

Upper Delaware Council
PROJECT REVIEW COMMITTEE MEETING MINUTES
February 27, 2018

Committee Members Present: Larry Richardson, David Dean, Harold Roeder, Jr., Fred Peckham, Jeff Dexter, Al Henry, Aaron Robinson, Jim Greier
Committee Members Absent: Susan Sullivan, Debra Conway
NPS Partner: Kris Heister, Carla Hahn
Staff: Laurie Ramie, Pete Golod
Guests: None

The UDC's Project Review Committee held its monthly meeting on Tuesday, February 27, 2018 at the Council office in Narrowsburg, NY. Chairperson Richardson called the meeting to order at 6:31 p.m.

A motion to approve the January 23 meeting minutes was made by Peckham, seconded by Dexter and carried. There was no public comment on the agenda.

Discussion Items Report: Golod reviewed his written report, including as highlights:

Substantial Conformance/Project Review Update

Town of Delaware, NY: On Feb. 14, Golod attended a Delaware Town Board meeting regarding the Callicoon Water Company, which he said has been in severe disrepair and has had a lot of issues over the years. The Town will assume ownership and control through the proposed establishment of a special water district. At this meeting, William Brown from Delaware Engineering provided a project description. It included that the existing well/treatment house for Well #1 will be razed and a new, 600 square foot well/treatment house will be constructed on the site. Construction will be required to meet NYS building codes and permits from the local flood plain administrator. The bypass channel connecting Callicoon Creek and the Delaware River that was created through dredging in 2006 will be filled. 7,150 feet of water lines will be replaced. The Well #2 house located on Railroad Avenue will be rehabilitated. Golod said that the project packet was not initially submitted to the UDC for review or comment but the National Park Service had asked for the UDC's comments, which Golod provided on Jan. 30. On Feb. 15, the UDC received its own packet from Delaware Engineering which included a Notice of Intent to Serve as Lead Agency, Water Infrastructure/Engineering Map, and an Environmental Assessment Form. Golod drafted and mailed a comment letter to Delaware Engineering on Feb. 16. A copy of that letter was included as a handout in members' packets. Dean asked how many customers the Callicoon Water Company serves. Golod said 300-400. Roeder commented this will be a costly project. Golod said there will be a spike in rates initially to defer the cost of the project, which the town hopes to start this spring and complete by 2019. He noted that they will install water meters. In the meantime, the private water company will continue to operate in its limited capacity. Hahn said that when the diversion channel runs, it causes problems with the water supply. Henry asked how the channel will be filled. Golod responded that they will make use of local fill. Hahn added that this was an initial project presentation and there will need to be additional plans and specifications prepared. Henry asked if there are any plans to address the New York State Department of Environmental Conservation river access which has become inaccessible because of the diversion channel. Golod said not yet; it's still very preliminary. Peckham asked whether permits will be needed from the U.S. Army Corps of Engineers. Hahn said that was a good question and added, "We'll find out."

Town of Cochection, NY: On Feb. 13, Golod contacted Town Supervisor Gary Maas to request a copy of the town's draft ordinance changes for summer camps. Supervisor Maas subsequently provided Golod with the "Town of Cochection, Sullivan County, New York Zoning Law Amendment – January 30, 2018 Draft." Golod has begun work on a Substantial Conformance review.

Damascus Township, PA: On Feb. 26, the UDC received a letter from NPS Upper Delaware Superintendent Heister stating that the single-family home project on River Road in Damascus Township did not rise to the level of a Class II Significant Project review and therefore the UDC's recommendation

letter was not forwarded to NPS Regional Director Vietzke for a determination. A copy of that letter was in the packets.

Westfall Township, PA: The Delaware River Basin Commission reported that an application was received to renew the approval of Westfall Township's Municipal Authority Waste Water Treatment Plant and its discharge. The plant will continue to discharge treated effluent to the Middle Delaware River.

FY 2018 Technical Assistance Grants Update: Golod reported that he sent letters on Feb. 21 to the Town of Tusten and Damascus Township regarding the restoration of funding for their projects. Copies of those letters were included in the packets.

Resource Specialist's Update:

- On Jan. 24, Golod sent the full USDA Natural Resource Conservation Service's Conservation Innovation Grants document to UDC member participating municipalities.
- On Jan. 24, Golod submitted comments to Deputy Regional Permit Administrator Martha A. Bellinger, Division of Environmental Permits for NYS DEC, regarding the SPDES permit application, review notification, and engineering report for the proposed wastewater treatment plan at French Woods Performing Arts Camp in the Town of Hancock.
- Golod and Hahn continue working towards a Project Review Guide final draft. Another working session is scheduled for Mar. 2.

New Business:

Hancock Supervisor Resignation: Peckham reported that Sam Rowe has resigned as Town Supervisor for the Town of Hancock. The news had been recently shared on social media. He received a promotion from the New York State Department of Transportation to a supervisory position that presented a potential conflict of interest with his town supervisor's position. He had just been re-elected three months ago after a 16-year tenure. Peckham said the town board will likely elevate a council member to act as supervisor. He noted that Rowe had been a very effective leader, particularly in helping the town get through the floods.

Kellams-Stalker Bridge: Hahn reported that the Kellams, NY-Stalker, PA Bridge over the Delaware River will be closed on March 8 through June 29 for a repair and rehabilitation project, then again on September 15-November 15 for painting. They have a detour plan to re-route vehicles around the single-lane bridge during those periods.

Old Business:

Fiscal Year 2018 TAG Determination: Ramie reported that the National Park Service Northeast Region Contracting Officer, in determining that two of the three Technical Assistance Grant (TAG) projects that the UDC had approved at its October 2017 meeting for FY 2018 were allowable federal expenses, also addressed the timeline that the Council has practiced. Ramie said that contrary to the UDC having been advised in the past that TAG projects had to be awarded and completed within the same fiscal year, he emphasized that is not the case. The parameters are for TAGs to be completed: a) within the five-year term of the UDC-NPS Cooperative Agreement; and b) within the timeframes identified in the TAG projects' Scopes of Work. Each scope should have an estimated timeline for completion so that the UDC and NPS can tell if the projects are on track. He said perhaps it would be best if the scopes submitted with the applications just identified project milestones and their relationship to the date the project is approved, e.g. amount of time until contract would be signed, completed, etc. The Contracting Officer also advised that the UDC could find itself in a bind if it approves the start of a TAG project before the UDC has the funding in hand. The TAGs are not fixed costs so they are probably UDC's area of greatest budgetary flexibility, which he said "could provide critical in this era of budgetary uncertainty." Henry asked if it has been a problem for municipalities to complete their TAG projects within the same fiscal year. Ramie said no; it was understood upon applying and reinforced in the contracts that there was a 10-month timeframe to complete the work and submit a payment reimbursement request. Richardson said he does not feel we should change our schedules. Ramie said that extending the deadlines beyond the current fiscal year was merely an option for the committee to consider.

NPS 12/11/17 Response: Letter of Interpretation to Incorporate UDC Renewable Energy Position Statement into the Land and Water Use Guidelines: The committee had previously tabled this item in the interest of time. The UDC sent correspondence to the National Park Service on Oct. 25, 2017 proposing to use a Letter of Interpretation method to incorporate new land uses (utility-scale solar, wind, geothermal and hydropower) into the Upper Delaware River Management Plan (RMP)/Land and Water Use Guidelines (Guidelines). After consultation with the Office of the Solicitor of the U.S. Department of the Interior, the NPS recommended there was no further action necessary to address utility-scale hydropower energy systems since this use is already specifically addressed in the Guidelines as “incompatible” under the definition of “Power Generating Stations”. The NPS letter also asserted that while utility-scale geothermal and wind energy systems do represent new land uses within the river corridor, NPS agrees that a Letter of Interpretation is an appropriate format to clarify that the definition of “Power Generating Station” could be interpreted as including utility-scale geothermal and wind energy systems having a rated output capacity of up to 2 MWac per wind turbine. This approach would not require any addition to the Schedule of Compatible, Conditional, and Incompatible Uses table (RMP, pg. 134) or the addition of definitions to Section 5 of the Guidelines (RMP, pg. 126). To support this approach, NPS recommends updating the “Position Paper on Select Utility-Scale Renewable Energy Systems: Solar, Wind, Geothermal and Hydropower” to more fully reflect the results of the analysis summarized in Table 1 (pg. 7) related to utility-scale wind energy systems. Lastly, the Dec. 11 letter states that utility-scale solar energy systems do represent a new land use within the river corridor and NPS accepts the Council’s recommendation that it be considered appropriate as a conditional use. It would require the addition of both a new land use to the Schedule table and new definition(s) to the Guidelines. NPS does not consider this change to represent either a clarification of an existing provision or existing authority in the RMP which would be the function of a Letter of Interpretation. NPS recommends that the Council follow the process to seek a minor amendment to incorporate utility-scale solar energy systems into the RMP/Guidelines.

Peckham asked whether a public hearing would be required. Heister said that the minor amendment process calls for soliciting public comment. That could be accomplished through a public meeting that is advertised, read at a UDC meeting, and voted on the following month. The length of the comment period is discretionary. Richardson said approving a minor amendment requires a unanimous vote. Robinson raised the issue of how Cideries had been listed as a Conditional Use in New York and a Special Use in Pennsylvania. We had discussed that, because the two states have different approaches to approve the use, the UDC would amend the Plan to standardize them. Heister said that case was a combination of agricultural and commercial use. The position paper recognized Cideries as a conditional or special use throughout the corridor. Robinson said the objective in modifying the RMP is to standardize how we look at this use in NY or PA. There is more than one issue here. The certainty of getting a unanimous vote is questionable at best. Robinson asked, wouldn’t we want to take on all the issues that should be modified in the Plan rather than go about it piecemeal? Henry said the Plan outlines taking one issue at a time for minor amendments. Heister said since the Plan hasn’t been updated since its 1986 adoption, she recommends starting with one issue. Richardson said he feels that there is a better chance of approval to go through the process with one issue addressed individually. Robinson said local planning boards have to review and approve project plans based on standards in the Plan that are outdated. He cited as an example the definition of “major commercial development” as “Commercial uses with 2,000 square feet or more of floor space, or five or more employees, not including Minor Commercial Development.” (Guidelines, pg. 129) Minor commercial development is defined as “In recreational areas, commercial uses limited to professional offices associated with residences, small neighborhood retail convenience stores, farm stands or similar retail facilities with less than 2,000 square feet of floor space, or less than five people, and compatible with the natural and scenic qualities of a designated recreational river.” (Guidelines, pg. 129) Robinson said that is a small space for commercial use which may put townships at a disadvantage. He suggested if we’re going to open up the RMP, maybe we should gather a list of issues from each town that are considered “a hindrance”? Richardson said he would not advocate opening up the RMP. This is about adding a use that wasn’t in there before. He added, “If we open it up, we’ll never get it closed again.” Henry quoted from the RMP regarding Plan Revision, “If a revision is needed, or a new action is required to meet management needs, the River Management Plan can be amended. An amendment to the plan would essentially deal with a single issue that can be addressed without requiring revision of other parts of the plan.” (pg. 26) He emphasized that it says a single issue. Henry said he recommends the UDC take an

'omnibus bill' approach and make the structure of this Plan more user-friendly. Changes should not be addressed through an Errata sheet or ignored as they are made along the way. Pursuing a minor amendment requires unanimous approval of the UDC and pursuing a major amendment requires Congressional approval. That is an onerous process. He proposed authorizing the UDC to make decisions on changes. Nowhere in this plan does it say that NPS can do this on their own. Robinson countered that the Secretary of the Interior does have that authority by law. Henry said only if it's a clear and direct threat. The Plan has never changed since its 1986 adoption and it's not easy to do. Let's come up with a sensible process to review the methodology. Peckham said that definition changes aren't major; they are just minor amendments and it was intended that the Plan would not be easy to change. Richardson said this should be one minor item we could address and put it to bed. Sending this up the ladder will take forever. Henry said we are in this position because there were no substantial reviews of the Plan done at the five and 20-year marks as should have occurred. Perhaps hiring a consultant is needed.

Returning to the issue of a minor amendment requiring affirmation by all voting members, Robinson asked what is the probability of that. All it takes is one objection to fail. Heister said the intent is to have all of the towns and townships in agreement. If any municipal member had a problem with the Renewable Energy position paper that was approved, we should already know about it. Henry asserted that there are changes that have occurred to the Plan over the years which did not go through the modification process, some of which significantly impacted private property rights. Is that legal? He would say no. A plan is the lowest level of guidance; it's not sacrosanct. Henry cited conflicts with 36 CFR, the Code of Federal Regulations that affects the way this park unit operates, some of which have been addressed through the Superintendent's Compendium such as banning glass on the river to the ordinary high water mark. Henry said that the DOI Solicitor had approved the approach the UDC took with dealing with all of the renewable energy definitions except for solar. Heister clarified whether she's hearing a suggestion to open up the whole Plan rather than just address solar through a minor amendment. Henry said he's in favor of trying to do this an easier way. Peckham said if a town or township did object to the minor amendment, the next step would be to move to negotiations as per the outlined process in the Plan. Richardson said that the NPS had previously distributed a step-by-step procedure for pursuing a minor amendment. He asked to put this item on next month's agenda so that this committee can fully understand the procedure and try to come to an agreement first. Once this is sent out to the full Council, it will meet up with representatives who haven't studied and discussed it at this depth. Hahn said it could justify scheduling a special work session. Henry said if this is on the next Project Review Committee agenda with the understanding that it will be on the table at the April Council meeting, that will provide an impetus for representatives to approach their supervisors about it. Richardson agreed that anyone who doesn't understand this subject or has concerns over it should please come to the Mar. 27 Project Review Committee meeting. Hahn said that we still need to develop the verbiage for the definition that is proposed to be added. Heister said that will be based on the position paper. Richardson said if everyone can agree on this procedure, he doesn't foresee the verbiage being a big deal. Peckham said our towns agreed with the conditional use for commercial solar. It's about what they want as UDC members, not what the representatives want. Dean said that home rule is a double-edged sword. He said that Richardson's suggestion on how to proceed was good. Robinson said that adding a definition by an amendment represents a change in standards. Heister said the intent was to make individual changes through minor amendments that don't affect the rest of the Plan. Robinson said he has communicated with his township and Shohola won't vote on this until they have an avenue to bring up other modifications. Regarding Minor Amendments, Henry quoted from the Plan, "There may be need at various times to make minor or technical changes to the River Management Plan that do not substantively change the intent or standards defined in the plan." (pg. 27) Greier said, as it stands now, commercial solar would be considered as a conditional use. He suggested everyone go back to their towns to check on approval for that. Robinson said he anticipates that when he tells his township that the solar issue is being put on the table, they will vote against the minor amendment if they can't get other changes addressed. Richardson expressed surprise that a town would say it isn't happy with the plan so will squash anything new. The towns had agreed with the concepts contained in the position paper. He told the representatives that a lot of this depends on how they present the information. Robinson said his township does agree on the solar approach but has concerns from a business standpoint about not seeing relief on other issues. Heister asked whether Shohola Township has experienced any business harm or delays in their projects that would justify holding up this process. She reminded all that there are no actual consequences to being found out of substantial conformance. These are Guidelines to follow. Robinson said this is philosophical

more than anything. Heister challenged Robinson to bring the township's issues with the Plan into the light of day to be examined openly. Robinson said he would. Dean commented that assessing harm is difficult because developers might not have gone forward with a project if they found the Guidelines too restrictive. That would be about precluding opportunity. Roeder clarified that, in advance of next month's meeting, each representative should ask their towns for a yea or nay opinion on the minor amendment approach to incorporate the commercial solar definitions as a conditional use into the Plan. Richardson said yes, it will be discussed next at the March 27 Project Review Committee meeting.

Public Comment: None

Adjournment: A motion by Roeder, seconded by Henry to adjourn the meeting at 7:40 p.m. was carried unanimously.

Minutes prepared by Laurie Ramie, 3/6/18