

MY JOURNEY TO FIND NEPA COMPLIANCE

Office of the Federal Environmental Executive (OFEE):

From: info@ofee.gov [mailto:info@ofee.gov]
Sent: Tuesday, April 30, 2013 9:26 AM
To: info@ofee.gov; sitemgr@fedcenter.gov
Subject: OFEE.gov Contact Request from Larry Adams

Name: Larry Adams

Email Address: bgradams@roadrunner.com

Subject: NEPA Compliance

Office of the Federal Environmental Executive Original sent 4.22.13 sent @12:25 pm. Submitted via comment page: <http://www.ofee.gov/contact.asp>. Second Submission sent 4.30.13 @ 9:30 am, wrong email address given on form.

I am looking for guidance on how to determine if an EIS is being conducted within NEPA compliance and who can I contact to have an independent source look at my concerns. I am impacted by the preferred alternative of a highway connector project study that has been ongoing now for 13 years - that same preferred alternative only met 20% of the Purpose and Needs (1 of 5) in April 2009.

The DEIS was published for comment in March 2012 and we await the FEIS to be published at any time. An extremely high percentage of our comments and concerns during the DEIS comment period and Public Hearing Testimony did not pass the "substantive test" and receiving no further comment, they will be buried in the back of the FEIS unanswered and unseen. Only 15 comments were considered substantive out of 83 pages of transcript from the Public Hearing.

FOAA was requested in October 2012 and we have just looked over those 1,239 FOAA documents, some of which are very troubling. Several FOAA documents at the Project Managers and Chief Engineer level, predating the publication of the DEIS by no more than three months, indicate that following the conclusion of the NEPA process, the preferred alternative design will be downgraded from freeway criteria to rolling criteria; an August 2011 email from the project manager states that the right-of-way will be reduced from 200' to 100'. The design included in the DEIS, the current document of record, is freeway criteria with a 200' right-of-way. Surprisingly, the cost included in the DEIS is not the actual cost of the freeway design - it is apparently already the cost of the rolling design. A design change announced in October 2011: changed the right-of-way to accommodate two-lanes only not accommodating the four lane construction planned in the future; that change was only applicable to the three remaining alternatives in consideration, one of which is the preferred alternative.

It gets better - in December of 2011, the FHWA liaison and member/co-manager of the study reached the conclusion that because of changes to the study, the Purpose and Needs for the preferred alternative were no longer met; he was later overruled by a superior. The FHWA liaison had concerns with the newly re-identified logical termini - a connection point some 4.5 miles west of the northeastern connection point specifically identified in a 2003 Technical Memorandum and where the vast majority of the 70+ alternatives all terminated in the northeast. The FHWA liaison also had concerns with the use of an existing state route to support the preferred alternative.

Included in the FOAA documents are screen copies of a question anonymously posed to the NEPA Forum that pretty much exactly describes this connector project to a tee and one of the five responders indicated that because of the changes to the study - it was practically not even the same project anymore and another responder was concerned about NEPA compliance. This forum posting occurred at the same time that the FHWA liaison voiced his concerns on the Purpose and Needs.

My questions are simple: If a planned change in design criteria is applicable to only one alternative and not the other 70+ that were studied, is that within NEPA compliance? Aren't all the alternatives supposed to be studied using the same criteria? Is knowingly not including the already decided end-state design in the DEIS within NEPA compliance? Who do I go to? Is there such a thing as a NEPA Inspector General? I can provide all supporting documentation via email. Thank you for your time and consideration. I only want to be treated fairly; I await your guidance. Larry Adams

FW: OFEE.gov Contact Request from Larry Adams

Garvey, Will

5/6/2013 4:45 PM

To: Larry Adams;

Mr. Adams - thanks for your note and apologies for the late follow up - we suggest that you contact the individual listed below:

Timothy L. Timmermann, Associate Director
Office of Environmental Review
EPA New England-Region 1
5 Post Office Square, Suite 100
Mail Code ORA 17-1
Boston, MA 02109-3912

Email: timmermann.timothy@epa.gov

Telephone: 617-918-1025

E-Fax: 617-918-0025

Re: OFEE.gov Contact Request from Larry Adams

Larry Adams

5/7/2013 3:36 PM

To: Garvey, Will;

Mr. Garvey, thank you for your response and suggestion:

I've started to draft a letter to Mr. Timmermann as you suggested, but I have a quick question first; the New England EPA is one of the Cooperating agencies that has been directly involved in this study since its inception. I am concerned with NEPA compliance and not necessarily work that the EPA has accomplished in this study. Is it possible for the EPA to separate the two and look at just the compliance piece when they are directly involved in the study or should this be taken to another office or agency?

Thank you, Larry Adams

Fw: OFEE.gov Contact Request from Larry Adams

Larry Adams

5/13/2013 9:36 AM

To: Will Garvey;

Still awaiting further guidance.

Thank you, Larry Adams

RE: OFEE.gov Contact Request from Larry Adams

Garvey, Will

5/13/2013 11:46 AM

To: Larry Adams;

Mr. Adams: I suggest that you contact Mr. Timmerman (who has NEPA review responsibilities) and ask him to discuss how they might address your concerns.

Best regards:

Will Garvey

Re: OFEE.gov Contact Request from Larry Adams

Larry Adams

5/13/2013 11:59 AM

To: Garvey, Will;

Thank you, I'll do that. Larry Adams

Email to New England EPA:

Request to verify NEPA compliance of I-395/Route 9 Transportation Study

Larry Adams

5/14/2013 3:30 PM

To: T. Timmerman/Associate Director - Office of Environmental Review EPA-NE;

Cc: Brewer City Council; Brewer City Manager; Mayor Jerry W. Goss; Councilor Kevin O'Connell; Eddington Board of Selectman and Town Manager; Representative Arthur Verow - District#21; Senator Edward Youngblood - District#31; Carol Woodcock / U.S. Senator Susan Collins; Representative David Johnson - District#20; Elizabeth Montgomery Schneider MacTaggart / U.S. Senator Angus King; Rosemary Winslow / U.S. Congressman Mike Michaud; Garvey/Council on Environmental Quality - Executive Office of the President;

Timothy Timmermann, Associate Director

timmermann.timothy@epa.gov

Office of Environmental Review

EPA-New England, Region I

5 Post Office Square, Suite 100

Mail code: ORA-17-1

Boston, MA 02109-3912

Dear Mr. Timmermann,

I received your contact information from Mr. Will Garvey of the Office of the Federal Environmental Executive. I asked the OFEE for guidance to determine if an EIS is being accomplished within compliance of the National Environmental Policy Act and who I could contact to have an independent source look at my concerns. It was suggested that I contact you directly to discuss how my concerns may be addressed since your office has NEPA review responsibilities.

I am fully cognizant that the New England EPA has been a Cooperating Agency on this project and not exactly the independent source that I was looking for. The New England EPA is also one of the agencies that may have directly led to the removal of the previous preferred alternative as stated in this MDOT Memorandum dated Feb 1, 2010: "EPA expressed concern about the ability of this alternative (3IEK-2) to comply with the Section 404(b)(1) Guidelines. The Corps makes the determination of compliance with the Guidelines, but EPA's concerns are serious and EPA indicated it would consider other actions should this alternative remain as the preferred alignment." I have no idea what other actions the EPA was considering at the time.

That being said, I am still asking for your office to determine if this study has been conducted within NEPA compliance. If this cannot be accomplished from your office because of jurisdiction or any other issues, please advise me who I should contact.

Here's a little history: The I-395/Route 9 Transportation Study has been ongoing for 13 years. The MDOT and the FHWA have selected 2B-2 as the preferred alternative. However, alternative 2B-2 only met one (20%) of the five [Purpose and Needs as stated in Apr2009](#).

Alternative 2B-2 is almost identical to the original 2B alternative removed twice from further consideration by January 2003 for the [following reasons](#):

- “The lack of existing access controls and the inability to effectively manage access along this section of Route 9, and the number of left turns, contribute to the poor LOS and safety concerns, and the inability of Alternative 2B to satisfy the system linkage purpose and need effectively.”
 - “Alternative 2B was dismissed...because it would inadequately address the system linkage and traffic congestion needs. This alternative would not be practicable because it would fail to meet the system linkage need of providing a limited access connection between I-395 and Route 9 east of Route 46.”
 - “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, 200 buildings (residential and commercial) would be located in proximity (within 500 feet) of the proposed roadway.”
 - “There are several hundred acres that can be developed along this section of Route 9.”
- Current statement in the DEIS concerning the 2B-2/preferred alternative:
- “However, future development along Route 9 in the study area can impact future traffic flow and the overall benefits of the project.” (DEIS page S19)

By September of 2010, all five alternatives meeting 100% of the Purpose and Needs in April 2009, including the 3EIK-2/preferred alternative, were removed from further consideration leaving only alternatives 2B-2 and 5A2E3K-1 both meeting only one (20%) of the five Purposes and Needs in April of 2009.

The last time this project was discussed in public was April 15, 2009; Sept/Dec 2010 study changes were not made public until the Bangor Daily News broke the story on January 6, 2012 (yes 2012!). We understand that there were vernal pool issues with the previous preferred alternative but we contend that no matter what the reason was for removal of the five alternatives – it could not make alternative 2B-2 any more viable than it was in April of 2009, let alone suddenly and magically transforming it from meeting only 20% of the Purpose and Needs to meet 100% of the Purpose and Needs and select it as the preferred alternative. The correct solution, when the agencies could not select an alternative to meet the original Purpose and Needs criteria and intent of the project, should have been to immediately go to No-Build. Isn't that what No-Build is for?

I have a real problem comprehending how the many environmental agencies involved in this study have no problem drastically changing a project to save frogs and salamanders in a vernal pool that may not even exist anymore but don't think twice about selecting an alternative that will cross Felts Brook and Eaton Brook in multiple locations—when both streams are identified as critical habitat to Atlantic salmon.

The DEIS was published for comment in March 2012 and the FEIS may be published at any time. I believe that too stringent of a definition of the word substantive was used to evaluate our DEIS comments and Testimony; this has allowed prior history of this study to be buried in the back of the book, with no further comment required, and that includes information that paints the 2B-

2/preferred alternative in a negative fashion—such as was previously stated concerning the original 2B alternative direct quotations from an [Oct2003 Technical Memorandum](#).

Only 15 comments were considered substantive out of 83 pages of transcript from the Public Hearing. After a lot of research, I have not found a clear definition of the word substantive. “The general rule under the CEQ regulations is that an FEIS must respond to all “substantive” comments on a DEIS. 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.” The National Park Service’s NEPA guidance states that substantive comments “(a) question, with reasonable basis, the accuracy of information in the EIS...”

MDOT/FHWA Responses to [Substantive Comments](#) dated Nov2012: “A substantive comment is one which suggests the modifications of an alternative, suggests the development and evaluation of an alternative not previously considered, supplements, improves or modifies analyses, or corrects a factual error.”

- Substantive comments question, with reasonable basis, the accuracy of information in the EIS or correct a factual error. It should have been as simple as that; why weren’t more of our comments considered substantive especially when most were historical facts quoted from MDOT documents?
- 40 CFR 1503.4.A.4: Possible responses are to: Make factual corrections.

My 37 questions to the DEIS were so extensive that my name was actually mentioned in recent FOAA documents on how to deal with my questions: “as to not draw unnecessary attention to them”.

A Freedom of Access Act (FOAA) was requested by the Town of Eddington in October 2012 and we have just looked over 1,239 FOAA documents, some of which are very troubling. Several FOAA documents at the Project Manager/Chief Engineer level, predating the publication of the DEIS by no more than three months, indicate that following the conclusion of the NEPA process, the preferred alternative design will be downgraded from freeway criteria to rolling criteria. An August 2011 email from the project manager states: “Ken decided the reduced lane and 100’ to 125’ ROW width was all we needed in the foreseeable future so why do more.” The design included in the DEIS, the current document of record as we have just been advised once again by the MDOT Project Manager in an April 19, 2013 biweekly report, is clearly stated as freeway

criteria with a 200' (minimum) right-of-way. Surprisingly, the cost included in the DEIS is not the actual cost of the freeway design - it is already the cost of the rolling design as evidenced by FOAA documents. A design change announced in October 2011 changed the right-of-way to accommodate two-lanes only, not accommodating the four lane construction planned in the future; that change was only applicable to the three remaining alternatives in consideration, one of which is the preferred alternative. What about the other 70 studied alternatives? How many changes can be tolerated before it is not even the same project anymore?

FOAA Documents reveal that on December 13, 2011 the FHWA liaison and member/co-manager of the study, Mark Hasselmann, voiced several concerns to the MDOT Project Manager, Judy Lindsey:

- “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.”
- “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’s comment the 2-lane- 2-lane ROW Preferred Alternative does not satisfy the Purpose and Need...”

Included in FOAA documents are screen captures sent from the MDOT Project Manager to her superiors of a question anonymously posted to the [NEPA Forum](#) that describes this connector project to a tee and one of the five responders indicated that because of the changes to the study - it was practically not even the same project anymore and another responder seemed concerned about NEPA compliance. This forum posting occurred on December 14, 2011 at the same time that the FHWA liaison was voicing concerns on the Purpose and Needs and it becomes obvious in the FOAA documents that the MDOT Program Manager believed it was the FHWA Liaison who made the original posting. NEPA Forum posting titled NEPA analysis w/ footprint change: “We are just now considering a much reduced footprint to around 100' ROW and to a lower standard, a two-lane arterial, rural rolling to reduce costs. With this proposed reduction in footprint, what happens now? We most certainly need to revise the admin draft to some extent given this change, at least the impact analysis as impacts will be substantially reduced, in some cases by more than one-half. Do we revisit any previous alternatives that were dismissed (not being carried forward for further consideration)? Do we need to step/look back? How far?”

Mr. Hasselmann’s concerns that the preferred alternative does not satisfy the Purpose and Needs were overruled by his superior.

The logical termini questioned above was re-identified in Jan2012 for inclusion in the DEIS to allow a connection point now some 4.5 miles west of the northeastern connection point (the original system linkage need) specifically identified in the Oct2003 DOT/FHWA/ACOE Technical Memorandum where the vast majority of the 70+ alternatives all terminated to the northeast.

That same 4.5 miles of route 9 was bypassed by the vast majority of the 70+ alternatives because: “Traffic congestion and conflicting vehicle movements on this section of Route 9 would substantially increase the potential for new safety concerns and hazards”.

My questions are simple and I only have one request; I am seeking written assurance that this EIS is being accomplished within NEPA compliance and nothing else. The communities impacted by this connector deserve to know that the process is being accomplished within NEPA standards and regulations and 100% compliant; not somewhat compliant—but 100% compliant.

1. Does a clear definition of substantive exist and was the definition used too restrictive for this study? It certainly doesn't match the simple definition as included in this text.
2. How did an alternative (2B-2) meeting only 20% (one of five) of the original Purpose and Needs in April 2009 become the preferred alternative by the end of 2010 without changing the Study Purpose and Needs?
 - a. Were changes made to the Study Purpose and Needs and if so were these changes within NEPA compliance?
3. Have the Purpose and Needs been changed to promote one alternative over the previously studied 70+ alternatives? If the Purpose and Needs have been changed, is that within NEPA compliance?
 - a. How many changes can be tolerated at the end of a project study without jeopardizing NEPA compliance?
 - b. How many changes can be made to a study project before it is no longer the same project that the Study Group was paneled to deliver?
4. If a planned future change in design criteria is applicable to only one alternative following the conclusion of the NEPA process and not the previously studied 70+ alternatives how can that possibly be within NEPA compliance?
 - a. Aren't all the alternatives supposed to be studied using the same criteria throughout the study?
 - b. Is knowingly (and obviously with intent as the FOAA documents indicate) not including the already decided upon end-state design criteria of rolling in the DEIS including a reduced right-of-way from 200' to 100' within NEPA compliance?
5. Is including the reduced price in the DEIS of a yet to be applied downgraded roadway design within NEPA compliance?
6. Shouldn't all 70+ studied alternatives be compared to the new reduced footprint and rolling design criteria as the anonymous poster to the NEPA Forum was alluding to?
 - a. Was Mr. Hasselmann the anonymous poster?
 - b. If the future design criteria change to rolling allows for earthwork quantities to be reduced by approximately 1/3, as an FOAA document indicates, shouldn't all the previously studied 70+ alternatives, some of which may have been removed because of earthwork concerns, be looked at again?
 - c. Shouldn't the previous 70+ alternatives be looked at again with the future 100' right-of-way to see if the reduced footprint would mitigate concerns with vernal pools?

7. Which agency or office has prime jurisdiction over compliance of the National Environmental Policy Act?
8. Is the Jan2012 redefinition of logical termini (System Linkage), when only 3 alternatives have remained in consideration since December 2010, within NEPA compliance? What about the other 70+ alternatives?
 - a. Since the logical termini directly affects the System Linkage Needs, I believe that redefining the logical termini at the end of the study is indeed changing the Study Purpose and Needs. Is that within NEPA compliance?
9. I believe the concerns, voiced by Mr. Mark Hasselmann, only two and a half months before the publication of the DEIS, should be thoroughly and independently investigated before this process goes any further. I concur that Mr. Hasselmann is correct in his assumptions that the 2B-2/preferred alternative did not meet the Purpose and Needs in December 2011. I also believe that the NEPA Forum question and responses, as first found in FOAA documents, deserves a full review to determine NEPA compliance. I suggest that the EPA Inspector General look at these two issues.

I can provide all the necessary project information and all supporting documentation via email. I will also send several emails and documents that I have already provided to my Local, State and Federal Legislative Delegation who are cc'd on this email.

Thank you for your time and consideration,
Larry Adams
17 Woodridge Road
Brewer, Maine

Results of telcon with EPA Representatives:

EPA Telcon

Larry Adams

5/29/2013 12:19 PM

To: Brewer City Council; Mayor Jerry W. Goss; Councilor Kevin O'Connell; Brewer City Manager; Eddington Board of Selectman and Town Manager; Representative Arthur Verow - District#21; Senator Edward Youngblood - District#31; Carol Woodcock / U.S. Senator Susan Collins; Representative David Johnson - District#20; Elizabeth Montgomery Schneider MacTaggart / U.S. Senator Angus King; Rosemary Winslow / U.S. Congressman Mike Michaud;

Cc: Larry Adams; Gretchen Heldmann;

Good afternoon – Gretchen and I had talked to the EPA/New England Region this morning. We gained some insight into process, but the bottom line is that the EPA is advisory only in transportation studies. There doesn't seem to be a mechanism to insure that the process is both fair and in compliance and I do find that hard to believe.

Larry Adams

Email to FHWA Headquarters, Washington DC:

NEPA Compliance of I-395/Route 9 Transportation Study

Larry Adams

5/30/2013 10:28 AM

To: Gerald Solomon FHWA;

Cc: Brewer City Council; Mayor Jerry W. Goss; Councilor Kevin O'Connell; Brewer City Manager; Eddington Board of Selectman and Town Manager; Representative Arthur Verow - District#21; Senator Edward Youngblood - District#31; Carol Woodcock / U.S. Senator Susan Collins; Representative David Johnson - District#20; Elizabeth Montgomery Schneider MacTaggart / U.S. Senator Angus King; Rosemary Winslow / U.S. Congressman Mike Michaud; gheldmann@gmail.com; Larry Adams; Garvey/Council on Environmental Quality - Executive Office of the President;



Mr. Gerald Solomon
Federal Highway Administration
Director, Office of Project Development and Environmental Review
1200 New Jersey Ave., SE
Washington, D.C. 20590
Gerald.Solomon@dot.gov

Dear Mr. Solomon,

I recently asked the OFEE for guidance to determine if an EIS is being accomplished within compliance of the National Environmental Policy Act and who I should contact to voice my concerns. Mr. Garvey suggested I contact the New England EPA, which I've already done, only to find out that the EPA is advisory in this type of project and could not offer assistance.

The National Environmental Policy Act website identified you as the primary point of contact for NEPA compliance within the DOT/Federal Highway Administration. I would like to discuss my concern that a local EIS process impacting my country neighborhood may not be in compliance with NEPA.

The I-395/Route 9 Transportation Study in Brewer/Eddington/Holden Maine has been ongoing for 13 years. The MDOT and the FHWA have selected 2B-2 as the preferred alternative even though alternative 2B-2 only met one (20%) of the five [Purpose and Needs as stated in Apr2009](#).

Alternative 2B-2 is virtually identical to the original 2B alternative removed twice from further consideration by January 2003 for the [following reasons](#) that still exist today:

- “The lack of existing access controls and the inability to effectively manage access along this section of Route 9, and the number of left turns, contribute to the poor LOS and safety concerns, and the inability of Alternative 2B to satisfy the system linkage purpose and need effectively.”

- “Alternative 2B was dismissed...because it would inadequately address the system linkage and traffic congestion needs. This alternative would not be practicable because it would fail to meet the system linkage need of providing a limited access connection between I-395 and Route 9 east of Route 46.”
- “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, 200 buildings (residential and commercial) would be located in proximity (within 500 feet) of the proposed roadway.”
- “There are several hundred acres that can be developed along this section of Route 9.”
- “However, future development along Route 9 in the study area can impact future traffic flow and the overall benefits of the project.” (DEIS page S19 March 2012)

By September of 2010, all five alternatives meeting 100% of the Purpose and Needs in April 2009, including the 3EIK-2/preferred alternative, were removed from further consideration leaving only alternatives 2B-2 and 5A2E3K-1 both meeting only one (20%) of the five Purposes and Needs in April of 2009.

The last time this project was discussed in public was April 15, 2009; Sept/Dec 2010 study changes were not made public until the Bangor Daily News broke the story on January 6, 2012 (yes 2012!).

We understand that there were vernal pool issues with the previous preferred alternative but we contend that no matter what the reason was for removal of the five alternatives, it could not make alternative 2B-2 any more viable than it was in April of 2009, let alone magically transforming it into the preferred alternative.

The correct solution, when the agencies could not select an alternative to meet the original Purpose and Needs criteria and intent of the project, should have been to immediately go to No-Build. Isn't that what No-Build is for?

I have a real problem comprehending how the many environmental agencies involved in this study had no problem drastically changing a project to save frogs and salamanders in a vernal pool that may not even exist anymore but don't think twice about selecting an alternative that will cross Felts Brook and Eaton Brook in multiple locations—when both streams are identified as critical habitat to Atlantic salmon.

The DEIS was published for comment in March 2012 and the FEIS may be distributed at any time. I believe that too stringent of a definition of the word substantive was used to evaluate our DEIS comments and Public Hearing Testimony, allowing prior history of this study to be buried in the back of the book, with no further comment required and that includes official MDOT/FHWA documentation that paints the 2B-2/preferred alternative in a highly negative fashion, such as the previously stated reasons the original 2B alternative was removed from further consideration quoted from the [Oct2003 Technical Memorandum](#).

Only 15 comments were considered substantive out of 83 pages of transcript from the Public Hearing. After a lot of research, I have not yet found a clear definition of the word substantive and it appears that a definition does not really exist:

- “The general rule under the CEQ regulations is that a FEIS must respond to all “substantive” comments on a DEIS. 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.” The [National Park Service’s NEPA guidance](#) states that substantive comments “(a) question, with reasonable basis, the accuracy of information in the EIS...”
- MDOT/FHWA [Responses to Substantive Comments](#) dated Nov2012:
“A substantive comment is one which suggests the modifications of an alternative, suggests the development and evaluation of an alternative not previously considered, supplements, improves or modifies analyses, or corrects a factual error.”
- Substantive comments question, with reasonable basis, the accuracy of information in the EIS or corrects a factual error. It should have been as simple as that; why weren’t more of our comments considered substantive especially when most were historical facts quoted from MDOT documents?
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A Freedom of Access Act (FOAA) was requested by the Town of Eddington in October 2012 and we have just looked over 1,239 FOAA documents from the MaineDOT, some of which are very troubling:

- Several FOAA documents at the Project Manager/Chief Engineer level, predating the publication of the DEIS by no more than three months, indicate that following the conclusion of the NEPA process, the preferred alternative design will be downgraded from freeway criteria to rolling criteria.
- An August 2011 email from the project manager states: “Ken decided the reduced lane and 100’ to 125’ ROW width was all we needed in the foreseeable future so why do more.”

The design included in the DEIS, the current document of record as we have just been advised once again by the MDOT Project Manager in an April 19, 2013 biweekly report, is clearly stated as freeway criteria with a 200' (minimum) right-of-way.

- Surprisingly, the cost included in the DEIS is not the actual cost of the freeway design - it is already the cost of the rolling design as evidenced by FOAA documents.
- A design change announced in October 2011 changed the right-of-way to accommodate two-lanes only, not accommodating the four lane construction planned in the future; that change was only applicable to the three remaining alternatives in consideration, one of which is the preferred alternative.
 - What about the other 70 studied alternatives?
 - How many changes can be tolerated before it is not even the same project anymore?

FOAA Documents reveal that on December 13, 2011 the FHWA liaison and member/co-manager of the study, Mark Hasselmann, voiced several concerns to the MDOT Project Manager Judy Lindsey:

- “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.”
- “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’s comment the 2-lane- 2-lane ROW Preferred Alternative does not satisfy the Purpose and Need...”

Included in FOAA documents are screen captures sent from the MDOT Project Manager to her superiors of a question anonymously posted to the [NEPA Forum](#) that describes this connector project to a tee and one of the five responders indicated that because of the changes to the study - it was practically not even the same project anymore and another responder seemed concerned about NEPA compliance. This forum posting occurred on December 14, 2011 at the same time that the FHWA liaison was voicing concerns on the Purpose and Needs and it becomes obvious in the FOAA documents that the MDOT Program Manager believed it was the FHWA Liaison who made the original posting.

NEPA Forum posting titled NEPA analysis w/ footprint change:

- “We are just now considering a much reduced footprint to around 100' ROW and to a lower standard, a two-lane arterial, rural rolling to reduce costs. With this proposed reduction in footprint, what happens now? We most certainly need to revise the admin draft to some extent given this change, at least the impact analysis as impacts will be substantially reduced, in some cases by more than one-half. Do we revisit any previous alternatives that were dismissed (not being carried forward for further consideration)? Do we need to step/look back? How far?”

Mr. Hasselmann's concern that the 2B-2/preferred alternative did not satisfy the Purpose and Needs was overruled by his superior. Mr. Hasselmann is not a bit player; he is the Right of Way Program Manager for the FHWA Maine Division in Augusta, Maine.

The logical termini questioned above was re-identified in Jan2012 for inclusion in the DEIS to allow a connection point now some 4.5 miles west of the northeastern connection point (the original system linkage need) specifically identified in the [Oct2003 DOT/FHWA/ACOE Technical Memorandum](#) where the vast majority of the 70+ alternatives all terminated to the northeast.

- That same 4.5 miles of route 9 was bypassed by the vast majority of the 70+ alternatives because: "Traffic congestion and conflicting vehicle movements on this section of Route 9 would substantially increase the potential for new safety concerns and hazards".

I am seeking written assurance that this EIS is being accomplished within NEPA compliance. The communities impacted by this connector deserve to know that the process is being accomplished within NEPA standards and regulations and 100% compliant; not somewhat compliant—but 100% compliant.

1. Does a clear FHWA definition of substantive exist?
 - a. Was the definition of substantive used by the traffic consultant in this study too restrictive?
2. How did an alternative (2B-2) meeting only 20% (one of five) of the original Purpose and Needs in April 2009 become the preferred alternative by the end of 2010 without changing the Study Purpose and Needs?
 - a. Were changes made to the Study Purpose and Needs and if so were these changes made within NEPA compliance?
3. Have the Purpose and Needs been changed to promote one alternative over the previously studied 70+ alternatives? If the Purpose and Needs have been changed, was that compliant with NEPA?
4. How many changes can be tolerated at the end of a project study without jeopardizing NEPA compliance?
5. How many changes can be made to a study project before it is no longer the same project that the Study Group was paneled to deliver?
6. If a planned future change in design criteria is applicable to only one alternative following the conclusion of the NEPA process and not the previously studied 70+ alternatives how can that possibly be within NEPA compliance?
7. Aren't all the alternatives supposed to be studied using the same criteria throughout the study?

8. Is knowingly (and obviously with intent as the FOAA documents indicate) not including the already decided upon end-state design criteria of rolling in the DEIS including a reduced right-of-way from 200' to 100' within NEPA compliance?
 - a. Is including the reduced price in the DEIS of a yet to be applied downgraded roadway design within NEPA compliance?
9. Shouldn't all 70+ studied alternatives be compared to the new reduced right-of-way footprint and rolling design criteria as the anonymous poster to the NEPA Forum was alluding to?
 - a. Was Mr. Hasselmann the anonymous poster to the NEPA Forum?
 - b. If the future design criteria change to rolling allows for earthwork quantities to be reduced by approximately 1/3, as an FOAA document indicates, shouldn't all the previously studied 70+ alternatives, some of which may have been removed because of earthwork concerns, be looked at again?
 - c. Shouldn't the previous 70+ alternatives be looked at again with the future 100' right-of-way to see if the reduced footprint would mitigate concerns with vernal pools?
10. Is the Jan2012 redefinition of logical termini (System Linkage), when only 3 alternatives have remained in consideration since December 2010, within NEPA compliance?
 - a. What about the other 70+ alternatives?

11. Since the logical termini defines the System Linkage Needs, I believe that redefining the logical termini at the end of the study is indeed changing the Study Purpose and Needs. Is that within NEPA compliance?

I believe the concerns, voiced by Mr. Hasselmann, just three months before the publication of the DEIS, should be thoroughly investigated. I concur that Mr. Hasselmann may be correct in his assumptions that the 2B-2/preferred alternative did not meet the Purpose and Needs in December 2011 and as such does not meet the Purpose and Needs of this Study in 2013.

I also believe that the NEPA Forum question and responses, as first found in FOAA documents, deserves a full review to help determine NEPA compliance of this Study.

I suggest that the DOT Inspector General look at these two issues to see what Mr. Hasselmann's concerns were then and even now and to find out if he was working in a hostile environment. Why did his superior not support his efforts; was his superior correct to countermand his decision? It seems to me, after reading the complete email string, that Mr. Hasselmann was concerned with performing his duties within NEPA compliance while Ms. Lindsey was more concerned in project delivery. Where was the evidence of any consensus among this Study Group; were members of the group free to discuss their concerns without being taken to the "woodshed" as Mr. Hasselmann obviously was?

I have attached a document that includes several of the FOAA documents that I have referred to in this email and that I have already provided to my Local, State and Federal Legislative Delegation who are cc'd on this email. I also have other documents that I can provide as necessary.

Alternative 2B-2 did not meet the Purpose and Needs in April 2009 and apparently Mr. Hasselmann had the same concerns in December 2011. Alternative 2B-2 still does not meet the original intent and Purpose and Needs of the Study. This project selection is now based only on the cheapest deliverable—nothing else seems to matter and that includes safety:

- Traffic congestion and conflicting vehicle movements on this section of Route 9 would substantially increase the potential for [new safety concerns and hazards](#). However, future development along Route 9 in the study area can impact future traffic flow and the overall benefits of the project." (DEIS page S19 March 2012)

The DEIS states that this is a \$61 million dollar project (based on a future downgraded design "following the conclusion of the NEPA process") and that does not include mitigation costs; this will be an 80% Federal funded project. That's a lot of our limited tax revenues going to a project where the DEIS is basically based on a lie (design and right-of-way does not reflect MDOT end-state design as stated in FOAA documents predating the DEIS) and FOAA documents have shown many irregularities in the process.

This Study process truly needs to be investigated; please advise if you need more information. If for any reason your office cannot look into this matter, please forward this email direct to the DOT Inspector General.

Thank you for your time and consideration,
Larry Adams
17 Woodridge Road
Brewer, Maine

First response from FHWA Headquarters and reply:

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

Larry Adams

6/3/2013 8:53 AM

To: Gerald Solomon FHWA;

Cc: Gretchen Heldmann;



Gretchen
Heldmann
FOAA Bri...



Eddington
FOAA
4.17.13.pdf

Mr. Solomon,

Thank you for the quick acknowledgement of my email.

I would like to share a Bangor Daily News article posted on April 17th and Gretchen Heldmann's FOAA Briefing document which she used in a presentation to the Town of Eddington Board of Selectmen on April 16th. The briefing contains several FOAA documents not included in the attachment with my original email. It is a precise summation of where the process is today.

Both Gretchen and I have been involved in this study for more than a decade.

Please feel free to request further information or clarification from either Gretchen or myself.

Thank you, Larry Adams

From: Gerald.Solomon@dot.gov

Sent: Thursday, May 30, 2013 4:38 PM

To: bgradams@roadrunner.com

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

Mr. Adams

This email is to acknowledge my receiving your email (below) raising your concerns with respect to NEPA compliance in connection with the EIS process for the I-395/Route 9 Transportation Study. I will review the information you provided in your email, and attachment to email, and will respond to you as soon as is possible. Thank you.

Gerry Solomon

Director

FHWA Office of Project Development and Environmental Review

1200 New Jersey Ave SE

Washington DC 20590

202 366-2037

gerald.solomon@dot.gov

Final Response from FHWA:

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

Gerald.Solomon@dot.gov

6/25/2013 8:51 AM

To: Larry Adams;

Cc: MHasselmann@dot.gov;

Mr. Adams

Thank you for your e-mail dated May 30, 2013 concerning the I-395/Route 9 Transportation Study in Brewer, Holden, Eddington and Clifton, Maine. Over the past weeks, I have been in contact with the Federal Highway Administration (FHWA) Maine Division to discuss your concerns and obtain additional information in connection with the status of this project's environmental review. As you may be aware, the FHWA Division Office is responsible for coordination with the state Department of Transportation and ensuring the environmental review is completed in compliance with NEPA.

I understand that the Environmental Impact Statement (EIS) for this project is still underway. The Final EIS will document decisions made throughout the project development process to reflect the selection of an alternative, modifications to the project, updated information on the affected environment, changes in the assessment of impacts, the selection of mitigation measures, required findings (e.g. wetlands), the results of coordination, comments received on the Draft EIS and responses to these comments. As of this date, no final decisions have been made.

This study, as you point out in your e-mail, has been underway since 2000. Initially undertaken as an Environmental Assessment (EA), the study transitioned to an EIS in October 2005 based on potential impacts.

The purpose and need for the project, as described generally in the Notice of Intent (NOI) (December 2005) and in detail in the Draft EIS, have remained the same - transportation system linkage, safety, and mobility. In addition, the logical termini of the project were identified in the NOI as between I-395 in Brewer and State Route 9 in Clifton. These same termini were used to evaluate the four alternatives studied in the Draft EIS.

Many project alternatives have been developed and screened since December 2000. Over 70 build alternatives were conceptually designed and analyzed using the No-Build alternative as the baseline for impact comparison purposes. Many of these conceptual alternatives were developed based on input given by the project's Public Advisory Committee and the public.

In addition to public involvement, there has been substantial coordination with State and Federal Resource Agencies to analyze and assess the environmental impacts. In particular, the Preferred Alternative, 2B-2, has been preliminarily identified by the U.S. Army Corps of

Engineers (USACOE) as the Least Environmentally Damaging Practicable Alternative. The USACOE's determination is critical in order for the project to obtain a Section 404 Clean Water Act permit.

As described in the Draft EIS, four alternatives, including the no-build alternative, were retained for further consideration and analyzed in detail. The build alternatives were studied as a controlled-access highway that facilitates a two-way two-lane roadway within a 200 foot wide right of way. Through this process, however, it was determined that the portion of each build alternative on Route 9 would not need to be improved to a high-speed, controlled-access facility.

I also understand that since publication of the Draft EIS, no changes have been made to the scope of the project, including a reduction to a 100-foot wide right of way. If changes are made during the development of the EIS or after completion of the EIS, these changes will have to be assessed under appropriate National Environmental Policy Act (NEPA) and FHWA procedures.

The FHWA NEPA project development process is an approach to balanced transportation decision-making that takes into account the potential impacts on the human and natural environment and the public's need for safe and efficient transportation. It is an iterative, deliberative, multi-disciplinary decision-making process.

FHWA is committed to full disclosure of any changes that occur during the EIS process and responding to comments received from other agencies and the public.

Should you have additional questions or concerns, I suggest communicating directly with Mark Hasselmann at our Maine Division Office. His email is Mark.Hasselmann@dot.gov.

Thank you.

Gerry Solomon
Director
FHWA Office of Project Development and Environmental Review
1200 New Jersey Ave SE
Washington DC 20590
202 366-2037
gerald.solomon@dot.gov

Latest non-response from a Government Official:

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

Larry Adams

6/27/2013 10:39 AM

To: Brewer City Council; Brewer City Manager; Mayor Jerry W. Goss; Councilor Kevin O'Connell; Eddington Board of Selectman and Town Manager; Representative Arthur Verow - District#21; Senator Edward Youngblood - District#31; Carol Woodcock / U.S. Senator Susan Collins; Representative David Johnson - District#20; Elizabeth Montgomery Schneider MacTaggart / U.S. Senator Angus King; Rosemary Winslow / U.S. Congressman Mike Michaud;

Cc: personal addresses redacted

Good morning to all:

I am forwarding Mr. Solomon's response to my May 30th NEPA compliance validation request along with my immediate thoughts and reactions.

CEQ and most Federal agencies identify [primary points of contact for NEPA compliance](#). Normally a senior environmental professional, environmental law attorney, or member of agency leadership, these contacts are responsible for broad oversight of NEPA compliance within their Executive Branch Office, Department, or Agency.

Mr. Solomon is the FHWA primary point of contact for NEPA compliance and as such is responsible for broad oversight of NEPA compliance within the FHWA.

Mr. Solomon responded: FHWA is committed to full disclosure of any changes that occur during the EIS process and responding to comments received from other agencies and the public—while not answering any of my 11 questions—not one of them or addressing my comments about Mr. Hasselmann's affirmation that the preferred alternative did not meet study purpose and needs and the NEPA Forum question concerning the validity of a project when changing the study parameters to rolling design with a reduced right-of-way (see below). These questions and comments will never be answered or commented on by MDOT/FHWA officials until someone of authority steps forward to hold them accountable.

I am extremely disappointed, disgusted and appalled that I had to wait almost four weeks for a response that tells me nothing. My questions and comments sent to Mr. Solomon are valid and substantive; please read them again as they go to the heart of this issue. This is not the first time my questions have been ignored, this is the way I have been treated since the 2B-2 issue surfaced in December 2011 and I started raising red flags. Mr. Solomon's response was basically to be non-responsive as has been my experience dealing with the MDOT and other agencies over this issue. They all stand fast in their opposition to answer any question that doesn't promote their cause.

My 37 questions to the DEIS can be viewed on pages 103 to 170 of the latest version of the [Responses to Substantive Comments](#). 68% of my questions were not considered substantive even though they mostly contained MDOT/FHWA statements and data from documents gleaned from MDOT's own web site. I still firmly believe that the definition of substantive, used in this study, was too strict; that was my first question posed to Mr. Solomon, again he chose not to answer.

Charette said that it is true some of the comments did not address the project's criteria, but all are included in the final report, which will be turned over to the Federal Highway Administration in the next week or so. (Bangor Daily News 4.17.13)

Does placing unanswered questions and comments in the back of a report make everything okay as Mr. Charette seems to allude to? Questions, not considered substantive, do not require comments from the MDOT/FHWA. Yes, all comments are in the final report but placed in the back of the book as to avoid drawing unnecessary attention to them:

Excerpt from FOAA Document #000251 (9.27.12):

For Mr. Adams submissions that did not provide substantive comments according to the regulation, we suggest not deleting them as suggested but bunch them together and number them as Mr. Adams had done (e.g., Larry Adams no. 1-14). This way the submissions are acknowledged as received and reviewed and we avoid drawing unnecessary attention to them.

NEPA Forum Original question:

<p>NEPA analysis w/ footprint change</p> <p>We are preparing an EIS and are currently reviewing the administrative draft of the DEIS. For the last five years we analyzed impacts for many (too!) five to ten mile long, new alignment, 250' ROW, controlled access, build alternatives. We have even identified a "preferred alternative", with the caveats that go with that. Two lanes would be constructed initially, as a "super 2", one barrel of the four-lane version and reserve the remaining ROW, building out the other two lanes when needed.</p> <p>We are just now considering a much reduced footprint to around 100' ROW and to a lower standard, a two-lane arterial, rural rolling to reduce costs.</p> <p>With this proposed reduction in footprint, what happens now? We most certainly need to revise the admin draft to some extent given this change, at least the impact analysis as impacts will be substantially reduced, in some cases by more than one-half. Do we revisit any previous alternatives that were dismissed (not being carried forward for further consideration)? Do we need to step/look back? How far?</p> <p>Thoughts on this one? Examples?</p>	<p>2011-12-14 15:29:37</p>
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One of five responses included in FOAA Document #000130:

<p>FHWA Division Office</p>	<p>The project being proposed now is very different than what was originally proposed - it is practically a new project. Has the Purpose and Need changed for the project (would seem like it would have to for the reduced roadway to be acceptable)? If so, you would definitely need to look at your alternatives analysis again based on the revised needs. And as you said, the impacts would have to be revised. You may want to hold a new public meeting (not quite scoping, since the areas of concern would be the same). Sounds like almost a complete rewrite of the EIS.</p> <p>Another option would be to do a combined PEL (Planning Environmental Linkage) and EIS document. The larger project would be the planning portion (what you would like to do), and the reduced template would be the EIS (what you are actually going to do based on funding). This would require that you identify BOTH the overall impacts (which you already have) and the impacts of the reduced project. Still have to do most of what I described above and add a lot of discussion to the PEL/EIS to clarify what is happening, but you wouldn't have to throw out the work that is already done.</p>	<p>12/15/2011 1:24 PM</p>
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The [clearly defined system linkage need](#) of a NE connection on route 9 to the east of route 46 has been shifted 4.5 miles west since Sept2010. The study has transitioned from providing a 2-lane highway built to freeway design criteria standards with a right-of-way of approximately 250 feet (large enough to support a future upgrade to a 4-lane divided highway) at the start of the study to a 2-lane highway built to freeway design criteria standards with an approximate 200 foot right-of-way that does not support a future upgrade by Oct2011 (as included in the DEIS), to a 2-lane highway built to rolling design criteria standards (cost of the downgraded rolling design criteria is already included in the DEIS), following the conclusion of the NEPA process, with an approximate 100 foot right-of-way. These criteria changes are only applicable to the three alternatives in the DEIS and to none of the previous 70+ studied; this is no longer the same project that the study group was originally tasked to provide.

The MDOT and the FHWA act as if all conclusions and determinations predating the DEIS are no longer relevant or of any consequence; I vehemently disagree.

I strongly contend that there is 12 years of valid history predating the DEIS. 2B-2 is nothing more than a resurrection of the 2B alternative (removed twice from further consideration by Jan2003) any MDOT/FHWA [statements of fact](#) about alternative 2B or the 4.5 miles of route 9 used as an integral part of the alternative are valid today and cannot be dismissed by simply taking a hard look at Route 9:

- ...would negatively affect people living along Route 9 in the study area...
- ...would severely impact local communities along Route 9 between proposed alternative connection points and Route 46.
- ...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.
- Limited opportunities exist to control access management on this section of Route 9 from local roads and driveways.
- The lack of existing access controls and the ability to effectively manage access along this section of Route 9, and the number of left turns, contribute to the poor LOS and safety concerns, and the inability of Alternative 2B to satisfy the system linkage purpose and need effectively.

I addressed these facts in my many questions to the DEIS and none of the above MDOT/FHWA statements of fact were considered substantive. They have been allowed to bury anything that they do not want to comment upon and any statement that may paint their preferred

alternative selection in a negative fashion. They are the sole judge of what is and what is not substantive.

Contemplate this illogical DEIS statement: However, future development along Route 9 in the study area can impact future traffic flow and the overall benefits of the project. (pg s-19)

Mr. Solomon closes with: Should you have additional questions or concerns, I suggest communicating directly with Mark Hasselmann at our Maine Division Office. His email is Mark.Hasselmann@dot.gov:

- Should I have additional questions or concerns?—my original questions, comments and concerns have yet to be answered!
- Thanks for the advice but Mr. Hasselmann made it clear on 12.17.12, as his MDOT counterpart on 12/07/12, he would no longer communicate with me via email.

I have now gone full circle within six months; that is how you successfully minimize a private citizen and quell the uprising.

I will probably not respond to Mr. Solomon's email as it should be obvious that he has decided to not only be non-responsive to my questions and comments, he is more than willing to pass the buck back to the local level where this ill-conceived scheme was first concocted. Honestly, perhaps naïve of me, I expected more from this gentleman's position—Mr. Solomon is the #1 watchdog to ensure FHWA NEPA compliance and is responsible for broad oversight of NEPA compliance within the FHWA. A person in that position should be held to a higher standard; taking 25 days to deliver a somewhat condescending and dismissive response without answering one question or addressing one comment is unacceptable at any level of government. Maybe the IRS is not the only federal agency that needs to be looked at.

After being thoroughly dismissed once again, I am out of ideas and desperately need assistance from others in this matter.

Thank you for your time and consideration, Larry Adams