



6.17.13

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Federal Highway Administration
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Re: Comments submitted at 6.17.13 Section 106 Consulting Party Meeting for Headquarters Road Bridge over Tincum Creek

Dear Ms. Otto,

Removing and replacing the Headquarters Road Bridge with a two lane, modern structure, as is being myopically pursued, will increase environmental harm, including to the high quality waters, flows and habitats of the Tincum Creek; it will diminish the ecological and historic attractiveness of the community which currently is a draw for visitors from all over the country bringing economic benefits to our community; it will result in a loss of this country's history that can never be replaced; and it is likely to undermine the Wild & Scenic designation granted to the Lower Delaware River which provides an important layer of recognition and protection that we can ill-afford to lose. The Headquarters Road Bridge, along with other historic bridges of Tincum Township, comprise a rare and irreplaceable asset that help support an environmentally friendly economy (ecotourism, etc.). It is critical that transportation project decisions do not erode this asset.

PennDOT, on behalf of the Federal Highway Authority, has failed to conduct an objective, well rounded, informationally supported assessment of the Headquarters Road bridge project including, but not limited to: there has not been appropriate consideration of options for accommodating the traffic needs PennDOT asserts, including alternative travel routes for through traffic; PennDOT has failed to use accurate information on the traffic, community growth, environmental impacts, and historic impacts of a variety of possible options; PennDOT is poorly complying with the legal requirements and guidance for historic and environmental reviews including inappropriately planning for a categorical exclusion assertion from the requirements of NEPA, failing to conduct the 106 and NEPA reviews jointly as federal policy

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recommends, among others; and having arrived at a final determination for this project before engaging in the required historic and environmental reviews that should be informing the decision not being used as mere check-offs after a decision has already been made.

I. Initial Thoughts About the Process.

The Delaware Riverkeeper Network is concerned about the process, decision and precedent being set with this project review. In this letter we provide a set of initial comments which we fully expect to supplement as the documents being used to explain, inform and support the decisionmaking process are finally revealed. The Delaware Riverkeeper Network has engaged a set of experts, historic and environmental, to review materials as they are made available -- to date very little has been released as part of the process and our Right to Know requests for documents have been impeded by the agency. Our experts have conducted initial reviews on the materials we have obtained and have conducted their own independent reviews as well. It is important that the public process for 106 purposes, NEPA and DOTA 4(f) provide enough time and opportunity for full public and expert review and engagement.

A Commitment to Additional 106 Meetings is Requested:

In order to ensure an informed Section 106 Consulting Party Process we would like FHWA to commit to a minimum of 6 additional meetings in order to ensure a full opportunity for the community to present its expert reviews, its well organized facts, and to engage in needed dialogue based on this information with representatives for FHWA in the 106 process. The request for 6 meetings is not random but is based on the following:

- Two for the community to come and present our expert findings, allow for questions, and accommodate public comment (The Delaware Riverkeeper Network has several experts we have hired and so would require at least two meetings to give the necessary time for them to present their findings and answer any questions.)
- Two for there to be dialogue between FHWA, PennDOT and the experts after each party has had opportunity to review and digest the materials that have been provided and the questions and answers that were discussed at the presentation meetings. Again, the Delaware Riverkeeper Network has hired several experts and so at least two meetings would be required to ensure adequate time for dialogue, and public comment.
- Two meetings to allow for consideration of specific topics that will arise once PennDOT has shared information with the public that we still are waiting for. PennDOT has not provided a full copy of the current record for our review and to ensure informed discussions and participation by all consulting parties.

In addition, we ask for immediate release of the full record associated with this project to all interested parties and that at least 60 days be provided for review and comment upon those documents.

II. Based on what we have seen to date - which is limited and much of it dated - we offer the following initial set of comments.

Purpose and Need Statement is Obviously Deficient:

The Purpose and Need Statement is obviously deficient in that it is missing the most obvious goal: protecting the historic bridge and all historic elements in the Area of Potential Effects and the Ridge Valley Historic District. That this would not be a desired outcome of the project is inconceivable but speaks volumes to the predetermined nature of this process.

The Area of Potential Effects and Consideration of Effects are too Narrow:

Pursuant to Section 106, PennDOT must identify the Area of Potential Affects (APE). This APE should include an area larger than simply the bridge and its approaches. A wider, new bridge will result in increased traffic on Headquarters Road and have adverse effects to other historic resources, including other contributing properties to the Ridge Valley Historic District; these effects must be identified, reviewed, analyzed and assessed. It seems that PennDOT has identified an APE that is far too narrow and has failed to consider the impacts to other historic resources, impacts to resources that must be considered in order to comply with Section 106.

Without question, the project will have an adverse effect on the historic Headquarters Road/Sheephole/Burnt Mill Bridge, a contributing resource to the Ridge Valley Rural Historic District. However, other effects must also be analyzed in the Area of Potential Effects, which have not been, including but not limited to:

- Widening the bridge from one to two lanes will have significant environmental and other historic impacts in the highly sensitive rural historic district immediately surrounding the bridge.
- Widening the one lane bridge to two lanes will result in increased traffic and traffic speeds.
- The induced traffic will result in secondary or cumulative impacts to the area, including but not limited to increased noise, fumes, visual impacts as well as secondary development.
- The recent PennDOT bridge replacement projects at Tettermer and Cafferty roads has invited an increase in graffiti, compounding the aesthetic harms to the historic district and inviting graffiti to other historic resources – the same would be expected if a new structure were built at Headquarters Road.

Full Environmental Review Should be Undertaken, not Avoided as is Apparently Intended and Should be Coordinated with 106 Compliance:

The Environmental Review conducted pursuant to NEPA is an irreplaceable part of the decisionmaking process and should be undertaken as early in the process as possible and certainly before any decisions on alternatives are made. The Section 106 regulations emphasize the need to coordinate Section 106 compliance with the agency's NEPA review. 36 C.F.R. § 800.8. In March of this year (2013) the Council on Environmental Quality and the Advisory Council on Historic Preservation encouraged agencies to integrate their NEPA and section 106 reviews and to do so early in the process. However, PennDOT and FHWA appear not to be complying with this guidance, instead undertaking 106 review in a vacuum with the environmental consideration to be undertaken later.

Of equal concern is that it appears as though PennDOT is poised to take the position that this project should be categorically excluded from review under NEPA as a "minor transportation" project. This classification fails to take into account that this Project could result in significant environmental impacts, is certain to have significant impacts on travel patterns, could have ramifications for both Wild & Scenic designation of the Delaware River and the Exceptional Value qualities of the Tinicum Creek, is likely to have air and noise impacts to the community,

and that it most certainly will have a “significant impact on properties protected by section 4(f) of the DOTA Act or section 106 of the National Historic Preservation Act,” and therefore involves “unusual circumstances” that require the FHWA “to conduct appropriate environmental studies to determine if the CE classification is proper.” 23 C.F.R. § 771.117(b).

Demolition of the current bridge and expanding the size of the bridge from one to two lanes along with associated construction practices (temporary and permanent) will not only affect historic properties, it will also lead to more runoff and pollutants entering Tinicum Creek, a designated Exceptional Value stream, it will impact stream flows, and will lead to water quality degradation, erosion and sedimentation. The Delaware Riverkeeper Network documented significant impacts to the Sundale Creek as the result of two PennDOT replacement projects and so we have recent evidence of the environmental harms that result.

At a minimum, an Environmental Assessment (“EA”) should be prepared to assess the environmental and community impacts of the various alternatives to the project. When will this process begin?

Review mandated by Section 4(f) of the Department of Transportation Act, 23 U.S.C. § 138 is being Potentially Undermined by Section 106 Review:

The Section 106 regulations emphasize the need to coordinate Section 106 compliance with the review mandated by Section 4(f) of the Department of Transportation Act 36 C.F.R. § 800.3(b). We are concerned that the analysis of alternatives that will be conducted by PennDOT under Section 106 is insufficient to satisfy the FHWA’s responsibilities under Section 4(f). Section 4(f) bars the FHWA from rejecting any reasonable alternative in favor of the bridge replacement if these alternatives do not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property. 23 C.F.R. § 774.17.

An analysis of the bridge prepared by Delaware Riverkeeper Network’s experts and shared already with PennDOT and FHWA, indicates that rehabilitation of the bridge is feasible and prudent. No evidence has been provided demonstrating that the bridge cannot be rehabilitated to an acceptable level of safety, or that the costs of rehabilitation reach the levels that would permit this alternative to be rejected under Section 4(f). No supporting data has been provided to suggest that the capacity of the rehabilitated bridge is inadequate to accommodate current or projected future traffic using the most up to date and place specific data available. Until this analysis is completed, it would be premature to reject the rehabilitation alternative as part of the Section 106 process.

Purpose and Need Document is Defective and Does Not Provide the Basis for the Replacement Option:

The purpose and need document seems to be based upon flawed information and to reach conclusions that are challenged by others and so need significantly more documentation to prove.

There seems to be a dramatic overstatement in the number of vehicle trips per day for the bridge. The figures provided range from 631 to 900 vehicle trips per day. Long time residents challenge this count. Additional information is needed to fully assess the accuracy of the assertions on either side:

- Over what period was the count conducted? Hours and then extrapolated? One day or multiple days and then averaged? Did PennDOT do multiple counts and use the high or low or average figure?
- What day(s) specifically was the count done? What day(s) of the week and what time of the year? And exactly what date(s)?
- Were other bridges and/or roads closed at the time of the count(s) and if so which ones?
- PennDOT should provide detailed reports from earlier traffic counts so that adequacy and comparability of the data can be reviewed.

Furthermore, updated traffic data that reflects current conditions (post-Headquarters Road Bridge closure) on the local network should be collected and made available – the information apparently relied upon is dated and fails to take into consideration current traffic needs and up to date, locally focused, population projections.

The bridge has previously accommodated “current” traffic. It is inappropriate in this case to increase its capacity for “future” traffic.

Our expert does not agree with the assessment that the pier structures cannot be rehabilitated. Based on technical information obtained and site reviews McMullen Associates has put forth a sound report regarding the availability of safe rehabilitation for the Bridge. PennDOT has not provided any information that would undermine this finding. At this time we would ask PennDOT to please provide McMullen Associates access to the piers to conduct the borings they have requested to further inform their analysis regarding the rehabilitation option.

Regarding the assertion that the horizontal curve radius of the western approach does not meet safety criteria – in the case of an historic bridge, functional obsolescence does not qualify as a project need.

Regarding the fire truck assertions:

- ✓ No information has been provided to defend the assertion that in the absence of bridge reconstruction the delivery of emergency services by fire, police and ambulance could not be accommodated.
- ✓ The bald-faced assertion regarding the 41.5ft ladder truck does not, on its face, support the assertion that emergency response is denied in the absence of an increase in the bridge size. Historically the bridge did in fact accommodate all emergency service vehicles and needs. A June 10, 2013 survey conducted by McMullan and Associates determined emergency vehicles could use a rehabilitated structure.
- ✓ Furthermore, this truck is located at only one of the two fire departments located in Tincum; the 41.5 ft ladder truck is located at the Ottsville fire department. What other emergency response vehicles does Ottsville have and surely the Erwinna/DelVal fire department has emergency response vehicles despite not having this 41.5 ft ladder truck meaning that there are other emergency response vehicles available even if PennDOT’s assertion regarding the Headquarters Road bridge were true.
- ✓ When was the 41.5 ft ladder truck obtained? After the closing of Headquarters Road bridge or prior to it?
- ✓ There are not any buildings in the middle of Tincum large enough to require a 105 foot tall

ladder truck thus further arguing against PennDOT using the presence of this vehicle in one of the two Tincum fire departments as a justification for the removal and replacement of the historic Headquarters Road bridge with its proposed oversized, modern structure.

- ✓ There are many routes available to the 41.5 ft ladder truck that could get it to the locations and buildings that would need an emergency response vehicle of this size.

PennDOT Should be Applying Context Sensitive Design:

PennDOT should apply Context Sensitive Design in the case of this and other historic resource projects. PennDOT has more than adequate authority to apply Context Sensitive Design standards to this project under the provisions of its own *Smart Transportation Guidebook*, FHWA's *Flexibility in Highway Design*, and other documents.

The local roadway network should be planned, designed, improved, and maintained under an appropriate local transportation plan that supports the area's environmentally sensitive nature (Ridge Valley Historic District, Tincum Creek Conservation Landscape, Tincum Nockamixon Greenspace Corridor, etc.). Most local roads in the area should be managed as low-volume roads.

The Assertion that Sediment Deposits and Erosion Mandate a New Bridge are not Supported:

The issues of sediment deposit and erosion can be better addressed by natural channel design and upstream stormwater practices than a new bridge.

Increased upstream development results in increased runoff and will cause changes to the stream regardless of the structure in place. So it is better to address increasing runoff and stream flows than try to change the structure because any structure will be similarly afflicted.

If there is a concern about the direction of the flows and erosion as pertains to the bridge structure, natural channel design practices can and will more effectively address the specific concern in an immediate and long-term way and provide benefits to creek health, habitat and water quality at the same time.

Other Federal Programs for the Headquarters Road Project:

The Headquarters Road bridge project, restored as a one lane bridge, would best protect the historic structure, integrity and beauty of the bridge, and best protect the surrounding environment, historic district, and continue to economically benefit the community and educationally protect the region and nation. As such, we would suggest FHWA look to enroll this project in the federal Transportation Alternatives Program, it seems a perfect fit.

“The federal Transportation Alternatives (TA) program funds 10 different types of transportation-related activities. Through the Historic preservation and rehabilitation activity, communities rehabilitate and restore transportation facilities significant to the history of transportation in America. These rehabilitated facilities help to educate the public and to give communities a unique sense of character that attracts tourists and generates a vibrant economic life. Since the Transportation Enhancements (TE) program began in 1992, approximately 17 percent of available TE/TA funds have been programmed for historic preservation and rehabilitation projects.” (http://www.ta-clearinghouse.info/10_definitions)

Conclusion:

These comments are preliminary and based upon the very limited amount of information made available in anticipation of the June 17, 2013 meeting. It is critical that PennDOT and FHWA immediately provide full copies and access to all information that is part of PennDOT's current decisionmaking for the Headquarters Road Bridge. And we ask that you honor our process requests regarding:

- ✓ making information fully and immediately available,
- ✓ providing at least 60 days for review and comment upon any materials released,
- ✓ committing to at least 6 additional Section 106 consulting party meetings,
- ✓ committing to undertake an Environmental Assessment pursuant to NEPA that will be used to make a determination regarding the need for a full Environmental Impact Statement, and
- ✓ ensuring that the 106 process is not carried out in such a way as to impede full and appropriate analysis pursuant NEPA and DOTA 4(f)

Respectfully,



Maya K. van Rossum
the Delaware Riverkeeper