
From: Borinsky, Susan (FTA)
To: Bausch, Carl (FTA); Barr, James (FTA); Ryan, James (FTA); Day, Elizabeth (FTA)
Sent: 3/5/2010 2:12:04 AM
Subject: FW: Revised Draft of HNL letter
Attachments: HNL NTP RM Draft 3-04-10.doc

Carl, Jim and Jim--I'm having a difficult time with this letter. Here's what I'm thinking of sending to the Region. Please advise.

Renee et al,

I am confused. This letter goes in a totally different direction than that I thought we had agreed upon.

1. The letter no longer addresses whether we approve the NTP#1A activities. Wasn't that the original point of our responding to the City?

I disagree with the statement in the letter that says that, "The City has not requested FTA approval . . . [about] the eligibility of activities to be undertaken under . . .NTP#1A." Admittedly, the letter indicates that the City intends to proceed with NTP#1A, but the fact that the City has not issued NTP#1A, undoubtedly incurring penalty costs or putting themselves in jeopardy of incurring such costs, indicates to me that the City is waiting for FTA approval.

On February 8, the City provided information on NTP#1A to FTA. In developing a response, Region IX raised questions about whether the City was adhering to FTA guidance on activities permitted under DB contracts before the completion of NEPA. FTA staff in HQ and the Region spent many hours determining what we deemed to be the acceptable actions in both NTP#1 and NTP#1A and identifying those ongoing or proposed actions that the City needed to clarify in order for us to determine whether NEPA was/would be impinged. The Region used the PMOC to further explore our concerns and to confirm our conversations and the PMOC provided a report.

Are we now *not* going to ask the City about those specific activities that staff and the PMOC have questioned, but instead are only going to admonish the City that "it may advance only those activities that are consistent with the applicable FTA guidance"—implying that we will determine the eligibility of activities *after* the City has accomplished them? Won't the City's reaction be: "Exactly what activities are you concerned about, FTA?"

2. The focus of the letter is now the FAA/airport issue, an subject beyond the City's original inquiry. I think this discussion is premature since the City has not been briefed by FAA or FTA on this matter.

The letter says that FTA has determined that resolution of the airport alignment "will require extensive study and consultation with our cooperating agency, the Federal Aviation Administration." We are stating our opinion about the outcome of the FAA matter before the City has had any briefing from FAA or us on this topic. We add that, "further procurement actions to advance the project may not be warranted at this time." I don't necessarily disagree with these statements, but this is strong, conclusory wording for us to be conveying before the City has been briefed about the FAA findings. Has FTA done an independent analysis of the DEIS and come to this conclusion? Would it be better to write this type of information to the City immediately *after* they have been briefed by FAA and FTA has independently considered the NEPA record? I do not understand why this topic is being addressed in this letter.

3. It appears that FTA will not immediately exercise its authority/responsibility on review of DB contractual activities executed before completion of NEPA, but will exercise its authority later.

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The letter offers judicious wording about FTA approval of the DB contract and subsequent contracting

activities to date. Since the letter doesn't approve or disapprove activities under NTP#1A and since we advise the City that it "proceeds . . . at its own risk," it appears that FTA has chosen not to exercise our authority/responsibility and will not direct the City in this regard at this time, but will hold the City accountable for the decisions/actions they take, *after* the fact. Is my interpretation correct? May FTA take that position?

TCC and Region IX appear to have objectives for this letter that go beyond my understanding of what FTA needs to do at this immediate moment regarding providing direction to the City on its DB contracting activities. We have been going over the February 8 letter and a proposed response for a long time. The proposed letter abandons our earlier approach of approving certain contract-related actions and asking for clarification on others and introduces a new topic, the airport alignment.

Frankly, we are out of time on this one. I can't concur with the revised letter because of the concerns I expressed above, and it would take too long to work all this out. I suggest that the Region and/or TCC take the letter to Peter for his approval. Clearly, the Region and TCC have a different perspective than I and none of us has the time necessary to work through my reservations. Susan

From: Marler, Renee (FTA)

Sent: Thu 3/4/2010 8:09 PM

To: Borinsky, Susan (FTA); Barr, James (FTA); Zelasko, Elizabeth (FTA); Day, Elizabeth (FTA); Zusman, Nancy-Ellen (FTA); VanWyk, Christopher (FTA)

Cc: Rogers, Leslie (FTA); Carranza, Edward (FTA); Sukys, Raymond (FTA)

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