

DRAFT
MINUTES OF THE 3/26/10 MEETING OF
THE ROUTE 11 GREENWAY AUTHORITY COMMISSION

Present: Steward, Markowicz, Allen, Giannotti, Sielman, Lyden, Jaskiewicz, Formica, and Butler.

Staff: Guggenheim, Contois, Nelson.

Public: Maynard, Jutila, Ross, Stone (for Lombardi), Renczkowski, and Bingham.

1. Call to Order: The Chairman called the meeting to order at 10:06 a.m.
2. Roll Call: A quorum was present.
3. Approval of Minutes of February 26, 2010 Meeting: It was voted (Sielman/Butler) to approve the Minutes of the February 26, 2010 Meeting.
4. Bike and Pedestrian Trail Status Report: At the request of Chairman Steward, Mr. Butler summarized the sources and uses of funds that had been designated for or provided to the Commission as discussed in Attachment A. He noted that the total cost for the final design (including permitting) for the Bike and Pedestrian Trail is unknown. Chairman Steward observed that there is linkage between Route 11 and the Route 11 Greenway and that he is opposed to the construction of a Bike and Pedestrian Trail without the completion of Route 11. Discussion followed. Representative Jutila (with the support of Representative Ritter and Senator Stillman) stated that they consider Route 11 and the Route 11 Greenway to be separate projects. He further noted the statutory initiatives of the General Assembly in support of the Commission. Representative Jutila stated that the CONNDOT Commissioner considers the Route 11 Bike and Pedestrian Trail a project that should be completed. He further reported that there is pending legislation in the General Assembly to reinstall highway tolls with the revenues to be used for new highway construction such as the completion of Route 11. Senator Maynard stated that he was substantially in agreement with Representative Jutila's remarks. Discussion followed regarding the status of funds and property acquisition and general public policy regarding bike and pedestrian trails. Mr. Allen stated that he believed that the expenditure of up to 30% of federal funds for the design of the Bike and Pedestrian Trail would not have to be repaid if the Trail is not constructed. Dr. Bingham commented regarding public support of bike and pedestrian trails, development risks associated with stopping the development of the Greenway, and his support for highway tolls. Mr. Ross stated his support for the Commission returning to its strategic objectives and mission. Mr. Sielman stated his support for CONNDOT providing the \$1.1Million State match for initiating with BL Companies the Preliminary Engineering and Environmental Plans. First Selectman Lyden stated his support for completing Route 11. Mr. Butler noted an E-mail response from FHWA to the various alternatives that the Commission had proposed regarding the Bike and Pedestrian Trail Project. Chairman Steward reviewed the four options (Attachment B) and stated his support of Options 1 and 4. Mr. Butler suggested that Option 1 may require modification due to the uncertain status of the

additional \$310,700 funds needed to complete the design tasks currently proposed by BL Companies as well as the additional funds that would likely be required to complete the final design (including permitting) of the Bike and Pedestrian Trail. First Selectman Formica stated his concern for higher priority water projects in East Lyme and asked several questions regarding the sources and uses of funds. Mr. Guggenheim stated that the Bike and Pedestrian Trail is not a Greenway.

Chairman Steward suggested that action by the Commission be delayed for one month in order to confirm Mr. Allen's observation regarding not having to repay up to 30% of federal design funds and Mr. Butler's concerns regarding the availability of more than \$150,000 of Bike and Pedestrian Trail design funds from the Department of Environmental Protection. Mr. Allen and Ms Giannotti agreed to investigate and report on these two issues. There was a consensus among the Commissioners to defer action regarding the Bike and Pedestrian Trail Project until this additional information was provided at the April Meeting.

5. Public Comment: None (Other than as recorded above)
6. Other Business: None.
7. Adjournment: There being no further business Chairman Steward adjourned the meeting at 11:26 a.m. The date of the next Regular Meeting is April 23, 2010.

MEMORANDUM

TO: Route 11 Greenway Authority Commission
FROM: James S. Butler, S. Richard Guggenheim, SCCOG Staff
DATE: 26 February 2010
SUBJECT: Route 11 and the Route 11 Greenway

In light of the recent decision by the State to suspend all activity related to Route 11, the following was prepared by SCCOG staff to focus the discussion on the key elements associated with the future of the Route 11 Greenway Authority Commission and the Bike/Pedestrian/Greenway project.

A key policy question is: Will the development of a bike/pedway help further the completion of Route 11?

The greenway project was initially undertaken as an article of faith that the development of a greenway, which protected the natural resources that were of concern to USEPA, would bring EPA to the table so that they would not veto the Army Corps Section 404 permit required for the completion of Route 11. However, in the past 10 years, despite the work of the Route 11 GAC, there is no evidence to support the presumption that a greenway will convince EPA to not veto a 404 permit for this project.

Route 11 Issues

In January 2010, the Connecticut Department of Transportation released their statewide Transportation Priority List. This list placed Route 11 on the list of Major Long Term Un-fundable Initiatives. The decision by the State to suspend activities related to a contract with BL Companies was predicated on the knowledge that for the foreseeable future, funding would not be available to build Route 11. At risk was having to repay the Federal government for the cost of the EIS if there was no forward motion toward the construction of Route 11. Knowing this, CONNDOT has decided to suspend the completion of the EIS. This action was taken despite the fact that funds are available (\$4.4 million earmark) to complete the EIS. The State was faced with a series of dilemmas. Under existing conditions, the only way to close out the existing EIS and to have a ROD issued is to have the No Build Alternative become the preferred alternative. The State's other option was to continue with the EIS with no prospect of completing the financial plan or, alternatively, offering a financial plan with a low expectation of success in order to complete the EIS and secure a ROD.

Therefore, under the above conditions, suspension of the EIS is the preferred alternative. If in the future (2016 or beyond), funds become available to design and build Route 11, the EIS can be updated and completed. Beyond that point, it remains unclear whether EPA will or will not decide to veto the required Section 404 Permit.

Requirement for a Bike/Pedway

The language of HPP #642, in Section 1702 of SAFETEA-LU, which appropriated the federal funding for the PE of Route 11 and the construction of a greenway, required the construction of a bike/pedway. Although intended by, then Congressman Simmons the legislative sponsor, to secure funding for the acquisition of open space, the Route 11 GAC learned in the summer of 2008 that the project as enacted into law requires the inclusion of a bicycle and pedestrian pathway. FHWA has made clear that despite the intent of the sponsor, no funds from HPP #642 can be used to purchase land for the greenway if it does not include a bike/pedway. The only way to remove the requirement that a bike/pedway be built would be to request Congress to amend the language of HPP #642. Congressman Courtney made such a request to the House Transportation and Infrastructure Committee in June, 2008. Unfortunately, the Committees' rules prevent such changes from being made in the case where a project was secured by the member of a party that no longer holds the seat.

Bike/Pedway Study

Most of the elements are in place to proceed with the bike/pedway preliminary engineering study. The immediate impediment is that the funds are not in place to underwrite the full cost of the BL study. However, a portion (\$4 Million) of the \$10 Million Federal earmark for construction of the greenway are in place and it is assumed that the State bond (\$1 Million) can be used for the match. The cost of the engineering for this project has escalated from the preliminary estimate of \$150,000 to \$451,700 based on the scope of work required by CONNDOT. Once SCCOG enters into the contract with BL Companies on behalf of the GAC, all NEPA requirements will need to be met. Some of these requirements are unforeseen. Ultimately the bike/pedway will need to be built or all of the Federal funds will need to be repaid. As the contracting agent, SCCOG could be held responsible for repayment.

Conclusion

CONNDOT and FHWA view the bike/pedway as a separate, stand alone project, related to Route 11 in name only. Most of the funds are in place to proceed with the project. With only \$1,000,000 in State bonding outstanding, there is every reason to believe that a regional bike/pedway can be completed.

However, since the four towns through which this facility is to run never viewed the Greenway independent of Route 11, the decision by the State to indefinitely suspend all activity related to Route 11 raises the question as to whether or not the design and construction of a bike/pedway and the acquisition of properties for the purpose of a greenway are still considered desirable by the four municipalities and the SCCOG in light of the prospect that Route 11 will never be built or will not be built in the foreseeable future.

Summary of Funding Status

- Route 11 GAC Administrative Funds - \$25,132 originally provided; \$14,447 available as of 2/1/10.
- Original funding for acquisition of properties for a greenway - \$1 Million from federal earmark. As reported by CONNDOT: \$814,800 expended to purchase four parcels; \$102,030 on CONNDOT administrative costs; balance remaining \$76,000.
- Funding to conduct bike/pedway study - \$200,000 included in CONDOT agreement with SCCOG (\$150,000 for consultant; \$25,000 for SCCOG, and an additional \$25,000 for CONNDOT). An additional \$301,700 will be required to complete the preliminary engineering study; not yet appropriated.
- Funding for final design of bike/pedway roughly estimated at \$500,000 (could be higher and might be impacted if the PE and environmental mitigation plan work for the construction of Route 11 does not move forward); not yet appropriated.
- Funding for Environmental Mitigation Plan and PE of Route 11 - \$4.4 Million earmark. This funding will require a \$1.1M match by the State; not yet appropriated.
- Funding for construction of Route 11 Greenway (requiring a bike/pedway) - \$10M (80% Federal, 20% State) earmark. \$1M (40% of State match) approved by State Bond Commission, assigning this amount to CTDEP for Route 11 GAC match.

Attachment B

Route 11 Greenway Authority Options In Light of CONNDOT's Decision Not to Move Ahead with Route 11

1. Vote to go ahead with creation of a Greenway. This would involve the entering into a contract with BL Companies for \$150,000 and seeking an additional \$310,700 from CONNDOT (assuming this would come from the \$10 M earmark) to complete the PE for a bike/pedway. Then a final design for the bike/pedway would have to be conducted at an unknown cost previously estimated at approximately \$500,000 (Note: This figure will be impacted by whether or not CONNDOT contracts with BL Companies to perform the PE and environmental mitigation for Route 11). Per the requirements of the federal earmark, the bike/pedway would then have to be constructed or the moneys paid back. These funds would come from the \$10M, and the State match of which 40% or \$1M has been provided to date.
2. Vote to abandon the idea of a Greenway, and possibly dissolve or at least suspend the work of the Route 11 Greenway Authority Commission. This would involve notice to BL and CONNDOT that the Route 11 GAC will not proceed with the bike/pedway study; disposition of the four properties acquired to date; notice to the Congressman's office, FHWA, and CONNDOT that the Route 11 GAC will not be using any funds from the \$10M earmark.
3. Decide to continue as is, without entering into a contract with BL for the bike/pedway study or expenditure of any additional funds of the purchase of property for the greenway, until such time as the State moves Route 11 up its priority list and provides some indication that it plans to move this project forward. This option could include the Route 11 GAC advocating for the construction of Route 11 and an associated bike/pedway. The Route 11 GAC would still meet at some regular interval for the purpose of sharing information, communicating with the State and Federal agencies, and for keeping Route 11 at the forefront in terms of desired transportation improvements in the region.
4. Do nothing. This option differs from option #3 in that it requires no action by the Route 11 GAC and allows the GAC to defer making any decision at this time. It allows a cooling off period and potentially a change by the State in how they view the funding and construction of Route 11. It assumes that the Route 11 GAC for the immediate future would not meet, or would meet less frequently than it has been since there would be no active mission for it.