



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

REGION IX
Arizona, California,
Hawaii, Nevada, Guam
American Samoa,
Northern Mariana Islands

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Councilmember Charles Djou
District 4

Councilmember Donovan Dela Cruz
District 2

Councilmember Ann Kobayashi
District 5

City and County of Honolulu
Honolulu Hawaii 96813-3065

Dear Councilmembers Djou, Dela Cruz, and Kobayashi:

This letter is in response to your letter of September 4, 2007 to Mr. Ron Fisher in the Office of Planning and Environment of the Federal Transit Administration in Washington, D.C. Mr. Fisher asked the Regional Office to respond because, within FTA, the responsibility and authority for environmental compliance rests here. In your letter, you question whether the proposed Honolulu fixed guideway transit project now under study might be subject to the same kind of litigation as the recently cancelled Superferry operation. You indicate that the residents of Honolulu are divided on what mode (bus or rail) the transit project should be, and you inquire about whether the Council should require an analysis of both rail and bus fixed guideway in the environmental impact statement (EIS) for the project.

FTA is not involved in the Superferry project and is therefore not conversant in the details. Furthermore, if, as you say, the Hawaii Supreme Court ruled on the litigation, then the case is probably based on Hawaii State law and not on Federal law. FTA is responsible for compliance with Federal law and generally does not comment on issues of State law. FTA's grantees are responsible for ensuring that their projects comply with State law.

The review process that is now being conducted by your Department of Transportation Services for the transit project is intended to comply with both State law and Federal law. The primary Federal law in question is the National Environmental Policy Act (NEPA) which requires the preparation of an EIS for major actions such as your project. The NEPA process can be effectively used to build a consensus around a particular alternative when disparate views exist at first. Normally both sides' alternatives would be studied when the objective is to build a consensus.

However, our impression is that the people of Honolulu cannot even agree on what should be studied, and agreeing on what should be built is even harder. Therefore, you may want to consider bringing in a qualified neutral experienced in mediation. A qualified neutral person would assist in developing a process for reaching consensus that involves all parties affected by the decision and

would then manage the execution of that consensus-building process. The U.S. Institute for Environmental Conflict Resolution is a good place to begin the consideration of this approach. In some cases, the staff at the Institute will provide this service for a fee. It is not cheap, but neither is your project. The Institute also provides a list of qualified law firms and professional consultants who provide mediation services under “Resources” on their Web site at www.ecr.gov. At this point, seeking outside help in resolving the issues may be a productive means of moving away from contention and into collaboration.

Should you have further questions on this, please contact me.

Sincerely,
Leslie Rogers
Regional Administrator