From:	Souki, Jesse K.
To:	'Renee.Marler@dot.gov'
CC:	Woo, Donna M; Kitaoka, Don S
Sent:	11/24/2009 2:50:33 PM
Subject:	RE: TRNS (1) Late DEIS Comments Letters and (2) Section 4(f) Chapter of FEIS for Honolulu High-Capacity Transit Corridor Project
Attachments:	DEIS-FEIS-Checklist.pdf

CONFIDENTIAL AND PRIVILEGED COMMUNICATION

Renee,

Thank you for your response. We eagerly await FTA's comments on Section 4(f).

Regarding your question about the Governor's role in the approval of the final EIS, under Hawaii Revised Statutes ("HRS") § 343-5(b)(2), "[t]he final authority to accept a final statement shall rest with . . . [t]he governor, or the governor's authorized representative, whenever an action proposes the use of state lands . . . [.]" Because the Project uses state lands, the governor must accept the final EIS. Furthermore, "[a]cceptance of a required final statement shall be a condition precedent to implementation of the proposed action." Id. The governor files her determination with the Office of Environmental Quality Control ("OEQC"), which is then published in the OEQC's *Environmental Notice*. Id.

Project planners have been in consultation with OEQC very early in the HRS Chapter 343 process, as documented in the draft EIS. OEQC reviewed the draft EIS and submitted comments, which the Project addressed in the administrative final EIS. The Project submitted a copy of the administrative final EIS to OEQC for their review approximately two months ago. The Project has not received any comments from OEQC regarding the administrative final EIS.

The Project was informed that OEQC will make a recommendation as to the acceptability of the final statement to the governor. For your convenience, I have attached the checklist prepared and used by OEQC in its analysis of HRS Chapter 343 EIS documents. I have reviewed the document for compliance with the checklist and find that the final EIS has or will meet those requirements. At this time, the Project has no reason to believe that OEQC will not recommend that the governor accept the final EIS.

I hope that this addresses your inquiry. If you require additional clarification, please let me know.

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

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From: Renee.Marler@dot.gov [mailto:Renee.Marler@dot.gov]
Sent: Tuesday, November 24, 2009 11:22 AM
To: Souki, Jesse K.
Cc: Woo, Donna M; Kitaoka, Don S
Subject: RE: TRNS (1) Late DEIS Comments Letters and (2) Section 4(f) Chapter of FEIS for Honolulu High-Capacity Transit Corridor Project

CONFIDENTIAL AND PRIVLEDGED COMMUNITCATION

Jesse,

I wanted to get back to you on your two questions, below, as well as ask you a question of my own.

In response to your first concern regarding response to late comments, such as the AOAO, you may already be

aware that we have taken the position that late comments will not be specifically included in the DEIS. FTA is finalizing a response to AOAO now that will include language to this effect:

The Federal Transit Administration (FTA) issues a DEIS only when it is satisfied that the document complies with National Environmental Policy Act requirements. The public comment period began on November 21, 2008. Due to the high degree of public interest in this project, FTA extended the comment period on the DEIS for 30 days. Additionally, five public hearings on the DEIS were held at local venues during the public comment period. The public comment period closed on February 6, 2009. I have been advised that your association did not formally file comments on the DEIS during the comment period. FTA received extensive comments on the DEIS. It is my understanding that members of your organization also communicated your concerns to City of Honolulu Department of Transportation Services representatives on October 15, 2009. Please be assured that all substantive issues developed in comments on the DEIS will be addressed in the Final Environmental Impact Statement (FEIS).

I apologize for any confusion in prior communications, and I hope this addresses your concerns.

In regard to your second concern, FTA is reviewing the City's responses to FTA comments on 4 (f). We will be getting back to you on these soon. We'll be communicating more about this next week, I expect.

Finally, we were concerned today to see a news report in the Honolulu Advertiser on the Governor's intent to conduct a lengthy review of the FEIS.

http://www.honoluluadvertiser.com/article/20091124/NEWS01/911240347/Lingle+promises+thorough+review+of+Honolulu+rail+project

I would be very interested in understanding the Governor's role in the approval of the FEIS. Could you get back to me on this issue right away?

Thanks very much,

Renee

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From: Souki, Jesse K. [mailto:jsouki@honolulu.gov]
Sent: Tuesday, November 17, 2009 6:28 PM
To: Marler, Renee (FTA)
Cc: Woo, Donna M; Kitaoka, Don S
Subject: TRNS (1) Late DEIS Comments Letters and (2) Section 4(f) Chapter of FEIS for Honolulu High-Capacity Transit Corridor Project

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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