



September 12, 2016

Kimberly Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: PennEast Pipeline Project's Impacts to Historic and Cultural Resources
FERC Docket No. CP15-558

Dear Ms. Bose,

Enclosed please find comments from Homeowners Against Land Taking-PennEast (HALT) regarding the analysis of historic and cultural resources in the Draft Environmental Impact Statement for the proposed PennEast Pipeline (FERC Docket No. CP15-558).

HALT's members have a significant interest in ensuring FERC avoids, minimizes, and mitigates harm to historic sites. HALT's members place a high value on the historic and cultural resources in their communities and have expended time and money to protect those resources. Many members also have historic and cultural resources on their property which they seek to protect. HALT submits these comments to address the flaws in the Draft Environmental Impact Statement's analysis of historic and cultural resources.

HALT requests that FERC withdraw the Draft Environmental Impact Statement to address the errors discussed in the enclosed comments. Thank you for your attention to this matter.

Sincerely,

s/ R. Steven Richardson
Counsel for Homeowners Against Land Taking-PennEast

Enclosures

September 12, 2016

Comments to FERC on Missing and Deficient Analysis of Historical and Cultural Resources, Docket No. CP15-558-000 – Proposed PennEast Pipeline Project

These comments are submitted by Homeowners Against Land Taking-PennEast (HALT). HALT's members have a significant interest in ensuring FERC avoids, minimizes, and mitigates harm to historic sites. HALT's members place a high value on the historic and cultural resources in their communities and have expended time and money to protect those resources. Many members also have historic and cultural resources on their property which they seek to protect. HALT submits these comments to address the flaws in the Draft Environmental Impact Statement's analysis of historic and cultural resources.

FERC released the Draft Environmental Impact Statement (DEIS) for the PennEast project on July 22, 2016. The DEIS falls far short of FERC's obligations, and HALT requests FERC withdraw the DEIS to address its violations of the National Historic Preservation Act, National Environmental Policy Act, and the Natural Gas Act.

First, the DEIS violates the National Historic Preservation Act (NHPA). Because the proposed PennEast pipeline is an undertaking with the potential to impact historic sites, FERC must analyze the adverse impacts on those sites to meet the requirements of Section 106 of NHPA.

Many of FERC's obligations under the NHPA have not been met. FERC has:

- Failed to consult local governments;
- Failed to identify historic properties;
- Failed to analyze the adverse impacts to historic properties;
- Failed to develop any avoidance or mitigation measures for the adverse effects;
- Failed to sufficiently involve the public in the process for the resources identified;

- Excluded the public entirely from involvement in analyzing the many resources not yet identified.

Despite meeting essentially none of the Section 106 requirements, the DEIS proposes to postpone NHPA analysis until after FERC decides on PennEast's application. Because that is unlawful, FERC must withdraw the DEIS until it finishes the Section 106 process.

The DEIS contains scant information regarding impacts to historic and cultural resources. It acknowledges failure to survey 68% of the area of potential effects (APE) in New Jersey. For the small percentage surveyed, the New Jersey Historic Preservation Office (NJHPO) criticized the results. With almost no analysis of the effects to historic and cultural resources, the DEIS consequently contains no development of avoidance or mitigation measures. FERC unlawfully asserts that it has no obligation to develop the missing information before its licensing decision so long as it does so sometime before construction.

Second, the National Environmental Policy Act (NEPA) also requires federal agencies such as FERC to take into account the proposed project's potential impact on historic and cultural resources. The Environmental Impact Statement (EIS) prepared under NEPA must include a discussion of the impacts to historic and cultural resources and the alternatives that might provide lesser impacts.

In failing to include the required information, the DEIS does not meet NEPA's requirements for a detailed discussion of historic and cultural resources. It also violates a basic tenet of NEPA that FERC must provide full and complete information to the public for comment. FERC's decision to delay analysis of historical impacts until after the DEIS comment period—and in all likelihood, until after the Record of Decision (ROD) is issued—does not meet that obligation.

Finally, FERC also violated the Natural Gas Act regulations that require that an applicant submit information on historic and cultural resources as part of its application. Yet PennEast's application lacked this information. Despite this failure, FERC went forward with issuing the DEIS. The DEIS includes a "condition" that PennEast must provide the missing historic and cultural resources information, but can do so after a license is granted. This deferral of required analysis directly contradicts the timing requirements for submitting this information. Because PennEast's initial application was defective and not cured before the issuance of the DEIS, FERC must withdraw the DEIS.

As the attachments to these comments show, the harm from these legal violations is widespread over a vast project area. PennEast's proposed 115-mile pipeline would run through Delaware Township, West Amwell Township, Holland Township, Alexandria Township, Kingwood Township, and Hopewell Township in New Jersey, and other townships and areas in Pennsylvania. All of these Townships currently oppose the pipeline because of the significant impacts on the community from the project, including impacts to historic and culturally significant sites.

The impacted New Jersey townships contain abundant cultural and historic resources. *See* Attachment A (map); Attachment B (chart of historic districts). There are many sites that are potentially eligible, eligible, and listed on the National Register of Historic Places, which speaks to the incredible wealth of cultural resources in the impacted area. Over the past thirty years, local communities have formed historical advisory organizations to preserve their heritages and document these critical resources through time and capital intensive efforts. Many historic sites remain untouched and undocumented. A sampling of only the sites that have been discovered

shows the richness of historic sites in the area and the communities' extensive efforts to preserve them.

These sites are diverse and relate to a full range of important historical eras in the United States: pre-contact settlements, camps and burial grounds, multiple sites associated with Washington's army and the Revolutionary War, early industrial and agricultural sites, hamlets and road systems dating to the 18th century, sites showing a continuing culture of agrarian life and agricultural values, and numerous farmsteads that have been in the same family for as many as eight generations.

Almost none of these sites are identified in the DEIS. Nor has FERC analyzed the impacts on the sites it has identified. Attachment A provides a picture of how many historic resources the PennEast pipeline threatens. These resources cannot be addressed as isolated sites; together they create a historic landscape. If one of these sites or its cultural surroundings or viewscape is impacted by the pipeline, the entire historic character is compromised. PennEast's project threatens to destroy the historic sites that New Jersey communities seek to protect. In fact, the DEIS recommends approval of the project despite clearly missing a full analysis of these widespread and adverse historical impacts. Because HALT members live in the affected communities, own properties that contain historic and cultural resources, and have worked with the local historic committees to identify and protect these resources, they are particularly concerned with the significant gaps in FERC's analysis of historic and cultural resources and well positioned to highlight these gaps.

I. THE FLAWED AND INCOMPLETE SECTION 106 PROCESS FOR THE PENNEAST PIPELINE VIOLATES THE NATIONAL HISTORIC PRESERVATION ACT

A. Relevant Legal Standard

Federal agencies must comply with Section 106 of NHPA when evaluating a Federal licensing action, such as FERC’s decision on whether to grant PennEast the Certificate.¹ Section 106 requires that “prior to the issuance of any license,” a federal agency “shall take into account the effect of the undertaking on any historic property.” 54 U.S.C. § 306108.

The implementing regulations for NHPA outline the steps a federal agency must take to comply with Section 106. 36 C.F.R. § 800 *et seq.* A federal agency must:

- 1) identify consulting parties;
- 2) identify historic sites in the APE;
- 3) identify and analyze the potential adverse effects on the historic sites; and
- 4) develop avoidance and mitigation measures for the adverse effects.

Id.

At all times, the agency must involve the public and seek consultation with the consulting parties. The Section 106 process must be “initiated early in the undertaking’s planning, so that a broad range of alternatives may be considered during the planning process for the undertaking.” 36 C.F.R. § 800.1(c). The Section 106 process must be completed “prior to the issuance of any license.” 54 U.S.C. § 306108.

The Advisory Council on Historic Preservation is responsible for implementing NHPA and advises agencies to integrate the NEPA and NHPA processes, because both require consideration of impacts on historic and cultural resources. The CEQ regulations similarly urge agencies to integrate NEPA and NHPA obligations.² NHPA regulations provide requirements for integrating NEPA and NHPA and instruct agencies to either “coordinate” NEPA and NHPA

¹ See DEIS 4-176.

² 40 C.F.R. § 1502.25(a) (“To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the... National Historic Preservation Act.”).

by following the requirements in 800.8(a) or “substitute” NEPA reviews for the Section 106 process pursuant to 800.8(c). 36 C.F.R. § 800.8.³

Under either the “substitution” or “coordination” provision, the agency must include in the EIS detailed information regarding the Section 106 process. To include that information, the agency must complete the process before publishing the DEIS. Otherwise, the agency has not met its obligations and the public will not have adequate opportunity to comment and participate in the process as required.

Agencies can elect not to integrate the NHPA and NEPA processes at all, at which point they must simply follow the procedures outlined in §§ 800.2 through 800.7. But FERC has stated it integrated the two processes for the PennEast project. FERC, Notice of Intent to Prepare an Environmental Impact Statement for the Planned PennEast Pipeline Project, Requests for Comments on Environmental Issues, and Notice of Public Scoping Meetings, 80 Fed. Reg. 5744 (Jan. 13, 2015) (“Our EIS for this project will document our findings on the impacts on historic properties and summarize the status of consultations under Section 106”); DEIS at 4-176 (discussing Section 106 in the DEIS). Thus, the procedures for coordination in § 800.8 apply.

An agency may be able to defer final identification and evaluation under certain circumstances, such as when access is restricted. 36 C.F.R. § 800.4(b)(2).⁴ However if an

³ If a federal agency elects “substitution,” the regulations provide five specific actions that must be taken “during preparation” of the DEIS. These are: 1) identify consulting parties pursuant to § 800.3(f); 2) identify historic properties and assess the effects on those properties pursuant to §§ 800.4 through 800.5; 3) consult the consulting parties regarding the effects during “NEPA scoping, environmental analysis, and the preparation of NEPA documents;” 4) involve the public; and 5) develop alternatives and proposed mitigation measures in consultation with the consulting parties and describe those alternatives and mitigation measures in the DEIS. 36 C.F.R. § 800.8 (c)(1). Under “coordination” the agency must ensure “an EIS and record of decision (ROD) includes appropriate scoping, identification of historic properties, assessment of effects upon them, and consultation leading to resolution of any adverse effects.” 36 C.F.R. § 800.8 (a)(3).

⁴ To the extent that FERC may later reverse the course it took in the DEIS and claim that it utilized the “deferral” regulatory provision, HALT reserves the right to challenge FERC’s ability to defer the majority of Section 106 process until after the DEIS. That course would not meet Section 106’s public participation requirements and would not override the Commission’s more specific and clear obligations in 800.8 that after the agency has already decided to coordinate under 800.8, it must complete the Section 106 process before a licensing decision is made.

agency decides to defer under § 800.4(b)(2), it must clearly indicate in the DEIS that it is deferring, include a description of the phased process that will be used to complete identification and evaluation as access becomes available, include “the likely presence of historic properties within the area of potential effects for each alternative or inaccessible area through background research, consultation and an appropriate level of field investigation,” and complete the process for all properties where access was granted. *Id.* Under the plain language of NHPA, the agency also still must finish the Section 106 process before issuing a license.⁵

B. Comments

1. *FERC and PennEast Failed to Identify Local Governments as Consulting Parties and Failed to Consult Them*

Before issuing the DEIS, FERC and PennEast did not grant consulting party status to the local historic advisory and preservation committees (the “local committees”) in the impacted New Jersey Townships, even though those groups are mandatory consulting parties.⁶ As a result, FERC and PennEast never consulted with the local committees, violating NHPA’s mandate for early and frequent consultation. Denying local governments their status as consulting parties contributed to the incomplete review in the DEIS of the project’s impact on historic sites.

The right of the local committees to serve as consulting parties is clearly established. *See* 36 C.F.R. § 800.2 (“A *representative* of a local government with jurisdiction over the area in which the effects of an undertaking may occur is *entitled* to participate as a *consulting party*.”) (emphases added). The Townships meet the definition of local governments, and the historic

⁵ 54 U.S.C. § 306108.

⁶ In a letter filed on August 9th, PennEast finally responded to the local committees in Kingwood Township and Delaware Township and acknowledged the Townships’ rights to be consulting parties, but did not clearly acknowledge the local committees’ right. The letter also said PennEast was willing to provide all consulting parties with the historical and cultural information, but only if ordered by FERC, which FERC has not done. FERC Docket No. CP-15-558, Accession No. 20160809-5232.

preservation committees are the Townships' representatives for NHPA purposes.⁷ Yet none of the Township committees has been identified as consulting parties by FERC or PennEast. Instead, PennEast offered only participation as "interested parties."⁸ This lesser status grants none of the rights provided to consulting parties under the regulations, including the right to review surveys and methodologies, identify resources, and review the studies underlying FERC's ultimate decision about the effects on historic resources.

The local committees repeatedly requested that they be granted consulting party status.⁹ But that status and the equivalent rights were never granted. Although the DEIS shows awareness of the committees and the request by at least one committee (Delaware Township Historic Advisory Committee) to become a consulting party, it also failed to afford them their legal right to be consulting parties.¹⁰

Nor does PennEast's August 9th letter fully acknowledge the committees' right to be a consulting party, but leaves it up to FERC to do so, which FERC has not done.¹¹ Regardless, the belated recognition of these rights—after the DEIS has been issued—would not cure the earlier violation. Identifying consulting parties is the first step of Section 106 and is preservative of all the other rights given to consulting parties. As such, the identification of consulting parties must be done prior to field surveys or the identification of historic sites, so that consulting parties can participate in those steps.¹² Early identification of consulting parties also is the only way to ensure that FERC and PennEast involve the consulting parties in "findings and determinations

⁷ These organizations include the Delaware Township Historic Advisory Committee, Hopewell Township Historic Preservation Commission, Holland Township Historic Preservation Commission, Township of West Amwell Historic Preservation, and Kingwood Township Historical Society.

⁸ Attachment C (example of the letter from PennEast asking the local committee to be an interested party.).

⁹ See, Attachment D for examples of the letters sent to FERC and PennEast requesting consulting party status.

¹⁰ DEIS at 4-182, 4-183.

¹¹ FERC Docket No. CP-15-558, Accession No. 20160809-5232.

¹² 36 C.F.R. § 800.4(a)(3) (agency must consult prior to the identification of historic properties); § 800.8(a)(1) ("Agencies should consider their section 106 responsibilities as early as possible in the NEPA process").

made during the section 106 process.” § 800.2(a)(4). Some of the other mandatory consulting parties, such as the New Jersey Historic Preservation Office (NJHPO) and several Native American tribes, were identified when FERC and PennEast initiated the Section 106 process and have been able to exercise rights denied to the local committees. The exclusion of the local committees denied them their right to participate as consulting parties and ensure that effects on historic sites were avoided, minimized, and mitigated.¹³

In failing to consult, FERC and PennEast have prevented the local governments from participating in some of the key parts of the Section 106 process. For example, PennEast has already prepared several iterations of the Phase I archaeological survey report for New Jersey and Pennsylvania. The local governments had no opportunity to consult on the methods for these reports or the conclusions within the reports.

Moreover, the DEIS incorporates parts of the Section 106 process and makes recommendations for completing the process. The local governments had no opportunity to consult on the weaknesses in PennEast’s data, possible alternatives that should have been included in the DEIS to avoid destruction or damage to historical sites, or further analysis that needed to be conducted. FERC prepared the discussion of Section 106 in the DEIS entirely without consulting the local governments. Although consultation is the cornerstone of the NHPA process, FERC and PennEast completely cut the local governments out of this foundational role. The failure to consult with the local governments up to this point, and FERC’s lack of any indication that it intends to remedy this problem, render the Section 106 process deficient.

¹³ 36 C.F.R. § 800.3(f)(1) (“The agency official shall invite any local governments or applicants that are entitled to be consulting parties under § 800.2(c).”).

The importance of consultation can be gleaned from the comments of the parties that were allowed to consult, such as the NJHPO's comments on PennEast's Phase I archaeological survey report. NJHPO faulted this report's failure to identify many historically significant sites, failure to analyze adverse impacts for specific sites, and mistaken conclusion that all effects could be mitigated. It is beyond dispute that the local committees would have identified historical impacts that have currently been overlooked. Upon release of the DEIS, for instance, one Delaware Township Historic Advisory Committee representative pointed out multiple missing sites from the DEIS's list of impacted sites.¹⁴ One of the missing sites was a bridge that is listed on the National Register of Historic Places. In addition, the comments indicated several sites whose historic character would be destroyed if the proposed pipeline pathway remained the same. Because FERC and PennEast did not consult with local committees as required, the DEIS fails to accurately identify sites or to provide accurate analysis of impacts to the sites that were identified.

Failure to consult thus inexcusably places historic sites at greater risk from the pipeline. Local governments have extensive knowledge of the local historic sites, are most likely to already have detailed information regarding the location and character of local historic sites, would ensure that a federal agency does not miss any sites in the identification stage, and would be able to inform FERC whether a particular action will adversely impact the overall historic character of a site. This complete understanding of the character of a historic property is a necessary precursor for developing ways to avoid or mitigate harms.

By failing to identify the local committees as consulting parties, FERC and PennEast could not accurately identify historical impacts during the Section 106 process and the

¹⁴ FERC Docket No. CP-15-558, Accession No. 20160815-0014.

preparation of the DEIS. This failure renders the Section 106 consultation and the DEIS legally deficient.

2. *PennEast and FERC Did Not Fully Identify the Historic and Cultural Sites in the Impacted Areas.*

The DEIS concedes that PennEast has only surveyed 32% of the area of potential effects (APE) in New Jersey for historic sites.¹⁵ Even in that limited area, the NJHPO identified inherent flaws in PennEast's survey methodology, resulting in the failure to identify several sites. Those flaws mean that PennEast has identified only a fraction of the potentially impacted sites. Despite missing at least 70% of the data related to the APE, FERC released the DEIS before requiring complete analysis or fixing the errors NJHPO identified. FERC's proposed timeline for deferring the identification of the remaining 70% until after issuing a Certificate violates NHPA.

Identification of historic sites must be completed early in the agency's process to allow adequate time to assess adverse effects and develop mitigation measures. Indeed, both Sections 800.8(a) and 800.8(c) require an agency to identify historic sites before issuing the DEIS.¹⁶ In addition, both ACHP and FERC have said that Section 106 must be initiated early in the NEPA process so the impacts to historic sites can be analyzed at the same time as impacts to other environmental resources.¹⁷ This step is crucial so that alternatives and mitigation measures can take impacts to historic and cultural resources into account. Because identification is one of the first steps of the Section 106 process, it must be initiated early in the NEPA process, not after the DEIS is released.

¹⁵ DEIS at 4-193.

¹⁶ 36 C.F.R. § 800.8.

¹⁷ NEPA and NHPA: A Handbook for Integrating NEPA and Section 106, Advisory Council on Historic Preservation, at 5 (March 2013); Guidelines for Reporting on Cultural Resources Investigations for Pipeline Projects, Office of Energy Projects, at 1 (Dec. 2002).

The DEIS overlooks these requirements. Although in limited circumstances an agency may defer identification pursuant to 800.4(b)(2), the DEIS does not meet the requirements for deferral.¹⁸ Even under the deferral standard, FERC would have been required to conduct sufficient “background research, consultation and an appropriate level of field investigation.” *Id.* Where, as here, the DEIS does not discuss several large historic districts located within the APE in New Jersey that could have been identified by minimal background research into public documents, FERC has failed to provide the appropriate level of investigation even under the deferral provisions. (These districts include, among others, the Pursley’s Ferry Historic District and the Amsterdam Historic District.¹⁹).

Finally, even if an agency elects to defer, final identification of historic sites must occur before a Certificate is issued. Unless the entire Section 106 process is completed before FERC issues a Certificate, the Certificate is invalid.²⁰ FERC openly disregards this requirement in the DEIS by stating that PennEast can delay its identification of historical sites until after the Certificate decision.²¹ This proposed timeline for completion misinterprets the clear language of NHPA.²²

In an area which has a substantial number of historic sites, the failure to survey nearly 70% of the APE caused PennEast and FERC to significantly undercount the number of potentially impacted sites. As the maps in Attachment A show, the proposed pipeline crosses

¹⁸ To defer, FERC would have needed to clearly specify in the DEIS that it was deferring and operating under a “phased process” and outline a specific plan for that phased process, neither of which it did. *See* 36 C.F.R. § 800.4(b)(2).

¹⁹ See Attachment B for a full list of potentially impacted historic districts, many of which are not identified in the DEIS.

²⁰ 54 USC § 306108 (process must be completed “prior to [the] issuance of any license).

²¹ DEIS at 4-200.

²² In Resource Report 4 of PennEast’s application, PennEast acknowledges Section 106’s timing requirement. Resource Report 4 at 4-1 through 4-2 (“Prior to authorizing an undertaking, in this case issuance of a Certificate for the Project, Section 106 of the NHPA requires Federal agencies including FERC, to take into account the effect of that undertaking on cultural resources listed in or eligible for listing in the National Register of Historic Places (NRHP) (36 Code of Federal Regulations [CFR] 60).”).

through multiple historic districts and hundreds of historic sites. Just counting the sites identified in Attachment A—which is not intended to be a complete list—makes it clear the townships along the proposed pipeline are rich with historic and cultural sites:

- Holland Township: more than 20 sites, 2 districts
- Kingwood Township: more than 60 sites, 2 districts
- Delaware Township: more than 100 sites, 3 districts
- West Amwell Township: more than 30 sites, 2.5 districts
- Hopewell Township: more than 25 sites, .5 districts

PennEast’s survey reports have not identified the majority of these impacted sites and districts. Table 4.9.2-7 of the DEIS lists only 25 total historic sites and districts in total—less than 10% of those identified in Attachment A.²³ The disparity between the number of sites in the project area and the far lower number that the DEIS analyzes shows how drastically incomplete the DEIS is.

In addition, PennEast still must conduct field surveys for cultural resources on 2,441 acres of land in New Jersey. In the 587 acres already surveyed, PennEast found six potential new historic sites (a fraction of the number that NJHPO told PennEast it should have identified). Thus, there could easily be dozens more new sites in the unsurveyed APE that PennEast has not yet identified, in addition to the many in Attachment A that PennEast has failed to identify.

The sites that fall along the proposed pipeline pathway are important to New Jersey residents, including HALT members. Many have broader national significance. Attachment B describes some of the impacted sites and their importance historically and culturally. For example, the Pursley’s Ferry Historic District is the site of the first ferry service across the

²³ DEIS at 4-196–197.

Delaware River, starting in 1742. It also holds multiple historic houses from the 1700s and 1800s. Nowhere in the DEIS is this District mentioned; PennEast has not identified it.

The Horseshoe Bend District is another valuable historic district in the APE. It contains thirteen historic farmsteads which the state and local governments have spent millions of dollars to preserve and other historic structures, such as a schoolhouse, bridge and church. While Horseshoe Bend Road is mentioned in the DEIS, the District itself is not identified. Many more historic districts and individual historic sites exist along the proposed pipeline route; each is an important piece of New Jersey and American history that should be preserved. Without identification, these sites are at risk and NHPA's preservation goals are not met.

FERC has failed in its obligation to identify the pipeline's impacts to historic properties: seventy percent of the APE in New Jersey has not been analyzed for historic impacts in the DEIS. FERC's plan to ignore its legal duties and issue a decision before completing identification is misguided and unlawful.

3. *FERC and PennEast Failed to Identify and Analyze the Adverse Effects on Historic Sites in the APE.*

The DEIS does not contain the required analysis of adverse effects on historic sites in the APE. The regulations require FERC to analyze adverse effects in the DEIS, or at a minimum before issuing a Certificate. But FERC has delayed that analysis until post-decision. This delay defeats the purposes of NHPA. FERC must analyze the adverse effects before issuing a DEIS so it can factor those adverse effects into its decision.

Both 36 C.F.R. § 800.8(a) and (c) require FERC to include analysis of adverse effects by the time of the DEIS. Under both provisions, FERC's decision to issue a DEIS with almost no discussion of effects and to delay review of those effects until after a decision on the merits clearly violates NHPA. FERC's failure to assess adverse effects in the DEIS contradicts one of

NHPA's purposes: that an agency "take into account the effects of their undertakings on historic properties." 36 C.F.R. § 800.1(a). FERC's principal analysis of the effects of a proposed pipeline on environmental and historic resources must be in the DEIS. Without understanding these effects, FERC cannot fulfill its duty to analyze overall impacts, less harmful alternatives, or mitigation measures. FERC mistakenly appears to believe it can analyze impacts on historic properties after issuing the Certificate.

One of the other purposes of NHPA is to ensure that an agency evaluates less harmful alternatives. To meet that purpose an agency "shall ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking." 36 C.F.R. § 800.1(c). FERC cannot consider a "broad range of alternatives" before it has the information to compare the adverse effects of different alternatives on historic sites. Developing and weighing alternatives can only be done with sufficient information. By the time FERC analyzes the adverse effects under the plan laid out in the DEIS, the DEIS comment period and the window for developing alternatives will both have closed. It is hard to conceive of a more flagrant violation of NHPA.

FERC has failed to analyze effects on even the small number of properties surveyed. Instead, the DEIS contains little to no evaluation of effects and merely reiterates PennEast's few conclusions on effects from the survey reports, many of which the NJHPO found inaccurate.²⁴ Even had FERC intended to defer its evaluation, deferral must end before the Certificate is issued, which FERC has ignored by proposing a condition that historical analysis can be deferred

²⁴ DEIS at 4-179.

up until construction. The statute prohibits this timeline.²⁵ If FERC follows its proposed plan to issue a Certificate before it reviews the adverse impacts, it will violate NHPA.²⁶

4. *FERC and PennEast Failed to Adequately Involve the Public.*

FERC and PennEast also have not adequately involved the public in the Section 106 process. Postponing historical analysis until the start of construction forecloses public comment on adverse historical effects and potential alternatives to the project.

Contrary to the approach in the DEIS, the NHPA regulations mandate public involvement in the NHPA process. The “views of the public are essential” and the agency must “seek and consider the views of the public in a manner that reflects the nature and complexity of the undertaking and its effects on historic properties, [and] the likely interest of the public in the effects on historic properties.” 36 C.F.R. § 800.2(d). To ensure the agency adequately considers the public’s view, the agency must “provide the public with information about an undertaking and its effects on historic properties and seek public comment and input.” *Id.*

Indeed, Section 800.8(c) makes public involvement during preparation of the DEIS mandatory. 36 C.F.R. § 800.8(c)(iv). Section 800.8(a) also requires agencies to “plan their public participation” in a way that meets both NEPA and NHPA’s requirements. 36 C.F.R. § 800.8(a)(1). The DEIS comment period is the primary way that an agency meets NEPA’s requirements regarding public participation, so it should also have been used to meet NHPA’s requirements.

²⁵ 54 U.S.C. § 306108.

²⁶ *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 554 (8th Cir. 2003) (rejecting agency’s argument that it could defer final evaluation of impacts or adoption of mitigation measures until after approving a license); *Vieux Carre Prop. Owners, Residents & Assocs., Inc. v. Brown*, 948 F.2d 1436, 1445 (5th Cir. 1991); *Montana Wilderness Ass’n v. Fry*, 310 F. Supp. 2d 1127, 1153 (D. Mont. 2004); *Nat’l Trust for Historic Pres. in United States v. U.S. Army Corps of Eng’rs*, 552 F. Supp. 784, 790 (S.D. Ohio 1982), *supplemented sub nom. Nat’l Trust for Historic Pres. v. Corps of Eng’rs*, 570 F. Supp. 465 (S.D. Ohio 1983).

FERC has not provided sufficient public participation for the NHPA process. In fact, the NJHPO previously criticized the low “level of public consultation that has taken place” in advance of PennEast’s survey report.²⁷ This lack of public involvement deprives PennEast of local expertise that could have mitigated much of PennEast’s flawed analysis and data collection.

FERC has sanctioned PennEast’s plan for limited public involvement by allowing PennEast to wait until after the DEIS public comment period to complete the majority of the Section 106 process. By the time that PennEast and FERC release the missing information, there will no longer be a venue for public comments. FERC needed to complete the Section 106 process before issuing the DEIS so that the public could comment on the entire Section 106 process, its findings, and the underlying studies forming the basis of those findings.

5. *FERC and PennEast Have Not Developed Any Avoidance or Mitigation Measures to Resolve Adverse Effects.*

FERC’s failure to include fully developed mitigation measures in the DEIS, as required in NHPA,²⁸ seriously jeopardizes historical resources. If FERC grants PennEast a Certificate, FERC has said it will also grant PennEast eminent domain authority.²⁹ Although the DEIS states that the mitigation measures must be developed before construction, it does not say that the measures must be developed before PennEast begins to exercise eminent domain to take easements over private properties, nor does it require the measures be developed before PennEast begins preparatory work for construction. The preparatory work could damage the resources if no mitigation measures are in place before it begins. In addition, once PennEast takes an easement through eminent domain, it is less likely to propose rerouting around that easement, even if historic sites are found, which limits the mitigation measures PennEast is likely to use.

²⁷ Letter from Daniel Saunders, Deputy State Historic Preservation Officer, NJHPO to FERC, at 8 (Mar. 18, 2016).

²⁸ 36 C.F.R. § 800.8(a).

²⁹ *See, e.g.*, DEIS at 4-74.

Among other reasons, route modifications would require additional eminent domain proceedings, supplemental environmental documents, and separate approvals from FERC and other agencies, so the approval of a project route and granting of eminent domain immediately limit mitigation options available for historic properties, even before they have been identified. As soon as eminent domain is authorized, the resources on properties subject to taking become at risk.³⁰

II. THE DEIS'S ANALYSIS OF HISTORIC AND CULTURAL RESOURCES DOES NOT MEET NATIONAL ENVIRONMENTAL POLICY ACT STANDARDS

A. Relevant Legal Standard

The National Environmental Policy Act (NEPA) separately requires FERC to discuss impacts to historical and cultural resources in the DEIS. While NHPA focuses on impacts to sites listed or eligible for the National Register of Historic Places, NEPA requires FERC to consider impacts to a broader array of historic and cultural resources. Deficiencies in analysis of these historic and cultural resources constitute a NEPA, not a NHPA violation.

Among NEPA's purposes is to "preserve important historic, cultural, and natural aspects of our national heritage." 42 U.S.C. § 4331(b)(4). The DEIS must "include the environmental impacts of the alternatives including the proposed action" and a comparison of the impacts to historic and cultural resources of the potential alternatives. 40 C.F.R. §§ 1502.16, 1508.8. NEPA regulations also instruct agencies to determine the significance of a proposed action based on impacts on historic and cultural resources. 40 C.F.R. § 1508.27. Therefore, unless FERC has analyzed the impacts to historic and cultural resources and considered those impacts in analyzing alternatives, the DEIS does not comply with basic procedural requirements.

³⁰ See also *Mid States Coal.*, 345 F.3d at 554 (rejecting agency's use of "a condition requiring DM & E to comply with whatever future mitigation requirements the Board finally arrives at" because NHPA requires the agency finish the Section 106 process, including adopting mitigation measures, before issuing a license).

The DEIS must provide a “detailed statement” that fully informs the public of historical impacts at the time of the public comment period.³¹ If an agency makes conclusions before it has gathered complete data about potential impacts, it fails to take a “hard look” as required by NEPA.³² In addition, conclusions in an EIS that are not supported by site-specific factfinding are arbitrary and capricious.³³ Finally, analysis of impacts that occurs without first gathering and reviewing baseline data also does not comply with NEPA.³⁴ The DEIS must also contain sufficiently developed, specific mitigation measures for identified impacts.³⁵ An agency must revise and supplement a DEIS if it “is so inadequate as to preclude meaningful analysis.”³⁶

B. Comments

The DEIS does not meet NEPA’s standards:

1. *The DEIS Lacks the Information That FERC Must Include Regarding Impacts and Mitigation.*

The DEIS is missing required information about the location of historic and cultural resources, the effects to them, and specific mitigation measures to avoid those effects. Because the DEIS is seriously underdeveloped, the dual goals of developing an EIS—informing an agency’s decision and informing the public—are not met.

The DEIS does not contain information regarding the location of and impact on historic and cultural resources found in nearly 70% of the APE in New Jersey.³⁷ Many survey reports

³¹ 42 U.S.C. § 4332(2)(C); *Silva v. Lynn*, 482 F.2d 1282, 1283-85 (1st Cir. 1973).

³² *Pub. Emp. For Env'tl. Responsibility v. Hopper*, No. 14-5301, 2016 WL 3606363, at *9 (D.C. Cir. July 5, 2016) (finding agency failed to take a “hard look” because it did not gather site-specific data about the seafloor that was necessary to determine the effects and consequences of the agency action).

³³ *Id.*; *Nat'l Audubon Soc'y v. Dep't of Navy*, 422 F.3d 174, 194 (4th Cir. 2005) (finding the agency “investigation falls short of providing adequate support” for its conclusions because of the failure to conduct sufficient studies and surveys); *Van Abbema v. Fornell*, 807 F.2d 633, 639 (7th Cir. 1986).

³⁴ *N. Plains Research Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067 (9th Cir. 2011).

³⁵ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989) (NEPA requires a “reasonably complete discussion of possible mitigation measures” because “[w]ithout such a discussion, neither the agency nor other interested groups and individuals can properly evaluate the severity of the adverse effects.”).

³⁶ 40 C.F.R. § 1502.9(a).

³⁷ DEIS at 4-193.

and evaluations are outstanding in both Pennsylvania and New Jersey.³⁸ As a result, the DEIS does not meet the general requirement for a “detailed statement” nor the specific requirements outlined in the regulations. The DEIS offers only scattershot identification of the historic and cultural resources along the proposed pipeline pathway and contains almost no analysis of the impacts to the few resources it identifies. Nor does the DEIS analyze any specific mitigation measures that would address impacts to historic and cultural resources.³⁹

In these circumstances, FERC has failed to take a hard look at the impacts on historic and cultural resources when preparing the DEIS. FERC could not analyze the effects because the DEIS lacked baseline data on the historic and cultural resources in the APE.⁴⁰ Without identifying the baseline, FERC cannot make a final decision, because it would be premised on an incomplete NEPA analysis.⁴¹ Unless FERC gathers the missing data from PennEast before its final decision, FERC will have failed to analyze impacts to historic and cultural resources. Yet this analysis is required under NEPA and is one of the statute’s primary goals.

The DEIS also fails to inform the public about potential impacts. Deferred analysis means that the public will not be informed about these impacts until after the comment period is completed. Although public participation is essential to the NEPA process,⁴² FERC has not provided a meaningful opportunity for public participation. In short, FERC has provided no data on which the public can comment; FERC never identified the resources, so it has not evaluated impacts or been able to make any judgment about whether mitigation measures will protect still-

³⁸ *Id.* at 4-186, 4-194.

³⁹ FERC acknowledges that analysis of effects and mitigation measures is missing when FERC states it will look at the effects and mitigation measures whenever PennEast provides them in the future. DEIS at 4-200.

⁴⁰ *Half Moon Bay Fisherman’s Mktg. Ass’n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988) (without information on baseline conditions “there is simply no way to determine what effect [an action] will have on the environment and, consequently, no way to comply with NEPA.”).

⁴¹ *Seattle Audubon Soc’y v. Espy*, 998 F.2d 699, 704 (9th Cir. 1993).

⁴² FERC’s regulations require it “comply with the requirements of 40 C.F.R. § 1506.6 of the regulations of the Council for public involvement in NEPA.” 18 C.F.R. § 380.9.

unidentified historical sites and structures. Many HALT members live on properties that contain cultural resources or have invested time and resources into protecting the cultural resources in their communities. They have unique interests and knowledge about these resources. FERC's failure in the DEIS to identify historic resources or provide data that support its conclusions eliminates the opportunity for the public—those with information to contribute—to participate. This curtailment is fundamentally opposed to NEPA's purposes.

2. *FERC's Conclusion that Effects Can be Mitigated Before they are Known is Arbitrary and Capricious*

FERC's conclusions are arbitrary and capricious because they are not based on any underlying data. Without baseline information regarding the location of historic and cultural resources, FERC cannot appropriately analyze impacts and draw conclusions from that analysis.⁴³ In the DEIS, FERC concludes “The studies and impact avoidance, minimization, and measures proposed by PennEast, and our recommendation, would ensure that any adverse effects on cultural resources would be appropriately mitigated.” DEIS at ES-12. FERC states the project “would result in some adverse environmental impacts, but impacts would be reduced to less-than-significant levels with the implementation of PennEast's proposed and our recommended mitigation measures.” *Id.* at ES-16. FERC also made conclusions regarding the impacts of each alternative it analyzed.⁴⁴ FERC cannot draw conclusions without first gathering and analyzing the relevant data.⁴⁵ Yet the DEIS shows FERC is doing just that, in violation of NEPA.

⁴³ *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1085 (9th Cir. 2011) (“without [baseline] data, an agency cannot carefully consider information about significant environment impacts. Thus, the agency fails to consider an important aspect of the problem, resulting in an arbitrary and capricious decision.” (quotation marks and citation omitted)); *Am. Rivers, Inc. v. FERC*, 201 F.3d 1186, 1195 n.15 (9th Cir. 1999)

⁴⁴ DEIS at 3-2 (“Each alternative was considered until it became clear that the alternative would not satisfy one or more of the evaluation criteria, or that the alternative would in fact be environmentally preferable.”).

⁴⁵ *LaFlamme v. FERC*, 852 F.2d 389, 400 (9th Cir. 1988) (“[T]he very purpose of NEPA's requirement that an [environmental review] be prepared for all actions that may significantly affect the environment is to obviate the

Conclusions in a DEIS cannot be conclusory or unsupported.⁴⁶ Because the DEIS lacks the required information regarding historic and cultural resources, FERC's conclusions regarding these resources are unsupported. FERC based its analysis of historic and cultural resources on the Phase I Archaeological Survey Reports provided for New Jersey and Pennsylvania.⁴⁷ Yet the reports did not provide information for nearly 70% of the APE in New Jersey. In addition, NJHPO pointed out severe flaws in the report, including errors in PennEast's methods for surveying the remaining 30% of the New Jersey APE. These errors resulted in missed resources that PennEast should have identified and in the undercounting of impacts. FERC has no basis to conclude from the incomplete and inaccurate report that the effects are minimal and can be adequately avoided.⁴⁸ FERC also has no basis to make determinations regarding the impacts of various alternatives.

For both Pennsylvania and New Jersey, the DEIS states that necessary "survey reports, avoidance plans, evaluation studies and reports, and potential treatment plans" are still pending.⁴⁹ PennEast has not completed the Phase II surveys that both PAHPO and NJHPO recommended.⁵⁰ PennEast has not revised its Phase I Report to address NJHPO's comments. In addition, FERC acknowledges archaeological surveys have not been completed in either Pennsylvania or New Jersey.⁵¹ FERC also recognizes that "PennEast has not completed all cultural resources field investigations."⁵² FERC admits that it has not reviewed the potential adverse effects on historic

need for speculation by insuring that available data is gathered and analyzed prior to the implementation of the proposed action")

⁴⁶ *NRDC v. Grant*, 355 F. Supp. 280, 287 (E.D.N.C. 1973) ("Where there is no reference to scientific or objective data to support conclusory statements, NEPA's full disclosure requirements have not been honored.").

⁴⁷ DEIS at 4-184.

⁴⁸ *Lands Council v. McNair*, 537 F.3d 981, 994 (9th Cir. 2008) (conclusions must be supported by reliable studies).

⁴⁹ DEIS at 4-186, 4-194.

⁵⁰ *Id.*

⁵¹ *Id.* at 4-187, 4-194.

⁵² *Id.* at 4-198.

and cultural resources.⁵³ These and other data gaps show that FERC has not analyzed the underlying facts and therefore has no basis to determine that effects will be minimal and can be mitigated.

PennEast also has not developed avoidance or mitigation measures to address impacts to historical and cultural resources. Instead, FERC has deferred development of mitigation measures until sometime prior to construction.⁵⁴ But without information about the scope of avoidance and mitigation measures—and without data about the impacts that must be avoided/mitigated—FERC cannot prematurely declare that whatever effects PennEast finds are going to be minimal and whatever mitigation measures PennEast develops are going to be effective.⁵⁵ These conclusions are entirely unsupported, are arbitrary and capricious, and violate NEPA.

3. *FERC's Failure to Acquire Data on Historic and Cultural Resources Prevented It From Developing and Fully Considering Alternatives to the Proposed Action.*

FERC's analysis of alternatives also is flawed. NEPA requires an agency develop reasonable alternatives to the proposed action and compare the environmental impacts—including impacts to historic and cultural resources—from each alternative.⁵⁶ FERC could not compare impacts on historic and cultural resources when it failed to collect any data.

FERC ignored impacts to historic and cultural resources when comparing alternatives. The DEIS did not propose any alternatives that addressed the need to avoid impacts to historic

⁵³ *Id.* at 4-199.

⁵⁴ *Id.* at 4-200.

⁵⁵ *Id.* at ES-12, ES-16.

⁵⁶ NEPA requires a “meaningful comparison of the environmental consequences” of each alternative, which requires actually analyzing the potential consequences from each alternative. *Ctr. for Biological Diversity v. U.S. Dep't of Interior*, 623 F.3d 633, 646 (9th Cir. 2010). *See also* Statements on Proposed Federal Actions Affecting the Environment: Interim Guidelines § 7(a)(iii), 35 Fed.Reg. 7390, et seq., April 30, 1970 (“Sufficient analysis of such alternatives and their costs and impact on the environment should accompany the proposed action through the agency review process in order not to foreclose prematurely options which might have less detrimental effects.”).

and cultural resources. That is clear error when the pipeline, no matter where it is routed, will impact a substantial number of historic and cultural resources. *See* Attachment A. Yet the DEIS rejects no-action and other no-build alternatives with no consideration of their ability to avoid, minimize, and mitigate historical impacts.⁵⁷ Had FERC collected information on historic and cultural resources in the APE before developing alternatives, it would have known that building a pipeline could damage many resources—of which some of those that the DEIS failed to identify are provided in Attachment A—and that further development of no-build options was necessary. Failure to analyze alternatives that could have lesser impacts on resources but still meet the agency’s purposes violates NEPA.⁵⁸ FERC failed to analyze any alternatives that would reduce the impacts to historic and cultural resources. By the time PennEast provides FERC with the missing historic and cultural resources data, there will no longer be an opportunity for FERC to develop and consider alternatives.

Moreover, FERC failed to complete accurate analysis for the alternatives it did include in the DEIS because FERC did not analyze each alternative’s impacts on historic and cultural resources. Indeed, the alternatives analysis section of the DEIS makes no mention of cultural resources. FERC completely overlooked its obligation to consider the impacts to cultural resources from each alternative. The DEIS gives no indication that FERC will revise the alternatives analysis once PennEast finally provides the missing data. Instead, FERC has placed its finger on the scale and selected a preferred alternative without performing the required study of historic and cultural resources.

⁵⁷ The DEIS dedicates less than one page of the 1174 page DEIS to the no-build and no-action alternatives. DEIS at 3-1.

⁵⁸ *Union Neighbors United, Inc. v. Jewell*, No. 15-5147, 2016 WL 4151237, at *8 (D.C. Cir. Aug. 5, 2016) (finding a NEPA violation when the agency failed to consider reasonable alternatives that were viable and would reduce impacts to endangered bats).

FERC's failure to consider an important aspect of its environmental obligations violates NEPA. FERC has failed to "include the environmental impacts of the alternatives," 40 C.F.R. § 1502.16, failed to "present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options," 40 C.F.R. § 1502.14, and violated NEPA's public-participation requirements. 40 C.F.R. § 1502.1. Due to FERC's deficient analysis, the public is deprived of any opportunity to comment on the adequacy of FERC's analysis of the impact of various alternatives on historic and cultural resources or to propose other alternatives that would avoid adverse impacts. The DEIS simply contains insufficient information to perform the most rudimentary alternatives analysis.

4. *FERC's Proposed Condition for the Order Would Violate NEPA.*

The DEIS proposed 54 conditions for FERC to include in any Order issuing the Certificate. Many of these conditions defer NEPA-required analysis until after the issuance of a Certificate, including development of the missing cultural resources survey reports.⁵⁹ But issuance of a Certificate without first acquiring the missing information violates NEPA's timing requirements for when analysis must be completed.

FERC has stated that any Certificate it grants to PennEast will provide PennEast with eminent domain authority over properties along the pipeline.⁶⁰ PennEast can comply with the proposed DEIS condition regarding historic and cultural resources by providing the missing data anytime pre-construction—including after a Certificate is issued. Thus, FERC's proposed approach would confer eminent domain authority before FERC has actually analyzed any of the effects to historic and cultural resources or adopted any mitigation measures.

⁵⁹ DEIS at 4-200.

⁶⁰ *Id.* at 4-74.

Such a premature grant of eminent domain would violate the requirement that an agency must complete the NEPA process before making an irretrievable commitment of resources.⁶¹ Granting the Certificate with eminent domain authority results in an irretrievable commitment of resources for two reasons:

1. Once PennEast has taken easements on properties for the pipeline using eminent domain, the injury is complete and the taking cannot be undone. The landowner will suffer the harm of having his property taken regardless of information later uncovered through surveys. Causing this harm to hundreds of landowners is irretrievable, and unlawful under NEPA.
2. A final EIS and license makes it far less likely that harm to any subsequently identified historic and cultural resources will be mitigated or avoided by a modification of FERC's decision or PennEast's route. By the time FERC has issued a final license and conferred eminent domain, FERC has far less flexibility to decide that a license is no longer in the public interest or to compel PennEast to develop alternative routes to avoid those resources. In fact, after a Certificate is granted, FERC's flexibility is practically eliminated.⁶² FERC has never rescinded a Certificate in these circumstances. And PennEast is unlikely to change its route when it has already expended money and time on condemnation procedures for the property that was taken, irrespective of later identification of protected resources, because to modify a route likely would require additional approval and

⁶¹ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1998) (NEPA's goal is to ensure impacts "will not be overlooked or underestimated only to be discovered after resources have been committed or the die otherwise cast.").

⁶² *Commonwealth of Mass. v. Watt*, 716 F.2d 946, 952 (1st Cir. 1983) ("The agency as well as private parties may well have become committed to the previously chosen course of action, and new information—a new EIS—may bring about a new decision, but it is that much less likely to bring about a different one. It is far easier to influence an initial choice than to change a mind already made up.").

further condemnation proceedings for different properties. In sum, the effect of FERC's delayed analysis of cultural and historical resources is to ignore them at the time when they are most relevant: before a decision is made.

The maps in Attachment A leave no doubt that PennEast will uncover historic and cultural resources when it conducts surveys in the unsurveyed APE. There are dozens of sites for which PennEast has not yet collected any information. The same is true of many historic districts, which are highly likely to contain resources that have not yet been uncovered. As mentioned above, PennEast found six new sites (and should have found more) in surveying less than 1/3 of the APE. It similarly will find many more sites as it conducts surveys, including additional sites beyond those identified in Attachment A. When the sites in Attachment A and potential new sites are combined, the number of resources PennEast will identify post-certificate is astounding.

Yet based on FERC's failure to follow NEPA's timing requirements, evaluation of these many additional sites and the potential harms to them will come too late to have any bearing on FERC's decision or to provide an opportunity to avoid or minimize impacts on historic sites and districts through the development of alternatives.

III. FERC VIOLATED ITS OWN REQUIREMENTS FOR ASSESSING HISTORIC AND CULTURAL RESOURCES.

FERC's Natural Gas Act (NGA) regulations describe the environmental reports an applicant must submit when it files its application. Resource Report 4 "is required for all applications" and the "initial application must include the documentation of initial cultural resource consultation, the Overview and Survey Reports, if required, and written comments from SHPOs, THPOs and land-managing agencies, if available." 18 C.F.R. § 380.12(f). If the State Historic Preservation Office (SHPO) comments are not available when the application is filed,

they must be filed before a Certificate is issued. *Id.* Also before a Certificate is issued, the applicant must file an Evaluation Report⁶³ and Treatment Plan⁶⁴ for the project. *Id.* FERC uses the information gathered in Resource Report 4 to comply with its obligations under NHPA and NEPA to assess impacts on historic and cultural resources and to develop alternatives based on those impacts.

PennEast submitted incomplete and inaccurate information in its application's Resource Report 4. Because FERC did not require PennEast to provide complete information with its application, the application was deficient and FERC should not have accepted it according to the NGA regulations. FERC also did not require the missing information before issuing the DEIS, which violated both NEPA and NHPA. FERC's planned timetable allows PennEast to provide the missing historic and cultural information after FERC makes its certificate decision. This timetable violates the NGA regulations, which explicitly require SHPO comments, the Evaluation Report, and the Treatment Plan before issuance of the Certificate. 18 C.F.R. § 380.12(f).

CONCLUSION

In November, December, February, and April, FERC issued Environmental Information Requests (EIRs) to PennEast asking PennEast to submit information that was missing from the application. In each of these requests, FERC stated "You should be aware that the information requested is necessary for us to continue preparation of the environmental impact statement

⁶³ The following is a non-exhaustive list of the required components for an Evaluation Report: "descriptions and locations (with appropriate maps) of the resources studied, and the reasons for the investigations conducted; the results of fieldwork and analyses, including evaluations of the physical integrity of each cultural resource, the data it contains, and the ability of those data to address important research questions; an analysis of the data; an evaluation of the significance of each cultural resource studied or tested; an assessment of both the direct and indirect effects of the project on historic properties." Office of Energy Projects, Guidelines for Reporting on Cultural Resources Investigations for Pipeline Projects 12-14 (2002)

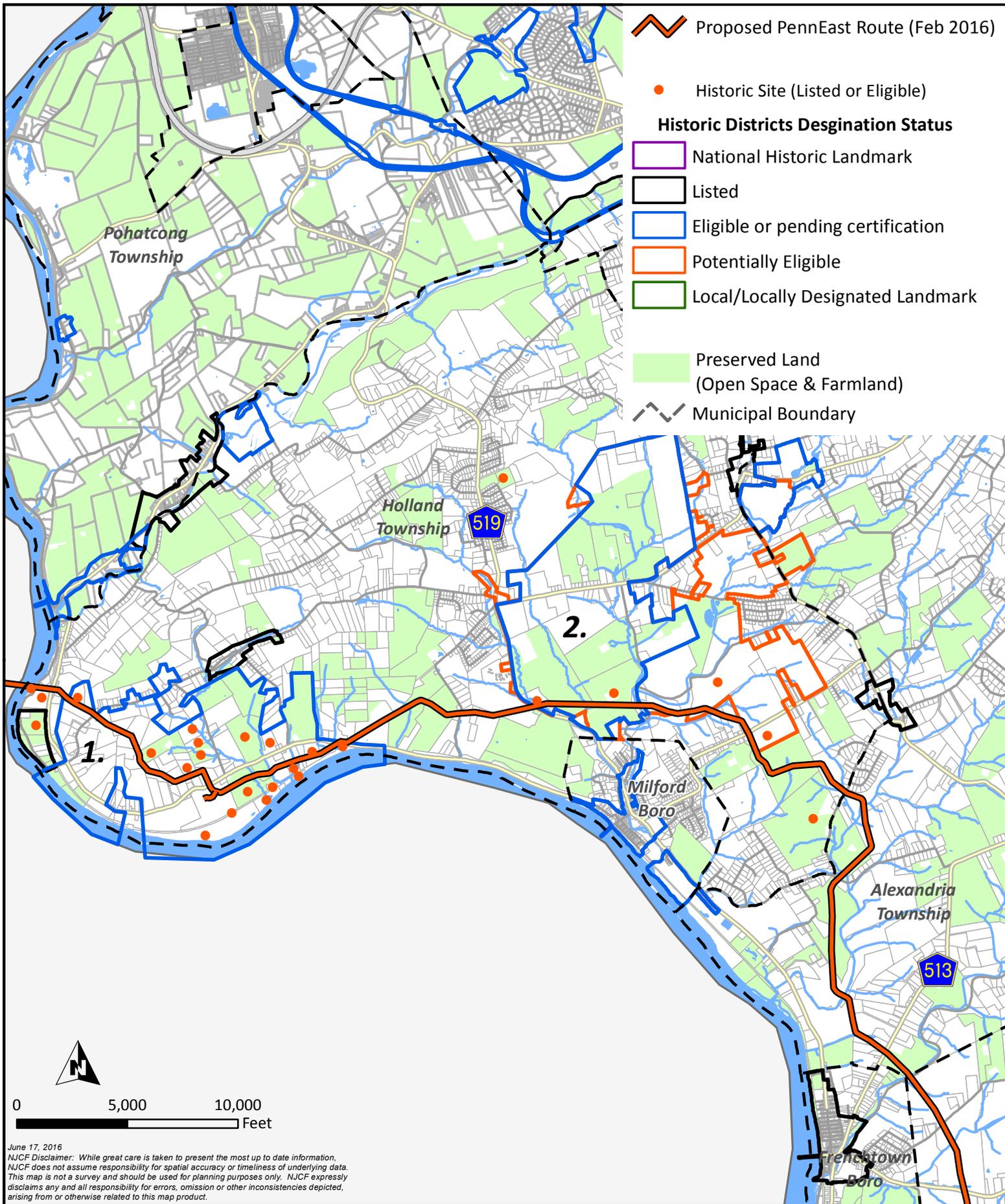
⁶⁴ A Treatment Plan "provides a proposal for the mitigation of effects upon any historic property that a project would affect. It can include data recovery, documentation, restoration or other measures." *Id.* at 14.

(EIS)” on its intended schedule.⁶⁵ Despite PennEast’s failure to provide much of the information requested in the EIRs—further evidenced by PennEast filing responses to the February and April EIRs two weeks after the DEIS was issued—FERC reversed course and found that the information was no longer necessary to prepare the EIS. Instead, FERC released the DEIS with significant data gaps.

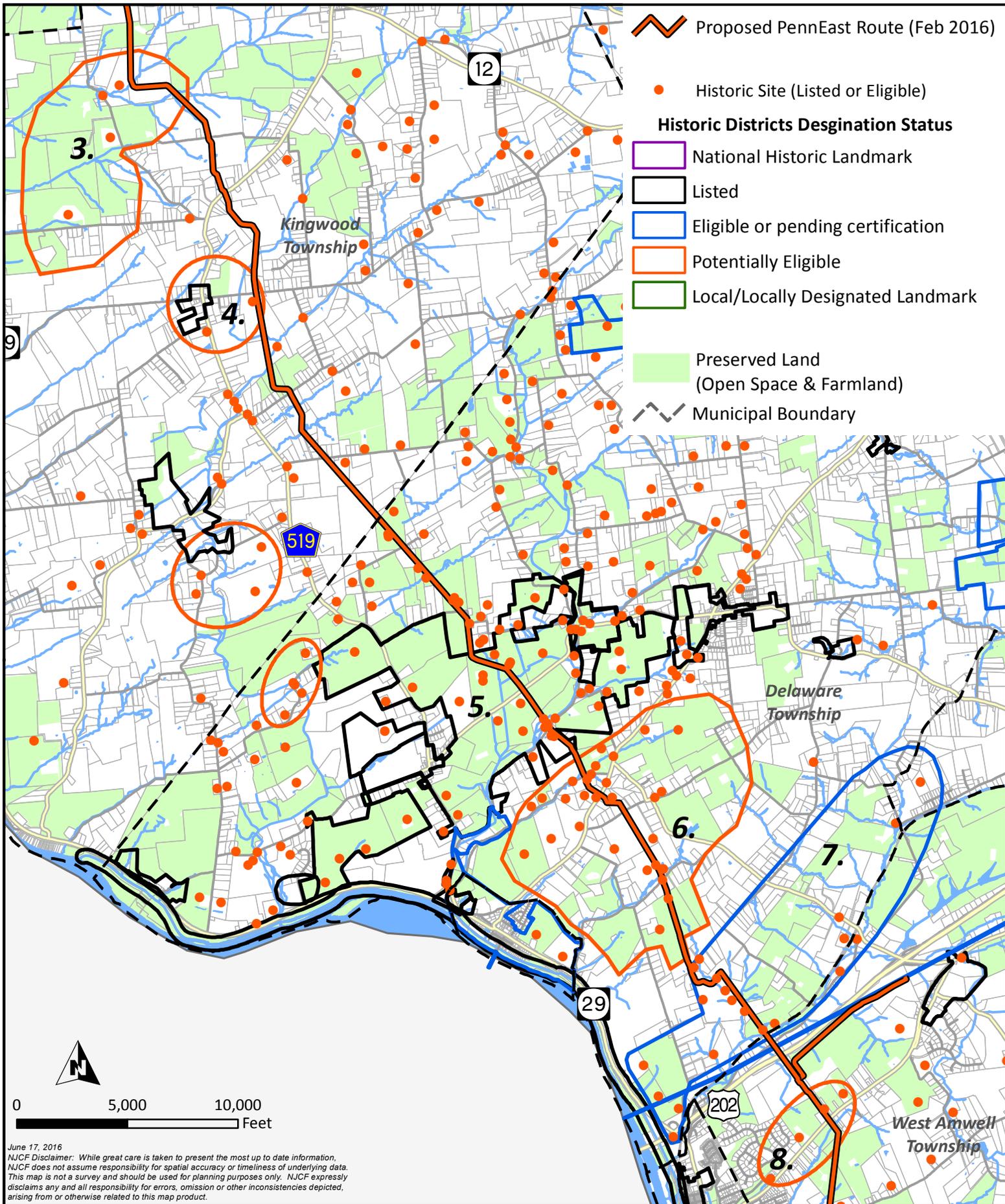
FERC must withdraw the DEIS until it can collect the missing data and bring itself into compliance with NHPA, NEPA and the NGA. FERC should revise and reissue the DEIS only when it has gathered the data that the law requires it to review *before* issuing the DEIS. FERC cannot exacerbate this violation by a conditional approval that allows it to delay review of the historic and cultural data until after it issues the Certificate. These current and proposed violations prevent public involvement and increase the risk that resources will be damaged and homeowners irreparably harmed.

⁶⁵ See, e.g., Letter from Office of Energy Projects, FERC, to Anthony Cox, PennEast Pipeline Company, Re Environmental Information Request, at 1 (Nov. 24, 2015).

Attachment A



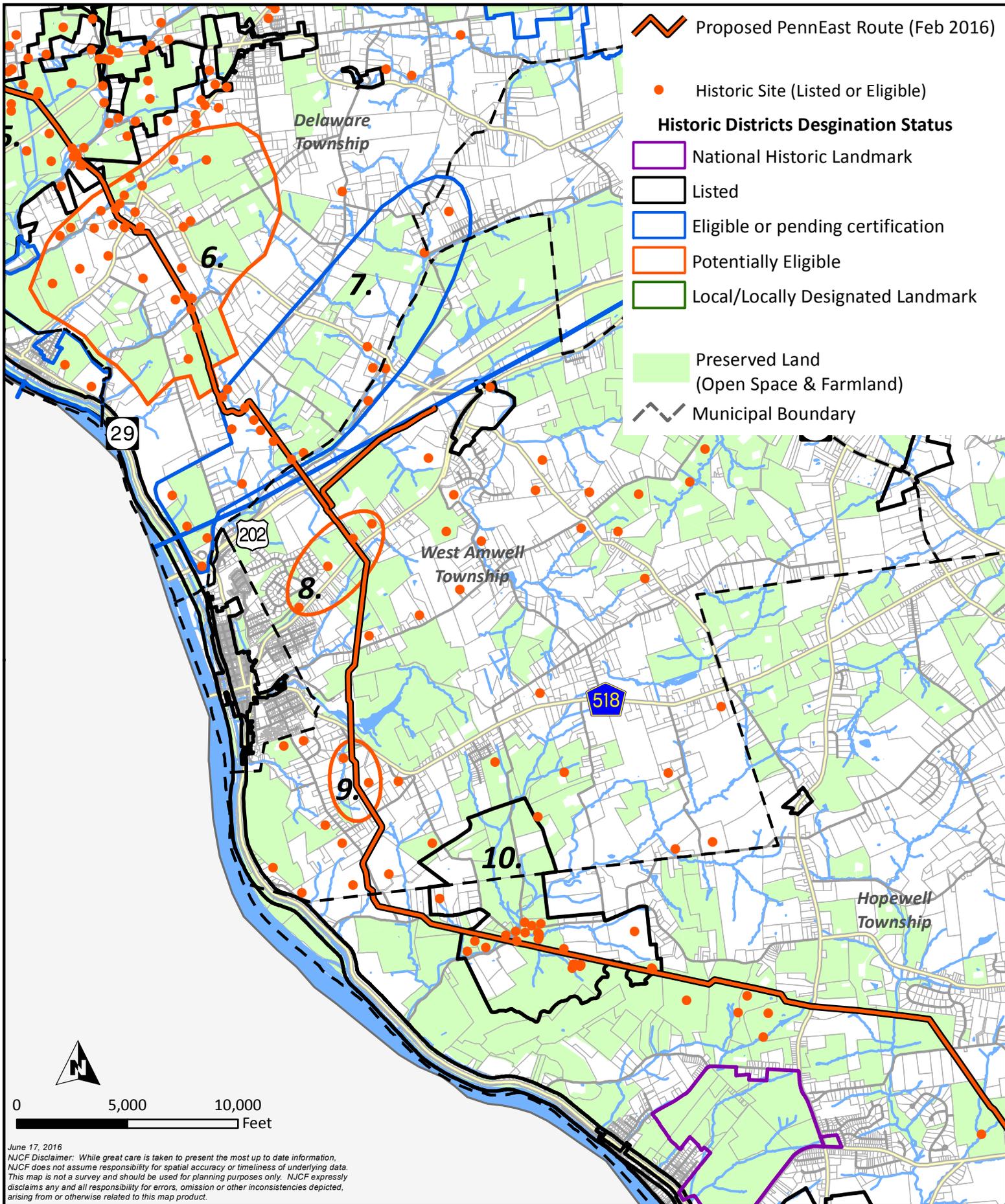
PennEast Pipeline
 Proposed Route - February 2016
 Preserved Land, Historic Sites



June 17, 2016
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PennEast Pipeline
 Proposed Route - February 2016
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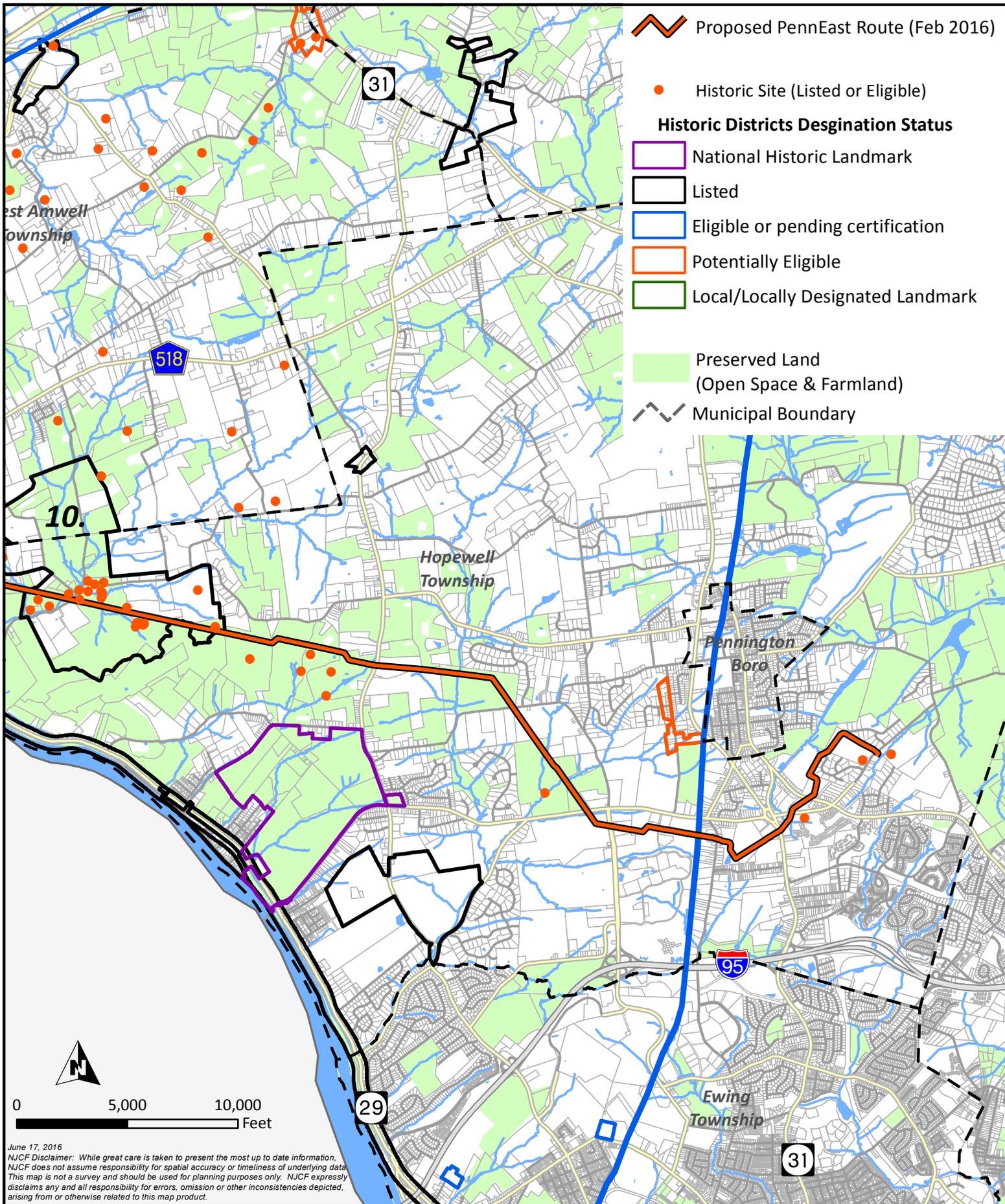


0 5,000 10,000 Feet

June 17, 2016
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PennEast Pipeline
 Proposed Route - February 2016
 Preserved Land, Historic Sites



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PennEast Pipeline
 Proposed Route - February 2016
 Preserved Land, Historic Sites

Attachment B

Attachment B

Introduction

The maps in Attachment A show the incredible wealth of historic resources in the proposed pipeline's pathway. These resources are threatened by the pipeline and by FERC's incomplete and inadequate review of the potential impacts. The maps do not, however, give the full picture of what the historic sites are and why they are significant.

Below is a chart listing some of the Historic Districts that are along the proposed pipeline pathway. This chart describes the important historic and cultural resources found in each historic district that give the districts their historic character. The chart also provides backstory on the districts to explain why each is significant to New Jersey and American history. For each district, column, the chart also provides the township in which the district is located and indicates the district's eligibility status for the National Register of Historic Places.

#	Historic District	Township/Borough	Category
1	<p>Pursley's Ferry Historic District (ID#1598) River Road at Church Road NR: 10/8/1980 (NR Reference #: 80002495) SR: 7/12/1978</p> <p>Description: This nearly 61 acre, listed district contains the Purcell/Brinks House from the 1700s, the John Hannah Bloom House c. 1810, and the Hart Johnson House from the late 1700s. This district also holds the sites of a previously existing saw mill and blacksmith shop. It also borders two other historic districts: the Delaware Raritan Canal Historic District and Amsterdam Historic District</p> <p>Relevance: This historic district contains the site of the first ferry across the Delaware River near the Musconetcong Valley, Parsley's Ferry. This ferry was established around 1742 and was specifically cited in a 1760 petition for taverns.</p>	Holland Township	Listed & Eligible for expansion

#	Historic District	Township/Borough	Category
2	<p>Amsterdam Historic District (ID#2811) Amsterdam, Church, and Crab Apple Hill roads NR: 3/17/1995 (NR Reference #: 95000184) SR: 1/24/1995 COE: 1/12/1996</p> <p>Description: This eligible and potentially eligible district contains 20 19th-century buildings and one 19th century bridge which contribute to its historical significance.</p> <p>Relevance: These buildings not only serve as important models for the rural architectural style of the 18th-19th centuries in that area, but some also contain aspects of other styles such as Greek Revival and Gothic Revival. The community's physical layout is still very similar to a map of the township from 1860.</p>	Holland Township	Eligible & Potentially Eligible

#	Historic District	Township/Borough	Category
3	<p>Horseshoe Bend District, Kingwood Township outside of Frenchtown, bounded by Horseshoe Bend Rd., Rt. 12, Rt. 29, Fairview Rd. and Spring Hill Rd.</p> <p>Description: This potentially eligible district consists of approximately 13 historic farmsteads (the majority of which are of stone construction from the late 18th early 19th century), an historic schoolhouse, a beautiful stone arch bridge and a unique church retreat on nearly 1,000 acres of preserved lands in the D & R Canal State park and Kingwood Park system.</p> <p>Relevance: One of these farmsteads was owned by James Montgomery Flagg, a famous artist. The State, County and local government has spent millions of dollars preserving this area for the integrity of its cultural, landscape and historic resources.</p>	Kingwood Township	Potentially Eligible
4	<p>Edward Fox House and Farm (ID#5301) 60 Barbertown-Point Breeze Road SHPO Opinion: 9/14/2012 and Barbertown Crossroads as a possible expansion</p> <p>Description: This listed house and farm span over 85 acres. It is currently eligible for expansion to include the Barberton crossroads. Isaac Barber opened a tavern in the settlement in 1823. The tavern sign was a new moon. Relevance: In 1881, it was noted that Barberton had a blacksmith shop, two stores, six dwellings, and a population of 90.</p>	Kingwood Township	Listed & Potentially Eligible for expansion

#	Historic District	Township/Borough	Category
5	<p>Covered Bridge Historic District (ID#104) Rosemont-Sergeantsville-Ringoes Road NR: 3/5/1999 (NR Reference #: 99000269) SR: 1/19/1999</p> <p>Rosemont Rural Agricultural District (ID#4591) NR: 6/18/2010 SR: 2/10/2010 SHPO Opinion: 4/4/2006 (Listed boundary smaller than originally identified in SHPO Opinion.)</p> <p>Sergeantsville Historic District (ID#1584) County Routes 523 and 604 NR: 12/2/2009 (NR Reference #: 09000972) SR: 6/3/2009 SHPO Opinion: 4/8/1981</p> <p>Sites included: Green Sergeant's Covered Bridge, Swallow-Reading Barn c. 1855, Blacksmith shop c. 1850-60, the Rittenhouse farmstead from 1788, the Cross Keys/Rittenhouse Tavern built in 1754, the Salter School, one of the earliest schools in the area, Sergeant's Sawmill, and the Green Sergeant School c. 1830.</p> <p>Description: 3 contiguous districts covering 2275 acres and containing 328 contributing structures.</p> <p>Relevance: These districts contain 3 hamlets dating back to the late 18th century with their undisturbed historic landscape context including significant viewsheds. This patchwork retains land uses and landscape features such as terracing, drainageways, hedgerows and farm lanes which date back to the 18th century.</p>	Delaware Township	All Listed

#	Historic District	Township/Borough	Category
6	<p data-bbox="293 264 753 296">Sandy Ridge Rural Historic District</p> <p data-bbox="293 338 818 810">Description: This district borders on the nationally registered historic Prallsville District and contains the Van Dolah House from the early 1700s, the Locandro Farmstead from the late 1700s to early 1800s, the John P. Hunt Sawmill from 1825, the Sandy Ridge Church, est. in 1819, the Larison barn c. 1890s, and the Benjamin Larson House, c. 1874 amongst other contributing elements. It also contains approx. 793 acres of preserved farmland and 42 acres of open space.</p> <p data-bbox="293 852 829 1755">Relevance: The proposed Sandy Ridge Rural Historic District occupies a Piedmont upland stretching between the borough of Stockton and the village of Sergeantsville for a distance of several miles. Comprising a landscape of open agricultural lands and woodlands, the district contains two dozen or more 18th and 19th century farmsteads and dwellings and with the Sandy Ridge Baptist Church and cemetery providing a focal point; a scattering of mid/late 20th-century dwellings are present. The district retains its 18th and 19th century road network, including a segment of one of Hunterdon County's earliest roads (route 523) which following the ridge top, and its property boundaries and field patterns reflects early patterns. The potential district possesses significance under National Register criteria A and C in the areas of settlement pattern and architecture with a period of significance extending from the 18th to early 20th centuries.</p>	Delaware Township	Proposed for a certificate of eligibility

#	Historic District	Township/Borough	Category
7	<p data-bbox="293 264 727 296">Alexauken Rural Historic District</p> <p data-bbox="293 338 829 877">Description: This eligible district contains Native American campsites, burial grounds, & river villages, the Hamp Road Historic Bridge, the Lambert Farmstead c. 1780s & main section c. 1790-1810, the Holcombe Sawmill and Holcombe houses from the 1700s, and the Lear/Lair House circa 1835-55. General George Washington and his troop twice camped in this area: once on October 6th-7th of 1777 on their way to Pennsylvania and again on June 20-23, 1778 on their way back into New Jersey. Here Washington's whole army awaited orders for the Battle of Monmouth.</p> <p data-bbox="293 926 829 1829">Relevance: Located in Delaware Township, the proposed Alexauken Creek Rural Historic District encompasses a portion of the lower Alexauken Creek watershed, west of Route 202 and north of Route 29. Comprising a landscape of open agricultural lands and woodlands, the district contains two dozen or more 18th and 19th century farmsteads and dwellings with an 18th/19th-century mill site providing a focal point. The probably location of a Revolutionary War encampment, recently recognized with a county historical marker, is another site of interest. A scattering of mid/late 20th-century dwellings are present. The district retains its 18th and 19th century road network, and its property boundaries and field patterns reflects early patterns. The potential district possesses significance under National Register criteria A and C in the areas of settlement pattern and architecture with a period of significance extending from the 18th to early 20th centuries.</p>	Delaware Township	Proposed for a certificate of eligibility

#	Historic District	Township/Borough	Category
8	<p data-bbox="293 264 786 296">Old York Road Rural Historic District</p> <p data-bbox="293 338 829 737">Description: Old York Road was laid upon an old Delaware tribe path that ran from Lambertville through Mt. Airy, Ringoes and Reaville to Newark. Starting in 1700, many Quakers settled here. Along this stretch of Old York Road there are a number of high quality stone houses dating to the 18th century. These are still operational farmsteads that recall the landscape and road systems of hundreds of years ago.</p> <p data-bbox="293 814 829 993">Relevance: Native Americans settled this area pre-historically. Washington camped here repeatedly. It was the main road between Philadelphia and New York.</p>	West Amwell Township	Potentially Eligible

#	Historic District	Township/Borough	Category
9	<p>Goat Hill District, bounded by Brunswick Pike, Hewitt Rd, Goat Hill Rd, and Chimney Hill Rd.</p> <p>Description: West Amwell Township outside of Lambertville, bounded by Goat Hill Rd and Hewitt Rd, and Brunswick Ave. This potentially eligible district neighbors upon Goat Hill Overlook, a 213 acre Green Acres preserve, which is part of the Green Acres Crossroads of the American Revolution land preservation initiative. From here, George Washington and Charles Cornwallis are said to have looked upon the opposing side across the river and have overseen preparations for the attack on Trenton. Also nearby is the Chimney Hill Estate, a historic building that dates back to 1820. This is the beginning of the Sourland Region, and therefore the topography is unusual: woods littered with large boulders. There are quarry sites in these woods dating back to the late 18th, early 19th century that are certainly eligible for designation and require further study as they are relevant to the early industrial and building practices of the area. There is also a pond which was once the source of Lambertville's ice supply.</p> <p>Relevance: Instead of leaving Goat Hill to be quarried by Constructural Dynamics Inc., the state paid \$4.5 million to preserve it, showing how important this area is.</p>	West Amwell Township	Potentially Eligible

#	Historic District	Township/Borough	Category
10	<p>Pleasant Valley Historic District (ID#1698) Wooden's Lane; Hunter, Pleasant Valley, and Valley roads NR: 6/14/1991 (NR Reference #: 91000676) SR: 4/12/1991</p> <p>Description: This listed historic district contains 89 contributing resources, including the Howell Living Historical Farm, farmed since the 1730s, the John, Henry, and Lewis Phillips Houses and the Pleasant Valley Schoolhouse Museum, which was an elementary school from 1862 to 1952.</p> <p>Relevance: Tours for the public and school programs are offered at Howell Farms. It is owned by the Mercer County Park Commission, showing its importance to the state.</p>	West Amwell & Hopewell Townships	Listed

Resources

GIS data: Historic Properties of New Jersey (NJDEP, Natural and Historic Resources, Historic Preservation Office): This dataset represents those Historic Properties that: 1. Are included in the New Jersey or National Registers of Historic Places, 2. Have been determined Eligible for inclusion through federal or state processes as administered by the New Jersey Historic Preservation Office (HPO), or 3. Have been identified through cultural resource survey or other documentation on file at the HPO.

GIS data: Historic Districts of New Jersey (NJDEP, Natural and Historic Resources, Historic Preservation Office): This dataset represents those Historic Districts that: 1. Are included in the New Jersey or National Registers of Historic Places, 2. Have been determined Eligible for inclusion through federal or state processes as administered by the New Jersey Historic Preservation Office (HPO), or 3. Have been identified through cultural resource survey or other documentation on file at the HPO.

Hunterdon County Master Plan Sites of Historic Interest, 1979

Farnham, Barbara and Alexander. Kingwood Township of Yesteryear. For the Kingwood Township Historical Society. 1988

Bertrand, Dennis. Wickecheoke and Lockatong Watersheds Cultural Resources Survey 1999

Davis Blackwell, Hopewell Township Historic Preservation Commission.

Larry le Fevre, Chair, Holland Township Historic Preservation Commission.

Marilyn Cummings, Delaware Township Historic Advisory Committee.

Deborah Kratzer, Chair, Kingwood Township Environmental Commission.

Dennis Bertland, Dennis Bertland Assoc.

Richard Hunter, President/Principal Archaeologist, Ph.D., RPA. Hunter Research, Inc.

Attachment C



March 11, 2016

Delaware Township Historic Advisory Committee
570 Rosemont-Ringoes Road
Sergeantsville, NJ 08557

RE: PennEast Pipeline Company, LLC
Proposed PennEast Pipeline Project: Bucks, Northampton, Carbon, and Luzerne,
Counties, Pennsylvania; Hunterdon and Mercer Counties, New Jersey
FERC Process Participation Request

Dear Committee Members,

PennEast Pipeline Company, LLC (PennEast) is proposing the PennEast Pipeline Project, which is designed to bring lower cost natural gas produced in the Marcellus Shale region in eastern Pennsylvania to homes and businesses in Pennsylvania and New Jersey. The Project facilities include a 36-inch diameter, approximately 114-mile pipeline, extending from Luzerne County, Pennsylvania, to Mercer County, New Jersey. The Project will extend from various receipt point interconnections in the eastern Marcellus region, including interconnections with Transcontinental Gas Pipe Line Company, LLC (Transco) and gathering systems operated by Williams Partners L.P., Regency Energy Partners LP, and UGI Energy Services, LLC, all in Luzerne County, Pennsylvania, to various delivery point interconnections in the heart of major northeastern natural gas-consuming markets, including interconnections with UGI Utilities, Inc. (UGI) in Carbon County, Pennsylvania and Northampton County, Pennsylvania, respectively, Columbia Gas Transmission, LLC (Columbia Gas) in Northampton County, and Elizabethtown Gas, Texas Eastern Transmission, LP (Texas Eastern) and Algonquin Transmission, LLC, all in Hunterdon, New Jersey. The terminus of the proposed PennEast system will be located at a delivery point with Transco in Mercer County, New Jersey.

As a federally regulated utility under Federal Energy Regulatory Commission (FERC) regulations, the PennEast Pipeline Project will be evaluated under the National Environmental Policy Act (NEPA) as part of the FERC certification process. The project will be regulated by FERC under Section 7(c) of the Natural Gas Act (15 USC 717). These regulations require federal agencies such as FERC to consult with stakeholders as a part of the NEPA process. Pursuant to the certificate regulations, PennEast, as a non-federal representative of the FERC, is obligated under Section 106 of the National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. 470 et seq., as amended through 2000) to consider the effects of this undertaking upon any historic properties, which are defined as districts, sites, buildings, structures, or objects that are included in or eligible for inclusion in the National Register of Historic Places (NRHP). As representatives of FERC, PennEast and its consultant, URS, respectfully request your participation as an interested party regarding the proposed PennEast Project and seeks your input on any cultural resources that you may be aware of or have concerns about that are within the project boundaries. We have coordinated with the New Jersey Historic Preservation Office (NJHPO) and obtained their approval for field survey protocols. Field investigations are ongoing.



A Google Earth kmz file and GIS shapefiles for the proposed route are on the enclosed CD to aide in your review and analysis of the Project. Please let us know if you have any difficulty opening any of the files.

On behalf of PennEast, URS will provide documentation of the responses of the participating agencies and stakeholders to FERC and would appreciate a formal response via letter or email confirming or declining your group's participation. If you have any questions regarding the project, please contact me by letter, by telephone at (610) 832-2791, or by email at grace.ziesing@aecom.com.

Sincerely,

A handwritten signature in black ink, appearing to read "Grace Ziesing".

URS Corporation

Grace Ziesing, Senior Archaeologist
625 West Ridge Pike, Suite E-100
Conshohocken, PA 19428

Cc: Jeff England, UGI
Bernard Holcomb, URS

Attachment D

CP15-558



Green Sergeant's Bridge

New Jersey's Only Remaining Covered Bridge

Delaware Township

Hunterdon County, New Jersey

www.DelawareTwpNJ.org

OFFICE OF TOWNSHIP COMMITTEE

PO BOX 500
TOWNSHIP HALL
SERGEANTSVILLE, NJ 08557
(609) 397-3240
Direct FAX Number (609) 397-4893

June 3, 2016

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

URS Corporation
Grace Ziesing, Senior Archaeologist
625 West Ridge Pike, Suite E-100
Conshohocken, PA 19428

ORIGINAL

FILED
SECRETARY OF THE
2016 JUN 20 P 2:49
FEDERAL ENERGY REGULATORY COMMISSION

RE: Response to PennEast Pipeline Company, LLC's FERC Process Participation Request
Dated March 11, 2016

Dear Secretary Bose and Ms. Ziesing:

We have received URS Corporation's March 11, 2016 letter requesting the Delaware Township Historic Advisory Committee's participation in the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) process for the PennEast project as an "interested party." That letter ignores the law. As mandated by the National Historic Preservation Act (16 U.S.C. § 470 et seq.), the Delaware Township Historic Advisory Committee ("Committee") has the right to participate as a "consulting party" for the PennEast project.

Under NHPA regulations, "the representative of a local government with jurisdiction over the area in which the effects of undertaking may occur is *entitled* to participate as a *consulting party*." 36 C.F.R. § 800.2 (emphasis added). Delaware Township is a local government as defined by the regulations, and the Committee is the Township's representative for NHPA consultation purposes. Therefore, the Committee has a right to consulting party status and does not accept the legally insufficient "interested party" status.

As a mandatory consulting party, the Committee has the right to review and consult on PennEast's *factual findings* during the NEPA process. This includes findings related to the identification of impacted historic sites, the calculation of the level of adverse impacts, and the

determination that impacts can be mitigated. 36 C.F.R. § 800.8. The Committee is aware that PennEast has already conducted some archaeological field surveys, yet the reports documenting these surveys were not provided to the Committee. As a mandatory consulting party, the Committee has a right to review and comment on these reports. The Committee requests PennEast provide a copy of all previous reports and that PennEast continue providing future reports as soon as they are prepared.

The Committee asks that FERC and PennEast immediately recognize its status as a consulting party and provide all relevant documentation for the Committee's review. Failure to do so would violate NHPA's requirements. This is not the first time the Committee has made this request. Our first request to participate as a "consulting party" was in February 2015, which was raised sufficiently early to make the opportunity to consult on any reports meaningful, and to initiate consultation well in advance of the issuance of any Draft Environmental Impact Statement (DEIS). Under the regulations, a consulting party must be involved beginning "at the early stages of the project planning" so the party can fully consult on all stages from identifying historic sites, conducting surveys of those sites, and mitigating impacts. 36 C.F.R. § 800.1 *et seq.*

Because our previous request to participate was ignored and the latest archaeological survey report was provided to the NJHPO, but not the Committee, six months ago, we have been deprived of involvement in important NHPA stages, in violation of our rights as a consulting party. If we had been involved in February 2015 at the beginning of the NHPA process, we would have had more than a year to review and consult on PennEast's findings as they were released. Since our involvement has been needlessly delayed until nearly two years after the NJHPO began its consultation, we insist that we be given at least six months to review and comment on any reports that have been completed before any DEIS is issued that evaluates potential effects on historic properties. No lesser amount of time would meet FERC's mandate under the Section 106 process: to "ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking." And even this length of time is less than we would have received if we had been properly consulted "at the early stages of planning." 36 C.F.R. § 800.1. Failure to grant us adequate time to review and comment would prevent both FERC and us from fully meeting the purposes and requirements of NHPA consultation.

Sincerely,


Susan D. Lockwood,
Delaware Township Mayor

cc: Jeff England, UGI
Bernard Holcomb, URS
Daniel D. Saunders, NJHPO
John Eddins, ACHP

Document Content(s)

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TOWNSHIP OF KINGWOOD

Committee Meeting:
First Thursday of Each Month – 7pm
Municipal Building:
Corner of Rt. 519 & Oak Grove Rd.
Fax: (908) 996-7753



Address Reply To:
Mary E. MacConnell, RMC
P.O. Box 199
Baptistown, NJ 08803-0199
Phone (908)996-4276 x 221

July 13, 2016

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

Ms. Grace Ziesing, Senior Archaeologist
URS Corporation
625 West Ridge Pike, Suite E-100
Conshohocken, PA 19428

RE: Response to PennEast Pipeline Company, LLC's FERC Process Participation Request
Dated March 11, 2016

Dear Ms. Bose and Ms. Ziesing:

We have received URS Corporation's March 11, 2016 letter requesting Kingwood Township's participation in the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA) process for the PennEast project as an "interested party". That letter ignores the law. As mandated by the National Historic Preservation Act (16 U.S.C. § 470 et seq.), the Township has the right to participate as a "consulting party" for the PennEast project.

Under NHPA regulations, "the representative of a local government with jurisdiction over the area in which the effects of undertaking may occur is *entitled* to participate as a *consulting party*." 36 C.F.R. § 800.2 (emphasis added). Kingwood Township is a local government as defined by the regulations, and the Township is the representative for NHPA consultation purposes. Therefore, the Township has a right to consulting party status and does not accept the legally insufficient "interested party" status.

As a mandatory consulting party, the Township has the right to review and consult on PennEast's factual findings during the NEPA process. This includes findings related to the identification of impacted historic sites, the calculation of the level of adverse impacts, and the determination that impacts can be mitigated. 36 C.F.R. § 800.8. The Township is aware that PennEast has already conducted some archaeological field surveys, yet the reports documenting these surveys were not provided to the Township. As a mandatory consulting party the Township has a right to review

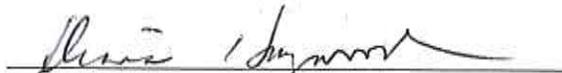
and comment on these reports. The Township requests PennEast provide a copy of all previous reports and that PennEast continue providing future reports as soon as they are prepared.

The Township asks that FERC and PennEast immediately recognize its status as a consulting party and provide all relevant documentation for the Township's review. Failure to do so would violate NHPA's requirements. Under the regulations a consulting party must be involved beginning "at the early stages of the project planning" so the party can fully consult on all stages from identifying historic sites, conducting surveys of those sites, and mitigating impacts. 36 C.F.R. § 800.1 *et seq.* FERC has already substantially delayed recognition of the Township as a "consulting party" until very late in the NEPA process, in direct contradiction to the NHPA regulations' mandate.

Because FERC and PennEast failed to involve the Township at the early stages, and the latest archaeological survey report was provided to the NJHPO but not the Township, six months ago, we have been deprived of involvement in important NHPA stages, in violation of our rights as a consulting party. If we had been involved at the beginning of the NHPA process, we would have had more than a year to review and consult on PennEast's findings as they were released. Since our involvement has been needlessly delayed until nearly two years after the NJHPO began its consultation, we insist that we be given at least six months to review and comment on any reports that have been completed before any DEIS is issued that evaluates potential effects on historic properties. No lesser amount of time would meet FERC's mandate under the Section 106 process: to "ensure that the section 106 process is initiated early in the undertaking's planning, so that a broad range of alternatives may be considered during the planning process for the undertaking". And even this length of time is less than we would have received if we had been properly consulted "at the early stages of planning". 36 C.F.R. § 800.1. Failure to grant us adequate time to review and comment would prevent both FERC and us from fully meeting the purposes and requirements of NHPA consultation.

Sincerely,

KINGWOOD TOWNSHIP COMMITTEE


Diana Haywood, Mayor

cc: Jeff England, UGI
Bernard Holcomb, URS
Daniel D. Saunders, NJHPO
John Eddins, ACHP

Marilyn Cummings
348 Rosemont-Ringoes Road
Stockton, NJ 08559

February 20, 2015

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Re: Docket No. PF15-1-000 PennEast Pipeline Project
Section 106 Consulting Party request

Dear Ms. Bose:

Please accept this letter as my request to be included as a Consulting Party, pursuant to Section 106 of the National Historic Preservation Act, for the project cited above. I am a member of the Delaware Township Historic Advisory Committee and have amassed a great deal of research pertaining to the history of my township. The committee wishes to be consulted officially during the course of the cultural resources investigation and Section 106 compliance efforts for this project. Additionally, I am working closely with the Township Committee in developing a formal response to this project. As such, I represent my local government and have both an organizational and personal interest in this undertaking.

During one of the open house meetings that were held last fall for this project, I met representatives of URS Corporation who are performing archaeological and historical investigation for this project. I indicated at that time that I wish to be included as a consulting party and am reiterating that request by this letter.

My files include extensive mapping of historic and prehistoric properties and sites in and around Delaware Township, and no survey will be complete without this information. I understand that the cultural resources survey is underway, and would appreciate an update of the efforts at this time.

Please ensure that the project's representatives contact me. I will anticipate working with them soon. Thank you very much.

Sincerely,

Marilyn Cummings

c: Medha Kochhar, FERC *via email* medha.kochhar@ferc.gov
David Hanobic, FERC *via email* david.hanobic@ferc.gov
Daniel Saunders, Deputy SHPO, NJDEP *via email* Dan.Saunders@dep.nj.gov
Charlene Dwin Vaughn, ACHP *via email* cvaughn@achp.gov
John Eddins, ACHP *via email* jeddins@achp.gov
Alisa Harris, PennEast Pipeline Company, LLC *via email* aharris@ugies.com
Sean Sparks, TetraTech *via email* Sean.Sparks@tetrattech.com
Vanessa Zeoli, URS Corporation *via email* vanessa.zeoli@urs.com
Grace Ziesing, URS Corporation *via email* grace.ziesing@urs.com