

HISTORIC PRESERVATION COMPLIANCE

The Section 106 Review Process and
the WV Department of Environmental
Protection



*Katie M. Turner, Archaeologist
Ernest E. Blevins, Structural Historian
West Virginia State Historic Preservation Office*

SECTION 106

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

Pub. L. 113-287, §3, Dec. 19, 2014, 128 Stat. 3227

TYPICAL LEAD AGENCIES

Federal Agencies

- Office of Surface Mining (OSM)
- US Army Corps of Engineers (USACE)

The lead federal agency may choose to delegate the responsibilities of the Section 106 process to a state agency. For example, OSM delegates to the WV Department of Environmental Protection (WVDEP) for certain undertakings.

36 CFR § 800.2(a)

DEFINITION: “undertaking”

The term “undertaking” means a project, activity, or program **funded** in whole or in part under the direct or indirect jurisdiction of a Federal agency, including—

1. those carried out **by or on behalf** of the Federal agency;
2. those carried out with Federal **financial assistance**;
3. those requiring a Federal **permit, license, or approval**; and
4. those subject to State or local regulation administered pursuant to a delegation or **approval** by a Federal agency.

Pub. L. 113–287, §3, Dec. 19, 2014, 128 Stat. 3191

DEFINITION: “historic property”

The term “historic property” means any prehistoric or historic district, site, building, structure, or object *included on, or eligible for inclusion on, the National Register*, including artifacts, records, and material remains relating to the district, site, building, structure, or object.

Pub. L. 113–287, §3, Dec. 19, 2014, 128 Stat. 3189

THINGS TO KEEP IN MIND

It is the **statutory obligation of the Federal agency** to fulfill the requirements of section 106.

36 CFR §800.2(a)

Consulting parties, including the SHPO/THPO, have **30 days** to respond after receiving information regarding the undertaking.

36 CFR § 800.3(c)(4), § 800.4(d)(1)(i-ii), and § 800.5(c)

SECTION 106 PROCESS

STEP 1: *Initiation* of Review Process

STEP 2: *Identification* of Historic Properties

STEP 3: *Assessment* of Effects

STEP 4: *Resolution* of Adverse Effects

STEP 1: Initiation of Review Process

Is it an **undertaking**? Yes or No?

Does it have the **potential to affect historic resources**? Yes or No?

If you answer “yes” for both, then:

- Identify consulting parties
- Involve the public
- Initiate consultation

STEP 1: **Initiation** of Review Process

The agency official **shall involve the consulting parties** . . . in findings and determinations made during the section 106 process. The agency official should plan consultations appropriate to the **scale** of the undertaking and the **scope** of Federal involvement.

36 CFR §800.2(a)(4)

SECTION 106 PROCESS

STEP 1: **Initiation** of Review Process

STEP 2: **Identification** of Historic Properties

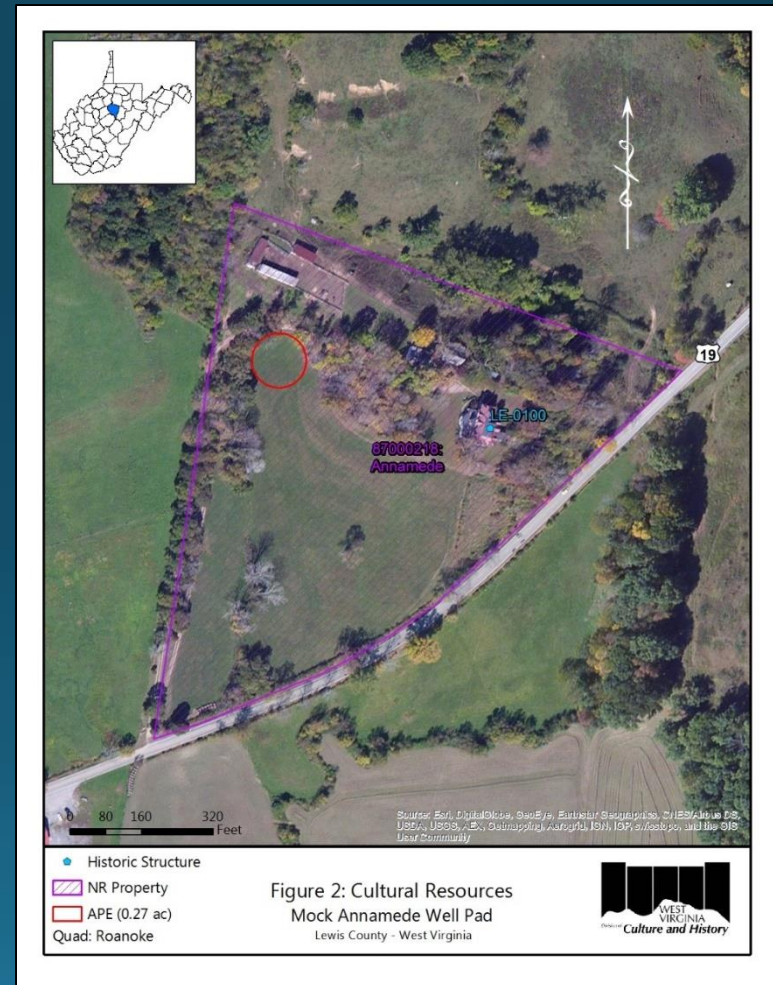
STEP 3: **Assessment** of Effects

STEP 4: **Resolution** of Adverse Effects

AREA of POTENTIAL EFFECTS (APE)

The geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties.

36 CFR §800.16(d)



A **direct effect** to historic properties include ground disturbance with the potential to affect archaeological resources and demolition of an eligible building or structure.



An **indirect effect** to historic properties include affects to the viewshed of a historic property, blasting area, or audible intrusions.

STEP 2: Identification of Historic Properties

Identify properties located within the **APE** that are **eligible** for or **included** in the National Register of Historic Places.

The agency official shall make a **reasonable and good faith effort** to carry out appropriate identification efforts.

36 CFR §800.4(b)(1)

Historic Properties include....

- **Buildings** (homes, barns)
- **Sites** (battlefields, trails, mine, landscapes, remains of a prehistoric village)
- **Structures** (bridges, canals, dams, trains)
- **Objects** (sculptures, monuments, fountains, mile markers)
- **Districts** (concentration of any of the above, residential areas, coal camps, rural villages, large farms, linked ceremonial sites)

STEP 2: Identification Surveys

Phase I Survey: Staff archaeologists may request that a Phase I survey be completed in the project's APE to determine if undocumented archaeological resources are present.



Architectural Survey: Staff architectural historians may request a survey to determine if any historic structures will be directly or indirectly impacted by a proposed undertaking.

STEP 2: Identification of Historic Properties

If historic properties *are not* located in APE, *and* the SHPO concurs, process finished.

If historic properties *are* located in APE, *but* the project will have no effect *or* no adverse effect to the properties *and* the SHPO concurs, process finished.

If historic properties *are* located in APE *and* will be adversely affected by the project *and* the SHPO concurs, process continues.

STEP 2: Identification of Historic Properties

If Federal agent and SHPO *disagree* on a property's *eligibility*, then the agency official shall obtain an official determination of eligibility from the *Secretary of the Interior* pursuant to 36 CFR, Part 63.

36 CFR §800.4(c)(2)

SECTION 106 PROCESS

STEP 1: **Initiation** of Review Process

STEP 2: **Identification** of Historic Properties

STEP 3: **Assessment** of Effects

STEP 4: **Resolution** of Adverse Effects

STEP 3: Assessment of Effects

An adverse effect is found when an undertaking may **alter**, **directly** or **indirectly**, any of the characteristics of a historic property that qualify the property for inclusion in the National Register in a manner that would **diminish the integrity** of the property's **location**, **design**, **setting**, **materials**, **workmanship**, **feeling**, or **association**.

36 CFR §800.5(a)(1)

Activities Considered *Adverse*...

- Physical **destruction** or **damage** from an undertaking
- **Alteration** of the property including work done to preserve a property not performed to the *Secretary of the Interior's Standards for the Treatment of Historic Properties*
- **Removal** of the property
- Changes in historic **purpose** and **use**
- Changes in the property's **setting**
- Introduction of **visual**, **atmospheric** or **audible** elements
- **Neglect** of a property
- **Transfer**, **lease**, or **sale** out of Federal ownership without adequate restrictions or conditions to ensure long-term preservation of the property

STEP 3: Phase II National Register Evaluation

Phase II Survey: In order to determine if an archaeological resource is eligible for the National Register of Historic Places a Phase II survey may be requested.



Architectural Survey: In order to determine if an architectural resource is eligible for inclusion in the National Register of Historic Places they consult the seven aspects of integrity: Location; Design; Setting; Materials; Workmanship; Feeling; and Association.

SECTION 106 PROCESS

STEP 1: **Initiation** of Review Process

STEP 2: **Identification** of Historic Properties

STEP 3: **Assessment** of Effects

STEP 4: **Resolution** of Adverse Effects

STEP 4: Resolution of Adverse Effects

The agency official shall consult with the SHPO/THPO and other consulting parties . . . to develop and evaluate alternatives or modifications to the undertaking that could **avoid, minimize, or mitigate** adverse effects on historic properties.

36 CFR §800.6(a)

STEP 4: Resolution of Adverse Effects

If the agency official and the SHPO/THPO agree on how the adverse effects will be resolved, they shall execute a memorandum of agreement.

36 CFR §800.6(b)(iv)

MEMORANDUM of AGREEMENT

- Usual result of a finding of Adverse Effect
- Used to mitigate unavoidable damage
- Outlines plan for mitigation of the adverse effect
- ACHP shall be invited to participate in mitigation

STEP 4: Mitigation

Phase III Data Recovery: Data Recovery is completed on sites determined to be eligible for or listed on the National Register of Historic Places. Data Recovery is typically done when the site cannot be avoided by the proposed undertaking.



Mitigation: One form of mitigation for architectural resources is the development of plaques utilized to educate the public about a particular region or resource. Other previous mitigation for mines and AML projects include site documentation and historical books such as the one for the Sundial (Hatfield) Refuse and Mine Complex in Edwight, Raleigh AML reclamation.

Professional Qualifications

All cultural resources must be evaluated by individuals who meet *The Secretary of the Interior's Historic Preservation Professional Qualification Standards*

(36 CFR Part 61)

Graduate degree in archaeology, anthropology, history, architectural history, architecture, cultural resource management, historic preservation, etc. *with one to two years* of professional experience in the associated field.

Completion of the Section 106 Process

The Section 106 process is considered complete when:

You have received a letter from the SHPO/THPO stating there are no cultural resources in APE, or no further consultation is necessary

You have allowed the public and other consulting parties thirty (30) days to comment on the undertaking

or

You have a signed MOA in hand *and* a letter from signatories indicating mitigation is complete

You have allowed the public and other consulting parties thirty (30) days to comment on the undertaking

What to Submit?

The Section 106 Checklist and the MR-SHPO Form:

West Virginia SHPO Information Sheet for [Section 106 Review Projects](#) is a checklist providing a listing of the information we recommend be submitted with all reviews. We also recommend that applicants consult our [GIS WebApp](#) to determine if significant structures or buildings previously recorded in the permit area. This information should be included with the MR-SHPO Forms.

**West Virginia SHPO
Information Sheet for
Section 106 Review Projects**

The following information is needed for SHPO staff to be able to complete a review of a federal or state funded or permitted project (undertaking):

I. General Information regarding all project submissions:

Is this project a new submission or supplemental information relating to a previously submitted project?

If this is supplemental information, please identify the project FR# (our project file number).

- Project Name
- Federal Agency, if applicable (agency providing funds, permit, license or assistance)
- Federal Agency Contact Person: Name, Street Address, Phone Number, email
- State Agency, if applicable
- State Agency Contact Person: Name, Street Address, Phone Number, email
- Project Contact Person: (individual(s) who are knowledgeable of project activities). Name, Street Address and Phone Number, email
- Project Street Address, City, Country, Zip Code
- Project Location: Please attach the appropriate USGS Topographic Quadrangle Map indicating the location of the project. If applicable, attach a street map indicating the location(s) of specific addresses. If providing UTM coordinates, please specify whether the projection is NAD 27 or 83. For DEP projects, it is required that a 1"=500' scale (Engineering Map) be submitted in addition to the USGS Topographic Map. All maps must clearly depict the project boundaries.
- Project Description: Describe the activities proposed within the defined project area and provide any available information regarding past land use of the project area. Provide the project size, including acres or project right-of-way length and width. If applicable, describe proposed construction depths. If the project will involve building rehabilitation or renovation, please identify materials and provide any available drawings, plans and specifications. If demolition is proposed, please provide cost comparison of repair vs. demolition, explanation of alternatives considered or justification as to why structure cannot be rehabilitated. This may include copies of building inspection or engineering reports.
- Project Photographs: These should document the project area showing general views, known disturbances, any rock outcrops, and buildings and/or structures (50 years or older) within

MR-SHPO

STATE OF WEST VIRGINIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF MINING AND RECLAMATION

FIELD REVIEW SITE QUESTIONNAIRE
(For Surface Coal Mine and Quarry Permits)
(W. Va. Code § 22 Articles 3 and 4)

Applicant Name: _____ SMA/QMA Permit No. _____

Address: _____
(If mailing address is a P.O. Box, street address must be included)

City _____ State _____ Zip _____ Telephone No. _____

Contact Person and Phone Number: _____

1. Type of Permit or Application to be Reviewed

NOTE: This evaluation is to be completed for all of the following types of applications unless the applicant so notes each.

- Surface Mine Application (Article 3)
- Quarry Application (Article 4)
- Incidental Boundary Revision (Article 3) or Quarry Modification (Article 4)
Which involves more than five acres of land disturbance unless such land disturbance borders along the original permit boundary and is not a unit extension of the permit boundary as an appendage to the permit.
Examples of unit extensions or appendages to the permit are: new roads, fills, staging or storage areas, new portals, etc. Proposed disturbances of greater than five acres on ridge tops or valley floors are subject to SHPO review regardless of purpose.
- Permit Renewal (Article 3 only) - **except as follows:**
 - Those on which all projected land disturbance has occurred prior to the renewal date;
 - Those on which mining and/or land disturbance is not completed, but is documented to have had a prior SHPO review with findings of no existence of, or no effect on, historic or cultural resources.
- Notice of Intent to Prospect (Article 3 only) - **except as follows:**
 - Those which do not involve any land disturbance;
 - Those which involve channel sampling along existing roadways, trails, tramways or existing benches, and where excavation by heavy equipment is not required for access or sampling;
 - Those which involve only core drilling and are less than ten acres;
 - Those in which land disturbance is proposed only on slopes of twenty degrees or greater in steepness

2. Acres - Provide the following information of acres affected by this operation:

*Total Disturbed _____ Total _____

Acres (check below) _____ + Undisturbed Acres _____ = ****TOTAL ACRES:** _____

- Previously Mined _____ Acres
- Timbered _____ Acres
- Other _____ Acres (Specify) _____

*All previously disturbed area, including areas previously mined, timbered, etc.
**Total Acres shall include all current and proposed acres affected by this operation.

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What to Submit?

We recommend that the following information be provided:

- **Detailed description** of planned work (what, where, who, and how)
- **Maps of project area**: mark specific boundaries on a USGS 7.5' topographic map and aerial images; include flood maps; nearby water features
- **Photographs** of the project area *and* areas with disturbance
- **Maps and photographs** of any buildings, foundations, cemeteries, rock overhangs, or recognizable cultural features 45+ years old located in project area or nearby vicinity
- **Original dates of construction** for structures located within project area or that have line-of-sight that are also 45+ years old
- **Exact location of project** (UTM/Lat. Long.) *not just the address or a colored map*

SHPO GIS Web App

WEST VIRGINIA STATE HISTORIC PRESERVATION OFFICE
Interactive Map

Layers: SHPO, Reference, Basemaps
Search / Zoom to location: USGS Quad, Lorado
Tools: [Map Tools]

No Site Selected
To view detailed information for a SHPO site, please click on a feature on the map viewer.

Scale = 1: 144,448
X: -81.780204, Y: 37.983854
Lon/Lat: (81.940193 W, 37.890976 N)
UTM 17N: (417331E, 4194135N)

Map labels: Ranger, Big Creek, Mud, Chapmanville, Henlawson, Pecks Mill, Mitchell Heights, Amherstdale, etc.

<http://mapwv.org/shpo>

Comments and Concerns

- The MR-SHPO Field Review Site Questionnaire
- DEP's permitting specialists/engineers are very knowledgeable about the undertakings
- The DEP Mining Permit Search and AML map websites
- The maps included with DEP submissions are detailed and provide ample information. However, GIS shapefiles could augment these
- Photographs of buildings/structures should be large enough to see the building and also show some yard or background for context

Comments and Concerns

- Section 3 of the MR-SHPO Form
- Background research
- Photographs
- Programmatic Agreement

What has been Found?

What has been Found? – Archaeology

By DEP permitted/funded undertakings completing the Section 106 process several archaeological, architectural and cemetery resources have been recorded.

Archaeological Resources:

- Dozens of lithic scatters, historic period artifact scatters, and isolated finds have been recorded
- Boone County
 - 46BO65
 - 46BO203
- Kanawha County
 - 46KA648



46BO65 – The Olafson Site



Complete knife.



Fayette Thick ceramics, cord marked (left) and plain (right).

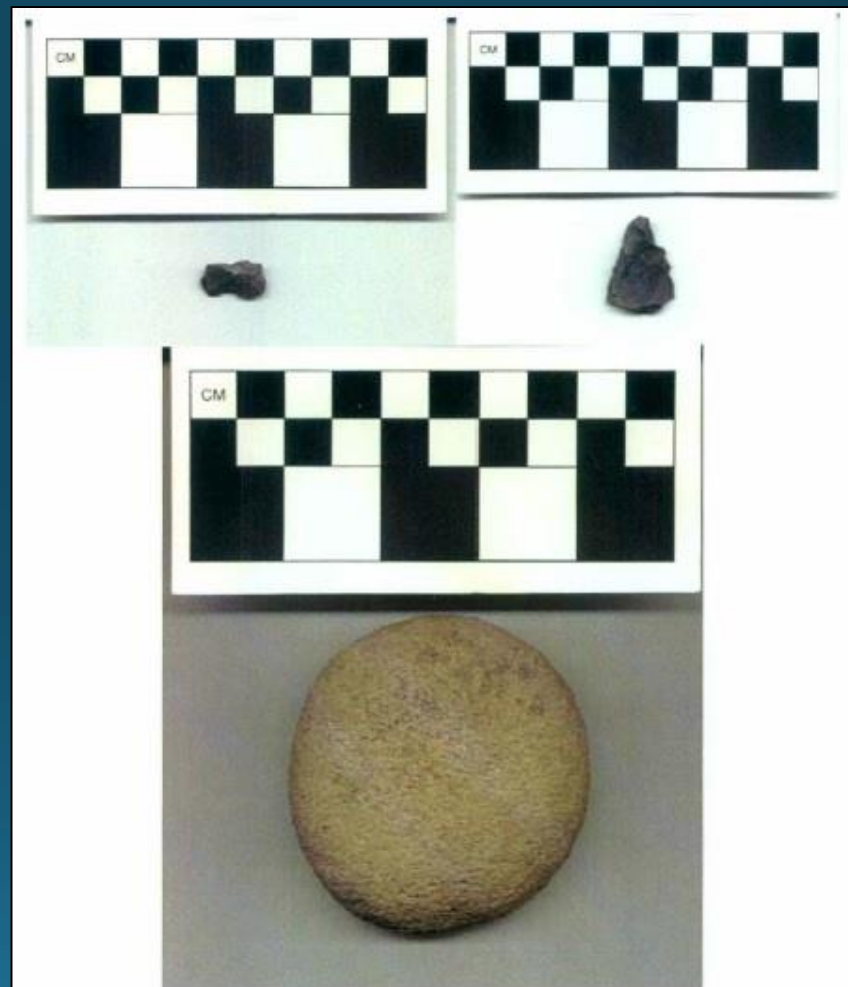


(L to R): Charleston Corner Notched, Adena stemmed and Levanna.

46BO203 – Stone Mound

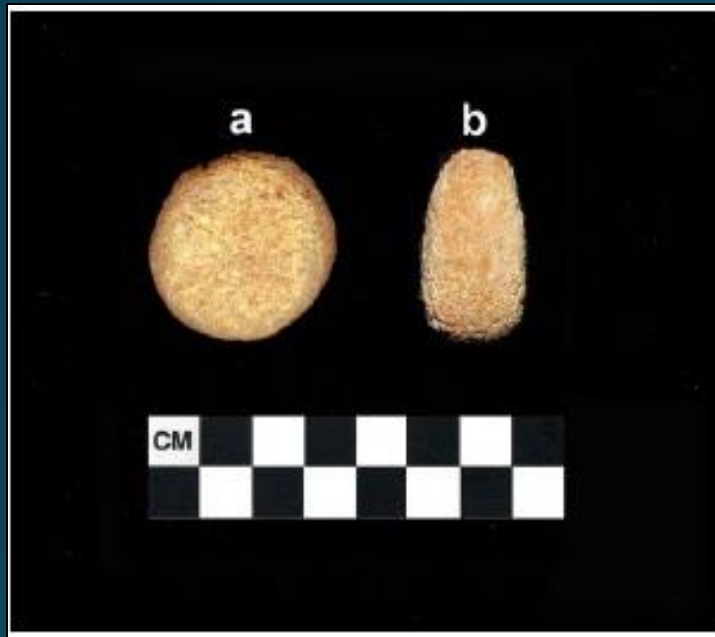


Site 46BO203, stone mound facing southeast.



Artifacts from 46BO203. Top, left to right: fragment of shallow bifurcate, Kanawha Stemmed; knife blade fragment. Bottom: discoidal abrader.

46KA648 – FS # 1



What has been Found? – Architecture and Cemeteries

Most architectural resources are found during the review process.

Architectural Resources:

- Wingrove AML Emergency , Fayette County
- Adrian (Black Lick Run) AML, Upshur County

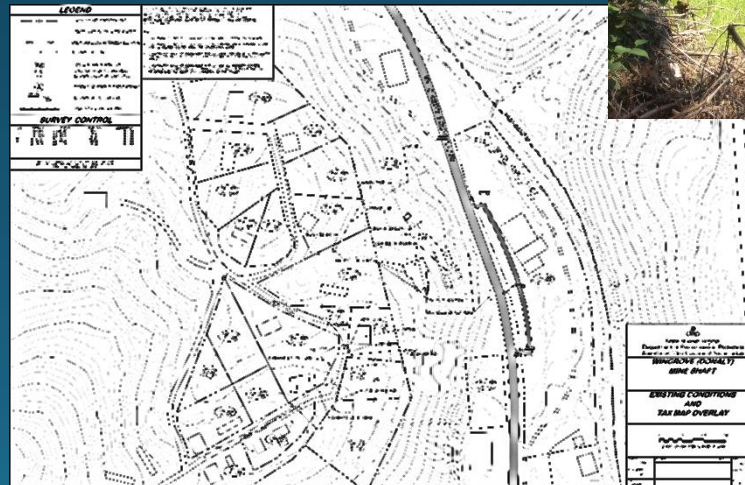
Cemetery Resources:

- Multiple previously undocumented cemeteries have also been recorded

Wingrove Mine AML Reclamation, Fayette County

AML emergency project to remove the ruins of the site after cinder blocks securing a 200 foot shaft were breached.

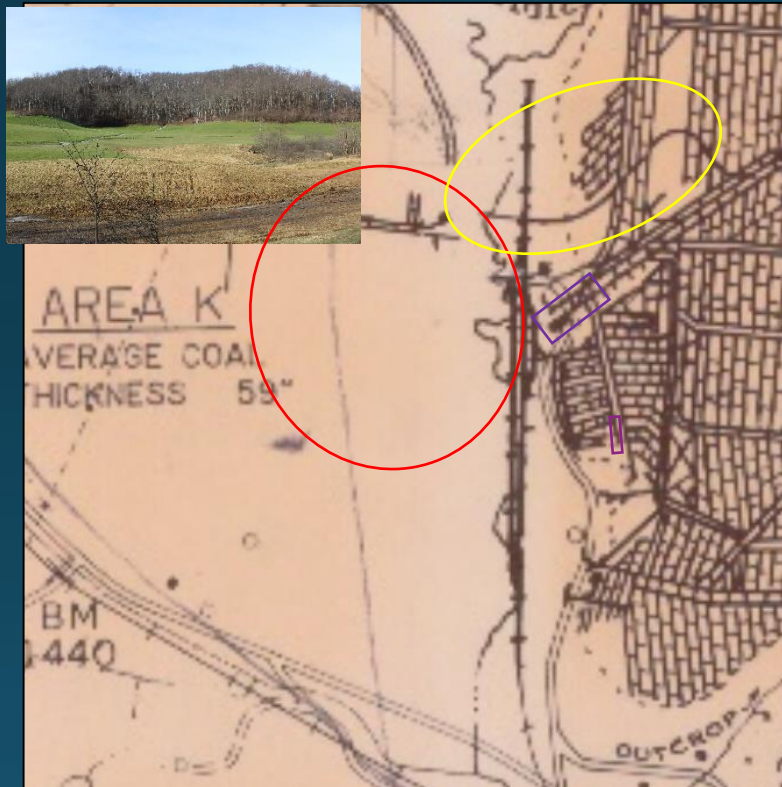
After photographic documenting the property during the investigation and mapping for demolition the site was reclaimed.



- Jason Foster, AML
- Ernest Blevins, SHPO

Adrian (Black Lick Run), Upshur County

During reclamation of the **red** area the **yellow** portion was used as a borrow area. During excavations to relocate earth a mine portal and subsidence into a passage way (**purple**) were discovered on the site.



The site determined eligible for the NRHP. The hazard was mitigated with a special designed bat gate that had no adverse effect to the portal.

- James Connally, AML
- Ernest Blevins, SHPO

Cemetery Discoveries

- Many cemeteries have been recorded during Section 106 projects.
- Most of these cemeteries not eligible for inclusion in the National Register of Historic Places.
- Other laws do protect all cemeteries, including a provision which encompasses cemeteries within 100-foot buffer.



Unnamed cemetery in Logan County discovered during a Phase I archaeological survey for an SMA.



Questions?

West Virginia Division of Culture and History
State Historic Preservation Office

The Culture Center (Building 9)
1900 Kanawha Boulevard East
Charleston, West Virginia 25305-0300

Phone 304-558-0240

Fax 304-558-2779

www.wvculture.org/shpo