



SIERRA CLUB

MARYLAND CHAPTER

Sierra Club Maryland Chapter
P.O. Box 278
Riverdale, MD 20738
(301) 277-7111

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Steve Archer, Cultural Resources Team Leader
Maryland Department of Transportation
State Highway Administration
Environmental Planning Division
707 North Calvert Street
Baltimore, MD 21202

Dear Mr. Archer,

The Sierra Club Maryland Chapter, a consulting party to the Section 106 process, is providing the following comments on the Section 106 documents recently forwarded for review.

Site Specific Issues

Several issues have come to our attention that have not been addressed or addressed adequately in the Section 106 process and need to be addressed prior to the execution of any Programmatic Agreement.

1) Morningstar Tabernacle No. 88 Moses Hall and Cemetery

MDOT/FHWA Cannot Claim No Adverse Effect

The Section 106 materials presented on January 4, 2022 fail to acknowledge that the project will have an adverse effect on the Morningstar hall and cemetery site, now saying there is “no adverse effect” on this historic property.

We agree with the National Trust for Historic Preservation statements in their October 8, 2021 letter to Steve Archer that:

“[w]ithout additional study, our understanding of the footprint of the historic cemetery is incomplete, and direct adverse impacts to burial sites remains a serious risk”.

The requested additional investigations have not been conducted as of the issuance of the SDEIS, and there is no mention in the SDEIS of any intent to conduct such additional surveys.

We again strongly recommend that MDOT expand the survey area to the north, west, and east of the already-surveyed site, including within the existing right-of-way. We further recommend the inclusion of a more substantial buffer between the northernmost identified burial and the project's Limit of Disturbance. These recommendations are crucial to minimizing the risk of causing adverse impacts to burials.

Furthermore, since the "adverse effect" on the Morningstar Tabernacle property has been acknowledged (and appropriately so) for purposes of Section 106, the potential "use" of the historic property cannot qualify as "de minimis." 23 U.S.C. § 138(b)(2).

In other words, ground penetrating radar data collection at the site has been insufficient and inadequate to allow for a determination of "no adverse effect" under Section 106.

No evidence has been supplied to the consulting parties that this serious oversight has been rectified. Until there has been a fuller ground penetrating survey that expands outside the borders of the already-surveyed site, including within the existing right-of-way, it is premature and improper for MDOT to claim that adverse effects on the Morningstar Tabernacle property have been avoided or minimized.

Eligibility Designation Needs to Be Updated with Updated Cemetery Boundary Information

The boundaries of the Moses Hall and Cemetery site need to be redrawn taking into account the new information found in the two studies as part of the Section 106 process and a new fuller ground penetrating radar survey. The NRHP eligibility designation form also needs to be updated to reflect the new information found in the studies and new site boundaries. We fully support the Friends of Moses Hall in their requests for additional mitigation measures.

No Basis for Cutoff Date for Cumulative Effects

The most recent Section 106 documentation acknowledges the serious impact of the original construction of the Beltway on Moses Hall, but then posits that "[b]ecause the 1960s impacts occurred prior to laws that required consideration of effects, . . . there is not an adverse effect to the historic property based on "cumulative" impacts." MDOT letter dated Jan. 4, 2022, Attachment 5, at 3. This

conclusion is wrong as a matter of both law and fact. As a matter of law, there is absolutely no support in the Section 106 regulations for this arbitrary cut-off date, which instead unconditionally state that “Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative.” 36 C.F.R. § 800.5(a)(1). Nor is there any authority for this arbitrary cut-off date in the Council on Environmental Quality’s cumulative impact regulations or in related regulatory guidance on cumulative impact analyses.

Furthermore, not only were those impacts significant, they had a significant disproportionate impact on an environmental justice community and its most important community feature, Moses Hall. A grave injustice was done. The imperative to consider past wrongs to environmental justice community is confirmed by Executive Order 13990, 86 C.F.R 7037 (Jan. 20, 2021),¹ which applies to projects such as this one, that would utilize federal funding. The Executive Order cites the nation’s commitment to “conserve our national treasures and monuments, places that secure our national memory. *Where the Federal Government has failed to meet that commitment in the past, it must advance environmental justice.*” (emphasis added)

MDOT staff know this wrong needs to be redressed and mitigated. Julie Schablitsky, the Chief, Cultural Resources Section and Chief Archaeologist at MDOT said:

“We own the faults of the Maryland Roads Commission impacting this community 60 years ago,” Schablitsky said during a recent visit to the cemetery. “It’s our responsibility now to repair that damage and come in and do the right thing.”²

The refusal to take into account impacts from the original Beltway construction is contrary to environmental justice and to MDOT’s own public comments that “*We own the faults of the Maryland Roads Commission impacting this community 60 years ago,*” Schablitsky said during a recent visit to the cemetery. “*It’s our responsibility now to repair that damage and come in and do the right thing.*”

MDOT’s January 4, 2022 letter also baldly asserts, without any substantiation, that no impacts to the cemetery occurred from the 1992 Beltway widening. That

¹ Exec. Order 13990, 86 C.F.R 7037 (Jan. 20, 2021), <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/executive-order-protecting-public-health-and-environment-and-restoring-science-to-tackle-climate-crisis/>

² Katherine Shaver, Maryland will avoid Moses Morningstar Cemetery when widening Beltway, state says, The Washington Post, Sept. 9, 2021, <https://www.washingtonpost.com/transportation/2021/09/09/maryland-beltway-moses-morningstar-cemetery/>

opinion, which is wholly unsupported by any evidence, is simply not credible. Basic math indicates that when you widen a highway, you have more throughput (which calculates to more noise), more impervious surface which results in greater runoff which this site is particularly vulnerable to by the state's own admission.

Clearly there are cumulative effects to consider and they cannot simply be brushed off.

The cemetery is of exceptional importance because there are few remaining examples of African American benevolent society cemeteries dating to the 1800s. Its significance has been recognized nationally by its listing as one of the National Trust for Historic Preservation's ["America's 11 Most Endangered Historic Places"](#).

The May 2021 MDOT-commissioned report³ states:

"While the Morningstar Cemetery and the nearby River Road Moses Cemetery have both been previously compared to the Upland South cemetery type, historic research suggests that the comparison may not be correct. Instead, the cemetery represents a vernacular African American cemetery that does not appear to fall within a specific, previously defined type. Late-nineteenth and early-twentieth-century African American cemeteries associated with fraternal lodge organizations may have their own characteristics that merit further investigation." (italics added)

This cemetery also included burials from other African American cemeteries in the region, numbering in the hundreds. The extent of the burials is still not known, and therefore the cemetery, once fully surveyed with appropriate equipment will certainly continue to yield information important to history. This cemetery is also unusual in the fact that records continue to be unearthed regarding those buried within it and the direct descendant community remains involved and continues to reveal new artifacts and information. The project's adverse effects on this NRHP eligible cemetery must be acknowledged and measures must be considered to avoid or mitigate these adverse effects.

Sierra Club Maryland Chapter agrees with and incorporates by reference the comments submitted by Friends of Moses Hall, describing the profound and permanent negative effect of the original Beltway construction. MDOT's failure to

³ Cultural Resources Technical Report Documentation and Archaeological Monitoring for the I-495 & I-270 Managed Lanes Study, Morningstar Tabernacle No. 88 Moses Hall and Cemetery (M:35-212), Montgomery County, Maryland, Archaeological Report, Report Number 560. Project Number AW073D12.

consider the cumulative impacts associated with this discriminatory and destructive past action perpetuates and exacerbates this gross injustice.

2) Historic Gibson Grove A.M.E. Zion Church (now First Agape A.M.E. Zion Church)

Highway stormwater runoff must be addressed to prevent adverse impacts to church

As the only extant structure from the Gibson Grove settlement, this small white church on a hill has very high historic and cultural significance and needs to be carefully protected. The Gibson Grove Church property has suffered cumulative impacts from highway stormwater runoff damage over many years due to the original I-495 Beltway construction. It must be ensured through appropriate mitigation measures that that highway stormwater runoff not adversely impact the church site going forward.

Historic boundaries of the Church need to be updated based on new research findings

Reports shared in September 2021 as part of the Section 106 process show graves on the church property. The historic boundaries of the Church need to be updated taking into account the new information found in the reports. The NRHP eligibility designation also needs to be updated with the new information and updated site boundaries.

Preserve tree canopy and historic appearance of site

Additionally, SHA must minimize impacts to these historic Gibson Grove church and its cemetery by preserving most of the tree canopy and topography, constructing context sensitive noise barriers, preserving air quality, and minimizing visual impacts.

3) Plummers Island

We agree that the project will have an adverse effect on Plummers Island, a rare and nationally and internationally important historical site. Plummers Island is ground zero for construction of a new double wide American Legion Bridge. The whole of Plummers Island including its riparian fringes and waterways are the sites of historically significant ongoing research. MDOT SHA and the selected developer Transurban plan to take part of Plummers Island, place a pier on the Island, undertake construction from the island, destroy important research plots of rare plant species and habitat, and overshadow the island and its significant research areas by as much as 30 feet with noisy new bridge lanes.

Known impacts raised by the caretakers of the island, Washington Biologists' Field Club, were not included as project impacts in the SDEIS or in any

communications from Section 106 leaders. Yet they are real and serious and include: (1) damage to waterways, (2) destruction of rare plants and rare plant communities from the far west end of the island, (3) destruction of WBFC research plots, (4) destruction of past collection sites, (5) habitat destruction and disturbance lead to more invasive organisms, (6) potential for catastrophic destruction from major floods if water barriers and/or construction platforms emplaced for construction blow out, (7) sound from bridge construction and closer proximity of traffic in six new bridge lanes after they open on the bridge, (8) impacts on biota from salt, deicing compounds, and oil runoff from the bridge. All of these impacts destroy the long-term continuity of 120 years of research and thus severely impair this significant feature of the site that contributes critically to its historic significance.

Potential project-caused flooding impacts to Plummers Island have not been sufficiently acknowledged by project proponents in any of the three processes underway (NEPA, Section 106, and Section 4(f)). The water flooding issues from planned caisson emplacements (creating perfect conditions for logjams) and leveling or trimming the rock ridge that constrains the channel over flow from flooding the island are major and reasonably foreseeable adverse issues that require prompt attention and avoidance, minimization or mitigation. The resulting damage and loss of long-term research plots and impacts to rare, threatened, and endangered species on the island would be formidable.

Please see additional issues in the Sierra Club et al. comments and the comments, letters, and communications from Washington Biologists' Field Club, further elaborating on the severe Project impacts on Plummers Island. Sierra Club Maryland Chapter fully endorses and adopts the Section 106 comments of the Washington Biologists' Field Club.

4) Carderock Springs Community

We support the Carderock Springs Citizens Association Section 106 comments

We write in support of the points made by the Carderock Springs Citizens Association. A community of approximately 600 homes, Carderock Springs is designated as a National Register-Listed Historic District for being a notable example of "situated modernism." This community will experience significant adverse effects from the proposed toll lane highway expansion. Comments submitted by the Carderock Springs Citizens Association ("CSCA"), a community organization that represents Carderock Springs and Carderock Springs South, show that the SDEIS fails to include a sufficient visual impact analysis based on the scoping questionnaire and includes an inconsistent and misleading analysis of noise impacts on the Carderock Springs community.

The fields of Carderock Springs Elementary School, which are used by the community and adjacent to the highway, are also a Section 4(f)-protected public recreation area. The school will suffer noise impacts from a widened highway that will impact educational instruction. Proposed flyover ramps for the MD,190/Cabin John Parkway interchange have the potential to alter the visual setting and context of the adjacent historic district.

The issues raised by the Carderock Springs Citizens Association need to be addressed by MDOT SHA as part of the Section 106 process, prior to the execution of any Programmatic Agreement. For these impacts and more, it is false to conclude, as MDOT does, that the preferred alternative would have no adverse impact on Carderock Springs or only de minimis impacts.

As a result of the preferred alternative, the residents of the community and the children and staff of the Carderock Springs Elementary School will be faced with loss of tree canopy, increased exposure to air pollution, and increased noise and visual impacts. These issues have been raised with MDOT SHA in DEIS, SDEIS, and Section 106 comments and need to be addressed as soon as possible before any Programmatic Agreement can be finalized.

5) Native American Site

Inappropriate approach and disregard for an important Native American site

Regarding Site 18MO749, a Native American site, we note a significant difference in what the DEIS appendix said about this archaeological site and what MDOT now states as part of the Section 106 process.

The July 10, 2020 DEIS Appendix stated that Site 18MO749:

“is believed to have the ability to answer significant questions about precontact settlement patterns and the nature and use of the site through further research and excavation. [It] appears to retain a high degree of stratigraphic integrity and has the potential to provide meaningful new data on precontact lifeways in the area. It may also provide additional information that can be used to compare and contrast with the concentration of precontact sites located on the south shore of the Potomac River across from the site.”

And yet, MDOT now proposes to defer the required Phase I survey until after a Programmatic Agreement is executed. See MDOT January 4, 2022 letter, at p. 7

More should be known about this site at this stage of the Section 106 process. Investigation and NRHP eligibility determination should not be deferred for such a historically significant archaeological site close to which there are proposed

wetland mitigations for impacts of the project to park wetlands. The archaeological site could be damaged if more is not known. Saying “The site may have been too poorly drained in the past to support human habitation, but this is not known with certainty” about a site next to the one described is careless and speculative, not at all in keeping with the due diligence and respect such a rare and unique archaeological site merits.

6) C&O Canal Lock House Keeper Site

NRHP eligibility determination for C&O Canal Lock House Keeper site not provided and needs to be

Another C&O Canal NHP site was recommended for NRHP eligibility in the July 10, 2020 DEIS for:

[G]ood potential for the presence of additional cultural features and patterned artifact deposits. [It] has the potential to provide substantive data that could be useful in addressing a variety of regional research issues, including those related to early 19th through early 20th century consumer behavior and the lifeways of C&O Canal lock house keepers. This site is recommended eligible under NRHP Criteria A, C, and D, and avoidance or data recovery investigation is recommended.

Notwithstanding this acknowledgement, the status of this site’s NRHP eligibility determination and avoidance, minimization, and mitigation measures are not disclosed in the SDEIS nor has any NRHP eligibility determination been shared as part of the Section 106 consulting party process. This omission must be remedied in advance of finalizing the Programmatic Agreement.

When available, we request to review the NRHP eligibility determination and request the close involvement of state historic preservation officers in protecting this site.

7) The Potomac River

Lack of attention to historic Potomac River and mitigation of impacts on river and its users

The Potomac River is nationally recognized as an important historic, scenic, and recreational waterway. The National Park Service (NPS) has designated the Potomac as a National resource – The Potomac Heritage National Scenic Trail and as part of the Captain John Smith Chesapeake National Historic Trail. Both of these National Trails include the section over which the new bridge will span. Yet the SDEIS does not assess impacts to the historic character of these NPS managed

trails. It does not appear that MDOT consulted with Maryland DNR Scenic and Wild Rivers Advisory Council or the managers of aforementioned trails regarding impacts to the Potomac River itself as a historic, scenic, and recreational resource.

Canoe Cruisers Association members actively use the Potomac River under the American Legion Bridge for paddling. The NPS and State of Maryland have recognized this section of the Potomac River as significant for its historical significance, scenery, and recreational opportunities. MDOT has not assessed the adverse impacts of replacing the American Legion Bridge to the Potomac itself nor to CCA members and the greater DC area paddling community. Furthermore, MDOT has not described how it can and must avoid, minimize, and mitigate those adverse impacts.

Sierra Club Maryland Chapter agrees with the inadequate assessment of impacts of the project and bridge replacement on the Potomac River itself. This is an omission that requires immediate attention and remedy.

Sierra Club also notes that CCA's interests include historic and cultural resource protection and supports the Canoe Cruisers Association's request for Section 106 consulting party status.

For more information on each of these site issues (except Item 7), we refer you to the Sierra Club et al. comments on the SDEIS. We also refer you to the comments of the individual stakeholder entities, including Friends of Moses Hall, Washington Biologists' Field Club, Carderock Springs Citizens Association, and Canoe Cruisers Association.

Bridge Alternatives

A serious study of bridge alternatives and bridge construction impacts has not been undertaken. The DEIS merely notes that "Other minimizations options were also considered and discussed with NPS such as a double deck bridge, top-down construction and reduced typical sections and pier locations." The public has not been provided a meaningful opportunity to review potentially less damaging bridge alternatives. Given the scenic historic value of the river and the sensitivity of the historic and ecological significance of the sites under and around the American Legion Bridge, it is not acceptable to wave away consideration of alternatives with mention of the fact that there were prior discussions between MDOT and one federal agency. There are many stakeholders that deserve to be at the table for decisions about the American Legion Bridge, including the ones mentioned in this letter. These alternatives must be given serious consideration as part of the Section 106 consultation process.

Impact Assessment for Cumulative Effects of Future Phases

Detailed identification and impact assessments of historic sites for all of the I-495 & I-270 MLS are required. It is improper to not have reviewed Section 106 sites from upper 270 between I-370 and I-70, which are reasonably foreseeable results of the planned eastern I-495 and upper I-270 future phases. Impacted historic properties include the Monocacy Battlefield. The upper I-270 segment is already conditionally contracted to the developer Transurban and has a specific name (Phase 1 South plus upper I-270 is being called the American Legion Bridge Traffic Relief Plan). It is part of the plan and therefore needs to be considered a foreseeable future cumulative effect of the plan. The failure to review and disclose the impacts on historic properties in the upper I-270 segment deeply prejudices the consideration of alternatives and the integrity of the decision-making process for this controversial project.

Area of Potential Effect and Limits of Disturbance

We note that you have included in the Section 106 process and January 4, 2022 Section 106 materials some properties that are outside of the LOD/APE of the project, including in Prince George's County (which this part of the project will not touch). The findings of no effect for property outside the project will obviously need to be re-evaluated and reassessed if/when a future phase of the project is undertaken. It should be absolutely clear that if the project goes in the future to the original scope, those findings are invalid and the public and relevant consulting parties needs to be given an opportunity to comment on impacts of any new expansion in the future.

In light of the strong disagreements relating to the assessment of adverse effects noted above, it is entirely premature to execute a Programmatic Agreement that is predicated upon the flawed assessment of adverse effects and mitigation measures noted above. Instead, any PA must acknowledge the serious adverse impacts on the Morningstar Tabernacle No. 88 Moses Hall and Cemetery, and must do a better job of considering measures to avoid or mitigate harm to those historic properties, such as Plummers Island, that are acknowledged to be adversely affected by the Project.

We appreciate your prompt attention to these serious unresolved matters.

Josh Tulkin, Director
Sierra Club Maryland Chapter