
Public Notice



**US Army Corps
of Engineers**
Pittsburgh District

In Reply Refer to
Notice No. below

US Army Corps of Engineers, Pittsburgh District
1000 Liberty Avenue
Pittsburgh, PA 15222-4186

Application No. 199400098

Date: October 30, 2007

Notice No. 07-52

Closing Date: November 30, 2007

1. TO ALL WHOM IT MAY CONCERN: The following permit extension request has been submitted for a Department of the Army Permit under the provisions of Section 404 of the Clean Water Act (33 U.S.C. 1344).
2. APPLICANT: West Virginia Department of Highways [WVDOH]
Mr. J. E. Sothen, Deputy State Highway Engineer
1900 Kanawha Blvd. East, Building Five, Room 110
Charleston, West Virginia 25305-0430
3. LOCATION: Grant, Hardy, Randolph and Tucker Counties of West Virginia.
4. PERMIT EXTENSION: WVDOH is requesting a permit extension of 10 years because the Department will not be able to complete construction of the entire Corridor H project by the original Permit's December 31, 2007 deadline. Further, it is anticipated that the entire Corridor H Project may still not be complete at the end of the next ten year (2017) cycle as funding and scheduling constraints may occur beyond control of the Department of Highways and other agency's.

While Corridor H is not yet complete, significant progress has been made in constructing the highway. To date, four(4) of the nine(9) Corridor H project segments (constituting 32 miles) are open to traffic and an additional 12 miles are currently under construction. Further, final design is ongoing for two(2) additional projects. All of the construction to date has been covered by the 1996 permit and all wetland and stream impacts have been fully mitigated. Notwithstanding this progress, several factors have delayed completing the construction of Corridor H within the 1996 Permit's time period. Immediately following Federal Highway Administration's issuance of the Record of Decision (ROD) and the Corps 1996 Permit, a lawsuit was filed challenging the highway's approval. The lawsuit took approximately four (4) years to settle. During this court imposed hiatus, only minor work was undertaken to construct the highway.

The Corridor H Settlement Agreement divided Corridor H into nine (9) separate projects, required Amended RODs for each of these projects, supplemental NEPA studies for several of the projects, and additional public and stakeholder outreach meetings, all further delaying construction.

Moreover, in the course of preparing the required supplemental NEPA studies, new scientific information regarding the habitat of the West Virginia Northern Flying Squirrel (WVNFS) was published. In response to this new information, trapping studies were conducted and the WVNFS was discovered in the study areas of the Parsons-to-Davis project and subsequently, the Davis-to-Bismarck project. As a result of these discoveries, the Federal Highway Administration was required to initiate consultation with the U.S. Fish and Wildlife Service under the federal Endangered Species Act (ESA) before commencing construction of these projects. The ESA Section 7 consultation process took over three (3) years to complete for the Parsons-to-Davis project, and has just recently been initiated for the Davis-to-Bismarck project.

Finally, based on the total project size and total length of Corridor H itself (approximately 100 miles) combined with the time to construct significant portions in steep and rugged mountainous terrain has further contributed to the need for an extension of the time limit in the Section 404 permit.

5. PURPOSE AND DESCRIPTION OF WORK: The Appalachian Highway Corridor H is designated by the Appalachian Regional Development Act to extend an interstate highway from I-79 at Weston, WV on the west to I-81 near Strasburg, VA on the east. Because of the scale and complexities of the project, protracted litigation that required supplemental NEPA studies, and the discovery of endangered species within the project study area the WVDOH and FHWA will not be able to complete the project within the original Permit's December 31, 2007 deadline. The corridor and alignment selection for Corridor H was conducted following the integrated NEPA/404 process. The coordinated process with the USEPA, USACE, and USF&WS resulted in an evaluation and selection of a preferred 2,000-foot wide corridor and a preferred alignment within that corridor. This process lead to the least environmentally damaging practicable alternative alignment.

It should be noted that certain alignments required additional environmental studies to resources as a result of the U.S. District Court mandated settlement agreement executed in February 2000. (SEE: Attached Table 1 and Table 2).

Further, see Exhibit 1 which depicts the nine (9) segments of the Corridor H Projects Horizontal Alignment, along with the previous, current and projected impacts.

Full drawings of the project are available for examination at the Pittsburgh District Corps of Engineers Office and at the Charleston Office of the West Virginia Department of Highways listed above (applicant).

One substantial change has occurred, whereas during the development of the 1996 Corridor H FEIS, WVDOH agreed to build a 1700-foot bridge to avoid direct impacts to the stream. However, geotechnical studies have revealed a thick layer (up to 80 feet) of soils on the original alignment with a high landslide potential following excavation and concerns for bridge safety. WVDOH provided the resource agencies with the revised plans for this section of Corridor H impacting the Middle Fork of Patterson Creek in Grant County. The revised plans involve the following:

- *Elimination of a 1,700-foot bridge.
- *Construction of a 1545-foot culvert and fill in the Middle Fork of Patterson Creek.
- *Relocation of an additional 1,000 feet of the Middle Fork of Patterson Creek to avoid thick soils.
- *Elimination of waste/borrow areas outside the project right-of-way that will avoid environmental impacts to an estimated 46 acres of forest.
- *WVDOH estimates savings of approximately \$17,000,000 dollars as a result of these changes.

This public notice also serves as preliminary approval by this office for the requested change based upon the implementation of the following mitigation:

- *Culvert features to aid passage of aquatic biota.
- *The purchase of an adjacent 12-acre land tract for watershed preservation and potential wetland development.
- *Monetary mitigation compensation in the amount of one million dollars will be contributed to the Abrams Creek Restoration account within the WVDNR's Wildlife Endowment Fund. Abrams Creek watershed is adjacent to the impacted watershed and drains into the North Branch of the Potomac River. Abrams Creek is on the 303D list of impaired waters due to acid mine drainage. These funds will be used solely for the treatment of 6.5 miles of feeder streams and 18.5 miles of main stem for an overall project effect of restoring 25 miles of trout stream.

6. WEST VIRGINIA CERTIFICATION: The State of West Virginia, Division of Environmental Protection (WVDEP), has issued State Water Quality Certification for the Corridor H Project. The WVDEP has considered that the proposed activity will comply with sections 301, 302, 303, 306, 307 of the Clean Water Act or any other appropriate State laws. Any questions regarding this certification may be addressed to the:

West Virginia Department of Environmental Protection
Division of Water & Waste Management
401 Certification Program
601 57th Street SE
Charleston, West Virginia 25304
Telephone: 304-926-0495

Re: Public Notice CELRP-OP-F No. 07-52

The Preferred Alternative for Corridor H is to be designed and constructed in sections over a relatively long period of time, the process developed to insure that impacts are avoided, minimized or mitigated is provided for in the Mitigation Document, Volume III of the 1996 Corridor H FEIS. This methodology for mitigation is further stipulated as a condition in the 404/401 permit: "Specific mitigation will occur on a segment by segment basis with full involvement and concurrence of the environmental resource agencies. This will be accomplished using the mitigation process provisions listed in the April 1996 Final Environmental Impact Statement, the FEIS Mitigation Document and the Record of Decision."

WVDEP and WVDNR have concluded that given such measures, the applicant has avoided and minimized project impacts and the proposed compensatory mitigation adequately compensates for unavoidable loss of waters of the state (including the Patterson Creek revision).

7. IMPACT ON NATURAL RESOURCES: The District Engineer has consulted the most recently available information and has determined that the project is not likely to affect the continued existence of any endangered species or threatened species, or result in the destruction or adverse modification of habitat of such species which has been determined to be critical. Under ESA Section 7 Consultation for the West Virginia Northern Flying Squirrel, FHWA and WVDOH has completed consultation for the Parsons-to-Davis Segment of the project, and will continue for other effected segments.

NEPA has been previously satisfied however, this Public Notice serves as a request to the U. S. Fish and Wildlife Service for any additional information they may have on whether any listed or proposed to be listed endangered or threatened species may be present in the area which would be affected by the activity, pursuant to Section 7(c) of the Endangered Species Act of 1972 (as amended).

8. IMPACT ON CULTURAL RESOURCES: The National Register of Historic Places has been consulted, and it has been determined that there are no properties currently listed on the register which would be directly affected by the proposed work. If we are made aware, as a result of comments received in response to this

notice, or by other means, of specific archeological, scientific, prehistorical, or historical sites or structures which might be affected by the proposed work, the District Engineer will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 - Public Law 89-665 as amended (including Public Law 96-515).

9. PUBLIC INVOLVEMENT: All adjoining landowners of the Corridor H project are receiving a copy of this public notice. Any person may comment within period specified in this Public Notice (November 30, 2007). The Corps of Engineers will consider all responses and determine if any new information about the project may be revealed that would warrant a public hearing.

10. EVALUATION: Note; Pursuant to 33 CFR 325.6(d), *Extensions of Time*, "Requests for extension will be processed in accordance with regular procedures of the regulations, including issuance of a public notice, except that such processing is not required where the district engineer determines that there have been no significant changes in the attendant circumstances since the authorization were issued." Interested parties are invited to state any objections they may have to the proposed work. The decision whether to extend this permit will be based on an evaluation of the probable impact, including cumulative impacts, of the proposed activity on the public interest. The Corps decision will reflect the National concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposals must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people. The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to re-issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the overall public interest of the

proposed activity. The evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, Environmental Protection Agency, under the authority of Section 404(b) of the Clean Water Act (40 CFR Part 230).

11. RESPONSES: A permit extension will be granted unless its issuance is found to be contrary to the public interest. Written statements concerning the proposed activity should be received in this office on or before the closing date of this Public Notice in order to become a part of the record and to be considered in the final determination. Any objections which are received during this period may be forwarded to the applicant for resolution before the determination is made whether to issue or deny the requested Department of the Army Permit. All responses to this notice should be directed to the U.S. Army Corps of Engineers, Regulatory Branch, 1000 Liberty Avenue, Pittsburgh, PA 15222, ATTN: Mr. Fred Pozzuto, Project Manager at the above address, by telephoning (412) 395-7275, or by e-mail at fred.pozzuto@usace.army.mil. Please refer to CELRP-OP-F 199400098, PN 07-52 in all responses.

FOR THE DISTRICT ENGINEER:



Scott A. Hans
Acting Chief, Regulatory Branch

A Corridor H wetland impact and mitigation summary is presented in Table 2.

Table 2
Wetland Impact and Mitigation Summary

Total Wetland Created and Preserved/Enhanced (acres)	41.70
<i>Total Wetland Impacts Incurred (acres)</i>	23.58
Total Wetland Impacts Incurred (acres - mitigation ratios applied)	30.94
Compensatory Wetland Surplus (acres – based on required mitigation ratios)	10.76
<i>Proposed Bismarck-to-Forman Project Wetland Impacts (acres)</i>	4.16
Proposed Bismarck-to-Forman Project Wetland Impacts (acres - mitigation ratios applied)	4.28
Compensatory Wetland Surplus (acres – based on required mitigation ratios)	6.48
<i>Proposed Wetland Impacts for Remaining Projects (acres)</i>	35.52
Proposed Wetland Impacts for Remaining Projects (acres - mitigation ratios applied)	51.18
Compensatory Wetland Required (acres – based on required mitigation ratios)	44.70

As shown in Table 2, the Walnut Bottom Run and Leading Creek wetland systems have exceeded the amount of required mitigation for the project impacts to date. The Bismarck-to-Forman Project is the next project scheduled for construction (in 2007). This project will impact 4.16 acres of wetland, and with the mitigation ratios included in the 1996 Permit applied, 4.28 acres of replacement wetland will be required to offset these impacts. The excess wetland area created at the compensatory wetland sites will offset proposed wetland impacts for the Bismarck-to-Forman Project while maintaining a wetland mitigation surplus of 6.48 acres.

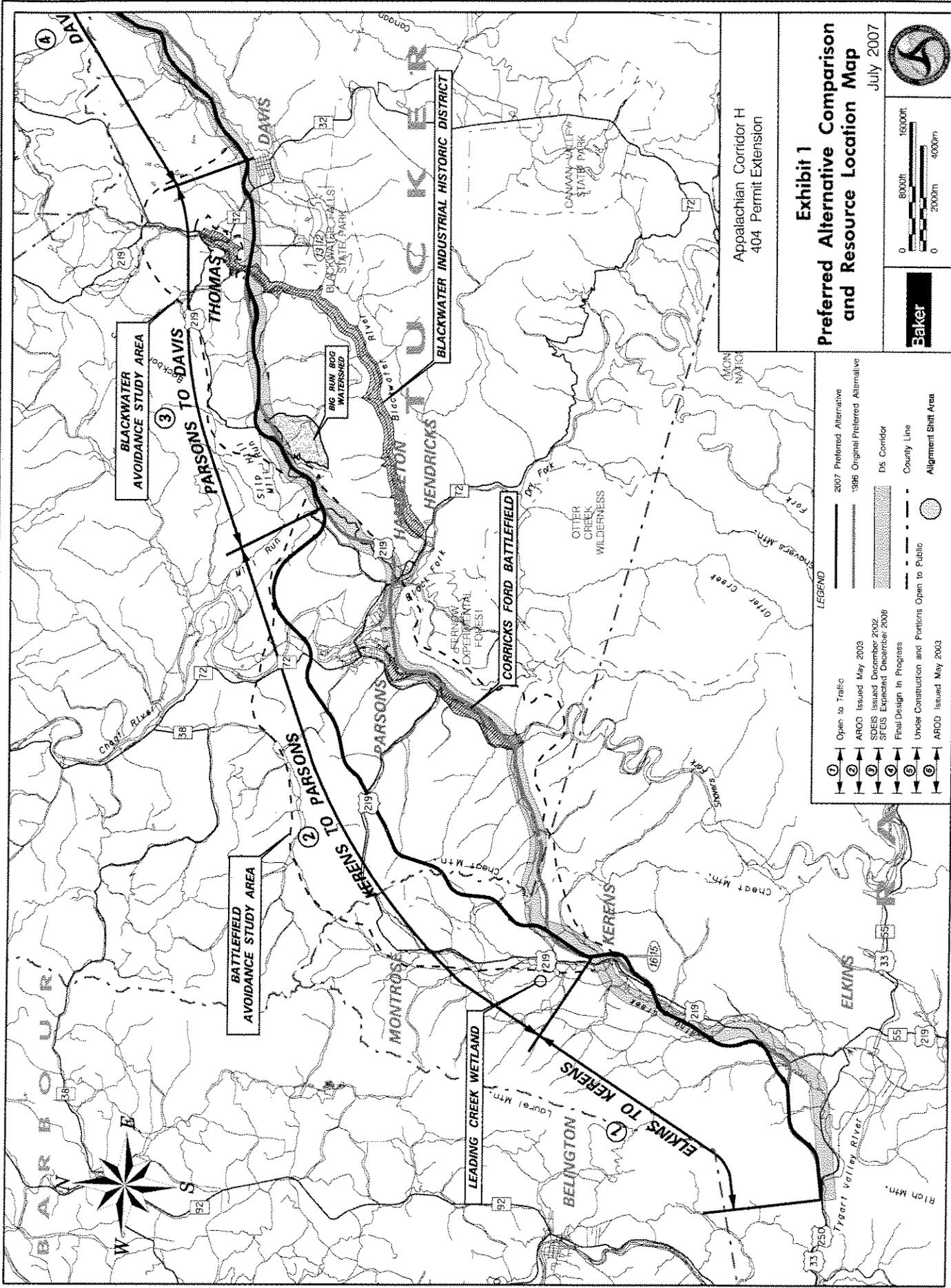
Following construction of the Bismarck-to-Forman project, an additional 44.70 acres of replacement wetland will be required to complete Corridor H. The WVDOH is in the process of identifying and evaluating additional opportunities for the creation and/or preservation of additional wetland required for the proposed wetland impacts. As required by the 1996 Permit and the 1996 ROD, the WVDOH will coordinate with the USACE, West Virginia Division of Natural Resources (WVDNR), WV Department of Environmental Protection (WVDEP), and United States Fish and Wildlife Service (USFWS) in identifying and selecting additional wetland mitigation sites. This coordination will occur prior to the scheduled construction of the Davis-to-Bismarck Project in 2008, which is the first project that will require additional mitigation.

**Table 1
Corridor H Status Update**

Corridor H Project	Stream Impacts		Stream Mitigation Status	Wetland Impacts		Wetland Mitigation Status	Project Status			
	1996 Permitted Impacts	Current Alignment Impacts*		1996 Permitted Impacts	Current Alignment Impacts*		NEPA	Final Design	1996 Permit Update / Modification	Development Status
Elkins-to-Kerens	7,410	7,410	Completed	4.95	7.95	Completed	AROD issued	Completed	None required	Open to traffic
Kerens-to-Parsons	15,205	To be updated prior to construction	Pending project construction	1.63	0.00	No Mitigation Required	SFEIS issued; AROD issued	On hold	To be initiated prior to construction	Final design scheduled for 2011
Parsons-to-Davis	4,120	To be updated prior to construction	Pending project construction	7.92	11.61 (projected)	Additional Mitigation Required	SFEIS issued; AROD expected late 2007	Pending issuance of AROD	To be initiated prior to construction	Pending issuance of AROD
Davis-to-Bismarck	9,115	To be updated prior to construction	Pending project construction	12.87	22.56 (projected)	Additional Mitigation Required	AROD issued	On-going	To be initiated prior to construction	Sections scheduled for construction in 2008
Bismarck-to-Forman	7,900	11,989 (projected)	Completed	3.97	4.16 (projected)	Completed	AROD issued	On-going; some sections completed	Permit Modified (June 2007)	Sections scheduled for construction in Fall 2007
Forman-to-Moorefield	7,380	12,456	Completed	2.84	12.60	Completed	EAFONSI issued; AROD issued	Completed	Permit modified (August 2003)	Under construction (portions open to traffic)
Moorefield-to-Baker	10,800	10,800	Completed	1.22	1.14	Completed	AROD issued	Completed	None required	Open to traffic
Baker-to-Wardensville	4,125	8,948	Completed	0.08	1.89	Completed	AROD issued	Completed	Update submitted (August 2001)	Open to traffic
Wardensville-to-Virginia	5,385	To be updated prior to construction	Completed	1.35	1.35 (projected)	Completed	AROD issued	On hold per Settlement Agreement	To be initiated prior to construction	On hold per Settlement Agreement

█ Project Complete or under construction

*Current Alignment determined by a US District Court mandated Settlement Agreement executed in February 2000 that required additional environmental studies to reduce impacts.



Appalachian Corridor H
404 Permit Extension

Exhibit 1 Preferred Alternative Comparison and Resource Location Map

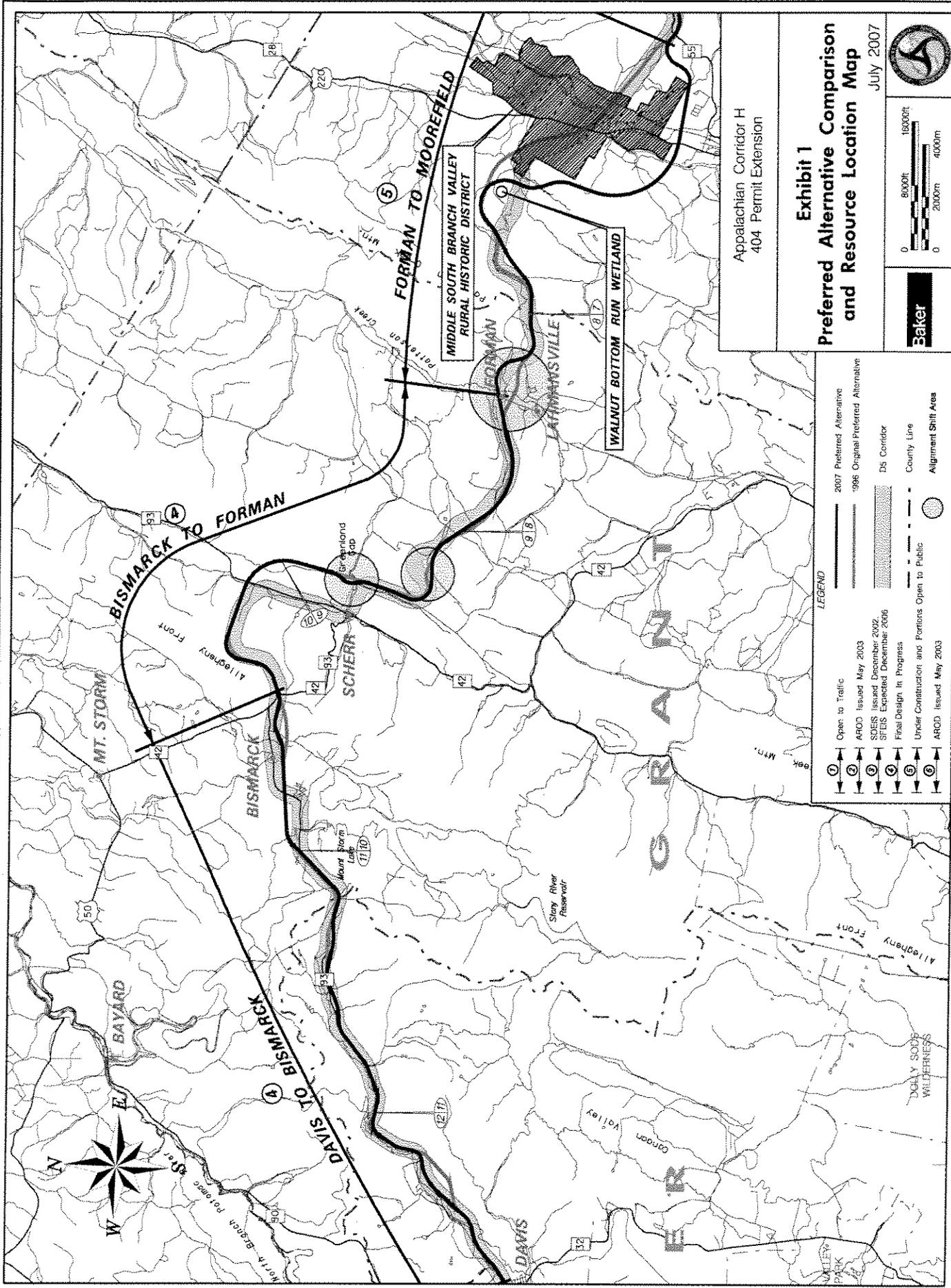
July 2007



LEGEND

- ① Open to Traffic
- ② AROD Issued May 2003
- ③ SDEIS Issued December 2002
- ④ SFEIS Expected December 2006
- ⑤ Final Design In Progress
- ⑥ Unclear Construction and Portions Open to Public
- ⑦ AROD Issued May 2003

- 2007 Preferred Alternative
- - - 1996 Original Preferred Alternative
- ▨ DS Corridor
- ▨ County Line
- Alignment Shift Area



Appalachian Corridor H
404 Permit Extension

Exhibit 1 Preferred Alternative Comparison and Resource Location Map

July 2007

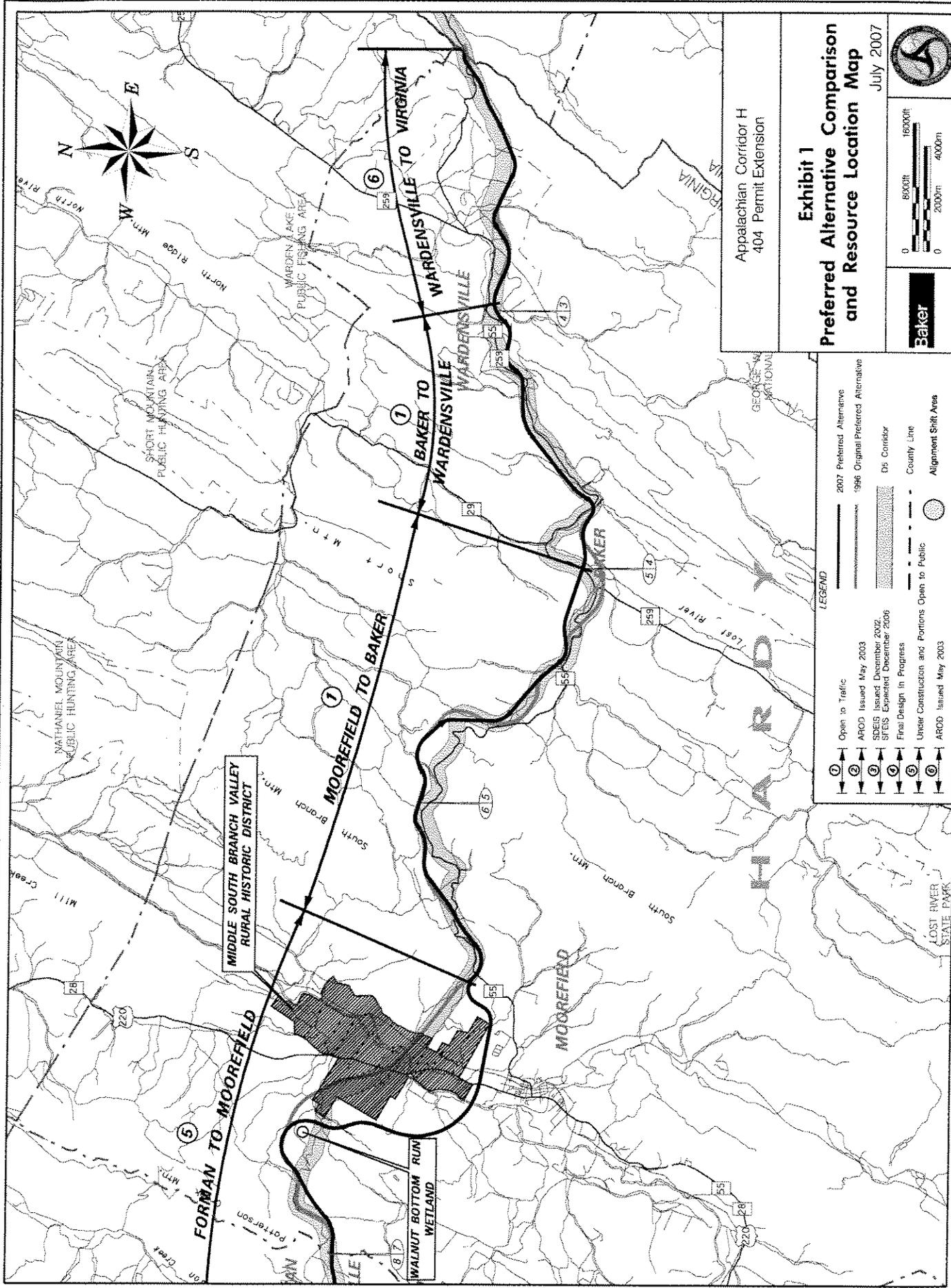


Baker

LEGEND

	2007 Preferred Alternative
	1996 Original Preferred Alternative
	D5 Corridor
	County Line
	Alignment Shift Area

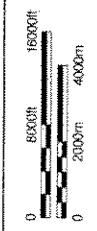
	Open to Traffic
	AROD Issued May 2003
	SDEIS Issued December 2002
	SFEIS Expected December 2006
	Final Design In Progress
	Under Construction and Portions Open to Public
	AROD Issued May 2003



Appalachian Corridor H
404 Permit Extension

Exhibit 1 Preferred Alternative Comparison and Resource Location Map

July 2007



LEGEND

- ① Open to Traffic
- ② AROD Issued May 2003
- ③ SDEIS Issued December 2002
- ④ SFES Expected December 2006
- ⑤ Final Design In Progress
- ⑥ Under Construction and Portions Open to Public
- ⑦ AROD Issued May 2003

- 2007 Preferred Alternative
- - - 1996 Original Preferred Alternative
- ▨ DS Corridor
- - - County Line
- Alignment Shift Area

MIDDLE SOUTH BRANCH VALLEY
RURAL HISTORIC DISTRICT

WALNUT BOTTOM RUN
WETLAND

