



GOVERNMENT HILL COMMUNITY COUNCIL

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February 19, 2008

Response to *Final Section 4(f) Evaluation*

This letter is in response to KABATA's release of the *Final Section 4(f) Evaluation* of the proposed Knik Arm Crossing. KABATA's interpretation of Section 4(f) and its analysis of alternatives are incorrect and insufficient, and do not meet the legal requirements of NEPA, Section 106 of the National Historic Preservation Act, or Section 4(f) the Department of Transportation Act of 1966. KABATA's conclusions are incorrect because it failed to carry forward alternatives that would not impact 4(f) resources. The process is insufficient because the Section 106 and Section 4(f) consultation is nowhere close to being concluded, and because it still fails to address comments submitted by GHCC in response to the DIES, specifically, GHCC comments 291-49 to 291-63.

(Continuing) Problems with the Alternatives Analysis

The first problem is that KABATA has failed to propose, adequately develop, or carry forward alternatives that would avoid adverse Section 4(f) impacts. To avoid a true alternatives analysis, KABATA narrowly defines its purpose and need (including the arbitrary \$600 million price tag) and adopts arbitrary interpretations of "*prudent and feasible*" KABATA admits that both the Degan and Erickson routes would adversely impact parks and historic resources. Thus, GHCC renews its objection, echoed by many others in comments to the DIES, to KABATA's characterization of the Degan and Erickson routes as actual "*alternatives*", they are mere variants. Courts also have recognized that "[a]n alternative route which uses any part of a park is not an alternative to use of the park." Until KABATA stops calling these routes "alternatives" and brings forward and develops alternatives that do not impact Section 4(f) resources, no true Section 4(f) analysis can occur.

Courts have held that "[t]he mere fact that a 'need' for a highway has been 'established' does not prove that not to build the highway would be 'imprudent'" GHCC continues to disagree that there is no "*prudent and feasible*" alternative that would entirely avoid Section 4(f) properties. Several of the alternatives dismissed by KABATA in Table 4-2 as too costly or disruptive to choose or even to carry forward such as Boniface, West Bluff, and one variant of the Anchorage Access Solution would have negligible or no impacts on Parks and historic sites. Along the same lines, KABATA overuses the "*unique problem/truly unusual factor*" reasoning. Under KABATA's explanation in Table 4-2, "*unique and usual*" factors that disqualified particular alternatives include such mundane and common issues as "*substantial military impacts*" (whatever that means), "*moving security gate,*" "*high cost,*" and the highly speculative "*more likely to lead to ultimate closure of both bases.*" This type of sloppy reasoning is not consistent with court decisions holding that factors such as cost, directness of route, and community disruption cannot be viewed as "*unique*" problems. If Congress had intended these factors to be on an equal footing with the preservation of parkland there would have been no need for section 4(f). Thus, we renew specific disagreements with these conclusions that we and others lodged during

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the DEIS process because we see nothing here in the final EIS that shows those objections were considered in anything other than a pro forma manner.

We will, however, take the time to reiterate our earlier comments, not responded to in the FIES, that the Anchorage Access Solution generated by the initial CSS meeting in Dec 2005 was grossly misrepresented by KABATA in the DEIS and FEIS. The Phase 2 variant crossing at Elm Street is just one of many possible Phase 2 alternates, including some that closely resemble Phase 2 for the Degan variant. The GHCC pointed out to KABATA and FHWA prior to issuance of the DEIS that they were misrepresenting the AAS, but we were completely ignored. Phase 1 of the AAS actually has far fewer impacts to Historic Properties protected by Section 106 and Parks protected by Section 4(f). If a Degan-like variant for Phase 2 was selected, it would have fewer impacts on Section 106 and 4(f) cultural resources, with a minor compromise, namely the curves necessary from Government Hill to the Viaduct over the Railroad Yards to Ingra/Gambell would need to be at a tighter radius than a 50 MPH design speed.

Problems with the Process

The evaluation cannot be considered complete or sufficient until all consulting parties and KABATA have agreed on the scope of the impacts of all alternatives, and (if protected resources are to be taken) reached agreements on mitigation measures. Neither of these steps has been taken.

The *4(f) Evaluation* admits that the coordination and consultation required by Section 106 for mitigation is incomplete. For example, between the draft and final versions of the *Section 4(f) Evaluation* KABATA deleted its commitment to determine mitigation before publication of the FEIS, and now suggests that consultation and coordination would “continue through the final design process.” (p. 70). In its response to Comment 298-19, KABATA states “The extent of adverse impacts to the Government Hill Urban Renewal Historic District will not be known in detail until specific design elements are identified.” For comments 298-19 to 298-23, KABATA again states that it will not know the actual extent of the adverse impacts, and again merely repeats that it is developing a Memorandum of Agreement, but has no specificity of the actual mitigation that will occur. Correspondence between KABATA/FHWA and the MOA and SHPO, including correspondence exchanged following publication of the Draft EIS, shows that the consultation process has barely started, with the final evaluation failing to list a single mitigation measure agreed to by either of these two consulting parties. Under these circumstances, the entire mitigation discussion starting on page 69 and continuing to page 78 should be viewed as nothing more than a series of one-sided negotiating gambits that KABATA hopes might be mistaken for a true consultation process.

The *Final Section 4(f) Evaluation* incorrectly states that “[c]onsultation is ongoing” with the Government Hill Community Council (p. 69). In fact, KABATA has not worked with GHCC since early 2006, and the last exchange of emails in January and February of 2006 and letters in November and December 2006 (attached to FEIS) showed GHCC pleading with KABATA/FHWA to return to the table, an invitation that FHWA and KABATA have steadfastly refused to accept for the past 2 years. And yet, KABATA now proposes “to undertake further Context Sensitive Solutions workshop efforts with the Government Hill Community” during the final design effort! (p. 71). Under these circumstances, the proposal to allow KABATA to move forward before consulting with GHCC would be the functional equivalent of locking the barn door after all the cows have left. After-the-fact

workshops cannot satisfy federal requirements to consult and to minimize harm. KABATA must be required to conclude the consultation process before FHWA issues its ROD. The GHCC agrees with US Dept of Interior in Comment 274-1 [*“We recommend that the Federal Highway Administration (FHWA) and the Knik Arm Bridge and Toll Authority (KABATA) continue their efforts to develop measures amenable to the Municipality of Anchorage and Government Hill community to mitigate the effects of the Degan and Erickson Alternatives on Section 4(f) resources and the community as a whole.”*)] and looks forward to that process concluding before any ROD is issued and before the project moves forward.

Finally, KABATA has neglected over the past year to consult with the Anchorage Historic Preservation Commission. AHPC was created in January of 2007 to serve as the historic preservation review commission for the purpose of maintaining the municipality as a certified local government, and to serve as the local historical district commission for the municipality under AS 29.55 and AS 45.98. AHPC has significant expertise and legal responsibilities with respect to historic properties in Anchorage and recently voted to request designation as a consulting party for purposes of complying with Section 106 of the National Historic Preservation Act, and that it be an invited signatory to any MOAs developed under Section 106.

Problems with the Proposals

KABATA suggests that taking 0.8 acre of Sunset Park during Phase I will not seriously impact its use; however, the ROW acquisition would remove the tree buffers and part of the mown playing field. (p. 32). The conclusion seems incorrect, as anyone who has used a park knows that removing vegetative buffer between the road and the park increases noise, smell, and negative visual impact, making the park experience less enjoyable.

Next, KABATA proposes to reclassify the remnant of Sunset Park as “Mini Park,” despite problems with access and parking (p.75). How can that be called mitigation? KABATA further proposes to investigate whether Cunningham Park could be expanded into an area smaller than the 1-acre minimum for “mini parks” in Anchorage. (p. 75). Creating a discontinuous scrap of land and calling it an amenity is not mitigation. The same problem applies to the proposal to investigate creating “discontinuous patches” of land on top of the tunnel lid (p. 76).: Small and discontinuous patches of land are not very functional and certainly can’t make up for loss of community parks.

GHCC questions the conclusion that the Greenbelt is not subject to Section 4(f) protection. The greenbelt is a functionally important part of both Sunset and Harvard Parks, in that it serves as a sight, sound and smell buffer between road traffic and parkland. It is also, as the MOA has pointed out, important to the neighborhood. The greenbelt creates a sense of peace, privacy, and self-containment that is a hallmark of our neighborhood.

Next, GHCC and Civil Engineers working on similar designs and actual construction of similar projects believe that both Phase 1 and Phase 2 will not be able to be built as shown on the preliminary design drawings. We believe that the Phase 1 work will impact both the Curling Club and the Alaska Railroad Employee Recreation Center (Square & Round Dance Center, or S&RDC which is Historic element # ANC-1932). We feel that the Phase 2 work will cause the demolition of an additional 3 houses that are contributing elements to the Government Hill Urban Renewal Historic District. These conclusions are

explained more fully in the Appendix to the Section 106 comments. These probable impacts need to be documented and mitigated before the project can move forward.

The mitigation negotiations for Section 4(f) adverse affects have barely started. From the correspondence in Appendix J related to Section 4(f) resources, it is clear that the mitigation discussions are not complete. KABATA discusses moving picnic tables, and creating parking lots, but fails to commit to the actual mitigation requirements of the Municipality, such as replacing affected facilities, like the Square & Round Dance Center, and the Curling Club. We agree with the February 1, 2006 letter that states that Sunset Park will be wholly impacted. However, the FEIS summary says that Sunset will be only partially impacted. This is typical of the inconsistencies in the FEIS.

GHCC agrees with the Municipality of Anchorage in their March 24, 2007 letter when it states: *“We believe that the proposed mitigation measures are not adequate to maintain Government Hill community cohesion or the integrity of its parks, and that other alternatives need to be seriously considered as required by the EIS process.”*

That letter further states *“any land lost from Harvard or Sunset Parks will be detrimental to the community and should be replaced with land of the equivalent size and usefulness, and equivalent connection to and accessibility by the neighborhood. Both current citywide and neighborhood uses should be factored into mitigation strategies, as well as the mitigation’s impact on low-income and minority residents. Replacement strategies must include facilities as well as land area – and serve existing user populations.”*

That letter further states *“We also believe it is necessary to work closely with the Government Hill Community to determine what combination of additional areas as well as enhancement or improvements in remaining park and green belt areas might provide adequate for the Degan or Erickson Alternative.”* The GHCC protests that FHWA has refused to include Government Hill Community Council in the Section 4(f) negotiations.

The GHCC supports the Municipality of Anchorage in their March 24, 2007 letter when it states *“One significant measure that should be included in the mitigation process is the purchase of existing deteriorated properties in the business district ... for the development of a neighborhood business center.”* It was pointed out in GHCC’s DEIS comments that all of the businesses in the GH business district will likely be bankrupted during the construction process. It is also pointed out that one of the benefits of the Anchorage Access Solution is that those “indirectly impacted” (and minority owned) businesses that would otherwise not be compensated for their losses, would be fully compensated if the Anchorage Access Solution was implemented.

The GHCC also supports the stipulation in the Municipality’s March 24, 2007 letter when it states *“these mitigation issues must be fully resolved before construction may proceed.”*