



August 2015 Newsletter Supplement:
The DEIS/FEIS-stated cost was not based on
the DEIS/FEIS-stated design criteria. That
disparity suggests NEPA noncompliance...

I feel the need to expand upon the following excerpted email from Federal Highway Administration's (FHWA) NEPA Compliance Point of Contact; this March 6th email was exhibited in my recent [August 2015 Newsletter](#). Irrefutable evidence serves to strengthen my opinion that NEPA (National Environmental Policy Act) was sidestepped by how this study was administered and continues to be noncompliant to date. Nobody has satisfactorily addressed the DEIS/FEIS cost vs. design disparity and although Mr. Solomon now acknowledges: "...the design was changed from freeway level to rolling." the FEIS affirms: "designed using MaineDOT design criteria for freeways". No DEIS/FEIS documentation—yet—Mr. Solomon does not or will not answer why. The criteria change to rolling was initiated before the DEIS was even published. Ask yourself why these downgraded design criteria changes were never documented in the DEIS or the FEIS and as a matter of fact were also not included in MaineDOT's answers to [questions from the office of U.S. Senator Collins](#) (questions 38/39) in January 2012. Was critical information intentionally withheld from the impacted communities? Seems so, the question is: why, what did they have to gain by these intentional acts, and what can be done about it now? The only ethical remedy is to immediately remove 2B-2 from consideration.

From: Gerald.Solomon@dot.gov

Sent: Friday, March 06, 2015 4:52 PM

To: bgradams@roadrunner.com

Cc: MHassellmann@dot.gov ; Todd.jorgensen@dot.gov ; Cheryl.Martin@dot.gov ; Cassandra.Chase@dot.gov ; Ken.Dymond@dot.gov

Subject: RE: NEPA Compliance of I-395/Route 9 Transportation Study

(Excerpt from email; original email posted in August 2015 Newsletter available upon request.)

"Prior to publication of the DEIS, the costs of the alternatives were roughly estimated to range between \$93 and \$121 million. The alternatives presented in the DEIS and FEIS were evaluated using the same design criteria. In an effort to further minimize impacts and reduce costs, the design was changed from freeway level to rolling. The cost estimates in the DEIS and FEIS were based on the rolling design criteria and range from \$61 to \$81 million. The DEIS and FEIS have been consistent in the information provided concerning impacts and costs."

FOAA Facts—92 days prior to publication of the DEIS:



Gannett Fleming

Excellence Delivered As Promised

000391

December 6, 2011

Ms. Judy Lindsey
Maine Department of Transportation
16 State House Station
Augusta, ME 04333-0016

Re: Revised Cost Estimate for the Build Alternatives
I-395 / Route 9 Transportation Study

Dear Judy:

Attached please find a copy of the latest cost estimate for the build alternatives retained for further consideration and detailed analysis for your review and consideration. We are working to complete both the property acquisition and utility relocation technical memoranda; the memoranda will reflect the costs shown in the attached estimates.

This cost estimate for the build alternatives was prepared using the DOT's freeway criteria. We understand the DOT would like, following the conclusion of the NEPA process, for the preferred alternative to be developed using rolling criteria. Developing the preferred alternative using rolling criteria would reduce the cost to construct it. Based on the DOT's experience with similar projects, we ask that the DOT let us know the anticipated percent reduction in cost that would result from this change in criteria; we will apply this percent reduction to the cost to construct the build alternatives that is shown in the DEIS/Section 404 Permit Application.

We appreciate the opportunity to be of service on this important study. Please contact either Dave Hamlet or myself if you have questions.

Sincerely,

Gannett Fleming, Inc.

William M. Plumpton, CEP
Project Manager

Note: Roughly \$2.75 million has been expended on this study to date...

"This cost estimate for the build alternatives was prepared using the DOT's freeway criteria."

"We understand the DOT would like, following the conclusion of the NEPA process, for the preferred alternative to be developed using rolling criteria."

"...we ask that the DOT let us know the anticipated percent reduction in cost that would result from this change in criteria; we will apply this percent reduction to the cost to construct the build alternatives that is shown in the DEIS/Section 404 Permit Application."

000392

Cost Estimate Summary for Range of Alternatives

Alternative	Construction	Utility Relocation	Engineering & Inspection	Right of Way	Mitigation	Total
2B-2	\$ 75,491,276.60	\$ 1,578,100.00	\$ 12,078,600.00	\$ 4,084,912.41	\$ -	\$ 93,240,000.00
5A2B-2	\$ 97,629,921.84	\$ 3,130,600.00	\$ 15,620,780.00	\$ 5,205,118.05	\$ -	\$ 121,590,000.00
5B2B-2	\$ 79,879,364.36	\$ 9,345,600.00	\$ 12,780,700.00	\$ 9,659,718.99	\$ -	\$ 111,670,000.00


[Click here to view this and other pertinent FOAA documents.](#)

FOAA Facts—37 days prior to publication of the DEIS:

000431

MaineDOT

Memo

To: I-395/Route 9 Transportation Study Project File
From: Ken Sweeney, P. E. - Chief Engineer 
CC: Russell Charette, Project Manager
Date: January 30, 2012
Re: Planning Level Cost Estimates for the Alternatives 2B-2, 5A2B-2, 5B2B-2

The build alternatives have been designed as a two-lane road within a two-lane right-of-way using MaineDOT's criteria for freeways. The latest estimate to construct the build alternatives dated December 2011 range from approximately \$93 million for Alternative 2B-2 to \$122 million for Alternative 5A2B-2.

After reviewing the cost estimates for the build alternatives, the cost estimates should be reduced by one-third, for planning purposes moving forward. The basis for this one-third reduction includes, but is not limited to:

- Reducing the number of structures that need to meet 1.2 stream bankfull structure design would reduce structure costs.
- Using a rolling design, earthwork quantities would be reduced by approximately one-third
- Recognizing that lump sum items – drainage, signing and pavement marking, erosion and sedimentation control, maintenance and protection of traffic, and mobilization – were calculated as a percentage of construction, additional savings would be realized for these items
- Reducing the contingency percentage from 20% to 10%.
- Reducing the design engineering and construction engineering services, based on the type of construction, from 16% to 10%.

2B-2's cost and design were essentially based on “rolling design” criteria before the DEIS was even published.

“After reviewing the cost estimates...the cost estimates should be reduced by one-third...The basis for this one-third reduction includes...using a rolling design...”

“The build alternatives have been designed...using MaineDOT's criteria for freeways. The latest estimate...dated December 2011 range from approximately \$93 million...to \$122 million...”

DEIS was not published until the first week of March 2012 and MaineDOT Chief Engineer (KS) ordered the “rolling design” cost reduction per this January 30, 2012 Memo. Mr. Solomon's statement: “Prior to publication of the DEIS, the costs of the alternatives were roughly estimated to range between \$93 and \$121 million.” is therefore false. 2B-2's cost and design criteria were based on the “MaineDOT's criteria for freeways” to “rolling design” change “prior to publication of the DEIS”.

Summary of FOAA #000391/000392 dated 12.06.11 (prior to DEIS publication):

Gannett Fleming Project Manager (WP), MaineDOT's prime engineering consultant since 2000, advised MaineDOT project manager (JL) of the latest cost estimates; 2B-2's cost was estimated @ \$93.24 million when "*prepared using DOT's freeway criteria*". (WP) understands that "*the DOT would like, following the conclusion of the NEPA process, for the preferred alternative to be developed using rolling criteria*". (WP) then asks what that cost reduction percentage might be and states: "*we will apply this percent reduction to the cost...in the DEIS...*"

[Click here to view these and other pertinent FOAA documents.](#)

Summary of FOAA #000431, dated 1.30.2012 (prior to DEIS publication):

MaineDOT Chief Engineer (KS) reiterated build alternatives were designed "*using MaineDOT's criteria for freeways*" and the latest cost estimate, "*dated December 2011*", was "*approximately \$93 million for alternative 2B-2.*" (KS) then asserted per this Memo: "*...the cost estimates should be reduced by one-third...the basis for this reduction includes...using a rolling design...*" This pre-DEIS cost reduction based on "*rolling design*" is an apparent answer to (WP) question posed on 12.6.2011.

These FOAA documents predate the DEIS offering clear evidence that the design criteria was essentially already downgraded from freeway to rolling design criteria before the publication of the DEIS, even though this downgraded criteria change is not included in the DEIS or the FEIS. Why wasn't this criteria change documented in the DEIS/FEIS? Is this act of deception within NEPA compliance?

Our state and federal government transportation bureaucrats continue to tap dance around this cost vs. design disparity question and refuse to fully answer these charges. If the cost in the DEIS/FEIS is not based on the design criterion in the same DEIS/FEIS, something is amiss. This was not by accident; this was an intentional act of deception and I believe this issue vital to whether or not this study is in compliance with NEPA. It is perfectly clear, the design criteria was effectively changed before the DEIS publication, but that change was not documented in the DEIS and not only that, the cost vs. design disparity was carried forward three years later in the FEIS. There is no other logical explanation, this was an intentional act. I must ask again, was this study in compliance with NEPA?

DEIS/FEIS-stated Costs and Design Criteria:

2.4.3 Estimated Construction Costs

As part of the conceptual design of the build alternatives, a preliminary estimate of the cost to construct them was prepared (in 2011 dollars). The cost to construct the build alternatives ranges from \$61 million to \$81 million.

DEIS/FEIS-stated-cost:
“The cost to construct the build alternatives ranges from \$61 million to \$81 million.”

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http://www.i395-rt9-study.com/Pubs/FEIS_Chap2.pdf

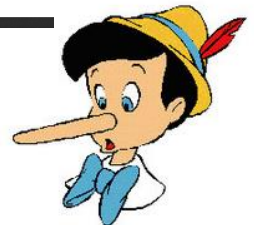
Alternative 2B-2 would further the study’s purpose and satisfy the system linkage need in the near term (the year 2035). Alternative 2B-2 would be a controlled-access highway and conceptually designed using the MaineDOT design criteria for freeways. Two lanes would be constructed and used for two-way travel within an approximate 200-foot-wide right-of-way. Route 9 would not be improved, and it would not provide high-speed, limited access connection to the east of East Eddington village. It would satisfy the study need related to traffic congestion and safety. It would satisfy the USACE’s basic purpose statement.

DEIS/FEIS-stated-design:
“Alternative 2B-2 would be a controlled-access highway and conceptually designed using the MaineDOT design criteria for freeways.”

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I-395/Route 9 Transportation Study Environmental Impact Statement

http://www.i395-rt9-study.com/Pubs/FEIS_Front.pdf



Can you find “rolling” in the above FEIS description of 2B-2’s design criteria? NO? Perform a word search of the whole DEIS/FEIS document; you will not be able to find the word “rolling” as it pertains to design criteria in the DEIS or the FEIS.

- Shouldn’t the cost in the DEIS/FEIS match the design in the same DEIS/FEIS?
- The DEIS/FEIS must be 100% honest/truthful—without an iota of misinformation.
- Integrity: uncompromising adherence to moral and ethical principles; honesty.

Dishonesty of process and lack of oversight allowed MaineDOT/FHWA to apply a cheaper cost upfront to gain a cheaper-cost-talking-point, while not jeopardizing NEPA compliance by changing DEIS/FEIS criteria. It doesn't matter when the criteria change occurred as much as not documenting the fact that it did. All 79+ studied alternatives, *not* just the remaining 3 as Mr. Solomon suggests, were to be analyzed using identical criteria; 2B-2 was evaluated using downgraded criteria, and not just the rolling change: [FHWA \(MH\) commented to MaineDOT \(JL\) in December 2011](#): "...the 2-lane/2-lane ROW Preferred Alternative does not satisfy the Purpose and Need...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 done with 4-lanes/4-lane ROW".(JL)



"...the DOT would like, following the conclusion of the NEPA process, for the preferred alternative to be developed using rolling criteria." Am I the only one that sees red flags over these words? AND—how many other intentional “errors” exist in the DEIS/FEIS that we are not supposed to be smart enough to figure out? If you can find one intentional error, I’m sure there are many more as this may be standard operating procedure (SOP) for these agencies; knowingly falsifying a government document is against Maine State Statute, so not only is integrity at issue, these actions may have been illegal. <http://www.mainelegislature.org/legis/statutes/17-A/title17-Asec456.html>

Before you give them the benefit of the doubt that the DEIS may have been in pre-publication when these criteria changes were made, ask yourself why the FEIS, not published until 3 years later, included the same blatant cost vs. design disparity.

When behind a MaineDOT vehicle, you will notice a 3 word motto: Integrity, Competence and Service. I don't doubt their levels of competence and service; as far as integrity goes, this study has been poorly managed and extremely dishonest since the study was driven underground in mid-2009. Even as the MaineDOT was apologizing (Jan. 2012) for not keeping our impacted communities duly informed, critical design criteria was still being withheld, criteria we could not question at the Public Hearing or in comments to the DEIS. Sadly, it's been more of the same since I exposed MaineDOT's “dirty little secret” in Dec. 2011. Integrity—not so much!