

December 16, 2011

To: Herb Thomson and Ken Sweeney
From: Judy Lindsey

RE: I-395/Route 9 December 14, 2011 Re:NEPA posting "NEPA analysis w/ footprint change"

On December 13, 2011 Mark Hasselmann contacted me to discuss the I-395/Route 9 Administrative Draft DEIS. Most of his comments were routine although two require further joint MaineDOT/FHWA discussion:

1) What are the long and short term needs of Route 9?

If there are needs not discussed in the AD DEIS there is a big piece of the documentation missing.

If there are any Route 9 improvements required in the next 5 years they are considered as indirect impacts as such he questioned the identification of the logical termini.

2) Mark is concerned the criteria change to a 2-lane/2-lane ROW of the Preferred Alternative will alter the impacts and prior alternatives analyses is not comparable (apples to apples) as those were done with 4-lanes/4-lane ROW. Mark stated he "expects to discuss this issue in the near future".

I explained to Mark a) the Preferred Alternative's final design criteria of 2-lane/2-lane ROW will avoid and minimize impacts; b) the impact analyses are comparable as they utilize the same design criteria for all alternatives; c) a statement is included in the DEIS concerning the reduced final design criteria. (My afterthought, the present option(s) satisfies the Purpose and Need.)

Mark said he expects to discuss the footprint/impacts issue in the near future. My understanding was a meeting will be arranged to discuss these issues.

Coincidentally on December 14 the following was an anonymous posting to the FHWA Re:NEPA forum -

"NEPA analysis w/ footprint change

12/14/2011 03:29 PM

We are preparing an EIS and are currently reviewing the administrative draft of the DEIS. For the last five years we analyzed impacts for many (too!) five to ten mile long, new alignment, 250' ROW, controlled access, build alternatives. We have even identified a "preferred alternative", with the caveats that go with that. Two lanes would be constructed initially, as a "super 2", one barrel of the four-lane version and reserve the remaining ROW, building out the other two lanes when needed.

We are just now considering a much reduced footprint to around 100' ROW and to a lower standard, a two-lane arterial, rural rolling to reduce costs.

With this proposed reduction in footprint, what happens now? We most certainly need to revise the admin draft to some extent given this change, at least the impact analysis, as impacts will be substantially reduced, in some cases by more than one-half. Do we revisit any previous alternatives that were dismissed (not being carried forward for further consideration)? Do we need to step/look back? How far? Thoughts on this one? Examples?"

The posting includes information unusually similar to my earlier I-395/Route 9 DEIS discussion.

My Comments/Thoughts on my telephone discussion with Mark and the Re:NEPA posting:

- A) The "apples to orange" comment is the last minute. We discussed the reduced footprint design change at the October interagency prior to everyone concurring with the preferred alternative. Mark did not say anything during or immediately after the meeting about the reduced footprint. One question: why is 2-lane/2-lane ROW footprint an issue when no concern was expressed on the reduction to the 2-lane/4-lane ROW footprint.
- B) The Preferred Alternative still satisfies the purpose and needs, one could argue that we have simply made changes to further avoid and minimize impacts while considering improved affordability.
- C) FHWA, as well as the Cooperating Agencies, have reviewed and commented on over 80% of the administrative draft DEIS the impact area has not been altered as the alternatives reduced footprint are in the same location.
- D) The MaineDOT/FHWA Partnership agreement states we will NOT answer shop.
- E) One ReNEPA commenter cited 23 CFR 771.130 concerning the need for a Supplemental EIS
Section (2)(b)(1) states a Supplemental may not be necessary where:
(1) The changes to the proposed action, new information, or new circumstances result in a "lessening of adverse environmental impacts evaluated in the EIS without causing other environmental impacts that are significant and were not evaluated in the EIS".
The underlined phrase is pertinent to this project. Considering this citation it is my opinion supplementing the DEIS is not required.

I recommend we have a meeting with Cheryl and Mark to discuss his comments to me and the Re:NEPA posting.

000128

Stewart, Jean

From: Lindsey, Judy
Sent: Monday, December 19, 2011 8:28 AM
To: Thomson, Herb
Cc: Sweeney, Ken; Charette, Russ
Subject: I-395/Route 9 Notes to File: December 13 Administrative Draft DEIS coordination with Mark Hasselmann and the Re:NEPA posting of December 14.
Attachments: 2011 Dec 14 ReNEPA_psoting_NEPA_analysis_footprint_change.docx;
2011 Dec 19_jel_Herb_Ken_email_ReNEPA_footprint_change.doc

Herb,

As requested, attached are my Notes to the File of the phone conversation I had with Mark Hasselmann concerning the I-395/Route 9 Transportation Study Administrative Draft DEIS and a copy of the December 14 anonymous Re:NEPA posting concerning a footprint change.

Judy

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> [Discussion](#)

[NEPA analysis w/ footprint change](#)

12/14/2011 03:29 PM

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Thoughts on this one? Examples?

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[Re: NEPA analysis w/ footprint change](#)

12/15/2011 01:08 PM

Sounds like you may need to do a Supplemental EIS, but I suggest you start with looking at 23 CFR 771.130 and make that determination (this would be FHWA's determination. I am not sure if you are with FHWA, a state DOT, or a consultant. If you are not with FHWA, consult with them regarding this determination). At least a re-evaluation is needed, per 771.129(a) if, as stated, the Draft EIS is five years old and there has been no Final EIS.

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[Re: NEPA analysis w/ footprint change](#)

12/15/2011 01:10 PM

Did the project get scaled back from an expected 4-lane improvement to a "Super 2-lane" because it now has been determined that the 2-lane adequately accommodates future traffic? If so, I think you most definitely need to step back and review your Purpose and Need statement and decide if the P&N for the project has changed. For example, did you eliminate OTHER 2-lane alternatives from consideration for traffic reasons, but now they could be viable alternatives? If so, those should have probably been covered in the EIS.

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[Re: NEPA analysis w/ footprint change](#)

12/15/2011 01:12 PM

This appears to be a good problem. Developing an alternative that requires a simple reduction of the footprint from an existing alternative, is much easier than developing an alternative that doubles the footprint. As long as the reduced version fits the P&N, you're good!

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FHWA Division Office

12/15/2011 01:24 PM

The project being proposed now is very different than what was originally proposed - it is practically a new project. Has the Purpose and Need changed for the project (would seem like it would have to for the reduced roadway to be acceptable)? If so, you would definitely need to look at your alternatives analysis again based on the revised needs. And as you said, the impacts would have to be revised. You may want to hold a new public meeting (not quite scoping, since the areas of concern would be the same). Sounds like almost a complete rewrite of the EIS.

Another option would be to do a combined PEL (Planning Environmental Linkage) and EIS document. The larger project would be the planning portion (what you would like to do), and the reduced template would be the EIS (what you are actually going to do based on funding). This would require that you identify BOTH the overall impacts (which you already have) and the impacts of the reduced project. Still have to do most of what I described above and add a lot of discussion to the PEL/EIS to clarify what is happening, but you wouldn't have to throw out the work that is already done.

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Re: NEPA analysis w/ footprint change

12/15/2011 02:19 PM

I think we really need to understand why the project scope is changing. If it's solely to address planning fiscal constraint requirements and not because of a change in needs for the proposed project, it may not be in the best interest of NEPA to just study the limited footprint in the environmental document. If it is just a fiscal constraint issue, there may be ways to handle this requirement, depending on the project situation, without jeopardizing NEPA compliance.

December 29, 2011

000177

To: File

From: Judy Lindsey

RE: I-395/ Route 9 Transportation Study Administrative Draft DEIS Status

On December 29, 2011 Bill Plumpton and I conducted a status conference call to discuss next steps for the Administrative Draft DEIS:

Procedural Steps

1. Meeting between Ken and Cheryl Martin to discuss Mark Hasselmann's comments on the Administrative Draft DEIS
 - Mark's comment the 2-lane- 2-lane ROW Preferred Alternative does not satisfy the Purpose and Need (I disagree with this comment as the PA satisfies both the NEPA Purpose and Need as well as the Corps Basic Project Purpose, the agencies concur)
 - Acceptance of the design criteria from Freeway to Rolling to be advanced for the Preferred Alternative prior to the FEIS
 - Interstate Justification Report – June 2011 Major Studies Meeting Mark approved the 8 criteria for an IJR would be incorporated/discussed in the DEIS. The Administrative Draft DEIS was prepared based on this approval see Appendix Dec 22, 2011 comment – IJR must be a separate stand-alone document.
 - I Recommend the Biological Assessment be coordinated and prepared between the DEIS and FEIS.
 - Discussion of the Route 9 footprint and future needs, if any beyond reconfiguration of Route 9/46, prior to the Design year 2030

Discussion items

2. DOT/FHWA needs to come to an agreement on Project Definition
3. Adding discussion on the EA to EIS elevation in the summary duplicates discussion in Chapters 1 and 3; is there value added to discuss in Summary?
4. Purpose and Need
5. Did Mark H completely review the AD DEIS a number of his comments in Chapter 1 and 2 are responded to in Appendices C,D and E. In addition, many are new comments not presented in prior reviews of the DEIS, see file notes from MH.
6. Down-scoping from 2-lanes/2-lane ROW – All alternatives have been analyzed with the same criteria (apples to apples) Mark has stated as the alternative will move forward as a 2-lane/2-lane the analysis is now apples to oranges comparison.
 - a. I disagree the alternative analysis for all 70+ alternatives have been conducted with the same footprint and criteria. Between the DEIS and the FEIS the design and analysis for the Preferred Alternative will be advance to reduce/minimize impacts by reducing the design criteria from

freeway/interstate standards to rolling rural standards similar to existing Route 9.

7. Design year: the design year of 2030 has been used to analyze all traffic impacts during the preparation of the EIS analysis whether to retain the 2030 design year was discussed with Mike Morgan. We discussed if there was a need to revise the traffic analysis to 2035 or if there was potential for substantial change to the present/future traffic numbers or mix. Mike stated if anything he anticipated the numbers may reduce based on gas prices and people's present habits of driving less. I also spoke with Ed Hanscom he also supported the use of a 2030 Design year for I-395 and he relayed that Wiscasset utilized a design year of 2025.
8. Not including cost information in the DEIS but have anticipated cost at the public hearing.

Wende Mahaney, USFWS comments

All of Wende's comments/changes are "great and add value" to the DEIS. She identified problems then provides a solution.

Need to discuss with Wende how to edit page 91, Exhibit 3.13, Summary Table of Wetlands to make it more useful keeping in mind MaineDOT has not performed a wetlands functional assessment.

Richard Bostwick comments

Richard needs to rewrite notes for clarity some of his handwriting is difficult to read.

Pg 77 if species have not been listed they should not receive expanded review in DEIS

Pg 79 what is Richard's expectation?

EFH – agencies will provide comments during Comment period – address in FEIS

RBs comments on mitigation should be discussed with the appropriate in-house staff, as Mitigation is the responsibility of the Environmental Office. A reminder email request was sent to Deane Van Dusen on December 29.

Jay Clement – critical path awaiting the Corps comments on the AD DEIS an email reminder was sent to Jay on December 29.