From: Zelasko, Elizabeth (FTA)
To: 'Miyamoto, Faith'
Sent: 5/27/2010 8:39:27 AM
Subject: FW: Honolulu High Capacity Transit Project Programmatic Agreement

FYI

From: Kehau Abad [mailto:keabad@ksbe.edu]
Sent: Thursday, May 27, 2010 12:25 PM
To: Kawika McKeague; Zelasko, Elizabeth (FTA); taahine.hina@gmail.com
Subject: RE: Honolulu High Capacity Transit Project Programmatic Agreement

Aloha no kakou,

Again, chiming in to support our chair's comments: The PA **ought** to "clearly addresses how the Project will meet the requirements for the aforementioned actions under the state historic preservation review process, as promulgated under Hawai'i Revised Statutes 6E and associated Hawai'i Administrative Rules 13-275 to 284, and HAR 13-300."

However, as of our last reading of the PA, it is in conflict with state historic preservation laws in that it allows for a phased in AIS and does NOT allow for the SHPD to comment, with appropriate data from an AIS, about the potential affect of the project on historic properties prior to the initiation of the project. The lack of a complete AIS in the Phase 2, 3, and 4 corridors at the time that the PA is anticipated to be signed is a most serious problem.

We further believe that the lack of a complete AIS for the entire corridor is in conflict with the dictates of the Section 4(f) of the DOT Act of 1966, as the National Trust for Historic Preservation has pointed out in its formal written comments on the PA.

We hope that our comments on these crucial matters will be considered seriously in your final review of the PA.

Me ke aloha,
Kehau

From: Kawika McKeague [mailto:kawikam@hawaii.rr.com]
Sent: Thursday, May 27, 2010 6:12 AM
To: elizabeth.zelasko@dot.gov; taahine.hina@gmail.com; Kehau Abad
Subject: RE: Honolulu High Capacity Transit Project Programmatic Agreement

Aloha Elizabeth-

I do appreciate your time and effort to provide us with an update. We look forward to receiving the revised version of the Programmatic Agreement. Understanding that these email correspondences do become a part of the project's administrative record, I ask for an opportunity to comment on one statement.

We recognize there is a defined role and sequence of communication/consultation steps involving the OIBC as prescribed in the PA. We have openly stated that we welcome the opportunity to continue our participation as a party of interest in an ongoing dialogue with the City and the FTA. However, please note that the OIBC has asserted in past Section 106 participant meetings and its own monthly public meetings that it will reference the PA as a guidance document but rely upon State Historic Preservation regulations and administrative rules as the appropriate checks and balance to assess project compliance with State and Federal regulations.

It is our position, which has been reviewed and affirmed by Attorney General's Office for the State of Hawai'i, that for matters relative to the identification, investigation, evaluation, and mitigative treatment for burials, the PA is not a substitute for State law or rules. We would like to comment that the final PA clearly addresses how the Project will

meet the requirements for the aforementioned actions under the state historic preservation review process, as promulgated under Hawai'i Revised Statutes 6E and associated Hawai'i Administrative Rules 13-275 to 284, and HAR 13-300.

Mahalo nui loa for the opportunity to share our concerns.

Sincerely,
Kawika McKeague

From: elizabeth.zelasko@dot.gov [mailto:elizabeth.zelasko@dot.gov]
Sent: Wednesday, May 26, 2010 12:48 PM
To: taahine.hina@gmail.com; keabad@ksbe.edu
Cc: kawikam@hawaii.rr.com
Subject: RE: Honolulu High Capacity Transit Project Programmatic Agreement

Hello all –

Thank you for your thoughtful responses to our request to have a teleconference. Although I have not been actively involved in this proposed project until recently, I did find in the my review of letters, meeting notes, and emails that you have been very active participants in the Section 106 process. From those materials and your response below, I understand that the OIBC has requested signatory status to participate in the Programmatic Agreement and that FTA considered but did not honor that request. I also understand that the OIBC's position regarding the timing of archeological investigations for the proposed Project.

The current draft of the Programmatic Agreement is substantially the same as what the consulting parties worked on last fall. Since that time, the signatories, the ACHP, FTA, and the SHPD, made clarifying changes to the language to improve the readability and future execution of the agreement. The City and the National Park Service, invited signatories to the Programmatic Agreement, have reviewed the Programmatic Agreement and provided comments. The National Park Service shared their comments by email last week and last night I shared FTA's response to their comments. I need to do a little more formatting on the PA and then I will share the current version with you and the other consulting parties.

As I mentioned in my email yesterday, FTA is currently reviewing the administrative draft Final EIS and providing comments to the City. Most of our time since last fall have been reviewing and consulting on concerns related to the potential rail alignment impacts at the Honolulu International Airport.

Although, we are still open to a teleconference, I am hearing that spending more time discussing the project may not substantively change our positions that would lead to the OIBC signing onto the Programmatic Agreement as a concurring party. Therefore, I will not schedule a teleconference at this time. Even though you will not be signing the agreement as a concurring party, the Programmatic Agreement outlines a continuing specific role for the OIBC as discussed last fall and outlines role for your participation generally as a consulting party.

Thank you very much for your time. I will be in touch soon regarding the PA.

Please contact me if you have any questions.

Liz

From: Hinaleimoana Falemei [mailto:taahine.hina@gmail.com]
Sent: Wednesday, May 26, 2010 6:35 AM
To: Kehau Abad
Cc: Zelasko, Elizabeth (FTA); kawikam@hawaii.rr.com
Subject: Re: Honolulu High Capacity Transit Project Programmatic Agreement

I likewise contribute the same sentiment as put forth by our Council chair Kawika McKeague and our Rail Task Force chair Kehau Abad. I shall await further update and information after the teleconference.

Mahalo a nui,
Hinaleimoana Falemei

On 25 May 2010 20:40, Kehau Abad <keabad@ksbe.edu> wrote:
Aloha no e Elizabeth,

Mahalo for your recent communications. I would simply like to add my wholehearted concurrence with the message that our OIBC Chair, Kawika McKeague, has conveyed below. We look forward to hearing back from you regarding the hoped for outcomes of a possible teleconference with FTA representatives.

Me ke aloha,
Kehau

From: kawikam@hawaii.rr.com [mailto:kawikam@hawaii.rr.com]
Sent: Tuesday, May 25, 2010 4:52 PM
To: Taahine.hina@gmail.com; elizabeth.zelasko@dot.gov; Kehau Abad
Cc: kawikam@hawaii.rr.com

Subject: RE: Honolulu High Capacity Transit Project Programmatic Agreement

Aloha Elizabeth-

Thank you for your follow-up. My apologies to you for not responding sooner but I had to address a personal family situation over the past week and was not able to reply in a more timely manner.

I appreciate the offer to have a teleconference meeting. Here's is my succinct response: Although we appreciate the FTA wishing to have a discussion, we need a little more information as to the scope of the proposed teleconference agenda and specifically, what is the intended outcome of this proposed teleconference? If it's to solely seek a reconsideration by the OIBC to be a consulted/concurring party, then I believe the proposed meeting may not be the best use of our time and energy.

Our past involvement and level of committed participation in the Rail Transit Section 106 process should be clearly evidenced by all the meetings we attended, commentary provided, email correspondences provided, etc. As you know, the OIBC has clearly articulated its position from its past verbal and written testimony, most notably, those submitted in October 2009 in a letter to Mr. Leslie Rogers and the unanimous vote taken in our October meeting to oppose the then-current draft of the PA. Although we receive monthly updates by the City at our monthly meetings, we have not been apprised to what the May 2010 version of the PA looks like or what is its contents. Would it be possible to receive the most current version of the PA? Second, unless there were substantive changes in the PA that speak to our concerns, we, as representatives of the OIBC, would probably not be in a position to have the full Council reconsider its current position to not support the PA or sign-off as a consulted party. We have articulated in past meetings and in writing to Mr. Rogers that the role of the OIBC and the potential effect this project will have on burials warranted a serious consideration by the FTA for the OIBC to be a mandatory signatory. The FTA rendered its position that the OIBC be afforded only "concurring party" status. Therefore, please advise if there are substantive changes in the PA or FTA's position as to the role of the OIBC that may warrant our reconsideration for further participation.

Our recent resolution was a reaffirmation of what we understand to be current in the finalization of the PA. It is our understanding that there are four mandatory signatories. The City via its own Council decision in Oct/Nov has authorized City Transportation Director Mr. Wayne Yoshioka to sign the PA. We understand that the FTA and ACHP final comments are being integrated into the PA. As of this writing, our Council has not been advised by the SHPO as to her concerns and decision to sign on the PA. As such, the OIBC articulated its position in our April 2010 meeting as follows:

Whereas, the current PA for the City's rail project includes a phased approach for archaeological inventory survey, and

Whereas, HRS Chapter 6E-8 and 6E-42 preclude a phased archaeological inventory survey approach, and

Whereas, the State Historic Preservation Officer has the ability to safeguard the full authority of State historic preservation laws and the integrity of historic properties and burial sites, and

Whereas, the OIBC Rail Task Force has been guaranteed in numerous PA meetings that State laws would not be circumvented by the PA,

Therefore, the OIBC strongly recommends that the State Historic Preservation Officer object to any version of a PA that allows for a phased archaeological inventory survey approach, and that the OIBC communicate the same to the PA signatories in our capacity as consulting parties to the PA.

This motion and resolution articulates our read of HRS 6E-8 and 6E-42, which state:

§6E-8 Review of effect of proposed state projects. (a) **Before any agency or officer of the State or its political subdivisions commences any project which may affect historic property**, aviation artifact, **or a burial site**, **the agency or officer shall advise the department and allow the department an opportunity for review of the effect of the proposed project on historic properties**, aviation artifacts, **or burial sites**, consistent with section 6E-43, especially those listed on the Hawaii register of historic places. **The proposed project shall not be commenced, or in the event it has already begun, continued, until the department shall have given its written concurrence. (EMPHASIS ADDED)**

The department is to provide written concurrence or non-concurrence within ninety days after the filing of a request with the department. The agency or officer seeking to proceed with the project, or any person, may appeal the department's concurrence or non-concurrence to the Hawaii historic places review board. An agency, officer, or other person who is dissatisfied with the decision of the review board may apply to the governor who may request the Hawaii advisory council on historic preservation to report or who may take action as the governor deems best in overruling or sustaining the department.

(b) The department of Hawaiian home lands, prior to any proposed project relating to lands under its jurisdiction, shall consult with the department regarding the effect of the project upon historic

property or a burial site.

(c) The State, its political subdivisions, agencies, and officers shall report to the department the finding of any historic property during any project and shall cooperate with the department in the investigation, recording, preservation, and salvage of the property. [L 1976, c 104, pt of §2; gen ch 1985; am L 1990, c 306, §7; am L 1995, c 187, §2; am L 1996, c 13, §1 and c 97, §7]

§6E-42 **Review of proposed projects. (a) Before any agency or officer of the State or its political subdivisions approves any project involving a permit, license, certificate, land use change, subdivision, or other entitlement for use, which may affect historic property, aviation artifacts, or a burial site, the agency or office shall advise the department and prior to any approval allow the department an opportunity for review and comment on the effect of the proposed project on historic properties**, aviation artifacts, **or burial sites**, consistent with section 6E-43, including those listed in the Hawaii register of historic places.

(b) The department shall inform the public of any project proposals submitted to it under this section which are not otherwise subject to the requirement of a public hearing or other public notification. [L 1988, c 265, pt of §1; am L 1990, c 306, §12; am L 1995, c 187, §3; am L 1996, c 97, §10]

In short, the State Historic Preservation Division and the SHPO are entrusted with the care and protection of historic resources in Hawai'i. We believe that the phased approach recommended in the PA fails to empower SHPD/SHPO with the information necessary for it to make a determination of effect and complete a well-informed review of the entire Project. We have repeatedly stated in public and in the multiple meetings held with other Section 106 participants that both the Federal and State requirements for historic preservation review are not being followed. We read "project" to be the entire rail system not the piecemeal phases of construction. So the reading of the law is very clear- the "Project" shall not commence until SHPD is afforded an opportunity to review the possible effects of the entire Project on historic properties, including burials. The only means for SHPD and the SHPO to complete its fiduciary responsibilities within the historic preservation review process is to have ALL the information for all areas of potential effect availed (not piecemeal or phased submittals) for the entire Project before rendering its determination of effect or its written concurrence, which is necessary for project construction to commence. As such, the resolution is clear- the SHPO should not sign-off on this PA as a phased approach simply does not provide the means for SHPD/SHPO an opportunity to review to the effect of the Project prior to any construction. This is our position. I welcome Ms. Falemei or Ms. Abad to clarify points I may have missed.

In conclusion, although I believe there is much we can probably share with you and the Director to help further your understanding of the concern relative to burial encounters, we frankly do not waste anyone's time, including yours, if at the end, the positions and outcomes will not change. So again, I sincerely appreciate if you can advise us as to what the FTA hopes to accomplish in having this teleconference. We, as members of the OIBC Rail Transit Task Force, can then assess if the merits of making this commitment to have a discussion are mutually beneficial for all.

Mahalo nui for your time and consideration to what I share here.

Please note that we do request and appreciate being updated regularly as to the status of the PA and the overall process of the project.

Na'u me ka ha'aha'a,

Kawika McKeague

O'ahu Island Burial Council, Chair & 'Ewa Moku Representative

---- elizabeth.zelasko@dot.gov wrote:
> Good afternoon -
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>
> I wanted to follow up on my request from last week for a teleconference
> between you, as representatives of the O'ahu Island Burial Council, and
> the Federal Transit Administration. Yesterday, the City sent out an
> request for a meeting which was the result of a miscommunication. It
> was our intent to contact you directly to give you the opportunity of
> having a meeting to discuss your concerns without having the City
> present. Due to the availability of my director, who I would like to
> participate in the call, I would need to set up a teleconference within
> the next few days. Would you be available tomorrow (Wednesday) or
> Thursday?
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> Please email or give me a call at 202-366-0244. If it is after 6 pm
> (EST), please call 202-841-4912. I will try and follow up by phone call
> as well.
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> Thank you,
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>
> Liz
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> From: Kawika McKeague [mailto:kawikam@hawaii.rr.com]
> Sent: Tuesday, May 18, 2010 9:52 PM

> To: Zelasko, Elizabeth (FTA); Taahine.hina@gmail.com; keabad@ksbe.edu
> Cc: Bausch, Carl (FTA); fmiyamoto@honolulu.gov; Sukys, Raymond (FTA);
> Matley, Ted (FTA); Borinsky, Susan (FTA)
> Subject: RE: Honolulu High Capacity Transit Project Programmatic
> Agreement
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> Aloha kakou-
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> I'm currently out of my office and will return to work on Wednesday,
> 5/19. I will respond in fuller detail at that time.
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> Mahalo,
>
> Kawika McKeague
>
> OIBC Chairman
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> From: elizabeth.zelasko@dot.gov [mailto:elizabeth.zelasko@dot.gov]
> Sent: Monday, May 17, 2010 1:44 PM
> To: kawikam@hawaii.rr.com; Taahine.hina@gmail.com; keabad@ksbe.edu
> Cc: Carl.Bausch1111@dot.gov; fmiyamoto@honolulu.gov;
> Raymond.Sukys@dot.gov; Ted.Matley@dot.gov; Susan.Borinsky@dot.gov
> Subject: Honolulu High Capacity Transit Project Programmatic Agreement
>
>
>
> Good afternoon -
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> This email message is a follow up on the voice mail that I just left Mr.
> McKeague. The Federal Transit Administration (FTA) has been working
> closely with our other Federal partners, the Hawaii SHPD, and the City
> and County of Honolulu on clarifying language in the Section 106
> Programmatic Agreement that was developed through consultation with your
> organization and other parties last year. We are aware of the

> resolution that the O'ahu Island Burial Council passed recently
> regarding your participation in the Programmatic Agreement. As we are
> progressing toward completing the Section 106 process, the FTA would
> like to reach out to you with a teleconference or videoconference to
> discuss the O'ahu Island Burial Council joining the Programmatic
> Agreement as a concurring party. We understand that we still may not be
> able to resolve all concerns, but we would like to try again.
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> If you are interested in having a teleconference with FTA and the City
> or with FTA only, please let me know and we could set one up for this
> week or early next week.
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> Thank you,
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> Liz
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> Elizabeth Zelasko
>
> Federal Transit Administration
>
> Office of Planning and Environment
>
> 1200 New Jersey Avenue, SE
>
> Washington, DC 20590
>
>
>
> elizabeth.zelasko@dot.gov
>
> (202) 366-0244
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