November 17, 2009

How the 4(f) process could save our city.

In December 2005 the FTA's Region IX issued its formal "Notice of intent to prepare an Environmental Impact Statement" to perform an Alternatives Analysis and then study a Managed Lanes Alternative along with a Fixed Guideway Alternative and others in a Draft EIS.

The City and PB Americas released the Alternatives Analysis in November 2006 and the City Council then approved the Locally Preferred Alternative in December. In January 2007 the City was now ready to begin preparing the Draft EIS — but there was a problem.

In the City's Alternative Analysis, the Managed Lane Alternative had appeared to be inferior to the Fixed Guideway — other than it would have a lesser effect on 4(f) properties whereas the elevated rail would have "severe visual impacts … and should be avoided."

However, the City Council's Transit Task Force had suggested improvements to the Managed Lanes Alternative in their final report[1] and if these were adopted it would have shown a better performance than the Fixed Guideway as Dr. Prevedouros' subsequent study[2] shows.

This was a problem for the City since they wanted an elevated rail line. The solution was for FTA's Region IX to issue a new "Notice of intent to prepare an Environmental Impact Statement" and Scoping notice in March 2007, and restart the process.

The new Notice of Intent differed from the old one only in that the Managed Lanes Alternative was dropped from consideration. The FTA does not accept responsibility for what occurs in an Alternatives Analysis, only in the EIS process; the AA is a local process in FTA's view. This move allowed the City to dismiss the Managed Lane Alternative without FTA objections.

The second Scoping Report states, "as stated in the Notice of Intent issued on March 15, 2007, that Notice of Intent superceded [sic] the one published on December 5, 2005." This was not true; the second Notice of Intent stated no such thing — or anything like it.

A second Scoping was necessary since federal regulations require that Draft EISs must be prepared in accordance with the scope decided on in the Scoping process even though no one claimed that the first Scoping was inadequate. Of course, it all seemed to be a little strange to have selected the Locally Preferred Alternative before the Scoping had taken place.

The second Scoping Information Package and the second Scoping Report suggest that the first Notice of Intent was merely to satisfy Hawaii Revised Statutes 343, even though there is no mention of that in either of the two federal Notices of Intent or the subsequent first Scoping Report. In any case, that does not wash since, if satisfying Hawaii Revised Statutes 343 was the only intent of the first Notice of Intent, the FTA's issuance of it would not have been necessary.

In addition, this action by FTA violates the requirement to eliminate duplication of local and federal documents in the environmental process. Neither the FTA nor the City has made any attempt to clarify why FTA issued the second Notice of Intent.

One of the major issues that this deception affects is the Section 4(f) requirement that the FTA must choose the alignment that has the least effect on historic properties. To do so requires this issue be studied in the alternatives analysis before the route alignment or technology is chosen.[3]

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[1] Report of the City Council Transit Advisory Task Force

[2] Prevedouros, P. D., et al. *Transportation Alternatives for Mitigating Traffic Congestion between Leeward Oahu and Honolulu.* University of Hawaii. 2008.

The City and PB Americas did not do this as evidenced by the three primary Alternatives Analysis documents concerning historic sites, which were:

1. Draft Environmental Consequences: Supporting Information.
No consideration of alternatives in light of 4(f) requirements. On pp. 28-29 under Mitigation, for the Managed Lane Alternative there are two references to 4(f) as follows

> *"Impacts associated with the Managed Lane Alternative would include:*
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> - *Changes in the setting of an historic or cultural site or Section 4(f) resource*
> - *Incorporate appropriate consultation, monitoring, preservation, and documentation measures to minimize impacts to Section 4(f), historic, cultural, and vegetative resources."*

Subsequently, on page 29, for Mitigation for the Fixed Guideway, it says,

> *Mitigation for impacts related to [the Fixed Guideway] would be similar to those discussed for [the Managed Lane Alternative].*

This is quite absurd since the Managed Lane Alternative would stop short of the Honolulu's historic districts and likely burial sites whereas the Fixed Guideway goes right through them with trains 40' high every 1½ minutes at 79 decibels.

Note that the above excerpts refer to Mitigation and not Avoidance.

2. Alternatives Screening Memo
This memo does not mention 4(f). It considers historic sites but not "iwi" or "burial." It also does not consider alternatives in light of 4(f) requirements.

On page 4-23 the current rail alignment is described in the following passage.

> *"The Nimitz Highway to Halekauwila Street alignment was the alignment included in the 1992 LPA after the Hotel Street tunnel was deleted. It provides a direct route to Kaka'ako and the Ala Moana Shopping Center areas and would well serve the Aloha Tower Market Place. However, this elevated alignment would have severe visual impacts for Aloha Tower and should be avoided if there are other viable alternatives."*

3. Alternatives Analysis.
Contains one mention of 4(f) but there is no consideration of which alternatives are more likely to comply with 4(f).

Summary:

The City should have followed the statutory requirement to first consider the opportunities for avoidance of impacts on 4(f) properties during the alternatives analysis phase. Had they done so then clearly either the Managed Lane Alternative, or a partially at-grade light rail line, would have been the *environmentally preferable alternative*.[4] That they did not do so violates the 4(f) statute. The "officials with jurisdiction" in the 4(f) process must be firm in requiring that the statute be followed.

The alternative is the ruination of our city. One cannot *mitigate* a 35-foot high concrete rail bed supported by 6-8 foot diameter pillars running along our waterfront and through the heart of our city.

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[3] 23CFR744.9 "(a) The potential use of land from a Section 4(f) property shall be evaluated as early as practicable in the development of the action when alternatives to the proposed action are under study." See also the FHWA Section 4(f) Policy Paper, page 4.

[4] "*The environmentally preferable alternative … means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources*http:/ceq.hss.doe.gov/nepa/regs/40/1-10.HTM 6(a)