November 23, 2009

NATIONAL TRUST FOR HISTORIC PRESERVATION®

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Regional Administrator
Federal Transit Administration
201 Mission St., Suite 1650
San Francisco, CA 94105

Wayne Yoshioka, Director
Department of Transportation Services
City & County of Honolulu
650 South King St.
Honolulu, Hawaii 96813

Re: Comments on Draft PA for Honolulu Rapid Transit Project

Dear Mr. Rogers and Mr. Yoshioka:

As a follow-up to the Section 106 consultation meeting and conference call on Friday, November 13, 2009, the National Trust submits the following comments regarding the most recent Draft Programmatic Agreement (PA).

The Area of Potential Effects (APE) Map is Erroneous and Needs to be Corrected.

On November 12, the consulting parties received an e-mail from PBWorld with a link to an FTP site where we could download the current copy of the APE Maps, which will be Attachment 1 to the PA. The map document on the FTP site was dated November 5, 2009. However, the individual map panels within the 44-page document are each dated July 24, 2008! Needless to say, the Section 106 determinations have changed dramatically since that time. This set of maps will be crucial to the implementation of the PA. Given their importance, we were surprised to discover that this document is so incomplete, inaccurate, and out of date. It needs to be substantially revised before the PA can be finalized:

- **The APE Map Fails to Delineate the APE.**

First, the map does not actually outline the boundary of the APE, but simply shows a thin colored line representing the guideway itself. The APE needs to be added to the map, as well as the 2,000-foot radius around each station, so that the document clearly delineates exactly what is and is not included within the APE and the 2,000-foot radius.

- **The APE Map Fails to Illustrate the Proposed Footprint of the Stations and Related Infrastructure.**

Second, each station is indicated by a red rectangular icon on the map, which does not correspond with the actual size and footprint of the station structure. The maps

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provide no information at all regarding the proposed location or size of the structures that would provide pedestrian access to the elevated platforms.

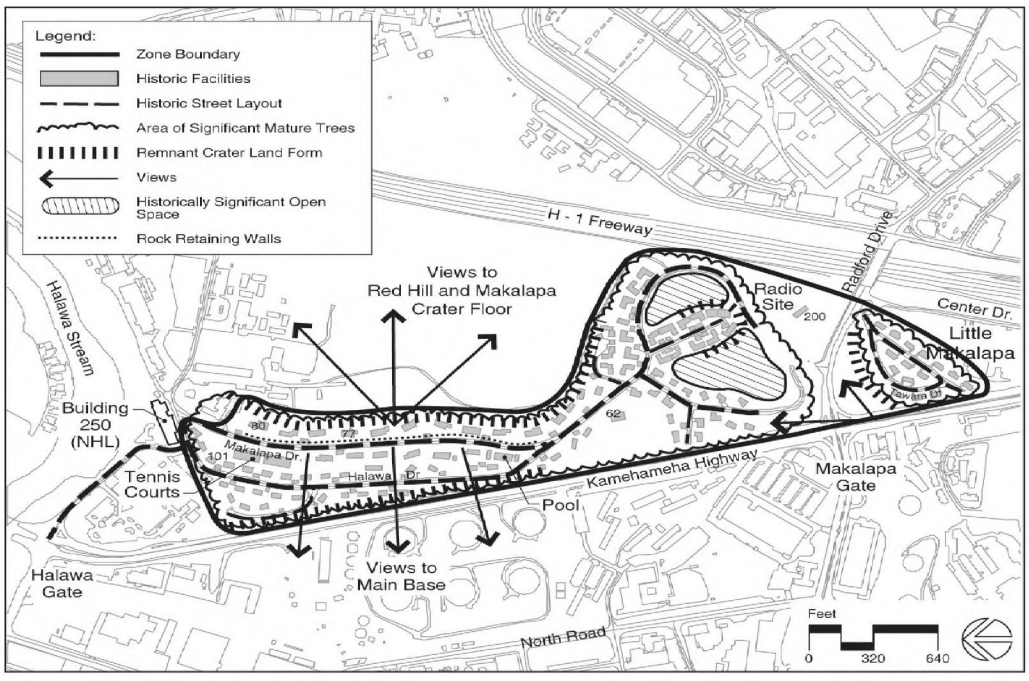
- **The Maps Should Not Include an Alternative Route that Has Already Been Rejected.**

The delineation of the Salt Lake Boulevard alternative should be removed from the document, including pages 22-27 of the 44-page electronic document (map panes 27-32). These only cause confusion.

In addition, the maps should be sequenced from west to east, rather than the current organization, which jumps back and forth from Aloha Stadium to the downtown section and back to Aloha Stadium again.

- **Historic District Boundaries for Makalapa, Adjacent to the Pearl Harbor Stop, are Inaccurate.**

The APE maps also show inaccurate historic district boundaries at the Pearl Harbor stop for the Makalapa housing district. The Makalapa housing areas are owned by the Navy, and are directly addressed in the Integrated Cultural Resources Management Plan (ICRMP) issued by the Navy in 2002. The ICRMP shows the entire complex of Makalapa and Little Makalapa as a single, integrated historic zone:



(From Navy Region Hawaii, ICRMP, Pearl Harbor Naval Complex, p. 3-222 (2002).) Note the key views from the Makalapa Gate toward the landscape across the Kamehameha Highway (indicated by arrows).

By contrast, the City has proposed two separate historic districts for Makalapa and Little Makalapa, and has carved out most of the landscape across from the Makalapa Gate in an apparent effort to downplay or deny the substantial adverse impacts of the rapid transit project – including direct, physical encroachment – on the historic landscape and setting for Makalapa.

(From Historic Effects Report, p.153 (April 15, 2009))
(cross-hatched area indicates landscape improperly excluded from district)

(From APE maps, pp. 37-38/panes 41-42)
(cross-hatched area indicates landscape improperly excluded from district)

This manipulation of the Makalapa boundaries cannot be justified, especially since the Navy, which owns this land, and will be required to comply with Section 106 prior to approving any use of the land for the transit project, has already determined in its 2002 ICRMP that the landscape and open space are integral components and character-defining features of the Makalapa Housing Zone.

These incorrect boundaries also call into question the City's "No Adverse Effect" determination for its proposed Little Makalapa historic district. This determination needs to be revised. Instead, the determination should be "Adverse Effect" for the entire unified Makalapa historic district.

Specific Comments on the Programmatic Agreement

In the week following our consultation meeting on November 13, the National Trust conferred with several of the other preservation partners in developing a specific proposal for revised language regarding two provisions – the stipulation describing the design review process, and the provision for monitoring potential secondary and cumulative effects of the transit project. We had commented during the conference call that we would recommend additional detail for both of these. Our specific proposals for revised language are attached, but this letter will outline and summarize our concerns and recommendations.

- The Draft Stipulation for Design Review Needs Additional Clarification.

    - It is not clear whether the *Design Language Pattern Guidebook* has been prepared yet. (For example, we cannot find this document on the project website.) If the *Guidebook* has not yet been issued, the PA should specify a clear deadline for completing the *Guidebook*, and should explain the proposed relationship between the *Guidebook* and the design workshops. Is the *Guidebook* supposed to be a resource for the design workshops? If so, further design workshops should be deferred until after the *Guidebook* is completed. Alternatively, if the *Guidebook* is supposed to be prepared after design workshops are completed, then the PA should explain how the *Guidebook* would be used to influence the preliminary engineering design plans.

    - The draft provision for Design Review needs to be more specific in describing the procedure for resolving disputes. We anticipate that most of the stations in the vicinity of historic properties and districts will *not* be consistent with the *Secretary's Standards*. More detail is needed regarding who will make the determination regarding consistency with the *Standards,* how disputes will be resolved, and what kind of "treatment" measures will be adopted to address the resulting adverse effects (i.e., ways to minimize and mitigate harm, since the adverse effect will not be avoided).

- **The Draft Stipulation for Monitoring Future City Permits to Address Secondary and Cumulative Impacts Needs Strengthening.**

At our informal consultation meeting on October 26, 2009, where we discussed the concept for monitoring City permits, Historic Hawaii Foundation and the National Trust suggested several procedures, which were not incorporated into the most recent draft. These include:

  - Monitoring permit applications for major alterations, in addition to demolition permits, since transit-generated projects involving adverse effects to historic properties would not be limited to those involving complete demolition;

  - Notice of permit applications at the time of filing with the City, so that consulting parties can use the City's existing land use review process to influence the outcome of the permit decision, rather than simply waiting for after-the-fact notification, when it's too late to avoid or minimize the adverse effect; and

  - Consultation regarding the issue of whether the permit application is related to or caused by the transit project, with an opportunity to resort to dispute resolution procedures in the event of a disagreement regarding causation or the treatment plan. (The most recent draft of the PA does not spell out a procedure for making the causation determination.)

We have suggested specific revised language to incorporate these requested provisions. At this point, we have proposed including alteration permits as part of the ongoing notice requirement to consulting parties, but not as part of the quantitative analysis that would trigger mandatory consultation, in light of the added complexity. Notice would at least allow the consulting parties to monitor alteration permits themselves, and to invoke the dispute resolution procedures if unanticipated effects arise. However, if other consulting parties feel strongly that alteration permits should be included in the quantitative analysis, we would be amenable to such a provision.

Historic Hawaii Foundation's Comments Warrant a More Thoughtful Response.

We support the request of the Historic Hawaii Foundation in an e-mail to FTA dated November 17, 2009, for a more thoughtful response to its comments on the previous draft PA. We agree that the City's response was surprisingly dismissive, in light of HHF's history of constructive consultation on this undertaking.

Thank you again for the opportunity to provide written follow-up comments on the draft PA following our November 13 consultation meeting.

Sincerely,

Elizabeth Merritt

Elizabeth S. Merritt
Deputy General Counsel

cc: Ted Matley, FTA
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Susan Tasaki, SHPD
Oahu Island Burial Council
Kiersten Faulkner, Historic Hawaii Foundation
Katie Kastner, Historic Hawaii Foundation
Spencer Leinweber, AIA
Brian Turner, NTHP

Exhibit A – Specific Proposed Revisions to Programmatic Agreement

IV. Design Standards

A. The City shall prepare a draft *Design Language Pattern Guidebook,* and distribute to all consulting parties, who will have 30 days to comment on the draft. The City shall take into account all comments received in preparing the final *Guidebook*, which will be completed prior to [WHEN]. The City shall follow the standards set forth in the Project's *Design Language Pattern Guidebook*, as appropriate, for all Project elements. For stations within the boundary of or ~~directly~~ adjacent to an eligible or listed historic property, the City shall be guided by ~~the~~ *The Secretary of the Interior's Standards for the Treatment of Historic Properties* contained in 36 CFR 68 and will make every effort to avoid adverse effects to all historic properties. If the SHPD determines that the ~~standards~~ *Standards* have ~~can~~not be~~en applied~~ met,** the City shall convene the consulting parties to ~~discuss the situation and propose any potential~~ develop a treatment plan, prior to final design for the project element that is inconsistent with the *Standards*, to ~~avoidance,~~ minimize~~ation, or~~ and mitigat~~ion~~ harm to historic properties. ~~measures that may be necessary.~~ In the event that the parties are not able to agree on a treatment plan, or on whether the *Secretary's Standards* have been met, the parties may invoke the dispute resolution clauses of Stipulations XII.C. and/or XIII.B.

** [This is necessary because the current draft does not include a process for making this determination or who has the final say. We anticipate disagreements over this issue, which will need a clear procedure for resolution.]

B. The City shall conduct a minimum of two neighborhood design workshops** for each grouping of no more than three or four stations. The City shall notify all consulting parties ~~of the~~ at least two weeks prior to each workshop~~s~~ and consider any comments received when ~~completing~~ preparing the station design.

** [Since the City has already conducted both design workshops for the first three "groupings" -- Waipahu, Kapolei, and Leeward Community College -- and is about to hold the final design workshop for Pearlridge, shouldn't this be reflected in a Whereas clause?]

C. After the two design workshops, ~~T~~the City shall provide Preliminary Engineering design plans for built components of the project, such as stations, guideway, and directly related project infrastructure improvements, such as parking lots, pedestrian access, utilities, etc., to the signatories and consulting parties for review and comment. For stations within boundaries of or directly adjacent to listed or eligible historic properties, the City shall also provide plans during the Final Design phase. The signatory and consulting parties shall provide the City with comments on the plans within 30 days of receipt, unless the SHPD seeks an extension of time as provided by law. The City shall consider all comments provided by the signatory and

consulting parties when completing preliminary engineering design ~~build~~ plans ~~or~~ and final design plans.

IX. Measures to Address Reasonably Foreseeable Indirect and Cumulative Effects Caused by the Project

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C. To examine Project impacts related to development along the Project corridor, the City and the consulting parties shall monitor the proposed demolition and substantial alteration of resources built before 1969 within the APE and within a 2,000-foot radius of each station. ~~This shall occur by monitoring demolition permits.~~

1. The City shall notify the consulting parties within 15 days of any permit application(s) being filed with the City, for any pre-1969 property within the APE and the 2,000-foot radius, which would affect any of the following: demolition; exterior alteration; alterations to building footprint; alterations to massing; and alterations to doors and/or windows.

2. The City shall establish a baseline for demolitions by calculating an annual average and standard deviation of demolitions that occurred within these areas between 2005 and 2008. The City shall include this baseline data in the second six-month report submitted pursuant to Stipulation XIII.D.2. Thereafter, each six-month report shall include specific information on the location of all pre-1969 properties for which demolition permits have been filed during the six-month period within the APE and the 2,000-foot radius.

3. The ~~SHPD~~ City** shall ~~provide~~ also compile and distribute to the consulting parties location information on eligible or listed historic properties within the 2,000-foot radius of each station location and include this information with the first six-month report submitted pursuant to Stipulation XIII.D.2.

** [Identification of these historic properties is the legal responsibility of the FTA and the City. The SHPO should review the agencies' determinations, but should not be saddled with doing their work in the first instance.]

4. If a permit application is submitted for the demolition of any historic property previously listed in or determined eligible for listing in the NRHP, or if in any year the total number of demolition permits ~~of~~ for eligible resources within the APE ~~or~~ and resources within the station areas that were built before 1969 is greater than one standard deviation above the established average ~~during the course of Project construction~~, ~~or when the proposed demolition of any historic property previously listed in or determined eligible for listing in the NRHP occurs~~, the City shall convene the consulting parties within 30 days (but with at least seven days' notice) to determine whether ~~and~~ these proposed demolitions are directly related to development or rezoning pressures resulting from the Project.** If the parties agree that the proposed demolition is related to or induced by the

Project, the consulting parties shall ~~convene to discuss~~ develop and~~/or~~ implement a ~~consultation process~~ plan that would ~~develop approaches to~~ minimize and mitigate harm to historic properties, and enhance ~~historic properties~~ their protection. If the consulting parties are unable to agree on either the cause of the proposed demolition or the plan developed in response to the demolition permit, the parties may invoke the dispute resolution clauses of Stipulations XII.C. and/or XIII.B.

** [This is necessary because the current draft does not include a process for making this determination or who has the final say. Disagreements could occur over this issue, which would need a clear procedure for resolution.]

XIII. Administrative Provisions

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C. Duration

1. This PA shall take effect on the date it is signed by the last signatory and shall be in effect until ~~the completion of construction, which is anticipated in 2018,~~ December 31, 2021,** or terminated pursuant to Stipulation XIII.H. [ADD ACHP LANGUAGE RE POTENTIAL FOR EXTENSION.]

** [The 2021 date is proposed to correspond with the duration of the Historic Preservation Committee in Stipulation IX.B. – i.e., 3 years after the completion of construction]