IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

THE TOWN OF THURMOND, WEST VIRGINIA, a municipal corporation, and NEW RIVER GORGE HISTORICAL SOCIETY, a West Virginia nonprofit corporation,

Plaintiffs,

v.

Civil Action No. 2:26-cv-00739

ERIC G. LAPRICE, in his official capacity as Acting Superintendent, New River Gorge National Park and Preserve; and NATIONAL PARK SERVICE, an agency of the United States Department of the Interior,

Defendants.

VERIFIED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

The Town of Thurmond (the "Town" or "Thurmond") was once the railway epicenter of the New River coalfields. Its historic district was listed in the National Register of Historic Places in 1984. Thurmond lies within New River Gorge National Park and Preserve (the "Park"), and the National Park Service ("NPS") acquired most of the Town's property, including many of its historic buildings. For more than three decades, NPS told the Town, its residents, and the public that it would preserve, rehabilitate, and adaptively reuse those buildings so that Thurmond could serve as a heritage-tourism gateway to the Park.

NPS has now abandoned that commitment. After allowing the buildings to deteriorate while the Town itself mowed and maintained the grounds around them, NPS approved the demolition of historic structures in Thurmond. That decision departs, without acknowledgment or explanation, from NPS's own 1992 Thurmond Development Concept Plan and Interpretive Prospectus, its 2011 General Management Plan, and the 2022 Historic Resource Survey it

commissioned, each of which called for preservation, stabilization, and adaptive reuse of Thurmond's historic buildings in support of visitor use. The same demolition project also covers the Prince Brothers General Store in nearby Prince, an individually listed National Register property that NPS once planned to restore and interpret for the visiting public. NPS rejected leasing because the Park had no leasing program, and it never solicited lease proposals for these structures. On November 13, 2026, days before demolition is set to begin, NPS issued a Request for Proposals ("RFP") that offers only certain Dun Glen structures for lease and does not offer any of the Structures Set For Imminent Demolition (as defined below). NPS has not explained why leasing is feasible for some structures but not others, and it has not supplemented its environmental analysis.

NPS has also failed to follow the review process it agreed to under the Programmatic Agreement ("PA") governing this demolition. That agreement requires NPS to give each consulting party, including the Town, the draft demolition plans and schedule and 30 calendar days from receipt to comment, and to conduct each review so that comments are taken fully into account and the consulting parties are notified of how NPS responded to them. The review is not complete until that notice is given. NPS never provided the Town a complete demolition plan package, relying on West Virginia's State Historic Preservation Office to circulate the documents rather than doing so itself. NPS then circulated a materially revised demolition schedule on November 13, 2026—two days before the date NPS said the comment period would close. Neither the plans nor the schedule addresses the 10-ton weight limit on the only bridge into Thurmond or the closure of roads maintained by the Town.

Plaintiffs do not ask the Court to substitute its judgment for NPS's. They ask the Court to require NPS to honor its own plans and agreements, and to follow federal law, before taking

irreversible action. Accordingly, Plaintiffs the Town of Thurmond, West Virginia, and New River Gorge Historical Society (the "Historical Society" and, together with the Town, "Plaintiffs"), by and through the undersigned counsel, bring this action against Defendant Eric G. LaPrice, in his official capacity as Acting Superintendent, New River Gorge National Park and Preserve, and Defendant National Park Service, for violations of the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701–706; the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.*; and the National Historic Preservation Act ("NHPA"), 54 U.S.C. § 300101 *et seq.*, and state as follows:

PARTIES

1. Plaintiff Town of Thurmond is a municipal corporation organized under the laws of the State of West Virginia and located in Fayette County, West Virginia, with its offices at 174 Main Street, Thurmond, West Virginia 25936. The Town was incorporated in 1903. The Thurmond Historic District encompasses the town site, and most of the Structures Set For Imminent Demolition lie within or adjacent to the Town's corporate limits. The structures NPS approved for demolition in its Finding of No Significant Impact ("FONSI") that lie within or adjacent to the Town's limits also include the Tom Kelly House and the Dun Glen Building/Ranger Station. Decl. of Mayor Melanie Dragan ("Mayor Decl.") ¶¶ 3, 5 [Exhibit X].

2. The Town brings this action as a consulting party under Section 106 of the NHPA and the Programmatic Agreement described below. NPS accepted the Town as a consulting party for the challenged demolition. The Town participated in the public comment process, requested consulting-party status, and proposed leasing the structures as an alternative to demolition. The Town brings its claims under the APA, 5 U.S.C. § 702, as a party adversely affected and aggrieved by final agency action.

3. The Town has concrete interests in the Structures Set For Imminent Demolition (as defined in ¶ 56), including its historic character and identity, heritage tourism and the local economy, and the safety and use of its streets and roads, which demolition traffic and road closures will directly affect. As an accepted consulting party under the PA, which governs a single undertaking that includes every Structure Set For Imminent Demolition, including the Prince Brothers General Store, the Town also has an interest in NPS's compliance with the PA as to the entire undertaking. The Town has long advocated for preservation of the store, which is part of the region's heritage-tourism economy, and has done so throughout NPS's process. The Historical Society's interests, and those of its members, are described in ¶¶ 4-5. Plaintiffs' injuries are irreparable. Once demolished, the Structures Set For Imminent Demolition cannot be restored. Their loss will permanently diminish the integrity of the Thurmond Historic District, the Town's identity, and the Historical Society members' study, use, and enjoyment of these structures. Mayor Decl. ¶¶ 6, 10–13, 19 [Exhibit X].

4. Plaintiff New River Gorge Historical Society is a West Virginia nonprofit corporation, with its principal office in Thurmond, West Virginia. The Historical Society was founded in 2025, and it is committed to preserving, protecting, and uplifting the rich history, culture, and overlooked stories of the New River Gorge region, specifically working to safeguard the landmarks, landscapes, and voices that shaped this place while inspiring people today to take an active role in preserving its future. The Historical Society conducts interactive exhibits, community events, educational programming, and preservation and archival work for the New River Gorge region. Decl. of Dr. Jennings Berry ("Berry Decl.") ¶¶ 1–2 [Exhibit V-1]. The Historical Society brings this action on behalf of its members and, secondarily, on its own behalf, under the APA, 5 U.S.C. § 702, as a party adversely affected and aggrieved by final agency action.

5. The interests it seeks to protect in this action are germane to its purpose. Neither the claims asserted nor the relief requested—declaratory relief, vacatur, and injunctive relief—requires the participation of individual members. Demolition would also directly impede the Historical Society's core activities, because the Structures Set For Imminent Demolition are among the structures it studies, interprets, and intends to preserve. Berry Decl. ¶¶ 2, 6, 13 [Exhibit V-1]. The Historical Society's members include Dr. Jennings Berry, David T. Sibray, and J.D. Belcher. Berry Decl. ¶ 1; Decl. of David T. Sibray ("Sibray Decl.") ¶ 1; Decl. of J.D. Belcher ("Belcher Decl.") ¶ 1 [Exhibits V-1, V-2, V-3]. The Historical Society's members have concrete plans to use the affected structures themselves, not merely the surrounding region, for historical education. Berry Decl. ¶¶ 3–4, 11; Sibray Decl. ¶¶ 3, 7; Belcher Decl. ¶¶ 3, 5 [Exhibits V-1, V-2, V-3].

6. Defendant Eric G. LaPrice is the Acting Superintendent of New River Gorge National Park and Preserve, a unit of the National Park System administered by NPS, an agency of the United States Department of the Interior. Defendant LaPrice is responsible for the Park's implementation of the demolition decision, including the demolition schedule, the review of demolition plans under the Programmatic Agreement, and the Park's leasing program. He is sued in his official capacity only.

7. Defendant National Park Service is an agency of the United States Department of the Interior. NPS issued the FONSI, Proposed Demolition of Historic Structures (July 18, 2025), executed the PA, Regarding the Demolition of Historic Structures (Feb. 5, 2025), and administers the Park, including the Structures Identified by the FONSI. Defendants LaPrice and NPS are referred to collectively as "Defendants."

JURISDICTION AND VENUE

8. This Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because this action arises under the laws of the United States, including the APA, 5 U.S.C. §§ 701–706; NEPA, 42 U.S.C. § 4321 *et seq.*; and the NHPA, 54 U.S.C. § 300101 *et seq.*

9. The United States has waived sovereign immunity for Plaintiffs' claims in this action, which seeks relief other than money damages against an agency of the United States and an officer acting in his official capacity. 5 U.S.C. § 702.

10. The FONSI is a final agency action for which there is no other adequate remedy in a court. 5 U.S.C. § 704.

11. This Court may grant declaratory and injunctive relief, including a temporary restraining order and a preliminary injunction, under 28 U.S.C. §§ 2201–2202, 5 U.S.C. §§ 705–706, and Federal Rule of Civil Procedure 65(a)–(b).

12. Venue is proper in this District under 28 U.S.C. § 1391(e). Defendant LaPrice performs his official duties here, NPS administers the Park here, the events giving rise to the claims occurred here, the property at issue is located here, and Plaintiffs are located here.

REGULATORY FRAMEWORK

The Administrative Procedure Act

13. The APA directs a reviewing court to set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D). The APA also authorizes a court to "compel agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

14. Agency action is arbitrary and capricious where the agency relies on factors Congress did not intend it to consider, fails to meaningfully consider an important aspect of the

problem, offers an explanation that runs counter to the evidence before it, or changes position without acknowledging and explaining the change. *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v.* State Farm *Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515–16 (2009).

The National Historic Preservation Act

15. Section 106 of the NHPA requires a federal agency to "take into account the effect of the undertaking on any historic property." 54 U.S.C. § 306108. Its implementing regulations require consultation with the State Historic Preservation Officer ("SHPO"), consulting parties, and, where it participates, the Advisory Council on Historic Preservation ("ACHP"), and meaningful consideration of how to avoid, minimize, or mitigate adverse effects. 36 C.F.R. pt. 800.

16. An agency may satisfy Section 106 through a programmatic agreement under 36 C.F.R. §§ 800.6 and 800.14(b). Once executed, the agency must act in accordance with the agreement's terms. *See* 36 C.F.R. § 800.14(b). An agency that does not follow the agreement has not satisfied Section 106. Unlike a land-use plan's aspirational statements, a programmatic agreement is a signed agreement whose stipulations use mandatory "will" language.

17. Section 110 of the NHPA requires each federal agency to assume responsibility for the preservation of historic properties it owns or controls and to use historic properties available to it to the maximum extent feasible. 54 U.S.C. §§ 306101–306102.

18. Section 111 of the NHPA directs that any federal agency "shall, to the extent practicable, establish and implement alternatives (including adaptive use) for historic property that is not needed for current or projected agency purposes" and authorizes leasing of such property where the lease will adequately ensure its preservation. 54 U.S.C. § 306121.

The National Environmental Policy Act

19. NEPA, as the courts construe it, requires federal agencies to take a "hard look" at the environmental consequences of major federal actions before undertaking them, and to study, develop, and describe technically and economically feasible alternatives. 42 U.S.C. § 4332(2)(C), (F).

20. An agency's NEPA duties do not end with its initial analysis. "[I]f there remains 'major Federal action' to occur," the agency must take a hard look at significant new information and determine whether it will affect the quality of the human environment "in a significant manner or to a significant extent not already considered." *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371–74 (1989). As the Fourth Circuit has explained, "[a] federal agency's responsibilities under NEPA do not end with the preparation of an EIS. If an agency's plans change, or if the circumstances surrounding a project are altered, NEPA obligations may be triggered." *Hodges v. Abraham*, 300 F.3d 432, 439 (4th Cir. 2002). The Council on Environmental Quality removed its NEPA regulations, including former 40 C.F.R. § 1502.9 and §§ 1501.5–1501.6, effective April 11, 2025. 90 Fed. Reg. 10,610 (Feb. 25, 2025). The continuing duty therefore rests on NEPA itself, as construed in *Marsh* and *Hodges*, and on the APA.

21. Courts afford substantial deference to an agency's NEPA judgments, including on an environmental assessment. *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 183 (2025). That deference does not displace arbitrary-and-capricious review. Agency action must still be "reasonable and reasonably explained." *Id.* at 180. An agency that does not consider significant new information at all, or gives no explanation for declining to supplement its analysis, has not exercised the judgment to which deference is owed.

FACTS

Thurmond and the Thurmond Historic District

22. The Thurmond Historic District encompasses the entire town along the New River. Once the Chesapeake and Ohio Railway's chief railroad center for the southern West Virginia coalfields, Thurmond was listed in the National Register of Historic Places in 1984. The 1984 nomination documented 45 contributing structures, sixteen of which were considered pivotal structures of the highest importance to the district.[1] *See also* Mayor Decl. ¶ 4 [Exhibit X].

23. The district's significance lies in its association with the railroad and coal industries and in its surviving ensemble of railroad, commercial, and residential buildings. Those buildings include the larger houses built for railroad managers and professionals and the smaller houses built for rail-yard workers and laborers, arranged on the hillside above the railroad and commercial district.[2]

24. NPS's own studies rate Thurmond of the highest significance. Its 2005 Historic Resource Study assigned Thurmond its highest significance rating of "1" and recommended expansion, not reduction, of the National Register district,[3] and the Park's 2011 Foundation Plan identifies "associated towns, such as Thurmond, developed to support the railroad," as fundamental resources and values of the Park.[4]

25. The Prince Brothers General Store is in Prince, West Virginia, immediately adjacent to State Route 41 on the north side of the New River. The store was individually listed in the National Register of Historic Places in 1986. Its nomination describes it as "the last surviving

[1]NPS, Revised Environmental Assessment, Proposed Demolition of Historic Structures (Apr. 2025) ("Revised EA"), at 26–27 [Exhibit A]; FONSI app. B, at B-3 [Exhibit B].
[2]Revised EA at 26 [Exhibit A].
[3]W. Va. Univ. Inst. for the History of Tech. & Indus. Archaeology, New River Gorge National River Historic Resource Study (Aug. 2005) ("2005 HRS"), at 53 [Exhibit C].
[4]FONSI app. B, at B-2 [Exhibit B] (quoting NPS, New River Gorge National River Foundation Plan (2011), at 10–11 [Exhibit D]).

building of the New River coal field commercial businesses located along the New River."[5] The store is listed first among the historic structures proposed for demolition. NPS's Environmental Assessment ("EA") and Revised Environmental Assessment ("Revised EA") state that NPS installed an interior truss in the store in 2021 as an "extreme stabilization measure" and that the building's deterioration "outpaced" repairs.[6] Based on the Town's information and belief, that deterioration resulted substantially from NPS's failure to maintain the building's roof and drainage.

NPS's Acquisition of Thurmond and Its Repeated Commitments to Preserve It

26. Following the 1978 establishment of the New River Gorge National River, NPS acquired most of the historic properties in Thurmond.[7] Mayor Decl. ¶ 7 [Exhibit X].

27. Based on the Town's information and belief, including courthouse records and conversations with NPS and former residents, NPS acquired these properties from previous owners who sold them on the understanding that the structures would be preserved to interpret Thurmond's history. Numerous former residents and owners submitted public comments to this effect, and the Town's Mayor stated in public comments that residents were told their homes would become part of a historical museum.[8] *See also* Mayor Decl. ¶ 7 [Exhibit X].

28. In its 1992 Thurmond Development Concept Plan and Interpretive Prospectus, NPS selected an alternative to preserve, interpret, and economically revitalize Thurmond, including

[5]National Register of Historic Places Nomination, Prince Brothers General Store (NR 86000810) (1986) ("Prince Brothers Nomination") [Exhibit E].
[6]NPS, Environmental Assessment, Proposed Demolition of Historic Structures (Oct. 2024) ("EA"), at 21 [Exhibit F]; Revised EA at 21 [Exhibit A].
[7]NPS, General Management Plan, New River Gorge National River (2011) ("GMP"), at 134 [Exhibit G] ("town mostly owned by the NPS").
[8]NPS, PEPC Project 111561, Civic Engagement Correspondence (Dec. 15, 2023–Jan. 16, 2024) ("Civic Engagement Responses") [Exhibit H].

preservation and adaptive reuse of historic buildings for visitor services through leasing agreements.[9]

29. In the Park's General Management Plan ("GMP"), approved by a Record of Decision signed December 7, 2011, [Exhibit G-5] NPS selected Alternative 5 and committed that, in river gateways, historic structures "will be restored or rehabilitated and adaptively reused through the NPS historic leasing program for commercial and/or residential uses," and that representative structures to be rehabilitated would include "houses in Thurmond that remain in good condition."[10]

30. The GMP further directs NPS, for Thurmond, to "rehabilitate houses that are currently in good condition for reuse for park housing, park dormitory housing, or visitor lodging through the NPS historic leasing program" and to "restore other remaining historic structures (on the exterior only)." The GMP also provides that "[h]istoric buildings that are not rehabilitated will be stabilized and restored on the exterior only."[11]

31. The GMP establishes as a desired condition that "[h]istoric buildings and cultural landscapes are managed to produce income that offsets the cost of their ongoing maintenance," including by leasing historic buildings.[12]

32. Based on the Town's information and belief, the GMP has not been amended or revised to authorize the demolition of contributing structures in the Thurmond Historic District, and NPS has not explained why the demolition is consistent with it.

[9]NPS, Thurmond Development Concept Plan and Interpretive Prospectus (Sept. 1992) ("1992 DCP"), app. F, at 93–94 [Exhibit I].
[10]GMP at 93 [Exhibit G].
[11]GMP at 134 [Exhibit G].
[12]GMP, Parkwide Desired Condition 48 [Exhibit G].

33. Consistent with these plans, NPS and the Town have long worked together to develop Thurmond as a heritage-tourism destination. For more than forty years, the Town has sought meaningful input on NPS's plans for the structures. Multiple Superintendents have presented multiple plans, none of which came to fruition. Mayor Decl. ¶ 14 [Exhibit X].

NPS's Neglect of the Structures Set For Imminent Demolition

34. The Town's Mayor has observed the structures for approximately 58 years. Based on the Town's information and belief, many of the Structures Set For Imminent Demolition were in sound condition when NPS acquired them, and their present condition results substantially from NPS's failure to maintain them over the decades that followed. Mayor Decl. ¶ 8 [Exhibit X].

35. For approximately seventeen years, the Town has voluntarily mowed NPS-owned property in Thurmond, including the grounds of the McGuffin House, the McClung rental houses, the area near the Sidney Ward House, the Harold Smith House, the Charles Ashley driveways, and the Erskine Pugh House parking area. The Town has done so to reduce moisture, deter snakes and other wildlife from nesting, and limit invasive plants. When NPS employees lived in the McGuffin and McClung houses, mowing was the tenants' responsibility, using NPS-provided equipment that was frequently in disrepair; the Town stepped in to fill the gap. No NPS employee has lived in either house for approximately two years. While the Town maintained the grounds, NPS failed to maintain the buildings themselves. Mayor Decl. ¶ 9 [Exhibit X].

36. In June 2022, NPS's contractors, Bratslavsky Consulting Engineers, Inc. and Aurora Research Associates LLC, field-documented the thirteen contributing resources in the Thurmond Historic District under consideration for demolition. They reported in a November 2022 Historic Resource Survey Report that "[t]he majority of these resources were found to retain

integrity but were in need of basic maintenance including vegetation clearing, building envelope repairs and gutter cleaning/repair."[13]

37. The 2022 Survey identified only the Billy McGuffin Garage and the Phillip A. McClung House as "the most likely candidates for demolition based on lack of significance and integrity." It noted that the Erskine Pugh Rental House was in poor condition. It recommended "[p]reservation/stabilization . . . for the remainder of the buildings, starting with immediate repairs to keep water, vegetation, trespassers and animals out of the structures," along with a routine maintenance plan and a comprehensive management plan.[14]

38. The SHPO reviewed and concurred with the 2022 Survey in February 2023.[15]

39. Based on the Town's information and belief, NPS did not implement the 2022 Survey's recommended immediate stabilization measures for the structures it later designated for demolition.

The Environmental Assessment and the Rejection of Leasing

40. In December 2023, NPS issued a Pre-NEPA Overview Document proposing to remove 35 structures, 21 of them historic, and opened a 30-day public comment period from December 13, 2023, to January 15, 2024.[16]

41. The public response overwhelmingly opposed demolition. Commenters, including the Town, urged NPS to lease the structures to private parties for rehabilitation. In written comments submitted January 15, 2024, the Town asked NPS to "[r]ent/[l]ease properties to outside vendor/individual to restore to NPS standards and maintain without NPS funds" and requested

[13]Bratslavsky Consulting Eng'rs, Inc. & Aurora Research Assocs. LLC, Historic Resource Survey Report, NERI 237369 (Nov. 10, 2022) ("2022 Survey"), at 1 [Exhibit J].
[14]2022 Survey at 1–2 [Exhibit J].
[15]EA app. D, Draft Programmatic Agreement ("Draft PA"), at D-3 (recitals) [Exhibit F].
[16]PA at 1–2 (recitals) [Exhibit K].

consulting-party status. The Town further proposed "another potential option for public / private lease" in partnership with historic preservation and friends-of-the-park groups.[17] Members of Preservation Thurmond likewise publicly opposed demolition and urged NPS to stabilize, lease, and rehabilitate the structures.[18] Dr. Berry and other Historical Society members also submitted comments to NPS in October and November 2024. Berry Decl. ¶ 5 [Exhibit V-1].

42. The Town's comment letters identified the Prince Brothers General Store among the structures the Town asked NPS to preserve. By letter dated October 10, 2024, the Town also wrote to the National Trust for Historic Preservation opposing the planned demolitions "in Thurmond, Dun Glen, and Prince."[19]

43. In October 2024, NPS issued the EA analyzing three alternatives: (A) no action; (B) demolition of all nineteen proposed excess historic structures and one non-historic addition; and (C) demolition of sixteen structures and retention of three. NPS identified Alternative B as its preferred alternative.[20]

44. The EA considered and dismissed an alternative to lease the historic structures rather than demolish them. It stated that "the park does not have an existing leasing program or the funding, staffing, or capacity to manage a leasing program at this time," that "[b]ecause the NPS lacks the capacity to complete these steps at this time, this alternative is not feasible," and that developing a leasing program "would take several years to complete."[21]

45. The EA also dismissed reuse of the structures, relying on their deteriorated condition and the maintenance burden of reuse.[22]

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[17]Civic Engagement Responses, Corr. ID Nos. 121, 122, 168 [Exhibit H].
[18] Decl. of Holly K. Clark on behalf of Preservation Thurmond ("Preservation Thurmond Decl.") ¶ 5 [Exhibit Y].
[19] Mayor Decl. ¶ 6 [Exhibit X].
[20]EA at 13–15 [Exhibit F].
[21]EA at 16 [Exhibit F].
[22]EA at 15–16 [Exhibit F].

46. The EA did not analyze the extent to which the structures' deteriorated condition resulted from NPS's own failure to implement maintenance and stabilization measures. It also did not address the 2022 Survey's recommendation that most of the structures be preserved and stabilized.[23]

47. The EA reasoned that, absent investment, the structures would continue to deteriorate and lose their contributing status.

The Revised EA, the Programmatic Agreement, and the FONSI

48. On February 5, 2025, NPS executed the PA with the West Virginia SHPO. In the PA, NPS and the SHPO concurred that the undertaking "would adversely affect historic properties, as defined at 36 CFR § 800.5(a)(1)."[24]

49. The PA identifies the Town as one of eight accepted consulting parties "who will be afforded the opportunity to participate in the Section 106 consultations."[25]

50. The PA expressly provides that "any final decisions regarding the demolition of the historic structures cannot be made until compliance with NEPA is complete." Stipulation II provides that final decisions on which structures are to be demolished "will not be made until (1) the NPS examines public and agency responses to the environmental assessment and the NEPA process is completed and (2) the NPS undertakes further consultations with the consulting parties and SHPO," and that "[t]he NPS will formally notify the consulting parties and SHPO by letter of the structures to be demolished."[26]

51. Stipulation III of the PA, captioned "Review of Demolition Plans," provides that NPS "will submit to the SHPO and consulting parties a demolition schedule and any revisions to

[23]*See* EA at 15–16, 20; *id.* app. C, at C-4 [Exhibit F].
[24]PA at 1 (recitals) [Exhibit K].
[25]PA at 1 (recitals) [Exhibit K]; Revised EA at 46–47 & tbl. 3 [Exhibit A].
[26]PA at 1 (recitals); PA Stip. II, at 2 [Exhibit K].

the schedule as they become available" and "draft demolition plans for each affected structure, including the limits of disturbance, for review and comment." NPS "will ensure that each review is conducted in a manner in which: i. The SHPO and consulting parties are provided 30 calendar days from the date of receipt to conduct the review and submit comments . . . and ii. Comments received are taken fully into account and the SHPO and consulting parties are notified of how the NPS responded to the comments."[27]

52. Stipulation IV of the PA provides that NPS, the SHPO, and the consulting parties "will consult to avoid, minimize, or mitigate adverse effects of the Undertaking," and that the measures listed were "tentatively identified" as "potential mitigation," with "further planning and consultation" to "result in the final agreed upon measures."[28] Stipulation IV also includes mitigation specific to the Prince Brothers General Store. In addition to the measures common to all structures, NPS will "[a]ccession, catalog, and curate associated archives and objects" and "[d]evelop a plan with consulting parties to include the store in the park interpretation and educational activities."[29] Based on the Town's information and belief, NPS has not developed that plan with the consulting parties.

53. In April 2025, NPS issued the Revised EA. It modified Alternative C to provide for demolition of "at least 13 of the 19" structures, retention of three, and potential leasing of three others "if the NPS receives viable proposals."[30]

[27]PA Stip. III(1)–(2), at 2 [Exhibit K].
[28]PA Stip. IV, at 2–3 [Exhibit K].
[29]PA Stip. IV, at 4 [Exhibit K].
[30]Revised EA at 14–15 [Exhibit A].

54. The Revised EA did not revisit the EA's dismissal of a leasing alternative for the remaining structures, notwithstanding that NPS now proposed leasing as feasible for certain structures.[31]

55. On July 18, 2025, the Regional Director signed the FONSI, selecting a modified Alternative C. The FONSI provides for retention of the Marilyn Brown House, the Thurmond Ice House, and the Dun Glen Ark; demolition of the Tom Kelly House, the Dun Glen Boat Storage Rack, and the Dun Glen Mini Ark unless NPS receives viable lease proposals; and demolition of the remaining structures.[32]

56. "Structures Identified by the FONSI" means the structures the FONSI approves for demolition, including those to be demolished absent viable lease proposals. "Structures Set For Imminent Demolition" means the structures identified for demolition in the Draft Demolition Plan Consultation Package (Oct. 16, 2026) (the "Demolition Plan Package") [Exhibits T-1 to T-4] and in NPS, NERI Remove Excess Structures and Abandoned Buildings, Contract No. 140P2026F0212, Schedule, Revision 02 (Nov. 4, 2026) ("Revised Schedule") [Exhibit S]. On information and belief, the Structures Set For Imminent Demolition are the following twelve structures: the Charles Ashley Outbuilding, James Humphrey Sr. House, Charles Ashley Garage, McGuffin Garage, May Bagoski House, Phillip A. McClung/Meadows House, Harold Smith House, Prince Brothers General Store, Sidney Allen Ward House, Camp Brookside Pool Chemical Building, Erskine Pugh Rental House, and Wedzel Young House.[33]

57. The FONSI acknowledges that demolition "will result in a loss of integrity of design, materials, and workmanship within the district, which will be a long-term adverse impact."

[31] *See* Revised EA at 14–16 [Exhibit A].
[32] FONSI at 2–4 [Exhibit B].
[33] NPS, Partner Update Letter (July 15, 2026) ("Partner Update Letter"), at 1 [Exhibit L].

It also acknowledges that demolition will cause "an adverse impact on those associated people and communities" and that "the intrinsic value of the structures as a representation of community identity will be lost."[34]

58. The FONSI states that, during the EA comment period, "the NPS received interest in leasing the Tom Kelly House as well as interest in leasing a combination of the Ark, Boat Storage Rack, and Mini Ark." It further states that "[r]etaining the structures under a successful leasing agreement still meets the purpose of and need for the project because they would no longer be a maintenance burden to the NPS."[35]

59. The FONSI does not explain why leasing, which it found satisfies the purpose and need for the project, is not a reasonable alternative for the other Structures Identified by the FONSI.[36] NPS's only apparent basis for the distinction—that it happened to receive unsolicited expressions of interest in certain structures during the EA comment period—is not a reasoned explanation, because NPS never offered the other Structures Identified by the FONSI for lease or invited lease proposals for them.

60. The FONSI's conclusion that cumulative impacts will be "primarily beneficial" rests on NPS's planned stabilization and rehabilitation of other historic structures, including Commercial Row. The PA states that NPS's obligations are "subject to the availability of appropriated funds," and the GMP acknowledges that proposed major rehabilitation "may not occur in the foreseeable future and is dependent upon future NPS service wide funding."[37]

61. The FONSI does not acknowledge, much less explain, its departure from NPS's plans and commitments to rehabilitate, stabilize, and adaptively reuse Thurmond's historic houses

[34]FONSI at 6–7 [Exhibit B].
[35]FONSI at 3 [Exhibit B].
[36]*See* FONSI at 2–4 [Exhibit B].
[37]FONSI at 5–6 [Exhibit B]; FONSI att. PA, Stip. XI, at 6 [Exhibit K]; GMP at 141 [Exhibit G].

in support of visitor use, including the 1992 Development Concept Plan, the GMP, and the 2022 Survey. Nor does it acknowledge NPS's commitments for the Prince Brothers General Store. The store's National Register nomination states that it "is owned by the New River Gorge National River, NPS, which plans to restore and interpret the building for the visiting public," and the preferred alternative in NPS's 2009 Draft GMP called for NPS to "rehabilitate the Prince Brothers General Store (for reuse through the NPS historic leasing program)" and "restore the cultural landscape" there. Prince Brothers Nomination [Exhibit E]; NPS, Draft General Management Plan, New River Gorge National River (2009) [Exhibit M].

62. On July 15, 2026, NPS informed Park partners that it was soliciting proposals for the demolition work through the Bureau of Indian Affairs Multiple Award Task Order Contract. NPS stated that Historic American Buildings Survey/Historic American Engineering Record ("HABS/HAER") documentation was underway and that demolition was "tentatively scheduled to begin in November 2026."[38]

The Town's Efforts to Engage and NPS's Refusal to Pause

63. The Town participated in both public comment periods, obtained consulting-party status, solicited signatures on petitions in opposition to NPS's decisions from its citizenry, and engaged with NPS in pre-filing correspondence through the Town's counsel.[39]

64. On August 11, 2026, the Town Council adopted a resolution for the Town to pursue pro bono legal services as Plaintiff in an action against the Department of the Interior to seek a temporary restraining order against the demolition of historically significant structures within

[38]Partner Update Letter at 1 [Exhibit L].
[39]Civic Engagement Responses, Corr. ID No. 122 [Exhibit H]; Letter from Benjamin L. Bailey to Eric G. LaPrice (Oct. 15, 2026) ("Oct. 15 Letter"), at 1 [Exhibit N].

Town limits, the surrounding area, and other locations throughout the Park, to the extent allowable by law.[40]

65. By letter dated October 15, 2026, the Town, through counsel, asked Defendant LaPrice to extend the demolition timeline by six to nine months to allow community engagement, preservation partnerships, and investment that could avoid demolition. The Town asked NPS to confirm that no demolition would occur until the 30-day demolition-plan review period prescribed by the PA had run and NPS had responded to the Town's comments.[41]

66. By letter dated October 28, 2026, Defendant LaPrice declined the Town's request. He stated that the demolition project had been "advertised, awarded, and work is scheduled to begin this fall," that NPS was "unable to rescind both the contract award and the NEPA decision," and that no demolition would occur "until the consulting parties have had 30 days to review the demolition plan." In the same letter, he stated that NPS "is developing a leasing program and will be providing the public with opportunities to lease the structures identified in the FONSI," that the Tom Kelly House "may not be available for lease for 1-2 years" because of work needed to secure a right-of-way, and that, "[o]nce the renovation projects are complete, we anticipate making other structures around the park, including some in Thurmond, available for leasing."[42]

Post-Decision Developments

67. On November 6, 2026, Defendant LaPrice stated that NPS will invest "over 20 million dollars into improving the Thurmond area of the park," with the goal of stabilizing and improving buildings that can "attract businesses, and help sustain the community."[43]

[40] Mayor Decl. ¶ 15 [Exhibit X].
[41] Oct. 15 Letter at 1–2 [Exhibit N].
[42] Letter from Eric G. LaPrice to Bailey Glasser LLP (Oct. 28, 2026) ("Oct. 28 Letter"), at 1–2 [Exhibit O].
[43] Email from Eric G. LaPrice to Hon. Greg Ingram (Nov. 6, 2026) ("Nov. 6 Email"), at 1–2 [Exhibit P].

68. On November 13, 2026, NPS issued a leasing RFP for three Dun Glen structures only—the Dun Glen Ark, Mini Ark, and Boat Storage Rack—with proposals due January 15, 2027.[44] The RFP does not offer, address, or reference any of the Structures Set For Imminent Demolition.

69. Prospective lessees and investors have expressed interest in rehabilitating Dun Glen structures that NPS designated for demolition under the FONSI, which shows a market for leasing. One of them, real estate developer Rich Rashid, is interested in rehabilitating and adaptively reusing the Dun Glen Building/Ranger Station, a structure NPS has designated for demolition, and has begun preliminary discussions with a landscape architecture firm regarding a master plan for Thurmond. Decl. of Richard M. Rashid ("Rashid Decl.") ¶¶ 2, 5–6 [Exhibit W-1]. Another, Joshua Dragan, a professional engineer and construction company owner, is interested in rehabilitating the Dun Glen Day Use Area Ranger Station, Ark, Mini Ark, and Boat Rack, and presented preliminary plans and cost estimates to NPS in January 2025, when NPS told him the Park was not set up to lease structures. Decl. of Joshua Dragan ("J. Dragan Decl.") ¶¶ 2, 4–5 [Exhibit W-2]. A third, Jonathan "Jay" Perry, is likewise interested in rehabilitating the Dun Glen Day Use Area structures. Decl. of Jonathan "Jay" Perry ("Perry Decl.") ¶¶ 3–5 [Exhibit W-3]. NPS offers no process for lease proposals on any structure outside the three-structure RFP, including the Structures Set For Imminent Demolition. Before any prospective lessee can submit a lease proposal NPS could consider viable, each must complete architectural and structural evaluations, a rehabilitation plan consistent with the Secretary of the Interior's Standards, cost estimates and financing commitments, and a proposal responsive to an NPS RFP. Rashid Decl. ¶ 7 [Exhibit W-1]; J. Dragan Decl. ¶ 6 [Exhibit W-2]; Perry Decl. ¶ 6 [Exhibit W-3]. A pause would let prospective

[44]NPS, News Release, Historic Structures Available for Lease in Dun Glen Area (Nov. 13, 2026) ("Dun Glen RFP Release"), at 1 [Exhibit Q].

lessees, the Town, and Preservation Thurmond evaluate the structures and prepare proposals. Preservation Thurmond is prepared, during any pause, to complete a Thurmond master plan, assess the structures for rehabilitation feasibility, coordinate with individuals, nonprofits, and businesses interested in leasing, organize lease proposals, raise funds, prepare pro formas, and partner with investors. Preservation Thurmond Decl. ¶ 7 [Exhibit Y]; *see also* Mayor Decl. ¶ 21 [Exhibit X].

70. NPS has issued no RFP for the Structures Set For Imminent Demolition and has opened no forum through which these prospective lessees and investors may engage with NPS. NPS has issued no RFP for the Tom Kelly House or for any structure in the Thurmond Historic District. NPS's leasing materials state that when lease awards involve criteria other than rent, NPS must issue a public RFP, and that unsolicited proposals are not accepted.[45] Because NPS has issued no RFP for the Structures Set For Imminent Demolition, no process exists through which prospective lessees can propose leasing them, and if they are demolished before NPS opens that process, the opportunity to propose their rehabilitation will be lost. Rashid Decl. ¶¶ 9–10 [Exhibit W-1]; J. Dragan Decl. ¶¶ 8–9 [Exhibit W-2]; Perry Decl. ¶¶ 5, 8 [Exhibit W-3].

71. NPS's leasing program, the RFP, its planned investment of more than $20 million in Thurmond, the interest of prospective lessees and investors, and the Revised Schedule described below are significant new information. They bear directly on NPS's obligations under the NHPA and the PA, the feasibility of the leasing and rehabilitation alternatives NPS dismissed, as well as the cumulative-impacts analysis on which the FONSI rests.

72. The Town has acted promptly. It relied on NPS to carry out the review and consultation process the PA promises, and it pressed its concerns through that process. The developments that bring this dispute to a head—NPS's new leasing program, the November 13,

[45]Dun Glen RFP Release at 1 [Exhibit Q]; NPS, Leasing Opportunities in the Park (last updated Nov. 13, 2026), https://www.nps.gov/neri/getinvolved/leasing-opportunities-in-the-park.htm.

2026 RFP, the November 6, 2026 announcement of more than $20 million in planned investment in Thurmond, and the Revised Schedule—all arose in October and November 2026. The interval since the July 2025 FONSI does not reflect delay. The threat of irreparable harm became imminent only when NPS awarded the demolition contract, transmitted demolition plans in October 2026, and scheduled contractor mobilization for on or about November 30, 2026. See ¶¶ 62–79.

The Draft Demolition Plan and Revised Schedule

73. On October 16, 2026, NPS transmitted a draft demolition plan consultation package by cover letter to some, but not all, of the consulting parties.[46] NPS did not send the cover letter or the package to the Town. The Town received the Demolition Plan Package [Exhibits T-1 to T-4] through the SHPO on October 19, 2026. Mayor Decl. ¶ 16 [Exhibit X].

74. The package the Town received contained only items 1–8 of the twelve attachments listed in Appendix 2, item IX [Exhibit T-2]. The four missing attachments, items 9–12, are the pre-demolition checklist, the HABS documentation, the geotechnical report, and the mitigation information. Mayor Decl. ¶ 16 [Exhibit X].

75. Stipulation III runs the 30-calendar-day review period from the date of receipt. The Town received the package through the SHPO on October 19, 2026. So even if the incomplete package could start the clock, the Town's review period ran through no earlier than November 18, 2026, not November 15, 2026.

76. On November 13, 2026, NPS circulated the Revised Schedule to the consulting parties, including the Town, attached to an email from Laurie J. Fisher, NPS's Section 106

[46]Email from Laurie J. Fisher, NPS Archaeologist and Section 106 Coordinator, New River Gorge National Park & Preserve, to Consulting Parties (Nov. 13, 2026, 7:13 a.m.) ("Nov. 13 Fisher Email"), at 1 [Exhibit R].

Coordinator.[47] The Town had not received the Revised Schedule before November 13, 2026. Mayor Decl. ¶ 18 [Exhibit X].

77. Although dated November 4, 2026, the Revised Schedule was not circulated to the consulting parties until Friday, November 13, 2026, two days before the date NPS said the review period would close. Mayor Decl. ¶ 18 [Exhibit X].

78. Stipulation III requires NPS to submit "any revisions to the schedule as they become available" for review and comment, on the same 30-calendar-day, receipt-based terms as the original submission. The Revised Schedule is such a revision and a materially revised Stipulation III submission. The consulting parties were therefore entitled to 30 calendar days from its receipt, through at least December 13, 2026, to review and comment on it before any demolition work proceeds.

79. The Nov. 13 Fisher Email confirms that NPS will respond to comments only "[a]fter the applicable review period closes," when it "will fully consider the comments received and notify the SHPO and consulting parties how we addressed them." Yet the Revised Schedule mobilizes the demolition contractor on or about November 30, 2026, before any fresh review period for the Revised Schedule could close and before NPS has committed to respond to any comment.[48]

80. The demolition plan does not address the 10-ton weight limit on the only bridge into Thurmond. The bridge is owned by CSX Transportation and is posted with a 10-ton weight limit, and the West Virginia Department of Transportation is responsible for inspections, repair, and maintenance on the passenger-vehicle side.[49] Demolition equipment and debris-hauling

[47]Nov. 13 Fisher Email at 1 [Exhibit R]; Revised Schedule [Exhibit S].
[48]Nov. 13 Fisher Email at 1 [Exhibit R]; Revised Schedule [Exhibit S].
[49] Mayor Decl. ¶ 12 [Exhibit X].

vehicles will exceed that limit. The plan identifies no alternative access routes, load restrictions, or measures to protect the bridge, and the Revised Schedule identifies no bridge load limits, haul routes, or road closures.

81. The draft demolition plan also contemplates closing Town streets, including Church Lane, Nicely Lane, and Main Street, with closures extending approximately 150 feet. NPS planned these closures without consulting the Town, obtaining its consent, or addressing resident access, emergency services, and visitor traffic. Demolition traffic, heavy equipment, and the planned closures will burden the Town's roads, drainage infrastructure, and access. Local emergency response time is at least 28 minutes, plus the time needed to fill vehicles with water. Mayor Decl. ¶¶ 11, 13 [Exhibit X].

82. These omissions bear directly on the limits of disturbance that Stipulation III requires each demolition plan to identify, and on the Town's ability to provide meaningful comments within the 30-day review period.

83. On November 13, 2026, before NPS's stated close of the review period, the Town emailed its written comments to Laurie J. Fisher and Bryan W. Wender of NPS (the "Town Comments") and confirmed receipt.[50]

84. NPS has not responded to the Town Comments, has not notified the Town how it addressed them, and has not committed to do so before contractor mobilization.

85. Stipulation IV contemplates "further planning and consultation" to "result in the final agreed upon measures" to mitigate adverse effects. Based on the Town's information and belief, no final agreed-upon mitigation measures have been reached with the consulting parties,

[50] Email from Town of Thurmond to Laurie J. Fisher and Bryan W. Wender, NPS (Nov. 13, 2026, 5:26 p.m.) [Exhibit U]; Mayor Decl. ¶ 17 [Exhibit X].

and the mitigation information was missing from the package the Town received. Mayor Decl. ¶ 16 [Exhibit X]; Sibray Decl. ¶ 8 [Exhibit V-2].

86. Stipulation II requires NPS to "formally notify the consulting parties and SHPO by letter of the structures to be demolished." NPS drafted this notice but did not send the letter to the Town directly. Instead, the SHPO sent it.

CAUSES OF ACTION

COUNT I: Violation of the APA and NEPA: Arbitrary and Capricious Decision-Making and Failure to Take a Hard Look

87. Plaintiffs re-allege the facts above and incorporate them by reference.

88. The FONSI and the decision to demolish the Structures Identified by the FONSI are final agency action reviewable under 5 U.S.C. § 704.

89. NPS's decision is arbitrary, capricious, and an abuse of discretion because NPS:

a. departed, without acknowledgment or reasoned explanation, from NPS's commitments in the 1992 Development Concept Plan, the GMP, and the 2022 Survey to preserve, stabilize, and adaptively reuse Thurmond's historic buildings in support of heritage tourism, and disregarded the reliance interests those commitments created for the Town, which has maintained the grounds of NPS's Thurmond properties for approximately seventeen years, and for former residents who sold their homes on the understanding they would be preserved;

b. rejected leasing as infeasible based on the absence of a leasing program, while simultaneously finding leasing feasible and consistent with the purpose and need for other structures, without reconciling the

inconsistency—one now heightened by NPS's November 13, 2026 RFP, which offers only three Dun Glen structures for lease;

c. relied on the structures' deteriorated condition without considering that the deterioration resulted from NPS's own failure to maintain the buildings, even as the Town maintained their grounds;

d. failed to address, and acted contrary to, its own 2022 Survey, which found most of the structures retained integrity and recommended their preservation and stabilization;

e. relied on uncertain and unfunded future rehabilitation projects, subject to the availability of appropriated funds, to conclude that cumulative impacts would be primarily beneficial; and

f. failed to take a hard look, as NEPA requires, 42 U.S.C. § 4332, at significant new information bearing on the action, including NPS's leasing program, the November 13, 2026 RFP, NPS's planned investment of more than $20 million in Thurmond, the interest of prospective lessees and investors, and the Revised Schedule, or to determine whether supplemental NEPA analysis is required. NPS did so even though demolition, the major federal action, remains to occur. In doing so, NPS disregarded Plaintiffs' interests in the study, use, and enjoyment of the Structures Set For Imminent Demolition.

90. The Court should declare the FONSI unlawful, set it aside as to the Structures Identified by the FONSI, and enjoin demolition pending NPS's reconsideration in compliance with law.

COUNT II: Violation of NHPA Section 106, the Programmatic Agreement, and APA: Failure to Comply with Section 106 and PA Terms

91. Plaintiffs re-allege the facts above and incorporate them by reference. This Count is asserted principally by the Town as an accepted consulting party under the PA. The Historical Society joins to the extent permitted by law.

92. Having elected to satisfy Section 106 through the PA, NPS is bound to implement the undertaking in accordance with the PA's stipulations. The NHPA provides no private right of action, so Plaintiffs proceed under the APA, 5 U.S.C. §§ 702, 706(2)(D).

93. NPS's decision to proceed with demolition and to mobilize the demolition contractor on or about November 30, 2026 under the Revised Schedule, together with Defendant LaPrice's October 28, 2026 refusal to pause, is final agency action for purposes of this Count. Once the contractor mobilizes, the Town's right under the PA to a complete review and to notice of how its comments were addressed will be lost.

94. Stipulation III requires NPS itself to submit to the SHPO and each consulting party a demolition schedule and draft demolition plans for each affected structure, including the limits of disturbance; to provide 30 calendar days from receipt to review and comment; and to take comments fully into account and notify the consulting parties how it responded. As to the Town, the 30-day review period never began because NPS never delivered a complete package. Alternatively, if the incomplete package started the clock, the period ran from the Town's October 19, 2026 receipt through at least November 18, 2026. Independently, the Revised Schedule triggered its own 30-day review period, running through at least December 13, 2026, because Stipulation III requires NPS to submit "any revisions to the schedule as they become available" on the same receipt-based terms.

95. NPS has violated, and is imminently threatening to violate, Section 106 and the PA by (a) failing to deliver to the Town a complete demolition plan package by omitting four of the twelve listed attachments (the pre-demolition checklist, HABS documentation, the geotechnical report, and mitigation information); (b) delegating transmittal of the package to the SHPO, and leaving even the Stipulation II notification letter to the SHPO, rather than submitting complete plans, including the limits of disturbance, to the Town itself; (c) circulating a materially revised demolition schedule on November 13, 2026 without providing a new 30-calendar-day review period from its receipt; (d) scheduling contractor mobilization for on or about November 30, 2026, before the review periods described above have run and before notifying the consulting parties how it responded to their comments; (e) failing to address, in the plans or the Revised Schedule, the 10-ton bridge weight limit, haul routes, and the closure of Town streets within the limits of disturbance; (f) not responding to the Town's November 13, 2026 comments and not committing to respond before contractor mobilization; and (g) failing to complete Stipulation IV consultation on mitigation measures, including the store-specific measures for the Prince Brothers General Store, such as a plan to include the store in park interpretation and educational activities.

96. Until NPS complies with the PA, it has not satisfied its obligation to take into account the effects of the undertaking on historic properties. Its demolition of the Structures Set For Imminent Demolition would therefore be agency action "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

COUNT III: Violation of the APA, 5 U.S.C. § 706(1): Agency Action Unlawfully Withheld

97. Plaintiffs re-allege the facts above and incorporate them by reference. This Count is asserted principally by the Town as an accepted consulting party under the PA. The Historical Society joins to the extent permitted by law.

98. The PA imposes discrete, mandatory duties on NPS that it must perform before demolition. NPS is required to deliver a complete Stipulation III package to the Town, to provide the Town 30 calendar days from receipt to review and comment, to notify the Town how its comments were addressed, and to complete Stipulation IV consultation on mitigation measures. These duties use mandatory language ("will submit," "will ensure," "will consult") and leave NPS no discretion over whether to perform them.

99. NPS has not performed these duties and is preparing to demolish the Structures Set For Imminent Demolition without doing so. Once demolition occurs, performance will be meaningless. NPS has therefore unlawfully withheld agency action, and the Court should compel NPS to perform these duties before any demolition of the Structures Set For Imminent Demolition. 5 U.S.C. § 706(1).

***

WHEREFORE, Plaintiffs respectfully request that this Court enter judgment in their favor and against Defendants, and order the following relief:

100. Declare that Defendants' decision to demolish the Structures Identified by the FONSI violates the APA, NEPA, and the NHPA, as set forth above;

101. Issue (a) a temporary restraining order under Federal Rule of Civil Procedure 65(b), effective until the Court rules on Plaintiffs' motion for a preliminary injunction, that enjoins Defendants and all persons acting in concert with them, including NPS contractors, from demolishing, removing, dismantling, or performing any ground-disturbing or structural work on any Structure Set For Imminent Demolition, including the Prince Brothers General Store, and (b) after notice and a hearing, a preliminary injunction under Federal Rule of Civil Procedure 65(a) granting the same relief pending final judgment; or, in the alternative, stay the demolition decision

under 5 U.S.C. § 705; provided that each injunction shall also apply to (A) any other Structure Identified by the FONSI that Defendants add to any current, revised, or subsequent demolition plan package, schedule, or task order, and (B) any other structure added to any demolition plan package, schedule, or task order after the date of the Court's order; further requiring Defendants to give Plaintiffs and the Court at least seven days' written notice before adding any structure to any demolition plan package, schedule, or task order or issuing any revised demolition schedule; provided further that each injunction may be dissolved on motion only upon a showing that Defendants have (i) delivered to the Town a complete Stipulation III demolition plan package, (ii) allowed 30 calendar days from the Town's receipt of that package and of the Revised Schedule and any later revision, (iii) notified the Town in writing how NPS addressed its comments at least 14 days before any work begins, and (iv) completed Stipulation IV consultation, including the store-specific measures for the Prince Brothers General Store; and set a nominal bond under Rule 65(c) as to both the temporary restraining order and the preliminary injunction;

102. Order Defendants, before taking any further action to demolish any Structure Set For Imminent Demolition, to deliver directly to the Town a complete Stipulation III demolition plan package; to allow a full 30-calendar-day review period running from the Town's receipt of that package, of the Revised Schedule, and of any later revision; to take fully into account, and respond in writing to, all comments submitted by the Town and other consulting parties, as Stipulation III requires; and to complete Stipulation IV consultation, including the store-specific measures for the Prince Brothers General Store;

103. Set aside the FONSI as to the Structures Identified by the FONSI and remand to NPS for further proceedings, including consideration of leasing alternatives for the Structures Identified by the FONSI and whether supplemental NEPA analysis is required;

104. Permanently enjoin demolition, removal, dismantling, or any ground-disturbing or structural work on the Structures Identified by the FONSI unless and until Defendants comply with NEPA, the NHPA, the Programmatic Agreement, and the APA;

105. Require Defendants to produce the complete administrative record;

106. Award Plaintiffs their reasonable costs and attorneys' fees as permitted by law, including under the Equal Access to Justice Act, 28 U.S.C. § 2412, as to each Plaintiff, and 54 U.S.C. § 307105; and

107. Grant such other and further relief as the Court deems just and proper.

Dated: November 18, 2026

Respectfully submitted,

THE TOWN OF THURMOND, WEST VIRGINIA, and NEW RIVER GORGE HISTORICAL SOCIETY, By Counsel

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VERIFICATION

THE TOWN OF THURMOND, WEST VIRGINIA, a municipal corporation, and NEW RIVER GORGE HISTORICAL SOCIETY, a West Virginia nonprofit corporation,
Plaintiffs,

v.

Civil Action No. 2:26-cv-00739

ERIC G. LAPRICE, in his official capacity as Acting Superintendent, New River Gorge National Park and Preserve; and NATIONAL PARK SERVICE, an agency of the United States Department of the Interior,

Defendants.

Melanie Dragan, under penalty of perjury, says:

I am the Mayor of the Town of Thurmond, West Virginia, a Plaintiff in the case captioned *Town of Thurmond, West Virginia, et al. v. Eric G. LaPrice, et al.*, Civil Action No., pending in the United States District Court for the Southern District of West Virginia at Charleston. I have authorized the filing of the Complaint for Declaratory and Injunctive Relief in this action. I have read the Complaint. The factual allegations in the Complaint relating to me and to the Town of Thurmond, West Virginia are true and correct to the best of my knowledge and belief, except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on November 18th, 2026, at Thurmond, West Virginia.

Signature: Melanie Dragan

Printed Name: Melanie Dragan

Mayor, the Town of Thurmond, West Virginia

VERIFICATION

THE TOWN OF THURMOND, WEST VIRGINIA, a municipal corporation, and NEW RIVER GORGE HISTORICAL SOCIETY, a West Virginia nonprofit corporation,

Plaintiffs,

v.

Civil Action No. 2:26-cv-00739

ERIC G. LAPRICE, in his official capacity as Acting Superintendent, New River Gorge National Park and Preserve; and NATIONAL PARK SERVICE, an agency of the United States Department of the Interior,

Defendants.

Dr. Jennings Berry, under penalty of perjury, says:

I am the President of the New River Gorge Historical Society, a Plaintiff in the case captioned *Town of Thurmond, West Virginia, et al. v. Eric G. LaPrice, et al.*, Civil Action No., pending in the United States District Court for the Southern District of West Virginia at Charleston. I have authorized the filing of the Complaint for Declaratory and Injunctive Relief in this action. I have read the Complaint. The factual allegations in the Complaint relating to me and to the New River Gorge Historical Society are true and correct to the best of my knowledge and belief, except as to matters therein stated to be alleged upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. 28 U.S.C. § 1746.

Executed on 11/18/2026, 2026, at Fairmont, West Virginia.

Signature: Jennings Berry

Dr. Jennings Berry

President, the New River Gorge Historical Society