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VIA EMAIL: c-rwhittin@pa.gov

Re: *Cumulative Impacts of PennDOT's Bridge Replacements in Bucks County*

Dear Ryan:

We have been reviewing and considering PennDOT's various bridge replacement projects recently completed, contemplated or underway throughout Bucks County. The widespread replacements will have a cumulative effect on the region's environmental and historic resources and appear to be part of a unified and comprehensive transportation upgrade initiative for the region that mandates them being considered cumulatively pursuant to NEPA. We urge PennDOT to recognize the coordinated and connected nature of these bridge projects, which are clearly part of a unified upgrade initiative for the region and must be considered cumulatively. Failure to do so violates NEPA's prohibition against project segmentation and fails to fulfill its cumulative impact analysis mandate.

PennDOT has recently completed, or is contemplating or currently undertaking major projects on many bridges in Bucks County, including Sheephole (Headquarters Road), Creamery Road, Jugtown Hill Road, Tettermer Road, Cafferty Road and Geigel Hill. These projects all affect the same waterways and road system and appear part of a unified upgrade initiative, thus having a "cumulative or synergistic environmental impact upon a region." *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976) ("when several proposals ... that will have cumulative or synergistic environmental impact upon a region are pending concurrently before an agency, their environmental consequences must be considered together."); *see also People ex rel. Van De Kamp v. Marsh*, 687 F. Supp. 495 (N.D. Cal. 1988) ("[a] federal agency must analyze and discuss the cumulative impacts of the proposed action considered together with past, present, and reasonably foreseeable future action.... The agency must consider other proposals and contemplated actions that are not yet formalized proposals. The agency must also consider actions that are not themselves subject to NEPA's requirements...."). The cumulative impacts are particularly significant

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where PennDOT plans to replace a bridge in its entirety. Accordingly, PennDOT must conduct a unified evaluation of the impacts of these replacement projects on the region.

Cumulative Action

NEPA regulations require agencies to include “connection actions,” “cumulative actions,” and “similar actions” in a single project evaluation. 40 C.F.R. § 1508.25(a).

A cumulative action is one which “when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.” 40 C.F.R. § 1508.25(a)(2). Under this definition, the bridge projects should be considered a cumulative action if they have cumulatively significant impacts, which are impacts “on the environment [resulting] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.” *Id.* § 1508.7. See also *id.* § 1508.27(b)(7) (cumulative significance discussed as one of ten factors to be considered in gauging intensity for purposes of determining significance). To undertake a proper and meaningful cumulative impact analysis, the lead agency must apply the Grand Canyon Trust test,¹ including, among other matters, the area impacted, “other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area,” and the expected overall impact of the separate projects “if the individual impacts are allowed to accumulate.”

Several bridge projects are currently under consideration by PennDOT; many plan to replace one-lane bridges and, significantly, all affect the Lower Delaware River, including Tohickon and Tinicum Creeks. 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). All the projects also impact the Bucks County roadway system. Together, bridge replacements will have an adverse impact on the region’s watershed and roads, and those consequences must be considered together.

Similar Action

Similar actions are those which “when viewed with other reasonably foreseeable or proposed agency actions, [] have similarities that provide a basis for evaluating their

¹ [A] meaningful cumulative impact analysis must identify:
(1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other actions—past, present, and proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.

Delaware Riverkeeper Network v. FERC, 2014 WL 2535225 (D.C. Cir. 2014), *citing Grand Canyon Trust v. FAA*, 290 F.3d 339, 345 (D.C. Cir. 2002).

environmental consequences together, such as common timing or geography.” 40 C.F.R. § 1508.25(a)(3). The common timing is quite obvious here, as procedures addressing various bridge projects in the County are proceeding on the same or similar timelines. Geography is likewise the same; all the projects impact the same roadways and the Lower Delaware watershed.

Connected Action

Connected actions include actions that are “interdependent parts of a larger action and depend on the larger action for their justification.” Id. § 1508.25(a)(1)(iii). Therefore, to the extent that these projects collectively represent a unified upgrade initiative, the projects must be considered sufficiently connected so as to require environmental review pursuant to NEPA.

Conclusion

The Delaware Riverkeeper Network urges PennDOT to undertake “a meaningful analysis of the cumulative impacts of these projects” (*Delaware Riverkeeper Network v. FERC*) to determine the true consequences of the extensive bridge replacements in Bucks County. We believe that applicable statutes, regulations and case law require PennDOT to evaluate Bucks County bridge replacement projects as a single, unified action which together adversely impact the invaluable environmental and historic resources of Bucks County.

* * *

I look forward to hearing PennDOT’s plans for conducting a meaningful cumulative impact analysis. Thank you.

Regards,



Maya K. van Rossum,
the Delaware Riverkeeper

cc (via email): Lester Toaso, PennDOT
Kenda Gardner, Esq.