U.S. Department
of Transportation
**Federal Transit
Administration**

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Mr. Kenneth T. Hamayasu
Chief, Rapid Transit Division
City and County of Honolulu
650 South King Street, 3rd Floor
Honolulu, Hawaii 96813

Dear Mr. Hamayasu:

Thank you for your letter dated February 8, 2010, regarding the design-build (DB) contract between the City and County of Honolulu ("the City") and Kiewit Pacific Company (Kiewit). The letter notifies the Federal Transit Administration (FTA) of the City's intention to proceed with a second notice-to-proceed (NTP #1A) for three additional work activities under this contract. It also provides some detail on the 35 work activities that were authorized under the initial notice-to-proceed (NTP #1). Activities authorized by these NTPs, or at least some parts of these activities, will proceed prior to issuance of a Record of Decision that will conclude the National Environmental Policy Act (NEPA) process for the proposed project. Your letter states the City's intention to issue NTP #1A to Kiewit by February 22, 2010. [Alternative: The City issued NTP#1A on February 22, 2010.]

Regarding NTP #1A, FTA agrees that the two activities to develop geotechnical data are consistent with the applicable FTA guidance on DB contracts initiated prior to completion of NEPA (Federal Register, Volume 72, No. 12, page 2583ff; January 19, 2007). The guidance specifically defines "geotechnical investigations" as an allowable activity. Consequently, FTA concurs with the authorization of these two activities:

- Soil borings to confirm geotechnical conditions, and
- The preparation of a geotechnical data report.

However, before FTA can concur with the authorization of the third activity, FTA requires additional information on the specific nature of work that would be authorized. The label on this activity – "All initial design activities preliminary to various interim design submittals" – is an insufficient basis for FTA concurrence. Please provide a description of the specific activities that would be authorized in this activity in detail sufficient to demonstrate that they would remain within the bounds set by the applicable Federal Register (FR) notice.

Regarding activities in NTP #1, the attachment to your letter clarifies sufficiently the nature of authorized work for most of the activities. However, FTA asks for further clarification of several items in detail sufficient to demonstrate their consistency with the PE approval. These items are:

- On-site security, communication and project signage
- Utility permits
- Other permits
- Mobilization
- Design foundations Area 1
- Design foundations Area 4
- NPDES implementation and permits

Finally, FTA is aware of certain dates included in the DB contract. At the time the contract was awarded the City anticipated completion of the NEPA process by the end of calendar year 2009. Obviously that has not occurred. The anticipated schedule for completion of the NEPA process is uncertain at this time, pending resolution of issues at the airport. The City must continue to ensure that work under the Kiewit contact is managed in a way that responds to these schedule realities, to NEPA requirements, to PE requirements and to the applicable FR notice on DB contracts, thereby avoiding activities that would jeopardize federal funding for the project.

If you have any questions about this matter, please contact Regional Counsel Renee Marler. Ms. Marler can be reached at 415--744-2736.

Sincerely,

Leslie T. Rogers
Regional Administrator