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August 25, 2010

Wayne Y. Yoshioka
Department of Transportation Services
650 South King Street, 3rd Floor
Honolulu, HI 96813

Pua Aiu
State Historic Preservation Division
Department of Land & Natural Resources
601 Kamokila Blvd Suite 555
Kapolei HI 96707

RECEIVED
2010 AUG 26 A 10:56
DIRECTOR'S OFFICE
DEPT OF
TRANSPORTATION SERVICES

Re: Impact of Rail Transit System on Historic Burial Sites

Dear Mr. Yoshioka & Ms. Aiu:

Over a year ago, our office sent you a letter on behalf of Paulette Ka'anohiokalani Kaleikini explaining that the City was circumventing requirements that protect burial sites. We reiterate that the Final Environmental Impact Statement must include an archaeological inventory survey, including subsurface testing, of all areas where (1) stations could be located (b) support pillars could be located and (c) existing underground infrastructure will be moved.

Not only is the City flirting with disaster in not performing these necessary studies, but it also risks violating HRS § 6E-8 and 6E-42. These provisions require that prior to commencement of a project, DLNR through SHPD shall give its written concurrence and that prior to approval of a project, SHPD be given an opportunity to review and comment. The rules that implement these statutory provisions require that an archaeological inventory survey be prepared and accepted before the completion of the historic review process. In other words, an agency cannot expect SHPD to give its written concurrence or to have reviewed and commented on a project until an AIS is completed where there is strong evidence that historic sites exist subsurface – as is this case along the transit corridor in Kaka'ako. There are no provisions in any of SHPD's rules to allowing for a "phased approach."

Some officials appear to believe that compliance with section 106 of the National Historic Preservation Act allows the city to ignore the provisions of HRS §§ 6E-8 and 6E-42. The National Historic Preservation Act does not preempt state historic preservation laws. The city and SHPD must comply with these statutory requirements.

Services made possible with major funding from the Office of Hawaiian Affairs.

Ni'olo. Upright, straight, stately, tall and straight as a tree without branches; sharply peaked, as mountains. Fig., righteous, correct.

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Nor should SHPD sit back and wait for the City to come to it for a review pursuant to HRS §§ 6E-8 and 6E-42 – knowing that the City plans to move forward on this project aggressively. SHPD should advise the City of its responsibilities immediately. After all, HRS 6E-1 provides that it “shall be the public policy of this State to provide leadership in preserving, restoring and maintaining historic and cultural property.” SHPD is required to provide technical assistance to the counties, develop an inventory of burial sites, and regulate archaeological activities. HRS § 6E-3.

Because the city appears to be proceeding with its high-capacity transit system without complying with HRS Chapter 6E, this letter is sent pursuant to HRS § 607-25(e)(2)(A).

Sincerely,



David Kimo Frankel
Attorney for Ms. Kaleikini

DKF:mr