



## PMP 2nd Quarter Meeting Agenda June 11th, 2025, 10:00 AM

Snyder Associated Companies  
The Bauer Company Block Plant  
119 Ruth Hill Rd  
Worthington, PA 16262

Jordan Rodgers, E.I.T., President  
Snyder Associated Companies, Inc.  
724-545-2719

[jordan.rodgers@snydercos.com](mailto:jordan.rodgers@snydercos.com)

Stacey Hanson, P.G., Vice President  
Apex Companies, LLC  
724-672-4845

[Stacey.Hanson@apexcos.com](mailto:Stacey.Hanson@apexcos.com)

Ben Gardner, P.E., Treasurer  
724 Walnut St, Latrobe, PA 15541  
540-746-4433

[dbgardne@gmail.com](mailto:dbgardne@gmail.com)

Kayla Kabina, Secretary  
Musser Engineering  
814-754-8477 x412

[kkabina@musserengineering.com](mailto:kkabina@musserengineering.com)

### Business Meeting

- Call to Order
- Introductions of Attendees
- Secretary's Report & Approval of Minutes
- Treasurer's Report
- Future Speakers/Venues
- New Business

### Technical Forum:

- PACA Updates – Megan Dennis
- PCA Updates – Rachel Gleason
- DEP Backlog/Review Times
- SHPO Viewshed Guidelines Updated
- MSHA Silica Rule Pushed Back
- WOTUS new guidance released
- Member Items/Open Discussion

### Presentation

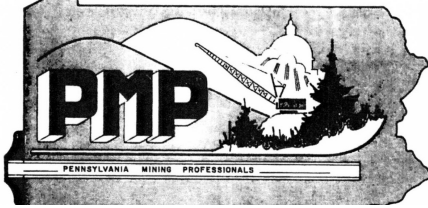
- **Speaker: Nathan Garlitz, PE/PG; Young & Associates Engineers and Surveyors**
  - **Bio:** *Mr. Garlitz started in engineering consulting in 2002 and is currently a project manager with Young & Associates. He holds degrees in Specialized Technology, Civil Engineering Technology, and Geology. He is also a Registered Professional Engineer in Pennsylvania, West Virginia, and Ohio, as well as Registered Professional Geologist in Pennsylvania.*
  - **Topic: Repurposing the East Brady Tunnel** – *The East Brady Tunnel, situated in Brady Township, Clarion County, PA, was used from 1915-1984 by the Pennsylvania Railroad and later by Consolidated Rail Corporation for rail commerce. During the term since its abandonment, it has gone through incremental conditional declines. The most notable deterioration, as is often the case, has been caused by water. As Allegheny Land Trust (now Armstrong Trails, Inc) began to rehabilitate the East Brady Branch about a decade ago, the East Brady Tunnel remained a barrier to the Pittsburgh-Erie biking corridor. This case history will touch briefly on the geology, geomorphology, tunneling techniques, and relining methods used to open the Allegheny River vistas to recreation.*

### Adjournment

*Lunch to be provided by PMP for the group.*

**\*Note: Virtual Link will be available and provided prior to meeting. PDH Credits will be awarded.**

# Pennsylvania Mining Professionals



Jordan Rogers, President: 724-548-8101  
 Stacey Hanson, Vice President: 724-672-4845  
 Kayla Kabina, Secretary: 814-754-8477 ext 412  
 Ben Gardner, Treasurer: 540-746-4433

**June 11, 2025**

|  |                           |
|--|---------------------------|
| <b>Previous Balance Reported at the March 2025 PMP Meeting</b>               | <b><u>\$9,440.96*</u></b> |
|  |                           |
| <b>EXPENDITURES</b>  | <b>AMOUNT</b>             |
|  | \$ 0                      |
|  | \$ 0                      |
|  | \$ 0                      |
|  |                           |
|  |                           |
| <b>Expenditures Subtotal</b>   | <b><u>\$ 0</u></b>        |
|  |                           |
| <b>INCOME</b>  | <b>AMOUNT</b>             |
| Dues   | \$ 950.00                 |
| <b>Income Subtotal</b>   | <b><u>\$ 950.00</u></b>   |
|  |                           |
|  |                           |
| <b>Present Balance Total June 11, 2025</b>                                   | <b><u>\$10,390.96</u></b> |
| Total = (Previous Balance - Expenditures Subtotal) + Income Subtotal         |                           |
|  |                           |
| Barbara Dunst Donation (3k) – Will reimburse the treasurer for this payment. | - \$3,000.00              |
|  |                           |
|  |                           |
| <b><u>CASH FORECAST</u></b>  | <b><u>\$7,390.96</u></b>  |
|  |                           |

Respectfully Submitted,

*David B. Gardner*

David “Ben” Gardner,  
 Treasurer

### **Business Meeting (10:05 – 10:10)**

- Introductions of Attendees
- Secretary's Report & Approval of Minutes
  - Motion Approved: Terry Schmidt & Kenneth King
- Treasurer's Report & Past Update's that were finalized
  - Motion Approved: Steve & Dean
- Future Speakers/Venues
  - Ryan Fritz & Sam Baker(Rosebud Mining Company)
  - X-mas location -same as last year
- New Business Technical Forum

### **PCA Updates – Rachel Gleason (10:11-10:25)**

- Clean Power Plant – EPA was reconsidering it back in March and final rule is schedule in December 2025.
- Budget – not happening by June 30
- US Steel & Nippon - June 18, 2025, merger deadline details haven't been ironed out yet. Alleged Agreement includes, billions proposed investments to increase steel production and to modernize steel mills, expand ore mining and facilities. No layoffs or outsourcing, steel workers receive bonuses. Failure to reach a deal means possibly reopening the merger.
- RGGI - Oral arguments have been held back in May 2025 with the supreme court about if RGGI is unlawful taxed, a fee, a tax, or something else? Argument went well.
- Effluent limitations – currently subject of litigations in the 4<sup>th</sup> Circuit and pending the outcome of the 8<sup>th</sup> Circuit Litigation.
- NEPA-overruled unanimously, lower court's decision requiring the Surface Transportation Board to consider environment effects of upstream & downstream projects on May 29, 2025.This will likely have significant implications for how future infrastructure projects are reviewed and approved under environmental law.
- Act 54 Report released in February 2025 (updated every 4 years)

### **PACA Updates – Megan Dennis (10:26-10:35)**

- RISE PA Grant - \$400 million available / small applications – Penn TAP
- Baghouse Fines/WMGR028 Joint Working Group with PAPA – working on guidance w/ DEP & PACA
- Environmental Justice / Penn Enviro Screen Tool
  - Interim Final Rule published in September 2023
  - No published comment-response letter or Final Rule
- WOTUS Update?
  - Have released some guidance

- Amy Van Blarcom-Lackey -EPA Region 3
- NIOSH? – one big mess right now, but they brought back Dr. John Howard (Director)
- MSHA -Silica Rule was pushed back until August 18, 2025, by court motion and S& S is likely to proceed against industry
- OSHA Heat Rule presumably dead
- HB 589–Landslide/Sinkhole Insurance –referred to Veterans Affairs and Emergency Preparedness Committee
- SB 333–Regulatory Sandbox
- SB 444–Review of economically significant regulations

**DEP Backlog/Review Times (10:35 – 1043)**

- Ken King example- Solar farm/Jurisdiction Transition lines

**SHPO Viewshed Guidelines Updated & WOTUS Update (10:44-1049)**

- Jordan shared info & see attachment

**Open Discussion(10:50- 11:03)**

(Ronald Musser) Sub Chapter F – abatement plan is more like GFCC

- Was per phase/Now require as per permit issuance

Exploration/NOITE

- DMO submissions- Not able to see or have access – want hard copy

(Terry Schmidt) 300' house Waiver- existing permit no house, now homeowner-built house, mining did not start, may need

(Todd Colman) PNDI – BAT- can't cut tree under 40 ac.

*BREAK (11:04-1121)*

**Presentation (11:22 – 12:30)**

- *Nathan Garlitz, PE/PG* - Repurposing the East Brady Tunnel

Question & Adjournment (12:31-12:39)

**2.25 PDH**

## SIGN IN SHEET

6-11-25

| <u>Name</u>                     | <u>Email</u>                    | <u>License (if app.)</u> |
|---------------------------------|---------------------------------|--------------------------|
| Jordan Rodgers                  | jordanrodgers@snydercos.com     |                          |
| Ben Gardner                     | bgardner@gmail.com              | PE                       |
| DAVID LINDAHL                   | ks3dco@verizon.net              | PG                       |
| KARL FATTER                     | KARL.FATTER@SNYDERCOS.COM       | PE                       |
| Jared Stewart                   | jrod.stewart@snydercos.com      |                          |
| Stephen Fisanick <del>III</del> | sfisanicki@gmail.com            | PE                       |
| ROB STORMER                     | RSTORMER@EADSGROUP.COM          | PG                       |
| KENNETH KING                    | ken.king@snydercos.com          | PG                       |
| Shawn Busler                    | Shawn@biomost.com               |                          |
| Stacey Hanson                   | Stacey.Hanson@apexcos.com       | PG                       |
| Alycia Shaffer                  | alycia.shaffer@apexcos.com      |                          |
| Dean Baker                      | dbakerut@gmail.com              | PE                       |
| DARREL K LEWIS                  | darrelklewis@yahoo.com          | PE                       |
| Guy Livingston                  | glivingston@marlinresearch.com  | PG                       |
| RON MUSSER                      | ronmusser@musserengineering.com | PE                       |
| Todd Coleman                    | tcoleman_minech @ atlanticbbnet | PE                       |
| GENE COONEY                     | ECCOONEY@LSSE.COM               | PG                       |
| NATHAN CARLITZ                  | NCARLITZ@LWALNEERS.COM          | PE, PG                   |

Virtual Attendance

Megan Dennis - PACA

Chuck Walton, PG

Jack Chamberlin, PLS

Mike Barilar, PG - Geotech Engineering

Josh James, PE - Young &amp; Associates

Carolyn Speicher - New Enterprise Stone &amp; Lime

17247120920, 17242973200, 14123521002 (Unverified)



**MEMORANDUM TO THE FIELD BETWEEN  
THE U.S. DEPARTMENT OF THE ARMY, U.S. ARMY CORPS OF ENGINEERS  
AND THE U.S. ENVIRONMENTAL PROTECTION AGENCY CONCERNING THE PROPER IMPLEMENTATION  
OF “CONTINUOUS SURFACE CONNECTION” UNDER THE DEFINITION OF “WATERS OF THE UNITED  
STATES” UNDER THE CLEAN WATER ACT**

March 12, 2025

**PURPOSE**

This memorandum provides guidance to the U.S. Army Corps of Engineers and the U.S. Environmental Protection Agency regarding the implementation of the definition of “waters of the United States” under both regulatory regimes currently operative across the country: the “Revised Definition of ‘Waters of the United States,’” as amended by the final rule “Revised Definition of ‘Waters of the United States’; Conforming” (the amended 2023 rule; 40 C.F.R. 120.2 and 33 C.F.R. 328.3) and the “pre-2015 regulatory regime”<sup>1</sup> consistent with the Supreme Court’s decision in *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023).<sup>2</sup>

This memorandum is being issued in response to requests for clarification on the implementation of the Federal Water Pollution Control Act, also known as the Clean Water Act, with respect to adjacent wetlands in light of the Supreme Court’s decision in *Sackett v. Environmental Protection Agency*. Specifically, the preamble to the 2023 Rule (“Revised Definition of ‘Waters of the United States,’” 88 FR 3004 (January 18, 2023)) and the preamble to the conforming rule (“Revised Definition of ‘Waters of the United States’; Conforming,” 88 FR 61964, September 8, 2023) did not include adequate direction or guidance on the meaning of the “continuous surface connection” requirement, and the agencies’ case-specific policy memoranda issued post-*Sackett* neither provided national guidance on the topic nor clear and transparent direction for the public or the agencies. The case-specific policy memoranda also contain conclusions which are inconsistent with the discussion of “continuous surface connection” as described in the pre-2015 regulatory regime guidance documents and the *Sackett* decision. In order to provide national consistency and eliminate confusion about the scope of “adjacent wetlands,” and

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<sup>1</sup> The “pre-2015 regulatory regime” refers to the agencies’ definition of “waters of the United States” set forth in pre-2015 Corps and EPA regulations (the Corps’ 1986 regulations and the EPA’s 1988 regulations, inclusive of the exclusion for prior converted cropland, which both agencies added in 1993), implemented consistent with relevant case law, including *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers*, 531 U.S. 159 (2001), and *Rapanos v. United States*, 547 U.S. 715 (2006). It also refers to longstanding practice, as informed by applicable guidance, including “Clean Water Act Jurisdiction Following the U.S. Supreme Court’s Decision in *Rapanos v. United States* & *Carabell v. United States*” (Dec. 2, 2008) (2008 *Rapanos* Guidance), available at [https://www.epa.gov/sites/default/files/2016-02/documents/cwa\\_jurisdiction\\_following\\_rapanos120208.pdf](https://www.epa.gov/sites/default/files/2016-02/documents/cwa_jurisdiction_following_rapanos120208.pdf). Additionally, the agencies interpret the phrase “waters of the United States” consistent with the Supreme Court’s decision in *Sackett v. Environmental Protection Agency*.

<sup>2</sup> For more information about the operative definition of “waters of the United States” for specific geographic areas in light of litigation, please visit <https://www.epa.gov/wotus/definition-waters-united-states-rule-status-and-litigation-update>.

specifically the phrase “continuous surface connection” as used in the *Rapanos* and *Sackett* decisions across both currently operative regulatory regimes, we are providing the following direction. This will provide for more effective and efficient approved jurisdictional determinations, permitting actions and other relevant actions consistent with *Sackett*.<sup>3</sup>

In addition, the agencies plan to issue a public notice imminently in the *Federal Register* to establish a docket on “WOTUS Notice: The Final Response to SCOTUS,” outlining a process to gather recommendations on the meaning of key terms in *Sackett* to inform future administrative actions that will seek to conform the definition of “waters of the United States” to Supreme Court precedent.

This guidance represents the agencies’ views on the proper implementation of the definition of “waters of the United States” and is effective immediately. The EPA and the Department of the Army will apply this guidance when determining if a wetland has a “continuous surface connection” to a requisite jurisdictional water under the Clean Water Act.

## **BACKGROUND**

### ***Sackett* and *Rapanos***

While the U.S. Supreme Court has issued numerous key decisions interpreting the phrase “waters of the United States,” the two cases that are of particular importance for purposes of this memorandum, especially as they relate to the “continuous surface connection” requirement for adjacent wetlands, are *Sackett v. Environmental Protection Agency*, 598 U.S. 651 (2023), and *Rapanos v. United States*, 547 U.S. 715 (2006).

On May 25, 2023, the *Sackett* Court “conclude[d] that the *Rapanos* plurality was correct” and rejected Justice Kennedy’s “significant nexus” standard, calling it a “particularly implausible” “theory” and stating that “the CWA never mentions the ‘significant nexus’ test, so the EPA has no statutory basis to impose it.” *Sackett*, 598 U.S. at 680. As a result, the agencies can apply only the *Rapanos* plurality standard as informed by *Sackett* in determining when adjacent wetlands are subject to CWA jurisdiction. As explained by the plurality in *Rapanos*, this standard is also consistent with prior Supreme Court precedent interpreting “waters of the United States,” including the Court’s opinion in *Riverside Bayview*. See *Rapanos*, 547 U.S. at 734-35, 740-42, 746-48 (Scalia, J., plurality).

*Sackett* makes reference to the relationship between adjacent wetlands and covered waters on multiple occasions. The *Sackett* Court clarified that:

In *Rapanos*, the plurality spelled out clearly when adjacent wetlands are part of covered waters. It explained that “waters” may fairly be read to include only those wetlands that are “as a practical matter indistinguishable from waters of the United States,” such that it is “difficult to determine where the ‘water’ ends and the ‘wetland’ begins.” That occurs when wetlands have “a continuous surface connection to bodies that are ‘waters of the United States’ in their own

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<sup>3</sup> The Clean Water Act and the EPA and Corps regulations, interpreted consistent with the *Sackett* decision, contain legally binding requirements. This guidance does not substitute for those provisions or regulations, nor is it a regulation itself. Thus, it does not impose legally binding requirements on the EPA, the Corps, Tribes, states or the regulated community.

right, so that there is no clear demarcation between ‘waters’ and wetlands.” . . . We agree with this formulation of when wetlands are part of “the waters of the United States.

*Id.* at 678 (internal citations omitted).

The *Sackett* Court also found that “[w]etlands that are separate from traditional navigable waters cannot be considered part of those waters, even if they are located nearby,” *id.* at 678, and that “‘adjacent’ cannot include wetlands that are not part of covered ‘waters,’” *id.* at 682. The Court also recognized that in determining the jurisdictional status of wetlands, the *Riverside Bayview* Court “need[ed] to focus so extensively on the adjacency of wetlands to covered waters” to adhere to the proper interpretation of the Clean Water Act. *Id.* at 674.

This is why the plurality in *Rapanos* rejected the Corps’ practice of asserting jurisdiction over wetlands adjacent to features that themselves were not “waters of the United States” in their own right based on a hydrologic connection theory. The *Rapanos* plurality instead concluded:

*[O]nly* those wetlands with a continuous surface connection to bodies that are “waters of the United States” in their own right, so that there is no clear demarcation between “waters” and wetlands, are “adjacent to” such waters and covered by the Act. Wetlands with only an intermittent, physically remote hydrologic connection to “waters of the United States” do not implicate the boundary-drawing problem of *Riverside Bayview*, and thus lack the necessary connection to covered waters that we described as a “significant nexus” in *SWANCC* . . . . Thus, establishing that wetlands . . . are covered by the Act requires two findings: first, that the adjacent channel contains a “wate[r] of the United States,” (*i.e.*, a relatively permanent body of water connected to traditional interstate navigable waters); and second, that the wetland has a continuous surface connection with that water, making it difficult to determine where the “water” ends and the “wetland” begins.

*Rapanos*, 547 U.S. at 742 (Scalia, J., plurality) (emphasis in original).

Additionally, the plurality said that “adjacent” means “physically abutting,” and used “abutting” and “adjacent” interchangeably. *Id.* at 748; see also *id.* at 742 (“*Riverside Bayview* rested upon the inherent ambiguity in defining where water ends and abutting (“adjacent”) wetlands begin[.]”). Most importantly, the plurality clarified that “the statutory definition [of ‘navigable waters’ at 33 U.S.C. §1362(7)] can be read to include *some* wetlands – namely, those that directly ‘abut’ covered waters.” *Id.* at 747, footnote 12 (emphasis in original).

### **2008 *Rapanos* Guidance in the Pre-2015 Regulatory Regime**

Following *Rapanos*, on June 6, 2007, the agencies issued joint guidance entitled “Clean Water Act Jurisdiction Following the U.S. Supreme Court’s Decision in *Rapanos v. United States* and *Carabell v. United States*” to address the waters at issue in that decision. The guidance was reissued with minor changes on December 2, 2008, and a review of that guidance reveals how the agencies interpreted the *Rapanos* plurality’s “continuous surface connection” construct. “[O]nly those adjacent wetlands that have a continuous surface connection because they directly abut the [relatively permanent] tributary (e.g., they are not separated by uplands, a berm, dike, or similar feature) are considered jurisdictional under the plurality standard.” 2008 *Rapanos* Guidance at 7, footnote 29.

Additionally, the 2008 *Rapanos* Guidance applies the *Rapanos* plurality’s standard to assert jurisdiction over “[w]etlands that directly abut” “[n]on-navigable tributaries of traditional navigable waters that are relatively permanent where the tributaries typically flow year-round or have continuous flow at least seasonally (e.g., typically three months).” *Id.* at 1.

The Corps’ pre-2015 Jurisdictional Determination Form Instructional Guidebook, which contained instructions to aid field staff in completing the associated Approved Jurisdictional Determination Form prior to *Sackett*, states “[t]he [*Rapanos*] decision provides two new analytical standards for determining whether water bodies that are not traditional navigable waters (TNWs), including wetlands adjacent to those non-TNWs, are subject to CWA jurisdiction: (1) if the water body is relatively permanent, or if the water body is a wetland that directly abuts (e.g., the wetland is not separated from the tributary by uplands, a berm, dike, or similar feature) a relatively permanent water body (RPW), or (2) if a water body, in combination with all wetlands adjacent to that water body, has a significant nexus with TNWs.”<sup>4</sup>

With significant nexus having been struck down by the Court in *Sackett*, we are left to determine what the pre-2015 regulatory regime’s approach to adjacency looked like without that evaluation. The Corps’ pre-2015 regulatory regime provides clarity on this point in the previously used *Rapanos* “Approved Jurisdictional Determination Form,” which states, “[a] wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus test.”<sup>5</sup> Removing the significant nexus portion from that statement leaves the simple fact that unless a wetland has a continuous surface connection – directly abutting a requisite jurisdictional water – it cannot be determined to be jurisdictional as an adjacent wetland.

## 2023 Rule

On January 18, 2023, the agencies issued the 2023 Rule to revise the definition of “waters of the United States.” The preamble to the 2023 Rule included limited guidance on the implementation of “continuous surface connection,” and stated:<sup>6</sup>

Under the relatively permanent standard for adjacent wetlands, wetlands meet the continuous surface connection requirement if they physically abut, or touch, a relatively permanent paragraph (a)(2) impoundment or a jurisdictional tributary when the jurisdictional tributary meets the relatively permanent standard, or if the wetlands are connected to these waters by a discrete feature like a non-jurisdictional ditch, swale, pipe, or culvert.

The agencies’ “discrete features” language is in tension with the pre-2015 regime and *Sackett* and the purpose of this memo is to align the agencies’ interpretation of adjacency with *Sackett*.

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<sup>4</sup> U.S. ARMY CORPS OF ENGINEERS JURISDICTIONAL DETERMINATION FORM INSTRUCTIONAL GUIDEBOOK, 6 (May 30, 2007), available at <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/2310>.

<sup>5</sup> U.S. ARMY CORPS OF ENGINEERS, APPROVED JURISDICTIONAL DETERMINATION FORM, 2, available at <https://usace.contentdm.oclc.org/utis/getfile/collection/p16021coll11/id/2314>.

<sup>6</sup> 88 FR 3004, 3090 (Jan. 18, 2023).

## Guidance on Wetlands with a Continuous Surface Connection

Under either the amended 2023 regulatory definition of “waters of the United States” or the pre-2015 regulatory regime consistent with *Sackett*, the agencies are interpreting “waters of the United States” to include “only those adjacent wetlands that have a continuous surface connection because they directly abut the [requisite jurisdictional water] (e.g., they are not separated by uplands, a berm, dike, or similar feature).” 2008 *Rapanos* Guidance at 7, footnote 29; see also 88 FR 3090 (Jan. 18, 2023) (“wetlands meet the continuous surface connection requirement if they physically abut, or touch, a [requisite jurisdictional water]”). Additionally, pursuant to the *Rapanos* plurality, “[w]etlands with only an intermittent, physically remote hydrologic connection to ‘waters of the United States’ do not implicate the boundary-drawing problem of *Riverside Bayview*,” and thus do not have the “necessary connection” to covered waters that triggers CWA jurisdiction. *Rapanos*, 547 U.S. at 742 (Scalia, J., plurality). The plurality was even more clear that the CWA definition of “navigable waters” includes “some wetlands – namely, those that directly ‘abut’ covered waters.” *Id.* at 747, footnote 12 (Scalia, J., plurality) (emphasis in original).

Therefore, an interpretation of “continuous surface connection” which allows for wetlands far removed from and not directly abutting covered waters to be jurisdictional as adjacent wetlands has the potential to violate the direct abutment requirement for “adjacent wetlands” under the plurality’s standard and now *Sackett*’s endorsement of that standard.<sup>7</sup> Therefore, any components of guidance or training materials that assumed a discrete feature established a continuous surface connection are rescinded.<sup>8</sup>

In summary, the Supreme Court in *Sackett* provided a clear two-part test for determining CWA jurisdiction over adjacent wetlands. First, the adjacent body of water must be a “water of the United States,” which generally means traditional navigable waters, or a relatively permanent body of water connected to a traditional navigable water. Second, the wetland, assuming it satisfies the agencies’ longstanding regulatory definition of “wetlands” at 33 C.F.R. 328.3 and 40 C.F.R. 120.2, must have a continuous surface connection to a requisite covered water making it difficult to determine where the water ends and wetland begins. The *Sackett* Court recognized that there may be some instances where that line drawing problem is difficult, such as during periods of drought or low tide or in those

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<sup>7</sup> The same is true for any reliance on *United States v. Cundiff*, 555 F.3d 200 (6th Cir. 2009) to evaluate wetlands that do not directly abut an otherwise covered water. Such reliance could create conflict with *Sackett*’s two-part test for jurisdiction over adjacent wetlands.

<sup>8</sup> This rescission encompasses the relevant portions of the agencies’ “September 24, 2024, Presentation: Updates on ‘Waters of the United States’” (“[w]etlands also have a continuous surface connection when they are connected to a jurisdictional water by a discrete feature like a non-jurisdictional ditch, swale, pipe, or culvert...”). *Id.* at slide 47, available at [https://www.epa.gov/system/files/documents/2024-09/wotus-overview\\_9-24-24\\_508c.pdf](https://www.epa.gov/system/files/documents/2024-09/wotus-overview_9-24-24_508c.pdf), and the agencies’ “Presentation – November 15, 2023, Updates for Tribes and States on ‘Waters of the United States’” (“[w]etlands also have a continuous surface connection when they are connected to a jurisdictional water by a discrete feature like a non-jurisdictional ditch, swale, pipe, or culvert...”). *Id.* at slide 48, available at [https://www.epa.gov/system/files/documents/2023-11/wotus-overview\\_tribes-and-states\\_11-15-23\\_508.pdf](https://www.epa.gov/system/files/documents/2023-11/wotus-overview_tribes-and-states_11-15-23_508.pdf). This directive also serves to rescind the following case-specific memoranda to the Field implementing the pre-2015 regulatory regime consistent with *Sackett* that apply the same “discrete features” test as the two trainings listed herein: “Memorandum on NWK-2022-00809,” “Memorandum on SWG-2023-00284,” “Memorandum on LRB-2023-00451” and “Memorandum on NWK-2024-00392,” as well as the following case-specific memoranda addressing continuous surface connection under the amended 2023 rule: “Memorandum on NWP-2023-602,” “Memorandum on NAP-2023-01223,” “Memorandum on POH-2023-00187” and “Memorandum on MVR-2023-0828.”

instances where there may be temporary interruptions in surface connection. The agencies will work to resolve these scenarios on a case-by-case basis and provide further clarity when appropriate to guide future implementation.

The agencies will use a forthcoming *Federal Register* notice and recommendations docket on “WOTUS Notice: The Final Response to SCOTUS” as well as other stakeholder engagement opportunities to identify areas of implementation challenges to be later addressed either through additional guidance or rulemaking.

**Dated:** March 12, 2025



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Robyn S. Colosimo, P.E.  
Senior Official Performing the Duties of the Assistant Secretary of the Army (Civil Works)  
Department of the Army

**BENITA  
BEST-WONG**

Digitally signed by  
BENITA BEST-WONG  
Date: 2025.03.12  
16:11:05 -04'00'

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Benita Best-Wong,  
Deputy Assistant Administrator performing the non-exclusive duties and functions  
of the Assistant Administrator for Water, U.S. Environmental Protection Agency



Pennsylvania State Historic Preservation Office  
PENNSYLVANIA HISTORICAL AND MUSEUM COMMISSION

# PA State Historic Preservation Office (PA SHPO)

## Guidelines for Projects with Potential Visual Effects

*Send out to PMP  
members*

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**UPDATED May 2024**

# PA SHPO

## Guidelines for Projects with Potential Visual Effects in Pennsylvania

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**NOTE:** This document was updated in May 2024 to clarify that the replacement of transmission lines does not have the potential to affect historic properties.

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## Guidelines for Projects with Potential Visual Effects in Pennsylvania

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### Introduction

The Pennsylvania State Historic Preservation Office (PA SHPO) has developed guidance for the identification and assessment of effects of proposed transmission towers, cell towers, wind turbines, highways, solar arrays, and other new construction on historic buildings, structures, and landscapes.

Under Section 106 and the Pennsylvania History Code, it is the role of our office to provide comments on the effects a project may have on historic properties. Some effects, such as demolition of a historic property or disturbance of an archaeological site, can be easily evaluated and determined to be adverse. However, assessing the impact of visual changes is often more subjective and may require more in-depth evaluation and discussion.

The purpose of this document is to outline the process necessary for the identification of those above ground resources where the introduction of new visual elements would diminish integrity, thereby significance and a property's eligibility for listing in the National Register of Historic Places (National Register). Guidelines for the assessment of adverse visual effects are also included.

Avoidance of adverse visual effects on historic properties is the recommended course of action for projects. If adverse effects cannot be avoided, then it is necessary to work to minimize adverse visual effects through changes to the project's location, scale, or design. If the adverse visual effects cannot be avoided or minimized then it may be necessary to mitigate to compensate for the loss of integrity.

### Integrity and Significance

Integrity is critical to the ability of a property to convey its historic significance. Therefore, for projects with the potential for visual effects, properties in the APE should be considered in light of the criteria for significance and aspects of integrity for which they are significant. *Evaluation of whether the introduction of a new feature will adversely affect a property's significance and aspects of integrity is critical in determining if a resource is recommended for further survey.*

Questions to be asked include:

- Is setting a character-defining feature of the resource?
- Will the project introduce new features into the setting?
- Will the project remove existing features from the setting?
- Would the introduction of new features or the removal of old features in the setting of the property affect its integrity? If so, which aspects?
- Would changes to the identified aspects of integrity affect the ability of the property to convey its significance?

In assessing the potential for visual effects for historic properties, the criteria for significance and the aspects of integrity provide a qualitative method for determining visual effects on historic properties.

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For example, integrity of setting is critical to a farm's (farm complex and associated lands) ability to convey its agricultural significance. The introduction of a tower or a field of solar panels in the view shed of the farmstead or the removal of associated landscape features, such as farmland, tree lines, woodlots, or field patterns, could alter integrity of setting and feeling. Therefore, a property of this type would likely require more documentation as there is the potential for an effect. However, if the setting of a property is not critical to understanding its significance (i.e., resources significant for architecture alone), then the introduction of a new visual feature or removal of surrounding features may not diminish the integrity of the property and therefore additional documentation to assess eligibility would not be warranted as there is no potential for an effect.

Typical examples of projects and resources that could be affected by associated changes in setting include:

- A historic farm whose associated farmland would be impacted by the construction of a solar array on the farmland and/or within the viewshed of the farm complex.
- Historic agricultural districts, scenic trails, and/or cultural landscapes that would be affected by the location of a transmission line or solar array in the associated landscape.
- A twentieth-century estate designed to take advantage of prominent view sheds of a ridge line on which a wind turbine is proposed.
- Historic farms with associated woodlots, hedgerows, stone walls, and/or field patterns that would be affected by clear cutting in order to provide a transmission line right of way.

### Initiation of Consultation with the PA SHPO

Consultation on the project begins with an Environmental Review (ER) submission to the PA SHPO using PA-SHARE, the PA SHPO's online system for consultation.

More information on how to submit a project in PA-SHARE is found on the [Environmental Review Page](#).

If PA SHPO staff determine that the project has the potential to affect above ground historic properties, then it will be necessary to refine the APE and document potential historic properties as outlined below. If PA SHPO staff determine that the project has no potential to affect above ground historic properties, then the appropriate response will be sent via PA-SHARE and consultation will be complete.

### Delineation of APE

The delineation of the initial APE should consider the viewshed or those areas from which the project may be visible. For example, a tower, solar array, or transmission line may not be located on a property, but it could introduce new features into the landscape. This could potentially affect an adjacent historic property's relationship to its setting, which may include surrounding features as well as view sheds.

The initial APE will be provided as part of the ER initial submission in PA-SHARE.

### Initial APE



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When delineating the initial APE, consider the extent of the potential visual effects these types of **new construction** would have on above ground resources, consulting the guidance provided below.

#### Transmission Lines

For a proposed new transmission line, the initial APE will consist of all resources that are within 0.5 miles on either side of the proposed right-of-way (ROW).

If the proposed project includes modifications within an existing ROW, it is our opinion the new structures will not have a greater visual effect than the existing infrastructure, and no further documentation will be required. Note: Potential direct impacts to resources in the ROW will still need to be considered.

#### Cell Towers

Two Nationwide Programmatic Agreements define the APE for visual effects for the construction of new cell towers and collocation of antennas on non-tower structures:

- Nationwide Programmatic Agreement for Review of Effects on Historic Property for Certain Undertakings Approved by the Federal Communications Commission:  
<https://www.fcc.gov/omnipublicaffairs/na04-22143.html>
- Nationwide Programmatic Agreement for the Collocation of Wireless Antennas:  
<http://www.fcc.gov/releases/04010641a.pdf>.

For new cell tower construction:

- If the proposed new tower is 200 feet or less, the APE is 0.5 miles from the tower site.
- If the proposed new tower is more than 200 feet but less than 400 feet, the APE is 0.75 miles from the tower site.
- If the proposed new tower is more than 400 feet, the APE is 1.5 miles from the tower site.

For collocations on existing buildings or structures, the APE is 250 feet from the collocation location.

An alternative APE for densely built urban areas where towers may not be fully visible within the standard APE can be proposed as part of the Environmental Review initial submission and determined upon further discussion between the FCC applicant and PA SHPO.

#### Wind Turbines

The initial APE for wind turbine towers will be 5 miles in all directions from the turbine site.

- If the proposed project includes modifications within an existing ROW, it is our opinion the new structures will not have a greater visual effect than the existing infrastructure, and no further documentation will be required. Note: Potential direct impacts to resources in the ROW will still need to be considered.



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### Scope of Work

For the purposes of this guidance, solar arrays are large-scale solar installations of ground-mounted panels installed across large areas as well as the associated infrastructure including transmission facilities, conduit, equipment pads, and substations.<sup>2</sup>

The initial APE for solar arrays will include the land area(s) where the solar array and associated infrastructure is physically located and will extend within .25 mile in all directions from the outer edge of installation(s).

### Reconnaissance Level Survey

In response to the initial ER submission, if PA SHPO determines the project has the potential to affect above ground historic properties, then PA SHPO staff will respond with a More Information Request, asking for a reconnaissance level survey which will consist of submission of 1) a refined APE and 2) a reconnaissance level survey (memo, table, photographs, and mapping) outlining those 45-year-old resources located in the refined APE and recommendations for further survey. If only a few resources will be affected, PA SHPO above ground staff may forgo a reconnaissance level survey and may request individual resource information.

The refined APE and reconnaissance level survey should be developed by cultural resources staff that meet the Secretary of the Interior's Professional Qualifications for Architectural History or History. The cultural resources staff person will need to be included as a contact on the ER project in PA-SHARE.

### Refined APE

The initial APE can be refined through an examination of topography, changes in elevation and vegetative cover, and/or GIS based modeling, to include only the anticipated extent to which a project may be visible. The refined APE should be checked during the field survey. As vegetative cover can change, the memo should include meta data on the date of the vegetative cover information used for the GIS analysis.

In addition to the refined APE boundary, a memo outlining cursory background research and methodology; a table of identified properties and recommendations for further survey; and supporting mapping and photographs should be provided as part of the reconnaissance level survey.

### Memo

The memo should provide the methodology for refining the APE boundary and outline the background research and field survey methods. The refined APE should be described and justified through mapping and photographs.

It is necessary to conduct sufficient background research to determine the nature and extent of previously identified historic resources within the boundary. At a minimum, background research should consist of:

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<sup>2</sup> Solar arrays are different from rooftop solar systems and commercial solar power systems that provide power to individual homes or businesses.

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- an examination of Pennsylvania's online resource database, PA-SHARE for previously identified resources;
- if the APE includes agricultural properties, an examination of the [Pennsylvania Agricultural Survey](#) and its updates to determine what types of properties can be anticipated within the APE; and
- a comparison of historic and current aerial mapping to document changes to the landscape and the potential for a historic agricultural district. If agricultural properties, such as farms and historic agricultural districts are identified in the refined APE, they should be included in the recommendations for future survey.

A statement explaining when field work was conducted and any limitations in property access should be included.

### Table of Properties in Refined APE and Survey Recommendations

A table of 45-year-old properties in the APE should summarize the results of background research and field work and outline recommendations for future work. The table should include resource number, name of property, address, date of construction, previous survey documentation (including determinations of eligibility), recommendations for future survey work, and at least one photograph of the identified resources.

Recommendations for future survey efforts should be based on the potential of the project to affect the significance or integrity of identified property types. If the resource is a farm, the recommendations section should note the function and age of the buildings that remain. The age of buildings can be determined from an examination of historic aeras. This will help the submitter to indicate if the farm retains the basic registration requirements to qualify for eligibility as a farm or farmstead within the relevant agricultural region, as illustrated in the [Agricultural Property Assessment Worksheet](#). If historic agricultural districts are identified in the refined APE, they should be included in the recommendations for future survey.

### Mapping and Illustration

Mapping and illustrations should support the refined APE and recommendations for further survey. They should be of high quality and in color, of readable scale, and should include sources and dates. As a minimum, the following should be included to convey the project's potential to affect historic properties:

- Aerial mapping of the refined APE, showing the location of the proposed above-ground features including but not limited to proposed towers or solar arrays;
- Aerial mapping with all 45-year-old resources within the refined APE labeled, showing the tax parcel boundaries and relationship of the resources to the project. Resources on the mapping should be labeled to correspond to the associated table;
- Additional photographs of previously identified resources;



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- Photographs of the APE showing viewsheds to and from National Register listed and eligible resources and those areas where changes in the landscape will occur (tree cutting, access roads, etc.); and
- Illustrations of the type, size, and scale of proposed above ground features.

Additional illustrations outlining changes to the landscape, such as historic and current aerial mapping comparisons, may also be included. The reconnaissance level survey memo and supporting materials should be submitted in PA-SHARE as a single pdf attachment. The refined APE can also be provided as a shapefile.

## Evaluation of Historic Properties

The PA SHPO above ground reviewer will examine the reconnaissance-level information provided in PA-SHARE. For those properties whose potential significance and integrity could be affected by the planned project, evaluation-level documentation will be requested via a PA-SHARE More Information Request to assess National Register eligibility. For large-scale surveys (10 or more resources), above ground review staff may request a Survey Proposal to allow for use of the PA SHPO's Surveyor application.

Required information for evaluation-level documentation includes site plan with buildings and features and photo locations labeled, historic and current aerial comparison, narrative that includes physical description, property history, and National Register eligibility evaluation, and additional photographs of the resource with captions. This information can be compiled into a single pdf document and attached to the resource in PA-SHARE in response to the More Information Request that will be generated from PA-SHARE.

The <https://www.pa.gov/agriculture/> and its updates should be consulted in the assessment of eligibility of agricultural properties. Additional attachments for evaluation-level documentation for a farm include the appropriate agricultural assessment worksheet and agricultural census data presented in chart form as detailed here:

<https://www.pa.gov/agriculture/about-us/resources/assessing-agricultural-properties-for-national-register-eligibility/>

The documentation should also include a discussion of those landscape features or viewsheds that are critical to the ability of a property to convey its historic significance.

## Assessment of Effect

For those resources identified as eligible for listing in the National Register, either previously or as part of the evaluation-level information submitted for the project, the effect of the project should be assessed. The assessment of effect documentation should be provided in PA-SHARE in response to a SHPO More Information Request for an effect assessment. If it is determined in consultation with PA SHPO that the proposed project will significantly and negatively impact a historic property, the agency should first propose measures for avoiding or minimizing the effect. Avoidance of adverse effects on historic properties is the recommended course of action for projects.



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In assessing the potential effects of a project on historic properties, the criteria for significance and the aspects of integrity are factors that require evaluation. Assessments of effect should present the following information:

- Detailed project description.
- Property's historic significance. It is necessary to understand the property's historic significance and integrity in order to evaluate the project's effects on the property's eligibility for listing in the National Register. The focus of the analysis should be consideration of setting.
- Brief physical description of the property with a focus on natural topography, setting, and man-made or natural features that enhance a historic property's significance and integrity. This should also include a discussion of the nature and quality of the view to and from the historic property. For example, specific viewsheds that enable the property to convey its significance should be noted.
- Assessment of physical effects. This assessment should focus on how the project will affect those physical features that convey the significance and integrity of the historic property.
- Assessment of visual effects. The historic property's relationship to its setting, which may include surrounding features and open space, should be taken into account. This includes the view from the historic property as well as the view toward a historic property.

Findings of effect should be justified through relevant illustrations, all of high quality and in color, with triangulation at a scale that is readable and source data identified:

- For each identified historic property, aerial photographs showing the boundaries of the property, location of primary and secondary resources, and landscape features should be provided. The aerial photograph should also show the location and direction of ground photographs. A definition of line of site and distance from the resource to the project. The date of the aerial photograph should be noted.
- Photographs should include views from the entire property, including secondary resources and historic landscape features, not just the primary resource. Panoramic photographs or photograph montages are especially useful to visual analysis.
- Plans of proposed and existing (if applicable) designs, including illustrations of the type, size, and scale of proposed above ground features.

### Minimization Measures

If visual effects to historic properties cannot be avoided, then it is necessary to consult with the PA SHPO and other consulting parties, as applicable, to minimize adverse effects through changes to the project's location,



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scale, or design. Recommended measures for minimizing visual effects are addressed below, including specific recommendations for cell towers, wind farms, power lines, and solar arrays.<sup>2</sup>

### General

- Site facilities outside of sensitive viewsheds or as far as possible from sensitive viewing locations as possible.
- Site facilities in previously developed landscapes.
- Use landforms, vegetation, or architectural screening.
- Color treat structures to reduce contrast with existing landscape.
- Preserve existing vegetation.
- Re-vegetate using native plants.

### Cell Towers

- Use of camouflage and/or disguise strategies in highly sensitive viewsheds.
- Collocation of towers on existing structures or buildings when the effect to historic properties will be lessened.

### Wind Turbines

- Consider topography when siting wind turbines.
- Cluster or group to break up overly long lines of turbines.

### Transmission Lines

- Improvements to tower design to minimize visual effects.
- Removal of redundant poles.
- Burying lines underground.

### Solar Arrays

- Screening solar collectors to avoid off-site glare through the use of vegetative buffers and other less visually obtrusive means.

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<sup>2</sup> The measures for minimizing visual effects outlined in this document are taken from the Visual Mitigation Measures Checklist included in the National Park Service's, [Guide to Evaluating Visual Impacts for Pennsylvania](#), National Resource Report (NPS/ARJ/NRR-2014/835).

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- Avoiding complete removal of vegetation around solar collectors.
- Locate and operate solar collectors to avoid off-site glare.
- Use color-treated solar collectors and support structures.

### Adverse Visual Effects

In general, a project can be considered to have an adverse visual effect to a historic property if it diminishes the integrity of the resource to the point that it can no longer convey its historic significance— examples of potential adverse effects include:

- Introduction of a visual element that is incompatible, out of scale, detracts, or is out of character with the setting of a property or district.
- Elimination of open space or a scenic view that is critical to the ability of a property to convey its historic significance.
- Elimination of a sufficient number of small-scale features (fence rows, tree lines, field patterns, etc.) that a property can no longer convey its historic use and significance.
- Blocking or intruding on a scenic view or blocking the view from one historic property to another.

If adverse effects cannot be avoided or minimized, then it may be necessary to mitigate or compensate for the loss of integrity, also in consultation with the PA SHPO and other consulting parties.

Projects subject to Section 106 of the National Historic Preservation Act review require execution of a Memorandum of Agreement by the Federal agency, PA SHPO, the project applicant, and any consulting parties in order to address the adverse effect of the project.



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### Appendix A Preferred Memo Template

#### Introduction

Memos for projects with the potential for visual effects should be brief, concise, and specific. While the length of the memo will be dictated by the nature of the project, size of the Area of Potential Effect (APE), and resources within the APE, every effort should be made to keep the memo as straightforward as possible while still providing adequate information for PA SHPO to complete a review.

PA SHPO has developed the following template for potential visual effects memos that captures the required information in the preferred format. The suggested length of each section is a guideline. Examples of a historic resources table and graphics to illustrate the memo are also provided.

#### Suggested Table of Contents

The following sections should be included in the potential visual effects memo and in this order. Please note specific instructions have been included for each section.

#### Cover Page

- Include the following:
  - Memo title
  - Project name
  - Project municipality and county
  - PA SHARP Project Number
  - Memo authors
  - Applicant/Client
  - Date

#### Table of Contents & List of Figures and Tables

- Both lists should fit on one page.

#### Introduction

- The introduction should be no more than half a page.
- Include:
  - name of project
  - name of applicant
  - specific undertaking triggering review
  - applicable legislation

#### Project Description

- The project description should be no longer than 1 page.
- Use maps and refer to supplemental materials about the Above Ground features being proposed rather than an extensive narrative.
- Include:



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- brief discussion of project being proposed, specifically what it is and why it is being proposed
- potential for visual effects
- size of project area
- project limits of disturbance.

### Summary of Findings & Recommendations

- Summary should be no longer than 1 page
- Include:
  - Brief characterization of project area
  - Size of APE
  - Number of properties in APE 45 years old or older
  - Characterization of landscape and types of 45-year-old resources in APE
  - Recommendations for future work.

### Project Location/Area of Potential Effect

- Location and APE discussion should be no longer than 1-2 pages of text.
- Use maps and photographs rather than an extensive narrative to describe project location, initial APE and refined APE.
- Include:
  - how the APE was developed.
  - subsection for Initial APE
    - Note size and distance from project area
    - Number of previously-identified historic properties within initial APE.
  - subsection for Refined APE
    - Note changes to initial APE after GIS-based modeling
    - Number of previously-identified historic properties within refined APE.
  - graphics
    - refer to and follow guidelines outlined in the [Mapping and Illustrations](#) and [Assessment of Effect](#) sections of the Guidelines for Projects with Potential Visual Effects when creating graphics.

### Methodology

- Methodology should be no longer than 1 page.
- Include:
  - Purpose of research and survey
  - Brief overview of steps in research and survey process
  - General types of sources consulted
  - Type of survey conducted
  - Criteria for inclusion in survey

### History & Context

- History and context section should be no longer than 2-3 pages of text, depending on size of the APE, the area's developmental history, and the nature of the properties within the APE.
- Include:





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- o Resource name and address: If property does not have a name, use owner's last name and use mailing address.
- o Resource description: Brief statement that identifies all above ground buildings, structures, and objects by name, date of construction, and use. Note landscape characteristics and features.
- o Impacts: Note if impact exists. If impact is noted, identify what is affected, and how it would be affected.
- o Recommendation: Note if potentially eligible or not eligible and why. If potentially eligible, note what type of further documentation is appropriate. Note previous determinations by PA SHPO as shown in PA-SHARE.
- o For resources with multiple buildings, like farms, more than one photograph should be included so all buildings, structures, objects, landscape, and landscape feature are documented.

### References

- References section should be no longer than 2 pages.
- Include specific contexts consulted to develop history and context statement.

### Appendices

- Use appendices to include specific information about the project's proposed above ground features, such as utility poles, cell phone towers, wind turbines, transmission lines, and solar arrays.
- Include:
  - o product cut sheets or specifications
  - o detail map showing exact location and dimensions for each above ground feature proposed and number of above ground features proposed
    - refer to and follow guidelines outlined in the [Mapping and Illustration](#) and [Assessment of Effect](#) sections of the Guidelines for Projects with Potential Visual Effects when creating graphics.
  - o photographs of above ground feature in situ on a similar landscape
  - o photographs of viewshed looking toward installation



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[Appendix B: Preferred Recommendations Table Example and Template](#)



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Example: Properties in APE & Recommendations Table

| Resource #<br>Map Key #            | Name<br>Address                                     | Municipality<br>County  | Description   | Impacts<br>Preliminary Assessment<br>of Effects   | Recommended Status<br>Further Documentation<br>Justification  | Photo  |
|------------------------------------|---|---|---|---|---|--|
| Newly-<br>identified<br>Building 1 | Abram Farm,<br>870 York Road,<br>Wynona PA          | South<br>Huntingdon<br>Township,<br>Westmoreland<br>County                | Contains an 1870<br>house, 1900 ground<br>barn with 1920<br>milking house, two<br>1920 silos, a 1940<br>drive through corn<br>crib and 1960 machine<br>shed, and two or more<br>other landscape<br>features including a<br>10-acre orchard. | Pipeline ROW goes<br>through the historic<br>orchard, and the ROW<br>will be within 50 feet of<br>barn and drive through<br>corn crib. Potential for<br>effects due to loss of<br>significant landscape<br>feature and ROW<br>location. | Potentially Eligible<br><br>Full HRSP<br><br>The property needs the<br>agricultural<br>context/property<br>registration requirements<br>for the periods 1900-1950 | <br>    |
| 2000RC12345                        | Potter Lane,<br>863 Fern Lane<br>Road, Wynona<br>PA | South<br>Huntingdon<br>Township,<br>Westmoreland<br>County<br><br>MP 46.2 | Contains a c.1800<br>house and summer<br>kitchen, and 1925<br>chicken house. The<br>1900 bank barn<br>burned down in 2005<br>and was replaced with<br>a pole barn in 2006.  | None, no impact to<br>resource due to HDD<br>barn.  | No Potential Effect<br><br>No further documentation   | <br> |