From:	Matley, Ted (FTA)
To:	Borinsky, Susan (FTA); Ossi, Joseph (FTA); Barr, James (FTA); Bausch, Carl (FTA); Ryan, James (FTA)
CC:	Marler, Renee (FTA); Carranza, Edward (FTA); Rogers, Leslie (FTA)
Sent:	8/25/2009 2:20:44 PM
Subject:	Requirement for Honolulu to sign PA as a binding signatory

Susan,

Renee had a conversation today with the Legal Counsel and Toru at the City of Honolulu. They are unhappy with the requirement that they sign the 106 Programmatic Agreement (PA) as a party bound by the agreement (I'm not sure of the correct terminology). They preferred to sign as a consulting party because they had determined that they are not legally bound by this action and would not have to refer the agreement to the City Council for authority to enter into the agreement. As we discussed, we feel this requirement is necessary since they should get the City Council on board with the mitigation agreed to and FTA is concerned by their past history so as to wish for additional assurances on their part. They are concerned that this requirement will politicize the agreement, add time to the project timeline, and that FTA is holding them to different standard. Legally they argue that the LONP and eventually the FFGA would be sufficient to bind them to implement the PA.

Also be aware that the Advisory Council on Historic Preservation is involved in the Consultation and the development of this agreement and they have expressed that this would be unusual (but not illegal or unprecedented) to not have the City sign as FTA has suggested. We all agree that this is not a legal requirement but a requirement within FTA's authority as FTA deems necessary.

Renee will be informing them that this requirement has been determined to be necessary by Region IX in consultation with TPE. Please be aware that this issue may be elevated to TPE or higher by Honolulu.

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Region IX

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