

**April 19 2005 Intermodal Planning Group Meeting, Honolulu, Hawaii
 Transcript of Discussion Regarding Financial Constraint**

<p>Shevaun Low</p>	<p>The ORTP will have a financial plan that will indicate a reasonable expectation of funding for the projects contained in the final plan. OMPO does not agree with the Certification Report that funding for projects that are relying on new sources of revenue should be firmly established.</p> <p>I think that this was something that came out of the Certification Review, that I understand that Gordon has been working directly with the FTA office on furthering the discussion of this issue.</p> <p>We believe that it will have a negative impact on the development of the ORTP as it does not reflect Oahu's vision as conceived by the Policy Committee, the Legislature, the City Council, and the public.</p> <p>It will, in addition, send a wrong signal to the public and the decision-makers on which direction Honolulu should proceed and may result in the programming of highway projects in our primary urban corridor that may not be consistent with a future rail project.</p> <p>Finally, OMPO is still waiting for a response to a letter contesting this position and at a Policy Committee meeting previously, the Policy Committee was told by FTA that a response would be made in a month from the time of the presentation.</p>
<p>Donna Turchie</p>	<p>Jon Young and I had talked about that. We couldn't come up with an internal agreement with FHWA as to how they saw financial constraint and how we saw it. So we haven't responded to that letter.</p>
<p>Leslie Rogers</p>	<p>I don't know how it eventually gets resolved. Maybe it's just a gentleman's agreement to agree to disagree. But FTA is under increasing scrutiny, not only by Congress, but by our internal Office of Inspector General and the General Accountability Office. And another issue that further exacerbates the concern on FTA's part is that, also, the inclusion of projects in RTP should be attached and include the O&M costs of those projects. We labor, here, historically, with the identification of adequate funding sources for capital costs. We think that inclusion of the attendant O&M costs further exacerbates the issue here.</p> <p>As we have counseled MPOs, at least on the transit side, throughout Region IX, from FTA's perspective, is that we have no qualms about including any myriad and number of projects for illustrative purposes, but, particularly, for us to address a financially constrained TIP, we look to the identification of reasonable funding sources and particularly here in the state of Hawaii, our past identification of what's reasonable has proven, frankly, unreasonable.</p> <p>And our intent, here, is to change the paradigm. We recognize the difficulties that this position may impose to decision-makers here, locally, and in the state. Our effort is to attach a degree of seriousness and earnestness for all of the policy-makers to coalesce and provide us with the identification of those funding sources to support a major capital investment project in the RTP. We recognize that we have a fundamental disagreement and that's just where we are.</p>

Gordon Lum	<p>I just have two comments. One comment being that we are working with our federal partners in terms of trying to develop this plan and having mixed signals from one partner verses the other partner doesn't help us in this particular direction.</p> <p>The second point that I wanted to raise would be in terms of developing a reasonable transportation plan would be if we assume that funding is not reasonable because it is not firmly established, then I guess the logical conclusion would be that the construction of rail is not reasonable... If we can not place rail as being a component, if rail will not be built in Honolulu's future, based on that line of thinking, we must come up with a set of plans that will accommodate the deficiencies within our primary corridor... Those projects that we identify will probably be highway in nature. We had several discussions, in the past, with our policy makers where they have indicated for the ewa area, ewa, central Oahu area, if no realistic solution, such as rail is going to be pursued, we've had comments that no "la-la-land" solutions should be given to the residents of ewa, central Oahu, in order to keep them satisfied and to have them accept their present condition. Instead, real solution will have to be promoted. If not rail, then it would have to be something like a Pearl Harbor tunnel or something that would add capacity and relief to the ewa residents. Such a project would definitely compete aggressively with a rail project. For us to set the ground work for such a movement that may actively work against us if we were to pursue rail. I think it would be detrimental to the planning process, to what our decision-makers feel should be part of the And with that, we have the tremendous need to resolve this issue sooner rather than later, because the timetable where the decision making process is heading, dove-tails almost parallel with the ORTP effort. We will be going out this summer with a recommendation in terms of the options that Honolulu will be pursuing as the future for .. the 2030 plan. At the same time the City Council and the Legislature are positioning themselves to provide the funding mechanism for such a system. The timing is very awkward for our process to go out together with the City Council's action, with the Legislature's action to both actively pursue almost philosophically opposing views in terms of addressing Honolulu's transportation concerns.</p> <p>I guess with that we are also very sensitive, in terms of trying to comply with rules and regulations. I think OMPO has taken very seriously rules and regulations issued by the federal government as well as by the local government. We recognize the fact that the BRT project, the FTA had warned the City about pursuing those particular actions about the BRT project ahead of time without FTA's approval and given that case perspective that it was indeed not followed, sanctions and repercussions were indeed were levied. We are aware of that, and I think in that vein, it would be very difficult for myself, as Executive Director, to recommend to the Policy Committee to pursue a course of action that may result in some ramifications and impacts to our process, given what was recently given to the City. Because of that, there is some need for resolution or at least something in writing so that I can bring something to our Policy Committee in this particular area that definitively establishes the policy of the FHWA , the FTA, our partners in this.</p> <p>So the two points I want to mention to you are the dilemma it imposes on the process and the need for some definitive resolution.</p>
Leslie Rogers	Well let me ask a question in that sense. We believe the RTP to be a living, breathing

	document subject to further potential amendments. If we had a major capital investment project on Oahu that only includes preliminary engineering, what's the fundamental harm of that approach such that once a firm financial funding source is identified to support total construction and operate and maintenance could the plan be amended when those sources are so identified?
Phyllis Kurio	I think we understand FTA's position, but I think for me personally, fundamentally, I try to read the rules, I read the preamble, and FTA's position is contrary to the regulations. I cannot balance that in my mind. The outlook in my world is either black or white there is no in between grades. But what I think FTA is doing is taking advantage of the in-between and pursuing something that is contrary to the planning rules and the preamble that to me discusses the intent of the regulations. When you talk about O&M cost to be included in the RTP, I don't think that it's in the rules. The rules are very very specific. So we either go through amending another round of rule-making to accommodate this. We are not a non-attainment area. Let us say for the TIP, we don't be local sources ready in place for year 1 and 2 because we are not a non-attainment area. But what you are saying for the RTP that to have the local source in place, it just flies in the face of the regulations. And that is why I cannot come to grips with your position. I understand it but its got to be consistent. There is the precedence of the regulations.
Bruce Turner	<p>Let me weigh in a little bit. Gordon, I heard you talk about mixed signals about reasonable expectations. I think from FHWA's standpoint, and I think Leslie would agree, the language "reasonable expectations" that's where we stand. But those expectations are I think from our program areas those expectations are what differ. The way FTA plans and develops their projects is different than the way FHWA plans and develops their projects. Our approach with "reasonable expectations" is more .. broader because it comes typically at an earlier stage in project development. FTA their project is tied more closely to their funding as the project goes along. And so the results of our expectations have been in one direction but the results of FTA's expectations have been in another direction. So that their definition, now Leslie I may be putting words in your mouth, of reasonable is different than our definition of reasonable. And that may be the way it is. As far as the reg and the preamble, I don't recall the language of the preamble...(tape ran out).</p> <p>Flexibilities are in there to allow the agencies to best operate the way they see fit. And remember that we are a nation-wide organization that must have some degree of consistency across the board. And it is true that we don't see necessarily with FTA as to what "reasonable expectations" are, but, like I said, we have one set of experiences and they have a different set of experiences. And it may be that it takes a while to resolve that.</p>
Leslie Rogers	The fundamental difference for FTA is that, unlike FHWA, typically FHWA does not require the identification of a new funding source. And FTA's New Starts Program, as you are aware, has a local funding source. The administration's reauthorization proposal would cap New Starts funding at 50% of the total project's cost. That is not to say that all of the federal funds cannot augment the New Starts source. I don't think that that language will pass, at least in the House side, it would still authorize projects up to 80%. Most recently the House Appropriations Committee had capped New Starts funding at 60%. To the extent that New Starts funding identified at amount greater than 60% that resulted in a low rating of the financial component. So, here, essentially we are looking inherently it would require the identification of a new

	<p>funding source to support a major capital investment on Oahu. And from our perspective, “reasonable expectations”, and we recognize that reasonable minds may differ, but, our experiences over the last 20 years are that the expectations have never borne fruit. And our intent here, candidly, is to change the paradigm. We are at a situation where we were in the early 90’s with this talk about the potential enactment of an excise tax. And you are all are closer, and we. The Honolulu Star Bulletin and Advertiser are probably not the best sources of information, but they are sources we check. And we see any myriad of comments that, particularly from folks in the lower chamber and the Senate and the comments coming out of the Ways and Means Committee some comments from the Governor’s Office, and frankly none of them are very comforting. If anything, it serves only to further muddy the waters, to give no clear sense of confidence that we will proceed in a fashion that at the end of the day gets us to a different result than we have witnessed in the last twenty years. So that is our fundamental approach here and we recognize the difficulties that it may entail but we are looking for leadership here at the local level to identify that source of funding to support a major investment project here on Oahu. Our intent is not at the end of the day find ourselves spending upwards of \$40 million dollars as we did in the early 90’s for a rail project that at the end of the day lacks the requisite local support to support its construction, operation and maintenance.</p>
Gordon Lum	<p>Does FTA feel that spending monies for Alternatives Analysis without the locally funded mechanism for the project is not worthwhile?</p>
Leslie Rogers	<p>No. And those funds will be expended. And I think you are aware of the Congressionally mandated rating process that attaches to a major capital New States Program. So admittedly, even absent the identification of a firm funding source, we could very well, and we have, (deprived?) every project before it advances to preliminary engineering must be minimally determined to have received a “recommended” rating. There area three current ratings: Highly Recommended, Recommended, and Not Recommended. So to advance a project to PE it is lower threshold than for other later stages of project development.</p>
Gordon Lum	<p>The point that I wanted to raise with that comment was through a project development phase from alternatives analysis systems planning, alternatives analysis preliminary engineering, design and construction. Through that phase more information is presented and a project develops and it gels more. Before we enter preliminary engineering, definitely we should have the local funding firmly established to ... (something) binding. My feeling is that prior to that point, it is a little on the softer side. After that point it becomes even firmer and firmer and firmer. We are talking about something begins at the very early process, the systems level planning, the alternatives analysis our recent transportation plan. The key... the point that we are sort of waffling about at this time is the definition of “reasonable expectation”. My feeling of “reasonable expectations” corresponds to probability. That in order to be reasonable it has to have a high probability of being enacted. When we first started this process several months ago, and after the Certification Review, I talked to Ray and told Ray that based upon the review that was submitted, I agree with it that it may not be reasonable because nothing has been done. But since that time, my feeling is that the probability of the rail project actually being pursued increased and increased and increased. The Governor’s Task Force came up with a recommendation for the rail project and the Nimitz Flyover. The State Legislature is now enacting a bill that will allow the excise tax to be increased. I see that as a major step. I am talking to my Chairman, Nestor Garcia, and he is telling me that he is</p>

	positioning the City Council to act on specific bills that will actually implement the State Legislature's bill. The City Council took a position on rail just a few months ago and passed it 8-1. The Policy Committee took an action and passed it by a vote of 10-1. So that in terms of probability, granted its not 100% probability nor is it 99.9% nor is it even 95%, but clearly it is more than 50%. The question that I have in my mind is at what point in the probability scale is the "reasonable expectation" at the ORTP level? At the PE level, I would assume that it would be at the 95 or 99.9% or something over. Alternatives analysis something lower than that. Regional transportation level something close to the systems analysis. I don't feel that "firmly established" at this point, given what has been done at the local level is the defining criteria for something that is needed and reasonable in this plan.
Phyllis Kurio	May I also add that I think, now that you have the major investment regulations, you have more control over whether a project gets annexed into funding.
Leslie Rogers	...in a pragmatic sense, from a timeline, when do we expect the enactment by the Legislature?
Gordon Lum	This May.
Leslie Rogers	Then when would the City Council act? If the City Council were to act sometime in the next nine months, then all this becomes a non-issue.
Gordon Lum	We have to go out with our plan this summer. In order to meet a deadline of April 2006 to have the plan endorsed, we would have to have our plan finalized by December or January for action by our Policy Committee. In order for that to occur, our draft plan, our analysis of that draft plan, going out to the public, I think my schedule right now is for summer to go out to the public.
Leslie Rogers	And if we were to depict the project as beyond PE as for illustrative purposes, doesn't that serve as the lever towards .. for the City Council to act?
Donna Turchie	...therefore moving it from illustrative to a pretty secure funding
Gordon Lum	But then see the "reasonable expectation" again if it's not reasonable to expect the funding to be available for this particular project, then it's also reasonable not to expect the construction. That this project will not be constructed or built as part of this plan. If it is not reasonable to have this project in the plan, what is it that we are going to be recommending? We are going to be sending mixed signals at a time when the City Council is deliberating this particular point. Telling them that the official plan for Oahu does not include rail.
Leslie Rogers	No. In essence, it's a conditional plan. City Council, if you act, the project moves from an illustrative project to a firmly identified fundable project.
Donna Turchie	And that could even be noted in the draft plan. Therefore, adding even more pressure.
Leslie Rogers	It places the onus where rightfully should be. The City Council needs to step forward and identify a local funding source to support a major rail project. And if they want to duck and dodge, fine. But that is our reality. I don't understand... the project is included as an illustrative project. And, City Council, solely you can, through your good graces, advance it up until it is financially constrained project by your ability to act.
Phyllis Kurio	So FTA views an illustrative project as like a contingency project in a grant application. If the funds become available, it will move forward up into the grant. Is that a reasonable analogy?
Leslie Rogers	In a broad sense.
Donna Turchie	Actually, contingency in a grant might be.... Secured funding.
Phyllis Kurio	So for Gordon's planning purposes.
Donna Turchie	In my opinion, and I don't live here, if they look at that and they see the draft this

	summer, and it says, you know, it's asterisk; if you actually go and put an explanation that's based on "this project is illustrative until such time as the Honolulu City Council enacts the excise tax, in which case it will be moved into a firm project." That puts even more pressure on them because it's right there in writing for everybody to see. You've just thrown the ball to them.
Gordon Lum	If we also go that route, and if we also provide the analysis as part of our ORTP effort during the summer, with rail without rail, have that contingency, and we have identified it as an illustrative project, if the City Council passes it, will FTA and FHWA allow us to amend the ORTP without any further analysis?
Phyllis Kurio	It is like a grand amendment you just put it in.
Gordon Lum	You just put it in?
Donna Turchie	Yeah. It seems that ... Bay Area projects, as Phyllis pointed out when we were having dinner last night and discussing not exactly this, but we were discussing around it. In California you have the right to collect the taxes, it's voted that way or propositioned. But once the local entity, such as San Jose passed their tax, then that stepped them up to the plate becoming a firm project into the MTC RTP and the same with MUNI. Once they got their plan passed, it's like "show me the money" and there it was. So once the City Council passed this you are going to start collecting as of a certain date, you've got the money so that whatever you choose out of your alternatives analysis, therefore you would be able to advance it into the ORTP.
Bruce Turner	But you would have to have the alternatives analysis in the plan to start with, is that what you're talking about?
Leslie Rogers	It should probably be an illustrative project not anyway so that you don't prejudice the alternatives analysis, right? I mean you have to try to maintain some sense of integrity for the alternatives analysis.So theoretically, we could go with some TSM or some bus alternative, if the locals decide that we don't ..can't financially sustain a major capital investment.
Phyllis Kurio	So I think Gordon's question is if the City Council were to enact an increase, and we have our funding source, and the rail project is illustrative, can it move up into the ORTP, fully funded without a major amendment?
Donna Turchie	Probably the best way is if they said "major transit project" or "major fixed guideway.
Gordon Lum	If we go this route, it will probably add a lot of caveats associated with this project.
Donna Turchie	So that you don't prejudice the AA.
Gordon Lum	Two points. I don't think it would prejudice the AA because having a project in the RTP does not guarantee its construction. Through the project development stage, it could be knocked out at any point. So that's not a major issue. The more important issue for us would be the additional work that would be associated with placing the project from the illustrative to the full fledged ORTP project. We could put caveats in it to inform the public that if the City Council does pass it, we need not go through another public review process. The public need not expect another public review process to place this amendment. We will not go through another technical analysis because it was already part of the ORTP effort. The Title VI/Environmental Justice, which was already done as part of the ORTP effort, will not be regurgitated again. And it will just be a simple movement by our Policy Committee.
Bruce Turner	How will the analysis impact that in the overall transportation plan? How would that be accounted for before you amended it?
Gordon Lum	Our consultant right now, as part of the ORTP effort, will be analyzing two different scenarios. One of them will be with rail and one will be without. So that would serve

	as the analysis to justify.
Leslie Rogers	So you would have an either or scenario?
Donna Turchie	How long do you think it will be to pass the City Council? Do you think they are going to take a year?
Phyllis Kurio	It depends on what the final bill says.
Donna Turchie	So you have a concern that by the time you are ready to pass this thing next March, that it's not going to be a done deal.
Gordon Lum	I think it may be a done deal and that it may require us to redo the ORTP effort for something...
Donna Turchie	You trying to say that if we back it up with caveats all along the way, so that should it be a done deal and, say it passes March 1 st right before publication, we can move it up to show it as a real project when it hits the street. I think it's reasonable.
Leslie Rogers	Yeah. Donna and I think it is reasonable. We have a precedent for this. It is essentially what we did in the Bay Area with the (didn't get project).
Donna Turchie	You don't have to run air quality conformity on it, that is the big thing in California. They have air quality conformity rules to worry about.
Shevaun Low	Can I just understand what you are meaning in terms of the two alternatives --with transit and without transit? Do mean that as a result of what the consultant is currently doing?
Gordon Lum	Currently doing.
Donna Turchie	Based on the vote of the City Council to approve it. If the City Council approves it before we go to press then it is going to show up in the funded section.
Gordon Lum	I guess that what Shevaun is trying to get at is that the with and without rail isn't a clear with or without rail. Because the analysis that we have encompasses; we have in our original list of projects over 450 proposals submitted by the public and the agencies. Some of them did not go through the initial screening. Clearly, the ones that did go through the initial screening not all those projects will make it to the final list. The analysis that is being done, encompasses a lot of those projects, so it's not going to be a clean with or without rail.
Shevaun Low	I just want you to understand that the projects that would be running with the rail and without rail may not go through as part of the final ORTP list of project. So, as Gordon said, it may not be a clean analysis. So what I hear you saying is that that would suffice for our analysis.
Leslie Rogers	We believe it would. But let me ask one question. Would, as you go through this suggested bifurcated process, could potentially the adoption of a rail project result in other projects falling out to maintain a financially constrained plan?
Shevaun Low	That's where I'm a little confused too. If you are talking about the dedicated funding source of say this one percent excise tax, I would assume that that would cover everything. So, if that is not the understanding that you have then other projects would fall out in order to maintain the financial constraint of the whole ORTP.
Leslie Rogers	I would agree. I would think that we are saying that this potential rail project is out here and it assumes New Starts funding and other potential funding and local funding from the excise tax. Okay, and once the tax is enacted, that provides the complete funding picture to continue advancement of that project with no detriment to all the projects over here, because we've identified all the projects over here as currently

	being financially constrained. And the whole issue of financial constraint for the rail project is identification of the local funding source. Is that fair.
Shevaun Low	I think we are on the same page.
Donna Turchie	Do see other projects in the ORTP being in question, even if they were highway projects because of the fact that the City Council gave the go ahead for the excise tax for the rail project? For example, might that knock out the thought that the State double-decking Nimitz or doing the famous Sand Island project. Might that knock out something like that because they wouldn't go there?
Shevaun Low	I think what Phyllis said earlier about how the bill actually comes out and how it passes the Legislature has an impact. Because, my understanding about how the bill is written now, it is for transit only. I haven't been keeping up with it.
Phyllis Kurio	I haven't followed it since the cross-over, but initially it was for the City and County of Honolulu to fund a light rail project, unless they have amended it. It would be enacted by the City Council to be used by the City not the State.
Leslie Rogers	Peter Pan commented to the Legislature last week such that we suggested that it not be prescriptive in terms of technology. We suggested that funds generated by this surcharge be used to support the locally preferred alternative. That was the preferable language, but then it pushed a fixed guideway or whatever. But we sort of wanted to adhere to the integrity of the alternatives analysis to say that whatever the project is that is the locally preferred alternative.
Donna Turchie	Technically, and AA could mean the double decking of Nimitz.
Leslie Rogers	I did go and read the bill that passed the Ways and Means last week and it also has a component that funds can be used for ADA and something else but I didn't know that it was particularly limited to the major capital. It could generate more than \$300 million a year and that is probably more than you would need as a local share. To that extent you would have a sure source of funding beyond what's needed to fund this rail project.
Gordon Lum	I believe that the Legislature is wrestling with that particular issue. There are members on both sides that feel that they should put rail other feel that they should be broader. I believe that philosophy also exists at the City Council too. It's also talked about to knock it down to a half percent. But it is still in flux and it will depend on what comes out of the bill.
Bruce Turner	My only concern would be the analysis for the whole plan and then adding a major project to that plan unless you had some place-holder in there. Some identification of that is a possibility and it was accounted for.
Gordon Lum	See that's my main concern about keeping it illustrative. But I am hearing that the initial work as part of the ORTP plan that we are doing will suffice to justify bringing it up to the plan with very little additional work.
Leslie Rogers	We believe so to the extent that the analysis would support the illustrative plan and that analysis is completed. You could just refer and invoke that analysis as the project moves from the illustrative list to the financial constraint list.
Donna Turchie	And if it wasn't done when your plan was done in April 2006 and they ended up passing it in May, then a quick amendment could be done. It would be a transit only amendment so that I could get it through our office fairly quickly.

DTS: Phyllis Kurio

OMPO: Gordon Lum (Executive Director) and Shevaun Low (Planning Program Coordinator)

FHWA-HI: Bruce Turner (Assistant Division Administrator)

FTA: Leslie Rogers (Regional Administrator) and Donna Turchie (Office of Planning & Programming Dev.)