I. SHPD Remaining Topics of Concern in the PA

A. The dPA needs to specify a process, timetable, and the various parties' responsibilities for post-review archeological discoveries

The archeological inventory survey (AIS) methodology for the Project is designed to minimize the likelihood for "post-review" burial discoveries. The intent is to investigate all locations requiring excavation and to address any discoveries as pre-construction discoveries with the assistance of the OIBC and SHPD. In the event of a "post-review" discovery, the PA follows State law and would apply to few, if any, situations. The experiences related about other projects in the letter are not for a linear project in which the intent is that 100% of the potential impacts would be addressed prior to construction. They are more relevant to large surface projects that are investigated by testing select locations. This can yield an unrealistic understanding of the location of burials or artifacts. The AIS methodology for the Rail Project is designed to minimize that possibility.

In order to address the concern, the ***PA will be revised to include a statement about how discoveries that occur after the completion of the AIS or during construction will be addressed beyond complying with State legal requirements***. It should also be noted that the SHPD's decision-making regarding post-review burial discoveries will be aided by consultation/coordination that would be completed during the AIS phase in developing knowledge of cultural and lineal descendants and, most likely, their preferred course of action for affected burials. That knowledge can be expected to shorten the timeline for addressing the concern identified in the letter.

B. The Project requires SHPO review well above and beyond the norm and thereby the City must provide staff expertise and continuity to meet the reviews generated by the Project and in this PA

The PA documentation stipulations as well as the review requirements were established by the consulting parties, including SHPD staff, and agreed to by the City at their request. The City has identified the need for an architectural historian to supervise the implementation of the PA in close cooperation with SHPD and is open to discussing additional methods to support an effective flow of information and assistance in the approval process. The City will fund staff augmentation to function as support to SHPD to handle issues related to review of documents produced in the course of the project regarding historic or archeological resources. ***The provision for supplementary support for SHPD will be added to the PA delineating the specific expertise and qualifications required.***

C. The adverse effects upon the two Historic Districts generated by the Project require special mitigation tailored to preserve the unique characteristics of entire districts.

While the Project crosses a section of the Chinatown Historic District boundary, Nimitz Highway (a six to eight-lane roadway) already bisects the district, separating it from the water.

The Project does not occur within the boundaries of the Merchant Street District. The FTA determined that there were no adverse effects to this district. SHPD did not concur with this finding, but has never provided the required documentation on the cause of the adverse effect determination.

The PA provides mitigation for these two districts in the form of proposed National Register and HABS documentation. Additionally, resources within these districts may be documented as part of interpretive work required by the PA and/or may be the subject of studies funded by the $100,000 Humanities Program. Buildings and property owners within the districts can also benefit from the educational effort/program to encourage rehabilitation that will be established as part of the PA mitigation. Finally, the City has established a $2 million fund for a Historic Preservation Committee to distribute to eligible or listed historic properties (including contributing properties within historic districts) within the APE for exterior improvements. Buildings within the districts will be eligible for this funding. The City believes that the PA offers adequate mitigation for the adverse effects to these historic districts because 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.

II. The Draft Programmatic Agreement Does Not Adequately Address the Direct, Indirect, Reasonably Foreseeable and Cumulative Adverse Effects on the Chinatown Historic District and the Merchant Street Historic District Caused by the Project.

Item I. C, above, addresses most of the comments in the lead-in to this section. To summarize: The FTA has accepted SHPD's adverse effect determinations, although no justification has been presented to support these determinations. The definition of "historic property" is consistent with Section 106 terminology and includes eligible or listed buildings, structures, objects, sites, and districts, and has been addressed by the FTA attorneys as being equivalent for purposes of the PA.

A. Examples of Direct, Indirect, Reasonable Foreseeable and Cumulative Adverse Impacts on the Historic Districts

1. Development of a high capacity rail corridor and transit stops which alter the characteristics of the low-density historic properties

The development of the rail project will not by itself alter the low density characteristics of the historic properties. While it can provide a basis for encouraging change, it still requires approval of supporting policies to become reality. Economic development that takes place in historic districts will have to meet the underlying requirements of those districts. ***This will be clarified in the PA.***

2. Development of a transit corridor which slices apart a historic district, segregating the waterfront community from the upper portions of the community

The rail system does not "slice apart" any historic district that is not already severed by existing infrastructure. In terms of connectivity, the elevated rail system will be more easily negotiated than Nimitz Highway as it does not obstruct passage.

3. **Development of transit facilities which will provide additional shelter to a large homeless population**

The project provides for the safety and security of the system and its users.

4. **Development of transit structures which will be targets for graffiti, areas for drug dealing and drinking**

The project will provide features to minimize the likelihood of graffiti or vandalism through plantings and surface treatments.

5. **Development of transit stops with high volume of daily commuter traffic, creating tremendous new markets for commerce, resulting in increasing pressure to redevelop the two Historic Districts to a higher density**

This is similar to comment 1, above. Any changes that affect the historic districts will have to abide by the requirements imposed by existing legislation. ***The PA wording will be updated to clarify that commitment.***

The concerns about indirect and cumulative effects are addressed in the EIS as required by NEPA.

Section 4.19.2 of the Final EIS evaluated the effect of the Project on growth in areas around stations. The analysis concluded Chinatown and Downtown already have TOD or TOD-like developments. Redevelopment in the area has taken place with recent condominium towers being built downtown. Further redevelopment could occur, particularly around the port, and incorporate more TOD elements in the future. The historic districts restrict redevelopment to a degree and those restrictions will be adhered to. As stated, the Project by itself is unlikely to substantially alter existing development plans in the Chinatown and downtown areas.

In addition to the DPP's design review process for development within the historic districts, DTS is responsible for ensuring that the mitigation commitments made in the Final EIS, including the PA, are followed. DTS will review each design to ensure that it conforms to the commitments outlined in the PA. Consulting parties will also review and comment on designs.

B. Section IV Design Standards Should be Amended to provide Distinct Standards and Procedures for the Two Historic Districts

To clarify the commitments noted in the letter, the language about the Secretary of Interior Standards was included by the consulting parties. The Historic Districts were addressed in the PA and the wording conforms to the agreement reached during the PA consultation process. The effect on the districts is addressed in the PA.

Regarding the suggestions made in the letter, ***clarification will be made in the PA to indicate that zoning and design criteria affecting the historic districts will be respected.*** Each station design will be the subject of three public workshops with the community who will be asked to participate in developing the design. ***Wording will be added in the PA to include the reference to the "architectural renderings of proposed design" made in the letter.*** The PA currently provides for a 30-day review of preliminary engineering design plans. A 90-day review period is excessive for any review activity on an active project. ***However, a longer review period of 60 days will be accommodated and added to the PA for plan reviews if it occurs concurrently with the design process.***

C. Section VIII Mitigation for Specific Historic Properties Should be Amended to Include the Two Historic Districts

This section was developed at the request of the consulting parties to address mitigation for specific historic properties. Concerns were raised during the consultation meetings held during the summer and fall of 2009. The SHPD participated in these meetings. The PA provides $2 million to address the effects on historic properties, which includes eligible or listed buildings, structures, objects, sites, and districts. This was intended and would apply to the districts as well, as provided in Section 106 and noted by FTA attorneys. It also covers the comment related to exterior improvements within historic districts. Alt***hough not needed under Section 106, clarification can be added to the PA to reference the historic districts specifically to ensure it is clear that the districts are part of the intended program.*** See above response for additional information on mitigation that includes the districts. The PA already includes updating the Chinatown Historic District National Register nomination in Section VI.C.1 (as well as all 30 other adversely affected properties). The potential for a Main Street Program was addressed thoroughly during the PA consultation process but was not included in the PA. The mitigation fund and the formation of the associated committee to oversee its use with direct relationship to the Project effects were included instead.

D. **Section IX Measures to Address Reasonably Foreseeable Indirect ad Cumulative Effects Caused by the Project**

The identified Project Architectural Historian was included to manage the implementation of the PA for the City, which includes working with DPP on any TOD projects or other changes occurring near a station area. The position would also serve as staff to the proposed Historic Preservation Committee (HPC) to assist in managing the allocation of funds under the provisions of the $2 million grant program. The grant fund and its budget were defined in discussion with the consulting parties, at meetings where SHPD staff was present. It is available to be used on projects relating to eligible or listed resources in the entire APE as opposed to only those that involve resources that were adversely affected by the Project in an effort to address potential indirect and cumulative effects. The demolition provision was included to measure changes in the number of historic and older properties over time at the request of the consulting parties. It was not intended to be a basis for mitigation as the demolitions may not have any relationship to the Project.

Regarding the suggestions in the letter, the Project has a safety and security plan and will provide funding to maintain and enhance safety and security at the stations which will help prevent homeless use and vandalism of the facilities. That provision is addressed in the FEIS. Further prevention will also be provided by plantings on columns and specialized anti-graffiti surface treatments. Funds for exterior improvement of historic properties are available through the grant program consistent with the uses defined in the PA by the consulting parties.

E. Redevelopment and Pressure for Higher Redevelopment with the Historic Districts is a Reasonable Foreseeable and Cumulative Impact that Requires Mitigation

These are appropriately addressed in the Final EIS. The grant fund and the oversight by an architectural historian are designed to keep the City abreast of changes and help mitigate the Project's potential reasonable foreseeable and cumulative effects on the historic districts. ***As mentioned earlier, the comments in the letter about the City's TOD ordinance are inconsistent with its intent which will be clarified in the PA.*** Most of the effects alluded to in the letter are desirable as noted in the last paragraph, but it is not the intent of the project to encourage redevelopment at the expense of the historic districts. The PA has been developed to help ensure preservation of historic properties even as the corridor changes over time. To ensure comprehensive notification to affected interests, the City will also include the Section 106 consulting parties in distribution of any materials or invitations regarding TOD activities. It is the intent that the City, in cooperation with SHPD, will be able to use the PA to provide effective and appropriate stewardship for historic properties within the corridor.