

April 4, 2013



Consulting Parties and the Honolulu Rail Transit Project (H RTP) PROGRAMMATIC AGREEMENT (PA)

WHAT IS A PROGRAMMATIC AGREEMENT (PA)?

The PA is an end product of the National Historic Preservation Act, Section 106 process for any undertaking that will adversely affect historic properties. The PA is a written agreement that describes what the agency will do take into account those effects and documents that agency's compliance with Section 106. The PA establishes the consultation process and the post-PA decision making.

The PA was developed for the H RTP because all the effects of the undertaking were not fully known. This was done to streamline and enhance historic preservation and project delivery efforts. For the H RTP, the PA is a document that spells out the terms of the formal, legally binding agreement between an applicant for federal assistance (Honolulu Authority for Rapid Transportation or HART) and the other state and/or federal agencies (U.S. Department of Transportation Federal Transit Administration, Hawai'i State Historic Preservation Office (SHPO/SHPD), United States Navy, and the Advisory Council on Historic Preservation). This PA established a process for consultation, review, and compliance with those federal laws concerning historic preservation.

HOW WAS THE H RTP PA DEVELOPED?

As a part of the project's planning and environmental studies, historic resources were identified and evaluated, and the Project's effects on them were determined. Properties within the Area of Potential Effects (APE) were identified as those with construction dates before 1969. The APE contains 81 historic resources (individual or districts). Of the 81 historic resources, FTA has determined that the H RTP will have adverse effects to 33 historic resources. While the H RTP was designed to avoid and minimize effects to historic properties, this was not always possible in meeting the Project's Purpose and Need. A draft PA was developed in consultation among the consulting parties. The draft PA recorded the terms and conditions agreed upon to resolve potential adverse effects and was attached to the Final EIS as in Appendix H. The Section 106 signatories clarified the language in the draft PA, and in May 2010 FTA distributed the draft PA to the Section 106 consulting parties for informational purposes. The final PA was signed in January 2011.

WHAT IS A CONSULTING PARTY?

36 CFR Part 800.2 defines consulting parties to include: the (c)(1) State Historic Preservation Office (SHPO), (c)(2)(ii) Native Hawaiian organizations (that attach religious and cultural significance to historic properties that may be affected by an undertaking), (c)(3) Representatives of local governments, and (c)(4) Applicant for Federal assistance.

Sections 800.2 and 800.3(f) set forth clear standards for who should be a consulting party, and a clear process for who makes the determination and when. **In the context of 36 CFR 800, historic properties are properties that have been determined eligible for listing in the National Register of Historic Places (NRHP).**

"[T]he act requires the agency official to consult with any Indian tribe or Native Hawaiian organization that attaches religious and cultural significance to historic properties that may be affected by an undertaking...The agency official shall ensure that consultation in the section 106 process provides the Indian tribe or Native Hawaiian organization a reasonable

opportunity to identify its concerns about historic properties, advise on the identification and evaluation of historic properties, including those of traditional religious and cultural importance, articulate its views on the undertaking's effects on such properties, and participate in the resolution of adverse effects.” [36 CFR 800.2(c)(2)(ii)]

Note that it is the signatories of the PA that have sole authority to execute, amend or terminate the agreement.

WHEN ARE CONSULTING PARTIES INVOLVED?

The Section 106 of the National Historic Preservation Act (NHPA) regulations outline specific points at which consulting parties must be involved (from Consulting under Section 106 of the NHPA. AASHTO, 2007):

1. **During Historic Property Identification:** If no historic properties are found, the agency provides appropriate documentation to the State Historic Preservation Officer (SHPO)/Tribal Historic Preservation Officer (THPO) and notifies consulting parties of the finding of No Historic Properties Affected.
2. **During the Determination of Effect:** If historic properties are found but will not be adversely affected, the agency provides appropriate documentation to the SHPO/THPO and notifies consulting parties of the finding of No Adverse Effect.
3. **In Case of SHPO/THPO Objection:** If the SHPO/THPO objects to the No Historic Properties Affected or No Adverse Effect finding, the documentation is forwarded to the Advisory Council on Historic Preservation (ACHP) for their advisory opinion, and concurrently, the agency must notify all consulting parties and invite their views.
4. **On the Determination of an Adverse Effect:** If the agency makes a determination that a property will be adversely affected under the Section 106 regulations, the agency must notify the ACHP and the consulting parties to invite their views. This notification must be accompanied by documentation of the finding of Adverse Effect. The agency will consider the views of the consulting parties, as well as the public, in seeking ways to avoid, minimize, or mitigate adverse effects to historic properties. A consulting party may also request the ACHP to join the consultation,
5. **During Development of Mitigation Measures:** The agreed-upon measures to address the adverse effect are incorporated into a Memorandum of Agreement (MOA) developed by the agency in consultation with the SHPO/THPO and other consulting parties.

WHAT HAS BEEN COMPLETED?

The H RTP has completed all of the above steps, and the Federal Transit Administration (FTA) and HART considered comments from consulting parties at each of the steps. The H RTP Programmatic Agreement (PA) executed in January 2011 functions as the MOA described in the step five above. **After execution of the PA, the rights and responsibilities of all parties, including consulting parties, that are afforded under Section 106 are defined and limited to what is included in the PA.**

WHAT'S NEXT? – PARTICIPATION BY STIPULATION

The PA defines specific areas for consulting party participation. The areas of participation that are not yet completed are summarized by stipulation below. A table of the activities anticipated during 2013 follows the summary.

Since none of the consulting parties elected to become signatories on the PA, consulting parties are not bound to complete any responsibilities granted to them; however, HART is bound to complete its responsibilities outlined in the PA. Any other participation that is not explicitly addressed in the PA is at HART's discretion, and is not required by Section 106.

Stipulation I. H: The Kako'o shall (see Stipulation I.H for a complete list):

- Establish and maintain lines of project-related communication and consultation with consulting parties
- Address requests by consulting parties to review deliverables and documentation that are provided to concurring parties
- Collect comments from consulting parties that identify impacts to historic properties located within the PA
- Provide assistance required by the consulting parties to meet terms of the PA
- Develop a best practice manual related to historic properties and a Section 106 "lessons learned" case study for use on future projects

Stipulation II: Traditional Cultural Properties (see separate summary memo)

- HART will meet with consulting parties regarding any TCPs determined eligible and adversely affected by the project.
- The consulting parties will review draft National Register of Historic Places nominations for eligible TCPs.

Stipulation III: Identification and Protection of Archaeological Sites and Burials

This stipulation follows the requirements of the State of Hawaii Administrative Rules (HAR) Chapter 13-276 and 13-300. Review is conducted outside the PA and burial related responsibilities are on lineal and cultural descendants rather than Section 106 consulting parties.

Stipulation IV: Design Standards

Consulting parties shall:

- Consult on treatment plans if Secretary of the Interior (SOI) standards cannot be applied (applies to specific stations only)
- Be notified of neighborhood design workshops (applies to all stations)
- Review and comment on preliminary station design plans and final design plans located within or adjacent to listed historic properties (applies to specific stations only)

Stipulation V: Recordation and Documentation

Consulting parties shall review cultural landscape reports.

Stipulation VI: NRHP/NHL Nominations

Consulting parties shall review property nominations as part of multiple-property documentation.

Stipulation VII: Educational and Interpretive Programs, Materials, and Signage

Consulting parties shall:

- Consult on the goals of the humanities program
- Participate in a kick-off meeting to develop a work plan, content for deliverables and schedule for all products required within this stipulation
- Review draft work products

Stipulation VIII: Mitigation for Specific Historic Properties:

- Consulting parties and others to participate in a kick-off meeting and draft park improvement plan review
- If park improvements are precluded, additional consultation will occur

Stipulation IX: Measures to Address Reasonably Foreseeable Indirect and Cumulative Effects Caused by the Project

- Consulting parties shall be notified if demolitions exceed threshold levels
- The Historic Preservation Committee operates separately from the consulting parties
- Consulting parties shall review and comment on any historic documentation required to address unanticipated effects to historic districts
- Consulting parties are to work with the Kako’o (per Stipulation I.H.10) if a significant adverse Project indirect or cumulative effect is identified for an NRHP eligible resource not included in the PA

Stipulation XI: Contractors and Contract Adherence

- Contractor training materials and lists of persons trained available annually

Stipulation XIV: Administrative Provisions

- Consulting parties shall consult on any changes to the Project area of potential affect
- Native Hawaiian Organizations may identify properties within the area of potential affect with religious or cultural significance to FTA

CONSULTING PARTY PARTICIPATION OPPORTUNITIES during 2013

Stipulation	Action	Approximate Date
I.	Kāko’o Coordination	Ongoing
II.	City Center TCP Study Consultation	May 8 & 9, 2013
IV.	West Oahu Station Group Station Workshop	Wkshp #2 - TBD 2013
IV.	Farrington Highway Station Group Station Workshop	Wkshp #2 – April 25
IV.	Kamehameha Station Group Station Workshops #1 & #2	TBD 2013
IV.	Airport Station Group Station Workshops #1 & #2	TBD 2013
IV.	Aloha Stadium Station FD Review	TBD 2013
IV.	Pearl Harbor Station FD Review	TBD 2013
VII.	HART outreach on cultural elements and station naming	Ongoing – Start up TBD 2013
XIV.E.3	Semi-Annual Progress Report	January-July: available in August 2013

IMPORTANT LINKS

H RTP PA: <http://www.honolulutransit.org/planning/section-106.aspx>

ACHP Home: www.achp.gov

ACHP Section 106 Summary: <http://www.achp.gov/106summary.html>

ACHP 36 CRF 800 Regulations: <http://www.achp.gov/regs-rev04.pdf>

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