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**May 27, 2026**

U.S. Department of Justice  
Bureau of Prisons  
ATTN: Kimberly Hudson, Site Selection Specialist & Justin Thorton, Chief, Facility  
Management Division  
320 First St., NW  
Washington, DC 20534

**RE: Demand Letter Concerning the Bureau of Prisons Proposed Prison  
Project in Letcher County, Kentucky**  
Rescind the Record of Decision  
Supplement the Environmental Impact Statement  
Reopen the Public Comment Period

Dear Ms. Hudson:

Please accept the following demand letter from the Abolitionist Law Center (“ALC”), Concerned Letcher Countians (“CLC”), Dream.org, Forward Justice (“FJ”), Kentucky Resource Council, Inc. (“KRC”), the Institute to End Mass Incarceration (“IEMI”), Voice of the Experienced (“VOTE”), and the United Keetoowah Band of Cherokee Indians in Oklahoma (“UKB”) concerning the Bureau of Prisons (“BOP”) deficient environmental review process as mandated by federal law under the National Environmental Policy Act (“NEPA”). As explained below, the BOP must rescind its Record of Decision (“ROD”) with regards to the agency’s proposed development of a new Federal Correctional Institute (“FCI”) and Federal Prison Camp in Letcher County, Kentucky (hereinafter “FCI Letcher”). In turn, it is statutorily necessary for the BOP to 1) rescind the ROD; 2) re-open the environmental review process by issuing a draft supplemental environmental impact statement (“SDEIS”); and 3) conduct a new round of public hearings and comment periods for this SDEIS and any subsequent issuance of a supplemental final environmental impact statement (SFEIS).

Substantial changes in circumstances and new information now make the BOP’s 2024

FEIS analysis of FCI/FPC's Letcher adverse effects deficient. As the BOP remains bound by NEPA and its regulatory obligations in pursuit of this major federal action, the agency must account for these changes by undertaking a supplemental analysis to its previous environmental review. In short:

1. The United Keetoowah Band of Cherokee Indians in Oklahoma ("UKB"), a federally recognized Indian tribe, has contacted the BOP about its failure to notify and consult with the UKB as required under the NHPA;<sup>1</sup> to date, the BOP has failed to respond to the UKBs letter and request to be notified and consulted as a cooperating agency during the NEPA and NHPA process.
2. New landowners at the proposed Roxana site intend to use their land for purposes other than a prison, precisely analogous to the change of circumstances that led the BOP to prepare an SEIS in 2017.
3. The BOP may have violated the Anti-Deficiency Act by relying on the voluntary services of a private nonprofit group in connection with both iterations of the proposed federal prison at Roxana.
4. New acoustic analysis demonstrates that multiple species of endangered or threatened bats are present on and around the Roxana site, contradicting the outdated Biological Opinion on which the BOP's EIS relies.
5. New expert mine engineering analysis highlights the risk of worsened flooding, subsidence, and methane migration from construction at the Roxana site.

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<sup>1</sup> See Exhibit A, Letter from UKB to BOP (Oct. 15, 2024) (on file with undersigned).

6. After historic and deadly flooding in 2022, Letcher County has continued to experience devastating flooding and mudslides throughout 2025, highlighting BOP's deficiencies in its analysis of flood risk and its "Adverse Weather Plan."
7. Hospitals throughout Letcher County, and Eastern Kentucky more broadly, are at extreme risk of closure and a local Letcher County emergency medical service has already shuttered, altering the BOP's analysis of existing conditions and expected impact on local medical services.
8. Cuts to the National Weather Service and National Oceanic and Atmospheric Administration will impact Eastern Kentucky's access to timely and accurate weather forecasting, increasing the risk of devastating impacts from extreme weather events.

ALC is a non-profit organization that advocates on behalf of people held in U.S. prisons and jails. As an advocate for incarcerated people, ALC is concerned about the environmental impacts of prisons – both the impacts felt by incarcerated people themselves, as well as the impacts on the "external" social, economic and ecological environments.

CLC is a membership based non-profit group of citizens centered in Letcher County, working to protect the future of the county, particularly for youth. CLC wants them to have a place to live, thrive, work, enjoy and be safe. They seek a sustainable community that provides education, healthcare, senior care, and environmental growth and protection and supports initiatives like the Appalachian Rekindling Project's efforts to reintroduce bison to Letcher County. None of these goals includes a federal prison.

Dream.Org is a national nonprofit organization working to close prison doors and open doors of opportunity in the advocacy, tech and climate sectors. Dream.org uses a common ground approach to bring together unlikely allies to make the American dream a reality – for everyone.

Dream.org envisions a world where we eradicate the harmful impacts of prisons, poverty, pollution and polarization. Dream.org opposes the construction of the new \$505 million prison in Letcher County, Kentucky - on top of a contaminated former coal mine.

FJ is a nonpartisan law, policy, and strategy center dedicated to advancing racial, social, and economic justice in the U.S. South. The organization includes organizers, lawyers, creatives, strategists and directly impacted people. FJ works to challenge and change laws, policies, systems, and practices that harm the most vulnerable in our society and keep us from full liberation.

IEMI is an organization dedicated to challenging the root causes of mass incarceration and the promotion of new approaches to dealing with harm and safety in our communities. Engaging alongside and in support of community-led movements, IEMI's work examines the harmful impacts of carceral infrastructure projects across myriad communities, including those where prisons are built and those whose members are sent to be incarcerated in them.

KRC is a statewide public-interest environmental law and advocacy organization. It works to protect Kentucky's natural resources, promote policies for healthy communities, and assure that those who pollute Kentucky's land, air or water are held to account. KRC's members and constituents live and work in areas potentially impacted by BOP's proposed project and its impacts.

VOTE is a non-profit membership-based organization based in Louisiana, a state with one of the highest incarceration rates in the United States. VOTE is an organization founded and led by formerly incarcerated individuals working to change the system of mass incarceration. Through grassroots organizing and education, VOTE works to restore the voting rights of the formerly incarcerated, advocates for improved health care and conditions inside of correctional facilities, and supports the employment and housing rights of the formerly incarcerated. Building a facility

in this specific remote location will adversely harm our members who will be forced to live at this former coal mine, hundreds (if not thousands) of miles away from their support systems.

The UKB is a federally recognized Indian tribe headquartered in Tahlequah, Oklahoma, whose aboriginal homeland includes Eastern Kentucky. The UKB must be notified and consulted with on any federal projects in its homelands, along with the other two federally recognized Cherokee tribes. The UKB's consultation right is separate and apart from the consideration of the merits of any proposed project.

Detailed below are ALC, CLC, Dream.Org, IEMI, KRC, VOTE, FJ, and the UKB's detailed concerns as to why the BOP must 1) rescind the ROD; 2) reopen the environmental review process by issuing a draft supplemental environmental impact statement ("SDEIS"); and 3) conduct a new round of public hearings and comment periods for this SDEIS and any subsequent issuance of a supplemental final environmental impact statement (SFEIS).

The undersigned demands that BOP take appropriate action within thirty (30) days of receipt of this letter. If the BOP chooses not to rescind the ROD, the undersigned organizations demand that within thirty (30) days of receipt of this letter, that the Agency provide written reasons supporting its decision.

#### **I. LEGAL STANDARD GOVERNING SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENTS**

The Department of Justice (DOJ)'s implementing regulations for National Environmental Policy Act (NEPA) require the DOJ and its subagencies to "supplement the environmental document to include analysis of the additional alternatives ... if it is desirable to consider substantially different alternatives."<sup>2</sup> NEPA implementing regulations specific to the Bureau of

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<sup>2</sup> 28 CFR §61.6(c).

Prisons require the BOP to prepare a supplement to Draft or Final Environmental Impact Statements whenever “necessary.”<sup>3</sup>

Under the regulations in effect at the time that the FCI/FPC Letcher Record of Decision was signed on October 28, 2024,<sup>4</sup> federal agencies were mandated to issue supplemental environmental impact statements whenever

- (i) “the agency makes substantial changes to the proposed action that are relevant to environmental concerns,” or
- (ii) “there are substantial new circumstances or information about the significance of adverse effects that bear on the analysis.”<sup>5</sup>

Federal agencies “may also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.”<sup>6</sup>

The Supreme Court has interpreted the statutory text of NEPA consistent with this regulatory standard. “NEPA does require that agencies take a ‘hard look’ at the environmental

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<sup>3</sup> 28 CFR Appendix A, Pt. 6 (*citing* 40 CFR § 1502.9).

<sup>4</sup> While Council on Environmental Quality (CEQ) implementing regulations for NEPA at 40 CFR § 1500 *et seq.* have subsequently been rescinded, the interim final rule rescinding such regulations was clear that “[a]fter this action, agencies will remain free to use or amend those procedures, and agencies should, in defending actions they have taken, continue to rely on the version of CEQ’s regulations that was in effect at the time that the agency action under challenge was completed. Thus, removing CEQ’s regulations does not constitute a retroactive change in agencies’ practices or an alteration of the public or project sponsors’ engagement under NEPA with respect to those agency actions.” 90 Fed. Reg. 10610, 10614 (Feb. 25, 2025).

<sup>5</sup> 40 CFR 1502.9(d)(1), 89 Fed. Reg. 35564 (May 1, 2024).

<sup>6</sup> *Id.* at 1502.9(d)(2). These standards are substantially identical to the 1978 version of CEQ regulations operative when the DOJ/BOP promulgated their NEPA implementing regulations in 1981. For original publication of operative DOJ/BOP NEPA implementing regulations, *see* 46 Fed. Reg. 7953 (Jan. 26, 1981). For substantive standards, *compare* 40 CFR 1502.9(d), 89 Fed. Reg. 35442, 35564 (May 1, 2024) (above) *with* 40 CFR 1502.9(c), 43 Fed. Reg. 55978, 55995 (Nov. 29, 1978) (Agencies “shall” prepare supplements if “(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts,” and an agency “may also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so”). While sections were reorganized, the language on supplementation in the 1978 version of § 1502.9 was unchanged by intervening revisions in 2020. *See* 40 CFR 1502.9(d), 85 Fed. Reg. 43304, 43365 (July 16, 2020). For authority on the incorporation of then-existing CEQ regulations into agency-specific NEPA regulations, *see Marin Audubon Soc’y v. Fed. Aviation Admin.*, 121 F.4th 902, 914-15 (D.C. Cir. 2024).

effects of their planned action, even after a proposal has received initial approval,” so federal agencies must prepare a supplemental EIS “if there remains major Federal action to occur, and if the new information is sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered.”<sup>7</sup>

## **II. THE BOP FAILED TO PROPERLY NOTIFY AND CONSULT WITH THE UNITED KEETOOWAH BAND AS REQUIRED UNDER NEPA AND NHPA**

NEPA and the National Historic Preservation Act (“NHPA”) mandate consultation with Native American Tribes impacted by proposed federal actions.

The NHPA is largely implemented through Section 106. In full, Section 106 provides:

[t]he head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, shall take into account the effect of the undertaking on any historic property. The head of the Federal agency shall afford the [ACHP] a reasonable opportunity to comment with regard to the undertaking.<sup>8</sup>

Section 106’s implementing regulations set out a robust Tribal consultation process under NHPA. These regulations require federal agencies to provide Indian Tribes “a reasonable opportunity to identify [their] concerns about historic properties, advise on the identification and evaluation of historic properties, . . . articulate [their] views on the undertaking’s effects on such properties, and participate in the resolution of adverse effects.”<sup>9</sup> In fact, these regulations explicitly codify federal agencies’ obligations that mandate consultation with Native American Tribes at

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<sup>7</sup> *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 374 (1989) (cleaned up); *see also Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55 (2004).

<sup>8</sup> 54 U.S.C. § 306108.

<sup>9</sup> 36 C.F.R. § 800.2(c)(2)(ii)(A).

each of the following steps in the § 106 process: a) in identifying historic properties;<sup>10</sup> b) in evaluating the National Register eligibility of historic properties;<sup>11</sup> c) in assessing potential effects;<sup>12</sup> and d) in resolving adverse effects.<sup>13</sup>

Specifically, federal agencies must consult with “any Indian tribes . . . that might attach religious and cultural significance to historic properties”<sup>14</sup> “that may be affected by an undertaking.”<sup>15</sup> The requirement to consult with Indian Tribes “applies regardless of the location of the historic property.”<sup>16</sup> Further, it is the federal agency’s responsibility to “make a reasonable and good faith effort to identify any Indian tribes . . . that might attach religious and cultural significance to historic properties,” and consultation should commence “early in the planning process.”<sup>17</sup>

In light of these regulations, federal courts will vacate an agency’s Record of Decision (ROD) if it fails to properly notify and consult with Native American Tribes as required under NHPA.<sup>18</sup> Furthermore, when agencies violate NHPA’s notice and consultation requirements they “violate[] their minimum fiduciary duty to [Indian Tribes.]”<sup>19</sup>

As well, a federal circuit recently stated that “[i]n light of the substantial overlap between the NHPA and NEPA inquiries, an EIS ‘should include consideration of the . . . likely effects on

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<sup>10</sup> *Id.* § 800.4(b).

<sup>11</sup> *Id.* § 800.4(c)(1).

<sup>12</sup> *Id.* § 800.5(a).

<sup>13</sup> *Id.* § 800.6(a).

<sup>14</sup> *Id.* § 800.3(f)(2).

<sup>15</sup> *Id.* § 800.2(c)(2)(ii) .

<sup>16</sup> *Id.*

<sup>17</sup> 36 C.F.R. § 800.2(c)(2)(ii)(A).

<sup>18</sup> *See Pit River Tribe v. BLM*, No. 2:02-CV-1314 JAM-JFM, 2008 U.S. Dist. LEXIS 105798 \*8 (E.D. Cal. Dec. 22, 2008) (ordering that the federal agencies vacate their ROD due to their failure to properly consult with Native American Tribes).

<sup>19</sup> *Pit River Tribe v. United States Forest Service*, 469 F.3d 768, 788 (9th Cir. 2006).

historic properties.”<sup>20</sup> In turn, parties consulting under NHPA should also be involved “during NEPA scoping, environmental analysis, and the preparation of NEPA documents,”<sup>21</sup> and should have the opportunity to assist in developing “alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects of the undertaking on histories properties.”<sup>22</sup>

NEPA and interpreting court decisions are unambiguous: NHPA consulting parties shall be involved “during NEPA scoping, environmental analysis, and the preparation of NEPA documents,”<sup>23</sup> and should have the opportunity to assist in developing “alternatives and proposed measures that might avoid, minimize, or mitigate any adverse effects of the undertaking on histories properties.”<sup>24</sup> BOP is obligated to consider the FCI/FPC Letcher project’s impact on Tribal Nations and invite impacted Tribes to act as consultants during the EIS process. Unfortunately, BOP has failed to meet its legal obligation.

The Distribution Lists for both the DEIS and the FEIS include the Cherokee Nation and the Eastern Band of Cherokee Indians, but omit the United Keetoowah Band of Cherokee Indians in Oklahoma from outreach efforts.<sup>25</sup> This is an egregious oversight. It is arbitrary and capricious to include two of three federally-recognized Cherokee Tribes without providing any rationale for excluding the United Keetoowah Band of Cherokee Indians in Oklahoma.<sup>26</sup>

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<sup>20</sup> *Oglala Sioux Tribe v. U.S. NRC*, 4 F.4th 291, 297 (D.C. Cir. 2022) (quoting 36 C.F.R. § 800.8(a)(1)).

<sup>21</sup> 36 C.F.R. § 800.8(c)(1)(iii).

<sup>22</sup> 36 C.F.R. § 800.8(1)(v).

<sup>23</sup> 36 C.F.R. § 800.8(1)(iii).

<sup>24</sup> 36 C.F.R. § 800.8(1)(v).

<sup>25</sup> DEIS p. 154-55; FEIS p.156.

<sup>26</sup> The undersigned organizations first made the BOP aware of this omission in their August 7, 2024 comment letter on the BOP’s FEIS. This comment raised that the proposed site was part of the ancestral land of seven Native American Tribes: the United Keetoowah Band of Cherokee Indians Tribe, the Shawnee Tribe, the Absentee-Shawnee Indians of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, the Kialegee Tribal Town, the Cherokee Nation and the Eastern Band Cherokee. These seven tribes had been notified of other projects in the immediate area, including a 2009 NEPA environmental assessment for the construction of a new cell tower in Whitesburg, Letcher County, Kentucky. Both the Shawnee Tribe and United Keetoowah Band of Cherokee Indians exercised their sovereign and statutory rights by electing to consult in the NEPA process for the cell tower project at that time. NEPA Assessment, Francis, Kendrick, & Francis, Oct. 20, 2009,

After the close of the BOP’s public comment period on its Final Environmental Impact Statement (FEIS), but before the publication of its Record of Decision (ROD), the United Keetoowah Band of Cherokee Indians in Oklahoma contacted the BOP about its failure to notify and consult with them as required under the NHPA.<sup>27</sup> See Exhibit A, attached. To date, the BOP has failed to respond to the UKB Tribe’s letter and request to be notified and consulted as a cooperating agency during the NEPA and NHPA process.

Although land at the proposed Roxana construction site is religiously and historically significant to the United Keetoowah Band of Cherokee Indians, the BOP failed to make a “reasonable and good faith effort” to identify Indian tribes that attach religious and cultural significance to the land at the proposed Roxana site.<sup>28</sup> While BOP states that it provided “Public Scoping Meeting information and other project-related announcements and material ... [to] Native American tribes...”,<sup>29</sup> the agency actually excluded at least four Tribes with ancestral ties to the site from its outreach efforts.

The BOP then failed to acknowledge direct communication from the United Keetoowah Band of Cherokee Indians objecting to their exclusion from the NEPA/NHPA process and exercising their rights to consultation. As the tribe wrote in its letter to BOP, “[t]he UKB has special expertise on Indigenous Knowledge, as specifically referenced in 40 C.F.R. § 1501.8(a). Additionally, UKB has environmental and archaeology expertise in environmental and cultural

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[http://psc.ky.gov/PSCSCF/2009%20cases%5C2009-00064%5C20091020\\_East\\_KY\\_Networks\\_NEPA\\_Assessment\\_of\\_Dry\\_Fork.PDF](http://psc.ky.gov/PSCSCF/2009%20cases%5C2009-00064%5C20091020_East_KY_Networks_NEPA_Assessment_of_Dry_Fork.PDF).

<sup>27</sup> See Exhibit A, Letter from UKB to BOP (Oct. 15, 2024) (on file with undersigned).

<sup>28</sup> 36 C.F.R. § 800.2(c)(2)(ii)(A).

<sup>29</sup> FEIS, p. 30.

matters which will inform your office in navigating NEPA and Section 106 process for the Proposed [FCI Letcher] Project.” See Exhibit A, attached. By excluding the UKB, the BOP’s ROD omits this valuable and legally necessary input.

Despite the undersigned’s comments and the UKB’s formal request for consultation, the BOP ignored its statutory obligations under NEPA and the NHPA when it published its ROD on October 28, 2024.<sup>30</sup> BOP is legally obligated to include Native Tribes with historical and religious ties to the land that will be adversely impacted by its proposed prison. It was the BOP’s responsibility to “make a reasonable and good faith effort to identify any Indian tribes ... that might attach religious and cultural significance to historic properties,” and consultation should have commenced “early in the planning process” that is now allegedly completed.<sup>31</sup>

Considering that the BOP now affirmatively knows that the UKB Tribe wants to consult on this project, the BOP must rescind its ROD and restart the NEPA review process in order to properly comply with the NHPA. See *Pit River Tribe v. BLM*, No. 2:02-CV-1314 JAM-JFM, 2008 U.S. Dist. LEXIS 105798 \*8 (E.D. Cal. Dec. 22, 2008) (ordering that the federal agencies vacate their ROD due to their failure to properly consult with Native American Tribes).

### **III. BOP MUST ACCOUNT FOR CHANGES IN LAND OWNERSHIP AND INTENDED USE**

Ownership arrangements at the Roxana site selected for the Letcher prison project have changed substantially since the BOP’s 2024 ROD.

The BOP has consistently cited landowner support as an important site selection criterion.<sup>32</sup> As stated in the BOP’s July 2025 FEIS, “[i]n addition to a site’s physical characteristics, the

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<sup>30</sup> See Record of Decision, <https://public-inspection.federalregister.gov/2024-24948.pdf> (Oct. 28, 2024).

<sup>31</sup> 36 C.F.R. § 800.2(c)(2)(ii)(A).

<sup>32</sup> See, e.g., BOP, Final Environmental Impact Statement, p.2-2 to 2-3 (July 2015); BOP, 2016 Revised Final EIS, p.2-2 to 2-3 (Mar. 2016); BOP, 2017 Final Supplemental Revised Final EIS, p. 2-3 (Sept. 2017); BOP, Final

interest and cooperation of property owners is another key factor in determining a site’s potential for development.”<sup>33</sup> Since the BOP released its Record of Decision (ROD) in October 2024, the Appalachian Rekindling Project (ARP) purchased 63 acres of land located within the footprint of the Roxana site.<sup>34</sup> ARP intends to restore the land under Indigenous stewardship, including reintroducing bison to the property.<sup>35</sup> The organization has already raised \$60,000 to install a fence to protect the bison herd,<sup>36</sup> conducted water quality tests and other evaluations of the property, and developed plans to care for an initial herd of four bison.<sup>37</sup> In addition to the anticipated environmental benefits of ARP’s plans for the land, the reintroduction of bison to Letcher County can increase eco-tourism<sup>38</sup> and support local production of bison meat, wool products, and more,<sup>39</sup> providing a local economic benefit.

ARP’s intended land use is incompatible with the BOP’s plan to build a prison on the same property. Building a prison at the Roxana site and preventing ARP from using the land as intended

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Environmental Impact Statement , p. 34 (July 2024) (“...owners of the sites should be supportive of correctional facility development.”).

<sup>33</sup> Bureau of Prisons, Final Environmental Impact Statement , p.36 (July 2024).

<sup>34</sup> See, e.g., Liam Niemeyer, “Indigenous group buys 63 acres in proposed prison site, offers different vision for E. KY land,” Kentucky Lantern (Jan. 23, 2025), available at: <https://kentuckylantern.com/2025/01/23/indigenous-group-buys-63-acres-in-proposed-prison-site-offers-different-vision-for-e-ky-land/> (accessed Aug. 21, 2025); Katie Myers, “Bison, not prison: Activists buy a prison site to rewild the land,” Grist (Feb. 3, 2025), available at: <https://grist.org/justice/bison-not-prison-activists-buy-a-prison-site-to-rewild-the-land/> (accessed Aug. 21, 2025).

<sup>35</sup> See, *id.* See also Appalachian Rekindling Project, “bison belong here,” available at <https://www.appalachianrekindlingproject.org/bisonbelonghere> (accessed Aug. 21, 2025); Appalachian Rekindling Project (@appalachian\_rekindling\_project), Instagram (Aug. 6, 2025), [https://www.instagram.com/p/DNBZG2Ag\\_8u/](https://www.instagram.com/p/DNBZG2Ag_8u/).

<sup>36</sup> See Appalachian Rekindling Project (@appalachian\_rekindling\_project), Instagram (Oct. 18, 2025), <https://www.instagram.com/p/DP9FC-iDepb/>.

<sup>37</sup> See Abby Hassler, “Home on the Range ... In Appalachia?” Appalachian Voices (Jan. 28, 2026), available at: <https://appvoices.org/2026/01/28/did-bison-live-in-appalachia/> (accessed Feb. 3, 2026).

<sup>38</sup> See Kentucky Life, *The Warrior’s Path: Footsteps Through Time* at 21:46 - 23:32 (KET, aired Nov. 8, 2025) <https://ket.org/program/kentucky-life/the-warriors-path-footsteps-through-time-e0w47l/> (naming the Appalachian Rekindling Project’s land restoration efforts as an example of using Indigenous history and land restoration to support local communities); Appalachian Wildlife Foundation, *Homepage*, <https://appwild.org/> (accessed Dec. 15, 2025) (describing the positive economic impacts of environmental protection and eco-tourism in Eastern Kentucky).

<sup>39</sup> See Abby Hassler, “Home on the Range ... In Appalachia?” Appalachian Voices (Jan. 28, 2026), available at: <https://appvoices.org/2026/01/28/did-bison-live-in-appalachia/> (accessed Feb. 3, 2026).

would also have new local environmental and economic effects that the BOP has not considered. Per the agency's own site selection criteria, the BOP must conduct an SEIS to evaluate how changes in landownership and intended use will affect its alternative site analysis and selection of the Roxana site.

In 2017, this commitment to landowner support resulted in the BOP changing the prison's entire site design and conducting a full SEIS after a landowner expressed opposition to selling his land. Specifically, in a public comment on the BOP's 2016 Revised Final EIS, this landowner stated his desire to keep his land and use it for other purposes.<sup>40</sup> In response, the BOP elected to remove two parcels from its land acquisition plan at the Roxana site.<sup>41</sup> The BOP explained that it "...withdrew one parcel because the landowner did not want to sell their property..."<sup>42</sup> The BOP further stated that "[this] property was not available for acquisition because the landowner did not want to sell their property."<sup>43</sup>

Importantly, the BOP determined that the removal of these two parcels necessitated a supplement to its previous FEIS because the agency needed to further evaluate how this reduction in site size would affect land use and zoning; topography, geology, and soils; air quality; noise; infrastructure and utilities; and cultural, water, and biological resources.<sup>44</sup>

The BOP properly responded in 2016 when it learned new information about landowner support – it considered alternative site plans and conducted an SEIS.<sup>45</sup> Today, a new landowner has acquired property at the Roxana site and has indicated an intention to use the land in ways that

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<sup>40</sup> See BOP, 2017 Final Supplemental Revised Final EIS, ES-i (2017).

<sup>41</sup> *Id.* at ES-i.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at ES-viii.

<sup>44</sup> *Id.* at ES-ii.

<sup>45</sup> In November 2016, the BOP released its Notice of Intent to Prepare a Supplemental Revised Final EIS. *Id.* at ES-v. Subsequently, the BOP released a Draft Supplemental Revised Final EIS in March 2017 and a Final Supplemental Revised Final EIS in September 2017. *Id.*

are incompatible with the BOP's prison construction plans. Consequently, now that the BOP is aware of similar circumstances to that in 2016, the agency must evaluate how these changes in land ownership and intended use impacts its evaluation of alternative locations and selection of the Roxana site. The BOP's site selection criteria require the agency to consider landowner support when selecting a construction site. As it has done in the past, the BOP must conduct an SEIS to reevaluate its land acquisition plans in light of new information about changes in landownership and conflicting intended land use.

#### **IV. THE BOP MAY HAVE VIOLATED THE ANTI-DEFICIENCY ACT**

In May 2026, CLC reported to the Department of Justice's Office of the Inspector General (DOJ OIG) a suspected Anti-Deficiency Act violation by BOP. *See* Exhibit B, attached. This complaint asks the DOJ OIG to investigate whether the BOP violated the Anti-Deficiency Act's bright-line rule requiring an advance written agreement before the acceptance of gratuitous services when they received services from the Letcher County Planning Commission (LCPC). In the complaint, CLC documents how LCPC performed essential project development tasks for the BOP, including assistance with site selection, community outreach, and planning processes for the FCI Letcher Project. The BOP apparently accepted these services without the required gratuitous service agreement.

Given reports of potential impropriety by BOP in preparing its EIS and issuing an ROD, BOP should review the complaint and any resulting findings and recommendations by the DOJ OIG. BOP should consider this new information about the agency's relationship to LCPC and the group's role in the NEPA process, especially areas where the BOP may have improperly relied on voluntary services from LCPC.

**V. NEW SURVEYS DEMONSTRATE THAT BIOLOGICAL ASSESSMENTS AND BIOLOGICAL OPINION RELIED ON BY THE BOP ARE DEFICIENT AND FATALLY FLAWED**

In 2024, undersigned pointed out in its comment that the BOP relied on an outdated 2017 Biological Opinion (BO) that predates the northern long-eared bat reclassification from threatened to endangered and does not account for newly available, site-specific survey data or current species-status information. Prior surveys found only habitat and no listed species living at the Roxana Site. However, a new survey now demonstrates that this premise is no longer supportable.

On January 30, 2026, Jonathan Hootman submitted a letter to the United States Fish & Wildlife Service.<sup>46</sup> *See* Exhibit C, attached. In this letter, Mr. Hootman outlines the results from a threatened and endangered bat acoustic survey that he conducted on the land where the BOP intends to build its new prison.<sup>47</sup> That survey recorded acoustic detections identified as Indiana bat, northern long-eared bat, tricolored bat, and gray bat.<sup>48</sup> He also identified a rock fissure and rock wall that meet the criteria for potential winter habitat for listed and proposed bat species, which had been overlooked by prior biological surveyors whose analyses were incorporated into the BOP's EIS.<sup>49</sup>

Now in direct contrast to the outdated biological analysis and assumptions that the BOP relied upon in the EIS, the agency has evidence that multiple listed bat species, as well as the proposed endangered tricolored bat, use the land at the prison site for foraging, roosting, commuting, and/or habit functions, and that the site contains previously overlooked habitat features relevant to winter use. This new information materially alters the assessment underlying

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<sup>46</sup> Report from Jonathan Hootman to United States Fish & Wildlife Service (sent Jan. 30, 2026), attached as Exhibit C.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

the BOP's ESA and NEPA analyses because the proposed action would involve land clearing, grading, blasting, excavation, lighting, noise, and vibration in an area now shown to support protected bat use and potential overwintering features. At a minimum, this new information reveals effects to listed species that may occur in a manner or to an extent not previously considered. The Fish and Wildlife Service had already "recommend[ed] that the USDOJ re-initiate consultation" with the Service pursuant to its NEPA review, in light of the proposed listing of the tricolored bat as endangered and because the scope of the FCI/FPC "differs greatly" from the USP project informing its prior Biological Opinion.<sup>50</sup> That recommendation is even more compelling now that site-specific survey data directly contradict the earlier assumption that the site contained only habitat and no listed bat species detections.

The Record of Decision must be rescinded because the biological analysis underlying it no longer reflects current site conditions or the best available information. The new acoustic survey and newly identified potential winter habitat directly undermine the prior premise that the Roxana site contained only habitat and no listed bat species use requiring further analysis. In light of this new information, the BOP must prepare a new or supplemental Biological Assessment and reinitiate consultation with the United States Fish and Wildlife Service as to the Indiana bat, northern long-eared bat, and gray bat, because the effects of this project on listed bat species may occur in a manner or to an extent not previously considered. The BOP must also, at minimum, confer with the Service regarding the proposed endangered tricolored bat. Because the FEIS and ROD rely on stale and materially incomplete bat analysis, the agency must supplement the EIS and reopen public comment before moving forward with the proposed prison project.

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<sup>50</sup> Letter from Virgil Lee Andrews, Jr., Field Supervisor, Fish and Wildlife Service Kentucky Field Office to Kimberly S. Hudson (Oct. 27, 2022), in Appendix B to FEIS, p. 27-28.

## **VI. NEW MINING ENGINEERING ANALYSIS DEMONSTRATES THE PRISON WOULD INCREASE FLOOD RISK AND POSES A RISK OF MINE SUBSIDENCE AND METHANE MIGRATION**

Comments to the BOP's environmental analysis of the proposed Roxana site have consistently raised concerns about the prison's location on a former mountaintop removal site with a significant history of coal mining. New expert analysis from mine safety and environmental investigation expert Jack Spadaro underscores several risks from construction on a site with such significant mining history that the BOP's environmental analysis fails to address. *See* Exhibit D, attached.

Mr. Spadaro has extensive qualifications in mining engineering, studying valley fill design and construction, surface mine drainage control, mine subsidence, and methane migration hazards from underground coal mining. He has studied numerous instances of severe flooding after valley fill construction and other adverse consequences from building on former mine sites. In formulating his expert opinions, Mr. Spadaro reviewed numerous materials from the EIS and appendices in addition to relevant literature and prior studies of construction on similar sites.

Mr. Spadaro concludes that the extensive excavation, earthwork, and grading work required for construction of a prison at Roxana would "cause substantial increases in the frequency and severity of flooding in the Roxana and downstream areas."<sup>51</sup> Mr. Spadaro cites to hydrologic studies of similar valley fill construction sites in Pike County, Kentucky and Mingo County, West Virginia finding significant increases in peak flows during heavy rainfall periods, as high as 250%-

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<sup>51</sup> Expert Report of Jack Spadaro, attached as Exhibit D. This analysis echoes the findings of a comment to the DEIS on stormwater runoff and flooding concerns by Dr. D. Scott Simonton, which was overlooked by the BOP in its preparation of the FEIS and raised again in Concerned Letcher Countians et al.'s comment to the FEIS prior to issuance of the ROD. Had the BOP not arbitrarily and capriciously failed to properly review, disclose, and incorporate substantive opposing viewpoints such as Dr. Simonton's, the implications of the proposed construction's impact on flood risk may have been analyzed more fully within the earlier EIS process. The mounting chorus of expert input on the flooding implications of the proposed construction certainly warrants supplemental review.

500%.<sup>52</sup> He finds that “the effects of erosion caused by the proposed construction of the prison facility will have long-term effects on the water quality of the North Fork of the Kentucky River.”<sup>53</sup> As described below, Letcher County has already experienced multiple severe floods in recent years causing loss of life, millions of dollars in property damage, and profound disruption to the community. The prison’s potential to materially increase the risk of devastating floods must be studied with care and prompt a reevaluation of the appropriateness of the Roxana site for extensive excavation and construction activity.

Mr. Spadaro also noted the documented presence of underground mines at the south end of the proposed site, and concludes that construction at this location “poses a risk of potential mine subsidence and possible methane migration to the surface areas and structures associated with the project.”<sup>54</sup> The 2024 FEIS relies principally on a 2016 geotechnical study by Cardno, Inc. for its review of “previous mining” at the Roxana site.<sup>55</sup> This geotechnical study concluded that “no documented underground mining has been conducted in the immediate vicinity of the Roxana site, based on Cardno’s review of publicly available documents.”<sup>56</sup> A subsequent USFWS Endangered Species Act Consultation conducted in 2017 found that “KMMIS data *did* show historical potential underground mines, and locations for potential connections to the surface were identified on the northern spur of the Roxana Impact Area and just outside the southern edge of the impact boundary.”<sup>57</sup> This finding of deep mining at the Roxana site was confirmed by an Environmental

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> 2024 FEIS at 45.

<sup>56</sup> 2024 FEIS Appendix F: Additional Geotechnical Study (2016) at 3.

<sup>57</sup> 2024 FEIS Appendix H: USFWS Endangered Species Act Consultation (2017), Desktop Analysis and Habitat Survey for the Indiana Bat (*Myotis sodalis*), Gray Bat (*Myotis grisescens*), and Northern Long-eared Bat (*Myotis septentrionalis*) at Two Sites for a Proposed Federal Correctional Facility Letcher County, Kentucky, at 6 (emphasis added).

Database Report conducted in 2023, which discovered at least two underground mines in the immediate vicinity of the proposed prison at Roxana: MSHA Mine ID 1516077, an underground bituminous coal mine operated by the Big Oak Coal Company, and MSHA Mine ID 1516000, an underground bituminous coal mine operated by Marie Enterprises, Inc.<sup>58</sup> WSP considered the location of these underground and additional surface mines at the proposed location to be an REC (Recognized Environmental Condition) due to the historical use of hazardous substances in mining and the potential for contamination from past mining operations.<sup>59</sup> WSP concluded that a “data gap” left it “unable to determine whether remedial action was taken at the REC locations.”<sup>60</sup>

Despite this confirmation of deep mines excluded from prior studies, the BOP appears to have conducted no additional due diligence to assess the risk of gaseous hazards to incarcerated people and BOP workers at the proposed Roxana Site. The risks of methane poisoning or explosions from building on abandoned underground coal mine land are exhaustively well-documented.<sup>61</sup> The BOP conducted no additional Phase II Environmental Site Assessment (ESA)

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<sup>58</sup> 2024 FEIS Appendix E: Phase I Environmental Site Assessment) at 81, 87.

<sup>59</sup> “Recognized Environmental Condition (REC) - (1) The presence of hazardous substances or petroleum products in, on, or at the subject property due to a release to the environment; (2) the likely presence of hazardous substances or petroleum products in, on, or at the subject property due to a release or likely release to the environment; or (3) the presence of hazardous substances or petroleum products in, on, or at the subject property under conditions that pose a material threat of a future release to the environment.” *Id.* at 6.

<sup>60</sup> *Id.* at 27.

<sup>61</sup> *See About Coal Mine Methane*, United States Environmental Protection Agency (March 11, 2025) (“Methane (CH<sub>4</sub>) emissions from coal mining and abandoned coal mines accounted for about 8% of total U.S. methane emissions in 2019... Closed or abandoned mines emit abandoned mine methane (AMM) from diffuse vents, ventilation pipes, boreholes, or fissures in the ground”), <https://www.epa.gov/cmop/about-coal-mine-methane#q4>; Ziemkiewicz et al., *Guidelines for the Design of Abandoned Mine Land Remediation and Water Treatment*, Army Corps of Engineers Environmental Restoration Development Center / West Virginia University National Mine Land Reclamation Center (2021) (Methane is a common risk at most coal mines ... found in coal seams... Methane can accumulate at mine shafts, slopes, drifts, and boreholes. Even boreholes into flooded mines have been known to produce methane. Methane should be assumed to be present until it is proven to be absent... Particularly hazardous locations are those places where a mine entry or borehole has been capped and work is to proceed adjacent to the cap or the cap is to be removed”) <https://wvri.wvu.edu/files/d/cab72499-a80a-45a6-bdd1-21f801041b34/guidelines-for-aml-remediation-manual-final-15-march-2021.pdf>; *Tackling Methane Emissions from Abandoned and Active Coal Mines*, World Bank Group (March 2, 2022) <https://www.worldbank.org/en/news/podcast/2022/03/02/tell-me-how-tackling-methane-emissions-from-abandoned-and-active-coal-mines>.

in preparation for its 2024 FEIS, which continues to cite to a 2016 Phase II ESA conducted before deep mines on the site were detected or confirmed.<sup>62</sup> The 2024 FEIS acknowledges methane as a greenhouse gas, but limits its analysis of gaseous hazards to fuel-powered equipment and fugitive dust in the construction process, ultimately concluding that “other than selection of energy-efficient equipment that meets applicable permitting and emission control standards, no mitigation measures are warranted” in the proposed FCI/FPC’s operation.<sup>63</sup> The FEIS acknowledges the history of deep mining under its analysis of “Hazardous Materials,” but inexplicably concludes that “no adverse impacts are anticipated” after focusing most of its analysis on petroleum byproducts in the site’s soil.<sup>64</sup>

The presence of underground mines at the proposed site also raises a significant risk of dangerous and costly subsidence once the proposed FCI/FPC is built. Subsidence hazards from new construction on abandoned mine land are also exhaustively well documented.<sup>65</sup> This hazard is also well-known to the BOP, which has expended tens of millions of dollars in ground stabilization work and repairs for USP Big Sandy, also constructed on a former coal mine site.<sup>66</sup> The BOP has already acknowledged that “additional geotechnical investigations” would be

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<sup>62</sup> This Phase II ESA focused on soil contamination by petroleum products at a compressor station nearby the site, detecting arsenic levels in the soil “well above the USEPA Regional Screening Level.” 2024 FEIS at 82; 2024 FEIS Appendix E: Phase I Environmental Site Assessment) at 26.

<sup>63</sup> 2024 FEIS at 129.

<sup>64</sup> 2024 FEIS at 81-84.

<sup>65</sup> Zhao et al., *Advances and Future Directions in Monitoring and Predicting Secondary Surface Subsidence in Abandoned Mines*, Remote Sensing (2025), <https://doi.org/10.3390/rs17030379>; Jeon et al., *Assessment of Subsidence Hazard in Abandoned Mine Area Using Strength Reduction Method*, 26 KSCE Journal of Civil Engineering 10 (Oct. 2022): 4338-4358, <https://doi.org/10.1007/s12205-022-2408-z>; Gennaro G. Marino, *Building Above Underground Coal Mines*, Structure Magazine (2025), <https://www.structuremag.org/article/building-above-underground-coal-mines/>

<sup>66</sup> Roger Alford, *Prison Becomes a Temporary Landmark: Kentucky Crews Work to Repair Leaning Tower*, Courier-Journal (Louisville, Kentucky, Aug. 2, 2022), <https://www.newspapers.com/image/362027958/>; *Federal Prison Has Own Version of Leaning Tower*, News-Press (Fort Myers, Florida, Aug. 4, 2002), <https://www.newspapers.com/image/217993128/>.

necessary during the design phase for the FCI/FPC,<sup>67</sup> described in a comment to the DEIS as an “extensive geotechnical boring program... to ensure that the structures and other features are developed on a solid rock foundation without any voids related to past mining.”<sup>68</sup> This is precisely the kind of environmental risk that NEPA is designed to incorporate *within*, not after, the environmental impact assessment process. Especially given recent closures due to desperately needed repair work at other BOP facilities,<sup>69</sup> the BOP cannot afford to gamble on a new prison site that would likely require expensive and extensive structural repairs. Mr. Spadaro’s new analysis of the risks posed by construction on this former mine land warrant further review through a supplemental EIS.

## VII. RECENT SEVERE FLOODING INDICATES INCREASED AND UNACCOUNTED FOR FLOOD RISKS

Eastern Kentucky experienced devastating floods in the summer of 2022. At least 37 people lost their lives, hundreds lost their homes, and 23,000 people lost electricity for extended periods of time.<sup>70</sup> Repeated severe flooding in the area since the BOP issued its ROD indicates that the 2022 floods were not an exceptional weather event, but a new normal for the region.<sup>71</sup>

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<sup>67</sup> 2024 FEIS at 96, 126.

<sup>68</sup> Response to Ashley Wilmes, April 15, 2024, ¶ O006-9, 2024 FEIS p.274.

<sup>69</sup> Michael R. Sisak, *BOP to close Calif. Prison due to failing concrete*, Correction 1 (Nov. 26, 2025), <https://www.corrections1.com/federal-prison/bop-to-close-calif-prison-due-to-failing-concrete>

<sup>70</sup> Sam Adams, *The Flood of 2022*, Whitesburg Mountain Eagle (Aug. 3, 2022), <https://www.themountaineagle.com/articles/the-flood-of-2022/#:~:text=Across%20eastern%20Kentucky%2C%2037%20people,County%2C%20where%207%2C000%20lost%20power.>

<sup>71</sup> “Letcher County ... was one of the hardest hit from the 2022 floods ... Hurricane Helene highlighted the devastation that flooding can have on rural communities, and underscores the new normal of flood risk in Appalachia.” Brendan Muckian-Bates, *Appalachian Flood Mitigation Roundup*, ReImagine Appalachia (Oct. 30, 2025), <https://reimagineappalachia.org/appalachian-flood-mitigation-roundup/>. Letcher County declared a state of emergency during Hurricane Helene in September 2024, weeks prior to issuance of the ROD. Killian Baarlaer, *Eastern Kentucky Bears the Brunt of Helene Storm Damage Friday. What to Know*, Louisville Courier Journal (Sep. 28, 2024), <https://www.courier-journal.com/story/weather/2024/09/28/helene-storm-remnants-cause-damage-across-kentucky/75427480007/>. Letcher County Water and Sewer District lost access to a pump station that supplied water to Pert Creek, just eleven miles from the Roxana site. Kevin Day, *Some Areas of Letcher County Lose Water After Power Outages*, WTCW (Sep. 30, 2024), <https://wtcwam.com/some-areas-of-letcher-county-lose-water-after-power-outage/>. Over 100 poles and 567 spans of wire supplying electric power went down, and numerous local schools closed

Given these changes in Letcher County flood patterns, one stated premise of the 2024 FEIS, that the “Roxana Site is not located in an area that is considered particularly vulnerable to climate change and associated weather or other physical impacts,”<sup>72</sup> is now patently untenable. A revised EIS is required to address these substantial risks and consider a broader range of alternatives.

In February of 2025, Letcher County was hit with yet another devastating flood. Letcher County received nearly four inches of rainfall over two days.<sup>73</sup> President Trump declared an emergency and deployed the Department of Homeland Security, Federal Emergency Management Agency (FEMA) in response to the flood, citing “emergency conditions resulting from severe storms, straight-line winds, flooding, and landslides beginning on February 14, 2025, and continuing.”<sup>74</sup> Locals reported road closures at the intersection of Hwy. 160 and Hwy. 588 – a key access point just 3 miles from the proposed Roxana site. *See* Exhibit E, attached, at 1-2. In Fleming-Neon, 21 miles from the Roxana site, the heavy rainfall caused a massive mudslide where

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due to road damage and power outages. Kevin Day, *KY Power: 80% of Power Restored After Helene*, WXXQ (Sep. 30, 2024), <https://1039thebulldog.com/ky-power-80-of-power-restored-after-helene/>. According to First Street, “Letcher County has extreme risk from flooding. There are 6,749 properties in Letcher County that have risk of flooding over the next 30 years. This represents 52.1% of all properties in Letcher County.” *Does Letcher County have Flood Risk?* First Street (2025), [https://firststreet.org/county/letcher-county-ky/21133\\_fsid/flood](https://firststreet.org/county/letcher-county-ky/21133_fsid/flood). Letcher County is one of six eastern Kentucky counties included in an October 2025 program from the state of Kentucky to “buy out properties from willing and voluntary Kentuckians in flood-prone areas.” *Gov. Beshear: More Than \$118.2 Million Secured For Estimated 600 Kentucky Families Impacted by Flooding*, Office of the Governor (Oct. 15, 2025), <https://www.kentucky.gov/Pages/Activity-stream.aspx?n=GovernorBeshear&prId=2602>. *See also Climate Risk Assessment: Kentucky River Area Development District*, Woodwell Climate Research Center (June 24, 2024) (“flood risk is project to increase in KRADD [Kentucky River Area Development District]. The probability of the present-day 100-year rainfall event, a useful indicator of flood risk, is expected to be five times greater by midcentury and ten times greater by the end of the century... The primary flood risk in KRADD is riverine flooding. Major riverine flooding is associated with the North Fork Kentucky River [which runs around the proposed prison at Roxana] ... flooding along the North Fork Kentucky River is quite extensive.”) <https://www.woodwellclimate.org/risk-assessment-kradd/>; Scott Utterback, *Eastern Kentucky is Recovering From Multiple Natural Disasters*, *Courier-Journal* (Dec. 28, 2025), <https://www.courier-journal.com/picture-gallery/news/local/2025/12/28/eastern-kentucky-recovering-from-multiple-natural-disasters/87687588007/>.

<sup>72</sup> 2024 FEIS at 130.

<sup>73</sup> Armando Barry, *High Spirits, Rising Water, and Cleanup Efforts in Letcher Co.*, WYMT (Feb. 16, 2025), <https://www.wyvt.com/2025/02/17/high-spirits-rising-water-cleanup-efforts-letcher-co/>.

<sup>74</sup> President Donald J. Trump Approves Kentucky Emergency Declaration, WHITEHOUSE.GOV, <https://www.whitehouse.gov/presidential-actions/2025/02/president-donald-j-trump-approves-kentucky-emergency-declaration/#:~:text=Trump%20declared%20that%20an%20emergency,14%2C%202025%2C%20and%20continuing> (last accessed Sept. 10, 2025).

portions of the hillside collapsed onto the adjacent road.<sup>75</sup> *Id.* at 3. Initial assessment of the February flooding’s damage to Letcher and surrounding counties was estimated at over \$30 million.<sup>76</sup> In August of 2025, portions of Hwy. 931 at Big Cowan, only 10 miles from Roxana, again flooded under heavy rain and became impassable.<sup>77</sup> These flood events since publication of the ROD provide valuable new information about the severity of Letcher County’s susceptibility to floods.

These additional floods in 2025 highlight the insufficiency of the FEIS and demonstrate the need for a revision that takes into account alternatives outside of Letcher County. Unaccounted for flood risk may be the starkest example of how the BOP’s prior alternatives analysis is woefully deficient without the alternative of renovating or replacing existing facilities.<sup>78</sup> [OBJ:OBJ]. A truly sufficient EIS would be able to compare the financial, social, public health and environmental costs of implementing these plans at Roxana to the benefits of a pre-existing site. An SEIS is therefore now required to compare new information about flood risk at the Roxana site with these lower risk alternatives.

## **VIII. LETCHER RESIDENTS ARE IN DANGER FROM LACK OF EMERGENCY WEATHER NOTIFICATION SERVICES**

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<sup>75</sup> Curadhan Powell, *AERIALS: Huge Hillside Collapses in Small Eastern Kentucky Town*, WLKY (Feb. 17, 2025), <https://www.wlky.com/article/kentucky-mudslide-video-letcher-county-fleming-neon/63821760>

<sup>76</sup> McKenna Horsley, *Eastern Kentucky Senators Say Floods Caused Multimillion-Dollar Damage in Their Counties*, Kentucky Lantern (Feb. 26, 2025), <https://kentuckylantern.com/2025/02/26/eastern-kentucky-senators-say-floods-caused-multimillion-dollar-damage-in-their-counties/>

<sup>77</sup> “Heavy Rain Has Lead to Flooding...”, 103.9 The Bulldog WXKQ Facebook post, <https://www.facebook.com/thebulldog1039/posts/pfbid02ZBaxWV5ZdtLbR615KvFVAULUcPvCkA3X3NHps5bcCjnuC7nHd3fMNzCx9Ekvc5QI>

<sup>78</sup> Multiple comments to the DEIS raised the BOP’s omission of substantive analysis regarding Letcher County’s high risk of flooding. In response to these comments, the FEIS added a paragraph addressing the potential for impeded “vehicle access” and declaring an intent to “prepare an Adverse Weather Plan and Institution Evacuation Plan.” FEIS, p. 59; Response to Emily Posner, et al., FEIS p. 247; Response to Artie Ann Bates, MD, FEIS p. 280; Response to Individual Comments Submitted by Everycustomaction.org, FEIS p. 381. As noted in CLC’s comment to the FEIS, this is a fundamentally insufficient response to an immense risk – especially given that the BOP’s plan to strip forested land and install impermeable surfaces is likely to enhance the recurrent flooding. CLC comment at 99-107.

The National Weather Service (NWS), which is housed within the National Oceanic and Atmospheric Administration (NOAA) agency, is responsible for forecasting tornadoes, floods, hurricanes, wildfires, blizzards, as well as weather affecting aviation, the planting and harvesting of crops, and other activities.<sup>79</sup> According to meteorological experts, recent cuts to NOAA's budget and staffing will lead to a loss of life and property in Kentucky.<sup>80</sup> These cuts occurred after the ROD was issued. As such, a SEIS is necessary to assess if the now understaffed and underfunded weather forecasting and warning services for Letcher County, Kentucky are sufficient to detect, alert, and protect residents (including incarcerated people at this proposed prison) from extreme weather.

Kentucky's NWS weather forecasting offices (WFO) are responsible for "issu[ing] warnings and forecasts for weather events, including severe thunderstorms, tornadoes, hurricanes, winter storms, floods, and heat waves to the general public, media, emergency management and law enforcement officials, the aviation and marine communities, agricultural interests, businesses, and others."<sup>81</sup> Up until recently, Kentucky's WFOs were "staffed 24/7/365." But that changed this past year.

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<sup>79</sup>Judson Jones and Amy Graff, *After Cuts, a Kentucky Weather Office Scrambles for Staffing as Severe Storms Bear Down*, NEW YORK TIMES, (May 16, 2025), <https://www.nytimes.com/2025/05/16/weather/nws-cuts-kentuckytornado.html>; Beth Musgrave, *Trump Cuts to National Weather Service Leave Kentucky Offices Understaffed*, HERALD LEADER (May 18, 2025; 10:08 AM), <https://amp.kentucky.com/news/politics-government/article306549111.html>; An Open Letter to the American People from All Former National Weather Service Directors (May 2, 2025), available at <https://www.newsweek.com/all-living-former-weather-service-directors-oppose-trump-staff-cuts-2067576>.

<sup>80</sup> See An Open Letter to the American People from All Former National Weather Service Directors (May 2, 2025), available at <https://www.newsweek.com/all-living-former-weather-service-directors-oppose-trump-staff-cuts-2067576>; Emily Mae Czachor, *Short-Staffed NWS Enters Hurricane Season in "Uncharted Territory."* *Meteorologists Share Their Concerns*, CBS (June 3, 2025; 10:23 A.M.), <https://www.cbsnews.com/news/nws-staff-hurricane-season-meteorologists-concerns/> ("Meteorologists are also concerned about additional funding cuts down the line. A White House budget proposal for 2026 suggests reducing NOAA's allocation by about \$1.5 billion, 'which would shrink the agency by 30%. The plan targets programming around weather research, oceanic observations and satellites, areas the proposal's critics say are essential for accurate storm forecasts'").

<sup>81</sup> NOAA in Your State – Kentucky, NWS, <https://www.noaa.gov/sites/default/files/2021-11/NIYSKY.pdf> (updated April 2023).

In 2025, nearly 600 workers left NWS due to significant cuts to NOAA’s budget and staff.<sup>82</sup> All three of Kentucky’s WFOs, Jackson, Paducah, and Louisville, were hit hard by these cuts. Currently, each office is critically understaffed. Louisville and Paducah are down to about eight and seven positions respectively.<sup>83</sup> The Jackson office, which is responsible for overseeing Eastern Kentucky, including Letcher County (and parts of tornado alley), no longer has sufficient staff to monitor weather 24/7. The staff is down to seven employees. There is no personnel to cover the overnight shift, which runs from midnight to 7AM.<sup>84</sup> Adding further hardship, there is no head meteorologist for the entire state, leaving the already strained staff to take on extra duties.<sup>85</sup>

Authorities have confirmed that the Jackson office cannot rely on other Kentucky offices to cover its vacancies for much longer.<sup>86</sup> On May 16-17, 2025, an EF-4 tornado laid waste Eastern Kentucky counties, leaving 19 dead, hundreds homeless, and millions in property damage. The Jackson overnight shift was staffed that night but only because the tornado had been predicted days in advance. But experts say the temporary transfer of employees is insufficient because extreme weather can be unexpected.<sup>87</sup> The temporary replacements lack the knowledge of

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<sup>82</sup> NOAA in Your State – Kentucky, NWS, <https://www.noaa.gov/sites/default/files/2021-11/NIYSKY.pdf> (updated April 2023).

<sup>83</sup> Beth Musgrave, *Trump Cuts to National Weather Service Leave Kentucky Offices Understaffed*, HERALD LEADER (May 18, 2025; 10:08 AM), <https://amp.kentucky.com/news/politics-government/article306549111.html>

<sup>84</sup> Beth Musgrave, *Did Staffing Cuts at Weather Service Affect Kentucky’s Tornado Response?* HERALD LEADER, <https://www.kentucky.com/news/state/kentucky/article306679051.html#storylink=cpy> (updated May 19, 2025; 4:13 P.M.).

<sup>85</sup> Beth Musgrave, *Trump Cuts to National Weather Service Leave Kentucky Offices Understaffed*, HERALD LEADER (May 18, 2025; 10:08 AM), <https://amp.kentucky.com/news/politics-government/article306549111.html>; Scott Dance, *How an Understaffed Kentucky Weather Office Took on a Tornado*, NEW YORK TIMES (May 17, 2025), <https://www.washingtonpost.com/weather/2025/05/17/tornadoes-understaffed-jackson-kentucky-weather-office/> (“Fully staffed, the Jackson office would have 13 meteorologists. But it’s currently down to nine, he said. Two management positions are also vacant — including the top role of meteorologist-in-charge, which has been vacant since last year — as are slots for three technical specialists”).

<sup>86</sup> Alana Wise and Sandhya Dirks, *At Least 27 Dead After Tornadoes Sweep Through Kentucky and Missouri*, NPR, (May 17, 2025; 10 PM ET), <https://www.npr.org/2025/05/17/nx-s1-5402053/tornadoes-kentucky-missouri-deaths>; Beth Musgrave, *Trump Cuts to National Weather Service Leave Kentucky Offices Understaffed*, HERALD LEADER (May 18, 2025; 10:08 AM), <https://amp.kentucky.com/news/politics-government/article306549111.html>.

<sup>87</sup> Beth Musgrave, *Trump Cuts to National Weather Service Leave Kentucky Offices Understaffed*, HERALD LEADER (May 18, 2025; 10:08 AM), <https://amp.kentucky.com/news/politics-government/article306549111.html> (“Water

experienced “staff who know the area well and critical to preventing the loss of life” and cannot be supplanted by commercial equipment that relies on NWS data.<sup>88</sup>

“Groups of lawmakers, forecasters and retired agency leaders have all spoken out about potentially catastrophic consequences” “without enough [NWS] [WFO] employees to reasonably handle the load.”<sup>89</sup> Kentucky Governor Beshear believes that the short-staffed Jackson office could cause problems in the long run: “I have big concerns with cuts to the National Weather Service.”<sup>90</sup>

Experts have predicted that understaffed NWS offices will have deadly and disastrous economic consequences for places like Letcher County. On May 2, 2025, five former directors of the NWS, who cover over the past 37 years released an open letter, expressing their alarm at the deep staff cuts to the service and the agency that houses it. “Our worst nightmare is that weather forecast offices will be so understaffed that there will be needless loss of life. We know that’s a nightmare shared by those on the forecasting front lines—and by the people who depend on their efforts.”<sup>91</sup> The implication of inaccurate weather forecasting is guaranteed to take an economic toll

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levels can rise quickly in Eastern Kentucky. Experienced, knowledgeable staff who know the area well are critical to preventing the loss of life, Jackson said. Many of the people who voluntarily retired had decades of experience with the weather service, Fahy said. That knowledge is now gone, he said”).

<sup>88</sup> Beth Musgrave, *Trump Cuts to National Weather Service Leave Kentucky Offices Understaffed*, HERALD LEADER (May 18, 2025; 10:08 AM), <https://amp.kentucky.com/news/politics-government/article306549111.html> (“These are people who went to school for four to six years to become a meteorologist. This was their dream to work for the National Weather Service. And many left because they were scared,” Fahy said. That means multiple National Weather Service offices, including Jackson, do not have staff monitoring weather conditions during late-night shifts. That’s important because weather conditions can change rapidly, Fahy said. All commercial weather programs — from the Weather Channel, AccuWeather to weather apps — are dependent on National Weather Service data. Commercial weather cannot replace the National Weather Service, Fahy said.”); Our Office, NWS Jackson, KY Virtual Tour, <https://www.weather.gov/jkl/virtualtour> (“Forecasters undergo in-depth training in order to become highly proficient with the radar and to properly interpret severe weather radar signatures”).

<sup>89</sup> Emily Mae Czachor, *Short-Staffed NWS Enters Hurricane Season in "Uncharted Territory." Meteorologists Share Their Concerns*, CBS (June 3, 2025; 10:23 A.M.) <https://www.cbsnews.com/news/nws-staff-hurricane-season-meteorologists-concerns/>; An Open Letter to the American People from All Former National Weather Service Directors (May 2, 2025), available at <https://www.newsweek.com/all-living-former-weather-service-directors-oppose-trump-staff-cuts-2067576>.

<sup>90</sup> Beth Musgrave, *Trump Cuts to National Weather Service Leave Kentucky Offices Understaffed*, Herald Leader (May 18, 2025 10:08 AM), <https://amp.kentucky.com/news/politics-government/article306549111.html>.

<sup>91</sup> An Open Letter to the American People from All Former National Weather Service Directors (May 2, 2025), available at <https://www.newsweek.com/all-living-former-weather-service-directors-oppose-trump-staff-cuts-2067576>.

as well. The former NWS directors warned: “airplanes can’t fly without weather observations and forecasts; ships crossing the oceans rely on storm forecasts to avoid the high seas; farmers rely on seasonal forecasts to plant and harvest their crops which feed us. Additionally, dam and reservoir operators rely on rainfall and snowfall forecasts to manage the water supply; fishermen in the \$320 billion commercial fisheries sector rely on forecasts to stay safe as do tourism and recreational boating communities.”<sup>92</sup>

With the downsizing of the Jackson WFO, Eastern Kentucky, including Letcher County, faces disastrous repercussions from tornadoes, flash floods, hurricanes, wildfires, and other severe storms. Eastern Kentucky is part of tornado alley. Since 2010, there have been over 30 tornadoes in Eastern Kentucky resulting in about 41 deaths and millions in damage to property.<sup>93</sup> Within the past two years alone there have been at least 23 fatalities due to tornadoes.<sup>94</sup> In May 2025, 19 people died from tornadoes that devastated Eastern Kentucky. Because the May 2025 tornado was predicted days in advance, there was enough time to staff the Jackson office to cover radar monitoring and weather warning duties. However, a tornado’s funnel is not the only thing requiring tracking. Strong winds, hail, flash flooding, inundated waterbodies, and mudslides can also stem from tornadoes and cause damage to surrounding areas, including to homes and businesses, power outages, and extensive street closures trapping residents within the inclement weather. As

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<sup>92</sup> An Open Letter to the American People from All Former National Weather Service Directors (May 2, 2025), available at <https://www.newsweek.com/all-living-former-weather-service-directors-oppose-trump-staff-cuts-2067576>.

<sup>93</sup> Alana Wise and Sandhya Dirks, *At Least 27 Dead After Tornadoes Sweep Through Kentucky and Missouri*, NPR, (May 17, 2025 7:10 PM ET), <https://www.npr.org/2025/05/17/nx-s1-5402053/tornadoes-kentucky-missouri-deaths>; Kanishka Singh, *US Storms Kill at Least 21 Across 4 States on Memorial Day Weekend*, REUTERS (May 24, 2024), <https://www.reuters.com/world/us/kentucky-warns-more-severe-weather-after-us-storms-kill-14-2024-05-27/>; <https://www.weather.gov/jkl/2025-05-16-Somerset-London-Catastrophic-Tornado-and-Eastern-Kentucky-Severe-Weather>; <https://midsouthtornadoes.msstate.edu/index.php?cw=ijkl>.

<sup>94</sup> Kanishka Singh, *US Storms Kill at Least 21 Across 4 States on Memorial Day Weekend*, REUTERS (May 24, 2024), <https://www.reuters.com/world/us/kentucky-warns-more-severe-weather-after-us-storms-kill-14-2024-05-27/>; <https://www.weather.gov/jkl/2025-05-16-Somerset-London-Catastrophic-Tornado-and-Eastern-Kentucky-Severe-Weather>; <https://midsouthtornadoes.msstate.edu/index.php?cw=ijkl>.

explained *supra*, Eastern Kentucky, and Letcher County in particular, has been devastated by flooding from storms. In 2022, torrential flooding claimed the lives of at least 45 residents.<sup>95</sup> In February 2025, prolonged heavy rains once again brought devastating floods resulting in about 10 casualties, thousands without power, and families stranded from hundreds of road closures.<sup>96</sup>

Efforts to downsize NWS started in 2025, after the issuance of October 2024 ROD on the BOP in Letcher, County. There is no evidence that the FEIS or any government agency evaluated the massive environmental, ecological, and economical impact of the drastic reduction of the Jackson WFO that services Eastern Kentucky, including Roxana and the surrounding area. Accordingly, an SEIS is required to evaluate the environmental impacts to Letcher County from the devastating cuts and dismantling of its emergency weather services.

#### **IX. MEDICAL FACILITIES AND SERVICES IN THE REGION ARE CLOSING OR AT RISK OF CLOSURE**

Medical care infrastructure in Letcher County has changed significantly since publication of the FEIS and selection of Roxana in the ROD. In its FEIS, the BOP depended in part on an analysis of the area's existing conditions and the proposed prison's impact on local medical services. The FEIS surveyed existing medical facilities including Appalachian Region Healthcare (ARH) hospitals such as Whitesburg ARH and local emergency services, and acknowledged that the "FBOP would also contract for local emergency ambulance service in cases requiring an AIC to be transported to an area medical facility."<sup>97</sup> Based on this information, the FEIS concluded that

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<sup>95</sup> *At Least Eight Dead in 'Historic' Kentucky Flooding. Emergency Disaster Declared*, SPOKESMAN-REVIEW, <https://www.spokesman.com/stories/2025/feb/16/at-least-eight-dead-in-historic-kentucky-flooding-/> (updated Feb 16, 2025; 9:49 P.M.).

<sup>96</sup> Rick Childress, Bill Estep, Valarie Honeycutt Spears and Hannah Stanley, <https://www.kentucky.com/news/state/kentucky/article277457683.html#storylink=cpy> (updated April 29, 2025 7:44 PM); *At Least Eight Dead in 'Historic' Kentucky Flooding. Emergency Disaster Declared*, SPOKESMAN-REVIEW, <https://www.spokesman.com/stories/2025/feb/16/at-least-eight-dead-in-historic-kentucky-flooding-/> (updated Feb 16, 2025; 9:49 P.M.); <https://www.weather.gov/lmk/KYFlooding>.

<sup>97</sup> FEIS, p. 107, 110.

“[e]xisting health care facilities and providers are expected to continue serving the medical needs of area residents and their families without interruption or adverse impacts.”<sup>98</sup>

In June of 2025, Letcher Emergency Medical Services closed down.<sup>99</sup> Local residents have noted a considerable increase in EMS response time since this closure, prompting an investigation from the county government.<sup>100</sup> While volunteer services from neighboring Neon County have taken responsibility for emergency calls, they have reported being “swamped” by the increased need.<sup>101</sup>

Cuts to federal funding for rural hospitals have put other local medical institutions at severe risk of closure. Prior to the passage of the ‘One Big Beautiful Bill,’ policy experts were raising alarms that “Kentucky faces the nation’s highest number of rural hospitals at risk of closure if Congress cuts Medicaid.”<sup>102</sup> Experts identified a number of Kentucky hospitals most endangered by the proposed cuts, placing Whitesburg ARH Hospital – a key institution factoring into the FEIS’s analysis – at the top of the list.<sup>103</sup> After Medicaid was officially slashed in the budget bill, the Kentucky Hospital Association estimated that up to 35 hospitals could be forced to close, with 20,000 health care jobs at risk.<sup>104</sup> According to the President and CEO of the Kentucky Hospital Association, numerous local hospitals have already scaled back capital investments and made

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<sup>98</sup> FEIS, p. 110.

<sup>99</sup> McKinley Calandrino, *WYMT Investigates: Letcher Ambulance Service Closes*, WYMT (June 3, 2025), <https://www.wytm.com/2025/06/03/wytm-investigates-letcher-ambulance-services-closing-doors/>.

<sup>100</sup> Kevin Day, *County Forms Committee to Look at Response Times after Letcher EMS Shutdown*, WXXQ 103.9 (July 31, 2025), <https://1039thebulldog.com/county-forms-committee-to-look-at-response-times-after-letcher-ems-shutdown/>.

<sup>101</sup> *Id.*

<sup>102</sup> Dustin Pugel & Ember Jones, *Kentucky Faces the Nation’s Highest Number of Rural Hospitals at Risk of Closure if Congress Cuts Medicaid*, Kentucky Center for Economic Policy (June 17, 2025), <https://kypolicy.org/35-kentucky-hospitals-at-risk-of-closure-due-to-medicaid-cuts/>.

<sup>103</sup> *Id.*

<sup>104</sup> Karolina Buczek, *Kentucky Hospital Groups Warns of Closures, Reduced Services, Job Losses Due to Medicaid Cuts*, Lex18 Kentucky (July 30, 2025), <https://www.lex18.com/news/covering-kentucky/kentucky-hospital-group-warns-of-closures-reduced-services-job-losses-due-to-medicaid-cuts>.

plans to lay off care workers; some are considering suspending critical services like cancer treatment.<sup>105</sup>

The closure of one local EMS service has already placed a significant strain on local medical infrastructure and eliminated one of the BOP's options for local emergency ambulance services. The Medicaid cuts threatening local hospitals, including Whitesburg ARH, will go into effect throughout 2026-27 – when the BOP is proposing to be in the middle of construction on FCI/FPC Letcher. These changes dramatically alter the BOP's analysis of its impact on local medical services, and warrant a supplemental EIS in order for the agency to properly comply with NEPA.

## **X. CONCLUSION**

Significant new information has come to light since the BOP's Final Environmental Impact Statement and Record of Decision for FCI/FPC Letcher. The BOP received and ignored a letter from the United Keetoowah Band of Cherokee Indians, who were excluded from NEPA/NHPA consultation on the project in violation of their sovereignty and federal law. New landowners intend to reintroduce a bison herd on the property, a use that is incompatible with a prison. In 2016-17, an analogous landowner conflict justified the BOP's preparation of a supplemental statement. The BOP has improperly relied upon the voluntary services of a private nonprofit group, a possible violation of the Anti-Deficiency Act. New acoustic surveys demonstrate that threatened and endangered bat species are present at the site, contradicting outdated surveys on which the BOP relied in its EIS. New expert mining analysis concludes that construction of a prison at Roxana poses a risk of increased flooding, subsidence, and methane gas migration. Further extreme flooding within Letcher County highlights the deficiencies of the BOP's previous review of

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<sup>105</sup> Aaron Mudd, *Facing Trump's Medicaid Cuts, KY Hospitals to Scale Back Services. Here's What Could Go*, Lexington Herald Leader (Nov. 11, 2025), <https://www.kentucky.com/news/state/kentucky/article312860840.html>.

extreme weather risks. Letcher County’s available emergency medical services and access to weather warning systems have been detrimentally impacted since issuance of the Record of Decision, altering the BOP’s analysis within the FEIS. Each of these changes in circumstance warrants meaningful review and justifies a supplemental environmental impact statement.

A supplement would also offer an opportunity to correct deficiencies in the BOP’s prior environmental analysis. As raised in multiple comments to the DEIS and FEIS, the BOP’s prior analysis insufficiently addressed numerous pressing environmental concerns. Among other deficiencies, the BOP’s analysis improperly narrowed its statement of purpose and need around a line of non-binding legislative history;<sup>106</sup> contained numerous irregularities in its assessments of impacted wetlands, aquatic resources, and water quality;<sup>107</sup> failed to disclose or incorporate several substantive opposing viewpoints expressed in comments to the DEIS;<sup>108</sup> and neglected several important indicators of the prison’s impact on the human environment: it overlooked the documented failure of prisons to boost local economies,<sup>109</sup> misrepresented community support for

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<sup>106</sup> Compare DEIS p. 15, FEIS p. 15 (citing Pub. L. 109-272 as a “directive” from “Congress” to “initiate various investigations for development of a new federal correctional institution in Letcher County, Kentucky”) and Response to William James Jonas III, LTC, U.S. Army, Retired, FEIS p. 316 (“Congress passed a public law (P.L. 109-272) that directed the BOP to plan for a new correctional facility in Letcher County, a directive that remains unchanged and in effect in 2024”) with Pub. L. 109-272, 120 Stat. 770 (2006) (an Act “to preserve the Mt. Soledad Veterans Memorial in San Diego, California”), Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-108, H.R. 2862, 119 Stat. 2290, 2297 (2005) (fiscal year 2006 legislation appropriating lump-sum amount for BOP’s buildings and facilities), H.R. Rep. No. 109-272 (Conference Report describing \$5,000,000 as earmarked for Letcher County, KY); see also *Lincoln v. Vigil*, 508 U.S. 182, 192-93 (1993), *American Hospital Assn. v. NLRB*, 499 U.S. 606, 616 (1991); *Cherokee Nation of Oklahoma v. Leavitt*, 543 U.S. 631, 633 (2005), U.S. Gov’t Accountability Off., GAO-08-209, Congressional Directives: Selected Agencies’ Processes for Responding to Funding Instructions, 10 (2008) (citing 55 Comp. Gen. 307 (1975), *Shannon v. United States*, 512 U.S. 573, 583 (1994)); *Tenn. Valley Auth. v. Hill*, 437 U.S. 153, 191, 98 S. Ct. 2279 (1978).

<sup>107</sup> Comment of Ashley Wilmes and Kentucky Resources Council (Apr. 15, 2024), FEIS 267-272.

<sup>108</sup> See Public Comment to the Federal Bureau of Prisons, Abolitionist Law Center, Concerned Letcher Countians et al., at 57-70 (listing overlooked comments of Jonathan Hootman, Dr. D. Scott Simonton, Carlton E. Williams, Dr. Beverly May, the Institute to End Mass Incarceration, the Campaign to Fight Toxic Prisons, Dr. Artie Ann Bates, and multiple directly impacted people from Washington, D.C. who spoke at public meetings or submitted written comments during the NEPA review process).

<sup>109</sup> Comment of Ashley Spalding and Kentucky Center for Economic Policy, FEIS p. 258-261; Comment of Kandia Milton and [Dream.Org](#), FEIS p. 250-255.

the prison,<sup>110</sup> and omitted analysis of the health impacts of isolation and trauma on the incarcerated population.<sup>111</sup> A supplemental EIS would allow for the BOP to cure these errors while incorporating the new facts listed above.

There is a litany of fatal deficiencies in the BOP's existing analysis. Several substantial changes in circumstance have come to light since the FEIS and Record of Decision. A supplemental statement can incorporate these changes and cure the deficiencies previously noted. The undersigned organizations particularly urge the BOP to expand its analysis to alternatives beyond Letcher County, including an alternative of strategic repairs to existing BOP facilities, and to meaningfully consider the relative benefits of a "no action" alternative. We have little doubt that a court of law would set aside the BOP's decision to pursue the Roxana project, in the absence of meaningful supplementary review, as being arbitrary, capricious, and not in accordance with the law.

Sincerely,

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/s/ Lolo Serrano  
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<sup>110</sup> Compare DEIS p. 16, FEIS p. 16 (describing "consistent, continuous, and unwavering support expressed by Letcher County's elected representatives, community leaders, members of local institutions and businesses, and residents to developing the proposed correctional facility") with Comment of Building Community Not Prisons Coalition, FEIS p. 218; Comment of Emily Posner et al., Concerned Letcher Countians, especially FEIS p. 224-225.

<sup>111</sup> Comment of Joan Steffen, National Lawyers Guild of Chicago, FEIS p. 264-265.

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# **EXHIBIT A**



**UNITED KEETOOWAH BAND**  
**of CHEROKEE INDIANS in OKLAHOMA**  
18300 W. Keetoowah Circle · Tahlequah, OK 74464  
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[www.ukb-nsn.gov](http://www.ukb-nsn.gov)



October 15, 2024

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Chief, Construction and Environmental Review Section  
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[kshudson@bop.gov](mailto:kshudson@bop.gov)

(202) 451-7046

RE: Tribal Consultation Concerning Proposed Federal Correctional Institution and Federal  
Prison Camp-Letcher County, Kentucky

Dear Ms. Hudson,

On behalf of the United Keetoowah Band of Cherokee Indians ("UKB"), I write in response to the Draft Environmental Impact Statement ("DEIS") for a Proposed Federal Correctional Institution and Federal Prison Camp in Letcher County, Kentucky (the "Proposed Project"). UKB respectfully requests to be included in consultation on the Proposed Project as a cooperating agency under the National Environmental Policy Act ("NEPA") implementing regulations at 40 C.F.R. § 1501.8.

UKB is a sovereign nation and is one of only three federally recognized Cherokee tribes in the United States – the other two being the Cherokee Nation and the Eastern Band of Cherokee Indians. UKB reviewed the Distribution List in Section 8 of the DEIS regarding the Proposed Project by the Federal Bureau of Prisons in Letcher County, Kentucky. The Distribution List for "Native American Tribes" only includes contacts associated with the Cherokee Nation and the Eastern Band of Cherokee Indians. Separately, UKB was forwarded two letters from your office, each dated January 18, 2024, regarding Tribal Consultation for the Proposed Project and participation as a cooperating agency. These letters were also only sent to the Cherokee Nation and the Eastern Band of Cherokee Indians.

The UKB has special expertise on Indigenous Knowledge, as specifically referenced in 40 C.F.R. § 1501.8(a). Additionally, UKB has environmental and archaeology expertise in environmental and cultural matters which will inform your office in navigating NEPA and Section 106 process for the Proposed Project. Given this expertise and knowledge, UKB requests to be treated as a cooperating agency in the NEPA process for the Proposed Project, in the same manner as the Cherokee Nation and the Eastern Band of Cherokee Indians.

Please contact UKB Historic Preservation Director/Tribal Historic Preservation Officer (THPO) Roger Cain at [rcain@ukb-nsn.gov](mailto:rcain@ukb-nsn.gov) to discuss further, or otherwise set up a time to discuss UKB's participation as a cooperating agency in the NEPA process for the Proposed Project.

Sincerely,

Roger Cain

UKB Historic Preservation Director/Tribal Historic Preservation Officer (THPO)

# **EXHIBIT B**

U.S. Department of Justice  
Office of the Inspector General  
Investigations Division  
950 Pennsylvania Ave., NW  
Washington, DC 20530

May 18, 2026

Re: Request to Investigate Potential Anti-Deficiency Act Violation

To the Office of the Inspector General at the Department of Justice,

We write on behalf of our clients, Concerned Letcher Countians (CLC), to report a suspected Anti-Deficiency Act (“the Act”) violation by officials in the Federal Bureau of Prisons (“the Bureau”). In what would be a violation of the Act, during the course of its efforts to build a new federal prison in Letcher County, KY (“the Letcher Prison Project”), the Bureau appears to have accepted voluntary services from a local group of business-owners – the Letcher County Planning Commission (LCPC) - which supports the project.

Since the inception of the Letcher Prison Project, LCPC has not only been closely collaborating with the Bureau in the site selection, community outreach, and planning processes for the proposed prison, but also performing essential project development tasks that benefit the Bureau. Bureau officials and consultants solicited and accepted LCPC’s assistance in furtherance of the Letcher Prison Project, for example, by asking LCPC to collect landowner signatures on rights-of-entry for the Bureau, to identify local contacts and stakeholders, and to take part in confidential planning meetings. Despite both the Trump and Biden administrations requesting cancellation of the project in each federal budget cycle since fiscal year 2018, the Letcher Prison Project continues to move forward, and we suspect that LCPC’s involvement is ongoing.

Our research indicates that the Bureau and LCPC never signed a compensation waiver or other contract for services as required by the Act. If the Bureau did in fact accept LCPC’s services without signing a gratuitous services agreement or other contract, the agency violated the Anti-Deficiency Act and the Government Accountability Office’s (GAO) bright-line rule requiring an advance written agreement before the acceptance of gratuitous services. On behalf of CLC, we ask that your office investigate these possible violations of the Act and take appropriate action.

## **I. The Anti-Deficiency Act**

Under 31 U.S.C. § 1342 and its interpretations, federal agencies generally cannot accept unpaid services save for three primary exceptions: 1) emergencies involving the safety of human life or the protection of property, 2) services provided pursuant to a statutory volunteer program, and 3) services that are provided gratuitously rather than voluntarily. As LCPC’s assistance was

clearly neither pursuant to a statutory volunteer program nor allowable as a response to the type of emergency envisioned by the statute, the relevant analysis is whether the services were voluntary in nature and, if so, whether the Bureau met the Act's requirements for receipt of such services.

The Office of the Comptroller General in the US Government Accountability Office (GAO) spoke directly to this question in *Matter of: Dep't of the Treasury-Acceptance of Voluntary Servs., B-324214* (Jan. 27, 2014). In this case, the GAO established a bright-line test for when unpaid services received by a federal agency can be considered gratuitous, and thus permissible under the Anti-Deficiency Act. Under this rule, uncompensated services are gratuitous if the agency executes an “advance written agreement that (1) states that the services are offered without expectation of payment, and (2) expressly waives any future pay claims against the government.”<sup>1</sup> In other words, the federal government may only accept unpaid services if there is “a written record noting that the services are offered with no expectation of payment.”<sup>2</sup>

#### **A. Statutory rule**

The Anti-Deficiency Act, originally enacted in the late 19th century and revised over time, includes at 31 U.S.C. § 1342 a strict “limitation on voluntary services.” The statute provides in relevant part that: “An officer or employee of the United States Government may not accept voluntary services for [the] Government or employ personal services exceeding that authorized by law, except for emergencies involving the safety of human life or the protection of property, unless otherwise authorized by law.”<sup>3</sup> This prohibition was added to the ADA in 1905 to prevent agencies from evading congressional budget controls by relying on unpaid labor or incurring obligations to pay for unauthorized work. The core concern is that if federal agencies accept free services, the providers might later claim compensation or Congress might feel morally compelled to appropriate funds after-the-fact, thereby undermining fiscal discipline.<sup>4</sup> In short, agencies cannot circumvent appropriations limits by using volunteer labor, except in very narrow circumstances.

#### **B. Voluntary vs. gratuitous services**

Crucially, administrative and legal precedents distinguish prohibited “voluntary services” from permissible “gratuitous services.”<sup>5</sup> The distinction is rooted in the origin of the voluntary services provision itself. Congress was responding to recurring budgetary abuse where agencies would push employees to work without pay to avoid exceeding their appropriations, only to then approach Congress after the fact and pressure them into funding this unpaid work. As noted by

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<sup>1</sup> Comptroller General of the United States, *Matter of: Dep't of the Treasury-Acceptance of Voluntary Servs., B-324214*, U.S. Government Accountability Office, 1 (Jan. 27, 2014) (available at <https://www.gao.gov/assets/b-324214.pdf>, accessed Dec. 10, 2025).

<sup>2</sup> *Id.* at 3.

<sup>3</sup> 31 U.S.C. § 1342.

<sup>4</sup> U.S. GOV'T ACCOUNTABILITY OFF., Principles of Federal Appropriations Law 3-33

<sup>5</sup> *Id.* at 3-34.

U.S. Representative Hemenway in the legislative record, “We give to Departments what we think is ample, but they come back with a deficiency. After they are made it is very hard to refuse to allow them... we seek by this amendment to some respect, at least, cure that abuse.”<sup>6</sup> However, in interpreting § 1342, the Comptroller General and Attorney General have long held that “gratuitous” services, offered with the understanding in advance that no payment will be sought, would be permissible.<sup>7</sup> Underpinning this exception is that the “evil at which Congress was aiming” was not the acceptance of free services, but rather the creation of liabilities. In these cases, “Congress would feel no moral obligation to pass an appropriation to pay an individual who knowingly waived his salary in advance.”<sup>8</sup> In contrast with “voluntary services,” “gratuitous services are unlikely to form the basis of future claims against the government.”<sup>9</sup>

The GAO decision that speaks most directly to this distinction in decision B-324214, Department of the Treasury – Acceptance of Voluntary Services (Jan. 27, 2014). In that case, the Treasury Department accepted unpaid services from four individuals over the course of more than a year. Notably, the Treasury accepted these services without any written agreement waiving compensation.

The GAO found that Treasury violated the Act, because they failed to secure an advance written agreement clearly waiving any right to compensation. In its decision, the GAO established a bright-line rule:

An agency may accept unpaid services when someone offering such services executes an advance written agreement that (1) states that the services are offered without expectation of payment, and (2) expressly waives any future pay claims against the government.<sup>10</sup>

GAO emphasized that the core reason for this prohibition was the avoidance of future claims, as “the purpose of the prohibition is to preclude situations that might generate claims for compensation that might exceed an agency’s available funds.”<sup>11</sup> The concern is that without a clear written waiver, even a well-meaning volunteer might bring a *quantum meruit* claim, asserting they deserve compensation for services rendered – the exact kind of “coercive deficiency” the statute was made to address. Further, the GAO clearly refutes any possibility that

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<sup>6</sup> 39 Cong. Rec. 3687 (1905) (statement of Rep. Hemenway)

<sup>7</sup> See 30 Op. Att’y Gen. 51, 52 (1913); Comptroller General of the United States, *Matter of Army’s authority to accept services from the American Association of Retired Persons/national Retired Teachers Association*, B-204326, U.S. Government Accountability Office (July 26, 1982) (available at <https://www.gao.gov/assets/450/441639.pdf>, accessed Dec. 10, 2025).

<sup>8</sup> 30 Op. Att’y Gen. 51, 55 (1913)

<sup>9</sup> Comptroller General of the United States, *Matter of Army’s authority to accept services from the American Association of Retired Persons/national Retired Teachers Association*, B-204326, U.S. Government Accountability Office (July 26, 1982) (available at <https://www.gao.gov/assets/450/441639.pdf>, accessed Dec. 10, 2025).

<sup>10</sup> *Matter of: Dep’t of the Treasury-Acceptance of Voluntary Servs.*, B-324214, at 1.

<sup>11</sup> *Id.* at 2

“binding oral waivers” might suffice to meet this standard.<sup>12</sup> As the GAO states, “[o]nly a written document, executed prior to the beginning of performance by those providing services to the government, provides the necessary protection from such claims.”<sup>13,14</sup> The opinion further cites the Ninth Circuit’s conclusion that “common sense tells us that agreements should routinely be put in writing.”<sup>15</sup>

### **C. The Bureau of Prisons apparently accepted voluntary site selection services from the Letcher County Planning Commission**

The Letcher County Planning Commission, Inc. (LCPC) is a Kentucky nonprofit organization.<sup>16</sup> Despite its government-sounding name, LCPC is a private entity whose mission is “providing sustainable citizen-based planning” for Letcher County’s future.<sup>17</sup> Notably, LCPC was the originator of the idea to build a federal prison in Letcher County. According to the Bureau, the Letcher Prison Project only began because “the Bureau was contacted by the Letcher County Planning Commission with an offer of potential sites” for a new federal prison.<sup>18</sup> In fact, LCPC identified specific locations in Letcher County suitable for a prison and proactively brought these sites to BOP’s attention in hopes of attracting a new facility.<sup>19</sup> The Letcher Prison Project’s genesis at LCPC’s behest illustrates this private organization’s interest in advancing this major federal construction project from the outset.

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<sup>12</sup> *Id.* at 3.

<sup>13</sup> *Id.* at 3-4.

<sup>14</sup> Section 1342 itself provides only one exception to the Anti-Deficiency Act’s prohibition on voluntary services for “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342. During *bona fide* emergencies, *e.g.* responding to a sudden disaster, agencies may accept volunteer services necessary to respond. Outside of emergencies, the only exceptions are those voluntary services “authorized by law.” *Id.* Some agencies have specific statutory authority to accept donated services or to have volunteer programs, often with conditions. For example, Congress has authorized certain volunteer programs, like student interns under 5 U.S.C. § 3111, or park volunteers for the National Park Service by statute. The Department of Justice and the Bureau have no general statutory authorization to accept voluntary services for projects like prison construction; no law empowers the Bureau to rely on unpaid local volunteers.

<sup>15</sup> *Matter of: Dep’t of the Treasury-Acceptance of Voluntary Servs., B-324214* at 4 (citing *Effects Associates v. Cohen*, 908 F.2d 555, 557 (9th Cir. 1990)).

<sup>16</sup> See Kentucky Secretary Of State, Business Entity Search: “Letcher County Planning Commission, Inc.” (available at <https://sosbes.sos.ky.gov/BusSearchNProfile/Profile.aspx?ctr=495032>, accessed December 9, 2025). See also Sylvia Ryerson, *Why Is a Private Planning Commission Pushing a Federal Prison in Appalachia?*, SCALAWAG (Apr. 1, 2024), <https://scalawagmagazine.org/2024/04/letcher-federal-prison-project-lcpc-bop/>.

<sup>17</sup> *Id.*

<sup>18</sup> United States Dep’t of Justice - *Federal Bureau of Prisons, 2017 Revised Final Supplemental Revised Final Environmental Impact Statement for Proposed US Penitentiary and Federal Prison Camp – Letcher County, Kentucky*, 2-3 (Sept. 2017) (available at [https://f3ccbb3a-b4aa-4a7c-98fe-8050e1837ed5.filesusr.com/ugd/c14bb4\\_b536c072bf30493ca8f1631f954bc5d2.pdf](https://f3ccbb3a-b4aa-4a7c-98fe-8050e1837ed5.filesusr.com/ugd/c14bb4_b536c072bf30493ca8f1631f954bc5d2.pdf), accessed Dec. 10, 2025).

<sup>19</sup> *Id.*

Many of the records cited in this complaint were obtained by public records requests. One request sought records related to the Bureau's relationship with LCPC,<sup>20</sup> another sought records related to the Bureau's land acquisition efforts for the Letcher Prison Project,<sup>21</sup> and a third sought records related to an economic forum related to the Letcher Prison Project and hosted by LCPC.<sup>22</sup> The relevant public records are attached as exhibits to this complaint.

**D. LCPC acted as the Bureau's representative in outreach to landowners at the potential prison construction sites.**

In several instances, LCPC acted as the Bureau's local agent in dealing with property owners at the proposed prison site. Specifically, LCPC contacted landowners on behalf of the Bureau and secured permission for the agency to survey privately owned land. These LCPC actions exemplify services rendered by the non-profit for the Bureau that likely violated the Act.

- **August 28, 2007 – Collecting Right of Entry Agreements** - On August 28, 2007, LCPC wrote to the Bureau about its efforts to secure rights of entry from landowners on the Bureau's behalf. The letter states that eight signed agreements were enclosed and requested that the Bureau send four other agreements "so that the remaining signatures can be obtained."<sup>23</sup> LCPC's letter indicates that it obtained signatures from landowners at each parcel, provided the signed agreements to the Bureau, and maintained copies of the

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<sup>20</sup> See Exhibit A. This FOIA request sought:

- 1) Any and all meeting minutes, notes, and agendas from meetings between the BOP and the Letcher Planning Commission meetings discussing the proposed federal prison;
- 2) Any and all communications, including electronic communications, internally within the BOP and the Letcher Planning Commission and/or between Letcher Planning Commission officials and any third party concerning the proposed federal prison;
- 3) Any and all records, reports, studies, or assessments conducted by the BOP with the Letcher Planning Commission related to the planning, construction, or potential impacts of the proposed federal prison; and
- 4) Any and all communications, including electronic communications, between the Letcher Planning Commission and the Federal Bureau of Prisons, Department of Justice officials, or any other federal, state, or local agencies concerning the proposed federal prison.

<sup>21</sup> See Exhibit B. This FOIA request included:

Any and all communications or documents, including electronic communications, between the Bureau of Prisons and the Letcher Planning Commission or any other state or local governments or nongovernmental or quasi-governmental organizations related to the appraisal, valuation, purchase, or transfer of any interest in real property to the federal government in connection with the construction and/or operation of the proposed Letcher Prison.

<sup>22</sup> See Exhibit C. This request included the "Itinerary of Director Collette Peters during the entirety of her most recent visit to Kentucky, in or about the week of 8/26/2024" and all materials provided to her during that visit.

<sup>23</sup> See Exhibit D, LCPC Letter to Bureau (Aug. 28, 2007).

agreements in the organization's records.<sup>24</sup> These documents show that LCPC acted as the Bureau's representative by securing legal agreements on the agency's behalf.<sup>25</sup>

- **August 2015 – Negotiations with Landowners** – In August 2015, the Bureau contacted landowner Mitchum Whitaker to inquire about purchasing his land for the Letcher Prison Project.<sup>26</sup> When Whitaker declined to sell to the Bureau, LCPC co-chair Elwood Cornett visited him at his home to try to convince him to accept the Bureau's offer.<sup>27</sup> Cornett's actions suggest he acted as the Bureau's agent in attempting to secure land for the Letcher Prison Project.

#### **E. LCPC served as site selection specialists for the Bureau.**

Since at least 2011, LCPC has scouted and suggested land parcels for the prison to the Bureau.<sup>28</sup> They also helped evaluate utility services and infrastructure at potential sites.<sup>29</sup> Such actions are fundamentally a service--preliminary real estate and land-use research--that the Bureau would otherwise have had to do itself or contract a consultant. Indeed, the Bureau's NEPA contractor, WSP, Inc., did conduct a formal "Site Selection Study" for the Bureau's Environmental Impact Study ("EIS"), but LCPC fed that process with its local knowledge and legwork, essentially acting as unpaid site selection consultants.

- **May 2-5, 2011 – Site Visits and Utility Investigation:** In May 2011, one of the Bureau's EIS contractors conducted a series of utility inspection meetings as part of the site selection process for the Letcher Prison Project. LCPC co-chair Cornett and "LCPC consultant" Jim Jones attended each site visit and utility meeting alongside the Bureau and the agency's contractors.<sup>30</sup> The investigation involved visiting four potential prison sites and conducting five meetings with local stakeholders about various local utilities

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<sup>24</sup> *See, id.*

<sup>25</sup> While the identity of the sender is redacted, a fax to the Bureau dated July 27, 2016, with a signed agreement attached, suggests that LCPC continued to obtain rights of entry on the agency's behalf. Exhibit E, Fax to Bureau (July 27, 2016).

<sup>26</sup> Sam Adler-Bell, *Appalachia vs. The Carceral State*, *The New Republic* (Nov. 25, 2019) (available at <https://newrepublic.com/article/155660/appalachia-coal-mining-mountaintop-removal-prison-fight>, accessed Dec. 10, 2025).

<sup>27</sup> *Id.*

<sup>28</sup> United States Dep't of Justice - *Federal Bureau of Prisons, 2017 Revised Final Supplemental Revised Final Environmental Impact Statement for Proposed US Penitentiary and Federal Prison Camp – Letcher County, Kentucky*, 2-3 (Sept. 2017) (available at [https://f3ccbb3a-b4aa-4a7c-98fe-8050e1837ed5.filesusr.com/ugd/c14bb4\\_b536c072bf30493ca8f1631f954bc5d2.pdf](https://f3ccbb3a-b4aa-4a7c-98fe-8050e1837ed5.filesusr.com/ugd/c14bb4_b536c072bf30493ca8f1631f954bc5d2.pdf), accessed Dec. 10, 2025).

<sup>29</sup> *See, e.g., id.* at 293-300.

<sup>30</sup> *Id.*

and services at each of the sites.<sup>31</sup> The investigation report indicated that Cornett and Jones “provided input during several of the meetings.”<sup>32</sup>

- **June 7-9, 2022 – Site Evaluation and Tours:** In mid-May 2022, the Bureau, WSP, and LCPC coordinated a multi-day site visit itinerary for early June 2022. Emails confirm LCPC’s involvement in planning the Bureau’s June 7–9, 2022 visit.<sup>33</sup> According to the itinerary, on June 7, 2022 the Bureau’s team met with “Letcher County Officials”, which in context meant LCPC members and perhaps a few local officeholders – to discuss “Identify/Evaluate Additional Sites, Outreach to Real Estate Community, Outreach to Large Land Owners (Mining Companies, others).”<sup>34</sup> This agenda shows that LCPC was expected to help identify and evaluate potential prison sites and to facilitate outreach to major landowners, like coal companies, who owned large tracts of land that might be suitable. In effect, LCPC acted as a local real estate scout and intermediary for the Bureau. Later that day, LCPC joined the Bureau in meetings with utility providers to discuss infrastructure for the proposed sites.<sup>35</sup> On June 8, 2022, LCPC, the Bureau, and WSP met regarding community resources.<sup>36</sup> LCPC representatives escorted the Bureau and WSP on physical tours of prospective sites.<sup>37</sup> Throughout these activities, LCPC personnel were effectively performing groundwork for the Bureau’s site selection, from arranging meetings with key stakeholders to coordinating site visits.
- **September 7, 2022 – Site Recommendation:** On September 7, 2022, LCPC sent a letter to WSP recommended that the Bureau choose the proposed Roxana site for prison construction.<sup>38</sup> LCPC’s reasons included the lack of underground mining at the site, access to local infrastructure, and local attitudes.<sup>39</sup> This recommendation followed previous input from LCPC regarding the availability of federal funding and the positions of public officials regarding the Letcher prison site.<sup>40</sup>
- **Site Evaluation Grant:** The Kentucky River Area Development District (KRADD) also reported that LCPC received an Economic Development Administration Grant to “prepare a strategic plan to evaluate potential federal prison sites, etc. to aid in the

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<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 293.

<sup>33</sup> Exhibit F - WSP USA, Bureau-WSP Letcher County Visit Itinerary (June 6-10, 2022).

<sup>34</sup> *Id.* at 2.

<sup>35</sup> *Id.* at 3.

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 5.

<sup>38</sup> Exhibit G – Letter from LCPC (Sept. 7, 2022).

<sup>39</sup> *Id.*

<sup>40</sup> Exhibit H – Email from Bureau (June 29, 2022).

recruitment of a federal prison to the Letcher County Area.”<sup>41</sup> Absent payment from the Bureau, LCPC sought and received funding for a portion of their substantive work to identify potential sites for the Letcher Prison Project.

**F. LCPC compiled local contact lists and assisted the Bureau with local project outreach.**

LCPC organized meetings between the Bureau and local officials, utility providers, and community groups. The organization also helped the Bureau and its contractors connect with local Letcher Countians. Arranging meeting logistics, inviting attendees, and leveraging LCPC’s community stature to ensure attendance are all services.

- **May 9, 2022 – Assistance with Local Outreach:** In early May 2022, the Bureau emailed LCPC a request to review the Bureau’s draft “Local Contacts” list.<sup>42</sup> This list was essentially a roster of local officials, media, business leaders, and other stakeholders to notify about the EIS process. The Bureau asked LCPC to “verify the names and contact information [we] have, add any info...and add any individuals, community leaders, local media, businesses, utility company officials, etc.”<sup>43</sup> The Bureau, WSP, and LCPC discussed this local outreach work during the Bureau’s trip to Letcher County in June 2022.<sup>44</sup>
- **September 30, 2022 – Assistance Planning Scoping Meeting:** At the end of September 2022, WSP emailed LCPC to arrange a date and venue for the upcoming Letcher Prison Project scoping meeting.<sup>45</sup> WSP requested that the email recipient “discuss with Elwood and others on the Commission and give me a call when ready to discuss possible venues (public school auditorium, etc.), logistics, meeting preparations, etc.”<sup>46</sup> LCPC provided event planning services to the Bureau in advance of its Scoping Meeting.
- **October 7, 2022 – Assistance with Local Outreach:** In October 2022, WSP similarly asked LCPC to review the invitation list for an upcoming public scoping meeting and add any overlooked names.<sup>47</sup> WSP thanked LCPC for “the support and assistance” provided by LCPC in this process.<sup>48</sup> This correspondence makes clear that the Bureau and its

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<sup>41</sup> Kentucky River Area Development District, *Comprehensive Economic Development Strategy Draft – 2017*, 34 (2017) (available at [https://kradd.org/wp-content/uploads/KRADD-CEDS-document-2017\\_s.pdf](https://kradd.org/wp-content/uploads/KRADD-CEDS-document-2017_s.pdf), accessed Dec. 10, 2025).

<sup>42</sup> Exhibit I - Email from Bureau to LCPC (May 9, 2022).

<sup>43</sup> *Id.*

<sup>44</sup> Exhibit F - WSP USA, Bureau-WSP Letcher County Visit Itinerary (June 6-10, 2022).

<sup>45</sup> Exhibit J - Email from WSP to LCPC (Oct. 7, 2022).

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

contractor deliberately relied on LCPC’s local knowledge and connections to conduct outreach, a task that normally the Bureau staff or paid consultants might perform.<sup>49</sup>

- **October 17, 2022 – Assistance with Advertising:** In mid-October 2022, LCPC proposed that the Bureau post a notice for the Scoping Meeting on the sign for the local Letcher County high school. WSP wrote LCPC via email thanking them for the idea and providing the group with the specific message to post.<sup>50</sup> LCPC performed advertising services on the Bureau’s behalf.

**G. The Bureau had a confidential relationship with LCPC that enabled the nonprofit organization to provide site selection and local outreach services.**

LCPC and the Bureau (along with WSP) have maintained a close-working, and largely private behind-the-scenes, relationship. When LCPC representatives sit in confidential project meetings with the Bureau and its contractors, they are participating in discussions that inform the Bureau’s decision-making. LCPC’s input at those meetings, whether offering their perspective on community reception or giving feedback on site criteria, constitutes advice and work product that the Bureau has relied on to develop the Letcher Prison Project. In effect, LCPC members have functioned as *de facto* advisors/consultants on the project’s development.

The GAO’s guidance indicates that even “consulting or furnishing advice to the Government” can qualify as a service.<sup>51</sup> Bureau documents obtained through public records requests demonstrate that LCPC has regularly supplied such services to the Bureau. In fact, apparently without any written agreement, LCPC has provided ongoing, structured consulting and advice to the Bureau on the Letcher Prison Project:

- **October 27, 2021 – Early Project Updates:** Months before the Bureau publicly announced a renewed environmental review for the Letcher Prison Project, the Bureau’s Construction and Environmental Review Branch chief privately gave LCPC advance notice that the agency planned to restart the site selection and Environmental Impact Statement (EIS) process. In an internal email, the Bureau recounted that it had provided LCPC updates about these plans in October 2021.<sup>52</sup> Thus, LCPC was tipped off about the project resumption a full eleven months before the Bureau notified the public in September 2022. During this period, LCPC essentially stood in a privileged position as the Bureau’s confidant, while other community stakeholders were kept in the dark.

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<sup>49</sup> See, e.g., *Environmental and Social Impact Assessment and Planning*, WSP, Inc., <https://www.wsp.com/en-us/services/environmental-and-social-impact-assessment-and-planning> (accessed Dec. 10, 2025) (listing “Stakeholder and Community Engagement” as one of WSP’s Environmental Impact Assessment services).

<sup>50</sup> Exhibit K - WSP email to LCPC (Oct. 17, 2025).

<sup>51</sup> See, U.S. GOV’T ACCOUNTABILITY OFF., *Principles of Federal Appropriations Law* 3-33

<sup>52</sup> Exhibit L – WSP Email re: LCPC (Oct. 27, 2021).

- **May 2, 2022 – Confidential “Introductory Meeting”:** In May 2022, the Bureau and WSP held an in-person introductory meeting with LCPC representatives in Letcher County.<sup>53</sup> Meeting materials show that the Bureau and WSP briefed LCPC on the project status and next steps, and strikingly, the official meeting summary labeled the discussions “confidential.”<sup>54</sup> The Bureau asked that LCPC, who are incorrectly referred to in the summary as “county officials (sic),” notify the agency before making any public announcements about the Letcher Prison Project, and promised to do likewise.<sup>55</sup> In other words, the Bureau enlisted LCPC in a confidential consulting role regarding the prison plans, treating LCPC like an internal partner.
  
- **September 23, 2022 – Pre-Publication Notice:** As the Bureau moved toward officially restarting the statutorily required environmental review under the National Environmental Policy Act (NEPA) for the Letcher Prison Project, it again gave LCPC an inside scoop. On September 23, 2022, the Bureau emailed LCPC members that the Bureau had submitted a Notice of Intent (NOI) for publication in the *Federal Register* to kick off the new EIS, and that a similar notice would appear in the local newspaper, the *Mountain Eagle*.<sup>56</sup> The Bureau explicitly instructed LCPC that they could share this information with its members but should not share the news publicly until the notice was officially published.<sup>57</sup> The *Federal Register* published the NOI on September 28, 2022, which became the first time the broader public learned of the revived project, nearly a year after LCPC had been brought into the loop. This incident underscores the privileged access LCPC enjoyed: the Bureau worked with LCPC to coordinate messaging and timing of disclosures.
  
- **2022-present:** LCPC’s deep involvement did not end once the project entered the public NEPA phase:
  - The Bureau and WSP met with LCPC to provide project updates on July 19 and December 6, 2023.<sup>58</sup> While the minutes from these meetings were posted on the Bureau’s public website for the Letcher Prison Project (<https://www.proposed-fci-letchercountyky.com/>), there was no advance public notice, and the meetings were not open to the public. Further, the Bureau declined to meet with other local community groups about the project during this same period. In December 2023, CLC emailed the Bureau’s Public Affairs office requesting a meeting to discuss

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<sup>53</sup> Exhibit M – Email with Meeting Summary Materials (May 5, 2022)

<sup>54</sup> *Id.* at 4.

<sup>55</sup> *Id.*

<sup>56</sup> Exhibit N – Email from Bureau (Sept. 23, 2026)

<sup>57</sup> *Id.*

<sup>58</sup> Exhibit O – Bureau of Prisons Project Update (July 21, 2023); Exhibit P - Bureau of Prisons Project Update (Dec. 6, 2023).

the Letcher Prison Project.<sup>59</sup> The Bureau responded on December 6, 2023—the same day as the agency’s project update meeting with LCPC—declining CLC’s meeting request.<sup>60</sup> This preferential treatment of LCPC compared to other community groups further indicates the special relationship between the Bureau and LCPC beyond the agency’s typical treatment of local stakeholders.

- The Bureau’s contractor WSP was also expected to provide regular status updates at LCPC’s monthly meetings during this same period. An email from WSP to the Bureau on February 21, 2023, noted that a WSP employee had “been asked to continue to provide short status reports at future Letcher County Planning Commission monthly meetings.”<sup>61</sup> This suggests that either the Bureau or LCPC set up an arrangement for ongoing reporting: effectively, LCPC was being treated as an advisory body kept apprised of the Letcher Prison Project’s progress. Notably, the Bureau provided no public notice of these meetings, nor has it provided any summary of the information shared by WSP.
- In August 2024, LCPC hosted the Bureau’s then-Director, Colette Peters, at a regional economic forum to discuss plans for the Letcher Prison Project.<sup>62</sup> LCPC’s forum connected Director Peters with more than 50 state and local elected officials, business owners, utility services, law enforcement, medical providers, educational institutions, housing organizations, transportation officials, and economic developers whose work would support the proposed prison.<sup>63,64</sup> LCPC did not invite CLC and other local groups that have expressed concerns about the project to participate.
- The Bureau apparently continues to provide updates to LCPC about the status of the Letcher Prison Project. LCPC’s co-chair, Elwood Cornett, was quoted in the Lexington Herald Leader on October 21, 2025, stating that “the Bureau of Prisons tells us not to worry about” about the future of the Letcher Prison Project.<sup>65</sup> Such statements imply that the Bureau’s confidential communications with LCPC are apparently ongoing.

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<sup>59</sup> See Exhibit Q – Letter from Building Community Not Prisons (Dec. 14, 2023).

<sup>60</sup> *Id.*

<sup>61</sup> Exhibit R – Email between Bureau and WSP (Feb. 21, 2023).

<sup>62</sup> Hal Rogers, “Congressman Rogers & Regional Leaders Welcomed Bureau of Prisons Director to Eastern Kentucky,” (Aug. 20, 2024), available at: <https://halrogers.house.gov/2024/8/congressman-rogers-regional-leaders-welcomed-bureau-of-prisons-director-in-eastern-kentucky> (accessed Mar. 6, 2026).

<sup>63</sup> *Id.*

<sup>64</sup> Exhibit S – Bureau Director’s Tour Itinerary and Agenda (Aug. 29, 2024).

<sup>65</sup> Austin Horn, *Rogers pushes back on Trump administration to keep \$500M Eastern KY prison funding*, Lexington Herald Leader (Oct. 21, 2025) (available at: <https://www.kentucky.com/news/politics-government/article312544506.html>, accessed May 14, 2026).

#### **H. The Bureau has never signed a voluntary services agreement with LCPC.**

LCPC was and is not a Bureau contractor, Bureau grantee, or public agency. Thus, the Anti-Deficiency Act required the Bureau to sign a gratuitous services agreement with LCPC prior to accepting services from the organization. It appears, however, that no such agreement was ever signed. In fact, the Bureau's FOIA productions did not include any gratuitous service agreement, nor did any of the records produced refer to any such agreement. Likewise, searches of the USA Spending.gov government contract database produced neither a gratuitous services agreement nor any other contract between the Bureau and LCPC. This research indicates that the Bureau never signed the required gratuitous services agreement with LCPC.

#### **II. The Office of the Inspector General (OIG) should investigate the Bureau and take appropriate action to rectify any violations of the Act.**

For nearly a decade, LCPC has played a quasi-official role in the planning of the Letcher Prison Project. The Bureau gave LCPC unique access, information, and responsibilities, from scoping out sites and lining up landowner permissions, to shaping outreach lists and receiving confidential updates from Bureau officials.

Critically, according to the Bureau's own records, all these services were provided without compensation. LCPC's contributions plainly benefited the non-profit's own interests in having the Bureau decide to build a new prison in Letcher County, Kentucky. Importantly, however, LCPC apparently undertook all project-related tasks without any formal contract or gratuitous service agreement with the Bureau. There is no indication that the Bureau ever procured LCPC's services via a contract or grant. There is no evidence that LCPC was paid by the Bureau, and there is no evidence of any contract, exchange of funds, or formal procurement. Likewise, there is no evidence that LCPC's assistance was performed under any statutory authority--LCPC is not, for example, a federally chartered volunteer corps, nor were its members sworn in as unpaid federal employees. Rather, LCPC appears to be a purely voluntary, and vested, participant that the Bureau solely utilized because LCPC's members want the prison built. And the Bureau did not secure any written waiver or agreement from LCPC acknowledging that its services were gratuitous. In fact, the collaboration appears to have been informal: the Bureau treated LCPC as a partner because LCPC was willing and eager.

The Bureau "accepted" these services from LCPC, rather than merely receiving an unsolicited benefit. Under the Act, acceptance can be explicit or implied through knowing use. Here, the Bureau not only accepted but solicited LCPC's involvement:

- The Bureau emailed requests for LCPC to perform tasks (e.g., "please review this contact list and add anyone we missed").
- The Bureau scheduled meetings and site visits with LCPC and expected their participation.
- The Bureau provided LCPC with confidential information and relied on their cooperation in keeping it secret until official release, essentially treating LCPC as part of the team.

- WSP (as the Bureau’s contracted agent) thanked LCPC for their “support and assistance” and planned continued collaboration.
- Even at the highest level, the Bureau Director engaged LCPC in private briefings, implicitly acknowledging LCPC’s role as a collaborator in the project.

These facts go well beyond passively receiving a benefit. The agency integrated LCPC into its decision process. Courts and GAO would likely find that by actively involving LCPC in official activities, Bureau officials improperly accepted their voluntary services.

The Bureau’s own records and other evidence indicate that the agency likely violated the Act by soliciting and accepting voluntary services from LCPC in the course of developing the Letcher Prison Project. On behalf of CLC, we urge this office to promptly investigate the Bureau’s relationship with LCPC and share your conclusions with CLC and the public. Please contact me with any questions or other requests related to this complaint. We look forward to reviewing your findings.

Sincerely,



Joan Steffen, on behalf of Concerned Letcher Countians (CLC)  
Attorney | Institute to End Mass Incarceration  
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P.O. Box 241, Elgin, IL 60121-0241  
*Licensed to practice law in Illinois and Kentucky.*

# **EXHIBIT A**

to Anti-Deficiency Act Complaint



**VOTE | Voice of the Experienced**  
4930 Washington Avenue; Suite D  
New Orleans, LA 70125  
504-571-9599  
emily@voiceoftheexperienced.org

Sent Via Email: BOP-OGC-EFOIA-S@BOP.GOV

**RE: Freedom of Information Act Request - Letcher Planning Commission and New Prison Construction**

Dear Sir/Madam:

This is a request for records under the Freedom of Information Act. Voice of the Experienced (VOTE) requests copies of records relating to the Letcher Planning Commission's involvement in planning the construction of the new federal prison in Letcher County, Kentucky.

On September 28, 2022, the Federal Bureau of Prisons announced its intention to move forward with planning for a new Federal Correctional Institution and prison camp in Letcher County, Kentucky. We seek information regarding the Letcher Planning Commission's participation in this process from 2010 until the present date.

Pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, we request access to and copies of:

- Any and all meeting minutes, notes, and agendas from meetings between the BOP and the Letcher Planning Commission meetings discussing the proposed federal prison;
- Any and all communications, including electronic communications, internally within the BOP and the Letcher Planning Commission and/or between Letcher Planning Commission officials and any third party concerning the proposed federal prison;
- Any and all records, reports, studies, or assessments conducted by the BOP with the Letcher Planning Commission related to the planning, construction, or potential impacts of the proposed federal prison; and
- Any and all communications, including electronic communications, between the Letcher Planning Commission and the Federal Bureau of Prisons, Department of Justice officials, or any other federal, state, or local agencies concerning the proposed federal prison.

We would prefer to receive the requested information as soon as possible and in electronic format.

**Request for a Fee Waiver**



**VOTE | Voice of the Experienced**  
4930 Washington Avenue; Suite D  
New Orleans, LA 70125  
504-571-9599  
emily@voiceoftheexperienced.org

VOTE requests that the Letcher Planning Commission waive any fee it would otherwise charge for search and production of the records described above. FOIA requires that requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The requested disclosure would meet both these requirements.

**A. VOTE Satisfies the First Fee Waiver Requirement**

For the following reasons, the disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of government.” 5 U.S.C. § 552(a)(4)(A)(iii):

- (1) It concerns an identifiable operation by the federal government: the plans for a proposed federal prison in Letcher County, Kentucky;
- (2) These files are not in the public domain, so their disclosure will likely increase public understanding of the government’s plans for the proposed prison;
- (3) We intend for the requested information to reach a broad audience as it relates to the environmental and human rights concerns; and
- (4) It is necessary to disclose these files so the public is aware of the social, economic, and environmental impact of the proposed prison and its construction

**B. VOTE Satisfies the Second Fee Waiver Requirement**

VOTE is a non-profit organization that advocates on behalf of people held in U.S. prisons and jails. VOTE works on behalf of people whose human rights have been violated in prison and educates the general public about mass incarceration’s injustice. As an advocate for incarcerated people, VOTE is concerned about the environmental impacts of prisons –both the impacts felt by incarcerated individuals themselves, as well as the impacts on the “external” social, economic and ecological environments. We make this request for public interest and non-commercial purposes.

**Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, VOTE will, if necessary and under protest, pay fees in accordance with the Letcher Planning Commission's FOIA regulations for all or a portion of the requested records. Please contact us before doing anything that would cause the fee to exceed \$100.



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If our request is denied in whole or part, please justify all withholdings by reference to specific exemptions and statutes, as applicable. VOTE reserves its right to seek administrative or judicial review of any fee waiver denial.

### **Conclusion**

Please email or (if it is not possible to email) mail the requested records to us at the VOTE office address listed above. Please send them on a rolling basis; Letcher Planning Commission's search for—or deliberations concerning—certain records should not delay the production of any part of the request. We look forward to receiving your response within the twenty-day statutory time period. Thank you for your consideration of this request.

Sincerely,  
/s/ Emily H. Posner  
Emily H. Posner  
General Counsel

# **EXHIBIT B**

to Anti-Deficiency Act Complaint

FOIA/PA Section  
Office of General Counsel, Room 924  
Federal Bureau of Prisons  
320 First Street, N.W.  
Washington, DC 20534

Sent Via Email: BOP-OGC-EFOIA-S@BOP.GOV

**RE: Freedom of Information Act Request - Proposed Letcher Prisons Site Appraisals**

Dear Sir/Madam:

This is a request for records under the Freedom of Information Act. The Institute to End Mass Incarceration (IEMI), on behalf of its client Concerned Letcher Countians LLC (CLC), requests copies of records relating to the Bureau of Prison's efforts to assess the value of privately owned land and to acquire privately owned land in connection with the Bureau's efforts to construct a prison in Letcher County, Kentucky.

On September 28, 2022, the Federal Bureau of Prisons announced its renewed intention to move forward with planning for a new Federal Correctional Institution and prison camp in Letcher County, Kentucky ("the proposed Letcher prison"). This is the second effort by the Bureau of Prisons to construct a federal prison in Letcher County. Prior efforts commenced in 2014 with plans to initiate an environmental impact assessment, as required by the National Environmental Policy Act of 1969. Multiple environmental impact statements regarding the proposed Letcher Prison were published by the Bureau between 2015 and 2017. On March 30, 2018, the Bureau issued a Record of Decision announcing its decision to "select Modified Alternative 2-Roxana for the land acquisition and development of a USP and FPC in Letcher County." On June 5, 2019, this Record of Decision was withdrawn. Three years later, on September 28, 2022, the Bureau published in *The Mountain Eagle* a public notice of its renewed proposal "to construct and operate a new medium-security FCI and an adjoining minimum-security FPC in Letcher County, KY." On March 1, 2024, the Bureau published a new Draft Environmental Impact Statement stating that its "preferred" course of action is to move forward with construction of a new federal prison "at the Roxana site" in Letcher County.

We seek information regarding the Bureau's efforts to appraise the value of real property and to acquire real property in connection with its effort to construct a prison in Letcher County. Our requests apply to the Bureau's past and ongoing efforts to construct the proposed Letcher prison; they are not limited temporally or otherwise to the currently pending effort. In this letter, we use the phrase "the proposed Roxana site" to refer to *all* versions of the Roxana site considered by the Bureau throughout the 2015-2019 environmental review process and up through the present, inclusive of but not limited to the boundaries defined by the "Modified Alternative 2-Roxana" site.

Specifically, pursuant to the federal Freedom of Information Act, 5 U.S.C. § 552, we request access to and copies of:

1. Any and all communications, including electronic communications, between the Bureau of Prisons and any individual hired or employed by the Bureau which discuss the appraisal of any real property within the proposed Roxana site.
2. Any and all documents or communications, including in electronic format, that contain draft or final site surveys or plats for any parcel or subparcel of land at the proposed Roxana site.
3. Any and all documents or communications, including in electronic format, related to title searches or other efforts to study the legal ownership or chains of title of land located at the proposed Roxana site.
4. Any and all communications or documents, including in electronic format, in the Bureau's possession between representatives of the federal government and private individuals who own, owned or whom the Bureau believed may own or may have owned any interest in real property at the proposed Roxana site related to the transfer of any such property interest from private individuals to the Bureau of Prisons. This request includes but is not limited to:
  - (a) any documents or communications containing information related to appraisals, including but not limited to communications seeking access to private property for purpose of appraisals and communications containing any related to estimates of property values;
  - (b) any documents or communications relating to any offer or potential offer made by the federal government to purchase land at the proposed Roxana site;
  - (c) any documents or communications relating to the use or potential use of the government's eminent domain authority to acquire land at the proposed Roxana site.
5. Any and all communications or documents, including electronic communications, between the Bureau of Prisons and the Letcher Planning Commission or any other state or local governments or nongovernmental or quasi-governmental organizations related to the appraisal, valuation, purchase, or transfer of any interest in real property to the federal government in connection with the construction and/or operation of the proposed Letcher Prison.
6. Any and all communications or documents, including electronic communications, internally within the Bureau of Prisons that discuss efforts to appraise and/or acquire ownership or possession of real property in connection with the proposed prison construction at the Roxana site. This request includes but is not limited to:
  - (a) internal communications regarding draft or final appraisal reports or other estimates of the value of any parcel, subparcel, or other interest in real property that the Bureau sought to obtain or access in furtherance of the construction and/or operation of the proposed prison at the Roxana site;

- (b) internal communications regarding plans or efforts to purchase or otherwise consensually acquire any real property interest in connection with the construction and/or operation of the proposed prison at the Roxana site; and
- (c) internal communications regarding any plans or efforts to acquire any real property interest in connection with the construction and/or operation of the proposed prison at the Roxana site via eminent domain.

Any references above to interests in real property refer to land located at the Roxana site itself and to any other real property interests that the Bureau may have sought to acquire or explored acquiring in connection with the construction and/or operation of the proposed Letcher prison whether at the Roxana site itself or elsewhere (e.g., easements for water, sewage, natural gas, electrical or other utilities; rights of way for over-land access).

7. Any and all communications or documents, including electronic communications, between the Bureau of Prisons and other components of the Department of Justice, including but not limited to the U.S. Attorney’s Office for the Eastern District of Kentucky and the Land Acquisition Section of the Environmental and Natural Resources Division, related to the use or potential use of eminent domain authority to acquire any interest in real property in connection with the proposed Letcher prison.
8. With respect to the information described in paragraphs (1), (4), and (5) above, we request the same information with respect to the Bureau’s efforts to acquire land in connection with the construction of USP McCreary and USP Big Sandy.

We would prefer to receive the requested information in electronic format. As discussed below, we also request the information on an expedited basis.

### **Request for a Fee Waiver**

IEMI requests that the Bureau of Prisons waive any fee it would otherwise charge for search and production of the records described above. FOIA requires that requested records be provided without charge “if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). The requested disclosure would meet both these requirements.

#### **A. CLC Satisfies the First Fee Waiver Requirement**

For the following reasons, the disclosure requested here would be “likely to contribute significantly to public understanding of the operations or activities of government.” 5 U.S.C. § 552(a)(4)(A)(iii):

- (1) It concerns an identifiable operation by the federal government: the plans for a proposed federal prison in Letcher County, Kentucky;

(2) These files are not in the public domain, so their disclosure will likely increase public understanding of the government’s plans for the proposed prison;

(3) We intend for the requested information to reach a broad audience and to share it with residents of Letcher County who will be impacted by the construction of the federal prison and by efforts to acquire private land in Letcher County in furtherance of said construction; and

(4) It is necessary to disclose these files so the public is aware of the plans for and impact of the proposed prison and its construction.

**B. CLC Satisfies the Second Fee Waiver Requirement**

CLC is a nonprofit limited liability company formed pursuant to and under Kentucky law “for a nonprofit purpose.” Ky. Rev. Stat. Ann. §275.015(19). The organization is composed of local Letcher County volunteer residents who are committed to tackling issues which present harm to the county and its inhabitants. CLC is working to protect and provide a positive future for the youth of Letcher, and in doing so creating an environment which respects all of its residents and its land. CLC believes that a prison will harm, not help Letcher County. CLC has no commercial investments in Letcher County and will use the information provided from this request to educate and assist the residents of Letcher County. As such, this records request “is not primarily in the commercial interest of the requester.” 5 U.S.C. §552(a)(4)(A)(iii).

**Willingness to Pay Fees Under Protest**

Please provide the records requested above regardless of your fee waiver decision. In order to expedite a response, IEMI will, if necessary and under protest, pay fees in accordance with the Bureau of Prisons’ FOIA regulations for all or a portion of the requested records. Please contact us before doing anything that would cause the fee to exceed \$100.

**Request for Expedited Status**

This request qualifies for expedited handling, pursuant to 5 U.S.C. § 552(a)(6)(E) and the second and the fourth criteria promulgated by the Department of Justice as circumstances warranting an expedited request. *See* 28 C.F.R. §16.5. Specifically, we request expedited handling because:

- The information requested is urgently needed to inform the public of the BOP’s activity regarding the proposed Letcher prison. The efforts to construct the proposed prison are actively underway, with an environmental impact study released on March 1, 2024 and public comments due within 45 days. This request is being made by CLC, an organization whose membership has been primarily engaged with informing Letcher countians and the general public about the proposed Letcher prison.
- Separately, the request relates to a subject of widespread and exceptional media interest and involves possible questions about the integrity of government actions that affect public confidence. The proposed Letcher prison has garnered exceptional media attention at the national, state and local level. The information sought is to ensure transparency

regarding this proposed prison, particularly given previous statements from the administrations of Presidents Trump and Biden that a prison in Letcher County is unnecessary and a poor use of taxpayer funds. Transparency about this proposed prison involves questions about the government's integrity that affect public confidence in the BOP and the government more broadly.

Please see the attached certified statement, which includes additional details supporting the applicability of the foregoing criteria for expedited handling. We look forward to receiving your confirmation of expedited processing within the ten-day statutory time period. *See* 5 U.S.C. §52( a)(6)(E)(ii)(I).

### Conclusion

Please email or (if it is not possible to email) mail the requested records to us at the IEMI office address listed below. **Please send them on a rolling basis.** The Bureau's search for ~~or~~ deliberations concerning ~~ertain~~ or new records should not delay the production of any part of the request. We look forward to receiving your response within the twenty-day statutory time period.

If our request is denied in whole or part, please justify all withholdings by reference to specific exemptions and statutes, as applicable. We reserve the right to seek administrative or judicial review of any denial of our requests, including requests for covered materials, for fee waiver, and for expedited handling.

Thank you for your consideration of this request.

Sincerely,



Andrew Manuel Crespo  
Executive Faculty Director  
Institute to End Mass Incarceration  
22 Everett Street  
Cambridge MA, 02138  
acrespo@law.harvard.edu

cc: Xochitl Hinojosa, Director, Office of Public Affairs Leadership, DOJ  
Sydney Thomas, Student-Attorney, Institute to End Mass Incarceration, via email  
Dr. Artie Ann Bates, Secretary, Concerned Letcher Countians, via email

attch: certification in support of expedited processing

## CERTIFICATION FOR EXPEDITED PROCESSING OF FOIA REQUEST

1. I, Andrew Manuel Crespo, in support of expedited handling of the accompanying FOIA request, certify that the below is true.
2. I am the Executive Faculty Director of the Institute to End Mass Incarceration, a legal clinic based at Harvard Law School.
3. In this capacity, I serve as counsel for Concerned Letcher Countians (“CLC”). CLC is a nonprofit limited liability company formed pursuant to and under Kentucky law “for a nonprofit purpose.” Ky. Rev. Stat. Ann. §275.015(19).
4. CLC’s members and leaders reside in Letcher County, Kentucky. The group was formed by local community leaders for the purpose of advancing the social and economic opportunities of the county, which the group believes would be seriously disserved by the construction of a new federal prison within the county.
5. On March 1, 2024, the Bureau of Prisons (“the Bureau”) published a Draft Environmental Impact Statement (“Draft EIS”). The Draft EIS states that construction of a new federal prison “at the Roxana Site” within Letcher County is the Bureau’s “preferred” course of action.
6. In conjunction with this certificate and on CLC’s behalf, I have today submitted to the Bureau a formal request, incorporated herein by reference, for records covered by the Freedom of Information Act.
7. As mandated by 5 U.S.C. § 552(a)(6)(E), the Department of Justice has promulgated regulations “providing for expedited processing of requests for records.” *Id.*; see 28 C.F.R. §16.5(e). As the Bureau summarizes on its website, “[t]here are four specific situations where a [FOIA] request will be expedited, which means it is handled as soon as practicable.” Federal Bureau of Prisons, Freedom of Information Act, <https://www.bop.gov/foia/#tabs-3> (last visited Mar. 4, 2024) (hereinafter “BOP FOIA Guidance”).
8. The FOIA request submitted today on CLC’s behalf qualifies for expedited handling under 28 C.F.R. §16.5(e)(1)(ii), which applies when “the information requested is urgently needed to inform the public concerning some actual or alleged federal government activity, and if it is made by a person primarily engaged in disseminating information to the public.” BOP FOIA Guidance. In support of the applicability of this criterion for an expedited response, I certify as follows:
  - a. The proposed construction of a new federal prison in Letcher County, as described in the Draft EIS, is a “federal government activity,” *id.*, that would have a significant impact on the Letcher County community. As one recent study by the Kentucky Center for Economic Policy reports, the construction of federal

prisons in this region has had serious adverse economic impacts on the surrounding communities. As the report states:

“We examined economic indicators for nearby Clay, Martin and McCreary counties from before and after a federal prison opened in each locality (1992, 2003, and 2004, respectively). Our analysis of county-level economic data shows that rather than economic improvement, longstanding problems have continued or even worsened....”<sup>1</sup>

- b. The “information requested” in CLC’s FOIA request “is urgently needed,” *id.*, given the imminent nature of the federal action. As noted above, the Draft EIS was published on March 1, 2024, commencing a 45-day comment period and potentially swift further action with respect to the prison. The House of Representatives Committee on Appropriations has also proposed legislation that, if enacted, would further accelerate this federal action—and thus compound the urgency of this request—by exempting this one prison construction project from existing environmental review and judicial review statutes. *See* H .Comm. on Appropriations, 118th Cong., Commerce, Justice, and Science Appropriations Bill for Fiscal Year 2024, §219 (2024).
- c. Consistent with its mission and efforts to inform the public about the consequences of the proposed prison in Letcher County, CLC and its members are “primarily engaged in disseminating information to the public.” *Id.* For example, Dr. Artie Ann Bates, who is one of CLC’s founding members and serves as its secretary, has authored numerous pieces in the media and has been interviewed on multiple occasions regarding the proposed prison.<sup>2</sup> For reference, please note the articles and interviews below:
  - i. Sylvia Ryerson & Judah Schept, *Eastern Kentucky Needs Flood Relief, Not Another Federal Prison*, N.Y. Times, Mar. 29, 2023, at A27.<sup>3</sup>

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<sup>1</sup> Ashley Spalding, Jason Bailey & Dustin Pugel, *Facts Don’t Support Economic Argument for Proposed Federal Prison in Letcher County 2* (May 19, 2023) Kentucky Center for Economic Policy, <https://kypolicy.org/letcher-county-prison-will-not-help-economy/>.

<sup>2</sup> CLC, through its members, is primarily involved in information dissemination as part of its efforts to inform the public about the consequences of the proposed prison construction process; the organization and its members also engage in other activities distinct from information dissemination. *Cf.* 28 C.F.R. §16.5(e)(3) (“[A] requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester’s sole occupation.”).

<sup>3</sup> Link for online access: <https://www.nytimes.com/2023/03/29/opinion/kentucky-prison-flood.html>

- ii. Artie Anne Bates, *Letter to the Editor: Says prison issue being ‘fast-tracked’*, The Mountain Eagle, Jan. 3, 2024.<sup>4</sup>
  - iii. Artie Ann Bates, *Letter to the editor: Writer has concerns about prison plan*, The Mountain Eagle, Nov. 9, 2022.<sup>5</sup>
  - iv. Radio Free Eskippakithiki, *Opposing Building Federal Prison in Letcher County*, WRFL University of Kentucky, at 2:05pm (Feb. 27, 2024).<sup>6</sup>
- d. Under Department of Justice guidelines, the “numerous articles published on [this] given subject,” including in national outlets such as *The New York Times*, demonstrates that CLC’s FOIA request satisfies “the requirement that there be an ‘urgency to inform’ the public on the topic.” 28 C.F.R. §16.5(e)(2).
9. CLC’s FOIA request separately qualifies for expedited handling under 28 C.F.R. §16.5(e)(1)(iv), which applies when there is “a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity that affect public confidence.” 28 C.F.R. §16.5(e)(1)(iv). In support of the applicability of this criterion for an expedited response, I certify as follows:
- a. The proposed prison in Letcher County raises multiple questions about the government’s integrity that affect public confidence. In support of this assertion, I certify that:
    - i. As reported in *Roll Call*, President Donald Trump’s administration opposed construction of the proposed prison, writing in its 2021 fiscal request to Congress that the project is “wasteful spending,” the prison is “unneeded” and “significantly delayed due to the site selected,” and “very costly to taxpayers.”<sup>7</sup>
    - ii. As reported in *Roll Call*, “President Joe Biden kicked off the fiscal 2024 appropriations process ... with a budget request that renewed a proposal to eliminate funding for the construction of a new federal prison in eastern Kentucky.”<sup>8</sup>

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<sup>4</sup> Link for online access: <https://www.themountaineagle.com/articles/letter-to-the-editor-says-prison-issue-being-fast-tracked/>

<sup>5</sup> Link for online access: <https://www.themountaineagle.com/articles/letter-to-the-editor-2/>

<sup>6</sup> Link for online access: <https://wrfl.fm/archives#tue-2pm>

<sup>7</sup> Todd Ruger, *Powerful appropriator battles Justice over prison in Kentucky*, Roll Call, Mar. 11, 2020, <https://rollcall.com/2020/03/11/powerful-appropriator-battles-justice-over-prison-in-kentucky/>.

<sup>8</sup> Ryan Tarinelli, *Rep. Harold Rogers brings influence to appropriations role*, Roll Call, Mar. 17, 2023, <https://rollcall.com/2023/03/17/rep-harold-rogers-brings-influence-to-appropriations-role/>.

- iii. Hugh Hurwitz, who has served as the Bureau’s Acting Director, Assistant Director for Administration, and Assistant Director for Reentry Services, publicly criticized the proposed prison construction project, writing in *The Hill* that “Letcher is a rural county with little industry or infrastructure” and “virtually no public transportation service,” such that “[h]iring and maintaining a professional workforce in this area will be extremely challenging.”<sup>9</sup>
- iv. As reported by *Louisville Public Media*, the principal legislative proponent of the proposed project, Representative Harold Rogers, has previously been criticized by Citizens for Responsibility and Ethics in Washington for allegedly “directing millions of dollars in earmarks to a Kentucky-based company that has contributed to his campaign.”<sup>10</sup>
- v. On May 19, 2023, the Kentucky Center for Economic Policy produced a research report concluding that “facts don’t support [the] economic argument for [the] proposed federal prison in Letcher County.”<sup>11</sup>
- vi. On September 19, 2023, over 185 organizations from across the country, including multiple leading national advocacy organizations, delivered a letter to congress opposing the project, citing its potential impact on families and communities throughout the Bureau’s Mid-Atlantic region and beyond.<sup>12</sup>
- vii. As reported in *The New Republic*, organized opposition to the prison has existed locally and nationally since at least March 2016. Due to this opposition, the initial proposal to construct a prison in Letcher County was ultimately withdrawn by the Bureau.<sup>13</sup>

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<sup>9</sup> Hugh Hurwitz, *We need a well-designed plan to repair or replace our crumbling federal prisons*, *The Hill*, Feb. 20, 2023, <https://thehill.com/opinion/criminal-justice/3866946-we-need-a-well-designed-plan-to-repair-or-replace-our-crumbling-federal-prisons/>.

<sup>10</sup> Phillip M. Bailey, *Watchdog Group Names Congressman Rogers Among Most Corrupt Lawmakers*, *Louisville Public Media*, Sept. 12, 2012, <https://www.lpm.org/news/2012-09-12/watchdog-group-names-congressman-rogers-among-most-corrupt-lawmakers>.

<sup>11</sup> Ashley Spalding, Jason Bailey & Dustin Pugel, *Facts Don’t Support Economic Argument for Proposed Federal Prison in Letcher County*, *Kentucky Center for Economic Policy* (May 19, 2023), <https://kypolicy.org/letcher-county-prison-will-not-help-economy/>.

<sup>12</sup> Emily Posner & Morgan Caplan, *Over 185 Organizations Oppose Legislation Fast-Tracking A New Prison in Eastern Kentucky*, *Sierra Club* (Sept. 19, 2023), <https://www.sierraclub.org/press-releases/2023/09/over-185-organizations-oppose-legislation-fast-tracking-new-prison-eastern>.

<sup>13</sup> Sam Adler-Bell, *Appalachia vs. The Carceral State*, *The New Republic*, Nov. 25, 2019, <https://newrepublic.com/article/155660/appalachia-coal-mining-mountaintop-removal-prison-fight>.

viii. As reported by the local CBS News Affiliate, WYMT, the proposal has previously sparked local protest “to show resistance to the proposed federal prison in Letcher County.”<sup>14</sup>

b. As indicated by the numerous news reports cited in this certification, including articles published in national publications such as *The New York Times* and *The New Republic*, as well as coverage in local and regional print, radio, and television media, CLC’s FOIA request concerns “a matter of widespread and exceptional media interest.” 28 C.F.R. §16.5(e)(1)(iv).

10. Based on the above information, the accompanying FOIA request should receive expedited handling.



Andrew Manuel Crespo  
Executive Faculty Director  
Institute to End Mass Incarceration  
23 Everett Street  
Cambridge, MA 02138

\* Admitted to practice law in  
Massachusetts and the District of Columbia

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<sup>14</sup> Ryan Adams, *Group opposing prison holds protest at SOAR Innovation Summit*, Mountain News WYMT, June 6, 2016, <https://www.wymt.com/content/news/Letcher-Governance-Project-holds-silent-protest-at-SOAR-Summit-in-381971531.html>.

# **EXHIBIT C**

to Anti-Deficiency Act Complaint

## [EXTERNAL] FOIA Request - Dir. Peters itinerary and received materials

jayhurst@jayhurst.net <jayhurst@jayhurst.net>

Fri 8/30/2024 8:29 PM

To: BOP-OGC-EFOIA-S (BOP) <BOP-OGC-EFOIA-S@bop.gov>

Cc: 'Microsoft Outlook' <jayhurst@jayhurst.net>

Under the federal Freedom of Information Act, 5 U.S.C. 552, I respectfully request from the Federal Bureau of Prisons the following items:

1. Itinerary of Director Collette Peters during the entirety of her most recent visit to Kentucky, in or about the week of 8/26/2024;

2. Copies of all materials presented to Director Peters during her most recent visit to Kentucky, in or about the week of 8/26/2024.

NEWS MEDIA REPRESENTATIVE – the requestor claims status as a News Media Representative regarding these materials, for which he is working with the Lexington (KY) Herald-Leader to produce an analysis of Rep. Hal Rogers’ plan to build a prison in Letcher County, Kentucky. Previously, the requestor has prior publications related to the FBOP and criminal justice; and has prior publication about the request’s subject matter itself (see <https://www.kentucky.com/opinion/oped/article209509889.html> ).

EXPEDITED PROCESSING – the requestor asks for expedited processing of this relatively simple request for limited materials showing a travel schedule and any reports the Director received on the FBOP’s behalf. The subject matter, contested construction of a new federal prison in Letcher County, Kentucky, is the subject of ongoing local reporting (see, e.g., <https://www.wyvt.com/2024/08/28/letcher-county-makes-case-federal-bureau-prisons-director/> ). The requestor, a freelance news media representative in addition to primary employment as attorney, has published previously in the local news media regarding the Letcher County build (see above), and is currently engaged in follow-up analysis reporting on the topic for a piece accepted for publication by the Lexington Herald-Leader. The public will thus quickly benefit from any revelations in the materials presented to BOP during Director Peters’ most recent visit, either as a revision to the pending piece or the construction of a separate news item.

FEE WAIVER – the requestor requests full fee waiver as a member of the news media engaged in real-time reportage about a matter of public importance, the construction of a federal prison on a recovered strip mine in rural Kentucky. Response to the request is very likely to contribute significantly to public understanding of the operations and activities of the government (contracting bidding, public construction, and correctional planning) and is not primarily in the commercial interest of the requestor (“freelance” does not always translate to “paid” writer, depending on the topic’s importance to the requestor).

I appreciate the Bureau’s time and attention, and look forward to discussing immediate production of these limited records. I stand available for all questions and concerns.

EJ Hurst II (NC Bar No. 39261)  
1890 Star Shoot Parkway  
Suite 170, PMB 371  
Lexington, Kentucky 40509  
859-361-8000  
[jayhurst@jayhurst.net](mailto:jayhurst@jayhurst.net)



# **EXHIBIT D**

to Anti-Deficiency Act Complaint

*Letcher County Planning Commission*  
*P.O. Box 370*  
*Whitesburg, Kentucky 41858*

August 28, 2007

(b)(6)

500 First Street N.W. 5<sup>th</sup> Floor  
Washington, D.C. 20534

Dear (b)(6)

I realize it has been a while since we discussed the rights of entry for the various properties that the BOP is considering in Letcher County. However, I believe we have finally gotten a document on each of the pieces of property. I am forwarding eight separate rights of entry, two of which also require your signature in order to be fully executed. I have retained copies of the six completed documents. I would appreciate it if you could return to me the extra original copy from Crawford Engineering. All four copies of the document from Natural Resource Partners will need to be sent to me so that the remaining signatures can be obtained. I will forward you an original of the executed document as soon as it becomes available to me. I am sorry for the added trouble and I appreciate your help and work. Please let me know if I can be of any assistance. Thank you.

Sincerely,

(b)(6)

(b)(6)

Treasurer  
Letcher County Planning Commission

Cc:

(b)(6)

# **EXHIBIT E**

to Anti-Deficiency Act Complaint

Date: July 27, 2016

To: (b)(6)  
U.S. Department of Justice

Fax: 202-616-(b)(6)

Re: Right of Entry, Roxana Kentucky

Attached is a signed Right of Entry for the 7.8 acres of the (b)(6). As discussed, the terms are for 36 months, no adjacent property owned by the heirs of (b)(6) is being considered at this time, and no subsurface drilling is necessary. Thank you for your consideration.

# RIGHT OF ENTRY

To: (b)(6) Site Selection Specialist  
 Capacity Planning and Site Selection Branch  
 Federal Bureau of Prisons  
 Administration Division  
 320 First Street, NW  
 Washington, D.C. 20534

PH: (b)(6)

(b)(6) Owner) hereby grant to the U.S. Department of Justice, Federal Bureau of Prisons, and its agents, consultants, and contractors, permission to enter upon the 7.8 acres, more or less, owned by me and located in Letcher County, Kentucky, for purposes of conducting various technical studies, inspections, and environmental evaluations. The term of this permission shall be for thirty-six (36) months commencing on midnight of June 1, 2016 through midnight on June 1, 2019.

This grant does not obligate Owner to sell or in any way convey the subject property, and Owner reserves all rights that it may have in the subject property notwithstanding this grant to enter upon the subject property for the above stated purposes. The Federal Bureau of Prisons shall also be responsible for personal injury and property damage, if any, caused by its employees, agents, consultants, and contractors and incurred as a result of the exercise of the right hereby granted, subject to all applicable laws and regulations.

Notwithstanding any provision contained within herein to the contrary, no term or provision of this Right of Entry shall be construed as an agreement by, or a requirement of, the Federal Bureau of Prisons that would result in a violation of the Anti-Deficiency Act, or to otherwise obligate federal funds in excess or advance of appropriation of the same.

Signature: (b)(6)

Date: 06/2016

# **EXHIBIT F**

to Anti-Deficiency Act Complaint



Prepared: May 11, 2022

## Itinerary

## Visit Letcher County, Kentucky

**Monday, June 6, 2022**

**Travel to Letcher County**

**Tuesday, June 7, 2022**

**Meet with Letcher County Officials**

**Time:**

9:00 AM - Noon

**Attendees:**

Letcher County Planning Commission, BOP, WSP

**Agenda:**

Introductions, Opening Remarks, Purpose of Visit

Approach to Siting and Developing new Federal Correctional Institution

- *Siting Process*
- *Development Costs*
- *Property Acquisition*
- *Environmental Impact Statement*
- *Public Engagement*
- *Community Support*

Previously Considered Sites

- *Roxana*
- *Payne Gap*

Identify/Evaluate Additional Sites

- *Outreach to Real Estate Community*
- *Outreach to Large Land Owners (Mining Companies, others)*
- *Others*

Public Engagement/Stakeholders

- *Elected and Appointed Federal and State Officials*
- *Elected and Appointed County and Municipal Officials*
- *Federal and State Regulatory and Permitting Agencies*
- *State and Local Media*
- *Public Interest*
  - *Environmental Groups*
  - *Community/Business Organizations*
  - *Prison Reform/Inmate Rights*
- *General Public/Others*



Prepared: May 11, 2022

**Time:** 2:00 PM – 4:00 PM

**Attendees:** Utility Providers, Letcher County Planning Commission, BOP, WSP

**Agenda:**

- *Water Supply*
- *Wastewater Collection and Treatment*
- *Natural Gas*
- *Electric Power*
- *Broadband and Telecommunications*

### Wednesday, June 8, 2022 Community Resources

**Time:** 9:00 AM – Noon

**Attendees:** Letcher County Planning Commission, BOP, WSP

- *Hospitals, Medical, Health Care*
- *Public Schools*
- *Law Enforcement, Fire Protection, EMT*
- *Availability of Housing*
- *Community Services and Amenities*

### Thursday, June 9, 2022 Site Visits

**Time:** 9:00 AM – 2:00 PM

**Attendees:** Letcher County Planning Commission, BOP, WSP

- *Tour Roxana Site*
- *Tour Payne Gap Site*
- *Tour Other Prospective Sites*

#### **Trip Wrap-up / Close out meeting**

**Time:** 3:00 PM - 4:00 PM

**Attendees:** Letcher County Planning Commission, BOP, WSP

### Friday, June 10, 2022 Depart for Home Offices

# **EXHIBIT G**

to Anti-Deficiency Act Complaint

9/7/2022

Dear (b)(6); (b)(7)(C)

The Letcher County Planning Commission would like to take this opportunity to present several reasons why we think the Federal Correctional Institution should be at Roxana. We realize that, while some of our reasoning may not be central to the goals of the Bureau of Prisons, some are. Roxana is in the midst of an economically depressed area. This project would positively impact Letcher County and at least four (4) surrounding counties by being placed at Roxana.

Significant assets include:

- It is the only site that we have found which is not undermined
- There has already been significant investment of money and time into the Roxana Site
- The local public overwhelmingly support the Roxana Site
- The Kentucky Department of Transportation has plans developed to correct the sharp turn at the junction of KY 160 and KY 588
- There is the availability of two sources of public water at the Roxana Site
- There are two sources of adequate power at the Roxana site
- Fiber Optic cable has already been installed adjacent to the Roxana site
- All affected landowners have expressed a willingness to sell
- Additional land is available
- Ample residential building sites are available at reasonable distances
- CSX rail service exists adjacent to the site and a staging area is available
- Representatives of the Jenkins area are in the process of developing impressive and significant tourism sites and activities. They have asked that the site be at Roxana
- The Roxana site has passed due diligence testing such as environmental, etc.

Please give our rational due consideration.

Sincerely,

Letcher County Planning Commission

- (b)(6); (b)(7)(C) CEO Childers Oil
- (b)(6); (b)(7)(C) Retired Educational Administrator
- (b)(6); (b)(7)(C) Retired Business Owner
- (b)(6); (b)(7)(C) Retired Coal Operator
- (b)(6); (b)(7)(C) Retired Educational Administrator
- (b)(6); (b)(7)(C) Retired Educational Administrator
- (b)(6); (b)(7)(C) Retired Gas Company Agent
- (b)(6); (b)(7)(C) Chairperson Gateway Industrial Park Board
- (b)(6); (b)(7)(C) CEO Mountain Comprehensive Health Corporation
- (b)(6); (b)(7)(C) Superintendent Jenkins Independent Schools
- (b)(6); (b)(7)(C) Business Owner
- (b)(6); (b)(7)(C) Marketing President Community Trust Bank
- (b)(6); (b)(7)(C) Vice President Whitaker Bank

(b)(6); (b)(7)(C) Letcher County Board of Education  
(b)(6); (b)(7)(C) CEO Whitesburg Appalachian Regional Hospital  
(b)(6); (b)(7)(C) Superintendent Letcher County Schools  
(b)(6); (b)(7)(C) Director of Southeast Community College Whitesburg Campus  
(b)(6); (b)(7)(C) Retired Bank of Whitesburg Agent

# **EXHIBIT H**

to Anti-Deficiency Act Complaint

**From:** (b)(6); (b)(7)(C)  
**To:**  
**Subject:** Phone Call from Mr. Cornett - Letcher County  
**Date:** Wednesday, June 29, 2022 10:01:00 AM

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FYI....

(b)(6); (b)(7)(C) called me this morning and thanked me for sending the nice email yesterday thanking him and the members of the community for the meetings that took place the week of June 6<sup>th</sup>.

He informed me that he has been in contact with Congressman Rogers office regarding the possibility of additional costs to build on the Roxanna Site. He stated that Congressman Rogers office informed him that if additional money is needed they would make that happen.

Also, he told me that he has talked to the Mayor of Jenkins regarding possible sites in Jenkins County. He stated that the Mayor does not want a prison built in Jenkins due to their expansion of tourism activities. He is concerned that if a prison is built in Jenkins it would impact tourism. Mr.

(b)(6); (b)(7)(C) stated again that he thinks that Roxanna is the best and possibly the only place to build the prison.

He also asked me for an update. I kept the update short and told him that we are doing our due diligence and performing research on other possible locations in Letcher County. He also asked me if we were going to re-evaluate the costs of building due to inflation. I told him that we are looking into that as well.

(b)(6); (b)(7)(C)

Federal Bureau of Prisons  
Construction and Environmental Review Branch

(b)(6); (b)(7)(C)

# **EXHIBIT I**

to Anti-Deficiency Act Complaint

(b)(6); (b)(7)(C) (BOP)

**From:** (b)(6); (b)(7)(C) (BOP)  
**Sent:** Monday, May 9, 2022 10:02 AM  
**To:** (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)  
**Cc:** (b)(6); (b)(7)(C)  
**Subject:** Database for Contacts in Letcher County, KY  
**Attachments:** Letcher County Contacts LOCAL 5-6-22 (RN).xlsx

Mr. (b)(6); (b)(7)(C)

As we discussed during the introductory meeting last week, the Bureau wants to be sure that it informs a wide audience about the proposed project, direct them to the website for meeting announcements, copies of approved reports, etc. We have extracted from our initial Master Contacts list those individuals, organizations, etc. that comprise the Letcher County area and ask that you and the Planning Commission look over, verify the names and contact information we have, add any info (email addresses if available) and add any individuals, community leaders, local media, businesses, utility company officials, etc.

Attached is the LOCAL CONTACTS portion of the overall database which will be periodically updated with additional contacts as the project unfolds. It is not urgent to respond quickly but please be as thorough as possible. WSP is developing the portion of the database comprising of state and federal regulatory agencies, public interest groups, etc. We will be discussing public engagement as an agenda item when we meet in June. Please feel free to call me with any questions and thank you in advance for your assistance.

(b)(6); (b)(7)(C)

Site Selection Specialist  
Federal Bureau of Prisons  
Construction and Environmental Review Branch

(b)(6); (b)(7)(C)

LOCAL CONTACTS LIST - LETCHER COUNTY, KENTUCKY						
Name	Affiliation	Title	Mailing Address	Office	Mobile	Email Address
<b>ELECTED OFFICIALS</b>						
<b>U.S. SENATORS</b>						
Mitch McConnell	U.S. Senate	U.S. Senator	317 Russell Senate Office Building, Washington DC 20510	202-224-2541		
Rand Paul	U.S. Senate	U.S. Senator	167 Russell Senate Office Building, Washington, DC 20510	202-224-4343		
<b>U.S. HOUSE OF REPRESENTATIVES</b>						
Hal Rogers	U.S. House of Representatives	Congressman	2406 Rayburn House Office Building, Washington, DC 20515	202-225-4601		
	U.S. House of Representatives	Aide to Congressman Hal Rogers	48 S. Kentucky Hwy 15, Hazard, KY 41701	606-439-0794		(b)(6); (b)(7)(C)
<b>STATE OF KENTUCKY, EXECUTIVE OFFICES</b>						
Andy Beshear	Office of the Governor	Governor	700 Capital Avenue, Suite 100, Frankfort, KY 40601	502-564-2611		
Jacqueline Coleman	Office of the Governor	LT Governor	700 Capital Avenue, Suite 100, Frankfort, KY 40601	502-564-2611		
La Tasha Buckner	Kentucky Executive Office	Chief of Staff	700 Capital Avenue, Suite 100, Frankfort, Kentucky 40601	502-564-2611		
Michael Adams	Kentucky Executive Office	Secretary of State	700 Capital Avenue, Suite 132, Frankfort, Kentucky 40601	502-564-3490		
<b>KENTUCKY STATE LEGISLATURE - STATE SENATE</b>						
Johnnie Turner	Kentucky State Senate	State Senator	702 Capitol Avenue, Annex, Room 253, Frankfort, KY 40601	502-564-8100		(b)(6); (b)(7)(C)
<b>KENTUCKY STATE LEGISLATURE - HOUSE OF REPRESENTATIVES</b>						
Angie Hinton	Kentucky House of Representatives	State Representative	702 Capitol Avenue, Annex, Room 472, Frankfort, KY 40601	606-633-3880		
<b>KENTUCKY JUDICIAL OFFICIALS</b>						
Honorable James W. Craft, II	47th Judicial District	Chief Circuit Judge	156 Main Street, Suite 205, Whitesburg, KY 41858	(b)(6); (b)(7)(C)		
Honorable Kevin R. Mullins	47th Judicial District	District Judge	156 Main Street, Suite 101 C, Whitesburg, KY 41858	(b)(6); (b)(7)(C)		
Mike Watts	Letcher County Circuit Court 47	Circuit Court Clerk	156 Main Street, Suite 201, Whitesburg, KY 41858			
Honorable Edison Banks	47th Judicial District	Commonwealth's Attorney	115 East Main Street, Suite A, Whitesburg, KY 41858			
Robert B. Conley	7th Supreme Court District	Supreme Court Justice	Boyd County Judicial Center, 2805 Louisa St., Suite 317, Carlisleburg, KY 41129			
Daniel F. Dotson	Gr. 47, Division 1	Master Commissioner	178 Main Street, Suite 1, Whitesburg, KY 41858			
Larry E. Thompson	7th District, 2nd Division	Judge, Kentucky Court of Appeals	Pike County Judicial Center, 175 Main St., 3rd floor, Pikeville, KY 41501			
John D. Meyers	Kentucky Bar Association	Executive Director	514 W. Main Street, Frankfort, KY 40601			
Shannon Roberts	Kentucky Bar Association	Director of Communications	514 W. Main Street, Frankfort, KY 40601			
<b>LETCHER COUNTY FISCAL COURT</b>						
Jason Back	Letcher County Fiscal Court	Letcher County Deputy Judge/Executive	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-2129		(b)(6); (b)(7)(C)
Terry Adams	Letcher County Fiscal Court	Letcher County Judge/Executive	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-2129		
Jack D. Banks	Letcher County Fiscal Court	District 1 Magistrate	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-2129		
Sherry Sexton	Letcher County Fiscal Court	District 2 Magistrate	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-2129		
Maverick Cook	Letcher County Fiscal Court	District 3 Magistrate	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-2129		
Cheddy Smith	Letcher County Fiscal Court	District 4 Magistrate	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-2129		
Bennie McCall	Letcher County Fiscal Court	District 5 Magistrate	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-2129		
Jim Ward	Letcher County Fiscal Court	Letcher County Judge/Executive	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-2129		
Bobbie Eldridge	Letcher County Fiscal Court	Letcher County Fiscal Court Clerk	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-2129		
<b>WHITESBURG MAYOR AND COUNCIL</b>						
Tiffany M. Craft	Whitesburg City Council	Mayor	38 East Main Street, Whitesburg, KY 41858	606-633-3700		(b)(6); (b)(7)(C)
Derek Barro	Whitesburg City Council	Council member	38 East Main Street, Whitesburg, KY 41858	606-633-3700		
Earlene Williams	Whitesburg City Council	Council member	38 East Main Street, Whitesburg, KY 41858	606-633-3700		
Larry Everidge	Whitesburg City Council	Council member	38 East Main Street, Whitesburg, KY 41858	606-633-3700		
Mike Jackson	Whitesburg City Council	Council member	38 East Main Street, Whitesburg, KY 41858	606-633-3700		
Shella Short	Whitesburg City Council	Council member	38 East Main Street, Whitesburg, KY 41858	606-633-3700		
Debbie Eldridge	Whitesburg City Council	Council member	38 East Main Street, Whitesburg, KY 41858	606-633-3700		
<b>JENKINS MAYOR AND COUNCIL</b>						
Todd DePriest	Jenkins City Council	Mayor	Jenkins City Hall, Jenkins, KY	PAVEY		
Rebecca T. Amburgey	Jenkins City Council	Council member	Jenkins City Hall, Jenkins, KY	606-832-2141		
Chuck Anderson	Jenkins City Council	Council member	Jenkins City Hall, Jenkins, KY	606-832-2141		
Garnet Bornthay	Jenkins City Council	Council member	Jenkins City Hall, Jenkins, KY	606-832-2141		
Rick Damron	Jenkins City Council	Council member	Jenkins City Hall, Jenkins, KY	606-832-2141		
Michael Dingus	Jenkins City Council	Council member	Jenkins City Hall, Jenkins, KY	606-832-2141		
Toni Jenkins	Jenkins City Council	Council member	Jenkins City Hall, Jenkins, KY	606-832-2141		
<b>NEON MAYOR AND COUNCIL</b>						
Susan Potts	Neon City Council	Mayor	City Hall, P.O. Box 66, Neon, KY 41840	606-855-7900		(b)(6); (b)(7)(C)
Kenneth Hollbrook	Neon City Council	Council member	City Hall, 955 Main Street, Fleming-Neon, KY 41840	(b)(6); (b)(7)(C)		
Linda Cantrell	Neon City Council	Council member	City Hall, 955 Main Street, Fleming-Neon, KY 41840	(b)(6); (b)(7)(C)		

James D. Collins	Neon City Council	Council member	City Hall, 955 Main Street, Fleming-Neon, KY 41840	(b)(6); (b)(7)(C)
Susie Fleming	Neon City Council	Council member	City Hall, 955 Main Street, Fleming-Neon, KY 41840	(b)(6); (b)(7)(C)
Ricky Fleming	Neon City Council	Council member	City Hall, 955 Main Street, Fleming-Neon, KY 41840	(b)(6); (b)(7)(C)
<b>UTILITY PROVIDERS</b>				
<b>WATER SUPPLY</b>				
(b)(6); (b)(7)(C)	City of Whitesburg Water Department	Water Plant Operator	3443 US 119N, Mayking, KY 41837	(b)(6); (b)(7)(C)
	Letcher County Water and Sewer District	General Manager	7777 Big Branch Road, Vico, KY 41773	
	Knott County Water and Sewer District	General Manager		
<b>WASTEWATER TREATMENT</b>				
(b)(6); (b)(7)(C)	City of Whitesburg Sewer Department	Sewer Plant Operator	3443 US 119N, Mayking, KY 41837	(b)(6); (b)(7)(C)
	City of Jenkins WWTP	Director		
	Letcher County Water and Sewer District			
<b>ELECTRIC POWER</b>				
	American Electric Power (AEP)			
<b>SOLID WASTE MANAGEMENT</b>				
(b)(6); (b)(7)(C)	City of Whitesburg Sanitation Department	Solid Waste Coordinator	156 Main Street, Suite 106, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Laurel Ridge Landfill	Manager		
<b>NATURAL GAS</b>				
	Egible Gas (EQT)			
	Hayden Harper			
	Clean Gas, Inc.			
<b>TELECOMMUNICATIONS (TELEPHONE, INTERNET, CABLE TV)</b>				
	Windstream			
	Birch Communications			
<b>LOCAL AGENCIES</b>				
<b>LETCHER COUNTY AGENCIES, BOARDS AND COMMISSIONS</b>				
(b)(6); (b)(7)(C)	County Attorney's Office	County Attorney	95 A Main Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Commonwealth Attorney	Commonwealth Attorney	48 East Main Street, Whitesburg, KY 41858	606-633-8121
	Department of Revenue	Property Valuation Administrator	156 Main Street, Suite 105, Whitesburg, KY 41858	606-633-2182
	County Sheriff's Office	County Sheriff	6 Broadway Street, Whitesburg, KY 41858	606-633-2293
	County Court Clerk	County Court Clerk	156 Main Street, Whitesburg, KY 41858	606-633-2432
	Circuit and District Courts	Circuit and District Court Clerk	156 Main Street, Whitesburg, KY 41858	606-633-7559 (Circuit)
	County Jail	County Jailor	156 Main Street, Whitesburg, KY 41858	606-633-5163
(b)(6); (b)(7)(C)	Coroner's Office	County Coroner	156 Main Street, Suite 107, Whitesburg, KY 41858	606-634-2794
	Department of Roads and Bridges	Road Foreman	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-2129
	Sanitation Department	Solid Waste Coordinator	156 Main Street, Suite 106, Whitesburg, KY 41858	606-633-2129
	Letcher County E-911 Office	Coordinator	2157 Highway 119 North, Whitesburg, KY 41858	606-633-3322
(b)(6); (b)(7)(C)	Emergency Management	Emergency Management Director	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-0429
	Pine Mountain Search and Rescue	Chief	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-0429
	Letcher County Fire and Rescue	Director	2429 KY-7, Jeremiah, KY 41826	606-633-0119
(b)(6); (b)(7)(C)	Letcher County Fire and Rescue	EMS Lieutenant		606-633-8058
	Kings Creek Volunteer Fire Department		8978 KY-160, Whitesburg, KY 41858	606-633-9632
	Mayking Volunteer Fire Department		84 Highway 1862, Whitesburg, KY 41858	606-633-2697
	Sandlick Volunteer Fire Department		2968 Highway 931, Whitesburg, KY 41858	606-633-5551
	Jenkins Fire Department	Fire Station 1	9349 Highway 805, Jenkins, KY 41537	
	Jenkins Fire Department	Fire Station 2	Dunham Road, Jenkins, KY 41537	
	Letcher County Cultural Hub	Director	91 Madison Avenue, Whitesburg, KY 41858	606-633-0108
	Parks and Recreation Department	Director	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-7027
	Letcher County Health Department	Treasurer	6 Broadway Street, Whitesburg, KY 41858	606-633-2945
	Letcher County Treasurer	Member	156 Main Street, Suite 107, Whitesburg, KY 41858	606-633-2129
	Letcher County Tourism Board	Member	30 CHILDERS ROAD, SUITE A, WHITESBURG, KY 41858	606-634-6630
	Letcher County Airport Board	Commissioner	156 Main Street, Suite 107, Whitesburg, KY 41858	606-632-9600
	Letcher County Flood Plans	Flood Plain Coordinator	156 Main Street, Suite 107, Whitesburg, KY 41858	606-335-9244
<b>LETCHER COUNTY PLANNING COMMISSION</b>				
(b)(6); (b)(7)(C)	Letcher County Planning Commission	Co-Chair	262 Elwood Road, Blackey, KY 41804	(b)(6)
	Letcher County Planning Commission	Member	P.O. Box 803, Neon, KY 41840	
	Letcher County Planning Commission	Member	13666 HWY 2035, Whitesburg, KY 41858	

(b)(6); (b)(7)(C)	Letcher County Planning Commission	Member	1014 HWY 3408, Blackey, KY 41804	(b)(6); (b)(7)(C)
	Letcher County Planning Commission	Member	P.O. Box 261, Comona, KY 41810	(b)(6); (b)(7)(C)
	Letcher County Planning Commission	Member	P.O. Box 831, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Letcher County Planning Commission	Member	P.O. Box 369, Ison, KY 41824	(b)(6); (b)(7)(C)
	Letcher County Planning Commission	Member	155 Main Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Letcher County Planning Committee	Co-Chair	51 HWY 2034, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
<b>MUNICIPAL AGENCIES</b>				
(b)(6); (b)(7)(C)	City of Whitesburg	Whitesburg City Clerk	38 E. Main Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	City of Whitesburg	City Attorney	38 E. Main Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	City of Whitesburg	Treasurer	38 E. Main Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Whitesburg Fire and Rescue	Whitesburg Fire Chief	38 E. Main Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Whitesburg Fire and Rescue	Volunteer Firefighter	38 E. Main Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Whitesburg Police Department	Whitesburg Police Chief	38 E. Main Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	City of Whitesburg Sanitation Department	Supervisor	38 E. Main Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	City of Whitesburg Recycling Department	Supervisor	38 E. Main Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	City of Whitesburg Street Department	Supervisor	38 E. Main Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	City of Whitesburg Volunteer Fire Station	Jenkins Fire Chief	Jenkins City Hall, P.O. Box 568, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	City of Jenkins	Jenkins City Treasurer	Jenkins City Hall, P.O. Box 568, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	City of Jenkins	Jenkins Finance Director	Jenkins City Hall, P.O. Box 568, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	City of Jenkins	Jenkins City Manager	Jenkins City Hall, P.O. Box 568, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	City of Jenkins	Jenkins City Clerk	Jenkins City Hall, P.O. Box 568, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	City of Jenkins Public Safety	Director	Jenkins City Hall, P.O. Box 568, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	City of Jenkins Police Department	Jenkins Police Chief	Jenkins City Hall, P.O. Box 568, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	City of Jenkins	Jenkins City Attorney	Jenkins City Hall, P.O. Box 568, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	City of Neon	City Attorney	City Hall, 955 Main Street, Fleming Neon, KY 41840	(b)(6); (b)(7)(C)
	City of Neon	City Clerk	City Hall, 955 Main Street, Fleming Neon, KY 41840	(b)(6); (b)(7)(C)
	City of Neon	City Treasurer	City Hall, 955 Main Street, Fleming Neon, KY 41840	(b)(6); (b)(7)(C)
	Neon Volunteer Fire Department	Fire Chief	50 Rescue Street, Neon, KY 41840	(b)(6); (b)(7)(C)
	Fleming-Neon Police Department	Police Chief	City Hall, 955 Main Street, Fleming Neon, KY 41840	(b)(6); (b)(7)(C)
<b>STAKEHOLDERS</b>				
<b>PROPERTY OWNERS (PROSPECTIVE SITES)</b>				
(b)(6); (b)(7)(C)	Lawson Site (Payne Gap)		(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
<b>COMMUNITY ORGANIZATIONS</b>				
	Letcher County Food Pantry		204 Madison Avenue, Whitesburg, KY 41858	606-633-5881
	Cowan Community Action Group, Inc.			
<b>EDUCATIONAL INSTITUTIONS</b>				
(b)(6); (b)(7)(C)	Letcher County Public Schools	Superintendent	224 Parks Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Letcher County Public Schools	Member - Letcher County Board of Education	224 Parks Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Letcher County Public Schools	Member - Letcher County Board of Education	224 Parks Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Letcher County Public Schools	Member - Letcher County Board of Education	224 Parks Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Letcher County Public Schools	Member - Letcher County Board of Education	224 Parks Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Cowan Elementary School	Principal	3125 Highway 9315, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Arle Boggs Elementary School	Principal	1099 Highway 806, Lobb, KY 41826	(b)(6); (b)(7)(C)
	Fleming Neon Middle School	Principal	50 Second Street, Neon, KY 41840	(b)(6); (b)(7)(C)
	Letcher County Central High School	Principal	435 Cougar Drive, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Letcher Elementary and Middle School	Principal	160 LHS Drive, Blackey, KY 41804	(b)(6); (b)(7)(C)
	Martha Jane Potter Elementary School	Principal	55 Kona Drive, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	West Whitesburg Elementary School	Principal	330 Parks Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Whitesburg Middle School	Principal	366 Parks Street, Whitesburg, KY 41858	(b)(6); (b)(7)(C)
	Hazard Community and Technical College	President/CEO	1 Community College Dr, Hazard, KY 41701	(b)(6); (b)(7)(C)
	Southeast Kentucky Community and Technical College	President/CEO	700 College Road, Cumberland, KY 40823	(b)(6); (b)(7)(C)
	Jenkins Independent Schools	Chairman - Jenkins Board of Education	P.O. Box 583, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	Jenkins Independent Schools	Vice-Chair - Jenkins Board of Education	245 Forest Hill Circle, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	Jenkins Independent Schools	Member - Jenkins Board of Education	100 Vanover Road, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	Jenkins Independent Schools	Member - Jenkins Board of Education	41 Railroad Hill, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	Jenkins Independent Schools	Member - Jenkins Board of Education	1101 Joe's Branch Road, Jenkins, KY 41537	(b)(6); (b)(7)(C)
	Burdine Elementary School	Principal	11497 KY 805, Burdine, KY 41517	(b)(6); (b)(7)(C)
	Jenkins Independent Schools	Superintendent	269 State Hwy 3086, Jenkins, KY 41537	(b)(6); (b)(7)(C)

Wendy Rutherford (b)(6); (b)(7)(C)	Jenkins Middle High School	Principal	269 State Hwy 3086, Jenkins, KY 41537	606-832-2185 (b)(6); (b)(7)(C)
<b>HOSPITALS AND HEALTH CARE PROVIDERS</b>				
(b)(6); (b)(7)(C)	Letcher County Health Center	Family Medicine, Nurse Practitioner	(b)(6); (b)(7)(C)	
(b)(6); (b)(7)(C)	Mountain Comprehensive Health Corp.	CEO	P.O. Box 40, 226 Medical Plaza Lane, Whitesburg, KY 41858	
	Whitesburg Appalachian Regional Hospital			
	ARH Clinic			
	Jenkins ARH Clinic			
	Neon ARH Clinic			
	ABH Cardiology Clinic and Home Health Agency			
	Kentucky River District Health Department	Director	441 Gorman Hollow Road, Hazard, KY 41701	
	Kentucky River District Health Department	Public Information Officer	441 Gorman Hollow Road, Hazard, KY 41701	
<b>REGIONAL PLANNING AND ECONOMIC DEVELOPMENT AGENCIES</b>				
(b)(6); (b)(7)(C)	Chamber of Commerce	President	229 Main Street (Tourism Building), Whitesburg, KY 41858	
	Kentucky Highlands Investment Corporation	CEO	P.O. Box 1738, London, KY 40743	
	Big Sandy Area Development District	Executive Director	10 Resource Court, Prestonsburg, Kentucky 41653	
	Big Sandy Area Development District	Economic Development Coordinator	10 Resource Court, Prestonsburg, Kentucky 41653	
	Kentucky Promise Zone		P.O. Box 1738 362 Old Whiteley Road London, KY 40743	
<b>LOCAL LIBRARIES AND RESPOSITORIES</b>				
(b)(6); (b)(7)(C)	Harry M. Caudill Memorial Library	Library Director	220 Main Street, Whitesburg, KY 41858	
	Blackey Public Library		295 Main Street Loop, Blackey, KY 41804	
	Jenkins Public Library		9543 Highway 805, P.O. Box 687, Jenkins, KY 41537	
	Lillian Webb Memorial Library		1049 Highway 317, P.O. Box 236, Neon, KY 41840	
<b>HOUSES OF WORSHIP</b>				
	Little Zion Baptist Church	Pastor	13897 US-119, Partridge, KY 40862	
	Rockvine Baptist Church		84 Warren Road, Cumberland, KY 40823	
(b)(6); (b)(7)(C)	Dione Baptist Church	Pastor	170 Madison Street, Whitesburg, KY 41858	
(b)(6); (b)(7)(C)	First Baptist Church		95 Maryland Drive, Whitesburg, KY 41858	
	Summit Community Church of Whitesburg			
<b>LOCAL BUSINESSES AND BUSINESS GROUPS</b>				
	Mitchell Wright Recycling			
	Lewis Electric Security Systems			
	Charles Sexton Trucking			
	Whitaker Bank			
	Community Trust Bank			
	Tom Short Ford			
	NAPA Auto Works/Childers Tire and Supply		37 Highway 2034, Whitesburg, KY 41858	
	Raven Rock Golf Course		586 Golf Course Lane, Jenkins, KY 41537	
<b>REAL ESTATE COMMUNITY</b>				
(b)(6); (b)(7)(C)	Appalachian Real Estate Group	President	2448 Church Street S, Ripley, WV 25271	
	The Mountain Real Estate Co.	President	200 E Main St, Hazard, KY 41701	
	AAA Real Estate Services, Inc.	Owner	141 Hibbard St, Pikeville, KY 41501	
(b)(6); (b)(7)(C)	Century 21 American Way Realty	(b)(6); (b)(7)(C)	256 E Main St, Hazard, KY 41701	
	Rz/Max Legacy Group	(b)(6); (b)(7)(C)	625 Memorial Dr #201, Hazard, KY 41701	
	Scott Hogue & Associates Realty		112 Myers St, Cumberland, KY 40823	
<b>MEDIA</b>				
<b>PRINT</b>				
(b)(6); (b)(7)(C)	The Paintsville-Herald	Staff Writer	978 Broadway Street, Paintsville, KY 41240	
	Floyd County Chronicle and Times		197 South Lake Drive, Prestonsburg, KY 41653	
	Mountain-Advocate	Editor	214 Knox Street, Barbourville, KY 40906	
	Corbin-Times-Tribune	Reporter	P.O. Box 516, Corbin, KY 40702	
	Corbin-Times-Tribune	Managing News Editor	P.O. Box 1524, Corbin, KY 40701	
	Corbin-News-Journal	Managing News Editor	P.O. Box 1524, Corbin, KY 40701	
	Mountain Eagle	Editor	41 N Webb Street, Whitesburg, KY 41858	
	Mountain Eagle	Contributing Editor	41 N Webb Street, Whitesburg, KY 41858	
	Letcher County Community News-Press		73 Community Dr, Cromona, KY 41810	(b)(6); (b)(7)(C)

# **EXHIBIT J**

to Anti-Deficiency Act Complaint

(b)(6); (b)(7)(C)

**(BOP)**

**From:** (b)(6); (b)(7)(C)  
**Sent:** Friday, October 7, 2022 11:37 AM  
**To:** (b)(6); (b)(7)(C)  
**Cc:** (b)(6); (b)(7)(C)  
**Subject:** [EXTERNAL] FW: Public Scoping meeting in Letcher County - Preparations  
**Attachments:** Letcher County Scoping Notification List 9-28-22 (RN).xlsx

(b)(6); (b)(7)(C)

Thanks for the opportunity to speak with the Planning Commission and discuss plans for the public scoping meeting to be held in Letcher County. This email confirms our discussion and the decisions made as listed below:

**TIME LINE**

- November 1, 2022: Notice published in local newspapers of date/time/place/purpose of scoping meeting.
- November 1, 2022: Emails distributed informing recipients of date/time/place/purpose of scoping meeting.
- November 16, 2022: BOP staff travel to Letcher County.
- November 17, 2022 (morning): Review meeting preparations, logistics, etc.
- November 17, 2022 (afternoon): Visit Letcher County Central High School to set-up/prepare for meeting, test equipment, etc.
- November 17, 2022 (7:00 – 9:00 PM): Public Scoping Meeting held at Letcher County Central High School cafeteria.
- November 18, 2022: BOP staff return to Washington, DC.

**PREPARATIONS**

- Cafeteria set up, tables, chairs, etc. (as done for previous BOP meetings).
- Signage directing attendees to cafeteria from school entrance.
- Table/chairs at cafeteria entrance (greet attendees, sign in table, speakers list, etc.)
- Table/chairs for BOP at head of room
- Podium (or equivalent) with microphone placed adjacent to table for BOP speakers to address audience.
- Internet connection to allow for remote attendance during meeting and to access PowerPoint presentation.
- Large screen (or equivalent) at head of room to display PowerPoint presentation.

We're currently reviewing a list of recipients to receive an email on November 1 informing them of date/time/place/purpose of scoping meeting (attached). Let us know if we've overlooked anyone of importance and feel free to add others (name, affiliation, address, email address, etc.). That's it for now. More to follow soon. Thanks again for the support and assistance by you and the Planning Commission. Best,



(b)(6); (b)(7)(C)

**WSP USA**

(b)(6); (b)(7)(C)

[wsp.com](http://wsp.com)

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**From:** (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)  
**Sent:** Friday, September 30, 2022 12:34 PM  
**To:** (b)(6); (b)(7)(C)  
**Subject:** Re: Public Scoping meeting in Letcher County

We are planning on meeting on Monday. We will get our thoughts together and let you know as soon as possible.  
Thanks

(b)(6); (b)(7)(C)

Sent from my iPhone

On Sep 30, 2022, at 10:00 AM, (b)(6); (b)(7)(C) wrote:

(b)(6); (b)(7)(C)

Hope all is well in Neon and Letcher County for you and family.

As has been done in the past, the Bureau of Prisons wishes to arrange for a Public Scoping Meeting to allow for the public to learn about current effort to develop a new federal prison in the county (as required by the National Environmental Policy Act, or NEPA). Therefore we need to arrange a date and venue for the scoping meeting. Bureau staff have identified two weeks in November 2022 that are preferable for them to travel to Letcher County and hold the meeting (assuming a start time of about 7:00 PM):

1. November 16 – 18
2. November 28 – 30

The meeting would be held in person with Bureau and WSP staff in attendance. We also wish to arrange for the meeting to be held virtually (via Zoom, WebEx, Teams, etc.) for those unable to attend in person. Please discuss with Elwood and others on the Commission and give me a call when ready to discuss possible venues (public school auditorium, etc.), logistics, meeting preparations, etc. Thanks.



(b)(6); (b)(7)(C)

WSP USA

(b)(6); (b)(7)(C)

[wsp.com](http://wsp.com)

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# **EXHIBIT K**

to Anti-Deficiency Act Complaint

**From:** (b)(6); (b)(7)(C)  
**To:** (b)(6); (b)(7)(C)  
**Cc:**  
**Subject:** [EXTERNAL] FW: Notice concerning Public Scoping Meeting - Letcher County  
**Date:** Monday, October 17, 2022 6:05:10 PM  
**Attachments:** image001.png

(b)(6); (b)(7)(C)

Thanks for calling this morning and for the great idea to have a notice added to the Central High School sign ahead of scoping meeting. Bureau of Prisons staff have recommended the message shown below:

Public Scoping Meeting about Federal Prison  
7:00 PM, November 17, 2022  
Central High School Cafeteria

We are still discussing the start time so 7:00 PM is a placeholder for now. Call with questions. Thanks.



(b)(6); (b)(7)(C)

**WSP USA**

(b)(6); (b)(7)(C)

[wsp.com](http://wsp.com)

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-LAEnPHHvdJv8l|WafHge7pkKl

# **EXHIBIT L**

to Anti-Deficiency Act Complaint

From: (b)(6); (b)(7)(C)  
To: (b)(6); (b)(7)(C)  
CC: (b)(6); (b)(7)(C)  
Date: 10/27/2021 12:00 PM  
Subject: Letcher County Planning Commission

FYI

We (CERB) spoke to (b)(6); (b)(7)(C) of the Letcher County Planning Commission this morning. We provided an update of the Bureau's plans to restart the Site selection process and EIS process. They understand that we will need to get a contractor on board to complete the many processes associated with the site selection and EIS. (b)(6); (b)(7)(C) was happy with our status update and will inform the rest of the commission.

# **EXHIBIT M**

to Anti-Deficiency Act Complaint

**From:** (b)(6); (b)(7)(C)  
**To:** (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)  
**Cc:** (b)(6); (b)(7)(C)  
**Subject:** Meeting Summary - Introduction Meeting BOP & Letcher County Planning Commission  
**Date:** Thursday, May 5, 2022 9:38:00 AM  
**Attachments:** Final Mtg Summ Letcher Cty 5 5 22.pdf

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Attached is the meeting summary from the introduction meeting with the BOP and the Letcher County Planning Commission held on Monday, May 2, 2022. Please let me know if you have any further questions/concerns regarding the Letcher County project.

Have a great weekend!

(b)(6); (b)(7)(C)

Site Selection Specialist  
Federal Bureau of Prisons  
Construction and Environmental Review Branch

(b)(6); (b)(7)(C)



# Proposed Federal Correctional Institution and Prison Camp Letcher County, Kentucky

## Introductory Meeting Summary

Meeting Time/Date: 10:30 AM (EDT), May 2, 2022  
Meeting Summary Prepared: May 4, 2022

### I. Welcome, Introductions, Attendees

- **Letcher County:** (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

- **Federal Bureau of Prisons:** (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

- **WSP:** (b)(6); (b)(7)(C)

### II. Overview/Project History/Background

Initial funding was provided to Federal Bureau of Prisons (BOP) in 2006 to construct a new federal correctional facility in Letcher County, Kentucky. Numerous feasibility studies, site selection reviews, technical studies, and Environmental Impact Statements (EISs) were conducted for the project. A Record of Decision (ROD) to proceed was signed by the BOP Director in 2018, which resulted in legal challenges.

At the time of the initial studies, the federal inmate population was steadily increasing resulting in the need for additional bedspace. However, for much of the past 10 years the federal inmate population has been on the decline. As a result, the project's security level and purpose have been revised to address the BOP's need to modernize and replace aging facilities and infrastructure since many BOP facilities currently operating are 50 – 100 years old.

### III. Current Proposed Project

The BOP's current proposal (2022) is to develop a new medium-security Federal Correctional Institution (FCI) and prison camp. The planning and EIS process is scheduled to take up to 36 months starting with identifying and evaluating prospective project sites. The project has been funded based on previous cost estimates (\$510 million) which will be re-examined once a preferred site and alternatives are identified in light of recent construction cost increases for project throughout the U.S.

Question was asked whether the process includes consideration of the five sites previously identified and evaluated? The previously studied sites will be included in the new studies including the originally preferred location (i.e., Roxana Site). The BOP team will also be updating and verifying information about the previously studied sites in addition to seeking out sites that may be better suited from a cost and environmental impact perspective. The project team will be bringing institutional knowledge of previous work and will build on that work; see what has changed over the past seven years and leave no stone unturned in seeking locations with lower site preparation costs, fewer environmental impacts, access to infrastructure

including high-speed broadband which has steadily grown in importance, and greater benefits for Letcher County and BOP.

The project team will also address previous project concerns/criticisms from stakeholders. The current project purpose is very different from the original purpose as its about replacing old, obsolete, facilities with new, more efficient facilities (no longer about building more beds). The BOP will evaluate each proposed site alternative with test fits of a standard FCI institution footprint. Adjustments to the standard institution footprint will be examined as the alternative sites are identified and studied.

BOP has requested Letcher County officials to assist with identifying additional land owners willing to consider selling their property(s) to provide as many viable alternatives as possible.

Question was asked about the design of the proposed facility. It was stated that typical BOP medium-security facilities are best described as campus-style with generally low-rise housing units, administrative offices, dining and food service, and support facilities (similar to community college).

Question was asked whether developing over previously mined areas is still a concern for the BOP. The BOP has developed several facilities in Kentucky and West Virginia on or near previously surfaced and/or undermined sites and has experienced differential settlements and other issues during and following construction. Previously mined sites are still a concern and will be looked at on a site-by-site basis.

#### **IV. Communication and Coordination**

##### ***Points of Contact***

- BOP Point of Contact/Project Spokesperson: (b)(6); (b)(7)(C) with (b)(6); (b)(7)(C) as back-up
- Letcher County Point of Contact: (b)(6); (b)(7)(C)
- Consultant Team Point of Contact: (b)(6); (b)(7)(C) (WSP) with (b)(6); (b)(7)(C) (WSP) as back-up

##### ***Public Engagement***

During the COVID-19 pandemic, the BOP came to rely upon technology to a greater extent for communicating during internal team meetings, agency meetings, public hearings, etc. while reducing the effort and expense associated with travel. It is expected that use of various virtual communications platforms will continue when appropriate, while attending in-person meetings as situations require.

To reach large audiences easily and efficiently with project-related information, meeting announcements, project updates, etc., the BOP is developing a Project Contacts database comprising elected and appointed officials, government agencies, community groups and organizations, media outlets, among others. In addition, to facilitate public communications and provide access to project-related documents, BOP has established the FCI Letcher County, KY project website: <https://www.proposed-fci-letchercountyky.com>.

Letcher County officials informed team members that older citizens might not be comfortable using such technologies, while those residing in more remote areas of the county might not have access to high-speed broadband service. The project team will work with Letcher County officials to develop its public engagement program using various approaches so that we reach all interested individuals and groups while avoiding methods that limit access.

Question was asked as to what are the limitations of the previous sites and the 2-3 key challenges associated with developing a new federal prison at other sites in Letcher County. To be successful, the BOP needs to minimize the volume and cost of site preparation. Based on each preferred site analysis, the team will calculate the cut and fill and earth work volumes, and the associated costs. Another key factor will be availability and cost of infrastructure (water, sewer, power, etc.) including high-speed broadband service.

Minimizing the number of land and mineral owners is another challenge to be considered as previous ownership stakes were complex and acquiring land and mineral rights was expected to be costly.

Current project appropriation is \$510 million although the cost of construction in general has increased significantly since 2020. The goal is to develop the project within the amount appropriated, otherwise the BOP would need to request additional funds from Congress.

### ***Public Announcements***

While the discussions during the introductory meeting are considered confidential, the BOP is planning to release a public notice (press release or other) announcing its efforts to develop a new correctional facility in Letcher County. The BOP is currently considering the content and timing of such an announcement.

It was requested that county officials notify the BOP prior to releasing any public announcements about the project; the BOP will similarly notify county officials prior to it issuing any public announcements. This is to avoid surprises and ensure that the information being released is current, consistent, and accurate.

## **V. Next Steps**

### ***Project Schedule***

The BOP is preparing an overall planning/site selection/EIS schedule showing tasks, task inter-relationships, estimated task durations, internal and external meetings, etc. during the project's initial 12 months.

### ***Siting Criteria and Site Evaluation Matrix***

The BOP is reviewing and updating its criteria for identifying and evaluating prospective sites in Letcher County. In addition, as previous sites are reconsidered and new sites are identified, an evaluation matrix that will serve to compile/summarize key information about each and compare and contrast site conditions and characteristics, is also being developed.

### ***Field Visit to Letcher County***

The month of May 2022 will be largely devoted to reviewing previous studies, EISs, and other technical documents, gathering available (updated information), etc. At this time, consideration is being given to visiting Letcher County during the first or second weeks in June 2022. The purpose of the visit, attendees, trip itinerary, and plans for meetings with local officials will be developed shortly and shared with Letcher County officials for comment and input in advance of the visit.

## **VI. Action Items**

- BOP: Develop preliminary Project Schedule.
- BOP: Review/update siting criteria and Site Evaluation Matrix.
- BOP: Assemble available project-related documents and submit to WSP for review.
- BOP: Determine content/timing of project announcement; coordinate release with Letcher County.
- BOP: Draft a new project description, purpose and need, etc.; share with Letcher County.
- BOP: Draft Project Contacts database; Letcher County to assist with local contacts information.
- BOP: Develop trip itinerary, purpose of visit, meeting plan/schedule with local officials, etc.; share with Letcher County for feedback.

Submitted by:

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

**Deputy Project Manager**

**WSP USA Solutions Inc.**

Attachment 1: Meeting Agenda

Attachment 2: Project Team Members/Contact Information

Attachment 3: Preliminary Project Schedule

## ATTACHMENT 1



# Proposed Federal Correctional Institution and Work Camp Letcher County, Kentucky

## Agenda – Introductory Meeting

Meeting Time/Date: 10:30 AM (EDT), May 2, 2022

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- I. **Welcome, Introductions**
  - a. Letcher County Officials
  - b. Federal Bureau of Prisons
  - c. WSP (consultant)
  
- II. **Overview**
  - a. Project History/Background
  - b. Proposed Project
  - c. Goals and Objectives
  
- III. **Initial Tasks**
  - a. Study Area Boundaries
  - b. Siting Criteria
  - c. Site Search
  - d. Information Sharing
  
- IV. **Communications and Coordination**
  - a. Bureau of Prisons: Point of Contact/Project Spokesperson
  - b. Letcher County: Point(s) of Contact
  - c. Consultants: Point(s) of Contact
  - d. Public Engagement
  
- V. **Schedule**
  - a. Visit Letcher County
  
- VI. **Next Steps/Action Items**

# ATTACHMENT 2



## Proposed Federal Correctional Institution and Prison Camp Letcher County, Kentucky

### Points of Contact

(as of May 3, 2022)

No.	Name	Title/Affiliation	Mailing Address	Telephone / Email
1	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Construction & Environmental Review Branch, BOP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
2	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Construction & Environmental Review Branch, BOP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
3	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Construction & Environmental Review Branch, BOP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
4	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Construction and Environmental Branch, BOP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
5	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Construction & Environmental Review Branch, BOP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
6	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Facilities Management Branch, BOP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
7	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) REEL, Office of General Counsel, BOP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
8	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) REEL, Office of General Counsel, BOP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
9	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Privatized Corrections Contracting, BOP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
10	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Privatized Corrections Contracting, BOP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
11	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) WSP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
12	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) WSP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
13	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) WSP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
14	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) WSP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
15	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) WSP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
16	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) WSP	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
17	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) J.C. Chang & Associates, Inc.	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
18	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) J.C. Chang & Associates, Inc.	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
19	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) President, J.C. Chang & Associates, Inc.	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
20	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Co-Chair, Letcher County Planning Committee	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
21	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Letcher County Planning Committee	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
22	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Letcher County Planning Committee	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
23	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Letcher County Planning Committee	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
24	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Letcher County Planning Committee	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
25	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Letcher County Planning Committee	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
26	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Letcher County Planning Committee	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
27	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Letcher County Planning Committee	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
28	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Co-Chair, Letcher County Planning Committee	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
29	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C) Letcher County Executive	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)
30	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)	(b)(6); (b)(7)(C)



# PROPOSED FCI / PRISON CAMP LETCHER COUNTY, KENTUCKY



ID	WBS Task Name	Start	Finish
1	1 TASK 1.0 - PROJECT MANAGEMENT AND SCHEDULE	Thu 3/31/22	Tue 3/11/25
2	1.1 KICK-OFF MEETING	Thu 3/31/22	Mon 4/4/22
3	1.1.1 Agenda/Meeting Highlights	Thu 3/31/22	Mon 4/4/22
4	1.2 MONTHLY COORDINATION MEETINGS	Tue 4/12/22	Tue 3/11/25
5	1.2.1 Agenda/Meeting Highlights	Tue 4/12/22	Tue 3/11/25
6	1.3 OTHER COORDINATION MEETINGS	Tue 4/12/22	Tue 3/11/25
7	1.3.1 Local Community Representatives	Tue 4/12/22	Tue 3/11/25
8	1.3.2 Others	Tue 4/12/22	Tue 3/11/25
9	1.4 FILE TRANSFER PROTOCOL (SHAREPOINT) SITE	Mon 5/2/22	Mon 5/9/22
10	1.5 MONTHLY PROGRESS/MANAGEMENT REPORTS	Tue 4/12/22	Tue 3/11/25
47	1.6 QUALITY ASSURANCE/QUALITY CONTROL PROCESS	Tue 4/12/22	Tue 3/11/25
84	1.7 PROJECT SCHEDULE	Tue 4/12/22	Tue 3/11/25
85	2 TASK 2.0 - SITE SEARCHES	Fri 4/1/22	Mon 10/3/22
86	2.1 ESTABLISH SITING CRITERIA	Fri 4/15/22	Tue 5/31/22
87	2.2 PREPARE CONCEPTUAL DEVELOPMENT PLAN(S)	Fri 4/15/22	Thu 6/30/22
88	2.3 CANDIDATE SITES INVENTORY	Mon 5/2/22	Mon 10/3/22
89	2.3.1 Site Identification Methodology	Mon 5/2/22	Tue 5/31/22
90	2.3.2 Identify/Screen Candidate Sites	Wed 6/1/22	Thu 6/30/22
91	2.3.3 Field Visits to Candidate Sites	Fri 7/1/22	Fri 7/15/22
92	2.3.4 Candidate Sites Evaluation Matrix	Fri 4/1/22	Wed 8/31/22
93	2.3.5 BOP Selects Preferred Sites	Thu 9/1/22	Thu 9/15/22
94	2.3.6 Draft/Review/Finalize Site Search Report	Fri 9/16/22	Fri 9/30/22
95	3 TASK 3.0 - SITE FEASIBILITY STUDY	Mon 10/3/22	Thu 12/1/22
96	3.1 PREFERRED/ALTERNATIVE SITE INVESTIGATIONS	Mon 10/3/22	Thu 12/1/22
97	3.1.1 Supplemental Research	Mon 10/3/22	Tue 11/1/22
98	3.1.2 Field Investigations of Preferred Sites	Wed 11/2/22	Wed 11/16/22
99	3.1.3 Revise/Update Cost Reports	Thu 11/17/22	Thu 12/1/22
100	4 TASK 4.0 - DRAFT ENVIRONMENTAL IMPACT STATEMENT	Tue 4/12/22	Fri 6/30/23
101	4.1 DEIS ADMINISTRATION	Thu 9/1/22	Mon 9/4/23
102	4.1.1 Change Control Process	Thu 9/1/22	Thu 8/31/23
103	4.1.2 Initial Cost Report	Mon 10/3/22	Mon 10/3/22
104	4.1.3 Revise/Update Cost Report	Tue 10/4/22	Mon 9/4/23
105	4.2 PROJECT WEBSITE	Tue 4/12/22	Wed 3/12/25
106	4.2.1 Develop/Review/Implement Website	Tue 4/12/22	Sat 4/30/22
107	4.2.2 Maintain Website	Mon 5/2/22	Wed 3/12/25
108	4.3 DEIS NOTICE OF INTENT (NOI)	Mon 5/2/22	Fri 10/21/22
109	4.3.1 Prepare Purpose and Need	Mon 5/2/22	Fri 7/1/22
110	4.3.2 Draft/Review/Finalize NOI	Fri 9/16/22	Fri 9/30/22
111	4.3.3 BOP Submits to Federal Register	Mon 10/3/22	Mon 10/3/22
112	4.3.4 NOI in Federal Register	Tue 10/4/22	Tue 10/4/22
113	4.3.5 NOI Added to Website/Administrative Record (AR)	Wed 10/5/22	Wed 10/5/22
114	4.3.6 NOI Newspaper Ad Published/Added to Website/AR	Thu 10/6/22	Fri 10/21/22
115	4.4 DEIS SCOPING		
116	4.4.1 Hold Communication Planning Sessions		
117	4.4.2 Arrange/Prepare/Hold Agency Scoping Meetings		



**SCHEDULE  
PROPOSED FCI / PRISON CAMP LETCHER COUNTY, KENTUCKY**



ID	WBS Task Name	Start	Finish
118	4.4.3 Arrange/Prepare/Hold Public Scoping Meetings		
119	4.4.4 Scoping Materials Added to Website/AR		
120	4.5 DEIS PREPARATION		
121	4.5.1 Field Visits to Alternative Sites		
122	4.5.2 Abstract		
123	4.5.3 Executive Summary		
124	4.5.4 Introduction/Purpose and Need		
125	4.5.5 Alternatives Analysis		
126	4.5.6 Affected Environments		
127	4.5.7 Potential Impacts and Mitigation		
128	4.5.8 Secondary and Cumulative Impacts		
129	4.5.9 Irreversible/Irretrievable Resources		
130	4.5.10 Short-Term vs Long-Term Impacts		
131	4.5.11 References, List of Preparers, Distribution List		
132	4.5.12 Compile Appendices		
133	4.5.13 Review/Revise Preliminary DEIS		
134	4.5.14 DEIS Screen Check		
135	4.5.15 BOP submits DEIS to USEPA		
136	4.6 DEIS DISTRIBUTED		
137	4.6.1 DEIS Notice of Availability (NOA) in Federal Register		
138	4.6.2 NOA Added to Website/AR		
139	4.6.3 NOA Newspaper Ad Published/Added to AR		
140	4.7 DEIS PUBLIC MEETINGS		
141	4.7.1 Hold Communication Planning Sessions		
142	4.7.2 Arrange/Prepare/Hold DEIS Public Meetings		
143	4.7.3 Public Meeting Materials Added to Website/AR		
144	5 TASK 5.0 - FINAL ENVIRONMENTAL IMPACT STATEMENT		
145	5.1 DEIS COMMENTS		
146	5.1.1 Compile DEIS Comments		
147	5.1.2 Develop Comment Tracking Matrix		
148	5.1.3 Hold Comment Review Meeting		
149	5.1.4 Prepare Responses to DEIS Comments		
150	5.2 FEIS PREPARATION		
151	5.2.1 Review/Revise Abstract		
152	5.2.2 Review/Revise Executive Summary		
153	5.2.3 Review/Revise Introduction/Purpose and Need		
154	5.2.4 Review/Revise Alternatives Analysis		
155	5.2.5 Review/Revise Affected Environments		
156	5.2.6 Review/Revise Potential Impacts and Mitigation		
157	5.2.7 Review/Revise Secondary and Cumulative Impacts		
158	5.2.8 Review/Revise Irreversible/Irretrievable Resources		
159	5.2.9 Review/Revise Short-Term vs Long-Term Impacts		
160	5.2.10 Review/Revise References, List of Preparers, Distribution List		
161	5.2.11 Review/Revise Appendices/Add Response to Comments		
162	5.2.12 Review/Revise Preliminary FEIS		

Subject to Change

Preliminary



SCHEDULE  
PROPOSED FCI / PRISON CAMP LETCHER COUNTY, KENTUCKY



ID	WBS Task Name	Start	Finish
163	5.2.13 FES Screen Check		
164	5.2.14 BOP Submits FES to USEPA		
165	5.3 FES DISTRIBUTED		
166	5.3.1 FES NOA Published in Federal Register		
167	5.3.2 NOA Added to Website/AR		
168	5.3.3 NOA Newspaper Ad Published/Added to AR		
169	6 TASK 6.0 - RECORD OF DECISION (ROD)		
170	6.1 PREPARE ROD		
171	6.1.1 Draft/Review/Finalize ROD		
172	6.1.2 BOP Signs ROD/Submits to Federal Register		
173	6.1.3 ROD Published in Federal Register		
174	6.1.4 ROD Added to Website/AR		
175	6.1.5 ROD Newspaper Ad Published/Added to AR		
176	7 TASK 7.0 - ADMINISTRATIVE RECORD (AR)		
177	7.1 ESTABLISH AR AND INDEX		
178	7.1.1 Maintain/Populate AR and Index		
179	7.1.2 Submit AR and Index to BOP		
180	8 TASK 8.0 - TECHNICAL STUDIES		
181	8.1 DELINEATE WETLANDS/OWUS		
182	8.1.1 Review Secondary Data Sources		
183	8.1.2 Meet with USACE District(s)		
184	8.1.3 Conduct Field Investigations to Locate Wetlands/OWUS		
185	8.1.4 Draft/Review/Finalize Wetland Reports/Requests for JDs		
186	8.1.5 Submit Reports/Requests for JDs to USACE		
187	8.1.6 Arrange/Attend USACE Field Verification		
188	8.1.7 Revise Delineation Report/Map (if necessary)		
189	8.1.8 Add as Appendix to EIS and AR		
190	8.1.9 Meet with USACE/State Officials About Permit Applications		
191	8.1.10 Confirm Need/Type of Permit(s)		
192	8.1.11 Draft/Review/Finalize Individual Permit Application		
193	8.1.12 Review Application with USACE/State Officials		
194	8.1.13 Develop Mitigation Plan		
195	8.1.14 Permit(s) Approved/Issued to BOP		
196	8.1.15 Add to AR		
197	8.2 PHASE I ENVIRONMENTAL SITE ASSESSMENT		
198	8.2.1 Review Data Sources/State/Federal Databases		
199	8.2.2 Review Property-Related Documents		
200	8.2.3 Perform Field Reconnaissance		
201	8.2.4 Interview Property Owner(s)		
202	8.2.5 Identify RECs		
203	8.2.6 Review Environmental Lien Search Report		
204	8.2.7 Submit FOIA Requests		
205	8.2.8 Draft/Review/Finalize Phase I ESA Reports		
206	8.2.9 Add as Appendix to EIS and AR		
207	8.3 PHASE II HISTORIC AND CULTURAL RESOURCES SURVEY		

Preliminary/Subject to Change

Task Start/Step [Solid Bar] Intermittent Task [Dashed Bar] Recurring Event [Dotted Bar]

Prepared: May 4, 2022



**SCHEDULE  
PROPOSED FCI / PRISON CAMP LETCHER COUNTY, KENTUCKY**



ID	WBS Task Name	Start	Finish
208	8.3.1 Conduct Research	Apr '22 27, 3, 10, 17, 24	Apr '23 27, 3, 10, 17, 24
209	8.3.2 Conduct Archaeological Field Surveys	May '22 1, 8, 15, 22, 29	May '23 1, 8, 15, 22, 29
210	8.3.3 Draft/Review/Finalize Phase I Survey Reports	Jun '22 5, 12, 19, 26	Jun '23 5, 12, 19, 26
211	8.3.4 Add as Appendix to EIS and AR	Jul '22 3, 10, 17, 24	Jul '23 3, 10, 17, 24
212	8.4 ENDANGERED SPECIES DOCUMENTATION	Aug '22 7, 14, 21, 28	Aug '23 7, 14, 21, 28
213	8.4.1 Conduct Research	Sep '22 4, 11, 18, 25	Sep '23 4, 11, 18, 25
214	8.4.2 Determine Potential Presence of Endangered Species	Oct '22 2, 9, 16, 23, 30	Oct '23 2, 9, 16, 23, 30
215	8.4.3 Include Results in EIS/CWA Permit Application/AR	Nov '22 6, 13, 20, 27	Nov '23 6, 13, 20, 27
216	8.5 ENVIRONMENTAL PERMITS REPORT	Dec '22 4, 11, 18, 25	Dec '23 4, 11, 18, 25
217	8.5.1 Conduct Research	Jan '23 1, 8, 15, 22, 29	Jan '24 1, 8, 15, 22, 29
218	8.5.2 Compile List/Description of Environmental Permits	Feb '23 5, 12, 19, 26	Feb '24 5, 12, 19, 26
219	8.5.3 Add as Appendix to EIS and AR	Mar '23 2, 9, 16, 23, 30	Mar '24 2, 9, 16, 23, 30
220	8.6 ALTA BOUNDARY/TOPOGRAPHIC MAPPING (PREFERRED SITE ONLY)	Apr '23 27, 3, 10, 17, 24	Apr '24 27, 3, 10, 17, 24
221	8.6.1 Conduct Deed/Other Research	May '23 1, 8, 15, 22, 29	May '24 1, 8, 15, 22, 29
222	8.6.2 Prepare/Review/Submit ALTA Boundary Survey	Jun '23 5, 12, 19, 26	Jun '24 5, 12, 19, 26
223	8.6.3 Prepare/Review/Submit ALTA Topographic Survey	Jul '23 3, 10, 17, 24	Jul '24 3, 10, 17, 24
224	8.7 PRELIMINARY GEOTECHNICAL PROGRAM (PREFERRED SITE ONLY)	Aug '23 7, 14, 21, 28	Aug '24 7, 14, 21, 28
225	8.7.1 Prepare Soil Boring Location Plan	Sep '23 4, 11, 18, 25	Sep '24 4, 11, 18, 25
226	8.7.2 Arrange Access, Locate Utilities, Etc.	Oct '23 2, 9, 16, 23, 30	Oct '24 2, 9, 16, 23, 30
227	8.7.3 Conduct Soil Boring Program	Nov '23 6, 13, 20, 27	Nov '24 6, 13, 20, 27
228	8.7.4 Perform Laboratory Analysis	Dec '23 4, 11, 18, 25	Dec '24 4, 11, 18, 25
229	8.7.5 Research Past Mining Activities	Jan '24 1, 8, 15, 22, 29	Jan '25 1, 8, 15, 22, 29
230	8.7.6 Draft/Review/Finalize Geotechnical Report	Feb '24 5, 12, 19, 26	Feb '25 5, 12, 19, 26
231	8.7.7 Add to Website/AR	Mar '24 2, 9, 16, 23, 30	Mar '25 2, 9, 16, 23, 30
232	8.8 UTILITY SERVICES	Apr '24 27, 3, 10, 17, 24	Apr '25 27, 3, 10, 17, 24
233	8.8.1 Water Supply Service	May '24 1, 8, 15, 22, 29	May '25 1, 8, 15, 22, 29
234	8.8.2 Wastewater Collection/Treatment Service	Jun '24 5, 12, 19, 26	Jun '25 5, 12, 19, 26
235	8.8.3 Electric Power Service	Jul '24 3, 10, 17, 24	Jul '25 3, 10, 17, 24
236	8.8.4 Natural Gas Service	Aug '24 7, 14, 21, 28	Aug '25 7, 14, 21, 28
237	8.8.5 Solid Waste Management Service	Sep '24 4, 11, 18, 25	Sep '25 4, 11, 18, 25
238	8.8.6 Telecommunications/Internet Service	Oct '24 2, 9, 16, 23, 30	Oct '25 2, 9, 16, 23, 30
239	8.8.7 Alternative Energy Sources	Nov '24 6, 13, 20, 27	Nov '25 6, 13, 20, 27
240	8.8.8 On-Site Services	Dec '24 4, 11, 18, 25	Dec '25 4, 11, 18, 25
241	8.8.9 Draft/Review/Finalize Utility Services Report	Jan '25 1, 8, 15, 22, 29	Jan '26 1, 8, 15, 22, 29
242	8.8.10 Add as Appendix to EIS and AR	Feb '25 5, 12, 19, 26	Feb '26 5, 12, 19, 26
243	8.9 HOUSING AND REGIONAL CONDITIONS ANALYSIS (OPTIONAL TASK)	Mar '25 2, 9, 16, 23, 30	Mar '26 2, 9, 16, 23, 30
244	8.9.1 Research Existing Housing Inventory	Apr '25 27, 3, 10, 17, 24	Apr '26 27, 3, 10, 17, 24
245	8.9.2 Profile Typical Relocation Employees/Families	May '25 1, 8, 15, 22, 29	May '26 1, 8, 15, 22, 29
246	8.9.3 Assess Inventory vs Projected Demand	Jun '25 5, 12, 19, 26	Jun '26 5, 12, 19, 26
247	8.9.4 Draft/Review/Finalize Housing Report	Jul '25 3, 10, 17, 24	Jul '26 3, 10, 17, 24
248	8.9.5 Add to Website/AR	Aug '25 7, 14, 21, 28	Aug '26 7, 14, 21, 28
249	8.9.6	Sep '25 4, 11, 18, 25	Sep '26 4, 11, 18, 25

Preliminary/Subject to Change

Task Start/Step [Solid Bar] Intermittent Task [Dashed Bar] Recurring Event [Dotted Bar]

Prepared: May 4, 2022

# **EXHIBIT N**

to Anti-Deficiency Act Complaint

(b)(6); (b)(7)(C)

**(BOP)**

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**From:**

(b)(6); (b)(7)(C) (BOP)

**Sent:**

Friday, September 23, 2022 12:08 PM

**To:**

(b)(6); (b)(7)(C)

**Cc:**

(b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

I am pleased to report that the Federal Bureau of Prisons has submitted the Notice of Intent to Prepare a (new) Draft EIS to the Federal Register and expect publication of the notice to occur shortly. Coinciding with the Notice of Intent will be publication of a similar notice in the Mountain Eagle and the Letcher County Community News Press. In addition, (b)(6); (b)(6); will soon contact you to arrange a short visit to Whitesburg to arrange for a venue and logistics of a public scoping meeting. Feel free to share this information with other commission members but await publication of the notices before sharing this widely. Thanks for your continued support. Please feel free to contact me if you have any questions or need additional information.

(b)(6); (b)(7)(C)

Federal Bureau of Prisons  
Construction and Environmental Review Branch

(b)(6); (b)(7)(C)

# **EXHIBIT O**

to Anti-Deficiency Act Complaint



## U.S. Department of Justice

Federal Bureau of Prisons

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Washington, DC 20534

July 21, 2023

### **Update on the Proposed FCI/FPC Letcher County, KY, Project**

The Federal Bureau of Prisons (BOP) and WSP (BOP's contractor) held a virtual meeting with the Letcher County Planning Commission (LCPC) on Wednesday, July 19, 2023, to provide the LCPC an update on the proposed FCI/FPC Letcher County, KY, project.

Since the public scoping meeting that was held on November 17, 2022, in Letcher County, the BOP and WSP have been updating the following areas of the Draft Environmental Impact Statement (EIS):

- Revising the purpose and need for the proposed project
- Currently evaluating alternatives
- Scoping with federal and state agencies:
  - Kentucky State Historic Preservation Office
  - U.S. Army Corp of Engineers (USACE)
  - U.S. Fish and Wildlife Service
  - Kentucky Department of Transportation (DOT)
  - Kentucky Department of Environmental Protection
- Updating affected environment
- Updating potential environmental impacts and mitigation measures
- Updating local conditions
  - Population
  - Economy
  - Housing
  - Education
  - Health Care
  - Emergency Services
  - Utility Services

The next steps are as follows:

- Field teams to conduct new wetland delineation in accordance with new federal guidance
  - Last delineation is 7 years old; USACE requires delineations <5 years old for jurisdictional determinations and permit applications

- Access habitats as changes could have occurred in some early-stage succession habitats
- Confirm conditions for potential of state/federally listed threatened or endangered species
- Note presence of wildlife or their signs (mammals, birds, amphibians, fish)
- Document extent of invasive plant species
- Revisit streams to identify if sedimentation is occurring from previous mining activities
- Identify areas for potential wetland mitigation
- Verify data provided by regulatory agencies
- Field teams to resurvey historic sites and structures, archaeological survey
- Gather current traffic data; discuss with Kentucky DOT need for improvements
- Update all remaining topic areas: land use, hazardous materials, air quality, noise conditions, etc.
- Provide periodic updates on progress and status via project website:  
<https://www.proposed-fci-letchercountyky.com>

The National Environmental Policy Act process is as follows:

- Draft EIS published in the Federal Register
- 45-day public comment period on the Draft EIS
- Public meeting concerning the Draft EIS
- Final EIS published
- 30-day public comment period on the Final EIS
- Bureau leadership reviews the public record and decides whether to proceed with the proposed action
- Decision memorialized in the Record of Decision (ROD)

BOP's goal is to adopt a ROD in the Spring of 2024.

# **EXHIBIT P**

to Anti-Deficiency Act Complaint



U.S. Department of Justice

Federal Bureau of Prisons

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Washington, DC 20534

December 6, 2023

## **Update concerning the Proposed Federal Correctional Institution and Federal Prison Camp – Letcher County, Kentucky**

The Federal Bureau of Prisons (BOP) held a virtual meeting with the Letcher County Planning Commission (LCPC) on Wednesday, December 6, 2023, to provide the LCPC with a report concerning:

- Status of the proposal to develop Federal Correctional Institution and Federal Prison Camp
- Progress and accomplishments in preparing new Draft Environmental Impact Statement (EIS)
- Recently conducted activities
- Upcoming activities
- Anticipated schedule

Since the last update, the BOP, and its environmental contractor (WSP) have continued to gather current information for analysis and inclusion within the new Draft EIS. The highlights of the BOP's activities are summarized below.

### **Biological Resources**

For jurisdictional determinations and permitting purposes, the U.S. Army Corps of Engineers (USACE) requires wetland delineations to be no more than five years old; and since the previous delineation was performed in 2016, it was necessary to prepare a new delineation. In accordance with the latest federal guidance, field surveys involving the new wetland delineation/habitat assessment of the Roxana Site have been completed. Initial indications are that the Roxana Site has a smaller area of wetlands (2.73 vs 3.10 acres) and less total length of jurisdictional streams (18,960 vs 20,868 linear feet) in 2023 than was documented in earlier delineations. At this time, the data gathered during the field studies are being organized into a new wetland delineation report.

While performing the field surveys, the team of biologists also surveyed wildlife habitats as changes could have occurred in early-stage succession habitats since 2016. The team also assessed habitats for conditions that could support state/federally listed threatened or endangered species by noting the presence of wildlife (mammals, birds, amphibians, fish) or their signs. The extent of invasive plant species was also documented in addition to inspecting the conditions of streams and drainages that bisect the site. Lastly, data provided by regulatory agencies and from other sources was also verified.

Next steps include the following:

- Complete new delineation report for submission to the USACE for review
- Analyze potential impacts from proposed FCI/FPC development
- Determine if Clean Water Act permits will be needed from USACE/State of Kentucky
- Develop measures for mitigating potential impacts, as necessary
- Incorporate results in new Draft EIS

## **Cultural Resources**

Field surveys involving archaeological and historic architectural sites in and around the Roxana Site have also been completed with no new cultural resource sites found. The data gathered during the field studies are being organized in a new cultural resource report for submission to the Kentucky State Historic Preservation Office (SHPO). Next steps include the following:

- Complete new cultural resource report for submission to the Kentucky SHPO for review
- Analyze potential impacts to cultural resources from proposed FCI/FPC development
- Develop measures for mitigating potential impacts, as necessary
- Incorporate results in new Draft EIS

## **Other EIS Topic Areas**

The BOP has developed a new Purpose and Need for the proposed project and updating, as needed, the analysis of alternatives. With the passage of time, other local conditions may have changed, therefore, current information continues to be gathered and analyzed covering the following topics:

- Topography, Geology and Soils
- Hydrology
- Population
- Economy
- Housing
- Education
- Health Care
- Emergency Services
- Environmental Justice
- Utility Services
- Traffic and Transportation
- Land Use
- Air Quality and Noise
- Hazardous Materials

The potential for environmental impacts and measures to mitigation adverse impacts is also under review.

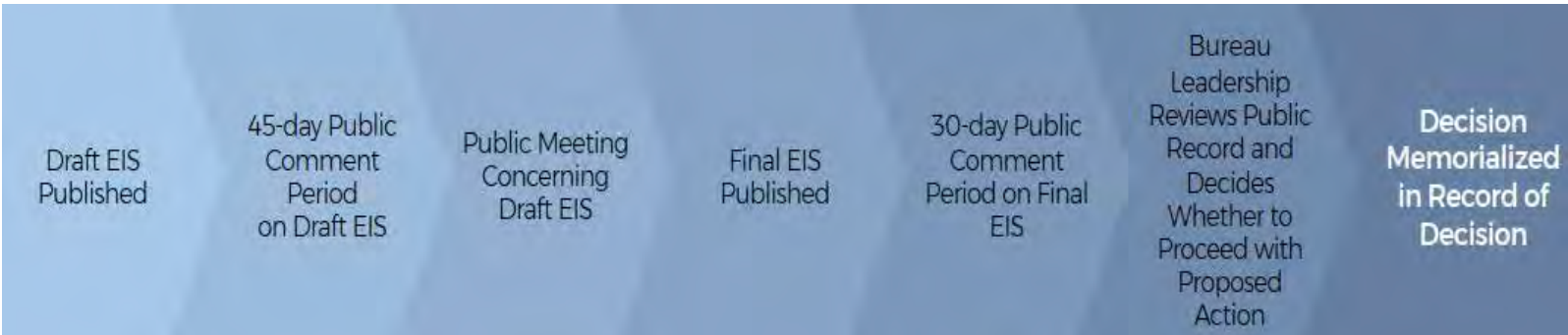
## Anticipated Schedule

The National Environmental Policy Act (NEPA) process is being conducted according to the following schedule:

- February 2024\* Notice of Availability (NOA) of Draft EIS published in Federal Register and local newspapers with information about how to access a copy of the Draft EIS. 45-day Draft EIS public review/comment period begins with publication of the NOA.
- March 2024\* Public Meeting held in Letcher County concerning the proposed FCI/FPC and Draft EIS.
- May 2024\* NOA of Final EIS published in Federal Register and local newspapers with information about how to access a copy of the Final EIS. 30-day Final EIS public review/comment period begins with publication of the NOA.
- July 2024\* BOP leadership reviews the public record and decides whether to proceed with the proposed action. Decision memorialized in a Record of Decision.

\* Schedule subject to change.

The exhibit below depicts the NEPA process and the milestones noted above.



# **EXHIBIT Q**

to Anti-Deficiency Act Complaint



# Building Communities Not Prisons

December 14, 2023

Director Colette Peters  
Federal Bureau of Prisons  
320 First Street, NW  
Washington, DC 20534

**RE: Irregularities Concerning the Proposed FCI Letcher**

Dear Director Peters:

On behalf of the Concerned Letcher Countians (CLC) and the Building Community Not Prisons Coalition (BCNP), the undersigned write to you about several significant concerns regarding irregularities in the planning for the proposed federal prison in Letcher County, Kentucky. Building Community Not Prisons is a coalition of people who oppose the construction of FCI Letcher and demand better options for the people of Letcher County and the communities of color that are most impacted by mass incarceration. Concerned Letcher Countians, LLC, is a group of volunteers who care about their county and its future.

We are deeply concerned that the Bureau of Prisons (BOP) appears to be giving preferential access to meetings to a private, non-profit organization, the Letcher County Planning Commission which, despite its name, does not represent all Letcher Countians, and their relationship with the local county government is unclear.

We request a response to our following concerns to ensure that the planning process for FCI Letcher is transparent, equitable, and just. In addition, we request that the Bureau of Prisons promptly comply with our outstanding FOIA requests.

**I. Factual Background**

**A. History of Proposed Prison Project in Letcher County, Kentucky**

From 2015-2019, Letcher County residents, currently incarcerated individuals, environmentalists, prison justice reformers and lawyers worked together to stop the construction

of the most expensive federal prison in US history – USP Letcher. Following litigation in 2019 that questioned the integrity of the project, the BOP canceled the prison’s construction. Since 2017, both the Trump and Biden Administrations have requested that the original funding for the prison be rescinded. Even top officials at the Department of Justice have publicly stated this new construction is unnecessary due to a declining federal prison population.

Despite bipartisan concern about the necessity of this prison project, on September 28, 2022, the BOP noted, in the Federal Registrar, its intent of restarting the National Environmental Policy Act (NEPA) process, and publishing a draft environmental impact statement (DEIS).

Members of CLC and BCNP submitted public comments following the September 28, 2022 publication and the November 17, 2022 Scoping meeting, expressing concern about the adverse social, environmental, economic and political impacts of this project.

## **B. Letcher County Planning Commission, Inc.**

The Letcher County Planning Commission, Inc. (LCPC) is a private, non-profit organization incorporated in Kentucky. LCPC is also recognized as a private non-profit by the Internal Revenue Service (IRS). Their stated mission is “providing sustainable citizen-based planning for the future of Letcher County for educational, recreational and economic progress for all its citizens, ensuring equal opportunity,” but the idea of a proposed federal prison for Letcher County originated with the LCPC.

According to the last Revised Supplemental Environmental Impact Statement (RSEIS), this project began because the BOP “was contacted by the Letcher County Planning Commission with an offer of potential sites for a new USP and FPC in Letcher County, Kentucky.”<sup>1</sup> In fact, the LCPC “identified potential locations for development and brought these sites to the attention of the Bureau to determine if the Bureau had an interest in developing a new facility at one of the locations.”<sup>2</sup>

Despite requests from the public in the last round of comments, the BOP has consistently failed to account for why this non-profit organization was empowered to identify a potential site and county for this massive government undertaking.<sup>3</sup>

## **C. Freedom of Information Act (FOIA) Request**

On June 30, 2023, Emily H. Posner, General Counsel for Voice of the Experienced (VOTE) – a member organization of BCNP – submitted a FOIA request to the BOP asking for the following:

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<sup>1</sup> See RSEIS, p. 2-3, available at [https://f3ccbb3a-b4aa-4a7c-98fe-8050e1837ed5.filesusr.com/ugd/c14bb4\\_b536c072bf30493ca8f1631f954bc5d2.pdf](https://f3ccbb3a-b4aa-4a7c-98fe-8050e1837ed5.filesusr.com/ugd/c14bb4_b536c072bf30493ca8f1631f954bc5d2.pdf)

<sup>2</sup> *Id.*

<sup>3</sup> Public Comment, p. 24 (May 8, 2017), available at [https://www.buildingcommunitynotprisons.com/\\_files/ugd/22a92b\\_98adfecfcbd2460096bc6d026f92be46.pdf](https://www.buildingcommunitynotprisons.com/_files/ugd/22a92b_98adfecfcbd2460096bc6d026f92be46.pdf)



# Building Communities Not Prisons

- Any and all meeting minutes, notes, and agendas from meetings between the BOP and the Letcher County Planning Commission meetings discussing the proposed federal prison;
- Any and all communications, including electronic communications, internally within the BOP and the Letcher County Planning Commission and/or between Letcher Planning Commission officials and any third party concerning the proposed federal prison;
- Any and all records, reports, studies, or assessments conducted by the BOP with the Letcher County Planning Commission related to the planning, construction, or potential impacts of the proposed federal prison; and
- Any and all communications, including electronic communications, between the Letcher County Planning Commission and the Federal Bureau of Prisons, Department of Justice officials, or any other federal, state, or local agencies concerning the proposed federal prison.

BOP assigned this FOIA request as No. 2023-03988. According to BOP's website, this request is still being processed. To date, no responsive records have been provided to Emily Posner.

## **D. BOP and LCPC**

Earlier this month, a recent search of BOP's website revealed concerning information: BOP and its contractor, WSP, had met with LCPC on [July 19, 2023](#).<sup>4</sup> Undersigned have been unable to locate any public notice of this meeting, and there was no notice of this meeting in the Federal Registrar. Upon learning of this meeting, Dr. Artie Ann Bates, secretary of CLC, wrote on December 1, 2023, to BOP's Public Affairs office, to inquire if this information was indeed correct.

On December 5, the BOP responded that, "Yes, a meeting was held with the Letcher County Planning Commission (LCPC) on July 19, 2023, to provide the LCPC with an update on the proposed FCI/FPC Letcher, KY, project . . . [and] shortly thereafter, a meeting summary was posted on the project website," and gave the link. In the next paragraph, the BOP stated that "The Federal Bureau of Prisons remains committed to providing periodic updates on the project website for all interested stakeholders."

Following this correspondence, on behalf of CLC and BCNP, Dr. Bates requested a Zoom meeting with BOP and WSP. In response, the BOP stated: "While we decline your offer for a

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<sup>4</sup> See <https://www.proposed-fci-letchercountyky.com/communications> (last visited Dec. 11, 2023).

Zoom meeting, we will continue to remain committed to providing periodic updates on the project website for all interested stakeholders.”

Later that evening, on [December 6, 2023](#), CLC research revealed that the BOP had met *again* with the LCPC, and it was on that *very same day* as Dr. Bates’ communication with the BOP Public Affairs Office. Again BOP posted a synopsis of the meeting: “a virtual meeting with the Letcher County Planning Commission (LCPC) on Wednesday, December 6, 2023, to provide the LCPC with a report concerning: Status of the proposal . . . Progress and accomplishments in preparing new Draft Environmental Impact Statement (EIS), Recently conducted activities, Upcoming activities, Anticipated schedule.”<sup>5</sup> The synopsis of the meeting on December 6th goes on to list specific biological studies and “Next steps . . . Complete delineation report for submission to the USACE for review, Analyze potential impacts from proposed FCI/FPC development, Determine if Clean Water Act permits will be needed from USACE/State of Kentucky, Develop measures for mitigating potential impacts, as necessary, Incorporate results in new Draft EIS.”<sup>6</sup>

## II. Appearance of Impropriety

These two exclusive meetings by the BOP and its contractor with the LCPC are problematic, particularly in light of BOP’s declination of a meeting with CLC. Why has a citizens group which appears to be a *proponent* of the proposed Letcher prison had two exclusive meetings with the BOP within six months? Why does a citizens’ group that is *opposed* to the prison get a prompt denial to a meeting request? BOP’s lack of transparency and its apparent ongoing communication with LCPC raises concerns about conflicts of interest.

In defiance of open government norms, these two meetings of the BOP with the LCPC impede accountability by the local and national public toward a Department of Justice agency whose very actions will severely affect local citizens in Letcher County, as well as incarcerated people and their families.

As well, BCNP and CLC are concerned that these meetings violate the Sunshine Act.<sup>7</sup> The published notes on these meetings fail to account who attended the meetings, the types of discussions that occurred and/or whether BOP conduct concerning the development of the EIS were made.

BCNP and CLC request that in the spirit of openness, transparency, accountability and compliance with the Sunshine Act that the BOP rectify our concerns immediately by

- 1) hosting a virtual meeting with CLC, BCNP and any other concerned stakeholder organization;

---

<sup>5</sup> See [https://www.proposed-fci-letchercountyky.com/\\_files/ugd/5947b2\\_4be0696df6294619b8f20462b18af2ef.pdf](https://www.proposed-fci-letchercountyky.com/_files/ugd/5947b2_4be0696df6294619b8f20462b18af2ef.pdf) (last visited Dec. 11, 2023).

<sup>6</sup> See [https://www.proposed-fci-letchercountyky.com/\\_files/ugd/5947b2\\_4be0696df6294619b8f20462b18af2ef.pdf](https://www.proposed-fci-letchercountyky.com/_files/ugd/5947b2_4be0696df6294619b8f20462b18af2ef.pdf) (last visited Dec. 13, 2023).

<sup>7</sup> See 5 U.S.C. § 552b(a)(2) (stating “the deliberations of at least the number of individual agency members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business . . .”).



# Building Communities Not Prisons

- 2) posting online access to the video of the two zoom meetings between BOP and LCPC;
- 3) releasing a transcript of the meetings that occurred between BOP and LCPC;
- 4) releasing the full minutes of these two meetings, including a list of all participants and materials exchanged or discussed; and
- 5) releasing the names of those who proposed the meetings and those who consented to them.

In so doing, BCNP and CLC also request that the BOP explain the relationship or standing that LCPC appears to have that merits exclusive, unpublicized meetings with BOP above other stakeholders who have legitimate concerns and are being denied access and information.

We believe that responding accordingly to our five requests would remedy any possible Sunshine Act violations.

### **III. Prompt Response to FOIA**

VOTE, BCNP and CLC now formally request a release of all responsive records to the VOTE's June 30, 2023 FOIA request. Access to these records is imperative in order to prepare sufficient comments to the DEIS, which is expected to be released in February of 2024.

We believe that releasing these records now will remedy our current concerns of violations of FOIA or NEPA.

### **IV. Conclusion**

In conclusion, we appreciate your consideration of our efforts to continue with a fair, transparent, and legal process as we oppose this unwarranted federal prison project in Letcher County and look forward to your response.

Sincerely,

/x/ Dr. Artie Ann Bates

Artie Ann Bates, MD  
Secretary, Concerned Letcher Countians  
Member, Building Community Not Prisons

/x/ Elvenia Blair Hooper

Elvenia Blair Hooper

Co-chair, Concerned Letcher Countians  
Member, Building Community Not Prisons

/x/ Attica Scott, MS

Attica Scott, MS  
Director of Special Projects, Forward Justice Action Network  
Member, Building Community Not Prisons

/x/ Emily H. Posner

Emily H. Posner  
General Counsel, Voice of the Experienced  
Member, Building Community Not Prisons

/x/ Dustin McDaniel

Dustin McDaniel  
Attorney, Abolitionist Law Center  
Member, Building Community Not Prisons

/x/ Joan Steffen

Joan Steffen  
Fellow, Institute to End Mass Incarceration  
Member, Building Community Not Prisons

CC per email: Kimberly Hudson via email [kshudson@bop.gov](mailto:kshudson@bop.gov)  
Chief, Construction and Environmental Review Section, Facilities Management  
Branch NEPA Site Selection Specialist at BOP

Cara Christianson via email [BOP-IPP-PublicAffairs@bop.gov](mailto:BOP-IPP-PublicAffairs@bop.gov)  
BOP's FOIA Public Liason

Mr. Benjamin O'Cone via email [BOP-IPP-PublicAffairs@bop.gov](mailto:BOP-IPP-PublicAffairs@bop.gov)  
BOP Public Affairs Officer

Director Collette Peters by USPS and email

# **EXHIBIT R**

to Anti-Deficiency Act Complaint

**From:** (b)(6); (b)(7)(C)  
**To:** (b)(6); (b)(7)(C)  
**Subject:** FW: Letcher County Planning Commission  
**Date:** Tuesday, February 21, 2023 6:06:00 AM  
**Attachments:** image001.png

The Letcher County Planning Commission called (b)(6); (b)(7)(C) WSP, for an update on Letcher. Below is how he responded.

(b)(6); (b)(7)(C)

Site Selection Specialist  
 Federal Bureau of Prisons  
 Construction and Environmental Review Branch

(b)(6); (b)(7)(C)

**From:** (b)(6); (b)(7)(C)@wsp.com>  
**Sent:** Monday, February 20, 2023 5:28 PM  
**To:** (b)(6); (b)(7)(C)@bop.gov>  
**Cc:** (b)(6); (b)(7)(C)@wsp.com>  
**Subject:** [EXTERNAL] Letcher County Planning Commission

(b)(6); (b)(7)(C)

The Letcher County Planning Commission held its monthly meeting today and called me to provide a short status report concerning the Letcher County project. With that I reported that the EIS team:

- Has reviewed all scoping comments and is using software to better archive, manage, and retrieve scoping comments and DEIS comments (following DEIS release).
- Is strengthening the project justification (purpose and need) with current population projections for inmates that will need to be housed in MidAtlantic Region.
- Is examining other BOP facilities in MidAtlantic Region to determine ability to develop a new facility at an existing BOP location vs developing in Letcher County (as per past comments and criticisms).
- Is documenting BOP efforts to develop a strategic framework for management of BOP Real Property Assets and prioritizing the backlog of maintenance and repairs needed at existing facilities to explain “modernizing BOP facilities and infrastructure”.

I also stated that BOP remains committed and continues to move forward with EIS



preparation. I have been asked to continue to provide short status reports at future Letcher County Planning Commission monthly meetings. Call with questions or if we can be of service.



(b)(6); (b)(7)(C)

**WSP USA**

Email: (b)(6); (b)(7)(C)

(b)(6); (b)(7)(C)

2000 Lenox Drive, 3rd Floor, Lawrenceville, NJ 08648 USA

[wsp.com](http://wsp.com)

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NOTICE: This communication and any attachments ("this message") may contain information which is privileged, confidential, proprietary or otherwise subject to restricted disclosure under applicable law. This message is for the sole use of the intended recipient(s). Any unauthorized use, disclosure, viewing, copying, alteration, dissemination or distribution of, or reliance on, this message is strictly prohibited. If you have received this message in error, or you are not an authorized or intended recipient, please notify the sender immediately by replying to this message, delete this message and all copies from your e-mail system and destroy any printed copies.

-LAEmHhHzdUzBITWfa4Hqs7pbKl

# **EXHIBIT S**

to Anti-Deficiency Act Complaint

**Director's Tour Route - USP McCreary**

**Thursday, August 29, 2024**

**9:00 a.m. Meet with Warden and Executive Team (Warden's Office)  
Welcome and Overview of USP McCreary**

**09:30 a.m. Health Services**

**10:00 a.m. Special Housing Unit**

**11:00 a.m. Food Service**

**11:15 a.m. Unit 4A**

**11:45 a.m. Recreation**

**12:00 p.m. Education**

**12:15 p.m. Psychology Services**

**1:00 p.m. End of USP McCreary Tour**

## Itinerary

### BOP Director Visit to Letcher County

August 28, 2024

- 9:00am- Welcome by Letcher Planning Commission and introduces Congressman Rogers
- 9:05- Congressman Rogers remarks and introduces Director Peters
- 9:15- Director Peters remarks
- 9:25- Congressman Rogers introduces Kentucky Senate President Robert Stivers
- 9:35- Kentucky Senate President Stivers remarks and introduction of other members of General Assembly.
- 9:45- Q&A from Congressman and Director
- 9:50- County/City Elected officials
- Letcher County Judge Executive, Terry Adams
  - Reggie Hickman, Pikeville City Manager
  - Knott County Judge Executive, Jeff Dobson
  - Perry County Judge Executive, Scott Alexander
  - Other Judges/Mayors present and may answer questions
- 10:00- Q&A from Congressman and Director
- 10:05- Utility Providers
- Appalachian Wireless (b) (6); (b) (7) (C)
  - Thacker Grigsby- (b) (6); (b) (7) (C)
  - Letcher County Water/Wastewater- (b) (6); (b) (7) (C)
  - Knott County Water- (b) (6); (b) (7) (C)
  - Kentucky Power- (b) (6); (b) (7) (C)

- DARA Kentucky LLC (formerly Vinland Energy)- (b) (6); (b) (7) (C)

10:15- Q&A from Congressman and Director

10:20- Law Enforcement/Fire/EMS

- Kentucky State Police
- Whitesburg Police, Chief Tyrone Fields
- Whitesburg Fire Department, Chief Charles "Red" Caldwell
- Volunteer Fire Departments- Letcher Judge Terry Adams

10:30- Q&A from Congressman and Director

10:35- Break

10:45- Hospitals & Healthcare

- ARH (b) (6); (b) (7) (C)
- Pikeville Medical Center (b) (6); (b) (7) (C)
- MCHC (b) (6); (b) (7) (C)
- PCCEK (b) (6); (b) (7) (C)

10:55- Q&A from Congressman and Director

11:00- Public & private schools

- Letcher County School Superintendent, Denise Yonts
- Jenkins Independent School Superintendent, Damian Johnson
- KCTCS- Dr. Ella Strong and Keila Miller
- UPIKE President Dr. Webb
- Alice Lloyd President Dr. Jim Stepp

11:10- Q&A from Congressman and Director

11:15- Housing

- HOMES, Inc. (b) (6); (b) (7) (C)

- Pine Mountain Partnership (b) (6); (b) (7) (C)

11:25- Q&A from Congressman and Director

11:30- Transportation

- State Representative John Blanton
- Kentucky Highway District 12 (b) (6); (b) (7) (C)
- Letcher County Airport Board- (b) (6); (b) (7) (C)

11:40- Q&A from Congressman and Director

11:45- Workforce/Economic Development

- SOAR- (b) (6); (b) (7) (C)
- EKCEP- (b) (6); (b) (7) (C)
- Pine Mountain Partnership (b) (6); (b) (7) (C)
- LKLP (b) (6); (b) (7) (C)

11:55- Q&A from Congressman and Director

12:00pm- Local Testimonials

- (b) (6); (b) (7) (C) Isom IGA
- (b) (6); (b) (7) (C)
- (b) (6); (b) (7) (C)

12:10- Q&A from Congressman and Director

12:15- Lunch at Pine Mountain Grill

1:00 Depart

# **EXHIBIT C**

Threatened and Endangered Bat Acoustic Survey Report at a Proposed Federal  
Correctional Institution in Roxana Kentucky

30 January 2026

Prepared for:



**USFWS KENTUCKY ECOLOGICAL SERVICES**

**Field Office**

**Attn: Mike Armstrong**

330 West Broadway, Suite 265

Frankfort, KY 40601

Prepared by:



**Building  
Community  
Not Prisons**

**BUILDING COMMUNITY NOT PRISONS**

&



**BOREALIS BIOLOGICAL, LLC.**

**Jonathan Hootman**

Co-Founder/Senior Biologist

167 Briarwood Lane

Mars Hill, NC 28754

## **DISCLAIMER STATEMENT**

This document is a work prepared for the U. S. Fish and Wildlife Service by Borealis Biological, LLC. and the Building Community Not Prisons Coalition. In no event shall the U. S. Fish and Wildlife Service, Borealis Biological, or the Building Community Not Prisons Coalition have any responsibility or liability for any consequences of any use, misuse, inability to use or reliance on the information contained herein, nor does either warrant or otherwise represent in any way the accuracy, adequacy, efficacy or applicability of the contents hereof.

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# 1. Project Information

- Project Location: Letcher County Kentucky. 37.104882, -82.955678
- Survey Dates: 14 & 15 July 2024
- Surveyor(s): Jonathan Hootman. Borealis Biological
- Land Ownership: Private
- Permit Numbers: Federal Permit: ES02332D-4

## 2. Survey Objectives

At the behest of the Building Community Not Prisons Coalition, Borealis Biological was contracted to conduct an acoustic presence/probable absence endangered bat survey for the Indiana bat, Northern long-eared bat and Tricolored bat at the site of a proposed federal prison near Roxana, Kentucky. The survey objectives were to conduct an acoustic survey in accordance with 2024 USFWS Survey guidelines to determine whether these bats were using area in and around the proposed prison location.

## 3. Survey Methods

- Survey Protocol: Methods followed the 2024 USFWS Range-Wide Indiana Bat and Northern Long-Eared Bat Survey Guidelines for acoustic surveys.
- Equipment Used: Anabat Swift acoustic detectors were utilized with either a directional or omni-directional microphone. Calls were recorded in zero crossing with a sample rate of 320k and a division ratio of 8. Sensitivity was set to 15 with a minimum frequency of detection of 15 kilohertz (kHz) and a maximum frequency of detection of 80 kHz. Calls were analyzed using Wildlife Acoustic's Kaleidoscope Pro Version 5.6.8.
- Detector Deployment: Seven detectors were placed throughout the project area (see Table 1 in section 7) in a variety of habitats to best capture a diversity of bat species. All detectors were equipped with Directional microphones. Each microphone was deployed at least 3 meters above vegetation using Mr. Long Arm extendable painter's poles.
- Sampling Schedule: Surveys took place on the nights of 14 and 15 July 2024 and started recording a half hour before sunset and ended a half hour after sunrise. A total of 14 detector nights of data were collected.
- Weather Conditions: Weather conditions were ideal for a bat survey with high temperatures of 73 and 81 degrees Fahrenheit and low temperatures of 66 and 68 degrees Fahrenheit respectively. Wind speeds were from zero to 3 miles per hour with no precipitation during the survey period of both nights.

- Quality Assurance: Fresh batteries were used and a “Finger Rub” microphone sensitivity test was used both before and after deployment and all detectors passed this test. No weather proofing was implemented for the detectors.

## 4. Results

A variety of habitats were sampled during the 2-day survey (Table 1). Indiana bats were detected at sites 1,2,3,4,5, and 7 (Table 2). Northern long-eared bats were detected at sites 2,4,5,6, and 7 (Table 2). Tricolored bats were detected at every site and, of note, gray bats were also detected at every site (Table 2).

## 5. Data Analysis

- Analysis Software: Wildlife Acoustic’s Kaleidoscope Pro Version 5.6.8. A species was considered present at a site if the analysis software recorded a call at the site.
- Manual Vetting: No manual vetting was conducted for this survey.

## 6. Discussion

The project area provided good sites with many diverse habitats. The weather was ideal for a summer survey with mild temperatures, low wind, and no precipitation. All detectors were in good working condition for the duration of the survey.

With the detection of Indiana, northern long-eared, and tricolored bats in the project area, as well as the discovery of winter habitat (see map) and the presence of the rock fissure that was last surveyed in the spring of 2016, it is recommended that no development take place in an effort to protect the endangered bats that are present in the area. Eastern Kentucky possesses challenging terrain in respect to searching for and identifying potential cave/mine/fissure roosting habitat. To illustrate this point, in 2016, when the surveyor was granted permission to look for potential habitat on Mitch Whitaker’s land, he was able to find a rock fissure that was previously overlooked by biologists conducting habitat assessments. In 2024, after receiving permission to look for habitat on other tracks of land within the project area, the surveyor was able to locate another rock wall (see photograph in appendices) that meets the criteria for being winter habitat (and in the case of gray bats potential summer habitat) for endangered bats. With the detection of such a large number (292 files) of gray bat calls on the project area, it is recommended that a more extensive habitat assessment be conducted throughout the project area.

## 7. Maps and Figures

### LIST OF TABLES

Table 1. – Acoustic site locations, habitats sampled, and dates surveyed.

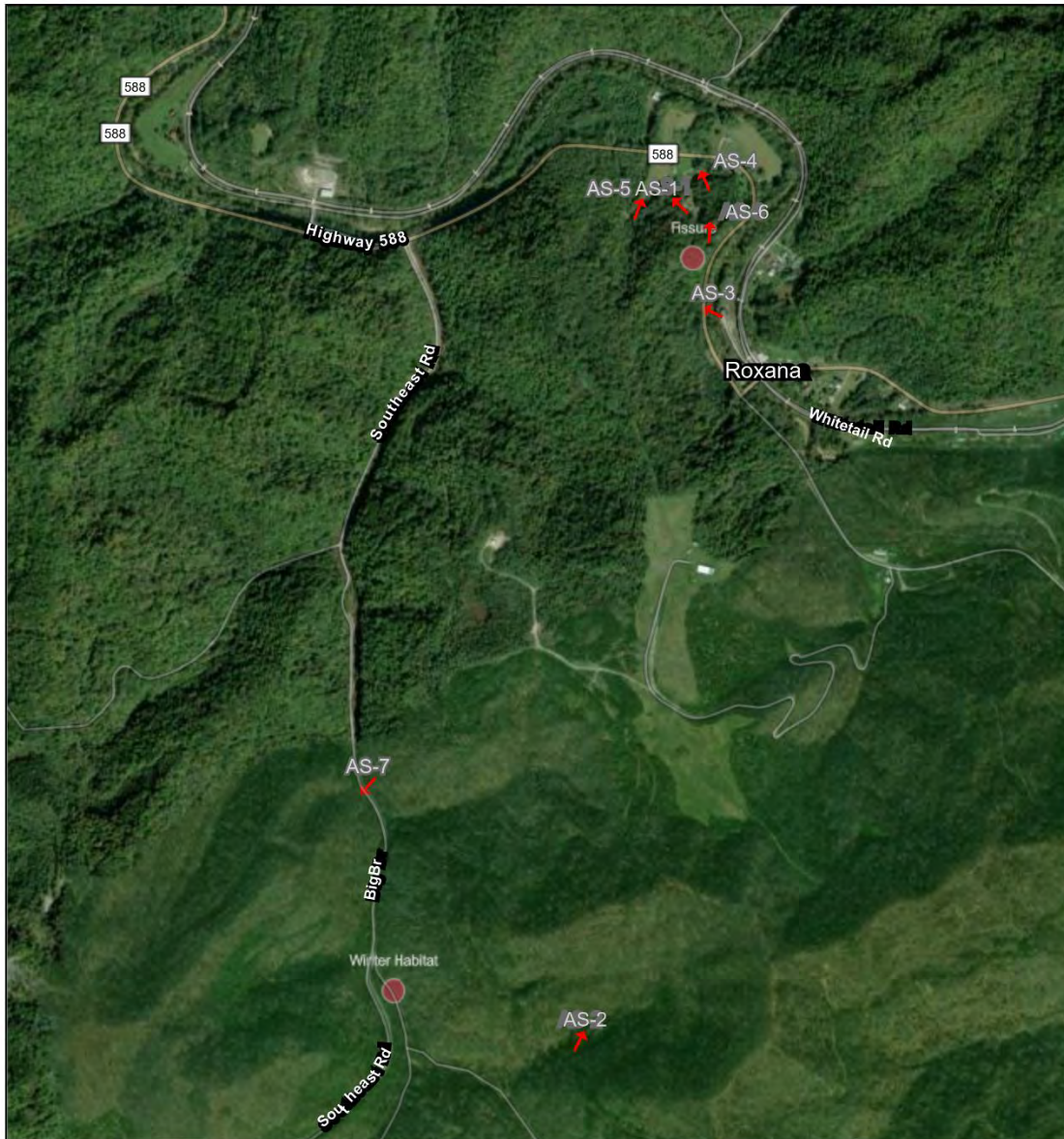
Station ID	Coordinates	Habitat	Survey Dates
AS-1	37.11306, -82.95243	Upland mowed area	14 & 15 July 2024
AS-2	37.09345, -82.9554	Canopy gap/Flyway/Edge	14 & 15 July 2024
AS-3	37.11055, -82.95146	River	14 & 15 July 2024
AS-4	37.11364, -82.95169	Pond	14 & 15 July 2024
AS-5	37.11298, -82.95364	Edge/Open mowed area	14 & 15 July 2024
AS-6	37.11242, -82.95155	Canopy Gap	14 & 15 July 2024
AS-7	37.09942, -82.96164	Flyway/Edge	14 & 15 July 2024

Table 2. – Summary of bat acoustic results for 14 and 15 July 2024 at Roxana.

Site	CORTOW	EPTFUS	LASBOR	LASCIN	LASNOC	MYOAUS	MYOGRI	MYOLEI	MYOLUC	MYOSEP	MYOSOD	NYCHUM	PERSUB	NOID	NOISE
Totals:	71	832	1453	12	29	19	292	6	66	12	11	1592	1752	465	1809
AS-1	1	103	891	3	13	3	13		5		1	959	667	324	739
AS-2		25	79	1	2	2	10	1	10	3	3	133	34	50	339
AS-3	1	93	75	1		5	19		11		2	54	250	12	145
AS-4	17	115	97	2	6	4	235	1	13	2	1	40	740	12	160
AS-5	7	170	156	5	6	2	6		10	3	3	233	38	33	107
AS-6	28	34	147			1	7	2	14	2		167	15	23	135
AS-7	17	292	8		2	2	2	2	3	2	1	6	8	11	184

# Map of Acoustic Sites and Found Winter Habitat Within the Project Area

## Roxana Acoustic Sites



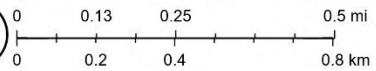
11/16/2025

- ↑ Acoustic Site
- Cave/Mine/Feature

High Resolution 30cm Imagery  
Citations  
4.8m Resolution Metadata




1:18,345



Vantor, Sources: Esri, TomTom, Garmin, FAO, NOAA, USGS, (c) OpenStreetMap contributors, and the GIS User Community

## **APPENDICES**

Appendix A: Data Sheets

 <b>BREALIS</b> <b>BIOLOGICAL</b>		<b>BAT ACOUSTIC SURVEY</b> <b>DATA SHEET</b>																					
<b>Site Deployment</b>		<b>Surveyors</b>																					
Project Name: <u>2024 Roxana Acoustic Survey</u>		Biologists: <u>Jonathan Hootman</u>																					
Site ID:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">AS-1</td> <td style="width: 25%;">State:</td> <td style="width: 25%;"></td> <td style="width: 25%;"></td> </tr> <tr> <td colspan="2">Latitude:</td> <td colspan="2">37.11306</td> </tr> <tr> <td colspan="2">Longitude:</td> <td colspan="2">-82.95243</td> </tr> <tr> <td>Start Date:</td> <td>14</td> <td>July</td> <td>2024</td> </tr> <tr> <td>End Date:</td> <td>16</td> <td>July</td> <td>2024</td> </tr> </table>	AS-1	State:			Latitude:		37.11306		Longitude:		-82.95243		Start Date:	14	July	2024	End Date:	16	July	2024	Detector ID: <u>ANA-07</u>	
AS-1	State:																						
Latitude:		37.11306																					
Longitude:		-82.95243																					
Start Date:	14	July	2024																				
End Date:	16	July	2024																				
		Start Time: <u>Sunset</u>																					
		End Time: <u>Sunrise</u>																					
<b>Detector Settings</b>		<b>Microphones</b>																					
Detector Brand: <u>Anabat</u>		Model: <u>Direct</u>																					
Detector Model: <u>Swift</u>		Height: (m) <u>3</u>																					
Weatherproofing: <u>NO</u>		Vert. Orientation: (°) <u>0 - horiz</u>																					
Sensitivity Setting: <u>Anabat 15</u>		Horiz. Orientation: (°) <u>315</u>																					
<b>SD / CF Card ID:</b>																							
<b>Habitat</b>		<b>Forest Cover &amp; Composition</b>																					
Habitat type	<u>Upland</u>	Canopy Openness:	<u>Open</u>																				
Stand age	<u>Young</u>	Midstory Openness:	<u>Open</u>																				
Stand comp.	<u>Hardwood</u>	Ground Cover:	<u>Dense</u>																				
DBH range (cm)	<u>10cm 25cm</u>	Dom Overstory:	<u>Quercus falcata</u>																				
DBH average (cm)	<u>15.00</u>		<u>Quercus vellutina</u>																				
			<u>Tsuga canadensis</u>																				
Select all that apply:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%;">Edge</td> <td style="width: 33%;"></td> <td style="width: 33%;">Other</td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>	Edge		Other	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Dom Midstory:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"></td> <td style="width: 50%;"></td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>			<input type="checkbox"/>	<input type="checkbox"/>										
Edge		Other																					
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<input type="checkbox"/>	<input type="checkbox"/>																						
	If Other: _____	Dom Ground:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;"></td> <td style="width: 50%;"></td> </tr> <tr> <td><input type="checkbox"/></td> <td><input type="checkbox"/></td> </tr> </table>			<input type="checkbox"/>	<input type="checkbox"/>																
<input type="checkbox"/>	<input type="checkbox"/>																						
<b>Distance to nearest forrest/roost potential (m)</b>		<b>Distance to nearest water source (m)</b>																					
North:	_____	South:	_____																				
East:	_____	West:	_____																				
		Type:	<u>Pond (&lt; 20 acre)</u>																				
		If other:	_____																				
		Distance (m):	<u>46</u>																				
		Direction:	<u>n</u>																				
		(from detector)																					
<b>Notes:</b>	Detector located at Mitch's house near a light pole that attracts bats.																						
*Include data notes -																							
# Files per night																							
Weather (wind, rain, cloud cover, etc.)																							
Moon phase																							



## BAT ACOUSTIC SURVEY DATA SHEET

### Site Deployment

Project Name: 2024 Roxana Acoustic Survey

<b>Site ID:</b>	<u>AS-2</u>	<b>State:</b>	<u></u>
Latitude:	<u>37.09345</u>		
Longitude:	<u>-82.9554</u>		
Start Date:	<u>14</u>	<u>July</u>	<u>2024</u>
End Date:	<u>16</u>	<u>July</u>	<u>2024</u>

### Surveyors

Biologists: Jonathan Hootman

**Detector ID:** ANA-06  
 Start Time: Sunset  
 End Time: Sunrise

### Detector Settings

Detector Brand: Anabat  
 Detector Model: Swift  
 Weatherproofing: NO  
 Sensitivity Setting: Anabat 15  
**SD / CF Card ID:** 6

### Microphones

Model: Direct  
 Height: (m) 3  
 Vert. Orientation: (°) 0 - horiz  
 Horiz. Orientation: (°) 27

### Habitat

Habitat type: Upland  
 Stand age: Mid  
 Stand comp.: Hardwood  
 DBH range (cm): 25cm 50cm  
 DBH average (cm): 15.00

Select all that apply:	<input type="checkbox"/> Edge	<input type="checkbox"/> Canopy Gap	<input type="checkbox"/> Flyway
	If Other: <u></u>		

### Forest Cover & Composition

Canopy Openness: Open  
 Midstory Openness: Open  
 Ground Cover: Dense  
 Dom Overstory: Liriodendron tulipifera  
Quercus rubra  
Platanus occidentalis

Dom Midstory:	<u></u>	<u></u>
Dom Ground:	<u>kudzu</u>	<u></u>

### Distance to nearest forest/roost potential (m)

North:  South:   
 East:  West:

### Distance to nearest water source (m)

Type: Creek  
 If other:   
 Distance (m): 500  
 Direction: w  
 (from detector)

**Notes:** up a gas line trail that opens up to a forest clearing. overrun with kudzu.

\*Include data notes -  
 # Files per night  
 Weather (wind, rain, cloud cover, etc.)  
 Moon phase



## BAT ACOUSTIC SURVEY DATA SHEET

### Site Deployment

Project Name: 2024 Roxana Acoustic Survey

<b>Site ID:</b>	AS-3	<b>State:</b>	
Latitude:	37.11055		
Longitude:	-82.95146		
Start Date:	14	July	2024
End Date:	16	July	2024

### Surveyors

Biologists: Jonathan Hootman

**Detector ID:** ANA-05  
**Start Time:** Sunset  
**End Time:** Sunrise

### Detector Settings

Detector Brand: Anabat  
 Detector Model: Swift  
 Weatherproofing: NO  
 Sensitivity Setting: Anabat 15  
**SD / CF Card ID:** 11

### Microphones

Model: Direct  
 Height: (m) 3  
 Vert. Orientation: (°) 0 - horiz  
 Horiz. Orientation: (°) 296

### Habitat

Habitat type: Bottomland  
 Stand age: Mid  
 Stand comp.: Hardwood  
 DBH range (cm): 10cm-60  
 DBH average (cm): 25.00

Select all that apply:	Edge	Water	Flyway
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
If Other: _____			

### Forest Cover & Composition

Canopy Openness: Open  
 Midstory Openness: Moderate  
 Ground Cover: N/A  
 Dom Overstory: Platanus occidentalis  
Liriodendron tulipifera  
Fagus grandifolia

Dom Midstory:	<input type="checkbox"/>	<input type="checkbox"/>
Dom Ground:	<u>kudzu</u>	<input type="checkbox"/>

### Distance to nearest forest/roost potential (m)

North: \_\_\_\_\_ South: \_\_\_\_\_  
 East: \_\_\_\_\_ West: \_\_\_\_\_

### Distance to nearest water source (m)

Type: River  
 If other: \_\_\_\_\_  
 Distance (m): 0  
 Direction: w  
 (from detector)

**Notes:** on the bank of the north fork of the Kentucky River.

\*Include data notes -  
 # Files per night  
 Weather (wind, rain,  
 cloud cover, etc.)  
 Moon phase



## BAT ACOUSTIC SURVEY DATA SHEET

### Site Deployment

Project Name: 2024 Roxana Acoustic Survey

<b>Site ID:</b>	AS-4	<b>State:</b>	
Latitude:	37.11364		
Longitude:	-82.95169		
Start Date:	14	July	2024
End Date:	16	July	2024

### Surveyors

Biologists: Jonathan Hootman

**Detector ID:** ANA-04  
**Start Time:** Sunset  
**End Time:** Sunrise

### Detector Settings

Detector Brand: Anabat  
 Detector Model: Swift  
 Weatherproofing: NO  
 Sensitivity Setting: Anabat 15  
**SD / CF Card ID:** 13

### Microphones

Model: Direct  
 Height: (m) 3  
 Vert. Orientation: (°) 0 - horiz  
 Horiz. Orientation: (°) 296

### Habitat

Habitat type: Mixed u/b  
 Stand age: Mid  
 Stand comp.: Mixed  
 DBH range (cm): 10cm-70  
 DBH average (cm): 25.00

### Forest Cover & Composition

Canopy Openness: N/A  
 Midstory Openness: N/A  
 Ground Cover: N/A  
 Dom Overstory: *Liriodendron tulipifera*  
*Quercus palustris*

Select all that apply:

<input checked="" type="checkbox"/> Water	<input checked="" type="checkbox"/> Open Meadow
<input type="checkbox"/>	<input type="checkbox"/>

If Other: \_\_\_\_\_

Dom Midstory: *J. virginiana*

<input type="checkbox"/>	<input type="checkbox"/>
--------------------------	--------------------------

Dom Ground: grass

### Distance to nearest forest/roost potential (m)

North: \_\_\_\_\_ South: \_\_\_\_\_  
 East: \_\_\_\_\_ West: \_\_\_\_\_

### Distance to nearest water source (m)

Type: Pond (< 20 acre)  
 If other: \_\_\_\_\_  
 Distance (m): 0  
 Direction: w  
 (from detector)

**Notes:** on the eastern bank of a pond.

\*Include data notes -  
 # Files per night  
 Weather (wind, rain,  
 cloud cover, etc.)  
 Moon phase



## BAT ACOUSTIC SURVEY DATA SHEET

### Site Deployment

Project Name: 2024 Roxana Acoustic Survey

<b>Site ID:</b>	AS-5	<b>State:</b>	
Latitude:	37.11298		
Longitude:	-82.95364		
Start Date:	14	July	2024
End Date:	16	July	2024

### Surveyors

Biologists: Jonathan Hootman

**Detector ID:** ANA-08  
**Start Time:** Sunset  
**End Time:** Sunrise

### Detector Settings

Detector Brand: Anabat  
 Detector Model: Swift  
 Weatherproofing: NO  
 Sensitivity Setting: Anabat 15  
**SD / CF Card ID:** 19

### Microphones

Model: Direct  
 Height: (m) 3  
 Vert. Orientation: (°) 0 - horiz  
 Horiz. Orientation: (°) 21

### Habitat

Habitat type: Mixed u/b  
 Stand age: Young  
 Stand comp.: Hardwood  
 DBH range (cm): 5cm 25cm  
 DBH average (cm): 15.00

### Forest Cover & Composition

Canopy Openness: N/A  
 Midstory Openness: N/A  
 Ground Cover: N/A  
 Dom Overstory: Liriodendron tulipifera  
Platanus occidentalis

Select all that apply:

<input type="checkbox"/>	Edge	<input type="checkbox"/>	Open Meadow
<input type="checkbox"/>		<input type="checkbox"/>	

If Other: \_\_\_\_\_

Dom Midstory: E. umbellata liriodendron tulipifera  
Platanus occidentalis  
 Dom Ground: grass

### Distance to nearest forest/roost potential (m)

North: \_\_\_\_\_ South: \_\_\_\_\_  
 East: \_\_\_\_\_ West: \_\_\_\_\_

### Distance to nearest water source (m)

Type: Pond (< 20 acre)  
 If other: \_\_\_\_\_  
 Distance (m): 90  
 Direction: E  
 (from detector)

**Notes:** at the top of a mowed pasture with young forest to the east and west.

\*Include data notes -  
 # Files per night  
 Weather (wind, rain, cloud cover, etc.)  
 Moon phase



## BAT ACOUSTIC SURVEY DATA SHEET

### Site Deployment

Project Name: 2024 Roxana Acoustic Survey

<b>Site ID:</b>	AS-6	<b>State:</b>	
Latitude:	37.11242		
Longitude:	-82.95155		
Start Date:	14	July	2024
End Date:	16	July	2024

### Surveyors

Biologists: Jonathan Hootman

<b>Detector ID:</b>	ANA-01
Start Time:	Sunset
End Time:	Sunrise

### Detector Settings

Detector Brand:	Anabat
Detector Model:	Swift
Weatherproofing:	NO
Sensitivity Setting:	Anabat 15
<b>SD / CF Card ID:</b>	12

### Microphones

Model:	Direct
Height: (m)	3
Vert. Orientation: (°)	0 - horiz
Horiz. Orientation: (°)	3

### Habitat

Habitat type	Upland
Stand age	Mid
Stand comp.	Hardwood
DBH range (cm)	5cm 60cm
DBH average (cm)	20.00

Select all that apply:	Canopy Gap		
If Other: _____			

### Forest Cover & Composition

Canopy Openness:	Open	
Midstory Openness:	Closed	
Ground Cover:	N/A	
Dom Overstory:	<i>Quercus vellutina</i>	
	<i>Prunus serotina</i>	
	<i>Tsuga Canadensis</i>	
Dom Midstory:	<i>Cercis canadensis</i>	<i>Fagus grandifolia</i>
		<i>Sassafras albidum</i>
Dom Ground:	grass	

### Distance to nearest forest/roost potential (m)

North:	_____	South:	_____
East:	_____	West:	_____

### Distance to nearest water source (m)

Type:	Pond (< 20 acre)
If other:	_____
Distance (m):	135
Direction:	N
(from detector)	

### Notes:

south end of a cemetery surrounded by dense forest. good snags just south of the cemetery.

\*Include data notes -  
# Files per night  
Weather (wind, rain, cloud cover, etc.)  
Moon phase



## BAT ACOUSTIC SURVEY DATA SHEET

### Site Deployment

Project Name: 2024 Roxana Acoustic Survey

<b>Site ID:</b>	AS-7	<b>State:</b>	
Latitude:	37.09942		
Longitude:	-82.96164		
Start Date:	14	July	2024
End Date:	16	July	2024

### Surveyors

Biologists: Jonathan Hootman

**Detector ID:** ANA-02  
**Start Time:** Sunset  
**End Time:** Sunrise

### Detector Settings

Detector Brand: Anabat  
 Detector Model: Swift  
 Weatherproofing: NO  
 Sensitivity Setting: Anabat 15  
**SD / CF Card ID:** 20

### Microphones

Model: Direct  
 Height: (m) 4  
 Vert. Orientation: (°) 0 - horiz  
 Horiz. Orientation: (°) 222

### Habitat

Habitat type: Mixed u/b  
 Stand age: Mid  
 Stand comp.: Hardwood  
 DBH range (cm): 5cm 60cm  
 DBH average (cm): 20.00

Select all that apply:	Flyway	Edge	

If Other: \_\_\_\_\_

### Forest Cover & Composition

Canopy Openness: Open  
 Midstory Openness: Closed  
 Ground Cover: Dense  
 Dom Overstory: Platanus occidentalis  
Quercus alba  
Liriodendron tulipifera  
 Dom Midstory: Celtis Canadensis Fagus grandifolia  
P. occedentalis  
 Dom Ground: jewelweed

### Distance to nearest forrest/roost potential (m)

North: \_\_\_\_\_ South: \_\_\_\_\_  
 East: \_\_\_\_\_ West: \_\_\_\_\_

### Distance to nearest water source (m)

Type: Pond (< 20 acre)  
 If other: \_\_\_\_\_  
 Distance (m): 500  
 Direction: NE  
 (from detector)

**Notes:** along tolsion fork branch. at the edge of a highwall.

\*Include data notes -  
 # Files per night  
 Weather (wind, rain,  
 cloud cover, etc.)  
 Moon phase

Appendix B: Photographs



Acoustic Site 1.



Acoustic Site 2.



Acoustic Site 3.



Acoustic Site 4.



Acoustic Site 5.



Acoustic Site 6.



Acoustic Site 7



Winter habitat discovered within the project area

## 9. References

- 2024 Range-wide Indiana Bat and Northern Long-eared Bat Survey Guidelines

# **EXHIBIT D**

**Jack Spadaro**  
**Mine Safety & Health/Environmental Consultant**  
**Post Office Box 442**  
**Hamlin, WV 25523**

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Cell: 681-390-3320  
Email: [spadarojack@aol.com](mailto:spadarojack@aol.com)

Environmental Investigations Mining  
Mine Accident Investigations

**Expert Witness Report**  
**Proposed Federal Prison**  
**Letcher County, Kentucky**

**Introduction**

I am Jack Spadaro, a mining engineer with extensive experience and knowledge regarding valley fill design and construction, surface mine drainage control, mine subsidence, and methane migration hazards related to underground coal mining. I am a former director of the National Mine Health and Safety Academy, Mine Safety and Health Administration [MSHA], U.S. Department of Labor in Beckley West Virginia. I have investigated flooding related to mountaintop removal mining operations, methane gas explosions, landslides, mine related subsidence events, and environmental effects of surface mining since the late 1960s. I have served as an expert witness in over 350 surface and underground mining related incidents involving mine health and safety and geotechnical issues related to earth fill structures such as valley fills since 1972. I have been recognized as a geotechnical and mine safety engineer in federal district courts in West Virginia, Kentucky, and Virginia. I have also been recognized as an expert in stability of earth structures and mine safety and health issues in circuit courts in Kentucky, West Virginia, Missouri, Ohio, Florida, South Carolina, Alabama, Texas, Montana, California, New Mexico, and Arizona. I am also the author of regulations developed by the Federal Office of Surface Mining Reclamation and Enforcement in 1977 regarding construction of erosion and sediment control measures on surface mines, valley fill construction, and earth fill dams. [See attached Resume]

I have reviewed the following materials, documents, maps, and reports related to the proposed federal prison site location in Letcher County, Kentucky.

- Final Environmental Impact Statement, Proposed Development of a New Federal Correctional Institute and Federal Prison Camp- Letcher County, Kentucky; Federal Bureau of Prisons, July 2024. With appendices.
- Mining records regarding surface and underground mining operations in the Roxana proposed prison site from the Kentucky Department for Surface Mining Reclamation and Enforcement, and the Kentucky Department of Natural Resources, Division of Mine Permits.
- United States Army Corps of Engineers Hydrologic Studies of Impacts of Valley Fill Construction Regarding Flooding Potential [2001]
- Maps of Kentucky surface mining permit number 867-0298 including valley fills and drainage control plans.

- Aerial view and mapping of proposed prison site.
- Hydrologic studies regarding valley fills and flooding on Harless Creek and Quicksand Creek Kentucky [Faulkner and Flynn Engineering; Roanoke, Virginia 2910]
- Hydrologic studies regarding mountaintop mining and related flooding in Pigeon Creek, Mingo County, W.Va. [Faulkner and Flynn Engineering; Roanoke, Va. 2009]
- Expert Witness Report Belva, W.Va. Flooding [Spadaro 2016]
- United States Geologic Survey “Landslides and Debris Flows in Appalachia” [2016]

### **Discussion of Proposed Prison Construction Activities**

The Roxana preferred construction site will require the excavation of approximately 9.2 million cubic yards of soil and additional earthwork and grading of 950,000 cubic yards of rock. These extensive construction measures will result in excessive runoff during rainfall periods and substantial sediment loading in the North Fork of the Kentucky River and its tributaries. Recent hydrologic studies in Eastern Kentucky and Southern West Virginia have found that valley fill construction at mountaintop removal mines in the region has caused substantial increase in peak flows during rainfall periods when valley fills are under construction. Peak flow discharges are significantly increased by as much as 500% in areas where valley fills are under construction. The valley fills proposed under the preferred Roxana prison site plan will cause substantial increases in the frequency and severity of flooding in the Roxana and downstream areas. The Environmental Impact Statement fails to address this hazard to the public and to aquatic life in the North Fork of the Kentucky River and its tributaries. The cumulative hydrologic impact caused by runoff from the open valley fill slopes has not been evaluated. Engineering studies in the Belva area of Fayette County, W. Va. in 2016 found that massive landslides can occur on the faces of valley fills even after revegetation has been completed. [Jack Spadaro Expert Witness Report regarding Belva W, Va. flooding 2016] Landslides will occur at the proposed prison site during and after construction of the valley fills, thereby posing additional hazards to downstream residents.

Additionally, the abandoned underground mine at the south end of the proposed site in the Fireclay Rider Coal seam poses a risk of potential mine subsidence and possible methane migration to the surface areas and structures associated with the project.

There has been no significant geotechnical evaluation of the proposed prison site. Underlying rock formations at the areas where mountaintop removal operations occurred have not been significantly evaluated to determine the effects of previous blasting operations or the stability of the foundation area. There has not been a complete evaluation of the soil strengths and toxicity of the materials to be placed in the proposed valley fills, nor has there been an engineering evaluation of the long-term stability of the proposed valley fills.

Hydrologic studies conducted on Quicksand Creek in Breathitt County and Harless Creek in Pike County, Kentucky have proven that peak runoff from valley fill construction sites have increased peak discharges during heavy rainfall periods by between 250% to 500%. Additional studies on Pigeon Creek

in Mingo County, West Virginia have also shown significant increases in peak flows for watersheds containing valley fills. Additional studies in flood prone areas of Appalachia have shown that surface disturbances such as the proposed prison project have been a substantial contributing factor related to flooding and sedimentation in streams.

### **Conclusion**

1. The Roxana preferred federal prison construction site is an unsafe and potentially damaging project area. The movement of over 10 million cubic yards of soil and rock and the construction of massive valley fills will create a flooding hazard to downstream residents for many years to come. Sedimentation in the North Fork of the Kentucky River and its tributaries will also occur.
2. The Final Environmental Impact Statement prepared by the Federal Bureau of Prisons does not contain an adequate evaluation of the on-site and off-site hydrologic impact created by the disturbance required to construct the project. Earth and rock moving operations will generate unstable soil and rock conditions that will cause flooding and extensive sediment loading of the tributaries of the North Fork of the Kentucky River.
3. The effects of erosion and flooding caused by the proposed construction of the prison facility will have long-term effects on the water quality of the North Fork of the Kentucky River. Approximately one million cubic yards of soil will be deposited as sediment in the North Fork of the Kentucky River and its tributaries. This sediment load will also increase the probability of flooding in the Roxana area and areas downstream of the federal prison site. There has also been no meaningful analysis regarding the toxicity of the soil and rock to be placed in the valley fills.
4. The Bureau of Prisons Environmental Impact Statement has also failed to evaluate the potential for mine subsidence damage caused by abandoned underground coal mines. Mine subsidence will cause damage to access roads and other structures on the surface. No geotechnical studies have been undertaken to determine the suitability of the site regarding soil and rock strength. Similar projects undertaken in West Virginia and Kentucky at former mountaintop removal sites have resulted in structural failures of buildings and access roadways.
5. The Bureau of Prisons has failed in its duties to ensure that the prison construction project in Letcher County Kentucky will not damage the nearby streams and will not pose a hazard to downstream residents. Additional flooding in the fragile area will cause substantial damage to those residents nearby and downstream from the construction project. This area was severely damaged from floods that occurred in July 2022.

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Jack Spadaro 01/30/2026

**Jack Spadaro**  
**Mine Safety & Health/Environmental Consultant**  
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Environmental Investigations Mining  
Mine Accident Investigations

**Professional Experience**

- 1) Mine Health & Safety and Environmental Consultant      10/2004 to Present**  
**Hamlin, WV**

**Duties and Accomplishments**

I provide consulting services and expert witness services to attorneys, labor unions, companies, and organizations involving the health and safety of miners in surface and underground coal and metal/non-metal mines and mineral processing facilities on a national basis. I also provide consulting services regarding storm water runoff and surface and underground mine environmental conditions related to water quality, ground water systems, mine waste and tailings areas, surface drainage control facilities, and stability of coal refuse dams, mine tailings areas, and valley fills.

I provide expertise in the application of the Mine Safety and Health Act to clients needing advice and knowledge of the federal regulations and industry standards related to mine worker health and safety. I also provide services regarding the Federal Surface Mining Control and Reclamation Act (SMCRA) and the Clean Water Act. I have testified in state courts regarding flooding and storm water runoff related to surface mining operations, gas and oil well construction sites, housing developments, highway construction, valley fills, landslides, dams, mining waste areas, and drainage control structures.

I provide expert witness services related to mining accidents and the mining environment at coal mines and metal / non-metal mines. I have served as an expert witness in litigation related to the Mine Safety and Health Act and SMCRA from 2004 to the present time. The expertise is related to surface and underground haulage accidents, roof and rib control, ventilation, exposure of workers to hazardous chemicals, mine tailings areas, respirable mine dust exposure, use of dust masks and respirators, stability of dumping sites, safety of road gradients, explosions and blasting, surface and underground transportation, crushers and processing plant safety, and the overall mine work environment. I have served as an expert witness in cases related to storm water runoff from surface mines and gas well construction sites and pipeline construction. I have served as an expert witness in complex litigation involving multiple plaintiffs and have

served as an expert witness in federal and state courts. The testimony required extensive knowledge of mining and the mine environment and a thorough knowledge of both federal and state mine health and safety regulations and environmental regulations related to water quality and storm water runoff control. I have been involved in litigation involving flooding and the stability of coal waste impoundments and surface mine waste fills. I have also testified as an expert regarding control of storm water runoff from housing developments, gas and oil well drilling operations, and pipeline construction activities. These cases involved regulations and standards related to mine safety and health, storm water runoff and stability of earth and rock fill structures that I had a role in writing during my earlier career with the Office of Surface Mining and the Mine Safety and Health Administration. I have testified in federal district courts regarding surface and underground mine safety standards and standards regarding landslides and storm water runoff damage from oil and gas drilling operations that caused damage to downstream residents. I have testified in federal and state courts in cases involving mine ventilation, roof and rib control, surface and underground haulage, equipment safety standards, and supervisory standards related to mine safety and health.

I have conducted investigations of mining accidents in coal mines and metal/non-metal mines and related mineral processing plants and tailings areas. I wrote reports detailing the root causes of the accidents and made recommendations for improvement of the mine operations regarding health, safety, and the environment. I have been recognized as an expert in mining safety and health and the mining environment at academic conferences examining the mining industry.

**2) MSHA Academy Superintendent, GS-1712-15**

**9/30/98 to 9/30/04**

**Employer**

**U.S. Department of Labor  
Mine Safety and Health Administration  
National Mine Health & Safety Academy  
1301 Airport Road  
Beaver, WV 25813**

**Supervisor**

**Davitt McAteer  
Assistant Secretary of Labor  
for Mine Safety and Health**

**Duties and Accomplishments**

The National Mine Health and Safety Academy is the principal training facility for all federal Mine Safety and Health Administration (MSHA) inspectors and for other mining interests. As superintendent of the Academy, I provided leadership and exercised overall planning and management control, direction and coordination of resources, activities, programs, and facilities of the Academy, including the development, establishment and implementation of policies and procedures; the planning, development and implementation of national and international education and training programs in mine health and safety; and operation of the Academy's physical facilities. I determined program goals and exercised decision-making authority within the parameters of MSHA

policy and program objectives. During my tenure, I developed and implemented a Strategic Plan for improving the quality of training and the production of training materials for mine inspectors and industry.

Through subordinate managers, I directed a staff of professional, technical, and clerical personnel in the conduct of a variety of comprehensive programs designed to accomplish the Academy's goals. During my tenure, the Academy had a staff of 65 full-time federal employees and 67 contract employees. I planned, developed, and implemented the educational and training programs of the Academy. I developed program goals, objectives and proposals. I was responsible for the development and administration of individualized study materials and education programs for nonresident students from federal, state, and local government agencies, from industry and labor organizations, and from educational institutions.

I planned and developed seminars and conferences on mine safety and health and related programs to be conducted at the Academy and at other locations. I was responsible for overseeing the management of the Technical Information Center and Library, and for acquiring and making available appropriate and up-to-date reference materials to meet customer needs.

I was responsible for development of studies designed to evaluate the effectiveness of the Academy's educational programs, and to determine needs for revisions in curricula based on changes in materials, industries and in educational processes. I also directed significant changes in the curricula for Entry Level and Journeyman MSHA inspector training.

I was responsible for development and implementation of support programs for services at the Academy for staff, faculty, and students. Support programs include administrative services, ancillary staff services support, student housing, recreation, internal safety, health services, and physical plant services. I managed the implementation of a capital improvement program to modernize classrooms, residence halls and computer capabilities.

I maintained liaison with key officials in MSHA, academia, industry and other organizations concerned with improved education techniques and methodologies related to safety and health issues. I developed and maintained relationships with universities, colleges, vocational schools, and secondary school to promote training and educational courses in the mineral industries, and to further the recognized stature of the Academy as a leading educational institution in mine health and safety. I participated in cooperative agreements with several colleges and universities and the Appalachian Consortium.

I delegated authority to subordinate managers for the personnel and program management of their respective areas. I evaluated the performance and review evaluations of subordinate supervisors. I conducted staff meetings, and provided advice and counsel on both program and administrative matters, and guidance in the solution of

special problems. During my tenure, I helped improve the effectiveness of each program area by communicating regularly and exchanging information among departments.

I served as a team leader in the investigation of the Martin County Coal Slurry Discharge, which occurred on Oct. 11, 2000 in Martin County, Kentucky. I managed the geotechnical engineering investigation of the slurry discharge, which was the largest and most serious pollution event in the eastern United States. I oversaw the drilling operations, laboratory analysis and the writing of the engineering evaluation regarding the causes of the incident.

During my tenure, I upgraded all training programs at the Academy. As a result, course days of training the Academy increased from 497 to 2,200. Enrollment increased from 17,000 students per year to 30,000 students per year.

**3) Deputy Superintendent, GS-301-14**

**1/05/97 to 8/30/1998**

**Employer**

**U.S. Department of Labor  
Mine Safety and Health Administration  
National Mine Health and Safety Academy  
1301 Airport Road  
Beaver, WV 24813**

**Supervisor**

**Davitt McAteer  
Assistant Secretary of  
Labor for Mine Safety  
and Health**

**Duties and Accomplishments**

As deputy superintendent, I was the day-to-day operations manager at the National Mine Health and Safety Academy. I assisted the Superintendent to plan, develop and implement the education and training programs of the Academy. I worked with department managers to direct a staff of professional, technical, and support personnel in the conduct of comprehensive programs designed to accomplish the Academy's goals.

I oversaw the human resources program for Academy employees, including work assignments, performance [standards, appraisals, rewards, disciplinary actions], safety and health programs, counseling, complaint systems, and leave systems. I worked directly with federal and state agency administrators to conduct research and technology transfer projects to further the Academy's goals.

I supervised the implementation of a long-term Strategic Plan that outlined the mission of the Academy. The plan included faculty and staff development and a program development plan to provide training programs and instructional materials that meet the highest educational and technical standards of quality. I directed attention to essential technical areas to provide improved training in surface and underground haulage safety, roof control safety, underground machinery and electrical safety, and industrial hygiene

related to the mine environment. I guided a pilot training program in Surface Mine Haulage safety that is being used as a model for future programs.

I devised a restructuring plan for the Academy and supervised its implementation. The plan created new divisions in mining technology, safety management, inspection automation, and course development. I supervised a staff of 62 full-time federal employees and 58 contract employees. I supervised the departments of Instructional Services and Instructional Materials, the Technical Information Center and Library, and the Facilities Support Services.

The reorganization of the Academy resulted in a more even distribution of work by Academy employees and more effective education and training to MSHA inspectors, miners, mine supervisors, and training specialists. I set up committees to develop new programs and improve existing programs. Altogether, 16 working committees, made up of staff members from various disciplines, took on projects to improve the Academy's curricula and other Academy functions. These committees completed comprehensive plans in the areas of Program Development, New Technology in Training, Academic/International Relations, Facilities Utilization, Community Relations, Individual Development, Internet Usage, Library Usage, Marketing of the Academy's courses and products, and use of the Mine Simulation Laboratory. The New Technology Committee completed an outline of the best methods for delivering mine safety and health-related training to the mining community.

I initiated the development of roof control seminars to provide training to all coal mine inspectors that will ensure that the most current information in this subject area will be made available to the inspectors. I also initiated conferences and seminars in the areas of noise and dust control in the mining environment, ventilation, blasting, construction, underground haulage safety, maintenance and repair safety, surface haulage safety, electrical hazards and inspection methods, and accident investigation.

I supervised the revision of entry-level training modules for metal, nonmetal and coal mine inspectors. The revision emphasized critical areas of the inspection process so that the early training is meaningful and comprehensive.

Under my supervision, the Academy negotiated cooperative agreements with six colleges and universities and joined the Appalachian Consortium to broaden the institution's expertise in various subject areas related to mine health and safety. The agreements include faculty exchanges, summer intern programs, and distance learning programs.

I included labor representatives in all phases of planning and implementation of revised and new programs. I created an individual development program that ensures that all employees have equal opportunity for advancement and additional professional development. This program allows Academy staff and students to receive credit toward associate, bachelor and master's degrees for courses taken at the Academy.

In 1998, I traveled to Russia and Ukraine to begin the development of an International Mine Health and Safety training program. Between 1998 and 2003, delegations from Russia, Ukraine, South Africa, China, Mexico, Poland, Peru, Georgia, Canada, Mexico, Thailand, and Indonesia have trained in mine health and safety at the Academy.

**4) Mining Engineer, GS-880-13**

**4/96 to 1/97**

**Employer**

**Supervisor**

**U.S. Department of Labor  
Program Evaluation and Information Resources  
4015 Wilson Boulevard  
Arlington, VA 22203-1984**

**George Fesak**

I conducted a study of 1,300 haulage accidents at coal mines and metal / non-metal mines and wrote a report regarding the causes of the accidents. I made recommendations for haulage safety program that has been adopted by MSHA. I also served as special assistant to the Superintendent of the National Mine Health and Safety Academy to work on curriculum expansion in the areas of mine ventilation, underground haulage accident prevention, roof control, underground mine electricity and machinery, and health. I presented a technical paper at a seminar at Virginia Polytechnical Institute and State University in August 1996. The technical paper has been used as a basis for developing the new training program in surface and underground haulage and equipment safety.

I evaluated the overall training needs for the Academy and recommended a program that included a research-driven curriculum that was aimed at eliminating fatalities and injuries in mines. The program included intensive use of staff experienced in mine safety enforcement that would meet the needs of the inspection force and the mining industry.

I planned a training program for new surface haulage instructors that began in November 1996. The program was key to a nationwide inspection and enforcement effort that concentrated on the critical safety and health needs of industry regarding steep haul roads, unsafe dump and fill sites, and vehicle maintenance programs.

**5) Mining Engineer, GS-880-13**

**3/82 to 4/96**

**Employer**

**Supervisor**

**Office of Surface Mining  
U.S. Department of the Interior  
10 Parkway Center  
Pittsburgh, PA 15520**

**James Gilley**

## **Duties and Accomplishments**

I was responsible for design and construction of health and safety hazard abatement, acid mine drainage abatement, landslide stabilization, subsidence control, surface water runoff drainage control, and mine fire projects in Kentucky, Virginia, West Virginia, Ohio, Indiana, Pennsylvania, Georgia, and Illinois.

I served as project engineer on approximately 300 mining-related landslides, drainage control projects, coal refuse fires, underground mine subsidence, and mine fire emergency projects. I evaluated causes of landslides and designed remedial construction measures that included control of storm water runoff for approximately 200 landslides. I also provided technical assistance to Office of Surface Mining field offices regarding valley fill construction, coal waste disposal, subsidence control, storm water runoff control, and landslide stabilization. I served as an expert witness regarding surface and underground mine operations, valley fill construction, blasting, landslide stabilization, subsidence and roof control, coal mine reclamation, and surface and underground mine safety regulations in federal court hearings in West Virginia, Kentucky, and Virginia. I taught mining and civil engineering classes about methods used to abate mining hazards.

I also taught geotechnical engineering methods to mine inspectors and project managers regarding stabilization of earth and rock fill structures. I managed a training program for inspectors and engineers in hydrology and storm water runoff control.

**6) Reclamation Supervisor, GS-13**

**4/78 to 3/82**

### **Employer**

### **Supervisor**

**Office of Surface Mining  
U.S. Department of Interior  
Washington, D.C. 20240**

**Richard Hall**

## **Duties and Accomplishments**

I supervised inspection and enforcement programs and regulation of surface and underground mining operations on a regional and national level. I wrote regulations for the permanent program for the construction of coal waste embankments, subsidence control, drainage control of surface and underground mine storm water runoff, valley fill construction and stability requirements, blasting, contour mining, mountaintop removal mining, and backfilling and grading on surface mines.

I served as an expert witness in administrative and federal court hearings in West Virginia, Pennsylvania, Virginia and Kentucky. I served as an expert witness regarding mine safety standards, ventilation, roof control and mine subsidence, groundwater movement, coal waste treatment, coal waste dam construction, earth and rock fill design and construction, blasting, geotechnical engineering, landslides, surface mine storm water

runoff control, surface water movement related to underground mining operations, and reclamation. I evaluated causes of landslides and designed remedial stabilization measures.

I authored papers on construction of earth-and rock fill coal waste embankments. I served as assistant to the director of Inspection and Enforcement in Washington, D.C. I wrote policy directives and supervised the national interim surface and underground mining inspection program. I managed tracking systems for violators and provided guidance to field managers regarding enforcement.

I served as district manager in Pennsylvania and West Virginia. I managed a nationwide training program for new inspectors and managers regarding inspection techniques at surface and underground mining facilities. I taught mining reclamation procedures for storm water runoff control facilities, coal waste embankments, excess mine spoil fills, and haulage road construction.

**7) Division Chief**

**3/73 to 4/78**

**Employer**

**Supervisor**

**Coal Refuse and Dam Control Division  
WV Department of Natural Resources  
Charleston, WV 25321**

**Ira Latimer**

**Duties and Responsibilities**

I was responsible for development of safety criteria for coal waste embankment construction, dam construction, landslide stabilization, excess mine spoil fills, and surface and underground mine drainage systems for the state of West Virginia. More than 1,500 coal waste embankments and dams were evaluated for safety. I issued enforcement documents to mine owners and supervised an inspection and compliance program for surface and underground mines.

I managed a statewide inspection and enforcement program with a staff of civil and mining engineers, geologists and reclamation specialists. I was also responsible for the review, approval, and inspection of storm water runoff control facilities for surface mines, coal preparation facilities, and surface areas of underground mines.

I taught seminars to train mine inspectors and engineers. I taught on the subjects of slope stabilization procedures for coal tailings areas, waste piles and dams, excess mine spoil fills, hydrology, and design of storm water runoff control structures. I taught all staff about the basics of geotechnical engineering as related to the mining environment. I managed a statewide training program for all dam and waste pile inspectors. I cross-trained all personnel in basic engineering and hydrology pertaining to earth and coal-related structures.

**8) Staff Engineer**

**3/72 to 10/72**

**Employer**

**Supervisor**

**Governor's Commission of Inquiry  
Into the Buffalo Creek Flood  
Of February 1972  
Charleston, WV 25321**

**Ira Latimer**

**Duties and Accomplishments**

I wrote the final report regarding the failure of a coal waste dam in February 1972 that killed 125 people in Logan County, West Virginia. I assembled and evaluated geotechnical engineering and hydrologic data regarding the construction and sudden failure of the dam. I interviewed witnesses and briefed commission members before hearings. I prepared recommendations for coal refuse and dam control regulations that were enacted into law in West Virginia.

**9) Mining Research Engineer**

**1/71 to 3/72**

**Employer**

**Supervisor**

**Coal Research Bureau  
West Virginia University  
School of Mines  
Morgantown, WV 26505**

**James Stump**

**Duties and Accomplishments**

I taught surface and underground mine design, haulage, roof control, ventilation, subsidence control, mineral preparation, and surveying. I conducted research projects in abatement of surface and underground acid mine drainage. This research included analysis of mine water and evaluation of treatment facilities and mine plans to abate acid drainage. I wrote reports about my research regarding the development of mine plans to reduce the possibility of acid drainage formation.

**10) Mining Engineer**

**5/70 to 1/71**

**Employer**

Semet Solvey Division  
Allied Chemical Corporation  
Montgomery, WV 25136

**Supervisor**

Charles Bowling

**Duties and Accomplishments**

I worked as a mining engineer in the design of surface and underground mining operations. I developed roof control and ventilation plans and designed valley fills, dams, and sediment control plans. I worked in underground continuous miner sections.

**11) Mining Engineer in Training**

**6/66 to 5/70**

**Employer**

U.S. Bureau of Mines (now MSHA)  
Mount Hope and Morgantown, WV

**Supervisor**

William Park

**Duties and Accomplishments**

I assisted in training in the areas of roof control, mine ventilation, and coal mine health and safety. I was part of a team that inspected underground mining operations and surface-related facilities to determine compliance with federal health and safety laws. I conducted investigations of fatal roof falls and other accidents in underground coal mines. I conducted ventilation and dust surveys.

## **Education**

Bachelor of Science – Mining Engineering  
West Virginia University, 1970

Mount Hope High School, 1966  
Salutatorian

## **Awards/Accomplishments**

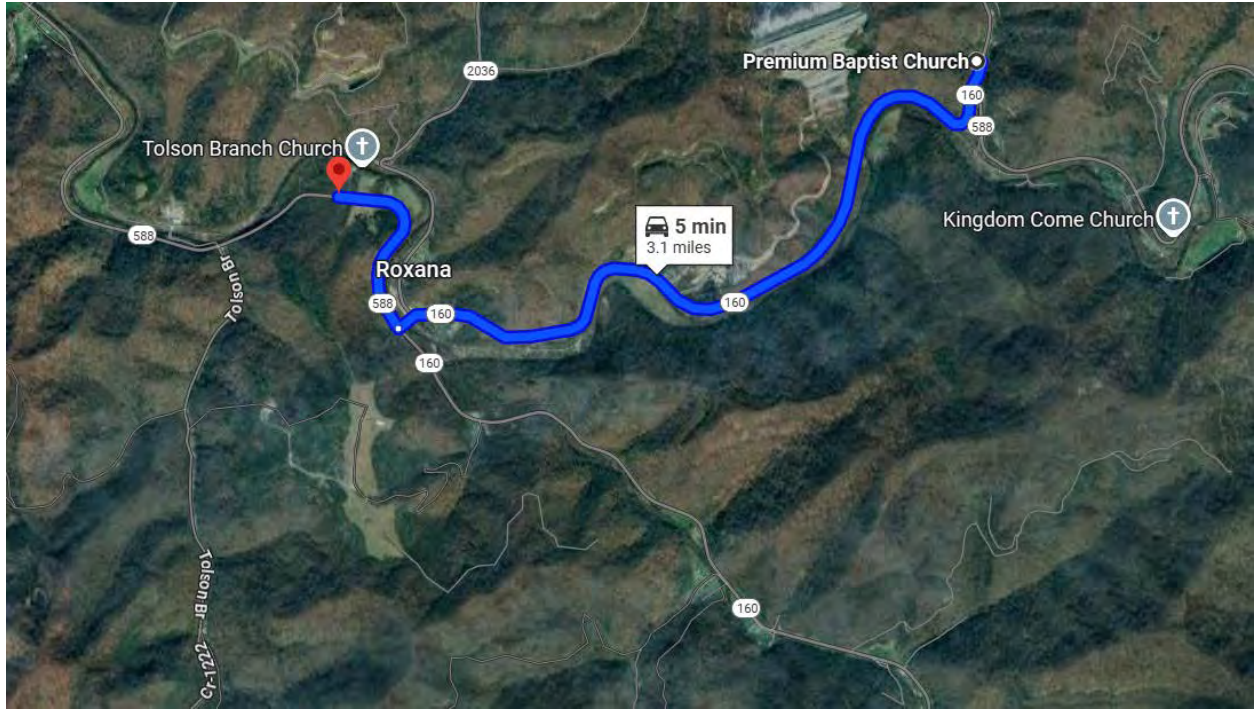
1991 – Instructor Training, Office of Surface Mining, U.S. Department of Interior  
1991 – Meritorious Service Award, Secretary of the Interior  
1991 – Impoundment Inspector Certificate, MSHA, U.S. Department of the Interior  
1993 – Engineer of the Year Award, U.S. Department of the Interior  
2004 – Jenco Foundation Award for Service to Humanity in Appalachia  
2001 – United Mine Workers of America for Service on Behalf of Miners Re: Safety  
2004 – Chuck Chambers Public Service Award, W.Va. Environmental Council  
2005 – Helen Lewis Community Service Award, Appalachian Studies Association  
2010 – Lifetime Achievement Award, Union of Concerned Scientists  
2012 – Conservation Achievement Award, National Wildlife Federation

# **EXHIBIT E**

**EXHIBIT E - IMAGES FROM FEBRUARY 2025 FLOODS**



*Image depicting flooding at the intersection of Hwy. 160 and Hwy. 588 in February 2025.*



*Map depicting the distance from the intersection of Hwy. 160 and Hwy. 588 and the proposed Roxana site.*



*Image depicting landslide in Fleming-Neon, Kentucky.*