Draft Response to National Park Service Comments on Programmatic Agreement and Section 4(f) Evaluation
May 6, 2010

NPS text is in black. Response is in blue.

General response: The NPS reviewed a draft of the Section 4(f) Evaluation (version from Fall 2009) that does not reflect incorporation of FTA's comments received in the Section 4(f) Evaluation. The Section 4(f) Evaluation included in the Pre-decisional Review Copy Final EIS, released on April 28, 2010, incorporated FTA comments. While the Section 4(f) Evaluation was revised the overall conclusions and determination of Section 4(f) use has not changed. The project no longer uses the United States Naval Base Pearl Harbor National Historic Landmark. This was the only Section 4(f) property for which NPS was "an official with jurisdiction" for Section 4(f) purposes.

PA -General Issues:
We remain concerned about the City's and FTA's response to the OIBCs concerns about whether the timing of the phased archeological inventory adequately protects the possibility of avoiding burials, if the OIBC determines that encountered fields of burials must remain in situ. Under Identification and Protection of Archeological Sites and Burials III.B.4, avoidance is limited to " . . . 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" - realignment is not included as an avoidance measure. How is this resolved, if there is a large field of burials, since the area where there are known burials is in phase IV and the survey would occur after the other three construction phases are well underway or complete? This question also applies to Burial Treatment under III.E.2.b.

The OIBC has consistently expressed these concerns and NPS has expressed concerns regarding this issue in at least two sets of correspondence, September 24, 2009 and October 19, 2009 and during consultation conference calls. We strongly recommend that The City and FTA take the concerns of the OIBC seriously.

FTA and the City acknowledged OIBC's concern. FTA and the City have been coordinating with the OIBC, and the concerns of the OIBC have been considered and are addressed in the Programmatic Agreement ("PA").

The Section 106 Programmatic Agreement includes a "phased approach" for purposes of federal compliance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (16 USC 4700), and its implementing regulations (36 CFR Part 800). In short, the purpose of Section 106 is to identify historic properties that are listed in or eligible for listing in the National Register of Historic Places, and if present, avoid, minimize, or mitigate any adverse effects from the Project on those properties. The Project chose a phased Section 106 methodology, because it allows projects that consist of corridors or large land areas, or where access to properties is restricted, to use a phased process to conduct historic property identification and evaluation efforts. In the downtown area (construction phase 4) archeological testing in the urban area will be conducted on urban roadways and may require temporary lane closures and access restrictions. Phasing the AIS will enable the City to refine the preliminary design of the guideway columns. This will result in a more precise study area to identify burials and archeological sites.

For the Project, the Section 106 process included establishing the likely presence of historic properties within the area of potential effects, consultation and field investigation, and considering the views of the consulting parties, comprising more than thirty groups, organizations, and federal, state, and local agencies.

The primary purpose of the Section 106 Programmatic Agreement is to comply with federal laws and to define the process for implementing mitigation and consultation throughout the duration of the Project. It includes information about how the Project will address the identification and protection of native Hawaiian burials in Section III. In particular, the Project bound itself to complete data recovery work as part of each archaeological inventory survey (AIS) prior to initiation of each construction phase. This ensures that prior to construction in each phase; the treatment of any native Hawaiian burials identified in the AIS will be determined by the OIBC.

The following statements in the PA summarize the Section 106 consultation regarding a phased approach and the overall schedule for activities in the PA as they relate to the project construction phases:

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

WHEREAS, the timing of activities listed in this PA are estimated based on beginning design and construction of the first construction phase and FTA granting approval to enter Final Design in 2010, and FTA signing a Full-Funding Grant Agreement during 2011. 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. Phase 1 will be built as a design build project beginning in 2010. Phase 2 is anticipated to begin construction in 2011, Phase 3 in 2012 and Phase 4 in 2013. Construction is anticipated to be complete during 2018."

The phased approach to the archeological inventory studies (AIS) was discussed with the Section 106 consulting parties. The AIS for construction phase 4 shall be completed prior to final design in that area and will be submitted to SHPD for approval. As stipulated in the PA, the City will develop a protocol in coordination with OIBC. Section III.B.1 of the PA states: "Within 60 days of execution of this PA, the City shall consult with the OIBC, lineal and cultural descendents, 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, 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."

Section III. C of the PA states
"Fieldwork—The City shall conduct archaeological fieldwork as presented in the AIS Plan. For each construction phase, the archaeological fieldwork shall be completed in advance of the completion of final design so that the presence of any sensitive archaeological sites/burials discovered during fieldwork so that final design may incorporate measures to avoid and/or minimize adverse effects to the historic properties. Fieldwork for Construction Phase 1 shall be completed prior to beginning construction of that phase. The City shall complete the AIS for Phase 4 (Middle Street to Ala Moana Center) during Preliminary Engineering. The City shall inform OIBC of status of the 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 AISP,

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".

Section III.E.2.b of the PA acknowledges the City's commitment to coordinate with OIBC prior to final design and prior to construction should burials be identified. The PA states: "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."

Ultimately, the City must and will comply with the state's burial laws for any native Hawaiian burials discovered during the preparation of AIS that will be prepared prior to construction for each phase of the project. Because these surveys will be prepared closer to final design, archaeologists will be able to take an even closer look at areas of likely impact to minimize the risk of inadvertent discoveries during construction.

We suggest adding the following clause to the PA: Although this agreement appears to meet the technical requirements of Section 106, it does not fully take into account the intent of Section 106.

The PA meets the technical requirements and intent of Section 106. According to 36 CFR 800.1(a), "Section 106 of the National Historic Preservation Act requires Federal agencies [the FTA] to take into account the effects of their undertakings on historic properties and afford the Council [the Advisory Council on Historic Preservation ("ACHP")] a reasonable opportunity to comment on such undertakings. The procedures in this part [36 CFR Part 800] define how Federal agencies meet these statutory responsibilities. The Section 106 process seeks to accommodate historic preservation concerns with the needs of Federal undertakings through consultation among the agency official and other parties with an interest in the effects of the undertaking on historic properties, commencing at the early stages of project planning. The goal of consultation is to identify historic properties potentially affected by the undertaking, assess its effects and seek ways to avoid, minimize or mitigate any adverse effects on historic properties." In consultation with various agencies, organizations, and individuals of concern, including ACHP, the City has made a reasonable and good faith effort to comply with Section 106, in addition to laying out the framework for how the City will comply with state burial laws. This effort culminated in the Section 106 PA.

There are more than a dozen 30-day reviews identified in the PA. This does not include instances where more than one report may be sent as part a of 30-day review submission. We suggest that the City develop a schedule to coordinate these reviews so that consulting parties are not simultaneously reviewing multiple submissions from this one PA or at least a provision that will accommodate a request for additional review time? This is not a new request from NPS; we reiterated this suggestion in our October 19 correspondence.

FTA considered this request at the time it was originally made during the Section 106 multi-party consultation. In consultation with the signatories and other consulting parties, the City agreed to a two-step approach for developing a schedule of PA activities. A schedule of activities for the first 90 days after execution was distributed to the consulting parties. A schedule for remaining elements will be developed within 60 days of implementation as outlined in Stipulation XIII(A) and agreed to by the consulting parties. The schedule in the PA is the result of consulting party requests made throughout the consultation process.

PA- Adverse Affects:
We have not received a revised Historic Effects Report that reflects the revised findings of adverse effect that are addressed in the PA. The number of adversely effected properties has increased from 5 to 22 then, from 22 to 33. NPS raised this question during the consultations meetings in Sept. 2009.

In the April 2009 Historic Effects Report prepared for the Project, potential effects to 81 identified NRHP-listed and eligible properties within the Project's APE were evaluated using the criteria of adverse effect outlined in 36 CFR 800.5. FTA determined that 22 properties were adversely affected by implementation of the Project. On July 22, 2010, the SHPO singled out 11 additional properties adversely affected from the 81 properties identified in the Historic Effects Report. Based on SHPO's letter, FTA determined that the Project will have adverse effects on 33 (the original 22, plus SHPO's 11) historic properties. The SHPO did not provide the basis for its 11 adverse effect determinations. Therefore, general effects to the resource are assumed.

Apparent Omission- Little Makalapa is included in the Historic Effects Report and the first draft 4(f) document, but not in the current PA or revised administrative draft 4(f). It is a historic property within the APE. Also, it is not clear how it is that there is an adverse effect to Makalapa and No Adverse Effect to Little Makalapa. They are right beside one another in a linear fashion adjacent to the guideway and well within the APE. Is there a revised site plan for this area?

The FTA has determined, in accordance with 36 CFR part 800, that the Project will have no adverse effect on Little Makalapa. The FTA received concurrence from SHPO in the finding of "no adverse effect" in accordance with 36 CFR part 800. This is documented in the Historic Effects Report. Since there is no adverse effect to this historic property, it is not included in the PA. There is no use of the historic property; therefore, it is not included in the Section 4(f) Evaluation.

Apparent Omission and Inconsistency- It is unclear why Boulevard Saiman is identified as a direct use 4(f) historic property and it is not listed as an adversely effected property in the PA. If it is a historic property 4(f) property with a direct use, then it should be included in the PA as property with an adverse effect.

The FTA has determined, in accordance with 36 CFR part 800, that the Project will have no adverse effect on Boulevard Saimin, as documented in the Historic Effects Report. The FTA received concurrence from SHPO.

The following text regarding Boulevard Saimin is included in the Final EIS Section 4(f) Evaluation, April 28, 2010:

"The Boulevard Saimin parcel would be affected by the widening of Dillingham Boulevard (Figure 5-13) to accommodate the fixed guideway in the median, as common to all Build Alternatives. A total of 700 square feet would be necessary. Section 106 consultation determined that the Project will have no adverse effect on this historic property. Therefore, while there will be a direct use, the impact will be *de minimis* and development of avoidance alternatives is not required."

"Pursuant to 23 CFR 774.5(b)(1), FTA has notified ACHP and the SHPO of its intent to make a *de minimis* impact determination on the two historic properties that were determined to have a no adverse effect under Section 106 (Boulevard Saimin and O'ahu Railway & Land Company Basalt Paving Blocks and Former Filling Station)."

Apparent Omission- Kamehameha Highway Bridge over Halawa Stream is identified in the 4(F) discussion (page 5-63) of visual effects as incurring moderate to significant high level visual impacts. The bridge is identified in the April 14, Historic Effects Report as eligible for listing on the NRHP and with a No

Adverse Effect determination, yet the 4(f) indicates significant visual impacts. This would seem to constitute an adverse effect and therefore would be listed in the PA. The bridge also is not included as a 4(f) property in the table (Table 5-2) of 4(f) properties in the 4(f) chapter and should be included.

The FTA has determined, in accordance with 36 CFR part 800, that the Project will have "no adverse effect" on Kamehameha Highway Bridge over Halawa Stream. The mauka span of the bridge is the only span eligible for the NRHP. The Project will introduce new components into the setting. Pre-existing changes to the property have already diminished the bridge's integrity of setting (Historic Effects Report, April 14, 2009, page 135). The FTA received concurrence from SHPO in the finding of "no adverse effect" in accordance with 36 CFR part 800.

There is no use of this bridge; therefore, it is not included in the Section 4(f) Evaluation. This bridge is discussed in the Section 4(f) Evaluation Section 5.8.2 Differences in Environmental Impacts between Airport and Salt Lake Alternatives as part of the Least Overall Harm Discussion in the context of comparing the overall visual efforts of the two alternatives. The Section 4(f) Evaluation concludes that the overall visual effects for the Airport Alternative are expected to be of a lower magnitude than with the Salt Lake Alternative.

PA-Stipulations:
The HABS HAER HALS documentation stipulation V.C should state that documentation will be completed and submitted prior to commencement of the project or the phase in which a historic property is located. As currently written, the document could be submitted after resource is impacted, which does not allow for additional field work or photographs if needed after draft review of the reports. This comment is not new. The suggested language that we are requesting was included in our September 25, 2009 comments on the draft PA.

Also, 30 days is not enough time to review multiple HHH submissions; a 30-day window also does not take into consideration for what else is in our queue for review request a minimum of 60 days.

The City will provide for a 60 review period of HABS/HAER/HALS documentation. No construction will commence in the area of each resource for which a HABS/HAER/HALS recordation is being completed prior to completion of the NPS 30-day review period."

We suggest the following changes to Section III.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 to archaeological sites and burials pursuant to the applicable state laws, including Hawai'i Revised Statutes, Chapter 6E and HAR, Title 13, Subtitle 13, Chapter 300, for each all construction phase phases. Treatment plans shall be submitted to the SHPD for approval. Upon approval by the SHPD, the City shall implement the treatment plan.

This subsection is specific to burial treatment plans as outlined in Hawaii State law. It is not appropriate to add "archaeological sites" in this location. Archaeological sites are treated separately in Section III.E "Mitigation Plans".

4(f) -Least Harm Alternative
Is the Airport Route, with the new alignment around the airport, still the least harm alternative compared to the Salt Lake Route? There are more displaced businesses; however no longer a direct use of Ke'ehi Lagoon Park. The alignment at the airport that is now the new alignment was dismissed as an avoidance measure in the administrative draft 4(f) because it required 15 full and 21 partial acquisitions of commercial properties, as well as a double-stacked guideway and an additional cost of $75,000,000 (2007 dollars). The analysis will need to be revised both because of the realignment and due to the following omissions and errors:

In the Draft and Final EISs, the Build Alternatives were refined as the design phase evolved, with site specific shifts occurring in the alignment or placement of individual station elements to avoid, where feasible, use of Section 4(f) properties. Through this iterative process, the number of Section 4(f) properties affected by the Project includes all possible measures to reduce harm and minimize the use of Section 4(f) properties.

Subsequent to the Draft EIS, additional coordination with FTA, the Federal Aviation Administration (FAA), and HDOT Airports Division revealed that the Airport Layout Plan (ALP) for Honolulu International Airport, upon which the alignment was based, was inconsistent with current FAA regulations for the runway protection zone on runway 22L/4R. The ALP showed a 1,000-foot runway protection zone where the requirement is now 1,700 feet. Although there are existing buildings within its limits, objects and activities are discouraged from being added to the controlled activity area of the runway protection zone.

This coordination resulted in an evaluation of a range of options to avoid the runway protection zone, including relocation of runway 22L/4R in the makai direction or transitioning the guideway along a range of alignments between Aolele Street and the H-1 Freeway. Based on this evaluation, the design was refined in coordination with FAA and HDOT-Airports to follow Ualena Street for a short distance, transitioning from Aolele Street to Ualena Street at the extension of Ohohia Street (a refinement of the avoidance alternative presented in the Draft EIS). This option has the lowest cost and fewer impacts to the airport than the Airport Alternative described in the Draft EIS. The FAA's evaluation of design options to avoid conflicts within the runway protection zone is included in Appendix K of the Final EIS.

The description of the direct use of Ke`ehi Lagoon Beach Park in the Final EIS Section 5.5 (page 5-18) was refined to reflect the transition that modified the entry point of the transit guideway into the park. The *de minimis* impact on the park does not change as a result of the transition from Aolele Street to Ualena Street. Section 5.8.1 of the Final EIS was revised to slightly change (decrease) the amount of land that will be used in Ke`ehi Lagoon Beach Park. Overall, the Aolele Street transition to Ualena Street refinement shortens the amount of alignment in the park by approximately 800 feet from the 2,000 feet described in the 2008 draft EIS.

The FTA may approve only the feasible and prudent alternative that causes the least overall harm in light of the statute's preservation purpose. Two feasible and prudent alternatives (Airport Alternative Alignment and Salt Lake Alternative Alignment) that were evaluated in the Draft EIS are assessed in this section to determine which one results in least overall harm. The least overall harm is determined by balancing the following factors:

- Ability to mitigate adverse impacts to each Section 4(f) property
- Relative severity of harm, after reasonable mitigation to the Section 4(f) qualities
- Relative significance of each Section 4(f) property
- Views of officials with jurisdiction of each Section 4(f) property
- Degree that Purpose and Need is met
- Magnitude of adverse impacts, after reasonable mitigation, to non-Section 4(f) properties
- Substantial differences in costs

As described in Section 5.8 of the Final EIS, both the Salt Lake Alternative and the Airport Alternative would result in use of Section 4(f) properties. Based on an assessment of the transportation benefits, public comments, and environmental analysis, this Section 4(f) evaluation documents that the Airport Alternative would result in the least overall harm and greatest improvement to corridor mobility. This chapter documents that there is no prudent and feasible alternative, as defined in 23 CFR 774.17, to the use of land from Section 4(f) properties, and the Project includes all possible planning, as defined in 23 CFR 774.17, to minimize harm to the use of Section 4(f) properties. The avoidance of Section 4(f) properties was an important consideration in designing and screening the alternatives under

consideration. As a result of this approach, the majority of public parks, recreational properties, and historic properties identified within the study corridor are avoided by the Project's design and location.

Apparent Omission and Error- The Impacts to Section 4(f) Resource section of the 4(f) chapter includes the following statement and assessment:
-The Airport Alternative was also determined to have adverse Section 106 effects related to setting and feeling at five historic resources (U.S. Naval Base Pearl Harbor National Historic Landmark, INCPACFLT Headquarters National Historic Landmark, Potential Makalapa Navy Housing, Historic District, Ossipoff's Aloha Chapel, and the Hawai'i Employers Council). The constructive use evaluation, described in Section 5.6, however, determined that none of these Section 4(f) properties will experience impairment severe enough to constitute constructive use from the Project. and
-The Visual Effects section of the 4(f) chapter only mentions visual effects to Pearl Harbor, Kamehameha Highway Bridge and Ke'ehi Lagoon Beach Park. There were 33 identified adverse effects and 20 of these properties were evaluated for constructive use due to visual impacts and impacts to the setting, feeling and association. The analysis in the two aforementioned sections omits most of these impacts when comparing the Airport alignment with the Salt Lake alignment.

The FTA is not required to document each determination that a project would not result in a constructive use of a nearby Section 4(f) property. *See* 23 CFR 774.15(c). However, based on concerns from consulting parties during the Section 106 process and at the request of the FTA, the City evaluated whether the project results in a constructive use of a nearby Section 4(f) property. That evaluation is based on 23 CFR 774.15(a), which states that: "A constructive use occurs when the transportation project does not incorporate land from a Section 4(f) property, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired. Substantial impairment occurs only when the protected activities, features, or attributes of the property are substantially diminished." Attributes that qualify the property for protection are based on NRHP eligibility criteria found in 36 CFR 60.4.

The Section 4(f) Evaluation Section 5.6.3 Summary of Evaluation of Constructive Use of Section 4(f) Properties concludes:

In summary, there will be no constructive use of Section 4(f) properties. The constructive use analysis considers all historic properties with an adverse effect Section 106 finding, where the Project will not directly use the property. The Project will not substantially impair the features or attributes of the historic properties that contribute to NRHP eligibility. There are no wildlife or waterfowl refuges along the study corridor and, therefore, there will be no proximity impacts from ecological intrusion. Vibration and noise impacts along the corridor range from negligible to moderate and do not rise to the level of "substantial impairment." Few, if any, of the Section 4(f) parks and recreational areas derive a substantial part of their value through their visual setting. Rather, they are used for games and sports, picnics, and parking. While visual impacts will occur, the Project will not substantially impair any aesthetic features that are important contributing elements of a property. In conclusion, the Project will not result in a constructive use of any Section 4(f) park or recreational or historic property.

The Impacts to Section 4(f) Resources section of the 4(f) evaluation includes the statement:
In a letter dated September 8, 2008, the State Department of Accounting and General Services considered both alignments and indicated a preference for the Airport Alternative (Project), noting that "the impact on the stadium would be further mitigated if the system ran past the airport." This evaluation was based on an earlier assessment of adverse effects that amounted to approximately 5 properties and now the number of adverse effects is 33. It is not clear whether the AGS has made a new assessment. If a new assessment has not been made of the revised alignment and in consideration of the increase in adversely affected properties, NPS requests FTA to omit this statement or request a new evaluation from the AGS.

The assessment by Department of Accounting and General Services (AGS) was limited to Aloha Stadium, for which it is the "official with jurisdiction" for Section 4(f) purposes.

Apparent Error - Some properties that are identified as individual historic properties in the Historic Effects Document are grouped in the 4(f) chapter with a single direct use for both properties, when it should be two instances of direct use - This is the case for the Oahu Railway & Land Company Terminal Building and the Oahu Railway & Land Company Office/Document Storage Building and it may be the case for the Oahu Railway & Land Company basalt paving blocks and the Oahu Railway & Land Company former filling station. If some of these resources constitute a district, then they should be identified as such and the use should be evaluated for the district as well.

At the request of FTA, historic properties were grouped in the Section 4(f) Evaluation where appropriate to combine the avoidance alternatives and measures to minimize harm discussion. The grouping does not imply a historic district, but provides a comprehensive methodology for evaluating these historic properties that is understandable to the public. The grouping of properties for Section 106 purposes was based on discussions with the SHPO and the SHPO has concurred with the effects findings on these properties.

4(f) - NR status of historic properties
Apparent Error - There are a few properties identified in the 4(f) document as eligible for listing on the NRHP that are actually listed on the NRHP. This is the case for the Merchant Street Historic District, Aloha Tower, and Dillingham Transportation Building. The text should be revised to state that the properties are listed on the NRHP.

Section 4(f) page 5-38 Dillingham Transportation Building states "The NRHP-listed building is significant for its association with commercial development of the time and the Dillingham family's business empire…" The City and FTA will add identified NRHP-listed and eligible properties the Section 4(f) Evaluation as is consistent with the rest of the document. This will not change the analysis and conclusions in the Section 4(f) Evaluation.

4(f) - constructive use analysis
Apparent Inconsistency - The 4(f) document includes a statement about how districts are treated under 4(f) analysis. "The FHWA Section 4(f) policy paper suggests that if a project has a Section 106 Finding of Adverse Effect on a historic district, as is the case here, the district and each contributing element should be considered for Section 4(f) use." (p. 5-34). Does this mean that use is assessed for both the district as a whole and for each of the contributing resources? Either way there seems to be an inconsistency in how use is evaluated when the resource is a district.

The constructive use evaluation for the impact to historic bridges seems inadequate. As described in the documentation, the guideway will run parallel and above some historic bridges (Honouliuli Stream Bridge, Waikele Stream Bridge Eastbound Span and Bridge over OR&L Spur, Waiawa Stream Bridge 1932 (westbound), Waimalu Stream Bridge, Kalauaa Springs Bridge, and Kalauaa Stream Bridge); however, the constructive use evaluation states the following in every case: "As the primary views of the bridge are from ground level, the elevated guideway will not eliminate primary views of this architecturally significant historic bridge nor alter its relationship to the existing transportation corridor." There are some plans in other chapters of the DEIS however, no plans or simulations are provided in the 4(f) to substantiate the assessment.

A constructive use occurs when a transportation project does not incorporate land from a Section 4(f) property, but the project's proximity impacts are so severe that the protected activities, features, or attributes that qualify the property for protection under Section 4(f) are substantially impaired. *See* 23 CFR § 774.15(a). Substantial impairment occurs only when the protected activities, features, or attributes

of the property are substantially diminished. *See* 23 CFR § 774.15(a). The Project will have no columns or project features in Honouliuli Stream, Waikele Stream, Waiawa Stream, Waimalu Stream, Kalauaa Springs or Kalauaa Stream. The Project will span these streams and the associated historic bridges; consequently, the project will not incorporate land from these historic properties. The Historic Effects Report, April 14, 2009, concluded that although these bridges would remain physically intact, the proximity of the guideway to the bridges would substantially obscure the visual relationship between the bridges and their immediate surroundings. However, the Project will have no effect on location, design, materials, or workmanship of the historic property. In addition, the primary views of the bridges are from ground level, the elevated guideway will not eliminate primary views of these architecturally significant historic bridges or alter their relationship to the existing transportation corridor. A picture of each bridge at ground level is provided in the Final EIS Section 4(f) Evaluation for each resource.

The City and FTA will reference the Historic Effects Report, April 14, 2009 in the Section 4(f) Evaluation, Section 5.4 Description of Section 4(f) Properties. The Historic Effects Report includes a description, photograph and plan view of the historic properties.

Similar questions arise regarding the constructive use analysis for the Institute for Human Services/Tamura Building. The Iwilei Station is with twenty feet of the Tamura Building, which has been identified as architecturally significant under Criterion C. The FHWA Section 4(f) policy paper seems to suggest that there is precedent for finding constructive use in the case of the Tamura Building and perhaps in the case of some of the bridges.

The Section 4(f) Evaluation (April 28, 2010 discussion in the Final EIS) of the Institute for Human Services/Tamura Building states: "The primary views of the building are from ground level on Ka'aahi Street, and the guideway and station will be 35 to 40 feet above grade. The side of the building along Ka'amahu Place will be entirely unobstructed, and most of the building along Ka'aahi Street will remain unobstructed because of the station's length and height and the guideway's diagonal approach to the adjacent street. The Project will not substantially impair the visual and aesthetic qualities of the building that qualify it for protection under Section 4(f). As a result, there will be no constructive use of this property." The City and FTA will reference the Historic Effects Report, April 14, 2009 in the Section 4(f) Evaluation.

4(f) –Miscellaneous
P5-18 Agency Coordination and Consultation 2nd column line 5: The following is not an accurate statement: " . . . a Programmatic Agreement (PA) has been developed with the concurrence of all consulting agencies . . ."

Reference to the Programmatic Agreement has been revised in the Section 4(f) Evaluation as follows: "Appendix H, Section 106 of the National Historic Preservation Act Programmatic Agreement, details the mitigation, consultation, and review process for use of historic properties impacted by the Project."

P5-34 second paragraph (This paragraph discusses the de minimis justification for direct use in Chinatown District). The following excerpt does not seem to be an accurate assessment of the impact and therefore does not support the de minimis finding: The 30- to 42-foot-high guideway will be placed in front of contributing pier buildings along the waterfront (Figure 5-25). It will pass between these elements and the harbor. The primary view of these structures is from a ground-level perspective from the mauka side of Kamehameha Highway, six lanes removed from the structures. Thus, the guideway and station will be behind and above the viewer and will not block or obstruct primary views of any architecturally significant buildings or substantially impair the characteristics of its National Register eligibility. The next paragraph goes on to state that the: The district's NRHP eligibility is based on the relationship between the district's elements and Honolulu Harbor (as well as the architecture). The Project will not substantially impair that physical connection to the waterfront. However, it will be a dominant visual element

contrasting in scale with the pedestrian environment and substantially changing makai views of Honolulu Harbor from Chinatown. It seems that this last excerpt contradicts a de minimis finding. I have included the map below to show how the line goes through Chinatown District.

The Section 4(f) Evaluation (April 28, 2010) includes an evaluation of the direct use of Chinatown, avoidance alternatives and measures to minimize harm. The following text is included in the April 2010 version of the Section 4(f) Evaluation in the Final EIS.

"Section 4(f) Evaluation
The Project includes construction of an elevated guideway within a reconstructed median on Nimitz Highway and a station Koko Head of Nu'uanu Stream at the 'Ewa edge of the district. The station entrance will touch down in a parking lot associated with the non-historic Chinatown Marketplace. While there will be no physical impact to any contributing resource, the guideway and station are within the National Register District. The Chinatown Station is located in the least sensitive location on the 'Ewa edge of the district, beside non-contributing modern buildings in a parking lot. The 30- to 42-foot-high guideway will pass between pier buildings along the waterfront (Figure 5-22) and the harbor that are contributing elements to the District.

The primary view of the Project and the station from a ground level position is from vehicles and pedestrians on Nimitz Highway and from pedestrians on the mauka side of Nimitz Highway. Views from vehicles traveling on Nimitz Highway will be Thus, the guideway and station will be behind and above the viewer and will not block or obstruct primary views of any architecturally significant buildings or substantially impair the characteristics of its National Register eligibility. Predicted noise levels do not exceed FTA criteria. The district's NRHP eligibility includes the relationship between the district's elements, including architecture, and Honolulu Harbor within the district. The Project will not substantially impair the physical connection to the waterfront. The Project will be a dominant visual element that contrasts in scale with the pedestrian environment and substantially changes makai views of Honolulu Harbor from Chinatown.

Avoidance Alternatives
As described above, there are no prudent or feasible avoidance alternatives to the Nimitz Highway alignment that passes through the edge of the Chinatown Historic District. The only alternatives that would completely avoid the Chinatown Historic District would be the Downtown area tunnel alternatives (Figure 5-23). This tunnel would increase the cost of the Project by more than $650 million (2006 dollars), which is beyond the funding provided in the financial plan. Therefore, this would not be considered a prudent alternative as defined under 23 CFR 774.17, as it would result in additional construction cost of an extraordinary magnitude.

Measures to Minimize Harm
Throughout the planning and design of the Project, the guideway has been designed to be as narrow as possible to minimize potential use of the Chinatown Historic District. The guideway will follow Nimitz Highway along the makai edge of Chinatown, and a station entrance will be placed on a parking lot on the edge of the historic district that will not require direct use of the district's contributing properties. The public, including the Section 106 consulting parties, will be offered the opportunity to provide comments on station design at neighborhood design workshops during the Final Design process.

A PA has been prepared in accordance with Section 106, with detailed stipulations that mitigate adverse effects from the Project on cultural properties. Specific measures are outlined related to station design proposed within, or adjacent to, the boundaries of properties eligible for or listed on the NRHP, such as this property. The City will consider the Secretary of Interior's Standards for the Treatment of Historic Properties in developing these designs, and the Section 106 consulting parties will be provided with the opportunity to comment on the design plans for stations. After review of other possible alternatives, the

alignment on Nimitz Highway includes all possible planning to minimize harm to the property and results in the least overall harm among the alternatives considered."

P 5-42 thru 5-43 Regarding Noise:
Is it an overstatement that there will be no noise impacts for West Loch Golf Course, Neal S. Blaisdell Park, and Aiea Bay State Recreation Area?

There will be no noise impacts at those locations as documented in Section 4.10 of the Final EIS. The City and FTA will add a reference to the noise analysis in the Section 4(f) Evaluation.

P5-49 under US Naval Base Pearl Harbor NHL:
Apparent Omission - The Bowfin is a NHL and the USS Arizona is a NHL.

The Section 4(f) Evaluation in the Final EIS includes the United State Naval Base Pearl Harbor National Historic Landmark since it the historic property within the APE. The following text was added to the Final EIS, Section 4.16 to address the National Park Service comments:

"The Project is adjacent to the U.S. Naval Base, Pearl Harbor NHL and near the CINCPACFLT Building NHL, also a part of the Pearl Harbor Naval Base. The FTA accepted the SHPO determination of adverse effect. The Project is not within the boundary of the NHLs and does not have a direct impact on the resources. Therefore, individual, eligible resources located on the Pearl Harbor Naval Base that will be adversely affected by the Project due to changes to setting include Makalapa Navy Housing, Vladimir Ossipoff's Aloha Chapel, SMART Clinic, and Navy-Marine Corps Relief Society–Facility 1514. These resources are not considered contributing elements to the NHL district. The USS Bowfin and the wrecks of the USS Arizona and USS Utah are NHLs located within the Pearl Harbor NHL, but they are not located within the APE for the Project. In addition, some properties within the NHL that also constitute a portion of the newly designated World War II Valor in the Pacific National Monument, including the Arizona Memorial and Visitor Center, were located outside of the APE."

P 5-50 under US Naval Base Pearl Harbor NHL:
We have earlier requested that the following statement be omitted since it is from an outdated omination that has been replaced: The NHL nomination specifically states that the national significance of Pearl Harbor stems from its continuing function rather than its physical facilities and those physical changes required to support this mission are "necessary, normal, and expected.

In our May 10, 2010 letter, NPS provided extensive comment on the use of this phrase in the historic effects document.

The U.S. Naval Base Pearl Harbor NHL nomination was requested from and provided by the NHL office in Washington D.C. The original nomination form and materials provided by the NHL office contained this language, which was used for the effects assessment in the Historic Effects Report. In response to NPS's prior comments, the updated form was obtained from the NHL office. The City and FTA will revise this language in the Section 4(f) Evaluation where the NHL is described.

P. 5-63 Visual Effects
Apparent Error-The first paragraph includes the following statement: With the Airport Alternative, views of East Loch and the Pearl Harbor National Historic Landmark makai of the alignment will be partially obstructed by the guideway and columns in the residential area near Kohomua Street. The visual integrity of the national historic landmark will not be adversely affected, and the project elements will barely be visible in mauka views from the harbor (see Figure 4-42 in Chapter 4 of this Final EIS). The adverse effect on the NHL is visual, so it is not clear why this statement is included here.

The Section 4(f) Evaluation includes an assessment of the visual effect on the Pearl Harbor National Historic Landmark.

"The elevated guideway will be approximately 650 feet makai from the building and approximately 40 to 45 feet above grade. Due to topography and vegetation, the Project will be minimally visible from select vantage points from within the property boundary. The historic setting of the property consists of its immediate surroundings, which include the drive from Kamehameha Highway (which is not part of the NHL) and the surrounding plantings. The rather dense vegetation will screen the Project from the INCPACFLT Headquarters."