

Southeast Alaska Conservation Council

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Re: Scoping comments relating to the supplemental environmental impact statement (SEIS) for Juneau Access Improvements

Dear Mr. Haugh and Mr. Yost:

Thank you for the opportunity to submit scoping comments on the supplement to the supplemental Environmental Impact Statement (SEIS) for the Juneau Access Improvements, a proposal to improve surface transportation to and from Juneau within the Lynn Canal Corridor. We have participated in good faith in this planning process for nearly 20 years. We are counting on both agencies to complete this SEIS process in a fair and unbiased manner and in conformance with federal and state legal requirements. We are hopeful that such a review will lead to a decision that avoids any degradation of the rich array of important fish and wildlife habitats, high value recreation and tourism uses, and 'wildland' character within Berners Bay and upper Lynn Canal in general. The special designation by Congress of the Berners Bay Legislated LUD II area in 1990, underscores the national significance of this area. Please consider the following recommendations as you proceed.

Redefine the Purpose and Need: Our hope that this SEIS process would not turn into another wasted effort to rationalize a decision already made – to build a road out of Juneau – was shaken by this statement in the Notice of Intent (NOI):

The purpose for the project remains the same: to improve surface transportation to and from Juneau within the Lynn Canal corridor to provide travel flexibility, capacity to meet demand, and greater travel opportunity while reducing travel time, state costs, and user costs.

77 Fed. Reg. 1973 (Jan. 12, 2012).

We recommend the agencies redefine the purpose and need for this project to drop components like 'reducing travel time' or 'lowering user costs' to focus on more

realistic criteria like improving regular, predictable, safe access for the public in Lynn Canal. This would be particularly prudent because of the agencies' inability to offer a reasonable explanation for their reliance on inaccurate and misleading frequency delay times in predicting traffic demand.

Finally, we acknowledge that consideration of 'state costs' is relevant when making any informed decision about how to provide regular, predictable, and safe transportation in Lynn Canal. Please explain, however, why a reduction in state costs provides a useful and accurate measure for determining whether the surface transportation system in Lynn Canal is safe, efficient, and reliable.

Drop Impracticable Alternatives from Consideration: Other than offering the court-mandated new alternative, the agencies indicate they intend to update all the action alternatives previously considered in the 2006 FEIS. Please – don't waste our time and taxpayer money on such monotonous repetition. Instead, we recommend the agencies take advantage of the expert analysis and review previously done by the Army Corps of Engineers, Environmental Protection Agency, U.S. Fish and Wildlife Service, and National Marine Fisheries Service.

For example, we hope that by "updating" the Juneau to Katzehin delta road alternative the agencies intend to substitute Alternative 2B, as modified to avoid and mitigate impacts during the post-FEIS 404(b)(1) Guidelines analysis. This Modified Alternative 2B reduced the acres of wetlands filled by nearly 57%, modified the alternative's route, avoided placing fill material in any contiguous wetland when constructing bridges to cross the Antler and Lace Rivers, and bridged additional salmon streams discovered during the 404(b)(1) Guidelines analysis. The SEIS should provide updated effects and cost figures for these changes.

We further recommend that FHWA and DOT&PF drop Alternative 3, Modified Alternative 3,¹ 4A, 4B, 4C, and 4D from further consideration. Upon completion of its 404(b)(1) Guidelines analysis, the Army Corps of Engineers concluded that:

Alternatives 3, Modified Alternative 3, 4A, 4B, 4C, and 4D, were all determined to be not practicable after taking into consideration cost, existing technology, and logistics in light of the overall project purpose. Logistics and technology were the deciding factors in this analysis.

Dept. of Army ROD & Permit Evaluation for the Juneau Access Improvements Project at 22 (June 13, 2008)(hereinafter "§404 ROD & Permit"). Although Alternative 4C would provide conventional monohaul service from Auke Bay instead of Berners Bay, DOT&PF advised the Corps that this alternative was impracticable because it would not increase capacity when compared to the other alternatives including the No Action Alternative. *Id.* at 19. Consequently, unless some new information had arisen since completion of this 404(b)(1) analysis, further analysis of these alternatives seems pointless.

¹ The Corps of Engineers added this alternative during its 401(b)(1) Guidelines analysis to avoid issues over potential impacts to endangered species in Berners Bay raised by the EPA, National Marine Fisheries Service, and U.S. Fish and Wildlife Service. See "§404 ROD & Permit at 10.

The “New” Ferry Alternative: Federal courts directed the FHWA and DOT&PF to consider “an alternative which improved ferry service using existing assets . . . to foster informed decision-making and public participation.” This means the agencies must comprehensively evaluate how all the existing vessels in the Alaska Marine Highway System (and vessels likely to be deployed in the future) used in Southeast Alaska could be configured to provide better service in the Lynn Canal corridor while still providing satisfactory service and interconnectivity to other Southeast Alaska communities.

Consequently, we were disappointed to see DOT&PF’s January 2012 *Project Newsletter* label the new, court-mandated action alternative as a variant of the existing ‘no-action’ alternative. Both the FHWA and DOT&PF are responsible for taking a hard look at the effects of a marine alternative, which provides improved regular, predictable, and safe transportation in Lynn Canal, to foster informed decision-making and public participation. Anything short of this fails to fulfill the most basic purpose of NEPA.

We have several recommendations for the FHWA and DOT&PF regarding the new, marine alternative:

- Re-number the new alternative as Alternative 2, and the road alternative as Alternative 3;
- Make sure that the SEIS reflects a comprehensive and integrated analysis of regular, predictable, and safe transportation in Lynn Canal;
- If the above Lynn Canal marine alternative would significantly diminish service to other Southeast Alaska communities, consider a third action alternative that would build two or more Alaska Class Ferries in order to meet capacity demand in Lynn Canal and provide adequate system-wide service.

We acknowledge that several of the ships in the AMHS fleet are aging and will need to be replaced in coming years. The state has commissioned the construction of at least one Alaska Class Ferry to replace one of its aging vessels, and more ships have been requested. Alaska Ship and Drydock, located in Ketchikan, is in strong contention to win the construction bid of Alaska Class Ferries, which would create approximately 200 year round jobs in Ketchikan. We strongly support Alaska Ship and Drydock and the State in their effort to invest Alaskan money in Alaskan infrastructure and laborers.

‘Safety’ is a significant issue: Both federal and state law recognize safety as a key factor in making surface transportation decisions. *See* 23 U.S.C. § 101(b)(3)(D); 23 U.S.C. § 109(a); AS 19.05.125 (purpose of establishing highway department includes improving the “general welfare of the people of the state”). One of the four goals stated for the 2008 Southeast Alaska Transportation Plan is to “maintain or improve modal safety.”² Alaska new Statewide Long-Range Transportation Policy Plan, *Let’s Get Moving 2030*, identifies ‘safety’ as a primary policy consideration.

²See <http://dot.alaska.gov/sereg/projects/satp/mission.shtml> (last checked Feb. 7, 2012).

Given the significance of the safety issue in surface transportation planning, and the numerous avalanche and slide areas on the east side of Lynn Canal adjacent to the proposed road route, the Juneau to Katzechin delta road alternative presents huge safety problems not at issue with the Lynn Canal marine ferry alternative(s). Previous geotechnical investigations undertaken by Golder Associates (Dec. 2006) for DOT&PF along the 22.2 miles of proposed road south of the Katzechin River to Independence Creek show extensive technical difficulties and hazards associated with road construction and operation, including rockfalls, debris flows, and avalanche-related problems. While there are engineering and design solutions available, such as retaining walls, tunnels, and snow sheds, that may make such a route reasonably safe, the SEIS must disclose and analyze the costs involved. In addition to the engineering and design costs, the agencies need to take a hard look at the costs of maintaining the proposed road throughout the winter.

‘Threatened and Endangered Species’ are significant issues: If FHWA and DOT&PF intend to “update” all the alternatives considered in the 2006 FEIS, then we recommend that FHWA initiate early consultation on a range of alternatives and cumulative actions with the National Marine Fisheries Service. By dropping alternatives with ferry service from Berners Bay, the agencies will avoid possible disruption of the prey base for Steller sea lions and humpback whales and collisions resulting in disturbance, injury or mortality to these marine mammals.

Even if FHWA and DOT&PF drop the alternatives based on ferry service from a dock in Berners Bay to either William Henry Bay or Haines and Skagway as suggested above, *supra* at 2, we still advise the FHWA to initiate early consultation with the National Marine Fisheries Service. The proposed road alternative will cross designated critical habitat for Steller sea lions. Although the previous informal consultation with the National Marine Fisheries Service concluded that the proposed road was not likely to result in adverse modification of critical habitat, new information supports additional consultation. In particular, we understand that the proposed road segment near the Gran Point sea lion haulout does not have a clear design option at this time and the series of mitigation measures agreed to in 2006 are subject to change as the agencies learn whether the identified measures are effective or not. This type of adaptive management reflects significant uncertainty about the effectiveness of the chosen mitigation measures and requires the initiation of formal consultation. We recommend FHWA begin consultation now.

Compensatory Mitigation under § 404(b)(1) Guidelines is a significant issue: In its 2008 decision, the Army Corps directed DOT&PF to pay a total of \$1.22 million dollars as In-Lieu Fee (ILF) for the unavoidable adverse impacts to fresh water aquatic resources, intertidal, and subtidal marine waters. See “§404 ROD & Permit at 65 (condition 4.a-c). The Army Corps did not identify a specific ILF operator to whom payment should be made, or select the specific mitigation project sites where aquatic habitat restoration, enhancement, and/or preservation opportunities exist sufficient to replace the adversely affected resources of Berners Bay, an undisputed Aquatic Resource of National Importance.³

³ See Letter from EPA to U.S. Army Corps of Engineers (June 12, 2006); §404 ROD & Permit at 25-26. The State of Alaska’s response that Congress chose to designate Berners Bay a LUD II area, not a Wilderness area, does not lessen the substantial and unacceptable impacts that highway construction would have on the nationally significant wildland values of this incredibly productive ecosystem.

The Berners, Lace, Antler, and Gilkey Rivers, all of which flow into Berners Bay, were identified by ADF&G as primary salmon producers in the Tongass Fish and Wildlife Resource Assessment (ADF&G 1988). The report also rated the Berners and Gilkey Rivers a high value for sport fish.⁴ In describing the Berners River outstandingly remarkable values which qualified this river for Wild River designation under the Wild and Scenic Rivers Act, the Forest Service noted that "... the broad floodplain of the Berners River is a large dynamic wetland complex."⁵

In the 1990 Tongass Timber Reform Law, Congress chose to require special management for Berners Bay (and 11 other Tongass areas) because of its "critical importance for fish and wildlife habitat and their high value to tourism and recreation." *See* H.R. Conf. Rep. No. 101-931, at 16 (1990). Consequently, the SEIS should look at compensatory mitigation to compensate for losses in addition to aquatic resources. *See* 73 Fed Reg. 19594, 19602 (April 10, 2008)(explaining final rule for compensatory mitigation).

Given the irreversible impact to the undeveloped nature of this entire watershed from building a highway through Berners Bay, we believe the compensatory mitigation approved back in 2008 for this project is inadequate. We request that the SEIS disclose the "approved" ILF program that the agencies intend to utilize to mitigate impacts from this project, evaluate appropriate and practicable mitigation options. Such an evaluation will help determine if higher ILF are necessary to account for the higher risk and uncertainty associated with compensatory mitigation implemented after impacts have occurred, particularly the irreplaceable diminishment of Berners Bay's wildland character. To mitigate potential impacts to Berners Bay from the proposed road, we further recommend that FHWA and DOT&PF be required to show that there are no other feasible land or water routes, that building a road through Berners Bay is clearly environmentally preferable, and the site-specific mitigation measure designed to avoid and minimize impacts to aquatic resources will be sufficient to compensate for lost resources.

Compliance with Tongass Forest Plan is a significant issue: The 2008 Tongass Forest Plan allows road construction on lands designated Old-Growth Habitat only if "no feasible alternative is available." Tongass Forest Plan at 3-52 (LAND2.B), 3-61 (TRAN.A.1) (Jan. 2008). Thus, the National Forest Management Act requires the Forest Service to determine that no feasible alternative exists before it can grant a right-of-entry for road construction through designated Old-Growth Habitat in Berners Bay.

The proposed highway route crosses three-designate Old-Growth Habitat reserves. We recommend that the comparative analysis of transportation alternatives conducted for the draft SEIS provide sufficient analysis to determine whether or not there are other feasible land or water routes available.

⁴ *See* Tongass Land Management Plan Revision, Final Supplemental Impact Statement, Roadless Area Evaluation and Wilderness Recommendations, Volume II, Appendix C-Part 1 at C1-475 (Feb. 2003).

⁵ *See* Tongass Land Management Plan Revision, Final Environmental Impact Statement, Appendix E at E-19 (Jan. 1997).

The 'Taking' or 'Disturbance' of Bald Eagles is a significant issue: Approximately 92 bald eagle nests are located within 0.5 miles of the proposed road alignment. Of those, approximately 49 are within 330 feet of the highway. Noise can alarm or otherwise upset bald eagles including disrupting the eagles' nesting behavior. Persistent noise can cause eagles to abandon their nests. Construction, operation and maintenance of the completed road will result in a persistent source of noise. That noise will disturb bald eagles.

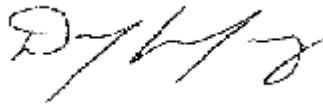
Disturbance from noise may cause bald eagles to change nesting sites or abandon nesting sites altogether. The SEIS must disclose these effects and evaluate mechanisms to remedy the potential effects. In addition, survey updates of nest locations should be conducted for the draft SEIS because the location and number of nests may have changed since 2005-2006. Finally, FHWA and DOT&PF should disclose and evaluate appropriate compensatory mitigation for disturbances that cannot be avoided or mitigated, including abandoned nesting sites.

Thank you for consideration of these comments.

Best Regards,



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Grassroots Attorney



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