

**KNIK ARM BRIDGE AND TOLL AUTHORITY**  
**BOARD of DIRECTORS**  
MEETING MINUTES #2-11

Board of Directors Meeting, April 28, 2011, Atwood State Office Building, Conference Room 1860, Anchorage, Alaska

The meeting was duly noticed on April 19, 2011 in the Anchorage Daily News and the Mat-Su Valley Frontiersman, the State Online Public Notice system and on the KABATA website.

Chairman Michael Foster called the meeting to order at 1:33pm.

1. Roll Call

A quorum was established with 5 voting Members in attendance at roll call: Michael Foster, Dave Haugen, Jerry Burnett, Pat Kemp for Commissioner Marc Luiken, Janet Kincaid, and Senator Linda Menard. Representative Mark Neuman was not present.

Also present: KABATA Executive Director Andrew Niemiec and CFO Kevin Hemenway.

Recorder: Michele Casey, KABATA Administrative Manager.

Foster acknowledged Pat Kemp, Deputy Commissioner for DOT&PF, sitting in for Commissioner Marc Luiken, and Jeff Stark, representing KABATA for the Attorney General's Office.

There were 8 members of the public in attendance and 7 staff members from the Alaska Division of the Federal Highway Administration participated via telephone.

2. Approval of Agenda

Approved unanimously as prepared.

3. Approval of Minutes from Meeting #1-11

Approved unanimously as submitted.

4. Chairman's Report

Since our last meeting in Juneau and receiving a record of decision on December 15<sup>th</sup>, 2010 we have been working with the legislature, Senator Menard, Representative Neuman and the Governor's office on 2 bills that are in the Senate and 2 identical companion bills that are in the House. The bills have passed through the Senate and House Transportation Committees and are scheduled for the Senate and House Finance Committees next session, which begins January 20<sup>th</sup>, 2012. There was some language changes that were worked out with the Governor's office for a committee substitute and that version will more than likely be

introduced to the House Finance Committee through Representative Stoltze or Neuman during the next session.

## 5. Executive Director's Report

Mr. Niemiec introduced Michele Casey, the new Administrative Manager.

He continued, since our last meeting the staff and our consultant's efforts have been focused around the legislation in an effort to answer questions. We've also been working on key environmental permits and preparing for right of way acquisition.

Mr. Niemiec recognized Bill Greene, who passed away March 27<sup>th</sup>, stating he was our legal counsel and put a lot of time and effort into this project.

### a. Project Development Update provided by Andrew Niemiec.

The critical habitat for the Cook Inlet Beluga Whales was finalized since our last meeting in Juneau. The biological opinion issued by the National Marine Fisheries Service (NMFS) included a conference opinion on critical habitat because it wasn't yet a final rule. NMFS indicated that after critical habitat was finalized they would turn it into a biological opinion. We expect that to occur shortly.

We are working with the Mat-Su Borough on an agreement whereby KABATA would provide financial support to establish a Borough office that would transition into a permitting office for future development. This was one of our commitments in the EIS.

On public outreach, we've provided a lot of presentations. Both Chairman Foster and the staff have been to many of the community meetings and professional organizations. We have provided interviews to media in print, radio and television.

Currently our biggest effort is with the Corps 404 permit. We've had meetings with the Corps and are waiting to submit our formal application until they are complete with their modeling. They are doing some numerical modeling that incorporates additional information we have on the Cook Inlet. We have agreed to split the cost of that modeling effort with the Corps. They are doing this to ensure that all the preliminary data that had to do with currents and sedimentation around the two ports is reconfirmed. We expect that to be done this summer. At that time we will be formalizing the 404 permit application along with the other secondary state and federal permits.

Chairman Foster noted that the secondary list is quite an extensive list which consists of Corps permits, the EPA permits, the migratory bird permit, coast guard permit and on the state side DNR has some permit requirements. These are process permits that go through the process with time frames, public notice, public comment, etc. which we are currently working on.

### b. Treasurer's Report

CFO Kevin Hemenway addressed the board hitting a couple of highlighted points off the report provided to the Board. YTD for the nine months ended March 31st, we've expended \$3.9 million on the project including \$900 thousand, or 24%, for authority operating costs (payroll, benefits, board costs, rent, travel and supplies) and \$2.9 million, or 76%, for consultants and DOT overhead and that is where a lot of the effort is expended. Comparing the actual to the budget for the fiscal year, for the nine months ended March 31, 2011 we've expended 59% of the approved operating budget and are 75% through the year. We are under budget again and as I reported to you in February that is primarily because we currently have 3 open positions.

Funding status - we have obligated federal participating funds available for project development as of March 31<sup>st</sup> totaling \$9.6 million. We have previously appropriated but not yet obligated federal participating funds available for project development (right of way, etc) of \$61.1 million. We are in good shape to continue to develop the project.

We submitted a TIFIA letter of interest on March 1<sup>st</sup>. I do not expect to see results of the TIFIA joint project office evaluation until the middle of this calendar year. That TIFIA LOI is requesting a \$305 million TIFIA loan on behalf of the selected private partner for the project. TIFIA will loan up to 1/3 of project cost.

Mr. Hemenway was hoping to report that our Comprehensive Financial Annual Report received its 5<sup>th</sup> consecutive award from the Government Finance Officers Association, however we have not received word on that yet. An email will be sent out to the board once that is received.

Foster followed up with information on the TIFIA loan. We've heard over the past several months that KABATA was rejected on the previous TIFIA applications. We were encouraged to submit an application even though we did not have a record of decision in place. In some respects the previous submissions were a place holder so they were aware of this project. At the time we submitted we were not expecting to get anything out of the TIFIA loan, however now that we have the record of decision and we have a project with a build alternative we are expecting to be part of that program.

Foster also stated in both the House bill and Senate bill we have a request to move from \$500 million to \$600 million for our bonding capacity and would like Mr. Hemenway to explain the difference between TIFIA, SAFETEA-LU (Safe, Accountable, Flexible, Efficient Transportation Equity Act) private activity bonds and conduit financing.

Mr. Hemenway responded that the TIFIA program is a subordinated patient capital debt program of the federal government primarily for green field projects that have a revenue source just like the Knik Arm Crossing. It's been around since the late 80's. The private activity bond capacity that's been allocated to the project is part of a \$15 billion national capacity limit that was passed in SAFETEA-LU, which was the previous transportation bill when Congressman Young was Chair of the committee.

This project was allocated, based on an application that we submitted several years ago, \$600 million of that national capacity. Private activity bonds require a conduit issuance by a public entity, even though the public entity is not the borrower. Part of the legislation is to up our capacity to utilize the full amount of the \$600 million in the event our private developer would like to include that in their financial plan they submit with their proposal. This allows the private sector to borrow on a tax exempt basis that is nearly as favorable as it would be for a public entity issuance. Clearly the private partner would be the borrower of both TIFIA and the private activity bonds, should they be used in their plan of finance.

Chairman Foster reiterated that the State has no obligation for those pass through bonds. The interest KABATA has to increase from \$500 to \$600 million and also on our TIFIA application is to provide some avenues for potential private partners to obtain the best funding opportunities they may have. This translates to more competitive, cost effective proposals.

- c. Also attached in the board packet and addressed by Mr. Niemiec was the staff and board travel for the last quarter. All of the travel was to and from Juneau, with the exception of one trip that was made by our Chief Engineer to visit an oscillated drilled shaft installation in water where they monitored noise. That trip was to Virginia.

## 6. Legislative Report

Senator Menard reported there was great progress with both the House and Senate Bill. The vehicle we had in the Senate, Senate bill 80, amends enabling language. The Senate bill 79 was the single appropriation and it was basically mirrored over in the House.

Senator Menard recognized her Chief of Staff, Michael Rovito, who spent numerous hours in meetings. There were several good discussions and presentations with the Governor's office. Her staff stayed on top of the KABATA issues and showed the video at least 50 times. The KABATA Bridge is now recognized on the National Highway System. This recognition was received shortly after the Record of Decision. This is an excellent way to be categorized and these are very encouraging steps forward. She is hopeful that these bills will have good speed when things start up again next session. We have done our due diligence and she believes the Governor is behind us.

Chairman Foster recognized and commended the efforts made by the Senator and her staff.

## 7. Old Business

No old business to report.

## 8. New Business

Resolution #1-11 P3 Procurement. Andrew Niemiec explained the main purpose of the resolution is to allow modification of the procurement and reinitiate it as we go forward and prequalify interested developers and eventually issue a request for proposals. For the record,

our developers that are prequalified at this time are very interested in the project and remain so. It is in our interest and the state's interest to ensure we have adequate competition. A lot of time has gone by and we look forward to a successful procurement process. The resolution was read.

Janet Kincaid moved to accept resolution 1-11 to reinstate the project procurement under public-private partnership, seconded by Dave Haugen.

Chairman Foster explained that the initial procurement for the P3 was a revenue risk transfer model and this is what's considered availability payment and I was asked at several committee hearings, what does availability payment mean? The developer will come in with 100% of the capital and KABATA agrees to make periodic availability payment. The asset is always owned by the state and the revenue stream is owned by the state. The availability payment is strictly an annual payment made directly to the investor who designs it, builds it, and operates it for the concession life. Chairman Foster opened the floor up to discussion of the resolution.

Jerry Burnett stated he supports the resolution and suggested a friendly amendment as follows to the 7<sup>th</sup> whereas.

Whereas, in the current marketplace and circumstances, the Project will benefit substantially from invigorated competition by retendering under an "availability fee" structure payable by KABATA under AS 19.75.

Jeff Stark has no problem with the change. By referencing back to our enabling statute it's clear that it is only payable to the extent that we are statutorily enabled to make a payment. As we sit today it is a corporate payment and if that statute is later changed, it may become a state payment.

Janet Kincaid moves to accept the resolution as read into the record above by Jerry Burnett. Dave Haugen seconded the motion. Amendment changes passed unanimously.

Jerry Burnett would like staff to keep the board apprised of the RFP process and any development.

Kevin Hemenway advised the board that KABATA plans to conduct an industry work session during the Infra-Americas P3 conference scheduled in June. He further explained the schedule for the procurement process that will immediately follow this conference.

Chairman Foster added that the last discussion he had with the Governor's office was timing and what we would be doing before the next session. The June P3 conference in New York will be attended by Andrew, Kevin, and himself, as well as the Governor's Deputy Chief of Staff, Randy Ruaro. He believed Jerry Burnett would be attending as well and the possibility of Commissioner Luiken and other state agencies. Assuming this resolution passes, the intent is to have this industry discussion, go out with an RFQ, meet with OMB in August, and to have the RFQ short listed. Tentatively by November or December have the RFQ completed through the Governor's office and prepared so that when we go to the legislature to work on these bills next session we have a short list, the proposal is out for industry review

and we're completing the language changes and the funding of the reserve so by the time we get to the end of the process every piece is in place.

Call for any other discussion. Resolution passed unanimously.

Senator Menard excused herself at 2:30 p.m.

#### 9. Other Matters to Properly Come Before the Board

None

#### 10. Board Members' Remarks

Dave Haugen made a personal note on the passing of Bill Greene. He really appreciated his loyal service to the organization and all the efforts he put forward during his time he worked for the project. He also commended Senator Menard and her staff for all their efforts.

Janet Kincaid is excited to see the project moving forward. She found by and large the legislature very receptive.

Jerry Burnett thanked Chairman Foster, Andrew Niemiec and Kevin Hemenway for their work during the legislative session. Everyone was very professional, worked hard and the unity in front of the legislature was always there.

Chairman Foster thanked Jerry Burnett for his comments, Marc Luiken with Department of Transportation, Jeff Stark with Department of Law, and Randy and Mike in the Governor's Office. He believes the substitute bill we received in the end was a very good bill and if we had a few more days we would have been able to move it through, but we're in a good position for next year. He appreciates everyone efforts, it was a big effort by a lot of folks.

#### 11. Public Comments

Jon Issac, Vice President with URS operations in Alaska, introduced himself and addressed the board. We are one of the two teams that were prequalified for the original P3. We appreciate the challenges KABATA has been dealing with both on the regulatory side and the financing side and we do understand the need to go out and rebid. We have been standing by for about four years and we certainly remain interested in it. I don't know if there will be any way that we can perhaps look at what we submitted to date and have some sort of minor update. I suppose a lot is going to depend upon your RFP and you do have a new financing mechanism so it may change significantly. We did want to show you that we are still interested and we appreciate your effort and if there is anything we can be doing, please let us know.

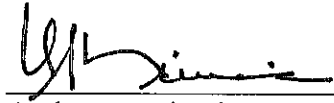
#### 12. Announcements

The date for the next Board of Director's Meeting has been changed from June 16<sup>th</sup> to Thursday, June 9<sup>th</sup> to be held in Fairbanks, Alaska. The location has not been established.

13. Adjournment: 2:32 p.m.

Minutes Approved: Unanimous Board Approval at June 9, 2011 Annual Board Meeting

Attested to by:



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Andrew J. Niemiec, Executive Director

Date: 6-9-11