

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

On October 17, 2024, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Southern District of Florida in the lawsuit entitled *United States v. Petroleum Products Corp., et al.*, Civil Action No. 1:91-cv-02014-BB.

In the filed Amended Complaint, the United States, on behalf of the U.S. Environmental Protection Agency (“EPA”), alleges that the Defendants are liable under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606 and 9607(a), for the response costs EPA incurred to respond to the releases and/or threatened releases of hazardous substances into the environment at the Petroleum Products Corporation Superfund Site located generally at 3150 Pembroke Road in Pembroke Park, Broward County, Florida that the Settling Defendants owned and operated. The Consent Decree requires the Settling Defendants to perform Remedial Action for the Site, pay past response costs for the Site and pay future costs related to the work. The Estimate for the Remedial Action is more than \$57,000,000. The Settling Defendants are responsible for performing the Work, but the FDEP will pay for at least \$30 million of it through a statutory trust fund and a petroleum product cleanup program established in 1987.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States v. Petroleum Products Corp., et al.*, D.J. Ref. No. 90-11-3-585/3. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Any comments submitted in writing may be filed in whole or in part on the

public court docket without notice to the commenter.

During the public comment period, the Consent may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. If you require assistance accessing the Consent Decree, you may request assistance by email or by mail to the addresses provided above for submitting comments.

Scott Bauer,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2024-24969 Filed 10-25-24; 8:45 am]

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DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Record of Decision; Proposed Development of a New Federal Correctional Institution and Federal Prison Camp—Letcher County, Kentucky

I. Introduction

This Record of Decision (ROD) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, documents the decision regarding the proposal by the United States (U.S.) Department of Justice (DOJ), Federal Bureau of Prisons (FBOP) to acquire properties totaling approximately 500 acres in area in order to construct and operate a new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) in Letcher County, Kentucky. The ROD describes the alternatives considered and the rationale for selecting the chosen alternative.

The purpose of this ROD is to publish the Agency’s decision with respect to the environmental review process. The decision is based on information and analysis contained in the Draft Environmental Impact Statement (DEIS) issued March 1, 2024, and the Final EIS (FEIS) issued July 12, 2024, together with various technical studies, other EISs conducted since 2015, and comments and input received from federal and state agencies, elected officials, organizations, and individuals.

II. Background

The mission of the FBOP is for corrections professionals to foster a humane and secure environment and ensure public safety by preparing individuals for successful re-entry into society. Congress, in 2006, directed the FBOP to initiate investigations leading to development of a new federal

correctional facility in Letcher County, Kentucky (see H.R. Rep. No. 109-272 that accompanies Pub. L. 109-108). In response, the FBOP has conducted a wide range of technical investigations and feasibility studies to comply with Congress’ directive including publication of a DEIS (2015), FEIS (2015), Revised FEIS (2016), Draft Supplemental Revised FEIS (2017), Final Supplemental Revised FEIS (2017) and Record of Decision (2018) with each prepared in support of development of a new high-security United States Penitentiary (USP) and FPC in Letcher County.

In July 2019, the Acting FBOP Director Hugh J. Hurwitz withdrew the 2018 ROD based on new cost and Adults in Custody (AIC) population trend information that came to light, which may have been relevant to the environmental analysis for the Proposed Action. The FBOP has continuously evaluated its current and projected future AIC populations and determined that the need to house medium-security AIC in the Mid-Atlantic Region supersedes the need to house high-security AIC. Since the design, construction, and operation of a high-security USP differs from a medium-security FCI, the potential environmental impacts of its development and operation would also be different. As a result of the 2018 ROD being withdrawn, the FBOP undertook new evaluations and analyses in accordance with current Council on Environmental Quality and NEPA guidelines, DOJ procedures for implementing NEPA, and other federal regulations as part of preparation of a new DEIS. The FBOP published a DEIS on March 1, 2024, and a FEIS on July 12, 2024, to develop a new FCI in Letcher County, Kentucky to meet its immediate and long-term needs.

III. Purpose and Need for the Project

The purpose and need for developing the proposed FCI and FPC was determined by the growing number of aged and obsolete federal correctional facilities, which are no longer cost-effective or sustainable to operate and maintain. The FBOP is responsible for all aspects of facility and infrastructure operations, maintenance, repairs, and renovations including interior and exterior finishes; roofs and structural systems; perimeter fences and other security measures; mechanical, electrical, plumbing, lighting, and utility systems; communication equipment, and fire protection and life safety systems. The condition of facilities, infrastructure, and equipment is critical to effective correctional

facility operation and security. This is the case with the federal prison system where facilities and infrastructure are in continuous use and require frequent maintenance ranging from routine inspections and repairs to large-scale upgrades, renovations, and replacements. Of the FBOP's many institutions, 62 were developed between 1890 and 1991, 55 institutions were developed between 1992 and 2007, and five were developed since 2008.

The FBOP proposes to acquire approximately 500 acres in Letcher County to construct and operate a modern new FCI, FPC, and ancillary facilities to meet the need to house medium- and minimum-security AIC in the Mid-Atlantic Region. Ancillary facilities would include a central utility plant, garage/landscape building, outside warehouse, staff training building and outdoor firing range, water storage tank, access drive, and internal roadways and parking lots. The proposed FCI would be designed to house 1,152 medium-security AIC with the FPC designed to house 256 minimum-security AIC for a total population of 1,408 AIC.

IV. Alternatives Considered

A. No Action Alternative

The No Action Alternative is defined as a decision by the FBOP not to proceed with the Proposed Action, thereby precluding development of a new FCI/FPC to house a portion of the federal AIC population in the Mid-Atlantic Region and maintaining the status quo.

Adopting the No Action Alternative would avoid the potential short-term, temporary impacts associated with FCI/FPC construction, among them increased noise levels, fugitive dust emissions, soil erosion, fuel consumption with the associated air emissions, and traffic volumes. Adopting the No Action Alternative would also avoid the potential permanent impacts to land use, biological resources, utility services, visual and aesthetic resources, and traffic volumes associated with FCI/FPC construction and operation. Implementation of the No Action Alternative, however, would result in the loss of positive benefits including contributing to achieving the mandates of Congress; the need for modern, secure, efficient and cost-effective institutions; the societal benefits derived from efficient operation of the federal criminal justice system; and the economic and employment opportunities which would become

available as a result of FCI/FPC development.

The FBOP has a need for modern and secure correctional facilities and infrastructure nationwide. With increasing numbers of federal correctional facilities becoming outdated, physically and operationally obsolete, and costly to operate and maintain, the FBOP is required to continuously improve the system's infrastructure through repair and renovation of existing facilities when possible and construction of new institutions when necessary. The No Action Alternative does not meet the purpose and need for the Proposed Action and has been eliminated from consideration.

B. Letcher County Alternatives

In 2006, Congress directed the FBOP to initiate various investigations for development of a new federal correctional institution in Letcher County, Kentucky. In conformance with that directive, the FBOP has focused its attention and resources upon the 339-square-mile area comprising Letcher County at the exclusion of other areas of the Mid-Atlantic Region and the U.S. as a whole.

Planning for a new federal correctional facility began in earnest in 2008. At that time, FBOP officials began familiarizing themselves with Letcher County by gathering technical information and engaging elected officials, federal, state and local governmental agencies, members of the business community, leaders of educational and health care institutions, utility providers, and others knowledgeable of local conditions affecting development. With assistance from community members, the process of identifying prospective sites began with a focus on physical conditions and characteristics influencing development in Letcher County along with the availability of public services and infrastructure. Candidate sites were identified on the basis of initial development requirements:

- Sufficient land area to accommodate the institution and a buffer zone between the facility and neighboring properties.
- Relatively level building sites or properties that could be altered to accommodate development.
- Ability to avoid sensitive environmental resources including floodplains, wetlands, threatened and endangered species habitats, and cultural and historic resources.
- Avoidance of potential conflicts with adjoining or nearby land uses.

- Availability of utility and transportation infrastructure.
- Willingness of owners to consider a sale of their property.

Sites that satisfied these initial requirements were evaluated further by applying increasingly rigorous criteria to ensure that all issues or potential issues are adequately addressed. Sites that appear suitable on the basis of the initial evaluations were subjected to in-depth analysis and documented in the form of EISs and other technical studies.

1. Identification of Alternative Sites

After the FBOP's site requirements were shared with Letcher County representatives, four candidate sites—Meadow Branch, Payne Gap, Roxana, and Van/Fields sites, were made available for evaluation for possible acquisition and development. All four sites are located in proximity of the City of Whitesburg (Letcher County seat).

The FBOP conducted a Site Reconnaissance Study (2008) to determine the suitability of each for development. Based on the results of the Site Reconnaissance Study, the FBOP determined that the four sites should be studied further in the form of a Feasibility Study. Completed in 2011, the Feasibility Study assessed cultural resources, wetlands, geologic conditions, and infrastructure availability and provided in-depth analyses of each site while identifying constraints that could eliminate a site from further consideration.

While conducting the Feasibility Study, the offer to consider the Meadow Branch site was withdrawn and the site was dropped from consideration. For the remaining sites, various technical studies were conducted. However, as the Feasibility Study neared completion, the Van/Fields site owners were no longer interested in selling the property, necessitating its removal from consideration. The remaining two sites, Payne Gap and Roxana, were considered viable alternatives and were the subject of a DEIS published in February 2015 and subsequent EISs published between July 2015 and September 2017.

2. Search for Other Alternative Sites

During the development of the current EIS the FBOP conducted another search in Letcher County for sites that would be suitable for development based on the siting criteria. The site search, undertaken from June to November 2022, revealed small pockets of relatively level topography scattered throughout the county. Many of these locations comprise previous surface mines, which were reclaimed after the mineral deposits were extracted and are

being redeveloped for housing and small-scale warehouse and light industrial uses as well as golf courses and other recreational uses. In addition to areas where the surface extraction of coal took place, large tracts of land in Letcher County were subjected to underground coal mining, which depending upon the depth of the mines and mining methods, rendered such lands equal to or less suitable than the Roxana and Payne Gap sites.

Many of the sites reviewed in 2022 were located within lower elevations and adjoining or near streams and rivers that are susceptible to flooding during severe weather events. No properties examined in 2022 were found sufficiently level and unencumbered to accommodate the proposed development without significant topographic alterations and the associated environmental impacts.

In addition to a site's physical characteristics, the interest and cooperation of property owners is another key factor in determining a site's potential for FBOP use. During the initial planning phase, the FBOP seeks out owners willing to negotiate a sale of their holdings thereby avoiding other methods of property acquisition. In 2022, inquiries and outreach were made to several property owners to ascertain their willingness to discuss their land holdings; however, none of the property owners approached showed any interest in participating in such a discussion. As a result, the effort to identify other alternative locations in Letcher County for development of the proposed project ended in favor of continuing to consider the Payne Gap and Roxana sites as alternatives.

3. Alternative Location, Payne Gap Site

This alternative involves acquisition of approximately 753 acres known as the Payne Gap Site and located 11 miles east of Whitesburg. The site is situated on a steeply sloping upland landform above the Kentucky River at its confluence with the Laurel Fork. U.S. Route 119 is located along the north end of the site and would be the means of vehicular access. The site is covered by secondary growth forests and portions of the original topography have been altered by past mining activities with spoil piles, unpaved roads, and fill piles covering the site. Mining permit applications indicate both surface and underground mining operations dating to the 1950s have occurred within the site. Summer roosting habitat and winter hibernaculum for the endangered northern long eared bat have also been identified at the Payne Gap Site.

To accommodate development approximately 300 acres of the Payne Gap Site would require extensive rock and spoil excavation and fill material to level and prepare the site for development. While site preparation would require the removal of mine spoil, there are no slurry ponds or coal mine waste facilities located on or near the Payne Gap Site and no active mining is occurring on site.

4. Alternative Location, Roxanna Site

This alternative involves acquisition of approximately 500 acres known as the Roxana Site and located 10 miles west of Whitesburg. Much of the site consists of relatively steep terrain with similarly steep terrain extending beyond the site boundaries to the north and south. However, portions of the original topography have been altered by past mining activities rendering the central portion of the site relatively level. The site is also covered by secondary growth forests which have occurred since surface mining ended. Mining permit applications indicate mining operations dating to the 1960s have occurred within the site.

To accommodate development, approximately 200 acres of the site would require extensive excavation of spoil material and lesser amounts of structural fill and spoil fill. Preparation of the site for construction activities would also require dynamic compaction, clearing and alteration of previously mined areas, and forest clearing. Excavations would include the removal of mine spoil. No slurry ponds or coal mine waste facilities are located on or within two miles of the Roxana Site and no active mining is occurring on site.

C. Preferred Alternative

Development of the proposed medium-security FCI and minimum-security FPC at the Roxana Site is considered the Preferred Alternative as it best meets the project needs and, on balance, would have fewer impacts to the human environment. Threatened and endangered species habitat was also a factor in the identification of the Preferred Alternative with development at the Payne Gap Site potentially impacting a significant amount of summer roosting habitat versus the amount that would be affected at the Roxana Site. Development at the Payne Gap Site would also have significant impacts to wastewater and natural gas infrastructure, while the Roxana Site would have less than significant impacts to utility infrastructure.

Based upon these and other potential environmental impacts applicable to

each site, including wetlands and stream impacts and significantly greater site preparation required for the Payne Gap Site, development of the proposed project at the Roxana Site has been determined by the FBOP to be the Preferred Alternative. The Preferred Alternative meets the project objectives, is technically feasible, would have fewer natural resource and other environmental impacts, and incorporates measures to avoid or minimize environmental impacts to the extent practicable. Reinforcing the Roxana Site as the Preferred Alternative is the preference expressed by Letcher County's elected representatives, community leaders, members of local institutions and businesses to developing the proposed correctional facility at the Roxana Site.

V. Avoidance, Minimization, and Mitigation Measures

Based on the findings represented by the DEIS and FEIS (2024), the FBOP shall implement the avoidance, minimization, and mitigation measures described below to lessen the potential adverse environmental impacts associated with the Preferred Alternative. With regards to socioeconomic considerations, southeastern Kentucky in general, and Letcher County in particular, has experienced steady declines in population, commercial activity, and other social and economic indices. Expanded employment and economic opportunities arising from FCI/FPC development are considered beneficial to achieving the social and economic goals of Letcher County and the surrounding region. The Preferred Alternative is also not expected to result in adverse impacts to Environmental Justice populations, therefore, mitigation measures for social, economic, and Environmental Justice are not warranted.

1. Topography, Geology, Soils, and Hydrology

(a) Earthwork and related ground disturbance shall be minimized by developing the FCI/FPC in a compact, campus-style arrangement thereby limiting the area subject to disturbance.

(b) To the degree feasible, site preparation activities would only disturb areas necessary for the current phase of construction.

(c) Engineering studies of surface and subsurface conditions shall be conducted to ensure appropriate standards and sound building practices are specified prior to construction. Risks associated with seismic activity and measures to minimize such risks shall

be addressed during design and construction.

(d) A Soil Erosion and Sediment Control Plan (E&S Control Plan) shall be prepared describing measures for controlling erosion and sedimentation during construction. Attention would be directed toward erosion potential and other engineering characteristics of rocks, spoil material, and soils to be encountered during construction. The E&S Control Plan shall be submitted to the Kentucky Department of Environmental Protection, Division of Water for approval prior to implementation.

(e) During construction, erosion control measures would be inspected and replaced or repaired as required. Erosion control measures to be maintained following construction shall include lawns and landscaping, discharge pipe aprons, pipe outlet channels, and similar controls.

(f) To ensure safe and secure operation of the FCI/FPC during a severe weather event, the FBOP shall prepare an Adverse Weather Plan and Institution Evacuation Plan that will, among other things, define the food and other provisions, emergency equipment, fuel, and similar necessities to be stockpiled on-site at all times to maintain uninterrupted operation and safeguard AICs and FBOP employees who would remain at their posts for the duration of the severe weather event and its aftermath.

2. Water Resources

(a) A Clean Water Act, Section 404 permit application shall be prepared to document potential impacts and mitigation measures for review and approval by the U.S. Army Corps of Engineers. It is anticipated that mitigation shall consist of payment into the in-lieu fee mitigation program managed by the Kentucky Department of Fish and Wildlife Resources.

(b) A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared addressing temporary and permanent surface water and stormwater management controls. The SWPPP shall be submitted to the Kentucky Department of Environmental Protection, Division of Water for review and approval prior to implementation.

(c) In accordance with the SWPPP, stormwater collection infrastructure shall be installed to control runoff by directing stormwaters into basins to attenuate the intensity of the flow and to allow suspended solids in the stormwater to settle out prior to discharge to receiving streams.

(d) A Groundwater Protection Plan shall be prepared describing temporary

and permanent groundwater protection measures and submitted to the Kentucky Department of Environmental Protection, Watershed Management Branch, Groundwater Section for review and approval prior to implementation.

3. Biological Resources

(a) Impacts to common vegetation and wildlife during construction shall be minimized by limiting the area of disturbance to the extent possible. Upon completion of construction, disturbed areas would be re-vegetated with native plant species.

(b) Under the Conservation Memoranda of Agreement with U.S. Fish and Wildlife Service, the FBOP shall contribute to the Imperiled Bat Conservation Fund as compensatory mitigation for potential adverse effects on special status bat species.

(c) FBOP shall review, revise and update as necessary, and resubmit its Biological Assessment to reinstate formal consultations with the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act. FBOP shall ensure that the FCI/FPC project is implemented as documented in the updated Biological Assessment and subsequent updated Biological Opinion (BO) to be issued by USFWS.

(d) Conservation measures documented in the Biological Assessment shall be incorporated in project design and construction including: avoiding tree removal during June and July and blasting from November 15 through March 31; conduct construction activities from April 15 through October 31 in suitable Indiana bat and/or northern long-eared bat habitat during daylight hours; require vehicles and equipment to be inspected to remove visible plant and seed material prior to entering the project area; and fence off potential bat hibernacula and install warning signs around the area to prevent disturbance.

4. Cultural Resources

(a) A minimum 100-foot buffer from all development shall be maintained around the Frazier Cemetery (Kentucky Historical Society, Site 15Lr115).

(b) If improvements are necessary to KY 160 and/or KY 588 which result in Adverse Effects on National Register-eligible resources, consultations shall be undertaken with the Kentucky State Historic Preservation Office, Native American Tribes, the Advisory Council on Historic Preservation, and other appropriate organizations. Based on the potential impacts and results of the consultations, measures to mitigate for Adverse Effects shall be determined,

agreed upon, and implemented as appropriate.

5. Hazardous Materials

(a) Locations of petroleum extraction-related releases at the compressor station, the damaged aboveground storage tank (AST), and the AST open drain valve shall be tested to identify contaminated soils with necessary remediation conducted in compliance with applicable regulations of the Kentucky Department of Environmental Protection, Hazardous Waste Branch.

(b) Contaminated soils shall be disposed of only at permitted disposal facilities.

(c) Remediation reports and records shall be submitted to the Kentucky Department of Environmental Protection, Hazardous Waste Branch in accordance with applicable regulations.

(d) Construction materials considered hazardous shall be stored and handled in accordance with applicable environmental, public safety, and occupational health regulations to prevent polluting soil, surface waters, or groundwater. Storage of hazardous materials shall be minimized or avoided where practicable.

(e) Staging areas shall be established prior to construction for the temporary storage and handling of hazardous materials. Liquid storage areas shall be provided with secondary containment systems. Stored materials shall be removed from designated areas by authorized personnel only and recorded by personnel overseeing construction.

(f) FCI/FPC operation shall adhere to applicable regulations governing the handling, storage, and disposal of hazardous wastes.

(g) Biohazardous medical wastes shall be stored, collected and disposed of in accordance with institution policies and procedures and applicable regulations.

6. Visual and Aesthetic Resources

(a) Development shall be directed towards the central portion of the site in a compact, campus-style arrangement that limits visual and physical presence from neighboring properties while allowing for the majority of the site's forests, understory, and topography to remain undisturbed.

(b) Design features that are sensitive to the site's visual environment shall be employed including developing structures that are primarily one and two stories in height and unobtrusive to the degree possible.

(c) Buffer areas consisting of forest stands and other vegetation shall be maintained between the facility and its security perimeter and neighboring

properties to maintain visual compatibility.

(d) Outdoor lighting shall comply with FBOP Technical Design Guidelines (Section 26 25 00—Exterior Lighting) including NFPA 70—National Electric Code; NFPA 101—Life Safety Code; IESNA—Lighting Handbook, Reference, and Application; the American Correctional Association; and the Buy American Act.

(e) Measures to limit unwanted light shall be specified, including use of full cutoff luminaires for security, parking lot, roadway, and pathway lighting resulting in maximum downlighting and minimal upward dispersal of light to the sky.

(f) Low-reflective surface materials shall be specified where practical to minimize upward reflection of light.

(g) Access drive location and design shall be given careful attention including placement of directional signage and lighting fixtures leading to the FCI/FPC.

(h) Design, construction, and maintenance of all facilities and infrastructure shall adhere to a high standard.

7. Community Facilities and Services

(a) Construction and operating policies and procedures shall be communicated to and coordinated with the Letcher County Sheriff's Office, the Kentucky State Police, and local police departments and fire protection companies operating in Letcher County.

(b) Agreements shall be established with local emergency ambulance services in cases requiring an employee or AIC to be transported to an area medical facility.

(c) Agreements shall be established with area medical facility(s) for emergency care in cases involving employees and AIC.

8. Land Use

(a) Setbacks and buffer areas shall be established to achieve land use compatibility between the facility and neighboring properties.

(b) The distance and mountainous conditions separating Lilley Cornett Woods from the project site and the large undeveloped acreage surrounding the FCI/FPC shall ensure adverse land use impacts to Lilley Cornett Woods are avoided.

9. Utilities

(a) Development of the on-site water storage tank and distribution system shall follow applicable regulations with plans submitted to the Kentucky Department of Environmental

Protection, Division of Water for review and approval prior to construction.

(b) Development of the on-site wastewater collection system shall follow applicable regulations with plans submitted to the Kentucky Department of Environmental Protection, Division of Water for review and approval prior to construction.

(c) Extension of electric power shall follow applicable regulations while avoiding service disruptions and maintaining effective worker safety practices and procedures.

(d) Permanent closure, abandonment, and/or relocation of on-site oil/natural gas wells and associated infrastructure shall comply with applicable regulations of the Kentucky Department of Natural Resources, Division of Oil and Gas.

(e) Construction wastes shall be stored on-site and transported to facilities permitted to accept such wastes for recycling or disposal.

(f) Solid wastes generated during FCI/FPC operation shall be stored in enclosed dumpsters or roll off containers in accordance with institution policies and procedures until collected and transported for recycling or final disposal.

10. Transportation

(a) A Traffic Safety and Maintenance Plan shall be developed prior to construction. The plan shall identify optimum vehicle routing during construction including permissible traffic movements along KY 588 and KY 160, vehicle height and weight limitations, and the need for temporary detours or lane closures to avoid damaging roadways.

(b) Construction schedules and activities shall be communicated and coordinated with the appropriate Commonwealth of Kentucky and Letcher County law enforcement and transportation agencies so traffic safety is maintained and any disruptions to normal traffic operations are minimized.

11. Air Quality

(a) Best management practices shall be implemented during construction including covering and/or periodically wetting exposed soil, material stockpiles, and other unpaved surfaces; providing dust control measures during weekends, after hours, and prior to daily start-up of construction activities; operating equipment in accordance with manufacturer's specifications; and limiting unnecessary idling of diesel-powered engines among other measures.

(b) Design and construction shall follow applicable regulations with permit(s) obtained from the Kentucky

Department for Environmental Protection, Division for Air Quality for air emission sources.

(c) Electric charging stations shall be provided for dedicated on-site government vehicles with additional infrastructure installed for future charging stations for employee and visitor electric powered vehicles.

(d) Design and construction of facilities shall apply the appropriate codes and incorporate features to minimize the potential for radon to accumulate in concentrations exceeding U.S. Environmental Protection Agency action levels.

12. Noise

(a) Construction activities shall be confined to normal working hours to the extent feasible.

(b) Construction equipment shall be equipped with appropriate noise attenuation devices and be maintained and operated in accordance with manufacturers specifications.

(c) Material and equipment staging areas and haul routes would be placed away from property boundaries to minimize potential for off-site noise impacts.

13. Climate

(a) FBOP shall pursue the sustainable green building certification program Leadership in Energy and Environmental Design including use of low volatile organic compound (VOC) materials, elimination of ozone depleting gases, and other conservation measures.

(b) FBOP shall consider Executive Order 13693, Planning for Federal Sustainability in the Next Decade, Executive Order 14057, Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, Council on Environmental Quality's Final NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions and other applicable executive orders and regulations during FCI/FPC design and construction.

VI. Decision

Based on consultations with federal, Commonwealth of Kentucky, and local regulatory agencies; consideration of potential environmental consequences; current operational, security, and management needs for the Mid-Atlantic Region; public comments on the 2024 DEIS and FEIS; and having been apprised of the material and information contained in previous technical studies, the FBOP has decided to select development of a new FCI and FPC at the Roxana Site in Letcher County as the

Preferred Alternative as summarized above and described in detail within the 2024 FEIS. Development of the proposed project at the Roxana Site in Letcher County is contingent on the availability of funding sufficient to proceed.

VII. Rationale

The FBOP's decision is based on the following:

The condition of facilities, infrastructure, and equipment is critical to effective correctional facility operation and security. As a result of their continuous use, facilities, infrastructure, and equipment require frequent maintenance and repairs, large-scale upgrades and renovations, and in select cases, complete replacement. With over 50 percent of all federal correctional facilities developed prior to 1991, and many facing a substantial backlog of Modernization and Repair (M&R) work, the challenge confronting the FBOP to continue achieving its mission with aging and obsolete institutions is formidable.

Coinciding with the need for modern facilities and infrastructure, Congress directed the FBOP to conduct investigations leading to development of a new federal correctional facility in Letcher County, Kentucky. The decision to develop a new FCI and FPC at the Roxana Site in Letcher County is based on the many detailed investigations conducted by the FBOP and demonstrates compliance with Congress' directive while best meeting the FBOP's goals and objectives. Because implementation of this alternative would have fewer adverse impacts on the human and natural environments, the FBOP considers it to be the Preferred Alternative.

Construction of the proposed FCI/FPC at the Roxana Site will result in short-term, temporary impacts including increased noise levels, fugitive dust emissions, soil erosion, traffic volumes, and fuel consumption with the associated air emissions. Permanent and significant impacts to topography, geology and soils would also occur from construction with permanent and less than significant impacts anticipated to land use, community facilities and services, transportation and traffic, visual and aesthetic resources, air quality, cultural resources, noise, utility services, water resources, biological resources, and hazardous materials, as defined by NEPA.

While construction and operation of the proposed FCI/FPC at the Roxana Site will cause unavoidable impacts, activities involving construction and operation shall comply with applicable

federal statutes, implementing regulations, Executive Orders, and other consultation, review, and permit requirements. Unavoidable adverse impacts to natural and manmade resources will be controlled, reduced, or eliminated by the avoidance, minimization, and mitigation measures identified in Section V (Avoidance, Minimization, and Mitigation Measures) of this ROD.

The FBOP will implement a Monitoring and Enforcement Program (MEP) to ensure that the proposed avoidance, minimization, and mitigation measures documented within this ROD are implemented. The MEP will identify the timing, responsibility, and method of implementation of the proposed measures, as well as any required monitoring and enforcement activities. As part of the program, each project contractor will be required to implement the mitigation measures arising from its project activities with the FBOP or its authorized agencies overseeing, inspecting and monitoring the measures to ensure compliance. The FBOP will be responsible for any mitigation measures required as part of FCI/FPC operation. The FBOP will maintain the MEP throughout project implementation and will include the MEP in the project administrative record. Any on-going obligations will be the responsibility of the FBOP.

Development of the proposed FCI/FPC at the Roxana Site will result in beneficial impacts by adding a modern new correctional facility to the federal prison system. In doing so, the local and regional economies will benefit from the addition of 325 permanent workers and new annual wages and salaries of \$43 million along with \$14 million in annual expenditures for supplies, equipment, utilities, and other goods and services necessary for operation. The estimated \$57 million annual operating budget is also expected to indirectly support additional private sector employment in Letcher County and throughout southeastern Kentucky. The region has experienced declining populations and slow or no economic growth which makes development of the proposed FCI/FPC attractive and consistent with the socioeconomic goals and objectives expressed by Letcher County leaders and representatives.

The FBOP will rely upon the Letcher County Water and Sewer District for the provision of water supply and wastewater treatment services along with other providers for electric power, natural gas, telecommunications, and solid waste collection services. Positive economic benefits will also accrue to those utility providers from supplying

such services. The necessity for utility service upgrades, extensions and related improvements will be communicated and coordinated with all appropriate agencies.

Prior to making this decision, the FBOP carefully considered comments received following the publication of the 2024 DEIS and FEIS. The comments and responses thereto are hereby acknowledged and measures to avoid, minimize, and mitigate potential adverse impacts are documented within Section V of this ROD. The FBOP has also carefully considered potential environmental justice impacts of the Proposed Action as discussed in the 2024 FEIS, together with comments concerning environmental justice submitted during the DEIS and FEIS process. As documented in the 2024 FEIS, the FBOP has determined that the Proposed Action will not result in either a disparate or significantly adverse impact to low-income or minority populations to which Executive Order 12898 is applicable.

VIII. Conclusion

After consulting with FBOP staff and being appraised of material in the 2024 DEIS and FEIS and visiting Letcher County in August 2024, it is the decision of the undersigned that the FBOP select the Roxana Site for land acquisition and the development of a FCI and FPC in Letcher County.

Colette S. Peters,

Director, Federal Bureau of Prisons.

[FR Doc. 2024-24948 Filed 10-25-24; 8:45 am]

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MERIT SYSTEMS PROTECTION BOARD

Performance Review Board Membership

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The Merit Systems Protection Board announces the appointment of the members of its Senior Executive Service Performance Review Board. This notice supersedes all previous notices regarding the Performance Review Board membership.

DATES: These appointments are effective October 28, 2024.

FOR FURTHER INFORMATION CONTACT:

Pervis Lee, Director of Human Resources, Merit Systems Protection Board, 1615 M Street NW, Washington, DC 20419; telephone: (771) 210-1492; or email: pervis.lee@mspb.gov.

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Record of Decision; Proposed Development of a New Federal Correctional Institution and Federal Prison Camp-Letcher County, Kentucky

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I. Introduction

This Record of Decision (ROD) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, documents the decision regarding the proposal by the United States (U.S.) Department of Justice (DOJ), Federal Bureau of Prisons (FBOP) to acquire properties totaling approximately 500 acres in area in order to construct and operate a new Federal Correctional Institution (FCI) and Federal Prison Camp (FPC) in Letcher County, Kentucky. The ROD describes the alternatives considered and the rationale for selecting the chosen alternative.

The purpose of this ROD is to publish the Agency's decision with respect to the environmental review process. The decision is based on information and analysis contained in the Draft Environmental Impact Statement (DEIS) issued March 1, 2024, and the Final EIS (FEIS) issued July 12, 2024, together with various technical studies, other EISs conducted since 2015, and comments and input received from federal and state agencies, elected officials, organizations, and individuals.

II. Background

The mission of the FBOP is for corrections professionals to foster a humane and secure environment and ensure public safety by preparing individuals for successful re-entry into society. Congress, in 2006, directed the FBOP to initiate investigations leading to development of a new federal correctional facility in Letcher County, Kentucky (see H.R. Rep. No. 109-272 that accompanies Pub. L. 109-108 (<https://www.govinfo.gov/link/plaw/109/public/108>)). In response, the FBOP has conducted a wide range of technical investigations and feasibility studies to comply with Congress' directive including publication of a DEIS (2015), FEIS (2015), Revised FEIS (2016), Draft Supplemental Revised FEIS (2017), Final Supplemental Revised FEIS (2017) and Record of Decision (2018) with each prepared in support of development of a new high-security United States Penitentiary (USP) and FPC in Letcher County.

In July 2019, the Acting FBOP Director Hugh J. Hurwitz withdrew the 2018 ROD based on new cost and Adults in Custody (AIC) population trend information that came to light, which may have been relevant to the environmental analysis for the Proposed Action. The FBOP has continuously evaluated its current and projected future AIC populations and determined that the need to house medium-security AIC in the Mid-Atlantic Region supersedes the need to house high-security AIC. Since the design, construction, and

operation of a high-security USP differs from a medium-security FCI, the potential environmental impacts of its development and operation would also be different. As a result of the 2018 ROD being withdrawn, the FBOP undertook new evaluations and analyses in accordance with current Council on Environmental Quality and NEPA guidelines, DOJ procedures for implementing NEPA, and other federal regulations as part of preparation of a new DEIS. The FBOP published a DEIS on March 1, 2024, and a FEIS on July 12, 2024, to develop a new FCI in Letcher County, Kentucky to meet its immediate and long-term needs.

III. Purpose and Need for the Project

The purpose and need for developing the proposed FCI and FPC was determined by the growing number of aged and obsolete federal correctional facilities, which are no longer cost-effective or sustainable to operate and maintain. The FBOP is responsible for all aspects of facility and infrastructure operations, maintenance, repairs, and renovations including interior and exterior finishes; roofs and structural systems; perimeter fences and other security measures; mechanical, electrical, plumbing, lighting, and utility systems; communication equipment, and fire protection and life safety systems. The condition of facilities, infrastructure, and equipment is critical to effective correctional (print page 85561) facility operation and security. This is the case with the federal prison system where facilities and infrastructure are in continuous use and require frequent maintenance ranging from routine inspections and repairs to large-scale upgrades, renovations, and replacements. Of the FBOP's many institutions, 62 were developed between 1890 and 1991, 55 institutions were developed between 1992 and 2007, and five were developed since 2008.

The FBOP proposes to acquire approximately 500 acres in Letcher County to construct and operate a modern new FCI, FPC, and ancillary facilities to meet the need to house medium- and minimum-security AIC in the Mid-Atlantic Region. Ancillary facilities would include a central utility plant, garage/landscape building, outside warehouse, staff training building and outdoor firing range, water storage tank, access drive, and internal roadways and parking lots. The proposed FCI would be designed to house 1,152 medium-security AIC with the FPC designed to house 256 minimum-security AIC for a total population of 1,408 AIC.

IV. Alternatives Considered

A. No Action Alternative

The No Action Alternative is defined as a decision by the FBOP not to proceed with the Proposed Action, thereby precluding development of a new FCI/FPC to house a portion of the federal AIC population in the Mid-Atlantic Region and maintaining the status quo.

Adopting the No Action Alternative would avoid the potential short-term, temporary impacts associated with FCI/FPC construction, among them increased noise levels, fugitive dust emissions, soil erosion, fuel consumption with the associated air emissions, and traffic volumes. Adopting the No Action Alternative would also avoid the potential permanent impacts to land use, biological resources, utility services, visual and aesthetic resources, and traffic volumes associated with FCI/FPC construction and operation. Implementation of the No Action Alternative, however, would result in the loss of positive benefits including contributing to achieving the mandates of Congress; the need for modern, secure, efficient and cost-effective institutions; the societal benefits derived from efficient operation of the federal criminal justice system; and the economic and employment opportunities which would become available as a result of FCI/FPC development.

The FBOP has a need for modern and secure correctional facilities and infrastructure nationwide. With increasing numbers of federal correctional facilities becoming outdated, physically and operationally obsolete, and costly to operate and maintain, the FBOP is required to continuously improve the system's infrastructure through repair and renovation of existing facilities when possible and construction of new institutions when necessary. The No Action Alternative does not meet the purpose and need for the Proposed Action and has been eliminated from consideration.

B. Letcher County Alternatives

In 2006, Congress directed the FBOP to initiate various investigations for development of a new federal correctional institution in Letcher County, Kentucky. In conformance with that directive, the FBOP has focused its attention and resources upon the 339-square-mile area comprising Letcher County at the exclusion of other areas of the Mid-Atlantic Region and the U.S. as a whole.

Planning for a new federal correctional facility began in earnest in 2008. At that time, FBOP officials began familiarizing themselves with Letcher County by gathering technical information and engaging elected officials, federal, state and local governmental agencies, members of the business community, leaders of educational and health care institutions, utility providers, and others knowledgeable of local conditions affecting development. With assistance from community members, the process of identifying prospective sites began with a focus on physical conditions and characteristics influencing development in Letcher County along with the availability of public services and infrastructure. Candidate sites were identified on the basis of initial development requirements:

- Sufficient land area to accommodate the institution and a buffer zone between the facility and neighboring properties.
- Relatively level building sites or properties that could be altered to accommodate development.
- Ability to avoid sensitive environmental resources including floodplains, wetlands, threatened and endangered species habitats, and cultural and historic resources.
- Avoidance of potential conflicts with adjoining or nearby land uses.
- Availability of utility and transportation infrastructure.
- Willingness of owners to consider a sale of their property.

Sites that satisfied these initial requirements were evaluated further by applying increasingly rigorous criteria to ensure that all issues or potential issues are adequately addressed. Sites that appear suitable on the basis of the initial evaluations were subjected to in-depth analysis and documented in the form of EISs and other technical studies.

1. IDENTIFICATION OF ALTERNATIVE SITES

After the FBOP's site requirements were shared with Letcher County representatives, four candidate sites—Meadow Branch, Payne Gap, Roxana, and Van/Fields sites, were made available for evaluation for possible acquisition and development. All four sites are located in proximity of the City of Whitesburg (Letcher County seat).

The FBOP conducted a Site Reconnaissance Study (2008) to determine the suitability of each for development. Based on the results of the Site Reconnaissance Study, the FBOP determined that the four sites should be studied further in the form of a Feasibility Study.

Completed in 2011, the Feasibility Study assessed cultural resources, wetlands, geologic conditions, and infrastructure availability and provided in-depth analyses of each site while identifying constraints that could eliminate a site from further consideration.

While conducting the Feasibility Study, the offer to consider the Meadow Branch site was withdrawn and the site was dropped from consideration. For the remaining sites, various technical studies were conducted. However, as the Feasibility Study neared completion, the Van/Fields site owners were no longer interested in selling the property, necessitating its removal from consideration. The remaining two sites, Payne Gap and Roxana, were considered viable alternatives and were the subject of a DEIS published in February 2015 and subsequent EISs published between July 2015 and September 2017.

2. SEARCH FOR OTHER ALTERNATIVE SITES

During the development of the current EIS the FBOP conducted another search in Letcher County for sites that would be suitable for development based on the siting criteria. The site search, undertaken from June to November 2022, revealed small pockets of relatively level topography scattered throughout the county. Many of these locations comprise previous surface mines, which were reclaimed after the mineral deposits were extracted and are (□ print page 85562) being redeveloped for housing and small-scale warehouse and light industrial uses as well as golf courses and other recreational uses. In addition to areas where the surface extraction of coal took place, large tracts of land in Letcher County were subjected to underground coal mining, which depending upon the depth of the mines and mining methods, rendered such lands equal to or less suitable than the Roxana and Payne Gap sites.

Many of the sites reviewed in 2022 were located within lower elevations and adjoining or near streams and rivers that are susceptible to flooding during severe weather events. No properties examined in 2022 were found sufficiently level and unencumbered to accommodate the proposed development without significant topographic alterations and the associated environmental impacts.

In addition to a site's physical characteristics, the interest and cooperation of property owners is another key factor in determining a site's potential for FBOP use. During the initial planning phase, the FBOP seeks out owners willing to negotiate a sale of their holdings thereby avoiding other methods of property acquisition. In 2022, inquiries and outreach were made to several property owners to ascertain their willingness to discuss

their land holdings; however, none of the property owners approached showed any interest in participating in such a discussion. As a result, the effort to identify other alternative locations in Letcher County for development of the proposed project ended in favor of continuing to consider the Payne Gap and Roxana sites as alternatives.

3. ALTERNATIVE LOCATION, PAYNE GAP SITE

This alternative involves acquisition of approximately 753 acres known as the Payne Gap Site and located 11 miles east of Whitesburg. The site is situated on a steeply sloping upland landform above the Kentucky River at its confluence with the Laurel Fork. U.S. Route 119 is located along the north end of the site and would be the means of vehicular access. The site is covered by secondary growth forests and portions of the original topography have been altered by past mining activities with spoil piles, unpaved roads, and fill piles covering the site. Mining permit applications indicate both surface and underground mining operations dating to the 1950s have occurred within the site. Summer roosting habitat and winter hibernaculum for the endangered northern long eared bat have also been identified at the Payne Gap Site.

To accommodate development approximately 300 acres of the Payne Gap Site would require extensive rock and spoil excavation and fill material to level and prepare the site for development. While site preparation would require the removal of mine spoil, there are no slurry ponds or coal mine waste facilities located on or near the Payne Gap Site and no active mining is occurring on site.

4. ALTERNATIVE LOCATION, ROXANNA SITE

This alternative involves acquisition of approximately 500 acres known as the Roxana Site and located 10 miles west of Whitesburg. Much of the site consists of relatively steep terrain with similarly steep terrain extending beyond the site boundaries to the north and south. However, portions of the original topography have been altered by past mining activities rendering the central portion of the site relatively level. The site is also covered by secondary growth forests which have occurred since surface mining ended. Mining permit applications indicate mining operations dating to the 1960s have occurred within the site.

To accommodate development, approximately 200 acres of the site would require extensive excavation of spoil material and lesser amounts of structural fill and spoil fill. Preparation of the site for construction activities would also require dynamic compaction,

clearing and alteration of previously mined areas, and forest clearing. Excavations would include the removal of mine spoil. No slurry ponds or coal mine waste facilities are located on or within two miles of the Roxana Site and no active mining is occurring on site.

C. Preferred Alternative

Development of the proposed medium-security FCI and minimum-security FPC at the Roxana Site is considered the Preferred Alternative as it best meets the project needs and, on balance, would have fewer impacts to the human environment. Threatened and endangered species habitat was also a factor in the identification of the Preferred Alternative with development at the Payne Gap Site potentially impacting a significant amount of summer roosting habitat versus the amount that would be affected at the Roxana Site. Development at the Payne Gap Site would also have significant impacts to wastewater and natural gas infrastructure, while the Roxana Site would have less than significant impacts to utility infrastructure.

Based upon these and other potential environmental impacts applicable to each site, including wetlands and stream impacts and significantly greater site preparation required for the Payne Gap Site, development of the proposed project at the Roxana Site has been determined by the FBOP to be the Preferred Alternative. The Preferred Alternative meets the project objectives, is technically feasible, would have fewer natural resource and other environmental impacts, and incorporates measures to avoid or minimize environmental impacts to the extent practicable. Reinforcing the Roxana Site as the Preferred Alternative is the preference expressed by Letcher County's elected representatives, community leaders, members of local institutions and businesses to developing the proposed correctional facility at the Roxana Site.

V. Avoidance, Minimization, and Mitigation Measures

Based on the findings represented by the DEIS and FEIS (2024), the FBOP shall implement the avoidance, minimization, and mitigation measures described below to lessen the potential adverse environmental impacts associated with the Preferred Alternative. With regards to socioeconomic considerations, southeastern Kentucky in general, and Letcher County in particular, has experienced steady declines in population, commercial activity, and other social and economic indices. Expanded employment and economic opportunities arising from FCI/FPC development are considered beneficial to achieving the social and economic goals of Letcher County and the surrounding region. The

Preferred Alternative is also not expected to result in adverse impacts to Environmental Justice populations, therefore, mitigation measures for social, economic, and Environmental Justice are not warranted.

1. Topography, Geology, Soils, and Hydrology

(a) Earthwork and related ground disturbance shall be minimized by developing the FCI/FPC in a compact, campus-style arrangement thereby limiting the area subject to disturbance.

(b) To the degree feasible, site preparation activities would only disturb areas necessary for the current phase of construction.

(c) Engineering studies of surface and subsurface conditions shall be conducted to ensure appropriate standards and sound building practices are specified prior to construction. Risks associated with seismic activity and measures to minimize such risks shall (□ print page 85563) be addressed during design and construction.

(d) A Soil Erosion and Sediment Control Plan (E&S Control Plan) shall be prepared describing measures for controlling erosion and sedimentation during construction. Attention would be directed toward erosion potential and other engineering characteristics of rocks, spoil material, and soils to be encountered during construction. The E&S Control Plan shall be submitted to the Kentucky Department of Environmental Protection, Division of Water for approval prior to implementation.

(e) During construction, erosion control measures would be inspected and replaced or repaired as required. Erosion control measures to be maintained following construction shall include lawns and landscaping, discharge pipe aprons, pipe outlet channels, and similar controls.

(f) To ensure safe and secure operation of the FCI/FPC during a severe weather event, the FBOP shall prepare an Adverse Weather Plan and Institution Evacuation Plan that will, among other things, define the food and other provisions, emergency equipment, fuel, and similar necessities to be stockpiled on-site at all times to maintain uninterrupted operation and safeguard AICs and FBOP employees who would remain at their posts for the duration of the severe weather event and its aftermath.

2. Water Resources

(a) A Clean Water Act, Section 404 permit application shall be prepared to document potential impacts and mitigation measures for review and approval by the U.S. Army Corps of Engineers. It is anticipated that mitigation shall consist of payment into the in-lieu fee mitigation program managed by the Kentucky Department of Fish and Wildlife Resources.

(b) A Stormwater Pollution Prevention Plan (SWPPP) shall be prepared addressing temporary and permanent surface water and stormwater management controls. The SWPPP shall be submitted to the Kentucky Department of Environmental Protection, Division of Water for review and approval prior to implementation.

(c) In accordance with the SWPPP, stormwater collection infrastructure shall be installed to control runoff by directing stormwaters into basins to attenuate the intensity of the flow and to allow suspended solids in the stormwater to settle out prior to discharge to receiving streams.

(d) A Groundwater Protection Plan shall be prepared describing temporary and permanent groundwater protection measures and submitted to the Kentucky Department of Environmental Protection, Watershed Management Branch, Groundwater Section for review and approval prior to implementation.

3. Biological Resources

(a) Impacts to common vegetation and wildlife during construction shall be minimized by limiting the area of disturbance to the extent possible. Upon completion of construction, disturbed areas would be re-vegetated with native plant species.

(b) Under the Conservation Memoranda of Agreement with U.S. Fish and Wildlife Service, the FBOP shall contribute to the Imperiled Bat Conservation Fund as compensatory mitigation for potential adverse effects on special status bat species.

(c) FBOP shall review, revise and update as necessary, and resubmit its Biological Assessment to reinitiate formal consultations with the U.S. Department of the Interior, Fish and Wildlife Service (USFWS) under Section 7 of the Endangered Species Act. FBOP shall ensure that the FCI/FPC project is implemented as documented in the updated Biological Assessment and subsequent updated Biological Opinion (BO) to be issued by USFWS.

(d) Conservation measures documented in the Biological Assessment shall be incorporated in project design and construction including: avoiding tree removal during June and July and blasting from November 15 through March 31; conduct construction activities from April 15 through October 31 in suitable Indiana bat and/or northern long-eared bat habitat during daylight hours; require vehicles and equipment to be inspected to remove visible plant and seed material prior to entering the project area; and fence off potential bat hibernacula and install warning signs around the area to prevent disturbance.

4. Cultural Resources

(a) A minimum 100-foot buffer from all development shall be maintained around the Frazier Cemetery (Kentucky Historical Society, Site 15Lr115).

(b) If improvements are necessary to KY 160 and/or KY 588 which result in Adverse Effects on National Register-eligible resources, consultations shall be undertaken with the Kentucky State Historic Preservation Office, Native American Tribes, the Advisory Council on Historic Preservation, and other appropriate organizations. Based on the potential impacts and results of the consultations, measures to mitigate for Adverse Effects shall be determined, agreed upon, and implemented as appropriate.

5. Hazardous Materials

(a) Locations of petroleum extraction-related releases at the compressor station, the damaged aboveground storage tank (AST), and the AST open drain valve shall be tested to identify contaminated soils with necessary remediation conducted in compliance with applicable regulations of the Kentucky Department of Environmental Protection, Hazardous Waste Branch.

(b) Contaminated soils shall be disposed of only at permitted disposal facilities.

(c) Remediation reports and records shall be submitted to the Kentucky Department of Environmental Protection, Hazardous Waste Branch in accordance with applicable regulations.

(d) Construction materials considered hazardous shall be stored and handled in accordance with applicable environmental, public safety, and occupational health regulations to prevent polluting soil, surface waters, or groundwater. Storage of hazardous materials shall be minimized or avoided where practicable.

(e) Staging areas shall be established prior to construction for the temporary storage and handling of hazardous materials. Liquid storage areas shall be provided with secondary containment systems. Stored materials shall be removed from designated areas by authorized personnel only and recorded by personnel overseeing construction.

(f) FCI/FPC operation shall adhere to applicable regulations governing the handling, storage, and disposal of hazardous wastes.

(g) Biohazardous medical wastes shall be stored, collected and disposed of in accordance with institution policies and procedures and applicable regulations.

6. Visual and Aesthetic Resources

(a) Development shall be directed towards the central portion of the site in a compact, campus-style arrangement that limits visual and physical presence from neighboring properties while allowing for the majority of the site's forests, understory, and topography to remain undisturbed.

(b) Design features that are sensitive to the site's visual environment shall be employed including developing structures that are primarily one and two stories in height and unobtrusive to the degree possible.

(c) Buffer areas consisting of forest stands and other vegetation shall be maintained between the facility and its security perimeter and neighboring (□ print page 85564) properties to maintain visual compatibility.

(d) Outdoor lighting shall comply with FBOP Technical Design Guidelines (Section 26 25 00 –Exterior Lighting) including NFPA 70–National Electric Code; NFPA 101–Life Safety Code; IESNA–Lighting Handbook, Reference, and Application; the American Correctional Association; and the Buy American Act.

(e) Measures to limit unwanted light shall be specified, including use of full cutoff luminaires for security, parking lot, roadway, and pathway lighting resulting in maximum downlighting and minimal upward dispersal of light to the sky.

(f) Low-reflective surface materials shall be specified where practical to minimize upward reflection of light.

(g) Access drive location and design shall be given careful attention including placement of directional signage and lighting fixtures leading to the FCI/FPC.

(h) Design, construction, and maintenance of all facilities and infrastructure shall adhere to a high standard.

7. Community Facilities and Services

(a) Construction and operating policies and procedures shall be communicated to and coordinated with the Letcher County Sheriff's Office, the Kentucky State Police, and local police departments and fire protection companies operating in Letcher County.

(b) Agreements shall be established with local emergency ambulance services in cases requiring an employee or AIC to be transported to an area medical facility.

(c) Agreements shall be established with area medical facility(s) for emergency care in cases involving employees and AIC.

8. Land Use

(a) Setbacks and buffer areas shall be established to achieve land use compatibility between the facility and neighboring properties.

(b) The distance and mountainous conditions separating Lilley Cornett Woods from the project site and the large undeveloped acreage surrounding the FCI/FPC shall ensure adverse land use impacts to Lilley Cornett Woods are avoided.

9. Utilities

(a) Development of the on-site water storage tank and distribution system shall follow applicable regulations with plans submitted to the Kentucky Department of Environmental Protection, Division of Water for review and approval prior to construction.

(b) Development of the on-site wastewater collection system shall follow applicable regulations with plans submitted to the Kentucky Department of Environmental Protection, Division of Water for review and approval prior to construction.

(c) Extension of electric power shall follow applicable regulations while avoiding service disruptions and maintaining effective worker safety practices and procedures.

(d) Permanent closure, abandonment, and/or relocation of on-site oil/natural gas wells and associated infrastructure shall comply with applicable regulations of the Kentucky Department of Natural Resources, Division of Oil and Gas.

(e) Construction wastes shall be stored on-site and transported to facilities permitted to accept such wastes for recycling or disposal.

(f) Solid wastes generated during FCI/FPC operation shall be stored in enclosed dumpsters or roll off containers in accordance with institution policies and procedures until collected and transported for recycling or final disposal.

10. Transportation

(a) A Traffic Safety and Maintenance Plan shall be developed prior to construction. The plan shall identify optimum vehicle routing during construction including permissible traffic movements along KY 588 and KY 160, vehicle height and weight limitations, and the need for temporary detours or lane closures to avoid damaging roadways.

(b) Construction schedules and activities shall be communicated and coordinated with the appropriate Commonwealth of Kentucky and Letcher County law enforcement and transportation agencies so traffic safety is maintained and any disruptions to normal traffic operations are minimized.

11. Air Quality

(a) Best management practices shall be implemented during construction including covering and/or periodically wetting exposed soil, material stockpiles, and other unpaved surfaces; providing dust control measures during weekends, after hours, and prior to daily start-up of construction activities; operating equipment in accordance with manufacturer's specifications; and limiting unnecessary idling of diesel-powered engines among other measures.

(b) Design and construction shall follow applicable regulations with permit(s) obtained from the Kentucky Department for Environmental Protection, Division for Air Quality for air emission sources.

(c) Electric charging stations shall be provided for dedicated on-site government vehicles with additional infrastructure installed for future charging stations for employee and visitor electric powered vehicles.

(d) Design and construction of facilities shall apply the appropriate codes and incorporate features to minimize the potential for radon to accumulate in concentrations exceeding U.S. Environmental Protection Agency action levels.

12. Noise

(a) Construction activities shall be confined to normal working hours to the extent feasible.

(b) Construction equipment shall be equipped with appropriate noise attenuation devices and be maintained and operated in accordance with manufacturers specifications.

(c) Material and equipment staging areas and haul routes would be placed away from property boundaries to minimize potential for off-site noise impacts.

13. Climate

(a) FBOP shall pursue the sustainable green building certification program Leadership in Energy and Environmental Design including use of low volatile organic compound (VOC) materials, elimination of ozone depleting gases, and other conservation measures.

(b) FBOP shall consider Executive Order 13693 ([/executive-order/13693](#)), Planning for Federal Sustainability in the Next Decade, Executive Order 14057 ([/executive-order/14057](#)), Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability, Council on Environmental Quality's Final NEPA Guidance on Consideration of the Effects of Climate Change and Greenhouse Gas Emissions and other applicable executive orders and regulations during FCI/FPC design and construction.

VI. Decision

Based on consultations with federal, Commonwealth of Kentucky, and local regulatory agencies; consideration of potential environmental consequences; current operational, security, and management needs for the Mid-Atlantic Region; public comments on the 2024 DEIS and FEIS; and having been apprised of the material and information contained in previous technical studies, the FBOP has decided to select development of a new FCI and FPC at the Roxana Site in Letcher County as the ([□ print page 85565](#)) Preferred

Alternative as summarized above and described in detail within the 2024 FEIS.

Development of the proposed project at the Roxana Site in Letcher County is contingent on the availability of funding sufficient to proceed.

VII. Rationale

The FBOP's decision is based on the following:

The condition of facilities, infrastructure, and equipment is critical to effective correctional facility operation and security. As a result of their continuous use, facilities, infrastructure, and equipment require frequent maintenance and repairs, large-scale upgrades and renovations, and in select cases, complete replacement. With over 50 percent of all federal correctional facilities developed prior to 1991, and many facing a substantial backlog of Modernization and Repair (M&R) work, the challenge confronting the FBOP to continue achieving its mission with aging and obsolete institutions is formidable.

Coinciding with the need for modern facilities and infrastructure, Congress directed the FBOP to conduct investigations leading to development of a new federal correctional facility in Letcher County, Kentucky. The decision to develop a new FCI and FPC at the Roxana Site in Letcher County is based on the many detailed investigations conducted by the FBOP and demonstrates compliance with Congress' directive while best meeting the FBOP's goals and objectives. Because implementation of this alternative would have fewer adverse impacts on the human and natural environments, the FBOP considers it to be the Preferred Alternative.

Construction of the proposed FCI/FPC at the Roxana Site will result in short-term, temporary impacts including increased noise levels, fugitive dust emissions, soil erosion, traffic volumes, and fuel consumption with the associated air emissions. Permanent and significant impacts to topography, geology and soils would also occur from construction with permanent and less than significant impacts anticipated to land use, community facilities and services, transportation and traffic, visual and aesthetic resources, air quality, cultural resources, noise, utility services, water resources, biological resources, and hazardous materials, as defined by NEPA.

While construction and operation of the proposed FCI/FPC at the Roxana Site will cause unavoidable impacts, activities involving construction and operation shall comply with applicable federal statutes, implementing regulations, Executive Orders, and other

consultation, review, and permit requirements. Unavoidable adverse impacts to natural and manmade resources will be controlled, reduced, or eliminated by the avoidance, minimization, and mitigation measures identified in Section V (Avoidance, Minimization, and Mitigation Measures) of this ROD.

The FBOP will implement a Monitoring and Enforcement Program (MEP) to ensure that the proposed avoidance, minimization, and mitigation measures documented within this ROD are implemented. The MEP will identify the timing, responsibility, and method of implementation of the proposed measures, as well as any required monitoring and enforcement activities. As part of the program, each project contractor will be required to implement the mitigation measures arising from its project activities with the FBOP or its authorized agencies overseeing, inspecting and monitoring the measures to ensure compliance. The FBOP will be responsible for any mitigation measures required as part of FCI/FPC operation. The FBOP will maintain the MEP throughout project implementation and will include the MEP in the project administrative record. Any on-going obligations will be the responsibility of the FBOP.

Development of the proposed FCI/FPC at the Roxana Site will result in beneficial impacts by adding a modern new correctional facility to the federal prison system. In doing so, the local and regional economies will benefit from the addition of 325 permanent workers and new annual wages and salaries of \$43 million along with \$14 million in annual expenditures for supplies, equipment, utilities, and other goods and services necessary for operation. The estimated \$57 million annual operating budget is also expected to indirectly support additional private sector employment in Letcher County and throughout southeastern Kentucky. The region has experienced declining populations and slow or no economic growth which makes development of the proposed FCI/FPC attractive and consistent with the socioeconomic goals and objectives expressed by Letcher County leaders and representatives.

The FBOP will rely upon the Letcher County Water and Sewer District for the provision of water supply and wastewater treatment services along with other providers for electric power, natural gas, telecommunications, and solid waste collection services. Positive economic benefits will also accrue to those utility providers from supplying such services. The necessity for utility service upgrades, extensions and related improvements will be communicated and coordinated with all appropriate agencies.

Prior to making this decision, the FBOP carefully considered comments received following the publication of the 2024 DEIS and FEIS. The comments and responses thereto are hereby acknowledged and measures to avoid, minimize, and mitigate potential adverse impacts are documented within Section V of this ROD. The FBOP has also carefully considered potential environmental justice impacts of the Proposed Action as discussed in the 2024 FEIS, together with comments concerning environmental justice submitted during the DEIS and FEIS process. As documented in the 2024 FEIS, the FBOP has determined that the Proposed Action will not result in either a disparate or significantly adverse impact to low-income or minority populations to which Executive Order 12898 (/executive-order/12898) is applicable.

VIII. Conclusion

After consulting with FBOP staff and being appraised of material in the 2024 DEIS and FEIS and visiting Letcher County in August 2024, it is the decision of the undersigned that the FBOP select the Roxana Site for land acquisition and the development of a FCI and FPC in Letcher County.

Colette S. Peters,

Director, Federal Bureau of Prisons.

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