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VIA EMAIL

May 13, 2015

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Consultant Project Management (HNTB)
PA Department of Transportation
Engineering District 6-0
7000 Geerdes Boulevard
King of Prussia, PA 19406
Email: c-rwhittin@pa.gov

Re: *Headquarters Road Bridge – Tincum Creek as a 4(f) resource*

Dear Ryan:

Through a Right-To-Know Request, the Delaware Riverkeeper Network recently received a set of emails exchanged between PennDOT, PennDOT's consultant AD Marble, and FHWA. We write to inquire about an email from you to Jonathan Crum in January 2015, recounting a phone conversation you had with Chuck Barscz regarding NPS's treatment of Tincum Creek as a 4(f) resource. The email states (emphasis added):

Jon,

Just giving you a heads up that I spoke with Chuck Barscz for another project (SR 611 over cooks Creek) yesterday and he also wanted to talk about Headquarters.

He mentioned again the team they have currently looking into the eligibility of the bridge and its contribution to the historic district though they haven't come to an official conclusion yet. *The reason I wanted to get in touch with you however was to let you know that they are still considering Tincum Creek as a Section 4(f) resource. I didn't quite follow the rationale this time around although he did seem to understand the stream does not contribute to the district. He mentioned how the district formed up around the stream and that the wild and scenic designation considers natural, recreational and historic resources.*

I asked him to summarize NPS opinion in an email and send it over to everyone. At this point I said we should probably have a meeting or phone call to talk this out.

-Ryan

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May 13, 2015
Page 2 of 3

This email indicates that neither PennDOT nor FHWA recognize Tincicum Creek as a 4(f) resource, despite NPS's position that the Creek is, in fact, a 4(f) resource.

Section 4(f) of the Department of Transportation Act prohibits FHWA and other DOT agencies from approving the use of 4(f) properties – such as Tincicum Creek – unless:

- There is no feasible and prudent avoidance alternative to the use of land; and
- The action includes all possible planning to minimize harm to the property resulting from such use; or
- The Administration determines that the use of the property will have a *de minimis* impact.

See <http://www.environment.fhwa.dot.gov/4f/>.

Tincicum Creek is a federal exceptional value waterway and state-listed Exceptional Value watershed. Under the National Wild and Scenic Rivers Act (WSRA), a Wild and Scenic River (WSR) is defined as “a river and the adjacent area within the boundaries of a component of the WSR.” While the designation of a river under the WSRA does not in itself invoke Section 4(f), publicly owned public parks, recreation areas, refuges, and historic sites within a WSR corridor are covered by Section 4(f). See http://www.environment.fhwa.dot.gov/section4f/properties_other.aspx#7.

Moreover, “any significant publicly owned public property (including waters) where the primary purpose of such land is the conservation, restoration, or management of wildlife and waterfowl resources including, but not limited to, endangered species and their habitat is considered by FHWA to be a wildlife and waterfowl refuge for purposes of Section 4(f).” See <http://www.environment.fhwa.dot.gov/4f/4fpolicy.asp#apply>. The Tincicum Creek watershed is ranked as first priority to protect in a countywide study (Rhoads and Block, Natural Areas Inventory of Bucks County, PA, 1999) based on its variety of uncommon plant communities, large numbers of rare plant and animal species, and the exceptional quality of the water. Four hundred plant species and over 100 nesting bird species inhabit the watershed. See <http://www.delawareriverkeeper.org/delaware-river/tincicum.asp>.

Applicable statutory provisions and regulations make clear that Tincicum Creek is a 4(f) resource, as indicated by the NPS. PennDOT has been proceeding on the Headquarters Bridge project under 4(f) for quite some time, such as in public and Consulting Party meetings. In addition, in a December 16, 2014 email from you to Diane Smith in Rep. Quinn's office, you state that the alternatives analysis being prepared by PennDOT “is meant to fulfill a Section 4(f) level of documentation.” We urge PennDOT and FHWA to continue to proceed under DOTA Section 4(f).

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Page 3 of 3

We would appreciate receiving a copy of NPS's explanation of its 4(f) rationale as soon as PennDOT receives it, per the email quoted above. While we can proceed under Right-To-Know Law to obtain a copy, we would prefer not to expend our or PennDOT's resources to do so. Thank you.

Regards,

A handwritten signature in black ink, appearing to read "L. Eden Burgess". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

L. Eden Burgess