

# Verrill Dana<sub>LLP</sub>

Attorneys at Law

SCOTT D. ANDERSON  
PARTNER  
sanderson@verrilldana.com  
Direct: 207-253-4540

ONE PORTLAND SQUARE  
PORTLAND, MAINE 04112-0586  
207-774-4000 • FAX 207-774-7499  
www.verrilldana.com

November 29, 2016

**Via Electronic Mail and Hand Delivery**

Robert L. Green, Jr.  
Project Manger  
Bureau of Land Resources  
Maine Department of Environmental Protection  
312 Canco Road  
Portland, ME 04103

Michael Mullen  
Land Division Director  
Maine Department of Environmental Protection  
17 State House Station  
August, ME 04033-0017

**Re: Maine Turnpike Southern Toll Plaza  
York, Maine**

Dear Bob and Mike:

On behalf of the Town of York we respectfully request that the Department hold a public hearing as part of its review of the Maine Turnpike Authority's proposal to relocate the southern toll plaza in York, Maine, and to replace the existing plaza with a combined EZ Pass/cash lane ("ORT") installation. This request applies to both the pending NRPA and Site Location of Act applications.

**THE TOWN OF YORK'S INTEREST AND WHY A HEARING IS WARRANTED**

Pursuant to Section 7(A) of Chapter 2 of the Department's rules, a request for a hearing must be received within twenty days after the application is deemed complete. By letter dated November 9, 2016, the Department informed MTA that its NRPA application is complete. For the reasons set forth below, the Town of York respectfully requests that the Department hold a public hearing on MTA's application.<sup>1</sup>

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<sup>1</sup> MTA has filed for a Site Law General Permit so the Department has not issued a completeness determination on the Site Law application. The Town has requested that the Department require MTA to file for an individual permit under the Site Law, and respectfully suggests that the Department combine

The Town has an acute interest in the Department's review of MTA's application as it is the host community for both the existing York Tollbooth and the relocated tollbooth proposed by MTA. The reconstruction and relocation of the York Tollbooth will impact residents of the Town of York and the Town has actively participated in discussions regarding this project for more than six years. A hearing is warranted in this proceeding as there is conflicting technical information regarding a fundamental aspect of the Department's review: specifically, whether there is a practicable alternative to MTA's proposal that will eliminate any impact to protected natural resources. As discussed in greater detail below, there will be conflicting technical testimony regarding whether an "All Electronic Tolling" ("AET") alternative is feasible in lieu of the "Open Road Tolling" ("ORT") facility proposed by MTA.

### **CONFLICTING TECHNICAL TESTIMONY REGARDING AET**

MTA has proposed an ORT facility—a toll facility that utilizes both highway-speed lanes and cash lanes. Although an ORT facility does permit motorists with EZ Pass transponders to pass at highway speeds, it still includes booths for cash collection of tolls. As such, an ORT facility still requires significant infrastructure and staffing, along with a corresponding impact to protected natural resources and abutting properties due to the larger footprint of the facility. In contrast, an AET facility eliminates the entire tollbooth structure, requiring only a gantry installation that spans the roadway. As such, an AET facility would result in no environmental impacts, and such facilities also offer significant improvements in safety, reductions in air and noise pollution, as well as significant reductions in traffic congestion. It is for these reasons the Commonwealth of Massachusetts has recently installed a full AET system for the Mass Turnpike, eliminating all cash toll collection in Massachusetts.

Over the past few years there has been an ongoing debate regarding the feasibility of AET. New Hampshire constructed an ORT facility in 2010. Since 2010, however, transponder use has increased and it appears that more recent conversions, including Massachusetts, will include only AET, with states dropping cash lanes altogether. In response to questions raised by the Town and others, on September 1, 2015, the MTA filed a lengthy submittal to the U.S. Army Corps of Engineers regarding the possibility of utilizing AET in order to avoid all environmental impacts. MTA noted that it had retained a "highly credentialed toll consultant," CDM Smith, to review the AET question."

1. Both MTA's and the Town's Consultant Have Concluded that AET is a Practicable Alternative.

CDM Smith evaluated two different facility designs for replacement of the existing York tollbooth: an ORT facility and an AET facility. CDM Smith evaluated numerous factors that impact revenue collection and net collection of revenue from these two types of tollbooth designs. The "study compared traffic, toll rates, operating costs, net revenue over a 10-year period, and capital costs" of both an ORT and AET facility. As noted by CDM Smith,

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MTA's NRPA and Site Law permit applications for evaluation in a single permitting proceeding, as is the Department's normal practice.



The toll industry is moving toward automating the toll collection process, using either ORT or AET. ORT would allow for high-speed, non-stop, collection of tolls from vehicles equipped with E-ZPass transponders, while retaining a limited number of cash collection lanes in each direction. AET would feature the elimination of cash collection altogether, and require only the construction of high-speed gantries across the mainline roadway, significantly reducing capital cost but requiring new methods and costs to handle vehicles without electronic transponders.<sup>2</sup>

As such, ORT facilities require greater up-front capital expenditures as the cash-lanes require infrastructure, and greater ongoing O&M for such structures. AET facilities require some additional costs for collection activities for non-transponder users, and there is some lost revenue—or “leakage”—due to drivers ignoring mailed invoices. Put simply, there are financial advantages and disadvantages to each alternative, and CDM Smith reviewed all of these factors as part of its work.

CDM Smith noted that construction of an AET facility would cost only \$4.8 million, while an ORT facility would cost \$36 million. CDM Smith also conducted a “sensitivity test” to evaluate the amount of surcharge appropriate for non-transponder drivers, and concluded that a \$3.00 surcharge fee for non-transponder drivers would minimize the loss of revenue associated with “leakage.” After considering all these factors, including the loss of toll revenues due to “leakage,” CDM Smith determined that “[w]hen the capital cost impacts are taken into consideration along with the 10-year net present value of the estimated AET toll revenue impacts, a net positive \$18.7 million is generated.” In other words, MTA’s own consultant has concluded that the **MTA will net out an additional \$18.7 million** over a ten-year period if it constructed an AET facility instead of the ORT facility it has proposed.<sup>3</sup>

The financial benefits of AET are likely even greater, as CDM Smith noted that the “leakage” due to implementation of AET decreases over time, “primarily due to an increasing market share of E-ZPass vehicles, decreasing the number of video transactions” and a reduction in the corresponding cost of collecting those revenues by mail. Over time, AET revenue will actually exceed ORT revenue, with this shift predicted by CDM Smith in 2019. This is because over time more drivers will install E-ZPass transponders, both for convenience and to avoid the \$3.00 surcharge.

CDM Smith also noted that “AET also has the benefit of virtually eliminating accident risk at toll plaza locations; toll plazas typically represent high accident locations on toll roads across the country.” Thus, an AET facility not only results in more net revenue for the MTA, it

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<sup>2</sup> The CDM report is attached at Exhibit “A.”

<sup>3</sup> The likely savings for MTA are actually greater, given that CDM Smith was asked only to assess the impact of converting 2 of MTA’s 18 toll plazas to AET. With many of the “back-room” costs fixed, as other toll plazas require upgrades the savings due to AET would multiply. AET is not only the most environmentally appropriate option, it appears to be the option that will, over time, allow MTA to operate the Turnpike with lower tolls, and fewer toll increases.



is safer, and because of its dramatically reduced footprint, it is by far the least environmentally damaging alternative. These are the conclusions of the MTA's own consultant.

The Town of York retained the eTrans Group to evaluate AET and MTA's September, 2015 submission to the Corps.<sup>4</sup> Even though the eTrans Group identified numerous problems with the CDM Smith Report, which problems overstated the challenges associated with AET and downplayed the benefits, the eTrans Group agreed with CDM Smith that AET would generate more revenue by avoiding construction costs and would result in a safer and more environmentally sound site. *See* Table of Impacts, eTrans Group Report, Section 4.0. Overall, the eTrans Group concluded that AET was not only a reasonable alternative, but from an engineering and toll collection standpoint, the only rational alternative.

2. MTA Continues to Raise Questions About AET.

Notwithstanding these conclusions by CDM Smith and eTrans, MTA continues to question whether AET is a reasonable and practicable alternative. Throughout this process MTA has argued that AET will not work due to (1) the challenges of collecting tolls from drivers without EZ Pass transponders, (2) the "unreasonableness" of the \$3 surcharge proposed by CDM Smith, and (3) the traffic impacts on U.S. Route 1 due to drivers without transponders bypassing the York tollbooth to avoid the surcharge fee.<sup>5</sup>

Although additional back-office staff will be required with an AET facility, these costs will be offset by the elimination of toll collection staff and significant reductions in construction costs. In fact, CDM Smith considered the need to increase back-office staff when it concluded that AET would generate more revenue for MTA over the first 10-year period. Although MTA argues the \$3 surcharge is unreasonable, it has offered no support for this claim. Finally, MTA's claim that traffic on Route 1 will increase is based on unsupported assumptions about motorists' response to the surcharge. Repeat users of the Maine Turnpike are likely to follow the national trend of increased EZ Pass use, and obtain a transponder in order to avoid the surcharge. Those that are passing by once or infrequently are not likely to fight Route 1 traffic to avoid an "infrequent" \$3 charge. Finally, given that the adverse impact to Route 1 would likely be the most severe in the Town of York, one would think that the Town would be sympathetic to MTA's dire predictions. This is not the case, as MTA's analysis is fundamentally flawed.<sup>6</sup>

3. This Conflicting Technical Debate Necessitates a Public Hearing.

Section 7(B) of Chapter 2 of the Department's rules provides that:

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<sup>4</sup> The eTrans report is attached at Exhibit "B."

<sup>5</sup> MTA's recent submissions supporting its arguments are attached at Exhibit "C."

<sup>6</sup> A complete third-party review of MTA's current traffic analysis would require access to MaineDOT's statewide traffic demand model. As MTA's allegation of unreasonable traffic diversions is one of MTA's primary basis for rejecting AET, the Department will need to conduct a review of MTA's traffic study. As part of a public hearing the Town would submit a third-party review, pending receipt and review of the MaineDOT model.

The Department will hold a hearing in those instances where the Department determines there is credible conflicting technical information regarding a licensing criterion and it is likely that a hearing will assist the Department in understanding the evidence.

Under NRPA the Department must determine that there are no practicable alternatives to MTA's proposed ORT facility that would avoid impacts to protected natural resources. The Town of York contends that AET is a practicable alternative that will eliminate impacts to protected resources. Assessing the feasibility of AET is, therefore, a central issue in this proceeding.

The Town appreciates that MTA disputes the conclusions of eTrans and contends that the CDM Smith report does not support the feasibility of AET. The Town disagrees, but resolution of the engineering, traffic, and other technical issues that underlie this debate should occur in a formal public hearing. The parties have put forth engineering reports that show there is credible conflicting technical information, and that information is relevant to a central licensing criteria in this proceeding. Although the Department has expertise with regard to environmental matters, a public hearing would assist the Department in understanding the engineering issues relevant to the required alternatives analysis.<sup>7</sup>

**CONCLUSION**

For the reasons stated above, the Town of York respectfully requests that the Department hold a public hearing on MTA's NRPA application. Please let me know if you have any questions or require any further information.

Very truly yours,



Scott D. Anderson

Enclosures

cc: Stephen H. Burns, Town Manager, Town of York  
Peter Mills, Executive Director, MTA  
Mark Bergeron, Maine Department of Environmental Protection  
(all via electronic and U.S. Mail, with enclosures)

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<sup>7</sup> Much of the information cited herein has been developed during the ACOE permitting process. The Town has cited these submittals to show that there is conflicting technical information relevant to the Department's permitting criteria. Additional technical information would be submitted as part of a public hearing before the Department.