


MEMORANDUM



CITY/BOROUGH OF JUNEAU

Office of the Mayor
155 S. Seward St. Juneau, AK 99801

DATE: July 23, 2010
TO: Assembly 
FROM: Bruce Botelho, Mayor

I write to express my reservations about proceeding with a ballot proposition on the October 2010 ballot to extend the one percent temporary sales tax in order to permit, design and construct a North Douglas crossing. I have been an ardent supporter of a crossing, but am convinced that this particular strategy is flawed. Nevertheless, I congratulate SAFE¹ members for creating momentum for construction of a North Douglas crossing.²

Historical Context

As many have noted, a crossing has been part of Juneau's long range planning since it was first included in the 1984 Comprehensive Plan and it has been a top priority of successive assemblies for more than a decade, gaining particular prominence with completion of a conceptual plan for West Douglas development in May 1997.

A preliminary scoping report undertaken by the Alaska Department of Transportation and Public Facilities, the City and Borough of Juneau and the Federal Highway Administration was completed in November 2004. This was followed by the issuance of *The Juneau Second Channel Crossing Project Development Summary Report*, in May 2005. It reached the following preliminary conclusions:

- A crossing in the vicinity of the Vanderbilt Hill Road Area to Yandukin Drive Area provides the greatest potential for meeting the comprehensive Purpose and Need objectives of the project.
- The least costly crossing potentials (with embankment) are in the Vanderbilt Hill Road Area to Sunny Drive Area.
- For an "all-structure" crossing (bridge) of the Gastineau Channel, the Channel Drive/Salmon Creek Area Crossing represents the least costly option.

¹ "Safe, Affordable, Future, Efficient".

² I also want to acknowledge the invaluable work that the West Douglas Development Working Group has provided since its inception to advance both the crossing and the North Douglas road extension. For the sake of brevity, I have not recounted their relentless behind-the-scenes efforts to shepherd this project at local, state and federal levels.

- The Channel Drive/Salmon Creek Area and Mendenhall Peninsula Area provide the only opportunities to avoid directly impacting the Mendenhall Wetlands State Game Refuge (MWSGR).
- Crossings in the Vanderbilt Hill Road Area to Yandukin Drive Area best avoid the highest value environmental areas with the MWSGR.

On October 10, 2005, the assembly adopted a resolution (2330(b)) that expressed the Assembly's support for completion of the Juneau Second Crossing EIS and narrowing the scope to focus on three proposed crossing concepts: Vanderbilt Hill Road Area Crossing, Sunny Drive Area Crossing, and Yandukin Drive Area Crossing.

Since the publication of the summary report, the state has been largely unwilling to support further work on an Environmental Impact Statement, citing variously the expense, the low probability of obtaining necessary permits, and the character of the crossing as a purely local—as opposed to regional—transportation corridor. However, after adoption of Resolution 2330(b), we were led to understand by state transportation officials that we could substantially foreshorten the permitting process by identifying a “community preferred alternative.”

Accordingly, in February 2006, we authorized a study to identify that alternative. It was presented in final to the assembly in April 2007. *See: Final Report – North Douglas Crossing Public Involvement Project – April 2007.* That report recommended the Vanderbilt Hill Road Corridor as the preferred alternative.³ The assembly adopted this alternative on June 25, 2007.

The assembly repeatedly requested additional legislative funding for completion of an EIS. The legislature included \$2.6 million in the FY 09 budget, but it was vetoed by Governor Palin in June 2008.

Beginning in late 2008, the assembly sought guidance from a legal consultant about how best to overcome regulatory hurdles.⁴ An initial memorandum issued on June 7, 2009 was followed by a more definitive memorandum on February 5, 2010. The salient points of the memorandum are:

State law issues

The MWSGR has two conflicting processes. The first, AS 16.20.034(i), permits establishment of a transportation corridor only if it can demonstrate, among other elements, that there is a significant public need for the corridor which cannot reasonably be met off-refuge. The second, AS 16.20.034(j), would authorize CBJ use of the corridor if both the Department of Natural Resources (DNR) and the Department

³ On June 11, 2007, the assembly sitting as a committee of the whole, reviewed the report extensively for the second time. The report acknowledged that the Sunny Point intersection was the least-cost alternative with respect to Egan Drive modifications. Ultimately, however, the COW recommended acceptance of the report's recommendations, likely because, as one assembly member put it “The Vanderbilt Alternative was the most likely to be permitted, and there would be a storm of opposition to any alternative, and Vanderbilt had the best chance for success.”

⁴ Attorney Richard Glick in the Portland, Oregon office of Davis, Wright, Tremaine.

of Fish and Game (ADFG) find that “there is a superior public need for or use of the land to its use as a state game refuge”.

The Alaska Department of Law has supported ADFG’s view that AS 16.20.034(i) governs.

Federal law issues

The Department of Transportation Act (DOT Act) of 1966 includes a special provision – Section 4(f) – which directs that the Federal Highway Administration (FHWA) and other DOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless there is no feasible and prudent alternative to the use of land and the action includes all possible planning to minimize harm to the property resulting from use.⁵

Under modifications to the DOT Act, the project could be determined to be eligible for *de minimis* review, but FHWA has already determined that it is not.

Recommendations

CBJ should develop a “robust alternatives analysis”, following NEPA EIS guidelines, to produce a document that both ADOT and FHWA would accept. The number of previously identified alternatives should be reduced to no more than five, including the “no action” alternative.

CBJ should consider state legislation that clarifies the state process for North Douglas Crossing approval and places the project outside of the federal requirements of Section 4(f). That legislation should be predicated upon a CBJ study of potential crossing locations and a determination of an environmentally feasible route (one that does not degrade the ecological and recreational integrity of the remaining refuge lands).

The assembly discussed the memorandum and North Douglas development at a special meeting held on March 8, 2010 and, based on estimates for completion of an EIS in the range of \$12-14 million, directed the manager to seek modification of previous legislative appropriations of \$2.9 million for dredging of Gastineau Channel and the EIS towards the extension of the North Douglas Highway, the rationale being that there were insufficient monies available to complete an EIS, but that the road extension would materially advance development in West Douglas, thus creating additional pressure for an eventual crossing.⁶

⁵ Glick’s analysis presupposes that the CBJ would seek federal funding for all or a part of the project. The SAFE proposal would rely exclusively on local funds in order to avoid this provision.

⁶ The assembly also met with the board of directors of Goldbelt, Inc. on December 1, 2009 and, on April 5, 2010, authorized the manager to enter into a new memorandum of understanding with Goldbelt for West Douglas development.

The current proposal

At our July 19, 2010 meeting, we referred the following motion to the Finance Committee for consideration at its August 4, 2010 meeting. It succinctly summarizes the proposal promoted by SAFE:

To include a ballot proposition on the October 2010 ballot to ask the voters extend the 1% temporary sales tax due to expire September 30, 2013 with the intent that The Assembly would appropriate the revenues for the purpose of design, permitting and constructing a North Douglas transportation crossing between the Glacier Highway interchange [Sunny Point] and Henrickson Point, the estimated cost of which is \$70 million.

I highlight below what I regard to be the issues—not necessarily in the order presented—that need to be confronted before moving ahead with a ballot proposition like the one outlined above. I am circulating it now so that both the proponents and the assembly have sufficient time to investigate these issues in more detail.

1. Will this project escape significant federal review?

No. One of the primary reasons for looking at funding exclusively from local or state sources is to avoid DOT Act 4(f) review. This proposal will achieve that purpose. Nevertheless, the project as proposed would remain subject to other federal laws with similar requirements.

The most significant is Section 404 of the Clean Water Act, which establishes a program to regulate the discharge of dredged or fill material into waters of the United States, including wetlands. The basic premise of the program is that no discharge of dredged or fill material may be permitted if: (1) a practicable alternative exists that is less damaging to the aquatic environment or (2) the nation's waters would be significantly degraded. Examination of "practicable alternatives" will require the kind of environmental review contemplated in 4(f). While historically, the Army Corps of Engineers has been more flexible in its analyses than FHWA, more recent experience in Juneau is not comforting (e.g. Statter Harbor).

Similarly, the project would be located in coastal velocity flood zone, requiring approval of the Federal Emergency Management Agency whose charge is to avoid "actions in or adversely affecting floodplains unless there is no practicable alternative."⁷

2. Will the project avoid state permit review?

No. Based on current state statute, the CBJ would need to undertake an analysis identical in most respects to the 4(f) requirements. As suggested by our consultant, we could pursue

⁷ In addition, the U.S Coast Guard has previously advised that it would require that a new crossing meet the same navigational clearances as the existing bridge, which is a minimum of 50 feet from mean high tide to the bottom chord of the structure. Any effort to reduce the navigability requirement would have to be analyzed in the context of an EIS.

legislation identifying a specific corridor—but not before having completed an alternatives study.

3. Can this project be done for \$70 million?

I am doubtful.⁸ While the project as proposed may accurately reflect the cost of construction, it does not take into account the consequences of even a “best-case” outcome in the permitting process—approval of the specific corridor, but construction consistent with minimal impact.

4. Can this project be financed for \$70 million?

No. The first sales tax revenues to be collected if this proposition were to pass is more than three years away. Even if one accepts the assumption that the project can be built for \$70 million in 2010 dollars, there is no reason to believe that it will escape normal inflationary tendencies. More importantly, the magnitude of the project will require that the project be bonded—having the capital up front to actually construct it. Thus, the actual cost to Juneau taxpayers would be substantially higher than the \$70 million proposed.⁹

To put this in perspective and making the following assumptions:

- a. that the project would commence in 2014 or 2015;
- b. that the construction inflation rate is about 3% per year, bringing the project to about \$80 million in today’s dollars;
- c. that the bond issue date would be 2014 and that the bond term would be 25 years,

THEN

- a. the estimated annual debt service would be \$5.4 million;
- b. the total debt service would be \$135 million; and
- c. the mill levy requirement would be between 1.2 and 1.25 mils, meaning that a property owner with property valued at \$100,000 could expect to pay about \$120 to \$125 per year.

5. Should this assembly limit the ability of a future assembly in determining the most important use of the temporary 1% sales tax?

I am troubled by the precedent that we might set in which we remove the authority of a future sitting assembly from deciding whether and for what purpose a sales tax extension should be placed on the ballot. In the normal course, this decision would be left to the assembly sitting in 2012. I recognize that the duration of temporary sales tax extensions generally includes several assembly cycles and that a future assembly could decide to divert sales tax revenues from the stated purpose. Nevertheless, placing this matter on the ballot more than three

⁸ Estimates for the Sunny Point alternative in the 2007 report (and in 2007 dollars) ranged from a low of \$62-77 million for an embankment with a fixed bridge to \$164-185 million for a structured road with a movable bridge. In addition, upgrades to the Sunny Point intersection were estimated at \$5 million.

⁹ The proposed project exceeds the largest project ever undertaken by the CBJ: construction of Thunder Mountain High School—a project that is reimbursed at 70% by the State of Alaska.

years before expiration of the current temporary tax (and with the available information at hand) is imprudent.

Conclusion: Where do we go from here?

I make the following observations that summarize how I think we should proceed:

- We should not finance this project from local sales or property taxes alone. We should look to state and federal aid as well.
- We will not advance a crossing project without a thorough EIS or EIS-like process, one that, using our consultant's terms, should "integrat[e] federal and state approval processes."
- We should examine our current CIP list and committed projects and determine whether we can "sweep" existing monies or redirect sales tax receipts that we expect over the next three years from lower priority projects in order to begin the permitting process. Should that fail, look to the 2011 or 2012 assembly to do a sales tax extension that would finance the permitting process alone.¹⁰

I understand the abiding frustration of proponents who have pushed for years to make this project a reality. Nevertheless, I caution that we not commit all of the community's resources at once. Let's commit significant resources to getting the required permits in place.

¹⁰ Were we to place the SAFE proposal on the ballot or some variant of it, no funding would be available for the permitting process until 2014. Were the permitting to proceed earlier, the actual construction could be accelerated. I also believe that a permitted project would have a significantly greater likelihood of state and/or federal funding.