Will the Mayor forgo federal rail funding?

By Cliff Slater

We now believe that Mayor has two plans for rail. First, he will try to get federal funding approvals and proceed in the normal way. Second, in the event he fails to get federal approvals, he is setting up matters at the City Council so that he can legally build the first six mile segment with just local funds and forgo federal funds.

The City's Draft Environmental Impact Statement was published late last year and many organizations have since filed formal comments criticizing its legal and environmental deficiencies.[i]

There has been a chorus of opposition from every single one of our local environmental groups that elevated rail running along the waterfront and through town is abhorrent. They complain about the visual and noise blight of such a structure.

The FTA can hardly ignore the comments of the American Institute of Architects, the Outdoor Circle, Hawaii's 1000 Friends, the Environmental Protection Agency, Kamehameha Schools, and many others that there are better alternatives.

The Federal Transit Administration must produce a Record of Decision at the conclusion of the EIS process that weighs the "environmentally preferable alternatives."[ii] How can they do that when the City has not properly studied street-level light rail, or bus/rapid transit (BRT) on an exclusive busway, which are reasonable alternatives that environmental law stipulates must be studied in detail?

Honolulutraffic.com has raised other serious legal questions regarding the City building the "Train to Nowhere"— the six mile segment from East Kapolei to the Pearl Highlands Shopping Center — since it clearly violates federal environmental law regarding "illegal segmentation,"[iii] which requires that a federal project not be segmented unless the proposed segment has "independent utility." In other words, the segment must be economically viable as a standalone project, which this segment clearly is not; the first three stations, for example, are in open fields.

We presently await the outcome of the FTA's decision as to whether they will require the City to perform a Supplementary Draft EIS, which we would think necessary given the legal deficiencies of the current Draft EIS.

Another hurdle the City faces is that of receiving a satisfactory FTA rating for the rail project, which is a requirement for the City to be able to enter the parallel "preliminary engineering" process. The City Council said, "preliminary engineering shall commence," over two years ago,[iv] and the Mayor at that time said, "the city will now move on to preliminary engineering,"[v] yet the City has only applied to do so in the last few days and approvals take months.

One must assume that the delay in being FTA rated is that the City's finance plan, when adjusted for current economic conditions, is inadequate. The City is currently projecting $1.4 billion from the federal government's transit fund but, given the competition for the limited funds available among the many cities seeking them, it is unlikely they will receive that much.[vi]

In addition, the City's forecast for revenue from the ½ percent increase in the General Excise Tax is far higher than the current Council on Revenues' forecasts. The City will likely be $760 million short when the tax expires.[vii]

If the federal track fails, then the Mayor wants to have in place City Council approvals for both the over one billion in rail construction funds in the upcoming City Budget and approval for bond sales necessary to raise the money. And he wants it without any provisos regarding prior federal approvals.

This would allow him to go ahead and construct the first six mile segment anyway without any prospect of federal funds. Doing so using elevated third-rail technology would commit the City to an elevated line throughout the City using just local funding.

The City Council can remedy this situation by including a proviso that City funds may not be used to construct rail until the City Administration has assurance in writing from the Federal Transit Administration that adequate federal funds will be forthcoming.

Failing that, our only hope is that the Governor will decide not to approve the Hawaii Final Environmental Impact Statement.

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End notes:

[i] http://www.honolulutraffic.com/EISComments.htm

[ii] "Section 1505.2 of the NEPA implementing regulations provides that records of decision contain (1) a statement of what the decision was; (2) the identification of all alternatives considered by the agency, including the environmentally preferable alternative(s); (3) a discussion of all factors— economic, technical, and mission-related, as well as considerations of national policy that were balanced in the decisionmaking process and how each factor weighed in the decision; and (4) an explanation of whether the decision was designed to avoid or minimize environmental harm and, if not, why not." http://www.fta.dot.gov/documents/enviroDocs.pdf p. 20.,

[iii] 23 CFR 771.111(f) requires that:
"In order to ensure meaningful evaluation of alternatives and to avoid commitments to transportation improvements before they are fully evaluated, the action evaluated in each environmental impact statement (EIS) or finding of no significant impact (FONSI) shall: Connect logical termini and be of sufficient length to address environmental matters on a broad scope; Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and, Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements." 23 CFR 771.111(f) updated 4/30/2009

[iii] http://www.khnl.com/Global/story.asp?s=6152390

[iii] http://www.honolulutraffic.com/Reso_07-039.pdf

[vi] A recently issued FTA report says that more than one-third of the trains, equipment and facilities of the nation's seven largest rail transit agencies are near the end of their useful life or past that point, the government says. Many have components that are defective or may be critically damaged.

A report by the Federal Transit Administration estimates it will cost $50 billion to bring the rail systems in Chicago, Boston, New York, New Jersey, San Francisco, Philadelphia and Washington DC, into good repair and $5.9 billion a year thereafter to maintain them.

Those seven systems carry 80 percent of the nation's urban rail transit passengers, or more than 3 billion passenger trips a year. They also include some of the oldest subways and commuter railroads. Some of their facilities date back more than a century.

"In a period of rising congestion and fuel prices, these services and the infrastructure and rolling stock that support them, are critical to the transportation needs and quality of life of the communities they serve," the report said.

"At the same time, this infrastructure is aging and the level of reinvestment appears insufficient to address a growing backlog of deferred investment needs," the report said.

Senator Dick Durbin, D-Ill., one of 11 senators who requested the report, said older transit systems have received a declining share of federal rail transit aid as newer systems have come online. In 1993, the seven largest rail transit systems received 90 percent of federal modernization funds, compared with 70 percent today.

Notice that Dick Durbin is requesting the report; he, and the other ten senators, will use it to press for a greater share of transit funds for the seven largest system and especially Chicago. It means there will be even more heated competition for the small amount of funds allocated to rail transit and that means less chance of Honolulu getting all of the $1.4 billion in rail funding that it is counting on for its financial plan.

vii While Sunday's Advertiser of May 3 shows that the City's tax collection's this year will be significantly short, it does not cover the outcome if the rail tax collections continue to fall short according to the Council on Revenues' latest projections. Through 2015 that shortfall is likely to amount to $238 million. And if, from that point on, we use the City's own projections of annual percentage increases in collections, they will be short $760 million by the time the tax sunsets in 2023.

Calculations of City collections of the ½% GE tax increase in millions

Fiscal year	**Our calculation**		**City forecast**		$ diff.
	Mills. $'s	% change	Mills. $'s	% change	Mills. $'s
2007	$48	Actual	$13	N/A	$35
2008	$169	Actual	$161	N/A	$8
2009	$160	-5.5%	$188	16.8%	-$28
2010	$161	1.0%	$198	5.3%	-$37
2011	$169	4.6%	$207	4.5%	-$38
2012	$174	3.2%	$214	3.4%	-$40
2013	$185	6.0%	$228	6.5%	-$43
2014	$196	6.2%	$242	6.1%	-$46
2015	$204	4.0%	$253	4.5%	-$49
2016	$214	4.7%	$265	4.7%	-$51
2017	$221	3.4%	$274	3.4%	-$53
2018	$230	4.0%	$285	4.0%	-$55
2019	$242	5.3%	$300	5.3%	-$58
2020	$249	3.0%	$309	3.0%	-$60
2021	$259	3.9%	$321	3.9%	-$62
2022	$272	5.0%	$337	5.0%	-$65
2023	$143	5.0%	$261	N/A	-$118
Total	$3,295		$4,056		-$761

Council on revenues forecast made 3/13/09 for 2009-2015 and City Draft EIS forecast percentage increases used for 2016-2023.