| | A | B | C |
|---|---|---|---|
| 1 | **NTHP Comments on Programmatic Agreement** | | |
| 2 | | | |
| 3 | **Number** | **PA Page Number** | **Comment** |
| 4 | 1 | Page 1 | Apparently the City has established a new agency – the Public Transit Authority – which will be taking over the role of the DTS. |
| 5 | 2 | Page 3 | 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. |
| 6 | 3 | Page 3 | 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. |
| 7 | 4 | Page 4 | These are commitments that should be enforceable stipulations, not Whereas Clauses. See p.14. |
| 8 | 5 | Page 6 | Is this person in addition to the *Kako'o*? The relationship needs to be clarified. |

| | D | E |
|---|---|---|
| 1 | | |
| 2 | | |
| 3 | **Response** | **FTA comments** |
| 4 | The Honolulu Authority for Rapid Transportation (HART) does not take effect until July 2011, so there is not yet another agency. When it takes effect, HART will be responsible for all Project activities, including the PA. HART will be a semi-autonomous agency and will be required to coordinate with other City agencies for work in other departments. | (copied response from HHF) |
| 5 | FTA has determined that the Project will have adverse effects to 33 historic resources. Included in these 33 are the adverse effect determinations recommended by the SHPO and accepted by FTA. As discussed with the consulting parties during consultation, the SHPO did not provide the basis for these determinations. Therefore, general effects to these resources are assumed. Reference to the Final EIS Table 4-34 was add to the **Whereas** clause on page 3 of the PA where the adverse effect determinations are noted. | On the conference call on 12/13, it was decided to reference back to the Table in the FEIS in a whereas clause. Would also mention that where the adverse effect is listed as not being indentified by the SHPO, FTA assumed an adverse effect to the setting of the historic property. |
| 6 | This issue was previously addressed with the Navy, SHPD, and other consulting parties during consultation . The APE was approved by SHPD on February 8, 2008. As discussed during consultation, the ICRMP is not a Section 106 document; it is a management tool for the Navy. The Navy can choose to manage the resources as a single system if desired. The reasoning for the separation of the two resources is that they are of different eras and served different purposes: enlisted vs. officers. They are also separated by a major public thouroughfare. The landscape area where the station touches down is not a contributing portion of the resource. It holds no specific historic value. The objective of the insistence on a single district is unclear, as it would not benefit the Project or further historic preservation. | |
| 7 | The City is required to and committed to meeting all of the requirements of the PA. The PA will be an attachment to FTA's Record of Decision (ROD) which also commits the City to complying with these mitigaiton measures. | (revised wording) |
| 8 | This postion will be filled in addition to the Kako`o. The City will hire an Architectural Historian to oversee implementation of the Section 106 process and the commitments in the PA. The Kako`o will coordinate with the Section 106 consulting parties. | This may be a worthwhile comment that should be addressed. The goal here is to not discredit every response by the commenters, but to explain the thought process. (revised wording) |

| | A | B | C |
|---|---|---|---|
| 9 | 6 | Page 7 | 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. |
| 10 | 7 | Page 8 | 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 | 8 | Page 9 | 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 |
| 12 | 9 | Page 9 | The City should have begun this study during the past year. There is no good reason for deferring the identification of these cultural resources. |
| 13 | 10 | Page 9 | 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). |
| 14 | 11 | Page 14 | 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. |
| 15 | 12 | Page 14 | Not strong enough. |

| | D | E |
|---|---|---|
| 9 | This is in reference to the people tasked with completing the various responsibilities under the PA who would interact with the Kako`o. | |
| 10 | FTA has determined that the Project will have adverse effects to 33 historic resources. Included in these 33 are adverse effect determinations recommended by the SHPO and accepted by FTA. The SHPO did not provide the basis for these determinations. Therefore, general effects to the resources are assumed as noted in Table 4-34 of the Final EIS. Reference to the Final EIS Table 4-34 was add to the Wheras clause on page 3 of the PA where the adverse effect determinations are noted. | Revise response to indicate that the whereas in the programmatic agreement will be changed to "see FEIS table 3.X for adverse effect determinations. Where the table says the SHPO did not respond, the FTA assumed general adverse effects to setting of the historic property and not a physical adverse effect to the historic property." Or some language to that effect. (wording revised) |
| 11 | PB will not fill the Kako`o role. Any contractual relationship between the City or one of its agents will be an arms-length financial arrangement only. The Kako`o, as defined here, will be responsible for ensuring the elements of the PA are adhered to and will interact with the consulting parties. The details of the full process are inappropriate in the PA and should be defined in the contract with the individual or firm hired to fill this role. As stipulated in the PA, the SHPO and FTA will have the opportunity to review and comment on the scope of work and contract for the Kako`o role. | Can also add that the SHPO and FTA will have an opportunity to review and comment on the statement of work and contract for the Kako'o role. (wording revised) |
| 12 | The City will begin this study in the timeframe stipulated in the PA, once the PA is executed. The City is prepared to meet the schedule for this work, which was agreed upon by the Section 106 consulting parties. | Tone down. (done) |
| 13 | The delay in the conclusion in the PA is the only impediment to beginning and completing the process and, if found, protecting the resources. The comment about 4(f) is not clear. Unless there is a resource that is eligible for consideration on the National Register, a Section 4(f) Evaluation is not required. | |
| 14 | The Whereas clause in the PA on page 4 was revised to say that all built component will follow the Project's Design Language Pattern Book. | Changed in the PA. Response should reflect that. |
| 15 | The effect of the wording in this clause does not affect the integrity of the PA | |

| | A | B | C |
|---|---|---|---|
| 16 | 13 | Page 14 | 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. |
| 17 | 14 | Page 14 | 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. |
| 18 | 15 | Page 14 | Unless the consulting parties have the ability to invoke a dispute resolution procedure (not currently included), this promise of "consider[ation]" is meaningless. |
| 19 | 16 | Page 14 | Ditto. |
| 20 | 17 | Page 15 | 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? |
| 21 | 18 | Page 18 | 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. |
| 22 | 19 | Page 23 | It's unclear what the relationship would be between this person and the *Kako'o.* |

| | D | E |
|---|---|---|
| 16 | Please refer to Stipulation XIV.C. which describes how various disputes will be processed. The City recognizes that some issues raised by various consulting parties are still of concern. These issues and suggested changes were brought to the attention of FTA and other Signatories, but it was decided to make other adjustments to the PA instead. | Rather than asking why this is an issue now, should just referece to the dispute resolution process described in the PA. In general, would perfer to politely recognize where issues have been brought of previously and FTA and/or the City considered that suggestion, but decided to go in another direction. |
| 17 | The PA has been revised to include consulting parties. | Changes were made. |
| 18 | Stipulation XIV. Administrative Procedures discusses the process for dispute resolution. While the signatories or invited signatories to the PA are responsible to initiate the the dispute resolution process, FTA will provide the consulting parties with a copy of the response. Through the other provisions of the PA the consulting parties will be provided opportunities for input. | Please check response. Not sure that I understand. (see response re worded) |
| 19 | Ditto. | |
| 20 | A specific number was suggested during consultation, but a decision was made not to specify a number at this time. It is recognized that the number could be up to 33 historic properties. | Remove "why are all these comments coming in now." Just state that the consultation said there could be up to 33. (wording revised) |
| 21 | The City in consultation with the Navy, or the Navy, if it chooses, shall complete an update to the Pearl Harbor NHL nomination and the CINPAQ HQ nomination. affected Navy resources. The City has not changed the Makalapa boundaries. The Section 106 APE was approved by the SHPD. The ICRMP is not a Section 106 document. It is an internal management tool. | Can we add, the City, in consultation with the Navy, or the Navy, if it chooses, shall complete an update to the Pearl Harbor NHL nomination and the CINPAQ HQ nomination? (wording revised) |
| 22 | The architectural historian is a City position that will handle the specific needs of the resources to be and the relationship to the various regulations and requirements. The City staff person would also staff the Historic Preservation Committee for the Project. The Kako`o will ensure that all parties follow the requirements set forth in the PA. The two would work together. | |

| | A | B | C |
|---|---|---|---|
| 23 | 20 | Page 23 | This seems to compete with the *Kako'o*. Would the *Kako'o* report to the architectural historian? |
| 24 | 21 | Page 24 | 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. |
| 25 | 22 | Page 24 | 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. |
| 26 | 23 | Page 24 | 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. |
| 27 | 24 | Page 24 | 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." |
| 28 | 25 | Page 25 | This would not encompass private development projects, which are likely to be a much greater factor in cumulative impact. |
| 29 | 26 | Page 25 | "related" is far too subjective a standard. |

| | D | E |
|---|---|---|
| 23 | The Kako`o will operate independently. Originally, this was to be a position funded by the Project for SHPD to ensure Project compliance with PA requirements. The SHPO preferred it be a separate entity and function independently reporting to the SHPD and the consulting parties. | |
| 24 | The City will begin this study in the timeframe stipulated in the PA, once the PA is executed. The City is prepared to meet the schedule for this work which was agreed upon by the Section 106 consulting parties. | This may be worded too strongly. (revised wording) |
| 25 | This was the wording agreed to after discussions about the subject in the RTD offices in Honolulu with representative from NTHP, HHF, and NPS present. | |
| 26 | For this and the following comments, the City and FTA have accepted SHPO's determination of adverse effect to 33 historic properties as noted in the Final EIS Table 4-34. The historic properties on or eligible for include in the NRHP are protected under Section 106. Therefore, if there is a change to the effect on a historic property it will be evaluated under the Section 106 process. The evaluation will consider the eligibility criteria used in determining that the historic property was eligible for inclusion on the NRHP. | Will add language to the effect that any adverse effect identified in this agreement that is not identified as demolition or modification of the building is identified as a visual adverse effect, but the project would not affect the physiclal structure of the historic property. (revised wording) |
| 27 | See previous response. | |
| 28 | The PA includes provisons to monitor private development within the APE to address potential cumulative effects. As stated in the PA, the City will work with other City agencies to review proposed development with the Chinatown and Merchant Street Historic Districts. The PA also states that if FTA, the City and SHPO agree that the Project plans or other activities may result in an adverse cumulative effect, the City in consultation with FTA, will consider measures to mitigate these effects. The City will also provide appropriate Section 106 documentation to the consulting parties and consider comments. | We should list out the provisions for the cumulative effects. (revised wording) |
| 29 | The PA states that the City will monitor demolition permits within 2000 feet of each station. | Tone down. 2,000 feet sounds like a reasonable standard. An alternative would be within the APE of the project in the area of the historic districts. (revised wording) |

| | A | B | C |
|---|---|---|---|
| 30 | 27 | Page 25 | This determination should be made by the HPC. |
| 31 | 28 | Page 26 | How would you know whether they were anticipated? Goal should be to minimize and mitigate ALL cumulative adverse effects? |
| 32 | 29 | Page 26 | How would you know whether they are unanticipated? |
| 33 | 30 | Page 28 | 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. |
| 34 | 31 | Page 31 | All consulting parties should be notified. There is no good reason to limit this type of important information to concurring parties. |
| 35 | 32 | Page 31 | A dispute resolution process needs to be provided for the consulting parties as well. Could cross-reference to Appendix A (see below). |
| 36 | 33 | Page 32 | This is unlikely to be long enough. We recommend at least 15. |
| 37 | 34 | Page 39 | 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. |

| | D | E |
|---|---|---|
| 30 | That is not the respnsibility of the HPC. FTA and the City are respnsible for determinations of effect. | agree. FTA should make determinations of effect. (revised wording) |
| 31 | See the response to comment 25. The City will address potential cumulative effects for future activities by others that are not known at this time during the Project's construction up to one year after operation. This is a reasonable timeframe for future actions. | A cumulative adverse effect does not have to be related to the project. It would just need to affect the same resource as the project does. The definition of cumulative effect is "past, present, and reasonably foreseeable future actions." Currently, we should have accounted for all past and present actions and currently anticipated future actions with our cumulative effects analysis. Was just trying to use language that gets that there may be other future actions, not currently reasonably foreseeable, that FTA would be willing to consider as cumulative impacts up until the end of construction and 1 year operation of the transit project. (revised wording) |
| 32 | See the response to comments 25 and 28. | see above. (referenced back to comments 25 and 28) |
| 33 | See response to comment 23. It should be noted that there are no vibration impacts from the project and with mitigation, no severe noise impacts as noted in the Final EIS Section 4.10. | we can add some language to a where as clause or reference back to the FEIS. Should note specifically that the adverse effects do not include noise or vibration or physical harm to the building. (revised wording) |
| 34 | OK | |
| 35 | See response to comment 15. | (referred back to another response) |
| 36 | This timeline was set during consultation over a year ago. It may be revisted in the future should the timeframe for construction of the Project change. | Add that the timeframe can be extended if needed when the expiration date is approaching. Ten years is just a preliminary date. (revised wording) |
| 37 | Because there has been no definition by SHPD of effect in some cases, an "unanticipated" finding could be any impact not defined. In most cases, the effect is likely one of an impact on setting, not the resource itself since few are directly affected. There is little chance effects on setting will change. In any case, if an effect to the historic resources on or eligible for the NRHP changes from what was disclosed in the FEIS and Historic Technical reports, the unanticipated effect would be evaluated based on the NRHP criteria used to determine eligibility. | |