From:	Souki, Jesse K.
To:	'Renee.Marler@dot.gov'
CC:	Woo, Donna M; Kitaoka, Don S
Sent:	11/17/2009 4:28:04 PM
Subject:	TRNS (1) Late DEIS Comments Letters and (2) Section 4(f) Chapter of FEIS for Honolulu High-Capacity Transit Corridor Project
Attachments:	20091117155904161.pdf; Honolulu Rail Project Questions re: 103109 FTA Comments

CONFIDENTIAL AND PRIVILEGED COMMUNICATION

Renee,

Please provide some guidance on the following two issues.

[1] Today, the project team was sent a copy of the attached letter, dated October 29, 2009. The letter is from the association of apartment owners (AOAO) of two condominium projects along the proposed transit route. The AOAOs comment on various parts of the Draft EIS. Ted Matley directed the project team to include the comment letter and response in the Final EIS. According to Ted, this direction came from FTA legal staff.

We have concerns regarding this directive. First, the letter was received well past the comment period prescribed under NEPA and HEPA regulations. I am concerned about the legal effect this directive will have on the AOAOs' standing to sue under NEPA and HEPA. Second, and more worrisome, is the effect this directive may have on other comments received after the NEPA and HEPA comment periods. According to the project team, the City has received 100s of comments on the project since the close of comment period on the Draft EIS. Do those comments and responses become part of the Final EIS as well? How would that affect the legal standing of these individuals and entities?

Please let me know if there is anything I can do to better support our position that responses to untimely comments are made in writing, but not made a part of the Final EIS.

[2] The project team received comments from the FTA regarding the Final EIS. As you are aware, the project team needed clarification on some of the FTA's comments. See Attached E-Mail. In addition, the project team hoped to clarify its approach to Section 4(f) as recommended by its consultant Nossaman LLP and in particular, Ed Kussy, Esq.

Today, Ted told the project team that the FTA's D.C. attorneys still disagree with the approach taken for Section 4(f). I was not in that telephone conference this afternoon, but the project team suggested that it might help if our attorneys met with the FTA attorneys face-to-face in D.C.

Do you think this will expedite FTA's review process? Would a conference call accomplish the same? The project team is willing to do what is necessary to expedite this process.

Thank you for your attention.

Sincerely,
Jesse K. Souki
Deputy Corporation Counsel
City and County of Honolulu
Tel.: (808) 768-5135

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