UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

March 24, 2008

Mr. Ted Matley
U.S. Department of Transportation
Federal Transit Administration
201 Mission Street, Suite 1650
San Francisco, California 94105

Subject: Draft Environmental Impact Statement for the Proposed Lahaina Small Boat Harbor Ferry Pier Improvements, Maui, Hawaii (CEQ #20080043)

Dear Mr. Matley:

The Environmental Protection Agency (EPA) has reviewed the above-referenced document pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. EPA has previously provided feedback on this project through the *Memorandum of Understanding for the National Environmental Policy Act/Clean Water Act Section 404, Integration Process for Surface Transportation Projects in the State of Hawaii* (NEPA/404 MOU). Our detailed comments are enclosed.

EPA appreciates the early planning and coordination for this project through the NEPA/404 MOU. EPA has previously concurred on the project purpose and need and criteria for alternative selection on November 4, 2005, and on the range of alternatives and Alternative 3 as the preliminary preferred alternative on December 29, 2006.

EPA is supportive of the efforts made by the project development team to minimize impacts to resources through the alternatives development process. However, we have some concerns related to dredging, water quality, habitat, and cumulative impacts. EPA has rated this document EC-2, *Environmental Concerns, Insufficient Information*. Please see the attached *Rating Factors* for a description of our rating system.

In particular, we are concerned that the document does not discuss how the dredging and construction associated with the project will be performed. The Final Environmental Impact Statement (FEIS) should provide this information, quantify the impact of these activities, particularly on coral habitat and water quality, and commit to

mitigation for these impacts. Filling of submerged lands for pier construction and dredging of areas not previously dredged will be subject to Clean Water Act (CWA) Section 404 (b)(1) Guidelines (40 CFR 230). If it is determined that an Individual Permit is required, only the Least Environmentally Damaging Practicable Alternative (LEDPA) can be permitted pursuant to the 404 (b)(1) Guidelines.

We appreciate the opportunity to review this Draft Environmental Impact Statement and look forward to future coordination on the project. The next steps for EPA and the NEPA/404 MOU signatories are concurrence on the LEDPA and the conceptual mitigation plan. When the FEIS is released for public review, please send two copies to the address above (mail code: CED-2). If you have any questions, please contact Carolyn Mulvihill of my staff at 415-947-3554 or mulvihill.carolyn@epa.gov.

Sincerely,

/s/ Laura Fujii for

Nova Blazej, Manager
Environmental Review Office

Enclosures:
Summary of EPA Rating Definitions
EPA's Detailed Comments

cc: Eric Hirano, State of Hawaii, Department of Land and Natural Resources
Michael Molina, U.S. Fish and Wildlife Service
Lolly Silva, U.S. Army Corps of Engineers
Farley Watanabe, U.S. Army Corps of Engineers
Chris E. Yates, NOAA National Marine Fisheries Service

EPA DETAILED COMMENTS ON THE DRAFT ENVIRONMENTAL IMPACT STATEMENT FOR THE PROPOSED LAHAINA SMALL BOAT HARBOR FERRY PIER IMPROVEMENTS PROJECT, MARCH 24, 2008

Alternatives Analysis

EPA is concerned that the Draft Environmental Impact Statement (DEIS) does not document the complete range of alternatives that have been considered during the environmental process for this project. While we concurred on the range of alternatives to be analyzed, for clarity, Chapter 2 (Alternatives Considered) of the Final Environmental Impact Statement (FEIS) should contain a discussion of the alternative locations for the project that are discussed in the Section 4(f) evaluation, and the reasons for their elimination from further analysis in the FEIS. While it is not necessary to include a detailed analysis of the impacts of these alternatives, they should be included in the discussion of alternatives as evidence that a rigorous evaluation has occurred (40 CFR 1502.14).

Recommendation:

- In the FEIS, include a discussion of all alternatives considered, including those not analyzed in detail in the DEIS. Provide justification for the elimination of all alternatives that are not analyzed in the document. Specifically, the DEIS should identify if eliminated alternatives have greater than, or equal environmental impacts to the alternatives analyzed.

Dredging Impacts

The description of dredging work in the DEIS does not include a detailed discussion of the method(s) that will be used to dredge and transport the dredged material from the project site to the proposed disposal site. A description of these methods and their impacts should be included in the FEIS. If dredging methods will include blasting, the FEIS should describe potential secondary impacts to marine life, such as coral reefs in areas near the dredging site and endangered green sea turtles and humpback whales in nearby waters, as well as to historic buildings in Lahaina.

The FEIS should commit to appropriate best management practices (BMPs) that will be implemented and maintained during dredging and construction. A coral and water quality monitoring program should be implemented and tied to decisions about starting and/or halting dredging operations.

The DEIS states that dredged materials will be disposed at a site at Kahului Harbor. The location of the disposal site and its status as upland (non-wetland) should be described. Since Kahului is a very windy area, the FEIS should also describe how dredged spoils will be contained using BMPs to prevent wind and water transport of spoils into nearby ocean and wetlands. The FEIS should also describe how the dredged materials will be transported to Kahului, by truck or barge, the impacts of this transport method, and how spillage will be prevented. Beneficial uses of dredged materials should

be prioritized over ocean disposal and indefinite stockpile (e.g. storage) alternatives and EPA supports reuse of dredged material as the preferred disposal method. Describe any plans for reuse of the dredged material in the FEIS.

Recommendations:

- Include in the FEIS a description of the type of dredging work that will be performed and the impacts of the methods used.
- Include commitments to BMPs in the FEIS to reduce the impacts of dredging and construction. These should include silt curtains, bubble curtains, or other effective containment devices.
- Commit to implementing a coral and water quality monitoring program to provide real-time measurements during dredging and construction activities. This monitoring should provide real-time turbidity measurements to the project manager and to the State of Hawaii Department of Health (DOH) so that dredging can be modified or halted if necessary to minimize impacts on aquatic resources.
- Provide a detailed description in the FEIS of the disposal plans for the dredged material, including a detailed description of the disposal site, the transport plan and any impacts that may result from the transport of materials, sampling that will be performed to characterize the material prior to disposal, and opportunities for reuse of dredged material. Identify and commit to BMPs to prevent accidental transport of spoils to nearby ocean and wetlands.

Water Quality

As described in the DEIS, Lahaina Harbor is included in DOH's 2004 list of impaired waters for turbidity, pursuant to Clean Water Act Section 303(d). However, the DEIS lacks an adequate assessment of the present water quality conditions in the harbor and analyses of the short- and long-term water quality impacts associated with each alternative.

Appendix D presents data from two stations sampled on one day in 2004 and a summary of the DOH's historical data for Lahaina Harbor (1989-1998). The 2004 data set does not contain an adequate number of samples or sample dates to characterize the present water quality at the site. In addition, the data are not compared with Hawaii's water quality standards (WQS) to identify parameters that exceed the WQS. DOH's Environmental Planning Office should be consulted to obtain guidance on data requirements for characterizing water quality conditions. Any efforts to improve water quality in the harbor and how those efforts might be impacted by construction and operation of the proposed improvements should be described.

Water quality impacts are potentially significant considering the history of nuisance macroalgal blooms and noxious odors in the Lahaina Harbor. The proposed dredging and construction could affect pollutant residence time and therefore, water quality conditions in the harbor. These impacts are not evaluated or discussed in the

DEIS. As discussed above, the FEIS should commit to BMPs to minimize impacts to water quality.

Recommendations:

- Given Lahaina Harbor's status as an impaired water body, the FEIS should include a thorough assessment of present water quality conditions. Consult with DOH for guidance on requirements for this assessment.
- The FEIS should include a discussion of the short- and long-term impacts of the various alternatives on water quality, and the impacts of the alternatives on any ongoing efforts to improve water quality.
- Identify and commit to BMPs in the FEIS to minimize project impacts to water quality.

Habitat Impacts

The DEIS states that Alternative 3 will result in the permanent loss of 2,720 square feet (sf) of reef flat, 528 sf of pilings, and 21,100 sf of sand. It also states that new sand and piling habitat will be created as a result of dredging and construction. However, the DEIS lacks an assessment of additional direct impacts to marine habitats resulting from construction practices such as anchoring and secondary impacts such as elevated turbidity during dredging. These impacts should be identified and included in determinations of required mitigation. The fact that the waters of the harbor are classified as essential fish habitat by the National Marine Fisheries Service should also be included in the discussion of impacts to biological resources.

Secondary effects from construction and dredging, such as elevated turbidity, could affect coral survival and water quality conditions in the harbor. Fine suspended sediments can block light transmission, and nutrients released from these sediments during dredging can stimulate algal growth. These factors may impact existing coral colonies as well as coral larvae and recruitment in the area.

Recommendations:

- The FEIS should include quantitative estimates of the impacts of dredging and construction activities on habitat areas, which include essential fish habitat. This discussion should include information on the projected aerial extent, direction, and probability of sediment plumes and estimates of temporary impacts to corals both within and outside the harbor.
- Identify and commit to strategies to avoid and minimize these impacts and quantify the benefits of implementing these strategies.

Compensatory Mitigation

The FEIS should describe appropriate compensatory mitigation for any unavoidable impacts to coral reefs, a special aquatic site under 40 CFR 230.44.

Compensatory mitigation should be over and above standard management practices. EPA recommends that compensatory mitigation be designed to compensate for permanent and temporary impacts of construction and dredging, and scaled using Habitat Equivalency Analysis (HEA) to compensate for lost functions. The DEIS describes a HEA in Appendix E. EPA notes that this was an early application of HEA for scaling of mitigation for construction impacts to coral reefs and that the methods now used are more comprehensive. For example, impacts from construction operations are now taken into account, as is the uncertainty of mitigation success. We encourage use of the updated methods, as practicable, in determining compensatory mitigation for the FEIS and conceptual mitigation plan.

The proposed compensatory mitigation described in the DEIS involves removing a vessel that was grounded on the reef at Lahaina in 2004 and transplanting corals from the construction footprint to the scar left in the reef by the grounded vessel. EPA notes that the vessel has been removed from the reef and that compensatory mitigation plans for the proposed project must be revisited before any Section 404 permit can be approved. It is likely that the proposed mitigation work is no longer possible or appropriate.

Recommendations:

- EPA recommends that a meeting be convened prior to publication of the FEIS with the State of Hawaii Department of Land and Natural Resources, U.S. Fish and Wildlife Service, National Marine Fisheries Service, U.S. Army Corps of Engineers, and EPA to identify appropriate mitigation. The FEIS should document this meeting and any other consultation with resource agencies to determine appropriate mitigation plans.
- EPA encourages use of updated HEA methods for determining compensatory mitigation.
- The FEIS should describe the updated mitigation plan, which should include mitigation for construction and dredging impacts. The benefits achieved through the proposed mitigation, such as sf of habitat created, should be quantified in the FEIS.

Cumulative Impacts

Cumulative impacts to coral reefs are not fully disclosed and discussed in the DEIS. Impacts from other harbor projects planned for Maui (Maalaea and Kahului) and statewide (Harbor Master Plan), should be specifically identified and considered in the cumulative impact analysis. The analysis of impacts to marine biota should consider the impacts of dredging and fill, as well as temporary construction-related impacts from anchors, anchor lines, and sediment.

For all impacts, the determination of which projects to include in a cumulative impact analysis depends upon the resources of concern that may be impacted. The projects to include can be public or private, and not only those activities associated with

the proposed project. EPA recommends use of the June 2005 *Guidance for Preparers of Indirect and Cumulative Impacts Analysis* developed jointly by Caltrans, FHWA, and EPA [http://www.dot.ca.gov/ser/cumulative_guidance/purpose.htm]. The guidance is relevant to projects outside of California and will assist in identifying cumulative impacts and preparing an analysis that is sound, well documented, and compliant with 404(b)(1) Guidelines.

Recommendations:

- Identify cumulative impacts to coral reefs from all harbor projects in the FEIS.
- Include a discussion of cumulative impacts from any other projects that have the likelihood of impacting resources impacted by the proposed project. This discussion should include all reasonably foreseeable actions, including non-harbor projects.
- EPA recommends the use of the June 2005 *Guidance for Preparers of Indirect and Cumulative Impacts Analysis* [http://www.dot.ca.gov/ser/cumulative_guidance/purpose.htm]. Specifically, the 8-step process outlined in the guidance provide guidelines for identifying and assessing cumulative impacts:
    1. Identify the resources to consider in the cumulative impact analysis by gathering input from knowledgeable individuals and reliable information sources. This process is initiated during project scoping and continues throughout the NEPA analysis.
    2. Define the geographic boundary or Resource Study Area for each resource to be addressed in the cumulative impact analysis.
    3. Describe the current health and the historical context of each resource.
    4. Identify the direct and indirect impacts of the proposed project that might contribute to a cumulative impact on the identified resources.
    5. Identify the set of other current and reasonably foreseeable future actions or projects and their associated environmental impacts to include in the cumulative impact analysis
    6. Assess the potential cumulative impacts.
    7. Report the results of the cumulative impact analysis.
    8. Assess the need for mitigation and/or recommendations for actions by other agencies to address a cumulative impact.

Climate Change

Emerging research on global climate change indicates that many coastal areas may be impacted in the future by sea level rise due to rising global temperatures and subsequent melting of polar ice caps and ice sheets. The FEIS should discuss the potential impacts of climate change on the proposed project and potential adaptive management strategies to protect the project from any adverse impacts.

Recommendation:

- Include a discussion in the FEIS of the potential impacts of climate change on the project and adaptive management strategies to protect the project from those impacts.

Air Quality

While air quality is not a significant concern for this project, the document contains an incorrect reference in discussing criteria air pollutants. The Clean Air Act, rather than the National Environmental Policy Act, is the legislation that requires EPA to set National Ambient Air Quality Standards (NAAQS) for the six criteria pollutants. The NAAQS are discussed in 40 CFR Part 50, not 40 CFR Part 38, Subpart B, which is referenced in the DEIS.