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**From:** Bausch, Carl (FTA)  
**To:** Day, Elizabeth (FTA); Ryan, James (FTA)  
**Sent:** 3/24/2010 12:29:50 AM  
**Subject:** FW: MAYOR'S LETTER WITH REVISIONS...

In case you are wondering where this matter is headed...

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**From:** Bausch, Carl (FTA)  
**Sent:** Wednesday, March 24, 2010 5:58 AM  
**To:** Borinsky, Susan (FTA)  
**Subject:** Fw: MAYOR'S LETTER WITH REVISIONS...

Should we think about recommending to TCC (Dorval?) that it prepare the Administrator's response in the circumstances, recalling that the last time we employed this tactic the Mayor didn't "get it?" I would also recommend that TCC make the call on the process--supplemental documentation, FEIS directly, or other--through which the avoidance alternative is advanced (another legal call). If, as I suspect, TCC wants facts on which to base the call, we could ask Liz to go on a fact-finding mission (hopefully at TCC expense) to Honolulu. Just some suggestions.

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**From:** Borinsky, Susan (FTA)  
**To:** Bausch, Carl (FTA); Zelasko, Elizabeth (FTA)  
**Sent:** Tue Mar 23 20:30:09 2010  
**Subject:** RE: MAYOR'S LETTER WITH REVISIONS...

Let's talk in the AM. I think that some of TCC would want us to undertake this, but I'm thinking that TCC, not TPE, should prepare the response since they have already drafted what they want to say. TPE can concur/sign-off. But let's see what you think.

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**From:** Bausch, Carl (FTA)  
**Sent:** Tuesday, March 23, 2010 7:18 PM  
**To:** Zelasko, Elizabeth (FTA); Borinsky, Susan (FTA)  
**Subject:** Re: MAYOR'S LETTER WITH REVISIONS...

What to do? Do the lawyers prevail? Obviously, the lawyers have little or no risk tolerance. Should we simply forward the responses to the Administrator? Should we ask the lawyers to fashion a response that satisfies their concerns? I don't think it would be wise for others to attempt to reduce the lawyers' concerns to writing. I would prefer not to sit on this; nor do I want to launch out in any direction. Should we get together early tomorrow to briefly settle on a strategy?

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**From:** Zelasko, Elizabeth (FTA)  
**To:** Zusman, Nancy-Ellen (FTA); Marler, Renee (FTA); Rogers, Leslie (FTA)  
**Cc:** Borinsky, Susan (FTA); Bausch, Carl (FTA); Carter, Dorval (FTA); VanWyk, Christopher (FTA)  
**Sent:** Tue Mar 23 18:23:03 2010  
**Subject:** RE: MAYOR'S LETTER WITH REVISIONS...

Renee,

Thank you for sending the summary of your concerns with the letter from the Mayor. I spoke with Susan after our call and we are supportive of the approach you described. One point that you did mention earlier was that FAA has not provided FTA written documentation on potential impacts from the current rail alignment on the airport. Is written documentation from FAA or a letter to FAA from FTA documenting our meetings and discussions something that everyone feels needs to be provided before the City begins preparing the analysis for an avoidance alternative?

Should this step also be communicated in the response to the City in the bullets below?

Liz

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**From:** Zusman, Nancy-Ellen (FTA)  
**Sent:** Tuesday, March 23, 2010 5:49 PM  
**To:** Marler, Renee (FTA); Zelasko, Elizabeth (FTA); Rogers, Leslie (FTA)  
**Cc:** Borinsky, Susan (FTA); Bausch, Carl (FTA); Carter, Dorval (FTA); VanWyk, Christopher (FTA)  
**Subject:** Re: MAYOR'S LETTER WITH REVISIONS...

I agree with Renee's points and would reiterate that we stay away from editing the letter. I think we may also want to issue a disclaimer with our comments along the lines of stating while FTA is providing comments on a draft letter, this is a City letter and the City is free to accept FTA's comments or ignore them as it sees fit. With regard to the second point, I might add the word "potential" in front of avoidance and include something along the lines that they may want to address this issue as appropriate. Again, we don't want anyone to find that we prejudged anything.  
Nancy-Ellen

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**From:** Marler, Renee (FTA)  
**To:** Zelasko, Elizabeth (FTA); Rogers, Leslie (FTA); Zusman, Nancy-Ellen (FTA)  
**Cc:** Borinsky, Susan (FTA); Bausch, Carl (FTA); Carter, Dorval (FTA); VanWyk, Christopher (FTA)  
**Sent:** Tue Mar 23 17:39:56 2010  
**Subject:** RE: MAYOR'S LETTER WITH REVISIONS...

#### ATTORNEY-CLIENT PRIVILEGED COMMUNICATION

Liz, Thanks for the call. To repeat the concerns I discussed with you on the phone today, I believe the best response to the Mayor would be to provide a few bullet style comments on the draft letter, thereby putting our concerns on the record. I am not comfortable with editing a letter which may be changed after our "approval," and am concerned that our participation in the draft could be used to signal a premature agreement with the City's environmental review strategy.

Concerns to express to the City in response to the draft letter:

- 1) The City needs to consult with FTA regarding the level of environmental review needed for the alignment shift. While I understand there is a strong opinion at the City and within FTA that the alignment shift represents an avoidance alternative that can be addressed in the FEIS, we do not have documentation from the City defining the shift precisely, or analyzing its impacts. A determination regarding the legally required level of review should be made in consultation with the City after an analysis of the data. Remember that NEPA cases are decided on a review of the administrative record. I urge that we not reach a conclusion prior to thoroughly reviewing and documenting the basis for selection of an avoidance alternative and the appropriate level of review.
- 2) The City needs to provide to FTA a description of the alignment shift, a description of the analysis that supported the shift as an avoidance alternative, a description of the impacts of the new alignment and the justification for the level of environmental review proposed for the alternative.

After analysis and consultation, FTA will determine the appropriate level of review.

- 3) The draft letter contains critical and inaccurate statements regarding FAA, particularly regarding the change in FAA requirements on RPZs, which FTA understands were implemented in 1994, and not "recently" as stated in the draft letter. Recognizing that FAA is a cooperating Federal agency for the environmental review process, the City and project would be better served by recognizing that in the past few months FAA has devoted significant time and resources to assist FTA and the City in analyzing the airport impacts.

Finally, I would in no way suggest that these concerns overshadow our acknowledgement of the very positive direction the City is taking in considering alternatives to the airport impacts. But looking ahead to potential litigation on the FEIS, I want to ensure we have an adequate administrative record to support our actions. Chris and Nancy-Ellen may have more to add on this point.

Renee

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**From:** Zelasko, Elizabeth (FTA)  
**Sent:** Tuesday, March 23, 2010 12:27 PM  
**To:** Rogers, Leslie (FTA); Marler, Renee (FTA); Zusman, Nancy-Ellen (FTA)  
**Cc:** Borinsky, Susan (FTA); Bausch, Carl (FTA)  
**Subject:** RE: MAYOR'S LETTER WITH REVISIONS...  
**Importance:** High

Carl has to leave for the day in a few minutes.

To keep the review moving as expeditiously as possible, when you finish making edits to the letter please send them to me and I will review them with Susan. TPE will then send the draft letter to TOA.

Thank you,

Liz

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**From:** Bausch, Carl (FTA)  
**Sent:** Tuesday, March 23, 2010 11:03 AM  
**To:** Rogers, Leslie (FTA); Marler, Renee (FTA); Zusman, Nancy-Ellen (FTA)  
**Cc:** Borinsky, Susan (FTA); Zelasko, Elizabeth (FTA)  
**Subject:** MAYOR'S LETTER WITH REVISIONS...

Leslie –

Susan B. has asked me to forward to you and others the attached electronic copy of Mayor Hannemann's letter with revisions. Revisions to the letter were made to correct factual errors, to soften some criticisms of FAA, and to reinforce the notion that, while some decisions are in the Mayor's court, the process belongs to FTA. I know that the Administrator is eager to get the draft letter back to the Mayor for processing. Would you please return the draft letter to us (to my attention) with any suggested changes in time to get the agreed upon draft to the Administrator and Dorval by early this afternoon. Many thanks. Carl

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