National Trust Comments on

PROGRAMMATIC AGREEMENT

Among the
U.S. Department of Transportation Federal Transit Administration
The Hawai'i State Historic Preservation Officer
The United States Navy
and the Advisory Council on Historic Preservation
Regarding the
Honolulu High-Capacity Transit Corridor Project
in the City and County of Honolulu, Hawai'i

WHEREAS, the City and County of Honolulu (City) Department of Transportation Services (DTS) is proposing the Honolulu High-Capacity Transit Corridor Project (Project or Undertaking) on O'ahu and is seeking financial assistance from the U.S. Department of Transportation Federal Transit Administration (FTA) for the Project, which is therefore a Federal undertaking subject to Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 U.S.C. § 470f) and its implementing regulation at 36 C.F.R. pt. 800; and

Comment [E1]: Apparently the City has established a new agency - the Public Transit Authority - which will be taking over the role of the DTS.

WHEREAS, the proposed Project is an elevated, electrically powered, fixed guideway transit system in the east-west travel corridor between East Kapolei and the Ala Moana Center via the Honolulu International Airport with an approximate length of twenty (20) miles and twenty-one (21) stations; and

WHEREAS, the City Council has authorized DTS to enter into this Programmatic Agreement (PA) through Resolution_____; and

WHEREAS, pursuant to 36 C.F.R. pt. 800, the FTA has consulted with the Hawai'i State Historic Preservation Division (SHPD), which is the State Historic Preservation Office, and the following parties:

- Advisory Council on Historic Preservation (ACHP)
- U.S. Navy (U.S. Naval Base Pearl Harbor)
- Historic Hawai'i Foundation
- National Park Service (NPS)
- National Trust for Historic Preservation
- University of Hawai'i Historic Preservation Certificate Program
- American Institute of Architects
- Hawai'i Community Development Authority
- Office of Hawaiian Affairs
- O'ahu Island Burial Council
- Hui Malama I Na Kupuna O Hawai'i Nei

- Royal Order of Kamehameha
- The Ahahui Ka'ahumanu
- The Hale O Na Ali'i O Hawai'i
- The Daughters and Sons of the Hawaiian Warriors
- Association of Hawaiian Civic Clubs
- Ali'i Pauahi Hawaiian Civic Club
- Ka Lei Maile Ali'i Hawaiian Civic Club
- King Kamehameha Hawaiian Civic Club
- Nānāikapono Hawaiian Civic Club
- Hawaiian Civic Club of Wahiawa
- Ahahui Siwila Hawai'i O Kapolei Hawaiian Civic Club
- Waikīkī Hawaiian Civic Club
- Princess Ka'iulani Hawaiian Civic Club
- Waianae Hawaiian Civic Club
- Merchant Street Hawaiian Civic Club
- Prince Kūhiō Hawaiian Civic Club
- Pearl Harbor Hawaiian Civic Club
- Hawaiian Civic Club of 'Ewa-Pu'uloa
- Kalihi-Palama Hawaiian Civic Club
- Hawaiian Civic Club of Honolulu; and

WHEREAS, in accordance with 36 C.F.R. § 800.10, FTA has notified the Secretary of the Interior of the consultation for FTA's adverse effect determination that the undertaking will have an adverse effect on the United States Naval Base, Pearl Harbor National Historic Landmark (NHL), and the CINCPAC Headquarters Building 250 NHL, and as a result, the NPS has been designated to participate formally in the consultation; and

WHEREAS, the public and consulting parties have been afforded the opportunity to consult and comment on the Project; and

WHEREAS, the FTA, in consultation with the SHPD, has defined the undertaking's Area of Potential Effects (APE) as depicted in Attachment 1 for the Airport Alternative; and

WHEREAS, the FTA, in consultation with the SHPD, has determined that the proposed Project would have an adverse effect on historic properties listed in the

National Register of Historic Places (NRHP) or eligible for listing in the NRHP; and

WHEREAS, the FTA, in consultation with the SHPD, has determined that the following historic properties will be adversely affected by the Project: Honouliuli Stream Bridge; Waikele Stream Bridge and Span over OR&L Spur; 1932 Waiawa Stream Bridge; Waimalu Stream Bridge; Kalauao Spring Bridge; Kalauao Stream Bridge; United States Naval Base, Pearl Harbor NHL; CINCPAC Headquarters Building NHL; Makalapa Navy Housing Historic District; Ossipoff's Aloha Chapel, SMART Clinic, and Navy-Marine Corps Relief Society; Hawai'i Employers Council; Afuso House; Higa Fourplex; Teixeira House; Lava Rock Curbs; Six Quonset Huts; Kapālama Canal Bridge; True Kamani Trees; Institute for Human Services/Tamura Building; Wood Tenement Buildings; Oahu Rail & Land Co. Office and Document Storage Building; Oahu Rail & Land Co. Terminal Building; Nu'uanu Stream Bridge; Chinatown Historic District; Merchant Street Historic District; HDOT Harbors Division Offices; Pier 10/11 Building; Aloha Tower; Irwin Park; Walker Park; HECO Downtown Plant; Dillingham Transportation Building; and Mother Waldron Playground; and

Comment [E2]: The nature of each of these adverse effects needs to be spelled out. None of the documentation identifies these detailed determinations. As noted in subsequent comments, many of the later provisions in the PA cannot be implemented without this information.

Comment [E3]: As discussed in our November 23, 2009 letter, the boundaries of the Makalapa district(s) reflected in the maps in Attachment 1 (Panes 41-42) are inconsistent with the Navy's Integrated Cultural Resource Management Plan (ICRMP). Despite the objections that have been raised, Attachment 1 continues to use a map dated July 24, 2008! If the City and FTA persist in their attempts to gerrymander the Makalapa boundary by carving out the portion of the landscape that the City intends to destroy, this boundary dispute will need to be referred to the Keeper of the National Register.

WHEREAS, an adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for the inclusion in the NRHP in a manner that would diminish the integrity of the property's location, design, setting, materials, craftsmanship, feeling, or association. Adverse effects may include reasonably foreseeable effects caused by the Project that may occur later in time, be farther removed in distance, or be cumulative; and

WHEREAS, the FTA, in consultation with the SHPD, has determined that the Project may adversely affect archaeological sites listed in or eligible for listing in the NRHP, but effects cannot be fully assessed prior to the approval of FTA financial assistance; and

WHEREAS, the FTA and the SHPD have agreed that a phased approach to identification and evaluation of archaeological sites is appropriate, pursuant to 36 C.F.R. § 800.4(b)(2); and

WHEREAS, the timing of activities listed in this PA are estimated based on FTA granting approval to enter final design in 2011, and FTA signing a full-funding grant agreement during 2012. The Project is anticipated to be completed in four construction phases: Phase I: East Kapolei to Pearl Highlands, Phase 2: Pearl Highlands to Aloha Stadium, Phase 3: Aloha Stadium to Middle Street, and Phase 4: Middle Street to Ala Moana Center. The City may request and FTA may approve construction on Phase I to begin prior to FTA granting approval for the project to enter final design; and

WHEREAS, the DTS has included minimization and avoidance measures during project design, including, but not limited to, narrow guideway design, route

selection, station location selection, and contained station footprints, to avoid and minimize adverse effects on historic properties; and

WHEREAS, all built components will follow the Project's *Design Language Pattern Book*; and

WHEREAS, consulting parties and the public will be offered the opportunity to provide ongoing comments on station design and transit-oriented development planning at neighborhood design workshops; and

Comment [E4]: These are commitments that should be enforceable stipulations, not Whereas Clauses. See p.14.

WHEREAS, the City has implemented zoning "overlay districts" to preserve individual and groupings of historic and cultural resources, through the application of architectural and other design guidelines and standards for developments surrounding them; and such overlay districts are already established for Chinatown, Merchant Street, and the Hawai'i Capital (civic center) areas; and

WHEREAS, City Ordinance 09-04 (2009), *Relating to Transit-Oriented Development* (TOD Ordinance), requires the establishment of transit-oriented development zones (TOD Zone) and implementing regulations around every transit station which, among other things, shall include (1) The general objectives for the particular TOD Zone in terms of overall economic revitalization, neighborhood character, and unique community historic and other design themes; (2) Desired neighborhood mix of land uses, general land use intensities, circulation strategies, general urban design forms, and cultural and historic resources that form the context for TOD; and (3) Identification of important neighborhood historic, scenic, and cultural landmarks, and controls to protect and enhance these resources; and

WHEREAS, the TOD Ordinance cannot preempt applicable state and federal historic preservation laws such as Hawai'i Revised Statutes (HRS) Chapter 6E, *Historic Preservation*, and Section 106 of the NHPA; and

WHEREAS, the City will comply with development controls in Special District Regulations in Chapter 21 of the Revised Ordinances of the City and County of Honolulu 1990 (ROH) which include policies that safeguard special features and characteristics of particular districts, such as the Chinatown and Merchant Street Historic Districts, to allow for their preservation and enhancement; and

WHEREAS, the Project will cross lands controlled or owned by the federal government and is subject to an approval of that crossing by the applicable federal agencies, which may elect to adopt this PA at any time; and

WHEREAS, this PA was developed with public involvement pursuant to 36 C.F.R. § 800.2(d) and 800.6(a), and the public was provided opportunities to comment on the Project and its adverse effects; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), FTA has notified the ACHP of its adverse effect determination with the required documentation, and the ACHP has chosen to participate formally in the consultation; and

WHEREAS, the FTA, the ACHP, the U.S. Navy and the Hawaii State Historic Preservation Officer (SHPO) are signatories to this PA; and

WHEREAS, FTA invited the City and the NPS to be invited signatories to this PA; and

WHEREAS, FTA invited all other consulting parties to be concurring parties to this PA if they choose; and

WHEREAS, signatories, invited signatories, concurring parties and consulting parties are all consulting parties; and

WHEREAS, FTA commits to continued engagement and ongoing communication with the consulting parties for the duration of this PA; and

WHEREAS, any future extensions of the Project with federal involvement would undergo a separate independent review under the National Environmental Policy Act and Section 106 of the NHPA, and any such review will be guided by the approaches to treatment of historic properties included in this PA; and

WHEREAS, unless defined differently in this PA, all terms are used in accordance with 36 C.F.R. § 800.16; and

NOW, THEREFORE, FTA, ACHP, the Hawai'i SHPO and the U.S. Navy agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the adverse effect of the undertaking on historic properties.

STIPULATIONS

The FTA will ensure that the terms of this PA are carried out and will require, as a condition of any approval of federal funding for the undertaking, adherence to the stipulations set forth herein.

I. Roles and Responsibilities

A. **FTA Responsibilities**—In compliance with its responsibilities under the NHPA, and as a condition of its funding award to the City under 49 U.S.C. § 5309 and any other subsequently identified FTA funding of the Undertaking, FTA will ensure that the City carries out the stipulated provisions of this PA in accordance with any applicable ACHP policy statements and guidelines.

B. **SHPD Responsibilities**—The SHPD shall specifically review and provide comments for work products completed as part of this PA.

C. **ACHP Responsibilities**—The ACHP will provide oversight and advise on disputes.

D. **City Responsibilities**—The City shall represent the interests of FTA and coordinate all activities described in the PA to carry out the stipulations below. The City will consult with the SHPD and other agency staff, as appropriate, in planning and implementing the stipulations of this PA. The City shall submit all plans and documents required by this PA in a timely and accurate manner to the SHPD and other agencies, as stipulated, for review. The City shall also ensure that all treatment measures developed by the City and as a result of consultation are compliant with government-wide policies and regulations.

E. Navy Responsibilities—[ADD]

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~~D.~~E. **Qualifications of Personnel**—Unless otherwise specified, all work carried out under the terms of this PA shall be conducted and/or supervised by cultural resources professionals (historians, architectural historians, historic architects, and/or archeologists, as appropriate) who meet the Secretary of the Interior's Professional Qualification Standards set forth in *Procedures for State, Tribal, and Local Government Historic Preservation Programs*, 36 C.F.R. pt. 61, Appendix A.

~~E.~~F. The City shall provide for an architectural historian who meets the qualifications described in Stipulation I.E on the Project staff through the completion of Project construction.

Comment [E5]: Is this person in addition to the *Kako'o*? The relationship needs to be clarified.

~~F.~~G. **PA Project Manager**

The City shall fund a PA Project Manager (*Kako'o*) within six (6) months of the PA being signed to assist with the coordination of all reviews and deliverables required under the terms of the PA.

The *Kako'o* shall meet the Secretary of the Interior's standards set forth at 36 C.F.R. pt. 61 regarding qualifications for preservation professionals in the areas of history, archaeology, architectural history, architecture or historic architecture.

Procurement

To the extent permissible by applicable state and federal procurement laws, the FTA and SHPD shall review and approve (1) the procurement request for the *Kako'o* prior to the release of such request, (2) the qualifications of the final candidates under consideration by the City prior to the final selection of the *Kako'o* by the City, and (3) the scope of work of the *Kako'o* to be included in the City's contract with the *Kako'o*, in order to ensure that the *Kako'o* duties and responsibilities are consistent with the provisions of this Stipulation

Upon making its selection of the *Kako'o*, the City shall provide written notification thereof to the FTA, SHPD and other signatory and consulting parties.

Duration

The *Kako'o* shall serve during the design and construction process for the Project. The *Kako'o* shall continue to perform the *Kako'o's* responsibilities for the duration of this PA pursuant Stipulation XIV.D.

Roles and Responsibilities

The *Kako'o's* principal task shall be to monitor and assess and report to the consulting parties on compliance by the City with this PA, specifically, the implementation of the measures to resolve adverse effects stipulated herein.

In addition, ~~It is understood that~~ the City shall continue to engage, as part of its Project design team, consultant(s) which have professional qualifications meeting Secretary of the Interior's professional standards in the areas of history, archaeology, architectural history, architecture, or historic architecture, as appropriate, and that the City shall continue to be responsible for the performance of further studies, evaluations and other tasks required to meet the Stipulations set forth in this PA.

Comment [E6]: Clarify that this is different from the *Kako'o*. (May want to relocate this to a different section.) Also, the PA needs to explain the relationship of these consultants to the architectural historian in Stipulation I.F and IX.A.

In this context and consistent with the independent monitoring, reporting and advisory role assigned to the *Kako'o* under this PA, the *Kako'o* shall perform the following responsibilities:

1. Establish and coordinate consultation and Project status update meetings as stipulated in Stipulations III.B and IX.B. On an as needed basis, additional meetings may be held to address unforeseen effects on historic properties determined to be eligible within the APE as provided for in Appendix A.

2. Establish and maintain lines of project-related communication and consultation with the consulting parties and the design and construction engineers, including oversight and monitoring of internet sites created for the Project.

3. Monitor, assess and report, in writing, to the consulting parties on mitigation related to Phases I through IV and any associated deliverables of this PA that are to be reviewed by the consulting parties (Stipulations III through XII).

4. Monitor and report on the City's compliance during the design and construction process for the Project with the special historic preservation design guidelines referred to in Stipulation IV.A, Design Standards.

5. Monitor and report on work performed on historic properties with respect to measures to resolve adverse effects caused by the Project in accordance with Stipulations IX.C (demolition monitoring) and X.C (construction monitoring) of this PA.

6. Coordinate regularly with the FTA and SHPD in connection with the *Kako'o*'s observations and recommendations regarding the progress of the Project in implementing measures to resolve adverse effects called for under this PA.

7. Report to the City, the FTA and SHPD concerning the existence, if any, of previously unidentified adverse effects of the Project on historic properties within the APE (that is, adverse effects which are not otherwise materially identified in the PA).

8. Submit written reports concerning the progress of the Project in the implementation of the Stipulations set forth herein in accordance with the reporting requirements in Stipulation XIV.E., with copies available to any other interested party who so requests.

9. Address requests by consulting parties to review deliverables and documentation that are provided to concurring parties.

10. Collect any comments from the consulting parties that identify impacts different from those stated in this PA to historic properties located within the APE for City and FTA processing. The *Kako'o* shall research the issues presented as described in Appendix A and prepare a recommendation for the disposition of the request and action by FTA. The notification process for consulting parties to submit requests for consideration is outlined in Appendix A of this PA.

Comment [E7]: Since the adverse effect determinations do not identify the nature of the adverse effect (e.g., partial destruction, visual intrusion, noise, vibration, etc.), it would be impossible to know whether the impacts about which the consulting parties are concerned would be "different" from those in the PA.

11. Provide administrative support and technical assistance required by the consulting parties to meet the terms of this PA such as the timely submission of deliverables and the issuance of regular public updates regarding historic preservation issues.

12. Develop a best practice manual related to historic properties and a Section 106 "lessons learned" case study on the Project that

may be helpful to future Section 106 processes on this and other projects. The best practice manual and "lessons learned" case study will be made available to the consulting parties and other interested parties within one (1) year of the completion of Phase 1 construction.

Comment [E8]: (1) If the City were to hire Parsons Brinkerhoff to perform the *Kako'o* role, we are concerned that this would present a conflict of interest, because the firm would not be sufficiently objective in criticizing its own performance. (2) Other than distributing the manual & case study to consulting parties, these documents would likely sit on a shelf. The PA should spell out how the recommendations would be implemented in subsequent meetings with consulting parties

II. Traditional Cultural Properties

A. Within thirty (30) days of execution of this PA, the City shall undertake a study to determine the presence of Traditional Cultural Properties (TCPs) within the APE, which includes cultural landscapes if present. Prior to construction commencement, the City shall meet with the SHPD, consulting parties, and other parties with expertise, including Native Hawaiian organizations (NHOs) to discuss and identify potential TCPs, as defined by the National Register Bulletin 38, *Guidelines for Evaluating and Documenting Traditional Cultural Properties*. Building on cultural practices analysis already completed to address Act 50, Session Laws of Hawaii 2000, requirements, the City shall undertake studies to evaluate these TCPs for NRHP eligibility in accordance with guidance in National Register Bulletin 38. The TCP study shall be completed by qualified staff with experience in ethnographic studies and TCP assessments for NRHP eligibility.

Comment [E9]: The City should have begun this study during the past year. There is no good reason for deferring the identification of these cultural resources.

If FTA determines that eligible TCPs are present, the City will complete effects assessments and seek SHPD concurrence on both eligibility and effects determinations. SHPD will have thirty (30) days to review eligibility and effect determinations. If FTA or the SHPD determine that there are adverse effects on eligible TCPs, the City shall meet with consulting parties to identify measures to avoid, minimize, or mitigate adverse effects. The City will complete all fieldwork, eligibility and effects determination, and consultation to develop treatment measures prior to the commencement of construction. The City shall complete any treatment measures prior to undertaking each construction phase that would adversely affect a TCP. Regardless of effect determination, the City will complete NRHP nominations for properties that meet the NRHP criteria for TCPs. The SHPD, NPS and consulting parties, including NHOs, will review draft NRHP nominations and provide comments within thirty (30) days of receipt. The City will consider all comments when completing final NRHP nominations. The City will submit final NRHP nominations to SHPD.

Comment [E10]: By the time these determinations are made, avoidance alternatives are likely to be foreclosed. Deferring these determinations also violates Section 4(f) of the Department of Transportation Act. *See Corridor H Alternatives, Inc. v. Slater*, 166 F.3d 368 (D.C. Cir. 1999).

III. Identification and Protection of Archaeological Sites and Burials

The City shall implement the following archaeological stipulations before each of the four construction phases.

A. Initial Planning

1. The APE for archaeological resources is defined as all areas of direct ground disturbance by the Project. This APE for archaeology includes any areas excavated for the placement of piers to support the elevated structures, foundations for buildings and structures, utility installation, grading to provide parking, or other construction-related ground disturbance, including preparation of construction staging areas. The APE includes the new location of any utilities that will be relocated by the Project.

2. The City shall develop an Archaeological Inventory Survey (AIS) Plan for the APE for each construction phase and shall submit it to the SHPD. The SHPD will provide comments to the City to be taken into account in revising the AIS plan or accept the AIS Plan within thirty (30) days. The AIS Plan shall follow the requirements of Hawai'i Administrative Rules (HAR) Chapter 13-276, *Rules Governing Standards for Archaeological Inventory Surveys and Reports*.

3. The O'ahu Island Burial Council (OIBC) will have jurisdiction to determine the treatment of previously identified Native Hawaiian burial sites pursuant to HAR Chapter 13-300, *Rules of Practice and Procedure Relating to Burial Sites and Human Remains*. Any *iwi kupuna* (Native Hawaiian burials) discovered during the AIS shall be treated as previously identified burial sites.

B. OIBC, Lineal and Cultural Descendents, and NHO Consultation

1. Within sixty (60) days of execution of this PA, the City shall consult with the OIBC, lineal and cultural descendents, NHOs and other interested parties that are identified in discussion with OIBC, about the scope of investigation for the AIS Plan for construction of Phase 4. The City shall provide preliminary engineering plans and existing utility maps to assist in the scoping process. The AIS Plan will provide for investigation of the entire Phase 4 area, including from Waiakamilo Road to Ala Moana Center. In the portion of Phase 4 with the greatest potential for resources as identified in the *Honolulu High-Capacity Corridor Project Archaeological Resources Technical Report* (RTD 2008n), the AIS Plan will evaluate all areas that will be disturbed by the Project. The AIS Plan will include a review of historical shoreline location, soil type, and, where

indicated by conditions, the survey measures listed in Stipulation III.C, including subsurface testing, for each column location, utility relocation, and major features of each station and traction power substation location based on preliminary engineering design data. The AIS Plan shall be submitted to the SHPD within four (4) months of execution of this PA. SHPD will provide comments on the AIS Plan to the City within sixty (60) days. The City will incorporate any timely comments in revising the AIS Plan. Archaeological investigation will begin following approval of the AIS Plan by the SHPD.

2. The City shall complete the AIS for Phase 4 (Middle Street to Ala Moana Center) prior to beginning final design for that area.

3. The City shall inform OIBC of the status of the AIS. The City will continue to meet regularly with the OIBC, either as a taskforce, or with the council of the whole, for the duration of the construction period of the Project.

4. The City, in coordination with the OIBC, lineal and cultural descendents, NHOs, and other interested parties that are identified in discussion with OIBC shall complete a draft protocol for consultation regarding treatment of any *iwi kupuna* identified during the AIS. It shall be provided to the OIBC for review within six (6) months of the execution of this PA. The protocol shall address, at minimum, a process for communication about any identified *iwi kupuna*, definitions that will be applied to the Project, identification and inclusion of lineal and cultural descendents and NHOs, and workflow of actions prior to and upon identification of *iwi kupuna* during AIS. The workflow shall provide for options to avoid moving *iwi kupuna* (preservation in place) versus relocation options. Avoidance shall include relocation of columns, change of column design to or from a center alignment to straddle bent or other alternatively-supported design, modification of span length, and alternate utility locations. The City will take into account any comments provided within sixty (60) days from the OIBC, lineal and cultural descendents, NHOs and other interested parties to finalize the draft protocol. The City will proceed in accordance with the protocol once it is approved by FTA. Nothing in this protocol will supersede HRS § 6E 43.5, or HAR Chapter 13-300.

5. Dispute Resolution Specific to Stipulation XIV.C: Should the parties identified in this stipulation be unable to resolve elements identified in this stipulation, the parties would first consult with the signatories to this PA for guidance. Should the parties still be unable to resolve the dispute, the provisions of Stipulation XIV.C would take effect.

C. **Fieldwork**—The City shall conduct archaeological fieldwork as presented in the AIS Plan. For construction Phases 1, 2 and 3, the archaeological fieldwork shall be completed in advance of the completion of final design for each phase so that the presence of any sensitive archaeological sites/burials discovered during fieldwork may be considered during final design and measures incorporated to avoid and/or minimize adverse effects on historic properties. The City shall inform OIBC of status of the archaeological investigation. Fieldwork required by the AIS Plan shall include, but not be limited to, the following:

1. Reconnaissance survey (archival research and visual inspection by pedestrian inventory) within the APE,

2. A sample survey of subsurface conditions with ground-penetrating radar (GPR), and subsurface inspection as warranted,

3. A subsurface testing regime for locations identified in the AIS Plan,

4. A description of archaeological methods specific and applicable to the findings will be used in analysis, and

5. Draft and final reports summarizing the results of the fieldwork and analysis that shall be submitted to the SHPD for review and approval.

D. **Treatment Plans**—Based on the results of the AIS fieldwork and in consultation with the SHPD, the City shall develop a specific treatment plan to avoid, minimize, or mitigate adverse effects on historic properties including archeological sites and burials pursuant to applicable state laws, including HRS Chapter 6E, *Historic Preservation*, and HAR Chapter 13-300, *Rules of Practice and Procedure Relating to Burial Sites and Human Remains*, for each construction phase. Treatment plans shall be submitted to the SHPD for approval. Upon approval by the SHPD, the City shall implement the treatment plan.

1. Any human remains found on lands owned or controlled by the federal government will be addressed in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. § 3001 *et seq.*, in coordination with the affected land management agency.

2. The City confirms that guideway columns may be relocated a limited distance along the guideway at most column locations, straddle-bent supports may be used, or special sections developed to modify span length allowing for preservation in-place to be viable

in those locations. If the OIBC determines that a burial is to be relocated, the City will consult with the OIBC to determine appropriate reinterment, which may include relocation to Project property in the vicinity of the discovery.

E. Mitigation Plans—Subsequent to the archaeological fieldwork and development of the treatment plan, the City, in consultation with the SHPD, shall develop mitigation plans as appropriate. The mitigation plans may include the following:

1. Archaeological Monitoring Plan

a. The City may develop an archaeological resources monitoring plan specifying the locations within the construction area that require a monitor and describing the level of monitoring necessary. The monitoring plan will be developed and implemented by a qualified archaeologist, meeting the *Secretary of the Interior's Professional Qualifications Standards for Archeology*, 48 Fed. Reg. 44738-9 (Sept. 29, 1983).

b. The City shall develop a follow-up monitoring report per HAR § 13-279-5 for the Project and shall submit it to the SHPD for approval. The monitoring report, if it contains the location and description of human burial remains discovered during the course of the Project, shall remain confidential. Precise location data may be provided in a separate confidential index. The monitoring report for the construction phase of the Project shall be submitted by the City to the SHPD no later than ninety (90) days after the completion of construction of that phase.

2. Data Recovery Programs

a. Data Recovery Programs (including Data Recovery Plans and Data Recovery Reports) will be prepared by the City as appropriate in consultation with the SHPD. Data Recovery Programs shall be submitted for review and approval by the SHPD.

b. Whenever possible, technological means will be used to avoid potential human remains and archaeological resources to minimize disturbance.

c. Completion of data recovery work must be verified by the SHPD prior to initiation of construction within the area of these sites.

d. Data recovery plans specify the disposition of recovered objects and shall be submitted by the City to the SHPD for review and approval.

F. **Curation**—The City will curate recovered materials in accordance with HAR Chapter 13-278, *Rules Governing Standards for Archaeological Data Recovery Studies and Reports*. The City shall consult with public and private institutions to pursue an opportunity to provide public access to the recovered materials. Interpretive materials as described in Stipulation VII of this PA at one or more stations may incorporate archaeological materials recovered during development of the Project. Any human remains found on lands owned or controlled by the federal government will be addressed in accordance with NAGPRA in coordination with the affected land management agency.

IV. Design Standards

A. The City shall develop standards for, and maintain and update the Project's *Design Language Pattern Book* for all Project elements. The pattern book shall be available electronically. For stations within the boundary of or directly adjacent to an eligible or listed historic property, the City shall ~~be guided by~~ comply with *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, 36 C.F.R. pt. 68, and will make every reasonable effort to avoid adverse effects on historic properties. If the standards cannot be applied, the City shall consult with the signatories, invited signatories and those listed as concurring parties to develop a treatment plan to minimize and mitigate adverse effects on the historic property.

B. The City shall conduct a minimum of two neighborhood design workshops for the stations in each of the Project phases. The City shall notify all consulting parties of the workshops and consider any comments received when completing station design.

C. Prior to Project entry into final design, the City shall provide preliminary engineering design plans for built components of the Project, such as stations, guideway, and directly related Project infrastructure improvements, to 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 consulting parties shall provide the City with comments on the plans within 30 days of receipt. The City shall consider all comments provided by the consulting parties when completing preliminary engineering or final design plans.

Comment [E11]: The Whereas Clause from p.4 needs to be added here, committing that the City will actually follow the *Pattern Book*, not just maintain and update it.

Comment [E12]: Not strong enough.

Comment [E13]: There may be disagreement between the City and other part(ies) as to whether or not the design of the project elements is consistent with the *Secretary's Standards*. The PA needs to establish a process spelling out who makes the initial determination as to consistency, and how those who disagree can invoke the dispute resolution provision.

Comment [E14]: This consultation should not be limited to concurring parties, but instead, must be open more broadly to consulting parties, as are IV.B. and IV.C. There may be a consulting party such as a Native Hawaiian Organization that has a direct connection to a particular site, but is uncomfortable signing the PA as a concurring party.

Comment [E15]: Unless the consulting parties have the ability to invoke a dispute resolution procedure (not currently included), this promise of "consider[ation]" is meaningless.

Comment [E16]: Ditto.

V. Recordation and Documentation

A. Within ninety (90) days of execution of this PA, the City shall complete draft historic context studies related to relevant historic themes within the APE. This type of study assists in documenting the history of the affected area and may be used in developing NRHP nominations for historic properties in the area.

Comment [E17]: For all of the products in Stipulation V, the failure to identify a specific quantity could lead to a major misunderstanding. Are the parties expecting 2 or 32? How will consensus be reached on this number?

1. The City will develop a draft scope of work for the studies describing the context themes, research methodology, report format, photography specifications, and schedule for completion. The City will circulate a draft scope of work to the consulting parties.

2. Any comments received by the City from consulting parties within thirty (30) days of receipt of the draft scope of work will be considered by the City in developing a final scope of work in consultation with the SHPD.

3. Initial field work and photography for each study theme shall be completed prior to construction commencement in relevant geographic areas.

4. The City shall submit draft context studies to the SHPD for review, and all comments provided by the SHPD will be reconciled in consultation with the City within thirty (30) days while preparing the final studies.

5. Copies of the final studies shall be distributed to repositories listed in Stipulation XIV.E.5.

B. The City shall complete Cultural Landscape Reports (CLR) related to historic properties along the Honolulu High-Capacity Transit Corridor.

1. Within ninety (90) days of execution of this PA, the City shall develop a draft scope of work for the CLRs describing the cultural landscapes to be studied, research methodology, report format, photography specifications, and project schedule. All work shall follow NPS guidance and standards, as appropriate, including National Register Bulletin 30, *Guidelines for Evaluating and Documenting Rural Historic Landscapes* and National Register Bulletin 18, *How to Evaluate and Nominate Designed Landscapes*, as well as relevant information presented in NPS, *Guidelines for the Treatment of Cultural Landscapes*. The City shall circulate a copy of the draft scope of work to the consulting parties.

2. Any comments received by the City from consulting parties within thirty (30) days of receipt of the draft scope of work will be

considered by the City in developing a final scope of work in consultation with the SHPD.

3. Initial field work and photography for each study area shall be completed prior to construction commencement in that area.

4. The City shall submit draft CLRs to the SHPD and consulting parties for review based upon a distribution list defined in advance in cooperation with the consulting parties. The SHPD will provide comments within thirty (30) days of receipt of draft materials. SHPD will have forty-five (45) days for review if multiple reports come in within ten days of each other. The City will consider all comments from the consulting parties and stakeholder groups while preparing final versions.

5. Copies of the final CLRs shall be distributed to repositories listed in Stipulation XIV.E.5.

C. Historic American Building Survey (HABS), Historic American Engineering Record (HAER), and Historic American Landscape Survey (HALS) Recordation

1. The City shall consult with the NPS HABS/HAER/HALS (HHH) coordinator in the Pacific West Regional Office to determine which of the historic properties that received adverse effect determinations will be documented by completing HHH recordation. After this determination, the NPS will stipulate the appropriate type and level of HHH documentation for each property.

2. The City shall ensure that all HHH documentation for properties identified in Stipulation V.C.1 is completed in accordance with NPS recommendations, including requisite draft and final submission requirements.

3. The City shall ensure that final HHH documentation is completed for a property and accepted by NPS prior to commencement of activities that could impact the historic property and/or affect its integrity.

4. The NPS shall provide comments on draft report submittals within 30 days of receipt and will provide comments on final report submittals within 30 days of receipt. If the City includes multiple reports in a submittal or submits multiple reports within a 10-day period, NPS will be allowed 45 days for review.

5. The City may request NPS to review the photographic documentation portion of a HHH report prior to completion of the full report, to accommodate construction schedules. The City shall only make such requests when the pace of the construction schedule makes it unlikely that a draft and final HHH report can be

completed and reviewed in time for construction to commence on or near the specific property. In such instances, the City shall submit the archival black and white prints and negatives to NPS for review. NPS will provide comments within 30 days of receipt. The City will ensure that the full draft HHH report is submitted within six (6) months of NPS approval of photographic documentation.

D. The City shall engage a professional photographer to complete archival photography to NRHP standards for all resources that received adverse effect determinations that are not subject to HHH documentation under Stipulation V.C. Photographic documentation will include, at a minimum, representative views of relevant historic structures associated with each historic property, and representative views of the surrounding setting of each historic property. These photographs will be offered to the repositories listed in Stipulation XIV.E.5. Per the schedule established by Stipulation XIV.E.3, the City shall consult with the SHPD to determine an appropriate level of written documentation for each above-ground historic property that is not documented under Stipulation V.C or VI. The SHPD will review this documentation upon completion.

E. The City shall have digital photographs taken by a professional photographer, in conjunction with the input of a supervising architectural historian, to document select resources and view sheds within the APE. These photographs shall be taken prior to construction commencement and shall be used for interpretive materials, publications, cultural landscape reports, and historic context studies. Photographs will focus on NRHP-eligible resources and unique landscape features. Approximately 150 views will be submitted. These photographs will be housed at the City Municipal Library with copies submitted to the SHPD.

F. The City shall take a comprehensive video of the Project corridor prior to construction commencement. Video documentation shall be completed by a professional videographer and will consist of unedited footage filmed from a moving vehicle. The Project corridor shall be filmed from the vehicle in each direction, from Ala Moana to ‘Ewa, and ‘Ewa to Ala Moana. This film will be housed at the City Municipal Library with a copy submitted to the SHPD.

VI. National Register of Historic Places/National Historic Landmark Nominations

A. The City shall complete a NRHP Multiple Property Documentation (MPD) for Modern/Recent Past historic properties dating from 1939-1979. Additionally, the City shall complete a single Multiple Property Submission (MPS), including all appropriate accompanying documentation.

1. The City and SHPD will consult with property owners to obtain access and determine their consent to the proposed listing. Listing procedures shall be consistent with HAR Chapter 13-197, *Practice and Procedure before the Hawaii Historic Places Review Board* and HAR Chapter 13-198, *The Hawaii and National Registers of Historic Places Programs*. Should owners object to listing or access, the City shall document the properties to the extent possible from public right-of-way and using available research or alternative properties may be selected by the City, in consultation with SHPD, for documentation. The SHPD will determine appropriate listing procedures according to Hawai'i Administrative Rules for the properties whose owners do not consent.

2. As part of the MPD, the City will propose a list of Modern/Recent Past historic properties determined eligible for the NRHP to be advanced for nomination and will circulate it to the consulting parties.

3. The City will consider any comments received from the consulting parties within thirty (30) days in developing a final list in consultation with the SHPD.

4. The City shall submit a draft MPS nomination form to the SHPD and NPS for review and comment. The SHPD and NPS will provide any comments within thirty (30) days of receipt. The City shall consider all timely comments while preparing the final MPS documentation.

B. Pending the U.S. Navy approving the work and providing access to the site and relevant records, the City shall complete an update to the Pearl Harbor NHL nomination and the CINCPAQ Headquarters NHL nomination. For the Pearl Harbor NHL amendment, emphasis shall focus on those resources closest to the APE and to those not previously documented in the existing nomination. All work shall be coordinated with the Navy and follow the guidelines set forth in *National Park Serv., U.S. Dep't of the Interior, How to Prepare National Historic Landmark Nominations* (1999). The work shall be carried out and approved by persons meeting the professional qualifications for historical architect or architectural historian in *The Secretary of the Interior's Historic Preservation Professional Qualification Standards*, 62 Fed. Reg. 33,713-14, 33719-20 (June 20, 1997). The City shall submit a draft document to the NPS, Navy, and SHPD. The City shall consider all comments received from NPS, Navy, and SHPD within 30 days in preparing the final NHL nomination. The City will provide the Navy with the updated NHL nominations and accompanying documentation, including requisite maps

Comment [E18]: The Navy should be taking the lead on this. Navy historic preservation professionals have substantial knowledge, and it would not make sense for the City to reinvent the wheel. Furthermore, the City's efforts to manipulate the Makalapa boundaries undermine the City's credibility and raise concerns about whether the City would be objective.

and photographs for submittal to the NPS. The Navy shall submit the completed nomination to the NPS.

C. National Register Nominations

1. The City shall complete NRHP nominations and/or amendments for all 31 of the 33 properties (Attachment 2) that received adverse effect determinations located along the Project corridor. (Note that two resources are NHLs and are addressed in Stipulation VI.B.) The City will consult with the SHPD to determine if nomination forms for properties already listed in the NRHP should be updated and/or amended. The City and SHPD will consult with property owners to obtain access and determine their consent to the proposed listing. Should owners object to listing or access, the City shall document the properties to the extent possible from public right-of-way and using available research. This information will be provided to the SHPD, who will determine appropriate listing procedures according to Hawai'i Administrative Rules for owners who do not consent. All work shall conform to guidance presented in relevant National Register Bulletins. The City will complete all appropriate accompanying documentation, including photographs and mapping.

2. The City will submit draft nomination forms to the SHPD for review. The SHPD will provide comments within thirty (30) days of receipt. The City will consider the comments and submit final NRHP nomination forms following the established procedures of the National Park Service under 36 C.F.R. § 60.6(g). Final nomination forms will be completed before the Project begins revenue service operations.

3. The City will also coordinate with the SHPD to nominate these historic properties to the Hawai'i Register of Historic Places if they are not already included.

D. Properties documented in the MPS required by Stipulation VI.A will not be documented on separate, individual NRHP forms beyond what is included in the MPS.

E. All NRHP and Hawai'i Register of Historic Places nominations will follow the procedures set forth in HRS Chapter 6E, *Historic Preservation*, and HAR Chapter 13-198, *The Hawaii and National Registers of Historic Places Programs*, as appropriate. Completion of the stipulated NRHP nominations does not guarantee listing; the Keeper of the NRHP may determine that the properties are not eligible for listing. Listing of any property in the NRHP is subject to NPS review and approval.

F. The City shall develop a searchable database of historic properties within the APE in a format suitable for public use. The database will

include an interactive geographic component and include property information (e.g., property name, address, tax map key, construction date, architect, etc.). The City will initiate database development prior to construction commencement and will update and maintain the database for the duration of this PA. The Navy reserves the right to approve the inclusion of any Navy historic properties in any public database.

G. The City will consult with the SHPD to develop a strategy for making this database and its information available to any organization with the authority and ability to develop, maintain, and support a public research database at the end of construction.

VII. Educational and Interpretive Programs, Materials, and Signage

The City shall implement the following stipulations before revenue service begins.

A. The City shall complete an interpretive plan for the Project area and install interpretive signage at appropriate locations. The interpretive plan will highlight historical themes (e.g., Native Hawaiian History, Native Hawaiian Culture, Immigrant History, Plantation Culture, Architecture, Government, Agriculture, Transportation, Military, etc.) and will interpret these themes at an appropriate station location. Interpretive signage will be installed at or near relevant transit stations and, where appropriate, inside transit vehicles.

B. The City shall complete a color brochure describing the history of the area along the transit line. All materials shall also be produced in a digital format for electronic and/or online distribution. Upon completion, 1,000 physical copies of the product shall be printed and made available at stations to transit riders.

C. The City shall prepare materials for children, such as a coloring book or child-friendly game that would educate children about relevant local history. The materials shall be prepared by professional historians and a professional illustrator. The City shall solicit student input to propose and develop the content for the materials. All materials shall also be produced in a digital format for electronic and/or online distribution. The materials will be available on the Project website.

D. The City shall establish a Humanities Program that will explore human histories, cultures, and values. This program will enhance visitor and resident exposure to the depth of history and culture in the vicinity of the Project. The Humanities Program will educate the public about important topics in Hawaiian history through conferences/seminars, research fellowships, media programs, exhibits, lectures, and publications. The Humanities Program will also consider conducting select architectural

surveys as a component of the potential program that may inform other program aspects. The City will develop this program's goals in consultation with consulting parties, and the City will provide one hundred thousand dollars ($100,000) to fund this program. The City will establish subcommittees to achieve the goals of the Humanities Program and meet at agreed-upon intervals. In the absence of additional funding from the City, the Humanities Program will continue until all designated funds are exhausted or until revenue service begins, whichever occurs later.

E. The City will develop and implement an educational effort/program to encourage the rehabilitation of historic properties located along the transit route. This effort will include printed and electronic information about proper rehabilitation practices; benefits of historic designation; financial incentives available for eligible properties; and existing resources for assistance in pursuing these options. The City will hold two meetings and/or public workshops with owners of historic properties to disperse this information. The City will invite all owners of eligible or listed properties located within the APE and also within a 2,000-foot radius of station locations to the two meetings/workshops and will also announce the meetings/workshops to the public on the Project website. The meeting/workshops will be completed before revenue service begins. At the conclusion of the effort, the City will submit a summary report to the consulting parties.

F. Based on the content developed in Stipulation VII.A, the City will develop an educational field guide of the historic properties (including historic districts) along the transit route. The City will make the field guide available to the public in both print and electronic formats.

G. Consulting parties will be invited to participate in a kick-off meeting to develop a work plan, content for deliverables, and schedule for all products required within Stipulation VII. The City will circulate a draft of the work plan, preliminary content outline, and schedule to consulting parties following the kick-off meeting. The City will consider all comments received within thirty (30) days while preparing the final work plan and schedule in consultation with the SHPD.

H. The City will submit drafts of all work products required in Stipulation VII to the consulting parties for review and comment. The consulting parties will provide comments on the content, design, and other relevant product components within thirty (30) days of receipt of draft materials. The City will consider all comments while preparing final versions.

VIII. Mitigation for Specific Historic Properties

A. All lava rock curbstones removed along the edges of pavement because of Project-related work shall be retained by the City for reuse and reinstallation. The stones will be marked prior to removal, stored securely, and replaced at their approximate original mile-point locations prior to the beginning of revenue service operation. Any stones that are damaged or destroyed during extraction or reinstallation shall be replaced with in-kind materials.

B. The bridge rails on the Kapālama Canal Bridge must be replaced or retrofitted to meet current safety standards. The City will maintain or replace the rails to match the appearance of the historic rails and to maintain existing views to and from the bridge. The City shall consider *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, 36 C.F.R. pt. 68, in developing draft plans to provide to SHPD for review per Stipulation IV.

C. The City will replace true kamani trees within the corridor as close as feasible to the current location of the group of 28 true kamani trees on the makai side of Dillingham Boulevard that will be removed. The City will replace the trees prior to revenue service operation. In consultation with the SHPD landscape plans will be developed by the City during final design so that new plantings will provide similar advantages to the community. If new plantings do not provide "equitable mitigation" (e.g., older mature trees that are removed), additional younger trees will be planted that will, in time, develop similar benefits.

D. Improvements to Adversely Affected Parks

1. The City will invite consulting parties, property owners, and other stakeholders to participate in a kick-off meeting to discuss improvements to adversely affected historic parks. Based upon design standards contained in Stipulation IV, and considering comments offered at the kick-off meeting, the City will develop and circulate a draft park improvement plan to consulting parties. The City will consider all comments received within thirty (30) days while preparing the final plan in consultation with the SHPD.

2. The City shall consider *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, 36 C.F.R. pt. 68, and make every effort to avoid adverse effects on historic properties.

3. The City will ensure completion of the park improvement plan before construction is complete.

4. Project funds in the sum of seven hundred fifty thousand dollars ($750,000) shall be budgeted for implementation of the

parks improvement plan. Should the City, following consultation with consulting parties, property owners, and stakeholders, determine that circumstances preclude improving these parks, Project funds budgeted for parks shall be transferred for use to the Honolulu High-Capacity Transit Corridor Project Historic Preservation Committee (Stipulation IX.B).

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

A. The City shall include a staff position for a qualified Project architectural historian, defined in Stipulation I.F. The architectural historian shall oversee completion of the stipulations of this PA, coordinate with the SHPD, *Kako'o* and other consulting parties, and coordinate with the Department of Planning and Permitting (DPP) regarding land use planning activities, including the integration of transit-oriented development with historic preservation in the vicinity of Project stations.

Comment [E19]: It's unclear what the relationship would be between this person and the *Kako'o*.

Comment [E20]: This seems to compete with the *Kako'o*. Would the *Kako'o* report to the architectural historian?

B. The City, in consultation with the consulting parties, shall create, chair, and provide technical, administrative, and financial support for the operation of a Honolulu High-Capacity Transit Corridor Project Historic Preservation Committee (HPC). The City shall allocate two million dollars ($2,000,000) within the Project's budget to fund the program administered by the HPC. The City will create and schedule the first meeting of the HPC within three months after execution of this PA. Prior to the creation of the HPC, the City will submit to the SHPD for approval, a list of the agencies, groups, and organizations that will be invited to be represented and serve on the HPC. The HPC shall comprised the following seven (7) members: the director of DTS, or his designee, to serve as a voting member and chair of the HPC; one representative, or its designee, from each of the following: SHPD, DTS, and DPP; and one representative each from three (3) non-governmental groups or organizations with expertise in historic preservation, cultural resources, architecture, planning, or landscape architecture. The HPC shall establish the goals, criteria, program guidelines, administrative procedures, and funding distribution for the disposition of these funds that will be provided by the City for exterior improvements to eligible or listed historic properties (including contributing resources within historic districts) within the Project's APE consistent with *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, 36 C.F.R. pt. 68, accomplished through grants provided under this section. The HPC shall also consult with the City and SHPO on the existence of potential unforeseen adverse effects as a result of Project actions on the Chinatown and Merchant Street Historic Districts.

The HPC shall identify and select an entity or entities that will administer the funds for the purposes established. This entity or entities shall be compliant with the requirements of ROH Chapter 6, Article 29, as amended, *Standards for the Appropriation of Funds to Private Organizations.* The City will dissolve the HPC when the funds are exhausted, not before six (6) months after completion of the Project but no later than three (3) years after completion of the Project, whichever occurs first.

C. To examine Project impacts related to development along the Project corridor, the City shall monitor the proposed demolition 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. 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 and an explanation of its relevance to project planning and implementation in the first six-month report submitted pursuant to Stipulation XIV.E.3. The ~~SHPD~~ City shall provide location information on eligible or listed historic properties within the 2,000-foot radius of each station location. If and when in any year during project construction the number of demolitions of listed or eligible resources within the APE or resources within the station areas built before 1969 is greater than one standard deviation above the baseline, then the City shall notify the consulting parties during each scheduled quarterly or annual review of the PA.

D. If any signatory to this PA finds during the duration specified in Stipulation XIV.D that there is likely to be a~~n imminent and~~ significant adverse indirect or cumulative effect on a resource determined eligible for the National Register as part of the Section 106 process for this project and that the adverse effect was not evaluated in this PA, that signatory shall notify FTA.

If consulting parties identify during the duration of this PA a~~n imminent and~~ significant adverse indirect affect on a resource determined eligible for the National Register as part of the Section 106 process for this project and that adverse effect was not evaluated in this PA, the consulting party shall follow procedures identified in Stipulation I.G.10.

Upon such notification, FTA will call a meeting of the consulting parties to discuss what next steps would be appropriate under the new circumstances to mitigate the effects on such resources.

E. In the Chinatown and Merchant Street Historic Districts, these specific additional requirements shall apply regarding unanticipated cumulative adverse effects referenced in Stipulation IX. D, above:

Comment [E21]: The City should have completed this within the past year, since this data is 2-5 years old. The baseline data and the standard deviations should be disclosed prior to signing the PA. There is no reason to delay the disclosure of this information.

Comment [E22]: This information is likely to be "too little-too late." We proposed a much more proactive approach to this in our November 23, 2009 comments, and we reiterate our request to incorporate that more comprehensive provision.

Comment [E23]: If the building is included in the list of 33, how would you know whether the particular adverse effect was evaluated or not? See next comment.

Comment [E24]: Since the adverse effect determinations do not identify the nature of the adverse effect (e.g., partial destruction, visual intrusion, noise, vibration, etc.), it would be difficult to know whether the impacts about which the consulting parties are concerned were "not evaluated in this PA."

1. During design, implementation, testing, and the first six months of full operation of the Project, the City shall follow the process described below to address unanticipated and reasonably foreseeable present and future non-Project actions that could, in combination with the Project, have cumulative adverse effects on the historic resources in the Chinatown and Merchant Street Historic Districts (hereinafter, the "Two Historic Districts") that may cause irreversible or long-term adverse effects on qualifying characteristics of the Two Historic Districts that were to be preserved or protected based upon the terms of this Agreement or other executed Section 106 Agreement document(s) associated with the Two Historic Districts.

2. City shall request all City agencies that are constructing projects ~~related to~~ within 2,000 feet of the Project within the Two Historic Districts to submit preliminary documents to the City to allow coordination of the Project activities with such other work and to allow the City's assessment of the Project to include the potential for unanticipated cumulative adverse effects on the Two Historic Districts.

Comment [E25]: This would not encompass private development projects, which are likely to be a much greater factor in cumulative impact.

Comment [E26]: "related" is far too subjective a standard.

3. City, its historic preservation consultants, and the *Kakoʻo*, in cooperation with the FTA, will consult with SHPO and the Project Historic Preservation Committee in assessing whether there is an unanticipated cumulative adverse effect related to the Project in the Two Historic Districts.

4. If FTA, the City and SHPO agree that Project plans or completed activities in conjunction with unanticipated and reasonably foreseeable present and future non-Project actions are likely to result in unanticipated cumulative adverse effects on the Two Historic Districts per Stipulation IX.D., above, then the City, in consultation with FTA, shall consider measures with respect to the Project to mitigate or minimize such effects, including technical or financial measures for the protection, rehabilitation, or repair and Project design modifications. Disagreements between the City and SHPO, including those related to effects findings, will be resolved pursuant to Stipulation XIV.C.

Comment [E27]: This determination should be made by the HPC.

5. City shall make all appropriate City-generated and prepared documentation related to the Project for Section 106 purposes and utilized in consideration of unanticipated cumulative adverse effects in Section IX.D. available to the consulting parties via the Project website. Consulting parties will be notified of the documentation

posting to the Project website via electronic notification. SHPO, ACHP, the Navy and FTA will respond within 30 days of receipt of all required documentation. All other consulting parties shall have 21 days to comment on the documentation. The City will provide paper copies of such documentation to consulting parties upon request. Should consulting parties fail to respond within 30 days after receipt of all documentation, it shall be assumed that they have no comments on the proposed action or mitigation, if any, to minimize or mitigate unanticipated cumulative adverse effects.

Comment [E28]: How would you know whether they were anticipated? Goal should be to minimize and mitigate ALL cumulative adverse effects?

6. The review of the documentation by all parties per Section IX.D. shall focus on the historic elements of the Two Historic Districts, as defined in the state or National Register of Historic Places, which may be caused by the Project relative to unanticipated cumulative adverse effects.

7. City, in coordination with FTA, and SHPO will consider and respond to comments about the Project related to the Two Historic Districts from consulting parties as provided for in Stipulation I.G.10. The review, in particular, will address the potential for ~~unanticipated~~ cumulative adverse effects on the Two Historic Districts. The review will also attempt to resolve specific disagreements about how City intends to address unanticipated cumulative adverse effects per Section IX.D. of this Agreement. If City, in consultation with SHPO is unable to reach a resolution with the consulting parties who have commented pursuant to Section I.G.10 regarding an unanticipated cumulative adverse effect on the Two Historic Districts, the City will notify the FTA, and as appropriate, consult with the ACHP, in accordance with Stipulation X.I.V.

Comment [E29]: How would you know whether they are unanticipated?

F. In addition to the mitigation presented in this stipulation, mitigation for indirect and cumulative effects is provided in Stipulations IV.A-B and VII.A-F.

X. Construction Protection Plan

A. During final design, DTS, in cooperation with its contractors and FTA, will develop a Construction Mitigation Plan (CMP). The CMP will include a Noise and Vibration Mitigation Plan. Per requirements to be included in the FTA Record of Decision (ROD) and FTA guidance entitled, *Transit Noise and Vibration Impact Assessment*, FTA-VA-90-1003-06 (2006) (FTA Guidance Manual), DTS shall perform quantitative assessments of both noise and vibration which will inform the CMP. Noise

and vibration control plans will be updated every six (6) months. The updated plans should predict the construction noise and vibration impacts at sensitive receptor locations based upon the proposed construction equipment and methods. Appropriate construction plan noise and vibration mitigation measures shall be employed as identified in FTA's Guidance Manual.

Numeric limits and monitoring measures will be developed to minimize noise and vibration impacts. Vibration criteria included in Table 12-3, *Construction Vibration Damage Criteria*, of the FTA Guidance Manual will be applied. Note that most historic properties in the corridor are non-engineered timber or masonry; a criterion of 0.2 inches per second of peak particle velocity would be applicable to these structures. Noise and vibration mitigation strategies will be included in the Noise and Vibration Mitigation Plan.

B. Before Project construction begins, the City shall meet with the construction contractor(s) to review and transmit the CMP.

C. The City will monitor Project construction to ensure that the measures in the CMP are implemented and shall provide a record of monitoring activities in progress reports prepared pursuant to Stipulation XIV.E.

D. With the cooperation of the Navy, the City shall complete post-construction noise monitoring as stipulated in the Project's final environmental impact statement within U.S. Naval Base, Pearl Harbor NHL.

E. The City, in consultation with FTA shall ensure that any inadvertent damage resulting from the Project to historic properties shall be repaired, to the extent possible, in accordance with *The Secretary of the Interior's Standards for the Treatment of Historic Properties*, 36 C.F.R. pt. 68. The City, in consultation with the FTA, shall submit a scope of work or treatment plan to address inadvertent damage to the SHPD for comment before initiating repairs.

XI. City Contractors and Contract Adherence to PA

FTA and the City shall ensure that contracts developed in the implementation of all construction phases of the Project shall expressly refer to and require compliance with the stipulations of this PA. Contractors responsible for work set forth in this PA shall have qualified staff that meets the *Secretary of Interior's Professional Qualification Standards*, 48 Fed. Reg. 44,738-39 (Sept. 29, 1983) for history, archaeology, architectural history, architecture, or historic architecture with experience in historic preservation planning to ensure the satisfactory

compliance with the terms of the PA during the design and construction of each project construction phase.

The *Kako'o* will provide guidance regarding the implementation of the terms of this PA to all contractors, particularly those involved in construction-related activities.

The City shall require, on an annual basis, or more frequently as circumstances require, historic preservation and cultural awareness training for the construction contractors and employees. The training shall include information related to the following topics:

a) Illegal collection and disturbance of historic and prehistoric cultural materials, including human remains.

b) Scope of applicable laws and regulations.

c) Initial identification and reporting of archeological materials, human remains, and historic buildings or structures that may potentially be discovered during the course of their work.

Training materials, schedules and lists of persons trained will be made available to the consulting parties of this PA and other interested parties on an annual basis.

XII. Post-Review Discoveries

A. Post-review discoveries are not anticipated for built historic properties. Notwithstanding, the City agrees to cease all work in the vicinity of the discovery should an unanticipated adverse effect on a built historic property be found during construction. The City will notify the signatories and provide information about the unanticipated adverse effect and the City's proposed treatment plan within a period of three (3) business days. Signatories will provide comments on the City's proposed treatment plan within three (3) business days. The City, in consultation with FTA and SHPD, will consider any timely comments in developing a final treatment plan. FTA will not allow work to resume in the vicinity of the unanticipated adverse effect until a treatment plan has been finalized. The City will proceed in accordance with the treatment plan.

Comment [E30]: It would, be difficult to know whether the adverse effect was anticipated or not, if the structure is included among the 33 adverse effect determinations..

B. Because of the linear nature of the Project and because any areas excavated for the placement of piers to support the elevated structures, foundations for buildings and structures, utility installation, grading to provide parking, or other construction-related ground disturbance, including preparation of construction staging areas and the new location of any utilities that will be relocated by the Project, will be the subject of a

comprehensive AIS, post-review archaeological discoveries after completion of AISs are not anticipated.

In the event of any inadvertent discoveries of burials, the OIBC shall be included in consultation as specified in HAR § 13-300-40. When suspected human skeletal remains are found, the City shall ensure that all work in the vicinity stops and that a City archaeologist will secure the area to avoid any additional disturbance, pursuant to HRS § 6E-43.6. If the remains are identified to be human, the City will notify SHPD as required by law. (Non-human remains that are determined by the Project archaeologist not to be a protected resource will be documented in Project files and no further action taken.) With confirmed human skeletal remains, the archaeologist must also notify the OIBC, the County Coroner's Office, and the County Police Department. With all inadvertent burial finds, SHPD determines burial treatment, either preservation in place or relocation, in consultation with the landowner, the district representative of the OIBC, and any recognized cultural or lineal descendents or NHOs for the Project. Pursuant to §§ 6E-43.6(c) and (d), SHPD has one (1) day to make its treatment determination for single burials and two (2) days for multiple burials found on O'ahu. Recognizing the extent of the Project and the sensitivity of any discoveries, the Project will allow an extended time for SHPD determination of treatment by an additional three (3) days for a total of four (4) days for single burials and five (5) days for multiple burials; provided that this extension of time shall not affect other obligations, duties, or responsibilities required under HRS Chapter 6E and applicable regulations. Information generated in the AISs in Stipulations III.B, III.C and III.D will assist SHPD and OIBC in identifying and notifying lineal and cultural descendants and defining a treatment plan since background research is an integral component of the AIS. Construction must remain halted in the vicinity of the burial find until SHPD's treatment decision has been carried out or any other requirements of law have been met.

C. The City, in consultation with the OIBC and the SHPD, will be responsible for carrying out the burial treatment for post-review discoveries.

1. For preservation in place, the City will modify the planned construction to allow for the remains to stay in place in accordance with the burial treatment plan.

2. Pursuant to HRS § 6E-43.6(f), in cases where remains are archaeologically removed, SHPD shall determine the place of relocation, after consultation with the City, OIBC, affected property owners, representatives of the relevant ethnic group, and any identified lineal descendants, as appropriate.

Parties identified in this Stipulation XII.C will consider the inclusion of either of the following two provisions in a post-review discovery

treatment plan: (1) If a reinterment site was not identified in a Treatment Plan in Stipulation III.D, the City will disinter the remains, curate the remains at the Project site until the associated Project phase is completed and then immediately arrange for reinterment within the Project area; or (2) If reinterment sites are identified as part of the Treatment Plans in Stipulation III.D, immediate reinterment to those identified sites will be the preferred practice

3. The City will document burial treatment in either a "burial site component of an archaeological data recovery plan" for burials that are relocated, or a "burial site component of an archaeological preservation plan" that documents the burial treatment that was carried out. These plans/reports document the conditions of the discovery, the burial treatment, access and any subsequent measures that have been agreed to by the landowner to safeguard either the relocation site or the preserve site. The City will record preserved or relocated burial sites with the Bureau of Conveyances so that the burial sites are not further disturbed in the future.

D. Any human remains found on lands owned or controlled by the Federal government will be addressed in accordance with NAGPRA in coordination with the affected land management agency.

XIII. Public Information

Elements of public involvement and information are included throughout this PA. In addition, the City shall undertake the following:

A. To keep the public informed about PA implementation, the semi-annual progress reports described in Stipulation XIV.E will be posted on the Project website.

B. With the exception of sensitive information or locations, the City shall add all documentation completed as part of this PA to the historic properties database that will be created as part of Stipulation VI.F. However, if the consulting parties agree, the sensitive information or locations may be included in a password-protected mode.

C. At any time during implementation of the activities covered in this PA, should an objection pertaining to this PA or the effect of any activity on historic properties be raised by a member of the public, FTA will notify the signatories to this PA and take the objection into account, consulting with the objector, and should the objector so request, with any of the parties of this PA, to resolve the objection.

XIV. Administrative Provisions

A. **Implementation Schedule**—Within sixty (60) days of the execution of this PA, the City shall develop a schedule for the implementation of the provisions of this PA. The City will submit the schedule to the signatories and concurring parties for review and comment. The final schedule will include timelines and milestones for completion of deliverables and will be posted on the Project website. The City will update the schedule to reflect Project changes and will notify the signatories and concurring parties of any alterations to the schedule.

Comment [E31]: All consulting parties should be notified. There is no good reason to limit this type of important information to concurring parties.

B. **Project Modifications**—Should the Project alignment be changed in any way that FTA determines results in a change to the APE, the City shall update the APE maps, and FTA and the City, in consultation with other consulting parties, shall ensure that the requirements of this PA are met, after further consultation and assessment of effects, with regard to the new portions of the APE.

C. **Dispute Resolution**—Should any Signatory or Invited Signatory to this PA object to any action proposed pursuant to the PA, the FTA shall consult with the objecting party to resolve the objection. If the FTA determines that the objection cannot be resolved, the FTA shall forward all documentation relevant to the dispute, including FTA's proposed resolution, to the ACHP.

Comment [E32]: A dispute resolution process needs to be provided for the consulting parties as well. Could cross-reference to Appendix A (see below).

1. Within thirty (30) days after receipt of all pertinent documentation, the ACHP shall provide the FTA with its advice on the resolution of the objection. FTA will then prepare a written response that considers any timely advice offered by the ACHP or by other signatories to the PA. FTA will provide all consulting parties with a copy of this written response and proceed according to its final decision.

2. If the ACHP does not provide its advice regarding the dispute within thirty (30) days of receiving appropriate documentation about the dispute, FTA may make its final decision on the dispute and proceed accordingly. Prior to reaching a final decision, FTA shall prepare a written response that considers any timely comments by other signatories to the PA and provide them and the ACHP with a copy of that response.

3. The responsibility of the FTA and the City to carry out all actions that are required by this PA and are not affected by the dispute remains unchanged.

Should any consulting party object to any action proposed pursuant to the PA, the consulting party shall follow the process outlined in Appendix A.

D. **Duration**

1. This PA shall take effect on the date it is signed by the last signatory and shall be in effect for ten (10) years from the date of execution, or terminated pursuant to Stipulation XIV.I. At least six (6) months prior to the end of the 10-year period, FTA will provide an update on the status of the work associated with all stipulations. At that time, and before the 10-year period elapses, the signatories may amend the content of the PA, which may include extension of the duration of the PA, in accordance with Stipulation XIV.H if they determine that it is necessary to complete all stipulations.

Comment [E33]: This is unlikely to be long enough. We recommend at least 15.

E. **Monitoring and Reporting**

1. Any signatory to this PA may request, at any time, a review of the implementation of the terms of this PA.

2. For the first twenty-four (24) months following the implementation of this PA, the City shall hold quarterly (every three (3) months) meetings with the consulting parties to discuss implementation of this PA including near-term planned activities.

3. Every six (6) months following the execution of this PA, until it expires or is terminated, the City shall provide all signatories to this PA a summary report detailing the work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes or objections received during efforts to carry out the terms of the PA.

4. After the 24-month period mentioned in Stipulation XIV.E.2. above, FTA shall conduct annual meetings of consulting parties to discuss implementation of this PA over the preceding year and planned activities for the coming year. FTA shall evaluate the effectiveness of this PA and whether any amendments or changes are needed based on the City's summary reports or Project modifications and provide its evaluation to the signatories prior to the meeting

5. Work products not containing sensitive information will be submitted to the following repositories so that the information generated is made available to the public: SHPD, State Publications Distribution Center (15 copies), University of Hawai'i, and the Municipal Library (3 copies).

F. **Emergency Situation**—Immediate rescue and salvage operations conducted to preserve life or property are exempt from the provisions of Section 106 of the NHPA and this PA. In the event that an emergency situation should occur during the Project, FTA shall follow the provisions of 36 C.F.R. § 800.12.

G. Coordination with Other Federal Involvement—In the event that the City or other agency applies for additional federal funding or approvals for the Honolulu High-Capacity Transit Corridor Project and the undertaking remains unchanged, such funding or approving agency may comply with Section 106 of the NHPA by agreeing in writing to the terms of this PA and notifying the signatories. Any necessary amendments will be considered in accordance with Stipulation XIV.H.

H. Amendments—Any signatory to this PA may propose that this PA be amended, whereupon the signatories to the PA shall consult to consider such amendment. Any amendment must be agreed to in writing by all signatories. The amendment will be effective on the date a copy with all signatures is filed with the ACHP.

I. Termination—If any signatory to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatory parties to attempt to develop an amendment per Stipulation XIV.H. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the PA upon written notification to the other signatories. Once the PA is terminated and prior to work continuing on the undertaking, FTA must either: (1) execute a new agreement pursuant to 36 C.F.R. § 800.6; or (2) request, take into account, and respond to comments of the ACHP under 36 C.F.R. § 800.7. FTA shall notify the signatories as to the course of action it will pursue. This PA may be terminated by the execution of a subsequent agreement that explicitly terminates this PA or supersedes its terms.

Execution of this PA by FTA, SHPD, and the ACHP and implementation of its terms evidence that FTA has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

J. Native Hawaiian Organization (NHO)— If, at any time during implementation of the provisions of this PA, an NHO informs the City or FTA that it attaches religious and cultural significance to properties within the APE, FTA shall invite that NHO to participate in reviews and consultation carried out under the terms of this PA.

SIGNATORY PARTIES

Federal Transit Administration

_____ Date: _____

Leslie Rogers, Regional Administrator

Hawai'i State Historic Preservation Officer

_____ Date: _____

Laura Thielen, Chairperson of the Board of Land and Natural Resources

United States Navy

_____ Date: _____

Admiral Patrick M. Walsh, Commander, U.S. Pacific Fleet

Advisory Council on Historic Preservation

_____ Date: _____

John M. Fowler, Executive Director

INVITED SIGNATORY PARTIES

City and County of Honolulu

_____ Date: _____

Wayne Y. Yoshioka, Department of Transportation Services

National Park Service

_____ Date: _____

Christine S. Lehnertz, Regional Director, Pacific West Region

CONCURRING PARTIES

Historic Hawai'i Foundation

_____ Date: _____

National Trust for Historic Preservation

_____ Date: _____

University of Hawai'i Historic Preservation Certificate Program

_____ Date: _____

American Institute of Architects

_____ Date: _____

Hawai'i Community Development Authority

_____ Date: _____

Office of Hawaiian Affairs

_____ Date: _____

O'ahu Island Burial Council

_____ Date: _____

Royal Order of Kamehameha

_____ Date: _____

The Ahahui Ka‘ahumanu

_____ Date:_____

Hui Malama I Na Kupuna O Hawai‘i

_____ Date:_____

The Hale O Na Ali‘i O Hawai‘i

_____ Date: _____

The Daughters and Sons of the Hawaiian Warriors

_____ Date: _____

The Association of Hawaiian Civic Clubs

_____ Date: _____

Ali‘i Pauahi Hawaiian Civic Club

_____ Date: _____

Ka Lei Maile Ali‘i Hawaiian Civic Club

_____ Date: _____

King Kamehameha Hawaiian Civic Club

_____ Date: _____

Nanaikapono Hawaiian Civic Club

_____ Date: _____

Hawaiian Civic Club of Wahiawa

_____ Date: _____

Ahahui Siwila Hawai'i O Kapolei Hawaiian Civic Club

_____ Date: _____

Waikīkī Hawaiian Civic Club

_____ Date: _____

Princess Ka'iulani Hawaiian Civic Club

_____ Date: _____

Waianae Hawaiian Civic Club

_____ Date: _____

Merchant Street Hawaiian Civic Club

_____ Date: _____

Prince Kūhiō Hawaiian Civic Club

_____ Date: _____

Pearl Harbor Hawaiian Civic Club

_____ Date: _____

Hawaiian Civic Club of 'Ewa-Pu'uloa

_____ Date: _____

Kalihi-Palama Hawaiian Civic Club

_____ Date: _____

Hawaiian Civic Club of Honolulu

_____ Date: _____

Attachments

Attachment 1: APE for Historic Resources; APE for Archaeological Resources

Attachment 2: Information on Resources with Adverse Effect Determinations

APPENDIX A - Consulting Party Comment Review and Disposition Process

If there are unanticipated effects on historic properties identified within the APE found after the execution of the Programmatic Agreement (PA), the process developed in this PA and applicable appendix to resolve any adverse effects upon such properties shall satisfy Section 106 responsibilities pursuant to 36 C.F.R. § 800.13. If there is an inadvertent discovery of burial remains that are not "historic property" as defined under 36 C.F.R. § 800.16(l), Stipulation XII of this PA and HRS § 6E-43.6 shall apply. If there is an inadvertent discovery of a historic property, Stipulation XII of this PA shall apply.

Comment [E34]: For properties already on the list of 33, it would be difficult to determine whether a particular effect was "unanticipated" (e.g., visual vs. vibration), because the nature of the adverse effects have not been identified.

The following procedure has been developed to implement Stipulation I.G of the PA. The PA Project Manager *(Kako'o)* will manage the review and disposition of comments from consulting parties related to this Appendix A as part of its assigned responsibilities.

NOTIFICATION PROCESS

1. Notification letter must come from a consulting party.

2. Notification letter should include the following information:

- Consulting party contact information including telephone number, email, and mailing address.
- Identify the impacted resource (i.e., a historic property, historic district, a property that was previously not considered historic, other).
- Provide a general description of unforeseen impact.
- Explain how the impact is different from what is stated in the Final Environmental Impact Statement (Final EIS).
- Identify the possible cause of the impact.
- List any additional information or related studies.

3. Send or deliver the notification letter to the Department of Transportation Services (DTS) at the City and County of Honolulu and FTA Region IX noting the project identification (HHCTCP) and subject (Section 106 Programmatic Agreement) to:

Wayne Y. Yoshioka
Director
Department of Transportation Services
650 S. King Street, Third Floor
Honolulu, HI 96813-3017

Ted Matley
FTA Region IX
P.O. Box 21648
201 Mission Avenue, Suite 1650
San Francisco, CA 94105

4. DTS and FTA will share the letter with the *Kakoʻo*. Within 30 calendar days of DTS and FTA receiving the notification letter, the *Kakoʻo* shall research or cause to be researched the issues listed in the notice, and write a recommendation for the disposition of the request for action by FTA.

5. The *Kakoʻo* and FTA shall consult with the Signatories, Invited Signatories, and appropriate ~~Concurring~~ Consulting Parties regarding the notification and appropriate action.

6. Within seven calendar days of receiving the recommendation from the *Kakoʻo*, FTA will take appropriate action and communicate the outcome of their review and decision to all of the Consulting Parties.