From: Miyamoto, Faith
To: 'elizabeth.zelasko@dot.gov'
Sent: 6/17/2010 10:01:41 AM
Subject: FW: Response to Pua's Concerns

Hi Liz –

The following is some information that we developed to respond to Pua's concerns:

(1) In reviewing the provisions on Historic Districts, the language in the PA relies on a City zoning "overlay districts" to preserve individual groupings of historic and cultural resources through the application of architectural and other design guidelines and standards for developments surrounding them. Overlay districts already established include Chinatwon, Merchant Street, and the Hawaii Capital civic center areas. This language is included in a whereas clause on page 4. However, the TOD zoning ordinance has language that it overrides any other zoning ordinance. The SHPO is concerned that the TOD zoning ordinance removes protections to the historic districts afforded through the zoning overlays.

Not withstanding City land use design laws and regulations, HRS chapter 6E regarding historic preservation, takes precedent where applicable. TOD Ordinance explicitly requires identification and protection of historic resources.

ROH § Sec. 21-9.100(b) provides as follows:

> ***The regulations applicable to a TOD zone shall be in addition to underlying zoning district and, if applicable, special district, regulations, and may supplement and modify the underlying regulations. Where a transit station is located within or adjacent to an existing special district, the TOD zone provisions may be incorporated in the existing special district provisions. If any regulation pertaining to a TOD zone conflicts with any underlying zoning district or special district regulation, the regulation applicable to the TOD zone shall take precedence.***

This language does not necessarily override all existing architectural and other design guidelines.

Specifically, under ROH § 21-9.100 2(a), Neighborhood TOD Plans developed by the community must include, among other things, the following:

> ***The general objectives for the particular TOD zone in terms of overall economic revitalization, neighborhood character, and unique community historic and other design themes. Objectives shall summarize the desired neighborhood mix of land uses, general land use intensities, circulation strategies, general urban design forms, and cultural and historic resources that form the context for TOD.***
>
> ***Recommended zoning controls, including architectural and community design principles, open space requirements, parking standards, and other modifications to existing zoning requirements, or the establishment of new zoning precincts, as appropriate, including density incentives. Prohibition of specific uses shall be considered. Form-based zoning may be considered.***

In addition, these plans must be "consistent with the applicable regional development plan" and "[t]o the extent practical . . . consistent with any applicable special area plan or community master plan, or make recommendations for revisions to these plans[.]" See ROH §§ 21-9.100 2(d), (e).

TOD development regulations for each TOD zone must include, among other things, "[i]dentification of important neighborhood historic, scenic, and cultural landmarks, and controls to protect and enhance these resources." See ROH § 21-9.100-4(f).

(2) The SHPO also has some concerns about reinternment responsibilities for discoveries of Native Hawaiian burials. In the PA there are three options for deciding how to mitigate the disturbance of Native Hawaiian burials. First, the burial could remain in place and the column would be relocated. Second the burial could be reintered within the project boundaries near where the burial was discovered or lastly, it could be reintered at a

location offsite. What has happened in the past, that the SHPO is concerned about, is that the responsibility of identifying a suitable location for a burial falls on the SHPD. The SHPO wants to make sure that the PA clearly identifies the City as having that responsibility with language along the lines that it is the City's responsibility to identify a relocation site that is acceptable to the OIBC. This language would need to be added to two sections of the PA; Stipulation III.D.2 and Stipulation XI.C.

Assuming that OIBC says that it is OK to relocate a native Hawaiian burial, it would be up to the OIBC in consultation with lineal descendants to determine where the bones should be reinterred. This could be an existing location where other burials are located. However, it could be that the City must arrange for a suitable site. This would be part of the burial treatment plan agreed to between the City and SHPD/OIBC.

(3) As discussed previously, the SHPO would like some assistance from the City with the workload/staffing issues associated with the PA. One proposal is establishing a Certified Local Government. Part of this is request is related to pressure from the SHPD being under review by the National Park Service

Decision needs to be coordinated with other City agencies; particularly if it becomes a permanent function of the City to perform state functions under Hawaii historic preservation laws. There may also be issues to work out regarding use of transit funds, if used, and council consent for any IGA.

I would like to discuss 6/23/10 call with you. Maybe we can talk tomorrow.

Faith

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