

Thank you for your letter of September 2, 2009 to Federal Transit Administration (FTA) Administrator Rogoff regarding the Honolulu High Capacity Transit Corridor consultation process to negotiate a Programmatic Agreement (PA).

FTA fully agrees with your assessment that the situation is complicated. However, we do not completely agree with a conclusion that the failure of the City and County of Honolulu to share information and consider mitigation measures proposed by the consulting parties to be the only reason for the slow progress of the consultation. While the information flow by the City and County staff can be improved, some of the mitigation measures proposed by the consulting parties have not been established to be reasonably related to the project and as proposed are not proportional to the project impact. In these cases the hesitation of the City and County to agree to them as proposed is justified. Also, in some cases consulting parties have failed to provide the City and County staff with information on the specific nature of adverse projects impacts they have identified.

Clearly, this is a situation where all parties must agree to work to improve the information flow and to negotiate in good faith regarding mitigation alternatives that are directly related to and proportional to the project impacts. While the consultation process has been slow and somewhat contentious, FTA believes that there has been recent progress and it is premature to consider the process as comprised.

Regarding the role of FTA staff, Region IX staff has worked continually to coordinate with the City and County staff, and as the complexity of the situation became clear, Region IX staff sought the participation of experienced staff from the FTA Office of Planning and the Environment (TPE). As you may be aware, at the consultation meeting held on the date of your letter, September 2, 2009, TPE staff participated directly in the consultation discussion, and has and will continue to take an active role in the process.

Regarding the signatory status of the City and County of Honolulu to the PA, FTA staff shares your concerns. After internal discussion, review of precedents and legal issues, and discussion with the staff of the City and County, FTA had determined that the City would be required to sign as an invited signatory to ensure they are fully committed to their responsibilities under the PA. This was communicated to the City and County prior to your letter and the consulting parties were informed of this at the September 2 meeting.

Regarding the City and County's efforts to foster transit oriented development (TOD), this discussion has been particularly complex as the group seeks to separate reasonably foreseeable impacts related to the project from more speculative impacts that are outside the scope of project mitigation. Making this distinction and developing effective and appropriate mitigation responses will continue to be an issue for discussion. In fact, FTA staff and ACHP discussed this issue in particular during a recent coordination call on September 10, 2009. FTA appreciated the assistance of ACHP staff on this issue as the group continues to work through this issue.

Finally, on the use of contractors by the applicant in what may be perceived as a lead role, you may not be aware of the limited staff resources that the City and County of Honolulu had in place as they began the planning and implementation of this major transit investment. The result is that there are many consultants to the City and County who are actively involved in the effort, perhaps more than is common. It is FTA's understanding that while they are very active in the process, they are not decision makers but working under the direction of City and County staff. To our knowledge City and County staff has always been present at the consultation meetings.

Thank you for your efforts to assist in this process, and we look forward to working closely with ACHP as this effort continues.