
From: Ossi, Joseph (FTA)
To: Matley, Ted (FTA); Sukys, Raymond (FTA)
CC: Marler, Renee (FTA); Bausch, Carl (FTA); Barr, James (FTA)
Sent: 6/23/2009 7:26:21 AM
Subject: RE: Honolulu High-Capacity Transit Corridor Project: Oahu Island Burial Council Request for Inclusion as Invited Signatory to Section 106 PA

Some of Jim's concerns could be addressed while still accepting Invited Signatories as follows:

Invite all consulting parties to sign, but give them a firm deadline of about 1 week to sign, and give each one a blank signature page with only one signature, that organization's, on it so that if it is not received by the deadline, it can be dropped from the Agreement.

The other consideration is what rights are given to Invited Signatories by the Agreement. I had, in my mark-up, deleted all reference to Invited Signatories in the body of the Agreement, so that only the principle signatories (FTA, SHPO, the City, and the Navy) would have rights and responsibilities. I don't know if that particular suggested change was accepted or not. It should be if the Agreement will give any invited signatory any rights not required by Federal or state law.

Joe Ossi
FTA Office of Planning and Environment
(202) 366-1613

From: Barr, James (FTA)
Sent: Friday, June 19, 2009 9:00 AM
To: Matley, Ted (FTA); Sukys, Raymond (FTA)
Cc: Ossi, Joseph (FTA); Marler, Renee (FTA); Bausch, Carl (FTA)
Subject: RE: Honolulu High-Capacity Transit Corridor Project: Oahu Island Burial Council Request for Inclusion as Invited Signatory to Section 106 PA

Some things to consider:

FHWA does a lot more digging in Hawaii than we do, and it is my understanding that they have never been a signatory.

Not a lot of Federal land is involved here, and if remains and objects are found on private lands, NAGPRA does not apply. Moreover, the NPS has not designated any Hawaiian organization as an "officially recognized" designee in Hawaii.

Where does this leave the State Office of Hawaiian Affairs and the 8 or 10 other Native Hawaiian organizations "that serve the interests of Native Hawaiians" and are included in the consultation? Do we elevate the Burial Council above the others? Do you suppose that this would sufficiently annoy the locals?

I think that the NPS never identified an "official Hawaiian designee" for precisely this reason.

My two cents.

From: Matley, Ted (FTA)
Sent: Thursday, June 18, 2009 11:31 PM
To: Sukys, Raymond (FTA); Barr, James (FTA)
Cc: Ossi, Joseph (FTA); Marler, Renee (FTA)
Subject: FW: Honolulu High-Capacity Transit Corridor Project: Oahu Island Burial Council Request for Inclusion as Invited Signatory to Section 106 PA

Hi all,

See request from Oahu Burial Council below.

I'm on leave Friday but maybe we can discuss next week.

Ted

From: Kawika McKeague [mailto:kmckeague@group70int.com]
Sent: Thu 6/18/2009 5:45 PM
To: Matley, Ted (FTA)
Cc: Miyamoto, Faith; dlrr@hawaii.gov; bsemmer@achp.gov; Kehau Abad; Charles Ehrhorn
Subject: Honolulu High-Capacity Transit Corridor Project: Oahu Island Burial Council Request for Inclusion as Invited Signatory to Section 106 PA

OAHU ISLAND BURIAL COUNCIL
Department of Land and Natural Resources
State Historic Preservation Division
State of Hawai'i
601 Kamokila Boulevard
Kapolei, HI 96707

June 17, 2009

Sent via US Mail and Email: Ted.Matley@dot.gov

Mr. Leslie T. Rogers, Regional Administrator
Federal Transit Administration, Region IX
U.S. Department of Transportation

AR00134443

201 Mission Street, Suite 1650
San Francisco, California 94105-1839
Attention: Mr. Ted Matley

RE: Request for Recognition as an Invited Signatory under Programmatic Agreement for the Honolulu High-Capacity Transit Corridor Project, City and County of Honolulu, Oʻahu, Hawaiʻi

Dear Mr. Matley:

Pursuant to the applicable provisions of the National Historic Preservation Act of 1966, as amended (16 USC 470 et seq.) and regulations implementing Section 106, 36 CFR Part 800, the Oʻahu Island Burial Council (“OIBC”) hereby respectfully submits its request to the Federal Transit Administration

The OIBC is established to carry out the applicable duties promulgated by Hawaiʻi Revised Statutes §6E-43, 6E-43.5, and 6E-43.6 and Hawaiʻi Administrative Rules 13-300. The OIBC is composed of members that are appointed by the Office of the Governor and consists of Native Hawaiian regional representatives and representatives of development and large property owners. The primary responsibility of the OIBC is to determine preservation or relocation of previously identified Native Hawaiian burial sites as provided under the applicable sections of the aforementioned statute and administrative rules.

Additionally, the OIBC assists the State of Hawaiʻi Department of Land and Natural Resources in the inventory and identification of Native Hawaiian burial sites; makes recommendations regarding the appropriate management, treatment, and protection of Native Hawaiian burial sites, and on any matters relating to Native Hawaiian burial sites; and maintains a list of appropriate organizations, agencies, and offices to notify regarding the discovery of remains (§6E-43.5(f)(1-3,5)). As such, the fiduciary duties and responsibilities of the OIBC to the management, care, and protect of iwi kūpuna (ancestral human skeletal remains), their moepū (funerary objects of possession by the deceased), and their wahi kanu (burial grounds), are unique and inherent from other State agencies, boards, or commission, as provided for under the applicable sections of Hawaiʻi’s historic preservation laws.

In the November 2008 Draft Environmental Impact Statement (DEIS), human burials were identified as archaeological resources documented within the Project’s area of potential effect. The DEIS states that there exists the possibility that subsurface features and deposits that have not been previously identified may be affected by the Project. The DEIS also states that the probability of occurrence for encountering human burials during the course and duration of project construction ranges from low to moderate to high, depending upon the specific phase and locational corridor of the Project. The DEIS recommends that a phased approach to identify unidentified archaeological resources, including burials, would be employed as a means to avoid, minimize, or mitigate adverse effects on historic properties. Additionally, the DEIS concludes that the Project will result in adverse effects to historic properties where avoidance is not possible; therefore, the DEIS recommends that a Memorandum of Agreement (MOA) be prepared to outline responsibilities and measures to mitigate or reduce project effects.

Given that impacts to unidentified but potential subsurface resources may occur during the construction phase of the Project, the DEIS recommends that additional archaeological work, including inventory survey work, be completed prior to construction to investigate these potential encounters. The DEIS specifically cites that during these investigations, burials that are identified would be managed in compliance with applicable laws. As the OIBC possesses the decision-making authority for previously identified burials as to their determination of preservation in-place or relocation, we believe this authority warrants our inclusion as an invited signatory to an MOA or any other binding agreement with the FTA.

Currently, we have been actively participating with representatives from the City and County of Honolulu Department of Transportation Services (DTS) in the formulation of the applicable portions of the pending Programmatic Agreement, which we have been informed, is the binding agreement to be completed by the FTA and that would provide direction to mitigate potential adverse effects to archaeological resources, including burials. We are sincerely appreciative of all the efforts led by Ms. Faith Miyamoto and other project representatives to proactively address our concerns.

In a letter (31 March 2009) issued by DTS to the OIBC, an assumption was made by DTS as to the OIBC’s acceptance as a consulting party in the NHPA Section 106. Additionally and more accurate, we understand that DTS has indicated through verbal communication with the FTA to recognize the OIBC as an invited signatory. In the OIBC’s June 2009 meeting, DTS reported that a decision to this recognition was still pending and advised the OIBC to submit a written request to the FTA. We respectfully request the FTA grant the OIBC’s inclusion as an invited signatory to the pending Programmatic Agreement for the proposed Project. If there are any questions, please contact me via email at: kawikam@hawaii.rr.com, postal mail, or via telephone at 808-265-7901. Your attention to this matter is sincerely appreciated.

ʻO au iho nō me ka haʻahaʻa,

Mark Kāwika McKeague, Chair
Oʻahu Island Burial Council

cc. Blythe Semmer, Program Analyst Advisory Council on Historic Preservation
Laura Thielen, State of Hawaiʻi Historic Preservation Officer
Faith Miyamoto, Project Manager, City and County of Honolulu, DTS
Charles Ehrhorn, Vice-Chair OIBC
Kehau Abad, OIBC Rail Task Force Committee Chair

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AR00134444