From: Barr, James (FTA)
To: Ossi, Joseph (FTA); Matley, Ted (FTA); Sukys, Raymond (FTA)
CC: Bausch, Carl (FTA)
Sent: 9/16/2009 8:18:54 AM
Subject: RE: Honolulu Transit 4F processes

We have adverse effects on a number of historic properties.
We have no constructive uses (believe it or not).
We have de minimis impacts on several public parks.

From: Ossi, Joseph (FTA)
Sent: Wednesday, September 16, 2009 1:48 PM
To: Barr, James (FTA); Matley, Ted (FTA); Sukys, Raymond (FTA)
Cc: Bausch, Carl (FTA)
Subject: RE: Honolulu Transit 4F processes

There is always this danger in mixing up 4(f) and 106 in our reviews. We should always keep them as separate as we possibly can.

Section 4(f) does not apply if there is no use of the historic property. The correspondent below is assuming that an adverse effect under 106 equates to a use under 4(f). It does not.

If there is a physical use of the historic property by our project, but that use results in a no-adverse-effect finding under 106, then the use has de minimis impact and our section 4(f) finding would be just that, a de minimis impact finding.

However, if there is no physical use of the historic property, then section 4(f) **does not apply** whether or not the section 106 process results in an adverse-effect finding. (The only exception is the very rare case where the proximity impacts of the project are so severe that they constitute a substantial impairment of the protected activities, features or attributes of the historic property. Our position should be that this does not occur with this project.) Correct me if I am wrong, but I suspect that none of the adverse effects identified after the DEIS involve a historic property that the project uses. If I am right, then 4(f) does not apply to these properties.

Joe Ossi
FTA Office of Planning and Environment
(202) 366-1613

From: Kiersten Faulkner [mailto:Kiersten@historichawaii.org]
Sent: Tuesday, September 15, 2009 10:53 PM
To: Barr, James (FTA); keabad@ksbe.edu
Cc: fmiyamoto@co.honolulu.hi.us; Spurgeon@pbworld.com; rtam1@honolulu.gov; kpatterson@honolulu.gov; Hogan@pbworld.com; Aranda@infraconsultllc.com; Foell@pbworld.com; Dahleen@pbworld.com; jeff@jn-architects.com; amy@aiahonolulu.org; aspencer@hawaii.edu; katie@historichawaii.org; chazinhawaii@aol.com; sherry_campagna@hotmail.com; frank_hays@nps.gov; Elaine_Jackson-Retondo@nps.gov; Melia_Lane-Kamahele@nps.gov; taahine.hina@gmail.com; kawikam@hawaii.rr.com; pua.aiu@hawaii.gov; Nancy.A.McMahon@hawaii.gov; Susan.Y.Tasaki@hawaii.gov; bsemmer@achp.gov; Matley, Ted (FTA); deepak@hcdaweb.org; keolal@oha.org; malamapono@aol.com; lani@aukahi.com; Brian_Turner@nthp.org; Elizabeth_Merritt@nthp.org; john.muraoka@navy.mil; pamela.takara@navy.mil; tware@honolulu.gov; ksokugawa@honolulu.gov; mmcdermott@culturalsurveys.com; hhammatt@culturalsurveys.com; Sukys, Raymond (FTA); Bausch, Carl (FTA); Ossi, Joseph (FTA)
Subject: Honolulu Transit 4F processes

Mr. Barr:
Thank you for copying Historic Hawai'i Foundation on your email to Ms. Abad about the FTA's 4(f) responsibilities related to the Honolulu Rapid Transit undertaking.

In your message, you refer to the determinations of effect on historic properties contained in the draft environmental impact statement, and state that, "For historic sites, a *de minimis* impact means that FTA has determined (in accordance with 36 CFR Part 800) that either no historic property is affected by the project or that the project will have "no adverse effect" on the historic property."

It is important to note that the list of adverse effects in the DEIS were preliminary. The list in Chapter 5 of the DEIS is inconsistent with the current determinations being discussed as part of the Section 106 consultation. The current list is much more complete, and includes effects on the Chinatown Historic District, the Merchant Street Historic District, the Pearl Harbor NHL, and 30 other historic properties.

Since, as you state, "For historic sites, a *de minimis* impact means that FTA has determined (in accordance with 36 CFR Part 800) that either no historic property is affected by the project or that the project will have "no adverse effect" on the historic property," and, in fact, FTA did determine that there will be "adverse effect" on 33 historic properties, a "de minimis" finding is not applicable in this case. Therefore, it is inappropriate to use this provision to attempt to avoid the analysis of feasible and prudent alternatives.

Further, It is important to remember that whereas Section 106 is concerned with adverse effects, 4(f) is concerned with use and the two are not interchangeable. A use may occur from proximity impacts of a transportation project on a section 4(f) property, even without acquisition, including if impacts such as noise, access restrictions, vibration, ecological intrusions, and visual impacts are so great that the purposes of the property are substantially impaired.

We also take note of provisions related to "late discovery," which refers to the discovery of a Section 4(f) resource after the NEPA or location approval. Be aware that, depending on the particular resources and uses involved in the project, the preferred alternative prior to the late discovery may change. If a late discovery occurs, a supplemental or revised Section 4(f) evaluation is likely to be required. The findings of the coordination and documentation may result in changes to the construction plans, including the selection of a new alternative. Failure to make such changes, or to undertake proper coordination and provide documentation, could result in Section 4(f) use. It would be prudent to take every precaution to avoid this type of use, since it may cause considerable disruption to a project schedule.

Very truly yours,

Kiersten Faulkner

Historic Hawai'i Foundation

From: James.Barr@dot.gov [mailto:James.Barr@dot.gov]
Sent: Tuesday, September 15, 2009 9:25 AM
To: keabad@ksbe.edu
Cc: fmiyamoto@co.honolulu.hi.us; Spurgeon@pbworld.com; rtam1@honolulu.gov; kpatterson@honolulu.gov; Hogan@pbworld.com; Aranda@infraconsultllc.com; Foell@pbworld.com; Dahleen@pbworld.com; jeff@jn-architects.com; amy@aiahonolulu.org; aspencer@hawaii.edu; Kiersten@historichawaii.org; katie@historichawaii.org; chazinhawaii@aol.com; sherry_campagna@hotmail.com; frank_hays@nps.gov; Elaine_Jackson-Retondo@nps.gov; Melia_Lane-Kamahele@nps.gov; taahine.hina@gmail.com; kawikam@hawaii.rr.com; pua.aiu@hawaii.gov; Nancy.A.McMahon@hawaii.gov;

Susan.Y.Tasaki@hawaii.gov; bsemmer@achp.gov; Ted.Matley@dot.gov; deepak@hcdaweb.org; keolal@oha.org; malamapono@aol.com; lani@aukahi.com; Brian_Turner@nthp.org; Elizabeth_Merritt@nthp.org; john.muraoka@navy.mil; pamela.takara@navy.mil; tware@honolulu.gov; ksokugawa@honolulu.gov; mmcdermott@culturalsurveys.com; hhammatt@culturalsurveys.com; Raymond.Sukys@dot.gov; Carl.Bausch@dot.gov; Joseph.Ossi@dot.gov
Subject: RE: Programmatic Agreement revisions and proposed stipulations

Kehau:

Please allow me to explain FTA's 4(f) responsibilities. The Department of Transportation Act of 1966 included an environmental provision (Section 4(f)) that had a major impact on highway and transit projects. (see 23 CFR 771.135)

Section 4(f) stated:
The Secretary shall not approve any program or project which requires the use of any land from a public park, recreation area, wildlife and waterfowl refuge, or historic site unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park, recreational area, wildlife and waterfowl refuge, or historic site resulting from such use. To use a Section 4(f) resource, Federal officials must find that alternatives to doing so present unique problems or unusual factors or that the cost, environmental impacts, or community disruption would reach extraordinary magnitude. Any potential adverse impacts on a Section 4(f) resource, as well as possible uses, are formally documented during review of the project under the National Environmental Policy Act of 1969.

For a complete evaluation of project related 4(f) uses and impacts please see Chapter 05 of the Honolulu High Capacity Transit Corridor Project, DEIS and section 4(f) Evaluation (November 2008). This evaluation is currently being updated and discussed internally in the administrative draft of the project FEIS. You will find elements of this evaluation in the Draft Programmatic Agreement.

Recent SAFETEA-LU amendments modified considerations for section 4(f). For publicly owned public parks, recreation areas, and wildlife and waterfowl refuges, a *de minimis* impact may be found. A *de minimis* impact is one that will not adversely affect the activities, features, or attributes of the property. For historic sites, a *de minimis* impact means that FTA has determined (in accordance with 36 CFR Part 800) that either no historic property is affected by the project or that the project will have "no adverse effect" on the historic property.

A *de minimis* impact determination does not require analysis to determine if avoidance alternatives are feasible and prudent, but consideration of avoidance, minimization, mitigation or enhancement measures should occur. There are certain minimum coordination steps that are also necessary. We at FTA believe that we have completed these steps. A preliminary list of *de minimis* impacts can be found in a table on page 5-6 of the project DEIS.

If OIBC believes that FTA is not meeting its requirements under Section 4(f), we welcome your input by discussing proposed stipulations in the Draft PA that would meet those requirements.

We agree that circulating meeting minutes to all participants would be beneficial, and we are working on that. An official response to OBIC's request for signatory status will be immediately forthcoming.

Thank you;

Jim Barr

From: Kehau Abad [mailto:keabad@ksbe.edu]

Sent: Monday, September 14, 2009 11:58 PM
To: Assum-Dahleen, Laura; Jeff; Amy Blagriff; aspencer@hawaii.edu; Kiersten Faulkner; katie@historichawaii.org; chazinhawaii@aol.com; Sherry Campagna; frank_hays@nps.gov; Elaine_Jackson-Retondo@nps.gov; Melia_Lane-Kamahele@nps.gov; Hinaleimoana Falemei; Kawika McKeague; pua.aiu@hawaii.gov; Nancy.A.McMahon@hawaii.gov; Susan.Y.Tasaki@hawaii.gov; Blythe Semmer; Matley, Ted (FTA); Barr, James (FTA); deepak@hcdaweb.org; keolal@oha.org; malamapono@aol.com; lani@aukahi.com; Brian_Turner@nthp.org; Elizabeth_Merritt@nthp.org; john.muraoka@navy.mil; pamela.takara@navy.mil; Ware, Terrance; Sokugawa, Kathy K.; mmcdermott@culturalsurveys.com; hhammatt@culturalsurveys.com
Cc: Faith Miyamoto (Honolulu DTS; Spurgeon, Lawrence; rtam1@honolulu.gov; kpatterson@honolulu.gov; Hogan, Steven; Judy Aranda; Foell, Stephanie
Subject: RE: Programmatic Agreement revisions and proposed stipulations

Aloha no kakou,

For months now the OIBC has been anticipating a written response from the FTA regarding our and the City's request to have the OIBC included as an invited signatory to the PA. In the September 11 meeting, we further voiced our specific interest in the FTA's legal analysis of its verbal assertion that the OIBC does not have the standing to be an invited signatory to the PA. We continue to look forward to receiving the FTA's correspondence.

We also feel that receipt of the meeting minutes is critical to our productive participation in the PA consultations. While we have our own notes to rely upon, we would appreciate seeing how those holding the consultation are interpreting the discussions. If we might receive such minutes, we would be most appreciative.

We further believe that a crucial unanswered question must be addressed before we can offer appropriate suggestions to improve the PA: How, if at all, is the PA addressing the FTA's Section 4f responsibilities? This question was asked a few times at the September 11 meeting but was not answered. Without an answer to this question, we are unable to respond to the request for suggested amendments to the draft PA.

Respectfully,
Kehau Abad
OIBC member

From: Assum-Dahleen, Laura [mailto:Dahleen@pbworld.com]
Sent: Monday, September 14, 2009 12:25 PM
To: Jeff; Amy Blagriff; aspencer@hawaii.edu; Kiersten Faulkner; katie@historichawaii.org; chazinhawaii@aol.com; Sherry Campagna; frank_hays@nps.gov; Elaine_Jackson-Retondo@nps.gov; Melia_Lane-Kamahele@nps.gov; Hinaleimoana Falemei; Kehau Abad; Kawika McKeague; pua.aiu@hawaii.gov; Nancy.A.McMahon@hawaii.gov; Susan.Y.Tasaki@hawaii.gov; Blythe Semmer; theodore.matley@fta.dot.gov; james.barr@fta.dot.gov; deepak@hcdaweb.org; keolal@oha.org; malamapono@aol.com; lani@aukahi.com; Brian_Turner@nthp.org; Elizabeth_Merritt@nthp.org; john.muraoka@navy.mil; pamela.takara@navy.mil; Ware, Terrance; Sokugawa, Kathy K.; mmcdermott@culturalsurveys.com; hhammatt@culturalsurveys.com
Cc: Faith Miyamoto (Honolulu DTS; Spurgeon, Lawrence; rtam1@honolulu.gov; kpatterson@honolulu.gov; Hogan, Steven; Judy Aranda; Foell, Stephanie
Subject: Programmatic Agreement revisions and proposed stipulations

Aloha Section 106 Consulting Parties!
In preparation for next week's Section 106 Consulting Parties meeting, proposed stipulations or any revisions to the draft Programmatic Agreement (PA) are requested by tomorrow, September 15, 2009. A new draft PA will then be transmitted on Thursday, September 17, 2009 to the consulting parties. This draft will be discussed at the Monday, September 21, 2009 meeting. Your continuing efforts in this matter are greatly appreciated. Thanks.
Everyone, any comments/revisions are welcomed. Please send to Laura Assum-Dahleen at dahleen@pbworld.com.
Mahalo!

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