

U.S. Department of the Interior
Office of Surface Mining Reclamation and Enforcement
Finding of No Significant Impacts
for
Mountain State Broadband Expressway
Programmatic Environmental Assessment
Abandoned Mine Land Reclamation FY 2016 and FY 2017 Economic
Development Pilot Program Project (PILOT)
West Virginia
July 2020

FINDING OF NO SIGNIFICANT IMPACT

Programmatic Environmental Assessment

Mountain State Broadband Expressway for Abandoned Mine Land Reclamation FY 2016 and FY 2017 Economic Development Pilot Program Project (PILOT)

The Office of Surface Mining Reclamation and Enforcement (OSMRE) completed a Programmatic Environmental Assessment (PEA) for the Mountain State Broadband Expressway (MSBE) Project in accordance with the National Environmental Policy Act (NEPA), the Council of Environmental Quality (CEQ) regulations for implementing NEPA (40 CFR Parts 1500-1508), the Secretarial Order 3355, the DOI's regulations for implementation of NEPA (43 CFR Part 46), the DOI's Departmental Manual Part 516, and OSMRE's directive REG-1, Handbook on Procedures for Implementing the NEPA of 1969 (OSMRE 2019). The PEA, published June 3, 2020, solicited public comments. Based on a National Park Service inquiry, the June 3, 2020 PEA was revised, finalized and is incorporated by reference.

A. BACKGROUND

Funding for the MSBE Project is provided via a grant through the United States Department of the Interior (DOI) Office of Surface Mining, Reclamation and Enforcement (OSMRE). As the grant recipient, the West Virginia Department of Environmental Protection (WVDEP) Office of Abandoned Mine Lands (OAMLRL) is administering the grant. The Upshur County Development Authority (UCDA), as a sub-recipient of the grant, is responsible for coordinating the implementation of the MSBE Project.

OSMRE evaluated the impacts and documented the analyses in the PEA for funding the MSBE Project within West Virginia. West Virginia ranks 47th in the nation in terms of broadband connectivity, a ranking which prevents many businesses from locating or expanding in the state. The MSBE Project will provide the needed connectivity by constructing a network of broadband towers on Abandoned Mine Lands (AML) within approximately 20 West Virginia counties.

The PEA evaluated two alternatives: (1) No Action Alternative and (2) Proposed Action. Two additional alternatives were considered and eliminated from evaluation and are described in the PEA with the reasons for elimination. The Proposed Action includes the construction and installation of a network of broadband towers with the following kinds of broadband infrastructure:

- Backbone Broadband and Cell Towers and Support Towers - Construction of new backbone towers and support towers with antennas installed on these new towers or collocated on existing leased towers,
- Wireless Connectivity – Future applications for Federal Communications Commission (FCC) licensing by others and managed by UCDA.
- Fiber Cables – buried underground in ductwork, conduit or directly in a protective bed, and

- Ancillary Equipment and Support Buildings - Equipment necessary for supporting the use of fiber optic cable for broadband operation, such as electrical cabinets and buildings.

The Proposed Action will construct a series of connected towers on or adjacent to AML sites and will be implemented in phases as individual tower sites for construction are identified. Sites will be identified and selected to minimize and avoid impacts as feasible.

B. Summary of Environmental Effects

Potential impacts to the environment resulting from the Proposed Action were evaluated in the PEA and found to have minimal negative effects to the environment and a substantial amount of positive impacts to West Virginia communities. If the sites identified for the Proposed Action do not exceed the thresholds identified in the PEA, no further environmental analysis is needed for the following environmental resources: topography, navigable waters, groundwater, surface water, wild and scenic rivers, air quality, vegetation, land use, socioeconomics, Environmental Justice, transportation, recreation, noise, human health and safety, hazardous waste, and solid waste.

Resources Requiring Further Site-Specific Environmental Reviews

Further environmental review and agency coordination for the resources listed below will be needed based on the presence of these resources on or in the vicinity of the sites selected for tower construction. The environmental review will be conducted for the preferred site location to identify resources, incorporate agency and public input, and evaluate potential impacts. The evaluation process for the site selection, input from the agencies and public, impacts, and mitigation (if applicable) will be documented in a supplemental EA tiered¹ to the PEA for OSMRE's review prior to construction.

1. Geology,
2. Water Resources,
3. Floodplains,
4. Soils,
5. Threatened and Endangered Species,
6. Migratory Birds,
7. Wildlife,
8. Visual,
9. Historical and Cultural Resources,
10. Tribal Lands and Cultural Resources, and
11. Specially Designated Lands.

The tiering table, Attachment 1 of this Finding of No Significant Impact (FONSI), identifies the agencies with which to coordinate for the site-specific environmental reviews for the above resources.

¹ Using tiered documents (43 CFR § 46.140) and Final Guidance on Effective Use of Programmatic NEPA Reviews (CEQ, 2014)

C. Public and Agency Involvement

OSMRE initiated scoping and coordinated the MSBE Project with assistance from WVDEP, and UCDA with the Economic Development Authority of various counties and notified the United States Fish and Wildlife Service (USFWS), Federal Communication Commission (FCC), West Virginia Division of Natural Resources (WVDNR), the Advisory Council on Historic Preservation (ACHP), the West Virginia State Historic Preservation Office (SHPO) and federally recognized tribal governments. Correspondence with these agencies or governments are provided in Appendix B of the PEA.

OSMRE advertised the availability of the PEA on the OSMRE Appalachian Region website and solicited public comments for 15 days. During this comment period, a copy of the draft PEA was available for download through the OSMRE Appalachian Region website. Additionally, OSMRE sent a letter to federal, state, local, and tribal stakeholders soliciting comments. OSMRE received no written public comments, but did receive an inquiry from the National Park Service regarding the towers and the viewshed of the New River Gorge National River and the Gauley River National Recreation Area. Based on this inquiry, the PEA is revised at Sections 3.14, 3.20, 3.21 and Table 4 of Section 3.22 to include coordination with the National Park Service and the National Forest Service to obtain input in the evaluation of the site locations and design to avoid and minimize impacts as feasible.

D. Mitigation and Stipulations

Each site will be evaluated to ensure the construction will encompass the range of activities and potential impacts described in the PEA. Factors including critical need, land use, engineering, economic, environmental, visual, wind loading, and historic preservation considerations will be evaluated during the siting process, and if feasible, alternative site locations will be selected to avoid and minimize potential impacts to these resources.

Sites selected where construction will not meet the thresholds described in the PEA, where the resources identified in Section B of this FONSI are present and have the potential for adverse impacts, and/or require mitigation measures to keep impacts below significant levels identified in the PEA, will require the preparation of a supplemental EA tiered to the PEA to evaluate impacts of the specific site location. Project impacts that produce significant impacts can generally be reduced below the level of significance, as appropriate, by implementing avoidance measures or by mitigating individual impacts using mitigation measures. OSMRE will review the supplemental EA(s) and make a finding determination of the potential significance of impacts prior to authorization of funds or construction.

WVDEP and UCDA, as the grant recipient and sub-recipient, will be responsible for compliance with all federal, state, and local laws and regulations, including obtaining any necessary permits and adhering to any conditions laid out in those permits. Any substantive changes, additions, and/or supplements to the approved scope of work that alter the scope of work, including additional work not funded by OSMRE but performed substantially at the same time, will require coordination with OSMRE prior to construction for re-evaluation under NEPA.

WVDEP and UCDA will adhere to following conditions in the implementation of the Proposed Action:

1. Geology

The geology will be assessed on a site by site basis with respect to the risk of subsidence and damage to MSBE infrastructure. Due to the potential instability of AML sites as a result of past coal mining activities, a desktop mapping study of each proposed tower location and the immediate surrounding area will be completed to determine the potential presence of historic underground mining. Historic mine mapping will be obtained from the West Virginia Geologic and Economic Survey and the WVDEP for each site-specific location to determine if the presence of an abandoned deep mine could impact a tower site. Qualified geotechnical professionals will be utilized to determine the concerns of tower erection and, the MSBE Project will rely on them to perform the necessary studies and make proper recommendations.

2. Water Resources

For each site, UCDA will determine whether construction activities may be located within potential jurisdictional “Waters of the United States” (WOTUS). The MSBE Project will avoid construction in wetlands as defined by the EO 11988. If WOTUS cannot be avoided and a stream or wetland could be adversely impacted or a Section 404 permit is required, UCDA will conduct additional consultation with the USACE, including stream and wetland delineations as needed.

The WVDEP – Division of Water and Waste Management regulates water quality impacts under Section 401 of the Clean Water Act (CWA). As a result of the Proposed Action, if impacts to WOTUS are anticipated for any MSBE action, CWA permitting must be addressed. In addition, 401 State Water Quality should be completed along with the NPDES permit for construction stormwater.

3. Floodplains

UCDA will review the sites for the presence of floodplains and assess impacts consistent with the Executive Order “Floodplain Management,” (EO 11988, originally signed in 1977). If impacted, the MSBE Project will be constructed in accordance with West Virginia Division of Homeland Security and Emergency Management’s guidelines.

4. Soils

The Farmland Protection Policy Act (FPPA) 7 U.S.C. § 4202 is intended to minimize the impact federal programs have on the unnecessary and irreversible conversion of farmland to nonagricultural uses. Construction of a building on farmland for a specific structure may require evaluation using Form AD-1006 and consultation with the United States Department of Agriculture and Natural Resources Conservation Service (NRCS). The correspondence will determine if Prime and Unique Farmland, Statewide Importance Farmland or Locally Important Farmland will be impacted. In addition, all applicable stormwater permits and associated erosion and sediment control measures will be implemented in accordance with WVDEP requirements.

5. Threatened and Endangered Species

Under the Endangered Species Act (ESA) of 1973 as amended, (16 U.S.C. §§ 1531 – 1544), all federal agencies must conserve listed threatened and endangered (T&E) species and will use their authorities in furtherance of the purposes of the ESA as set forth in 16 U.S.C. §1531(c) (Section 2(c)). Consultation with the USFWS West Virginia Field Office and the WVDNR will occur for each site to assess the potential for endangered species habitat and/or species. Should this review result in identification of the presence of any T&E species at the site, additional coordination shall be completed with this agency, and any conservation measures incorporated in the site-planning process as required. Correspondence completed as part of this consultation shall be compiled and forwarded to the WVDEP.

6. Protected Migratory Birds

Under the Migratory Bird Treaty Act (MBTA), as amended, 16 U.S.C. §§ 703-712, the purposeful taking, killing, or possessing migratory birds is unlawful, and if likely to result in the purposeful taking of birds protected under the MBTA would require the issuance of taking permits from the USFWS. WVDEP and UCDA will conduct an analysis to assess the sites potential impacts consistent with the FCC's Antenna Structure Registration Program (FCC 2012), as well as USFWS guidance for minimizing the risk of collisions of migratory birds (USFWS, 2008) with telecommunications towers (Patterson, 2012; Manville, 2014, USFWS, 2014)

7. Wildlife

The tower site will be coordinated with the West Virginia Division of Natural Resources and evaluated for effects on wildlife due to construction, including temporary and/or intermittent impacts from spacing of the tower sites.

8. Visual

Consultation and coordination with appropriate stakeholders will be initiated during site selection, including the National Park Service, the U.S. Forest Service and consultation as stipulated in the PA for cultural and historical resources to identify potential visual impacts for the sites.

9. Historical and Cultural Resources

OSMRE is in the process of joining the Program Comment to Avoid Duplicative Reviews for Wireless Communications Facilities Construction and Modification (Program Comment) and is developing a Programmatic Agreement (PA) to improve efficiency in evaluating the potential effect to historic resources. As part of the Program Comment, OSMRE is relieved of Section 106 responsibilities for undertakings that are subject to review under the Federal Commerce Commission's (FCC) Nationwide Programmatic Agreements (NPA), which for the MSBE Project includes the construction of the towers.

OSMRE, absent of the Program Comment and PA, will conduct Section 106 consultation for the MSBE Project in accordance with Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and its implementing regulations, "Protection of Historic Properties" (36 C.F.R. Part 800). Prior to construction, coordination with SHPO, consulting

parties, and federally recognized tribes, will be conducted to identify the presence, assess potential effects and mitigate unavoidable effects from the construction at the sites. In addition, the following best management practices will be followed as appropriate:

- Protection measures, resulting from consultations with the SHPO, will be provided to the contractor prior to work, and an approved archaeologist will conduct training on the location, requirements, and protective conditions that must be followed.
- Installation equipment and vehicles will remain on road surfaces or within existing rights-of-way whenever possible.
- Should ground disturbance encounter previously unknown cultural artifacts or deposits or human remains, work will be halted within a defined area. The approved archaeologist must contact the SHPO, THPO, and OSMRE for further consultation.
- Whenever possible, avoid all historic sites when causing ground disturbance, especially in sites not previously disturbed.
- If a site is possibly within the Area of Potential Effect (APE) and cannot be avoided, including by directional boring, the process for assessing adverse effects will be coordinated with SHPO, consulting parties, and stakeholders.
- For cemeteries located within 200 feet of the APE, flagging and/or monitoring by an approved archaeologist will be conducted to ensure that no adverse impacts are created.

10. Consultation and Coordination with Indian Tribal Governments

The presence and potential effects to Native American resources will be reviewed and determined on a site by site basis in coordination with the tribes in accordance with Section 106 of the NHPA and EO 13175 Consultation and Coordination with Indian Tribal Governments. Consultation with the Tribes will continue as needed to address potential interests through the construction of the MSBE Project. Five federally recognized tribes responded with comments for the potential presence of sites with religious and cultural significance within specific counties as follows:

- United Keetoowah Band of Cherokee Indians – requested by phone that the ACHP be involved in the MSBE Project
- Catawba Indian Nation – requested to be consulted for sites within the following specific counties: Braxton, Fayette, Gilmer, Greenbrier, Harrison, Lewis, Marion, Mercer, Monongalia, Nicolas, Raleigh, Summers, and Taylor.
- The Delaware Nation – requested to be consulting parties for sites for the MSBE Project.
- Cherokee Nation – requested to be consulted for the sites within the following specific counties: Boone, Cabell, Fayette, Kanawha, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Putnam, Raleigh, Summers, Wayne, and Wyoming.
- Osage Nation - requested to be a consulting party for the Section 106 process.

11. Specially Designated Lands

Specially designated lands in the vicinity of the towers can be sensitive to changes in surrounding lands uses. A site-specific review of the surrounding areas will be needed to determine if specially designated lands, such as lands managed by the National Park Service or National Forest Service, are in the vicinity of the tower sites being evaluated. During the site evaluation and prior to selection, UCDA will contact OSMRE to coordinate with the National Park Service and the National Forest Service to obtain input in the evaluation of the site locations and design to avoid and minimize impacts as feasible.

In addition to the stipulations above, the following Best Management Practices (BMPs), Standard Operating Procedures (SOPs), and minimization and mitigation measures will be considered for inclusion in project design and implementation:

1. Protection of Soils, Vegetation, Wetlands, Floodplains, Groundwater, and Surface Water Quality

- Do not disturb stream or riverbanks and beds by using directional boring, attaching cable to bridges, attaching cable to poles, or using microwave propagation as feasible.
- If stream or riverbanks and beds must be disturbed, design the site to disturb the minimum amount necessary, using the fewest pieces of equipment, and minimize the amount of sediment flowing downstream.
- Avoid removing native riparian vegetation, including trees and shrubs, within riparian areas, wetlands, and floodplains. If trees or shrubs must be removed, design the site to remove the absolute minimum number of trees and shrubs necessary. This applies to underground and aerial features and new towers. However, for aerial features, woody vegetation must be permanently removed to avoid interference with poles and wires and to minimize the risk of fire.
- Any sites needing revegetation to improve recovery rates or minimize the risk of soil erosion shall be planted in accordance with OAML R's Guide for the Preparation of Reclamation Designs (WVDEP, 2020).
- Maintain or protect roadside ditches and culverts to efficiently collect storm water within construction areas and avoid over-road flow.
- No fueling will be conducted less than 200 feet from wetland, floodplain, and/or riparian areas, and secondary containment will be used where appropriate and minimum spill cleanup kits will be in all fueling vehicles, including equipment such as storm drain plug or cover kit, non-water absorbent containment boom of at least 10 feet in length with a 12-gallon absorbent capacity, non-metallic shovel, and two five-gallon buckets with lids. All fueling will be conducted at least 25 feet from the nearest storm drain or inside an impervious containment with a volumetric holding capacity equal to or greater than 110% of the fueling tank volume, or covering the storm drain to ensure no inflow of spilled or

leaked fuel. Spills over five gallons or any spills of hazardous or toxic materials/wastes will be reported to the state environmental protection agency.

- The contact information for the local fire department (911) and the appropriate regional office of the WVDEP Office of Water and Waste Management (OWWM) will be on site to report all spills in a timely manner.
- During directional boring operations near riparian areas, containment and cleanup equipment will be present for use at the site, as needed; a qualified hydrological monitor will be present for prompt detection of any releases; releases will be immediately controlled and drilling fluid contained or removed; a remediation plan will be in place for all directional boring operations; and all slurry used for directional boring will be removed from the site and discarded at an approved site.
- Concrete trucks will be taken off site to wash out or discharge surplus concrete or drum wash when possible or temporary containment will be used if on-site cleaning is necessary.
- Each contractor will designate at least one trained person to be responsible for erosion and spill control to ensure compliance with all local, state, and federal erosion and sediment control requirements.
- Storm drain inlets will be protected to prevent coarse sediment from entering drainage systems prior to permanent stabilization of disturbed areas. Protection may include, depending on site conditions: a temporary dike using concrete blocks and gravel; a gravel “donut”; gravel and wire mesh filters; catch basin filters; curb inlet protection with wooden weir; block and gravel curb inlet protection; or curb and gutter sediment barrier.
- If contaminated soils are encountered during ground-disturbing activities, the contractor will halt construction and contact the WVDEP.
- To prevent compaction, gulying, and rutting, mechanical equipment would be limited or excluded during wet soil conditions.
- The contractor will be responsible for implementing the measures called for in the National Pollutant Discharge Elimination System (NPDES) Stormwater permit provided by the WVDEP for erosion and sediment control. Sediment control measures shall be in-place and operational prior to any disturbance occurring in the site area. The WVDEP’s approval of this plan does not relieve the contractor of his/her responsibility to be in compliance with any laws and/or permits.

2. Protection of Human Health and Safety

- Ensure that all cell and microwave towers/base stations are at least 30 feet from public areas and residences, with no access by unauthorized people.
- Any hazardous abandoned mine land features that could potentially impact persons entering the site shall be abated in a manner approved by the WVDEP OAMLRL.

- All sites will have fencing and locked gates to prevent access by unauthorized people. Access roads will have locked gates at the beginning of any easement ROW.

3. Protection of Air Quality

- All measures to control fugitive dust will be followed as appropriate.
- Dust suppression, such as use of water trucks, will be employed as required to control particulate matter (PM10 and PM2.5).
- Minimize idling time either by shutting equipment off when not in use or reducing the idling time to 5 minutes.
- Maintain all construction equipment in proper working condition according to manufacturer's specifications.
- When appropriate, update equipment to higher efficiency models to minimize air quality emission.

4. Minimizing the Effects of Noise

Activities near residences and sensitive noise receptors such as hospitals, nursing homes, and residences would be performed during daylight hours, with optimum muffling of equipment where needed and in accordance with local ordinances.

5. Values of Lands with Special Designations

Integrate standards, guidelines, and conditions found in the applicable agency's land management plan as pertinent to the MSBE Project and its construction into site-specific project location and design.

6. Protected Migratory Birds

- Since 2000, the USFWS has provided and updated guidance regarding tower siting and construction standards and mitigation for minimizing the risk of bird collisions (American Bird Conservancy 2000). Following the USFWS voluntary guidelines would include collocating antennas whenever possible and using non-guyed towers less than 200 feet tall with appropriate lighting.
- Where placement of cable or other infrastructure would require removing nest trees for migratory birds protected by the MBTA or ESA, develop effective protective measures, such as avoiding removing the nesting trees or shrubs during nesting season. If active nests of migratory birds are discovered during surveys, the potential for adverse impact would be evaluated by USFWS and appropriate protective measures identified, including measures such as appropriate buffers, avoidance during the sensitive season (such as nesting), not removing or disturbing habitat or vegetation to avoid or minimize adverse impacts.

- If nests or birds must be disturbed while present, the UCDA will contact OSMRE and the USFWS. The contractor will acquire any necessary permits from the USFWS prior to the start of work.
- The applicant should consult with the USFWS if lattice towers are proposed for constructing in areas of protected birds or mammals (such as Bald Eagle, for example) that might provide perching habitat for raptors that might prey on the protected species, or use monopole towers instead.
- Any project specific or programmatic agreements from consultations with the USFWS will be provided to the construction contractor prior to work.
- Follow the USFWS guidelines for towers to protect migratory birds as appropriate.
- If informal consultation results in conservation recommendations, or if formal consultation is required, resulting in mandatory terms and conditions per the ESA, integrate such recommendations if appropriate, and terms and conditions when required into project design and implementation.

E. Finding of No Significant Impact

Based upon the information contained in the referenced Final PEA completed in accordance with the National Environmental Policy Act (NEPA), National Historic Preservation Act (NHPA) and tribal considerations, Endangered Species Act (ESA); Executive Orders (EO) addressing Floodplains (EO 11988), Wetlands (EO 11990), and Environmental Justice (EO 12898); and agency guidance for implementing NEPA (DHS Instruction 023-01 and FEMA Directive 108-01-1), it is found that the Proposed Action, with the prescribed mitigation measures and stipulations, would have no significant adverse impact on the human environment. As a result of this FONSI, an Environmental Impact Statement will not be prepared.

Issuance of the FONSI concludes OSMRE's environmental review process at the programmatic level. There may be site specific "tiered" environmental reviews as identified in the Final PEA. The ultimate funding decision will be based on the phased environmental reviews tiered to the PEA for the site-specific construction and upon conclusion of a tiered environmental review process.

F. Approval

This FONSI is effective upon date of signature.

OSMRE Environmental Preparer:

Signed copy on file

7/2/2020

Jenna Hincks
AML Program Specialist

Date

Signed copy on file

7/6/2020

Ben Owens, Acting Director
Charleston Field Office

Date

Contact: For additional information on this FONSI and PEA, please contact Jenna Hincks, Phone (304) 347-7162; Email: jhincks@osmre.gov.

Attachment 1

ATTACHMENT 1
MSBE PEA, Agency Coordination for Tiered Documents
Mountain State Broadband Expressway AML Pilot Project PEA (2020)

Applicable Scope of Work: For the phasing of the MSBE Project, coordination with the agencies below is required to evaluate potential impacts at each site location.

Resource to analyze in tiered environmental review	Agency or Government with which to Perform Consultation or from which to Obtain Permit
Geology	West Virginia Geologic and Economic Survey and the West Virginia Department of Environmental Protection Office of Abandoned Mine Land Reclamation
Water Resources	U.S. Army Corps of Engineers, West Virginia Department of Environmental Protection Division of Water and Waste Management
Floodplains	U.S. Army Corps of Engineers, Federal Emergency Management Agency, West Virginia Division of Homeland Security and Emergency Management
Soils	United States Department of Agriculture and Natural Resources Conservation Service
Threatened and Endangered Species	United States Fish and Wildlife Service, West Virginia Division of Natural Resources
Migratory Birds	United States Fish and Wildlife Service, West Virginia Division of Natural Resources
Wildlife	West Virginia Division of Natural Resources
Visual	West Virginia State Historic Preservation Office, Applicable Tribal Governments, local Economic Development Authorities
Historical and Cultural Resources	West Virginia State Historic Preservation Office, Applicable Tribal Governments
Tribal Lands and Cultural Resources	West Virginia State Historic Preservation Office, Applicable Tribal Governments
Specially Designated Lands	National Park Service, National Forest Service