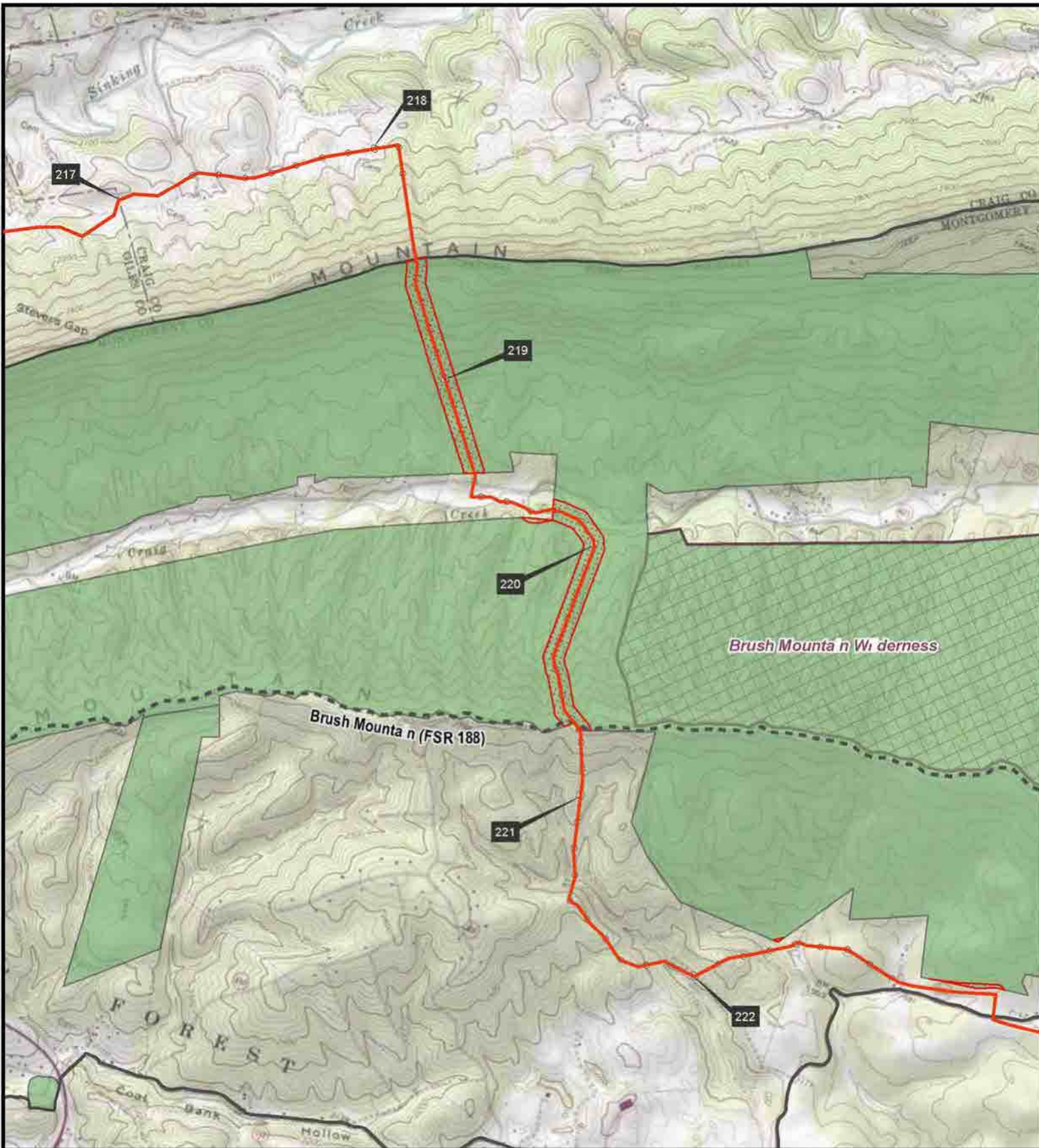


U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



Copies of this map are available for public inspection in the Office of the Regional Forester, Southern Region, Atlanta, GA.





#### Vicinity Map



#### References

Background data is ESRI/NGS\_Topo\_US data, supplemented with Mountain Valley Pipeline project data and Forest Service Lands Status Records System: ownership and boundary data.

#### Disclaimer

The USDA Forest Service makes no warranty, expressed or implied regarding the data displayed on this map, and reserves the right to correct, update, modify, or replace this information without notification.

#### Legend

- Milepost
- Tenth-mile
- Approved Pipeline Route
- 100' buffer on either side of the Limits of Disturbance of Approved Pipeline Route
- U.S. Forest Service Road
- Administrative Forest Boundary
- National Wilderness Area
- National Forest System Lands

0 0.125 0.25 0.5 Miles

Map Created: March 19, 2018

#### Attachment 2: Mountain Valley Pipeline Emergency Closure Order



U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



Copies of this map are available for public inspection in the Office of the Regional Forester, Southern Region, Atlanta, GA.



**From:** Timm, Joby -FS  
**To:** [david@wildvirginia.org](mailto:david@wildvirginia.org)  
**Cc:** [Rubado, Jessica - FS](#)  
**Subject:** Wild Virginia Concerns re: MVP Closure Order  
**Date:** Saturday, March 24, 2018 7:45:17 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[Wild Va. MVP Emergency Closure Order.pdf](#)  
[20180319 MVP Closure Order on JNF.pdf](#)

---

David,

Thank you for your inquiry regarding the MVP Project Emergency Closure Order.

The closure order #08-08-11-18-01 dated 3/7/2018 referenced in your letter was replaced by MVP Closure Order #08-08-11-18-02 dated 3/10/2018. This closure order has also been replaced with Revised Mountain Valley Pipeline Project Emergency Closure Order # 08-08-11-18-03, dated 3/19/2018, which is attached and available at the following link: <https://www.fs.usda.gov/detailfull/gwj/home/?cid=stelprdb5407016&width=full>. Our purpose in revising the closure orders was to clarify the applicability of the Closure Order. We hope our clarification made it clear that the order applies continuously on the access roads and the distances described from the MVP Project right-of-way and centerline described in the revised closure order.

The primary purpose of the closure order is to keep the public safe in the area surrounding the approved right-of-way when tree felling and construction that will occur. We do consider tree felling to be an activity that poses risks to public safety and the Forest Service must consider safety above all else. Large infrastructure projects like the MVP Project often require construction schedules to shift (with appropriate authorization). Due to the uncertainty about schedule and the process involved in issuing multiple closure orders, I determined public safety would be best met through keeping the order in place continuously while Mountain Valley Pipeline, LLC has the potential to be conducting activities to develop the MVP Project. The Forest Service does not intend to issue additional public statements regarding our rationale for the closure order.

We are considering but have not yet issued a closure order for the Atlantic Coast Pipeline Project on the George Washington National Forest.

If you have additional questions about the Mountain Valley Pipeline Project or the Atlantic Coast Pipeline Project on National Forest System lands, please direct them to Jessica Rubado at 503-314-0767 or [jrubado@fs.fed.us](mailto:jrubado@fs.fed.us). –JOB



**Joby P. Timm**  
**Forest Supervisor**  
**Forest Service**  
**George Washington and Jefferson National Forest**  
p: 540-265-5118  
c: 540-339-2523  
f: 540-265-5110  
[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)







March 12, 2018

P.O. Box 1065  
Charlottesville, VA  
22902  
(434) 971-1553  
[www.wildvirginia.org](http://www.wildvirginia.org)

Jobi Timm  
Forest Supervisor  
George Washington and Jefferson National Forests  
[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)

Sent Via Email

Re: Mountain Valley Pipeline Emergency Closure Order 08-08-11-18-01

Dear Supervisor Timm:

*Board of Directors:*

*Reiko Dogu*

*Bette Dzamba*

*Howard Evergreen*

*Katie Keller*

*Jennifer Lewis*

*Laurie Miller*

*David Sellers*

*Deirdre Skogen*

*Elizabeth Williams*

*Jamie Trost*

I am writing on behalf of Wild Virginia, our members, and our partners to ask you to clarify the provisions of the referenced Closure Order for areas on the Jefferson National Forest. We fully understand the need to enforce some requirements to protect the public and workers, if work on the Mountain Valley Pipeline (MVP) continues, but we also feel it is vital that the public retain the right to visit and use all portions of our public lands to the greatest extent possible, consistent with safety concerns. We trust that you endorse this position and ask that you respond to this letter and make your response public, to ensure that all who wish to use the Forest are fully informed about the issues discussed here. We also ask that you address these same issues in relation to the portions of the Atlantic Coast Pipeline proposed to cross the George Washington National Forest.

Our primary concern about the Closure Order is with the time periods described. The areas addressed include "an area 200 feet on both sides of the centerline of the pipeline right-of-way on National Forest System lands" and two sections of Forest road.

In regard to the roads, the Order prohibits the presence of motor vehicles "where construction associated with pipeline activity is occurring and when closed by a sign, gate, or barricade." (emphasis added) This sentence indicates that the named roads will only be off-limits during the periods when construction "is occurring" and when notices or barriers to access are present. We presume that the periods will be limited only to those in which activities in the specific named areas cause safety concerns. We do note that the Federal Energy Regulatory Commission (FERC) does not consider tree felling by hand, as is currently underway, to constitute "construction." We ask that you confirm that the periods of exclusion on these roads will be strictly limited and that you clarify the use of the word "construction" as used in the Order.

In regard to the 200-foot zone on either side of the right-of-way centerline, the Order does not explicitly limit the period to those times when construction "is occurring" or specify that signs or barriers are required to trigger the prohibitions. We do note the statement in the Order that "[t]he prohibitions of this Order shall remain in effect for a period of 12 months from the date of execution unless terminated earlier by the Authorized Officer." A prohibition on access to the right-of-way for an entire year is not justified.

**Protecting Your Favorite Wild Places**

*Printed on 100% Post Consumer Recycled Paper*

Jobi Timm  
March 12, 2018

We ask that you specify for the right-of-way areas, as you have for the roads, that the public is excluded only when construction is occurring and that warnings or barriers will be present on active sections to alert people that the prohibition against entry is in effect and to show the limits of the affected areas. Again, we believe it is necessary that you define the term “construction” in the context of your Order.

We assert that the public should be allowed access to the right-of-way areas at all times unless safety hazards are present. For example, the public should be able to traverse the right-of-way areas after tree felling occurs but before digging, blasting, and placement of pipes begins. Likewise, we should be able to visit any section within these areas as soon as work is completed and as soon as safety allows. As you know, we have grave concerns about the damages pipeline-related activities will cause on our Forest lands and we intend to document any such impacts. Proper access, without unnecessary and unwarranted limitations, will allow the public to play its proper role as safeguards of the public interest.

Thank you and we look forward to your response.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
David Sligh  
Conservation Director

cc: Karen Overcash, GW&JNF

**UNITED STATES DEPARTMENT OF AGRICULTURE  
GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS**

Order Number 08-08-11-18-03

**Revised Mountain Valley Pipeline Project Emergency Closure**  
*This Revised Order Terminates and Supersedes Order Number 08-08-11-18-02*

Pursuant to the provisions of 16 U.S.C. § 551, and 36 C.F.R. §§ 261.50 (a) and (b), the following acts are prohibited due to hazards associated with constructing the Mountain Valley Pipeline on the Eastern Divide Ranger District, George Washington and Jefferson National Forests, West Virginia and Virginia.

**A. Prohibitions:**

**1. It is prohibited to be within 100 feet from the outer edge of each side of the disturbance corridor of the Approved Pipeline Route right-of-way [ROW] on National Forest System lands as shown on the maps attached hereto and made a part hereof as Attachment 1 dated March 19, 2018 and Attachment 2 dated March 19, 2018. For purposes of this closure order, the "disturbance corridor" is defined as the visible ROW that has been cut through the National Forest following the Approved Pipeline Route. For areas on the Approved Pipeline Route where the disturbance corridor has not yet been cut through the National Forest, it is prohibited to be within 200 feet on either side of the of the centerline of the Approved Pipeline Route on National Forest System lands as shown on the maps attached hereto and made a part hereof as Attachment 1 dated March 19, 2018 and Attachment 2 dated March 19, 2018. 36 C.F.R. § 261.53(e).**

**2. It is prohibited to be on any portion of Mystery Ridge Road (a/k/a FSR #11080) as shown on the map attached hereto and made a part hereof as Attachment 1, dated March 19, 2018. 36 C.F.R. § 261.54(e).**

**3. It is prohibited to be on the Pocahontas Road (a/k/a FSR #972) segment situated between the first Forest Service gate on Pocahontas Road and the intersection of Pocahontas Road with Mystery Ridge Road as shown on the map attached hereto and made a part hereof as Attachment 1, dated March 19, 2018. 36 C.F.R. § 261.54(e).**

**B. Exclusions:**

**1. The tread width of the Appalachian Trail is excluded from this Emergency Closure Order. For purposes of this closure order, the tread width is defined as twenty-four (24) inches on each side of the centerline of the Appalachian Trail as shown on the map attached hereto and made a part hereof as Attachment 1, dated March 19, 2018.**

**2. The entirety of Brush Mountain Road (a/k/a FSR #188) is excluded from this Emergency Closure Order. Brush Mountain Road is shown on the map attached hereto and made a part hereof as Attachment 2, dated March 19, 2018.**



**C. Duration:** The prohibitions of this Order shall remain in effect through March 31, 2019, unless terminated earlier by the Authorized Officer.

**D. Prior Orders:** This Order revises, supersedes and replaces Order Number 08-08-11-18-02, dated March 10, 2018, which is hereby revoked and terminated.

**E. Exemptions:** Pursuant to 36 C.F.R. §§ 261.50(e), the following persons are exempt from the prohibitions contained in this order:

1. Any Federal, State, or Local Officer, or member of an organized rescue or firefighting force engaged in the performance of an official duty. 36 C.F.R. § 261.50(e)(4).

2. Persons working under a permit, contract, or agreement issued by a Federal, State, or Local regulatory entity which specifically authorizes activity within the area and on the roads covered by this Order. 36 C.F.R. §§ 261.50(e)(1), and (6).

**F. General Prohibitions:** The General Prohibitions set forth in 36 C.F.R. Part 261, Subpart A (§§ 261.1 – 261.23), remain in effect. The prohibitions set forth herein pursuant to 36 C.F.R. Part 261, Subpart B (§§ 261.50 – 261.58) are in addition to the General Prohibitions.

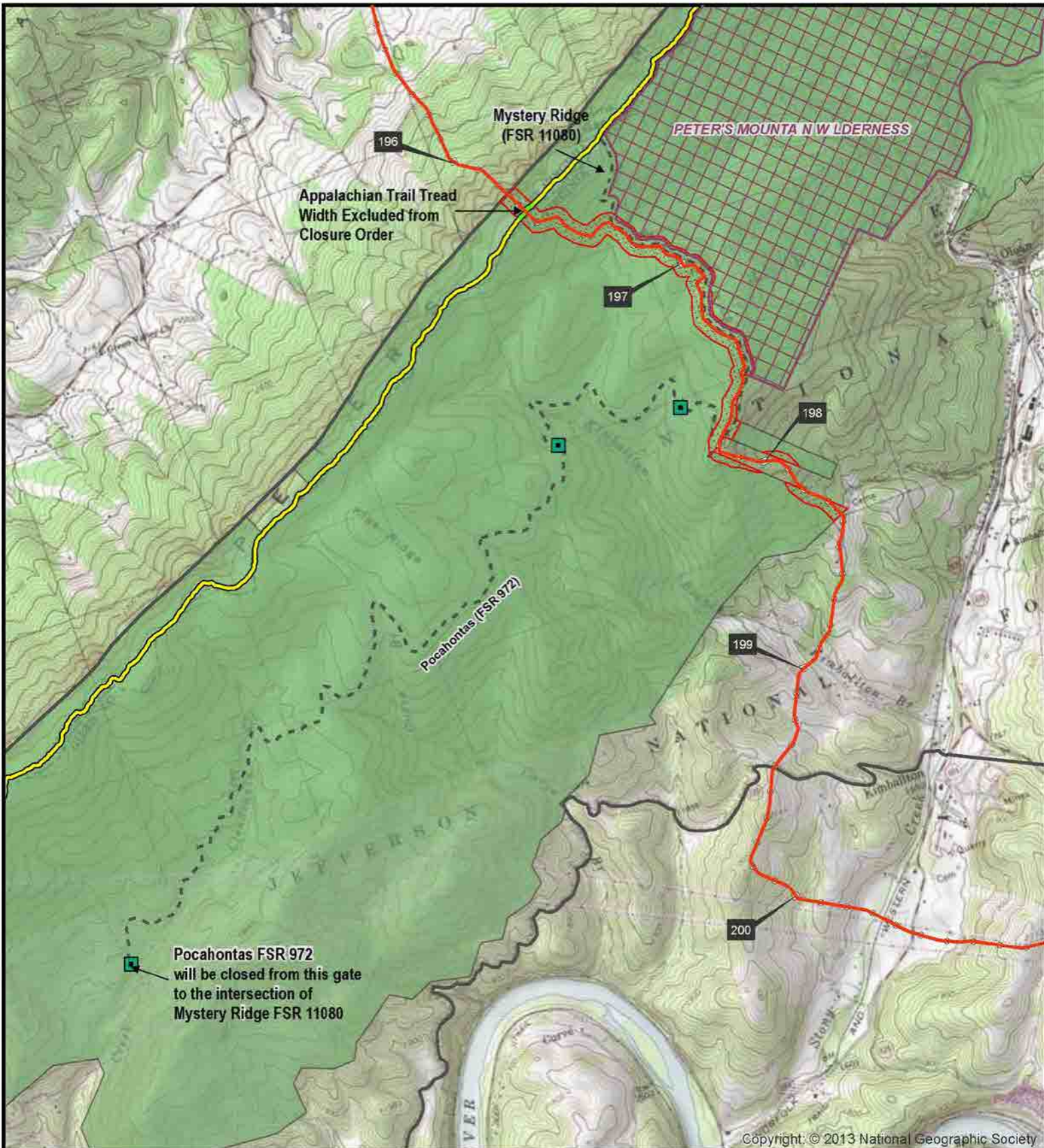
Executed in Roanoke, Virginia this 19 day of March, 2018.



JOBY P. TIMM  
Forest Supervisor  
George Washington and Jefferson National Forests

**Violation of these prohibitions is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, imprisonment for not more than 6 months, or both. 16 U.S.C. § 551, and 18 U.S.C. §§ 3559 and 3571.**





Copyright: © 2013 National Geographic Society

#### Vicinity Map



#### References

Background data is ESRI NGS, Topo\_US data, supplemented with Mountain Valley Pipeline project data and Forest Service Lands Status Records System ownership and boundary data.

#### Disclaimer

The USDA Forest Service makes no warranty, expressed or implied regarding the data displayed on this map, and reserves the right to correct, update, modify, or replace this information without notification.

#### Legend

- Milepost
- Tenth-mile
- Seasonal Gate
- Approved Pipeline Route
- 100' buffer on either side of the Limits of Disturbance of Approved Pipeline Route
- Closed U.S. Forest Service Road
- Appalachian Trail
- Appalachian Trail Tread excluded from Closure Order
- Administrative Forest Boundary
- National Wilderness Area
- National Forest System Lands

Map Created: March 19, 2018

#### Attachment 1: Mountain Valley Pipeline Emergency Closure Order

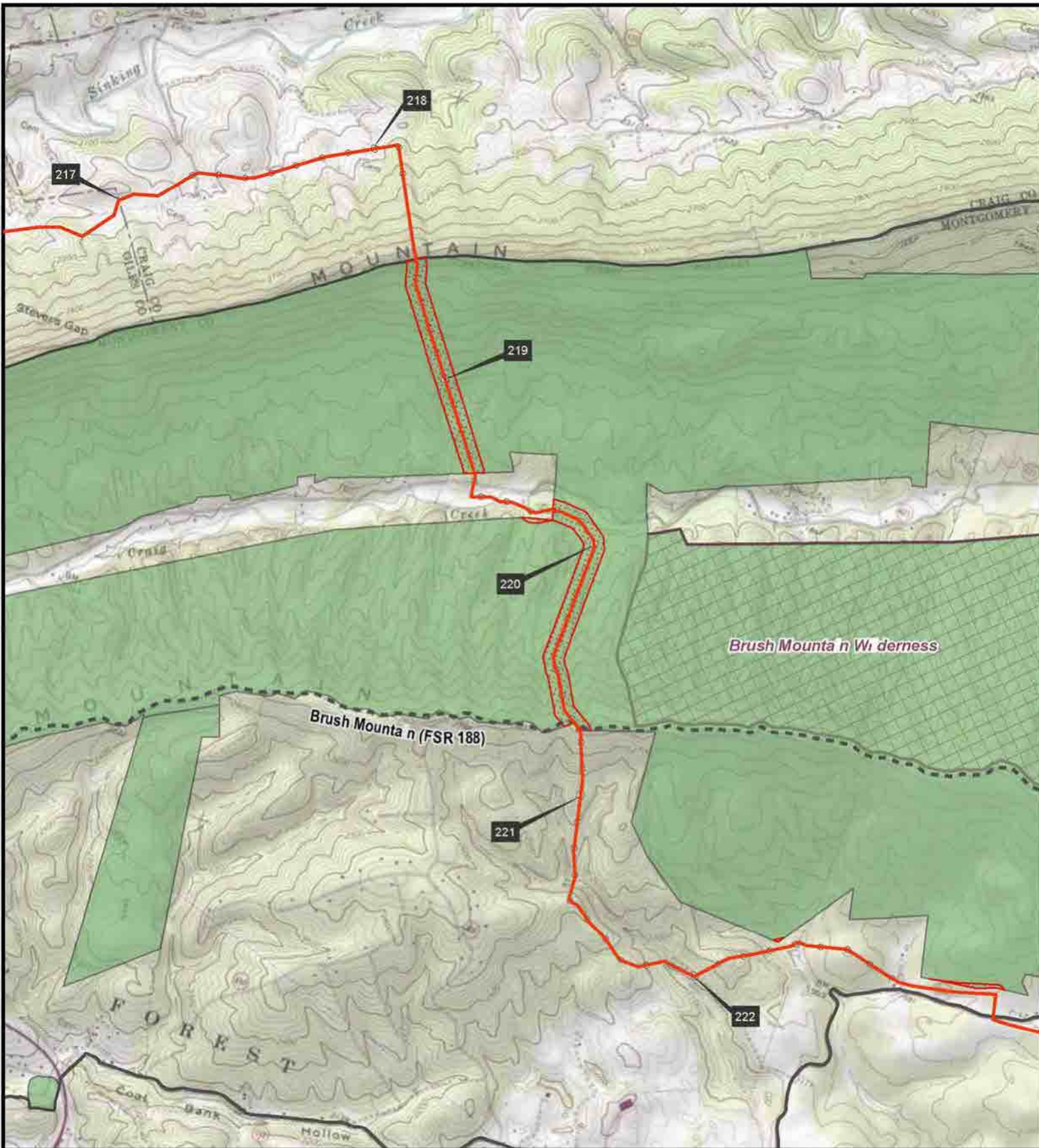


U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



Copies of this map are available for public inspection in the Office of the Regional Forester, Southern Region, Atlanta, GA.





#### Vicinity Map



#### References

Background data is ESRI/NGS\_Topo\_US data, supplemented with Mountain Valley Pipeline project data and Forest Service Lands Status Records System: ownership and boundary data.

#### Disclaimer

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0 0.125 0.25 0.5 Miles

#### Legend

- Milepost
- Tenth-mile
- Approved Pipeline Route
- 100' buffer on either side of the Limits of Disturbance of Approved Pipeline Route
- U.S. Forest Service Road
- Administrative Forest Boundary
- National Wilderness Area
- National Forest System Lands

Map Created: March 19, 2018

#### Attachment 2: Mountain Valley Pipeline Emergency Closure Order



U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



Copies of this map are available for public inspection in the Office of the Regional Forester, Southern Region, Atlanta, GA.



**From:** [Lauren Johnston](#)  
**To:** ["Jankowiak, Connie L -FS"; MVP: Grace Ellis; Morris, Troy - FS](#)  
**Cc:** [ycraft@blm.gov](mailto:ycraft@blm.gov); [Miriam Liberatore \(mliberat@blm.gov\)](mailto:Miriam.Liberatore@blm.gov)  
**Subject:** RE: MVP Closure Order  
**Date:** Monday, March 12, 2018 1:23:00 PM  
**Attachments:** [closure.pdf](#)  
**Importance:** High

---

Hi Connie,

Megan Neylon just called asking about the updated MVP March 10th closure order. Is it okay if we share it with MVP? They are requesting a copy for their court hearing tomorrow re the tree sitters.

Thanks,

Lauren Johnston

Galileo Project, LLC  
p. 480.629.4705  
[www.galileoaz.com/](http://www.galileoaz.com/)

-----Original Message-----

**From:** Jankowiak, Connie L -FS <[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)>  
**Sent:** Sunday, March 11, 2018 3:41 AM  
**To:** MVP <[mvp@transcon.com](mailto:mvp@transcon.com)>; Grace Ellis <[grace.ellis@galileoaz.com](mailto:grace.ellis@galileoaz.com)>; Lauren Johnston <[lauren.johnston@galileoaz.com](mailto:lauren.johnston@galileoaz.com)>; Morris, Troy - FS <[troydmorris@fs.fed.us](mailto:troydmorris@fs.fed.us)>  
**Subject:** FW: MVP Closure Order

FYI. Katie caught the fact the WV was not noted on the original Closure Order that was issued. It was redone yesterday and signed by Job and is attached. Wanted to share with you.

Connie L Jankowiak  
Acting Special Project Coordinator  
Forest Service  
George Washington & Jefferson National Forests  
p: 540-265-5114  
[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)  
5162 Valleypointe Parkway  
Roanoke, VA 24019  
[www.fs.fed.us](http://www.fs.fed.us)

Caring for the land and serving people

-----Original Message-----

**From:** Ballew, Katie J -FS  
**Sent:** Saturday, March 10, 2018 3:03 PM  
**To:** Harris, Robert -FS <[rharris04@fs.fed.us](mailto:rharris04@fs.fed.us)>; Southard, Brian -FS <[bsouthard@fs.fed.us](mailto:bsouthard@fs.fed.us)>; Willett, James -FS <[jjwillett@fs.fed.us](mailto:jjwillett@fs.fed.us)>; Price, John R -FS <[jrprice@fs.fed.us](mailto:jrprice@fs.fed.us)>; Buchanan, Chip M -FS <[cbuchanan02@fs.fed.us](mailto:cbuchanan02@fs.fed.us)>; Ramey, Christopher W -FS <[cramey@fs.fed.us](mailto:cramey@fs.fed.us)>; Ford, David L -FS <[davidford@fs.fed.us](mailto:davidford@fs.fed.us)>; Crawford, Cindy G -FS <[cgcrawford@fs.fed.us](mailto:cgcrawford@fs.fed.us)>; Timm, Joby -FS <[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)>; Abing, Timothy -FS <[tabing@fs.fed.us](mailto:tabing@fs.fed.us)>; Rubado, Jessica -FS <[jrubado@fs.fed.us](mailto:jrubado@fs.fed.us)>; Jankowiak, Connie L -FS <[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)>; McKeague, Dan -FS <[dmckeague@fs.fed.us](mailto:dmckeague@fs.fed.us)>; LeMaster, Elizabeth -FS <[elemaster@fs.fed.us](mailto:elemaster@fs.fed.us)>  
**Subject:** MVP Closure Order

**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS**  
**EASTERN DIVIDE RANGER DISTRICT**

Order Number 08-08-11-18-02

**Mountain Valley Pipeline Project Emergency Closure**

Pursuant to the provisions of Title 36, Code of Federal Regulations, Section 261.50 (a) and (b), the following acts are prohibited due to hazards associated with constructing the Mountain Valley Pipeline on the Eastern Divide Ranger District, George Washington and Jefferson National Forests, West Virginia and Virginia.

1. For the protection of public health and safety, going into or be upon any area which is closed by this Order by foot, horseback, or by non-motorized or wheeled conveyance (bicycle). 36 CFR 261.53
2. Operating, leaving, possessing, or parking a motor vehicle on roads closed by this Order where construction associated with pipeline activity is occurring and when closed by a sign, gate, or barricade. 36 CFR 261.54 (e)

This Order applies to an area 200 feet on both sides of the centerline of the pipeline right-of-way on National Forest System lands as shown on the maps attached to and made a part of this Order (Attachment 1 and Attachment 2), excluding however, the footpath of the Appalachian Trail and the Brush Mountain East Road.

This Order applies to the following roads:

- Mystery Ridge Road (FR #11080) for its entire length.
- Pocahontas Road (FR #972) from the first Forest Service gate on Pocahontas Road to the intersection with Mystery Ridge Road.

The prohibitions of this Order shall remain in effect for a period of 12 months from the date of execution unless terminated earlier by the Authorized Officer.

Pursuant to Title 36 Code of Federal Regulations, Section 261.50(e), the following persons are exempt from the prohibitions contained in this order:

- Any Federal, State, or Local Officer, or member of an organized rescue or firefighting force engaged in the performance of an official duty.
- Persons working under a permit, contract, or agreement issued by a Federal, State, or Local regulatory entity which specifically authorizes activity within the area and roads covered by this Order.

The prohibitions are in addition to the general prohibitions in 36 CFR Part 261, Subpart A.

Executed in Roanoke, Virginia this 10<sup>TH</sup> day of March, 2018.

A handwritten signature in blue ink, appearing to read "Joby P. Timm", is written over a horizontal line.

JOBY P. TIMM

Forest Supervisor

George Washington and Jefferson National Forests

Violation of these prohibitions is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, imprisonment for not more than 6 months, or both. (16 U.S.C. 551 and 18 U.S.C. 3559 and 3571).



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**UNITED STATES DEPARTMENT OF AGRICULTURE**  
**GEORGE WASHINGTON AND JEFFERSON NATIONAL FORESTS**  
**EASTERN DIVIDE RANGER DISTRICT**

Order Number 08-08-11-18-02

**Mountain Valley Pipeline Project Emergency Closure**

Pursuant to the provisions of Title 36, Code of Federal Regulations, Section 261.50 (a) and (b), the following acts are prohibited due to hazards associated with constructing the Mountain Valley Pipeline on the Eastern Divide Ranger District, George Washington and Jefferson National Forests, West Virginia and Virginia.

1. For the protection of public health and safety, going into or be upon any area which is closed by this Order by foot, horseback, or by non-motorized or wheeled conveyance (bicycle). 36 CFR 261.53
2. Operating, leaving, possessing, or parking a motor vehicle on roads closed by this Order where construction associated with pipeline activity is occurring and when closed by a sign, gate, or barricade. 36 CFR 261.54 (e)

This Order applies to an area 200 feet on both sides of the centerline of the pipeline right-of-way on National Forest System lands as shown on the maps attached to and made a part of this Order (Attachment 1 and Attachment 2), excluding however, the footpath of the Appalachian Trail and the Brush Mountain East Road.

This Order applies to the following roads:

- Mystery Ridge Road (FR #11080) for its entire length.
- Pocahontas Road (FR #972) from the first Forest Service gate on Pocahontas Road to the intersection with Mystery Ridge Road.

The prohibitions of this Order shall remain in effect for a period of 12 months from the date of execution unless terminated earlier by the Authorized Officer.

Pursuant to Title 36 Code of Federal Regulations, Section 261.50(e), the following persons are exempt from the prohibitions contained in this order:

- Any Federal, State, or Local Officer, or member of an organized rescue or firefighting force engaged in the performance of an official duty.
- Persons working under a permit, contract, or agreement issued by a Federal, State, or Local regulatory entity which specifically authorizes activity within the area and roads covered by this Order.

The prohibitions are in addition to the general prohibitions in 36 CFR Part 261, Subpart A.

Executed in Roanoke, Virginia this 10<sup>TH</sup> day of March, 2018.

A handwritten signature in blue ink, appearing to read "Joby P. Timm", is written over a horizontal line.

JOBY P. TIMM

Forest Supervisor

George Washington and Jefferson National Forests

Violation of these prohibitions is punishable by a fine of not more than \$5,000 for an individual or \$10,000 for an organization, imprisonment for not more than 6 months, or both. (16 U.S.C. 551 and 18 U.S.C. 3559 and 3571).



## Alexa Esquivel

---

**From:** Grace Ellis  
**Sent:** Wednesday, March 14, 2018 9:18 AM  
**To:** Maria Martin; Peter Rocco; Lauren Johnston  
**Subject:** Fwd: More questions about access to the National Forests

**Categories:** DF IN, DF Maybe

FYI.

J. Grace Ellis  
Galileo Project LLC  
4700 South McClintock Rd., St. 100  
Tempe, Arizona 85282  
928.856.1621

----- Original message -----

From: "Williams, Ginny -FS" <gwilliams03@fs.fed.us>  
Date: 3/14/18 9:06 AM (GMT-07:00)  
To: "Rubado, Jessica - FS" <jrubado@fs.fed.us>, "Jankowiak, Connie L -FS" <cjankowiak@fs.fed.us>, "Morris, Troy - FS" <troy Morris@fs.fed.us>, "Adams, Jennifer - FS" <jenniferpadams@fs.fed.us>, "Thompson, James H -FS" <jamesthompson@fs.fed.us>, "Irvine, Peter -FS" <pirvine@fs.fed.us>, "Woods, Steven -FS" <swoods01@fs.fed.us>  
Cc: "Brown, JoBeth -FS" <jobethbrown@fs.fed.us>, "Abing, Timothy -FS" <tabing@fs.fed.us>, "Timm, Joby - FS" <jtimmm@fs.fed.us>, Grace Ellis <grace.ellis@galileoaz.com>, Lauren Johnston <lauren.johnston@galileoaz.com>, "Cober, William J -FS" <wcober@fs.fed.us>  
Subject: RE: More questions about access to the National Forests

I'm bringing in 3 more GWJeff people critical to the question about the road closure order on the GWNF, regarding the status and contents of the closure order as well as the implications for trails – Jim Thompson, Steve Woods, and Pete Irvine. I also cc'd WJ who appears to have been left off the string pertaining to the MNF.

Pete is on leave this week, but he may be checking emails intermittently. I'll share what I've learned from working on the scenery aspects of this. ACP will cross:

- FSR 348.1 just outside of NF ownership, which is used to access Braley Pond and FS roads and trails in that vicinity; there is no other vehicular access to this site;
- FSRs 449 and 466 which are access points for multiple long and short loop hiking opportunities that include the Dowell's Draft Trail (FST650), Wild Oak National Recreation Trail (716), White Oak Draft Trail (FST 486), Bald Ridge Trail (FST496), and others, all in the popular area of Hankey Mountain, Bald Ridge and Dividing Ridge (including trails within the recommended Shenandoah Mountain National Scenic Area). If both roads are closed simultaneously, this will result in loss of access from US 250 south of this trail network. Looking at our MVUM and the National Geographic Trails Illustrated map, there are still access points from other state and FS roads including locations at or near Ramseys Draft Wilderness Trailhead and North River/Staunton Dam including FSRs 96, 95A and 95B to 425 (most of which have seasonal designations on our MVUM) and these accesses may be further east than desired for some.

I have not been involved in the access roads portion of the ACP internal and external calls in several weeks and I know much has occurred on this issue since then. I apologize for not contributing better info to help answer this question, but it's prudent that I defer to Jim, and Steve who have been involved in more recent conversations and planning for the access roads, and Pete who can better articulate than I the implications for trails.

**Ginny Williams, Landscape Architect**  
**Developed Recreation Program Manager,**  
**Volunteer & Service Programs Coordinator**

**Forest Service**  
**George Washington & Jefferson National Forests,**  
**Supervisor's Office**

**p: 540-265-5166**  
**f: 540-265-5109**  
[gwilliams03@fs.fed.us](mailto:gwilliams03@fs.fed.us)

5162 Valleypointe Parkway  
Roanoke, VA 24019  
[www.fs.fed.us](http://www.fs.fed.us)



**Caring for the land and serving people**

---

**From:** Rubado, Jessica - FS

**Sent:** Tuesday, March 13, 2018 7:58 PM

**To:** Jankowiak, Connie L -FS <cjankowiak@fs.fed.us>; Morris, Troy - FS <troymorris@fs.fed.us>; Williams, Ginny -FS <gwilliams03@fs.fed.us>

**Cc:** Brown, JoBeth -FS <jobethbrown@fs.fed.us>; Abing, Timothy -FS <tabing@fs.fed.us>; Timm, Joby -FS <jtim@fs.fed.us>; Grace Ellis <grace.ellis@galileoaz.com>; Lauren Johnston <lauren.johnston@galileoaz.com>

**Subject:** FW: More questions about access to the National Forests

Hi All –

I'll need assistance with the answers to these detailed questions about the closure order – please advise. As you know the ACP order on the GW would likely have a lot of impacts to recreationists so it would be good to get our messaging on that determined.

As I've mentioned a few times now, I'm unclear on what happens when the pipeline crosses roads and trails? The latest closure list has a number of crossed trails remaining open – how would hikers avoid the closed pipeline route they'd encounter using the trails? Same thing I think for a few roads, how would the crossings be managed for vehicle access?

Best,  
Jessica



**Jessica Rubado**  
**Project Manager**  
**Forest Service**  
**Washington Office, Business Operations, Enterprise Program**

**p: 503-314-0767**  
[jrubado@fs.fed.us](mailto:jrubado@fs.fed.us)  
1220 SW 3rd Avenue  
Portland, OR 97204  
[www.fs.fed.us](http://www.fs.fed.us)





Caring for the land and serving people

**From:** Adams, Jennifer - FS

**Sent:** Monday, March 12, 2018 2:25 PM

**To:** (b)(6)

**Cc:** Thompson, Clyde N -FS <[cnthompson@fs.fed.us](mailto:cnthompson@fs.fed.us)>; (b)(6)

(b)(6) Bridges, Kelly - FS <[kellybridges@fs.fed.us](mailto:kellybridges@fs.fed.us)>;

Jankowiak, Connie L -FS <[cjankowiak@fs.fed.us](mailto:cjankowiak@fs.fed.us)>; Rubado, Jessica - FS <[jrubado@fs.fed.us](mailto:jrubado@fs.fed.us)>

**Subject:** RE: More questions about access to the National Forests

(b)(6)—Clyde will reassess the need for the closure on the MNF toward the end of the 120-day period and make a determination at that time whether or not a longer closure order is needed.

Jessica—Can you send Lew a link to where the closure order for the GWNF is posted?



**Jennifer P. Adams**  
Acting Ecosystems Group Leader

Forest Service  
Monongahela National Forest,  
Supervisor's Office

p: 304-635-4457

f: 304-637-0582

[jenniferpadams@fs.fed.us](mailto:jenniferpadams@fs.fed.us)

200 Sycamore Street

Elkins, WV 26241

[www.fs.fed.us](http://www.fs.fed.us)



Caring for the land and serving people

**From:** (b)(6)

**Sent:** Monday, March 12, 2018 4:08 PM

**To:** Adams, Jennifer - FS <[jenniferpadams@fs.fed.us](mailto:jenniferpadams@fs.fed.us)>

**Cc:** Thompson, Clyde N -FS <[cnthompson@fs.fed.us](mailto:cnthompson@fs.fed.us)>; (b)(6)

(b)(6)

**Subject:** Re: More questions about access to the National Forests

Jennifer -

Since writing you yesterday with questions on access to National Forest lands during the construction of the ACP (another copy is attached), I have learned of the Notice posted last Friday announcing selected closures in the MNF:

<https://www.fs.usda.gov/alerts/mnf/alerts->



[notices/?aid=45474](#). As these announced closures are for 120 days and for only specific locations, will there be a general policy issued about MNF access during construction of the ACP and/or will there be rolling alerts for specific closures as circumstances arise?

I have not been able to find a comparable notice about any closures in the GWNF. Do you know if such closures are being contemplated and if so where? Or, is there someone other than you with the GWNF to whom I should pose the question?

Thanks for any information you can provide. I'm getting LOTS of questions!

(b)(6)

(b)(6)

On Sun, Mar 11, 2018 at 7:17 PM, (b)(6) wrote:

I suppose it would help you if I actually attached the questions posed to me. This time, it is attached.

(b)(6)

On Sun, Mar 11, 2018 at 6:49 PM, (b)(6) wrote:

Jennifer -

Since writing you earlier this afternoon with one question about the use of mechanized vehicles for tree-felling, I received additional questions - attached - regarding the whole subject of public access to Forest lands during the construction of the ACP. We discussed this topic during our meeting in Elkins last

Wednesday. At that time, you and your colleagues responded to (b)(6) query that you were still addressing the question yourselves and didn't have yet a definitive answer, at least that is the take-a-way I had from the exchange. Given the more specific questions set forth in the attachment, what can I tell our people at this time in response?

If a phone call is better to discuss this, my number is (b)(6) (b)(6) As I mentioned in my earlier email, it is increasingly likely I will be in Highland all-day Monday due to expected inclement weather (rather than in Elkins to attend Clyde's meeting) and I will definitely be here on Tuesday.

I appreciate any clarifications you can provide. This is an issue of growing concern among many in our coalition who deeply care about the GWNF and MNF and their access to the National Forests.

(b)(6)

(b)(6)

On Sun, Mar 11, 2018 at 5:42 PM, (b)(6) wrote:

Jennifer -

I have been informed by some of our people that tree-felling has begun in the GWNF and MNF, per your telling us last Wednesday that authority had been granted on March 2 by the Forest Service. One question that was posed to me today concerns an area of the GWNF, near Dowell's Draft in western Augusta County:

"Does the GWNF permit include motorized access?"

Can you clarify what is and is not permitted in tree-felling on MNF and GWNF lands at this time?

Thanks.

(b)(6)

PS - I am scheduled to be in Elkins tomorrow, per an invitation from Clyde, to participate in the all-day meeting of forest partner organizations. However, due to predicted weather over my way, that's looking iffy, so an email response sometime Monday morning (or sooner) would be much appreciated.

(b)(6)

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**From:** Rubado, Jessica - FS  
**To:** [Grace Ellis](#); [Lauren Johnston](#)  
**Cc:** [Miller, Lynette M - FS](#)  
**Subject:** FW: Call about Mountain Valley Pipeline Protester and Denying Food and Water  
**Date:** Friday, April 06, 2018 4:03:15 PM  
**Attachments:** [image001.png](#)  
[image005.png](#)  
[image007.png](#)  
[image008.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image006.png](#)

---

For the project record



**Jessica Rubado**  
**Project Manager**

**Forest Service**

**Washington Office, Business Operations, Enterprise Program**

**p: 503-314-0767**

[jrubado@fs.fed.us](mailto:jrubado@fs.fed.us)

1220 SW 3rd Avenue

Portland, OR 97204

[www.fs.fed.us](http://www.fs.fed.us)



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---

**From:** Timm, Joby -FS  
**Sent:** Friday, April 6, 2018 4:01 PM  
**To:** [Jeff.Sturgeon@Roanoke.com](mailto:Jeff.Sturgeon@Roanoke.com)  
**Subject:** Call about Mountain Valley Pipeline Protester and Denying Food and Water

Jeff,

Thank you for your inquiry about the Mountain Valley Pipeline Project. The monopod protester is located within an area under an emergency closure established for public safety and also is a direct violation of the Code of Federal Regulations, title 36, sections 261.10(a) Placing any a structure on National Forest System lands without authorization; and 261.12(d) blocking, restricting, or otherwise interfering with the use of a Forest Service road.

To provide for public safety, the Forest Service is enforcing the emergency closure order. Individuals within the area will be subject to criminal charges

Agency officials have informed the monopod occupant that she is in direct violation of the closure order, and she has been asked to vacate the closure area on numerous occasions. Monopod occupant is not being denied food or water and can leave the closure area at any time.

The Forest Service recognizes citizens' First Amendment rights and has accommodated these rights

outside of the closure area by designating the Caldwell Fields Campground on the Eastern Divide Ranger District as a safe location for people to exercise their First Amendment rights. –JOB



**Joby P. Timm**  
**Forest Supervisor**

**Forest Service**

**George Washington and Jefferson National Forest**

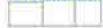
p: 540-265-5118

f: 540-265-5110

[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)

Supervisors Office  
5162 Valleypointe Parkway  
Roanoke, VA 24019

[www.fs.fed.us](http://www.fs.fed.us)



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**From:** Rubado, Jessica - FS  
**To:** [Brown, JoBeth -FS](#)  
**Cc:** [Timm, Joby -FS](#); [Miller, Lynette M - FS](#); [Grace Ellis](#); [Lauren Johnston](#)  
**Subject:** Reply approved: Talking Points for Jaime Hayle, protester  
**Date:** Monday, April 09, 2018 11:56:46 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)

---

(b)(5), Deliberative Process Privilege





the signs affixed to the Forest Service gate. Forest Service Law Enforcement gave protesters the option to retrieve property, and the signs were not retrieved. Since the signs were left they were considered abandoned property and disposed.

**Lynette Miller**  
**Environmental Coordinator**  
**Forest Service**  
**WO Business Operations, Enterprise Program**  
**c: 406-210-0264**  
[lynettemiller@fs.fed.us](mailto:lynettemiller@fs.fed.us)

Flagstaff, AZ 86001  
[www.fs.fed.us](http://www.fs.fed.us)



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**ACP-Forest Service Weekly Check-in****Date** March 8, 2018**Time:** 1-2:15pm (Eastern)**Location:** Conference Call

Attendees	Forest Service	Jennifer Adams, Connie Jankowiak, Troy Morris, Jessica Rubado, Amy Coleman, Mike Madden, Rich Guercin
	Atlantic Coast Pipeline (ACP)	Robert Hare, Jason Barnette
	Transcon	Jeff Davis, Greg Gryniewicz, Alli Rhodehamel-Leung, Mike Warner,
	Galileo Project	Maria Martin, Peter Rocco

**Action Items**

- **Jason** sends ACP's response to the tree felling pre-construction checklist. Anticipated March 9.
- **ACP** submits the complete road permit application with design drawings and shapefiles on March 12.
- **Jason** transmits plans for porta john distribution.
- **ACP** submits the variance request for the shifts in additional temporary work space.
- **Mike M** sends a map marked up with his suggested changes to ACP's route shift.
- **Robert** follows up with Connie if he needs anything from the Forest Service to resolve FERC's comments related to the timber marked for felling that was not included in FERC's certificate.
- **Jennifer** tells the Forest Service's security lead to contact ACP's security lead (Vic) to exchange security team related contact info.
- **Jennifer** coordinates with Galileo on a setting up a call to discuss red spruce sapling translocation. *In progress.*
- **Jennifer** checks authorizations to see if ACP can park on plywood. *Complete, this activity is not allowed.*
- **Jason** asks staff to take pictures of locations where they might use plywood to park on.

**Discussion Summary**

- The pre-timber felling and construction phase checklists are not meant to be formal documents; they are summaries of the protection measures and requirements found in the authorization documents that need to be implemented. The use of the checklists could help minimize compliance issues.
- Some portions of 3 of the roads the Forest Service authorized for "light duty" use were not included in the FERC authorization. ACP thinks the error comes from a GIS discrepancy, but FERC will be considering a variance to approve the use of the roads.
- Pre-treatment for non-native invasive species is not needed at this time. The few species present will be removed during blading operations. There are non-native invasive species present in Forest Roads 1012 and 55 which ACP will be using for felling operations, so ACP will need to wash vehicles after crossing these areas and before entering forest lands in accordance with the road permit and authorizations. There will be a need for pre-treatment and additional protection measures during the construction phase.

- The Forest Service expressed concerns about the number of vehicles that will be using the light duty roads. ACP is not allowed to park outside of the footprint of the road or block traffic. It is not clear if there will be enough parking. Jason said ACP understands these constraints and may direct contractors to shuttle crews in. The forests are also concerned about damage to the roads, there was some disagreement whether or not ACP was required to take measures to reduce effects by laying gravel prior to use or if they only needed to repair damage as it occurred. *Post meeting note: Jennifer emailed Robert to state the permit requires pre-treatment; Robert responded with a request to discuss further.*
- Mike expressed appreciation for ACP's voluntary effort to minimize effects to heritage sites by shifting the pipeline and work spaces. The Virginia State Historic Preservation Office is waiting for this to be resolved before issuing a response to the Forest Service letter.
- The forests have or will be issuing closure orders for the permitted roads and within 200' of the pipeline centerline. A few trails and a campground will also be included in the closure order. The Forest Service is considering allowing foot traffic on the trails.
- ACP plans to focus felling operations on the Virginia side of the project first since access to the ROW is constrained and they time of year restriction begins on March 15. They will start off with about 55 crew members and 10-12 environmental inspectors. The crews typically average about 3,000 feet a day.
- Transcon and ACP expressed appreciation for the early coordination and all agreed that communication at the field level is critical.

#### Next Meeting(s)

- March 15, External FS-ACP Weekly Check-in Call, 1-3pm



Attachment 3 depicts the Closed Area along the Mystery Ridge Road Segment and a portion of the Pocahontas Road Segment. Refer to Attachments 4 and 5 for the complete Closed Area coinciding with the Pocahontas Road Segment. Refer to Attachments 1 and 2 for the Closed Area along the Approved Pipeline Route.

Appalachian Trail Tread Width Excluded from Closure Order

Mystery Ridge (FSR 11080) End Point

PETER'S MOUNTAIN WILDERNESS

Mystery Ridge (FSR 11080)

Mystery Ridge FSR 11080 will be closed from its intersection with Pocahontas FSR 972 to its endpoint at Peter's Mountain Wilderness

Pocahontas (FSR 972)

Mystery Ridge (FSR 11080) Intersection with Pocahontas (FSR 972)

Pocahontas FSR 972 will be closed from its intersection with Mystery Ridge FSR 11080 to its intersection with State Route 641

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#### Vicinity Map



#### References

Background data © ESRI NGS, Topo, US data, supplemented with Mountain Valley Pipeline project data and Forest Service Lands Status Records System ownership and boundary data.

#### Disclaimer

The USDA Forest Service makes no warranty, expressed or implied regarding the data displayed on this map, and reserves the right to correct, update, modify, or replace this information without notification. The USDA Forest Service makes no warranty to the accuracy of the approved pipeline route on non National Forest System lands. Any buffers shown on this map are for the purpose of depicting the area subject to the closure order and do not reflect the approved area of disturbance for the project.

0 0.05 0.1 0.2 Miles

#### Legend

- Seasonal Gate
- Closed U.S. Forest Service Road
- Appalachian Trail
- Appalachian Trail Tread excluded from Closure Order
- Administrative Forest Boundary
- Closed Area
- National Wilderness Area
- National Forest System Lands

#### Attachment 3: Mountain Valley Pipeline Emergency Closure Order



U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



Copies of this map are available for public inspection in the Office of the Regional Forester, Southern Region, Atlanta, GA.

Map Created: April 6, 2018

file location: T:/FS/NFS/WOLands/ALP/Project/R08/regional/MapProduct/Attachment3\_MVP\_Closure\_04062018.pdf



Attachment 4 depicts the Closed Area coinciding with the Pocahontas Road Segment. Refer to Attachment 5 for the Appalachian Trail tread and Pocahontas Road Segment. Refer to Attachment 3 for the Closed Area coinciding with the Mystery Ridge Road Segment. Refer to Attachments 1 and 2 for the Closed Area along the Approved Pipeline Route.

Mystery Ridge (FSR 11080)  
Intersection with  
Pocahontas (FSR 972)

Pocahontas FSR 972 will be  
closed from its intersection with  
Mystery Ridge FSR 11080 to its  
intersection with Clendennin Road

Pocahontas (FSR 972)

Appalachian Trail Tread  
Width Excluded from  
Closure Order

Pocahontas (FSR 972)  
intersection with  
Clendennin Road (State Route 641)

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#### Vicinity Map



#### References

Background data © ESRI NGS, Topo, US data, supplemented with Mountain Valley Pipeline project data and Forest Service Lands Status Records System ownership and boundary data.

#### Disclaimer

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#### Legend

- Seasonal Gate
- Closed U.S. Forest Service Road
- Appalachian Trail
- Appalachian Trail Tread excluded from Closure Order
- Administrative Forest Boundary
- Closed Area
- National Wilderness Area
- National Forest System Lands

0 0.1 0.2 0.4 Miles

Map Created: April 6, 2018

#### Attachment 4: Mountain Valley Pipeline Emergency Closure Order



U.S. Forest Service  
Southern Region  
George Washington & Jefferson  
National Forest



Copies of this map are available for public inspection in the Office of the Regional Forester, Southern Region, Atlanta, GA.



**From:** Timm, Joby -FS  
**To:** [FS-pdl r8 gwjeff all](#); [MVP@transcon.com](#); [jdavis@transcon.com](#); [Berry, Jonathan D -FS](#); [Ellsworth, Kacy L -FS](#); [Rubado, Jessica - FS](#); [Sutton, Amy L -FS](#); [Abing, Timothy -FS](#)  
**Cc:** [Bridges, Kelly - FS](#); [Jankowiak, Connie L -FS](#); [Maria Martin](#); [Lauren Johnston](#); [Peter Rocco](#); [Grace Ellis](#); [Ballew, Katie J -FS](#); [Abing, Timothy -FS](#); [Adams, Jennifer - FS](#)  
**Subject:** Mountain Valley Pipeline Project Tree Felling Begins  
**Date:** Wednesday, February 28, 2018 6:07:54 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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GWJEF Team,

The Mountain Valley Pipeline (MVP) is scheduled to begin cutting trees on February 28, 2018. I wanted to give you an update as to where we are in our preparations for the construction.

I am in regular contact with our law enforcement patrol captain, Katie Ballew, who continues to work with Special Agent James Willet and other law enforcement personnel to monitor various intelligence, including news and social media for any signs of possible protests. To date, there has been no indication of any planned protest activity at our offices; however, there is an active protest on the right-of-way near the Appalachian National Scenic Trail crossing. For your safety, please avoid the area around the ANST where protests are occurring.

If there appears to be any concerns or potential impacts to one of our offices or surrounding areas, you will be notified by your supervisor. Patrol Captain Ballew, the local District Ranger(s), Beth and I will continue to monitor the situation and review safety considerations to determine the need for office closure or delayed openings for affected offices. In addition, we will honor a liberal annual leave policy as well as telework opportunities during these uncertain times. As always, please coordinate this through your supervisors.

If there is a decision to close any office, a message will be recorded on the Supervisor's Office phone system. District folks please follow direction from your District Ranger. Every effort will be made to record this message before 6:00 AM. To access the message employees will call 540-265-5100 and then press the \* key to hear the status of the office opening. You will also be contacted by your supervisor, staff officer, or District Ranger.

There is a possibility that there may be media and public presence near the pipeline right-of-way or Forest Service Offices. Should you be approached by media about either the MVP or Atlantic Coast Pipeline, please refer them to the GWJNF website for more information, Public Affairs Officer Jessica Rubado at 503-314-0767, or myself at (540) 265-5100. Please refrain from responding to media and public inquiries individually. Attached to this email are Construction Public Affairs Employee Materials for you to reference so that you are familiar with the project and our social media expectations. Please take a moment to review this document. If you have an encounter with the public, please follow the procedures described in the attachment to notify the appropriate individuals.

I have asked Safety Officer, Peter Roginski, to make sure he touches base with our on-site partners.

I appreciate everyone's continued patience as we work to gather information. As always, safety of our employees, partners, and publics is a high priority. If you have any specific concerns, please make sure you share these with Peter Roginski, your supervisor, Beth or myself.

Thank you, -JOB

**Joby P. Timm**





**Forest Supervisor**

**Forest Service**

**George Washington and Jefferson National Forest**

p: 540-265-5118

c: 540-339-2523

f: 540-265-5110

[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)

Supervisors Office

5162 Valleypointe Parkway

Roanoke, VA 24019

[www.fs.fed.us](http://www.fs.fed.us)



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**From:** Rubado, Jessica - FS  
**To:** [Grace Ellis](#); [Lauren Johnston](#); [Jankowiak, Connie L -FS](#)  
**Cc:** [Miller, Lynette M - FS](#); [Robbins, Rebecca - FS](#)  
**Subject:** FW: FYI FW: from Senator Kaine's office - forwarded but sent to JoBeth originally  
**Date:** Thursday, April 26, 2018 12:45:01 PM  
**Attachments:** [image005.png](#)  
[image006.png](#)  
[image007.png](#)  
[image008.png](#)

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For the project record/your information

---

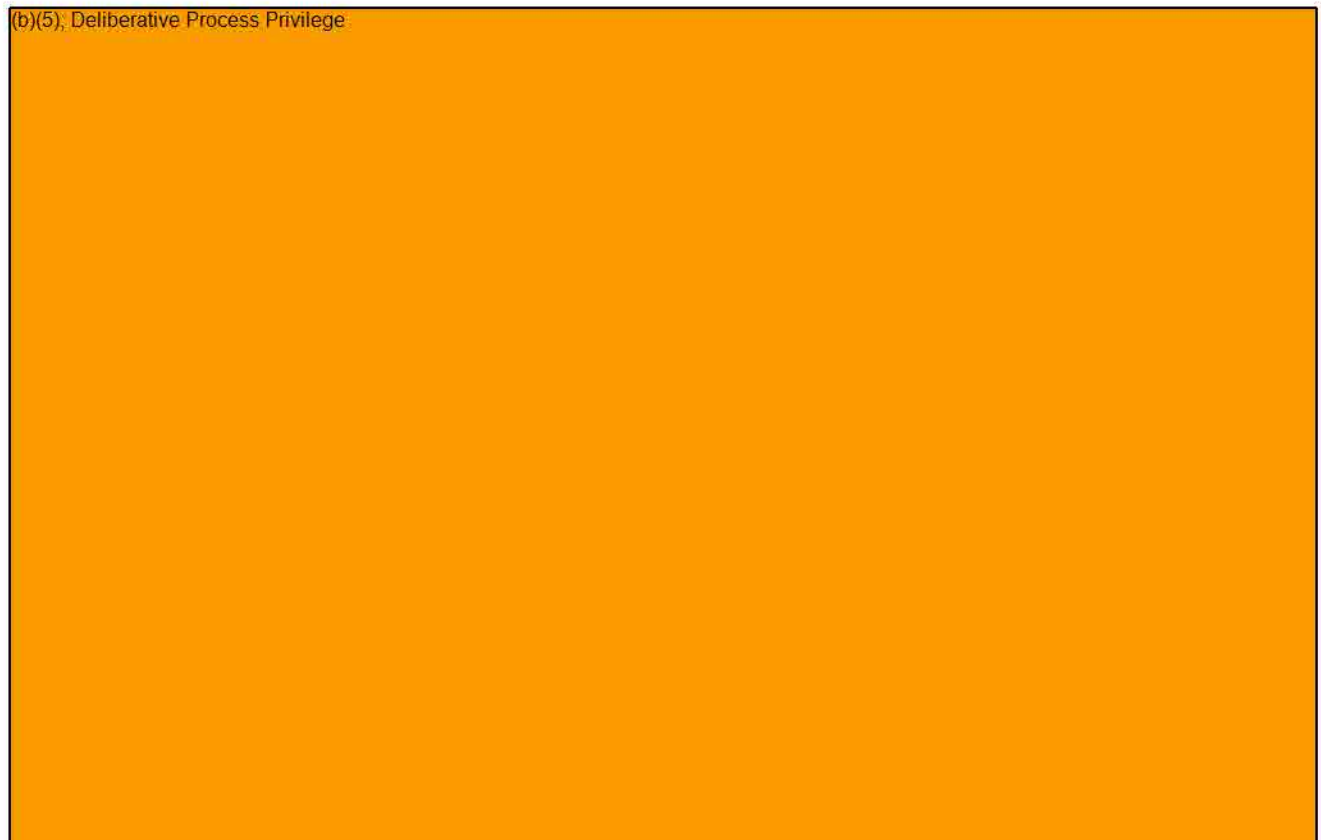
**From:** Robbins, Rebecca - FS  
**Sent:** Thursday, April 26, 2018 12:04 PM  
**To:** Timm, Joby -FS <jttimm@fs.fed.us>; LeMaster, Elizabeth -FS <elemaster@fs.fed.us>  
**Cc:** Rubado, Jessica - FS <jrubado@fs.fed.us>; Miller, Lynette M - FS <lynettemmiller@fs.fed.us>  
**Subject:** FYI FW: from Senator Kaine's office - forwarded but sent to JoBeth originally

FYI

---

**From:** Robbins, Rebecca - FS  
**Sent:** Thursday, April 26, 2018 2:36 PM  
**To:** 'Gwen\_Mason@kaine.senate.gov' <[Gwen\\_Mason@kaine.senate.gov](mailto:Gwen_Mason@kaine.senate.gov)>;  
'John\_Knapp@kaine.senate.gov' <[John\\_Knapp@kaine.senate.gov](mailto:John_Knapp@kaine.senate.gov)>;  
'Ali\_Sutherland@kaine.senate.gov' <[Ali\\_Sutherland@kaine.senate.gov](mailto:Ali_Sutherland@kaine.senate.gov)>  
**Subject:** RE: from Senator Kaine's office - forwarded but sent to JoBeth originally

(b)(5); Deliberative Process Privilege



**ACP Office of General Council and Regional Office Coordination****Date** April 27, 2018**Time:** 11:00am-11:30am (Eastern)**Location:** Conference Call

Attendees	USDA OGC	Sarah Kathmann
	Forest Service	Tim Abing, Elizabeth LeMaster, Connie Jankowiak, Jim Twaroski, Tracey Adkins
	Galileo Project	Maria Martin, Peter Rocco

**Action Items**

(b)(5), Attorney-Client Privilege

- Connie updates the team on timing for road design package or other schedule changes.

**Discussion Summary**

- The meeting was called to begin planning for closure orders related to the Atlantic Coast Pipeline (ACP) Project.
- Currently, timber felling is complete on approximately 50% of the pipeline right-of-way (ROW) and has not begun along access roads. Due to time of year restrictions (TOYR) related to migratory birds and threatened/endangered bats, ACP cannot begin felling timber again until September 1 (for birds) and November 15 (for bats) in Virginia.
- Connie reported ACP intends to submit revised road designs in a few weeks. Road construction will require at least some timber felling. Forest and regional office staff think ACP intends to spend the next few months getting the road designs approved and other permits in place so work on the roads can begin as soon as the TOYR restrictions end. One of the big items ACP needs is a permit from the Virginia Department of Environmental Quality.
- It is possible that ACP would request a variance from the TOYR restrictions once they have the designs and other permits in place. Work would not begin until the Federal Energy Regulatory Commission issued a Notice to Proceed.
- Other than survey or planning work, there is little ACP can do in the field until the TOYR restrictions are lifted.
- The group discussed the possibility of implementing a phased closure order, closing first the roads with construction activity and then a larger area once timber removal or construction begins.
- The scope and timing of the order needs to balance safety concerns and public access. Locations of the closure should be logical, clear to the public, and easy to enforce.
- The Monongahela National Forest (MNF) issued a 120 day temporary closure order. Participants did not know the MNF's plans to extend, revise, or reissue the order.
- The possibility of issuing a closure order where trees have been felled but not removed was discussed and preliminarily dismissed since there were no outstanding safety issues.
- The forest and regional office have done preliminary work to identify what roads and areas would need to be closed. Work on this effort is on hold pending the revised road design plans and clarity on the scope and timing of ACP's work plans.

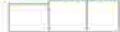


**From:** Miller, Lynette M - FS  
**To:** [Grace Ellis](#); [Lauren Johnston](#)  
**Subject:** For the PR: FW: MVP Inquiry Response Timeframes and Protesters Availability of Food and Water  
**Date:** Tuesday, May 01, 2018 3:43:42 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

---

**Lynette Miller**  
**Environmental Coordinator**  
**Forest Service**  
**WO Business Operations, Enterprise Program**  
**c: 406-210-0264**  
[lynettemiller@fs.fed.us](mailto:lynettemiller@fs.fed.us)

Flagstaff, AZ 86001  
[www.fs.fed.us](http://www.fs.fed.us)



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---

**From:** Rubado, Jessica - FS **On Behalf Of** FS-George Washington and Jefferson National Forests PublicAffairs  
**Sent:** Tuesday, May 1, 2018 1:45 PM  
**To:** FS-George Washington and Jefferson National Forests PublicAffairs  
<[GeorgeWashingtonAndJeffersonNationalForests-PublicAffairs@fs.fed.us](mailto:GeorgeWashingtonAndJeffersonNationalForests-PublicAffairs@fs.fed.us)>  
**Subject:** MVP Inquiry Response Timeframes and Protesters Availability of Food and Water

Thank you for your continued interest in the Mountain Valley Pipeline. This reply is sent to you on behalf of Joby Timm, George Washington and Jefferson National Forests Supervisor. We are continuing to work on replies to your inquiries within your requested timeframes. However, we want to let you know that this is a challenging project in remote locations, and many responses are taking longer than anticipated. We will continue to do our best to provide you with responses to meet your deadlines and to address your outstanding inquiries. Thank you for your patience and understanding.

Regarding the closure order and availability of food and water:

The USDA Forest Service has a responsibility to enforce the closure area, which includes preventing anyone from entering the areas around the tree and monopod Mountain Valley Pipeline protestors. We are encouraging the protestors to seek food and water outside the closure area. We are regularly assessing their safety and condition, and Emergency Medical Services have confirmed there are no actionable medical issues with the occupants.

The protestors will be issued a violation notice and allowed to voluntarily leave the area as long as they are cooperative and can provide proof of their identity.

Please refer new inquiries to this email address to assist the Forest Service in facilitating an expeditious reply.

- Job



**Forest Service**

**George Washington and Jefferson National Forests**

**Public Affairs**

**Phone: 888-603-0261**

[GeorgeWashingtonAndJeffersonNationalForests-PublicAffairs@fs.fed.us](mailto:GeorgeWashingtonAndJeffersonNationalForests-PublicAffairs@fs.fed.us)

5162 Valleypointe Parkway

Roanoke, VA 24019

[www.fs.fed.us](http://www.fs.fed.us)



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**From:** Miller, Lynette M - FS <lynnettemiller@fs.fed.us> on behalf of FS-George Washington and Jefferson National Forests PublicAffairs <GeorgeWashingtonAndJeffersonNationalForests-PublicAffairs@fs.fed.us>  
**Sent:** Wednesday, May 16, 2018 1:27 PM  
**To:** Grace Ellis; Lauren Johnston  
**Subject:** For the PR: FW: Objection to Closure Order for MVP  
**Attachments:** Wild Va. MVP Emergency Closure Order 5.14.18.pdf; Timm email MVP closure order.pdf

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

**Categories:** In Post Decision

Lynette Miller  
Environmental Coordinator  
Forest Service  
WO Business Operations, Enterprise Program  
c: 406-210-0264  
[lynnettemiller@fs.fed.us](mailto:lynnettemiller@fs.fed.us)

Flagstaff, AZ 86001

[www.fs.fed.us](http://www.fs.fed.us)



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**From:** Rubado, Jessica - FS  
**Sent:** Monday, May 14, 2018 9:33 AM  
**To:** FS-George Washington and Jefferson National Forests PublicAffairs <GeorgeWashingtonAndJeffersonNationalForests-PublicAffairs@fs.fed.us>  
**Subject:** FW: Objection to Closure Order for MVP

FYI

---

**From:** [david@wildvirginia.org](mailto:david@wildvirginia.org) [<mailto:david@wildvirginia.org>]  
**Sent:** Monday, May 14, 2018 9:30 AM  
**To:** Timm, Joby -FS <[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)>  
**Cc:** Overcash, Karen B -FS <[kovercash@fs.fed.us](mailto:kovercash@fs.fed.us)>; Rubado, Jessica - FS <[jrubado@fs.fed.us](mailto:jrubado@fs.fed.us)>; Misty Boos <[misty@wildvirginia.org](mailto:misty@wildvirginia.org)>; Ernie Reed <[friendsandforests@gmail.com](mailto:friendsandforests@gmail.com)>; Deirdre Skogen <[deirdre.skogen@gmail.com](mailto:deirdre.skogen@gmail.com)>; Katie Keller <[kelle3ke@dukes.jmu.edu](mailto:kelle3ke@dukes.jmu.edu)>  
**Subject:** Objection to Closure Order for MVP

Supervisor Timm:

Please find the attached sent on behalf of Wild Virginia. Thank you.



Dave Sligh

[illegible]

*Never be afraid to raise your voice for honesty and truth and compassion, against injustice and lying and greed.*

--William Faulkner

David Sligh

[david@wildvirginia.org](mailto:david@wildvirginia.org)

[davidwsligh@yahoo.com](mailto:davidwsligh@yahoo.com)

434-964-7455

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FOIA NWP

Notes

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## Wild Virginia Concerns re: MVP Closure Order

Yahoo/Inbox

**Timm, Joby -FS** <jtimmm@fs.fed.us>

Mar 24 at 10:45 AM

To: david@wildvirginia.org

Cc: Rubado, Jessica - FS

David,

Thank you for your inquiry regarding the MVP Project Emergency Closure Order.

The closure order #08-08-11-18-01 dated 3/7/2018 referenced in your letter was replaced by MVP Closure Order #08-08-11-18-02 dated 3/10/2018. This closure order has also been replaced with Revised Mountain Valley Pipeline Project Emergency Closure Order # 08-08-11-18-03, dated 3/19/2018, which is attached and available at the following link:

<https://www.fs.usda.gov/detailfull/gwj/home/?cid=stelprdb5407016&width=full>. Our purpose in revising the closure orders was to clarify the applicability of the Closure Order. We hope our clarification made it clear that the order applies continuously on the access roads and the distances described from the MVP Project right-of-way and centerline described in the revised closure order.

The primary purpose of the closure order is to keep the public safe in the area surrounding the approved right-of-way when tree felling and construction that will occur. We do consider tree felling to be an activity that poses risks to public safety and the Forest Service must consider safety above all else. Large infrastructure projects like the MVP Project often require construction schedules to shift (with appropriate authorization). Due to the uncertainty about schedule and the process involved in issuing multiple closure orders, I determined public safety would be best met through keeping the order in place continuously while Mountain Valley Pipeline, LLC has the potential to be conducting activities to develop the MVP Project. The Forest Service does not intend to issue additional public statements regarding our rationale for the closure order.

We are considering but have not yet issued a closure order for the Atlantic Coast Pipeline Project on the George Washington National Forest.

If you have additional questions about the Mountain Valley Pipeline Project or the Atlantic Coast Pipeline Project on National Forest System lands, please direct them to Jessica Rubado at 503-314-0767 or [jrubado@fs.fed.us](mailto:jrubado@fs.fed.us). -JOB

**Joby P. Timm**  
Forest Supervisor**Forest Service****George Washington and Jefferson National Forest**p: 540-265-5118  
c: 540-339-2523  
f: 540-265-5110  
[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)

Supervisors Office

5162 Valleypointe Parkway  
Roanoke, VA 24019[www.fs.fed.us](http://www.fs.fed.us)  
 **Caring for the land and serving people**



May 14, 2018

P.O. Box 1065  
Charlottesville, VA  
22902  
(434) 971-1553  
[www.wildvirginia.org](http://www.wildvirginia.org)

Joby Timm  
Forest Supervisor  
George Washington and Jefferson National Forests  
[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)

Sent Via Email

Re: Mountain Valley Pipeline Emergency Closure Order 08-08-11-18-05

Dear Supervisor Timm:

*Board of Directors:*

On behalf of Wild Virginia and our members, I write to object to the referenced closure order and to ask that you issue a revised order to replace it. As explained below, we assert that

*Reiko Dogu*

*Bette Dzamba*

*Howard Evergreen*

*Katie Keller*

*Jennifer Lewis*

*David Sellers*

*Deirdre Skogen*

*Elizabeth Williams*

*Jamie Trost*

➤ the scope of the Emergency Closure order now in place far exceeds temporal limits that are necessary or proper to meet the stated purpose of avoiding “hazards associated with constructing the Mountain Valley Pipeline. . . .” and

➤ additional bases on which you have attempted to justify the scope of the closure order are not specified in the order, are invalid, and go beyond the scope of your authority.

According to the text of the order, it prohibits specified activities on the Forest “due to hazards associated with constructing the Mountain Valley Pipeline on the Eastern Divide Ranger District, George Washington and Jefferson National Forests, West Virginia and Virginia.” We agree that an order that is reasonably designed to meet that purpose is within your authority. However, given that closure of portions of public lands to allow MVP to exercise the rights gained through their easement for the pipeline conflicts with rights generally enjoyed by the public to access parts of the National Forest, such closure order should be narrowly defined and reasonably related to the valid purpose for the order.

Your order excludes the public from the following areas for the entire period between the date of issuance (April 7, 2018) and March 31, 2019:

- being “within 100 feet from the outer edge of each side of the Construction ROW as already cut through the National Forest along the Approved Pipeline Route. . . .”
- “[f]or areas on the Approved Pipeline Route where the Construction ROW has not been cut through the National Forest” being “within 200 feet on either side of the centerline of the Approved Pipeline Route. . . .”
- being “on any portion of Mystery Ridge Road . . . from its intersection with Pocahontas Road to its endpoint at Peters Mountain Wilderness” or being “within 125 feet of the centerline of said Mystery Ridge Road Segement.”



- being on “any portion of Pocahontas Road . . . between its intersection with Clendennin Road . . . and its intersection with Mystery Ridge Road” or being “within 125 feet of the centerline of said Pocahontas Road Segment.”

There is simply no valid or rational purpose for imposing the order’s restrictions on all of the areas described for the entire period lasting through March 31, 2019. The wording of the order addresses “hazards associate with constructing” the pipeline. No such hazards exist, or should be allowed to exist, in periods when construction is not underway. During periods before construction begins or before those activities require active use of roads or trail areas, there is no danger to members of the public. Likewise, after any active work is completed the public should not be at risk when entering these areas. In fact, if MVP should create any conditions that do pose risks and then fail to alleviate those risks when it completes active work, then we believe that situation would be unacceptable and would likely violate its easement.

In an email you sent me on March 24, 2018 (attached), addressing a previous Wild Virginia letter regarding closure of Forest areas and providing a link to the third version of your order (#08-08-11-18-03, dated 3/19/2018), you reiterated that the “primary purpose of the closure order is to keep the public safe in the area surrounding the approved right-of-way *when tree felling and construction that [sic] will occur.*” (emphasis added). However, you then added a supposed justification for making the order effective for more than one year. You stated:

Large infrastructure projects like the MVP Project often require construction schedules to shift (with appropriate authorization). Due to the uncertainty about schedule and the process involved in issuing multiple closure orders, I determined public safety would be best met through keeping the order in place continuously while Mountain Valley Pipeline, LLC has the potential to be conducting activities to develop the MVP Project.

This statement clearly reveals that the extended period of coverage under that and subsequent orders is designed for the convenience of MVP, to the extent that it may change its intended construction schedule, and of the Forest Service, to the extent you may need to issue new or revised orders to accommodate such changes.

First, this purpose is not stated in the order as a justification for closing areas on the Forest. Second, even if this purpose was clearly stated in the order as a basis for your action, this would not be a valid or reasonable purpose. The convenience of a company to cause disruption and destruction on the Forest must not be used as an excuse for impairing the public’s valid use of areas normally available to it. Finally, the Forest Service will bear no significant administrative burden if required to issue new or revised orders to accommodate changing construction schedules. You have so far issued five successive versions of the order between March 7 and April 7, 2018, a period of just 31 days. Given this record, it is ludicrous to cite “the process involved in issuing multiple closure orders” as a justification for the excessive length of your order.

We also endorse positions expressed by other parties that exclusion of the public from certain roads and other areas seem to be motivated by an effort to limit the public’s right to exercise First Amendment rights. Clearly, any infringement on the public’s right of free expression can only be made for valid purposes and must be no broader than necessary to meet those purposes.

Joby Timm  
May 14, 2018

Our concerns about the exclusion of the public from prescribed areas over such an extended period are not merely theoretical. For example, citizens plan to visit stream crossing sites that will be affected by pipeline construction and associated activities in the near future to document pre-construction conditions in those waters. Under your order, as it now stands, we would face severe penalties for doing so. Further, as you know, some of these streams are important and highly used areas for fishing and other recreational uses and to ban those uses throughout the next ten months is outrageous. Likewise, roads and other portions of the Forest within the areas of exclusion and are used for hunting, hiking, and other public purposes and to prohibit those uses throughout and entire summer or through entire hunting seasons without a valid purpose is simply unacceptable.

Under the Administrative Process Act, your actions in issuing closure orders must generally be judged, at the very least, under a standard of reasonableness. The factors described above make it impossible for the current order to meet even that relatively deferential standard. An even higher standard must be met when Constitutional rights are implicated, as others have expressed through legal action.

We insist that you revoke the current order and issue a version that truly reflects the valid purposes you are authorized to serve. Any order should specify that the public's use of roads, trails, or any other areas on the Forest is prohibited *only during active construction or authorized uses* by MVP. You are obligated to rescind the referenced order and, in any future orders, define a scope for the closures that preserves the public's rights to use our public lands to the maximum extent possible while still serving any valid need that forms the basis for such order(s).

Thank you and we look forward to your response.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_

David Sligh  
Conservation Director

cc: Karen Overcash, GW&JNF

**File Code:** 1230; 2720  
**Route To:****Date:** JUL 23 2018**Subject:** Delegation of Authority for the Atlantic Coast Pipeline Project**To:** Forest Supervisor, George Washington – Jefferson National Forests

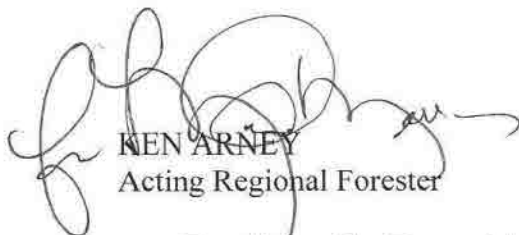
The Regional Forester for the Eastern Region and I jointly authorized special use permits (SUP) to construct the Atlantic Coast Pipeline (ACP) Project on lands administered by the Monongahela National Forest and the George Washington National Forest. As the Forest Service Authorized Officer for the SUP on the George Washington National Forest, I have the authority to approve amendments to the SUP (clause I.E. of the SUP) and revisions to the Construction, Operation, and Maintenance (COM) Plan (clause II.B. of the SUP). I also have authority to suspend the special use authorization in whole or in part when necessary to protect public health, safety, or the environment (clause VII. B. of the SUP).

In the interest of administrative efficiency, I delegate you to be the authorized officer to administer the SUP on the George Washington National Forest and issue any needed stop work orders for the project. As authorized officer, you or your designee, would be the Forest Service Field Compliance/Monitoring Officer for these actions. At your discretion, you may designate other qualified members of your staff and your contracted work force to act as additional Field Compliance/Monitoring Officers.

The COM Plan for the ACP Project describes procedures to authorize “variances,” which are revisions to the COM Plan authorized by the Forest Service Field Compliance/Monitoring Officer (COM Plan, section 3.9). The COM Plan also states that the Forest Service’s Field Compliance/Monitoring Officers have stop work authority for discrete activities on National Forest System lands that pose an immediate threat to a sensitive environmental resource (COM Plan, section 3.6.3).

Stop work orders should be communicated through the permittee’s Environmental Inspector, or directly to the permittee’s Project Manager. Document the order in writing, and notify me as soon as practicable, and in no case more than one business day following issuance of the order. Do not issue any orders or instructions directly to the permittee’s Construction Contractor.

Should you have questions, please contact Tim Abing, Director of Lands, Minerals, & Uses at 404-347-3989 or [tabing@fs.fed.us](mailto:tabing@fs.fed.us).



KEN ARNEY  
Acting Regional Forester

cc: Tim Abing, Jim Twaroski, Jennifer Adams





## Alexa Esquivel

---

**From:** Adams, Jennifer - FS <jenniferpadams@fs.fed.us>  
**Sent:** Thursday, August 09, 2018 12:29 PM  
**To:** Morris, Troy - FS; Brown, JoBeth -FS; Yonce, Mary E -FS; Stull, Lauren B -FS; McNichols, Elizabeth -FS; Ballew, Katie J -FS  
**Cc:** Timm, Joby -FS; LeMaster, Elizabeth -FS; Hess, Todd A -FS; Thompson, Clyde N -FS; Kathmann, Sarah - OGC; Fosbender, Julie K -FS; Hess, Todd A -FS; Bridges, Kelly - FS; Madden, Michael J -FS; Sandeno, Cynthia M -FS; Maria Martin; Peter Rocco  
**Subject:** RE: ACP Draft Closure Order Documents  
**Categories:** DF Maybe

Sarah,

(b)(5), Attorney Work Product Privilege





**Jennifer P. Adams**  
**Special Project Coordinator**  
**Forest Service**  
**George Washington & Jefferson National Forests**  
**and**  
**Monongahela National Forest**

p: 540-265-5114

p: 304-635-4457

[jenniferpadams@fs.fed.us](mailto:jenniferpadams@fs.fed.us)

**George Washington & Jefferson National Forests**  
5162 Valleypointe Parkway  
Roanoke, VA 24019

**Monongahela National Forest**

200 Sycamore Street

Elkins, WV 26241

[www.fs.fed.us](http://www.fs.fed.us)



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---

**From:** Adams, Jennifer - FS

**Sent:** Thursday, August 9, 2018 10:53 AM

**To:** Morris, Troy - FS <troy Morris@fs.fed.us>; Brown, JoBeth -FS <jobethbrown@fs.fed.us>; Yonce, Mary E -FS <meyonce@fs.fed.us>; Stull, Lauren B -FS <lbstull@fs.fed.us>; McNichols, Elizabeth -FS <emcnichols@fs.fed.us>; Ballew, Katie J -FS <katiejballew@fs.fed.us>

**Cc:** Timm, Joby -FS <jtimmm@fs.fed.us>; LeMaster, Elizabeth -FS <elemaster@fs.fed.us>; Hess, Todd A -FS <tahess@fs.fed.us>; Thompson, Clyde N -FS <cnthompson@fs.fed.us>; Kathmann, Sarah - OGC <sarah.kathmann@ogc.usda.gov>; Fosbender, Julie K -FS <jfosbender@fs.fed.us>; Hess, Todd A -FS <tahess@fs.fed.us>; Bridges, Kelly - FS <kellybridges@fs.fed.us>

**Subject:** RE: ACP Draft Closure Order Documents



**Jennifer P. Adams**  
Special Project Coordinator

**Forest Service**  
George Washington & Jefferson National Forests  
and  
Monongahela National Forest

p: 540-265-5114

p: 304-635-4457

[jenniferpadams@fs.fed.us](mailto:jenniferpadams@fs.fed.us)

George Washington & Jefferson National Forests  
5162 Valleypointe Parkway  
Roanoke, VA 24019

**Monongahela National Forest**

200 Sycamore Street

Elkins, WV 26241

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**From:** Morris, Troy - FS

**Sent:** Thursday, August 9, 2018 8:47 AM

**To:** Brown, JoBeth -FS <[jobethbrown@fs.fed.us](mailto:jobethbrown@fs.fed.us)>; Adams, Jennifer - FS <[jenniferpadams@fs.fed.us](mailto:jenniferpadams@fs.fed.us)>; Yonce, Mary E -FS <[meyonce@fs.fed.us](mailto:meyonce@fs.fed.us)>; Stull, Lauren B -FS <[lbstull@fs.fed.us](mailto:lbstull@fs.fed.us)>; McNichols, Elizabeth -FS <[emcnichols@fs.fed.us](mailto:emcnichols@fs.fed.us)>; Ballew, Katie J -FS <[katiejballew@fs.fed.us](mailto:katiejballew@fs.fed.us)>

**Cc:** Timm, Joby -FS <[jtimmm@fs.fed.us](mailto:jtimmm@fs.fed.us)>; LeMaster, Elizabeth -FS <[elemaster@fs.fed.us](mailto:elemaster@fs.fed.us)>

**Subject:** ACP Draft Closure Order Documents

Here is the link for the ACP Draft Closure Order documents in Pinyon:

(b)(4)

Let me know if you can't access.

Thanks,



**Troy W. Morris**  
Integrated Resources Staff Officer

**Forest Service**  
George Washington & Jefferson National Forests

p: 540-265-5170

f: 540-265-5145

[troymorris@fs.fed.us](mailto:troymorris@fs.fed.us)

5162 Valleypointe Parkway  
Roanoke, VA 24019

[www.fs.fed.us](http://www.fs.fed.us)



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**MVP Law Enforcement****Date/Time:** Friday, May 4 @ 8-8:30 am EST/5-5:30 am (Arizona)

(b)(4)

**Attendees**

Forest Service (FS)	<b>Tim Abing, Job Timm</b>
USDA Office of General Counsel (OGC)	<b>Sarah Kathmann, Jay McWhirter</b>
MVP & Contractors	<b>Duane Moriarty, Joe Dawley</b>
Galileo Project	<b>Grace Ellis</b>

**Action Items From Friday, April 27 Call:**

- Duane follows up on whether additional trees have been cut since the second tree sitter came down. *Post Meeting Note:* No additional trees have been cut.
- Job follows up on UTV Permit
- Duane follows up on options for location of the fence.
- MVP looks into whether removing survey stakes is illegal
- FS/OGC will have internal discussions about resident road access.
- Galileo will monitor the hotline and pass on any time-sensitive messages

---

**Agenda**

- I. Roll Call
- II. Update on the protesters
  - a. Tree Sit location: All tree sitters are still in place. No resupply
  - b. Monopod: No resupply. Same situation. There is a noticeable lean to the pole.
  - c. Support camps: Motion activated lights and a guard there all the time.
  - d. Placement of Additional Bulk Wood Chip Bags: Moving them is too big and could place the monopole in danger.
- III. FS Update on UTV Use: FS is working on a typical UTV permit for Pocahontas and Mystery Ridge Road. There has been verbal permission, but this document allowing the use. ETA in the next couple of days. MVP and OGC will confer on this later.
- IV. MVP Update on Whether Removal of Survey Stakes is Illegal: MVP is still looking into this this.
- V. FS Update on Road Access for Resident (Letters authorizing resident road use): There is a letter agreement allowing access to the lot waiting Job's signature. ETA today.
- VI. Other Updates: The port-a-potty was moved from the protest site to the end of Mystery Ridge Road, presumably using ATV. Joe is checking to confirm how it was moved.

**MVP Law Enforcement****Date/Time:** Friday, May 11 @ 8-8:30 am EST/5-5:30 am (Arizona)**Conference Call:****Attendees**

Forest Service (FS)	<b>Tim Abing, Mike Donaldson,</b>
USDA Office of General Counsel (OGC)	<b>Sarah Kathmann, Jay McWhirter, Steve Bott</b>
MVP & Contractors	<b>Joe Dawley</b>
Galileo Project	<b>Grace Ellis</b>

---

**Discussion**

- Update on the protesters
  - Tree Sit location: No changes; tree sitter still present.
  - Monopod: No changes; pole sitter still present.
  - Support camps: No changes.
- FS Update on UTV Use: Use has ceased on the AT.
- FS Update Letters Authorizing Road Access for Residents: These letters went out via certified mail. **Action:** Sarah will send a copy to Galileo.
- Porta-Potty Placement update: They have been relocated from the top of the hill to a location at Mystery Ridge and the AT. There is some concern about tampering, so there are efforts to secure them.



**MVP Law Enforcement****Date/Time:** Friday, May 17 @ 8-8:30 am EST/5-5:30 am (Arizona)

(b)(4)

**Invitees**

Forest Service (FS)	<b>Tim Abing, Job Timm, Mike Donaldson, Robert Harris</b>
USDA Office of General Counsel (OGC)	<b>Sarah Kathmann, Jay McWhirter</b>
MVP & Contractors	<b>Duane Moriarty, Joe Dawley</b>
Galileo Project	<b>Grace Ellis, Lauren Johnston</b>

**Agenda**

- I. Roll Call
- II. Closure Order Litigation: This was about whether to grant the restraining order. It appears an opinion may not yet have been written. Anticipate a ruling next week. Protesters requested access to the lower portion of Pocahontas Rd, not the other areas of the closure order. Another has been filed, asking for medical access for physicians.
- III. Update on the protesters
  - a. Tree Sit location: No change; still present.
  - b. Monopod: No change; still present. No attempts to resupply. Giles County checking on them.
  - c. Support camps: No change. Numbers fluctuate daily, usually 4-5. 10-12 on the weekends. There could be an event this weekend.
- IV. Other Updates: No changes. The May 31 deadline is approaching. The next window for cutting trees would be July 31. Tim has a call in to FERC on this. FS is expecting the final road package shortly. Once that comes in, the agencies will review. Once approved, road construction could commence but the tree-sitter and the legal decision could affect the start of construction.
- V. Action Items

**ACP-Forest Service Weekly Check-in****Date** September 13, 2018**Time:** 1-3pm (Eastern)/11am-1pm (Mountain)/10am-12pm (Pacific)**Location:** Conference Call and GoTo Meeting

Attendees	Forest Service	Cathy Johnson, Jennifer Adams, Jessica Rubado, Mike Madden, Mike Owen, Rachel Arrick, *Tim Abing, Todd Hess, Will Wilson, Mitch Kerr, Bill Malcomb, Carol Whetsell
	Atlantic Coast Pipeline	Robert Hare, Jason Barnette, Ellery Baker, *Clint Kiebler, Rick Casteel
	GAI	*Jonathan Glenn
	Transcon	Alli Rhodehamel-Leung, Jayanna Miller, Mike Warner
	Galileo Project	Peter Rocco, Alexa Esquivel

\*Partially Attended

Enclosures: *Transcon Weekly Summary*

1. Roll Call
2. Boundary Survey and Monuments: The forest surveyors Bill Malcomb from the Monongahela National Forest (MNF) and Mitch Kerr from the George Washington National Forest (GWNF) participated to answer questions ACP has regarding survey monument specifications.
  - a. Replacement Standards and Guidelines: Bill stated for corner monumentation and marking of boundary lines ACP needs to adhere to forest standards, which Todd provided to ACP via email.
    - i. The MNF uses specific cap markers and signs described in the specifications emailed to ACP. Todd advised ACP to mark the area before the corners or monuments are destroyed to be able to reinstall. The forests requested shapefiles of the original corner monument and redocumented locations to adjust the forest shapefiles. Carol noted in the case where property line tree markers are removed ACP may need to put carsonite signs.
    - ii. The GWNF boundary lines use aluminum delineator post due to the hard ground.
  - b. Boundary Survey Data (Existing and As-Built): Carol noted ACP previously provided some survey drawings on the MNF and asked that the updated drawings be the same or similar. Mitch said he did not receive a complete set of boundary drawings for the GWNF. Jennifer requested the status of the boundary surveys and timeframe for receiving the final maps on each forest. Rick reported the MNF are almost ready to configure a map and the GWNF map will follow soon after. Mike said the forests prefer GIS data in state plane or UTM coordinate systems. Todd notes the FS will need as-built drawings and GIS data.
  - c. Todd and Jennifer reminded the team that documenting conversations is helpful and important for keeping the team in the loop. Mitch stated it is easier to speak directly with the ACP surveyors when discussing specifications, however he understands the importance of informing the team of what is being discussed.



3. Cultural Survey Update: Mike M. stated the review of cultural survey reports for variance 013 (GWNF desktop route) has been difficult due to the number of reports and would like clarification. Mike M. requested Jonathan to provide the final addendum for cultural resources and within that notate what he has previously reviewed and has State Historic Preservation Office (SHPO) concurrence. HE also asked GAI to notate the three minor new adjustments outside the prior concurrence for review. It was then decided presenting this information in matrix would be the most helpful for the forest review. Jonathan stated the following reports have been submitted; the initial report for the entire pipeline alignment, an addendum with access roads, and Phase II report for four sites in the Mt. Torry area. Robert stated his preference for a consolidated report to decrease the amount of reports being submitted to SHPO and the forests.
4. Variance Updates: Mike W. provided a brief overview of updates.
  - a. MNF
    - i. Variance 022 [MNF Forest Road (FR) 1026 Road Construction]: Transcon had a field walk on 9/12 with forest specialists. The forest scheduled a meeting on 9/14 to discuss the field walk feedback and consideration of the variance.
    - ii. Variance 016 [Off Limits of disturbance (LOD) Tree Removal]: The forest and Transcon discussing week of 9/17.
    - iii. MNF water bars extending outside the LOD (variance tbd): The forest and Transcon will be reviewing stormwater pollution prevention plan (SWPPP) and how that related to the water bars.
    - iv. Variance 017 (MNF Trench dewatering): Mike W will rely the FS comments on this to Jason.
  - b. GWNF
    - i. Variance 013 (GWNF Desktop Route): Transcon received the resubmitted variance which now includes Variance 018 and Variance 019.
    - ii. Mike W. noted the attention is currently on the GWNF road designs and upcoming meeting with Virginia Department of Environmental Quality (DEQ). Although the water bars, trench dewatering and off LOD tree removal will be reviewed next.
    - iii. Variance 001 (GWNF Riparian Setback Waiver): ACP is re-submitting the variance form with only 2 workspace areas. Todd noted if ACP decides to withdraw a variance then a formal letter stating such will be needed.
5. Scheduling
  - a. Survey Permits (FS) and Survey Schedule (ACP)
    - i. Survey Permits: Todd reported the nominal use letter allowing ACP to conduct environmental surveys for the MNF has been signed and sent; GWNF letter is currently underway and will soon follow. Robert mentioned upon receipt of the MNF nominal use letter he instructed the karst



- consultant to prepare to re-survey the half mile on forest land. Todd reminded ACP the letter does not allow any use of public roads for timber removal or tree felling that would require a separate permit.
- ii. Survey Schedule: Jason reported ACP crews went out with Transcon and changed bat monitoring equipment. ACP is waiting on GWNF nominal use letter to check on American ginseng.
- b. ACP's Schedule for Construction/Felling on MNF and GWNF
- i. Robert stated ACP submitted an MNF draft full construction request to the Federal Energy Regulatory Commission (FERC) and Merjent. Robert noted full construction for the GWNF is likely 2-3 months behind the MNF.
  - ii. ACP believes their existing limited notice to proceed to fell trees from FERC is still valid.
  - iii. Once the stop order is lifted ACP anticipates submitting the following
    1. Request to the FERC for full construction on the MNF with use of approved access roads, excluding FR1026 (Buzzard Ridge)
    2. Submit "light duty" road use permit request to the FS for access to cut the remaining trees in the GWNF. The previous permit has expired.
- c. Pre-Construction Checklist & Timeline for Decisions: Alli provided a brief overview of the outstanding items.
- i. Term 6 Fish and Wildlife Service (FWS) Biological Opinion (BO): Jennifer confirmed that because FWS issued the new BO, FS considers that item complete, and it is FERC's responsibility to ensure Section 7 consultation is met and that ACP has a BO and a valid Incidental Take Statement (ITS) in place.
  - ii. Term 41 Botanical Surveys: The MNF has not received the botanical survey report for roan mountain sedge, Appalachian oak fern and white alumroot. Jason noted the report is complete and he'll send it to the FS once he gets it.
  - iii. Term Q Updated karst re-survey report: Alli reiterated Robert had previously stated crews would be out as early as 9/14.
  - iv. Term 2 FR281 (Campbell Hallow) Design: The road designs are on hold pending other design needs.
  - v. Term 9 Erosion and Sediment Control Plan (ESCP) and Term 10 Stormwater Pollution Prevention Plan (SWPPP): Still pending completion. Robert noted these permits are following a similar timeline as the GWNF access roads.
- d. Road Use Permit: The materials ACP submitted for light duty use are under the forest review.
6. Closure Orders: Tim reported there are modifications and language adjustments that are being worked on for the MNF. The forest is also working on a draft for the GWNF and

considering a segmented closure approach due to the large number of roads being used. The logic behind this strategy is that the right-of-way (ROW) will be closed for a longer period and roads would be closed as needed. The sequence of closures would be as follows; ROW, access roads directly needed for the project and roads and trails that intersect the project but not needed for access.

## 7. Updates

### a. Weekly Inspection Summary

- i. ACP has not conducted any construction activity since March 2018. Transcon has not observed any signage, staking or new road issues.
- ii. Transcon accompanied ERM crews for routine maintenance for acoustic monitoring equipment. Transcon noted one monitor did not gather any data due to being unintentionally unplugged.
- iii. Transcon inspector was approached by a landowner. The landowner expressed opposition for the project and disclosed being involved in litigation against ACP. Landowner inquired about the inspectors Robert stated Transcon can provide Robert or Jason's contact information to any landowner if needed. Jennifer noted law enforcement and rangers will be briefed on these types of conversations.

- b. GWNF Roads: Robert noted DEQ has annual standards and specifications which allows certain companies to issue their own ESCP which include generic road designs. Robert said recently DEQ may consider allowing ACP to use the annual standards and specifications for a significant portion of the project which may include the forest roads.

- c. Weather Events: Jennifer mentioned the need for cease field activities guidance for storm events. Galileo or Transcon can distribute the information to ACP.

- d. Previous Action Items (See Table Below)

## 8. Other Discussion Items

- a. Robert asked if Leslie Hartz should attend these weekly meetings. Tim stated due to the technical nature of the call that would not be necessary. She may be needed if there are issues that need resolution beyond these calls.
- b. Jason reported ACP spoke with the FERC about Transcon performing the stabilization surveys. The forest was agreeable to such activities. FERC gave confirmation on 9/13 that Transcon can inspect while the stop work order is in effect. Alli inquired if the FERC needs the reports. Robert understood the FERC doesn't need anything at this time, but that he would check.

### Upcoming Meetings (Eastern Time)

- September 13, External Weekly Engineering Call, 3-4pm
- September 14, External Culvert/Aquatic Organism Passage Call, 10am-12pm
- September 20, External FS-ACP Weekly Check-in, 1-3pm
- September 20, External Weekly Engineering Call, 3-4pm



ACTION ITEM UPDATES - EXTERNAL COORDINATION MEETING			
Party	Date	Task	Status
<i>Previous Action Items</i>			
Jason	8/23	Variance 001 (GWNF Riparian Setback Waiver): Send updated shapefiles by 8/28/18. Needs to talk with construction.	ACP/ Transcon confirm if data is complete.
Jason	8/23	Variance 013 (GWNF Desktop Route): Submit the combined variance to FS by 9/10/18.	Complete.
Jennifer	8/23	Variance 022 (MNF FR1026): Notify Robert on what the expected turnaround time will be once FS has all relevant information.	Meeting scheduled 9/14.
Jason	8/23	Submits MNF water bar variance the week of 9/3/18.	In progress. Depending on FS feedback on V17 (trench dewatering)
Jennifer	8/23	Provide ACP with directions on how to apply for tree felling by hand on GWNF. Access is needed.	Complete.
Jason	8/23	Provides date for submission of finalized plant reports to FS by close of business on 8/23/18.	In progress.
Jason	8/23	Adds ETA dates for the variances that are considered TBD.	In progress.
Jason	8/23	Send Transcon the results of GeoConcept's karst re-survey once it is completed.	Surveys anticipated for MNF on 9/14.
Robert	8/23	Consolidate and submit final cultural resource reports to VA SHPO and Forest Service.	In progress.
Jennifer	8/30	Discuss with GWNF and MNF surveyors to set up criteria for replacing monuments and corners.	Complete
Jennifer	8/30	Notifies management of RPBB and Duncan Knob Road.	Complete.
FS	9/6	Coordinate surveyor attendance at the next call	Complete
<i>New Action Items</i>			
Bill	9/14	Provide ACP with MNF specs for boundaries and monuments.	Complete
Jonathan	9/14	Provide Mike M. with final addendum for cultural resource reports and identifies what needs to be reviewed.	
Jennifer	9/14	Follows up with the incident team for cease activities guidance for storm events. Provides Transcon/Galileo with the guidance to distribute to ACP.	
Jennifer	9/14	Notifies management that FERC approved Transcon's monitoring of the ROW during the shutdown.	
Alli	9/14	Updates and distributes the variance summary table.	Complete
ACP	9/14	Notifies FS how many boundary signs are needed.	



FOREST SERVICE RELATED ACP FERC FILING UPDATES	
Submission Date	Document Title & Comments
TBD	Request to FERC for MNF NTP construction except for Buzzard Ridge Road FR1026
TBD	Request to FERC for FR1026 and associated private lands.
TBD	Request to FERC for GWNF NTP construction

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, September 13, 2018 (period of review September 6—September 11)

**Compliance Inspectors Present During this Period:** Nathan Amick, Bill Clayton

#### Preconstruction Activities:

Activity	Location
Tree Felling	None
Road Maintenance	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - No issues with signing or staking were observed during this inspection period.
    - Rutting/Erosion
      - No new issues with rutting or erosion were observed during this inspection period.
      - All areas of rutting and erosion were noted in previous reports.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
  - Road Conditions
    - No road maintenance conducted by ACP has taken place
    - All instances of road damage have been noted in previous reports.
- Biological Resources
  - Transcon inspector accompanied an ERM crew as they performed routine maintenance on acoustic monitoring equipment used for the detection of bats.
    - One unit did not gather data in the past month as it had been unintentionally unplugged
  - No other biological concerns were noted.
- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.

- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - No new variances were received by Transcon during this inspection period.
- Miscellaneous
  - N/A

**Meetings Held**

- ACP Weekly External Meeting (September 13, 2018)

**Upcoming Meetings**

- September 13, External FS-ACP Weekly Check-in, 1-3pm
- September 13, External Weekly Engineering Call, 3-4pm
- September 14, External Culvert/Aquatic Organism Passage Call, 10am-12pm



**Forest Service-Transcon Weekly Check-in****Date:** September 13, 2018**Time:** 9:00-10:30am (Eastern)/7:00-8:30am (Mountain)/6:00-7:30am (Pacific)**Location:** Conference Call

Attendees	Forest Service	Cathy Johnson, Jessica Rubado, Jim Twaroski, Laura Hise, Mike Madden, Rachel Arrick, Steffany Mellor, Todd Hess, Will Wilson, Mitch Kerr, Bill Malcomb, Carol Whetsell, Tom Collins, Mike Owen
	Transcon	Alli Rhodehamel-Leung, Felixcia Blanchard, Mike Warner, Nadine Benally
	Galileo Project	Peter Rocco, Rosana Nesheim

Enclosures: *Weekly Inspection Report***Discussion Summary**

- *Boundary Survey and Monuments:* On September 12, Bill and Mitch discussed FS requirements for replacing destroyed or removed monuments and caps. Mitch forwarded information regarding FS specifications for the GWNF, including the Engineering Management Publication # 7150, which states that FS requires specific monumentation that already includes a cap. Mitch also stated that an iron pin with a plastic cap on it would not be enough. Bill advised that MNF specifications are like those on the GWNF, but that MNF makes modifications to the corners. FS can work with ACP to ensure ACP uses the correct replacement monuments and caps. Todd added that if ACP only needs a dozen signs, FS might be able to provide the signs at no charge; however, if ACP needs more, FS would need to order the signs and pay for them via cost recovery. FS would like ACP to provide information on reestablishing monuments, corners, and boundary lines in a shapefile, based on UTM, so FS can update its GIS information. MNF is waiting for ACP to finalize surveys but will request what ACP has now and ask for updates on when they will provide complete sets. Mitch stated that it is ACP's responsibility to keep track of any disturbed monuments and ensure reestablishing monuments at the correct locations. ACP did not provide boundary surveys to the FS before the permit was issued, so the FS was unable to confirm the pre-construction survey work.
- *Variance Updates*
  - *Variance 022 (MNF Forest Road 1026):* Transcon reviewed this variance on the field on September 12 and will summarize the information on a September 14 call.
  - *Water bars and trench dewatering:* Transcon and FS will discuss trench dewatering variances at a later date.
  - *Other Variance Updates:* Alli suggested a meeting to discuss off-limits of disturbance (LOD) trees. Transcon collected and tabulated data on August 25 and is ready to forward that information, if FS agrees. Transcon also received a route shift variance on September 13.
- *Scheduling*
  - *Survey Permits (expired):* On September 13, FS issued a nominal use letter that allows ACP to perform surveys on the MNF that will meet the Construction, Operations, and Maintenance (COM) Plan needs. Todd expects GWNF to issue ACP a nominal use letter in the next couple of days. The nominal use letter gives ACP access to survey for karst, check on equipment, and check felled timber without removing any trees from

the forest. Jennifer stated that if ACP wants light duty access to the roads, they will need separate authorization.

- *Biological Opinion (BO)*: US Fish and Wildlife Service (FWS) provided the BO to FERC the week of September 10, which Carol Croy (FS) reviewed and compared with the original BO. The current BO reflects new locations of rusty-patched bumblebee and small whorled pogonia. Cathy Johnson (FS), Dawn Kirk (FS), and Mike Owen (FS) have not reviewed the BO yet.
- *Preconstruction Checklist and Timeline for Decisions*:
  - Jennifer confirmed that because FWS issued the new BO, FS considers that item on the preconstruction checklist complete, and it is FERC's responsibility to ensure Section 7 consultation is met and that ACP has a BO and a valid Incidental Take Statement (ITS) in place.
  - FS is still waiting to hear about the National Parks Service's vacated permit. FERC does not typically authorize a Notice to Proceed (NTP) if any permits or authorizations are outstanding; however, FERC could lift the Stop Work Order and issue the NTP in areas where ACP qualifies and as an independent utility.
  - Outstanding items on the GWNF include Term 9 (Compliance with Virginia's Erosion and Sediment Control Plan), and Term 10 (Compliance with Virginia Stormwater Pollution Prevention Plan). Outstanding items on the GWNF and MNF include Term 41 (Botanical Surveys) and Term Q (Updated karst survey).
  - On September 12, ACP submitted a Temporary Road Use Permit application to transport sawyers to hand fell trees on the GWNF. Because biological windows impact some of the spreads, ACP will not be able to complete some of the work until mid-November.
- *Closure Orders*: The current closure order on the MNF is temporary, but ACP wants a longer-term closure order. FS is revising closure order drafts for both MNF and GWNF. Jessica mentioned that FS is considering phased-closure orders as ACP completes construction for areas like trails, or other areas that might have a more discreet footprint.
- *Updates*
  - *Weekly Inspection Summary*: ACP has not conducted construction on the MNF or GWNF since March 2018.
    - During the last inspection, Transcon did not observe any new issues with signage, staking, rutting, erosion, or non-compliances. Transcon did observe routine maintenance on acoustic monitoring equipment. One unit had been unplugged and did not gather any data.
    - Transcon will be on site with ERM at the acoustic monitoring at the caves on September 26.
    - Nathan (Transcon) encountered a landowner, who was accompanying ACP survey crew, on FR 124 during an inspection the week of September 10. The landowner expressed opposition to the ACP project, and asked about Transcon's role. Nathan explained that Transcon works for FS and added the encounter to a conversation record posted on Transcon's SharePoint site.
  - *George Washington NF Roads*: a meeting to discuss GWNF Roads is scheduled for September 13, and the meeting with Virginia Department of Environmental Quality (VDEQ) is scheduled for September 24.



- *Weather Events:* Jennifer will meet with GWNF FS supervisors, rangers and staff officers on September 14 at 2:30pm (EST) for instructions on when FS activities should cease. They will meet again on September 17 at 2:30pm (EST). Jennifer will follow up with Transcon and Galileo after each meeting to inform them when FS will cease and resume activities and whether Transcon staff should be on the field.
- *Previous Action Items (See Table Below)*
- *Other Discussion Items*

Upcoming Meetings (Eastern Time)

- September 13, Internal Water Bar/Trench Dewatering, 11:30am-12pm
- September 13, External FS-ACP Weekly Check-in, 1-3pm
- September 13, External Weekly Engineering Call, 3-4pm
- September 14, External Culvert/Aquatic Organism Passage Call, 10am-12pm
- September 20, Internal Weekly Coordination Call, 9-10:30am
- September 20, External FS-ACP Weekly Check-in, 1-3pm
- September 20, External Weekly Engineering Call, 3-4pm
- September 24, Internal GWNF Road Design Call, 12:30-1:30pm
- September 24, Agency Only GWNF-DEQ Call, 2-3:30pm



ACTION ITEMS - INTERNAL WEEKLY COORDINATION CALLS			
Party	Date	Task	Status
<i>Previous Action Items</i>			
Tom/Will	8/23	Writes something up on reporting of fossils	In progress.
Felixcia	8/23	Follow up and ensure James has information on what data ACP has not provided to FS.	Complete
Jennifer	8/30	Checks FS staff calendars in anticipation of scheduling meetings to discuss variances for off-LOD tree removal (variance 12) and for road 1026 (variance 22).	Complete
Galileo	9/6	Adds viewing of drone footage to last 15 minutes of 9/10 MNF culverts call.	Complete
Felixcia	9/6	Reviews variance 022 shapefile to ensure it matches other files Transcon has	Complete
Galileo	9/6	Adds water bar discussion on MNF into trench dewatering call.	Complete
Alli	9/6	Sends most recent version of preconstruction checklist to Jennifer.	Completed 9/6
Alli	9/6	Sends information on FR rutting and erosion to FS.	Complete
Transcon	9/6	Adds drone footage of access roads to Transcon's virtual site visit.	Complete
Jennifer	9/6	Emails VDEQ's availability to GWNF staff for road designs meeting.	Complete
Galileo	9/6	Schedule road design meeting between VDEQ and FS.	Complete
Galileo	9/6	Invites survey specialists to the next coordination calls.	Complete
Galileo	9/6	Adds closure order to next internal call agenda	Complete
<i>New Action Items</i>			
Todd	9/13	Forwards email with exhibits and manuals from Mitch to ACP for monuments.	Complete
Steffany	9/13	Discuss two soil concerns on variance 022 (FR1026) with Stephanie Connolly (FS).	Complete
Transcon	9/13	Review route shift variance.	
Transcon	9/13	Review Temporary Road Use Permit application ACP submitted 9/12	Comments submitted.
Jennifer	9/13	Circle back with Regional Office regarding letters that would allow ACP to commence tree felling and construction.	Complete
Jennifer	9/13	Touch base with Transcon and Galileo after meeting with FS supervisors, rangers, staff officers on 9/13 and 9/17.	Complete
Galileo	9/13	Schedules variance 012 (off LOD trees) meeting	Complete

2018

Atlantic Coast Pipeline

Galileo	9/13	Schedules variance 022 (FR1026) meeting.	Complete
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## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, September 13, 2018 (period of review September 6—September 11)

**Compliance Inspectors Present During this Period:** Nathan Amick, Bill Clayton

#### Preconstruction Activities:

Activity	Location
Tree Felling	None
Road Maintenance	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - No issues with signing or staking were observed during this inspection period.
    - Rutting/Erosion
      - No new issues with rutting or erosion were observed during this inspection period.
      - All areas of rutting and erosion were noted in previous reports.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
  - Road Conditions
    - No road maintenance conducted by ACP has taken place
    - All instances of road damage have been noted in previous reports.
- Biological Resources
  - Transcon inspector accompanied an ERM crew as they performed routine maintenance on acoustic monitoring equipment used for the detection of bats.
    - One unit did not gather data in the past month as it had been unintentionally unplugged
  - No other biological concerns were noted.
- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.



- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - No new variances were received by Transcon during this inspection period.
- Miscellaneous
  - N/A

**Meetings Held**

- ACP Weekly External Meeting (September 13, 2018)

**Upcoming Meetings**

- September 13, External FS-ACP Weekly Check-in, 1-3pm
- September 13, External Weekly Engineering Call, 3-4pm
- September 14, External Culvert/Aquatic Organism Passage Call, 10am-12pm

## Alexa Esquivel

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**From:** Jason C Barnette <Jason.C.Barnette@dominionenergy.com>  
**Sent:** Thursday, September 20, 2018 5:59 PM  
**To:** Beum, Frank R -FS  
**Cc:** Abing, Timothy -FS; LeMaster, Elizabeth -FS; Robert P Hare; Adams, Jennifer - FS; Hess, Todd A -FS; Madden, Michael J -FS; acp@transcon.com; Maria Martin; Peter Rocco; Leslie Hartz; Brian M Wright; Carole A McCoy; Kathmann, Sarah - OGC; Arney, Ken S -FS  
**Subject:** RE: ACP Tree Felling Activity  
**Categories:** DF IN, DF Maybe

Frank,

Good Evening and welcome to the ACP team!

I very much appreciate your prompt response and attention to the below activities – the explanation on the schedule driver is helpful. I completely understand and encourage applying lessons learned either from other projects or our own. We will communicate the below to our construction teams so they can make the appropriate preparations to begin felling trees on Monday September 24<sup>th</sup> in areas of the George Washington where we have LNTP from FERC.

We also look forward to working with you and getting down to Atlanta in the near future to sit down face-to-face. I've copied two of my colleagues Leslie Hartz – ACP executive and Robert Hare – ACP Technical Support Manager who support me in our coordination/management efforts with the Forest.

Robert and I are available most anytime to discuss ACP and encourage you to reach out to us when needed. Robert's contact information is below along with mine:

**Jason C. Barnette, RPL**  
Atlantic Coast Pipeline  
Forest Service Liaison  
Email: [Jason.c.barnette@dominionenergy.com](mailto:Jason.c.barnette@dominionenergy.com)  
Mobile: 304-641-8476

Robert Hare  
Technical Support Manager  
Atlantic Coast Pipeline Construction  
707 E. Main Street, 19th Floor  
Richmond, VA 23219  
Office: (804) 775-5144  
Mobile: (804) 314-2832  
[robert.p.hare@dominionenergy.com](mailto:robert.p.hare@dominionenergy.com)

Take care,

Jason

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**From:** Beum, Frank R -FS [mailto:fbeum@fs.fed.us]

**Sent:** Thursday, September 20, 2018 4:56 PM

**To:** Jason C Barnette (GasInfrastructure - 2)

**Cc:** Abing, Timothy -FS; LeMaster, Elizabeth -FS; Robert P Hare (GasInfrastructure - 2); Adams, Jennifer - FS; Hess, Todd A -FS; Madden, Michael J -FS; acp@transcon.com; maria.martin@galileoaz.com; peter.rocco@galileoaz.com; Leslie Hartz (GasInfrastructure - 2); Brian M Wright (GasInfrastructure - 2); Carole A McCoy (GasInfrastructure - 2); Kathmann, Sarah - OGC; Arney, Ken S -FS

**Subject:** [External] FW: ACP Tree Felling Activity

Good afternoon Jason –

I have recently been asked to serve in the role of Pipeline Infrastructure Executive for the Atlantic Coast and Mountain Valley Pipeline projects, representing the Regional Foresters in the Southern and Eastern Region. Tim forwarded to me your email request to resume tree felling activities on the George Washington National Forest tomorrow, September 21.

In the interest of public safety, the Forest Service wishes to implement a Closure Order for the right of way in advance of conducting tree-felling. We have maps prepared, but are still working on the narrative for the Order. Lessons learned from Mountain Valley Pipeline demonstrated the importance of a thorough legal review of the language of Closure Order narrative, as they were the subject to legal challenge. Our legal advisers are currently committed to preparing a response to the Petitioner's Request for a Stay of the ACP Project on National Forest System lands which is due by noon on Friday September 21, 2018. We project that we can have the Closure Order in place and allow you to resume tree felling by Monday, September 24.

We look forward to working with you in the future on this project. Let me know if you have any questions.

— Frank



**Frank Beum**  
**Deputy Regional Forester**  
**On Detail – Pipeline Infrastructure Executive**

**Forest Service**  
**Southern and Eastern Regions**

**p: 404-347-2872**

**c: 404-272-9413**

**f: 404-347-4821**

**[fbeum@fs.fed.us](mailto:fbeum@fs.fed.us)**

1720 Peachtree Road, NW, Suite 792 South  
Atlanta, GA 30309

**[www.fs.fed.us](http://www.fs.fed.us)**



**Caring for the land and serving people**

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**From:** Abing, Timothy -FS

**Sent:** Thursday, September 20, 2018 3:00 PM



**To:** Beum, Frank R -FS <[fbeum@fs.fed.us](mailto:fbeum@fs.fed.us)>; LeMaster, Elizabeth -FS <[elemaster@fs.fed.us](mailto:elemaster@fs.fed.us)>

**Subject:** Fwd: ACP Tree Felling Activity

Sent from my iPhone

Begin forwarded message:

**From:** Jason C Barnette <[Jason.C.Barnette@dominionenergy.com](mailto:Jason.C.Barnette@dominionenergy.com)>

**Date:** September 20, 2018 at 2:51:56 PM EDT

**To:** "[tabing@fs.fed.us](mailto:tabing@fs.fed.us)" <[tabing@fs.fed.us](mailto:tabing@fs.fed.us)>

**Cc:** Robert P Hare <[robert.p.hare@dominionenergy.com](mailto:robert.p.hare@dominionenergy.com)>, "Adams, Jennifer - FS"

<[jenniferpadams@fs.fed.us](mailto:jenniferpadams@fs.fed.us)>, "Hess, Todd A -FS" <[tahess@fs.fed.us](mailto:tahess@fs.fed.us)>, "Madden, Michael J -FS"

<[mjmadden@fs.fed.us](mailto:mjmadden@fs.fed.us)>, "[acp@transcon.com](mailto:acp@transcon.com)" <[acp@transcon.com](mailto:acp@transcon.com)>, Maria Martin

<[maria.martin@galileoaz.com](mailto:maria.martin@galileoaz.com)>, Peter Rocco <[peter.rocco@galileoaz.com](mailto:peter.rocco@galileoaz.com)>, Leslie Hartz

<[leslie.hartz@dominionenergy.com](mailto:leslie.hartz@dominionenergy.com)>, Brian M Wright <[Brian.M.Wright@dominionenergy.com](mailto:Brian.M.Wright@dominionenergy.com)>, Carole

A McCoy <[carole.a.mccoy@dominionenergy.com](mailto:carole.a.mccoy@dominionenergy.com)>

**Subject:** ACP Tree Felling Activity

Good Afternoon,

Per our conversation on the weekly ACP/Forest Service call today and consistent with the LNTP issued by FERC on March 9, 2018, ACP plans to resume tree felling activities in the GWNF, Spreads 3A and 4A. In support of the tree felling activities ACP is respectfully requesting the Forest Service to acknowledge this continuation and determine if they need to provide ACP with any additional/incremental written confirmation (e.g. email or letter) for this activity. ACP is ready to begin tree felling starting Friday September 21, 2018, but not until we receive either a letter or email confirmation from the Forest.

Thank you in advance for your continued support of this project.

Take care,

**Jason C. Barnette, RPL**

Atlantic Coast Pipeline

Forest Service Liaison

Email: [Jason.c.barnette@dominionenergy.com](mailto:Jason.c.barnette@dominionenergy.com)

Mobile: 304-641-8476

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**ACP-Forest Service Weekly Check-in****Date** September 20, 2018**Time:** 1-3pm (Eastern)/11am-1pm (Mountain)/10am-12pm (Pacific)**Location:** Conference Call and GoTo Meeting

Attendees	Forest Service	Aaron Fox, Jessica Rubado*, Lisa Miller-Allard, Mike Madden, Steffany Mellor, Stephanie Connolly, Tim Abing*, Todd Hess, Will Wilson,
	Atlantic Coast Pipeline	Robert Hare, Jason Barnette
	Transcon	Alli Rhodehamel-Leung, Ian Snyder, Jayanna Miller, Mike Warner
	Galileo Project	Maria Martin, Peter Rocco, Alexa Esquivel

**Meeting Attachments:** Transcon's Weekly Report*\*Partial meeting attendance*

1. Roll Call
2. Variance Updates: Ian provided a brief overview of Monongahela National Forest (MNF) and George Washington National Forest (GWNF) variance updates.
  - a. Variance 012 [MNF Off Limit of Disturbance (LOD) Tree Retrieval]: The data collected last month has been reviewed by Transcon and is now under review by the MNF.
  - b. Variance 017 (MNF Trench dewatering): Transcon has a meeting with forest specialists on developing a flexible approach to deciding dewatering locations.
  - c. Variance 022 [Forest Road (FR) 1026 Construction]: A site visit is scheduled for 9/21.
  - d. Variance 011 (GWNF Waiver Riparian Buffer): The variance has been submitted to the GWNF for review.
  - e. Variance 001 (GWNF ATWS): Previously was 3 locations, now is 2 locations, Transcon received an updated variance request and will begin review. They anticipate forest review early week of 9/24.
  - f. Variance 014 (ATWS MP 99.3): Currently under Transcon review. Transcon anticipates a staff report completed end of day 9/20 and submit onto the forest for discussion.
  - g. Variance 013 (GWNF Desktop Route Shift): Currently under Transcon review.
  - h. Variance 016, 021 (GWNF LOD Tree Retrieval): Transcon is waiting on shapefiles, ACP is waiting on the outcome for the MNF off LOD tree variance.
  - i. Variance Water bars MNF: Transcon received supporting documentation and had preliminary discussion with forest service specialists Transcon is expecting a variance form to be submitted within next day or two.
  - j. Windrowing outside LOD on MNF is to be determined.
  - k. Water bars Off the ROW and Trench Dewatering on GWNF have not yet been submitted by ACP. Transcon understands ACP is waiting on the final approach



- l. Windrowing outside LOD on GWNF is yet to be determined by ACP.
- m. Next up, once road design is complete, there will be a variance request for exceedance areas along GWNF access roads.

- a. ACP's Sequence of Activities for Roads and Pipeline ROW: ACP, intends to begin access road upgrades in spread 3A to support the equipment concurrent with the hand felling of trees on spread 3 in the MNF (which has a time of year restriction for bats until 11/16). Then equipment will be used to remove the felled trees and mainline construction can begin.

- i. For spread 3A all the trees in the right-of-way have been felled except for some trees associated with temporary workspace (ATWS blue and orange boxes) variances. Robert said it would take 4-6 weeks to work on the access roads and hand felling. Removal of trees on spread 3 would then begin and take through November.
- ii. Tim mentioned the concern about potentially getting an adverse ruling on the litigation while there is an open trench. Robert said ACP is aware of the litigation but until the court rules, ACP plans to move forward with their scheduled activities unless they are told they cannot. Tim mentioned that there will be oral arguments on 9/28 and guessed that the ruling timeframe will be similar to that of another recent pipeline ruling (2-3 weeks). Robert said ACP would not likely begin trenching until November at the earliest.
- iii. Stephanie noted soil disturbance and stripping away of the protective mat that holds the soils in place, particularly on steep slopes, is a critical point of concern. Stephanie said if the court rules adversely and soil removal has occurred ACP would need a timely solution involving physical control measures for short term. Robert stated ACP shares the same concerns and hopes to work together to minimize potential effects.
- iv. Mike mentioned having a four week look ahead from ACP as part of these weekly meetings to assist Transcon with staffing schedules. Jason said as the schedule becomes clear on approvals they can provide that information to Transcon. Jason mentioned the opportunity for Transcon to be involved in the daily meetings at the spread trailers.

- i. Mike W. explained at the external engineering meeting the team will be coordinating final details for the meeting with DEQ. Mike W. mentioned some roads ACP is requesting use of through the RUP application are primitive and would not be approved until they are upgraded or they may have limited use for different types of vehicles.

- ii. ACP submitted a revised application for the RUP on 9/20 for forest review. Todd stated the return of the RUP timeframe depends on what information was submitted by ACP. If there is enough information, then it will be a quicker turn around. Robert said, assuming ACP provided the forest with all information needed for the light duty permit, he would tell the construction crew to expect to begin receiving some or all the permits late next week. Todd indicated late next week was appropriate but could not confirm it was definite. Todd reminded Robert to coordinate with the forest fire dispatch if using helicopters to be sure the air way is clear.
  - iii. Federal Energy Regulatory Commission (FERC) already issued a Limited Notice to Proceed (LNTP) on the GWNF (spread 4A) and MNF (spread 3A) which allowed ACP to fell trees by hand. ACP would like to continue felling trees by hand in the GWNF spread as early as 9/21.
  - iv. Robert stated within 1-2 weeks ACP will request an LNTP for hand felling from the FERC for spread 4 and 5 in the GWNF. Tim mentioned the FS will need to issue a new road use permit (RUP) and revise the tree felling letter to instruct ACP to follow the markings on the ground for the cultural resources for tree felling for spread 3A and 4A. Robert stated the crews understand they must access the trees by foot while there is no active light duty RUP. Robert noted the cultural sites are in spread 5. Robert would like to get concurrence from the forest for sawyers to begin work 9/21 for what was previously unfinished. Tim stated he needs to follow up with the forest supervisor if this activity still falls under the previous letter allowing hand felling on the GWNF. He also noted the Forest Service is preparing a closure order to address safety concerns.
  - v. ACP intends to submit an NTP request for full construction on the MNF, excluding the FR1026 (Buzzard Ridge), the week of 9/24. Todd noted the regional foresters can decide to authorize the NTP either partially now, or fully once the Virginia Department of Environmental Quality (DEQ) requirements are met. Tim stated the FERC would check with federal permitting agency before issuing the NTP as proposed by ACP.
- c. Pre-construction Checklist
- i. Term 2 FR281 (Campbell Hallow) road designs still waiting and will come with the GWNF road package.
  - ii. Term 9 Erosion and Sediment Control Plan and Term 10 Stormwater Pollution Prevention Plan are still pending.
  - iii. Term 41 Botanical Survey results for Roan Mountain sedge, Appalachian oak fern and white alumroot has not been received from ACP. Jason mentioned the botanical report would be included in the Implementation Plan which is anticipated to be filed with the FERC week of 9/24.



- iv. Term Q Karst resurvey scheduled for MNF 9/14 and GWNF on 9/21. Robert stated the MNF re-survey was completed and there were no findings. Jason will send the letter to Transcon.
  - d. Special Use Permit Amendments: Todd provided forest management with the issued variance amendments for review before sending to Leslie Hartz. Robert inquired if the Biological Opinion (BO) small whorled pogonia (SWP) monitoring and reporting would be included with this amendment. Todd stated at this time the SWP measures are not included. Robert understood there will be more amendment forms to file for ACP.
  - a. Closure Orders and Communication Plans: Todd reported currently on the MNF a temporary order is in place till November and the long-term order is still under review. It should be getting signed any day now. The GWNF long term closure order is under review and should also be getting signed soon. The closure orders are for both the roads and pipeline right-of-way. As noted previously, Tim needs to follow up on the status of the closure order and check with forest supervisors prior to ACP going out on GWNF to fell trees.
- 4. Updates
  - a. Weekly Inspection Summary
    - i. ACP has not conducted any construction activity since March 2018.
    - ii. Transcon observed FR449 and FR446 rutting and erosion.
    - iii. Damage from hurricane was minor with some run off no issues with ROW.
    - iv. Todd reminded ACP to have a copy of the nominal use letter in case they get stopped by law enforcement. Jason said ACP crews are aware of law enforcement being out in the field and should be compliant.
  - b. ACP Survey Work
    - i. ACP will have crews out for surveying ginseng and karst re-survey.
    - ii. ACP crews will be out 9/27 for the Starr Chapel Cave bat monitoring.
  - c. Weather Events: Robert reported several West Virginia and Virginia non-forest land steep slopes have the best-in-class installed with incremental controls management and handled the rain well.
  - d. Previous Action Items (See Table Below)
    - i. Mike M. reiterated from last week that the forest is trying to track down the SHPO clearance for the six cultural resource sites tied in with the realignment. Robert said ACP submitted a map of the realignment in the GWNF to SHPO. Robert said SHPO responded that the realignment looks good to minimize disturbance. The forest had previously requested the SHPO to review and provide feedback on the cultural sites but have not since received any notice. Robert suggested the forest, ACP and SHPO discuss the status of the concurrence letter for these six sites to get closure.
- 5. Other Discussion Items



- a. Robert reported ACP reviewed their GIS to resolve the 200ft impact on forest service land discussed in an email chain. The discrepancy was on ACP's side and it has been resolved.
- b. Robert inquired how the approvals and construction techniques get documented and separated for the three MNF access roads and FR1026 (Buzzard Ridge). Todd recommended keeping FR1026 separate and the forest can compare what the differences would be with the sensitive resources which may have additional requirements.
- c. Ian inquired if ACP has soil bearing test information for FR1026 as it would be needed for a site visit. Jason sent a request to the road design crew to check for the data. Todd mentioned without that the soil data, the soil scientists may be limited in their ability to respond to questions.
- d. Jason inquired if the forest has an expectation for spraying for all the invasive species after they seed. Todd stated the forest does not require spraying but has given permission if needed.

Upcoming Meetings (Eastern Time)

- September 20, External FS-ACP Weekly Check-in, 1-3pm
- September 20, External Weekly Engineering Call, 3-4pm
- September 27, External FS-ACP Weekly Check-in, 1-3pm
- September 27, External Weekly Engineering Call *(added to end of External FS-ACP Weekly Check-in beginning September 27)*

ACTION ITEM UPDATES - EXTERNAL COORDINATION MEETING			
Party	Date	Task	Status
<i>Previous Action Items</i>			
Jason	8/23	Variance 001 (GWNF Riparian Setback Waiver. Sends updated variance form.	Complete
Jason	8/23	Submits MNF water bar variance the week of 9/3/18.	In progress
Jason	8/23	Provides date for submission of finalized plant reports. to FS by close of business on 8/23/18.	In progress
Jason	8/23	Adds ETA dates for the variances that are considered TBD.	In progress
Jason	8/23	Send Transcon the results of GeoConcept's karst re-survey once it is completed. Surveys for MNF on 9/14 complete and GWNF on 9/21.	Partially completed, MNF report submitted 9/21. GWNF pending.
Robert/ Jonathan	8/23	Consolidate and submit final cultural resource reports to Forest Service, identifying what needs to be reviewed and what was previously cleared.	In progress. Was discussed on 9/14.
Bill	9/14	Provide ACP with MNF specs for boundaries and monuments.	Complete

Jennifer	9/14	Follows up with the incident team for cease activities guidance for storm events. Provides Transcon/Galileo with the guidance to distribute to ACP.	Complete
Jennifer	9/14	Notifies management that FERC approved Transcon's monitoring of the ROW during the shutdown.	Complete
Alli	9/14	Updates and distributes the variance summary table.	Complete
ACP	9/14	Notifies FS how many boundary signs are needed.	In progress
<b><i>New Action Items</i></b>			
Jason	9/20	Follows up with ERM on Botanical survey report file date.	
Tim	9/20	Follows up with forest supervisors on closure order status.	Complete
Tim	9/20	Follows up with the forest supervisor on allowing hand felling on the GWNF.	Complete
Jason	9/20	Coordinates with Transcon to attend ACP crew meetings.	
Jason	9/20	Provide Transcon/Forest Service with the MNF re-survey report (letter).	Complete
Jason	9/20	Provides Forest Service with email asking to resume tree felling activity.	Complete
FS/ACP	9/20	Jason/Robert/Mike M./Jonathan meeting with Roger SHPO to discuss concurrence issues for the 6 sites.	In progress
ACP	9/20	Follow up with Geosyntec for supporting documents for the soil bearing data for FR1026.	

#### FOREST SERVICE RELATED ACP FERC FILING UPDATES

<b>Submission Date</b>	<b>Document Title &amp; Comments</b>
TBD	Request to FERC for MNF NTP construction except for Buzzard Ridge Road FR1026
TBD	Request to FERC for FR1026 and associated private lands.
TBD	Request to FERC for GWNF NTP construction

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, September 20, 2018 (period of review September 12—September 18)

**Compliance Inspectors Present During this Period:** Bill Clayton

#### Preconstruction Activities:

Activity	Location
<i>Tree Felling</i>	None
<i>Road Maintenance</i>	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - Inspectors observed one downed trail marker along Forest Service road 449.
      - No other issues with signing or staking were observed during this inspection period.
    - Rutting/Erosion
      - Inspectors observed minor erosion along Forest Service roads 449 and 466.
        - See below.
      - No instances of rutting or erosion along the pipeline right of way were observed.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
  - Road Conditions
    - Inspectors noted several locations where erosion and rutting has occurred:
      - Forest Service road 449
        - Four minor areas of erosion channels created by recent precipitation
          - Ranged in depth from 2"-5"
          - Ranged in length from 50'-100'
      - Forest Service road 466
        - One erosion channel created by recent precipitation
          - 3" in depth and 200' in length
    - No road maintenance conducted by ACP has taken place
    - All instances of road damage have been noted in previous reports.
- Biological Resources
  - No biological surveys were completed during this inspection period.



- No biological concerns were noted.
- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.
- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - No new variances were received by Transcon during this inspection period.
- Miscellaneous
  - N/A

**Meetings Held**

- ACP Weekly External Meeting (September 20, 2018)

**Upcoming Meetings**

- September 20, External FS-ACP Weekly Check-in, 1-3pm
- September 20, External Weekly Engineering Call, 3-4pm

**Forest Service-Transcon Weekly Check-in****Date:** September 20, 2018**Time:** 9:00-10:30am (Eastern)/7:00-8:30am (Mountain)/6:00-7:30am (Pacific)**Location:** Conference Call

Attendees	Forest Service	Aaron Fox, Jessica Rubado, Jim Boyd, Laura Hise, Mike Madden, Steffany Mellor, Stephanie Connolly, Tim Abing, Todd Hess, Will Wilson, Angela Parrish*
	Transcon	Alli Rhodehamel-Leung, Ian Snyder, Jayanna Miller, Mike Warner
	Galileo Project	Maria Martin, Peter Rocco, Rosana Nesheim

Enclosures: *Weekly Inspection Report**\*Partial meeting attendance***Discussion Summary**

- *Variance Updates*
  - *Variance 012 [MNF Off-Limit of Disturbance (LOD) Tree Removal]*: FS and Transcon met on September 18 to discuss updated data collected in the field. The variance is currently with FS for review. Transcon expects this variance to be prioritized first.
  - *Variance 017 (MNF Trench Dewatering)*: Transcon expects ACP to update their request based on what approach would be best for adding areas that are larger in length and adjusting dewatering as it fits on the ground. Transcon expects ACP to provide an updated shapefile for the area. A call for trench dewatering is scheduled for September 26.
  - *Variance 022 [MNF Forest Road (FR) 1026]*: ACP provided answers to some of Transcon's questions on the discrepancies and inconsistencies in the request. Transcon plans on moving forward pending comments that might result from the field review scheduled for September 21. Stephanie wants to request that ACP provide additional data on FR 1026 road bed testing prior to the field review. This variance is a priority because ACP will need the road to access the right-of-way (ROW).
  - *Variance 001 (GWNF 100-foot Setbacks)*: Transcon expects ACP to submit the updated variance request with revisions, which include removal of one box and adjustment of another box, today. ACP will need this variance to fell trees on the GWNF.
  - *Variance 011 (GWNF Riparian Setbacks)*: ACP provided Transcon with the updated shapefile the week of September 3, and Transcon resubmitted the variance to FS for review the week of September 17. Transcon hopes to get final review and comments from FS specialists and move forward for signature without an additional meeting to discuss this variance. ACP will need this variance to fell trees on the GWNF.
  - *Variance 013 (GWNF Desktop Route)*: ACP provided the updated variance request, and Transcon anticipates being able to present it to FS the week of September 24. This variance changes FERC's certificate of alignment at multiple areas, so it needs to be prioritized. ACP will not be able to remove trees in those areas without this variance.
  - *Variance 014 [Additional Temporary Workspace (ATWS) Modification milepost (MP) 99.3]*: This variance was pulled out of the bundled route shift variance. Transcon expects to complete the staff report and present it to FS on September 20.
  - *Water bars, windrowing, all other anticipated variances*:
    - Transcon has not received a variance request to extend water bars off the ROW on the MNF. ACP provided photos and exhibits, and Transcon expects ACP to submit



the final variance request for water bars on September 21. FS anticipates ACP to submit shapefiles for areas ACP plans to use. Transcon will incorporate FS comments from water bar discussion as part of the stipulations once ACP submits the variance package. Trench dewatering variances will need to be prioritized over water bar variances because trench dewatering is associated with pipeline trenching, which Transcon expects will happen immediately. Water bars will need to be in place once the trees are felled.

- Transcon anticipates one variance on the MNF and two on the GWNF for windrowing outside the LOD and variances for water bars off the ROW and trench dewatering off the LOD. Since MNF variances will set precedent for variances on the GWNF, ACP is waiting to see how things progress on the MNF for consistency. Transcon also anticipates ACP to submit variances for areas needed outside the 30-foot FERC LOD on the GWNF.
- *Other Variance Updates:* Variances 016 – 021 for off-LOD tree retrieval on GWNF are on hold pending updated shapefiles from ACP. The outcome of variance requests for MNF will affect these variances.
- *Schedule*
  - ACP's target start date on the MNF is October 5 but, as of September 19, the Notice to Proceed (NTP) request has not been published to FERC's docket.
  - *Road Use Permits*
    - Todd cautioned the group about referring to non-system trails, routes, or two-track paths as "roads". The term "road" only applies to designated system roads. Two of the paths ACP included in their road use permit application for tree felling have tank traps, which means they were likely closed at one time, and should not be referred to as "roads." Mike M. suggested including input from Steve Woods (FS) and Angela Parrish (FS) in a discussion to properly manage access road activities. Todd pointed out that ACP can only use a road use permit on a designated system road. For the two accesses in question, possible solutions include having an authorized officer issue a nominal use letter or a special use permit for a non-system road. FS could add a note to the file for a one-year special use permit, and, if using the access for construction, FS could reference the NEPA that has already been performed. As a third alternative, an authorized officer could determine that the road use permit meets policy guidelines for a non-designated road.
    - Mike M. asked whether moving the alignment 10 feet from where ACP depicted it on the map would create more difficulties from an engineering standpoint. Todd advised that FS engineers could better address that question on a separate call. FS determined that an internal call would take place to discuss these, and additional questions from Mike Tripp on FR 55 and FR 1026, both of which ACP included in the road use permit request. Specifically, issues on FR 55 are different on the MNF than on the GWNF.
    - Todd speculated that ACP could receive authorization to start construction soon, and the road use permit would be dissolved. Todd also pointed out that there is a \$4 million bond available to cover damage, and that ACP is in the process of putting together the necessary numbers for Transcon to write up the road use permit.
  - *Documenting Commencement of Felling and Construction Operations:*



- Outstanding Checklist Items:
  - Term and Condition (T&C) #2: Transcon expects ACP to submit the Campbell Hollow road designs with the GWNF road package.
  - T&C #6: US Fish and Wildlife Service (FWS) completed the updated Biological Opinion (BO) on September 11. The FS will incorporate the revised BO into the special use permit.
  - T&C #9 and #10: Transcon expects ACP to be in compliance with Virginia's Erosion and Sediment Control Plan and Stormwater Pollution Prevention Plan soon.
  - T&C #41: ACP completed the botanical surveys and has informed Transcon the reports are ready. Transcon expects ACP to provide the reports soon.
  - Transcon expects ACP to complete the karst resurveying on September 21.
- Tim and Laura agreed that it would be reasonable for regional foresters to issue a partial NTP once ACP issues the karst and botanical reports. Tim pointed out that the issues with FR 1026 are preventing access to the Virginia side, but that FS could issue the NTP on West Virginia, excepting FR 1026.

(b)(5), Attorney-Client Privilege



- Tim referred to a recent phone conversation he had with Leslie Hartz (ACP) where they discussed FS not wanting to repeat the problems FS had with MVP after construction was halted. Tim wants to get feedback from ACP regarding road construction and tree removal on the MNF and mainland construction and asking ACP for a look-ahead for dates and times of activities.
- *Special Use Permit (SUP) Amendments:*
  - Todd explained that FS took all the variances that have been signed, and combined them into one SUP amendment, which was sent to the regional forester to evaluate. Todd expects Laura to make a decision on the SUP amendment the week of September 17. Laura responded that she had anticipated a single amendment numbered as one amendment instead of having each variance listed within the amendment. Todd explained that FS wants to ensure compliance with FS variance tracking guidelines, and each time a variance is entered into the FS Special Use Data System, it is assigned a variance number. Tim expressed concern for whether minor changes would really necessitate amendments to the COM Plan, but Todd emphasized the importance for FS to track any changes in the COM Plan, which is an agreement between the SUP holder and FS. Todd added that only the regional forester could approve amendments to the SUP and that the revised BO and additional monitoring and reporting requirements need to be submitted by ACP as

- a variance, or the regional office could provide, in writing, their preference for incorporating these into the SUP without changing the COM Plan. Laura forwarded her review of the SUP Amendments to the group for comments.
    - *Closure Orders and Communication Plans*
      - The temporary closure order for the MNF will remain in place until November. MNF leadership is still evaluating the longer-term closure order. GWNF staff are working on the closure order for GWNF. Jessica has been coordinating with folks at the Regional Office.
  - *Planning for Virginia Department of Environmental Quality (VDEQ) Meeting:*
    - Angela advised that ACP needs to clarify their needs for temporary or long-term use roads. FS expects that if ACP only plans to use the roads only for construction, FS expects those roads not be returned to current conditions after ACP completes construction activities. If ACP intends on long-term maintenance of a new road created as part of construction, ACP needs to request that FS keep that road template in place, so ACP can continue to use it after completing construction. Tim stated that long-term use is not on the table yet, and FS cannot make considerations until ACP is clear about their intended use of the roads.
    - Angela expects Mike Tripp to facilitate the discussion with VDEQ because he is familiar with ACP's road plans. Angela and Steve W. will also weigh in.
    - Angela questioned whether ACP submitting a road use permit the right process. ACP's current road permit request is based on using the roads for tree clearing, but there are some references to long-term use roads. FS wants ACP to clarify how they plan to use the accesses, some of which are not currently passable.
  - *Updates*
    - *Weekly Inspection Summary*
      - ACP has not completed any construction activities since March 2018.
      - On FR 449, Transcon observed one downed trail marker and four minor areas of 2- to 5-inch erosion channels that were 50 to 100 feet in length and cause by recent precipitation. Transcon also observed 3-inch deep erosion that was 200 feet in length on FR 466. Transcon did not observe road maintenance or non-compliance issues.
      - Transcon inspectors did not report major damage caused by the hurricane but are still on the field documenting.
    - *ACP Survey Work*
      - ACP crews did not conduct any surveys during the week of September 17.
      - Transcon inspectors will accompany the VHB crew to survey for ginseng and to check on monitoring equipment at the Star Chapel cave. Transcon will also accompany ACP's staking crew and karst survey crew.
    - *Previous Action Items (See Table Below)*
  - *Other Discussion Items*
    - Transcon identified some fossils in the project area six weeks ago, and there were some questions on whether the fossils should be reported. FS geologists proposed adding language on significant or uncommon fossils within the COM Plan in Attachment R. Although FS does not anticipate ACP coming across anything significant, FS wants ACP to have a paleontologist on call so that inspectors in the field could take photos and forward them to the paleontologist to determine significance.



- Starting September 27, Thursday coordination calls will start one hour later.

Upcoming Meetings (Eastern Time)

- September 20, External FS-ACP Weekly Check-in, 1-3pm
- September 20, External Weekly Engineering Call, 3-4pm
- September 24, Internal GWNF Road Design Call, 12:30-1:30pm
- September 24, Agency Only GWNF-DEQ Call, 2-3:30pm
- September 25, Agency Only FERC Call, 2-3:30pm
- September 26, Internal Trench Dewatering (Variance 17) Call, 9-10am
- September 27, Internal Weekly Coordination Call, 10-11:30am\*\*\*\* New Time
- September 27, External FS-ACP Weekly Check-in, 1-3pm
- September 27, External Weekly Engineering Call (Incorporated into FS-ACP Weekly Check-in beginning September 27)



**Action Items**

<b>ACTION ITEMS - INTERNAL WEEKLY COORDINATION CALLS</b>			
<b>Party</b>	<b>Date</b>	<b>Task</b>	<b>Status</b>
<i>Previous Action Items</i>			
Tom/Will	8/23	Writes something up on reporting of fossils	In progress.
Todd	9/13	Forwards email with exhibits and manuals from Mitch to ACP for monuments.	Complete
Steffany	9/13	Discuss two soil concerns on variance 022 (FR1026) with Stephanie Connolly (FS).	Complete
Transcon	9/13	Review route shift variance (Variance 013).	
Transcon	9/13	Review Temporary Road Use Permit application ACP submitted 9/12	Complete
Jennifer	9/13	Circle back with Regional Office regarding letters that would allow ACP to commence tree felling and construction.	Complete
Jennifer	9/13	Touch base with Transcon and Galileo after meeting with FS supervisors, rangers, staff officers on 9/13 and 9/17.	Complete
Galileo	9/13	Schedules variance 012 (off LOD trees) meeting	Complete
Galileo	9/13	Schedules variance 022 (FR1026) meeting.	Complete
<i>New Action Items</i>			
Mike W.	9/20	Start working on road use permit request as soon as ACP submits it to have it ready on Friday.	
Maria	9/20	Send out internal number to discuss road use permit internally.	Complete
Galileo	9/20	Send out updated meeting invitation for Weekly Internal Call.	Complete
Will	9/20	Send recommendations for paleontologists to ACP.	

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, September 20, 2018 (period of review September 12—September 18)

**Compliance Inspectors Present During this Period:** Bill Clayton

#### Preconstruction Activities:

Activity	Location
<i>Tree Felling</i>	None
<i>Road Maintenance</i>	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - Inspectors observed one downed trail marker along Forest Service road 449.
      - No other issues with signing or staking were observed during this inspection period.
    - Rutting/Erosion
      - Inspectors observed minor erosion along Forest Service roads 449 and 466.
        - See below.
      - No instances of rutting or erosion along the pipeline right of way were observed.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
  - Road Conditions
    - Inspectors noted several locations where erosion and rutting has occurred:
      - Forest Service road 449
        - Four minor areas of erosion channels created by recent precipitation
          - Ranged in depth from 2"-5"
          - Ranged in length from 50'-100'
      - Forest Service road 466
        - One erosion channel created by recent precipitation
          - 3" in depth and 200' in length
    - No road maintenance conducted by ACP has taken place
    - All instances of road damage have been noted in previous reports.
- Biological Resources
  - No biological surveys were completed during this inspection period.

- No biological concerns were noted.
- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.
- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - No new variances were received by Transcon during this inspection period.
- Miscellaneous
  - N/A

**Meetings Held**

- ACP Weekly External Meeting (September 20, 2018)

**Upcoming Meetings**

- September 20, External FS-ACP Weekly Check-in, 1-3pm
- September 20, External Weekly Engineering Call, 3-4pm



## Alexa Esquivel

---

**From:** Beum, Frank R -FS <[fbeum@fs.fed.us](mailto:fbeum@fs.fed.us)>  
**Sent:** Friday, September 21, 2018 1:25 PM  
**To:** Smith, Greg -FS; Arney, Ken S -FS; Atkinson, Kathleen -FS; Borst, Mary Beth - FS; LeMaster, Elizabeth - FS; Thompson, Clyde N -FS; Donaldson, Mike -FS; King, Mary -FS; Erba, Anthony E -FS  
**Cc:** Abing, Timothy -FS; Johnson, Stephanie N -FS; Adams, Jennifer - FS; Kathmann, Sarah - OGC  
**Subject:** ACP Update  
  
**Categories:** DF IN, DF Maybe

Good afternoon all –

Quick Update – ACP will not go back to work on Monday cutting trees on the GWNF. Will be Tuesday earliest based on below.

(b)(5), Deliberative Process Privilege



Have a great weekend.

— Frank



**Frank Beum**  
**Deputy Regional Forester**  
**On Detail – Pipeline Infrastructure Executive**

**Forest Service**  
**Southern and Eastern Regions**

p: 404-347-2872

c: 404-272-9413

f: 404-347-4821

[fbeum@fs.fed.us](mailto:fbeum@fs.fed.us)

1720 Peachtree Road, NW, Suite 792 South

Atlanta, GA 30309

[www.fs.fed.us](http://www.fs.fed.us)



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**PRIVILEGED AND CONFIDENTIAL – ATTORNEY CLIENT - DELIBERATIVE****Weekly FS Regional Office (RO) Coordination Call - Notes****Date:** September 21, 2018**Location:** Conference Call

R8/GWNF	Frank Beum, Jennifer Adams, Mike Donaldson, Tim Abing, Beth LeMaster, Stephanie Johnson
R9/MNF	Clyde Thompson, Kathleen Atkinson, Mary Beth Borst, Tony Erba, Todd Hess, Julie Fossbender
Office of General Counsel (OGC)	Jay McWhirter, Sarah Kathmann
Galileo	Grace Ellis, Lauren Johnston, Peter Rocco

**Action Items:**

(b)(5), Deliberative Process Privilege; Attorney-Client Privilege

(b)(5); Deliberative Process Privilege; Attorney-Client Privilege





(b)(5), Deliberative Process Privilege; Attorney-Client Privilege



**ACP, MVP, WB Xpress FS-FERC Biweekly Coordination Call****Date** September 25, 2018 @ 2:00-3:30 PM (Eastern)**Location:** Conference Call**Attendees:**

Forest Service (FS)	Jennifer Adams, Jim Twaroski, Todd Hess, Christina Henderson
Bureau of Land Management (BLM)	Victoria Craft
Federal Energy Regulatory Commission (FERC)	Gertrude Fernandez Johnson, Kevin Bowman, Paul Friedman
Merjent	Hannah Lipps
Transcon	Alli Rhodehamel-Leung, Ian Snyder, Jayanna Miller, Jeff Davis, Mike Warner, Nik Gillen
Galileo Project, LLC	Grace Ellis, Lauren Johnston, Maria Martin, Meredith Griffin, Peter Rocco, Rosana Nesheim

**I. Mountain Valley Project (MVP) Updates**

- FERC lifted its stop work order when BLM wrote its Practicality analysis, so construction is moving ahead for now, except on Federal lands.
- Paul noted that Hurricane Florence did not cause much damage and that the area experienced more rainfall prior to Hurricane Florence. MVP is currently working to repair damaged erosion control devices (ECD) that were damaged during the hurricane.
- FS and BLM reviewed MVP's stabilization plan and both agencies provided concurrence. FERC also provided a written concurrence and posted the concurrence to the FERC docket.
- FS is still discussing the sedimentation analysis at the regional office level. FS has not yet decided on a final plan to address the court's decision.
- BLM is preparing a termination letter that would provide additional instructions to MVP to implement the stabilization plan once the court's mandate becomes effective.
- Transcon issued a notice of non-compliance for areas with sediment outside the limits of disturbance (LOD) because of the hurricane. Transcon is also working on another notice of non-compliance for sediment outside the LOD the weekend of September 22-23. Transcon also noted that MVP went out and maintained silt fencing for which MVP did not have previous approval.
- MVP has been on site collecting rock skullcap seeds and plants for the last week and a half. FS and Transcon expect MVP to collect enough overall for a successful transplant.
- Transcon noted that MVP needs to repair and maintain some ECDs on the ROW.
- FS is reviewing internally on how to proceed with NEPA compliance for addressing the court's mandate. If FS conducts a supplemental analysis, in the form of a supplemental environmental impact statement, the final Record of Decision (ROD) would be completed by May 2019. Without the supplemental analysis, the final ROD would be completed by March 2019.
- Paul stated that FERC approved the stabilization plan filed by MVP on September 21.

**Action Items:**

- Transcon will forward notice of non-compliance to FS for sediment outside LOD September 22-23.
- Jennifer will share hydrological analysis and NEPA information with Paul.

## II. Atlantic Coast Pipeline (ACP) Updates:

- The court granted a stay of the FS's ROD and Special Use Permit on September 24. Since FERC is not a respondent/intervenor in the case, Kevin does not have additional information pertaining to the case. Jennifer confirmed that FS is scheduled to present oral arguments on September 28. The court is expected to rule within 2-3 weeks after hearing oral arguments.
- The court stay prevents ACP from tree felling or construction activities on National Forest Service (NFS) lands. Additionally, the Southern Environmental Law Center is asking FERC for a stop work order. Jennifer does not know if the court stay prevents ACP from monitoring biological sites or from performing surveys, but FS did issue a nominal use letter for each forest to allow ACP to conduct surveys such as the required karst survey. Any other activity ACP conducts would be covered under the SUP. FS will decide how to move forward based on direction from Office of General Counsel (OGC).
- FS is working on a closure order for the GWNF but has put the closure order on hold. MNF still has the emergency closure order in place, but that closure order only applies when there are activities in specific areas.
- Transcon and FS met with Virginia Department of Environmental Quality (VDEQ) to review ACP's road design template and to discuss some of the important points FS wanted to convey to VDEQ regarding what FS prefers to see on NFS lands. FS informed VDEQ that if, after VDEQ works with ACP on the road designs, they depart substantially from the current road designs, VDEQ will need to inform FS.
- Transcon is working on seven variances with three under review with FS, including a variance for the riparian buffer, MNF off-LOD tree retrieval, and a variance along Forest Road (FR) 1026. Transcon is also scheduling meetings with FS for a variance on the GWNF for additional temporary workspace and a variance for a 100-foot setback on the GWNF. Transcon expects ACP to submit an updated variance request for a water bar off the LOD. Transcon anticipates finalizing review of a variance for changes in desktop route this week and expects to present the variance to FS soon after.
- FS received road permit packages from ACP. The road permit package for the MNF is complete and ready for the FS supervisor's signature. The road permit package for the GWNF is in review with FS.

### Action Items:

- Transcon informs Kevin of which ACP variances require FERC approval.

## III. WB Xpress Updates

- Based on the in-service request letter Columbia sent to FS, Transcon expects Columbia to begin in-service on October 26. This date may need to be pushed back, as there have been delays due to weather. This date applies only to the in-service date on FS lands. As FERC noted, Columbia has requested different start dates for different spreads.
- Columbia has been conducting hydrostatic testing on the western spread. Transcon has observed that most of the pipeline is in the trench, with the exception of a 700-foot area at the top of a hill that has not yet been trenched.
- FS is reviewing several variances and will have them finalized in the next two weeks.



- During the last inspection period, Transcon did not observe issues that resulted from the hurricane event. The area did not receive more rain than was normal due to the hurricane, but Transcon did observe some creek levels rise. Columbia increased its ECDs prior to the storm, and Transcon did not find sedimentation outside the LOD.
- Transcon did observe a spring actively leaking into the trench and causing erosion at the Smoke Hole area. Transcon relayed that Columbia agreed to contract an expert to correct the issue.

**Action Items:**

- FS clarifies with Columbia on what date Columbia will request for in-service on NFS lands.
- FERC will clarify for which areas Columbia requested in-service in their letter to FERC.

Next Scheduled Meeting: Tuesday, October 9, 2018 2:00-3:30pm (Eastern)

**Forest Service-Transcon Weekly Check-in****Date:** September 27, 2018**Time:** 10:00-11:30am (Eastern)/7:00-8:30am (Mountain)/6:00-7:30am (Pacific)**Location:** Conference Call

Attendees	Forest Service	Briana Smrekar, Christina Henderson, Jennifer Adams, Jessica Rubado, Jim Boyd, Jim Twaroski, Laura Hise, Mike Madden, Mike Owen, Rachel Arrick, Todd Hess
	Transcon	Alli Rhodehamel-Leung, Ian Snyder, Jayanna Miller, Mike Warner
	Galileo Project	Maria Martin, Peter Rocco, Rosana Nesheim

Enclosures: *Weekly Inspection Report***Discussion Summary**

Deliberative Process Privilege, Attorney Work Product Privilege

- *SUP Amendments*
  - Jim T's understanding is the SUP amendments were signed September 24 or 25 but he has not seen them.
- *Closure Order and Communication Plans*
  - FS signed the closure order earlier the week of September 24 but pulled the closure order back when the stay was announced. The communication plans were still in review and are now pending based on the stay.
- *ACP's March Chart for Felling, Roads, and Construction*
  - FS discussed expectations with ACP prior to the court's stay. FS expects to resume the discussions when construction looks imminent again. FS still expects that ACP should be able to provide 2- to 3-week look-aheads.
- *Variance Updates*

- *Variance 012 [MNF Off-Limit of Disturbance (LOD) Tree Removal]*: Transcon incorporated specialist comments and the returned the variance to FS, where it is now out for signature and final review.
- *Variance 017 (MNF Trench Dewatering)*: FS expects ACP to submit an updated request for this variance within the next two days. ACP did provide additional materials, including mapping that shows proposed areas for dewatering activities based on collaboration between FS, Transcon, and ACP to develop criteria for a flexible plan. Transcon and FS also met with FS specialists the week of September 24. Upon receipt of FS specialists' comments and concerns, Transcon will have the final package for review and additional stipulations.
- *Variance 022 (MNF Forest Road 1026)*: FS conducted a site visit on September 21
- *Variance 001 (100-foot Riparian Setbacks)*: Transcon completed its staff report and received the remaining materials from ACP. Transcon is ready to present the variance to FS specialists.
- *Variance 011 (GWNF Riparian Buffer Waiver)*: ACP provided an updated shapefile and figure, and the variance is currently with FS for review.
- *Variance 014 [GWNF Additional Temporary Workspace (ATWS) Modification at milepost (MP) 99.3]*: Transcon completed its staff report and received the remaining materials from ACP. Transcon is ready to present the variance to FS specialists.
- *Variance 013 (GWNF Changes in Desktop Route)*: Transcon expects to have a staff report prepared within two business days.
- *Variance 023 [MNF Off-right-of-way (ROW) Water bars]*: ACP provided the variance request and Transcon anticipates having a staff report shortly after preliminary discussions with FS.
- *Variances 016 and 021 (GWNF Off-LOD Tree Retrieval)*: Transcon received updated variance requests on September 26 and will move forward with a similar process as the off-LOD tree removal on the MNF. Briana commented that the data Transcon collected for the MNF off-LOD tree retrieval variance was extremely helpful in the office. Transcon anticipates having inspectors collecting data for the GWNF.
- *Anticipated variances and Other Variance Updates*:
  - Transcon has not received variances for windrowing or for water bars and trench dewatering on the GWNF. ACP wants to see how the water bar and trench dewatering variances work on the MNF before proceeding with those variances on the GWNF.
  - Todd pointed out that for two of the variances that were issued for the condensed amendment, GIS data showed only the area ACP wants to acquire and not the area that will be relinquished. Jennifer related that Jason Barnette (ACP) will be working on getting that information. Todd also requested that Transcon provide information on which current variances have the correct shapefiles. Todd wants to ensure ACP understands that FS cannot issue variances with missing shapefiles.
- *Tree Painting and Sale Administration*
  - Jim B expressed concerns with ACP's survey contractor requesting paint from FS district staff on two occasions without his knowledge. He stressed the importance of Jason Barnette (ACP) making those requests on behalf of his staff before FS is able to issue marking paint to any ACP crews. Mike W. also mentioned the importance of ensuring that Transcon observes and verifies that ACP makes any line adjustments



- properly and accurately. Todd reiterated the importance of following communication protocols equally for simple and major requests.
- Jim B also mentioned that, on Thursday, Joe Peña (ACP contractor) called one of Jim's staff and asked him to participate in the field visit. Jim B, through his staff, let Joe know that he could not attend without additional clarification, at which point Joe informed Jim that he no longer needed to attend the field trip. Jim assumes Joe wanted to discuss boundaries for Forest Road (FR) 1026, for which Jim advised him not to check until the assigned variance is in place.
  - Jim B stated that Jarret Winningham (FS) at GWNF may need sale administration assistance from Transcon. Mike W. informed Jim that Transcon does have field staff with timber experience.
  - *Updates*
    - *Weekly Inspection Summary:*
      - ACP did not conduct any construction activities on either forest during Transcon's last inspection period. ACP has not felled trees since March 2018.
      - Transcon did not observe any signage or staking issues, nor did Transcon observe compliance issues with ACP's survey crews.
      - Transcon observed some rutting on FR 755, which was 1 to 2 inches deep, 7 inches wide, and about 200 feet in length.
      - Transcon accompanied VHB to survey for American ginseng. VHB did not observe any new plants.
      - Todd clarified to Transcon that because FERC does not look at issues like turbid water, ruts, or erosion as non-compliances, but instead focuses on the actions that result, such as sediment off the LOD, that FS should be doing the same. Todd advised Transcon to continue to document problem areas in case those problems lead to FS identifying non-compliances.
    - *Virginia Department of Environmental Quality (VDEQ) Meeting Recap:* FS met with VDEQ to provide FS's perspective and needs for the ACP road designs. FS advised VDEQ that if the final road designs depart significantly from what FS expressed in the meeting, FS wants the opportunity to review the road designs again to decide whether or not to approve the final package. ACP will now work directly with VDEQ, and FS is comfortable with this and communicated the approach back to ACP.
    - *ACP Survey Work and Smithsonian Monitoring:* Jennifer agrees with ACP's request for FS and Transcon to be involved in the Smithsonian's small whorled pogonia monitoring.
    - *Weather Events:* The area had experienced constant rainfall for several days despite it being the dry season. FS expects that ACP will have multiple days with no work and this will likely result in problems with rutting that ACP will need to address.
  - *Other Discussion Items:*
    - Golden and bald eagles are out flying, so ACP needs to be aware of the eagles' possible presence prior to using chain saws when felling trees.
    - Mike M. received the cultural phase I report on September 26 and is in communication with the State Historic Preservation Officer (SHPO). Roger Kirchen, the review and compliance individual, is working on a letter with concurrence for five sites and a sixth site for which ACP has agreed to narrow the area of impact.

Upcoming Meetings (Eastern Time)

- September 27, External FS-ACP Weekly Check-in, 1-3pm
- October 2, Internal MNF Water Bar Call, 2-4pm
- October 4, Internal Weekly Coordination Call, 10-11:30am
- October 4, External FS-ACP Weekly Check-in, 1-3pm

**Action Items**

<b>ACTION ITEMS - INTERNAL WEEKLY COORDINATION CALLS</b>			
<b>Party</b>	<b>Date</b>	<b>Task</b>	<b>Status</b>
<i>Previous Action Items</i>			
Tom/Will	8/23	Writes something up on reporting of fossils.	Complete
Will	9/20	Sends write-up for fossil report to the RO for discussion.	
Mike W.	9/20	Start working on road use permit request as soon as ACP submits it to have it ready on Friday.	Road use permits in progress.
Maria	9/20	Send out internal number to discuss road use permit internally.	Complete
Galileo	9/20	Send out updated meeting invitation for Weekly Internal Call with new start time.	Complete
<i>New Action Items</i>			
Todd	9/27	Reaches out to Ian to ensure Todd has the correct variance ready for signatures (Variance 012 for MNF).	Complete
Jim T.	9/27	Forwards signed SUP amendments to Todd for uploading onto Pinyon site.	Complete
Ian	9/27	Follow up with Jason Barnette about clarification on GIS data for areas that will be relinquished for issued variances.	Complete
Ian	9/27	Summarizes data for variances with and without correct shapefiles into a reference table.	
Todd	9/27	Provide ACP and group with land survey paint color requirement for land boundary paint.	
Mike W.	9/27	Provide information and qualifications for Transcon staff who have timber experience to help Jarret with timber sale administration and copy Jennifer with that information.	
Mike M.	9/27	Complete review on cultural report and forward to Roger Kirchen (VA SHPO).	

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, September 27, 2018 (period of review September 19—September 25)

**Compliance Inspectors Present During this Period:** Nathan Amick, Terry Slater

#### Preconstruction Activities:

Activity	Location
<i>Tree Felling</i>	None
<i>Road Maintenance</i>	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - Inspectors accompanied survey/re-staking crews during this inspection period.
        - No compliance issues were noted
      - No issues with signing or staking were observed during this inspection period.
    - Rutting/Erosion
      - Inspectors observed minor erosion along Forest Service road 1755.
        - See below.
      - No instances of rutting or erosion along the pipeline right of way were observed.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
  - Road Conditions
    - Inspectors noted rilling along Forest Service road 755 (Stover Shop Road)
      - 1-2" deep, 7" wide, and 200' in length
    - No road maintenance conducted by ACP has taken place
    - All other instances of road damage have been noted in previous reports.
- Biological Resources
  - VHB completed American ginseng surveys near MP 85.04.
    - No new plants were observed and no non-compliance issues were noted by Transcon inspectors
  - No other biological surveys were completed during this inspection period.



- No biological concerns were noted.
- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.
- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - No new variances were received by Transcon during this inspection period.
- Miscellaneous
  - N/A

**Meetings Held**

- ACP Weekly External Meeting (September 27, 2018)

**Upcoming Meetings**

- September 27, External FS-ACP Weekly Check-in, 1-3pm

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**From:** Adams, Jennifer - FS <jenniferpadams@fs.fed.us>  
**Sent:** Friday, November 16, 2018 4:36 PM  
**To:** Kathmann, Sarah - OGC; LeMaster, Elizabeth -FS; Abing, Timothy -FS; Beum, Frank R -FS; Timm, Joby -FS  
**Cc:** McKeague, Dan -FS; Rubado, Jessica - FS  
**Subject:** Re: Termination of Brush Mtn Closure Order

Deliberative Process Privilege; Attorney Work Product Privilege; Attorney-Client Privilege



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**From:** Adams, Jennifer - FS  
**Sent:** Friday, November 16, 2018 3:58 PM  
**To:** Kathmann, Sarah - OGC; LeMaster, Elizabeth -FS; Abing, Timothy -FS; Beum, Frank R -FS; Timm, Joby -FS  
**Cc:** McKeague, Dan -FS  
**Subject:** Re: Termination of Brush Mtn Closure Order

I'll let Jessica know.

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**From:** Kathmann, Sarah - OGC  
**Sent:** Friday, November 16, 2018 3:41:56 PM  
**To:** LeMaster, Elizabeth -FS; Abing, Timothy -FS; Beum, Frank R -FS; Adams, Jennifer - FS; Timm, Joby -FS  
**Cc:** McKeague, Dan -FS  
**Subject:** RE: Termination of Brush Mtn Closure Order

Thanks! Fingers crossed this lets everyone have a happier Thanksgiving up there! :o)



Sarah Kathmann  
Attorney-Advisor  
Office of the General Counsel  
U.S. Department of Agriculture  
1718 Peachtree Street, NW  
Suite 576  
Atlanta, GA 30309

404-347-1072 (Voice)  
470-330-1121 (Work Cell)  
844-217-8320 (Fax)  
[Sarah.Kathmann@ogc.usda.gov](mailto:Sarah.Kathmann@ogc.usda.gov)


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**From:** LeMaster, Elizabeth -FS  
**Sent:** Friday, November 16, 2018 3:38 PM  
**To:** Abing, Timothy -FS <[tabing@fs.fed.us](mailto:tabing@fs.fed.us)>; Beum, Frank R -FS <[fbeum@fs.fed.us](mailto:fbeum@fs.fed.us)>; Kathmann, Sarah - OGC <[sarah.kathmann@ogc.usda.gov](mailto:sarah.kathmann@ogc.usda.gov)>; Adams, Jennifer - FS <[jenniferpadams@fs.fed.us](mailto:jenniferpadams@fs.fed.us)>; Timm, Joby -FS <[jtimm@fs.fed.us](mailto:jtimm@fs.fed.us)>  
**Cc:** McKeague, Dan -FS <[dmckeague@fs.fed.us](mailto:dmckeague@fs.fed.us)>  
**Subject:** FW: Termination of Brush Mtn Closure Order

(b)(5), Deliberative Process Privilege

Beth



Elizabeth (Beth) LeMaster  
Acting Forest Supervisor  
Forest Service  
George Washington and Jefferson National Forests  
p: 540-265-5119  
c: 540-200-9007  
[elemaster@fs.fed.us](mailto:elemaster@fs.fed.us)  
5162 Valleypointe Parkway  
Roanoke, VA 24019  
[www.fs.fed.us](http://www.fs.fed.us)  
    
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**From:** LeMaster, Elizabeth -FS  
**Sent:** Friday, November 16, 2018 3:33 PM  
**To:** McKeague, Dan -FS <[dmckeague@fs.fed.us](mailto:dmckeague@fs.fed.us)>  
**Subject:** RE: Termination of Brush Mtn Closure Order

I made a few minor edits (verb agreement and date), signed and here is scanned version.



Elizabeth (Beth) LeMaster  
Acting Forest Supervisor  
Forest Service  
George Washington and Jefferson National Forests  
p: 540-265-5119  
c: 540-200-9007  
[elemaster@fs.fed.us](mailto:elemaster@fs.fed.us)



5162 Valleypointe Parkway  
Roanoke, VA 24019  
[www.fs.fed.us](http://www.fs.fed.us)



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**From:** McKeague, Dan -FS  
**Sent:** Friday, November 16, 2018 2:50 PM  
**To:** LeMaster, Elizabeth -FS <[elemaster@fs.fed.us](mailto:elemaster@fs.fed.us)>  
**Subject:** Termination of Brush Mtn Closure Order

**ACP-Forest Service Weekly Check-in****Date** November 8, 2018**Time:** 1-3pm (Eastern)/11am-1pm (Mountain)/10am-12pm (Pacific)**Conference Call**

Attendees	Forest Service	Jennifer Adams, Jessica Rubado, Lisa Miller-Allard, Mike Madden, Steffany Mellor, Steven Woods, Todd Hess, Will Wilson, Tom Collins
	Atlantic Coast Pipeline	Robert Hare, Jason Barnette, Ellery Baker
	ERM	James Hemme, Matt Hurst
	Transcon	Alli Rhodehamel-Leung, Jayanna Miller, Mike Warner, Mike Tripp
	Galileo Project	Maria Martin, Peter Rocco, Rosana Nesheim

**Meeting attachment:** *Transcon's Weekly Report, COM Plan Attachment R*

1. Schedule and Litigation Update: Robert reported that he has no information outside of the Fourth Circuit Court issuing a stay on the U.S. Army Corps of Engineers permit in West Virginia. ACP is waiting for a Notice to Proceed (NTP) from FERC for construction in Virginia. ACP has received erosion and sediment control permits, which are currently under review. Until the judicial review is resolved, that area is excluded from the NTP. At this time, ACP can construct in West Virginia, but not in streams or wetlands.
2. Roads
  - a. Campbell Hollow Road: ACP believes that for long-term maintenance, Campbell Hollow Road is better suited to be primarily outsloped, rather than crowned, because of physical constraints like plugged culverts and deep ruts in the roads. Steven and Mike T. previously discussed concern with the number of existing pipes on the road and what ACP would do with those pipes if ACP does make the road outsloped. James believes that an outsloped road is a good path forward. Steve, and possibly Mike T., will conduct a field walk on Campbell Hollow. Robert offered to have someone from ACP available to participate in the field walk if Steven would find that useful.
  - b. George Washington National Forest (GWNF) Road Design Status: Ellery expects to submit the remaining road designs for 2018 on November 9 and the designs for 2019, including Campbell Hollow and Scotch Town Draft, in mid-November. Ellery expects to submit the road designs for Duncan Knob closer to the end of November.
3. Variance Updates
  - a. 022 [Monongahela National Forest (MNF) Forest Road (FR) 1026]: Transcon circulated this variance to FS for signatures.
  - b. 017 (MNF Trench Dewatering): Jason provided updated shapefiles. Transcon will add stipulations and circulate the variance back to FS for specialist review.
  - c. 023 [MNF Off-right-of-way (ROW) Water bars]: Jason provided updated shapefiles. Transcon will add stipulations and circulate the variance back to FS for specialist review.

- d. 011 (GWNF Riparian Buffer Waiver): Transcon sent the final variance package to FS for signatures.
  - e. 001 (GWNF 100-foot Riparian Setback) and Variance 014 [GWNF Additional Temporary Workspace (ATWS) Modification at milepost (MP) 99.3]: Transcon will incorporate comments provided by FS NEPA specialist then return the variance package to FS for signatures on November 8.
  - f. 013 (GWNF Desktop Route Shift): Jason provided the final alignment sheets the morning of November 8. Once the FS receives concurrence from FERC, Transcon will let Jennifer know when they are ready to schedule a meeting with FS specialists. FS will not make a decision on this variance without FERC approval and ACP confirmation that private landowners have signed agreements. Currently, ACP has one signed agreement from a private landowner and is waiting for a second agreement to be signed.
  - g. 016 and 021 [GWNF Off-limits of disturbance (LOD) Tree Retrieval]: Transcon compiled and tabulated off-LOD tree data and is ready to schedule a meeting to present the information to FS.
  - h. 024 (GWNF FR 84.1): Transcon received this variance, which is similar to the variance for FR 1026, on November 6. Transcon has the shapefiles for the variance and will write a staff report and schedule a meeting to present it to FS.
4. Paleontology Plan [*See Meeting Attachment: Construction, Operations, and Maintenance (COM) Plan Attachment R*]

Jason had previously emailed FS with ACP's plan for how ACP and its contractors would proceed when encountering fossils during construction. Jason stated that the six steps in Attachment R of the COM Plan are clear about reporting fossil finds to ACP's environmental inspectors (EIs) immediately and then instituting a shutdown of the area within 100 feet of the point or group of points where the fossil or fossils are found. The EI turns the fossil over to a supervisor, who submits the fossil to FERC or to the appropriate state agency for the state where the fossil is found. ACP would not resume work in that area until receiving feedback from the appropriate agency on how to proceed.

Tom expressed concern with how ACP and its contractors would determine which fossil finds would trigger a work shutdown and stated that, although certain sections of the construction area could have a lot of fossils, most would be considered "common" fossils. This could be laborious if workers don't have a procedure in place to filter out common fossils.

Jason stated that he does not think ACP's field personnel has the expertise to make that distinction. He also stated that frequent finds and shutdowns could lead to having a specialist or paleontologist on site.

Jennifer referenced the Paleontological Resources Preservation Act (PRPA) and its requirements for identifying "uncommon" fossils. Jennifer also mentioned that a map with paleontological hotspots could be helpful to ACP. Tom pointed out that ACP probably has not dealt with these types of questions in the past because the PRPA only applies to FS, Bureau of Land Management, National Parks Service land, and some state managed lands



that receive federal funding. Tom also suggested that ACP contact some of the agencies ACP has already worked with, and which are listed on the Environmental Impact Statement.

#### 5. Updates

- a. Special Use Permit (SUP) Amendment 2: ACP signed the SUP amendment 2 and forwarded it to Jim Twaroski (FS) in Atlanta. Todd stated that the Regional Office (RO) has the option to sign off on the SUP Amendment or wait for the judge's decision on the stay.
- b. Closure Orders: ACP's emergency closure order on the MNF expired on November 2nd. To ensure public safety, Clyde Thompson (FS) signed a subsequent emergency closure order on November 7. FS is waiting to have a permanent closure order, which may be issued at the end of November. The idea is to have a closure order in place when ACP has the NTP and is ready to move forward. The emergency closure order also allows time to complete the NEPA process. FS will not issue a news release announcing the emergency closure order but will post it on the FS site. FS will consider a news release for the permanent closure order.
- c. Nominal Use Letter: Jennifer informed the RO that ACP is continuing to conduct activities authorized by the nominal use letter. ACP will proceed with those activities unless the RO advises otherwise. ACP has a list of items they intend to submit for another nominal use letter once ACP management provides feedback. Jennifer advised that ACP should submit a proposal with any activities that are not on the current nominal use letter. Todd advised ACP to wait until the spring to submit the proposal.
- d. Weekly Inspection Summary:
  - i. Transcon accompanied ACP crews taking road measurements in support of road designs.
  - ii. Transcon accompanied VHB at the Star Chapel Cave for acoustic monitoring. The monitors were all functioning, but one was damaged, likely by a bear. That monitor was still collecting data, and VHB adjusted the monitor so the bear does not reach it.
  - iii. Transcon did not observe issues with signage or staking or with rutting or erosion along the roads.
- e. Weather Events: It appears the area will get less than an inch of rain on November 9 and 12. There is a potential for about an inch of rain and snow on November 13. Transcon does not expect the weather to affect the project significantly.

#### 6. Other Discussion Items:

- a. Todd announced that FS will transition to a new email address format over the next year. FS staff will continue to receive email at the old and new email addresses during the transition period.
- b. ACP agreed to incorporate dates into the file names when sending shapefiles.
- c. Galileo created an index of documents that were contained in a recent FERC filing. FS was concerned about the revised horizontal directional drilling (HDD) plan on

the FS and Blue Ridge Parkway. ACP stated that there were not a lot of changes to the HDD because the entrance and exit pit are on private property. ACP also stated that nothing has changed for the Blue Ridge Parkway where it goes underneath FS property.

- d. ACP reviewed a draft of their planting plan, which consolidates all previous instructions, requirements, and emails together in a map format. ACP wants to submit this to FS and have FS review and comment because it is the plan ACP wants to implement in the forest to achieve replanting goals and objectives.

#### Upcoming Meetings (Eastern Time)

- November 15, External FS-ACP Weekly Check-in, 1-3pm

ACTION ITEM UPDATES - EXTERNAL COORDINATION MEETING			
Party	Date	Task	Status
<i>Previous Action Items</i>			
Jason	8/23	Adds ETA dates for the variances that are considered TBD. Jason anticipates sending updated dates to Transcon this week.	To be finalized once ESC and SWPPP for VA are received.
Jason	10/4	Provides Transcon with new proposal to utilize the length along the ROW for Variance 023 (MNF Water bars off ROW).	Complete
Jason	10/18	Provide alignment sheets for Variance 13 to FS. Dependent on when ESC plan is completed.	Complete
Jason	11/1	Provides Transcon with updated shapefiles to address karst/SWP concerns for variances 17 and 23.	Complete
Ellery	11/1	Submits GWNF road design variances to FS	Complete
Jason	11/1	Follow up with ERM on biological data CD's being sent to Galileo. Galileo has received reports but is still waiting for data. Flash drive preferred if possible.	Jason will follow up with ERM.
Jennifer	11/1	Follows up with Mike Madden regarding the 10/1 SHPO letter and provides ACP with a copy. Mike M. is still waiting for response and will follow up with Roger Kirchen.	Complete
Jason	11/1	Provides pictures to FS of dewatering structures in use. Jason has some site-specific photos of trench dewatering and dewatering structures on slopes that appeared to be less than 15% but did not encounter a scenario that would duplicate the situation on FS land exactly. Jason stated that ACP did not use Geotech under the bag because it makes the bag slicker and it slides off	In progress
Jennifer	11/1	Coordinates multi-party meeting to review ACP's Duncan Knob Road plans. Jennifer	In progress



		instructed Galileo to send a Doodle poll for FWS, FS, and FERC to find dates when the agencies can all attend. Aiming for first three weeks in December depending on availability of key participants.	
Jason	11/1	Confirms if all the boundary and monument information was submitted to FS. Jason confirmed that entire package of every monument/corner that might be affected was sent to FS.	Complete
Jason	11/1	Provides erosion and stormwater plans approved by the Virginia DEQ to FS. Jason is unable to upload plans to the FTP site because of Dominion's security. Ellery is expecting a waiver for the Galileo site.	
<b><i>New Action Items</i></b>			
Steven	11/8	Reviews Campbell Hollow Road Plan concerns regarding how to deal with the number of existing pipes on the road if it is turned into an outslowed road.	
Mike T. & Steve	11/8	Works together to schedule field walk on Campbell Hollow Road.	
Jason	11/8	Sends alignment sheets for variance 13 to FERC.	
Todd	11/8	Emails temporary closure order information to ACP.	Complete
Jason	11/8	Submits proposal to FS for additional activities under a new nominal use letter.	
Robert	11/8	Looks into revised HDD plans in FERC filing to determine if it will have any effects on FS property.	
Jason	11/8	Shares picture of trench dewatering structure using a bag with Steffany	In progress
FS	11/8	Provides supporting information for paleontological hotspots to ACP.	
Jason	11/8	Finds out if ACP has a staff paleontologist who can assist with identifying "uncommon" fossils.	
Jason	11/8	Looks into Paleontological Resources Protection Act to see what federal lands it applies to. Looks into ACP's records to see what paleo related information they have from relevant state or federal agencies.	
Jason	11/8	Work with ERM geologist to formulate better plan for identifying fossils.	
Jennifer	11/8	Provide ACP with agency contact information for fossil identification.	



**FOREST SERVICE RELATED ACP FERC FILING UPDATES**

<b>Submission Date</b>	<b>Document Title &amp; Comments</b>
TBD	Request to FERC for MNF NTP construction except for Buzzard Ridge Road FR1026
TBD	Request to FERC for FR1026 and associated private lands.
TBD	Request to FERC for GWNF NTP construction

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, November 07, 2018 (period of review October 31—November 6)

**Compliance Inspectors Present During this Period:** Terry Slater, Solomon Workman, Fred Huber

#### Preconstruction Activities:

Activity	Location
Tree Felling	None
Road Maintenance	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - No new instances of signage/staking issues were observed along the pipeline right of way or access roads.
        - All other instances of signage/staking issues have been noted in previous reports.
    - Rutting/Erosion
      - No new instances of rutting or erosion along the pipeline right of way were observed.
        - All other instances of rutting/erosion have been noted in previous reports.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
  - Road Conditions
    - No new instances of rutting or erosion along access roads were observed.
      - All other instances of road damage have been noted in previous reports.
      - No road maintenance conducted by ACP has taken place
    - Inspectors observed ERM's access of GWNF roads 281, 124, and 309 in support of access road designs.
      - No road damage or non-compliance issues were observed.
- Biological Resources
  - Inspector observed maintenance of the small-whorled pogonia soil monitors.
    - Monitors were functioning properly
      - One monitor was bent, likely by a bear.

- The monitor was adjusted and remains in working condition.
- No non-compliance issues were observed.
- No other biological surveys were completed during this inspection period.
- No biological concerns were noted.
- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.
- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - No new variances were received by ACP during this inspection period.
- Miscellaneous
  - N/A

**Meetings Held**

- ACP Weekly External Meeting (November 7, 2018)

**Upcoming Meetings**

- November 14, Internal/External FS-ACP Weekly Check-in, 1-3pm



**ATLANTIC COAST PIPELINE, LLC  
ATLANTIC COAST PIPELINE**

**Construction, Operations, and Maintenance Plans**

**ATTACHMENT R**

**Plan for Discovery of Unanticipated Paleontological Resources on National  
Forest System Lands**

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## **1.0 INTRODUCTION**

This *Plan for Discovery of Unanticipated Paleontological Resources on National Forest System Lands* was prepared to identify procedures to be implemented in the event that significant paleontological resources are found during construction of the Atlantic Coast Pipeline Project (ACP) in National Forest System (NFS) lands.

## **2.0 POTENTIAL PALEONTOLOGICAL RESOURCES**

Atlantic Coast Pipeline, LLC (Atlantic) consulted with the West Virginia Geological and Economic Survey (WVGES) and Virginia Department of Mines, Minerals, and Energy (VADMME) to identify areas and formations crossed by the ACP with the potential to contain significant paleontological resources.

In West Virginia, and northwestern Virginia, the geologic formations crossed by the ACP could contain fossiliferous remains of marine invertebrates, animals, and fragmentary plant specimens (Kochanov, 2015; McDowell, 2015; Heller, 2015). While the likelihood of encountering significant paleontological resources during pipeline construction is low, there have been instances in the region where shallow excavations uncovered rare specimens, such as the 2004 discovery of *Fedexia striglei* during construction near the Pittsburgh Airport (Carnegie Museum of Natural History, 2010).

## **3.0 TRAINING**

Prior to the start of construction, Atlantic will conduct environmental training for Company and Contractor<sup>1</sup> personnel. The training program will focus on the Federal Energy Regulatory Commission's Certificate of Public Convenience and Necessity conditions, the COM Plan, including these paleontological discovery procedures, and other permit conditions and mitigation plans. In addition, Atlantic will provide large-group training sessions before each work crew commences construction with periodic follow-up training for groups of newly assigned personnel.

## **4.0 UNANTICIPATED DISCOVERY OF PALEONTOLOGICAL RESOURCES**

The following measures will be implemented if significant paleontological materials (i.e., fossilized vertebrate remains such as bones, teeth, etc.) are encountered on NFS lands during construction:

1. The Contractor will stop work in the area of the find (i.e., within 100 feet of the find or the outer perimeter of a group of finds) to protect the integrity of the find.
2. The Contractor will notify Atlantic's Environmental Inspector (EI) of the find.

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<sup>1</sup> Contractor refers to the company or companies retained by Atlantic/DTI or another contractor to construct the proposed facilities.



3. The EI will notify Atlantic's Environmental Project Manager and the Forest Service (FS) Field Compliance/Monitoring Officer.
4. The Environmental Project Manager will notify the FERC and WVGES or VADMME, as appropriate.
5. Based upon consultation with the FS Field Compliance/Monitoring Officer, and the FERC, and with WVGES or VADMME as appropriate, Atlantic will undertake appropriate action, such as salvaging the discovery if it is determined to be a significant find. The Environmental Manager will inform the EI when consultation with the appropriate agencies is complete and work can resume in the area of the find.
6. The Contractor will not resume work within 100 feet of the find until the EI has granted clearance.

## **5.0 REFERENCES**

- Kochanov, W. 2015. Email communication with Pennsylvania Department of Conservation and Natural Resources. Communication on March 26, 2015.
- McDowell, R. 2015. Email communication with West Virginia Geological and Economic Survey. Communication on March 23, 2015.
- Heller, M. 2015. Email communication with Virginia Department of Mines, Minerals, and Energy. Communication on March 30, 2015.
- Carnegie Museum of Natural History. 2010. Early Terrestrial Amphibian Described by Carnegie Museum of Natural History Scientists. March 15, 2010. Available online at <http://www.carnegiemnh.org/press/pressrelease.aspx?id=18061>. Accessed March 2015.

## **6.0 AGENCY CONTACTS**

TBD, Monongahela National Forest

TBD, George Washington National Forest

Kevin Bowman, Environmental Project Manager  
Federal Energy Regulatory Commission  
Address: 888 First Street NE, Washington, DC 20426  
Phone: 202-502-6287  
Email: [kevin.bowman@ferc.gov](mailto:kevin.bowman@ferc.gov)

William E. Kochanov, Senior Geologist  
Pennsylvania Department of Conservation and Natural Resources  
Bureau of Topographic and Geologic Survey  
Address: 3240 Schoolhouse Road, Middletown, PA 17057  
Phone: 717-702-2033  
Email: [wkochanov@pa.gov](mailto:wkochanov@pa.gov)

Ronald McDowell, Senior Research Geologist and Head of Geoscience Section  
West Virginia Geological and Economic Survey  
Address: Mont Chateau Research Center, 1 Mont Chateau Road, Morgantown, WV 26508-8079  
Phone: 304-594-2331  
Email: [mcdowell@geosrv.wvnet.edu](mailto:mcdowell@geosrv.wvnet.edu)

Matthew Heller, Geology Manager  
Virginia Department of Mines, Minerals, and Energy  
Division of Geology and Mineral Resources  
Address: 900 Natural Resources Drive, Ste. 400, Charlottesville VA 22903  
Phone: 434-951-6361  
Email: [matt.heller@dmme.virginia.gov](mailto:matt.heller@dmme.virginia.gov)

Jeff Reid, Senior Geologist  
North Carolina Geological Survey  
Address: 512 North Salisbury Street, Raleigh, NC 27604-7687 -  
Phone: 919-707-9205  
Email: [jeff.reid@ncdenr.gov](mailto:jeff.reid@ncdenr.gov)

**Forest Service-Transcon Weekly Check-in****Date:** November 8, 2018**Time:** 10:00-11:30am (Eastern)/8:00-9:30am (Mountain)/7:00-8:30am (Pacific)**Location:** Conference Call

Attendees	Forest Service	Christina Henderson, Jennifer Adams, Jessica Rubado, Mike Madden, Tim Tolley, Todd Hess, Tom Collins, Will Wilson
	Transcon	Alli Rhodehamel-Leung, Felixcia Blanchard, Jayanna Miller, Mike Tripp, Mike Warner
	Galileo Project	Maria Martin, Peter Rocco, Rosana Nesheim

*Attachments: Weekly Inspection Report, COM Plan Attachment R - Unanticipated Paleontological Resources Plan - Questions*

## 1. Roads

- a. Buzzard Ridge Revised Road Design Review: Mike Owen (FS) has completed his review of the revised road design and provided comments to Jennifer.
- b. Campbell Hollow Road – Mike T. and Jessica discussed ACP's suggestion to outslope this road. Jennifer anticipates hearing from Steve Woods (FS) and Angela Parrish (FS) on November 8 or 9.
- c. Duncan Knob Road – Jennifer is still working on scheduling a meeting that would include US Fish and Wildlife Service, FERC, Carol Croy (FS), and possibly Virginia Department of Conservation and Recreation. Jennifer stated that the meeting could probably proceed without Kevin Bowman (FERC) if he is unable to attend.
- d. George Washington National Forest (GWNF) Road Design Status – FS expects to receive the remaining 2018 road designs on November 9 unless Ellery Baker (ACP) states otherwise the afternoon of November 8. FS also expects to receive the 2019 road designs in mid-November. Mike M. reported that ACP has been conducting roads-related surveying in Campbell Hollow and in Scotch Town Draft.

## 2. Variance Updates

- a. 022 [Monongahela National Forest (MNF) Forest Road (FR) 1026]: This variance is in final review with FS.
- b. 017 (MNF Trench Dewatering): Transcon is awaiting updated shapefiles and forms from ACP.
- c. 023 [MNF Off-right-of-way (ROW) Water bars]: Transcon is awaiting updated shapefiles and forms from ACP.
- d. 011 (GWNF Riparian Buffer Waiver): Transcon sent the final variance package to FS for signatures.
- e. 001 (GWNF 100-foot Riparian Setback) and Variance 014 [GWNF Additional Temporary Workspace (ATWS) Modification at milepost (MP) 99.3]: FS NEPA specialist provided comments to Transcon, who will send the variance packages back to FS for signatures.



- f. 013 (GWNF Desktop Route Shift): Transcon received final alignment sheets from Jason Barnette (ACP) on November 8 and will forward to FERC to ensure the alignment sheets meet FERC's expectations. Jennifer stressed the importance of ensuring FERC and private landowners approve of the plans prior to FS making a decision.
  - g. 016 and 021 [GWNF Off-limits of disturbance (LOD) Tree Retrieval]: Transcon compiled and tabulated off-LOD tree data and posted the information to Transcon's virtual site. Jennifer advised that Todd will need to review the data to ensure it is consistent with what is needed for the Special Use Permit (SUP) prior to having FS specialists review the data.
  - h. 024 (GWNF for FR 84.1): Transcon received this variance, which is similar to variance 022 for FR 1026, on November 5. ACP is requesting to construct at a couple of spots outside the 30-foot LOD. Todd confirmed that the road pertaining to this variance does not have a name. Once ACP provides shapefiles, Transcon will write up a staff report and present the variance to FS.
  - i. Additional Variance Updates: Transcon anticipates receiving additional road variances throughout November. Transcon also anticipates variances for trench dewatering and for water bars on the GWNF.
  - j. Variance Forms: Jennifer relayed that she asked Jason to modify ACP's variance form to help streamline the variance process. Jennifer suggested removing the boxes where ACP states the variance is consistent with NEPA and the Environmental Impact Statement because FS makes those determinations. Jennifer also suggested changing the placement of signatures to avoid giving the appearance that the FS specialist is in agreement with everything on the form. Jennifer stated that FS does not want to change the proposal but wants to ensure the language ACP uses is clear. Mike W. advised Transcon to ensure proposals in the form of variances come with a transmittal confirming the variance is from ACP and not from one of ACP's contractors.
3. Updates
- a. SUP Amendment: Amendment 2, which will officially authorize all issued variances, was sent to ACP for signature. It will then go to Jim Twaroski (FS) at Region 8. Region 8 has the option to wait for the court to decide on the stay or the region could advance the amendment and clear it for signature.
  - b. Closure Orders: The temporary closure order for MNF expired on November 2. Clyde Thompson (FS) signed a subsequent emergency closure order. FS is working on a permanent closure order and some new maps, which FS expects to complete by late November. FS did not issue a news release for the temporary closure order but did post the information on the FS website.
  - c. Nominal Use: Jennifer reminded the regional offices that ACP is moving forward with activities authorized in the nominal use letter, but the regional offices have not responded. The forests will allow ACP to continue with the authorized activities unless the forests receive different instructions from the regional offices.

- d. Cultural Resources: Mike M. sent a letter dated October 1 to Roger Kirchen at the Virginia State Historic Preservation Office (SHPO) and expects to receive a response soon.
  - e. Paleontology Plan [Compliance, Operations, and Maintenance (COM) Plan Attachment R]: Tom and Will have been working on a draft of questions on the 6-step procedure for identifying paleontological fossils in Attachment R of the COM Plan. The purpose of the questions is to prompt ACP to prepare a plan on how ACP and its contractors will implement procedures, including how to determine whether any discovered fossils are common or uncommon. FS is concerned that ACP and its contractors may not have the appropriate training to differentiate common fossils from uncommon fossils, and this lack of training could lead to unnecessary work stoppages that could slow the project down. Jennifer is also concerned that FERC may have additional requirements for ACP to follow. FS thinks ACP could benefit from having a credentialed paleontologist on site. Jennifer suggested asking what ACP does to adhere to the Paleontological Resources Preservation Act in other sections of the project's route. Tom went through the six steps in Attachment R (*see meeting attachment*).
  - f. Weekly Inspection Summary: During the last inspection week, Transcon observed that ACP engineering crews were taking measurements on some of the GWNF roads and refreshing some flagging and staking. Transcon did not observe any construction activities. There were no issues with signage or staking, rutting, erosion, non-compliances, or any road issues. Transcon accompanied the ERM crew at the small whorled pogonia locations to perform monitoring of the soil monitors. ERM found that one monitor had been bent and chewed, likely by a bear, but the monitor was still working. ERM raised the monitor to keep it out of reach of bears.
  - g. Biological Report Data and Department of Environmental Quality (DEQ) Approved Plans: FS anticipates ACP to provide data for six recently submitted biological reports. Galileo has copies of Virginia and West Virginia alignment sheets, which ACP provided in September and October. Galileo has been working on an index of other ACP FERC filings that FS might be interested in.
  - h. Weather Events: Transcon expects less than an inch of rain on November 9 and 12 and about an inch of rain on November 13. Rain and snow are both expected on November 13.
4. Other Discussion Items
- a. Jennifer thanked Peter for his email about the court issued stay for the U. S. Army Corps of Engineers permit in West Virginia. Jennifer forwarded the email to FS staff in the affected regions and suggested allowing ACP to let FS know about when the permit might be back in place and how it will affect ACP's construction and schedule.
  - b. Todd reported that FS is transitioning to new email addresses over the next year. FS staff will continue to receive email sent to previous email address during the



transition period. The new email addresses will generally follow this format:  
[first.last@usda.gov](mailto:first.last@usda.gov).

- c. Todd suggested asking ACP to add the date to the file name of shapefiles to ensure the most up to date information is available.

#### Upcoming Meetings (Eastern Time)

- November 8, External FS-ACP Weekly Check-in, 1-3pm
- November 15, Internal Weekly Check-in, 10-11:30
- November 15, External FS-ACP Weekly Check-in, 1-3pm



**ACTION ITEMS - INTERNAL WEEKLY COORDINATION CALLS**

<b>Party</b>	<b>Date</b>	<b>Task</b>	<b>Status</b>
<i><b>Previous Action Items</b></i>			
Mike W.	9/27	Provides resumes for staff with timber harvest experience to Jarret for review. CC Jennifer. Mike's understanding is ACP is targeting tree felling in February 2019 assuming the court ruling is favorable. Mike W. has gathered resumes for more local candidates with previous FS experience.	In progress
Jennifer	10/25	Coordinates letter re: FR 1026 designs	Pending completion of related variance 22.
Jim/Laura	10/25	Coordinates execution of SUP amendment	Pending stay removal
Mike O.	11/1	Completes review of Buzzard Ridge Revised Road Design	Complete
Jennifer	11/1	Reviews Galileo's email regarding agency availability for Duncan Knob Road Meeting	Complete
Ian	11/1	Reviews data collection for off-LOD trees and prepare to present the data to FS	Complete
Jennifer	11/1	Checks with Mike Madden on SHPO consultation	Complete
Jennifer	11/1	Follows up with OGC on nominal use letter to ensure it covers ACP's flagging work	Complete
Peter	11/1	Emails Alli update on biological reports received	Complete
<i><b>New Action Items</b></i>			
Alli	11/8	Sends updated variance 22 data to Jennifer and Todd.	Complete
Jennifer	11/8	Asks Jason to confirm that the ACP has provided shapefiles for extra spaces for variance 22 and ensure that calculations on table ACP provided correctly reflect the shapefiles	
Jennifer	11/8	Reviews Mike O.'s comments on Buzzard Ridge Road Design and discuss potential questions with him.	Complete. Comments submitted.
Jennifer/Galileo	11/8	Coordinates to send Doodle poll to key agency participants for FS-vdc-FERC-ACP Duncan Knob Road meeting.	Doodle poll sent. scheduling in progress
Alli	11/8	Forwards V15 alignment sheets to Jennifer and Todd	Complete
Jennifer	11/8	Reminds Jason to submit alignment sheets for Variance 13 to FERC	Complete

Alli	11/8	Forwards preliminary variance 24 provided by ACP to Jennifer.	Complete
Alli	11/8	Asks Jason to copy Jennifer and Todd on all email correspondence.	Complete
Peter	11/8	Forwards VA and WV alignment sheets ACP provided in October and November to Transcon.	Complete
Peter	11/8	Provides index of ACP's FERC filing to Jennifer.	Complete

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, November 07, 2018 (period of review October 31—November 6)

**Compliance Inspectors Present During this Period:** Terry Slater, Solomon Workman, Fred Huber

#### Preconstruction Activities:

Activity	Location
Tree Felling	None
Road Maintenance	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - No new instances of signage/staking issues were observed along the pipeline right of way or access roads.
        - All other instances of signage/staking issues have been noted in previous reports.
    - Rutting/Erosion
      - No new instances of rutting or erosion along the pipeline right of way were observed.
        - All other instances of rutting/erosion have been noted in previous reports.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
  - Road Conditions
    - No new instances of rutting or erosion along access roads were observed.
      - All other instances of road damage have been noted in previous reports.
      - No road maintenance conducted by ACP has taken place
    - Inspectors observed ERM's access of GWNF roads 281, 124, and 309 in support of access road designs.
      - No road damage or non-compliance issues were observed.
- Biological Resources
  - Inspector observed maintenance of the small-whorled pogonia soil monitors.
    - Monitors were functioning properly
      - One monitor was bent, likely by a bear.



- The monitor was adjusted and remains in working condition.
- No non-compliance issues were observed.
- No other biological surveys were completed during this inspection period.
- No biological concerns were noted.
- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.
- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - No new variances were received by ACP during this inspection period.
- Miscellaneous
  - N/A

#### **Meetings Held**

- ACP Weekly External Meeting (November 7, 2018)

#### **Upcoming Meetings**

- November 14, Internal/External FS-ACP Weekly Check-in, 1-3pm

**ATLANTIC COAST PIPELINE, LLC  
ATLANTIC COAST PIPELINE**

**Construction, Operations, and Maintenance Plans**

**ATTACHMENT R**

**Plan for Discovery of Unanticipated Paleontological Resources on National  
Forest System Lands**

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## 1.0 INTRODUCTION

This *Plan for Discovery of Unanticipated Paleontological Resources on National Forest System Lands* was prepared to identify procedures to be implemented in the event that significant paleontological resources are found during construction of the Atlantic Coast Pipeline Project (ACP) in National Forest System (NFS) lands.

## 2.0 POTENTIAL PALEONTOLOGICAL RESOURCES

Atlantic Coast Pipeline, LLC (Atlantic) consulted with the West Virginia Geological and Economic Survey (WVGES) and Virginia Department of Mines, Minerals, and Energy (VADMME) to identify areas and formations crossed by the ACP with the potential to contain significant paleontological resources.

In West Virginia, and northwestern Virginia, the geologic formations crossed by the ACP could contain fossiliferous remains of marine invertebrates, animals, and fragmentary plant specimens (Kochanov, 2015; McDowell, 2015; Heller, 2015). While the likelihood of encountering significant paleontological resources during pipeline construction is low, there have been instances in the region where shallow excavations uncovered rare specimens, such as the 2004 discovery of *Fedexia striglei* during construction near the Pittsburgh Airport (Carnegie Museum of Natural History, 2010).

## 3.0 TRAINING

Prior to the start of construction, Atlantic will conduct environmental training for Company and Contractor<sup>1</sup> personnel. The training program will focus on the Federal Energy Regulatory Commission's Certificate of Public Convenience and Necessity conditions, the COM Plan, including these paleontological discovery procedures, and other permit conditions and mitigation plans. In addition, Atlantic will provide large-group training sessions before each work crew commences construction with periodic follow-up training for groups of newly assigned personnel.

[These training sessions cover many topics. Do any of the training sessions for paleo include anything beyond mentioning or displaying the Attachment R Plan?]

## 4.0 UNANTICIPATED DISCOVERY OF PALEONTOLOGICAL RESOURCES

The following measures will be implemented if significant paleontological materials (i.e., fossilized vertebrate remains such as bones, teeth, etc.) are encountered on NFS lands during construction:

1. The Contractor will stop work in the area of the find (i.e., within 100 feet of the find or the outer perimeter of a group of finds) to protect the integrity of the find. [How would this work in the field? Is a "find" any fossil the Contractor finds? If so, would the Contractor be stopping work whenever the Contractor finds a fossil? Most of the fossils the Contractor finds are likely to be common fossils. So, would the best strategy be for ACP's paleontologist to develop a procedure for Contractor awareness that focuses on 1) potential vertebrate fossil finds, and 2) potential uncommon invertebrate and plant fossil finds?]
2. The Contractor will notify Atlantic's Environmental Inspector (EI) of the find.

[What information (such as GPS location and photographs) would the Contractor's notification contain?]

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<sup>1</sup> Contractor refers to the company or companies retained by Atlantic/DTI or another contractor to construct the proposed facilities.



3. The EI will notify Atlantic's Environmental Project Manager and the Forest Service (FS) Field Compliance/Monitoring Officer. [Does ACP have a professional paleontologist involved in these procedures? If so, at what point does the paleontologist first get involved in implementing the procedures? Is ACP's paleontologist familiar with the USDA –Forest Service regulations on Paleontological Resources Preservation 36 CFR 291 including the definition of Common invertebrate and plant paleontological resources? Will ACP's paleontologist coordinate with Forest geologists in developing the procedures? ]
4. The Environmental Project Manager will notify the FERC and WVGES or VADMME, as appropriate. [Unless ACP plans to notify FERC and WVGES or VADMME about common fossils, then the procedures need to have filtered out common fossils, so the notification would typically be about fossils which ACP's paleontologist or FS believe warrant further review. What procedures (including coordination with FS) will ACP follow before Procedure 4 to filter out common fossils before notifying FERC and WVGES or VADMME?]
5. Based upon consultation with the FS Field Compliance/Monitoring Officer, and the FERC, and with WVGES or VADMME as appropriate, Atlantic will undertake appropriate action, such as salvaging the discovery if it is determined to be a significant find. The Environmental Manager will inform the EI when consultation with the appropriate agencies is complete and work can resume in the area of the find. [Procedure needs to include FS and FERC as ultimate deciders on status and disposition of fossils. After considering the consultations and proposed action by Atlantic, the Forest Service and FERC will determine appropriate action Atlantic would undertake, such as salvaging the discovery if it is determined to be a significant find.]
6. The Contractor will not resume work within 100 feet of the find until the EI has granted clearance.

## 5.0 REFERENCES

- Kochanov, W. 2015. Email communication with Pennsylvania Department of Conservation and Natural Resources. Communication on March 26, 2015.
- McDowell, R. 2015. Email communication with West Virginia Geological and Economic Survey. Communication on March 23, 2015.
- Heller, M. 2015. Email communication with Virginia Department of Mines, Minerals, and Energy. Communication on March 30, 2015.
- Carnegie Museum of Natural History. 2010. Early Terrestrial Amphibian Described by Carnegie Museum of Natural History Scientists. March 15, 2010. Available online at <http://www.carnegiemnh.org/press/pressrelease.aspx?id=18061>. Accessed March 2015.

## 6.0 AGENCY CONTACTS



TBD, Monongahela National Forest

TBD, George Washington National Forest

[FS needs to identify Agency Contacts for MNF and GWNF]

Kevin Bowman, Environmental Project Manager  
Federal Energy Regulatory Commission  
Address: 888 First Street NE, Washington, DC 20426  
Phone: 202-502-6287  
Email: [kevin.bowman@ferc.gov](mailto:kevin.bowman@ferc.gov)

William E. Kochanov, Senior Geologist  
Pennsylvania Department of Conservation and Natural Resources  
Bureau of Topographic and Geologic Survey  
Address: 3240 Schoolhouse Road, Middletown, PA 17057  
Phone: 717-702-2033  
Email: [wkochanov@pa.gov](mailto:wkochanov@pa.gov)

Ronald McDowell, Senior Research Geologist and Head of Geoscience Section  
West Virginia Geological and Economic Survey  
Address: Mont Chateau Research Center, 1 Mont Chateau Road, Morgantown, WV 26508-8079  
Phone: 304-594-2331  
Email: [mcdowell@geosrv.wvnet.edu](mailto:mcdowell@geosrv.wvnet.edu)

Matthew Heller, Geology Manager  
Virginia Department of Mines, Minerals, and Energy  
Division of Geology and Mineral Resources  
Address: 900 Natural Resources Drive, Ste. 400, Charlottesville VA 22903  
Phone: 434-951-6361  
Email: [matt.heller@dmme.virginia.gov](mailto:matt.heller@dmme.virginia.gov)

Jeff Reid, Senior Geologist  
North Carolina Geological Survey  
Address: 512 North Salisbury Street, Raleigh, NC 27604-7687 -  
Phone: 919-707-9205  
Email: [jeff.reid@ncdenr.gov](mailto:jeff.reid@ncdenr.gov)

## Alexa Esquivel

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**From:** Maria Martin  
**Sent:** Friday, November 9, 2018 3:18 PM  
**To:** Jennifer Adams (jenniferpadams@fs.fed.us); Todd Hess (tahess@fs.fed.us); Mike Madden (mjmadden@fs.fed.us)  
**Cc:** Aaron Fox (aaronfox@fs.fed.us); Alexa Esquivel; Alli Rhodehamel-Leung (allirl@transcon.com); Amy Coleman (amycoleman@fs.fed.us); Anthony Erba (aerba@fs.fed.us); Beth LeMaster (elemaster@fs.fed.us); Briana Smrekar (bsmrekar@fs.fed.us); Carrie Gilbert (carriegilbert@fs.fed.us); Catherine Johnson (catherinejohnson@fs.fed.us); Chad Landress (chadmlandress@fs.fed.us); Charles Foote (cfoote@fs.fed.us); Christopher Spurl (cfspurl@fs.fed.us); Clyde Thompson (cnthompson@fs.fed.us); Cynthia Sandeno (cmsandeno@fs.fed.us); David Frazier (dkfrazier@fs.fed.us); Elizabeth McNichols (emcnichols@fs.fed.us); Gene Smithson (gsmithson@fs.fed.us); Ian Snyder (isnyder@transcon.com); Jacob D'Angelo (jsdangelo@fs.fed.us); James Boyd (jamesboyd@fs.fed.us); James H. Thompson (jamesthompson@fs.fed.us); James Willett (jwillett@fs.fed.us); Jay McWhirter (Jay.McWhirter@ogc.usda.gov); Jayanna Miller (jmillier@transcon.com); Jeff Davis (jdavis@transcon.com); Jessica Rubado (jrubado@fs.fed.us); Jim Twaroski (jtwaroski@fs.fed.us); Joby Timm (jtimmm@fs.fed.us); Jonathan (Chad) Murphy (jcmurphy@fs.fed.us); Katie Ballew (katiejballew@fs.fed.us); Kelly Bridges (kellybridges@fs.fed.us); Laura Hise (lhise@fs.fed.us); Lauren Stull (lbstull@fs.fed.us); Lynette Miller (lynettemiller@fs.fed.us); Margaret Riddle (mriddle@fs.fed.us); Maria Martin; Mary Helms (mshelms@fs.fed.us); Mary Yonce (meyonce@fs.fed.us); Michael Owen (mdowen@fs.fed.us); Mike Warner (mwarner@transcon.com); Nadine Benally (nbenally@transcon.com); Nik Gillen (ngillen@transcon.com); Pamela Edwards (pjedwards@fs.fed.us); Peter Gaulke (pgaulke@fs.fed.us); Peter Rocco; Rachel Arrick (rarrick@fs.fed.us); Ray Nelling (rnelling@fs.fed.us); Steffany Mellor (steffanymellor@fs.fed.us); Stephanie Connolly (sconnolly@fs.fed.us); Tim Tolley (ttolley@fs.fed.us); Timothy Abing (tabing@fs.fed.us); Tony Randolph (trandolph@fs.fed.us); Troy Morris (troymorris@fs.fed.us); Will Wilson (wwilson@fs.fed.us); William Clayton (wclayton@transcon.com); WJ Cober (wcober@fs.fed.us)  
**Subject:** ACP - Weekly Update 11/9/18  
**Attachments:** 20181109 ACP Weekly Project Update.docx; 2018 ACP Project Map GWNF Spreads 10.5.18 Reduced.pdf; 2018 ACP Project Map MNF Spreads 10.5.18 reduced.pdf; 181101 ACP Access Roads on NFS Lands Table.docx; 181101 ACP GWNF Road Timeline.pdf; 181101 ACP ROW on NFS Lands Table.docx; 20181101\_Transcon\_ACP\_Weekly Report 10.24-10.30.pdf; 20181105 Dominion Weekly Status Report 10.20 - 10.26.pdf; 20181109 Dominion Weekly Status Report 10.27 - 11.2.pdf

Hi Jennifer, Todd and Mike -

The following weekly update items are attached for the week ending November 9, 2018:

- Forest Service ACP Weekly Project Update
- GWNF and MNF project maps
- Access Roads on National Forest System lands table
- GWNF roads timeline
- ROW on National Forest System Lands table
- Transcon's ACP Weekly Status Report – dated 10/24 to 10/30
- Dominion's Weekly Status Reports – dated 10/20 to 10/26 and to 10/27 to 11/2

Thank you,  
Maria

Maria L. Martin  
Galileo Project LLC



4700 S McClintock Dr, Suite 100  
Tempe, AZ 85282  
480-629-4705 – office  
480-888-6283 – cell  
[www.galileoaz.com](http://www.galileoaz.com)

**\*\*\*INTERNAL USE ONLY\*\*\*****Recent and Upcoming Meetings** *(all meetings listed in Eastern time)*

- FS-ACP Forest Road 1026 variance check-in call- **October 10 @ 4:30-5:30pm**
- GWNF ATWS variance review call- **October 11 @ 9-10am**
- MNF & GWNF trench dewatering variance call- **October 19 @ 10am-12pm**
- FS/FERC bi-weekly check-in- **October 23 @ 2-3:00pm**
- GWNF water bars off LOD variance call- **October 29 @ 12-2pm**
- FS/FWS/FERC/WVDEP/ACP small whorled pogonia call- **October 29 @ 3-4:30pm**
- FS-ACP variance check-in call- **October 31 @ 1:30-2:30pm**
- FS-BLM-FERC pipeline coordination call- **November 6 @ 2-3pm**
- FS/Transcon weekly check-in - **Thursdays @ 10-11:30 am**
- FS/ACP weekly check-in - **Thursdays @ 1-3 pm**
- FS/ACP/FERC/FWS Duncan Knob Road discussion- **TBD**

**Recent & Upcoming Filings and Issuances**

- 11/5/18 Dominion's weekly status report for 10/20 to 10/26 is attached.
- 11/9/18 Dominion's weekly status report for 10/27 to 11/2 is attached.

**Current & Ongoing Efforts**

- Transcon's [weekly report dated 11/1 for 10/24 to 10/30](#) is attached.
- The 4<sup>th</sup> Circuit issued a stay on the FS ROD and SUP on 9/24. Construction on NFS lands is not allowed until the court issues a decision on the litigation. Construction in other areas is ongoing.
- DEQ approved CP's erosion, karst, and stormwater management plans. ACP subsequently requested permission from FERC to begin construction in Virginia. They had been felling trees by hand.
- ACP is conducting biological and other survey work while the stay is in place.
- [An emergency closure order on the MNF has been issued \(link\)](#). Long term closures for both forests are under development.
- MNF Variances: Variances under review include variance #12 to remove trees that fell outside the limits of disturbance (LOD), #17 installing trench dewatering structures outside the LOD, #22 for segments of FR1026 that extend beyond the LOD, and #23 for water bars extending beyond the LOD. Variance #22 also requires FERC's consideration. Variances will not be issued while the stay is in effect.
- GWNF Variances: Variance under review include: #1, #14, and #11 regarding riparian buffers, #13 changes in desktop route, Variance #13 also requires FERC's consideration. Discussions for water bar and trench dewatering variances are in progress. Variances will not be issued while the stay is lifted.
- Roads update: ACP began submitting revised road designs for the GWNF 2018 construction road designs. Designs for 2019 construction roads are expected by mid-November. See the enclosed GWNF Road Timeline.

**Next Steps to Construction**

(unless noted otherwise FERC will check with the FS before responding to an NTP request)

- ACP submits NTP request to FERC for construction on the MNF (Marlinton-White Sulphur Ranger District). Anticipated immediately after the stay is lifted. See the attached MNF maps and ROW table.
- ACP restarts hand felling in the GWNF (Warm Springs and North River RDs). Anticipated immediately after the stay is lifted. This activity was approved in early 2018. See attached GWNF maps and ROW table.
- ACP requests a limited NTP to conduct hand felling on spreads 4 and 5 in the GWNF (adding the Glenwood-Pedlar RD to the previously mentioned districts). Anticipated shortly after the stay is lifted.
- ACP submits NTP request to FERC to construct FR1026. Anticipated shortly after the stay is lifted.

**Legal Update**

- 2/5/18 Various NGOs filed a joint petition for review of the Forest Service ROD in the 4<sup>th</sup> Circuit Court of Appeals. A recording of the oral arguments made on 9/28 can be heard by clicking [here](#).
- The issues with the FWS Incidental Take Statement and the NPS approval of the crossing under the Blue Ridge Parkway have been resolved. The FWS decision has been challenged again.
- [The 4<sup>th</sup> Circuit issued a stay of the Army Corps of Engineers Nationwide 12 Permit in WV.](#)



November 2, 2018

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: Atlantic Coast Pipeline, LLC & Dominion Energy Transmission, Inc.  
Atlantic Coast Pipeline  
Docket Nos. CP15-554-000 & CP15-554-001  
Supplemental Information – Weekly Status Report: 10/20/2018 – 10/26/2018**

Dear Secretary Bose:

By Order dated October 13, 2017, the Federal Energy Regulatory Commission (Commission or FERC) authorized Atlantic Coast Pipeline, LLC (Atlantic) to construct and operate certain facilities that comprise the Atlantic Coast Pipeline (Project). *Atlantic Coast Pipeline, LLC* 161 FERC ¶ 61,042 and *order on rehearing*, 164 FERC ¶ 61,100 (2018) (collectively, the “Order”).

As required under Environmental Conditions 8, 9b, and 67 of Appendix A to the Order, Dominion Energy Transmission, Inc.<sup>1</sup> (DETI or “Dominion Energy”), on behalf of Atlantic and itself, hereby submits the weekly status report for the Project.

If you have any questions, please contact me at 866-319-3382.

Respectfully submitted,

*Angela M. Woolard*

Angela M. Woolard  
Gas Transmission Certificate Consultant

cc: Mr. Kevin Bowman, FERC

encl(s)/

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<sup>1</sup> On May 12, 2017, Dominion Transmission, Inc. changed its name to Dominion Energy Transmission, Inc.



**Order Condition No. 8 – Weekly Construction Status Report**  
**Reporting Period of October 20, 2018 through October 26, 2018**

**A: Update on Federal Authorizations**

Federal Authorizations required for the project and received to-date are tabulated in Appendix A.  
No new Federal Authorizations were received during the reporting period.

**B: Construction Status**

<b>Table B-1: Pipeline Construction Spreads</b>		
<b>Spread</b>	<b>Construction Status of Each Spread</b>	<b>Work Planned for the Following Reporting Period</b>
<b>Spread 1-1</b> Harrison and Lewis Counties, WV	Continued welding and lowering in pipe, backfill, and restoration. Continued clearing previously felled timber and felling trees, grading, and ditching ROW. Stringing pipe on the ROW. Maintaining access roads, maintaining and installing erosion controls.	Continue grading and ditching ROW, stringing, welding and lowering in pipe, backfill, and restoration. Continue clearing previously felled timber and felling trees. Grading and adding gravel to approved access roads. Complete wetland wlea005e crossing. Maintaining and installing erosion controls.
<b>Spread 1-2</b> Lewis and Upshur Counties, WV	None.	None.
<b>Spread 2-1</b> Upshur and Randolph Counties, WV	Continued welding and lowering in pipe, backfill, and restoration. Continued clearing previously felled timber and felling trees, grading, and ditching ROW. Stringing pipe on the ROW. Maintaining access roads, maintaining and installing erosion controls.	Continue grading and ditching ROW, stringing, welding and lowering in pipe, backfill, and restoration. Continue clearing previously felled timber and felling trees. Grading and adding gravel to approved access roads. Complete SUPB011 waterbody crossing. Maintaining and installing erosion controls.
<b>Spread 2-2</b> Randolph County, WV	None.	None.

**Table B-1: Pipeline Construction Spreads**

<b>Spread</b>	<b>Construction Status of Each Spread</b>	<b>Work Planned for the Following Reporting Period</b>
<b>Spread 2A</b> Randolph County, WV	Continued welding and lowering in pipe, backfill, and restoration. Continued clearing of previously felled timber, grading, ditching, and stringing on ROW. Access roads continue to be built along with maintaining and installing erosion controls.	Continue grading and ditching ROW, stringing, welding and lowering pipe, followed by backfill and restoration. Continue clearing of previously felled timber, building access roads, and maintaining and installing erosion controls, as necessary.
<b>Spread 3</b> Randolph and Pocahontas Counties, WV	None.	None.
<b>Spread 3A</b> Pocahontas County, WV and Highland County, VA	Maintaining erosion and sediment controls and stabilization of ROW.	Maintain erosion and sediment controls and stabilization of ROW.
<b>Spread 4</b> Highland and Bath Counties, VA	None.	None.
<b>Spread 4A</b> Bath and Augusta Counties, VA	None.	None.
<b>Spread 5</b> Augusta and Nelson Counties, VA	None.	None.
<b>Spread 5A</b> Augusta and Nelson Counties, VA	None.	None.
<b>Spread 6</b> Nelson, Buckingham, Cumberland Prince Edward, and Nottoway Counties, VA	Continued tree felling: MP 260.7 to 260.8; MP 261.2 to 261.5; MP 261.8 to 261.3; MP 262.8 to 263.1; and MP 263.7 to 268.7.	Continue tree felling operations in approved areas.
<b>Spread 7</b> Nottoway, Dinwiddie, Brunswick, and Greenville Counties, VA; and Northampton County, NC	None.	None.

**Table B-1: Pipeline Construction Spreads**

<b>Spread</b>	<b>Construction Status of Each Spread</b>	<b>Work Planned for the Following Reporting Period</b>
<b>Spread 8</b> Northampton, Halifax, and Nash Counties, NC	Continued mechanical clearing, grading, installation of construction entrances and ECDs, and potholing foreign utility line crossings in approved areas. Continued construction activities within Contractor Yard 08-A. Began qualifying welders.	Continue mechanical clearing, grading, installation of construction entrances and ECDs, and potholing foreign utility line crossings in approved areas. Continue construction activities within the Contractor Yard 08-A. Begin stringing pipe for road crossings. Begin ditching, welding pipe and road bores. Begin Tar River HDD.
<b>Spread 9</b> Nash, Wilson, Johnston, Sampson, and Cumberland Counties, NC	None.	None.
<b>Spread 10</b> Cumberland and Robeson Counties, NC	Continued mechanical clearing and potholing foreign utility line crossings in approved areas. Continued installation of construction entrances and ECDs in approved areas. Began improvements to Contractor Yard 10-A.	Continue mechanical clearing, potholing foreign utility line crossings, and installation of construction entrances and ECDs in approved areas. Continue improvements within Contractor Yard 10-A. Continue limited grading operations.
<b>Spread 11</b> Northampton County, NC; Greenville and Southampton Counties, VA; and the Cities of Suffolk and Chesapeake, VA	None.	Begin mobilization to Contractor Yard 11-A. Resume tree felling in approved areas. Preparing for full tree felling.
<b>Spread 12</b> Brunswick and Greenville Counties, VA	None.	None.



**Table B-2: Above Ground Facilities**

<b>Facility</b>	<b>Current Work Activities</b>	<b>Work Planned for Next Period</b>
<b>Compressor Station 1</b> Lewis County, WV	Continued site E&S installations and maintenance. Continued installation of west side rock fill underdrains. Continued general project civil work; cut and fill for west side of project site.	Continue site E&S installations and maintenance. Continue installation of west side rock fill underdrains. Continue general project civil work; cut and fill for west side of project site. Begin installation of east side rock fill underdrains.
<b>Compressor Station 2</b> Buckingham County, VA	None.	None.
<b>Compressor Station 3</b> Northampton County, NC	Continued forming Compressor Building B walls. Completed main suction discharge piping and utility piping, ESD lines, and drain lines installation in the launcher & receiver area to the suction separators. Continued excavations for Main Gas Headers. Began welding and installing suction and discharge headers from Separators. Continued forming foundations in the Tank Farm area. Formed main slab and grade beams for the Auxiliary Building and installed plumbing. Poured Auxiliary Building MCC pit floor and grade beams. Installed utility line and conduit from Station to Regional Office.	Pour Compressor Building B walls. Continue excavations for Main Gas Headers. Continue welding and installing suction and discharge headers from suction separators. Begin installing pipe sleepers and conduit in the Tank Farm area. Begin installing utility piping from Separators to tank farm. Complete install of rough-in plumbing and pour main slab and grade beams for the Auxiliary Building.
<b>Kincheloe M&amp;R Station</b> Lewis County, WV	Continued site E&S installations and maintenance. Continued installation of west side rock fill underdrains. Continued general project civil work; cut and fill for west side of project site.	Continue site E&S installations and maintenance. Continue installation of west side rock fill underdrains. Continue general project civil work; cut and fill for west side of project site. Begin installation of east side rock fill underdrains.
<b>Long Run M&amp;R Station</b> Randolph County, WV	None.	None.
<b>Woods Corner M&amp;R Station</b> Buckingham County, VA	None.	None.

**Table B-2: Above Ground Facilities**

<b>Facility</b>	<b>Current Work Activities</b>	<b>Work Planned for Next Period</b>
<b>Smithfield M&amp;R Station</b> Johnston County, NC	Continued interior build-out of Office building. Completed build-out of Regulation and Meter buildings. Continued pulling wire and terminations. Completed final bolt-up of piping. Continued installing instrumentation and tubing.	Continue interior build-out of Office building. Connect to utility power. Complete installing instrumentation and tubing. Begin testing electric motors and switches. Begin checking manual valves for positions. Begin testing pneumatic valves. Begin microwave tower erection.
<b>Fayetteville M&amp;R Station</b> Cumberland County, NC	None.	None.
<b>Pembroke M&amp;R Station</b> Robeson County, NC	None.	None.
<b>Elizabeth River M&amp;R Station</b> City of Chesapeake, VA	None.	None.
<b>Brunswick M&amp;R Station</b> Brunswick County, VA	None.	None.
<b>Greensville M&amp;R Station</b> Greensville County, VA	None.	None.

**Table B-3: HDD Construction Summary**

<b>HDD</b>	<b>Current Work Activities</b>	<b>Work Planned for Next Period</b>
<b>Construction Spread 1-1</b>		
<b>Interstate 79</b> Lewis County, WV	None.	None.

Table B-3: HDD Construction Summary		
HDD	Current Work Activities	Work Planned for Next Period
<b>Construction Spread 5</b>		
<b>Blue Ridge Parkway/ Appalachian National Scenic Trail</b>  Augusta and Nelson Counties, VA	None.	None.
<b>Construction Spread 6</b>		
<b>James River</b> (Including Mayo Creek) Nelson and Buckingham Counties, VA	None.	None.
<b>Construction Spread 8</b>		
<b>Roanoke River</b> Northampton and Halifax Counties, NC	None.	None.
<b>Fishing Creek</b> Halifax and Nash Counties, NC	None.	None.
<b>Swift Creek</b> Nash County, NC	None.	None.
<b>Tar River</b> Nash County, NC	None.	Begin mobilizing equipment to the HDD site.
<b>Construction Spread 9</b>		
<b>Contentnea River</b> Wilson County, NC	None.	None.
<b>Little River</b> Johnston County, NC	None.	None.
<b>Construction Spread 10</b>		
<b>Cape Fear River</b> Cumberland County, NC	None.	None.
<b>Construction Spread 11</b>		



**Table B-3: HDD Construction Summary**

<b>HDD</b>	<b>Current Work Activities</b>	<b>Work Planned for Next Period</b>
<b>Nottoway River</b> Southampton County, VA	None.	None.
<b>Blackwater River</b> Southampton County and City of Suffolk, VA	None.	None.
<b>Lake Prince</b> City of Suffolk, VA	None.	None.
<b>Western Branch Reservoir</b> City of Suffolk, VA	None.	None.
<b>Western Tributary to Nansemond River</b> City of Suffolk, VA	None.	None.
<b>Nansemond River</b> City of Suffolk, VA	None.	None.
<b>Route 58</b> City of Suffolk, VA	None.	None.
<b>Interstate 64</b> City of Chesapeake, VA	None.	None.
<b>Route 17</b> City of Chesapeake, VA	None.	None.
<b>Southern Branch Elizabeth River</b> City of Chesapeake, VA	None.	None.

**Schedule Changes for Stream Crossings/Other Environmentally Sensitive Areas:**

None at this time.

**C/D/E: Listing of Problem Areas Encountered and/or Instances of Noncompliance Observed by the Environmental Inspector (EI)**

<b>Environmental Problem Areas or Noncompliances</b>		
<b>Problem or Noncompliance</b>	<b>Description of Corrective Action(s) Implemented, and Cost</b>	<b>Effectiveness of Corrective Action(s) Implemented</b>
1. <u>Noncompliance</u> : Spread 8 on 10/23/2018, at station 1043+63. Three felled trees were identified outside of the certificated workspace by approximately 8 feet. These trees were cut in February 2018.	Crews have been briefed on the need to request clarification in the event of a change in the LOD is apparent. Landowner has been contacted and did not have any concerns over the felled trees.	No further incidents.
2. <u>Problem Area</u> : Spread 10 on 10/24/2018. Subsoil was placed on top of unstripped topsoil within Contractor Yard 10-A in an area approximately 150 feet x 3 feet.	Contractor removed subsoil from the top of the topsoil, stripped the topsoil as required prior to replacement of subsoil berm.	No further incidents.
3. <u>Noncompliance</u> : Spread 2A on 10/26/2018, at milepost 71.7. Construction began clearing and grading activities before receiving written approval to proceed from FERC.	Stopped work in this area until written approval from FERC is received. Meetings with the field karst specialist and the construction team will be increased.	No further incidents.
4. <u>Noncompliance</u> : Spread 8 on 10/26/2018, at station 1018+00 to 1026+00. Due to wet conditions, mixing of topsoil and subsoil within an agricultural field.	Contractor ceased operations in this area to prevent any further mixing. Topsoil and subsoil separation was reinforced during the morning meeting with crews.	No further incidents.

**F: Landowner/Resident Complaints (Order Condition No. 9b)**

Date	Tract No.	Pipeline Spread or Facility	Pipeline Milepost or Facility Location	Description of Complaint	Description of Measures Taken	Resolution Status
10/17/2018	03-119.1.WT	2-1	35.0	Landowner called ACP hotline and stated that his well water levels are low, which he believes may be due to ACP Construction in the area.	11/01/2018 – Well samples have been returned. A meeting is being scheduled.	Pending
10/25/2018	22-080	10	134.7	Landowner called Land Agent to state that he did not approve of a temporary bridge (built for construction) over one of his canals. It has blocked access to part of his farm.	10/26/2018 – Land Agent and Construction met with Landowner at property. They agreed to build a road that circumvents the bridge so Landowner can access the rest of his farm. Landowner was satisfied with this approach.	Resolved on 11/01/2018
10/26/2018	SAMSUNLIMITED.SY	10	145.0	Landowner called Land Agent and said there were drums on his property labeled “hazardous waste” and his agreement states no waste to be stored on property.	Land Agent confirmed via pictures sent by text that drums were on Landowner’s property. Land Agent informed Construction and drums are in the process of being removed.	Pending



**G: Copies of Any Correspondence Received Concerning Instances of Noncompliance from Other Federal, State, or Local Permitting Agencies, and Atlantic's Response**

No correspondence was received concerning instances of noncompliance from other federal, state, or local permitting agencies.

**Order Condition No. 67: Information on Noise Sensitive Areas (NSAs)**

Pursuant to Condition 67 of the Order, DETI on behalf of Atlantic hereby provides the following:

NSA Information				
HDD	NSA or Location	Noise Measurement (Obtained at the start of drilling operations)	Noise Mitigation (Implemented at the start of drilling operations)	Any Additional Mitigation *Will be implemented if the initial noise measurements exceed the thresholds in the footnote below
Blue Ridge Parkway/ Appalachian National Scenic Trail	S9	None yet.		
	Gatehouse	None yet.		
	Office Building	None yet.		
Route 17	Entry Site	None yet.		
	Exit Site	None yet.		
Swift Creek	S11 (near Entry Site)	None yet.		
	S13(near Entry Site)	None yet.		
	S14(near Entry Site)	None yet.		
*Additional mitigation will be implemented if the initial noise measurements exceed an Ldn of 55 dBA at the nearest NSA and/or increased noise is greater than 10 dBA over ambient conditions.				

**Appendix A**  
**Federal Authorizations**

Appendix A			
Federal Authorizations for the Atlantic Coast Pipeline Project			
Agency	Permit/Approval/Clearance	Initial Submittal Date "	Receipt Date (Anticipated)
<b>FEDERAL</b>			
FERC	Certificate under Section 7(c) of the NGA and Authorization under Section 7(b) of the NGA	September 2015	October 2017 (Accession No. 20171013-4003)
Federal Aviation Administration	Notice of Proposed Construction or Authorization	November 2016	October 2018
	Supplemental Notice	November 2016	October 2018
Federal Communications Commission	Application for Wireless Telecommunications Bureau Radio Service Authority	November 2016	January 2019
NOAA – NMFS	Consultation under Section 7 of the ESA and Section 305 of the Magnuson-Stevens Act	August 2014	September 2017 (Accession No. 20171013-5176)
	Consultation under the Marine Mammal Protection Act	August 2014	July 2016 (Accession No. 20160718-5164)
NPS – BRP	Right-of-Way Grant and Special Use Permit to cross the BRP	September 2015	December 2017 (Accession No. 20171222-5064)
USACE			
Huntington District	Department of the Army Permits under Section 404 of the CWA and Section 10 of the RHA	September 2015	February 2018 (Accession No. 20180213-5077)
Pittsburgh District	Department of the Army Permits under Section 404 of the CWA and Section 10 of the RHA	September 2015	February 2018 (Accession No. 20180207-5151)
Norfolk District	Department of the Army Permits under Section 404 of the CWA and Section 10 of the RHA	September 2015	February 2018 (Accession No. 20180213-5077)
Wilmington District	Department of the Army Permits under Section 404 of the CWA and Section 10 of the RHA 404	September 2015	February 2018 (Accession No. 20180213-5077)
Norfolk District	Section 107 of the RHA (408 Permission) South Branch Elizabeth River, Nansemond River, and Western Branch of the Nansemond River	August 2016	February 2018 (Accession No. 20180213-5077)



Appendix A			
Federal Authorizations for the Atlantic Coast Pipeline Project			
Agency	Permit/Approval/Clearance	Initial Submittal Date <sup>a</sup>	Receipt Date (Anticipated)
Wilmington District	Section 107 of the RHA (408 Permission) at Cape Fear River Crossing	August 2016	November 2016 (Accession No. 20161117-5168)
FWS			
West Virginia Ecological Field Services Office	Consultation under Section 7 of the ESA	August 2014	October 2017 (Accession No. 20171103-3008)
Virginia Ecological Field Services Office	Consultation under Section 7 of the ESA	August 2014	October 2017 (Accession No. 20171103-3008)
North Carolina Ecological Field Services Office	Consultation under Section 7 of the ESA	August 2014	October 2017 (Accession No. 20171103-3008)
Virginia Ecological Field Services Office	Short-Term Eagle Incidental Take Permit	March 2017	October 2017 (Accession No. 20171117-5137)
FS – GWNF including a crossing of the ANST <sup>b</sup>	ROD to authorize the use of NFS lands on the GWNF and LRMP amendments	November 2015	November 2017 (Accession No. 20171122-5040)
	SUP for construction of ACP on NFS lands in the GWNF	November 2015	January 2018 (Accession No. 20180209-5220)
	Amended Operational SUP of ACP on NFS lands in the GWNF	November 2015	August 2018 (Accession No. 20180907-5077)
	FS-7700-41 Road Permit for Use During Tree Felling	February 2018	March 2018 (Accession No. 20180309-5199)
	Road Design Approval Letter for Construction	February 2018	November 2018
FS – MNF	ROD to authorize the use of NFS lands on the MNF and LRMP amendments	November 2015	November 2017 (Accession No. 20171122-5040)
	SUP for construction of ACP on NFS lands in the MNF	November 2015	January 2018 (Accession No. 20180209-5220)
	Amended Operational SUP of the ACP on NFS lands in the MNF	November 2015	August 2018 (Accession No. 220180907-5077)

Appendix A			
Federal Authorizations for the Atlantic Coast Pipeline Project			
Agency	Permit/Approval/Clearance	Initial Submittal Date "	Receipt Date (Anticipated)
Advisory Council on Historic Preservation	FS-7700-41 Road Permit for Use During Tree Felling	February 2018	March 2018 (Accession No. 20180309-5199)
	Road Design Approval Letter* (*with exception of Forest Road 1026)	February 2018	May 2018 (Accession No. 20180511-5246)
	Road Design Approval Letter for Forest Road 1026	June 2018	July 2018 (Accession No. 20180803-5110)
	Consultation under Section 106 of the NHPA	See below	January 2018 (Accession No. 20180119-3012)
<b>STATE</b>			
<b>West Virginia</b>			
West Virginia Department of Environmental Protection			
Division of Air Quality	Air Permit – New Source Review Permit (or other applicable permit)	September 2015	May 2017 (Accession No. 20171018-5002)
Division of Water and Waste Management	Water Quality Certificate under Section 401 of the Clean Water Act	September 2015	December 2017 (Accession No. 20171206-5117)
West Virginia Division of Culture and History	Consultation under Section 106 of the National Historic Preservation Act	June 2014	January 2018 (Accession No. 20180119-3012)
<b>Virginia</b>			
Virginia Department of Environmental Quality			
Coastal Zone Management Program	Consistency Determination under the Virginia Coastal Zone Management Program	September 2015	June 2017 (Accession No. 20170728-5118)
Air Division	Air Permit – New Source Review Permit (or other applicable permit)	September 2015	November 2018
Water Division	Upland Water Quality Certificate under Section 401 of the Clean Water Act	September 2015	December 2017 (Accession No. 20171229-5105)
Virginia Department of Historical Resources	Consultation under Section 106 of the National Historic Preservation Act	June 2014	January 2018 (Accession No. 20180119-3012)

Appendix A			
Federal Authorizations for the Atlantic Coast Pipeline Project			
Agency	Permit/Approval/Clearance	Initial Submittal Date <sup>a</sup>	Receipt Date (Anticipated)
<b>North Carolina</b>			
North Carolina Department of Environmental Quality			
Division of Air Quality	Air Permit – Stationary Source Construction and Operation Permit	September 2015	February 2018 (Accession No. 20180309-5199)
Division of Water Resources	Water Quality Certificate under Section 401 of the Clean Water Act	May 2017	January 2018 (Accession No. 20180202-5182)
North Carolina State Historic Preservation Office	Consultation under Section 106 of the National Historic Preservation Act	June 2014	January 2018 (Accession No. 20180119-3012)
<sup>a</sup> Date of Atlantic's and DETI's initial application submittals. <sup>b</sup> Note: Since 1995, the GWNF in central western Virginia and the Jefferson National Forest in southwestern Virginia have been administratively combined as the single : George Washington and Jefferson National Forests, managed by a single Forest Supervisor.			



**Appendix B**  
**Agency Permits/Authorizations**

None this reporting period.

## Appendix C

### Representative Photographs during the Reporting Period



Smithfield M&R – Piping inside Regulator building



Spread 1-1 – Seeding and mulching ROW



Spread 8 – Building mat road



Spread 10 – Installing construction entrance to ROW



November 9, 2018

Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**Re: Atlantic Coast Pipeline, LLC & Dominion Energy Transmission, Inc.  
Atlantic Coast Pipeline  
Docket Nos. CP15-554-000 & CP15-554-001  
Supplemental Information – Weekly Status Report: 10/27/2018 – 11/2/2018**

Dear Secretary Bose:

By Order dated October 13, 2017, the Federal Energy Regulatory Commission (Commission or FERC) authorized Atlantic Coast Pipeline, LLC (Atlantic) to construct and operate certain facilities that comprise the Atlantic Coast Pipeline (Project). *Atlantic Coast Pipeline, LLC* 161 FERC ¶ 61,042 and *order on rehearing*, 164 FERC ¶ 61,100 (2018) (collectively, the “Order”).

As required under Environmental Conditions 8, 9b, and 67 of Appendix A to the Order, Dominion Energy Transmission, Inc.<sup>1</sup> (DETI or “Dominion Energy”), on behalf of Atlantic and itself, hereby submits the weekly status report for the Project.

If you have any questions, please contact me at 866-319-3382.

Respectfully submitted,

*Angela M. Woolard*

Angela M. Woolard  
Gas Transmission Certificate Consultant

cc: Mr. Kevin Bowman, FERC

encl(s)/

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<sup>1</sup> On May 12, 2017, Dominion Transmission, Inc. changed its name to Dominion Energy Transmission, Inc.



**Order Condition No. 8 – Weekly Construction Status Report**  
**Reporting Period of October 27, 2018 through November 02, 2018**

**A: Update on Federal Authorizations**

Federal Authorizations required for the project and received to-date are tabulated in Appendix A.  
No new Federal Authorizations were received during the reporting period.

**B: Construction Status**

<b>Table B-1: Pipeline Construction Spreads</b>		
<b>Spread</b>	<b>Construction Status of Each Spread</b>	<b>Work Planned for the Following Reporting Period</b>
<b>Spread 1-1</b> Harrison and Lewis Counties, WV	Continued welding and lowering in pipe, backfill, and restoration. Continued clearing previously felled trees and felling trees, grading and ditching ROW. Stringing pipe on the ROW. Completed wetland wlea005e crossing. Maintaining access roads, maintaining and installing erosion controls.	Continue grading and ditching ROW, stringing, welding and lowering in pipe, backfill, and restoration. Continue clearing previously felled trees and felling trees. Grading and adding gravel to approved access roads. Maintaining and installing erosion controls.
<b>Spread 1-2</b> Lewis and Upshur Counties, WV	None.	Begin felling and clearing trees.
<b>Spread 2-1</b> Upshur and Randolph Counties, WV	Continued welding and lowering in pipe, backfilling, and restoration of ROW. Continued clearing previously felled trees and felling trees, grading and ditching ROW. Stringing pipe on the ROW. Completed SUPB011 waterbody crossing. Maintaining access roads, maintaining and installing erosion controls.	Continue grading and ditching ROW, stringing, welding and lowering in pipe, backfill and restoration. Continue clearing previously felled trees and felling trees. Grading and adding gravel to approved access roads. Complete Supb010 and Supa014 waterbody crossings. Maintaining and installing erosion controls.
<b>Spread 2-2</b> Randolph County, WV	None.	Begin felling and clearing trees.

**Table B-1: Pipeline Construction Spreads**

<b>Spread</b>	<b>Construction Status of Each Spread</b>	<b>Work Planned for the Following Reporting Period</b>
<b>Spread 2A</b> Randolph County, WV	Continued stringing, welding, and lowering in pipe, followed by backfilling and restoration of ROW. Continued clearing of previously felled trees, building access roads, and maintaining and installing erosion controls, as necessary.	Continue stringing, welding and lowering in pipe, followed by backfill and restoration. Preparing for stream bore on Spoe017. Continue clearing of previously felled trees, building access roads, and maintaining and installing erosion controls, as necessary.
<b>Spread 3</b> Randolph and Pocahontas Counties, WV	None.	Begin installation of erosion control devices and fencing on construction entrances.
<b>Spread 3A</b> Pocahontas County, WV and Highland County, VA	Maintaining erosion and sediment controls and stabilization of ROW.	Maintain erosion and sediment controls and stabilization of ROW.
<b>Spread 4</b> Highland and Bath Counties, VA	None.	None.
<b>Spread 4A</b> Bath and Augusta Counties, VA	None.	None.
<b>Spread 5</b> Augusta and Nelson Counties, VA	None.	None.
<b>Spread 5B</b> Nelson Counties, VA	None.	None.
<b>Spread 6</b> Nelson, Buckingham, Cumberland Prince Edward, and Nottoway Counties, VA	Continued tree felling: MP 231.6 to 232.5; MP 232.7; MP 233.2 to 233.3; MP 235.8 and MP 235.9 to 236.2.	Continue tree felling operations in approved areas.
<b>Spread 7</b> Nottoway, Dinwiddie, Brunswick, and Greensville Counties, VA; and Northampton County, NC	None.	None.

**Table B-1: Pipeline Construction Spreads**

<b>Spread</b>	<b>Construction Status of Each Spread</b>	<b>Work Planned for the Following Reporting Period</b>
<b>Spread 8</b> Northampton, Halifax, and Nash Counties, NC	Began ditching and road boring activities. Continued mechanical clearing, grading, and installation of construction entrances, potholing and installation of ECDs in approved areas. Continued construction activities within Contractor Yard 08-A. Continued testing welders and welding pipe for the Tar River HDD section.	Continue mechanical clearing, grading, ditching, stringing, road boring, installations of construction entrances, potholing, and installations of ECDs in approved areas. Continue construction activities within Contractor Yard 08-A. Continue welding testing. Complete welding of Tar River HDD section.
<b>Spread 9</b> Nash, Wilson, Johnston, Sampson, and Cumberland Counties, NC	None.	None.
<b>Spread 10</b> Cumberland and Robeson Counties, NC	Continued mechanical clearing, installation of construction entrances, potholing, and installations of ECDs in approved areas. Continued improvements to Construction Yard 10-A and limited grading operations.	Continue mechanical clearing, installation of construction entrances, potholing, and installations of ECDs in approved areas. Continue improvements to Construction Yard 10-A and limited grading operations.
<b>Spread 11</b> Northampton County, NC; Greenville and Southampton Counties, VA; and the Cities of Suffolk and Chesapeake, VA	Began tree felling operations.	Continue tree felling operations.
<b>Spread 12</b> Brunswick and Greenville Counties, VA	None.	None.



**Table B-2: Above Ground Facilities**

<b>Facility</b>	<b>Current Work Activities</b>	<b>Work Planned for Next Period</b>
<b>Compressor Station 1</b> Lewis County, WV	Continued site E&S installations and maintenance. Continued installation of west side rock fill underdrains. Continued general project civil work cut and fill for west side of project site.	Continue site E&S installations and maintenance. Continue installation of west side rock fill underdrains. Continue general project civil work cut and fill for west side of project site. Begin installation of east side rock fill underdrains.
<b>Compressor Station 2</b> Buckingham County, VA	None.	None.
<b>Compressor Station 3</b> Northampton County, NC	Poured half of the Compressor Building B walls. Continued excavations for Main Gas Headers. Continued welding and installing suction and discharge headers from suction separators. Began installing pipe sleepers and conduit in the Tank Farm area. Began installing utility piping from Separators to tank farm. Completed installation of rough-in plumbing, poured MCC pit floor, and began forming MCC pit walls for the Auxiliary building. Began excavation for Unit 3 Gas Coolers.	Deliver and set the Unit 3 Turbine/Compressor. Pour the remaining Compressor Building B walls. Continue excavations for Main Gas Headers. Continue welding and installing suction and discharge headers from suction separators. Continue installing pipe sleepers and conduit in the Tank Farm area. Continue installing utility piping from Separators to tank farm. Continue forming MCC pit walls and installing conduit and grounding for the Auxiliary building.
<b>Kincheloe M&amp;R Station</b> Lewis County, WV	Continued site E&S installations and maintenance. Continued installation of west side rock fill underdrains. Continued general project civil work cut and fill for west side of project site.	Continue site E&S installations and maintenance. Continue installation of west side rock fill underdrains. Continue general project civil work cut and fill for west side of project site. Begin installation of east side rock fill underdrains.
<b>Long Run M&amp;R Station</b> Randolph County, WV	None.	Begin installation of E&S controls and improvements on the access road.
<b>Woods Corner M&amp;R Station</b> Buckingham County, VA	None.	None.

**Table B-2: Above Ground Facilities**

<b>Facility</b>	<b>Current Work Activities</b>	<b>Work Planned for Next Period</b>
<b>Smithfield M&amp;R Station</b> Johnston County, NC	Continued interior build-out of office building. Connected to utility power. Completed installing tubing. Continued installing instrumentation. Began testing electric motors and switches. Began checking manual valves for positions. Began testing pneumatic valves. Began microwave tower erection.	Continue interior build-out of office building. Continue installing instrumentation. Continue testing electric motors and switches. Continue checking manual valves for positions. Continue testing pneumatic valves. Continue microwave tower erection.
<b>Fayetteville M&amp;R Station</b> Cumberland County, NC	None.	None.
<b>Pembroke M&amp;R Station</b> Robeson County, NC	None.	None.
<b>Elizabeth River M&amp;R Station</b> City of Chesapeake, VA	None.	None.
<b>Brunswick M&amp;R Station</b> Brunswick County, VA	None.	None.
<b>Greensville M&amp;R Station</b> Greensville County, VA	None.	None.

**Table B-3: HDD Construction Summary**

<b>HDD</b>	<b>Current Work Activities</b>	<b>Work Planned for Next Period</b>
<b>Construction Spread 1-1</b>		
<b>Interstate 79</b> Lewis County, WV	None.	None.

Table B-3: HDD Construction Summary		
HDD	Current Work Activities	Work Planned for Next Period
<b>Construction Spread 5</b>		
<b>Blue Ridge Parkway/ Appalachian National Scenic Trail</b>  Augusta and Nelson Counties, VA	None.	None.
<b>Construction Spread 6</b>		
<b>James River</b> (Including Mayo Creek) Nelson and Buckingham Counties, VA	None.	None.
<b>Construction Spread 8</b>		
<b>Roanoke River</b> Northampton and Halifax Counties, NC	None.	None.
<b>Fishing Creek</b> Halifax and Nash Counties, NC	None.	None.
<b>Swift Creek</b> Nash County, NC	None.	None.
<b>Tar River</b> Nash County, NC	Continued mobilization and rig-up of HDD equipment.	Continue mobilization and rig-up of HDD equipment. Complete welding of Tar River HDD section. Begin HDD drilling.
<b>Construction Spread 9</b>		
<b>Contentnea River</b> Wilson County, NC	None.	None.
<b>Little River</b> Johnston County, NC	None.	None.
<b>Construction Spread 10</b>		
<b>Cape Fear River</b> Cumberland County, NC	None.	None.
<b>Construction Spread 11</b>		



**Table B-3: HDD Construction Summary**

<b>HDD</b>	<b>Current Work Activities</b>	<b>Work Planned for Next Period</b>
<b>Nottoway River</b> Southampton County, VA	None.	None.
<b>Blackwater River</b> Southampton County and City of Suffolk, VA	None.	None.
<b>Lake Prince</b> City of Suffolk, VA	None.	None.
<b>Western Branch Reservoir</b> City of Suffolk, VA	None.	None.
<b>Western Tributary to Nansemond River</b> City of Suffolk, VA	None.	None.
<b>Nansemond River</b> City of Suffolk, VA	None.	None.
<b>Route 58</b> City of Suffolk, VA	None.	None.
<b>Interstate 64</b> City of Chesapeake, VA	None.	None.
<b>Route 17</b> City of Chesapeake, VA	None.	None.
<b>Southern Branch Elizabeth River</b> City of Chesapeake, VA	None.	None.

**Schedule Changes for Stream Crossings/Other Environmentally Sensitive Areas:**

None at this time.

**C/D/E: Listing of Problem Areas Encountered and/or Instances of Noncompliance Observed by the Environmental Inspector (EI)**

Environmental Problem Areas or Noncompliances			
Problem or Noncompliance		Description of Corrective Action(s) Implemented, and Cost	Effectiveness of Corrective Action(s) Implemented
1.	<u>Problem Area</u> : Compressor Station 1 (Marts), 11/01/2018. Sediment and sediment-laden water were observed in intermittent stream sleb104i. Sediment overtopped the compost filter sock and entered the waterbody. There was no visible flow of water in this part of the waterbody at the time of the sediment release.	Sediment was collected and returned to an upland area to the maximum extent practicable. The compost filter sock has been upgraded to a triple stack.	No further incidents.

**F: Landowner/Resident Complaints (Order Condition No. 9b)**

Date	Tract No.	Pipeline Spread or Facility	Pipeline Milepost or Facility Location	Description of Complaint	Description of Measures Taken	Resolution Status
10/17/2018	03-119.1.WT	2-1	35.0	Landowner called ACP hotline and stated that his well water levels are low, which he believes may be due to ACP Construction in the area.	11/01/2018 – Well samples have been returned. A meeting is being scheduled.	Pending
10/26/2018	SAMSUNLIMITED.SY	10	145.0	Landowner called Land Agent and said there were drums on his property labeled “hazardous waste” and his agreement states no waste to be stored on property.	Land Agent has confirmed all drums have been removed from property.	Resolved on 11/08/2018
10/31/2018	02-036	1-1	7.8	Landowner called Land Agent to report that construction on ACP has caused her driveway to develop ruts.	Land Agent met with Landowner to assess damage. Construction has repaired the ruts.	Resolved on 11/06/2018
11/01/2018	02-071	1-1	11.8	Landowner called Land Agent and said ACP silt fence is blocking the only entrance to feed his cattle.	ACP Construction went to Landowner’s house to inspect the silt fence. The silt fence was adjusted to allow access to the cattle.	Resolved on 11/02/2018



**G: Copies of Any Correspondence Received Concerning Instances of Noncompliance from Other Federal, State, or Local Permitting Agencies, and Atlantic's Response**

No correspondence was received concerning instances of noncompliance from other federal, state, or local permitting agencies.

**Order Condition No. 67: Information on Noise Sensitive Areas (NSAs)**

Pursuant to Condition 67 of the Order, DETI on behalf of Atlantic hereby provides the following:

NSA Information				
HDD	NSA or Location	Noise Measurement (Obtained at the start of drilling operations)	Noise Mitigation (Implemented at the start of drilling operations)	Any Additional Mitigation *Will be implemented if the initial noise measurements exceed the thresholds in the footnote below
Blue Ridge Parkway/ Appalachian National Scenic Trail	S9	None yet.		
	Gatehouse	None yet.		
	Office Building	None yet.		
Route 17	Entry Site	None yet.		
	Exit Site	None yet.		
Swift Creek	S11 (near Entry Site)	None yet.		
	S13(near Entry Site)	None yet.		
	S14(near Entry Site)	None yet.		
*Additional mitigation will be implemented if the initial noise measurements exceed an Ldn of 55 dBA at the nearest NSA and/or increased noise is greater than 10 dBA over ambient conditions.				

**Appendix A**  
**Federal Authorizations**

Appendix A			
Federal Authorizations for the Atlantic Coast Pipeline Project			
Agency	Permit/Approval/Clearance	Initial Submittal Date "	Receipt Date (Anticipated)
<b>FEDERAL</b>			
FERC	Certificate under Section 7(c) of the NGA and Authorization under Section 7(b) of the NGA	September 2015	October 2017 (Accession No. 20171013-4003)
Federal Aviation Administration	Notice of Proposed Construction or Authorization	November 2016	November 2018
	Supplemental Notice	November 2016	November 2018
Federal Communications Commission	Application for Wireless Telecommunications Bureau Radio Service Authority	November 2016	January 2019
NOAA – NMFS	Consultation under Section 7 of the ESA and Section 305 of the Magnuson-Stevens Act	August 2014	September 2017 (Accession No. 20171013-5176)
	Consultation under the Marine Mammal Protection Act	August 2014	July 2016 (Accession No. 20160718-5164)
NPS – BRP	Right-of-Way Grant and Special Use Permit to cross the BRP	September 2015	December 2017 (Accession No. 20171222-5064)
USACE			
Huntington District	Department of the Army Permits under Section 404 of the CWA and Section 10 of the RHA	September 2015	February 2018 (Accession No. 20180213-5077)
Pittsburgh District	Department of the Army Permits under Section 404 of the CWA and Section 10 of the RHA	September 2015	February 2018 (Accession No. 20180207-5151)
Norfolk District	Department of the Army Permits under Section 404 of the CWA and Section 10 of the RHA	September 2015	February 2018 (Accession No. 20180213-5077)
Wilmington District	Department of the Army Permits under Section 404 of the CWA and Section 10 of the RHA 404	September 2015	February 2018 (Accession No. 20180213-5077)
Norfolk District	Section 107 of the RHA (408 Permission) South Branch Elizabeth River, Nansemond River, and Western Branch of the Nansemond River	August 2016	February 2018 (Accession No. 20180213-5077)



Appendix A			
Federal Authorizations for the Atlantic Coast Pipeline Project			
Agency	Permit/Approval/Clearance	Initial Submittal Date <sup>a</sup>	Receipt Date (Anticipated)
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FWS			
West Virginia Ecological Field Services Office	Consultation under Section 7 of the ESA	August 2014	October 2017 (Accession No. 20171103-3008)
Virginia Ecological Field Services Office	Consultation under Section 7 of the ESA	August 2014	October 2017 (Accession No. 20171103-3008)
North Carolina Ecological Field Services Office	Consultation under Section 7 of the ESA	August 2014	October 2017 (Accession No. 20171103-3008)
Virginia Ecological Field Services Office	Short-Term Eagle Incidental Take Permit	March 2017	October 2017 (Accession No. 20171117-5137)
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	Road Design Approval Letter for Construction	February 2018	November 2018
FS – MNF	ROD to authorize the use of NFS lands on the MNF and LRMP amendments	November 2015	November 2017 (Accession No. 20171122-5040)
	SUP for construction of ACP on NFS lands in the MNF	November 2015	January 2018 (Accession No. 20180209-5220)
	Amended Operational SUP of the ACP on NFS lands in the MNF	November 2015	August 2018 (Accession No. 220180907-5077)

Appendix A			
Federal Authorizations for the Atlantic Coast Pipeline Project			
Agency	Permit/Approval/Clearance	Initial Submittal Date "	Receipt Date (Anticipated)
Advisory Council on Historic Preservation	FS-7700-41 Road Permit for Use During Tree Felling	February 2018	March 2018 (Accession No. 20180309-5199)
	Road Design Approval Letter* (*with exception of Forest Road 1026)	February 2018	May 2018 (Accession No. 20180511-5246)
	Road Design Approval Letter for Forest Road 1026	June 2018	July 2018 (Accession No. 20180803-5110)
	Consultation under Section 106 of the NHPA	See below	January 2018 (Accession No. 20180119-3012)
<b>STATE</b>			
<b>West Virginia</b>			
West Virginia Department of Environmental Protection			
Division of Air Quality	Air Permit – New Source Review Permit (or other applicable permit)	September 2015	May 2017 (Accession No. 20171018-5002)
Division of Water and Waste Management	Water Quality Certificate under Section 401 of the Clean Water Act	September 2015	December 2017 (Accession No. 20171206-5117)
West Virginia Division of Culture and History	Consultation under Section 106 of the National Historic Preservation Act	June 2014	January 2018 (Accession No. 20180119-3012)
<b>Virginia</b>			
Virginia Department of Environmental Quality			
Coastal Zone Management Program	Consistency Determination under the Virginia Coastal Zone Management Program	September 2015	June 2017 (Accession No. 20170728-5118)
Air Division	Air Permit – New Source Review Permit (or other applicable permit)	September 2015	November 2018
Water Division	Upland Water Quality Certificate under Section 401 of the Clean Water Act	September 2015	December 2017 (Accession No. 20171229-5105)
Virginia Department of Historical Resources	Consultation under Section 106 of the National Historic Preservation Act	June 2014	January 2018 (Accession No. 20180119-3012)

Appendix A			
Federal Authorizations for the Atlantic Coast Pipeline Project			
Agency	Permit/Approval/Clearance	Initial Submittal Date <sup>a</sup>	Receipt Date (Anticipated)
<b>North Carolina</b>			
North Carolina Department of Environmental Quality			
Division of Air Quality	Air Permit – Stationary Source Construction and Operation Permit	September 2015	February 2018 (Accession No. 20180309-5199)
Division of Water Resources	Water Quality Certificate under Section 401 of the Clean Water Act	May 2017	January 2018 (Accession No. 20180202-5182)
North Carolina State Historic Preservation Office	Consultation under Section 106 of the National Historic Preservation Act	June 2014	January 2018 (Accession No. 20180119-3012)
<sup>a</sup> Date of Atlantic's and DETI's initial application submittals. <sup>b</sup> Note: Since 1995, the GWNF in central western Virginia and the Jefferson National Forest in southwestern Virginia have been administratively combined as the single : George Washington and Jefferson National Forests, managed by a single Forest Supervisor.			



**Appendix B**  
**Agency Permits/Authorizations**

None this reporting period.

## Appendix C

### Representative Photographs during the Reporting Period



Compressor Station 3 (Northampton) – Aerial view



Smithfield M&R – Erecting microwave tower



Spread 1-1 – Safety fence around ditch at road



Spread 2-1 – Lowering in section of pipe

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, November 01, 2018 (period of review October 24—October 30)

**Compliance Inspectors Present During this Period:** Nathan Amick, Terry Slater

#### Preconstruction Activities:

Activity	Location
Tree Felling	None
Road Maintenance	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - No new instances of signage/staking issues were observed along the pipeline right of way or access roads.
        - All other instances of signage/staking issues have been noted in previous reports.
    - Rutting/Erosion
      - No new instances of rutting or erosion along the pipeline right of way were observed.
        - All other instances of rutting/erosion have been noted in previous reports.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
  - Road Conditions
    - Inspector observed rutting measuring 50' in length and 3" in dept along FS 466A.
      - No ACP traffic was observed on NFS lands during this inspection period.
    - All other instances of road damage have been noted in previous reports.
    - No road maintenance conducted by ACP has taken place
- Biological Resources
  - Inspector observed maintenance of the Starr Chapel cave acoustic monitors.
    - Monitors were in place and functioning properly.
    - No non-compliance issues were observed.
  - No other biological surveys were completed during this inspection period.
  - No biological concerns were noted.



- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.
- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - No new variances were received by ACP during this inspection period.
- Miscellaneous
  - N/A

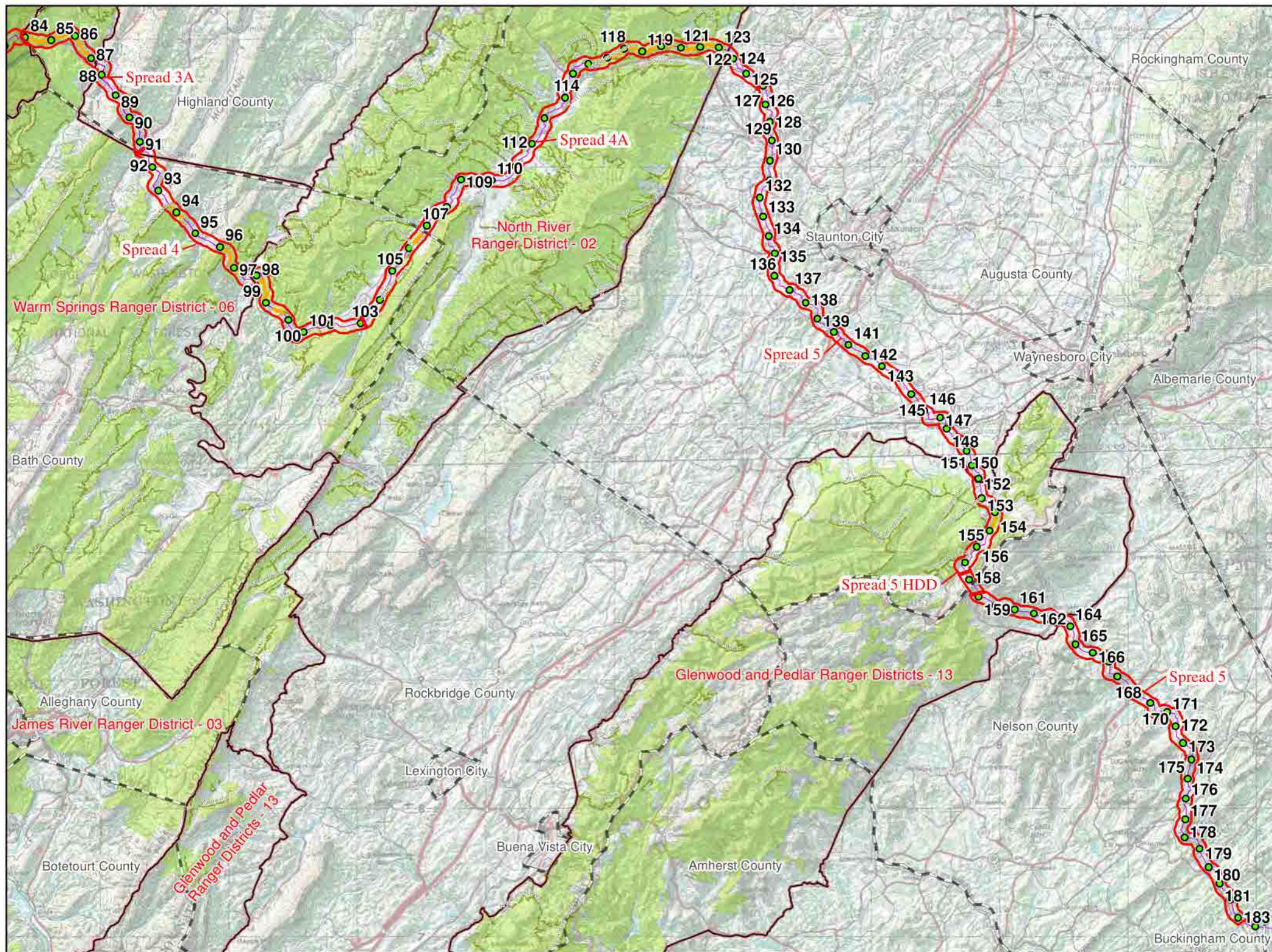
**Meetings Held**

- ACP Weekly External Meeting (November 1, 2018)

**Upcoming Meetings**

- November 8, Internal/External FS-ACP Weekly Check-in, 1-3pm





### Legend

- Mileposts
- Limit of Disturbance
- Project Alignment
- Forest Service Roads
- Spread
- Ranger District Boundary
- County Boundary
- Monongahela National Forest
- George Washington National Forest

## 2018 Project Work Area Overview

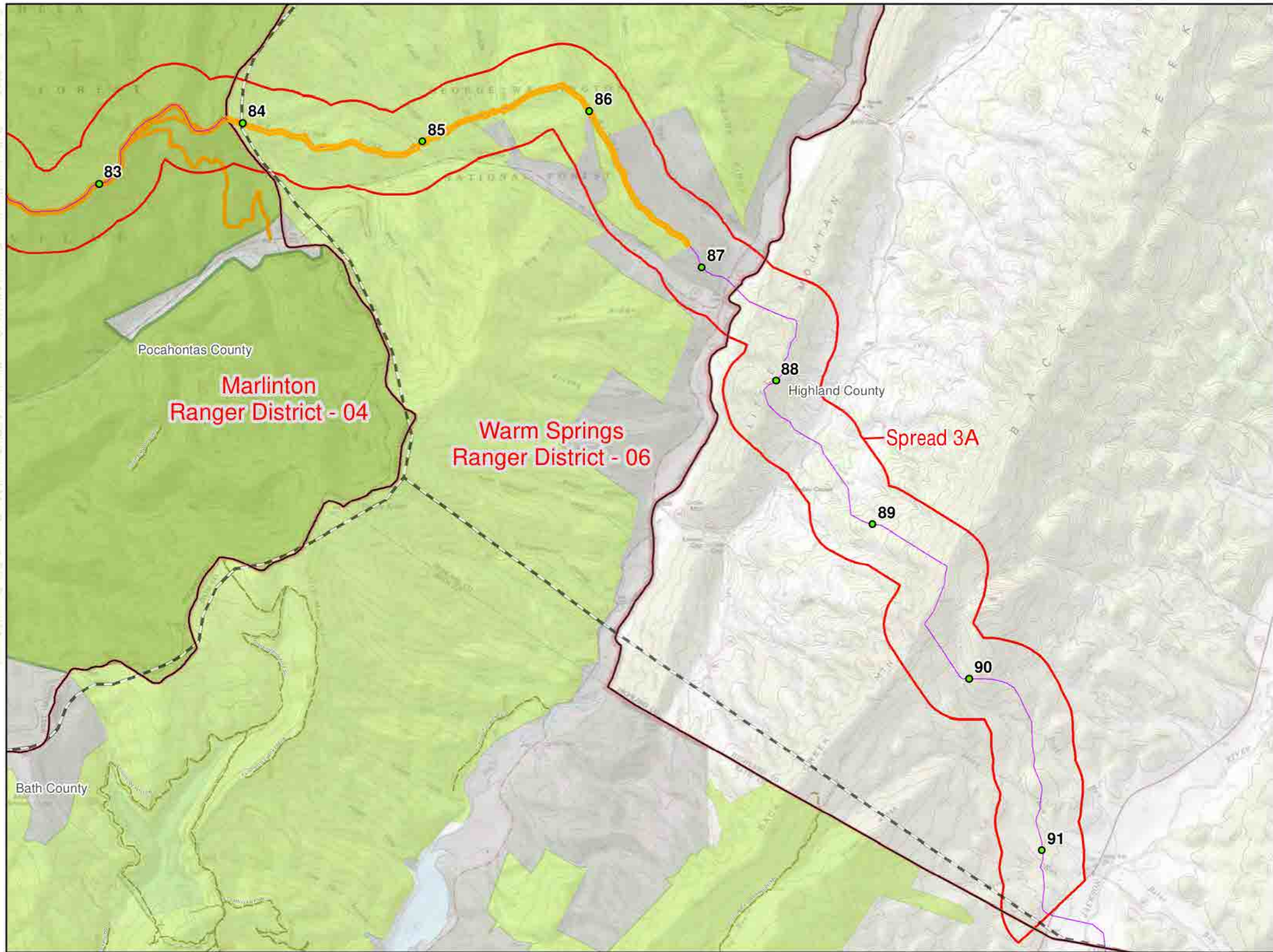
Atlantic Coast Pipeline Project



0 28,000 Feet



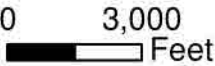




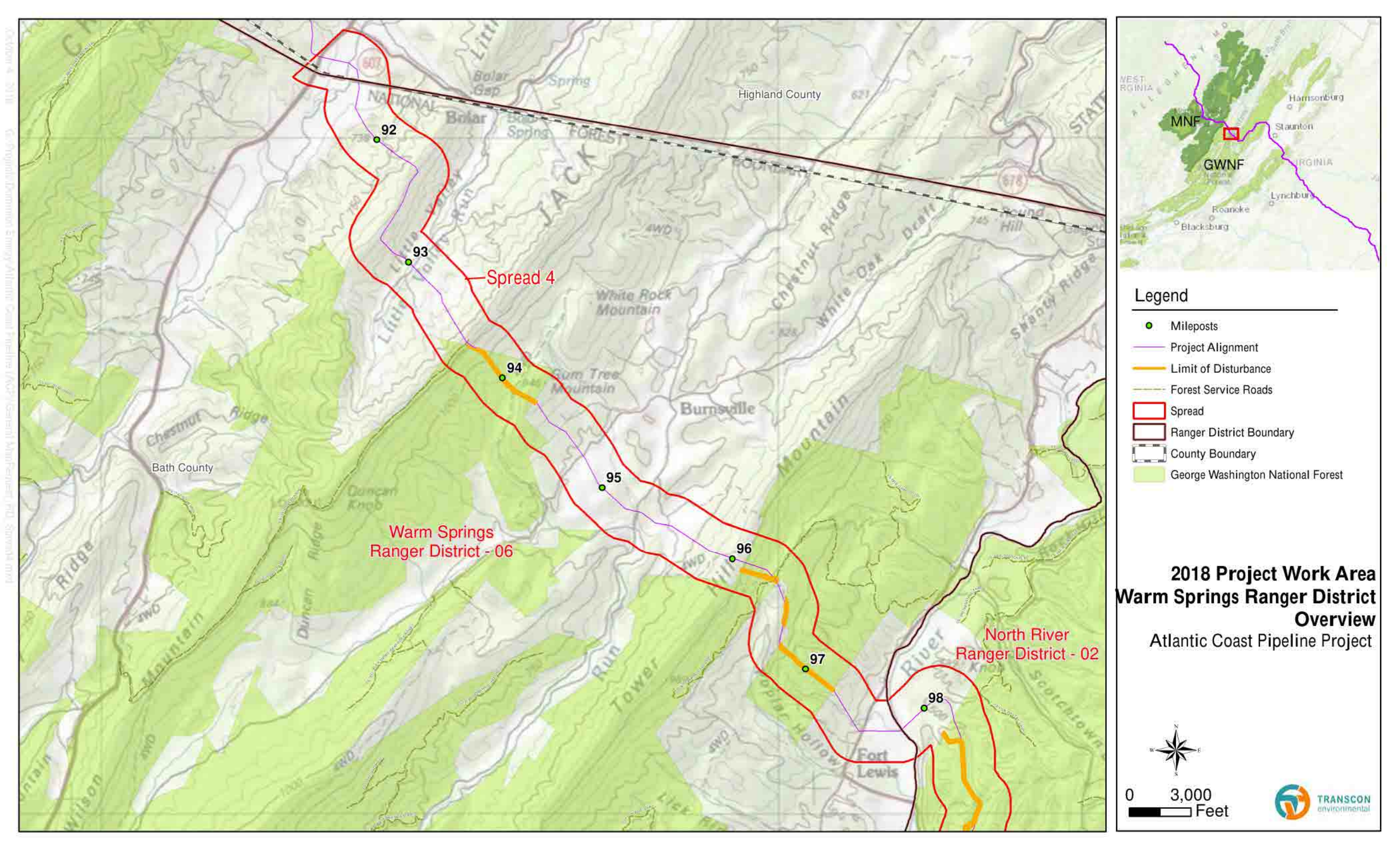
Legend

- Mileposts
- Project Alignment
- Limit of Disturbance
- Forest Service Roads
- Spread
- Ranger District Boundary
- County Boundary
- Monongahela National Forest
- George Washington National Forest

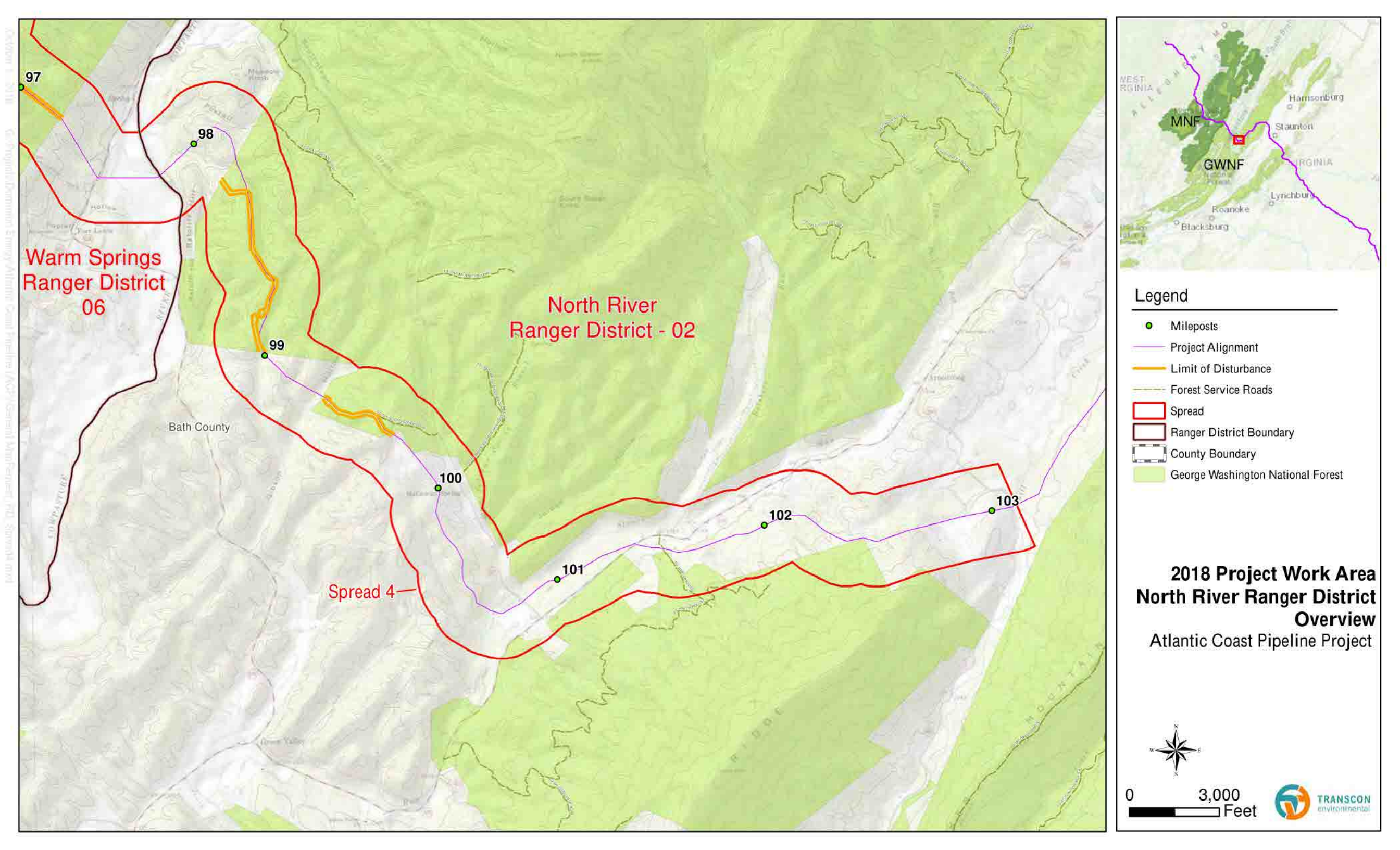
2018 Project Work Area  
Warm Springs Ranger District  
Overview  
Atlantic Coast Pipeline Project



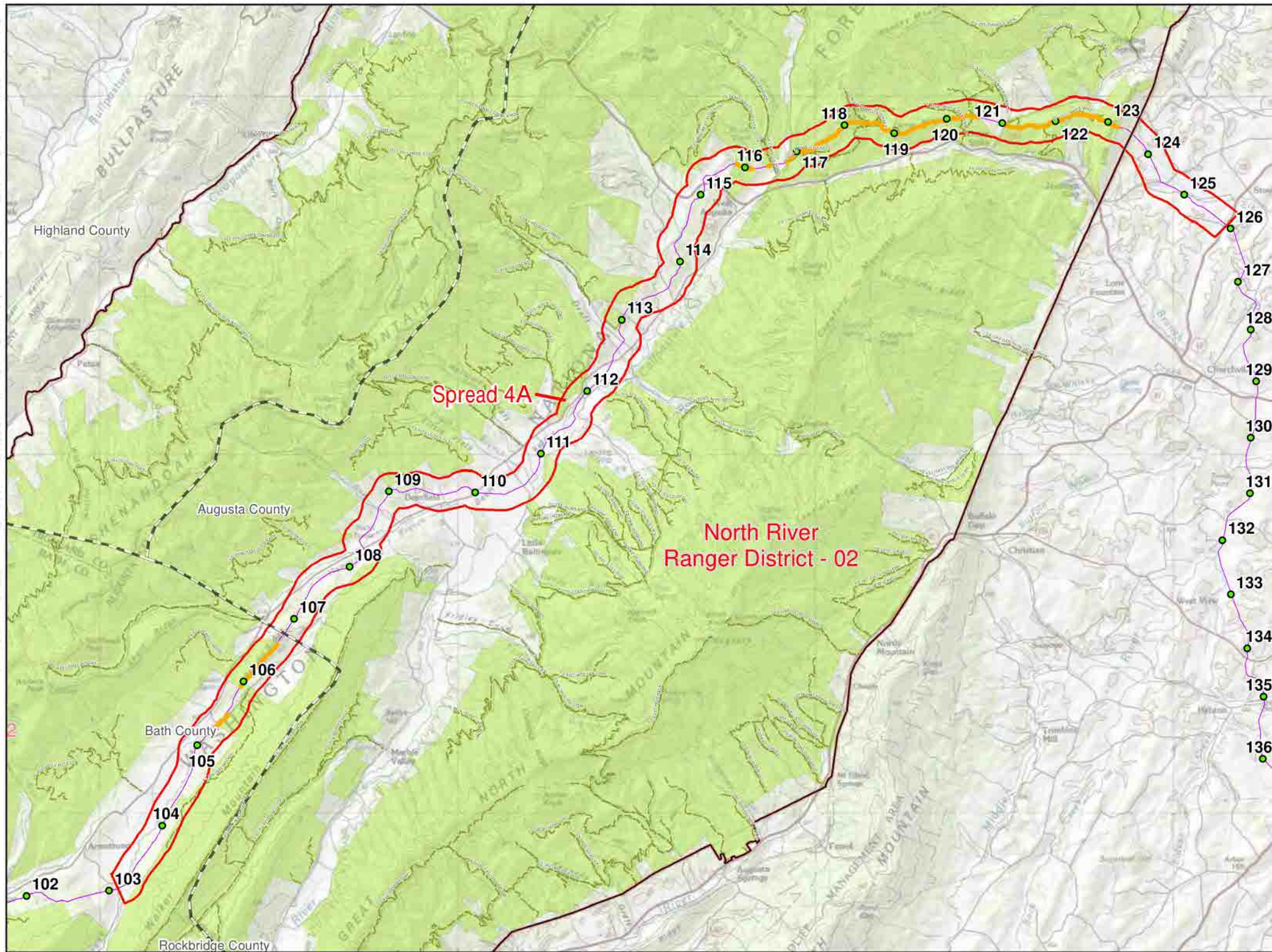












- Legend**
- Mileposts
  - Project Alignment
  - Limit of Disturbance
  - Forest Service Roads
  - Spread
  - Ranger District Boundary
  - County Boundary
  - George Washington National Forest

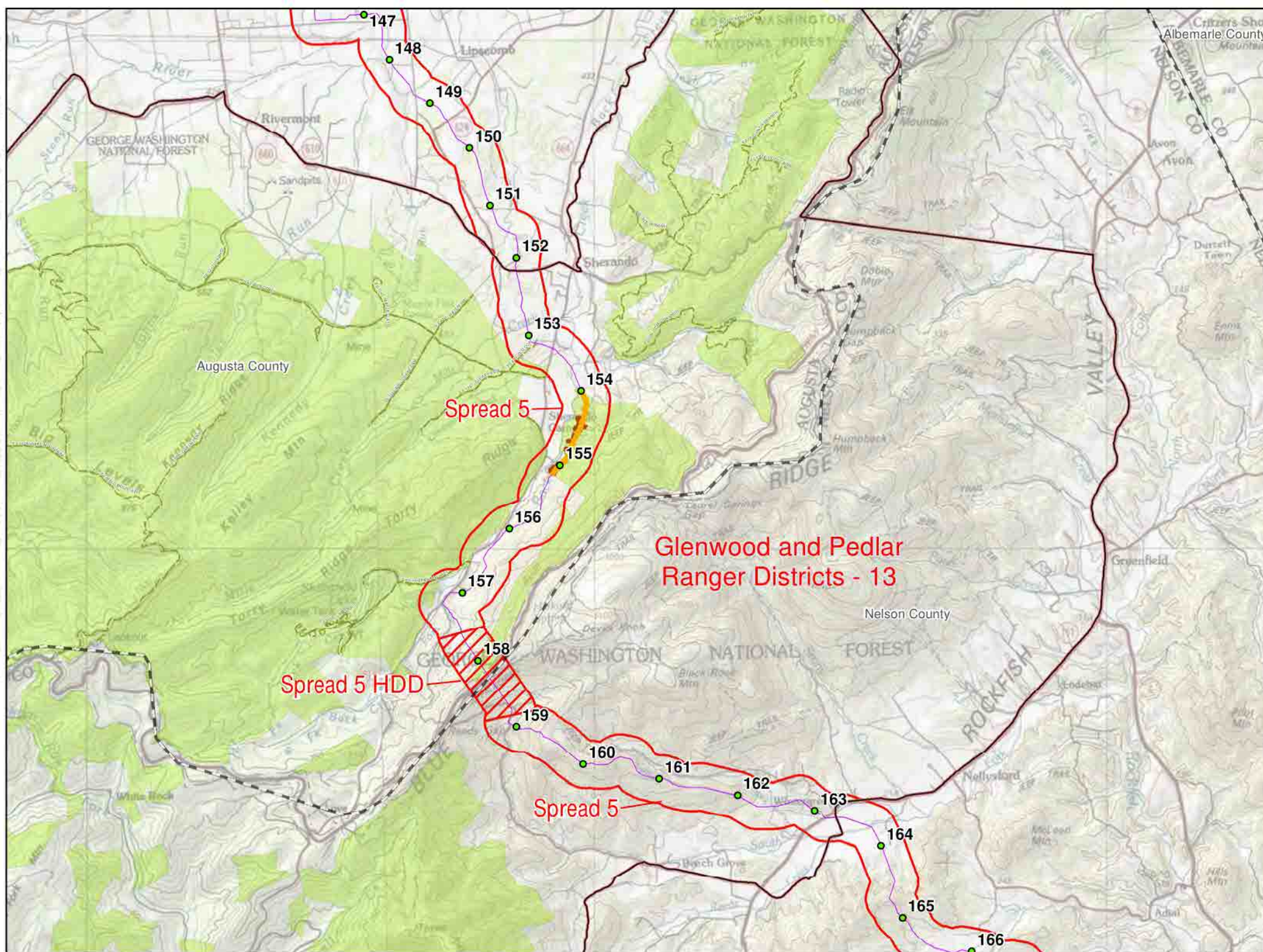
**2018 Project Work Area**  
**North River Ranger District**  
**Overview**  
Atlantic Coast Pipeline Project



03,000  
Feet







- Legend**
- Mileposts
  - Limit of Disturbance
  - Project Alignment
  - Forest Service Roads
  - Cultural Site
  - Spread**
    - 5
    - 5 HDD
  - Ranger District Boundary
  - County Boundary
  - George Washington National Forest

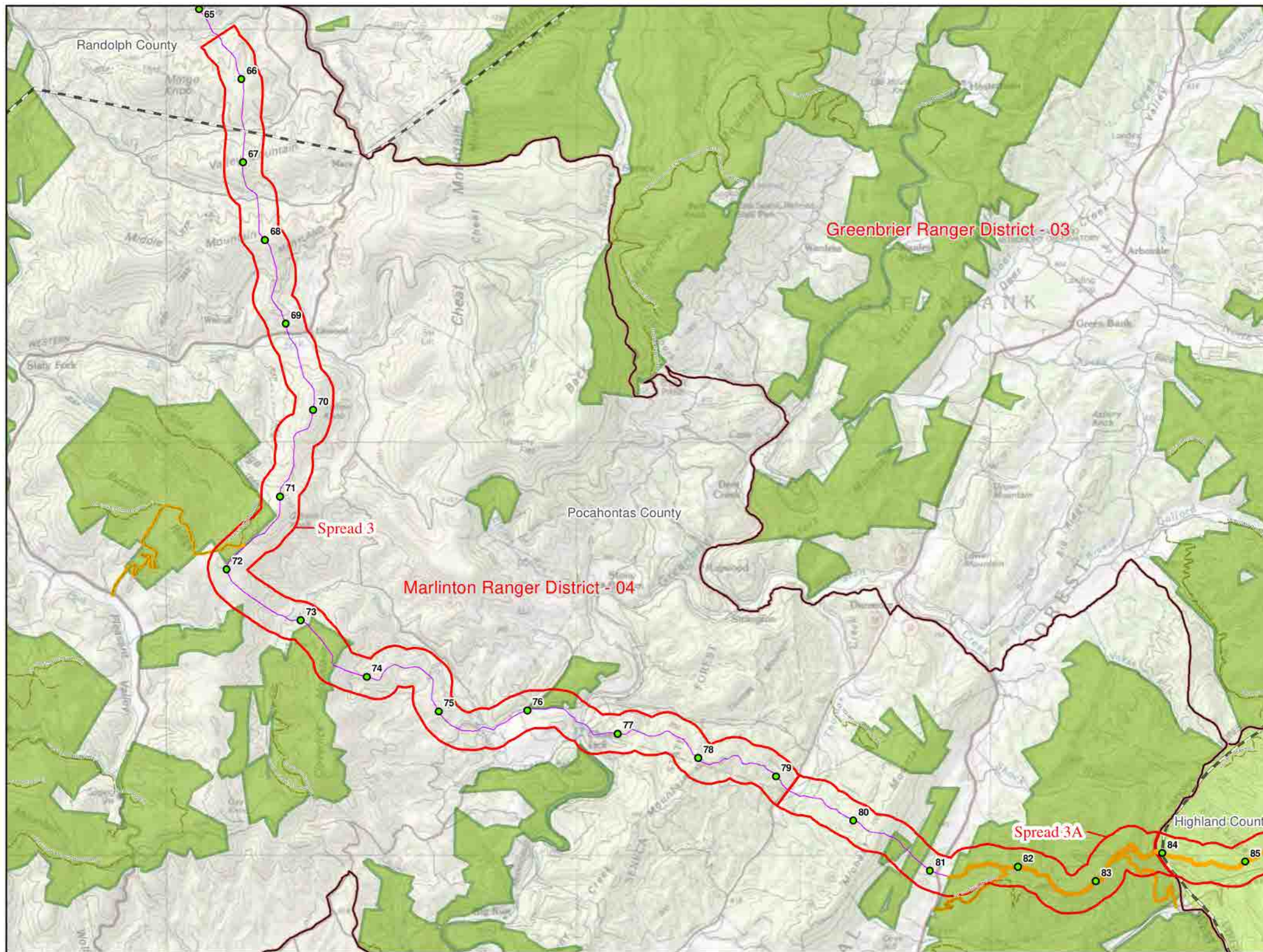
**2018 Project Work Area  
Glenwood and Pedlar  
Ranger District Overview  
Atlantic Coast Pipeline Project**



0 3,000  
Feet







### Legend

- Mileposts
- Project Alignment
- Limit of Disturbance
- Forest Service Roads
- Spread
- Ranger District Boundary
- County Boundary
- Monongahela National Forest
- George Washington National Forest

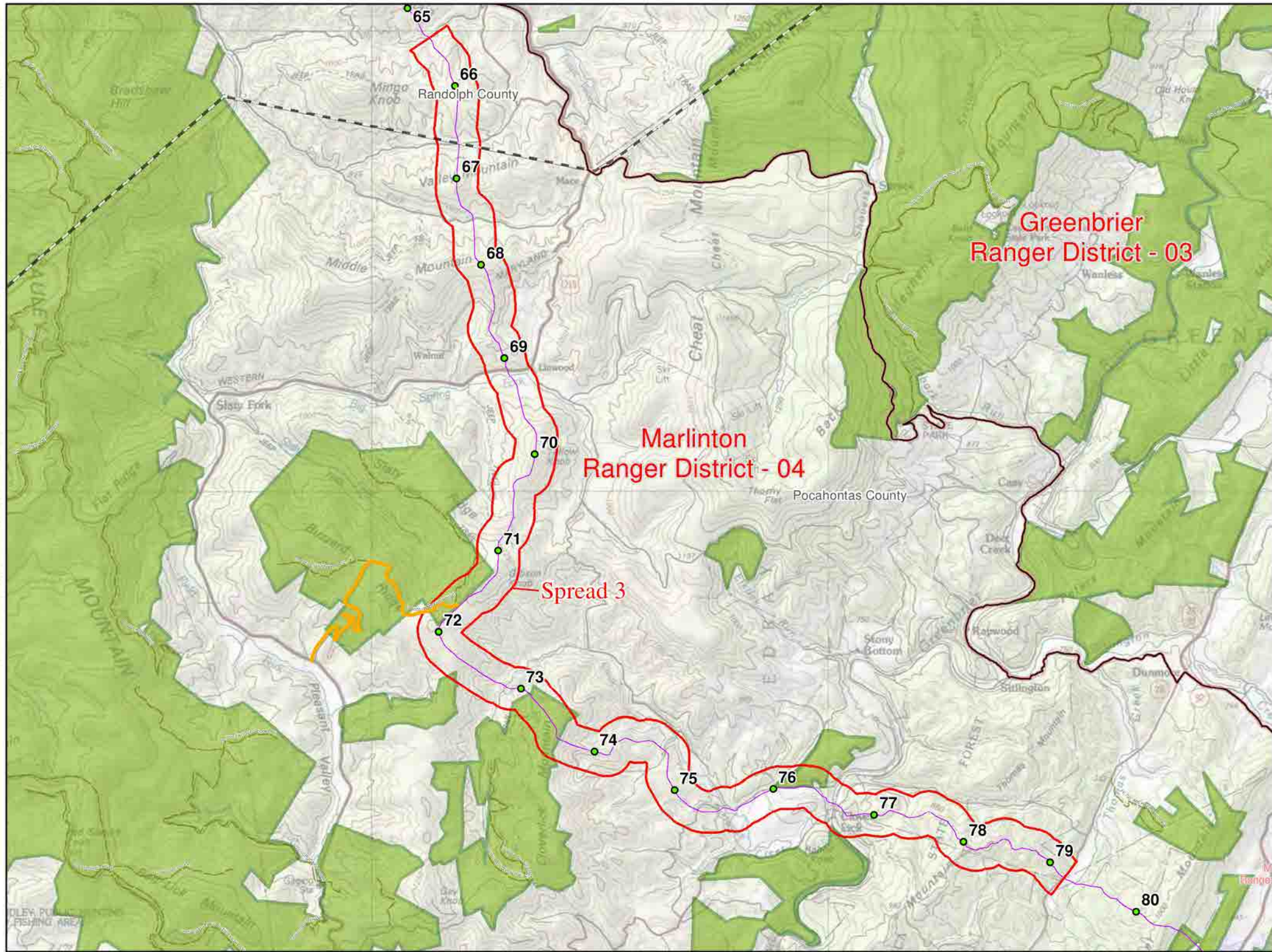
### 2018 Project Work Area Monongahela National Forest Overview Atlantic Coast Pipeline Project



0 9,000 Feet







Legend

- Mileposts
- Limit of Disturbance
- Project Alignment
- Forest Service Roads
- Spread
- Ranger District Boundary
- County Boundary
- Monongahela National Forest

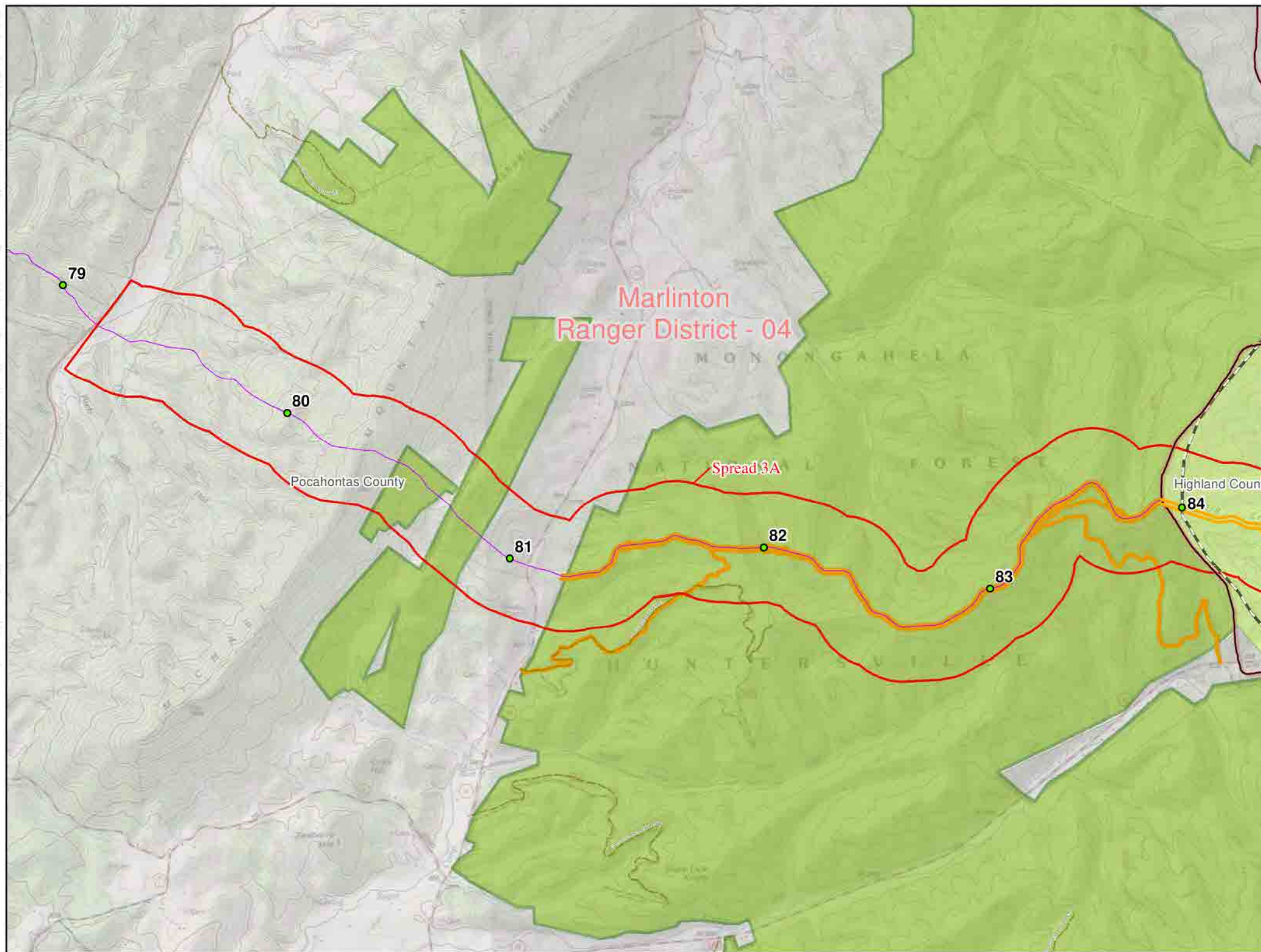
2018 Project Work Area  
Marlinton Ranger District  
Overview  
Atlantic Coast Pipeline Project












0 3,000  
Feet







### Legend

-  Mileposts
-  Project Alignment
-  Limit of Disturbance
-  Forest Service Roads
-  Spread
-  Ranger District Boundary
-  County Boundary
-  Monongahela National Forest
-  George Washington National Forest

## 2018 Project Work Area Marlinton Ranger District Overview Atlantic Coast Pipeline Project



0 3,000 Feet



# Atlantic Coast Pipeline: Road Status Table

November 2018

For internal use only

## ROAD TABLE 11/01/18

Spread	Forest/Ranger District	Forest Road (FR) Name+	ACP Road Name	Common Name	Length	Acres	Status	Anticipated Tree Felling	Anticipated Tree Removal/ Construction
3	MNF/Marlinton - White Sulphur	FR 1026/N	05-001-C009.AR2	New spur off FR1026	0.1	0.3	Design resubmitted	November 2018	Late 2018
		FR 1026	05-001-C009.AR1	Buzzard Ridge Road	4.2	15.2	Design resubmitted	November 2018	Late 2018
3A	MNF/Marlinton - White Sulphur	FR 1012	05-001-E64.AR1	Sugar Camp Road	1.4	5.0	Design/variance approved	November 2018	November 2018
		FR 1012/N	05-001-E64.AR1	New spur off FR1012	0.4	1.5	Design/variance approved	November 2018	November 2018
		FR 1017	05-001-E064.AR3	Upper Shock Road	<0.1	0.1	Design/variance approved	November 2018	November 2018
		FR 55	05-001-E64.AR2	Allegheny Road	2.7	10.0	Design/variance approved	November 2018	November 2018
	GWNF/Warm Springs	FR 84.1N	06-001-B001.AR3	New spur off FR84	0.2	0.5	Design resubmitted	Late 2018	Late 2018
		FR 84.2N	06-001-B001.AR7	New spur off FR84	0.5	1.4	Design under review	Late 2018	Late 2018
		FR 84.3N	06-001-B001.AR4	New spur off FR84	0.1	0.2	Design under review	Late 2018	Late 2018
		FR 84	06-001-B001-AR5	New Road	<0.1	0.1	Design in progress	2019	2019
4	GWNF/ North River (east of Cowpasture River) & Warm Springs	FR 124	36-014.AR2	Duncan Knob	1.9	6.9	Design in progress	2019	2019
		FR 281	36-016.AR1	Campbell Hallow	2.8	10.1	Design in progress	2019	2019
		FR 309	36-016.AR2	Scotchtown Draft	0.6	1.7	Design in progress	2019	2019
4A	GWNF/North River	FR 348.1	07-001.A009-AR1	Braley Pond Road	<0.1	<0.1	Design under review	Late 2018	Late 2018
		FR 449/449A	07-001.AR1-AR3	FR 449/449A	2.6	9.4	Design under review	Late 2018	Late 2018
		FR 449.1N	07-001.AR1-AR4	New spur off FR449	<0.1	0.2	Design resubmitted	Late 2018	Late 2018
		FR 449.2N	07-001.AR1-AR6	New spur off FR449	0.3	0.9	Design under review	Late 2018	Late 2018
		FR 466A	07-001.AR1-AR8	FR 466A	0.3	1.0	Design under review	Late 2018	Late 2018
		FR 466	07.001.AR1-AR9	FR 466	0.6	2.1	Design under review	Late 2018	Late 2018
		FR 1755	07-001.AR1-AR7	?	0.4	1.4	Design resubmitted	Late 2018	Late 2018
		FR 1757	07-001.AR1-AR1	?	0.6	2.1	Design under review	Late 2018	Late 2018
		FR 1757.1N	07-001.AR1-AR2	New spur off FR 1757	1.5	5.6	Design under review	Late 2018	Late 2018
5 HDD	GWNF/Glenwood-Pedlar	---	---	---	---	---	---	---	---
5		---	---	---	---	---	---	---	---

+ Road with a N suffix are proposed new roads, generally using templates of old trails or logging roads

Lengths and acreage are approximate and subject to change.

Timeline assumes the 4<sup>th</sup> Circuit decision is published in November and is in favor of the Forest Service.

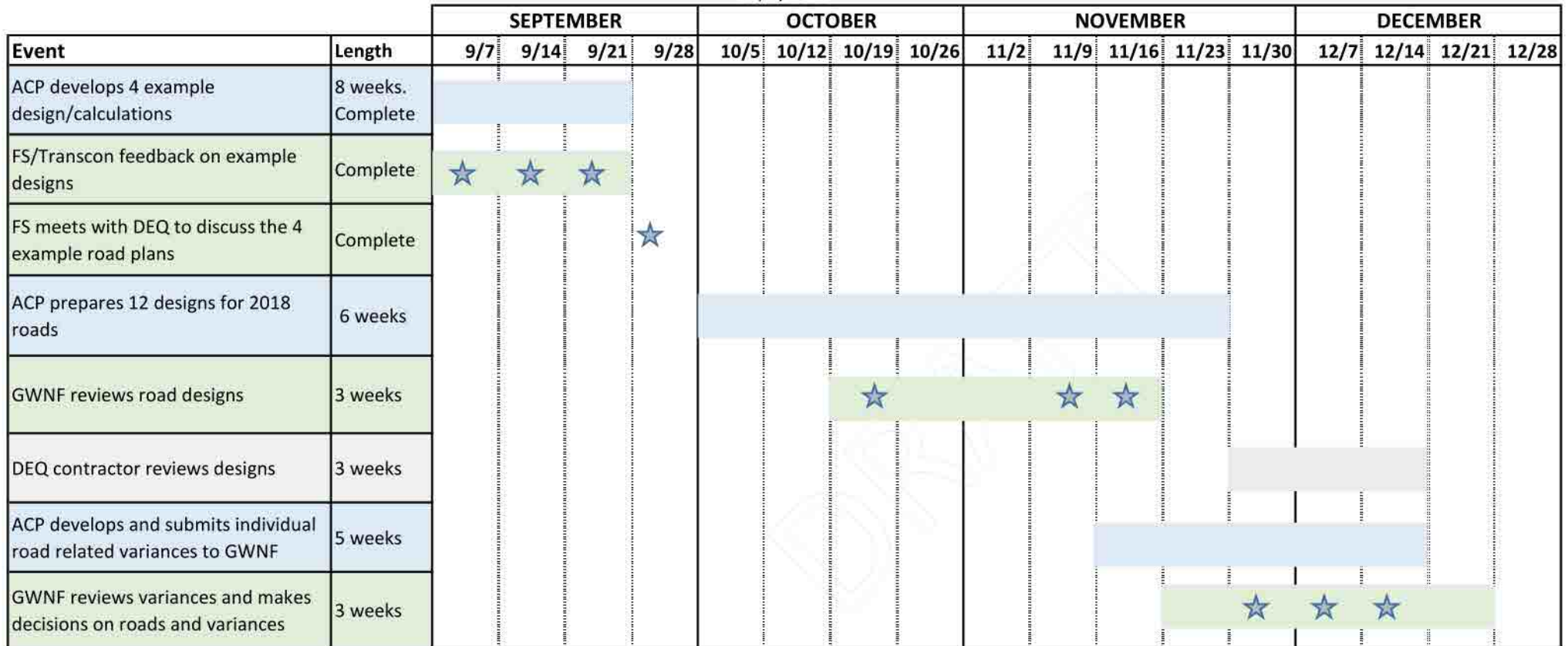
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Prepared by Galileo Project, LLC



**CONCEPTUAL PATHWAY TO DECISION ON GWNF ROADS**  
**(All 2018 Roads Presented at Once Approach)**

11/1/2018



**NOTES**

For discussion purposes only.

Assumes no significant revisions to plans after DEQ's review.

Decisions may be conditioned or to not approve.

DEQ and ACP have not reviewed this chart.

The GWNF met with DEQ on September 24 to confirm that the designs for 4 example roads met FS needs.

Feedback = ★

-- Prepared by--

Galileo Project, LLC



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## RIGHT OF WAY TABLE

11/01/18

Spread	Forest/Ranger District	Milepost (approx.)	Miles (approx.)	Construction Acres	Permanent Acres	Tree Felling Status and Anticipated Next Steps on NFS ROW Lands	Anticipated Tree Removal/ Construction Start
3	MNF/ Marlinton-White Sulphur	65.4 to 79.2	0.8	8.2	4.9	0% complete. Felling starting in late November 2018	December 2018
3A	MNF/ Marlinton-White Sulphur	79.2 to 83.3	4.3	38.8	28.2	100% complete as of March 2018*	November 2018
	GWNF/ Warm Springs	83.3-91.3	4	37.1	26.0	46% complete. Felling restarting in November 2018	December 2018
4	GWNF/ Warm Springs (west of Cowpasture River) & North River	91.3 to 103.1	3.8	32.8	25.2	0% complete. Felling starting in November 2018	December 2018
4A	GWNF/North River	103.1 to 125.9	6.6	61.6	44.0	34% complete. Felling restarting in November 2018.	December 2018
5	GWNF/ Glenwood-Pedlar	154.9 to 158.8	1.1	12.9	8.4	0% complete. Felling starting in November 2018.	December 2018
5 HDD		157.6 to 158.8	0.1	0	0	Horizontal directional drilling under the ANST on NFS lands.	December 2018

Notes

values are approximate and subject to change.

Timeline assumes the 4<sup>th</sup> Circuit decision is published in early November and is in favor of the Forest Service.

\* some areas related to variances issued since March will need to be felled, likely in November, 2018

**ACP-Forest Service Weekly Check-in****Date** November 15, 2018**Time:** 1-3pm (Eastern)/11am-1pm (Mountain)/10am-12pm (Pacific)**Conference Call**

Attendees	Forest Service	Jennifer Adams, Jessica Rubado, Lisa Miller-Allard, Mike Madden,
	Atlantic Coast Pipeline	Robert Hare, Jason Barnette, Ellery Baker
	ERM	James Hemme, Matt Hurst
	Transcon	Alli Rhodehamel-Leung, Jayanna Miller, Mike Warner, Mike Tripp
	Galileo Project	Maria Martin, Peter Rocco, Rosana Nesheim

**Meeting attachment:** *Transcon's Weekly Report*

1. Schedule and Litigation Update: ACP released information about the schedule delays on the project to shareholders two weeks ago but explained that ACP is unsure of how the delays affect FS lands. Schedule delays are due to the court stays and permitting, and the overall turn-in date was pushed out.
2. Roads
  - a. Submitted George Washington National Forest (GWNF) Road Designs – Ellery submitted the last of the 11 revised road designs the week of November 12.
  - b. Upcoming GNWF Road Designs – ERM submitted designs for Scotchtown Draft the morning of November 15, and Galileo sent the link to the road designs to Mike T. ACP anticipates submitting designs for Duncan Knob and for Campbell Hollow at the end of November. ACP will add information on the state of Campbell Hollow based on information provided during the November 26 visit with Mike T. and Steve Woods (FS). The remaining designs are in review.
  - c. Buzzard Ridge Road: ACP has received and reviewed comments Mike Owen (FS) provided. Ellery explained that ACP will incorporate Mike O.'s comments, but that will not change the variance itself or to the engineering design of the road. ACP does not expect that incorporating Mike O.'s comments will change the limit of disturbance (LOD) or the current areas associated with the variance. James pointed out that most of the comments require minor adjustments, like adding notes or adjusting the invert of a culvert that won't affect the overall variance.
3. Variance Updates (Transcon)
  - a. 022 [Monongahela National Forest (MNF) Forest Road (FR) 1026]: FS has completed all work on this variance. FS received updated shapefiles with two areas not included in the original shapefile. Transcon marked those areas on the shapefile so they stand out easily for resource specialists to review and to ensure the change does not affect any other stipulations.
  - b. 017 (MNF Trench Dewatering): Jason provided updated shapefiles. Transcon will add stipulations and circulate the variance back to FS for final signature.
  - c. 023 [MNF Off-right-of-way (ROW) Water bars]: Jason provided updated shapefiles. Transcon will add stipulations and circulate the variance back to FS for final signature.



- d. 011 (GWNF Riparian Buffer Waiver): Transcon sent the final variance package to FS for signatures.
  - e. 001 (GWNF 100-foot Riparian Setback) and Variance 014 [GWNF Additional Temporary Workspace (ATWS) Modification at milepost (MP) 99.3]: Transcon incorporated comments provided by FS NEPA specialist and returned the variance package to FS for final signature.
  - f. 013 (GWNF Desktop Route Shift): Jason provided the final alignment sheets the morning of November 8. Jason has not received feedback on the alignment sheets from FERC. Once the FS receives concurrence from FERC, Transcon will schedule a meeting with FS specialists.
  - g. 016 and 021 (GWNF Off-LOD Tree Retrieval): Transcon compiled and tabulated off-LOD tree data and is ready to schedule a meeting to present the information to FS.
  - h. 024 (GWNF for FR 84.1) and 025 (GWNF trench dewatering): Transcon received both variances the week of November 4. Both variances are currently under Transcon review.
4. Updates
- a. Special Use Permit (SUP) Amendment 2: ACP signed the SUP Amendment 2 and submitted it to Jim Twaroski (FS). Jim will decide whether to route the SUP Amendment 2 for signatures or wait until FS receives direction based on the court stay.
  - b. Closure Orders: An emergency closure order is in place on the MNF. FS is working on a permanent closure order.
  - c. Weekly Inspection Summary:
    - i. Transcon confirmed that ACP has not conducted any construction activity on either forest during the last inspection period.
    - ii. Transcon observed several downed signs and stakes from milepost MP 84.05 to MP 85.4; however, all other instances of signage or staking have been mentioned in previous reports.
    - iii. Transcon did not observe rutting or erosion on the ROW but did observe some rutting of about 6 inches in depth and about 20 feet in length on FR 124. Transcon did not observe ACP traffic, and the area is open to the public.
    - iv. Transcon observed monitoring, maintenance, and battery replacement at the Star Chapel Cave. Monitors were functioning, and Transcon did not observe any issues. Monitoring will resume on November 26 and will be scheduled about every three weeks throughout the winter and until March.
  - d. Alignment Sheets, Data, and Reports: Galileo sent Jason a table of biological reports ERM had submitted. Jason forwarded the table to ERM to compile data. Jason reported problems with ACP's FTP site accessing external FTP sites but expects that the issue was corrected on November 14.



- e. Weather Events: The area experienced 1-3 inches of rain and sleet the week of November 12 and expects less than an inch of rain and snow on November 19 and 20. The rest of that week should be sunny.
  - f. Previous Action Items (See Table Below)
5. Other Discussion Items:
- a. ACP is working on a nominal use request, which is in final review. Road variances for the GWNF and the water bar variance for the GWNF are ACP's top priorities.
  - b. Mike M. referred ACP to the state forestry building in Charlottesville, Virginia for geological maps, publications, and other paleontological material. Mike M. is not as familiar with resources in West Virginia but suggested the state forestry office might be in Charleston.
  - c. Steve reminded everyone to be aware of deer ticks, which are still out on the field, as well as deer hunters.
  - d. FS still has a project website to post data, but as FS has been adding information, some of the links have been buried. FS has found it easier to refer the public to the FERC docket or to ACP's website for information. Jason mentioned that ACP's website is also getting robust with data, but ACP is still hosting data for public access.
  - e. FS will wait to see if the Fourth Circuit Court issues a decision prior to deciding whether to cancel the meeting for December 27 or proceed with it.

Upcoming Meetings (Eastern Time)

- November 29, External FS-ACP Weekly Check-in, 1-3pm

ACTION ITEM UPDATES - EXTERNAL COORDINATION MEETING			
Party	Date	Task	Status
<i>Previous Action Items</i>			
Jason	8/23	Adds ETA dates for the variances that are considered TBD. Jason anticipates sending updated dates to Transcon this week.	To be finalized once ESC and SWPPP for VA are received.
Jason	11/1	Follow up with ERM on biological data CD's being sent to Galileo. Galileo has received reports but is still waiting for data. Flash drive preferred if possible. Table of data needs provided on 11/15.	Jason will follow up with ERM.
Jason	11/1	Provides pictures to FS of dewatering structures in use. Jason has some site-specific photos of trench dewatering and dewatering structures on slopes that appeared to be less than 15% but did not encounter a scenario that would duplicate the situation on FS land exactly. Jason stated that ACP did not use Geotech under the bag because it makes the bag slicker and it slides off	Jason provided the pictures on 11/15 and Todd reviewed them. Complete.

Jennifer	11/1	Coordinates multi-party meeting to review ACP's Duncan Knob Road plans. Jennifer instructed Galileo to send a Doodle poll for FWS, FS, and FERC to find dates when the agencies can all attend. Aiming for first three weeks in December depending on availability of key participants.	Meeting was set for 12/7. As requested by FWS, invited VDNR, FERC, FS engineers. ACP is available on 12/7. Jennifer recommends morning meeting.
Jason	11/1	Provides erosion and stormwater plans approved by the Virginia DEQ to FS. Jason is unable to upload plans to the FTP site because of Dominion's security. Ellery is expecting a waiver for the Galileo site.	In progress. Will post to FTP site by 11/23.
Steven	11/8	Reviews Campbell Hollow Road Plan concerns regarding how to deal with the number of existing pipes on the road if it is turned into an outslowed road.	Pending submission of the plans.
Mike T. & Steve	11/8	Works together to schedule field walk on Campbell Hollow Road.	Complete. 11/26 at 10 am.
Jason	11/8	Sends alignment sheets for variance 13 to FERC and follow up with FERC on alignment sheets for reroute.	Complete. See new action item below.
Todd	11/8	Emails temporary closure order information to ACP.	Complete
Jason	11/8	Submits proposal to FS for additional activities under a new nominal use letter.	Dependent on FTP access. Proposal is under review
Robert	11/8	Looks into revised HDD plans in FERC filing to determine if it will have any effects on FS property.	Robert does not believe HDD plans will not affect the forest. Potentially affected areas are exit and entrance, both of which are outside of the forest. See revised action item below.
Jason	11/8	Finds out if ACP has a staff paleontologist who can assist with identifying "uncommon" fossils.	Ongoing
Jason	11/8	Looks into Paleontological Resources Protection Act to see what federal lands it applies to. Looks into ACP's records to see what paleo related information they have from relevant state or federal agencies.	Ongoing
Jason	11/8	Work with ERM geologist to formulate more detailed plan for identifying fossils.	Ongoing
Jennifer	11/8	Provide ACP with agency contact information for fossil identification.	

FS	11/8	Provides supporting information for paleontological hotspots to ACP.	Mike M. referred ACP to the state geological surveys. Complete
<b><i>New Action Items</i></b>			
Galileo	11/15	Notifies all parties when Scotch Town Draft road designs are uploaded onto FTP site.	Complete
ERM	11/15	Addresses comments from Mike O. on Buzzard Ridge Road.	
Jason	11/15	Reaches out to Kevin Bowman (FERC) for feedback on alignment sheets for variance 13.	Complete
Jason	11/15	Confirms he can access Galileo's FTP site.	Complete
Jason	11/15	Submits request for nominal use letter.	Complete
Jason	11/15	Discusses wrapping up priority variances on GWNF (road and water bars) with Alli.	
Galileo	11/15	Provides letter from FS re HDD plans and agency reviews Jason.	Complete
ACP/Jason	11/15	Provides detailed review of what changed in the HDD and contingency plans in light of FS previous concerns as documented in previous comments.	

#### FOREST SERVICE RELATED ACP FERC FILING UPDATES

Submission Date	Document Title & Comments
TBD	Request to FERC for MNF NTP construction except for Buzzard Ridge Road FR1026
TBD	Request to FERC for FR1026 and associated private lands.
TBD	Request to FERC for GWNF NTP construction



## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, November 15, 2018 (period of review November 7—November 13)

**Compliance Inspectors Present During this Period:** Terry Slater, Solomon Workman

#### Preconstruction Activities:

Activity	Location
Tree Felling	None
Road Maintenance	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - Inspectors observed several downed signs and stakes from MP 84.05 to 85.4.
        - All other instances of signage/staking issues have been noted in previous reports.
    - Rutting/Erosion
      - No new instances of rutting or erosion along the pipeline right of way were observed.
        - All other instances of rutting/erosion have been noted in previous reports.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
  - Road Conditions
    - Inspectors observed rutting approximately 6" in depth and 20' in length along FS road 124.
      - No ACP traffic was observed during this inspection period.
    - All other instances of road damage have been noted in previous reports.
    - No road maintenance conducted by ACP has taken place
- Biological Resources
  - Inspector observed maintenance of the Starr Chapel Cave acoustic monitors.
    - Monitors were functioning properly
    - No non-compliance issues were observed.
  - No other biological surveys were completed during this inspection period.

- No biological concerns were noted.
- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.
- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - Transcon received one variance request during this inspection period
    - ACP\_VAR\_GWNF\_25 (MNF Trench Dewatering Outside of the LOD)
- Miscellaneous
  - N/A

#### **Meetings Held**

- ACP Weekly External Meeting (November 15, 2018)

#### **Upcoming Meetings**

- November 29, Internal/External FS-ACP Weekly Check-in, 1-3pm

**Forest Service-Transcon Weekly Check-in****Date:** November 15, 2018**Time:** 10:00-11:30am (Eastern)/8:00-9:30am (Mountain)/7:00-8:30am (Pacific)**Location:** Conference Call

Attendees	Forest Service	Angela Parrish, Jennifer Adams, Jessica Rubado, Laura Hise, Mike Madden, Rachel Arrick, Steffany Mellor, Todd Hess, Will Wilson
	Transcon	Alli Rhodehamel-Leung, Jayanna Miller, Mike Tripp, Mike Warner
	Galileo Project	Maria Martin, Peter Rocco, Rosana Nesheim

Enclosures: *Weekly Inspection Report*

## 1. Roads

- a. Submitted George Washington National Forest (GWNF) Road Designs: Galileo has posted the road designs to the FTP site.
- b. Upcoming GWNF Road Designs:
  - i. ACP submitted the road designs for Scotchtown Draft on November 14.
  - ii. Mike Tripp expects to visit Campbell Hollow on November 26.
  - iii. Duncan Knob meeting dates have been narrowed to when US Fish and Wildlife Service (FWS) is available. Angela questioned what the meeting would address, and Jennifer explained that FS asked ACP to present an overview of the road design and how they intend to meet agency requirements to FS, Transcon, and FWS. FWS also requested to include Virginia Department of Natural Resources. FERC was also invited to attend the meeting. FS wants to avoid being put into a position between ACP and another agency. FS also wants to ensure everyone is involved in the discussion because Duncan Knob Road will need to meet Department of Environmental Quality and FS requirements while also meeting the terms and conditions of FWS's Biological Opinion (BO). The road traverses rusty-patched bumble bee (RPBB) habitat. RPBB is federally listed and was identified on four separate occasions on FS land that had not previously seen RPBB. Jennifer wants to avoid similar problems encountered with Forest Road (FR) 1026 because FS did not include all parties from the start.
  - iv. Jennifer reported that ACP is discussing lack of landowner approval for Duncan Knob internally and with FERC to determine how to proceed. Jennifer also stated that what FERC certificated is in a different area than what is on the map of FWS's BO, and FERC will need to resolve that with FWS and ACP. ACP is unaware that FWS is working on a third BO as a result of a lawsuit based on the second BO.
  - v. Galileo advised Todd that Ellery Baker (ACP) provided updated road designs on November 14, so the FTP link Galileo sent to Todd on November 13 is not the most current version. Todd wants to ensure he adds



the most current version with Transcon's reviews to FS's Pinyon site. Transcon is reviewing the updated designs and will provide findings to Steve Woods (FS) and Angela. Todd wants Transcon to review the designs again because of concerns with ACP resubmitting designs without incorporating the comments Mike T. makes when he reviews the designs. Todd does not want to present the designs to FS specialists without having ACP incorporate all of Mike T.'s comments.

- c. Buzzard Ridge Road – FS provided Ellery with Mike Owen's (FS) comments and is now awaiting Ellery's response.

## 2. Variance Updates (Transcon)

- a. 022 [Monongahela National Forest (MNF) FR 1026]: This variance is in final review for signature with FS.
- b. 017 (MNF Trench Dewatering): Jason Barnette (ACP) provided the updated shapefiles the week of November 4. Steffany indicated that FS specialists have not seen the final stipulations from the last meeting. Jennifer suggested meeting to discuss the stipulations prior to the week of Thanksgiving when a lot of staff will be out of the office.
- c. 023 [MNF Off-right-of-way (ROW) Water bars]: Jason provided the updated shapefiles to Transcon on November 8. Alli confirmed that when Transcon receives shapefiles from ACP, Felixcia Blanchard (Transcon) reviews the shapefiles to ensure they are correct. Alli also informed Jennifer and Steffany that the shapefiles combine data for the MNF and the GWNF. Steffany responded that she is fine with the combined data. Transcon also confirmed that draft stipulations are included in the staff report. Jennifer suggested meeting prior to the holiday week to discuss the variance.
- d. 011 (GWNF Riparian Buffer Waiver): Transcon sent the final variance package to FS for signatures.
- e. 001 (GWNF 100-foot Riparian Setback) and Variance 014 [GWNF Additional Temporary Workspace Modification at milepost (MP) 99.3]: FS NEPA specialist provided comments the week of November 4. Todd sent variance 001 to the FS specialist this morning and is now working on variance 014.
- f. 013 (GWNF Desktop Route Shift): Transcon received final alignment sheets from Jason on November 8 and will forward to FERC to ensure the alignment sheets meet FERC's expectations. Jennifer stressed the importance of ensuring FERC approves of the plans prior to FS specialists looking at the variance or FS making a decision.
- g. 016 and 021 [GWNF Off-limits of disturbance (LOD) Tree Retrieval]: Transcon compiled and tabulated off-LOD tree data and posted the information to Transcon's virtual site. Transcon is ready to schedule a final meeting with FS to present both variances.
- h. 024 (GWNF for FR 84.1) and 025 (GWNF trend dewatering): Both variances are under Transcon review. Transcon forwarded both initial requests to FS the week of November 4.
- i. Additional Variance Updates: Transcon anticipates receiving variances for water bars off the ROW on the GWNF. Transcon also expects ACP to submit more

GWNF road design variances throughout November, December, and into next year.

### 3. Updates

- a. Special Use Permit (SUP) Amendment 2: Todd reported that Jim Twaroski (FS) received the SUP Amendment 2 and Jim is now routing it to Region 8. The amendment will then go to Region 9 for signature. Laura wanted to ensure that obtaining the regional forester's signature is the appropriate action since FS had previously stated they would wait for the court's decision prior to proceeding with obtaining signatures.
- b. Closure Orders: A temporary closure order is in place on the MNF. FS is in the process of writing a permanent closure order. Todd explained to Laura that FS has not issued a permanent closure order because of a 200-foot buffer that was added and then removed. FS is awaiting direction from the Office of General Counsel on how to proceed. Todd instructed Jessica to wait for an update prior to posting the link to the temporary closure order.
- c. Weekly Inspection Summary:
  - i. Transcon reported that no construction activity occurred on either forest during the past week.
  - ii. Transcon did observe downed signage and staking from MP 85.04 to MP 85.4. ACP will need to refresh those. The paint in those areas is still in good condition.
  - iii. Transcon did not observe any new instances of rutting or erosion and did not observe any non-compliances. Along FR 124, Transcon did observe 6-inch deep ruts that were 20 feet in length. This area was open to the public and Transcon did not observe any ACP traffic in the area.
  - iv. Transcon observed maintenance of the Star Chapel Cave. The monitors were all working properly. Surveyors will return on November 26, then every 3 weeks through March to change batteries and to ensure monitors continue to work properly.
- d. Alignment Sheets, Data, and Reports:
  - i. Galileo has the corresponding data for the RFSS Plant Buffer Survey Report, American Ginseng Relocation Monitoring, and Virginia Plant Report for Rare, Threatened, and Endangered Species.
  - ii. Galileo does not have data for the following reports: Virginia Small Mammal Habitat Survey Report, Virginia Bat Survey Report, Virginia Tiger and Mabee's Salamander Report, Ginseng Survey Memo, MNF and GWNF Small Whorled Pogonia Monitoring, West Virginia Bat Habitat Assessment Report, West Virginia Botany Report for Buffalo Clover and Small Whorled Pogonia, West Virginia Bat Presence Likely Absence Report.
  - iii. Galileo posted alignment sheets ACP submitted to FERC in September and October to the FTP site.

- e. Weather Events: Transcon does not expects any weather conditions that will negatively impact the project.
  - f. Previous Action Items (See Table Below)
4. Other Discussion Items (Galileo)

Upcoming Meetings (Eastern Time)

- November 15, External FS-ACP Weekly Check-in, 1-3pm
- November 29, Internal Weekly Check-in, 10-11:30
- November 29, External FS-ACP Weekly Check-in, 1-3pm



ACTION ITEMS - INTERNAL WEEKLY COORDINATION CALLS			
Party	Date	Task	Status
<i>Previous Action Items</i>			
Mike W.	9/27	Provides resumes for staff with timber harvest experience to Jarret for review. CC Jennifer. Mike's understanding is ACP is targeting tree felling in February 2019 assuming the court ruling is favorable. Mike W. has gathered resumes for more local candidates with previous FS experience.	In progress
Jennifer	10/25	Coordinates letter re: FR 1026 designs	Pending completion of related variance 22.
Alli	11/8	Sends updated variance 22 data to Jennifer and Todd.	Complete
Jennifer	11/8	Asks Jason to confirm that the ACP has provided shapefiles for extra spaces for variance 22 and ensure that calculations on table ACP provided correctly reflect the shapefiles	Complete
Jennifer	11/8	Reviews Mike O.'s comments on Buzzard Ridge Road Design and discuss potential questions with him.	Complete. Comments submitted.
Jennifer/Galileo	11/8	Coordinates to send Doodle poll to key agency participants for FS-vdc-FERC-ACP Duncan Knob Road meeting.	Complete
Alli	11/8	Forwards V15 (desktop realignment) alignment sheets to Jennifer and Todd	Complete
Jennifer	11/8	Reminds Jason to submit alignment sheets for Variance 13 to FERC	Complete
Alli	11/8	Forwards preliminary variance 24 (F84.1N exceedances) provided by ACP to Jennifer.	Complete
Alli	11/8	Asks Jason to copy Jennifer and Todd on all email correspondence.	Complete
Peter	11/8	Forwards VA and WV alignment sheets ACP provided in October and November to Transcon.	Complete
Peter	11/8	Provides index of ACP's FERC filing to Jennifer.	Complete
<i>New Action Items</i>			
Peter	11/15	Looks into issues Mike T. is having with uploading onto FTP site.	Complete

Galileo	11/15	Post road designs for Duncan Knob, Campbell Hollow, and Scotch Town Draft to FTP site.	Complete
Galileo	11/15	Upload latest design from Ellery to FTP site.	Complete
Alli	11/15	Email draft of stipulations for variance 17 (MNF trench dewatering) to Steffany.	
Alli	11/15	Resend shapefiles for variance 23 (MNF off LOD water bars) to Todd and Jennifer.	Complete
Jennifer	11/15	CC Laura on email with clarification on how to proceed with obtaining signatures for SUP Amendment 2.	
Galileo	11/15	Email Jason to ask for ETAs on data for biological reports.	Complete

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, November 15, 2018 (period of review November 7—November 13)

**Compliance Inspectors Present During this Period:** Terry Slater, Solomon Workman

#### Preconstruction Activities:

Activity	Location
Tree Felling	None
Road Maintenance	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - Inspectors observed several downed signs and stakes from MP 84.05 to 85.4.
        - All other instances of signage/staking issues have been noted in previous reports.
    - Rutting/Erosion
      - No new instances of rutting or erosion along the pipeline right of way were observed.
        - All other instances of rutting/erosion have been noted in previous reports.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
  - Road Conditions
    - Inspectors observed rutting approximately 6" in depth and 20' in length along FS road 124.
      - No ACP traffic was observed during this inspection period.
    - All other instances of road damage have been noted in previous reports.
    - No road maintenance conducted by ACP has taken place
- Biological Resources
  - Inspector observed maintenance of the Starr Chapel Cave acoustic monitors.
    - Monitors were functioning properly
    - No non-compliance issues were observed.
  - No other biological surveys were completed during this inspection period.



- No biological concerns were noted.
- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.
- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - Transcon received one variance request during this inspection period
    - ACP\_VAR\_GWNF\_25 (MNF Trench Dewatering Outside of the LOD)
- Miscellaneous
  - N/A

**Meetings Held**

- ACP Weekly External Meeting (November 15, 2018)

**Upcoming Meetings**

- November 29, Internal/External FS-ACP Weekly Check-in, 1-3pm

**ACP-Forest Service Weekly Check-in****Date** November 29, 2018**Time:** 1-3pm (Eastern)/11am-1pm (Mountain)/10am-12pm (Pacific)**Conference Call**

Attendees	Forest Service	Jessica Rubado, Lisa Miller-Allard, Rachel Arrick, Steven Woods, Todd Hess
	Atlantic Coast Pipeline	Robert Hare, Jason Barnette, Ellery Baker,
	ERM	James Hemme
	Transcon	Alli Rhodehamel-Leung, Ian Snyder, Jayanna Miller, Mike Tripp
	Galileo Project	Maria Martin, Peter Rocco, Alexa Esquivel

**Meeting attachment:** *Transcon's Weekly Report*

1. Schedule and Litigation Update: No updates were provided.
2. Roads
  - a. Campbell Hollow Road Field Trip Recap: Steven reported on November 26 ERM, ACP, Transcon, and Forest Service (FS) compared the road designs in field to the condition of the road. Steven reported the out sloped option was not suited for the entire road, but a combination with ditch use and other methods would work in certain areas. James noted there was discussion on scarifying the road to repair existing erosion, but methods would be left up to the contractors to decide.
  - b. Road Design Review Status and Upcoming Submissions: Ellery reported Campbell Hollow and Duncan Knob Road designs are still outstanding. Ellery noted on Duncan Knob it appears there are rock headwalls on the culverts and the current road design avoids them completely. Steve reached out to FS archaeologist who said from what they reviewed there is a good chance that some or all rock headwalls were constructed by the Civilian Conservation Corps (CCC). FS will make a site visit to confirm but Steven agreed with ACP's current approach to avoid them. Steven explained if they are CCC structures, the archeologist would typically request that the walls be buried with their location marked with drainage pipe added down or up road. If the pipe is functioning and can be cleaned out that would be the FS preferred approach. If the pipe is left as is, then crimp where possible. James mentioned these rock headwalls were included in the original review for environment/cultural of roadway and SHPO had reviewed and deemed not eligible for the National Historic Preservation listing.
  - c. Buzzard Ridge Road: Ellery submitted the designs on November 29 to Forest Service addressing Mike Owens (FS) comments.
3. Variance Updates (Transcon)
  - a. 022 [Monongahela National Forest (MNF) Forest Road (FR) 1026]: Transcon recrafted the stipulation language and is now under FS review for signature as of November 29.
  - b. 017 (MNF Trench Dewatering): Transcon provided the updated stipulations to FS for review. Transcon requested ACP provide shapefiles with the updated areas that

would avoid small whorled pogonia (SWP). Jason has received the shapefiles but asked Transcon to check the areas to ensure they are updated.

- c. 023 [MNF Off-right-of-way (ROW) Water bars]: Transcon requested updated shapefiles from ACP showing the SWP section removed.
  - d. 013 (GWNF Desktop Route Shift): Jason submitted alignment sheets to FS and Federal Energy Regulatory Commission (FERC) earlier this month. Jason has not received preliminary feedback from Kevin Bowman (FERC).
  - e. 016 and 021 (GWNF Off-LOD Tree Retrieval): Transcon is scheduled to present the variance along with staff reports and tree data to FS.
  - f. 025 GWNF additional space outside the approved for trench dewatering on all spreads: under Transcon review and awaiting the shapefiles from ACP. Jason mentioned the shapefiles previously sent included the MNF and GWNF shapefiles. His GIS contact is out for a few days.
  - g. 024 (GWNF for FR 84.1) and 025 (GWNF trench dewatering): Transcon is focusing on 024 then 025 to follow.
  - h. Transcon notes they have not received GWNF water bar variances. Jason said he anticipates send the variances to Transcon week of 12/3.
  - i. Transcon is anticipating the GWNF road design variances. Jason pushed the date back to the week of 12/10.
4. Updates
- a. Nominal Use Request Status: Todd received Jason's email requesting a new nominal use letter with a link but was unable to gain access. Todd and Jennifer will review the proposal and make recommendations to the Forest Supervisors.
  - b. Closure Orders: An emergency closure order is in place on the MNF. FS is working on a long-term closure order for both forests.
  - c. Special Use Permit (SUP) Amendment 2: Todd noted the regional office still has the SUP and may be awaiting a court decision or for the stay to be lifted prior to signing.
  - d. Weekly Inspection Summary:
    - i. Transcon confirmed that ACP has not conducted any construction activity on either forest during the last two inspection periods.
    - ii. Transcon observed several downed signs SAUA420 and along access road 449A. All other signage and staking issues have been provided in previous reports.
    - iii. Transcon did not observe any rutting or erosion along pipeline ROW but did observe rutting along FR449A.
    - iv. Transcon did not observe any potential non-compliance.
    - v. Transcon noted no surveys were being conducted over the last few weeks. However, Transcon was out observing routine maintenance with VHB at Starr Chapel cave on November 29.



- e. Weather Events: The Elkins area had snow fall the past few days but has seem to let up.
  - f. Previous Action Items (See Table Below):
    - i. Jason contacted ERM to see if they can provide a paleontologist who can identify uncommon findings and review the plan for updates. Jason anticipates feedback soon from ERM. Jason followed up with the ACP construction teams and are in support of the efforts to reduce any downtime during construction.
    - ii. Jason explained what changed on the Horizontal Directional Drilling (HDD) plans; the workspace on the northside of the drill shortened in length and widened and added neckdowns for stream crossings.
5. Other Discussion Items
- a. Todd told Robert and Jason that he is trying to get the bill for 2019 land use fees out by November 30. Otherwise they should expect it sometime in December. Todd reminded Jason and Robert to make a payment until they receive the bill. Once they receive the bill, they have 30 days to remit payment.

Upcoming Meetings (Eastern Time)

- November 29, External FS-ACP Weekly Check-in, 1-4pm
- December 6, External FS-ACP Weekly Check-in, 1-4pm
- December 7, External Duncan Knob Road, 10am-12pm

ACTION ITEM UPDATES - EXTERNAL COORDINATION MEETING			
Party	Date	Task	Status
<i>Previous Action Items</i>			
Jason	8/23	Adds ETA dates for the variances that are considered TBD. Jason anticipates sending updated dates to Transcon this week.	To be finalized once ESC and SWPPP for VA are received.
Jason	11/1	Follow up with ERM on biological data CD's being sent to Galileo. Galileo has received reports but is still waiting for data. Flash drive preferred if possible. Table of data needs provided on 11/15.	Jason will follow up with ERM. – data for 6 of 11 reports has been provided thus far.
Jason	11/1	Provides erosion and stormwater plans approved by the Virginia DEQ to FS. Jason is unable to upload plans to the FTP site because of Dominion's security. Ellery is expecting a waiver for the Galileo site.	In progress – uploading files 11/29.
Steven	11/8	Reviews Campbell Hollow Road Plan concerns regarding how to deal with the number of existing pipes on the road if it is turned into an out sloped road.	Pending submission of the plans.

Jason	11/8	Finds out if ACP has a staff paleontologist who can assist with identifying “uncommon” fossils.	Ongoing – Galileo will combine with related items.
Jason	11/8	Looks into Paleontological Resources Protection Act to see what federal lands it applies to. Looks into ACP’s records to see what paleo related information they have from relevant state or federal agencies.	Ongoing - Galileo will combine with related items.
Jason	11/8	Work with ERM geologist to formulate more detailed plan for identifying fossils.	Ongoing - Galileo will combine with related items.
Galileo	11/15	Notifies all parties when Scotch Town Draft road designs are uploaded onto FTP site.	Complete
ERM	11/15	Addresses comments from Mike O. on Buzzard Ridge Road.	Revised design submitted
Jason	11/15	Confirms he can access Galileo’s FTP site.	Complete
Jason	11/15	Submits request for nominal use letter.	Complete on 11/19
Jason	11/15	Discusses wrapping up priority variances on GWNF (road and water bars) with Alli.	Complete
Galileo	11/15	Provides letter from FS re HDD plans and agency reviews Jason.	Complete
ACP/Jason	11/15	Provides detailed review of what changed in the HDD and contingency plans in light of FS previous concerns as documented in previous comments.	Ongoing
Jason	11/29	Reaches out for a second time to Kevin Bowman (FERC) for feedback on alignment sheets for variance 13.	

#### FOREST SERVICE RELATED ACP FERC FILING UPDATES

Submission Date	Document Title & Comments
TBD	Request to FERC for MNF NTP construction except for Buzzard Ridge Road FR1026
TBD	Request to FERC for FR1026 and associated private lands.
TBD	Request to FERC for GWNF NTP construction

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

**Date:** Thursday, November 29, 2018 (period of review November 21—November 27)

**Compliance Inspectors Present During this Period:** Terry Slater, Bill Clayton, Mike Tripp

#### Preconstruction Activities:

Activity	Location
<i>Tree Felling</i>	None
<i>Road Maintenance</i>	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - No new instances of signage or staking issues were observed.
        - All other instances of signage/staking issues have been noted in previous reports.
    - Pipeline Right of Way Rutting/Erosion
      - No new instances of rutting or erosion along the pipeline right of way were observed.
        - All other instances of rutting/erosion have been noted in previous reports.
    - Road Conditions
      - No new instances of rutting or erosion along access roads were observed.
        - All other instances of road damage have been noted in previous reports.
        - No road maintenance conducted by ACP has taken place
      - Inspectors observed ERM's access of GWNF road 281 in support of access road designs.
        - No road damage or non-compliance issues were observed.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
- Biological Resources
  - No biological surveys were completed during this inspection period.
  - No biological concerns were noted.



- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.
- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - No new variances were received by ACP during this inspection period.
- Miscellaneous
  - N/A

**Meetings Held**

- ACP Weekly Internal/External Meeting (November 29, 2018)

**Upcoming Meetings**

- November 29, Internal/External FS-ACP Weekly Check-in, 1-3pm

**Forest Service-Transcon Weekly Check-in****Date:** November 29, 2018**Time:** 10:00-11:30am (Eastern)/8:00-9:30am (Mountain)/7:00-8:30am (Pacific)**Location:** Conference Call

Attendees	Forest Service	Aaron Fox, Christina Henderson, Jennifer Adams, Jessica Rubado, Lisa Miller-Allard, Rachel Arrick, Steffany Mellor, Tim Tolley, Todd Hess
	Transcon	Alli Rhodehamel-Leung, Felixcia Blanchard, Ian Snyder, Jayanna Miller, Mike Tripp
	Galileo Project	Maria Martin, Peter Rocco, Rosana Nesheim

Attachment: *Transcon Weekly Inspection Report*

## 1. Roads

- a. Campbell Hollow Road Field Trip Recap: Mike T. conducted a site visit with James Hemme (ERM), Matt Hurst (ERM), Ellery Baker (ACP), and Steve Woods (FS) to review the entire road. The group decided on a 70% dip culverts and 30% outsloped road design. The group also discussed how to handle the heavy rutting on the road. Mike T. expects to receive designs from Matt H. soon.
- b. Road Design Review Status: ACP recently submitted 12 road designs, and the plans are uploaded on Galileo's FTP site. Mike T. reviewed the designs to ensure compliance and emailed them to Jennifer and the FS resource specialists. Mike T. reported that ERM is making corrections to the plans, based on Mike Owen's (FS) comments. Jennifer wants to ensure that Mike O. receives the road designs for Forest Road (FR) 1026, so he can determine whether the designs are appropriate. Mike T. also indicated that ACP is willing to add erosion control socks for the Alleghany woodrat. Mike T. anticipates Steve will discuss working Civilian Conservation Corps (CCC) era headwalls at Duncan Knob Road with the GWNF archaeologist.

## 2. Variance Updates (Transcon)

- a. 012 [Monongahela National Forest (MNF) Off-Limit of Disturbance (LOD) Tree Removal]: FS resource specialists have signed this variance, and the NEPA write up is now on the FS Pinion site.
- b. 011 [George Washington National Forest (GWNF) Riparian Buffer Waiver]: FS NEPA specialist has reviewed this variance.
- c. 014 [GWNF Additional Temporary Workspace Modification at milepost (MP) 99.3]: FS NEPA specialist has reviewed this variance. Transcon is unsure if the variance will be denied.
- d. 001 (GWNF 100-foot Riparian Setback): Variance is pending authorized officer's signature. The location at MP 116.5, including everything from the road to the uphill side, will be approved. The areas downhill will be denied because of the steepness of the slopes.
- e. 022 (MNF FR 1026): Transcon sent the revised stipulations to FS on November 15. Felixcia corrected the locations so FS specialists can locate the areas. Todd informed Transcon that FS specialists cannot review the stipulations unless they are attached to variance form.

- f. 017 (MNF Trench Dewatering): The shapefiles ACP provided contained inconsistencies with some of the changes. Transcon returned the shapefiles and requested that ACP provide updated shapefiles.
  - g. 023 [MNF Off-right-of-way (ROW) Water bars]: Jennifer is concerned of the potential to affect species addressed in the Biological Opinion. Jennifer also reported that Briana Smrekar (FS) and Rachel would approve the variance at the edge of a spotted skunk habitat, but not within in. Transcon believes ACP is avoiding all Endangered Species Act listed wildlife and plants for trench dewatering but is asking for approval to use water bars in all areas, excluding environmentally sensitive areas for small whorled pogonia or cultural resource. Jennifer wants resource specialists to review variances on a species by species basis. FS staff want ACP to start thinking about how they will dewater to prepare for heavy rainfall and minimize the risk for overflow and erosion. FS specialists cannot review the variance until ACP has provided an updated shapefile. Jennifer is concerned with obtaining an ETA for when ACP will provide the shapefile because several FS specialists will be out of the office in December and unable to review the variance until after the New Year. Additionally, FS wants to plan for workload in case the court returns a decision prior to the holidays. FS has informed ACP that FS specialists cannot review variances without shapefiles. FS will prioritize focusing on variances for which ACP has provided shapefiles.
  - h. 013 (GWNF Desktop Route Shift): FS expects ACP to ensure FERC has all the necessary information and materials for this variance because FERC will ultimately need to make the decision on whether to approve the variance. Transcon received alignment sheets from ACP on November 8. Transcon did receive the shapefiles with the requested route and the original route but does not have a variance for FS specialists to review. Transcon also has a combined staff report prepared with information for variances 16, 21, and 13.
  - i. 016 and 021 (GWNF Off-LOD Tree Retrieval): Transcon prepared a staff report for variances 16, 21, and 13 and emailed the information and shapefiles for all three variances to Galileo. Transcon proposed discussing variances 16 and 21 prior to variance 13 on the November 30 call.
  - j. 025 (GWNF trench dewatering): Variance is analogous to the trench dewatering variance for the MNF. Transcon is reviewing the variance and may be able to present it on the November 30 call.
  - k. 024 (GWNF for FR 84.1): Variance is under Transcon review. The road does not have a name, and ACP has designated it as FR 84.1N. There are two other roads in that section, but they may not all have a need for a variance.
  - l. Additional Variance Updates: Transcon anticipates receiving variances for water bars off the ROW on the GWNF. Transcon also expects ACP to submit more GWNF road design variances, which ACP might package together.
3. Nominal Use Request Status: FS received the request from ACP, but the Regional Office and the Office of General Counsel (OGC) will need to review the nominal use letter to ensure consistency with the court stay.
  4. Updates



- a. Closure Orders (FS): OGC is reviewing the long-term closure order for the MNF. The closure order for the GWNF will be handled by the regions, and FS does not have a status for it yet.
  - b. Weekly Inspection Summary
    - i. Transcon did not observe any construction activities on the ROW.
    - ii. Transcon observed several downed signs at a stream crossing at the U420 and at Access Road (AR) 449A. ACP will need to refresh those signs prior to construction starting.
    - iii. Transcon did not observe any new rutting but did observe rutting that was 4 inches in depth at AR 449A; however, there was no ACP traffic that day.
    - iv. Mike T. accompanied ERM and ACP at GWNF Road 281 to review road designs and did not observe any compliance issues.
    - v. VHB is monitoring and performing maintenance of acoustic monitors at the Star Chapel Cave on November 29.
  - c. Weather Events: FERC provided FS with the historical view of water in Ohio and the Eastern Seaboard. The area expects to get rain and snow the week of December 3.
  - d. Previous Action Items (See Table Below)
5. Other Discussion Items
- a. Alex Fought (FS) met with Ellery and Jason Barnette (FS) to discuss the Deerfield Water Authority's (DWA) Special Use Permit (SUP) on the GWNF. DWA is concerned that ACP will create sediment that will affect their water. ACP agreed to create a water filtration system on land administered by FS to address DWA concerns. ACP will need to apply for a construction permit from FS to be able to construct the water filtration system for DWA, but the SUP would need to be issued by Alex at the GWNF. Jennifer and Todd agreed that Todd could help ACP frame out the permit for any required NEPA. Jennifer also suggested having Galileo and Transcon help with that work.

#### Upcoming Meetings (Eastern Time)

- November 29, External FS-ACP Weekly Check-in, 1-4pm
- November 30, Internal GWNF Variance Call, 1-3pm
- December 4, Internal FS-BLM-FERC Biweekly Check-in, 2-3pm
- December 6, Internal FS Coordination Call, 10-11:30am
- December 6, External FS-ACP Weekly Check-in, 1-4pm
- December 7, External Duncan Knob Road, 10am-12pm
- December 7, Internal GWNF Variance Call, 12-3pm

## **ACTION ITEMS**

ACTION ITEMS - INTERNAL WEEKLY COORDINATION CALLS			
Party	Date	Task	Status
<i>Previous Action Items</i>			
Mike W.	9/27	Provides resumes for staff with timber harvest experience to Jarret for review. CC Jennifer. Mike's understanding is ACP is targeting tree felling in February 2019 assuming the court ruling is favorable. Mike W. has gathered resumes for more local candidates with previous FS experience.	In progress
Jennifer	10/25	Coordinates letter regarding acceptance of the revised FR 1026 designs.	Pending completion of related variance 22. Revised design submitted on 11/28.
Todd	11/29	Email link for new shapefiles for variance 22 (FR 1026) to resource specialists.	Complete
Todd	11/29	Put stipulations for variance 22 (FR 1026) together and ask Briana to resign the variance.	Complete
Transcon	11/29	Resubmit information for variance 22 (FR 1026) in variance form	Complete
Ian	11/29	Confirm with Felixcia and Jason that Transcon has the correct shapefile for variance 23 (MNF Off-ROW water bars).	
Transcon	11/29	Draft information for variance 23 (MNF Off-ROW water bars) into variance form and send to FS.	
Jennifer & Todd	11/29	Review description of request for water bars in ESA areas.	
Todd	11/29	Upload new shapefiles and alignment sheets for variance 13 (GWNF Desktop Route Shift) to Pinion.	Complete
Galileo	11/29	Email materials for variances 16 and 21 (GWNF Off-LOD Tree Retrieval) to all invitees for 11/30 call.	Complete
Jennifer & Todd	11/29	Review nominal use letter request.	In progress
Jennifer	11/29	Email ROs to inform them of ACP's request for water filtration system at Deerfield Water Authority.	

## Weekly Report Summary

### Atlantic Coast Pipeline (ACP) Project

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**Date:** Thursday, November 29, 2018 (period of review November 21—November 27)

**Compliance Inspectors Present During this Period:** Terry Slater, Bill Clayton, Mike Tripp

#### Preconstruction Activities:

Activity	Location
<i>Tree Felling</i>	None
<i>Road Maintenance</i>	None

- Construction Update
  - No construction activities were completed on the George Washington and Jefferson National Forest (GWNF) or the Monongahela National Forest (MNF) during this inspection period.
- Construction Schedule
  - Crews have confirmed that no construction activities have taken place on the GWNF since 3/14/18.
  - Crews have confirmed that no construction activities have taken place on the MNF since 3/30/18
- Compliance Status
  - Observations
    - Signage/Staking
      - No new instances of signage or staking issues were observed.
        - All other instances of signage/staking issues have been noted in previous reports.
    - Pipeline Right of Way Rutting/Erosion
      - No new instances of rutting or erosion along the pipeline right of way were observed.
        - All other instances of rutting/erosion have been noted in previous reports.
    - Road Conditions
      - No new instances of rutting or erosion along access roads were observed.
        - All other instances of road damage have been noted in previous reports.
        - No road maintenance conducted by ACP has taken place
      - Inspectors observed ERM's access of GWNF road 281 in support of access road designs.
        - No road damage or non-compliance issues were observed.
    - Potential Non-Compliances
      - No non-compliance issues were noted by the CICs during this inspection period.
- Biological Resources
  - No biological surveys were completed during this inspection period.
  - No biological concerns were noted.



- Cultural Resources
  - No cultural surveys were completed during this inspection period.
  - No cultural concerns were noted.
- Paleontological Resources
  - No paleontological concerns were noted.
- Visual Resources
  - No visual resource concerns were noted.
- Variances
  - No new variances were received by ACP during this inspection period.
- Miscellaneous
  - N/A

**Meetings Held**

- ACP Weekly Internal/External Meeting (November 29, 2018)

**Upcoming Meetings**

- November 29, Internal/External FS-ACP Weekly Check-in, 1-3pm

## Rebecca Hopkins

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**From:** Hess, Todd A -FS <tahess@fs.fed.us>  
**Sent:** Friday, December 14, 2018 10:28 AM  
**To:** Fox, Aaron - FS; Coleman, Amy - FS; Smrekar, Briana - FS; Johnson, Catherine M -FS; Boyd, James -FS; Adams, Jennifer - FS; Stevens, Karen L -FS; Miller-Allard, Lisa - FS, Elkins, WV; Owen, Michael D -FS; Arrick, Rachel - FS; Mellor, Steffany - FS; Connolly, Stephanie -FS; Tolley, Tim -FS; Wilson, Will -FS; Hess, Todd A -FS; Fosbender, Julie K -FS; Bridges, Kelly - FS; Brake, Timothy -FS  
**Cc:** Torres, Roman - FS; Maria Martin; Peter Rocco; acp@transcon.com; Hise, Laura B -FS; Twaroski, Jim - FS; Sandeno, Cynthia M -FS; Thompson, Clyde N -FS  
**Subject:** ACP MNF Stand By  
**Attachments:** Fourth Circuit opinion on ACP Forest Service permit - 12-13-18.pdf  
**Importance:** High  
**Categories:** DF Maybe

Howdy MNF Staff on ACP:

The 4<sup>th</sup> Circuit Court has made a ruling on the ACP project (see attached). During this morning's RO/WO pipeline call, it has been decided that **all work will stop** on the Monongahela by direction of Deputy Forest Supervisor Roman (Ray) Torres. Additional discussions will occur with the MNF, GWJNF, ROs, and WO to determine our next steps as an agency. Until further guidance is directed, all ACP work on the MNF will halt. This includes: variance reviews, nominal use proposals, road design reviews, and long-term closure orders.

The GWJNF will address their own staff until full direction is presented from Regional Offices for this joint project.

Advice to staff, be flexible as direction may change and sway back and forth over the next few days/weeks. Ensure you have entered all hours in the cost recovery monitoring spreadsheet located on Pinyon at (b)(4)

If you see I missed a MNF staff member, please forward this email to them.



Todd Hess  
Special Use Manager / Realty Specialist

Forest Service  
Monongahela National Forest

p: 304-635-4453

f: 304-637-0582

[todd.hess@usda.gov](mailto:todd.hess@usda.gov)

200 Sycamore Street  
Elkins, WV 26241

[www.fs.fed.us](http://www.fs.fed.us)



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**PUBLISHED**UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 18-1144**

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COWPASTURE RIVER PRESERVATION ASSOCIATION; HIGHLANDERS  
FOR RESPONSIBLE DEVELOPMENT; SHENANDOAH VALLEY  
BATTLEFIELDS FOUNDATION; SHENANDOAH VALLEY NETWORK;  
SIERRA CLUB; VIRGINIA WILDERNESS COMMITTEE; WILD VIRGINIA,  
INC.,

Petitioners,

v.

FOREST SERVICE, an agency of the U.S. Department of the Agriculture;  
KATHLEEN ATKINSON, in her official capacity as Regional Forester of the  
Eastern Region; KEN ARNEY, in his official capacity as Acting Regional  
Forester of the Southern Region,

Respondents,

ATLANTIC COAST PIPELINE LLC,

Intervenor.

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On Petition for Review of a Decision of the United States Forest Service.

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Argued: September 28, 2018

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Decided: December 13, 2018

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Before GREGORY, Chief Judge, WYNN and THACKER, Circuit Judges.

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Petition for review granted, vacated and remanded by published opinion. Judge Thacker wrote the opinion, in which Chief Judge Gregory and Judge Wynn joined.

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**ARGUED:** Austin D. Gerken, Jr., SOUTHERN ENVIRONMENTAL LAW CENTER, Asheville, North Carolina, for Petitioners. Avi Kupfer, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Respondents. Brooks Meredith Smith, TROUTMAN SANDERS LLP, Richmond, Virginia, for Intervenor. **ON BRIEF:** Amelia Burnette, J. Patrick Hunter, Asheville, North Carolina, Gregory Buppert, Jonathan Gendzier, SOUTHERN ENVIRONMENTAL LAW CENTER, Charlottesville, Virginia, for Petitioners Cowpasture River Preservation Association, Highlanders for Responsible Development, Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, and The Virginia Wilderness Committee. Nathan Matthews, SIERRA CLUB ENVIRONMENTAL LAW PROGRAM, Oakland, California, for Petitioners Sierra Club and Wild Virginia, Inc. Eric Grant, Deputy Assistant Attorney General, Andrew C. Mergen, J. David Gunter II, Environment & Natural Resources Division, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C.; Stephen A. Vaden, Principal Deputy General Counsel, Washington, D.C., Jay McWhirter, Sarah Kathmann, Office of the General Counsel, UNITED STATES DEPARTMENT OF AGRICULTURE, Atlanta, Georgia, for Respondents. Andrea W. Wortzel, TROUTMAN SANDERS LLP, Richmond, Virginia, for Intervenor.

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THACKER, Circuit Judge:

In this case, we address whether the United States Forest Service (“Forest Service”) complied with the National Forest Management Act (“NFMA”), the National Environmental Policy Act (“NEPA”), and the Mineral Leasing Act (“MLA”) in issuing a Special Use Permit (“SUP”) and Record of Decision (“ROD”) authorizing Atlantic Coast Pipeline, LLC (“Atlantic”), the project developer, to construct the Atlantic Coast Pipeline (“ACP” or “the pipeline”) through parts of the George Washington and Monongahela National Forests (“GWNF” and “MNF,” respectively) and granting a right of way across the Appalachian National Scenic Trail (“ANST”).

For the reasons more fully explained below, we conclude that the Forest Service’s decisions violate the NFMA and NEPA, and that the Forest Service lacked statutory authority pursuant to the MLA to grant a pipeline right of way across the ANST. Accordingly, we grant the petition for review of the Forest Service’s SUP and ROD, vacate those decisions, and remand to the Forest Service for further proceedings consistent with this opinion.

I.

A.

*Background*

The ACP is a proposed 604.5 mile, 42-inch diameter natural gas pipeline that would stretch from West Virginia to North Carolina. The ACP route approved by the Federal Energy Regulatory Commission (“FERC”) -- and for which the Forest Service issued the SUP, ROD, and right of way challenged in this case -- crosses 21 miles of



national forest land (about 16 miles in the GWNF and five miles in the MNF) and crosses the ANST in the GWNF. Construction would involve clearing trees and other vegetation from a 125-foot right of way (reduced to 75 feet in wetlands) through the national forests, digging a trench to bury the pipeline, and blasting and flattening ridgelines in mountainous terrains. Following construction, the project requires maintaining a 50-foot right of way (reduced to 30 feet in wetlands) through the GWNF and MNF for the life of the pipeline.

Pursuant to NEPA, when a federal agency proposes to take a “major Federal action[] significantly affecting the quality of the human environment,” the agency must prepare a detailed environmental impact statement (“EIS”) describing the likely environmental effects, “adverse environmental effects which cannot be avoided,” and potential alternatives to the proposal. 42 U.S.C. § 4332(C). On April 27, 2015, the Forest Service provided scoping comments on FERC’s Notice of Intent to prepare an EIS for the ACP project. The scoping comments stated, among other concerns, that the EIS must analyze alternative routes that do not cross national forest land, and that the EIS must address the Forest Service’s policy that restricts special uses on national forest lands to those that “cannot reasonably be accommodated on non-National Forest System lands.” J.A. 3593;<sup>1</sup> *see also* Forest Serv. Manual, Addendum to Pet’rs’ Br. 65–66. The Forest Service’s comments further identified concerns about landslides, slope failures,

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<sup>1</sup> Citations to the “J.A.” refer to the Corrected Deferred Joint Appendix filed by the parties in this appeal.

sedimentation, and impacts to groundwater, soils, and threatened and endangered species that it believed would result from the ACP project.

On September 18, 2015, Atlantic filed its formal application with FERC to construct, own, and operate the pipeline. On November 12, 2015, Atlantic applied for the SUP from the Forest Service to construct and operate the pipeline across the MNF and GWNF. This application was amended in June 2016.

B.

*Review and Comment*

As FERC prepared the EIS, the Forest Service reviewed and commented on draft environmental resource reports, construction designs, biologic evaluations, and the first draft of Atlantic's Construction, Operation, and Maintenance ("COM") Plan filed with FERC. Additionally, in a letter to Atlantic dated October 24, 2016, the Forest Service requested ten site-specific stabilization designs for selected areas of challenging terrain to demonstrate the effectiveness of Atlantic's proposed steep slope stability program, which Atlantic called the "Best in Class" ("BIC") Steep Slopes Program. As the Forest Service explained:

Both the [GWNF and MNF] contain Forest Plan standards that limit activities in areas that are at high risk for slope and soil instability. To facilitate the acceptance of ACP's [SUP] application for further processing, the Forests need to be able to determine that the project is consistent or can be made consistent with this Forest Plan direction.

J.A. 3379. The letter further noted that the ten selected sites were "merely representative sites that have been selected to demonstrate whether stability can be maintained for the purpose of making a preliminary determination of Forest Plan consistency. Should the

ACP Project be permitted, multiple additional high hazard areas will need to be addressed on a site-specific basis.” *Id.*

In a meeting between Atlantic and the Forest Service on November 21, 2016, Atlantic presented the first two of these site-specific stabilization designs (identified as MNF01 and GWNF02 in the October 24, 2016 letter). According to the meeting notes, the MNF Forest Supervisor noted:

[W]hile the BIC program [Atlantic] is proposing is laudable [the MNF Forest Supervisor] is skeptical the techniques will work; the Forest Service has seen slope failures on lesser slopes and would be able to provide examples. [Atlantic] needs to be able to demonstrate that the techniques will work in extreme conditions. . . . The [Forest Service] wants to know beforehand that these examples have a reasonable chance of working.

J.A. 3319. Additionally, the Forest Service observed that the MNF01 and GWNF02 “drawings are a step in the right direction but more detail is needed for site specific design, the Forest Service needs to see how this lays out on the land.” *Id.* at 3320.

Thereafter, beginning in December 2016, Atlantic circulated a timeline of “FERC and Forest Service Reviews” to the Forest Service, which set the following deadlines for the agency’s decisions (as proposed by Atlantic): (1) FERC’s Draft Environmental Impact Statement (“DEIS”) to be issued in December 2016; (2) FERC’s Final Environmental Impact Statement (“FEIS”) to be issued in June 2017; (3) the Forest Service’s draft ROD to be issued also in June 2017; (4) a “Federal Agency Decision Deadline” of September 2017 (for issuance of the FERC Certificate of Convenience and Public Necessity and the Forest Service’s SUP and ROD); (5) Forest Plan amendments completed in October 2017; and (6) the pipeline in service by 2019. *See* J.A. 3252–53.



In line with Atlantic's deadlines for the agencies' decisions, FERC issued the DEIS on December 30, 2016. Regarding its analysis of alternative routes, the DEIS explicitly stated that the ACP was routed on national forest lands in order to avoid the need for congressional approval for the pipeline to cross the ANST:

*A significant factor in siting ACP was the location at which the pipeline would cross the ANST. In the general project area, the ANST is located on lands managed by either the [National Park Service ("NPS")] or [the Forest Service]. The NPS has indicated that it does not have the authority to authorize a pipeline crossing of the ANST on its lands. Instead, legislation proposed by Congress and signed into law by the President would be necessary to allow the NPS the authority to review, analyze, and approve a pipeline crossing of the ANST on its lands. Because of this legislative process, Atlantic considered locations where the ANST was located on lands acquired and administered by the [Forest Service], which significantly constrained the pipeline route and severely limits opportunities for avoiding and/or minimizing the use of [National Forest System] lands.*

J.A. 3207–08 (emphasis supplied). Regarding the environmental impact on forest resources, the DEIS further stated:

*[W]e acknowledge that a shorter pipeline route could conceptually have significantly greater qualitative impacts to sensitive resources than a longer route, which could make the longer route preferable. In this instance, we have not identified or received any information that suggests the shorter pipeline route through the National Forests has significantly greater impacts to sensitive resources than the alternative, but acknowledge that ground resource surveys have not been conducted.*

*Id.* at 3208 (emphasis supplied).

On February 17, 2017, Atlantic and the Forest Service met again to discuss the ten requested site-specific stabilization designs. During this meeting, Atlantic informed the Forest Service that the two earlier site designs were for demonstration purposes, and the remaining eight sites were not currently being designed. The Forest Service stated that it

was “not comfortable” with not seeing the remaining designs, and that it was the Forest Service’s understanding that specific designs for all ten sites were still needed. J.A. 2939. Significantly, the Forest Service stated, it “want[ed] to see actual information, including specs on the actual controls and protocol on how they will be installed, not conceptual drawings.” *Id.*

On April 6, 2017, the Forest Service provided comments on FERC’s DEIS. In multiple places, the Forest Service’s comments stated that FERC’s conclusions in the DEIS were premature given the incomplete information used to make them -- this was particularly the case regarding the extent of impacts to national forest resources and the effectiveness of mitigation techniques. *See, e.g.*, J.A. 2444 (“This statement [in the DEIS] acknowledges deficiencies in information needed to conduct an appropriate effects analysis for at least some sensitive species. Given this, the [Forest Service] has serious reservations about the conclusions of the analyses up to this point because those conclusions have been reached prior to acquiring the necessary information to substantiate what must otherwise be presumed to represent judgments based on incomplete information.”); *id.* at 2445 (“There will be irreversible impacts to the soil and vegetation resources from construction of the ACP pipeline on [National Forest System] lands. No matter how [Atlantic] plans to implement measures to reduce these impacts, there will still be an unavoidable irreversible dedication of the soil resource as defined by NEPA . . . . The [COM] Plan is currently not complete, and substantial work remains to develop and refine measures to avoid, minimize, and mitigate impacts to a variety of



resources on [National Forest System] lands, including steep slopes/sensitive soils; threatened, endangered, and sensitive species; and management indicator species.”).

Further, regarding the DEIS’s analysis of non-national forest alternative routes, the Forest Service commented:

No analysis of a National Forest Avoidance Alternative has been conducted, and environmental impacts of this alternative have not been considered or compared to the proposed action. *Therefore, the Forest Service cannot support the recommendation that the National Forest Avoidance Alternative be dropped from consideration. In our scoping comments, we requested that all alternatives, including a National Forest Avoidance Alternative, be fully addressed in regard to their feasibility and environmental effects. We hereby reiterate that request.*

J.A. 2454 (emphasis supplied).

The Forest Service’s comments on Atlantic’s draft biologic evaluation, issued on April 24, 2017, paint a similarly grim picture of the ACP project’s effects on erosion and on threatened and endangered species. For example, Atlantic’s draft biologic evaluation contained the following statement: “Construction activities may displace certain sensitive species from within and areas adjacent to the right-of-way, but the impact is expected to be short-term and limited to the period of construction. After construction, Atlantic will restore the right-of-way as near as practicable to preconstruction contours and conditions . . . .” J.A. 2324. In response, the Forest Service stated:

Restoration will consist of erosion control, some NNIS [non-native invasive species] control, and some native plant re-introduction, so it will create habitat of some sort, *but the impact to sensitive species should be expected to be long-term.* Restoration plantings will take many years to establish and flourish, will in most cases consist of different species than were present before, and will in many cases not re-create the conditions sensitive species need to survive. NNIS introductions, given the current lack of plans to conduct treatment along access roads, *likely will create long-term*



*negative impacts to the ecosystem, including potentially to sensitive species.*

*Id.* (emphasis supplied).

Additionally, in response to a statement in the draft biologic evaluation that the loss of potential roosting habitat for the little brown bat (caused by construction of the pipeline and the resulting permanent right of way) would be “offset,” since the species could use the right of way as foraging habitat, the Forest Service stated:

A potential increase in foraging habitat (which is not really proven here) does not offset the long-term loss of good roosting habitat -- they apply to different life history needs and an increase in one does not offset loss of the other. Also, the loss of forested habitat would be a long-term impact given the time period required for recovery.

J.A. 2333. The Forest Service further noted, “Bats utilizing the more open areas (such as the [right of way] and road corridors) for foraging are also more vulnerable to predators. This offset is counteracted by an increase in potential predation, which negates the [right of way] and roads as potentially beneficial to the bat.” *Id.* at 2332.

C.

### *Change of Course*

Despite the Forest Service’s clearly stated concerns regarding the adverse impacts of the ACP project, as Atlantic’s deadlines for the agency’s decisions drew closer, its tenor began to change. On May 14, 2017, the Forest Service sent a letter to FERC and Atlantic in which it stated -- for the first time -- that it would not require the remaining eight site-specific stabilization designs before authorizing the project. Specifically, the letter stated: “If the ACP project is authorized, the site-specific designs for the remaining

eight sites identified in our October 24, 2016 letter must be reviewed and approved by the [Forest Service] before construction at those locations could begin.” J.A. 2307. The letter did not acknowledge that the agency was changing its position from its original request for all ten site designs prior to granting approval for the ACP nor did it provide any further explanation regarding the reason for the Forest Service’s change in position. On July 5, 2017, the Forest Service sent a letter to Atlantic “acknowledg[ing]” that the two site-specific stabilization designs that had so far been provided (MNF01 and GWNF02) and the subsequent information about those sites provided by Atlantic “w[ere] adequate for the purposes of disclosing the environmental effects” associated with the ACP project. *Id.* at 1881. The letter did not provide any explanation as to why the two plans were “adequate.”

On July 21, 2017, FERC released the FEIS. On the very same day, and in line with Atlantic’s timeline, the Forest Service released its draft ROD proposing to adopt the FEIS, grant the SUP, and exempt Atlantic from several forest plan standards. The FEIS’s “National Forest Avoidance Route Alternatives” section, which the Forest Service commented on previously (as explained above), is identical to the DEIS. Regarding the alternatives analysis, the Forest Service’s draft ROD states: “FERC’s evaluation concluded that the major pipeline route alternatives and variations do not offer a significant environmental advantage when compared to the proposed route or would not be economically practical.” *Id.* at 1411.

Regarding the COM Plan, on October 6, 2017, the Forest Service sent a letter to Atlantic stating that Atlantic’s June 30 responses to the Forest Service’s second draft

COM Plan comments “largely addressed our comments except for a limited number of items needing further explanation or clarification.” J.A. 847. The letter requested an updated COM Plan incorporating these responses. Atlantic filed this third (and final) draft of the COM Plan on October 27, 2017.

FERC issued the Certificate of Convenience and Public Necessity to ACP for construction of the pipeline on October 13, 2017.

Shortly after, on October 27, 2017, the Forest Service filed its responses to objections to the draft ROD. In response to an objection regarding the range of non-national forest route alternatives, the Forest Service stated that FERC “adequate[ly] consider[ed] the route across the National Forests” and “concluded these alternatives would not provide a significant environmental advantage over a shorter route that passes through National Forests.” J.A. 676.

On November 16, 2017, the Forest Service sent a letter to Atlantic regarding Atlantic’s updated biologic evaluation, which had been filed on August 4, 2017. That biologic evaluation stated that the ACP project was likely to result in a “loss of viability” for three Regional Forester Sensitive Species (“RFSS”) in the MNF, a conclusion which, we note, was in line with the Forest Service’s April 24, 2017 comments on the draft biologic evaluation. Nonetheless, in an about-face, the Forest Service’s letter amended the updated biologic evaluation to conclude that, in fact, the project was *not* likely to result in a loss of viability to the three RFSS. This conclusion is significant, because the Forest Service cannot authorize uses of national forests that are likely to result in a loss of viability for a species. *See* J.A. 64 (“Per [Forest Service Manual] 2670.32, activities or



decisions on [National Forest System] lands ‘must not result in a loss of species viability or create significant trends towards federal listing.’”). However, as noted above, the Forest Service had already issued its draft ROD proposing to authorize the SUP before the updated biologic evaluation was filed.

The Forest Service issued its final ROD on November 17, 2017, and it issued the SUP and granted the right of way across the ANST on January 23, 2018. Cowpasture River Preservation Association, Highlanders for Responsible Development, Shenandoah Valley Battlefields Foundation, Shenandoah Valley Network, Sierra Club, Virginia Wilderness Committee, and Wild Virginia, Inc. (collectively, “Petitioners”) filed this challenge on February 5, 2018. We possess jurisdiction pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–06, and the Natural Gas Act, 15 U.S.C. § 717r(d)(1).

## II.

We may “‘hold unlawful and set aside [a federal] agency action’ for certain specified reasons, including whenever the challenged act is ‘arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law.’” *Sierra Club, Inc. v. U.S. Forest Serv.*, 897 F.3d 582, 589–90 (4th Cir. 2018) (quoting 5 U.S.C. § 706(2)(A)).

An agency’s decision is arbitrary and capricious if:

the agency relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

*Id.* at 590 (quoting *Def. of Wildlife v. N.C. Dep't of Transp.*, 762 F.3d 374, 396 (4th Cir. 2014)).

### III.

Petitioners assert that the Forest Service violated three federal Acts in issuing the ROD and SUP: the NFMA, NEPA, and the MLA. We address each of these Acts and alleged violations in turn.

#### A.

##### *National Forest Management Act*

The NFMA sets forth substantive and procedural standards that govern the management of national forests. *See* 16 U.S.C. § 1604. As this court recently explained in *Sierra Club v. Forest Service*, the NFMA establishes a procedure for managing National Forest System lands using “Forest Plans,” which “provide a framework for where and how certain activities can occur in national forests.” *Sierra Club, Inc. v. U.S. Forest Serv.*, 897 F.3d 582, 600 (4th Cir. 2018) (quoting *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 919 (D.C. Cir. 2017); 16 U.S.C. § 1604(a)). First, the NFMA directs the Forest Service to “develop, maintain, and, as appropriate, revise” Forest Plans; second, it directs the Forest Service to ensure that all activities on national forest lands -- specifically, all “resource plans and permits, contracts, and other instruments for the use and occupancy of National Forest System lands” -- are consistent with the Forest Plans. *Id.* (quoting *Perdue*, 873 F.3d at 919; 16 U.S.C. § 1604(i)).

The NFMA also charges the Department of Agriculture (through the Forest Service, *see* 36 C.F.R. § 200.3(b)) with “promulgating guidelines for Forest Plans, which

should, inter alia, ‘insure consideration of the economic and environmental aspects of various systems of renewable resource management’ and ‘provide for diversity of plant and animal communities based on the suitability and capability of the specific land area.’” *Sierra Club*, 897 F.3d at 600 (quoting 16 U.S.C. § 1604(g)(3)(A)–(B)). At issue in this case are two Forest Service regulations issued pursuant to this authority: the 2012 Planning Rule and the 2016 Amendment to the 2012 Planning Rule, both of which deal with amendments to Forest Plans.

Petitioners assert that the Forest Service violated the NFMA by: (1) determining that amendments to the GWNF and MNF Plans’ standards to accommodate the ACP were not “directly related” to the 2012 Forest Planning Rule’s (“2012 Planning Rule’s”) substantive requirements; (2) failing to meet public participation requirements in amending forest plans; and (3) failing to analyze whether the ACP project’s needs could be reasonably met off of national forest land.

1.

*2012 Planning Rule*

Petitioners assert that the Forest Service violated the NFMA by failing to apply the substantive requirements of the 2012 Planning Rule to the amendments of the GNF and MNF Plans’ standards. Specifically, Petitioners assert that the amendments are directly related to the substantive requirements both in their purpose and their effects.



a.

### *Background*

In 2012, the Forest Service updated its Forest Planning Rule, which superseded the 1982 rule and set forth new, substantive requirements for Forest Plans. *See* 2012 Planning Rule, 77 Fed. Reg. 21,162 (U.S. Dep’t of Agric. Apr. 9, 2012). The updated substantive requirements in the 2012 Planning Rule apply to Forest Plans developed under the 1982 rule in certain circumstances. *See* 36 C.F.R. §§ 219.8–219.11; *Sierra Club*, 897 F.3d at 600–01. Specifically, as the 2016 Amendment to the 2012 Planning Rule clarified, a substantive requirement from the 2012 Planning Rule applies to a Forest Plan amendment if that requirement is “*directly related* to the plan direction being added, modified, or removed by the amendment.” *Sierra Club*, 897 F.3d at 601 (quoting 36 C.F.R. § 219.13(b)(5) (emphasis supplied in *Sierra Club*)).

If the substantive requirement is directly related to the amendment, then the responsible official must “apply such requirement(s) within the scope and scale of the amendment.” *Sierra Club*, 897 F.3d at 601 (quoting 36 C.F.R. § 219.13(b)(5)). Conversely, if the substantive requirement from the 2012 Planning Rule is not directly related to the amendment, the responsible official is not required to apply it to the amended Forest Plan. *See id.* Thus, Petitioners’ arguments on this point turn on whether the requirements in the 2012 Planning Rule are *directly related* to the Forest Service’s amendments to the GWNF and MNF Plans.

A substantive requirement is directly related to the amendment when the requirement “is associated with either the purpose for the amendment or the effects

(beneficial or adverse) of the amendment.” *Sierra Club*, 897 F.3d at 602 (quoting 2016 Amendment to 2012 Rule, 81 Fed. Reg. 90,723, 90,731 (U.S. Dep’t of Agric. Dec. 15, 2016)); *see also* 36 C.F.R. § 219.13(b)(5)(i) (“The responsible official’s determination must be based on the purpose for the amendment and the effects (beneficial or adverse) of the amendment, and informed by the best available scientific information, scoping, effects analysis, monitoring data or other rationale.”). Further, regarding the adverse effects of an amendment, “[t]he responsible official must determine that a specific substantive requirement is directly related to the amendment when scoping or NEPA effects analysis for the proposed amendment reveals substantial adverse effects associated with that requirement, or when the proposed amendment would substantially lessen protections for a specific resource or use.” 36 C.F.R. § 219.13(b)(5)(ii).

b.

*GWNF and MNF Plan Amendments: Purpose Analysis*

In its ROD, the Forest Service decided to apply project-specific amendments to a total of 13 standards in the GWNF and MNF Plans for the purpose of construction and operation of the ACP. The amendments exempt the ACP project from four MNF Plan standards and nine GWNF Plan standards that relate to soil, water, riparian, threatened and endangered species, and recreational and visual resources.

Petitioners assert that the Forest Service violated the NFMA and the 2012 Planning Rule because it skipped the “purpose” prong of the “directly related” analysis.

Consistent with our decision in *Sierra Club*, we conclude that Petitioners are correct.<sup>2</sup> Although the ROD states the rule correctly, *see* J.A. 36 (“[W]hether a planning regulation requirement is directly related to an amendment is based upon the amendment’s purpose or its effect (beneficial or adverse).”), it fails to analyze the purpose of the amendments and instead moves directly to analyzing the amendments’ effects, *see id.* at 36–48. This omission is particularly striking because the Forest Service specifically identified the purpose and need for the amendments in the ROD:

The purpose of the amendments are [sic] to meet the requirements of the NFMA and its implementing regulations that projects authorized on [National Forest System] lands must be consistent with the LRMP. Without the MNF and GWNF project-specific Forest Plan amendments the ACP project would not be consistent with some Forest Plan standards related to soil, riparian, threatened and endangered species, utility corridors, the ANST, an Eligible Recreational River Area, and scenic integrity objectives.

*Id.* at 31.

Indeed, this purpose and need is repeated several times throughout the ROD. *See, e.g.*, J.A. 27 (“The project-specific amendments to MNF and GWNF LRMP’s [sic] approved by this decision are needed to allow the ACP Project to be consistent with LRMP standards.”); *id.* at 37 (“[T]he purpose of the plan amendments is to ensure consistency of the ACP Project with the provisions of the two Forest Plans.”). There

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<sup>2</sup> Faced with a nearly identical situation in *Sierra Club v. Forest Service*, we concluded that the Forest Service acted arbitrarily and capriciously by failing to analyze the *purpose* of the amendment in its ROD (and instead focusing on only the effects) when “the clear purpose of the amendment [was] to lessen requirements protecting soil and riparian resources so that the pipeline project could meet those requirements.” *Sierra Club*, 897 F.3d at 603.



would be no need to amend the Forest Plans to “ensure consistency” if the ACP project could meet the Forest Plan standards in the first place. In other words, the ROD makes clear that the purpose of the amendments was to lessen certain environmental requirements in the GWNF and MNF Plans because the ACP project could not meet those Plans’ existing requirements.

Accordingly, by failing to analyze whether the substantive requirements of the 2012 Planning Rule are directly related to the purpose of the amendments, the Forest Service “entirely failed to consider an important aspect of the problem.” *Defs. of Wildlife v. N.C. Dep’t of Transp.*, 762 F.3d 374, 396 (4th Cir. 2014) (quoting *Motor Vehicle Mnfs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). This failure is significant, because it is clear that the amendments (intended to lessen protections for soils, riparian areas, and threatened and endangered species in the GWNF and MNF Plans) *are directly related* to the 2012 Planning Rule’s substantive requirements for these same categories: “soil and soil productivity” (36 C.F.R. § 219.8(a)(2)(ii)); “water resources” (*id.* § 219.8(a)(2)(iv)); “ecological integrity of riparian areas” (*id.* § 219.8(a)(3)(i)); “ecological integrity of terrestrial . . . ecosystems” (*id.* § 219.8(a)(1)); “appropriate placement and sustainable management of . . . utility corridors” (*id.* § 219.10(a)(3)); and “recovery of federally listed . . . species” (*id.* § 219.9(b)).

c.

#### *Ex Post Facto Statements of Purpose*

Notwithstanding the Forest Service’s statements of purpose and need in the ROD, in its briefing and at oral argument the Forest Service attempted to recharacterize the

purpose of the amendments as “to relax thirteen planning standards just enough to ‘authorize [Atlantic] to use and occupy [National Forest System] lands for the [ACP] Project’ consistent with the forest plans.” Resp’t’s Br. 18. Meanwhile, Atlantic asserts that the Forest Service *did* “explicitly evaluate[] the purpose of the proposed amendments” and determined that “the purpose of ACP is not directly related to any of [the 2012 Planning Rule’s] management guidelines.” Intervenor’s Br. 25. Instead, according to Atlantic, “the purpose of ACP is to ‘serve the growing energy needs of multiple public utilities and local distribution companies, and Virginia and North Carolina’ and the ‘purpose and need’ of the ‘proposed action’ is to ‘respond to Atlantic’s application for a special use permit.’” *Id.* (quoting J.A. 10, 37). Quite the contrary -- the ROD does *not* analyze whether the amendments’ purpose is directly related to the 2012 Planning Rule’s substantive requirements. Rather, the ROD lists the purpose and need of the amendments but analyzes only the amendments’ effects. *See* J.A. 36–48. The Forest Service’s and Atlantic’s attempts to recharacterize the purpose of the amendments (despite the clear statements of the amendments’ purpose in the ROD) are without merit.

First, the Forest Service asserts that the true purpose of the amendments was just to authorize the ACP project -- not to lessen environmental protections for certain resources -- and that “not every amendment with an *effect* on a particular resource has the *purpose* of adjusting the forest plan’s direction for that resource.” Resp’t’s Br. 18–19 (emphasis in original). But this contradicts the Forest Service’s own description of the amendments’ purpose in both the ROD and in its brief, which *begins with the phrase* “to relax thirteen planning standards.” *Id.* at 18. Relaxing, lessening, loosening -- regardless

of the Forest Service's verb preference, the purpose of the Forest Plan amendments is to reduce the Plans' environmental protections for certain resources.

Further, this is not a situation where a proposed project-specific amendment may have an *incidental* effect on a Forest Plan standard; rather, the amendments' entire purpose is to weaken existing environmental standards in order to accommodate the ACP, which cannot meet the current standards. To say that a 2012 Planning Rule requirement protecting water resources (as one example) is not "directly related" to a Forest Plan amendment specifically relaxing protection for water resources is nonsense.

Meanwhile, Atlantic conflates the purpose of the *amendments* to the Forest Plans with, first, the overall purpose of the ACP *project* (to "serve the growing energy needs of multiple public utilities and local distribution companies, and Virginia and North Carolina," Intervenor's Br. 25), and second, the Forest Service's reason for taking action at all (to "respond to Atlantic's application for a special use permit," *id.*). Both interpretations of "purpose" are facially incorrect applications of the 2012 Planning Rule's "directly related" analysis, and neither address the Forest Service's purpose for amending the GWNF and MNF Plans. First, the purpose of the *plan amendment*, not the ACP project, is the focus of this analysis. Second, the Forest Service's need to respond to Atlantic's application for the SUP is overly broad and does not address the need for amending the Forest Plans -- clearly, the Forest Service could have "responded" to Atlantic's application without the amendments.

Finally, both the Forest Service and Atlantic suggest that only amendments changing a management standard for the forest as a whole -- and not project-specific



amendments -- can trigger the substantive requirements of the 2012 Planning Rule. *See* Resp't's Br. 18–20 (“A substantive requirement is directly related to the purpose for an amendment when the amendment’s objective is to adjust the management of the corresponding forest resource.”); Intervenor’s Br. 26 (“[T]he proposed amendments for ACP did not change any of the generally applicable standards or guidelines in the forest plans.”). Neither party offers authority to support this assertion, which is contrary to the purpose of the 2012 Planning Rule: to promote consistency in the protections for national forest resources across Forest Plans. *See* 2012 Planning Rule, 77 Fed. Reg. at 21,162. If the Forest Service could circumvent the requirements of the 2012 Planning Rule simply by passing project-specific amendments on an ad hoc basis, both the substantive requirements in the 2012 Planning Rule and the NFMA’s Forest Plan consistency requirement would be meaningless.

Accordingly, in line with our decision in *Sierra Club v. Forest Service*, we conclude that the 2012 Planning Rule requirements for soil, riparian resources, and threatened and endangered species are directly related to the purpose of the Forest Plan amendments. The Forest Service acted arbitrarily and capriciously in concluding otherwise.

d.

#### *Effects Analysis*

Although we need not reach the “effects” prong of the analysis in light of our conclusion that the purpose of the amendments is directly related to the 2012 Planning

Rule's substantive requirements, the Forest Service's assertion that the Plan amendments will not have substantial adverse effects warrants additional discussion.

As noted above, a substantive requirement is directly related to a Forest Plan amendment when the requirement "is associated with . . . the effects (beneficial or adverse) of the amendment." *Sierra Club*, 897 F.3d at 602 (quoting 2016 Amendment to 2012 Rule, 81 Fed. Reg. at 90,731); *see also* 36 C.F.R. § 219.13(b)(5)(i). The Forest Service asserts that an adverse effect must be "substantial" in order to be directly related to a substantive provision in the 2012 Planning Rule.<sup>3</sup> When asked at oral argument how the Forest Service defines "substantial adverse effects," counsel for the Forest Service responded:

COUNSEL: [T]he best guidance for that issue can be found in the preamble to the 2012 [Planning] Rule where the Forest Service says that rarely, if ever, will a project-specific amendment rise to the level of having a substantial adverse effect on these resources.

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<sup>3</sup> It is not necessary for us to determine whether this characterization of the regulations is accurate because, for the reasons explained below, we conclude that the Forest Service's determination that the amendments will not have substantial adverse effects was arbitrary and capricious. Nevertheless, we note that the regulation at issue -- 36 C.F.R. § 219.13 -- does not define "adverse effects" as including *only* substantial effects; rather, it says that the applicable substantive requirement from the 2012 Planning Rule *must apply when* the effects are substantial. *See* 36 C.F.R. § 219.13(b)(5)(ii). Curiously, there is no corresponding guidance for beneficial effects. In other words, under the Forest Service's interpretation of the regulation, only "substantial" adverse effects could trigger application of a substantive requirement, but *any beneficial effect at all* would trigger the same substantive requirement. The Forest Service does not explain why the regulations would intend to make it easier to pass amendments that harm the environment (by not requiring application of the substantive requirements, which aim to protect the environment, unless that harm is substantial) but more difficult to pass amendments that benefit the environment.

...

COURT: How can that be, rarely if ever will something rise to have a substantial adverse effect on the forest? How many trees do you cut down before it is a substantial adverse effect? Maybe not one. All of them?

COUNSEL: The way the Forest Service stated it in the 2012 preamble to [the Planning] Rule was that it was going to look at the impact of the resource over the entire forest.

Oral Argument at 22:55–24:04, *Cowpasture River Preservation Ass’n v. Forest Serv.*, No. 18-1144 (4th Cir. Sept. 28, 2018), <http://www.ca4.uscourts.gov/oral-argument/listen-to-oral-arguments> (hereinafter “Oral Argument”).

It is nothing short of remarkable that the Forest Service -- the federal agency tasked with maintaining and preserving the nation’s forest land -- takes the position that as a bright-line rule, a project-specific amendment, no matter how large, will *rarely, if ever*, cause a substantial adverse effect on a national forest. And it is even more remarkable that the agency is unable to say what *would* constitute a substantial adverse effect on the forest.

Indeed, counsel’s response did not answer the court’s question, and the Forest Service has never explained (in its briefing nor at argument) what makes an adverse effect “substantial.” Even more telling, however, is that the “rarely, if ever” language used by counsel is *nowhere to be found* in the preamble to the 2012 Planning Rule, nor in *any other* Forest Service guidance that the court could find. The closest language to counsel’s assertion that the court could identify is in the preamble to the *2016 Amendment* to the 2012 Planning Rule, which states, “[i]t is unlikely that a change in land allocation for a small area would have substantial adverse effects.” 2016 Amendment to



2012 Rule, 81 Fed. Reg. at 90,728. This language was a response by the Forest Service to a public comment which was concerned that the proposed rule (the 2016 Amendment) might impose a burden on small changes to land allocation. The Forest Service's full response was as follows:

The 2012 rule did not require that every resource or use be present in every area. The Department clarifies in this final rule that directly related substantive requirements within §§ 219.8 through 219.11 apply within the scope and scale of the amendment. Changes in land allocation for a small area would likely require a similarly narrow application of the directly related substantive requirements, depending on the purpose and effects of the changes. It is unlikely that a change in land allocation for a small area would have substantial adverse effects.

*Id.*

Even assuming that this language from the 2016 Amendment's preamble is what counsel was referring to during argument, it still does not provide any support for the Forest Service's interpretation of "substantial adverse effects." A "change in land allocation for a small area" is plainly not the same as generalizing to any project-specific amendment, and "unlikely" is a far cry from "rarely, if ever." Perhaps this is why counsel struggled to define what "rarely, if ever" would mean in this context.

Thus, we find no basis in the law for the Forest Service's assertion that "rarely, if ever, will a project-specific amendment rise to the level of having a substantial adverse effect" on the natural forests.

In any event, the Forest Service's application of the "effects" prong of the directly related test was still flawed. In each instance in the ROD where the Forest Service concluded that the 2012 Planning Rule's substantive requirements were not "directly

related” to the Plan amendments, the ROD states that the amendment “will not cause substantial *long-term* adverse effects.” J.A. 39, 41, 43 (emphasis supplied). But nowhere do the regulations (nor does the ROD, nor does the Forest Service’s brief) state that a substantial adverse effect must be *long term* for the substantive requirement in the 2012 Planning Rule to be “directly related” to the amendment.

The Forest Service’s strained and implausible interpretations of “substantial adverse effects” are especially striking in light of the significant evidence in the record that the GWNF and MNF Plan amendments *would* cause substantial adverse effects on the forests. *See, e.g.*, J.A. 25 (“Sedimentation modeling indicates annual soil loss will be 200 to 800 percent above baseline erosion during the first year of construction, returning to pre-construction levels within 5 years following restoration”); *id.* at 2320 (“Full recovery of forested sites would take many decades.”); *id.* at 2351 (“It is unsubstantiated as to how [erosion] increases of that magnitude are considered moderate and impacts will be temporary and minimal.”).

The lengths to which the Forest Service apparently went to avoid applying the substantive protections of the 2012 Planning Rule -- its own regulation intended to protect national forests -- in order to accommodate the ACP project through national forest land on Atlantic’s timeline are striking, and inexplicable.

Accordingly, we conclude that the Forest Service’s determination that the GWNF and MNF Plan amendments would not have substantial adverse effects on the forests was arbitrary and capricious.

e.

*Remand to the Forest Service*

Because the 2012 Planning Rule requirements for soil, riparian resources, and threatened and endangered species are directly related to the purpose and effect of the GWNF and MNF Forest Plan amendments, the Forest Service must “apply [those] requirement[s] within the scope and scale of the amendment.” *Sierra Club*, 897 F.3d at 603 (quoting 36 C.F.R. § 219.13(b)(5) (alterations in *Sierra Club*)). Accordingly, we remand to the Forest Service for proper application of the Planning Rule requirements for soil, riparian resources, and threatened and endangered species to the Forest Plan amendments.

The Forest Service contends that remand is unnecessary because the Plan amendments already meet the substantive requirements of the 2012 Planning Rule. Thus, the Forest Service asserts, any error in applying the 2012 Planning Rule was harmless. We find no basis to support such a conclusion. In fact, the ROD suggests just the opposite is true: in its analysis of the amendments’ compliance with the 2012 Planning Rule’s substantive requirements, the Forest Service explicitly stated when an amendment met the applicable substantive requirement. For example, regarding the GWNF Plan amendment for utility corridors, the ROD states:

The FEIS evaluated a variety of options to transport natural gas and adequately analyzed the appropriate placement and sustainable management of the ACP. Consequently, *I find this amendment meets the 36 CFR 219.10(a)(3) planning rule requirement.* Since the amendment meets the rule requirement, there is no need to make a further determination as to whether the rule requirement is directly related to it.



J.A. 41–42 (emphasis supplied); *see also id.* at 44, 46, 47, 48 (similarly concluding that the Plan amendments for the ANST, scenic integrity objectives, road reconstruction, and management of old growth, respectively, meet the 2012 Planning Rule’s substantive requirements and thus “there is no need” to determine whether the substantive requirement is directly related to the amendment).

Yet, tellingly, the Forest Service specifically did *not* conclude that the GWNF and MNF Plan amendments for soils, riparian areas, and threatened and endangered species met the applicable 2012 Planning Rule’s substantive requirement. Instead, it concluded (incorrectly) that in each case, the substantive requirements were not directly related to the applicable Plan amendment. According to the ROD, conducting the directly related analysis would have been unnecessary if the amendment in fact satisfied the substantive requirement: where “the amendment meets the rule requirement, *there is no need to make a further determination as to whether the rule requirement is directly related to it.*” J.A. 41–42 (emphasis supplied)). Accordingly, the case must be remanded.

2.

*Public Participation Requirements*

Petitioners further assert that the Forest Service violated the NFMA because it provided no opportunity for public comment for four of the amended forest plan standards. Even assuming Petitioners are correct (a point the Forest Service disputes), Petitioners do not attempt to demonstrate “that the outcome of the process would have differed in the slightest had notice been at its meticulous best.” *Friends of Iwo Jima v. Nat’l Capital Planning Comm’n*, 176 F.3d 768, 774 (4th Cir. 1999). Without even an

allegation of prejudice, Petitioners fail to carry their burden to prove that any notice-related deficiency was prejudicial. Accordingly, we reject this argument.

3.

*Accommodation of the ACP Project on Non-National Forest Land*

Petitioners assert that the Forest Service violated NEPA by failing to consider alternatives that avoid national forest land. Relatedly, Petitioners argue that the Forest Service violated the GWNF and MNF Plans and the NFMA because it failed to demonstrate that the ACP project's needs could not be reasonably met on non-national forest lands.

The GWNF Plan limits "Special Use Authorizations" to "needs that *cannot be reasonably met* on non-[National Forest System] lands or that enhance programs and activities." J.A. 4068 (emphasis supplied). Similarly, an MNF Plan goal states: "[p]roposed special uses of [National Forest System] lands . . . are considered that meet public needs, are consistent with direction for other Forest resources and management prescriptions, and *cannot be accommodated* off the National Forest." J.A. 4069 (emphasis supplied). Finally, the Forest Service's regulations state: "[a]n authorized officer shall reject any proposal . . . if, upon further consideration, the officer determines that: . . . the proposed use would not be in the public interest." 36 C.F.R. § 251.54(e)(5)(ii). The Forest Service Manual provides further guidance on § 251.54(e)(5)(ii), directing that a proposed use should be authorized as "in the public interest" "only if . . . the proposed use *cannot reasonably be accommodated* off of National Forest System lands." Forest Serv. Manual, Addendum to Pet'rs' Br. 65–66

(emphasis supplied). The Forest Service Manual further directs, “[d]o not authorize the use of National Forest System lands solely because it affords the applicant a lower cost or less restrictive location.” *Id.* at 66.

We agree that the Forest Service violated its obligations under the NFMA and its own Forest Plans because it failed to demonstrate that the ACP project’s needs could not be reasonably met on non-national forest lands. The Forest Service’s ROD adopted and incorporated FERC’s alternative routes analysis in the EIS, but the EIS applied a different standard than the one imposed on the Forest Service by the NFMA and its own Forest Plans. In the EIS, FERC considered only whether a route alternative “confers a significant environmental advantage over the proposed route.” J.A. 1533. This is a significantly different standard than whether the proposed use “*cannot reasonably be accommodated* off of National Forest System lands.” Forest Serv. Manual, Addendum to Pet’rs’ Br. 65–66 (emphasis supplied); *cf. Sierra Club*, 897 F.3d at 604–05 (concluding that the Bureau of Land Management violated its MLA obligations where it failed to analyze whether alternative pipeline routes were “impractical,” as required by the Bureau’s regulations, and instead adopted an EIS that considered only whether an alternative route offered a “significant environmental advantage”).

Accordingly, adopting FERC’s EIS was not sufficient for the Forest Service to fulfill its obligations under the Forest Service Manual and its own Forest Plans, and the Forest Service did not purport to undertake this required analysis anywhere else in the ROD.



The Forest Service asserts that it “determines project consistency only ‘with respect to standards and guidelines,’ not general forest planning ‘goals’ like Monongahela LS17.” Resp’t’s Br. 24 (quoting 2012 Planning Rule, 77 Fed. Reg. at 21,241). As an initial matter, the Forest Service regulations and the Forest Service Manual apply to both the GWNF and the MNF, so even if the court were to disregard the MNF goal cited by Petitioners, the proposed use of national forest land must still fit the Forest Service Manual’s definition of “in the public use,” which contains essentially the same requirement as the MNF goal: that the proposed use cannot be reasonably accommodated outside of the national forest. *See* Forest Serv. Manual, Addendum to Pet’rs’ Br. 65–66.

However, the Forest Service’s assertion about forest planning goals and objectives deserves additional discussion. The regulatory guidance quoted by the Forest Service -- from the preamble to the 2012 Planning Rule, 77 Fed. Reg. at 21,241 -- is a response by the Forest Service to a public comment regarding the 2012 Planning Rule’s consistency requirement, which states:

The Forest Service policy was that consistency could only be determined with respect to standards and guidelines, or just standards, because *an individual project alone* could almost never achieve objectives and desired conditions. . . .

The Department continues to believe that the consistency requirement cannot be interpreted to require achievement of the desired conditions or objectives of a plan *by any single project or activity*, but we believe that we can provide direction for consistency to move the plan area toward desired conditions and objectives, *or to not preclude the eventual achievement of desired conditions or objectives*, as well as direction for consistency with the other plan components.

77 Fed. Reg. at 21,241 (emphasis supplied). In other words, even if the Forest Service is not required to conclude that an individual project alone *meets* a forest planning goal, it is not free to disregard the goal entirely -- as the Forest Service apparently wishes to do here.

The Forest Service was aware of its obligation to determine that the ACP project could not be reasonably accommodated on non-national forest land from the beginning of the project. Indeed, the Forest Service specifically cited to the Forest Service Manual and Forest Plan requirements in its initial scoping comments in response to FERC's Notice of Intent to Prepare an EIS. *See* J.A. 3593 (“[T]he analysis must address Forest Service Manual direction that restricts special uses to those that cannot reasonably be accommodated on non-National Forest System lands (FSM 2703.2).”); *id.* at 3593–94 (stating that the GWNF Plan requires special use authorizations be “[l]imit[ed] to needs that cannot be reasonably met on non-[National Forest System] lands or that enhance programs and activities”). The Forest Service's failure to undertake this analysis violated the NFMA. Accordingly, we remand to the Forest Service for proper analysis of whether the ACP project's needs can be reasonably met on non-national forest lands, in compliance with the NFMA and the GWNF and MNF Plans.

B.

*National Environmental Policy Act*

As this court recently explained in *Sierra Club v. Forest Service*, Congress enacted NEPA “to reduce or eliminate environmental damage.” 897 F.3d at 590 (quoting *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004)). “NEPA itself does not mandate

particular results in order to accomplish these ends,’ but rather, ‘imposes only procedural requirements on federal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions.’” *Id.* (quoting *Dep’t of Transp.*, 541 U.S. at 756–57).

NEPA requires that agencies consider alternatives to the proposed action, 40 C.F.R. § 1502.14, and “take a hard look at environmental consequences,” *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (internal quotation marks omitted). To that end, whenever a federal agency proposes to take a “major Federal action[] significantly affecting the quality of the human environment,” the agency must prepare a detailed EIS describing the likely environmental effects of the proposal, any unavoidable adverse environmental effects, and potential alternatives. 42 U.S.C. § 4332(2)(C). Consideration of alternatives “is the heart of the [EIS].” 40 C.F.R. § 1502.14.

In this case, FERC was the lead agency charged with issuing the EIS, and the Forest Service acted as a cooperating agency by assisting FERC to analyze the environmental impacts to 430 acres of national forest lands on the proposed ACP route. As a cooperating agency, the Forest Service may adopt FERC’s EIS only if it undertakes “an independent review of the [EIS]” and “concludes that its comments and suggestions have been satisfied.” 40 C.F.R. § 1506.3(c); *see also Sierra Club*, 897 F.3d at 590. It must also ensure that the EIS is “adequate” under NEPA regulations. 40 C.F.R. § 1506.3(a). In reviewing an EIS, the court’s responsibility is to “determine whether the [agency] has considered the relevant factors and articulated a rational connection between



the facts found and the choice made.” *Sierra Club*, 897 F.3d at 594 (quoting *Balt. Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 105 (1983)).

Petitioners assert that the Forest Service violated NEPA by (1) failing to study alternative off-forest routes, and (2) adopting a FEIS that failed to take a hard look at landslide risks, erosion, and degradation of water quality.

1.

*Study of Alternative Off-Forest Routes*

As noted above, an agency may only adopt an EIS if it “meets the standards for an adequate statement” under the applicable regulations. 40 C.F.R. § 1506.3(a). One applicable regulation provides:

If a [DEIS] is so inadequate *as to preclude meaningful analysis*, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

*Id.* § 1502.9(a) (emphasis supplied). Petitioners assert that FERC’s FEIS was inadequate because it failed to sufficiently study alternative pipeline routes for the ACP that avoided national forest lands. According to Petitioners, the Forest Service violated NEPA because it adopted FERC’s inadequate EIS without undertaking the required “independent review,” and because the FEIS did not satisfy the Forest Service’s earlier comments and suggestions on the DEIS. *Id.* § 1506.3(c).

In counter, the Forest Service asserts that once FERC had issued the Certificate of Convenience and Public Necessity, the choice before the Forest Service was simple: either approve the pipeline route as it was authorized by FERC or deny the right of way.

According to the Forest Service, since FERC was responsible for analyzing alternative pipeline routes, the Forest Service reasonably relied on that alternatives analysis in adopting the FEIS.

The Forest Service frames Petitioners' argument as an impermissible collateral attack on FERC's actions, but that ignores the Forest Service's obligation to "independent[ly] review" the EIS and ensure its comments and suggestions to the lead agency were satisfied before adopting it. 40 C.F.R. § 1506.3(c). Neither the Forest Service nor Atlantic points to evidence in the record to demonstrate that the Forest Service undertook the required independent review. To the contrary, the record suggests that they did not. Instead, the record reflects that at first the Forest Service strenuously objected to the lack of non-national forest route alternatives in the DEIS, but it eventually reversed course and adopted the FEIS even though the analysis of non-national forest alternatives was unchanged from the DEIS -- all in an effort to prevent Atlantic from having to obtain congressional approval for the project to cross the ANST.

From the beginning, the Forest Service made clear through its comments to FERC and Atlantic that the EIS would need to analyze non-national forest alternative routes and justify the necessity of any proposed route crossing of national forest lands. The Forest Service's scoping comments for the ACP project noted:

It is . . . necessary to understand why any proposed routes (preferred or alternative) crossing [National Forest System] lands are selected over those not crossing [National Forest System] lands. Therefore, the EIS should contain a comparison of project effects for routes crossing [National Forest System] lands versus routes not crossing [National Forest System] lands. Discussions and other relevant information should also be provided to justify the necessity of any proposed route crossing [National Forest

System] lands. . . . Comparisons of the alternatives should be based on analyses of site-specific impacts to resources potentially affected by the proposed project, which may not necessarily be correlated with the footprint of the proposed project.

J.A. 3593.

Then, FERC's DEIS indicated that "[a] significant factor in siting ACP was the location at which the pipeline would cross the ANST." J.A. 3207. As the DEIS stated, crossing the ANST on NPS lands would require congressional approval. "*Because of this legislative process*" -- that is, to avoid obtaining congressional approval to cross the ANST on NPS lands -- "Atlantic considered locations where the ANST was located on [Forest Service lands], which significantly constrained the pipeline route and severely limits opportunities for avoiding and/or minimizing the use of [National Forest System] lands." *Id.* at 3207–08 (emphasis supplied). Because of this, and even though ground resource surveys had not been conducted, FERC concluded that it "ha[d] not identified or received any information that suggests the shorter pipeline route through the National Forests has significantly greater impacts to sensitive resources than the alternative" that avoided national forest lands. *Id.* at 3208. In response to this analysis of off-forest routes in the DEIS, the Forest Service commented:

No analysis of a National Forest Avoidance Alternative has been conducted, and environmental impacts of this alternative have not been considered or compared to the proposed action. Therefore, the Forest Service cannot support the recommendation that the National Forest Avoidance Alternative be dropped from consideration. In our scoping comments, we requested that all alternatives, including a National Forest Avoidance Alternative, be fully addressed in regard to their feasibility and environmental effects. We hereby reiterate that request.



*Id.* at 2454. Further, in response to the DEIS's assertion that in general, as the length of a pipeline route increases, the environmental impacts also increase, the Forest Service commented: "Miles of line do not necessarily equate to severity of the environmental impact. The nature of the resources to be impacted needs to be considered. The Forest Service has previously requested that such comparative information on impacts be obtained and considered for alternatives to the proposed action." *Id.* at 2451.

Despite the Forest Service's concerns regarding the lack of study of off-forest alternatives, the "National Forest Avoidance Route Alternatives" section in the FEIS is identical to the DEIS. Nevertheless, on the very same day that FERC issued the FEIS, the Forest Service released its draft ROD, which proposed adopting the FEIS (and, consequently, the unchanged alternatives analysis). Without explaining the Forest Service's change of position from the scoping comments or its comments on the DEIS, the draft ROD states: "FERC's evaluation concluded that the major pipeline route alternatives and variations do not offer a significant environmental advantage when compared to the proposed route or would not be economically practical." J.A. 1411. The Forest Service's discussion on this point was essentially identical in its response to objections filed to the draft ROD and in its final ROD.<sup>4</sup>

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<sup>4</sup> The Forest Service's response to objections filed to the draft ROD stated:

The Project Record shows consideration of alternatives that avoid National Forests. One such alternative would have increased the route by 43 miles to the south and another would have increased the route by 15 miles to the north. The FERC noted, as a general matter, environmental impacts increase as the length of a pipeline route increases. Furthermore, the FERC lacked information concluding

(Continued)

The Forest Service asserts, “Petitioners present no record evidence that FERC did not” continue to analyze non-national forest alternatives following the Forest Service’s comments on the DEIS. Resp’t’s Br. 39. But no such analysis is apparent anywhere in the record, and most tellingly, neither the Forest Service nor Atlantic even attempt to identify evidence to demonstrate that FERC did anything to address the Forest Service’s concerns about off-forest alternative routes. What is apparent from the record is that: (1) the Forest Service repeatedly expressed concerns about the need to analyze alternative pipeline routes that avoided the national forests (particularly in the scoping comments, comments on the draft resource reports, and the DEIS); (2) FERC’s analysis of alternative pipeline routes remained unchanged from the DEIS to the FEIS, and there is no other evidence apparent from the record that FERC addressed the Forest Service’s concerns about off-forest alternative routes; and (3) the Forest Service never explains, in

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a shorter overall route through NFS lands would have significantly greater impacts on sensitive resources . . . . Therefore, it was concluded these alternatives would not provide a significant environmental advantage over a shorter route that passes through National Forests.

J.A. 676. Similarly, the final ROD stated:

The proposed crossing of the MNF and GWNF received a considerable amount of comment and criticism from stakeholders, and accordingly, resulted in a number of evaluated route alternatives and variations. FERC evaluated . . . several variations to avoid or minimize crossing of [Forest Service] and [NPS] lands. . . . FERC’s evaluation concluded the major pipeline route alternatives and variations do not offer a significant environmental advantage when compared to the proposed route or would not be economically practical.

*Id.* at 48.

the ROD or elsewhere, how its concerns about off-forest alternative routes were assuaged.

The chain of events surrounding the Forest Service's sudden acquiescence to the alternatives analysis in the FEIS is similar to that in *Sierra Club v. Forest Service*, where we determined that the Forest Service had acted arbitrarily and capriciously in adopting the sedimentation analysis in the FEIS for a different pipeline project. *See Sierra Club*, 897 F.3d at 594–96. Here, like in *Sierra Club*, “[g]iven the circumstances, we simply cannot conclude that the Forest Service undertook an independent review and determined that its comments and concerns were satisfied” when it seemingly dropped its demand that off-forest alternative routes be studied before the ACP was authorized without any further analysis. *Id.* at 595. In light of this, and particularly considering the Forest Service's earlier skepticism that location decisions for the ACP were made solely to avoid congressional approval,<sup>5</sup> we hold that adopting the unchanged alternatives analysis in the FEIS was arbitrary and capricious.

2.

*Analysis of Landslide Risks, Erosion, and Degradation of Water Quality*

Petitioners further contend that the Forest Service's deficient analysis of landslide risks, erosion impacts, and water quality degradation from the ACP project violated

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<sup>5</sup> *See, e.g.*, J.A. 3661 (“[T]he report should . . . not base all of the routing decisions for the [ANST] crossing on project timeline issues with getting [c]ongressional approval. The proposed location for crossing the [ANST] need[s] to be based on sound resource and compelling public interest determinations.”).



NEPA. Specifically, Petitioners assert that the Forest Service abandoned its request for ten site-specific stabilization designs prior to granting the SUP, which it previously stated were necessary to evaluate effects under NEPA, and instead accepted the two that Atlantic provided as “adequate” without explanation for this change in position. Additionally, Petitioners assert that Atlantic’s erosion and sedimentation mitigation plan had not been determined at the time the FEIS and ROD were issued. Thus, the Forest Service did not know if the mitigation measures it relied on to approve the project would actually be successful. As a result, Petitioners argue that the FEIS does not provide “a thorough investigation into the environmental impacts of [the] agency’s action.” Pet’rs’ Reply Br. 29 (quoting *Nat’l Audubon Soc’y v. Dep’t of Navy*, 422 F.3d 174, 185 (4th Cir. 2005)). For its part, the Forest Service contends that it thoroughly analyzed the impacts of the proposed route on national forest lands, and that NEPA does not require an agency to formulate and adopt a complete mitigation plan before it can act.

As noted above, NEPA does not require the Forest Service to ensure “environment-friendly outcomes.” *Nat’l Audubon Soc’y*, 422 F.3d at 184. Rather, “an agency decision is acceptable even if there will be negative environmental impacts resulting from it, so long as the agency considered these costs and still decided that other benefits outweighed them. ‘NEPA merely prohibits uninformed -- rather than unwise -- agency action.’” *Id.* (quoting *Robertson*, 490 U.S. at 350–51 (citations omitted)). Nevertheless, an EIS must still “contain a detailed discussion of possible mitigation measures.” *Robertson*, 490 U.S. at 351. Further, NEPA requires “particular care” “when

the environment that may be damaged is one that Congress has specially designated for federal protection,” such as national forests. *Nat’l Audubon Soc’y*, 422 F.3d at 186–87.

We conclude that the Forest Service violated NEPA by failing to take a hard look at the environmental consequences of the ACP project. The Forest Service expressed serious concerns that the DEIS lacked necessary information to evaluate landslide risks, erosion impacts, and degradation of water quality, and it further lacked information about the effectiveness of mitigation techniques to reduce those risks.

Specifically, the record reflects that the Forest Service voiced concerns about (1) authorizing the SUP without ten site-specific stabilization designs to demonstrate the effectiveness of Atlantic’s BIC program; (2) the overly high efficiency rate of erosion control devices used in the sedimentation analysis (96 percent); (3) relying on the use of water bars as a mitigation technique, when Atlantic had not analyzed whether water bars would mitigate or exacerbate erosion effects during construction; and (4) Atlantic’s use of averaged versus episodic sediment calculations to analyze the water resource impacts from increases in sedimentation due to the ACP project.

However, the FEIS did not address any of these concerns; rather, it made clear that this incomplete and/or inaccurate analysis in the DEIS remained incomplete. The FEIS stated (among other examples): “slope instability/landslide risk reduction measures have not been completed or have not been adopted,” J.A. 1615; “[Atlantic is] currently working to provide documentation of the *likelihood* that their proposed design features and mitigation measures would *minimize* the risk of landslides in the project area,” *id.* at 1616 (emphasis supplied); “specific [erosion] effects are unknown” and “it is unclear if

erosion control and rehabilitation measures would meet the standards of the Forest Plan[s],” *id.* at 1659; and “water resource impacts from sedimentation are largely uncertain,” *id.* at 1663.

Accordingly, the FEIS could not have satisfied the Forest Service’s concerns that the DEIS lacked necessary information to evaluate the environmental consequences of the pipeline. Indeed, the FEIS conceded that the Forest Service’s concerns remained unresolved. Nevertheless, as Atlantic’s deadlines drew near, the Forest Service disregarded these concerns and adopted the FEIS -- including its conclusions that landslide risks, erosion impacts, and degradation of water quality remained unknown -- the very same day FERC issued it. To support its decision to approve the project and grant the SUP, the Forest Service relied on the very mitigation measures it previously found unreliable. This was insufficient to satisfy NEPA, and did not constitute the necessary hard look at the environmental consequences of the ACP project.

a.

#### *Landslide Risks*

The Forest Service clearly explained its concerns about landslides, erosion, and pipeline safety and stability in its October 24, 2016 letter requesting the ten site-specific stabilization designs:

The route for the [ACP project] proposed by [Atlantic] would cross some very challenging terrain in the central Appalachians. Potentially difficult situations include steep slopes, presence of headwater streams, geologic formations with high slippage potential, highly erodible soils, and the presence of high-value natural resources downslope of high hazard areas. These hazards are exacerbated by high annual rates of precipitation and the potential for extreme precipitation events.



Similar hazards on other smaller pipeline projects in the central Appalachians have led to slope failures, erosion and sedimentation incidents, and damage to aquatic resources. Therefore, the [Forest Service] is concerned that crossing such challenging terrain with a much larger pipeline could present a high risk of failures that lead to resource damage.

J.A. 3379.

In addition to highlighting these concerns, the Forest Service's October 24, 2016 letter made clear that the ten selected sites were "merely representative sites," required for the Forest Service to determine whether the ACP project could be permitted in the GWNF and MNF. J.A. 3379. In other words, the site designs were needed to aid the Forest Service in its decision whether to permit the pipeline at all. Accordingly, the Forest Service's later decision to only require the designs prior to construction was not simply a question of timing. It meant the Forest Service approved the pipeline without information it previously determined was necessary to making its decision, and it did so without acknowledging, much less explaining, its change in position.

The Forest Service's reversal is particularly puzzling considering the reason it requested the site-specific stabilization designs in the first place: to demonstrate that Atlantic's BIC program could actually work in particular conditions, rather than simply being a "cookbook with generalities." J.A. 2514. The Forest Service also conducted a literature review on Atlantic's BIC incremental controls to attempt to determine the effectiveness of these measures. Far from proving the effectiveness of the BIC program, the literature review concluded: "[T]he majority of these BIC incremental controls are either too new to provide any real insight to the effectiveness on erosion control,

especially on steep slopes, or there has not been any research to prove the effectiveness of these incremental controls for adequate erosion control.” *Id.* at 3703.

Thus, despite its own well-documented concerns with Atlantic’s mitigation plans, the Forest Service abandoned its request for the eight site-specific stabilization designs and adopted the FEIS, all without science-based evidence of the BIC program’s effectiveness. This falls far short of NEPA’s hard look requirement, and the Forest Service’s brief, conclusory letter stating that the information provided by Atlantic was “adequate” is insufficient to show that the Forest Service’s concerns had been addressed as NEPA requires. J.A. 1881.

Perhaps nothing demonstrates the dangers of the Forest Service’s insufficient analysis of landslide risks clearer than the FEIS’s use of the Columbia Gas Transmission pipeline as an example of an existing pipeline in the Appalachian Mountains that safely crosses karst terrain. *See, e.g.*, J.A. 1589, 1609 (“There are differences between ACP and corridor and the Columbia pipeline project and corridor, and so, there can be more potential for project-induced slope failures in the ACP corridor. But the decades of slope stability performance of the Columbia pipeline corridor on slopes generally similar to those along the ACP pipeline route is relevant information to consider.”). Significantly, during the briefing of this case, a landslide in Marshall County, West Virginia, caused the Columbia pipeline -- highlighted by the Forest Service for its safety and stability -- to

rupture and explode.<sup>6</sup> Clearly, the Forest Service's concerns about landslide risks and pipeline safety highlighted in its October 24, 2016 letter deserve serious consideration, for the protection of both the environment and the public.

b.

*Erosion Impacts and Degradation of Water Quality*

In adopting the FEIS and approving the pipeline, the Forest Service concluded that because of "mitigation measures, impacts on groundwater and surface waters will be effectively minimized or mitigated." J.A. 25. However, as explained above, the Forest Service had previously expressed serious concerns about the extensive erosion and sedimentation that the ACP project could cause, and it additionally questioned the mitigation techniques that Atlantic relied on to reduce those impacts. This is particularly true regarding the overly high efficiency rate of erosion control devices used in the sedimentation analysis (96 percent), the use of water bars as a mitigation technique, and the use of averaged versus episodic sediment calculations to analyze water resource impacts in the sedimentation analysis. Despite these concerns, and the FEIS's conclusion that "specific [erosion] effects [remained] unknown," *id.* at 1659, the Forest Service

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<sup>6</sup> See, e.g., Anya Litvak, *Landslide Caused West Virginia Pipeline Explosion*, *TransCanada Reports*, Pittsburgh Post-Gazette (July 11, 2018), <http://www.post-gazette.com/business/powersource/2018/07/11/Landslide-caused-pipeline-explosion-Columbia-Gas-reported/stories/201807100176>. We can take judicial notice of this fact because it "is not subject to reasonable dispute" and "can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b).



nevertheless relied on the incomplete analysis in the FEIS and disregarded its concerns about the effectiveness of the mitigation techniques.

For example, in the draft biologic evaluation, Atlantic asserted that installation of erosion control devices would “reduce erosion by about 96 percent.” J.A. 2633. The Forest Service criticized this conclusion in its March 10, 2017 comments to the draft biologic evaluation, stating, “Use of lab testing and efficiency rates are inappropriate for steep slope pipeline construction. Update model with more conservative assumptions about containment efficiencies. Document the literature references that apply to efficiencies in the field, particularly mountainous terrain in WV and VA.” *Id.* at 2357.

However, Atlantic did not comply with the Forest Service’s request, and the 96 percent erosion control efficiency rate remained in Atlantic’s August 2017 Soil Erosion and Sedimentation Modeling Report. *See* J.A. 909 (“Installation of [erosion control devices] was predicted to reduce erosion by about 96 percent.”). We note that this report was issued five months *after* the Forest Service directed Atlantic to update its erosion efficiency rate, one month after the Forest Service issued its draft ROD, just two months before the final version of the COM Plan was issued, and only three months before the Forest Service issued the final ROD. Accordingly, we see no evidence in the record that the Forest Service’s concerns regarding the 96 percent erosion control efficiency rate were ever resolved; nonetheless, the Forest Service ultimately relied on this figure to determine that Atlantic’s proposed mitigation measures would effectively reduce erosion and sedimentation impacts from the ACP project.

During oral argument, Atlantic claimed that the Forest Service's concern about the 96 percent efficiency rate was resolved because Atlantic agreed not to use silt fences as a mitigation technique in certain areas, which it claims were the cause of the "overly optimistic" efficiency rate. Oral Argument at 37:50–39:41. As counsel for Atlantic stated:

The Forest Service never accepted the 96 percent efficiency. Indeed, that model was predicated on a standard erosion and sediment control device called the silt fence. Instead of debating . . . over the percent effectiveness of the silt fence, the Forest Service made a much more direct and compelling move, which was to prohibit the use of silt fences in the areas over which it had concern. . . Atlantic committed not to use the silt fences that were the subject of the overly optimistic erosion sediment model.

*Id.*

As an initial matter, we note that the Soil Erosion and Sedimentation Modeling Report attributes the 96 percent erosion control efficiency rate to all erosion control devices "such as silt fences, waterbars, and mulch application," not just silt fences. J.A. 929. Additionally, the final draft of the COM Plan is riddled with uses of silt fences as proposed mitigation techniques. *See, e.g., id.* at 303, 409, 473, 475, 586, 587.

However, even if Atlantic is correct that it committed not to use silt fences in certain areas, this is beside the point. The use of silt fences was not the problem. The problem, as the Forest Service itself pointed out, was assuming that these devices would function nearly perfectly to reduce erosion and sediment, despite a wealth of evidence to the contrary. This assumption remained in the August 2017 Soil Erosion and Sedimentation Modeling Report. *See* J.A. 908 n.2 ("The effectiveness predicted by the model is influenced by slope, soil, groundcover, and type of erosion control device; *the*

*model assumes perfect installation, soil retention, and maintenance.*” (emphasis supplied)). This assumption infected the sedimentation model -- the model that produced the “200 to 800 percent above baseline erosion” estimate cited in in the ROD. *Id.* at 25.

Crucially, we can identify no other more conservative efficiency rate used to correct the sedimentation model which drove the Forest Service’s erosion and sedimentation analysis. Indeed, the use of the 96 percent efficiency rate in the August 2017 Soil Erosion and Sedimentation Modeling Report, which was issued only three months before the Forest Service’s final ROD, suggests that the Forest Service’s concern with Atlantic’s overly high efficiency rate for erosion control devices was never resolved. *See* J.A. 908–09 (“Installation of [erosion control devices] was predicted to reduce erosion by about 96 percent.”).

Additionally, the FEIS relied on the use of water bars as a mitigation technique that would reduce the environmental impacts of the ACP project. *See* J.A. 1662 (“The use of water bars (i.e., slope breakers) was assumed on long slopes . . . .”). The Forest Service had previously stated in its comments on Atlantic’s updated biologic evaluation that further analysis was needed to determine whether water bars would be effective: “Slope breaker locations relative to pertinent habitat features need to be disclosed[.] It is important to be sure that they are not potentially directing water into habitats (in which case they would actually do more harm than good).” *Id.* at 2337. Nevertheless, the FEIS candidly acknowledged that this further analysis was never done:

[W]ater bars create concentrated flows where they discharge adjoining off right-of-way areas. *The [Forest Service] has stated that Atlantic has not assessed how or whether the adjoining areas can receive concentrated*



*flows, or whether measures would be implemented to allow these areas to safely receive and convey the concentrated flows. In addition, the slopes to be encountered in the MNF and GWNF would require several water bars to be “stacked” along their length, creating multiple points of discharge. The [Forest Service] has stated the potential impacts of multiple points of concentrated discharges onto the adjoining areas has not been assessed.*

*Id.* at 1663 (emphasis supplied). Once again, the Forest Service adopted the FEIS (including its use of water bars as a mitigation technique), issued its ROD, and granted the SUP based on an erosion and sedimentation analysis using water bars as a mitigation technique, despite the clear evidence in the record that (1) the Forest Service had concerns with this technique; (2) the Forest Service’s concerns were not resolved in the FEIS; and (3) the effectiveness of water bars for this project was never analyzed.

Finally, the record further reflects that the Forest Service believed Atlantic used an incorrect calculation to analyze how sedimentation from the ACP project would impact aquatic species. In its draft biologic evaluation, Atlantic analyzed the total sediment that would erode a stream in a year divided by the volume of water that would flow through the stream in a year -- to create an *average* sediment level over an entire year -- rather than analyzing sediment levels in terms of discrete episodic events, where the sediment levels vary based on precipitation events that cause larger amounts of erosion to enter the stream. In other words, Atlantic employed a simplistic (and unrealistic) calculation that made in-stream sedimentation levels look much lower than they would be during construction. Of note, the Forest Service sharply criticized this approach in its comments on the draft biologic report:

This entire paragraph has false rationale and needs to be deleted or modified extensively. Erosion and sediment transport to streams cannot be

averaged evenly over a year, rather it happens in discrete episodic events. It is not appropriate to minimize impacts by making a comparison of total load evenly spread over time. The point of the load calculation is to address impacts to sensitive aquatic species which are impacted by flow and timing of sediment during these erosion events.

J.A. 2358. However, despite the Forest Service's concerns with Atlantic's calculations in the sedimentation analysis, the record does not indicate that Atlantic ever updated its calculation to reflect actual conditions. Nevertheless, the Forest Service adopted Atlantic's updated biologic report and the FEIS, and it concluded that erosion and sedimentation from the ACP project would not substantially adversely affect sensitive aquatic species.

The Forest Service argues -- correctly -- that NEPA does not require a fully formed mitigation plan to be in place. As this court has noted, "it would be inconsistent with NEPA's reliance on procedural mechanisms -- as opposed to substantive, result-based standards -- to demand the presence of a fully developed plan that will mitigate environmental harm before an agency can act." *Robertson*, 490 U.S. at 353. However, in this case, the Forest Service adopted the FEIS and issued its draft ROD *in reliance on a mitigation plan that had not been established*, and one that, as demonstrated by the Forest Service's own concerns, had not been proven effective.

To satisfy NEPA in this case, the Forest Service needed to resolve its own concerns with the EIS -- which, for the reasons we have explained, it did not do -- and it needed to have a reasonable basis for concluding that the mitigation plan, once fully formed, *would be effective*. Here, the Forest Service relied on the generalities of the BIC program and other techniques proposed by Atlantic to achieve particular mitigating



results, with neither actual site designs nor science-based evidence demonstrating such results were likely. This is precisely the sort of uninformed agency action that NEPA prohibits. *See Nat'l Audubon Soc'y*, 422 F.3d at 184.

Accordingly, we cannot conclude that the Forest Service took a hard look at the environmental consequences of its decision. Rather, the record before us readily leads to the conclusion that the Forest Service's approval of the project "was a preordained decision" and the Forest Service "'reverse engineered' the [ROD] to justify this outcome," despite that the Forest Service lacked necessary information about the environmental impacts of the project. *Nat'l Audubon Soc'y*, 422 F.3d at 183 (concluding that the U.S. Navy "reverse engineered" its EIS to achieve a particular outcome, and although "[t]he deficiencies in each area of the Navy's analysis would not, on their own, be sufficient to invalidate the EIS," "a review of the various components of the EIS taken together indicates that the Navy did not conduct the 'hard look' that NEPA requires.").

Pursuant to NEPA, we conclude the Forest Service acted arbitrarily and capriciously in adopting the FEIS and granting the SUP. Upon remand, the Forest Service should explain its decision that receiving only two of the eight site-specific stabilization designs was "adequate" to determine the environmental effects of the ACP project, and it should also explain how it took a "hard look" at the erosion, sedimentation, and water quality issues discussed here considering the Forest Service's numerous concerns that were not addressed in the FEIS. If supplemental analysis is needed, particularly regarding the effectiveness of mitigation strategies relied on in the COM Plan, the Forest Service should perform that analysis as well.



## C.

*Mineral Leasing Act*

## 1.

The MLA authorizes the “Secretary of the Interior or appropriate agency head” to grant gas pipeline rights of way across “Federal lands.” 30 U.S.C. § 185(a). As relevant here, “Federal lands” means “all lands owned by the United States *except lands in the National Park System.*” 30 U.S.C. § 185(b)(1) (emphasis supplied). Pursuant to the Park Service’s Organic Act, land in the National Park System includes “any area of land and water administered by the Secretary [of the Interior]” through NPS. 54 U.S.C. § 100501.

Congress designated the ANST as a National Scenic Trail administered by the Secretary of the Interior, who delegated that duty to NPS. *See* 16 U.S.C. § 1244(a)(1). Accordingly, the ANST is land in the National Park System. The parties are generally in agreement about this; after NPS informed FERC that “the entire [ANST] corridor [is] part of the ANST park unit” and a “unit” of the National Park System, J.A. 1849, 3186, FERC’s FEIS concluded that NPS is “the lead federal agency for the administration of the entire ANST” and that the ANST “is a ‘unit’ of the national park system,” J.A. 1794. The parties also do not dispute that NPS indicated it does not have authority under the MLA to grant pipeline rights of way across the ANST. However, the parties disagree about whether the Forest Service has the authority to grant such rights of way across the ANST. The FEIS concluded:

The ANST is a unit of the National Park system; *however*, the lands acquired and administered by the [Forest Service] for the ANST are [National Forest System] lands and subject exclusively to [Forest Service]

regulations and management authority. . . . [A]n authorization from the NPS is not required for Atlantic's proposed ANST crossing on [National Forest System] lands."

*Id.* at 1489 (emphasis supplied).

The Forest Service asserts that the MLA authorizes the Forest Service to grant pipeline rights of way on Forest Service land traversed by the ANST. Specifically, the Forest Service argues that the National Trails System Act, which provides for the administration of national trails like the ANST, distinguishes between the "overall" administration of the ANST (with which NPS is charged) and administration of the ANST's underlying lands (most of which are under the jurisdiction of other agencies, like the Forest Service). Pursuant to this reading of the National Trails System Act, the Forest Service asserts, the MLA authorizes the Forest Service to grant pipeline rights of way on portions of the ANST traversing lands administered by the Forest Service.

The Forest Service largely relies on the following language from the National Trails System Act to support this argument:

The Secretary of the Interior *or the Secretary of Agriculture as the case may be*, may grant easements and rights-of-way upon, over, under, across, or along any component of the national trails system in accordance with the laws applicable to the national park system *and the national forest system, respectively*: Provided, That any conditions contained in such easements and rights-of-way shall be related to the policy and purposes of this chapter.

16 U.S.C. § 1248(a) (emphasis supplied). The MLA, the Forest Service asserts, prevents NPS from authorizing pipeline rights of way across components of the ANST on *National Park System* lands, but it does not prevent the Forest System from authorizing pipeline rights of way across components of the ANST on *National Forest System* lands.

In any event, the Forest Service concedes that its position on this issue is entitled to no judicial deference. *See* Resp't's Surreply Br. 12–13.

The problem with the Forest Service's argument is it misreads both the MLA and the National Trails System Act. The MLA specifically excludes *lands* in the National Park System from the authority of the Secretary of the Interior “or appropriate agency head” to grant pipeline rights of way. *See* 30 U.S.C. §§ 185(a), 185(b)(1). In other words, the MLA concerns the *land*, not the agency. The FEIS concluded, and the parties agree, that the ANST is a unit of the National Park System. Accordingly, even if the Forest Service were the “appropriate agency head” in this instance, it could not grant a pipeline right of way across the ANST pursuant to the MLA. Interpreting the MLA as the Forest Service argues would give the Forest Service more authority than NPS on National Park System land. This defies logic.

Further, the Forest Service is *not* the “appropriate agency head” for the ANST. The Forest Service's arguments notwithstanding, the National Trails System Act does not distinguish between various levels of administration of the ANST (“overall” versus by “jurisdiction”); rather, as NPS explained to FERC, the Act is clear that the Secretary of the Interior *administers* the entire ANST, while “other affected State and Federal agencies,” like the Forest Service, *manage* trail components under their jurisdiction. *See* 16 U.S.C. §§ 144(a), 1246(a). Indeed, 16 U.S.C. § 1246(a) clearly distinguishes between trail administration and management:

The Secretary charged with the overall *administration* of a trail pursuant to section 1244(a) of this title shall, in *administering and managing* the trail, consult with the heads of all other affected State and Federal agencies.



Nothing contained in this chapter shall be deemed to transfer among Federal agencies any *management responsibilities* established under any other law for federally *administered* lands which are components of the National Trails System.

§ 1246(a)(1)(A) (emphasis supplied).

Section 1248(a) of the Act does not transfer *administration* responsibilities of the ANST to the Forest Service simply because the Forest Service *manages* land underlying components of the ANST. Although it is true that § 1248(a) does permit the Secretary charged with overall administration of a national trail -- “[t]he Secretary of the Interior or the Secretary of Agriculture as the case may be” -- to grant easements and rights of way in accordance with the laws applicable to either the National Park System or the National Forest System, in this case, the applicable *administrator* is the Secretary of the Interior, not the Secretary of Agriculture, and the applicable laws are those of the National Park System. *See* 16 U.S.C. § 1244(a)(1) (“The Appalachian Trail shall be administered primarily as a footpath by the Secretary of the Interior, in consultation with the Secretary of Agriculture.”). Other national trails are *administered* by the Secretary of Agriculture and are subject to laws applicable to the National Forest System -- the ANST is simply not one of those trails. *See, e.g.,* § 1244(a)(2), (5), (13), (14), (27), (30) (charging the Secretary of Agriculture with overall administration of the Pacific Crest Trail, the Continental Divide National Scenic Trail, the Florida National Scenic Trail, the Nez Perce National Historic Trail, the Arizona National Scenic Trail, and the Pacific Northwest National Scenic Trail).

The Forest Service's arguments to the contrary are unavailing, and the Forest Service does not have statutory authority to grant pipeline rights of way across the ANST pursuant the MLA. The Forest Service's ROD and SUP granting this right of way are, accordingly, vacated.

2.

The Forest Service also argues that Petitioners have no standing to bring this challenge because they allege no harm traceable to the right of way grant. For the reasons this court explained in *Sierra Club v. U.S. Department of the Interior*, this standing argument fails. *See* 899 F.3d 260, 282–85 (4th Cir. 2018). Petitioners' alleged injuries are fairly traceable to the Forest Service because "without [the Forest Service's] grant of a right of way, the pipeline could not have been authorized in its currently proposed form. It therefore cannot be said that Petitioners' injuries are 'the result of the independent action of some third party not before the court.'" *Id.* at 284 (quoting *Bennett v. Spear*, 520 U.S. 154, 168–69 (1997)).

Furthermore, the Forest Service asserts that Petitioners waived their argument that the Forest Service lacks statutory authority to grant rights of way across the ANST because Petitioners failed to adequately raise that argument before the Forest Service. In comments on the draft ROD, Petitioners objected to the agency's failure to consider non-national forest routes for the pipeline and the viability of Atlantic's proposed method for crossing the ANST. Petitioners did not challenge the Forest Service's authority to issue the right of way in the first instance.

Those challenging agency actions, such as Petitioners here, are generally required to raise their arguments to the agency during the administrative review process and to exhaust their administrative remedies before this Court may consider their arguments. *See* 7 U.S.C. § 6912(e). Nonetheless, the draft ROD -- to which the Forest Service claims that Petitioners should have lodged their MLA objection -- nowhere mentions that the Forest Service was contemplating granting right of way through lands administered by *NPS*, or the ANST, in particular. To the contrary, the draft ROD characterizes the decision to be made as “[W]hether to authorize the use and occupancy of *NFS* lands for [Atlantic] to construct, operate, maintain, and eventually decommission a natural gas pipeline that crosses *NFS lands administered by the MNF and GWNF*.” J.A. 1378 (emphasis added).

Because (1) the draft ROD purported to be considering granting right of way through *only* Forest Service “lands administered by the MNF and GWNF” and (2) the FEIS, upon which the draft ROD relied, stated that NPS “administered” the entire ANST and that the entire ANST is a “unit” of the National Park System, there was no reason for Petitioners, or any other public commenter, to believe that the ROD or the SUP would grant right of way across the ANST. To be sure, Petitioners may have been on notice from the FEIS that the pipeline would require a right of way across the ANST from some agency at some point, but Petitioners had no way to know that such right of way would be granted by the Forest Service through the ROD. Indeed, the plain language of the SUP authorizes Atlantic “to use or occupy” only “*National Forest System lands* in the [MNF] and the [GWNF] *of the National Forest System*.” Put simply, the Forest Service



never notified the public that it intended to grant Atlantic right of way through a unit of the National Park System like the ANST.

Furthermore, and significantly, the draft ROD nowhere mentions that the Forest Service intended to rely on the MLA as the basis of its authority to grant the right of way across the ANST. Indeed, regarding the MLA, the FEIS stated only that separate, congressional approval would be required if NPS were the agency issuing the right of way. *See, e.g., Bowen v. City of New York*, 476 U.S. 467, 482–87 (1986) (refusing to enforce exhaustion requirement when plaintiffs could not have been expected to administratively “attack a policy they could not be aware existed” (internal quotation marks omitted)); *Beth V. v. Carroll*, 87 F.3d 80, 83 (3d Cir. 1996) (excepting plaintiff from statutory exhaustion requirement when he “was given no prior notice or opportunity to object” and requiring exhaustion would be “futile”).

Moreover, the question of whether the MLA authorized the Forest Service to issue the SUP is a purely legal question that this Court may answer without the benefit of the Forest Service’s expertise. Our sister courts have recognized an exception to the administrative exhaustion requirement for such legal issues. *See Bartlett v. U.S. Dep’t of Agric.*, 716 F.3d 464, 474 (8th Cir. 2013); *Vt. Dep’t of Pub. Serv. v. United States*, 684 F.3d 149, 159–60 (D.C. Cir. 2012); *Beth V.*, 87 F.3d at 88. Under the legal question exception, a party’s failure to exhaust administrative remedies is excused if the issues “are legal questions which are not suitable for administrative resolution and are more properly resolved by the courts.” *Bartlett*, 716 F.3d at 474 (citation omitted). This exception is narrow. *See id.*; 7 West’s Fed. Admin. Prac. § 8226 (2018) (“[C]ourts have

plenary power over questions of law, but usually legal questions must first be presented to the agency.”). Nonetheless, when the agency has no expertise in the issue, and no factual disputes must be resolved, the question may be ripe for judicial review notwithstanding a party’s failure to exhaust its administrative remedies. *See Ace Prop. and Cas. Ins. Co. v. Fed. Crop Ins. Corp.*, 440 F.3d 992, 1001 (8th Cir. 2006); *see also EEOC v. Seafarers Int’l Union*, 394 F.3d 197, 201 (4th Cir. 2005) (discussing exhaustion exception for legal issues and stating that “courts have limited it to issues that are quintessentially legal and fail to implicate the agency’s expertise in any meaningful manner” (citation omitted)).

The issue of whether the Forest Service had authority under the MLA to issue a right of way across the ANST is a question of statutory interpretation. Such a question is the peculiar province of the courts. Indeed, “[t]he judiciary is the final authority on issues of statutory construction . . . .” *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 n.9 (1984). And the Forest Service has pointed to no factual disputes that must otherwise be resolved before the Court may determine the scope of the agency’s authority under the MLA.

Accordingly, because (1) Petitioners were not put on notice that the right of way across the ANST would be granted by the Forest Service through the ROD; (2) the Forest Service gave no hint of the legal authority that it would claim in issuing the SUP during the administrative review process; and (3) the Forest Service’s authority to issue rights of way pursuant to the MLA is a purely legal question, we decline to find that Petitioners

were required to exhaust their administrative remedies in connection with their MLA argument.

#### IV.

We trust the United States Forest Service to “speak for the trees, for the trees have no tongues.” Dr. Seuss, *The Lorax* (1971). A thorough review of the record leads to the necessary conclusion that the Forest Service abdicated its responsibility to preserve national forest resources. This conclusion is particularly informed by the Forest Service’s serious environmental concerns that were suddenly, and mysteriously, assuaged in time to meet a private pipeline company’s deadlines. Accordingly, for the reasons set forth herein, we grant the petition to review the Forest Service’s Record of Decision and Special Use Permit, vacate the Forest Service’s decisions, and remand to the Forest Service for proceedings consistent with this opinion.

*PETITION FOR REVIEW GRANTED,  
VACATED AND REMANDED*



**MVP Non-Compliance Call****Date/Time:** Fri., March 30 @ 9-10am(PT)/10-11am(MT)/11-noon(CT)/noon-1pm(ET)**Conference Call****Attendees:**

Bureau of Land Management (BLM)	Vicki Craft, Mitchell Leverette, Sally Spencer, Elizabeth LeMaster
Forest Service (FS)	Russ MacFarlane, Tim Abing, Troy Morris, Joby B. Timm,
Office of General Council (OGC)	Sarah Kathmann
Department of Interior Solicitor	John Henson
Galileo Project, LLC	Grace Ellis, Lauren Johnston
Transcon	Jeff Davis, Nik Gillen

(b)(5); Deliberative Process Privilege, Attorney Work Product Privilege, Attorney-Client Privilege

(b)(5), Deliberative Process Privilege, Attorney Work Product Privilege, Attorney-Client Privilege



(b)(5), Deliberative Process Privilege, Attorney Work Product Privilege





**MVP Law Enforcement****Date/Time:** Friday, May 17 @ 8-8:30 am EST/5-5:30 am (Arizona)

(b)(4)

**Invitees**

Forest Service (FS)	<b>Tim Abing, Job Timm, Mike Donaldson, Robert Harris</b>
USDA Office of General Counsel (OGC)	<b>Sarah Kathmann, Jay McWhirter</b>
MVP & Contractors	<b>Duane Moriarty, Joe Dawley</b>
Galileo Project	<b>Grace Ellis, Lauren Johnston</b>

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**Agenda****I. Roll Call**

(b)(5), Deliberative Process Privilege; Attorney Work Product Privilege; Attorney-Client Privilege

**V. Action Items**

**From:** [Hess, Todd A -FS](#)  
**To:** [Adams, Jennifer - FS](#); [Wilson, Will -FS](#); [Hess, Todd A -FS](#)  
**Cc:** [Lauren Johnston](#); [Peter Rocco](#); [Fosbender, Julie K -FS](#); [Bridges, Kelly - FS](#)  
**Subject:** FW: WBXpress and ACP emergency closure orders will expire this week  
**Date:** Monday, March 4, 2019 10:44:04 AM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)

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See Julie's message.

WBX – If the construction is complete, is there a need to have a permanent closure order in place? We can't justify SAFETY for simple restoration efforts. We need to inform Columbia the order will terminate in two days.

ACP - I recall hearing on RO call that OGC recommends not issuing another closure order because there is no permit in place requiring such an order. However, this would be the ROs call to provide advice to the Forest Supervisor.

Jennifer, please reach out to those powers and see what is recommended.



**Todd Hess**  
**Special Use Manager / Realty Specialist**  
**Forest Service**  
**Monongahela National Forest**

p: 304-635-4453  
f: 304-637-0582  
[todd.hess@usda.gov](mailto:todd.hess@usda.gov)

200 Sycamore Street  
Elkins, WV 26241  
[www.fs.fed.us](http://www.fs.fed.us)



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**From:** Fosbender, Julie K -FS  
**Sent:** Monday, March 4, 2019 10:29 AM  
**To:** Hess, Todd A -FS <ta Hess@fs.fed.us>  
**Cc:** Fosbender, Julie K -FS <jfosbender@fs.fed.us>; Bridges, Kelly - FS <kellybridges@fs.fed.us>  
**Subject:** WBXpress and ACP emergency closure orders will expire this week

The WBXpress Emergency Closure Order will expire this Wednesday, 3/6/19.

The ACP Emergency Closure Order will expire this Thursday, 3/7/19.

We have already renewed these emergency closure orders once so my understanding is that we cannot renew them again. If we want to keep these construction corridors closed to public use, we will need to issue a permanent closure order.

Please let me know if you need for me to do anything. Thanks.



**Julie Fosbender**  
**Partnerships and Public Affairs**

**Forest Service**  
**Monongahela National Forest**

**p: 304-635-4446**

**f: 304-637-0582**

[julie.fosbender@usda.gov](mailto:julie.fosbender@usda.gov) (new email address!)

200 Sycamore Street  
Elkins, WV 26241

[www.fs.fed.us](http://www.fs.fed.us)



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