



## **FINDING OF NO SIGNIFICANT IMPACT**

### **Sharpsburg Water Intake Upgrade**

#### **Chesapeake and Ohio Canal National Historical Park Washington County, Maryland**

The National Park Service (NPS) is proposing to grant a revised Right-of-Way (ROW) to the Department of Water Quality Control of Washington County, Maryland (the County) to upgrade a raw water intake pipeline across the Chesapeake and Ohio National Historical Park (Park) at Mile 74.3.

The purpose of the project is to replace an existing water pipeline with a new raw water pipeline across the Park to connect the existing Sharpsburg Water Intake and the Water Treatment Plant and to replace an existing electrical control platform with a new electrical control platform. This action is needed because the existing pipeline has exceeded its useful lifespan and has at least one leak along its length, which is affecting the ability of the County to maintain a reliable safe water source for the Town of Sharpsburg, Maryland. The existing water control platform is at danger of being damaged by flooding of the Potomac River at its present height, which threatens the ability of the County to control the water intake pumps during flood events.

In the 1960s, the County constructed the raw water intake and pipeline to supply the water treatment plant for the Town of Sharpsburg, including the approximately 800 feet of pipeline and raw water intake pump and power control systems at Mile 74.3 within the Park. The existing easement, as described in the 1976 perpetual easement, is 30 feet wide for 805 feet of its length, and 50 feet wide for the remaining 60 feet of its length adjacent to the east bank of the Potomac River. The existing easement was granted by the NPS for the purpose of maintaining a 6-inch water supply, a water intake structure, and an underground electric service line. Under current easement, the County is allowed to undertake routine maintenance and operations of the existing water supply pipeline, including any repair work necessary to maintain and operate the existing water supply pipeline including vegetation maintenance and management.

The NPS completed an environmental assessment (EA) that provided an analysis of the environmental consequences of the alternatives which considered resource protection and visitor accommodation. This EA was prepared in accordance with National Environmental Policy Act of 1969, as amended (NEPA), its implementing regulations by the Council on Environmental Quality (CEQ) (40 CFR 1500-1508), and Director's Order 12, Conservation Planning, Environmental Impact Analysis and Decision-Making, and accompanying Handbook.

### **SELECTED ALTERNATIVE**

Based on the analysis presented in the EA, the NPS has selected Alternative C: Existing Easement, Construction Option 1, as the NPS preferred alternative for implementation. The selected alternative is described on pages 16 through 25 of the EA.

Alternative C will consist of removal of the existing, leaking underground 6-inch diameter raw water supply pipeline from within the current easement and replacement with an underground 6-inch diameter water line in the same place. A second underground 6-inch diameter water line will be installed to allow for future additional water capacity without necessitating new construction. This alternative also includes the replacement of an underground electric service line, installation of an underground telecommunications line, replacement of the elevated electrical platform adjacent to the water intake pumps, and construction of a cross-over dike across the canal prism on Park lands.

The County will lay a temporary bypass water line (TWL) from the water intake to the water treatment plant to ensure that water service to the Town of Sharpsburg is not interrupted. The TWL will be

installed by hand, on grade, with minimal disturbance to vegetation. It will cross the towpath near the intake structure and then proceed parallel to the towpath within the canal prism. Location for the TWL will be reviewed and approved by NPS. The TWL's crossing of the towpath will require a shallow trench, not to exceed 12 inches. A 12-inch steel sleeve will be inserted in the trench to carry the TWL. The steel sleeve will be covered by either a steel plate or a 6-inch soil overburden, which would be graded for ease of passage for Park visitors.

In the event of major predicted storms, the TWL will be sandbagged to hold it in place. Due to the potential of the TWL to be affected by freezing conditions, construction work will need to occur during warmer months. The TWL will be removed immediately upon implementation of the permanent water line. A temporary ROW will be required for the TWL.

The County will also construct a new elevated electrical platform adjacent and upstream of the intake which will be used to control the water intake pumps. The new elevated electrical platform will be 5 feet higher than the existing platform and placed on pilings to minimize ground disturbance. The change in height will raise the electrical panels above the 100-year flood level to protect the panels from damage and shorting out during Potomac River flood events. The colors and materials chosen for this construction will be those that best blend into the wooded setting. The old platform will be removed following activation of the new electrical controls. Construction activities associated with the new elevated electrical platform will occur within the existing easement.

On non-Park lands between the Park boundary and treatment plant the County will improve the existing dirt and gravel road leading from the water treatment plant down towards the canal prism in accordance with the existing NPS scenic easement. The roadway on the private property will connect to the Park towpath via a cross-over dike within the canal prism. The dike will be used for all construction access and will remain in place after construction to facilitate routine operations and maintenance of the intake structure. No further use of the canal towpath from Lock 38 for intake operations and maintenance will be necessary. The cross-over dike will contain two 36-inch culvert pipes to allow water flow within the canal prism during storm events. Construction of the cross-over dyke will meet industry standards for soil compaction.

The construction of Alternative C will necessitate an amendment to the existing easement between the County and the NPS to allow the additional infrastructure, as the existing easement agreement limits the County to a single 6-inch diameter water line and an electrical conduit, with a controlled access point within the ROW from private land to Park property. The new easement will be filed at the Washington County Courthouse, Hagerstown, Maryland. An additional ROW will be needed for approximately 0.11 acres for the proposed permanent cross-over dike.

Installation of the permanent water lines across the Park lands will involve open cut trenching in the area of the Park towpath and canal prism, as evaluated under Alternative C, Option 1. The project will also install a 36-inch diameter steel casing sleeve under the towpath and canal prism through which the new infrastructure will be placed. All construction work will adhere to best management practices and follow any permit conditions as issued from regulatory authorities.

All construction equipment will be selected to comply with Park weight restrictions when working within the Park. During the construction period, precautions will be taken during storm events to remove equipment and materials from the flood plain.

The estimated project construction time is 6 months for the entire project. Construction on Park property is estimated at 8 weeks, but the TWL would be in place on Park property for the duration of the project.

Vegetation within the existing easement will be cleared. Trees will be flush cut to grade and roots within the active trench zone will be cut, rather than pulled, out of the way. Remaining roots will be left in place to deteriorate naturally. Stumps will be treated with NPS approved herbicide to prevent regrowth. Trees adjacent to but outside the easement may be trimmed to remove branches obstructing construction access. All vegetation work will be undertaken to meet NPS arborist standards for the protection trees to remain.

All excavation work will be anticipated to be conducted within areas previously disturbed by the 1960's construction of the existing water pipeline, including the crossing of the towpath, which reduces the possibility of encountering rock during construction. Should rock be encountered, hydraulic hammering is the preferred method for rock removal. Any blasting of rock would require approval permit from the NPS and all necessary state permits.

The Park will remain open at all times during construction. A temporary pedestrian bypass will be established to facilitate safe travel through the construction zone as needed. Some project work, such as the trenching across the towpath/canal prism will be scheduled for evening/overnight/early morning hours to avoid Park operating hours. All activities and designs affecting Park visitors will be reviewed and approved by the NPS prior to implementation.

### **OTHER ALTERNATIVES CONSIDERED**

In addition to the NPS selected alternative described above, the EA analyzed Alternative A: No Action. Alternative A would have the County continue with existing routine operations and maintenance to the existing infrastructure. Emergency repairs would be undertaken as needed. Access to the intake would involve the County staff entering the Park at Lock 38 and traveling one mile along the Park's towpath. This alternative was not select as it did not best meet the purpose and need for the project.

### **ALTERNATIVES CONSIDERED BUT DISMISSED**

**The following alternatives were considered but dismissed within the EA**

**Alternative B** would consist of the abandonment of the existing easement and the construction of a new water supply pipeline and associated power line conduit within a new ROW. This alternative would run from the existing pump station perpendicular across the Park for approximately 200 feet before entering private property. Alternative B was dismissed as it would result in permanent impacts to rock outcrops associated with cultural resources within the Park that would be considered a significant adverse impact to Park resources.

**Alternative C: Existing Easement, Construction Option 2** would be the same as Option 1 (preferred alternative), but rather than extending the open-cut trench through the towpath and canal prism, the jack-and-bore method would be used to place the 36-inch diameter steel casing sleeve underneath the towpath and canal prism. This method would require more land to be used during the construction to accommodate the drill's sending and receiving pits. These pits would be outside the existing/known limits of disturbance (LOD) from the existing pipe's installation. Option 2 would extend the duration of the project work within the Park an additional three weeks. There would also be a greater chance of encountering bedrock within the previously undisturbed areas, which would require removal. Construction Option 2 was dismissed as it would result in larger adverse impacts to Park resources compared to selected alternative.

**Alternative D** would consist of tapping into the water system of an adjacent community and abandoning the existing pump station and water supply pipeline. This is not feasible because adjacent communities are facing potential future shortfalls within their supply systems and may need to tie into the Sharpsburg water supply. Alternative D was dismissed as it would not fulfill the purpose and need of the project.

**Alternative E** would consist of relocating the water intake approximately 600 feet downstream from the existing intake structure. This would include construction of a pump station, water intake structures, subsurface pump structure, and a new above-ground electrical controls. Additional vegetation clearing would be required within the Park, including the Potomac River bank. This location would place it on a river curve, making it more susceptible to debris and siltation. While the location would shorten the overall ROW within the Park, Alternative E was dismissed as it would not fulfill the purpose and need of the project and would result in larger adverse impacts to Park resources.

### **ENVIRONMENTALLY PREFERABLE ALTERNATIVE**

The NPS is required to identify the environmentally preferred alternative in its NEPA document for public review and comment. The NPS, in accordance with the Department of the Interior policies contained in the Departmental Manual (516 DM4.10) and the CEQ *NEPA's Forty Most Asked Questions*,

defines the environmentally preferred alternative as the one that “causes the least damage to biological and physical environment.” It is the alternative “which best protects, preserves, and enhances historic, cultural and natural resources” (Q6a).

After completing the environmental analysis, the NPS identified Alternative C: Existing Easement, Construction Option 1 (open-cut trenching within previous limits of disturbance), as the environmentally preferred alternative. Alternative C is considered the environmentally preferable alternative, as it best meets the requirements of “achieving a balance between population and resource use that will permit high standards of living and a wide sharing of life’s amenities”. Alternative C will ensure the reliability of the water supply for the Town of Sharpsburg while minimizing adverse impacts to the human and natural environment. Because Construction Option 1 will minimize disturbance to previously undisturbed areas, minimize the duration of construction within or adjacent to the towpath, minimize safety concerns from deep excavations within or adjacent to the towpath, and minimize safety concerns from construction equipment within or adjacent to the towpath, Option 1 is the preferred construction option.

The no-action alternative, Alternative A, does not fit the definition of the environmentally preferable alternative. While on face value, the no-action alternative would not have any new impacts to natural or cultural resources of the Park, the current condition of the pipeline does not ensure that the water supply to the Town of Sharpsburg would continue uninterrupted.

### MITIGATION MEASURES

The NPS places a strong emphasis on avoiding, minimizing, and mitigating potentially adverse environmental impacts. To help ensure the protection of natural and cultural resources and the quality of the visitor experience, the following protective measures will be implemented as part of the selected action alternative.

Mitigation Measures of the Selected Alternative	
Resource Area	Mitigation Measures
Soils	Ensure that an erosion and sediment control plan is completed and followed in accordance with the <i>Maryland Erosion and Sediment Control Guidelines for State and Federal Projects</i> to prevent, reduce, and control soil erosion and sedimentation during construction.
	Close open trenches in the event of any major storm event forecasted within 24 hours that could elevate Potomac River to 100-year floodplain stage.
	Reseed soils disturbed within the proposed construction area with NPS approved native vegetation seed mix to stabilize the soil, repair compaction, and/or improve soil productivity.
	Provide spill containment kits will be on site during construction. An emergency response plan will be developed.
Wetlands	Return contours of the stream channel and canal prism to their former condition immediately upon installation of the new infrastructure.
	Install filter fabric on existing grade within the canal prism prior to placement of fill material for the cross-over dike. The filter fabric is a visual marker of the existing grade should any future work to the cross-over dike be necessary.
	Install adequately-sized culverts through the cross-over dike to allow for water flow within the canal prism.
	Reseed disturbed wetlands and cross-over dike with NPS approved native vegetation seed mix suitable for wetlands.
	Implement any additional mitigation measures determined during the Maryland Department of the Environment (MDE)/United States Army Corps of Engineers (USACE) permitting process.
Vegetation	Follow NPS standards for tree impacts and mitigation, including all tree work to be done under the direction and general supervision of an Arborist certified by the International Society of Arboriculture (ISA) who possesses verifiable technical competence in tree physiology, identification, diagnosis of disorders, and current tree care and safety practices in accordance with accepted industry standards.
	Abide by any code of ethics or professional conduct established by the National Arborist Association and ISA.
	Get pre-approval of all spray applications from the Park Integrated Pest Management Coordinator. Park approved applications shall be under the direct supervision of a Certified Pesticide Applicator licensed to spray within the State of Maryland.
	Ensure that all tree pruning and removal activities will be in accordance with the American National Standard for Tree Care Operations – “Tree, Shrub, and Other Woody Plant Maintenance – Standard Practices, ANSI A300 (Part 1) – 2000 Pruning” and “Pruning, Repairing, Maintaining and Removing Trees and Cutting Brush – Safety Requirements” – ANSI Z133.1.-2000.
	Follow NPS arborist standards for root pruning practices in an effort to protect root systems of trees adjacent to the existing easement. When tree root systems are to be impacted, practices for cleanly pruning the root systems of existing trees must be followed. Tree pruning standards will be provided by Park staff.
	Revegetate cleared portions of the easement using NPS approved native vegetation seed mix seed and ensuring that the seed mix properly germinates.



Mitigation Measures of the Selected Alternative	
Resource Area	Mitigation Measures
	County to routinely mow grassed easement areas to minimize or prevent the intrusion of invasive species onto Park property while easement is in use.
	All construction equipment will be washed prior to entry onto NPS lands to reduce the risk for the spread/introduction of invasive plant species.
	Consultation with Park staff prior to placement of temporary water line to ensure no impacts to vegetation.
	Reduce risk for spread/introduction of invasive plant species into wildlife habitat by implementing appropriate mitigative measures identified for vegetation.
Wildlife	Ensure preventative measures are taken to minimize potential for adverse impacts to aquatic wildlife from fuel leaks or spills. Remove all construction equipment from the 100-year floodplain in the event of any major storm event forecasted within 24 hours that could elevate to 100-year floodplain stage.
	Prohibit overnight parking of equipment within the 100-year floodplain.
	Undertake tree removal outside of bird nesting season.
	Minimize physical adverse impacts to the towpath from construction vehicles by limiting ingress and egress from construction areas and using a rubber tired backhoe loader and single axle dump truck, each with gross operating weights under 12 tons. Larger trackhoe used for trenching will be limited to crossing the towpath within limits of disturbance for original water line.
Historic Structures and Districts	Improve access to the area of potential effect (APE) for construction of Alternative C as well as for future maintenance of the waterline and pump station via an improved access road along the private property easement and the construction of a cross-over dike, which will be designed to blend in with the surrounding environment. The cross-over dike will be a grassed to minimize potential erosion and the road gated on the private property side to minimize unintended use. Project design will be reviewed for acceptable design/finish of the dike.
	Repair any damage to the towpath resulting from construction or the movement of construction vehicles. Consult with the NPS and adhere to the Secretary of Interior Standards for the Treatment of Historic Properties.
	Minimize visual impacts of the electrical platform by using colors and materials that best blends into the wooded setting.
	Restore canal features in accordance with best practices of historic canal construction and restoration.
	If during construction, archeological resources are discovered, halt all work in the immediate vicinity of the discovery until the resources can be identified and documented and an appropriate mitigation strategy developed. If necessary, consultation with the Maryland State Historic Preservation Officer (SHPO), NPS, and/or the NPS Regional Archeologist will be coordinated to ensure that the protection of resources is addressed. In the unlikely event that human remains, funerary objects, sacred objects, or objects of cultural patrimony are discovered during construction, provisions outlined in the Native American Graves Protection and Repatriation Act (25 USC 3001) of 1990 will be followed.
	Establish temporary pedestrian bypass during the period in which reconstruction activities are occurring within the towpath.
Visitor Use and Experience	Ensure that construction activities are avoided during periods of peak visitor use of the Park.
	Place signs at Lock 38 and between the project area and Snyder's Landing to notify Park visitors of the construction work. The signs will remain until repairs finished.
	If steel plate is used to cover the temporary waterline at the towpath, ensure that edges of the steel plate are not an impediment to visitor travel.
	If earthen overburden is placed over the temporary bypass water line, grade overburden to provide a gradual slope up and over the water line to prevent disruption to passage by motorized vehicles, bicyclists, and pedestrians on the towpath.
	Restore towpath to NPS standards and approval.
	Develop a safety plan to ensure the safety of Park visitors, NPS personnel, and construction workers.
Public Health and Safety	Place signs at Lock 38 and between the repair area and Snyder's Landing to notify Park visitors of the construction work. The signs will remain until construction is finished.
	Limit construction activities through or on either side of the towpath to those times of day least used by the public.
	Limit trenching through the towpath and installation of the steel casing sleeve under the towpath in a single construction episode between sunset and following morning sunrise, when the towpath will be closed to Park visitors, with backfilling of the trench expected to be completed by morning when the Park opens.
	Establish temporary pedestrian bypass during the period in which reconstruction activities are occurring within the towpath.
	Post project staff on the towpath to ensure safe visitor travel through the work zone during open Park hours.
	Place battery-operated blinker barricades to warn visitors in the project area after hours.
	Use construction fencing or safety tape to demarcate limits of open-cut trenches within and adjacent to Park boundaries.
	Mark the temporary bypass water line location so that it is easily seen by Park visitors.
	Keep people a safe distance away during any hydraulic hammering activities so they do not encounter flying debris.

## **WHY THE SELECTED ALTERNATIVE WILL NOT HAVE A SIGNIFICANT EFFECT ON THE HUMAN ENVIRONMENT**

As documented in the EA, the NPS has determined that the selected alternative, Alternative C: Existing Easement, Construction Option 1, can be implemented without significant adverse effects. As defined in 40 CFR §1508.27, significance is determined by examining the following criteria:

***Impacts that may have both beneficial and adverse aspects and which on balance may be beneficial, but that may still have significant adverse impacts that require analysis in an Environmental Impact Statement (EIS):*** Soils, wetlands, vegetation, wildlife, historic structures and districts, and visitor use and experience will have both beneficial and adverse impacts as a result of implementing the selected alternative, however, no significant impacts were identified that will require analysis in an EIS.

Under the selected action there may be adverse, local, short-term, minor impacts to soils during construction activities and adverse, local, long-term, minor impacts to soils from installation of new elevated electric platform pilings and construction of the permanent cross-over dike. The selected action will also include mitigation to reduce soil loss and erosion and to restore and stabilize construction areas.

Under the selected action there may be adverse, local, short-term impacts to wetlands from trenching through previous limits of disturbance within the intermittent stream and canal prism and adverse, local, long-term, minor impacts to the canal prism from construction of the permanent cross-over dike. The selected action will also include mitigation to restore wetlands impacted by trenching and installation of culverts through the cross-over dike to maintain flow within the canal prism.

Impacts to vegetation from the selected action will be adverse, local, long-term and minor. While implementation of mitigation measures within the project study area will result in the reestablishment of native vegetation, maintenance of the easement will prevent the growth of any shrubs or trees. Although trees and other vegetation that have become established within 0.55 acre of the existing easement will be permanently removed and approximately 0.11 acre cleared for construction of the permanent cross-over dike, clearing and implementation of routine vegetation maintenance within the easement will not adversely affect the contiguous nature of the forest canopy within the project study area and adjacent areas. A continuous canopy of trees will be present along and between the bank of the Potomac River and the existing easement which connects with the forest upstream and downstream of the project study area. Additionally, although the area of cleared vegetation within the existing easement will be 30 feet in width, the canopy of mature trees on either side of the easement will still span the easement area.

Temporary displacement of wildlife during construction activities will result in adverse, local, short-term, minor impacts to wildlife. The selected action will have adverse, local, long-term, minor impacts to wildlife and wildlife habitat through clearing activities for construction, which will remove some woody structure from the existing wildlife habitat. The cleared areas within the easement will be reseeded with NPS approved native grass mix and mowed on a semi-annual basis to prevent regrowth of woody vegetation. Maintenance of native grasses within the easement will provide foraging opportunity for herbivorous wildlife.

There will be adverse, local, short-term minor impacts to the towpath and canal prism within the limits of previous disturbance within the easement in the Park from trenching for installation of new water lines and conduit and from installation of the temporary bypass water line crossing. There will be adverse, local, long-term, minor impacts to the canal prism from the construction of the permanent cross-over dike and adverse local, short-term, minor impacts to the towpath from the passage of construction equipment, but these actions will result in beneficial, local, long-term, minor impacts to the historic towpath through avoidance and elimination, respectively, of construction vehicle use and County maintenance vehicle use on one mile of towpath. Implementation of the selected action will also result in adverse, long-term, negligible impacts to visual conditions from construction of the new elevated electrical platform and removal of the existing platform, and from clearing of the easement. Adverse impacts will be mitigated. The impacts will result in "no adverse effects" under Section 106 of the National Historic Preservation Act (NHPA). The proposed mitigation measures will ensure that, while the adverse impacts to the Park will be detectable, they will not diminish the physical integrity or the character of the Park.

The selected action will result in adverse, local, short-term, minor impacts to visitor use and experience during construction. Post-construction, the selected action will result in adverse, local, long-term, minor impacts to visitor use and experience from visual changes to vegetation within the easement. Mitigation measures will be implemented to minimize adverse impacts to visitor use and experience.

***Degree of effect on public health or safety:*** The selected alternative will have no effect on public health. The magnitude of impacts to public safety from the selected alternative will be adverse, local, short-term, and minor with appropriate safety measures during construction. There will be no long-term impacts to public safety.

***Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, wetlands, prime farmlands, wild and scenic rivers, or ecologically critical areas:*** Prime farmlands, wild and scenic rivers, or ecologically critical areas do not occur in the project area.

The Chesapeake and Ohio Canal is located within the APE of the proposed action and is listed in the National Register as an historic district. In addition to the historic towpath and canal prism, a complex of historic structures and features associated with a canal lock are located at or in close proximity to the proposed action. These include Lock 39, a Bypass Flume, and a Section House/Lockhouse, as well as Culvert 108, a wastewier, Canal Company Sectionhouse, Culvert 109, and Sediment Entrapment Wall at Culvert 109. Open-cut trenching as described in the selected action will occur through the towpath and canal prism within the LOD from the 1960s water line construction. The disturbance from the towpath and canal prism trenching will be restored to the historic specifications. The County will also construct a permanent cross-over dike across the canal prism to allow for the access of County maintenance vehicles to the easement and existing pump station, avoiding use of one mile of historic towpath during construction and during future operations and maintenance activities. The dimensions of the permanent cross-over dike will approximate those of the towpath; approximately 6 feet in height above existing canal prism grade, have an approximately 12-foot wide travel lane, and have 3:1 grade side slopes for an ultimate width of approximately 16 feet. Current plans call for the cross-over dike to contain two 36-inch culverts to allow water to flow through the canal prism during rain events. The selected action will avoid impacts to other historic structures in the APE.

Construction associated with the replacement of a waterline will result in minor temporary impacts to wetlands consisting of an intermittent stream within the existing easement on NPS lands. The streambed will be returned to its present condition following construction. Minor permanent impacts will occur to the canal prism. The selected action will be an excepted action, as reviewed by the NPS's Water Resources Division in June 2011, and not require a Statement of Findings under Director's Order 77-1 documenting consistency with Executive Order 11990: *Protection of Wetlands* based on the following:

- the proposed action is for replacing/renovating an underground water pipeline within the same alignment as currently exists (not expanding),
- the cumulative wetland disturbance is less than 0.1 acre,
- pre-construction contours and elevations will be restored,
- soil/substrate characteristics and riparian vegetation will be restored,
- the project will not result in adverse impacts on surface or ground water hydrology (no wetland drainage), and
- best management practices for protection of aquatic life implemented throughout the construction and restoration process.

Similarly, because the proposed action will not result in occupation or modification of floodplains or result in impacts to floodplain values, this project will not require a Statement of Findings under Director's Order 77-2 documenting consistency with Executive Order 11988: *Floodplain Management*. Although some construction activities will occur within the floodplain of the Potomac River, construction will occur within the existing easement, pre-construction contours and elevations will be restored, soil/substrate characteristics will be restored, and riparian vegetation will be restored. Therefore, the proposed action will have no adverse impacts on floodplains or floodplain values within the Park.

***Degree to which effects on the quality of the human environment are likely to be highly controversial:***

No highly controversial effects in terms of scientific uncertainties as a result of the selected alternative were identified during the preparation of the EA or by the public during the public comment period.

***Degree to which the possible effects on the quality of the human environment are highly uncertain or involve unique or unknown risks:*** No highly uncertain, unique, or unknown risks were identified during either preparation of the EA or through public comment.

***Degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration:*** The selected alternative neither establishes a NPS precedent for future actions with significant effects nor represents a decision in principle about a future consideration.

***Whether the action is related to other actions with individually insignificant but cumulatively significant impacts:*** Implementation of the selected alternative will have no significant cumulative impacts. As described in the EA, past, present, and future actions and projects within the project area that could affect soils, wetlands, vegetation, wildlife, historic structures and districts, visitor use and experience, and public health and safety include: New Design Raw Water Main and McKinney Treated Effluent Outfall (Mile 44); Point of Rocks Boat Ramp (Mile 48); Rehabilitate, Reconstruct, and Stabilize Big Slackwater Historic Stone Wall and Towpath (Mile 84-88); Restoration of Canal Operations at Williamsport, Maryland (Mile 98-100); and Eelways at Dams #4 and #5 (Mile 84 and 106).

Impacts to soils from the New Design Raw Water upgrades; the restoration of Canal Operations at Williamsport; Points of Rock boat ramp and Big Slackwater; and installation of the eelways at Dams 4 and 5, when combined with the impacts of the selected alternative will result in adverse, local, short-term and long-term, and minor cumulative impacts on soils, with the selected alternative having a slight contribution on the overall cumulative impact. Impacts to wetlands from the cumulative actions of the Point of Rocks boat ramp; Big Slackwater; Canal Operations at Williamsport; and the eelways project at Dams 4 and 5, when added to the impacts of the selected alternative will result in short-term minor and long-term moderate adverse cumulative impacts, with the selected action having a minor contribution.

Effects to vegetation from cumulative actions would include: adverse, local, short-term, negligible impacts for the New Design Raw Water Upgrades; adverse, local, long-term, minor to moderate impacts at Point of Rocks; adverse, local, short-term and long-term, moderate impacts at Big Slackwater; and adverse, local, short-term, minor impacts for construction of the eelways at Dams 4 and 5. The selected alternative would result in adverse, local, long-term, minor impacts to vegetation. When combined with the impacts from the cumulative actions, the selected alternative would have a minor contribution to adverse, long-term, minor cumulative impacts to vegetation within the Park.

New Design Raw Water Upgrades had and the eelways at Dams 4 and 5 will have adverse, local, short-term, minor impacts to wildlife habitat. The Point of Rocks boat ramp had adverse, local, short-term and long-term, negligible impacts, but also had some beneficial impacts. Big Slackwater will have adverse, local, short-term and long-term, moderate impacts to wildlife. The eelway project will have beneficial impacts for the American eel. The selected alternative would result in adverse, local, long-term, minor impacts to wildlife habitat. When combined with the impacts from the cumulative actions, the selected alternative may have a minor contribution to adverse, short-term and long-term, minor cumulative impacts to wildlife habitat within the Park.

Effects to historic structures and districts from cumulative actions would include: adverse, local, short-term, minor impacts at Points of Rock boat ramp during construction; adverse, local, short-term, minor impacts at Big Slackwater, with beneficial long-term impacts due to the rebuilding of the towpath; beneficial, local, long-term impacts for Canal Operations at Williamsport; and adverse, local, long-term negligible to minor (Dam 5) and moderate (Dam 4) impacts for the eelways due to the introduction of non-historical elements into the cultural landscape and dams. The selected alternative would result in adverse, local, short-term, long-term, negligible to minor impacts, but would have beneficial, local, long-term, minor impacts by elimination of County maintenance vehicle use on one mile of towpath. When combined with the impacts from the cumulative actions the selected alternative may have a slight



contribution to adverse, short-term and long-term, minor cumulative impacts to historic structures and districts.

When combined with the impacts from the cumulative actions, the selected alternative would have a slight, local contribution to adverse, short-term and long-term, minor cumulative impacts to visitor use and experience within the Park.

Evaluations regarding public health and safety had/has typical adverse, local, short-term, minor impacts during construction phases for all projects cited. However, Big Slackwater and Point of Rocks boat ramp provide beneficial, local, long-term impacts by providing safety improvements for Park visitors. The magnitude of impacts to public safety from the selected alternative would be adverse, local, short-term, and minor with appropriate safety measures during construction. When combined with the impacts from the cumulative actions the selected alternative would have a slight contribution to adverse, short-term, minor cumulative impacts to public safety within the Park during construction. There would be no long-term impacts to public safety.

***Degree to which the action may adversely affect districts, sites, highways, structures, or objects listed on National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources:*** Removal of the existing water line and electrical conduit and installation of the new water lines, electric service and communication lines in the former location of the existing water line by the open trench construction method will result in subsurface disturbance amounting to a minor short-term loss of physical integrity to the towpath and canal prism. This trenching will occur within the previous LOD from the 1960s installation of the original water line and the towpath and canal prism will be restored to their original form with existing material immediately after installation of the new water lines and conduit. Installation of the temporary bypass water line within a narrow, shallow trench across the towpath will result in subsurface disturbance amounting to a minor short-term loss of physical integrity to the towpath. The towpath will be restored to its original form with existing material immediately after completion of project construction. The proposed elevated electrical platform will replace an existing elevated electrical platform; the existing visual conditions in this location will not change. In addition, the colors and materials chosen for the platform will be those that best blends into the wooded setting. The installation of the elevated electrical platform will have no impact to historic structures and districts. Construction of the permanent cross-over dike will result in a minor local change to the appearance of the canal prism but will reduce County vehicular traffic on the towpath for construction and future operations and maintenance on one mile of towpath. The overall impact of the project will support a finding of *no adverse effect* to historic structures and districts under Section 106.

Vegetation, within the proposed project area/existing easement, consists of grasses, shrubs, saplings, small trees, and one specimen tree. This vegetation will be removed to facilitate construction. Post construction will include replanting small native species and period mowing as a long-term facility maintenance measure. The easement will be maintained as an open grass area. Most of the easement runs parallel with the towpath and is shielded from view by a section of mature forest that is 20-60 feet wide. The 30-40 foot wide easement will be visible where it intersects the towpath, but is not anticipated to be an adverse impact for Park users other than when passing through the easement area. Because the County has the right to clear existing vegetation from and maintain the existing easement, and will revegetate the easement with native vegetation as a mitigation measure, the action will not result in impairment to the aesthetics and viewsheds of the Park. As such, the clearing of vegetation and periodic maintenance will have *no adverse effect* to historic structures and districts under Section 106.

To protect archeological resources, woody growth within the easement will be flush cut to grade. Root systems that extend beyond the existing LOD will be trimmed, not pulled.

In accordance with Section 106 of the NHPA, potential adverse effects, (as defined in 36 CFR 800) on archeological resources and on historic structures and districts listed on or eligible for listing on the National Register, were coordinated between the NPS and the SHPO to determine the level of effect on the property and to determine any necessary mitigation measures.

In a letter dated September 23, 2009, the NPS initiated correspondence with the Maryland Historical Trust (MHT), Maryland's SHPO. This was conducted in accordance with Section 106 of the NHPA and as part of the merged NEPA/NHPA (Section 106) process. The MHT responded in an email dated October 14, 2009 that recognized that the project was being conducted under the merged NEPA/NHPA process and the MHT looked forward to further consultation with the NPS.

Copies of this *Sharpsburg Water Intakes Upgrade EA* were distributed on March 15, 2012 to the MHT for review and comment related to compliance with Section 106 of the NHPA. On April 10, 2012, the MHT issued a letter that stated that the undertaking's preferred alternative, the NPS selected alternative, will not have an adverse effect on historic properties (see attached).

***Degree to which the action may adversely affect an endangered or threatened species or its critical habitat:*** In accordance with Section 7 of the Endangered Species Act of 1973, letters were sent to the U.S. Fish and Wildlife Service (USFWS) and the Maryland Department of Natural Resources Wildlife & Heritage Service (WHS) regarding potential occurrences of federal- and state-listed species within the project area.

The USFWS responded on May 20, 2010, stating that, with the exception for occasional transient individuals, there were no documented occurrences of any federally listed species within the project area. As a result, no adverse affects to any federally listed species will occur from the selected alternative. The USFWS stated that no additional coordination or Biological Assessment is required.

On December 16, 2009, the WHS replied that one documented occurrence of arbor-vitae (*Thuja occidentalis*), a state-listed Threatened tree species, was located on or within very close proximity to the project study area, with documented occurrences of twenty other state-listed species within 3.0 miles of the project study area. A follow-up letter was issued to the WHS on April 5, 2010 with further project area information. The WHS issued a second letter on June 29, 2012 that stated that there are no State or Federal records for rare, threatened, or endangered species within the project boundaries. The letter did identify that the limestone cliff area along the Potomac River near the project boundaries has six species of concern. Additionally, the maintenance of water quality is crucial to the continued existence of rare species of freshwater mussels in the Potomac River. The proposed action, by staying within the existing easement LOD, will not disturb intact limestone cliff habitat located outside the easement. The project will be conducted with appropriate erosion and sediment control measures to protect water quality. As such, there will be no adverse effect to State Rare, Threatened, and Endangered Species.

***Whether the action threatens a violation of federal, state, or local environmental protection law:*** The selected alternative violates no federal, state, or local environmental protection laws.

## **PUBLIC INVOLVEMENT**

Park personnel conducted internal scoping to define the purpose and need for the project, review the Environmental Screening Form (ESF), and to gather information on potential impacts and alternatives. The ESF was completed September 16, 2009. A project kick-off meeting, attended by NPS personnel and County representatives was held on September 23, 2009 to initiate the NEPA and concurrent Section 106 process and to review internal scoping results and preliminary designs. An on-site meeting was held as part of the project kick-off, at which preliminary impact topics were identified.

In February 2010, the NPS released a public notice informing all interested parties of the Park's intention to develop an EA to assess the potential impacts of the project. The public notice was posted on the NPS Planning, Environment and Public Comment (PEPC) website, and was also sent out to the Park's mailing list of pertinent stakeholders. A public scoping meeting was held by the NPS on February 25, 2010 to facilitate public involvement and obtain community feedback on the proposed action. This meeting was held at Park Headquarters at 1850 Dual Highway, Suite 100, in Hagerstown, Maryland, from 7-9 PM. Two people signed in at the meeting. No comments were received via e-mail or other types of correspondence during the public scoping period.

The EA was made available for public review and comment beginning on March 23, 2012 and ending on April 19, 2012. It was announced by email to the Park's standing mailing list of approximately 230

media and stakeholders. The NPS also mailed 12 printed copies the EA to federal, and state review agencies, organizations, and individuals. The EA was also placed on the NPS' PEPC website.


The comment period concluded on April 19, 2012. No public comments were received. Correspondence from the MHT was received regarding the Section 106 review.

## CONCLUSION

The NPS has selected Alternative C: Existing Easement, Construction Option 1, for implementation. In light of the impacts described in the EA for the project and with guidance from NPS *Management Policies 2006*, natural and cultural resources information, professional judgment, and considering agency and public comments, the impacts that will result from the selected alternative will not impair any park resources and values. The selected alternative does not constitute an action that normally requires preparation of an environmental impact statement (EIS). The selected alternative will not have a significant effect on the human environment. Negative environmental impacts that could occur are negligible to minor in intensity. There are no significant impacts on soils, wetlands, vegetation, wildlife, historic structures and districts, visitor use and experience, and public health and safety. No highly uncertain or controversial impacts, unique or unknown risks, significant cumulative effects, or elements of precedence were identified. Implementation of the selected alternative will not violate any federal, state, or local environmental protection law.

Based on the foregoing an EIS is not required for this action and thus will not be prepared. This is a finding of no significant impact.

Recommended:

  
\_\_\_\_\_  
Kevin Brandt  
Superintendent,  
Chesapeake and Ohio Canal National Historical Park

5/30/12  
Date

Approved:

  
\_\_\_\_\_  
Steve Whitesell  
Regional Director  
National Capital Region

6.25.12  
Date



## IMPAIRMENT OF PARK RESOURCES OR VALUES

In addition to reviewing the list of criteria for significant impacts, the NPS has determined that implementing the NPS selected alternative will not constitute an impairment of Park resources or values. This conclusion is based on a thorough analysis of the impacts described in the EA, agency and public comments received, and the professional judgment of the decision-makers in accordance with NPS *Management Policies 2006*. As described in the EA, implementation of the NPS selected alternative will not result in impairment of Chesapeake and Ohio Canal National Historical Park resources or values whose conservation is (1) necessary to fulfill specific purposes identified in the Park's establishing legislation, (2) key to the natural or cultural integrity of the Park or to opportunities for enjoyment of the Park, or (3) identified in the Park's management plan or other relevant NPS planning documents as being of significance.

While the selected alternative will result in negligible to minor, local, short-term to long-term adverse impacts on some of the Park's resources (soils, wetlands, vegetation, wildlife, and historic structures and districts), these impacts will not affect the Park's ability to fulfill specific purposes identified in the Park's establishing legislation, and either will not affect resources key to the natural or cultural integrity of the Park or to opportunities for enjoyment of the Park or will not impair any significant resources identified in the Park's management plan or relevant NPS planning documents.

Because open-cut trenching will be within the LOD from the existing water line construction in the 1960s, and because appropriate mitigation measures will be taken to lessen the adverse impacts, including erosion control and restoration of the trenched area, trenching will result in adverse, local, short-term, minor impacts, but will not result in significant adverse impacts to soils. Because installation of the temporary bypass water line will rest on the ground for most of its length and not result in any ground disturbance except across the towpath, and because appropriate mitigation measures will be taken for adverse impacts, including restoration of the towpath following removal of the temporary bypass water line, the temporary bypass water line will result in adverse, local, short-term, minor impacts, but will not result in significant adverse impacts to soils. Because the new elevated electrical platform will be installed within the existing easement in an area previously disturbed during 1960s construction, will be installed on pilings with minimal soil disturbance involving minor soil removal, and appropriate mitigation measures will be taken, installation of the new elevated electrical platform will result in adverse, local, long-term, minor impacts to soils, but will not result in significant adverse impacts to soils. Because the cross-over dike will permanently bury approximately 0.11 acres of soils but will eliminate construction vehicle and future maintenance and operations vehicle use from one mile of historic towpath, and because appropriate mitigation measures will be taken, construction of the permanent cross-over dike will result in adverse, local, long term, minor impacts to soils but will not result in significant adverse impacts to soils. Because no significant adverse impacts will occur to harm the overall integrity or value of Park soil resources or to opportunities for enjoyment of the Park, the selected alternative will not result in an impairment of soils.

Because the open-cut trenching within the easement will be within the LOD from the existing water line construction from the 1960s, because the trenching impacts will be temporary and limited to approximately 0.001 acre of intermittent stream and 0.006 acre of the canal prism which were also trenched in the 1960s, and because appropriate mitigation measures will be taken for adverse impacts, including erosion control and restoration of the disturbed area, trenching will result in adverse, local, short-term, minor impacts to wetlands, but will not result in significant adverse impacts to wetlands. Because the cross-over dike will permanently bury approximately 0.018 acre of the canal prism, but because appropriate mitigation measures will be taken including the installation of two 36-inch diameter culverts to allow for water flow within the canal prism, construction of the permanent cross-over dike will result in adverse, local, long-term, minor impacts to wetlands but will not result in significant adverse impacts to wetlands. Mitigation for these impacts will likely be required as part of the permit process and mitigation will be completed in a location, type, and quantity to be determined at that time. Because no significant adverse impacts will occur to harm the overall integrity or value of Park wetland resources or

to opportunities for enjoyment of the Park, the selected alternative will not result in an overall impairment of wetlands.

Because clearing of the easement areas will result in the removal of woody vegetation and future maintenance will prevent regrowth of woody vegetation (in order to avoid future tree root damage to the water lines), but because a continuous tree canopy will span the easement from adjacent trees and because appropriate mitigation measures will be taken including reseeded with a native grass mix and regular mowing will reduce the potential for introduction/spread of invasive species onto Park property, clearing the easement will result in adverse, local, long-term, minor impacts to vegetation, but will not result in significant adverse impacts to vegetation. Because no significant adverse impacts will occur to harm the overall integrity or value of Park vegetation resources or to opportunities for enjoyment of the Park, the selected alternative will not result in an impairment of vegetation.

Because construction activities will temporarily displace wildlife from the immediate project area during construction activities, but will not result in changes in overall population levels in the vicinity of the project area, construction activities will result in adverse, local, short-term, minor impacts to wildlife, but will not result in significant adverse impacts to wildlife. Because clearing of the easement areas will result in the removal of woody vegetation and future maintenance will prevent regrowth of woody vegetation, but because a continuous tree canopy will span the easement from adjacent trees and because appropriate mitigation measures will be taken including reseeded with a native grass mix will provide foraging opportunity for herbivorous wildlife, clearing will result in adverse, local, long-term, minor impacts to wildlife, but will not result in significant adverse impacts to wildlife. Because no significant adverse impacts will occur to harm the overall integrity or value of Park wildlife resources or to opportunities for enjoyment of the Park, the selected alternative will not result in an impairment of wildlife.

Because open-cut trenching will be within the LOD of the original 1960s waterline, and because appropriate mitigation measures will be taken for adverse impacts, including restoration of the towpath and canal prism disturbed by trenching, trenching will result in adverse, local, short-term, minor impacts, but will not result in significant adverse impacts to historic structures. Because installation of the temporary bypass water line will cross the towpath, but because appropriate mitigation measures will be taken for adverse impacts, including restoration of the towpath following removal of the temporary bypass water line, the temporary bypass water line will result in adverse, local, short-term, minor impacts, but will not result in significant adverse impacts to historic structures. Because the new elevated electrical platform will be installed within the existing easement in an area previously disturbed during construction in the 1960s, the existing structure will be removed, and appropriate mitigation measures will be taken, installation of the new elevated electrical platform will result in adverse, local, long-term, negligible impacts to the scenic condition from the towpath, but will not result in significant adverse impacts to historic structures and districts. Because clearing of the easement areas will result in the removal of woody vegetation and future maintenance will prevent regrowth of woody vegetation, but because a continuous tree canopy will span the easement from adjacent trees and because the area will be reseeded with a native grass mix removal of woody vegetation within the easement will result in adverse, local, long-term, minor impacts to the scenic condition from the towpath, but will not result in significant adverse impacts to historic structures and districts. Because the permanent cross-over dike will cross the canal prism, but will eliminate construction vehicle and future maintenance and operations vehicle use from one mile of towpath, and because appropriate wetlands mitigation measures will be taken including the installation of two 36-inch diameter culverts to allow for water flow within the canal prism and measures taken to blend the dike in with the surrounding environment, construction of the permanent cross-over dike will result in adverse, local, long-term, minor impacts but will not result in significant adverse impacts to historic structures and districts. Because no significant adverse impacts will occur to harm the overall integrity or value of Park historic structures or districts or to opportunities for enjoyment of the Park, the selected alternative will not result in an impairment of historic structures and districts.



IN REPLY REFER TO:

D2215 (CHOH)

March 15, 2012

Ms. Elizabeth Cole  
Administrator, Project Review and Compliance  
Office of Preservation Services  
Maryland Historical Trust  
100 Community Place  
Crownsville, MD 21032

Dear Ms. Cole:

In accordance with the Council of Environmental Quality, the National Environmental Policy Act, and the National Historic Preservation Act, Chesapeake & Ohio Canal National Historical Park is forwarding a copy of *Sharpsburg Water Intake Upgrade, Environmental Assessment/Assessment of Effect, March 2012* for your review. This document will be on a 30-day public and agency review beginning March 21, 2012 through April 19, 2012.

The document has also been posted electronically on the National Park Service's web-based program, "Planning, Environment, and Public Comment (PEPC)," <http://parkplanning.nps.gov/choh>.

If you have any questions, please contact Lynne Wigfield, Compliance Officer, at [lynne\\_wigfield@nps.gov](mailto:lynne_wigfield@nps.gov), (301) 745-5802 or the above address. Comments can be registered in PEPC or sent to Ms. Wigfield. Please forward any comments by April 19, 2012.

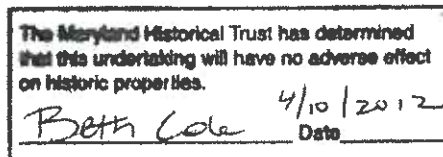
Thank you for the time to review this project.

Sincerely,

*Christopher J. Stubbs, Director*

Kevin D. Brandt  
Superintendent

Enclosure



4210 SC 4/10/12

WA-VI-048  
2nd  
JES  
4/9/12

## **ERRATA SHEET**

The design for the cross-over dike will be reviewed for precise dimensions, which will include a slightly lower center elevation. In the event of major flooding, the dike must not force water to top the historic towpath, but rather become the sacrificial feature to prevent flood damage to the historic features.

The adjacent private property is encumbered by a scenic easement with the National Park Service. All work within the scenic easement will abide by any/all restrictions as outlined within this document (see attached).





Lynne Wigfield/CHOH/NPS  
09/27/2010 11:28 AM

To "Scott Seibel" <sseibel@ESINC.CC>  
cc Daniel\_Copenhagen@nps.gov, "Fred Frederick"  
<Fred@fisa-md.com>, P\_Scott\_Bell@nps.gov, Sam  
Tamburro/CHOH/NPS, William Spinrad  
bcc  
Subject Re: Sharpsburg Waterline EA - Information Request

Scott,

One additional piece of information came to light this morning when identifying the tract # of the land through which the project is located. The Scott's have a scenic easement over their property that prohibits the cutting of trees larger than 6" dbh. So, the alignment using the existing ROW is the alternative that will not affect the scenic easement issue. I wonder if the Scotts mentioned the scenic easement to Washington County when they were negotiating for a new ROW alignment? Be that as it may, that adds another element to the discussion for impacts. You can contact Bill Spinrad, 301-714-2221 for more info.

Lynne

Lynne Wigfield  
Compliance Officer  
C&O Canal NHP  
1850 Dual Highway, Suite 100  
Hagerstown, MD 21740  
(301) 745-5802  
"Scott Seibel" <sseibel@ESINC.CC>



"Scott Seibel"  
<sseibel@ESINC.CC>  
09/27/2010 09:58 AM

To <Sam\_Tamburro@nps.gov>, <P\_Scott\_Bell@nps.gov>,  
<Daniel\_Copenhagen@nps.gov>  
cc "Fred Frederick" <Fred@fisa-md.com>,  
<Lynne\_Wigfield@nps.gov>  
Subject Sharpsburg Waterline EA - Information Request

Sam, Scott, and Dan,

I am working on revising the Sharpsburg Waterline EA to take into account the change in the preferred alternative and need to get some information from the NPS to assist in revising the existing conditions as well as actually determining potential effects of the different alternatives. Some of these questions were outlined in an email exchange between myself and Lynne in early September on which you were CC'ed. At the request of the County, we are trying to expedite the completion of the Draft Review EA within the next few weeks, and anything you could do to assist with that would be greatly appreciated.

I have outlined my questions, below, but if there is any additional information you think that I may need, please let me know.

Sam:

MAIL AUG 24 1976

CO. 558

SCENIC EASEMENT DEED

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NATIONAL PARK SERVICE

CHESAPEAKE AND OHIO CANAL  
NATIONAL HISTORICAL PARK

Received for record August 12, 1976  
at 1:08 o'clock P.M. Liber #620

Tract No. 31-107 & 31-110

MC 12-7682 17139 \*\*\*\*\*18.00

THIS DEED, made this 21st day of July, 1976, by and  
between James C. Scott and Shirla L. Scott, his wife

of  
Washington County, State of Maryland, Grantors, and the UNITED STATES  
OF AMERICA, Grantee.

WHEREAS the Act of January 8, 1971, Public Law 91-664 authorizes the Secretary of the Interior to acquire, within the boundaries of the Chesapeake and Ohio Canal National Historical Park, lands and interests therein to preserve and interpret the historic and scenic features thereof, and

WHEREAS, the Grantors are vested with a fee simple interest in certain real property hereinafter described, located within the boundaries of the Park, and over which the Secretary of the Interior has determined it to be necessary to acquire a scenic easement estate in order to fulfill the purposes of said Act,

NOW, THEREFORE WITNESSETH that, for and in consideration of the sum of Fourteen Thousand Six Hundred Dollars & No/100----- Dollars (\$14,600.00) the receipt of which is hereby acknowledged, the grantor(s) do hereby grant, bargain, sell, and convey unto the United States, a permanent and assignable perpetual estate, interest, and scenic easement, in, on, under and across the said real property of the grantor(s) as described in:

EXHIBIT A, attached hereto and made a part hereof,

Subject to the conditions hereinafter set forth in Exhibit B attached hereto and made a part hereof; of the nature and character and to the extent hereinafter expressed to be and to constitute a servitude upon the real property of grantor(s), and to that end and for the purpose of accomplishing the intent of the parties hereto, said grantor(s), for themselves, their heirs, executors, administrators, personal representatives, (successors, and assigns,) do covenant and agree with the grantee and its assigns, to do and to refrain from doing, severally and collectively, in, on, under and across the said lands of grantor(s), the various acts hereinafter enumerated and expressed; it being hereby agreed that the doing and the refraining from doing said acts, and each thereof, are and will be for the benefit of the United States of America, and for present and future generations, through the preservation of the historic and scenic values of lands comprising the Chesapeake and Ohio Canal National Historical Park,

Commonwealth Land Title Insurance Co. 1828 L. Street  
N.W. Wash D.C. 20036

WASHINGTON COUNTY CIRCUIT COURT (Land Records) [MSA CE 18-570] VJB 620, p. 0274 Printed 04/19/2012 Image available as of 09/27/2006

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The restrictions hereby imposed upon the use of said lands of the grantor(s) and the acts which said grantor(s) so covenant to do and to refrain from doing upon their said lands, in connection therewith, are and shall be as stated fully in:

EXHIBIT B, attached hereto and made a part hereof,

SUBJECT to the existing easements for public roads and highways, public utilities, railroads and pipelines, and to easements and rights of way granted to the Washington County Sanitary District by Instrument dated May 2, 1957 and recorded in Liber 455 at folio 121 of the Land Records of Washington County, Maryland.

TO HAVE AND TO HOLD the said scenic easement estate in and to the land described in Exhibit A attached, together with all and singular the rights, and privileges thereunto belonging unto the said Grantee and its assigns to the only proper use, benefit and behoof of the Grantee and its assigns forever,

AND the said Grantor(s) warrant that the land herein conveyed is owned by them in fee simple, and is free from any mortgage, lien, judgment, or any other encumbrance whatsoever, and hereby agree to warrant and forever defend, all and singular, the title to the land herein and hereby conveyed to the United States of America, and its assigns against the claims of any and all persons whomsoever and that said Grantor(s) will execute such other and further assurances thereof as may be requisite.

IN WITNESS WHEREOF, the grantor(s) do hereunto set their hand(s) and seal(s) on the day and year first above written.

WITNESSES

G. Y. Schaffer  
G. Y. Schaffer

James C. Scott (SEAL)  
Shirley L. Scott (SEAL)  
(SEAL)  
(SEAL)

STATE OF Maryland, COUNTY OF Allegany, to wit:

I HEREBY CERTIFY that on this 21st day of July, 1976, before me, the subscriber, a Notary Public of the State of Maryland in and for Allegany County, aforesaid, personally appeared James C. Scott and Shirley L. Scott, his wife and acknowledged the aforesaid deed to be their respective act and deed.



WITNESS my hand and Notarial Seal

James C. Scott  
Notary Public

## EXHIBIT "A"

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## TRACT NO. 31-107

All that certain tract or parcel of land lying and situate in the First Election District, County of Washington, Maryland, being more particularly described as follows:

Beginning at a corner common to the lands of the grantor and the lands now or formerly of Edgar and Clara P. Line and on the line of lands of the United States of America, said corner being South 58° 26' 06" East 815.99 feet, more or less, from USGS Survey Control Marker "ET 110 A2 1967", having Maryland State Grid Coordinates N 599,700.80 - E 577,844.60; thence, with the lands of said Line North 85° 38' 31" East 504.84 feet, more or less, to a point on the Chesapeake and Ohio Canal National Historical Park Boundary Line, the same being on the line of lands of said grantor and on the line of lands of said Line; thence, with said Park Boundary Line and through the lands of said grantor as follows:

South 01° 52' 40" East 1121.62 feet, more or less,  
South 09° 46' 35" West 174.79 feet, more or less,

to a point on said Park Boundary Line, the same being a corner common to the lands of said grantor and lands of the United States of America; thence, with the lands of the United States of America as follows:

South 82° 59' 47" West 194.77 feet, more or less,  
North 05° 08' 19" East 279.12 feet, more or less,  
North 06° 36' 37" West 538.58 feet, more or less,  
North 42° 12' 26" West 58.05 feet, more or less,  
North 21° 32' 28" West 245.12 feet, more or less,  
North 37° 49' 36" West 246.44 feet, more or less,

to the place of beginning, containing 7.96 acres of land, more or less.

The above described parcel, designated as Tract 31-107, Chesapeake and Ohio Canal National Historical Park, is part of the same land acquired by James C. Scott and Shirla Scott, his wife, from Keller R. Scott by deed dated June 13, 1955 and filed for record January 7, 1956 in Liber 305, page 596 in the records of Washington County, Maryland.

## TRACT NO. 31-110

All that certain tract or parcel of land lying and situate in the First Election District, County of Washington, Maryland, being more particularly described as follows:

Beginning at a corner common to the lands of the grantor and lands now or formerly of Angus W. and Florence R. MacDonald and the lands of the United States of America, said corner being South 22° 08' 10" West 311.56 feet, more or less, from USGS Survey Control Marker "ET 111 A3 1967", having Maryland State Grid Coordinates N 587,337.60 - E 578,439.40; thence, with the lands of the United States of America as follows:

North 34° 49' 46" East 836.93 feet, more or less,  
North 16° 10' 20" East 104.12 feet, more or less,  
South 79° 15' 31" East 190.90 feet, more or less,

to a point on the Chesapeake and Ohio Canal National Historical Park Boundary Line, the same being a corner common to the lands of said grantor and the lands of the United States of America; thence, with said Park Boundary Line and through the lands of said grantor as follows:



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South 06° 28' 39" West 855.89 feet, more or less,  
South 50° 14' 56" West 512.45 feet, more or less,

to a point on said Park Boundary Line, the same being on the line of lands of said grantor and on the line of lands of said MacDonald; thence, with the lands of said MacDonald North 25° 33' 14" West 472.95 feet, more or less, to the place of beginning, containing 10.23 acres of land, more or less.

The above described parcel, designated as Tract 31-110, Chesapeake and Ohio Canal National Historical Park, is part of the same land acquired by James C. Scott and Shirla Scott, his wife, from Keller R. Scott by deed dated June 13, 1955 and filed for record January 7, 1956 in Liber 305, page 596 in the records of Washington County, Maryland.

EXHIBIT BSCENIC EASEMENTTERMS AND CONDITIONS

1. Only permanent single family residences may be constructed and occupied. Mobile homes with the undercarriages removed, and permanently affixed to the ground, shall be considered to be permanent residences. Only such professional or commercial activities that can be conducted from an occupied residence without changing the residential character of the property may be permitted. Except, that the lands may be used for camping or recreational activities providing that such is done in compliance with the hereinafter stated restrictions and State and County health and zoning regulations as they apply to residences.
2. Tents, recreational vehicles, travel trailers, pick-up mounted or self-propelled camper-type vehicles may be placed on the lands during the temporary periods they are occupied, but in no case closer than 200 feet from the inland edge of the canal prism. When unoccupied, such camper facilities must be moved from within the easement area with the exception of picnic tables and sanitary facilities.
3. Lot size dimensions for each single family residence, as defined in Item 1 above, within said easement, shall not be less than 200 feet wide on the side nearest the canal. Each lot shall contain sufficient area within which all structures permanently affixed to the land will be located not less than 50 feet from all property lines. No structures either permanent or temporary in nature, shall be located less than 200 feet from the inland edge of the canal prism. Campsites or trailer campsites are to be singular in nature (single party or family).
4. No building or other structure shall be more than 40 feet in height, measured from the lowest point on the natural ground level from which it rises.
5. No change in the character of the topography or disturbance of natural physical features, except area needed for basement excavation and footings, septic facilities, wells, and required road construction, shall be permitted; also, no mining, quarrying, or other removal or depositing of earth substances or onsite drilling and removal of oil and/or gas deposits shall be conducted on the premises.
6. There shall be no accumulation of any trash or foreign material which is unsightly or offensive, and no dumping or disposal of waste water of any kind on the ground, unless in a septic or other sewage system constructed in accordance with State and County regulations. However, in eroding areas where surface water runoff is destroying the natural ground cover or endangering the surrounding area or general public, suitable heavy fill may be so placed so as to control and prevent further erosion, provided that such fill or erosion control devices are covered by arable soil or humus.
7. Except as provided in Item 5 above, there shall be no cutting, destruction, or removal of any timber larger than 6 inches d.b.h. (diameter-breast-high) except that diseased, dead, injured, or hazardous trees may be removed when necessary for reasons of safety. No living vegetation shall be used for fence posts. Cultivated crops, including orchard, fruit, and nut trees, may be pruned, harvested, and otherwise maintained in accordance with good farm practices; necessary pruning to avoid disturbance of service and utility lines will be permitted. Livestock must be properly confined to pasture areas at all times.
8. No sign, billboard, or advertisement shall be displayed or placed upon the land, except for signs not larger than 1 square foot indicating residence, or notice of privacy or restricted access, and for one sign not greater than 24 inches by 36 inches, in size, advertising the sale of products raised or manufactured thereon or sale or lease of the subject property. No signs shall be self-illuminated.

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9. Excepting and reserving to the grantors, their successors and assigns, the right to maintain all of the buildings now existing on the land. If all or any of such buildings are destroyed or damaged by fire, storm, casualty, or otherwise, they may be replaced, rebuilt, or substituted with others in substantially the same location after approval of plans thereof by the Secretary of the Interior or his designate. The Secretary of the Interior or his designate will take into account what is customary in the neighboring community in determining whether the buildings will be reasonably harmonious with the scenic and historic character of the scene intended to be preserved by this instrument.

10. Exceptions to these controls may only be authorized in writing by the Secretary of the Interior or his designate. Approval of any action by the Secretary of the Interior or his designate shall be deemed to have been granted if the Secretary or his designate has not responded to a written request within 30 days.



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RECEIVED FOR RECORD May 23, 1967 2:06 P. M.  
RECEIPT NO. 44829 LIBER 455

THIS DEED AND EASEMENT AGREEMENT, made this 2nd day of May, 1967, by and between James C. Scott and Shiria Scott, his wife, of Washington County, Maryland, and the Washington County Sanitary District, a public corporation of the State of Maryland.

WITNESSETH: That in consideration of the sum of Ten (\$10.00) Dollars, and other valuable considerations, we, the said James C. Scott and Shiria Scott, his wife, do hereby grant and convey unto the said Washington County Sanitary District all that parcel of ground, together with any improvements thereon, and all the rights, ways, waters, privileges and appurtenances thereunto belonging, situate in Washington County, Maryland, on the West side of Maryland Route 34 leading from Sharpsburg to Shepherdstown, and more particularly described as follows: All that 3.42 acres, more or less, as described on the attached plat entitled "Water Treatment Plant Tract" (Drawing No. SD4-E3 by Baker-Wibberley & Associates, dated October 6, 1966), in fee simple absolute; being part of the property conveyed to the Grantors herein by Keller R. Scott, widower, by deed dated June 13, 1955, and recorded in Liber 305, folio 596 among the Land Records of Washington County, Maryland.

The parcel hereby conveyed in fee simple may be used by the Grantee, its successors and assigns, only for the purpose of constructing and operating thereon a water treatment plant and the appurtenances thereto.

The Grantors also grant to the Washington County Sanitary District, its successors and assigns, a perpetual right of way and easement for purpose of vehicular and pedestrian access from the said plant tract eastward and northward to Maryland Route 34 over the course delineated by hatch marks on said plat. This access road, as between the Grantor and the Grantee, shall be maintained by the latter party, which shall have the right to pave same if it desires. The Grantee shall also have the right to install a power line along and over this easement area to bring electric power to the treatment plant site.

The Grantors also grant to the Washington County Sanitary District, its successors and assigns, a perpetual easement leading westward from the northernmost corner of the treatment plant site to the C. & O. Canal, as indicated on said attachment by hatch marks. In this easement area the District may install, operate, maintain, repair and replace pipelines and appurtenant facilities and also a power line; the District may also maintain thereon such slopes and drainage facilities as may be reasonably necessary for such utilization of this easement area. The easement area may be utilized by the Grantors after construction for agricultural purposes, but not for crops except pasture. Following construction any excavation shall be backfilled and the ground restored to its former condition.

During construction of the treatment plant and the pipelines the District shall erect fencing around same to keep out any cattle on the Grantors' property. After the treatment plant is constructed it shall be fenced in; and the Grantors may farm any portion of that tract not being used at the time by the District, which may be terminated, however, by the District giving notice thereof. The District shall reimburse the Grantors for any damage caused their crops lying outside the plant tract, during construction of the water lines and the treatment plant.

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The District shall hold the Grantors harmless against all claims by third parties for bodily injury or property damage caused by the construction or operation of said water plant and pipelines.

The District shall install a fire hydrant along the water main near the plant site, which may be used by Grantors in case of fire. The District shall also install a one inch service line to the Grantors' present home, but it may not be connected in any manner with any other private water supply of Grantors. So long as Grantors or Roy Allen Scott, their son, reside in this house, none of them shall be charged for water supplied from this service line to this house and their adjacent present barn, but only to the extent of normal domestic requirements of their home and for watering their livestock. If their house or barn is destroyed or torn down and rebuilt, this free water right shall apply to the replacement building. If the Grantors or their son move to another house on this property, they may connect the new house at their expense to this water line and the free water right shall apply to it but no longer to their house now occupied by them.

And we, the said James C. Scott and Shirila Scott, his wife, do hereby covenant that we will warrant generally the property and easements hereby conveyed and that we will execute such other and further assurances as may be requisite.

WITNESS our hands and seals.

WITNESS:

James C. Scott (SEAL)  
James C. Scott

Shirila L. Scott (SEAL)  
Shirila Scott

WASHINGTON COUNTY SANITARY DISTRICT

By: Carl M. Mann  
Carl M. Mann, Chairman  
Washington County Sanitary Commission

(DISTRICT'S SEAL)

ATTEST:  
Clement J. Ferling  
Clement J. Ferling  
Secretary-Treasurer

STATE OF MARYLAND, WASHINGTON COUNTY, to-wit:

I HEREBY CERTIFY that on this 2nd day of May, 1967, before me, a Notary Public in and for the State and County, aforesaid, personally appeared James C. Scott and Shirila Scott, his wife, and acknowledged the foregoing Deed and Easement Agreement to be their act.

WITNESS my hand and Notarial Seal.

My Commission Expires:  
July 1, 1967

Notary Public

STATE OF MARYLAND, WASHINGTON COUNTY, to-wit:

I HEREBY CERTIFY that on this 15th day of May, 1967, before me, a Notary Public in and for the State and County aforesaid, personally appeared Carl M. Mann, who did acknowledge that he, being thereunto duly authorized, did execute the foregoing Agreement as

as the voluntary act of the Washington County Sanitary District, as its voluntary act; and also appeared Clement J. Ferling, who did acknowledge that he did attest the execution of said Agreement by said Carl M. Mann and did affix thereto the seal of the District.

WITNESS my hand and Notarial Seal.

My Commission Expires:  
July 1, 1967

Notary Public