

From: Denis J. Dwyer
To: Hamayasu, Toru
Sent: 1/5/2010 5:31:32 PM
Subject: FW: FAA role in Honolulu Transit
Attachments: Other FAA correspondence EIS.pdf

Redacted

From: Denis J. Dwyer
Sent: Tuesday, January 05, 2010 10:23 PM
To: 'Yamamoto, Alan (Inouye)'
Subject: FAA role in Honolulu Transit

Alan,

Consistent with the discussions that we have had about how and when the FAA became involved in the Honolulu Transit project, I thought it might be helpful for me to provide you with the important touch points that define the FAA participation. The FAA was originally invited to be a "participating agency" in the Honolulu Transit project on December 15, 2005. A participating agency is a term of art in the NEPA process. A participating agency --

- Provides input on the impact of assessment methodologies and levels of detail in a particular federal agency's area of expertise;
- Participates in coordination meetings, conference calls and joint field reviews, as appropriate and joint field reviews; and
- Review and comment on the pre-draft or pre-final environmental documents to communicate any comments the federal agency has on the adequacy of the document and to communicate any concerns about the adequacy of the alternatives considered and the anticipated impacts and mitigation.

The correspondence to the FAA on that date made clear that FAA was NOT being asked to be a "cooperating agency" (see footnote 1 on page 1 of the attached letter to Ronnie Simpson). The FAA could have sought a change in its status at any time in the process, but - as you will see explained below -- it did not do so three weeks ago -- at the end of the consultation process.

The FAA accepted its role as a "participating agency" in its reply to the City on January 5, 2006 (contained in the pdf attachment). The FAA has maintained its role as a participating agency over the development of the project (keep in mind that the EIS has ALWAYS carried the Airport alignment even after the LPA was modified in 2007 to Salt Lake). Moreover, the Council voted to reverse that decision in November 2008 - more than a year ago, which gave the FAA plenty of time to recalibrate their focus should their attention have been diverted by the alignment change - but (at the risk of being overly repetitive) the EIS always carried the airport alignment - it was never dropped.

The final attached letter from the FAA was sent just three weeks ago on December 15, 2009 where FAA seeks to change their status from a "participating agency" to a "cooperating agency" which gives them a much greater jurisdictional role and is likely the basis for FAA indicating to you that it needs 3 months to implement mitigation measures and in essence "sign off" (although there is no formal signature requirement of the agency). As a cooperating agency, the FAA has a much greater role in the EIS approval process so that their approval is now essential to move forward.

I know that I have said this before, but I think it not fair, frankly wrong and even violative of the relevant federal regulations -- (see: 49 CFR 1501.6):

Cooperating agencies. The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any

environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency. (Emphasis added, but the seeking of being designated as a cooperating agency is presumed to occur at the beginning of the NEPA process) --

It is very frustrating to have a federal agency suddenly at the end of the EIS process to change its status in the project and then require the project to standby while it tries to catch up with a process that they ostensibly have been participating in since January of 2006 -- three years.

In fairness to the FAA, it has consistently, from early days in the project raised a concern about takeoff runway 4L and 4R and landing runway 22L and 22R. It is a legitimate issue, but there are already existing obstructions in the runway protection zone (RPZ). The City thought it had an acceptable resolution to that issue before the FAA regional office became involved in early December that would have solved the RPZ issue for not only the guideway, but also the existing obstructions in the RPZ.. The "cargo city" issue only arose last month.

I hope that this information is helpful to you, Alan. I don't mean to push too hard, but the review of the history makes clear that the transit project has been dealt an unfair set back.

I really appreciate your assistance over these past weeks and Senator Inouye's assistance. Let me know if I can provide you with any additional information.

Denis
<<Other FAA correspondence EIS.pdf>>

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