



Robert L. Ehrlich, Jr., Governor
Michael S. Steele, Lt. Governor

Robert L. Flanagan, Secretary
Neil J. Pedersen, Administrator

Maryland Department of Transportation

January 22, 2004

Michael Grant, President
Bethesda Place Community Council, Inc.
Suite 100
7605 Arlington Road
Bethesda MD 20814-6217

Dear Mr. Grant: *Michael*

This is a follow-up to your letter regarding the Bethesda Place Community Council's appeal of the State Highway Administration's (SHA) decision not to provide noise abatement for the Bethesda Place/Stratton Commons community, located in the southeast quadrant of the I-270 West Spur/Democracy Boulevard interchange in Montgomery County, as part of the I-270/Democracy Boulevard interchange project. I appreciate your patience while we reviewed and researched the points you raised and responded to them.

Combined Response to Points 1 and 2 of your letter:

The SHA's Sound Barrier Policy was approved by the Federal Highway Administration (FHWA) in May 1998 and was based on a framework of federal guidance that was promulgated in June 1995. The receipt of federal approval of our policy meant that the language of SHA's Sound Barrier Policy was judged to be consistent with and to meet the spirit of the federal guidance.

We recognize that FHWA's policy encourages flexibility, and we believe that our policy is flexible. The current policy was developed with the guidance of a panel of Maryland legislators who felt that, while it was important to provide flexibility, it was even more important to establish boundaries for the policy that would result in an affordable program. This is the reason why our policy includes the 3-decibel threshold as a "reasonableness" criterion. While our policy uses the words "could be considered" with regard to the 3-decibel increase, in practice we have always applied this as a criterion that must be met. To relax this element in this situation would open the State to requests, for similar treatment, by numerous other communities that had previously been denied a barrier for this reason. The State is not in a position to fund such an outcome.

Regarding the federal guidance reference to a "rational, open process," we know that the criteria contained in our policy have been applied uniformly and believe that they provide a reasonable degree of flexibility. We also know that there have been, and will continue to be, instances in which communities do not meet the requirements for a sound barrier.

My telephone number/toll-free number is 410-545-0400 or 1-800-206-0770
Maryland Relay Service for Impaired Hearing or Speech 1.800.735.2258 Statewide Toll Free

Response to Point 3 of your letter:

As stated above, the increase of 3 decibels or more (“build” vs. “no build”) is a part of the “reasonableness” criteria. As a matter of policy, SHA does not consider it reasonable to abate noise levels that are only marginally above the levels that would occur without the proposed improvements. When our explanatory text refers to “perceptible change,” we are speaking of a change in the “average” noise level, or “Leq,” not the second-to-second or minute-to-minute changes in noise that include “noise spikes” which average out in an Leq summary. While we appreciate that these noise events are bothersome, the Leq is the national standard that we follow.

This project was not particularly difficult to model. The physical changes associated with this project are not substantial (compared to the “no-build” condition) and do not result in noticeable changes in the noise level. Ramp traffic was modeled, taking into account the shift of traffic from the eliminated loop ramp to the eastbound ramp to Democracy Boulevard. In addition, the eastbound ramp widening was also included as an element of the prediction model.

In the reference to “peak period noise levels,” changes in the noise level moment-to-moment are accounted for in the noise model, and all vehicles, including buses, are modeled. The “peak hour” Leq is the national standard noise descriptor, which FHWA requires states to use in the assessment of highway traffic noise impacts. The effect of vehicles passing at a close distance and the associated noise fluctuations are accounted for in the noise model, in that the analysis includes a distance-related calculation of noise level and considers the differing emission levels for different vehicle types, including buses. The more of these types of “events” that occur, the higher the overall average level will be.

Response to Point 4 of your letter:

Further referencing flexibility in the SHA policy, even when the 3-decibel increase threshold is not met, the policy provides for special consideration when the hourly Leq noise level reaches or exceeds 72 decibels. In cases where this occurs, our policy provides for any increase in noise resulting from the project improvements as having met this criterion. A key provision regarding appeals is contained on page 8 of the policy. The basis for appeals is limited to the application of the policy criteria or the accuracy of the technical analysis.

Response to Point 5 of your letter:

The issue concerning the Greentree Road area was addressed in the cumulative effects analysis. The results found that the acceleration lane resulted in no increase in noise. The policy indicates that, if noise reaches 72 decibels, there must be a demonstrated increase to further consider abatement. None was found in this situation.

Mr. Michael Grant
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Closing Comments

The reference to the Montgomery County Master Plan and the included recommendation of noise barriers along the I-270 spur is not binding on SHA and is based on the plan as it existed at that time. The construction of sound barriers with highway improvements is always based upon whether the eligibility requirements are met. The response to your point 4 is the conclusion we must reach in considering your appeal. Your disagreement with a specific criterion contained in the policy does not, according to the policy, provide a basis for appeal. We must therefore respectfully deny your appeal of our decision not to provide noise abatement for the Bethesda Place/Stratton Commons community as part of the I-270/Democracy Boulevard interchange improvements.

Thank you for your letter and your continuing interest in the State's Sound Barrier Policy. If you have additional questions, please do not hesitate to contact Mr. Charles B. Adams, SHA's Director of Environmental Design, at 410-545-8640, 1-800-446-5962 or, by e-mail, at cadams@sha.state.md.us. He will be pleased to assist you.

Sincerely,



Neil J. Pedersen
Administrator

cc: Mr. Charles B. Adams, Director of Environmental Design, SHA
The Honorable William A. Bronrott, Member, Maryland House of Delegates
The Honorable Howard A. Denis, Member, Montgomery County Council
The Honorable Douglas M. Duncan, Montgomery County Executive
The Honorable Robert L. Flanagan, Secretary, Maryland Department of Transportation
The Honorable Brian E. Frosh, Member, Senate of Maryland
The Honorable Marilyn R. Goldwater, Member, Maryland House of Delegates
The Honorable Susan C. Lee, Member, Maryland House of Delegates
Mr. Charlie K. Watkins, District Engineer, SHA