

March 26, 2012

Leslie T. Rogers
Regional Administrator
Federal Transit Administration, Region IX
U.S. Department of Transportation
201 Mission Street, Suite 1650
San Francisco, CA 94105

Subject: Honolulu Rail Transit Project

Dear Mr. Rogers:

The City of Honolulu's elevated heavy rail proposal is fundamentally flawed and for several reasons is highly unlikely to be completed. One, we expect to win our federal lawsuit. Two, the City's financial plan is weak, as you have noted. Three, public opinion shifted *against* the project when the public realized that City officials misled them.ⁱ Four, Gov. Benjamin Cayetano is likely to be Honolulu's next mayor – and he has promised to stop the rail project regardless of its stage of completion.

We wholeheartedly concur with Gov. Cayetano's efforts to protect the specialness of our magnificent city – especially the physical environment and cultural assets – and to give proper attention to pressing city needs, such as a solution to the intolerable level of traffic congestion. A majority of the people on Oahu apparently agree with us: The pro-rail Honolulu Star-Advertiser has reported that Gov. Cayetano is the frontrunner in the mayoral race,ⁱⁱ and a more recent poll from another pro-rail news company, shows him to have a double-digit lead over all of his opponents combined.ⁱⁱⁱ

Even if one were to assume for the sake of argument that the City wins the federal and state lawsuits, and that someone other than Gov. Cayetano is elected mayor, the risk of running out of money is still quite high. The requested \$1.55 billion in New Starts funding, for example, might have been a good bet prior to trillion-dollar federal deficits and exploding national debt, but much less so now. Additional help from the State ceased to be a rational bet when the State's finances took a nosedive several years ago.

Less than three years ago Senator Inouye publicly complained that an EPA mandate for upgraded sewers would cost the City more than a billion dollars and that such an additional cost could "bankrupt" the City. Since then, the City entered into a consent decree that requires it to spend at least an additional \$3.7 billion. Meanwhile, the University of Hawaii cannot build badly needed new dormitories because of the long-neglected sewer system – a problem for much of Oahu.

Sources within the City also describe growing water supply problems—evidenced regularly by broken water mains—that will likely cost at least \$5 billion to remedy completely. Drivers are more than familiar with the need for road repair. And then there is the City's share of the pension and retiree-healthcare shortfall: the most recent actuarial reports put the combined number for the City and state well in excess of \$20 billion, and growing rapidly. Even Mayor Carlisle is aware of this particular problem, as indicated by the following excerpt from a report on an interview that he gave a few months ago:

"Carlisle will turn 59 next month, so he's only a few years away from retirement age. But he says the retirement system is so broken that he's not even sure there will be money left for *him* to take out, let alone future generations of City workers. 'I have absolutely no confidence by the time that I stop that there will be a retirement fund left over for me,' he said."^{iv}

Carlisle need not worry for himself: a recent Hawaii Supreme Court decision confirmed that accrued retirement benefits are fully protected by the State Constitution. The city and state governments are the ones with the problem: they have to figure out what to do about accelerating growth in the annual required payments to the underfunded pension system and totally unfunded retiree healthcare system.

There are additional reasons why the proposed project will never be completed. Key portions of the land on which HART proposes to build is classified and zoned agriculture, and contains the best agricultural land in Hawaii. A proposed reclassification to urban use is being heavily contested in a quasi-judicial case now before the State of Hawaii Land Use Commission and the ultimate outcome of that battle is far from clear. Also, the land needed for the maintenance facility may not yet be owned by or properly leased to the City, and there are open issues dealing with the site for the pre-casting facility and other construction areas. Finally, if construction ever were to reach the downtown and Kakaako areas, the almost-certain desecration of native burials ('iwi kupuna) would appropriately bring it to a halt.

The City would probably run out of money even if we were to assume for the sake of argument that it gets the \$1.55 billion of federal funds it is seeking. A report by the IMG Team on behalf of Governor Lingle concluded that the project would probably cost significantly more than the \$5.27 billion touted by the City. As you know, substantial cost overruns are the norm on rail projects.

Furthermore, there have been shockingly low levels of professionalism and transparency on this project. Consider the concluding paragraphs of the IMG report:

"[T]he IMG Team found the extreme difficulty in being able to obtain information from the City and its consultants both unique in our

collective experience and to add difficulty in our ability to perform the project. This was also a puzzlement – why would the City wish to restrict the team engaged to review the project's financial plan from being able to obtain the information necessary to perform its work?

“A multi-billion dollar transportation improvement project, particularly one that is proposed to be operated in, and funded by, an urbanized area that is far smaller than the norm for such projects, should have its financial plan developed with methodologies that incorporate the highest professional and technical standards and techniques. As we demonstrate above in detail, the financial planning and modeling process for [this] Project fails this ‘best practices’ test in many ways.”

The Star-Advertiser recently revealed that Mayor Carlisle plans to plow forward with elevated heavy rail even if the City does not receive *any* of the \$1.55 billion requested from the federal government. According to his spokesperson, Carlisle acknowledged, “the project may have to be scaled back dramatically.”¹⁰ According to the Star-Advertiser, “this has clearly been the policy in the push to start heavy construction this month without a final federal commitment, but nobody told the public so until Carlisle’s spokeswoman was asked for a direct statement of his intentions.” It concerns us greatly that Carlisle would withhold from the public such a vital piece of information.

We suspect that you are no longer shocked by the City’s deceptive practices. You surely are aware of emails in which FTA professionals have complained about the City’s “lousy practices of public manipulation,” its “use of critical and inaccurate statements,” and its culture of “never [having] enough time to do it right, but lots of time to do it over.” Others observe that the City put itself in a “pickle,” by setting unrealistic start dates for construction and complain about the City’s “casual treatment of burials.”

People on this island want to know why the City would be so secretive and deceptive about the largest capital works project in the state’s history. They also want to know what will happen when the rail project is stopped by a court or by the new mayor, or when the money is gone. Surely you realize that the governor and state legislature have made clear that any request to extend the 0.5% so-called rail tax would likely fail.

There is another reason for the sharp shift in public opinion: People are increasingly asking why the City would begin construction in a sparsely populated area in the countryside, rather than beginning in the downtown area. Rod Haraga, a former Director of the State Department of Transportation who more recently served as advisor to Mayor Hanneman on the elevated heavy rail system, advised Hannemann that it would make no sense to begin construction in central Oahu rather than downtown.

Hanneman's response was that starting in the country was "easier." Hannemann had a similar exchange with the City Council, which member Ann Kobayashi can confirm.

Since then, Mayor Carlisle has acknowledged that the City may run out of money before reaching downtown. That, of course, would leave Honolulu with a rail "system" that neither begins nor ends in an area that has a high concentration of jobs. National commentators would probably call it, "the train from nowhere, to nowhere."

By the way, Carlisle addressed the Honolulu Rotary Club several months ago and someone from the audience asked whether the federal government would cover part of any cost overrun. The correct answer, of course, is no. Amazingly, Carlisle's answer was, "I don't know." That was after signing off of a project that the City clearly cannot afford, that begins in the country nearly 20 miles from downtown.

Combine all this with the facts that there are alternatives that would actually reduce the current level of traffic congestion, preserve the environment, and cost far less than elevated heavy rail, and it becomes clear that the current rail project makes no sense.

Finally, we have concerns about the FTA's role in all this. For example, we wonder if you realize that City officials and HART board members, when pressed on the wisdom of continuing to spend hundreds of millions on construction that will probably be torn down in the not-too-distance future, regularly point to your agency. They say or imply that the FTA would put a stop to what they are doing if their decisionmaking and numbers were not rock solid. They claim to be doing absolutely everything, "by the book," and for that reason to have the FTA's blessing.

We also wonder about the FTA's amazingly quick reaction to Gov. Cayetano's release of emails in which FTA personnel express concern about various aspects of the rail project. Ignoring for now the question of whether the FTA should allow itself to get sucked in to a political campaign, we were troubled by the following statement in the FTA's press release: "The Federal Transit Administration believes that this project will bring much needed relief from the suffocating congestion on the H-1 Freeway." We believe that this is inconsistent with the FTA's earlier judgment as expressed in its Record of Decision for the Project, in which it wrote, "Many commenters [on the Draft EIS] reiterated their concern that the Project will not relieve highway congestion in Honolulu. FTA agrees, but the purpose of the Project is to provide an alternative to the use of congested highways for many travelers."^{vi} It is also inconsistent with the FTA-approved Final EIS in which the City wrote, "You are correct in pointing out that traffic congestion will be worse in the future with rail than what it is today without rail, and that is supported by data included in the Final EIS."^{vii}

Finally, we wonder what U.S. Department of Transportation Secretary Ray LaHood was thinking when he recently said that Honolulu's 20-mile rail line would "deliver people all over the island," which is flat-out wrong.^{viii}

When the wheels start coming off this project, as they undoubtedly will, we predict that many fingers will be pointing at your agency.

Respectfully,

A handwritten signature in black ink that reads "Randall W. Roth". The signature is written in a cursive, slightly slanted style.

Randall W. Roth (in his personal capacity) on behalf of himself, Judge Walter Heen (Retired), and Cliff Slater

ⁱ Lisa Kubota, "Hawaii Poll shows decline in support for rail project," Honolulu Star-Advertiser, Feb. 12, 2012, updated Feb. 14, 2012; John Temple, "Honolulu Voters Oppose Rail Project," Honolulu Civil Beat, Mar. 5, 2012

ⁱⁱ B.J. Reyes, "Cayetano holds off other mayoral hopefuls in poll – The former governor has gained traction on his anti-rail stance and name recognition," Feb. 13, 2012; see also Lisa Kubota, "Cayetano leads mayoral candidates in Hawaii Poll," Hawaii News Now, Feb. 12, 2012, updated Feb. 14, 2012.

ⁱⁱⁱ John Temple, "Cayetano Tops 50% In Honolulu Mayor's Race," Honolulu Civil Beat, Mar. 8, 2012.

^{iv} Michael Levine, "Carlisle Wants \$1B Rainy Day Fund as Legacy," Honolulu Civil Beat, Sept. 2, 2011.

^v David Shapiro, "With federal funds in limbo, public may pay more for rail," Honolulu Star-Advertiser, Mar. 21, 2012.

^{vi} See http://www.honolulutraffic.com/Total_ROD.pdf at p. 208 of 217.

^{vii} See Appendix A, Final EIS, at http://www.honolulutraffic.com/FinalEIS/AppendixA_D.pdf, at the bottom of page 1251.

^{viii} Malia Zimmerman, "Secretary LaHood Addresses FTA's Internal Emails Critical of Honolulu Rail Project," Hawaii Reporter, Mar. 15, 2012