

ALASKA STATE LEGISLATURE

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November 2, 2009

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES GRAVINA ISLAND ACCESS PROJECT

October 30, 2009

Audit Control Number
25-30050-10

The review of the Gravina Island Access Project (GIA) identified federal and state funds authorized, appropriated and spent on GIA by project and phase, and evaluated the Department of Transportation and Public Facilities' (DOTPF) use of redirected federal GIA earmarks for compliance with federal intent and state law. The GIA project work completed through May 2009 and the methodology for developing cost estimates were evaluated for appropriateness. Projects delayed due to GIA earmarks were identified. Whether GIA was managed in a cost effective and time sensitive manner was evaluated. Furthermore, DOTPF's progress in improving access from Ketchikan to its airport was assessed.

The audit was conducted in accordance with generally accepted government audit standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and recommendations presented in this report are discussed in Objectives, Scope, and Methodology.

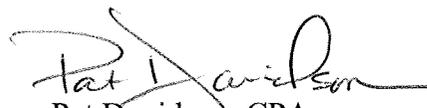

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 of the Alaska Statutes and a special request by the Legislative Budget and Audit Committee, we have conducted a special audit of the State of Alaska, Department of Transportation and Public Facilities (DOTPF) Gravina Island Access Project (GIA). The objectives, scope, and methodology of our review is as follows:

Objectives

Specific objectives of this audit were to:

- Identify federal and state funds authorized, appropriated, and spent on GIA by project and phase.
- Evaluate DOTPF's authority and application of state laws over the use of redirected federal earmarks on other state transportation projects.
- Identify other projects funded by federal appropriations previously earmarked for the GIA bridges.
- Identify projects delayed because funds were earmarked for GIA.
- Determine GIA work completed through May 2009 and evaluate the development of cost estimates for appropriateness.
- Evaluate whether GIA has been efficiently managed in a cost effective and time sensitive manner.
- Determine DOTPF's progress in improving access from Ketchikan to its airport.

Scope and Methodology

We reviewed the time period from 1996 through July 2009. To gain an understanding of congressional intent and federal transportation project management, we interviewed the Government Accountability Office's (GAO) legal staff; the United States Department of Transportation (USDOT), Office of the Inspector General's assistant staff within the procurement and acquisition section; and the Federal Highway Administration's (FHWA) staff assigned to Alaska. Additionally, we reviewed the federal funding process to gain an understanding of federal funding for USDOT projects.

Additional field work included the following:

- Review of federal transportation funding notices related to FFY 03 through FFY 05 as provided by DOTPF. When possible, we confirmed the completeness of the funding with independent federal information.
- Review of state and federal laws and regulations over transportation construction projects, environmental impact statement development, and procurement.
- Analysis of various federal public laws enacted over GIA earmarks.
- Analysis of state general fund and federal receipt appropriations.
- Data analysis of the GIA funding obligated by FHWA for amounts spent to date, and amounts still available.
- Data analysis of the redirected GIA earmarks, projects funded by the redirected earmarks, amounts spent through May 2009, and amounts still available.
- Examination of the GIA environmental impact statement as well as supporting analyses and studies.
- Examination and analysis of DOTPF's GIA records (design and construction files) and internal communications between the Southeast Region staff.
- Examination and analysis of DOTPF's procurement documentation for professional services and construction associated with GIA.
- Review of DOTPF's "Preconstruction and Construction Manuals," and applicable policies and procedures.
- Examination and analysis of the GIA cost estimate process.
- Examination and analysis of the GIA pay estimates and inspector logs.
- Various interviews conducted with staff at DOTPF, FHWA, USDOT, and GAO as well as the design contractor for GIA.

ORGANIZATION AND FUNCTION

The Department of Transportation and Public Facilities' mission is to “*provide for the movement of people and goods and the delivery of state services.*” Its core services include developing, maintaining, and operating:

- Highways
- Alaska Marine Highway System
- Airports
- Public Facilities
- Ports and Harbors
- State Equipment Fleet

The responsibility for planning, constructing, and maintaining the State highway system is divided into three regions – Northern, Central, and Southeast. Headquarters, located in Juneau, provide technical and support services to the regions.

Each region manages its own highway projects. The regions have sections for procurement, planning, design, construction, and project control.

- The procurement section is responsible for soliciting and awarding professional service and construction contracts which meet the needs of a particular project.
- The planning section is responsible for determining transportation needs for the geographic area and providing effective public involvement in the planning process.
- The design section performs design studies, holds location and design public hearings, develops cost estimates, negotiates and manages consulting contracts, and provides environmental hydrological and geological support.
- The construction section administers construction contracts, provides technical assistance, inspects materials, monitors projects, and assures that contract requirements and federal specifications have been satisfied.
- The project control section coordinates with all other sections to prepare financial documents and supporting data.

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BACKGROUND INFORMATION

This section of the report describes federal and state funding of highway projects in general terms, and provides a specific description of the Gravina Island Access Project (GIA) in the form of a timeline. Also included is the background information necessary to understand the environmental impact statement (EIS) process and the statewide transportation improvement program (STIP).

The Federal Highway Financing Process

There are several steps to federally funding state highway projects including authorization, appropriation, obligation limits, obligations, and reimbursements. Exhibit 1 shows the flow of federal funding to states as described by the Federal Highway Administration (FHWA).¹

Authorization

An authorization is a statutory provision which establishes or continues a federal agency, activity, or program, and can be for either a fixed or indefinite period of time. The authorization specifies the period of years which defines programs and sets upper limits on the amount of funds made available to carry out programs.

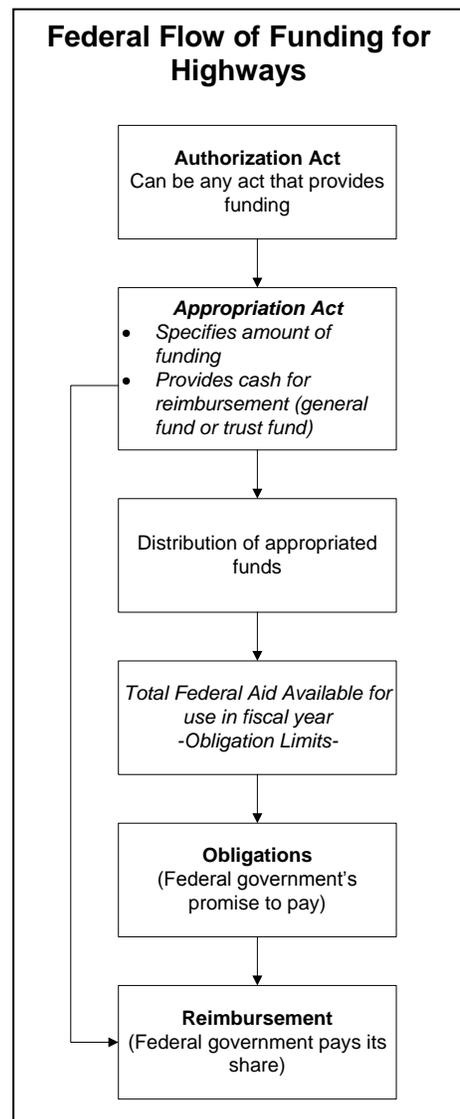
Appropriation Act

Funds are distributed and used only after the passage of annual legislation by Congress. Through an appropriation, Congress gives approval to distribute and obligate funds. The obligation may be equal to or lower than the originally authorized level of funding.

Obligation Limits

Obligation limits place a maximum, or ceiling, on the total amount of appropriation available for use in the federal highway program during a year. It is impossible to place direct controls on outlays, so Congress controls obligations using a formula to calculate the limit annually. Each year, the appropriations legislation confirms or modifies these ceiling amounts. Obligation limits can reduce funding available, or increase the funding, such as 90 percent or 105 percent of the amount more than the appropriation, but not greater than the original authorization.

Exhibit 1



¹Source: Federal Highway Administration publication, "Financing Federal-Aid Highways" March 2007

Obligations

Obligations are the federal government's promise to pay a state for the federal share of a project's eligible cost. This commitment occurs when the project is approved and the project agreement is executed. Obligated funds are considered "used" even though no cash is transferred.

Reimbursements

Reimbursements occur when a state bills the federal agency for costs incurred on an obligated project and is later federally reimbursed for eligible costs. The project does not need to be completed for a state to receive reimbursement. Depending upon the type of the project, the time lapsed from obligation to reimbursement can vary from a few days to several years.

Congressional earmarks are typically for specific projects.

Earmarks are funds provided by Congress for projects and programs where congressional intent is stated (whether in statutory text, report language, or other communication) for specific projects. Congress can specify a location, a project, or a recipient. In general, earmarks and some specific program amounts are subtracted from the annual transportation appropriation prior to the determination of other flexible transportation program funding available. Earmarks effectively curtail the ability to manage statutory and constitutional responsibilities of a state department over its transportation programs because they limit a state's flexibility in allocating funding.

The federal transportation act of 2005 changed transportation programs, funding levels, and increased the number of project earmarks.

The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), signed into law August of 2005, replaced the previous Transportation Equity Act for the 21st Century (TEA-21). The new act changed methodologies in transportation program funding calculations as well as added new programs such as Safe Routes to Schools. Additionally, the number of earmarked projects increased from 1,850 (\$9.4 billion) under TEA-21 to 5,634 (\$21.6 billion) under SAFETEA-LU. Funding for earmarks are generally spread across the fiscal years covered by the transportation act. Earmark funding is not necessarily available in the first year of the act. For example, a \$75 million Gravina earmark identified in SAFETEA-LU was to be allocated to the State in amounts of \$18.75 million each year over four federal fiscal years, with FFY 06 being the first year.

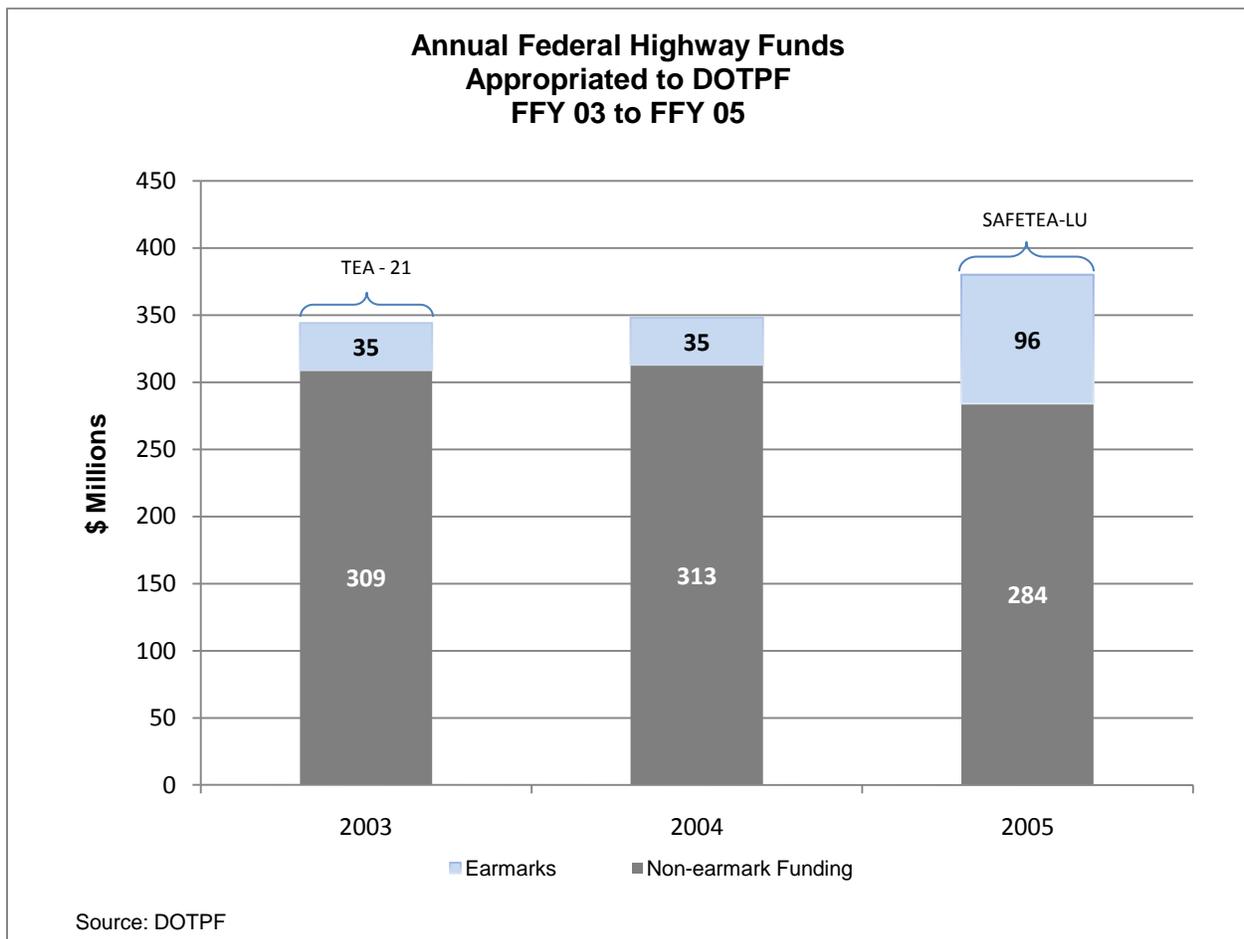
Both TEA-21 and SAFETEA-LU contain three basic funding categories. Those categories are (1) earmarks for specific projects, (2) funds intended for specific programs,² and (3) funds for any state and federally approved transportation project. The federal transportation

² Funds for specific programs specify the program and intended use of transportation funds, but DOTPF determines which projects will be completed.

appropriation *first* awards funding to states for earmarks and then applies formula calculations to the remaining available balance to determine the amounts for specific program categories and other state transportation funding. Therefore, the higher the total amount of earmarks awarded to states, the less funds available for states' non-earmark projects. In other words, Alaska's funding level for non-earmark projects is reduced by all earmarks, whether awarded to the State of Alaska or other states.

For FFY 05, the Department of Transportation and Public Facilities (DOTPF) received approximately \$96 million³ in earmarks representing 25 percent of the total federal highway funds available to the State. The amount of earmarks awarded in FFY 05 was much higher compared to the FFY 03 amount of \$35 million, or 10 percent under TEA-21. Exhibit 2 shows amounts appropriated to DOTPF by funding category for the last year of TEA-21 (FFY 03), the transition year (FFY 04), and the first year under SAFETEA-LU (FFY 05).

Exhibit 2



³GIA specific earmarks totaled \$29.6 million or 31 percent of the total state earmark funds received for FFY 05.

DOTPF uses the STIP to identify planned transportation projects.

The STIP is a prioritized statewide listing of transportation projects planned for work within the next four years. Before a project may be listed in the STIP, there must be a reasonable anticipation of full funding within the estimated time frame for project completion. Once the department has evaluated potential projects, assembled the updated needs list, and prepared a draft STIP, the department announces that it is available for public comment and review. The public review is no less than 45 days, and there is at least one public meeting held during the comment period. Projects must be in the STIP to be eligible for federal funding.

All amendments made to the STIP must be publicly reviewed. Reasons for possible amendments include a change in available funds; emergency requirements; unanticipated delays in completion; change in the scope, cost, or development of a project; or for reasons that are in the State's best interest.

An EIS is required for federally funded projects to begin construction.

Federal law requires that an EIS be prepared for any project which will be federally reimbursed. The process for preparing an EIS is specified in federal regulation and requires input from multiple state and federal agencies as well as the public. An EIS is a full disclosure document which details the process of developing the transportation project. The completed document must include the consideration of a range of reasonable alternatives; an analysis of the potential environmental, social and economic impacts of each alternative; and a demonstration of how each alternative complies with applicable environmental laws and executive orders. An EIS also documents the entirety of the decision making process to select the project's preferred alternative. Sections of the EIS include the purpose and need for action, alternatives considered, and multiple sections on environmental consequences and impacts along with social and economic impacts. When the process is complete, a state submits a final EIS to FHWA for approval. A record of decision is issued if the project plan and preferred alternative is accepted by FHWA.

State regulation identifies the amount and category for use of unrestricted federal transportation funds.

State regulation⁴ identifies two main categories of projects: the National Highway System (NHS) and all other state transportation projects. The funding is calculated as follows: 48 percent is allocated to NHS and 52 percent is for other transportation projects. The 52 percent is broken down further as 8 percent allocated to the Alaska Highway System, 39 percent allocated to the Community Transportation Program, 2 percent allocated to the trails and recreational access, and 3 percent flexible spending.

⁴17 Alaska Administrative Code 05.190(b)(1-4)

The State legislature appropriated funds specifically for GIA starting in 1998.

In 1998, the State legislature began authorizing federal receipts and general funds through appropriations for GIA. In addition to the GIA specific appropriations, DOTPF utilized other annual general fund match appropriations and federal receipt appropriations to fund GIA activities. Appendix B provides a listing of the amounts expended and still available for the GIA specific appropriations as of May 31, 2009.

Two GIA specific general fund appropriations totaling \$10.1 million were established, and four GIA specific federal receipt appropriations totaling \$346 million were established from 1998 through 2006. The GIA specific general fund match and federal receipt appropriations total \$356.1 million.

For a complete listing of the amounts appropriated, spent, and still available for GIA as of May 31, 2009, see Appendix C.

Access to the airport on Gravina Island has been a long time goal of Ketchikan.

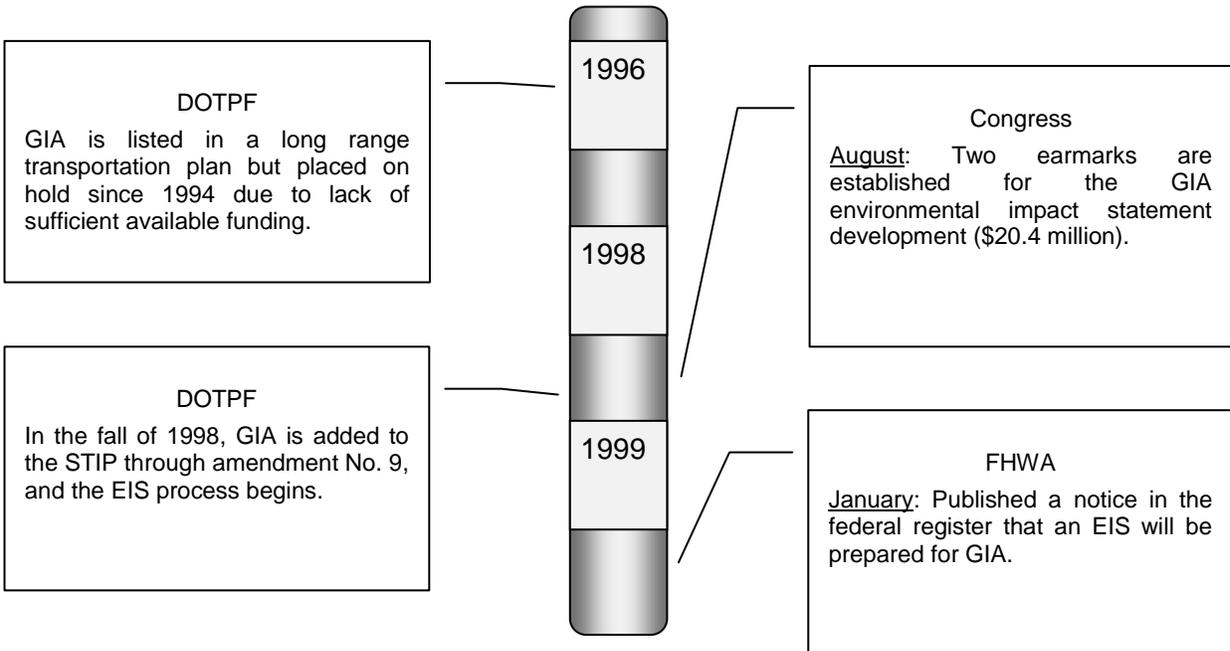
Exhibit 3

Gravina Specific Session Laws of Alaska (SLA) by Year	
General Fund Appropriations	
SLA 98 Chapter 139	\$ 200,000
SLA 06 Chapter 82	<u>9,926,370</u>
	\$10,126,370
Federal Receipt Appropriations	
SLA 98 Chapter 139	\$ 20,000,000
SLA 01 Chapter 61	20,000,000
SLA 04 Chapter 159	215,000,000
SLA 06 Chapter 82	<u>91,000,000</u>
	<u>\$346,000,000</u>
Specific GIA Appropriation Total	<u>\$356,126,370</u>

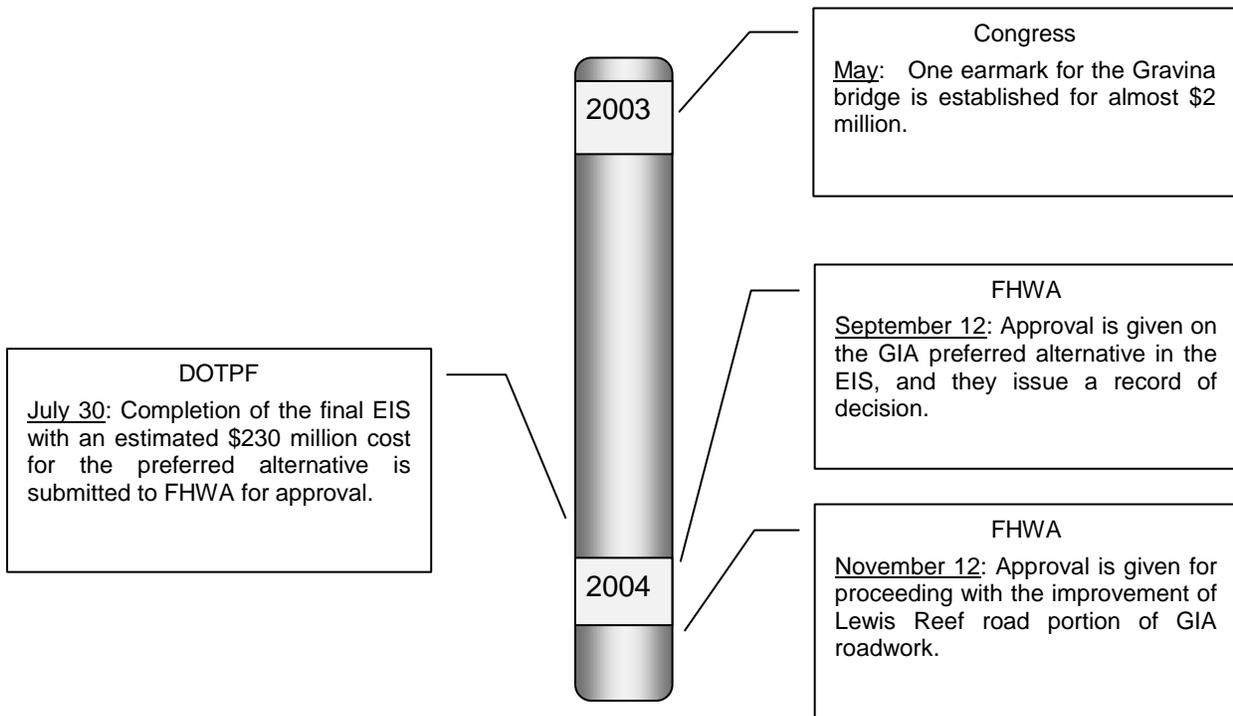
The community of Ketchikan has sought improved access to its airport since the early 1970's, when its airport was built on Gravina Island. Currently, a ferry system is used to cross the Tongass Narrows which separates the community of Ketchikan on Revillagigedo Island from Gravina. During the late 1970's through the early 1990's, multiple studies of improved access were developed. The studies were conducted by both the Ketchikan Gateway Borough and DOTPF. Gravina access has been included in DOTPF's long range transportation plan since completion of the airport. In 1998, two federal earmarks were established which moved the project forward for a full EIS.

The timeline on the following pages provides a listing of key state and federal milestones and project actions from 1996 through July 2009.

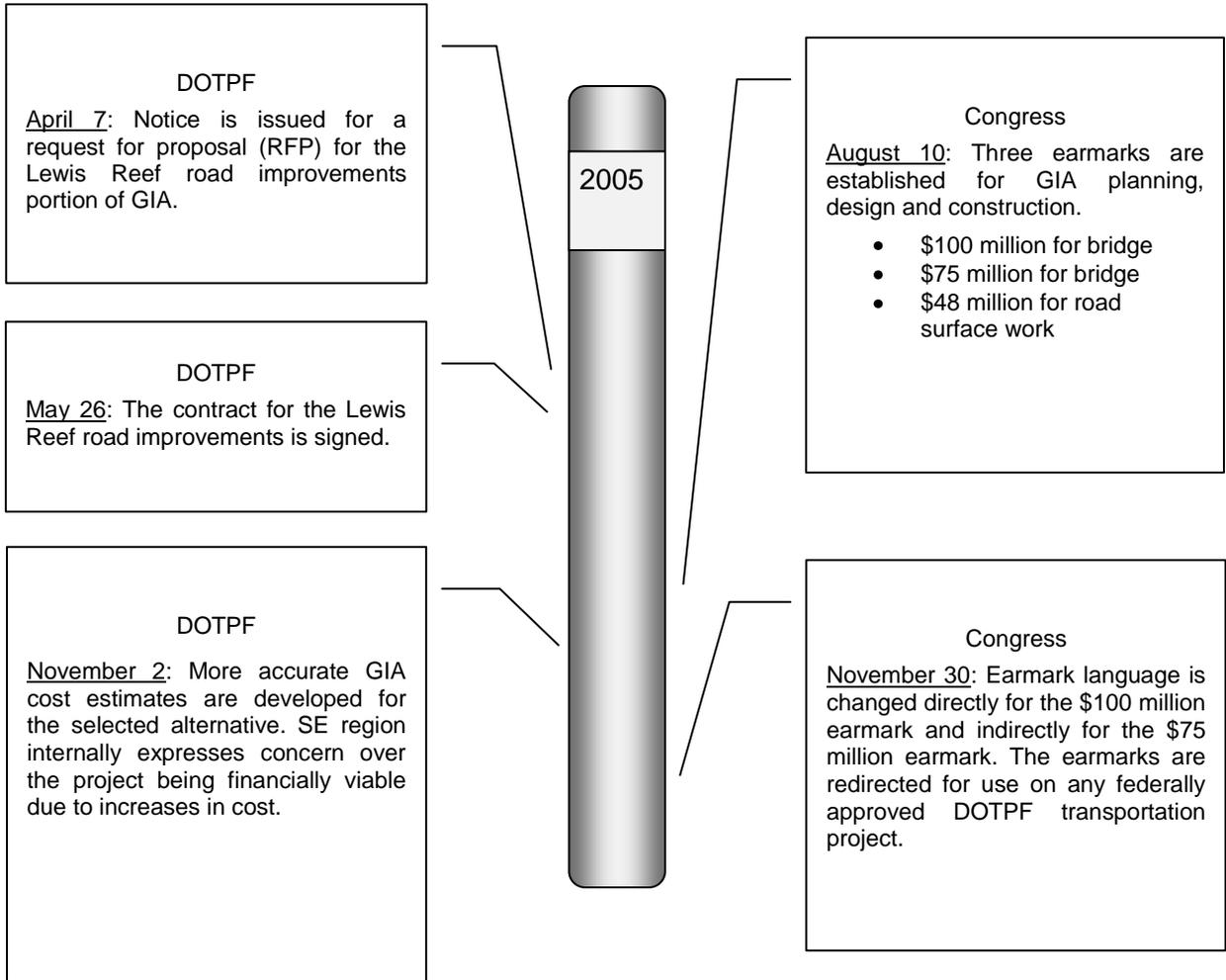
Earmarks move the GIA project into the planning phase.



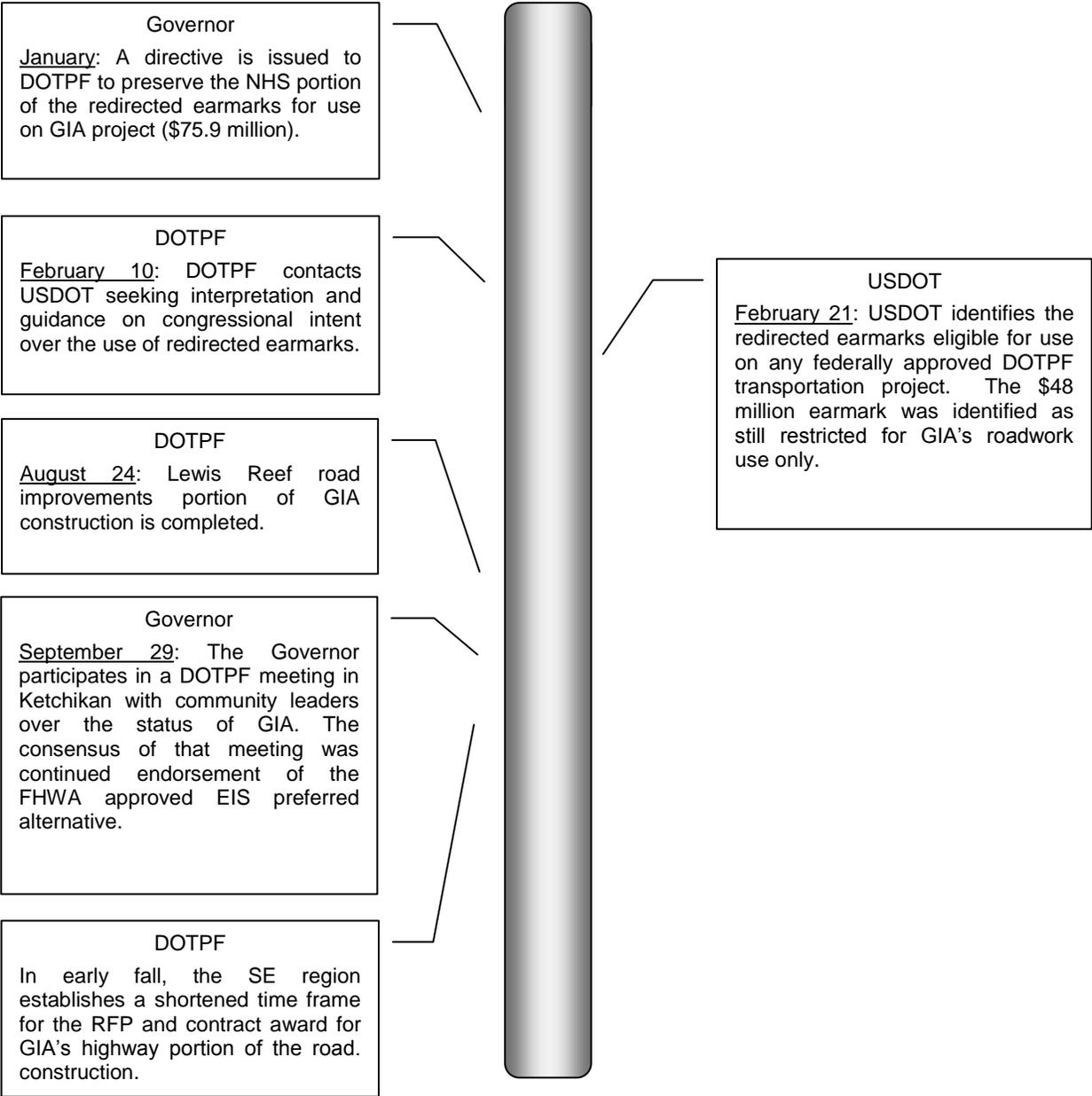
An EIS is completed and approval is given to proceed with a portion of construction.



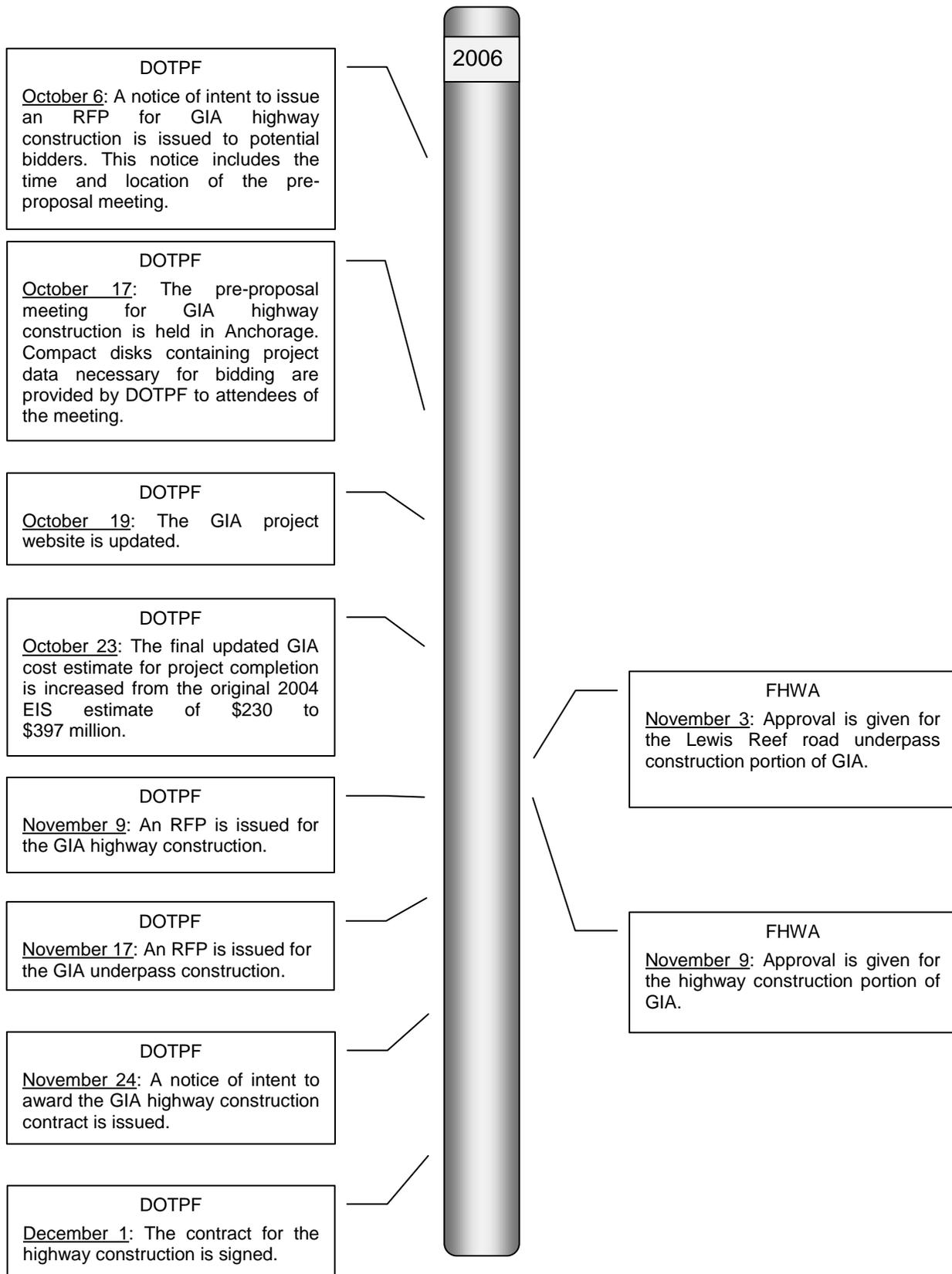
Construction earmarks are established and later rescinded by Congress.



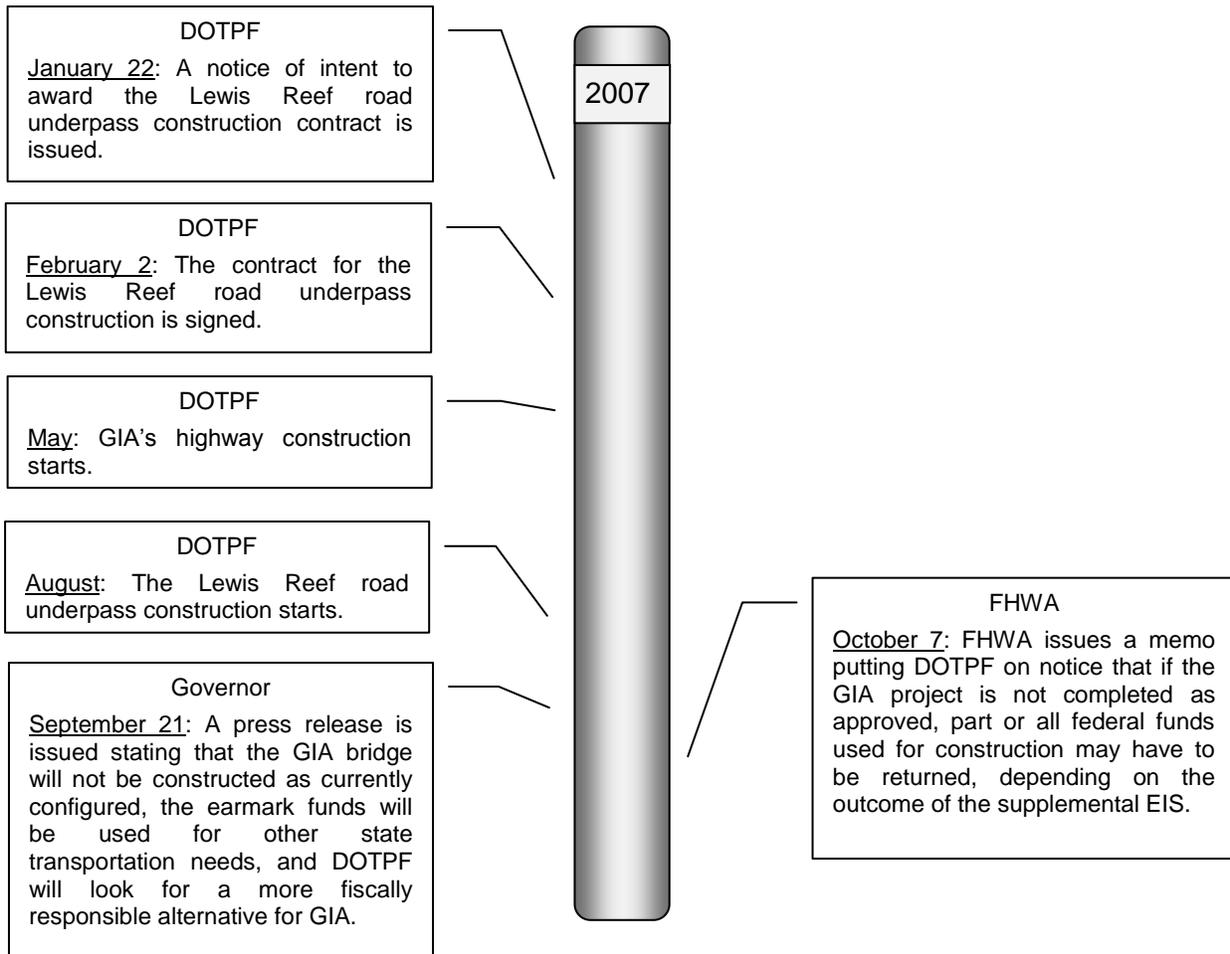
Clarification and a directive is given regarding use of redirected earmarks and the first portion of road construction is completed.



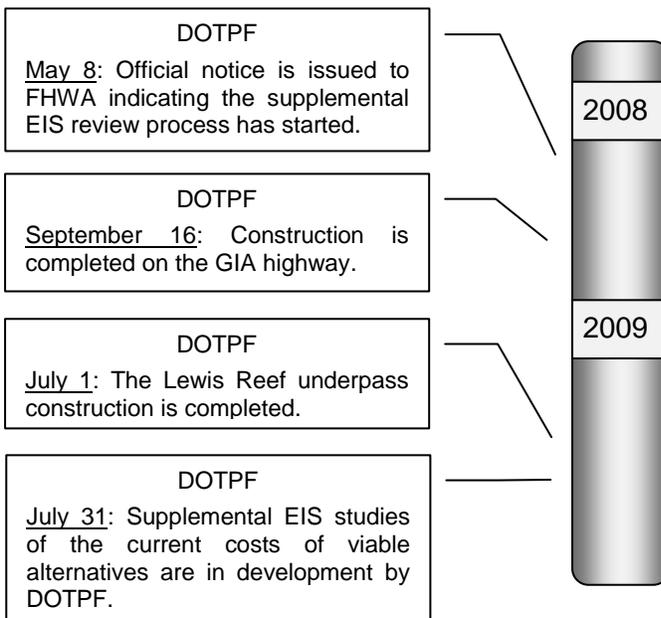
The procurement process begins and final GIA roadwork is awarded.

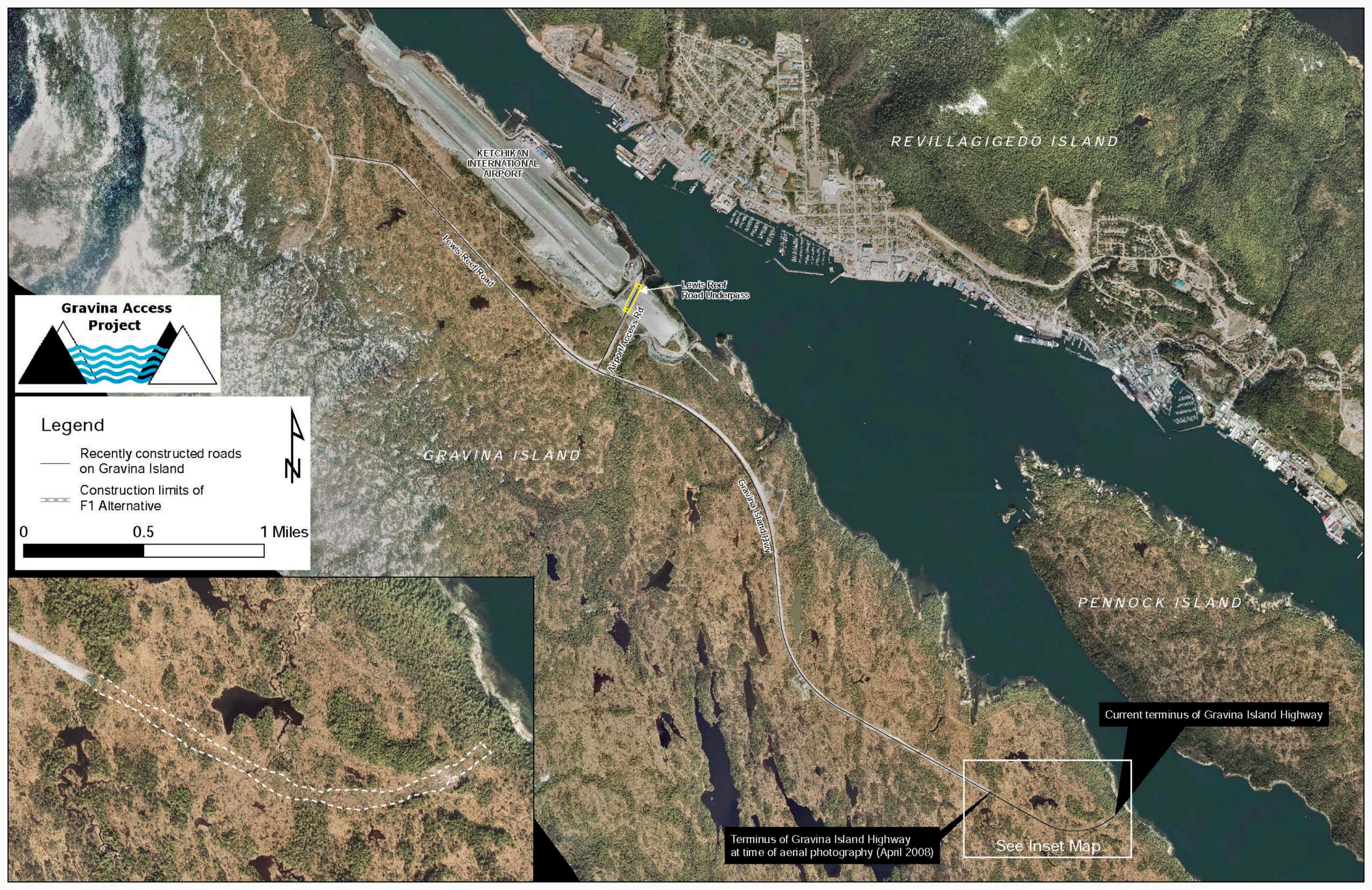


Construction begins on remaining GIA roadwork, and DOTPF is directed to find a more fiscally responsible alternative than the two high bridges.



The construction of GIA highway and underpass is completed, and the supplemental EIS is under review.





REVILLAGIGEDO ISLAND

KETCHIKAN INTERNATIONAL AIRPORT

Lewis Reef Road

Lewis Reef Road Underpass

Airport Access Rd

GRAVINA ISLAND

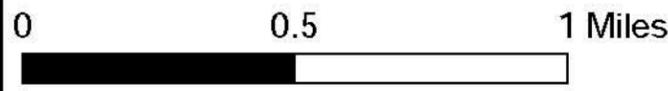
Gravina Island Hwy

PENNOCK ISLAND



Legend

- Recently constructed roads on Gravina Island
- Construction limits of F1 Alternative



Current terminus of Gravina Island Highway

Terminus of Gravina Island Highway at time of aerial photography (April 2008)



See Inset Map

Fold out aerial photo of Gravina Island
as of April 2008

REPORT CONCLUSIONS

We were directed to identify and evaluate the following aspects of the Gravina Island Access Project (GIA) connecting the city of Ketchikan to its airport:

- Identify federal and state funds authorized, appropriated, and spent on GIA by project and phase.
- Evaluate the Department of Transportation and Public Facilities' (DOTPF) authority and application of state laws over the use of redirected federal earmarks on other state transportation projects.
- Identify other projects funded by federal appropriations previously earmarked for GIA bridges.
- Identify projects delayed because funds were earmarked for GIA.
- Determine GIA work completed through May 2009 and evaluate the development of cost estimates for appropriateness.
- Evaluate whether GIA has been efficiently managed in a cost effective and time sensitive manner.
- Determine DOTPF's progress in improving access from Ketchikan to its airport.

Some progress in achieving GIA goals has occurred, but access from Ketchikan to its airport on Gravina Island has not improved. In general, DOTPF properly interpreted federal intent related to the use of GIA earmarks. Furthermore, roadwork completed on the underpass, Lewis Reef road, and highway portion of GIA was within the scope of the approved environmental impact statement (EIS). However, the decision to proceed with the highway construction was not in the public's best interest given the lack of congressional financial support for the bridges and the significant increase in estimated cost.

The large number of earmarks associated with the new federal transportation act contributed to the delay of many DOTPF transportation projects. A list of delayed projects is included in Appendix D. Conclusions, including expenditure and federal funding information, are discussed in more detail on the following pages.

Six congressional earmarks were initially designated for GIA.

Six earmarks, totaling \$245,418,000, were initially designated for GIA. Exhibit 4 on the following page shows two earmarks were established in 1998 to develop the EIS; one was established in 2003 for construction of the bridges; and three were established in 2005 for the design and construction of the bridges and roadwork. For a complete listing of earmark funds appropriated, obligated, and still available, see Appendix A.

Exhibit 4

GIA Authorized Federal Earmarks				
Year	Public Law	Earmark	Purpose	Authorized
1998	PL 105-206 sec.1602, No. 1450	1	EIS planning and development	\$ 15,000,000
1998	PL 105-206 sec.1602, No. 1492	2	EIS planning and development	5,443,000
2003	PL 108-7 sec. 330, No. 22	3	Planning, design and construction of a bridge	1,975,000
2005	PL 109-59 sec.1702, No. 3323	4	Earthwork and roadway construction	48,000,000
2005	PL 109-59 sec.1702, No. 406	5	Planning, design and construction of a bridge	100,000,000
2005	PL 109-59 sec.1114 (g)(1)(A)(ii)	6	Construction of a bridge	<u>75,000,000</u>
			Total	<u>\$ 245,418,000</u>

Congress rescinded two bridge specific earmarks and redirected use to any federally approved transportation project in the state.

In November 2005, just three months after authorizing the earmarks, Congress amended two bridge earmarks (shown as Earmark Nos. 5 and 6 above in Exhibit 4). The amendment redirected the earmarks away from bridge design and construction to be used by DOTPF for any federally approved transportation project. This reduced specific federal authorization for GIA from \$245.4 million to \$70.4 million (shown in Exhibit 5 below).

DOTPF was unsure of congressional intent because the rescission language directly identified Earmark No. 5, but only indirectly identified Earmark No. 6. Additionally, it was unclear whether GIA was still eligible for use of the redirected funds. Based on these issues, DOTPF sought clarification from the United States Department of Transportation (USDOT).

Exhibit 5

Effect of Redirection on GIA Authorized Earmarks				
Earmark	Purpose	Authorized	Redirected	GIA Earmarks
1	EIS planning and development	\$ 15,000,000	\$ - 0-	\$ 15,000,000
2	EIS planning and development	5,443,000	-0-	5,443,000
3	Bridge construction	1,975,000	-0-	1,975,000
4	Earthwork and roadway construction	48,000,000	-0-	48,000,000
5	Bridge planning, design and construction	100,000,000	(100,000,000)	- 0-
6	Construction of a bridge	<u>75,000,000</u>	<u>(75,000,000)</u>	<u>-0-</u>
Total		<u>\$ 245,418,000</u>	<u>\$ (175,000,000)</u>	<u>\$ 70,418,000</u>

USDOT clarified congressional intent of earmark change.

The State sought interpretation and direction from USDOT on future use of the redirected earmarks. In a response, dated February 21, 2006, to a request by DOTPF for clarification, the Alaska USDOT division administrator stated the following:

*...modified the respective **bridge** earmarks by requiring that any amount made available in PL 109-59... be made available to the Alaska Department of Transportation and Public Facilities for any purpose eligible under section 133(b) of Title 23. [Emphasis added]*

The administrator further elaborated that while the bridges continued to remain eligible for the previously exclusive bridge earmarks, those funds could instead be used by the State for any federally allowed purpose, project or activity eligible under the surface transportation program. Upon review and consultation with USDOT headquarters and the Office of the Chief Counsel, the administrator also stated that the earmark dedicated to earthwork and roadway construction (Earmark No. 4 authorized in 2005 for \$48 million), which was “exclusive of the bridge”, remained intact.

We contacted an assistant attorney general within the Government Accountability Office (GAO), specializing in congressional earmarks, to confirm USDOT’s interpretation. The GAO attorney corroborated USDOT’s determination of eligible use of the redirected earmarks.

DOTPF followed federal interpretation correctly by using redirected earmarks in accordance with state regulations.

Because Congress redirected use of the GIA earmarks, DOTPF allocated the now non-restricted⁵ funds according to state regulations. Specifically, regulation 17 AAC 05.190(b)(1-4) requires 48 percent of non-restricted federal funds be used on National Highway System (NHS) projects. The remaining 52 percent is to be for all other federally approved projects within the statewide transportation improvement program (STIP).

⁵The redirection of earmark funds did not change the classification as federal high priority projects. It simply allowed the State to designate which projects were high priority rather than Congress. Federally approved projects within the STIP are ranked by priority and estimated funding necessary to complete. DOTPF applied the State’s formula in regulation to direct the use and amounts of the federal funds.

Exhibit 6

Redirected Earmark Funding Analysis as of May 31, 2009					
Redirected Earmarks:		Federal Highway Status of Redirected Funds			
Earmark	Purpose	Authorized	Appropriated*	Obligated	Still Available
5	STIP Projects	\$100,000,000	\$ 89,990,011	\$21,994,575	\$ 67,995,436
6	STIP Projects	75,000,000	68,269,047	16,149,375	52,119,672
		Total	\$158,259,058	\$38,143,950	\$120,115,108
State Allocation and Status of Funding :					
General STIP project funding		52%	\$ 82,294,710	\$38,143,950	\$ 44,150,760
NHS Funding		48%	75,964,348	-0-	75,964,348
			\$158,259,058	\$38,143,950	\$120,115,108

* See Background for description of difference in authorized vs. appropriated.

Governor Murkowski’s administration directed DOTPF to preserve a portion of the redirected earmarks for GIA.

After the bridge earmarks were redirected, Governor Murkowski’s administration directed DOTPF, in January of 2006, to preserve the NHS portion of the funds. As a result, DOTPF reserved over \$75.9 million of NHS funding for future use on GIA. Exhibit 6 above shows the NHS funding amounts calculated as held in reserve based on funding appropriated for use on GIA.

Governor Palin’s administration did not remove or change the previous administration’s directive over the NHS reserved funds. Consequently, \$75.9 million of federal funds are available for obligation should DOTPF choose to go forward with the GIA bridge project. Otherwise, these funds are available for other NHS projects in accordance with state regulations. Furthermore, approximately \$11.5 million of Earmark Nos. 1-4 have not been obligated by DOTPF and remain available for future use on GIA.

Changes in SAFETEA-LU⁶ and increases in project costs contributed to DOTPF delaying planned projects.

Reduced non-earmarked funding under SAFETEA-LU contributed to delays of planned projects by DOTPF. Non-earmarked funding available in FFY 05 was significantly less than expected. Although the State received more federal transportation funding than it received in the previous two federal fiscal years, a larger percentage of the funds were earmarked, making less available for funding STIP projects.⁷ At the same time, raw materials and labor costs increased substantially. Together, these factors resulted in projects being delayed or

⁶The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), signed into law August of 2005, replaced the previous Transportation Equity Act for the 21st Century.

⁷A detailed description of the impact of SAFETEA-LU and the amount of federal highway funds received for FFY 03 through FFY 05 is included in the Background Section of this report.

removed altogether from the planned DOTPF work. For a listing of those projects delayed in the fall of 2005, see Appendix D.

Redirected funds have been used for federally approved projects contained in the STIP.

DOTPF has used a portion of the redirected earmarks on various approved STIP projects throughout the State. Appendix E lists projects funded by the redirected earmarks through May 2009.

Methodologies for developing cost estimates for GIA are consistent with DOTPF's standard practices.

The methodologies used to develop GIA costs were consistent with standard DOTPF practices. Project costs developed for the EIS were based on estimated quantities of material, labor, and management as provided in federal guidelines. This approach ensures all alternatives reviewed were comparable within the EIS. Upon selection of the preferred alternative, DOTPF gained more technical information for the specific geographical location. The refined information resulted in project cost estimates that more closely approximated the actual cost for completion.

The EIS, completed by DOTPF in July 2004, listed total project costs for GIA completion at \$230 million. In 2006, an updated project estimate increased costs for completion to \$397 million. The cause for the significant increase was threefold: (1) Hurricane Katrina caused increased costs of available materials and reduced availability of labor; (2) unanticipated increases in fuel and steel costs; and (3) federal regulations requiring estimates include a factor for inflation for each year over the life of the project. DOTPF used federal standard inflation over an anticipated seven year period.

The \$397 million estimated cost for the approved access alternative is currently cost prohibitive and unlikely to receive sufficient federal funding.

The increase in cost and decrease in congressional support, makes the preferred alternative for GIA cost prohibitive. As early as fall 2005, Southeast Region engineering staff identified that costs for completion had increased significantly. At an estimated project cost of \$397 million⁸ in 2006, the Federal funding needed was approximately \$318 million⁹ (80 percent of \$397 million). Once the two bridge earmarks were redirected, the DOTPF Southeast Region management had concerns over the financial viability of the project.

⁸The 2006 project cost estimates projected construction costs beginning in 2007 through project completion seven years later in 2013.

⁹The federal government does not pay the entire cost of construction for federal highway projects. Federal funds must be "matched" with funds from other sources. This is referred to as a state match and is typically covered through general fund expenditures. Typical DOTPF projects are federally reimbursed at an 80 percent rate and 20 percent as state match.

The \$56 million expended on GIA work through May 2009 is within the scope of the approved EIS; however, the highway roadwork completed is questionable given insufficient bridge funding.

Approximately \$56 million of federal and state funds have been expended on GIA planning, design, land acquisitions, and construction which is within the federally approved scope of work. Exhibit 7 below shows the GIA specific expenditures as of May 31, 2009, by project and by phase.

Exhibit 7

GIA Project Expenditures as of May 31, 2009*			
	Federal Funds	State funds	Total Costs
<i>Overall Gravina Island Planning and Right of Way</i>			
Environmental Impact Statement	\$ 11,835,381	\$ 2,982,765	\$ 14,818,146
Gravina Island acquisitions	146,200	36,550	182,750
	<u>\$ 11,981,581</u>	<u>\$ 3,019,315</u>	<u>\$ 15,000,896</u>
<i>Lewis Reef Road Improvements</i>			
Planning	\$ 33,006	\$ 9,248	\$ 42,254
Construction	1,383,910	352,028	1,735,938
	<u>\$ 1,416,916</u>	<u>\$ 361,276</u>	<u>\$ 1,778,192</u>
<i>Lewis Road Underpass</i>			
Construction	\$ 10,226,165	\$ 1,015,085	\$ 11,241,250
<i>Gravina Highway</i>			
Construction	\$ 25,547,595	\$ 2,543,071	\$ 28,090,666
	<u>\$ 25,547,595</u>	<u>\$ 2,543,071</u>	<u>\$ 28,090,666</u>
Totals	<u>\$ 49,172,257</u>	<u>\$ 6,938,747</u>	<u>\$ 56,111,004</u>

*This represents retroactive adjustments for activity through August 2009.

Although the work done complies with the approved scope, we question whether constructing the highway was a prudent decision by DOTPF. The highway terminates on the southern end of Gravina Island. Yet, DOTPF is uncertain whether a bridge will be constructed at that location given the lack of available funding.

Within the EIS, the preferred alternative required Gravina Island road work. The preferred alternative specifically called for the construction of an airport underpass between the Lewis Reef road and the Gravina highway. The following are brief descriptions of the need for the work performed:

- An airport underpass was necessary to access the Lewis Reef road and the Gravina Highway at the south end of the airport.
- Lewis Reef road was constructed to create access to the west side of the airport towards the borough's planned Lewis Reef area development.

- The Gravina highway was constructed to provide access to the bridge as well as create access to developable land on the south end of the island.

All three projects were substantially completed by the fall of 2008. Review of detailed expenditures found the costs were reasonable for the project activity. We reviewed pay estimates and daily inspector logs to ensure the airport construction and safety improvements that occurred during the same time as the GIA underpass construction were not inappropriately charged to GIA. No inappropriate charges to GIA were found. The GIA construction projects are identified in the photo on page 15 of this report.

The procurement process for the GIA highway construction did not comply with all state and federal laws.

DOTPF was directed by Governor Murkowski's administration to accelerate the process to award a contract for the construction of the highway. As a result, the time period for both the solicitation for proposals and subsequent award of the contract, was reduced. An abbreviated procurement process is allowed within statute and regulation but must be justified in writing. There was signed documentation that authorized the reduction of time for the highway construction bid period; however, DOTPF had no compelling reason to support the urgent actions taken to award the contract. Ostensibly, the main reason for accelerating the highway construction procurement was to ensure the contract award was signed before the governor left office.

This finding, along with other procurement anomalies, is discussed in Recommendation No. 1 in the Findings and Recommendations section of this report.

Access from Ketchikan to Gravina has not improved, but some progress was made in achieving other GIA goals.

DOTPF has made some progress toward GIA goals. Many access alternatives have been studied, and certain road work is complete, but access from Ketchikan to its airport has not improved. The EIS provided three reasons for improving access.

1. To provide more reliable, efficient, convenient, and cost-effective access to borough lands and other developable lands on Gravina Island as planned.
2. To improve the convenience and reliability of access to the Ketchikan International Airport.
3. To promote environmentally sound, long-term development on Gravina Island.

The goal of creating more reliable and convenient access to developable lands on Gravina Island has been achieved; however, the access to Gravina Island from Ketchikan has not improved. The current ferry transport in place remains the only means of access to the airport.

The need for improved access from Ketchikan to its airport on Gravina Island remains a high priority for both the Ketchikan Borough and DOTPF. Issues identified within the needs and goals section of the EIS have affected Ketchikan since the 1970's and still exist today. Some of the main concerns are:

- The airport is the primary link into and out of Ketchikan and at least four other smaller communities.
- Transport of emergency personnel and equipment between the airport and Ketchikan is inconvenient and limits the ability to respond to emergencies efficiently and quickly. More than 160 medical evacuations are coordinated annually through the Ketchikan airport.
- Negotiating ramps at the ferry terminal is difficult for the elderly and people with disabilities.
- The high demand and low supply of available land increases land costs. It also increases pressure to develop lands that are environmentally marginal, such as wet lands or steep slopes.
- Plane flights missed in Ketchikan because of ferry travel time or mechanical delays, often create a domino effect of missed connections and appointments raising costs for the airlines, businesses and individuals.
- The ferry imposes limitations on services the airport tenants can provide because of its schedule, capacity, and restriction on the type and weight of materials which can be transported.

Two of the three roadwork projects, Lewis Reef road improvements and the airport underpass, were included in all nine EIS access alternatives reviewed. The highway was only included within two of the alternatives, including the preferred alternative. By constructing the highway, funds which could have been used for another alternative road approach are no longer available. Essentially, if another alternative which does not use the constructed highway is selected, additional expenditures, not otherwise necessary, will be required to complete the project.

DOTPF is reserving approximately \$76 million of Earmarks Nos. 5 and 6 for GIA. Another \$11.5 million of Earmarks Nos. 1-4 is available for obligation, but progress has slowed pending development of a supplemental EIS to support more cost effective alternatives. The determination of an acceptable alternative will have to consider total project costs, the likelihood of sufficient federal funding, and sufficient support of the Ketchikan community.

FINDINGS AND RECOMMENDATIONS

Recommendation No. 1

The Director of the Southeast Region of the Department of Transportation and Public Facilities (DOTPF) should ensure state laws are adhered to for construction procurements.

DOTPF was directed by Governor Murkowski's administration to accelerate the process to award and sign the contract for construction of the highway. As a result, state and federal laws and regulations were not followed when DOTPF Southeast Region procured construction for a highway on Gravina Island. Three instances of non-compliance were identified: (1) not all potential bidders were provided the same information; (2) approval from the Federal Highway Administration (FHWA) to shorten the solicitation period was not obtained; and (3) sufficient justification did not exist to support shortening the solicitation and award period from 21 to 10 days. Additionally, the contract was signed four days prior to the end of the protest period. Although signing a construction contract before the end of the protest period does not violate specific statute or regulation, it further demonstrates Southeast Region's intent to meet the imposed deadline prior to the end of the Murkowski administration.

1. A disc with project information and data¹⁰ necessary to prepare a bid for the Gravina roadwork was provided to contractors attending a pre-proposal meeting held in Anchorage on October 17, 2006. DOTPF's standard practice is to hold a pre-proposal meeting for prospective bidders prior to the issuance of a request for proposal (RFP). The GIA highway and underpass pre-proposal meeting was held in Anchorage and not made available via teleconference. The DOTPF project website was updated on October 19, 2006, with a notice that the project data was available upon request. However, the posting included disclaimers stating that the information should not be relied upon, and that contractors should not use the information in preparing a bid.

The *Alaska Administration Manual* mandates, "In all cases you must provide the same information to all contractors."¹¹ Many potential bidders were not made aware of the information until the RFP was issued on November 11, 2006. For some contractors, this gave them the information for less than one week while contractors who attended the pre-proposal meeting had information for over a month. By not providing the information to all potential bidders, DOTPF unfairly limited competition.

2. Federal regulations require that FHWA approval be obtained in cases where the State seeks to shorten the solicitation period.¹² DOTPF and FHWA have been operating under the assumption that authority to shorten solicitation periods was delegated to the State.

¹⁰Project information and data include such items as survey and mapping data, right of way information, and some geotechnical information.

¹¹Alaska Administrative Manual 81.410

¹²23 Code of Federal Regulations 635.112 (b)

However, the State's stewardship agreement with FHWA does not include the authority to shorten solicitation periods.

3. Both federal regulations and state statutes allow for a shorter bid process if doing so is fully justified and adequate competition is anticipated. Justification is required to be in writing.¹³ The written justification for accelerating the solicitation of Gravina Access roadway work signed by the Southeast Region director was not convincing with references to *economies of scale*. No additional information was provided to substantiate that justification.

Furthermore, regional staff indicated that *economies of scale* was not the impetus for accelerating the bid process. Rather, the bid solicitation period was shortened to ensure the highway contract was signed before Governor Murkowski left office. The contract was signed Friday, December 1, 2006. Governor Murkowski left office Sunday, December 3, 2006.

The Gravina highway procurement was not fair and equitable for all potential bidders. Lacking adequate justification for a shortened solicitation and signing a contract before the end of the protest period puts the State at risk for litigation and associated costs. Also failure to comply with state laws and regulations may jeopardize future federal transportation project funding.

Accordingly, we recommend the director of DOTPF Southeast Region ensure adherence to the laws, regulations and rules for procurements, and clarify the delegation of authority within the state's stewardship agreement with FHWA.

¹³Alaska Statute 36.30.130 (a)

APPENDIX A

The table below lists all the earmarks originally designated for the Gravina Island Access Project (GIA). The first two earmarks were designated for the design and planning portion of the environmental impact statement (EIS). The third earmark was designated for bridge construction. The fourth was for roadwork on Gravina Island. The last two earmarks were initially designated for bridge construction, but were later redirected. Congress redirected the bridge earmarks (Earmark Nos. 5 and 6 below) to be eligible for any Department of Transportation and Public Facilities (DOTPF) project contained on the statewide transportation improvement program (STIP).

Summary of GIA Earmarks Amounts Appropriated, Obligated, and Still Available As of May 30, 2009

<u>Earmark</u>	<u>Purpose</u>	<u>Authorized</u>	<u>Appropriated*</u>	<u>Obligated</u>	<u>Still Available</u>
1	GIA EIS	\$ 15,000,000	\$ 14,020,785	\$ 15,296,544	\$ (1,275,759)
2	GIA EIS	5,443,000	5,087,675	3,703,458	1,384,217
3	GIA Bridge	1,975,000	1,975,000	-0-	1,975,000
4	GIA roadwork	48,000,000	43,195,205	33,790,095	9,405,110
5	STIP Projects	100,000,000	89,990,011	21,994,575	67,995,436
6	STIP Projects	<u>75,000,000</u>	<u>68,269,047</u>	<u>16,149,375</u>	<u>52,119,672</u>
	Total	<u>\$ 245,418,000</u>	<u>\$ 222,537,723</u>	<u>\$ 90,934,047</u>	<u>\$ 131,603,676</u>

*See Background for description of difference in authorized versus appropriated.

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APPENDIX B

Summary of State Specific GIA Appropriations Amounts Appropriated, Expended and Still Available As of May 31, 2009

		<u>Appropriated</u>	<u>Expended</u>	<u>Still Available</u>
General Fund Appropriations				
SLA 98 Chapter 139	Ketchikan to Gravina Bridge	\$ 200,000	\$ 200,000	\$ -0-
SLA 06 Chapter 82	State match for Gravina Bridge	<u>9,926,370</u>	<u>-0-</u>	<u>9,926,370</u>
		10,126,370	200,000	9,926,370
Federal Receipt Appropriations				
SLA 98 Chapter 139	Ketchikan to Gravina Bridge	20,000,000	14,939,512	5,060,488
SLA 01 Chapter 61	Gravina Island crossing	20,000,000	20,000,000	-0-
SLA 04 Chapter 159	Ketchikan Gravina Island crossing	215,000,000	14,199,740	200,800,260
SLA 06 Chapter 82	Gravina Island Bridge	<u>91,000,000</u>	<u>-0-</u>	<u>91,000,000</u>
		346,000,000	49,139,252	296,860,748
	Specific GIA Appropriations Total	<u>\$ 356,126,370</u>	<u>\$ 49,339,252</u>	<u>\$ 306,787,118</u>

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APPENDIX C

**Summary of GIA Project Expenditures
By Project By Type of Funding Appropriation
Amounts Appropriated, Expended and Still Available
As of May 31, 2009**

	<u>Appropriated</u>	<u>Expended</u>	<u>Still Available</u>
Environmental Impact Statement			
General Fund GIA Specific Appropriations			
SLA 98 Chapter 139	\$ 200,000	\$ 200,000	\$ -0-
SLA 06 Chapter 82	9,926,370	-0-	9,926,370
	<u>10,126,370</u>	<u>200,000</u>	<u>9,926,370</u>
General Fund GIA Non-Specific Appropriations			
SLA 96 Chapter 123	360,000	360,000	-0-
SLA 99 Chapter 02	936,000	936,000	-0-
SLA 01 Chapter 61	96,385	96,385	-0-
SLA 02 Chapter 1	370,000	362,919	7,081
SLA 03 Chapter 82	1,033,740	1,027,461	6,279
SLA 06 Chapter 82	347,461	-0-	347,461
	<u>3,143,586</u>	<u>2,782,765</u>	<u>360,821</u>
Federal Receipt GIA Specific Appropriations			
SLA 98 Chapter 139	13,338,612	11,835,381	1,503,231
SLA 04 Chapter 159	199,211,592	-0-	199,211,592
SLA 06 Chapter 82	91,000,000	-0-	91,000,000
	<u>303,550,204</u>	<u>11,835,381</u>	<u>291,714,823</u>
Total Environmental Impact Statement	\$ 316,820,160	\$ 14,818,146	\$ 302,002,014
Gravina Island Acquisitions			
General Fund GIA Non-Specific Appropriations			
SLA 05 Chapter 3	33,163	33,163	-0-
SLA 07 Chapter 30	892,701	3,387	889,314
	<u>925,864</u>	<u>36,550</u>	<u>889,314</u>
Federal Receipt GIA Specific Appropriations			
SLA 98 Chapter 139	3,703,458	146,200	3,557,258
Total Gravina Island Acquisitions	\$ 4,629,322	\$ 182,750	\$ 4,446,572
Lewis Reef Road Improvements			
General Fund GIA Non-specific Appropriations			
SLA 03 Chapter 82	316,188	316,188	-0-
SLA 04 Chapter 159	49,994	39,038	10,956
SLA 06 Chapter 82	6,800	6,050	750
	<u>372,982</u>	<u>361,276</u>	<u>11,706</u>
Federal Receipt GIA Specific Appropriations			
SLA 98 Chapter 139	1,355,733	1,355,733	-0-
SLA 04 Chapter 159	72,000	28,177	43,823
	<u>1,427,733</u>	<u>1,383,910</u>	<u>43,823</u>
Federal Receipt GIA Non-specific Appropriations			
SLA 03 Chapter 82	33,006	33,006	-0-
Total Lewis Reef Road Improvements	\$ 1,833,721	\$ 1,778,192	\$ 55,529

APPENDIX C

**Summary of GIA Project Expenditures
By Project By Type of Funding Appropriation
Amounts Appropriated, Expended and Still Available
As of May 31, 2009
(Continued)**

	<u>Appropriated</u>	<u>Expended</u>	<u>Still Available</u>
Lewis Road Underpass			
General Fund GIA Non-Specific Appropriations			
SLA 05 Chapter 3	\$ 46,729	\$ 46,729	\$ -0-
SLA 06 Chapter 82	212,669	179,994	32,675
SLA 07 Chapter 30	788,362	788,362	-0-
	<u>1,047,760</u>	<u>1,015,085</u>	<u>32,675</u>
Federal Receipt GIA Specific Appropriations			
SLA 98 Chapter 139	1,602,197	1,602,197	-0-
SLA 01 Chapter 61	6,810,671	6,810,671	-0-
SLA 04 Chapter 159	2,142,470	1,813,297	329,173
	<u>10,555,338</u>	<u>10,226,165</u>	<u>329,173</u>
Total Lewis Road Underpass	\$ 11,603,098	\$ 11,241,250	\$ 361,848
Gravina Highway			
General Fund GIA Non-Specific Appropriations			
SLA 03 Chapter 82	39,109	39,109	-0-
SLA 04 Chapter 159	3,451	3,451	-0-
SLA 05 Chapter 3	727,514	727,514	-0-
SLA 06 Chapter 82	1,911,541	1,772,997	138,545
	<u>2,681,615</u>	<u>2,543,071</u>	<u>138,545</u>
Federal Receipt GIA Specific Appropriations			
SLA 01 Chapter 61	13,189,329	13,189,329	-0-
SLA 04 Chapter 159	13,573,938	12,358,266	1,215,672
	<u>26,763,267</u>	<u>25,547,595</u>	<u>1,215,672</u>
Total Gravina Highway	<u>29,444,882</u>	<u>28,090,666</u>	<u>1,354,217</u>
Total GIA Project	\$ <u>364,331,183</u>	\$ <u>56,111,004</u>	\$ <u>308,220,180</u>

APPENDIX D
DOTPF Transportation Projects
Delayed in Fall 2005

Region	Project Description
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Project Status: Delayed

Central	Glenn Highway- Bridge Repair Edmonds Lake # 1369
Central	Glenn Highway- Bridge Repair Eklutna River #1230
Central	Glenn Highway- MP 34 to 42 Reconstruction Parks to Old Glenn Highway
Central	Glenn Highway- MP 53 to 56 Reconstruction Moose creek Canyon
Central	Glenn Highway- MP 66.5 to 80 Reconstruction Chickaloon
Central	Glenn Highway- MP 80 to 92 Reconstruction Long Lake to Cascade
Central	Parks Highway- MP 98.5 to 115 Repair Talkeetna Spur to Petersville Rd.
Central	Parks Highway- MP 115 to 133 Bridge Repair Petersville Rd. to Chulitna River
Central	Parks Highway- MP 52.3 New Interchange Big Lake
Central	Parks Highway- MP 83 to 98.5 Repair Kashwitna River to Talkeetna Spur Rd
Central	Seward Highway- International Airport Road Intersection Grade Separation
Central	Seward Highway- MP 18 to 25.5 Reconstruction Snow River to Trail River
Central	Seward Highway- MP 25.5 to 36 Repair Trail River to Sterling Wye
Central	Seward Highway- MP 36 to 50 Rehabilitation Sterling Wye to Summit Lake
Central	Seward Highway- MP 75 to 90 Road/Bridge Repair Ingram Creek to Girdwood
Central	Seward Highway- O'Malley Road Interchanges at Old and New Highways
Central	Sterling Highway- MP 157 to 169 Repair Anchor Point to Baycrest Hill
Central	Sterling Highway- MP 45 to 60 Repair Sunrise to Skilak Lake Rd
Headquarters	NHS Highway Information System
Northern	Dalton Highway MP 9 to 11 Reconstruction 9-Mile Hill
Northern	Fairbanks- Airport Road Intersection Improvements
Northern	Fairbanks- Airport Way & Cushman St Intersection Improvements
Northern	Fairbanks- Airport Way Corridor Capacity and Safety Improvements
Northern	Parks Highway- MP 194 Broad Pass Railroad Overcrossing
Northern	Parks Highway- MP 285 Bridge Replacement Julius Creek
Northern	Richardson Highway- MP 228 Bridge Repair One Mile Creek #0591
Northern	Richardson Highway- MP 261 to 265 Bridge Repair Jarvis Creek
Northern	Richardson Highway- MP 345 Moose Cr Railroad Overcrossing
Northern	Richardson Highway- MP 357 Fairbanks New Weigh Station
Southeast	Juneau- Egan Drive Harbor Area Intersection Improvements

Project Status: Delayed And Later Moved Forward

Northern	Dalton Highway- MP 175 to 209 Reconstruction Coldfoot to Dietrich
Northern	Dalton Highway- MP 260 321 Culverts Repair or Replacement
Northern	Glenn Highway- MP 2 Tok Cutoff - Bridge Replacement Gakona River #646

Project Status: Moved Forward With Alternative Funding

Central	Parks Highway- MP 72 to 3 Reconstruction Willow Creek to Kashwitna River
Northern	Alaska Highway- MP 1308 - Tok Weigh Station
Northern	Dalton/Elliott Highways MP 18.3 Bridge Repair Washington Creek #0838
Northern	Glenn Highway- MP 172 to 189 Repair Tolsona River to Richardson Hwy Jct
Southeast	Haines Highway- Ferry Terminal Through Town to Old Haines Highway
Southeast	Juneau- Glacier Highway Fritz Cove Road to Auke Bay Ferry Terminal

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APPENDIX E

**Projects Funded with Redirected Earmarks
As of May 31, 2009**

Earmark 5: Original Federal Appropriation Amount		\$ 89,990,011		
<u>Project Location</u>	<u>Project Description</u>	<u>Project phase</u>	<u>Federal Obligation</u>	<u>Federally Reimburse Expenditures</u>
Bethel	Roadway improvements and adding pedestrian facilities	construction	\$ 7,544,618	\$ 7,544,618
False Pass	New roadway construction and bridge	design	250,168	215,897
False Pass	New roadway construction and bridge	construction	1,975,072	1,975,072
Haines	Ferry terminal and approach road improvements	right of way	22,743	-0-
Haines	Ferry terminal and approach road improvements	construction	1,368,640	-0-
Hooper Bay	Roadway and boardwalk improvements	construction	1,337,011	915,834
Hooper Bay	Roadway and boardwalk improvements	utilities	90,189	53,726
Juneau	Install new traffic signal controllers and detection equipment	construction	478,474	4,259
Ketchikan	Airport ferry terminal road surfacing improvements	construction	97,243	72,616
Ketchikan	Roadway, bridge and pedestrian improvements	right of way	22,742	-0-
Ketchikan	Roadway, bridge and pedestrian improvements	construction	18,194	15,171
Ketchikan	Roadway improvements	design	22,206	22,205
Ketchikan	Roadway improvements	construction	4,620,935	4,620,935
Nome	Roadway improvements	construction	1,210,000	20,514
N Region	Removal of brush and trees along roadway right-of-way	construction	145,177	145,177
Petersburg	Roadway improvements	construction	1,559,133	1,551,183
SE Region	Roadway and bridge resurfacing repairs and improvements	design	10,917	10,914
SE Region	Roadway and bridge resurfacing repairs and improvements	construction	853,299	828,877
SE Region	Cutting and removal of sand, brush, trees, and other vegetation for scenic enhancement	construction	140,389	140,389
M/V Chenega	Perform post delivery hull inspection for identifying damage and repair as necessary; survey operating condition of existing ship systems, and modify and improve systems	design	227,425	3,230
Total Obligated and Total Reimbursed			<u>21,994,575</u>	<u>18,140,617</u>
Earmark 5:	Remaining Unobligated Balance		\$ <u>67,995,436</u>	

APPENDIX E

**Projects Funded with Redirected Earmarks
As of May 31, 2009
(Continued)**

Earmark 6:	Original Federal Appropriation Amount		\$ 68,269,047	
Project Location	Project Description	Project Phase	Federal Obligation	Federally Reimburse Expenditures
Glenn Highway	Roadway improvements and bridge replacement	construction	8,397,675	8,397,675
Unalaska	Road and bridge improvements to include adding pedestrian access. Also shoreline improvements	construction	7,751,700	7,751,700
	Total Obligated and Total Reimbursed		16,149,375	16,149,375
Earmark 6:	Remaining Unobligated Balance		\$ <u>52,119,672</u>	

STATE OF ALASKA

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES OFFICE OF THE COMMISSIONER

SEAN PARNELL, GOVERNOR

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January 4, 2010

Ms. Pat Davidson
Division of Legislative Audit
PO Box 113300
Juneau AK 99811-3300



Dear Ms. Davidson:

This letter is in response to Legislative Audit's Preliminary Audit report on: *A Special Report on the Department of Transportation and Public Facilities, Gravina Island Access, October 30, 2009.* The Department of Transportation and Public Facilities submits the following responses and clarification.

Background Information Section

With each succeeding transportation bill since 1992 the federal funding process has increased in complexity. Dealing with the complexity and delivering needed infrastructure is benefited when people who do not work with the program every day understand the process.

I would like to compliment you and your staff for grasping the complexity of the federal funding process and presentation of that process in general terms. It is important that people understand the complexity and the resulting limitations on available funding.

Page 8, STIP Section, *"Before a project may be listed in the STIP, there must be a reasonable anticipation of full funding within the estimated timeframe for project completion."*

The Department disagrees with this statement in terms of the Gravina Island Access project. The legal requirement for full funding of a STIP project within the estimated timeframe for project completions was not adopted by federal regulations until February 14, 2007. The STIP governing this project predates this requirement.

Report Conclusions

Page 17, *"However, the decision to proceed with the highway construction was not in the public's best interest given the lack of congressional financial support for the bridges and the significant increase in estimated cost."*

"Providing for the safe movement of people and goods and the delivery of state services."

The Department disagrees due to the following:

1. National support for the project based on congress designating federal funds for its construction.
2. State support for the project based on the Legislature providing authority to spend federal funds on its construction.
3. Support from the Governor.
4. Local government support.
5. Funding would be maximized by constructing the road in conjunction with the airport's runway safety area project.
6. These funds could only be employed for construction of the Gravina Access roadway, which extended access to both ends of Gravina Island connecting to all alternatives under consideration.

Page 21, "...the highway roadwork completed is questionable given insufficient bridge funding."

These two preceding report conclusions are at odds with the state's long standing support for earmarked projects that meet three requirements:

- The project is fully funded by the federal earmark(s) in question, thus there is no "opportunity cost" in pursuing the work.
- The project is supported by the community within which it exists.
- If part of a larger project vision, the immediate work authorized has utility independent of the larger project.

Numerous Alaska communities seek and secure federal earmarks for projects, which serve a larger objective. Since the roadwork portion of Gravina Island Access serves to access borough and other developable lands on Gravina Island (regardless of whether the island is accessed by ferry or a highway bridge) a legitimate public purpose is achieved.

The conclusions such as the one made here about the Gravina Island Access project roadwork is at odds with the goal of both federal and state legislative efforts that big transportation goals often must be accomplished in smaller undertakings. The department does not believe the public's interest would be served by exercising its discretion to not undertake projects that is fully funded by an earmark, but is not fully funded as to the ultimate and perhaps long term objective.

Moreover, in the case of this project, the coincident aviation project to lengthen the runway at the Ketchikan Airport created a timing issue that is overlooked by the report. Simply said, there was never going to be an easier and less expensive opportunity to build road in a tunnel under the runway, than during the same project that extended and elevated the runway across the proposed road location.

The combination of the road having independent utility, and the timing of construction to take advantage of the concurrent runway lengthening, makes a compelling case for the road work being in the public interest. Without the “independent utility” of accessing borough and other developable lands, the roadwork portion of Gravina Island Access would not have been able to be advanced using federal funds.

The department offers the following clarification on Appendix A. Appendix A provides a list of all earmarks originally designated for the Gravina Island Access Project (GIA), including the two earmarks that were redirected by Congress. It is recommended that the table be restructured to separate the NHS funds reserved for GIA separated from the funds allocated by regulations for other transportation projects. Without this separation the possibility exists for a misunderstanding that all of the “Still Available” funds could be used for GIA.

On page 21, the report identifies a typical match rate of 80 percent. Unfortunately, this overstates the match amount needed for GIA. The actual rate is dependent upon the specific federal funding program. The actual match rate varies from “0” percent to “20” percent.

For the GIA, the match rate from the 2006 Initial Financial Plan identifies the federal portion as 90.97% with a match rate of 9.03%. These rates more accurately reflect the amount of federal and match funds for this type of project.

Findings and Recommendations

Page 25, Recommendation No. 1: *“The director of the Southeast Region of the Department of Transportation and Public Facilities (DOT&PF) should ensure state laws are adhered to for construction procurements.”*

The department agrees. All procurement activities associated with the Gravina project adhered to state and federal laws and regulations.

Page 25, “(1) not all potential contractors were provided the same information”

The department disagrees. All potential contractors were advised at the same time through the State of Alaska Online Public Notice (OPN) system. This notice provided equal access to bid information as required by law and regulation. All contractors had the opportunity to acquire the information at the same time. (As a courtesy we also provided the same information on the project website two days later, but this is not required.)

Page 25, “(2) approval from the Federal Highway Administration (FHWA) to shorten the solicitation period was not obtained.”

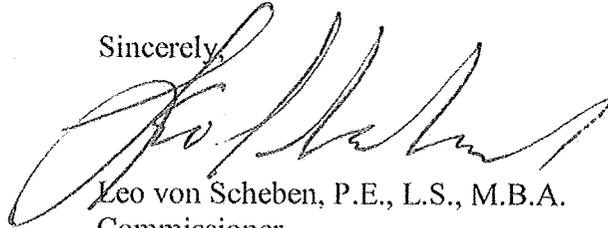
The department disagrees. FHWA approval is not required for a shortened circulation period. The previously supplied letter from David Miller, Division Administrator, FHWA, confirms that “the DOT&PF has the authority to approve a shortened advertisement period.” (See enclosure.)

Page 25, “(3) sufficient justification did not exist to support shortening the solicitation and award period from 21 to 10 days.”

The Department disagrees. The state and federal requirements allow a shortened advertisement period when it is "advantageous" and "justified." The Southeast Region Director's determination to shorten the advertisement period was established in accordance with all applicable federal and state statutes and regulations.

I appreciate the opportunity to respond to this preliminary audit report. If you have further questions, please contact Laura Baker, Administrative Services Director, at 465-3911.

Sincerely,

A handwritten signature in black ink, appearing to read "Leo von Scheben". The signature is fluid and cursive, with a long horizontal stroke at the end.

Leo von Scheben, P.E., L.S., M.B.A.
Commissioner

Enclosure

cc: Laura Baker, Director, Division of Administrative Services, DOT&PF
Gary Davis, Southeast Regional Director, DOT&PF
Mark O'Brien, Chief Contracts Officer, DOT&PF
Frank Richards, Deputy Commissioner of Highways & Public Facilities, DOT&PF



U.S. Department
of Transportation
**Federal Highway
Administration**

Alaska Division

August 6, 2009

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Mr. Mark O'Brien, Chief Contracts Officer
Alaska Department of Transportation
and Public Facilities
P.O. Box 112500
Juneau, Alaska 99811-2500

In Reply Refer To:
922(5)/67698

Dear Mr. O'Brien:

Reference is made to our discussion of August 5, 2009, regarding the State's approval of a shortened advertising period for the Gravina Island project. Specifically, you were seeking clarification that 1) the Alaska Department of Transportation and Public Facilities (DOT&PF) is not in jeopardy of non-participation on the Gravina Island project as a result of its approval of a reduced advertisement schedule for the Gravina Island project ; and 2) our offices have been operating with the understanding that shortened advertising periods are approved by the State Highway Agency, first under Certification Acceptance, and then under the Oversight Agreement and related procedures.

Consistent with your discussion with Mr. Lohrey of this office, the FHWA can confirm that the DOT&PF's approval of a shortened advertisement period would not in and of itself be cause for non-participation in a Federal-aid project. As is documented by the FHWA's approval of Section 470.4 of the DOT&PF Preconstruction Manual, and as described in DOT&PF Policy and Procedure Number 10.02.014 entitled "Public Notice for Construction Related Competitive Procurements", the DOT&PF has the authority to approve a shortened advertising period. Specific to Gravina Island, the contents of the Legislative Audit Report have not been revealed to this office and we are not in a position to comment on the findings of the Legislative Audit Report.

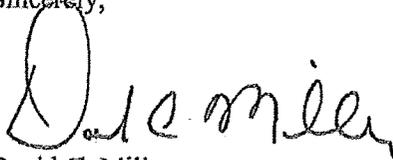
The FHWA can further confirm that our offices have been operating under the understanding that shortened advertising periods, as outlined under 23 CFR 635.112(b), are approved by the State Highway Agency. We would note that only after being contacted by Legislative Audit in regard to the Gravina Island project did we become aware that, from a technical perspective, clarity is needed in our rewrite of the FHWA/DOT&PF Stewardship Agreement to more clearly document delegations of "Public Interest Findings" and approvals of individual actions that are



“in the public’s interest”, or other such similar language. Specific to shortened advertisement approvals, we were unaware of this as an issue until raised by Legislative Audit.

In closing, while the DOT&PF has authority to approve shortened advertisement periods, the FHWA believes that the current oversight agreement is not clear on what approvals are delegated to the DOT&PF under the term “Public Interest Finding”, especially from an auditor’s perspective. The FHWA is certainly aware that you are (and have been for many years) approving force account work and use of public owned equipment, as well as making other approvals under the Preconstruction Manual and Policy and Procedure documents. To that end, the FHWA will seek to work with your office to clarify approval authority in the Stewardship Agreement as it is currently under revision. In the interim, the DOT&PF should continue to operate under the approved Policy and Procedures until such time as the update to the Stewardship agreement is complete.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Miller". The signature is written in a cursive, somewhat stylized font.

David C. Miller
Division Administrator

CC:
Mr. Roger Healy, DOT&PF Chief Engineer

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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January 5, 2010

Members of the Legislative Budget
and Audit Committee

We have reviewed the Commissioner of the Department of Transportation and Public Facilities' response to our audit report. Nothing in the response causes us to reconsider our conclusions or recommendation. However, we offer the following clarification in regard to Appendix A.

On page 3 of the response the commissioner noted:

It is recommended that the table [Appendix A] be restricted to separate the NHS funds reserved for GIA separated from the funds allocated by regulations for other transportation projects.

The purpose of Appendix A was to summarize the funding earmarked for the Gravina access project. A more detailed analysis of the redirected earmarks is located within the report conclusion section as Exhibit 6 on page 20.

We reaffirm the report conclusions and recommendation.

Sincerely,

A handwritten signature in cursive script that reads "Pat Davidson".

Pat Davidson, CPA
Legislative Auditor