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1	**NTHP Comments on Programmatic Agreement**		
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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.

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3	**Response**
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.
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 attachment 2 of the PA was added to the **Whereas** clause on page 3. Attachment 2 contains a summary of adverse effect determinations for all 33 resources. The information in the table in attachment 2 derived from the Section 4(f) analysis presented in the FEIS and the historic resources technical reports for the project that have previously been shared with the consulting parties.
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. As stipulated in Section IV of the PA, the City will be preparing nomination forms to the National Register of Historic Places to the Keeper of the National Register. The boundaries will confirmed or revised by the Keeper at that time.

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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.
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

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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.
8	This postion will be filled in addition to the Kako`o, an independent contractor. The City will hire an in-house 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.
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 the table in attachment 2 to the PA. Attachment 2 is a summary of information presented in the FEIS and historic resources technical reports. Reference to attachment 2 was added to the Wheras clause on page 3 of the PA where the adverse effect determinations are noted.
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. It is anticipated that the case study will be prepared to be helpful for future Section 106 processes. In addition to distributing to consulting parties and other interested parties, FTA can make this document available on their public website.

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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.
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.

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12	The cultural and historic research conducted by the City's cultural and historic contractors (Cultural Resources Technical Report, August 15, 2008) and through scoping and public comments on through the NEPA and Section 106 processes only identified one traditional cultural property along the alignment; the Chinatown district. Through discussions on the PA with consulting parties, the City agreed to do additional studies on traditional cultural properties as part of the PA. Based on the initial work conducted by the City's cultural and historic resources experts, FTA believes that the City has condcuted a reasonable and good faith effort to identify traditional cultural properties. It is not anticipated that the additional work through the PA will find new traditional cultural properties. However, if potentially eligible traditional cultural properties are identified, then the FTA will follow the procedures for PA and Section 4(f) analyses, if needed.
13	see comment above
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.
15	Suggested change was accepted.
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. In addition, the Kako'o will be providing an independent assessment on the City's compliances with stipulations in the PA including a review of design and construction plans. One of the responsibilities of the Kako'o is to share their independent assessment of project mitigation requirements with consulting parties.

	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?

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17	The PA has been revised to include consulting parties.
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 including neighborhood design workshops and by providing preliminary engineering design plans for built components of the Project for comment. In addition, the Kako'o will be providing an independent assessment on the City's compliances with stipulations in the PA including a review of design and construction plans. One of the responsibilities of the Kako'o is to share their independent assessment of project mitigation requirements with consulting parties.
19	Again, the Kako'o will be conducting an independent assessment of project deliverables and compliance with the terms of the PA. This information will be provided to FTA and the signatories and invited signatories as well as the other consulting parties. Any of these invited signatories can invoke the dispute resolution process. As described in the PA, FTA will be participating in the process for the long haul and will be availble for the consulting parties. In addition to the Kako'o position, there are numerous opportunities highlighted in the PA that will allow input from the consulting parties. FTA does not see a need at this time for a formal dispute resolution process involving the consulting parties.
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.

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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.*
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.

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21	Language changed in the PA. 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. As described above, the ICRMP is not a Section 106 document. It is an internal management tool
22	Language was added to the PA to further distinguish the roles. The architectural historian is an in-house 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 could 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. The Kako'o would be funded by the City, however, would likely report to the SHPD and FTA to some degree as as third-party contractor. The details of this arrangement would be determined in the request for proposal and statement of work for the position.
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.
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	See previous responses.

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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?
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.

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27	See previous responses.
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.
29	The PA states that the City will monitor demolition permits within 2000 feet of each station.
30	That is not the respnsibility of the HPC. FTA, with assistance from the City and other consulting parties, are respnsible for determinations of effect.
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.
32	See the response 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.
34	OK. The PA was changed to reflect this recommendation.
35	See response to comment 15.
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.

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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.

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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 Attachment 2, which is a summary of information provided in technical reports and the FEIS, the unanticipated effect would be evaluated based on the NRHP criteria used to determine eligibility.