

	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 (Panels 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 <i>Kako'o</i> ? The relationship needs to be clarified.
9	6	Page 7	Clarify that this is different from the <i>Kako'o</i> . (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.

	D	E
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2		
3	Response	FTA comments
4	New agency begins July 1, 2011. Responsibilities will be transferred to the RTA.	
5	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 SHPD and accepted by FTA. The SHPO did not provide the basis for these determinations. Therefore, general effects to the resources are assumed.	On the conference call today, 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 and resolved. The APE was approved by SHPD. 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 thoroughfare. 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 unless it is to purposely gerrymander a single district in an effort to force the Project to directly impact the resource. It does not benefit the Project or historic preservation.	
7	These have been part of the PA for over a year. They will be adhered to and are listed as stipulations later in the PA, but this comment is inappropriate at this stage.	
8	This is in addition to the Kako`o and has been part of the PA for over a year.	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.
9	This is in reference to the people tasked with completing the various responsibilities under the PA who would interact with the Kako`o.	

	A	B	C
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 <i>Kako'o</i> 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 <i>Corridor H Alternatives, Inc. v. Slater</i> , 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 <i>Pattern Book</i> , not just maintain and update it.
15	12	Page 14	Not strong enough.
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 <i>Secretary's Standards</i> . 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.

	D	E
10	The adverse effects on a number of resources were identified by SHPD without explanation. The FTA and the City, though repeated requests for an explanation have not been responded to, have included them with the objective to give as much access to the consulting parties as the project moves forward.	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.
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.	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.
12	Until there is a project, there is no need. If the PA causes the project to be terminated for delay, any expenditures for such work would be wasted. The PA must be completed and executed for the requirement to have an effect.	Tone down.
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	We can add that, but the City is committing to abide by the Pattern Book under any circumstances.	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	
16	Why is this just now being presented as an issue? It was part of the discussion a year ago. It is consistent with the PA from last November that NTHP was part of. It is inappropriate to bring this forward now. The bottom line is that there is a process described in the PA. There could be disagreement, but those will be worked through. FTA's and the City's goal is to protect resources.	Rather than asking why this is an issue now, should just referce 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.

	A	B	C
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 <i>Kako’o</i> .
23	20	Page 23	This seems to compete with the <i>Kako’o</i> . Would the <i>Kako’o</i> 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.

	D	E
17	The PA will be revised to include consulting parties.	
18	This is the adopted practice for the Project as a whole and has been followed so far despite not having a PA. This practice will continue. Alternatively, the clause can be removed iff that provides more definition.	Please check response. Not sure that I understand.
19	Ditto.	
20	Why are all these comments coming in now? This has not changed since the discussions last year. During consultation, it was recognized that it could be up to 33, but will likely be fewer than that.	Remove "why are all these comments coming in now." Just state that the consultation said there could be up to 33.
21	The Navy is welcome to take on the nomination forms for the affected Navy resources. Contrary to the comment, the City has never manipulated 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?
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.	
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 has had no incentive to move on this without an executed PA. If there is no Project, there is not need for this effort.	This may be worded too strongly.
25	This was the wording agreed to after discussions about the subject in the RTD offices in Honolulu with the NTHP, HHF, and NPS present.	

	A	B	C
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.
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?

	D	E
26	For this and the following comments, the City and FTA have repeatedly requested clarification of the exact nature of the adverse effect on a number of resources. No response has ever been given. Nonetheless, the City chose to include them to address an apparent concern which, though undefined, seemed worthy of Section 106 protection. It is unreasonable to address this now. It has been this way for two years.	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 physical structure of the historic property.
27	See previous response.	
28	And not necessarily related to the Project in any way. There is a limited ability to prevent the private sector from doing what it does except to encourage proper safeguards. The PA helps to establish those. There are provisions in the PA to address the possibility of cumulative impacts as a result of the Project. Restrictions to property uses unrelated to the Project should be addressed through changes in law or regulation, which are not within the purview of the PA	We should list out the provisions for the cumulative effects.
29	"Related" is a more specific description than a random distance of nearly a half mile that may include properties in no way related to the Project work. The intent is to ensure that the Project funds are spent where the Project has an effect, not to be a provider of protection against the normal course of development business in the City.	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.
30	That is not the charge of the HPC. FTA and the City do not agree with this approach.	agree. FTA should make determinations of effect.
31	This was a major concern of the SHPO. The wording reflects that preference. The goal in this should be to minimize all cumulative adverse effects "related to the Project only."	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.

	A	B	C
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
32	This was a major concern of the SHPO. The wording reflects that preference.	see above.
33	The expectation is that effects on the built environment will be known. Should there be another "unanticipated" effect, it will be properly addressed.	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.
34	OK	
35	The process set forth in the PA is to establish a process for reasonable coconsideration of any issues, not provide a forum for spurious arguments and unsubstantiated claims intended to delay work.	
36	This timeline was set during consultation over a year ago. It will remain.	Add that the timeframe can be extended if needed when the expiration date is approaching. Ten years is just a preliminary date.
37	It is unlikely, but because there has been no definition 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.	

Cell: D17

Comment: Lawrence Spurgeon:
Check, I think this was already done.