

The Permitting Process

Background and Overview of Requirement:

- The proposed York Toll Plaza relocation project will require at least two permits prior to construction. These permits are required under the broad umbrella of the National Environmental Policy Act, known as NEPA, and Section 404 of the Clean Water Act, which specifically addresses discharges of dredged or fill material into adjacent waters, including wetlands.
- There are two primary permitting agencies. One is the US Army Corps of Engineers (COE); the other is the Maine Department of Environmental Protection (MDEP). While the two agency's processes theoretically occur in tandem, each has a specific series of steps, procedures, roles and responsibilities which are outlined below.
- A key factor in the permitting process is the determination of need, which was identified by the MTA in April 2007 as "to replace/rehabilitate the existing barrier toll plaza on the Maine Turnpike in York, Maine". This statement of "basic project purpose" was written in the most general and broad terms to afford the permitting agencies the greatest flexibility during the process.
- There are three common elements that are considered by both agencies in determining whether to issue or deny their respective permits. These are:
 - Aquatic impact: direct, indirect, short term, long term, during construction and post construction
 - Natural Resources and Environmental Impacts
 - Human Impact: homes, business, etc.
- Other agencies may be brought into the process. An example would be the Department of Homeland Security for critical infrastructure protection considerations. In addition, the Town of York has also been formally identified in writing to both permitting agencies as a Public Advocate.

- The elapsed time span from initiation to determination, and potential issuing or denial of the requisite permits for the York project will span an 18 to 24 month period.

The Process:

- The US Army Corps of Engineers is considered the lead agency. It's review, conducted by the Corps New England Division, is basically a paper review of the information provided by the Maine Turnpike Authority pertaining to the five build / no build options identified in the ***York Toll Plaza Replacement Technical Report in Response to Maine LD 534*** in order to determine the Least Environmentally Damaging Practicable Alternative (LEDPA). In review, these options are:
 1. No Build – Leave the York Plaza in its existing condition and tolling arrangement
 2. Upgrade the existing plaza infrastructure with no additional capacity
 3. Upgrade the existing site with conventional tolling and increased capacity
 4. Upgrade the existing site with highway speed tolling and increased capacity
 5. Relocate the plaza to one of the four alternate locations with highway speed tolling
- It begins with a Pre-application / Phase I Avoidance phase, which entails a meeting with the MTA, followed by subsequent workshop sessions with the MDPA, other Federal and State agencies and Public Advocates including the Town of York to determine the basic project purpose, determine the basic project scope, identify the sites and study area, and determine whether an Environmental Impact Study (EIS) will be required. As stated above, the MTA has identified the project purpose as "to replace / rehabilitate the existing barrier toll plaza on the Maine Turnpike in York, Maine". Concurrent steps and events consist of a constraint map review, meetings to determine Phase I alternatives, written wetland assessment of alternatives, and resolution of conflicts and disagreements. This Pre-application phase alone can take as long as twelve to fourteen months to complete. It is estimated that we are currently at the beginning stages of this phase.

- It is followed by Phase II Avoidance Phase consisting of the submission of the actual permit application. Between Phase I and Phase II, the list of potential sites will be refined to a short list of the five potential sites listed above. Upon the Phase II filing, a Public Notice will be issued to abutters, the Town of York, The Conservation Commission, and the media. The Public Notice is intended to solicit information from the public as input to assist determining the LEDPA. We will then have 30 days in which to respond to this Notice. This will be followed by a joint evaluation hearing prior to the final decision to deny or issue a Corps permit.
- The Corps permit decision is also contingent on a parallel and concurrent process conducted by the Maine DEP and associated interests. Specifically, it follows the preparation of NEPA documentation, which is either an Environmental Assessment or an Environmental Impact Statement. For permit decisions subject to Section 404 of the Clean Water Act, the Corps must make a determination of compliance with four specific guidelines which prohibit discharges under the following conditions, in which a permit cannot be issued unless the project complies with each of the these tests:
 1. A less environmentally damaging practical alternative exists
 2. There are violations of State or Federal Water Quality Standards, the Endangered Species Act, and the Marine Sanctuaries Act
 3. The discharges contribute to significant degradation of water and wetlands
 4. Failure to take all appropriate and practical mitigation
- If insufficient information exists to determine compliance, then the permit must be denied. Accordingly, it is incumbent upon Think Again and the Town of York to continue to provide hard core data that counters the MTA's statement of need and substantiates the negative human and environmental impacts.