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**From:** Scott.Biehl@dot.gov  
**To:** Kurio, Phyllis  
**CC:** Hamayasu, Toru  
**Sent:** 10/24/2006 6:41:37 AM  
**Subject:** RE: HOT facility

I'll have to make this very quick, Phyllis, because I'm on my way to Capitol Hill for the rest of the day, but let me make a couple corrections to your notes below:

1. It's true that the construction of a HOT lane facility is not eligible for Federal funding under the Section 5307 urbanized area formula program or the New Starts, Bus, or Fixed Guideway Modernization programs under Section 5309. That's because a HOT lane cannot meet the unique definition of a "fixed guideway" under 49 U.S.C. § 5302. The Section 5302 definition of "fixed guideway" is explicitly limited to facilities for "the exclusive use of public transportation and other high occupancy vehicles." Thus, a HOT lane can't meet that definition because it is designed to accommodate *single-occupant* vehicles that pay a toll.

I can't rule out the possibility, however, that once FTA promulgates a final regulation for the new "Small Starts" program under Section 5309, the transit portions of a HOT lane project might be eligible under that program. The reason for that the eligibility requirements for the Small Starts program are more liberal than those for the traditional New Starts program; Small Starts funds can be spent on non-fixed guideway facilities and equipment. See, 49 U.S.C. § 5309(e).

Then again, it will be at least a year before FTA promulgates a final rule for the Small Starts program, and even then, it's doubtful whether HOT lanes will be competitive for Small Starts funding as compared to the other types of projects that will compete for those funds (e.g., Bus Rapid Transit, Streetcars). Moreover, the Small Starts program will be open only to projects seeking less than \$75 million in Section 5309 funds and of a total project cost less than \$250 million. To my mind, there are very few HOT lanes that could be built for less than \$250 million.

2. The only types of FTA funds that can be flexed to FHWA are Section 5307 funds and planning funds. Section 5309 funds cannot be flexed to FHWA.

Scott

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**From:** Kurio, Phyllis [mailto:pkurio@honolulu.gov]  
**Sent:** Monday, October 23, 2006 10:07 PM  
**To:** Biehl, Scott <FTA>  
**Cc:** Hamayasu, Toru  
**Subject:** HOT facility

Aloha, Scott. I hope you are well. Other than the inconvenience of an island-wide power outage, Kelvin and I weren't impacted by the earthquake last week. I hope your family's homes weren't damaged.

We are finalizing the Alternatives Analysis report for submittal to the City Council. Toru wants me to double check with you to verify the assertion being made in the report: Construction of the Managed Lane facility will not be eligible for assistance under any FTA funding program. The Managed Lane Alternative would include construction of a grade-separated facility for use by buses, paratransit vehicles, vanpool vehicles, and high-occupancy vehicles (HOVs). Toll-paying single-occupant vehicles would also be allowed to use the facility provided that there is sufficient capacity to maintain free-flow speeds for transit vehicles and HOVs.

From your explanation at the New Starts Listening Session in San Francisco, we understand construction of a HOT lane facility is not eligible for New Starts funding. Please confirm my read of the following:

1. Construction of a HOT lane facility is NOT an eligible activity for assistance under §5307, §5309 Bus Capital Program, §5309 Rail & Fixed Guideway Modernization Program, or any other FTA assistance program.

2. Flexing FTA funds to FHWA does not make construction of the Managed Lane facility eligible for the transferred FTA funds. FTA funds transferred to FHWA can be used only for purposes eligible under the original FTA program that the funds are transferred from.

We would really appreciate your response tomorrow in case we're barking up the wrong tree and suffering from foot-in-mouth disease.

Mahalo nui loa,

Phyllis