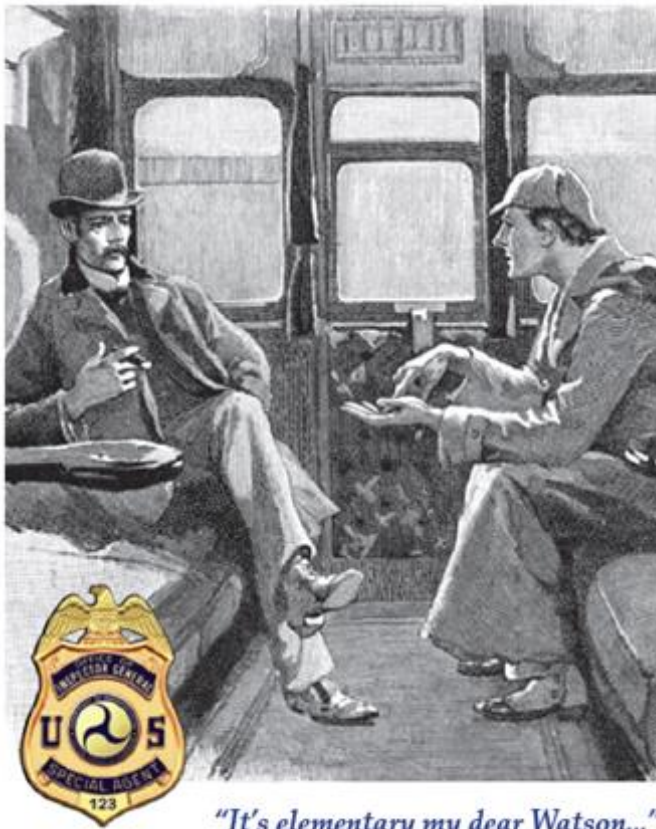


A request to the U.S. Department of Transportation Office of Inspector General to investigate irregularities in the I-395/Route 9 Transportation Study as revealed by Maine's Freedom of Access Act (FOAA) documents.



"It's elementary my dear Watson..."

Fraud is deliberate deception to secure an unfair gain.

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U.S. Department of Transportation
Office of Inspector General

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OIG maintains a hotline to report allegations of fraud, waste, abuse, and other irregularities in USDOT programs or operations. Allegations may be reported by USDOT employees, contractors, or the public. The OIG Hotline is available 24 hours a day, 7 days a week. Issues that should be reported include the following:

- ✓ Contract, procurement, and grant fraud
- ✓ Environment, health, and safety violations
- ✓ Computer crimes
- ✓ Product substitution, including suspected unapproved and counterfeit aircraft parts
- ✓ Bribery, kickbacks, and gratuities
- ✓ False statements and false claims
- ✓ Conflicts of interest and ethics violations
- ✓ Travel fraud, theft, and/or abuse of Government property
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Fax: (704) 556-0732

E-mail: hotline@oig.dot.gov

Mail: USDOT Inspector General
1200 New Jersey Ave. S.E., Room W73-104A
Washington, DC 20590

Note: The OIG Hotline is obligated to expeditiously forward all safety-related complaints to USDOT's safety regulatory agencies for action, as appropriate.



U.S. Department of Transportation
Office of Inspector General

View poster @ <http://www.oig.dot.gov/sites/dot/files/OIG-generic-2.pdf>

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State of Maine Statute:

Title 23: HIGHWAYS

Part 1: STATE HIGHWAY LAW

Chapter 3: OFFICIALS AND THEIR DUTIES

Subchapter 1: DEPARTMENT OF TRANSPORTATION

§73. Transportation policy

1. Short title. This section may be known and cited as the "Sensible Transportation Policy Act."

2. Purposes and findings. (Excerpt) The people further find that the decisions of state agencies regarding transportation needs and facilities are often made in isolation, without sufficient comprehensive planning and opportunity for meaningful public input and guidance.

3. Transportation policy. (Excerpt) It is the policy of the State that transportation planning decisions, capital investment decisions and project decisions must:

G. Incorporate a public participation process in which local governmental bodies and the public have timely notice and opportunity to identify and comment on concerns related to transportation planning decisions, capital investment decisions and project decisions. The department and the Maine Turnpike Authority shall take the comments and concerns of local citizens into account and must be responsive to them.

- ***MaineDOT will not talk to us, even under the threat of legislative action—they haven't taken our comments and concerns into account and they certainly haven't been responsive to them. MaineDOT/FHWA have yet to answer to the many irregularities revealed in FOAA request documents.***

Title 17-A: MAINE CRIMINAL CODE

Part 2: SUBSTANTIVE OFFENSES

Chapter 19: FALSIFICATION IN OFFICIAL MATTERS

§456. Tampering with public records or information

1. A person is guilty of tampering with public records or information if he:

A. Knowingly makes a false entry in, or false alteration of any record, document or thing belonging to, or received or kept by the government, or required by law to be kept by others for the information of the government; or

B. Presents or uses any record, document or thing knowing it to be false, and with intent that it be taken as a genuine part of information or records referred to in subsection 1, paragraph A; or

C. Intentionally destroys, conceals, removes or otherwise impairs the verity or availability of any such record, document or thing, knowing that he lacks authority to do so.

2. Tampering with public records or information is a Class D crime.

- ***Does §456 apply to false and/or misleading statements within the DEIS?***
- ***If an intentional false statement or claim exists—shouldn't the whole DEIS be held up as suspect?***
- ***Who will step up to hold the MaineDOT and the FHWA accountable?***

FALSE STATEMENT or CLAIM: *The DEIS-stated cost of 2B-2 is falsely declared @\$61 million—\$32.24 million less than the actual \$93.24 million cost of 2B-2 designed using the DEIS-stated "MaineDOT design criteria for freeways"—intentionally making 2B-2 appear as a cheaper, more acceptable alternative than it really is. The MaineDOT plans to downgrade the design criteria from freeway to rolling following the conclusion of the NEPA process, yet the reduced cost has already been intentionally incorporated in the DEIS. Not only was the decision to include the falsified cost in the DEIS unethical—it may not have been in compliance with Maine statute per Title 17-A, Part 2, Chapter 19, §456. The intentional inclusion of this fraudulent \$61 million cost in the DEIS has enabled a MaineDOT/FHWA talking point that has been part of the DEIS since March 2012—this project has been misrepresented for the past 21+ months to not only the public but the many Cooperating Agencies that are required to voice in on this project. There's no way that the people within the impacted communities can ever be made whole until the MaineDOT/FHWA is made to come out in public and admit to the false statements intentionally incorporated in the DEIS and halt this Study. See FOAA Documents #000391/000392/000431 (pages 5 and 6).*

Why would the MaineDOT Commissioner and Chief Engineer freely discuss the rolling design criteria and reduction in the ROW to 100 feet with Carol Woodcock (Office of U.S. Senator Collins) on April 4th 2013—if it wasn't the truth?

- I met with Carol Woodcock on March 21st 2013—presenting her with recently released FOAA Documents that addressed changes in design criteria from freeway to rolling and the reduction of the Right-of-Way from 200' to 100'. She allowed me to submit a few questions that she would try to get answered at a scheduled April 4th 2013 meeting with MaineDOT officials. The following is an excerpt of an April 8th 2013 email—full document available upon request.

conversation with Dave Bernhardt and Ken Sweeney

Woodcock, Carol (Collins)

4/8/2013 3:16 PM

To: Larry Adams (bgradams@roadrunner.com);

"The first question I asked was about the rolling design and whether it was in the DEIS. I showed them the memo written by Ken. Ken remembered it very well. Ken said it was in the appendix of the DEIS. We talked a little about the rolling design. They explained that Route 9 was rebuilt with the rolling design method – that's why it is so curvy."

"I brought up the issue of reducing the right of way from 200 ft. to 100 ft. and the concerns that neighbors had with walking out their door and being so close to the fast-moving traffic. It took a while for me to get this point across, but finally I did. They both explained that, even though the ROW is being reduced to 100 ft., they will enter into conversations with all affected landowners. There will be individual conversations because everyone will have different views/concerns about this situation. Some will be pleased to have their property not disturbed and others will want to leave the area because of the close proximity to the road. Each situation will be dealt with on an individual basis. So, if/when they get to that point in the process, individual landowners just need to make their desires very clear."

- NOTE: I am unable to find "rolling design" in the DEIS using word search—even if it was, the DEIS clearly states (DEIS page s12-s13 on page 7): **"Alternative 2B-2...designed using the MaineDOT design criteria for freeways."** I believe the **"memo written by Ken"** to be the Memo dated January 30th 2012—marked as FOAA Doc #000431 on page 6.

Eddington residents learn state plans 'rolling rural' route for I-395/Route 9 connector: (BDN—April 17th 2013)

- "Planning board member **Gretchen Heldmann** gave a summary report of the 1,239-page FOAA response at Tuesday's selectmen's meeting...documents reveal that MDOT: **Changed the design criteria and downgraded the limited access highway project to a two-lane rolling rural route. The change reduces the right-of-way needs from 200 feet of width to between 100 and 125 feet** over the approximately 5-mile-long route from Brewer to Eddington."
- "MDOT project manager **Russell Charette** responded Wednesday to Heldmann's conclusions by saying the state agency's federal partners asked for a change in the design criteria, that the change would reduce costs, and that all public comments are part of the final report he is finishing."

MaineDOT Project Manager Charette made these **conflicting statements** in an April 19th 2013 email: (See page 15)

- 1.) "There was a lot of **information** included in a recent news article, some of which may be **miss-leading...**"
 - ALL INFORMATION was gleaned from official MaineDOT documents and emails received from FOAA requests.
 - 2.) "It is important to note that the **Draft Environmental Impact Statement (DEIS)** contains the information pertaining to the project and is the **current document of record.**"
 - I agree 100%—please explain to me—why don't the cost and the design criteria match in the DEIS??"
 - 3.) "The National Environmental Policy Act (NEPA) requires and defines a process by which MaineDOT and FHWA evaluates proposed projects. As such, **individual documents** may not be the current correct information and represents a snapshot of that point in time."
 - 4.) "To be clear, the proposed **Right of Way for the project corridor is 200 feet (minimum).** The **design standard** used for the evaluation of the 79+ alternatives considered in the process is the **"Freeway" design standard as documented in the DEIS** and continues to be the standard for environmental processing."
- • **Is a change in design criteria specific only to the preferred alternative and not the other 79+ studied alternatives compliant with NEPA? What about falsifying the cost—is that within NEPA compliance?**
- • **Is the fear of NEPA-noncompliance why Mr. Charette walked back several statements over a 15 day period?**

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:

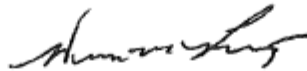
Attached please find a copy of the latest cost estimate for the build alternatives retained for further consideration and detailed analysis for your review and consideration. We are working to complete both the property acquisition and utility relocation technical memoranda; the memoranda will reflect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


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

- FOAA Docs #000391/000392 predate the DEIS by only 92 days (3.03 months). Why was this future change from freeway criteria to rolling criteria withheld from the Public and not included in the DEIS?
- The reduced cost of this future design criteria downgrade has been part of the DEIS since March 2012.
- Are these actions within NEPA compliance? ←

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%.

→ FOAA Doc #000431 predates the DEIS by only 37 days. Why was this critical downgrade in design from freeway criteria to rolling criteria withheld from the Public and not included in the DEIS?

FACTS established in FOAA Documents #000391/000392/000431:

- 1.) "This cost estimate for the build alternatives was prepared using the DOT's freeway criteria." →
- 2.) "We understand the DOT would like, following the conclusion of the NEPA process, for the preferred alternative to be developed using rolling criteria." →
- 3.) "...we ask that the DOT let us know the anticipated percent reduction in cost that would result from this change in criteria..." →
- 4.) "...we will apply this percent reduction to the cost to construct the build alternatives that is shown in the DEIS/Section 404 Permit Application." →
- 5.) The total cost of the 2B-2 alternative "using the DOT's freeway criteria" is: \$93,240,000—not including mitigation—not \$61 million as stated in the DEIS. →
- 6.) As of Dec 6th 2011, 2B-2's total cost is \$93,240,000 not \$93 million as stated in FOAA Doc #000431. →
- 7.) "The build alternatives have been designed...using MaineDOT's criteria for freeways." →
- 8.) "After reviewing the cost estimates...the cost estimates should be reduced by one-third..." →
- 9.) "The basis for this one-third reduction includes...using a rolling design..." →

Draft Environmental Impact Statement ([DEIS](#))

Alternative 2B-2

Alternative 2B-2 would further the study's purpose and satisfy the system linkage need in the near term. 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 page s12-s13

Estimated Construction Costs

The estimated construction costs of alternatives include the costs of preliminary engineering, construction engineering, utility relocation, acquisition of property for right-of-way, and mitigating environmental impacts. The costs of the build alternatives would range between approximately \$61 million and \$81 million (in 2011 dollars).

DEIS page s15-s18

- 1.) "...designed using the MaineDOT design criteria for freeways..."
- 2.) "...within an approximate 200-foot-wide right-of-way."
- 3.) "...costs...approximately \$61 million...(in 2011 dollars)." ←

→ MaineDOT/FHWA Management signed off on the DEIS on 3/7/12 and 3/8/12.

Just 92 days (3.03 months) earlier: FOAA Docs #000391/000392 (page 5), (WP) from Gannett Fleming (Engineering Consultant) to the MaineDOT Project Manager (JL), tell a different story—is the conflict between the DEIS-cost and the DEIS-design within NEPA compliance?

- 1.) "This cost estimate for the build alternatives was prepared using the DOT's freeway criteria."
- 2.) "We understand the DOT would like, following the conclusion of the NEPA process, for the preferred alternative to be developed using rolling criteria."
- 3.) "...we ask that the DOT let us know the anticipated percent reduction in cost that would result from this change in criteria..."
- 4.) "...we will apply this percent reduction to the cost to construct the build alternatives that is shown in the DEIS/Section 404 Permit Application."
- 5.) The total cost of the 2B-2 alternative using the "MaineDOT design criteria for freeways" is: \$93,240,000—not including mitigation—NOT \$61 million as stated in DEIS.

FOAA Docs #000391/000392 predate the DEIS by only 92 days. Why was this critical downgrade in design criteria from freeway to rolling withheld from the Public and not included in the DEIS? ←

Right-of-Way for the Project Corridor:

FALSE STATEMENT or CLAIM: *Is the right-of-way (ROW) still 200' as stated in the DEIS or has it already been changed to 100' to 125' as indicated in FOAA Document #001143? Is this in compliance with NEPA?*

Alternative 2B-2 would further the study's purpose and satisfy the system linkage need in the near term. 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 page s12-s13

→ ***"...within an approximate 200-foot-wide right-of-way."***

→ **MaineDOT/FHWA Management signed off on the DEIS on 3/7/12 and 3/8/12.**

001143

Bostwick, Richard

From: Lindsey, Judy
Sent: Monday, August 01, 2011 8:12 AM
To: Bostwick, Richard
Subject: RE: I-395 connector reduced width

Richard,

It's true, Ken decided the reduced lane and 100' to 125' ROW width was all we needed in the foreseeable future so why do more. I've been told this project will be taken to the Governor as one to move forward even though the price tag is up there. I hadn't notified anyone as I am waiting for the modification to be signed. Bill will be providing a new set of plans when available. I'll keep you in the loop.

Judy

JUDY LINDSEY

MAINE DEPARTMENT OF TRANSPORTATION

BUREAU OF TRANSPORTATION SYSTEMS PLANNING

16 STATE HOUSE STATION

AUGUSTA, MAINE 04333-0016

(207) 624-3291

JUDY.LINDSEY@MAINE.GOV

→ ***"It's true, Ken decided the reduced lane and 100' to 125' ROW width was all we needed in the foreseeable future so why buy more."***

→ **FOAA Doc #001143 predates the DEIS by 7.2 months. Why was this critical reduction of right-of-way (ROW) withheld from the Public and not included in the DEIS?**

The Cost of Mitigating Environmental Impacts:

FALSE STATEMENT or CLAIM: Does the DEIS-stated \$61 million cost include environmental mitigation? Not according to FOAA Document #000392 dated 12/6/11: Note that the mitigation column is blank while DEIS page s15-s18 states: "...include the costs of... mitigating environmental impacts".

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

→ FOAA Doc #000392 predates the DEIS by only 92 days (3.03 months).

Estimated Construction Costs

The estimated construction costs of alternatives include the costs of preliminary engineering, construction engineering, utility relocation, acquisition of property for right-of-way, and mitigating environmental impacts. The costs of the build alternatives would range between approximately \$61 million and \$81 million (in 2011 dollars).

DEIS page s15-s18

→ "...include...mitigating environmental impacts".

→ MaineDOT/FHWA Management signed off on the DEIS on 3/7/12 and 3/8/12.

I-395/Route 9 Transportation Study Environmental Impact Statement
Net Present Value Analysis and Benefit-Cost Ratio of Modeled Transportation Benefits
 August 1, 2012

Inputs
 0.07 Percent Discount Rate
 20 Years Analysis Period
 (References: <http://www.fhwa.dot.gov/infrastructure/asstmgmt/primer03.cfm>, http://www.whitehouse.gov/omb/circulars_c094)

000187

Calendar Year	Project Life	Study Year/ Exponent	Construction Costs			Benefits	
			Present Value Factor	Current Year	Present Value	Current Year	Present Value
2015		0		\$61,000,000	\$61,000,000	0	0
2016	1	1	1.00000	0	0	4,167,500	4,167,500
2017	2	2	0.87344	0	0	4,386,842	3,831,638
2018	3	3	0.81630	0	0	4,606,184	3,760,018
2019	4	4	0.76290	0	0	4,825,526	3,681,371
2020	5	5	0.71299	0	0	5,044,868	3,596,921
2021	6	6	0.66634	0	0	5,264,211	3,507,766
2022	7	7	0.62275	0	0	5,483,553	3,414,881
2023	8	8	0.58201	0	0	5,702,895	3,319,137
2024	9	9	0.54393	0	0	5,922,237	3,221,304
2025	10	10	0.50835	0	0	6,141,579	3,122,067
2026	11	11	0.47509	0	0	6,360,921	3,022,028
2027	12	12	0.44401	0	0	6,580,263	2,921,716
2028	13	13	0.41496	0	0	6,799,605	2,821,594
2029	14	14	0.38782	0	0	7,018,947	2,722,069
2030	15	15	0.36245	0	0	7,238,289	2,623,489
2031	16	16	0.33873	0	0	7,457,632	2,526,158
2032	17	17	0.31657	0	0	7,676,974	2,430,333
2033	18	18	0.29586	0	0	7,896,316	2,336,235
2034	19	19	0.27651	0	0	8,115,658	2,244,047
2035	20	20	0.25842	0	0	8,335,000	2,153,922

Benefits and Assumptions	
Benefits (2011\$)	
\$5,117,000	reduction in crash costs
\$417,000	reduced vehicle operating costs
\$2,801,000	travel time savings
\$8,335,000	

\$4,167,500
 \$219,342.11 (half of total benefits, divided by 19 years)

Assumptions:

1. \$8,335,000 in benefits would occur as of design year 2035. However, a lower level of annual benefits would begin in year 1 of project life. Because the amount of benefits was not modeled separately for each project year, it was assumed that 1/2 of design year benefits would occur in project year 1, and increase linearly until 2035.
2. The salvage value of right-of-way was not subtracted from the total project cost. Subtracting the salvage value would decrease the project cost and increase the positive benefit-cost ratio.






Notes:

1. Benefits calculated to design year of 2035; however roadway is expected to exist past 2035 and would continue to provide transportation benefits.
2. Other non-transportation benefits, such as employment and related economic development supported by improved mobility and access, are not accounted for and would provide additional benefits for the public.

Installation		Benefits
SUM OF PRESENT VALUES	61,000,000	61,424,195
AVERAGE ANNUAL EQUIVALENTS	5,381,279	5,798,009
BENEFIT-COST RATIO	1.1	
AVG ANN EQVINT NET BNFTS		\$416,731

Benefit-to-Cost Ratio Determines the End-State-Design Criteria:

MaineDOT/FHWA Transportation Professionals stated a decade ago: *“Traffic congestion and conflicting vehicle movements on this section of Route 9 would substantially increase the potential for [new safety concerns and hazards](#).”* Safety should never be trumped by money. The cost of alternative 2B-2, as stated by MaineDOT’s Engineering Consultant on December 6th 2011 using freeway design criteria, was \$93,240,000. See FOAA Document #000392 on page 5.


- Since a Benefit/Cost Ratio is simple mathematics, knowledge on how to compute benefits is not necessary. Present value of Benefits established by MaineDOT @ \$61,424,195 (See attached FOAA Doc #000187 on page 10). A project must have a B/C \geq (equal to or greater than) 1.0 to be viable; as that number increases above the 1.0 threshold—the more viable the project.
- Benefit-to-Cost Ratio using **\$93,240,000** cost established per FOAA Doc #000392: (see page 5)
 - FOAA Document #000187 established Benefits @ \$61,424,195
 - FOAA Document #000392 established 2B-2 Cost @ \$93,240,000
 - $\$61,424,195 / \$93,240,000 = B/C \text{ Ratio } @ 0.659$
 - **A Benefit-to-Cost Ratio of 0.659 makes this project unviable—when using “...cost estimate...prepared using the DOT’s freeway criteria.”** 
- Benefit-to-Cost Ratio using **\$93,000,000** cost established per FOAA Doc #000431: (see page 6)
 - FOAA Document #000187 established Benefits @ \$61,424,195
 - FOAA Document #000431 established 2B-2 Cost @ \$93,000,000
 - $\$61,424,195 / \$93,000,000 = B/C \text{ Ratio } @ 0.660$
 - **A Benefit-to-Cost Ratio of 0.660 makes this project unviable—when using cost estimate “...designed...using MaineDOT’s criteria for freeways.”** 
- Benefit-to-Cost Ratio using **\$61,000,000** cost established per the DEIS: (see page 7)
 - FOAA Document #000187 established Benefits @ \$61,424,195
 - DEIS-stated cost of alternative 2B-2 is established @ \$61,000,000
 - $\$61,424,195 / \$61,000,000 = B/C \text{ Ratio } @ 1.007$
 - **A Benefit-to-Cost Ratio of 1.007 makes this project viable—yet marginally. Note that the MaineDOT apparently rounded up that 1.007 to obtain a Benefit-to-Cost Ratio of 1.1—inconsistent with mathematical principles.**
-  • **A Benefit to Cost ratio >1.0 cannot be obtained unless the project criteria is downgraded from freeway criteria to rolling criteria—bet you won’t find that fact in the DEIS!**
-  • **The \$61 million DEIS-stated-cost reflects a future downgrade to rolling criteria even though that future change in criteria has not actually taken place yet (or at least not technically per the DEIS—and we all know that the DEIS “is the current document of record”).**
-  • **21 months have gone by since the \$61 million cost was intentionally and fraudulently included in the DEIS! How ethical is that?—AND—How compliant with NEPA is that?**


Cost reduced by one-third—IS NOT EQUAL TO—the DEIS-stated \$61 million:

FOAA Document #000431 (page 6) states: *"...cost estimates should be reduced by one-third..."* 

FOAA Document #000392 established 2B-2 Cost @ \$93,240,000 (see page 5)


$\$93,240,000 / 3 = \$31,080,000$ (one-third of \$93,240,000)


$\$93,240,000 - \$31,080,000 = \$62,160,000$ —OR— $\$1.16$ million more than DEIS-stated \$61 million 

 • Benefits @ \$61,424,195 / Cost @ \$62,160,000 = *unviable 0.988 B/C ratio*

FOAA Document #000431 established 2B-2 Cost @ \$93,000,000 (see page 6)

$\$93,000,000 / 3 = \$31,000,000$ (one-third of \$93,000,000)

$\$93,000,000 - \$31,000,000 = \$62,000,000$ —OR— $\$1.0$ million more than DEIS-stated \$61 million 

 • Benefits @ \$61,424,195 / Cost @ \$62,000,000 = *unviable 0.991 B/C ratio*

What is the Cost—reduced by one-third—the DEIS-stated \$61 million represents?

DEIS-stated cost of alternative 2B-2 is established @ \$61 million. (see page 7)

$\$61,000,000 = (2/3)$ of the Unknown Total Cost

$\$61,000,000 (3/2) =$ Unknown Cost Total Cost

 $\$91,500,000$ —reduced by one-third—would be the mathematical basis behind the DEIS-stated \$61 million cost.

 $\$91,500,000$ is \$1,500,000 to \$1,740,000 less than the 2B-2 costs stated in FOAA Docs #000392/000431.

-
- *Benefit to Cost Ratio is a simple concept to understand: Cost must be equal to or less than the stated benefits of \$61,424,195 and the \$61 million DEIS-stated cost does just that—coincidence? The mathematical basis behind the DEIS-stated \$61 million cost—including the \$91,500,000 (total cost before one-third reduction above)—cannot be found in the DEIS or any FOAA document to date.*
 - *MaineDOT Chief Engineer (KS) to MaineDOT Project Manager (RC) on January 13th 2012: "Fill in the range of cost alternatives....Low should be no greater than \$65 M ..you decide High." (FOAA Docs #000364/000365 on page 13)*
 - *The DEIS-stated \$61 million 2B-2 cost may be nothing more than a guesstimate. Don't we deserve 100% accurate, verifiable, non-opinionated engineering and mathematical documentation after 13 years of a \$2.5 million study?*
 - *NOTE: MaineDOT Chief Engineer (KS) stated on January 30th 2012 in FOAA Document #000431 (page 6): "The latest estimate to construct the build alternatives dated December 2011 range from approximately \$93 million for Alternative 2B-2..." (KS) either rounded down or misstated the Dec 6th 2011 \$93,240,000 cost of 2B-2, as stated in FOAA Document #000392 (page 5), by \$240,000 to \$93,000,000. I included both costs in my computations.*

FALSE STATEMENT or CLAIM: *The \$61 million—it is unimaginable that anyone, especially a professional engineer, could possibly make mathematical errors of \$240,000, \$1,000,000, \$1,160,000, \$1,500,000 or \$1,740,000 in calculations without it being intentional. OR—is the \$61 million really just a guesstimate of no greater than \$65 million as suggested by MaineDOT's Chief Engineer?*

The following email from MaineDOT **Chief Engineer Sweeney** to MaineDOT Project Manager Charette was part of an email string over four pages numbered: FOAA Documents #000363 to #000366 (full pages upon request). This one email starts on FOAA Doc #000364 and finishes on FOAA Doc #000365:

From: Sweeney, Ken

Sent: Friday, January 13, 2012 1:07 PM

To: Charette, Russ

Subject: RE: I-395/Route 9 Study

000364

Yes...as follows:

Does the purpose statement need to reference AASHTO POLICY? If it must then it should say GUIDE not policy.

Add a sentence or two about Freight connectivity and the recent Congressional action to allow 100k trucks on the interstate system and the critical need to provide a safe connection to the interstate system for those trucks on route 9 from Canada and regionally from Washington County and EastPort Port needing to travel to points south and west.

Fill in the range of cost alternatives....Low should be no greater than \$65 M ..you decide High.

000365

Anticipated Construction could begin in 2014-2015

We also discussed wording and had a meeting with the biologists that led to a comment that we should only commit to the 1.2 bankful on the structures that make environmental sense and not a blanket 1.2 statement. We should also avoid the "will be considered in final design" when it involves environmental commitment because the regulators interpret the language consider the same as require.

That's all I recall

Thanks

ken

→ **"Fill in the range of cost alternatives....Low should be no greater than \$65 M ..you decide High."**

→ **FOAA Docs #000364/000365 predate the DEIS by 7.7 weeks.**

- I questioned the DEIS \$61 million price tag, but nothing in that question was deemed substantive. Is this more dissimulation? Who will hold the MaineDOT/FHWA accountable to these actions?

Attachment: Comments and Public Meeting Transcripts

DEIS Comment/Question # 4.

Submitted by: Larry Adams, a Brewer resident, on April 13, 2012

Cost of alternatives in this Study:

"The estimated cost of 2B-2 construction is \$90 million dollars." (October 2011 Interagency Meeting Minutes)
"MDOT estimates the project will cost \$70 million to \$101 million." (BDN 1/10/2012) At \$90 million dollars, alternative 2B-2 at 6.1 miles in length will cost \$14.75 million dollars per mile. "Ray responded that the DOT has seen recent average construction costs of \$7-8 million per mile." "For a 10 to 11-mile connector as studied here, construction would likely cost \$70 to \$80 million." (PAC Meeting 11/19/2008)
"Route 3EIK-2... Developed over the past few weeks, the new route features 10.6 miles of new roadway at an estimated construction cost of \$40 million." (BDN article 5/01/2003) "At the national level, we saw a major spike in the price of asphalt as a result of the 2005 hurricane season and its impacts on the petroleum industry, which certainly revealed our national vulnerabilities related to energy supplies. Consequently, MaineDOT reported in 2010 that its construction costs had increased by a troubling 60 percent over the previous five years, further contributing to the challenge of maintaining an aging system." (Connecting the D.O.T.S September 2011) The 3EIK-2 alternative would have cost \$40 million dollars in 2003, a ten to eleven mile connector would have cost \$70 to \$80 million dollars in 2008 and now in 2012 the 2B-2 alternative, which is 4.5 miles less in overall length than the 3EIK-2 route will cost an estimated \$70 to \$101 million or is it \$90 million dollars? The cost of asphalt is directly tied to the price of crude oil and current events, it will only go up in the future and even now the price of gas is \$4.00+/gallon.

"The estimated construction costs of alternatives include the costs of preliminary engineering, construction engineering, utility relocation, acquisition of property for right-of-way, and mitigating environmental impacts. The costs of the build alternatives would range between approximately \$61 million and \$81 million (in 2011 dollars)". (DEIS pages 15/18) Since 2B-2 has the lowest construction costs of the three remaining alternatives, the cost estimate to construct 2B-2, per the DEIS, is \$61 million dollars. ←

-
- Why the large disparity from \$61 million dollars in March of 2012 from \$90 million dollars in October of 2011 or more as reported in the BDN in January 2012?
 - What will be the cost in real 2014 dollars when this 2B-2 alternative is slated to go to construction if selected?
 - Is this \$90 million dollar estimate from October of 2011 even realistic or will this end up costing more like \$120 million dollars or more if 2B-2 goes to construction two or three years from now?
 - At what point will the MaineDOT/FHWA realize that this project will be too costly for the limited benefits that it delivers?

MaineDOT Biweekly Report following Eddington's FOAA Briefing. MaineDOT Project Manager (RC) reiterated that the ***proposed Right of Way was 200 feet minimum*** and the ***design was the "Freeway" design standard***. This proclamation ***directly conflicts*** with the discussion that Commissioner Bernhardt had two weeks prior with Carol Woodcock when he freely discussed ***the preferred alternative's downgraded design from freeway criteria to rolling criteria with a reduction in the ROW from 200 feet to 100 feet***.

From: "Charette, Russ" <Russ.Charette@maine.gov>
Date: Friday, April 19, 2013 2:38 PM
To: <albromley@roadrunner.com>; <john.bryant@amforem.biz>; <John@HoldenMaine.com>; <ljohns@brewerme.org>; <rkenerson@emdc.org>; <RPLane@laneconstruct.com>; <townofeddington@roadrunner.com>; <SBost@BrewerME.org>
Cc: <nrickr@bangordailynews.com>; "Plumpton, William M." <wplumpton@GFNET.com>; "Rollins, Scott" <Scott.Rollins@maine.gov>; <Mark.Hasselmann@FHWA.dot.gov>; "Cassandra Chase (Cassandra.Chase@dot.gov)" <cassandra.chase@dot.gov>; "Talbot, Ted W (PIO)" <Ted.W.Talbot@maine.gov>; "Thomson, Herb" <Herb.Thomson@maine.gov>
Subject: I-395 Route 9 Transportation Study

No major changes in development since the last report. MaineDOT continues to assemble the additional information requested by the U.S. Fish and Wildlife Services related to the Biological Assessment (BA) that was previously submitted.

It should be noted that this additional work effort is "in the queue" for the staff in our Office of Environment, one of many projects they are working on.

There was a lot of information included in a recent news article, some of which may be miss-leading..

It is important to note that the Draft Environmental Impact Statement (DEIS) contains the information pertaining to the project and is the current document of record. The National Environmental Policy Act (NEPA) requires and defines a **process** by which MaineDOT and FHWA evaluates proposed projects. As such, individual documents may not be the current correct information and represents a snapshot of that point in time. The purpose of NEPA and the NEPA document (in this case, an EIS) is **not** to document the decision, but to **be** the decision-making document. Comments received on the DEIS will be incorporated into the Final Environmental Impact Statement (FEIS). Any comments on the DEIS that were determined to be substantive require a response which will be included in the FEIS.

To be clear, the proposed Right of Way for the project corridor is 200 feet (minimum). The design standard used for the evaluation of the 79+ alternatives considered in the process is the "Freeway" design standard as documented in the DEIS and continues to be the standard for environmental processing. There are multiple "standards" available dependent on the functional classification of the highway segment you propose to build. For example, the interstate(Freeway) system has six to one in-slopes compared to four to one slopes for non-freeway arterials. If a build alternative is constructed it will be designed and built to national standards to the proposed design speed and classification for the highway.

Please let me know if you have any questions.

Russell Charette – Project Manager

Russell D. Charette, P.E.
Director, Mobility Management Division
Bureau of Transportation Systems Planning
MaineDOT 16 State House Station
Augusta, Maine 04333
Phone: 207-624-3238
Fax: 207-624-3301
E-Mail: Russ.Charette@Maine.Gov

**Questions to Maine DOT
Submitted January 9, 2012
By Carol Woodcock
Office of US Senator Susan Collins**

I have attached several documents that I will refer to in my questions. Of particular note, I'd like to point to a document prepared by MDOT, FHWA, and USACE of October 2003; "Rational for Alternatives Retained for Further Consideration February 2002" in which it clearly states that to improve regional system linkage, an alternative must provide a limited-access connection between 1-395 and Route 9 east of Route 46. It went further to state that "Alternatives that do not provide a limited access connection to Route 9 east of Route 46 would not provide a substantial improvement in regional mobility and connectivity and would negatively affect local access." This document has been the source of a number of questions that have been brought to my attention.

Most of the questions that I have raised here are regarding the process that MDOT and other agencies have followed in the past ten years.

38. *Will the proposed connecting route be built to interstate grade standards?*

No, the build alternatives would be controlled-access highways and were conceptually designed using the MaineDOT design criteria for freeways. Two lanes would be constructed and used for two-way travel within an appropriate 200-foot-wide right-of-way.

39. *Is this going to be designed as a four-lane, divided highway?*

No, the build alternatives would be controlled-access highways and were conceptually designed using the MaineDOT design criteria for freeways. Two lanes would be constructed and used for two-way travel within an appropriate 200-foot-wide right-of-way.



MaineDOT answers predate the DEIS by only 7.1 weeks.

This is obviously just an excerpt—full document of 41 questions/answers available upon request.

Why was the following critical downgrade in design criteria and the reduction of the Right-of-Way information, obtained from FOAA requests, not shared with the Office of U.S. Senator Susan Collins in official MaineDOT answers on January 17, 2012?

- The **change from freeway criteria to rolling criteria**, following the conclusion of the NEPA process, as documented in the **December 6th 2011** letter to the MaineDOT from their paid Engineering Consultant at Gannett Fleming (see FOAA Doc #000391 on page 5).
- The **reduction in Right-of-Way to 100' to 125'** in an **August 1st 2011** MaineDOT email (see FOAA Doc #001143 on page 8): "It's true, Ken decided the reduced lane and 100' to 125' ROW width was all we needed in the foreseeable future so why do more."

On December 13th 2011—FHWA/Mark Hasselmann advised the MaineDOT Project Manager (JL) that the preferred alternative did not meet Purpose and Needs. Mr. Hasselmann's position and the subsequent overturning of his position deserve a thorough investigation. Alternative 2B-2 did not meet Purpose and Needs in April 2009—the FHWA co-manager of the Study basically said the same thing in December of 2011.

December 16, 2011

000131

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".

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

FOAA Docs #000131/000177 predate the DEIS by 69 to 82 days. Purpose and Needs is the driving force behind any project—don't you think this issue deserves further investigation?

So—what's the real truth?

- Is the Right-of-Way the DEIS-stated 200 feet or the FOAA Doc #001143-stated 100 to 125 feet as the MaineDOT Commissioner acknowledged on April 4th 2013?
- Is the design the DEIS-stated “MaineDOT design criteria for freeways” or the FOAA Doc #000391/000431-stated rolling design criteria as the MaineDOT Commissioner acknowledged on April 4th 2013?
- Are changes in design criteria—“following the conclusion of the NEPA process”—and applicable only to the 2B-2/preferred alternative and none of the other 79+ alternatives in the study—within NEPA compliance?
- Was including the cost in the DEIS of a future downgrade of design criteria—within NEPA compliance?
- Does this project satisfy the Benefit-to-Cost Ratio or not? Why was the BCR not part of the DEIS?
- Does the DEIS-stated \$61 million cost include mitigating environmental impacts or not?
- Why the apparent mathematical errors in the one-third reduction of cost computations?
- What is the engineering and the mathematical basis behind the DEIS-stated \$61 million cost?
- Was FHWA/Hasselmann correct—the 2B-2/preferred alternative does not meet Purpose and Needs?
- Has this Study been managed within NEPA compliance?
- How did the 2B-2 alternative—only meeting one (20%) of the five Purpose and Needs in April 2009 and virtually identical to the 2B alternative removed twice from further consideration before January 2003—become the preferred alternative of a \$61 million project at a time when Maine cannot afford to maintain the existing failing roads and bridges? **Couldn't that \$61 million be better spent on Maine's unmet transportation needs—now and in the future?**

I-395/Route 9 Transportation Study

Draft Environmental Impact Statement and Section 404 Permit Application

Supporting Information

Brewer, Holden, Eddington, and Clifton, Maine

FHWA-ME-EIS-12-01-D

MaineDOT Project Identification Number: 008483.20

FHWA: NH-8483(20)E

Submitted Pursuant to 42 U.S.C. 4332 (2) (c) by the

Federal Highway Administration, and Maine Department of Transportation

Cooperating Agencies

U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service, U.S. Environmental Protection Agency, National Oceanic and Atmospheric Administration—National Marine Fisheries Service, Maine Department of Environmental Protection, and Maine Historic Preservation Commission

David Bernhardt, P.E.

Commissioner, Maine Department of Transportation

3/7/12
Date

Todd D. Jorgensen

Maine Division Administrator, Federal Highway Administration

3/8/2012
Date

The following people may be contacted for additional information regarding this document:

Comments on this Draft EIS/Section 404 Permit Application and supporting information are due by May 15, 2012 and should be sent to either of the following:

Mark Hasselmann
Federal Highway Administration
Edmund S. Muskie Federal Building
40 Western Avenue, Room 614
Augusta, ME 04332
(207) 622-8350

Russell D. Charette, P.E.
Maine Department of Transportation
Director, Mobility Management Division
Bureau of Transportation Systems Planning
16 State House Station
Augusta, Maine 04333
(207) 624-3238

The Maine Department of Transportation (MaineDOT) and the Maine Division of Federal Highway Administration (FHWA) have undertaken the I-395/Route 9 Transportation Study to evaluate transportation alternatives to improve regional system linkage, relieve traffic congestion, and improve safety along Routes 1A and 46, and to improve the current and future flow of traffic and the shipment of goods to the Interstate system. This Environmental Impact Statement (EIS)/Clean Water Act Section 404 Permit Application examines the environmental effects of the “No-Build” Alternative and three build alternatives developed to satisfy the study purpose and needs. The purpose of this EIS/Section 404 Permit Application is to provide the FHWA, the MaineDOT, the USACE, and the public with a full accounting of the environmental impacts to the natural, social, atmospheric, and transportation environments. The EIS/Section 404 Permit Application serves as the primary document to facilitate review of the project by federal, state, and local agencies and the general public.

After careful consideration of the range of alternatives developed in response to the study's purpose and needs and in coordination with its cooperating and participating agencies, the MaineDOT and the FHWA have identified Alternative 2B-2 as its preferred alternative because the MaineDOT and the FHWA believe it best satisfies the study purpose and needs, would fulfill their statutory mission and responsibilities, and has the least adverse environmental impact.

→ MaineDOT/FHWA Management signed off on the DEIS on 3/7/12 and 3/8/12.

Timeline leading up to the DEIS: Are these actions within NEPA compliance?

- Official MaineDOT Document—Purpose and Needs Matrix—dated 4/15/09:

I-395/Route 9 Transportation Study
PAC Meeting April 15, 2009

Purpose and Needs Matrix

Alternatives	Meets Purpose		Meets Needs		
	Study Purpose	USACE Purpose	System Linkage	Safety Concerns	Traffic Congestion
No-Build	No	No	No	No	No
Alternative 1-Upgrade	No	No	No	No	No
2B-2	No	No	No	Yes	No
3A-3EIK-1	Yes	Yes	Yes	Yes	Yes
3EIK-2	Yes	Yes	Yes	Yes	Yes
5A2E3K	Yes	Yes	Yes	Yes	Yes
5A2E3K-1	No	No	No	Yes	No
5A2E3K-2	Yes	Yes	Yes	Yes	Yes
5B2E3K-1	Yes	Yes	Yes	Yes	Yes

http://www.i395-rt9-study.com/Pubs/PAC041509_handouts.pdf

NOTE: 2B-2 went from only one step above No-Build in Apr 2009 to the preferred Alternative by Sept 2010?

NOTE: 3EIK-2 was the preferred alternative May 2003-Sept 2010.

2B-2 only met one (20%) of the five Purpose and Needs in Apr 2009.

- FOAA Doc #001143—Reduced lane/Reduction in ROW—dated 8/1/11—see page 8:
 - 1.) *"It's true, Ken decided the reduced lane and 100' to 125' ROW width was all we needed in the foreseeable future so why buy more."*
- FOAA Docs # 000391/000392—Design criteria change following NEPA process /Cost reduction due to change in criteria/Reduced cost applied to DEIS before criteria change—dated 12/6/11—see page 5:
 - 1.) *"We understand the DOT would like, following the conclusion of the NEPA process, for the preferred alternative to be developed using rolling criteria."*
 - 2.) *"...we ask that the DOT let us know the anticipated percent reduction in cost that would result from this change in criteria..."*
 - 3.) *"...we will apply this percent reduction to the cost to construct the build alternatives that is shown in the DEIS/Section 404 Permit Application."*
 - 4.) *The total cost of the 2B-2 alternative "using the DOT's freeway criteria" is: \$93,240,000—not including mitigation—NOT \$61 million as stated in DEIS.*
- FOAA Docs #000131/000177—Preferred Alternative does not meet Purpose and Need/Design change before the FEIS—dated 12/16/11 and 12/29/11—see page 17:
 - 1.) *"On December 13, 2011 Mark Hasselmann...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-lane/4-lane ROW."*
 - 2.) *"Mark's comment the 2 lane- 2 lane ROW Preferred Alternative does not satisfy Purpose and Need...Mark has stated as the alternative will move forward as a 2-lane/2- lane the analysis is now apples to oranges comparison."*
 - 3.) *"Acceptance of the design criteria from Freeway to Rolling will be advanced for the Preferred Alternative before the FEIS."*
- FOAA Docs #000364/000365—Cost of Alternative 2B-2—dated 1/13/12—see page 13:
 - 1.) *"Fill in the range of cost alternatives....Low should be no greater than \$65 M ..you decide High."*

-
- **MaineDOT Answers—Questions from the office of Senator Collins—dated 1/17/12—see page 16:**
 - 1.) **Critical** downgrade in roadway design criteria and reduction of Right-of-Way **information**, obtained from FOAA requests, **was not shared with the Office of U.S. Senator Susan Collins** in official MaineDOT answers.
-
- **FOAA Doc #000431—Cost reduced to one-third/Design change—dated 1/30/12—see page 6:**
To: I-395/Route 9 Transportation Study Project File from MDOT Chief Engineer:
 - 1.) *“The build alternatives have been designed...using MaineDOT’s criteria for freeways.”*
 - 2.) *“After reviewing the cost estimates...the cost estimates should be reduced by one-third...”*
 - 3.) *“The basis for this one-third reduction includes...using a rolling design...”*
-
- **[Management signs off on the DEIS](#) on 3/7/12 and 3/8/12—see page 18:**
 - 1.) DEIS clearly affirms: *“Alternative 2B-2...designed using the MaineDOT design criteria for freeways...within an approximate 200-foot-wide right-of-way...costs...approximately \$61 million...(in 2011 dollars)...include the costs of...mitigating environmental impacts...”*
-

Other issues that require investigation:

“The [CEQ regulations and guidance](#) do not define the term “substantive,” nor is there any definition of this term in FHWA or FTA regulations or guidance. The National Park Service issued guidance stating that a comment is considered substantive if it raises specific issues or concerns regarding the project or the study process, but not if it merely expresses support for or opposition to the project or a particular alternative. FHWA generally follows a similar approach when determining which comments are substantive.” Not found in the [Study Glossary—MaineDOT’s interpretation](#) of “substantive” is based loosely on [40 CFR § 1503.4: Response to comments](#); MaineDOT/FHWA used that to their advantage to pick and choose what they wanted to discuss or what they would bury in the back of the book—unanswered. View the [Draft Responses to Substantive Comments](#); what was considered not substantive was in most cases even more important to the issue—such as this prior statement from MaineDOT/FHWA Transportation Professionals: *“Alternative 2B would use approximately 5 miles of Route 9. Traffic congestion and conflicting vehicle movements on this section of Route 9 would substantially increase the potential for [new safety concerns and hazards](#).”* 2B-2 uses that same section of Route 9—that fact was not considered substantive—it was buried in the back of the book. [View my 37 Comments/Questions to the DEIS \(pages 103-170\)](#) and [83 pages of Public Hearing Transcript \(pages 219-302\)](#).

Somehow, a [“hard look”](#) at Route 9 was enough to substantially change the direction and design of this project. Throughout the decade, the majority of the alternatives studied bypassed Route 9 in Eddington to connect east of Route 46. Now—it has been determined that using 4.5 miles of Rt. 9 and building a shorter, undivided, 2-lane “rolling rural” design—with a 100 foot ROW—instead of a divided, 4-lane freeway design road—with a 200 foot ROW—not only meets Purpose and Needs but somehow these changes are not substantive enough to warrant input from the Public Advisory Committee or re-analysis of past alternatives under these new down-designed specifications.

*MaineDOT/FHWA—without seeking input from the Public Advisory Committee, impacted private citizens and/or their local community governments—**determined that the System Linkage Need and the need for a limited access facility as established over the previous decade—was to be considered a [long-term need](#) until an undetermined time beyond the year 2035—DEIS (page 258) “[In the near-term \(Year 2035\)](#)”**. There are 158 separate access points and 5 speed limit changes on the 4.5 mile section of Route 9 that is part of 2B-2, an alternative that was supposed to be **limited-access**.*

This 2B-2/preferred alternative selection and the process are flawed. Our concerns are ignored—we deserve to be heard. What I presented to you were FOAA documents unavailable at the time of the Public Hearing and the DEIS comment period. I look forward to providing more documents or testimony in any forum. Is there sufficient basis for spending \$61 million of our critical transportation funds on an unviable and deficient 2B-2 alternative that only met one (20%) of the five [Purpose and Needs in April 2009](#)? I think not. Couldn’t these state and federal funds be better spent on the unmet transportation needs of the State of Maine?

I urge you to please investigate this matter. Larry Adams

Appendix A: Previous Contact with the OIG

Letter to the OIG—May 14th 2012:

Larry Adams
17 Woodridge Road
Brewer, Maine 04412
207-989-4913
bgradams@roadrunner.com

Office of Inspector General
1200 New Jersey Avenue S.E.
7th Floor
Washington, DC 20590
May 14, 2012

To whom it may concern:

The MaineDOT/FHWA I-395/Route 9 Transportation Study within the Maine communities of Brewer, Holden and Eddington is now in the twelfth year with expenditures exceeding \$1.7 million dollars. The Draft Environmental Impact Statement has been published and is currently out for comment until May 15th; we are told that the final selection is six to eight months in the future.

There is considerable frustration in the impacted communities on the outcome of this Study:

- How was it possible to change this Study so drastically without our knowledge?
 - How can this Study Group dismiss the original Purposes and Needs and the original intent of the Study?
 - How can a route become the preferred route in 2012 when it is identical to a route removed twice ten years ago because of traffic and safety concerns?
 - How is it possible that a Study can take twelve years to complete?
- Was this just a source of money to keep people busy?
 - Where did the money go?
- How is it possible to keep private citizens and their elected officials completely outside of the decision-making process?
 - Where was the transparency?
 - Eight of the twelve years of this Study has been outside of public scrutiny.
 - Was there no transparency for a reason?
- How can a vernal pool with a couple of frogs and salamanders change the outcome of this project?
 - How can the EPA and the ACOE not feel the same concerns about the human environment as they do for frogs and salamanders living in a soon-to-be-dried-out skidder track?
- The questions continue and can best be understood by reading my 35 attached DEIS Comments/Questions at the end of this letter. (*Questions are no longer attached—see [Draft Responses to Substantive Comments](#) pages 103-170.*)

I live in a quiet rural residential neighborhood approximately 80' from the right-of-way of 2B-2/the preferred alternative; I am neither directly nor indirectly impacted according to current State and Federal regulations—even though I will suffer a serious devaluation in my property and a decreased quality of life. Frogs and salamanders have unalienable rights—I apparently have none—that is outrageous to one that has gone to war for this country. Never would I have ever thought that my quality of life in my senior years would depend on where a couple of frogs, in a stagnant puddle of water, would call home. I wonder how many ACOE and EPA officials, protecting these valuable mosquito breeding puddles, have fought for their country as hard as they seem to be fighting to save the rights of a few frogs and salamanders.

- Where is the same concern from these State and Federal agencies for the human element—real live people?

I am writing because there are Federal funds involved in the Study; there are multiple Federal agencies involved in the Study, including the FHWA as a co-lead of the Study; the ACOE and the EPA that played an important part in steering this study; and 80% Federal matching funds for an estimated \$90 million dollar construction project will be requested by the end of the year if people don't start listening and become aware of the deficiencies of this connector selection.

This is not a letter of accusation; I simply present facts that contradict the decision-making process of this study. I disagree with the decisions of the Study Group and see their decision as a complete failure to produce a product as they were tasked to do over twelve years ago and a failure to operate in a professional, above board and fully transparent manner keeping the public fully informed and

engaged in the whole process. The time for consensus is during the process, not after the Draft Environmental Impact Statement is published. The consensus during the May 2nd Public Hearing was that of the 20 speakers formally addressing the Study Group – there was no one that spoke in favor of the panel's decision, most addressed safety concerns with the Study Group's selection of any of the remaining three alternatives.

Even after a highly charged hearing, we still believe that our concerns are not being listened to and that is with all levels of Legislative officials engaged in the process. The MaineDOT/FHWA seems to be hell bent to push forward, no matter what the concerns, with their selection to end this Study.

Alternative 3EIK-2 was the MDOT/FHWA preferred route for almost seven years as far back as May of 2003. Alternative 2B was removed from further consideration twice before the end of 2002 only to be brought up again in September of 2003 as the 2B-2 alternative when we all thought the study was near completion. This new 2B-2 alternative used the same identical segment of Route 9 a little differently than 2B; 2B-2 required a rebuild of or improvements to Route 9 while 2B used the existing Route 9. At the last time this connector was discussed in public, 4/15/2009, the 2B-2 alternative only met 20% of the Purposes and Needs of the Study. At the end of the Public Advisory Committee meeting of 4/15/2009, we all left with the knowledge that the 3EIK-2 route was the preferred route; 3EIK-2 was practicable and 3EIK-2 meet all the Purposes and Needs of the Study.

The 3EIK-2/preferred alternative was removed from further consideration along with all other routes that met the Purposes and Needs of the Study in September of 2010; Route 9 will not be rebuilt or improved, 2B-2 is now the preferred alternative, 2B and 2B-2 both use the same 4.1 mile segment of an unimproved Route 9—turning 2B-2 into 2B all over again, a route removed twice before because: “Traffic congestion and conflicting vehicle movements on this section of Route 9 would substantially increase the potential for new safety concerns and hazards.”

None of the three remaining alternatives, including 2B-2, meet the original Purposes and Needs of the Study and the intent of the project. The connection point for all three remaining alternatives, including 2B-2, is now 4.5 miles west of where the connection point of more than 70 alternatives previously studied was sited in order to meet the System Linkage Need criteria—a connection point on Route 9 east of Route 46 in the vicinity of the Eddington/Clifton town line.

When I discovered this news on 12/15/2011, purely by accident as the news had not been provided to the general public, I immediately emailed the City of Brewer and the Project Manager requesting an update as I was completely floored that the project had turned 180 degrees, removing the only four proposals from further consideration, including the 3EIK-2/preferred alternative, that fully met the Purposes and Needs of this Study, leaving just two routes that only met 20% of the original criteria, a similar third route was added. No one in my community was aware of any of these changes to the Study.

So what we have left in the Draft Environmental Impact Statement are three alternatives, none of which meet the original Purposes and Needs of the Study and the original intent of the project. It is fact that there are no alternatives in the DEIS that meet the original Purposes and Needs of this project. Our screams of foul have been silenced by MDOT talking points of new roadway downgraded design; decreased traffic numbers; too many vernal pools on 3EIK-2 alternative; the private E/W highway proposal doesn't go there; rightsizing etc... We feel railroaded by a process that should have been fair to all, open and fully transparent to the private citizen and their elected officials.

All decisions, since 4/15/2009, were made without scrutiny of the public and their governing bodies—without knowledge and concurrence of any of the real stakeholders.

The City of Brewer and the Town of Eddington have removed their support of the project by resolution—both resolutions stating support for the No-build option.

I have attached my DEIS Comments/Questions that I have already provided to the MDOT, FHWA and the ACOE for inclusion in the Final Environmental Impact Statement—that's the long story and includes a lot of information that contradicts the decisions that have been made to date. *(Questions are no longer attached—see [Draft Responses to Substantive Comments](#) pages 103-170.)*

I had hoped that some of those questions, along with the 27 questions submitted by the Town of Eddington that night, would be answered at the May 2nd Public Hearing, but the Study Group would not address the public except for opening statements. We are told that the questions will be answered in the FEIS sometime six to eight months away from now. We have also been told that only substantive comments or questions will be answered. There is no accountability in this process; the Study Group can determine what comments or questions they seem fit to answer making all others moot; and we feel railroaded by these agencies and the process. They are the Judge, Jury and the Executioner; no scrutiny; no accountability.

The MaineDOT and the FHWA are not listening to the private citizen or their elected officials. We are at a loss as how this can be acceptable in a free society.

It is time to halt this study and if a connector is really needed take this back to the public arena and have the stakeholders get a voice in the decision-making process.

Key Points to Consider:

- The State of Maine requires a 250' buffer (4.51 acres) around a significant vernal pool; the ACOE requires a 750' buffer (40.56 acres) around any vernal pool—whether significant or not. And in fact, the New England District of the ACOE differs than all other ACOE districts in the US in the way they view vernal pools. How can you buffer a non-significant vernal pool? If it is non-significant, it is just a puddle. Isn't it ridiculous that a property owner, like many of us living in my neighborhood, can be 80' from the right-of-way of the preferred alternative and not be considered directly or even indirectly impacted—yet frogs and salamanders and mosquitos are guaranteed to be no closer than 750' of the proposed roadway? AND—where is the proof? Show me the vernal pools on the State of Maine GIS maps—bet you won't find them—they haven't been registered—they don't exist. These State and Federal agencies will say that it is the landowner's responsibility to register them—vernal pools were so numerous around 3EIK-2/the preferred route that—3EIK-2 was removed from further consideration—placing 2B-2 as the new preferred alternative even though 2B-2 doesn't meet the original Purposes and Needs of the Study.
 - Shouldn't these same State and Federal agencies have the responsibility to make the sure the landowners register the vernal pools that State and Federal agencies told us they found?
 - Shouldn't State and Federal agencies operate under similar regulations?
 - Shouldn't the ACOE operate under the same ACOE regulations throughout the US?
 - Why does the New England District of the ACOE treat vernal pools so much differently in the New England states as anywhere else in the US?
 - How can the ACOE treat all vernal pools as significant (containing the specific amount of frogs and salamanders) whether they are significant or non-significant?
- The FHWA apparently has no problem with the new redesign of this connector. This downgraded connector design, occurring sometime in 2011 and first addressed at the October 2011 Interagency Meeting, does not include a future upgrade to a four lane divided highway as was the original intent for the previous decade of the study. This connector will be constructed as a two lane undivided roadway for its life expectancy of 2035; subject to often fatal head-on crashes on these type of two lane undivided highways. Fatalities from head-on crashes already happen all too often on this stretch of Route 9.
 - Why is the FHWA, as co-lead of this Study, promoting this connector design and removing any chance of an upgrade when safety or increased traffic becomes an issue.
 - Why in the year 2012 are any new road surfaces being suggested by the FHWA, especially one connecting to an interstate, as a two lane undivided roadway? Safety of this proposed connector alternative has been brought up to the MaineDOT and the FHWA—so far nobody seems to be listening. This shortsighted removal of the upgrade option, as future traffic and safety concerns demand, was based solely on cost by removing the requirement to purchase a larger initial right-of-way. MaineDOT officials estimated a \$1 million dollars cost for the larger right-of-way purchase; in an overall \$90+ million dollar project, that is only 1.11% of the total price of the project.
 - How much would you pay for safety?
- Alternative 2B was removed from further consideration not only once—but twice before the end of 2002. The reasons were clear: "This alternative would not be practicable because it would fail to meet the system linkage need, and would fail to adequately address the traffic congestion needs in the study area. [Traffic congestion and conflicting vehicle movements on this section of Route 9 would substantially increase the potential for new safety concerns and hazards.](#)"¹
 - SAFETY CONCERNS?
 - SAFETY HAZARDS?
 - CONFLICTING VEHICLE MOVEMENTS?
 - TRAFFIC CONGESTION?
- In the same document, the original system linkage need was further defined: "To meet the need of improved regional system linkage while minimizing impacts to people, it was determined that an alternative must provide a limited-access connection between I-395 and Route 9 east of Route 46."¹

- The connection point for all three remaining alternatives is now 4.5 miles west of the connection point of more than 70 alternatives previously studied; sited in order to meet the original System Linkage Need criteria—a connection point on Route 9 east of Route 46 in the vicinity of the Eddington/Clifton town line.
- That paragraph continued to give a glimpse of what may be expected if an alternative does not meet the original system linkage need parameter: “Alternatives that do not provide a limited access connection to Route 9 east of Route 46 would not be practicable because that would not provide a substantial improvement in regional mobility and connectivity and would negatively affect people living along Route 9 in the study area. Alternatives that would connect to Route 9 west of Route 46 would severely impact local communities along Route 9 between proposed alternative connection points and Route 46.”¹
 - How can the MaineDOT/FHWA negatively affect and severely impact local communities with intent?
- MDOT’s Purpose and Needs Matrix², dated April 15, 2009, contained no engineering data that could be manipulated or misunderstood by anyone—just simple yes and no answers. Did 2B-2 meet the following criteria: Study Purpose? NO; ACOE Purpose? NO; System Linkage Need? NO; Traffic Congestion Need? NO; Safety Concerns? YES. Alternative 2B-2 only met 20% of the purposes and needs of the study three years ago and now it is the “preferred alternative” for a \$90+ million dollar project.
- Alternatives 2B and 2B-2 use the same “4.2 mi. of Route 9 without additional improvement” per the DEIS. They are almost exactly the same route with the same I-395 starting point and the same connection point on Route 9. 2B-2 IS 2B.
- One of the most interesting statements in the 300+ pages of the Draft Environmental Impact Statement is found on page s19: “However, future development along Route 9 in the study area can impact future traffic flow and the overall benefits of the project.”³
 - How can the success of a \$90 million dollar project be based on the hope that a community will stagnate or fail?
 - Safety is the prime benefit to this project—how soon will safety be compromised after fronting \$90 million dollars for construction—if Eddington develops?
- Mission Statement of the MaineDOT: “Responsibly provide a safe, efficient, and reliable transportation system that supports economic opportunity and quality of life.”
- The mission of the United States Department of Transportation is to: “Serve the United States by ensuring a fast, safe, efficient, accessible and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people, today and into the future.”
 - When the word SAFE is in your mission statement shouldn’t you operate at a higher standard?
 - To continue to promote a preferred alternative hanging so precipitously on whether a town develops or not is illogical and may jeopardize Safety.
 - To not recognize our safety concerns is irresponsible. We have these State and Federal agencies to make sure that our highways are Safe—there should be no Safety concerns raised on a new project—that is their job as a public servant.
- What you won’t find in the 300+ page DEIS document is any real concern for the human element. Humans can be relocated, but you certainly can’t disturb a couple of frogs and salamanders in a vernal pool that may only exist for a few months and not return again for a year or so if ever. Many of us are well within 100’ or less of the 200’ right-of-way, many people have their properties cut in half and at least 8 families will watch as the bulldozers raze their homes. How can an agency look an 82 year old man in the face knowing that he will lose his home and the property that he has worked all his life and say this is the right proposal for this connector?
 - Where’s a balance between environment and man?
- How did 2B-2 become the preferred alternative? After 10 years of work and expenditure in excess of \$1.7 million dollars—the parameters of the study were changed in September of 2010. Work by the Public Advisory Committee and others over a good part of the previous decade was disregarded and the PAC was not consulted about any of these changes.
- The MaineDOT has operated outside of their own MaineDOT regulations concerning Public Involvement. They have failed to keep the public and their local governing bodies involved in this Study since 4/15/2009 and none of the decision-making involved anyone, including the elected local officials, none of the real stakeholders in this Study.
 - The FHWA, as a co-lead of this Study, is complicit by allowing this to occur outside of any public scrutiny.

- The E/W private highway feasibility report will be completed by 1/15/2013. “Such a route would remove nearly all of the existing traffic off of Route 9, as well as cut projected future traffic on Route 1 by roughly 2,300 vehicles per day below current levels.”⁴ Where’s the traffic issue on Route 9 if nearly all the existing traffic is removed by an E/W highway?
- The Study Group, under the management of the MaineDOT/FHWA, has managed to spend in excess of \$1.7 million dollars to reach a conclusion that an alternative thrown out two times ten years ago by the same Study Group now “best satisfies the study purpose and needs” for this connector.
<http://www.i395-rt9-study.com/Pubs/Alts%20Tech%20Memo.pdf> page ii and Summary page 5
http://www.i395-rt9-study.com/Pubs/PAC041509_handouts.pdf MDOT Purpose and Needs Matrix
<http://www.i395-rt9-study.com/DEIS/00Sum.pdf> DEIS Summary
<http://www.maine.gov/mdot/1999eastwesthwystudy/reportlinks.htm> MDOT 1999 Executive Summary
- It is time that this Study is halted and take the decision-making back to the real stakeholders within the three communities most impacted by this connector, the private citizen and their elected officials.
- It is time that the FHWA remove support from this Study.
 - There should be no questions of safety with a new roadway connecting to an Interstate Highway.
 - Safety should not be compromised merely by cost.
- It is time that the MaineDOT and the FHWA apologize to the public of these three impacted communities for keeping this issue over our heads for 12 years.
 - It is time to find out where the \$1.7+ million dollars was spent.

Thank you for your consideration in this matter,
 Larry Adams
 17 Woodridge Road
 Brewer, Maine 04412
 207-989-4913
bgradams@roadrunner.com

cc: US Congressman Michael Michaud
 US Senator Olympia Snowe
 US Senator Susan Collins

→ **OIG letter submitted as DEIS Comment/Questions #37—see [Draft Responses to Substantive Comments](#), pages 164 to 170—note that only one comment/question was marked substantive.**

Email to the OIG—August 13th 2012:

I395/Route 9 Connector Project in Brewer, Holden and Eddington Maine

Larry Adams

8/13/2012 2:15 PM

To: hotline@oig.dot.gov;



Q#37 IG
Letter.pdf



Q#36 Letter to
Selected
Officials.pdf



NOTE: Q #36 and Q #37 can be viewed on pages 159 to 170
http://www.i395-rt9-study.com/Pubs/Draft_Comments.pdf

To whom it may concern:

On May 14, 2012, I sent a series of documents to your Washington Office concerning the I-395/Route 9 connector project in Brewer, Holden and Eddington Maine. Delivery confirmation indicates delivery to your office on May 21st. The documents included a letter directly to the Office of the IG (attached), a copy of a letter to selected State and Federal officials (attached) and copies of my concerns/questions submitted in response to the (DEIS) Draft Environmental Impact Statement (can/will provide again on request). Both letters were copied to Senator Collins, Senator Snow and Representative Michaud. The DEIS questions/concerns provide a good history of what has occurred in the Study, a Study not only involving the State of Maine but Federal Agencies such as the FHWA, the ACOE and the EPA as major players. As of January 2012, \$1.7 million dollars was expended into the 12th year of this study that was budgeted for \$2.5 million. Construction of the current preferred alternative is estimated at \$90 million dollars (in October 2011 money). This is to be an 80% federally funded project.

Alternative 2B-2 is the preferred alternative by the Study Group and recently identified as the Least Environmentally Damaging Practicable Alternative by the ACOE. The problem is that this 2B-2 alternative is identical to the 2B alternative removed from further consideration twice in 2002 for the following reasons as stated in an official MDOT, ACOE, FHWA Document of October 2003: <http://www.i395-rt9-study.com/Pubs/Alts%20Tech%20Memo.pdf> (pages ii and iii)

“Alternative 2B

This alternative would not be practicable because it would fail to meet the system linkage need, and would fail to adequately address the traffic congestion needs in the study area.

Alternative 2B would use approximately 5 miles of Route 9. Traffic congestion and conflicting vehicle movements on this section of Route 9 would substantially increase the potential for new safety concerns and hazards.

Additionally, this alternative would result in: substantially greater proximity impacts (residences within 500 feet of the proposed roadway) in comparison to Alternative 3EIK-2 (200 residences v. 12 residences).”

- would not be practicable because it would fail to meet the system linkage?
- would fail to adequately address the traffic congestion needs in the study area?
- Traffic congestion and conflicting vehicle movements on this section of Route 9 would substantially increase the potential for new safety concerns and hazards?

How safe does that sound?

View the Purposes and Needs Matrix in this PAC Handout from April 15, 2009 and you will find that alternative 2B-2 did not meet the System Linkage Need, Traffic Congestion Need, Study Purpose and ACOE Purpose – only meeting 20% of the Purposes and Needs of this Study on April 15, 2009.

http://www.i395-rt9-study.com/Pubs/PAC041509_handouts.pdf

I would like to find out if this matter will be investigated and if it is, what the status of that investigation may be.

It's now been over two months since the DEIS Public Meeting and all we receive are vague answers to our questions and then only the questions that the MDOT/FHWA want to answer. The DEIS substantive comments were supposed to be discussed at the “next” Interagency meeting, however the June meeting agenda did not include the I395/Route 9 Connector Project and both July and the August meetings have been cancelled.

We are in dire need for of an outside entity to investigate this matter.

We feel railroaded by not only the State DOT, but all the Federal Agencies involved in this Study.

Thank you for your consideration,

Larry Adams

17 Woodridge Road

Brewer, Maine 04412

bgradams@roadrunner.com

207-989-4913

OIG Response—August 14th 2012:

RE: DOT120813-05

US Department of Transportation (oig.dot.gov@globalcompliance.com) [Add contact](#)

8/14/2012 3:48 PM

To: 'Larry Adams';

Thank you for contacting the OIG Complaint Center Operations regarding your concerns. Based on our review of the material provided we have determined that we do not have primary oversight over your concerns and the appropriate venue is the Federal Highway Administration (FHWA). Therefore, we recommend that you contact the FHWA Maine Division office via its website at <http://www.fhwa.dot.gov/mediv/index.htm> or via its telephone at 207-622-8350 for further assistance. We anticipate no further action regarding this matter and thank you for bringing this information to our attention.