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DECEMBER 14, 2023

FORMER OR&L PROGRAMMATIC AGREEMENT MEETING NOTES - PUBLIC

FHWA

Meesa Otani (Environmental Engineer)

Kelly Okamura (Realty Specialist and Civil Rights Program Manager)

Matt Walker (Transportation Specialist)

David Clarke (Federal Preservation Officer)

HDOT

Henry Kennedy (Engineering Program Manager)

Robert Sun (Project Manager)

NTHP

Betsy Merritt

HRS

Steve Vendt

ENV

Paul Christiansen

James Campbell Company

Kellie Caswell

RM Towill

Diana Yamashita

Isaiah Sato

Kapolei Project

Scott McCormack

HECO

Rouen Liu

Sarah Uechi

The Resort Group at Ko Olina

Shane McMonagle

Planning Solutions

Jim Hayes

Hunt Companies

Tony Gaston

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Meesa Otani

Today's meeting was to discuss the the latest draft of the Oahu Railway and Land Company Programmatic Agreement for Section 106 of the National Historic Preservation Act. We are here to take any comments. If you want to submit written comments, you can do so until January 12th.

Steve Vendt

As discussed in the meeting the other day, Malio Street is not a road. We've checked all the valuation maps from 1916 to the 1930s and there is no roadway shown on those maps. We've also spoken to kapuna in the neighborhood and at least one of them says there was never a road there. I just want to make sure that's clear that if someone believes otherwise, you need to provide proof.

The other issue is that HDOT is soliciting bids for a service contract to take care of the right-of-way. Why is HDOT doing this and how will this be done? What is the end game? What is HDOT trying to do? I can only assume that it's a way for HDOT to let the right-of-way deteriorate or impair and impede HRS from running trains on the track.

Henry Kennedy

As mentioned earlier, the purpose of the RFP is to consolidate the maintenance of the landscaping around the the OR&L right-of-way and the maintenance of the historic property so that it stays in good shape. We want to make sure that the maintenance is done by an SOI qualified individual so that it retains its historic integrity. That's really the purpose of it. It's not to degrade the track or to let it go into disrepair. That might be HRS's fear, but that is not HDOT's purpose.

Steve Vendt

How are you going to do this when the deed says it needs to be done by historical nonprofit?

Henry Kennedy

I believe that only pertains to operation of the train; it doesn't pertain to who maintains the railroad.

Steve Vendt

HRS believes it does.

Henry Kennedy

That's a difference of interpretation. I don't know how to satisfy or to convince you that you're incorrect.

Steve Vendt

It's in the first couple paragraphs of the deed, where it says it will be operated and maintained by a historical nonprofit.

Henry Kennedy

It says "may".

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Meesa Otani

Is HDOT going to consult the AG for a legal type of interpretation?

Henry Kennedy

It will.

Paul Christiansen

Based on our earlier meeting, we understand that using trenchless methods, such as pipe jacking or horizontal directional drilling (HDD), underneath the tracks to replace an existing utility is okay as far as the PA is concerned, that that activity would be included.

However, using trenchless methods to install a new utility, would not be covered by the PA and would be subject to the 106 process.

Meesa Otani

Currently, Appendix C speaks of maintenance of existing utilities, but it does not speak to new utilities as covered under this Programmatic Agreement.

Paul Christiansen

The reason that was given for that was concerns regarding burials and similar issues. I would contend that that concern applies regardless of whether the activity is covered by the Programmatic Agreement or not. Pits would be dug on either side of the right-of-way. They could even be done outside of the right-of-way and then tunnel underneath. It seems like that would be fairly minimally disruptive.

We have some plans; BWS is putting in water lines and we plan to sewer Verona villages. So we will have a need to put utility lines underneath the tracks and it would probably be helpful to not have to go through the 106 process. I don't know if Appendix C can be altered to also allow new utilities, or if that's opening up a big can of worms.

Meesa Otani

At this time, we're not planning on including any new utilities under Appendix C.

As mentioned, we are consulting on the 106 Programmatic Agreement for the Oahu Railway and Land Company right-of-way. The latest version of the draft Programmatic Agreement was posted on the HDOT website. If you had any comments or any questions, you may submit them in writing by January 12th.

Steve Vendt

I have a question for Mr. Hayes. You said you were planning on crossing the right-of-way, is it above ground, below ground, at ground?

Jim Hayes

I wouldn't say I was planning to cross it. It is just that occasionally that topic comes up. For instance, in Appendix C and under utilities, Item K. It addresses the maintenance, repair and replacement of above ground and underground utilities and other sections have a lot more specificity to them.

So one of the questions that utility installations may have is, when that maintenance repair and replacement involves a slightly different arrangement than what is currently existing. For example, you

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have an existing 8-inch water line and it's been determined that it needs to be increased to a 12-inch water line as part of a maintenance project. A similar situation could occur with electric lines or other utilities. It is considered maintenance repair/replacement by the utility and growing with the community in the surrounding area. Is that something that's going to be considered covered under appendix, or is something different?

David Clarke

This is a very good question and a very important question and I want to be clear to everybody on the call today...maintenance of existing utility facilities can happen under the Programmatic Agreement with the appendix that we've provided, with the intent that if it's rehabilitation of existing facilities then the appendix allows a streamlined approach; but that is only for in kind rehabilitation. Anything new, different or changes even to existing facilities will require a formal, 106 and 6E consultation process. So the short answer is "no", the appendix will not allow for that. It's meant for existing facilities to be rehabilitated in kind, and we use the word "in kind" to mean you can fix what's already there. But if you want to change anything then you've got to go through the formal process.

Jim Hayes

We did see the words "in kind" in other sections of Appendix E, but that term in kind did not appear in section K of Appendix C.

David Clarke

I think it's in the preamble to that appendix, but the intent is for in kind only. That's not meant to stop infrastructure and utility work from happening. It's meant to have that kind of, like, pause to determine if we agree and if it's appropriate to do the type of work for whatever may be new utilities or new crossings or new work.

G. Scott McCormack

The last time we had this meeting, there was a discussion about completing the Programmatic Agreement in a three-month time frame. What does it look like in terms of actually complaining the agreement and finalizing it?

Meesa Otani

The section 16 consultation process can be complicated. That was our latest guess on what we thought was going to be a three-month time frame. As I mentioned earlier, we're taking comments until January 12th. We hope to have possibly another round of meetings and then move forward with the Programmatic Agreement. So we are probably looking at the end of March.

David Clarke

That's about right. We have to take public comment until January, then we have to adjudicate any comments that come in to finalize the document. This should be the last round of the comment response matrix and then once we respond to this round of comments, we will plan to move forward with a final document for signature...hopefully in February or March, early spring.

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Rouen Liu

I noticed nobody from the State Historic Preservation Division is on the call. Have you heard anything from them on the Programmatic Agreement in the language? I know there were some differences previously and was wondering if those differences were resolved.

Meesa Otani

We had a smaller group consulting party meeting on Tuesday with Historic Hawaii Foundation, National Trust, Hawaiian Railway Society and SHPD did participate in that phone call; they did have a couple of comments. I think they are planning to submit comments to the current version of the draft PA, but I think we will be able to address their comments.

Rouen Liu

Is there a way that we're able to see those comments that they submit?

Meesa Otani

I do have a comment matrix. Can I provide everyone the comments?

David Clarke

We can, but if we send them to one group, we've got to send them to everybody. We can do a comment matrix and send that out after January when the comment period closes via an Excel file.

Betsy Merritt

One of the bigger questions that was raised on Tuesday was, why is Hawaii DOT going to search for a firm that they would pay to do the maintenance work that the Hawaiian Railway Society is currently doing for free? It just makes no sense. We weren't really getting a a straight answer to that and it's the kind of thing where textual changes to the PA don't necessarily address that question. But we can certainly try to think of safeguards that we could suggest adding to the draft PA that might address that.

David Clarke

I'm not going to give you a clean answer on that today, but I hear you.

Betsy Merritt

You're not the one making the decision anyway, right?

David Clarke

The federal government hears you, and it's something that we will take back from the federal government to talk to our State counterparts with. It's outside of the PA; it's technically not part of the PA process and embedded.

Betsy Merritt

The PA references it.

David Clarke

It references it, but it doesn't directly dictate who's going to "do the maintenance". FHWA will have to

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figure out and talk internally and then decide what the position the federal government has before we go back to the State.

Betsy Merritt

What is the anticipated timing of the Contractual RFP process to seek this kind of a firm versus the finalization of the Programmatic Agreement. Which is going to happen first?

Henry Kennedy

We have to route it through federal highways and SHPD and the AG before we let the RFP so I'd say give or take six months.

David Clarke

I think the PA will happen first and then the State will have whatever agreement they have for maintenance.

Betsy Merritt

It's reassuring to the here that the RFP is going to be routed through SHPD.

David Clarke

It's got to go through us and them. So that's why the PA will happen first.

Henry Kennedy

I wanted to say that a big part of it is that we want to make sure that the maintenance is done by SOI qualified standards. I'm sure HRS is doing a good job, but I don't know that it's SOI qualified and that came up as an issue of concern.

David Clarke

That's also something we talked with Dawn about as the SHPO and whether or not the exact SOI qualifications need to be in place or what level the federal government has any oversight capacity. But I understand and hear what the State is saying and the concern.

Betsy Merritt

There's not an SOI category for expertise in historic rail infrastructure but we you know we have lots of concerns; there's a lot of places where things could go wrong. What we want to try to do is develop safeguards that are mutually acceptable, that bring everyone a comfort level. HDOT said that it was going to try to package this scope of work with some other unrelated things.

Meesa Otani

Please submit your comments by January 12th and we will have another meeting after that comment round.