



ADMINISTRATIVE RECORD-KEEPING

Managing the Paper Storm

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What is the Administrative Record?

- Why does it matter?
- It's all about decision making

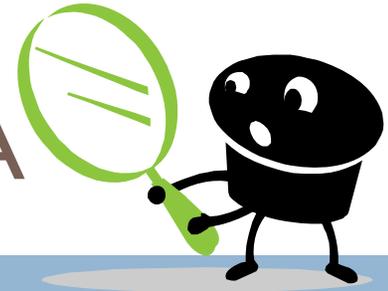


National Environmental Policy Act



- Ensures informed agency decisions
- Informs the public
- NEPA is “procedural”

Judicial Review under NEPA



- Review may not occur until FONSI or ROD is issued
- Standard = “arbitrary and capricious”
- Agency must take a “hard look”



Administrative Record



- Information compiled by an agency during the decision-making process
- Includes EIS or EA, plus supporting documents, slides, communication
- Also includes public and agency input

Decisions Must Be Supported

- Decision maker to review the Administrative Record
- Agency must assemble and submit the Administrative Record to court



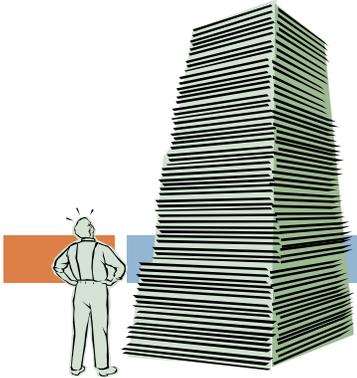
Supplementing the Record



- Review generally limited to the Administrative Record

- Limited exceptions:
 - ▣ If necessary to explain information in the Record
 - ▣ If the Record is incomplete
 - ▣ If agency acts in bad faith

Potential Problems

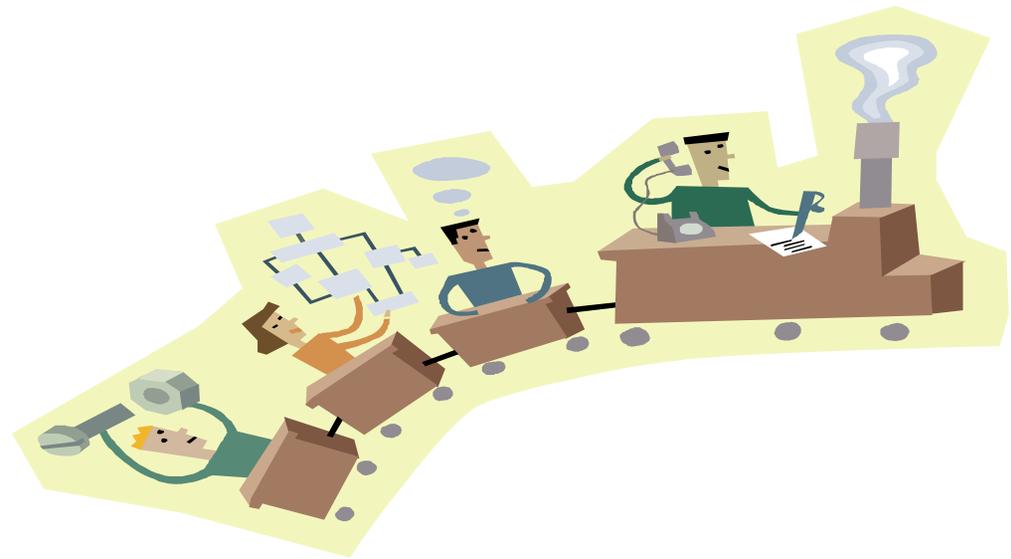


- Draft versus Final Documents
- Internal Deliberations
- Email, email, email!



Potential Problems (continued)

- Information submitted by the public or interest groups
- Use of consultants
- Multiple authors



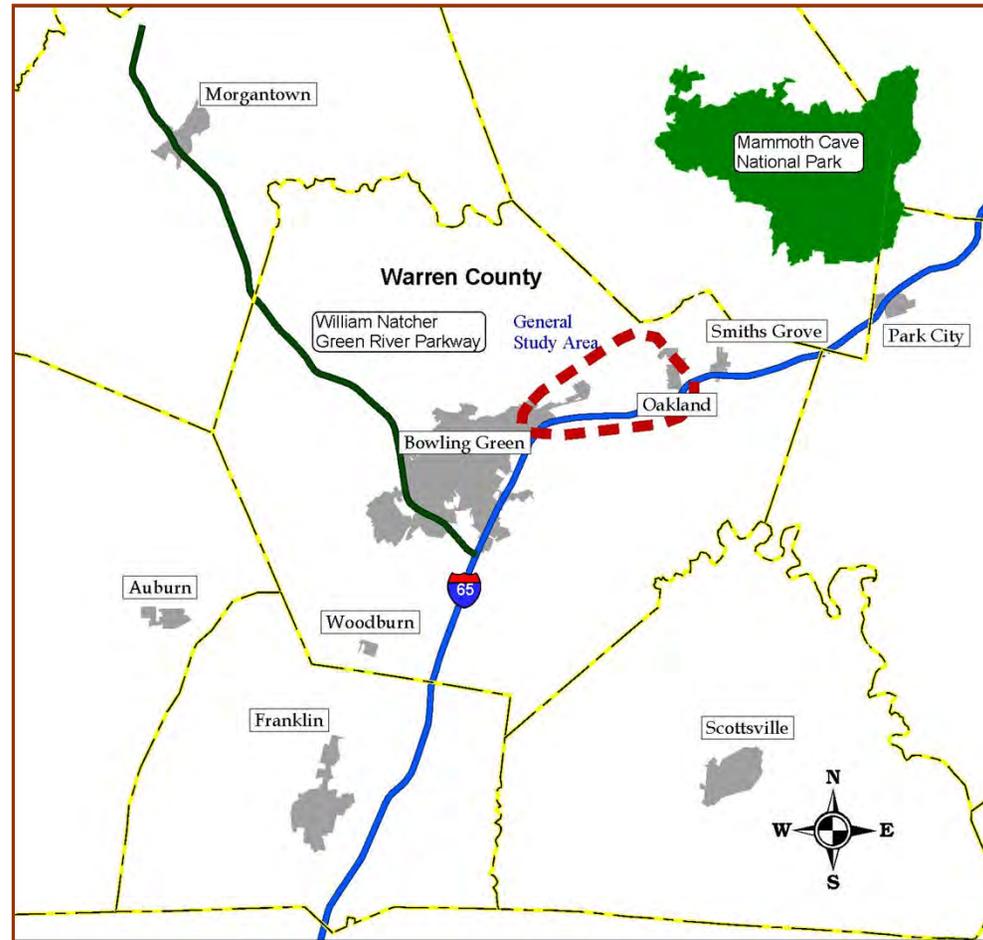
Potential Problems (continued)

- Did I mention email?!?



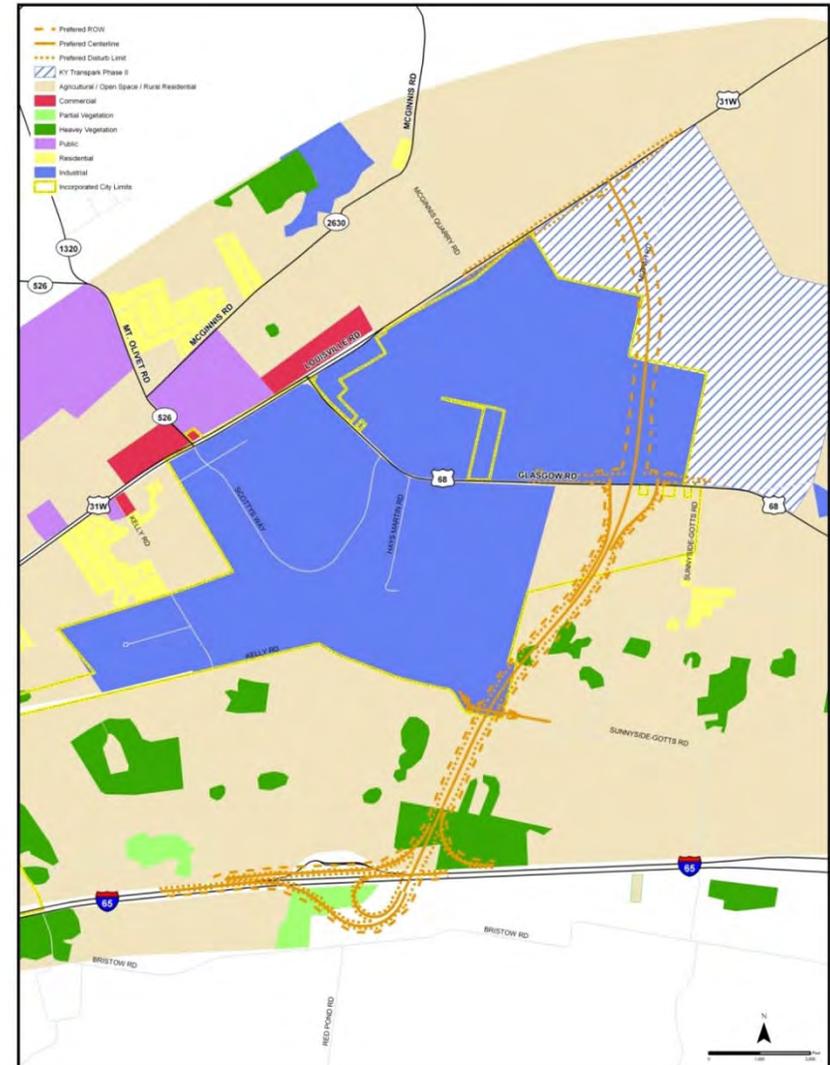
Case Study: I-65 to US 31 W Connector

Project Location



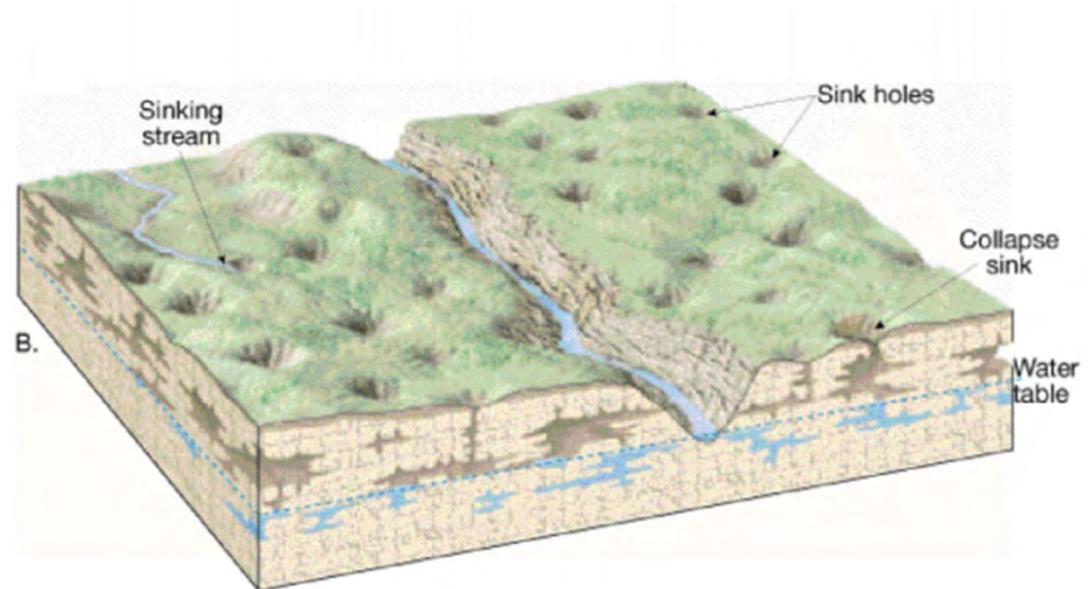
Case Study: I-65 to US 31W Connector

- Project Location
- 2.3-mile new road and interchange with I-65



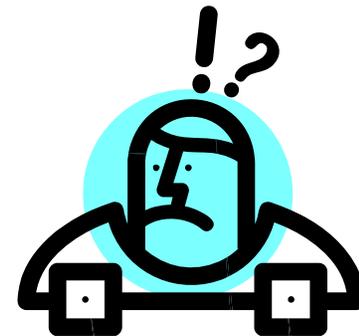
Case Study: I-65 to US 31 W Connector

- Project Location
- 2.3-mile new road and interchange with I-65
- Very Karstic Region



What makes this Project Special?

- Public controversy / relation with Transpark
- Threat of litigation
- Decided to prepare an EIS, not an EA/FONSI
- Project then ballooned in regard to:
 - ▣ Alternatives
 - ▣ Indirect and Cumulative Impacts Assessment
 - ▣ Section 106 Involvement



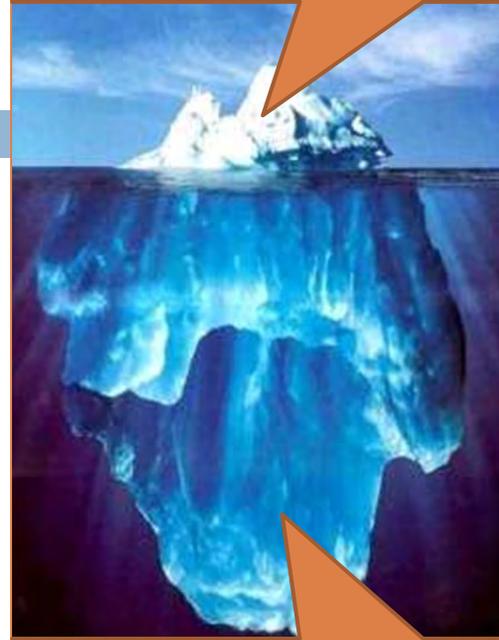
Which resulted in ...

- Extra Studies
- Revised Reports
- Addendums
- Meetings
- Time Extensions – 2003-2010
- **A/R: Files Gone Wild**





NEPA Document



Administrative Record

You



The A/R for this project:



- Scanned in, or converted to a pdf, every document, news article, notes, etc, from 7 years
- We collected every email from everyone's computer
- Organized by subject
- Created a spreadsheet of every file, cross-referenced and hyperlinked each
- One DVD – paperless

The A/R:

Administrative Record Log.xls [Compatibility Mode] - Microsoft Excel

Home Insert Page Layout Formulas Data Review View Developer Acrobat

Clipboard Font Alignment Number Styles Cells Editing

129 DOCs\E_ECO-CO\E26.pdf

	A	B	C	D	E	F	G	H	I
1	DATE	TO	COMPANY	FROM	COMPANY	TYPE	RE	CODE	LINK
2	3/30/03	WALDNER, DAVID; GOODMAN, ANTHONY; WEHNER, JANE	KYTC, FHWA, GK4	HARMON, DAVE	KYTC	EMAIL	SPILL CONTINGENCY PLAN	E53	DOCSIE_ECO-COIE53.pdf
3	3/15/08	HARMAN, DAVE	KYTC	WALDNER, DAVID	KYTC	DOC	BG STORMWATER ORDINANCE	E52	DOCSIE_ECO-COIE52.pdf
4	6/10/08	WALDNER, DAVID	KYTC	ANDREWS, VIRGIL	USFWS, FIELD SUPER.	LTR	APPROVAL OF PROJECT BA	E51	DOCSIE_ECO-COIE51.PDF
5	4/16/08	SPRINGER, TOM	GK4	GOODMAN, ANTHONY	FHWA	EMAIL	GHG STANDARD LANGUAGE	E50	DOCSIE_ECO-COIE50.pdf
6	3/28/08	FILE	GK4	NA	BERNARDIN LOCHMUELLER ASSO	RPT	BA: BATS AND CAVE SHRIMP	E43	DOCSIE_ECO-COIE43.pdf
7	3/25/08	SPRINGER, TOM ENGINEERS, CONSULTANTS	GK4	HARMON, DAVE	KYTC	EMAIL	REGARDONG BIOLOGICAL ASSESSMENT BEST MANAGEMENT PRACTICE: KARST AND SIGNIFICANT RESOURCE AREAS	E48	DOCSIE_ECO-COIE48.pdf
8	2/18/08	NOE, DALE; SPRINGER, TOM	N/A	KRATT, DAVID	KYTC	MEMO		E47	DOCSIE_ECO-COIE47.pdf
9	4/12/07	SPRINGER, TOM	KYTC; GK4	HARMON, DAVE	KYTC	EMAIL	STATE LISTED SPECIES LANGUAGE FOR DEIS	E46	DOCSIE_ECO-COIE46.pdf
10	4/3/07	SPRINGER, TOM; SPRINGER, TOM; NOE, DALE	GK4; KYTC	HARMON, DAVE	KYTC	EMAIL	TES LANGUAGE IN DEIS	E45	DOCSIE_ECO-COIE45.pdf
11	3/23/07	DALE	GK4; KYTC	HARMON, DAVE	KYTC	EMAIL	TES LANGUAGE IN DEIS	E44	DOCSIE_ECO-COIE44.pdf
12	3/28/06	SPRINGER, TOM	GK4	HARMON, DAVE	KYTC	EMAIL	RE: BIOLOG ASSESSMENT	E43	DOCSIE_ECO-COIE43.pdf
13	1/10/06	SPRINGER, TOM	GK4	HARMON, DAVE	KYTC	EMAIL	CAVE SHRIMP SURVEY ADDITIONAL WORK	E42	DOCSIE_ECO-COIE42.pdf
14	12/1/05	LEWIS, JULIAN	LEWIS & ASSOC	SPRINGER, TOM; HARMON, DAVE	GK4, KYTC	EMAIL	CAVE SHRIMP SURVEY - MAPPING	E41	DOCSIE_ECO-COIE41.pdf
15	12/1/05	LEWIS, JULIAN	LEWIS & ASSOC	SPRINGER, TOM; HARMON, DAVE	GK4, KYTC	EMAIL	TRANSPARK - NO EVIDENCE OF CAVE SHRIMP HISTORIC PRESENCE IN BASIN	E40	DOCSIE_ECO-COIE40.pdf
16	12/1/05	FILE	GK4	LEWIS, J.J.	LEWIS & ASSOCIATES, LLC	RPT	SURVEY FOR KY CAVE SHRIMP IN GRAHAM SPRINGS GROUNDWATER BASIN IN VICINITY OF PROPOSED I-65 TO US 31W CONNECTOR	E39	DOCSIE_ECO-COIE39.pdf
17	11/22/05	SPRINGER, TOM	GK4	HEIDEL, ALLEN	KYTC	EMAIL	STORM WATER MANAGEMENT SYSTEM THAT IS CURRENTLY IN PLACE IS REQUIRED REGARDING REQUEST FOR PRE-PUBLICATION REVIEW OF DEIS	E38	DOCSIE_ECO-COIE38.pdf
18	11/8/05	MULTIPLE RECIPS	FHWA, KYTC, GK4	FARLEY, ROBERT	FHWA	EMAIL		E37	DOCSIE_ECO-COIE37.pdf
19	9/28/05	MULTIPLE RECIPS	KYTC, GK4	COX, KENNETH	KYTC	EMAIL	HAZMAT SPILL CONTINGENCY PLANNING	E36	DOCSIE_ECO-COIE36.pdf
20	9/26/05	MULTIPLE RECIPS	KYTC, GK4,	LEWIS, J.J.	LEWIS & ASSOCIATES, LLC	EMAIL	CAVE SURVEY PROGRESS RPT	E35	DOCSIE_ECO-COIE35.pdf
21	3/12/05	SPRINGER, TOM	GK4	WALDNER, DAVID	KYTC	LTR	ECOLOGY BASELINE & GAF APPROVED PROJECT APPROVED AND ECOLOGY GAF	E34	DOCSIE_ECO-COIE34.pdf
22	8/26/05	SPRINGER, TOM	GK4	WALDNER, DAVID	KYTC	LTR	APPROVED (COPY ATTACHED)	E33	DOCSIE_ECO-COIE33.pdf
23	8/12/05	MULTIPLE RECIPS HOBAN, PATRICK; SLAUGHTER, RENEE;	KYTC, GK4	LEWIS, J.J.	LEWIS & ASSOCIATES, LLC	EMAIL	PERILS OF CAVE BIOLOGY	E32	DOCSIE_ECO-COIE32.pdf
24	8/11/05	SPRINGER, TOM ANDREWS, LEE;	KYTC; GK4	HARMON, DAVE	KYTC	EMAIL	GRAHAM SPRINGS DYE TRACING	E31	DOCSIE_ECO-COIE31.pdf
25	8/3/05	DEGARMO, PHIL	USFWS	YEAGER, RUSTY	BERNARDIN LOCHM.	EMAIL	INDIANA BAT SURVEY FOR BA PROGRESS RPT: SURVEY FOR THE MAMMOTH CVE SHRIMP. IN GRAHAM SPRINGS GROUNDWATER BASIN	E30	DOCSIE_ECO-COIE31.pdf
26	8/7/05	FILE	GK4	LEWIS, J.J.	LEWIS & ASSOCIATES, LLC	RPT	SUBMITTAL OF REVISED SOCIOECONOMIC BASELINE, REPLACEMENT TEXT, GAF & COVER SHEETS	E29	DOCSIE_ECO-COIE29.pdf
27	8/5/05	WALDNER, DAVID	KYTC	SPRINGER, TOM	GK4	LTR	MINUTES REGARDING SCOPE FIELDWORK AND	E28	DOCSIE_ECO-COIE28.pdf

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Bigger Picture



- APA – American Procedures Act of 1946
 - Litigation of NEPA projects occur under APA
 - Premise: Informed Public
 - Oversight of Agencies / Balance of Control
- Purpose of the A/R:
 - Ensure decision makers have complete information
 - Documents the analysis
 - Demonstrates compliance with NEPA and other laws
 - Provides record of responses to public comments
- What courts look at:
 - Arbitrary, Capricious, Abuse or Discretion of Power
 - Judges review is limited to the AR, unless there are glaring omissions

Bigger Picture



- Use of the A/R:
 - Reflects Disagreements
 - “Discovery” by challengers is reduced
 - Documentation of opponents’ views
 - A/R closes when the ROD is signed
- What happens with this information, before court:
 - Federal Agency Legal Council sifts through it all
 - Sorts relative vs. non-relative. Relative information=A/R

Bigger Picture



- What to include...
 - Information related to the agency's decision
 - Information on alternatives rejected
 - Privileged and non-privileged information
 - Studies – all types, baseline, engineering, planning
 - Public Meeting / Hearings Comments, Responses, Minutes, Handouts, Exhibits, etc.
 - Memos, communications, emails
 - Agency and consultant files
 - Anything you relied upon

Case Study: Lessons Learned



- Get organized
- Keep the end in mind
- Emails, they stick around for a long time
- It takes the right personality to make an A/R excellent – someone who knows the process with an eye for holes

Case Study: Milton-Madison Bridge

- Easier said than done!

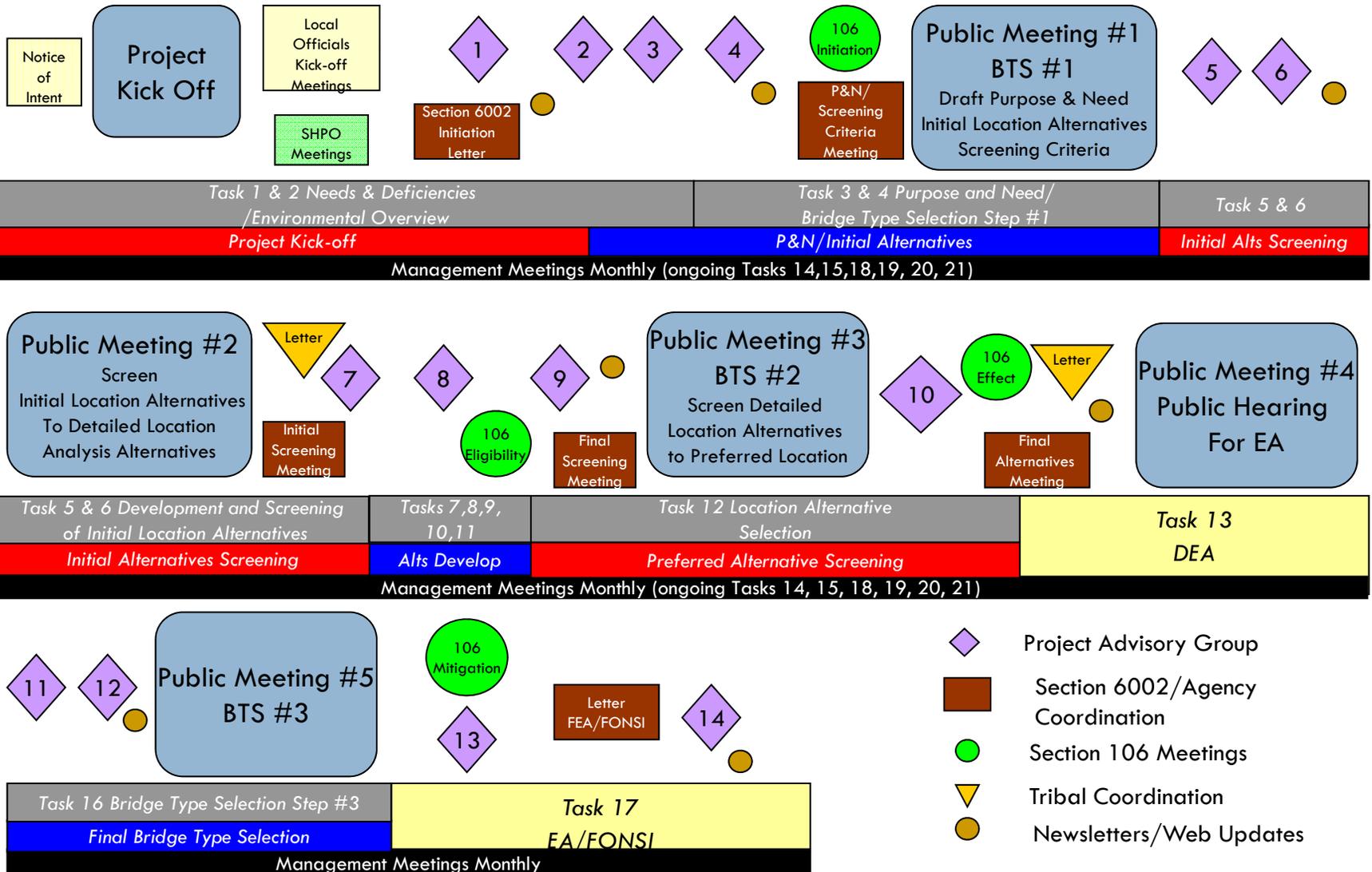


Case Study: Milton-Madison Bridge

- Three year bridge rehab/replacement project
- Led by KYTC, INDOT, FHWA KY, FHWA IN
- Adjacent to country's largest National Historic Landmark District
- Inclusive, Collaborative, Transparent process driven by meetings with Project Advisory Group, public, agencies, consulting parties
- Accelerated schedule

Case Study: Milton-Madison Bridge

Stakeholder/Agency Participation Schedule



How we started out



- Consultant scope of work:
“An Administrative Record will be developed for KYTC and INDOT in compliance with NEPA”

- Project Set Up
 - ▣ Project email account to be copied on all internal correspondence
 - ▣ Quality Control Plan
 - ▣ Filing cabinet to house data, analyses, & documentation
 - ▣ Shared workspace on server for all files
 - ▣ Project Communication Protocol

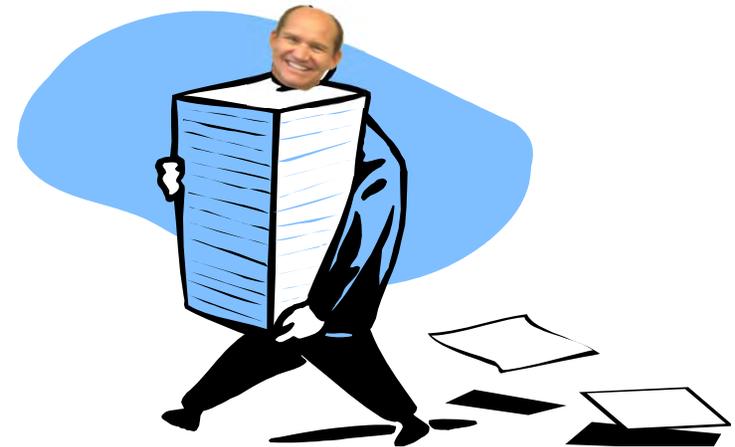
What Changed

- In May 2009, FHWA requested a paper copy of the admin record – to be updated as the project progressed – that would be kept on file at the KY Division office.



Which resulted in ...

- A set of binders, indexed and arranged chronologically, for each major involvement effort:
 - ▣ Project team meetings
 - ▣ Section 6002 Agency coordination
 - ▣ PAG coordination
 - ▣ Public communications
 - ▣ Section 106 consultation
 - ▣ NEPA checklist
 - ▣ Project Reports
- Record set up at a workstation within FHWA
- Regular updates – trips Frankfort to add pages



Lessons Learned: What worked



- Communicate needs and expectations up front
- One person needs to be responsible for maintaining records
- Version control is essential
- Cross-referencing and indexing makes an enormous dataset usable
- Electronic format allows for easier tracking and word search features

Lessons Learned: What worked

- Incentives and leadership keep a team motivated



Lessons Learned: Challenges

- Keeping up with the accelerated project pace
- Keeping up with changing project scope
- Stick to it: managers need to reinforce importance of following protocols throughout the life of the project

