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June 2, 2009

The Honorable Roy Kientz
Undersecretary for Policy
United States Department of Transportation
West Building, 8th Floor
1200 New Jersey Avenue, SE
Washington, DC 20590

Subject: Draft Environmental Impact Statement (DEIS) for Honolulu High-Capacity
Transit Project

Dear Mr. Kientz:

The undersigned are Members of the City Council of the City and County of Honolulu (CCH) of the State of Hawai'i. As elected representatives of our Districts, we have responsibilities that require us to ensure that public funds – regardless of their source – are expended wisely and to safeguard our constituents from tax burdens that otherwise could be avoided through good governance.

At the present time, the Honolulu City Council is being asked by the City Administration to approve an appropriation for the forthcoming 2010 fiscal year (July 1, 2009 – June 30, 2010) of over \$1 billion in local funds to initiate construction of a 6.5 mile-long segment of the proposed Honolulu High-Capacity Transit Corridor (HHCTC) Project. The City Administration has requested this authorization by the City Council in advance of the publishing of a Final Environment Impact Statement (FEIS) for the Project or the issuance of a Record of Decision (ROD) by the Federal Transit Administration.

The HHCTC Project, as proposed by the City Administration as a candidate for Federal financial assistance, involves the construction of an all-elevated electric railway using automated light

metro technology, extending for 20.5 miles along the Leeward side of the island of O'ahu between East Kapolei and Ala Moana Center. The currently anticipated implementation cost of the Project is \$5.4 billion with a forecasted completion date in late 2018.

DEIS Process and Content

The HHCTC Project was the subject of a Notice of Intent to Prepare an Environmental Impact Statement for High-Capacity Transit Improvements in the Leeward Corridor of Honolulu, HI published in the Federal Register on Thursday, March 15, 2007 (Volume 72, No. 50, Pages 12254-12257, copy attached hereto). Subsequently, the City Administration prepared a DEIS for the Project, submitted it to the Federal Transit Administration for review, and published that document for the mandatory period for receipt of comments and written statements that ended on February 6, 2009.

The NOI (Summary, Page 12254) specifically states that:

"The Federal Transit Administration (FTA) and the City and County of Honolulu, Department of Transportation Services (DTS) intend to prepare an EIS on a proposal by the City and County of Honolulu to implement a fixed-guideway transit system in the corridor between Kapolei and the University of Hawai'i at Manoa with a branch to Waikiki. Alternatives proposed to be considered in the draft EIS and two Fixed Guideway Transit alternatives."

The NOI (V. Alternatives, Page 12256) also states that:

"Fixed Guideway Alternatives, which would include the construction and operation of a fixed guideway transit system in the corridor between Kapolei and UH Manoa with a branch to Waikiki. The draft EIS would consider five distinct transit technologies: Light trail [sic] transit, rapid rail transit, rubber-tired guided vehicles, a magnetic levitation system, and a monorail system."

Our concern is that the DEIS does not conform with its intent as stated in the Federal Register, which we understand to be legally-binding on the parties that published the notice. Specifically, the document addressed only the following alternatives:

- No Build Alternative
- Fixed Guideway Transit Alternative via Salt Lake Boulevard (Salt Lake Alternative)

- Fixed Guideway Transit Alternative via the Airport (Airport Alternative)
- Fixed Guideway Alternative via Airport and Salt Lake (Airport & Salt Lake).

Our understanding of the applicable environmental law is that, in order to be compliant with the National Environmental Protection Act (NEPA), the DEIS should have provided the public with an equal evaluation of all five technologies identified in the relevant NOI and contained a ranking of their comparative benefits and impacts to Honolulu, so as to enable the selection of a “best fit” technology after comments and statements concerning its contents were received and evaluated by both CCH and FTA.

Instead, each of the Fixed Guideway Transit Alternatives discussed in the DEIS for the HHCTC Project was based on an elevated railway using automated light metro technology, a form of rail rapid transit that requires full grade-separation. In particular, the DEIS failed to provide the public with information concerning the environmental characteristics of the other four transit technologies – light rail transit, bus rapid transit, magnetic levitation and monorail – as called for by the relevant NOI.

We also wish to point out that while the Locally Preferred Alternative approved by the Honolulu City Council in December 2006 is identified in its entirety in the HHCTC Project DEIS – from Kapolei to UH Manoa with a branch to Waikiki, which would involve approximately 29 miles of railway -- the DEIS only addressed 20 miles (by either of two routing alternatives) between East Kapolei and Ala Moana.

Despite being identified in the NOI, we believe that the branch out to Waikiki was intentionally left out of the DEIS by the City Administration to avoid having to address the negative environmental impacts in the document and to avoid having critical comments entered into the record of the DEIS hearings and comment period. The Waikiki community will not allow an elevated railway to overshadow its avenues; this is because its residents and businesses understand that it would severely damage the environment and destroy the visual beauty which attracts visitors to Hawaii.

Action Requested: Inasmuch as none of the alternatives contained in the DEIS addressed the environmental impacts of the five technology options for the HHCTC Project called for by the relevant NOI, we hereby request a formal finding by USDOT as to whether or not the DEIS for the HHCTC Project as prepared by CCH/DTS was compliant with the National Environment Protection Act.

Environmental Protection Agency Letter to Federal Transit Administration

With regard to NEPA compliance, we also wish to draw your attention to a letter sent by Region IX EPA to Region IX FTA concerning the DEIS for the HHCTC Project. This letter, dated February 12, 2009 (copy attached hereto) states:

“While EPA supports the goal of providing transportation choices to the communities of O’ahu, we have some concerns related to wetlands, water quality, environmental justice, and noise impacts. EPA has rated this document EC-2, *Environmental Concerns, Insufficient Information.*”

In addition, both in its letter to FTA and in its detailed comments on the subject DEIS, EPA stated:

“While we believe that most of the alternatives eliminated prior to the DEIS are documented sufficiently, we have remaining questions about why light rail or bus rapid transit in an exclusive right-of-way were not considered as reasonable alternatives in the DEIS.”

Region IX EPA made the following recommendation to FTA:

“Include additional information in the FEIS explaining why light rail or bus rapid transit in an exclusive right-of-way were not considered to be reasonable alternatives and were therefore not reviewed in the DEIS. If these technologies may have resulted in fewer environmental impacts, further justification is warranted to substantiate why those less damaging alternatives were not carried through for consideration.”

These statements by Region IX EPA are germane to criticisms to the DEIS for the HHCTC Project made in numerous verbal comments and written statements during the review period that ended on February 6, 2009, six days before the date of EPA’s letter.

It is our understanding that, in order to be compliant with NEPA, the DEIS for the HHCTC Project should have provided the public with an equal evaluation of all five technologies identified in the relevant NOI. This evaluation, we believe, should have contained a ranking of their comparative benefits and impacts, so as to enable the selection of a “best fit” technology for Honolulu after all comments and statements concerning the DEIS were evaluated by both CCH and FTA.

Instead, the City Administration chose to have the DEIS compare the “worst” impacts of the “worst case” technologies (for example that magnetic levitation would be the “loudest” technology) and then constructing comparative tables noting these impacts but without also addressing the “least adverse” or “beneficial” impacts of each of the technologies.

The only alignments for the transit corridor discussed in the DEIS were those that fit an elevated railway. All benefits and impacts were assumed to fall within this corridor alone, as opposed to evaluating benefits and impacts in alternative corridors suitable for non-elevated transit system technology options, such as light rail transit and bus rapid transit.

As Region IX EPA suggested in its letter, the approach taken by the City Administration entirely misses the opportunity implicit in the EIS process to discover the “best fit” technology choice for Honolulu, which might mean a compromise between maximum possible station-to-station schedule speed over the full length of the HHCTC Project and the environment, aesthetic, commercial, social and historic impacts to the city, its residents and its business community.

Action Requested: We request USDOT to coordinate FTA’s actions concerning the DEIS for the HHCTC Project with the EPA to ensure that they adhere to both NEPA and the relevant NOI. We also request that USDOT, using its responsibility and authority under NEPA, take steps that ensure that the numerous comments and statements critical of aspects of the HHCTC Project, in particular those concerned about the negative impacts of constructing and operating an elevated railway through environmentally sensitive commercial, recreational and residential areas of Honolulu, are addressed in an objective and meaningful manner, as required by the National Environmental Protection Act and implementing regulations issued by EPA and FTA. If in addressing the comments the conclusion is reached that the project should be changed to light rail technology that can accommodate both elevated and at-grade operations, we request that USDOT ensure that the HHCTC Project is changed accordingly.

Other Pertinent Information

Statements Made by Honolulu City Administration to Honolulu City Council

The Honolulu City Administration has told the Honolulu City Council, as well as the local news media and the public, that approval by FTA of the Final Environmental Impact Statement (FEIS) for the HHCTC Project will be forthcoming in the near future, inasmuch as “There are no significant problems with the DEIS or the Project,” and that issuance of an Record of Decision (ROD) qualifying the Project for Federal financial assistance will follow in short order. The City

Administration also has advised the City Council that CCH has been assured that it is “in line for up to \$1.4 billion in Federal grants under the New Starts program,” although no written evidence of this claim has been provided to us.

City Administration Claims that “It’s Too Late to Consider Technology Alternatives”

Notwithstanding the fact that Section II. **Scoping** of the relevant NOI (Page 12255) states:

“Comments on the alternatives should propose alternatives that would satisfy the purpose and need at less cost or with greater effectiveness or less environmental or community impact and were not studied or eliminated for good cause. At this time comments should focus on the scope of the NEPA review and should not state a preference for a particular alternative. The best opportunity for that type of input will be after the release of the draft EIS.”

The City Administration steadfastly maintains that, because the FTA approved public release of the DEIS for the HHCTC Project, “it is too late to consider technology alternatives” that were commented upon or recommended during the review period.

Many of our constituents, including parties that submitted verbal comments or written statements during the mandatory review period, believe that they are being “stone-walled” by the City Administration in violation of NEPA, implementing EPA and FTA regulations, and the NOI governing the intended content of the DEIS for the HHCTC Project. As elected City officials, we too have experienced similar responses from the City Administration when raising questions about the HHCTC Project, and are obliged by our fiduciary duty to our taxpayers to bring this to your attention.

Hostility Expressed by City Administration to Criticisms of HHCTC Project

Only recently did it become public that over 600 comments were received by CCH and FTA concerning the DEIS. When initially asked about releasing the comments and statements, the City Administration resisted and stated that while they could, many of the comments would raise undue concern over issues that would be addressed in the FEIS and that the comments and statements would be released with the FEIS. Only after insistence by members of the City Council and threats by the news media that they were prepared to institute actions under Freedom of Information laws, were the documents released. This is clearly indicative of the attitude of the City Administration towards its legal responsibility to address these comments in an objective and meaningful manner.

Increasingly, the public has become aware of the negative impacts that would be caused by construction and operation of an elevated railway in certain areas of the city (that can only operate in a secured or grade separated right-of-way due to the required third rail along the tracks), notably in the Primary Urban Core extending from the Kalihi and Iwilei neighborhoods through Downtown to Kaka'ako and Ala Moana. Concerns also are being expressed to us about the environmental impacts of planned future extensions of the HHCTC Project – which were not addressed in the DEIS – into the McCully, Mo'ili'ili, University of Hawaii and Waikiki neighborhoods, as well as from East Kapolei, located on former agricultural lands in the Ewa region, into the heart of Kapolei.

These concerns have resulted in a well-spring of public support for the use of more flexible light rail transit technology, which would permit different segments of the HHCTC Project to be constructed at-grade on private rights-of-way, in highway medians, on exclusive transit-only lanes or in mixed traffic along city streets, as well as on elevated structures. We are advised by one of the parties that submitted a written statement during the DEIS comment period that its findings are that as much as forty-five percent (45%) of the Project can be brought to grade through the use of light rail transit technology, resulting in a reduction in implementation costs in the range of \$2 billion. The City Administration not only expresses no interest in exploring this alternative, which we believe would enhance the HHCTC Projects potential for receiving a favorable rating under the New Starts Criteria, but has reacted in a hostile manner to those advancing this viewpoint.

While anonymous, we believe that USDOT will be interested in the attached electronic media report distributed on May 1, 2009 by Ian Lind OnLine. In this report, the head of one of Honolulu's pre-eminent architectural firms (who has been vocal in his criticisms of the HHCTC Project and was active in the preparation of a written statement entered into the DEIS record by the Honolulu Chapter of the American Institute of Architects) was quoted as saying

“More than once I've been threatened that I'll never work in this town again,” he said. The mayor is intimidating architects to shut them up.”

City Administration's Rush to Lock-In the Technology

Within a few weeks following the close of the DEIS comment period on February 6, 2009, the City Administration began to take steps to lock-in the use of automated light metro technology for the HHCTC Project. It attempted to do so has the following manner:

1) By issuing the following Requests for Proposals (RFPs) for infrastructure construction and equipping, including acquisition of rolling stock, of an elevated railway between East Kapolei and Pearl Highlands:

- RFP-DTS-90015 West Oahu/Farrington Highway Guideway Design-Build Contract, released to potential bidders on March 12, 2009;
- RFP-DTS-98143 Core Systems Design-Build-Operate-Maintain Contract, released to potential bidders on April 17, 2009; and
- RFP-DTS-213102 Maintenance and Storage Facility Design-Build Contract, released to potential bidders on May 29, 2009.

2) By misstatements made by the City Administration that the decision to move forward with an all-elevated fixed guideway was already made. In reality, none of the relevant documents – City and County of Honolulu Ordinance 07-001 selecting a Fixed Guideway Transit System for the Locally Preferred Alternative, the Mayor’s notification to the City Council of his selection of Steel Wheel-on-Steel Rail guidance technology for the HHCTC Project, and the vote of the electorate in favor of Steel Wheel-on-Steel Rail -- require the HHCTC Project to be a fully grade-separated elevated railway:

- Part I, Section 2 of City and County of Honolulu Ordinance 07-001, adopted by the Honolulu City Council on December 22, 2006, and approved by the Mayor on January 6, 2007, states “the locally preferred alternative for the Honolulu High-Capacity Transit Corridor Project shall be a fixed guideway system between Kapolei and the University of Hawaii at Manoa, starting at or near the intersection of Kapolei Parkway and Kalaeloa Boulevard...” (Document attached hereto.)
- Section 6 **Reservation of the right to select technology**, states that “The council reserves the right to select the technology of the fixed guideway system for the locally preferred alternative. If the council exercises the right, the council shall select the technology through subsequent ordinance passed on third reading by the council before the city administration issues a public notice soliciting proposals or inviting bids for work that includes design of the system.

The city administration shall give the council at least 90 days’ notice before issuing the first public notice soliciting proposals or inviting bids for work that includes design of the fixed guideway system.”

- Letter dated April 17, 2008, from Mayor Mufi Hannemann to Council Chair Barbara Marshall, announcing the Mayor's "...decision to proceed with the technology selection of Steel on Steel for the Honolulu High-Capacity Transit Corridor project."

The letter further states, "therefore, I have instructed the Department of Transportation Services to proceed with the steel technology as selected by the expert panel in the preparation of the draft Environmental Impact Statement, Preliminary Engineering, the final Environmental Impact Statement and other necessary documents as required or requested by the FTA and the State.

Additionally, pursuant to the second proviso included in Ordinance 07-001, PART III, Section 6, I am notifying the Council that I am issuing the first notice soliciting proposals for work that includes design of the steel on steel fixed guideway system after 90 days from the date of this letter." (Document attached hereto.)

- On November 4, 2008, by a vote of 52.57% for and 47.43% against, the voters of the City and County of Honolulu approved an amendment to the Honolulu City Charter which asked, "Shall the powers, duties, and functions of the city, through its director of transportation services, include establishment of a steel wheel on steel rail transit system?"

- 3) Statements by members of the City Administration that at various public hearings and meetings that "The decision has already been made" and "There will be no turning back." For example, at a City Council Budget Committee hearing held on May 18, 2009, as part of his testimony, the City's Director of Transportation Services stated, "We will do anything that it takes to start building the rail project by the end of this year."

SUMMARY

In his confirmation speech, the Secretary of Transportation said,

"In our surface transportation programs, it implies a commitment to the principles that some refer to as livability; that is, investing in a way that recognizes the unique character of each community. The era of one-size-fits-all transportation projects must give way to one where preserving and enhancing unique community characteristics, be they rural or urban, is a primary mission of our work rather than an afterthought."

As Members of the Honolulu City Council, we share the Secretary's viewpoint. The people of Honolulu want and need improved public transportation, and we respect the November 2008

vote for a steel on steel transit system. At the same time, citizens want a transit system that will serve them and their needs, is sensitive to our natural environment, supports our tourism industry, and will not financially strap our future generations.

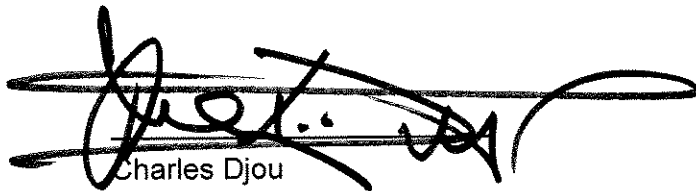
We believe that there is no reason to spend more money to build, operate and maintain a transit system that neither serves the people nor creates a more livable city. Honolulu, like the rest of Hawaii, is rooted in deep respect for the *aina* (land) and environment; preserving and enhancing the unique characteristics of our community cannot be ignored in the rush to build a transit system.

We have the opportunity to go a long ways in solving our transportation problems, while still protecting our lifestyles, if and only if, all transit alternatives are given a full and fair consideration. We are only requesting that light rail at-grade and elevated be examined as an alternative to all elevated system as currently pursued by the City Administration, and that money not be spent for preliminary engineering or construction until this evaluation is complete. It is for this reason that we bring this matter to your attention.

Respectfully,



Duke Bainum
Honolulu City Councilmember
District 5



Charles Djou
Honolulu City Councilmember
District 4

Copies to:

The Honorable Ray H. LaHood, Secretary of Transportation
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1200 New Jersey Avenue, SE
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The Honorable John D. Pocari
Deputy Secretary of Transportation
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The Honorable Peter M. Rogoff, Administrator
Federal Transit Administration
East Building, 5th Floor
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Mr. Matt Welbes, Acting Deputy Administrator
Federal Transit Administration
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Attachments

- 1) Federal Register, Thursday, March 15, 2007, Volume 72, No. 50, Pages 12254-12257
- 2) Letter from Region IX EPA to Region IX FTA Concerning the DEIS for the HHCTC Project,
Dated February 12, 2009
- 3) Ian Lind OnLine, May 1, 2009 (<http://www.ilind.net>)
- 4) City and County of Honolulu Ordinance 07-001
- 5) Letter from Mayor Mufi Hannemann to Council Chair Barbara Marshall, Regarding the
Selection of Technology for the HHCTC Project