



August 18, 2014

VIA EMAIL

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Engineering District 6-0
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Re: Headquarters Road Bridge: NEPA process

Dear Ryan:

PennDOT held an open house on July 30, which included information about NEPA along with several other topics. We understand from dialogue that happened during the open house that PennDOT considers the open house as satisfying its NEPA obligations.

1. Regulatory Requirements for NEPA Public Meetings

As indicated in its July 22, 2014 letter, Delaware Riverkeeper Network expects that PennDOT will take additional steps to comply with NEPA, and strenuously objects to the agency's treatment of the open house as a public meeting that satisfies its NEPA obligations.

The open house did not satisfy regulatory requirements for a NEPA public meeting. 23 CFR 771.111, one of FHWA's NEPA regulations, sets forth several requirements for public hearings, including:

(b) State public involvement/public hearing procedures must provide for:

....

- (v) Explanation at the public hearing of the following information, as appropriate:
 - (A) The project's purpose, need, and consistency with the goals and objectives of any local urban planning,
 - (B) The project's alternatives, and major design features,
 - (C) The social, economic, environmental, and other impacts of the project,
 - (D) The relocation assistance program and the right-of-way acquisition process.
 - (E) The State highway agency's procedures for receiving both oral and written statements from the public.
- (vi) Submission to the FHWA of a transcript of each public hearing and a certification that a required hearing or hearing opportunity was offered. The transcript will be accompanied by copies of all written statements from the public, both submitted at the public hearing or during an announced period after the public hearing.

In addition, CEQ's NEPA regulations require that agencies "[h]old or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is ... [s]ubstantial environmental controversy concerning the proposed action or substantial interest in holding the hearing." 40 CFR 1506.6(c)(1).

Several staffers from the Delaware Riverkeeper Network attended the open house and do not believe the required information (23 CFR 771.111(b)(5)) was provided. Specifically, PennDOT had no information regarding right-of-way procedures, a critical aspect of the NEPA process with respect to the Headquarters Road Bridge because certain neighbors have indicated they will not grant easements or agree to rights-of-way for a 2-lane bridge. Also, PennDOT will not be able to provide a transcript due to the open forum format. And the format was neither that of a public hearing or public meeting, for example there was no dialogue that included all in attendance - there were merely stations that allowed for individual conversations between those in attendance with each other and with individual agency staff members from PennDOT and other agencies. And finally, public notices did not make clear that this meeting was intended to be a NEPA public meeting or hearing, it was advertised as an open house, and so individuals did not know that this was a meeting where they could gather NEPA type information or provide comment or testimony for the record in order to inform PennDOT and FHWA decision-making.

2. Consideration of Public Interest

PennDOT has failed to give due or appropriate consideration to the public interest and has not provided for a NEPA process that allows for full presentation of the array of public harms that result from PennDOT's plans. When comments regarding environmental and other impacts have been raised, PennDOT has continued to assert that any meeting held was limited to consideration of historic impacts and values and as such other areas of discussion were premature. And PennDOT has not provided a clear forum or venue for discussion of environmental, socioeconomic, recreational, health, safety, private property or other impacts, interests or concerns. The open house did not provide a clear and understood venue for raising, on the record, these other matters.

PennDOT's plan to demolish the 1-lane Headquarters Road Bridge and replace it with a modern 2-lane structure is clearly causing "[s]ubstantial environmental controversy" and "substantial interest" (40 CFR 1506.6(c)(1)). Tinicum Creek and the Lower Delaware River are included in the Wild and Scenic River System (16 U.S.C. § 1278(a)), and Tinicum Creek is an exceptional value waterway within that System. The Ridge Valley Rural Historic District, of which the Headquarters Road Bridge is a contributing structure, is a cultural and historic resource for the Tinicum Creek segment of the Lower Delaware River and supported the segment's designation as a scenic river.

PennDOT's plan to demolish and replace the Bridge poses a serious threat to the exceptional value of Tinicum Creek as well as the Wild & Scenic status of the Creek and the Delaware River, and PennDOT must give due consideration to the public's concerns regarding that threat under NEPA before proceeding. See, e.g., 40 CFR 1500.1(b) ("NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken").

3. Cumulative Impacts

Furthermore, PennDOT has failed to consider the cumulative impacts of the multiple bridge replacement proposals in and around Tinicum Township communities - environmental impacts, community impacts, roadway infrastructure impacts, economic impacts, traffic impacts, etc. As Delaware Riverkeeper Network stated in its letter to PennDOT earlier this month, NEPA regulations require agencies to include "cumulative actions," "similar actions," and "connected actions" in a single project evaluation. 40 C.F.R. § 1508.25(a). Delaware Riverkeeper Network maintains that PennDOT's various bridge replacement projects throughout the region clearly meet these definitions, representing "part of a unified and comprehensive transportation upgrade initiative," and that NEPA therefore mandates cumulative impact analysis (See

August 5, 2014 Letter to PennDOT Re: Cumulative Impacts of PennDOT's Bridge Replacements in Bucks County, "Aug. 5 Letter"). The open house did not remedy, in any way, this glaring NEPA deficiency.

PennDOT currently has several bridge projects in various stages of development, including similar plans to replace one-lane bridges; all projects affect the Lower Delaware River, including Tohickon and Tinicum Creeks, as well as the Bucks County roadway system. Tinicum Creek and the Lower Delaware River have been included within the Wild and Scenic River System under the Wild and Scenic Rivers Act; Tohickon Creek was added to the Lower Delaware Wild and Scenic Rivers Act as a scenic river in 2000 (P.L. 106-418). Delaware Riverkeeper Network maintains that these "bridge replacements will have an adverse impact on the region's watershed and roads, and those consequences must be considered together." (Aug. 5 Letter).

As the Delaware Riverkeeper Network has stated previously, "[a]n agency impermissibly 'segments' NEPA review when it divides connected, cumulative, or similar federal actions into separate projects and thereby fails to address the true scope and impact of the activities that should be under consideration." (Aug. 5 Letter). In order for PennDOT to comply with NEPA with regard to Headquarters Road Bridge, it must evaluate the cumulative impacts of bridge replacement projects in and around Tinicum Township as part of the proceedings.

We look forward to hearing PennDOT's plans for NEPA compliance. Thank you.

Regards,

A handwritten signature in blue ink that reads "Maya K. van Rossum".

Maya K. van Rossum,
the Delaware Riverkeeper

cc (via email): Mike McAtee, Urban Engineers
Kenda Gardner, Esq., PennDOT