



April 14, 2022

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, has received the Section 106 materials and draft Programmatic Agreement (PA) for Phase 1 South of the I-495 & I-270 Managed Lanes Study which was sent for review on March 31, 2022. The materials included a revised area of potential effect and revisions in the limits of disturbance. Our comments, concerns, and requests follow, and they incorporate by reference here all of our previous comments.

THE PA IS PREMATURE BECAUSE SERIOUS LEGAL ISSUES REGARDING CUMULATIVE EFFECTS WERE IGNORED

Sierra Club and multiple consulting parties raised legal objections to the MDOT's arbitrary and incorrect argument that no cumulative effects prior to 1966 and 1970 could be considered.

Yet the March 31, 2022 MDOT Section 106 cover letter in this set of materials glosses over the legally insufficient argument, does not address that issue in the response matrix, and falsely implies there are no issues with cumulative impacts to the Morningstar Tabernacle No. 88 Moses Hall and Cemetery site, saying: "FHWA finds that the issues related to atmospheric, audible, visual, and cumulative effects to the property, have been addressed."

The MDOT cover letter further states,

"In MHT's letter of February 4, 2022, the rationale for not concurring with the specific effect finding for Morningstar Cemetery was due to potential for

additional burials outside the defined boundaries of the property that may exist or be impacted.”

This is not accurate.

The MHT February 4, 2022 letter states regarding the Morningstar site that (emphasis added):

“Given the sensitivity of the resource, the potential for the presence of additional burials that may be impacted, and the overwhelming expression of concern for this resource expressed by multiple consulting parties, **it is our opinion that the finding of adverse effect remains valid for this historic property.**”

The sensitivity of the resource and concern for the resource certainly include more than just the possibility of additional burials that may be impacted and extend to audible, visual, and cumulative effects, and site diminishment. That those issues were spoken about generally as “sensitivity of the site” and “overwhelming expression of concern” in the above MHT comment does not remove them as issues from the Section 106 process. Cumulative impacts, for one, is still very much an issue for this site.

Cumulative impacts from past Beltway construction are indisputably adverse; this site has been subject to longstanding, historic race-based discrimination in transportation planning in the [state](#).

The PA is premature given that the serious legal issues regarding cumulative effects have been ignored.

MORNINGSTAR TABERNACLE NO. 88/MOSES HALL AND CEMETERY

We endorse and incorporate by reference the April 14, 2022 comments of the Friends of Moses Hall regarding the Morningstar Tabernacle No. 88 Moses Hall and Cemetery site.

In addition to Sierra Club objecting to MDOT’s dismissing and ignoring of cumulative effects and other adverse effects to this site, as described above, we have significant concerns about (1) MDOT’s deferral of the determination of effects for the site and (2) the lack of specificity in the PA language concerning the site.

Deferral of Effects Determination

After a determination of adverse effects and then a contested determination of no adverse effect, MDOT is now proposing to defer its effects determination for the Morningstar Tabernacle No. 88 Hall and Cemetery in the historic Black community of Gibson Grove in Cabin John, Maryland.

The contentious issue surrounding the adverse effect determination for Morningstar Tabernacle No. 88 site cannot be deferred. In a letter to Dr. Julie M. Schablitsky of MDOT, the MHT clearly stated on February 4, 2022 that: “it is our opinion that the finding of adverse effect remains valid for this historic property.”

Sierra Club objects to MDOT’s deferral of the adverse effect determination for several additional specific reasons.

1. MDOT’s new proposed plan to defer a determination of adverse effect for Morningstar Tabernacle No. 88 site until after issuance of the Record of Decision will foreclose major options for alternatives and redress.
2. Adverse effects are able to be determined now since there are over two dozen probable or possible grave shafts in the right-of-way abutting the land where the highway will be widened and heavy construction equipment will be used. The probable and possible grave shafts conform to the same patterns observed in the rest of the cemetery.
3. These effects, when added to the cumulative impacts from past Beltway construction, are indisputably adverse; hence, even assuming some degree of post-ROD mitigation, there is no basis for arguing that there would be no adverse cumulative effects to this important historical site, which has been subject to longstanding, historic race-based discrimination in transportation planning in this state.

In summary, while the full extent of the adverse effect can be addressed as part of the PA, the adverse effect determination must be made now.

Programmatic Agreement

In addition to the April 14, 2022 comments on the PA made by Friends of Moses Hall, we ask that:

1. the PA include a binding commitment to avoid any disturbance or physical intrusion to the portion of the cemetery within the right-of-way that contains the probable and possible grave shafts

2. the PA section pertaining to the Morningstar site be specific about which studies will be done and which boundaries (historical boundaries, or boundaries set on a certain date) are being referred to and include the referenced boundary map as an attachment to the PA
3. this statement in Section V.G.2 be removed from the PA as it is not accurate, legally or otherwise – “If no interments are identified that would unavoidably be affected by the project, there will be no adverse effects to the cemetery from the Preferred Alternative.”
4. this statement in Section V.G.2 be amended to include italicized text: “Should interments be identified outside the identified boundary of the cemetery, and no additional project avoidance options are feasible, MDOT SHA, ~~and~~ FHWA *and Friends of Moses Hall, National Trust for Historic Preservation, M-NCPPC, MHT, Sierra Club Maryland Chapter and other interested parties* will consult on the likely adverse effect, identify mitigation options, and amend this PA as necessary following the procedures in Stipulations IV and XIII of this PA.”

PLUMMERS ISLAND/WASHINGTON BIOLOGISTS’ FIELD CLUB

We endorse and incorporate by reference the April 14, 2022 comments of the Washington Biologists’ Field Club.

Given the recent groundbreaking of the 495 NEXT toll lane expansion project in Virginia, cumulative effects (including stormwater runoff) of the 495 NEXT project combined with the Maryland toll lanes project need to be documented and taken into account for the intervening historical properties, Potomac River, and the American Legion Bridge, from which runoff will empty untreated into the Potomac River and directly impact Plummers Island.

CARDEROCK SPRINGS

We endorse and incorporate by reference the April 2022 comments of Carderock Springs Citizens Association, who represent a National Register of Historic Places community.

INSUFFICIENT COMMENT PERIOD

Every other time Section 106 materials have been sent to consulting parties as part of the I-495 & I-270 Managed Lanes Study there has been a 30-day review period. This time, at the most critical juncture in this process, that of requesting concurrence, only a two-week comment period has been provided despite new information and materials to review, a change in determination status for an important historical site, and unresolved conflicts.

The regulations say that if information is missing, more time may be requested. “At the request of the agency official or any of the consulting parties, the Council shall review any disputes over whether documentation standards are met and provide its views to the agency official and the consulting parties.”

In the comment response table circulated on March 31, 2022, there is a notably cursory and incomplete response to the issues raised by consulting parties in the last round of comments. In some cases, MDOT just picked out a single point to respond to, such as in the case of Friends of Moses Hall. In Sierra Club’s case, MDOT only responded to three comments and ignored all the other issues raised.

MDOT has failed to respond to a significant number of consulting party substantive comments for this most recent Section 106 comment period, failing to address multiple Section 106 issues raised by the Maryland Historical Trust, National Trust for Historic Preservation, Friends of Moses Hall, and Sierra Club Maryland Chapter, among others. On that basis, Sierra Club continues to request more time for comment on this package of materials.

Attachment 6 “Eligibility and Effects Tables” also appears to be incomplete. It seems to be a summary of historic properties experiencing adverse effect, experiencing no adverse effect, and 4(f) *de minimis* properties, but it omits a list of 4(f) properties with more or less than *de minimis* impacts. For instance, the public playing field at Carderock Springs Elementary School is missing from the 4(f) impacts list. Also, for unexplained reasons, the 4(f) *de minimis* properties list includes Beltsville Agricultural Research Center (BARC) which is in Prince George’s County, not in Phase 1 South of this project at all.

Secondly, a key legal matter (regarding cumulative effects) raised by multiple consulting parties was ignored. A response to that issue is missing from the documentation provided and is necessary for moving forward with the PA.

For these two reasons, Sierra Club on behalf of consulting parties continues to request more time for review and comment on the March 31, 2022 Section 106 package of materials.

CLOSING AND NAME FOR PROGRAMMATIC AGREEMENT

In closing, the PA is premature given that the serious legal issue regarding cumulative effects has been ignored.

While a more detailed analysis of the project's full adverse effects on the Morningstar Tabernacle No. 88 Moses Hall and Cemetery site can be addressed as part of the PA, the adverse effect determination must be made now.

In addition to Morningstar Moses Hall and Cemetery, there are still significant outstanding unresolved issues with regard to Plummers Island and Carderock Springs.

This latest 2-week comment period with only a few working days for individuals impacted by public school spring vacation seems intentionally designed to limit feedback from consulting parties. The short timeframe provided is not sufficient for review of the materials, much less formulation of thoughts, consultation, write up, and internal approvals. There is not one person or group who has only this project's Section 106 process as a fulltime job, which is why Sierra Club (Appendix A) and other consulting parties wrote in asking for a longer timeframe for comment.

On the basis of missing information, Sierra Club continues to request more time for review and comment on the March 31, 2022 Section 106 package of materials.

The requested name for the Programmatic Agreement is Josh Tulkin for Sierra Club Maryland Chapter. However, we do not concur with the Programmatic Agreement at this time and withhold signature unless and until such time as we deem that consulting party requests have been appropriately included in the Programmatic Agreement.

Sincerely,

Josh Tulkin, Director
Sierra Club Maryland Chapter



SIERRA CLUB
MARYLAND CHAPTER

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April 6, 2022

Steve Archer, Cultural Resources Team Leader
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State Highway Administration
Environmental Planning Division
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Dear Mr. Archer,

We received the new Section 106 materials less than a week ago on Thursday. These materials were provided with a two-week comment period ending on April 14, 2022. All previous Section 106 comment periods for the I-495 & I-270 Managed Lanes Study have been 30 days long.

We have learned of your denial of Friends of Moses Hall's request for the usual 30-day comment period on the new Section 106 materials.

We echo their concerns about the inadequacy of the proposed two-week review period, particularly when one of those weeks overlaps with the public school spring break in the affected jurisdictions. Many people, including my key staff, have previously scheduled vacations during this timeframe, and this will make it very difficult if not impossible to provide meaningful comments on the new materials.

There was no advance notice of when this new set of Section 106 materials would be circulated for public review and comment, so no advance planning was possible to schedule and reserve time to provide comments, an additional reason why a two-week period is not adequate.

We therefore ask that you reconsider the request for an enlargement of time to provide comments on these key documents and provide a 30-day comment period on the latest materials up to and including April 30, 2022.

Sincerely,

Josh Tulkin, Director
Sierra Club Maryland Chapter