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A COMMUNITY WIDE EFFORT TO KEEP ELEVATED RAIL OUT OF OUR CITY

Let's not dig any deeper

By Cliff Slater

HART has recently let a new \$75 million contract for work on Downtown stations, among other work.ⁱ Work also continues on billions of dollars of contracts with Ansaldo, AECOM and many others including, of course, Parsons Brinckerhoff.ⁱⁱ

Meanwhile, the Hawai'i Supreme Court ruled unanimously in the *Kaleikini* case that the work started on the rail line was illegal and must cease. The *Kaleikini* attorneys believe that this ruling will lead to a permanent injunction against rail on the present route.

Having stopped construction as required, HART's CEO said last Thursday that completing the necessary excavations for potential burial sites would cause a delay of 6 to 9 months before the City could re-start construction, providing they do not find *iwi kupuna*.

Only hours later, he announced that they might have found some. Whatever the decision on these particular bones, it is almost certain that HART will uncover Native Hawai'ian remains somewhere along the Kaka'ako part of the rail route. That is because Halekauwila Street is the center of the sandy soil behind the original Honolulu shoreline and was the favored place for Native Hawaiians to bury their dead.

Second, Federal Judge Tashima will rule shortly in the case of *Honolulutraffic.com et al* versus the City and the Federal Transit Administration. In the view of the plaintiffs, the City and the Federal Transit Administration violated Federal Environmental law by not "rigorously exploring" for transportation technologies and routes that would avoid the areas of probable native Hawaiian burial sites and also historic buildings.

The plaintiffs are asking Judge Tashima to set aside the federal approvals of the rail project and require the defendants to return to the Alternatives Analysis stage.

Judge Tashima's words near the end of the last hearing were, "If the plaintiffs prevail on any substantial point, then I think we will have to have some discussion on a remedy."ⁱⁱⁱ Obviously, there is more than a hint of danger here for the rail project.

Third, the Federal government has yet to award the City the \$1.55 billion the City is counting on to build the rail line. Given the current wrangling in Congress over such funding, there is at least some doubt about whether that full amount will be forthcoming.

Fourth, voters will likely elect Governor Ben Cayetano our next Mayor and he opposes the rail alternative. The FTA have made it clear that they will not provide federal funds for the rail project without strong local political support.^{iv}

Put together, these four risks to the rail project add up to at least a strong possibility that the rail project will not survive.

As the HART CEO explained last Thursday, any delay beyond the 6 to 9 months now contemplated approaches the time when it would be cheaper to have the construction companies “stand down” rather than “hold in place.” His assessment only accounted for the Hawai’i Supreme Court decision, the first of the risks we enumerated here; they were not taking into account the other three risks at all.

Were they to account for all four risks they would undoubtedly find that “standing down” all the contractors now would be the prudent action to take, rather than having them continue to work.

As Will Rogers famously advised, “If you find yourself in a hole, stop digging.”

It is now time for those in charge of spending our taxes on the rail project to stop digging. Every dollar spent from now on will most likely prove to be a waste of money.

HART and the City have continued spending recklessly despite the threat of lawsuits under both state and federal law. That the City recognized their vulnerability to environmental lawsuits is evidenced by their having set aside \$300,000 for defense attorneys three years ago before they let the first construction contract.

While we believe these four dangers to rail will succeed in upending the rail project, even rail supporters should recognize that throwing away more money on rail should cease until at least these four dangers have been overcome.

Cliff Slater chairs Honolulutraffic.com

ⁱ http://www.staradvertiser.com/newspremium/20120829_june-july_rail_pacts_worth_75m.html?id=167809045

ⁱⁱ http://www.honolulutraffic.com/HART_contracts_082812.pdf

ⁱⁱⁱ Transcript. http://www.honolulutraffic.com/08-21-12_Honolulu_Traffic.pdf

^{iv} <http://www.civilbeat.com/articles/2012/02/14/14883-fta-watching-opponents-wants-250m-for-honolulu-rail/>