From:	Matley, Ted (FTA)
To:	Ossi, Joseph (FTA); Sukys, Raymond (FTA); Marler, Renee (FTA); Barr, James (FTA)
CC:	Rogers, Leslie (FTA)
Sent:	8/13/2009 12:10:11 PM
Subject:	Discuss Honolulu 106 issues
Attachments:	Honolulu PA Stipulations not Included.doc; Oahu Burial Council.pdf

Hello all please let me know if you are available at 1:30 PM Monday August 17 Eastern and 10:30 AM Pacific for a conference call to discuss issues on the City of Honolulu 106 Programmatic agreement.

If you are not available then please indicate what availability you have on Monday or Tuesday August 18.

Issue One: Updated news here - The City doesn't want to be a signatory to the PA. They have said now that they will sign as a concurring party. Their legal opinion is that if they sign as a concurring party they are saying the City agrees with the terms, but is not bound to them – therefore they are not entering into an agreement so City Council approval is not required. The City claims that it will be bound under FTA grant agreements to implement the PA so it is not required to be a signatory. In course of discussion it became clear the primary reason the City didn't want to be a signatory is that they had determined that the Executive branch (the Mayor) didn't have authority to enter into the PA without City Council approval and the City doesn't want to go there. There is a strong opinion in FTA that for legal and other issues involving the need for concurrence of the City Council for mitigation actions, the City should be a signatory. Also the ACHP has verbally stated in consultation meetings that they feel the City should be a signatory. This will likely not make the Mayors office very happy, so we'd like to discuss and confirm our position before we communicate this to the City.

Issue Two: City staff has determined that there are several mitigation efforts that are being requested by consulting parties that are beyond their authority or ability (see attached document on stipulations not included in PA). The consulting parties, including SHPD and ACHP want to know FTA's position on these determinations, basically whether we agree with the City's position. The City may have a point in that some requests are to create programs or positions that the Transportation Division cannot implement (which may get back to the City Council issue). Also, the City says the SHPD and HHF position is that the project and the TOD ordinance adopted by the City to support the project will spur cumulative impacts through development that will affect historic properties. They City claims this is speculative and unspecific, and also outside the APE in some cases. Right now, FTA is being pressed by the consulting parties (including ACHP) to make some statement about the City's determination. Does FTA want to adopt and express a position on these issues, or just send the parties back to the negotiating table without comment?

Issue Three: Both the Oahu Burial Council (OBIC) and the Office of Hawaiian Affairs (OHA) have expressed interest in being invites signatories to the PA. Only the OBIC has sent a letter to FTA requesting this status, the OHA simply stated in a comment letter to the City on the 106 process that they urged that OHA and OIBC be invited signatories. The PA states that the OIBC will be involved in burial issues as required by Hawaii law and does discuss their role, the OHA isn't mentioned. Since the role of the OIBC is covered in law, and since we haven't found a precedent to the OIBC or the OHA being invited in a PA from USDOT or any recognition of the OIBC or the OHA as recognized representatives of Native Americans, we don't see a compelling reason to include them as invited signatories. However, we should likely respond in writing to the OIBC. We would like to confirm this position before we respond to OIBC.

Thanks,

Ted

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