
From: Sukys, Raymond <FTA>
To: Bausch, Carl <FTA>; VanWyk, Christopher <FTA>
CC: Matley, Ted <FTA>
Sent: 4/23/2009 6:43:49 AM
Subject: Army Corps express unhappiness with data in DEIS, schedule, procurement method, etc. - Honolulu Transit Project

FYI

From: Matley, Ted <FTA>
Sent: Wednesday, April 22, 2009 10:10 PM
To: Meyer, Susan A SPL
Cc: Young, George P POH; Kasperowicz, Lindsey POH; Carranza, Edward <FTA>; Sukys, Raymond <FTA>; Rogers, Leslie <FTA>; Marler, Renee <FTA>; Barr, James <FTA>
Subject: RE: Honolulu Transit Project (POH-2007-00127)

Susan,

Thank you for your very detailed email and for keeping us informed of your discussions and the issues you have raised.

As I mentioned when we spoke last, the timeline of a Fall ROD that the City has presented to you is the City's preferred schedule, it is not a timeline that FTA has signed off on. We have only promised to do our best to meet the City's timeline but that the NEPA process or any other important procedural, legal, or regulatory considerations would not be compromised to maintain this timeline.

Currently, the City is in the process of reviewing the many comments that they have been received on the DEIS and will be working with FTA to address those comments. The City has not yet made any concrete proposals to FTA as to how they will address comments made by the Corps, or those of any other organization or individuals. We regret your discussions with the City and their consultants were not more fruitful. FTA will be sure to discuss with the City how your comments on the DEIS and the concerns raised in your email will be addressed prior to a FEIS being released and before any other actions related to the Corps permitting requirements are undertaken by the City. Any statement that was made by the City or their consultants as to what the FEIS will and will not contain has not been the result of a final agreement with FTA as to the content of the FEIS document.

FTA has been closely monitoring the actions that the City has taken regarding their planned implementation of the first phase of the project to make sure that no actions are taken that get ahead of the process. As you are aware and as FTA has made clear to the City, even if the first phase is locally funded it cannot proceed before a ROD.

If you feel that further staff level discussions with the City and their consultants would help, we would encourage you to continue if they can clarify technical or procedural points that would help the process move forward. At such time as FTA and the City discuss how to respond to comments on the DEIS, we will be sure to discuss with the City the resolution of the issues you have raised. As we may need further consultation with the Corps to fully understand the issues you have raised and how they can be addressed, we would appreciate the opportunity to discuss them further with you.

Please contact me with any other questions or concerns you may have and be assured that FTA is very mindful of the need to address the types of issues you have raised before the environmental process is concluded. I also appreciate you taking the time to articulate them so clearly to us.

Ted

From: Meyer, Susan A SPL [mailto:Susan.A.Meyer@usace.army.mil]
Sent: Wed 4/22/2009 8:09 PM
To: Matley, Ted <FTA>

AR00138423

Cc: Young, George P POH; Kasperowicz, Lindsey POH
Subject: Honolulu Transit Project (POH-2007-00127)

Ted,

We spoke back on February 18th when I telephoned you to discuss the subject project. At that time, I expressed concern from our agency's perspective in terms of the estimated schedule for completing the NEPA process given the number of issues we identified during our review of the Draft Environmental Impact Statement (EIS). Since we are an official cooperating agency on the EIS and a federal regulatory agency with jurisdiction by law, we continue to want to ensure the environmental process meets our independent NEPA needs, as well as our Department of the Army (DA) permit requirements.

On February 25, 2009 the Corps met with Parsons Brinckerhoff (PB) to discuss the Corps' written comments on the Draft EIS, as well as some of the technical issues we identified during our reviews, including, but not limited to missing field studies (e.g., delineation of waters of the United States) and pertinent analyses. We understood from PB that the City and County was in the process of obtaining rights-of-entry to a number of properties in order to perform some of the necessary fieldwork. During our meeting with PB, we communicated some of the shortcomings we found with the Draft EIS and other outstanding issues related to our statutory requirements, such as the 404(b)(1) Guidelines/alternatives analysis. Among other things, the Draft EIS lacked any sort of quantification of impacts to the aquatic environment, making it impossible to provide meaningful comments on the Draft EIS and to understand the scope and magnitude of impacts, which as you know influence the permitting strategy, selection of the least environmentally damaging practicable alternative (LEDPA), and compensatory mitigation needs of the project. Regarding the latter, it was reported that the FTA ROD would be issued sometime around fall 2009, but that the Final EIS likely will not contain a detailed mitigation plan for aquatic resource impacts. Without adequate information pertaining to waters of the United States, we are uncertain as to how the ROD would address compensatory mitigation for unavoidable impacts and how the applicant (DTS) proposes to submit a complete DA permit application.

The last public Newsletter (dated March 2009) received from DTS indicates the bidding process for the initial 6.5-mile segment has commenced, with project groundbreaking scheduled for the end of this calendar year. In light of the fact the NEPA process has not yet been completed, the contractual aspects that are currently underway by DTS raise questions about the non-federal applicant's ability to take action (e.g., commit resources and monies) that might have an adverse environmental impact or limit the choice of reasonable alternatives. While the Corps is not the lead federal agency, we are concerned with being in a favorable position to adopt FTA's Final EIS and render a timely DA permit decision and therefore think it would be fruitful to gain your agency's perspective on this NEPA matter. Moreover, the design-build approach to the first phase of construction does not lend itself to a straight-forward permitting process, as we understand from PB that the contractor will be responsible for identifying construction staging areas, temporary stockpile areas, etc. Should any of these project features be sited in waters of the United States, DA authorization would most likely be required. We are aware of DTS' identification of their locally preferred route, but has FTA formally selected a federally preferred alternative and identified the environmentally preferable alternative?

We remain concerned with the disposition of the EIS and therefore would like to meet with FTA to discuss the overall direction of the NEPA process and how the federal environmental review process comports with our permitting requirements. Although the Corps is neither a project proponent nor opponent, we continue to do our best to support FTA and DTS in this capitol improvement project; and in this regard, we believe it would be in everyone's best interest if we had a clearer understanding of the project schedule and an opportunity to communicate directly with one another about some of our concerns. We presume that FTA and DTS are mindful of the fact a DA permit will be required for those project activities that discharge fill material into waters of the United States (e.g., tributaries, streams, wetlands) and/or project activities that occur within, over, under or otherwise affect Section 10 waters (e.g., Pacific Ocean, tidally influenced streams, etc). Corps authorization is dependent on completion of Section 106 coordination, ESA Section 7 consultation, 401 water quality certification and CZMA consistency certification, as applicable. The Corps certainly wants to help ensure this project stays on track and is in compliance with all applicable federal laws and regulations.

I thank you in advance for your time and feedback...please feel free to give me a call to discuss any of these matters in greater detail. If you would, please disseminate this message to those folks in your organization and at DTS and PB that you deem appropriate.

V/R,
Susan

Susan A. Meyer

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<http://www.poh.usace.army.mil/EC-R/EC-R.htm> (USACE, Honolulu District)

<http://www.spl.usace.army.mil/regulatory> (USACE, Los Angeles District)

<http://www.usace.army.mil/CECW/Pages/Home.aspx> (USACE, Headquarter's)

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