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Preserving America's Heritage

September 2, 2009

The Honorable Peter M. Rogoff
Administrator
Federal Transit Administration
1200 New Jersey Ave. SE
Washington, DC 20590

RE: Honolulu High-Capacity Transit Corridor Project
Honolulu, Hawaii

Dear Mr. Rogoff:

The Advisory Council on Historic Preservation (ACHP) is contacting you for your assistance in handling a complicated situation. By letter of August 4, 2009, we notified you that the ACHP would participate in the Section 106 consultation process for the referenced undertaking pursuant to 36 CFR §800.6(b)(2) of our regulations, "Protection of Historic Properties" (36 CFR Part 800). Since formally entering consultation two weeks ago, we have observed that consulting parties are not receiving meaningful responses to the historic preservation issues they have raised regarding the Honolulu High-Capacity Transit Corridor Project. The consultation process to negotiate a Programmatic Agreement (PA), therefore, is being compromised. We hope that with this follow up notification to headquarters, experienced Federal Transit Administration (FTA) staff can become involved in this matter to avoid an impasse in reaching agreement on how adverse effects to historic properties will be handled as this project is implemented.

Other consulting parties, particularly local preservationists, have expressed frustration with a lack of communication from the applicant, the City and County of Honolulu Department of Transportation Services (City), regarding the consideration of measures to avoid, minimize, and mitigate adverse effects to historic properties from this undertaking. It is unclear to what extent the City is collaborating with FTA regional staff about the mitigation measures proposed by consulting parties or whether FTA policies and guidance inform the City's responses. Consulting parties are especially concerned about the apparent limitation of mitigation measures to properties directly affected by project construction and the emphasis on recordation as the primary mitigation strategy. We seek input from headquarters before moving forward about whether these approaches are guided by FTA policy.

Related concerns involve the City's role in the development and implementation of a PA. The City has asserted that it does not plan to sign a final PA for this undertaking given certain local

legislative requirements. As ACHP is not familiar with local requirements related to legal agreements, we cannot address this issue. It is critical, therefore, that FTA clarify who can sign an agreement on behalf of the applicant or how the City will commit to the implementation of mitigation measures when not an invited signatory to a PA. We are awaiting a response from FTA or the City to questions about the City's strategy to foster transit-oriented development along the proposed corridor. It has been difficult to obtain information about how local agencies are collaborating on this high-profile project or whether the City Department of Transportation Services' explanation of a defined demarcation of the lines of authority reflects FTA's planning approach. Our concern is that indirect and cumulative effects of transit projects be addressed through comprehensive planning that includes historic preservation.

Regrettably, contractors to the applicant have taken the lead in recent teleconferences and electronic communication. While our regulations permit the use of contractors to prepare information, analyses, and recommendations in the Section 106 process [§800.2(a)(3)], FTA's endorsement of these documents and responses should be evident. At this juncture, consulting parties feel that it is contractors to the applicant that have assumed the role of decision maker. The participation of headquarters staff in providing guidance to Region IX and the City would help to manage the consultation process and engage consulting parties in good faith consultation. Further we could avoid further confusion about FTA's role.

ACHP is eager to assist FTA in meeting its historic preservation responsibilities under Section 106 of the NHPA for an undertaking that will significantly transform Honolulu. If you have any questions or would like to discuss this matter, please contact Blythe Semmer at 202-606-8552 or via e-mail at bsemmer@achp.gov.

Sincerely,

John M. Fowler
Executive Director