



U S. Department
of Transportation
**Federal Transit
Administration**

REGION IX
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American Samoa,
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SEP 17 2009

Mark Kawika McKeague, Chair
Oahu Island Burial Council
Department of Land and Natural resources
State Historic Preservation Division
State of Hawai'i
601 Kamokila Boulevard
Kapolei, HI 96707

RE: Honolulu High Capacity Transit Corridor
Project – Section 106 Programmatic
Agreement

Dear Mr. McKeague:

Thank you for your interest in the Honolulu High-Capacity Transit Corridor Project and your letter requesting that the Oahu Island Burial Council (OIBC) be made an invited signatory to the Section 106 Programmatic Agreement (PA) for this project. In evaluating the eligibility of properties, the Federal Transit Administration (FTA) must acknowledge the special expertise of interested Native Hawaiians in assessing the cultural and religious significance of historic properties. In inviting the OIBC and other Native Hawaiian organizations to be consulting parties to this agreement, FTA has met its responsibilities under 36 C.F.R. 800.3(f)(2).

We note that under the Protection of Historic Properties statute a federal agency "...may invite any Indian tribe or Native Hawaiian organization... to be a signatory." (800.6(c)(2)(ii) Federal agencies are then prompted: "the agency official should invite any party that assumes a responsibility under the MOA to be signatory." (800.6(c)(2)(ii) Clearly, the Federal agency may use its discretion on whether to invite participating parties as signatories or concurring parties based upon their degree of responsibility in enforcing the provisions of the PA.

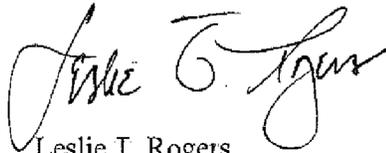
The FTA has determined that the Programmatic Agreement will be between four parties; FTA, the State of Hawaii Historic Preservation Division, the City and County of Honolulu, and the Advisory Council on Historic Preservation since they bear the primary responsibility for enforcement. The Oahu Burial Council will be invited to sign the agreement as a concurring party, along with the other partners in the consultation process.

FTA appreciates the special role that the OIBC plays in addressing burial site issues and representing the views of native Hawaiians. The Programmatic Agreement clearly outlines the role of the OIBC and the responsibility of the parties to the agreement to consult with the OIBC. Given that the role and responsibility of the OIBC are clearly outlined in State legislation, and the strong interest of the OIBC in serving in that role, it is unnecessary for the OIBC to sign an agreement to commit the OIBC to performing these functions. By signing as a concurring party, the OIBC will be acknowledging their role and their understanding of the obligations of the other parties to consult with the OIBC.

If you feel the Programmatic Agreement does not sufficiently outline the actions that the parties to the agreement should take in regard to the interests of the OIBC, please suggest necessary changes to the document as part of the ongoing consultation process.

Thank you for your continuing interest in the project and your participation in the Section 106 Programmatic Agreement Consultation process.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leslie T. Rogers".

Leslie T. Rogers
Regional Administrator

cc: Faith City and County of Honolulu Department of Transportation Services
Blythe Semmer, Advisory Council on Historic Preservation
Pua Aiu, State of Hawaii, State Historic Preservation Division
Elaine Jackson-Retondo, National Park Service Pacific West Region