September 12, 2022

The Honorable Nuria Fernandez
Administrator
Federal Transit Administration
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Room E-56 205
Washington, D.C. 20590

Dear Administrator Fernandez:

Subject: Honolulu Authority for Rapid Transportation City and County of Honolulu, State of Hawai'i Recovery Plan 2022

By way of introduction, I am the Chair of the Board of Directors of Honolulu Authority for Rapid Transportation (HART). I am taking the liberty of writing you directly in response to the memo addressed to you dated June 18, 2022, which was sent by individuals who identify themselves as "current and former" members of the HART Board of Directors (HART Board). Though they correctly state that they are speaking in their individual capacity, it is always disconcerting that they claim they obtained their knowledge in their Board-related capacity. I write because the official positions of the HART Board and the Honolulu City Council (City Council) must be explained in light of this memo.

Under the Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition) (RCH) and the Rules and Operating Procedures of the Board of Directors of the Honolulu Authority for Rapid Transportation, I am authorized to speak and explain the position taken by the HART Board in its adoption and recommendation to the City Council to accept the Recovery Plan 2022 as prepared by the HART. It is my understanding that questions have been raised as to whether the revenue projections found in the Recovery Plan 2022 are overly aggressive and could possibly lead to shortfalls. Apparently, the Federal Transit Administration's (FTA) present Project Management Oversight Contractor (PMOC) has solicited from HART an explanation of these projections. With all due respect, the PMOC, Hill International, is relatively new to the Honolulu Rail Transit Project (HRTP) and Hawai`i. I am the only person who has served as the Chair of the HART Board twice, and am familiar with Jacobs Engineering who was the initial PMOC for this project. I believe Jacobs had a longstanding relationship with HART and understood the uniqueness of Hawai`i.

Before I justify the projections utilized by HART as adopted by the Board and the City Council, permit me to explain my background and familiarity with the financing of this project. First of all, it is critical to understand that we are the only state that has a General Excise Tax (GET). The GET is the most unique tax which pyramids, and is not a sales tax and does not behave as a sales tax. It is the aggressive nature of this tax that made the then-Mayor of the City and County of Honolulu (City) ask the Hawai'i State Legislature (Legislature) to permit the counties to impose a GET for the purpose of the rail construction. It is important to note that under the Hawai`i State Constitution, the only taxing authority that the counties have is real property tax. All other taxing authority is reserved to the state. This is why the GET legislation required the State to authorize the counties to agree to the tax, which the state then collected and transmitted to the City. The increase in our state GET by .5 of 1% (.5%) was enacted into law for the various counties' needs, with the exception of the City who was required to use the .5% for the construction of the HRTP. I was a member of the Hawai`i State Senate when HB 1309 CD1 was passed and became Act 247 of the 2005 Legislative Session. As a side note, Senator Brian Schatz was in the State House of Representatives and was an original sponsor of HB 1309. Congressman Ed Case was a member of Congress, representing the Second Congressional District for Hawai`i. The Legislature was approached to fund the HRTP with a dedicated source, the GET. The City with its real property base, could not have sustained a project of this size. The City subsequently enacted the provisions of Act 247 (as an aside, the reference to enactment by the City is due to the fact that the State did authorize the .5% GET; however, it was up to each county to pass its respective ordinances as to whether it would avail itself of the funding. No other county chose to avail itself of the GET in 2005 or 2015).

Act 247 (2005) provided for collection on the .5% GET to begin on January 1, 2007. The FTA had not entered in to a Full Funding Grant Agreement ("FFGA") with the City and County of Honolulu until December 19, 2012. At that time, I was a member of Congress, representing the First Congressional District of Hawai`i, and in fact signed a "ceremonial" FFGA with then-Secretary Ray LaHood and FTA Administrator Peter Rogoff. A Risk Refresh was conducted in 2012 and the projections were approved by the FTA. I remember this event clearly because Senator Daniel K. Inouye had passed only two days earlier and the signing took place in his Senate Appropriations Conference Room.

Two years later, the 2014 Risk Refresh raised a concern as to whether the funding was sufficient. The Hawai`i State Legislature in its 2015 Session, enacted HB 134 CD1 which became law as Act 240 (2015). Act 240 (2015) gave the City and all other counties the opportunity to enact a .5% GET from January 1, 2023 to December 31, 2027. This was a five-year extension from the GET collection provided for in Act 247 (2005). It was expected to generate $1.5 billion in that time period, and the City had stated at that time that it just needed an additional $910 million to complete the project. The City did enact the extension.

Two years later, the 2016 Risk Refresh raised yet another concern as to the sufficiency of the funding. As you can imagine, the Legislature which has stood by the project time and time again, was not pleased when yet another request came to it in the 2017 Legislative Session. This is why SB 1183 CD1, which sought to further extend state funding for the HRTP, failed to pass in the Regular Session of the 2017 Legislature.

I was a member of Congress representing the First Congressional District in 2017. Both the President of Senate and the Speaker of House approached me for assistance in the passage of an extension of the GET. Both leaders agreed to call a Special Session to address this extension. The First Special Session of the 2017 Legislature was called and SB 4 of the First Special Session of 2017 became law as Act 1. Act 1 extended the

GET from January 1, 2028 to December 31, 2030 and enacted a 1% increase to the Transit Accommodation Tax (TAT), a tourism tax which began immediately and sunsets on December 31, 2030. The House Standing Committee Report, HSCR 4 at 6 stated as follows:

> Your Committees also believe that, by requiring a large portion of the additional funding for the rail project to be derived from a modest increase in transient accommodations tax revenue and by limiting the period in which the City and County of Honolulu may extend its surcharge on state tax to three years, this measure minimizes financing costs and the tax burden on residents of the State and the City and County of Honolulu. The project's high-cost construction years are expected to occur between 2018 and 2022, and the infusion of capital during those years will directly offset the need for long-term financing costs associated with the ten-year extension of the surcharge on state tax that was proposed by the Mayor of the City and County of Honolulu. Regarding the adequacy of the financing to be generated by this measure, your Committees note that the conservative three percent general excise tax revenue projection and the twenty-nine year historical eight percent transient accommodations tax revenue data show that there will be a windfall that exceeds the Mayor of the City and County of Honolulu's last-minute attempt to add $548,000,000 to the $8,165,000,000 rail transit project budget. Your Committees also note that the financial "stress test" that the Federal Transit Administration will apply to the project will be based on the financial plan submitted by the Honolulu Authority for Rapid Transportation. If the Federal Transit Administration finds that the financial plan is not adequate, then the Honolulu Authority for Rapid Transportation will need to explain how it will address the possibilities that the project's cost may rise or that revenues may not materialize as projected. Your Committees note that the United States Representative from the 1st Congressional District testified that, pursuant to her discussions with Federal Transit Administration personnel, the Federal Transit Administration does not necessarily require that funding be in place to address those potential variances. Your Committees also note that this measure specifically prohibits the use of revenues generated by the increase in transient accommodations tax or the surcharge on state tax for the operating or maintenance costs of a mass transit project or the administrative, operating, marketing, or maintenance costs of a rapid transportation authority charged with responsibility for constructing, operating, or maintaining the mass transit project.

The TAT was collected for the HRTP beginning January 1, 2018 and continues until December 31, 2030. The then-Mayor's attempt to add funds for what was perceived as his legacy project (not the rail project) made the Legislature very wary of providing more funds than required. The TAT was added to assist HART in paying for the upswing in construction costs during those years when the cost of construction was anticipated to be the highest.

It is important to note that HART did not experience the anticipated high costs of construction beginning in 2018. In fact, due to COVID-19 and its impact, HART's construction costs did not increase at that time.

This brings us to the issue of projections and why the FTA should accept the projections of HART. According to the Recovery Plan, the projections used were 9.13% for TAT and 5.83% for GET, which HART developed with consultation from the State of Hawai`i Department of Taxation (DOTAX).

DOTAX, through the Council on Revenues (COR), does projections for the State of Hawai`i, which are generally conservative. (When in the Hawai`i State Senate, I was the Vice Chair of the Ways and Means Committee during my third and fourth years, and the Vice President of the Senate. My last four years were spent as the President of the Senate. I am very familiar with the COR projections.) Article VII, Section 7 of the Hawai`i State Constitution requires that the Legislature follow COR's projections in its budgeting process, by calculating how much it believes it can appropriate each year. COR's projections are actually for two years, although it provides annual estimates on a quarterly basis and a six-year growth projection. As an example of the conservatism of COR's projections, the actual revenue collected as of April 30, 2022 reflected a cumulative 32.8% growth, while COR estimated a cumulative 28% revenue growth for fiscal year (FY) 22 which ended on June 30, 2022. This is because COR, though it anticipated high growth numbers, did not believe the trend could hold for the remaining two months of the fiscal year (actuals are not yet available, but I anticipate that it will continue with an upward trend). COR also reduced the growth for FY 23 from 6% to 5%, although I believe that the actual rate will exceed 6%, and the actual cumulative rate will be closer to 34%. So that I am not criticized that I am misleading you in some way, these COR projections based on actuals are for all revenue sources not only GET. However GET is a major source of the revenue for the State.

DOTAX is conservative and, more importantly, is familiar with how the history of projections and revenue have been experienced in this State. Note what the House Committee Report stated: "conservative three percent general excise tax revenue projection and the twenty-nine year historical eight percent transient accommodations tax revenue data show that there will be a windfall." There is no question, we did have a windfall in GET revenues but for COVID-19.

Notwithstanding, those conservative projections went into determining what revenue will be generated for the HRTP by way of the GET and TAT up to December 31, 2030. It is important to note that there is a lag in the collections, so funds will continue to be received after that date. Furthermore, I believe the impact of the subsequent legislation has not been fully accounted for. The anticipated revenues which we are debating are all **projections.**

Additionally, a review of the history of Hawai`i's economy during crisis reveals that our state has behaved differently from other locales. For example, after 9-11, Hawai`i had great economic growth. A lot of that was attributed to our tourism industry and the strong federal spending in the state. What 9-11 taught us is the Hawai`i is viewed as a safe destination due to the presence of all branches of the military and its position as the headquarters for the Indo-Pacific Command.

I ask that the FTA recognize that a major source of Hawai`i's tourism dollars—revenue from Japan and the rest of Asia—has not recovered from the impacts of COVID-19. Still, we experienced a 32.8% growth with the opening up of tourism to the non-Asia market, up to April 30, 2022. We in Hawai`i know that the Japanese tourists, in particular, love to travel to Hawai`i, which means both GET and TAT will increase when they return.

Tourists from Japan spend time in hotels, not transient vacation units, which means TAT and GET will be collected.

It is also critical to note that although the Hawai`i State Legislature has not been pleased with the performance of HART, it has always stood by the project. The 2021 Legislative Session proved that: the Legislature granted to the counties the ability to impose its own 3% TAT, and provided that a portion go to HART. The City granted HART 1% for the first two years and 1 ½ % thereafter, in perpetuity (the percentage may be deceiving in that 1% of State-authorized 3% means 33% of the TAT funds collected, and 1 ½% means 50% of the TAT collected). As you may be aware, it was the HART Board of Directors which initiated the TAT collection by the City and asked that a portion of the funds be earmarked for the HRTP via a City Council resolution. These funds are in perpetuity and did not affect the 1% TAT received from statewide collections until December 31, 2030, per Act 1 (2017).

I would like to share with you what I say to the HART staff: this is the last four miles (three miles if the truncated FFGA is accepted by the FTA) of a 20-mile project—the largest capital improvement project in the state's history. If after all of the difficulties it has faced, we have not learned to build rail, then we have no right to do so. I believe HART has learned how to build rail. I ask that you look at the Airport Guideway and Stations segment of the project as evidence of this fact. The previous segments have had their challenges, and to some extent continue to have issues which are not insurmountable.

The HART Board created what is called a Permitted Interaction Group (PIG) under the state's Sunshine Law to oversee the drafting of the Recovery Plan. I provide a link to the report and hope that you will review it: https://www.dropbox.com/s/lkdth87t7a5rtko/Final%20Recovery%20Plan%20PIG%20Report.pdf?dl=0. The Board believes the projections by HART staff contained therein are conservative, and we have so noted in the PIG report. The Board also incorporated footnotes into the Recovery Plan due to the information the Board gathered during its session. The Board did not simply rubber stamp what the HART staff produced; in fact, its PIG held 11 separate meetings from January to early April, 2022 to ensure that its report and the Recovery Plan reflected the sentiment of the Board and the City by the Recovery Plan's acceptance by the City Council.

What I found to be most troubling and prompted this letter to you is the apparent position of the PMOC that when HART did its projections, it calculated the amounts received without discounting it for the additional 9% GET which HART began to receive from January 1, 2018. As part of Act 1 (2017), the Legislature instituted a lower surcharge rate for the collection of the GET for HART than provided for in Act 247 (2005), which was enacted when I was in the Legislature. For many of us, we believed the state would incur costs in the collection of the .5% GET and we were concerned in that there was no FFGA with the FTA at that time. Notwithstanding, the state retained 10% of the total GET collected under Act 245 (2005). With Act 1 (2017), the Legislature released 9% of the 10% to HART and retained only 1% of the GET collected for HART to cover the state's administrative costs. This means from January 1, 2018, HART would be receiving an additional 9% in revenue that was not anticipated. This is such a critical point, that I believe the FTA should recognize that the 9% increase beginning January 1, 2018, represents the total collection of 108% of the yearly GET up to December 31, 2030. Stated another way, this change in the GET collection from 2018 to 2030 means that HART will receive in addition more than a year's worth of GET for this time period. It would be as if Act 1

(2017) gave HART a GET increase until past December 31, 2031+. This is why I found the GET growth projections of 5.83% acceptable though conservative. Your PMOC and its FMOC has not taken this into consideration; and I believe is incorrectly arguing that the 5.83% growth projections is incorrect because it took into account the increase in the revenue of 9% in the calculations of the actual collected. This is what makes the criticism absurd, as it does not account for the automatic increase in the revenue due to Act 1 (2017).

For some reason, the PMOC has determined that this increase in revenue should not be counted towards a revenue projection for HART. Again, I find that to be absurd. If for example, the FTA would have stressed the figures in the 2016 Risk Refresh, the PMOC would probably have recommended approaching the Legislature to amend Act 245 (2005) and ask for the administrative fees. This is exactly what Act 1 (2017) did without being stressed. It is as if HART found another revenue source that provide it 9% of the total GET collected for Oahu until December 31, 2030.

The only logical explanation is that the PMOC may be moved by the "color of money." That is to say that since the source is GET, its projections should not take into account the administrative fees which have now been released. This is why I believe the projections should be tied to the actuals. The bottom line for the FTA and HART should be what is received. Unfortunately, we must rely on projections but the best indicator of the projections is how they compare to the actuals. When the Board accepted HART's projections, it did so with the anticipated increase in income. This is the reality.

Also in support of HART's GET growth projections, I have calculated the projections versus actuals by comparing apples to apples — by removing the administrative fees of 9% from the actuals for the time period prior to January 1, 2018, and reducing the projections by the same amount. See the chart below and you will find that the 5.83% is the best predictor of the future revenue, missing the actuals by only $11,508,011. Again the actuals validates the projections.

		Base	162,048,559				
YEAR	**4.79%**	**(Excess)**	**5.4100000%**	**(Excess)**	**5.83%**	**(Excess)**	**Actual**
2011	169,810,685	58,706,176	170,815,386	57,701,475	171,495,990	57,020,871	228,516,861
2012	177,944,617	(34,268,410)	180,056,498	(36,380,291)	181,494,206	(37,817,999)	143,676,207
2013	186,468,164	(16,023,058)	189,797,555	(19,352,449)	192,075,318	(21,630,212)	170,445,106
2014	195,399,989	23,889,715	200,065,603	19,224,101	203,273,310	16,016,394	219,289,704
2015	204,759,648	16,033,645	210,889,152	9,904,141	215,124,143	5,669,150	220,793,293
2016	214,567,636	14,776,605	222,298,255	7,045,986	227,665,881	1,678,360	229,344,241
2017	224,845,425	1,333,688	234,324,591	(8,145,478)	240,938,802	(14,759,689)	226,179,113

2018	212,053,969	22,668,042	222,301,396	12,420,616	229,486,981	5,235,031	234,722,012
2019	222,211,354	20,750,823	234,327,901	8,634,276	242,866,072	96,106	242,962,178
Total Difference		**107,867,226**		**51,052,377**		**11,508,011**	**1,915,928,714**

I find it troubling that the PMOC has not considered that the impact of Act 1 (2017) and guaranteed increase in revenues is a positive act, not one that HART and/or the Legislature should be penalized for.

The problem is the PMOC and its FMOC do not account for the actual increase of 9% which is a function of Act 1 (2017). To not include the 9% in the projections, is to ignore the reality of what will be collected until December 31, 2030.

To give you an idea of what this means, the actuals collected for the 9% from January 1, 2018 to June 30, 2022 totals $120,700,483. This is for only four years (1/2 of FY 2018 to end of FY2022) reflecting the Act 1 (2017) change to the Administrative fee. Using the following GET projections for the remaining 8 years, the 9% would total as follows:

$226,135,935	4.79% growth rate projection for FY2023 to FY2030
+ $120,700,483	9% actuals collected for FY2018 to end of FY2022
$346,836, 418	

$269,673,844	5.83% growth rate projection for FY2023 to FY2030
+ $120,700,483	9% actuals collected for FY2018 to end of FY2022
$390,374,327	

Whether it is 4.79% or 5.83%, this change in Act 1 (2017) represents $346 to $390 million in additional revenue which is not accounted for in any GET projection scenario. This is because the projections used have not had a clear relationship to actuals. If they did, there should have been a reduction of 10% or the projections for revenues that would go the state and not HART. As of January 1, 2018, this has changed.

Therefore, it is a more accurate way to project, contrary to what the PMOC may think, in that the projections takes into account the additional revenue. How HART arrived at the 5.83% is the more accurate predictor, though I personally believe, it is too conservative.

In closing, I would like to propose that the FTA accept the project's Recovery Plan, which I continue to believe is conservative. Notwithstanding, I do believe, however that there are sufficient funds to City Center for the truncated FFGA.

Please note that the HART Board of Directors and its PIG spent many meetings on the issue of the projections and had conversations with those who understand COR and DOTAX. For these reasons, I respectfully ask that with all due respect to PMOC and its consultants, the Board is far from a rubber stamp to the HART administration; we understand the GET and TAT and arrived at the projections which should be accepted by the FTA. In that light, we respectfully also ask that the Recovery Plan be approved.

Sincerely,

Colleen Hanabusa
Chair, HART Board of Directors

cc: Hawai`i Congressional Delegation
Governor David Y. Ige
The Honorable Ron Kouchi, Senate President
The Honorable Scott Saiki, Speaker, House of Representatives
Honolulu City Council
Mayor Rick Blangiardi
Mr. Michael Formby, Managing Director
HART Board of Directors