



January 27, 2020

Technical Guidance Coordinator
Department of Environmental Protection, Policy Office
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: Comments on Policy for Pennsylvania Historical and Museum Commission (PHMC) and Department of Environmental Protection (DEP) Coordination During Permit Application Review and Evaluation of Historic Resources
Document ID: 012-0700-001

Dear Sir or Madam,

The Delaware Riverkeeper Network appreciates the opportunity to submit comments regarding the Department of Environmental Protection's (The Department) proposed policy on the coordination between the Department and Pennsylvania Historical and Museum Commission (PHMC) during permit application review and evaluation of historic resources. The Delaware Riverkeeper Network is actively engaged with communities, and as such, supports broad and active public participation. We also encourage the Department to further expand the opportunities for the public to take part in and contribute to the agency's decisionmaking process.

The well-being and health of residents across the Commonwealth are affected by the Department's permitting decisions in a variety of areas. The public participation process is essential to transparent and fair decisions, because it allows those who are most affected by policies, to influence the procedure of permit applications and the evaluation of historic resources. In addition, the Department can derive great value from the information and perspectives that residents can provide related to projects proposed for their communities.

To realize these benefits, a public participation process must be accessible, structured, and allow for meaningful participation by diverse members of the public. With this in mind, we offer the following comments on specific sections of the proposed policy.

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I. Definitions

The narrow definition of “Significant above ground historic resource” in the proposed policy fails to fully implement the intent of the Commonwealth’s History Code “to engage in **comprehensive** programs of historic preservation for the enjoyment, education and inspiration of all the people, including future generations.”¹ The narrow definition does not provide sufficient protection for contributing elements in a historic district. These elements are vital to promoting tourism, and may aid in spurring local economies.

Therefore, we recommend that the definition of “Significant above ground historic resource” be revised to read as follows:

“A building, structure, object, or district that is significant based on (1) the application of the National Register criteria and is listed in or eligible for listing in the National Register of Historic Places or (2) status of a contributing element to an historic district or (3) determination, based on evaluation of pertinent evidence and community involvement, that it possesses rare or valuable architectural or engineering features, deep cultural or historic connections to its surroundings, measurable economic value to the tourist economy, conspicuous community affinity, or other notable value related to its historic character. SHPO determines whether an above ground historic resource is significant.”

II. Coordination with PHMC

We support the early coordination between the Department and PHMC in guiding project development and in “[p]lanning for the avoidance of sensitive areas [that] may accelerate the review.” We, also, support the inclusion of “sources of information” that applicants should consult prior to completing the PHMC form and a Department application. However, we recommend that the Department alerts applicants of such information, perhaps by Fact Sheet, to increase the likelihood the information is utilized by applicants.

III. DEP’s Procedures for Permit Applicants and Persons Requesting Plan Approvals

We support the notification by applicants to the Department if historic resources or archeological remains are found during activity. However, the proposed policy fails to state how the Department or PHMC will ensure that applicant’s cease earth disturbance activities when historic resource or archeological resources are found. The proposed policy fails to provide a mechanism for determining appropriate procedures to safeguard the involved historic resources. Again, we recommend that the Department alerts applicants of such information, perhaps by Fact Sheet, to increase the likelihood the information is utilized by permittees.

IV. DEP/PHMC List of Exemptions

We recommend for clarity, Exemption 7, be revised to read as follows:

“Construction and maintenance of temporary road crossings, or temporary crossings over or through regulated waters of the Commonwealth including wetlands. Replacement of 50-year old bridges are not exempt from this policy.”

¹ 37 Pa.C.S. § 102, emphasis added

Without the additional “temporary,” Exemption 7 may be understood to encompass not only the “[c]onstruction and maintenance of temporary road crossings,” but all forms of crossings. The addition of “temporary” would clarify any ambiguity that may exist in the exception.

We also recommend that the phrase, “road maintenance activities”, in Exemption 9, be either removed entirely or narrowly defined to ensure that **only** activities that pose a low risk of degrading or destroying historical or archeological resource are exempt. Under the proposed policy, “road maintenance activities” is not defined at all, creating an exception for all road maintenance regardless of its risks to historic and archeological resources, and to the environment. A historic bridge, for example, could require extensive maintenance and thereby not only risk the destruction of its historical value, but also negatively impact the stream it is built over.

The term could be removed to ensure that the proper review will take place before any road maintenance occurs. Alternatively, the term could be narrowed to only exempt road maintenance that does not exceed a modest monetary amount. Both alternatives would guarantee that road maintenance projects with higher impacts and risks of historical, archeological, and environmental harm go through the necessary PHMC evaluations.

Further, we support the condition in Exemption 10, which reads as follows: “Some emergencies may require follow-up permits, which may not be exempt from PHMC coordination.” This condition, that was previously omitted from Document ID Number 012-0700-001, effective as of March 16, 2002, ensures that only emergency situations are exempt from PHMC evaluations. We, however, recommend that “follow-up permits” require PHMC coordination, unless the “follow-up permits” fall within one of the enumerated exemptions. This should clarify, when applicants or permittees will need PHMC evaluations to continue their activities and, also, ensure that the new or continued activity poses no threat to historical or archeological resources.

V. Relation of Proposed Policy to the PA State Constitution

The Pennsylvania State Constitution ensures “the protection of our right to clean air, and pure water, and to the preservation of the natural, scenic, historic and esthetic values of the environment.”² Applicants and permittees through their activities, whether it be by development or other permit necessary activity, cause potential harm to historic resources and adverse impacts on our environment. Certain exemptions, in particular exemption 7 and 8, may impact the right to clean air, water, and the preservation of the environment. The Pennsylvania Constitution affirmatively links protection and preservation of the environment and historic values. It forbids actions that cause deterioration and degradation to historic resources and natural resources. It provides that these resources are part of the public trust. It is particularly important in a policy such as the PHMC to overtly state that the purpose of the policy is to further the intent of section 27 of Article I of the Constitution of Pennsylvania and thus to provide the link and reference to legal precedents under the Environmental Rights Amendment. See 37 Pa.C.S.A. § 102

In conclusion, , guaranteeing that applicants and permittees go through the proper and appropriate PHMC evaluations will serve to prevent needless degradation, diminution, and depletion of

² Pa. Const. art. I, § 27

significant historical or archeological resources . For these reasons, DRN respectfully requests that the DEP incorporate the above suggestions of this comment. We look forward to continuing to work with the Department to further protect and preserve historic resources and natural resources so treasured to our communities and to the Commonwealth.

Thank you for your time, consideration, and commitment to public participation.

Sincerely,

A handwritten signature in blue ink that reads "Maya van Rossum" followed by a horizontal line.

Maya van Rossum
Delaware Riverkeeper