



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NEW ENGLAND DISTRICT, CORPS OF ENGINEERS
696 VIRGINIA ROAD
CONCORD, MASSACHUSETTS 01742-2751

Regulatory Division
CENAE-R-PEC

October 29, 2014

Sara Zografos
Maine Turnpike Authority
2360 Congress Street
Portland, Maine 04102

Dear Ms. Zografos:

This concerns the ongoing study to improve access to the Maine Turnpike at Portland and South Portland from western Cumberland County. This letter is intended to address your questions concerning project purpose and need and alternatives analyses.

As you are aware, the Section 404(b)(1) Guidelines (40 CFR §230) (hereafter, “the Guidelines”) are the substantive criteria used by the Corps and the Environmental Protection Agency in evaluating discharges of dredged or fill material subject to our jurisdiction under Section 404 of the Clean Water Act. No such discharges shall be permitted if there is a practicable alternative to the proposed discharge(s) which would have less adverse impact on the aquatic ecosystem. As such, a critical element of our review process is the alternatives analysis and its foundation, the determination of the basic project purpose.

The Guidelines at 40 CFR §230.10 discuss both “overall” and “basic” project purpose. The basic project purpose is the fundamental or irreducible reason for the project that is used by the Corps to determine if the proposed action is water dependent for purposes of the Guidelines. The overall project purpose is a more detailed, comprehensive, and project specific statement of the project's purpose that takes into account the needs of the public and the applicant. The Corps will define this “overall/basic” project purpose broadly to insure that a reasonable and broad range of alternatives will be examined.

For actions subject to the National Environmental Policy Act (“NEPA”), where the Corps is the lead federal agency pursuant to its permitting authority, a project “purpose and need statement” must be included in environmental documentation and in response to which alternatives are presented (40 CFR §1500). This “purpose and need” may differ from the Corps Section 404(b)(1) Guidelines statement of “overall/basic project purpose”. NEPA may require consideration of a broader range of alternatives than the Guidelines.

For this project, the Corps would define the “basic” project purpose as to improve transportation between western Cumberland County and I-95/I-295, vicinity Portland and South Portland, Maine. The “overall” project would be to implement transportation improvements in order to address public safety and ensure the continued movement of goods and services along

established or new transportation corridors linking the communities west of Portland to I-95/I-295, vicinity Portland and South Portland, Maine. The purpose and need statement for any future NEPA document will likely be similar to earlier correspondence, to reduce traffic congestion, improve traveler safety and the movement of people and goods between western Cumberland County and I-95/I-295, both for current and future projected traffic volumes through the year 2035. Presently this traffic travels along the corridors of Route 25 and 114 between the southern end of the existing Gorham Bypass at Gorham, Maine to Exit 45 on I-95 and its vicinity.

In response to your specific questions, the Corps offers the following:

1. *Must the Maine Turnpike Authority (“MTA”) analyze alternatives they are not legally or financially capable of building?* As noted above, the Guidelines require the Corps to consider a broad range of alternatives. The alternatives analysis required by NEPA may be even broader, and is not limited to alternatives available to the applicant (40 CFR §230.10(a)(4)). An alternative is “practicable” if it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose (40 CFR §230.3). Only the least environmentally damaging practicable alternative may be permitted. If an alternative is available and meets the overall project purpose, the Corps must consider its practicability; its impact to aquatic resources; and its overall environmental impact. MTA maintains that non-toll, unrestricted access alternatives are beyond their authority to construct. Regardless, this does not obviate the need for the Corps, and by association MTA, to analyze these alternatives in the permit process and in the NEPA documentation. Presumably MTA would attempt to demonstrate that they are either not available; not practicable from a cost standpoint; they are more environmentally damaging; or they in some way do not meet the overall project purpose.

2. *Can the goal of separating local traffic be included in the purpose and needs statement?* No. As noted above, the Guidelines and NEPA require the Corps to define “basic” and “overall” project purpose broadly and the NEPA “purpose and needs statement” even more so. The alternatives analysis will presumably demonstrate why one or more alternatives are not practicable or otherwise preferred relative to the overall project purpose.

3. *If MTA were to receive federal funding, would that affect the permitting process?* The actual permitting process would change very little. However, the interagency coordination and consultation process would likely shift from one led by the Corps to one led, for example, by the Federal Highway Administration (“FWHA”).

NEPA requires federal agencies to factor environmental considerations into their discretionary decision-making. NEPA applies to any federal agency proposals for “actions,” which include direct agency undertakings, funding, permitting and proposals for legislation. Typically the federal agency with the greatest role assumes a lead agency status for purposes of NEPA compliance and documentation. The lead agency has the responsibility to supervise the preparation of the environmental document and for coordinating with other agencies and tribes

pursuant to their individual authorities. In most cases where the FHWA funds all or a large portion of a transportation project, they assume the lead agency role. In cases where only state funding is involved, the Corps assumes that role because of our permitting responsibility. In either case, we or FHWA would rely heavily on the state transportation agency as a partner in the process.

4. Is MTA's draft purpose and needs statement acceptable? As noted above, the Corps has redrafted our "basic" and "overall" project purposes. You will note that we have added language that acknowledges the option of a new roadway. The overall project purpose is the key element in that it forms the basis for future alternatives analyses. The purpose and needs statement is only applicable to the NEPA process.

If you have any further questions concerning this matter, please contact Jay Clement of my staff at 207-623-8367 at our Manchester, Maine Project Office.

Sincerely,



Frank J. Del Giudice
Chief, Permits & Enforcement Branch
Regulatory Division