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February 28, 2012

Aloha,

When I attended an American Dream Coalition Conference in 2007 in San Jose, California, I was able to meet many of the guest speakers that are with us tonight. I have brought with me to tonight's forum some of the books made available at that particular conference for your review so that you can copy the titles and authors' names in the event you would like to become more familiar with some of the data and research conveyed by the guest speakers.

In this packet, I have included an article I wrote regarding my experience visiting a Transit-Oriented Development scheme and I encourage you to watch a video I made from that visit on my website- www.councilmanberg.com.

Also in this packet, are some of the measures I have introduced at the City Council on this rail project. Another measure I will be introducing at the Council will be to REPEAL HART.

At this time, the ballot initiative to repeal HART has not been filed. I expect to file it by the end of this week. This means the ballot initiative to place the repeal of HART to the voters will be heard for a public hearing on March 21 at Honolulu Hale at 10:00 a.m.

Please do not hesitate to contact me on any matter.

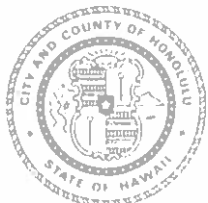
MAHALO,

A handwritten signature in black ink that reads "Tom Berg". The signature is stylized with a long horizontal stroke above the name.

TOM BERG
Councilmember – District 1
Ewa Beach, Kapolei, Waianae Coast

TB:ge

Enclosures



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FOR IMMEDIATE RELEASE
City Councilmember Tom Berg
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**NATIONAL EXPERTS FEATURED AT
TOWN HALL MEETINGS
FEBRUARY 28 KAPOLEI HALE AND
FEBRUARY 29 MISSION MEMORIAL AUDITORIUM**

**Focus on Solutions for Congestion and Second City Growth vs.
Disbenefits of Rail and Transit-Oriented Development (TOD)**

(HONOLULU HALE) February 27, 2012 – Honolulu City Councilmember Tom Berg has reserved Kapolei Hale for a town hall meeting on February 28 from 6-8:30 p.m. that will feature guest speakers covering Honolulu's rail project and the development schemes that surround it.

"When the State Legislature passed HB1309 (ACT 247, HSL 2005), the law that started this whole ploy to deceive the taxpayers and dupe them into thinking they were getting some form of adequate traffic congestion relief, the stage was actually being set to bring about a bait-and-switch, a form of loss-leader to get Oahu's residents to think they were buying into a self-sufficient 21st century transportation solution. Instead, the taxpayers are walking out the door having purchased 18th century rail technology deemed obsolete. Steel wheel on steel rail is extremely noisy, exorbitantly overpriced, and super dependent upon taxpayer subsidies to keep it afloat. People often overlook the fact that ACT 247 prohibited from the get-go, taxpayers from being able to have any form of highway technology advanced to address traffic congestion. The alternatives to steel wheel rail were never really an option for us, forcing superior, less expensive solutions to be ignored and falsely portrayed as not doable," stated Councilmember Berg.

"The presentations that the public will witness at both of these meetings, contain material that the City, and in some instances, certain media outlets, simply do not want you to see and hear. The City is moving at a reckless pace- as fast as possible to spill concrete and expend as much money as they can so that the defective, archaic, noisy behemoth we purchased won't be exchanged in time for better technology," stated Councilmember Berg.

"I think a screenplay or movie will one day be made about how rail came about on Oahu's landscape and the cast of characters from 'The Sting' and 'The Stepford Wives' will emerge. Only in this drama.

it will be about how the taxpayers got swindled and the aftermath impacting generations to come," stated Berg adding, "To sell this rail, the City had to concoct an elixir and drown us in it so we would think we were getting a cure all when in actuality, we got nothing more than a potion meant to numb our common senses."

The town hall meetings are meant to educate the public on what we are getting into and disseminate information the City has sought to muzzle. Both meetings are being recorded by Olelo and Councilmember Berg.

Attached are the February 28 and 29 flyers.

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Star-Bulletin mobile edition



Gathering Place
Tom Berg

Fruitless in Fruitvale: Dangers of developing along transit lines

Transit orientated developments are being proposed by the city to define, redevelop and transform neighborhoods, creating symbiotic relationships with rail operations. The intent is that rail stations and their patrons will be equally served with mutual benefit creating a win-win environment for all.

Rail stations and the land masses that surround them are designated TOD areas that incorporate a common theme: to deter, discourage and restrict automobile use in those areas. Both Portland, Ore., and an Oakland, Calif., community called Fruitvale have adopted TOD principles that have produced outcomes that are the opposite of what is being lauded.

During a Waipahu TOD meeting Nov. 14 to garner public input, Fruitvale was portrayed as a vibrant, economic success story. This puzzled me since just a couple of days before the Waipahu meeting, I had visited the Fruitvale complex.

The eating establishments did not appear to be heavily frequented and one restaurant advertising a plate lunch for less than \$4 couldn't muster up a customer. Of course, this was just a snapshot in time. At 5 p.m., though, I thought patrons would be enjoying a drink after work, but the place resembled a ghost town. When the planners in Waipahu described Fruitvale as bustling, I chimed in and described numerous "for lease" signs posted throughout the complex, as well as my observation that the majority of the second-story offices appeared empty. Very few lights were on as it got dark and some lacked window dressings, suggesting they were not occupied.

Could it be that the train coming every few minutes at a noise level of some 85 decibels was not conducive to business? Who wants to shout at their customers just to be heard?

Magnets for crime

Another concern is security. Honolulu has numerous unfilled police officer positions. Yet TOD rail stations have transit police; statistics reflect that more crimes are committed at rail centers and on rail routes than occur at bus operations or to car users. Rail operations are a magnet for crime and graffiti even with the presence of transit police. If Honolulu cannot fill vacant positions for police officers, what will our TODs resemble? Have security costs been factored into Honolulu's TODs?

One of Portland's TODs was incorporated with an elderly residential complex. Because TODs are regulated differently from other areas and possess unique zoning requirements, their retail and other residential facilities need not supply parking ratios that normally would be required outside of a TOD scheme. Because there is so little parking available at the Portland TOD housing complex, the dedicated emergency lanes often are taken up by cars illegally parked. This is an ongoing syndrome of regulated planning associated with TODs. People wind up parking in everyone else's neighborhood.

Who is going to pay for all of the landscaping, pedestrian paths and building facades? I heard over and over that the private sector most likely will build the parking structures and sugarcoat the town. In Fruitvale, one can park all day for less than \$2. To believe that scenario is doable in Hawaii defies logic. Unless, of course, tax breaks and incentives at taxpayers' expense make it happen. Does condemnation ring a bell? In this case, TOD should stand for Transfer Our Dollars.

Planners and supporters of tax breaks for developers associated with TODs say, "Be patient, the vision will work. Just think in terms of what we will have before us 20 years from now. TODs are the future." When I close my eyes, I see automobiles that are not dependent on fossil fuels and emit no carbon waste -- and more commuters in need of more roads.

It appears Honolulu is attempting to enact ordinances that will slowly exterminate the automobile user. I believe Americans should be able to park our cars near our destinations of choice, and not be herded into centralized parking structures wondering if our cars and their contents will be there when we return.

Include rubber wheels

In order for the City Council to choose rubber-tire technology (buses) over steel wheels (rail) on the fixed guideway, the Legislature should consider amending Act 247 (general excise tax authorization bill) to include language expanding the usage of the fixed guideway right of way so that it can include buses. The clarity is needed because during the city's scoping meetings, high occupancy toll lanes/managed lanes were presented as doable when they now say the concept for buses is not applicable.

Buses do not meet the capacity and speed defined by the Council as an acceptable means of mass transit. So why did we spend \$10 million on an alternative analysis that let the public look at managed lanes using buses when the tax cannot be used for that type of transit to begin with?

We are being told that a bus does not have the capability to go faster than the rail speed to be contrived at 20 mph and that buses do not have the space to carry as many people as a rail car can. Yet, in contrast, when PB America Inc., which did Honolulu's alternative analysis, revealed its findings for other cities across America, it chose managed lanes/toll lanes as reducing traffic congestion more than rail. Why is it different for Honolulu?

Money wisely spent

Furthermore, we have been duped by the entire process, told that the Council's hands are tied because it

cannot go with letting buses and cars use the dedicated fixed guideway. This is because HB 1309 HD2 SD2 CDI, which became Act 247, does not permit the general excise tax increase to be used by highway technology in existence by a county with a population of more than 500,000. If a bill can be passed this upcoming legislative session to let the tax collection be used to build elevated reversible express lanes, then the Council can still get new start federal grants and there would be no delays in going with rubber tire technology. This would assume that we have followed through with our congressional delegation to ensure we don't lose our federal funding opportunity. Just because we expanded the type of mass transit options would be a lame excuse to deny us our choice of transit using our own tax money, whether federal, state, or county taxes. It's all our money to begin with, no matter who dishes it out.

Imagine, we could actually turn the level of service on the H-1 corridor from an "F" grade to an "A" by letting the City Council have the authority to adopt the tax expenditure for highway technology. The whole island would be served by rubber technology. Twenty-two other states are doing it -- getting billions from the feds for highway technology used specifically for reversible express lanes as a form of mass transit that caters to buses. The only holdup here is the restrictive language in Act 247. Let's support our legislators to change that and give our Council some more room to maneuver. It might be that these TOD schemes are not even necessary if rubber tire technology is chosen.

The savings and traffic reduction capabilities could be astronomical with a mere amendment to the law. Now that's the type of symbiotic relationship I can handle, the one between the taxpayer and a dose of reason.

Tom Berg is an Ewa Beach resident and a member of the Ewa Neighborhood Board, serving as its legislative chairman and also the Ewa representative for the Oahu Resource and Conservation Development Council.

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RESOLUTION

INITIATING AN AMENDMENT TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973, AS AMENDED, RELATING TO THE PUBLIC TRANSIT AUTHORITY.

WHEREAS, in 2007, the Honolulu City Council enacted Ordinance 07-001 selecting a fixed guideway system as the City's locally preferred alternative ("LPA"); and

WHEREAS, Ordinance 07-001 further provided that the LPA for the Project shall be a fixed guideway system between Kapolei and the University of Hawaii at Manoa, starting at or near the intersection of Kapolei Parkway and Kalaeloa Boulevard, with an alignment as follows:

- (1) Section I — Saratoga Avenue/North-South Road and Kamokila Boulevard, as determined by the city administration before or during preliminary engineering, to Farrington Highway;
- (2) Section II — Farrington Highway/Kamehameha Highway;
- (3) Section III — Salt Lake Boulevard and Aolele Street as determined by the city administration before or during preliminary engineering;
- (4) Section IV — Dillingham Boulevard; and
- (5) Section V — Nimitz Highway/Halekauwila Street/Kapiolani Boulevard to the University of Hawaii at Manoa, with the Waikiki branch;

and

WHEREAS, in February of 2007, the Council recognized that although a fixed guideway system covering the entire LPA alignment is the City's long-term goal, due to fiscal constraints, a shorter, operable system would have to be built first with the revenues available; and

WHEREAS, such a shorter system is known as the "minimum operable segment" or "MOS" by the federal guidelines and through Resolution 07-039, FD1(C), the Council approved the MOS for the Project as the portion of the LPA between the University of Hawaii-West Oahu, near the future Kroc-Center, and Ala Moana Center, via Farrington Highway and Kamehameha Highway, to Salt Lake Boulevard, to Dillingham Boulevard, to Nimitz Highway, to Halekauwila Street, and to Ala Moana Center; and



RESOLUTION

WHEREAS, in line with the recommendation of a panel of transit consultants convened by his administration to consider whether a rubber tire on concrete, magnetic levitation (mag-lev), monorail, or steel wheel on steel rail technology would be best for the Project, then-Mayor Mufi Hannemann selected steel wheel on steel rail technology for the fixed guideway system (MM 32, 2008); and

WHEREAS, the Council also gave the City Administration approval to commence the necessary planning and preliminary engineering for the MOS; and

WHEREAS, on October 29, 2008, the Federal Transit Administration and the City Administration approved the Draft Environmental Impact Statement ("DEIS") for the Project; and

WHEREAS, on November 4, 2008, the voters of the City and County of Honolulu approved, by a narrow margin, an amendment to the Revised Charter of the City and County of Honolulu 1973, as amended ("Revised Charter"), to authorize the City's Director of Transportation Services to, "[e]stablish a steel wheel on steel rail transit system"; and

WHEREAS, the City's voters were not given any other mass transit options to choose from, and had to select "steel wheel on steel rail" transit or nothing; and

WHEREAS, the vote was also based on the original MOS (the Salt Lake Route); and

WHEREAS, in January 2009, through Resolution 08-261, the Council amended the MOS for the Project based on the DEIS, which underscored the City's 2006 Alternatives Analysis Report that noted that a route serving Pearl Harbor and the Airport (the "Airport Route") was a "better route" that would provide greater ridership and system access compared to a route along Salt Lake Boulevard serving the Salt Lake area (the "Salt Lake Route"); and

WHEREAS, at the time, the Council recognized that the Airport Route was estimated to cost approximately \$200 million more than a Salt Lake Route, but believed that the additional cost was justified; and

WHEREAS, on December 16, 2009, the City Council adopted Resolution 09-252, CD1, which proposed amendments to the Revised Charter, via the following question:

"Shall the revised City Charter be amended to create a semi-autonomous public transit authority responsible for the planning, construction,



RESOLUTION

operation, maintenance, and expansion of the City's fixed guideway mass transit system?";

and

WHEREAS, on general election day, November 2, 2010, over 63 percent of those casting votes ratified these Charter amendments to create a public transit authority to be known as the Honolulu Authority for Rapid Transportation ("HART") effective July 1, 2011; and

WHEREAS, on July 1, 2011, management of the Project was transferred from the Department of Transportation Services to HART; and

WHEREAS, the creation of HART also included the establishment of a ten-member Board of Directors ("Board"), which shall consist of nine voting members (seven appointed and two ex-officio) and one non-voting member (one ex-officio); and

WHEREAS, the Board is required or authorized to: 1. Determine the policy for the planning, construction, operation, maintenance, and expansion of the fixed guideway system (Section 17-103(3)(g), Revised Charter); and 2. Prescribe and enforce rules and regulations having the force and effect of law to carry out Charter provisions (Section 17-103(3)(h), Revised Charter); and

WHEREAS, at a current estimated total cost of \$5.5 billion, the "steel wheel on steel rail" Project is the most expensive capital project in the City's history; and

WHEREAS, during a HART Board of Directors meeting on July 21, 2011, a City representative estimated that the cost for consultants and other "soft costs" would total \$1 billion; and

WHEREAS, the City's voters should have the option of deciding on whether HART should continue to develop and operate a "steel wheel on steel rail" fixed guideway system in light of the Council's unilateral change to the Airport Route, which has significantly increased the estimated cost of the Project and decreased the system's usefulness to voters living in the Foster Village and Salt Lake communities; and

WHEREAS, voters should be given the opportunity to consider other quieter and less expensive fixed guideway choices, like the monorail and magnetic levitation; now, therefore,



RESOLUTION

BE IT RESOLVED by the Council of the City and County of Honolulu:

1. That it propose, and it is hereby proposed, that the following question be placed on the 2012 general election ballot:

"Shall the Revised City Charter be amended to prohibit the Honolulu Authority for Rapid Transportation from developing, operating, maintaining, and expanding a fixed guideway system that includes "steel wheel on steel rail" technology?"

2. That Section 17-103, Revised Charter of the City and County of Honolulu 1973, ("Powers, Duties and Functions --") as amended, be amended by amending subsection 1 to read as follows:

"1. The public transit authority shall have authority to develop, operate, maintain and expand the city fixed guideway system as provided in this article; provided that steel wheel on steel rail technology shall not be utilized."

3. That in Section 2 of this "Resolved" clause, new charter language is underscored. When revising, compiling, or printing this charter provision for inclusion in the Revised Charter of the City and County of Honolulu 1973, as amended, the Revisor of the Charter need not include the underscoring.
4. That the City Clerk be and is hereby directed:
 - A. To prepare the necessary ballots with the question contained in this Resolution and with spaces for "yes" and "no" votes on the question for presentation to the electors at the 2012 general election. The City Clerk may make technical and non-substantive changes to the form of the question presented in order to conform it to the form of other charter amendment questions presented to the electors at the same election; and
 - B. To publish the above-proposed charter amendments at length in a daily newspaper of general circulation in the City and County of Honolulu at least 45 days prior to its submission to the electors at the 2012 general election.



RESOLUTION

- 5. That upon approval of the charter amendment question posed in this Resolution by a majority of the electors voting thereon, as duly certified, the charter amendments proposed herein shall take effect.

INTRODUCED BY:

TOM BERG

DATE OF INTRODUCTION:

OCT 27 2011
Honolulu, Hawaii

Councilmembers

FILED
DATE: NOV - 2 2011

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

RESOLUTION 11-328

Introduced: 10/27/11 By: TOM BERG

Committee: EXECUTIVE MATTERS
AND LEGAL AFFAIRS

Title: RESOLUTION INITIATING AN AMENDMENT TO THE REVISED CHARTER OF THE CITY AND COUNTY OF HONOLULU 1973, AS AMENDED, RELATING TO THE PUBLIC TRANSIT AUTHORITY.

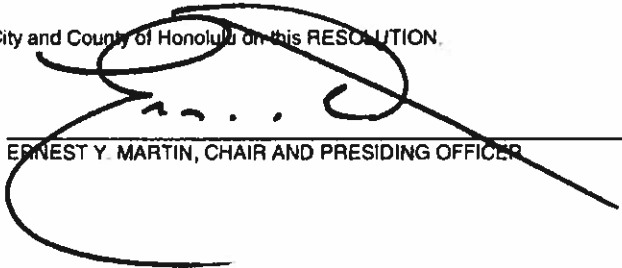
Links: [RES11-328](#)

Voting Legend: Y= Aye, Y* = Aye w/Reservations, N= No, A = Absent, ABN = Abstain

COUNCIL	11/02/11	MOTION TO PASS ON FIRST READING FAILED.							
ANDERSON	N	BERG	Y	CACHOLA	N	CHANG	N	GABBARD	N
GARCIA	N	HARIMOTO	N	KOBAYASHI	Y*	MARTIN	N		
RESOLUTION 11-328 FILED ON COUNCIL FLOOR.									
ANDERSON	Y	BERG	N	CACHOLA	Y	CHANG	Y	GABBARD	Y
GARCIA	Y	HARIMOTO	Y	KOBAYASHI	Y	MARTIN	Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.


BERNICE K. N. MAU, CITY CLERK


ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER



RESOLUTION

URGING THE MAYOR, THE CITY'S CHIEF PROCUREMENT OFFICER, AND THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION TO REVERSE THE AWARD TO ANSALDO HONOLULU OF THE "CORE SYSTEMS" CONTRACT FOR THE CITY'S RAIL PROJECT BY UPHOLDING THE PROTESTS OF THE OTHER OFFERORS OR BY CALLING FOR NEW BIDS FROM ALL THREE OFFERORS.

WHEREAS, the City has awarded a contract to Ansaldo Honolulu ("Ansaldo") to design, build, operate and maintain the City rail project's "core systems," which include 80 train cars and a system control center; and

WHEREAS, Ansaldo, a joint venture between AnsaldoBreda and Ansaldo STS, was awarded the contract over the submission of two other competitive proposals, one by Sumitomo Corporation of America ("Sumitomo"), and the other by Bombardier Transportation ("Bombardier"), of which the latter will potentially save the City hundreds of millions of dollars as reflected in the following table:

Project Phases	Ansaldo	Bombardier	Sumitomo
Design-Build Cost	\$573,782,793	\$697,263,592	\$688,825,949
Intermediate Operations and Maintenance	\$166,974,503	\$86,550,393	\$273,491,568
Full Operations and Maintenance	\$339,056,303	\$176,167,567	\$240,438,085
Optional Operations and Maintenance	\$317,573,494	\$203,375,014	\$250,694,496
Total	\$1,397,387,093	\$1,163,356,566	\$1,453,450,098

and

WHEREAS, the evaluation of the proposals submitted by the three proposers was based on a variety of factors, including price, past experience, performance, and the proposers' management team; and

WHEREAS, Bombardier has more than 100,000 train vehicles in operation in 25 countries; and

WHEREAS, it has been reported that in other places AnsaldoBreda has had problems delivering train vehicles it had contracted to deliver in a timely manner and according to specifications, including the following examples:



RESOLUTION

- (1) In 2003, AnsaldoBreda won a contract from the Los Angeles County Metropolitan Transportation Authority to deliver 50 light-rail vehicles by June of 2007 but delivered only 19 vehicles by January 2009, and even those vehicles were 5,000 to 6,000 pounds overweight; and
- (2) Danish train company DSB has said that AnsaldoBreda was behind schedule in delivering 14 trains by 2009, delivering only eight trains, only three of which were operational and even those had problems;

and

WHEREAS, Bombardier's proposal also includes plans to: (1) assemble 65 train cars on Oahu, creating an estimated 150 full-time local jobs, most of which will become permanent local jobs maintaining the train cars; and (2) create training programs at the University of Hawaii and Leeward Community College to train residents for jobs with the train system; and

WHEREAS, Ansaldo will assemble all of its train cars on the mainland and will not provide local jobs or training programs similar to those that Bombardier proposes to provide; and

WHEREAS, the Council has raised a number of questions and concerns regarding the award of the core systems contract to Ansaldo including the following: (1) Ansaldo has had a spotty performance record with respect to the trains it has contracted to deliver to other train authorities; (2) the design and build portion of the contract was weighted as being seven times more important than the operations and maintenance portion which gave an advantage to Ansaldo, even though its operations and maintenance costs for the interim period and the optional extension far exceeded the same costs for Bombardier and was significantly higher than those costs for Sumitomo; (3) Ansaldo's design and build price dropped from \$679.8 million in June 2010 to \$574 million in February 2011, while its operations and maintenance price went up by about \$100 million; (4) Bombardier's second best and final offer ("BAFO") was rejected because it allegedly included an inappropriate condition regarding a change in the indemnification clause, even though, according to Bombardier, it was not a condition but merely a request for clarification and despite the fact that the alleged condition was included in Bombardier's first BAFO without causing Bombardier's proposal to be rejected; and



RESOLUTION

WHEREAS, these problems and concerns with the procurement of the core systems and the award of the contract to Ansaldo have resulted in the following actions:

- Bombardier has filed legal action in Circuit Court seeking to invalidate a State agency's summary judgment throwing out Bombardier's appeal that it was unfairly and improperly disqualified. Bombardier has also requested the Federal Transit Administration to review whether the City has violated both State and Federal procurement laws by failing to conduct meaningful discussions with Bombardier about specific language in its proposal;
- A well-known group of rail opponents have filed suit in U.S. District Court seeking to invalidate the project's environmental impact statement ("EIS") and federal government approval. The plaintiffs accuse the City of violating federal environmental, historic preservation and transportation laws in preparing the EIS, claiming that City officials defined the requirements of the project so narrowly as to exclude all reasonable alternatives, including monorail, light rail and other technologies. An injunction is being sought that would require the City to prepare a new or supplemental EIS; and
- Two firms, both potential subcontractors for the project, have filed complaints with the State Contractors Licensing Board alleging that Ansaldo was not licensed as a contractor in Hawaii when it bid on the contract to design, build, operate and maintain the City's rail system—an apparent violation of state law;

and

WHEREAS, at the very least, these legal actions create serious doubts about the validity of the Ansaldo award, and in fact, may result in halting the project and requiring the City to prepare a new EIS that leads to a new request for proposals on the core systems contract; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that it urges the Mayor, the City's Chief Procurement Officer, and the Honolulu Authority for Rapid Transportation to reverse the award to Ansaldo Honolulu of the "core systems" contract for the city's rail project by upholding the protests of the other offerors or by calling for new bids from all three offerors; and

BE IT FURTHER RESOLVED that the procurement process for this contract pick up where it left off, resuming the evaluation of all three offerors on a fair and equitable



RESOLUTION

basis; or barring that course of action, beginning at square one and calling for new bids based on criteria that best serve the interests of Honolulu residents and taxpayers, giving appropriate weighting to cost considerations in all phases of the contract, including design, building, operations and maintenance—and thereby yielding the creation of the greatest number of guaranteed jobs for the residents of Hawaii at the lowest cost; and

BE IT FURTHER RESOLVED that should the lawsuit in U.S. District Court result in an injunction and the requirement of the preparation of a new EIS that appropriately considers and evaluates all viable technologies and alternatives, including but not limited to magnetic levitation, monorail, rubber tire on concrete, managed lanes and bus rapid transit, the City is urged to issue a new Request for Proposals for the core systems contract based on factors including but not limited to: 1) Due diligence and investigation of past performance in other jurisdictions, 2) Criteria that appropriately considers low cost, jobs creation, and financial standing, and 3) Appropriate communications with all offerors in order to prevent and cure misunderstandings as they arise; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor, the Director of Budget and Fiscal Services, and the Chair of the Honolulu Authority for Rapid Transportation Board of Directors.

INTRODUCED BY:

Tom BERG

DATE OF INTRODUCTION:

SEP 08 2011

Honolulu, Hawaii

Councilmembers



RESOLUTION

URGING THE MAYOR AND THE HONOLULU AUTHORITY FOR RAPID TRANSPORTATION TO PREPARE A NEW ENVIRONMENTAL IMPACT STATEMENT FOR THE CITY'S TRANSIT PROJECT.

WHEREAS, on March 15, 2007, with respect to the Honolulu High-Capacity Transit Corridor Project ("transit project"), the City and the Federal Transit Administration ("FTA") published a Notice of Intent ("NOI") to prepare a draft environmental impact statement ("DEIS") for high-capacity transit improvements in the Leeward corridor of Honolulu, Hawaii (Federal Register, Vol. 72, No. 50, Pages 12254-12257); and

WHEREAS, the NOI states the following:

"The draft EIS would consider five distinct transit technologies: Light rail transit, rapid rail transit, rubber-tired guided vehicles, a magnetic levitation system, and a monorail system." (Federal Register, Vol. 72, No. 50, Page 12256);

and

WHEREAS, on November 2, 2008, the city released the DEIS, which does not evaluate the five transit technologies noted in the NOI; and

WHEREAS, the failure to evaluate all five technology options in the DEIS as stated in the NOI conflicts with the intent of the federal notice and calls into question whether the DEIS is in compliance with the provisions of the National Environmental Protection Act; and

WHEREAS, on June 14, 2010, the city released the final environmental impact statement ("FEIS"), which likewise does not evaluate the five technology options and notes, "The system will use steel-wheel-on-steel-rail technology" (FEIS, p. S-1); and

WHEREAS, a well-known group of rail opponents have filed suit in U.S. District Court seeking to invalidate the transit project's environmental impact statement ("EIS") and federal government approval. The plaintiffs accuse the City of violating federal environmental, historic preservation and transportation laws in preparing the EIS, claiming that City officials defined the requirements of the transit project so narrowly as to exclude all reasonable alternatives, such as monorail, light rail and other technologies. An injunction is being sought that would require the City to prepare a new or supplemental EIS for the transit project; and



RESOLUTION

WHEREAS, Randy Roth, law professor and one of the lawsuit's plaintiffs, expressed optimism at the required Federal response to the lawsuit, noting that Federal attorneys failed to put forth any new information to defend the EIS and admitted lacking knowledge or information about nearly a dozen reasonable and prudent alternatives to the current system ("Honolulu Rail Opponents Have No Case, Feds Say," Honolulu Civil Beat, 8/14/2011); and

WHEREAS, the Council finds that there is a high likelihood that the lawsuit will succeed in requiring the City to prepare a new EIS, and that continuing to defend against the lawsuit will result in the expenditure of unjustifiable sums of taxpayer dollars; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that it urges the Mayor and the Honolulu Authority for Rapid Transportation to prepare a new environmental impact statement for the City's transit project that fully assesses all reasonable alternatives for high-capacity transit; and

BE IT FINALLY RESOLVED that copies of this Resolution be transmitted to the Mayor and the Chair of the Honolulu Authority for Rapid Transportation Board of Directors.

INTRODUCED BY:

TOM BERG

DATE OF INTRODUCTION:

SEP 19 2011
Honolulu, Hawaii

Councilmembers

An anti-rail mayor would need 4 Council allies to kill the project

By Tom Berg

No matter who the mayor of Honolulu is or will be, the mayor alone cannot unilaterally stop the rail project unless at least four City Council members of like mind join the mayor in that effort.

To explain how to stop the train in its tracks, let's assume a scenario whereby a mayor no longer wants to expend funds for the rail endeavor.

An anti-steel-wheels-on-steel-rails mayor sends a budget to the City Council for approval and that budget does not include any funding for the Honolulu Author-

ity for Rapid Transportation (HART). Subsequently, assuming the majority (five of nine) City Council members support the rail project, the Council counters the mayor and restores the funding for rail. The Council then sends the budget bill back to the mayor containing funding for HART. The mayor responds with a veto of the budget bill. It takes two-thirds, or a total of six Council members to override the mayor's veto.

Thereby, if the Council were to have four members in agreement with the mayor, and these four members voted to sustain the

mayor's veto, the budget bill override would be defeated and funding for the rail would come to a halt. The mayor cannot stop the train unless the mayor has a minimum of four Council members agreeing to that position when it comes to the budget season.

There are four Council seats up for grabs in the 2012 election and the remaining five members not up for re-election have all supported steel-wheels-on-steel-rails to come to fruition.

One could deduce then, that in the absence of the five Council members currently in office not changing their position, that all four open seats up for election would need their constituents from each respec-

tive Council district to send to City Hall a "stop this train from leaving" candidate to make any anti-rail mayor in office be of value.

What would happen to the money collected for the rail project if the steel-wheeled train were stopped?

The mayor could propose the funds be expended for light rail, monorail, urban maglev or even rubber-tire-on-concrete technology instead, and ask that be pursued. If allowed to do so, HART then could be charged to oversee construction of the new transportation mode. Changes would be presented to the federal government to maximize funding options.

The mayor could also request from the Legislature that Act 247 (Hawaii Session

Laws 2005) be amended and allow for the funds to be used for highway technology — bus rapid transit, for example. Another possibility would be to have the money returned to the city — almost a billion dollars collected thus far — and ask the Legislature for redress, and open the discussions for public debate as to what we should do.

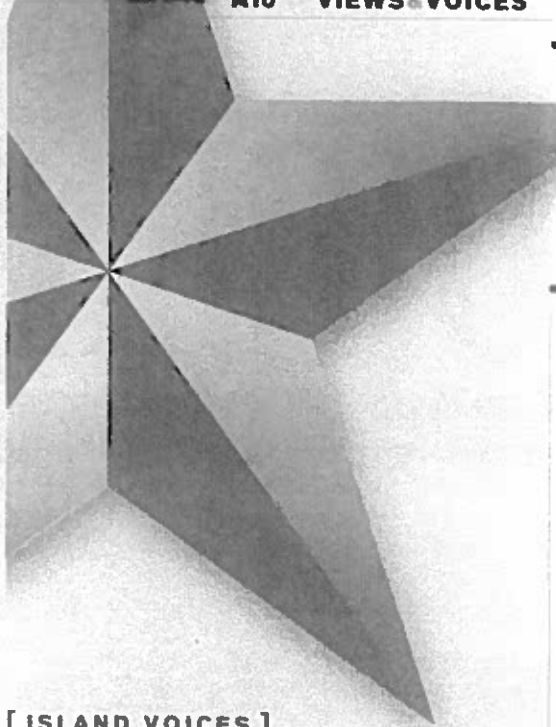
In the end, it is important to know that the mayor cannot stop a project by merely refusing to release funds like the governor can do as the executive with the state Legislature. In contrast, a completely different setup exists at City Hall when it comes to funding HART.

HART has a level of autonomy to carry out its operations that in the event a

budget bill gets passed to fund HART, the mayor is without the authority or ability to sit on the funds and have them lapse. The mayor is trumped by the language of the City Charter that puts the purse strings for HART in the domain of the City Council, and that battle was already fought last year and the mayor lost.

To put it bluntly, all the chatter about a mayoral race to feature who is for and who is against the steel-wheel rail is moot without first securing four Council candidates in tandem who, too, exclaim the rail project as it stands needs to come to a halt.

Tom Berg is the city councilman for District 1 (Ewa Beach to Kaena Point).



[ISLAND VOICES]

Stop state from using city's rail fund as its own piggy bank

BY TOM BERG

PERHAPS IT was inevitable that the multibillion-dollar rail transit endeavor, Hawaii's largest-ever public works project, would bring out the greedy side of our otherwise dedicated state politicians. But that can't possibly make it acceptable, especially when the No. 1 funding mechanism for the rail project is being exploited through systematic fleecing of rail tax collections before any money even makes it to the city.

The ploy was set into motion when the Hawaii Legislature in 2005 passed House Bill 1309 (Act 247) to allow the rail project to advance on Oahu. Beginning in 2007, the half-percentage point increase in the general excise tax, known as the "rail surcharge," has been improperly used to balance the state budget. For the last four years, the state has been collecting an administrative services fee to



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projects statewide. But there's still time to fix this arrangement.

The House Finance Committee has a bill currently being considered — Senate Bill 1426 SD2 — which unwarrantedly proposes to take \$200 million from the rail fund in a borrowing scheme. I suggest a "gut and replace" maneuver to the bill: Remove the language that takes \$200 million in another money grab, then insert language that allows for an administrative fee to withhold only that amount which is needed to process the rail surcharge.

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The administrative fee surplus is expected to shortchange the rail project by \$300 million.

process the surcharge levied on Oahu purchases.

As a Legislature staffer who helped advance the rail tax authorization bill, I remember that when the legislation was adopted, the state had little to no idea what the cost would be to administer this tax. As a result, the overly generous, arbitrary "guesstimate" of 10 percent was applied against the gross revenues as an administrative assessment. Averaging \$16 million per year above the real cost to collect the rail surcharge, this administrative fee surplus is being deposited into the state's general fund and is expected to shortchange the voter-approved rail project and city taxpayers by \$300 million during the life of the rail tax that expires in 2022.

Star-Advertiser readers can probably surmise that the state doesn't need nearly that big a cut to collect and process taxes for the city. Indeed, highly informed sources tell me that the state needs to retain only 3 percent or less to break even on the favor it's doing the city.

But "greed" is the operative word here, and sadly, "bad faith" is the byproduct. The rail fund is still being used to finance pet

A special City Council meeting at 8:30 a.m. today was called to send a message to the Legislature about this issue. It is hoped that my colleagues will unanimously adopt my Resolution 11-91 CD1, which strongly urges the state to withhold only the amount of money actually needed to administer the rail surcharge.

Under no circumstances was Act 247 sold to the public to be a profiteering scheme for the state to make money off the rail endeavor. Yet year after year, both the Legislature continues to approve budgets that siphon crucial millions from rail construction.

NOW THAT the \$3.7 billion price tag narrowly approved by voters in 2008 has exploded to \$5.5 billion, the rail project's financial plan is in big trouble. Tax collections are down. Federal funding for rail from a penny-pinching Republican Congress is uncertain, to say the least. And city officials are being told by the feds and by City Council members to keep their hands off the budget for TheBus in order to find rail funds. Worse yet, city officials have notified the Council that we will need to approve issuing of bonds to make up the cash flow shortfall.

That's how bad things are looking. So if we are still going to do rail, we need to do it right. The Legislature needs to stop raiding the city's rail fund and taxpayers need to demand that they get their money's worth from a broken system.



Sustainable Growth: Challenges and Solutions for the People of Hawaii

FREE and OPEN TO THE PUBLIC

12:30 to 2:15 PM – CHALLENGES

Panos Prevedouros: Moderator

John Charles: Transit Oriented Development Costs and Benefits

Panos Prevedouros: Agriculture, Energy and Resilience Challenges

Wendell Cox: Paying the Bills: Prioritizing Honolulu's Fiscal Challenges

Brief break

2:30 to 4:00 PM – SOLUTIONS

Randall Roth: Moderator

Adrian Moore: HOT Lanes for Corridor Congestion

Peter Vincent: Infrastructure Development and Oahu's Aesthetic Appeal

Randal O'Toole: Urban Sprawl and Community Development

Randall Roth: Closing Remarks



Panos Prevedouros
UH Manoa



Wendell Cox
Demographia



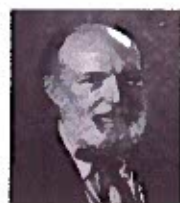
Peter Vincent
Peter Vincent Archit.



Adrian Moore
Reason Foundation



John Charles
Cascade Policy



Randal O'Toole
CATO Institute



Randall Roth
UH Manoa

Mission Memorial Auditorium

550 South King St. (Just behind the Honolulu Hale-Diamond Head and Mauka)
Wednesday, February 29, 2012 from 12:30 p.m. to 4:00 p.m.

Sponsored by the American Dream Coalition and the SBH Educational Foundation