

**Section 106 Compliance Plan**  
**Susquehanna - Roseland 500kV Transmission Line**

**Crossing the**  
**Appalachian National Scenic Trail**  
**Delaware Water Gap National Recreation Area**  
**Middle Delaware National Scenic and Recreational River**

October 1, 2012

## **Section 106 of the National Historic Preservation Act**

Consistent with guidance in National Park Service Management Policies and Directors Orders, NPS managers elected to comply with Section 106 of the National Historic Preservation Act for the issuance of the construction and ROW permit through the use of 36 CFR 800.8(c), which allows federal agencies to use the NEPA process to meet Section 106 compliance responsibilities, according to standards in that subpart of the regulations. Integration of the requirements of Section 106 of the NHPA into the NEPA process and documentation are accomplished by meeting the criteria set forth in 36 CFR 800.8(c)(1)-(4).

Early in the scoping process for the EIS, NPS staff began consulting with the Pennsylvania and New Jersey Historic Preservation Offices and numerous federally-recognized Tribes. Additionally, the scoping process included sets of news releases, public scoping meetings that included newsletters and information on historic resources, and general public notification of the decision-making process and alternatives being considered. NPS staff members shared extensive research, hosted consultation calls, and conducted on-site consultation meetings, finalizing the list of Section 106 consulting parties in spring 2012, when the NPS identified a preferred alternative.

The list of Section 106 consulting parties includes the Absentee Shawnee Tribe of Indians of Oklahoma; Advisory Council on Historic Preservation; Appalachian Trail Conservancy; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; New Jersey Historic Preservation Office; New York-New Jersey Trail Conference; Oneida Nation of New York; Onondaga Nation of New York; Pennsylvania State Historic Preservation Office; Preservation New Jersey; Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians Of New York); Seneca-Cayuga Tribe of Oklahoma; Seneca Nation of New York; Shawnee Tribe, Oklahoma; Stockbridge-Munsee Community, Wisconsin; and Tonawanda Band of Seneca Indians of New York.

Other local organizations and municipalities have participated in discussions about this project.

In addition to information that was made available to the public in the draft EIS on the undertaking and its effects on historic properties, the NPS and the applicant have completed numerous cultural resource studies and investigations. The results of these efforts were shared with the Section 106 consulting parties. National Park Service cultural resource studies and findings supported the development of the draft EIS. The applicants' final reports, completed in spring 2012, contributed to development of the final EIS. Details on the consultation process can be found in Appendix M of the final EIS, and the PEPC site for the Susquehanna-Roseland Transmission Line,

<http://parkplanning.nps.gov/document.cfm?parkID=220&projectID=25147&documentID=49560>).

The EIS and associated consultation determined the Area of Potential Effect (APE) (as described in the draft EIS and final EIS) and identified historic properties contained within it. The NPS worked with the consulting parties and the applicant to avoid and minimize effects to historic properties where possible and mitigate adverse effects where necessary. It was determined that there would be adverse effects to at least one archeological site, seventeen historic structures, and fourteen cultural landscapes (as specified in the final EIS). Through this ROD, the NPS commits to the following measures and processes to further avoid or minimize effects, and to mitigate adverse effects to historic properties from the issuance of the ROW and construction permit to the applicant. As discussion between the NPS, consulting parties and the applicant continue, and the applicant finalizes the design of the transmission line, the NPS will refine the minimization and mitigation measures and formalize the commitments itemized below as conditions of permit granted to the applicant.

## **Mitigation Measures**

While there are some physical effects, adverse effects from the issuance of this permit are primarily visual; due to the scale of the proposed towers, minimization efforts through vegetative screening are unlikely to be successful. Accordingly, through consultation with the Section 106 consulting parties, the NPS has developed mitigation measures that address the overall adverse effect to the parks from issuing the permit rather than focusing on effects to individual properties. The mitigation measures for specific properties and broad-based management plans and interpretive materials will be stipulated in the applicant's permit. The applicant will fund the identified mitigation measures, as well as any future avoidance, minimization, or mitigation measures resulting from the issuance of NPS permit, with oversight by the NPS. All of the activities below will be completed according to the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR 68), and by, or under the supervision of, personnel who meet the Secretary of the Interior's professional qualification standards (48 FR 44716, 1983), as appropriate.

### ***Appalachian National Scenic Trail***

- The applicant will allocate \$500,000 from the Middle Delaware Compensation Fund to rehabilitate, improve, and protect elements and features of the Appalachian Trail that contribute to its National Register eligibility. The two specific activities below (viewshed analysis and National Register nominations) will be paid for from this allocation. These efforts may be associated with points along the Trail that are directly affected by the Susquehanna-Roseland Line or may be associated with mitigating existing adverse effects at other points along the Trail within the established Area of Potential Effect. Projects will be completed by the National Park Service, the Appalachian Trail Conservancy, or other not-for-profit organizations associated with the Appalachian Trail (e.g. New York-New Jersey Trail Conference, the Appalachian Mountain Club). Rehabilitation, screening, or clearing will be decided upon and conducted at the direction of the National Park Service after discussion with the appropriate Section 106 consulting parties after construction.
- The NPS will oversee the preparation of a viewshed analysis for the portion of the Appalachian Trail within the APE that will identify critical, character-defining views to inform the development of the National Register nominations discussed below.
- The NPS will oversee the preparation of National Register nominations for the entire portion of the Appalachian Trail within the State of New Jersey and a reasonable segment of the Trail in Pennsylvania, as determined in discussion with the Pennsylvania State Historic Preservation Office. These nominations will follow the standards of the multiple property documentation form the NPS is currently developing for the full length of the Appalachian Trail. The nominations must meet the standards of the New Jersey State Historic Preservation Officer, Pennsylvania State Historic Preservation Officer, and National Register of Historic Places, and will be considered complete when accepted and approved by the Keeper of the National Register.
- In addition to these measures, there are efforts related to this decision underway outside of the Section 106 process, such as land protection measures (including land acquisition), that will augment the current Section 106 mitigation plan.

Within the Appalachian Trail, activities will occur within the existing ROW, which will not be widened. The above mitigation measures satisfy the requirements under Section 106 of the NHPA for effects to the Appalachian Trail.

The NPS received two letters from non-profit organizations seeking to comment about or object to the NPS's compliance with Section 106 of the National Historic Preservation Act (E-mail to NPS from Preservation New Jersey dated Sept. 28, 2012; and Letter from the New York-New Jersey Trail Conference dated Sept. 25, 2012). The comments in the letters were previously raised by these organizations or other organizations or individuals, and the NPS already addressed these comments through Section 106 meetings and added analyses in the FEIS. Moreover, the NPS, in consultation with the consulting parties, developed binding measures that seek to avoid, minimize, or mitigate potential adverse effects associated with the proposal to address the comments raised by the letters. These measures were discussed in the FEIS, which cross-referenced the draft mitigation plan that was made publicly available on the NPS's website prior to publication of the FEIS, and are contained in the ROD. Additionally, the NPS did not provide for a public comment period for the FEIS. See 40 C.F.R. § 1503.1(b). Nevertheless, we note that the dispute resolution provisions contained in this ROD and the Section 106 Mitigation Plan will apply to the future actions covered by or implemented in accordance with this plan.

#### ***Delaware Water Gap National Recreation Area***

NPS tasks identified under this heading will be completed using an allocation from the Middle Delaware Compensation Fund, as detailed below. The applicant will pay for all other tasks.

- The NPS will require the applicant to make all efforts to avoid any ground disturbing activity that will impact archeological resources. The NPS will also require the applicant to fully excavate affected portions of any archeological site that will be impacted by unavoidable ground disturbance. Any excavation must be done under an Archeological Resources Protection Act (ARPA) permit.
- With the input of Tribes and State Historic Preservation Officers, the NPS will develop an archeological monitoring plan that will identify appropriate locations for archeological and/or tribal monitoring during construction-related ground-disturbing activities. The plan will meet or exceed New Jersey, Pennsylvania, and NPS standards. The NPS will complete the plan prior to the initiation of construction. The applicant will pay for monitoring costs not to exceed \$170,000.
- The NPS will prepare a historic properties management plan for DEWA. This plan will identify and analyze historic structures and districts within the park, including historic significance, interpretation value, and potential for future reuse. The NPS will develop this plan in consultation with the interested Section 106 consulting parties, with substantial input from the surrounding communities and the public. The NPS will encourage additional agencies and other organizations who were not consulting parties during the development of the EIS to participate in the development of the historic properties management plan. The park will specifically encourage the involvement of their partner organizations in measures that affect the properties of interest to them.
- The applicant will allocate \$12,500,000 from the Middle Delaware Compensation Fund for physical preservation, rehabilitation, and/or restoration of historic structures and landscapes at DEWA. The expenditure of funds will be guided by the results of the historic properties management plan and input from the Section 106 consulting parties. Funds will be focused on

the Old Mine Road Historic District and other appropriate locations within the park in Pennsylvania and New Jersey.

- The NPS will consult with the federally-recognized Tribes affiliated with the park to develop a tribal cultural program. This program may include a tribal cultural center in the park, to be established at the Westbrook-Bell House or other appropriate facility identified in the historic properties management plan.
- The applicant will complete vegetative screening or other treatments of cultural landscapes. Specific locations of screening, clearing, or other landscape treatments will be selected by the NPS, in cooperation with the Section 106 consulting parties after the transmission line has been built, when visual effects to historic landscapes are more fully defined. This effort will not exceed a cost of \$500,000.
- The NPS will oversee the completion of three National Register nominations or updates to existing nominations, such as updates to the Old Mine Road Historic District and Millbrook Village nominations and/or the completion of a River Road (PA) nomination. The nominations must meet the Pennsylvania or New Jersey Historic Preservation Office, and National Register of Historic Places standards, and will be considered complete once accepted and approved by the Keeper of the National Register of Historic Places.
- The NPS will oversee the completion of five research studies, such as Historic Structure Reports, Cultural Landscape Reports, historic contexts, or research syntheses. The NPS will solicit input from the Section 106 consulting parties for this project to determine the subjects of the studies.
- The NPS will oversee the completion of four interpretive products, such as tour podcasts, site-specific interpretive signs, scenic byway signs, or popular publications. The NPS will solicit input from the Section 106 consulting parties for this project to determine appropriate products under this stipulation.
- The applicant will provide Delaware Water Gap National Recreation Area \$350 per box of artifacts and \$500 per linear foot of archeological records created by the surveys, evaluations, and any possible excavations resulting from design and construction under this permit to cover the costs of curation of those artifacts/records. The artifacts and records will be prepared and stored according to the standards in 36 CFR 79. Any human remains or objects subject to the Native American Graves Protection and Repatriation Act (NAGPRA) discovered as a result of this construction permit will be handled according to the regulations at 43 CFR 10.
- The above mitigation measures satisfy the requirements under Section 106 of the NHPA for effects to the Delaware Water Gap National Recreation Area. However, this plan recognizes that there are additional efforts related to this permit underway outside of the Section 106 process, such as land protection measures (including land acquisition), that may also be put in place and will augment the current Section 106 mitigation plan.

### **Schedule for Completion of Mitigation Measures**

*Within three years of issuance of the permit, these measures will be complete:*

- Historic Properties Management Plan
- National Register nominations for the Appalachian National Scenic Trail

- Identification of locations for vegetative screening/cultural landscape treatments

*Within five years of issuance of the permit, these measures will be complete:*

- National Register nominations for Delaware Water Gap National Recreation Area
- Interpretive products

*Within ten years of issuance of the permit, these measures will be complete:*

- Research studies
- Vegetative screening/cultural landscape treatments
- Preservation, rehabilitation, and/or restoration projects of historic structures and cultural landscapes for which funding is provided under this plan.

### **Project-Wide Stipulations Applicable to Both Parks:**

#### **Consulting Party Involvement**

- Unless otherwise specified, the NPS will provide the Section 106 consulting parties with 30 days to review and provide comments or input on the implementation of measures identified in this plan. Consulting parties will have the opportunity to review and comment on interim and final drafts, as appropriate, and the identification of properties proposed for rehabilitation.

If the NPS is unable to fulfill the commitments outlined in this mitigation plan, it will notify all consulting parties that it will follow the procedures in 36 CFR 800.3 through 800.6 as necessary to address any changes in the mitigation plan.

The following conditions will be included as stipulations in the permit, and will apply to all activities covered by the permit. Any activities that occur outside of the actions allowed under the permit will undergo separate Section 106 compliance.

#### **Unanticipated Effects**

The permit will include the following stipulations to apply if any new adverse effects are identified as a result of changes in design or from unanticipated archeological discoveries during construction:

1. The NPS and Applicant will determine if avoidance/minimization measures are possible. These include but are not limited to:
  - Visual effects from towers/widened ROW
  - Physical effects from construction
2. Applicant will present feasibility/infeasibility of avoidance/minimization to NPS; NPS will submit to Section 106 consulting parties for review and comment.
3. If the NPS and applicant determine that avoidance is not technically or environmentally feasible, the applicant will propose minimization efforts for NPS approval. This may include but is not limited to planting vegetative screening at sites identified for which it would be appropriate, or restricting damage to minimal area and/or less significant resources. Data recovery would still be required for any affected portion of archeological sites. The NPS and Section 106 consulting parties will review and discuss any proposed minimization efforts before NPS approval.

4. If the NPS determines minimization efforts are not adequate, the applicant will be responsible for additional mitigation and/or compensation. The NPS will consult with the Section 106 consulting parties to identify appropriate mitigation. Mitigation measures for archeological sites may include, but are not limited to, data recovery, curation costs, and/or production of interpretive materials. Mitigation measures for historic structures and cultural landscapes may include, but are not limited to, physical rehabilitation, development of interpretive materials, planning documents, HABS/HAER/HALS documentation, and National Register nominations. This stipulation only applies if new adverse effects are identified based on unanticipated discoveries during construction, or significant changes in design proposed by the applicant. If the new adverse effects are due to unanticipated ground-disturbing activities, no ground disturbance can occur until the appropriate avoidance or mitigation efforts are determined. The NPS will determine the appropriate mitigation measures, in consultation with the appropriate Section 106 consulting parties, within 5 business days of determining the adverse effect is unavoidable.

### **Design and Pre-Construction Activities**

As the applicant finalizes the placement of transmission towers, crane pads, pull sites, access roads, and other associated features and activities, the applicant will submit the designs and locations to the NPS. Reviews will be limited to the precise, final location of towers, crane pads, and access roads established through discussions with the NPS. Adjustments from existing plans will be made, where possible given engineering and operational constraints, to avoid and minimize potential adverse impacts.

### **Archeology**

- All archeological activities necessary for planning and/or construction will be controlled by a valid Archeological Resources Protection Act (ARPA) permit.
- All areas of possible ground disturbance determined sensitive for archeological resources must have undergone archeological survey (Phase I) and evaluation of identified archeological sites (Phase II) where deemed necessary through review and consultation prior to ground-disturbing activities in that particular location. Survey and evaluation results must have been reviewed by the appropriate Section 106 consulting parties and comments considered by the NPS prior to proceeding.
- The applicant shall protect sites through fencing, matting, or other NPS-approved methods, where appropriate. If archeological sites cannot be protected and will be damaged by ground disturbance, the NPS will oversee their excavation according to a data recovery plan that meets NPS, state, and park-specific standards and is concurred upon by the NPS and the appropriate SHPO and Tribes prior to ground-disturbing activities. DEWA has a standard of archeologically excavating 100% of the affected portion of any archeological site impacted by development within the park.
- An archeological and/or tribal monitor must be present for ground-disturbing activities identified according to the archeological monitoring plan (as identified above) within the boundaries of the park to ensure no previously undiscovered sites are affected; the monitors may decide their presence is not required for individual actions. Applicant must coordinate the schedule of all ground disturbance with the monitors to ensure coverage, where appropriate. The cost for monitoring is included in the NTE estimate identified in the park-specific measures listed above.
- If construction crews make unanticipated discoveries of archeological materials, work will immediately stop in the discovery location. Monitors will make an on-site determination of the

likelihood of human remains; if none is expected, monitors will notify the respective park superintendent and cultural resource manager, who will coordinate with the respective SHPO and Tribes for an eligibility determination and treatment method, as needed, within 15 days.

- If construction-related activities uncover human remains, the applicant or its contractors will stop work at the location immediately, and notify park law enforcement, monitors, and the park cultural resources manager. Park law enforcement will determine if the remains are the result of a crime, and, if so, will contact the local coroner to determine whether the remains are of American Indian origin. If the coroner determines that the remains are American Indian, NPS managers will comply with NAGPRA requirements as described in 43 CFR 10 or a park-specific NAGPRA Plan of Action. If the coroner determines that the remains are not American Indian and not the result of a crime, the park superintendent and cultural resource manager will coordinate with the appropriate SHPO to determine disposition of the remains.
- The NPS will require the relocation of ground disturbing activities to avoid human remains, unless technically infeasible. If not technically feasible, the applicant will consult with park and Tribes on the reasons, and discuss alternate strategies, such as re-interment. Applicant is responsible for all costs associated with the delineation of the boundaries of the burial site, if required; relocation of ground disturbance; and costs of re-interment or alternate treatment methods.
- Applicant is responsible for all costs associated with survey/evaluation/mitigation of effects to archeological sites, as well as any costs for construction delays associated with such activities.
- The applicant must prepare an archeological survey plan for review and approval by the DEWA and APPA cultural resources manager for any post-construction ground-disturbing activities related to maintenance and/or improvement of the line within the boundaries of DEWA, APPA, or MDSR for which the NPS will issue permit(s).

### **Historic Structures/Cultural Landscapes**

Physical rehabilitation or restoration efforts on historic structures and cultural landscapes resulting from this project, and conducted by entities other than the National Park Service, will be supervised and inspected by the NPS to ensure they meet the Secretary of the Interior's Standards for the Treatment of Historic Properties. If the efforts do not meet the Standards, the performing entity will make all necessary adjustments, at its own expense, until rehabilitation or restoration meet the Standards.

### **Dispute Resolution**

1. Should any consulting party object in writing to the NPS regarding any action carried out or proposed with respect to any undertakings covered by this plan or to implementation of this plan, the NPS will notify all consulting parties and consult with the objecting party to resolve the objection.
2. Within thirty (30) days after initiating such consultation, if the NPS determines that the objection cannot be resolved through consultation, the NPS will forward all documentation relevant to the objection to the ACHP, including the proposed response to the objection.
3. Within thirty (30) days after receipt of all pertinent documentation, the ACHP will exercise one of the following options:
  - a. Advise the NPS that the ACHP concurs with the NPS proposed response to the objection, whereupon the NPS will respond to the objection accordingly; or

b. Provide the NPS with recommendations, which the NPS will take into account in reaching a final decision regarding its response to the objection.

4. Should the ACHP not exercise one of the above options within thirty (30) days after receipt of all pertinent documentation, the NPS may assume the AHCP's concurrence in its proposed response to the objection.

5. The NPS will take into account any ACHP recommendation or comment provided in accordance with this stipulation with reference only to the subject of the objection; the NPS's responsibility to carry out all the actions under this plan that are not the subjects of the objection will remain unchanged.