

Queen Kaahumanu Highway Widening Project 106 Consultation Meeting

Attendance

Herb Lee (Facilitator)
Donald Smith (HDOT)
Pua Aiu (HDOT)
Lisa Powell (FHWA)
Kahaa Rezantes (FHWA)
Meesa Ontani (FHWA)

From Palama Nui:

Carrie Kuwada Phipps
Richard Stevens
Daniel Stevens
Director Raynette (Kalei) Haleamu-Kam (Director)
Paolo Morgan (Student)
Carrie Kuwada Phipps
Rachel Solemsaas (Chancellor)
No'el Tagab-Cruz (Hawai'i Lifestyle program instructor)
Juanita Thompson (former Student, via video)

Mandy Raslow (ACHP)
Lauren Morawski (OHA)
Susan Lebo (SHPD)
Tamara Luthy (SHPD)
Fred Cachola (Ka makani hou o Kaloko-Honokohau)
Paka Harp (Ka makani hou o Kaloko -Honokohau)
Bo Kahui (La'i Opuia)
Aric Arakaki (Na Alahele, NPS)
Mandy (Na Alahele, NPS)
Kierston Faulkner (HHF)
Bill Thompson (NPS)
Jeff Zimpler (NPS)
Carrie Johnson (OHA)

Opening Pule Fred Cachola

Opening remarks by Herb Lee to set context for discussion and meeting and to encourage collaboration and cooperation for a productive meeting

Introductions were made.

There was a discussion on the appropriateness of the agenda. Don and Herb clarified that time would be given to all proposals, including the Palama Nui proposal from HDOT and the NHO proposal. Don clarified that the Palama Nui Proposal was one possible option for mitigation.

Don Smith went over the status of the stipulations. The stipulation tracking spreadsheet was passed out to those who needed a copy. Smith started by discussing only the outstanding stipulation, but Cachola asked to go down the list in order, so that it would be easier to follow. Below is a review of comments and discussion of the stipulation items in the order they are presented in the attached spreadsheet.

The last meeting was 2 years ago

Stipulation # 4: Archaeological Preservation and Mitigation Plan

Lisa Powell reported that the Data Recovery report was sent to SHPD March 16, 2018. The end of fieldwork report is anticipated in mid-2019.

Harp asked if HDOT received a response from SHPD regarding the Burial Treatment Plan Addendum submitted to SHPD? Lisa noted that it was not needed since the roadway was moved. Paka suggest that the report be updated by deleting the burial treatment plan section since it is no longer applicable. Cachola agreed that the report should be adjusted to reflect that the burial is outside the boundaries of the project.

Stipulation #5b Native Hawaiian Cultural Outreach and Education

Smith noted that the MOU with UH Hilo expired this year and no work had been done on it. However, he has been working with Keiki Kawaiaie'a to develop a new MOU. Smith said that he expects it to be signed within the month. This is one of the reasons the Queen Kaahumanu MOA needs to be amended and extended. The new MOU retains all of the stipulations in the old MOU (as required in the Queen Kaahumanu MOA), with addition of:

a) the Kohala Center has been added, per NHO requests. The Kohala Center will add a layer of oversight as well as being on the same side of the island as the project.

b) funding has been increased to 1.25 million to cover increased salaries and the addition of the Kohala Center.

In addition, Smith has been working on securing funding, so UHH will receive the first year's funding soon after signing the document. Transfer of funds had been one of the issues holding up implementation of the old MOU with UHH.

Susan Lebo (SHPD) asked who would sign? Smith relayed that it would be the Chancellor and the DOT Director and legal representatives.

Cachola expressed frustration and disappointment that nothing had been done. Cachola questioned HDOT's sincerity to accomplish this stipulation. He asked why the clause triggering dispute resolution had not been utilized to ensure this item was completed. He also felt that going down a checklist was not conducive to having a meaningful discussion. According to Cachola, UHH has tried multiple times to attempt to get the funding. He believes this points to HDOT's unwillingness to accomplish this stipulation.

Lee noted that the Consulting Parties (CP) have not seen the MOU. Smith agreed to share it.

Lebo asked if there is a provision in the MOU to stop or terminate the MOU if the effort is not moving forward. Smith said there is language for both addressing not moving forward and for termination.

Smith said that the MOU contained provisions for this.

Lee wanted clarification if this is the same MOU? Smith said it is, with two additions: the addition of Kohala Center and additional funds from \$800,000 and \$1.25 million. There is also additional legal language. The language in the MOU retains the same Queen Kaahumanu MOA stipulations and did not change between the new and old MOU.

Faulkner (HHF) pointed out that the terms MOA and MOU were being mixed and ask for clarification that the MOU with UH will meet the requirements of the Queen Kaahumanu MOA. Fred and Don agreed that it would.

Harp wanted UHH to consult with the CPs on how the UH MOU is implemented. Ala Kahakai wanted to be consulted on any trail work. Don explained that consultation for stipulation 5b was completed as part of the Queen Kaahumanu MOA.

Lebo asked if the MOU has language that says it meets the stipulations in the MOA and is there language to determine if the MOU is being implemented and actions if it is not. She assumes everyone is working in good faith but the MOU should have a measure that allows for corrections if it is not being done.

Smith noted that if HDOT cannot accomplish the stipulations in 5b, it would still be HDOT's responsibility to complete the stipulations in the MOA. HDOT responsibility to ensure the terms of the MOU are met is clearly spelled out in the MOU. (Language below added by HDOT after the meeting)

HDOT would not reopen consultation for the MOU unless UHH does not fulfill the MOU and an alternative must be found. At that point, more consultation would need to be done to make sure the consulting parties agree with any new effort.

Cachola ask that it be noted that nothing can be done.

Amanda (Na Ala Hele, NPS) noted that under E, A, or B that Palamanui could be included in the UHH MOA. It doesn't necessarily have to be an either or, and they could help meet the stipulations. Don noted that the Palama Nui proposal is for the trail breaches.

Lebo asked if the increased funding, from \$800,000 to \$1.25 million will impact FHWA funding for other efforts or other efforts to mitigate damage to the damaged sits. Smith replied that is does not impact FHWA funding or other mitigation efforts.

Stipulation #11, Interpretive Signs

Powell reported that HDOT, FHWA and NPS have signed an MOA to have NPS develop interpretive signs for the trails in the project ROW that are also within the National Park. NPS will invoice DOT for state money. Work should start soon.

Powell noted that the Harpers Ferry Group will be doing the work. Zimpler added that the Harper's Ferry group will come out in August and give recommendations and then the NHO's will be consulted once the consulting group gives options.

Harp noted that he had wanted the trails marked on the highway like at NELHA but DOT was concerned with safety. He thought DOT was going to paint the roadway. Harp would like to know why those details were not in the MOA. He noted that the signage was only being done in the NPS boundaries and not beyond.

Stipulation #17 Post-Review Discoveries

This item will be addressed later in the agenda.

Stipulation #19 Monitoring and Reporting

This item is in progress.

Stipulation #21 Amendments

Smith noted that we are discussing various amendment to the MOA.

Stipulation #1 On site point of contact.

The HDOT On-site point of contact is Don Smith.

Stipulation #2 Area of Potential effect

SHPD concurred with the expanded APE on January 6, 2017.

Stipulation #3 Professional Standards

Both Cachola and Harp challenged the professional qualifications of Cultural Surveys Hawaii. Harp stated that if CSH had done its job, we would not be here today. CSH identified 17 sites, Harp identified 86 sites. Harp says that it is not correct to say professional standards were used because CSH did not place the buffers correctly. Harp reiterated the lack of professional standards by CSH and added that Hawaii is an occupied state and that destruction of sites are war crimes.

Stipulation #6 Cultural Monitors

This item is complete. Harp took a moment to thank Cynthia Nazara, who was the lead cultural monitor and to acknowledge her passing. He also thanked Sterling Chow, who is no longer with HDOT, for bringing her on the project.

Stipulation #9 Highway Drainage and Stipulation #10a Pedestrian Crossings

Smith reported that the Drainage and Pedestrian crossings are complete. Both were completed when the highway was completed.

Stipulation #10b Pedestrian Crossings Underpass Feasibility Study

Pedestrian and Underpass Feasibility Study and Design Guidelines are complete and Smith has 2 copies for distribution and will be available for download. Smith and Cachola agreed that both studies warrant additional discussion, but agreed to hold off in the interest of time.

Aric asked if the study is in draft form. He and Mandy were not allowed to consult on the Underpass Feasibility Study.

Stipulation #12 Ahupua'a Signs

Ahupuaa signs have been placed

Stipulation #13 Landscaping Plans

Landscaping was part of the construction and is complete.

Stipulation #14 Relationship Building Workshop

Relationship Building Workshops are completed. HDOT extended these workshop, so 2 were held on Oahu, 1 on Hawaii Island, and 1 on Maui. Aiu mentioned Kauai and Smith stated those were part of the Listening Sessions

Stipulation #15 Terrain Model

Smith stated that this item is complete. The terrain model was located in the room. Harp disagreed that the model is complete because it is missing the mauka to makai trails. Cachola noted that the terrain model was an innovative mitigation measure meant to represent and bring back a landscape that is being destroyed. He noted that Hawaiians are losing their "classrooms" which is needed to finish passing on our knowledge to the next generation. Cachola said they were not consulted and the terrain model before them is not what they had in mind. Cachola reiterated that you cannot check off a box The terrain model is not done and is not what was expected. It is not a commodity, it is not a check box, and this is not what they had in mind. He noted that if consultation had been done as it should have, we would not be in this situation. Harp noted that during a meeting with RM Towill, the terrain model was forced on them, because the map maker was retiring. They did not have a chance to review the model before it became final.

Smith noted that there were two meetings where HDOT and RM Towill met with stakeholders and discussed the study and terrain models. The information obtained during those meetings, plus information from additional outreach attempts that were made was utilized to complete the study and the model. Out of that consultative effort these items (terrain model, underpass feasibility study, and design guidelines) were developed. Smith said HDOT followed a process and did what we could to obtain the information. Therefore, going forward, we will not reopen the consultation or redo the terrain model.

Lebo said we need to look at the big picture that we are working on a MOA. If parties feel that certain items have not been adequately consulted on to reach a conclusion in the MOA or if we walk away feeling that certain aspects of the stipulations have not been adequately consulted then we will need to emphasize the stipulations that have not been developed or are still under consideration.

Harp and Tamara asked for a list of the meetings and meeting attendees. Don agreed to make these available for download.

Amanda asked if the digital link to the terrain model could be re-sent as she was having difficulty linking to the digital version. Don agreed to resend.

Stipulation #16 Archaeological materials and records

Amanda asked where are the archeological materials being housed? Smith responded that they are being housed by CSH in Hilo. Cachola asked if they can be housed by NPS.

Lebo noted that under 6E SHPD selects the archive site. She noted that the State is buildings some archiving facilities, so SHPD may be able to store or curate materials in the future.

Amanda asked if the MOA needs to be amended because it states that at a future date NPS can hold the materials. Lebo said if NPS agreed to take them in the MOA, if they have the facilities, an amendment would not be needed. Amanda suggested reading the stipulation for cultural artifacts.

Amanda – read the stipulation for cultural artifacts.

Otani noted that this stipulation was commented on by ACHP after everyone else had signed, so the initials say that this was done after consultation. But NPS did not have facilities to take the materials. They could take the materials in the future if space or facilities became available. This was agreed to with the Advisory Council 5 years ago.

Lebo agreed but pointed out that since we are drafting an MOA amendment, it is possible if these facilities come on line, NPS can take the artifacts.

Harp asked for an update on the rocks that were dismantled from the O'oma boundary wall. The agreement was that the rocks would be left there for future use by the NHOs. Smith and Otani thought that this had been done. Lebo asked for administrative record to show it had been done. Cachola said it was in the meeting minutes. The work was done, the rocks are stored, and the boundary is very important because Kamehameha III spend the first five years of his life in O'oma. Lebo would like to see the documentation. Harp asked if there can be an agreement allowing the NHOs to access the rocks and erect an ahu? Right now, they cannot legally access the area. Lebo suggested adding a stipulation in the MOA making the rocks available for appropriate use.

Lee ended this portion of the meeting.

Palamanui did a presentation.

Live were Director Raynette (Kalei) Haleamu-Kam; student Paolo Morgan; Richard Stevens and Carrie Kuwada Phipps. On Zoom were: Chancellor Rachel Solemsaas; Hawai'i Lifestyle program instructor No'el Tagab-Cruz; and former student who recently graduated Juanita Thompson.

Harp appreciated the speakers' passion for the trails. However he is concerned about the restoration process. Has documentation been done and is Palama Nui following laws that protect historical resources? He recommends that Dr. Stevens get together with an expert to see what legal processes need to be followed to avoid any issues of unforeseen violations of the law. He does not want to see the spirit for the trails dampened. Suggested that Palama Nui find out what laws are applicable because he doesn't want to see Palama Nui charged with anything for trying to do the right thing.

Cachola expressed appreciation that there is an ohana like this working on the trials, and the geographical and historical environment. He believes that the Palama Nui program meets the needs of the UHH MOU and wished this could have been done six (6) years ago. He urged the Palama Nui presenters to talk to the UH Chancellor to see if they could access the UHH funds.

Racheal, chancellor of UH Community college committed to follow up with UH Chancellor and see how the MOU could benefit this work.

Both Cachola and Harp did not believe that the Palama Nui proposal should be used as mitigation for the trail breaches because there had not been adequate vetting of the NHO proposal. Fred noted that they have brought a power point of their proposal to share with everyone.

Smith noted that the UHH MOU is in process and cannot be changed at this point. However, as mitigation for the breached sites, HDOT could participate with Palama Nui on their trail restoration projects. Smith also noted that the MOU is using federal funds, but the mitigation for the breached sites will be from State funds, so they use different pots of money.

Lebo expressed a concern that that these trails would not be documented as historic properties.

Kahui stated that the process is good. He believes there is a lot more to be done and that there are layers of different efforts. He commends the work being done by Palama Nui, and believes that if they work with DOT they would comply with the law. It is apparent that UH wants to do the right thing for our trails. He noted that we are here to resolve the MOA and believes we can get there, but if it is all about wanting more, then we are never going to get there. We have to come to a resolution, that is my mana'o.

Cachola expressed his disappointment in the meeting and asked for another meeting where the agenda can be mutually agreed on.

Amanda asked for some clarification regarding consultation on the breaches. She noted that the signatories have to agree. Lebo agreed but noted signatories don't have to sign if they don't find the MOA adequate. Amanda wanted to know the role of the invited signatories. Aiu noted that they are invited to sign, but HDOT can move forward as long as the signatories agree. The signatories are:

Cachola noted that HDOT and FHWA committed to notifying the NHOs within 30 days of the last meeting on mitigation, about committing to a schedule to determine mitigation. That was two years ago. That is the kind of frustrations and furry I feel .

Morowski (OHA) reiterated that the mitigation for the damaged sites should come from the NHO's. There needs to be more information and time to discuss and maybe we can understand how HDOT is arriving at these decisions.

Rezantes (FHWA) said he heard Uncle Fred's concerns, and they seem very valid and passionate. But he wanted to clarify that he heard Smith, speaking for HDOT, commit to doing something, but he did not hear Smith say he committed to any one thing. He committed to addressing the breaches. Rezantes wants clarity. FHWA needs to know what we are walking away from in this meeting. He was pleased, HDOT is acknowledging what is happening and encouraged that they are committed to following through.

Rezantes further clarified that he heard Smith say, "We commit to fulfilling our commitment. There are two parts, 1 being the UHH MOU and the 1.25 M, and the second the breaches" Rezantes said he thought Smith said that Palama Nui is an option. He pointed out that he would be concerned, like Uncle Fred, if I heard any more than that.

Smith noted that he cannot fund Palama Nui unless it is tied to mitigation.

Lee asked if there were further comments.

Lebo pointed out that due to rule changes she now needs 3 weeks notice to travel. She asked if HDOT could give adequate notice as SHPD wants to participate in person. Morowski noted that OHA has the same restrictions.

Lee stated in closing: Please make sure everyone understands there are still options on the table and no one is committed to any one option. The purpose of today meeting is to update you, close out some of the stipulations that remained open. We have not met for a while and HDOT is making a good faith effort to move forward on mitigation measures. We have covered primarily outstanding items and shared the work on the MOU with UH.

Lee asked Cachola if he could send out a copy of his proposal for the breaches.

Smith was asked if he would commit to more meetings. He responded that HDOT is not committing to more meetings today. This is not to saying we won't agree to more meetings in the future, just saying we did not commit to that today.

Harp asked if we have a commitment that the terrain model is a draft? Smith replied, "no."

Smith committed to providing additional information on how HDOT wants to move forward before the end of next week.

Herb – Let's adjourn