

GOVERNMENT HILL COMMUNITY COUNCIL

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January 27, 2012

Mary Lee Plumb-Mentjes, Project Manager
Department of the Army
U.S. Army Engineer District, Alaska
Anchorage Field Office
1600 A Street, Suite 110
Anchorage, AK 99501
Mary.Plumb-Mentjes@usace.army.mil

RE: Knik Arm Bridge and Toll Authority application to fill waters of the United States,
Reference Number: POA-2005-97

Dear Ms. Plumb-Mentjes:

The Government Hill Community Council submits these comments on behalf of our neighborhood, regarding the Knik Arm Bridge and Toll Authority's ("KABATA") above-referenced application to fill waters of the United States, including wetlands for construction of approach roads and bridge abutments for the proposed Knik Arm Crossing, also known as and herein described as the Knik Arm Bridge.

The Federal Highway Administration ("FHWA") has not satisfactorily addressed the comments on the FEIS submitted by the Government Hill Community Council, other Community Councils, public interest groups and various agencies and local governments. We thus incorporate those previous comments herein by reference.

Note that unless otherwise stated, all underlines, emphasis, etc. in this document is by the GHCC.

I. FHWA And KABATA Have Not Complied With The Programmatic Agreement

The FHWA and KABATA have not implemented the requirements of the Programmatic Agreement, dated Dec 5, 2008.

Page 3 of the Programmatic Agreement states: “*Whereas, FHWA commits to continuing public notification and participation, as appropriate, during the implementation of the terms of this PA; and* ”

Unlike the signatories to the PA, GHCC as a Consulting Party who did not sign the PA, was not notified on Nov 15, but instead mailed, & postmarked on Nov 29, 2011. KABATA and FHWA thus failed to provide timely notification regarding this action regarding POA-2005-97.

Page 4 of Programmatic Agreement states: “*Whereas, KABATA, as project sponsor, has participated in consultation pursuant to 36 CFR 800 and is signing this PA as an Invited Signatory with the right to amend or terminate the PA with the notification and concurrence of the Signatories, and shall be responsible to administer and implement the stipulations under the terms of this PA for and as directed by FHWA; and Whereas, failure of a Concurring Party(ies) to sign this PA does not relieve FHWA and KABATA of the responsibility to execute the terms of this Agreement, unless so requested and amended by Signatories to this Agreement; and”*

The PA thus makes KABATA responsible for compliance with the terms of the PA.

Page 4 of Programmatic Agreement states: “*A. Funding of the KABATA Liaison 1. Role and Responsibilities: FHWA shall participate in funding for a KABATA staff liaison (KABATA Liaison) position within six (6) months after the date of this PA. The KABATA Liaison shall be hired in consultation with FHWA and SHPO, employed by KABATA, consult and collaborate with all Section 106 consulting parties as the primary point of contact to implement Phases 1 and 2 of this PA, and will also provide regular project development and construction status updates. Key tasks will include the following: a. Establish and coordinate consultation and project status update meetings. The purpose of these meetings may include, but not be limited to, the following: to recommend priorities and goals of mitigation and assess progress of those plans, and identify any recommended changes or amendments to the current mitigation plans based upon evolving information or developments during construction. b. Establish and maintain lines of project related communication and consultation with the consulting parties and the design and construction engineers, including oversight and monitoring of internet sites created for the KAC Project.*”

Edrie Vinson, former Environmental Project Manager for FHWA, (directly in charge of overseeing whether or not KABATA’s EIS met NEPA requirements, and at least partially responsible for creating the position of KABATA liaison) was reported to have been hired by KABATA as their KABATA Liaison on November 30, 2009 (see <http://www.knikarmbridge.com/documents/KABATAPressRelease11302009.pdf>), but she never contacted GHCC regarding any of the required notifications and update meetings, etc. The GHCC does not know when Edrie Vinson left employment with KABATA, but during her tenure at KABATA, she failed to comply with the provisions of the PA regarding coordinating with and notification to GHCC. Now position is vacant, see (<http://www.knikarmbridge.com/staff.html>). KABATA is in non-compliance with the requirements

of the PA in that they do not have a KABATA Liaison at the present time (<http://www.knikarmbridge.com/staff.html>) and (<http://www.knikarmbridge.com/contractors.html>).

Page 9 of the Programmatic Agreement states: “*g. Develop semi-annual status reports on the implementation of this PA as detailed in Stipulation IX, Review Protocols.*”

GHCC has not received any “semi-annual status reports” since the PA was signed in 2008. KABATA failed to comply with the requirements of the PA.

Page 10 of the Programmatic Agreement states: “*As part of the semi-annual reporting, KABATA shall verify that the Liaison position is staffed and that SHPO is provided the opportunity to comment on their performance in carrying out the tasks set forth in this PA.*”

GHCC was not notified either that the KABATA Liaison position had been filled, or that it was vacant since the PA was signed in 2008. KABATA failed to comply with the requirements of the PA.

Page 15 of the Programmatic Agreement states: “*G. Government Hill Neighborhood Plan (Neighborhood Plan) Not later than six (6) months after the date of this PA, but independent of and separate from this PA, FHWA shall negotiate, in consultation with SHPO and GHCC, and enter into a MOU with the Municipality whereby FHWA shall provide funding for the Municipality to develop a Government Hill Neighborhood Plan to serve as a planning and management “tool” that promotes the historic character and values of the Government Hill neighborhood and the orderly growth, improvement, and future development of the neighborhood. The Neighborhood Plan shall address preservation of buildings and landscape features that define the historic character of the Government Hill neighborhood, while guiding other aspects of the growth and development in the neighborhood. The Municipality shall develop the Neighborhood Plan in consultation with SHPO and the GHCC, and will incorporate the Government Hill Historic Preservation Plan, as appropriate, as detailed in Stipulation IV.A.3.*”

While the GHCC appreciates that the Government Hill Neighborhood Plan is currently underway, KABATA and FHWA failed to consult with GHCC during the negotiation of the Memorandum of Understanding (MOU). The MOU was completely negotiated without the consent of the GHCC, despite our having told personnel of the Municipality of Anchorage that we wanted to be involved and consulted, if we were not allowed an actual “seat at the table”. KABATA and the MOA failed to comply with the requirements of the PA. We consider this unilateral transfer of our rights under 36 CFR 800 without our knowledge or consent, to be a violation of 36 CFR 800, Section 106 of the National Historic Preservation Act under 16 U.S.C. 470s, and a miscarriage of the National Environmental Policy Act (NEPA) process.

Page 25 of the Programmatic Agreement states: “*E. Document Reviews: FHWA and KABATA shall post to the KABATA website plans, specifications, reports, and other documents to be reviewed under the terms of this PA for a minimum of thirty (30) days. The consulting parties will be notified when documents for review are posted. Consulting parties will have thirty (30)*

calendar days to submit comments on any documents reviewed under the terms of this PA. This review schedule does not apply to information related to Tribal resources for which government-to-government consultation is required.”

GHCC has not received any “Documents for Review” since the PA was signed in 2008. It is not known if there have been any “Documents for Review” that have been created.

Page 26 of the Programmatic Agreement states: “A. *The Signatories shall review this PA each January following its execution to consider whether its terms are being properly met to respond to current conditions. The Signatories shall have thirty (30) calendar days to notify FHWA if an amendment should be considered. Any amendments to this PA recommended during the review shall be considered in accordance with Stipulation IX, Review Protocols (36 CFR 800.6(c)(7)), as appropriate. If the review results in a recommendation to amend the PA, the consulting parties shall consult for a minimum of thirty (30) days prior to the proposed amendment to the PA. B. SHPO, EAFB, and ACHP may request FHWA to consider an amendment, whereupon they shall consult to consider such amendment pursuant to 36 CFR 800.6(c)(7). Amendments shall be executed in the same manner as this PA.*”

GHCC has not received any “reviews” since the PA was signed in 2008. KABATA failed to comply with the requirements of the PA.

ii. The Knik Arm Crossing No Longer Meets The “Financially Feasible” Criteria

The NEPA review of the KAC included the criterion that the project be “Financially feasible”. “Alternatives had to meet all of the applicable criteria to be considered reasonable”

KABATA has proclaimed since the inception of this project that toll revenues will finance both operations and maintenance costs, as well as the eventual construction in Phase 2 of the 4 lane bridge and connecting roads needed to make the KAC effective.

As stated in the 2035 Metropolitan Transportation Plan Update, which is still in draft form, this estimated cost for Phase 1 is \$778 Million, which is far above the costs for which KABATA and FHWA rejected feasible alternatives in the Scoping Stage, which would not have had the environmental impacts demonstrated by KABATA for the chosen alternative for the KAC.

Thus KABATA's preferred alternate does not meet Criterion P&N-2 *“Would be financially feasible, based on the ability to finance a total estimated project cost not-to-exceed \$600 million (this criterion is for initial construction costs of the facility, Phase 1, and does not include ultimate build-out capacity that would be funded through toll-backed financing)”*

The attached *“The real Costs of the Knik Arm Bridge.pdf”* indicates that the bridge may cause a \$2.6 Billion dollar shortfall that will need to be paid by the state if KABATA’s two bills which are currently under review in the legislature, and thus does not meet Criterion P&N-3 *“Would be sustainable; projected travel demand would provide estimated debt service and cover operation and maintenance costs”*.

KABATA is seeking state financial support for a “Reserve Fund” to pay for the lack of toll revenues, and for additional state guarantees for payments to private investors in the bridge, and because hundreds of millions of taxpayer dollars may be implicated, with corresponding impacts on state and local finances, etc.

The Government Hill neighborhood is deeply concerned about the indirect financial and societal impacts of bridge on the state, other transportation projects, and on its potential impacts to the Port of Anchorage, which is located within the boundaries of the GHCC. Because the bridge will affect overall state funding for other transportation projects, the AMATS 2035 MTP update is not “fiscally constrained”, a critical component of FHWA’s April 8, 2011 Transportation Planning Certification Review of AMATS.

III. The Effects of the KAC on Siltation at the Port of Anchorage is Still Unknown

Much appears to have changed regarding the sedimentation patterns in Upper Cook Inlet since the original 2006 Hydrodynamic Modeling conducted in Vicksburg. Unfortunately the local experiences of residents, fishermen, boaters, as well as shippers and coastal pilots were not solicited.

The Anchorage Daily News and other Media have highlighted what we have seen from our neighborhood; the Corps of Engineers has needed to conduct dredging operations near the Port of Anchorage nearly year round, when only a few years ago, dredging was done on a multi-year schedule. The recent shoaling problems in Upper Cook Inlet are affecting safe and efficient shipping operations, and because the design for the Port of Anchorage has not yet been determined, and because the siltation has significantly changed since 2006, the 2006 COE Hydrodynamic Modeling may not be valid.

The proposed project will directly impact at least 80 acres of wetlands and tidelands, and will impact critical habitat for the Endangered Beluga whale, as well as their food supply. The “fillets” on each side of the Causeways are also estimated to be filled, raising the total acreage of affected wetlands significantly. The cumulative impacts to that Essential Fish Habitat has not been fully identified in the FEIS. The proposed project and the associated new growth in the Matanuska Susitna Borough will directly and indirectly affect populations of salmon, affecting commercial, sport and subsistence fisheries, as well as being an important food source for the Endangered Beluga whale. Pollution from the new neighborhoods, roadway, industries, and parking lots and other impacts to salmon and other fish has not been fully considered.

The project will have significant effects on traffic patterns with implications for pedestrians, bicyclists and drivers, as well as shipping and trucking companies that will be affected by any adverse impacts to the Port of Anchorage and these societal impacts should be taken into

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consideration by the Corps in judging whether or not to issue this permit. Corps better understand such

The EPA on page 2 of their 2-15-08 comments on the FEIS state: *“As presented, the range of alternatives may not comply with the Clean Water Act Section 404(b)(1) Guidelines. The range of alternatives must include those that are practicable “in light of the overall project purposes” [40 CFR 230.10(a)(2)].* In addition, the definition of “financially feasibility” is subjective, and does not constrain or change the required evaluation of practicable alternatives.”

The GHCC agrees with the following comments in shown in Appendix K of the FEIS: EPA Comments 313-3, 313-4, 313-13, 313-14; the Matanuska Susitna Borough, the Municipality of Anchorage, the Corps of Engineers in comments 293-2, 293-4 and the Alaska SHPO that the FEIS has not explored and evaluated additional or true alternatives that would avoid or minimize environmental impacts.

Thank you again for your attention to this matter, and please do not hesitate to contact me if you have any questions.

Sincerely yours,

Robert French,

President of Government Hill Community Council.