

SOUTHEAST ALASKA CONSERVATION COUNCIL,  
THE ALASKA TRANSPORTATION PRIORITIES PROJECT  
and THE AUK KWAAN

March 13, 2006

**VIA HAND-DELIVERY**

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RE: Comments on Juneau Access Improvements Final Environmental Impact Statement  
State Project Number: 71100 / Federal Project Number: STP-000S (131)

The following comments are submitted by the Southeast Alaska Conservation Council (SEACC); the Alaska Transportation Priorities Project (ATPP); and the Auk Kwaan, the original settlers of Juneau, Alaska, on the Alaska Department of Transportation's (ADOT) Juneau Access Improvements Final Environmental Impact Statement (FEIS).

SEACC is a coalition of 18 volunteer citizen organizations based in 14 Southeast Alaska communities. SEACC's membership includes commercial fishermen, Alaska Natives, small-scale timber operators and value-added wood product manufacturers, tourism and recreation business owners, hunters and guides, and Alaskans from many other walks of life. We are dedicated to safeguarding the integrity of Southeast Alaska's unsurpassed natural environment while providing for the sustainable use of our region's resources.

ATPP is a statewide watchdog organization advocating for a transportation system that is safe, efficient, environmentally appropriate, and fiscally conservative.

The Auk Kwaan are the original settlers of Juneau, who "recognize their territory as starting on the mainland at Berners Bay, including all that bay and following south along the mainland to approximately the location of Thane on Gastineau Channel, including the northern and western portion of Douglas Island around as far as Point Hilda." The Auk Kwaan have used Berners Bay as a source of food and traditional medicine. It also was a "burial site known to be sacred, due to the Shaman's (sic) that are buried there. There is a mountain located at Berners Bay [Lions Head Mountain] that is known to have all their Shaman spirits dwell in it up to the present."<sup>1</sup>

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<sup>1</sup>See Scoping comments from SEACC, Friends of Berners Bay, and the Auk Kwaan on Juneau Access Improvements, at 1, n. 1 (April 18, 2003), citing and attaching referenced sources as exhibits.

Roughly a year ago, we commented on the Supplemental Draft Environmental Impact Statement (SDEIS) for the Juneau Access Improvements project. We showed that the SDEIS overestimated the benefits of the proposed road alternative while underestimating the costs, and, in general, presented an evaluation skewed in favor of a road. ADOT did not respond adequately to those comments. By this reference, we incorporate all comments and supporting documentation that we previously submitted on both the SDEIS and the 1997 Draft Environmental Impact Statement (DEIS) for this project.

In the SDEIS, ADOT's Preferred Alternative was a continuous road link between Juneau and Skagway along the east side of Lynn Canal. In August of 2005, ADOT announced a significant change in its plans. It announced that Alternative 2B, a 50-mile extension of Juneau's road system ending at a new ferry terminal to be constructed at the Katzeihin River delta where travelers could board one of three new shuttle ferries, was the new Preferred Alternative.

The change in preferred alternative merely exacerbates many of the concerns we raised in comments on the SDEIS. Indeed, ADOT has had to deviate further from its stated purpose and need for the project and present even more tortured reasoning in an effort to justify its choice of Alternative 2B. The analysis reveals a clear bias toward road construction and a concerted effort to ignore public sentiment as well as concerns raised by Alaska Natives. Not only is ADOT's analysis deficient, but its choice fails even the most basic common sense test.

Alternative 2B will not reduce costs to the state. To the contrary, in fact, the FEIS estimates that it will cost 45% more to maintain and operate Alternative 2B than the current ferry system. Over 35 years, this additional cost totals \$27 million. *See* FEIS at S-19. Additionally, construction of the road-shuttle ferry alternative would require \$67.2 million in state general funds. *Id.* at 2-27. These funds can be more effectively spent on other needs in the state.

Further, in many cases, Alternative 2B will not reduce travel times. Nor will it improve reliability or safety, as weather and 36 avalanche chutes will keep the proposed road closed for more than a month each year. *See* FEIS at 4-45 to 4-46. Moreover, travel will be made more difficult for those passengers who currently travel aboard the ferry system without a vehicle. The FEIS suggests that this issue is unimportant because a private company will institute bus or van service in Lynn Canal. *Id.* at 4-44. This speculation is another example of ADOT's disregard for any issue that might hinder road construction.

In a further effort to justify road construction, ADOT's analysis dramatically overstates the demand for travel in Lynn Canal and the difference in capabilities between ferry and highway alternatives. A less-biased analysis of traffic demand and user benefits would show that ferry alternatives are both sufficient and preferable.

In addition, in its haste to construct a road, ADOT refused to consider a reasonable alternative that would increase capacity and flexibility without requiring huge initial capital expenditures. Rather than building new ferries, roads, or terminals, ADOT could make

more efficient use of the assets it currently owns. Through more efficient management and scheduling, capacity can be increased dramatically, costs to the state and user can be lowered, and flexibility and reliability can be increased. All of this can be accomplished without the enormous initial expense of money, tremendous dangers, and ecological and cultural damage that would accompany ADOT's Preferred Alternative.

In addition to modifying the schedule, a more effective management alternative would make other changes to improve the system. These changes could be funded by the savings incurred by not investing in new infrastructure. In particular, we suggest:

- Increasing staff at the ferry terminals to ease delay;
- Expanding the hours of operation to make reserving space on the ferry system easier;
- Producing and maintaining a reliable schedule two years in advance;
- Providing adequate notice if minor changes must be made;
- Upgrading the reservation website and schedule to make both more user-friendly;
- Increasing marketing in order to increase ridership and, thus, revenue; and
- Reducing fares in Lynn Canal to lower user costs.

The failure to consider such an alternative in the FEIS is unreasonable.

For this and the myriad concerns raised in our comments, the FEIS fails to comply with the National Environmental Policy Act (NEPA), the National Historic Preservation Act (NHPA), the National Forest Management Act (NFMA), and other statutory and regulatory requirements relating to transportation planning. Both ADOT and the Federal Highway Administration (FHWA) are responsible for these deficiencies. *See* 23 C.F.R. § 771.109(c)(1) (“[A] State highway agency...may prepare the environmental impact statement (EIS) and other environmental documents with the Administration furnishing guidance, participating in the preparation, and independently evaluating the document.”).

#### **I. ADOT HAS NOT IDENTIFIED APPROPRIATE SOURCES OF FUNDING AND HAS DRAMATICALLY UNDERSTATED THE TOTAL CONSTRUCTION COST FOR ALTERNATIVE 2B**

The FEIS estimates that initial preparation and construction of Alternative 2B will cost \$273 million. Of this, \$67.2 million will come from the state's general fund, and the remainder is predicted to be available from a variety of federal sources. These estimates are dramatically understated. Moreover, the state is very unlikely to be able to secure even this level of funding. Many of the federal sources cited in the FEIS are either inappropriate for this project or unlikely to be made available. Similarly, the legislature is unlikely to write ADOT a blank check from the general fund for a project that has waning public support and does not satisfy the basic purpose and need identified. Ultimately, the money ADOT proposes to spend building Alternative 2B would be more wisely and appropriately spent elsewhere.

A. The State Has Not Shown That Full Funding Is Likely to Be Available

The State Transportation Improvement Plan (STIP) “shall include a project, or an identified phase of a project, only if full funding can reasonably be anticipated to be available for the project within the time period contemplated for completion of the project.” 23 U.S.C. § 135(f)(2)(D). We do not believe that the \$273 million that ADOT estimates will be required to complete this project will be made available.

1. *The Shakwak Account and Ferry Boat Funding*

ADOT proposes to spend \$111 million from a fund created in 23 U.S.C. § 218 to construct the Preferred Alternative and associated infrastructure. Because that provision was implemented to fulfill United States obligations with Canada outlined in the Shakwak Agreement, the fund is also known as the “Shakwak” or “excess apportionment” account. *See Ex. 1 (1977 Treaty)*. Traditionally this funding was used to reconstruct portions of the Alaska and Haines Highways for the mutual benefit of Alaskans and Canadians. Accordingly, use of these funds could impact our relationships with, and ability to fulfill obligations to, Canada.

Section 218 specifically allows these funds to be spent on “the reconstruction of the Alaska Highway” and on “the Alaska Marine Highway System.” 23 U.S.C. § 218(a). Thus, all past expenditures have been either on the existing highway system or to support the ferry system. The attempt to spend these funds to construct a new road unconnected to the Alaska Highway, or the facilities to support that road, is a dramatic shift from past practice. Portraying these funds as available is misleading, and any reliance on their availability is arbitrary and capricious. Moreover, this new understanding of Section 218 is not supported by recent changes to that provision. In SAFETEA-LU, Pub. L. 109-59, 119 Stat. 1144 (2005), Congress amended Section 218 to add a definition of the Alaska Marine Highway System (AMHS):

For purposes of this section, the term “Alaska Marine Highway System” includes all existing or planned transportation facilities and equipment in Alaska, including the lease, purchase, or construction of vessels, terminals, docks, floats, ramps, staging areas, parking lots, bridges and approaches thereto, and necessary roads.

SAFETEA-LU § 4409, 119 Stat. at 1778. No part of Alternative 2B fits under this description. The proposed road is not “necessary” to any function of the AMHS. The shuttle ferries and terminal are not intended to be part of the AMHS but, rather, are necessary only to fulfill the desire to have a road. The project is not intended to improve ferry service. As explained throughout these comments, it will, in fact, hurt ferry travel by consuming needed funding sources and by reducing revenue to the system.

Further, use of \$111 million of Shakwak funds will impact adversely the ferry system and other projects eligible for those funds. The \$37.2 million reconstruction of the Haines Highway from mile post 3.5 to mile post 25.3 has been dropped from the FY06-08 STIP. According to a February 22, 2004 letter from Commissioner Mike Barton to the Senate

President and Speaker of the House, reconstructing the Haines Highway and six ferry improvement projects are listed as priority uses of Shakwak funds. *See* Ex. 2 (letter to Theriault and Kott). Similarly, reconstruction of the Haines Highway from Old Town Haines to the ferry terminal has been delayed until 2008 according to the FY06-08 STIP.

In addition to the \$111 million in Shakwak funds, ADOT also proposes to use \$15 million from the Ferry Boat Discretionary fund to pay for construction of the shuttle vessels necessary for Alternative 2B. Like the Shakwak money, these funds could be used for other improvements, such as the \$60 million Southern Gateway Shuttle proposed to run between Ketchikan and Prince Rupert or the \$45 million replacement for the *M/V LeConte* to connect villages in the northern panhandle. Thus, to build Alternative 2B, ADOT proposes using \$126 million of funding that would otherwise be available for the ferry system and other necessary projects in Southeast.

In sum, use of Shakwak funds for this project is contrary to the letter and spirit of Section 218. This money and the Ferry Boat Discretionary funds would be much more appropriately, and usefully, spent elsewhere. Accordingly, it is unlikely that these funds could be allocated to this project in the manner proposed in the FEIS.

### 2. *Section 144 Bridge Funding*

ADOT proposes spending \$45 million from Section 144 bridge funding to construct Alternative 2B. *See* FEIS at 2-27. As applicable here, section 144 funds may be spent only on bridge work and bridges that will replace ferries in existence on January 1, 1984. *See id.*; 23 U.S.C. § 144. The Preferred Alternative does not replace or reduce the number of ferries in service. The alternative actually increases the number of ferries because it necessitates the construction of new ferries to run between the Katzechin River Delta, Haines, and Skagway while using the existing ferries on other routes.

ADOT may argue that its Preferred Alternative would replace older ferries in the Lynn Canal with a newer system of bridges and ferries. That argument, however, is unavailing because the primary vessel currently providing service in the Lynn Canal is the *M/V Fairweather*, which did not come on line until 2004, a full two decades after the 1984 deadline established in Section 144.

Accordingly, section 144 is not an acceptable source of funding for this Alternative.

### 3. *National Highway System and Other Federal Funds*

ADOT plans to draw \$15 million from the National Highway System funding for road construction. Currently the National Highway System in Juneau ends at Auke Bay. *See* Ex. 3 (ADOT list of NHS routes). Glacier Highway from Auke Bay to Echo Cove is part of the Alaska Highway System, not the National Highway System. The proposed 50-mile dead-end extension of the Glacier Highway cannot be considered part of the National Highway System because it does not facilitate interstate or inter-regional travel. *See* 23 U.S.C. § 103(b) (describing the criteria for designation as part of the National Highway System); 23 C.F.R. § 470.107(b) (defining the National Highway System); 23 C.F.R. § 470.113 (describing procedures for states to request additions to or modification

of National Highway System routes); 23 C.F.R. § 470.115 (FHWA approval authority for modifications to NHS); 23 C.F.R. § 470, App. D to Subp. A (“Guidance Criteria for Evaluating Requests for Modifications to the National Highway System). In fact, Alternative 2B actually would make travel harder by making it vastly more difficult for travelers without vehicles to move between communities. A road extension 50 miles into the wilderness that begins 40 miles from a town with a population of 30,000 does not “serve a major population center.” Nor would the road extension have any significant benefit for national defense. The ferry system, on the other hand, connects people both regionally and internationally. It is a public transportation facility in and of itself. The ferry system can also provide a mobile shelter during state and national emergencies. For example, after the *Exxon Valdez* oil spill, AMHS vessels served as a floating staging area for the clean-up efforts. The 50 miles of new pavement proposed for Berners Bay and the Lynn Canal offer none of the benefits of a National Highway System project and should not be eligible for NHS funding.

In addition to the Shakwak, Ferry Boat Discretionary, Section 144, and NHS funds, ADOT plans to use a \$14.5 million project-specific earmark identified in SAFETEA-LU to fund the road. FEIS at 2-27. Federal funds, regardless of which category, can fluctuate from year to year. Congress may authorize funding levels, but the actual amount appropriated depends on the federal budget and, more specifically, on the funds available from the Federal Highway Trust Fund. This fiscal year, Alaska only received 85% of the funds that Congress had authorized, and funding levels could go down even lower in the future. The United States Chamber of Commerce commissioned a study that found that the highway portion of the Federal Highway Trust Fund could be zeroed out by 2008, a year before Congress is slated to reauthorize the transportation bill. *See* Ex. 4 (Washington Post article). The result could be a drastic reduction in funding made available to all states, including Alaska. ADOT cannot reasonably expect that each of the categories listed above will be fully funded in the future.

#### 4. State Funds

ADOT’s funding scheme for construction of the road includes \$67.2 million from the state general fund, which includes \$9.7 million to match the federal funds proposed for use. *See* FEIS at 2-27 & n.16-19. The legislature will have to approve use of these general funds, and it has not indicated a willingness to fund controversial mega-projects like Alternative 2B. Nor have mayors of the state’s population centers, including Anchorage, the Mat-Su Borough, and the Kenai Peninsula Borough, indicated that they are willing to sacrifice local projects in their regions to fund controversial mega-projects. *See* Ex. 5 (Juneau Empire article of Feb. 10, 2006) & Ex. 6 (Letter from Mayors). Moreover, these funds could be used more effectively elsewhere. The attached analysis illustrates projects throughout the state that have been cut or delayed in the STIP from last year to this year. Much of the funding ADOT proposed to spend on Alternative 2B could instead be used to address these needs. *See* Ex. 7 (STIP Comparison). Spending the flexible general fund dollars on this project will come at the expense of other, more necessary maintenance and construction projects. The state should not rely on the availability of these funds to construct Alternative 2B.

In addition to the capital funds, the proposed road would also draw on general funds to cover the increased cost of maintaining and operating the road. The FEIS states that the net cost to the state over a 35-year period for maintaining and operating the road is \$88 million as compared to \$61 million to maintain and operate the existing ferry system. FEIS at S-19. Thus, Alternative 2B will result in a 45% increase in the cost to the state. Both the \$27 million increase in operation and maintenance costs over 35 years and the \$67.2 million general fund allocation necessary to fund construction clearly defy one of ADOT's five stated purpose and need objectives, the need to "reduce costs to the state."

#### B. The FEIS Dramatically Understates the Costs for Alternative 2B

ADOT estimates that the entire cost to construct the Preferred Alternative would be \$273 million. ADOT construction costs are chronically underestimated likely in order to make the project more palatable to the public, politicians, and the Federal Highway Administration.

Herrera Environmental Consultants, a professional engineering firm certified in Alaska, found that ADOT had not accounted for or had underestimated a variety of costs, including costs associated with mitigation, contingency and mobilization, inflation, rock fall protection and avalanche control structures. *See* Ex. 8 (Herrera Report). It also concluded that ADOT estimates arbitrarily refused to account for inflation, instead simply assuming that inflationary cost increases would be balanced by economies of scale. No analysis supported ADOT's decision not to account for inflation. The report also showed that ADOT dramatically underestimated the costs of bridge construction. In total, these experts showed that, on the road construction portion of Alternative 2B alone, ADOT had underestimated costs by at least \$20 million.

ADOT also has underestimated the cost of construction for the proposed Katzehin ferry terminal and dock. ADOT estimates that this portion of the project will cost \$16 million. *See* FEIS at 2-12. The area where ADOT is proposing to construct the ferry terminal is an exposed river delta consisting of silt and mud. The unstable soils in this area create a poor foundation for construction of a ferry terminal, a parking lot, and associated infrastructure. Further, the waters immediately surrounding the Katzehin uplands are extremely shallow, which means that a long dock and associated breakwater is necessary to reach the deeper sections of the fjord, vastly increasing the cost of this terminal and dock. Moreover, the need to design this breakwater with gaps or culverts to provide fish passage may further increase its cost. *See* FEIS at S-11; 4-55. There is no information in the FEIS to support or justify the cost estimate for the terminal, dock, or breakwater given these unique circumstances.

ADOT also mentions that wastewater may be stored and then pumped off the vessels at wastewater treatment facilities. *See* FEIS at S-14. There is no mention of this cost in the FEIS. This cost should be included in the total cost of the proposed project.

Finally, according to the FEIS, the Katzehin ferry terminal will be unmanned. *See* FEIS Appendix B at 28 ("[T]erminal operators and line handlers are not planned for the new

terminals.”). Currently, however, staff at the ferry terminals in Haines, Skagway, and Juneau face increased workloads as a result of new security requirements (personal communication between Emily Ferry and ADOT staff, March 10, 2006). ADOT never explains why the proposed new Katzehin terminal would be subject to less stringent security requirements than the three existing Lynn Canal ferry terminals. Further, the FEIS does not even discuss how ADOT will handle security at the Katzehin terminal. This example shows that ADOT arbitrarily underestimated project costs for this alternative by ignoring relevant factors, such as security.

### C. There Is a Lack of Commitment to Complete the Project as Proposed

The unavailability of appropriate funding and chronic underestimation of costs leads to the ultimate conclusion that the state actually has little intention of completing Alternative 2B as currently proposed. In a *Juneau Empire* story from April 27, 2005, State Representative Bruce Weyhrauch explains that his intention in securing \$10 million (eventually the figure was cut to \$5 million) for the Juneau Road was to facilitate development of the Juneau Road, saying “We need roads. We need to get to the mines.” See Ex. 9 (Juneau Empire article of April 27, 2005). A year earlier Congressman Don Young said he would try to secure funding “so we can at least extend the road to Berners Bay out to the Kensington mine.” See Ex. 10 (Juneau Empire article of April 9, 2004).

The high probability that the state will not be able to secure funding to complete the entire project combined with statements made by top decision makers regarding the “real” purpose of the project leads us to believe that the stated purpose of the entire Juneau Access Improvements project is misleading. It is not about improving capacity, flexibility, or reducing state and user costs—it is about building a road to the Kensington Gold Mine for the benefit of out-of-state corporate interests.

Even if the FEIS accurately estimates that alternative 2B will cost \$273 million to build, the funding for the road comes up short. When Shakwak funds, Section 144 bridge funds, and NHS funds (all sources of funding that cannot be used for this project) are subtracted, the total anticipated funding is closer to \$102 million, not even half of the estimated cost of the project. As it stands, the Juneau Access Improvements project should not be included in the STIP, and the Federal Highway Administration should not approve any federal spending for it because it is unreasonable to expect that appropriate funding will be available to complete the project.

## II. THE FEIS VIOLATES THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

### A. ADOT Violated NEPA By Failing to Consider a Better Ferry Service Alternative

The FEIS evaluates seven alternatives, including a No Action Alternative. Three additional alternatives involving a highway link all the way to Skagway were considered in the SDEIS. These alternatives were dropped from the FEIS because they were deemed “impractical.” Of the nine “action” alternatives considered in detail in the SDEIS and FEIS, five involve construction of significant new highway connectors—the three full highway links to Skagway, a west-side highway to Haines, and the new Preferred Alternative, which proposes a highway to Katzechin and ferry connection from there. The remaining four “marine” alternatives each involve construction of new vessels, either traditional monohull or fast vehicle ferries, and two involve construction of a new ferry terminal in Berners Bay.

Missing from this analysis is an alternative that focuses on improving ferry service in Lynn Canal without construction of new dedicated ferries or terminals. This failure renders the FEIS inadequate. *See Resources Limited Inc. v. Robertson*, 35 F.3d 1300, 1307 (9th Cir. 1993) (“The existence of a viable but unexamined alternative renders an environmental impact statement inadequate.” (quoting *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992))). This type of Transportation Management Alternative was considered in the 1997 DEIS and was dropped from consideration without any substantial justification in the renewed process. As explained below, an alternative exists which would address the purpose and need stated in the FEIS, including increasing capacity, without requiring new construction. This alternative is viable, is not encompassed by the other alternatives, and would satisfy the purpose of the planning process. Additionally, it fulfills the request for improved ferry service made by the residents of Juneau, Haines, and Skagway. *See* Ex. 11 (Resolutions).

#### 1. *The Better Ferry Service Alternative*

Currently, there are a maximum of 15 ferry roundtrips in Lynn Canal each week. The fast ferry *M/V Fairweather* makes 9 round trips and four mainline vessels make a total of 6 roundtrips (two each for the *M/V Taku* and *M/V Matanuska*, and one each for the *M/V Columbia* and *M/V Malaspina*). From this starting point, capacity and flexibility may be increased without new construction or reducing service to other communities through improved management and utilization of existing vessels.

First, the *M/V Fairweather* is permitted to make 13 roundtrips in Lynn Canal each week. This estimate is conservative, and additional trips may be possible with additional staff. Nonetheless, the 13 roundtrips can be spread throughout the week so that the *M/V Fairweather* makes two roundtrips on six days and one roundtrip on the 7<sup>th</sup> day. The two roundtrips that the *M/V Fairweather* makes currently to Sitka easily could be accommodated by the *M/V LeConte* and/or the replacement vessel proposed by ADOT, so that service to Sitka is not decreased.

Next, ADOT already is planning to change the manner in which mainline vessels travel in Southeast independent of the Juneau Access Improvements project. In the Southeast Alaska Transportation Plan (SATP), ADOT proposes to build a Southern Gateway Shuttle to run between Ketchikan and Prince Rupert. *See* SATP at 56-57. According to a presentation given by Bruce Hutchinson to the Southeast Conference on Sept. 28, 2005, Glosen and Associates has been charged with studying the concept. *See* Ex. 12 (Juneau Empire article of Sept. 18, 2005). When the Southern Gateway Shuttle is built, the two mainline vessels, the *M/V Taku* and *M/V Matanuska*, currently serving southern Southeast will be available to turn around in Ketchikan, rather than Prince Rupert. *See* SATP at 56-57. Removing the Prince Rupert to Ketchikan portion shortens those routes by approximately 16 hours. We propose to use those 16 hours to have the *M/V Taku* and *M/V Matanuska* make one extra round trip in Lynn Canal per circuit. Since the *M/V Taku* and *M/V Matanuska* make two circuits each week, adding one roundtrip in Lynn Canal per circuit results in four extra round trips each week (two per boat).<sup>2</sup>

Thus, ADOT easily could add those four extra mainline vessel roundtrips to the current schedule and run the *M/V Fairweather* twice a day six days per week. Adjusting the schedule in that manner maintains existing service to all communities and increases capacity in Lynn Canal to 377 Average Annual Daily Trips (AADT). *See* Ex. 13 (Capacity Calculation and Proposed Schedule). The Better Ferry Service Alternative also increases the number of roundtrips in Lynn Canal each day—there would be four roundtrips three days per week, three round trips three days per week, and two roundtrips on the last remaining day. *See id.* This alternative would not require major changes to the current ferry schedule. A draft schedule is attached as Exhibit 13.

The Better Ferry Service Alternative increases capacity and flexibility without reducing service to other communities. Further, because it would not require new ferries, terminals, or highways, initial construction and life cycle costs would be dramatically lower than any action alternative considered.

Indeed, the action alternatives considered in the FEIS have initial capital costs between \$126 million (alternative 4C) and \$283 million (alternative 2-C). *See* FEIS at 2-25. ADOT intends to use both federal and state funds to pay for this initial construction. *See id.* at 2-27. Currently, the state has proposed using \$67.2 million in general fund money to construct Alternative 2B. *See id.* at 2-27 (showing \$57.5 million in appropriations) & n.16-19 (explaining the matching funds that must be appropriated, which total \$9.7 million). By comparison, the initial capital cost for the Better Ferry Service Alternative would be zero. The FEIS also estimates that it will cost the state \$27 million more over 35 years to operate and maintain the proposed road than it would to maintain the existing ferry system. *See id.* at S-19. Some portion of this savings could be used to improve the

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<sup>2</sup> The SATP proposes retiring the *M/V Matanuska* when the Southern Gateway Shuttle is built. *See* SATP at 54. No reason is provided, however, for this choice, and it would be reasonable to continue operating the *M/V Matanuska*.

capacity, flexibility, speed, and reliability of ferry travel in Lynn Canal while reducing costs to the user. Specifically, this money might be used to:

- Increase staff at terminals and thereby reduce wait times for ticketing and security procedures;
- Increase reservation staff to lengthen the hours during which reservations may be made and ease delays during the reservation process;
- Upgrade the reservation website;
- Produce and maintain a reliable schedule two years in advance and provide adequate notice if minor changes must be made;
- Increase marketing;
- Reduce fares in Lynn Canal; and
- Ensure that professional staff and managers are in charge of the ferry system.

Management changes, such as those outlined above, would reduce travel time, increase convenience and reliability, and reduce costs of ferry travel. Ultimately, this would increase ridership and, therefore, revenue.

Finally, the schedule proposed for the Better Ferry Service Alternative is simply a starting point. It shows how capacity and flexibility may be increased without diminishing service to other communities. Other configurations, of course, are possible. This fact points to another strength of this type of alternative. During periods of peak demand, other temporary changes might be considered in the schedule. For example, for peak weeks, AMHS could use the *M/V Matanuska* or *M/V Taku* as day boats in Lynn Canal, thereby adding two extra roundtrips five days per week. Alternatively, during peak weeks, AMHS could add the *M/V Malaspina* as a day boat, thereby increasing capacity by 176 vehicles/day, or add an extra roundtrip on the *M/V LeConte*. These changes, of course, would lower service to other communities, but they would be temporary and might be done only in the unlikely situation that demand outstrips capacity for a short period of time. Moreover, these peaks tend to be predictable both seasonally (summer ridership is always higher than winter ridership) and daily (certain events including the Klondike International Road Relay, the Haines Bald Eagle Festival, the Klauane Chilkat International Bike Relay, and the Frostbite Music Festival tend to drive up ridership over specific weekends). Accordingly, schedules could be developed far in advance.

Similarly, under this alternative, AMHS could reduce service during periods of low demand in order to save operating costs. Ultimately, the Better Ferry Service Alternative would give AMHS the flexibility to adjust to changing demand and build slowly toward higher capacity as demand grows.

## *2. Better Ferry Service Is a Reasonable Alternative That Meets the Purpose and Need for the Juneau Access Improvements Project*

As explained above, ADOT is required to analyze all reasonable alternatives that meet the purpose and need for a proposed action. Better ferry management is viable, and ADOT unreasonably refused to consider it. Moreover, it meets the identified purpose

and need at least as well as, and in many respects better than, the alternatives considered in detail in the FEIS.

a) *A Better Ferry Service Alternative Is Viable and No Persuasive Reason Is Given for the Failure to Consider It*

Since the beginning of the planning process for the Juneau Access Improvements project, ADOT has acknowledged the reasonableness of an alternative focused on existing infrastructure, like the Better Ferry Service Alternative. Indeed, such an alternative was deemed reasonable and considered in detail in the 1997 DEIS. In that analysis, Alternative 1 was called “No-Build/Transportation System Management,” under which ADOT “would continue to adjust ferry service to best accommodate all Southeast Region.” 1997 DEIS at 3-10. That alternative is described further:

[ADOT] is studying options to enhance the efficiency of the existing fleet while maintaining an acceptable level of service to each community. Some of the options being considered would reduce overall travel time throughout the region by decreasing port time and/or reducing service to some communities, while increasing service to others. One primary objective of all scheduling options considered is to increase service within Lynn Canal....

...One option to improve service in Lynn Canal...would be to convert the *M/V Malaspina* to a day boat.

*Id.* at 3-10 to 3-11. Thus, improving ferry service through management changes was deemed reasonable by ADOT in 1997.

In addition, better ferry service was suggested as an alternative during the comment period on the SDEIS. SEACC specifically requested that ADOT consider “improv[ing] access to Juneau in the Lynn Canal using existing assets through changes in management, operations, and financial planning for the Alaska Marine Highway System.” SEACC SDEIS Comments at 25. Finally, the alternative discussed above was developed by individuals with significant experience with the ferry system who agree that it is a feasible way to meet increased demand in Lynn Canal. *See* Ex. 14 (Doll letter).

Moreover, federal regulations state explicitly that “[t]ransportation system management and investment strategies designed to make the most efficient use of existing transportation facilities” should be analyzed. 23 C.F.R. § 450.208(a)(10); *see also* 23 U.S.C. § 135(c)(1)(G) (“emphasize the preservation of existing transportation system”).

Nonetheless, the FEIS specifically refuses to consider this type of alternative:

Transportation System Management (TSM) refers to activities that maximize the efficiency of an existing system with little or no new construction. It is generally applicable to transportation systems in urban areas and typically involves options such as fringe parking, ride sharing, designating

high occupancy vehicle (HOV) lanes, and traffic signal optimization. Re-assigning vessels to Lynn Canal could be reviewed as a form of TSM, but unlike more typical TSM measures, this would be at the expense of service elsewhere. For this reason, there is no TSM alternative in the Supplemental Draft EIS range of alternatives and the term TSM is not included in the Alternative 1 title.

FEIS at 2-8. In its responses to comments, the FEIS repeats this statement and adds that a TSM alternative “would be at the expense of reduced service elsewhere and would increase the cost of Lynn Canal service.” FEIS at Y-126 (responding to comments that the EIS “should examine Transportation System Management Options”). Thus, the FEIS makes clear that ADOT refused to evaluate an alternative like the Better Ferry Service Alternative.

Ultimately, the FEIS provides only two reasons for failing to consider an improved ferry alternative: 1) that it would reduce service elsewhere; and 2) that it would increase the costs of service in Lynn Canal. These statements are arbitrary and unreasonable.

First, it is plainly untrue that changes to the operating structure must come at the expense of service elsewhere. As demonstrated above, service in Lynn Canal could be increased easily *without* reducing service to any other communities. In fact, just the converse is true: ADOT’s own studies show that reducing ferry service in Lynn Canal will negatively affect service elsewhere. *See* 1996 Parson’s-Brinkerhoff study, Ex. 27 to SEACC SDEIS Comments (showing that reducing ferry service in Lynn Canal would result in a \$2.3–\$3.6 million loss to the system, which would result in reduced service elsewhere). Thus, this rationale can be discarded with no further explanation.

Second, more efficient management would not necessarily increase the cost of service in Lynn Canal.<sup>3</sup> The additional mainline vessel roundtrips should not increase state costs. Those vessels would have been making a roundtrip between Ketchikan and Prince Rupert during the time our alternative would have them in Lynn Canal. There is not a significant cost difference between a Ketchikan–Prince Rupert roundtrip and a Juneau–Haines roundtrip. *See* <http://www.dot.state.ak.us/amhs/schedres/scheds/S06.htm> (showing that it takes 7 hours for one-way trips between both Ketchikan–Prince Rupert and Juneau–Haines). Moreover, while increasing the number of roundtrips made by the *M/V Fair-weather* from 10 to 13 would involve some increased state expenditure for fuel, staff, and maintenance, the net cost to the state over a 35-year period is still likely to fall well below the net cost to the state for the other action alternatives. Indeed, a conservative estimate for the additional costs for the changes we propose totals approximately \$4.2 million for the first year. *See* Ex. 15 (Cost Memorandum). This cost is easily offset by the savings in capital expenditures. As explained below, ADOT could use a portion of the money it proposes to spend on construction under the other action alternatives to cover these cost

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<sup>3</sup> It is not clear whether the FEIS refers to user costs or costs to the state. This distinction is irrelevant because a Better Ferry Service Alternative would not necessarily result in increased costs to either.

increases. Thus, any increased spending proposed under this alternative would not be passed on to users and would not increase life-cycle costs to a level above any other action alternative.

*b) Improved Ferry Service Meets the Purpose and Need*

The FEIS identifies “improved surface transportation to and from Juneau within the Lynn Canal corridor” as the purpose and need for the Juneau Access Improvements Project. FEIS at 1-8. It subdivides this statement into the following five elements:

- Provide the capacity to meet transportation demand in the corridor
- Provide flexibility and improve opportunity for travel
- Reduce travel times between the communities
- Reduce state costs for transportation in the corridor
- Reduce user costs for transportation in the corridor

*Id.* An improved ferry service alternative as described above meets each of these goals at least as well as, and in many cases better than, other alternatives considered in the FEIS.

First, improved service will increase capacity dramatically. It will allow for 377 AADT. The alternatives considered in the FEIS have capacities ranging from 167 AADT to 1416 AADT:

Table 1: FEIS Alternatives Capacity

<b>Alternative</b>	<b>Capacity to Skagway</b>	<b>Capacity to Haines</b>	<b>Total Capacity</b>
No Action	71	96	167
2B	636	544	1180
3	408	1008	1416
4A	223	229	452
4B	227	284	511
4C	149	154	303
4D	203	208	411

An alternative like the one presented above falls squarely in the range of capacities considered in the FEIS.

Second, improved ferry service would increase flexibility and improve opportunity for travel. An alternative like that proposed above would increase the number of roundtrips each day. Four roundtrips would be offered three days per week, three roundtrips three days per week, and two roundtrips on the last remaining day. *See Ex. 13 (Capacity Calculation and Proposed Schedule).* That schedule dramatically increases the opportunity to travel, and it could be arranged so that ferry departure times are the same every day.

Moreover, system flexibility would improve dramatically. During periods of low demand, ferries could be docked to save operating expenses. The state has recently proposed such a change for the *M/V Fairweather*. *See Ex. 16 (Juneau Empire article of Feb. 24, 2006).* Similarly, as discussed above, additional runs could be added to accommodate

peak days or weeks. These alterations from the schedule outlined above could be built into a schedule released two years in advance to increase reliability and predictability.

The FEIS identifies several factors it says are restrictions to flexibility and opportunity for travel. *See* FEIS at 1-11. Most of these “restrictions” could be addressed by more effective management. For example, there are several complaints about the reservation system. Additional staff would allow a shorter wait time to place a reservation over the phone and could also allow for extended hours of operation. The web-based reservation system is already available 24 hours a day, but these extended hours of operation would be especially helpful for travelers coming from the East Coast who currently have to wait until mid-day to make reservations and for others who prefer to make reservations by phone. Moreover, ADOT should upgrade the web-based reservation system to make it more reliable and user-friendly.

In addition, a consistent, reliable schedule that is prepared in advance would help increase reliance on the ferry system. Community leaders, school districts, and tourism operators have asked for a schedule that comes out earlier and is reliable. Likewise, the Marine Transportation Advisory Board has advocated for a schedule release two years in advance. Over the past several years there has been vocal criticism of ferry system management. *See* Ex. 17 (News Coverage of Discontent). This simple change would increase reliability and, likely, ridership.

Similarly, as explained below, check-in and load/unload times could be reduced by increasing staff levels. Additional daily roundtrips dramatically reduce any inconvenience of having to plan around the ferry schedule. In fact, the certainty of planning around a set schedule, with reservations, may be more convenient than planning around the uncertainty of a first-come, first-served system, as proposed in Alternative 2B. Other concerns, such as weather delays, will apply equally to all action alternatives considered in the FEIS.

Next, travel time could be reduced by increasing efficiency. Some of the savings in general fund capital expenditure could be spent to increase staff levels. Doing so would reduce load and unload times and would allow AMHS to reduce the required check-in times. It also would reduce delays caused by new security procedures. Moreover, AMHS could institute a web- or phone-based check-in procedure like that used by airlines. According to ADOT’s own analysis, ferry alternatives can achieve “[w]eighted average travel times comparable (i.e., within 15 minutes or less) to those provided by DEIS Alternative 2, East Lynn Canal Road...at lower life cycle costs than that of the road.” Juneau Access Marine Alternatives Study at 1-16. Moreover, with increased fast ferry service, the difference in time between a road alternative and a ferry alternative is small. The FEIS estimates a 3.8-hour trip to Skagway via fast ferry and a 3-hour trip by alternative 2B. *See* FEIS at 2-9, 2-11. For Haines, it estimates a 3.5-hour summer trip by fast ferry, and a 2.5-hour trip under alternative 2B. These estimates include check-in and load and unload time for the fast ferry, but do not include any check-in time for the shuttle ferries under alternative 2B. *See id.* at 2-9, 2-11.

A Better Ferry Service Alternative also would reduce state costs. Because it would not require any large initial capital investment, overall costs to the state would be much lower than any alternative considered except the No Action Alternative. Even accounting for federal funds that might be used for initial construction and the costs for increases in fuel, maintenance, and staff coincident to increased service, the overall cost to the state likely would be lower than the action alternatives considered in the FEIS. Currently, the state is proposing to spend \$67.2 million from the general fund to construct Alternative 2B. *See* FEIS at 2-27. Some portion of that money could be used to fund the changes outlined here. In addition, some portion could be invested to create a fund from which improvements could be made. As explained in the attached Cost Memorandum (Ex. 15), a conservative estimate for the changes proposed in this alternative is \$4.2 million for the first year. Thus, regardless of the way in which the state would choose to fund the changes proposed here, it saves a significant amount of money. Further, the federal funds that would be used for construction could be used elsewhere on the AMHS or on other high-way projects.

Moreover, according to the FEIS, increasing capacity and flexibility while reducing travel time should have the effect of increasing ridership. *See* FEIS at 1-8. Indeed, the recent experimental lowering of fares combined with increased marketing raised ridership by 48% and revenue by 18%.<sup>4</sup> This increased ridership should help offset increases in annual state costs.

Finally, user costs might be reduced simply by lowering fares. Initially, increased ridership will generate more revenue, so fares should not have to be raised to accommodate the increased service. *See* Juneau Access Marine Alternatives Study at 1-16 (“Tariffs can be reduced for the local marine system operating in [Lynn Canal] to 60% to 75% of the current AMHS standard tariffs while continuing to recover 60% of the operating costs for the marine system (i.e., 40% operating subsidy, which is typical of major public ferry systems such as AMHS and Washington State Ferries).”). More significantly, however, the state might use the savings in initial capital expenditures to reduce fares. Vehicle travel could be subsidized while still maintaining a life-cycle cost lower than all of the other action alternatives.

Thus, a Better Ferry Service Alternative would meet all elements of the stated purpose and need for the project. It is a reasonable alternative, and the reasons presented in the FEIS for failing to consider it are arbitrary. *See Muckleshoot Indian Tribe v. United States Forest Serv.*, 177 F.3d 800, 813-14 (9th Cir. 1999); *City of Tenakee Springs v. Clough*, 915 F.2d 1308, 1312 (9th Cir. 1990) (stating that the agency “does not explain why an amendment to the contract was not feasible,” and that “the Service’s failure seriously to consider any alternative to the rigid application of its own interpretation of the contract requirements raises serious questions of compliance with applicable law”); *Natural Res. Def. Council v. Morton*, 458 F.2d 827, 834-38 (D.C. Cir. 1972) (discussing re-

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<sup>4</sup> *See* “State Ferry Ridership on the Rise,” Feb. 16, 2006, available at [http://www.publicbroadcasting.net/apti/news.newsmain?action=article&ARTICLE\\_ID=880398](http://www.publicbroadcasting.net/apti/news.newsmain?action=article&ARTICLE_ID=880398); accessed March 12, 2006.

quirement that feasible alternatives not be excluded from detailed evaluation); *National Wildlife Fed'n v. National Marine Fisheries Serv.*, 235 F. Supp. 2d 1143, 1155-57 (W.D. Wash. 2002) (finding that the Army Corps of Engineers had rejected proposed alternatives without sufficient justification).

### 3. Conclusion

Capacity and flexibility for travel in Lynn Canal can be improved without building new ferries or terminals. An alternative that uses the existing infrastructure more effectively is reasonable and was suggested during the comment period. ADOT's failure to analyze such an alternative in detail in the FEIS violates NEPA.

#### B. ADOT Violated NEPA and Misled the Public by Relying on an Arbitrary Traffic Demand Forecast Which Dramatically Overstated Demand for Highway Alternatives and Understated Demand for Ferry Alternatives

Much of the analysis, justification for choice among alternatives, and other discussion in the FEIS are premised on the Traffic Forecast Report, attached as Appendix C to the SDEIS. This appendix purports to present an analysis of the traffic demand (i.e. how many vehicles would travel) for each alternative. It makes a current prediction—how many vehicles would travel each day if each alternative existed today—and then extrapolates that prediction to 2008 (when the FEIS predicts that construction will be completed) and 2038 (the end of the analysis cycle).<sup>5</sup> These predictions include a series of errors and suspect assumptions that serve to inflate the projected demand and increase the difference between the projected demand for highway and ferry alternatives. These errors mislead the public and will render arbitrary ADOT's decision to adopt the Preferred Alternative.

The most glaring errors concern the costs assigned to “frequency delay time” and ferry travel time. The FEIS also arbitrarily calculates the “latent” demand, or demand that would exist currently if Alternative 2, the original Preferred Alternative, were in existence today. These errors have the effect of nearly doubling the projected demand for Alternative 2B. *See* Ex. 18 (Smart Mobility Report). The model also contains two more technical errors, which have the effect of increasing demand for the highway alternatives. *See id.* at 1-2 (explaining elasticity and accident cost corrections). Using more realistic assumptions and a correctly formulated model results in a dramatic decline in demand for all highway alternatives:

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<sup>5</sup> The FEIS estimates that it will take 4 years to complete construction. Thus, 2008 is chosen as the starting point because the analysis was conducted in 2004 and assumed that construction would begin that year.

Table 2: Demand Projections

	Projected Demand	
	Appendix C	Accurate Model and Projections
Current Service	80	80
1	90	90
2	500	230
2A	380	200
2B	380	190
2C	400	200
3	310	170
4A	140	100
4B	160	110
4C	100	90
4D	130	100

*See id.* at 4 & 15, Tables 1 & 7.<sup>6</sup> By using inflated demand projections, ADOT biased its decision toward a highway alternative and presented grossly misleading information to the public. A more specific discussion of these errors follows.

*1. Cost Estimates*

There are two significant problems with the cost estimates, both of which significantly inflate the cost for ferry alternatives. First, the FEIS grossly overstates the frequency delay time for ferry alternatives and, in particular, for the no action alternative. Second, it assigns the same opportunity cost to ferry travel time as to all other time despite acknowledging that most travelers state that ferry travel is enjoyable and worthwhile for its own sake. *See* FEIS, App. C at C-28.

*a) Frequency Delay Time*

The “frequency delay time” is a measure of how often a passenger can make a trip in Lynn Canal. The FEIS measures this variable by assuming that travel occurs during a 16-hour window each day. It divides those 16 hours by the number of ferry trips per day for each alternative. It then assumes that “people are able to obtain utility equal to the value of time for...half of the interval between departures.” FEIS, App. C at 31. Thus, the frequency delay time is equal to half of the interval between ferry trips. The No Action Alternative, for example, has an average of approximately one trip to Haines per day. The model, therefore, assigns a frequency delay time of more than 8 hours for each trip to Haines.<sup>7</sup>

<sup>6</sup> These calculations were based on model spreadsheets, data, and a formula provided by ADOT. *See* Ex. 19 (ADOT spreadsheets).

<sup>7</sup> The frequency delay times for the No Action Alternative were 513 minutes (8.55 hours) to Haines and 529 minutes (8.82 hours) to Skagway. *See* Ex. 19 at 3.

The FEIS assigns a monetary value to the frequency delay time equivalent to all other time spent traveling (load/unload time and actual travel time). For all ferry alternatives this cost is a very significant component of the estimated travel cost. *See* Ex. 18 at 9, Figure 2 (Smart Mobility Report). Accordingly, it dramatically affects the demand projections.

The assumption that someone would wait for more than 8 hours for a ferry is patently unreasonable. Even more egregious, however, is that the method used by ADOT also requires assuming that someone waited *twice that long*. *See id.* at 2. That, of course, is absurd. Nor is it an appropriate “measure of schedule convenience.” FEIS, App. C. at 30. While the method used by ADOT is appropriate for short wait times, it is inappropriate for use in this context. *See* Ex. 18 at 2 (Smart Mobility Report).

*b) Ferry Travel*

The FEIS assumes the same opportunity cost for ferry travel time as for all other travel time. It does so despite acknowledging that “[m]arket research performed on board AMHS vessels during the past three years has confirmed that *most ferry passengers* consider travel in Lynn Canal and elsewhere along the Inside Passage to be a desirable way to spend their time.” FEIS, App. C. at 28 (emphasis added). Rather than a cost, therefore, most ferry passengers view time spent on board as a benefit. The FEIS makes no attempt to quantify this benefit:

Rather than attempt to capture the subtleties of pleasure travel, the model accepts the fundamental principal of transportation utility that faster is better. Experience has shown that this is a reasonable approach to predicting traffic. Shorter travel times and more convenient schedules are assumed to be net improvements in service that lead to additional traffic. To this end, time saved is counted as a benefit and assigned a dollar value.

*Id.* at 29. This is not a sufficient justification for failing to differentiate between ferry and other travel time.

First, it would not have been difficult to account for the portion of travelers who view ferry travel time as a benefit. Indeed, ADOT knows that most people view ferry travel time as a net benefit rather than a loss. So, even without modeling the time as a net benefit, it could have assigned ferry travel time an hourly cost of zero, rather than a cost equivalent to all other travel time.

At the very least, ADOT should have modeled the cost of ferry travel time the same way that the State of Washington does. Washington determined that the disutility of 1 minute of ferry travel time was, on average, equal to 0.795 minutes of auto travel time. *See* Ex. 18 at 3 (Smart Mobility Report).

This error is significant because actual transport time is a very important variable in the cost calculations for the ferry alternatives. Indeed, correcting for the arbitrary time cost

estimates and the more technical modeling errors results in the more accurate demand projections listed in Table 2, above.

## 2. “Latent” Demand Calculation

The FEIS predicts a “latent” demand of 500 AADT if the least restrictive alternative, Alternative 2, existed currently. This prediction is based on a series of assumptions, many of which are unsupported or arbitrary.

First, the biggest projected source of “latent” demand comes from residents traveling to and from Juneau, Haines, and Skagway. These demand projections are based on household surveys conducted in 1994 and 2003. FEIS, App. C at 15. There are two obvious problems with the calculations made based on these surveys. Most significantly, simple reliance on the surveys demonstrably overstates demand. In addition to asking how many trips would be made if a highway existed, the surveys also asked residents how many trips they had made in the past year. In the most recent survey, Juneau residents reported making 1.4 trips to Haines by ferry and 0.7 trips to Skagway by ferry each year. *Id.* Using the same multiplication performed by the FEIS for the highway alternative, these numbers reveal that Juneau residents alone should account for 132 AADT.<sup>8</sup> The total number of trips made in 2002, however, including all travelers, was only 80 AADT. *Id.*, App. C at 14. So, the survey results overstated the number of trips by at least 61%, without even accounting for Haines or Skagway residents.

The calculations made using these survey results also overstate demand. The survey results are multiplied by 11,500 households in Juneau to arrive at a total number of trips by Juneau residents. FEIS, App. C at 15. The FEIS states, however, that approximately 90 percent of the households in Juneau own cars. FEIS at 4-44. Because Alternative 2 will only provide transportation for that percentage of Juneau residents, the calculation is correctly made by multiplying the number of households (11,500) by 90%.

The FEIS makes several other unsupported assumptions regarding latent demand. It assumes that travel from Anchorage and the Interior “would double to about 20 AADT.” FEIS, App. C. at 17. It does so “[i]n the absence of any data to support a more rigorous analysis of this market.” *Id.* In other words, it makes this assumption with no support cited. The FEIS also assumes that non-resident visitors would increase demand by 30 AADT. *Id.*, App. C at 19. Again, there is no real justification for this assumption. Similarly, the FEIS assumes a five-fold increase in freight traffic (from 3 to 15 AADT) without any substantial justification. *Id.*, App. C at 19-20.

Each of these assumptions or mistakes has the effect of inflating the latent demand estimate. The total latent demand is forecast at 500 AADT. First, as demonstrated above, the surveys overstate demand by 61%. To account for this discrepancy conservatively, Juneau demand should be reduced by 50%, which removes 115 AADT. Reducing the

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<sup>8</sup> (2.1 trips x 11,500 households) / 365 days per year = 66 trips, which is equivalent to 132 roundtrips in Lynn Canal. One “trip to Haines” equals two one-way trips in Lynn Canal.

number of Juneau households to 90% of 11,500 reduces the estimate by another 24 AADT. The last three assumptions listed above account for 62 AADT. Thus, a more realistic latent demand estimate might be  $500 - 62 - 24 - 115 = 299$  AADT.

Moreover, ADOT could have actually calculated the projected demand for Alternative 2, rather than employing this “highly speculative” technique. *See* Ex. 18 at 3 (Smart Mobility Report). Applying an appropriate elasticity coefficient and using appropriate values for frequency and ferry travel time yields a “latent” demand of 230 AADT. *Id.*, Table 7. This is very close to the latent demand calculated above.

### 3. *Other Problems with the Demand Forecast*

There are two other significant problems with the demand forecast. First, the FEIS uses arbitrary growth rates to project the demand into the future. The FEIS projects demand to 2008 and then 2038. In projecting growth from 2008–2038, the FEIS assigns a different growth rate to each alternative. *See* FEIS, App. C at 37-38. Based on population growth rates, it assumes that growth rates for all alternatives fall between 1% and 2%. *Id.* It then assigns a percentage growth to each alternative. It assigns 1.2% to the No Action Alternative because it has the highest user costs, and 2% to Alternative 2, as the lowest cost alternative. *Id.* The others fall between those percentages. This approach “is contrary to standard modeling practice.” *See* Ex. 18 at 3 (Smart Mobility Report). It “double counts induced travel and is invalid.” *Id.* Of course, it also has the effect of inflating projected traffic under all highway alternatives relative to the ferry alternatives. Instead, “[t]he growth rate should be the same for all alternatives, and the FEIS data show that this growth rate should be low - on the order of 1 percent per year – due to low population and tourism growth rates.” *Id.*

Second, the Traffic Demand Forecast was the first analysis completed for the SDEIS. *See* FEIS, App. W at 11, 135. The estimates it contains are used as the basis for much of the other analysis in the FEIS. As the process continued, however, ADOT apparently refined some of the cost estimates. *Id.* These revised estimates were used in the User Benefits Analysis. ADOT, however, did not use these new costs to re-evaluate traffic demand prior to release of the SDEIS for public review or prior to publication of the FEIS. In response to comments on the SDEIS, ADOT re-calculated demand using these new cost estimates. It appears, however, that the new cost estimates simply were plugged back into the demand curve created using the old estimates. Obviously, this is not a rigorous analysis. ADOT should have created a new curve using the new cost figures.

### C. ADOT Violated NEPA by Failing to Analyze Mitigation Measures in the FEIS

In an EIS, an agency must describe and analyze the effectiveness of proposed mitigation measures. *See* 40 C.F.R. § 1502.16(h) (requiring that an EIS shall include discussions of “[m]eans to mitigate adverse environmental impacts”). “The requirement that an EIS contain a detailed discussion of possible mitigation measures flows both from the language of the Act and, more expressly, from CEQ’s implementing regulations.” *Robert-*

*son v. Methow Valley Citizens Council*, 490 U.S. 332, 351 (1989). “Mitigation must ‘be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated.’” *Neighbors of Cuddy Mountain v. United States Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998) (quoting *Carmel-By-the-Sea v. U.S. Dep’t of Transp.*, 123 F.3d 1142, 1154 (9th Cir. 1997). “A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.” *Northwest Indian Cemetery Protective Ass’n v. Peterson*, 795 F.2d 688, 697 (9th Cir. 1986), rev’d on other grounds, 485 U.S. 439 (1988).

The FEIS does not satisfy this requirement. Sections 5.1 to 5.12 of the FEIS list a series of mitigation measures grouped by resource. These sections contain absolutely no analysis. Instead, they simply present a list of measures. For the vast majority of the listed measures, no actual analysis or support for the chosen measures is presented elsewhere in the FEIS or appendices.

Many of the proposed mitigation measures are vague and should be subjected to more rigorous analysis to determine whether they might be effective. *See, e.g.*, FEIS at 5-1 (stating that culverts will be installed “in appropriate locations” and that “[e]mbankment heights and side slopes would be minimized”); *id.* at 5-2 (stating that ADOT would “investigate ways” to reduce intertidal fills and the amount of sidecast material); *id.* (“To the extent practicable, beach access points would be chosen to take advantage of existing landings, previously disturbed sites, or locations of planned fill.”); *id.* at 5-3 (“Clearing would be avoided in the vicinity of active [trumpeter swan and Queen Charlotte goshawk] nests.”); *id.* (requiring “BMPs for handling food, trash, and other potential wildlife attractants,” but not specifying those practices.).

Other measures are little more than surveys. *See, e.g., id.* at 5-4 (“Mitigation for impacts to wildlife would include funding for bear, goat, wolverine, and moose population monitoring studies to enable ADF&G to address impacts from lost habitat, collision mortality, and improved access.”). ADOT fails to explain how surveying or monitoring will mitigate impacts effectively. Still other measures assert specific management changes but present no analysis to support a conclusion that they will be effective. *See, e.g., id.* at 5-3 (stating that bridges would have 130-foot spans and culverts would be used to provide fish passage), *id.* (stating that “[b]ridges across streams would be designed to also function as wildlife underpasses,” but providing no analysis or support to show that this might be effective). *See also id.* at Y-192 (“Using wildlife underpasses at appropriate locations along the highway could reduce the fragmentation of seasonally important bear habitat although the efficacy of this mitigation measure is untested.”).

Thus, many of the proposed mitigation measures are presented in such a vague manner or with qualifiers, such as “to the extent practicable” or “as necessary,” that sufficient analysis is impossible. Further, in many cases, the proposed measures that are specified adequately are supported by no analysis or evaluation. This failure to analyze the proposed mitigation measures renders the FEIS inadequate in violation of NEPA.

### III. CONSTRUCTION OF THE PREFERRED ALTERNATIVE WILL VIOLATE THE BALD EAGLE PROTECTION ACT

The Bald Eagle Protection Act of 1940 makes it a crime to “take...any bald eagle” without a permit. 16 U.S.C. 668(a). “Take” is defined broadly in the Act to include “pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.” *Id.* § 668c. The Act gives the Secretary of the Interior the authority to permit the taking of eagles “for the protection of wildlife or of agricultural or other interests in any particular locality...pursuant to regulations which he is hereby authorized to prescribe” *Id.* § 668a.

The United States Fish and Wildlife Service (USFWS) promulgated relevant regulations at 50 C.F.R. § 22. These regulations explain a permitting process for the taking of eagles. That process, however, applies only to “scientific, educational, and depredation control purposes and for the religious purposes of American Indian tribes.” 50 C.F.R. § 22.1. It does not authorize permits for any other taking. Similarly, regulations promulgated pursuant to the Migratory Bird Treaty Act do not authorize a permit for taking bald eagles for any purpose. *See id.* § 21.2(b) (“This part, except for Sec. 21.12(a), (c), and (d) (general permit exceptions); Sec. 21.22 (banding or marking); Sec. 21.29 (Federal falconry standards); and Sec. 21.31 (rehabilitation), does not apply to the bald eagle...”). Accordingly, ADOT cannot obtain a permit to take bald eagles for road construction purposes.

Nonetheless, Alternative 2B will take bald eagles because the birds are likely to be disturbed by operation of the completed highway and by road construction. Initially, the regulations do not define “disturb.” USFWS, however, recently proposed a definition of the term as part of the effort to de-list the bald eagle as an endangered species in the Lower 48. *See* 71 Fed. Reg. 8265 (Feb. 16, 2006). The agency proposes to define “disturb” as “[t]o agitate or bother a bald or golden eagle to the degree that interferes with or disrupts normal breeding, feeding, or sheltering habits, causing injury, death, *or nest abandonment.*” *Id.* at 8266 (emphasis added). We do not agree that this definition is appropriate or in accordance with the intent of the Bald Eagle Protection Act. Even under this unduly restrictive definition, however, it is clear that the Preferred Alternative will “disturb” bald eagles in violation of the Act.

In the FEIS, ADOT admits that “[m]aintenance and operation of Alternative 2B would involve a persistent source of noise that may result in the relocation of individual eagle pairs to alternate nest trees within their nesting territory. Individual eagle pairs may even abandon their nesting territory and associated hunting perches altogether, especially during the summer months, when traffic volumes are predicted to peak.” FEIS at 4-64. Similar statements are found in the Bald Eagle Technical Report. *See* FEIS, Appendix R at 4-3 to 4-4. Thus, ADOT acknowledges that the completed road is likely to cause eagle pairs to abandon their nests. Nest abandonment fits squarely under the proposed definition of “disturb,” and, therefore, it is clear that the proposed road will take bald eagles in violation of the Bald Eagle Protection Act. ADOT’s determination that these changes are not likely to affect the overall population, FEIS at 4-64, is inapposite. The relevant standard is whether eagles will be “disturbed,” and ADOT has admitted that they will be.

Second, construction will disturb eagles. FHWA operates under a memorandum of understanding with USFWS under which certain construction activities are prohibited within 330 feet of eagles' nests during certain months of the year, and other activities are prohibited within 0.5 miles. The FEIS identifies 92 eagle nests within 0.5 miles of the proposed highway. Of those, 49 nests are within 330 feet. ADOT proposes to abide the restrictions in the memorandum of understanding for those nests "unless USFWS approves a plan to avoid impacts while operations continue." FEIS at 5-3. USFWS has approved a similar plan at least once before. *See* Dunn 2000 (described monitoring conducted on eagles' nest within 100 feet of construction near Pt. Louisa). In that situation, however, constant monitoring was required for all activities in the restricted zone. No such requirement is made explicit in this case. Without mandatory monitoring, ADOT cannot ensure that eagles will not be disturbed by construction activities within the restricted zones.

Thus, building a highway in Lynn Canal will take bald eagles in violation of the Bald Eagle Protection Act. Allowing such construction is not in accordance with law and, therefore, violates the Administrative Procedure Act, 5 U.S.C. § 706, and Bald Eagle Protection Act.

#### **IV. ADOT VIOLATED THE ENDANGERED SPECIES ACT (ESA) BY FAILING TO INITIATE FORMAL SECTION 7 CONSULTATION**

The Endangered Species Act (ESA) requires all federal agencies "to insure that any action authorized, funded, or carried out by such agency...is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of" critical habitats. 16 U.S.C. § 1536(a)(2). Accordingly, "[b]efore initiating any agency action in an area that contains threatened or endangered species or a critical habitat, the agency must (1) make an independent determination of whether its action 'may affect' a protected species or habitat, or (2) initiate a formal consultation with the agency that has jurisdiction over the species." *Natural Resources Defense Council v. Houston*, 146 F.3d 1118 (9th Cir. 1998). If the agency determines that an action "may affect" critical species or habitats, formal consultation is mandatory. *See id.*; 50 C.F.R. § 402.14(a). The result of that formal consultation is a Biological Opinion.

In determining whether the proposed action may affect the species or critical habitat, the agency may prepare a Biological Assessment, which "evaluate[s] the potential effects of the action on listed species and designated...critical habitat...and is used in determining whether formal consultation...is necessary." 50 C.F.R. § 402.13(a). "A Federal agency need not initiate formal consultation if, as a result of the preparation of a biological assessment..., the Federal agency determines, with the written concurrence of the Director, that the proposed action is not likely to adversely affect any listed species or critical habitat." 50 CFR 402.14(b)(1). Nonetheless, the agency has "an affirmative duty to ensure" that its actions do not jeopardize listed species or adversely affect critical habitat. *See Houston*, 146 F.3d at 1127. The agency's conduct in fulfilling this obligation is subject

to review under the arbitrary and capricious standard of the Administrative Procedure Act. *See id.* at 1125; *Southwest Center for Biological Diversity v. U.S. Forest Ser.*, 100 F.3d 1443, 1448 (9th Cir. 1996).

ADOT and FHWA have failed to comply with this obligation. The eastern stock of Steller sea lions, which includes those in Lynn Canal, is listed as threatened under the ESA. *See* FEIS at 3-64. Critical habitat was designated for sea lions in 1993, and it includes major haulouts and rookeries. *See* 50 CFR § 226.202. One such designated haulout, Gran Point, is present in Lynn Canal. The area of critical habitat around Gran Point “includes all the land and water within a 3,000-foot radius” of the haulout. *See* FEIS, App. S at 3-2.

The proposed highway would pass directly through this designated habitat, and within 300 feet of the haulout site. Thus, construction of the road would have a direct effect on the habitat by converting a portion of it to highway. The proposed road also has the potential to affect the sea lions themselves by creating a significant new source of noise (during both construction and operation of the road), increasing public access to the area, and increasing pollution, runoff, and sediment loads in the surrounding land and water.

Despite clear evidence of these potential effects, ADOT and FHWA refused to initiate formal consultation with the National Marine Fisheries Service (NMFS) with regard to sea lions. Instead, ADOT prepared a Biological Assessment and sought concurrence from NMFS that its actions were not likely to jeopardize sea lions or adversely affect the critical habitat. In response, NMFS stated that it has “limited experience” with the effects of construction noise “and the likely response by Steller sea lions to human activity in such close proximity to an important haulout.” FEIS at 7-111. Nonetheless, NMFS agreed that the proposed road would not adversely affect critical habitat on the condition that ADOT implement certain additional mitigation measures. *Id.* at 7-111 to 7-119. Both NMFS’ determination and ADOT’s reliance upon it in refusing to request formal consultation are arbitrary.

These conditions are insufficient to ensure that Steller sea lions are not jeopardized or their critical habitat adversely affected. “‘Destruction or adverse modification’ means a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.” 50 C.F.R. § 402.02. Constructing a highway directly through critical habitat will directly alter of the habitat and “appreciably diminish[]” its value. Construction will alter the habitat to within 300 feet of the haulout, and it will bring noise, traffic, and pollution to the habitat. It will also increase public access. These impacts warrant further evaluation in a formal consultation process.

Moreover, the additional conditions required by NFMS and accepted by ADOT will not mitigate these impacts sufficiently to prevent adverse modification of the critical habitat. First, NMFS recognized that “increased access would likely result in disturbance to these haulouts from people approaching to view sea lions, recreational fishing activities, or other related activities such as tourism.” FEIS at 7-116. To remedy this problem, NMFS required that “[m]echanisms...be in place to ensure that the road will not result in in-

creased access to east Lynn Canal through the development of boat launches or other improved access as a result of this project.” *Id.* ADOT cannot address this concern because it does not have jurisdiction over the tidelands adjacent to the proposed road. Accordingly, it requested concurrence from the Alaska Department of Natural Resources (DNR). DNR agreed to “consult with NMFS prior to authorizing any marine access facility adjacent to the new highway” and not to “authorize any such facility without concurrence from NMFS.” *Id.* at 7-123.

This response is insufficient for two reasons. First, it does not amount to a blanket prohibition on construction of access facilities adjacent to the road. Second, it does not account for increased access unrelated to new construction. Kayakers and hikers, for example, will not need boat launches to access the area near Gran Point. This concern may be addressed somewhat by the requirement for construction of “screening structures and other mechanisms to avoid human impacts to the haulout.” Those mechanisms, however, are not specified, and NMFS does not require more than that they be developed as part of the construction plan. Thus, these additional protections are not specified, and neither NMFS nor ADOT has evaluated their effectiveness.

Similarly, many of the conditions imposed by NMFS appear to be aimed at developing a sort of adaptive management regime in which activities are allowed in the critical habitat, subject to monitoring. If the monitoring reveals an effect to the population, then the protections must be revisited. *See, e.g.*, FEIS at 7-116 to 7-117 (conditions 8, 9 and 12). That approach is not a proper way to ensure that the habitat is not adversely affected. Instead, it evidences the reluctance of the agency to investigate the likely impacts. Rather than allow construction now and look later to determine whether an impact is occurring, the agencies should engage in formal consultation in order to evaluate fully the likely impacts from construction and operation of the road before it is built.

Further, construction within 3,000 feet of Gran Point is prohibited while sea lions are present, “unless approved by NMFS...” *Id.* at 7-116. This condition is particularly significant because monitoring data reveal that sea lions are present nearly constantly at Gran Point. *See id.*, App. W at 409-33. It is unreasonable to assume that construction will be undertaken on a day-by-day basis where it might be allowed one day and not the next or for the month following. The cost of mobilizing workers and materials would be too great, and the inconvenience very significant. It is much more likely that some plan to allow construction within the 3,000-foot boundary will be developed. That plan, however, is not part of the conditions specified. If construction will be allowed while sea lions are present, ADOT and FHWA must specify and evaluate all measures that will be used to prevent disturbance of the animals.

Finally, we note that the decision not to prepare a Biological Opinion is very difficult to harmonize with the decision to initiate formal consultation on the Kensington Gold Mine project. In this case, the effects to sea lion critical habitat are direct and obvious. ADOT, FHWA, and NMFS have acted arbitrarily by failing to engage in formal consultation.

## V. ALTERNATIVE 2B IS INCONSISTENT WITH A VALID STATEWIDE TRANSPORTATION PLAN

Under federal law, every state is required to complete a long-range statewide transportation plan “for all areas of the State, that provides for the development and implementation of the intermodal transportation system of the state.” 23 U.S.C. § 135(f); *see also* 23 C.F.R. § 450.214; Alaska Stat. 44.42.050. In addition, the state must complete a statewide transportation improvement program (STIP) for all areas of the state. 23 U.S.C. § 135(a), (g); *see also* 23 C.F.R. § 450.216; Alaska Stat. 44.42.050. The STIP includes surface transportation projects that the state anticipates building with federal funding. 23 U.S.C. § 135(g)(4). Significantly, every project included in the STIP must be “consistent with the statewide transportation plan.” 23 U.S.C. § 135(g)(4)(D)(I); *see also* 23 C.F.R. § 450.216(a)(3) (the STIP shall “Contain only projects consistent with the statewide plan”). The FHWA and the Federal Transit Administration jointly approve the transportation improvement program, 23 U.S.C. § 135(g)(6), but can only do so based on a finding “that the transportation planning process through which statewide transportation plans and programs are developed is consistent with” the requirements specified in the statute. 23 U.S.C. § 135(g)(7); *see also* 23 C.F.R. § 450.220. Thus, the FHWA can only approve a STIP if every project in the STIP is consistent with the statewide transportation plan. Alaska has not yet completed a sufficient statewide transportation plan. To the extent that such a plan exists, however, Alternative 2B is not consistent with the plan.

### A. *Vision: 2020* and the Area Plans Do Not Fulfill the Statutory Requirements for a Statewide Long-Range Transportation Plan

Statewide transportation plans must cover the entire state, and must take into consideration several factors, including safety, efficiency, and preserving existing transportation systems. 23 U.S.C. §§ 135(d) & (f); 23 C.F.R. § 450.214. It is clear from the nature of the factors that must be considered in the planning process and the history of the Federal Highway Act that the statewide plans are intended to put transportation planning in a statewide context and to encourage public participation in planning. *See, e.g.*, H.R. Rep. No. 102-171(I) (1991), at 1532-33 (emphasizing the need for long-range, coordinated planning). The state was required to “identify the official statewide transportation plan” by January 1, 1995. 23 C.F.R. § 450.224.

Currently, Alaska’s statewide long-term planning consists of *Vision: 2020*, which is a statewide policy document, and five area plans. “Using the goals and policies” identified in *Vision: 2020*, the area plans “help determine where best to invest resources with the goal of efficiently and effectively meeting the future transportation needs of a specific region.” *Vision: 2020* § 2, at 138. *Vision: 2020* considers the factors required under 23 U.S.C. §§ 135(d) and (f), and discusses, from a broad perspective, the existing transportation systems in the state. It divides the state into three regions for purposes of this discussion: 1) Southeast, 2) Southcentral-Interior, 3) Southwest, Yukon–Kuskokwim Delta, and Northwest Arctic Alaska. *See Vision: 2020* § 2, at 35.

The area plans, however, do not correspond to these three areas of the state. Instead, the state is divided into six areas for purposes of area planning: 1) the Northwest, 2) the Southeast, 3) Prince William Sound, 4) Yukon-Kuskokwim, 5) the Southwest, and 6) the Interior. *See id.* § 2, at 138. ADOT has not yet completed an area plan for the Interior, a vast portion of the state, which includes a large part of the state's road system. According to *Vision: 2020*, the state intended to begin an area plan for the Interior after completing the Southwest and Yukon-Kuskokwim area plans. *Id.* § 2, at 140. Those plans were completed in 2004 and 2002 respectively, yet there is no indication that the Interior area plan is forthcoming. *See Southwest Area Plan* and *Yukon-Kuskokwim Area Plan*, available at <http://www.dot.state.ak.us/stwdplng/areaplans/index.shtml>.

Without an area plan for the Interior, the statewide plan is incomplete and cannot serve the purpose of planning for transportation needs on a statewide basis. Part of the purpose for requiring statewide transportation planning is to assist the state decisionmakers and the public in comparing transportation needs among different regions of the state. This type of comparison becomes even more difficult in Alaska because *Vision: 2020*, which discusses existing transportation systems and needs, does not frame its discussion of state transportation in terms of the same areas as the area plans do. The area plans, in some respects, contradict the policy-based goals of *Vision: 2020*. For example, *Vision: 2020* lists preserving natural beauty and enhancing Alaska's unique character with environmentally and economically responsible transportation planning as goals. *Vision: 2020* § 1, at 19. By contrast, the Southeast Area Transportation Plan states that its goal is simply to transition from a ferry-based transportation system to a road-based transportation system. *See Southeast Alaska Transportation Plan* at 33. Starting with a mission statement that mandates road building, the Southeast Alaska Transportation Plan can hardly meet the goals of *Vision: 2020*.

Furthermore, because the statewide plan is broken into several components, there is no opportunity for the public to comment on the long-term plans as a whole. This clearly frustrates the purposes of statewide planning and public participation. *See* 23 U.S.C. § 135(f) (requiring a long-range plan for all areas of the state and consultation with relevant planning bodies for consistent planning); H.R. Conf. Rep. 102-404 at 1702 (1991) (discussing planning and coordination requirements); S. Rep. 102-71 at 34-3 (1991) (advocating comprehensive planning). The state's piecemeal, and incomplete, approach to statewide planning is inadequate.

Because the statewide planning does not meet the requirements of federal law, the STIP, which includes the Juneau Access Improvements project, is inadequate. The projects in the STIP cannot be consistent with a statewide long-term plan that does not exist. FHWA therefore cannot properly approve the STIP or the projects, such as the Juneau Access Improvements project, in it.

**B. Alternative 2B is not consistent with *Vision: 2020***

To the extent that *Vision: 2020* and the area plans do qualify as a statewide long-range plan, each project in the STIP must be consistent with them. Since both the area plans

and *Vision: 2020* are part of the statewide plan, the Juneau Access Improvements project must be consistent with both the Southeast area plan and *Vision: 2020*. See 23 U.S.C. § 135(g)(D). *Vision: 2020* is the only document that purports to address transportation planning across the state. *Vision: 2020* identifies its “primary purpose” as:

...to set the direction for Alaska’s 21st century transportation system in line with our department’s commitment...as embodied in our mission statement:

*The mission of the department is to improve the quality of life for Alaskans by cost-effectively providing, operating and maintaining safe, environmentally sound and reliable transportation systems and public facilities. Special emphasis will be given to utilizing meaningful public involvement and creating working partnership[s] with other entities.*

*Vision: 2020* §1, 1. The document then lists some policies and goals intended to implement that mission. Alternative 2B and the process used by ADOT in an effort to construct it are contrary to every element of the stated mission and most of the policies and goals.

The very first stated policy in *Vision: 2020* is to “[d]evelop multi-modal facilities and connections to ensure that Alaska’s transportation system is safe, integrated, coordinated, cost-effective, and energy-efficient to effectively move people and freight.” *Vision: 2020*, § 1 at 15. One aspect of meeting this goal is to facilitate travel for “people with disabilities, the elderly, youth and other people who do not drive cars.” *Id.* This policy is reiterated elsewhere in *Vision: 2020*, where the document discusses the importance of ensuring transportation benefits for all citizens and encouraging public transit programs and transit programs designed specifically for the elderly and disabled. See *id.*, § 1 at 20, and § 2, at 148-51. Instead of facilitating transportation for people who do not drive, Alternative 2B removes a viable option for those traveling without cars. In direct conflict with this policy, and with the repeated assertions in *Vision: 2020* that the mission of ADOT is to move people *and* goods, ADOT dismisses these concerns by stating that “the primary responsibility of the state is to provide a transportation facility and not the transportation itself.” FEIS at 1-10. *Contra*, 23 U.S.C. § 135(d)(1)(F) (state transportation should “enhance the integration and connectivity of the transportation system, across and between modes throughout the state, for people and freight”). ADOT’s statements are plainly untrue and in direct conflict with *Vision: 2020*’s goals.

Further, Alternative 2B clearly is not cost-effective. The FEIS estimates that it will require \$273 million for initial construction of an alternative that will cost \$27 million more to maintain and operate than the existing ferry system. See FEIS at S-19 (showing the difference in costs for each of the alternatives). Thus, by choosing Alternative 2B, ADOT has chosen to spend \$273 million in the short term in order to spend an additional \$27 million over 35 years. In no way is this choice cost-effective. Moreover, unwisely using these funds to build and maintain Alternative 2B frustrates the goal of encouraging decision making on the basis of statewide needs. See *Vision: 2020*, § 1 at 21, § 2 at 171-

72. This money could be used to address statewide needs. *Cf. id.*, § 2 at 101, 113-17. It also clearly contravenes the goal of preserving existing transportation systems. *See id.*, § 2 at 188; *see also* 23 U.S.C. § 135(c)(1)(G) (“emphasize the preservation of existing transportation system”); 23 C.F.R. § 450.208(a)(10) (the state should analyze “Transportation system management and investment strategies designed to make the most efficient use of existing transportation facilities”).

*Vision: 2020* encourages the use of transportation management strategies to improve transportation rather than creating “induced demand” by building roads. *Vision: 2020*, § 2 at 164, 180-81, 185 (encouraging a reduction in motor vehicle travel). The need for increased capacity plays a major role in ADOT’s choice of its Preferred Alternative, yet the statewide policy explicitly notes that providing additional capacity is not necessarily a goal. People are likely to take trips they otherwise would not have taken, increasing the use of fuel and other negative impacts, when unnecessary roads are built. *Id.*, § 2 at 164. Building a road in Lynn Canal is exactly the type of project *Vision: 2020* suggests should not be built. FEIS 4-38 (“At least four times as much traffic would travel under Alternatives 2B than on the AMHS system under the No Action Alternative in 2008.”).

*Vision: 2020* provides that new road access should only be built “when public need is shown and when economically, socially, and environmentally justified, taking into account diverse public values.” *Vision: 2020*, § 1 at 16. The surveys conducted by ADOT confirmed only that residents of Haines, Skagway, and Juneau felt that improved access was important. FEIS at 1-10. Residents of all three communities were split over whether a road or improved ferry service would best meet that goal, but a majority of those surveyed supported improved ferry service. FEIS at 4-30, 4-37. Moreover, Haines and Skagway have passed specific resolutions supporting improved ferry service. *See Ex. 11 (Resolutions)*. By contrast, ADOT received only 26 comments in support of Alternative 2B during the SDEIS process. *See FEIS at Y-8*. Five other alternatives received more public support. Clearly, ADOT’s selection of an alternative directly supported by only 26 people does not satisfy the “public need” objective.

A goal of overarching importance in *Vision: 2020* is to provide safe and secure transportation for the “movement of people and commerce.” *Vision: 2020*, § 1 at 23, § 2 at 140-41. ADOT asserts that Alternative 2B is not dangerous. *See FEIS at Y-161*. The FEIS proves otherwise. ADOT does not predict how many accidents and injuries are likely to occur on the proposed highway, but projects that there will be six traffic fatalities over the next thirty years. FEIS at 4-43. ADOT has not predicted how many accidents or injuries are likely to result from avalanches, landslides, or rockslides. The road is located in steep, dangerous terrain, in an area known for its bad weather. By contrast, the FEIS concedes that there have been no fatalities on the ferry system since 1975, and no reported injuries. FEIS at 4-43. Alternative 2B does not meet *Vision: 2020*’s goal of providing safe transportation.

*Vision: 2020* also sets forth aesthetic goals: “Strive to preserve the natural beauty of the state, limit the negative impacts and enhance the positive attributes—environmental, social, economic and human health—of transportation projects.” *Vision: 2020*, § 1 at 19-

20. Projects should minimize pollution, enhance the environment, preserve water quality and fish habitat, and take into account subjective factors such as scenic views. *Id.*, § 1 at 20, § 2, at 156, 159-60. Alternative 2B directly contravenes these goals. “Landscapes within Lynn Canal are predominantly natural and undisturbed, and contain a wide range of visual resources.” FEIS at 3-12. The views in the area are “spectacular,” “unforgettable and unparalleled within the region,” and “extraordinary.” *Id.* It is for these views that thousands of tourists travel to the area. *See Vision: 2020*, § 2 at 136 (noting the growth in cruise ship traffic because of “the pristine and expansive Tongass and...the glaciers and mountains of the Inside Passage”). Certainly, these views should be preserved. Moreover, the environmental impacts of Alternative 2B would be far-reaching. It would result in the direct loss of 70 acres of wetlands, 36.4 acres of marine and freshwater habitat, 428 acres of terrestrial habitat (including 286 acres of old-growth forest), cross critical habitat for Steller sea lions, come within 0.5 miles of 92 bald eagle nests, and destroy essential fish habitat. FEIS at S-7 to S-9. Alternative 2B does not meet *Vision: 2020*’s goals of environmental preservation and enhancing positive attributes and natural beauty.

Finally, *Vision: 2020* promotes the development of the statewide transportation system “in a way that preserves and enhances Alaska’s unique character and takes advantage of Alaska’s unique global position,” preferring projects that “highlight and reflect the geographic and social uniqueness of Alaska.” *Vision: 2020*, § 1 at 17. One of those unique characteristics is the state’s transportation system, including the variety of transportation modalities such as ferries and aircraft. *Id.*, § 2 at 71 (stating that the “Alaskan experience” is, in part, defined by its transportation system). The Lynn Canal ferries are a part of that uniquely Alaskan character, and should be preserved to meet the goals of the statewide plan. This unique way to travel, combined with the uniquely Alaskan views of glaciers and pristine mountainsides in the Lynn Canal, is exactly what *Vision: 2020* emphasizes. *See Vision: 2020*, § 2 at 136.

Alternative 2B is inconsistent with virtually every goal stated in *Vision: 2020*. It does not promote efficiency or cost-effectiveness, fails to preserve existing systems, frustrates statewide planning, has substantial negative environmental impacts, and undermines the uniquely Alaskan character of Lynn Canal and the AMHS. Because it contradicts, rather than promotes, the policies of *Vision: 2020*, Alternative 2B cannot be included in the STIP or approved by FHWA.

## **VI. THE SECTION 4(f) ANALYSIS OF THE BERNERS BAY CABIN IS ARBITRARY**

In comments submitted by SEACC and ATPP on the SDEIS, the intent and specific requirements of Section 4(f), 49 U.S.C. § 303, were explained. *See* SEACC SDEIS Comments at 8-12. In addition, specific concerns about the treatment of the Berners Bay cabin were detailed. *Id.* at 13-14. These concerns have not been addressed appropriately in the FEIS.

The FEIS makes clear that “FHWA has determined that the cabin and use area around the cabin is a significant recreation facility....” FEIS at 7-27.<sup>9</sup> It then makes the incredible assertion that “the alternatives that would pass behind this area would not use land from this facility.” *Id.* It is not at all clear how the highway could pass behind the recreation area without using land important to the uses of that facility.

The FEIS states that ADOT “mapped the discernible use areas (e.g. trails, outbuildings, cleared areas) at the cabin and would avoid any disturbance within 100 feet of these areas.” *Id.* at 6-3. Apparently, therefore, ADOT has determined that the only areas significant to recreation are the cabin itself, trails, outbuildings, and cleared areas. That is patently untrue. The entire area surrounding the cabin is significant to the recreation experience there.

Even more incredible, however, is ADOT’s conclusion that the proposed highway would not constitute a constructive use of the protected land. *See id.* The highway would pass within 200 feet of areas that ADOT has identified as discernable use areas, and construction would occur up to 100 feet boundary around those areas. *See id.* Thus, traffic noise and exhaust will affect use of those areas. Moreover, the aesthetic value of that area will be dramatically diminished by the highway. What is currently a serene location with a beautiful view of mountains and water will be turned into a noisy, smelly place with a view of a highway. These changes clearly would amount to a substantial impairment of the “activities, features, [and] attributes that qualify” the Berners Bay cabin for protection. *See* 23 C.F.R. § 771.135(p)(2).

Finally, construction of a highway to within 100 feet of the area that ADOT recognizes warrants protection clearly constitutes a temporary use of this area. It is not clear that the cabin can remain open while construction is underway. Indeed, the FEIS suggests that disturbed areas will be used as staging areas for construction. *See* FEIS at 5-2 (“To the extent practicable, beach access points would be chosen to take advantage of existing landings, previously disturbed sites, or locations of planned fill.”). The area around Berners Bay cabin qualifies as one such area. Construction would not satisfy the criteria outlined in 23 C.F.R. § 771.135(p)(7) to determine when occupancy is so minimal that it does not constitute a use. Indeed, construction will be noisy and disruptive. There also will very clearly be interference with the activities and purposes of the resource if the cabin is closed during construction.

For these reasons, ADOT cannot move forward with Alternative 2B unless “there is no prudent and feasible alternative to using that land” and “the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.” 49 U.S.C. § 303(c). ADOT clearly cannot meet these criteria. Reasonable and prudent alternatives, such as better ferry management, exist.

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<sup>9</sup> This statement appears contradictory to earlier statements that the Forest Service determined that “the recreation facility is the cabin itself, not the land it occupies.” FEIS at 6-3.

## **VII. ADOT VIOLATED THE NATIONAL HISTORIC PRESERVATION ACT BY REPEATEDLY REFUSING TO CONSULT APPROPRIATELY WITH THE AUK KWAAN**

ADOT's response to our SDEIS comments on its failure to consult adequately with the Auk Kwaan, the original settlers of the Juneau area, is another example of the agency's refusal to "stop, look, and listen" before plowing ahead undeterred with its pre-determined objective to build a road. As the record shows, Rosa Miller, tribal leader of the Auk Kwaan, has time and time again expressed concerns over effects of the proposed highway on cultural resources and ancestral burial sites in Berners Bay important to the Auk Kwaan and indicated that she is the correct contact for the Auk Kwaan.<sup>10</sup> Despite her repeated and diligent efforts, ADOT refused to consult with her prior to, or after, issuance of the SDEIS for the Juneau Access Improvements project. *See* Ex. 20 (ADOT Email of March 10, 2006) ("No we have not [specifically consulted with Rosa Miller since the release of the SDEIS.]").

ADOT's failure to formally consult with Tribal Leader Miller, raises serious questions about the adequacy of the effects analysis conducted by ADOT and any measures developed to mitigate those effects. Moreover, the failure to consult with Tribal Leader Miller regarding the development of the inventory design raises serious questions about the adequacy of the field and aerial surveys conducted for this project. A complete and accurate description of the cultural and historical resources potentially affected by this highway project is an indispensable prerequisite for such the informed analysis required by NEPA and the National Historic Preservation Act.

Likewise, ADOT promises to mitigate potential impacts to cultural and historical resources by flagging "known" historical resources before construction activities begin or to develop a plan, after consultation with the State Historic Preservation Officer, to protect any previously unknown cultural resources discovered during construction. *See* FEIS at 5-7 to 5-8. Based upon recent experience during construction of another state-funded project, the Cascade Point Access Road, we are not reassured by ADOT's promises. *See* Ex. 21 at 7 (CPAR Monitoring Report).

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<sup>10</sup> *See* Letter from Miller to Yost, ADOT (Mar. 17, 2005); Scoping comments from SEACC, Friends of Berners Bay, and the Auk Kwaan (April 18, 2003), specifically requesting that ADOT consult with Rosa Miller, Auk Kwaan Tribal Leader, regarding impacts to cultural and historical properties; Letter from Miller to ADOT and FHWA (Dec. 9, 1997), commenting on the 1997 Juneau Access Improvements DEIS.

## VIII. THE ARMY CORPS OF ENGINEERS MAY NOT RELY ON THE FEIS TO GRANT A SECTION 404 PERMIT

According to the draft permit application, the Preferred Alternative would impact 70 acres of wetlands and 32 acres of tidelands. *See* FEIS at X-6. It also would result in the loss of 428 acres of terrestrial habitat and impact 36.4 acres of essential fish habitat. *Id.* at X-135. By contrast, the No Action Alternative, and Alternatives 4A and 4C (the two ferry alternatives that retain ferry service from Auke Bay, rather than building a new terminal in Berners Bay) involve no impacts to wetlands or tidelands and no loss of habitat. *Id.* at X-135. When an action, such as the Juneau Access Improvements project, is subject to NEPA, the Corps of Engineers has an independent responsibility to review, and if necessary supplement, the environmental documentation provided by an applicant. *See Tillamook County v. United States Army Corps of Engineers*, 288 F.3d 1140, 1142 (9th Cir. 2002); *Friends of the Earth v. Hintz*, 800 F.2d 822, 835 (9th Cir. 1986); 40 C.F.R. § 230.10(a)(4) (“For actions subject to NEPA...it may be necessary to supplement” the EIS when the information it contains is not sufficient to determine compliance with the Corps guidelines). ADOT’s FEIS is not adequate to support the issuance of a Section 404 permit. Consequently, the Corps cannot grant a Section 404 permit without supplementing the FEIS.

The Environmental Protection Agency assigned a rating of “EO-2” (Environmental Objections—Insufficient Information) to the SDEIS. FEIS at 7-46. EPA also suggested a number of modifications to Alternative 2B to mitigate the impacts of the Katzehin River ferry alternative, but ADOT refused to adopt these mitigation steps. *Id.* at 7-55, X-105 to X-106. Although ADOT has added some information to the FEIS in response to agency comments, ADOT did not provide sufficient information to allow the Corps of Engineers to grant a Section 404 permit. The Corps expressed concern regarding the specificity of ADOT’s information about wetlands functions, as well as ADOT’s mitigation plan. *Id.* at 7-86. ADOT failed to address these concerns adequately.

Moreover, the Corps must determine that granting the permit is in the public interest. *Friends of the Earth v. Hintz*, 800 F.822 (9th Cir. 1986). The FEIS does not provide a sufficient basis for making this determination. Based on the information that is included in the FEIS, the Corps cannot grant ADOT a permit for Alternative 2B. *See* 33 C.F.R. § 320.4 (discussing the Corps’s public interest review).

Under the Corps’ guidelines, no discharge can be permitted if there is a “practicable alternative to the proposed discharge which would have less adverse impact on the aquatic environment.” 40 C.F.R. § 230.10(a); *see also Friends of the Earth v. Hintz*, 800 F.822 (9th Cir. 1986). Practicable alternatives include those that “do not involve a discharge of dredged or fill material into the waters of the United States or ocean waters.” 40 C.F.R. § 230.10(a). An alternative is practicable if “it is available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.” 40 C.F.R. § 230.10(a); *see also Sylvester v. United States Army Corps of Engineers*, 882 F.2d 407, 409-10 (9th Cir. 1989). The Corps cannot permit the discharge of

any dredged or fill material “unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem.” *Id.* § 230.10(d).

ADOT acknowledges that Alternative 2B impacts the largest acreage of wetlands of any of the alternatives considered. FEIS at X-104. The 32 acres of intertidal fills will smother any animals living there and alter the ecosystem, making it less valuable as foraging grounds for fish. *Id.* at X-106. All of the intertidal area impacted is considered essential fish habitat. Changing the alignment to impact fewer wetlands may put the road closer to bald eagles nests and avalanche chutes. *See id.* at X-82 (listing constraints for alignment of certain highway segments). “The No Action Alternative is the least environmentally damaging of all the alternatives . . .” *Id.* at X-100. According to the FEIS, Alternatives 4A and 4C would be slightly more damaging than No Action but less damaging than any other alternative. *Id.* at X-101. Alternative 2B “would have greater environmental impacts than the No Action and marine alternatives.” *Id.* at X-107.

ADOT insists that none of the less environmentally damaging marine alternatives sufficiently meet the purpose and need of the project, *id.* at X-140, although it acknowledges that “[a]ll reasonable alternatives are economically and technically feasible and meet the common sense test.” *Id.* at X-94. Moreover, the marine alternatives (those discussed by ADOT as well as the Better Ferry Service Alternative discussed in these comments) provide an adequate increase in capacity to meet the existing and projected demand in Lynn Canal and to better serve the needs of users. Additional ferry trips provide greater flexibility than the No Action Alternative and a predictable schedule for travelers.

Further, according to the FEIS, Alternative 2B would cut only 0.8 hours off of travel time to Skagway on a fast ferry, and only one hour off of travel time to Haines on a fast ferry. *Id.* at S-19. Alternative 4A provides more fast ferry trips, so that more travelers can take advantage of shorter travel time. The Better Ferry Service Alternative proposed in these comments would also provide more fast ferry trips, reducing travel time for many users. Marine alternatives, therefore, can reduce travel time for many users.

As explained above, Alternative 2B also results in an increase in state costs, in contravention of the asserted purpose of reducing state costs, and would not reduce user costs for all users.

In sum, Alternative 2B does not meet the stated purpose and need substantially better than the ferry alternatives. Marine alternatives meet these objectives as well as, or better than, the Preferred Alternative and result in fewer impacts to wetlands and intertidal areas. Because of the existence of these practicable alternatives with less impact on the aquatic environment, the Corps cannot lawfully grant ADOT a Section 404 permit for Alternative 2B.

## **IX. THE PROPOSED ALTERNATIVE IS INCONSISTENT WITH THE TONGASS LAND MANAGEMENT PLAN AND FAILS TO DISCLOSE ADEQUATELY IMPACTS TO OLD-GROWTH RESERVES**

In our comments on the SDEIS, we showed that ADOT failed to demonstrate that the road construction alternatives were consistent with the Old-Growth Habitat and Legislated LUD II Land Use Designations in the 1997 Tongass Forest Plan. ADOT failed to respond adequately to these comments, demonstrate that the proposed highway construction will be consistent with the agency's obligations under the forest plan, or fulfill its obligation to evaluate fully all the effects as required by NEPA.

For example, in responding to comments, ADOT claims that "impacts that the Juneau Access Improvements Project alternatives would have on USFS old-growth reserves are not cumulative because the USFS has already addressed the impacts of the Kensington Gold Project through boundary changes." FEIS, Appendix Y at Y-76. This response demonstrates ADOT's misunderstanding of NEPA's most basic analytical requirements and is factually incorrect. NEPA defines cumulative impacts as impacts to the environment resulting from "the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions...." 40 C.F.R. § 1508.7. So, the question of whether impacts from the fragmentation of the designated old-growth reserves under alternatives 2, 2A, and 2B are cumulative is distinct from whether or not those effects were evaluated in the Kensington FEIS.

The assertion that "the USFS has already addressed the impacts of the Kensington [to the old-growth reserves] through boundary changes," is plainly erroneous. Even if ADOT had indicated that it had tiered to the analysis in the Kensington FEIS, the analysis in that document completely failed to evaluate the cumulative effects of the Juneau Access Improvements road alternatives on the designated reserves or the old-growth reserve system in the project area. *See Kensington Gold Project, Record of Decision, Appendix 1; see also Kensington Gold Project, Final Environmental Impact Statement at 4-145 to 4-146.*

Even ADOT's evaluation of direct impacts to the old-growth reserves in the FEIS from fragmentation resulting from a road violates NEPA and NFMA. The FEIS only informs the public and decision maker about the amount of ground disturbance directly caused by the road. *See FEIS at 4-57 to 4-58.* This analysis is incomplete and misleading because neither the FEIS, nor the Kensington FEIS, analyze the impacts from creating two new habitat edges in the reserve and the resulting loss of interior forest habitat. Without this analysis, ADOT cannot demonstrate that the location, design, and construction of the road are compatible with the Old-Growth Habitat LUD objectives as required by the Tongass Forest Plan and NFMA. *See Tongass Forest Plan at 3-81 (Transportation prescription for Old-Growth Habitat LUD).*

Finally, the FEIS violates NEPA and NFMA by failing to disclose any revisions to the boundaries of the old-growth reserves proposed by the Forest Service, Alaska Department of Fish and Game and U.S. Fish and Wildlife Service to address the impacts of the preferred alternative. Postponing an evaluation of the effects of revising the boundaries

of the old-growth reserves fails to provide the public with a basis for fully evaluating the impacts of the road corridor on wildlife and, accordingly, violates NEPA. Further, ADOT's delay in disclosing and evaluating these boundary changes conflicts with the Tongass Forest Plan's direction. The forest plan requires such analysis to occur *during* the planning of activities, not after those activities are approved. *See* Tongass Forest Plan at 4-112 (Wildlife Standards and Guidelines).

## X. CONCLUSION

Ultimately, the FEIS represents an arbitrary and capricious attempt to justify a road project that makes little economic sense, is not supported by the public, and would violate the law in several respects. ADOT has violated NEPA by refusing to evaluate a reasonable range of alternatives, presenting a misleading and arbitrary projection of traffic demand, and failing to analyze mitigation measures. In addition, it has failed to show that funding will be available for this project; acted arbitrarily in violation of the Bald Eagle Protection Act, ESA, NHPA, and NFMA; and failed to fulfill its transportation planning and Section 4(f) obligations.

For the reasons above and those set forth in SEACC's earlier comments, ADOT may not legally choose or construct the Preferred Alternative.

Best regards,



Buck Lindekugel,  
Conservation Director  
Southeast Alaska Conservation Council



Emily Ferry,  
Coordinator  
Alaska Transportation  
Priorities Project



for

Rosa Miller,  
Tribal Leader  
Auk Kwaan

## Table of Exhibits

Exhibit No.	Description
1	Treaty on Reconstruction of Alaska Highway Agreement, January 11 and February 11, 1977, U.S.-Can., 28 U.S.T. 5303 (“1977 Treaty”)
2	Letter from Mike Barton, DOT to Gene Therriault, Senate President and Pete Kott, Speaker of the House & Investment Plan for SHAKWAK Federal Receipts (February 22, 2004) (“Letter to Therriault and Kott”)
3	ADOT’s National Highway System (NHS) Route List (“ADOT list of NHS routes”)
4	Washington Post Article: <i>Industry Group Says Highway Funds Scarce</i> (Nov. 25, 2005)
5	Juneau Empire Article: <i>Lawmakers on Fence over Road Funds</i> (Feb. 10, 2006)
6	Letter from Mayors Tim Anderson, Mat-Su Borough; Mark Begich, Municipality of Anchorage; and John Williams, Kenai Peninsula Borough, to Mike Barton, DOT (December 30, 2005) (“Letter from Mayors”)
7	FY04-FY06 Amendment 8 Comparison with FY06-FY08 STIP (prepared March 13, 2006) (“STIP Comparison”)
8	Kathleen Adams, et al., Herrera Environmental Consultants: <i>Review of highway construction, mitigation, and O&amp;M costs for Alternative 2B of the Juneau Access Improvements: Final Environmental Impact Statement</i> (March 6, 2006) (“Herrera Report”)
9	Juneau Empire Article: <i>Weyhrauch marks \$10 million for Glacier Highway Extension</i> (April 27, 2005)
10	Juneau Empire Article: <i>Young: State could Build Road to Kensington Mine</i> (April 9, 2004)
11	Haines & Skagway Resolutions & Letters (various dates) (“Resolutions”)
12	Juneau Empire Article: <i>State Considers New Ketchikan-Prince Rupert Shuttle Ferry</i> (Sept. 18, 2005)

- 13 Lynn Canal Ferry Summer Capacities and Proposed Schedule (“Capacity Calculation and Proposed Schedule”)
- 14 Letter from R.J. Doll, Better Ferries for Alaska, to Reuben Yost, DOT/PF (March 10, 2006) (“Doll Letter”)
- 15 Cost Estimation Memorandum (prepared March 12, 2006) (“Cost Memorandum”)
- 16 Juneau Empire Article: *State Slashes Fast Ferry Winter Runs* (Feb. 24, 2006)
- 17 News Coverage of Community Leaders’ Discontent with Ferry Management (various dates) (“News Coverage of Discontent”)
- 18 Norman Marshall, *Smart Mobility: Review of Juneau Access Improvements Traffic Forecasts* (March 2006) (“Smart Mobility Report”)
- 19 ADOT Juneau Access Traffic Formula, Data, and Spreadsheets (March 2006) (“ADOT Spreadsheets”)
- 20 Email from Reuben Yost, ADOT to Sue Schrader, SEACC (March 10, 2006) (“ADOT Email of March 10, 2006”).
- 21 USFS, Cascade Point Access Road Construction Monitoring R2005100533004 (Oct. 2005) (“CPAR Monitoring Report”)