

APPENDIX B: APPLICABLE LAWS, POLICIES, AND PLANNING DOCUMENTS

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NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, AS AMENDED

NEPA legislation established this country's environmental policies, including the goal of achieving productive harmony between human beings and the physical environment for present and future generations. It provided the tools to implement these goals by requiring that every federal agency prepare an in- depth study of the impacts of "major Federal actions significantly affecting the quality of the human environment" and alternatives to those actions and required that each agency make that information an integral part of its decisions. NEPA also requires that agencies make a diligent effort to involve the interested members of the public before they make decisions that affect the environment.

NATIONAL PARK SERVICE ORGANIC ACT OF 1916 AND GENERAL AUTHORITY ACT OF 1970

Together the NPS Organic Act of 1916 and the NPS General Authorities Act of 1970 provide the most important statutory directive for the NPS. These laws establish the NPS obligation to conserve and provide for enjoyment of park resources and values, and create the prohibition on impairment of the same. Additional detail on and official agency interpretation of these laws can be found online at <http://www.nps.gov/policy/mp2006.pdf>.

NATIONAL PARK SERVICE MANAGEMENT POLICIES 2006

The NPS *Management Policies 2006* (NPS 2006) is the basic NPS- wide policy document, adherence to which is mandatory unless specifically waived or modified by the NPS Director or certain departmental officials, including the U.S. Secretary of the Interior. Actions under this EA are in part guided by these management policies. Two sections from the NPS *Management Policies 2006* (NPS 2006) are relevant to this project: Section 1.4, Park Management, and Section 8.6, Special Park Uses.

Under Section 1.4, the NPS *Management Policies 2006* require an analysis of potential effects to determine whether or not actions would impair park resources (NPS 2006). NPS managers have the discretion to allow impacts on park resources and values when necessary and appropriate to fulfill the purposes of a park, as long as the impacts do not constitute impairment of the affected resources and values.

An impact would be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is:

- Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park;
- Key to the natural or cultural integrity of the park; or

- Identified as a goal in the park's general management plan or other relevant NPS planning documents.

The management policies state in Section 8.6, that, using criteria and procedures outlined in Director's Order 53, Special Park Uses, each request to permit a special park use or renew authorization of an existing use will be reviewed and evaluated by the superintendent according to the terms of applicable legislation, regulations, and management planning documents (NPS 2006).

NPS AUTHORITY FOR AUTHORIZING CONSTRUCTION AND RIGHT-OF-WAY PERMIT

Construction on any land within the parks requires an SUP for construction to harmonize the interest of the easement holder with that of the United States. Power over lands owned by the federal government is expressed, with respect to the national park system, in the NPS *Organic Act*, which grants to the Secretary of the Interior the power to make such rules and regulations for the use and management of the national park system as he or she may deem necessary and proper for its use and management (16 U.S.C. § 2). Pursuant to that delegated authority, the regulations of the NPS are made generally applicable on lands within the national park system in which the United States owns a partial interest or a fee interest subject to an easement (36 C.F.R. § 1.2). Construction within the national park system is generally forbidden without a permit (See 36 C.F.R. § 5.7, 1.6).

Right- of- way SUPs allow a utility to pass over, under, or through NPS property. A right- of- way permit is a discretionary and revocable document and, unlike a deeded easement or fee simple ownership, does not convey or imply any interest in the land. A right- of- way permit may be issued only pursuant to specific statutory authority and generally only if there is no practicable alternate to such use of NPS lands (See 36 CFR 14, 16 USC § 5 Rights of Way Through Parks; 16 USC § 79 Rights of Way for Public Utilities).

EXECUTIVE ORDERS AND DIRECTOR'S ORDERS

Director's Order 12: Conservation Planning, Environmental Impact Analysis, and Decision Making and Handbook

NPS Director's Order 12 and its accompanying handbook (NPS 2001) lay the groundwork for how the NPS complies with NEPA. Director's Order 12 and the handbook set forth a planning process for incorporating scientific and technical information and establishing a solid administrative record for NPS projects.

NPS Director's Order 12 requires analyzing impacts on park resources in terms of their context, duration, and intensity. It is crucial for the public and decision makers to understand the implications of those impacts in the short and long term, cumulatively, and within context, based on understanding and interpretation by resource professionals and specialists.

The NPS Director's Order 12 was amended in October 2011 to include a section on *Guidance for Non-Impairment Determinations and the NPS NEPA process*. The guidance requires a non-impairment determination only for the selected alternative, and requiring that the non-impairment determination be appended to the decision document (i.e., a finding of no significant impact [FONSI]) (NPS 2011).

Director's Order 53: Special Park Uses

A special park use is defined as a short-term activity that takes place in a park area and may involve either rights or privileges, and may or may not support the purposes for which a park was established, such as:

- Provides a benefit to an individual, group or organization, rather than the public at large;
- Requires written authorization and some degree of management control from the NPS in order to protect park resources and the public interest;
- Is not prohibited by law or regulation; and
- Is neither initiated, sponsored, nor conducted by the NPS.

The approval or denial of requests to engage in special park uses is an important and continuing responsibility of superintendents.

PARK PLANS, POLICIES, AND ACTIONS

Appalachian National Scenic Trail

Comprehensive Plan for the Protection, Management, Development and Use of the Appalachian National Scenic Trail: 1981, Abridged version published in 1987. The Comprehensive Plan describes the unique management approach to maintaining the scenic and recreational aspects of the park. One of the main goals of this plan is to provide Congress with the information it needs to adhere to the oversight responsibility it has over the Trail. Further, the plan organizes policy directions and guidelines in relation to the administration of the Trail regarding private, state, and federal organizations that manage the operation of the Trail (NPS 1987). The management approach set forth in the Comprehensive Plan establishes nine main management philosophies:

- The NPS, state, local, and private organizations will form a cooperative management system with the goal of maintaining and preserving the Appalachian Trail.
- The Appalachian Trail will be managed in such a way as to "...lie lightly on the land" (NPS 1987) to maintain the Trail as a simple footpath, preserving the natural environment.
- Diversity in the character and use of the Trail should be maintained.

- Trail design, maintenance, and construction are to follow guidelines in the Appalachian Trail Conference manual.
- Hikers along the Trail are responsible for their own safety and comfort; they shall be unaided in their efforts to hike the Trail.
- All management organizations are to have an unregimented atmosphere and encourage self-reliance to Trail users, with guidance coming only from guidebooks and maps distributed off the Trail and from signs located on the Trail.
- Management activities and law enforcement would be put in place by local, state, and federal governments to discourage any activities that would degrade the Trail's natural or cultural resources or social values.
- The use of any motorized vehicles on the Trail is strictly prohibited from the footpath, unless in an emergency situation.
- The Trail will remain a free and open natural resource to all who choose to enjoy it.

The Comprehensive Plan does not specifically describe how projects should be carried out or prioritized and is not intended to be a substitute for more detailed plans, nor does it dictate precisely what other plans must cover. Rather, it is the one document that bridges management and protection topics related to the Trail.

Appalachian Trail Conservancy: 2009 Local Management Planning Guide, Chapter 4(f) Roads and Utilities. In 1983, the Forest Roads Task Force convened and produced a one-page statement—the first Appalachian Trail Conservancy (ATC) policy on roads. In November 1988, the ATC Board of Managers adopted a policy statement on utilities and communications facilities. That policy was first amended in 1992 to address utility-line maintenance practices, amended again in April 1994 to include criteria for proposed utility-line crossings of the AT, and a third time in April 1996 to address the more specific impacts of communications sites, airport beacons, wind-generation towers, and other mountaintop facilities. In 2000, the Board adopted a policy on roads and utility developments that replaces both previous policies, but retains many of the previous provisions.

It is the policy of ATC to oppose construction of any such facilities on AT corridor lands or those facilities on adjacent lands that could have an adverse impact on the viewshed of the Trail, unless they meet all of the following criteria:

1. The proposed development represents the only prudent and feasible alternative to meet an over-riding public need, as demonstrated in a thorough and detailed analysis of alternatives.
2. Any new impacts associated with the proposed development shall coincide with existing major impacts to the Trail experience.

3. Any proposed development of linear facilities shall be limited to a single crossing of the Appalachian Trail corridor.
4. Any adverse impacts of a proposed development shall be sufficiently mitigated so as to result in no net loss of recreational values or the quality of the recreation experience provided by the Appalachian Trail. To the extent practicable, mitigation shall occur onsite.
5. The proposed development shall avoid, at a minimum: (a) wilderness or wilderness study areas; (b) NPS natural areas; (c) U.S. Forest Service semi- primitive non- motorized or designated backcountry areas; (d) natural heritage sites; (e) cultural resource sites; (f) Trail-related facilities such as shelters and campsites; and (g) alpine zones, balds, and wetlands.
6. After construction, all impacted areas would be restored to the extent feasible. Restoration measures could include installation of permanent erosion control and planting of native vegetation.

Shenandoah National Park

Shenandoah National Park General Management/Development Concept Plan. Created and approved in 1983, the General Management Plan (GMP) guides the overall management and use of park resources. The general management portion of the plan indicates overall unified programs for park preservation, interpretation of the park's natural and cultural resources, visitor use, development, and administration. The development concept portion refines proposals for the developed areas and discusses the spectrum of existing and new facilities that will allow opportunities for recreation to continue for future generations. The GMP will be used to determine any future of existing plans in the vicinity of the upgrade.

STATE, LOCAL, AND OTHER PLANS, POLICIES, AND ACTIONS

Regional Transmission Expansion Plan

PJM is a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of 13 states and the District of Columbia. In its Regional Transmission Expansion Plan, PJM identified transmission system additions and improvements needed to maintain a reliable electric grid in its service area. Studies are carried out based on mandatory national standards and PJM regional standards to provide accurate statistics on weaknesses in the electric grid or where improvements are needed. These studies model electric load, voltage limitations, and reliability issues 15 years into the future (PJM 2008).

State Corporation Commission Actions

The State Corporation Commission (SCC) is one of Virginia's primary regulatory agencies. The SCC's authority encompasses utilities, insurance, state- chartered financial institutions, securities, retail franchising, and railroads. The SCC also serves as the Commonwealth's central filing office for

corporations, limited partnerships, limited liability companies, business trusts, and Uniform Commercial Code filings (SCC n.d.). On January 25, 2012, the SCC issued a Final Order authorizing DVP to rebuild and upgrade an existing 115kV transmission line that extends approximately 45 miles from the Dooms Substation in Augusta County to the Bremo Substation in Fluvanna County. The authorization for the construction and operation of the proposed project by the SCC has been obtained; however, it must also be authorized by the federal government by the granting of the SUP permits through the NEPA process.