

September 14, 2009.

## Where do matters stand with the rail project?

Since we are frequently asked this question we thought it timely to deal with it in some detail. Here are the hurdles that the Hannemann Administration has to overcome if it is to succeed in building the East Kapolei to Waipahu segment of the rail line.

1. Getting permission to enter into Preliminary Engineering.
2. Gaining acceptance of the Final Environmental Impact Statement.
3. Achieving a two-thirds City Council approval of a billion dollar bond issue.
4. Getting the FTA's Record of Decision certifying completion of the EIS process.
5. Successfully countering possible legal action.

### 1. Getting permission to enter into Preliminary Engineering (PE):

On June 16 the City submitted a Financial Plan, dated May 1, 2009, to the Federal Transit Administration (FTA) as part of its formal application to enter Preliminary Engineering, which is the next phase of the FTA process. It was a completed plan, not a draft as the City claims. You do not submit a draft in a formal application. And even if it was a draft, it would have clearly said so on the document; it did not.

Subsequently the City has submitted a revised financial plan for PE entry about three weeks ago for the obvious reason that the FTA found the May 1 Plan unacceptable. Most probably it was because the financial plan was unsatisfactory. It showed that the GE Tax collections were forecast to be \$520 million less than the City had forecast in the Draft EIS.

It is difficult to see how the City is going to be able to make up the GE tax collection projected shortfall. There have been two forecasts by the Council on Revenues (COR) since the May 1 Plan was written and each one showed further reductions in forecast revenues.

In addition, the City did not even use the COR's forecast through 2015 but instead used a forecast by Parsons Brinckerhoff that did not mention the Council on Revenues. It would be an understatement to say that it is tainted.

As we have shown before on our website, had the City used the COR forecast they would be showing a shortfall of over \$900 million instead of the \$520 million shortfall they admit to in the May 1 plan. It is difficult to see how the Hannemann Administration is going to make up the shortfall with raising or extending taxes and that appears to have no chance of succeeding.

### 2. Gaining acceptance of the Final Environmental Impact Statement (FEIS)

Both the FTA and Governor Lingle have to approve the Final EIS. Given the extensive legal deficiencies that we enumerated in [our formal comments on the Draft EIS](#) together with those of others such as the Environmental Protection Agency, every single Hawaii Federal Judge, the U.S. General Services Administration, it is difficult to see how that can be approved by the FTA. Normally that would be the case but we understand that enormous pressure is being applied by Sen. Daniel Inouye's office and he does, after all, also control the FTA's own budget; the legal niceties may be required to take a back seat.

But Governor Lingle also has to approve the FEIS and she should have serious concerns about how the financing of the project may impact State finances. The financial plan assumes that the

project is going to come in on budget given a billion dollars of contingency — a little under 20 percent. However, the average cost overrun of rail projects has been 40 percent according to the FTA's own studies. The last U.S. elevated heavy rail project was the San Juan Tren Urbano, which came in 113 percent over projected costs. Cost overruns of anything close to such magnitude would spill over into state finances.

#### 4. Getting the FTA's Record of Decision certifying completion of the EIS process.

It is to be expected that if the FTA and Governor Lingle approve the FEIS that the Record of Decision (ROD) would be a formality and be produced within 30 days of the FEIS being issued.

#### 4. Achieving a two-thirds City Council approval of a billion dollar bond issue.

After the FTA issues the ROD, the billion dollar bond issue necessary to build the first 6-mile section of the rail line from East Kapolei to Waipahu will have to be approved by a 6-3 margin of the City Council. This may well be difficult especially when the voters understand that a ROD is no guarantee of federal funding; it only acknowledges completion of the environmental process and has little to do with the federal funding.

Here is the language used in recent RODs for [Houston](#) and [Minneapolis-St. Paul](#):

“Neither the FEIS nor this Record of Decision (ROD) constitutes an FTA commitment to provide financial assistance for construction of the project.”

Councilmembers and their constituents must weigh the risk of spending a billion dollars on a useless 6-mile segment with absolutely no assurance of federal funding for the balance.

#### 5. Successfully countering possible legal action.

In the event that the Hannemann Administration is able to successfully negotiate the foregoing hurdles the indications are that someone will take legal action against the elevated rail project. We have been told that the Draft EIS is a legally deficient document and to the best of our knowledge, what is deficient in the Draft EIS has not so far been remedied.

#### Summary:

The support for rail transit is different since the last time it was proposed in 1992. The Chamber of Commerce, the Business Roundtable and a few individual businesses were openly in support of rail. In fact, the principal champion outside of City Hall was Gerald Czarnecki, CEO of the then HonFed Bank (subsequently Bank of America Hawaii) together with Lex Brodie.

Today, neither the Chamber of Commerce nor the Business Roundtable has been heard from at City Council hearings for years. And there is not a single businessperson out front on the rail issue.

Instead we find that significant objections have come to light since the referendum on rail at the time of the general election last November.

- All Hawaii's environmental organizations, from the Outdoor Circle to the Sierra Club, show them all opposed to elevated rail.
- Major landowners such as Kamehameha Schools and General Growth (Ala Moana Center and Ward Centers) object to significant elements of the rail proposal.
- Our Hawaii federal judges and the U.S. General Services Administration object to the Halekauwila Street route.

- The Environmental Protection Agency (EPA) objects to the lack of detailed study of what might well be environmentally preferable alternatives, such as street-level rail in town or Bus/Rapid Transit (BRT) on exclusive guideway.
- Many more objections from federal, state and private organizations and individuals may be found at <http://www.honolulutraffic.com/EISComments.htm>

It is instructive to remember that the 1982 rail project, the 1992 rail project, and the 2003 BRT project, were “DONE DEALS” up to the end when they suddenly became “UNDONE DEALS.” This current project has all the earmarks of becoming the latter soon.

This file is available at [www.honolulutraffic.com/The\\_Comments.pdf](http://www.honolulutraffic.com/The_Comments.pdf)