

OVERVIEW OF HONOLULU HIGH CAPACITY TRANSIT PROJECT ISSUES

- **Environmental Issues**

- a. **Status/Timing of Record of Decision (ROD)**

- The comment period for the Final Environmental Impact Statement (EIS) closed in August. FTA staff is reviewing the summary of comments and responses prepared by the City and County of Honolulu Department of Transportation Services Rapid Transit Division (RTD).
 - The following actions must be completed before FTA could issue a ROD: complete the review of FEIS comments and responses, prepare the ROD, complete Programmatic Agreement, and address the pre-cast yard issue (if applicable – see description below). **FTA anticipates that it will take 5-6 weeks to complete the FEIS comment review and prepare the ROD. RTD has asked FTA for an anticipated ROD date, but FTA can't respond until the pre-cast yard issue is resolved.**
 - RTD is assuming that the new Governor will approve the Final Environmental Impact Report (the state environmental document) within the next few days, and that FTA will issue a ROD shortly thereafter.
 - If the ROD is delayed beyond January, there could likely be several decision points that FTA will be faced with. FTA's guidance requires that prior to NEPA completion project sponsors request FTA prior approval for the award of the preliminary engineering portions of design-build contracts. If FTA allows RTD to award multiple design build contracts, it would be difficult for FTA to argue in a legal setting that the project sponsor has not proceeded with the project in advance of the completion of NEPA.

- b. **Status of Programmatic Agreement**

- FTA, the City, the Hawaii State Historic Preservation Officer (SHPO), Advisory Council on Historic Preservation (ACHP), the Navy and the National Park Service (NPS) have agreed to terms in a final draft Programmatic Agreement.
 - FTA, on the advice of the ACHP, shared this final draft Programmatic Agreement with consulting parties for a two week comment period ending on Friday, December 3rd.
 - The Honolulu City Council has authorized the Director of the Department of Transportation Services to execute the final draft Programmatic Agreement.

- c. **Pre-Cast Yard Issue**

- Several months ago, the design-build contractor for the West Oahu Farrington segment initiated a review under the State environmental process for a 30-acre pre-cast yard. The yard would be used to fabricate the concrete aerial structure for the project. The proposed site had not been included as part of the project scope in the Final EIS. Ideally, the Final EIS should include a review of the entire project scope.
 - FTA asked for additional information about pre-cast yard sites for the project (up to four may be needed for the project), but RTD has resisted on the grounds that site selection is the contractor's responsibility.
 - The New Starts team proposed sending a letter to RTD requiring that the agency identify a pre-cast yard site or sites sufficient for the project and complete any necessary supplemental environmental documentation before FTA would issue a ROD.
 - You asked us not to send the letter, so FTA now needs to determine how we will handle this issue and communicate the decision to RTD.

- In the interim, FTA has learned from RTD’s counsel that the Hawaii state environmental law might not allow for supplemental environmental documentation. Thus, if FTA were to require a supplemental environmental review, state law might require the entire Final Environmental Impact Report to be rewritten to include the pre-cast yard(s). This could present a significant schedule delay to the project.
- RTD told FTA that a letter would be forthcoming stating that RTD would obtain the concrete for the western segment from existing manufacturers on Oahu. FTA told RTD that the letter would need to address the pre-cast concrete needs for the entire project. To date, no letter has been received.
- d. **Status of Governor’s review of financial information**
 - Governor Lingle hired consultants to review the financial plan for the project. FTA received a copy of the report on December 3.
- **Project Development Issues**
 - a. **Final Design Approval currently anticipated June 2011**
 - b. **Letters of No Prejudice (LONPs) and “Local Match” Appropriations Language**
 - RTD has awarded a design-build contract for the West Oahu Farrington segment with an anticipated notice to proceed for final design and construction date of March 2011, which would be prior to the project’s entry into final design. RTD has broached the subject of an LONP with FTA.
 - By awarding this design-build contract prior to the ROD, RTD has set themselves up to incur potential delay costs in the event that they can’t proceed with subsequent phases of the contract. This could become an issue if the ROD is delayed.
 - The Hawaii delegation was successful in getting language in the Senate FY 2011 Appropriations bill that would allow RTD to count the West Oahu Farrington segment as local match toward the rest of the project. RTD seems to be under the impression that this language would allow them to proceed with construction of that segment as a “local project” and use it as match for the FTA-funded project, eliminating the need for an LONP. There would be significant challenges with separating the western segment from the Federal project at this point, including updating the New Starts criteria information, re-rating the shorter Federal project, and possibly revising NEPA documents.
 - “Sec. 169. Notwithstanding any other provision of law, when evaluating the local share of the project authorized to be carried out under section 3043(c)(86) of Public Law 109-59 (119 Stat. 1644) the Secretary shall give consideration to all non-New Starts funds expended for engineering, final design and construction of the Farrington Highway Guideway, Stations, Maintenance Storage Facility and related elements advanced with 100 percent non-New Starts funds.”
 - In addition to the West Oahu Farrington segment, RTD has indicated that they plan to request several LONPs for the project, some prior to final design approval, and some during final design. FTA has asked RTD to summarize the potential LONPs, amounts and anticipated dates, but has not yet received this information. **It would be helpful for you to request that RTD send us this information immediately.**
 - c. **Procurement Issues**
 - This summer, a Procurement Systems Review was completed on RTD. The review concluded that required Federal clauses were not included in a \$49 million contract for project management support for the rail project with InfraConsult LLC. There were several other

findings related to lack of supporting documentation. FTA has not yet decided how to address this issue. The typical resolution would be to require RTD to rebid the contract with the Federal clauses. RTD has proposed to avoid complying with procurement requirements by applying their local “overmatch” to selective line items within the FFGA budget. This approach would be contrary to FTA policy.

d. State Safety Oversight

- As a new rail transit project in the State of Hawaii, there must be a State Safety Oversight (SSO) entity in place to oversee the project. The former Governor designated the Hawaii DOT as the SSO. Prior to final design approval, the SSO needs to prepare an SSO Plan. To date, HDOT does not seem to be making this a priority, and there is a long lead time in which they need to hire a consultant to prepare the plan. **It would be helpful for you to emphasize this requirement to the new Governor.**