
From: Ted.Matley@dot.gov
To: Miyamoto, Faith
CC: Hamayasu, Toru
Sent: 10/23/2009 10:00:31 AM
Subject: RE: Honolulu High-Capacity Transit Corridor Project

Faith,

Jim Barr and I reacted to what seems to us to be an unusual approach proposed by the City staff that was debatable in its merit. We found it unusual, as did other consulting parties that the City would propose to bring to the City Council a document for their review and action where the process to develop that document was ongoing and where the document was admittedly open to change. We also expressed surprise that the City Council would consider action given these circumstances. This is a reaction we would have in any process where it is proposed to request approval by a government body of a document under development. Logic would suggest that this action should wait until the consultation process is concluded. However, in subsequent discussions we now understand that the City is primarily considering their project timeline in making this decision.

To be clear, FTA neither encourages nor authorizes the City to bring the draft 106 Programmatic Agreement (PA) to the City Council at this time. Also, FTA's position is not, as you have written, "that DTS can proceed with requesting the City Council's authorization for the DTS Director to sign a PA that is substantially the same as that attached to the proposed resolution."

FTA has required that the City be an invited signatory to the PA. The City has informed FTA that a City Council action is required for the DTS to enter into a binding agreement such as the PA. This City has decided on this course of action and this timing of action as a means of addressing requirements put forth by FTA. The City will be responsible for demonstrating the legal sufficiency of this action should circumstances require this demonstration.

Should the City Council take action to approve the resolution authorizing DTS to enter into the agreement based upon a draft PA, any subsequent changes to the final signed 106 PA, even those deemed by the City to insubstantial, would call into question the legality of the action of the City Council. To ensure that the legality of this action is demonstrated, if there are any changes to the draft 106 PA subsequent to the action of the City Council, FTA will request a legal opinion from the City's counsel that the action of the City Council to authorize DTS to enter into the PA remains legally sufficient.

Should you have any other questions, please contact me.

Ted Matley

-----Original Message-----

From: Miyamoto, Faith [mailto:fmiyamoto@honolulu.gov]
Sent: Friday, October 23, 2009 6:00 AM
To: Matley, Ted (FTA)
Cc: Hamayasu, Toru
Subject: Honolulu High-Capacity Transit Corridor Project

Hi Ted -

The comments made by FTA at Wednesday's Section 106 Consulting Parties meeting regarding the City going forward with asking the City Council to authorize the Director of Transportation Services to sign the PA are being related to the City Council as FTA's position on the resolution. We anticipate that at Monday's City Council committee meeting we will be

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questioned on the statements that you made.

When I spoke with you yesterday, you stated that after the meeting, you had conferred with other FTA people, such as your legal counsel (Renee Marler), and that the FTA position on the resolution is that DTS can proceed with requesting the City Council's authorization for the DTS Director to sign a PA that is substantially the same as that attached to the proposed resolution. It would be ideal if we could get a letter communicating your position on this matter. However, recognizing that the City Council meeting will be on Monday, can you confirm my understanding of the FTA position? I would like to say that I spoke with you and you related FTA's position that was discussed with whomever. I would like to be specific on who was consulted with on the FTA position. Was legal counsel involved, etc.? I want to make certain that I am not misrepresenting FTA's position.

Thanks.

Faith