

October 25, 2004

Thomas Smith
Division Administrator
Federal Highway Administration
700 Washington Street East
Charleston WV 25301

RE: Corridor H Bike Path #1
City of Thomas to County Route 27
State Project # U647-BIC/YC-1.00
Federal Project # HDH-0484(171)C

Corridor H Bike Path #5
County Route 27 to Hendricks
State Project # U347-BIC/YC-5.00
Federal Project # APD-0484(207)

Dear Mr. Smith:

The West Virginia Division of Transportation (WV DOT) is involved in developing a hiking and biking trail in Blackwater Canyon, as mitigation for Corridor H and under the terms of the Corridor H settlement. This is part of the Allegheny Highlands Trail from Elkins to Mt Storm. The Trail is based on an old railroad grade. The WV DOT has studied the Blackwater Canyon portion of the Trail under a Categorical Exclusion, rather than doing a full EIS, on the grounds that the Trail will be used exclusively for hiking and biking.

The Department of Highway (DOH) Report: Corridor H Bike Path #1 City of Thomas to County Route 27 and Corridor H Bike Path #5 County Route 27 to Hendricks, (the Blackwater Canyon portion) states that hiking and biking trail use will not adversely impact the historic resources on and along the Trail – resources that federal agencies such as the Monongahela National Forest and the Federal Highway Administration, and the State using Transportation Funds, are required to make every effort to protect.

The Blackwater Canyon Rail-Trail from Hendricks to Thomas has been intensively studied and documented for its historic, scenic, and cultural resources by the West Virginia Department of Transportation. This work is documented in the Phase 1 Cultural Resources Management Report, dated May 5, 2003. The Report states that the WVC& P railroad grade through the Blackwater Canyon is individually eligible to be listed on the National Register of Historic Places. In addition, the Trail is a contributing resource to the National Register-eligible Blackwater Industrial Complex Archeological and Historic District. The West Virginia SHPO concurs on this ruling.

Stewards of the Potomac Highlands has learned that the DOT has entered into negotiations with Allegheny Wood Products for the purchase of one half of the Trail through the Canyon, and is discussing allowing the potential seller to retain an easement over the Trail which will allow the seller, a timber company, to run log trucks, bulldozers and skidders up and down the Trail. The use of the Trail as a commercial logging haul road would be contradictory to the premise of the DOT's reliance on a Categorical Exclusion, and would inherently and necessarily degrade and damage the cultural and environmental resources of the Trail, to such an extent that a new level and full round of assessment would be legally necessary, before even considering entering into any agreement based on such a plan. The DOT has made no findings of "no adverse impact" regarding the use of the Trail as a commercial logging haul road.

To reiterate: the current Cultural Resources Management Report has been written under a Categorical Exclusion for a hiking and biking trail. *If the proposed use of the Trail changes to a haul road, the Federal Highway Administration must approve of this new use, and a full EIS must be done on the proposal.*

Because the conveyance of any easement to the timber company would have an adverse effect on the historic railroad grade, the Federal Highway Administration must first consult under Section 106 of the National Historic Preservation Act. *Stewards of the Potomac Highlands asks to be a consulting party to the Section 106 process.*

Moreover, Stewards of the Potomac Highlands submits that after a thorough, legally mandated study, the adverse impact on the Trail's historic, scenic, environmental and cultural resources would be found to be so significant as to be unacceptable as a matter of law.

In addition Stewards of the Potomac Highlands assert that *the timber company's use of the Trail as a haul road using motorized vehicles will be incompatible with use as a trail, and therefore would violate the terms of the Corridor H settlement agreement.*

For these reasons, any offer, contract, or other agreement to purchase land with highway dollars that would allow the Trail to be used as a commercial logging haul road would be *ultra vires*, void, and illegal.

The Federal Highway Administration and all other agencies involved in cultural resources and environmental protection must be fully aware of this proposal, must take action to see that the law is followed, and must advise the WV DOT of the improper nature of the proposal under consideration. To this end we are sending this letter to the Federal Highway Administration, West Virginia SHPO, the WV DNR, the Monongahela National Forest, the Advisory Council on Historic Preservation, General Counsel at the Office of the Governor of West Virginia, and the U. S. Fish and Wildlife Service. *And we are asking the Federal Highway Administration, and each of these entities, to advise us of what actions they will take in response to this information.*

Given the demonstrated overwhelming public opposition to such a scheme that drew the most public comments *ever* to the Forest Service on a Mon Forest issue, there would be a massive and sustained public outcry, and immediate litigation, should there be any attempt to implement this illegal proposal.

We look forward to hearing from you soon.

Sincerely,

Paul Burke, President
Stewards of the Potomac Highlands

Ed Compton, Environmental Specialist, Federal Highway Administration
Susan Pierce, Deputy Historic Preservation Officer, West Virginia Division of Culture & History
Don Klima, Federal Agency Programs Director, Advisory Council on Historic Preservation
Fred VanKirk, Secretary, West Virginia Department of Transportation
Clyde Thompson, Forest Supervisor, Monongahela National Forest
Ed Hamrick, Director, West Virginia Division of Natural Resources
Tom Chapman, Field Supervisor, U. S. Fish and Wildlife Service
The Honorable Bob Wise, Governor of the State of West Virginia
Erica Mani, General Counsel, Office of the Governor
Alexander Macia, Chief of Staff, Office of the Governor
James Sothen, Director, WV DOT